

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

RUTHELLE FRANK, CARL ELLIS, JUSTIN
LUFT, DARTRIC DAVIS, BARBARA ODEN,
SANDRA JASHINSKI, PAMELA DUKES,
ANTHONY SHARP, ANTHONY JUDD, ANNA
SHEA, MATTHEW DEARING, MAX KLIGMAN,
SAMANTHA MESZAROS, STEVE
KVASNICKA, SARAH LAHTI, DOMINIQUE
WHITEHURST BY HIS MOTHER AND NEXT
FRIEND SABRENA PUTNAM, AND EDWARD
HOGAN,

Plaintiffs,

v.

Case No. 11-CV-1128

GOVERNOR SCOTT WALKER, JUDGE
THOMAS BARLAND, JUDGE GERALD C.
NICHOL, JUDGE MICHAEL BRENNAN, JUDGE
THOMAS CANE, JUDGE DAVID G.
DEININGER, JUDGE TIMOTHY VOCKE,
KEVIN J. KENNEDY, NATHANIEL E.
ROBINSON, MARK GOTTLIEB, LYNNE JUDD,
KRISTINA BOARDMAN, DONALD D.
REINCKE, TRACY JO HOWARD, SANDRA M.
BRISCO, BARNEY L. HALL, DONALD J.
GENIN, JILL LOUISE GEOFFROY, AND
PATRICIA A NELSON,

Defendants.

DEFENDANTS' ANSWER TO PLAINTIFFS' COMPLAINT

Defendants Governor Scott Walker, Judge Thomas Barland, Judge Gerald C. Nichol,
Judge Michael Brennan, Judge Thomas Cane, Judge David G. Deininger, Judge Timothy Vocke,
Kevin J. Kennedy, Nathaniel E. Robinson, Mark Gottlieb, Lynne Judd, Kristina Boardman,

Donald D. Reincke, Tracy Jo Howard, Sandra M. Brisco, Barney L. Hall, Donald J. Genin, Jill Louise Geoffroy, and Patricia A Nelson (collectively, “Defendants”), by their undersigned counsel, hereby answer the Complaint filed by Plaintiffs Ruthelle Frank, Carl Ellis, Justin Luft, Dartric Davis, Barbara Oden, Sandra Jashinski, Pamela Dukes, Anthony Sharp, Anthony Judd, Anna Shea, Matthew Dearing, Max Kligman, Samantha Meszaros, Steve Kvasnicka, Sarah Lahti, Dominique Whitehurst by his mother and next friend Sabrena Putnam, and Edward Hogan (collectively, “Plaintiffs”), as follows.

COMPLAINT FOR DECLARTORY AND INJUNCTIVE RELIEF

Unnumbered paragraphs on pages 2 through 4 of Plaintiffs’ Complaint: Defendants ADMIT that Plaintiffs and Defendants are parties to this action and that Plaintiffs bring this action to protect their right to vote under the United States Constitution and federal law. Defendants DENY all remaining allegations in the unnumbered paragraphs on pages 2 through 4 of Plaintiffs’ Complaint.

NATURE OF THE ACTION

1. Defendants ADMIT the allegations in paragraph 1.
2. Defendants ADMIT the allegations in the first sentence of paragraph 2 and DENY the remaining allegations in paragraph 2.

PARTIES

3. Defendants lack knowledge or information sufficient to form a belief as to the allegations in the first sentence of paragraph 3. Defendants DENY that the remainder of paragraph 3 contains any factual allegations to which a responsive pleading is required because Wis. Stat. § 6.02(1) speaks for itself. To the extent that the allegations in paragraph 3 misstate

the law or contain factual allegations to which a response is required, Defendants DENY the allegations in paragraph 3.

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.

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; however, AFFIRMATIVELY ALLEGE that Dominique D. Whitehurst, date of birth February 4, 1994, was issued a current, unexpired Wisconsin driver license or identification card.

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

21. Defendants ADMIT the allegations in paragraph 21.

22. Defendants DENY the allegations in paragraph 22. AFFIRMATIVELY ALLEGE that David G. Deininger is the Chair of the Government Accountability Board, that Michael Brennan is the Vice Chair, and that Gerald C. Nichol, Thomas Barland, and Thomas Cane are the remaining members of the GAB.

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, except DENY the allegations in the fourth sentence of paragraph 27. AFFIRMATIVELY ALLEGE that Jill Louise Geoffroy is the Region Manager of the DMV Bureau of Field Services for the North Central Region.

JURISDICTION AND VENUE

28. Defendants ADMIT the allegations in paragraph 28.

29. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 29.

FACTS RELATED TO THE PHOTO ID LAW

30. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 30.

31. Defendants DENY that paragraph 31 contains any factual allegations to which a responsive pleading is required because 2011 Wisconsin Act 23 and *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008), speak for themselves. To the extent that the allegations in paragraph 31 misstate the law or contain factual allegations to which a response is required, Defendants DENY the allegations in paragraph 31.

32. Defendants DENY that paragraph 32 contains any factual allegations to which a responsive pleading is required because Wis. Stat. § 5.02(6m), Wis. Stat. 5.02(6m)(a), and Wis. Stat. § 6.79(7) speak for themselves. To the extent that the allegations in paragraph 32 misstate the law or contain factual allegations to which a response is required, Defendants DENY the allegations in paragraph 32.

33. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 33.

34. Defendants DENY that paragraph 34 contains any factual allegations to which a responsive pleading is required because Wis. Stat. § 6.79(6) speaks for itself. To the extent that the allegations in paragraph 34 misstate the law or contain factual allegations to which a response is required, Defendants DENY the allegations in paragraph 34.

35. Defendants DENY that paragraph 35 contains any factual allegations to which a responsive pleading is required because Wis. Stat. § 6.34(1), Wis. Stat. § 6.87(4)(b)1, Wis. Stat. § 6.875(6)(c), Wis. Stat. § 6.87(4)(b)5, Wis. Stat. § 6.86(2)(a), Wis. Stat. § 6.87(4)(b)2, and Wis. Stat. § 6.87(4)(b)3 speak for themselves. To the extent that the allegations in paragraph 35 misstate the law or contain factual allegations to which a response is required, Defendants DENY the allegations in paragraph 35.

36. Defendants DENY that paragraph 36 contains any factual allegations to which a responsive pleading is required because Wis. Stat. § 227.24, 2011 Wisconsin Act 21, “2001 [sic] Wis. Act 32,” Wis. Stat. § 227.24(1)(e)1g, Wis. Stat. § 227.185, Executive Order No. 50, Wis. Stat. § 227.26(2)(b), and Wis. Stat. § 227.24(1)(e)1d speak for themselves. To the extent that the allegations in paragraph 36 misstate the law or contain factual allegations to which a response is required, Defendants DENY the allegations in paragraph 36.

37. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 37. Defendants DENY that the last four sentences of paragraph 37 contain any factual allegations to which a responsive pleading is required because Wis. Stat. § 227.24(1)(e)1d and Wis. Stat. § 227.24(1)(e)1g speak for themselves. To the extent that the

allegations in paragraph 37 misstate the law or contain factual allegations to which a response is required, Defendants DENY the allegations in paragraph 37.

38. Defendants DENY the allegations in the first sentence of paragraph 38. Defendants DENY that the last two sentences of paragraph 38 contain any factual allegations to which a responsive pleading is required because Wis. Stat. § 227.26(2)(i) speaks for itself. To the extent that the allegations in paragraph 38 misstate the law or contain factual allegations to which a response is required, Defendants DENY 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 lack knowledge or information sufficient to form a belief as to the allegations in paragraph 41.

42. Defendants DENY that the first two sentences of paragraph 42 contain any factual allegations to which a responsive pleading is required because Wis. Stat. § 227.24(1)(e)1d speaks for itself. To the extent that the allegations in the first two sentences of paragraph 42 misstate the law or contain factual allegations to which a response is required, Defendants DENY the allegations in paragraph 42. AFFIRMATIVELY ALLEGE that on November 22, 2011, GAB staff submitted a scope statement to Governor Walker for approval regarding the use of technical college identification cards for voting. FURTHER ALLEGE that Governor Walker approved the scope statement on December 2, 2011, and it was published in the December 30, 2011, edition of the Administrative Register. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 42.

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

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.

**FACTS RELATED TO OBTAINING WISCONSIN PHOTO ID AND THE
UNDERLYING DOCUMENTS REQUIRED BY WISCONSIN DMV**

49. Defendants DENY that paragraph 49 contains any factual allegations to which a responsive pleading is required because Wis. Stat. § 343.50(5)(a) and 2011 Wis. Act 23 § 138 speak for themselves. To the extent that the allegations in paragraph 49 misstate the law or contain factual allegations to which a response is required, Defendants DENY the allegations in paragraph 49.

50. Defendants ADMIT the allegations in paragraph 50, except that Defendants AFFIRMATIVELY ALLEGE that there will be a total of 92 DMV offices open as of January 2012.

51. Defendants ADMIT the allegations in paragraph 51.

52. Defendants DENY the allegations in paragraph 52. AFFIRMATIVELY ALLEGE that the Madison DMV office on Odana Road is open until 6 p.m. on Tuesdays, Thursdays, and Fridays and that the Saukville DMV office is open until 6 p.m. on Wednesdays.

53. Defendants ADMIT the allegations in paragraph 53.

54. Defendants DENY that paragraph 54 contains any factual allegations to which a responsive pleading is required because Wis. Stat. § 343.50(1)(b) and 2011 Wis. Act 23 § 130 speak for themselves. To the extent that the allegations in paragraph 54 misstate the law or contain factual allegations to which a response is required, Defendants DENY the allegations in paragraph 54.

55. Defendants DENY that paragraph 55 contains any factual allegations to which a responsive pleading is required because Wis. Stat. § 343.21 speaks for itself. To the extent that the allegations in paragraph 55 misstate the law or contain factual allegations to which a response is required, Defendants DENY the allegations in paragraph 55.

56. Defendants DENY that paragraph 56 contains any factual allegations to which a responsive pleading is required because Wis. Admin. Code § TRANS 102.15(2) speaks for itself. To the extent that the allegations in paragraph 56 misstate the law or contain factual allegations to which a response is required, Defendants DENY the allegations in paragraph 56.

57. Defendants DENY that paragraph 57 contains any factual allegations to which a responsive pleading is required because Wis. Admin. Code § TRANS 102.15(2)(b), Wis. Admin. Code § TRANS 102.15(2)(bm)2, Wis. Admin. Code § TRANS 102.15(2)(c), and Wis. Admin. Code § TRANS 102.15(4m) speak for themselves. To the extent that the allegations in paragraph 57 misstate the law or contain factual allegations to which a response is required, Defendants DENY the allegations in paragraph 57.

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

59. Defendants DENY the allegations in paragraph 59. AFFIRMATIVELY ALLEGE that Wis. Stat. § 7.08(12) requires the Government Accountability Board to “Engage in outreach to identify and contact groups of electors who may need assistance in obtaining or renewing a document that constitutes proof of identification for voting under s. 6.79(2)(a), 6.86(1)(ar), or 6.87(4)(b)1., and provide assistance to the electors in obtaining or renewing that document.”

60. Defendants DENY that paragraph 60 contains any factual allegations to which a responsive pleading is required because Wis. Admin. Code § TRANS 102.15(3) speaks for itself. To the extent that the allegations in paragraph 60 misstate the law or contain factual allegations to which a response is required, Defendants DENY the allegations in paragraph 60.

61. Defendants DENY that paragraph 61 contains any factual allegations to which a responsive pleading is required because Wis. Admin. Code § TRANS 102.15(1), Wis. Admin. Code § TRANS 102.15(3)(b), and Wis. Admin. Code § TRANS 102.15(3)(c) speak for themselves. To the extent that the allegations in paragraph 61 misstate the law or contain factual allegations to which a response is required, Defendants DENY the allegations in paragraph 61.

62. Defendants DENY that paragraph 62 contains any factual allegations to which a responsive pleading is required because Wis. Admin. Code § TRANS 102.15(3m) speaks for itself. To the extent that the allegations in paragraph 62 misstate the law or contain factual allegations to which a response is required, Defendants DENY the allegations in paragraph 62.

63. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 63.

64. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 64.

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

66. Defendants DENY that the third through fifth sentences of paragraph 66 contain any factual allegations to which a responsive pleading is required because Wis. Stat. § 69.21 and Wis. Admin. Code § DHS 142.04 speak for themselves. To the extent that the allegations in the third through fifth sentences of paragraph 66 misstate the law or contain factual allegations to which a response is required, Defendants DENY the allegations in the third through fifth sentences of paragraph 66. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 66.

67. Defendants DENY that paragraph 67 contains any factual allegations to which a responsive pleading is required because Wis. Admin. Code § TRANS 102.15(4) speaks for itself. To the extent that the allegations in paragraph 67 misstate the law or contain factual allegations to which a response is required, Defendants DENY 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 DENY that paragraph 69 contains any factual allegations to which a responsive pleading is required because Wis. Admin. Code § TRANS 102.15(4m) speaks for itself. To the extent that the allegations in paragraph 69 misstate the law or contain factual allegations to which a response is required, Defendants DENY the allegations in paragraph 69.

70. Defendants DENY that paragraph 70 contains any factual allegations to which a responsive pleading is required because Wis. Admin. Code §§ TRANS 102.15(4m)(b), (c), (d),

and (f) speak for themselves. To the extent that the allegations in paragraph 70 misstate the law or contain factual allegations to which a response is required, Defendants DENY the allegations in paragraph 70.

71. Defendants ADMIT the allegations in the first two sentences of paragraph 71. DENY the remaining allegations in paragraph 71.

PLAINTIFF CLASS ALLEGATIONS

CLASS 1

72. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 72.

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

74. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 74.

75. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 75.

CLASS 2

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

77. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 77.

78. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 78.

79. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 79.

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

81. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 81.

CLASS 3

82. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 82.

83. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 83.

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

85. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 85.

86. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 86.

CLASS 4

87. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 87.

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

89. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 89.

CLASS 5

90. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 90.

91. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 91.

92. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 92.

CLASS 6

93. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 93.

94. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 94.

95. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 95.

CLAIMS

COUNT ONE: Violation of the Equal Protection Clause of the Fourteenth Amendment

[Class 1]

96. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 96.

97. Defendants DENY that paragraph 97 contains any factual allegations to which a responsive pleading is required because *Burdick v. Takushi*, 504 U.S. 428 (1992), speaks for

itself. To the extent that the allegations in paragraph 97 misstate the law or contain factual allegations to which a response is required, Defendants DENY the allegations in paragraph 97.

98. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 98.

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

100. Defendants DENY the allegations in paragraph 100.

101. Defendants DENY the allegations in paragraph 101.

COUNT TWO: Violation of the Equal Protection Clause of the Fourteenth Amendment

[Class 2]

102. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 102.

103. Defendants DENY that paragraph 103 contains any factual allegations to which a responsive pleading is required because *Burdick v. Takushi*, 504 U.S. 428 (1992), speaks for itself. To the extent that the allegations in paragraph 103 misstate the law or contain factual allegations to which a response is required, Defendants DENY the allegations in paragraph 103.

104. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 104.

105. Defendants DENY the allegations in paragraph 105.

106. Defendants DENY the allegations in paragraph 106.

COUNT THREE: Violation of the Twenty-Fourth Amendment and Equal Protection

Clause of the Fourteenth Amendment [Class 3]

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

108. Defendants DENY that paragraph 108 contains any factual allegations to which a responsive pleading is required because the Twenty-Fourth Amendment to the United States Constitution speaks for itself. To the extent that the allegations in paragraph 108 misstate the law or contain factual allegations to which a response is required, Defendants DENY the allegations in paragraph 108.

109. Defendants DENY that paragraph 109 contains any factual allegations to which a responsive pleading is required because the Twenty-Fourth Amendment to the United States Constitution, *Harman v. Forssenius*, 380 U.S. 528 (1965), and *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966), speak for themselves. To the extent that the allegations in paragraph 109 misstate the law or contain factual allegations to which a response is required, Defendants DENY the allegations in paragraph 109.

110. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 110.

111. Defendants DENY the allegations in paragraph 111.

112. Defendants DENY the allegations in paragraph 112.

COUNT FOUR: Violation of the Equal Protection Clause of the Fourteenth Amendment

[Class 4]

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

114. Defendants DENY that paragraph 114 contains any factual allegations to which a responsive pleading is required because *Burdick v. Takushi*, 504 U.S. 428 (1992), speaks for itself. To the extent that the allegations in paragraph 114 misstate the law or contain factual allegations to which a response is required, Defendants DENY the allegations in paragraph 114.

115. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 115.

116. Defendants DENY the allegations in paragraph 116.

117. Defendants DENY the allegations in paragraph 117.

COUNT FIVE: Violation of the Twenty-Fourth Amendment and Equal Protection Clause

of the Fourteenth Amendment [Class 5]

118. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 118.

119. Defendants DENY that paragraph 119 contains any factual allegations to which a responsive pleading is required because the Twenty-Fourth Amendment to the United States Constitution speaks for itself. To the extent that the allegations in paragraph 119 misstate the law or contain factual allegations to which a response is required, Defendants DENY the allegations in paragraph 119.

120. Defendants DENY that paragraph 120 contains any factual allegations to which a responsive pleading is required because the Twenty-Fourth Amendment to the United States Constitution, *Harman v. Forssenius*, 380 U.S. 528 (1965), and *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966), speak for themselves. To the extent that the allegations in paragraph 120 misstate the law or contain factual allegations to which a response is required, Defendants DENY the allegations in paragraph 120.

121. Defendants DENY the allegations in paragraph 121.

122. Defendants DENY the allegations in paragraph 122.

COUNT SIX: Violation of the Equal Protection Clause of the Fourteenth Amendment

[Class 6]

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.

125. Defendants ADMIT the allegations in paragraph 125.

126. Defendants DENY the allegations in paragraph 126.

127. Defendants DENY the allegations in paragraph 127.

RESPONSE TO PRAYER FOR RELIEF AND WHEREFORE CLAUSE:

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

FURTHER RESPONSE: Defendants DENY any factual allegations not expressly admitted herein.

AFFIRMATIVE DEFENSES

A. Pursuant to Fed. R. Civ. P. 12(b)(6), Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

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

Dated this 13th day of February 2012.

Respectfully submitted,

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/s/ Clayton P. Kawski

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