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CIRCUIT COURT
DANE COUNTY, WI
2025CV000173

BY THE COURT:

DATE SIGNED: September 8, 2026

Electronically signed by Stephen E Ehlke
Circuit Court Judge

STATE OF WISCONSIN CIRCUIT COURT BRANCH 15 DANE COUNTY

ANNIE LAURIE GAYLOR, et al.,

Plaintiffs,

v. Case No. 2025CV000173

THE CITY OF MADISON, et al.,

Defendants.

DECISION AND ORDER ON MOTIONS FOR JUDGMENT ON THE PLEADINGS

INTRODUCTION

This is a declaratory judgment action challenging the constitutionality of a property tax exemption. Plaintiffs Annie Laurie Gaylor, Dan Barker, David Peterson, and Freedom From Religion Foundation, Inc. (collectively, "Plaintiffs") ask the Court to declare Wis. Stat. § 70.11(3m) ("the Exemption") unconstitutional and enjoin its application. Defendant St. Raphael's Congregation moves for judgment on the pleadings on statute of limitations grounds, joined by Defendants Presbyterian Student Center Foundation, Babcock House Corporation, City of Madison and Intervenor-Defendant Wisconsin State Legislature. The Wisconsin State Legislature also separately moves for judgment on the pleadings on the basis of laches. For the reasons as follows, the Court DENIES these motions.

BACKGROUND

In 2009, the legislature enacted Wis. Stat. § 70.11(3m), which exempts certain nonprofit-owned student housing facilities from general property taxes. Wis. Stat. § 70.11(3m). In 2013, the Exemption was amended to its current version. *Id.*

On January 14, 2025, Plaintiffs filed an action for declaratory judgment, alleging that the Exemption violates Art. VIII, sec. 1, Art. I, sec. 1, Art. I, sec. 18, and Art. IV, sec. 18 of the Wisconsin Constitution. Compl., Dkt. 4.

The City of Madison, Presbyterian Student Center Foundation ("Pres House") and St Raphael's Congregation ("St Raphael's") were named as defendants. *Id.* On March 24, 2025, the Wisconsin State Legislature was permitted to intervene as a defendant. Motions to dismiss filed by these parties were denied. Decision and Order, Dkt. 97. In that same decision, Judge Genovese, who previously presided over this case, ordered joinder of necessary parties, resulting in the addition of four new defendants. *Id.* All but one of these four, Babcock House, were subsequently dismissed. Order Granting Joint Stipulation of Dismissal, Dkt. 147.

Presently before this Court is a motion for judgment on the pleadings filed by St. Raphael's on April 1, 2026, asserting that Plaintiffs' claims are time-barred by the statute of limitations. Mot. For J. on the Pleadings, Dkt. 141. Pres House, the Wisconsin State Legislature, the City of Madison, and Babcock House join St. Raphael's in this motion. Dkts. 147, 165, 163, 164. The Wisconsin State Legislature also separately moves for judgment on the pleadings on the basis of laches. Leg. Memo in Supp., Dkt. 166.

DISCUSSION

A motion for judgment on the pleadings raises the question of whether the facts alleged in the answer are sufficient to constitute a defense to the cause of action set out in the complaint. *Ross* *v. Honey Lake Prot. & Rehab. Dist.*, 166 Wis. 2d 739, 748, 480 N.W.2d 795, 799 (Ct. App. 1992). Judgment on the pleadings is essentially a summary judgment decision without affidavits and other supporting documents; it is proper only if there are no genuine issues of material fact. *Southport Commons, LLC v. Wisconsin Dep't of Transportation*, 2021 WI 52, ¶ 18, 397 Wis. 2d 362, 960 N.W.2d 17.

I. Citations in Briefs

Before turning to the merits, the Court pauses to address the manner in which the parties, particularly St. Raphael's, have presented their authorities. Several of the cases cited in the briefing are unpublished or otherwise non-precedential decisions offered without any acknowledgement of their non-binding status. The Court expects counsel to identify persuasive authority as such and to explain why it merits consideration, rather than presenting it as if it were binding law. Additionally, in more than one instance, a case cited for a particular proposition says nothing of the sort. The Court declines to catalog each instance of this here, but once again advises counsel to be more careful in their future citations. The Court has disregarded the mischaracterized authority in reaching its decision below.

II. Laches

The Legislature argues that Plaintiffs' claims are untimely based on the doctrine of laches. Leg. Reply Br., Dkt. 171 at 1-8. Laches is distinct from a statute of limitations and may be found where the statute of limitations has not yet run. *Zizzo v. Lakeside Steel & Mfg. Co.*, 2008 WI App 69, ¶ 7, 312 Wis. 2d 463, 752 N.W.2d 889. Because both are at issue in this case, the Court addresses laches first.

"Laches is an affirmative, equitable defense designed to bar relief when a claimant's failure to promptly bring a claim causes prejudice to the party having to defend against that claim."

Wisconsin Small Businesses United, Inc. v. Brennan ("*WSBU*"), 2020 WI 69, ¶ 11, 393 Wis. 2d 308, 946 N.W.2d 101 (*citing Sawyer v. Midelfort*, 227 Wis. 2d 124, 159, 595 N.W.2d 423 (1999)). Laches is founded on the notion that equity aids the vigilant, and not those who sleep on their rights to the detriment of the opposing party. *State ex rel. Wren v. Richardson*, 2019 WI 110, ¶ 14, 389 Wis. 2d 516, 936 N.W.2d 587.

The party asserting a laches defense must prove three elements: "(1) a party unreasonably delays in bringing a claim; (2) a second party lacks knowledge that the first party would raise that claim; and (3) the second party is prejudiced by the delay." *WSBU*, 2020 WI 69, ¶ 12. Even if all three elements are shown, "the court may—in its discretion—choose not to apply laches if it determines that application of the defense is not appropriate and equitable." *Wren*, 2019 WI 110, ¶ 15.

1. <u>Unreasonable Delay</u>

Whether a delay is reasonable is case specific; the court looks at the totality of circumstances. *Id.*, ¶ 18. "[U]nreasonable delay in laches is based not on what litigants know, but what they might have known with the exercise of reasonable diligence … the plaintiff is chargeable with such knowledge as he might have obtained upon inquiry, provided the facts already known by him were such as to put a man of ordinary prudence upon inquiry." *Id.*, ¶ 20. The question is when Plaintiffs "either knew or should have known" they had a potential claim. *Id.*, ¶ 21.

It is undisputed that the Exemption was enacted in 2009 and amended in 2013. Plaintiffs have owned property in Madison since long before either date and have paid property taxes since then. Compl., Dkt. 4, ¶¶ 12-13, 61. By 2014, both Pres House and St. Raphael's benefitted from the Exemption—information that was publicly available. Thus, by 2014 at the latest, the factual circumstances underlying Plaintiffs' claims were in existence and discoverable by Plaintiffs. At that time, Plaintiffs knew or should have known they had grounds to bring their constitutional challenges to the Exemption. Yet Plaintiffs did not bring these claims until over a decade later, in January of 2025. Compl., Dkt. 4.

Plaintiffs do not dispute this timeline, nor do they argue that a decade is a reasonable delay. Pls.' Memo in Opp'n, Dkt. 167 at 15-16. Instead, Plaintiffs argue that their case is distinguishable from those in which the Wisconsin Supreme Court found unreasonable delay. *Id.* Plaintiffs assert that their action is unique in that it challenges "future enforcement," in contrast to the claims in *WSBU*, 2020 WI 69, and *Trump v. Biden*, 2020 WI 91, 394 Wis. 2d 629, 951 N.W.2d 568, which each sought to undo actions of the past. *Id.*

In *Trump,* the plaintiffs sought to invalidate more than 220,000 Wisconsin ballots after the election. The court found unreasonable delay, concluding that "the time to challenge election policies such as these is not after all ballots have been cast and the votes tallied." *Trump,* 2020 WI 91, ¶ 22. In *WSBU,* the plaintiffs challenged two partial vetoes in the 2017-19 biennial budget years after the budget bill had gone into effect and after a new budget had taken effect. 2020 WI 69. The court found that this delay was unreasonable because "money has been spent, revenues have come in, and the books have already been closed on the operation of the 2017-19 biennial budget." *Id.,* ¶ 17. The general rule that can be gleaned from the court's decisions in *Trump* and *WSBU* is that where the effect of a declaratory judgment action would be to undo an event that has "come and gone," that action is untimely.

The Court does not find these circumstances distinguishable from those of this case. The relief Plaintiffs seek would have the effect of undoing legislative decisions of the past: the 2009 enactment of the Exemption and its 2013 amendment. Much like the 2017-19 budget or 2020 election, these events have come and gone: the Exemption has gone into effect and has been applied to multiple nonprofit-owned student housing facilities meeting its requirements. The time to challenge a tax exemption is not after property meeting its requirements has been exempted for over a decade.

The Wisconsin Supreme Court's ruling in *Clarke* does not support a different result. *Clarke v. Wisconsin Elections Comm'n*, 2023 WI 79, 410 Wis. 2d 1, 998 N.W.2d 370. In *Clarke,* the court found no unreasonable delay where, less than a year and a half after state legislative district maps were adopted in *Johnson III,* petitioners filed an action challenging those maps. *Id.; see also Johnson v. Wisconsin Elections Comm'n,* 2022 WI 19, 401 Wis. 2d 198, 972 N.W.2d 559 ("*Johnson III*"). Because *Johnson III* was decided on the last possible day for districts to be established prior to the 2022 fall elections, it was impossible for petitioners to seek declaratory relief before those elections. *Clarke,* 2023 WI 79 ¶ 42. The court permitted petitioners to challenge the maps prior to the 2024 elections instead, "given the timing of legislative elections." *Id.* In other words, filing an action in time for "the soonest elections for which relief could be granted" was not unreasonable delay, given the unique circumstances of the case. *Id.* Similar circumstances are not present here. Although payment of property taxes, much like elections, occur regularly, nothing in the parties' submissions suggests that it was impossible for Plaintiffs to seek declaratory relief prior to the first property tax bill following the enactment of the Exemption, or that the upcoming property tax bill is the "soonest…for which relief could be granted."

Plaintiffs unreasonably delayed bringing this lawsuit.

2. <u>Knowledge of Plaintiffs' Claims</u>

The second element requires that the Defendants lacked knowledge that the Plaintiffs would bring these claims. *WSBU*, 2020 WI 69, ¶ 12. The Legislature asserts that this element is met because "nothing in the pleadings suggests that the Defendants were aware that Plaintiffs would bring this claim." Leg. Memo in Supp., Dkt. 166 at 9. However, having reviewed the pleadings, the Court finds that it is also true that nothing in the pleadings suggests that Defendants were *unaware.* The party seeking application of laches bears the burden of proving each element. *WSBU*, 2020 WI 69, ¶ 12. The Legislature fails to meet this burden.

3. Prejudice

The third element requires the Legislature to prove that prejudice results from the Plaintiffs' unreasonable delay. *Id.* "What amounts to prejudice … depends upon the facts and circumstances of each case, but it is generally held to be anything that places the party in a less favorable position." *Wren*, 2019 WI 110, ¶ 32. There are two categories of prejudice that may satisfy this burden: evidentiary and economic. *Id.*, ¶ 33. "Evidentiary prejudice ... may arise where a plaintiff's delay in bringing an action has curtailed the defendant's ability to present a full and fair defense on the merits due to the loss of evidence, the death of a witness, or the unreliability of memories." *Id.* Economic prejudice is present where "the costs to the defendant have significantly increased due to the delay." *Id.*, n. 26.

a. Evidentiary prejudice

The Legislature first asserts that "all Defendants …will be hard-pressed to locate the key records and witnesses related to the facts at issue." Leg. Memo in Supp., Dkt. 166 at 9. It cites to *Wren* for the proposition that because discovery will be more difficult now than if Plaintiffs had timely filed suit, this case presents "classic" evidentiary prejudice. Leg. Reply Br., Dkt. 171 at 6. But the holding in *Wren* was not so broad: in *Wren*, the Supreme Court of Wisconsin analyzed whether laches was appropriately applied to bar a writ of habeas corpus asserting ineffective assistance of counsel filed 10 years after the plaintiff's conviction. 2019 WI 110, ¶¶ 1-3. The court found that it was: the State showed evidentiary prejudice sufficient to satisfy the prejudice element because, in the intervening years, the plaintiff's allegedly ineffective lawyer had died and his documentary files had been lost. *Id.*, ¶¶ 32-38. In contrast, the Legislature here makes only general allegations of difficulty. Leg. Memo in Supp., Dkt. 166 at 9. There is nothing in the pleadings to suggest that there exist "key records and witnesses" unavailable now due to Plaintiffs' delay, and the Legislature makes no attempt to identify which specific "essential witness[es]" or "documentary files" are unavailable. *Id.* This is insufficient to establish that Defendants have been meaningfully disadvantaged.

b. Economic Prejudice

The Legislature next argues that if Plaintiffs prevail, Defendants will suffer economic prejudice because they will be unable to plan or prepare for the property taxes they will have to pay, likening the facts of this case to *WSBU.* Leg. Reply Br., Dkt. 171 at 6. But the facts surrounding these cases are distinguishable. In *WSBU*, respondents relied on the challenged 2017-19 budget to make decisions relating to the 2020-21 budget. 2020 WI 69, ¶¶ 21-24. Had WSBU timely filed suit to challenge the 2017-19 budget, respondents could have adjusted the 2020-21 budget in a variety of ways to account for the result of WSBU's suit. *Id.* But because WSBU delayed filing until after both budgets had gone into effect, respondents would suffer economic prejudice in the form of "cascading effects on the state's global policy calculus and budget outlook, as well as options available to policymakers." *Id.* ¶ 22.

Similar cascading effects are not present here. It is true that if Plaintiffs prevail, Defendants' student housing facilities will no longer receive the Exemption, but there is nothing in the pleadings to suggest that resuming the obligation to pay property taxes is any more burdensome today than it would have been ten years ago. If anything, Plaintiffs' delay has allowed Defendants to enjoy the Exemption for longer. The Legislature fails to establish that Defendants were placed "in a less favorable position" economically by Plaintiffs' delay.

Because the Legislature fails to prove all three elements, laches does not bar Plaintiffs' claims.[1]

III. Statute of Limitations

All Defendants move to dismiss the case on statute of limitations grounds.

Wisconsin's Declaratory Judgments Act, Wis. Stat. § 806.04, grants a court the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. Wis. Stat. § 806.04. The Act does not itself provide a statute of limitations for declaratory actions. *E-Z Roll Off, LLC v. Cnty. of Oneida*, 2011 WI 71, ¶ 28, 335 Wis. 2d 720, 738, 800 N.W.2d 421, 430 ("the Declaratory Judgment Act, found in Wis. Stat. § 806.04, provides no statute of limitations.") However, applying the principle of statutory construction that the specific statute applies over the general, the Wisconsin Supreme Court has held that "[w]here governmental action is challenged after a *specific* statute of limitations has expired… such limitations period applies." *Ross*, 166 Wis. 2d 739, 745, 480 N.W.2d 795, 798 (emphasis in original). In other words, a declaratory judgment action may be rendered untimely by the claimant's failure to comply with statutes of limitations applicable to the underlying substantive claim:

> In *Gottshalk v. Ziegler*, 208 Wis. 55, 241 N.W. 713 (1932), the court held that an action in equity, premised upon fraud, to vacate and set aside a final probate judgment, was governed by the then statute of limitations applicable to fraud actions. *Id*. at 62–63, 241 N.W. at 715. The court has applied the same rationale in equitable actions between private parties. In *Markey Inv., Inc. v. Arnezeder*, 15 Wis.2d 74, 112 N.W.2d 211 (1961), the cross-claimant pled an action in declaratory relief for the recovery of real estate. However, the defendant had established the requisite period of adverse possession. The supreme court held that the specific statute of limitations barring actions for the recovery of real estate if the requisite adverse possession is established

[1] The parties also dispute whether the Legislature is permitted to raise a laches defense, given that it is an intervening party and its motion was not joined by named defendants. Because its laches defense fails regardless, the Court declines to address this issue.

> rendered the claimant's declaratory action untimely. *Id.* at 80–81, 112 N.W.2d at 214–15.

Id. at 745–46, 480 N.W.2d 795, 798.

Chapter 893 of the Wisconsin Statutes provides that "[c]ivil actions may be commenced only within the periods prescribed in this chapter, except when, in special cases, a different limitation is provided by statute." Wis. Stat. § 893.01.

Defendants assert that a number of statutes could be applicable to the underlying claim: § 893.93, § 893.52, § 893.53, and § 74.35. Mot. for J. on the Pleadings., Dkt. 141 at 4; St. Raphael's Reply Br., Dkt. 172 at 4-5. The Court considers the applicability of each in turn.

1. <u>Wis. Stat. § 893.93</u>

Wis. Stat. § 893.93 provides that "when a different limitation is not prescribed by law," "[a]n action upon a liability created by statute" shall be commenced within 3 years after the cause of action accrues or be barred. Wis. Stat. § 893.93(1m).

Whether Wis. Stat. § 893.93(1m) applies, then, is a question of whether a declaratory judgment action challenging the constitutionality of a statute is "an action upon a liability created by statute." In other words, the Court examines whether the substantive claim underlying Plaintiffs' declaratory judgment action depends on a statute—absent which the claim would have no legal basis. *See Yanta v. Montgomery Ward & Co.*, 66 Wis. 2d 53, 63 n. 16, 224 N.W.2d 389, 394 (1974).

The substantive claims forming the basis of Plaintiffs' declaratory judgment action are plainly not based upon a statute, but on the Wisconsin Constitution—specifically, Art. VIII, sec. 1, Art. I, sec. 1, Art. I, sec. 18, and Art. IV, sec. 18. Compl., Dkt. 4. Plaintiffs do not seek to enforce an obligation or duty created by a legislative enactment. Thus, the underlying legal basis for

Plaintiffs' claims cannot be said to be "created by statute."

St. Raphael's' argument that Plaintiffs *do* rely on a statute—the Declaratory Judgments Act—is unavailing. St. Raphael's Reply Br., Dkt. 172 at 8-9. The Act is merely a mechanism for litigants to address constitutional violations, it does not itself form the basis for a cause of action. To bring a declaratory judgment action, the plaintiff must have, among other things, a "legally protectible interest." *Lister v. Bd. of Regents of Univ. Wisconsin Sys*., 72 Wis. 2d 282, 306, 240 N.W.2d 610, 624 (1976). That is, "an interest that is arguably protected by the statutory or constitutional law upon which the plaintiff bases the claim for relief." *Chenequa Land Conservancy, Inc. v. Vill. of Hartland*, 2004 WI App 144, ¶ 16, 275 Wis. 2d 533, 685 N.W.2d 573. Accordingly, relevant to the Court's analysis is not the Declaratory Judgments Act itself, but the law upon which Plaintiffs base their claim for declaratory relief: here, the Constitution.

Regardless, even if the Court were to adopt St. Raphael's' interpretation of the phrase "created by statute," Plaintiffs' action is not "upon a liability." *See Krahenbuhl, DDS v. Wisconsin Dentistry Examining Bd.*, 2004 WI App 147, 275 Wis. 2d 626, 685 N.W.2d 591. In *Krahenbuhl*, the Court of Appeals considered the meaning of "liability" in this context.[2] *Id.* Krahenbuhl, a dentist, argued that a disciplinary action brought by the Wisconsin Dentistry Examining Board ("DEB") against him was barred by the statute of limitations. *Id.* ¶ 21. The court concluded that whether an action is an "action upon a liability" depends on the "core purpose" of the proceeding. *Id.*, ¶ 31. It went on to find that "while the DEB's action and sanctions against Krahenbuhl have a 'liability' ring, it is the protection of the public, rather than the imposition of penalty or punishment, that lies at the core of the DEB's disciplinary proceeding against Krahenbuhl." *Id.*, ¶¶

[2] The court considered the language of Wis. Stat. § 893.93(1)(a) as it existed in 2004, which is identical to that of the current Wis. Stat. §893.93(1m)(a): "An action upon a liability created by statute when a different limitation is not prescribed by law."

23-31. Thus, the statute of limitations did not apply. *Id.* Other cases have had similar results. *See, e.g. Kenosha Cnty. v. Town of Paris*, 148 Wis. 2d 175, 187, 434 N.W.2d 801, 806 (Ct. App. 1988) (a declaratory judgment action seeking a ruling on the validity of a town ordinance was not time-barred because the statute that was the basis of the action, Wis. Stat. § 60.74, "establishe[d] prerequisites for the validity of a town zoning ordinance … it [did] not hold the town 'liable' for a violation thereof.").

Here, as in *Krahenbuhl*, the purpose of Plaintiffs' proceeding is not "principally about damages, penalties, or forfeitures." *Krahenbuhl*, 2004 WI App 147, ¶ 29. Rather, the core purpose of the action is "to declare rights, status, and other legal relations" relating to the constitutionality of the Exemption. Wis. Stat. § 806.04(1). This is not an action upon liability.

The three-year statute of limitations in Wis. Stat. § 893.93(1m)(a) does not apply.

2. Wis. Stats. §§ 893.53, 893.54

Wis. Stats. § 893.53 and § 893.54 provide a 3-year statute of limitations for "an action to recover damages for an injury to the character or rights of another, not arising on contract" and "an action to recover damages for injuries to the person," respectively. Wis. Stat. § 893.53, §893.54(1m)(a). Plaintiffs do allege injuries: FFRF alleges that it is unconstitutionally excluded from ever benefitting from the Exemption. Compl., Dkt. 4, ¶ 3. The remaining plaintiffs each allege that they "pay higher property taxes to make up for the unlawful omission of these properties from the tax rolls." *Id.*, ¶ 7. However, Plaintiffs do not bring this action "to recover damages" for these injuries. *Id.*, ¶ 102. Rather, they plead these injuries to establish standing to strike down the Exemption as unconstitutional. Wis. Stats. § 893.53 and § 893.54 are inapplicable.

3. Wis. Stat. § 74.35

Wis. Stat. § 74.35 allows "a person aggrieved by the levy and collection of an unlawful tax assessed against his or her property" to file a claim to recover the unlawful tax. Wis. Stat. § 74.35(2)(a). Such claims "shall be filed by January 31 of the year in which the tax is payable." Wis. Stat. § 74.35(5)(a). "Unlawful tax" means a general property tax with respect to which one of the following errors was made:

> (a) A clerical error has been made in the description of the property or in the computation of the tax.
> (b) The assessment included real property improvements which did not exist on the date under s. 70.10 for making the assessment.
> (c) The property is exempt by law from taxation, except as provided under sub. (2).
> (d) The property is not located in the taxation district for which the tax roll was prepared.
> (e) A double assessment has been made.
> (f) An arithmetic, transpositional or similar error has occurred.

Wis. Stat. §§ 74.33(1); 74.35(1).

Applying the rationale in *Ross*, 166 Wis. 2d 739, 745, 480 N.W.2d 795, 798, the Court finds this time limit inapplicable. "When a particular statute fixes a time limit for challenging certain governmental action, such represents a controlling statement of legislative intent." *Id.* The legislative intent here is clear: actions challenging the levy and collection of unlawful property tax must be filed by January 31 of the year the tax is payable. Plaintiffs challenge the collection of their property taxes on the basis that the Exemption unconstitutionally relieves some properties of the duty to pay property tax, resulting in higher property taxes to those paying property taxes. Compl., Dkt. 4, ¶ 62. This is not among the errors contemplated by Wis. Stat. § 74.33(1)(a)-(f) and thus not one of the cases to which the January 31 deadline was intended to apply.

4. <u>"Catch-all" Statute of Limitations</u>

As a final matter, the Court addresses St. Raphael's' assertion that every cause of action must subject to *some* statute of limitations. St. Raphael's Reply Br., Dkt. 172 at 3. This is not true in Wisconsin: where the legislature has not prescribed a statute of limitations to the particular action at issue, none applies. *See, e.g. In re R.W.L.*, 116 Wis. 2d 150, 163, 341 N.W.2d 682, 687 (1984) (there "was no statute of limitations applicable" to a child's commencement of a paternity action until the legislature enacted one in 1981). Further, Wisconsin courts have repeatedly held that equitable actions are not subject to any statute of limitations. *See, e.g., Elkhorn Area Sch. Dist. v. E. Troy Cmty. Sch. Dist*., 127 Wis. 2d 25, 377 N.W.2d 627 (Ct. App. 1985); *City of Milwaukee v. Firemen's Relief Ass'n of City of Milwaukee*, 34 Wis. 2d 350, 149 N.W.2d 589 (1967). Wisconsin courts regard a claim for declaratory relief as "essentially equitable in nature." *Belanger v. Local Div. No. 1128*, 256 Wis. 274, 278, 40 N.W.2d 504, 506 (1949).

Neither the specific statutes of limitations presented by Defendants nor any other statute of limitations applies to Plaintiffs' action.

IV. Other Grounds

In its reply brief, St. Raphael's briefly raises two additional arguments: (1) Chapters 70 and 74 of the Wisconsin Statutes are the exclusive procedures for raising a constitutional challenge to a property tax assessment, and (2) Plaintiffs don't have standing. St. Raphael's Reply Br., Dkt. 172 at 4-5. Identical arguments were considered and rejected by Judge Genovese in the Court's January 30, 2026 order on the motions to dismiss filed in this case. Dkt. 97 at 4-13; 18-19.

In that decision, Judge Genovese made the following findings: (1) "[t]he 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. Because of the absence of any adequate administrative remedy to address the alleged constitutional violations, plaintiffs properly sought declaratory relief." *Id.,* 4-13, and (2) "[b]ecause the individual plaintiffs have alleged pecuniary loss, the court finds that they have sufficiently alleged standing to withstand a motion to dismiss."

Id., 18-19. The first issue has been resolved. The second issue need not be revisited at this time: Judge Genovese's conclusion rests on the premise that the motion to dismiss stage was not the proper juncture to resolve the issue of standing, given that the court could not take evidence at that point. Because the Court remains unable to take evidence at this stage, re-addressing Plaintiffs' standing now would be redundant.

CONCLUSION

Plaintiffs' declaratory judgment action seeks to strike down the property tax exemption in Wis. Stat. § 70.11(3m) as unconstitutional. Though brought over a decade after the enactment and subsequent amendment of that exemption, Plaintiffs' action is not among the ordinary civil actions subject to a statute of limitations, nor have Defendants established laches. Accordingly, Plaintiffs' action is not time-barred under either theory. Additional arguments raised in support of judgment on the pleadings fail as improper at this stage.

ORDER

For the reasons stated,

IT IS ORDERED that the Defendants' motions for judgment on the pleadings are DENIED.