

FILED

STATE OF WISCONSIN
SUPREME COURT

JUL 21 2021

CLERK OF SUPREME COURT
OF WISCONSIN

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

Appeal No. 2019AP000221

NHIA LEE,

Defendant-Appellant-Petitioner,

Appeal from the Decision of Court of Appeals,
District III, dated January 20, 2021
Reversing and Remanding to the Circuit Court of Marathon County,
The Honorable Lamont Jacobson, Presiding
Case No. 2018-CF-001025

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

Pursuant to Wis. Stat. § 809.19(7), the Wisconsin Counties Association, by its attorneys, von Briesen & Roper, s.c., respectfully requests that the Supreme Court of Wisconsin grant it leave to file an *amicus curiae* brief 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, the Wisconsin Supreme Court and the Wisconsin Court of Appeals have not hesitated to allow the Wisconsin Counties Association to submit *amicus curiae* briefs on pending issues when it 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. *Town of Delafield v. Central Transport Kriewaldt* – Wisconsin Supreme Court (2020)

The issues related to a county's authority to enforce state statutory weight limits, including special or seasonal weight limits, on public highways.

2. *Town of Rib Mountain v. Marathon County* – Wisconsin Supreme Court (2019)

The issues related to a county's authority to implement a uniform rural naming and numbering system in all unincorporated areas of a county.

3. *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.
4. *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.
5. *Murr v. St. Croix County* – U.S. 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.
6. *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.
7. *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.

8. *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.

9. *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.

10. *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.

11. *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.

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

The multiple issues in the above-captioned matter are of great interest to all counties in the state. The legislature created the State Public Defender and the Wisconsin State Public Defender's Office ("SPD") and granted them the authority to appoint counsel according to specific indigency standards. Wis. Stat. §§ 977.05(1) & (5)(a), 977.05(5)(b). When those indigency standards are not met or the SPD is not permitted to appoint counsel for other reasons, circuit courts have the discretion to appoint counsel at county expense. *See State v. Dean*, 163 Wis. 2d 503, 511, 471 N.W.2d 310 (Ct. App. 1991). The imposition of a legal requirement that courts must appoint counsel in all cases where SPD has difficulty finding counsel would impose costs and administrative burdens, which are traditionally borne by the state-funded SPD, on every county. Neither of the parties are in a position to address the practical and administrative burdens associated with the requested relief, which are a critically important consideration for the Court.

As in the above cases, the Wisconsin Counties Association believes it should be granted leave to file an *amicus curiae* brief in this case to fulfill its statutory role and ensure that the state-wide interests of all member counties are properly represented in this matter.

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

Respectfully submitted this 21st day of July, 2021.

von Briesen & Roper, s.c.
Attorneys for Wisconsin Counties Association

By:



Andrew T. Phillips
State Bar No. 1022232
Natalie D. Fluker
State Bar No. 1123119
Matthew J. Thome
State Bar No. 1113463

P.O. ADDRESS

111 East Wisconsin Avenue
Suite 1000
Milwaukee, WI 53202
Phone: 414-287-1570
Fax: 414-276-6281
Email: aphillips@vonbriesen.com
nfluker@vonbriesen.com
mthome@vonbriesen.com



TAGLaw International Lawyers

Natalie D. Fluker
Direct Telephone
414-287-1428
nfluker@vonbriesen.com

July 21, 2021

VIA HAND DELIVERY

Ms. Sheila Reiff
Clerk of the Supreme Court and Court of Appeals
110 East Main Street, Suite 215
P.O. Box 1688
Madison, WI 53701-1688

RECEIVED

JUL 21 2021

CLERK OF SUPREME COURT
OF WISCONSIN

RE: *State of Wisconsin v. Nhia Lee*
Appeal No.: 2019AP000221
Marathon County Case No. 18-CF-1025

Dear Ms. Reiff:

Enclosed for filing in the above-referenced matter are ten (10) copies of a Notice of Motion and Motion for Leave to File Brief of *Amicus Curiae* of the Wisconsin Counties Association. Please file nine (9) copies and file stamp one (1) copy to return with our waiting messenger.

By copy of this letter, all counsel of record are being served with copies of the same.

Very truly yours,

von BRIESEN & ROPER, s.c.

A handwritten signature in black ink, appearing to read "Natalie D. Fluker".

Natalie D. Fluker
NDF:aaJ

Enclosures

cc: Attorney Julianne M. Lennon (via first-class mail and email) (w/enclosures)
Attorney Timothy M. Barber (via first-class mail and email) (w/enclosures)
Attorney Kyle R. Mayo (via first-class mail and email) (w/enclosures)

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