

IN THE SUPREME COURT OF WISCONSIN

Case No. 2020AP1718-OA

JERE FABICK,

Petitioner,

v.

TONY EVERS, IN HIS OFFICIAL CAPACITY
AS THE GOVERNOR OF WISCONSIN,

Respondent.

**MOTION OF AMICI CURIAE DEREK LINDOO, BRANDON
WIDIKER, AND JOHN KRAFT FOR ORAL ARGUMENT TIME**

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Anthony LoCoco (WI Bar No. 1101773)
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Counsel for Amici Curiae

Amici curiae Derek Lindoo, Brandon Widiker, and John Kraft hereby move this Court pursuant to Wis. Stat. §809.14 to grant them time at oral argument to address the issue raised in their non-party brief, namely whether, if Executive Order #82 and Executive Order #90 are authorized by Wis. Stat. 323.10, that statute is an unconstitutional delegation of legislative power to the executive branch.

In support of this motion, *Amici* state as follows:

1. As this Court knows, *Amici* are the plaintiffs in *Lindoo v. Evers*, No. 20-CV-219 (Wis. Cir. Ct. Polk Cty. 2020), a lawsuit pending in Polk County Circuit Court which alleges that Respondent Evers' serial public health emergency declarations violate Wis. Stat. §323.10 and that, if they do not, §323.10 constitutes an unlawful delegation of legislative power to the executive.

2. On October 22, 2020, *Amici* filed a conditional petition asking this Court to consolidate *Lindoo* with the present case. *See generally* Conditional Petition, *Lindoo v. Evers*, 2020AP1749-OA

(Wis. Oct. 22, 2020). There *Amici* argued that consolidation would serve the Court in part because the *Fabick* Petitioner had not raised the non-delegation issue *Amici* had presented in *Lindoo*. *See, e.g., id.* at 32-33.

3. On October 28, 2020, this Court denied that request but authorized *Amici* to file a non-party brief in this case. *See* Order 2, *Lindoo v. Evers*, No. 2020AP1749-OA (Wis. Oct. 28, 2020). The Court also ordered the *Fabick* Petitioner to address the non-delegation issue. Order 1-2, *Fabick v. Evers*, No. 2020AP1718-OA (Wis. Oct. 28, 2020).

4. The brief that *Amici* submit today addresses the non-delegation issue in detail. Given the substantial time that *Amici* have devoted both in this case and in *Lindoo* to the topic, as well as the possibility that the *Fabick* Petitioner may have a different view of the proper application of that doctrine than *Amici* do, this Court would be well-served by allowing *Amici* to address the subject of their brief at oral argument and to answer any questions the Court may have.

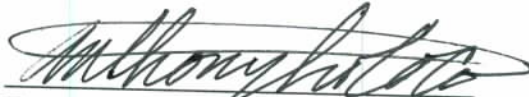
5. The *Fabick* Petitioner does not object to the request that this Court permit *Amici* to appear at oral argument to discuss the non-delegation doctrine so long as the Petitioner is not asked to cede his own time.

For the foregoing reasons, *Amici* respectfully ask this Court pursuant to Wis. Stat. §809.14 to grant them time at oral argument to address the non-delegation issue.

Dated: November 3, 2020.

Respectfully submitted,

Wisconsin Institute for Law & Liberty, Inc.



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CERTIFICATE OF SERVICE

I, Anthony LoCoco, attorney for *Amici Curiae*, hereby certify that on November 3, 2020 I caused three (3) true and correct copies of the foregoing motion to be served upon counsel of record via U.S. Mail, first-class postage, addressed as follows:

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Dated: November 3, 2020.



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