FILED
10-12-2026
CLERK OF WISCONSIN
SUPREME COURT

STATE OF WISCONSIN
SUPREME COURT

Appeal No. 2026AP1258

Kaarina Dunn, Caroline Elfstrom, Tyler McClure, Miahlin Behnke, Athena Behnke, Jayla Manthe, Lucille Wright, Madeleine Bohn, Isabella Black, Ted Schultz-Becker, Charles Breitenmoser, Elia Masrour, Alexander Castillo, Simon Besonen, and Auden Gresch,

Plaintiffs-Appellants,

v.

Public Service Commission of Wisconsin, Summer Strand, Kristy Nieto, Marcus Hawkins, and Wisconsin State Legislature,

Defendants-Respondents.

APPEAL FROM A DECISION AND ORDER ENTERED IN THE DANE COUNTY CIRCUIT COURT, THE HONORABLE JULIE GENOVESE, PRESIDING

PETITION OF PLAINTIFFS-APPELLANTS TO BYPASS THE COURT OF APPEALS

Tressie Kamp,
State Bar No. 1082298
Tony Wilkin Gibart,
State Bar No. 1075166
Midwest Environmental Advocates
634 W Main Street, Suite 201
Madison, WI 53703
(608) 251-5047

Nathan Bellinger,* OR Bar No. 145479
Joanna Zeigler,* OR Bar No. 222331
Our Children's Trust
PO Box 5181
Eugene, OR 97405
(541) 375-0158

tkamp@midwestadvocates.org
tgibart@midwestadvocates.org

nate@ourchildrenstrust.org
joanna@ourchildrenstrust.org

**Admitted pro hac vice* by circuit court

Attorneys for Plaintiffs-Appellants

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INTRODUCTION

Plaintiffs-Appellants are 15 Wisconsin youth—Kaarina, Caroline, Tyler, Waazakone, Mukademigwan, Gookoonz, Lucy, Madeleine, Bella, Ted, Charlie, Elia, Alex, Simon, and Indy ("Youth Plaintiffs")—who seek access to Wisconsin's courts to protect their constitutional rights. They petition to bypass the Court of Appeals under Wis. Stat. §§ 808.05 and 809.60 because their case asks time-sensitive and significant questions of state constitutional law. The questions presented in this Petition are purely legal and likely to end up before this Court eventually.

The underlying case concerns the State's ongoing contributions to climate disruptions and the resulting harms to Youth Plaintiffs' health and lives, and whether these harms implicate rights protected by Wisconsin's Constitution, including its fundamental guarantees of life, liberty, and other inherent rights. This case specifically asks whether the Constitution affords them any protection against ongoing and worsening harms to their physical health and safety, their economic and property interests, and their cultural practices, caused by the statutes challenged here. Implicit in these questions is whether the courthouse doors will open to these disproportionately harmed youth for adjudication of their claims on the merits.

The circuit court's unprecedented order precludes judicial review of Youth Plaintiffs' claims, with grave implications for the enforceability of Wisconsin's constitutional protections in this and a myriad of other contexts. Bypass is warranted to affirm the duty of Wisconsin courts to interpret the Constitution and act as a check, when necessary, on the political branches. The questions presented here are a quintessential match for bypass and well satisfy the criteria in Wis. Stat. §§ 809.60 and 809.62(1r).

This action alleges that Wis. Stat. §§ 196.491(3)(d)3., 196.491(3)(d)4., 196.378(4m)(a) and 196.025(1)(c)1. ("the challenged laws") unconstitutionally prevent the Wisconsin Public Service Commission and its Commissioners (collectively, "PSC") from considering air pollution, including greenhouse gas ("GHG") emissions,

when approving fossil-fuel power plants, and from considering renewable energy as an alternative means to meet Wisconsin's growing energy needs. *See, e.g.*, R. 6:76-78. Youth Plaintiffs allege the laws unconstitutionally lock in fossil fuel sources of energy, causing air pollution that exacerbates their climate and air pollution-related injuries.

The circuit court found Youth Plaintiffs' claims raised non-justiciable political questions—though no Wisconsin appellate court has ever precluded constitutional review of a statute on that basis. On appeal, Defendants advance the circuit court's analysis and other justiciability defenses. Their arguments wrongly attempt to narrow protected rights and limit Wisconsin precedent requiring courts to adjudicate state constitutional claims on the merits.

Faced with premature dismissal of their claims, Youth Plaintiffs seek bypass and ask this Court to decide whether they allege viable life, liberty, and related claims to inherent rights under Article I, § 1, and viable public trust claims under Article IX, § 1 of Wisconsin's Constitution. *In re Adopt. of M.M.C.*, 2024 WI 18, ¶ 59, 411 Wis. 2d 389, 5 N.W.3d 238 (Dallet, J., concurring), *cert. denied sub nom. A.M. B. v. McKnight*, 145 S. Ct. 1051 (2025). Relatedly, Youth Plaintiffs ask this Court to decide that their constitutional claims are justiciable, which is required to give this Court an opportunity to interpret and give import to Wisconsin's constitutional protections.

This Petition does not merely ask the Court to correct an erroneous trial court decision. Youth Plaintiffs ask this Court to take jurisdiction to resolve threshold viability and justiciability questions of statewide import now. This will avoid years-long delay for these questions to play out in lower courts—all while PSC continues to approve new fossil fuel projects, increasing Wisconsin's GHG emissions and intensifying Youth Plaintiffs' ongoing injuries.

For these reasons, Youth Plaintiffs ask this Court to grant their Petition, reverse the circuit court's holding that their constitutional claims raise nonjusticiable political questions, find they have pleaded

viable claims under Article I, § 1 and Article IX, § 1 of Wisconsin's Constitution, and remand this case for further proceedings on the merits.

ISSUES PRESENTED

Issue No. 1: Does the Complaint state valid claims to life, liberty, a stable climate, and to access, enjoy, and use navigable waters and their beds, under Article I, § 1 of Wisconsin's Constitution?

Circuit Court Answer: The circuit court did not address the validity of Youth Plaintiffs' claims under Article I, § 1, concluding only that their constitutional claims presented nonjusticiable political questions.

Court of Appeals Answer: N/A

Youth Plaintiffs' Answer: This Court should find Youth Plaintiffs have sufficiently pleaded viable claims to life, liberty, a stable climate, and to access, enjoy, and use navigable waters and their beds, under Article I, § 1, and remand for further proceedings on the merits.

Issue No. 2: Does the Complaint state valid claims to access, use, and enjoy the navigable waters of the State under Article IX, § 1 of Wisconsin's Constitution?

Circuit Court Answer: The circuit court did not address the validity of Youth Plaintiffs' claims under Article IX, § 1, concluding only that their constitutional claims presented nonjusticiable political questions.

Court of Appeals Answer: N/A

Youth Plaintiffs' Answer: This Court should find Youth Plaintiffs have sufficiently pleaded viable public trust claims under Article IX, § 1, and remand for further proceedings on the merits.

Issue No. 3: Is the Complaint for declaratory relief challenging four statutory provisions for violating their rights guaranteed by Article I, § 1 and Article IX, § 1 of Wisconsin's Constitution justiciable under Wisconsin's liberally construed Uniform Declaratory Judgments Act ("UDJA")?

Circuit Court Answer: No. The circuit court ruled Youth Plaintiffs' claims presented nonjusticiable political questions, while declining to rule on other justiciability arguments raised by Defendants, including standing, ripeness, and sovereign immunity.

Court of Appeals Answer: N/A

Youth Plaintiffs' Answer: This Court should find the Complaint for declaratory relief is justiciable and survives Defendants' motions to dismiss. Youth Plaintiffs seek conventional equitable relief in the form of a declaration that the four challenged laws are unconstitutional. Because Wisconsin's UDJA favors justiciability, Youth Plaintiffs' claims are justiciable and warrant review on their merits.

STATEMENT OF THE CASE

I. Legal Background

a. Wisconsin's Relevant Constitutional Protections

Article I, § 1 protects more than "life, liberty, or property"; its plain language encompasses the pursuit of happiness and other unspecified but explicitly referenced "inherent" rights. Wis. Const. art. I, § 1. These rights predate and exceed 14th Amendment protections. *See, e.g.*, *Jacobs v. Major*, 139 Wis. 2d 492, 541, 407 N.W.2d 832 (1987) (Abrahamson, J., concurring in part, dissenting in part). Article I, § 1 was adopted two decades before the 14th Amendment was added to the U.S. Constitution—the original public meaning of this state provision, could not have been limited by the original public meaning of the 14th Amendment, which did not yet exist. *In re Adopt. of M.M.C.*, 411 Wis. 2d 389, ¶ 57 (Dallet, J., concurring).

Unlike the 14th Amendment, Article I, § 1 does not use the phrase "due process" but speaks of the people's "inherent rights," including rights to "life, liberty and the pursuit of happiness" in positive terms; it states that government is formed "to secure [the people's] rights." Wis. Const. art. I, § 1. The liberty interests protected by the federal due process clause include personal security, bodily integrity, and cultural and spiritual traditions. *See, e.g.*, R. 54:52. This case implicates these

rights, and other enumerated and inherent rights protected under Wisconsin's more expansive Article I, § 1 protections. *See, e.g.*, R. 54:51-63; R. 6:64-73, 76-78.

Article IX, § 1 memorializes a pre-statehood right to access, use, and enjoy the navigable waters of the State. This case implicates Youth Plaintiffs' public trust rights to access, use, and enjoy the navigable waters of the State under Article IX, § 1 of Wisconsin's Constitution. R. 54:66-71; R. 6:73-76. Article IV of the Northwest Ordinance of 1787 provided that, "[t]he navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways, and forever free, as well to the inhabitants of the said territory[,] as to the citizens of the United States . . . ." *See also PPL Mont., LLC v. Montana*, 565 U.S. 576, 603 (2012) (tracing right to navigable waters from Roman Law to English Law to the U.S.). Before adoption of our State's Constitution, residents of what is now Wisconsin had the right to use the navigable waters stemming from rights granted in Article IV of the Northwest Ordinance of 1787 and the deeply rooted Public Trust Doctrine.

The drafters of Wisconsin's Constitution included the text of Article IV of the Northwest Ordinance in Article IX, § 1. Courts have consistently understood that the right to use the waters of the State existed before statehood and is part of the inherent freedoms preserved, not created, by the State's Constitution. *See, e.g.*, *Diana Shooting Club v. Husting*, 156 Wis. 261, 271, 145 N.W. 816 (1914).

b. Legislative and Executive Actions Confirm the Need to Decarbonize Wisconsin's Electricity Sector

The State has known for decades that burning fossil fuels causes air pollution, including GHG emissions, which cause adverse environmental effects and various public interest harms. R. 6 ¶ 80. The State has also known that reducing and eventually eliminating GHG emissions is necessary to minimize dangers to the public interest and protect Wisconsin's waters and other resources. *Id.*

The Wisconsin Legislature's 1993 State Energy Policy established that new electricity generation in the State should come from renewable energy resources to the extent cost effective and technically feasible—which it now is. *Id.* ¶¶ 81, 88-92. In 1999, Wisconsin adopted its first Renewable Portfolio Standard ("RPS"). *Id.* ¶ 83. Wisconsin amended its RPS in 2005 to set a statewide goal that 10% of all electric energy consumed in the State come from renewable energy sources by 2015; Wisconsin met that goal in 2013. *Id.*

In August 2019, Governor Evers' Executive Order 38 created the Office of Sustainability and Clean Energy, charged with ensuring that electricity consumed within the State of Wisconsin be 100% carbon-free by 2050. *Id.* ¶ 85. In October 2019, Governor Evers established the Governor's Task Force on Climate Change, which found that "Wisconsin cannot take meaningful climate action without bold action to reduce the use of fossil fuels and pivot to renewable energy." *Id.* ¶¶ 85-86. Youth Plaintiffs are not asking the courts to re-write any of these policies or create new energy policy.

c. The Challenged Laws Perpetuate the State's Dependence on Fossil Fuels

i. Certificates of Public Convenience and Necessity

PSC reviews all applications for certificates of public convenience and necessity ("CPCN"), which are required to construct new large electric generating facilities in Wisconsin. Wis. Stat. § 196.491(3)(a)1. PSC approves CPCN applications only if certain statutory criteria are met, including a finding that the proposed facility would be in the public interest. R. 6 ¶¶ 93, 95. No person may commence the construction of a new large electric generating facility without a CPCN. *Id.* ¶ 93.

The first two challenged laws, Wis. Stat. § 196.491(3)(d)3. and Wis. Stat. § 196.491(3)(d)4., expressly prohibit PSC from considering GHG emissions and other air pollution when deciding whether to approve CPCNs for the construction of electric generation facilities. R. 6 ¶¶ 98-99. Even if PSC determines that GHG emissions and air pollution from

a proposed facility would render a project contrary to the "public interest," cause an "undue adverse impact on other environmental values," or harm "public health and welfare," PSC *must not* deny a CPCN application on these bases. *Id.* No other Wisconsin agency has authority to conduct these public interest and public health analyses in the approval process for new construction of fossil fuel-fired power plants in the State, and the Wisconsin Department of Natural Resources ("DNR") does not deny air pollution permits because of GHG emissions. *Id.* ¶¶ 95-97.[1]

Defendant Commissioner Strand acknowledged PSC is prohibited from denying new electricity generation projects over air pollution concerns. *Id.* ¶ 99. The Governor's Task Force on Climate Change stated that because of Wis. Stat. § 196.491(3)(d)3., PSC does not consider GHG emissions or the ability of utilities to meet their 2030 and 2050 GHG emission reduction goals when evaluating proposed fossil fuel-fired power plants. *Id.* ¶ 100.

ii. Wisconsin's Renewable Portfolio Standard

The last two challenged laws, Wis. Stat. § 196.378(4m)(a) and Wis. Stat. § 196.025(1)(c)1., prevent PSC from requiring electric providers to build or purchase electricity from renewable energy sources beyond what is required to meet the statewide goal of 10% renewable electricity. *Id.* ¶¶ 104, 106. Wisconsin Statute § 196.378(4m)(a) prohibits PSC from requiring any electric provider to increase its renewable energy generation above the required level set forth in the RPS. *Id.* ¶ 107. Wisconsin Statute § 196.025(1)(c)1. similarly prohibits PSC from imposing additional renewable energy requirements on any investor-

[1] Youth Plaintiffs have alleged, and are prepared to prove, that DNR's air permitting program does not include a public interest determination or consider GHG emissions in any meaningful way. R. 6 ¶ 97. PSC's public interest consideration, impacts on environmental values, and public health and welfare is separate and independent of any DNR air emissions standards under the Clean Air Act. Moreover, the challenged CPCN laws are irrational by prohibiting PSC from considering *only* air pollution when determining what is in the public's interest. R. 6 ¶ 98. These allegations must be presumed true at this stage of the case.

owned electric utility if Wisconsin has met the statewide RPS goal and the utility has otherwise complied with its electric provider requirements. *Id.* ¶ 108. Taken together, these laws cap how much renewable energy PSC can require electric providers to build or purchase, and constrain PSC from ensuring compliance with State energy policy. *Id.* ¶ 106.

PSC's statutory mandate is to ensure an adequate and reliable supply of electricity in Wisconsin. *Id.* ¶ 112. As electric providers propose more fossil fuel-fired power plants for resource-intensive industries such as data centers, the challenged laws bind PSC to continue approving fossil fuel-fired power plants that it knows contribute to climate change, contradict State energy policy, harm the public's health and welfare, and impair access to Wisconsin's public trust waters.

II. Relevant Factual and Procedural Background

a. The Challenged Laws Cause Air Pollution and Exacerbate Climate Change, Harming Uniquely Vulnerable Youth Plaintiffs

Fifteen young Wisconsinites come before the courts seeking relief from the concrete harms they are experiencing because of the challenged laws, which they allege are violating their rights under Article I, § 1 and Article IX, § 1 of Wisconsin's Constitution. The challenged laws ensure an electricity sector dominated by expensive fossil fuels. R. 6 ¶¶ 118-35. Seventy-five percent of Wisconsin's electricity still comes from fossil fuels, and the State's own projections expect the electricity sector to be dominated by fossil fuels for years to come. *Id.* ¶¶ 4, 120, 132. Air pollution, including GHG emissions, from Wisconsin's electricity sector is causing and contributing to climate disruptions in Wisconsin and a range of harms to Youth Plaintiffs. *Id.* ¶¶ 12-72; R. 64:11-21.

The circuit court accepted as true facts demonstrating that climate disruptions are harming Youth Plaintiffs now and will worsen in coming years absent remedial actions. R. 64:11-21. The challenged laws cause air pollution that results in rising temperatures, unhealthy air quality, extreme precipitation events, harm to the State's agriculture sector, loss

of wild rice, increasing vector borne illnesses, and impaired access to Wisconsin's rivers and lakes. *Id.*; *see also infra* § II (pp. 30-31). Youth Plaintiffs suffer physical and mental health harms, are deprived of tribal practices and access to culturally significant foods, experience economic losses and property destruction, and are denied access to public trust waters. R. 64:11-21.

b. Procedural Background

On August 22, 2025, Youth Plaintiffs filed their Complaint under Wisconsin's UDJA, Wis. Stat. § 806.04, alleging the challenged laws are violating their constitutional rights. R. 6:1. Plaintiffs are 15 youth from across Wisconsin, ranging from ages 8 to 17, all experiencing real and unique climate change-related harms including illness, economic losses, disruptions to cultural practices, and lost recreational opportunities. R. 6:10-27; R. 64:1. Defendants are PSC, the three Commissioners in their official capacity, and the Wisconsin Legislature.

Defendants filed separate motions to dismiss arguing Youth Plaintiffs lacked standing; their claims were not ripe, were barred by sovereign immunity, and presented nonjusticiable political questions; and the Complaint failed to allege viable constitutional claims. R. 33; R. 35. Youth Plaintiffs opposed these motions in a consolidated brief. R. 54. On April 23, 2026, the circuit court granted Defendants' motions to dismiss, despite noting it "is sympathetic to the youths." R. 64:2. The circuit court reached its decision based solely on a finding that Youth Plaintiffs' claims presented nonjusticiable political questions, despite the lack of precedent recognizing the political question doctrine in Wisconsin. R. 64:35. The circuit court declined to rule on Defendants' other justiciability defenses and did not decide whether Youth Plaintiffs had stated viable claims under Article I, § 1 or Article IX, § 1. R. 64:35.

Youth Plaintiffs filed their Notice of Appeal on May 28, 2026, and their Opening Brief on July 27, 2026. Defendants filed their Response briefs September 28, 2026. This Petition is timely filed under Wis. Stat. § 809.60(1)(a).

STATEMENT OF REASONS TO GRANT THE PETITION

Criteria for the Court's review of this Petition are in Wis. Stat. § 809.62(1r) and incorporated into the Court's Internal Operating Procedures. The statutory criteria for review are, in relevant part:

> (a) A real and significant question of federal or state constitutional law is presented. . . . (c) A decision by the supreme court will help develop, clarify or harmonize the law, and 1. The case calls for the application of a new doctrine rather than merely the application of well-settled principles to the factual situation; or 2. The question presented is a novel one, the resolution of which will have statewide impact; or 3. The question presented is not factual in nature but rather is a question of law of the type that is likely to recur unless resolved by the supreme court. . . .

Wis. Stat. §§ 809.62(1r)(a), (c).

The Court should grant this Petition because it satisfies these review criteria and because expeditious final resolution of Youth Plaintiffs' constitutional claims is necessary to protect these Youth Plaintiffs from further harms and infringement of their constitutional rights. *See id.*; *see also* Wisconsin Supreme Court Internal Operating Procedure § III.B.2.

I. This Petition Meets Statutory Criteria for Review by the Court

a. This Case Presents Real and Significant Questions of Constitutional Law About the Scope of Rights Protected Under Article I, § 1 and Article IX, § 1 of Wisconsin's Constitution

This case presents real, significant, and previously unadjudicated state constitutional questions about the scope of rights protected by Article I, § 1 and Article IX, § 1.

i. This Case Concerns the Scope of Enumerated Life and Liberty Rights Under Article I, § 1

The Court should accept bypass to prevent a narrowing of life and liberty rights protected by Wisconsin's Constitution. Youth Plaintiffs

allege the challenged laws violate their enumerated, previously recognized inherent rights to life and liberty. R. 6 ¶¶ 216-40. Defendants dispute the scope of Article I, § 1 protections, arguing such rights are limited to only those protected by the federal constitution. R. 33:27; R. 35:35; Legis. Resp. Br. 41; PSC Resp. Br. 38;[2] *contra* § I.a (pp. 10-11).[3] Under criteria for bypass, Wis. Stat. § 809.62(1r)(a), this real and significant question of state constitutional law primes this case for review by the Court.

Wisconsin's substantive due process rights protect individuals against state action[4] that is "arbitrary, wrong, or oppressive," regardless of process. *State v. Wood*, 2010 WI 17, ¶ 17, 323 Wis. 2d 321, 780 N.W.2d 63; *Penterman v. Wis. Elec. Power Co.*, 211 Wis. 2d 458, 480, 565 N.W.2d 521 (1997) ("In evaluating a substantive due process claim, the threshold inquiry is whether the plaintiff shows a deprivation of a liberty or property interest protected by the Constitution."); *see also Zablocki v. Redhail*, 434 U.S. 374, 387 (1978) (evaluating whether the challenged laws "directly and substantially" interfere with plaintiff's rights to life and liberty). Government action that deprives a person of life or liberty is subject to strict scrutiny. *Mayo v. Wis. Injured Patients & Fams. Comp. Fund*, 2018 WI 78, ¶ 28, 383 Wis. 2d 1, 914 N.W.2d 678.

Substantive due process cases require courts to identify the protected constitutional interest and whether any state interests may outweigh the constitutional interest. *Wood*, 323 Wis. 2d 321, ¶ 18. Wisconsin courts have long recognized that Article I, § 1 protects inherent rights to life and liberty and evaluated whether state laws violate such rights on the merits. *In re Guardianship of Ruth E.J.*, 196 Wis. 2d 794, 804, 540 N.W.2d 213 (Ct. App. 1995) (finding state law

[2] The Response briefs cited herein were filed by the Legislature and PSC in the Court of Appeals on September 28, 2026. Later in the brief, Plaintiffs' Opening Brief is cited too.

[3] This dispute confirms there is a live controversy as to scope of Youth Plaintiffs' constitutional rights, making the case justiciable under the UDJA.

[4] Youth Plaintiffs' constitutional claims against the challenged laws seek protection from *government* interference—not conduct of private parties—and pass muster under the state action doctrine. R. 54:49-51. Defendants continue to make incorrect arguments to the contrary before the Court of Appeals. Legis. Resp. Br. 39-40.

violates constitutional right to life and liberty); *In re Zachary B.*, 2004 WI 48, ¶ 38, 271 Wis. 2d 51, 678 N.W.2d 831.

Youth Plaintiffs have alleged violations of their rights to life and liberty. The Defendants and the challenged laws are causing and contributing to a medically significant disruption of Youth Plaintiffs' physiological and psychological growth and functioning as children, effects that extend into adulthood and cause a lifetime of hardship via exposure to heightened risk of illness or death. R. 6 ¶¶ 231-32. Further, Youth Plaintiffs allege Defendants, and the challenged laws are contributing to a destabilized climate system by increasing GHG emissions in violation of their liberty rights to health, safety, and bodily integrity by exposing them to physical injury and disease and serious psychological, social, spiritual, and cultural harms and traumas. R. 6 ¶¶ 154-57, 221.

Youth Plaintiffs Caroline, Madeleine, Alex, Simon, and Indy are currently suffering from, or at an increased risk of developing, asthma and other respiratory diseases. R. 6 ¶¶ 17-18, 37, 62, 66, 70, 170-76. Caroline, Ted, Alex, and Indy are forced to inhale air polluted by climate-induced wildfire smoke and fossil fuel pollution. R. 6 ¶¶ 17-18, 51, 62, 70, 175-76. Waazakone and Bella have both been severely debilitated by vector-borne diseases, which are growing in prevalence due to warming temperatures. R. 6 ¶¶ 29, 44 (because of Lyme disease, Waazakone could barely walk and Bella lost 20 pounds in a month). The safety of Kaarina, Caroline, Elia, Alex, and Simon has been jeopardized by illnesses stemming from extreme heat, and all Youth Plaintiffs are at risk of experiencing more heat-related illnesses in the future. R. 6 ¶¶ 14, 18, 58, 62, 67, 164-69. Tyler, Waazakone, Gookoonz, Mukademigwan, Madeleine, Bella, and Elia have suffered serious psychological harms related to the climate crisis. R. 6 ¶¶ 31, 40, 47, 61, 156-57, 169. Finally, Tyler, Waazakone, Gookoonz, Mukademigwan, Lucy, Ted, and Charlie have experienced cultural and spiritual deprivations from climate change impacts to agriculture, the loss of winter snowpack, and the exponential decline of native resources such as wild rice and sturgeon. R. 6 ¶¶ 22-27, 32-36, 48-50, 54-55, 158-62, 186-96.

These grave injuries to health, safety, bodily integrity, lives, and cultural practices implicate rights protected by Article I, § 1, irrespective of federally protected rights. This Petition asks the Court to apply recognized constitutional rights to new factual circumstances here—a challenge to laws that cause air pollution, exacerbate climate disruptions, and harm Youth Plaintiffs. No justiciability carveout exists for constitutional protections in energy and climate cases, as Defendants would have it. This Court should find Youth Plaintiffs are entitled to present evidence as to how the challenged laws are violating their constitutional life and liberty rights secured by Article I, § 1.

ii. This Case Concerns the Scope of Inherent Rights to a Stable Climate, and to Access, Use, and Enjoy Navigable Waters Under Article I, § 1

Grant of bypass is warranted so this Court can serve as the final arbiter of Wisconsin's Constitution to determine whether Youth Plaintiffs have pleaded viable claims for certain inherent rights under Article I, § 1. Youth Plaintiffs allege inherent rights protected by Article I, § 1 include the right to a stable climate and the right to access, use, and enjoy navigable waters of the State, and that these rights are essential to preserving rights to life, liberty, and pursuit of happiness. R. 6 ¶¶ 241-62. While these rights have not previously been recognized, prior courts existing under more stable climate conditions did not have occasion to address these rights.

Relying on federal case law, PSC argues the inherent rights of Article I, § 1 are "extremely limited" and must be "implicit in the concept of ordered liberty." PSC Resp. Br. 39.

Not only does Defendants' position illustrate the live controversy as to the scope of protected rights in this case, this Court should base its decision on the unique and broader protections of Wisconsin's Constitution and Wisconsin jurisprudence. The view of Article I, § 1 that better secures Wisconsinite's inherent rights is: "[w]hereas the Fourteenth Amendment's protections extend only to those rights 'so rooted in the traditions and conscience of our people as to be ranked as

fundamental,' the inherent rights contemplated by Article I, Section 1 are not so limited." *In re Adopt. of M.M.C.*, 411 Wis. 2d 389, ¶ 55 (Dallet, J., concurring) (quoting *Reno v. Flores*, 507 U.S. 292, 303 (1993)). "Wisconsinites have 'inherent rights,' a phrase that was written 'to be broad enough to cover every principle of natural right, of abstract justice.'" *Id.* (quoting *Black v. State*, 113 Wis. 205, 226, 89 N.W. 522 (1902) (Marshall, J., concurring)).

Since Wisconsin's earliest years, officials understood the State's climate was fundamental to life. In 1867, the State Forestry Commission recognized the importance of a stable climate, while also recognizing humans' ability to alter the climate and the dangers of a changing climate for Wisconsinites. I. A. Lapham, J. G. Knapp & H. Crocker, *Report on the Disastrous Effects of the Destruction of Forest Trees Now Going on so Rapidly in the State of Wisconsin*, 9-12, 23-24 (1867) (recognizing "there is no doubt" that "changes of climate can be produced by man" and "[u]nder these changes of climate and productiveness" people will be "deprived of so many of the means of comfortable living").[5] So too, the right to access, use, and enjoy Wisconsin's navigable waters is an inherent right that pre-dates statehood. That right should not "be limited or curtailed by narrow constructions" but rather "should be interpreted in the broad and beneficent spirit that gave rise to it[.]" *Diana Shooting Club*, 156 Wis. at 271.

Wisconsin courts should not accept Defendants' invitation to foreclose—especially at the motion to dismiss stage—the question of whether Wisconsin's vulnerable youth have inherent rights to a stable climate and to access, use, and enjoy navigable waters. Such constitutional questions deserve head-on judicial review, which this Court can provide by granting this Petition and ordering supplemental briefing on this issue of first impression. *See infra* § III (pp. 31-32).

[5] Other state supreme courts recognize a constitutional right to a stable climate. *Held v. State*, 560 P.3d 1235, 1246 (Mont. 2024) (holding Montana's constitutional rights includes right to a "stable climate system that sustains human lives and liberties"); *Matter of Haw. Elec. Light Co., Inc.*, 526 P.3d 329, 335 (Haw. 2023) (recognizing a constitutional "right to a life-sustaining climate system").

iii. This Case Concerns the Scope of Public Trust Rights Protected Under Article IX, § 1

According to Defendants, there can never be a cause of action under Article IX, § 1, and only the State—never individuals—can invoke the Public Trust Doctrine to challenge the constitutionality a statute. Legis. Resp. Br. 44; PSC Resp. Br. 46. These arguments, if accepted, would render Article IX, § 1 protections for navigable waters unenforceable and meaningless. Wisconsin precedent clearly indicates that meaningful implementation of these pre-statehood rights hinges on the ability of individuals to bring related claims against the State trustees. R. 54:68 (citing *State v. Deetz*, 66 Wis. 2d 1, 11, 224 N.W.2d 407 (1974) (recognizing the "public trust doctrine has been used by citizens" "to limit or rescind actions taken by the state")).[6]

A long legal history preserves a deeply rooted tradition of Wisconsinites prizing their ability to access, use, and enjoy the waters of the State. R. 54:63. In limited contemporary precedent touching on the Public Trust Doctrine, this Court confirmed that "[t]he waters of this state are deeply revered, especially by those who live alongside them." *Lake Beulah Mgmt. Dist. v. Dep't of Nat. Res.*, 2011 WI 54, ¶ 69, 335 Wis. 2d 47, 799 N.W.2d 73 (Ziegler, J., concurring). Youth Plaintiffs seek to continue to protect their access, use, and enjoyment of the waters of the State secured by previous generations of Wisconsinites.

The worsening climate crisis, to which the challenged laws are contributing, deprives Youth Plaintiffs of these inherent rights by virtue of diminishing water quality and associated diminished opportunities for water-based, public trust activities. R. 6 ¶¶ 13, 19, 28, 35, 37, 52, 56, 58, 63, 202-14. For example, the Great Lakes, which are central to Anishinaabe migration story, are being physically altered by a warming climate, which limits Tyler, Waazakone, Mukademigwan, and

[6] Although recent public trust precedent has not involved constitutional claims like those alleged by Youth Plaintiffs, the comparative uptick in these cases demonstrate the statewide interest in understanding the scope of rights granted under Article IX, § 1. *See, e.g.*, *Vill. of Shorewood v. Paul W. Florsheim*, No. 26CV1769 (Milwaukee Cnty. Cir. Ct. Sept. 3, 2026) (applying Public Trust Doctrine to beach-walking rights).

Gookoonz's ability to harvest culturally important foods, such as wild rice, from the lakes and its shores. R. 6 ¶¶ 23, 214; *see also* R. 6 ¶¶ 25-26, 202-09 (reduced ability to fish for cold-water fisheries). Additionally, Youth Plaintiffs cannot access or use navigable waters for boating, fishing, or swimming due to harmful algal blooms that are dangerous to their health and are caused by warming waters. R. 6 ¶¶ 19, 28, 35, 37, 58, 63.

Allowing Defendants to prevail would render constitutional protections for Wisconsinites' ability to access, use, and enjoy the State's waters effectively and broadly unenforceable. While that outcome would have broad implications, this case also illustrates the need to protect Wisconsin's waters from degradation due to climate change, the greatest threat to these waters.

* * *

Youth Plaintiffs allege the challenged laws are violating their enumerated life and liberty rights, as well as their inherent rights to a stable climate and to access, use, and enjoy Wisconsin's navigable waters. Defendants contest the existence of such rights and argue for a narrow interpretation of Wisconsin's constitutional protections that, for Article I, § 1, is in lockstep with federal due process protections.[7] This Court should grant bypass to answer important questions about the scope of *Wisconsin's* constitutional protections, then remand to the circuit court for adjudication of the merits based on a fully developed factual record.

b. Resolution of Novel Questions Regarding Rights Protected Under Article I, § 1 and Article IX, § 1 Will Develop or Clarify the Law and Have Statewide Impacts

The underlying controversy over the scope of Article I, § 1 and Article IX, § 1 protections presents novel questions regarding the scope

[7] Even accepting Defendants' narrow interpretation of Article I, § 1, Youth Plaintiffs still have justiciable claims.

of such protections and whether they apply to the nature of Youth Plaintiffs' injuries. The factual and legal circumstances presented by this Petition demonstrate the statewide impacts its resolution will have, providing another "special and important reason" for this Court to review this case on bypass. Wis. Stat. § 809.62(1r)(c)2. PSC agrees that "questions presented raise issues of substantial and continuing public interest." PSC Resp. Br. 19.

The circuit court accepted as true the statewide disruptions and significant harms Youth Plaintiffs are experiencing because of climate change and the challenged laws. R. 64:11-21; *see also infra* § II (pp. 30-31). These facts are not disputed here at the pleading stage. Statewide harms caused by climate disruptions—exacerbated by the challenged laws—highlight the need for this Court to accept bypass and rule on the viability of Youth Plaintiffs' constitutional claims arising from those harms. Additionally, if courts accept Defendants' narrow reading of inherent rights protected under Articles I, § 1 and IX, § 1, that narrow interpretation will have statewide impacts that resonate far beyond the climate harms at issue in this case.

c. Whether Youth Plaintiffs' Constitutional Claims are Justiciable Warrants Review by the Court to Clarify Underlying Novel Legal Theories

The viability of state constitutional claims forms the foundation of this Petition. Yet, the circuit court's unprecedented application of the political question doctrine to block judicial review of the constitutionality of state statutes also warrants review by the Court. R. 64:2, 25-35. Indeed, no Wisconsin appellate court has ever determined constitutional questions present nonjusticiable political questions. Opening Br. 22.

i. The Circuit Court's Application of the Political Question Doctrine Presents a Novel Question, the Resolution of Which Will Have Statewide Impacts

With its decision that Youth Plaintiffs' constitutional claims presented a nonjusticiable political question, R. 64:34-35, the circuit

court disavowed precedent holding that, consistent with the separation of powers, the judicial branch has the power and duty to consider the constitutionality of statutes. *League of Women Voters of Wis. v. Evers*, 2019 WI 75, ¶¶ 30, 36, 387 Wis. 2d 511, 929 N.W.2d 209 ("*LWVW*"). There is no exception for environmental or energy laws. *Contra* R. 64:2, 27, 35. If judicial review of the challenged laws was foreclosed simply because they touch on economic or social issues, as the circuit court implied, R. 64:26, multitudes of other statutes would also be immune from judicial review as nearly all laws implicate economic or social issues, either directly or indirectly. Opening Br. 24 (citing cases). This Court is presented with a novel circuit court application of the political question doctrine that, if not corrected, could have statewide impact by precluding constitutional review of a wide range of state statutes.

The political question doctrine is a function of federal law and rooted in jurisdictional limitations imposed upon federal courts by the "case or controversy" requirement of Article III of the U.S. Constitution. *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 215 (1974). Article III's limitations do not apply in Wisconsin courts because the State Constitution does not have a "case or controversy" requirement and instead provides circuit courts with general jurisdiction over "all matters civil and criminal[.]" Wis. Const. art. VII, § 8; *Foley-Ciccantelli v. Bishop's Grove Condo. Ass'n, Inc.*, 2011 WI 36, ¶ 40 n.18, 333 Wis. 2d 402, 797 N.W.2d 789; *See also* Wis. Stat. § 806.04(1). Wisconsin's Constitution guarantees access to the courts and a remedy to every person for their injuries—a right not found in the U.S. Constitution—providing Wisconsin courts with jurisdiction to hear a wider range of cases than federal courts. Wis. Const. art. I, § 9.

This jurisdiction is perhaps at its broadest when, as is the case here, constitutional claims are asserted under Wisconsin's UDJA. Wisconsin courts have broad authority to "declare rights, status, and other legal relations" when brought by an interested person affected by a statute. Wis. Stat. § 806.04(1); R. 6 ¶ 10. Courts construe the UDJA "liberally as it affords relief from an uncertain infringement of a party's

rights." *Town of Eagle v. Christensen*, 191 Wis. 2d 301, 316, 529 N.W.2d 245 (Ct. App. 1995) (citation omitted).

Because there is limited support for the existence or application of the political question doctrine in Wisconsin law, the circuit court relied on non-binding cases from other jurisdictions, with different constitutions, to find Youth Plaintiffs' constitutional claims are nonjusticiable. R. 64:27. This novel application of the political question doctrine to state law to insulate environmental and energy laws from judicial review has no support in Wisconsin's jurisprudence (or out-of-state cases). *See* Opening Br. 29, 36 (distinguishing out-of-state cases, which did not challenge specific laws); *see also* App. 303 (Order on Second Rule 60(a) Motion for Clarification at 6, *Held v. State*, No. CDV-2020-307 (Mont. 1st Jud. Dist. Sept. 22, 2022) ("To hold this controversy as non-justiciable due to the political question doctrine would completely upset the separation of powers.")).

The Court should accept bypass to review the circuit court's dangerously novel application of the political question doctrine that would insulate swaths of statutes from review and contravene the judiciary's duty to interpret the Constitution. The dearth of state political question cases, let alone cases applying the federal *Baker* factors as the circuit court did[8]—underscores the importance of this Court's review. *Baker v. Carr*, 369 U.S. 186 (1962).

ii. Defendants' Other Justiciability Arguments Raise Novel Questions about Judicial Review of Unconstitutional Statutes, the Resolution of Which Will Have Statewide Impacts

The circuit court granted Defendants' motions to dismiss solely on the political question doctrine without examining Defendants' other justiciability arguments. R. 64:35. Yet, Defendants continue to advance

[8] R. 64:26-34. Defendants advance the circuit court's *Baker*-focused political question doctrine analysis in their briefs. PSC Resp. Br. 25-35; Legis. Resp. Br. 29-39. Even if the *Baker* factors were applied, Youth Plaintiffs' claims are justiciable. Opening Br. 26-38.

these arguments in the Court of Appeals. PSC Resp. Br. 37-54; Legis. Resp. Br. 17-27, 39-47. These defenses, if accepted by Wisconsin courts, will upset long-standing justiciability doctrines and will have at least two statewide impacts: 1) undercutting the judiciary's core function to review the constitutionality of state laws; and 2) limiting plaintiffs' access to state courts to challenge unconstitutional laws.

First, Defendants argue that administrative exhaustion precludes adjudication of Youth Plaintiffs' constitutional claims. *See, e.g.*, PSC Resp. Br. 47-51. But they are not challenging a specific agency action that would be reviewable under Wisconsin's Administrative Procedures Act. Instead, they challenge the constitutionality of specific statutes under the UDJA. Exhaustion of administrative remedies cannot apply because PSC does "not have the power to declare statutes unconstitutional," which is what Youth Plaintiffs seek here. *Metz v. Veterinary Examining Bd.*, 2007 WI App 220, ¶ 21, 305 Wis. 2d 788, 741 N.W.2d 244. The Court should reject Defendants' argument as an improper attempt to foreclose facial challenges to statutes under the UDJA.

Second, PSC argues that sovereign immunity bars Youth Plaintiffs' claims. One well-recognized exception to sovereign immunity is in cases seeking a declaratory judgment that a statute is unconstitutional. *Town of Eagle*, 191 Wis. 2d at 320. In *Town of Eagle*, the court held sovereign immunity did not bar a suit against the agency and officials in that case because the plaintiffs did not seek damages, and the complaint alleged constitutional violations against the state officers. *Id.* at 320. Youth Plaintiffs neither seek damages, nor attempt to use declaratory judgment to purse a damages remedy. R. 6:71-73. Rather, the underlying claims for declaratory judgment are "well-suited" for judicial resolution because they are against a state agency and state officials and seek a determination of the constitutionality of statutory provisions. R. 6 ¶¶ 216-78. This Court should reject Defendants' attempt to re-write the law to immunize state laws from judicial review.

Third, Defendants attempt to read the federal redressability requirement into Wisconsin's standing law when our State's standing test does not include such a requirement. PSC Resp. Br. 51-53; Legis. Resp. Br. 25-27. This Court should reject such efforts and provide clarity to the lower courts as to the proper standing analysis in constitutional cases under Wisconsin law. *Foley-Ciccantelli*, 333 Wis. 2d 402, ¶¶ 37-45 (Abrahamson, J., lead) (recognizing there has not been a uniform Wisconsin standing test). While the circuit court did not address standing, the Complaint's allegations, which must be accepted as true, go beyond minimal pleading requirements and provide the courts with jurisdiction to review Youth Plaintiffs' constitutional claims on the merits. R. 6 ¶¶ 101, 103, 113, 226-27, 237-38, 247-48, 259-60, 275-76. This Court has clarified that "[s]tanding in Wisconsin is not to be construed narrowly or restrictively, but rather should be construed liberally." *Foley-Ciccantelli*, 333 Wis. 2d 402, ¶ 38; *see also* Wis. Const. art. I, § 21.

Defendants' jurisdictional defenses attempt to preclude Wisconsin courts from determining Youth Plaintiffs' constitutional claims on the merits. But under Wisconsin's "liberally construed" UJDA and standing jurisprudence, courts have broad authority to declare rights. Wis. Stat. § 806.04(12); *Town of Eagle*, 191 Wis. 2d at 316. The Court should accept bypass to foreclose Defendants' attempt to wrongly impose heightened federal justiciability requirements on Youth Plaintiffs' constitutional claims. *Sierra Club v. Dep't of Nat. Res.*, 2025 WI App 39, ¶ 31, 417 Wis. 2d 90, 24 N.W.3d 157.

d. Questions Presented to the Court at this Stage of the Case are Legal in Nature and Likely to Recur

This Petition asks the Court to determine the scope of rights protected by Wisconsin's Constitution, and relatedly, the viability and justiciability of their constitutional claims. These legal questions make bypass appropriate under Wis. Stat. § 809.62(1r)(c)3. Whether the challenged laws violate Youth Plaintiffs' constitutional rights should be determined after remand from this Court.

The Court's decision on bypass in *Sorenson v. Jarvis* supports a decision to grant this Petition. 119 Wis. 2d 627, 350 N.W.2d 108 (1984). As *Sorenson* stated:

> The complaint must be liberally construed to do substantial justice and, if reasonably possible, construed to state a cause of action. . . . We accepted these cases on bypass, not to determine a routine pleading issue, but to determine whether public policy was better served by concluding that the plaintiffs had a cause of action under the facts pleaded. . . .

119 Wis. 2d at 631-32; *see also Priorities USA v. Wis. Elections Comm'n*, 2024 WI 32, ¶¶ 1-2, 412 Wis. 2d 594, 8 N.W.3d 429.

It best serves justice and public policy—particularly at this motion to dismiss stage of Youth Plaintiffs' case—to remand this matter to the circuit court for further proceedings to adjudicate factual questions and decide the constitutionality of the challenged laws. *Sorenson*, 119 Wis. 2d at 648. Like many cases, Youth Plaintiffs' claims have factual underpinnings that will require scientific experts and other fact-finding before the circuit court. But here, this Court has before it robust and compelling allegations that must be accepted as true, R. 64:11-21, leaving only legal questions regarding the viability of this declaratory judgment action.

Finally, the criteria at Wis. Stat. § 809.62(1r)(c)3. support bypass because this case raises legal issues as to the health and safety of Wisconsinites similar to those being decided by state supreme courts around the country. *See, e.g.*, *Kain v. Dep't of Env't Protection*, 49 N.E.3d 1124 (Mass. 2016) (Massachusetts has legal obligation to promulgate regulations to reduce GHG emissions); *Held*, 560 P.3d at 1259-60 (laws that promote fossil fuels violate youth plaintiffs' constitutional rights). *See, e.g.*, Opening Br. 28-30. The statewide importance of these cases makes it likely that the issues will be presented to this Court eventually. *Supra* §§ I.b, c (pp. 23-28). As the "final arbiter" of constitutional interpretation questions, the issues presented as to the scope of Wisconsin's constitutional protections are issues likely to end up before this Court. *Jensen v. Wis. Elections Bd.*, 2002 WI 13, ¶ 25, 249 Wis. 2d

706, 639 N.W.2d 537; *LWVW*, 387 Wis. 2d 511, ¶ 36; *see also* Sup. Ct. Internal Operating Procedures III.B.2.

II. Delaying a Final Decision in this Case Locks in Further Harms to Youth Plaintiffs

The challenged laws ensure a fossil fuel-dominated electricity sector that contributes to climate disruptions in Wisconsin, contradicts State energy policy, and infringes on Youth Plaintiffs' constitutional rights. *See, e.g.*, R. 6 ¶ 1. Defendants do not deny that the challenged laws are being implemented in Wisconsin and will continue to be implemented in a manner that harms Youth Plaintiffs absent judicial relief. *See, e.g.*, R. 54:35.

Promptly resolving Youth Plaintiffs' claims is critical: each additional ton of carbon dioxide emitted and every fractional increase in temperature amplifies their harms. *See, e.g.*, R. 6:44; R. 54:28. The harms Youth Plaintiffs will continue to experience are not esoteric. Tyler, Waazakone, Mukademigwan, and Gookoonz all are losing access to integral aspects of their First Nations cultures including maple sugaring, gathering wild rice, and hunting and fishing for traditional food sources. R. 6:13-17. Caroline is forced to stay indoors due to allergies, poor air quality from nearby fossil fuel-fired power plants, and an increased risk of developing asthma—missing critical childhood development experiences like outdoor play and summer camps. R. 6:12. As a result of exposure to hazardous wildfire smoke, Kaarina, Caroline, Lucy, Ted, Elia, Alex, Simon, and Indy have all had childhoods marred by negative health impacts, disrupted schooling, or unavoidable outdoor activities—like working on the family farm—that expose their still-developing bodies to acute and long-term health harms. R. 6 ¶¶ 14, 18, 35, 37, 39-40, 51, 58, 62, 66, 70, 173.

The long lifespan of fossil-fuel plants reinforces the reality faced by Youth Plaintiffs and the time-sensitive nature of their claims: PSC continues to review and approve applications for fossil-fuel plants, including those built to power resource-intensive industries such as data centers, all while continuing to ignore dangers from resulting air

pollution. This effectively guarantees more harm and more severe climate disruptions for the thirty-plus year lifespan of the power plants. R. 64:9. The challenged laws are also a barrier to Wisconsin's goal to decarbonize its electricity sector by 2050, which is necessary to protect Youth Plaintiffs. R. 64:4-9.

Court of Appeals reporting shows a three-judge panel in District One takes an average of 587 days from the notice of appeal to issue a decision.[9] With a notice of appeal dated May 28, 2026, early 2028 is a realistic date to expect a decision just on Defendants' motions to dismiss. If the circuit court's grant of those motions is overturned, as it should be, resolution of the merits of underlying constitutional claims in calendar year 2028 is unlikely. Defendants will have years to continue approving new fossil fuel projects, absent consideration of known harms from air pollution, and unable to require utilities to increase their procurement of renewable energy.

Delay will cause unnecessary harm beyond Youth Plaintiffs. Prompt judicial review of the challenged laws' constitutionality will more quickly protect ratepayers and provide certainty for regulated industry. As in *LWVW*, 387 Wis. 2d 511, ¶ 12, review via bypass is necessary here to avoid harm and uncertainty that results from unresolved issues of constitutional law.

III. If the Court Grants this Petition, Supplemental Briefing is Warranted

Due to the limited scope of the underlying circuit court decision, Plaintiffs' Opening appellate brief only addressed whether Youth Plaintiffs' constitutional claims raise nonjusticiable political questions. Defendants' response briefs raised arguments not addressed in the Opening Brief, including standing, administrative exhaustion, sovereign immunity, and failure to state constitutional claims. *See, e.g.*, PSC Resp. Br. 37-57; Legis. Resp. Br. 18-29, 39-48. Supplemental briefing is

[9] Wis. Ct. App., *2025 Annual Report* at 3 (2025), wicourts.gov/ca/DisplayDocument.pdf?content=pdf&seqNo=1098408.

appropriate to assist this Court in determining these issues of statewide import.

CONCLUSION

Youth Plaintiffs ask the Court to grant this Petition and find they have viable and justiciable claims under Article I, § 1 and Article IX, § 1. Youth Plaintiffs ask this Court to then remand this case for further proceedings on the merits of their constitutional claims.

Respectfully submitted,

Electronically signed by Tressie K. Kamp

Tressie Kamp,
State Bar No. 1082298
Tony Wilkin Gibart,
State Bar No. 1075166
Midwest Environmental Advocates
634 W Main Street, Suite 201
Madison, WI 53703
(608) 251-5047
tgibart@midwestadvocates.org
tkamp@midwestadvocates.org

Nathan Bellinger,* OR Bar No. 145479
Joanna Zeigler,* OR Bar No. 222331
Our Children's Trust
PO Box 5181
Eugene, OR 97405
(541) 375-0158
nate@ourchildrenstrust.org
joanna@ourchildrenstrust.org

Form and Length Certification

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b), (8)(bm), and (8)(g). Although this is a petition to bypass, not a petition for review, this Petition conforms to the rules in Wis. Stat. § 809.62(2) for a petition for review produced with a proportional serif font. The length of this Petition is 7,945 words. This word count includes all words in the Introduction, Issues Presented, Statement of the Case, Statement of Reasons to Grant the Petition, and Conclusion sections, including the text of all such sections' headings and footnotes.

Certificate of E-File/Service

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Appellate Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 12th day of October 2026.

Electronically signed by Tressie K. Kamp
Tressie Kamp
Senior Staff Attorney
State Bar No. 1082298
Midwest Environmental Advocates
634 West Main Street, Suite 201
Madison, WI 53703
tkamp@midwestadvocates.org
608.251.5047 x817