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CIRCUIT COURT
DANE COUNTY, WI
2025CV000173

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 8

DANE COUNTY

ANNIE LAURIE GAYLOR, et al.Plaintiffs,
v.Case No. 25 CV 173
Case Code: 30701
Declaratory Judgment**CITY OF MADISON, et al.**Defendants.

REPLY BRIEF IN SUPPORT OF CITY OF MADISON'S MOTION TO DISMISS IN LIEU OF ANSWER AND MOTION TO REQUIRE JOINDER OF PARTIES

INTRODUCTION

The Defendant City of Madison (the “City”) has moved the court to dismiss this case in lieu of answering it, as authorized by Wis. Stat. § 802.06(2), asserting that, because Plaintiffs have failed to make a showing in their Complaint that the matter is justiciable, the complaint fails to state a claim upon which relief may be granted and that the City is entitled to dismissal of the complaint as a matter of law pursuant to Wis. Stat. § 802.06(2)(a)6. In the alternative, the City asserts that, pursuant to Wis. Stat. § 802.06(2)(a)7, Plaintiffs have failed to join parties under Wis. Stat. § 803.03 who are needed for just and complete adjudication, and has moved the Court for an order, under Wis. Stat. § 803.03(3), to require the joinder of said parties. (Dkts. 30, 31.)

Defendants St. Raphael’s Congregation (“Congregation”), Presbyterian Student Center Foundation (“Foundation”), and the Wisconsin State Legislature (“Legislature”) have each filed additional motions to dismiss, arguing, in various parts, that Plaintiffs lack standing, that they have failed to state a claim for relief, and that they have failed to join indispensable parties. (Dkts. 34, 35, 39, 40, 43, 45.)

Plaintiffs have responded to the four Motions to Dismiss by generally asserting that their claims are justiciable and that there are no other necessary parties. (Dkt. 61.) To keep the issues focused, this reply brief will only address those responses made by the Plaintiffs to the City's arguments in its Brief.

ARGUMENT

1. *The justiciability factors should not be liberally construed.*

To start with, as noted by the Plaintiffs in their response, and as directed by Wis. Stat. § 806.04(12), Courts may construe and administer the Uniform Declaratory Judgement Act, Wis. Stat. § 806.04, liberally. But that directive does not apply to whether a person can satisfy the justiciability standards that must be met before a court can consider such a matter. “A court must be presented with a justiciable controversy before it may exercise its jurisdiction over a claim for declaratory judgment. This is so because the purpose of the [Uniform Declaratory Judgments] Act is to allow courts to anticipate and resolve identifiable, certain disputes between adverse parties.” *Olson v. Town of Cottage Grove*, 2008 WI 51, ¶ 28, 309 Wis. 2d 365, 379, 749 N.W.2d 211, 218. Any suggestion by the Plaintiffs that this Court should liberally construe the justiciability factors themselves in favor of granting jurisdiction lacks support and should be disregarded.

2. *Plaintiffs have not asserted a claim of right against one who has an interest in contesting it.*

Turning to the justiciability test, the first condition that must be met to establish that a justiciable controversy exists is that there exists a “controversy in which a claim of right is asserted against one who has an interest in contesting it”. *Fabick v. Evers*, 2021 WI 28, ¶ 9, 396 Wis. 2d 231, 238, 956 N.W.2d 856, 860. Plaintiffs have not established that any such controversy exists in this case.

a. *Plaintiffs do not have a claim of right against the City in this case.*

In its Brief, the City has pointed out that Plaintiffs have not made any factual claims in the Complaint that demonstrate that they have a claim of right against the City pertaining to a property tax

exemption created by and granted pursuant to State law. (Dkt. 31, 6-7.) Nor have any claims of right been made in the Complaint against the Foundation or the Congregation.¹

In its Response, Plaintiffs seem to argue that because they are alleging that the Exemption is unconstitutional and that the City is applying the Exemption anyway, that they have a claim of right against the City. (Dkt. 61, 18-20.) Yet Plaintiffs continue to fall short in demonstrating how they have any claim of right *against the City* regarding a property tax exemption they have not applied for, been granted, or been denied. Nor have they made any effort to show how they have a claim of right against the other Defendants. Plaintiffs point to *Tooley v. O'Connell*, 77 Wis.2d 422 (1977), for support of their argument. In that case, Milwaukee taxpayers challenged municipal officials over the property tax funding process for the Milwaukee public schools, in which the Board of School Directors would forward its approved budget to the Milwaukee Common Council, who was required to levy and collect taxes against property in the City of Milwaukee at this amount. While the Court did find that the matter was justiciable, the taxpayers in that case were directly affected by the statute involved in that dispute—their local property taxes were directly determined under the statutory scheme in question. On the contrary, in the matter at stake in this case, the Plaintiffs have not alleged any direct right that they may have in the City's granting of a property tax exemption to a third party pursuant to State law (or to the Congregation and Foundation's receipt of the Exemption). Indeed, were it the case that any taxpayer or property owner has a right to challenge a municipality's authority to grant a tax exemption to a third party, municipalities would be faced with a flood of litigation as persons filed suits challenging any tax exemption that they disagreed with. As noted in the City's Brief, those sorts of cases do not exist in the appellate record—which is indicative of the Plaintiffs lack of any claim of right against the City pertaining to the granting of the Exemption. Plaintiffs may have a claim of right against other entities

¹ The Legislature was joined as a Defendant following its own Motion to Intervene, pursuant to Wis. Stat. §§ 13.365(3), 803.09(2m) and 803.09(2). (Dkts. 43, 49.) This action occurred after the City's Brief was filed and thus was not addressed in the City's Brief. The City will not address, in this Reply, whether a declaratory judgment action solely against the Legislature would be justiciable as that is beyond the scope of the City's Motions.

pertaining to the Exemption, but they just do not have one against the City. The City should be dismissed as a party from this matter.

b. Even if the Plaintiffs have a claim of right against the City, the City has no interest in contesting the claims.

Even if somehow a claim of right existed against the City for its administration of the Exemption, including granting of the Exemption to the Congregation and the Foundation, as previously noted the City has no interest in contesting Plaintiffs' assertion of this claim.

The City has an administrative role in the processing of statutorily created tax exemptions—specifically, reviewing state supplied forms and determining whether a property qualifies for a tax exemption, and whether an exemption should be continued or terminated. (Comp. at ¶ 15; Dkt. 31, 8.) However, in this instance, Plaintiffs have not alleged that the City made any errors or mistakes when it granted the Foundation and the Congregation the Exemption, other than applying a statute that Plaintiffs claim is unconstitutional. Also, none of the Plaintiffs were applicants for or recipients of the Exemption. Unlike the tax levy process at stake in *Tooley*, the freezing of property taxes under urban redevelopment law at stake in *Gottlieb v. City of Milwaukee*, 33 Wis. 2d 408, 147 N.W.2d 633 (1967), or the creation of alternate procedures to review Board of Review determinations at issue in *Metro. Assocs. v. City of Milwaukee*, 2011 WI 20, 332 Wis. 2d 85, 796 N.W.2d 717, the City's general administration of Wis. Stat. § 70.11 does not reflect the exercise of any municipal authority. Nor does the granting of the Exemption raise revenue for the City. As such, the City has no interest in contesting the claim and is indifferent to any claims of right asserted by Plaintiffs. (Dkt. 31, 8-9.)

In response, Plaintiffs first appear to argue that the City's interest in contesting the claims is demonstrated by the City's filing of a Motion to Dismiss (“the City has an interest in contesting the claims—and indeed, is contesting them through its Motion to Dismiss”; “the City has an interest in contesting that assertion (and has chosen to do so in this action)”). (Dkt. 61, 20.) But that is an unworkable conclusion that would negate the interest requirement and undermine the justiciability test

itself. Under Plaintiffs interpretation, no party could ever claim that they lacked interest in contesting a right at stake in a declaratory judgment action, as by raising the issue they would have demonstrated their interest in the matter. Such an approach would remove all meaning from the requirement that a claim of right must be “asserted against one who has an interest in contesting it”. Interest would be assumed, effectively amending the long-standing justiciability test so that the only requirement of the first prong would be that a claim of right be asserted against a party. Clearly, that result is not warranted here, and it will take more than the City’s filing of a motion to dismiss to establish that it has an interest in contesting the claim here.

Plaintiffs further respond to the City’s assertion that it has no interest in contesting Plaintiffs’ claims by arguing that, because the Plaintiffs claim the Exemption is unconstitutional, the City has an interest in contesting that claim because it “believes it should continue to implement the Exemption unless it is repealed or declared unconstitutional by the Court”. (Dkt. 61, 20-21.) In other words, according to the Plaintiff, the City has an interest because it has expressed that it will continue to follow the law unless it is declared unconstitutional. This is circular logic that provides its own solution to the question being asked. As noted in the City’s Brief, if the Exemption is declared constitutional, the City Assessor will continue to administer the Exemption as required; and if this matter proceeds and the Exemption is declared unconstitutional, the City Assessor will no longer administer the Exemption. The outcome of this litigation could be impactful to the City, but that doesn’t mean that the City has an interest in contesting Plaintiff’s claims.

For the reasons set forth above, and in the City’s Brief, and based upon their Pleadings in the Complaint, Plaintiffs have fallen short in establishing that they can meet the first prong of the justiciability test.

3. *Plaintiffs’ interests are not adverse to the City’s.*

It is an essential component of the justiciability test that the controversy must be between persons whose interests are adverse. As pointed out by the City in its Brief, the City has no interest in

the outcome of this litigation; in fact, its interests would actually be served, and the City benefited financially, by the invalidation of the Exemption. (Dkt. 31, 9-10.) This is not the same scenario presented by the property tax scheme used to fund the Milwaukee public schools that was at stake in

Tooley:

The board has an obvious interest in contesting the asserted claim of right of the plaintiffs. To fail to do so would result in the loss of the ability to raise a large share of the funds necessary to operate Milwaukee's school system. To fail to contest the plaintiffs' claim and to cease transmitting budgetary needs to the common council for the subsequent levy and collection of tax, would place the defendant-board in the position of failing to carry out its statutorily imposed duties.

Tooley at 435, 253 N.W.2d 335, 341. This clearly adverse interest explains why the Court in that case found “[s]ufficient adverseness to “. . . sharpen the presentation of issues for illumination of constitutional questions. . . .” exists.” *Id.* at 437, 253 N.W.2d 335, 341–42 (internal citations omitted). Such adverseness does not exist here between the City and the Plaintiffs in this case. Other Defendants or potential Defendants may have interests sufficiently adverse to the Plaintiffs in this case—but as the lead Defendant, the City, quite simply, does not.

4. *The Plaintiffs do not have a legally protectable interest and the issues are not ripe for judicial determination.*

In its Brief, the City did not address the remaining two prongs of the justiciability test, arguing that Plaintiffs’ failure to meet the claim of right and adverse interests prongs was sufficient to warrant dismissal. (Dkt. 31, 10.) However, both of these requirements, the standing and ripeness prongs, were raised by other Defendants in this matter.² Should the Court rule in favor of the other Defendants on these issues, there would be additional basis for the Court to find that Plaintiffs did not satisfy the justiciability requirements and grant the City’s motion.

5. *Additional necessary parties should be joined to this matter.*

² In its Brief, Congregation challenged Plaintiffs’ standing (Dkt. 39, 10-15); in its Brief, Foundation challenged Plaintiffs’ standing (Dkt. 35, 6-10); and in its brief, the Legislature challenged Plaintiffs’ standing (Dkt. 45, 14-23) and ripeness (*Id.*, 24-25).

Should the Court rule against the City and the other Defendants' collective Motions to Dismiss, the Court must address the City's additional motion to require the joinder of other parties pursuant to Wis. Stat. § 802.06(2)(a)7.³ The City has asserted that the Plaintiffs have failed to join additional parties under § 803.03(1) who are needed for just and complete adjudication, specifically all other beneficiaries of the Exemption, and that the Court should order that they be made parties under § 803.03(3). (Dkt. 31, 10-13)

As a starting point, it should be noted that in their Response, Plaintiffs definitively assert that the City is seeking the joinder of the Wisconsin Department of Revenue (DOR). (Dkt. 61, 49.) That is simply not the case, which a review of the City's arguments reveals. In its Brief, the City argued that the DOR, as the entity responsible for supervising the administration of the property tax statutes and for advising and directing assessors within the State as to their duties under the property tax statutes, along with its "duty" and the "power and authority" under Wis. Stat. § 73.03(45) to "direct the assessor of any taxation district to deny specific claims for property tax exemption or to terminate specific existing property tax exemptions prospectively", is the appropriate party against whom this case should have been brought. (Dkt. 31, 6-7.) As established by the justiciability test, the City is the wrong party against whom to bring this lawsuit and, rather than requiring joinder of the DOR, the City is seeking dismissal outright of this matter. Thus, the City is not seeking the joinder of the DOR in this case, although both Congregation and Foundation have raised this argument in their Briefs.

Turning to the issue at hand, under Wis. Stat. § 806.04(11), "[w]hen declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration may prejudice the right of persons not parties to the proceeding." In this case, Plaintiffs have joined Congregation and Foundation under Wis. Stat. § 803.03(1), but have not joined other, non-religious affiliated beneficiaries of the Exemption. This was done not to avoid

³ Congregation (Dkt. 39, 14-15) and Foundation (Dkt. 35, 25-26) have also raised the joinder issue in their Briefs in Support of their respective Motions to Dismiss.

undermining some of Plaintiffs' arguments, but apparently because they "were not the intended beneficiaries of the Exemption." (Comp. at ¶ 16, 17, 28.) However, the other beneficiaries of the Exemption clearly have an interest that would be affected by the declaration sought by Plaintiffs in this case, regardless of whether they are "[un]intended beneficiaries of the Exemption." Specifically, if the court grants the relief sought by Plaintiffs in this case, an order enjoining the City "from applying Wis. Stat. § 70.11(3m) to any property going forward" (Comp. at ¶ 102.b), the City will be prevented from granting the Exemption to the real property of the non-party beneficiaries, making their property taxable once again. As such, they clearly have an interest that would be affected by the declaration.

Moreover, in the absence of the other non-party beneficiaries, complete relief cannot be accorded in this matter as required by Wis. Stat. § 803.03(1)(a). Specifically, judgment for the Plaintiffs in this matter would not foreclose the non-party beneficiaries from pursuing the Exemption, even if the City would be prevented from granting it.⁴ The judgment in this matter would not be binding upon those other beneficiaries as Sec. § 806.04(11) indicates that "no declaration may prejudice the right of persons not parties to the proceeding." The City would thus likely be faced with subsequent litigation, and that future court would not be bound by the decision of this Court. If Plaintiffs are going to continue to pursue this action against the City instead of DOR, given the small number of beneficiaries of the Exemption, the only way to ensure that complete relief, as requested by Plaintiffs, is accorded would be to require the joinder of all other beneficiaries of the Exemption.

In response, Plaintiffs argue that the interests of the other beneficiaries are adequately represented by the current Defendants—that either Foundation and Congregation are proxies of sorts

⁴ A judgment that against or that included the Department of Revenue would not suffer from this issue, nor would joinder of the non-party beneficiaries be necessary if the DOR was a party. "The Declaratory Judgment Act does not require 'the joinder as parties, in a declaratory action to determine the validity of a statute or ordinance, of any persons other than the public officers charged with the enforcement of the challenged statute or ordinance.'" *Helgeland v. Wisconsin Municipalities*, 2008 WI 9, ¶ 140, 307 Wis. 2d 1, 65–66, 745 N.W.2d 1, 32 (internal citations omitted). As has previously been asserted in the City's Brief and this Reply, the entity charged with the enforcement of the Exemption, Wis. Stat. § 70.11(3m), is the DOR, with the City Assessor merely administering the Exemption as directed by the Department and statute.

for them, and that where they may fall flat, that the City of Madison can stand up for its constituents. As support for these arguments, Plaintiffs point to the rebuttable presumptions discussed in *Helgeland v. Wisconsin Municipalities*, 2008 WI 9, 307 Wis. 2d 1, 745 N.W.2d 1, a case concerning municipal efforts to intervene in a pending court case brought by state employees against state officials pertaining to their benefits. However, that case addressed procedural issues when the interested municipalities moved to intervene into an existing lawsuit as a matter of right under Wis. Stat. § 803.09(1), which the Court later found to have similar requirements to permissive intervention under Wis. Stat. § 803.03(1)(b). Procedurally, that is not the same situation as this matter, where the City is moving under Wis. Stats. § 802.06(2)(a)7 and § 803.03(3) to require the joinder of the other beneficiaries as necessary parties. Additionally, as discussed above, joinder of the other beneficiaries is required under Wis. Stats. § 806.04(11) and § 803.03(1)(a), neither of which requires the consideration of whether existing parties can provide adequate representation of their interests.

But, even if it were the case that adequate existing representation was to be considered here, it is speculative to declare that the other, non-religious beneficiaries of the Exemption have the same interests as the religious beneficiaries. That may be the case, but it may also not be the case. Certainly, they do not have the same interests as the lead Defendant, the City. As noted elsewhere, the City is indifferent and would benefit from the judgment in favor of the Plaintiffs. The City, not being tasked with the enforcement of the Exemption, has no interest in the Exemption's continued constitutionality, unlike other potential parties to this lawsuit. As the other beneficiaries cannot rely upon the City or the current Defendants to provide adequate representation of their interests, they should be considered necessary under Wis. Stat. § 803.03(1)(b) as well.

Based upon the foregoing, should the Court deny the various Motions to Dismiss, the Court should find that the other non-party beneficiaries of the Exemption are necessary parties under Wis. Stats. § 806.04(11) and § 803.03(1), and order the Plaintiffs, pursuant to Wis. Stat. § 803.03(3) to add them as parties to this matter.

Conclusion

As discussed in the City's Brief and this Reply Brief, this case was filed against the wrong party. Plaintiffs have not pled sufficient facts to demonstrate that this matter is justiciable, and thus that they are entitled to declaratory relief. Plaintiffs have not asserted a claim of right against the City, or that the City has an interest in contesting a claim of right should one exist. Nor have they established that the City's interests are adverse to their own. While not argued by the City, the other Parties have also argued that Plaintiffs do not have a legally protectable interest (i.e., that they lack standing) and the issues are not ripe for judicial determination, both of which are also required to establish justiciability. Thus, for the reasons previously noted, and those noted in the collective briefing in this case, this case should be dismissed for failure to state a claim upon which relief can be granted, pursuant to Wis. Stat. § 802.06(2)(a)6.

Alternatively, should the Court deny any of the Motions to Dismiss, for the reasons noted in the City's Brief and this Reply Brief, this Court should grant the City's motion, pursuant to Wis. Stat. § 802.06(2)(a)7, that Plaintiffs failed to join parties needed for just and complete adjudication under Wis. Stats. § 806.04(11) and §803.03(1), and order Plaintiffs to make the other non-party beneficiaries of the Exemption parties under Wis. Stat. § 803.03(3).

Dated this 12th day of May, 2025.

Electronically signed by Doran Viste
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