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Supreme Court of Wisconsin

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May 30, 2019

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You are hereby notified that the Court has entered the following order:

Nos. 2016AP1688
2016AP2502

Clean Wisconsin, Inc. v. DNR L.C.#2015CV2633

On April 9, 2019, the court accepted certification of these consolidated appeals.¹ Several procedural motions are now pending before us. On April 25, 2019, the Wisconsin Legislature, on

¹ On the same day, the court also accepted certification of the appeal in Clean Wisconsin, Inc. v. DNR, No. 2018AP59.

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behalf of the Joint Committee on Legislative Organization (Wisconsin Legislature or Proposed Intervenor), moved to intervene in this matter. On May 2, 2019, the Respondent-Appellant, Wisconsin Department of Natural Resources (DNR), filed a "Notice of Partial Voluntary Dismissal and Motion to Modify Briefing Schedule." On May 6, 2019, the DNR opposed the Wisconsin Legislature's motion to intervene. On May 9, 2019, the Petitioners-Respondents, Clean Wisconsin et al., opposed the Wisconsin Legislature's motion to intervene. On May 9, 2019, Clean Wisconsin filed a response stating that it does not oppose the DNR's motion to modify the briefing schedule, although it may seek leave to file a reply to the DNR's brief. On May 13, 2019, the Wisconsin Legislature filed a memorandum stating it opposes the DNR's motion to modify the briefing schedule. On May 20, 2019, Clean Wisconsin moved to strike the Wisconsin Legislator's May 13, 2019 filing, noting that the Wisconsin Legislature has not been granted Intervenor status as of this date.

By order dated May 6, 2019, we stayed the merits briefing in this case until further order of the court; that briefing schedule remains stayed.

The parties and Proposed Intervenor disagree as to the legal standard that governs our consideration of the Wisconsin Legislature's motion to intervene. The Wisconsin Legislature cites Wis. Stat. § 803.09(2m), as well as Wis. Stat. §§ 803.09(1) and (2). The DNR responds that in the context of a review of an agency determination, intervention is guided by the provisions in Chapter 227, namely, Wis. Stat. § 227.53(1)(d). As these arguments arose in the context of a motion, the parties and the Proposed Intervenor have not had an opportunity to fully develop their arguments or to respond to competing arguments.

To assist the court in its deliberations, the court now asks the parties and the Proposed Intervenor to file memoranda that address the interplay of the aforementioned statutes on the correct legal standard for an intervention motion on these facts, and whether the Proposed Intervenor meets that legal standard. The memoranda need not and should not address the Constitutionality of Wis. Stat. § 803.09(2m). We are well aware of the pending challenges to 2017 Wis. Act 369. As of the date of this order, Wis. Stat. § 803.09(2m) is not enjoined. Therefore,

IT IS ORDERED that the Respondent-Appellant Wisconsin Department of Natural Resources' Notice of Partial Voluntary Dismissal is accepted. Case No. 2016AP1699 and Case No. 2016AP2502 are severed and Case No. 2016AP2502 is dismissed. See Wis. Stat. § (Rule) 809.18; Wis. Sup. Ct. IOP III.L.4;

IT IS FUTHER ORDERED that on or before June 19, 2019, the parties and the Wisconsin Legislature shall file simultaneous legal memoranda, each not exceeding 6,000 words, that address the correct legal standard for the Wisconsin Legislature's motion to intervene and whether the Wisconsin Legislature meets that standard;

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IT IS FURTHER ORDERED that, on or before July 9, 2019, the parties and the Wisconsin Legislature may file legal memoranda, each not exceeding 3,500 words, in response to the memoranda filed on June 19, 2019, by the opposing parties;

IT IS FURTHER ORDERED that, with respect to the merits of the pending appeal, the Respondent-Appellant Wisconsin Department of Natural Resources' motion to modify the briefing schedule is granted. When the stay imposed by this court is lifted, the Respondent-Appellant may file its opening brief on the same schedule as that of the Petitioners-Respondents, Clean Wisconsin et al.; and

IT IS FURTHER ORDERED that the Petitioners-Respondents' motion to strike the Wisconsin Legislator's memorandum in opposition to the Respondent-Appellant's motion to modify the briefing schedule is dismissed, as moot.

Sheila T. Reiff
Clerk of Supreme Court