

FILED
09-09-2025
CIRCUIT COURT
DANE COUNTY, WI
2025CV002975
Honorable Nia Trammell
Branch 6

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY
BRANCH ____

TONY EVERS, in his official capacity as Governor,
Wisconsin State Capitol
2 East Main Street
Madison, WI 53702,

THE DEPARTMENT OF NATURAL RESOURCES
101 South Webster Street
Madison, WI 53707,

THE DEPARTMENT OF AGRICULTURE,
TRADE, AND CONSUMER PROTECTION
2811 Agriculture Drive
Madison, WI 53718,

THE DEPARTMENT OF SAFETY AND
PROFESSIONAL SERVICES
4822 Madison Yards Way
Madison, WI 53705,

THE PSYCHOLOGY EXAMINING BOARD
4822 Madison Yards Way
Madison, WI 53705,

THE RADIOGRAPHY EXAMINING BOARD
4822 Madison Yards Way
Madison, WI 53705,

and

THE MARRIAGE AND FAMILY THERAPY,
PROFESSIONAL COUNSELING, AND
SOCIAL WORK EXAMINING BOARD,
4822 Madison Yards Way
Madison, WI 53705,

Plaintiffs,

v.

Case No. 2025-CV-_____
Declaratory Judgment: 30701
Injunctive Relief: 30704

WISCONSIN LEGISLATURE JOINT COMMITTEE
ON LEGISLATIVE ORGANIZATION

Wisconsin State Capitol
2 East Main Street
Madison, WI 53702,

SENATOR MARY FELZKOWSKI, in her official
capacity as Co-Chair of the Joint Committee on
Legislative Organization

Wisconsin State Capitol, Room 220 South
2 East Main Street
Madison, WI 53707,

REPRESENTATIVE ROBIN VOS, in his official
capacity as Co-Chair of the Joint Committee on
Legislative Organization

Wisconsin State Capitol, Room 217 West
2 East Main Street
Madison, WI 53708,

THE WISCONSIN LEGISLATIVE
REFERENCE BUREAU

1 East Main Street #301
Madison, WI 53703,

and

RICHARD CHAMPAGNE, in his official capacity
as Director of the Wisconsin Legislative

Reference Bureau,
1 East Main Street #301
Madison, WI 53703,

Defendants.

SUMMONS

THE STATE OF WISCONSIN,

To each person named above as a Defendant:

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

Within 45 days of receiving this Summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Court, whose address is Dane County Clerk of Courts, Dane County Courthouse, 215 South Hamilton St., Madison, Wisconsin 53703, and to Assistant Attorney General Colin T. Roth, Plaintiffs' attorney, whose address is Wisconsin Department of Justice, Special Litigation and Appeals Unit, 17 West Main Street, Post Office Box 7857, Madison, Wisconsin 53707-7857. You may have an attorney help or represent you.

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

Dated this 9th day of September 2025.

Respectfully submitted,

JOSHUA L. KAUL
Attorney General of Wisconsin

Electronically signed by:

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COLIN T. ROTH
Assistant Attorney General
State Bar #1103985

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STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY
BRANCH ____

TONY EVERS, in his official capacity as
Governor, THE DEPARTMENT OF NATURAL
RESOURCES, THE DEPARTMENT OF
AGRICULTURE, TRADE, AND CONSUMER
PROTECTION, THE DEPARTMENT OF
SAFETY AND PROFESSIONAL SERVICES,
THE PSYCHOLOGY EXAMINING BOARD,
THE RADIOGRAPHY EXAMINING BOARD,
and THE MARRIAGE AND FAMILY THERAPY,
PROFESSIONAL COUNSELING, AND SOCIAL
WORK EXAMINING BOARD,

Plaintiffs,

v.

Case No. 2025-CV-_____
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WISCONSIN LEGISLATURE JOINT
COMMITTEE ON LEGISLATIVE
ORGANIZATION, SENATOR MARY
FELZKOWSKI, in her official capacity as
Co-Chair of the Joint Committee on Legislative
Organization, REPRESENTATIVE ROBIN
VOS, in his official capacity as Co-Chair of the
Joint Committee on Legislative Organization,
THE WISCONSIN LEGISLATIVE
REFERENCE BUREAU, and RICHARD
CHAMPAGNE, in his official capacity as
Director of the Wisconsin Legislative Reference
Bureau,

Defendants.

COMPLAINT

INTRODUCTION

1. In a landmark decision issued two months ago, *Evers v. Marklein*, 2025 WI 36, 22 N.W.3d 789 (“*Evers II*”), the Wisconsin Supreme Court ended unconstitutional legislative committee vetoes over the administrative rulemaking process. *Evers II* accomplished this by facially invalidating several statutes that allowed legislative committees to block executive agencies from promulgating final administrative rules that the Governor had approved.

2. Most importantly for this case, *Evers II* invalidated Wis. Stat. § 277.19(5)(c), the only statute that barred an executive agency from promulgating a final administrative rule until a legislative committee completed its review. This statutory pre-promulgation pause was “facially unconstitutional” because it “permitted [a legislative committee] to exercise discretion over which approved rules may be promulgated and which may not,” in violation of the constitutional “requirements of bicameralism and presentment.” *Evers II*, 2025 WI 36, ¶ 41.

3. In line with *Evers II*’s holding, in August 2025, the plaintiff agencies and attached boards submitted to the Legislative Reference Bureau (LRB) for publication 12 administrative rules that had received the Governor’s approval. LRB has a statutory obligation to publish those rules now that Wis. Stat. § 227.19(5)(c)’s pre-promulgation pause is gone.

4. But, despite *Evers II*, LRB has refused to publish certain of the 12 rules. At the direction of the Legislature's Joint Committee on Legislative Organization, LRB has refused to publish nine of those rules whose standing committee review period has not yet ended under Wis. Stat. § 227.19(4). By refusing to publish those rules, LRB is blocking them from taking effect despite them receiving final executive branch approval.

5. LRB cannot lawfully refuse to publish these nine rules. Now that Wis. Stat. § 227.19(5)(c) has been invalidated, no statute bars agencies from promulgating final administrative rules pending a legislative committee's review. And even if any such statute existed, it would be facially unconstitutional under *Evers II* for the same reason that Wis. Stat. § 227.19(5)(c) was: a legislative committee cannot have discretion over a pre-promulgation pause without violating constitutional bicameralism and presentment procedures. Such a statute would also unconstitutionally intrude on the executive branch's authority to execute statutes that authorize administrative rulemaking.

6. Plaintiffs—the Governor and several executive branch agencies and attached boards—therefore respectfully request a declaration that LRB must publish all administrative rules that have obtained the Governor's approval and completed all preceding rulemaking procedures, including the

nine rules at issue here, and a corresponding injunction ordering LRB to carry out its statutory duty to do so.

JURISDICTION AND VENUE

7. This Court has jurisdiction over the subject matter of this dispute pursuant to article VII, section 8 of the Wisconsin Constitution and Wis. Stat. § 753.03, which provide for subject-matter jurisdiction over all civil matters within this State.

8. Defendants, as State officers, are subject to this Court's jurisdiction. *See Lister v. Bd. of Regents of Univ. of Wis. Sys.*, 72 Wis. 2d 282, 303, 240 N.W.2d 610 (1976).

9. Venue is proper in Dane County because it is the county where the claims arose. Wis. Stat. § 801.50(2)(a).

PARTIES

10. Plaintiff Tony Evers is the Governor of Wisconsin, the elected constitutional officer under Wis. Const. art. V, § 1.

11. Plaintiff Department of Natural Resources is an executive branch agency. *See* Wis. Stat. § 15.34.

12. Plaintiff Department of Agriculture, Trade, and Consumer Protection is an executive branch agency. *See* Wis. Stat. § 15.13.

13. Plaintiff Department of Safety and Professional Services is an executive branch agency. *See* Wis. Stat. § 15.40.

14. Plaintiff Psychology Examining Board is a board with independent rulemaking authority that is attached to the Department of Safety and Professional Services. *See* Wis. Stat. §§ 15.08(5)(b), 15.405(10m).

15. Plaintiff Radiography Examining Board is a board with independent rulemaking authority that is attached to the Department of Safety and Professional Services. *See* Wis. Stat. §§ 15.08(5)(b), 15.405(7e).

16. Plaintiff Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board is a board with independent rulemaking authority that is attached to the Department of Safety and Professional Services. *See* Wis. Stat. §§ 15.08(5)(b), 15.405(7c).

17. Defendant Wisconsin State Legislature Joint Committee on Legislative Organization (JCLO) is a standing committee of the Wisconsin Legislature. *See* Wis. Stat. § 13.80. This committee supervises and makes policy for all legislative staff services, including the Legislative Reference Bureau. *See* Wis. Stat. § 13.80(3).

18. Defendant Senator Mary Felzkowski is a Co-Chair of JCLO. She is sued in her official capacity.

19. Defendant Representative Robin Vos is a Co-Chair of JCLO. He is sued in his official capacity.

20. The Wisconsin Legislative Reference Bureau is a service agency of the Wisconsin Legislature. *See* Wis. Stat. § 13.92. Among other duties, LRB

publishes final administrative rules in the Wisconsin Administrative Register and the Wisconsin Administrative Code. *See* Wis. Stat. §§ 35.93(2)–(3), 227.21(1).

21. Defendant Richard Champagne is the LRB Director. He is sued in his official capacity.

22. Compliance with Wis. Stat. § 893.825 will occur with service of this complaint on the above defendants and the senate majority leader.

FACTUAL ALLEGATIONS

I. Before *Evers II*, executive branch agencies could not promulgate a rule until multiple legislative committees finished reviewing it.

23. Before *Evers II*, an administrative rule proposed by an agency and approved by the Governor could not take effect until a combination of legislative committees reviewed and approved it.

24. Administrative rules undergo an extensive rulemaking process before reaching the Governor, including publishing a scope statement, which must be approved by the Department of Administration and the Governor (Wis. Stat. § 227.135), holding a public hearing and comment period on the scope statement, if requested by the Joint Committee for the Review of Administrative Rules (JCRAR) (Wis. Stat. § 227.136), drafting the rule's text (Wis. Stat. § 227.14), preparing an economic impact analysis (Wis. Stat. § 227.137), submitting the rule to Legislative Council staff, who may

recommend changes (Wis. Stat. § 227.15(1)), and holding a public hearing on the rule (Wis. Stat. § 227.16).

25. Only after completing these steps can a rule be submitted to the Governor for approval or rejection under Wis. Stat. § 227.185.

26. After receiving the Governor's approval, a rule then is reviewed by legislative committees, first by a standing committee in each house of the Legislature under Wis. Stat. § 227.19(4), and then by JCRAR under Wis. Stat. § 227.19(5).

A. Before *Evers II*, Wis. Stat. § 227.19(5)(c) imposed a pre-promulgation pause while legislative committees reviewed an administrative rule.

27. Before *Evers II*, once the Governor approved a rule, Wis. Stat. § 227.19(5)(c) imposed a pre-promulgation pause that barred the agency from promulgating the rule until JCRAR completed its review.

28. Specifically, Wis. Stat. § 227.19(5)(c) provided that:

An agency may not promulgate a proposed rule or a part of a proposed rule until the joint committee for review of administrative rules nonconcurs in the objection of the committee, concurs in the approval of the committee, otherwise approves the proposed rule or part of the proposed rule, or waives its jurisdiction over the proposed rule or part of the proposed rule under par. (d), until the expiration of the review period under par. (b) 1., if no committee has objected to the proposed rule or the part of the proposed rule, until a bill introduced under par. (e) fails to be enacted, or until a bill introduced under par. (em) is enacted.

29. This pre-promulgation pause applied throughout the entire legislative committee review process under Wis. Stat. § 227.19(4)–(5).

30. As discussed more below, *Evers II* facially invalidated this pre-promulgation pause provision. *Evers II*, 2025 WI 36, ¶ 41.

B. After the Governor approves a rule, standing committees and JCRAR have statutory review functions under Wis. Stat. § 227.19(4)–(5).

31. The first stage of legislative committee review involves standing committees. *See generally* Wis. Stat. § 227.19(4).

32. A rule reaches standing committees by way of the Legislature’s chief clerks. Once the Governor approves a proposed rule, the agency notifies the chief clerk of each house of the Legislature that the rule is in final draft form and submits a corresponding report. *See* Wis. Stat. § 227.19(2)–(3). The presiding officers of each house of the Legislature then direct their respective chief clerks to refer the notice and report to one legislative standing committee in each house. *See* Wis. Stat. § 227.19(2).

33. Once a rule arrives at the two standing committees, their independent review periods can last anywhere from a day to more than nine months (and possibly longer than even that, depending on the legislative calendar). Multiple factors determine the length of each committee’s review period, some of which the committees have discretion to control.

34. First, a special set of rules applies when an agency submits a rule after the last day of the Legislature’s final general-business floor period (in common parlance, when the Legislature goes “out of session”). In that situation, the rule need not be considered received by the chief clerks until the first day of the Legislature’s next regular session, after which the chief clerks refer the rule to standing committees. *See* Wis. Stat. § 227.19(2).

35. That referral delay could last months or even over a year, depending on the legislative calendar. The Legislature’s current 2025–2026 session began on January 6, 2025, and is scheduled to end on March 19, 2026. *See* Wis. State Leg. 2025–2026 Session Schedule at a Glance, https://docs.legis.wisconsin.gov/2025/related/session_calendar/calendar (last visited Sept. 8, 2025). The next regular session will not begin until early January 2027.¹ So, if an agency submits a rule under Wis. Stat. § 227.19(2) any time after March 19, 2026, the chief clerk ordinarily will not refer it for standing committee review until early January 2027, potentially more than nine months after the agency’s initial submission. And even then, the rule would still need to travel

¹ This schedule is roughly consistent with those in recent years. *See, e.g.,* Wis. State Leg. 2023–2024 Session Schedule at a Glance https://docs.legis.wisconsin.gov/2023/related/session_calendar/calendar (2023–2024 session began on January 3, 2023, and ended on April 11, 2024); 2021–2022 Session Schedule at a Glance, https://docs.legis.wisconsin.gov/2021/related/session_calendar/calendar (2021–2022 session began on January 4, 2021, and ended on March 10, 2022) (last visited Sept. 8, 2025).

through the committees' ordinary review periods, which would be another 30 or 60 days, as discussed more below.

36. The presiding officers of each legislative house may direct the clerks to refer a rule before the next regular session begins. *See* Wis. Stat. § 227.19(2). But even in that scenario, the standing committee review period still lasts until the start of the next regular session—which, again, could be nine months (or more) later. *See* Wis. Stat. § 227.19(4)(b)1m.

37. Other standing committee timing rules apply when an agency submits a rule for review while the Legislature remains in session.

38. Each of the two standing committees receives a default 30-day review period. *See* Wis. Stat. § 227.19(4)(am), (b)1.

39. Either standing committee can choose to extend its default 30-day period for another 30 days, either by requesting in writing that the agency meet with the committee to review the rule or by announcing that the committee will hold a meeting or hearing to review the rule. *See* Wis. Stat. § 227.19(4)(b)1.

40. Either standing committee also can request that an agency voluntarily modify a rule and, if the agency agrees to consider such modifications, the review period is generally extended to 10 days after the committee receives either the modified rule or a written statement from the

agency that the agency has decided not to modify the rule. *See* Wis. Stat. § 227.19(4)(b)2.

41. Another special rule applies if either standing committee's review period has not concluded by the time a new Legislature begins a new session: in that scenario, that standing committee's review process begins all over again. *See* Wis. Stat. § 227.19(4)(b)6.

42. Finally, either standing committee can choose to cut short its review period—whether 30 days, 60 days, or until the next legislative session begins—at any time by objecting to a rule or part of a rule (*see* Wis. Stat. § 227.19(4)(d)), approving the rule (*see* Wis. Stat. § 227.19(4)(e)), or waiving the remainder of its review period (*see* Wis. Stat. § 227.19(4)(c)).

43. Once a standing committee's review period expires without action or the committee objects to the rule, approves the rule, or waives the remainder of its review period (whichever occurs first), the committee refers the rule to JCRAR. *See* Wis. Stat. § 227.19(4)(e). This referral can occur at different times for the two standing committees, depending on how each one has exercised its discretion over its own, independent review period.

44. Just like with the standing committees, JCRAR's review period can last for virtually any length of time between a day and over nine months based on the same factors that determine the length of standing committee review. *See* Wis. Stat. §§ 227.19(5)(b)1m. (review period lasts until start of next

legislative session, if agency submits rule while Legislature is out of session), 227.19(5)(b)1. (default 30-day review period, which JCRAR can choose to extend to 60 days), 227.19(5)(b)2. (extended review period if JCRAR requests modifications and agency agrees), 227.19(5)(b)6. (review period restarts if it does not end by the time the next Legislature convenes), 227.19(5)(d) (JCRAR can end review period early by approving a rule, objecting to it, or waiving its jurisdiction).

45. Before *Evers II*, JCRAR could block administrative rules well beyond its review period through various veto mechanisms. *See generally* Wis. Stat. § 227.19(5)(d)–(g); *Evers II*, 2025 WI 36, ¶¶ 12–15.

46. If JCRAR instead decided not to veto a rule, the agency could promulgate it when JCRAR’s review period ended. *See* Wis. Stat. § 227.19(5)(c).

47. While it remained in effect, Wis. Stat. § 227.19(5)(c) was the sole provision that prohibited agencies from promulgating a rule until JCRAR’s review ended without a veto.

48. Because Wis. Stat. § 227.19(5)(c) barred promulgation until JCRAR finished reviewing a rule, it necessarily also barred promulgation while standing committees reviewed a rule. Because standing committees review a rule first and then refer it to JCRAR, Wis. Stat. § 227.19(5)(c) meant that agencies waiting for JCRAR’s approval also had to wait for standing committees to complete their review.

49. No separate provision in Wis. Stat. § 227.19(4) prohibits the agency from promulgating a rule while it is under standing committee review; Wis. Stat. § 227.19(5)(c) was the only provision with this effect, and now, after *Evers II*, it is gone.

C. LRB has a statutory obligation to publish rules submitted to it by executive branch agencies.

50. When a rule is ready for promulgation, the agency must file a certified copy of it with LRB. *See* Wis. Stat. § 227.20(1).

51. This filing with LRB creates a statutory “presumption” that, among other things, “all of the rule-making procedures required by this chapter were complied with.” Wis. Stat. § 227.20(3)(c).

52. Upon receipt of a filing, LRB “shall publish all rules that agencies are directed by this chapter to file with the legislative reference bureau under s. 227.20 in the register and shall publish all permanent rules that agencies are directed by this chapter to file with the legislative reference bureau under s. 227.20 in the code.” Wis. Stat. § 227.21(1).

53. A rule becomes effective only after LRB publishes it. *See* Wis. Stat. § 227.22.

II. *Evers II* facially invalidated several legislative veto provisions, including Wis. Stat. § 227.19(5)(c).

54. The Wisconsin Supreme Court in *Evers II* facially invalidated several chapter 227 provisions that allowed legislative committees to veto administrative rules. In short, *Evers II* concluded that those veto provisions violated constitutional bicameralism and presentment procedures.

55. Generally, “the bicameralism and presentment requirements of the Wisconsin Constitution, Wis. Const. art. IV, §§ 1, 17, 19 & art. V, § 10, . . . require any law to pass both houses of the Legislature and be presented to the Governor.” *Evers II*, 2025 WI 36, ¶ 3.

56. *Evers II* held that multiple provisions in Wis. Stat. ch. 227 improperly allowed legislative committees to veto administrative rules without following these constitutional procedures.

57. First, *Evers II* facially invalidated Wis. Stat. § 227.19(5)(c), the “pre-promulgation pause” provision discussed above. *Evers II*, 2025 WI 36, ¶ 41. The Court explained that the pause period—during which legislative committees could “exercise discretion over which approved rules may be promulgated and which may not”—operated as a “pocket veto” without satisfying bicameralism and presentment requirements. *Id.*

58. Second, on similar grounds, *Evers II* facially invalidated Wis. Stat. § 227.19(5)(d) and (dm), which empowered JCRAR to block proposed rules

“temporarily or indefinitely,” and Wis. Stat. § 227.26(2)(d) and (im), which allowed JCRAR to suspend rules that had already been promulgated. *Evers II*, 2025 WI 36, ¶¶ 42–43.

59. *Evers II* did not invalidate any other legislative review provisions in Wis. Stat. § 227.19, and so agencies remain obligated to submit rules to the Legislature under Wis. Stat. § 227.19(2) so that rules can undergo legislative committee review under Wis. Stat. § 227.19(4)–(5).

60. *Evers II* therefore left legislative committees with the authority to, among other things, hold hearings regarding rules under their review, request changes, and lodge non-binding objections to those rules.

61. Moreover, “[the Legislature] alone maintains the ability to amend, expand, or limit the breadth of administrative rulemaking in the other branches—as long as it adheres to the constitution, including the provisions of bicameralism and presentment.” *Evers II*, 2025 WI 36, ¶ 44. Put differently, the full Legislature can amend either the general rulemaking provisions in chapter 227 or an agency’s specific rulemaking provisions elsewhere by passing a bill in both legislative houses that the Governor then signs. The Legislature therefore retains the power to veto, alter, or replace *any* administrative rule or even change the entire rulemaking process by enacting laws that pass through constitutional bicameralism and presentment procedures.

62. But now that *Evers II* facially invalidated the legislative veto provisions in Wis. Stat. § 227.19, nothing prevents an agency from promulgating a rule once the Governor approves it, even if a legislative committee continues to review it in anticipation of possible legislative action by the full Legislature.

63. Wisconsin Stat. § 227.19(5)(c) was the only statutory provision that barred agencies from promulgating rules until a legislative committee finished reviewing them, and so, now that this provision has been invalidated, no statutory provision bars an agency from promulgating a rule while legislative committees review it.

64. Therefore, just as an agency is now free to promulgate a rule during the JCRAR review period, an agency is now free to promulgate a rule during the standing committee review period.

III. JCLO has ordered LRB not to publish certain administrative rules that the Governor has approved, and LRB has followed JCLO's direction.

65. In August 2025, Plaintiff agencies submitted 12 administrative rules to LRB for publication, all of which had received the Governor's approval under Wis. Stat. § 227.185, followed all preceding rulemaking requirements, and been submitted to the chief clerk of each house of the Legislature, as required by Wis. Stat. § 227.19(2).

66. As of the date of this filing, the 12 rules submitted to LRB fall into two main categories.

67. The first category contains nine rules whose standing committee review periods under Wis. Stat. § 227.19(4) have not yet expired: CR 23–010; CR 23–047; CR 24–045; CR 24–051; CR 24–096; CR 25–019; CR 25–032; CR 25–036; and CR 25–040.² These nine rules fall into four subcategories:

(a) Four were referred to standing committees within 30 days before this filing and (as of this filing) they remain in the default 30-day review period: CR 25–019; CR 25–032; CR 25–036; and CR 25–040.

(b) One was referred to standing committees within 60 days before this filing, after which a standing committee chose to extend its review period under Wis. Stat. § 227.19(4)(b)1.b.: CR 24–096.

² See Wis. State Leg., *Clearinghouse Rule CR 23-010*, https://docs.legis.wisconsin.gov/code/chr/all/cr_23_010; *Clearinghouse Rule CR 23-047*, http://docs.legis.wisconsin.gov/code/chr/all/cr_23_047; *Clearinghouse Rule CR 24-045*, http://docs.legis.wisconsin.gov/code/chr/all/cr_24_045; *Clearinghouse Rule CR 24-051*, https://docs.legis.wisconsin.gov/code/chr/all/cr_24_051; *Clearinghouse Rule CR 24-096*, https://docs.legis.wisconsin.gov/code/chr/all/cr_24_096; *Clearinghouse Rule CR 25-019*, https://docs.legis.wisconsin.gov/code/chr/all/cr_25_019; *Clearinghouse Rule CR 25-032*, https://docs.legis.wisconsin.gov/code/chr/all/cr_25_032; *Clearinghouse Rule CR 25-036*, https://docs.legis.wisconsin.gov/code/chr/all/cr_25_036; and *Clearinghouse Rule CR 25-040*, https://docs.legis.wisconsin.gov/code/chr/all/cr_25_040 (last visited Sept. 8, 2025).

(c) Two remain in extended review periods (as of this filing) after a committee modification request under Wis. Stat. § 227.19(4)(b)2.: CR 23–047 and CR 24–045.

(d) Two have not been referred back to standing committees (as of this filing) by the chief clerk following the agency’s resubmission under Wis. Stat. § 227.19(4)(b)4.: CR 23–010 and CR 24–051.

68. LRB has so far refused to carry out its statutory obligation under Wis. Stat. § 227.21(1) to publish all nine rules in this first category.

69. The second category contains three rules whose standing committee review periods have expired: CR 24–034; CR 24–086; and CR 24–091.³ LRB has agreed to publish all three rules in this second category.

70. As for the nine rules in the first category—those whose standing committee review periods have not yet ended, as of this filing—LRB’s ongoing refusal follows from direction it has received from JCLO, the legislative committee with authority to “supervise and make policy for” LRB. *See* Wis. Stat. § 13.80(3).

³ *See Clearinghouse Rule CR 24-034*, https://docs.legis.wisconsin.gov/code/chr/all/cr_24_034; *Clearinghouse Rule CR 24-086*, https://docs.legis.wisconsin.gov/code/chr/all/cr_24_086; *Clearinghouse Rule CR 24-091*, https://docs.legis.wisconsin.gov/code/chr/all/cr_24_091 (last visited Sept. 8, 2025).

71. On August 22, 2025, JCLO voted 6–4 to pass the following motion:

I vote [___ YES] [___ NO] that the Legislative Reference Bureau (LRB) shall neither finalize nor publish any rules or proposed rules that failed to comply with the standing committee statutory requirements of s. 227.19 (2) to (4), Stats., including rules or proposed rules that have already been submitted to the LRB.

A copy of this motion is attached to the complaint as **Exhibit A**.

72. In a memorandum accompanying this motion, JCLO’s Co-Chairs explained their position that “[t]he Legislature has duly enacted statutory requirements providing that no agency may promulgate any rule or proposed rule prior to the appropriate standing committee of the Legislature receiving the appropriate notice and report as to the rule or proposed rule and then subsequently concluding its statutory jurisdiction over the rule or proposed rule. See s. 227.19(2) to (4).” A copy of this memorandum is attached to the complaint as **Exhibit B**.

73. Although this JCLO memorandum generally cited Wis. Stat. § 227.19(2)–(4) as the basis for this position, it did not cite any specific provision that bars agencies from promulgating rules until a standing committee completes its review under Wis. Stat. § 227.19(4).

74. In subsequent LRB emails to agencies regarding the rules it is declining to publish, LRB referenced a “directive of the Joint Committee on Legislative Organization” not to publish the rules on the theory that they “failed to comply with the standing committee statutory requirements of s.

227.19 (2) to (4).” One example of these emails is attached to the complaint as **Exhibit C**.

75. No statutory provision in Wis. Stat. § 227.19(2)–(4) bars an agency from promulgating a rule before the completion of standing committee review.

76. The only statutory provision that barred an agency from promulgating a rule before the completion of a committee’s review was Wis. Stat. § 227.19(5)(c), which *Evers II* facially invalidated.

77. These continued delays matter. One example is CR 23–010, which the Department of Natural Resources originally submitted for legislative committee review almost two years ago, in October 2023. This proposed rule would further protect surface water quality by strengthening review of permitted discharges of pollutants from regulated point sources. Federal law requires Wisconsin to guard against the degradation of its high-quality surface waters, and this rule brings Wisconsin into compliance with federal law by updating crucial procedures that must be followed before degrading such waters.

78. Currently, Wisconsin does not apply antidegradation review to all discharges of pollutants, to discharges of stormwater, or to discharges from new concentrated animal feeding operations. The long promulgation delay has therefore meant that some discharges that this proposed rule would cover have

not been—and are not being—evaluated, risking the degradation of surface water quality.

79. These promulgation delays will continue to arise, even if during this litigation LRB agrees to publish the rules disputed here when their standing committee review periods expire.

80. In addition to the rules LRB is already refusing to publish, Plaintiff agencies have additional administrative rulemaking efforts that are nearing the stage for gubernatorial approval under Wis. Stat. § 227.185.

81. Because Wis. Stat. § 227.19(5)(c) has been facially invalidated, those Plaintiff agencies intend to continue submitting rules that obtain the Governor's approval (and complete all preceding rulemaking procedures) to LRB for publication, without waiting for legislative committees to complete their review under Wis. Stat. § 227.19(4)–(5).⁴

82. Given JCLO's August 22, 2025, direction to LRB, which JCLO has not retracted as of this filing, Plaintiffs reasonably believe that LRB will continue to refuse to publish all rules submitted to it by executive branch agencies while any standing committee review period continues.

⁴ The Plaintiff agencies do intend, however, to continue submitting such rules to the Legislature under Wis. Stat. § 227.19(2) so that legislative committees can continue to exercise the review functions that survived *Evers II*.

CLAIMS FOR RELIEF

COUNT I – DECLARATORY JUDGMENT

No statute prohibits agencies from promulgating final administrative rules before both standing committees complete their review.

(Declaratory and Injunctive Relief Sought)

83. Plaintiffs reallege and incorporate herein by reference every foregoing paragraph of this Complaint as if set forth here in full.

84. Any court of record in this State is authorized to enter a declaratory judgment declaring that a statutory provision, or an application of a statutory provision, is unconstitutional. *See* Wis. Stat. § 806.04(1). Further relief based on a declaratory judgment, including injunctive relief, may also be granted whenever necessary or proper. *See* Wis. Stat. § 806.04(8).

85. Since the facial invalidation of Wis. Stat. § 227.19(5)(c) in *Evers II*, no statutory provision in Wis. Stat. § 227.19 (or elsewhere) prohibits an agency from promulgating a rule during legislative standing committee review under Wis. Stat. § 227.19(4).

86. In other words, once the Governor approves an executive agency's proposed rule under Wis. Stat. § 227.185, the agency now has statutory authority to promulgate it as a final rule.

87. JCLO's August 22, 2025, directive that LRB must refuse to publish administrative rules until they complete standing committee review lacks any statutory basis.

88. LRB is therefore obligated by Wis. Stat. § 227.21(1) to publish rules submitted to it by executive branch agencies that have obtained the Governor's approval and completed all preceding rulemaking procedures, including the nine rules it has so far refused to publish, discussed above.

COUNT II (IN THE ALTERNATIVE) – DECLARATORY JUDGMENT

If any statute prohibits agencies from promulgating final administrative rules during standing committee review, that statute facially violates constitutional bicameralism and presentment requirements.

(Declaratory and Injunctive Relief Sought)

89. Plaintiffs reallege and incorporate herein by reference every foregoing paragraph of this Complaint as if set forth here in full.

90. Any court of record in this State is authorized to enter a declaratory judgment declaring that a statutory provision, or an application of a statutory provision, is unconstitutional. *See* Wis. Stat. § 806.04(1). Further relief based on a declaratory judgment, including injunctive relief, may also be granted whenever necessary or proper. *See* Wis. Stat. § 806.04(8).

91. Plaintiffs' primary claim is Count I: that no statute prohibits executive branch agencies from promulgating a final administrative rule until both standing committees complete their review under Wis. Stat. § 227.19(4).

92. However, if any statute were to be construed as containing such a prohibition, that statute would be facially unconstitutional for failing to comply with constitutional bicameralism and presentment requirements under Wis. Const. art. IV, §§ 1, 17, 19 and art. V, § 10.

93. Any such statute would represent a pre-promulgation pause functionally identical to Wis. Stat. § 227.19(5)(c), except that it would block the promulgation of rules during standing committee review rather than, as Wis. Stat. § 227.19(5)(c) did, during both standing committee and JCRAR review.

94. Such a statute would share the same constitutional defects as Wis. Stat. § 227.19(5)(c), which *Evers II* facially invalidated.

95. Specifically, paragraph 41 of *Evers II* could be rewritten by substituting “standing committee” for “JCRAR,” and the same result would follow—any statute requiring a “pre-promulgation pause” during standing committee review is facially invalid because it bypasses constitutional bicameralism and presentment procedures:

[Whichever statute is construed as creating a standing committee pre-promulgation pause] permits [a standing committee] to prevent proposed rules from going into effect. Under this statute, [a standing committee] is empowered to act after an agency has completed the rulemaking process and submitted a proposed rule

to the Governor for approval. The statute essentially allows [a standing committee] to capture control of agency rulemaking authority from the executive branch during the 30-day pause period under § 227.19(4)(b)(1). . . . [A standing committee] can also choose to block rules from promulgation by extending the pause from 30 days to up to 60 days. . . . In other words, this provision operates as a “pocket veto.” Even if such an interruption is relatively brief, the constitution does not contemplate temporary violations of its provisions. . . . The ability of a . . . committee to halt or interrupt the passage of a rule, which would ordinarily be required to be presented to the governor as a bill, is simply incompatible with Articles IV and V of the Wisconsin Constitution. . . . By permitting [a standing committee] to exercise discretion over which approved rules may be promulgated and which may not, the statute empowers [a standing committee] to take action that alters the legal rights and duties of persons outside of the legislative branch, triggering the requirements of bicameralism and presentment. Because [whichever statute is construed as creating a standing committee pre-promulgation pause] bypasses bicameralism and presentment, it is facially unconstitutional.

Evers II, 2025 WI 36, ¶ 41.

96. Once any statutory provision imposing a pre-promulgation pause during standing committee review is facially invalidated, JCLO’s August 22, 2025, directive that LRB must refuse to publish administrative rules that have not yet completed standing committee review under Wis. Stat. § 227.19(4) would lack any statutory basis (assuming the directive ever had one).

97. LRB would then be obligated by Wis. Stat. § 227.21(1) to publish all rules submitted to it by executive branch agencies that have obtained the Governor’s approval and completed all preceding rulemaking procedures, including the nine rules it has so far refused to publish, discussed above.

COUNT III (IN THE ALTERNATIVE) – DECLARATORY JUDGMENT

(Declaratory and Injunctive Relief Sought)

If any statute prohibits agencies from promulgating final administrative rules during standing committee review, that statute facially violates the constitutional separation of powers.

98. Plaintiffs reallege and incorporate herein by reference every foregoing paragraph of this Complaint as if set forth here in full.

99. Any court of record in this State is authorized to enter a declaratory judgment declaring that a statutory provision, or an application of a statutory provision, is unconstitutional. *See* Wis. Stat. § 806.04(1). Further relief based on a declaratory judgment, including injunctive relief, may also be granted whenever necessary or proper. *See* Wis. Stat. § 806.04(8).

100. Plaintiffs' primary claim is Count I: that no statute prohibits executive branch agencies from promulgating a final administrative rule until both standing committees complete their review under Wis. Stat. § 227.19(4).

101. But if any statute were to be construed as containing such a prohibition, that statute also would facially violate the constitutional separation of powers by improperly intruding on the executive powers vested in the executive branch through Wis. Const. art. V, § 1.

102. More specifically, any such statute would improperly intrude on the executive branch's core power to execute statutes that authorize administrative rulemaking. When executive branch agencies promulgate

rules, they are not exercising a fundamentally different power than the core power they use when otherwise implementing statutory programs. In both cases, the executive branch uses executive discretion to execute the law within the statutory boundaries set by the legislature.

103. And even if rulemaking is viewed as a power shared by the executive and legislative branches, the constitution still does not authorize the legislature to absolutely block executive branch rulemaking through a legislative committee, without enacting laws.

104. Once any statutory provision imposing a pre-promulgation pause during standing committee review is facially invalidated, then JCLO's August 22, 2025, directive that LRB must refuse to publish administrative rules that have not yet completed standing committee review under Wis. Stat. § 227.19(4) would lack any statutory basis (assuming the directive ever had one).

105. LRB would then be obligated by Wis. Stat. § 227.21(1) to publish all rules submitted to it by executive branch agencies that have obtained the Governor's approval and completed all preceding rulemaking procedures, including the nine rules it has so far refused to publish, discussed above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully ask this Court to enter a judgment in their favor and against Defendants, consisting of:

- (a) A declaratory judgment that an executive branch agency can promulgate a final rule after the Governor approves it under Wis. Stat. § 227.185 (and completes all preceding rulemaking procedures), even if a standing committee has not yet completed its review under Wis. Stat. § 227.19(4), either because no statute prohibits such promulgation or because any statute that does is facially unconstitutional;
- (b) An injunction directing LRB to publish the nine administrative rules it is refusing to publish and, prospectively, all other rules submitted to it by executive branch agencies that have received the Governor approval under Wis. Stat. § 227.185, even if a standing committee has not yet completed its review under Wis. Stat. § 227.19(4); and

(c) Any such other relief as the Court may deem just and proper.

Dated this 9th day of September 2025.

Respectfully submitted,

JOSHUA L. KAUL
Attorney General of Wisconsin

Electronically signed by:

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Assistant Attorney General
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Co-Chair

Mary Felzkowski | Senate President



Co-Chair

Robin Vos | Assembly Speaker

STATE OF WISCONSIN

JOINT COMMITTEE ON LEGISLATIVE ORGANIZATION

August 21, 2025

MAIL BALLOT

MOTION: I vote [☐ YES] [☐ NO] that the Legislative Reference Bureau (LRB) shall neither finalize nor publish any rules or proposed rules that failed to comply with the standing committee statutory requirements of s. 227.19 (2) to (4), Stats., including rules or proposed rules that have already been submitted to the LRB.

Signature

Date**PLEASE RETURN BY 1:00 p.m., Friday, August 22, 2025 TO:**

Anne Sappenfield, Director
Legislative Council Staff
One East Main Street, Suite 401
Madison, WI 53703-3382

Co-Chair

Mary Felzkowski | Senate President



Co-Chair

Robin Vos | Assembly Speaker

STATE OF WISCONSIN

JOINT COMMITTEE ON LEGISLATIVE ORGANIZATION

TO: JOINT COMMITTEE ON LEGISLATIVE ORGANIZATION

Senators

Devin LeMahieu

Dan Feyen

Dianne Hesselbein

Jeff Smith

Representatives

Tyler August

Scott Krug

Greta Neubauer

Kalan Haywood

FROM:

Handwritten signature of Mary Felzkowski.

President Mary Felzkowski, Co-Chair

Handwritten signature of Robin Vos.

Speaker Robin Vos, Co-Chair

DATE:

August 21, 2025

Evers v. Marklein, 2025 WI 36, 22 N.W.3d 789 (“*Marklein II*”), held that “the Legislature retains power over the administrative rulemaking process” and “alone maintains the ability to amend, expand, or limit the breadth of administrative rulemaking in the other branches—as long as it adheres to the constitution, including the provisions of bicameralism and presentment.” *Id.* ¶ 44. The Legislature has duly enacted statutory requirements providing that no agency may promulgate any rule or proposed rule prior to the appropriate standing committee of the Legislature receiving the appropriate notice and report as to the rule or proposed rule and then subsequently concluding its statutory jurisdiction over the rule or proposed rule. See s. 227.19 (2) to (4), Stats. Attached for your consideration is a mail ballot directing the Legislative Reference Bureau not to finalize or publish under s. 227.20 or 227.21, Stats., any rule or proposed rule that does not comply with the standing committee statutory requirements of s. 227.19 (2) to (4), Stats.

Please indicate your vote on this motion on the attached ballot and return it by **1:00 p.m., on Friday, August, 22, 2025** to:

Anne Sappenfield, Director
Legislative Council Staff
One East Main Street, Suite 401

MF:RV:jal
Attachment

Roth, Colin T.

From: Administrative-Code-Register <Administrative-Code-Register@legis.wisconsin.gov>
Sent: Monday, August 25, 2025 8:06 AM
To: Esch, Emma G - DNR
Subject: RE: CR 25-032 (FH-10-24) Final Rule for Filing and Publication in the Register

**CAUTION: This email originated from outside the organization.
Do not click links or open attachments unless you recognize the sender and know the content is safe.**

Good morning,

Per directive of the Joint Committee on Legislative Organization, the LRB will not be publishing CR 25-032 in the Wisconsin Administrative Register on Monday, August 25, 2025. That rule failed to comply with the standing committee statutory requirements of s. 227.19 (2) to (4).



Lexi Ernst-Treutel

Register Editor
Wisconsin Legislative Reference Bureau
1 East Main Street, Suite 200
Madison, WI 53703
608.504.5817

From: Esch, Emma G - DNR <emma.esch@wisconsin.gov>
Sent: Thursday, August 14, 2025 2:11 PM
To: LRB-Administrative-Code-and-Register <Administrative-Code-Register@legis.wisconsin.gov>
Cc: Lee-Zimmermann, Kari A - DNR <Kari.LeeZimmermann@wisconsin.gov>; Harvey, Chandra - DNR <Chandra.Harvey@wisconsin.gov>
Subject: CR 25-032 (FH-10-24) Final Rule for Filing and Publication in the Register

Good afternoon,

Please see the attached final rule documents for filing and publication in the **next available Administrative Register**. As noted in the rule text, this rule takes effect on April 1, 2026, except that SECTIONS 186 to 188 take effect on April 1, 2027.

The certified copy of the rule is attached, and I dropped off a hard copy of the rule earlier today.

Thank you,
Emma

Emma Esch

She/Her

Department Administrative Rules Coordinator – Bureau of Legal Services

Wisconsin Department of Natural Resources

Phone: 608-266-1959

Cell Phone: 608-419-8477

emma.esch@wisconsin.govdnr.wi.gov

Our core values include professionalism, integrity, and customer service.

Please visit our [survey](#) to provide feedback on your experience interacting with any DNR employee.