

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

SUSAN LIEBERT; ANNA HAAS; ANNA POI;
and ANASTASIA FERIN KNIGHT,

Plaintiffs,

v.

WISCONSIN ELECTIONS COMMISSION;
DON M. MILLIS, ROBERT F. SPINDELL,
MARGE BOSTELMANN, ANN S. JACOBS,
MARK L. THOMSEN, *and* JOSEPH J.
CZARNEZKI, *in their official capacities as
commissioners of the Wisconsin
Elections Commission; Meagan Wolfe,
in her official capacity as administrator
of the Wisconsin Elections Commission;
MICHELLE LUEDTKE, in her official
capacity as city clerk for the City of
Brookfield; MARIBETH WITZEL-BEHL, in
her official capacity as city clerk for the
City of Madison; and LORENA RASE
STOTTLER, in her official capacity as city
clerk for the City of Janesville,*

Case No. 3:23-cv-00672-slc

Defendants.

**INTERVENOR-DEFENDANT THE WISCONSIN
LEGISLATURE'S ANSWER AND AFFIRMATIVE
DEFENSES TO PLAINTIFFS' COMPLAINT**

Intervenor-Defendant the Wisconsin Legislature ("Legislature"), by its undersigned attorneys at Troutman Pepper Hamilton Sanders LLP, hereby provides its Answer And Affirmative Defenses To Plaintiffs' Complaint, Dkt.1, as follows:

NATURE OF THE ACTION

1. Paragraph 1 sets forth legal conclusions for which no response is required. Paragraph 1 also references a federal statute and judicial opinions that speak for themselves. The Legislature denies the allegations in Paragraph 1 to the extent they are inconsistent with these sources.

2. Paragraph 2 sets forth legal conclusions for which no response is required. Paragraph 2 also references a federal statute and judicial opinion that speak for themselves. The Legislature denies the allegations in Paragraph 2 to the extent they are inconsistent with these sources.

3. Paragraph 3 sets forth legal conclusions for which no response is required. Paragraph 3 also references a federal statute and its amendments that speak for themselves. The Legislature denies the allegations in Paragraph 3 to the extent they are inconsistent with these sources.

4. Paragraph 4 sets forth legal conclusions for which no response is required. Paragraph 4 also references a federal statute that speaks for itself. The Legislature denies the allegations in Paragraph 4 to the extent they are inconsistent with this source.

5. Paragraph 5 sets forth legal conclusions for which no response is required; however, if a response is required, the Legislature denies that Wisconsin law violates the Voting Rights Act. Paragraph 5 also references provisions of Wisconsin and federal law that speak for themselves. The Legislature denies the allegations in Paragraph 5 to the extent they are inconsistent with these sources.

6. Paragraph 6 sets forth legal conclusions for which no response is required. Paragraph 6 also references a state statute that speaks for itself. The Legislature denies the allegations in Paragraph 6 to the extent they are inconsistent with this source.

7. Paragraph 7 sets forth legal conclusions for which no response is required; however, if a response is required, the Legislature admits that Plaintiffs seek the relief mentioned in Paragraph 7, but denies that they are entitled to any relief on their claims. The Legislature specifically denies that Plaintiffs “are subjected to an illegal restriction” on their voting rights and denies that Wisconsin’s absentee voting laws violate the Voting Rights Act. Paragraph 7 also references state and federal statutes, which speak for themselves. The Legislature denies the allegations to the extent they are inconsistent with these sources.

JURISDICTION AND VENUE

8. Paragraph 8 sets forth legal conclusions for which no response is required; however, if a response is required, the Legislature admits only that Plaintiffs purport to bring this action under 42 U.S.C. §§ 1983 and 1988, but denies that they are entitled to any relief. The Legislature further denies the allegations in Paragraph 8 to the extent they are inconsistent with those cited federal statutes, which speak for themselves.

9. Paragraph 9 sets forth legal conclusions for which no response is required; however, if a response is required, the Legislature denies the allegations in Paragraph 9. Paragraph 9 also cites federal statutes and the United States

Constitution, which speak for themselves. The Legislature denies the allegations to the extent they are inconsistent with these sources.

10. Paragraph 10 sets forth legal conclusions for which no response is required; however, if a response is required, the Legislature denies the allegations in Paragraph 10. Paragraph 10 also cites federal statutes and Federal Rule of Civil Procedure 65, which speak for themselves. The Legislature denies the allegations to the extent they are inconsistent with these sources.

11. Paragraph 11 sets forth legal conclusions for which no response is required; however, if a response is required, the Legislature denies the allegations in Paragraph 11.

12. Paragraph 12 sets forth legal conclusions for which no response is required; however, if a response is required, the Legislature denies the allegations in Paragraph 12. Paragraph 12 also cites a federal statute, which speaks for itself. The Legislature denies the allegations to the extent they are inconsistent with this source.

PARTIES

13. The Legislature denies that “[t]he Witness Requirement burdens Ms. Liebert’s exercise of her right to vote” and that she “faces a stark choice” to “forgo voting entirely.” The Legislature otherwise lacks knowledge or information to form a belief about the allegations in Paragraph 13, and therefore denies them.

14. The Legislature denies that “[t]he Witness Requirement burdens Ms. Haas’s exercise of her right to vote.” Paragraph 14 also references state statutes in a footnote, which speak for themselves. The Legislature denies the allegations to the

extent they are inconsistent with those sources. The Legislature otherwise lacks knowledge or information to form a belief about the allegations in Paragraph 14, and therefore denies them.

15. The Legislature denies that “[t]he Witness Requirement burdens Ms. Poi’s exercise of her right to vote.” The Legislature otherwise lacks knowledge or information to form a belief about the allegations in Paragraph 15, and therefore denies them.

16. The Legislature denies that “the Witness Requirement burdens Ms. Knight’s exercise of her right to vote.” The Legislature otherwise lacks knowledge or information to form a belief about the allegations in Paragraph 16, and therefore denies them.

17. The Legislature admits that Defendant Wisconsin Elections Commission (“WEC”) is a governmental agency that is tasked with providing local election officials with education, training, and support in administering Wisconsin’s elections. Paragraph 17 also cites a state statute, which speaks for itself. The Legislature denies the allegations in Paragraph 17 to the extent they are inconsistent with that source.

18. The Legislature admits that the various Defendants named in Paragraph 18 are the six WEC Commissioners and that Plaintiffs have sued those Defendants in their official capacities. The remaining allegations in Paragraph 18 cite a Wisconsin statute, which speaks for itself. The Legislature denies the allegations in Paragraph 18 to the extent they are inconsistent with that source.

19. The Legislature admits that Defendant Wolfe is the WEC Administrator and that Plaintiffs have sued that Defendant in her official capacity. That said, the remaining allegations in Paragraph 19 cite Wisconsin statutes, which speak for themselves. The Legislature denies the allegations in Paragraph 19 to the extent they are inconsistent with those sources.

20. The Legislature admits that Plaintiffs have sued Defendant Luedtke in her official capacity. That said, the remaining allegations in Paragraph 20 set forth legal conclusions for which no response is required. Paragraph 20 also cites a Wisconsin statute, which speaks for itself. The Legislature denies the allegations in Paragraph 20 to the extent they are inconsistent with this source.

21. The Legislature admits that Plaintiffs have sued Defendant Witzel-Behl in her official capacity. That said, the remaining allegations in Paragraph 21 set forth legal conclusions for which no response is required. Paragraph 21 also cites a Wisconsin statute, which speaks for itself. The Legislature denies the allegations in Paragraph 21 to the extent they are inconsistent with this source.

22. The Legislature admits that Plaintiffs have sued Defendant Stottler in her official capacity. That said, the remaining allegations in Paragraph 22 set forth legal conclusions for which no response is required. Paragraph 22 also cites a Wisconsin statute, which speaks for itself. The Legislature denies the allegations in Paragraph 22 to the extent they are inconsistent with this source.

GENERAL ALLEGATIONS

I. Absentee Voting in Wisconsin

23. Paragraph 23 is a legal conclusion that requires no response. This paragraph cites Wisconsin statutes and a provision of the Wisconsin Constitution, which speak for themselves. The Legislature denies the allegations in Paragraph 23 to the extent they are inconsistent with the cited legal sources.

24. Paragraph 24 is a legal conclusion that requires no response. This paragraph cites a Wisconsin statute, which speaks for itself. The Legislature denies the allegations in Paragraph 24 to the extent they are inconsistent with that source.

25. Paragraph 25 is a legal conclusion that requires no response. The allegations in this paragraph cite Wisconsin statutes, which speak for themselves. The Legislature denies the allegations in Paragraph 25 to the extent they are inconsistent with the cited legal sources.

26. Paragraph 26 is a legal conclusion that requires no response. The allegations in this paragraph cite Wisconsin statutes, which speak for themselves. The Legislature denies the allegations in Paragraph 26 to the extent they are inconsistent with the cited legal sources.

27. Paragraph 27 is a legal conclusion that requires no response. The allegations in this paragraph cite Wisconsin statutes, which speak for themselves. The Legislature denies the allegations in Paragraph 27 to the extent they are inconsistent with the cited legal sources.

28. Paragraph 28 is a legal conclusion that requires no response. The allegations in this paragraph cite a Wisconsin statute, which speaks for itself. The Legislature denies the allegations in Paragraph 28 to the extent they are inconsistent with that source.

29. Paragraph 29 is a legal conclusion that requires no response. The allegations in this paragraph cite a Wisconsin statute, which speaks for itself. The Legislature denies the allegations in Paragraph 29 to the extent they are inconsistent with that source.

30. Paragraph 30 is a legal conclusion that requires no response. The allegations in this paragraph cite Wisconsin statutes, which speak for themselves. The Legislature denies the allegations in Paragraph 30 to the extent they are inconsistent with the cited legal sources.

31. Paragraph 31 sets forth legal conclusions for which no response is required. This paragraph also cites Wisconsin statutes, which speak for themselves. The Legislature denies the allegations in Paragraph 31 to the extent they are inconsistent with the cited legal sources.

32. Paragraph 32 is a legal conclusion that requires no response. The allegations in this paragraph also cite Wisconsin statutes, which speak for themselves. The Legislature denies the allegations in Paragraph 32 to the extent they are inconsistent with the cited legal sources.

33. Paragraph 33 is a legal conclusion that requires no response. This paragraph also cites a Wisconsin statute, which speaks for itself. The Legislature

denies the allegations in Paragraph 33 to the extent they are inconsistent with the that source.

II. The WEC Defendants' Role in Administering the Witness Requirement

34. Paragraph 34 sets forth legal conclusions for which no response is required; however, if a response is required, the Legislature admits only that WEC is a statewide agency responsible for administering election and voting laws on a statewide basis and provides guidance regarding the interpretation and implementation of state election laws, including the absentee-voting laws.

35. Paragraph 35 sets forth legal conclusions for which no response is required. This paragraph also references a Wisconsin statute, WEC Form EL-128, WEC Form EL-128cc, and WEC Form EL-128u, which speak for themselves. The Legislature denies the allegations in Paragraph 35 to the extent they are inconsistent with these sources.

36. Paragraph 36 sets forth legal conclusions for which no response is required. This paragraph also references Wisconsin statutes and WEC Form EL-122, which speak for themselves. The Legislature denies the allegations in Paragraph 36 to the extent they are inconsistent with these sources.

37. Paragraph 37 sets forth legal conclusions for which no response is required. This paragraph also cites a Wisconsin statute and the WEC Election Administration Manual, which speak for themselves. The Legislature denies the allegations in Paragraph 37 to the extent they are inconsistent with these sources.

III. The Clerk Defendants' Role in Administering the Witness Requirement

38. Paragraph 38 sets forth legal conclusions for which no response is required.

39. Paragraph 39 sets forth legal conclusions for which no response is required. Paragraph 39 also references Wisconsin statutes and WEC guidance, which speak for themselves. The Legislature denies the allegations in Paragraph 39 to the extent they are inconsistent with those sources.

40. Paragraph 40 sets forth legal conclusions for which no response is required. Paragraph 40 also cites a Wisconsin statute, which speaks for itself. The Legislature denies the allegations in Paragraph 40 to the extent they are inconsistent with that source.

IV. The Witness Requirement's Effects on Plaintiffs

41. Paragraph 41 sets forth legal conclusions for which no response is required; however, if a response is required, the Legislature denies the allegations in Paragraph 41. Specifically, the Legislature denies that Wisconsin absentee voting laws "have injured and will continue to injure Wisconsin absentee voters, including all Plaintiffs."

42. The Legislature admits that absentee voting is a privilege, and further admits that the fundamental distinction between the right to vote and the privilege of absentee voting is enshrined in the Wisconsin Constitution, which provides that the Legislature "may" enact laws "[p]roviding for absentee voting." Wis. Const. art. III, § 2. That said, Paragraph 42 sets forth legal conclusions for which no response is

required; however, if a response is required, the Legislature denies the allegations in Paragraph 42. Specifically, the Legislature denies that “complying with” Wisconsin’s absentee-ballot witness requirement “injures Plaintiffs” and that the requirement is a “burden” on Plaintiffs’ right to vote.

43. Paragraph 43 sets forth legal conclusions for which no response is required; however, if a response is required, the Legislature denies the allegations in Paragraph 43. Specifically, the Legislature denies that Wisconsin’s absentee-ballot witness requirement “injures Plaintiffs by burdening them with a risk of disenfranchisement” and that “absentee voters face a risk of disenfranchisement from Wisconsin’s requirement that an absentee voter provide the witness’s ‘address.’” This paragraph also references Wisconsin statutes and judicial opinions, which speak for themselves. The Legislature denies the allegations in Paragraph 43 to the extent they are inconsistent with these sources.

44. Paragraph 44 sets forth legal conclusions for which no response is required; however, if a response is required, the Legislature denies the allegations in Paragraph 44. Paragraph 44 also references a publicly filed document in a court case, which speaks for itself. The Legislature denies the allegations in Paragraph 44 to the extent they are inconsistent with that source.

45. Paragraph 45 sets forth legal conclusions for which no response is required; however, if a response is required, the Legislature denies the allegations in Paragraph 45. Specifically, the Legislature denies that Wisconsin’s absentee-ballot witness requirement causes absentee voters to “face an ongoing threat that they will

be disenfranchised.” Paragraph 45 also references court cases and regulatory documents, which speak for themselves. The Legislature denies the allegations in Paragraph 45 to the extent they are inconsistent with those sources.

46. Paragraph 46 sets forth legal conclusions for which no response is required; however, if a response is required, the Legislature denies the allegations in Paragraph 46. Specifically, the Legislature denies that Wisconsin’s absentee-ballot witness requirement imposes unlawful burdens on voters. The Legislature lacks knowledge or information to form a belief about the remaining allegations in Paragraph 46, and therefore denies them.

47. Paragraph 47 sets forth legal conclusions for which no response is required; however, if a response is required, the Legislature denies the allegations in Paragraph 47. Specifically, the Legislature denies that “Wisconsin’s rules for curing defective absentee ballot certificates are very burdensome.” This paragraph also references WEC’s Election Administration Manual, which speaks for itself. The Legislature denies the allegations in Paragraph 47 to the extent they are inconsistent with that source.

48. Paragraph 48 sets forth legal conclusions for which no response is required; however, if a response is required, the Legislature denies the allegations in Paragraph 48. Specifically, the Legislature denies that “[t]he rules for curing absentee ballots are [] very unsettled.” This paragraph also references court cases and judicial decisions, which speak for themselves. The Legislature denies the allegations in Paragraph 48 to the extent they are inconsistent with those sources.

49. Paragraph 49 sets forth legal conclusions for which no response is required; however, if a response is required, the Legislature denies the allegations in Paragraph 49.

CLAIMS FOR RELIEF

COUNT I

Voting Rights Act § 201

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

50. In response to Paragraph 50, the Legislature realleges and incorporates by reference all prior paragraphs of this Answer and the paragraphs in the counts below as though fully set forth herein.

51. Paragraph 51 consists of a legal conclusion to which no response is required; however, if a response is required, the Legislature denies the allegations in Paragraph 51. Paragraph 51 also references a federal statute, which speaks for itself. The Legislature denies the allegations in Paragraph 51 to the extent they are inconsistent with that cited source.

52. Paragraph 52 cites 52 U.S.C. § 10501, which speaks for itself. The Legislature denies the allegations in Paragraph 52 to the extent they are inconsistent with that source.

53. Paragraph 53 consists of legal conclusions to which no response is required; however, if a response is required, the Legislature denies the allegations. Paragraph 53 also references Wisconsin statutes, which speak for themselves. The Legislature denies the allegations in Paragraph 53 to the extent they are inconsistent with these cited sources.

54. Paragraph 54 consists of legal conclusions to which no response is required; however, if a response is required, the Legislature denies the allegations. Paragraph 54 also references a court case, which speaks for itself. The Legislature denies the allegations in Paragraph 54 to the extent they are inconsistent with that source. To the extent this paragraph asserts additional factual allegations, the Legislature lacks sufficient information to admit or deny, and so denies.

55. Paragraph 55 consists of legal conclusions to which no response is required; however, if a response is required, the Legislature denies the allegations. Specifically, the Legislature denies that Wisconsin's absentee-ballot witness requirement violates the Voting Rights Act. This paragraph also references state and federal statutes, which speak for themselves. The Legislature denies the allegations in Paragraph 55 to the extent they are inconsistent with those sources.

56. Paragraph 56 consists of legal conclusions to which no response is required; however, if a response is required, the Legislature denies the allegations in Paragraph 56.

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. In response to Paragraph 57, the Legislature realleges and incorporates by reference all prior paragraphs of this Answer and the paragraphs in the counts below as though fully set forth herein.

58. Paragraph 58 consists of legal conclusions to which no response is required; however, if a response is required, the Legislature denies the allegations in Paragraph 58. This paragraph also references federal statutes, which speak for themselves. The Legislature denies the allegations in Paragraph 58 to the extent they are inconsistent with these cited legal sources.

59. Paragraph 59 consists of legal conclusions to which no response is required. Paragraph 59 cites a federal statute, which speaks for itself. The Legislature denies the allegations in Paragraph 59 to the extent they are inconsistent with this cited legal source.

60. Paragraph 60 consists of legal conclusions to which no response is required. Paragraph 60 cites federal precedents, which speak for themselves. The Legislature denies the allegations in Paragraph 60 to the extent they are inconsistent with these cited legal sources.

61. Paragraph 61 consists of legal conclusions to which no response is required; however, if a response is required, the Legislature denies the allegations in Paragraph 61. Specifically, the Legislature denies that Wisconsin's absentee-ballot witness requirement is "a voucher requirement in violation of the Voting Rights Act" or "is an unnecessary requirement that substantially increases absentee voters' risk of ballot rejection or disqualification." Paragraph 61 also references state and federal statutes, which speak for themselves. The Legislature denies the allegations in Paragraph 61 to the extent they are inconsistent with these cited legal sources.

62. Paragraph 62 sets forth legal conclusions for which no response is required; however, if a response is required, the Legislature denies the allegations in Paragraph 62. Paragraph 62 also references federal statutes, which speak for themselves. The Legislature denies the allegations in Paragraph 62 to the extent they are inconsistent with those cited legal sources.

PRAYER FOR RELIEF

The Legislature denies that Plaintiffs are entitled to any of the relief that they claim on page 21 of their Complaint. The Legislature also denies any allegations not otherwise answered in the prior Paragraphs, including any allegations in headings and footnotes, to the extent such denials are consistent with the Legislature's prior answers.

AFFIRMATIVE DEFENSES

1. Plaintiffs lack standing for their claims and/or their claims are not justiciable.
2. The allegations in the Complaint fail to state a claim upon which relief may be granted.
3. The doctrine of abstention bars Plaintiffs' claims.
4. The relief Plaintiffs seek is too speculative to support relief from this Court.
5. The Legislature reserves the right to assert any further defenses that may become evident during the pendency of this matter.

WHEREFORE, the Legislature demands judgment in its favor and against Plaintiffs, dismissing Plaintiffs' complaint, as well as ordering such other and further relief as this Court deems appropriate under the circumstances.

Dated: December 6, 2023.

Respectfully submitted,

/s/Misha Tseytlin

MISHA TSEYTLIN
Counsel of Record

KEVIN M. LEROY

CARSON A. COX*

TROUTMAN PEPPER

HAMILTON SANDERS LLP

227 W. Monroe, Suite 3900

Chicago, Illinois 60606

(608) 999-1240 (MT)

(312) 759-1938 (KL)

(312) 759-1939 (fax)

misha.tseytlin@troutman.com

kevin.leroy@troutman.com

*Attorneys for the Wisconsin State
Legislature*

**Admitted pro hac vice*

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of December, 2023, a true and accurate copy of the foregoing was served via the Court's CM/ECF system upon all counsel of record.

/s/Misha Tseytlin
MISHA TSEYTLIN