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CIRCUIT COURT
DANE COUNTY, WI
2025CV000173

BY THE COURT:

DATE SIGNED: January 30, 2026

Electronically signed by Julie Genovese
Circuit Court Judge

STATE OF WISCONSIN CIRCUIT COURT BRANCH 13 DANE COUNTY

ANNIE LAURIE GAYLOR, et al.,

Plaintiffs,

v. Case No. 2025CV000173

THE CITY OF MADISON, et al.,

Defendants.

DECISION AND ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTIONS TO DISMISS AND ORDERING PLAINTIFFS TO JOIN NECESSARY PARTIES

INTRODUCTION

In this declaratory judgment action, Plaintiffs Annie Laurie Gaylor, Dan Barker, David Peterson, and Freedom From Religion Foundation, Inc. ask the court to find that the tax exemption in Wis. Stat. § 70.11(3m) ("the Exemption") is unconstitutional. Plaintiffs allege that the Exemption unlawfully targets specific church-owned rental properties for preferential treatment, thereby raising taxes for other residents and excluding other entities from receiving the Exemption. Defendants City of Madison, Presbyterian Student Center Foundation, and St. Raphael's Congregation, as well as Intervenor-Defendant Wisconsin State

Legislature, now move the court for an order dismissing the complaint. Additionally, the City of Madison moves the court to order plaintiffs to join all other beneficiaries of the Exemption as parties under Wis. Stat. § 803.03(3).

BACKGROUND

In 2009, the Wisconsin Legislature enacted Wis. Stat. § 70.11(3m), which provides that student housing facilities may be exempted from general property taxes, provided that: (1) the facility is owned by a nonprofit organization; (2) at least 90 percent of the facility's residents are students enrolled at the University of Wisconsin-Madison and the facility houses no more than 300 such students, and; (3) the facility offers support services and outreach programs to its residents, the public or private institution of higher education at which the student residents are enrolled, and the public. Wis. Stat. § 70.11(3m)(a).

In 2013, the statute was amended to include an additional requirement: "[t]he facility is in existence and meets the requirements of this subsection on July 2, 2013, except that, if the facility is located in a municipally designated landmark, the facility is in existence and meets the requirements of this subsection on September 30, 2014." *Id.*

At least four student housing facilities have been granted the Exemption: Pres House, owned by the Presbyterian Student Center Foundation, Lumen House Apartments, owned by St. Raphael's Congregation, the Babcock House, and the Association of Women in Agriculture (AWA) House. Compl., dkt. 4 at ¶¶ 3, 28. The latter two housing facilities are student co-ops not affiliated with religious institutions. *Id.* at ¶ 28, fn 1.

On January 14, 2025, Madison taxpayers Annie Laurie Gaylor, Dan Barker, David Peterson (collectively, the "individual plaintiffs"), and Freedom From Religion Foundation, Inc. ("FFRF") filed an action for declaratory judgment, asking the circuit court to declare the Exemption unconstitutional on four grounds:

Claim 1: The Exemption is arbitrary and creates an unequal taxation of comparable properties in violation of Wisconsin's Uniformity Clause in Art. VIII, sec. 1 of the Wisconsin Constitution. *Id.* at ¶¶ 64-74.

Claim 2: The Exemption's criteria are unmoored from any rationale with a reasonable purpose or relationship to the facts or state policy, in violation of the Equal Protection Clause of the Wisconsin Constitution: Art. I, sec. 1. *Id.* at ¶¶ 75-85.

Claim 3: The Exemption specifically benefits two religious organizations in violation of Article I, Section 18 ("no… preference [shall] be given by law to any religious establishments"). *Id.* at ¶¶ 86-93.

Claim 4: The Exemption is an unconstitutional private bill, in violation of Article IV, Section 18. *Id.* at ¶¶ 94-101.

The individual plaintiffs allege that the Exemption unconstitutionally removed Pres House and Lumen House from the tax roll, resulting in a greater tax burden on them. *Id.* at ¶ 61. FFRF alleges that the Exemption improperly excludes it and others who could otherwise qualify for the Exemption. *Id.* at ¶ 62.

The City of Madison, Presbyterian Student Center Foundation (hereinafter

"Pres House") and St Raphael's Congregation (hereinafter "St Raphael's") were named as defendants. On March 24, 2025, the Wisconsin State Legislature was permitted to intervene as a defendant. Each defendant has filed a motion to dismiss. Mots. to Dismiss, dkts. 30, 34, 40, 45. The City of Madison also moves the court to order plaintiff to join Babcock, AWA, and all other beneficiaries of the Exemption as parties to the action, on the grounds that they are necessary parties. City Mot. to Dismiss, dkt. 31.

DISCUSSION

I. Threshold Issues

The court first addresses the threshold issues of whether the plaintiffs have standing to bring the present action, whether the action is justiciable, and whether the action is procedurally barred.

A. Standing

Standing in Wisconsin is not a matter of jurisdiction, as in federal courts, but of sound judicial policy. *Friends of Black River Forest v. Kohler Co.,* 2022 WI 52, ¶ 17, 402 Wis. 2d 587, 605–06, 977 N.W.2d 342. Judicial policy favors hearing cases presenting "carefully developed and jealously argued' issues. *Teigen v. Wisconsin Elections Comm'n,* 2022 WI 64, ¶ 17, 403 Wis. 2d 607, 624, 976 N.W.2d 519, 528, *overruled on other grounds by Priorities USA v. Wisconsin Elections Comm'n*, 2024 WI 32, ¶ 17, 412 Wis. 2d 594, 8 N.W.3d 429 (internal citations omitted).

Courts typically require plaintiffs to possess some personal stake in the case:

> The gist of the requirements relating to standing ... is to assure

> that the party seeking relief has alleged a personal stake in the outcome of the controversy as to give rise to that adverseness necessary to sharpen the presentation of issues. This standard is quite liberal; even 'a trifling interest' may suffice, provided the asserted interest generates sufficient adversity.

Id. (internal citations omitted).

When standing is challenged on the basis of the pleadings, the court must "take all facts alleged by [the petitioner] to be true in determining whether he has standing to bring his claim." *McConkey v. Van Hollen,* 2010 WI 57, ¶14, n. 5, 326 Wis. 2d 1, 783 N.W.2d 855). However, "while standing is to be liberally construed, the claim asserted must be legally recognizable in Wisconsin jurisprudence." *Id.* at ¶ 19 (*quoting Foley-Ciccantelli v. Bishop's Grove Condo. Ass'n, Inc.*, 2011 WI 36, 333 Wis. 2d 402, 797 N.W.2d 789).

In a declaratory judgment action, the concept of standing overlaps with the statutory requirement of justiciability. *Foley,* 2011 WI 36, ¶ 47. For a claim brought under the Uniform Declaratory Act to be justiciable:

> (1) [there must exist] a controversy in which a claim of right is asserted against one who has an interest is contesting it;
> (2) the controversy must be between parties whose interests are adverse to one another;
> (3) the party seeking declaratory relief must have a legally protectable interest in the controversy; and
> (4) the issue involved must be ripe for judicial determination.

Loy v. Bunderson, 107 Wis. 2d 400, 320 N.W.2d 175 (1982). The legally protectible interest requirement has often been expressed in terms of standing. *City of Madison v. Town of Fitchburg*, 112 Wis.2d 224, 228, 332 N.W.2d 782 (1983); *Voters with Facts v. City of Eau Claire,* 2017 WI App 35, ¶ 15, 376 Wis. 2d 479, 495, 899 N.W.2d 706,

714. For this reason, the court considers arguments relating to the third prong of the justiciability test in its standing analysis.

The Legislature, St. Raphael's and Pres House each challenge the plaintiffs' standing. The Legislature's Br. in Support of Mot. to Dismiss (hereinafter "Leg. Br."), dkt. 45 at 14-23; St. Raphael's Br. in Support of Mot. to Dismiss (hereinafter "Raphael's Br."), dkt. 39 at 11-15; Pres House's Br. in Support of Mot. to Dismiss, (hereinafter "Pres. Br."), dkt. 35 at 6-10.

i. Freedom From Religion Foundation, Inc.

FFRF alleges that the Exemption unconstitutionally favors: (a) nonprofit-owned rental properties (b) renting to at least 90 percent UW-Madison students (c) that house no more than 300 students, (d) that offer support services or outreach programing, (e) and the rental properties have been in existence and met the requirements of the state by July 2, 2023, "except that, if the facility is located in a municipally designated landmark, the facility is in existence and meets the requirements of this subsection on September 30, 2014." Compl., dkt. 4 at ¶ 69. As a result, FFRF alleges that it is "unable to ever qualify for the Exemption if it were to invest in rental properties aimed at renting to UW-Madison students," and that it is "prevented from ever qualifying for the Exemption if it were to open rental properties aimed at serving atheist and agnostic students." *Id.* at ¶¶62, 92.

St. Raphael's, Pres House, and the Legislature argue that FFRF has not sufficiently alleged standing because FFRF's purported personal stake in the outcome of the case is merely hypothetical. Pres. Br., dkt. 35 at 8; Raphael's Br., dkt. 39 at 13;

Leg. Br., dkt. 45 at 18-19. They cite to *Friends of Black River Forest,* 2022 WI 52, for the proposition that to have standing in a declaratory judgment action, the plaintiff must be "have sustained, or will sustain … a substantial injury to his or her interests" and the injuries must be "neither hypothetical or conjectural." Pres. Br., dkt. 35 at 8; Raphael's Br., dkt. 39 at 13; Leg. Br at 14-16. FFRF's alleged injury "may never happen," they argue; FFRF has not alleged that it intends – or even desires – to open student housing and apply for the Exemption. *See id.*

In *Friends of Black River Forest,* our Supreme Court considered whether plaintiffs had standing to challenge a land exchange between Kohler Company and the Department of Natural Resources. 2022 WI 52, ¶ 1. The Court's analysis concerned whether the plaintiffs satisfied the two prongs of the standing test in the context of a petition for judicial review under Wis. Stat. ch. 227. *Id.* at ¶ 12. In determining whether "the petition alleges injuries that are a direct result of the agency action," the court stated that an "[i]njury alleged, which is remote in time or which will only occur as an end result of a sequence of events set in motion by the agency action challenged, can be a sufficiently direct result of the agency's decision to serve as a basis for standing." *Id.* at ¶ 21 (quoting *Wisconsin's Env't Decade, Inc. v. Pub. Serv. Comm'n of Wisconsin*, 69 Wis. 2d 1, 230 N.W.2d 243 (1975)).

The present action does not involve judicial review of an administrative action under Wis. Stat. Ch. 227, but a declaratory judgment action. Compared to declaratory judgment actions, "a somewhat different formulation has been used when determining whether a person has standing to appeal an administrative agency decision under Wis. Stat. ch. 227." *Chenequa Land Conservancy, Inc. v. Vill. of Hartland*, 2004 WI App 144, ¶ 15, 275 Wis. 2d 533, 545, 685 N.W.2d 573, 579. Thus, rather than relying on *Friends of Black River Forest,* the Court turns to caselaw on standing in declaratory judgment actions to guide its standing analysis:

> In order to have standing to bring a declaratory judgment action, a party must have a personal stake in the outcome and be directly affected by the issue in controversy. This is measured by whether the claimant has sustained, or will sustain, some pecuniary loss or otherwise will sustain a substantial injury to his or her interests.

Lake Country Racquet & Athletic Club, Inc. v. Vill. of Hartland, 2002 WI App 301, ¶ 17, 259 Wis. 2d 107, 655 N.W.2d 189.

As noted above, the "'gist of the requirements relating to standing is to assure that the party seeking relief has alleged 'such a personal stake in the outcome of the controversy as to give rise to that adverseness necessary to sharpen the presentation of issues for illumination of constitutional questions.'" *Teigen,,* 2022 WI 64, ¶ 17. In declaratory judgment actions, "whether or not the allegation of stake in the outcome is sufficient to confer standing depends on whether there is a 'logical nexus between the status asserted and the claim sought to be adjudicated.'" *Madison Gen. Hosp. Ass'n v. City of Madison*, 71 Wis. 2d 259, 265, 237 N.W.2d 750, 753 (1976).

Construing the allegations in the complaint liberally, the court can draw the inference that FFRF is interested in providing rental housing to students in Madison, but has not yet done so because it would be ineligible for a tax exemption due to the Exemption's allegedly unconstitutional requirements. FFRF therefore alleges a logical nexus between the status asserted (nonprofit organization and prospective rental housing developer interested in the Exemption) and the claim sought to be adjudicated (constitutionality of the Exemption). The complaint permits the inference that the outcome of the case will determine whether FFRF pursues the development of rental housing in Madison. The court sees FFRF as having alleged a "personal stake" in the outcome sufficient to establish standing.[1]

Liberally construing the complaint in favor of the complaining party, the court finds that FFRF's allegations are sufficient to establish standing at the pleading stage. As long as one of the plaintiffs has standing, the case may proceed. *See City of Madison v. Town of Fitchburg*, 112 Wis. 2d 224, 232. The court nevertheless turns to the standing of the remaining plaintiffs.

ii. The individual plaintiffs

The Legislature, Pres House, and St. Raphael's each argue that the cornerstone of taxpayer standing is the unlawful expenditure of taxpayer funds. See *Teigen v. Wisconsin Elections Comm'n*, 2022 WI 64, ¶163, n.2, 403 Wis. 2d 607. These defendants argue that an allegation of pecuniary loss alone is insufficient; a taxpayer must allege a pecuniary loss due to an illegal expenditure. In support of this claim, the defendants cite to the fact that taxpayer standing cases have always involved an alleged illegal expenditure. *Id.* . Because the individual plaintiffs have failed to allege

[1] In making this determination, the court rejects defendants' policy argument that finding standing for FFRF would open a "universe of entities or people" who could potentially bring suit. By finding that FFRF has alleged standing at the pleading stage, the court merely finds that a party that believes it has been unconstitutionally excluded from qualifying for a tax exemption has standing to bring a constitutional challenge. This interpretation of standing is not so broad as to warrant a finding that judicial policy weighs against finding standing in this case.

an unlawful expenditure, they do not have taxpayer standing. Pres. Br., dkt. 35 at 7, Raphael's Br., dkt. 39 at 11-12; Leg. Br., dkt 45 at 21.

Plaintiffs, to the contrary, argue that to have taxpayer standing, no allegation of unlawful expenditure is required: "plaintiffs need only allege a pecuniary loss associated with unlawful taxing provisions." Dkt. 61 at 26 (citing *Fabick v. Evers*, 2021 WI 28, 396 Wis. 2d 231, 956 N.W.2d 856 and *Tooley v. O'Connell*, 77 Wis. 2d 422, 253 N.W.2d 335 (1977)).

Although our Supreme Court has often found taxpayer standing when pecuniary loss resulting from an illegal expenditure is alleged, this court is aware of no caselaw in Wisconsin that *limits* taxpayer standing to cases involving illegal expenditure.

In its brief, St. Raphael states that certain principles and procedures have developed around challenging the Legislature's taxing decisions. The brief states: "[A] taxpayer can't challenge an exemption-they don't have standing". Raphael's Br., dkt. 39 at 8. However, the case authority comes from Minnesota and Missouri. [2] In fact, cases from other states have gone the other way, holding that taxpayers do have standing to challenge exemptions. For instance, in *McKenzie v. Johnson*, 98 Ill. 2d 87, 456 N.E. 2d 73 (1983), the Illinois Supreme Court addressed a facial challenge to the constitutionality of the legislature granting property tax exemptions for parsonages, fraternity and sorority houses and homestead improvements. The

[2] St. Raphael also cites *Vill. Of Slinger v. City of Harford,* 256 Wis. 2d 859,866 for the proposition. However, this case does NOT deal with exemptions. Counsel is advised to be more careful in their citations.

plaintiff was a property taxpayer seeking a declaratory judgment that the exemptions were unconstitutional because they violated the Illinois constitution. The court found that McKenzie had standing because he alleged that the granting of the exemption raised the amount of real property tax which he must pay. This allegation was admitted by the Board. The court concluded that McKenzie had alleged a sufficient stake or interest in the controversy to confer standing.

Similarly, in *Lowry v. McDuffie*, 269 Ga. 202, 496 S.E.2d 727 (1998) taxpayers brought an action against the Revenue Commissioner and Tax Commission, contending that a statute creating an exemption from ad valorem taxation for dealer-owned motor vehicles held for sale or resale was unconstitutional. In finding that the taxpayers had standing, the court cited with approval its reasoning in an earlier case, *Wasden v. Rusco Industries*, where the court stated:

> Wasden is a citizen and taxpayer of Jenkins County. Each taxpayer in Jenkins County is required pay his proper share of taxes levied there. Each taxpayer has an interest in seeing that no other taxpayer is illegally exempted from payment of such tax. An illegal exemption places a greater tax burden upon those taxpayers being required to pay.

Id. at 203(citing *Wasden v. Rusco Indus. Inc.*, 233 Ga 439, 211 S.E. 2d 733(1975))

Thus, since the Wisconsin courts have not yet ruled on this issue, and guidance from other states is split, the court applies the more general standing principles that have been enunciated. "A taxpayer has standing to challenge the constitutionality of a statute on behalf of himself and all similarly situated taxpayers if he has a direct and personal pecuniary interest in the litigation." *City of Appleton v. Town of*

Menasha, 142 Wis. 2d 870, 883, 419 N.W.2d 249 (1988); *see also S.D. Realty Co. v. Sewerage Comm'n of City of Milwaukee,* 15 Wis. 2d 15, 21, 112 N.W.2d 177, 181 (1961) ("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"). Even an "infinitesimally small" pecuniary loss is sufficient to confer standing. *Voters with Facts*, 2017 WI App 35 at ¶16

In *City of Appleton*, the court addressed annexation of certain parts of the Town of Menasha by the City of Appleton. Menasha and Appleton were unable to agree on the division or adjustment of assets and liabilities attributable to the annexation. Appleton commenced suit, and Walling, a resident and taxpayer of Menasha and its Town Board Chairman, moved to intervene and filed a third-party complaint against Appleton. He alleged among other things that the apportionment statute was unconstitutional.

In finding that Walling had standing, the court held that a taxpayer has the right to raise, on behalf himself and other taxpayers, a constitutional issue affecting his and their individual rights. *City of Appleton*, 142 Wis. 2d at 877. Reviewing the caselaw, the court cited its decision in *Columbia County v. Wisconsin Retirement Fund*, 17 Wis. 2d 310, 319-20, 116 N.W. 2d 142 (1962), where the court said:

> Unless an individual taxpayer can ground an action for an injury to himself and raise the question of unconstitutionality of the laws so affecting him, the legislature could with impunity violate the constitutional limitations of its powers by enacting statutes affecting counties and the taxpayers thereof and be free from challenge in the state court….

After an extensive review of the caselaw, the *City of Appleton* court stated:

> In summary, in numerous cases… the court has uniformly concluded that a taxpayer has standing to challenge the constitutionality of a statute on behalf of himself and all similarly situated taxpayers if he has a direct and personal pecuniary interest in the litigation… The parties in this case agree that Walling has a direct and personal pecuniary interest in the apportionment statute. The City's answer to Walling's third-party complaint does not deny the allegations **that Walling's taxes may be raised as result to the apportionment**. The City of Appleton thus admits that Walling has a direct and personal pecuniary interest in this litigation. (emphasis added)

City of Appleton, *142* Wis. 2d at 883.

Here, Plaintiffs allege that "the Exemption results in the plaintiffs paying higher property taxes than they otherwise would if the exempt properties were returned to the property rolls." Compl., dkt. 4 at ¶ 71. This allegation plainly alleges "a direct pecuniary loss" to them as taxpayers and "to other taxpayers similarly situated." *City of Appleton,* 142 Wis. 2d 870, 883–84. Because the individual plaintiffs have alleged pecuniary loss, the court finds that they have sufficiently alleged standing to withstand a motion to dismiss. [3]

B. Justiciability

Having determined that the plaintiffs have sufficiently alleged standing, the court turns to a second threshold issue: whether plaintiffs' complaint alleges a justiciable controversy. To obtain declaratory relief, a justiciable controversy must

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[3] The court expresses no opinion on whether the plaintiffs can withstand a motion for summary judgement on this issue. Discovery may well reveal that the taxes paid by the individual taxpayers would remain the same, and thus there would not be any pecuniary loss. However, at the motion to dismiss stage, I must accept the allegations in the complaint and all reasonable inferences as true.

exist. *Bunderson*, 107 Wis. 2d 400, 409-10. A controversy is justiciable when four conditions are met: (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 protectable interest"; and (4) "The issue involved in the controversy must be ripe for judicial determination." *Fabick,* 2021 WI 28, ¶ 9. The court examines each of the conditions in turn.

i. A claim of right against one who has an interest in contesting it; adverse interest between parties

To satisfy the first condition—a claim of right against one with an interest in contesting it—the claim must assert "present and fixed rights" rather than "hypothetical or future rights." *Id.* at ¶10 (citing *Tooley,* 77 Wis. 2d 422 at 434). The City contends that no claim has been asserted against it, as it is the Department of Revenue, not the City, that has the "duty" and "power and authority" to terminate specific existing property tax exemptions. City of Madison Br. in Support of Mot. to Dismiss (hereinafter "City Br."), dkt. 31 at 6. It further argues that regardless, it has no interest in contesting the constitutionality of the Exemption because "it does not matter to the City one way or the other if the Plaintiff's suit is successful or unsuccessful" *Id.* at 8.

The court rejects these arguments. Declaratory judgment actions may be used to obtain a ruling on the constitutionality of a statute. *Lister v. Bd. of Regents of Univ.*

Wisconsin Sys., 72 Wis. 2d 282, 302, 240 N.W.2d 610 (1976). A constitutional challenge is "not a hypothetical matter; it is a real contest over legal authority being claimed and exercised right now." *See Fabick,* 2021 WI 28*,* ¶ 10. In such an action, "it is the duty of the public officers charged with the enforcement of the challenged statute or ordinance ... [to] act in a representative capacity in behalf of all persons having an interest in upholding the validity of the statute or ordinance under attack. *Helgeland v. Wisconsin Municipalities*, 2008 WI 9, ¶ 108, 307 Wis. 2d 1, 53, 745 N.W.2d 1, 26.

Plaintiffs challenge the constitutionality of the Exemption. The City, as the governmental actor "responsible for assessing all properties within the city limits for taxes and determining whether a property qualifies for a tax exemption," is a proper party with a duty to apply and defend the constitutionality of the Exemption. Compl., dkt. 4 at ¶ 15. The City admits this, agreeing that it annually values all real property within its boundaries and administers tax exemptions consistent with the Wisconsin Property Assessment Manual, according to its statutory duties. City Br., Dkt. 31 at 8.

That other governmental actors may also have a duty related to the Exemption does not negate this duty - sufficient adverseness may exist against multiple defendants with statutory duties related to the controversy. For example, in *Tooley*, the Supreme Court considered whether a declaratory judgment action challenging the City of Milwaukee's financing system was justiciable. 77 Wis. 2d 422. The court found that an adverse interest existed between the plaintiffs and the defendants:

members of the board of school directors of the City of Milwaukee, the Secretary of the Wisconsin Department of Revenue, and three City employees. Sufficient adverseness existed because "the defendants have a statutory duty to initiate the taxing process" and because "the defendants by statute are required to operate under and maintain the system." *Id.* at 437.

Here, much like in *Tooley,* the City has a clear statutory duty to operate under and maintain the Exemption. This duty is directly adverse to plaintiffs. Plaintiffs seek to invalidate the Exemption; the City by statute is required to administer the Exemption. The first and second conditions are satisfied.[4]

ii. A legally protected interest in the controversy

The third element is often expressed in terms of standing. *City of Madison v. Town of Fitchburg*, 112 Wis.2d 224, 228. For the same reasons that plaintiffs have sufficiently pleaded standing, they have met the third element of justiciability.

iii. Ripeness

Under the fourth element, plaintiffs' claims are ripe. "By definition, the ripeness required in a declaratory judgment is different from the ripeness required in other actions … Thus, a plaintiff seeking declaratory judgment need not actually suffer an injury before seeking relief under Wis. Stat. § 806.04(2). Nonetheless, a matter is not ripe unless the facts are sufficiently developed to allow a conclusive adjudication." *Milwaukee Dist. Council 48 v. Milwaukee Cnty.*, 2001 WI 65, ¶ 41, 244

[4] Further, the plaintiffs and the other two defendants are clearly adverse. Both Pres House and St. Raphael's have an interest in keeping their property tax exemption.

Wis. 2d 333, 353, 627 N.W.2d 866, 876.

The Legislature argues that for FFRF's claims against the City to be ripe, it must first apply for the Exemption and receive a denial from the City. Leg. Br., dkt. 45 at 29. The Supreme Court has repeatedly rejected similar arguments. *See Olson v. Town of Cottage Grove*, 2008 WI 51, 309 Wis. 2d 365, 749 N.W.2d 211 (a real estate developer's challenge to an ordinance was ripe, despite the fact that he had taken no steps to obtain final rezoning approval or proceed with property development); *Milwaukee Dist. Council 48,* 2001 WI 65 (employee could challenge a pension ordinance, despite the fact that they had not officially been denied a pension); *Putnam v. Time Warner Cable of Se. Wisconsin, Ltd. P'ship,* 2002 WI 108, 255 Wis. 2d 447, 649 N.W.2d 626 (cable customers could challenge a late-payment fee, despite the fact that the late payment fees may never be imposed). "The underlying philosophy of the Uniform Declaratory Judgments Act is to enable controversies of a justiciable nature to be brought before the courts for settlement and determination prior to the time that a wrong has been threatened or committed." *Olson v. Town of Cottage Grove*, 2008 WI 51, ¶ 28, 309 Wis. 2d 365, 379, 749 N.W.2d 211, 218.

Here, FFRF alleges that the Exemption is unconstitutional and, as a result, it would be denied if it applied. Whether FFRF should be granted the Exemption is not at issue, so waiting until the denial actually occurs would defeat the purpose of the declaratory judgment statute. The court finds that the facts are sufficiently alleged to make a determination and award FFRF relief from uncertainty and insecurity with respect to the Exemption.

In sum, Plaintiffs' action for declaratory relief meets each of the justiciability conditions, and is therefore a justiciable controversy.

C. Procedural Bars

The Legislature claims that both FFRF and the individual plaintiffs are procedurally barred from bringing the action. Leg. Br., dkt. 45 at 7-13.

The Legislature alleges that FFRF may not bring a declaratory judgment action because "[a] claim that property is exempt [...] may be made only in an action under this section. Such a claim may not be made by means of an action under s. 74.33 or an action for a declaratory judgment under s. 806.04." Wis. Stat §§ 74.35(2)(a) The Legislature's argument is based on the assertion that "the relief [FFRF] ultimately seeks is a tax exemption." *Id.* at 14.

The court rejects this conclusion. Plaintiffs' complaint clearly requests as relief (1) a declaratory judgment declaring the Exemption unconstitutional and (2) an injunction preventing further application of the Exemption to any property. Compl. dkt. 4 at 24. The complaint does not allege that property owned by FFRF is tax exempt. In fact, it claims the opposite. *Id.* at ¶¶ 91-92. Thus, the procedure for "a claim that property is exempt" in Wis. Stat. § 74.35 is irrelevant to this action.

Next, the Legislature claims that the individual taxpayer plaintiffs failed to exhaust administrative remedies. Leg. Br., dkt. 45 at 12-13. The Legislature contends that Wis. Stat. § 74.37, which governs the procedure for bringing a claim or action for an excessive assessment, bars the present action because "where a method of review is prescribed by statute, that prescribed method is exclusive." *Id.* at 12, citing

Hermann v. Town of Delavan, 215 Wis. 2d 370, 572 N.W.2d 855 (1998). That statute defines a claim or action for an excessive assessment as "a claim or action, respectively, by an aggrieved person to recover that amount of general property tax imposed because the assessment of property was excessive." Wis. Stat. § 74.37(1).

Although the injury alleged by the individual plaintiffs is that they pay higher property taxes due to the Exemption, they do not seek to recover this property tax due to an excessive assessment. Rather, they seek to obtain a ruling on the constitutionality of a statute and an injunction. The method for doing so is through a declaratory judgment action. *Lister,* 72 Wis. 2d 282, 302.

"Where no specific administrative review procedures exist or an appeal to an administrative agency would not provide a party with adequate relief, a party may challenge an action by seeking declaratory relief." *Town of Eagle v. Christensen*, 191 Wis. 2d 301, 317–18, 529 N.W.2d 245, 251 (Ct. App. 1995). The administrative process for recovering tax imposed due to an excessive assessment under Wis. Stat. § 74.37(1) does not provide the relief the plaintiffs seek.[5] Because of the absence of any adequate administrative remedy to address the alleged constitutional violations, plaintiffs properly sought declaratory relief. *See Id.* at 319.

The action is not procedurally barred.

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[5] *See, e.g. Tooley v. O'Connell*, 77 Wis. 2d 422, 440–41, 253 N.W.2d 335, 343 (1977) ("The plaintiffs are not seeking merely a refund for past taxes paid. They are seeking to invalidate the whole taxing scheme […] Since the plaintiffs are not seeking merely a refund of taxes paid, and since they are not contesting the valuation of their property, the remedies suggested by the defendants would be inappropriate in a determination of the constitutionality of the entire taxing procedure…").

II. Failure to State a Claim

The court next turns to arguments raised by the Legislature, Pres House, and St. Raphael's in their respective motions that plaintiffs fail to state a claim.

"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, 676, 849 N.W.2d 693, 698 (citations omitted). The motion looks only within the four corners of the complaint. *Wausau Tile, Inc. v. County Concrete Corp.*, 226 Wis. 2d 235, 245, 593 N.W.2d 445 (1999). For purposes of determining whether a complaint is legally sufficient, the court: (1) accepts all facts pleaded as true; (2) derives all reasonable inferences from those facts; and (3) construes those facts and inferences in the light most favorable to the plaintiff. *Preston v. Meriter Hosp., Inc.*, 2005 WI 122, ¶13, 284 Wis. 2d 264, 700 N.W.2d 158. The court does not add facts in the process of construing a complaint, and legal conclusions stated in the complaint need not be accepted as true. *Data Key*, 2014 WI 86, ¶19. "(T)he complaint should be dismissed as legally insufficient only if it appears to a certainty that no relief can be granted under any set of facts that the plaintiff can prove in support of her allegations." *Strid v. Converse*, 111 Wis. 2d 418, 422, 331 N.W.2d 350, 353 (1983).

A. Claim 1 - Uniformity Clause

Plaintiffs' first claim is that the Exemption violates the Uniformity Clause of the Wisconsin Constitution. That clause generally provides that "[t]he rule of taxation shall be uniform" and that "taxes shall be levied upon such property ... as the legislature shall proscribe." Wis. Const. art. VIII, § 1. As the Wisconsin Supreme

Court has held, "the Uniformity Clause grants the legislature the right to select some property for taxation and to totally omit or exempt other property." *Nw. Airlines, Inc. v. Wisconsin Dep't of Revenue,* 2006 WI 88, ¶ 66, 293 Wis. 2d 202, 237, 717 N.W.2d 280, 297. "The only limitation upon the legislature's authority to exempt property is that the distinction between taxed and wholly exempt property must bear 'a reasonable relation to a legitimate purpose of government[.]'" *Id.* (quoting *Madison Gen. Hosp. Ass'n v. City of Madison*, 92 Wis.2d 125, 129–30, 284 N.W.2d 603 (1979).)

Plaintiffs claim that the Exemption violates the Uniformity Clause because "the Exemption is arbitrary and treats specific church-affiliated nonprofit-owned rental properties unequally without a rational basis" and because it "unreasonably singles out these specific commercial rental properties that theoretically primarily serve UW-Madison students." Compl., dkt. 4 at ¶¶73-74.

Pres House and St. Raphael's argue that there are numerous legitimate, rational legislative goals that could have been the basis for the Exemption, so no argument that plaintiffs raise can prove beyond a reasonable doubt that the Exemption violates the Uniformity Clause. Pres. Br., dkt. 35, 12-14; Raphael's Br., dkt. 39 18-20. These arguments fail.

The constitutionality of an exemption may be challenged under the Uniformity Clause. *See Madison Gen. Hosp. Ass'n*, 92 Wis. 2d 125, 129-130. At the motion to dismiss stage, the plaintiffs need not prove beyond a reasonable doubt that the Exemption violates the Uniformity Clause; they need only allege sufficient facts to support their Uniformity Clause claim. The complaint alleges that the requirements for qualifying for the Exemption are arbitrary. Compl., dkt. 4 at ¶¶ 71-73, In support of this allegation, the plaintiffs allege that the Legislature did not "vigorously debate" or "meaningfully research" the constitutionality or impact of the Exemption, that lawmakers who introduced and supported the measure did so based on their personal beliefs that the Pres House and Lumen House should be tax-exempt, and that the Joint Finance Committee believes the Exemption to be an "aberration and earmark." *Id.* at ¶¶ 21-22, 30.

Taking each of these allegations as true, and construing them in the light most favorable to the plaintiffs, the court can make the reasonable inference that the Exemption as it exists today does not have a reasonable relation to a legitimate purpose of government. As such, plaintiffs have alleged facts sufficient to support a claim that the Exemption violates the Uniformity Clause. Whether the plaintiffs will be able to prove this claim beyond a reasonable doubt is an issue to be determined at a later stage in this case.

B. Claim 2 - Equal Protection Clause

Plaintiffs next claim that the Exemption violates Wis. Const. art. I, § 1, the Equal Protection Clause of the Wisconsin Constitution. This clause "ensures that people will not be discriminated against with regard to statutory classifications and other governmental activity." *Thorp v. Town of Lebanon*, 2000 WI 60, ¶ 37, 235 Wis. 2d 610, 633, 612 N.W.2d 59, 72 (internal quotations omitted). To survive an equal protection challenge, "a classification made by the legislature that does not concern a suspect class or implicate a fundamental right must bear a rational relationship to a legitimate government interest." *Nw. Airlines, Inc.,* 2006 WI 88, ¶ 54 (internal citations omitted).

Parties seeking to challenge the constitutionally of a statute on equal protection grounds must demonstrate that the statute treats members of a similarly situated class differently. *Aicher ex rel. LaBarge v. Wisconsin Patients Comp. Fund*, 2000 WI 98, ¶ 56, 237 Wis. 2d 99, 128, 613 N.W.2d 849, 865. Additionally, the complaint must allege facts that the ordinance is not rationally related to its asserted purpose.[6] *See Thorp*, 2000 WI 60, ¶ 40. Put differently, the test is "whether a legislative enactment is reasonable and practical in light of the government's objective in creating the legislation." *Id.*

Here, plaintiffs allege that the Exemptions' requirements create a distinct classification: beneficiaries and all others. Compl., dkt. 4 at ¶ 78. This class is treated "significantly differently from all other similarly situated properties in Madison and Wisconsin as a whole" such as "colleges, churches, synagogues, or other nonprofits" that currently own or may acquire rental properties, including FFRF. *Id.* at ¶ 79-80. They further allege that the Exemption is not reasonable or practical in light of the government's objective, alleging that the Legislature "cannot produce a rational justification for favoring rental properties for UW-Madison students" over students at other University of Wisconsin locations, or other higher education institutions in Madison. They claim that the Legislature has no rational basis for the Exemption's

[6] The Exemption does not involve a fundamental right or protected class and thus is subject only to rational-basis review. Compl. dkt 4 at ¶¶ 79-85.

many requirements and that no rational basis can be produced that could explain these requirements, especially the specific percentage of UW-Madison students required as tenants and the date-of operation requirement. *Id.* at ¶¶ 75-85.

A classification created by legislative enactment will survive a rational basis scrutiny upon meeting five criteria:

> (1) All classification[s] must be based upon substantial distinctions which make one class really different from another.
>
> (2) The classification adopted must be germane to the purpose of the law.
>
> (3) The classification must not be based upon existing circumstances only. [It must not be so constituted as to preclude addition to the numbers included within a class.]
>
> (4) To whatever class a law may apply, it must apply equally to each member thereof.
>
> (5) That the characteristics of each class should be so far different from those of other classes as to reasonably suggest at least the propriety, having regard to the public good, of substantially different legislation.

Mayo v. Wisconsin Injured Patients & Fams. Comp. Fund, 2018 WI 78, ¶ 42, 383 Wis. 2d 1, 30–31, 914 N.W.2d 678, 692

Here, the Complaint alleges facts sufficient to support that the Exemption fails factors 1, 3 and 5.

Factor 1: Substantial Distinctions

Plaintiffs allege that nothing inherent about rental properties housing at least 90 percent UW-Madison students but no more than 300 individual students justifies a special property exemption, when compared to rental properties that primarily serve other public institutions in Wisconsin. Compl., dkt 4 at ¶¶81-82.

Factor 3: Existing Circumstances Only

The Complaint alleges that the result of the Exemption's requirement that "the facility is in existence and meets the requirements of this subsection on September 30, 2014" is that "[n]o other colleges, churches, synagogues, or other nonprofits can ever qualify for the Exemption if they acquire or currently own rental properties." *Id.* at ¶¶78-79. This limitation effectively precludes addition to the numbers included within the "beneficiaries" class.

Factor 5: Different Circumstances

Plaintiffs allege facts showing that no characteristic distinguishes the four recipients of the Exemption from other student housing facilities throughout the state, such as those serving other University of Wisconsin locations or Madison College, that could justify substantially different legislation. *Id.* at ¶¶81-82.

Defendants Pres House, St. Raphael's and the Legislature ask the court to dismiss this claim because the Legislature likely had a rational basis for creating the Exemption. Pres. Br., dkt. 35 at 15-16; Raphael's Br., dkt. 39 at 19; Leg. Br., dkt. 45 at 31-32. Although the court agrees with these defendants that plaintiffs have the difficult task of proving beyond a reasonable doubt that the statute possess no rational basis to any legitimate governmental objective, the determination at the motion to dismiss stage relates to the sufficiency of the plaintiffs' pleadings, not their ability to prove an equal protection claim. *Thorp,* 2000 WI 60, ¶44. The court is guided by the statement in *Thorp*::

> Finally, we note that the burden on a plaintiff to prove that an ordinance lacks a rational relationship to a valid governmental objective is difficult. The rational basis test has been characterized as creating a "frequently insurmountable task" for the challenger of an ordinance to prove "beyond a reasonable doubt that the ordinance possesses no rational basis to any legitimate municipal objective." *Grand Bazaar,* 105 Wis.2d at 209, 313 N.W.2d 805. Moreover, ordinances enjoy a presumption of validity, even when they are challenged on the basis of equal protection. *State v. Post,* 197 Wis.2d 279, 301, 541 N.W.2d 115 (1995). An opponent of an ordinance must establish the ordinance's unconstitutionality beyond a reasonable doubt. *Id.; Kmiec v. Town of Spider Lake,* 60 Wis.2d 640, 651, 211 N.W.2d 471 (1973). **We agree with the court of appeals, however, that our determination relates to the sufficiency of the Thorps' pleadings, not their ability to prove an equal protection claim.** *Thorp,* 225 Wis.2d at 692, 593 N.W.2d 878. As such, the "frequently insurmountable" presumptions and burdens associated with the rational basis test do not apply at this point in the inquiry. *Grand Bazaar,* 105 Wis.2d at 209, 313 N.W.2d 805. (emphasis added)

The plaintiffs have sufficiently alleged facts to state an Equal Protection Claim.

C. Claim 3 - Establishment Clause

Plaintiffs next claim that the Exemption violates Article I, Section 18 of the Wisconsin Constitution, which states that "no preference shall be given by law to any religious establishments or modes of worship."

Pres House argues that plaintiffs have not stated a claim under the Establishment Clause of the Wisconsin Constitution because "there is no 'establishment of religion' involved in determining that a church or religious organization is entitled to a tax exemption" Pres. Br., dkt. 35 at 22 (citing *Wisconsin*

Evangelical Lutheran Synod v. City of Prairie du Chien, 125 Wis. 2d 541, 553, 373 N.W.2d 78, 84 (Ct. App. 1985)). The court agrees.

Our Supreme Court has acknowledged that there are "valid statutes which benefit religious organizations, rather than the public generally" such as the tax exemption for religious organization or parochial school property in Wis. Stat. § 70.11(4). *State ex rel. Reynolds v. Nusbaum*, 17 Wis. 2d 148, 159, 115 N.W.2d 761, 766 (1962). This statute "and analogous provisions" are constitutional under sec. 18, art. I because "the exemption afforded by sec. 70.11(4) is not expressly or effectually restricted to religious organizations, as many other non-profit organizations benefit from it. Thus, this tax exemption does not transcend the religious classification prohibition." *Id.*

Plaintiffs do not allege that the Exemption on its face favors religious organizations, nor do they allege that only religious establishments benefit from the Exemption. Rather, they claim that "the Exemption, as amended, primarily benefits [the] two religious organization that own the Pres House and Lumen House Apartments." Compl. dkt. 4 at 22. They allege that at least two non-religious nonprofit organizations also benefit from the Exemption. *Id.* at 11. Thus, even construing the complaint in the light most favorable to the plaintiffs, they have not alleged that the Exemption is expressly or effectively restricted to religious organizations. Much like Wis. Stat. § 70.11(4), the Exemption "does not transcend the religious classification prohibition," so plaintiffs have not alleged facts sufficient to support a claim that the Exemption violates the Establishment Clause. This claim should be dismissed.

D. Claim 4-Private Bill

Article IV, section 18 of the Wisconsin Constitution provides that "[n]o private or local bill which may be passed by the legislature shall embrace more than one subject, and that shall be expressed in the title." A purpose of article IV, section 18 is to "guard against the danger of legislation, affecting private or local interests, being smuggled through the legislature" and to protect against "'internal logrolling,' the legislative practice of bundling several unrelated issues, none of which could be passed singly, and securing passage by a combination of the legislative factions who favor separate pieces of the legislation." *Lake Country Racquet & Athletic Club, Inc. v. Morgan*, 2006 WI App 25, ¶ 9, 289 Wis. 2d 498, 510, 710 N.W.2d 701, 707 (citations omitted).

An article IV, section 18 challenge to a legislative enactment attacks the propriety of the process used by the legislature to adopt the legislation. *Id.* at ¶ 11. For this reason the courts will not afford the legislation challenged on these grounds a presumption of constitutionality unless the record shows that the legislature adequately considered the legislation in question.

Plaintiffs raising an article IV, section 18 challenge to a legislative enactment must allege that the measure was not adequately considered by the legislature, and that the statute is private or local legislation. *See Id.*, ¶¶ 11-22. A law is local if it applies to a particular locality to the exclusion of others.... "An act is 'general,' as contradistinguished from and inconsistent with 'local,' ... only when its operation extends to the whole state, or perhaps to the whole of some class of localities therein...." *City of Oak Creek v. State Dep't of Nat. Res.*, 185 Wis. 2d 424, 439, 518 N.W.2d 276, 280 (Ct. App. 1994).

Here, plaintiffs allege sufficient facts for an article IV, section 18 challenge. They allege that the legislature did not adequately consider the measure, as evidenced by the fact that the legislature "did not hold a hearing, request public comment, commission reports, or otherwise vigorously debate the impact or constitutionality of the Exemption" Compl., dkt 4 at 12. As such it would not be entitled to the presumption of constitutionality usually afforded legislative enactments.

They further allege that the act is local: the Exemption was drafted to award tax-exempt status only to "rental properties serving primarily UW-Madison students," Compl., dkt 4 at ¶ 20, excluding those that "primarily house students at one of the other University of Wisconsin locations throughout the state, or even any of the other public institutions of higher education located in Madison." *Id.* at ¶ 82. Thus it should have passed as a single subject bill, instead of as part of the multi-subject State budget bill. Dkt. 4 at ¶ 18.

Pres House argues that the claim should be dismissed because plaintiffs are unable to "show beyond a reasonable doubt that the statute does not relate to a state responsibility of statewide dimension, or that its passage would not have a direct and immediate impact on a statewide concern or interest." Dkt. 35 at 27 (citing *Lake Country,* 289 Wis. 2d 498, ¶ 23.) The court rejects this argument. At this stage, plaintiffs need only allege that the bill is private or local, they need not prove this claim beyond a reasonable doubt. Accepting all facts pleaded as true and construing those facts and inferences in the light most favorable to the plaintiffs, the complaint states a valid claim under article IV, section 18 of the Wisconsin Constitution. *Preston v. Meriter Hosp., Inc.*, 2005 WI 122, ¶13.

III. Joinder of Necessary Parties

Finally, the court considers the City's argument that additional parties must be joined. If, as a practical matter, a person's absence in an action may "impair or impede the person's ability to protect" an "interest relating to the subject of the action," then "the judge to whom the case has been assigned shall order that person to be made a party." Wis. Stat. § 803.03(1); (3).[7]

When determining whether a party must be joined, the relevant inquiry is not whether a prospective party has a legal or legally protected interest in the subject of an action, but whether the person or entity has an interest of such direct and immediate character that the [prospective party] will either gain or lose by the direct

[7] The full text of these statutes reads:

A person who is subject to service of process shall be joined as a party in the action if:
(a) In the person's absence complete relief cannot be accorded among those already parties; or
(b) The person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may:
1. As a practical matter impair or impede the person's ability to protect that interest; or
2. Leave any of the persons already parties subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations by reason of his or her claimed interest.
Wis. Stat. § 803.03 (1).

If any such person has not been so joined, the judge to whom the case has been assigned shall order that the person be made a party.
Wis. Stat. § 803.03(3).

operation of the judgment. *See Koschkee v. Evers,* 2018 WI 82, ¶ 21, 382 Wis. 2d 666, 913 N.W.2d 878 (quoting *Dairyland Greyhound Park, Inc. v. McCallum,* 2002 WI App 259, 258 Wis. 2d 210, 655 N.W.2d 474, 02-1204).

A. Other Beneficiaries of the Exemption

The AWA and Babcock houses, as recipients of the Exemption, will either retain or lose their exemption depending on the judgment. Plaintiffs seek an order "enjoining Defendants, their successors, and all those acting in concert with them or at their direction from applying Wis. Stat. § 70.11(3m) to *any property* going forward." Compl., dkt 4 at 102 (emphasis added). They also seek a declaratory judgment that the Exemption is unconstitutional. *Id.* Either form of relief threatens the tax-exempt status of these properties.

Plaintiffs argue that Babcock and AWA House are not necessary parties because "their interests are adequately represented by parties that are already in the case," citing *Helgeland.* "Adequate representation is ordinarily presumed when a movant and an existing party have the same ultimate objective in the action." *Helgeland,* 2008 WI 9, ¶ 90. "When the potential intervenor's interests are substantially similar to interests already represented by an existing party, such similarity will weigh against the potential intervenor." *Id.*

In making this argument, plaintiffs seemingly assume that the objectives of Babcock and AWA house would be at least substantially similar to those of existing parties. Yet, in their complaint, plaintiffs highlight the fact that Babcock and AWA House are different from Lumen House and Pres House: they are "not the intended beneficiaries of the Exemption" and are "small, UW-Madison student co-ops that house a little more than 20 students each." Compl., dkt 4 at 11. As such, they may have a different objective than existing parties and should not be excluded for this reason. Babcock and AWA House should be joined as parties to the action, as well as any other beneficiaries of the Exemption. [8]

B. The Department of Revenue

> In a declaratory action to determine the constitutionality of a statute, it is the duty of the "public officers charged with the enforcement of the challenged statute or ordinance ... [to] act in a representative capacity in behalf of all persons having an interest in upholding the validity of the statute or ordinance under attack."

Id., ¶ 108.

The Department of Revenue has a statutory duty to "exercise general supervision over the administration of the assessment and tax laws of the state" including the responsibility 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." Wis. Stat. §§ 73.03(1), (45).

Thus, it has a duty to act in a representative capacity on behalf of persons having an interest in upholding the validity of the Exemption. That said, the Department of Revenue's interests are plainly identical to those of existing parties,

[8] In its brief, Pres House argues that Plaintiff's requested relief would violate the Free Exercise Clause of the First Amendment to the U.S. Constitution because finding the Exemption unconstitutional only as applied to its two religious beneficiaries would be to "deny[] a qualified religious entity a public benefit solely because of its religious character." Pres. Br., dkt 35 at 24-25. Having now determined that the non-religious beneficiaries of the Exemption must be joined, the court finds this issue moot and declines to consider it in detail.

as the City shares this duty (as outlined in the court's justiciability analysis above) and is already party to the action. The Department of Revenue's absence from the action therefore does not impair or impede its ability to protect an "interest relating to the subject of the action," as any interest it has is adequately represented by the City. Its joinder is not required.

ORDER

For the reasons stated,

IT IS ORDERED that the defendants' motions to dismiss the complaint are GRANTED-IN-PART, DENIED-IN-PART. The court dismisses plaintiffs' Establishment Clause claim but denies the motions as to all other claims.

IT IS FURTHER ORDERED that plaintiffs must join all other beneficiaries of the tax exemption in Wis. Stat. § 70.11(3m) no later than February 20, 2026.