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DISTRICT II

Case No. 2024AP2429

ABBOTSFORD EDUCATION ASSOCIATION, AFSCME, LOCAL 47, AFSCME, LOCAL 1215, BEN GRUBER, BEAVER DAM EDUCATION ASSOCIATION, MATTHEW ZIEBARTH, SEIU WISCONSIN, TEACHING ASSISTANTS' ASSN., LOCAL 3220, AFT AND INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL NO. 695,
Plaintiffs-Respondents,

v.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION, JAMES J. DALEY, DEPARTMENT OF ADMINISTRATION, KATHY BLUMENFELD, DIVISION OF PERSONNEL MANAGEMENT AND JEN FLOGEL,
Defendants-Co-Appellants,

WISCONSIN STATE LEGISLATURE,
Intervenor-Defendant-Appellant,

KRISTI KOSCHKEE,
Intervenor-Appellant.

On Appeal From The Dane County Circuit Court,
The Honorable Jacob B. Frost, Presiding
Case No.2023CV3152

AMICUS CURIAE BRIEF OF WISCONSIN MANUFACTURERS AND COMMERCE INC.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES 3
INTRODUCTION 7
ARGUMENT 7
A. A competitive tax environment promotes industry and investment. 7
B. Act 10 saved Wisconsin from financial ruin. 12
C. Striking down Act 10 will require municipalities to either increase taxes or lay off employees. 13
D. Striking down Act 10 will require school districts to either increase taxes or sacrifice education. 14
CONCLUSION 17
FORM AND LENGTH CERTIFICATION 18

TABLE OF AUTHORITIES

Cases

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INTRODUCTION

Long before Scott Walker entered the Governor's mansion, even Milwaukee's socialist mayor recognized that powerful public unions cause "considerable loss of control over the budget, and hence over tax rates."[1] To keep the state's budget and taxes both manageable, Gov. Walker signed 2011 Wisconsin Act 10. But with the stroke of its own pen, the circuit court struck down that law. In doing so, the circuit court invited what even card-carrying socialists used to fear: inevitable, long-lasting tax increases.

This Court should reverse.

ARGUMENT

A. A competitive tax environment promotes industry and investment.

For the economy to thrive—and thus for wages to rise and lives improve—business needs to bustle. One way—indeed, one tried-and-true way—to encourage business is to keep the tax rate competitive. Years of data confirm this point: low taxes allow industry to flourish; high taxes tend to choke it out. When taxes are low, employers invest—in employees and products and even the communities they help sustain. These benefits were on bright display only shortly ago, in 2017.

For years the United States maintained "one of the least competitive tax environments" "in the developed world," and the corporate tax rate, the highest of any nation's at the time, was a major reason why.[2] Aimed straight at resolving this problem, Congress passed

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[1] Patrick McIlheran, *FDR's Ghost is Smiling on Wisconsin's Governor*, REAL CLEAR POLITICS (Feb. 19, 2011), https://www.realclearpolitics.com/articles/2011/02/19/the_ghost_of_fdr_is_smiling_on_wisconsins_governor_108962.html.

[2] Adam Michel, *The Tax Cuts and Jobs Act: 12 Myths Debunked*, HERITAGE FOUNDATION (Mar. 23, 2021), https://www.heritage.org/taxes/report/the-tax-cuts-and-jobs-act-12-myths-debunked.

in 2017 "a $1.5 trillion tax cut and reform package," which no doubt improved both life and business here in Wisconsin.[3]

The impact was almost immediate. No sooner were taxes cut than businesses large and small and across the state were raising wages and doling bonuses. Take a few examples from a whole spectrum of industries. In Sussex, one marketing-solutions company called Quad/Graphics used its savings to "transfer roughly $22 million in … stock to its employees' retirement accounts."[4] Meanwhile, American Family Insurance expanded its employees' tuition-reimbursement program, at the same time giving 11,000 workers a $1,000 bonus.[5] And the Madison-based Musicnotes—which runs the world's largest library of digital sheet music—gave each of its employees a 3% pay bump, "tied specifically to corporate tax reform."[6]

Other companies used their savings not just to boost salaries but to create new jobs. Sprecher Brewing Company, Milwaukee's longtime maker of brewed-by-fire beers and sodas, used its savings to concoct new products that would generate "new jobs."[7] Another Milwaukee brewery, Central Standard Distillery, did the same, investing in a new facility, a new bottling line, and four new employees.[8]

Still other companies, investing outward, gave their savings to charities. One insurance firm in Madison, CUNA Mutual, made "its largest contribution ever to its philanthropic foundation, a $20 million

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[3] *Id.*

[4] John Kartch, *How the Tax Cuts and Jobs Act is Helping Wisconsin*, AMERICANS FOR TAX REFORM (last updated Feb. 14, 2025), https://atr.org/wisconsin/.

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.*

donation made possible in part by federal tax reform."[9] In Milwaukee, Robert W. Baird and Company "donated nearly $1.2 million to more than 650 non-profits as a result of the firm's efforts to share tax reform benefits with associates."[10] The Milwaukee Rescue Mission—which gives meals, shelter, and clothing to Milwaukee's homeless population—received several donations from Baird.[11]

Tax cuts especially benefit small businesses. New-business formation is critical for the long-term success of Wisconsin's economy. Between 1978 and 2020, "new business formation created an annual average of 86,321 jobs."[12] This trend holds "not only for the state as a whole but also for metropolitan and nonmetropolitan Wisconsin."[13] From the urban centers of Milwaukee and Madison to the rustic Northwoods, Wisconsinites depend on small businesses to provide meaningful employment.

With their own unique challenges, small businesses are especially susceptible to changes in the tax code, flourishing when taxes are low, yet suffering when high. Owners often take advantage of additional capital to reduce liabilities, add staff, increase inventory, and replace aging physical assets to boost efficiency. Small-business owners did just that in Wisconsin following the 2017 cuts. Koehler Flooring Inc., to take an example, is a family-owned carpet and flooring company that "gave

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[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] Steven Deller, *New Business Formation Driver of Job Growth in Wisconsin*, UW COMMUNITY ECONOMIC DEVELOPMENT (last updated Jan. 3, 2023), https://economicdevelopment.extension.wisc.edu/2023/01/03/new-business-formation-driver-of-job-growth-in-wisconsin/.

[13] *Id.*

$1,000 bonuses to seven full-time employees."[14] Krista and Jim Mendyke, owners of Copperleaf Assisted Living, employ 175 people in central Wisconsin.[15] Following the 2017 tax reforms, the Mendykes finished the year with $60,000 in additional tax savings, which they used to give each of their employees a bonus.[16]

Low corporate tax rates are not the only indicator of a competitive tax system. Other taxes—sales, property, income, unemployment—are important too. The Tax Foundation uses each of these taxes to determine which states have the most competitive tax system. "The evidence shows that states with the best tax systems will be the most competitive at attracting new businesses and most effective at generating economic and employment growth."[17]

Wisconsin business leaders clamor for that environment. It is no surprise that high taxes have been, and continue to be, one of the primary concerns of Wisconsin's business community. To understand the challenges facing Wisconsin businesses, amicus curiae Wisconsin Manufacturers and Commerce Inc. (WMC) conducts semiannual surveys of its members. In 2012, "24% [of business leaders] said high taxes are

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[14] Kartch, *supra* note 4.

[15] Mark Treinen, *Wisconsin business to award $600 bonuses to employees based on tax cuts,* STEVENS POINT JOURNAL (Dec. 22, 2017), https://web.archive.org/web/20210416114117/https://www.stevenspointjournal.com/story/news/2017/12/22/wisconsin-business-award-600-bonuses-employees-based-tax-cuts/977147001/.

[16] *Id.*

[17] Andrey Yushkov et al., *2025 State Tax Competitiveness Index*, TAX FOUNDATION (Oct. 31, 2024), https://taxfoundation.org/research/all/state/2025-state-tax-competitiveness-index/.

the state's top policy problem."[18] Still in 2023, business leaders cited high taxes as their top concern.[19]

Other organizations, including the National Federation of Independent Business (NFIB), identified a similar tenor. Its 2024 poll revealed 22% of businesses reported state taxes on business income as a critical issue.[20] Holly Wade, the Executive Director of the NFIB Research Center, explained that "small business owners are working hard to create new jobs and grow their businesses, but the threat of rising costs, taxes, and uncertainty gives Main Street pause."[21] Bill Smith, the NFIB State Director for Wisconsin, urges Wisconsin lawmakers to "make pro-small business legislation a top priority and address the immediate needs and concerns of our state's small business owners."[22]

Economists Art Laffer and James Doti found that "the ten states with the lowest income taxes including Florida and Texas, gained a cumulative net inflow from all Adjusted Gross Income (AGI) classes of $391 billion from California during the entire 2018 to 2021 period."[23] Meanwhile, in California, where the tax environment is decidedly *not*

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[18] *WMC 2012 Economic Outlook Survey: 94 Percent of CEOs Say State is Headed in Right Direction*, WMC (Jan. 3, 2012), https://www.wmc.org/press-releases/wmc-2012-economic-outlook-survey-94-percent-of-ceos-say-state-is-headed-in-right-direction/.

[19] *Survey: Businesses Rate Tax Reform as Top Public Policy Objective*, WMC (Jan. 25, 2023), https://www.wmc.org/press-releases/survey-businesses-rate-tax-reform-as-top-public-policy-objective/.

[20] *New NFIB Problems & Priorities Highlight Wisconsin Small Business Concerns*, NFIB (Jun. 5, 2025), https://www.nfib.com/news/news/new-nfib-problems-priorities-highlight-wisconsin-small-business-concerns/.

[21] *Id.*

[22] *Id.*

[23] Katy Grimes, *Why Did 352 California Companies Flee to Other States in Three Years?*, CALIFORNIA GLOBE (May 29, 2023), https://californiaglobe.com/fl/why-did-352-california-companies-flee-to-other-states-in-three-years/.

competitive,[24] "more than 237 businesses … have left the state since 2005."[25]

B. Act 10 saved Wisconsin from financial ruin.

In 2011, Wisconsin was on the brink of financial ruin. The State desperately needed reform. "Wisconsin face[d] a 137-million-dollar deficit for the remainder of th[e] fiscal year and a 3.6-billion-dollar deficit for the upcoming budget."[26] That deficit placed 1,500 state employees at risk of losing their jobs.[27]

Act 10 not only warded off that deficit—it protected those jobs. At the same time, it set Wisconsin on a path toward financial responsibility.

Indeed, Wisconsin is now "one of the most financially responsible states in the country with a routine budget surplus, a robust rainy-day fund, and a fully funded state pension system."[28] The Wisconsin Retirement System's (WRS) "funding level remains at 100%."[29] And "with some $140 billion in assets as of October 2024, the WRS ranks among the 10 largest U.S. public pension funds."[30] According to the

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[24] California's tax competitiveness is ranked 48th in all the nation. Yushkov, *supra* note 17.

[25] Robin Rhim et al., *The Corporate Departure from California*, SANTA CLARA BUSINESS LAW CHRONICLE (Apr. 23, 2024), https://www.scbc-law.org/post/the-corporate-departure-from-california.

[26] *On the Anniversary of 2011 Wisconsin Act 10: A Look Back at the Legislation that Gained National Headlines* at 2, INSTITUTE FOR REFORMING GOVERNMENT (IRG) (Feb. 12, 2020), https://reforminggovernment.org/wp-content/uploads/2020/02/2020-02-10-IRG_Policy-Paper_Act-10_Final1.pdf..

[27] *Id.*

[28] William Osmulski, *Act 10 Savings Top $35 Billion in 2025,* MACIVER INSTITUTE (Mar. 17, 2025), https://www.maciverinstitute.com/research/act-10-savings-top-35-billion-in-2025.

[29] *ETF Releases 2023 WRS Financial Report*, DEPARTMENT OF EMPLOYEE TRUST FUNDS (ETF) (Sep. 12, 2024), https://etf.wi.gov/news/etf-releases-2023-wrs-financial-report.

[30] *Our Wisconsin Retirement System* at 3, ETF (last accessed Jun. 24, 2025), https://etf.wi.gov/publications/et7100/direct.

MacIver Institute, Act 10 has saved Wisconsin taxpayers and businesses "$13.8 billion in pension contributions and $21.8 billion in health insurance savings, for a total of $35.6 billion."[31]

C. Striking down Act 10 will require municipalities to either increase taxes or lay off employees.

Striking down Act 10 without implementing alternative funding measures will recreate the problem Wisconsin faced in 2011, before Act 10 was ever passed.

Will Flanders, of the Wisconsin Institute for Law and Liberty (WILL), estimates that "[e]nding Act 10 would bring about $480 million in new costs for local governments statewide."[32]

To maintain the status quo, municipalities will in all likelihood need to increase property taxes, which usually requires voter approval. But the results from last April's elections suggest that voters across the state are reluctant to bear those costs. Indeed, voters rejected eight of the 14 municipal referendums on the spring ballot to raise property taxes.[33] For instance, only 21% of the voters in the Village of Walworth supported increasing their property tax levy for general operations—79% did not.[34] Brookfield offers another example. Facing a "budget deficit of $4 million next year," Brookfield "asked residents to increase the property tax levy by $6 million."[35] Even though roughly "75 percent of

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[31] Osmulski, *supra* note 27.

[32] Will Flanders, *WILL Warns that Eliminating Act 10 Will Cost Local Taxpayers Nearly Half a Billion Dollars Annually*, WILL (last accessed Jun. 26, 2025), https://will-law.org/will-warns-that-eliminating-act-10-will-cost-taxpayers-nearly-half-a-billion-dollars/.

[33] Evan Casey, *Majority of municipal referendums to raise property tax levies failed in spring election*, WISCONSIN PUBLIC RADIO (Apr. 11, 2025), https://www.wpr.org/news/majority-municipal-referendums-raise-property-tax-levies-failed-spring-election.

[34] *Id.*

[35] *Id.*

Brookfield's budget is tied to employee salaries and benefits," voters rejected this referendum.[36] These results are not surprising: studies show that property taxes are the most disliked state and local tax.[37]

If Act 10 is struck down and voters do not approve any increases to their levy limits, unforeseen consequences will likely abound. "In light of the levy limits that constrict the ability of local units of government to raise property taxes, the financial impact to local budgets will be devastating. A possible unintended consequence from such a scenario is the mass layoff of public employees or significant cuts to local and state programs."[38]

Thus striking down Act 10 leaves municipalities with two options, both undesirable: either increase taxes or lay off employees.

D. Striking down Act 10 will require school districts to either increase taxes or sacrifice education.

If the circuit court's judgment is affirmed, Wisconsin school districts too will be forced to raise property taxes. According to WILL, "Restoring collective bargaining for teacher salaries could cost districts and the state nearly $650 million annually."[39] Further, eliminating employee contributions for retirement and healthcare would "likely lead to approximately $982,259,074 in new expenses" for school districts.[40]

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[36] *Id.*

[37] Bowman et al., *Public Opinion on Taxes: 1937 to Today* at 29, AMERICAN ENTERPRISE INSTITUTE PUBLIC OPINION STUDIES (last accessed Jun. 26, 2025), https://aei.org/wp-content/uploads/2017/04/Bowman_Public-Opinion-Study_Taxes_April-2017.pdf.

[38] *Property Taxes Could Skyrocket if Wisconsin Supreme Court Overturns Act 10* at 1, IRG (last accessed Jul. 2, 2025), https://reforminggovernment.org/wp-content/uploads/2025/02/IRG-Court-Watch-Act-10-Property-Taxes.pdf.

[39] Will Flanders, *Back to the Past: The Fiscal Threat of Reversing Act 10 in Public Education* at 2, WILL (last accessed Jun. 24, 2025), https://will-law.org/wp-content/uploads/2024/04/Act-10-Final-Report.pdf.

[40] *Id.*

Increasing the costs of education as such will harm the quality of Wisconsin's schools.[41]

With their Act 10 savings, school districts have invested in Wisconsin's students—those who, in due time, will form the next generation of innovators and leaders. In 2019, for instance, the Madison Metropolitan School District teamed with Madison College to offer college STEM classes to high-school students. [42] The Early College STEM Academy gives students the opportunity to pursue associate degrees in STEM fields. Students leave with a head start to pursue a four-year degree or to succeed in their careers.[43]

Across the state, districts have integrated these programs into the academic experience. The Appleton Area School District, for example, offers a so-called "Classroom to Career" program, designed to expose students early on to the careers they might someday pursue.[44] This program ensures that "all students will graduate with a game-plan for reaching their future career and a support system to help throughout the process."[45] In the Milwaukee Public School District, to take another

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[41] One study found that the changes in salaries introduced by Act 10 significantly raised test scores over time, particularly for disadvantaged students. Barbara Biasi & Wayne Aaron Sanderholtz, *The Political Consequences of Controversial Education Reform: Lessons from Wisconsin's Act 10*, IZA Inst. of Lab. Econ. 17, 26 (2025).

[42] *Equity Projects and Programs*, MADISON METROPOLITAN SCHOOL DISTRICT (last accessed Jul. 1, 2025), https://www.madison.k12.wi.us/about/referendum/equity-projects-and-programs?.

[43] *Early College STEM Academy Curriculum Overview*, MADISON METROPOLITAN SCHOOL DISTRICT (last accessed Jul. 1, 2025), https://www.madison.k12.wi.us/secondary-programs-and-personalized-pathways/early-college-opportunities/early-college-stem-academy/early-college-stem-academy-curriculum-overview.

[44] *Classroom to Career*, APPLETON AREA SCHOOL DISTRICT (last accessed Jul. 1, 2025), https://www.aasd.k12.wi.us/academics/academic-programs/classroom-to-career.

[45] *Id.*

example, the Lynde and Harry Bradley Technology and Trade School "partners with" Milwaukee Area Technical College to offer "college-credit classes in career pathways that include construction, design, manufacturing, and pre-engineering."[46]

Joe Garza, the Superintendent of the New Berlin School District, explained that the extra funds have been used for "college level coursework like a [certified nursing assistant] lab in partnership with [Waukesha County Technical College], computer science, [and] STEM courses."[47] The district has done all that while also pre-paying a portion of its long-term debt.[48] Garza explained that if the district were to return to pre-Act 10 finances, the district would have to cut these programs, reduce its teaching budget, and increase the size of every class.[49] School districts are thus left in the same predicament as municipalities. To deliver competitive education, they must raise their revenue limits[50]—or else cut valuable programs that prepare the next generation to be productive members of the workforce.

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[46] *Bradley Technology and Trade*, MILWAUKEE PUBLIC SCHOOLS (last accessed Jul. 1, 2025), https://mps.milwaukee.k12.wi.us/Schools/Bradley-Technology-and-Trade.htm.

[47] Flanders, *supra* note 38, at 6.

[48] *Id.*

[49] *Id.*

[50] Even Governor Evers's partial-veto tax increase of $350 each year per pupil is not enough to cover the immediate yearly cost of striking down Act 10. *See LeMieux v. Evers*, 2025 WI 12, 415 Wis. 2d 422, 19 N.W.3d 76. During the 2024–25 school year, 791,956 students were enrolled in public schools. *See* Wyatt Eichholz, *Wisconsin student enrollment and teacher staffing trends*, BADGER INSTITUTE (last updated Jan. 30, 2025), https://www.badgerinstitute.org/wisconsin-student-enrollment-and-teacher-staffing-trends/. Therefore, based on the $350 per pupil increase, districts could raise an additional $277,184,600 without a referendum. That means next year, to maintain current spending levels without Act 10's savings, school boards will have no choice but to go to the voters for 1 billion-plus dollars.

CONCLUSION

Striking down Act 10 will prompt a slew of unfortunate consequences. It could cause taxes to climb, businesses to struggle, investment to sputter, employees to be pink slipped, and education quality to plummet. Affirming the circuit court's decision is no path "forward" for Wisconsin.

This Court should reverse the circuit court's decision striking down Act 10.

Dated this 7th day of July 2025.

Respectfully submitted,

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FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Rule 809.19(8)(b), (bm), and (c) for a brief. The length of this brief is 2,589 words.

Dated this 7th day of July 2025.

Electronically signed by
Nathan J. Kane

Nathan J. Kane