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FILED

10-09-2024

CLERK OF WISCONSIN

SUPREME COURT

October 9, 2024

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

No. 2023AP2020-OA Governor Evers v. Senator Marklein

By order of July 5, 2024, this court ordered the parties to file simultaneous legal memoranda discussing the impact of the court's July 5, 2024 decision, if any, on whether the court should grant review of the second and/or third issues set forth in the petition for leave to commence an original action. The parties filed responses in accord with the July 5, 2024 order. We construe the response filed by the petitioners, Gov. Evers et al., as including a motion to withdraw the second issue listed in the petition for leave to commence an original action. In addition, non-party briefs in response to the court's July 5, 2024 order were received from Clean Wisconsin and from the National Association of Social Workers and its Wisconsin Chapter. On July 26, 2024, intervenor-petitioner, Gathering Waters Inc., filed an unopposed motion for voluntary dismissal, indicating that it does not wish to participate as a party in consideration of the remaining issues in this action. The court having considered all of these filings;

IT IS ORDERED that the motion to withdraw the second issue listed in the petition for leave to commence an original action is granted, and the second issue is dismissed; and

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IT IS FURTHER ORDERED that the third issue listed in the petition for leave to commence an original action, which was held in abeyance by this court's order of February 2, 2024, will be considered by the court. The third issue was presented in the petition as follows:

Under various provisions of Wis. Stat. ch. 101, [the Department of Safety and Professional Services (DSPS)] is charged with promulgating rules relating to commercial building safety, accessibility, and energy efficiency. Under Wis. Stat. § 457.03(2), the Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board is responsible for developing ethics standards for social workers, marriage and family therapists, and professional counselors. Courts have broadly recognized that blocking executive branch agencies' rules violates bicameralism and presentment procedures and infringes on executive and judicial authority. Wisconsin Stat. §§ 227.19(5)(c), (d), (dm), and 227.26(2)(d) and (im) authorize the Joint Committee for Review of Administrative Rules, a 10-member legislative committee, to veto administrative rules. Do these veto provisions violate the separation of powers by allowing this committee to block executive agency rulemaking or, at minimum, DSPS's and the Board's rulemaking authority over commercial building standards and ethics standards for social workers, marriage and family therapists, and professional counselors?; and

IT IS FURTHER ORDERED that within 30 days after the date of this order the petitioners shall file a brief regarding the third issue in this court; that within 20 days of filing of the petitioners' brief, the respondents and intervenor-respondent shall file a single, combined responsive brief or a statement that no brief will be filed; and within 10 days of filing of the responsive brief, the petitioners must file either a reply brief or a statement that no reply brief will be filed; and

IT IS FURTHER ORDERED that the parties shall be advised of the date for oral argument in this matter in a subsequent order or oral argument calendar; and

IT IS FURTHER ORDERED that the motion of the intervenor-petitioner, Gathering Waters, Inc., for voluntary dismissal is granted.

Samuel A. Christensen
Clerk of Supreme Court

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