

STATE OF WISCONSIN
SUPREME COURT

Appeal No. 2015AP2019

TETRA TECH EC, INC., and
LOWER FOX RIVER REMEDIATION LLC,
Petitioners-Appellants-Petitioners

v.
WISCONSIN DEPARTMENT OF REVENUE
Respondent-Respondent

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CLERK OF SUPREME COURT
OF WISCONSIN

**JOINT MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF BY
WISCONSIN MANUFACTURERS AND COMMERCE, INC., MIDWEST
FOOD PRODUCTS ASSOCIATION, METROPOLITAN MILWAUKEE
ASSOCIATION OF COMMERCE, WISCONSIN BANKERS
ASSOCIATION, WISCONSIN CHEESE MAKERS ASSOCIATION,
WISCONSIN PAPER COUNCIL, DAIRY BUSINESS ASSOCIATION,
INC., ASSOCIATED BUILDERS AND CONTRACTORS, INC.
(WISCONSIN CHAPTER), WISCONSIN POTATO AND VEGETABLE
GROWERS ASSOCIATION, WISCONSIN FARM BUREAU
FEDERATION, AND WISCONSIN CORN GROWERS ASSOCIATION**

On Appeal from District III of the Court of Appeals' December 28, 2016, decision
affirming the September 11, 2015, Order of Brown County Circuit Court
The Honorable Marc A. Hammer, Presiding

Robert I. Fassbender (#1013985)
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July 24, 2017

Movants, Wisconsin Manufacturers and Commerce, Midwest Food Products Association, Metropolitan Milwaukee Association of Commerce, Wisconsin Bankers Association, Wisconsin Cheese Makers Association, Wisconsin Paper Council, Dairy Business Association, Inc., Associated Builders and Contractors, Inc. (Wisconsin Chapter), Wisconsin Potato and Vegetable Growers Association, Wisconsin Farm Bureau Federation, and Wisconsin Corn Growers Association by their counsel, Great Lakes Legal Foundation, pursuant to Wis. Stat. § 809.19(7) respectfully requests this Court grant Movants leave to file an amicus curiae brief in the above referenced matter. The grounds for this motion are as follows:

1. Wisconsin Manufacturers and Commerce, Inc., (WMC) is the state chamber of commerce and manufacturing association, with approximately 3,800 members statewide. Since 1911, WMC has represented the interests of Wisconsin's business community before administrative agencies, administrative law judges, the legislature and the courts to ensure that commerce is not impeded by regulatory actions.

2. The Midwest Food Products Association (MWFPA) is a trade association advocating on behalf of food processing companies and affiliated industries in Illinois, Minnesota, and Wisconsin. Established in 1905 as the Wisconsin Cannery Association, today MWFPA represents a diverse group of food producers on a variety of food issues, with its primary government relations function to shape public policy in the legislature and before administrative agencies.

3. The Metropolitan Milwaukee Association of Commerce (MMAC) has served Milwaukee area businesses for over 150 years, with 1,800 current business members in the four-county metro Milwaukee area, ranging from the smallest businesses to Fortune 500 companies. MMAC focuses on: sharing best practices among members to build stronger business relationships; serving as the key private-sector partner in regional economic development, working to

strengthen the business base and to attract and retain jobs and the talent to fill them; and advocating for member businesses at the local, state and federal levels on a wide range of regulatory matters.

4. The Wisconsin Bankers Association (WBA) is dedicated to supporting and enhancing the banking industry in Wisconsin. Founded in 1892, its mission is to promote a healthy business and regulatory environment for banks through public policy advocacy at both the state and federal levels. WBA works to advance legislative priorities, focuses on banking regulations, and submits *amicus curiae* briefs in Wisconsin appellate court cases that will impact the industry.

5. Wisconsin Cheese Makers Association is a non-profit statewide organization representing over 80 dairy product manufacturing facilities in Wisconsin and more than 100 companies in Wisconsin supplying goods and services to the dairy industry. The association provides information, conducts advocacy, and sponsors educational events for its members.

6. Wisconsin Paper Council is a non-profit statewide organization representing 20 pulp and paper mills located in Wisconsin, along with 70 paper-converting and related business associate members, employing over 31,000 or over 7 percent of all manufacturing workers in Wisconsin. The Wisconsin Paper Council advocates for and represents its members in public affairs and public relations matters, serves as a forum for the exchange of ideas, and disseminates news and information concerning the industry.

7. Dairy Business Association, Inc. (DBA) is a non-profit, statewide organization of dairy producers, vendors, allied industry partners, and professionals actively working to ensure that dairy producers, large and small, remain an active, thriving part of Wisconsin's economy, communities, and food chain. DBA works to foster a positive business and political environment for dairy farming in Wisconsin, including the creation and preservation of consistent water, environmental, and waste management regulation.

8. Associated Builders and Contractors, Inc. Wisconsin Chapter (ABC) membership numbers more than 22,000 firms nationally and more than 850 members in its Wisconsin Chapter. Dedicated to the principles of free enterprise, ABC is an effective force in business development, education, labor relations, legislation, and regulation, translating these principles into a healthy, competitive and professional construction business climate across the nation and here in Wisconsin.

9. Wisconsin Potato and Vegetable Growers Association (WPVGA) is a non-profit statewide organization representing 300 farm operations and related business associate members, who provide over 35,000 jobs in Wisconsin and generate \$7.5 billion in gross state product. WPVGA represents its members before the legislature and regulatory agencies on a range of issues affecting the agricultural sector.

10. Wisconsin Farm Bureau Federation (WFBF) is Wisconsin's largest general farm organization with more than 46,000 members, coming from every one of Wisconsin's 72 counties. WFBF advocates on behalf of its members on a broad range of legislative and regulatory issues before the legislature and administrative agencies.

11. The Wisconsin Corn Growers Association (WCGA) is a non-profit statewide organization representing 842 corn farming operators, operations and related business associate members. The WCGA was created to assist its grower-members to conduct and utilize science-based agricultural research and technologies, garner public and private sector support for agricultural research, and educate the consumer on corn crop production and utilization in consumer products.

12. Movants' members are global leaders in manufacturing, making everything from toilets to giant earth moving equipment. Wisconsin has more than 7,970 manufacturers, employing over 472,000 workers, with an output value that exceeds \$53 billion annually. Movants members are dairy, corn, potato, vegetable,

and other food producers, large and small. They are the companies that process these agricultural products for consumers around the world. There are 68,700 farms in Wisconsin. Wisconsin's farms and agricultural businesses generate more than \$88.3 billion in economic activity and 413,500 jobs.

13. Movants' members are of every type and size. They range from small-town main street businesses to large industrial operations. They are diverse, but share concerns over the complexity, volume, and burdens imposed by unchecked state and federal administrative agencies. Movants, on behalf of their members, are united in their long-standing advocacy for fair and balanced development, implementation, interpretation and application of government regulation properly grounded within our constitutional framework of separation of powers.

14. This case is about how much deference the courts afford agencies to self-assess their regulatory reach. Judicial review of agency actions is the last line of defense against excessive discretionary power in the hands of the regulators. Currently, the courts give agencies too much deference on these questions of law. Under our constitution, it is the duty of the courts to say what the law is. It is the Movants' members who will pay more taxes if the courts defer to the tax collectors, and who will be burdened with more regulations if the courts defer to the regulators. The disposition of this case will affect their ability to maintain and create Wisconsin jobs.

15. Movants' brief should be considered desirable to the court because it will set forth the unique and valuable perspective of the regulated and those associations representing them before the legislature and administrative agencies. Movants understand how excessive regulatory burdens invariably arise when a court allows an agency to define its own powers and reach.

WHEREFORE, Movants respectfully request that the court grant leave to file an *amicus curiae* brief in this case by July 31, 2017.

DATED this 24th day of July, 2017.

Respectfully Submitted,

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