

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 12

DANE COUNTY

PRIORITIES USA, et al.,

Plaintiffs,

v.

Case No. 23-CV-1900

WISCONSIN ELECTIONS COMMISSION,

Defendant.

**[PROPOSED] ANSWER AND AFFIRMATIVE DEFENSES OF
INTERVENOR-DEFENDANTS RICHARD TEIGEN, RICHARD THOM, AND
THE ASSOCIATION OF MATURE AMERICAN CITIZENS, INC.**

Proposed Intervenor-Defendants Richard Teigen, Richard Thom, and the Association of Mature American Citizens, Inc. (“AMAC”) (collectively “Intervenors” where appropriate), by and through their undersigned counsel and pursuant to Wis. Stat. §§ 802.02(2)-(3) and 803.09(3), submit this Answer and Affirmative Defenses to the Complaint filed by Plaintiffs Priorities USA, Wisconsin Alliance for Retired Americans, and William Franks in this action:

1. Paragraph 1 states legal conclusions to which no response is required. To the extent a response is required, Intervenors admit that the quoted words appear in the cases cited.

2. Paragraph 2 states a legal conclusion to which no response is required; to the extent a response is required, Intervenors deny that the Plaintiffs are entitled to the relief they seek.

3. Intervenors admit that the quoted words appear in the cases cited and affirmatively allege that the cases cited do not deal with the issue of absentee voting.

4. Intervenors admit.

5. Intervenors deny as stated. The Intervenors admit that many voters cast their ballots through in-person or mail-in absentee voting but deny that voters must rely on absentee voting to vindicate their right to vote. Voting by absentee ballot is a privilege and not a right.

6. Intervenors deny.

7. Intervenors lack knowledge sufficient to admit or deny the allegations of Paragraph 7 and therefore deny same and put Plaintiffs to their proof thereon.

8. Intervenors lack knowledge sufficient to admit or deny the allegations of Paragraph 8 and therefore deny same and put Plaintiffs to their proof thereon.

9. Intervenors lack knowledge sufficient to admit or deny the allegations of Paragraph 9 and therefore deny same and put Plaintiffs to their proof thereon.

10. Intervenors lack knowledge sufficient to admit or deny the allegations of Paragraph 10 and therefore deny same and put Plaintiffs to their proof thereon.

11. Intervenors lack knowledge sufficient to admit or deny the allegations of Paragraph 11 and therefore deny same and put Plaintiffs to their proof thereon.

12. Intervenors lack knowledge sufficient to admit or deny the allegations of Paragraph 12 and therefore deny same and put Plaintiffs to their proof thereon.

13. Intervenors lack knowledge sufficient to admit or deny the allegations of Paragraph 13 and therefore deny same and put Plaintiffs to their proof thereon.

14. Intervenors lack knowledge sufficient to admit or deny the allegations of Paragraph 14 and therefore deny same and put Plaintiffs to their proof thereon.

15. Intervenors admit.

16. Paragraph 16 states a legal conclusion to which no response is required. To the extent a response is required, Intervenors admit this Court has jurisdiction over the subject matter of this action pursuant to Wis. Stat. §§ 753.03 and 806.04, but deny that this Court has jurisdiction over this action pursuant to Wis. Stat. § 227.40, because Plaintiffs ultimately challenge statutes, not rules or guidance documents.

17. Paragraph 17 states a legal conclusion to which no response is required. To the extent a response is required, Intervenors admit.

18. Paragraph 18 states a legal conclusion to which no response is required. To the extent a response is required, Intervenors admit.

19. Paragraph 19 states a legal conclusion to which no response is required. To the extent a response is required, Intervenors deny that Wis. Stat. § 227.40 provides jurisdiction over the subject matter of this action.

20. Paragraph 20 states a legal conclusion to which no response is required. To the extent a response is required, Intervenors admit that venue in this Court is proper pursuant to Wis. Stat. § 801.50(3)(a), but deny that Wis. Stat. §§ 801.50(3)(b) and 227.40(1) are the relevant statutes for purpose of venue.

21. Paragraph 21 states a legal conclusion to which no response is required. To the extent a response is required, Intervenors admit that venue in this Court is

proper pursuant to Wis. Stat. § 801.50(3)(a), but deny that Wis. Stat. § 227.40(1) is the relevant statute for purpose of venue.

22. Intervenors deny the first sentence of Paragraph 22. Wisconsin administered elections for many years with very limited absentee voting. Intervenors lack knowledge or information sufficient to admit or deny the remaining allegations of the paragraph and therefore deny same and put Plaintiffs to their proof thereon.

23. Intervenors deny.

24. Intervenors admit.

25. Intervenors admit.

26. Intervenors deny the last sentence of Paragraph 26. Intervenors admit the remaining allegations of Paragraph 26.

27. Intervenors admit.

28. Intervenors admit.

29. Intervenors deny the first sentence of Paragraph 29. Intervenors lack knowledge sufficient to admit or deny the remaining allegations of Paragraph 29 and therefore deny same and put Plaintiffs to their proof thereon.

30. Intervenors deny the last sentence of Paragraph 30. Intervenors lack knowledge or information sufficient to admit or deny the remaining allegations of Paragraph 30 and therefore deny same and put Plaintiffs to their proof thereon.

31. Intervenors lack knowledge or information sufficient to admit or deny the allegations of Paragraph 31 and therefore deny same and put Plaintiffs to their proof thereon.

32. Intervenors deny the last sentence of Paragraph 32. Intervenors admit the remaining allegations.

33. Intervenors lack knowledge or information sufficient to admit or deny the allegations of Paragraph 33 and therefore deny same and put Plaintiffs to their proof thereon.

34. Intervenors lack knowledge sufficient to admit or deny the allegations of Paragraph 34, and therefore deny same and put Plaintiffs to their proof thereon.

35. Intervenors admit.

36. Intervenors admit.

37. Intervenors lack knowledge sufficient to admit or deny the allegations of Paragraph 37 and therefore deny same and put Plaintiffs to their proof thereon.

38. Intervenors admit that the cited decision stated that “returning an absentee ballot in Wisconsin is also easy.” Intervenors deny that this is no longer the case.

39. Intervenors admit.

40. Intervenors admit.

41. Intervenors lack knowledge or information sufficient to admit or deny the allegations of Paragraph 41 and therefore deny same and put Plaintiffs to their proof thereon.

42. Intervenors admit the first sentence of Paragraph 42. Intervenors lack knowledge or information sufficient to admit or deny the remaining allegations of Paragraph 42 and therefore deny same and put Plaintiffs to their proof thereon.

43. Intervenors lack knowledge or information sufficient to admit or deny the allegations of Paragraph 43 and therefore deny same and put Plaintiffs to their proof thereon.

44. Intervenors lack knowledge or information sufficient to admit or deny the allegations of Paragraph 44 and therefore deny same and put Plaintiffs to their proof thereon.

45. Intervenors lack knowledge or information sufficient to admit or deny the allegations of Paragraph 45 and therefore deny same and put Plaintiffs to their proof thereon.

46. Intervenors lack knowledge or information sufficient to admit or deny the allegations of Paragraph 46 and therefore deny same and put Plaintiffs to their proof thereon.

47. Intervenors lack knowledge or information sufficient to admit or deny the allegations of Paragraph 47 and therefore deny same and put Plaintiffs to their proof thereon.

48. Intervenors lack knowledge or information sufficient to admit or deny the allegations of Paragraph 48 and therefore deny same and put Plaintiffs to their proof thereon.

49. Intervenors lack knowledge or information sufficient to admit or deny the allegations of Paragraph 49 and therefore deny same and put Plaintiffs to their proof thereon.

50. Intervenors lack knowledge or information sufficient to admit or deny the allegations of Paragraph 50 and therefore deny same and put Plaintiffs to their proof thereon.

51. Intervenors admit.

52. Intervenors admit.

53. Intervenors admit.

54. Intervenors admit the second sentence of Paragraph 54 and deny the remaining allegations.

55. Intervenors lack knowledge or information sufficient to admit or deny the allegations of Paragraph 55 and therefore deny same and put Plaintiffs to their proof thereon.

56. Intervenors lack knowledge or information sufficient to admit or deny the allegations of Paragraph 49 and therefore deny same and put Plaintiffs to their proof thereon.

57. Intervenors admit the first sentence of Paragraph 57 and deny the remaining allegations.

58. Intervenors admit.

59. Intervenors deny the allegation in Paragraph 59 that the legislature treats absentee votes as less valuable than those cast in person. Intervenors admit the remaining allegations of the paragraph.

60. Intervenors admit the first sentence of Paragraph 60 so long as the absentee ballots were cast in the manner consistent with the statutes. Intervenors deny the remaining allegations.

61. Paragraph 61 states a legal conclusion to which no response is required; to the extent a response is required, Intervenors admit that the language in Paragraph 61 is accurately quoted.

62. Paragraph 62 states a legal conclusion to which no response is required; to the extent a response is required, Intervenors admit that the language in Paragraph 62 is accurately quoted.

63. Paragraph 63 states a legal conclusion to which no response is required; to the extent a response is required, Intervenors admit that the language in Paragraph 63 is accurately quoted.

64. Paragraph 64 states a legal conclusion to which no response is required; to the extent a response is required, Intervenors deny that strict scrutiny applies in this case.

65. Intervenors deny.

66. Paragraph 66 states a legal conclusion to which no response is required; to the extent a response is required, Intervenors admit that the paragraph describes what strict scrutiny is but deny that strict scrutiny applies in this case.

67. Paragraph 67 states a legal conclusion to which no response is required; to the extent a response is required, Intervenors admit that the language in the case is quoted correctly but deny that strict scrutiny applies in this case.

68. Paragraph 68 states a legal conclusion to which no response is required; to the extent a response is required, Intervenors admit that the language in the cases in the first sentence is quoted correctly and deny the remaining allegation and affirmatively allege that neither Iowa nor Alaska law governs.

69. Paragraph 69 states a legal conclusion to which no response is required; to the extent a response is required, Intervenors admit that the case law is quoted correctly but deny that strict scrutiny applies in this case.

70. In response to Paragraph 70, Intervenors incorporate the preceding paragraphs by reference.

71. Paragraph 71 states a legal conclusion to which no response is required; to the extent a response is required, Intervenors admit that the statute is accurately quoted.

72. Paragraph 72 states a legal conclusion to which no response is required; to the extent a response is required, Intervenors admit the statute is accurately quoted.

73. Paragraph 73 states a legal conclusion to which no response is required; to the extent a response is required, Intervenors admit the statute is accurately quoted.

74. Paragraph 74 states a legal conclusion to which no response is required; to the extent a response is required, Intervenors lack knowledge sufficient to admit or deny the allegations of Paragraph 74.

75. Intervenors deny.

76. Intervenors lack knowledge sufficient to admit or deny the allegations of Paragraph 76 and therefore deny and put Plaintiffs to their proof thereon.

77. Intervenors deny.

78. Intervenors deny that this paragraph references the proper standard for this case and deny the allegations of Paragraph 78.

79. Intervenors lack knowledge sufficient to admit or deny the allegations of Paragraph 79 and therefore deny and put Plaintiffs to their proof thereon.

80. Intervenors lack knowledge sufficient to admit or deny the allegations of Paragraph 80 and therefore deny and put Plaintiffs to their proof thereon.

81. Intervenors deny the allegations of the first sentence of Paragraph 81. Intervenors lack knowledge sufficient to admit or deny the remaining allegations and therefore deny and put Plaintiffs to their proof thereon.

82. Intervenors deny that this paragraph references the proper standard for this case and deny the allegations of Paragraph 82.

83. In response to Paragraph 83, Intervenors incorporate the preceding paragraphs by reference.

84. Intervenors deny.

85. Intervenors deny.

86. Intervenors lack knowledge sufficient to admit or deny the remaining allegations and therefore deny and put Plaintiffs to their proof thereon.

87. Intervenors deny.

88. Intervenors deny.

89. Intervenors deny that this paragraph references the proper standard for this case and deny the allegations of Paragraph 89.

90. Intervenors deny that this paragraph references the proper standard for this case and deny the allegations of Paragraph 90.

91. Intervenors deny.

92. Intervenors deny.

93. Paragraph 93 states a legal conclusion to which no response is required. To the extent a response is required, Intervenors admit that the written decision in *Teigen* did not address Plaintiffs' arguments but affirmatively allege that those arguments are incorrect.

94. Intervenors deny that this paragraph references the proper standard for this case and deny the allegations of Paragraph 94.

95. Intervenors deny.

96. Intervenors deny.

97. In response to Paragraph 97, Intervenors incorporate the previous paragraphs by reference.

98. Intervenors deny.

99. Intervenors deny.

100. Intervenors deny.

101. Intervenors deny that this paragraph references the proper standard for this case and deny the allegations of Paragraph 101.

102. Paragraph 102 states a legal conclusion to which no response is required. To the extent a response is required, Intervenors admit that the courts cited have upheld early voting, but deny the allegations of Paragraph 102 and affirmatively allege that none of these cases held that voters have a right to change or cure their ballots after polls have closed.

103. Intervenors deny that this paragraph references the proper standard for this case and deny the allegations of Paragraph 103.

104. Intervenors deny that this paragraph references the proper standard for this case and deny the allegations of Paragraph 104.

105. Intervenors deny that this paragraph references the proper standard for this case and deny the allegations of Paragraph 105.

106. Intervenors deny that this paragraph references the proper standard for this case and deny the allegations of Paragraph 106.

107. In response to Paragraph 107, Intervenors incorporate the previous paragraphs by reference.

108. Intervenors deny.

109. Intervenors admit that the Wisconsin Constitution provides that the Legislature “may” provide for absentee voting and deny the allegations of Paragraph 109 to the extent inconsistent with provisions of the Constitution.

110. Intervenors admit that, pursuant to Wis. Stat. § 6.84, “The legislature finds that voting is a constitutional right, the vigorous exercise of which should be strongly encouraged. In contrast, voting by absentee ballot is a privilege exercised wholly outside the traditional safeguards of the polling place. The legislature finds that the privilege of voting by absentee ballot must be carefully regulated to prevent the potential for fraud or abuse; to prevent overzealous solicitation of absent electors who may prefer not to participate in an election; to prevent undue influence on an absent elector to vote for or against a candidate or to cast a particular vote in a referendum; or other similar abuses.” The Intervenors deny the allegations of the first sentence of Paragraph 110 to the extent inconsistent with Wisconsin law, and deny the allegations in the second sentence.

111. Intervenors admit the first sentence of Paragraph 111 and deny the remaining allegations.

112. Intervenors deny.

In response to Plaintiffs’ prayer for relief, Intervenors deny that Plaintiffs are entitled to any of the relief they seek.

AFFIRMATIVE DEFENSES

1. The Complaint, or portions thereof, fails to state a claim upon which relief can be granted.
2. One or more of the Plaintiffs lacks standing to pursue this lawsuit.
3. Plaintiffs’ claims are barred by the doctrine of laches.
4. Wis. Stat. § 227.40 does not apply to one or more of Plaintiff’s claims.

5. Intervenor reserve the right to assert additional defenses that may become evident during the pendency of the matter.

Intervenor respectfully request that the Court:

1. Deny Plaintiffs any of their requested relief;
2. Dismiss Plaintiffs' complaint with prejudice; and
3. Grant such further relief as the Court deems just and proper.

Dated: September 8, 2023.

WISCONSIN INSTITUTE FOR
LAW & LIBERTY, INC.

Electronically signed by Luke N. Berg

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