

IN THE SUPREME COURT OF WISCONSIN

Appeal No. 2021AP802

ANDREW WAITY, JUDY FERWERDA,
MICHAEL JONES, and, SARA BRINGMAN,

Plaintiffs-Respondents,

v.

DEVIN LEMAHIEU, in his official capacity, and
ROBIN VOS, in his official capacity,

Defendants-Appellants-Petitioners.

On Appeal From The Dane County Circuit Court
The Honorable Stephen E. Ehlke, Presiding
Dane County Case No. 2021-CV-589

PLAINTIFFS-RESPONDENTS' MOTION TO STRIKE PORTIONS OF
DEFENDANTS-APPELLANTS-PETITIONERS' OPENING BRIEF

Plaintiffs-Respondents, Andrew Waity, Judy Ferwerda, Michael Jones, and Sara Bringman (hereinafter "Waity"), by Pines Bach LLP, their attorneys, hereby move the Court, pursuant to Wis. Stat. § 809.14, to strike from the Opening Brief of the Defendants-Appellants-Petitioners (hereinafter "the Legislators") all references to facts that are not found in the record of the summary judgment motion that was

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**CLERK OF SUPREME COURT
OF WISCONSIN**

considered by the circuit court and which is being reviewed *de novo* by this Court, and to strike in its entirety Section V of the Legislators' Opening Brief.

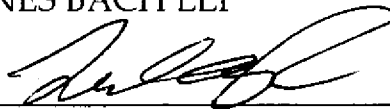
As grounds for this motion, Waity respectfully represents that when this Court reviews a summary judgment entered by a circuit court, it is bound by the uncontested facts in the circuit court record and may not consider other assertions of fact. Because the Legislators' Opening Brief repeatedly makes argument based on facts that are not in the circuit court record, they must be stricken from that brief.

Waity further represents that Section V of the Legislators' Opening Brief presents and argues an issue that is not the subject of appeal from the circuit court's judgment. Consequently, Section V must be stricken from the brief as well.

The grounds for this motion are more fully set forth through the Memorandum in Support of it which is submitted herewith and incorporated herein by reference.

Respectfully submitted this 3rd day of September 2021.

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