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Sauk County WI
Circuit Court
2025CV000020
Honorable Michael P. Screnock
Branch 1

STATE OF WISCONSIN CIRCUIT COURT SAUK COUNTY

NATHAN AND EMILY WEIGEL on their own behalf and on behalf of their minor daughter, MACY WEIGEL,
E14276 County Road W
Baraboo, WI 53913

Plaintiffs,

v.

WISCONSIN INTERSCHOLASTIC ATHLETIC ASSOCIATION,
5516 Vern Holmes Drive,
Stevens Point, WI 54482, and

BARABOO SCHOOL DISTRICT,
423 Linn Street
Baraboo, WI 53913

Defendants.

Declaratory Judgment
Case Code: 30701

SUMMONS

THE STATE OF WISCONSIN, To each person named above as a Defendant:

You are hereby notified that the Plaintiffs named above have filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within 20 days of receiving this summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court,

whose address is **Sauk County Clerk of Courts, 510 Broadway Street, Baraboo, WI 53913**, and to the **Wisconsin Institute for Law & Liberty**, Plaintiffs' attorneys, whose address is **330 East Kilbourn Avenue, Suite 725, Milwaukee, WI 53202**. You may have an attorney help or represent you.

If you do not provide a proper answer within 20 days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated: January 23, 2025

Respectfully Submitted,

WISCONSIN INSTITUTE
FOR LAW & LIBERTY

Electronically signed by
Skylar Croy

Richard M. Esenberg (#1005622)
Lucas T. Vebber (#1067543)
Luke N. Berg (#1095644)
Skylar Croy (#1117831)

330 E. Kilbourn Ave., Suite 725
Milwaukee, WI 53202
Phone: (414) 727-9455
Fax: (414) 727-6385

Rick@will-law.org
Lucas@will-law.org
Luke@will-law.org
Skylar@will-law.org

Attorneys for Plaintiffs

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Defendants.

COMPLAINT

Plaintiffs Nathan and Emily Weigel, on their behalf and on behalf of their minor child, Macy Weigel, by their undersigned attorneys at the Wisconsin Institute for Law & Liberty, hereby allege as follows:

INTRODUCTION

1. This action concerns whether the Wisconsin Interscholastic Athletic Association (WIAA), a private association, is unlawfully exercising governmental power by acting as the sole gatekeeper to high school athletics, a government-provided benefit. WIAA has monopolized athletics, with the help of public schools, without any sanction in the law to do so. *See, e.g.*, *Halter v. WIAA*, 2024 WI App 12, ¶16, 411 Wis. 2d 191, 4 N.W.3d 573, *pet. for rev. granted*. WIAA purports to bind roughly 90,000 student-athletes, their parents, and even public-school officials, as to who can and cannot participate in athletics. Its constitution boldly declares that its "Board of Control shall have general control over all activity and persons involved with the official school teams in any sport sponsored by [WIAA]." WIAA Const. art. VI, § 2(A);[1] *WIAA Partnerships*, WIAA (last visited Jan. 23, 2025).[2]

2. Every public high school in the State belongs to WIAA, accounting for approximately 80 percent of WIAA members. And public-school districts, like the Baraboo School District, have ceded to WIAA exclusive authority to decide which of their students can participate on their teams. No statute or constitutional provision gives WIAA this power or authorizes school districts to delegate this power to it. WIAA's exercise of this power, and school districts' deferral to WIAA, violates multiple doctrines and constitutional provisions: the private non-delegation doctrine

[1] https://www.wiaawi.org/Portals/0/PDF/Publications/2022-23handbook.pdf

[2] https://www.wiaawi.org/About-WIAA/WIAA-Partnerships

(the principle that government power may not be delegated to private entities); Article X, Section 1 of the Wisconsin Constitution, which requires "public instruction" to be "supervis[ed]" by the superintendent of public and "such other officers as the legislature shall direct;" and the bedrock principle that government power may not be exercised without statutory or constitutional authority.

3. WIAA has unlawfully exercised this government power to prevent Macy Weigel, a public high school student, from participating on the varsity softball team at her school this coming spring. Macy attended a private school until her family could no longer afford it, due to a younger sibling experiencing a serious illness. Nevertheless, WIAA enforced its so-called "Transfer Rule" to prohibit Macy from participating in varsity sports for one year and then denied the school district's and the Weigels' request for an exemption due to "extenuating circumstances," with little to no rational explanation. And the school district has indicated that it believes itself bound by WIAA's determination. Yet WIAA has no more power to enforce its transfer rules against Macy than it could tell her she cannot enroll in AP Physics.

4. Alternatively, even if WIAA can exercise such power over a government-sponsored activity, the Weigels are entitled to common law certiorari review—just like they would be if the Superintendent or another public-school official placed the ban on Macy directly. *See Halter*, 411 Wis. 2d 191, ¶¶23–25.

5. And WIAA's determination that Macy was not eligible for the "extenuating circumstances" exception was arbitrary and capricious, so this Court should set it aside. WIAA's Board of Control provided no reasoning whatsoever in its

decision denying the exemption request. The only rationale even suggested was by a WIAA staff member and was based on second-guessing the financial impact of her sibling's serious illness; in the staff member's view, the Weigels could have afforded to keep Macy at a private school, so the transfer rules applied, and Macy was prohibited from participating in certain co-curricular activities for a full year.

6. This Court should declare that WIAA cannot exercise governmental power and/or that WIAA has acted arbitrarily, capriciously, and contrary to law. It should also grant temporary and permanent injunctive relief.

PARTIES

7. Plaintiffs Nathan and Emily Weigel are the parents of Macy Weigel, a junior enrolled at Baraboo High School. The Weigels are also taxpayers. They bring this action on their behalf and on behalf of their daughter, Macy.

8. Defendant WIAA is an unincorporated association consisting of every public high school in the state and some private schools. *Halter*, 411 Wis. 2d 191, ¶16. Its mission is "to emphasize interscholastic athletics as a partner with other school activities in the total educational process[ ] and to formulate and maintain policies that will cultivate the high ideals of good citizenship and sportsmanship." *About WIAA*, WIAA (last visited Jan. 23, 2025).[3] It is also "to promote uniformity of standards in interscholastic athletic competition ...." *Id.*

[3] https://www.wiaawi.org/About-WIAA/WIAA-Partnerships

9. WIAA is governed by its member schools, which elected an 11-person Board of Control. Ten of the 11 are "administrators from the senior high school membership," and one is from the Wisconsin Association of School Boards. *Board of Control*, WIAA (last visited Jan. 23, 2025).[4] Seven of the 11 represent geographical districts, one is an at-large ethnic minority, one is an at-large gender minority, and one is an at-large nonpublic school representative. *Id.* Below is a table showing the current membership.

Position	Name	Occupation
District 1	Cory Hinkel	Superintendent, Luck School District
District 2	Nathan Lehman	District Administrator, Stratford School District
District 3	Brian Nadeau	Superintendent, Ellsworth Community School District
District 4	Bryan Davis	Superintendent, Oshkosh Area School District
District 5	Kurt Cohen	Superintendent, Potosi School District
District 6	Dennis Birr	Superintendent, Fall River School District
District 7	Ryan McMillen	Activities Director, Muskego & Norway Schools
Ethnic Minority	Karl Morrin	District Administrator, School District of Florence
Gender Minority	Jill Stobber	Athletic Director, Waterford Union High School
Nonpublic School	Paul Pedersen	Principal, Regin Catholic Schools
School Boards	Mike Humke	President of the Dodgeville School Board

10. Defendant Baraboo School District is a public school district as that term is used in Chapters 115 through 121 of the Wisconsin Statutes.

[4] https://www.wiaawi.org/About-WIAA/Board-of-Control

JURISDICTION AND VENUE

11. This Court has jurisdiction to hear and decide this action under Article VII, Section 8 of the Wisconsin Constitution and is competent to provide relief under Wis. Stat. §§ 806.04 and 813.01.

12. Venue in this Court is proper under Wis. Stat § 801.50(2).

BACKGROUND

13. Nathan and Emily Weigel have four children.

14. Macy Weigel, the Weigels' oldest child, is a high school junior, enrolled at Baraboo High School in the Baraboo School District.

15. Macy Weigel has never participated in any high-school sponsored athletics.

16. For the first two years of Macy Weigel's high school career, she attended Community Christian School (CCS).

17. CCS is a small private school in Baraboo.

18. CCS does not offer school-sponsored athletics.

19. CCS is not even a WIAA member.

20. CCS is tuition-based, and the Weigels paid thousands of dollars to enroll Macy there.

21. During Macy Weigel's freshman year at CCS, her youngest sibling was diagnosed with a deadly and rare blood condition that required a nine-week hospital stay and significant follow-up care.

22. Before that diagnosis, Emily Weigel had worked full-time as a teacher but left her career to care for her youngest child, ensuring she could attend follow-up care.

23. The Weigels resultantly lost approximately $60,000 in annual income.

24. Nathan Weigel is now the sole provider for a family of six.

25. Nathan Weigel works at a family farm, so his income varies significantly from year to year.

26. After the diagnosis, various family members, close friends, and community members provided the Weigels with financial assistance to help cover expenses and pay tuition for Macy at CCS through her sophomore year.

27. Following Macy Weigel's sophomore year, the family looked at their budget to reduce expenses, given that Emily Weigel had been out of work for a long time.

28. The Weigels realized that continuing at CCS was not a financially responsible option for them.

29. Macy Weigel resultantly transferred from CCS to her local residential public high school, Baraboo High School, before her junior year.

30. In this time of significant uncertainty and hardship for the Weigels, there was a silver lining: Macy hoped to play high school athletics for the first time because Baraboo High School offered a variety of athletic teams.

31. In particular, Macy Weigel wanted to play on the softball team, a sport she loves and has played for years with a local non-school affiliated recreational program in Baraboo.

32. After transferring, the Weigels learned that because of WIAA's "transfer rules," Macy would not be allowed to play at the varsity level for a full calendar year.

33. WIAA's transfer rules provide that "[a] student who transfers from any school into a member school will be subject to the transfer rules for one year, unless the transfer is made necessary by a total and complete change in residence by parent(s)." *See* WIAA Handbook Page 31.[5]

34. Once subject to the transfer rules, "Students entering 11th and 12th grade are restricted to nonvarsity for one calendar year." *Id*.

35. WIAA does not view its transfer rules as absolute, however.

36. As noted above, there is an exception for a change in residence—i.e., if a family moves from one district into another, the rule does not apply.

37. The Weigels, however, have been residents of, and taxpayers in, the Baraboo School District at all relevant times, so that exception does not apply to them.

38. There is also an exception for "[a] student who transfers into a member school without ever participating in a try-out, practice, scrimmage, or contest on a

[5] WIAA's 2024–25 Senior High Handbook is available on their website at: https://www.wiaawi.org/Portals/0/PDF/Publications/2024-25handbook.pdf.

team sponsored by a school or a club in a WIAA recognized sport while attending classes at any school in grades 9–12 ...." *Id.*

39. Macy Weigel has played softball in a local recreational program, so this exception also does not apply to her.

40. Finally, WIAA's transfer rules allow for "waivers" on a case-by-case basis "upon presentation of documentation detailing extenuating circumstances." *Id.*

41. An "extenuating circumstance" is "an unforeseeable, unavoidable, and uncorrectable act, condition, or event which results in severe burden and/or involuntary change that mitigates the rule." *Id.* at 32.

42. According to WIAA guidance, "medical" documentation "can be helpful" in showing an extenuating circumstance. *WIAA Transfer Rules and Waivers Quick Facts* (last visited Jan. 23, 2025).[6]

43. Baraboo High School wanted to allow Macy Weigel to play on the taxpayer-funded and school-sponsored varsity softball team, so it sought a waiver as provided by WIAA rules.

44. That waiver request was denied by WIAA staff member Mel Dow, who concluded, "[i]n this instance, it appears this student's situation has come about largely as a result of choices, decisions and/or actions made by Macy and her family."

45. Baraboo High School appealed that decision to WIAA's Board of Control, WIAA's governing body, believing Macy should be able to play immediately.

[6] https://www.wiaawi.org/portals/0/pdf/eligibility/transferrules.pdf

46. The Board of Control scheduled an appeal hearing for October 31, 2024. That hearing was attended by counsel for the Weigel family, Nathan Weigel, and the Baraboo High School athletic director, Jim Langkamp.

47. Langkamp and the Weigels' counsel both spoke in support of the appeal.

48. After Dow made a short statement opposing the appeal, the Board of Control broke for a private discussion in an adjoining room and minutes later re-entered the hearing room to vote.

49. The Board of Control denied the appeal by a vote of 8-3.

50. Per WIAA's rules, "[a]ll decisions of the board shall be final and nonappealable except as provided by these rules." No exceptions applied.

51. Following the appeal denial, the Baraboo athletic director indicated his hands were tied—Baraboo High School is bound by WIAA's decision.

52. The Weigels were informed that Macy could not play varsity softball.

53. As a result, unless this Court acts, Macy will be denied the opportunity to compete at the varsity level at her local public high school for the upcoming season because of WIAA's decision.

54. Macy will suffer irreparable harm if she cannot participate in varsity athletics during the upcoming season. She will lose an entire season of eligibility without the opportunity to make it up, which will have a cascading effect on her high school career and any possible post-high school career.

55. WIAA, on the other hand, will not suffer any harm if Macy is allowed to play.

56. The Weigels have no other adequate remedy at law.

57. Given the time sensitivity, her season starting just a few months from now, a temporary injunction is necessary to preserve any meaningful remedy, and a motion seeking the same will be filed shortly after this complaint.

CAUSES OF ACTION

CLAIM ONE: Unlawful Exercise of Governmental Power

58. The Weigels reallege and incorporate the preceding allegations of the complaint.

59. A foundational principle of the rule of law is that governmental power cannot be wielded by anyone, but only pursuant to a constitutional or statutory authorization.

60. One corollary is the so-called private non-delegation doctrine—that private entities may not exercise governmental power unless they are an agent of and subordinate to the government entity with the power. *E.g.*, *State ex rel. Nehrbass v. Harper*, 162 Wis. 589, 156 N.W. 941 (1916) (explaining a common council cannot delegate its power to private citizens); *see also Alpine Sec. Corp. v. Fin. Indus. Regul. Auth.*, 121 F.4th 1314, 1325 (D.C. Cir. 2024) ("For a delegation of governmental authority to a private entity to be constitutional, the private entity must act only 'as an aid' to an accountable government agency that retains the ultimate authority to 'approve[], disapprove[], or modif[y]' the private entity's actions and decisions on delegated matters.") (quoted source omitted); *Nat'l Horsemen's Benevolent & Protective Ass'n v. Black*, 53 F.4th 869, 872 (5th Cir. 2022) ("A cardinal constitutional

principle is that federal power can be wielded only by the federal government. Private entities may do so only if they are subordinate to an agency.").

61. With respect to public schools, this principle is reflected in Article X, Section 1 of the Wisconsin Constitution, which provides that "[t]he supervision of public instruction shall be vested in a state superintendent and such other officers as the legislature shall direct ...."

62. The primary "other officers" that the legislature has "directed" are locally elected school boards. *See generally* Wis. Stat. chs. 118–21.

63. The legislature has directed that local school boards "have the possession, care, control and management of the property and affairs of the school district ...." Wis. Stat. § 120.12(1).

64. The legislature has also given school boards local legislative power to "[m]ake rules for the organization, gradation and government of the schools of the school district ...." Wis. Stat. § 120.13(1)(a).

65. WIAA, by contrast, is a private association without authority to exercise governmental powers.

66. WIAA has unilaterally exercised both legislative and executive power over a government-provided benefit, namely, high school athletics.

67. WIAA's usurpation of governmental power has directly injured the Weigels.

68. WIAA has unlawfully wielded this power to exclude Macy Weigel from participating in the high school athletics of her choosing, a part of "public instruction."

69. Interscholastic athletics are part of "public instruction" under Article X, Section 1, that must be supervised either by the Superintendent or such other officer as the legislature may direct.

70. Just like students need to learn the alphabet and mathematics, they must also learn good citizenship, physical education, and social skills. *See Report of the State Superintendent* 13 (1849) ("The [S]tate ... seeks to train ... [all children] up so as to render them useful and honorable citizens."); *see also Report of State Superintendent* 10 (1852) ("Let there grow up in their minds a love for the place—an affection for the scene of their sports and studies."). As one federal court said, "[i]t is beyond cavil that education is a traditional function of the [S]tate, and 'perhaps the most important function of state and local government.' Extracurricular activities are an important component of an education in today's modern society." *Barnhorst v. Mo. State High Sch. Activities Ass'n*, 504 F. Supp. 449, 457 (W.D. Mo. 1980) (quoting *San Antonio Sch. Dist. v. Rodriguez*, 411 U.S. 1, 29 (1973)); *see also Nagy v. Evansville-Vanderburgh Sch. Corp.*, 844 N.E.2d 481, 492–93 (Ind. 2006) ("[W]e already recognized that 'athletics are an integral part of this constitutionally-mandated process of education.' ") (quoted source omitted).

71. WIAA is not authorized to exercise governmental power—it cannot tell individual schools and school districts which students are allowed to participate in a particular activity and which are not.

72. WIAA was not created by any statute or constitutional provision.

73. Instead, WIAA is a private association that all public high schools around the state have joined and purport to be bound by the decisions of.

74. Neither the Superintendent nor any other officer identified by the legislature administer, operate, or oversee WIAA.

75. Likewise, no public-school board administers, operates, or oversees WIAA.

76. No public-school board has the power to approve, disapprove, or modify WIAA's decisions.

77. Nor is WIAA part of any other agency.

78. Even still, WIAA adopts and enforces rules—an exercise of both legislative and executive power—that bind student-athletes, their parents, and even public-school officials throughout Wisconsin

79. WIAA is effectively a rogue administrative agency. The Department of Public Instruction—headed by the Superintendent—even calls WIAA "the regulatory agency for all high school sports in Wisconsin." *Athletic Conference*, DPI (last visited Jan. 23, 2025).[7] An agency necessarily exists within the "executive branch," but again, no statute created WIAA. *See Koschkee v. Taylor*, 2019 WI 76, ¶14, 387 Wis. 2d 552, 929 N.W.2d 600. It cannot exercise governmental power any more than a self-proclaimed prosecutor could. WIAA cannot order around students and bind public schools unless the legislature says it can.

80. WIAA's Transfer Rules are an exercise of legislative power that determines eligibility for high school athletics, a government-provided benefit.

81. WIAA's Transfer Rules contain an exception for "extenuating circumstances," which WIAA approves or disapproves on an ad hoc basis.

82. WIAA's enforcement of the Transfer Rules and its determinations about who qualifies for the "extenuating circumstances" exception are an exercise of executive power.

83. WIAA's Transfer Rules violate Article X, Section 1 because they are an exercise of legislative power over public instruction without supervision by either the Superintendent or any other officer directed by the legislature for that purpose.

84. WIAA's application of the Transfer Rules to Macy Wiegel, and its determination that she is ineligible for the "extenuating circumstances" exception,

[7] https://dpi.wi.gov/wise/data-elements/athletic-conference

violate Article X, Section 1, because they are an exercise of executive power over public instruction without supervision by either the superintendent, the Baraboo School Board, or any other officer directed by the legislature for that purpose.

85. WIAA's Transfer Rules, application of that Rule to Macy Wiegel, and determination that she is ineligible for the "extenuating circumstances" exception violate the private non-delegation doctrine by allowing WIAA to unilaterally exercise governmental power over a government-provided benefit.

86. WIAA's Transfer Rules, application of that Rule to Macy Wiegel, and determination that she is ineligible for the "extenuating circumstances" exception are unlawful and ultra vires, because no statute or constitutional provision gives WIAA such power.

87. This Court should declare that WIAA cannot decide which public school students can and cannot participate in interscholastic athletics and cannot bind public school officials to its decisions.

88. This Court should enjoin WIAA from enforcing its ban against Macy Weigel or the Baraboo School District.

CLAIM TWO: In the alternative, WIAA's decision was arbitrary and capacious and contrary to law

89. Plaintiffs reallege and incorporate the preceding allegations of the complaint.

90. Even assuming WIAA has the power it claims, it takes that power on the same terms as if the State exercised it.

91. Accordingly, the Weigels are entitled to certiorari review regarding WIAA's application of its transfer rules, just as if the same decision were made directly by a public-school official. *See Halter*, 411 Wis. 2d 191, ¶¶23–25.

92. The decision was arbitrary and capricious. *See id.*

93. As every parent would agree, a deathly ill child is an unforeseeable, unavoidable, and uncorrectable event—not to mention a severe burden that causes involuntary change.

94. Parents have a legal and moral obligation to care for their children, and the Weigels should be applauded for doing what needed to be done to ensure that their youngest child is in the best position possible to combat sickness.

95. WIAA has no interest—let alone a rational one—in preventing Macy Weigel from competing.

96. WIAA provided no rational justification for its conclusion that Macy Weigel did not meet the "extenuating circumstances" exception.

97. Furthermore, to the extent that WIAA is lawfully exercising state authority, it must do so in accordance with state law. The "transfer rules" are not set out in state law, nor any duly promulgated administrative rule, and so their enforcement against Macy Weigel is contrary to law.

98. This Court should reverse WIAA's decision.

REQUEST FOR RELIEF

Plaintiffs therefore request the following relief:

A. A declaration that WIAA has illegally exercised governmental power;

B. A declaration that WIAA's decision was arbitrary and capricious and/or contrary to law;

C. A temporary and permanent injunction prohibiting WIAA from banning Macy Weigel from varsity athletics or from enforcing its ban against the Baraboo School District;

D. A temporary and permanent injunction requiring the Baraboo School District to allow Macy Weigel to try out for (and, if she passes tryouts, participate on) the varsity softball team;

E. An award of costs and any such other relief as the Court deems appropriate.

Dated: January 23, 2025

Respectfully Submitted,

WISCONSIN INSTITUTE FOR
LAW & LIBERTY

Electronically signed by
Skylar Croy

Richard M. Esenberg (#1005622)
Lucas T. Vebber (#1067543)
Luke N. Berg (#1095644)
Skylar Croy (#1117831)

330 E. Kilbourn Ave., Suite 725
Milwaukee, WI 53202
Phone: (414) 727-9455
Fax: (414) 727-6385

Rick@will-law.org
Lucas@will-law.org
Luke@will-law.org

Skylar@will-law.org

Attorneys for Plaintiffs