STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY
BRANCH 31

THEODORE LIPSCOMB, SR.,
Chairman, Milwaukee County Board of Supervisors,
In his official capacity,
Milwaukee County Courthouse
901 N. 9th Street, Room 201
Milwaukee, Wisconsin, 53233,

Plaintiff,

v.

Case No: 2015-CV-008664
Case Code: 30701

CHRISTOPHER ABELE,
Milwaukee County Executive,
In his official capacity,
Milwaukee County Courthouse
901 N. 9th Street, Room 308
Milwaukee, Wisconsin, 53233,

Defendant.

PLAINTIFF'S BRIEF OPPOSING DEFENDANT'S MOTION TO DISMISS

The Plaintiff, Theodore Lipscomb, Sr., by his attorneys, Cullen Weston Pines & Bach LLP, respectfully submits this brief in opposition to the Defendant Christopher Abele's motion to dismiss.

INTRODUCTION

In 2013, the Wisconsin Legislature enacted 2013 Wisconsin Act 14 ("Act 14"), which altered the statutory authority of both the Milwaukee County Board and the Milwaukee County Executive. In this declaratory judgment action, Lipscomb seeks the construction of certain provisions of Wis. Stat. Ch. 59, as amended by Act 14, as they

relate to the authority of the Milwaukee County Board and the Milwaukee County Executive.

The central issue in dispute, as plainly stated in the complaint, concerns the statutory authority of the County Executive and the Board, respectively, over the compensation of *unclassified* County employees. Complaint, ¶ 36. Lipscomb contends that the Board has broad statutory authority over the compensation of all County employees, including unclassified employees. Complaint, ¶ 37. Act 14 expressly limits that authority only with respect to employees in the office of the County Executive. *Id.* Abele, by contrast, has taken the position that Act 14 gives the County Executive unilateral authority over the compensation of unclassified employees. Complaint, ¶ 20. Accordingly, Abele has taken actions with respect to the compensation of unclassified employees that directly conflict with Board policies. Complaint, ¶¶ 17-19, 24.

The complaint also seeks a declaration as to the Board's authority to require the County Executive to attend Board meetings. Complaint, ¶¶ 5, 6. Abele has disregarded the Board's requests to attend meetings of the Board. *Id.* ¶ 25. This issue also requires statutory interpretation. *Id.* ¶ 34, 39, 40.

Abele moved to dismiss the complaint pursuant to Wis. Stat. § 802.06(2)(a)1, arguing primarily that Lipscomb lacks standing to bring this declaratory judgment action. In the alternative, he moves for a more definite statement of the claim pursuant to Wis. Stat. § 802.06(5). This Court should deny the motion to dismiss. Lipscomb has standing to bring a declaratory judgment action seeking to clarify the respective authority of the County Board and County Executive under the Wisconsin Statutes.

Further, the complaint presents a short and plain statement of the claim for declaratory judgment. A more definite statement of the claim is not warranted.

ARGUMENT

I. LIPSCOMB HAS STANDING TO BRING THIS ACTION FOR DECLARATORY JUDGMENT.

Lipscomb, as a Supervisor and Chairman of the Milwaukee County Board, has a legal interest in the controversy raised in this declaratory judgment action. His interests are distinctly adverse to Abele's interests, ensuring that the issues presented will be well developed and zealously argued. Indeed, it is hard to imagine a plaintiff better suited to bring this action, the purpose of which is to resolve ongoing intra-county disputes about authority over the compensation of unclassified employees and the county executive's obligation to attend meetings when his presence is deemed necessary by the Board. This Court should find that Lipscomb has standing to bring this action.

A. WISCONSIN COURTS CONSTRUE STANDING BROADLY AND LIBERALLY, ESPECIALLY IN THE CONTEXT OF A DECLARATORY JUDGMENT ACTION.

Abele's motion to dismiss the complaint challenges Lipscomb's standing. "When a challenge is made to standing as alleged in a complaint, we take the allegations in the complaint as true and liberally construe them in the plaintiff's favor." *Chenequa Land Conservancy, Inc. v. Village of Hartland*, 2004 WI App 144, ¶ 18, 275 Wis. 2d 533, 685 N.W.2d 573 (citing *Thompson v. Kenosha County*, 64 Wis. 2d 673, 679, 221 N.W.2d 845 (1974)).

In Wisconsin state courts, standing is not jurisdictional, but rather a matter of judicial policy. *Foley-Ciccantelli v. Bishop's Grove Condominium Ass'n, Inc.*, 2011 WI 36, ¶ 40 n.18, 333 Wis. 2d 402, 797 N.W.2d 789; *Milwaukee Dist. Council 48 v. Milwaukee County*, 2001 WI 65, ¶ 38 n.7, 244 Wis. 2d 333, 627 N.W.2d 866 (2001). The Wisconsin Supreme Court has explained the policies underlying standing as follows:

> Standing requirements in Wisconsin are aimed at ensuring that the issues and arguments presented will be carefully developed and zealously argued, as well as informing the court of the consequences of its decision. *See Moedern v. McGinnis*, 70 Wis. 2d 1056, 1064, 236 N.W.2d 240 (1975) ("[T]he 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."); *In re Carl F.S.*, 2001 WI App 97, ¶ 5, 242 Wis. 2d 605, 626 N.W.2d 330 (2001) ("The purpose of the requirement of standing is to ensure that a concrete case informs the court of the consequences of its decision and that people who are directly concerned and are truly adverse will genuinely present opposing petitions to the court.").

McConkey v. Van Hollen, 2010 WI 57, ¶ 16, 326 Wis. 2d 1, 783 N.W.2d 855 (footnotes omitted). In accordance with these policies, "the law of standing should not be construed narrowly or restrictively." *State v. Iglesias*, 185 Wis. 2d 117, 132, 517 N.W.2d 175 (1994). Rather, the law of standing is liberally construed. *Fox v. DHSS*, 112 Wis. 2d 514, 524, 334 N.W.2d 532 (1983).

Generally, a litigant must allege facts that demonstrate an actual injury to a legally protected interest to have standing. *See State ex rel. First Nat'l Bank v. M & I Peoples Bank*, 95 Wis. 2d 303, 308, 290 N.W.2d 321 (1980). "Even an injury to a trifling interest" will suffice. *Fox*, 112 Wis. 2d at 524. However, a party seeking declaratory judgment need *not* suffer an actual injury before seeking declaratory relief. *Milwaukee Dist. Council 48 v. Milwaukee County*, 244 Wis. 2d 333, ¶ 41, 627 N.W.2d 866 2001 WI 65.

The purpose of the Uniform Declaratory Judgments Act is "to allow courts to anticipate and resolve identifiable, certain disputes between adverse parties" and "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." *Putnam v. Time Warner Cable of Southeastern Wisconsin, Ltd*., 255 Wis. 2d 447, ¶44, 649 N.W.2d 626, 2002 WI 108.

Thus, to have standing to bring a declaratory judgment action, the plaintiff must only "have a personal stake in the outcome and must be directly affected by the issues in controversy." *Lake Country Racquet & Athletic Club, Inc. v. Village of Hartland,* 2002 WI App 301, ¶ 15, 259 Wis. 2d 107, 655 N.W.2d 189. Because declaratory judgment affords relief from an uncertain infringement of a party's rights, standing in declaratory judgment actions is construed liberally and in favor of the plaintiff. *State ex rel. Village of Newburg v. Town of Trenton*, 2009 WI App 139, ¶ 10, 321 Wis. 2d 424, 773 N.W.2d 500.

B. AS A SUPERVISOR AND CHAIRMAN OF THE MILWAUKEE COUNTY BOARD, LIPSCOMB HAS A LEGALLY PROTECTABLE INTEREST AND A PERSONAL STAKE IN THE OUTCOME OF THIS CASE.

The complaint alleges that Abele has unilaterally directed changes in the compensation of unclassified employees that directly conflict with the compensation policies enacted by the Board and infringe the Board's statutory authority to provide, fix, or change compensation for county employees under Wis. Stat. § 59.22(2). The complaint also alleges that Abele has disregarded the Board's requests that he attend meetings when deemed necessary by the Board, pursuant to Wis. Stat. § 59.794(3)(b).

Notwithstanding Abele's efforts to minimize the duties and powers of the Chairman of the Board of Supervisors, the Chairman, by statute, serves as the presiding officer of the Board. *See* Wis. Stat. § 59.12(1). The Chairman is statutorily authorized, when directed by ordinance, to "countersign all county orders, transact all necessary board business with local and county officers, expedite all measures resolved upon by the board and take care that all federal, state and local laws, rules and regulations pertaining to county government are enforced." Wis. Stat. § 59.12(1).

By ordinance, the Chairman serves as head of the Board of Supervisors for purposes of budgeting and personnel oversight authority over all county board staff, overseeing departmental operations, approving departmental expenditures and submitting requested budgets. Milwaukee County Ordinance (MCO) § 1.27. Among numerous other powers and duties prescribed by ordinance, the Chairman presides over Board meetings; receives resolutions and ordinances and refers them to committees; appoints the members of standing committees; and receives all communications to the county board, reports of county officers, requests of county officers, requests of department heads and employees, and communications from the County Executive, which are not in response to an existing county board file, or a previous request from a committee. MCO § 1.03, 1.09, 1.11, 1.18. Further, the ordinances broadly require all personnel requests relating to the compensation of county employees to be filed with the Chairman. MCO § 1.17(b).

Given his authority and duties, vested by statute and ordinance, both to oversee the Board and to ensure that all laws, rules and regulations pertaining to county

government are enforced, Lipscomb has a legally protectable interest and a personal stake in the outcome of this case. In his official capacity as a Supervisor and Chairman of the Board, Lipscomb is directly affected by Abele's actions that undermine the Board's statutory authority, evade its policies, and attempt to shift the balance of county power to the County Executive and away from the Board.

Further, this action seeks a construction of state statutes that allocate authority to the Board and the County Executive. As a Supervisor and Chairman of the Board, Lipscomb has a stake in and is affected by these issues of statutory interpretation. The Court's decision construing the relevant statutes will have an impact on Lipscomb's duties and authority as a Supervisor and Chairman of the Board of Supervisors. For these reasons, the Court should find that Lipscomb has standing to bring this declaratory judgment action.

Moreover, even if Lipscomb were required to show an injury, he could meet that standard. As alleged in the complaint, Abele has undertaken actions that have circumvented and undermined the authority and policies of the Board of Supervisors, causing at least a "trifling injury" to Lipscomb in his official capacity as Supervisor and Chairman.

Abele argues that only the Board's interests are affected by the issue in dispute and not those of an individual Supervisor or the Chairman. He is incorrect. The Board, the legislative branch of county government, is composed of elected representatives of county residents. *See* Wis. Stat. § 59.10. An infringement of the legal authority and duties of the Board infringes on the authority and duties of each Supervisor as an

elected representative of his or her constituents. Injuries to the Board of Supervisors are, by necessity, injuries to the Supervisors that make up the Board.

Most of Abele's arguments that Lipscomb lacks standing to bring the lawsuit have little to do with standing. For example, he contends that Lipscomb lacks authority to bring a lawsuit on behalf of the Board or that the Board did not authorize him to bring the action on their behalf.[1] These arguments do not dispute Lipscomb's stake in the outcome or that he is directly affected by the issue in controversy. Further, Abele's contentions about the Board's authorization of the action refer to factual matters outside the four corners of the complaint. This Court must analyze Abele's motion to dismiss the complaint within the four corners of the complaint, accepting as true all factual allegations. *See Clear Channel Outdoor, Inc. v. City of Milwaukee*, 2011 WI App 117, ¶ 2, 336 Wis. 2d 707, 805 N.W.2d 582. Abele's attempt to litigate the Board resolution authorizing the action does not properly contest standing and is outside the scope of a motion to dismiss the complaint.

C. LIPSCOMB HAS STANDING AS A MILWAUKEE COUNTY RESIDENT AND TAXPAYER TO BRING THIS ACTION.

In the alternative, Lipscomb has standing as a taxpayer to bring this declaratory judgment action. "Taxpayers actions have been utilized to contest the validity of a variety of governmental activities accompanied by expenditure of public moneys." *Thompson v. Kenosha County,* 64 Wis. 2d 673, 680, 221 N.W.2d 845 (1974) (citing *Columbia*

[1]The Board of Supervisors in fact approved a resolution authorizing the action. However, that resolution is not before this Court on a motion to dismiss the complaint.

County v. Wisconsin Retirement Fund, 17 Wis. 2d 310, 116 N.W.2d 142 (1962)). Wisconsin courts have long recognized that:

> Any illegal expenditure of public funds directly affects taxpayers and causes them to sustain a pecuniary loss. This is because it results either in the governmental unit having less money to spend for legitimate governmental objectives, or in the levy of additional taxes to make up for the loss resulting from the expenditure. Though the amount of the loss, or additional taxes levied, has only a small effect on each taxpayer, nevertheless it is sufficient to sustain a taxpayer's suit.

S.D. Realty Co. v. Sewerage Comm., 15 Wis. 2d 15, 21-22, 112 N.W.2d 177 (1961) (internal citations omitted). "The fact that the ultimate pecuniary loss to the individual taxpayer may be almost infinitesimal" does not defeat standing. *Id.; Kenosha County,* 64 Wis. 2d at 680. In fact, taxpayer standing would not be defeated "even if the illegal expenditures resulted in a net saving." *Kenosha County,* 64 Wis. 2d at 680 n.9 (citing *Democrat Printing Co. v. Zimmerman,* 245 Wis. 406, 410, 14 N.W.2d 428 (1944)).

As alleged in the complaint, Abele has directed changes in the compensation of unclassified county employees that have caused certain employees to be paid in excess of the salary limitations established by the Board.[2] Complaint, ¶ 24. These illegal expenditures of public funds directly affect Lipscomb, as a Milwaukee County resident and taxpayer, and cause him to sustain a pecuniary loss. This Court may find that Lipscomb has standing to bring this action as a taxpayer and resident of Milwaukee County. *Cf. State ex rel. Wisconsin Senate v. Thompson*, 144 Wis. 2d 429, 436, 424 N.W.2d

[2] The complaint alleges, for example, that "the compensation of Hector Colon, the Director of Health and Human Services, was reported to be $177,625 as of October 15, 2015. Colon's position is assigned to pay grade 903E under the policies approved by the Board, for which the current maximum salary is $122,422.20 (including a 1.5% cost of living adjustment approved by the Board in July 2015)." Complaint, ¶ 24.

385, 387 (1988) (holding that Frederick Risser and Thomas Loftus had standing, both as taxpayers and in their official capacities as legislators, to bring declaratory judgment action challenging governor's partial vetoes of state budget bill). The absence of a specific allegation in the complaint that Lipscomb suffered pecuniary loss as a taxpayer is not necessary for this Court to find standing. A pecuniary loss may be inferred from a liberal construction of the complaint. *Id.*; *see also Kenosha Cty.*, 64 Wis. 2d at 681 (liberally construing complaint to contain an allegation that plaintiffs, as taxpayers, suffered pecuniary loss, where complaint did not specifically allege such loss).

D. THIS COURT SHOULD FIND THAT LIPSCOMB HAS STANDING AS A MATTER OF JUDICIAL POLICY.

Finally, even if this Court were to conclude that Lipscomb did not meet the traditional criteria of standing for a declaratory judgment action, namely a legally protectable interest and stake in the outcome of the action, the Court should allow the case to proceed because the policy considerations underlying the standing doctrine favor addressing the merits of Lipscomb's claim.

The Wisconsin Supreme Court has identified several policy reasons that warrant the adjudication of an action, even where the plaintiff's standing is uncertain: (1) the plaintiff is capable of competently framing the issues; (2) allowing the case to proceed promotes judicial efficiency; (3) a different plaintiff would not enhance the Court's understanding of the issues; (4) a detailed analysis of the nature of the injury might cause a premature consideration of the underlying legal issue; (5) resolving the issue is

in the public interest; and (6) similar legal issues have been adjudicated in prior cases in which standing was not challenged. *McConkey,* 2010 WI 57, ¶¶ 17-18.

All of these judicial policy interests are present in this case. Lipscomb, as a Supervisor and Chairman of the Board of Supervisors, is well suited to competently frame and zealously argue the issues presented. *See id.*, ¶ 18. Second, dismissal of this lawsuit would not put the issue to rest but likely would result in another lawsuit being filed by a different plaintiff, which is not an efficient use of judicial resources. Third, it is very unlikely that a different plaintiff would enhance the Court's understanding of the issues. Fourth, a detailed analysis of the nature of Lipscomb's injuries due to Abele's actions might cause this Court to prematurely consider the underlying issues of statutory consideration. Fifth, resolving this intra-county dispute between two branches of county government related to the statutory duties and powers of the respective branches is a matter of concern for county citizens and thus is in the public interest. Finally, a similar intra-county dispute as to whether a county executive exceeded his authority was adjudicated in at least one previous case in which the county board chair's standing apparently was not challenged. *See Schuette v. Van De Hey*, 205 Wis. 2d 475, 556 N.W.2d 127 (Ct. App. 1996) (declaratory judgment action brought by county board chairman against county executive to invalidate an executive order restricting farming near airport, in conflict with county ordinance).

Abele argues this Court should dismiss the complaint because the action presents a "political question." This is incorrect. An action seeking the construction of state statutes allocating authority and duties to county government is firmly within the

jurisdiction of the circuit court. The interpretation of state statutes is not even remotely a "political question" exclusively committed by the constitution to another branch of government and not susceptible to judicial resolution. *See Mills v. Vilas Cty. Bd. of Adjustments*, 2003 WI App 66, ¶ 17, 261 Wis. 2d 598, 608, 660 N.W.2d 705, 710, *citing Vincent v. Voight,* 2000 WI 93, ¶ 192, 236 Wis.2d 588, 614 N.W.2d 388 (Sykes J., concurring in part, dissenting in part).[3]

In analogous cases involving intra-governmental disputes at the state government level, the Wisconsin Supreme Court has repeatedly held that individual legislators have standing to bring actions challenging the governor's constitutional authority. *See, e.g., Panzer v. Doyle*, 2004 WI 52, ¶¶ 41-45, 271 Wis. 2d 295, 680 N.W.2d 666 (individual legislators had standing to bring declaratory judgment action against governor, claiming that governor's negotiation of Indian gaming compacts exceeded his authority and impinged on legislative functions), *abrogated on other grounds by Dairyland Greyhound Park, Inc. v. Doyle*, 2006 WI 107, ¶¶ 41-45, 295 Wis. 2d 1, 719 N.W.2d 408; *State ex rel. Wisconsin Senate v. Thompson*, 144 Wis. 2d 429, 433-36, 424 N.W.2d 385 (1988) (individual legislators had standing to bring declaratory judgment action claiming that governor exceeded his constitutional veto authority). *See also Risser v. Klauser*, 207 Wis. 2d 176, 558 N.W.2d 108 (1997) (declaratory action by legislators and a taxpayer seeking

[3]Notably, while the Wisconsin Supreme Court rarely has held that an issue is a "political question," it has held that issues about whether the legislature adhered to its own rules governing how it operates are non-justiciable political questions. *State ex rel. La Follette v. Stitt*, 114 Wis.2d 358, 365, 338 N.W.2d 684 (1983). Abele's efforts to interject into this proceeding issues regarding the propriety of the Board of Supervisors' resolution authorizing the action presents a political question that this court should decline to entertain, even if it were properly presented in a motion to dismiss the complaint.

declaration that governor's vetoes exceeded his constitutional authority; standing was not contested); *State ex rel. Sundby v. Adamany*, 71 Wis. 2d 118, 237 N.W.2d 910 (1976) (taxpayer had standing to bring declaratory judgment action challenging governor's vetoes).

E. THE MILWAUKEE COUNTY BOARD'S NON-PARTICIPATION IN THIS ACTION IS IRRELEVANT TO LIPSCOMB'S STANDING AND DOES NOT PRESENT GROUNDS FOR DISMISSAL.

Abele also argues that Lipscomb lacks standing because the Milwaukee County Board is not a party to this action. This contention has nothing to do with Lipscomb's standing to bring a declaratory judgment action, a question that turns solely on Lipscomb's personal stake and interest in the outcome of the proceeding, and not on whether some other entity might, in Abele's view, be a more appropriate litigant. To the extent that Abele's contentions about the Board's interests in the controversy could be properly framed as whether the Board is an indispensable party, this Court need not address it, because Abele has not raised that issue. *See Schopper v. Gehring*, 210 Wis.2d 208, 212, 565 N.W.2d 187 (Ct. App. 1997) (declining to address whether Brown County was necessary party because issue was not raised). Further, even if properly raised, a claim that the Board of Supervisors is a necessary party would not present grounds for dismissal.

Abele's citation to statutes granting the Board the authority to authorize legal action are inapposite. Wis. Stat. § 59.02(1) addresses the Board's authority to authorize an action on behalf of the county, a body corporate which may sue and be sued pursuant to Wis. Stat. § 59.01. This case involves an intra-county dispute regarding the

statutory allocation of powers and duties between the County Board and County Executive. Abele does not cite a single case or statute supporting the proposition that only the Board may bring such an action or that the Chairman of the Board of Supervisors lacks standing to do so. As noted above, the sole reported Wisconsin case involving a similar intra-county dispute was brought by the chairman of the county board against the county executive. *See Schuette*, 205 Wis. 2d 475. This Court should reject Abele's arguments that the Board of Supervisors is a necessary party or the sole party that could bring this declaratory judgment action.

Abele also relies on Wis. Stat. § 806.04(11), which states that "[w]hen declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration may prejudice the right of persons not parties to the proceeding." The Wisconsin Supreme Court has held that Section 806.04(11) "should not be construed to require that all interested parties must be joined in a declaratory judgment action seeking to adjudge the validity of a statute." *N. Side Bank v. Gentile*, 129 Wis. 2d 208, 215, 385 N.W.2d 133 (1986) (*citing Barry Laboratories, Inc. v. State Bd. of Pharm.*, 26 Wis. 2d 505, 512, 132 N.W.2d 833 (1965)). Likewise, the statute does not require all interested parties to be joined in the action when one party is "acting 'in a representative capacity in behalf of all persons having an interest" in the action. *Id.* at 215-16; *see also Town of Blooming Grove v. City of Madison*, 275 Wis. 328, 335, 81 N.W.2d 713 (1957) (private citizens are not necessary parties in action brought by public officers to protect public rights).

Lipscomb's interests, in his official capacity as Supervisor and Chairman of the Board of Supervisors, are completely aligned with the interests of the Board of Supervisors. He represents their interests in this litigation. "[W]hen the putative representative is a governmental body or officer charged by law with representing the interests of the absentee, a presumption of adequate representation arises whether the would-be intervenor is a citizen or subdivision of the governmental entity." *Helgeland v. Wisconsin Municipalities*, 2008 WI 9, ¶ 91, 307 Wis. 2d 1, 46, 745 N.W.2d 1, 23 (holding that municipalities were not necessary parties, where the defendant state agency represented their interests).

The Board of Supervisors is not a party that must be joined for just and complete adjudication in this case. Complete relief can be afforded without the Board being a party. *See* Wis. Stat. § 803.03 (joinder of parties). The Board does not risk liability or damages in this declaratory judgment action. Rather, the action seeks to clarify the Board's legal authority under the Wisconsin statutes. The Board's interests in the questions of statutory construction presented in the action are fully aligned with Lipscomb, who brings this action in his official capacity as a Supervisor and Chairman of the Board. Further, the Board has not moved to intervene and has not claimed any interest in the action that is distinct from Lipscomb's interests. Wis. Stat. § 803.03(1)(b).

Lipscomb's position is analogous to that of the plaintiffs in *Schuette*, *Klauser*, and *State ex rel. Wisconsin Senate v. Thompson*, all cases in which the plaintiffs pressed issues with public interests. The Court should follow suit and reject Abele's motion as a misreading of the doctrine of standing in Wisconsin. In any event, the failure to join an

indispensable party does not deprive a court of jurisdiction and the action may proceed in the party's absence. *Berger v. Town of New Denmark*, 2012 WI App 26 ¶ 15 n.8, 339 Wis. 2d 336, 345, 810 N.W.2d 833, 837 (noting that Brown County may have an interest in the case and was not joined as a party, but that action could nevertheless proceed).

II. THE COMPLAINT MAKES A SHORT AND PLAIN STATEMENT SHOWING THAT THE PLAINTIFF IS ENTITLED TO RELIEF AND A MORE DEFINITE STATEMENT OF THE CLAIM IS NOT WARRANTED.

In the alternative, Abele argues that Lipscomb should file a more definite statement of his claim before Abele is required to file a responsive pleading. He relies on Wis. Stat. § 802.06(5), which provides:

> (5) Motion for more definite statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

Wisconsin follows the "notice pleading" rule. Under § 802.02(1)(a), a complaint must contain "[a] short and plain statement of the claim, identifying the transaction or occurrence or series of transactions or occurrences out of which the claim arises and showing that the pleader is entitled to relief." The claims are to be liberally "construed [so] as to do substantial justice." Wis. Stat. § 802.02(6); *Doe v. Archdiocese of Milwaukee*, 2005 WI 123, ¶¶ 34-37, 284 Wis. 2d 307, 700 N.W.2d 180.

The complaint is neither vague nor ambiguous. It plainly states that justiciable controversies exist between Lipscomb and Abele concerning the respective authority of the County Executive and the Board under the Wisconsin Statutes to provide, fix, or

change the compensation of unclassified County employees and concerning the Board's authority to require the County Executive, as necessary, to attend meetings of the Board. Complaint, ¶¶ 36, 39. It precisely identifies the issues of statutory construction that Lipscomb seeks to have declared to resolve those controversies. *See* Complaint, ¶¶ 6, 37, 38, 40. Moreover, the complaint includes detailed allegations of facts providing the context of the legal dispute between the parties and demonstrating that a justiciable controversy exists.

A complaint is not a brief. It is not required to present a lengthy analysis of the legal issues underlying the claim. Rather, its purpose is to put the other party on notice of the nature of the dispute. A more definite statement of the claim is not warranted. This Court should deny Abele's motion for a more definite statement.

CONCLUSION

For the reasons stated above, the Plaintiff, Theodore Lipscomb, Sr., respectfully requests that the Court deny the Defendant's motion to dismiss the complaint.

Dated this 22nd day of December, 2015.

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