

FILED
04-04-2024
Clerk of Court
Marinette County
2024CV000043

STATE OF WISCONSIN CIRCUIT COURT MARINETTE COUNTY
BRANCH 2

THOMAS OLDENBURG,

Plaintiff,

v.

Case No. 24-CV-0043

WISCONSIN ELECTIONS
COMMISSION, et al.,

Defendants.

DEFENDANTS' ANSWER AND DEFENSES

Defendants Wisconsin Elections Commission, Marge Bostelmann, Carrie Riepl, Ann Jacobs, Donald Millis, Robert Spindell, Jr., Mark Thomsen, and Megan Wolfe, by attorneys, Assistant Attorney General Brian P. Keenan, answers Plaintiff Thomas Oldenburg's Complaint for Declaratory Judgment and provides defenses as follows.

The first two paragraphs of the complaint are a narrative containing legal conclusions to which no response is required. To the extent a response is required to these two introductory paragraphs, Defendants deny the allegations in these paragraphs.

PARTIES

1. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 1, and therefore deny them.

2. Defendants admit the allegations in paragraph 2.

3. Defendants deny the allegations in paragraph 3 and affirmatively alleged that WEC's address is 201 West Washington Avenue, Second Floor, Madison, Wisconsin 53703.

4. Defendants admit that Marge Bostelmann, Carrie Riepl, Ann S. Jacobs, Don Millis, Robert F. Spindell, Jr., and Mark L. Thomsen are the six current Commissioners of the Wisconsin Elections Commission. Defendants affirmatively allege that the Commission is under the direction and supervision of the Commission Administrator, who is appointed by a majority of the members of the Commission, with the advice and consent of the Wisconsin senate. Defendants deny the remaining allegations in this paragraph.

5. Defendants admit the allegations in the first sentence of paragraph 5. Defendants deny that WEC's address is 212 East Washington Avenue, Third Floor, Madison, WI 53703, and affirmatively alleged that WEC's address is 201 West Washington Avenue, Second Floor, Madison, Wisconsin 53703.

COMPETENCY AND VENUE

6. Defendants state that the allegations in paragraph 6 are characterizations of law to which no response is required.

7. Defendants state that the allegations in paragraph 7 are characterizations of law to which no response is required.

FACTS

8. Defendants state that the allegations in paragraph 8 are characterizations of law to which no response is required. To the extent a response is required, Defendants state that the Wisconsin Statutes speak for themselves and deny any characterization of them contrary to their express terms.

9. Defendants state that the allegations in paragraph 9 are characterizations of law to which no response is required. To the extent a response is required, Defendants admit that Wis. Stat. § 6.84 speaks for itself and deny any characterization of the provision contrary to its express terms.

10. Defendants state that the allegations in paragraph 10 are characterizations of law to which no response is required. To the extent a response is required, Defendants admit that Wis. Stat. § 6.86 speaks for itself and deny any characterization of the provision contrary to its express terms.

11. Defendants state that the allegations in paragraph 11 are characterizations of law to which no response is required. To the extent a response is required, Defendants admit that Wis. Stat. § 6.86 speaks for itself and deny any characterization of the provision contrary to its express terms.

12. Defendants state that the allegations in paragraph 12 are characterizations of law to which no response is required. To the extent a response is required, Defendants admit that Wis. Stat. § 6.86 speaks for itself and deny any characterization of the provision contrary to its express terms.

13. Defendants state that the allegations in paragraph 13 are characterizations of law to which no response is required. To the extent a response is required, Defendants admit that Wis. Stat. § 6.87 speaks for itself and deny any characterization of the provision contrary to its express terms.

14. Defendants state that the allegations in paragraph 14 are characterizations of law to which no response is required. To the extent a response is required, Defendants admit that Wis. Stat. § 6.84 speaks for itself and deny any characterization of the provision contrary to its express terms.

15. Defendants state that the allegations in paragraph 15 are characterizations of law to which no response is required. To the extent a response is required, Defendants admit that state that the Wisconsin Statutes speak for themselves and deny any characterization of them contrary to their express terms.

16. Defendants state that the allegations in paragraph 16 are characterizations of law to which no response is required. To the extent a response is required, Defendants admit that state that the Wisconsin Statutes speak for themselves and deny any characterization of them contrary to their express terms. Defendants affirmatively allege that the voter signature and witness requirements provide this type of proof for all absentee ballots.

17. Defendants admit that WEC maintains a system whereby voters can request absentee ballots for upcoming elections by electronic mail through the website myvote.wi.gov (“MyVote”). Defendants deny any characterization inconsistent with the requests being made by email.

18. Defendants admit the allegations in paragraph 18.

19. Defendants admit the allegations in paragraph 19.

20. Defendants admit the allegations in paragraph 20.

21. Defendants admit the allegations in paragraph 21.

22. Defendants admit the allegations in paragraph 22.

23. Defendants admit the allegations in paragraph 23.

24. Defendants admit the allegations in paragraph 24.

25. Defendants admit the allegations in paragraph 25.

26. Defendants admit the allegations in paragraph 26.

27. Defendants admit the allegations in paragraph 27.

28. Defendants admit the allegations in paragraph 28.

29. Defendants admit the allegations in paragraph 29.

30. Defendants admit the allegations in paragraph 30.

31. Defendants admit the allegations in paragraph 31.

32. Defendants admit the allegations in paragraph 32.

33. Defendants admit the allegations in paragraph 33.

34. Defendants admit the allegations in paragraph 34.

35. Defendants admit the allegations in paragraph 35.

36. Defendants admit the allegations in paragraph 36.

37. Defendants state that the allegations in paragraph 37 are characterizations of law to which no response is required. To the extent a response is required, Defendants admit that Wis. Stat. §§ 6.86 and 6.87 speak for themselves and deny any characterization of the provision contrary to their express terms.

38. Defendants state that the allegations in paragraph 38 are characterizations of law to which no response is required. To the extent a response is required, Defendants admit that Wis. Stat. §§ 6.86 and 6.87 speak for themselves and deny any characterization of the provision contrary to their express terms.

39. Defendants state that the allegations in paragraph 39 are characterizations of law to which no response is required. To the extent a response is required, Defendants admit that state that the Wisconsin Statutes

speak for themselves and deny any characterization of them contrary to their express terms. Defendants affirmatively allege that the voter signature and witness requirements provide this type of proof for all absentee ballots.

40. Defendants state that the allegations in paragraph 40 are characterizations of law to which no response is required. To the extent a response is required, Defendants admit that Wis. Stat. § 6.84 speaks for itself and deny any characterization of the provision contrary to its express terms.

41. With respect to the allegations in paragraph 41, Defendants admit that WEC has approved the use of new absentee ballot return envelopes and deny the remaining allegations.

42. With respect to the allegations in paragraph 42, Defendants admit that WEC has approved the design of new “Absentee Certificate Envelope” forms designated from EL-122 in August 2023 and deny the remaining allegations.

43. Defendants admit the allegations in paragraph 43.

44. Defendants admit the allegations in paragraph 44 subject to the affirmative allegations in paragraphs 45 and 48.

45. Defendants assert that the document referred to by paragraph 45 speaks for itself. Defendants affirmatively allege that the correct quotation is: “and the Absentee Certificate Envelope (EL-122), the inside envelope in which

the voter returns his or her voted absentee ballot to the clerk.” Defendants deny the remaining allegations in this paragraph.

46. Defendants affirmatively allege that the document referred to by paragraph 46 is the former version of the EL-122SP, the version of the absentee certificate envelope utilized for absentee voters who reside in certain residential care facilities that are not served by Special Voting Deputies. Defendants deny the allegations in paragraph 46 to the extent they claim that this document is the old version of the EL-122 used by the majority of absentee voters.

47. Defendants admit the allegations in paragraph 47.

48. Defendants assert that the document referred to by paragraph 48 speaks for itself. Defendants affirmatively allege that the correct quotation is: “the Absentee Certificate Envelope (EL-122), the inside envelope in which the voter returns his or her voted absentee ballot to the clerk.”

49. Defendants admit that the document in paragraph 49 contains the quoted language. Defendants affirmatively allege that the language “and this is the original or a copy of that request” did not appear on the previous versions of the EL-122. Defendants deny the remaining allegations in this paragraph.

50. Defendants state that the allegations in paragraph 50 are characterizations of law to which no response is required. To the extent a response is required, Defendants admit that Wis. Stat. § 12.60 speaks for itself and deny any characterization of the provision contrary to its express terms.

51. Defendants state that the allegations in paragraph 51 are characterizations of law to which no response is required. To the extent a response is required, Defendants admit that Wis. Stat. § 12.13 speaks for itself and deny any characterization of the provision contrary to its express terms.

52. Defendants state that the allegations in paragraph 52 are characterizations of law to which no response is required. To the extent a response is required, Defendants admit that Wis. Stat. §§ 12.13 and 12.60 speak for themselves and deny any characterization of the provision contrary to their express terms.

53. Defendants deny the allegations in paragraph 53.

54. Defendants affirmatively allege that the language certificate language “I requested this ballot, and this is the original or copy of that request” was included on the new EL-122, in part, to further clarify that the certification constitutes a copy of the absentee ballot request for all electors returning their voted absentee ballots. Defendants deny the remaining allegations in paragraph 54.

55. Defendants admit that the EL-122 is not the original request for absentee voters who have requested an absentee ballot through MyVote and deny the remaining allegations in paragraph 55.

56. Defendants deny the allegations in paragraph 56.

57. Defendants deny the allegations in paragraph 57.

58. Defendants deny the allegations in paragraph 58.

59. Defendants deny the allegations in paragraph 59.

60. Defendants state that the allegations in paragraph 60 are characterizations of law to which no response is required. To the extent a response is required, Defendants admit that Wis. Stat. § 12.13 speaks for itself and deny any characterization of the provision contrary to its express terms.

61. Defendants state that the allegations in paragraph 61 are characterizations of law to which no response is required. To the extent a response is required, Defendants admit that Wis. Stat. § 12.60 speaks for itself and deny any characterization of the provision contrary to its express terms.

62. Defendants state that the allegations in paragraph 62 are characterizations of law to which no response is required. To the extent a response is required, Defendants admit that Wis. Stat. § 12.60 speaks for itself and deny any characterization of the provision contrary to its express terms.

63. Defendants admit the allegations in paragraph 63.

64. Defendants admit the allegations in paragraph 64.

65. Defendants admit the allegations in paragraph 65.

66. Defendants admit the allegations in paragraph 66.

67. Defendants deny the allegations in paragraph 67.

68. Defendants deny the allegations in paragraph 68.

69. Defendants deny the allegations in paragraph 69.

70. Defendants state that the allegations in paragraph 70 are characterizations of law to which no response is required. To the extent that a response is required, Defendants deny the allegations.

COUNT I:
DECLARATORY JUDGMENT – WIS. STAT. § 806.04

71. Defendants incorporate their responses to the allegations in paragraphs 1–70.

72. Defendants state that the allegations in paragraph 72 are characterizations of law to which no response is required. To the extent a response is required, Defendants admit that the Wisconsin Statutes speaks for themselves and deny any characterization of their provisions contrary to their express terms.

73. Defendants state that the allegations in paragraph 73 are characterizations of law to which no response is required. To the extent a response is required, Defendants admit that the Wisconsin Statutes speaks for themselves and deny any characterization of their provisions contrary to their express terms.

74. Defendants state that the allegations in paragraph 74 are characterizations of law to which no response is required. To the extent a response is required, Defendants admit that the Wisconsin Statutes speaks for themselves and deny any characterization of their provisions contrary to their express terms.

COUNT II:
DECLARATORY JUDGMENT – WIS. STAT. § 227.40

75. Defendants incorporate their responses to the allegations in paragraphs 1–74.

76. Defendants state that the allegations in paragraph 76 are characterizations of law to which no response is required. To the extent a response is required, Defendants admit that Wis. Stat. § 227.23 (the complaint erroneously reference Wis. Stat. § 223.23) speaks for itself and deny any characterization of the provision contrary to its express terms.

77. Defendants state that the allegations in paragraph 77 are characterizations of law to which no response is required. To the extent a response is required, Defendants admit that Wis. Stat. § 227.10 speaks for itself and deny any characterization of the provision contrary to its express terms.

78. Defendants state that the allegations in paragraph 78 are characterizations of law to which no response is required. To the extent a response is required, Defendants admit that Wis. Stat. § 6.86 speaks for itself and deny any characterization of the provision contrary to its express terms.

79. Defendants state that the allegations in paragraph 79 are characterizations of law to which no response is required. To the extent a response is required, Defendants admit that Wis. Stat. § 6.87 speaks for itself and deny any characterization of the provision contrary to its express terms.

80. Defendants admit the allegations in paragraph 80.

81. Defendants admit that WEC passed a motion on April 28, 2023, requiring Wisconsin municipalities to use the new EL-122 envelopes when the redesign project was complete and confirmed that the old versions of EL-122 were not authorized after the February 20, 2024, election.

82. Defendants admit the allegations in paragraph 82.

83. Defendants deny the allegations in paragraph 83.

84. Defendants deny the allegations in paragraph 84.

85. Defendants deny the allegations in paragraph 85.

86. Defendants deny the allegations in paragraph 86.

87. Defendants admit that voters may use MyVote to send an absentee ballot request by email to their municipal clerk. Defendants affirmatively allege that the evaluation of the voter's absentee request, as well as the

decision to issue the absentee ballot, is responsibility of the municipal clerk. Defendants deny the remaining allegations in paragraph 87.

88. Defendants deny the allegations in paragraph 88.

89. Defendants state that the allegations in paragraph 89 are characterizations of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

90. Defendants state that the allegations in paragraph 90 are characterizations of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

FURTHER RESPONSE

Defendant DENIES any factual allegations in the complaint not expressly admitted herein.

DEFENSES

1. Plaintiff lacks standing on one or more claims.
2. Plaintiff fails to state a claim upon which relief can be granted.
3. One or more of Plaintiff's claims are barred by sovereign immunity.
4. Defendants reserve the right to name additional defenses as they may become known through further discovery or otherwise in this action.

WHEREFORE, Defendants demand judgment as follows:

1. Denying the declaratory, injunctive, and any other form of relief sought by the plaintiffs
2. Dismissing the complaint on its merits and with prejudice as to all other causes of action.
3. Awarding Defendants their costs and any other relief the Court deems just.

Dated this 4th day of April 2024.

Respectfully submitted,

JOSHUA L. KAUL
Attorney General of Wisconsin

Electronically signed by:

Brian P. Keenan
BRIAN P. KEENAN
Assistant Attorney General
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Attorneys for Defendants

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CERTIFICATE OF SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed an Answer with the clerk of court using the Wisconsin Circuit Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 4th day of April 2024.

Electronically signed by:

Brian P. Keenan

BRIAN P. KEENAN

Assistant Attorney General

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