

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SUSAN LIEBERT, et al.,

Plaintiffs,

v.

Case No. 23-CV-672

WISCONSIN ELECTIONS
COMMISSION, et al.,

Defendants.

ANSWER OF COMMISSION DEFENDANTS

Defendants Don M. Millis, Robert F. Spindell, Marge Bostelmann, Ann S. Jacobs, Mark L. Thomsen, and Carrie Riepl, in their official capacities as commissioners of the Wisconsin Elections Commission, and Meagan Wolfe, in her official capacity as administrator of the Wisconsin Elections Commission (hereafter “Commission Defendants”), after the Court’s Order dismissing Defendant Wisconsin Elections Commission from this action (Dkt. 56), hereby respond and assert defenses to Plaintiffs’ Complaint for Declaratory and Injunctive Relief (Dkt. 1) as follows.

NATURE OF THE ACTION

1. As to the allegations in paragraph 1 of the complaint, they are legal conclusions to which no response is required.

2. As to the allegations in paragraph 2 of the complaint, they are legal conclusions to which no response is required.

3. As to the allegations in paragraph 3 of the complaint, they are legal conclusions to which no response is required.

4. As to the allegations in paragraph 4 of the complaint, they are legal conclusions to which no response is required.

5. As to the allegations in paragraph 5 of the complaint, the Commission Defendants DENY. And as to all allegations that “the Witness Requirement” is “Wisconsin’s requirement that a witness vouch for the qualifications of an absentee voter,” and it conflicts with the allegations of a “Witness Requirement” in paragraph 28, the Commission Defendants DENY.

6. As to the allegations in paragraph 6 of the complaint, they are legal conclusions to which no response is required. To the extent a response is required, the Commission Defendants DENY the allegations as to the witness attestation.

7. As to the allegations in paragraph 7 of the complaint, the Commission Defendants ADMIT that Plaintiffs seek declaratory and injunctive relief and DENY all remaining allegations.

JURISDICTION AND VENUE

8. As to the allegations in paragraph 8 of the complaint, the Commission Defendants ADMIT that Plaintiffs bring this action under 42 U.S.C. § 1983 and DENY all remaining allegations.

9. As to the allegations in paragraph 9 of the complaint, they are legal conclusions to which no response is required.

10. As to the allegations in paragraph 10 of the complaint, they are legal conclusions to which no response is required.

11. As to the allegations in paragraph 11 of the complaint, they are legal conclusions to which no response is required. To the extent a response is required, the Commission Defendants DENY that this Court has personal jurisdiction over the Wisconsin Elections Commission because it was dismissed from this action by the Court in an order dated January 17, 2024 (Dkt. 56).

12. As to the allegations in paragraph 12 of the complaint, the Commission Defendants ADMIT that venue is proper and DENY the remaining allegations.

PARTIES

13. As to the allegations in paragraph 13 of the complaint, the Commission Defendants DENY the allegations that the “Witness Requirement” burdens Susan Liebert’s exercise of her right to vote, and lack

knowledge or information sufficient to form a belief as to the remaining allegations and therefore DENY.

14. As to the allegations in paragraph 14 of the complaint, the Commission Defendants DENY the allegations that the “Witness Requirement” burdens Anna Haas’s exercise of her right to vote, and lack knowledge or information sufficient to form a belief as to the remaining allegations and therefore DENY.

15. As to the allegations in paragraph 15 of the complaint, the Commission Defendants DENY the allegations that the Witness Requirement burdens Anna Poi’s exercise of her right to vote, and lack knowledge or information sufficient to form a belief as to the remaining allegations and therefore DENY.

16. As to the allegations in paragraph 16 of the complaint, the Commission Defendants DENY the allegations that the Witness Requirement burdens Anastasia Ferin Knight’s exercise of her right to vote, and lack knowledge or information sufficient to form a belief as to the remaining allegations and therefore DENY.

17. As to the allegations in paragraph 17 of the complaint, the Commission Defendants DENY that the Wisconsin Elections Commission is a defendant in this case because this Court dismissed it through an order dated January 17, 2024 (Dkt. 56).

18. As to the allegations in the first two sentences of paragraph 18 of the complaint, the Commission Defendants DENY that Joseph J. Czarnezki is a commissioner and as to the remaining allegations, ADMIT; the Commission Defendants AFFIRMATIVELY ALLEGE that Carrie Riepl has replaced Joseph J. Czarnezki as a commissioner and is automatically substituted as a defendant under Federal Rule of Civil Procedure 25(d). As to the remaining sentence, they contain legal conclusions to which no response is required; to the extent a response is required, the Commission Defendants DENY.

19. As to the allegations in the first two sentences of paragraph 19 of the complaint, the Commission Defendants ADMIT. As to the remaining sentence, they contain legal conclusions to which no response is required; to the extent a response is required, the Commission Defendants DENY.

20. As to the allegations in paragraph 20 of the complaint, the Commission Defendants ADMIT.

21. As to the allegations in paragraph 21 of the complaint, the Commission Defendants ADMIT.

22. As to the allegations in paragraph 22 of the complaint, the Commission Defendants ADMIT

GENERAL ALLEGATIONS
Absentee Voting in Wisconsin

23. As to the allegations in paragraph 23 of the complaint, they are legal conclusions to which no response is required.

24. As to the allegations in paragraph 24 of the complaint, they are legal conclusions to which no response is required. To the extent a response is required, the Commission Defendants DENY that this definition extends to Wisconsin law beyond “[r]esidence as a qualification for voting” under Wis. Stat. § 6.10(1).

25. As to the allegations in paragraph 25 of the complaint, they are legal conclusions to which no response is required.

26. As to the allegations in paragraph 26 of the complaint, they are legal conclusions to which no response is required.

27. As to the allegations in paragraph 27 of the complaint, they are legal conclusions to which no response is required.

28. As to the allegations in paragraph 28 of the complaint, they are legal conclusions to which no response is required.

29. As to the allegations in paragraph 29 of the complaint, they are legal conclusions to which no response is required.

30. As to the allegations in paragraph 30 of the complaint, they are legal conclusions to which no response is required.

31. As to the allegations in paragraph 31 of the complaint, they are legal conclusions to which no response is required.

32. As to the allegations in paragraph 32 of the complaint, they are legal conclusions to which no response is required.

33. As to the allegations in paragraph 33 of the complaint, they are legal conclusions to which no response is required.

The WEC Defendants' Role in Administering the Witness Requirement

34. As to the allegations in paragraph 34 of the complaint, they are legal conclusions to which no response is required. To the extent a response is required, the Commission Defendants DENY.

35. As to the allegations in the first sentence of paragraph 35 of the complaint, they are legal conclusions to which no response is required. As the second sentence, the Commission Defendants ADMIT that the Commission prescribes uniform instructions for absentee voters and witnesses in Forms EL-128, EL-128cc, and EL-128u, but DENY that the image in paragraph 35 is the correct image of Form EL-128 (found on the Commission's website¹). The Commission Defendants AFFIRMATIVELY ALLEGE that the Commission, on December 19, 2023, voted to approve revised uniform absentee ballot

¹ *EL - 128 Uniform Instructions for Wisconsin Absentee Voters*, WEC, https://elections.wi.gov/sites/default/files/documents/EL-128%20Uniform%20Instructions%20Standard_1.pdf (last visited Jan. 30, 2024).

instructions. *See Notice of Commission Approval of Uniform Absentee Ballot Instructions*, WEC, <https://elections.wi.gov/sites/default/files/documents/Clerk%20Comm%20Revised%20Uniform%20Instructions%2012.27.23.pdf> (last visited Jan. 31, 2024). As to the last sentence, the Commission Defendants DENY that the Commission is a party to this case, as it was dismissed through an Order dated January 17, 2024 (Dkt. 56), and as to the remaining allegations, they are legal conclusions to which no response is required; to the extent a response is required, the Commission Defendants DENY.

36. As to the allegations in the first sentence of paragraph 36 of the complaint, they are legal conclusions to which no response is required. As to the second and third sentences, the Commission Defendants ADMIT. As to the last sentence, the Commission Defendants DENY that the Commission is a party to this case, as it was dismissed through an Order dated January 17, 2024 (Dkt. 56), and as to the remaining allegations, they are legal conclusions to which no response is required; to the extent a response is required, the Commission Defendants DENY.

37. As to the allegations in the first and second sentences of paragraph 37 of the complaint, they are legal conclusions to which no response is required; to the extent a response is required, the Commission Defendants ADMIT that the Commission prepares and distributes via its website an Elections Manual. As to the third sentence, the Commission Defendants ADMIT that the URL in

cited in the paragraph links to the Wisconsin Election Administration Manual, last updated on September 14, 2023, but DENY that that version is the current version. The Commission Defendants AFFIRMATIVELY ALLEGE that the manual was updated by the Commission on January 24, 2024, and will be uploaded to the website shortly. As to the last sentence, the Commission Defendants DENY that the Commission is a party to this case, as it was dismissed through an Order dated January 17, 2024 (Dkt. 56), and as to the remaining allegations, they are legal conclusions to which no response is required; to the extent a response is required, the Commission Defendants DENY .

The Clerk Defendants' Role in Administering the Witness Requirement

38. As to the allegations in the first sentence of paragraph 38 of the complaint, they are legal conclusions to which no response is required.

39. As to the allegations in paragraph 39 of the complaint, they are legal conclusions to which no response is required.

40. As to the allegations in paragraph 40 of the complaint, they are legal conclusions to which no response is required.

The Witness Requirement's Effect on Plaintiffs

41. As to the allegations in paragraph 40 of the complaint, the Commission Defendants DENY.

42. As to the allegations in paragraph 42 of the complaint, the Commission Defendants DENY.

43. As to the allegations in the first and second sentences of paragraph 43 of the complaint, the Commission Defendants DENY. As to the remaining sentences, they are legal conclusions to which no response is required.

44. As to the allegations in paragraph 44 of the complaint, the Commission Defendants ADMIT that clerks in Wisconsin municipalities, including the city clerks of Madison, Racine, and Green Bay, have admitted that they employ different standards for witness addresses and reject noncompliant absentee ballots, and DENY the remaining allegations.

45. As to the allegations in the first and second sentences of paragraph 45 of the complaint, the Commission Defendants DENY. As to the remaining sentences, the Commission Defendants ADMIT.

46. As to the allegations in the first sentence of paragraph 46 of the complaint, the Commission Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations and therefore DENY. As to the last sentence, the Commission Defendants DENY.

47. As to the allegations in the first sentence of paragraph 47 of the complaint, the Commission Defendants DENY. As to the remaining sentences, they are legal conclusions to which no response is required; to the extent a response is required, the Commission Defendants DENY.

48. As to the allegations in the first and second sentences of paragraph 48, the Commission Defendants ADMIT. As to the remaining sentences about the *Kormanik v. WEC* state court case, the Commission Defendants ADMIT that litigation is ongoing, the circuit court issued a decision granting summary judgment to the plaintiff and against the Commission but DENY that a temporary injunction is in force; the Commission Defendants AFFIRMATIVELY ALLEGE that the circuit court vacated the previously-issued temporary injunction in light of its decision on summary judgment against the Commission.

49. As to the allegations in paragraph 49 of the complaint, the Commission Defendants DENY.

CLAIMS FOR RELIEF

COUNT 1

Voting Rights Act § 201

52 U.S.C. § 10501; 42 U.S.C. § 1983; 28 U.S.C. §§ 2201, 2202

50. The Commission Defendants reallege and incorporate by reference the previous paragraphs as if fully set forth in this paragraph.

51. As to the allegations in paragraph 51 of the complaint, the Commission Defendants DENY.

52. As to the allegations in paragraph 52 of the complaint, they are legal conclusions to which no response is required.

53. As to the allegations paragraph 53 of the complaint, the Commission Defendants DENY.

54. As to the allegations in the first sentence of paragraph 54 of the complaint, the Commission Defendants DENY. As to the remaining sentence, the Commission Defendants ADMIT that the quoted language is from a brief filed by the Commission in a state court case relating to the Witness Requirement but DENY the allegation characterizing the position taken as to the Witness Requirement in this action.

55. As to the allegations in paragraph 55 of the complaint, the Commission Defendants DENY.

56. As to the allegations in paragraph 56 of the complaint, the Commission Defendants DENY.

COUNT II
Alternative Count
Civil Rights Act Materiality Provision
52 U.S.C. § 10101(a)(2)(B); 42 U.S.C. § 1983; 28 U.S.C. §§ 2201, 2202

57. The Commission Defendants reallege and incorporate by reference the previous paragraphs as if fully set forth in this paragraph.

58. As to the allegations in paragraph 58 of the complaint, the Commission Defendants DENY.

59. As to the allegations in paragraph 59 of the complaint, they are legal conclusions to which no response is required.

60. As to the allegations in paragraph 60 of the complaint, they are legal conclusions to which no response is required.

61. As to the allegations in paragraph 61 of the complaint, the Commission Defendants DENY.

62. As to the allegations in paragraph 62 of the complaint, the Commission Defendants DENY.

FURTHER RESPONSE

The Commission Defendants DENY any factual allegations in the complaint not expressly admitted herein.

RELIEF REQUESTED

The Commission Defendants DENY that Plaintiffs are entitled to any of the relief requested.

DEFENSES

1. Some or all of the plaintiffs lack standing.
2. The plaintiffs' complaint fails to state a claim upon which relief may be granted.
3. No counts or claims may continue against the Wisconsin Elections Commission because this Court dismissed it as a defendant in an Order dated January 17, 2024 (Dkt. 56).
4. Notwithstanding this Court's Order dated January 17, 2024 (Dkt. 56), for the purposes of appeal, the counts and claims against the Commission

Defendants are barred by sovereign immunity under the Eleventh Amendment.

5. The Commission Defendants reserve the right to raise other defenses as they become known, through discovery or otherwise.

WHEREFORE, the Commission Defendants demand judgment in their favor and against the plaintiffs, as well as such other and further relief as the Court deems appropriate under the circumstances.

Dated this 31st day of January 2024.

Respectfully submitted,

JOSHUA L. KAUL
Attorney General of Wisconsin

Electronically signed by:

s/ Steven C. Kilpatrick
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