STATE OF WISCONSIN
IN SUPREME COURT

Case No. 2020AP1634-CQ

DEMOCRATIC NATIONAL COMMITTEE, DEMOCRATIC PARTY OF WISCONSIN, SYLVIA GEAR, CHRYSTAL EDWARDS, and JILL SWENSON

Plaintiffs-Appellees,

v.

MARGE BOSTELMANN, JULIE M. GLANCEY, DEAN KNUDSON, MARK L. THOMSEN and ROBERT SPINDELL, JR.,

Defendants,

REPUBLICAN PARTY OF WISCONSIN, REPUBLICAN NATIONAL COMMITTEE, and WISCONSIN STATE LEGISLATURE,

Intervening Defendants-Appellants.

QUESTION ON CERTIFICATION FROM THE UNITED STATES SEVENTH CIRCUIT COURT OF APPEALS

NON-PARTY BRIEF OF THE OFFICE OF THE ATTORNEY GENERAL

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INTRODUCTION

Nearly a year was spent on the briefs, argument, and decision in *Service Employees International Union, Local 1 v. Vos*, 2020 WI 67, 393 Wis. 2d 38, 946 N.W.2d 35 ("*SEIU*"), a case presenting categorical questions about whether and when the legislative branch may participate in the "predominately … executive function" of "representing the State in litigation." *Id.* ¶ 63. Yet, during proceedings before the U.S. Court of Appeals for the Seventh Circuit, the Legislature has sought to have this Court to resolve a similar question in mere days.

Given that incredibly short timeline, this Court should decline to answer the broad certified question, as framed. That question—"whether, under Wis. Stat. §803.09(2m), the State Legislature has the authority to represent the State of Wisconsin's interest in the validity of state laws"—presents a complex separation-of-powers issue that could permanently alter the structure of state government in judicial proceedings. And because that question can arise in myriad ways, it simply cannot be answered quickly without risking error. While the underlying federal case may be important, no single case is more important than preserving the "central bulwark of our liberty"—the separation of powers. *SEIU*, ¶ 30.

This Court should instead narrow the question to address only the Legislature's authority to intervene in the underlying federal case. Within the broad categories of cases implicated by Wis. Stat. § 803.09(2m), few implicate the institutional legislative interests recognized in *SEIU* that might permit legislative participation. Because at least some applications of Wis. Stat. § 803.09(2m) are thus likely unconstitutional, the answer to the broad certified question must be "no"—the Legislature may *not* always intervene.

And while the Legislature may have an interest in defending either its institutional legislative processes or statutes that give it procedural rights, as occurred in both *SEIU* and *League of Women Voters of Wis. v. Evers*, 2019 WI 75, 287 Wis. 2d 511, 929 N.W.2d 209 ("*LWV*"), that does not mean it has an institutional interest in defending *all* state statutes. Indeed, *SEIU* rejected that sweeping proposition by holding that the Legislature may "intervene in litigation concerning the validity of a statute," but only when another of "its institutional interests [is] implicated." *SEIU*, ¶ 72. None of the election laws at issue in the federal case here implicate uniquely legislative processes or procedural rights.

Nor is this case the proper vehicle to resolve exactly when the Legislature may constitutionally intervene and when it may not. Just as a facial challenge to a statute cannot succeed if some applications are constitutional, so too a "facial approval" (like the certified question here) cannot succeed if some applications are *un*constitutional. The proper result here thus tracks *SEIU*, where a facial challenge to 2017 Wis. Act 369's litigation control provisions was dismissed because some applications would comply with the separation of powers.

If this Court answers any question at all, it should hold only that the Legislature may not constitutionally intervene in the underlying federal case.

ARGUMENT

I. This Court should narrow the certified question to address only the underlying federal case.

A. Broad and complex separation of powers issues should not be resolved in mere days.

Whether the Legislature may constitutionally intervene in all litigation challenging the validity of state law

is an issue of critical importance that would have long-lasting effects on the structure of state government. But this Court has only a few days to receive briefing and issue a decision on that crucial issue, given that the *en banc* Seventh Circuit apparently intends to proceed in the underlying federal case by no later than Wednesday, October 7.

This sweeping separation-of-powers issue is simply too important to be resolved so quickly. Compare this lightening-speed pace to *SEIU*, a case that presented similarly broad separation-of-powers questions about legislative participation in state litigation. This Court assumed jurisdiction over *SEIU* on June 11, 2019. Briefing lasted until late September and then the Court held oral argument on October 21, over four months after it assumed jurisdiction. It issued a written decision on July 9, 2020. A year to decide there; less than a week here.

SEIU's deliberate pace represents the time it takes to properly brief, argue, and decide important constitutional questions like these. The public interest is best served when fundamental questions about the structure of state government are addressed on a reasonable timeline. Just like the decision in *SEIU*, any precedential decision this Court might issue here could alter Wisconsin state government for years to come. An answer should not be rushed.

The Legislature asserts that the impending general election creates an exigency in favor of accepting certification.[1] (Pet. Br. 4–5.)[2] But, to be clear, the underlying federal case did not invalidate a state law, much less one

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[1] This Court does not automatically agree to rush its review of every question that could potentially affect impending elections, as shown in *Zignego v. WEC*, Nos. 2019AP2397, 2020AP112.

[2] Citations to "Pet. Br." reference the brief the Legislature field in support of its original action petition in 2020AP1629-OA.

affecting the Legislature's unique interests. Instead, the "calamity" identified by the Legislature (Pet. Br. 1) is that a federal court allowed six extra days for local clerks to receive absentee ballots in the midst of a pandemic and a corresponding historic number of absentee ballot requests.

Moreover, any purported exigency simply reflects the Legislature's desire to get a second bite at the apple—a Seventh Circuit panel ruled against the Legislature and now it wants another shot. But the Seventh Circuit is capable of resolving Article III standing questions that turn on state law, which is just what the panel did here. *See Democratic Nat'l Comm. v. Bostelmann*, No. 20-2835, 2020 WL 5796311, at *1 (7th Cir. Sept. 29, 2020). And the U.S. Supreme Court in *Virginia House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945 (2019), also analyzed this same federal standing question without resort to state court certification. Indeed, even the *en banc* Seventh Circuit has indicated that it will rule by October 7, with or without this Court's input.

At bottom, no single case is more important than the proper separation of powers, the "central bulwark of our liberty." *SEIU*, ¶ 30. The risk posed by rushing an answer to fundamental questions about the structure of state government outweighs the risk of an incorrect federal interpretation of state law. A flawed precedential decision here would potentially lead to unforeseen, undesirable consequences in many future cases.

B. Because many applications of Wis. Stat. § 803.09(2m) are likely unconstitutional, the certified question is too broad.

The striking breadth of the certified question provides another reason to avoid rushing an answer: "[W]hether, under Wis. Stat. § 803.09(2m), the State Legislature has the authority to represent the State of Wisconsin's interest in the

validity of state laws." This sweeping question is essentially *SEIU* in reverse—rather than a facial *challenge* to a provision in Act 369, it asks for a facial *approval* of one such provision. It should meet the same fate. Just as this Court refused to conclude in *SEIU* that all applications of Wis. Stat. §§ 165.08 and 165.25 violate the separation of powers, so too should it refuse to hold here that all applications of Wis. Stat. § 803.09(2m) comply with the separation of powers.

Indeed, *SEIU* requires that result. There, this Court indicated that only *some* applications of Wis. Stat. § 803.09(2m) are constitutional: "In at least *some cases*, we see no constitutional violation in allowing the legislature to intervene in litigation concerning the validity of a statute, *at least where its institutional interests are implicated*." *SEIU*, ¶ 72 (emphasis added). If the Legislature may constitutionally intervene only in "some cases" involving the validity of state law "where its institutional interests are implicated," there must be other cases in which it *cannot* constitutionally intervene—namely, those that implicate no institutional legislative interests.[3]

The institutional interests recognized in *SEIU* do not cover every case in which the validity of state law is at issue (and, in fact, they likely cover few). *SEIU* identified only three such interests: (1) cases where the Attorney General

[3] This analysis also explains why the Court's statement in its *SEIU* stay decision that the "the Legislature … suffer[s] … harm … when a statute … is declared unenforceable … before any appellate review can occur" (Leg. App. 13) cannot be read as broadly as the Legislature says. It cannot mean that the Legislature *always* has an institutional interest in defending the validity of state law, since the *SEIU* merits decision rejected that sweeping proposition. Instead, it must be read in context—it addressed the balance of equities, not the merits of a separation-of-powers analysis. That constitutional issue was not litigated during the *SEIU* stay litigation.

represents a legislative entity; (2) cases where a legislative body authorizes the Attorney General's representation (e.g. where the Attorney General defends a legislative entity or prosecutes a case on its authorization); and (3) some cases where "spending state money" is at issue. *SEIU*, ¶ 71. When a given case implicates *none* of these institutional interests, the Legislature's intervention presumptively invades a "core executive function," absent identification of another valid interest. *Id.* ¶ 67.

The Legislature thus does not have an independent institutional interest in every case challenging the validity of state law, contrary to its assertion. (Pet. Br. 24.) If that were true, *SEIU* would have listed that interest alongside the other three. But it did not, and for good reason. In most cases challenging a state statute's validity, the Legislature's constitutional role ended when it passed that legislation. Under our separation of powers, the baton then passes to the executive branch to enforce and defend that law.

That result properly aligns Wisconsin with other courts that recognize how legislatures have no institutional interest in the validity of laws they have already passed. *See, e.g.*, *Bethune-Hill*, 139 S. Ct. 1945, 1953 ("This Court has never held that a judicial decision invalidating a state law as unconstitutional inflicts a discrete, cognizable injury on each organ of government that participated in the law's passage."); *Planned Parenthood of Wisconsin, Inc. v. Kaul*, 942 F.3d 793, 798 (7th Cir. 2019) (recognizing that "the Legislature-as-legislature ha[d] no interest" in a challenge to Wisconsin law). And that result also aligns with separation of powers principles, which teach that "[f]ollowing enactment of laws, the legislature's constitutional role as originally designed is generally complete." *Wisconsin Legislature v. Palm*, 2020 WI 42, ¶ 182, 391 Wis. 2d 497, 942 N.W.2d 900 (Hagedorn, J., dissenting).

The vast majority of cases challenging the validity of state law do not implicate the legislative interests recognized in *SEIU*. The named defendants in those cases are not the Legislature; they are the executive branch officials charged with enforcing the challenged laws. *See, e.g.*, *Madison Teachers, Inc. v. Walker*, 2014 WI 99, ¶ 5, 358 Wis. 2d 1, 851 N.W.2d 337 (challenge to validity of 2011 Wis. Act 10 named as defendants the governor and three Wisconsin Employment Relations Commission commissioners). These cases thus do not trigger the Legislature's institutional interests when it is sued or when it authorizes a specific representation, the first two interests recognized in *SEIU*.

That leaves only the institutional interest in "spending state money." *SEIU*, ¶ 71. But challenges to the validity of state law are not claims seeking damages (or any other form of monetary relief) from state coffers. Indeed, sovereign immunity would bar such monetary requests. That leaves only the Legislature's argument that challenges to state law based on the supremacy of federal law often involve requests for attorneys' fees. *See* 42 U.S.C. § 1988(b); (Pet. Br. 26–28). Such challenges in state court based on state law, however, do not involve fee requests, and so that category of cases never implicate the Legislature's attorneys' fees theory.

And fee requests in federal challenges do not trigger a sufficient legislative interest to permit intervention. In the Legislature's apparent view, it has an institutional interest in any case where a state entity may have to pay attorneys' fees. That is wrong for two main reasons.

First, executive agencies cover attorneys' fees awards from funds the Legislature has already appropriated to them. The Department of Administration's risk management program pays fee awards, which is essentially an insurance program funded by contributions from state agencies out of their existing appropriations. *See* Wis. Stat. § 16.865. In fact,

even when fee awards follow the invalidation of state law, the Legislature does not contribute to them from its legislative budget. Instead, executive branch agencies bear those costs through risk management, even though they had no role in passing the invalidated law. No new legislative appropriation is required.

Second, the Legislature's theory about spending from the public fisc proves too much. If true, it would necessarily entitle the Legislature to participate in *any* executive action that affects state funds. Consider executive branch contracting—any agency payment for contracted goods and services "could *only* come from the public fisc," just like attorneys' fees awards. (Pet. Br. 27.) Or consider executive branch grant programs—again, any grants paid by agencies "could *only* come from the public fisc." (Pet. Br. 27.) Or consider executive branch salaries—the amount agencies decide to pay their employees "could *only* come from the public fisc." (Pet. Br. 27.) These few examples illustrate an obvious point: Practically every single executive branch action rests on money the Legislature has already appropriated for agency use. Indeed, that is the whole point of the biennial budget process—to appropriate money to fund executive agency activity over two-year periods.

Once the Legislature appropriates money, however, its constitutional role has ended. How agencies execute the law by spending their appropriated funds—their core duty as agents of the executive branch—is up to them. Of course, those expenditures must conform to any statutory conditions, and the Legislature may supervise agencies' conduct through oversight hearings, information requests, and the like. But allowing the legislative branch to "subject[ ] executive branch enforcement of enacted laws to a legislative veto" would "turn[ ] our constitutional structure on its very head." *Palm*, ¶ 218 (Hagedorn, J., dissenting). "Our constitution's

commitment to the separation of powers means the legislature should not, as a general matter, have a say in the executive branch's day-to-day application and execution of the laws. The legislature gets to make the laws, not second guess the executive branch's judgment in the execution of those laws." *Id.*

Yet that is the precise implication of the Legislature's argument here. If it can constitutionally intervene in state litigation simply because the agency may need to pay fees that "could *only* come from the public fisc," (Pet. Br. 27), what would stop it from passing legislation entitling it to veto any agency contract, any grant it doesn't like, or any state employee salary it thinks is too high? Essentially *all* executive decisions involve money that "could *only* come from the public fisc." It is fundamentally inconsistent with our constitutional structure to allow the Legislature to participate in all executive branch actions simply because it appropriates the executive branch's funding.

And even assuming the Legislature might have some institutional fiscal interest in cases like these, it is difficult to understand how intervention under Wis. Stat. § 803.09(2m) could protect that interest. The "public fisc" argument rests on the premise that the Legislature may need to rein in the executive branch's expenditure of state funds. But how would intervention in federal fee-shifting litigation accomplish that? When executive branch officials defend state law, fees will invariably accrue, whether or not the Legislature intervenes. In fact, fees could only rise *higher* upon legislative intervention—another litigating defendant can only exert upward, not downward, pressure on a plaintiff's attorneys'

fees. That is an ironic way to justify intervention on fiscal watchdog grounds.[4]

In sum, most applications of Wis. Stat. § 803.09(2m) are almost surely unconstitutional and the answer to the broad certified question is "no"—the Legislature does not always have constitutional authority to intervene under that statute. And if intervention is sometimes constitutional and sometimes not, this Court cannot draw that line now, just like it could not do so in *SEIU* for the challenged litigation control provisions.

The only question this Court can answer is a narrow, as-applied one: Can the Legislature intervene in *this* underlying federal case under Wis. Stat. § 803.09(2m), consistent with the separation of powers? The answer to that question is no, as explained below.

II. The Legislature may not constitutionally intervene in the underlying federal case.

The Legislature may not intervene in the underlying federal case consistent with the separation of powers because no institutional interest of the Legislature is implicated.

First, the federal case arose in the same posture as every challenge to the validity of state laws: Plaintiffs sued executive branch officials charged with enforcing the challenged election laws. It thus implicates neither of the first two institutional interests identified in *SEIU* that arise in cases where the Attorney General represents the Legislature

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[4] In July 2020, a news report indicated that the Legislature thus far had spent nearly $4.8 million on outside counsel it retained during the current legislative session. *See* https://wislawjournal.com/2020/07/30/legal-tab-for-gop-lawmakers-private-attorneys-nears-4-8-million/. Much of that sum is surely attributable to outside counsel it has retained for intervention.

as a defendant or where the Legislature authorizes a prosecution.

Second, the federal case does not sufficiently implicate a legislative interest in "spending state money" just because the State may ultimately need to pay an attorneys' fees award. *SEIU*, ¶ 71. As explained above, any such award would be paid from the State's risk management fund, which is funded by contributions from executive state agencies out of their existing appropriations. *See* Wis. Stat. § 16.865. And the mere impact on already-appropriated money cannot suffice, otherwise the Legislature could participate in practically every executive branch action.

That exhausts the institutional interests recognized in *SEIU*, and so intervention is unconstitutional unless the Legislature identifies another valid interest. It has not done so.

The only other proffered legislative interest is the one rejected in *SEIU*—that it "possesses a strong interest in … laws surviving judicial review when challenged in court." (Pet. Br. 24.) Again, *SEIU* held that the Legislature may only "intervene in litigation concerning the validity of a statute … *where its institutional interests are implicated*." *SEIU*, ¶ 72 (emphasis added). If the "validity of a statute" always implicated the Legislature's institutional interests, *SEIU* would not have conditioned intervention on identifying some other interest.

The Legislature then makes the same mistake it made in *SEIU*, arguing that its participation should be allowed because it "does not burden the Attorney General." (Pet. Br. 25.) In *SEIU*, it argued that Act 369's litigation control provisions were valid simply because the Attorney General has no constitutionally-assigned powers. The Court rejected that argument, explaining that "the question is not whether

the legislature may circumscribe the attorney general's executive powers, but whether it may assume them, at least in part, for itself." *SEIU*, ¶ 62. Here, too, the Legislature must identify a valid institutional interest before assuming what would otherwise be a core executive power. In any event, duplicative legislative participation would burden both the federal courts and the Attorney General, as multiple federal courts have concluded. (App. 101–155.)

To be sure, in both *SEIU* and *LWV*, legislative entities intervened to defend the validity of challenged legislation and appealed adverse decisions. (Pet. Br. 23–24.) But those cases directly implicated legislative interests in a way this federal case does not.

In *LWV*, the Legislature defended the constitutionality of its December 2018 extraordinary session. It had a direct institutional interest in preserving its authority to convene extraordinary legislative sessions like that one. Likewise, in *SEIU*, the Legislature enacted statutory provisions that gave its subunits a right to participate in executive branch litigation decisions. The challenge to those provisions thus directly implicated a procedural right the Legislature had granted to itself.[5] In both cases, it made sense for the Legislature to intervene and defend its own processes and procedural rights. (The same would be true for cases implicating the judiciary's own rules, like *File v. Kastner*, No. 19-cv-1063, 2020 WL 3507962 (E.D. Wis. June 29, 2020).)

As for *Wisconsin Legislature v. Evers*, No. 2020AP608-OA, that case did not even involve a challenge to the validity of state law. Rather, it involved the Legislature's assertion

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[5] *See also Martinez v. Dep't of Indus., Labor & Human Relations*, 165 Wis. 2d 687, 695, 478 N.W.2d 582 (1992) (allowing legislative subunit to defend the validity of its own procedural right to reject proposed administrative rules).

that the Governor had improperly assumed legislative authority through an executive order. Allowing the Legislature to defend its prerogative to enact law against executive intrusion does not imply it can also defend against challenges to laws it already enacted. This Court's partial veto decisions are similarly inapposite—they bear directly on the legislative process of enacting laws. *See, e.g.*, *State ex rel. Wis. Senate v. Thompson*, 144 Wis. 2d 429, 424 N.W.2d 385 (1988).

The federal case here, however, does not involve challenges to either the legislative process itself (like in *LWV*) or to a legislative procedural right (like in *SEIU*). Instead, it involves challenges to state election laws in which the Legislature has no ongoing role. In such cases, the Legislature has no valid institutional interest—its constitutional role ended when it passed the election statutes at issue.

The Legislature's final line of defense is that, even in cases where it otherwise has no institutional interest, one somehow arises *ex nihilo* "when the Attorney General affirmatively chooses not to defend the law in court." (Pet. Br. 24.)[6] Before addressing the flaws in this argument, three misstatements must be corrected.

First, the Legislature suggests that the Attorney General declined to defend the Wisconsin Elections Commission (WEC) in this federal case for political reasons. (Pet. Br. 6.) That is false. The Attorney General withdrew from the representation due to a potential conflict of interest

[6] The Attorney General did not concede this legislative interest in *SEIU*. (*See* Pet. Br. 26.) There, the Attorney General merely assumed *arguendo* that defending a challenged statute "could be viewed" as a shared power that implicates "a possible legislative interest." AG Resp. Br., *SEIU*, 2019 WL 4645564, at *40 (Sept. 17, 2019).

between representing WEC and simultaneously representing the Governor in a closely related election matter.

Second, the Legislature asserts that the Attorney General is "refusing to represent the Commission in many cases." (Pet. Br. 5.) Again, that is false. The Attorney General has declined to represent WEC only in the three consolidated federal cases at issue here and one earlier this year, all due to the same conflict. Indeed, the Attorney General has recently represented WEC in at least nine cases, three of which involve challenges to the validity of state election laws that the Attorney General is vigorously defending. *See One Wisconsin Institute, Inc. v. Thomsen*, No. 15-cv-324 (W.D. Wis.), *Luft v. Evers,* No. 20-CV-768 (W.D. Wis.), *Common Cause v. Thomsen*, No. 19-CV-323 (W.D. Wis.).

Third, the Legislature implies that it simply seeks to intervene in cases in "where no other sovereign party is defending [state] law." (Pet. Br. 1, 3–5.) That too is false. The Legislature has sought to intervene in many recent cases in which the Attorney General is vigorously defending state law on behalf of executive branch clients. Federal courts have repeatedly denied the Legislature's motions, holding that only one voice can speak for the State and that the Attorney General is doing so appropriately. (App. 101–105.)

And the Legislature's supposed "non-defense" interest fails on its own terms. It misunderstands that if any Attorney General decides that its office cannot defend a given case due to a conflict (or any other reason), that does not automatically end the matter or otherwise result in a judgment invalidating state law. Rather, outside counsel is retained for the executive branch client to defend against the claim. That is just what happened here. Once the Attorney General withdrew, the Governor's office obtained counsel for WEC. Although WEC then took the position (right or wrong) that it had no statutory authority to defend against the claims, that position should

have created a lack of adversity that defeated Article III jurisdiction. Indeed, WEC filed a motion to dismiss on exactly that basis. *See Edwards v. Vos*, No. 20-cv-340, Dkt. 15:4–5 (W.D. Wis.).

Moreover, the Legislature's concept of a case where "no other sovereign party is defending [state] law" (Pet. Br. 3) appears to cover almost any defense-side case it is politically interested in. It seems to conflate a wide range of executive branch litigation strategies, from a decision not to defend at all, to a vigorous defense followed by a decision not to appeal an adverse ruling, to everyday decisions about the best way to litigate.

But at the one end, a complete lack of defense should preclude judicial intervention given the lack of a live controversy between the parties. At the other end, a vigorous defense followed by a reasoned decision not to appeal does not represent a "failure to defend." Rather, it represents the defendant's judgment that, under the circumstances, an appeal would not serve the public interest. In the middle—cases in which the Legislature simply thinks it might do a better job—the federal courts again have rejected several recent efforts by the Legislature to intervene, concluding that the existing defendants and Attorney General's office were robustly defending the state laws at issue. (App. [x].)

Given this broad sweep of cases, allowing the Legislature to intervene when "no other sovereign party is defending [state] law" (Pet. Br. 1) would cause confusion, waste taxpayer dollars, and, in most cases, violate the separation of powers.

As for the federal case at issue on certification, no institutional legislative interest exists. The election laws at issue implicate no legislative process or right, unlike the challenges in *SEIU* and *LWV*. And while the Legislature may

wish WEC's outside counsel had employed different litigation strategies, that is irrelevant from a constitutional perspective. The Wisconsin Constitution empowers the Legislature to enact legislation. Once the Legislature does so, with few exceptions, its constitutional role is complete.

CONCLUSION

This Court should narrow the certified question to address only whether the Legislature may constitutionally intervene in the underlying federal litigation, and on this question it should answer "no."

Dated this 5th day of October 2020.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 4397 words.

Dated this 5th day of October 2020.

Colin Roth

COLIN T. ROTH
Assistant Attorney General

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

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § 809.19(12).

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This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 5th day of October 2020.

Colin Roth

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Assistant Attorney General

SUPPLEMENTAL APPENDIX CERTIFICATION

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is a supplemental appendix.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using one or more initials or other appropriate pseudonym or designation, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

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