Appeal No. 2026AP1258

WISCONSIN COURT OF APPEALS
DISTRICT I

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-Respondent*s.

On Appeal from the Circuit Court for Dane County,
The Honorable Julie Genovese, Presiding
Circuit Court Case No. 2025CV002797

BRIEF OF LAW FORWARD, INC. AS *AMICUS CURIAE*

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Interest of Law Forward as *Amicus Curiae*

Law Forward is a nonpartisan, nonprofit, public interest law firm that exists to preserve fundamental democratic principles, revive Wisconsin's traditional commitment to clean and open government, and promote a progressive vision through impact litigation, administrative process, and public education. Many, if not most, of Law Forward's litigation matters involve adjudications that have political, though not partisan, aspects and consequences, including cases involving the political question doctrine (and related separation-of-powers and standing doctrines) at issue here.[1] These cases address laws and/or government actions alleged to be inconsistent with constitutional guarantees and obligations. In its impact litigation to advance Wisconsin

[1] *See, e.g.*, *Johnson v. WEC*, 2021 WI 87, 399 Wis. 2d 623, 967 N.W. 2d 469 (equal-protection challenge brought in state court to state legislative districts in light of new Census data); *Johnson*, 2022 WI 14, 400 Wis. 2d 626, 971 N.W.2d 402 (same); *Johnson*, 2022 WI 19, 401 Wis. 2d 198, 972 N.W.2d 559 (same); *Teigen v. WEC*, 2022 WI 64, 403 Wis. 2d 607, 976 N.W.2d 519 (voter challenge to WEC guidance addressing acceptable methods of absentee-ballot return); *Abbotsford Educ. Ass'n v. WERC*, No. 2023CV3152, Decision & Order Granting Mot. J. Pleadings (Wis. Cir. Ct. Dane Cnty. Dec. 2, 2024) (challenge to 2011 Wis. Act 10 under equal protection guarantee of the Wisconsin Constitution), *rev'd*, No. 2024AP2429 (Wis. Ct. App. July 29, 2026) (per curiam), *pet. for rev. pending* (Wis.); *Clarke v. WEC*, 2023 WI 79, 410 Wis. 2d 1, 998 N.W.2d 370 (challenge to state legislative districts as inconsistent with Wisconsin Constitution); *Brown v. WEC*, 2025 WI 5, 414 Wis. 2d 601, 16 N.W. 3d 619 (judicial review of WEC decision dismissing complaint regarding location of alternate sites for in-person absentee voting); *Wis. Bus. Leaders for Democracy v. WEC*, 2025 WI 52 (appointing three-judge panel and designating venue); *Wis. Bus. Leaders for Democracy v. WEC*, No. 2025CV2252, Mem. & Order (Wis. Cir. Ct. Dane Cnty. Apr. 28, 2026) (dismissing state constitutional challenge to Wisconsin's congressional districts as an anti-competitive gerrymander), *appeal pending*, No. 26AP1008 (Wis.); *Wis. PTA v. Wis. State Assembly* (No. 2026CV103) (Wis. Cir. Ct. Eau Claire Cnty.) (challenge to Wisconsin's public-school-finance system as inconsistent with Wisconsin Constitution). Note that this list includes matters in which Law Forward represents a party and excludes those matters where, as here, Law Forward participates only as *amicus curiae*.

democracy, Law Forward relies on several deeply rooted and established tenets of Wisconsin law that expand justiciability in state courts.

These tenets, as developed below, are not only essential to Wisconsin's constitutional order but also foundational to Law Forward's work defending and advancing Wisconsin democracy through impact litigation. Both as a matter of legal principle and to protect the interests of current and future clients, Law Forward advocates for courts to clearly and faithfully apply the letter and spirit of the law and to adamantly reject attempts to weaken the Wisconsin Judiciary's power to execute its core responsibilities. The circuit court order (R.64) dismissing Appellants' complaint contravenes these core principles of Wisconsin law. Law Forward writes here as *amicus curiae* to address the inapplicability of the federal political question doctrine in Wisconsin courts. The circuit court's reflexive, lockstep adoption of holdings rooted in law that does not apply to Wisconsin's Judiciary to base dismissal on the political question doctrine (*see* R.64:25–34) is inconsistent with the Wisconsin Constitution. If allowed to stand, this decision would significantly curtail impact litigation in our state courts and would disserve the people of Wisconsin by foreclosing access to the courts in contravention to fundamental rights and guarantees conferred by Wisconsin's Constitution.[2]

[2] Law Forward takes no position on the merits of Appellants' underlying claims in this case.

Introduction

The text, structure, and history of the Wisconsin Constitution diverge significantly from the Federal Constitution in several ways, including one that requires reversal of the circuit court's ruling dismissing the case below. The political question doctrine as derived by federal courts from the Federal Constitution and applied in cases arising under federal law has no analogous roots in the Wisconsin Constitution. And no Wisconsin court ***ever*** has found a basis in the Wisconsin Constitution for the political question doctrine; instead, ***every*** Wisconsin court to apply the political question doctrine to cases arising under Wisconsin law has done so by following federal law in lockstep. That is error, plain and simple. And it is error that the circuit court here repeated by applying a political question doctrine rooted in the Federal Constitution to hold that Wisconsin courts—which differ from their federal counterparts in the broad sweep of their general jurisdiction and their state constitutional command to provide a remedy for every legal injury—have no power to hear cases like the one brought by Appellants here. This Court should hold that the Wisconsin Constitution demands that Wisconsin courts analyze and apply a political question doctrine under Wisconsin—not federal—law, and it should reverse the circuit court's ruling and remand for further proceedings.

Argument

I. The political question doctrine derives from federal constitutional principles.

As developed in federal courts, the political question doctrine (PQD) is rooted in both Article III limitations on federal courts and separation-of-powers principles to ensure that the federal judiciary does not intrude on the political branches' respective delegated powers. The

PQD "excludes from judicial review those controversies which revolve around policy choices and value determinations constitutionally committed for resolution to the halls of Congress or the confines of the Executive Branch." *Japan Whaling Ass'n v. Am. Cetacean Soc'y*, 478 U.S. 221, 230 (1986).

The landmark articulation of the PQD appears in *Baker v. Carr*, which identifies six factors used to determine whether the PQD renders an issue non-justiciable by a federal court. 369 U.S. 186, 217 (1962). In federal court, the PQD may apply if one or more of the following is present:

- a textually demonstrable constitutional commitment of the issue to a coordinate political department;
- a lack of judicially discoverable and manageable standards for resolving the issue;
- the impossibility of deciding the issue without an initial policy determination of a kind clearly for nonjudicial discretion;
- the impossibility of a court's undertaking independent resolution of the issue without expressing the respect due coordinate branches of government;
- an unusual need for unquestioning adherence to a political decision already made; or
- the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Id. Though *Baker* first delineated these factors, the concept of the PQD was not novel.

The PQD's roots trace back much further and can be detected even in *Marbury v. Madison*, where the U.S. Supreme Court established the principle of judicial review while also limiting its application. 5 U.S. (1 Cranch) 137 (1803). *Marbury* declares both that "[t]he province of the court is … not to enquire how the executive [branch] perform[s] duties in

which they have a discretion" and also that "[i]t is emphatically the province and duty of the judicial department to say what the law is." *Id.* at 170, 177–78.

The tension between the judicial duty to declare the law and the PQD is one that federal courts continue to navigate. "[E]valuating the constitutionality of statutes is firmly within the bailiwick of the judiciary, even if an unreviewable political determination exists somewhere in the case." *L.M.L. v. Martin*, 833 F. Supp. 3d 692, 716–17 (W.D. Tex. May 14, 2026) (internal quotation omitted). For this reason, a court "does not express a lack of respect due to a coordinate branch of government for purposes of the political question doctrine whenever it performs its constitutionally assigned role of opining on the meaning or application of the constitution or a statute; that is what courts do." *Ali v. Al-Nahyan*, 808 F. Supp. 3d 88, 132 (D.D.C. 2025) (cleaned up). Indeed, "[a]n Article III court cannot decline to hear a case 'merely because the issues have political implications.'" *Neguse v. ICE*, 813 F. Supp. 3d 45, 84 (D.D.C. 2025) (quoting *Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 194 (2012)). Ultimately, "[federal] courts retain their responsibility to decide cases properly before them—even those they would gladly avoid." *Vassiliades v. Rubio*, 792 F. Supp. 3d 1, 12 (D.D.C. 2025) (cleaned up)).

The tension federal courts must navigate, however, differs from the one Wisconsin's Judiciary must navigate, as demonstrated in the sections that follow.

II. The Wisconsin Constitution does not contain the same text, structure, or principles that animate the political question doctrine under the U.S. Constitution.

As a matter of constitutional interpretation, the PQD that federal courts have derived from the U.S. Constitution has no state analog grounded in Wisconsin's Constitution because of several foundational differences between the two constitutions.

First, unlike federal courts, Wisconsin courts exercise general jurisdiction. The Wisconsin Constitution vests circuit courts with "original jurisdiction in all matters civil and criminal within this state" and the authority to "issue all writs necessary in aid of its jurisdiction." Wis. Const. art. VII, § 8. This grant of jurisdiction is "extremely broad," and our "statutes acknowledge the plenary jurisdiction of Wisconsin circuit courts." *Matter of Guardianship of Eberhardy*, 102 Wis. 2d 539, 548, 307 N.W.2d 881 (1981). Indeed, after reaffirming the circuit courts' full constitutional authority, Wis. Stat. § 753.03 provides that "circuit courts have power to hear and determine, within their respective circuits, ***all*** civil and criminal actions and proceedings unless exclusive jurisdiction is given to some other court" (emphasis added). Circuit courts "have all the powers … necessary to the full and complete jurisdiction of the causes and parties and the full and complete administration of justice, and to carry into effect their judgments, orders and other determinations…." *Id.* The same is true of Wisconsin's appellate courts. *See id.* §§ 752.01–.02 (Court of Appeals); *id.* §§ 751.05, 751.07–.08 (Supreme Court).

Second, Wisconsin law has a more capacious concept of standing than does federal law. In Wisconsin, standing is so broadly construed that "'even an injury to a trifling interest' may suffice" to open the

courthouse doors. *McConkey v. Van Hollen*, 2010 WI 57, ¶15, 326 Wis. 2d 1, 783 N.W.2d 855 (quoted source omitted). While Article III constrains federal standing, the same limitations do not apply to Wisconsin courts because the Wisconsin Constitution differs in structure and scope from the federal Constitution. That is why "Wisconsin courts need not follow federal law on standing." *Sierra Club v. DNR*, 2025 WI App 39, ¶¶16–17, 417 Wis. 2d 90, 24 N.W.3d 157, *rev. granted*, 2026 WI 7, 32 N.W.3d 752 (cleaned up).

Third, the Wisconsin Constitution promises "[e]very person" a "remedy in the laws for all injuries, or wrongs." Wis. Const. art. I, § 9. The U.S. Constitution contains no analogous provision. While Article I, Section 9, does not promise "a certainty of recovery," it "guarantees to every litigant a day in a court of competent jurisdiction to present claims for judicial relief." *State ex rel. Universal Processing Servs. of Wis., LLC v. Cir. Ct. of Milwaukee Cnty.*, 2017 WI 26, ¶92, 374 Wis. 2d 26, 892 N.W.2d 267. This provision complements the Wisconsin Constitution's grant of general jurisdiction: courts can hear and resolve all disputes, and every litigant is entitled to present their claims to a Wisconsin court. While federal courts have limited jurisdiction and hear only certain kinds of cases, Wisconsin state courts exist to resolve ***all*** disputes Wisconsinites encounter.

Fourth, since statehood, Wisconsin has recognized the Judiciary's obligation to uphold the Wisconsin Constitution and ensure fidelity to its precepts. *Phelps v. Rooney*, 12 Wis. 698, 709 (1860) ("Among the highest duties thus imposed upon the judicial branch, is that of determining the validity of all acts of the legislature, with reference to the constitution or fundamental law; and whenever by it the authority of the legislature is

either expressly or impliedly limited, the courts cannot avoid the responsibility, in proper cases, of ascertaining and defining what those limits are."). *Accord, e.g.*, Wis. Stat. § 15.001(1) ("[T]he judicial branch has the responsibility for adjudicating any conflicts which might arise from the interpretation or application of the laws.").

This principle holds with equal force today, when "[t]he Wisconsin Supreme Court, and by extension all state courts, have a duty to enforce the rights protected under the Wisconsin Constitution." *Democratic Nat'l Comm. v. Boehm*, 2026 WI App 44, ¶80, --- Wis. 2d ---, --- N.W.3d --- (Neubauer, J., concurring) (internal quotation marks omitted), *rev. granted* (Wis. Sept. 28, 2026). "It is the responsibility of the judiciary to act, notwithstanding the fact that [a] case involves political considerations or that final judgment may have practical political consequences." *State ex rel. Wis. Senate v. Thompson*, 144 Wis. 2d 429, 436–37, 424 N.W.2d 385 (1988); *see also, e.g.*, *Citizens Util. Bd. v. Klauser*, 194 Wis. 2d 484, 492–93 n.7, 534 N.W.2d 608 (1995) ("We deem it to be this court's duty to resolve disputes regarding the constitutional functions of different branches of state government; we may not avoid this duty simply because one or both parties are coordinate branches of government.").[3]

[3] Wisconsin's adoption of the Uniform Declaratory Judgments Act underscores Wisconsin courts' general jurisdiction because plaintiffs may seek relief before an actual injury occurs, relying on the Judiciary's broad remedial powers. *See* Wis. Stat. § 806.04. The Act empowers courts "to declare rights, status, and other legal relations whether or not further relief is or could be claimed" and "is to be liberally construed and administered" for the purpose of "settl[ing] and afford[ing] relief from uncertainty and insecurity with respect to rights." *Id.* § 806.04(1), (12). In fact, a party may sue for declaratory judgment even before suffering an injury. *See Voters with Facts v. City of Eau Claire*, 2017 WI App 35, ¶40, 376 Wis. 2d 479, 899 N.W.2d 706, *aff'd*, 2018 WI 63, 382 Wis. 2d 1, 913 N.W.2d 131.

Fifth, while Wisconsin resembles the federal government in having three co-equal branches, Wisconsin has developed a distinct separation-of-powers doctrine. Under Wisconsin's separation-of-powers doctrine, in addition to each branch's unique, core powers, the branches also have overlapping, shared powers. *See, e.g.*, *Kaul v. Wis. State Legis.*, 2025 WI 23, ¶¶10–14, 416 Wis. 2d 322, 21 N.W.3d 513. This approach necessarily includes tolerance for intrusions by one branch into another's work. Because the federal PQD effectuates the U.S. Constitution, the bounds and contours of which differ from those of the Wisconsin Constitution, the separation-of-powers rationale that some Wisconsin courts have cited in wholesale adopting the federal PQD does not reflect Wisconsin's understanding of tripartite state government.

III. Wisconsin courts have failed to honor the Wisconsin Constitution's unique and independent structure, text, and principles, instead reflexively applying the federal political question doctrine without analyzing whether it fits the state constitution.

Given the significant differences identified above between the U.S. and Wisconsin Constitutions, it is not only inappropriate but an abdication of judicial duty for Wisconsin courts to adopt the PQD in lockstep with federal caselaw. *See Matter of Adoption of M.M.C.*, 2024 WI 18, ¶50, 411 Wis. 2d 389, 5 N.W.3d 238 (Dallet, J., concurring) ("Our constitution was written independently of the United States Constitution and we must interpret it as such, based on its own language and our state's unique identity.").[4] Particularly on questions of

[4] Other state courts have held that *Baker* and federal PQD do not apply wholesale to state courts for the same reasons argued above. *See, e.g.*, *Markwell v. Cooke*, 482 P.3d 422, 427 (Colo. 2021); *State v. Campbell Cnty. Sch. Dist.,* 32 P.3d 325, 334 (Wyo. 2001); *Backman v. Sec'y of the Commonw.*, 441 N.E.2d 523, 527 (Mass. 1982). Justice Brennan, the author of *Baker*, said the same: "[S]tate courts that rest their decisions wholly or even partly on state law need not apply federal principles of standing and

justiciability, the "'judicial power' conferred in state constitutions and exercised by state courts is markedly different from what federal courts are permitted to exercise under Article III. Consequently, the arguments that are so often asserted as the bases for federal justiciability doctrine just do not apply to state courts." Jack L. Landau, *State Constitutionalism and the Limits of Judicial Power*, 69 Rutgers U. L. Rev. 1309, 1323 (2017).

When faced with litigants invoking the PQD, Wisconsin courts nevertheless have reflexively applied federal law, especially the *Baker v. Carr* factors, without investigating the extent to which the doctrine generally (or each *Baker* factor specifically) fits with Wisconsin's Constitution. *See, e.g.*, *Johnson*, 2021 WI 87, ¶¶40–52 (citing exclusively federal cases in finding partisan gerrymandering claims non-justiciable); *Vincent v. Voight*, 2000 WI 93, ¶192, 236 Wis. 2d 588, 614 N.W.2d 388 (Sykes, J., concurring in part and dissenting in part) (dissenting from majority holding that challenge to Wisconsin's public-school-finance system was justiciable and not barred by the PQD)[5]; *Voters with Facts*, 2017 WI App 35, ¶31 n.10 (stating without mentioning Wisconsin's constitution that the "modern formulation of the political question doctrine was articulated in *Baker*"). Writing separately for a minority in

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justiciability that deny litigants access to the courts. … [Federal justiciability precedents] are not mechanically applicable to state law issues, and state court judges and the members of the bar seriously err if they so treat them." William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights,* 90 Harv. L. Rev. 489, 501–02 (1977).

[5] Justice Sykes's application of the PQD in *Vincent* lacked support to create precedent. Five Justices clearly rejected her invocation of the PQD. *See* 2000 WI 93, ¶2 n.2 (Crooks., J., lead op.); *id.*, ¶¶90–91 (Wilcox, J., concurring and echoing footnote 2); *id.*, ¶94 (Abrahamson, C.J., concurring in part and dissenting in part, joined by Bradley and Bablitch, JJ., expressly joining footnote 2); *id.*, ¶127 (Bablitch, J., concurring in part and joining footnote 2).

Vincent, Justice Sykes acknowledged both that it is "the duty and particular province of the judiciary to interpret the constitution and say what the law is," and that the PQD "has not been directly applied by [the Wisconsin Supreme Court] on a question of state constitutional law since *Baker*." 2000 WI 93, ¶194 (citing *Marbury*, 5 U.S. (1 Cranch) at 137, and *Thompson*, 144 Wis. 2d at 436). Nonetheless, as with most Wisconsin cases applying the PQD—including the circuit court decision below—Justice Sykes's separate writing in *Vincent* did not examine Wisconsin's constitutional framework or situate the PQD within our constitutional text.

Those Wisconsin courts that have cited Wisconsin law in analyzing the PQD have looked to separation-of-powers principles. Justice Sykes's minority opinion in *Vincent*, for example, expressed concern that "any attempt" at defining "a constitutional standard or definition of the right to education" would "implicat[e] separation of powers principles and bring[] into play the political question doctrine." *Id.*, ¶192. In *Mills v. Vilas County Board of Adjustments*, the Court of Appeals held that the circuit court had erred in applying the PQD. 2003 WI App 66, ¶18, 261 Wis. 2d 598, 660 N.W.2d 705. In articulating the PQD, the appellate court relied solely on Justice Sykes's minority opinion in *Vincent*. *See id.*, ¶17. More recently, in *Voters with Facts*, the Court of Appeals rejected the circuit court's application of the PQD, 2017 WI App 35, ¶32, quoting *Mills* and *Baker* in a footnote containing the entire PQD discussion, with no mention of Wisconsin's constitution or unique separation-of-powers

principles, *id.*, ¶31 n.10. The circuit court decision below similarly makes no mention of the Wisconsin Constitution. (R.64:25–27).[6]

IV. In this case, the circuit court's application of the political question doctrine was error and should be reversed.

For the reasons explained above, Wisconsin courts should not apply the PQD in lockstep with federal courts, as the circuit court explicitly did. (R.64:27–34 & n.2) In outlining the PQD and its foundations, the circuit court relied almost entirely on *Baker* and the Wisconsin cases identified in Part III, *supra*.[7] This is problematic twice over. For one thing, none of those cases adopts the PQD as a matter of binding Wisconsin law. For another, none of them shows how the PQD flows from the Wisconsin Constitution. Then, the circuit court thoroughly applied four of the *Baker* factors, even though ***no*** Wisconsin court has analyzed whether those factors align with Wisconsin's constitution.

The circuit court concluded that each of the first four *Baker* factors renders the case nonjusticiable. ***First***, "the legislature, not the court, is tasked with setting energy policy." (R.64:28) ***Second***, the court "is simply not in a position to formulate a judicially manageable standard to remedy air pollution and to achieve the renewable resource goals

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[6] In a future case, where appropriate, Wisconsin courts may want to devise a narrow PQD that fits Wisconsin law. Such a version would recognize the broad, general jurisdiction Wisconsin courts exercise and those courts' obligation to decide nearly all cases presented, including those, like this one, seeking primarily declaratory relief. It would acknowledge that Wisconsin courts operate within a shared-powers framework, meaning they have broader authority than federal courts do. And it would balance that with an appropriate sense of comity so that courts don't step on the core powers of the other branches. But that task is best left for another day.

[7] The circuit court cited *Flynn v. DOA* and *State ex rel. Hammermill Paper Co. v. La Plante* for the axiomatic principle that the Legislature, not the Judiciary, sets public policy. (R.64: 26) That truism does not depend on the PQD, and nothing argued here would displace it.

advocated by the Plaintiffs." (R.64:31) ***Third***, "Plaintiffs' requested relief would involve underlying policy choices that are not the court's to make." (R.64:34) ***Fourth***, "While the court may agree with Plaintiffs' policy preferences, it would show a blatant lack of respect for our elected officials and the agency defendants to substitute my judgment for theirs, and strike the limitations imposed by the legislature and executed by the PSC." (R.64:34) None of these conclusions aligns with Wisconsin law.

The first, third, and fourth conclusions are different ways of saying that the Legislature, not the Judiciary, is entrusted to decide Wisconsin's energy policy. The premise is true, but the conclusion the court drew from it does not follow. The Legislature's authority to design Wisconsin's energy policy co-exists with the Judiciary's authority—and obligation—to review that policy's fidelity to the Wisconsin Constitution. This obligation, "of determining the validity of all acts of the legislature, with reference to the constitution or fundamental law," is "among the highest duties [] imposed upon the judicial branch." *Phelps*, 12 Wis. at 709. "[C]ourts cannot avoid th[is] responsibility," *id.*, "notwithstanding the fact that [the] case involves political considerations or that final judgment may have practical political consequences," *Thompson*, 144 Wis. 2d at 436–37. The circuit court was asked to assess the constitutionality of certain Wisconsin statutes. Its insistence that it cannot do so is anathema to judicial duty. The circuit court erred in leaping from constitutional adjudication to imposition of a remedy; the circuit court's doubts about its ability to deliver "a certainty of recovery" cannot subsume the fact that the Wisconsin Constitution "guarantees" adjudication of the declaratory judgment claim, *Universal Processing*

Servs., 2017 WI 26, ¶92, "whether or not further relief is or could be claimed," Wis. Stat. § 806.04(1).

The second conclusion reflects a related error. It shows the circuit court focused on remedy, rather than adjudication of the claims asserted. The circuit court's concern about "a judicially manageable standard" addressed not the constitutionality of the challenged statutes but the court's ability "***to remedy*** air pollution and to achieve [] renewable resource goals." (R.64:31 (emphasis added)) This is, respectfully, a category error. The circuit court's concern over remedy does not preclude adjudication. The circuit court could have, and should have, decided the declaratory judgment claims. Only if those claims succeeded would the court then consider remedies.

Conclusion

The claims presented by the complaint—that various statutes violate the Wisconsin Constitution—are justiciable. Wisconsin courts have a duty to adjudicate them. The circuit court erred by lockstepping with the federal PQD to hold otherwise. Dismissal should be vacated, and the case should be remanded for resolution of additional arguments raised in the motions to dismiss and, if appropriate, merits adjudication.

Dated: October 12, 2026. Respectfully submitted,

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CERTIFICATION OF COMPLIANCE WITH WIS. STAT. § 809.19(8g)(a)

I hereby certify that this brief conforms to the rules contained in s. 809.19(8)(b), (bm), and (c) for a brief. The length of this brief is 3,406 words.

Dated: October 12, 2026.

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