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Supreme Court of Wisconsin

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January 13, 2022

To:

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

No. 2020AP1032

John Doe 1 v. Madison Metro. School Dist. L.C.#2020CV454

A petition for review pursuant to Wis. Stat. § 808.10 having been filed on behalf of plaintiffs-appellants-petitioners, John Doe 1, Jane Doe 1, Jane Doe 3, and Jane Doe 4, and considered by this court, and the court having also considered the motion of plaintiffs-appellants-petitioners to file a reply in support of their petition for review;

IT IS ORDERED that the motion to file a reply is granted, and plaintiffs-appellants-petitioners' reply and appendix are accepted as filed; and

IT IS FURTHER ORDERED that the petition for review is granted and that pursuant to Wis. Stat. § (Rule) 809.62(6), the plaintiffs-appellants-petitioners may not raise or argue issues not set forth in the petition for review unless otherwise ordered by the court; and

IT IS FURTHER ORDERED that pursuant to Wis. Stat. §§ (Rules) 809.62(6) and 809.63, within 20 days after the date of this order the plaintiffs-appellants-petitioners must file a brief in

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this court; that within 20 days of filing the defendant-respondent, Madison Metropolitan School District, and intervenors-defendants-respondents, Gender Equity Association of James Madison Memorial High School, Gender Sexuality Alliance of Madison West High School, and Gender Sexuality Alliance of Robert M. La Follette High School, must file either a brief or a statement that no brief will be filed; and that if a brief is filed by the defendant-respondent and intervenors-defendants-respondents, within 10 days of filing of the last response brief the plaintiffs-appellants-petitioners must file either a reply brief or a statement that no reply brief will be filed; and

IT IS FURTHER ORDERED that in any brief filed in this court the parties shall not incorporate by reference any portion of their court of appeals' brief or petition for review or response; instead, any material in these documents upon which there is reliance should be restated in the brief filed in this court; and

IT IS FURTHER ORDERED that the first brief filed in this court must contain, as part of the appendix, a copy of the decision of the court of appeals in this case; and

IT IS FURTHER ORDERED that, if a party has not previously filed an electronic copy of the briefs filed on behalf of that party in the court of appeals, the party, within 30 days after the date of this order, must provide the clerk of this court with 10 copies of the brief previously filed on behalf of that party in the court of appeals; but if the party has already filed an electronic copy of such briefs, then there is no obligation to provide additional copies of those briefs to the clerk of this court; and

IT IS FURTHER ORDERED that any non-party that wishes to file a non-party brief *amicus curiae* must file a motion for leave of the court to file a non-party brief by March 2, 2022. Wis. Stat. § (Rule) 809.19 (7). A proposed non-party brief must accompany the motion for leave to file it; and

IT IS FURTHER ORDERED that the allowance of costs, if any, in connection with the granting of the petition will abide the decision of this court on review.

ANN WALSH BRADLEY, J. (*dissenting*). I would deny the motion to file a reply. This court has seen an unfortunate recent trend of filing such motions.¹ I say unfortunate because a reply to a response to a petition for review is outside of this court's established rules. See Wis. Stat. § (Rule) 809.62(2) and (3) (providing requirements for petition for review and response to petition only).

¹ See, e.g., County of Dane v. Pub. Serv. Comm'n, No. 2021AP1325, unpublished order (Wis. S. Ct. Sept. 13, 2021); Stempski v. Heinrich, No. 2021AP1434-OA, unpublished order (Wis. S. Ct. Aug. 27, 2021); Waity v. Lemahieu, No. 2021AP802, unpublished order (Wis. S. Ct. July 9, 2021).

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In contrast, for briefing on the merits, the rules specifically call for a reply brief and describe its requirements and time limits. See Wis. Stat. § (Rule) 809.19(4). When reading § (Rule) 809.62 along with § (Rule) 809.19(4), only one conclusion can be drawn: that there should not be a reply brief filed at the petition for review stage unless specifically requested by the court.

We should follow our rules. If we are to routinely grant such motions, the rules should change lest they be rendered illusory. Accordingly, I respectfully dissent to the order granting the motion to file a reply.

I am authorized to state that Justice REBECCA FRANK DALLET and Justice JILL J. KAROFKY join this dissent.

Sheila T. Reiff
Clerk of Supreme Court

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