

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

ONE WISCONSIN INSTITUTE, INC., *et al.*,

Plaintiffs,

v.

Case No. 15-CV-324

GERALD C. NICHOL, *et al.*,

Defendants.

**DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES
TO PLAINTIFFS' SECOND AMENDED COMPLAINT**

Defendants Gerald C. Nichol, Elsa Lamelas, Thomas Barland, Harold V. Froelich, Timothy Vocke, John Franke, Kevin J. Kennedy, Michael Haas, Mark Gottlieb, and Patrick Fernan (collectively, "Defendants"), answer Plaintiffs' Second Amended Complaint as follows:

PRELIMINARY STATEMENT

To the extent that the Second Amended Complaint seeks to re-assert claims that this Court dismissed and has not reinstated, *see* Dkt. 66, Dkt. 79-1 (claims chart), Defendants assert that no response is warranted as to these claims because they are no longer at issue in this action.

Response to unnumbered paragraphs on pages 1 through 3 and footnote 1 of the Second Amended Complaint: Defendants lack knowledge or information sufficient to form a belief as to these allegations.

JURISDICTION AND VENUE

1. Defendants DENY that paragraph 1 contains any factual allegations. Paragraph 1 instead contains only legal conclusions to which no responsive pleading is required. To the extent the allegations in paragraph 1 misstate the law or constitute factual allegations, Defendants DENY the allegations in paragraph 1.

2. Defendants DENY that paragraph 2 contains any factual allegations. Paragraph 2 instead contains only legal conclusions to which no responsive pleading is required. To the extent the allegations in paragraph 2 misstate the law or constitute factual allegations, Defendants DENY the allegations in paragraph 2.

3. Defendants DENY that paragraph 3 contains any factual allegations. Paragraph 3 instead contains only legal conclusions to which no responsive pleading is required. To the extent the allegations in paragraph 3 misstate the law or constitute factual allegations, Defendants DENY the allegations in paragraph 3.

PARTIES

4. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 4.

5. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 5.

6. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 6.

7. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 7.

8. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 8.

9. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 9 and footnote 2.

10. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 10.

11. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 11.

12. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 12.

13. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 13.

14. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 14.

15. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 15.

16. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 16.

17. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 17.

18. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 18.

19. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 19.

20. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 20.

21. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 21.

22. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 22.

23. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 23.

24. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 24.

25. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 25.

26. Defendants ADMIT the allegations in the first two sentences of paragraph 26. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 26 and in footnote 3.

27. Defendants DENY the allegations in paragraph 27.

28. Defendants DENY the allegations in paragraph 28.

29. Defendants DENY the allegations in paragraph 29.

30. Defendants ADMIT the allegations in paragraph 30.

31. Defendants ADMIT the allegations in paragraph 31.

32. Defendants DENY 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 the first two sentences of paragraph 35. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 35.

36. Defendants DENY the allegations in paragraph 36.

FACTUAL ALLEGATIONS

Wisconsin's History and the Ongoing Effects of Discrimination

37. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 37.

38. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 38.

39. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 39.

40. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 40.

41. Defendants AFFIRMATIVELY ALLEGE that Wisconsin election laws do not authorize "early voting." To the extent that the allegations in paragraph 41 regarding "early voting" misstate the law, Defendants DENY the allegations in paragraph 41. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 41.

42. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 42.

43. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 43 and footnote 4.

44. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 44.

45. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 45.

46. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 46.

47. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 47.

48. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 48.

49. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 49.

50. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 50.

51. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 51.

Recent Political History

The 2008 Election

52. Defendants ADMIT that in the 2008 election President Barack Obama defeated Senator John McCain in Wisconsin by a margin of approximately 14% and that the two prior elections in Wisconsin were decided by less than one-half of a percentage point. Defendants lack

knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 52.

53. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 53.

54. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 54.

55. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 55.

56. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 56.

57. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 57.

58. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 58.

The 2010 Election and Subsequent Legislation

59. Defendants ADMIT the allegations in paragraph 59.

60. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 60.

61. Defendants AFFIRMATIVELY ALLEGE that the provision of Act 23 speak for themselves. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 61.

62. Defendants AFFIRMATIVELY ALLEGE that the requirements in 2011 Wisconsin Act 23 cited speak for themselves. To the extent the allegations in paragraph 62 misstate the law or constitute factual allegations, Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 62.

63. Defendants AFFIRMATIVELY ALLEGE that the requirements of the Wisconsin Acts cited and of the Wisconsin Statutes cited speak for themselves. To the extent the allegations in paragraph 63 misstate the law or constitute factual allegations, Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 63.

64. Defendants AFFIRMATIVELY ALLEGE that in August 2012 the Wisconsin Government Accountability Board unanimously directed that election officials shall accept electronic versions of any of the proof of residence documents under Wis. Stat. § 6.34(3)(a) that contain a current and complete name and address. *See* <http://tinyurl.com/qyrctuy>. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 64.

65. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 65.

The 2012 Election and Subsequent Litigation

66. Defendants ADMIT that President Obama was re-elected in 2012 and that he again won Wisconsin. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 66.

67. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 67.

68. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 68.

69. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 69.

70. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 70.

71. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 71 and footnote 5.

72. Defendants AFFIRMATIVELY ALLEGE that Wisconsin election laws do not authorize “early voting.” To the extent that the allegations in paragraph 72 regarding “early voting” misstate the law, Defendants DENY the allegations in paragraph 72. Defendants further AFFIRMATIVELY ALLEGE that the requirements of the Wisconsin Acts cited speak for themselves. To the extent the allegations in paragraph 72 and footnote 6 misstate the law or constitute factual allegations, Defendants lack knowledge

or information sufficient to form a belief as to the allegations in paragraph 72 and footnote 6.

73. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 73.

Challenged Provisions

Limitation on Early Voting Locations

74. Defendants DENY that paragraph 74 contains any factual allegations. Paragraph 74 instead contains only legal conclusions to which no responsive pleading is required. To the extent the allegations in paragraph 74 misstate the law or constitute factual allegations, Defendants DENY the allegations in paragraph 74.

75. Defendants AFFIRMATIVELY ALLEGE that Wisconsin election laws do not authorize “early voting.” To the extent that the allegations in paragraph 75 regarding “early voting” misstate the law, Defendants DENY the allegations in paragraph 75. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 75.

76. Defendants AFFIRMATIVELY ALLEGE that Wisconsin election laws do not authorize “early voting.” To the extent that the allegations in paragraph 76 regarding “early voting” misstate the law, Defendants DENY the allegations in paragraph 76. Defendants further AFFIRMATIVELY ALLEGE that the GAB report referenced in paragraph 76 speaks for itself.

Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 76.

77. Defendants AFFIRMATIVELY ALLEGE that Wisconsin election laws do not authorize “early voting.” To the extent that the allegations in paragraph 77 regarding “early voting” misstate the law, Defendants DENY the allegations in paragraph 77. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 77.

78. Defendants AFFIRMATIVELY ALLEGE that Wisconsin election laws do not authorize “early voting.” To the extent that the allegations in paragraph 78 regarding “early voting” misstate the law, Defendants DENY the allegations in paragraph 78. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 78.

79. Defendants AFFIRMATIVELY ALLEGE that Wisconsin election laws do not authorize “early voting.” To the extent that the allegations in paragraph 79 regarding “early voting” misstate the law, Defendants DENY the allegations in paragraph 79. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 79.

80. Defendants AFFIRMATIVELY ALLEGE that Wisconsin election laws do not authorize “early voting.” To the extent that the allegations in paragraph 80 regarding “early voting” misstate the law, Defendants DENY

the allegations in paragraph 80. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 80.

81. Defendants AFFIRMATIVELY ALLEGE that Wisconsin election laws do not authorize “early voting.” To the extent that the allegations in paragraph 81 regarding “early voting” misstate the law, Defendants DENY the allegations in paragraph 81. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 81.

82. Defendants AFFIRMATIVELY ALLEGE that Wisconsin election laws do not authorize “early voting.” To the extent that the allegations in paragraph 82 regarding “early voting” misstate the law, Defendants DENY the allegations in paragraph 82. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 82.

83. Defendants AFFIRMATIVELY ALLEGE that Wisconsin election laws do not authorize “early voting.” To the extent that the allegations in paragraph 83 regarding “early voting” misstate the law, Defendants DENY the allegations in paragraph 83. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 83.

84. Defendants AFFIRMATIVELY ALLEGE that Wisconsin election laws do not authorize “early voting.” To the extent that the allegations in paragraph 84 regarding “early voting” misstate the law, Defendants DENY

the allegations in paragraph 84. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 84.

85. Defendants AFFIRMATIVELY ALLEGE that Wisconsin election laws do not authorize “early voting.” To the extent that the allegations in paragraph 85 regarding “early voting” misstate the law, Defendants DENY the allegations in paragraph 85. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 85.

86. Defendants AFFIRMATIVELY ALLEGE that Wisconsin election laws do not authorize “early voting.” To the extent that the allegations in paragraph 86 regarding “early voting” misstate the law, Defendants DENY the allegations in paragraph 86. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 86.

87. Defendants AFFIRMATIVELY ALLEGE that Wisconsin election laws do not authorize “early voting.” To the extent that the allegations in paragraph 87 regarding “early voting” misstate the law, Defendants DENY the allegations in paragraph 87. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 87.

Reductions in the Early Voting Period

88. Defendants AFFIRMATIVELY ALLEGE that Wisconsin election laws do not authorize “early voting.” To the extent that the allegations in paragraph 88 regarding “early voting” misstate the law, Defendants DENY

the allegations in paragraph 88. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 88.

89. Defendants AFFIRMATIVELY ALLEGE that Wisconsin election laws do not authorize “early voting.” To the extent that the allegations in paragraph 89 regarding “early voting” misstate the law, Defendants DENY the allegations in paragraph 89. Defendants further AFFIRMATIVELY ALLEGE that the requirements of the Wisconsin laws cited speak for themselves. To the extent the allegations in paragraph 89 misstate the law or constitute factual allegations, Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 89.

90. Defendants AFFIRMATIVELY ALLEGE that Wisconsin election laws do not authorize “early voting.” To the extent that the allegations in paragraph 90 regarding “early voting” misstate the law, Defendants DENY the allegations in paragraph 90. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 90.

91. Defendants AFFIRMATIVELY ALLEGE that Wisconsin election laws do not authorize “early voting.” To the extent that the allegations in paragraph 91 regarding “early voting” misstate the law, Defendants DENY the allegations in paragraph 91. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 91.

92. Defendants AFFIRMATIVELY ALLEGE that Wisconsin election laws do not authorize “early voting.” To the extent that the allegations in paragraph 92 regarding “early voting” misstate the law, Defendants DENY the allegations in paragraph 92. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 92.

93. Defendants AFFIRMATIVELY ALLEGE that Wisconsin election laws do not authorize “early voting.” To the extent that the allegations in paragraph 93 regarding “early voting” misstate the law, Defendants DENY the allegations in paragraph 93. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 93.

94. Defendants AFFIRMATIVELY ALLEGE that Wisconsin election laws do not authorize “early voting.” To the extent that the allegations in paragraph 94 regarding “early voting” misstate the law, Defendants DENY the allegations in paragraph 94. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 94.

95. Defendants AFFIRMATIVELY ALLEGE that Wisconsin election laws do not authorize “early voting.” To the extent that the allegations in paragraph 95 regarding “early voting” misstate the law, Defendants DENY the allegations in paragraph 95. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 95.

96. Defendants AFFIRMATIVELY ALLEGE that Wisconsin election laws do not authorize “early voting.” To the extent that the allegations in paragraph 96 regarding “early voting” misstate the law, Defendants DENY the allegations in paragraph 96. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 96.

97. Defendants AFFIRMATIVELY ALLEGE that Wisconsin election laws do not authorize “early voting.” To the extent that the allegations in paragraph 97 regarding “early voting” misstate the law, Defendants DENY the allegations in paragraph 97. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 97.

98. Defendants AFFIRMATIVELY ALLEGE that Wisconsin election laws do not authorize “early voting.” To the extent that the allegations in paragraph 98 regarding “early voting” misstate the law, Defendants DENY the allegations in paragraph 98. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 98.

Voter-Registration Restrictions

99. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 99.

Elimination of Corroboration and Expanded Proof-of-Residence
Requirement

100. Defendants AFFIRMATIVELY ALLEGE that the requirements of the Wisconsin Acts and laws cited speak for themselves. To the extent the allegations in paragraph 100 misstate the law or constitute factual allegations, Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 100.

101. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 101.

102. Defendants AFFIRMATIVELY ALLEGE that Defendant Kennedy's testimony before the Wisconsin Senate Committee on Transportation and Ethics speaks for itself. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 102.

103. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 103.

104. Defendants ADMIT that Defendant Kennedy made the statement that is quoted in the last sentence of paragraph 104. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 104.

105. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 105.

106. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 106.

107. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 107.

108. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 108.

109. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 109.

110. Defendants ADMIT that Defendant Kennedy made the statement in the first sentence of paragraph 110. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 110.

111. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 111.

112. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 112.

113. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 113.

114. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 114.

Registration Restrictions Targeting Young Wisconsinites

115. Defendants AFFIRMATIVELY ALLEGE that the requirements of 2011 Wisconsin Act 23 cited speak for themselves. To the extent the allegations in paragraph 115 misstate the law or constitute factual allegations, Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 115.

116. Defendants AFFIRMATIVELY ALLEGE that the requirements of FERPA, 20 U.S.C. § 1232g, cited speak for themselves. To the extent the allegations in paragraph 116 misstate the law or constitute factual allegations, Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 116.

117. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 117.

118. Defendants AFFIRMATIVELY ALLEGE that the requirements of 2011 Wisconsin Act 240 cited speak for themselves. To the extent the allegations in paragraph 118 misstate the law or constitute factual allegations, Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 118.

119. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 119.

120. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 120.

Overtuning Requirement that Landlords Distribute
Voter-Registration Forms

121. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 121.

122. Defendants AFFIRMATIVELY ALLEGE that the requirements of 2013 Wisconsin Act 76 cited speak for themselves. To the extent the allegations in paragraph 122 misstate the law or constitute factual allegations, Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 122.

123. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 123.

124. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 124.

Elimination of Statewide Special Registration Deputies

125. Defendants AFFIRMATIVELY ALLEGE that the requirements of the Wisconsin laws cited speak for themselves. To the extent the allegations in paragraph 125 misstate the law or constitute factual

allegations, Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 125.

126. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 126.

127. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 127.

128. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 128.

Increased Residency Requirements

129. Defendants AFFIRMATIVELY ALLEGE that the requirements of 2011 Wisconsin Act 23 cited speak for themselves. To the extent the allegations in paragraph 129 misstate the law or constitute factual allegations, Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 129.

130. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 130.

131. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 131.

132. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 132.

133. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 133.

134. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 134.

Invasive Poll Monitoring

135. Defendants DENY that prior to 2013 Wisconsin Act 177 election observers were required, pursuant to GAB policy, to maintain a six-foot distance from voters. Defendants AFFIRMATIVELY ALLEGE that prior to 2013 Wisconsin Act 177, GAB policy required election observers to maintain a six-foot distance from voters only if physically feasible. Defendants further AFFIRMATIVELY ALLEGE that the requirements of 2013 Wisconsin Act 177 cited speak for themselves. To the extent the remaining allegations in paragraph 135 misstate the law or constitute factual allegations, Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 135.

136. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 136.

137. Defendants ADMIT that on July 31, 2012, the GAB issued a statement, which included the language quoted in the first sentence of paragraph 137. Defendants AFFIRMATIVELY ALLEGE that the GAB's July 31, 2012, statement speaks for itself. Defendants lack knowledge or

information sufficient to form a belief as to the remaining allegations in paragraph 137.

138. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 138.

139. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 139.

140. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 140.

141. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 141.

Changes to Straight-Ticket Voting

142. Defendants AFFIRMATIVELY ALLEGE that the requirements of 2011 Wisconsin Act 23 cited speak for themselves. To the extent the allegations in paragraph 142 misstate the law or constitute factual allegations, Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 142.

143. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 143.

144. Defendants AFFIRMATIVELY ALLEGE that the requirements of the Wisconsin laws cited speak for themselves. To the extent the allegations in paragraph 144 misstate the law or constitute factual

allegations, Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 144.

145. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 145.

146. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 146.

Changes to Absentee Voting

Elimination of Option to Obtain Absentee Ballots by Fax or Email

147. Defendants AFFIRMATIVELY ALLEGE that the requirements of 2011 Wisconsin Act 75 cited speak for themselves. To the extent the allegations in paragraph 147 misstate the law or constitute factual allegations, Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 147.

148. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 148.

149. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 149.

Prohibition on Returning Absentee Ballots to Correct Certain
Mistakes

150. Defendants AFFIRMATIVELY ALLEGE that the requirements of 2011 Wisconsin Act 227 cited speak for themselves. To the extent the allegations in paragraph 150 misstate the law or constitute factual allegations, Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 150.

151. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 151.

152. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 152.

The Voter ID Law

153. Defendants DENY that IDs from Wisconsin's two-year technical colleges cannot be used for voting. Defendants AFFIRMATIVELY ALLEGE that the GAB has promulgated an emergency rule that permits the use of technical college ID cards for voting. Defendants further AFFIRMATIVELY ALLEGE that the requirements of the Wisconsin Statutes cited speak for themselves. To the extent the allegations in paragraph 153 misstate the law or constitute factual allegations, Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 153.

154. Defendants AFFIRMATIVELY ALLEGE that the requirements of the Wisconsin Statutes cited speak for themselves. To the extent the allegations in paragraph 154 misstate the law or constitute factual allegations, Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 154.

155. Defendants AFFIRMATIVELY ALLEGE that the trial court's decision in *Frank v. Walker*, 17 F. Supp. 3d 837, 854 (E.D. Wis. 2014), *rev'd* 768 F.3d 744 (7th Cir. 2014), speaks for itself. To the extent the allegations in paragraph 155 misstate the case law, Defendants DENY the allegations in paragraph 155. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 155.

156. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 156.

157. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 157.

158. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 158.

159. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 159.

160. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 160.

161. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 161.

162. Defendants AFFIRMATIVELY ALLEGE that the GAB has promulgated an emergency rule that permits the use of technical college ID cards for voting. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 162.

163. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 163.

164. Defendants AFFIRMATIVELY ALLEGE that the Wisconsin Supreme Court's decision in *Milwaukee Branch of the NAACP v. Walker*, 2014 WI 98, 357 Wis. 2d 469, 851 N.W.2d 262, speaks for itself. To the extent the allegations in paragraph 164 misstate the case law, Defendants DENY the allegations in paragraph 164. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 164.

165. Defendants AFFIRMATIVELY ALLEGE that the Wisconsin Supreme Court's decision in *Milwaukee Branch of the NAACP v. Walker*, 2014 WI 98, 357 Wis. 2d 469, 851 N.W.2d 262, speaks for itself. To the extent the allegations in paragraph 165 misstate the case law, Defendants DENY

the allegations in paragraph 165. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 165.

166. Defendants AFFIRMATIVELY ALLEGE that the Seventh Circuit's decision in *Frank v. Walker*, 768 F.3d 744 (7th Cir. 2014), speaks for itself. To the extent the allegations in paragraph 166 misstate the case law, Defendants DENY the allegations in paragraph 166. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 166.

167. Defendants DENY the allegations in paragraph 167.

168. Defendants DENY the allegations in paragraph 168.

169. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 169.

170. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 170.

171. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 171.

172. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 172.

173. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 173.

174. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 174.

175. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 175.

176. Defendants AFFIRMATIVELY ALLEGE that 2011 Wisconsin Act 23 speaks for itself. To the extent the allegations in paragraph 176 misstate the law, Defendants DENY the allegations in paragraph 176. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 176.

177. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 177.

CAUSES OF ACTION

COUNT I

(Violations of Section 2 of the Voting Rights Act)

178. Defendants reassert and incorporate by reference their answers to all prior paragraphs of this Answer and the responses paragraphs in the paragraphs below as though fully set forth herein.

179. Defendants DENY that paragraph 179 contains any factual allegations. Paragraph 179 instead contains only legal conclusions to which no responsive pleading is required. To the extent the allegations in paragraph

179 misstate the law or constitute factual allegations, Defendants DENY the allegations in paragraph 179.

180. Defendants AFFIRMATIVELY ALLEGE that Wisconsin election laws do not authorize “early voting.” To the extent that the allegations in paragraph 180 regarding “early voting” misstate the law, Defendants DENY the allegations in paragraph 180. Defendants ADMIT that the Seventh Circuit has held that Wisconsin’s voter ID law does not violate Section 2 of the Voting Rights Act and that the voter ID law cannot be distinguished from the Indiana voter ID law upheld in *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008), which the Supreme Court found did not unduly burden the right to vote. Defendants DENY the remaining allegations in paragraph 180.

181. Defendants ADMIT the allegations in the first sentence of paragraph 181. Defendants AFFIRMATIVELY ALLEGE that the Seventh Circuit’s decision in *Frank v. Walker*, 768 F.3d 744 (7th Cir. 2014), speaks for itself. To the extent the allegations in paragraph 181 misstate the case law, Defendants DENY the allegations in paragraph 181. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 181.

182. Defendants DENY the allegations in paragraph 182. Defendants AFFIRMATIVELY ALLEGE that the Seventh Circuit has determined that

the voter ID law does not violate Section 2 of the Voting Rights Act. *Frank v. Walker*, 768 F.3d 744 (7th Cir. 2014).

183. Defendants DENY the allegations in paragraph 183. Defendants AFFIRMATIVELY ALLEGE that the Seventh Circuit has determined that the voter ID law does not violate Section 2 of the Voting Rights Act. *Frank v. Walker*, 768 F.3d 744 (7th Cir. 2014).

184. Defendants DENY the allegations in paragraph 184. Defendants AFFIRMATIVELY ALLEGE that the Seventh Circuit has determined that the voter ID law does not violate Section 2 of the Voting Rights Act. *Frank v. Walker*, 768 F.3d 744 (7th Cir. 2014).

185. Defendants DENY the allegations in paragraph 185. Defendants AFFIRMATIVELY ALLEGE that the Seventh Circuit has determined that the voter ID law does not violate Section 2 of the Voting Rights Act. *Frank v. Walker*, 768 F.3d 744 (7th Cir. 2014).

COUNT II

(Undue Burdens on the Right to Vote in Violation of the First Amendment and the Equal Protection Clause of the Fourteenth Amendment)

186. Defendants reassert and incorporate by reference their answers to all prior paragraphs of this Answer and the responses paragraphs in the paragraphs below as though fully set forth herein.

187. Defendants DENY that paragraph 187 contains any factual allegations. Paragraph 187 instead contains only legal conclusions to which no responsive pleading is required. To the extent the allegations in paragraph 162 misstate the law or constitute factual allegations, Defendants DENY the allegations in paragraph 187.

188. Defendants DENY the allegations in paragraph 188. Defendants AFFIRMATIVELY ALLEGE that the Seventh Circuit has determined that the voter ID law is constitutional. *Frank v. Walker*, 768 F.3d 744 (7th Cir. 2014).

189. Defendants DENY the allegations in paragraph 189.

190. Defendants ADMIT the allegations in the first sentence of paragraph 190. Defendants AFFIRMATIVELY ALLEGE that the Seventh Circuit's decision in *Frank v. Walker*, 768 F.3d 744 (7th Cir. 2014), speaks for itself. To the extent the allegations in paragraph 190 misstate the case law, Defendants DENY the allegations in paragraph 190. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 190.

COUNT III

(Disparate Treatment of Voters Without a Rational Basis in Violation of the Equal Protection Clause of the Fourteenth Amendment)

191. Defendants reassert and incorporate by reference their answers to all prior paragraphs of this Answer and the responses paragraphs in the paragraphs below as though fully set forth herein. The Court has already dismissed some of Plaintiffs' rational basis claims, and those claims have not been reinstated. *See* Dkt. 66.

192. The Court has already dismissed some of Plaintiffs' rational basis claims, and those claims have not been reinstated. *See* Dkt. 66. Defendants DENY that paragraph 192 contains any factual allegations. Paragraph 192 instead contains only legal conclusions to which no responsive pleading is required. To the extent the allegations in paragraph 192 misstate the law or constitute factual allegations, Defendants DENY the allegations in paragraph 192.

193. The Court has already dismissed some of Plaintiffs' rational basis claims, and those claims have not been reinstated. *See* Dkt. 66. Defendants DENY that paragraph 193 contains any factual allegations. Paragraph 193 instead contains only legal conclusions to which no responsive pleading is required. To the extent the allegations in paragraph 193 misstate the law or

constitute factual allegations, Defendants DENY the allegations in paragraph 193.

194. The Court has already dismissed some of Plaintiffs' rational basis claims, and those claims have not been reinstated. *See* Dkt. 66. Defendants DENY the allegations in paragraph 194.

195. The Court has already dismissed some of Plaintiffs' rational basis claims, and those claims have not been reinstated. *See* Dkt. 66. Defendants AFFIRMATIVELY ALLEGE that GAB has promulgated an emergency rule that permits the use of technical college ID cards for voting. Defendants further AFFIRMATIVELY ALLEGE that the voter ID law does not permit out-of-state IDs and some expired IDs for purposes of voting. Defendants DENY the remaining allegations in paragraph 195.

196. The Court has already dismissed some of Plaintiffs' rational basis claims, and those claims have not been reinstated. *See* Dkt. 66. Defendants DENY the allegations in paragraph 196.

COUNT IV

(Partisan Fencing in Violation of the First Amendment and the Equal Protection Clause of the Fourteenth Amendment)

197. Defendants reassert and incorporate by reference their answers to all prior paragraphs of this Answer and the responses paragraphs in the paragraphs below as though fully set forth herein.

198. Defendants DENY that paragraph 198 contains any factual allegations. Paragraph 198 instead contains only legal conclusions to which no responsive pleading is required. To the extent the allegations in paragraph 198 misstate the law or constitute factual allegations, Defendants DENY the allegations in paragraph 198. Plaintiffs' "partisan fencing" claims should be dismissed for the reasons stated in Defendants' motion to dismiss.

199. Defendants AFFIRMATIVELY ALLEGE that Wisconsin election laws do not authorize "early voting." To the extent that the allegations in paragraph 199 regarding "early voting" misstate the law, Defendants DENY the allegations in paragraph 199. Defendants DENY any remaining allegations in paragraph 199.

COUNT V

(Abridgement or Denial of the Right to Vote on the Basis of Race in Violation of the Equal Protection Clause of the Fourteenth Amendment and the Fifteenth Amendment)

200. Defendants reassert and incorporate by reference their answers to all prior paragraphs of this Answer and the responses paragraphs in the paragraphs below as though fully set forth herein.

201. Defendants DENY that paragraph 201 contains any factual allegations. Paragraph 201 instead contains only legal conclusions to which no responsive pleading is required. To the extent the allegations in paragraph

201 misstate the law or constitute factual allegations, Defendants DENY the allegations in paragraph 201.

202. Defendants DENY that paragraph 202 contains any factual allegations. Paragraph 202 instead contains only legal conclusions to which no responsive pleading is required. To the extent the allegations in paragraph 202 misstate the law or constitute factual allegations, Defendants DENY the allegations in paragraph 202.

203. Defendants DENY that paragraph 203 contains any factual allegations. Paragraph 203 instead contains only legal conclusions to which no responsive pleading is required. To the extent the allegations in paragraph 203 misstate the law or constitute factual allegations, Defendants DENY the allegations in paragraph 203.

204. Defendants DENY the allegations in paragraph 204. Defendants AFFIRMATIVELY ALLEGE that Wisconsin election laws do not authorize “early voting.” Defendants AFFIRMATIVELY ALLEGE that the Seventh Circuit has determined that the voter ID law is constitutional. *Frank v. Walker*, 768 F.3d 744 (7th Cir. 2014).

205. Defendants DENY that paragraph 205 contains any factual allegations. Paragraph 205 instead contains only legal conclusions to which no responsive pleading is required. To the extent the allegations in paragraph

205 misstate the law or constitute factual allegations, Defendants DENY the allegations in paragraph 205.

206. Defendants DENY the allegations in paragraph 206.

COUNT VI

(Abridgement or Denial of the Right to Vote on the Basis of Age in Violation of the Twenty-Sixth Amendment)

207. Defendants reassert and incorporate by reference their answers to all prior paragraphs of this Answer and the responses paragraphs in the paragraphs below as though fully set forth herein.

208. Defendants DENY that paragraph 208 contains any factual allegations. Paragraph 208 instead contains only legal conclusions to which no responsive pleading is required. To the extent the allegations in paragraph 208 misstate the law or constitute factual allegations, Defendants DENY the allegations in paragraph 208.

209. Defendants DENY that paragraph 209 contains any factual allegations. Paragraph 209 instead contains only legal conclusions to which no responsive pleading is required. To the extent the allegations in paragraph 209 misstate the law or constitute factual allegations, Defendants DENY the allegations in paragraph 209.

210. Defendants AFFIRMATIVELY ALLEGE that Wisconsin election laws do not authorize “early voting.” Defendants DENY the allegations in paragraph 210.

RESPONSE TO PRAYER FOR RELIEF AND WHEREFORE CLAUSE:

Defendants DENY that Plaintiffs are entitled to the relief that they have requested.

FURTHER RESPONSE: Defendants DENY all factual allegations in the Second Amended Complaint not expressly admitted herein.

AFFIRMATIVE DEFENSES

1. This Court lacks jurisdiction over the subject matter of the Second Amended Complaint because Plaintiffs lack standing.

2. The Second Amended Complaint fails to state a claim upon which relief can be granted.

3. Defendants are entitled to sovereign immunity.

WHEREFORE, Defendants respectfully request that judgment be entered in their favor dismissing this action with prejudice, denying all of the relief requested, and granting them such further relief as the Court deems appropriate.

Dated this 26th day of April, 2016.

Respectfully submitted,

BRAD D. SCHIMEL
Wisconsin Attorney General

/s/ Gabe Johnson-Karp
GABE JOHNSON-KARP
Assistant Attorney General
State Bar #1084731

JODY J. SCHMELZER
Assistant Attorney General
State Bar #1027796

CLAYTON P. KAWSKI
Assistant Attorney General
State Bar #1066228

S. MICHAEL MURPHY
Assistant Attorney General
State Bar #1078149

Attorneys for Defendants

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 267-8904 (Johnson-Karp)
(608) 266-3094 (Schmelzer)
(608) 266-7477 (Kawski)
(608) 266-5457 (Murphy)
(608) 267-2223 (Fax)
johnsonkarp@doj.state.wi.us
schmelzerjj@doj.state.wi.us
kawskicp@doj.state.wi.us
murphysm@doj.state.wi.us