No. 2019AP559

STATE OF WISCONSIN
SUPREME COURT

LEAGUE OF WOMEN VOTERS OF WISCONSIN, DISABILITY RIGHTS WISCONSIN, INC., BLACK LEADERS ORGANIZING FOR COMMUNITIES, GUILLERMO ACEVES, MICHAEL J. CAIN, JOHN S. GREENE, and MICHAEL DOYLE, IN HIS OFFICIAL CAPACITY AS CLERK OF GREEN COUNTY,
*Plaintiffs-Respondents*,

v.

TONY EVERS, IN HIS OFFICIAL CAPACITY AS THE GOVERNOR OF THE STATE OF WISCONSIN,
*Defendants-Respondent*, and

WISCONSIN LEGISLATURE,
*Intervening Defendant-Appellant*.

On Appeal from the Circuit Court for Dane County
Case No. 19-CV-84, The Honorable Richard G. Niess

# NON-PARTY BRIEF OF LEGAL SCHOLARS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

### Cases



### Statutes



### Other Authorities

## INTEREST OF *AMICI*

*Amici* are fourteen noted scholars of state constitutional law and governance, including authors of leading textbooks and treatises. The Appendix lists biographical information. *Amici* have a professional interest in promoting state constitutional analysis that rigorously applies text, history, and purpose, taking due account of practice and precedent across states.

## INTRODUCTION

This litigation emerged from a political controversy, but its central question is purely legal: Was the Legislature's December 2018 Extraordinary Session constitutionally convened? It was not. Neutral principles drive this conclusion—principles that transcend the politics of the day and that equally bind lawmakers on both sides of the aisle.

To safeguard liberty and promote responsible lawmaking, the Wisconsin Constitution imposes structural constraints on the Legislature, including on its convening power. Specifically, the Legislature must meet at regular intervals provided by law. The Constitution has never licensed the Legislature to convene at whim, precisely because, from the beginning, Wisconsinites knew the dangers of irregular lawmaking.

Looking to other states underscores the Extraordinary Session's unconstitutionality. Coast to coast, the prevailing view is that legislatures cannot self-convene extraordinary sessions without express constitutional authorization. In recent decades, many states have amended their constitutions to confer that convening power, at least in limited circumstances. Wisconsin has not, yet the Legislature has claimed the power anyway. No other state handles extraordinary sessions this way, and no court has ever endorsed a convening practice akin to the one here. Ultimately, the most extraordinary thing about the Extraordinary Session is that it happened at all.

## ARGUMENT

### I. THE LEGISLATURE LACKED AUTHORITY TO CALL THE EXTRAORDINARY SESSION.

#### A. The relevant constitutional and statutory provisions preclude the Legislature from self-convening as it did.

The Wisconsin Constitution channels and constrains the "legislative power" in numerous respects. Relevant here, Article IV, §11 specifies when the Legislature may meet. Its text, the parties agree, makes legislative meetings *ultra vires* unless statutorily authorized or gubernatorially called. Yet, in December 2018, the sole sources of authority that the Legislature invoked in its official Journals were internal legislative rules. *See* Assembly J. Dec. 2018 Extraordinary Session, at 968 (citing Joint Rule 81(2); Assembly and Senate Rule 93).

The Legislature now seeks to ground the Extraordinary Session in Wis. Stat. §13.02, but that statute authorizes only ordinary convenings, not extraordinary ones, as its title ("Regular sessions") makes clear. Specifically, §13.02 requires the Legislature to "meet annually" in "regular session," and identifies when those sessions presumptively begin. *Id.* §13.02(1)-(2). It then instructs the Legislature, "[e]arly in each biennial session period," to develop a "work schedule," memorialized in a joint resolution, that further specifies the timing of regular session meetings. *Id.* §13.02(3). Nothing in this section remotely authorizes the Legislature, at the whim of its organizational committees, to initiate irregular, unscheduled, special-purpose convenings. Such convenings flout the orderly and predictable legislative process that §13.02 envisions.

This statutory deficiency suffices to resolve this case. But a more fundamental problem also lurks. Properly understood, the Constitution would have precluded the Extraordinary Session even if a statute

purportedly allowed it. As leading treatises explain, legislatures may not self-convene in extraordinary session unless "specifically authorized by constitutional provision." 1 Sutherland Statutory Construction §5:1 (7th ed.); *see also* 81A C.J.S. States §112; 72 Am.Jur.2d States §43.

Nothing in the Wisconsin Constitution expressly permits legislatively initiated extraordinary convenings. Instead, the text affirmatively constrains the Legislature in ways inconsistent with such power. Article IV, §11 requires the Legislature to "meet … *at such time* as shall be provided by law, *unless* convened by the governor in special session." (emphasis added). This is a call for temporal regularity, obliging the Legislature to commit by law to meet at periodic intervals.

Article V, §4 further reflects a deliberate constitutional choice to vest the governor—and *not* legislators—with the power to convene the Legislature "on extraordinary occasions." By attempting to call itself into extraordinary session, the Legislature usurped this gubernatorial prerogative. *See* 72 Am.Jur.2d States §43 ("Under a constitutional provision authorizing the governor to call an extraordinary session, that power rests solely with the governor; it may not be exercised by the legislature[.]"); *cf. State v. Hastings*, 10 Wis. 525, 531 (1860) ("[W]hen the people have declared…that certain powers shall be possessed and duties performed by a particular officer or department, their exercise and discharge by any other officer or department, are forbidden by a necessary and unavoidable implication.").

### B. History confirms that the Legislature exceeded its authority.

The Constitution's history reinforces that the Legislature may not call an extraordinary session even with statutory authorization, much less without it. Like the present version of §11, the 1848 version permitted the Legislature to meet only when "provided by law" or

"convened by the governor." Unlike the present Constitution, the 1848 version restricted legally prescribed meetings to "once in each year, and not oftener."

The Constitution's drafters had good reason not to give lawmakers unbounded convening authority. Partly, it was logistical. Nineteenth century legislators were true part-timers who often resided far from Madison. They needed to know, clearly and predictably, when they would meet. Citizens, too, needed meaningful notice so they could attend, petition, lobby, and monitor legislative activity. Beyond this, Wisconsin's constitutional deliberations occurred amidst highly publicized incidents of legislative mismanagement, incompetence, and corruption around the country. *See* G. Alan Tarr, *Understanding State Constitutions* 118-26 (1998). Those events produced widespread distrust of state legislatures, which intermingled with a desire not to repeat colonial-era abuses involving irregular convenings. *See* Robert Luce, *Legislative Assemblies* 123 (1924) (describing "irregularity of sessions []as a bitter grievance with the colonists"). To minimize legislative overreach and safeguard liberty, state constitutions of this era incorporated features to constrain and regularize lawmaking, including limits on meeting times and methods.

Since 1848, Article IV, §11, has been amended twice, but neither revision transferred extraordinary convening authority to the Legislature. An 1881 amendment imposed two new constraints. First, it limited legislative meetings to "once in two years, and no oftener," forcing the Legislature to abandon its regular annual session and meet biennially instead. Many states made similar changes during this period due to continued concerns about "widespread corruption of state legislatures and the expense of annual sessions." Belle Zeller, *American State Legislatures* 89 (1954). Second, the 1881 amendment solidified gubernatorial control over extraordinary convenings by clarifying that, when the Governor calls a special session, the Legislature cannot conduct business beyond that

"necessary to accomplish the [convening's] special purposes." This language reinforced the prevailing understanding that the "sole determination" whether to convene on extraordinary occasions belonged to the governor "alone." 17 Att'y Gen. Op. 171, 173 (1928); 15 Att'y Gen. Op. 163, 165 (1926).

The only other amendment came in 1968. It struck the words "once in two years, and no oftener," creating modern-day Section 11. The amendment's purpose is evident from its history. As state government grew in size and complexity, many legislators came to see biennial sessions as inadequate. In the preceding decade, lawmakers resorted to the constitutionally dubious practice of reconvening in the second year of the biennium under the pretense that they were merely continuing their prior year's meeting (after recessing for many months).

The 1968 amendment ended this subterfuge by allowing the Legislature to meet in regular session more than "once in two years." The official ballot explanation described the "[e]ffect of ratification" as follows:

> At present, the Wisconsin Constitution states that the legislature shall meet at such time as shall be provided by law once in two years unless convened by the governor in special session for special purposes. If a majority of the electors voting on this question approve the amendment, the legislature would be permitted to meet *in regular session* more often than once in two years.

Wis. State J., Mar. 25, 1968, at 6 (emphasis added). The ballot question read: "Shall Article IV, Section 11 of the Constitution be amended to permit the legislature to meet *in regular session* oftener than once in two years?" *Id.* (emphasis added).

These prominent "regular session" references are instructive, as is the recognition that the power to convene specially remains with the governor. The people voted merely to authorize more frequent regular session

meetings. Indeed, public discussion repeatedly characterized it as a measure to allow the Legislature to meet every year rather than biennially.[1]

Strikingly absent from these materials is any reference to legislatively convened extraordinary sessions. That silence is unsurprising. By voting for more frequent regular session meetings, the electorate endorsed a system that ought to have made ad hoc extraordinary convenings less necessary. According to the Legislative Reference Bureau, the amendment aimed to make lawmaking more orderly and methodical, and to minimize "ill considered legislation," by permitting lawmakers "to establish, by law," a "pre-planned" and "precise" meeting schedule. LRB, *Wisconsin Briefs: Constitutional Amendments to be Submitted to the Wisconsin Electorate*, at 8-9 (Mar. 1968). Voters surely did not, as part of this change, *sub silentio* authorize the Legislature—much less two committees—to call an unscheduled, irregular meeting by internal rule.

### C. The Legislature's arguments are unsound.

The Legislature describes the Extraordinary Session as merely a "non-prescheduled floor period" within a lawfully convened two-year-long meeting that ran continuously from January 2017 to January 2019. This account does not withstand scrutiny.

First, the Legislature contorts the plain meaning of "meet." The whole point of the 1968 constitutional amendment was to allow the Legislature to meet "oftener" than "once in two years," avoiding the fiction that a meeting continues even during lengthy periods when legislators are not gathered together to make law. Accordingly, §13.02 expressly contemplates multiple meetings during the biennium. *See* §13.02(3) (requiring "at least one meeting" each January); §13.02(1) (organizational meeting). In SJR1, the Legislature itself

[1] *E.g.*, Robert Meloon, *State Voters OK Annual Sessions of Legislature*, Capital Times, at 4 (Apr. 3, 1968) ("In approving annual sessions, the voters reversed the action taken in a statewide referendum in 1882.").

scheduled several discrete floor periods when it would meet in regular session. The Extraordinary Session was an additional convening, outside the regular session calendar, meant to facilitate lawmaking when it would not otherwise occur.[2]

Second, the Legislature misapprehends §13.02(3). Far from giving lawmakers *carte blanche* to convene whenever and however they wish, §13.02(3) serves to structure the Legislature's regular session work. It requires the Legislature, to set a "work schedule" by joint resolution "[e]arly in each biennial session period." A joint resolution cannot, consistent with that instruction, license the Legislature's organizational committees to decide later to call additional, unscheduled meetings.

Third, even if the regular session meeting were somehow continuous, extraordinary sessions are separate convenings that stand apart both conceptually and practically, thus requiring separate authorization beyond the Legislature's internal rules. Until now, the Legislature has always regarded extraordinary sessions as akin to gubernatorially convened special sessions. Special sessions may occur alongside or atop regular session meetings, but no one doubts their distinctiveness. *See State ex rel. Groppi v. Leslie*, 44 Wis.2d 282, 300, 171 N.W.2d 192 (1968) (Governor may call special session even "while the legislature is in general session"). So, too, with extraordinary sessions. As the LRB put it:

> As the names suggest, 'special' and 'extraordinary' sessions … differ from regular sessions in their purposes and procedures. They are similar to each other in that they are called solely to consider one or more specified topics or pieces of legislation. Their chief difference is that a special session is called by the governor and an extraordinary session is initiated by the Legislature.

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[2] Contrary to the Legislature's suggestion, legislatures may exist as continuing bodies during a biennium without meeting continuously throughout that period. *Cf.* Council of State Governments, *Legislative Modernization* 1 (1968) (encouraging states to amend their constitutions to make their legislatures "continuing bod[ies]" that "meet annually" at prescribed times, *and* to authorize the legislature "to call itself into special session" if two-thirds of members so petition).

*Special and Extraordinary Sessions of the Wisconsin Legislature*, LRB-IB-14-2 (Aug. 2014). Indeed, the Legislature's own rules repeatedly address special and extraordinary sessions together and distinguish them from regular sessions.[3] So does SJR1 itself. It discusses the "final adjournment" of special/extraordinary sessions, underscoring that they are indeed separate meetings, and also lumps special and extraordinary sessions together for other purposes. SJR1, §1(5).

In short, the Legislature's position boils down to an assertion that the Extraordinary Session was neither extraordinary nor a session. It was both. And it was unlawful.

Separately, the Legislature emphasizes that numerous prior extraordinary sessions occurred without challenge. But legal defects, especially ones involving unglamorous matters of state constitutional structure, often escape notice until a catalyzing event. Even at the federal level, structural defects are sometimes long overlooked. Last year, the U.S. Supreme Court held unconstitutional a half-century-old system for appointing administrative law judges. *Lucia v. SEC*, 138 S.Ct. 2044 (2018). As Justice Scalia once observed, structural constraints "tend to be undervalued or even forgotten," despite being "central to liberty." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 707 (2012) (Scalia, J., dissenting). It is the judiciary's responsibility, he maintained, to take structural protections seriously. That is what the Court is called upon to do here.

## II. LOOKING TO OTHER STATES UNDERSCORES THE EXTRAORDINARY SESSION'S ILLEGALITY.

In matters of first impression, Wisconsin courts routinely consider "the practices and interpretations of other states." *State v. Cole*, 2003 WI 112, ¶39, 264 Wis.2d

[3] *E.g.*, Joint Rules 74(2), 81(2)(c); Senate Rule 93; Assembly Rules 93, 98(1).

520, 665 N.W.2d 328. The Wisconsin Legislature's approach to extraordinary sessions makes it a national outlier. No other state legislature exercises analogous authority to self-convene by internal rule, and no court has endorsed a comparable practice.

Historically, most states gave the governor sole authority to convene the legislature outside the normal course. As of 1954, only a few states, Wisconsin not among them, allowed the legislature to self-convene special or extraordinary sessions. Zeller, *supra*, at 91. Today, more than 30 states do. This shift occurred as states amended their constitutions to authorize the practice expressly and to specify the convening process.[4] Lawmakers pursued constitutional reform because they understood that sub-constitutional changes to rules or even statutes would not suffice. *E.g.*, *Advisory Op. to the Governor*, 95 So.2d 603, 605 (Fla. 1957) ("A legislat[ive] body has no inherent power to convene itself in special or extraordinary session for any purpose. It enjoys such power only when so endowed by the organic law.").

Consider the contrasting experiences of Wisconsin and next-door neighbors Iowa and Illinois. In 1968, the year Wisconsin removed its biennial meeting restriction, Iowa made a nearly identical change. Iowa Const. art. III, §2. As Iowans understood, this revision did not create any new extraordinary convening authority. There remained "only two kinds of sessions known to the constitution, regular sessions and special or extra sessions," with the latter "convened by proclamation of the governor," "now as formerly." Iowa Att'y Gen. Op. 69-3-16 (1969). Iowa then adopted a further amendment in 1974 authorizing legislatively convened special sessions, but only when "two-thirds of the members of each house" consent. The Wisconsin Constitution contains no such provision. Yet the Legislature asserts

[4] *E.g.*, Colo. Const. art. V, §7 (two-thirds of legislature may call); N.J. Const. art. IV, §1(4) (majority); Ohio Const. art. II, §8 (presiding officers). Last year, Utah became the latest state to so amend its constitution. Utah Const. art. VI, §2(3). Utah lawmakers recognized that, without such an amendment, they lacked extraordinary convening authority.

an even more expansive power to call extraordinary sessions through its organizational committees. That simply cannot be.

The Illinois Constitution, meanwhile, provides that the Legislature "shall convene each year" in January and "shall be a continuous body during the term" of House members. Ill. Const. art. IV, §5. The drafters, however, did not regard this language as authorizing extraordinary legislative convenings. They separately added that "special sessions" may "be convened by joint proclamation of the presiding officers of both houses, issued as provided by law." *Id.* This occurred in 1970—essentially contemporaneous with Wisconsin amending Article IV, §11 without such a change. The Illinois Legislature, in turn, adopted a statute—not a rule—to implement this special session authorization. 25 Ill. Comp. Stat. §15/1-2.

In just three states—Connecticut, Massachusetts, and Nebraska—does the legislature's extraordinary convening authority rest on anything other than a highly specific constitutional foundation. And analyzing these states confirms that the Wisconsin Legislature lacks the convening power it purports to possess.

First, each state authorizes legislative meetings in more expansive terms than Wisconsin does. *See* Conn. Const. art. III, §2 (legislature may convene, beyond its usual meetings, "at such other times as [it] shall judge necessary"); Mass. Const., part II, ch.1, §1, art.1 (same); Neb. Const. art. III, §6 (making legislative sessions "annual except…as may be otherwise provided by law").

Second, unlike Wisconsin, Connecticut and Nebraska both have statutes squarely authorizing legislatively called special sessions. Conn. Stat. §2-6; Neb. Rev. Stat. §50-125.[5] Only Massachusetts delineates

[5] Nebraska's statute has never been judicially tested and may not pass muster. While Nebraska's constitutional language is broader than Wisconsin's, Nebraska precedent indicates that extraordinary convening power belongs "entirely" to the governor. *People v. Parker*, 3 Neb. 409 (1872).

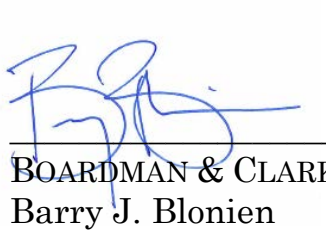
the authority in a legislative rule. *See* Joint Rule 26A. But Massachusetts' Constitution, unlike Wisconsin's, does not limit meetings to times "provided by law."

Third, a mere committee vote—the convening method in December 2018—does not suffice in any of these states. Connecticut and Massachusetts precedents hold that lawmakers cannot call themselves into special session without majority approval. *Op. of the Justices*, 3 N.E.2d 218 (Mass. 1936); Conn. Att'y Gen. Op. 86-050 (1986). This limitation derives from majority quorum requirements in those states—a requirement Wisconsin shares. Wis. Const. art IV, §7. Nebraska's statute, meanwhile, requires two-thirds support. Neb. Rev. Stat. §50-125. Thus, even in the few states with practices that might initially seem to resemble Wisconsin's, the Extraordinary Session would have been unlawful.

## CONCLUSION

For these reasons, this Court should affirm the circuit court's conclusion that the December 2018 Extraordinary Session was unlawful, and tailor its temporary injunction analysis accordingly.

DATE: May 3, 2019



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## APPENDIX – NAMES & BIOGRAPHIES OF *AMICI CURIAE* *

Richard Briffault, Joseph P. Chamberlain Professor of Legislation, Columbia Law School. Professor Briffault's research, writing, and teaching focus on state and local government law, legislation, the law of the political process, government ethics, and property. He is co-author of the textbook, *State and Local Government Law* (8th ed. 2016); and author of *Balancing Acts: The Reality Behind State Balanced Budget Requirements* (1996). He has also written more than 75 law review articles. He has served as a member of, or consultant to, several city and state commissions in New York dealing with state and local governance, including the Temporary New York Commission on Constitutional Revision (1993–95).

Nestor M. Davidson, Albert A. Walsh Chair in Real Estate, Land Use, and Property Law, Fordham Law School. Professor Davidson's research and teaching focus on state and local government law, property law, and affordable housing law and policy, and his articles routinely appear in the nation's top law journals. Professor Davidson previously practiced with the firm of Latham and Watkins and served as Deputy General Counsel in the U.S. Department of Housing and Urban Development.

Lawrence Friedman, Professor of Law, New England Law | Boston. Professor Friedman teaches courses in constitutional law and state constitutional law. He is the coauthor of *State Constitutional Law: Cases and Materials* (5th ed. 2015), the series editor of the Oxford Commentaries on the State Constitutions of the United States, and the author of volumes in that series on the New Hampshire and Massachusetts Constitutions.

James A. Gardner, Bridget and Thomas Black SUNY Distinguished Professor University at Buffalo School of Law. Professor Gardner is nationally recognized as an

* Institutional affiliations are listed for identification purposes only.

expert in American state constitutional law. He is the author of *Interpreting State Constitutions* (2005), co-editor of *New Frontiers in State Constitutional Law: Dual Enforcement of Norms* (2011), and the author of more than thirty articles on the subject of state constitutional law and federalism. He is currently the Director of the Edwin F. Jaeckle Center for Law, Democracy, and Governance, and from 2014 to 2017 served as Interim Dean of the University at Buffalo School of Law.

Helen Hershkoff, Herbert M. and Svetlana Wachtell Professor of Constitutional Law and Civil Liberties, New York University Law School. Professor Hershkoff has published widely on issues involving state constitutions in law reviews including *Harvard*, *Stanford*, *NYU*, *Rutgers*, and *Fordham*.

Justin R. Long, Associate Professor of Law, Wayne State University Law School. Professor Long has authored multiple invited publications in the *Rutgers Law Journal*'s annual state constitutionalism issue, the leading law review specially devoted to this subject. His articles, essays, and book reviews address why state constitutional courts follow federal jurisprudence (or do not), state constitutional education rights, the relationship between state and federal courts, and state constitutional restraints on legislatures.

Donald Marritz has taught as an adjunct professor at Gettysburg College and Penn State-Dickinson School of Law and has been a civil legal aid attorney in Pennsylvania for more than 40 years. His practice has included several state constitution cases, including *Washington v. DPW*, 188 A. 3d 1135 (Pa. 2018), in which the state supreme court struck down a statute enacted in violation of the legislative procedure provisions of the Pennsylvania Constitution. He is the author of a law review article and a book chapter about state constitutional provisions prohibiting "special laws" and guaranteeing "open courts."

Kirsten Nussbaumer, Assistant Professor, Department of Political Science and Law School; Associate Director, Center for State Constitutional Studies, Rutgers University. Professor Nussbaumer's scholarship focuses on U.S. and comparative election law, constitutional history and design, federalism, and democratic equality, including an article published in the federalism journal *Publius*, and a book manuscript, *Our Eighteenth Century Election Law*. Before joining Rutgers, Professor Nussbaumer provided legislative drafting for federal and state elected officials and nonprofit organizations.

Michael Pollack, Assistant Professor of Law, Benjamin N. Cardozo School of Law. Professor Pollack's research and teaching center on state and local government law, institutional decisionmaking at the federal and state levels, administrative law, and property law. His publications have appeared in law reviews including the *University of Chicago Law Review*, the *Alabama Law Review*, and the *NYU Law Review*.

Kate Shaw, Professor of Law and Co-Director, Floersheimer Center for Constitutional Democracy, Benjamin N. Cardozo School of Law. Before joining Cardozo, Professor Shaw served in the White House Counsel's Office as a Special Assistant to the President and Associate Counsel to the President. Professor Shaw's primary research interests are in constitutional law, administrative law, and legislation, with a focus on executive power, in both states and the federal system. Her work has appeared in the *Northwestern University Law Review*, the *Columbia Law Review*, the *Cornell Law Review*, the *Georgetown Law Journal*, and the *Texas Law Review*.

G. Alan Tarr, Board of Governors Professor Emeritus, Department of Political Science; former Director, Center for State Constitutional Studies, Rutgers University. Professor Tarr is the author or editor of several books, including *Without Fear or Favor: Judicial Independence*

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Justin Weinstein-Tull, Associate Professor of Law, Sandra Day O'Connor College of Law, Arizona State University. Professor Weinstein-Tull studies federalism and politics, especially as they play out within state governments. His latest article, "State Bureaucratic Undermining" (*University of Chicago Law Review* 2018), investigated the ways in which state government, including the legislature, can both frustrate and further federal priorities.

Robert F. Williams, Distinguished Professor of Law, Rutgers Law School; Director, Center for State Constitutional Studies, Rutgers University. Professor Williams has authored numerous articles and books, participated in a wide range of litigation, and lectured to state judges and lawyers on subjects involving state constitutional law. He is the author of the *Law of American State Constitutions* (2009) and coauthor of *State Constitutional Law: Cases and Materials* (5th ed. 2015).

Robert Yablon, Assistant Professor of Law, University of Wisconsin Law School. Professor Yablon's research interests include political and election law, constitutional law, federal courts, and statutory interpretation. His most recent publications have appeared in the *Northwestern University Law Review*, the *Minnesota Law Review*, and the *Iowa Law Review*.

## CERTIFICATE OF SERVICE

I hereby certify that on this date I caused 22 copies of this Non-Party Brief of Legal Scholars as *Amici Curiae* in Support of Respondents to be filed with the Court via messenger. All counsel of record will receive service through the electronic filing system when the electronic version is accepted for filing. I further certify that on this date I caused three copies of this brief to be served on each party via U.S. Mail to:

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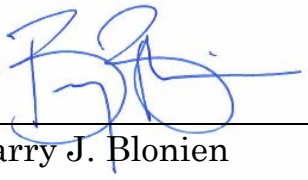
DATED: May 3, 2019



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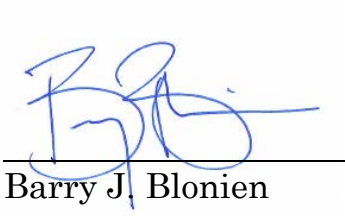
## CERTIFICATION AS TO FORM AND LENGTH

I certify that this Non-Party Brief of Legal Scholars as *Amici Curiae* in Support of Respondents conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (d) for a brief produced using Century, a proportional serif font; specifically: minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points, and maximum of 60 characters per full line of body text. The length of this brief is 2,997 words.

DATED: May 3, 2019



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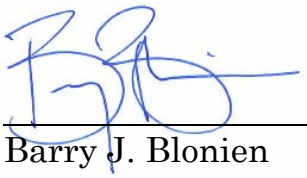
## CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § 809.19(12)

I hereby certify that when an electronic copy of this Non-Party Brief of Legal Scholars as *Amici Curiae* in Support of Respondents is submitted to this Court, it will comply with the requirements of § 809.19(12) and will be identical in content to the text of the paper copy of the brief. A copy of this certificate is included with the paper copies of this brief that are submitted for filing with the Court and served on all opposing parties.

DATED: May 3, 2019



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