

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

LABORERS LOCAL 236, AFL-CIO, *et al.*,

Plaintiffs,

v.

Case No. 11-CV-462

SCOTT WALKER, Governor of the State of
Wisconsin, *et al.*,

Defendants,

v.

CHRISTOPHER KING and CARIE KENDRICK,

Defendant-Intervenors,

**ANSWER AND AFFIRMATIVE DEFENSES
OF DEFENDANT-INTERVENORS**

INTRODUCTION

Plaintiff labor unions seek to invalidate 2011 Wisconsin Act 10 (“Act 10”) which, among other things, protects the constitutional rights of public employees within bargaining units represented by these unions, their affiliates and other labor unions. The Defendant-Intervenors (“Employees”) are Christopher King, a social service specialist, represented for bargaining purposes by a sister affiliate of Plaintiff AFSCME Local 60, AFL-CIO, and Carie Kendrick, a University of Wisconsin-Whitewater custodian lead

Answer of Defendant-Intervenors, *Laborers Local 236, et al. v. Walker, et al.*, PAGE- 1.

person represented for bargaining purposes by a related affiliated of Plaintiff AFSCME Local 60, AFL-CIO. The Employees' constitutional rights not to associate and not to speak are protected by Act 10. They file this answer and affirmative defenses to defend Act 10 and vindicate their constitutional rights.

Defendant-Intervenors, by their attorneys, pursuant to Federal Rules of Civil Procedure 8, 12, and 24, hereby answer Plaintiffs' Complaint and assert the following affirmative defenses:

ANSWER

1. Defendant-Intervenors admit the allegations of Paragraphs 8, 9 and 10.
2. Defendant-Intervenors admit that AFSCME Local 60 is a labor organization within the meaning of § 111.70(1)(h), Wis. Stat. (2009-10), and is affiliated with the AFL-CIO. They are without information sufficient to form a belief as to the truth or falsity of the remaining allegations of Paragraph 4 and therefore deny them.
3. Defendant-Intervenors admit that Donald Coyier, who has his offices at 1602 South Park Street, Room 102, Madison, Wisconsin 53715, is the president of AFSCME Local 60; that Jennifer McCulley, who has her offices at 8033 Excelsior Drive, Suite B, Madison, Wisconsin 53717, is the staff representative; but they are without information sufficient to form a

believe as to the truth or falsity of the remaining allegations of Paragraph 5 and therefore deny them.

4. Defendant-Intervenors are without information sufficient to form a belief as to the truth or falsity of the allegations of Paragraphs 2, 3, 6, 7, and therefore deny them.
5. As to Paragraph 1, Defendant-Intervenors admit that Plaintiffs have styled this action as being brought pursuant to 42 U.S.C. §§ 1983 and 1988; 28 U.S.C. §§ 1331, 1343, 2201 and 2201; and the First and Fourteenth Amendments to the United States Constitution; and that Plaintiffs claim to be suing all Defendants in their official and individual capacities. The Employees deny the allegation that Plaintiffs have asserted any viable claim against any of the Defendants in any capacity, which are legal conclusions. Although the allegations that Plaintiff unions and the employees that they represent along with Plaintiff Jamie O'Brien are persons within the meaning of the Fourteenth Amendment are legal conclusions, the Employees admit these allegations. They are also without information sufficient to form a belief as to the truth or falsity of the remaining allegations of Paragraph 1 and therefore deny them.
6. Defendant-Intervenors state that Act 10 and the statutes described in Paragraphs 11, 12 and 13 speak for themselves and are the best evidence of

the effects of Act 10 and those statutes. The Employees deny the allegations of Paragraphs 11, 12 and 13 to the extent they are inconsistent with Act 10 and the statutes referenced in those Paragraphs. They admit that Wis. Stat. § 111.70 *et seq.* is known as the Municipal Employment Relations Act (“MERA”); that the MERA extends certain extraordinary special privileges to municipal employees; that ACT 10 amended certain provisions of the MERA and removed many of the extraordinary special privileges formerly available to some municipal employees. Defendant-Intervenors deny any and all remaining allegations of Paragraphs 11, 12 and 13 to the extent not expressly admitted.

7. Defendant-Intervenors deny the allegations of Paragraphs 14, 15 and 16.

AFFIRMATIVE DEFENSES

1. Plaintiffs have failed to state a claim upon which relief may be granted as a matter of law.
2. Defendant-Intervenors King and Kendrick are represented for bargaining purposes by related affiliates of Plaintiff AFSCME Local. They are not members of their unions. They have the right, protected by the First Amendment to the United States Constitution, to prevent the unions and their affiliates from using their money for any purpose, unless the State demonstrates a compelling reason to require nonmembers to pay for the costs of collective bargaining, contract administration and grievance adjustment.

Act 10 has removed most, if not all, compelling reasons to support any infringement on the First Amendment rights of nonmembers and is justified by the State's interest in protecting the First Amendment rights of nonmembers to refrain from association with the unions and from subsidizing the unions' speech.

3. The State also has the right to prohibit the payroll deduction of union dues and nonmember forced fees. The First Amendment does not confer an affirmative right on anyone or group, including unions, to use government payroll mechanisms for the purpose of obtaining funds for expression, nor does it require the government to assist others in funding the expression of particular ideas, including political ones. In fact, the First Amendment does not even impose any affirmative obligation on the government to listen, to respond or, in this context, to recognize labor union and bargain with it. Through Act 10, the State of Wisconsin has exercised its constitutional discretion to stop assisting in the funding of general union expression and bargaining with general unions over any matter other than base wage rates. *Ysursa v. Pocatello Educ. Ass'n*, 555 U.S. 353 (2009); *Smith v. Highway Employees*, 441 U. S. 463, 465 (1979) (*per curiam*).

WHEREFORE, Defendant-Intervenors respectfully request that judgment be entered as follows:

- A. Dismissing the Plaintiffs' Complaint in its entirety;
- B. Awarding all Defendants, including Defendant-Intervenors, their costs, disbursements and attorney fees incurred in defending this action; and

C. Granting any other relief this Court deems just and equitable under the circumstances.

Dated: September 3, 2011

Richard M. Esenberg, WBN 1005622
Thomas C. Kamenick, WBN 1063682
Wisconsin Institute for Law & Liberty
P.O. Box 511789
Milwaukee, WI 53203-0301
Telephone (414) 213-3957
rick@will-law.org

Bruce N. Cameron
Reed Larson Professor of Labor Law
Regent University School of Law
Robertson Hall # 353
1000 Regent University Dr.
Virginia Beach, VA 23464
Telephone (757) 352-4522
Fax (757) 352-4571
bcameron@regent.edu

Attorneys for Defendant-Intervenors

Respectfully submitted,

/s/ Milton L. Chappell
Milton L. Chappell (DC BN 936153)
Erin E. Wilcox
c/o National Right to Work Legal
Defense Foundation, Inc.
8001 Braddock Rd., Suite 600
Springfield, VA 22151
Telephone (703) 770-3329
Fax (703) 321-9319
mlc@nrtw.org