



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

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SUPREME COURT**

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December 1, 2023

Samuel A. Christensen
Clerk of the Supreme Court and Court of Appeals
110 East Main Street, Suite 215
Post Office Box 1688
Madison, WI 53701-1688

Re: *Evers, et al. v. Marklein, et al.*,
Case No. 2023AP2020-OA

Dear Mr. Christensen:

I write regarding two related items pending before the Court in this matter: (1) the Wisconsin State Legislature's Motion to Intervene as Respondent; and (2) Respondents' request that the Court grant the Legislature's motion to intervene and dismiss the individual legislative committee chairs from this case (*See Resp. to Pet.* 44–46).

First, Petitioners do not oppose the Legislature's motion to intervene based on Wis. Stat. § 803.09(2m). In this separation-of-powers case challenging the Legislature's institutional authority to create legislative committee vetoes over executive branch action, Petitioners agree that the Legislature may constitutionally intervene under Wis. Stat. § 803.09(2m) to represent that institutional interest.¹

The Court therefore need not resolve whether the Legislature also has an independent basis to intervene as of right or permissively through Wis. Stat. § 803.09(1) or (2). In fact, the Court should not unnecessarily address these other intervention provisions, given that the purported interests the Legislature invokes under these provisions potentially implicate merits arguments that should not be resolved at this early stage of the case.

¹ Petitioners do not concede that Wis. Stat. § 803.09(2m) may be constitutionally applied in other kinds of cases.

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Second, Petitioners do oppose Respondents' contention (made in their response to the original action petition) that the individual legislators, named in their official capacities as chairs of the relevant legislative committees, are not proper parties to this action and should be dismissed. (*See Resp. to Pet.* 44–46.) If the Court chooses to construe Respondents' request as a motion to dismiss the individual legislators, Petitioners respectfully request an opportunity to file a short brief opposing that request. If the Court accepts jurisdiction of the petition, Petitioners would respectfully suggest that such a brief be filed either before merits briefing or contemporaneously with (but separate from) merits briefing.

Thank you for your consideration.

Sincerely,

Electronically signed by:

Colin T. Roth
Assistant Attorney General

CTR:jrs

cc: all parties via e-filing