

April 8, 2020

**VIA EMAIL ONLY**

Honorable Patience Roggensack  
Chief Justice  
Wisconsin Supreme Court  
State Capitol  
Madison, WI 53701

Dear Chief Justice Roggensack:

This morning I received by email an order from the Court in *Legislature v Evers* (Case No. 20AP608-OA) which stated:

Yesterday, several individual and voting rights organizations filed a motion seeking leave to file a non-party brief amicus curiae in the above-captioned matter, together with a copy of the proposed brief. The motion and proposed brief were received shortly after the court issued its initial order granting the petition for leave to file an original action and granting the request for temporary injunctive relief.

The order then dismissed the motion as moot.

I am one of the attorneys for SEIU Wisconsin State Council, which is a plaintiff in *Lewis, et al. v Knudson, et al.* (W.D. Wis. Case No. 20-cv-284-wmc) and was one of the organizations that submitted the motion for leave to file a non-party brief and proposed brief that are the subject of the above order. I write on behalf of all of the attorneys who represent the plaintiffs in the *Lewis* case and who jointly submitted the request to file a non-party brief in this case.

It is our understanding that the Legislature's petition asking the Court to take original jurisdiction and to issue an injunction against Governor Evers' Executive Order #74 was filed at approximately 2:30 p.m. on April 6, 2020 and that at approximately 3:00 p.m. the Court ordered that any response to the petition be filed by 3:30 p.m. on that date.

We learned of the Court's order at approximately 3:20 p.m. on April 6, 2020. I telephoned the Clerk of the Supreme Court immediately to alert the Court that we intended to seek amici status and file a brief; I was initially put on hold, but was able to speak with a staff member at approximately 3:28; she urged us to file as soon as possible. At 3:47 I emailed the Clerk notifying her that we would be filing a motion for leave to appear as amicus curiae and would do so promptly. Our motion and proposed brief were submitted by e-filing at approximately 4:26 p.m. and re-filed by email at 4:47 p.m. We filed the motion and proposed brief in compliance with Wis. Stat. § 809.19(7) which, as you know, governs the submission of non-party briefs to the Court.

Subsequently, it has come to our attention that three "letter briefs" were filed with the Court in support of the Legislature's position from the following: Attorney Richard Esenberg on behalf of the Wisconsin Institute for Law & Liberty; Attorney Lane E. Ruhland on behalf of the Republican Party of Wisconsin; and Attorney Andrew T. Phillips on behalf of the Wisconsin Counties Association/Washington County. It is also our understanding that the Court considered these "letter briefs" despite the fact that none of the non-parties on whose behalf they were sent had asked the Court permission to file a non-party brief.

Wis. Stat. § 809.19(7) and footnote 7 to it state:

- (a) A person not a party may by motion request permission to file a brief. The motion shall identify the interest of the person and state why a brief filed by that person is desirable.
- (b) If the brief will support or oppose a petition under s. [809.62](#) or [809.70](#), the brief shall accompany the motion and shall be filed within the time permitted for the opposing party to file a response to the petition. If an unpublished opinion is cited under s. [809.23 \(3\) \(a\)](#) or [\(b\)](#), a copy of the opinion shall be provided in an appendix to the brief.
- (c) Except as provided in par. [\(b\)](#), the motion shall be filed not later than 14 days after the respondent's brief is filed, and the brief shall be filed within the time specified by the court. If an unpublished opinion is cited under s. [809.23 \(3\) \(a\)](#) or [\(b\)](#), a copy of the opinion shall be provided in an appendix to the brief.

Sub. (7) The practice under former Rule 251.40 is modified to require the request to file an amicus curiae brief be made by motion rather than by letter. Rule 20, FRAP. The motion should indicate the interest of the amicus and why a brief by the amicus is desirable.

We have two questions:

1. Has the Court adopted a new procedure that allows non-parties to present arguments to the Court by “letter briefs” without first seeking permission to do so under Wis. Stat. § 809.19(7)?
2. If not, in the future may non-parties, on the basis of the Court’s consideration of “letter briefs” in this matter, submit non-party “letter briefs” to the Court with the understanding that the Court, on an ad hoc basis, will decide if it will review and consider them?

The answer to those questions are important so that in the future attorneys who are consulting with potential amici to this Court can properly advise them about whether they should expend the time, effort and resources to comply with Wis. Stat. § 809.19(7) or just submit a “letter brief” in the hope the Court will consider it.

Very truly yours,

PINES BACH LLP



Lester A. Pines

LAP:hkb

cc: Justices of the Court (via email)  
Attorney Doug Poland (via email)  
Attorney Richard Saks (via email)  
Attorney Tamara Packard (via email)  
Attorney David Hollander (via email)