

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 TO INTERVENE 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**

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 move pursuant to Wis. Stat. § 803.09, to intervene as Respondents, should this Court grant the Petition in the above-captioned case.

Should this Court grant the Petition in the above-captioned case, Movants seek intervention as of right under Wis. Stat § 803.09(1) or, in the alternative, respectfully request permission to intervene under Wis. Stat § 803.09(2). The grounds for this motion, as more fully set forth in the memorandum in support of this motion and affidavits of all movants which are being filed simultaneously with this motion, are as follows:

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.

4. Movants have timely filed this motion.

5. 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).

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

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

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

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

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

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

25. 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.

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

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

28. As more fully explained in the memorandum in support of this motion and the affidavits of all movants filed herewith, should this Court grant the Petition in this case, Movants seek to intervene as of right pursuant to Wis. Stat. § 803.09(1) because all Movants have interests in the subject of this action, disposition of this action as a practical matter may impede or impair their ability to protect those interests, and the current Respondents do not adequately represent their interests.

29. Alternatively, all Movants seek permission of this Court to intervene under Wis. Stat. § 803.09(2) because they share defenses with Respondents and granting their motion to intervene would neither unduly delay proceedings nor prejudice the original parties.

For these reasons, and as more fully explained in the memorandum in support of this motion and the affidavits of all movants filed herewith, should this Court grant the Petition in this case, Movants respectfully request that this Court grant their motion to intervene as of right, or in the alternative, grant them permission to intervene in this action.

Dated: November 13, 2023.

Respectfully submitted,

WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.

Electronically signed by Lucas T. Vebber

Richard M. Esenberg (WI Bar No. 1005622)

Lucas T. Vebber (WI Bar No. 1067543)

Cory Brewer (WI Bar No. 1105913)

Skylar Croy (WI Bar No. 1117831)

Lauren Greuel (WI Bar No. 1127844)

330 East Kilbourn Avenue, Suite 725

Milwaukee, WI 53202

Telephone: (414) 727-9455

Facsimile: (414) 727-6385

Rick@will-law.org

Lucas@will-law.org

CBrewer@will-law.org

Skylar@will-law.org

Lauren@will-law.org

Counsel for all Movants

HUSCH BLACKWELL LLP

Francis H. LoCoco (WI Bar No. 1012896)

Anthony J. Anzelmo (WI Bar No. 1059455)

511 North Broadway, Suite 1100
Milwaukee, WI 53202
Telephone: 414-273-2100
Facsimile: 414-223-5000
Frank.LoCoco@huschblackwell.com
Anthony.Anzelmo@huschblackwell.com

Co-counsel for Seton Catholic Schools, Inc.