

FILED
10-09-2024
CLERK OF WISCONSIN
SUPREME COURT



OFFICE OF THE CLERK
Supreme Court of Wisconsin

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WI 53701-1688

TELEPHONE (608) 266-1880
FACSIMILE (608) 267-0640
Web Site: www.wicourts.gov

October 9, 2024

To:

Charlotte Gibson
Electronic Notice

Kevin M. Leroy
Electronic Notice

Colin Thomas Roth
Electronic Notice

Misha Tseytlin
Electronic Notice

Sean T.H. Dutton
Electronic Notice

Erin K. Deeley
Electronic Notice

*Distribution list continued on Page 3.

You are hereby notified that the Court has entered the following order:

No. 2023AP2020-OA Governor Evers v. Senator Marklein

By order of July 5, 2024, this court ordered the parties to file simultaneous legal memoranda discussing the impact of the court's July 5, 2024 decision, if any, on whether the court should grant review of the second and/or third issues set forth in the petition for leave to commence an original action. The parties filed responses in accord with the July 5, 2024 order. We construe the response filed by the petitioners, Gov. Evers et al., as including a motion to withdraw the second issue listed in the petition for leave to commence an original action. In addition, non-party briefs in response to the court's July 5, 2024 order were received from Clean Wisconsin and from the National Association of Social Workers and its Wisconsin Chapter. On July 26, 2024, intervenor-petitioner, Gathering Waters Inc., filed an unopposed motion for voluntary dismissal, indicating that it does not wish to participate as a party in consideration of the remaining issues in this action. The court having considered all of these filings;

IT IS ORDERED that the motion to withdraw the second issue listed in the petition for leave to commence an original action is granted, and the second issue is dismissed; and

Page 2

October 9, 2024

No. 2023AP2020-OA Governor Evers v. Senator Marklein

IT IS FURTHER ORDERED that the third issue listed in the petition for leave to commence an original action, which was held in abeyance by this court's order of February 2, 2024, will be considered by the court. The third issue was presented in the petition as follows:

Under various provisions of Wis. Stat. ch. 101, [the Department of Safety and Professional Services (DPS)] is charged with promulgating rules relating to commercial building safety, accessibility, and energy efficiency. Under Wis. Stat. § 457.03(2), the Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board is responsible for developing ethics standards for social workers, marriage and family therapists, and professional counselors. Courts have broadly recognized that blocking executive branch agencies' rules violates bicameralism and presentment procedures and infringes on executive and judicial authority. Wisconsin Stat. §§ 227.19(5)(c), (d), (dm), and 227.26(2)(d) and (im) authorize the Joint Committee for Review of Administrative Rules, a 10-member legislative committee, to veto administrative rules. Do these veto provisions violate the separation of powers by allowing this committee to block executive agency rulemaking or, at minimum, DPS's and the Board's rulemaking authority over commercial building standards and ethics standards for social workers, marriage and family therapists, and professional counselors?; and

IT IS FURTHER ORDERED that within 30 days after the date of this order the petitioners shall file a brief regarding the third issue in this court; that within 20 days of filing of the petitioners' brief, the respondents and intervenor-respondent shall file a single, combined responsive brief or a statement that no brief will be filed; and within 10 days of filing of the responsive brief, the petitioners must file either a reply brief or a statement that no reply brief will be filed; and

IT IS FURTHER ORDERED that the parties shall be advised of the date for oral argument in this matter in a subsequent order or oral argument calendar; and

IT IS FURTHER ORDERED that the motion of the intervenor-petitioner, Gathering Waters, Inc., for voluntary dismissal is granted.

Samuel A. Christensen
Clerk of Supreme Court

Page 3

October 9, 2024

No. 2023AP2020-OA Governor Evers v. Senator Marklein

Distribution List Continued:

Carly Gerads
Electronic Notice

Rachel E. Snyder
Electronic Notice

Nathan J. Kane
WMC Litigation Center
501 East Washington Ave.
Madison, WI 53703

Christine Donahoe
Daniel S. Lenz
T.R. Edwards
Law Forward Inc.
222 West Washington Ave., Ste. 250
Madison, WI 53703

Evan Feinauer
Brett Korte
David Tipson
Clean Wisconsin
634 West Main St., Ste. 300
Madison, WI 53703

Tony Wilkin Gibart
Midwest Environmental Advocates
634 W. Main St., Ste. 201
Madison, WI 53703

Miriam Seifter
Bryna Godar
State Democracy Research Initiative
University of Wisconsin Law School
975 Bascom Mall
Madison, WI 53706

Richard M. Esenberg
Lucas T. Vebber
Skylar Croy
Wisconsin Institute for Law & Liberty
330 East Kilbourn Ave., Ste. 725
Milwaukee, WI 53202

Tamara B. Packard
Pines Bach LLP
122 West Washington Ave., Suite 900
Madison, WI 53703