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VIA ELECTRONIC FILING

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

Re: *Evers, et al. v. Marklein, et al.*, No.2023AP2020-OA (Wis.)

Dear Mr. Christensen:

I am counsel to Respondents Senator Howard Marklein, Representative Mark Born, Senator Chris Kapenga, Representative Robin Vos, Senator Steve Nass, and Representative Adam Neylon, and Proposed-Intervenor the Wisconsin State Legislature ("Legislature") in the above-captioned case. I write to respond to Petitioners' letter of December 19, 2023, advising the Court on the recent factual developments surrounding the negotiations between the Legislature's Joint Committee on Employment Relations ("JCOER") and the University of Wisconsin System ("UW") regarding UW employee pay adjustments.

Yesterday, JCOER voted to approve a compensation plan for UW employees, following negotiations and a collaborative process between the Legislature and UW Board of Regents. See Joint Committee on Employment Relations, Recording of Public Hearing/Executive Session, WisEye.org (Dec. 19, 2023), *available at* <https://wiseye.org/2023/12/19/joint-committee-on-employment-relations-17/>. Thus, UW employees will soon receive these negotiated pay increases, consistent with the previous budget and JCOER's approval vote.

These developments underscore the lack of exigency surrounding Petitioners' Petition For Original Action, thereby supporting the denial of the Petition. In their Petition and Memorandum In Support, Petitioners relied heavily on their characterization of JCOER's "blocking" of "already-budgeted pay adjustments for most of UW's 42,000 employees," as their primary reason that "time is of the essence" for this Court to grant their Petition. Pet'rs' Mem.18; see also Resp'ts' Br.19–23. The approval of the UW pay adjustments means that Petitioners now have no argument that time constraints would render any "remedy" offered by "the circuit court" "inadequate" to address their claims in ordinary litigation. *Petition of Heil*, 230 Wis. 428, 442, 284 N.W. 42 (1939).

Clerk Samuel A. Christensen
December 20, 2023
Page 2



Petitioners' contention that their framing of the issue of JCOER's statutory review authority as a facial challenge means that there remains a live controversy, Pet'rs' Letter at 2, has no bearing on the question of exigency at issue in deciding whether this Court will grant their Petition. While a facial, constitutional challenge to JCOER's authority to review proposed changes to certain state employee compensation plans under Wis. Stat. § 230.12(3)(e)1. remains live for adjudication, the cases that Petitioners cite for this proposition—*Service Employees International Union, Local 1 v. Vos*, 2020 WI 67, 393 Wis. 2d 38, 946 N.W.2d 35, and *Olson v. Town of Cottage Grove*, 2008 WI 51, 309 Wis. 2d 365, 749 N.W.2d 211—both tellingly came to this Court on appeal after being first filed in circuit court. Petitioners can raise their facial claims through just such ordinary litigation processes if they so desire, thereby negating entirely their contention that this Court's denial of the Petition would allow JCOER to "evade judicial review" of the issue. Pet'rs' Letter at 2.

So, for these additional reasons, Respondents and the Legislature request that the Court deny the Petition For Original Action.

Respectfully submitted,

Electronically signed by Misha Tseytlin
Misha Tseytlin

cc: All Counsel of Record via email and efileing