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Supreme Court of Wisconsin

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February 25, 2021

To:

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

No. 2021AP265-CQ St. Augustine School v. Taylor

The court having considered the request of the United States Court of Appeals for the Seventh Circuit, pursuant to Circuit Court Rule 52 and Wis. Stat. § 821.01, that this court resolve the following certified question: For purposes of determining whether two or more schools are "private schools affiliated with the same religious denomination" for purposes of Wis. Stat. 121.51, must the state superintendent rely exclusively on neutral criteria such as ownership, control, and articles of incorporation, or may the superintendent also take into account the school's self-identification in sources such as its website or filings with the state[?];

IT IS ORDERED that the certification is granted and the appeal is accepted; and

IT IS FURTHER ORDERED that on or before March 17, 2021, the plaintiffs-appellants, St. Augustine School, Joseph Forro, and Amy Forro, shall file a supplemental brief addressing the

certified question and the additional questions set forth below; that on or before April 6, 2021, the defendants-appellees, Carolyn Stanford Taylor, in her official capacity as the Superintendent of Public Instruction, and the Friess Lake School District, shall file a supplemental response brief; and that on or before April 16, 2021, the plaintiffs-appellants shall file a supplemental reply brief or a statement that no supplemental reply brief will be filed. The parties shall file the supplemental briefs in conformity with Wis. Stat. § (Rule) 809.19. In addition to serving the three physical copies of a brief on each party as required by Wis. Stat. § (Rule) 809.19(8)(a), each party filing a brief shall also serve a copy of the brief on each other party via facsimile transmission or other electronic means prior to or simultaneous with the time that the brief is filed with this court; and

IT IS FURTHER ORDERED that in any brief filed in this court the parties shall not incorporate by reference any portion of a brief or memorandum filed in another court; instead any material in these documents upon which there is reliance should be restated in the brief filed in this court; and

IT IS FURTHER ORDERED that the parties shall include in an appendix that accompanies their supplemental briefs in this court all documents from the record in the federal action upon which they rely; and

IT IS FURTHER ORDERED that as part of addressing the question certified by the Seventh Circuit, the parties' briefs shall also address the following additional question:

The Free Exercise Clause and the Establishment Clause of the First Amendment may bear upon our interpretation of Wis. Stat. § 121.51 and its inclusion of "private schools affiliated with the same religious denomination." In meeting the query of the certified question, should we revisit this court's decisions in State ex rel. Vanko v. Kahl, 52 Wis. 2d 206, 188 N.W.2d 210 (1971) and Holy Trinity Community School, Inc. v. Kahl, 82 Wis. 2d 139, 262 N.W.2d 210 (1978); and

IT IS FURTHER ORDERED that any non-party that wishes to file a brief as an amicus curiae must file a motion for leave of the court to file a non-party brief pursuant to the requirements of Wis. Stat. § (Rule) 809.19(7). Non-parties should also consult this court's Internal Operating Procedure III.B.6.c. concerning the nature of non-parties who may be granted leave to file a non-party brief. A proposed non-party brief must accompany the motion for leave to file it. Any proposed non-party brief shall be limited to the certified question and the additional questions set forth in this order, and it shall not exceed 13 pages if a monospaced font is used or 3,000 words if a proportional serif font is used. Any motion for leave with the proposed non-party brief attached shall be filed no later than 4:00 p.m. on Monday, April 12, 2021. Any such motion and proposed brief shall be filed as attachments in pdf format to an email addressed to clerk@wicourts.gov. Any submission by a non-party that does not comply with Wis. Stat. § (Rule) 809.19(7) and any proposed non-party brief for which this court does not grant leave will not be considered by the court; and

IT IS FURTHER ORDERED that the court shall hear oral argument in this matter at 9:45 a.m. on Tuesday, May 4, 2021. Due to the COVID-19 pandemic, oral arguments before the court will be conducted via videoconferencing. The hearing room will not be open to the public. The court will endeavor to make the proceedings available for viewing on the Wisconsin Eye website. Counsel in this case will receive instructions from the Marshal of this court regarding the procedures for appearing remotely.

Sheila T. Reiff
Clerk of Supreme Court