BY THE COURT:

DATE SIGNED: April 23, 2026

Electronically signed by Julie Genovese
Circuit Court Judge

STATE OF WISCONSIN CIRCUIT COURT BRANCH 13 DANE COUNTY

KAARINA DUNN, et al.,
Plaintiffs,

v. Case No. 25CV2797

PUBLIC SERVICE COMMISSION of WISCONSIN, et al.,

Defendants.

DECISION AND ORDER GRANTING MOTION TO DISMISS

INTRODUCTION

Plaintiffs are fifteen youths ranging in age from 8-17. Compl., Dkt. 6, ¶2. They bring this case against the Public Service Commission (PSC) and its commissioners, as well as the Wisconsin Legislature. *Id.*, ¶¶73-79.

According to Plaintiffs, because of climate change, they are unable to enjoy Wisconsin's natural resources, like its rivers and lakes. *Id.*, ¶¶ 12-72. They cannot engage in desired recreational activities, like swimming and skiing, because of the algae in the lakes and lack of snow. *Id.* Some are deprived of their Indigenous cultural traditions, while others have experienced asthma and contracted Lyme disease. *Id.*

The Plaintiffs claim that certain statutes governing the approval of fossil fuel-fired plants are unconstitutional because they limit the PSC's ability to consider

the impact on air quality when authorizing permits for these plants. *Id.* Similarly, they claim that other statutes in the same chapter unconstitutionally prohibit the PSC from requiring electric providers to build or purchase more electricity from renewable energy sources. As a result, the PSC is contributing to climate change and therefore depriving the Plaintiffs of certain constitutional rights under the Wisconsin Constitution. Further, they allege that these statutes violate the legislature's constitutional duty to serve as a steward of Wisconsin's waters under the Public Trust Doctrine.

The Plaintiffs ask this court to declare these statutes unconstitutional, thereby removing limits on the PSC's ability to prioritize renewable energy sources over fossil fuel. Compl., Dkt. 6 at 71-73. While the court is sympathetic to the youths and admires their willingness to access the courts in their quest to protect the planet, I conclude that the case must be dismissed because environmental policy is a nonjusticiable political question.

MOTION TO DISMISS STANDARD

"A motion to dismiss for failure to state a claim tests the legal sufficiency of the complaint." *Data Key Partners v. Permira Advisers LLC*, 2014 WI 86, ¶ 19, 356 Wis. 2d 665, 676, 849 N.W.2d 693, 698 (citations omitted). For purposes of determining whether a complaint is legally sufficient, the court: (1) accepts all facts pleaded as true; (2) derives all reasonable inferences from those facts; and (3) construes those facts and inferences in the light most favorable to the plaintiff. *Preston v. Meriter Hosp., Inc.*, 2005 WI 122, ¶13, 284 Wis. 2d 264, 700 N.W.2d 158. The court does not add facts in the process of construing a complaint, and legal conclusions stated in the complaint need not be accepted as true. *Data Key*, 2014 WI

86, ¶19 (citations omitted). "[T]he complaint should be dismissed as legally insufficient only if it appears to a certainty that no relief can be granted under any set of facts that the plaintiff can prove in support of her allegations." *Strid v. Converse*, 111 Wis. 2d 418, 422, 331 N.W.2d 350, 353 (1983).

FACTS

The complaint in this case is 75 pages, complete with a Table of Contents. The court will not recite all of the facts, but will accept as true for purposes of this motion the following facts and propositions outlined by the Plaintiffs:

A. It is Economically and Technically Feasible to Achieve 100% Carbon Free Electricity by 2050.

For decades, the State of Wisconsin has known that burning fossil fuel causes air pollution. Compl., Dkt. 6, ¶ 80. In 1993, the Wisconsin Legislature enacted a State Energy Policy establishing that all new electricity generation in the state be from renewable energy sources, to the extent cost effective and technically feasible. *Id.,* ¶ 81. That policy includes an energy priorities list. *Id.,* ¶ 82. Fossil fuels are the last priority on the list. *Id.*

In 1999, Wisconsin adopted its first Renewable Portfolio Standard (RPS). *Id.,* ¶ 83. 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. *Id.* Wisconsin met the statewide goal in 2013. *Id.*

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. *Id.,* ¶ 85.

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." *Id.*, ¶ 86.

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% carbonfree electric system by 2050 to protect human and environmental health by reducing air pollution. *Id,* ¶ 87.

Wisconsin's current and future needs for adequate and reliable electricity can be met with 100% renewable energy sources—primarily wind and solar—as soon as 2035, and no additional fossil fuel-fired generating infrastructure is necessary to meet Wisconsin's current or future electricity needs. *Id.,* ¶ 88-89. 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. *Id.,* ¶ 91.

B. The Challenged Statutes Are a Barrier to Decarbonization

The PSC is an independent agency of Wisconsin that supervises and regulates every public utility in the State of Wisconsin. *Id.,* ¶ 73. Public utilities receive indeterminate permits from the PSC, granting them the authority to own, operate, manage or control power plants. *Id.* In exercising its regulatory authority, the PSC determines whether Wisconsin's electricity comes from fossil fuel sources or renewable energy sources. *Id.,* ¶ 74. The PSC receives its authority from the statutory scheme outlined in Chapter 196 of the Wisconsin Statutes, entitled

"Regulation of Public Utilities." *Id.*, ¶¶ 74-77; Wis. Stat. § 196.02. At issue are the following statutes:

1. The Plant Siting Law—Wis. Stats. §196.491(3)(d)3. and 4.

In order to construct a large electric generating facility, a person must apply for and receive a Certificate of Public Necessity and Convenience (CPCN) from the PSC. Wis. Stat. § 196.491(3)(a)1. The PSC 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. Compl., Dkt. 6, ¶ 93.

Under these statutes, the PSC must consider two criteria. *Id.,* ¶ 94. First, before issuing a CPCN, the PSC 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.; Compl., Dkt. 6, ¶ 95. The PSC is the only agency that makes this substantive public interest finding. Compl., Dkt. 6, ¶ 95. However, in making its public interest determination, the PSC "*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. (emphasis added).

Second, the PSC 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 PSC is the only agency that makes this substantive determination of undue

adverse environmental impact. Compl., Dkt. 6, ¶ 96. 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. (emphasis added).

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. Compl., Dkt. 6, ¶ 97. 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 PSC is required to do. *Id.* When issuing air pollution permits, chapter 285 limits DNR's consideration of greenhouse gas (GHG) emissions to the extent the Federal Clean Air Act requires, which is extremely limited. *Id.* The DNR does not deny air pollution permits on the basis of a project's GHG emissions. *Id.*

Under the Plant Siting Law, Wis. Stat. § 196.491, the PSC 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. *Id.*, ¶ 98. 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 PSC from denying a CPCN for a proposed fossil fuel-fired power plant because of concerns related to air pollution, including GHG emissions. *Id.*

Therefore, even if the PSC 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 PSC is prohibited from denying a CPCN application on this basis. *Id.,* ¶99.

Defendant, Summer Strand, a PSC commissioner, has acknowledged that the PSC is prohibited from denying new electricity generation projects over air pollution concerns, and the Governor's Task Force on Climate Change has stated that because of Wis. Stat. § 196.491(3)(d)3., the PSC 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. *Id.,* ¶¶ 99-100.

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

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. *Id.,* ¶ 104. 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. *Id.,* ¶ 105.

Two related laws prevent the PSC 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 PSC can require electric providers to build or purchase, thereby constraining the PSC's ability to decarbonize the electricity sector. *Id.,* ¶ 106.

Pursuant to Wis. Stat. § 196.378(4m)(a), the PSC cannot require any electric provider to increase its percentage of renewable energy generation above the required level set forth in the RPS. *Id.,* ¶ 107. And under Wis. Stat. § 196.025(1)(c)1.,

the PSC cannot impose additional renewable energy requirements on any investor-owned electric utility so long as Wisconsin has met the statewide RPS goal and the utility has otherwise complied with its electric provider requirements. *Id.,* ¶ 108. 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 PSC has been prohibited from requiring electric providers to build or purchase additional renewable electricity since that time. *Id.,* ¶ 109.

Wis. Stat. § 196.378(4m)(a) and Wis. Stat. § 196.025(1)(c)1 therefore restrict the PSC's ability to impose obligations to provide additional renewable energy when a utility has met the RPS requirements. *Id.,* ¶ 110. 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 PSC can require electric providers to build or purchase. *Id.* Consistent with this statutory constraint, the PSC has not required electric providers to increase their development or procurement of renewable energy sources. *Id.,* ¶ 111.

The PSC 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) and electric providers' existing renewable energy sources cannot supply enough electricity to meet growing electricity demands (which is true), PSC has no authority to require electric providers to build or purchase renewable electricity to meet the demand. Instead, the PSC is compelled to continue approving fossil fuel-

fired power plants to ensure an adequate and reliable supply of electricity. *Id.,* ¶ 112.

The Plaintiffs conclude that, without these laws, the PSC 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. *Id.,* ¶ 113-14.

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

In 2023, only 17% of total retail sales of electricity (i.e., electricity consumed by end users) in Wisconsin came from renewable resources. *Id.,* ¶ 119. Renewable energy resources provided only 9% of Wisconsin's in-state electricity net generation. *Id.* Fossil fuel-fired power plants dominate electricity generation in Wisconsin, providing approximately 75% of Wisconsin's electricity generation. *Id.,* ¶ 120. Fossil fuel-fired power plants burn fossil fuels including coal, oil, and gas, thereby causing air pollution, including GHG emissions. *Id.*

Wisconsin's electricity sector is increasingly reliant on gas imported from other states and countries. *Id.,* ¶ 122. Between 2010 and 2023, there was a five-fold increase in the use of gas in the electricity sector. *Id.* The use of gas in the electricity sector is projected to continue to grow through at least 2030. *Id.* Even though fossil fuel-fired power plants have a lifespan of at least thirty years, the PSC continues to approve them. *Id.,* ¶ 126. 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. *Id.*

The PSC continues to approve gas-fired power plants, including the Oak Creek Generation Project and the Paris Generation Plant. *Id.,* ¶ 126-28. 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. *Id.,* ¶ 128.

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. *Id.,* ¶ 129. States that get a higher percentage of electricity from renewable energy sources tend to have cheaper electricity prices. *Id.,* ¶ 130. 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. *Id.*

Wisconsin's demand for electricity is growing and projected to increase by approximately 15% in the next five years. *Id.,* ¶ 131. Wisconsin's electric providers plan to add approximately 2,500 MW of new gas capacity by 2030. *Id.,* ¶ 132. The portion of Wisconsin's electricity that comes from gas is projected to increase from 36% in 2023 to 42% in 2030. *Id.* The PSC'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 the youth Plaintiffs. *Id.,* ¶ 133.

D. The Air Pollution That Results From the Challenged Laws Has Significant Environmental Effects Which Have Caused Injury to the Plaintiffs and Their Families

The burning of fossil fuels for electricity in Wisconsin is causing and contributing to a range of detrimental impacts in Wisconsin, including warming annual and seasonal temperatures, changes in precipitation patterns, increased flooding, 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. *Id.,* ¶ 154.

1. Rising Temperatures

Wisconsin is warming due to GHG emissions from the burning of fossil fuels. 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. *Id.,* ¶ 158. 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. *Id.*

While all seasons and regions of Wisconsin have warmed, winters have warmed more rapidly than summers. *Id.,* ¶ 159. 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. *Id.*

Winter warming has been the most pronounced in Northwest Wisconsin (4 to 6°F warming since the 1950s). *Id.,* ¶ 160. 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. *Id.* Winter snowpack has declined in Wisconsin due to GHG emissions from the burning of fossil fuels. *Id.,* ¶ 161. 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. *Id.,* ¶ 162. Snow activities combined accounted for nearly $84 million gross domestic product in Wisconsin in 2022. *Id.*

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. *Id.* The shortening winter season has prevented Plaintiffs from cross country-skiing and downhill skiing. *Id.* Bella's family lost 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. *Id.*

2. Unhealthy Air Quality

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. *Id.,* ¶ 171. 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. *Id.*

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. *Id.*

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. *Id.,* ¶ 173. The combination of pollen and air pollution from burning fossil fuels can exacerbate asthma attacks and allergic reactions for children and youth. *Id.* Madeleine suffers from asthma and intense pollen allergies that have worsened making it difficult for her to focus while in school. *Id.*

Coal and gas-fired power plants emit a mixture of air pollutants, including nitrogen dioxide (NO_2), fine particulate matter ($PM_{2.5}$), black carbon, and ozone precursors, that are harmful to Plaintiffs. *Id.,* ¶ 176. Living in communities with fossil fuel-fired power plants is strongly associated with higher exposure to harmful air pollutants, including NO_2 and $PM_{2.5}$, which are known to impair children's lung development during critical periods of growth. *Id.* 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. *Id.*

3. Changing Precipitation Patterns

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. *Id.,* ¶ 177. 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. *Id.* 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 loses, and incur other expenses. *Id.*

Extreme precipitation events and ensuing erosion and landslides caused damage to Kaarina's family property, causing her economic injury, emotional distress, and forcing her to move out of her childhood home and change schools. *Id.*

Winter precipitation in Wisconsin has increased by at least 20% since 1950 in much of the State. *Id.,* ¶ 178. Due to warming winter temperatures, this precipitation is increasingly falling as rain rather than snow. *Id.* 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. *Id.* 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 lie on. *Id.*

The flooding of houses increases respiratory health risks such as irritation of asthma by mold growth. *Id.,* ¶ 185. Flooding in Madeleine's basement has increased in frequency and severity, causing her economic injury and increasing her risk of asthma irritation. *Id.* 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. *Id.*

4. Harms to Wisconsin's Agriculture Sector

The changing climatic conditions are harming Wisconsin's agricultural sector, an integral part of Wisconsin's economy, history, and culture. *Id.,* ¶ 186. The agriculture sector provides 435,700 jobs (11.8% of the State's employment) and contributes $104.8 billion to the State's economy. *Id.* Ted's and Charlie's farms are being directly harmed by the changing climatic conditions. *Id.* Increased precipitation variability and more frequent wet-dry transitions increase the risk of transient drought in crops, threatening crop viability. *Id.,* ¶ 187. Crops on Ted's farm have died because of transient drought. *Id.*

Increased precipitation is causing waterlogged soils, which delays planting and shortens planting windows in the spring and harvesting in the fall. *Id.,* ¶ 188. Planting crops in the spring has been much more difficult on Ted's family farm due to shortened planting windows. *Id.* Excessive precipitation is causing increased crop loss especially during seed germination periods. *Id.* 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. *Id.*

Increasingly hot summers are also projected to reduce crop yields. *Id.,* ¶ 189. As temperatures warm, vapor pressure deficit increases, and crops lose more water. *Id.* Without an expansion of irrigation, increases in atmospheric vapor pressure deficit will limit crop yields. *Id.* Hotter summers increase the need for irrigation, depleting Wisconsin's water resources. *Id.* 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. *Id.*

5. Loss of Wild Rice

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. *Id.,* ¶ 191. Wild rice is central to the creation story of the Anishinaabe, a vast cultural and linguistic collective that includes the Ojibwe, Odawa, and Potawatomi. *Id.*

Wild rice grows in shallow waters in Northern Wisconsin and is especially vulnerable to climate change due to warming waters and altered hydrology. *Id.* Climate change threatens to move wild rice's habitat farther north and out of the reach of the Ojibwe Tribal Nations. *Id.* 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. *Id.*

6. Harm to Forests and Wildlife Diversity

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

Wisconsin is the fourth largest producer of maple syrup in the country, but climate change is undermining Wisconsin's maple syrup production. *Id.,* ¶ 193. Maple sap ("ziinzibaakwadwaaboo" in Ojibwe) runs in the early spring and is dependent on consistent nightly freezes and daily thaws. *Id.* Warming temperatures are shifting the sap-collecting season earlier in the year, and increasing weather variability is making annual production of syrup more variable. *Id.* The warming climate results in a decrease in sugar

content in the maple sap (requiring more effort to convert it to maple syrup). *Id.* Tyler, Waazakone, Mukademigwan, and Gookoonz's maple sugaring tradition is threatened by climate change. *Id.* The paper birch, a species culturally significant to tribes in Wisconsin, is declining in northern forests. *Id.,* ¶ 194. The Great Lakes Indian Fish and Wildlife Commission's climate change vulnerability assessment listed paper birch as highly vulnerable to climate change. *Id.* 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. *Id.* 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. *Id.* The decline of paper birch has led to harvest restrictions and negatively impacted tribal members' ability to use paper birch in traditional ceremonies, for canoe building, and for medicine. *Id.,* ¶ 195. Wisconsin is renowned for its wildlife diversity. *Id.,* ¶ 196. Tribal Nations within Wisconsin's state boundaries, and Tyler, Waazakone, Mukademigwan, and Gookoonz, rely on wildlife diversity for subsistence hunting and gathering for their spiritual, cultural, and physical well-being. *Id.*

The negative impacts of climate change on wildlife in Wisconsin are harming Wisconsin's outdoor tourism economy and tribal members' subsistence hunting. *Id.* 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. *Id.* Warmer winters with reduced snow cover, more pests, and changing water levels also stress wildlife species. *Id.*

7. Increasing Vector Borne Illnesses

Disease-carrying insects, including ticks, are becoming more widely distributed in Wisconsin due to anthropogenic climate change. *Id.,* ¶ 197. 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. *Id.* Wisconsin has one of the highest rates of Lyme disease in the country. *Id.* Lyme disease causes joint pain, fever, fatigue, and headaches. *Id.* 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. *Id.*

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. *Id.,* ¶ 198. Bella had Lyme disease, which caused her nausea, and she developed alpha-gal syndrome. *Id.* Waazakone has also had Lyme disease, which caused her joint pain that made it difficult to walk. *Id.*

Other Plaintiffs are increasingly at risk of getting Lyme disease. *Id.* 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. *Id.,* ¶ 199. Children are more prone to infection with vector-borne diseases due to their smaller body size and developing immune system. *Id.* 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. *Id.*

8. Degradation of Wisconsin's Public Trust Waters

Inland lake water temperatures are warming in Wisconsin. *Id.,* ¶ 202. 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. *Id.* As summers grow longer and warmer, the probability of fish kills increases due to oxygen depletion of the lake waters. *Id.,* ¶ 203. 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. *Id.* However, the warmer temperatures of these shallower layers can be lethal for the cold-water fish. *Id.* Fish kills in Wisconsin's inland lakes are projected to double by 2050 and quadruple by 2100. *Id.*

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. *Id.,* ¶ 204. Such climate-induced changes are diminishing fishing opportunities for Ted, Kaarina, Tyler, Waazakone, Mukademigwan, and Gookoonz. *Id.* 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 warming waters. *Id.*, ¶ 205.

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. *Id.* As these inland lakes warm, they will become unsuitable habitats for cool-water game fish like walleye, perch, sturgeon, and muskellunge, and Tyler, Waazakone, Mukademigwan, and Gookoonz's ability to fish for their traditional foods will be greatly reduced. *Id.*

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. *Id.,* ¶ 206. The extent and duration of winter ice cover on the Great Lakes has declined in the past four decades. *Id.,* ¶ 207. Nine of the top ten lowest ice cover years have occurred since 2002. *Id.* Winter ice coverage on all the Great Lakes declined by 71% from 1973 to 2010. *Id.* 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. *Id.*

Similarly, the duration of ice coverage on Lake Mendota, where Alex and Elia recreate, has been declining steadily in recent decades. *Id.,* ¶ 209. Climate change has shaved off more than a month of the season for ice fishing and ice skating. *Id.* 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. *Id.,* ¶ 210. HABs negatively affect water quality, make swimming unsafe, and detract from scenic beauty and enjoyment of lakes. *Id.* HABs can also cause fish kills, thereby reducing opportunities for fishing. *Id.*

The increased occurrence of HABs presents a danger to Plaintiffs' health. *Id.,* ¶ 211. HABs are caused by a variety of algal groups with different toxins harmful to human health. *Id.* Swallowing contaminated water can cause vomiting, diarrhea, muscle twitching, and respiratory failure. *Id.* 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. *Id.*

Further, 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. *Id.,* ¶ 213. Changes in precipitation, snow melt, evapotranspiration, and storm intensity have increased river flow variability in the upper Mississippi River in Wisconsin. *Id.,* ¶ 215. As a result, the Mississippi River is more susceptible to flooding and drought. *Id.* Extended high water river flows and fall flooding have occurred in seven of the past ten years. *Id.* Cumulative runoff has increased in recent decades and is projected to continue to increase, leading to increased flooding of the Mississippi. *Id.* Flooding and extended high water levels have prevented Kaarina from swimming and accessing her dock on the Mississippi River at her family's cabin. *Id.*

PLAINTIFFS' CLAIMS

Reduced to its essence, Plaintiffs' complaint challenges certain statutory requirements governing the permitting of fossil fuel-fired plants which limit the PSC's ability to consider the impact of air pollution on the environment. As a result, the PSC continues to approve these plants, thus contributing to air pollution, harming the environment, and infringing on the Plaintiffs' constitutional rights. Further, the statutes prohibit the PSC from requiring the provider to build or purchase renewable energy so long as the State is meeting the 10% threshold and the provider is otherwise complying with its requirements. This limitation is a barrier to achieving the attainable goal of being 100% carbon free by 2050.

Specifically, Wis. Stat. § 196.491(3)(d)3. provides that the PSC must

determine whether the design and location or route is in the public interest when deciding whether to issue CPCNs. The factors the PSC considers in making its public interest determination include alternative sources of supply, alternative locations or routes, individual hardships, and engineering, economic, safety, reliability and environmental factors. Wis. Stat. 196.491(3)(d)3. Under Wis. Stat. § 196.491(3)(d)4., the PSC must determine that proposed facility will not have an undue adverse impact on other environmental values, such as ecological balance, public health and welfare, historic sites, geological formation, or the aesthetics of land and water and recreational use.

Both sections therefore require the PSC to weigh a number of considerations regarding the public interest and the environment. However, under both sections, the PSC may not deny a permit application due to the impact of air pollution, provided the proposed facility meets the requirements of ch. 285. That chapter regulates air pollution permitting and provides that permits shall be granted if GHG emissions are permitted under the Federal Clean Air Act. *See* Wis. Stat. § 285.63(3m). According to the Plaintiffs, the standards under the Federal Clean Air Act are too limited. Compl., Dkt. 6, ¶ 97.

Plaintiffs also quarrel with the restrictions set forth in in Wis. Stats. § 196.025(1)(c)1. and § 196.378(4m)(a) regarding renewable resources. In 2005, RPS set a statewide goal that 10% of all electricity consumed in the State come from renewable resources by 2015. That standard also established requirements for electric providers to drive their development and procurement of renewal energy sources.

These two statutes limit the PSC's authority in this regard. Under Wis. Stat. § 196.378(4m)(a), the PSC cannot require any electric provider to increase its percentage of renewable energy generation above the required level in the RPS. And under Wis. Stat. § 196.025(1)(c)1., the PSC cannot impose additional energy requirements on any investor-owned electric utility if Wisconsin has met the statewide RPS goal and the utility has otherwise complied with the electric provider requirements. Because Wisconsin electric providers have collectively met the statewide RPS goal every year since 2013, the PSC has been prohibited from requiring electric providers to build or purchase additional renewal electricity since that time.

Plaintiffs bring five causes of action:

Count 1: Violation of Inherent Right to Liberty (Against PSC and its commissioners).

The statutes violate Article I, §1 of the Wisconsin Constitution because they deprive the Plaintiffs of their inherent right to liberty—to be from government conduct that substantially endangers their health, safety and bodily integrity. Compl., Dkt. 6, ¶¶ 216-29.

Count 2: Violation of Inherent Right to Life. (Against PSC and its commissioners).

The statutes violate Article I, §1 of the Wisconsin Constitution because they deprive the Plaintiffs of their inherent right to life which includes the right to pursue life and enjoy and pursue the happiness in living. *Id.,* ¶¶ 230-40. The right to life includes vitality, or health, and a person's natural lifespan. *Id.,* ¶ 231. For the 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. *Id.*

Count 3: Violation of Inherent Right to a Stable Climate System (Against PSC and its commissioners).

The statutes violate Article I, §1 of the Wisconsin Constitution which protects inherent rights, which are "broad enough to cover every principle of natural right, of abstract justice." *Id.,* ¶ 242 (quoting *Black v. State*, 113 Wis. 205, 89 N.W. 522, 529 (1902) (Marshall, J. concurring)). A stable climate system is essential to the protection of inherent rights to life, liberty and the pursuit of happiness. *Id.,* ¶ 243. 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. *Id.,* ¶¶ 241-50. Thus, the right to a stable climate system is an inherent right protected by Art. I, §1.

Count 4: Violation of Inherent Right to Access, Enjoy, and Use Navigable Waters and Their Beds (Against PSC and its commissioners).

The statutes violate Article I, §1 of the Wisconsin Constitution which protects inherent rights, which are "broad enough to cover every principle of natural right, of abstract justice." *Id.,* ¶ 252, (quoting *Black v. State*, *supra,* 89 N.W. 522, 529). Navigable waters and the lands under them have long been recognized as protected for the inhabitants of the place now known as Wisconsin. *Id.,* ¶ 253. The right of Wisconsinites to access, enjoy, and use the navigable waters of the state pre-dates Wisconsin's statehood. *Id.*

Count 5: Violation of Wisconsin's Public Trust Doctrine (Against all Defendants).

The statutes violate Article IX, §1 which constitutionally enshrines the Public Trust Doctrine. That doctrine provides that waters and river and lake beds are held

in trust by the State of Wisconsin for the benefit of the public. *Id.,* ¶ 268.

The Plaintiffs ask the court to declare the challenged statutes unconstitutional and enjoin their application. *Id.* at 71-73.

DISCUSSION

Both the Legislature and the PSC argue that Plaintiffs' claims present nonjusticiable political questions. "The political question doctrine is invoked by courts declining to address issues better left resolved by other branches of government." *Mills v. Vilas Cnty. Bd. of Adjustments*, 2003 WI App 66, ¶ 17, 261 Wis. 2d 598, 660 N.W.2d 705. It provides that "[t]he judiciary should not be drawn into deciding issues that are essentially political in nature, exclusively committed by the constitution to another branch of government and not susceptible to judicial management or resolution." *Id.,* ¶ 17, (quoting *Vincent v. Voight*, 2000 WI 93, ¶ 192, 236 Wis. 2d 588, 614 N.W.2d 388). The "nonjusticiability of a political question is primarily a function of the separation of powers." *Voters with Facts v. City of Eau Claire,* 2017 WI App 35, ¶ 31 n.10, 376 Wis. 2d 479, 899 N.W.2d 706 (quoting *Baker v. Carr*, 369 U.S. 186, 210 (1962)); *see also Johnson v. Wisconsin Elections Comm'n.,* 2021 WI 87, ¶ 40, 399 Wis. 2d 623,*overruled on other grounds by Clarke v. Wisconsin Elections Comm'n*, 2023 WI 79, ¶ 40, 410 Wis. 2d 1, 998 N.W.2d 370.

The Wisconsin Constitution divides government into three separate branches, each vested with a specific, "core" power. *Kaul v. Wisconsin State Legislature*, 2025 WI 23, ¶¶ 10–11, 416 Wis. 2d 322, 21 N.W.3d 513. The legislature is vested with "the power to make the law, to decide what the law shall be." *Id.* ¶ 10 (quoting *Serv. Emps. Int'l Union, Loc. 1 v. Vos*, 2020 WI 67, ¶ 1, 393 Wis. 2d 38, 946 N.W.2d 35). The executive branch is vested with the power to implement and enforce

the law. *Id*. And the judiciary is vested with the power to interpret and apply the law to disputes between parties. *Id*. As to core powers, "any exercise of authority by another branch of government is unconstitutional." *Id.* ¶ 11.

To protect these boundaries, Wisconsin courts apply the political question doctrine, which dictates that courts will not decide questions that require the court to determine what the best or wisest public policy would be, as such questions are "essentially political in nature . . . exclusively committed by the constitution" to the other branches. *Mills*, 2003 WI App 66, ¶ 17; *accord Flynn v. DOA*, 216 Wis. 2d 521, 539, 576 N.W.2d 245 (1998) (recognizing "it is the province of the legislature, not the courts, to determine public policy").

The doctrine also embodies a practical component, recognizing that matters of economic and social policy are not reasonably "susceptible to judicial management or resolution." *Mills,* 2003 WI App 66, ¶ 17 (internal quotation omitted); *accord State ex rel. Hammermill Paper Co. v. La Plante*, 58 Wis. 2d 32, 46, 205 N.W.2d 784 (1973) (recognizing that "under our system of government" courts are not called upon to decide matters of economic and social policy). Put simply, "sometimes, ... 'the law is that the judicial department has no business entertaining [a] claim of unlawfulness—because the question is entrusted to one of the political branches or involves no judicially enforceable rights.'" *Johnson v. Wisconsin Elections Comm'n*, 2021 WI 87, ¶ 40, 399 Wis. 2d 623, 649 (internal citations omitted),

To determine whether an issue constitutes a nonjusticiable political question, courts apply the multi-factor framework established by the United States Supreme Court in *Baker v. Carr*, 369 U.S. 186. Relevant here are the following factors: "[1] a textually demonstrable constitutional commitment of the issue to a coordinate

political department; [2] a lack of judicially discoverable and manageable standards for resolving it; [3] the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; [4] impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government." *Baker v. Carr*, 369 U.S. 186, 217; *see also State v. Jensen, 2*004 WI App 89, 272 Wis. 2d 707, 681 N.W.2d 230 (applying the *Baker* framework). [2]

A. *Baker v. Carr* Factor 1: Textually Demonstrable Constitutional Commitment of the Issue to Another Branch of Government

The Wisconsin Supreme Court discussed the court's role as it relates to the PSC in *Clean Wisconsin v. Public Service Comm'n*, 282 Wis. 2d 250, ¶35. There, while considering a challenge to a CPCN, the court made clear that energy policy is for the legislature, not the courts:

> It is not the function of this court to determine this state's energy policy. Nor is it this court's place to decide whether construction of power plants at issue in this case is in the public interest. These are legislative determination that the legislature has assigned to the PSC. Whether a given decision in in the public interest is a matter of public policy and state-craft and not in any sense a judicial question.

Other courts, addressing claims virtually identical to those claimed here, have concluded that the legislative and executive branches, not the courts, are tasked with energy policy. For instance, in *Aji P. by & through Piper v. State,* 16 Wash. App. 2d 177, 480 P.3d 438 (2021), the Washington court of appeals addressed

[2] The other two factors —[5] an unusual need for unquestioning adherence to a political decision already made; or [6] the potentiality of embarrassment from multifarious pronouncements by various departments on one question." — are not implicated here.

a very similar action brought by youth plaintiffs. As in this case, the youths claimed that the State's current GHG emissions statutes and regulations did not sufficiently address climate change, resulting in ill health effects, and they requested that the State generate 90% of its electricity from carbon free sources by 2030. *Id.*, ¶13. The court assumed that there was a fundamental right to a healthy and pleasant environment but concluded that the question posed was a nonjusticiable political question. *Id.*

The *Aji P.* court noted that the resolution of the claim is constitutionally committed to the legislative and executive branches. *Id.* at 189, 480 P.3d 438, 447. The court reasoned that the requested relief would require the court to order the executive branch, through the power vested in it by the legislature, and the legislature to create and implement legislation. *Id.* The court concluded that it could not force the legislature to enact legislation or write the legislation itself. *Id.*

Here, as in other states throughout the nation, the power to make laws is vested in the legislature. The Wisconsin Constitution provides that "the legislative power shall be vested in a senate and assembly." Article IV, Sec. 1. The legislature as such is tasked with setting public policy, and our supreme court has indicated that the legislature, not the court, is tasked with setting energy policy. *Clean Wisconsin*, 282 Wis. 2d 250, ¶35.

B. *Baker v. Carr* Factor 2: No Judicially Manageable Standard

The *Aji P.* court also determined that there is no judicially manageable standard by which it could resolve the plaintiffs' claims. 16 Wash. App. 2d 177, ¶19. In that case the youths had proposed a recovery plan to include a carbon budget to implement and achieve science-based reductions of GHG emissions in Washington

consistent with reductions necessary to stabilize the climate. *Id.* ¶6. At least in *Aji P.* the plaintiffs proposed a remedy.

Here, the complaint just asks this court to find the last sentences of Wis. Stat. § 196.491(3)(d)3. and 4. —limiting the consideration of air pollution— unconstitutional and enjoin their application. Compl., Dkt 6 at 71-73. The complaint also asks this court to declare unconstitutional and permanently enjoin Wis. Stats. § 196.378(4m)(a) and § 196.025(1)(c)1. — the statutes that (1) prevent the PSC from requiring electric providers to generate renewable energy beyond the percentage required by the RPS; and (2) limit the PSC's ability to impose additional energy requirements on investor-owned electric utilities once Wisconsin has met the statewide RPS goal and the utility has otherwise complied with the electric provider requirements. Compl., Dkt 6 at 71-73.

Even assuming the court found the statutes unconstitutional as requested by the Plaintiffs due to the limitation on consideration of air pollution, then what? The practical consequences remain unclear. Such a finding would not, in itself, require the PSC to stop issuing CPCNs for fossil fuel-fired plants because of their air pollution effects. Would the court then be required to order the PSC to consider air pollution and its effects as outlined by the Plaintiffs? Under what standards?

Likewise, if the court were to strike down the statute which states that the PSC cannot impose additional renewable energy requirements on any investor-owned electric utility so long as Wisconsin has met the 10% statewide RPS goal and the utility has otherwise complied with its electric provider requirements, then what? Would the court order a greater goal? What would that goal be? What standard would the court use? What evidence would it consider? How would the

court enforce the goal? In effect, the Plaintiffs ask this court to perform functions constitutionally and statutorily assigned to the executive and legislative branches, which this court is not equipped to do.

The complaint in this case makes abundantly clear the need for scientific expertise in addressing these matters. It includes complicated meteorological information regarding warming patterns; economic predictions regarding the effects on Wisconsin taxpayers and the economy; statements regarding the Earth's Energy Imbalance ("EEI"); "best available science" regarding reductions in CO_2 concentrations to stabilize the EEI and the climate system; projections regarding the growth of use of gas in the electricity sector through at least 2030; and scientific evidence regarding the approval of recent power plants and their effect on the 2050 goal to decarbonize Wisconsin's electricity sector. Compl., Dkt. 6, ¶¶ 91, 122, 126 147-53, 158-68. 186, *Id.,* ¶ 126. [4]

The complaint also cites healthcare costs to Wisconsin per year from the approval of gas-fired power plants, including the Oak Creek Generation Project and the Paris Generation Plant. *Id.,* ¶ 128. The Plaintiffs claim that air pollution from these two plants alone is projected to cost between $80 million and $127 million in

[4] The complaint contains a number of scientific graphs as well: "Wisconsin Greenhouse Gas Emissions by Economic Sector, 2022," Compl., Dkt. 6, ¶ 138; "Wisconsin GHG Emissions (MMTCO2e) from the electric power section from 1993-2022." *Id.*, ¶ 141; "Historical and Future Projected Frequency of Extreme Heat," *Id.,* ¶ 164; "Historical Change in Average Annual and Winter Precipitation." *Id.*, ¶ 179; "Projected Changes in Seasonal Precipitation by 2050." *Id.,* ¶ 181; "Historical and Future Projected Frequency of Extreme Rainfall." *Id.,* ¶ 183; "Lyme Disease Cases in Wisconsin from 1990." *Id.*, ¶ 201; "Ecological services of Ice-Covered Inland Water," *Id.*, ¶ 208.

health costs each year from respiratory and cardiovascular disease. *Id.* Should the PSC be required to consider these costs in its approval of plants?

As the *Aji P.* court noted:

> [S]cientific expertise is required to make a determination regarding appropriate GHG emission reductions, and the determination necessarily involves including all stakeholders and balancing the many implicated and varied interests affected by any GHG emission reduction policies…Accordingly, we cannot imagine a judicially manageable standard available to create and enforce the Youths' asserted right, the related claims, or the extension of the public trust doctrine to the atmosphere.

Aji. P., 16 Wash. App. 2d 177, ¶15.

This court is simply not in a position to formulate a judicially manageable standard to remedy air pollution and to achieve the renewable resource goals advocated by the Plaintiffs.

C. *Baker v. Carr* Factor 3: The Impossibility of Deciding Without an Initial Policy Determination of a Kind Clearly for Nonjudicial Discretion.

Energy policy is of a kind clearly for nonjudicial discretion. The Wisconsin Supreme Court told us so in in *Clean Wisconsin*, 282 Wis. 2d 250, ¶35 ("It is not the function of this court to determine this state's energy policy".)

The *Aji P.* court emphasized that the legislature and the agency respondents had already made an initial policy determination concerning the Youths' claims, pursuant to their constitutionally prescribed authority, and they created a regulatory regime on that basis. *Aji P.,* 16 Wash. App. 2d 177, ¶16. Similarly, the Alaska Supreme Court rejected the plaintiffs' attempt to obtain an injunction requiring the State to account for and reduce its emissions based on the "best available science" because it would have involved "underlying policy choices that

were not [the court's] to make in the first instance." *Kanuk ex rel. Kanuk v. State, Dept. of Nat. Res.,* 335 P.3d 1088, 1098 (Alaska 2014). The court stated:

> [Although] the science of anthropogenic climate change is compelling, government reaction to the problem implicates realms of public policy besides the objectively scientific. The legislature — or an executive agency entrusted with rulemaking authority in this area—may decide that employment, resource development, power generation, health, culture, or other economic and social interests militate against implementing what the plaintiffs term the "best available science" in order to combat climate change.

Id. at 1097-98.

This reasoning was subsequently affirmed in *Sagoonick v. State*, 503 P. 3rd 777, 797 (Alaska 2022).

This case presents an attempt by the Plaintiffs to have this court substitute its policy preferences for those of the legislature. The legislature has developed a comprehensive statutory scheme to address the permitting of these plants, found in Chapter 196 of the Wisconsin Statutes. That chapter outlines the duties of the PSC. Wis. Stat. § 196.025. The legislative intent is clear when the PSC's first duty listed is "STATE ENERGY POLICY." Wis. Stat. § 196.025(1).

The legislature has decided what policy factors the PSC must evaluate and balance in determining whether the grant of a CPCN is in the public interest, including alternative source of supply, alternative locations or routes, individual hardship, engineering, economic safety, as well as reliability and environmental factors. Wis. Stat. § 196.491(3)(d)3. The legislature has further delegated to the PSC the determination as to whether the plant will have an undue adverse impact on other environmental values, such as ecological balance, public health and welfare,

historic sites, geological formation, the aesthetics of land and water and recreational use. Wis. Stat. § 196.491(3)(d)4. Those are the policy decisions that the legislature has delegated to the PSC which is in the best position to consider all the stakeholders' interests.

The legislature has also made a policy determination regarding consideration of air pollution. The legislature did not say that air pollution could not be considered at all. Rather, it said that the PSC could not deny a CPCN because of air pollution so long as the plant's effect on air pollution complies with the permitting scheme under Chapter 285. *Id.* That Chapter requires the DNR to ensure that the air pollution permit is consistent with the Federal Clean Air Act—which Plaintiffs claim is too limited. *See* Wis. Stat. § 285.63(3m). While Plaintiffs may disagree with that policy, it is good enough for the legislature, and any recourse is best left to our elected officials.

Further, the legislature has set a state-wide goal that 10% of all electricity consumed in the state come from renewable resources. Plaintiffs object to the limitation on the PSC that it cannot impose additional energy requirements on any investor-owned electric utility if Wisconsin has met the statewide RPS goal and the utility has otherwise complied with the electric provider requirements. Wis. Stat. § 196.378(2)(a)1. The Plaintiffs think the legislature can and should do better. The legislature is satisfied with the fact that Wisconsin electric providers have collectively met the statewide RPS goal that 10% of all electricity consumed in the state come from renewable energy sources. Further the legislature is not prohibiting electric providers from going beyond the 10% goal; it simply prevents the

PSC from requiring it. Thus, Plaintiffs' requested relief would involve underlying policy choices that are not the court's to make.

D. *Baker v. Carr* Factor 4: The Impossibility of a Court's Undertaking Independent Resolution Without Expressing Lack of the Respect Due Coordinate Branches of Government

Finally, by substituting this court's judgment for the legislature, the court would be showing a lack of respect for the legislative and executive branches.

Plaintiffs do not like these policy decisions. They want this court to say that the PSC must consider air pollution, not to the standards set by the DNR or the Federal Clean Air Act, but consistent with the Plaintiffs' views on what are acceptable standards. They want the PSC to be able to require the building or purchasing of additional renewable electricity beyond the 10% goal. Because Plaintiffs think it is technologically and economically feasible for Wisconsin to be carbon free by 2050, they conclude that by invalidating the statutes and thus their limitations, the PSC will decide to stop approving fossil fuel-fired plants, and Plaintiffs' carbon free goal will be achieved. While the court may agree with Plaintiffs' policy preferences, it would show a blatant lack of respect for our elected officials and the agency defendants to substitute my judgment for theirs, and strike the limitations imposed by the legislature and executed by the PSC.

Accordingly, because the court concludes that the legislature's policy decisions represent a nonjusticiable political question, this case must be dismissed.

CONCLUSION

Plaintiffs, fifteen youths seeking to address the effects of climate change in Wisconsin, ask this court to declare certain statutory provisions pertaining to air pollution and renewable resources unconstitutional and to enjoin Defendants from

implementing them. Whether Wisconsin's environmental policy is adequate to combat climate change is a political question, not a legal one. Thus, these claims must be resolved through the political process; not by the courts. [5]

ORDER

For the reasons stated,

IT IS ORDERED that the defendants' motion to dismiss the complaint is GRANTED.

[5] The Defendants have raised a number of other issues, including standing. The Legislature analogizes the facts of this case to federal cases in which courts rejected constitutional challenges to environmental policy on the basis of standing. *See e.g. G.B. v. U.S. EPA*, No. 25-2473 (9th Cir. Apr. 9, 2026) (finding that youth plaintiffs' injuries were too attenuated from the challenged actions), Leg. Letter, April 16, 2026, Dkt. 62, Ex. A. I have declined to address these issues given my conclusion that this case is nonjusticiable.