

BY THE COURT:

DATE SIGNED: October 23, 2020

Electronically signed by Mario White
Circuit Court Judge

THIS IS A FINAL ORDER FOR THE PURPOSE OF APPEAL.

STATE OF WISCONSIN

DANE COUNTY Br. 7

CIRCUIT COURT

SARI RATNER JUDGE, MIRIAM RATNER
MOLLY LUBIN, JUDY REED, and ELANA
MATTHEWS,

Plaintiffs,

Case: 20CV2029

BOARD OF CANVASSERS FOR
THE CITY OF MADISON

Defendant

DECISION AND ORDER DISMISSING DECLARATORY JUDGMENT ACTION

This matter comes before the Court on Plaintiffs' Emergency Motion for Declaratory Judgment filed September 30, 2020.

BACKGROUND

The Plaintiffs are five City of Madison residents who received absentee ballots in the mail. They were concerned with voting in person for a number of reasons, including the current COVID-19 global pandemic. The City of Madison, in an effort to assist voters concerned with in-person voting, established "Democracy in the Park." At these events, held September 26, 2020 and October 3, 2020, voters were permitted to return completed absentee ballots in person at various city parks. On the eve of the first event legal counsel

for Wisconsin Assembly Speaker Robin Vos and Wisconsin Senate Majority Leader Scott Fitzgerald submitted a letter (“Letter”) to the City of Madison Clerk arguing that the “Democracy in the Park” events were “unlawful” and that ballots submitted at those events might be invalidated. The City responded with a letter from City Attorney Michael Haas that stated the event was lawful.

Fearing their votes might be invalidated, Plaintiffs filed suit against the Board of Canvassers seeking a declaratory judgment from this Court affirming that absentee ballots submitted at “Democracy in the Park” events are not *per se* invalid.

At the October 2, 2020 hearing, the Court asked the parties to brief the issue of whether this matter was justiciable. Plaintiffs submitted a brief addressing the four justiciability factors. Defendants declined to submit a brief. For the reasons stated below, the Court finds the parties are not adverse and therefore no justiciable controversy currently exists. The Court does not reach the merits of the Plaintiffs’ claim.

LEGAL STANDARD

The Uniform Declaratory Judgments Act provides the court with “power to declare rights, status, and other legal relations.” Wis. Stat. 806.04(1). “The power of a court to declare rights is broad in scope.” *Loy v. Bunderson*, 107 Wis.2d 400, 407 (1982). The exercise of that power is discretionary. “The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.” Wis. Stat. 806.04(6).

Before declaratory relief may be granted a court must find that a justiciable controversy exists. A justiciable controversy exists if *all* the following exist:

1. “A controversy in which a claim of right is asserted against one who has an interest in contesting it.
2. “The controversy must be between persons whose interests are adverse.
3. “The party seeking declaratory relief must have a legal interest in the controversy—that is to say, a legally protectable interest.
4. “The issue involved in the controversy must be ripe for judicial determination.”

Loy at 409.

ANALYSIS

This Court must first determine whether a justiciable controversy exists. If none exists, the matter must be dismissed. If a justiciable controversy exists only then will the court reach the merits.

Plaintiffs contend a justiciable controversy exists. In its brief, Plaintiffs argue sufficient adversity exists between the parties. The Court disagrees. The Defendants have not taken *any* action in opposition to the Plaintiffs. No brief opposing the Plaintiffs’ Motion was filed. No argument contrary to the Plaintiffs’ argument was provided. In an October 9, 2020 letter to the Court, Defendants’ attorney states his belief that the absentee ballots returned at the “Democracy in the Park” events will be processed as valid. Dkt. 23.

Plaintiffs also contend the uncertainty created by the Letter creates a justiciable claim. The Board of Canvassers did not author the Letter, however.

Both parties in this action are aligned at this stage and therefore are not adverse.

CONCLUSION

Based on the filings and the record, the Court finds no justiciable controversy exists in the present case because the parties are not currently adverse in interest. The Court makes no findings regarding the other factors concerning justiciability, nor does the Court reach the merits of the Plaintiffs' claim.

THEFORE, the Declaratory Judgment action is HEREBY DISMISSED.

IT IS SO ORDERED.

Dated October 23, 2020