FILED
08-12-2026
Clerk of Circuit Court
Waukesha County
2025CV001940

WISCONSIN • CIRCUIT COURT • WAUKESHA COUNTY
BRANCH 5

CHRISTINE STUELAND,
ADAM AHRENS,

Case No. 25CV1940

Plaintiffs,

v.

DAVID CULLEN in his official capacity as Treasurer of Milwaukee County,

Defendant.

BRIEF OF AMICUS CURIAE WISCONSIN EDUCATIONAL MEDIA & TECHNOLOGY ASSOCIATION

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INTEREST OF AMICUS CURIAE

The Wisconsin Educational Media & Technology Association (the Association) is the only statewide organization representing school librarians and media technologists in Wisconsin's public schools. The Association's mission is to empower educators to provide learning experiences that prepare students to flourish in an information-rich environment. The Association has been active for nearly 80 years in Wisconsin, and it has members in every one of Wisconsin's Cooperative Educational Service Agency (CESA) regions.

Central to this lawsuit is the Common School Fund, created by and in conformance with Article X, Section 2 of the Wisconsin Constitution. The Common School Fund is the primary, and in most districts the only, funding source for Wisconsin public school libraries. The Association represents the librarians and school professionals who utilize these funds to provide opportunities for students. These professionals, and their ability to serve students, are directly affected by the funds distributed from the Common School Fund. The Association submits this brief to emphasize how critical funds from the Common School Fund are for public schools and their students and to support the claim that Wis. Stat. § 59.25(3)(j)1.c. violates the Wisconsin Constitution's provision governing the Common School Fund. The Association takes no position on the equal protection claim.

ARGUMENT

I. The Common School Fund is critical for public school libraries.

Before Wisconsin became a state, education and libraries were recognized as vital state interests. The story of Wisconsin's public schools is rooted in the Land

Ordinance of 1785 and the Northwest Ordinance of 1787. In the late-18th century, westward expansion was beginning in the newly founded nation, and the Confederation Congress was tasked with setting the trajectory. In 1785, that body enacted the Land Ordinance of 1785 which preserved the sixteenth section of every township "for the maintenance of public schools." Land Ordinance of 1785, in 28 *Journals. of the Continental Congress 1774–1789*, at 375–81 (John C. Fitzpatrick ed., 1933). Two years later, the Confederation Congress enacted the Northwest Ordinance which defined the purpose of the sixteenth-lot preservation, stating "[r]eligion, morality, and knowledge being necessary to good government and happiness of mankind, schools and the means of education shall be forever encouraged." Northwest Ordinance, in 32 *Journals of the Continental Congress 1774–1789*, at 334–43 (Roscoe R. Hill ed., 1936).

In 1836, Wisconsin became a territory. 5 Stat. 10, 24 Cong. Ch. 54. That same year, during its first session, the Wisconsin territorial legislature established Wisconsin's first library. Legislators recognized the importance of having materials available and allocated $5,000 to establish a library.[1] That library became the Wisconsin State Library, which today operates as the Wisconsin State Law Library.[2]

In 1846, delegates from around Wisconsin met to draft the state constitution. The delegates incorporated into that draft constitution a section detailing how the state would fund public schools. Wis. Const. of 1846, art. IX, § 2 (rejected by popular

[1] Wis. Libr. Heritage Center, Wis. Libr. Ass'n, *Wisconsin Library History Timeline*, https://heritage.wisconsinlibraries.org/timeline/ (last visited Aug. 4, 2026).

[2] *Id.*

vote, April 1847). Under this design, the state would create a fund to support public schools throughout the state. The capital for the fund would come from grants from the United States to Wisconsin, the clear proceeds of all property granted by the United States to Wisconsin for educational purposes as well as all property not specified for other purposes, and "all monies, and clear proceeds from all property which may accrue to the State by forfeiture or escheat." *Id.* The interest on the principal of the fund was to be distributed to public schools based on how many school aged children lived in the town, city, or district. *Id.* The 1846 constitution contained other ideas that were notably progressive for the time; immigrants who applied for citizenship could vote, married women could own property and keep their own wages, and commercial banking was prohibited. Wis. Const. of 1846, art. VIII, § 1(2d); art. XIV, § 1; art. X, §§ 1–6 (rejected by popular vote, April 1847).

Voters found this constitution to be too radical and rejected it in April of 1847.[3] Later that year, the delegates to the second constitutional convention removed much of the language seen as controversial, but they kept the provision that funded public schools by creating a fund containing federally granted land and the proceeds of any sale of such land, money and the clear proceeds of property accruing to the state by forfeiture or escheat, the clear proceeds of fines collected by counties, and all money granted to the state without a specific purpose. Wis. Const. art. X, § 2. This fund, the Common School Fund, was designed by the framers to ensure state funding of public

[3] Erika Janik, *Rights for Women, African-Americans, Immigrants: Wisconsin's Radical 1846 Constitution*, Wis. Pub. Radio (Oct. 2, 2017), https://www.wpr.org/culture/rights-women-african-americans-immigrants-wisconsins-radical-1846-constitution.

schools and public school libraries in perpetuity. *Id.* The second constitutional convention was a success, and the Wisconsin Constitution was ratified in 1848.[4]

Initially, the Common School Fund comprised more than 1.7 million acres of land held in trust by the State of Wisconsin for educational purposes. Across the State's early decades, most of the land held by the Common School Fund was sold to create a principal corpus. Ideally, the interest this principal generated would support Wisconsin's public schools and their libraries. Unfortunately, the land was sold for sums far, far below its value—often at rates of 5–10 cents per acre, when it was worth as much as $20 per acre. Risky investments further diluted the value of the Common School Fund's holdings, eroding both the principal at the heart of the Common School Fund and the Fund's ability to generate sufficient proceeds to meet the needs of Wisconsin's public schools.[5] For example, by 1921, the Common School Fund was distributing only 31 cents per school-age child in the state, which amounts to approximately $5.45 in today's dollars when adjusted for inflation.[6] Ultimately, because the Common School Fund was mismanaged in the early years of its existence, it has never generated enough revenue to cover the State's share of public school funding. Even though the Common School Fund has never fulfilled the vision of the framers, it has remained an important piece of the school funding puzzle for school districts across Wisconsin. Notably, in 1965, the legislature directed all the

[4] State Democracy Res. Initiative, Univ. of Wis. Law Sch., *Tracking Wisconsin's Constitution*, https://50constitutions.org/wi (last visited Aug. 4, 2026).

[5] John Callahan, *The Common School, University and Normal School Funds*, Wisconsin Blue Book, 348–50 (1925–1926).

[6] *Id.* at 354. U.S. Bureau of Lab. Stat., *CPI Inflation Calculator*, https://www.bls.gov/data/inflation_calculator.htm (last visited Aug. 4, 2026).

distributions from the Common School Fund be spent on public school library materials. 1965 Wis. Act 185, § 5.

According to data from DPI and the Association, the Common School Fund—the only source of state funds to school libraries—is now the sole source of funding for more than 90 percent of public school libraries in Wisconsin. This means that for the vast majority of public schools, the only source of funding for new books, new instructional materials in libraries, and new technology is the annual distribution from the Common School Fund. Such materials do not just enrich but are essential to ensuring that public school students can access their constitutionally protected fundamental right to obtain a sound basic education. When counties divert monies that belong in the Common School Fund to other purposes, public school students are harmed.

II. The Wisconsin Constitution is clear: counties must contribute to the Common School Fund.

By allowing Milwaukee County to forgo contributing to the Common School Fund, Wis. Stat. § 59.25(3)(j)1.c. violates Article X, Section 2 of the Wisconsin Constitution. The constitutional provision has always required, and still does require, that "the clear proceeds of all fines collected in the several counties for any breach of the penal laws" be contributed to the Common School Fund for the maintenance of common schools and "the purchase of suitable libraries." Wis. Const. art. X, § 2. Any attempt to diminish funding designated for the Common School Fund ultimately harms public school students.

The Wisconsin Supreme Court has a long history of declaring laws that divert these funds unreasonably or entirely away from the Common School Fund unconstitutional. Early Wisconsin cases illuminate Article X, Section 2's meaning. In *Lynch v. The Steamer "Economy"*, the Supreme Court of Wisconsin held invalid a law that allowed for a county to keep one-half of the financial penalty imposed because it was a clear violation of Article X, Section 2. 27 Wis. 69, 71–72 (1870). A year later, the Supreme Court struck down a law that gave the entire financial penalty imposed to the complainant because it violated Article X, Section 2. *Dutton v. Fowler*, 27 Wis. 427, 432 (1871). Justice Cole, who delivered the Court's opinion, wrote, "The language [of the constitution] is plain, positive and comprehensive, and there is nothing which in the least degree tends to restrict, its meaning." *Id.* at 430. Therefore, the meaning of "clear proceeds" cannot be ignored or overridden by statute; counties must contribute funds from the money they receive in penalties to the Common School Fund. The statute at issue here, Wis. Stat. § 59.25(3)(j)1.c., is only the most recent effort to evade Article X, Section 2's constitutional mandate, and it, like its predecessors, must be declared unconstitutional and be enjoined from implementation.

Case law also provides that "the legislature may not grant so large a percentage of the fines that the sum left for the school fund is merely nominal." *State ex rel. Comm'rs of Pub. Lands v. Anderson*, 56 Wis. 2d 666, 669, 203 N.W.2d 84 (1973). Though the legislature has some degree of authority to determine what percentage of the fines are clear proceeds that must go to the Common School Fund, the funds kept

by the county "should represent the actual or reasonably accurate estimate of the costs of the prosecution." *Id.* Wisconsin law is clear that counties must make meaningful contributions to the Common School Fund. The Supreme Court has admonished that, "should the legislature grant so large a percentage to the informer that the sum left for the school fund becomes merely nominal, this court would feel obliged to correct the evil, for in such a case it would be apparent that the constitution was evaded." *State v. De Lano*, 80 Wis. 259, 262, 49 N.W. 808, 809 (1891). *See also State ex rel. Johnson v. Maurer*, 159 Wis. 653, 655, 150 N.W. 966 (1915) (declaring unconstitutional a law allowing a county to reserve one-third of fines because the amount was part of the "clear proceeds" required to go to the Common School Fund).

Over time, the percentage of fines and penalties counties have retained has fluctuated and slowly crept up to the 50 percent retention rate reflected in statute today for counties other than Milwaukee. *See* Wis. Stat. § 59.25(3)(j)1.b. In 1881, the Supreme Court recognized that state law allowed treasurers to retain 2 percent of fine collections but warned that superfluous additional deductions could "dry up one of the sources which the constitution has ordained to replenish and increase the school fund of the state." *State v. Miles,* 52 Wis. 488, 490, 9 N.W. 403 (1881). This warning resonates today, when it remains true that allowing counties to make further diversions of funds designated for the Common School Fund will weaken that Fund and in turn diminish resources for public school students.

Ultimately, more than 150 years of case law illustrates the necessary conclusion that Wis. Stat. § 59.25(3)(j)1.c. is blatantly unconstitutional and cannot

stand. Any county withholding all of its contribution to the fund, especially the state's most populous county, does a disservice to the children enrolled in public schools throughout this state. Wisconsin's Constitution was designed to ensure that the Common School Fund would support students in public schools in perpetuity; Milwaukee County cannot be exempt from contributing its fair share.

III. The remedy imposed by this Court matters a great deal to school libraries.

The Association agrees with Milwaukee County that striking Wis. Stat. § 59.25(3)(j)1.c. alone does not fix the issue. This Court should declare that all of the Legislature's revisions to Wis. Stat. § 59.25(3)(j) in 2025 Wis. Act 15 are ineffective, ensuring that the preexisting statute is restored to efficacy and Milwaukee County is not treated differently than every other county.

Additionally, the Association urges this Court to require Milwaukee County to make the Common School Fund whole for any losses it sustained during the period of unconstitutional diversion of fine proceeds. According to the County's brief, the Legislative Fiscal Bureau estimated that diversion should exceed $2 million per biennium; Milwaukee County asserts that the total has been about 8 percent of that (approximately $180,000). The Legislative Fiscal Bureau estimate is, of course, a projection, not an absolute certainty. But the discrepancy between the LFB projection and the County's assertion is so massive it raises concern. The Association respectfully suggests that this Court should order Milwaukee County to submit sworn declarations and supporting evidence of the accounting for fines collected since Act 15 went into effect and that the Court should require Milwaukee County to deposit

in the Common School Fund its constitutional share of 50 percent of their fees collected that were withheld pursuant to the unconstitutional Wis. Stat. § 59.25(3)(j)1.c.

CONCLUSION

The framers of our state constitution established the Common School Fund with the vision that Wisconsin public school children would forever enjoy public schools adequately funded to meet educational needs. That vision, from the very beginning, included school libraries capable of expanding students' horizons, providing access to up-to-date materials, and meaningfully enhancing students' learning at all grade levels. While the Common School Fund has fallen short of the lofty goal of paying the entirety of the State's contribution to public schools, it has, for nearly 180 years and counting, funded school libraries across Wisconsin and kept that aspect of the framers' vision alive. But Wis. Stat. § 59.25(3)(j)1.c. impairs that tradition, threatens the framers' vision, and violates the Wisconsin Constitution by allowing one county to forgo contributions to the Common School Fund. This contravenes Article X, Section 2 of the Wisconsin Constitution and decreases the amount of money available to share among all school districts in Wisconsin. The statute must be invalidated.

Dated this 12th day of August, 2026.

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