

ANTRELL THOMAS, et al.,

Plaintiffs,

v.

Case No. 22-CV-1027

ANTHONY S. EVERS, in his official
capacity as the Governor of Wisconsin, et al.,

Defendants.

**DEFENDANTS' REPLY BRIEF DISCUSSING
THE IMPACT OF THE 2023–25 BIENNIAL BUDGET ON THIS CASE**

Defendants have only a few short points in reply to Plaintiffs' latest brief.

First, Plaintiffs' claim is that they have a constitutional right to be appointed counsel within 14 days of their initial appearances. (Doc. 48 ¶¶ 119–33.) They therefore ask this Court to declare that any appointments made after 14 days are per se unlawful under both the United States and Wisconsin Constitutions. (Doc. 48:36.) Plaintiffs' latest brief, however, assumes that the Court has decided this issue, describing appointments made after 14 days as “ongoing constitutional violations,” for example. (Doc. 115:7.) As Defendants have argued, there is no constitutional right to appointed counsel within 14 days of an initial appearance. (Doc. 58:11–19; 98:7–13.) Thus, if Plaintiffs' case is justiciable—a big if—the Court should dismiss it for

Plaintiffs’ “[f]ailure to state a claim upon which relief can be granted.”
Wis. Stat. § 802.06(2)(a)6.

Second, Plaintiffs’ response focuses on their belief that the 2023–25 biennial budget does not provide enough money for the Office of the State Public Defender. (*See* Doc. 115:2, 3, 9, 11.) This policy-driven view highlights Defendants’ point: Plaintiffs’ grievance revolves around a debate over funding that is best left to the political process. (*See* Doc. 113:2, 11.) “Legislative determination[s] of public policy questions [do] not raise justiciable issues of fact or law.” *Voters with Facts v. City of Eau Claire*, 2018 WI 63, ¶ 39, 382 Wis. 2d 1, 913 N.W.2d 131 (alterations in original) (citations omitted). Plaintiffs are effectively asking this Court to wade into the policy debate and pick a side.

Third, Plaintiffs argue that the impact of the new budget’s increased funding cannot be known now, yet simultaneously and emphatically argue that the increase in funding will not be enough to solve the problem they perceive. (*Compare* Doc. 115:4 (“the full impact of the 2023–25 biennial budget will likely not be known for years”), *with* Doc. 115:1 (“the budget is not—and cannot be—a magic bullet”), Doc. 115:2 (the funding increase “is simply not enough”), and Doc. 115:3 (“the added funding will not be enough”).) This inconsistency undercuts their position and underscores that their concern is best left to public policy, not a court.

Lastly, Plaintiffs do not respond to the argument that their declaratory-judgment action is not justiciable under the four-factor test for such claims. (Doc. 115:1–11; 113:8–11.) “Unrefuted arguments are deemed admitted.” *State v. Chu*, 2002 WI App 98, ¶ 41, 253 Wis. 2d 666, 643 N.W.2d 878.

CONCLUSION

This Court should grant Defendants’ motion to dismiss the amended complaint and deny class certification.

Dated this 22nd day of August 2023.

Respectfully submitted,

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Electronically signed by:

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CERTIFICATE OF SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed Defendants' Reply Brief Discussing the Impact of the 2023–25 Biennial Budget on this Case with the clerk of court using the Wisconsin Circuit Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 22nd day of August 2023.

Electronically signed by:

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