

**FILED****JUN 24 2021**

## SUPREME COURT OF WISCONSIN

APPEAL NO: 2020AP940

**CLERK OF SUPREME COURT  
OF WISCONSIN**

BROWN COUNTY,

Plaintiff-Respondent,

vs.

BROWN COUNTY TAXPAYERS  
ASSOCIATION AND FRANK BENNETT,Defendants-Third-Party  
Plaintiffs-Appellants.

vs.

PETER BARCA, SECRETARY,  
WISCONSIN DEPARTMENT OF REVENUE,Third-Party Defendant-  
Respondent.

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On Certification from the Appeal from Circuit Court for Brown County  
The Honorable John P. Zakowski, Presiding.  
Circuit Court Case No. 18-CV-640

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**NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE BRIEF OF  
AMICUS CURIAE WISCONSIN COUNTIES ASSOCIATION**

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Attorneys For Wisconsin Counties Association

Pursuant to Wis. Stat. § 809.19(7), the Wisconsin Counties Association, by its attorneys, Michael Best & Friedrich LLP, respectfully moves the Supreme Court to grant the Wisconsin Counties Association leave to file an *amicus curiae* brief and appendix in the above-captioned matter.

The Wisconsin Counties Association was statutorily authorized in 1935 and is committed to protecting the interests of Wisconsin counties and promoting better county government. Wis. Stat. § 59.52(22). To meet its mission, the Wisconsin Counties Association represents interests common to Wisconsin's 72 counties, including the issues presented in the above-captioned matter. In fact, one of the primary purposes of the Wisconsin Counties Association is to monitor and participate in the legal developments affecting county governments.

The Supreme Court of the United States, this Court and the Wisconsin Court of Appeals have not hesitated to allow the Wisconsin Counties Association to submit *amicus curiae* briefs in pending cases when doing so would further the Wisconsin Counties Association's role to protect interests that are common to Wisconsin counties. Other examples include the following cases and issues:

1. *Golden Sands Dairy LLC v. Town of Saratoga* - Wisconsin Supreme Court (2018)

The issue related to whether building permit rule applied to all land specifically identified in the building permit application, and not merely structures.

2. *Allenergy Corp. v. Trempealeau County* - Wisconsin Supreme Court (2016)

Coordinated with the Wisconsin Towns Association on the *amicus curiae* brief to address an issue related to the appropriate process by which a county considers an application for a conditional use permit.

3. *Murr v. St. Croix County* - United States Supreme Court (2016)

Coordinated with the League of Wisconsin Municipalities and the Wisconsin Towns Association to file an *amicus curiae* brief to address issues related to the validity of a county ordinance requiring the combination of contiguous substandard lots under common ownership.

4. *Krueger v. Appleton Area School District* - Wisconsin Supreme Court (2016)

Coordinated with other school and local government associations to file an *amicus curiae* brief to address issues related to the interpretation and application of Wisconsin's open meetings law.

5. *Town of Grant v. Portage County* - Portage County Circuit Court (2016)

The issues related to the county's ability to levy a tax on town residents to support county-wide emergency medical services.

6. *County of Barron v. Labor and Industry Review Comm'n* - Wisconsin Court of Appeals (2009)

The issue related to an independent contractor's ability to claim unemployment compensation benefits from the county.

7. *Meriter Hospital, Inc. v. Dane County* - Wisconsin Supreme Court (2004)

The issue related to the appropriate county reimbursement rate for medical providers that provide care to inmates in the Sheriff's custody.

8. *Racine County v. Int'l Assoc. of Machinists* - Wisconsin Supreme Court (2008)

The issue related to the county's authority to contract for services in relation to its obligation to collectively bargain with certain employees.

9. *Town of Madison v. County of Dane* - Wisconsin Supreme Court (2008)

Filed *amicus curiae* brief and participated in oral argument to address issues related to the appropriate manner by which a county charges for local bridge aid.

10. *Town of Rib Mountain v. Marathon County, et al.* - Wisconsin Supreme Court (2019).

The issue related to the scope of a county's authority to establish a uniform rural

drawing or numbering system for roads, houses, farms, etc., in towns to aid in fire protection, emergency services, and civil defense.

11. *Brown County v. Brown County Taxpayers Association, et al.* – Brown County Circuit Court and Wisconsin Court of Appeals (2019).

Both the Circuit Court and the Court of Appeals granted the Wisconsin Counties Association permission to file an *amicus curiae* brief in the present case.

Each of the above cases, and the issues presented in those cases, affected all counties across Wisconsin. The impact was not limited to the particular county that was a party in the case. Therefore, the Wisconsin Counties Association's participation in the above cases, and many more, was recognized to be not only permissible, but desirable.

Although this case arose in the context of whether Brown County's particular sales and use tax ordinance is *ultra vires*, any decision on the merits of this case will require the Court to interpret Wis. Stat. § 77.70. Wis. Stat. § 77.70 applies to all seventy-two counties. Sixty-six counties currently have a sales and use tax in place. Accordingly, the WCA and its members have an interest in the outcome of this case and in this Court's application and interpretation of Wis. Stat. § 77.70. Any interpretation of the statute that limits or vacates the Attorney General's 1998 opinion will reach far beyond Brown County and will directly impact every county in this State.

Both the Circuit Court and the Court of Appeals recognized the benefit of allowing the Wisconsin Counties Association to participate in this case in a non-party role, the Wisconsin Counties Association believes it should be granted leave to file an *amicus curiae* brief in the final stage of these proceedings as well. Indeed, the Wisconsin Counties Association intends to provide the court with additional information related to the arguments of the parties. As those arguments have been refined, the Wisconsin

Counties Association intends to provide additional information beyond what was provided below.

Accordingly, the Wisconsin Counties Association respectfully requests that this Court grant it leave to file an amicus curiae brief.

Respectfully submitted this 25<sup>th</sup> day of June, 2021.

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