



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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October 8, 2014

Waukesha County Courthouse
The Honorable James R. Kieffer
Civil Division, Room C-167
PO Box 1627
Waukesha, WI 53187-1627

Re: *E. Glen Porter v. State of Wisconsin*
Case No: 14CV1763

Dear Judge Kieffer:

Enclosed for filing please find a copy of the Defendants' Answers and Affirmative Defenses in the above case. By a copy of this letter, I am serving Plaintiffs' counsel with this answer. I am also sending a courtesy copy of the answer to Plaintiffs' counsel via e-mail today. Thank you for your consideration.

Sincerely,

Clayton P. Kawski
Assistant Attorney General
State Bar #1066228

CPK:jrs

Encl.

cc: Richard Esenberg/Michael Fischer/Thomas Kamenick (via U.S. Mail and e-mail; w/encl.)

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 8

WAUKESHA COUNTY

E. GLEN PORTER III,
1400 Woodlawn Circle
Elm Grove, WI 53122,

and

HIGHLAND MEMORIAL PARK, INC.,
14875 W. Greenfield Avenue
New Berlin, WI 53151

Plaintiffs,

v.

Case No. 14CV1763

Declaratory Judgment: 30701

STATE OF WISCONSIN,
c/o J.B. Van Hollen, Attorney General
17 W. Main Street
Madison, WI 53707

DAVE ROSS, Secretary,
Wisconsin Department of Safety & Professional Services
1400 E. Washington Avenue
Madison, WI 53703

and

WISCONSIN FUNERAL DIRECTORS EXAMINING
BOARD,
1400 E. Washington Avenue
Madison, WI 53703

Defendants.

DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES

Defendants the State of Wisconsin, Dave Ross, and the Wisconsin Funeral Directors Examining Board (collectively, "Defendants"), by their undersigned counsel, answer the complaint filed by Plaintiffs E. Glen Porter III and Highland Memorial Park, Inc., as follows:

INTRODUCTION

1. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 1.
2. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 2.
3. Defendants DENY the factual allegations in paragraph 3. With regard to the legal allegations in paragraph 3, Defendants DENY that a responsive pleading is required because the Wisconsin Constitution speaks for itself. To the extent that the legal allegations in paragraph 3 misstate the law, Defendants DENY the allegations in paragraph 3.

JURISDICTION AND VENUE

4. Defendants ADMIT that Plaintiffs seek a declaration that Wis. Stat. §§ 157.067 and 445.12(6) are unconstitutional. Defendants DENY all remaining allegations in paragraph 4.
5. Defendants DENY that paragraph 5 contains any factual allegations. Paragraph 5 instead contains only a legal conclusion to which no responsive pleading is required because the Wisconsin Statutes speak for

themselves. To the extent that the legal allegations in paragraph 5 misstate the law, Defendants DENY the allegations in paragraph 5.

6. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 6.

THE PARTIES

7. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 7.

8. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 8.

9. Defendants ADMIT that Plaintiffs challenge the constitutionality of Wis. Stat. §§ 445.12(6) and 157.067 and that Defendant State of Wisconsin is a sovereign state. Defendants DENY all remaining factual allegations in paragraph 9.

10. Defendants ADMIT the allegations in the first and third sentences of paragraph 10. Defendants lack knowledge or information sufficient to form a belief as to the remaining factual allegations in paragraph 10.

11. Defendants ADMIT the allegations in paragraph 11.

STATEMENT OF FACTS

The Death Care Industry

12. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 12.

13. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 13.

14. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 14.

15. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 15.

16. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 16.

17. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 17.

18. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 18.

19. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 19.

20. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 20.

21. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 21.

22. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 22.

23. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 23.

24. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 24.

25. Defendants lack knowledge or information sufficient to form a belief as to the factual allegations in paragraph 25. With regard to the legal allegations in paragraph 25, Defendants DENY that a responsive pleading is required because California case law speaks for itself. To the extent that the legal allegations in paragraph 25 misstate the law, Defendants DENY the allegations in paragraph 25.

26. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 26.

27. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 27.

Wisconsin Law

28. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 28.

29. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 29.

30. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 30.

31. Defendants lack knowledge or information sufficient to form a belief as to the factual allegations in paragraph 31. With regard to the legal allegations in paragraph 31, Defendants DENY that a responsive pleading is required because the Wisconsin Statutes speak for themselves. To the extent that the legal allegations in paragraph 31 misstate the law, Defendants DENY the allegations in paragraph 31.

32. Defendants DENY the first and last sentences in paragraph 32. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 32.

33. Defendants DENY that the first sentence in paragraph 33 contains any factual allegations. The first sentence in paragraph 33 instead contains only a legal conclusion to which no responsive pleading is required because the statute speaks for itself. To the extent that the legal allegations in paragraph 33 misstate the law, Defendants DENY the allegations in paragraph 33. Defendants DENY that Wis. Stat. § 445.12(6) "makes no sense at all" and further DENY the last sentence in paragraph 33. Defendants lack

knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 33.

34. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 34.

FIRST CLAIM FOR RELIEF

(Violation of Article I, Section I of the Wisconsin Constitution – Substantive Due Process)

35. Defendants incorporate by reference their answers above as fully set forth herein.

36. Defendants DENY the allegations in paragraph 36.

37. Defendants DENY that paragraph 37 contains any factual allegations. Paragraph 37 instead contains only a legal conclusion to which no responsive pleading is required because the statute speaks for itself. To the extent that the legal allegations in paragraph 37 misstate the law, Defendants DENY the allegations in paragraph 37.

38. Defendants DENY the allegations in paragraph 38.

39. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 39.

40. Defendants DENY that the first sentence in paragraph 40 contains any factual allegations. The first sentence in paragraph 40 instead contains only a legal conclusion to which no responsive pleading is required because the Wisconsin Constitution speaks for itself. To the extent that the

legal allegations in paragraph 40 misstate the law, Defendants DENY the allegations in paragraph 40. Defendants DENY the remaining allegations in paragraph 40.

41. Defendants DENY the allegations in paragraph 41.

SECOND CLAIM FOR RELIEF

(Violation of Article I, Section I of the Wisconsin Constitution – Equal Protection)

42. Defendants incorporate by reference their answers above as fully set forth herein.

43. Defendants DENY the allegations in paragraph 43.

44. Defendants DENY the allegations in paragraph 44.

45. Defendants DENY the allegations in paragraph 45.

46. Defendants DENY the allegations in paragraph 46.

RESPONSE TO PRAYER FOR RELIEF AND WHEREFORE

CLAUSE: Defendants DENY that Plaintiffs are entitled to the relief requested.

FURTHER RESPONSE: Defendants DENY any factual allegations in the complaint not expressly admitted herein.

AFFIRMATIVE DEFENSES

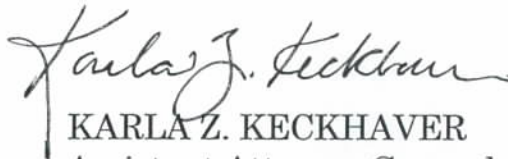
1. The complaint fails to state a claim upon which relief can be granted.
2. The State of Wisconsin is entitled to sovereign immunity.

Dated this 8th day of October, 2014.

J.B. VAN HOLLEN
Attorney General



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State Bar #1066228



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