

IN THE SUPREME COURT OF WISCONSIN

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Appeal No. 2021AP802

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ANDREW WAITY, JUDY FERWERDA,  
MICHAEL JONES, and, SARA BRINGMAN,

Plaintiffs-Respondents,

v.

DEVIN LEMAHIEU, in his official capacity, and  
ROBIN VOS, in his official capacity,

Defendants-Appellants-Petitioners.

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On Appeal From The Dane County circuit court  
The Honorable Stephen E. Ehlke, Presiding  
Dane County Case No. 2021-CV-589

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PLAINTIFFS-RESPONDENTS' RESPONSE TO  
DEFENDANTS-APPELLANTS-PETITIONERS' SUPPLEMENT TO THEIR  
EXPEDITED PETITION TO BYPASS

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As ordered by the Court, the Defendants-Appellants ("Vos and LeMahieu") filed a Supplement to their Petition for Bypass, which purports to set forth the issues that would be presented for appellate review were the court to accept their Petition for Bypass. That filing ignores the actual issues that were presented to and decided by the circuit court.

## ISSUES PRESENTED FOR REVIEW

1. Were Vos and LeMahieu independently authorized under a 2018 statute, Wis. Stat. § 13.124, to enter into their December 23, 2020 contract with Consovoy McCarthy PLLC (in association with Adam Mortara) (“Consovoy”) and their January 2, 2021 contract with Bell Giftos St. John LLC (“BGSJ”), putatively on behalf of the Senate and Assembly, to be paid from taxpayer money, and in the absence of existing litigation to be handled under the contracts?

The circuit court answered “no,” and the court of appeals has not ruled on this issue.

2. Were Vos and LeMahieu independently authorized under Wis. Stat. § 16.74 to enter into their December 23, 2020 contract with Consovoy and their January 2, 2021 contract with BGSJ, putatively on behalf of the Senate and Assembly, to be paid from taxpayer money, and in the absence of existing litigation to be handled under the contracts?

The circuit court answered “no,” and the court of appeals has not ruled on this issue.

3. Were Vos and LeMahieu independently authorized under Wis. Stat. § 20.765 to enter into their December 23, 2020 contract with Consovoy and their January 2, 2021 contract with BGSJ, putatively on

behalf of the Senate and Assembly, to be paid from taxpayer money, and in the absence of existing litigation to be handled under the contracts?

The circuit court answered “no,” and the court of appeals has not ruled on this issue.

4. Were Vos and LeMahieu independently authorized under the Wisconsin Constitution to enter into their December 23, 2020 contract with Consovoy and their January 2, 2021 contract with BGSJ, putatively on behalf of the Senate and Assembly, to be paid from taxpayer money, and in the absence of existing litigation to be handled under the contracts?

The circuit court answered “no,” and the court of appeals has not ruled on this issue.

5. Did the court of appeals incorrectly find that the circuit court properly exercised its discretion in denying Vos and LeMahieu’s motion for stay of its final Decision and Order pending appeal by finding that it had examined the relevant facts, applied the correct standard of law, demonstrated a rational process, and reached a decision that a reasonable judge could make? *State v. Gudenschwager*, 191 Wis. 2d 431, 440 (1995).

The circuit court implicitly answered “no” and the court of appeals answered “no.”

Respectfully submitted this 9<sup>th</sup> day of July 2021.

PINES BACH LLP

A handwritten signature in cursive script, appearing to read "Aaron Dumas", is written over a horizontal line.

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