

FILED
08-22-2025
CIRCUIT COURT
DANE COUNTY, WI
2025CV002797
Honorable Jacob Frost
Branch 9

STATE OF WISCONSIN CIRCUIT COURT BRANCH __ DANE COUNTY

KAARINA DUNN, by and through her
guardian, Kadanne Dunn; CAROLINE
ELFSTROM, by and through her guardian,
Brittany Keyes; TYLER MCCLURE, by and
through his guardian, Monica Champagne;
MIAHLIN BEHNKE, ATHENA BEHNKE.,
and JAYLA MANTHE, by and through their
guardian, Ryan Champagne; LUCILLE
WRIGHT, by and through her guardian,
Mandy Roberts; MADELEINE BOHN, by
and through her guardian, Gloria Moy;
ISABELLA BLACK, by and through her
guardian, Steven Black; TED SCHULTZ-
BECKER, by and through his guardian,
Katrina Becker; CHARLES
BREITENMOSER, by and through his
guardian, Hans Breitenmoser; ELIA
MASROUR, by and through his guardian,
Giuliana Chamedes; ALEXANDER
CASTILLO, by and through his guardian,
Cristina Carvajal; SIMON BESONEN, by
and through his guardian, David Besonen;
and AUDEN GRESCH, by and through his
guardian, Elise Gresch
634 West Main Street, Suite 201
Madison, WI 53703

Plaintiffs,

vs.

PUBLIC SERVICE COMMISSION OF WISCONSIN; SUMMER STRAND, in her official
capacity as Chairperson of the Public Service Commission; KRISTY NIETO and MARCUS
HAWKINS, in their official capacities as members of the Public Service Commission,
4822 Madison Yards Way,
PO Box 7854, Madison, WI 53707;

WISCONSIN STATE LEGISLATURE,
2 East Main Street,
Madison, WI 53703

Defendants.

Case No.:
Case Type: Declaratory Judgment
Case Code: 30701

SUMMONS

THE STATE OF WISCONSIN

To each person named above as a Defendant:

You are hereby notified that the Plaintiffs named above have filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within 45 days of receiving this summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the Complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is: Clerk of Circuit Court, Dane County Courthouse, 215 South Hamilton Street, Room 1000, Madison, WI 53703. The answer must also be sent or delivered to Plaintiffs' attorneys at Midwest Environmental Advocates whose address is: 634 W. Main Street, Suite 201, Madison, WI 53703, and at Our Children's Trust whose address is: Our Children's Trust, PO Box 5181, Eugene, OR 97405. You may have an attorney help or represent you.

If you do not provide a proper answer within 45 days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated: August 22, 2025

Respectfully submitted,

Electronically signed by: Tony Wilkin Gibart

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*Application for *pro hac vice* admission
forthcoming

Attorneys for Plaintiffs

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COMPLAINT

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Youth Plaintiffs, Kaarina Dunn, Caroline Elfstrom, Tyler McClure, Miahlin Behnke, Athena Behnke, Jayla Manthe, Lucille Wright, Madeleine Bohn, Isabella Black, Ted Schultz-Becker, Charles Breitenmoser, Elia Masrour, Alexander Castillo, Simon Besonen, and Auden Gresch bring this action against the Public Service Commission of Wisconsin; Commissioners Summer Strand, Kristy Nieto, and Marcus Hawkins, in their official capacities;¹ and the Wisconsin State Legislature (collectively, “Defendants”), and allege as follows:

NATURE OF THE CASE

1. This case presents a challenge to Wisconsin laws that create and perpetuate a fossil fuel-dominated electricity sector which contributes to climate change, harms Plaintiffs, and infringes on Plaintiffs’ inherent rights to life, liberty, and a stable climate system, guaranteed by Article I § 1 of the Wisconsin Constitution, and the right to access, enjoy, and use public trust waters, guaranteed by Article I § 1 and Article IX § 1 of the Wisconsin Constitution. Plaintiffs challenge laws that prohibit the Commission from considering or using air pollution as a basis for denying permits to new fossil fuel-fired power plants. Plaintiffs also challenge laws that set a ceiling on the amount of renewable electricity generation the Commission can require electric providers to supply, with no exceptions.

2. Plaintiffs are children and youth between the ages of eight and seventeen, who have been and continue to be harmed by these laws. The laws perpetuate a fossil fuel-based electricity system; cause the emission of harmful air pollution, including climate-heating greenhouse gases (“GHG”); and obstruct Wisconsin’s transition to renewable energy, which is necessary to protect Plaintiffs’ constitutional rights. Given their age, Plaintiffs are uniquely vulnerable to air pollution and fossil

¹ Defendant Public Service Commission and Commissioners Summer Strand, Kristy Nieto, and Marcus Hawkins are referred to collectively as the “Commission” hereafter.

fuel-caused climate change, which harm their physical and psychological health and safety, bodily integrity, and degrade public trust resources they depend upon for their well-being and survival. Youth Plaintiffs face life-long hardships due to their ongoing exposure to air pollution, extreme weather events, and degradation of Wisconsin's public trust resources.

3. Notwithstanding legislative and executive directives to state agencies to transition the electricity sector to renewable energy sources (see *infra* ¶¶ 80-87), and Defendants' longstanding knowledge of the dangers of air pollution and climate change, Defendants continue to make and implement laws that lock in an electricity system powered predominantly by fossil fuels. Wisconsin's electricity sector is the largest source of Wisconsin's GHG emissions, and thus the State's single greatest contributor to the air pollution that is harming Plaintiffs and exacerbating climate change.

4. The Commission, through its implementation of the renewable portfolio standard and its approval authority of electricity generation, determines whether the State's electricity comes from fossil fuels or renewable energy sources. Under the Commission's control, coal and gas-fired power plants provide approximately 75% of Wisconsin's electricity, while renewable energy resources provide only 17%. Defendants are on track to achieve, at most, 26% of Wisconsin's electricity generation from renewable energy sources by 2030, with the vast majority still coming from coal and gas.² Wisconsin's 2024 *Emissions Reduction Roadmap* admits the State is not on track to meet its GHG emission reduction targets.³ Nevertheless, the Commission continues to

² Public Service Commission, *Strategic Energy Assessment 2024-2030*, at 33-34 (Nov. 2024), <https://apps.psc.wi.gov/ERF/ERFview/viewdoc.aspx?docid=523854>.

³ Wisconsin Department of Administration, Office of Sustainability and Clean Energy, *Wisconsin Emissions Reduction Roadmap* 14 (Mar. 1, 2024), <https://www.wistatedocuments.org/digital/collection/p267601coll4/id/34490/>.

approve permits for new fossil fuel-fired power plants because the unconstitutional laws that Plaintiffs challenge constrain the Commission from doing otherwise.

5. Specifically, the laws that prohibit the Commission from considering air pollution when deciding whether to approve or deny applications for a Certificate of Public Convenience and Necessity (“CPCN”) for the construction of electric generation facilities (Wis. Stat. § 196.491(3)(d)3. and 4.) violate Plaintiffs’ Article I § 1 constitutional rights to liberty (including their rights to health, safety, and bodily integrity) (Count I); to life (Count II); to a stable climate system (Count III); to access, enjoy, and use navigable waters and their beds (Count IV); and Plaintiffs’ Article IX § 1 constitutional right to public trust resources free from substantial impairment (Count V). Plaintiffs allege that the prohibition on the consideration of air pollution in Wis. Stat. § 196.491(3)(d)3. and 4.⁴ is unconstitutional as applied to the Commission’s review of CPCNs for fossil fuel-powered electric generation facilities (i.e., fossil fuel-fired power plants) and should be enjoined from implementation during the Commission’s review of CPCNs for such facilities.

6. Additionally, the statutory limitations on the Commission’s authority to impose renewable energy development and procurement requirements on electric providers that exceed the level mandated by Wisconsin’s Renewable Portfolio Standard (“RPS”) (Wis. Stat. § 196.378(4m)(a) and Wis. Stat. § 196.025(1)(c)1.) violate Plaintiffs’ Article I § 1 constitutional rights to liberty

⁴ Here, and in the remainder of the Complaint, references to Wis. Stat. § 196.491(3)(d)3. and 4. refer only to the last sentence of those subdivisions. Wis. Stat. § 196.491(3)(d)3. (“In its consideration of environmental factors, the commission may not determine that the design and location or route is not in the public interest because of the impact of air pollution if the proposed facility will meet the requirements of ch. 285.”); Wis. Stat. § 196.491(3)(d)4. (“In its consideration of the impact on other environmental values, the commission may not determine that the proposed facility will have an undue adverse impact on these values because of the impact of air pollution if the proposed facility will meet the requirements of ch. 285.”).

(including their rights to health, safety, and bodily integrity) (Count I); to life (Count II); to a stable climate system (Count III); to access, enjoy, and use navigable waters and their beds (Count IV); and Plaintiffs' Article IX § 1 constitutional right to public trust resources free from substantial impairment (Count V). Plaintiffs allege Wis. Stat. § 196.378(4m)(a) and Wis. Stat. § 196.025(1)(c)1. are facially unconstitutional and should be enjoined from implementation in all circumstances.

7. These laws perpetuate an electricity sector in Wisconsin dominated by fossil fuels and constrain the Commission's ability to procure more electricity from renewable energy sources instead of fossil fuels. A declaration that the challenged laws violate Plaintiffs' constitutional rights, and an injunction barring the Commission from implementing them, would eliminate a legal barrier to reducing air pollution from Wisconsin's electricity sector, and would determine Defendants' legal authority and obligations to decarbonize Wisconsin's electricity sector.

8. Each of the fifteen Plaintiffs is presently experiencing significant injuries from Defendants' conduct that results in harmful air pollution and is exacerbating climate change, injuries that worsen with each additional ton of GHG emissions authorized by Defendants because of the laws challenged herein.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action pursuant to Article VII § 8 of Wisconsin's Constitution and Wis. Stat. § 753.03, which provide circuit courts with jurisdiction over all civil matters within the State.

10. This Court has jurisdiction to grant declaratory relief under Wisconsin's Uniform Declaratory Judgments Act ("UDJA"), Wis. Stat. § 806.04, as well as its general equitable powers.

Pursuant to the UDJA, this Court “shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.”

11. Venue is proper in this Court pursuant to Wis. Stat. § 801.50. The Commission and its Commissioners perform their work and have their principal place of business in Madison, Wisconsin. The Legislature is seated and does its work in Madison, Wisconsin.

PARTIES

I. Plaintiffs

12. **Kaarina Dunn** is seventeen years old, lives in Onalaska, Wisconsin, and has deep family roots in the Mississippi River Valley and the Driftless Region. Kaarina used to live in Vernon County, but she was forced to move after two “100-year rain events” in the past ten years caused flooding, landslides, and erosion that damaged Kaarina’s family’s property, and threatened her safety and home. In 2018, the road leading to her home and her driveway was washed out, blocking Kaarina’s access to her home for two days. Kaarina’s family incurred over \$5,000 in bills to repair their driveway. Then, in 2023, a massive boulder, dislodged by climate-driven freeze-thaw cycles, tumbled down the bluff above her house and into her backyard, toppling trees and raising new safety concerns. Feeling unsafe in their home, Kaarina and her family made the hard decision to move, but they could not find an affordable home in Vernon County that was not vulnerable to climate-induced flooding. They were ultimately forced to move to La Crosse County to find a place where they could safely live. Being displaced from her home and having to change schools was a very disruptive and stressful experience for Kaarina.

13. Fishing and swimming on the Mississippi River is an important family tradition for Kaarina, but floods now often block her access to the river. Summer floods routinely inundate her grandparents’ property, blocking access to the dock Kaarina uses for river access. The frequency

and magnitude of these floods are worse now than in the past. If Defendants' conduct continues, Kaarina's ability to recreate on the river will decline further as flooding in the Mississippi River Valley continues to increase in frequency and severity.

14. Kaarina often spends time in the summer working on her grandparents' walnut tree farm in Vernon County. However, extreme heat and increasingly common climate-fueled wildfire smoke makes working there unsafe. Kaarina has suffered from heat exhaustion while working on the farm. Extreme heat also drove Kaarina to quit her summer job teaching tennis. As temperatures continue to increase and wildfire smoke becomes more common due to Defendants' conduct, the harm to Kaarina's health will worsen and her ability to work and recreate outdoors will be further limited.

15. Since she was seven, Kaarina has been skiing with her family, and she now competes on her high school ski team. In recent years, Kaarina's ability to ski has been limited by warmer winter temperatures and less frequent snowfall due to climate change. Kaarina's competitive ski season has been shortened from twelve weeks to six to eight weeks. If Defendants' conduct continues unchecked, Kaarina's ability to ski and recreate in the winter will be further limited.

16. Kaarina is committed to doing everything she can to reduce the dangers posed by climate change in Wisconsin through practice and community education. Kaarina is the president of her local 4-H club, through which she won the Wisconsin KidWind Challenge, a hands-on competition where student teams build small-scale wind turbines and solar structure designs. Kaarina has been awarded three Bloomberg Philanthropies Climate Action Fund grants to reduce waste at youth symphony concerts, restore a section of eroded shoreline in La Crosse, and plan and run a camp to teach youth how to live sustainably in the Driftless region.

17. **Caroline Elfstrom** is an eight-year-old resident of Beloit, Wisconsin. Caroline is harmed by poor air quality due to air pollution from gas-fired power plants located near her home in Beloit. Caroline attends Todd Elementary School, which has one of the highest asthma rates in the Beloit school district. As Caroline continues to live in the Beloit area, and the Commission continues to approve fossil fuel-fired power plants, the risk that she will develop asthma or experience other air pollution-related injuries increases. Caroline also suffers from seasonal allergies, which are exacerbated by climate change and Defendants' conduct.

18. Caroline is increasingly unable to go outside and play during the summer because extreme heat and humidity make it hard for her to breathe and are dangerous for her health. Smoke from wildfires has also forced Caroline to avoid playing outside. She feels trapped when forced indoors by extreme heat and smoke. School events have also been cancelled due to wildfire smoke. Climate-induced heat and smoke now regularly deprive Caroline of the ability to engage in outdoor activities that are important for her health, happiness, and education. Lyme-disease carrying ticks, which are becoming more prevalent in Wisconsin due to rising temperatures, are also a growing danger to Caroline's health and safety, and she is now checked for ticks anytime she has been playing outside.

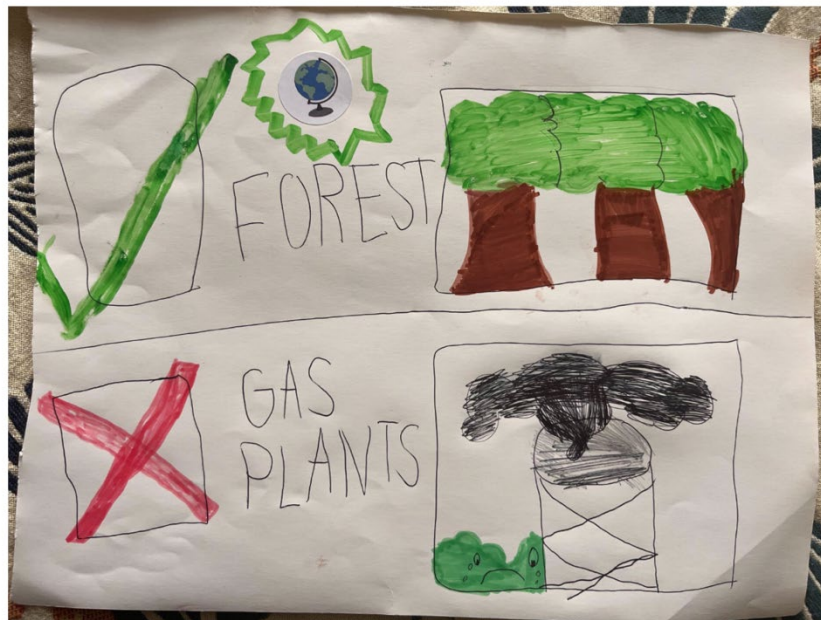
19. Caroline frequently swims and kayaks with her family on Wisconsin's public trust waters, including Lake Chetek and Lake Warner. However, both lakes have increasingly experienced harmful algal blooms due to climate change that prevent Caroline from recreating on the lakes. With ongoing air pollution authorized by the Commission, algal blooms will get worse, further limiting Caroline's access to and use of Wisconsin's lakes.

20. Caroline has been attending climate events with her friends and family since she was two years old and organized her own educational climate event at age four. Caroline has submitted

comments in several Commission proceedings opposing the expansion of fossil fuel infrastructure, including the expansion of the Riverside Energy Plant in Beloit and the construction of a gas-fired power plant in Oak Creek. Her comment, expressed through an original drawing, inspired other youth in the Oak Creek area to submit comments opposing the construction of the Oak Creek gas plant.

21.

For: Wisconsin Public Service Commission
Art By: Caroline (7)
Resident of Beloit, WI



22. **Tyler McClure** age thirteen, **Miahlin Behnke (Waazakone)** age twelve, **Athena Behnke (Mukademigwan)** age ten, and **Jayla Manthe (Gookoonz)**⁵ age eight, are siblings who live in Milwaukee and attend the Indian Community School of Milwaukee located in Franklin. They are Anishinaabeg youth and members of the Indigenous community in Milwaukee (MinoAki). They have the following tribal affiliations:

⁵ The youth's tribal name is in parenthesis and is used hereafter.

- a. Tyler: Mescalero Apache, Confederated Salish and Kootenai Tribes of the Flathead Reservation, and Laguna Pueblo;
- b. Waazakone, Mukademigwan, and Gookoonz: Grand River Band of Ottawa Indians, Little River Band of Ottawa Indian, Grand Traverse Band of Ottawa and Chippewa Indians, Little Traverse Bay Band of Odawa Indians, and Lac du Flambeau Band of Lake Superior Chippewa Indians.

Tyler, Waazakone, Mukademigwan, and Gookoonz frequently travel to the Lac du Flambeau Reservation and to the Ceded Territories in northern Wisconsin to fish, participate in cultural ceremonies, and partake in other aspects of tribal life. Defendants' conduct threatens many culturally significant activities, foods, and ways of life for Tyler, Waazakone, Mukademigwan, and Gookoonz.

23. Access to traditional foods of the Anishinaabeg diet, including wild rice, fish, and maple sugar, is essential to Tyler, Waazakone, Mukademigwan, and Gookoonz's connection to their tribes, cultural heritage and traditions, and to their health and happiness. All four children harvest manoomin (wild rice) and are working to re-establish wild rice in waters in the Milwaukee area. In the Anishinaabeg migration story, the Creator told Anishinaabe people to go to the place where the food grows on water and so Tyler, Waazakone, Mukademigwan, and Gookoonz's ancestors migrated to the Great Lakes where they found wild rice. Wild rice is a culturally and spiritually significant staple food for Anishinaabeg and has been for thousands of years. Rapidly changing water levels in lakes, extreme rain events, and warming waters, all due to climate change, are harming wild rice beds, impairing the ability of Tyler, Waazakone, Mukademigwan, and Gookoonz to harvest and eat wild rice.

24. Tyler, Waazakone, Mukademigwan, and Gookoonz harvest maple sugar (Anishinaabe

zhiiwaagamizigan) by tapping sugar maple trees (ziinzibaakwadwaatig) as a family, as their tribes have done for generations. Maple sugar is a traditional sweetener used instead of processed non-Indigenous sugars. In recent years, maple tapping has been extremely erratic, and the season is shorter because of early thaws and wildly fluctuating temperature changes in late winter and spring. Last year, the maple sap did not flow in the trees Tyler, Waazakone, Mukademigwan, and Gookoonz tapped, depriving them of a culturally important food source.

25. Warming water temperatures harm Tyler, Waazakone, Mukademigwan, and Gookoonz's ability to harvest fish such as walleye, muskellunge, and sturgeon depriving them of a traditional source of protein. In the spring, they spear fish for walleye in Wisconsin's public trust waters. Walleye is a cold-water fish and an important food for many Anishinaabe people. Warming water temperatures due to climate change are causing declining walleye populations across the Ceded Territories which limits Tyler, Waazakone, Mukademigwan, and Gookoonz's ability to catch and eat these fish. Sturgeon is another culturally important fish and was traditionally a staple fish in the Anishinaabe diet. Warming water temperatures due to climate change are depleting sturgeon populations. Because of the low populations, Tyler, Waazakone, Mukademigwan, and Gookoonz can only harvest sturgeon for ceremonial purposes, not as a food source. If Defendants' conduct continues unchecked, the opportunities for Tyler, Waazakone, Mukademigwan, and Gookoonz to harvest walleye and sturgeon will continue to decline.

26. Tyler, Waazakone, Mukademigwan, and Gookoonz learned to spear muskellunge through the ice from their father using traditional Anishinaabeg fishing methods. However, in recent years, ice cover has not formed until late in the winter, limiting the ice fishing season and in turn limiting their access to foods they rely on. This past winter, Tyler, Waazakone, Mukademigwan, and Gookoonz were not able to ice fish until late January.

27. Climate change is also limiting the opportunities for Tyler, Waazakone, Mukademigwan, and Gookoonz to sled, ski, and play a traditional Anishinaabeg winter game called Gooniikaa-Ginebig Ataadiiwin (Snow Snake) where wooden poles are thrown down a grooved channel in the ice or snow. Anishinaabe people have been holding community gatherings to play Snow Snake in March since well before Wisconsin's statehood. In recent winters, Tyler, Waazakone, Mukademigwan, and Gookoonz could not play Snow Snake because there was not enough snow on the ground. Missing the opportunity to play Snow Snake deprives them of a chance to connect with their community, family, and cultural heritage.

28. In the summer, Tyler, Waazakone, Mukademigwan, and Gookoonz spend most of their time swimming, kayaking, canoeing, surfing, and fishing on Lake Michigan and other nearby lakes. They have been prevented from swimming in Lake Michigan due to harmful algal blooms, such as one that occurred on Lake Michigan while they were attending Racine Zoo Summer Camp. Low water levels on the Milwaukee River due to the increasing occurrence of drought has also prevented them from canoeing or kayaking on the river at times. Tyler, Waazakone, Mukademigwan, and Gookoonz's use and enjoyment of Wisconsin's public trust waters will be further infringed if Defendants' conduct continues.

29. Tyler, Waazakone, Mukademigwan, and Gookoonz are harmed by the increasing prevalence of ticks in Wisconsin. In the past, they only worried about ticks when spending time in northern Wisconsin, but recently they have started checking for ticks whenever they are outside. In 2023, Waazakone contracted Lyme disease from a tick bite. For two years, Waazakone experienced swollen joints and could barely walk. Ticks continue to jeopardize Waazakone and her siblings' safety and put them at risk of contracting Lyme disease or other vector-borne diseases.

30. Tyler, Waazakone, Mukademigwan, and Gookoonz all have seasonal allergies which are

worsening due to climate change and Defendants' conduct.

31. Defendants' conduct harms the mental health of Tyler, Waazakone, Mukademigwan, and Gookoonz because they know their ability to access traditional food sources and participate in culturally-important ceremonies will be further limited as climate change worsens, such that they could be unable to carry on traditional ways of life in the future. The prospect of such losses is devastating.

32. **Lucille Wright (Lucy)** is a seventeen-year-old resident of Wausau, Wisconsin. Cross-country skiing provides a healthy form of recreation and a source of community for Lucy, who has been skiing since she could walk. Her family has been cross-country skiing for generations and carrying on her family tradition is important for Lucy's way of life. Lucy's ability to ski and to stay connected to her family and community have been severely limited by warming winter temperatures and declining winter snowfall due to climate change. Lucy grew up skiing on the thirty-kilometer trail network in Nine Mile County Forest Recreation area with her family and friends and teaching younger athletes how to ski, but she has almost entirely lost her ability to ski there due to lack of snow in recent years.

33. Lucy competes in Nordic skiing as part of a local club team, but the lack of snow has severely shortened her team's ski season and forced Lucy's team to drive two hours to access only five kilometers of ski trails with artificial snow for ski practice. Lucy and her team have been forced to substantially extend their "dryland" season, having to run and roller-ski to prepare for ski season, into the winter months due to the lack of snow. Lucy's races are held more frequently on courses with a thin cover of artificial snow which melts as hundreds of racers ski the track to expose rocks and dirt. The exposed ground creates tripping hazards that can create a pileup of young ski racers, making her ski races more dangerous.

34. Lucy has been competing in races at the American Birkebeiner (“Birkie”), a ski race festival highlighted by a fifty-five kilometer ski race from Cable to Hayward, Wisconsin, since she was in fifth grade. Lack of snow and unseasonably warm weather due to climate change has forced the Birkie to rely on artificial snowmaking for the past two years and modify the course in 2017 and 2024, degrading Lucy’s experience participating in the race. If Defendants’ conduct continues, Lucy’s ability to participate in this culturally significant race and connect with the intergenerational Nordic ski community will be further limited.

35. During the summers, Lucy is increasingly forced to stay inside and has had summer ski practices cancelled due to wildfire smoke. She also enjoys swimming in Wisconsin’s lakes but has been prevented from swimming due to harmful algal blooms.

36. Defendants’ conduct is actively undermining Lucy’s ability to cross-country ski, train, and swim outdoors, activities that are central to her way of life, her health, and her happiness. If Defendants’ conduct continues unchecked, Lucy’s ability to engage in outdoor recreation activities will further decline.

37. **Madeleine Bohn** is a seventeen-year-old resident of Madison, Wisconsin. In the summer, Madeleine enjoys paddleboarding and swimming, but harmful algal blooms caused by warmer water temperatures and intense rain events have prevented her from swimming and paddleboarding on Wisconsin’s public trust waters, including Lake Wingra. Madeleine has asthma, and rising temperatures and poor air quality due to wildfire smoke increasingly force Madeleine to stay inside to avoid asthma flare-ups, preventing her from biking, hiking, and running outdoors. In 2023, Madeleine’s summer gym class was cancelled due to dangerous wildfire smoke. Madeleine also suffers from pollen allergies, which further force her to limit time spent outside. Madeleine’s allergy symptoms—sneezing, runny nose, and watery eyes—have worsened in recent years and

make it difficult for her to focus in school. Madeleine's health, safety, and ability to recreate outside will be harmed further without action by Defendants to reduce air pollution from fossil fuel-fired power plants.

38. Since she was young, it has been a family tradition for Madeleine to ice skate in the winter on the neighborhood outdoor ice rinks and lakes in Madison. Because winters are warmer, ice is not forming or melting quicker, resulting in Madeleine only being able to ice skate once or twice a winter in recent years.

39. Madeleine's school has increasingly cancelled classes due to extreme weather events like extreme cold or icy conditions, limiting her access to important educational opportunities. Extreme rain events due to climate change have also increasingly flooded Madeleine's basement, damaging her home and creating a mess that her family must clean up, which causes a financial and time burden on her family.

40. Madeleine experiences climate anxiety and fears for her own health and safety, and that of her community and future generations. She has missed school due to her mental health injuries and cannot participate in school sports.

41. Madeleine is committed to doing everything she can to minimize the dangers posed by climate change. She is President of her school's Green Club, a leader of the Madison chapter of the Citizens' Climate Lobby Youth Action Team, an organizer and moderator of the Dane County Youth Environmental Conference, and minimizes her own climate footprint.

42. **Isabella Black (Bella)** is a sixteen-year-old resident of Hazelhurst, Wisconsin. Due to the sharp decline in snowfall in Minocqua, Bella's family lost approximately \$80,000 in the past two winters because of cancelled reservations at her family's lakeside resort, which is her family's primary source of income. The resort depends on year-round tourism to the Minocqua area for

cross-country skiing, snowshoeing, and snowmobiling in the winter, and recreating on the lakes in the summer. There has been so little snow that the ski and snowmobile trails at Minocqua Winter Park did not open for the 2023-2024 winter season and rarely opened for the 2024-2025 winter season.

43. As a result of more extreme and destructive weather events, Bella's family spent approximately \$35,000 to install generators to power their family home and business during power outages. In the summer months, increasing heat and the lack of air conditioning at Bella's family resort now deters guests. Bella's family cannot afford the \$5,000 investment per air conditioner unit after losing so much revenue and spending money to install generators. Bella is harmed by her family's loss of revenue as she relies on her family for financial support. If Defendants' conduct continues unchecked, Bella's family will continue to experience financial losses from reduced tourism, directly harming Bella.

44. In summer of 2024, Bella contracted Lyme disease from a tick bite. Bella experienced intense nausea due to her Lyme disease, which caused her to lose twenty pounds over the course of a month. Her nausea has persisted in the past year, and she also developed alpha-gal syndrome, a red meat allergy, from the tick bite. Ticks continue to jeopardize Bella's safety and put her at risk of contracting other vector-borne diseases.

45. Bella cross-country skis to stay active and spend time with her family, but extremely low snowfall has caused Bella to lose this avenue for recreation and family bonding, forcing her to stay inside more. Her ability to ski in the future will be further limited if Defendants' conduct continues.

46. Bella's health suffers from spring pollen allergies, which are worsening due to Defendants' conduct to exacerbate climate change. She often wakes up in the morning with her eyes swollen and crusted shut and she has trouble breathing throughout the day.

47. Bella experiences climate anxiety because she knows that however bad the injuries she has already suffered are, they will get worse if the Commission keeps approving new fossil fuel-fired power plants. Bella has a passion for environmental issues and has participated in school environmental clubs since elementary school.

48. **Ted Schultz-Becker** is fifteen years old and lives in Athens, Wisconsin. Ted works on both of his parents' organic vegetable farms, which are his family's primary source of income. Ted is the fourth generation to live and work on his father's family farm.

49. Increasingly inconsistent rainfall and more frequent extreme weather events, including heavy rainfall, hail, wind, and drought events have made growing vegetables more challenging for Ted and his family. Intermittent drought conditions have forced Ted and his family to rely more heavily on irrigation on the farms. Ted's mother spent approximately \$10,000 to drill and install a new well to ensure adequate water for irrigation. There are also increased labor costs and efforts incurred from the inconsistent rainfall because moving irrigation equipment around the farm creates hours of extra labor each day on the farms. Extreme rain events, hailstorms, high wind events, and drought increasingly damage crops on both of Ted's parents' farms resulting in lost revenue.

50. Ted is harmed by increasing operating costs and lost revenue of his parents' farms, as he relies on his parents for economic support. If Defendants' conduct continues unchecked, economic losses to Ted's family will continue to worsen as rainfall becomes increasingly unpredictable, extreme weather events become more frequent and severe, and drought conditions worsen, exacerbating Ted's financial insecurities. Ted wants to pursue vegetable farming for his own livelihood, but climate change is undermining his family's way of life and making it financially riskier.

51. Farm work must get done regardless of air quality, and Ted increasingly finds himself working on the farm when the air is thick with wildfire smoke, harming his health. Additionally, Ted's ability to compete in football and track and field at school has been limited due to extreme heat and poor air quality from climate change. Cross-country practices have been cancelled because of smoke, and football practices have moved inside instead of playing outdoors during extreme heat. Rising temperatures and poor air quality are depriving Ted of opportunities for outdoor recreation that are important for his health, happiness, and well-being.

52. Since he was very young, Ted has gone canoeing, swimming, and fishing for trout on the Rib River, near his home, and Baldwin Creek, which runs through his farm. Increasing water temperatures on Baldwin Creek and the Rib River have led to a decline in trout runs, limiting Ted's ability to fish. Low water levels on the Rib River, which are increasingly common due to climate-induced drought conditions, have also prevented Ted from canoeing on the river and accessing his normal fishing spots. If Defendants' conduct continues, Ted's ability to fish and recreate on Wisconsin's public trust waterways will be further impaired.

53. The tick season is longer than it used to be and Ted often picks ticks off himself after being outdoors. Given the rising prevalence of Lyme-disease carrying ticks, Ted's health and safety is at risk from increasing tick populations.

54. **Charles Breitenmoser (Charlie)** is seventeen years old and lives in Merrill, Wisconsin. Charlie has been working on his family's 460-cow dairy farm, which is his family's main source of income, since he was eight years old. Increasingly extreme precipitation events and inconsistent rainfall have made growing cattle feed more challenging for Charlie and his family. Unpredictable rainfall has shortened the suitable weather window for planting while increasingly common extreme rain events have required Charlie and his family to invest time and money in planting

cover crops and vegetative buffers to prevent topsoil erosion. Extreme rainfall has made some plots too wet to grow feed or decreased the crude protein content in the feed, forcing Charlie's family to purchase additional feed and protein to properly nourish their cows, something they did not have to do until recently.

55. During winter months, all the heifers on the farm used to stay clean and warm outside laying on the frozen ground through the winter. In recent years, with warming winter temperatures, the ground has started to thaw during the winter causing it to become muddy and unsuitable for the cows to lay on. Because of this, Charlie's family had to spend hundreds of thousands of dollars building an additional barn to house their heifers in the winter. The increased costs of running the farm, and lost revenue, directly harm Charlie because he depends on his family for economic support. Charlie's economic injuries will worsen in the coming years if Defendants' conduct continues.

56. Charlie has been attending Wisconsin Farmers Union Kamp Kenwood since he was eight years old where he enjoys swimming in Lake Wissota. In recent years, Charlie has not been able to swim in Lake Wissota due to the increase of blue-green algae. Charlie's ability to access, enjoy, and use Wisconsin's public trust waters will be further impaired if Defendants' conduct continues.

57. Charlie serves as a youth leader in the farming community as a member of the Wisconsin Farmers Union Senior Youth Advisory Council ("SYAC"). Charlie's family uses solar panels on their farm for electricity, grows their cows' feed, and takes steps to reduce methane emissions from their cattle.

58. **Elia Masrour** is an eleven-year-old resident of Madison, Wisconsin. In the summer, Elia loves swimming and playing in Wisconsin's public trust waters, including Lakes Mendota, Monona, and Wingra in the Madison area. However, harmful algal blooms have prevented Elia

from swimming in or recreating near Wisconsin's lakes and enjoying their scenic beauty. Elia suffers from migraines and has had to miss multiple days of summer camp because increasingly common extreme heat exacerbates his risk of suffering a migraine. These headaches cause Elia extreme pain and force him to rest and recover at home. Elia has missed outdoor recess and been forced to stay inside during the summer many times due to unhealthy air quality from wildfire smoke. If Defendants' conduct continues unchecked, Elia's ability to recreate and exercise outside and swim in Wisconsin's lakes will be further limited and his risk of migraines will increase.

59. Elia loves recreating in the snow and ice skating with friends and family but his opportunities to do so are declining due to warming winter temperatures and reduced snowpack, which cause ice to form later and melt lakes, ponds, and neighborhood ice rinks earlier. As a result of less snow and ice in the winter, Elia is deprived of an outdoor recreation opportunity important to his health and happiness. Elia's ability to recreate with family and friends in the snow and to ice skate will be further limited without reductions in air pollution from fossil fuel-fired power plants.

60. Elia's family has invested over \$10,000 to protect their house from extreme precipitation events and increased flooding dangers due to climate change. Elia is dependent on his family for financial support and his parents' increased cost of housing directly impacts Elia. The costs to protect his home will increase if Defendants' conduct continues.

61. Unseasonably warm winter temperatures, extreme rainstorms, and tornado warnings cause Elia to feel distressed and anxious. Heavy rainstorms have woken Elia up in the middle of the night, disrupting his sleep and making him anxious about the future.

62. **Alexander Castillo (Alex)** is a seventeen-year-old resident of Middleton, Wisconsin. Alex plays competitive soccer on school and club teams, and trains throughout the year. Alex is increasingly forced to train and practice in extreme heat and air polluted with wildfire smoke. Air

pollution from the West Campus Co-Generation Facility, a natural gas plant near Alex's home, also pollutes the air Alex breathes. Playing soccer through extreme heat causes Alex to experience symptoms of heat exhaustion like extreme fatigue and headaches. Playing soccer and training in extreme heat and wildfire smoke jeopardizes Alex's health and puts him at risk of heat exhaustion, heat stroke, and respiratory illness. Such risks to Alex's health increase with each additional increment of heating resulting from ongoing air pollution authorized by Defendants' conduct.

63. Alex enjoys swimming, boating, and spending time with friends and family on Lake Mendota in the summer. The increasing occurrence of harmful algal blooms on Lake Mendota, which are worsening due to Defendants' conduct, has prevented Alex from swimming and enjoying the aesthetic beauty of the lake. Alex's ability to swim, boat, and enjoy the beauty of Lake Mendota and Wisconsin's public trust waters will be further limited without action by Defendants to reduce air pollution from fossil fuel-fired power plants.

64. In the winter, Alex downhill skis at Devil's Head and Tyrol Basin and ice skates on the lakes in the Madison area. In recent years, Alex has had fewer opportunities to ski and ice skate because there is significantly less snowfall, and lake ice forms later and melts earlier due to climate change. His ability to ski and ice skate in the future will be limited further if Defendants' conduct continues, depriving Alex of activities important to his health, happiness, and well-being.

65. Extreme weather events have damaged Alex's home. A severe hailstorm caused about \$20,000 of damage to the roof of Alex's family home, approximately \$5,000 of which Alex's family had to pay out of pocket. If Defendants' conduct continues unchecked, extreme weather events will continue to pose a threat to Alex's family home and property and cause more financial losses.

66. **Simon Besonen** is a seventeen-year-old resident of Viroqua, Wisconsin. Simon has had asthma since he was a child. In summer 2023, unhealthy air quality from climate-induced wildfire smoke exacerbated Simon's asthma symptoms forcing him to limit his time spent outdoors and to wear a face mask when he did go outside in the smoke. Simon and his family also utilized air purifiers in the house to protect him from the smoke. As the air quality in Wisconsin gets even worse as a result of fossil fuel air pollution authorized by Defendants, Simon will continue to have to limit time outdoors and purchase face masks to protect his health from air pollution.

67. Simon's health and well-being have been harmed by the increasing summer heat. At his dad's house, the only source of air conditioning is a window unit in the living room. Temperatures regularly rise high enough that Simon is forced to spend most of his time near the air conditioning. At night, Simon has had a hard time sleeping because of how hot it is and cannot sleep without the fan he added to his bedroom. During the day, heat often causes Simon to limit his time recreating outside.

68. Simon enjoys cold plunging and spending time outside in the snow in the winter. Less winter snowfall and warmer winter days have decreased Simon's opportunities to recreate in the snow. Simon is troubled by declining snowfall and rapidly fluctuating winter weather, which he recognizes as a sign of how climate change impacts will continue to worsen in the future if Defendants continue to approve permits for new fossil fuel-fired power plants.

69. Simon has been engaged in climate activities since he was a child, including participating in a cross-country climate march when he was four years old. In fourth grade, Simon participated in the youth-led Fridays for Future climate rallies, to raise awareness about the dangers of climate change. Simon is determined to hold his government accountable for its actions that increase fossil fuel air pollution and make climate change worse.

70. **Auden Gresch (Indy)** is a fifteen-year-old resident of Madison, Wisconsin. Indy suffers from asthma which has been exacerbated by wildfire smoke and air pollution from fossil fuel-fired power plants. Poor air quality aggravates Indy's asthma symptoms making everyday activities more difficult. During the wildfires throughout the summer of 2025, the Air Quality Index in Madison remained in a range unhealthy for those with asthma for weeks at a time, and Indy was forced to stay inside. As a result, Indy missed out on recreational activities and his physical education class, which are important for his health and happiness. Indy experiences wheezing and difficulty breathing whenever he visits his grandmother in Wausau because of air pollution from the Weston coal-fired power plant. If Defendants' conduct continues unchecked, Indy's health and safety will be further harmed.

71. In the winter, Indy enjoys skiing and snowboarding, an activity he has been doing with his family since he was five years old. However, the lack of snow reduces Indy's ability to engage in these winter recreation activities. Indy's ability to ski and snowboard, which are important family activities and part of Indy's overall health and happiness, will be further limited without reductions in air pollution from Defendants.

72. In the summers, Indy and his family regularly swim, canoe, and kayak at Pickerel Lake. In recent years, Indy has noticed that the Eurasian watermilfoil, which spreads rapidly in the warming lake, has grown so out of control that his ability to swim and recreate in the lake has become limited. Indy's family owns a family cottage near Pickerel Lake, which they rent out in the winter. Recently however, there has been a dramatic decrease in their rental income due to the lack of winter snowpack, which is the primary draw for winter visitors. The cottage does not have air conditioning because it was not needed in the past, but now, the extreme heat makes it uncomfortably hot for Indy when visiting the cabin.

II. Defendants

73. **Defendant Public Service Commission of Wisconsin** is an independent agency of the State of Wisconsin. The Commission supervises and regulates every public utility in the State of Wisconsin and has jurisdiction to do all things necessary and convenient to its jurisdiction. Public utilities receive indeterminate permits from the Commission, granting them the authority to own, operate, manage, or control power plants and equipment for the production, transmission, delivery, or furnishing of public utility services in Wisconsin. The Commission's grant of an indeterminate permit guarantees the public utility monopoly status within its service territory.

74. In exercising its regulatory authority, the Commission determines whether Wisconsin's electricity comes from fossil fuel sources or renewable energy sources.

75. The Commission has a duty to consider applications and make decisions about whether to issue CPCNs for the construction of electric generating facilities under the Plant Siting Law (Wis. Stat. § 196.491).

76. No person may build new large electric generating facilities⁶ in Wisconsin without a CPCN from the Commission.

77. The Commission has a duty to implement and monitor electric service providers' compliance with Wisconsin's RPS (Wis. Stat. § 196.378 and Wis. Stat. § 196.025).

78. **Defendants Summer Strand, Kristy Nieto, and Marcus Hawkins** are the three Public Service Commissioners. Commissioners Strand, Nieto, and Hawkins decide cases brought before the Commission, and decide whether to issue CPCNs. Commissioners Strand, Nieto, and Hawkins are each sued in their official capacity.

⁶ "Large electric generating facility" means electric generating equipment and associated facilities designed for nominal operation at a capacity of 100 megawatts or more. Wis. Stat. § 196.491(1)(g).

79. **Defendant Wisconsin State Legislature** is a sovereign trustee over the public trust resources within its domain, including all navigable waters. The Legislature is charged with preserving, promoting, and protecting the public's rights in navigable waters for the benefit of present and future Wisconsinites. The Legislature is empowered to enact laws to protect public trust resources. The Legislature cannot act in a manner that infringes upon Plaintiffs' public trust rights under Article IX § 1 of the Wisconsin State Constitution. The Legislature is only a defendant for the public trust claim asserted under Article IX § 1 (Count V).

STATEMENT OF FACTS

I. Wisconsin's Legislative and Executive Branches Have Decided to Decarbonize the State's Electricity Sector.

80. For decades, the State of Wisconsin has known that burning fossil fuels causes air pollution, including GHG emissions, resulting in various harms to the public interest, including adverse environmental effects. The State of Wisconsin has known that a reduction in, and eventual elimination of, GHG emissions is necessary and would minimize the dangers.

81. Over thirty years ago, in 1993, the Wisconsin Legislature enacted a State Energy Policy establishing that all new electricity generation in the State be renewable energy resources, to the extent cost effective and technically feasible. The State Energy Policy also orders agencies to "rely to the greatest extent feasible on energy efficiency improvements and renewable energy resources, if [they] are cost effective and technically feasible and do not have unacceptable environmental impacts" in designing all new and replacement energy projects.⁷ The bill was motivated in part by

⁷ Wis. Stat. § 1.12(5)(a).

a need to “reduce the environmental effects of energy systems powered by carbon-based . . . fuels.”⁸

82. The 1993 State Energy Policy includes an energy priorities list. Fossil fuels are the last priority on the energy priorities list, below energy conservation and efficiency and renewable energy resources.

83. In 1999, Wisconsin adopted its first RPS. Wisconsin amended its RPS in 2005 to set a statewide goal that 10% of all electric energy consumed in the State come from renewable energy sources by 2015. Wisconsin met the statewide goal in 2013.

84. In April 2007, Governor Jim Doyle created the Governor’s Task Force on Global Warming through Executive Order 191. In 2008, the Task Force made various policy recommendations to decarbonize Wisconsin’s electricity sector and encourage renewable energy development.

85. In August 2019, Governor Evers signed Executive Order 38, which created the Office of Sustainability and Clean Energy, and charged the Office, in partnership with state agencies and utilities, with ensuring that all electricity consumed within the State of Wisconsin be 100% carbon free by 2050. In October 2019, Governor Evers signed Executive Order 52, establishing the Governor’s Task Force on Climate Change.

86. In 2020, the State of Wisconsin published the Governor’s Task Force on Climate Change Report, which found that “Wisconsin cannot take meaningful climate action without bold action to reduce the use of fossil fuels and pivot to renewable energy.”

⁸ 1993 Wis. Act 414, Prefatory Note, <https://docs.legis.wisconsin.gov/1993/related/acts/414>.

87. The Office of Sustainability and Clean Energy released Wisconsin's first Clean Energy Plan in April 2022 and declared its objectives to put Wisconsin on a path toward a 100% carbon-free electric system by 2050 to protect human and environmental health by reducing air pollution.⁹

II. Renewable Energy Sources Are Technically and Economically Feasible to Meet Wisconsin's Current and Future Energy Needs, but the Challenged Laws Are a Barrier to Decarbonization.

88. It is technically and economically feasible for Wisconsin to meet its target of achieving 100% carbon free electricity no later than 2050. Wisconsin's current and future needs for adequate and reliable electricity—indeed, *all* its energy needs (i.e., electricity, transportation, residential, industry, and commercial sectors)—can be met with 100% renewable energy sources—primarily wind and solar—as soon as 2035.¹⁰

89. No additional fossil fuel infrastructure, including fossil fuel-fired generating infrastructure, is necessary to meet Wisconsin's current or future electricity needs.

90. Wind and solar are the cheapest forms of electricity today. Battery storage is also cost-effective and, when used with renewable energy, effectively balances supply and demand and improves overall grid stability.

91. Transitioning to 100% renewable energy would result in over \$300 in annual energy costs savings per Wisconsin resident, avoid \$7.11 billion in health costs per year, and create nearly 85,000 jobs.¹¹

⁹ Wisconsin Office of Sustainability and Clean Energy, *Clean Energy Plan 7* (Apr. 2022) <https://osce.wi.gov/Documents/SOW-CleanEnergyPlan2022.pdf>.

¹⁰ The Solutions Project, *100% Wisconsin*, <https://thesolutionsproject.org/what-we-do/inspiring-action/why-clean-energy/-/map/states/location/WI> (last visited Aug. 15, 2025); Mark Jacobson, *Zero Air Pollution and Zero Carbon From All Energy Without Blackouts at Low Cost in Wisconsin* (Dec. 7, 2021), <https://web.stanford.edu/group/efmh/jacobson/Articles/I/21-USStates-PDFs/21-WWS-Wisconsin.pdf>.

¹¹ *Id.*

92. Achieving a transition to 100% renewable electricity in Wisconsin by no later than 2050, and as soon as 2035, is cost-effective, technically feasible, and consistent with protecting Plaintiffs from the most catastrophic and irreversible climate impacts.

III. The Challenged Laws Operate as an Unconstitutional Barrier to the Decarbonization of Wisconsin's Electricity Sector and a Violation of Plaintiffs' Constitutional Rights.

A. Plant Siting Law – Wis. Stat. § 196.491(3)(d)3. and 4.

93. The Commission has a duty to review all applications for CPCNs to construct new large electric generating facilities in Wisconsin and only approves such applications when certain statutory criteria are met. No person may commence the construction of a new large electric generating facility (“proposed facility”) without a CPCN from the Commission.

94. The Commission is forbidden from considering air pollution, including the GHGs that drive climate change, in its evaluation of two criteria that must be fulfilled for the Commission to approve an application for a CPCN.

95. First, before issuing a CPCN, the Commission must determine the proposed facility’s “design and location or route is in the public interest considering alternative sources of supply, alternative locations or routes, individual hardships, engineering, economic, safety, reliability, and environmental factors.” Wis. Stat. § 196.491(3)(d)3. The Commission is the *only* agency that makes this substantive public interest finding. In making its public interest determination, the Commission “may not determine that the design and location or route is not in the public interest because of the impact of air pollution if the proposed facility will meet the requirements of ch. 285.” Wis. Stat. § 196.491(3)(d)3.

96. Second, before issuing a CPCN, the Commission must determine that “[t]he proposed facility will not have undue adverse impact on other environmental values such as, but not limited

to, ecological balance, public health and welfare, historic sites, geological formations, the aesthetics of land and water and recreational use.” Wis. Stat. § 196.491(3)(d)4. The Commission is the *only* agency that makes this substantive determination of undue adverse environmental impact. However, “[i]n its consideration of the impact on other environmental values, the commission may not determine that the proposed facility will have an undue adverse impact on these values because of the impact of air pollution if the proposed facility will meet the requirements of ch. 285.” Wis. Stat. § 196.491(3)(d)4.

97. Chapter 285 charges Wisconsin’s Department of Natural Resources (“DNR”) with conducting various environmental reviews and issuing air pollution control permits for proposed power plants. However, DNR *does not* make findings about whether a proposed facility’s design and location are in the “public interest” or will have an “undue adverse impact on other environmental values,” as the Commission is required to do. When issuing air pollution permits, chapter 285 limits DNR’s consideration of GHG emissions to the extent the federal Clean Air Act requires, which is extremely limited. The DNR does not deny air pollution permits on the basis of a project’s GHG emissions.

98. Under the Plant Siting Law, Wis. Stat. § 196.491, the Commission is *required* to deny an application for a CPCN if issuing the CPCN is not in the “public interest” or would have an “undue adverse impact on other environmental values,” regardless of whether DNR has issued any permits for the proposed project. However, Wis. Stat. § 196.491(3)(d)3. and 4. *single out air pollution* as distinct from all other environmental impacts that are subject to permitting decisions made by DNR and *prohibit* the Commission from denying a CPCN to a proposed fossil fuel-fired power plant because of concerns related to air pollution, including GHG emissions.

99. Even if the Commission determines that air pollution from a proposed facility would render the project contrary to the “public interest,” cause an “undue adverse impact on other environmental values,” or harm “public health and welfare” the Commission is prohibited from denying a CPCN application on this basis. Commissioner Strand has acknowledged that the Commission is prohibited from denying new electricity generation projects over air pollution concerns.

100. The Governor’s Task Force on Climate Change has stated that because of Wis. Stat. § 196.491(3)(d)3., the Commission does not consider GHG emissions, or the ability of utilities to meet their 2030 and 2050 GHG emission reduction goals when evaluating proposed fossil fuel-fired power plants.

101. Declaring Wis. Stat. § 196.491(3)(d)3. and 4. unconstitutional would remove a barrier to the Commission’s ability to deny a fossil fuel-fired power plant’s application for a CPCN on the basis that its design or location is not in the “public interest” because of its air pollution, including GHG emissions. It would also remove a barrier to the Commission’s ability to deny a fossil fuel-fired power plant’s application for a CPCN on the basis that the proposed facility’s air pollution will have an “undue adverse impact on other environmental values,” including impacts to “ecological balance, public health and welfare.”

102. The Commission knows that permitting fossil fuel-fired power plants is harmful to the “public interest,” including youth Plaintiffs, has an “undue adverse impact on other environmental values,” including “ecological balance, public health and welfare,” and is contrary to the State’s commitment to decarbonize the electricity sector no later than 2050. Therefore, upon information and belief, the effect of declaring Wis. Stat. § 196.491(3)(d)3. and 4. unconstitutional is that the

Commission would deny CPCNs for fossil fuel-fired power plants in favor of renewable energy resources.

103. The denial of CPCNs for fossil fuel-fired power plants would reduce air pollution from fossil fuel-fired power plants, thereby alleviating Plaintiffs' current climate and air pollution-related injuries, and minimizing their risk of future injuries.

B. Renewable Portfolio Standard – Wis. Stat. § 196.378(4m)(a) and Wis. Stat. § 196.025(1)(c)1.

104. Wisconsin's RPS, as amended in 2005, set a statewide goal that 10% of all electricity consumed in the State come from renewable energy sources by 2015.

105. The RPS also established requirements for electric providers to drive their development and procurement of renewable energy sources, as necessary to meet the statewide goal.

106. Two related laws prevent the Commission from requiring electric providers to build or purchase electricity from renewable energy sources beyond what is required to meet the statewide goal of 10% renewable electricity. These laws cap how much renewable energy the Commission can require electric providers to build or purchase, thereby constraining the Commission's ability to decarbonize the electricity sector.

107. Pursuant to Wis. Stat. § 196.378(4m)(a), the Commission cannot require any electric provider to increase its percentage of renewable energy generation above the required level set forth in the RPS.

108. Pursuant to Wis. Stat. § 196.025(1)(c)1., the Commission cannot impose additional renewable energy requirements on any investor-owned electric utility if Wisconsin has met the statewide RPS goal and the utility has otherwise complied with its electric provider requirements.

109. Because Wisconsin electric providers have collectively met the statewide RPS goal—that 10% of all electricity consumed in the State come from renewable energy sources—every year

since 2013, the Commission has been prohibited from requiring electric providers to build or purchase additional renewable electricity since 2013.

110. Wis. Stat. § 196.378(4m)(a) and Wis. Stat. § 196.025(1)(c)1. restrict the Commission's ability to impose obligations to provide additional renewable energy when a utility has met the RPS requirements. Wis. Stat. § 196.378(4m)(a) and Wis. Stat. § 196.025(1)(c)1. have transformed Wisconsin's RPS into a ceiling that caps how much renewable energy the Commission can require electric providers to build or purchase.

111. Consistent with this statutory constraint, the Commission has not required electric providers to increase their development or procurement of renewable energy sources.

112. The Commission has a statutory mandate to ensure there is an adequate and reliable supply of electricity in Wisconsin. However, under current law, if electric providers continue proposing to build more fossil fuel-fired power plants (which they are doing)¹² and electric providers' existing renewable energy sources cannot supply enough electricity to meet growing electricity demands (which is true),¹³ the Commission has no authority to require electric providers to build or purchase renewable electricity to meet the demand. Instead, the Commission is compelled to continue approving fossil fuel-fired power plants to ensure an adequate and reliable supply of electricity.

113. Declaring Wis. Stat. § 196.378(4m)(a) and Wis. Stat. § 196.025(1)(c)1. unconstitutional would remove a barrier that currently prevents the Commission from requiring electric providers to build or purchase electricity from renewable energy sources, as necessary to meet the State's growing demand, and remove a barrier to requiring more renewable energy sources.

¹² Public Service Commission, *Strategic Energy Assessment 2024-2030*, at 2.

¹³ *Id.* at 1,14 (demand for electricity is projected to increase by 14.8% from 2024 through 2030).

114. Given Wisconsin's commitment to decarbonize its electricity sector no later than 2050, upon information and belief, the effect of declaring Wis. Stat. § 196.378(4m)(a) and Wis. Stat. § 196.025(1)(c)1. unconstitutional is that the Commission would require electric providers to meet Wisconsin's current and growing electricity demand with electricity from new renewable energy sources, instead of new fossil fuel energy sources. This would increase the share of electricity generated from renewable energy sources, decrease the share of electricity generated from fossil fuels, and reduce air pollution—thereby alleviating Plaintiffs' current climate and air pollution-related injuries, and minimizing their risk of future injuries.

115. Such an outcome would occur because renewable energy sources are cost-effective and technically feasible to meet growing demand for electricity, can provide an adequate and reliable supply of electricity, and do not exacerbate climate change. Ensuring that Wisconsin meets its current and growing electricity demand with electricity from new renewable energy sources would achieve compliance with State Energy Policy, Executive Order 38, and the Commission's constitutional obligations to Plaintiffs.

* * *

116. The challenged laws, Wis. Stat. § 196.491(3)(d)3. and 4., Wis. Stat. § 196.378(4m)(a), and Wis. Stat. § 196.025(1)(c)1., violate Plaintiffs' inherent rights protected by Article 1 § 1 and public trust rights protected by Article IX § 1 by requiring the Commission to disregard air pollution from fossil fuel-fired power plants—a known threat to Plaintiffs' lives, health, safety, happiness, and the public trust resources they depend on. The challenged laws cannot be reconciled with Defendants' obligation to decarbonize Wisconsin's electricity sector no later than 2050, as the protection of Plaintiffs' constitutional rights requires. On the contrary, these laws, individually and collectively ensure the continuation of the Commission's pattern and practice of approving CPCNs for fossil

fuel-fired power plants, prevent the Commission from satisfying its constitutional obligations to protect Plaintiffs from harmful air pollution, and are a barrier to the Commission's ability to decarbonize Wisconsin's electricity sector.

117. Without these laws, upon information and belief, the Commission would deny CPCNs for new fossil fuel-fired power plants based on their harmful air pollution and mandate an increase in electricity generation from renewable energy sources, thereby decreasing air pollution from fossil fuel-fired power plants and minimizing and alleviating Plaintiffs' current and future climate and air pollution-related injuries.

IV. The Commission's Permitting of Fossil Fuel-Fired Power Plants Has Perpetuated an Electricity System Dominated by Fossil Fuels in Wisconsin.

118. The challenged laws ensure that Wisconsin's electricity sector remains dominated by fossil fuels. Moreover, the Commission continues to approve new fossil fuel-fired power plants, and Wisconsin is not on track to decarbonize the electricity sector by 2050.

119. In 2023, only 17% of total retail sales of electricity (i.e., electricity consumed by end users) in Wisconsin came from renewable resources.¹⁴ Renewable energy resources provided only 9% of Wisconsin's in-state electricity net generation.¹⁵

120. Fossil fuel-fired power plants dominate electricity generation in Wisconsin, providing approximately 75% of Wisconsin's electricity generation. Fossil fuel-fired power plants burn fossil fuels including coal, oil, and gas, thereby causing air pollution, including GHG emissions, which exacerbates the climate crisis and Plaintiffs' injuries.

¹⁴ Public Service Commission, *Report on the Impacts of the Renewable Portfolio Standard 7* (July 1, 2024), https://docs.legis.wisconsin.gov/misc/mandatedreports/2024/public_service_commission/report_on_the_impacts_of_the_renewable_portfolio_standard_s_196_378_4r_received_6_28_2024.pdf.

¹⁵ U.S. Energy Information Administration, *Wisconsin State Profile and Energy Estimates* (updated Sept. 19, 2024), <https://www.eia.gov/state/analysis.php?sid=WI>.

121. Wisconsin electric utilities still have seven utility-scale coal-fired power plants currently operating with a combined capacity of nearly 2800 MW. The newest coal-fired power plant, Elm Road Generating Station, became operational in 2010. The Commission granted a CPCN to Wisconsin Electric Corporation to build this 1830 megawatt (“MW”) coal-fired power plant in 2003.

122. Wisconsin’s electricity sector is increasingly reliant on gas imported from other states and countries. Between 2010 and 2023, there was a five-fold increase in the use of gas in the electricity sector. The use of gas in the electricity sector is projected to continue to grow through at least 2030.

123. Upon information and belief, the Commission has issued at least seventeen CPCNs for gas-fired power plants since 1993, for a combined capacity of approximately 5300 MW currently operational and an additional 1128 MW of new capacity approved in May 2025.

124. Upon information and belief, the Commission has only denied one application for a CPCN for a proposed fossil fuel-fired power plant in its recorded history—solely on the basis of cost.

125. Upon information and belief, the Commission has never denied a CPCN to a proposed fossil fuel-fired power plant on the basis that the proposed project was not in the “public interest” or on the basis that the project would have an “undue adverse impact on other environmental values” or “public health and welfare.”

126. Even though fossil fuel-fired power plants have a lifespan of at least thirty years, the Commission continues to approve them. Any fossil fuel-fired power plant approved today would be expected to operate until at least 2055, well past the 2050 deadline to decarbonize Wisconsin’s electricity sector.

127. In 2020, the Commission issued a final decision approving a CPCN for the Nemadji Trail Energy Center Project, a 550 MW gas-fired power plant. In June 2024, the Commission issued a

final decision approving a CPCN for the Wheaton Repowering Project, a 255 MW gas-fired power plant. In April 2025, the Commission approved the Riverside Enhancement Project, a 17.5 MW expansion to the 674.9 MW gas-fired Riverside Energy Center.

128. In May 2025, the Commission approved Wisconsin Electric Power Company's ("WEPCO") application for a CPCN for Oak Creek Generation Project, a project that will convert a fifty-year-old coal-fired power plant, at the end of its operational life, into a 1100 MW gas-fired power plant in Milwaukee County. The proposed project is designed for an operating life of not less than thirty years. The Commission also approved WEPCO's application for a CPCN to build the Paris Generation Plant in Kenosha County, a 128 MW gas-fired power plant. The air pollution from these two plants alone is projected to cause between \$80 million and \$127 million in health costs each year from respiratory and cardiovascular disease.

129. The cost to build new fossil fuel-fired power plants is borne by Wisconsin residents as electric providers charge ratepayers to build new power plants, which can exceed \$1 billion for a single project. The Oak Creek Generation Project and Paris Generation Project will cost ratepayers over \$1.2 billion and \$270 million, respectively.

130. States that get a higher percentage of electricity from renewable energy sources tend to have cheaper electricity prices. Wisconsin's electricity is more expensive than electricity in thirty-five other states, most of which have a higher percentage of electricity from renewable energy.¹⁶

131. Wisconsin's demand for electricity is growing and projected to increase by approximately 15% in the next five years.

¹⁶ Mark Jacobson, *60 Countries/Territories Whose Electricity Generation in 2023 was 50-100% Wind-Water-Solar (WWS) (Including 12 With 98.4-100% WWS Generation) and 11 U.S. States That Produced the Equivalent of 52.4-121.3% of the electricity They Consumed With WWS From Q2-2024 to Q1-2025*, (May 28, 2025), <https://web.stanford.edu/group/efmh/jacobson/WWSBook/Countries100Pct.pdf>.

132. Wisconsin's electric providers plan to add approximately 2,500 MW of new gas capacity by 2030. The portion of Wisconsin's electricity that comes from gas is projected to *increase* from 36% in 2023 to 42% in 2030.¹⁷

133. The Commission's ongoing approval of new gas-fired power plants delays and inhibits Wisconsin's transition to 100% renewable energy electricity and perpetuates additional air pollution, rather than decreasing GHG emissions, stabilizing the climate system, and protecting youth Plaintiffs. It also imposes a financial burden on Wisconsin ratepayers, including Plaintiffs' families, who ultimately pay for the expensive and unnecessary fossil fuel-fired power plants, despite renewable energy being a cheaper and reliable alternative. There are additional financial burdens related to damage caused by extreme climate events, including to Plaintiffs' homes and properties; increased health care expenses; and lost opportunities for economic growth.

134. Gas-fired power plants are no less harmful to youth Plaintiffs and the climate system than coal-fired power plants. Gas used domestically in the U.S. to produce electricity has a GHG footprint similar to, or worse than coal, when methane emissions are considered. Further, the GHG footprint for the production of electricity using liquified natural gas is 33% *greater* than coal due to additional GHG emissions from the liquefaction, transport by tanker, and re-gasification of the gas. Therefore, the Commission's approval of the conversion of coal-fired power plants to gas-fired power plants will not reduce GHG emissions from electricity generation and instead locks in decades of additional climate-warming air pollution.

135. The challenged laws have been implemented by the Commission to authorize new fossil fuel-fired power plants that endanger youth Plaintiffs and delays Wisconsin's transition to 100% renewable energy.

¹⁷ Public Service Commission, *Strategic Energy Assessment 2024-2030*, at 2.

V. The Challenged Laws Lead to Significant GHG Emissions that Cause and Contribute to Climate Change and Harm Youth Plaintiffs.

136. As a result of the laws challenged herein, and the Commission's ongoing approval of fossil fuel-fired power plants, the electricity sector is the largest source of GHG emissions in Wisconsin.

137. According to the Environmental Protection Agency's most recent GHG data inventory, the electricity sector, over which the Commission exercises regulatory control, was the largest source of GHG emissions in Wisconsin in 2022, producing 31.1 million metric tons of carbon dioxide equivalent ("MMTCO₂e"), 26.1% of the State's overall emissions (Figure 1).¹⁸

138.

Wisconsin Greenhouse Gas Emissions by Economic Sector, 2022

Emissions in million metric tons of carbon dioxide equivalent

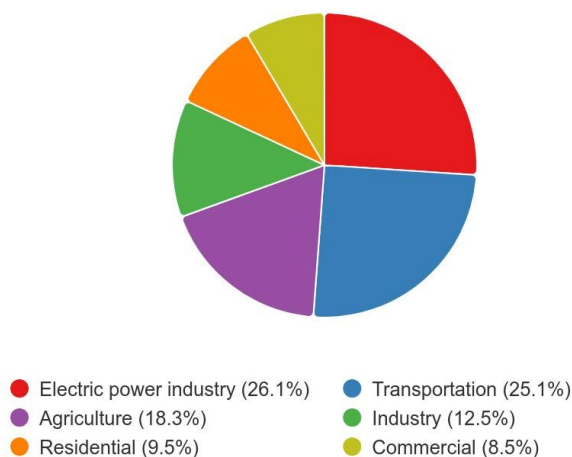


Figure 1. Wisconsin GHG emissions by sector in 2022. Electricity is the largest contributor to GHG emissions. Data and graphic from U.S. EPA's Greenhouse Gas Inventory Data Explorer.

139. Between 1993 and 2022, the Commission has authorized the production of 1,245 MMTCO₂e of GHG emissions from the electric sector. That is approximately equal to the

¹⁸ U.S. Environmental Protection Agency, *Greenhouse Gas Inventory Data Explorer*, <https://cfpub.epa.gov/ghgdata/inventoryexplorer/#electricpowerindustry/entiresector/allgas/category/all> (last visited Aug. 15, 2025).

economy-wide GHG emissions produced by Nepal between 1993 and 2022, a country with a population of 29.6 million compared to Wisconsin's population of 6 million.

140. As demonstrated in Figure 2, Wisconsin's GHG emissions from the electric power sector have barely declined in the past thirty years and remain dangerously high, thereby continuing to harm Plaintiffs.

141.

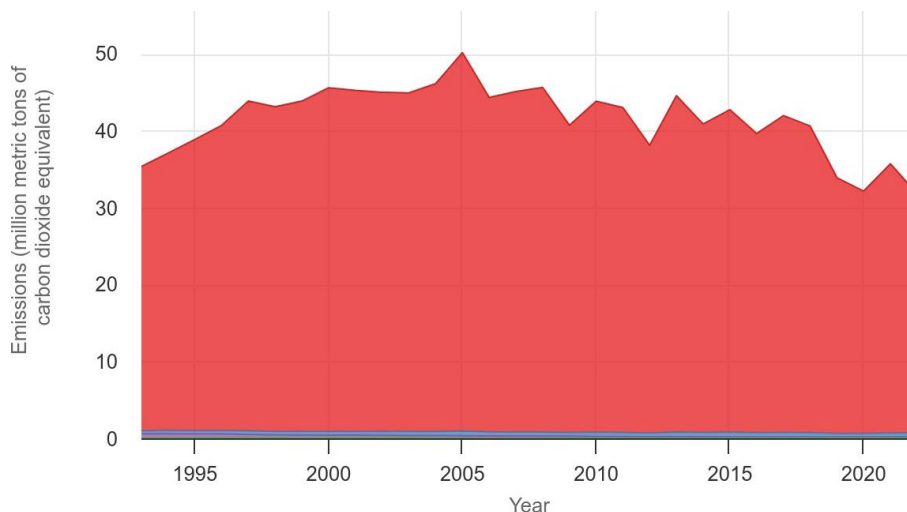


Figure 2. Wisconsin GHG Emissions (MMTCO₂e) from the electric power sector from 1993 to 2022. Data and graphic from U.S. EPA's Greenhouse Gas Inventory Data Explorer.

VI. The Challenged Laws Have Resulted in Levels of Air Pollution that Are Harmful to the Youth Plaintiffs and Are Unconstitutional.

142. There is scientific consensus that current levels of air pollution are harming youth in Wisconsin and the natural systems on which their well-being and lives depend. Those harms are ongoing and worsen with each increment of heating and each additional ton of GHG emissions that results from the challenged laws.

143. The present level of global heating is unprecedented in at least the past 100,000 years and is primarily the result of carbon dioxide ("CO₂") from the development and combustion of fossil fuels, including coal, oil, and gas.

144. The global annual average atmospheric CO₂ concentration in 2024 was 422.8 parts per million (“ppm”) compared to the pre-industrial global CO₂ average of 280.

145. The current atmospheric concentration of CO₂ is now around levels not seen in three million years.

146. As air pollution from fossil fuel-fired power plants, including CO₂, methane, and other GHGs, continues to accumulate in the atmosphere, more heat is trapped on Earth than escapes back to space, causing the planet to warm.

147. The excess heat retained in the Earth’s systems (i.e., oceans, ice, air, and land surface) because of increasing atmospheric concentrations of GHGs causes what is referred to as the Earth’s Energy Imbalance (“EEI”). The EEI is a calculation of how much extra energy, or heat, is being retained in Earth’s systems compared to an energy balance where the amount of energy coming into Earth’s atmosphere from space is equal to the amount of energy leaving Earth’s atmosphere.

148. EEI is the most critical metric for determining the amount of global heating and climate change we have experienced and will experience if the imbalance continues. From 1971 to 2020, the Earth accumulated enough energy to bring a lake the size of 78 Lake Superiors or 193 Lake Michigans to boil.

149. Each additional ton of CO₂ emissions authorized by Defendants’ conduct exacerbates the EEI and makes it more difficult and expensive to protect the Earth systems upon which Plaintiffs’ well-being and lives depend.¹⁹ The more CO₂ added into the atmosphere by Defendants, the more

¹⁹ IPCC, *Summary for Policymakers*, in *Climate Change 2021: The Physical Science Basis* 28, Figure SPM.10 (2021), https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_FullReport_small.pdf; *See also Held v. Montana*, 2023 WL 5229257, Findings of Fact, Conclusions of Law, and Order, at 24 (Mont. 1st Jud. Dist. Ct., Aug. 14, 2023) (finding of fact based on uncontroverted expert testimony that “[e]very ton of fossil fuel emissions contributes to global warming and impacts to

frequent and harmful extreme weather events such as heatwaves, flooding, and drought will become in Wisconsin.

150. To protect Plaintiffs from the most catastrophic and irreversible climate impacts, the EEI must be restored to cool and then stabilize the climate system.

151. The best available science today prescribes that global atmospheric CO₂ concentrations must be restored to less than 350 ppm by 2100 (with further reductions thereafter) to stabilize the EEI and climate system on which Plaintiffs' ability to meaningfully exercise their fundamental rights depend.²⁰ The only way to do this is to reduce GHG emissions by eliminating CO₂ emissions and protecting and enhancing carbon sinks to maximize the sequestration of carbon.

152. No one, including the International Panel on Climate Change ("IPCC"), has published any scientific evidence to counter the finding that 350 ppm or less is the maximum safe concentration of CO₂.

153. Achieving 100% carbon free electricity in Wisconsin no later than 2050 (and ideally sooner) is a necessary step towards restoring the EEI, stabilizing the climate system, protecting Plaintiffs' fundamental rights, and ensuring Defendants fulfill their legal obligations.

VII. The Air Pollution that Results from the Challenged Laws Is Harming Youth Plaintiffs and Degrading Wisconsin's Public Trust Resources.

154. The burning of fossil fuels for electricity in Wisconsin, authorized by the laws challenged herein, is causing and contributing to a range of detrimental impacts in Wisconsin, including warming annual and seasonal temperatures, changes in precipitation patterns, increased flooding,

the climate and thus increases the exposure of youth Plaintiffs to harms now and additional harms in the future.").

²⁰ James Hansen et al., *Assessing "Dangerous Climate Change": Required Reductions of Carbon Emissions to Protect Young People, Future Generations and Nature*, 8 PLOS ONE e81648 (2013), <https://doi.org/10.1371/journal.pone.0081648>.

declining winter snowpack and lake-ice coverage, alteration of lake and river ecosystems and resultant harm to aquatic life, changes in forest ecosystems, and increasing drought and risk of fires. This degradation of Wisconsin's physical environment and public trust waters is harming Plaintiffs' physical and mental health; damaging their homes, property, and farms; disrupting cultural practices and access to traditional food sources; causing economic losses; and impairing Plaintiffs' access to and enjoyment of public trust waters.

155. The climate impacts in Wisconsin disproportionately affect and endanger children and youth, including Plaintiffs. As children, Plaintiffs are especially susceptible to air pollution and climate injuries because they experience greater proportionate exposure than adults by breathing more air, drinking more water, and eating more food per unit of bodyweight than adults. Children's still-developing bodies and minds are uniquely vulnerable to air pollution, extreme heat and weather, and diseases.

156. Not only are Plaintiffs particularly vulnerable to climate change's physical health impacts, they are also more prone to suffering mental health impacts and post-traumatic stress after extreme weather events—often with long-lasting effects impacting their adult functioning. Climate change is causing children to experience a wide range of mental health impacts, including reduced capacity for learning, lower emotional regulation capacity, increased restlessness and distraction, and detrimental effects on childhood cognitive development.

157. Climate anxiety is an emotional response to climate change that can impair functioning and is linked to mental health problems, including depression and generalized anxiety, and in severe cases, substance use and suicidal thinking. Climate anxiety and dissatisfaction with government responses to climate change harms children's daily functioning. In a survey of 15,000 youth across the United States (including Wisconsin), 84.6% of Wisconsin youth respondents reported being at

least moderately worried about climate change, with 59.2% being very worried or extremely worried.²¹ Exposure to chronic stress, such as climate stress, in childhood has a long-lasting impact and increases the risk of developing mental health problems and physical health problems too. Climate-induced stress and anxiety is harming the mental and physical health of Kaarina, Tyler, Waazakone, Mukademigwan, Gookoonz, Madeleine, Bella, and Elia.

A. Rising Temperatures

158. Wisconsin is warming due to GHG emissions from the burning of fossil fuels.²² From 1895 to 2023, Wisconsin's annual temperature has warmed at rate of 0.10°C (0.18°F) per decade and the most recent decade (2014 to 2023) was 1.2°C (2.16°F) warmer than 1895 to 1904. Wisconsin's annual temperature has also warmed faster in more recent decades; from 1950 to 2023, Wisconsin's annual temperature warmed at a rate of 0.23°C (0.41°F) per decade.

159. While all seasons and regions of Wisconsin have warmed, winters have warmed more rapidly than summers. From 1950 to 2023, Wisconsin's winter temperatures warmed at a rate of 0.35°C (0.63°F) per decade and the most recent decade's winter temperatures (2014 to 2023) were 2.4°C (4.32°F) warmer than 1950 to 1959. Meanwhile, Wisconsin's annual summer temperatures warmed at a rate of 0.15°C (0.27°F) per decade since 1950 and the most recent decade's summer temperatures (2015 to 2024) were 0.7°C (1.26°F) warmer than 1950 to 1959.

²¹ R. Eric Lewandowski et al., *Climate Emotions, Thoughts, and Plans Among US Adolescents and Young Adults: A Cross-Sectional Descriptive Survey and Analysis by Political Party Identification and Self-Reported Exposure to Severe Weather Events*, 8(11) *The Lancet Planetary Health* e879-e893 (2024), [https://www.thelancet.com/journals/lanplh/article/PIIS2542-5196\(24\)00229-8/fulltext](https://www.thelancet.com/journals/lanplh/article/PIIS2542-5196(24)00229-8/fulltext).

²² Wisconsin Initiative on Climate Change Impacts, *Wisconsin's Changing Climate: Impacts and Solutions for a Warming Climate* 14 (2021), <https://uwmadison.app.box.com/s/qi5evkp4nac87chjmfaoa6kn9840sh35>.

160. Winter warming has been the most pronounced in Northwest Wisconsin (4 to 6°F warming since the 1950s). Wisconsin's warming winters are reflected in fewer days of extreme cold (below 0°F) and with cold periods becoming less common—a pattern which is expected to continue.

161. Winter snowpack has declined in Wisconsin due to GHG emissions from the burning of fossil fuels.

162. This winter warming and decline in winter snowpack negatively affects the winter tourism industry in Wisconsin and Wisconsinites' enjoyment of winter activities and sports such as cross-country and downhill skiing. Snow activities combined accounted for nearly \$84 million gross domestic product in Wisconsin in 2022.²³ As a result of reduced snowfall and fewer days cold enough for snowmaking, there is already a shortening of the season for winter snow sports in Wisconsin. The shortening winter season has prevented Bella and Lucy from cross country-skiing, and Indy, Kaarina, Tyler, Waazakone, Mukademigwan, and Gookoonz from downhill skiing in Wisconsin. Lack of snow has also caused Bella's family business to lose about \$80,000 in the past two years due to cancelled winter cabin reservations and Indy's family has seen a dramatic decrease in rental income for his family's cottage.

163. Wisconsin's winters will continue to warm without necessary reductions in GHG emissions.²⁴ Climate models project that even with moderate increases in GHG emissions, winter temperatures in Wisconsin will rise an additional 3 to 8°F by 2050.

164. Climate models project that Wisconsin's average temperature will increase an additional 2 to 8°F above the late 20th-century average by 2050 under a mid-range GHG emissions scenario.

²³ Austin Holland et al., *Downhill Skiing and Climate Change Adaptation in Wisconsin: Perspectives from Key Stakeholders*, 6 Env't Rsch. Commc'ns 081006 (2024), <https://doi.org/10.1088/2515-7620/ad6ee6>.

²⁴ Wisconsin Department of Natural Resources, *The Science of Climate Change*, <https://dnr.wisconsin.gov/climatechange/science> (last visited Aug. 15, 2025).

Extreme weather events, including extreme heat, will continue to become more frequent and greater in magnitude. Models project a tripling in the number of days above 90°F by 2050 (Figure 3). Similarly, the number of hot nights where the temperature does not drop below 70°F is expected to quadruple by mid-century.²⁵

165.

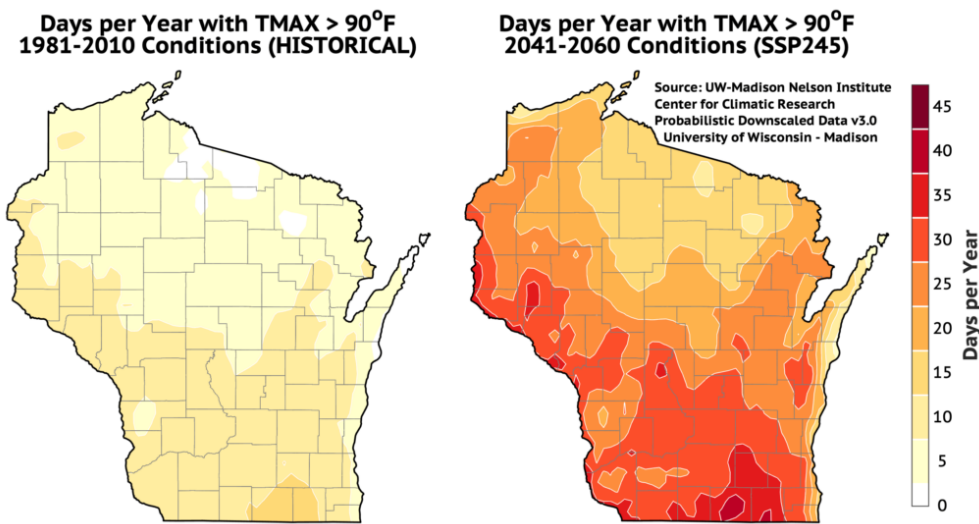


Figure 3. Historical and Future Projected Frequency of Extreme Heat. Average number of days per year when the temperature exceeded 90°F for historical conditions (left) and projected number of days per year when the temperature will exceed 90°F by the mid-21st century (right). Data from the Wisconsin Initiative on Climate Change Impacts.

166. Cities in the northern contiguous United States, like Milwaukee, are especially vulnerable to heat waves because many homes and apartments lack air conditioning. By 2050, Milwaukee will likely experience three times the current number of days with a heat index above 105°F, which is dangerous to human health.

167. Increased frequencies of extreme heat amplify Plaintiffs' risk of heat-related illness and respiratory illness in Wisconsin. Extreme heat has well-documented, observed impacts on

²⁵ Wisconsin Initiative on Climate Change Impacts, *Wisconsin's Changing Climate* 18; Wisconsin Initiative on Climate Change Impacts, *Report to the Governor's Task Force on Climate Change – Strategies to Improve Wisconsin's Climate Resilience and Readiness* 8 (July 31, 2020), <https://wicci.wisc.edu/wp-content/uploads/wicci-report-to-governors-task-force.pdf>.

children's health, mortality, and morbidity. Extreme heat can cause heatstroke and exacerbate chronic illnesses, such as asthma, cardiovascular diseases, and diabetes. Even at current levels of heating, Madeleine has been unable to safely spend time outdoors in extreme heat due to her asthma. An increase in heat-related and respiratory illnesses will result in increased health costs for Plaintiffs.

168. Extreme heat causes disproportionate harm to populations vulnerable to extreme heat, including children. Children and youth working outdoors or lacking adequate air conditioning, like Plaintiffs Ted, Charlie, and Simon, are even more vulnerable. Children and young people are uniquely vulnerable to heatwaves and extreme heat because they are less able to regulate their body temperature and are more prone to dehydration. Elia has been forced to limit his time outdoors during extreme heat due to his proclivity for migraines when he is dehydrated, which is more likely to happen during exposure to extreme heat. Physical risks to children and youth from heatwaves include heatstroke, electrolyte imbalance, kidney-associated diseases, respiratory diseases such as asthma, and infectious diseases. Alex, Madeleine, Kaarina, Caroline, Lucy, Ted, and Indy have all experienced symptoms of heat exhaustion or been forced to stay inside rather than working, playing, or training outside in extreme heat.

169. Extreme heat and heatwaves also negatively impact young people's learning, cognitive performance, and mental health—with young people at greater risk of developing anxiety and depression due to high heat.

B. Unhealthy Air Quality

170. Increasing air temperatures contribute to unhealthy air quality and amplify existing health risks for Plaintiffs. Higher temperatures increase the formation of ground-level ozone, an air

pollutant that causes lung and heart problems and is especially harmful to Plaintiffs because of their age.

171. Extreme heat, fires, and drought caused by climate change increase ozone formation and particulate pollution, which contribute to unhealthy air quality and harm children's health. Nine of the Plaintiffs—Alex, Madeleine, Elia, Tyler, Waazakone, Mukademigwan, Gookoonz, Indy, and Caroline—live in counties that received a failing grade for unhealthy ozone levels from the American Lung Association in the State of the Air Report 2025, including Dane, Milwaukee, and Rock counties. Three of the Plaintiffs—Kaarina, Ted, and Lucy—live in a county that earned a D grade for unhealthy ozone levels, including La Crosse and Marathon counties.

172. Eight of the Plaintiffs—Alex, Madeleine, Elia, Tyler, Waazakone, Mukademigwan, Gookoonz, and Indy—live in a county that received a failing grade for high incidence of days with unhealthy particle pollution, including Dane and Milwaukee counties.

173. Longer growing seasons due to warming air temperatures have led to an increase in the duration and severity of pollen season, which causes health problems for people with pollen allergies. The combination of pollen and air pollution from burning fossil fuels can exacerbate asthma attacks and allergic reactions for children and youth. Madeleine suffers from asthma and intense pollen allergies that have worsened making it difficult for her to focus while in school.

174. With climate change contributing to longer growing seasons, reduced snowpack, and warmer air temperatures, the occurrence of fires in Wisconsin is projected to increase. In the Upper Great Lakes region (Wisconsin, Michigan, and Minnesota), fire probability has historically been low but is projected to increase by 50 to 75% by 2100.

175. Based upon the Fifth National Climate Assessment's projections, many Midwest counties will experience greater smoke exposure in the coming years. Wildfire smoke presents a significant

and growing source of injury for Plaintiffs. Elia, Indy, Madeleine, Lucy, Simon, and Caroline have had activities cancelled or moved inside, and limited their time outside, due to wildfire smoke.

176. Coal and gas-fired power plants emit a mixture of air pollutants, including nitrogen dioxide (“NO₂”), fine particulate matter (“PM_{2.5}”), black carbon, and ozone precursors, that are harmful to Plaintiffs. Living in communities with fossil fuel-fired power plants is strongly associated with higher exposure to harmful air pollutants, including NO₂ and PM_{2.5}, which are known to impair children’s lung development during critical periods of growth. Plaintiffs Lucy, Caroline, Madeleine, Indy, Alex, Tyler, Waazakone, Mukademigwan, and Gookoonz live in communities with fossil fuel-fired power plants and are forced to breathe air polluted by the burning of coal and gas.

C. Changing Precipitation Patterns

177. Precipitation is increasing in Wisconsin due to anthropogenic climate change, especially in the southern two-thirds of the State. In the past decade, nearly every region of Wisconsin has experienced extreme rainfall events, with devastating effects, such as the flooding of roads, homes, businesses, and farm fields. Extreme precipitation events and associated flooding are predicted to continue throughout the State, with wide ranging consequences to Wisconsin’s natural and built environments, including washing away topsoil, disrupting farm operations, and damaging infrastructure. Extreme precipitation events have disrupted farm operations on both Charlie’s and Ted’s family farms, forcing them to buy feed for cows that they used to grow, build expensive shelters, suffer crop losses, and incur other expenses. Extreme precipitation events and ensuing erosion and landslides caused damage to Kaarina’s property, causing her economic injury, emotional distress, and forcing her to move out of her childhood home and change schools.

178. Winter precipitation in Wisconsin has increased by at least 20% since 1950 in much of the State (Figure 4). Due to warming winter temperatures, this precipitation is increasingly falling as rain rather than snow. Rain is more likely to run off frozen ground into the State's waterways and negatively impact water quality, rather than soak into the soil. Charlie's family dairy farm had to build an additional barn to house their cows in the winter because the winter rain has made the ground muddy and unsuitable for the cows to lay on.

179.

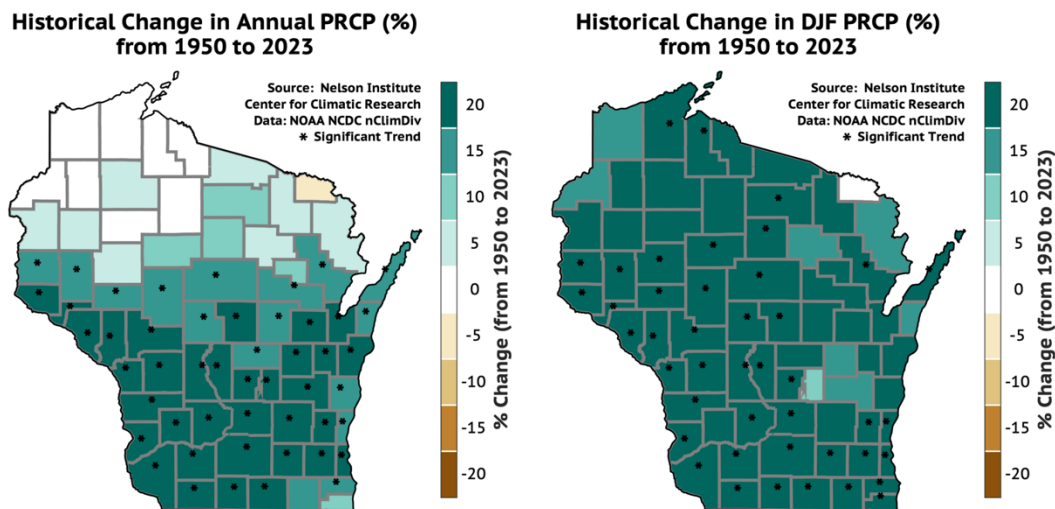


Figure 4. Historical Change in Average Annual and Winter Precipitation. Historical change in annual precipitation from 1950 to 2023 (left), historical change in winter (December, January, February) precipitation from 1950 to 2023. Graphic from Wisconsin Initiative on Climate Change Impacts.

180. Wisconsin's average annual precipitation is projected to increase 8 to 20% by 2050 relative to the past five decades. The greatest increase in precipitation is projected to occur in the winter and spring, with precipitation becoming more variable in summer and fall (Figure 5).²⁶

²⁶ Wisconsin Initiative on Climate Change Impacts, *Wisconsin's Changing Climate*, 19; Aaron B. Wilson et. al., *Fifth National Climate Assessment, Ch. 24. Midwest* 24-7 (2023).

181.

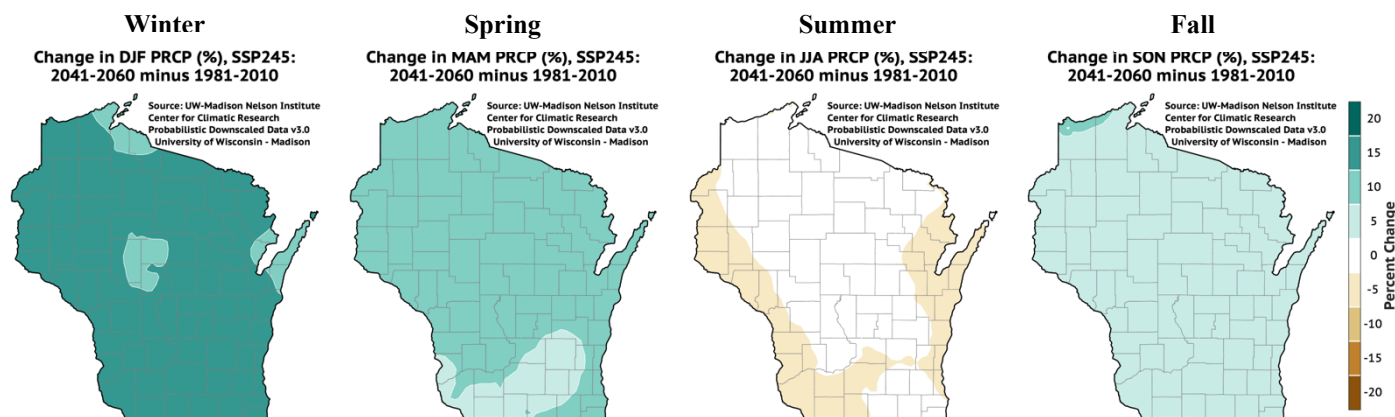


Figure 5. Projected Changes in Seasonal Precipitation by 2050. Projected percent change in precipitation from historical conditions (1980 to 2010) to 2050 for winter (December, January, February), spring (March, April, May), Summer (June, July, August) and Fall (September, October, November) under RCP 4.5. Maps adapted from Wisconsin Initiative on Climate Change.

182. Extreme precipitation events, such as two-inch rainfall events (Figure 6), are projected to continue to increase in both frequency and magnitude.²⁷ Extreme precipitation events and related flooding have adverse impacts on both aquatic and terrestrial ecosystems, human health, critical infrastructure, and cause billions of dollars in damage to local and regional economies, including to the Plaintiffs' and their families.

183.

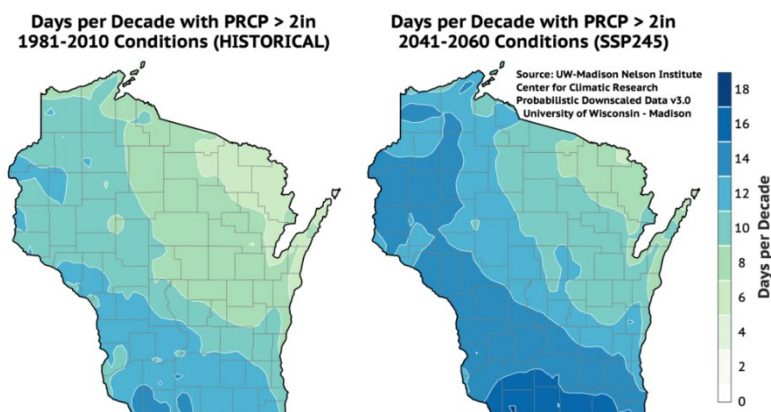


Figure 6. Historical and Future Projected Frequency of Extreme Rainfall. Average days per decade with two or more inches of precipitation in twenty-four hours for historical conditions (left) and by mid-21st century (right), showing increases in extreme precipitation. Maps adapted from Wisconsin Initiative on Climate Change.

²⁷ Wisconsin Department of Natural Resources, *The Science of Climate Change*.

184. While precipitation is increasing in Wisconsin overall, projected increases in evapotranspiration and longer periods between rainfall events are projected to cause drought conditions in some regions of the State. The combination of warming temperatures and variable summer precipitation creates an increased risk of drought in the summer. Failure of private wells is projected to increase during drought as the water table drops due to increased water usage and irrigation. Ted's family had to install an additional well to meet increasing irrigation demands on his family's vegetable farm.

185. The flooding of houses increases respiratory health risks such as irritation of asthma by mold growth. Flooding in Madeleine's basement has increased in frequency and severity, causing her economic injury and increasing her risk of asthma irritation. Elia's family made significant investment in installing a double sump pump and building their house higher above ground to reduce the risk of flooding in their basement.

D. Harms to Wisconsin's Agriculture Sector

186. The changing climatic conditions are harming Wisconsin's agricultural sector, an integral part of Wisconsin's economy, history, and culture. The agriculture sector provides 435,700 jobs (11.8% of the State's employment) and contributes \$104.8 billion to the State's economy.²⁸ Ted and Charlie's farms are being directly harmed by the changing climatic conditions.

187. Increased precipitation variability and more frequent wet-dry transitions increases the risk of transient drought in crops, threatening crop viability. Crops on Ted's farm have died because of transient drought.

²⁸ Wisconsin Department of Agriculture, Trade and Consumer Protection, *Wisconsin Agricultural Statistics* (updated June 26, 2025), <https://datcp.wi.gov/Pages/Publications/WIAgStatistics.aspx>.

188. Increased precipitation is causing waterlogged soils, which delays planting and shortens planting windows in the spring and harvesting in the fall. Planting crops in the spring has been much more difficult on Ted's family farm due to shortened planting windows. Excessive precipitation is causing increased crop loss especially during seed germination periods. Charlie's farm was unable to grow sufficient feed for their cows in 2024 due to waterlogged soils and, as a result, had to purchase additional feed from external sources.

189. Increasingly hot summers are also projected to reduce crop yields. As temperatures warm, vapor pressure deficit increases, and crops lose more water. Without an expansion of irrigation, increases in atmospheric vapor pressure deficit will limit crop yields. Hotter summers increase the need for irrigation, depleting Wisconsin's water resources. Ted's family farm has experienced reduced crop yields due to hot summers and installed a new well to meet increasing irrigation needs on the farm.

190. Extreme heat and cold fluctuations are harming Wisconsin's agriculture. Rapid temperature fluctuations above and below freezing in the spring have damaged fruit crops and degraded soil health. Extreme heat in the summer has caused stress to dairy cows, which has decreased milk production and increased water usage.

E. Loss of Wild Rice

191. Climate change threatens wild rice ("manoomin" in Ojibwe), a crop sacred to the Ojibwe, Menominee, and other indigenous people, and to Plaintiffs Tyler, Waazakone, Mukademigwan, and Gookoonz. Wild rice is central to the creation story of the Anishinaabe, a vast cultural and linguistic collective that includes the Ojibwe, Odawa, and Potawatomi. Wild rice grows in shallow waters in Northern Wisconsin and is especially vulnerable to climate change due to warming waters and altered hydrology. Climate change threatens to move wild rice's habitat farther north

and out of the reach of the Ojibwe Tribal Nations. The decreased harvest rates and projected loss of access to wild rice are leading to a distressing loss of cultural identity for the Anishinaabe people, including Tyler, Waazakone, Mukademigwan, and Gookoonz, whose ability to harvest wild rice as one of their main food sources has already been diminished.

F. Harm to Forests and Wildlife Diversity

192. Warmer winters reduce snowpack, which insulates trees in Wisconsin forests, and create more favorable conditions for pests and diseases. These climatic shifts are allowing southern species to start to outcompete native boreal tree species.

193. Wisconsin is the fourth largest producer of maple syrup in the country, but climate change is undermining Wisconsin's maple syrup production. Maple sap ("ziinzibaakwadwaaboo" in Ojibwe) runs in the early spring and is dependent on consistent nightly freezes and daily thaws. Warming temperatures are shifting the sap-collecting season earlier in the year, and increasing weather variability is making annual production of syrup more variable. The warming climate results in a decrease in sugar content in the maple sap (requiring more effort to convert it to maple syrup). Tyler, Waazakone, Mukademigwan, and Gookoonz's maple sugaring tradition is threatened by climate change.

194. The paper birch, a species culturally significant to tribes in Wisconsin, is declining in northern forests. The Great Lakes Indian Fish and Wildlife Commission's climate change vulnerability assessment listed paper birch as highly vulnerable to climate change. Anishnaabe people, including Tyler, Waazakone, Mukademigwan, and Gookoonz, traditionally use paper birch bark for canoes, dwellings ("wiigiwaams" in Ojibwe), baskets, and scrolls in their ceremonies. However, paper birch populations, which thrive in cool climates, have been harmed by warming temperatures, and populations are expected to continue to decline in Wisconsin.

195. Paper birch's decline has led to harvest restrictions and negatively impacted tribal members' ability to use paper birch in traditional ceremonies, for canoe building, and for medicine.

196. Wisconsin is renowned for its wildlife diversity. Tribal Nations within Wisconsin's state boundaries, and Plaintiffs Tyler, Waazakone, Mukademigwan, and Gookoonz rely on wildlife diversity for subsistence hunting and gathering for their spiritual, cultural, and physical well-being. The negative impacts of climate change on wildlife in Wisconsin are harming Wisconsin's outdoor tourism economy and tribal members' subsistence hunting. More intense summer droughts and increased flooding from climate change are reducing critical habitat and food sources for wildlife, especially waterfowl which depend on wetlands. Warmer winters with reduced snow cover, more pests, and changing water levels also stress wildlife species.

G. Increasing Vector Borne Illnesses

197. Disease-carrying insects, including ticks, are becoming more widely distributed in Wisconsin due to anthropogenic climate change. Rising temperatures, especially in the winter, have contributed to the expanded range of ticks, the vector of Lyme disease, because ticks are more active above 45°F. Wisconsin has one of the highest rates of Lyme disease in the country. Lyme disease causes joint pain, fever, fatigue, and headaches. Weeks to months after acquiring the disease, people can experience severe headaches, arthritis with severe muscle and joint pain, inflammation of the brain, and heart palpitations.

198. Tick bites, especially from the lone star tick, can also cause alpha-gal syndrome, an acquired red meat allergy that can manifest in hives, nausea, diarrhea, headaches, and anaphylaxis. Bella had Lyme disease, which caused her nausea, and she developed alpha-gal syndrome. Waazakone has also had Lyme disease, which caused her joint pain that made it difficult to walk. Other Plaintiffs are increasingly at risk of getting Lyme disease.

199. The increased incidence of various vector-borne diseases is likely to have negative impacts on Plaintiffs' health, as children tend to spend more time outdoors, where they can be exposed to high temperatures and where disease vectors like ticks are found. Children are more prone to infection with vector-borne diseases due to their smaller body size and developing immune system. Children are also more likely to experience more severe disease, more complications, and are less likely to have a complete recovery than adults, for Lyme disease.

200. On average, about 4,000 cases of Lyme disease were reported each year from 2018 to 2022 and the average number of reported cases in Wisconsin has tripled over the past fifteen years (Figure 7).²⁹

201.

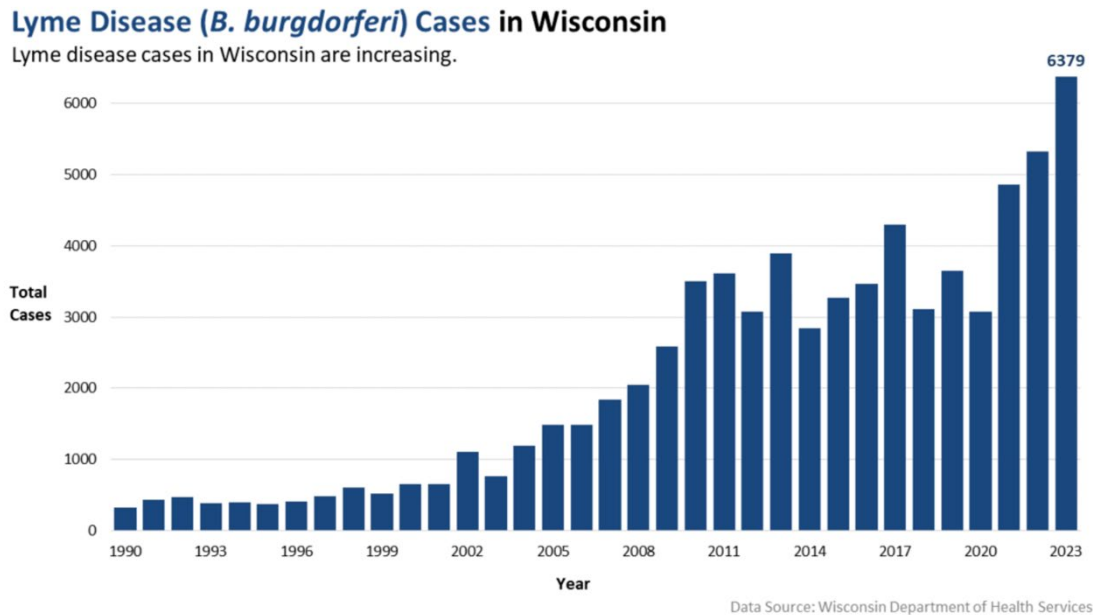


Figure 7. Annual reported cases of Lyme disease in Wisconsin from 1990. Figure from Wisconsin Department of Health Services.

²⁹ Wisconsin Department of Health Services, *Lyme Disease: Wisconsin Data*, <https://www.dhs.wisconsin.gov/tick/lyme-data.htm> (last visited Aug. 15, 2025).

H. Degradation of Wisconsin's Public Trust Waters

Warming Lakes Harm Fisheries and Fish Habitat

202. Inland lake water temperatures are warming in Wisconsin. Summer has become longer and warmer due to climate change which is resulting in a longer period of thermal stratification in inland lakes, causing low oxygen conditions that are harmful to fish.

203. As summers grow longer and warmer, the probability of fish kills increases due to oxygen depletion of the lake waters. When oxygen is depleted in deeper colder layers of the lake, cold-water fish are forced to move up to shallower layers with more oxygen. However, the warmer temperatures of these shallower layers can be lethal for the cold-water fish. Fish kills in Wisconsin's inland lakes are projected to double by 2050 and *quadruple* by 2100.³⁰

204. Warming water temperatures and declining and increasingly variable ice cover are shifting aquatic ecosystem compositions and changing the species of fish that can survive in Wisconsin's lakes and streams. Such climate-induced changes are diminishing fishing opportunities for Ted, Kaarina, Tyler, Waazakone, Mukademigwan, and Gookoonz. Current models show 21,300 miles of streams are suitable for brook trout and 12,400 miles of streams are suitable for brown trout in Wisconsin.³¹ However, climate models (under a moderate to high emissions scenario) project that due to climate change stream habitat for brook trout and brown trout will decline by 68% and 32% by 2050, respectively. Climate change has reduced the number of trout that Ted can catch on Baldwin Creek and the Rib River.

205. Cisco (lake herring) have already disappeared from 29% of Wisconsin's inland lakes with cold-water fisheries, and lake whitefish have disappeared from 33% of these inland lakes due to

³⁰ Wisconsin Initiative on Climate Change Impacts, *Wisconsin's Changing Climate* 51.

³¹ Wisconsin Initiative on Climate Change Impacts, *Wisconsin's Changing Climate* 49; Aaron B. Wilson et. al., *Fifth National Climate Assessment*, Ch. 24. Midwest 24-12, 24-14.

warming waters.³² Wisconsin is expected to lose 160 lakes currently classified as cool by 2049 and all but four of the State's cool lakes will be warm by 2089. As these inland lakes warm, they will become unsuitable habitats for cool-water game fish like walleye, perch, sturgeon, and muskellunge. Tyler, Waazakone, Mukademigwan, and Gookoonz's ability to fish for their traditional foods has been greatly reduced by declining fish populations due to climate change.

Wisconsin's Lakes Are Warming and Winter Ice Is Declining

206. Changing climatic conditions are causing warmer water temperatures, changes in lake mixing, and reduced ice cover on Wisconsin's lakes, including Lake Superior and Lake Michigan. Lake Superior is one of the fastest warming lakes in the world.

207. The extent and duration of winter ice cover on the Great Lakes has declined in the past four decades. Nine of the top ten lowest ice cover years have occurred since 2002. Winter ice coverage on all the Great Lakes declined by 71% from 1973 to 2010. Both ice cover duration and thickness are projected to continue to decline. Thinner ice on lakes increases the risk of drowning and decreases the opportunity for recreational activities on frozen lakes, such as ice skating or ice fishing. This loss of opportunity to engage in winter recreation negatively impacts Wisconsin's winter cultural traditions and tourism economy (Figure 8). The loss of lake ice has reduced Elia and Madeleine's opportunities to ice skate and Tyler, Waazakone, Mukademigwan, and Gookoonz's ability to ice fish in the winter.

³² Wisconsin Initiative on Climate Change Impacts, *Wisconsin's Changing Climate* 50.

208.

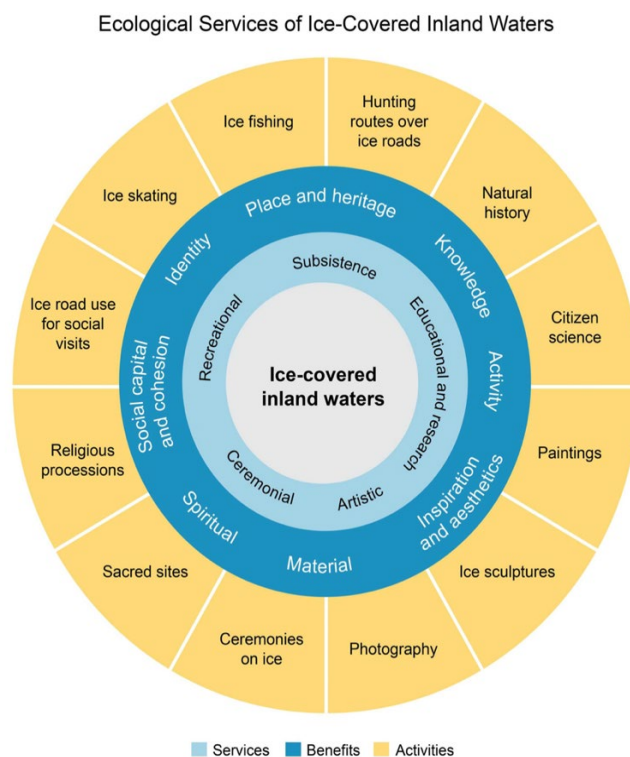


Figure 8. Ice-covered inland waters provide humans with important ecosystems services (light blue ring), benefits (dark blue ring), and activities (yellow ring) that are central to people’s well-being, culture, and identity in Wisconsin. Adapted from the IPCC Fifth National Climate Assessment at 24-15.

209. The duration of ice coverage on Lake Mendota, where Alex and Elia recreate, has been declining steadily in recent decades. Historically, Lake Mendota froze in early December and thawed in mid-April; today, Lake Mendota freezes in early January and thaws in late March. Climate change has shaved off more than a month of the season for ice fishing and ice skating.

Increasing Harmful Algal Blooms

210. Higher frequency and magnitude of extreme rain events results in increased runoff carrying nutrients and contaminants into Wisconsin’s rivers, streams, and lakes and deteriorating their water quality. These changes are causing degraded water quality and are increasing the occurrence of harmful algal blooms (“HAB”), including cyanobacteria or blue-green algae blooms, in Wisconsin’s lakes. HABs negatively affect water quality, make swimming unsafe, and detract from

scenic beauty and enjoyment of lakes. HABs can also cause fish kills, thereby reducing opportunities for fishing.

211. The increased occurrence of HABs presents a danger to Plaintiffs' health. HABs are caused by a variety of algal groups with different toxins harmful to human health. Swallowing contaminated water can cause vomiting, diarrhea, muscle twitching, and respiratory failure. Caroline, Lucy, Charlie, Madeleine, Alex, Elia, Tyler, Waazakone, Mukademigwan, and Gookoonz have all been prevented from recreating on or enjoying the beauty of Wisconsin's lakes because of algal blooms.

Degradation of Wisconsin's Lakes and Rivers

212. Increasing precipitation and storms delivering large amounts of water results in flooding of Wisconsin's rivers and lakes. At the same time, longer periods between rainfall events and increases in evapotranspiration causes drought, resulting in rapid declines in water levels and stream flows.

213. In August 2025, the rivers in Milwaukee flooded from extreme rainfall, including the Milwaukee River that rose thirteen feet over a two-day period.³³ In times of drought, the water level of the Milwaukee River has been so low that Tyler, Waazakone, Mukademigwan, and Gookoonz could not go canoeing or kayaking. Such extreme fluctuations are increasingly common as a result of climate change.

³³ Madeleine Heim, *See how Dramatically Milwaukee Rivers Rose During 1,000-Year Flood*, Milwaukee Journal Sentinel, Aug. 12, 2025, <https://www.jsonline.com/story/news/2025/08/12/see-how-milwaukee-rivers-rose-in-wauwatosa-waukesha-cedarburg/85625278007/>; Scott Bauer, *'What is Happening?' Milwaukee Area Recovers from Record Rain and Flooding*, PBS News, Aug. 11, 2025, <https://www.pbs.org/newshour/nation/what-is-happening-milwaukee-area-recovers-from-record-rain-and-flooding>.

214. The area along the Great Lakes is warming faster than the general pattern of warming across Wisconsin, leading to physical changes in the lakes such as water fluctuations, changes to water temperature and lake mixing, and ice cover changes impacting coastal land, habitats, water quality, and impacts to native species like walleye and wild rice.³⁴ The Great Lakes are central to the Anishinaabeg migration story and the changes to the lakes that prevent harvest of culturally important foods harm Tyler, Waazakone, Mukademigwan, and Gookoonz's ability to eat their traditional Anishinaabe diet.

215. Changes in precipitation, snow melt, evapotranspiration, and storm intensity have increased river flow variability in the upper Mississippi River in Wisconsin. As a result, the Mississippi River is more susceptible to flooding and drought. Extended high water river flows and fall flooding have occurred in seven of the past ten years. Cumulative runoff has increased in recent decades and is projected to continue to increase leading to increased flooding of the Mississippi. Flooding and extended high water high levels have prevented Kaarina from swimming and accessing her dock on the Mississippi River at her family's cabin.

CLAIMS FOR RELIEF

COUNT I

Violation of Inherent Right to Liberty Under Wisconsin Constitution Article I § 1 (Against the Commission and Commissioners Summer Strand, Kristy Nieto, and Marcus Hawkins)

216. Plaintiffs hereby re-allege and incorporate by reference each of the allegations set forth above.

217. The Declaration of Rights in the Wisconsin Constitution establishes limitations or restrictions on state action. These restrictions were motivated by "[t]he historical intention of state

³⁴ Wisconsin Initiative on Climate Change Impacts, *Water*, <https://wicci.wisc.edu/2021-assessment-report/water/> (last visited Aug. 15, 2025).

constitutions, including Wisconsin's . . . to recognize rights of the people and protect them from governmental interference."³⁵

218. Article I § 1 of the Wisconsin Constitution provides that "[a]ll people are born equally free and independent, and have certain inherent rights; among these are life, liberty and the pursuit of happiness." The inherent right to liberty encompasses the rights to live healthy lives, to safety, and to bodily integrity. Article I § 1 is a limitation on the Legislature's plenary powers to make laws that infringe on Wisconsinites' inherent rights.

219. The plain language directives of Wis. Stat. § 196.491(3)(d)3. and 4. unconstitutionally prohibit the Commission from denying a CPCN to fossil fuel-fired power plants. In complying with Wis. Stat. § 196.491(3)(d)3. and 4., the Commission is perpetuating an electricity sector dominated by fossil fuels through its historic and ongoing permitting of fossil fuel-fired power plants.

220. The plain language directives of Wis. Stat. § 196.025(1)(c)1. and Wis. Stat. § 196.378(4m)(a) unconstitutionally prohibit the Commission from requiring electric providers to build or purchase more electricity from renewable energy sources. In complying with Wis. Stat. § 196.025(1)(c)1. and Wis. Stat. § 196.378(4m)(a), the Commission has perpetuated an electricity sector dominated by fossil fuels.

221. These laws have caused, and continue to cause, air pollution from fossil fuel-fired power plants that interferes with the protection of youth Plaintiffs' health, safety, and bodily integrity by exposing them to physical injury and disease and serious psychological, social, spiritual, and cultural harms and traumas. Plaintiffs' injuries worsen with each additional ton of GHG emissions authorized by the Commission.

³⁵ *Jacobs v. Major*, 139 Wis. 2d 492, 512 (1987).

222. As such, Wis. Stat. §§ 196.491(3)(d)3. and 4., 196.025(1)(c)1., and 196.378(4m)(a) deprive Plaintiffs of the right to be free from government conduct that substantially endangers their health, safety, and bodily integrity.

223. Without the ability to enjoy these inherent liberty rights, Plaintiffs cannot enjoy their equally important inherent right to the pursuit of happiness, which includes the ability to satisfy ones' physical needs.

224. Technologically and economically feasible means of providing adequate, reliable, secure, and affordable energy are available which do not substantially harm and endanger the health, safety, and bodily integrity of youth Plaintiffs.

225. An actual and justiciable controversy exists between the parties as to the violation of Plaintiffs' liberty rights under Wisconsin Constitution Article I § 1. Plaintiffs suffer, and will continue to suffer, injuries due to the Commission's implementation and enforcement of Wis. Stat. §§ 196.491(3)(d)3. and 4., 196.025(1)(c)1., and 196.378(4m)(a) until the Commission is restrained from doing so.

226. A declaration that Wis. Stat. § 196.491(3)(d)3. and 4. are infringing on Plaintiffs' health, safety and bodily integrity, and are unconstitutional as applied to the Commission's determination of whether to approve or deny CPCNs for fossil-fuel-fired power plants, would remove a barrier to the Commission's ability to deny CPCNs for such facilities.

227. A declaration that Wis. Stat. §§ 196.025(1)(c)1 and 196.378(4m)(a) are infringing on Plaintiffs' health, safety, and bodily integrity, and are facially unconstitutional, would remove a barrier to the Commission's ability to require electric providers to build or purchase more electricity from renewable sources.

228. A declaratory judgment would effect a change with concrete ramifications in legal status and relations between Plaintiffs and the Commission and would provide Plaintiffs meaningful redress. A declaratory judgment will prevent further infringement of Plaintiffs' inherent right to liberty and reduce the extent of their ongoing and future injuries.

229. Plaintiffs are entitled to declaratory relief from this Court pursuant to Wis. Stat. § 806.04(1) and, if necessary and proper, injunctive relief pursuant to Wis. Stat. § 806.04(8) that Wis. Stat. §§ 196.491(3)(d)3. and 4., 196.025(1)(c)1., and 196.378(4m)(a) violate Plaintiffs' inherent liberty rights to health, safety, and bodily integrity.

COUNT II

Violation of Inherent Right to Life Under Wisconsin Constitution Article I § 1 (Against the Commission and Commissioners Summer Strand, Kristy Nieto, and Marcus Hawkins)

230. Plaintiffs hereby re-allege and incorporate by reference each of the allegations set forth above.

231. Article I § 1 is a limitation on the Legislature's plenary powers to make laws that infringe on Wisconsinites' inherent right to life. The deprivation of Plaintiffs' inherent right to life does not only occur at death; it includes the right to pursue life and enjoy and pursue happiness in living. The right to life includes vitality, or health, and a person's natural lifespan. By natural extension, for children and youth whose organs and bodies are still developing, the right to life includes their ability to grow and develop healthfully into their adult minds and bodies.

232. A deprivation of life occurs when the government affirmatively disrupts, in a medically significant way, the healthy physiological and psychological growth and functioning of a child to adulthood, causing them a lifetime of hardship or exposing them to heightened risk of illness or death.

233. Wis. Stat. §§ 196.491(3)(d)3. and 4., 196.025(1)(c)1., and 196.378(4m)(a) have caused, and continue to cause, air pollution from fossil fuel-fired power plants that results in Plaintiffs' still developing bodies and brains being exposed to unhealthy air quality, dangerous heat, extreme weather, disease, and disrupts their cultural practices and traditions. Such injuries during childhood disrupt the healthy physiological and psychological growth and functioning of a child to adulthood, causing a lifetime of hardships and a heightened risk of illness or premature death.

234. As such, Wis. Stat. §§ 196.491(3)(d)3. and 4., 196.025(1)(c)1., and 196.378(4m)(a) deprive Plaintiffs of their inherent right to life protected by Wisconsin Constitution Article I § 1.

235. Technologically and economically feasible means of providing adequate, reliable, secure, and affordable energy are available which do not harm or endanger youth Plaintiffs' lives.

236. An actual and justiciable controversy exists between the parties as to the violation of Plaintiffs' right to life under Wisconsin Constitution Article I § 1. Plaintiffs suffer, and will continue to suffer, injuries to their lives due to the Commission's implementation and enforcement of Wis. Stat. §§ 196.491(3)(d)3. and 4., 196.025(1)(c)1., and 196.378(4m)(a) until the Commission is restrained from doing so.

237. A declaration that Wis. Stat. § 196.491(3)(d)3. and 4. are infringing on Plaintiffs' right to life, and are unconstitutional as applied to the Commission's determination of whether to approve or deny CPCNs for fossil fuel-fired power plants, would remove a barrier to the Commission's ability to deny CPCNs for such facilities.

238. A declaration that Wis. Stat. §§ 196.025(1)(c)1 and 196.378(4m)(a) are infringing on Plaintiffs' right to life, and are facially unconstitutional, would remove a barrier to the Commission's ability to require electric providers to build or purchase more electricity from renewable sources.

239. A declaratory judgment would effect a change with concrete ramifications in legal status and relations between Plaintiffs and the Commission and would provide Plaintiffs meaningful redress. A declaratory judgment will prevent further infringement of Plaintiffs' inherent right to life and reduce the extent of their ongoing and future injuries.

240. Plaintiffs are entitled to declaratory relief from this Court pursuant to Wis. Stat. § 806.04(1) and, if necessary and proper, injunctive relief pursuant to Wis. Stat. § 806.04(8) that Wis. Stat. §§ 196.491(3)(d)3. and 4, 196.025(1)(c)1., and 196.378(4m)(a) violate Plaintiffs' right to life.

COUNT III

Violation of Inherent Right to a Stable Climate System Under Wisconsin Constitution

Article I § 1

(Against the Commission and Commissioners

Summer Strand, Kristy Nieto, and Marcus Hawkins)

241. Plaintiffs hereby re-allege and incorporate by reference each of the allegations set forth above.

242. Article I § 1 explicitly protects "inherent rights," which are "broad enough to cover every principle of natural right, of abstract justice."³⁶ Wisconsin's constitutionally protected inherent rights are not intended to be interpreted in an unduly limited manner.

243. A stable climate system is essential to the protection of inherent rights to life, liberty, and the pursuit of happiness. A stable climate system is the bare minimum necessary to protect the inherent rights of Wisconsinites. Without a stable climate system, youth Plaintiffs cannot grow and develop in safety, live long healthy and happy lives, provide for basic human needs, practice their cultural traditions, or maintain their bodily integrity.

244. Wis. Stat. §§ 196.491(3)(d)3. and 4., 196.025(1)(c)1., and 196.378(4m)(a) have caused, and continue to cause, air pollution from fossil fuel-fired power plants that is destabilizing the

³⁶ *Black v. State*, 113 Wis. 205, 226 (1902) (Marshall, J., concurring).

climate system. There is currently an Earth energy imbalance, i.e., a destabilized climate system, and the imbalance gets worse with each additional ton of GHG emissions authorized by the Commission. As such, Wis. Stat. §§ 196.491(3)(d)3. and 4., 196.025(1)(c)1., and 196.378(4m)(a) deprive Plaintiffs of their inherent right to a stable climate system protected by Wisconsin Constitution Article I § 1.

245. Technologically and economically feasible means of providing adequate, reliable, secure, and affordable energy are available which do not further destabilize the climate system or harm Plaintiffs.

246. An actual and justiciable controversy exists between the parties as to the violation of Plaintiffs' inherent right to a stable climate system under Wisconsin Constitution Article I § 1. Plaintiffs suffer, and will continue to suffer, injuries due to the Commission's implementation and enforcement of Wis. Stat. §§ 196.491(3)(d)3. and 4., 196.025(1)(c)1., and 196.378(4m)(a) until the Commission is restrained from doing so.

247. A declaration that Wis. Stat. § 196.491(3)(d)3. and 4. are infringing on Plaintiffs' right to a stable climate system, and are unconstitutional as applied to the Commission's determination of whether to approve or deny CPCNs for fossil fuel-power plants, would remove a barrier to the Commission's ability to deny CPCNs for such facilities.

248. A declaration that Wis. Stat. §§ 196.025(1)(c)1 and 196.378(4m)(a) are infringing on Plaintiffs' right to a stable climate system, and are facially unconstitutional, would remove a barrier to the Commission's ability to require electric providers to build or purchase more electricity from renewable sources.

249. A declaratory judgment would effect a change with concrete ramifications in legal status and relations between Plaintiffs and the Commission and would provide Plaintiffs meaningful

redress. A declaratory judgment will prevent further infringement of Plaintiffs' inherent right to a stable climate system and reduce the extent of their ongoing and future injuries.

250. Plaintiffs are entitled to declaratory relief from this Court pursuant to Wis. Stat. § 806.04(1) and, if necessary and proper, injunctive relief pursuant to Wis. Stat. § 806.04(8) that Wis. Stat. §§ 196.491(3)(d)3. and 4, 196.025(1)(c)1., and 196.378(4m)(a) violate Plaintiffs' inherent right to a stable climate system.

COUNT IV

Violation of Inherent Right to Access, Enjoy, and Use Navigable Waters and their Beds Under Wisconsin Constitution Article I § 1 (Against the Commission and Commissioners Summer Strand, Kristy Nieto, and Marcus Hawkins)

251. Plaintiffs hereby re-allege and incorporate by reference each of the allegations set forth above.

252. Article I § 1 explicitly protects "inherent rights," which are "broad enough to cover every principle of natural right, of abstract justice."³⁷ These inherent rights include rights that are not enumerated in Article I § 1, and the constitutionally protected inherent rights should not be interpreted in an unduly limited manner.

253. Navigable waters and the lands under them have long been recognized as protected for the inhabitants of the place now known as Wisconsin. The right of Wisconsinites to access, enjoy, and use the navigable waters of the state pre-dates Wisconsin's statehood. The Northwest Ordinance, for example, recognized that navigable waters "shall be common highways and forever free" for people of the territory. The United States Supreme Court has held that states hold navigable waters

³⁷ *Black v. State*, 113 Wis. 205, 226 (1902) (Marshall, J., concurring).

and their beds “in trust for the people of the state, that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein”³⁸

254. The longstanding right of Wisconsinites to access, enjoy, and use navigable waters and their beds is inextricably connected with the preservation of other constitutional rights, including the right to life, liberty, and the pursuit of happiness. Without access and use of navigable waters, Plaintiffs cannot engage in activities such as navigation and fishing, or access culturally important food sources.

255. The Wisconsin Constitution prohibits the Commission from taking action that destroys or substantially impairs navigable waters and the lands under them, or Wisconsinites’ right to access, enjoy, and use navigable waters and their beds.

256. Wis. Stat. §§ 196.491(3)(d)3. and 4., 196.025(1)(c)1., and 196.378(4m)(a) have caused, and continue to cause, air pollution from fossil fuel-fired power plants that is substantially impairing Wisconsin’s waters, and infringing on Plaintiffs’ right to access, enjoy, and use such resources free from impairment or destruction. As such, Wis. Stat. §§ 196.491(3)(d)3. and 4., 196.025(1)(c)1., and 196.378(4m)(a) deprive Plaintiffs of their right under Wisconsin Constitution Article I § 1 to access, enjoy, and use navigable waters and their beds.

257. Technologically and economically feasible means of providing adequate, reliable, secure, and affordable energy are available which do not further impair Wisconsin’s navigable waters and their beds, or Plaintiffs’ access, enjoyment, and use of such waters and beds.

258. An actual and justiciable controversy exists between the parties as to the violation of Plaintiffs’ right to access, enjoy, and use navigable waters and their beds under Wisconsin Constitution Article I § 1. Plaintiffs suffer, and will continue to suffer, injuries due to the

³⁸ *Illinois Cent. R. Co. v. State of Illinois*, 146 U.S. 387, 452 (1892).

Commission's implementation and enforcement of Wis. Stat. §§ 196.491(3)(d)3. and 4., 196.025(1)(c)1., and 196.378(4m)(a) until the Commission is restrained from doing so.

259. A declaration that Wis. Stat. § 196.491(3)(d)3. and 4. are infringing on Plaintiffs' right to access, enjoy, and use navigable waters and their beds, and are unconstitutional as applied to the Commission's determination of whether to approve or deny CPCNs for fossil fuel-fired power plants, would remove a barrier to the Commission's ability to deny CPCNs for such facilities.

260. A declaration that Wis. Stat. §§ 196.025(1)(c)1 and 196.378(4m)(a) are infringing on Plaintiffs' right to access, enjoy, and use navigable waters and their beds, and are facially unconstitutional, would remove a barrier to the Commission's ability to require electric providers to build or purchase more electricity from renewable sources.

261. A declaratory judgment would effect a change with concrete ramifications in legal status and relations between Plaintiffs and the Commission and would provide Plaintiffs meaningful redress. A declaratory judgment will prevent further infringement of Plaintiffs' inherent right to access, enjoy, and use navigable waters and their beds and reduce the extent of their ongoing and future injuries.

262. Plaintiffs are entitled to declaratory relief from this Court pursuant to Wis. Stat. § 806.04(1) and, if necessary and proper, injunctive relief pursuant to Wis. Stat. § 806.04(8) that Wis. Stat. §§ 196.491(3)(d)3. and 4, 196.025(1)(c)1., and 196.378(4m)(a) violate Plaintiffs' right to access, enjoy, and use navigable waters and their beds.

COUNT V
Violation of Wisconsin's Public Trust Doctrine Under Wisconsin Article IX § 1
(Against All Defendants)

263. Plaintiffs hereby re-allege and incorporate by reference each of the allegations set forth above.

264. The public trust doctrine requires sovereign governments, including Defendants, to protect, preserve, and prevent substantial impairment to, and waste of, public trust resources for the benefit of present and future generations of Wisconsinites, including youth Plaintiffs.

265. The public trust doctrine predates Wisconsin's statehood and has its roots in Roman law. The public trust doctrine can be traced through the Magna Carta to the United States and is deeply rooted in Wisconsin history and jurisprudence.

266. Certain public trust rights have been codified in the Wisconsin Constitution. They were not created by the Constitution. The constitutional codification of certain public trust rights and obligations does not extinguish other common law public trust rights.

267. Wisconsin's Constitution, Article IX § 1, provides that:

[T]he river Mississippi and the navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways and forever free, as well to the inhabitants of the state as to the citizens of the United States, without any tax, impost, or duty therefor.

268. Wisconsin's constitutionally enshrined public trust doctrine provides that waters and river and lake beds are held in trust by the State of Wisconsin for the benefit of the public. The public trust protects not only the Great Lakes and their beds but also lesser inland waters, including areas covered with aquatic vegetation within a particular high-water mark.

269. The Wisconsin Legislature is the trustee of navigable waters for the benefit of Wisconsin's citizens who are the trust's beneficiaries. The Wisconsin Legislature and the Commission each have an affirmative fiduciary duty to protect navigable waters for the benefit of Wisconsin citizens.

270. The rights and uses of public trust resources have evolved over time and been interpreted expansively to protect and preserve a wide range of commercial and recreational uses of waters, including the right of present and future generations to access, enjoy, and use public trust resources

for navigation, fishing, hunting, commerce, boating, bathing, skating, scenic beauty, and other public purposes.

271. Government conduct violates the public trust doctrine when there is sufficiently concrete, specific evidence of harm or potential harm to public trust resources resulting from the government conduct or ensuing pollution.

272. Wis. Stat. §§ 196.491(3)(d)3. and 4., 196.025(1)(c)1., and 196.378(4m)(a) have caused, and continue to cause, air pollution from fossil fuel-fired power plants which is substantially impairing and endangering Wisconsin's public trust resources. Consequently, Plaintiffs' ability to access, enjoy, and use public trust waters for navigation, fishing, hunting, boating, bathing, skating, scenic beauty, and other public purposes has been infringed. The air pollution that Defendants have authorized to be emitted into the atmosphere has a scientifically demonstrable effect on Plaintiffs' ability to access, enjoy, and use Wisconsin's public trust resources.

273. As such, Wis. Stat. § 196.491(3)(d)3. and 4., as applied to fossil fuel-fired power plants, and Wis. Stat. §§ 196.025(1)(c)1. and 196.378(4m)(a) on their face, substantially impair Wisconsin's public trust resources and Plaintiffs' right to access, enjoy, and use Wisconsin's public trust resources.

274. An actual and justiciable controversy exists between the parties as to whether Wisconsin's public trust resources are substantially impaired. Plaintiffs suffer and will continue to suffer injuries due to Defendants' implementation and enforcement of Wis. Stat. §§ 196.491(3)(d)3. and 4., 196.025(1)(c)1., and 196.378(4m)(a) until Defendants are restrained from doing so.

275. A declaration that Wis. Stat. § 196.491(3)(d)3. and 4. are substantially impairing Wisconsin's public trust resources, and are unconstitutional as applied to the Commission's

determination of whether to approve or deny CPCNs for fossil fuel-fired power plants would remove a barrier to the Commission's ability to deny CPCNs for such facilities.

276. A declaration that Wis. Stat. §§ 196.025(1)(c)1 and 196.378(4m)(a) are substantially impairing Wisconsin's public trust resources, and are facially unconstitutional, would remove a barrier to the Commission's ability to require electric providers to build or purchase more electricity from renewable sources.

277. A declaratory judgment would effect a change with concrete ramifications in legal status and relations between Plaintiffs and Defendants and would provide Plaintiffs meaningful redress. A declaratory judgment will prevent further infringement of Plaintiffs' public trust rights and reduce the extent of their ongoing and future injuries.

278. Plaintiffs are entitled to declaratory relief from this Court pursuant to Wis. Stat. § 806.04(1) and, if necessary and proper, injunctive relief pursuant to Wis. Stat. § 806.04(8) that Wis. Stat. §§ 196.491(3)(d)3. and 4., 196.025(1)(c)1., and 196.378(4m)(a) violate Plaintiffs' public trust rights.

REQUEST FOR RELIEF

Youth Plaintiffs respectfully request that this Court:

1. Grant declaratory judgment as follows:
 - a. The last sentence of Wis. Stat. § 196.491(3)(d)3. and 4. violate Plaintiffs' inherent liberty rights to health, safety, and bodily integrity, and are unconstitutional as applied to prohibiting the Commission from considering air pollution when determining whether to approve or deny a CPCN for fossil fuel-fired power plants.
 - b. Wis. Stat. § 196.378(4m)(a) and Wis. Stat. § 196.025(1)(c)1. violate Plaintiffs' inherent liberty rights to health, safety, and bodily integrity, and are facially unconstitutional.

- c. The last sentence of Wis. Stat. § 196.491(3)(d)3. and 4. violate Plaintiffs' inherent right to life, and are unconstitutional as applied to prohibiting the Commission from considering air pollution when determining whether to approve or deny a CPCN for fossil fuel-fired power plants.
- d. Wis. Stat. § 196.378(4m)(a) and Wis. Stat. § 196.025(1)(c)1. violate Plaintiffs' inherent right to life, and are facially unconstitutional.
- e. Article I § 1 of the Wisconsin Constitution protects Plaintiffs' inherent right to a stable climate system.
- f. The last sentence of Wis. Stat. § 196.491(3)(d)3. and 4. violate Plaintiffs' inherent right to a stable climate system, and are unconstitutional as applied to prohibiting the Commission from considering air pollution when determining whether to approve or deny a CPCN for fossil fuel-fired power plants.
- g. Wis. Stat. § 196.378(4m)(a) and Wis. Stat. § 196.025(1)(c)1. violate Plaintiffs' inherent right to a stable climate system and, are facially unconstitutional.
- h. Article I § 1 of the Wisconsin Constitution protects Plaintiffs' inherent right to access, enjoy, and use navigable waters and their beds.
- i. The last sentence of Wis. Stat. § 196.491(3)(d)3. and 4. violate Plaintiffs' inherent right to a right to access, enjoy, and use navigable waters, and are unconstitutional as applied to prohibiting the Commission from considering air pollution when determining whether to approve or deny a CPCN for fossil fuel-fired power plants.
- j. Wis. Stat. § 196.378(4m)(a) and Wis. Stat. § 196.025(1)(c)1. violate Plaintiffs' inherent right to right to access, enjoy, and use navigable waters, and are facially unconstitutional.

- k. Pursuant to Article IX § 1 Defendants have affirmative public trust obligations to protect and conserve Wisconsin's public trust resources for the benefit of present and future generations of Wisconsinites.
 - l. The last sentence of Wis. Stat. § 196.491(3)(d)3. and 4. infringe upon Plaintiffs' public trust rights, and are unconstitutional as applied to prohibiting the Commission from considering air pollution when determining whether to approve or deny a CPCN for fossil fuel-fired power plants.
 - m. Wis. Stat. § 196.378(4m)(a) and Wis. Stat. § 196.025(1)(c)1. infringe upon Plaintiffs' public trust rights, and are facially unconstitutional.
2. Permanently enjoin Defendants from implementing the last sentence of Wis. Stat. § 196.491(3)(d)3. and 4. when determining whether to approve or deny a CPCN for fossil fuel-fired power plants
 3. Permanently enjoin Defendants from implementing Wis. Stat. § 196.378(4m)(a) and Wis. Stat. § 196.025(1)(c)1 in all instances.
 4. Grant an order awarding Plaintiffs their reasonable attorneys' fees and costs.
 5. Award such further relief as the Court deems necessary and proper.

Dated: August 22, 2025

Respectfully submitted,

Electronically signed by: Tony Wilkin Gibart

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*Application for *pro hac vice* admission
forthcoming

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