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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III
Appeal No. 2026AP244

ANTRELL THOMAS, MELVIN CLEMONS, CHRISTIAN PITTMAN,
CHANCE KRATOCHVIL, KELSIE McGESHICK, JEROME BROST,
DWIGHT MOORE, SEBASTIAN POPOVICH, MELINDA
MESHIGAUD, ELMORE ANDERSON, CASHUN DRAKE, TERRY
JOHNSON, TIMOTHY WILLIAMS, WILLIAM LOWE, TIVON
WELLS, DAVADAE BOBBITT, and DONALD JUECK, on behalf of
themselves and all others similarly situated,

Plaintiffs-Appellants,

v.

JENNIFER BIAS, in her official capacity as the Wisconsin State Public
Defender; ELLEN THORN, in her official capacity as Chair of the Wis-
consin Public Defender Board; JOSEPH MIOTKE, in his official capac-
ity as Vice-Chair of the Wisconsin Public Defender Board; MAI NENG
XIONG, in her official capacity as a member of the Wisconsin Public
Defender Board; ANTHONY COOPER, SR., in his official capacity as a
member of the Wisconsin Public Defender Board; INGRID JAGERS, in
her official capacity as a member of the Wisconsin Public Defender
Board; MARTINA GAUTHIER, in her official capacity as a member of
the Wisconsin Public Defender Board; DEJA VISHNY, in her official
capacity as a member of the Wisconsin Public Defender Board;
DR. CHARLES WESTERBERG, in his official capacity as a member of
the Wisconsin Public Defender Board; and T. R. WILLIAMS, in her offi-
cial capacity as a member of the Wisconsin Public Defender Board,

Defendants-Respondents.

Appeal from an Order Denying Class Action Certification of the Circuit
Court of Brown County, the Honorable Thomas J. Walsh Presiding,
Circuit Court Case No. 2022CV001027

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INTRODUCTION

Defendants do not dispute that lengthy delays in the appointment of public defense counsel have adversely affected thousands of defendants in Wisconsin—causing a statewide crisis that continues to this day. And they do not dispute that the circuit court’s denial of class certification in this case prevents these individuals from seeking collective relief for the constitutional violations they have suffered. Yet, to shield the SPD from judicial scrutiny and to avoid any systemic change not on the SPD’s terms, Defendants mechanically defend the circuit court’s decision, raising a series of arguments for why—despite the clear legal missteps identified in Plaintiffs’ Opening Brief—the circuit court nevertheless “properly exercised its discretion” in denying class certification. These arguments fail. Plaintiffs have satisfied Section 803.08(1)(b)’s commonality requirement and Section 803.08(2)(b)’s common relief requirement, and the circuit court erred by concluding otherwise. Accordingly, the Court should reverse the circuit court’s order and remand the case for further proceedings.

ARGUMENT

I. Plaintiffs have satisfied the “commonality” requirement.

The circuit court erroneously concluded that Plaintiffs failed to satisfy Section 803.08(1)(b)’s commonality requirement, and Defendants’ arguments otherwise fail.

In their class certification motion, Plaintiffs proposed two common questions: (1) whether the first 30 days of a criminal prosecution in Wisconsin is a “critical stage” of the proceedings and (2) whether a more-than-30-day delay in appointment of counsel is per se unreasonable. As

set forth in Plaintiffs' Opening Brief, each of these questions satisfies Section 803.08(1)(b)'s commonality requirement, and the circuit court erred by concluding that there are no common questions of law or fact. Br. at 33–48. In their Opposition, Defendants argue that the circuit court did not err in its commonality analysis, and that, even if it did, this Court should overlook the circuit court's errors. Defendants are wrong.

A. The circuit court erred by failing to consider Plaintiffs' first proposed common question.

As Defendants concede, Plaintiffs correctly pointed out that the circuit court failed to consider whether Plaintiffs' first proposed common question—whether the first 30 days of a criminal prosecution in Wisconsin constitutes a “critical stage” of the proceedings—was a question common to the class. Opp'n at 39 (“Plaintiffs] correctly argue that the circuit court did not specifically consider their [first] proposed question[.]”).

Nevertheless, Defendants make three failed arguments for why this Court should overlook the circuit court's error.

First, Defendants argue Plaintiffs' first proposed common question is the same as their second proposed common question—whether a 30-day delay in appointment of counsel is unreasonable. *Id.* (arguing that the two questions “merge[]”). Tellingly, Defendants do not cite a single case that supports this proposition. That's because it's wrong. As Plaintiffs extensively detailed in their Opening Brief, critical-stage claims and unreasonable-delay claims are different Sixth Amendment claims, each with their own Supreme Court jurisprudence. *See* Br. at 34–40. Accordingly, there are “two avenues for a Sixth Amendment violation” here: “(1) lack of counsel at a critical stage, or (2) unreasonable delay in appointment that fails to provide for adequate representation at [a] critical stage.” *Betschart v. Garrett*, 700 F. Supp. 3d 965, 981 (D. Or. 2023)

(emphasis added). The Court should reject Defendants' baseless request to "merge" these doctrinally distinct claims to excuse the circuit court's legal error.

Second, Defendants argue that a "critical stage" must be a discrete event rather than a temporal period in the proceedings. Opp'n at 39–40. Again, Defendants cite nothing to support this proposition, and again it is wrong. Courts have repeatedly recognized that there is no one-size-fits-all definition of "critical stage." *See Van v. Jones*, 475 F.3d 292, 312 (6th Cir. 2007) (noting that there is no "comprehensive and final one-line definition"). And a critical stage can be a temporal "period." *See id.*; *see also, e.g., Robbins v. Billings*, No. CV-22-054, 2025 Me. Super. LEXIS 37, at *20 (Me. Super. Ct., Ken. Cnty., Mar. 7, 2025) (holding that the period immediately following an initial appearance or arraignment constitutes a critical stage).

True, to determine whether a particular period is critical, courts must look at the events and circumstances that occur—or are at risk of occurring—during that time. But Defendants are wrong that this determination must be made on a case-by-case basis. Plaintiffs have established, with evidence, that during this critical, initial 30-day period, class members were subject to common events, circumstances, and risks. Br. at 29–30, 40. Defendants do not dispute this. And although Defendants may disagree as to whether these common events, circumstances, and risks make this period categorically "critical" to an accused, that is a merits question, not a class certification one.

Third, Defendants argue that the Court should ignore the circuit court's error because it was "harmless." Opp'n at 40–41. But the harmless-error statute Defendants cite, Wis. Stat. § 805.18(1), concerns errors

at trial. See Wis. Stat. § 805 (Civil Procedure – *Trials*). It does not set forth the standard for appellate review of the circuit court’s class certification denial, which has no harmless-error component. See *McDaniel v. Wis. Dep’t of Corr.*, 2025 WI 24, ¶ 15 (Wis. 2025).

For these reasons, the circuit court erred by failing to consider Plaintiffs’ first proposed question, and this Court should reject Defendants’ request to overlook this error.

B. The circuit court erred by requiring Plaintiffs to establish a specific policy of denial.

The circuit court also erroneously concluded that commonality was not satisfied as to Plaintiffs’ second proposed common question—whether a greater-than-30-day delay is per se unreasonable under *Rothgery v. Gillespie County*, 554 U.S. 191 (2008)—by finding that Plaintiffs did not establish that the SPD had adopted a “specific policy” to “consciously deny[] eligible defendants an attorney” for more than 30 days. R.265:8.

To prevail on an unreasonable-delay claim, the Sixth Amendment and Wisconsin Constitution do not require the plaintiff to show the defendant acted for a specific reason or with a specific mental state. Br. at 41–43. Rather, the plaintiff need only show that the defendant failed to provide them with an attorney within a reasonable time. *Id.* Thus, the common treatment is the fact that Defendants’ appointment policies and procedures failed to provide class members with attorneys within 30 days.

Defendants fail to meaningfully respond to this argument. First, they claim that “the circuit court did not require [Plaintiffs] to identify a specific SPD policy” of conscious denial. Opp’n at 26. But the plain language of the court’s decision makes clear that the lack of such a policy

was critical to its analysis. Indeed, the court spent nearly half of its commonality analysis discussing the Seventh Circuit’s decision in *Scott v. Dart*, 99 F.4th 1076 (7th Cir. 2024). Although acknowledging that *Scott* supported Plaintiffs’ commonality argument “at first blush,” the court specifically distinguished *Scott* on the ground that Plaintiffs had not shown that the SPD had a “specific policy” to “willful[ly]” and “consciously deny[]” counsel:

[T]he difference is that the [defendant in *Scott*] had a specific policy in place . . . [i]n other words, the [defendant’s] conduct was willful, and the [plaintiffs] were consciously denied access to an on-site oral surgeon . . . There is no . . . suggestion . . . that the SPD is consciously denying eligible defendants an attorney for any length of time.

R.265:6–8. If the court did not conclude that a specific policy of denial was required to show common treatment, as Defendants suggest, then the court’s reasoning makes no sense.

Next, Defendants attempt to blame the circuit court’s error on *Plaintiffs*. According to Defendants, the court was “simply address[ing]” Plaintiffs’ “main and overarching argument . . . which was based on SPD’s written policy . . . of appointing counsel as soon as possible.” Opp’n at 26–27. But Plaintiffs never argued that the SPD’s “as soon as possible” policy was a “willful” and “conscious[]” policy of denial. Plaintiffs’ *actual* argument was that the SPD’s appointment policies and practices—including, but not limited to, the “as soon as possible” policy—constituted Defendants’ common treatment of the proposed class. *See* R.189:31 (“Regardless of where they were located across the state and what they were charged with, all [Class] members were subject to the SPD’s policies and practices . . . [for] appointing private bar attorneys.”); *see also* R.233:9

(“Defendants’ deficient appointment policies and practices . . . constitute common treatment toward the class as a whole.”).

To be sure, Plaintiffs’ position is that the evidence adduced in discovery shows that the SPD’s deficient appointment policies and practices facilitated the delays at issue. But Plaintiffs do not need to prevail on that causation issue to obtain class certification. All that is required at this stage is that Plaintiffs show common treatment by Defendants, which Plaintiffs have done.

C. The circuit court erred by concluding that case-specific, environmental factors bear on the reasonableness of an appointment delay.

The circuit court also erroneously concluded that commonality was not satisfied as to Plaintiffs’ second proposed common question because the court found case-specific “variables” bear on whether a delay in the appointment of counsel is reasonable. R.265:10. According to the circuit court, such variables include “the county where the charges are being brought,” “the reputation of the prosecutor,” “the SPD’s alleged appointment practices,” “the local SPD office appointing the case,” and the “number of private attorneys in the vicinity, their areas of practice, their existing caseloads, and their experience levels,” among others. *Id.* According to the circuit court, because these environmental factors vary from county to county, the reasonableness of a greater-than-30-day delay is not a common question for a statewide class. *Id.*

Plaintiffs argued that the circuit court erred by concluding that such environmental factors are relevant to determining whether a delay is reasonable because *Rothgery*’s reasonableness analysis concerns only the potential impact of the delay on the accused’s defense—in other words, whether the delay still “allow[s] for adequate representation.” 554 U.S.

at 212; *see* Br. at 38–40. Therefore, the only factors relevant to this inquiry are those that potentially affect the adequacy of an accused’s defense, such as the objective seriousness of the case and the length of the delay (which are characteristics that the class has in common, as they each were charged with a felony and denied counsel for at least 30 days). Br. at 38–40. Conversely, factors that do not affect the adequacy of the accused’s defense are categorically irrelevant. *Id.* For this reason, although the case-specific, environmental factors identified by the circuit court may explain “*why* appointment of counsel was delayed,” as a matter of constitutional law, *they do not bear on whether the delay was reasonable*. Accordingly, it was a legal error for the circuit court to conclude that commonality was not met because of such factors.

In response, Defendants argue that the circuit court correctly determined these factors were relevant to the reasonableness analysis, relying on *Allen v. Edwards*. Opp’n at 21–22 (citing *Allen*, 322 So. 3d 800, 811 (La. Ct. App. 2021)).

But Defendants’ reliance on *Allen* is misplaced. In *Allen*, a Louisiana appellate court reversed a class certification order on commonality grounds. Crucially, however, the plaintiffs in *Allen* asserted ineffective-assistance-of-counsel claims under *Strickland*, not unreasonable-delay claims under *Rothgery*. *See Allen*, 322 So. 3d at 804 (“[P]laintiffs complain . . . that . . . Louisiana fails to provide *effective representation* to . . . indigent defendants” (emphasis added)). To determine whether a defendant received effective assistance of counsel under *Strickland*, a court must conduct a “case-specific analysis” of the specific attorney’s performance and whether it prejudiced the defendant. *See Blake v. United States*, 161 F.4th 506, 512–13 (7th Cir. 2025) (citing, *inter alia*,

Strickland). Here, however, Plaintiffs are asserting unreasonable-delay claims under *Rothgery*, which require no case-specific assessments about attorney performance (because no attorney has been appointed) or actual prejudice (which is not required). See *Farrow v. Lipetzky*, 637 F. App'x 986, 988 (9th Cir. 2016) (“[T]he district court erroneously required the plaintiffs to allege actual prejudice [from the delay].”). Indeed, for unreasonable-delay claims, the absence of counsel itself is the harm. *Id.*

Next, Defendants argue that, in Wisconsin, the “reasons why appointment of counsel might be delayed vary from case to case,” noting, among other things, county-by-county differences in the number of attorneys per capita and district attorney charging practices. Opp’n at 22–24. But even assuming those differences exist, they are irrelevant to members’ unreasonable-delay claims. Again, Defendants are conflating the reasonableness of *a state’s efforts to secure counsel* with the reasonableness of the delay’s impact on *the accused’s efforts to mount an adequate defense*. See *Rothgery*, 554 U.S. at 212. This is simply wrong. If a state’s inability to appoint a defense attorney unduly jeopardizes the adequacy of an accused’s defense, it violates the Sixth Amendment and Wisconsin Constitution. The extent to which that failure is caused by “environmental” factors is not the constitutional question raised by Plaintiffs’ unreasonable-delay claims.

D. Defendants fail to distinguish Plaintiffs’ cases.

Defendants attempt to distinguish three cases cited in Plaintiffs’ Opening Brief. These attempts fail.

1. *Castelan v. Villarreal*

Plaintiffs cited *Castelan v. Villarreal* as an example of how to conduct the reasonableness inquiry under *Rothgery*. Br. at 38–39. In

Castelan, the court concluded that a greater-than-30-day appointment delay was unreasonable because, under Texas law, a defendant has the right to a mandatory bail reduction hearing within 30 days and requires the assistance of counsel to assert that right. 2025 U.S. Dist. LEXIS 21233, at *27–30, *42 (W.D. Tex. Feb. 6, 2025). Importantly, the *Castelan* court rejected the State of Texas’s argument that environmental factors—such as increased arrest volume and COVID-19—had any meaningful bearing on the analysis. *Id.* at *42, *44–47.

In response, Defendants attempt to downplay *Castelan* by making several meritless arguments.

First, Defendants argue that *Castelan* is “unpublished” and “not precedential.” Opp’n at 34. But there’s nothing “incorrect” about citing a nonbinding federal case for persuasive purposes. *Luckett v. Bodner*, 2009 WI 68, ¶ 29 (Wis. 2009) (“When a state rule mirrors the federal rule, we consider federal cases interpreting the rule to be persuasive authority.”). Defendants then argue that the Court should disregard *Castelan* because there is a pending appeal in that case. But this is a red herring; none of the issues on appeal relate to the trial court’s analysis of whether the appointment delay was reasonable. *See* Appellants’ Opening Br., Dkt. No. 50, *Castelan v. Taylor*, No. 25-50714 (5th Cir. Dec. 10, 2025) (appealing supervisory-liability and qualified-immunity issues).

Next, Defendants argue that because *Castelan* was not a class-certification decision, it is not persuasive. Opp’n at 34. But *Castelan*, like this case, is a putative class action involving Sixth Amendment unreasonable-delay claims. And although the cited decision concerned the merits of such claims, not class certification, the substance of the underlying claims informs the commonality analysis, as the Wisconsin Supreme

Court has explained. *See McDaniel*, 2025 WI 24, ¶ 28 (affirming that a court “may need to consider the underlying legal claims . . . to determine whether a common legal question exists”) (citing *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011)); *see also id.* at 351 (noting that “frequently” a court’s class certification analysis “will entail some overlap with the merits of the plaintiff’s underlying claim”). Contrary to what Defendants claim, Plaintiffs are not asking the Court to consider the *ultimate viability* of the underlying claims.

Finally, Defendants argue that *Castelan* actually “undermines [Plaintiffs’] basis for class certification.” Opp’n at 36. Not so. *Castelan* illustrates what “facts and circumstances” a court should consider when conducting a reasonableness analysis under *Rothgery*. The fact that the *Castelan* court rejected the State’s argument that environmental factors have any meaningful impact on the reasonableness analysis supports Plaintiffs’ argument that the circuit court erred in concluding that these case-by-case differences defeat commonality.

2. *Scott v. Dart*

Plaintiffs cited the Seventh Circuit’s decision in *Scott* to show that differences between each class member’s case did not defeat commonality. Br. at 45. In *Scott*, a putative class of detainees brought due-process claims against a prison, alleging that the prison’s failure to staff an oral surgeon was objectively unreasonable. The Seventh Circuit rejected the defendant’s argument that “individualized factors, such as type of dental issue, degree of pain, and how long each detainee waited before receiving treatment” could defeat commonality. 99 F.4th at 1089–90. The court concluded that the failure to provide an oral surgeon could be per se

unreasonable and determined on a classwide basis *regardless* of each class member's individual situation. *See id.*

Defendants attempt to distinguish *Scott*, arguing that “[u]nlike the outright denial in *Scott* of an oral surgeon to those detainees demonstrably in need of one, [Plaintiffs’] case does not involve a *policy* by [the State] to outright deny counsel to indigent criminal defendants who qualify for it.” Opp’n at 36 (emphasis added). But as explained in Plaintiffs’ Opening Brief, the existence of a policy was important in *Scott* because the plaintiffs had asserted *Monell* claims, which require proof of “an express municipal *policy*, widespread custom, or deliberate act of a decision-maker.” *Scott*, 99 F.4th at 1088 (emphasis added). Plaintiffs are not bringing *Monell* claims here. And, as explained above, Plaintiffs need not show that Defendants acted intentionally or indifferently to prevail on their unreasonable-delay claims. *See supra* Section I(C). Therefore, a specific policy is not required to show commonality.

3. *Farrow v. Lipetzky*

Plaintiffs cited *Farrow* to show that the only factors relevant in *Rothgery*’s reasonableness analysis are those that potentially impact the adequacy of the accused’s defense. Br. at 38 (citing *Farrow v. Lipetzky*, 2017 U.S. Dist. LEXIS 65331, at *45–46 (N.D. Cal. Apr. 28, 2017)). Defendants attempt to distinguish *Farrow* but fail.

First, Defendants argue that *Farrow* is “inapposite” because it was a motion-to-dismiss denial, not a class certification order. But Defendants do not dispute that the *Farrow* plaintiffs, like Plaintiffs here, had asserted unreasonable-delay claims under *Rothgery*. And Defendants do not and cannot dispute that “[a] court may need to consider the

underlying legal claims . . . to determine whether a common legal question exists.” *McDaniel*, 2025 WI 24, ¶ 28 (citing *Dukes*, 564 U.S. at 350).

Next, Defendants argue that, as with *Castelan*, *Farrow* “undermines” Plaintiffs’ commonality argument. Defendants are wrong. *Farrow* shows that not all circumstances are properly considered in the reasonableness analysis. Indeed, the *Farrow* court explained that, in addition to the “time needed [for defense counsel] to prepare for an upcoming critical stage,” a court should consider circumstances relating to the “value of . . . counsel to protect [the defendant’s] process and liberty interests,” such as the possibility of “secur[ing] a bail reduction” or moving to “dismiss[] the indictment.” 2017 U.S. Dist. LEXIS 65331, at *35–46. Notably, the court did not consider the number of defense attorneys available or any other environmental factor. *Id.* As with *Castelan*, *Farrow* shows that the only relevant considerations are those that have a potential impact on the adequacy of the accused’s defense. Accordingly, *Farrow* supports Plaintiffs’ commonality argument.

II. Plaintiffs have satisfied the “common relief” requirement.

As Plaintiffs explained, the circuit court erroneously concluded that Plaintiffs’ proposed class did not satisfy Section 803.08(2)(b)’s “common relief” requirement, which requires the party seeking class certification to establish that the opposing party “has acted or refused to act on grounds that apply generally to the class, *so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.*” Wis. Stat. § 803.08(2)(b) (emphasis added).

Plaintiffs explained that Defendants’ failure to appoint public defense counsel on behalf of Plaintiffs and proposed class members within 30 days is a “refus[al] to act on grounds that apply generally to the class.” Br. at 49 (quoting Wis. Stat. § 803.08(2)). Moreover, Defendants’

application of the SPD appointment policies and practices to Plaintiffs and the proposed class members—which is how the State purports to comply with its constitutional obligations—is conduct that “appl[ies] generally to the class.” *Id.* Defendants do not dispute either of these arguments.

Plaintiffs further explained that their requested declaratory judgment satisfies Section 803.08(2)(b)’s requirement that “declaratory relief [be] appropriate respecting the class as a whole.” *Id.* Because, by definition, each class member did not receive counsel within 30 days, a judicial determination that the first 30 days of a prosecution is a “critical stage,” or that a greater-than-30-day delay in the appointment of counsel is per se unreasonable, would provide the basis for a declaratory judgment that the State’s conduct violated each class member’s constitutional right to counsel—“declaratory relief . . . respecting the class as a whole.” Wis. Stat. § 803.08(2).

Defendants try to salvage the circuit court’s erroneous ruling by arguing “the unique circumstances of each [Plaintiff] and putative class member must be considered to judge their constitutional claims, making class-wide injunctive or declaratory relief impossible.” Opp’n at 32. But this is simply a repackaging of their commonality argument. The issue is not whether Plaintiffs’ proposed questions are, in fact, common to the class; it is whether—assuming at least one is and is resolved in Plaintiffs’ favor—*the Court can order corresponding classwide relief*. The Court should reject Defendants’ attempt to merge these distinct inquiries.

Next, Defendants incorrectly assert that the circuit court’s conclusion “was based on a correct statement of the law and application of the law to the relevant facts.” *Id.* They say the circuit court correctly

concluded that Plaintiffs seek “individualized relief”—“a different injunction or declaratory judgment” for each class member. *Id.* Not so. A ruling that the first 30 days is a “critical stage,” or that a greater-than-30-day delay is per se unreasonable, would mean that each class member suffered a constitutional violation, providing the basis for a classwide declaratory judgment. Defendants fail to explain how this is “individualized relief” (because it is not).

Defendants then argue that the Seventh Circuit’s decision in *Jamie S. v. Milwaukee Public Schools*, 668 F.3d 481 (7th Cir. 2012), supports the circuit court’s reasoning. *Id.* at 29. It does not. In that case, the Seventh Circuit concluded that the federal analogue to Section 803.08(2)(b) was not satisfied because the “relief sought would merely initiate a process through which highly individualized determinations of liability and remedy are made.” *Jamie S.*, 668 F.3d at 499. Here, by contrast, there will be no “individualized determinations of liability and remedy.” *Id.* If Plaintiffs prevail on the merits, then Plaintiffs will have established that Defendants have violated each class member’s constitutional right to counsel—a *common* determination of liability. And a declaratory judgment to that effect is a *common* remedy.

Last, Defendants argue that the circuit court correctly found that an injunction would “usurp[] decision making authority from those appointed, elected, and entrusted to run each county’s judiciary and criminal justice system.” Opp’n at 33 (quoting R. 265:12). According to the circuit court, if a defendant in another county “has gone more than thirty days or any other length of time without the successful appointment of an attorney . . . the obvious answer is that those [county-level officials] with their boots on the ground . . . should figure out what to do; it is

impossible to decide sitting here in Brown County.” R. 265:12. But Plaintiffs did not ask the circuit court to solve the underlying policy question of how to appoint counsel within 30 days. Rather, Plaintiffs asked the circuit court to decide whether the denial of counsel violates class members’ constitutional rights and, if so, to declare that the class members’ rights have been violated and to enjoin further violations. This “is emphatically the province and duty” of the judiciary, *Gabler v. Crime Victims Rts. Bd.*, 2017 WI 67, ¶ 37 (Wis. 2017) (quoting *Marbury v. Madison*, 5 U.S. 137, 177 (1803)), and the circuit court erred by concluding it could not perform this essential judicial function.

CONCLUSION

The Court should reverse the circuit court’s denial of Plaintiffs’ class certification motion and remand for further proceedings.

Dated this 10th day of June, 2026.

Respectfully submitted,

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CERTIFICATION AS TO FORM AND LENGTH

I hereby certify that this brief conforms to the rules contained in Section 809.19(4)(a) and (b) for a brief, as modified by the Court's June 10, 2026 order granting Plaintiffs' Motion to Expand Word Limit for Forthcoming Reply. The length of this brief is 3,999 words.

Dated this 10th day of June, 2026.

Signed:

Electronically signed by
Michael P. Mayer

Electronically signed by
James W. Randall

CERTIFICATE OF SERVICE

I hereby certify that I have submitted an electronic copy of the foregoing document, which complies with the requirements of Section 809.19(12).

I further certify that a copy was served on all counsel of record via the Wisconsin Appellate Court Electronic Filing System, which will accomplish the electronic notice and service for all participants who are registered.

Dated this 10th day of June, 2026.

Signed:

Electronically signed by
Michael P. Mayer

Electronically signed by
James W. Randall