

**STATE OF WISCONSIN
COURT OF APPEALS – DISTRICT I**

Kaarina Dunn, Caroline Elfstrom, Tyler
McClure, Miahlin Behnke, Athena Behnke,
Jayla Manthe, Lucille Wright, Madeleine
Bohn, Isabella Black, Ted Schultz-Becker,
Charles Breitenmoser, Elia Masrour,
Alexander Castillo, Simon Besonen, and
Auden Gresch,

Plaintiffs-Appellants,

Appeal No. 2026AP001258

v.

Public Service Commission of Wisconsin,
Summer Strand, Kristy Nieto, Marcus
Hawkins, and Wisconsin State Legislature,

*Defendants-
Respondents.*

**NONPARTY BRIEF OF THE PUBLIC HEALTH LAW CENTER, THE
WISCONSIN ENVIRONMENTAL HEALTH NETWORK, AND
HEALTHY CLIMATE WISCONSIN
IN SUPPORT OF PLAINTIFFS' OPENING BRIEF**

ON APPEAL FROM THE DANE COUNTY CIRCUIT COURT,
THE HONORABLE JULIE GENOVESE, PRESIDING

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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. Plaintiffs are particularly vulnerable to these impacts because of their young age and, in several cases, their preexisting medical conditions like allergies and asthma. *See* R. 6 ¶¶ 17, 30, 37, 46, 58, 66, 70. Those harms are compounded by the challenged statutory provisions, which prevent Plaintiffs' particular vulnerabilities from being considered during the approval process. Plaintiffs' constitutional challenge of these statutes is justiciable, and they should be granted the opportunity for their claims to be heard on the merits.

ARGUMENT

I. Climate Change is a Children's Public Health Emergency

For children and youth, climate change is a public health emergency with generational implications.¹ *See generally* R. 6 ¶¶ 12-72. The U.S. Centers for Disease Control and Prevention (CDC) has identified several health-harming effects of climate change, like air pollution, extreme heat, flooding, changes in the ecology of disease vectors like mosquitoes and ticks, increasing allergens, and the mental health toll of environmental degradation.² In Wisconsin, residents are experiencing greater exposure to vector-borne diseases,³ groundwater contamination,⁴ respiratory issues,⁵

¹ Lukoye Atwoli, et al., [Call for Emergency Action to Limit Global Temperature Increases, Restore Biodiversity, and Protect Health](#), 385 New Engl. J. Med. 1134, 1136 (2021); *see also, e.g.*, World Health Org., [The Health Argument for Climate Action](#) 2 (2021) ("Climate change is the single biggest health threat facing humanity."); U.S. Global Change Research Program (USGCRP), [Fifth National Climate Assessment](#) 15-6 (2023).

² CDC, [Preparing for the Regional Health Impacts of Climate Change in the United States](#) 3, 15 (2024).

³ [More Mosquito Disease Days in 95% of Major U.S. Cities](#), Climate Cent.: Climate Matters (Jul. 22, 2026).

⁴ Wis. Initiative on Climate Change Impacts, [Wisconsin's Changing Climate: Impacts and Solutions for a Warmer Climate](#) 79 (2021); *see also* Jonathan Patz et al., [Medical Alert! Climate Change is Harming our Health in Wisconsin](#), Univ. of Wisconsin-Madison 13 (Oct. 20, 2020).

⁵ *See generally* Judith Ruiz-Branch, [Wisconsin Doctors: Climate Change is Making People Sick](#), WXPB (Sept. 15, 2026).

and heat stroke.⁶ These climate-related health hazards especially endanger children and youth. As 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.”⁷ Taken together, the Plaintiffs are directly impacted by multiple intersecting dangers posed by climate change.

First, increases in average temperatures and the incidence of extreme heat events are serious dangers to Plaintiffs’ health. In fact, extreme heat already kills more Wisconsinites than all other extreme weather events combined.⁸ Plaintiffs Kaarina and Alexander, both 17 years old, have experienced heat exhaustion, while Caroline, eight years old, struggles to breathe during heat waves and Elia, 11 years old, suffers from heat-induced migraines. R. 6 ¶¶ 14, 17, 58, 62. Within the next 25 years, southern Wisconsin is expected to experience a threefold increase in the number of days with a heat index above 105 degrees.⁹ Children are more vulnerable to extreme heat and are at greater risk of dehydration, heat stress, and heat-related mortality because young children’s temperature regulation systems are not fully developed and children lose fluids more quickly than adults.¹⁰

A combination of higher temperatures, sunlight, and pollutants from burning wood and fossil fuels can lead to the formation of ground-level ozone pollution, which is associated with increased shortness of breath, asthma attacks, and respiratory-related emergency room visits.¹¹ This year, more than 60% of the

⁶ See Wis. Initiative on Climate Change Impacts, *supra* note 4, at 78.

⁷ Samantha Ahdoot et al., [Climate Change and Children’s Health: Building a Healthy Future for Every Child](#), 153 Pediatrics 75, 75 (2024).

⁸ Patz et al., *supra* note 4, at 8.

⁹ Wis. Initiative on Climate Change Impacts, *supra* note 4, at 78.

¹⁰ Lawrence R. Stanberry et al., [Prioritizing the Needs of Children in a Changing Climate](#), 15 PLoS Med. 1, 1 (Jul. 31, 2018).

¹¹ See, e.g., [Climate Change and Lung Health](#), Am. Lung Ass’n (Feb. 18, 2025). [Ozone](#), Am. Lung Ass’n (June 9, 2025); U.S. Env’t Prot. Agency (EPA), [Integrated Science Assessment for Ozone and Related Photochemical Oxidants: Executive Summary](#) ES-6 (Apr. 2020).

reporting Wisconsin counties are receiving an “F” grade from the American Lung Association for number of days with high ozone concentration.¹² Children like the Plaintiffs, who enjoy outdoor activities, spend more time outside than adults on average, which can lead to more exposure to both heat and ambient air pollution.¹³ For example, Plaintiff Kaarina spends summers working on her grandparents’ farm and teaching tennis, though her participation in both activities has now been compromised by extreme heat. R. 6 ¶ 14. Caroline enjoys playing outside, swimming, and kayaking in local lakes, but she is increasingly forced to stay indoors due to extreme heat. *Id.* ¶¶ 18-19. Ted and Alexander participate in school sports, which have at times been cancelled or moved indoors, otherwise exposing them to heat exhaustion due to exceedingly high temperatures. *Id.* ¶¶ 51, 62.

Second, climate change is increasing the risk of wildfires, creating further health repercussions.¹⁴ As of November 2025, exposure to wildfire smoke was found to be responsible for approximately 10,000 premature deaths in the United States annually, with around 250 of those occurring in Wisconsin.¹⁵ In children, exposure to particulate matter, the main pollutant in smoke, is associated with increased risk of asthma, impaired lung development, neurodevelopmental disorders and diminished IQ.¹⁶ Health professionals throughout Wisconsin have reported spikes in emergency room visits for respiratory and cardiac issues corresponding to this summer’s wildfire smoke events.¹⁷

Youths with preexisting chronic respiratory conditions, like 17-year-old Plaintiff Madeleine who suffers from asthma, are particularly affected by heat and

¹² See [Report Card: Wisconsin](#), Am. Lung Ass’n (last visited Sept. 21, 2026).

¹³ Ahdoot et al., *supra* note 7, at 76.

¹⁴ USGCRP, *supra* note 1, at 15-7 (citing Marshall Burke et al., [The Changing Risk and Burden of Wildfire in the United States](#), 118 Proceedings of the Natl. Acad. Sci. (2020)).

¹⁵ Clean Wis. Env’t Health Initiative, [Wildfire Smoke in Wisconsin: Effects on Health](#) i (Nov. 2025).

¹⁶ Li-Zi Lin et al., [The Epidemiological Evidence Linking Exposure to Ambient Particulate Matter with Neurodevelopmental Disorders: A Systematic Review and Meta-Analysis](#), 209 Env’t Res. (June, 2022); Frederica Perera et al., [Climate Change, Fossil-Fuel Pollution, and Children’s Health](#), 386 New Engl. J. of Med. (2022).

¹⁷ See Ruiz-Branch, *supra* note 5.

wildfire smoke. R. 6 ¶ 37. Madeleine has been forced to stay inside and forgo many of her hobbies, such as biking, hiking, and running, due to extreme heat and poor air quality from wildfires. *Id.* Plaintiffs Simon and Indy have similarly experienced worsening asthma symptoms due to wildfire smoke and fossil fuel pollution, limiting the time they are able to spend outside and the activities in which they participate. *Id.* ¶¶ 66, 70. In Wisconsin, children younger than age five already have the highest rates of asthma, which are twice those of adults 35 to 64 years of age and almost six times those of adults age 65 years and older.¹⁸ Consequently, about one in three children have missed school due to asthma.¹⁹

Third, climate change is driving an increase in vector-borne diseases.²⁰ Insects like mosquitoes and ticks experience longer active seasons and cover broader geographic areas as temperatures warm, increasing the incidence of vector-borne illnesses like Zika virus and Lyme disease.²¹ Consequently, the incidence of Lyme disease cases in Wisconsin has risen over 400% over the last two decades.²² In fact, the state had its highest reported number of Lyme disease cases in 2025, reporting nearly 9,000 incidents of the illness. *Id.* This disease can cause severe and debilitating reactions such as facial paralysis, cardiac irregularity, inflammation of the brain or spinal cord, and nerve and joint pain.²³ The lone star tick, which can cause a severe red meat allergy, is also increasingly making its way into Wisconsin due to warmer and longer summers.²⁴ Additionally, the disease-transmitting lifespan of mosquitoes in Wisconsin between 1970 and 2025 increased by 25 days, thereby extending the

¹⁸ Wis. Asthma Coalition, Children’s Health Alliance of Wis., [Wisconsin Asthma Plan 2021-2025](#) 4 (2020).

¹⁹ Wis. Dept. of Health Services, [Wisconsin Asthma Burden Report](#) 11 (2020).

²⁰ See Nat’l Ctr. For Emerging & Zoonotic Infectious Diseases, [Climate & Infectious Diseases](#) (Mar. 21, 2024).

²¹ USGCRP, *supra* note 1, at 15-8 to 15-9.

²² [Lyme Disease: Wisconsin Data](#), Wis. Dep’t of Health Servs. (last visited Sept. 21, 2026).

²³ [Signs and Symptoms of Untreated Lyme Disease](#), CDC (May 15, 2024).

²⁴ See generally Goudarz Molaei et al., [Bracing for the Worst – Range Expansion of the Lone Star Tick in the Northeastern United States](#), 381 New Engl. J. Med. 2189 (Dec. 4, 2019); [Lone Star Tick Surveillance](#), CDC (May 26, 2026); Miles Felix, [Aggressive Lone Star Tick Closing In on Wisconsin](#), Madison 365 (Jul. 15, 2026).

time that residents are exposed to mosquito-borne illnesses like West Nile virus.²⁵ As noted, children and youth tend to spend more time outside, making them especially likely to be affected by these vector-borne diseases.²⁶ Plaintiff Waazakone previously contracted Lyme disease, which left her struggling to walk from swollen joints for a period of two years. R. 6 ¶ 29. Plaintiff Isabella also contracted Lyme disease, “which caused her to lose twenty pounds over the course of a month” due to severe nausea, as well as the lone star tick’s signature red meat allergy. *Id.* ¶ 44.

Exposure to foodborne and waterborne pathogens is expected to increase due to climate change; for example, extreme rain events, like the extreme flooding experienced by Plaintiff Kaarina and her family, can lead to contaminated drinking water and waterborne illnesses.²⁷ R. 6 ¶¶ 12-13. Approximately two-thirds of Wisconsin residents drink from groundwater sources increasingly susceptible to contamination due to flooding, exposing them to waterborne illnesses like legionella.²⁸ Notably, a flood that would have been considered a “100-year flooding event” in 1961 now occurs approximately every 40 years.²⁹

Finally, changes in the climate can have profound effects on children’s mental health. In one study, children were observed to have lower reading and numeracy scores after a wildfire.³⁰ Adolescents exposed to rising average temperatures have been documented to exhibit more aggression and delinquency.³¹ Extreme weather events are also associated with development of post-traumatic stress, depression, and

²⁵ *More Mosquito Disease Days in 95% of Major U.S. Cities*, *supra* note 3; see also [West Nile Virus: Data](#), Wis. Dep’t of Health Servs. (last visited Sept. 21, 2026); CDC, *supra* note 2, at 15.

²⁶ See, e.g., Carol A. McCarthy et al., [Lyme Disease in Children](#), 36 Infectious Disease Clinics of North Am. 593 (2022).

²⁷ Wis. Initiative on Climate Change Impacts, *supra* note 4, at 45-46.

²⁸ *Id.* at 79; see also Patz et al., *supra* note 4, at 13.

²⁹ Patz et al., *supra* note 4, at 15.

³⁰ Lisa Gibbs et al., [Delayed Disaster Impacts on Academic Performance of Primary School Children](#), 90 Child Dev. 1402 (2019).

³¹ Jennifer L. Barkin, et al., [Effects of Extreme Weather Events on Child Mood and Behavior](#), 63 Developmental Med. & Child Neurology 785, 785-86 (2021).

suicidal thoughts in children.³² In addition, a recent review of the literature on climate change and children’s mental health confirmed that fear of climate change is associated with anxiety and depression in youth.³³ Distress over climate change can cause changes in “behavior, development, memory, executive function, decision-making, and scholastic achievement.”³⁴ For example, Plaintiffs Madeleine and Isabella suffer from ongoing climate anxiety; Madeleine “fears for her own health and safety, and that of her community and future generations[,]” causing her to miss school and to forgo participation in school sports. R. 6 ¶¶ 40, 47. And Anishinaabeg Plaintiffs Tyler, Waazakone, Mukademigwan, and Gookoonz are harmed by the impacts of climate change on their traditional and culturally significant foods, practices, and ceremonies, which are essential for their spiritual, mental, and physical health. *Id.* ¶¶ 22-27, 31.

II. Plaintiffs’ Challenge to the Constitutionality of Statutes is Justiciable

This Court has the power to protect Plaintiffs from these harms. Contrary to the circuit court’s analysis, this case is not barred by the political question doctrine. As noted by the Appellants, the political question doctrine was born of the U.S. Constitution’s Art. III “cases and controversies” restrictions on federal courts,³⁵ whereas Wisconsin’s Constitution gives state courts broader judicial latitude.³⁶ Appellants’ Br. 22-23. The Wisconsin Supreme Court has explicitly held that interpretation of the State Constitution is strictly a question of law for the judiciary to assess. *Wisconsin Just. Initiative, Inc. v. Wisconsin Elections Comm’n*, 2023 WI 38, ¶ 14, 407 Wis. 2d 87, 103, 990 N.W.2d 122, 130; *see also Vincent v. Voight*, 2000 WI 93, 236 Wis. 2d 588, 614 N.W.2d 388, 396 (holding that a constitutional challenge of a state

³² Susan Clayton et al., [Mental Health and Our Changing Climate: Impacts, Implications, and Guidance](#), Am. Psych. Ass’n (2017); *see also* Intergovernmental Panel on Climate Change, [Summary for Policymakers, in Climate Change 2023: Synthesis Report](#) 1, 6 (Hoesung Lee & José Romero, eds., 2023).

³³ Terra Leger-Goodes et al., [Eco-Anxiety in Children: A Scoping Review of the Mental Health Impacts of the Awareness of Climate Change](#), 13 *Frontiers in Psych.* 1, 3, 7 (2022).

³⁴ Clayton et al., *supra* note 32, at 6.

³⁵ *See Baker v. Carr*, 369 U.S. 186 (1962).

³⁶ *See* Wis. Const. Art. I § 9.

statutory school finance provision constituted a justiciable issue). Appellants' requested relief does not ask this Court to prescribe any particular policy, as mischaracterized by the circuit court. R. 64:35. Rather, Appellants seek a declaration that the statutes at issue are unconstitutional and an injunction against further implementation in accordance with their constitutional rights. This is consistent with Wisconsin's jurisprudence on the separation of powers.

Absent a valid application of the political question doctrine, the Plaintiffs' claims are justiciable and should be considered on the merits. "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, ¶ 14, 326 Wis. 2d 1, 11, 783 N.W.2d 855, 860 (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. *Wisconsin Legislature v. Palm*, 2020 WI 42, ¶ 12, 391 Wis. 2d 497, 511, 942 N.W.2d 900, 907.

Plaintiffs more than satisfy these requirements. As described above, and as acknowledged by the circuit court, their injuries are extensive and will be imminently worsened by the continued execution of the challenged statutory provisions. R. 64:11-21 (citing R. 6 ¶ 154) ("The burning of fossil fuels for electricity in Wisconsin is causing and contributing to a range of detrimental impacts in Wisconsin."). Climate change is particularly harmful for Plaintiffs because of their young age and, in some cases, their medical conditions. These harms will be prolonged and exacerbated by the pollution that the Public Service Commission allows—a sufficient causal relationship for standing. *See, e.g., Sierra Club v. Wisconsin Dep't of Nat. Res.*, 2025 WI App 39, ¶ 22, 417 Wis. 2d 90, 111, 24 N.W.3d 157, 169, *review granted*, 2026 WI 7, 32 N.W.3d 752 (finding standing to sue a state agency for permitting a plant that emitted pollutants which 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, 604, 977 N.W.2d 342, 350. 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 v. Trump*, No. 25-6714, 2026 WL 1555982 (9th Cir. June 2, 2026).³⁷ Nonetheless, a declaration from this Court that the statutory provisions challenged by the Plaintiffs are unconstitutional would enable the Commission to vindicate the state’s goals of mitigating the very health threats that are causing Plaintiffs’ injuries.³⁸

CONCLUSION

Public Health Law Center, Wisconsin Environmental Health Network, and Healthy Climate Wisconsin respectfully urge this Court to reverse the circuit court’s Order to dismiss and remand the case for further proceedings on the merits.

Dated October 12, 2026

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³⁷ 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. R. 35:18 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 adopts the federal redressability requirement or is relevant to this case. 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* R. 54:44-59. 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)).

³⁸ *See, e.g.,* Wis. Off. Sustainability & Clean Energy, [State of Wisconsin Clean Energy Plan Progress Report 5](#) (2025) (laying out state objectives for clean energy).

CERTIFICATION

I hereby certify that this brief conforms to the rules contained in s. 809.19(8)(b), (bm), and (c) for a brief. This brief is set in 13-point Garamond, its footnotes and block quotes are set in 11-point Garamond, and the brief's Introduction, Argument, and Conclusion, including footnotes within those sections, contain 2,999 words pursuant to s. 809.19(8)(c)(3).

Dated: October 12, 2026

Respectfully submitted,
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