

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CENTER FOR BIOLOGICAL
DIVERSITY, et al.,

Plaintiffs,

Case No. 1:15-CV-477-EGS

v.

JIM KURTH, et al.,

Federal Defendants,

AMERICAN FOREST &
PAPER ASSOCIATION, et al.,

Defendants-Intervenors.

DEFENDERS OF WILDLIFE,

Plaintiff,

Case No. 1:16-CV-910-EGS
(Consolidated Case)

v.

JIM KURTH, et al.,

Federal Defendants,

AMERICAN FOREST &
PAPER ASSOCIATION, et al.,

Defendants-Intervenors.

**BRIEF OF AMICUS CURIAE STATE OF WISCONSIN
IN SUPPORT OF FEDERAL DEFENDANTS**

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IDENTITY AND INTEREST OF AMICUS CURIAE

The State of Wisconsin,¹ through its Department of Natural Resources (“WDNR” or “Wisconsin”), is responsible for “the custody and protection of[] all wild animals within th[e] state.” Wis. Stat. § 29.011(1). Similarly, under Wisconsin’s Endangered and Threatened Species law, WDNR is required to maintain a list of threatened and endangered species in the State. *See* Wis. Stat. § 29.604(3)(a). This list includes species listed under the federal Endangered Species Act, but Wisconsin’s law also requires the State to maintain a separate list of endangered and threatened Wisconsin species. Wis. Stat. § 29.604(3)(a). WDNR is also required to “implement programs directed at conserving, protecting, restoring and propagating selected state-endangered and threatened species to the maximum extent practicable.” *See* Wis. Stat. § 29.604(7)(a).

In furtherance of its responsibilities under Wisconsin law, the State in 2011 listed the Northern long-eared bat (NLEB) as a state “threatened” species, based on the imminent risk of White Nose Syndrome (WNS). *See* Wis. Admin. Code § NR 27.03(3)(a)3. In coordination with that listing decision, Wisconsin has undertaken substantial measures to combat the spread of WNS. In light of Wisconsin’s statutory framework for endangered

¹ The State of Wisconsin submits this brief pursuant to the District Court’s Local Civil Rule 7(o)(1), (2)–(5) (and rules cited therein).

and threatened species, its listing of the NLEB, and its general authority over resource management and conservation, Wisconsin holds a strong interest in the U.S. Fish and Wildlife Service’s (FWS) decision to list the NLEB as a threatened species under the federal Endangered Species Act, 16 U.S.C. §§ 1531–44 (ESA or “the Act”).

RELEVANT STATUTES

The Plaintiffs and Federal Defendants have set forth the relevant statutes. Some sections of the ESA bear particular mention, as they illustrate the collaborative federal–state approach that Congress contemplated in enacting the ESA, and which was central to the listing determination here. To begin, the ESA requires that any listing decision be made “solely on the basis of the best scientific and commercial data available.” 16 U.S.C. § 1533(b)(1)(A). And to ensure that the agency has the best data available, the Act also provides that, before a species may be listed under the ESA, the Secretary must “tak[e] into account those efforts, if any, being made by any State . . . to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices.” 16 U.S.C. § 1533(b)(1)(A).

More broadly, the Secretary “shall cooperate to the maximum extent practicable with the States,” including through management agreements, cooperative agreements, and resource allocation. *See* 16 U.S.C. § 1535(a). Congress also required that the Secretary “give actual notice of [any] proposed

regulation” to and “invite the comment” of affected states, *see* 16 U.S.C. § 1533(b)(5)(A)(ii), as well as “giv[ing] actual notice” to affected states of any proposed emergency regulations, 16 U.S.C. § 1533(b)(7)(B). And where a state files comments disagreeing with all or part of a proposed regulation under the ESA, and the Secretary issues a final regulation in conflict with those comments, “the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency’s comments or petition.” 16 U.S.C. § 1533(i).

Finally, in addition to these collaborative provisions, the ESA’s broadly stated purposes are to “provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes [of related laws and treaties].” 16 U.S.C. § 1531(b).

INTRODUCTION AND SUMMARY OF THE ARGUMENT

From early in the federal listing process, Wisconsin has supported federal efforts to protect the NLEB. (*See, e.g.*, LAR 14953 (Wisconsin’s January 2014 comment letter supporting proposed listing decision “because of the imminent threat” of [WNS]).)² At the same time, Wisconsin along with

² References to “LAR” are to the final administrative record for the listing decision.

many states across the NLEB's range encouraged FWS to adopt a listing rule that preserved flexibility for state resource managers. In particular, Wisconsin noted that the primary purpose of any listing decision would be to protect the NLEB from WNS, but that it was also important to "limit[] unintentional impacts to other resource management activities (e.g., forest management activities)." (LAR 14953.)

This concern was paramount for Wisconsin and other states where NLEB conservation efforts include active forest management.³ The natural resource managers in these states recognized that their management efforts had been effective in maintaining healthy forests, as well as healthy NLEB populations, until the introduction of WNS. (*See, e.g.,* LAR 27026 (governmental briefing from Minnesota DNR regarding the proposed listing, noting that "absent the threat posed by [WNS], timber harvest and these other human impacts do not threaten NLEB as a species").)

In Wisconsin's view, FWS's final, threatened listing provides the best strategy for continued survival for the NLEB, in Wisconsin and nationwide. The threatened listing (with its attendant 4(d) rule) ensures that state natural

³ The "forest management" practices refer to timber harvest and other practices involving the removal or alteration of forest landscapes. (*See* LAR 34633.) These practices vary from state to state, but any "forest management" activity would be accepted and approved by the state's natural resources or forestry agency. (*See* LAR 34633.) These activities have been practiced on a large scale and for many years by states across NLEB's range, with no perceptible harm to the species. (*See* LAR 34633.)

resource managers have the flexibility to manage their states' natural resources, informed by their localized expertise. Because the final listing rule and the 4(d) rule recognize the expertise of local resource managers—including the need for flexibility in managing their state resources—Wisconsin asks this Court to affirm the listing decision and grant summary judgment for the Federal Defendants.

Wisconsin's support for the listing decision is based on two interconnected considerations: First, the primary threat to the NLEB's survival as a species is WNS; not forestry, not wind energy developments, not chemicals, not fire. To be effective in managing the NLEB, any listing decision must ensure that efforts focus on this unique and devastating threat, rather than on preventing individual harms that would not actually threaten the species' survival.

Second, despite the population declines caused by WNS, Wisconsin and other states presented substantial data showing that healthy populations persisted across the NLEB's range. Necessarily, then, the statutory requirement for an endangered listing was not met, since the NLEB was not "in danger of extinction throughout all or a significant portion of its range." 16 U.S.C. § 1532(6).

Given the unique threat of WNS and the varying population data from across the NLEB's range, the purpose of the ESA would be best served by

listing the bat as threatened, rather than endangered. Whereas an endangered listing would unduly restrict the efforts of experienced state natural resource managers, a threatened listing will ensure that those managers will have the flexibility to continue their ongoing efforts to manage habitat and fight WNS on the landscape. This conclusion is buttressed by one of the central purposes of the ESA, which is “to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved.” *See* 16 U.S.C. § 1531(b). In light of the lack of data to support an endangered listing, coupled with the ongoing ecosystem-protective activities in many states, Wisconsin supports FWS’s decision to list the NLEB as threatened.

ARGUMENT

I. The primary threat to the NLEB is WNS, not other human activities.

Early in the listing process, FWS acknowledged that “[n]o other threat is as severe and immediate for the NLEB as the disease, white-nose syndrome (WNS). If this disease had not emerged, it is unlikely the [NLEB] population would be declining so dramatically.” (LAR 13632.)

Wisconsin emphasized this point throughout the listing-decision process. For example, Drew Feldkirchner, then a conservation biologist with Wisconsin’s Natural Heritage Conservation Bureau, participated in the

listing-decision process as a member of the federal NLEB “Threats Team.”⁴ That team was tasked with gathering information about the non-WNS threats that might affect the survival and recovery of the NLEB. (See LAR 25884.) As Feldkirchner recognized, in most cases, other, non-WNS threats “are secondary at best” relative to WNS. (LAR 26025.) Given this hierarchy of threats facing the bats, it was recognized as “important that these secondary threats are not presented [in such a way] that give them ‘equal billing’ to WNS.” (LAR 26025.)

Likewise, in an early comment letter, Wisconsin encouraged FWS to focus conservation efforts on winter hibernacula, “since this is where [WNS] is generally spread, and white nose is the root of the [NLEB] population decline.” (LAR 16363.)

Wisconsin also highlighted the importance of WNS-focused efforts through its involvement in a regional association of natural resource agencies, the Midwest Association of Fish and Wildlife Agencies (MAFWA). MAFWA and other regional associations submitted a letter to FWS as part of the comment process. (See LAR 34626–43.) In its letter, these natural resource managers

⁴ The NLEB Threats Team was organized as part of the listing process, and was made up of officials from FWS, six state natural resource agencies, the United States Geological Survey, the U.S. Forest Service, two tribal natural resource agencies, and a forestry group. (See LAR 34407–08, 34412–13 (list of team members for NLEB Threats Team).)

made clear that “WNS is the primary threat to the NLEB,” and emphasized that states are already undertaking substantial measures to slow the spread and impact of the disease.⁵ (See LAR 34632–35, 34638.)

FWS reaffirmed this fact in its final rule, recognizing that WNS is “the primary threat to the northern long-eared bat.” *See, e.g.*, 80 Fed. Reg. 18000, 18001 (Apr. 2, 2015). Thus, relying on the best available scientific data, state and federal natural resource managers concluded that WNS needed to be the focal point of any effort to protect the NLEB.

II. Wisconsin and other states presented FWS with data demonstrating that healthy NLEB populations persisted in many states throughout its range.

Following the proposed listing decision, which concluded that NLEB was “in danger of extinction throughout all or a significant portion of its range,” *see* 78 Fed. Reg. 61075–76 (Oct. 2, 2013), many states sought to clarify that, in those states, NLEB populations were either still robust, or had not yet been substantially decimated by WNS. For example, MAFWA presented FWS with population information based on state surveys of NLEB populations. In its letter, MAFWA and other regional associations of natural resource agencies informed FWS that, based on the states’ population data, the “proposed

⁵ MAFWA’s comment letter also noted that there was reason to question FWS’s conclusion that WNS would spread as far and as quickly as the agency initially thought. (See LAR 34630–31.)

endangered listing is not supported by the best scientific and commercial data available.” (LAR 34627.)

In particular, the MAFWA letter noted two concerns relating to NLEB population data: First, the endangered listing relied “almost entirely upon information about NLEB population abundance and trends in only the northeastern U.S.,” with “very little reliable information about the species’ total population size.” (LAR 34628.) As the letter noted, “[a]vailable information on current NLEB population estimates indicates that they could be off by an order of magnitude.” (LAR 34628.) Moreover, it pointed out that there exists “considerable uncertainty” in the scientific community about the reliability of population data based on hibernacula surveys (as opposed to using summer data to estimate population). (LAR 34628–29.)

Second, the letter suggested that the best available data also did not support the conclusion that the NLEB was in danger of extinction throughout any significant portion of its range. (*See* LAR 34629–30.) As the letter noted, “[t]here is no evidence that NLEB are extirpated in any portion of their range. Even in Pennsylvania where hibernacula surveys have indicated that NLEB populations been severely impacted by WNS, summer mist netting results remain at 24% of the level observed pre-WNS.” (LAR 34630 (citing 2013 study by Pennsylvania Game Commission).) The MAFWA letter also pointed out that, despite the variance in regional populations, there was no evidence to

support separating the NLEB species into subgroups or subpopulations, with different regional populations being listed differently. (*See* LAR 34629–30.)

The conclusions in the MAFWA letter were echoed in a letter submitted by the Northeast Association of Fish and Wildlife Agencies (NEAFWA), whose member states are at the “epicenter” of WNS. (*See* LAR 36308.) Those states’ resource managers concluded that despite the sharp declines in NLEB populations in their states, the population data even there did not support an endangered listing. (*See* LAR 36308–09.) The NEAFWA letter reiterated the point made by MAFWA and other states, that imposing a rule to address population declines, without actually addressing WNS, would not only be fruitless, but would needlessly divert administrative resources that would otherwise be allocated to combatting WNS. (*See* LAR 36309.) The best approach, NEAFWA advocated, would be to list the species as threatened, adopt a 4(d) rule, allow continued forest management efforts, and “allow[] natural resource agencies to focus on the cause of the decline.” (*See* LAR 36309–10.)

In addition to the regional associations, many states (including Wisconsin) submitted comments to FWS suggesting that the proposed endangered listing placed too much weight on population information from the Northeast states, without considering population trends range-wide. (*See generally* LAR 14896–987 (state letters to FWS).) Many of these states

encouraged FWS to either (1) conduct more research before making *any* listing decision; or (2) list the bat as threatened, rather than endangered. (See, e.g., LAR 14921–24 (Kentucky, urging FWS to withhold range-wide listing “until further information can be obtained”); 14898–99 (Georgia, recommending threatened listing, rather than endangered, “[g]iven that the impact of [WNS] in the southern and western portions of the species’ range has not yet been documented”); see also LAR 14904–08 (letter from Tennessee, urging listing only for Northeast states).)

Ultimately, in its final listing rule, FWS concurred with these states’ review of the data: “in the currently uninfected areas we have no evidence that [NLEB] numbers have declined, and the present threats to the species in those areas are relatively low.” 80 Fed. Reg. 18008. Based on the best available scientific and commercial data, then, FWS properly concluded that an endangered listing was not warranted.

III. The best available scientific and commercial data from Wisconsin and other states demonstrate that a threatened listing presented the best opportunity to protect the NLEB.

A. State input greatly contributed to the best available scientific data in support of the listing decision.

The ESA contemplates collaboration between the federal and state agencies responsible for natural resource protections. See, e.g., 16 U.S.C. § 1533(b)(1)(A) (in reaching listing decision, Secretary must take into account

efforts by any State “to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices”); 16 U.S.C. § 1535(a) (Secretary “shall cooperate to the maximum extent practicable with the States,” including management agreements and resource allocation); 16 U.S.C. § 1533(b)(5)(A)(ii) (Secretary must give actual notice of proposed regulation to, and invite comment of, affected states).

In keeping with this collaborative mandate, throughout the NLEB listing process, FWS confirmed its commitment to working with the states, particularly in gathering and analyzing data about NLEB biology and habitat. (*See, e.g.*, LAR 16724–25, 18112–13.) For example, a letter from FWS Regional Director Thomas Melius informed the states that FWS “welcome[s] state input and expert assistance in both NLEB biology and forest management,” and that the agency “would greatly value additional information about the impact of [WNS] on the NLEB in each state.” (LAR 18112–13.) Similarly, in response to a letter from natural resource managers in Wisconsin, Indiana, Michigan, and Minnesota about state involvement, FWS officials reaffirmed that participation of the states would be integral in reaching a final listing decision, given the “logistics and staffing challenges presented with this wide-ranging species.” (*See* LAR 16724–25.) FWS thus confirmed that the agency seeks “the expertise, ideas, and input of the states, as full partners in conservation, to compile the best available scientific and commercial information available for

this species.” (LAR 18113.) To that end, FWS pledged “to work collaboratively with the states to devise implementable and appropriate conservation strategies to conserve the species.” (LAR 18113.)

Wisconsin, among other states, answered this call for collaborative conservation efforts. For example, the Director of Wisconsin’s Bureau of Natural Heritage Conservation (Erin Crain) submitted to FWS a survey of state resource managers about NLEB conservation. (*See* LAR 21543–51.) Crain also served on the joint “Northern Long-eared Bat Conservation Measures Team,” which consisted of state, federal, and tribal natural resource agencies. (*See* LAR 25299 (email with team).) The team’s focus was “on conservation measures that might be implemented to ameliorate the threats/stresses facing the species. This information can help inform the utilization of the ESA’s many conservation tools.” (LAR 25299.)

Accordingly, when FWS promulgated its final listing rule, its conclusions were well-supported by its own data, as well data submitted by many cooperating state natural resource managers. And as the state managers urged, these data—constituting the best available scientific and commercial data, as required under the ESA, *see* 16 U.S.C. § 1533(b)(1)(A)—demonstrate that the best way to protect the NLEB is not through an overly restrictive endangered listing. (*See* LAR 16362 (letter from Wisconsin and others, noting concern that an endangered listing would “severely limit” states’ ability to

manage critical habitat for species of special concern.) Instead, the best way to protect the bat is through a threatened listing and 4(d) rule, which will allow state resource managers to continue their ongoing efforts focused on WNS research and treatment, as well as efforts in managing the primary summer habitat of the NLEB: forests.

B. State efforts in forest management have been successful in conserving NLEB habitat and protecting NLEB populations.

Many states (including Wisconsin) engage in various forms of forest management, including timber harvest. As MAFWA noted in its letter to FWS, these traditional forest management efforts “are necessary and advisable for the conservation of NLEB.” (LAR 34633–34.) Existing forest management efforts are “accepted and approved by each state’s forestry or natural resources agency,” all of which are highly qualified in ecosystem management. (See LAR 34633.) Moreover, as the letter noted, “[t]he well-documented ubiquity of NLEBs across this range attests to the effectiveness of normal forest management activities in providing suitable foraging, roosting, and swarming habitat for the NLEB.” (LAR 34633.)

Similarly, natural resource managers from Minnesota pointed out that because forest management is “critical to long-term ecosystem health and the provision of habitat for many species, including the NLEB,” the ability to manage forests is particularly important. (LAR 27026.) As the Minnesota

official stated plainly, “while summer timber harvest may kill individual bats, it is also the key tool in sustainably managing the NLEB’s summer habitat.” (LAR 27026.) According to another commenter, NLEB populations benefit in numerous ways from forest management: “[F]orested landscapes, including those that are intensively managed, contain streamside management zones, set[-]aside areas, and other non-managed landscape components that contribute to habitat diversity and contain habitat elements important to bats[,] besides those elements provided in the managed stands themselves.” (LAR 27086.)

Wisconsin’s Drew Feldkirchner expressed a similar conclusion in a white paper drafted on behalf of the federal NLEB Threats Assessment Team. The paper suggested that any threat to the bat posed by forest management would be negligible relative to WNS. (LAR 33907.) The paper noted that “[f]orest management has been compatible with NLEB for many decades and can continue to be a major tool for maintaining and enhancing NLEB habitat.” (LAR 33909.) The paper concluded that “[t]he range-wide threat of timber management on NLEB is discountable based on the annual impacts to potential roost trees over a broad scale.” (LAR 33909.)

This information was presented to FWS decision-makers in preparation for the final listing decision. (*See* LAR 35680–87; *see also* LAR 37496–523 (PowerPoint presentation on “Non-WNS Threats: Loss or Modification of Summer Habitat”).)

Another white paper reaffirmed this conclusion. (*See* LAR 41029–47.) That paper, compiled by an expert team of biologists “most familiar with the species and the disease White-Nose Syndrome,” was meant to serve “as a reference guide to the best available scientific and commercial information pertinent to the proposal to list the [NLEB].” (LAR 41030.) That team’s charge was to draft a paper that includes “material facts that would serve to support a listing determination, without regard to what that final decision may ultimately be – Not Warranted, Threatened, or Endangered.” (LAR 41030.) And just like the state experts, these experts concluded that “the best available data support the conclusion that the NLEB, at the species level, was resilient to the impacts of tree removal and forest management activities.” (LAR 41040.)

FWS’s final rule effectively adopted this conclusion, noting that the types of forest management activities used in the states were highly unlikely to have significant effects on NLEB populations. *See* 80 Fed. Reg. 17993. These types of forest management are “expected to maintain a forest over the long term for the species.” 80 Fed. Reg. 17993. Distinguishing “forest conversion” (loss of forest) from “forest management,” FWS highlighted that any potential impacts

of forest management can be largely eliminated through best-management practices (already required in most states), which “avoid or minimize effects to bats and their habitat.” 80 Fed. Reg. 17992–93. (*See* LAR 34624, 34635 (MAFWA letter, noting states’ requirements of best-management practices).) As FWS concluded, benefits of forest management include “keeping forest on the landscape and creation and management of roosting and foraging habitat.” 80 Fed. Reg. 17993. The best available scientific data therefore support the conclusion that forest management provides a necessary component of any plan to protect the NLEB.

C. An endangered listing would impede state conservation efforts for the NLEB, and would not meaningfully address WNS.

In light of the acknowledged benefit of these widely accepted forest management practices, many state resource managers expressed their concern that an endangered listing for the bat would severely hinder these management efforts. The restrictions that would accompany an endangered listing would, for example, “severely limit” states’ abilities to manage habitat for other threatened and endangered species, while placing unhelpful burdens—both administrative and financial—on the state resource managers (among other groups). (*See* LAR 16362–63.) The burdens that agencies would have faced fell into two categories: diversion of resources from actually

addressing WNS; and administrative hindrances to ongoing forest management. (*See, e.g.*, LAR 27087.)

As to the first concern, commenters pointed out that “listing the bat will place the focus of conservation efforts on habitat rather than white-nose syndrome, [NLEB’s] most immediate threat, while restricting forest management options for landowners and public agencies.” (LAR 27087.) Similarly, natural resource managers from the “epicenter” of WNS urged FWS not to adopt a rule that would “forc[e] the Service, states, and local governments to divert their limited conservation resources into project reviews instead of addressing WNS, the primary threat to the species.” (LAR 36309 (NEAFWA letter).) This concern was particularly acute because many states within the NLEB’s range already had in place laws to protect the species. (*See* LAR 34636 (MAFWA letter), 36309 (NEAFWA letter).)

And as to habitat management, state commenters emphasized that an endangered listing would “reduce[] the capability of conservation agencies to manage for resilient and sustainable forest/woodland/savanna conditions that could benefit the [NLEB].” (LAR 21550 (Wisconsin’s NLEB survey).) Such restricted management capabilities “will only hurt the bat and many other plants, wildlife and natural communities.” (LAR 21550.) A similar comment noted that listing the bat as endangered “would restrict the ability of forest managers to address habitat concerns for all species and reduce incentives for

forest landowners to manage their land sustainably and maintain forest cover.” (LAR 27087; *see also* LAR 27086–87 (summary chart of comments in response to proposed endangered listing).)

The MAFWA letter further noted that it is “imperative” that NLEB conservation efforts support, rather than hinder, the management and recovery of forests. (LAR 34636.) These management efforts provide assurances, including state and federal environmental regulation, “site-level best management practices, forest certification systems, and forest planning requirements at the individual state level.” (LAR 34635.) Through these, states commit to wildlife and habitat conservation, which, for purposes of the NLEB, translates directly to providing foraging, roosting, and swarming habitat for the bats. (*See* LAR 34635.)

The central point that Wisconsin and its sister states sought to emphasize is that the states already are doing what they can to protect bat populations, including the NLEB, from WNS. (*See* LAR 21550.) As they do so, these managers concluded that an endangered listing would “not address this primary threat,” and would instead, very likely, *create* an additional risk of harm due to hampered conservation efforts and diverted resources. (*See* LAR 21550 (Wisconsin survey), 34632–36 (MAFWA letter), 36308–09 (NEAFWA letter).)

WNS is a unique threat. The speed and methods by which the disease has spread pose substantial difficulties for natural resource managers across the NLEB's range. Throughout the listing process, Wisconsin has emphasized that the unique qualities of the disease, along with its disparate effects on populations across the bat's range, make treatment under the ESA equally unique.

To meet these unique challenges, FWS's final rule takes the most reasonable approach. The final listing rule and the 4(d) rule reflect that simply halting forest management will not save the NLEB, and that the bat's ongoing survival will be ensured—if at all—through scientifically based conservation efforts, many of which are already underway in the states. The approach taken will not only ensure that NLEB habitat is maximized through forest management, but also that the responsible state agencies can continue their ongoing efforts to contain and treat WNS. The final rule, listing the NLEB as threatened, should be affirmed, and summary judgment granted for the Federal Defendants.

CONCLUSION

For the reasons discussed, the State of Wisconsin asks this Court to deny Plaintiffs' motion for summary judgment, and grant Federal Defendants' motion for summary judgment, thereby affirming the final rule listing the NLEB as threatened.

Dated this 7th day of July, 2017.

Respectfully submitted,

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Dated this 7th day of July, 2017.

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CERTIFICATE OF SERVICE

I certify that on July 7, 2017, I electronically filed the foregoing Brief of Amicus Curiae State of Wisconsin in Support of Federal Defendants with the clerk of court using the CM/ECF system, which will accomplish electronic notice and service for all participants who are registered CM/ECF users.

Dated this 7th day of July, 2017.

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