

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN  
(MILWAUKEE DIVISION)**

NANCY A. STENCIL, DANIEL C. ) RUSSLER, LISA C. MUELLER, CHERYL L. ) MARANTO, GERARD D. LISI, JAMES B. ) KURZ, MARGARET L. DEMUTH, PAUL ) DEMAIN, JAMES R. BOTSFORD AND ) RICHARD BECHEN, )  Plaintiffs, )  v. )  RONALD H. JOHNSON, THOMAS P. ) TIFFANY, AND SCOTT L. FITZGERALD, )  Defendants. )	Case No. 2:22-cv-00305  Hon. Lynn Adelman
--	---

---

**DEFENDANTS THOMAS P. TIFFANY AND SCOTT L. FITZGERALD’S RESPONSE  
IN PARTIAL OPPOSITION TO PLAINTIFFS’ CIVIL L.R. 7(h) MOTION FOR ORAL  
ARGUMENT ON MOTIONS TO DISMISS**

Pursuant to Civ. L. R. 7(h), Defendants Thomas P. Tiffany and Scott L. Fitzgerald hereby respond in partial opposition to Plaintiffs’ Motion for Oral Argument on the Motions to Dismiss (ECF No. 49):

Plaintiffs filed this suit with the stated goal of obtaining a declaration from this Court finding that Defendants engaged in an “insurrection” under the Disqualification Clause, which Plaintiffs would then use in an attempt to force the State of Wisconsin (through its election commission) to bar Defendants from the ballot. (Opp.’n at 14, ECF No. 23.) Two motions to dismiss under Fed. R. Civ. P. 12(b)(1) and (b)(6)—one of which was filed jointly by Tiffany and Fitzgerald—are pending before the Court. Among the issues raised in Tiffany and Fitzgerald’s motion to dismiss are the dispositive propositions that this Court lacks the authority to adjudicate whether Defendants violated the Disqualification Clause because Congress has not granted it the jurisdiction to do so, the State of Wisconsin lacks the power to adjudicate such a challenge or enforce such a judgment, and the Plaintiffs lack a cause of action to request such an adjudication in the first place. (ECF Nos. 19 & 41).

While Tiffany and Fitzgerald do not oppose Plaintiffs’ motion to the extent it requests oral argument on the motions to dismiss, Tiffany and Fitzgerald do oppose Plaintiffs’ motion to the extent it requests that any such hearing occur on an expedited basis. While Plaintiffs appear to base their request to expedite this proceeding on upcoming elections and election-related deadlines, Plaintiffs are playing a self-dealt hand. The few allegations in Plaintiffs’ eighty-page Complaint that even remotely pertain to Defendants occurred more than a year before Plaintiffs filed this suit. And although Plaintiffs may claim they waited to commence this suit until it was clear the Defendants were running for reelection (setting aside that running for reelection is the default for Members of Congress, and it was no secret that Tiffany and Fitzgerald would run again for their

current office), Plaintiffs then compounded their self-made delay by waiting nearly 3 months after filing their Complaint and more than 6 weeks after Tiffany and Fitzgerald filed their motion to dismiss to seek expedited oral argument and decision on the motions to dismiss. Indeed, while Plaintiffs filed their Complaint on March 10, 2022, they did not file the instant motion until May 24, 2022. As a result, Tiffany and Fitzgerald respectfully request that the Court take Plaintiffs' self-made delay into consideration when deciding the aspect of Plaintiffs' motion that seeks expedited oral argument and decision on the motions to dismiss.

WHEREFORE Defendants Thomas P. Tiffany and Scott L. Fitzgerald respectfully request that this Court deny that aspect of Plaintiffs' Motion for Oral Argument on the Motions to Dismiss seeking to expedite oral argument.

Dated: May 31, 2022

Respectfully submitted,

/s/ Robert L. Avers

Charles R. Spies (MI Bar # P83260)  
Dickinson Wright PLLC  
1825 Eye Street N.W., Suite 900  
Washington, D.C. 20006  
(202) 466-5964  
(844) 670-6009 (Fax)  
cspies@dickinsonwright.com

Robert L. Avers (MI Bar #P75396)  
Dickinson Wright PLLC  
350 S. Main Street, Suite 300  
Ann Arbor, Michigan 48104  
(734) 623-1672  
(844) 670-6009 (Fax)  
ravers@dickinsonwright.com

Thomas G. Kreul (WI Bar No. 1003947)  
Schober Schober & Mitchell, S.C.  
2835 South Moorland Road  
New Berlin, WI 53151-3743  
(262) 785-1820  
tgkreul@schoberlaw.com

*Attorneys for Defendants Scott L. Fitzgerald and  
Thomas P. Tiffany*

**CERTIFICATE OF SERVICE**

I hereby certify that on May 31, 2022, I caused a true and correct copy of the foregoing document to be served upon all counsel of record registered with the Court's ECF system, by electronic service via the Court's ECF transmission facilities.

/s/ Robert L. Avers