

Troutman Pepper Hamilton Sanders LLP
227 W. Monroe Street, Suite 3900
Chicago, IL 60606

troutman.com



Misha Tseytlin
D 608.999.1240
misha.tseytlin@troutman.com

January 29, 2024

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 advise the Court of a recent factual development that further counsels in favor of this Court denying Petitioners’ Petition For Original Action in this case.

On January 23, 2023, Governor Tony Evers announced during his 2024 State of the State Address that “[i]n partnership with the Biden Administration and the Conservation Fund, [the Governor has] approved the conservation easement for the Pelican River Forest’s remaining acres.” Governor Tony Evers, 2024 State of the State Address, at 40:13–40:25 (Jan. 23, 2024).^{*} While Petitioners previously cited objections by the Legislature’s Joint Committee on Finance (“JCF”) to this “Pelican River Forest Legacy Easement – II” project as part of its challenge to JCF’s review authority under the Warren Knowles-Gaylord Nelson Stewardship 2000 program (“Knowles-Nelson”), Wis. Stat. § 23.0917; see Pet. Ex.A at 4, the Governor has now apparently secured federal funds for the project without JCF’s involvement.

This additional factual development again underscores the lack of exigency surrounding Petitioners’ Petition For Original Action, further supporting the denial of the Petition. See Response To 12/19/2023 Correspondence From the Petitioners (Dec. 20, 2023). In their Petition and Memorandum In Support, Petitioners relied on their characterization of JCF’s Knowles-Nelson authority as “block[ing] conservation projects”—like the Pelican River Forest project, Pet.4; *id.* Ex.A at 4—“that would expand outdoor recreation activities across the State,” thereby

^{*} Available at <https://wiseye.org/2024/01/23/2024-state-of-the-state-address/> (last visited Jan. 26, 2024).

Clerk Samuel A. Christensen

January 29, 2024

Page 2



supporting their contention that “time is of the essence” for the Court to grant their Petition and immediately review their constitutional challenge to JCF’s authority without the benefit of lower-court consideration, Pet’rs’ Mem. 18. But the Governor’s recent move apparently securing federal funds for the Pelican River Forest project without JCF’s involvement shows that Petitioners have no argument that time constraints would render any “remedy” offered by “the circuit court inadequate” to address their claims in typical litigation. *Petition of Heil*, 230 Wis. 428, 442, 284 N.W. 42 (1939).

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 efilng