

AMY ROSNO,  
105 Woodfield Drive  
Eagle, WI 53119,

NICHOLAS JOHNSON,  
2812 S. 70<sup>th</sup> St.  
Milwaukee, WI 53219,

TRACIE HAPPEL,  
N5653 Mohican Trail  
Onalaska, WI 54650,

JENNIFER HENDERSON,  
3041 97th St.  
Sturtevant, WI 53177,

and

ELIJAH GRAJKOWSKI  
1529 S. Carriage Ln.  
New Berlin, WI 53151,

Plaintiffs,

v.

Declaratory Judgment

Case Code: 30701

Case No. 13-CV-

JAMES R. SCOTT and RODNEY G. PASCH,  
In their official capacity as Members of the  
Wisconsin Employment Relations Commission,  
1457 East Washington Avenue, Suite 101  
Madison, WI 53704,

Defendants.

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**SUMMONS**

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THE STATE OF WISCONSIN

To each person named above as a Defendant:

You are hereby notified that the Plaintiffs named above have filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

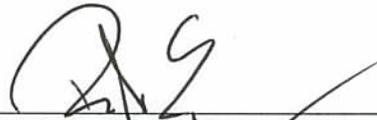
Within 45 days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is: **Clerk of Circuit Court, Waukesha County Courthouse, 515 West Moreland Boulevard, Waukesha, WI 53188**, and to the Plaintiffs' attorney, whose address is: **Wisconsin Institute for Law & Liberty, 1139 East Knapp Street, Milwaukee, WI 53202**.

You may have an attorney help or represent you.

If you do not provide a proper answer within 45 days, the court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 29th day of October, 2013.

Respectfully submitted,  
WISCONSIN INSTITUTE FOR  
LAW & LIBERTY  
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**COMPLAINT**

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Plaintiffs, Amy Rosno, Nicholas Johnson, Tracie Happel, Jennifer Henderson, and Elijah Grajkowski, by their counsel, the Wisconsin Institute for Law & Liberty, as and for their Complaint against Defendants, James R. Scott and Rodney G. Pasch, allege to the Court as follows:

### **INTRODUCTION**

1. In 2011, the Wisconsin Legislature enacted a comprehensive reform of Wisconsin labor law as it relates to public employees, commonly known as Act 10. Among other things, public employees were given the right to participate in an annual election to determine whether or not they and their fellow employees will be represented in the upcoming year by a collective bargaining agent in negotiations with their employers. This is an action for declaratory judgment under Wis. Stat. § 806.04 to enforce that right, as well as other rights given to general municipal employees under Act 10.

2. The Plaintiffs are public school teachers who wish to exercise their right to vote in November on whether a union will represent them in collective bargaining in the coming year. Plaintiffs seek a declaration that they are entitled to vote in the election required by Act 10 and that Defendants Scott and Pasch, as Wisconsin Employment Relations Commission commissioners (collectively, “WERC”), are required by Wis. Stat. § 111.70(4)(d)3.b. to hold recertification elections prior to December 1, 2013. In the alternative, Plaintiffs seek a declaration that if no election is held, they are free to negotiate the factors and conditions of their employment, including base wages, without representation.

### **PARTIES**

3. Plaintiff Amy Rosno is a teacher employed by the School District of Waukesha. She teaches English at eAchieve Academy. She is in a bargaining unit represented by the Education Association of Waukesha, but is not a member of that organization. She is a citizen of the State of Wisconsin, residing at 105 Woodfield Drive, Eagle, Wisconsin 53119.

4. Plaintiff Nicholas Johnson is a teacher employed by Milwaukee Public Schools. He teaches Grades 9-12 Music and Special Education at Ronald Reagan High School. He is in a bargaining unit represented by the Milwaukee Teachers’ Education Association, but is not a

member of that organization. He is a citizen of the State of Wisconsin, residing at 2812 South 70th Street, Milwaukee, Wisconsin 53219.

5. Plaintiff Tracie Happel is a teacher employed by the School District of La Crosse. She teaches Second Grade at Northside Elementary School. She is in a bargaining unit represented by the La Crosse Education Association, but is not a member of that organization. She is a citizen of the State of Wisconsin, residing at N5653 Mohican Trail, Onalaska, Wisconsin 54650.

6. Plaintiff Jennifer Henderson is a teacher employed by the Racine Unified School District. She teaches Third Grade at Schulte Elementary School. She is in a bargaining unit represented by the Racine Education Association, but is not a member of that organization. She is a citizen of the State of Wisconsin, residing at 3041 97th Street, Sturtevant, Wisconsin 53177.

7. Plaintiff Elijah Grajkowski is a teacher employed by the Elmbrook School District. He teaches Fourth and Fifth Grade Band at Brookfield Elementary School. He is in a bargaining unit represented by the Elmbrook Education Association, but is not a member of that organization. He is a citizen of the State of Wisconsin, residing at 1529 South Carriage Lane, New Berlin, Wisconsin 53151.

8. All of the Plaintiffs want WERC to hold recertification elections as originally scheduled this November. Each intends to either vote or refrain from voting - which has the same effect as a "no" vote - in the recertification election

9. WERC has cancelled those elections as a result of the recent decision by the Dane County Circuit Court in *Madison Teachers, Inc. v. Walker*, Case No. 11CV3774, a case in which the WERC Commissioners were parties.

10. Defendant James R. Scott is a Member and the Chair, and Defendant Rodney G. Pasch is a Member, of the Wisconsin Employment Relations Commission. They are named as Defendants in their official capacities only, and their offices are located at 1457 East Washington Avenue, Suite 101, Madison, Wisconsin 53704.

11. The Wisconsin Employment Relations Commission and its Commissioners are the executive agency and executive officials, respectively, responsible for administering the Wisconsin labor relations statutes, including interpreting, implementing, enforcing, and administering the challenged provisions of the Municipal Employment Relations Act, as modified by 2011 Wisconsin Act 10 and 2011 Wisconsin Act 32.

## **JURISDICTION AND VENUE**

12. This court has jurisdiction pursuant to Wis. Stat. § 806.04 in that: (a) there is a controversy between the parties as to the statutory duties of WERC with relation to the Plaintiffs; (b) the interests of Plaintiffs and Defendants are adverse in that the Plaintiffs wish WERC to hold recertification elections and WERC intends not to hold recertification elections; (c) Plaintiffs have a legally protected interest in exercising their right to vote in an annual recertification election; and (d) the controversy is ripe for determination in that WERC has committed to not holding recertification elections this November. Plaintiffs also have a legally protected interest in perfecting their rights under Act 10 in the event that no recertification election is held.

13. Venue is properly lodged in this Court pursuant to Wis. Stat. § 801.50(2)(a), because Plaintiffs Rosno and Grajkowski teach in school districts in this County and, as a result, their claims arise in this County, and pursuant to Wis. Stat. § 801.50(3)(a), because the sole Defendants are state officers, and the Plaintiffs hereby designate Waukesha County as the venue for this action.

## **FACTS**

### **Act 10**

14. In 2011, the Wisconsin Legislature enacted sweeping changes to the statutes that govern collective bargaining between public employees and their employers. These changes included Act 10 as well as Act 32, which amended and modified Act 10. Act 10 became the law in Wisconsin on June 29, 2011; Act 32 on July 1, 2011.

15. Act 32 and Act 10 (collectively, “Act 10”), among other things, amended Wis. Stat. § 111.70, the statute that governs collective bargaining between municipal employers and unions representing their employees. Section 111.70(4)(d), as amended by Act 10, now requires general municipal unions to stand for re-certification in an election every year and obtain at least 51 percent of the votes of all of the employees in the collective bargaining unit.

16. In particular, § 111.70(4)(d)3.b. states that annually, WERC “shall conduct an election to certify the representative of the collective bargaining unit,” and that “election shall occur no later than December 1 for a collective bargaining unit containing school district employees.” (Emphasis added.)

17. “If no representative receives at least 51 percent of the votes of all of the general municipal employees in the collective bargaining unit, at the expiration of the collective bargaining agreement, the commission shall decertify the current representative and the general municipal employees shall be nonrepresented.” *Id.* (emphasis added).

18. Thus, among the many other rights given to public employees by Act 10, the Plaintiffs have a right to participate in an election and vote either in favor of or against representation by an exclusive bargaining representative every year. If no election results in a union obtaining votes from 51 percent of the collective bargaining unit by December 1, the Plaintiffs have the right to represent themselves to individually negotiate the factors and conditions of their employment, including base wages, with their employers.

19. Under WERC regulations, teachers have 20 days to vote, starting November 1<sup>st</sup>, 2013. Voting is done by a teacher in a school district calling a toll-free number and answering the following question: “Do you want to continue to be represented by (name of union) for the purpose of collective bargaining?”

### **Litigation**

20. In the wake of its passage by the Legislature, several lawsuits were filed that challenged the validity of Act 10 on constitutional or other grounds. The U.S. District Court for the Western District of Wisconsin upheld portions of Act 10 and struck down other portions. *WEAC v. Walker*, 824 F. Supp. 2d 856 (W.D. Wis. 2012). On appeal, the U.S. Court of Appeals for the Seventh Circuit dismissed all challenges to the statute on federal constitutional grounds, upholding the statute in its entirety. *WEAC v. Walker*, 705 F.3d 640 (7th Cir. 2013).

21. On September 11, 2013, the U.S. District Court of the Western District of Wisconsin upheld Act 10 against a related constitutional challenge, dismissing that case as well. *Laborers Local 236, AFL-CIO v. Walker*, 2013 WL 4875995 (W.D. Wis. Sept. 11, 2013).

22. On October 23, 2013, the Dane County Circuit Court, the Honorable John Markson, presiding, upheld Act 10 against a related constitutional challenge brought by state employees and a union representing them, dismissing that case. *Wisconsin Law Enforcement Association v. Walker*, Dane County Circuit Court No. 12CV4474, Order dated Oct. 23, 2013.

23. But on September 14, 2012, the Dane County Circuit Court, the Honorable Juan Colás, presiding, held parts of Act 10 to be in violation of the Wisconsin State Constitution,

including those provisions that require annual recertification elections. *Madison Teachers, Inc. v. Walker*, Dane County Circuit Court No. 11CV3774, Order dated Sept. 14, 2012. An appeal from the Circuit Court's decision is currently pending before the Wisconsin Supreme Court, with oral arguments scheduled on November 11, 2013.

24. During the appeal, the State requested a stay of the lower court's order. In denying that request, the Wisconsin Court of Appeals, District IV, held that the lower court's decision has no precedential value and is not binding on other courts, rejecting "out of hand the proposition that the circuit court's decision has the same effect as a published opinion of [the court of appeals] or the supreme court." It also stated that "different courts might make different decisions on [whether to follow the Dane County decision]." The Court held that a stay of the Dane County decision was not appropriate because, among other things, the decision did not have statewide effect. *Madison Teachers, Inc. v. Walker*, 2012AP2067, Wis. Ct. App. Order dated March 12, 2013, \*14.

25. The Dane County Circuit Court, ignoring the court of appeals, in an oral ruling on October 21, 2013, (memorialized in an October 25, 2013, written order) attempted to give its ruling statewide effect by holding WERC in contempt for scheduling recertification elections under 111.70(4)(d)3.b. for unions that were not parties to *Madison Teachers*.

26. Although WERC disagrees with the Circuit Court's decision (and that decision is the subject of an emergency proceeding in both the Supreme Court and the Court of Appeals), WERC indicated that it intends to follow the Circuit Court's decision pending final resolution. It has already written to one union rescinding its earlier decertification notice, and is cancelling hundreds of elections already scheduled to take place in November.

27. It is well-established as a matter of Wisconsin law that Circuit Court decisions are not binding on anyone other than parties to the lawsuit, as the Court of Appeals stated in its decision on the stay. Thus, Act 10 remains the law of the land for everyone in Wisconsin except the parties in *Madison Teachers*, including the Plaintiffs and their employers.

28. No court with jurisdiction over the Plaintiffs or their employers has ever declared Act 10 to be unconstitutional. To the contrary, the only courts with even geographic jurisdiction over them (the U.S. Court of Appeals for the Seventh Circuit for all of them and the U.S. District Court for the Western District of Wisconsin for Plaintiff Happel) have declared that Act 10 is constitutional. Both of those courts expressly rejected the arguments accepted by Judge Colás.

29. Under the current state of the law, notwithstanding the Dane County decision, the Plaintiffs enjoy the full panoply of rights and benefits given to them by Act 10, including the right to vote in annual recertification elections.

### **FIRST CLAIM FOR RELIEF**

#### **For a Declaration that WERC Must Hold Recertification Elections**

30. Plaintiffs incorporate the allegations of the previous paragraphs as if fully set forth herein.

31. Wis. Stat. § 111.70(4)(d)3.b. states that, “Annually, the commission shall conduct an election to certify the representative of the collective bargaining unit that contains a general municipal employee. The election shall occur no later than December 1 for a collective bargaining unit containing school district employees . . . .”

32. WERC currently intends to not hold recertification elections under § 111.70(4)(d)3.b. prior to December 1, 2013.

33. If WERC fails to hold these elections, Plaintiffs and tens of thousands of other teachers will be denied their right under Act 10 to vote either for or against the election of an exclusive bargaining representative.

34. Therefore, Plaintiffs are injured by WERC’s failure to hold the recertification elections, and pursuant to Wis. Stat. § 806.04 are entitled to a declaration that WERC must hold these elections and an order to the same effect.

### **SECOND CLAIM FOR RELIEF**

#### **For a Declaration, in the Alternative, that if No Recertification Election is Held, the Plaintiffs are Free to Individually Negotiate the Terms and Conditions of their Employment**

35. Plaintiffs incorporate the allegations of the previous paragraphs as if fully set forth herein.

36. If WERC fails to hold a recertification election pursuant to § 111.70(4)(d)3.b. prior to December 1, 2013, Act 10 provides that no union will be certified to represent the Plaintiffs and the other members of their collective bargaining unit in negotiations with their employers for 2014.

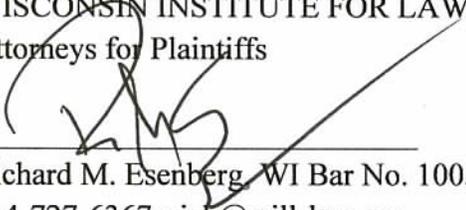
37. Accordingly, the Plaintiffs seeks a declaration that if no such election is held, they have no collective bargaining agent, are not and cannot be bound by any agreement made between their employers and any alleged collective bargaining agent, will be free to negotiate the factors and conditions of their employment, including base wages, individually with their employers, and are entitled to all of the other rights and privileges provided to them under Act 10, and that WERC may take no action that denies them the full benefits of such rights and privileges.

WHEREFORE, the Plaintiffs respectfully request this Court grant the following relief:

- A. A declaratory judgment stating that Plaintiffs enjoy the full panoply of rights and benefits given to them by Act 10;
- B. A declaratory judgment stating that WERC is lawfully required by Wis. Stat. § 111.70(4)(d)3.b. to hold recertification elections for those collective bargaining units to which the Plaintiffs belong before December 1, 2013;
- C. An order directing WERC to hold recertification elections for those collective bargaining units to which the Plaintiffs belong before December 1, 2013;
- D. In the alternative, a declaratory judgment stating that if WERC does not hold recertification elections under § 111.70(4)(d)3.b. for those collective bargaining units to which the Plaintiffs belong before December 1, 2013, the Plaintiffs have no collective bargaining agent, are not and cannot be bound by any agreement made between their employers and any alleged collective bargaining agent, will be free to negotiate the factors and conditions of their employment, including base wages, individually with their employers and are entitled to all of the other rights and privileges provided to them under Act 10, and that WERC may take no action that denies them the full benefits of such rights and privileges.
- E. Awarding Plaintiffs costs and attorney fees; and
- D. Granting Plaintiffs such other and further relief as the Courts deems appropriate.

Dated this 29<sup>th</sup> day of October, 2013.

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