

In the Supreme Court of Wisconsin

JULIE UNDERWOOD, CHARLES UPHOFF, RANDY WENDT,
FATHER TOM MUELLER, ANGELA RAPPL, DUSTIN IMRAY AND
SCOTT WALKER M.D.,

PETITIONERS,

v.

ROBIN VOS, SPEAKER OF THE WISCONSIN STATE ASSEMBLY,
JILL UNDERLY, WISCONSIN STATE SUPERINTENDENT OF
PUBLIC INSTRUCTION AND KATHY BLUMENFELD, SECRETARY
OF THE DEPARTMENT OF ADMINISTRATION,

RESPONDENTS.

**MOTION ON BEHALF OF SCHOOL CHOICE WISCONSIN ACTION,
INC., WISCONSIN COUNCIL OF RELIGIOUS & INDEPENDENT
SCHOOLS, INC., ST. MARCUS EVANGELICAL LUTHERAN
CHURCH, INC., ST. AUGUSTINE PREPARATORY ACADEMY, INC.,
PIUS XI CATHOLIC HIGH SCHOOL, INC., SETON CATHOLIC
SCHOOLS, INC., CATHOLIC MEMORIAL HIGH SCHOOL OF
WAUKESHA, INC., GREEN BAY AREA CATHOLIC EDUCATION,
INC., IMMANUEL EVANGELICAL LUTHERAN CHURCH, IMPACT
CHRISTIAN SCHOOLS, INC., MESSMER CATHOLIC SCHOOLS,
INC., NEW TESTAMENT CHRISTIAN ACADEMY, INC., SHORELAND
LUTHERAN HIGH SCHOOL FEDERATION, INC., TRINITY
EVANGELICAL LUTHERAN CHURCH, ALDIRA ALDAPE, ANTHONY
KLOSOWSKI, JR., JOHANNA AND NICHOLAS DENTICE, MARK
ADAM, SARAH AND CALEB STORMER, TIM AND JENNIFER
MEINHARDT, TONY AND GINA ELLIS, AND SARAH AND JAMES
JORDAN FOR LEAVE TO FILE A NON-PARTY BRIEF AMICUS
CURIAE IN OPPOSITION TO THE PETITION TO TAKE
JURISDICTION OF AN ORIGINAL ACTION**

Movants School Choice Wisconsin Action, Inc., Wisconsin Council of
Religious & Independent Schools, Inc., St. Marcus Evangelical Lutheran
Church, Inc., St. Augustine Preparatory Academy, Inc., Pius XI Catholic High

School, Inc., Seton Catholic Schools, Inc., Catholic Memorial High School of Waukesha, Inc., Green Bay Area Catholic Education, Inc., Immanuel Evangelical Lutheran Church, Impact Christian Schools, Inc., Messmer Catholic Schools, Inc., New Testament Christian Academy, Inc. , Shoreland Lutheran High School Federation, Inc., Trinity Evangelical Lutheran Church, Aldira Aldape, Anthony Klosowski, Jr., Johanna and Nicholas Dentice, Mark Adam, Sarah and Caleb Stormer, Tim and Jennifer Meinhardt, Tony and Gina Ellis, and Sarah and James Jordan, by their undersigned counsel, hereby moves for leave to file the attached non-party brief in opposition to the Petition to Take Jurisdiction of an Original Action in this case.

1. On October 12, 2023, Petitioners filed a Petition to this Court to take jurisdiction of an original action challenging various school choice programs in Wisconsin.

2. Specifically, Petitioners challenge the Milwaukee Parental Choice Program (“MPCP”), the Wisconsin Parental Choice Program (“WPCP”), the Special Needs Scholarship Program (“SNSP”) and the Independent Charter School Program (“ICSP”).

3. On October 31, 2023, this Court ordered Respondents to file one or more responses by November 14, 2023, and asked for any motions for leave to file non-party amicus curiae briefs to be filed by that same day.

4. Movants have timely filed this motion.

5. This motion and the attached non-party brief comply with the requirements of Wis. Stat. (rule) 809.19(7) and this Court’s October 31, 2023 Order.

6. Movants are a group of parents, schools, and associations of schools who participate in one or more of the challenged programs (or whose members include participants in one or more of the challenged programs).

7. Movant School Choice Wisconsin Action, Inc. (a/k/a “SCWA”), is a membership-based association of schools. *Aff. Luehring*, ¶3. SCWA, has members who participate in the MPCP, the WPCP, and the SNSP. *Aff. Luehring*, ¶5.

8. Movant Wisconsin Council of Religious & Independent Schools, Inc. (a/k/a “WCRIS”), is a membership-based association of schools. *Aff. Schmeling*, ¶3. WCRIS has members who participate in the MPCP, the WPCP, and the SNSP. *Aff. Schmeling*, ¶5.

9. Movant St. Marcus Evangelical Lutheran Church, Inc. (a/k/a “St. Marcus Lutheran School”), is a private school in Milwaukee. *Aff. Tyson*, ¶3. St. Marcus Lutheran School participates in the MPCP and SNSP programs. *Aff. Tyson*. ¶4.

10. Movant St. Augustine Preparatory Academy, Inc. (a/k/a “St. Augustine Preparatory Academy”), is a private school in Milwaukee. *Aff. Andrietsch*, ¶3. St. Augustine Preparatory Academy participates in the MPCP, RPCP, WPCP, and SNSP programs. *Aff. Andrietsch*, ¶4.

11. Movant Pius XI Catholic High School, Inc. (a/k/a “Pius XI Catholic High School”), is a private high school in Milwaukee. Aff. Herbert, ¶3. Pius XI Catholic High School participates in the MPCP, WPCP, and SNSP programs. Aff. Herbert, ¶4.

12. Movant Seton Catholic Schools, Inc. (a/k/a “Seton”), is a school system based in the Milwaukee area consisting of 12 private schools. Aff. Couch, ¶3. All Seton schools participate in one or more of the MPCP, WPCP, and SNSP programs. Aff. Couch, ¶5.

13. Movant Catholic Memorial High School of Waukesha, Inc. (a/k/a “Catholic Memorial High School”), is a private high school in Waukesha. Aff. Bembenek, ¶3. Catholic Memorial High School participates in the WPCP program. Aff. Bembenek, ¶4.

14. Movant Green Bay Area Catholic Education, Inc. (a/k/a “GRACE”), is a school system based in the Green Bay area consisting of nine private schools. Aff. Desotell, ¶3. All GRACE schools participate in the WPCP program. Aff. Desotell, ¶5.

15. Movant Immanuel Evangelical Lutheran Church (a/k/a “Immanuel Lutheran School”), is a private school in Wisconsin Rapids. Aff. Betts, ¶3. Immanuel Lutheran School participates in the WPCP and SNSP programs. Aff. Betts, ¶4.

16. Movant Impact Christian Schools, Inc. (a/k/a “Impact Christian Schools”), is a school system based in the Madison area consisting of seven

private schools. Aff. Moore, ¶3. Impact Christian Schools consists of schools who participate in the WPCP and SNSP programs. Aff. Moore, ¶5.

17. Movant Messmer Catholic Schools, Inc. (a/k/a “Messmer Catholic Schools”), is a school system based in the Milwaukee area consisting of three private schools. Aff. Bartels, ¶4. Messmer Catholic Schools consists of schools who participate in the MPCP, WPCP, and SNSP programs. Aff. Bartels, ¶5.

18. Movant New Testament Christian Academy, Inc. (a/k/a “New Testament Christian Academy”), is a private school based in Milwaukee. Aff. Johnson, ¶3. New Testament Christian Academy participates in the MPCP and WPCP programs. Aff. Johnson, ¶4.

19. Movant Shoreland Lutheran High School Federation, Inc. (a/k/a “Shoreland Lutheran”), is a private high school based in Kenosha. Aff. Scriver, ¶3. Shoreland Lutheran participates in the MPCP, RPCP, WPCP and SNSP programs. Aff. Scriver, ¶4.

20. Movant Trinity Evangelical Lutheran Church (a/k/a “Trinity Lutheran School of Freistadt”), is a private school based in Mequon. Aff. Seefeld, ¶3. Trinity Lutheran School of Freistadt participates in the MPCP, WPCP and SNSP programs. Aff. Seefeld, ¶4.

21. Movant Aldira Aldape is the parent of a student enrolled in a private school as part of the WPCP. Aff. Aldape, ¶6.

22. Movant Anthony Klosowski, Jr., is the parent of a student enrolled in a private school as part of the RPCP. Aff. Klosowski, ¶6.

23. Movants Johanna and Nicholas Dentice are the parents of students enrolled in a private school as part of the SNSP. Aff. Dentice, ¶6.

24. Movant Mark Adam is the parent of a student enrolled in a school as part of the ICSP. Aff. Adam, ¶6.

25. Movants Sarah and Caleb Stormer are parents of students enrolled in a private school as part of the WPCP. Aff. Stormer, ¶6.

26. Movants Tim and Jennifer Meinhardt are parents of students enrolled in a school as part of the ICSP. Aff. Meinhardt, ¶6. Additionally, Movant Jennifer Meinhardt is a teacher at a school in the ICSP. Aff. Meinhardt, ¶¶10-11.

27. Movants Tony and Gina Ellis are parents of students currently enrolled in a private school as part of the WPCP. Aff. Ellis, ¶6.

28. Movants Sarah and James Jordan are parents of students currently enrolled in a private school as part of the RPCP. Aff. Jordan, ¶6.

29. Movants are all participants in one or more of the challenged programs.

30. Movants have significant experience with these programs, including their legal and regulatory history and structure and their real-world impacts throughout Wisconsin.

31. Given their extensive experience with the challenged programs, a brief from Movants should be desirable to this Court as it considers whether or not to grant the Petition in this case.

For these reasons, Movants respectfully request the Court grant leave to file the attached non-party brief.

Dated: November 13, 2023.

Respectfully submitted,

WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.

Electronically signed by Lucas T. Vebber

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