FILED
09-19-2023
Clerk of Circuit Court
La Crosse County WI
2022CV000555

**BY THE COURT:**

**DATE SIGNED: September 18, 2023**

Electronically signed by Elliott M. Levine
Circuit Court Judge

**STATE OF WISCONSIN** **CIRCUIT COURT BRANCH II** **LA CROSSE COUNTY**

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**MARY JO WERNER,**

Plaintiff,

**vs.**

**DECISION AND ORDER**

**GINNY DANKMEYER, in her official capacity,**

Case No.: **22-CV-555**

Defendant.

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The Plaintiff, Mary Jo Werner, is seeking judicial review of decisions made by Defendant, Ginny Dankmeyer, in her capacity as the La Crosse County Clerk and the Chair of the County Board of Canvassers regarding a recount of the 2022 La Crosse County Sheriff's Election. The Defendant and the Intervener-Defendant, Democratic National Committee, have filed a Motion for Judgment on the Pleadings. The Plaintiff has filed a Motion for Summary Judgment on this case. For the reasons stated herein, the Defendant and Intervener-Defendant's Motion for Judgment on the Pleadings is GRANTED. The Plaintiff's motion for Summary Judgment is DENIED.

## FACTS

An election in La Crosse County on November 8, 2022 had on the ballot a race for a new La Crosse County Sheriff and a referendum question on a $194.7 million plan to consolidate two high schools, among other issues and candidates running for other offices. The Plaintiff was a registered voter in La Crosse County at the time of the election and did exercise her right to vote in that election. The Plaintiff voted against the referendum and for Fritz Leinfelder for Sheriff. In the contest to determine the new La Crosse County Sheriff, candidate Fritz Leinfelder lost to candidate John Siegel by 175 votes. In Wards 9, 10 and 11[1] the voter turnout was 240.24%, 306.67% and 139.5% respectively. Candidate Fritz Leinfelder lost in all three of those wards.

On November 16th, 2022, candidate Leinfelder demanded a recount of wards 9, 10 and 11 in the City of La Crosse pursuant to Wis. Stat. § 9.01. The day before the recount started, 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. Absentee ballots are mostly maintained by municipal clerks. Page eight of the Wisconsin Election Commission Manual 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

[1] Ward 11 does not have campus residential buildings

absentee ballot envelope except those issued in-person in the clerk's office." [2] The La Crosse Municipal Clerk maintains the absentee ballot applications for Ward 9, 10 and 11 of the City of La Crosse. The La Crosse Municipal Clerk is not a party to this law suit.

Defendant Dankmeyer at the La Crosse County Clerk and as the Chair of the Board of Canvassers conducted a recount of the vote for Sheriff on November 18, 2022. The Plaintiff Werner, was an observer at this recount. The candidate Leinfelder made some objections during the recount that Dankmeyer found not appropriate under guidance from the manual prepared by the Wisconsin Elections Commission (WEC) for handling recounts. On November 21, 2022, Dankmeyer emailed the Leinfelder Campaign and stated, "State law acknowledges that college students may move frequently, and provides special exceptions for them." In that email, Dankmeyer denied the challenges that the Leinfelder campaign had made. The recount verified the original count had determined the correct winner of the 2022 La Crosse County Sheriff's race, John Siegel. Fritz Leinfelder did not appeal this decision to the circuit court.

## STANDARD OF REVIEW

A judgment on the pleadings, under Wis. Stat. § 802.06(3), is essentially a "summary judgment minus affidavits and other supporting documents." *Freedom from*

[2] Wisconsin Elections Commission "Election Recount Procedures" manual dated November 2020.

*Religion Found.,Inc. v. Thompson*, 164 Wis. 2d 736, 741, 476 N.W.2d 318 (Ct. App. 1991) (quoting *Schuster v.Altenberg*, 144 Wis. 2d 223, 228, 424 N.W.2d 159 (1988)). "[The Court] examine[s] the complaint to determine whether a claim for relief has been stated. In determining the legal sufficiency of the complaint, the facts pleaded by the plaintiff, and all reasonable inferences therefrom, are accepted as true." *Schuster*, 144 Wis. 2d at 228 (internal citation omitted). If "it is quite clear that under no circumstances can the plaintiff recover," then the complaint should be found legally insufficient and judgment entered against the plaintiff. *Id*. If a claim for relief has been stated, the Court then determines whether a material factual issue exists as presented by the pleadings. *Id*. If no genuine issue of material fact exists, the court may determine that the moving party is entitled to judgment as a matter of law. *Id.*

"A motion to dismiss for failure to state a claim tests the legal sufficiency of the complaint." *Data Key Partners v. Permira Advisers, LLC,* 2014 WI 86, ¶19, 356 Wis. 2d 665, 849 N.W.2d 693. "[T]he sufficiency of a complaint depends on substantive law that underlies the claim made…."*Id.* ¶31. If there is no substantive law that supports the complaint, the claim fails and must be dismissed.

In deciding summary judgment motions, the Court will first examine the pleadings to determine whether a claim of relief has been stated and whether any material factual issues exist. *Green Spring Farms v. Kersten*, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987). As the moving party, the Plaintiff must then make a prima facie case for

summary judgment by presenting a claim that would defeat the Defendant's defenses as a matter of law. ***Tews v. NHI, LLC***, 2010 WI 137, ¶ 4, 330 Wis. 2d 389, 793 N.W.2d 860.

If the Plaintiff has made a prima face case, the Court must then examine the record and other proof of the Defendant to determine whether any genuine issue exists or whether conflicting inferences may be drawn from the undisputed facts. ***Id.*** The Court is required to view the facts in the light most favorable to the Defendant as the non-moving party. *Metro. Ventures, LLC v. GEA Associates*, 2006 WI 71, ¶ 20, 291 Wis. 2d 393, 717 N.W.2d 58 (citation omitted). "[S]ummary judgment should not be granted if reasonable, but differing, inferences can be drawn from the undisputed facts." *Tews*, ¶ 42 (quoting *Delmore v. American Family Mut. Ins. Co.,* 118 Wis. 2d 510, 516, 348 N.W.2d 151 (1984)). Summary judgment is appropriate where no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law. Wis. Stat. § 802.08(2).

It has long been held, that summary judgment is a drastic remedy, and should not be granted unless the material facts are not in dispute, no competing inferences can arise, and the law that resolves the issue is clear. *Lecus v. Am. Mut. Ins. Co. of Boston*, 81 Wis. 2d 183, 189, 260 N.W.2d 241, 243 (1977). Summary judgment is not to be a trial on affidavits and depositions. *Id***.**

## DECISION

### A. MOTION ON PLEADINGS

A number of arguments are brought up by the Defendant and Defendant-Intervener in support of their motion for a decision on the pleadings. It is argued but not in this order[3]; that Wis. Stat. Sec. 9.01 precludes the relief the Plaintiff requests; that the Plaintiff failed to exhaust administrative remedies that were required; that the Plaintiff lacks standing and has not presented a justiciable controversy; and that the Plaintiff seeks an advisory opinion that is inappropriate as it seeks an opinion on claims that are moot and unripe.

***Wis. Stats. Sec. 9.01 precludes the relief by the Plaintiff.***

Following a motion hearing with argument by both parties, the Court issued an Order Dismissing Plaintiff's First Cause of Action Under s. 9.01(6) for Lack of Standing (Dkt. 12). That order was final for the purposes of appeal, but was not appealed.

The Plaintiff was not an aggrieved candidate who asked for a recount and then sought an appeal to this circuit court regarding that recount. Mr. Leinfelder is not a party of this suit. Nor is the Plaintiff acting on the behalf of Mr. Leinfelder. Furthermore, the Plaintiff had not asked for a recount of a referendum question for which she was an

[3] The court has changed the order of arguments to respond in the order the court believes are the strongest.

elector so there was not a recount of that issue to bring before this circuit court. Therefore, the Plaintiff was not an individual who could appeal to the circuit court for alleged mistakes or errors in voting or the vote counting process. As Wis. Stats. Sec. 9.01(11) states, “This section constitutes the exclusive remedy for testing the right to hold an elective office as the result of an alleged irregularity, defect or mistake committed during the voting or canvassing process.”

The Plaintiff argued, even without standing, that the Court should intervene to correct alleged errors, that the candidate did not on appeal before this Court, in order to clarify future recounts under Wis. Stats. Sec. 9.01. The Wisconsin Supreme Court emphasized that only the aggrieved candidate’s appeal of alleged irregularities or incorrect application of law was the exclusive remedy. “The statute on its face is capable of no other interpretation.” *State ex rel. Shroble v. Prusener*, 185 Wis. 2d 102, 110, 517 N.W.2d 169 (1994). The Court held in *Shroble*, individual voters cannot invoke the administrative or judicial review procedures of § 9.01, and “[t]he need for finality” justifies “reasonably limit[ing] the remedy of recount to the candidates in the election” and “rel[ying] on them to represent the interests of the electorate.” *Id*. at 115-16. *Shroble* is clear that future relief from any errors or mistakes in recounts would be addressed only through aggrieved candidates appealing decisions on those issues. Thus, the Plaintiff is not an aggrieved candidate, but an individual voter, Wis. Stats. Sec. 9.01 does not provide an avenue for seeking the requested remedy.

***Administrative remedies were not exhausted by Plaintiff.***

Although Wis. Stats. Sec. 9.01 does not allow individuals in the Plaintiff's position to challenge a recount, the Plaintiff was not without remedy. The legislature did provide an avenue for relief for voters in the Plaintiff's position, who disagreed with their election officials' administration of laws impacting the qualification of voters in the district, including whether they qualified due to their residence. Wis. Stats. Sec. 5.06 provides a procedure to the challenges that the Plaintiff wishes to contest.

Wis. Stats. Sec. 5.06 requires specific action under this statute including having the elector file a written sworn complaint with the Wisconsin Election Commission (WEC). After the matter has reached a disposition with the WEC, the Plaintiff can appeal that decision to the circuit court.

The complaint the Plaintiff had with Defendant Dankmeyer, was exactly the type of complaint this statute envisioned an elector may have, with how an election official used its discretion during the administration of an election. The primary objections the Plaintiff had with Defendant Dankmeyer's administration of the election procedures, was her determination of elector's voting qualifications including their residence as a voter qualification. Voter registration is generally administered by the municipal clerks. In this case the wards that were being challenged were wards in the City of La Crosse.

Registration would be the responsibility of the City Clerk of La Crosse, not Defendant Dankmeyer. This statute provides the Plaintiff a remedy for the objections to the actions of the appropriate election official. Defendant Dankmeyer is not the appropriate election official in a complaint to the WEC, which in turn could be appealed to the circuit court.

The Plaintiff's challenges to the student voter registration process, and the requests for absentee ballots, are clearly issues that need to be appealed to the Wisconsin Election Commission. Students are considered residents for election purposes, when they reside at their university or college housing and have met all other requirements to registrar. The rules by the WEC for same day registration are followed by the local municipalities and more specifically the City of La Crosse Clerks office in the present case.

As pointed out by the Plaintiff, in person voting is highly protected. In fact, in order to challenge an in person voter, an objection would have to be made at the time of voting. For the vote to be disqualified, the objector would have to prove, beyond reasonable doubt, that the individual was not a resident of the ward in which they were voting. Wis. Stats. 6.325, states that **"**no person may be disqualified as an elector unless the **municipal clerk**, board of election commissioners or a challenging elector under s. 6.48 demonstrates beyond a reasonable doubt that the person does not qualify as an elector or is not properly registered." (emphasis added) A blanket objection to all the voters of entire wards, not only disenfranchises students residing in those wards,

but also non-students residing in those ward.[4] This would be a clear violation of the statute, the United States Constitution and Wisconsin Constitution.

Wis. Stats. Sec. 5.06 is not only a remedy for the Plaintiff, it is the **exclusive remedy**. As stated in the statute: "No person who is authorized to file a complaint under sub. (1), other than the attorney general or a district attorney, may commence an action or proceeding to test the validity of any decision, action or failure to act on the part of any election official with respect to any matter specified in sub. (1) without first filing a complaint under sub. (1), nor prior to disposition of the complaint by the commission." Wis. Stats. Sec. 5.06 (2). The recent *Teigen* case referred to by both parties verified this exclusive remedy for grievances against actions of election officials. *See, e.g., Teigen*, 2022 WI 64, ¶47 (lead op.). The Plaintiff did not follow the procedure outlined in this statute, she was not allowed to test the validity of Defendant Dankmeyer's decisions or actions, or the decisions or actions of any election official in the filing of this action.

As was indicated in the pleadings by both parties, Wis. Stats. Sec. 5.06(10) of this statute does not apply to matters related to issues from a recount. The Plaintiff argues that because of this language, they must have standing under Wis. Stats. Sec. 9.01 for their grievance for the ways the election was administered. For the reason stated above, the Plaintiff did not have standing under that statute as she was not the candidate objecting to how the recount was administered. At the time of the election,

[4] See footnote 1

however, if the Plaintiff had issues with how Defendant Dankmeyer administration of the election related to voters' qualifications related to their residence or absentee votes were counted, Wis. Stats. Sec. 5.06 afforded her a remedy. This was a remedy she did not pursue, and because she did not pursue that remedy, she is prohibited from bringing this action contesting the administration of that election or future elections through this law suit.

***The Plaintiff has not presented a justiciable controversy.***

The test for standing under Wisconsin law turns on the following considerations, (1) whether the party whose standing is challenged has a personal interest in the controversy (sometimes referred to in the case law as a "personal stake" in the controversy); (2) whether the interest of the party whose standing is challenged will be injured, that is, adversely affected; and (3) whether judicial policy calls for protecting the interest of the party whose standing is challenged. *Foley-Ciccantelli v. Bishop's Grove Condo. Ass'n, Inc*., 2011 WI 36, ¶ 40, 333 Wis. 2d 402, 797 N.W.2d 789.

When a litigant brings an action for declaratory relief, they must also present a "justiciable controversy." To present a justiciable controversy under Wis. Stat. 806.04(4), the Plaintiff must satisfy four conditions: (1) A controversy in which a claim of right is asserted against one who has an interest in contesting it. (2) The controversy must be between persons whose interests are adverse. (3) The party seeking

declaratory relief must have a legal interest in the controversy— that is to say, a legally protectible interest. (4) The issue involved in the controversy must be ripe for judicial determination. *Loy v. Bunderson,* 107 Wis. 2d 400, 410, 320 N.W.2d 175 (1982). All four conditions must be satisfied to present a justiciable controversy. *WMC*, 398 Wis. 2d 164, ¶ 13. "It is not a sufficient ground for declaratory relief that the parties have a difference of opinion…" *Lister v. Bd. of Regents*, 72 Wis. 2d 282, 308, 240 N.W. 2d 610 (1976). Due to the similarities between the two standards, Wisconsin courts have characterized the concepts of standing and justiciability as "overlapping concepts in declaratory judgments*." Foley-Ciccantelli*, 333 Wis. 2d 402, ¶ 47; *Id*. ¶ 55 (the Loy test is a "tool" for determining standing). Defendant's argument unfolds by addressing overlapping elements together. Ultimately, the Plaintiff has not shown that this is a justiciable controversy or that she has standing to bring this action.

The Plaintiff's answer is that her vote-dilution approach to standing was supported by the Wisconsin Supreme Court, (Dkt. 38 at 5-6 (citing *Teigen v. Wis. Elections Comm'n*, 2022 WI 64, 403 Wis. 2d 607, 976 N.W.2d 519)) but it is very clear that the vote-dilution theory of standing discussed in ¶¶14-31 of *Teigen's* three-Justice lead opinion was expressly rejected by a majority of the Court. While Justice Hagedorn provided the necessary fourth vote for the majority decision's outcome, he did not join most of the lead opinion, including the vote-dilution theory of standing. See 2022 WI 64, ¶149 n.1 (Hagedorn, J., concurring) (joining only parts of majority/lead opinion.)

The Court agrees with the defense position that Hagedorn and the three dissenting Justices all unequivocally rejected the "vote dilution" theory of standing on multiple grounds. Id. ¶¶158-67 (Hagedorn, J., concurring); ¶¶210-15 (A.W. Bradley, J., dissenting, joined by Dallet and Karofsky, JJ.). Justice Hagedorn characterized the vote-dilution theory as "unpersuasive" and emphasized it did "not garner the support of four members of this court." *Id.* ¶167 (Hagedorn, J., concurring) (emphasis added). The three Justices in dissent likewise emphasized that the paragraphs in the lead opinion discussing vote-dilution standing "do not constitute precedential authority." *Id*. ¶205 n.1 (A.W. Bradley, J., dissenting) (emphasis added).

The *Teigen* majority holding on vote-dilution is not alone on this point. Federal judges in Wisconsin and throughout the country have rejected vote-dilution standing theories like the Plaintiff advances. *Friends of Black River Forest v. Kohler Co.,* 2022 WI 52, ¶17, 402 Wis. 2d 587, 977 N.W.2d 342.4 And, as one federal court recently observed, "[d]istrict courts across the country have consistently dismissed complaints premised on the theory of unconstitutional vote dilution in the aftermath of the 2020 election." *Soudelier v. Dep't of State of La.*, Civ. No. 22- 2436, 2022 WL 17283008, *3 (E.D. La. Nov. 29, 2022) (citing cases), appeal filed, No.22-30809 (5th Cir. Dec. 27, 2022); see also *Graeff v. U.S. Election Assistance Comm'n,* No. 4:22-CV-682 RLW, 2023 WL 2424267, at *5 (E.D. Mo. Mar. 9, 2023).

A decision regarding Wisconsin's November 2020 election by Chief Judge Pamela Pepper is on point. See *Feehan v. Wis. Elections Comm'n*, 506 F. Supp. 3d 596 (E.D. Wis. 2020), appeal dismissed, Nos. 20-3396, 20-3448, 2020 WL 9936901 (7th Cir. Dec. 21, 2020). The plaintiff, who "identified himself as a resident of La Crosse, … a registered voter and a 'nominee of the Republican Party to be a Presidential Elector,'" filed suit, charging "massive election fraud, multiple violations of the Wisconsin Election Code," and various constitutional violations in the conduct of the 2020 Wisconsin general election and subsequent recount. *Id*. at 601. Chief Judge Pepper cites several federal decisions rejecting claims "that a single voter has standing to sue as a result of his vote being diluted by the possibility of unlawful or invalid ballots being counted. *Id*. at 608-09 (analyzing decisions by district courts in North Carolina, Nevada, Vermont, and Texas). *Feehan's* "alleged injuries" were the same as "any Wisconsin voter suffers if the Wisconsin election process" allows illegal votes to be cast and thus "no more than a generalized grievance common to any voter," rather than "a particularized, concrete injury sufficient to confer standing." *Id.* at 609. The Plaintiff is making the similar generalized claims as *Feehan*.

Another federal court rejected other Wisconsin voters' allegations because their "interest in an election conducted in conformity with the Constitution … merely assert[ed] a 'generalized grievance' stemming from an attempt to have the Government act in accordance with their view of the law." *Wis. Voters All. v. Pence*, 514 F. Supp. 3d

117, 120 (D.D.C. 2021) (quoting *Hollingsworth v. Perry*, 570 U.S. 693, 706 (2013)). That court reasoned that such generalized grievances do not meet the requirement for a "'concrete and particularized' injury … as other courts have recently noted in rejecting comparable election challenges." *Id*.

The U.S. Supreme Court's holding that individual voters' allegation "that the law … has not been followed" is "precisely the kind of undifferentiated, generalized grievance about the conduct of government" insufficient to support standing. *Lance v. Coffman*, 549 U.S. 437, 442 (2007).

The Plaintiff turns to the landmark redistricting decision in *Reynolds v. Sims*, 377 U.S. 533 (1964), but the discussion of dilution in *Reynolds* is distinguishable. *Reynolds* held that "[d]iluting the weight of votes because of place of residence" violates the Fourteenth Amendment's equal-protection guarantee. *Id*. at 566; see also *Id*. at 567 ("The fact that an individual lives here or there is not a legitimate reason for overweighting or diluting the efficacy of his vote.").

The Court agrees that the Plaintiff's claimed vote dilution does not result from any invidious classification targeted at and disfavoring people like her, such as classifications based on "race, sex, economic status, or place of residence within a State," in which the "favored group has full voting strength and the groups not in favor have their votes discounted." *Id.* at 555 n.29, 561. Vote-dilution standing can only be based on a classification that causes "individual and personal injury," not on an

"undifferentiated, generalized grievance about the conduct of government" that any voter could raise. *Gill v. Whitford*, 138 S.Ct. 1916, 1931 (2018). The Plaintiff's repeated assertions that her claimed injuries are shared by "everybody" in La Crosse County (Dkt. 38 at 29, 32) supports the defense position that she does not have standing in this suit.

The Court also agrees that Justice Ann Walsh Bradley's dissenting views in *Teigen*, joined by two other Justices and in Justice Hagedorn's concurrence, states the current Wisconsin law on this point.

> [T]he majority/lead opinion … extends the doctrine [of standing] beyond recognition. … [It] attempts to create a free-for-all. It delineates no bounds whatsoever on who may challenge election laws. Instead, it relies on broad pronouncements regarding the import of our election laws and their general effect on all people. But just because all people are subject to a law does not mean that any and all people are entitled to challenge it. Indeed, "Courts are not the proper forum to air generalized grievances about the administration of a government agency." … Yet a "generalized grievance" is just what Teigen brings to this court. … Taken to its logical conclusion, the [dilution theory] indicates that any registered voter would seemingly have standing to challenge any election law. The impact of such a broad conception of voter standing is breathtaking and especially acute at a time of increasing, unfounded challenges to election results and election administrators.

2022 WI 64, ¶¶210, 212-14 (A.W. Bradley, J., dissenting); *see also Id*. ¶215 (characterizing lead opinion's "approach to standing in this case" as "unbridled" and "untethered to any limiting principle, which in effect renders the concept of standing entirely illusory"); *Id*. ¶167 & n.8 (Hagedorn, J., concurring). Thus the plaintiff lacks standing and has not presented a justiciable controversy.

***Declaratory judgement on claims are moot and unripe.***

If the defendant can no longer make the changes the plaintiff seeks through a law suit to change the outcome of an election, the claim is moot. *See Feehan*, 506 F. Supp. 3d at 613. Wisconsin Supreme Court stated: "[A] case is moot when a determination is sought upon some matter which, when rendered, cannot have any practical legal effect upon a then existing controversy." *Milwaukee Police Ass'n v. City of Milwaukee*, 92 Wis. 2d 175, 183, 285 N.W.2d 133 (1979). The Court can not change the results of the 2022 election, thus any claims related to that election is moot and not judiciable.

The Plaintiff's claims are not ripe. "The basic rational of the 'ripeness' doctrine is to prevent courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative or, in this case, legislative policies." *Lister v. Board of Regents of University Wisconsin System*, 72 Wis.2d 282, 309, 240 N.W.2d 610, 625 (1976). Defendant Dankmeyer was following administrative guidance from the WEC in how she was to consider an elector a "resident" in order to vote in the ward that they had voted in, and how to deem an absentee ballot acceptable. It is not "ripe" for this Court to wade into the disagreement regarding the interpretation of this guidance by the WEC for future elections. As discussed above, there were opportunities at the time of the election for aggrieved electors to raise these issues prior to and at the election, but the time has passed for judicial consideration at this point.

## B. SUMMARY JUDGMENT

Given the analysis of the Defendant's Judgment on the Pleadings above, a summary judgement motion for the Plaintiff is clearly not available. The first step is to determine whether the complaint states a claim for relief. *See Commercial Mortg. & Finance Co. v. Clerk of Circuit Court*, 276 Wis.2d 846, 861, 689 N.W.2d 74, 81 (2004). As was stated above: "[T]he sufficiency of a complaint depends on substantive law that underlies the claim made…." *Data Key Partners v. Permira Advisers, LLC,.* ¶31. If there is no substantive law that supports the complaint, the claim fails. As described above, there is no substantive law that supports the relief the Plaintiff is seeking in this action and so the Plaintiff's summary judgment motion fails for not stating a claim for relief.

Furthermore, many of the facts asserted by the Plaintiff are unsupported by the record. The custodian of the absentee ballots are not in the possession of Defendant Dankmeyer. As noted in the above section, those requests for absentee ballots are specifically in the possession of the La Crosse City Clerk. The student address list from the University of Wisconsin-La Crosse, lists two addresses, one at the residence hall and the other the student's home address. The listing is clearly a material fact that is in dispute, as to the meaning of that list between the parties, and how it should be interpreted in light of the WEC regulations.

It is clear that if there are material facts in dispute, the Court must find in favor of the non-moving party. Only if "there is no genuine issue as to any material fact" may a

moving party be entitled to judgment as a matter of law. Wis. Stat. § 802.08(6). Not only does the Plaintiff fail to state a claim for relief, but furthermore there would be genuine issues of fact that would be in dispute. The motion for Summary Judgment is denied.

## ORDER

NOW, THEREFORE IT IS ORDERED:

For the reasons stated above, the Plaintiff's Motion for Summary Judgment is DENIED.

And the Defendant's and the Intervener-Defendant's, Democratic National Committee, Motion for Judgment on the Pleadings is GRANTED.