

STATE OF WISCONSIN
SUPREME COURT

Appeal No. 2017AP001823

LAMAR CENTRAL OUTDOOR, LLC
d/b/a Lamar Advertising of Central Wisconsin

-and-

TLC PROPERTIES, INC.,

Petitioners-Appellants-Petitioners,

v.

STATE OF WISCONSIN
DIVISION OF HEARING & APPEALS,

Respondent-Respondent,

-and-

STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION,
Other Party.

ON APPEAL FROM A JUDGMENT OF THE CIRCUIT COURT,
PORTAGE COUNTY, HONORABLE JON M. COLINSELL,
PRESIDING, CASE NO. 16 CV 0196

**MOTION FOR LEAVE TO FILE NON-PARTY BRIEF BY
WISCONSIN MANUFACTURERS & COMMERCE, MIDWEST
FOOD PRODUCTS ASSOCIATION, OUTDOOR ADVERTISING
ASSOCIATION OF WISCONSIN, WISCONSIN CHEESE MAKERS
ASSOCIATION, AND WISCONSIN DAIRY ALLIANCE**

Movants, Wisconsin Manufacturers & Commerce, Midwest Food Products Association, Outdoor Advertising Association of Wisconsin, Wisconsin Cheese Makers Association, and Wisconsin Dairy Alliance by their counsel, Great Lakes Legal Foundation, pursuant to Wis. Stat. § 809.19(7) respectfully request 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 unreasonable 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. Outdoor Advertising Association of Wisconsin (OAAW) is a statewide trade association representing the outdoor advertising industry. OAAW is dedicated to protecting and advancing the interests of the industry in Wisconsin and across the country.
4. 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.
5. Wisconsin Dairy Alliance (WDA) is a non-profit lobbying group representing Wisconsin's largest dairy operations seeking to raise awareness for agricultural and environmental issues. WDA focuses on regulations and other policies that impact the growth and expansion of the Wisconsin dairy industry.

6. Movants' members are global leaders in manufacturing, making everything from faucets 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, cheese, and other food producers, large and small. They are the companies that process these agricultural products for consumers around the world. There are over 68,000 farms in Wisconsin. Wisconsin's farms and agricultural businesses generate \$88 billion in economic activity and over 400,000 jobs.
7. 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.

8. Movants, on behalf of their members, have an interest in assuring that Wisconsin executive branch agencies follow the procedures set forth in Wisconsin Statutes Chapter 227, and for this case, the rulemaking requirement of Wis. Stat. § 227.10(1). For the regulated community, rulemaking plays a critical role in promoting fairness by providing notice, consistency, and opportunity to comment. In most instances, compliance with rulemaking procedures is a legal prerequisite to regulation.
9. Movants primary interest in this case relates to the concept coined by the court of appeals in this case as an “error-correcting exception” to Chapter 227 rulemaking procedures. This exception, as pronounced by the court of appeals, lessens protections afforded the regulated community by allowing agencies to make major policy changes without Chapter 227 rulemaking. Under this exception—not provided anywhere in Chapter 227—an agency merely needs to pronounce its desired policy change is necessary to comport to the statutes. If this loophole stands it will encourage agency avoidance of required

rulemaking procedures, which inevitable leads to regulating by agency edict.

10. Movants' brief should be considered desirable to the court because it will set forth the unique and valuable perspective of the regulated community and those associations representing them before the legislature and administrative agencies. Movants understand how excessive and unlawful regulatory burdens arise when administrative agencies enforce policies that are not properly promulgated as rules under Chapter 227.

11. Respondent-respondents State of Wisconsin Department of Transportation filed their Response Brief on June 20, 2019. Hence, this motion is timely filed, pursuant to Wis. Stat. § (Rule) 809.19(7)(c).

WHEREFORE, Movants respectively request the court grant leave to file a nonparty brief in this case by July 12, 2019.

DATED this fifth day of July 2019.

Respectfully Submitted,

By: _____ /s/ _____

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