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COPY

Attorney Susan M. Crawford  
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September 16, 2015

VIA HAND DELIVERY

Diane Fremgen, Clerk  
Wisconsin Supreme Court  
110 E. Main Street, #215  
Madison, WI 53701

RECEIVED  
9/17/15

Re: Peggy Z. Coyne, et al. v. Scott Walker, et al.  
Case No. 2013AP416

Dear Ms. Fremgen:

Enclosed please find the original and nine copies of Plaintiffs-Respondents' Response Opposing Motion To File Amici Curiae Brief Or, In The Alternative, Motion To File Response To The Proposed Non-Party Brief in the above- referenced matter. Please file stamp the extra copy and return it to the messenger.

By copy of this letter and enclosure, copies have been served on all counsel of record via First Class U.S. Mail on this date.

Thank you for your attention to this matter. Kindly contact me with any questions or concerns.

Very truly yours,

CULLEN WESTON PINES & BACH LLP



Susan M. Crawford

SMC:jp

Enclosures

cc: AAG Thomas C. Bellavia/AAG Daniel P. Lennington

Randall R. Garczynski

Janet A. Jenkins/Ryan Nilsestuen

Richard M. Esenberg/C.J. Szafis/Michael Fischer/Thomas Kamenick ✓

STATE OF WISCONSIN  
SUPREME COURT

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Case No. 2013AP416

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PEGGY Z. COYNE, MARY BELL, MARK W. TAYLOR,  
COREY OTIS, MARIE K. STANGEL, JANE WEIDNER  
and KRISTIN A. VOSS,

Plaintiffs-Respondents,

v.

SCOTT WALKER and SCOTT NEITZEL,

Defendants-Appellants-Petitioners,  
and

ANTHONY EVERS,

Defendant-Respondent.

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**ON APPEAL FROM THE OCTOBER 30, 2012, DECISION BY THE  
DANE COUNTY CIRCUIT COURT, CASE NO. 11-CV-4573,  
THE HONORABLE AMY R. SMITH, PRESIDING**

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**PLAINTIFFS-RESPONDENTS' RESPONSE  
OPPOSING MOTION TO FILE AMICI CURIAE BRIEF OR, IN THE  
ALTERNATIVE, MOTION TO FILE A RESPONSE TO THE PROPOSED  
NON-PARTY BRIEF**

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Plaintiffs-Respondents Peggy Coyne, et al., by their undersigned counsel, hereby respectfully request that this Court deny the motion of Wisconsin Manufacturers & Commerce, et al., (“proposed *amici*”) to file a non-party brief as *amici curiae*, or, alternatively grant leave to Plaintiffs-Respondents to file a response brief, for the following reasons:

1. The proposed *amici* seek to file a non-party brief to argue solely that this Court should overrule its prior precedent of *Thompson v. Craney*, 199 Wis. 2d 674, 546 N.W.2d 123 (1996). They acknowledge that this argument was not made by the Defendants-Appellants-Petitioners. See Motion to File *Amicus* Brief, ¶ 8.

2. Thus, in contrast to a typical amicus brief, the proposed *amici* do not seek to offer their perspectives on the broad policy impacts of the case that might assist the Court in making a well-informed decision. See Judge Neal Nettesheim & Clare Ryan, *Friend of the Court Briefs: What the Curiae Wants in an Amicus*, Wis. Lawyer, May 2007, at 11, 55. Instead, they seek to submit a merits brief directly advancing legal arguments not raised by the parties in the case.

3. Plaintiffs-Respondents filed their respondents’ brief on September 1, 2015, and do not have an opportunity to file another brief under the Rules of Appellate Procedure. See Wis. Stat. §809.19.

4. Because the Defendants-Respondents have not raised the issue regarding whether *Thompson* should be overruled, the Plaintiffs-Respondents did not brief the issue in their brief to this Court. Plaintiffs-Respondents would have included an extensive and vigorous argument that this Court should *not* overrule its prior precedent



in *Thompson* in their brief to this Court if the Defendants-Respondents had argued for the overruling of *Thompson* in their brief.

5. Because the issue regarding whether this Court should overrule *Thompson*, which the Plaintiffs-Respondents regard as the controlling precedent in this case, has never been raised by the Defendants-Appellants or other party, the issue should be treated as forfeited and not properly before this Court. "To allow amici to raise this issue at this late date, contrary to the wishes of the parties, would be contrary to the principles of fairness and the policies of judicial administration that the forfeiture rule protects." *Schill v. Wisconsin Rapids Sch. Dist.*, 2010 WI 86, ¶ 45, 327 Wis. 2d 572, 597-98, 786 N.W.2d 177, 190-91; see also *Cnty. of Barron v. Labor & Indus. Review Comm'n*, 2010 WI App 149, ¶ 30, 330 Wis. 2d 203, 221, 792 N.W.2d 584, 593 ("courts need not consider arguments raised only by amici"); *Falcon Carriche v. Ashcroft*, 350 F.3d 845, 850 n. 5 (9th Cir. 2003); *Wyoming Farm Bureau Fed. v. Babbitt*, 199 F.3d 1224, 1230 n. 2 (10th Cir. 2000); *Reno v. Koray*, 515 U.S. 50, 55 n. 2, 115 S.Ct. 2021, 132 L.Ed.2d 46 (1995) (argument of *amicus* was not properly before Court where respondent abandoned it on appeal).

6. Because the sole issue presented in the proposed amicus brief is the argument that *Thompson* should be overruled, the proposed amicus brief does not assist the Court in resolving any issue properly before the Court. Accordingly, the Plaintiffs-Respondents respectfully request that this Court deny the motion to file *amici curiae* brief.

7. Alternatively, in the event that the Court grants the motion to file amici curiae brief, Plaintiffs-Respondents respectfully request leave to file a 15-page

responsive brief within ten days from the Court's order granting the motion. See *Sambo v. City of Brookfield*, 97 Wis. 2d 356, 361, 293 N.W.2d 504, 507 (1980)(noting that party was granted leave to file a brief responding to new issues raised in *amicus* brief).

Dated this 16th day of September, 2015.

A handwritten signature in cursive script, appearing to read "Susan M. Crawford". The signature is written in black ink and is positioned above a horizontal line.

Susan M. Crawford, SBN 1030716