STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY
BRANCH 13

KARINA DUNN, et al.,

Plaintiffs,

v.

Case No. 25-CV-2797

PUBLIC SERVICE COMMISSION, et al.,

Defendants.

PROPOSED AMICUS CURIAE BRIEF OF DEFENDING EDUCATION IN SUPPORT OF DEFENDANTS' MOTIONS TO DISMISS

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INTRODUCTION & INTEREST OF AMICUS CURIAE

Defending Education is a national, nonprofit, grassroots association. Its members include students, parents, educators, and other concerned citizens. Defending Education uses advocacy, disclosure, and litigation to combat the indoctrination of America's education system and the political weaponization of our nation's youth.

This case directly implicates Defending Education's mission. Activist environmental organizations who object to commonsense energy policies, like the Wisconsin statutes at issue here, have failed to persuade voters or elected officials. So they are trying a new tactic: filing climate lawsuits—with children as the named plaintiffs—that ask courts to impose sweeping renewable energy mandates. The strategy behind these lawsuits is clear. Activist groups hope to weaponize sympathetic child plaintiffs to challenge policies that they couldn't defeat at the ballot box. (Activists have used the same tactic to challenge voting regulations, immigration enforcement, and other policies.) But these lawsuits do not represent the views of everyday American families. In fact, most Americans support the continued use of traditional fuels like gas, oil, and coal to provide affordable energy for hardworking parents and their children.

Climate activists are free to disagree. And they are free to encourage voters to support tighter restrictions on the use of fossil fuels. What they cannot do is ask the judiciary to resolve that policy dispute for them. This Court should grant Defendants' motions to dismiss.

ARGUMENT

I. Climate alarmists are using our children as vehicles to pursue policy disagreements through the courts.

A. When they lose at the ballot box, activist groups use child plaintiffs to challenge policies in court.

Environmental interest groups have tried for years to persuade voters, elected officials, and regulators to severely curtail or completely prohibit the use of traditional fossil fuels and instead force Americans to rely on "carbon-free" energy sources like wind and solar power. *E.g.*, *626 Groups Urge Congress to Phase Out Fossil Fuels*, Friends of the Earth (Jan. 10, 2019), perma.cc/2DJU-5HQU. These climate alarmists say that America must rapidly "transition to 100 percent renewable energy" and "transfor[m] the global economy" to avoid an impending "climate catastrophe." *Id.* Despite the heavy-handed rhetoric, however, voters and government officials have largely rejected the alarmists' sweeping proposals. *E.g.*, Storrow, *Voters Reject Several Climate-Related Ballot Initiatives*, Scientific American (Nov. 7, 2018), perma.cc/7MDH-TDUM. For good reason. *See infra* I.B.

So, as those who cannot win at the ballot box often do, climate activists are turning to the courts instead, seeking to impose their preferred policies through litigation. "But in an increasing number of recent lawsuits, these organizations are employing a new twist: Using kids as plaintiffs." Nikolewski, *Fair or exploitative? Environmental groups using kids as plaintiffs*, FOX (Aug. 19, 2015), perma.cc/S6EB-PWP2. Our Children's Trust has filed many such actions, filing "climate lawsuits and legal actions" with child plaintiffs "in all 50 states" and in federal court. *State Legal Actions*, OCT (archived Nov. 20, 2025), perma.cc/4JB4-4PMQ. Indeed, the

organization has at least four other cases pending in federal and state court right now. *G.B. v. EPA*, 25-2473 (9th Cir. Apr. 17, 2025); *Lighthiser v. Trump*, 25-06714 (9th Cir. Oct. 23, 2025); *Sagoonick v. Alaska*, 3AN-24-06508CI (Alaska Super. Ct. filed May 22, 2024); *Reynolds v. Fla. Pub. Serv. Comm'n*, 2024-019966-CA-01 (Fla. Cir. Ct. filed Oct. 17, 2024).

The strategy is clear: Kids make for sympathetic plaintiffs, so activist groups figure their odds of winning are greater if a lawsuit is nominally "youth-led." *State Legal Actions*, OCT (archived Nov. 20, 2025), perma.cc/4JB4-4PMQ. By "using the kids as fronts for their cause," climate alarmists can achieve policy changes in court that they weren't able to enact through legislation. Clark, *Meet the Young Activists behind the New Youth Climate Lawsuit*, E&E News (Dec. 15, 2023), perma.cc/M4P4-A3KX. Even the lawsuits' supporters acknowledge the strategic value of using children as plaintiffs: The "symbolism of young people suing the government" is "narratively powerful," Rink et al, *Litigation by young people to hold governments to account for climate damage*, BMJ Paediatrics Open (Oct. 2024), bit.ly/47WbspO, and reframing energy policy debates as battles for "the plight of young people" helps to draw "nationwide publicity," Klass, *Despite Supreme Court setback, children's lawsuits against climate change continue*, The Conversation (May 2, 2025), perma.cc/UQ8L-V3Y8.

This tactic, though relatively new, is an increasingly common strategy for activist groups whose agendas aren't popular with voters. And it extends beyond the climate context. Activists regularly use sympathetic young plaintiffs to file lawsuits

asking courts to impose sweeping policy changes on issues that affect Americans of *all* ages. Often, those issues have only a tenuous connection to the discrete interests of young people. Child plaintiffs have, for example, been used to challenge generally applicable election rules, *Marino v. Gardner*, 1:17-cv-00395 (D.N.H. filed Aug. 31, 2017), frustrate immigration enforcement, *C.M. v. United States*, 2:19-cv-05217 (D. Ariz. filed Sept. 19, 2019), and force racial equity into America's largest public school system, *IntegrateNYC v. New York*, 152743/2021 (N.Y. Sup. Ct. filed Mar. 9, 2021), to name just a few. Fortunately, Defending Education thwarted one of those challenges. *See IntegrateNYC v. New York*, 2025 WL 2979535, at *3, 5 (N.Y. Ct. App. Oct. 23, 2025) (dismissing lawsuit by New York City students, in which Defending Education intervened as a defendant, because the plaintiffs' claims were really complaints about "educational policy" and weren't fit for judicial resolution). But activists are emboldened by the few courts that have entertained such claims.

Using children to front lawsuits over climate change is especially concerning, though. In anticipation of filing such lawsuits, environmental groups and other climate alarmists promote a sense of "climate anxiety," using emotionally charged messaging to foster "anger" and "'concern'" among young people about their future. *Establishing Accountability for Climate Change Damages*, Climate Accountability Inst., at 25 (Oct. 2012), perma.cc/3Q5P-GS4R; *see also* Clayton et al., *Mental Health and Our Changing Climate*, Am. Psychological Ass'n, at 68 (Mar. 2017), bit.ly/4rbtcoB (describing "a chronic fear of environmental doom"). That anxiety is then repackaged and deployed in the form of lawsuits claiming that commonsense energy policies like

Wisconsin's are somehow robbing young people of their future. A plaintiff in one of Our Children's Trust's recently filed cases, for example, reported feeling that she "ha[d] to" sue because she feared that "Trump's fossil fuel orders [we]re a death sentence for [her] generation." *22 Youth Sue Donald Trump Over Executive Orders That Escalate Climate Crisis*, OCT (May 29, 2025), perma.cc/C2U7-KMWM.

Climate alarmists, in other words, are using lawsuits to pursue policy changes that they could not secure through the electoral process. And to create fodder for those lawsuits, they are manufacturing fear among America's youth. That is not a strategy that this Court should condone.

B. Most families prefer a smarter approach to energy policy.

It's no wonder that climate activists have given up trying to persuade voters and elected officials. Though they claim to speak for Wisconsin's "children and youth," Compl. (Doc. 6) at ¶2, alarmist groups like Our Children's Trust are severely out of step with everyday American families when it comes to energy policy. Most Americans oppose uncompromising renewable energy mandates and other radical climate policies, not least because they rely on the affordable energy that traditional fuel sources provide.

Of course, Americans broadly support reasonable, limited, and cost-effective measures to promote renewable energy. But they oppose making "sweeping changes to American life to cut carbon emissions." *See* Kennedy et al., *Majorities of Americans Prioritize Renewable Energy*, Pew Rsch. Ctr. (June 28, 2023), perma.cc/2MCN-HFX7. They overwhelmingly oppose "phasing out the use of fossil fuel energy sources altogether." *Id.* They likewise oppose eliminating gas-powered vehicles or requiring

new buildings to run only on electricity. *Id.* In fact, over the last half-decade, support for broad renewable energy mandates has *decreased* while support for traditional energy sources like oil, gas, and coal has *increased*. Support for "expanding wind and solar production … has dropped" by almost 20 percentage points since 2020. Radtke, *Support for renewables shrinks as fossil fuel interest grows*, Floodlight (June 5, 2025), perma.cc/X3CL-B9N8. Meanwhile, over the same period, the number of Americans who "support expansion of oil, coal, and natural gas" has "almost double[d]." *Id.*

The hundreds of millions of Americans who support traditional energy sources have no desire to harm the environment or America's youth. *Contra* Compl. ¶¶142, 153 (suggesting that the only way to avoid "harming youth in Wisconsin" is a "100% carbon free electric[al]" system). Quite the opposite, in fact. They recognize that preserving our children's "physical and psychological health and safety" and preventing undue "hardships," Compl. ¶2, requires the affordable energy that traditional fuel sources provide. Traditional fuels are how we heat and cool our homes, how we keep the lights on in our schools, and how we transport people and goods. It's also how we power our medical care and emergency services, which means unreliable or costly energy can put human lives at risk. *E.g.*, *Inquiry into Bulk-Power System Operations During December 2022 Winter Storm Elliott*, Fed. Energy Reg. Comm'n, at 6 (Oct. 2023), bit.ly/3K16UVW (estimating that as many as "800" Texans died "primarily from causes connected to … power outages" during Winter Storm Uri in 2021). "Cutting off access to the very resources that power the economy will not only raise energy costs, but … lower the quality of life for every" child in Wisconsin.

Shughart et al., *If You Want to Keep Fossil Fuels in the Ground, You Support a Form of Economic Self-Destruction*, Indep. Inst. (Feb. 6, 2018), perma.cc/M9B4-PG8T.

Indeed, policy experts have calculated that transitioning to 100% renewable energy "would cost Wisconsin families and businesses an additional $248 billion (in constant 2022 dollars) through 2050" compared to "the current electric grid." Orr et al., *The High Cost of 100 Percent Carbon Free Electricity By 2050*, Ctr. of the Am. Experiment, at 2 (Oct. 2022), bit.ly/4o3Qc5Z. In human terms, that would be an increase of $2,755 *each* year for *each* customer. *Id.* For many Wisconsinites, that kind of price hike is simply unaffordable. "[O]ne in four Wisconsinites" are already "having difficulties paying their basic expenses," and that number is much higher for "renters, … [l]ow-income people, people under age 30, those with health problems, and the self-employed." Collins, *Survey finds many Wisconsin residents struggle with personal finances, inflation*, La Follete Sch. of Pub. Affs. (Jan. 23, 2024), bit.ly/4rgZu1y.

And that assumes that forcing Wisconsin to convert to a carbon-free electrical grid would *work* in the first place. The best evidence indicates otherwise. A fully carbon-free "electric grid would experience capacity shortfalls … due to weather-driven fluctuations in electricity generation from wind and solar facilities." Orr et al., *supra*, at 2. And gaps in coverage would only grow worse over time, as even Plaintiffs admit that "Wisconsin's demand for electricity is growing and projected to increase by approximately 15% in the next five years." Compl. ¶131. Proving the point, other states that have abandoned traditional energy sources in favor of "weather-dependent wind and solar power" have already suffered "skyrocketing costs and

rolling blackouts." *Id.* at 5; *cf.* Samayoa, *As NW faces rolling blackouts, study says renewable energy may not be enough*, OPB (Oct. 30, 2025), perma.cc/8EZK-83E9.

Americans know that higher energy prices and blackouts won't improve quality of life for anyone, young or old. That's why they don't support sweeping mandates for carbon-free energy grids. But if climate activists get their way, the views of Wisconsinites who support the use of affordable fossil fuels will be ignored in favor of a "wildly impracticable" carbon-free mandate that will have, at best, an "infinitesimal" effect on global greenhouse gas levels. Legislature's Br. (Doc. 31) at 1.

II. This is not the right forum for Plaintiffs' complaints.

At bottom, this lawsuit—like many others—is an attempt to launder policy disagreements through litigation. Defendants' briefs explain why Plaintiffs lack standing to pursue those claims. They have not suffered any discrete injuries and, even if they did, their requested relief would not remedy the injuries. *See* Legislature's Br. at 7-18; PSC's Br. (Doc. 33) at 18-24. But this lawsuit threatens another fundamental principle regarding the separation of powers: justiciability.

Wisconsin, like every other state and the federal government, divides the executive, legislative, and judicial functions between three different branches. It is a fundamental principle that each branch should be free from interference from the other branches in the discharge of its powers. *Complaint Against Grady*, 118 Wis. 2d 762, 776 (1984) ("[A]ny exercise of" one branch's core "authority by another branch of government is unconstitutional."). For the judicial branch, this principle is effectuated through the doctrine of justiciability. Although justiciability encompasses many discrete concepts, the doctrine at its core means that, "when the Legislature

has made [a] policy decision," the court will not "substitute [its] own judgment to pursue an 'alternative' policy [it] think[s] superior to the Legislature's choice." *Kaul v. Wis. State Legislature*, 416 Wis. 2d 322, 350 (2025).

That rule makes sense. The executive and legislative branches, which are both politically accountable, are in a better position than "unelected judges" to make "value judgments." *United States v. Sineneng-Smith*, 590 U.S. 371, 385 (2020) (Thomas, J., concurring). They are also better equipped—in terms of both resources and expertise—to tackle complex scientific, economic, and social questions or make discretionary decisions about the allocation of scarce resources and the ordering of priorities. *See State v. Kruzicki*, 209 Wis. 2d 112, 134 (1997) ("the legislature is in a better position than the courts to gather, weigh, and reconcile … competing policy proposals"); *Evers v. Marklein*, 412 Wis. 2d 525, 553 n.16 (2024) ("'The legislature, as the government body closest to the will of the people, may … determine whether to reallocate limited resources.'"). Put simply, choices that are "'essentially *political* in nature'" are "'exclusively committed'" to the *political* branches. *Mills v. Vilas Cnty. Bd. of Adjustments*, 261 Wis. 2d 598, 608 (Wis. Ct. App. 2003) (emphasis added).

Disagreements about the climate and energy policy may run deep, in Wisconsin as elsewhere. And navigating the balance between environmental preservation and affordable energy will certainly involve trade-offs and uncertainties. But the fact that this issue requires balancing interests and making compromises is precisely what makes it a nonjusticiable political question. *Town of Beloit v. City of Beloit*, 37 Wis. 2d 637, 644 (1968) ("What is 'necessary' or what is 'in the best interest'

is not a fact and its determination by the judiciary is an exercise of legislative power when each involves political considerations."). All the more so because questions about energy and climate policy are steeped in "scientific, economic, and technological" expertise. *Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410, 428 (2011).

Nor can Plaintiffs escape their justiciability problems simply by recasting their policy disputes regarding acceptable carbon emission levels in more dire terms. *See* Compl. ¶2 (claiming that that fossil fuels will "harm [Plaintiffs'] physical and psychological health and safety [and] bodily integrity [and] degrade public trust resources they depend upon for their well-being and survival"). Even if we accept those dire claims as valid, it remains "the legislature's function to weigh all relevant policy factors to obtain the fullest public use" of common environmental resources. *State v. Bleck*, 114 Wis. 2d 454, 465-66 (1983). "[S]ome questions—even those existential in nature—are the province of the political branches." *Juliana v. United States*, 947 F.3d 1159, 1173 (9th Cir. 2020).

Finding the right balance between preserving the environment and maintaining a reliable power grid is certainly a question worthy of public debate. Plaintiffs, for better or worse, currently find themselves on the losing side of that debate. But having lost the debate in the legislature, they cannot now ask this Court to simply impose their preferred policies by judicial fiat. That is not how democracy, or the separation of powers, works.

CONCLUSION

This Court should grant Defendants' motions to dismiss.

Dated: November 24, 2025

Respectfully submitted,

Electronically signed by Marie Sayer

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