FILED
11-28-2022
Clerk of Circuit Court
La Crosse County WI
2022CV000555
Honorable Elliott M Levine
Branch 2

STATE OF WISCONSIN CIRCUIT COURT LA CROSSE COUNTY

Mary Jo Werner
3337 Hanson Street
La Crosse, WI 54603

Plaintiff,

vs. Case Code: 30703 (Unclassified)

Ms. Ginny Dankmeyer
In her Official Capacity as
the La Crosse County Clerk and
Chair of the Board of Canvassers,
212 6th Street N - Rm 1500
La Crosse, WI 54601

Defendant.

SUMMONS

THE STATE OF WISCONSIN

To each person named above as a Defendant:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within 20 days of receiving this summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is La Crosse County Courthouse, 333 Vine Street, La Crosse WI 54601, and to Eminent Domain Services, LLC whose address is 6515 Grand Teton Plaza, Suite 241, Madison, Wisconsin 53719. You may have an attorney help or represent you.

If you do not provide a proper answer within 20 days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against

any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 25th day of November, 2022.

EMINENT DOMAIN SERVICES, LLC

Electronically Signed by Erik S. Olsen
Erik S. Olsen
State Bar No.: 1056276

6515 Grand Teton Plaza, Suite 241
Madison, WI 53719
Telephone: (608) 535-6109
Facsimile: (608) 338-0889

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La Crosse, WI 54601

Defendant.

VERIFIED CIVIL COMPLAINT AND NOTICE OF RECOUNT APPEAL TO CIRCUIT COURT

PLEASE TAKE NOTICE:

Ms. Ginny Dankmeyer
The La Crosse County Clerk and
Chair of the Board of Canvassers
212 6th Street N - Room 1500
La Crosse, WI 54601
gdankmeyer@lacrossecounty.org

Mr. Fritz Leinfelder
2710 S Pleasant Dr
Holmen WI 54636
fritz@fritzforsheriff.com

Mr. John Siegel
Candidate for La Crosse County Sheriff
1630 Bainbridge St.
La Crosse WI 54603
jochsiegel@gmail.com

PLEASE TAKE NOTICE that Mary Jo Werner, by and through her attorney, Erik S. Olsen, Eminent Domain Services, LLC, alleges and shows as follows:

1. Plaintiff is an adult resident of the State of Wisconsin and the County of La Crosse residing at the address above-captioned.

2. Defendant Ginny Dankmeyer is the La Crosse County Clerk and the Chair of the Board of Canvassers and is sued in her official capacity as La Crosse County Clerk and as the Chair of the Board of Canvassers. At all times discussed herein, Dankmeyer was acting under color of state law.

3. On November 8th of 2022, an election was held in La Crosse County which included on the ballot a referendum question on a nearly $195 million plan to consolidate two high schools and the election of a new La Crosse County Sheriff.

4. Plaintiff voted against the $195 million school consolidation plan, and for Fritz Leinfelder for the office of La Crosse County Sheriff in the election held on November 8th of 2022.

5. The referendum lost by 18,875 to 8,433, and Mr. Leinfelder lost the election by 175 votes.

6. On November 16th of 2022, Candidate Fritz Leinfelder demanded a recount of certain wards in the City of La Crosse pursuant to a Verified Petition for Recount which was duly filed and served and which is incorporated by reference.

7. The recount determination by the Board of Canvassers was commenced on November 18th, 2022 with Plaintiff Mary Jo Werner participating as an observer.

8. Dankmeyer, who is the La Crosse County Clerk, also served as the Chair of the Board of Canvassers for the November 18th, 2022 recount.

9. Dankmeyer performed the recount pursuant to interpretations of Wisconsin law which disenfranchised Plaintiff by diluting her vote in at least three ways: by diluting Plaintiff's vote when challenges to absentee ballots were denied due to illegible witness signatures on envelopes, by diluting Plaintiff's vote when challenges to absentee ballots with no request for absentee ballot in the record and no proof that the absentee elector was unwilling or unable to vote in person, as those terms are legally defined, were denied; by diluting Plaintiff's vote by denying the challenges to the student electors for whom there was no record evidence of residency pursuant to an interpretation of Wisconsin law wherein it is not allowed to

challenge residency at a recount and under which interpretation of the law "special exceptions" for student residency determinations exist.

10. Many of the absentee ballot envelopes had illegible witness signatures. The Leinfelder Campaign challenged all absentee ballot envelopes that had illegible witness signatures because there is essentially no witness if the witness's name is unknown because their signature is illegible.

11. Dankmeyer denied this challenge on the grounds that her interpretation of Wisconsin law only requires a witness signature on an absentee ballot envelope, not a legible witness signature.

12. The Wisconsin Statutes and the Recount Manual ("Manual") produced by the Wisconsin Elections Commission ("WEC") state that the several stages of the recount must be performed in consecutive order, however Dankmeyer allowed all of the steps to proceed simultaneously resulting in the recount tables sometimes being covered with a chaotic array of documents.

13. The Leinfelder Campaign objected to doing the recount out of the order shown in the Manual and in ch. 9 because it made it impossible for the observers to see what was going on and therefore there was no due process because the Leinfelder Campaign could not observe, make objections, or preserve evidence. The Leinfelder campaign asked for the procedures to be done in the order stated in the statutes and Manual.

14. Dankmeyer denied the request on the grounds that her reading of the statutes was that the various recount tasks did not have to proceed in a specific order and could occur simultaneously.

15. The day before the recount started, and again at the recount on November 18th of 2022, the Leinfelder Campaign asked to review all of the absentee ballot applications citing Wis. Stat. § 9.01(1)(b)11. which provides a right to review election materials, and page eight of the Manual which states "The board of canvassers then reviews the written applications for absentee ballots and the list of absentee voters maintained by the municipal clerk. There should be a written application for each absentee ballot envelope except those issued in-person in the clerk's office." Dankmeyer refused to produce or review the written applications for absentee ballots.

16. The Leinfelder Campaign then challenged all absentee ballots under Wis. Stat. §§ 6.84, 6.85, 6.86, and *Walter V. Lee vs. David Paulson*, 2001 WI App 19. Because without any applications in the record there is no proof that each ballot was requested and there is no

proof that each voter was "unwilling or unable" to vote in person within the specific meaning of those terms within the statutory framework. Because strict compliance is required and voting by absentee is a privilege and not a right, simply assuming or stating that the ballot was requested and that the voter was unable or unwilling to vote in person does not comply with the statute because the terms "unwilling or unable" without further explanation are capable of various meanings and Wis. Stat. § 6.84 states a strong legislative preference in favor of voting in person.

17. Dankmeyer denied this challenge to the absentee ballots on the grounds that the certification on each absentee envelope itself proves that the absentee ballot was requested and that the voter was unwilling or unable to vote in person and in the view of Dankmeyer that is all that the statute requires.

18. Dankmeyer denied this request to see the absentee ballot applications on the grounds that it would be impossible to produce the absentee ballot applications in a timely manner because they contain information which would need to be redacted before it could be shared and this could not be accomplished timely.

19. During the recount, many of the County's recount staff ("Tabulators") were seated in such a way or moving through documents at such a speed that it was impossible for the observers to see the documents.

20. The Leinfelder Campaign asked for the absentee ballot envelopes and supplemental poll book pages to be shown slowly enough that they could be photographed. Dankmeyer denied this request on the grounds that nothing required the Tabulators to display any of the documents to the observers.

21. After objection and consultation with corporation counsel, the Leinfelder Campaign reached an agreement with Dankmeyer that all of the supplemental poll book pages from the recounted wards would be scanned and emailed to the Leinfelder Campaign and the Leinfelder Campaign would have the opportunity to place residency objections on the record by email until noon on November 19th, 2022.

22. The supplemental poll book pages were particularly important because the presence of a name on the supplemental poll book pages shows that the person registered to vote in La Crosse County less than 20 days before the election. This is because voter registrations that are more than 20 days before the election are printed into the actual poll book and therefore do not appear in the supplemental poll book pages.

23. The Leinfelder Campaign had previously requested the voter registration applications for all of the voters whose names appeared in the supplemental poll book pages, however Dankmeyer had refused to provide the voter registration applications on the grounds that they were not part of the recount.

24. On November 18th of 2022 the Leinfelder Campaign received a list of student addresses at the University of La Crosse in response to an open records request. Also on November 18th the Leinfelder Campaign received scans of the supplemental poll book pages from Dankmeyer. Comparing these two documents, the Leinfelder discovered that many of the students who registered to vote in La Crosse County 20 days or less before the election had listed with the University of Wisconsin, La Crosse that their home address was outside of La Crosse County and in some cases even outside of the State of Wisconsin.

25. On November 19th, 2022, the Leinfelder Campaign timely submitted the Affidavit of Fritz Leinfelder to Dankmeyer challenging over one thousand of the electors listed in the supplemental poll book pages because they had listed home addresses with the University of Wisconsin, La Crosse that were outside of La Crosse County. The Leinfelder Campaign therefore challenged all of the votes of these challenged electors on the grounds that there was no proof of residency for these voters.

26. On Monday, November 21st, Dankmeyer emailed the Leinfelder Campaign denying the challenges as follows:

> The time to object to a voter's eligibility based on their residency is on Election Day at the polling place, not at a recount.
> State law acknowledges that college students may move frequently, **and provides special exceptions for them**. In general:
> Students have the right to vote in Wisconsin if they have resided in a ward for at least 28 days, are a U.S. Citizen, at least 18 years on or before Election Day, and are not otherwise disqualified.
> Student status shall not be a consideration in determining residence for the purpose of establishing voter eligibility.
> It is not necessary that there be intention to remain permanently at the voting residency. It is sufficient that the place is for the time being home of the voter to the exclusion of other places.
>
> With that, the Board of Canvassers have reviewed your objection to the recount (attached) held on November 18, 2022 of the La Crosse County Sheriff's contest for an election on November 8, 2022, and have denied it.
>
> Dankmeyer email 11/21/22 (emphasis supplied).

27. Dankmeyer improperly denied the challenges in the Leinfelder Affidavit when the University of La Crosse records showed that the electors resided outside of the County and there was no evidence of any type in the record that showed that the challenged electors resided in the County. Furthermore, Dankmeyer's interpretation of Wisconsin law is incorrect when her interpretation allows "special exceptions" that students are allowed to pick where they vote regardless of where their domicile is. Shortly after this the above referenced 11/21/22 email from Dankmeyer, Fritz Leinfelder conceded the Sheriff election to his opponent.

28. As shown above, Dankmeyer's interpretation and application of the law disenfranchised Plaintiff by diluting her vote. The challenges to absentee ballot envelopes with illegible witness signatures should not have been denied because when the name of the witness cannot be read it is the same as there being no witness at all. The recount tasks must be accomplished in the sequential order set forth in the statute with reasonable accommodations provided for observers from the campaigns to see the election materials, make objections, and preserve evidence. The challenges to the absentee ballots should have been upheld when there were no absentee ballot applications in the record and no proof of why each of the absentee voters was unable or unwilling to vote in person. The challenges should have been sustained to the residency of the student voters who registered to vote less than twenty days before the election and had home addresses on file with University of La Crosse that were outside of La Crosse County and when none of the relevant voter registration applications were produced or made part of the recount record. Dankmeyer's interpretation of the law at the recount disenfranchised the Plaintiff and therefore Plaintiff is aggrieved by the recount.

FIRST CAUSE OF ACTION
WIS. STAT. § 9.01(6)

29. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein and hereby appeals to the La Crosse County Circuit Court pursuant to Wis. Stat. § 9.01(6).

30. A true and correct copy of this pleading and notice has been served by certified mail and email on Ms. Ginny Dankmeyer, Mr. Fritz Leinfelder, and Mr. John Siegel at the physical and electronic addresses specified above.

31. The appellant hereby files this notice with the clerk of circuit court and requests that the Court approve an amount for the undertaking and surety, conditioned upon the payment of all costs taxed against the appellant, pursuant to Wis. Stat. § 9.01(6)(a), and the appellant requests that the Court sign the order filed herewith.

32. Wherefore, pursuant to Wis. Stat. § 9.01(7), Appellant requests that the Court hold a scheduling conference for the purpose of adopting procedures that will permit the court to determine this matter as expeditiously as possible.

SECOND CAUSE OF ACTION
VIOLATION OF EQUAL PROTECTION UNDER THE LAW (42 U.S.C. § 1983)

33. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

34. Section 1 of the Fourteenth Amendment of the United States Constitution provides: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

35. As shown above, Dankmeyer's actions at the recount, and Dankmeyer's interpretations of state law at the recount, all done under color of state law, disenfranchised Plaintiff by diluting her vote when challenges to ballots that should have been sustained for the reasons stated above were denied due to an incorrect interpretation of Wisconsin law. This violated Plaintiff's right to equal protection of the laws and the free exercise of the right of suffrage under the federal and state constitutions, and 42 U.S.C. § 1983 by diluting Plaintiff's vote.

THIRD CAUSE OF ACTION
VIOLATION OF THE CIVIL RIGHTS ACT OF 1964 (42 U.S.C. § 1971)

36. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

37. Pursuant to 42 U.S.C. § 1971(a)(2)(A), no state official acting under color of law shall "in determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote."

38. Dankmeyer, in determining and denying the challenges to the challenged electors at the recount, applied a standard, practice, or procedure, namely "special exceptions", different from those applied to other individuals who have been found qualified to vote in violation of 42 U.S.C. §§ 1971 and 1983, and the state constitution. While all other voters were required to reside in La Crosse County to vote in the La Crosse County elections, the votes challenged in the Leinfelder affidavit were allowed to count in the La Crosse County election even though there was no record evidence that they had established their residence in La Crosse County as required under Wisconsin law due to the Defendant's interpretation of Wisconsin law providing special exceptions to college students.

FOURTH CAUSE OF ACTION
UNIFORM DECLARATORY JUDGMENTS ACT WIS. STAT. § 806.04

39. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

40. The Wisconsin Statutes state "Any person interested under a deed, will, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder." Wis. Stat. 806.04(2).

41. The Plaintiffs rights were, and continue to be affected by the laws and legal interpretations of those laws by Dankmeyer during the recount as shown above. Plaintiff resides and votes in La Crosse County and has an interest in the election laws being accurately enforced in all future elections including but not limited to so that her vote is not diluted.

42. Wherefore Plaintiff requests that the disputed legal rights and interpretations outlined above, particularly in Paragraph 28, be declared and determined by this Court.

WHEREFORE, Plaintiff prays that this Court grant the following declaratory and injunctive relief:

(a) Declare the law as follows: 1) declare that challenges to absentee ballot envelopes with illegible witness signatures must be be sustained at a recount; 2) declare that a recount must proceed in the order of events set forth in the Wisconsin statutes and that observers must be given a fair opportunity to examine election materials, make objections, and preserve evidence; 3) declare that at a recount, challenges to absentee ballots for which no request for the ballot can be produced must be sustained; 4) declare that at a recount challenges to absentee ballots for which no proof is provided of why the elector is unable or unwilling to vote in person must be sustained; 5) declare that students are not accorded special exceptions under Wisconsin law and must in fact vote in the place where they are domiciled and that therefore challenges to student residency at a recount must be sustained when there is no evidence of residency and the official university documents indicate that their home address is outside of the County; 6) declare that challenges to residency may be raised at a recount.

(b) Enter injunctive relief against the Defendant in accordance with the declaratory relief awarded so that future elections are conducted according to the correct interpretation of Wisconsin law.

(c) Enter judgment declaring that the challenged ballots must be withdrawn from the count.

(d) Award Plaintiffs their costs, interest and reasonable attorneys' fees for this action pursuant to 42 U.S.C. §1988 and other relevant statutes.

(e) Order such other and further declaratory and injunctive relief as the Court deems just and proper under the circumstances.

Dated this 25th day of November, 2022.

EMINENT DOMAIN SERVICES, LLC

Electronically Signed by Erik S. Olsen

Erik S. Olsen
SBN 1056276
erik@eminentdomainservices.com

6515 Grand Teton Plaza, Suite 241
Madison, WI 53719
(608) 535-6109

VERIFICATION

I, Mary Jo Werner, being first duly sworn, on oath, state that the factual assertions contained in the above pleading are known to me to be true and those legal conclusions and statements on information and belief are believed to be true.

Mary Jo Werner

Subscribed and sworn to before me this 25th day of November, 2022.

Heather M. Monk
Notary Public
(or any other person authorized to administer oaths)

My Commission Expires 4-17-2023
(specify expiration date)

State of Wisconsin County of LaCrosse

Subscribed and Sworn to before me
this 25 day of November 2022
Heather M. Monk
NOTARY PUBLIC, LaCrosse County, WI
My Commission Expires 4-17-2023