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Calumet County
2025CV000022

BY THE COURT:

DATE SIGNED: August 8, 2025

Electronically signed by Carey J. Reed
Circuit Court Judge

STATE OF WISCONSIN CIRCUIT COURT BRANCH II CALUMET COUNTY

WISCONSIN DAIRY ALLIANCE, INC. ET AL,
Plaintiff

vs. Case No. 25-CV-22

JOSH KAUL ET AL,
Defendant

ORDER

Plaintiffs, Wisconsin Dairy Alliance, Inc. (hereafter WDA) filed this declaratory action challenging the defendant's agreement with New York University (NYU), which involves contracting with an NYU "legal fellow" to work on environmental issues for the Wisconsin Department of Justice (DOJ). WDA claims this agreement harms its members via what it characterizes as "unlawful prosecutions".

Both parties refer to the Wisconsin Supreme Court's *Fabick* decision for guidance on declaratory judgment actions and standing. *Fabick vs. Evers*, 396 Wis.2d 231, 956 N.W.2d 856 (2021). The *Fabick* court instructs that a justiciable controversy must exist to maintain a declaratory relief actions. *Id*. at p. 238. The four necessary conditions for a justiciable controversy are as follows:

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 who's interest are adverse;

3) The party seeking declaratory relief must have a legal interest in the controversy-that is to say, a legally protectable interest; and
4) The issue involved in the controversy must be ripe for judicial determination.

Id. citations omitted.

Fabick involved a tax payor challenging Governor Evers' Executive Order which proclaimed a public health emergency resulting from COVID-19 pandemic. Fabick filed for declaratory relief challenging the validity of the executive orders. Governor Evers argued that Fabick could not satisfy the first and third elements of a justiciable controversy. As to the claim of right, the court ruled that, "[a]s a taxpayer, under well-established law, he had a legal interest (should taxpayer standing be satisfied) to contest governmental actions leading to an illegal expenditure of taxpayer funds." *Id*. at p. 239. "In order to maintain a taxpayer's action, it must be alleged that the complaining taxpayer and taxpayers as a class have sustained, or will sustain, some pecuniary loss." *Id*. The court ultimately concluded that the governor's "expenditure of taxpayer funds implementing his executive orders, gave Fabick a legally protected interest to challenge the Governor's emergency declarations." *Id*. at 240.

Plaintiff's appear to be opposed to both how the fellow was acquired and what she will do in her role. These parties clearly have adverse interests. Among the purposes of the fellow is to enforce and prosecute environmental issues affecting Plaintiff's members. Plaintiffs have a legal interest to contest governmental actions leading to what they believe is an illegal expenditure of taxpayer funds. The DOJ's expenditure of taxpayer funds, such as those to pay for the fellow's travel expenses, bar dues and court fees, gives plaintiffs a legally protected interest to challenge the DOJ's contract with NYU/the fellow. Those expenditures are alleged to be ongoing. As such, the plaintiffs have standing and have stated a claim upon which relief can be granted. Defendant's motion to dismiss is denied.

THIS IS A FINAL ORDER FOR PURPOSES OF APPEAL.