

STATE OF WISCONSIN

CIRCUIT COURT
Branch 6

DANE COUNTY

CLEAN WISCONSIN, INC.
634 West Main Street, Suite 300
Madison, WI 53703

and

PLEASANT LAKE MANAGEMENT DISTRICT
P.O. Box 230
Coloma, WI 54930,

Petitioners,

Case Nos. 16-CV-2817
16-CV-2818
16-CV-2819
16-CV-2820
16-CV-2821
16-CV-2822
16-CV-2823
16-CV-2824

v.

WISCONSIN DEPARTMENT OF
NATURAL RESOURCES,
101 South Webster Street
Madison, WI 53707,

Case Code: 30607
Administrative Agency Review

Respondent.

REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE *AMICUS CURIAE BRIEFS*

INTRODUCTION

The Central Sands Water Action Coalition (“CSWAC” or collectively “the Amici”) and the Town of Rome (“the Town” or collectively “the Amici”) moved this Court for leave to file amicus curiae briefs in this action for judicial review of an agency decision. Respondent’s opposition to the Amici’s briefs is based upon a flawed assumption that nonparty amici briefs are not permitted in circuit court. Respondent further conflates the standards and roles of nonparty briefs with formal intervention as a party in a case.

Neither CSWAC nor the Town seek to intervene in the above-captioned matter. The Amici therefore respectfully request that this Court grant their motions for leave to file amicus curiae briefs because this Court has the authority and discretion to consider the briefs submitted by both CSWAC and the Town.

ARGUMENT

I. This Court may appropriately consider the Amici as friends of the court rather than intervening parties.

Neither Wis. Stat. ch. 227 nor Wisconsin's rules of civil or appellate procedure prohibit a nonparty from filing an amicus brief in judicial review of administrative decisions. The rules of appellate procedure allow nonparties to request a court's permission to file an amicus curiae brief. Wis. Stat. § 809.19(7). It is well established that courts may apply civil procedure statutes during ch. 227 judicial review where the general procedural rules do not conflict with the more specific review procedures within ch. 227. *See e.g., State ex rel. Town of Delevan v. Circuit Court for Walworth Cnty.*, 167 Wis. 2d 719, 482 N.W.2d 899 (1992). There is no conflict between the procedures in chapter 227 and the rule authorizing nonparty briefs. Additionally, it is appropriate for this Court to invoke the nonparty amicus statute in this case because judicial review of agency decisions is similar to an appeal. *Citizens' Util. Bd. v. Pub. Serv. Comm'n*, 2003 WI App 206, ¶ 15, 267 Wis. 2d 414, 671 N.W.2d 11 ("[A] petition for judicial review of an administrative agency decision is the functional equivalent of an appeal.").

Circuit courts have allowed nonparties to file amici briefs in other cases as well. *See, e.g., Amicus Curiae Brief of the Wisconsin Transportation Builders Association, Town of Cedarburg v. Dawson*, No. 01-CV-422 (Wis. Cir. Ct. Ozaukee County June 30, 2003); Amicus Curiae Brief of the Board on Aging and Long Term Care of the State of Wisconsin, *Schaul v. Kordell*, No. 05-CV-000226 (Wis. Cir. Ct. Walworth County Sept. 9, 2008); Amicus Curiae Brief of the

Wisconsin Hospital Association and Wisconsin Medical Society, *Schultz v. Cont'l Cas. Co.*, No. 07-CV-296 (Wis. Cir. Ct. Milwaukee County July 3, 2008).

Such allowance is in keeping with the important role of the amicus in our judicial system. Wisconsin courts have praised and “borrow[ed] liberally” from amici briefs, particularly when amici briefs provide more public policy and economic background. *See, e.g., Paulhe v. Riley*, 2006 WI App 171, 5, 295 Wis. 2d 541, 722 N.W.2d 155. The Seventh Circuit has acknowledged the role of friends of the court in instances such as “when the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.” *Ryan v. Commodity Futures Trading Comm'n*, 125 F.3d 1062, 1063 (7th Cir. 1997). The Amici in this matter provide the Court with perspective from a large, active citizens’ group and a municipality faced with recreational, economic and other impacts of unchecked high capacity well pumping.

Respondent relies heavily upon language from *In re Delevan Lake Sanitary District*, but takes that language out of context in application of the decision to this matter. 160 Wis. 2d 403, 415, 466 N.W.2d 227 (Ct. App. 1991). That case does not support the State’s position that nonparties may not file amicus briefs in judicial review of agency decisions before a circuit court. *See generally, id.* The question presented in that case was whether interested parties had standing to either petition for judicial review of an agency decision, or to intervene in such an action. *Id.* Respondent quotes language from *Delevan* in support of its position that a nonparty may participate in judicial review only if that nonparty is granted intervenor status. DNR Br. at 2. But the decision in *Delevan* did not reject or even consider whether a nonparty could submit an amicus brief in a judicial review proceeding. *In re Delevan Lake Sanitary District*, 160 Wis. 2d 403. Instead, the court explained why nonparties must establish standing in order to *intervene*

as parties. *Id. Delevan* is therefore inapposite to the Court's decision regarding whether to allow CSWAC and the Town to submit amici briefs in support of Petitioners in this case.

The State has cited no conflicting authority to undercut this Court's broad discretion to apply rules of general civil and appellate procedure and allow filing of nonparty amici briefs in this matter. As such, the Court may accept and review briefs from the Amici pursuant to Wis. Stat. § 809.17(7), and need not treat motions from CSWAC or the Town as attempts to become intervening parties.

II. The Amici need not satisfy the intervention standard required by Wis. Stats. §§ 227.53(d) or 803.09.

CSWAC and the Town are not seeking to intervene as parties in a ch. 227 judicial review case; therefore the Amici do not need to meet intervention standards outlined in Wis. Stat. § 803.09. This motion will not address Respondent's arguments that the Amici filed untimely motions to intervene or that the Amici's interests are represented by existing parties in the instant matter.

CONCLUSION

For each of the reasons stated herein, the Amici request that: (1) the Court deny Respondent's motion in opposition for leave to file the *amicus curiae* briefs; and (2) the Court grant both CSWAC and the Town permission to file a nonparty *amicus* brief.

Dated this 11th day of July, 2017.

Respectfully submitted,

Attorneys for CSWAC and the Town of Rome

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