

KAARINA DUNN by and through her
guardian, Kadanne Dunn, et al.,
Plaintiffs,

v.

PUBLIC SERVICE COMMISSION OF
WISCONSIN, et al.,

Case No. 2025 CV 2797

Defendants.

NONPARTY BRIEF OF THE PUBLIC HEALTH LAW CENTER, THE WISCONSIN
ENVIRONMENTAL HEALTH NETWORK, AND HEALTHY CLIMATE WISCONSIN
IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS

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Statement of Interest

The **Public Health Law Center** (PHLC) is a public interest legal resource center dedicated to improving health through the power of law and policy. Based in the Midwest, the Center helps local, state, national, and Tribal leaders promote public health. For twenty-five years, the Center has worked with public officials and community leaders to develop, implement, and defend effective public health laws. Reducing air pollution and mitigating the effects of climate change—the single greatest threat to public health—are core elements of the Center’s work.

The **Wisconsin Environmental Health Network** (WEHN) is a group of healthcare professionals collaborating with local environmental advocates. WEHN works to inform healthcare professionals, the public, and policy makers about the effects of environmental toxins and climate change on public health. WEHN develops and promotes clinical tools, offers environmental health education for public and healthcare professionals, and advocates for strong environmental regulation to protect human health. The following WEHN members, who are authorities on the impact of the environment and climate change on the health of individuals throughout their lifespan, join this Brief on behalf of WEHN: Susan Davidson, MD (Maternal Fetal Medicine); Ann Behrmann, MD (Pediatrics); Beth Neary, MD (Pediatrics); Claire Gervais, MD (Family Medicine); Jonathan Patz, MD, MPH (Environmental Medicine and Family Medicine); and Henry Anderson, MD (Occupational Medicine).

Healthy Climate Wisconsin (HCW), formerly known as the Wisconsin Health Professionals for Climate Action, is a nonprofit organization of nurses, doctors, public health workers, and health professionals from all across the state of Wisconsin united to advocate for climate action because of climate change's far-reaching and detrimental health impacts. HCW shares climate health resources, educates, networks, empowers its members to advocate for their

communities' health, and catalyzes the transition to climate-smart healthcare in Wisconsin. The following HCW members, who are authorities on the impact of the environment and climate change on the health of individuals throughout their lifespan, join this Brief on behalf of HCW: Joel Charles, MD, MPH (Family Medicine and Hospitalist); Elizabeth White, MD (Family Medicine); and Emily Walz, MD Psychiatry).

Introduction

The dual harms of climate change and fossil fuel pollution are negatively impacting public health in Wisconsin, with Wisconsin's children and youth shouldering the greatest impacts. As a result of the state laws challenged in this case, Plaintiffs are exposed to health harms that will, without intervention, impact them for the rest of their lives. These harms include exposure to particulate matter, nitrogen oxides, sulfur oxides, carbon monoxide, and a variety of other pollutants created by the power plants that are approved under the challenged provisions. They are further exacerbated by the effects of climate change, which will increase Plaintiffs' exposure to harmful air pollutants and other environmental health hazards such as extreme heat. The two sides of these effects are intertwined: just as burning fossil fuel releases greenhouse gases alongside other air pollutants, the climatic changes caused by those greenhouse gases will make the air Plaintiffs breathe more dangerous.

Plaintiffs are particularly vulnerable to these impacts because of their young age and, in several cases, their preexisting medical conditions such as asthma. Those harms are continued and exacerbated by the challenged statutory provisions, which prevent Plaintiffs' particular vulnerabilities from being considered during the approval process. Plaintiffs therefore have standing to bring this case, and this Court has the power to vindicate their rights.

Argument

I. Climate Change is a Public Health Emergency to which Plaintiffs are Particularly Vulnerable

Climate change is the single greatest public health threat that we face.¹ The effects of climate change create or exacerbate a wide range of public health harms, from extreme heat to changes in the cycle of seasons.² Climate change also impacts the social determinants of health, like economic stability; for example, the impacts to Plaintiff Ted's family's vegetable farm.³ Compl. ¶¶ 48-50. Many of these harms are especially pronounced for children and youth, such as the Plaintiffs, and for people with preexisting chronic respiratory conditions, from which several Plaintiffs suffer. *See generally* Compl. ¶¶ 12-72.

A. Climate Change has Profound Impacts on Public Health

The danger posed by climate change manifests in several ways that directly affect the Plaintiffs. First, increased average temperatures and the incidence of extreme heat events are a serious danger to Plaintiffs' health.⁴ Compl. ¶¶ 14, 18, 58, 62, 67. When temperatures are higher, more people are hospitalized or seek emergency treatment for a variety of health harms: trouble with their heart, difficulty breathing, diabetes, dehydration, and liver failure.⁵ The extent of these

¹ Lukoye Atwoli, et al., *Call for Emergency Action to Limit Global Temperature Increases, Restore Biodiversity, and Protect Health*, 385 New England J. Med. 1134, 1136 (2021), [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(21\)01915-2/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(21)01915-2/fulltext) (editorial simultaneously published in 230 other medical and public-health journals); *see also, e.g.*, World Health Org., *The Health Argument for Climate Action 2* (2021), <https://cdn.who.int/media/docs/default-source/climate-change/cop26-special-report.pdf> ("Climate change is the single biggest health threat facing humanity."); Anthony Costello et al., *Managing the Health Effects of Climate Change*, 373 Lancet 1693, 1693 (2009) ("Climate change is the biggest global health threat of the 21st century."); U.S. Global Change Research Program (USGCRP), *Fifth National Climate Assessment* 15-6 (2023), https://toolkit.climate.gov/sites/default/files/2025-07/NCA5_2023_FullReport.pdf ("Climate change has profound negative effects on human health.").

² *See, e.g.*, USGCRP, *Fifth National Climate Assessment*, *supra* note 1, at 15-6 to 15-10.

³ *See, e.g.*, Carol Ziegler & James Muchira, *Climate Change: The Ultimate Determinant of Health*, 50 Primary Care: Clinics in Off. Practice 645 (2023), <https://www.sciencedirect.com/science/article/abs/pii/S0095454323000507>.

⁴ *See, e.g.*, USGCRP, *Fifth National Climate Assessment*, *supra* note 1, at 15-6.

⁵ *Id.* (citing Ana Maria Vicedo Cabrera et al., *The Burden of Heat-Related Mortality Attributable to Recent Human-Induced Climate Change*, 11 Nature Climate Change 492 (2021), <https://www.nature.com/articles/s41558-021->

harms will depend on the amount of new greenhouse gas emissions that are allowed to enter the atmosphere. For example, research published by the American Heart Association predicts that deaths by cardiovascular conditions from extreme heat will increase by 162 percent between the early and mid-twentieth century if emissions increase by a moderate amount, but by 233 percent under a higher emission scenario.⁶

Changes in global average temperatures are causing a wide variety of other health impacts. Higher temperatures increase the formation of ground-level ozone, also known as smog, from the chemicals emitted by fossil-fuel combustion; ozone causes shortness of breath and asthma attacks, and can kill people exposed to it over the long term.⁷ Climate change is increasing the number of wildfires, and therefore the smoke created by burning large areas of our country.⁸ This smoke includes particulate matter—particles tiny enough to be breathed in and damage or obstruct the lungs, heart, and other organs—as well as a variety of harmful pollutants, including the chemicals that form ozone.⁹ Wildfire smoke is already impacting multiple

01058-x; Kristie L. Ebi et al., *Hot Weather and Heat Extremes: Health Risks*, *The Lancet*, vol. 398 iss. 10301, at 698 (2021), [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(21\)01208-3/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(21)01208-3/fulltext); Nikita Thomas et al., *Time-Series Analysis of Daily Ambient Temperature and Emergency Department Visits in Five U.S. Cities with a Comparison of Exposure Metrics Derived from 1-km Meteorology Products*, *Env't Health* vol. 20, art. 55 (2021), <https://link.springer.com/article/10.1186/s12940-021-00735-w>).

⁶ Sameed Ahmed M. Katana et al., *Projected Change in the Burden of Excess Cardiovascular Deaths Associated with Extreme Heat by Midcentury (2035-2065) in the Contiguous United States*, 148 *Circulation* 1559, 1559, 1561 (2023), <https://www.ahajournals.org/doi/10.1161/CIRCULATIONAHA.123.066017>.

⁷ See, e.g., *Climate Change and Lung Health*, Am. Lung Ass'n, <https://www.lung.org/clean-air/climate-change/climate-change-lung-health> (Feb. 18, 2025); *Ozone*, Am. Lung Ass'n, <https://www.lung.org/clean-air/outdoors/what-makes-air-unhealthy/ozone> (June 9, 2025).

⁸ USGCRP, *Fifth National Climate Assessment*, *supra* note 1, at 15-7 (“Roughly half the increase in burned areas in the US can be attributed to a warming climate.” (citing Marshall Burke et al., *The Changing Risk and Burden of Wildfire in the United States*, *Proceedings of the Natl. Acad. Sci.* vol. 118, no. 2, art. e2011048118 (2020), <https://www.pnas.org/doi/epdf/10.1073/pnas.2011048118>)).

⁹ E.g., Am. Lung Ass'n, *State of the Air 2025*, at 14, 16, 19 (2025), <https://www.lung.org/getmedia/5d8035e5-4e86-4205-b408-865550860783/State-of-the-Air-2025.pdf>; USGCRP, *Fifth National Climate Assessment*, *supra* note 1, at 15-7 to 15-8 (citing Emily Grant & Jennifer D. Runkle, *Long-Term Effects of Wildfire Exposure: A Scoping Review*, *J. Climate Change & Health* vol. 6, art. 100110 (2022), <https://www.sciencedirect.com/science/article/pii/S2667278221001073>; Ryan W. Gan et al., *The Association between Wildfire Smoke Exposure and Asthma-Specific Medical Care Utilization in Oregon during the 2013 Wildfire Season*, 30 *J. Exposure Sci. & Env't Epidemiology* 618 (2020), <https://www.nature.com/articles/s41370-020-0210-x>; Michelle C.

Plaintiffs, restricting the time that they can safely spend outside and negatively impacting their health. Compl. ¶¶ 14, 18, 35, 37, 51, 66, 70.

Climate change is also expected to increase instances of vector-borne diseases and other environmental health risks.¹⁰ For example, disease-bearing insects are expanding their range and activity as temperatures warm, increasing the incidence of the Zika virus and Lyme disease.¹¹ Tick and mosquito-borne diseases are becoming more prevalent in children.¹² Compl. ¶¶ 18, 29, 44, 53. In addition, extreme rain events, such as the extreme flooding experienced by Plaintiff Kaarina and her family, can lead to contaminated drinking water and water-borne illnesses.¹³ Compl. ¶¶ 12-13. Approximately two-thirds of Wisconsin residents get their drinking water from groundwater that may be susceptible to water contamination.¹⁴ And, a warmer climate has led to

Kondo et al., *Meta-Analysis of Heterogeneity in the Effects of Wildfire Smoke Exposure on Respiratory Health in North America*, 16 Intl. J. Env't Res. & Pub. Health 960 (2019), <https://www.mdpi.com/1660-4601/16/6/960>; Zachary S. Wettstein, *Cardiovascular and Cerebrovascular Emergency Department Visits Associated With Wildfire Smoke Exposure in California in 2015*, J. Am. Heart Ass'n vol. 7, iss. 8, art. e007492 (2018), <https://www.ahajournals.org/doi/10.1161/JAHA.117.007492>; Colleen E. Reid et al., *Critical Review of Health Impacts of Wildfire Smoke Exposure*, 124 Env't Health Persps. 1334 (2016), <https://pmc.ncbi.nlm.nih.gov/articles/PMC5010409/pdf/ehp.1409277.pdf>.

¹⁰ See Nat'l Ctr. For Emerging & Zoonotic Infectious Diseases, *Climate & Infectious Diseases*, <https://www.cdc.gov/ncezid/topics-programs/climate-infectious-disease.html> (last visited Jan. 12, 2026).

¹¹ USGCRP, *Fifth National Climate Assessment*, *supra* note 1, at 15-8 to 15-9 (citing, inter alia, Cyril Caminade et al., *Impact of Recent and Future Climate Change on Vector-Borne Diseases*, Annals of N.Y. Acad. of Sci., vol. 1436, iss. 1, at 157 (2019), <https://nyaspubs.onlinelibrary.wiley.com/doi/10.1111/nyas.13950>; Daniel E. Sonenshine, *Range Expansion of Tick Disease Vectors in North America: Implications for Spread of Tick-Borne Disease*, Intl. J. Env't Res. & Pub. Health vol. 15, iss. 3, art. 478 (2018), <https://www.mdpi.com/1660-4601/15/3/478>; Ram K. Raghavan et al., *Current and Future Distribution of the Lone Star Tick, Amblyomma americanum (L.) (Acari: Ixodidae) in North America*, PLOS ONE vol. 14, iss. 1, art. e0209082 (2019), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0209082>; Irina Sagurova, *Predicted Northward Expansion of the Geographic Range of the Tick Vector Amblyomma americanum in North America under Future Climate Conditions*, Env't Health Persps. vol. 127, iss. 10, art. 107014 (2019), <https://pmc.ncbi.nlm.nih.gov/articles/PMC6867274/>; Salah U. Khan et al., *Current and Projected Distributions of Aedes aegypti and Ae. albopictus in Canada and the U.S.*, Env't Health Persps. vol. 128, iss. 5, art. 57007 (2020), <https://pubmed.ncbi.nlm.nih.gov/32441995/>).

¹² WI Dept. of Health Serv., *Ticks in Wisconsin: Data and Surveillance*, <https://www.dhs.wisconsin.gov/tick/wisconsin.htm> (last visited Jan. 9, 2026).

¹³ WI Initiative on Climate Changes Impacts Assessment Report, *Wisconsin's Changing Climate: Impacts and solutions for a warmer climate* at 45-45 (2021), <https://uwmadison.app.box.com/s/lob4igia3b55u1q6kead7l91p14odoqu>.

¹⁴ WI Dept. of Health Services, *Drinking Water: Groundwater Standards*, <https://www.dhs.wisconsin.gov/water/gws.htm> (last visited Jan. 12, 2026).

more pollen in the air, worsening seasonal allergies experienced by children like Plaintiffs Caroline, Tyler, Waazakone, Mukademigwan, and Gookoonz.¹⁵ Compl. ¶¶ 17, 30. For Indigenous Plaintiffs, climate-related impacts to culturally and spiritually significant plant and animal species will have life-long repercussions for their health.¹⁶ Compl. ¶¶ 22-31.

B. Plaintiffs are Especially Vulnerable to these Health Impacts

The young Plaintiffs in this case are particularly vulnerable to the health impacts from air pollution and climate change. *See* Ps.’ Combined Resp. 9-12. A recent technical report from the American Academy of Pediatrics notes: “Children are at higher risk of climate-related health burdens than adults because of their unique behavior patterns; developing organ systems and physiology; greater exposure to air, food, and water contaminants per unit of body weight; and dependence on caregivers.”¹⁷ Children breathe faster than adults and have a smaller airway size.¹⁸ They spend more time outside and are particularly vulnerable to environmental hazards while their lungs are developing.¹⁹ This makes them susceptible to ambient air pollution, which is associated with numerous childhood diseases, including asthma, as experienced by Plaintiffs

¹⁵ *See, e.g.*, Allison J. Burbank et al., *Climate Change and Allergens: Current and Future Impacts*, 13 J. Allergy & Clinical Immunology: In Practice 1281 (2025), <https://www.sciencedirect.com/science/article/abs/pii/S2213219825002120>; Duncan A. Meiklejohn et al., *Climate Change, Allergic Rhinitis, and Sinusitis*, J. Am. Med. Ass’n Insights art. 19748 (Dec. 3, 2025), <https://jamanetwork.com/journals/jama/article-abstract/2842287>; Shubhayu Saha et al., *Short Term Physician Visits and Medication Prescriptions for Allergic Disease Associated with Seasonal Tree, Grass, and Weed Pollen Exposure across the United States*, Env’t Health vol. 20 art. 85 (2021), <https://link.springer.com/article/10.1186/s12940-021-00766-3>.

¹⁶ *See* CDC, *Tribal Practices for Wellness in Indian Country* (Aug. 21, 2024), <https://www.cdc.gov/healthy-tribes-tpwic/php/about/index.html> (recognizing that access to cultural practices supports healthier lives and chronic disease prevention).

¹⁷ Samantha Ahdoot et al., Am. Acad. Pediatrics, *Climate Change and Children’s Health: Building a Healthy Future for Every Child*, Pediatrics vol. 153, iss. 3, at 1, 1 (2024), <https://publications.aap.org/pediatrics/article/153/3/e2023065504/196647/Climate-Change-and-Children-s-Health-Building-a>.

¹⁸ *Id.* at 5.

¹⁹ *Id.*

Madeleine, Simon, and Indy.²⁰ Compl. ¶¶ 37, 66, 70. Youth also take longer to acclimate to higher temperatures, experiencing disproportionate impacts from extreme heat.²¹

An October 2025 decision out of Montana further illustrates the unique harm posed to children by climate change. In *Lighthiser vs. Trump*, young plaintiffs also presented declarations attesting to the increased risks to their physical health from climate change. CV 25-54-BU-DLC, 2025 WL 2930569, at *3 (D. Mont. Oct. 15, 2025). The court noted: “[H]igher average temperatures will exacerbate air pollution, which in turn aggravates existing cases of asthma experienced by several Plaintiffs....Children and youth with chronic health conditions such as asthma or allergies...are more susceptible to poor air quality, which may result in more visits to the emergency room and hospital admissions.” *Id.* at *5. The court also cites a pediatrician expert witness who concludes that “climate change and exposure to pollution from fossil fuels presents a health emergency for children and youth.” *Id.* And the science shows, for example, that “exposure to air pollutants...in childhood has been clearly linked to reduced lung function,” and is “well documented to exacerbate asthma in children.”²² The court found this cumulative “overwhelming evidence” of harm to the plaintiffs from climate change to be sufficient to find injury in fact for standing purposes. *Lighthiser*, 2025 WL 2930569, at *6.

In Wisconsin, children younger than age five already have the highest rates of asthma, which are two times higher than adults 35 to 64 years of age and almost six times higher than adults age 65 years and older.²³ Symptoms of asthma may be severe enough to cause a child to

²⁰ *Id.*

²¹ *Id.* at 8.

²² Frederica P. Perera, *Multiple Threats to Child Health from Fossil Fuel Combustion: Impacts of Air Pollution and Climate Change*, 125 Env’t Health Persps. 141, 143 (2017), <https://pmc.ncbi.nlm.nih.gov/articles/PMC5289912/>.

²³ WI ASTHMA COALITION, CHILDREN’S HEALTH ALLIANCE OF WI, WISCONSIN ASTHMA PLAN 2021-2025, <https://www.chawisconsin.org/?wpdmdl=1821&ind=1604686177411> (last visited Jan. 12, 2026).

miss school or an adult to miss work or their usual activities. About 1 in 3 children have missed school due to asthma.²⁴ For example, Plaintiff Indy, who has asthma, has had to skip recreational activities and his physical education class due to air pollution. Compl. ¶ 70. Children, especially those with pre-existing health conditions such as asthma, are especially vulnerable to increased heat and increased levels of air pollution due to climate change.²⁵

II. Fossil-Fuel Generation Creates Additional Public Health Harms for Plaintiffs

The burning of fossil fuels across the country and in states like Wisconsin continue to perpetuate poor outdoor air quality. The result of this pollution is a slow deterioration of the lungs and airways for children, leading to detrimental health outcomes.

A. Air Pollution is Detrimental to Children's Health

Exposure to pollutants such as carbon monoxide, nitrogen oxides, and particulate matter leads to poor health outcomes. Carbon monoxide is a compound that is released with the burning of fossil fuels. It can stay in the air for about two months, harming the health of those who live near industrial activity in particular.²⁶ Carbon monoxide affects a person's cardiovascular and respiratory systems, organ development, and more.²⁷

Nitrogen oxides are another compound connected to the burning of fossil fuels. Nitrogen dioxide is a common byproduct from burning coal and natural gas.²⁸ At low concentration levels it causes irritation to the eyes, nose, and throat. At higher concentration levels, it can cause

²⁴ WI DEPT. OF HEALTH SERVICES, WISCONSIN ASTHMA BURDEN REPORT (2020), <https://www.dhs.wisconsin.gov/publications/p02412-20.pdf>.

²⁵ WI Dept. of Health Serv., *Ticks in Wisconsin: Data and Surveillance*, <https://www.dhs.wisconsin.gov/tick/wisconsin.htm> (last visited Jan. 9, 2026).

²⁶ *ToxFAQs™ for Carbon Monoxide*, U.S. Ctrs. for Disease Control & Prevention (Dec. 12, 2012), <https://wwwn.cdc.gov/TSP/ToxFAQs/ToxFAQsDetails.aspx?faqid=1163&toxid=253>.

²⁷ *Carbon Monoxide*, U.S. Ctrs. for Disease Control & Prevention (Feb. 10, 2021), <https://wwwn.cdc.gov/TSP/substances/ToxSubstance.aspx?toxid=253>.

²⁸ *Basic Information about NO₂*, U.S. Env't Prot. Agency (July 10, 2025), <https://www.epa.gov/no2-pollution/basic-information-about-no2>.

“rapid burning, spasms, and swelling of tissues in the throat and upper respiratory tract, reduced oxygenation of body tissues, a build-up of fluid in your lungs, and death.”²⁹

Particulate matter is made of “small particles and liquid droplets containing acids, organic chemicals, metals, and soil or dust particles.”³⁰ Particulate matter comes in different sizes, and the particles of most significant concern for human health are those measuring 2.5 micrometers or less.³¹ These fine particles can enter airways and bloodstreams. Breathing air with particulate matter can lead to “premature death in people with heart or lung disease, nonfatal heart attacks, irregular heartbeat, aggravated asthma, decreased lung function, increased respiratory symptoms, such as irritation of the airways, coughing or difficulty breathing.”³²

These pollutants lead to a decreased quality of life, long term health issues, and the potential for premature death.³³ States that fail to act to limit pollution from fossil fuels are leaving their populations vulnerable to preventable disease and death. Children, in particular, may carry these health impacts for their lifetimes.

²⁹ *ToxFAQs™ for Nitrogen Oxides*, U.S. Ctrs. for Disease Control & Prevention (Mar. 25, 2014), <https://wwwn.cdc.gov/TSP/ToxFAQs/ToxFAQsDetails.aspx?faqid=396&toxid=69>.

³⁰ Jonathan O. Anderson, *Clearing the Air: A Review of the Effects of Particulate Matter Air Pollution on Human Health*, 8 J. Med. Toxicology 166, 166 (2011), <https://pmc.ncbi.nlm.nih.gov/articles/PMC3550231/>.

³¹ *Particulate Matter (PM) Basics*, U.S. Env’t Prot. Agency (May 30, 2025), <https://www.epa.gov/pm-pollution/particulate-matter-pm-basics>.

³² *Health Impact of Air Pollution*, Am. Lung Ass’n, <https://www.lung.org/research/sota/health-risks> (last visited Jan. 9, 2026).

³³ There is considerable evidence that air pollution and climate change also worsen childrens’ mental health. Exposure to higher rates of pollution worsens depression in children, and higher rates of mental health illnesses, especially depression and post traumatic stress, have also been found after extreme weather events and wildfires. See Jessica P. Uy, et al., *Effects of Pollution Burden on Neural Function During Implicit Emotion Regulation and Longitudinal Changes in Depressive Symptoms in Adolescents*, Biological Psychiatry Global Open Science, Volume 4, Issue 4, 100322 (Jul. 2024), <https://www.sciencedirect.com/science/article/pii/S2667174324000351>; Magda Lahorgue Nunes, et al., *Neurodevelopment and climate change*, Jornal de Pediatria, Volume 101, Supplement 1, pages S34-S39 (Mar.-Apr. 2025), <https://www.sciencedirect.com/science/article/pii/S0021755724001414>.

B. Children and Infants are Especially Vulnerable to the Air Pollution Produced by Burning Fossil Fuels

When exposure to high levels of air pollution starts at an early age, as with many of the Plaintiffs, health outcomes can be worse. Children with asthma, like seventeen-year old Plaintiff Madeleine, become more susceptible to other respiratory viruses and issues after exposure to carbon monoxide.³⁴ Compl. ¶ 37. In pregnancy, high levels of carbon monoxide can lead to miscarriage and lower levels can lead to developmental delays of the fetus.³⁵ These public health risks will only compound over a child's lifetime.

Similarly, nitrogen oxides, particulate matter, and other pollutants cause detrimental outcomes both for pregnant people and for children. Such detrimental outcomes include low birth weight, abnormal fetal growth, and more likely connections to respiratory issues like asthma as the child grows.³⁶ Children that are exposed to high rates of air pollution also have higher rates of respiratory illness and low lung function. If exposure is not reduced by the time the child turns 18, it is unlikely that capacity in the lungs will recover.³⁷ The Plaintiffs are likely to face ongoing health issues with continued exposure to air pollution, thus limiting their quality and potentially length of life. Addressing Plaintiffs' state law challenges would lead to better health outcomes for Wisconsin's children.

³⁴ Susanna Esposito et al., *How Air Pollution Fuels Respiratory Infections in Children: Current Insights*, 13 FRONTIERS IN PUB. HEALTH (2025), <https://www.frontiersin.org/journals/public-health/articles/10.3389/fpubh.2025.1567206/full>.

³⁵ *ToxFAQs™ for Carbon Monoxide*, U.S. Ctrs. for Disease Control & Prevention (Dec. 12, 2012), <https://wwwn.cdc.gov/TSP/ToxFAQs/ToxFAQsDetails.aspx?faqid=1163&toxid=253>.

³⁶ Roya Gheissari et al., *Health Outcomes in Children Associated with Prenatal and Early-Life Exposure to Air Pollution: A Narrative Review*, 10 TOXICS 8 (2022), <https://pmc.ncbi.nlm.nih.gov/articles/PMC9415268/>.

³⁷ Frederica P. Perera, *Multiple Threats to Child Health from Fossil Fuel Combustion: Impacts of Air Pollution and Climate Change*, 125 Env't Health Persps. 141, 143 (2017), <https://pmc.ncbi.nlm.nih.gov/articles/PMC5289912/>.

III. Plaintiffs' Injuries are More than Sufficient to Demonstrate Standing

“The law of standing in Wisconsin is construed liberally, and even an injury to a trifling interest may suffice.” *McConkey v. Van Hollen*, 2010 WI 57, ¶ 15, 326 Wis. 2d 1, 783 N.W.2d 855 (quotation marks and citation omitted). Any plaintiff who “has a stake in the outcome of the controversy and is affected by the issues in controversy” satisfies the standing requirements. *State Legislature v. Palm*, 2020 WI 42, ¶ 12, 391 Wis. 2d 497, 942 N.W.2d 900.

Plaintiffs more than satisfy these requirements. As described above, their injuries are extensive and will be prolonged or imminently worsened by the challenged statutory provisions. The harms from climate change are particularly impactful on Plaintiffs because of their young age and, in some cases, their medical conditions. These harms will be prolonged and exacerbated by the pollutants that the Public Service Commission allows, a sufficient causal relationship for standing. *See, e.g., Sierra Club v. State Dept. of Nat. Res.*, 2025 WI App 39, ¶ 22, 417 Wis. 2d 90, 24 N.W.3d 157 (finding standing to sue state agency for permitting plant that created pollutants that harmed plaintiffs).

This Court is also capable of relieving Plaintiffs' injuries. Notably, “[f]ederal law on standing is not binding in Wisconsin.” *Friends of Black River Forest v. Kohler Co.*, 2022 WI 52, ¶ 17, 402 Wis. 2d 587, 977 N.W.2d 342. Thus, the federal requirement to demonstrate “redressability” does not restrict this Court’s ability to resolve the case, neither do the redressability concerns presented by federal courts in cases like *Juliana v. United States*, 947 F.3d 1159 (9th Cir. 2020), or *Lighthiser*, 2025 WL 2930569.³⁸ Nevertheless, a declaration from

³⁸ The Public Service Commission Defendants collect three disparate cases which, they argue, establish that Wisconsin has silently incorporated the federal redressability requirement into its standing jurisprudence. Br. Supp. Public Service Comm’n Defs.’ Mot. Dismiss, Dkt. No. 35, at 18 n.2 (citing *Zehner v. Vill. of Marshall*, 2006 WI App 6, 288 Wis. 2d 660, 709 N.W.2d 64; *Town of Baraboo v. Vill. of W. Baraboo*, 2005 WI App 96, 283 Wis. 2d 479, 699 N.W.2d 610; and *State ex rel. First Nat’l Bank of Wisc. Rapids v. M & I Peoples Bank of Coloma*, 95 Wis. 2d 303, 290 N.W.2d 321 (1980)). None actually adopts the federal redressability requirement or is relevant to this case.

this Court that the statutory provisions challenged by the Plaintiffs are unconstitutional would lessen the damage to Plaintiffs' health: without these restrictions, the Commission would be free to vindicate the state's goals of protecting against the very health threats that are causing Plaintiffs' injuries.³⁹

Conclusion

The Plaintiffs in this case are subjected to serious health harms as a result of the challenged statutory provisions, a harm that will only grow so long as these provisions stand. PHLC, WEHN, and HCW respectfully urge the court to reject Defendants' motions to dismiss.

Dated January 16, 2026

Electronically signed by Dennis M. Grzezinski
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The appellate court's analysis of the "direct effect" of a decision in *Zehner*, 2006 WI App 6, ¶ 13, was merely a means of querying whether the plaintiffs in that case had "present and fixed rights," which Plaintiffs here have demonstrated, *see generally* Ps.' Combined Resp. Opp. Ds.' Mot. Dismiss 44-59. The reference to "a personal stake in the outcome of the controversy" in *Town of Baraboo*, 2005 WI App 96, ¶ 37, is a rephrasing of the requirement that the plaintiffs be in some way affected by the challenged action, not a redressability requirement. And the federal requirement that cases be "historically viewed as capable of judicial resolution" incidentally referenced in *First Nat'l*, 95 Wis. 2d 303, 308-09 (quoting *Flast v. Cohen*, 392 U.S. 83, 101 (1968)), predates the development of modern federal standing jurisprudence, including redressability. *See, e.g., Lewis v. Casey*, 518 U.S. 343, 353 n.3 (1996) ("[O]ur later opinions have made it explicitly clear that *Flast* erred...." (citations omitted)).

³⁹ *See, e.g.,* Wis. Off. Sustainability & Clean Energy, *State of Wisconsin Clean Energy Plan Progress Report 5* (2025), <https://osce.wi.gov/Documents/2025%20Clean%20Energy%20Plan%20Progress%20Report.pdf> (laying out state objectives for clean energy, including "[p]utting Wisconsin on course for all electricity used in the state to be 100 percent carbon-free by 2050" and "[p]rotecting human and environmental health by reducing pollutions in ecosystems caused by fossil fuels").