

Nos. 20-2835, 20-2844

In the United States Court of Appeals

FOR THE SEVENTH CIRCUIT

DEMOCRATIC NATIONAL COMMITTEE, ET AL.,
PLAINTIFFS-APPELLEES,

v.

MARGE BOSTELMANN, ET AL.,
DEFENDANTS,

and

WISCONSIN STATE LEGISLATURE,
INTERVENING DEFENDANT-APPELLANT.

SYLVIA GEAR, ET AL.,
PLAINTIFFS-APPELLEES,

v.

MARGE BOSTELMANN, ET AL.,
DEFENDANTS,

and

WISCONSIN STATE LEGISLATURE,
INTERVENING DEFENDANT-APPELLANT.

CHRYSTAL EDWARDS, ET AL.,
PLAINTIFFS -APPELLEES,

v.

WISCONSIN STATE LEGISLATURE,
DEFENDANT-APPELLANT.

JILL SWENSON, ET AL.,
PLAINTIFFS -APPELLEES,

v.

MARGE BOSTELMANN, ET AL.,
DEFENDANTS,

and

WISCONSIN STATE LEGISLATURE,
INTERVENING DEFENDANT-APPELLANT.

On Appeal From The United States District Court
For The Western District of Wisconsin
Consol. Case Nos. 3:20-cv-249, -278, -340, & -459
The Honorable William M. Conley, Presiding

**WISCONSIN LEGISLATURE'S EMERGENCY MOTION TO CERTIFY A
QUESTION OF LAW TO THE WISCONSIN SUPREME
COURT AND FOR AN ADMINISTRATIVE STAY**

In its *per curiam* decision yesterday, this Court held that *Service Employees International Union (SEIU), Local 1 v. Vos*, 946 N.W.2d 35 (Wis. 2020), eliminates the Legislature’s authority to defend state law, as an agent of the State, under Wis. Stat. §§ 13.365(3), 803.09(2m). In reaching this conclusion, this Court overruled its own decision in *Democratic National Committee v. Bostelmann*, Nos. 20-1538 *et. al*, 2020 WL 3619499 (7th Cir. Apr. 3, 2020), and the Supreme Court’s implicit standing decision in *Republican National Committee v. Democratic National Committee*, 140 S. Ct. 1205 (2020) (*per curiam*). With all respect, the Wisconsin Supreme Court would be surprised, to put it mildly, to learn of this misunderstanding of its careful, narrow decision. That surprise would be particularly acute because, in *SEIU*, the Court *honored* the Legislature’s right to vindicate the State’s interests in defending state law, overturning an injunction in an appeal filed *only* by the Legislature. 946 N.W.2d at 59–60; *accord Va. House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945, 1952 (2019) (citing *Karcher v. May*, 484 U.S. 72 (1987), and discussing importance of the “record . . . of litigation by state legislative bodies in state court” in deciding standing).

But this Court need not speculate as to what the Wisconsin Supreme Court thinks Wisconsin law is on this question, in light of *SEIU*; rather, this Court should simply ask it, by way of certification, under its authority pursuant to Circuit Rule 52(a).* “Certification is a useful tool of cooperative federalism” that allows the federal

* Although Circuit Rule 52(a) provides that certification requests generally should “be included in the moving party’s brief,” Cir. R. 52(a), as the Court acknowledged, the stay posture is the whole appeal here, *see* Dkt.51 at 5. This Court has ample authority to certify a question on its own motion, Cir. R. 52(a), as well as to “suspend the requirements of these Circuit Rules” in the interests of “expediting decision or for other good cause,” Cir. R. 2.

courts “to seek a *definitive ruling* from the highest court of a state on the meaning of state law.” *State Farm Mut. Auto, Ins. Co. v. Pate*, 275 F.3d 666, 671 (7th Cir. 2001) (emphasis added). The Wisconsin Supreme Court, in turn, has adopted a rule to answer certified questions. *See* Wis. Stat. § (Rule) 821.01.

The Legislature thus respectfully requests that this Court certify the question of whether, under state law, the Legislature can appeal an injunction blocking state law, as an agent of the State, as this Court held that it could in *Bostelmann*, 2020 WL 3619499, or whether *SEIU* prohibits this, as this Court held yesterday, Dkt.51. **The Legislature respectfully requests that this Court issue such a certification today, September 30, asking the Wisconsin Supreme Court to provide an answer to the question by Monday, October 5.** Notably, during the April Election, the Wisconsin Supreme Court twice decided election-related legal questions either in a matter of hours, *see Wis. Legislature v. Evers*, No. 2020AP608-OA (Wis. Apr. 6, 2020), or within two business days, *see Jefferson v. Dane Cty.*, No. 2020AP557-OA (Wis. Mar. 31, 2020). Further, *such a certification would benefit all interested parties, while harming no one*. It would provide clarity for citizens, the parties, and the courts (including the United States Supreme Court, which will, in all likelihood, be asked to consider this case by one side or the other, either after the panel stage or after a decision of the en banc court, in the very near future).

The Legislature further respectfully requests that this Court continue its administrative stay of the preliminary injunction until the Wisconsin Supreme Court answers the certified question. Such a course would follow from *Purcell v. Gonzalez*,

549 U.S. 1 (2006) (per curiam), which makes clear that federal courts should avoid sowing “voter confusion” during an impending (or, here, ongoing) election. *Id.* at 4–5.

Dated: September 30, 2020

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), I certify the following:

This motion complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2) because it contains 648 words, excluding the parts of the motion exempted by Federal Rule of Appellate Procedure 32(f).

This motion complies with all typeface requirements of Federal Rules of Appellate Procedure 27(d)(1)(E) and 32(a)(5)–(6), because it has been prepared in a proportionally spaced typeface using the 2016 version of Microsoft Word in 12-point Century Schoolbook.

Dated: September 30, 2020.

/s/ Misha Tseytlin

MISHA TSEYTLIN

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of September, 2020, I filed the foregoing Emergency Motion To Certify A Question Of Law To The Wisconsin Supreme Court And For An Administrative Stay with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to all registered CM/ECF users.

Dated: September 30, 2020

/s/ Misha Tseytlin

MISHA TSEYTLIN