FILED
11-14-2023
CLERK OF WISCONSIN
SUPREME COURT

No. 2023AP1896-OA

In the Supreme Court of Wisconsin

JULIE UNDERWOOD, CHARLES UPHOFF, RANDY WENDT, FATHER TOM MUELLER, ANGELA RAPPL, DUSTIN IMRAY *and* SCOTT WALKER M.D.,
PETITIONERS,
v.
ROBIN VOS, SPEAKER OF THE WISCONSIN STATE ASSEMBLY, JILL UNDERLY, WISCONSIN STATE SUPERINTENDENT OF PUBLIC INSTRUCTION *and* KATHY BLUMENFELD, SECRETARY OF THE DEPARTMENT OF ADMINISTRATION,
RESPONDENTS.

On Petition For Original Action Before This Court

BRIEF OF RESPONDENT SPEAKER ROBIN VOS, IN OPPOSITION TO PETITION FOR ORIGINAL ACTION

MISHA TSEYTLIN
Counsel of Record
KEVIN M. LEROY
TROUTMAN PEPPER
HAMILTON SANDERS LLP
227 W. Monroe Street,
Suite 3900
Chicago, Illinois 60606
(608) 999-1240
(312) 759-1939 (fax)
misha.tseytlin@troutman.com

Attorneys for Respondent Speaker Robin Vos

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Statutes And Rules

Other Authorities

INTRODUCTION

Wisconsin school choice programs have for decades helped low-income families send their children to the schools that best fit their educational needs. Thirty-three years after the Legislature enacted the first school choice program—and thirty-one years after this Court upheld that program in *Davis v. Grover,* 166 Wis. 2d 501, 480 N.W.2d 460 (1992)—Petitioners bring this Petition For Original Action, asking this Court to strike down Wisconsin's school choice regime. But no exigent circumstances justify allowing Petitioners to skip the ordinary litigation process to bring their claims, which all involve complex factual disputes that are not appropriate in the original action context. Petitioners even acknowledge that the *Davis* Court "expressly rel[ied] on numerous facts" to "uph[o]ld the constitutionality of the program 'under the circumstances,'" Pet.6–7 (quoting *Davis*, 166 Wis. 2d at 545), and given the nature of Petitioner's claims even more such facts will be at issue in this dispute. Further, Petitioners' underlying claims are meritless, including in light of *Davis*.

This Court should deny the Petition For Original Action.

STATEMENT

A. Wisconsin's School Choice Programs

1. Wisconsin's educational funding framework comprises multiple types of aid, the majority of which is funneled into the public school system with only limited state

aid directed to nontraditional educational programs, including the State's school choice programs. Wisconsin public school districts receive funding through a mix of local taxes, state aid, and federal aid. Wis. Stat. §§ 121.01, *et seq.*; Russ Kava & Maria Toniolo, Wis. Legis. Fiscal Bureau, *Informational Paper #28: State Aid to School District* 3 (Jan. 2023) ("*Info. Paper #28*").[1] As relevant here, the two primary forms of direct state aid are "equalization aid" and "categorical aid." *See Info. Paper #28*, *supra,* at 7–12, 19–33.[2]

"Equalization aid," the largest source of direct state aid, *id.* at 2,[3] comprises payments to school districts calculated according to a complex formula that considers, among other factors, resident student counts for the district (called "membership") and property values in the district, *see id.* at 7–12; Wis. Stat. § 121.08. The purpose of equalization aid is to minimize funding differences between school districts, Wis. Stat. § 121.01; *Info. Paper #28*, *supra*, at 12, thus, the State generally provides more equalization aid per pupil to districts with lower property values and less equalization aid per pupil to districts with higher property values, *Info. Paper #28*, *supra*, at 7; Wis. Dept. of Pub. Instruction, *Equalization*

[1] Available at https://docs.legis.wisconsin.gov/misc/lfb/informational_papers/january_2023/0028_state_aid_to_school_districts_informational_paper_28.pdf (all websites last visited Nov. 13, 2023).

[2] State aid takes two forms: property tax credits and direct payments (hereinafter "direct state aid").

[3] For fiscal year 2023, equalization aid eligibility comprised 77.3% of all direct state aid ($5,155,400,000/$6,668,498,600).

Aid.[4] For fiscal year 2023, this totaled $5,155,400,000. *Info. Paper #28*, *supra*, at 2.

"Categorical aid" partially funds specific program costs, such as those for special education, Wis. Stat. § 115.88; achievement-gap reduction, *id.* § 118.44; pupil transportation, *id.* § 121.58–59; and bilingual education, *id.* § 115.95, *see also Info. Paper #28*, *supra*, at 19–33. Categorical aid accounted for about $1.45 billion of direct state aid to public schools in 2022–23. *Info. Paper #28*, *supra*, at 33–34; Wis. Dept. of Pub. Instruction, *Full Summary of 2023 Wisconsin Act 19* at 3 (July 2023).[5]

Finally, "revenue limits" cap the annual amount of revenue that each school district can raise through local property taxes and equalization aid.[6] Wis. Stat. § 121.91; *see generally* Russ Kava, Wis. Legis. Fiscal Bureau, *Informational Paper #27: School District Revenue Limits and Referenda* (Jan. 2023) ("*Info. Paper #27*").[7] The maximum

---

[4] Available at https://dpi.wi.gov/sfs/aid/general/equalization/overview#:~:text=For%20these%20reasons%2C%20Equalization%20Aid,those%20districts%20with%20low%20per%2D.

5 Available at https://dpi.wi.gov/sites/default/files/imce/policy-budget/pdf/2023-25_State_Biennial_Budget_2023_Act_19_with_vetoes_publish.pdf.

[6] Revenue limits further apply to high poverty aid, integration aid and special adjustment aid, which combined contribute about 1.2% of that offered through equalization aid, *Info. Paper #28*, *supra*, at 2, along with computer aid and certain exempt personal property aid, *id.* at 3.

[7] Available at https://docs.legis.wisconsin.gov/misc/lfb/informational_papers/january_2023/0027_school_district_revenue_limits_and_referenda_informational_paper_27.pdf.

revenue limit is based upon enrollment changes, an inflationary increment, and each district's prior year revenue. Wis. Stat. § 121.91; Wis. Dept. of Pub. Instruction, *School District Revenue Limits*.[8] School districts that wish to exceed the revenue limits can generate additional property tax revenue by submitting the issue for a public referendum. Wis. Stat. § 121.91(3); *Info. Paper #27*, *supra*, at 8.

2. The Legislature has enacted four school choice programs, allowing eligible students to enroll in participating private schools or charter schools with state-funded vouchers to help pay tuition costs. Wis. Stat. §§ 118.60, 118.40, 115.7915, 119.23; *see generally Jackson v. Benson*, 218 Wis. 2d 835, 857, 578 N.W.2d 602 (1998); *History*, School Choice Wis.[9] As of the 2023–24 school year, 64,709.8, full-time equivalent students are enrolled in these programs. Wis. Dept. of Pub. Instruction, *Private School Choice Programs (MPCP, RPCP, WPCP) & Special Needs Scholarship Program (SNSP) Summary: 2023-24 School Year Student HC, FTE & Annualized Payment*;[10] Wis. Dept. of Pub. Instruction,

---

[8] Available at https://dpi.wi.gov/sfs/statistical/basic-facts/revenue-limits.

[9] Available at https://schoolchoicewi.org/about/history/.

[10] Available at https://dpi.wi.gov/sites/default/files/imce/parental-education-options/Choice/Data_and_Reports/2023-24/Updated_-_2023-24_summary_mpcp_wpcp_rpcp_snsp.pdf. In 2023–24, the number of full-time equivalent students in each (non-charter school) program is as follows: 28,185.2 in the MPCP; 3,934.2 in the Racine Parental Choice Program; 18,711.1 in the statewide Wisconsin Parental Choice Program; and 2,651.5 in the SNSP. *Id.*

Wisconsin Independent Charter Schools – Headcount and FTE: 2023–24 School Year (best available data).[11] These programs are as follows:

Milwaukee Parental Choice Program ("MPCP"). The Legislature enacted the MPCP, Wis. Stat. § 119.23, to provide low-income Milwaukee students vouchers to pay for private school tuition. *Jackson*, 218 Wis. 2d at 857; Maria Toniolo, Wis. Legis. Fiscal Bureau, *Informational Paper #30: Private School Choice and Special Needs Scholarship Program* 1 (Jan. 2023) ("*Info. Paper #30*").[12] Upon receiving proof of the student's enrollment in a private school, the State pays the school a statutorily-defined sum, equivalent in 2023–24 to $9,893 for students in grades K through 8 and $12,387 for students in grades 9 through 12. Wis. Stat. § 119.23(4)(bg)3; Wis. Dept. of Pub. Instruction, *2023–24 Funding Comparison for "WI Choice Programs"* 1 ("*2023-24 Funding Comparison*").[13] To offset the MPCP's cost, the State reduces Milwaukee Public Schools' ("MPS") equalization aid payment. Wis. Stat. § 121.08; *Info. Paper #28*, *supra*, at 8–9. This reduction, equivalent to 3.2% of the total cost of the MPCP

[11] Available at https://dpi.wi.gov/sites/default/files/imce/parental-education-options/Charter-Schools/2023-2024_ICS_LegalEntity_Count_Data.xls. In 2023–24, 11,227.8 full-time equivalent students were enrolled in an Independent Charter School.

[12] Available at https://docs.legis.wisconsin.gov/misc/lfb/informational_papers/january_2023/0030_private_school_choice_and_special_needs_scholarship_programs_informational_paper_30.pdf.

[13] Available at https://dpi.wi.gov/sites/default/files/imce/sfs/pdf/FY24-ChoiceOptionsFundingTable.pdf.

for 2023–24, will be eliminated in 2024–25, and the State will fully fund the program through general purpose revenue. Wis. Stat. § 121.08(4)(b); *Info. Paper #28*, *supra*, at 17; Wis. Dept. of Pub. Instruction, *MPCP Facts and Figures for 2022–23*;[14] *Programs*, School Choice Wis.[15]

The Wisconsin Parental Choice Program ("WPCP"). The Legislature expanded school choice to Racine and then statewide in 2011 and 2013, respectively. Wis. Stat. § 118.60; *Info. Paper #30*, *supra*, at 2. Currently, a student is eligible to participate in WPCP if the student's family income is less than 220% of the federal poverty level (or 300% for the Racine Parental Choice Program). Wis. Stat. § 118.60(2)(a)1.a, (2)(bm); *Info. Paper #28*, *supra*, at 17. As with the MPCP, the State pays the school a statutorily-defined sum—currently $9,893 for students in grades K through 8 and $12,387 for students in grades 9 through 12. Wis. Stat. § 118.60(4)(bg)3; *2023–24 Funding Comparison*, *supra*, at 1. Payments for students who first participated in the programs prior to 2015–16 are fully funded through state general purpose revenue, while the State offsets payments for other participating students by reducing the equalization aid[16] paid to the school

[14] Available at https://dpi.wi.gov/sites/default/files/imce/parental-education-options/Choice/Data_and_Reports/2022-23/2022-23_mpcp_facts_and_figures.pdf.

[15] Available at https://schoolchoicewi.org/programs/.

[16] By statute, the reduction is to "general" aid, which aid is in practice over 98% equalization aid. *Info. Paper #28*, *supra*, at 2.

districts where these students reside. Wis. Stat. § 118.60(4d)(b)1; *Info. Paper #28*, *supra*, at 17.

The Independent Charter School Program ("ICSP"). Charter schools are public schools created by contract between the school and a state-authorized entity, with "independent" charter schools ("ICS") being those in contract with an entity other than a school district. Wis. Stat. § 118.40; Russ Kava, Wis. Legis. Fiscal Bureau, *Informational Paper #32: Charter Schools* 1–2, 18 (Jan. 2023) ("*Info. Paper #32*").[17] Wisconsin first allowed for ICSs in 1998 and now authorizes seven entities to create such schools.[18] Wis. Stat. § 118.40(2r), (2x). Currently, an ICS receives $11,385 for each student. *2023–24 Funding Comparison*, *supra*, at 3; *see also Info. Paper #28*, *supra*, at 18–19. Payments to schools in contract with entities authorized before 2015 are funded out of the general purpose revenue, while payments to schools contracted by later-authorized entities are offset through a reduction to the general aid paid to the students' school districts of residence. Wis. Stat. § 118.40(2)(g); *Info. Paper #28*, *supra*, at 9, 19; *Info. Paper #32*, *supra*, at 10.

---

[17] Available at https://docs.legis.wisconsin.gov/misc/lfb/informational_papers/january_2023/0032_charter_schools_informational_paper_32.pdf.

[18] The entities are the Common Council of the City of Milwaukee, the chancellor of any institution in the University of Wisconsin System, each technical college district board, the Waukesha County Executive, the College of Menominee Nation, Lac Courte Oreilles Ojibwe University, and the UW-System Office of Educational Opportunity. Wis. Stat. § 118.40(2r), (2x).

The Special Needs Scholarship Program ("SNSP"). To participate in this program, students must have an individualized education program or services plan,[19] but no income requirements limit a student's eligibility. *See generally* Wis. Stat. § 115.7915; *Info. Paper #28*, *supra*, at 18; *Info. Paper #30*, *supra*, at 21. For each participating student in 2023–24, the State provides a $15,065 payment, offset by reducing the equalization aid that it would otherwise pay to the student's school district of residence. Wis. Stat. § 115.7915(4m); *2023–24 Funding Comparison*, *supra*, at 2; *Info. Paper #28*, *supra*, at 18; *Info. Paper #30*, *supra*, at 24.

B. Factual And Procedural Background

Petitioners' Petition For Original Action asks this Court to adjudicate, as an original matter, multiple constitutional challenges to all four of Wisconsin's school choice programs, as well as the State's funding statutes for public schools. Petitioners are seven Wisconsin taxpayers: three Petitioners allege that they have children in the public school system; three allege they have grandchildren in the public school system; and one Petitioner simply alleges that he is a former employee in the public school system. Pet.21–22. Petitioners have named as Respondents, in their official capacities, Speaker Robin Vos, State Superintendent of Public

[19] This is a written statement identifying a student's special needs and outlining concomitant learning goals. Wis. Dept. of Pub. Instruction, *Individualized Education Program (IEP): Preparing Students for College and Career* (available at https://dpi.wi.gov/sped/college-and-career-ready-ieps).

Instruction Jill Underly, and Secretary of the Department of Administration Kathy Blumenfeld. Pet.22–23. Petitioners assert that Speaker Vos is "responsible for enacting, maintaining, and/or expanding" the school choice programs and the funding statutes challenged in this case. Pet.22.

The Petition asserts four constitutional challenges to Wisconsin's school choice programs and the funding statutes for public schools. First, Petitioners claim that the programs "divert significant resources away from public schools" in violation of the Constitution's public-purpose requirement. Pet.47–49. Second, they contend that the programs result in "local taxes . . . no longer being used locally" in violation of the Uniformity Clause, Wis. Const. art. VIII, § 1. Pet.49–52. Third, Petitioners allege that the programs violate the Constitution's Superintendent Supervision Clause, Wis. Const. art. X, § 1, because they do not provide the Superintendent with "sufficient supervisory control over participating private schools." Pet.52–54. Finally, Petitioners claim that Wis. Stat. §§ 121.905, 121.91, 121.92 violate both the Uniformity Clause, Wis. Const. art. VIII, § 1, and the Annual School Tax Clause, *id.* art. X, § 4. Pet.54–56. Petitioners request declaratory and injunctive orders declaring the programs and funding mechanisms unconstitutional and prohibiting Respondents from enforcing or funding them.

ARGUMENT

This Court considers three factors when considering whether to grant a petition for an original action. *See generally* Wis. Const. art. VII, § 3. The circumstances underlying the petition must demonstrate some "exigency," *Petition of Heil*, 230 Wis. 428, 443–46, 284 N.W. 42 (1939), to justify the departure from the conventional course of litigation, which circumstances will cause the petitioner "great and irreparable hardship," without the Court's exercise of original jurisdiction, *Application of Sherper's, Inc.*, 253 Wis. 224, 228, 33 N.W.2d 178 (1948). Further, an original action is only appropriate when it presents limited material factual disputes, such that this Court can reach "a speedy and authoritative determination" on the legal questions presented in the petition. *Heil*, 230 Wis. at 446; *see also State ex rel. Kleczka v. Conta*, 82 Wis. 2d 679, 683, 264 N.W.2d 539 (1978); *Bartlett v. Evers*, 2020 WI 68, ¶ 25, n.11, 945 N.W.2d 685 (opinion of Roggensack, C.J.). Finally, an original action petition must raise questions of statewide "importance" or "*publici juris*." *Heil*, 230 Wis. at 443–46; *Wis. Prof'l Police Ass'n v. Lightbourn*, 2001 WI 59, ¶ 4, 243 Wis. 2d 512, 627 N.W.2d 807 ("significantly affect[ ] the community at large").

I. There Is No Exigency That Would Justify This Court Granting This Petition And Short-Circuiting The Ordinary Judicial Process

A. This Court is more likely to exercise its original jurisdiction when a petition presents exigent circumstances, which circumstances may prohibit this Court's effective

review of the questions in the petition in the ordinary course. *Heil*, 230 Wis. at 447. For example, where the failure to assert original jurisdiction would cause the petitioner "great and irreparable hardship," *Sherper's, Inc.*, 253 Wis. at 228, such that "remedy in the circuit court [would be] inadequate," *Heil*, 230 Wis. at 447. Further, the party seeking to invoke the Court's original jurisdiction should demonstrate that an exigency exists, with reference to factual evidence and/or legal support, where appropriate. *See* Order, *Wis. Voters All. v. Wis. Elec. Comm'n*, No. 2020AP1930-OA (Dec. 4, 2020) (Hagedorn, J., joined by A.W. Bradley, Dallet, and Karofsky, JJ., concurring).

B. Here, Petitioners have failed to show that any exigent circumstances exist that would support this Court's appropriate exercise of its original jurisdiction.

This Court has previously rejected an original action challenging the State's various school choice programs. Specifically, before the case that became *Davis*, 166 Wis. 2d 501, plaintiffs first sought leave to commence an original action challenging the constitutionality of the MPCP just one month after that program was enacted. *See* Order, *Chaney v. Grover*, No. 90-1200-OA (Wis. Jun. 26, 1990); *Davis v. Grover*, 159 Wis. 2d 150, 158, 464 N.W.2d 220 (Ct. App. 1990), *rev'd*, 166 Wis. 2d 501 (1992). This Court denied the request, with Chief Justice Heffernan noting that although "there is an exigency of time associated with the *implementation* of the statutory educational program," the circuit courts were fully

equipped to handle that exigency and to "assure that priority is given to [the case's] disposition." Order, *Chaney*, No. 90-1200-OA (Heffernan, C.J., concurring) (emphasis added). The plaintiffs then refiled their challenge in the circuit court, the case was eventually resolved in the ordinary course, and this Court upheld the constitutionality of the challenged program on a fully developed record. *Davis*, 166 Wis. 2d at 546.

This Court should take the same approach as it did in *Davis* and deny the Petition here, leaving Petitioners free to raise their constitutional challenges in the ordinary course of litigation, if they choose to do so—first in the circuit court, then to the Court of Appeals, and then to this Court, through the Court's petition-for-review jurisdiction.

The State has operated its school choice programs for over three decades, and the four current school choice programs now benefit a combined over 64,000 students. Wis. Dept. of Pub. Instruction, *Private School Choice Programs (MPCP, RPCP, WPCP) & Special Needs Scholarship Program (SNSP) Summary: 2023-24 School Year Student HC, FTE & Annualized Payment*, *supra*; Wis. Dept. of Pub. Instruction, *Wisconsin Independent Charter Schools – Headcount and FTE: 2023–24 School Year*, *supra*. The Petition points to no breaking developments of fact or law that create any exigency with the programs now—let alone one that requires resolution by June 2024, as Petitioners request. *See* Pet.20–21

In *Davis*, the circumstances surrounding the constitutionality of school choice were far more exigent than the well-settled circumstances surrounding school choice now, yet this Court still declined to exercise its original-action jurisdiction. There, the plaintiffs challenged the MPCP immediately after its enactment. 166 Wis. 2d at 516. Despite the "exigency of time associated with the implementation" of the program, and the need to "ascertain as soon as practicable" its "legality," this Court declined to consider the case as an original action, given that the circuit court was capable of handling the litigation. Order, *Chaney*, No. 90-1200-OA (Heffernan, C.J., concurring); *Davis*, 159 Wis. 2d at 156 n.1. Here, this Court has already determined and affirmed the legality of the school choice programs, and the programs have operated since their inception, such that there simply is no "exigency" that would justify an original action now.

Petitioners fail to identify any exigent circumstances that would justify this Court's exercise of original jurisdiction over their sweeping constitutional claims. Although Petitioners insultingly and repeatedly call the school choice programs—which, again, currently provide over 50,000 predominantly low-income students across the State the opportunity to obtain quality education—a "cancer," Pet.1, 7, 48, they point to no evidence of any harm suffered by the district schools. Further, there is no evidence that Petitioners' children and grandchildren will receive a

deficient education in Wisconsin's public schools if Petitioners follow the usual litigation course in bringing their claims in circuit court.

II. Numerous Important Disputes Of Fact Preclude This Court From Granting This Petition

A. "[I]t is the principal function of the circuit court to try cases and of this court to review cases which have been tried." *Heil*, 230 Wis. at 448. Thus, this Supreme Court "is primarily an appellate court" that "benefit[s] from the analyses of the circuit court and the court of appeals." *State v. Lira*, 2021 WI 81, ¶ 21, 399 Wis. 2d 419, 966 N.W.2d 605 (citation omitted); *see also State v. Anderson*, 2005 WI 54, ¶ 23, 280 Wis. 2d 104, 695 N.W.2d 731. This Court has consistently emphasized that "[t]he circuit court is much better equipped for the trial and disposition of questions of fact than is this court and such cases should be first presented to that court." *In re Exercise of Original Jurisdiction*, 201 Wis. 123, 128, 229 N.W. 643 (1930); *compare Heil*, 230 Wis. at 436; *In re State ex rel. Atty. Gen.*, 220 Wis. 25, 44, 264 N.W. 633 (1936); *Green for Wis. v. State Elections Bd.*, 2006 WI 120, ¶ 10, 297 Wis. 2d 300, 723 N.W.2d 418; *see also State ex rel. Kleczka v. Conta*, 82 Wis. 2d 679, 683, 264 N.W.2d 539 (1978). As such, where a petition for leave to commence an original action in this Court "depends upon disputed factual claims," Order 2, *Wis. Voters All.*, No. 2020AP1930-OA, that "alone" can be sufficient grounds to deny the petition, *see, e.g.*, *id.; Heil*, 230 Wis. at 436, 448.

B. Here, there are complex disputes of fact that preclude adjudication Petitioners' claims, assuming that the legal theories underlying those claims are valid. *But see infra* Part III (briefly summarizing Respondent's view that Petitioners' claims fail as a matter of law).

Petitioners bring four claims. First, Petitioners assert that the school choice programs violate the public-purpose doctrine, which doctrine requires "public funds [to] only be used for a public purpose." Pet.47–49 (quoting *State ex rel. Warren v. Reuter*, 44 Wis. 2d 201, 211, 170 N.W.2d 790 (1969)). Second, Petitioners claim that the school choice programs violate the Constitution's Uniformity Clause, Wis. Const. art. VIII, § 1, which clause provides that "[t]he rule of taxation shall be uniform." Pet.49–52. Third, Petitioners assert that the programs violate the Constitution's Superintendent Supervision Clause, Wis. Const. art. X, § 1, which provides that "the supervision of public instruction shall be vested in a state superintendent and such other officers as the legislature shall direct." Pet.52–54. Finally, Petitioners argue that the school tax revenue limit, Wis. Stat. §§ 121.905, 121.91, 121.92, violates the Constitution's Uniformity Clause, Wis. Const. art. VIII, § 1, and its Annual School Tax Clause, *id.* art. X, § 4, the latter of which requires each municipality "to raise by tax, annually, . . . a sum not less than one-half the amount received" from the State's school fund" in order to fund its local schools, Pet.54–56.

All four claims rest on critical disputes of fact, each of which justify this Court's denial of hearing these claims in the first instance in its original-action jurisdiction.

1. *Public-purpose claim*: Petitioners' first claim—that the programs "divert significant resources away from public schools," "weaken the public school system," and "serve as a conduit for public funds to flow to private businesses in violation of the public purpose doctrine," Pet.47–48—rests on numerous disputes of fact that are central to its disposition.

To begin, Petitioners' conclusory allegations about the expenditure of "significant resources," the "weaken[ing]" of the public schools, the creation of "better educational opportunities for all students," sufficient "educational standards," and so forth, *see* Pet.47–49, all raise factual questions. Each of these questions may call for expert reports and testimony, with the circuit court resolving credibility contests, evidentiary disputes, and the like. *See In re Exercise of Original Jurisdiction*, 201 Wis. at 128; *Heil*, 230 Wis. at 436; *In re State ex rel. Atty. Gen.*, 220 Wis. at 44; *Green for Wis.*, 2006 WI 120, ¶ 10; Order 2, *Wis. Voters All.*, No. 2020AP1930-OA; *see also State ex rel. Kleczka*, 82 Wis. 2d at 683. This counsels against granting this Petition. *See, e.g.*, *Heil*, 230 Wis. at 436, 448; Order 2, *Wis. Voters All.*, No. 2020AP1930-OA.

This Court's decisions in *Davis*, 166 Wis. 2d 501, and *Jackson*, 218 Wis. 2d 835, show how fact-dependent these sorts of inquiries are. In *Davis*, this Court engaged in a

factual analysis of the MPCP, its funding scheme, the controls available to the State, and the degree of supervision imposed by the State. 166 Wis. 2d at 541–46. To assist in this analysis, this Court examined the scope and effectiveness of the "supervision and control measures" imposed on Wisconsin's private schools, including annual reports with "data on academic achievement, daily attendance, percentage of dropouts, and percentage of pupils suspended and expelled," "financial and performance audits," and the funding schemes for both public schools and the private schools participating in the program. *Id.* Petitioners themselves even acknowledge that the *Davis* Court "expressly rel[ied] on numerous facts" to "uph[o]ld the constitutionality of the program 'under the circumstances.'" Pet.6–7 (quoting *Davis*, 166 Wis. 2d at 545). Likewise, in *Jackson*, the Court upheld the constitutionality of certain amendments to the MPCP against a public-purpose challenge. After noting that "control and accountability requirements imposed under the public policy doctrine are not demanding," the court identified specific methods of control that, collectively, acted as sufficient "accountability safeguards . . . to ensure that the program fulfills its purpose of promoting education." 218 Wis. 2d at 897–99.

Petitioners' assertion that there are no disputes of fact here is mistaken, and they omit key factual information necessary to dispose of this claim (as well as their other claims).

First, Petitioners misrepresent how the State's school funding scheme and the equalization aid formulas work, the operation of which are central components of their claim. Pet.47–49. As discussed above, *supra* pp.10–14, Wisconsin's school choice programs only affect the amount of equalization aid and revenue allotted to public schools. The programs do not affect categorical aid, numerous grants, or federal aid awarded to traditional public schools, including the supplemental aid, high poverty aid, and special adjustment aid available only to public schools. *See generally Info. Paper* #28, *supra*.

Adjudicating Petitioners' claim requires an examination of the entire school funding scheme, yet Petitioners omit the necessary data on these additional types of aid and how they offset the school choice program reductions. *See* Pet.20, 47–49. Petitioners here, for example, claim that the school choice programs leave the public schools insufficiently funded, yet—in additional to fatally misunderstanding how the equalization aid formula works—they do not mention *at all* that the State provides categorical funding to public schools but not to the private schools in the choice programs. *See supra* pp.7–9. This categorical aid alone *vastly* outweighs the entire cost of the school choice programs, *compare Info. Paper #28*, *supra*, at 33–34, *with Info. Paper #30*, *supra*, at 19, 25, but Petitioners do not even attempt to explain how this affects their theory or calculus. Given these omissions, Petitioners' assertions about how the

school choice programs divert monies from public school and the impacts thereof cannot be relied upon here to support their claim that there are no disputes of fact. *See* Pet.20, 47–49.

Next, Petitioners make general assertions about how the school choice programs affect certain school districts but fail to include much of the factual detail necessary for this Court to assess these arguments. *See* Pet.7–15 (discussing Milwaukee, Madison, and Racine school districts). The mechanics of every district's funding scheme are different because the funding formula involves multiple different inputs. *See supra* p.8. Petitioners ignore how these factors can impact—and, in some cases, entirely offset—the school choice program reductions in a given district. *See* Pet.30–35, 47–49. For example, a school district that qualifies for high poverty aid and federal impact aid may entirely offset any funding reduction imposed by school choice programs in a given academic year. *See Info. Paper* #27, *supra*, at 6; Memorandum from Bob Lang, Director, Wis. Legis. Fiscal Bureau, to Members of the Wisconsin State Legislature, at 6 (Nov. 14, 2022).[20] Alternatively, a school district could entirely offset reductions if voters approve a referendum to exceed the district's revenue limit. *Info. Paper* #27, *supra*, at 6; *supra* p.7.

[20] Available at https://docs.legis.wisconsin.gov/misc/lfb/misc/178_2022_23_general_school_aids_amounts_for_all_school_districts_11_14_22.pdf.

Finally, Petitioners omit several key features of certain of the school choice programs that weaken their argument here, making it impossible for a court to render a decision without additional factfinding. As an initial matter, they challenge the charter school program in Count I (and their other counts), but charter schools *are public schools*—a point that Petitioners do not seem to recognize. As discussed above, *supra* p.13, charter schools are public schools created by contract between the school and an entity authorized by the State, *see* Wis. Stat. § 118.40(1). Moreover, establishing a charter school requires the support of the local public school district, as a successful charter school petition requires the signatures of a percentage of teachers employed by the district, a public hearing, and school board approval. *Id.* § 118.40(1m)–(2). Thus, at least as to this program, Petitioners' theories could not possibly apply unless Petitioners can introduce additional, relevant facts. Similarly, Petitioners' challenge to the MPCP is fatally flawed because that program's funding scheme will not result in any reduction in equalization aid to the surrounding public schools in the next school year (2024–25)—which extinguishes their claim as to this program without anything more. *See supra* pp.11–12.

Based on the foregoing, this Court would particularly benefit from the sharpening and narrowing of the disputed points of fact and law that occur in litigation through the circuit court and Court of Appeals, particularly with respect

to the operation of the statutory funding formulas, which formulas Petitioners themselves concede are "incredibly complicated," Pet.7; *see also In re Exercise of Original Jurisdiction*, 201 Wis. at 128; *Heil*, 230 Wis. at 436; *In re State ex rel. Atty. Gen.*, 220 Wis. at 44; *Green for Wis.*, 2006 WI 120, ¶ 10; Order 2, *Wis. Voters All.*, No. 2020AP1930-OA; *see also State ex rel. Kleczka*, 82 Wis. 2d at 683.

2. *Uniform taxation claim*. Petitioners' second claim alleges that the programs are unconstitutional because they "result in different equalization aid reductions[,] . . . cause different tax increases around the state," and "redistribute the property tax burden across the state so that local taxes are no longer being used locally." Pet.50. This claim also requires consideration of disputed facts.

Adjudicating whether the school choice provisions violate the Uniformity Clause, as Petitioners suggest, Pet.49–52, may require resolving disputes about the impact—if any—of school choice funding mechanisms on local property tax levies; the way property taxes are levied by local subdivisions; and the manner in which state aid is distributed and equalization payments are determined, *see supra* pp.7–10. Indeed, the Uniformity Clause only requires that property taxes be levied in a uniform manner with respect to the individuals subject to that particular tax, *see Knowlton v. Bd. of Supervisors*, 9 Wis. 410 (1859), so without factual evidence that a district imposes a nonuniform tax levy, the school choice programs cannot violate the Uniformity Clause. As

such, answering the underlying factual questions will require considering the impact of the programs and the tax implications on a district-by-district basis, and perhaps even a school-by-school basis. Further, these questions will require expert reports and testimony about the economic impact of the school choice programs, which testimony is certain to generate evidentiary objections and credibility disputes over which the circuit court, not this Court, is equipped to resolve. *See In re Exercise of Original Jurisdiction*, 201 Wis. at 128; *Heil*, 230 Wis. at 436; *In re State ex rel. Atty. Gen.*, 220 Wis. at 44; *Green for Wis.*, 2006 WI 120, ¶ 10; Order 2, *Wis. Voters All.*, No. 2020AP1930-OA; *see also State ex rel. Kleczka*, 82 Wis. 2d at 683.

3. *Superintendent supervision claim*. Petitioners' third claim also rests on core disputes of fact. In this claim, Petitioners allege that the school choice programs "do not provide the state superintendent with sufficient supervisory control over participating private schools," Pet.53, but fail to provide the Court with critical facts necessary to establish the current level of control exercised by the State Superintendent or where such control falls short of the constitutional standard.

This claim depends, at its core, on the Superintendent having "sufficient supervisory control over participating private schools." Pet.53. Just as in *Davis* and *Jackson*, the question of whether the controls in place today are sufficient will depend on numerous disputes of fact. *See supra* p.23. It

will require determining how effective existing controls are, how often the controls are exercised, what alternatives exist, and so forth. *See supra* p.23. Such a fact-intensive evaluation should be carried out by the circuit court. *See Heil*, 230 Wis. at 436, 448; Order 2, *Wis. Voters All.*, No. 2020AP1930-OA.

4. *School tax revenue limit claim*. Petitioners' fourth claim, in which they allege that the revenue limit "places a statutory cap on the amount of funding a school district can raise via local property taxes per student," thus "impos[ing] limitations on school districts and prevent[ing] them from providing the educational opportunities to students that they believe are appropriate," Pet.55, also rests on disputes of fact.

Here, Petitioners assert that the statutory revenue cap "imposes limitations on school districts and prevents them from providing the educational opportunities to students that they believe are appropriate." Pet.55. Determining what "educational opportunities" are "appropriate" is an obvious dispute of fact, which will depend on reviews of evidence, expert testimony, and so forth. Pet.55. Moreover, Petitioners ignore the alternative funding mechanism contained in Section 121.91(3), which allows districts to collect revenue above the statutory cap via referendum. Wis. Stat. § 121.91(3); *see Info. Paper #27*, *supra*, at 8. Fact finding into the operation and viability of this alternative mechanism is necessary to decide this claim. *See Davis*, 166 Wis. 2d at 541–46; *Jackson*, 218 Wis. 2d at 897–99.

III. Wisconsin's School Choice Programs Are Constitutional

A. Only cases presenting serious disputes over questions of statewide "importance"—that is, matters of "publici juris"—are appropriate for this Court's exercise of its original-action jurisdiction. *Heil*, 230 Wis. at 443–46; *Wis. Prof'l Police Ass'n*, 2001 WI 59, ¶ 4 ("significantly affect[ ] the community at large"). This Court's more recent treatment of original action petitions demonstrates how this Court considers this factor, including the need to raise a *serious dispute* of a matter of *publici juris*.

B. Here, Petitioners have not raised serious challenges to the school choice programs or these funding statutes. Indeed, as briefly stated below, each of Petitioners' four claims will fail (after proper factual development), particularly under *Davis* and *Jackson*. Thus, the Petition does not implicate a matter of *publici juris* that would warrant original-action treatment. *See Heil*, 230 Wis. at 443–46.

1. Beginning with Petitioners' public-purpose claim—in which they allege that the school choice programs "divert significant resources away from public schools" in violation of the constitutional requirement that "public funds . . . only be used for public purposes," Pet.47, this Court has already rejected this claim in *Davis* and *Jackson*.

In both cases, this Court analyzed whether the MPCP permitted sufficient governmental "control and accountability" over participating schools to satisfy the

requirement that "public funds only be used for a public purpose," *Warren*, 44 Wis. 2d at 211, 216–17, holding that the program did so, *see Davis*, 166 Wis. 2d at 542; *Jackson*, 218 Wis. 2d at 898. This Court first recognized that "improving educational quality" was a "valid public purpose," and that "private schools may be employed to further that purpose." *Davis*, 166 Wis. 2d at 513, 541; *Jackson*, 218 Wis. 2d at 897. Further, the MPCP granted the State sufficient "supervision and control measures" over participating schools, which measures—coupled with "parental choice" to remove a student from said schools—"attain the public purpose to which this legislation is directed" and "preserve[ ] accountability for the best interests of the children." *Davis*, 166 Wis. 2d at 544; *Jackson*, 218 Wis. 2d at 898–99.

The doctrine of *stare decisis* weighs heavily in favor of adhering to *Davis* and *Jackson*'s straight-forward conclusions. *See Johnson Controls, Inc. v. Emps. Ins. of Wausau*, 2003 WI 108, ¶ 94, 264 Wis. 2d 60, 665 N.W.2d 257 ("This court follows the doctrine of stare decisis scrupulously because of our abiding respect for the rule of law."). First, there have been no "changes or developments in the law [that] have undermined the rationale behind" either decision, *id.* ¶ 98; rather, Wisconsin has merely expanded the school choice program to the entire State, pursuing precisely the same public purpose as the MPCP, *see supra* pp.11–13. Second, there exist no "newly ascertained facts" that would displace these holdings, *id.* ¶ 98; instead, the MPCP

"experiment" has proven extraordinarily successful, prompting expansion, *see supra* p.12. Third, rather than these precedents being "detrimental to coherence and consistency in the law" or "unsound in principle," *Johnson Controls*, 2003 WI 108, ¶¶ 98–99, they are detailed and well-reasoned opinions that clearly and correctly apply this Court's public-purpose precedent. Fourth, the decisions are not "unworkable in practice," *id.* ¶ 99; the MPCP school choice experiment has successfully allowed lower-income students to benefit from enhanced educational opportunities for over three decades, *see supra* p.11. Fifth, and finally, the decisions have generated *significant* reliance interests from hundreds of thousands of students, mostly from lower-income families, who have enrolled in these programs to pursue educational opportunities that would otherwise be unattainable to them. *Johnson Controls*, 2003 WI 108, ¶ 99.

Davis and *Jackson* are also correct on their own terms, even putting *stare decisis* aside. Whether a state expenditure satisfies the Constitution's public-purpose doctrine turns not on the "wisdom, merits, or practicability of the legislature's enactment," but rather solely on whether "a public purpose can be conceived which might reasonably be deemed to justify or serve as a basis for the expenditure." *Millers Nat'l Ins. Co. v. City of Milwaukee*, 184 Wis. 2d 155, 175–76, 516 N.W.2d 376 (1994) (citation omitted). While the allocation of public funds to private institutions requires sufficient "governmental control and supervision," *Wis. Indus. Sch. for*

Girls v. Clark Cnty., 103 Wis. 651, 667, 79 N.W. 422 (1899), "[a] court can conclude that no public purpose exists only if it is 'clear and palpable' that there can be *no benefit to the public*," *State ex rel. Hammermill Paper Co. v. La Plante*, 58 Wis. 2d 32, 56, 205 N.W.2d 784 (1973) (emphasis added).

Here, the State's school choice programs satisfy the public-purpose requirement. Education is a valid public purpose—indeed, "[e]ducation ranks at the *apex* of a state's function," *Jackson*, 218 Wis. 2d at 897 (emphasis added); *see also Vincent v. Voight*, 2000 WI 93, ¶¶ 31–47, 236 Wis. 2d 588, 614 N.W.2d 388—so a state program that does no more than provide educational opportunities to students on a neutral basis, like the four programs at issue here, satisfies the public-purpose doctrine, so long as the program provides adequate "governmental control," *Wis. Indus. Sch. for Girls,* 103 Wis. at 667; *Warren*, 59 Wis. 2d at 216–17.

2. Petitioner's claim that the school choice programs violate the Uniformity Clause, Wis. Const. art. VIII, § 1 is similarly without merit. Petitioners allege that the school choice programs violate the requirement that taxation be "uniform" across the State because, when a student enrolls in a school choice program, the State reduces the amount of funding it provides to the public school district that the student would otherwise have attended, which forces that district to have to raise property taxes to recoup the difference. Pet.50. Petitioners further allege that the school choice programs violate the related principle that "the state

cannot compel one school district to levy and collect a tax for the direct benefit of other school districts," Pet.49–50 (quoting *Buse v. Smith*, 74 Wis. 2d 550, 579, 247 N.W.2d 141 (1976)), because the programs "allow eligible students to attend private schools outside of their district, which moves local tax dollars into another taxing authority," Pet.51.

Petitioners' uniformity claim is legally meritless. Under the Uniformity Clause, a taxing entity, such as a local subdivision, must levy property taxes in a uniform manner with respect to the individuals subject to that particular tax. *See Knowlton*, 9 Wis. at 410; *Gottlieb v. Milwaukee*, 33 Wis. 2d 408, 417–26, 147 N.W.2d 633 (1967); *State ex rel. La Follette v. Torphy*, 85 Wis. 2d 94, 108–11, 270 N.W.2d 187 (1978). The programs do not violate this requirement because even if public school districts choose to raise property taxes as a result of receiving reduced state aid, there is no evidence or even an allegation that the districts do so in a non-uniform manner with respect to all property owners within the district, which is all the Uniformity Clause prohibits. Although the school choice programs "allow eligible students to attend private schools outside of their district," Pet.51, this does not divert property taxes generated in the student's home district to a different district, as Petitioners claim. Indeed, nothing about the school choice programs compels or even permits a school district to allocate tax revenue for out-of-district purposes.

3. As for Petitioners' claim that the school choice programs "do not provide the state superintendent with sufficient supervisory control over participating private schools," Pet.53, that is also meritless. Article X, Section 1, provides that "[t]he supervision of public instruction shall be vested in a state superintendent and such other officers as the legislature shall direct; and their . . . powers [and] duties . . . *shall be prescribed by law*." Wis. Const. art. X, § 1 (emphasis added). Given the emphasized "shall be prescribed by law" language, *id.*, Article X, Section 1 empowers the Legislature with the complete authority to define the scope of the Superintendent's role and duties, in the exercise of its constitutional law-making power. *See Koschkee v. Taylor*, 2019 WI 76, ¶ 29, 387 Wis. 2d 552, 929 N.W.2d 600 (holding that a "plain-meaning analysis of Article X, Section 1 . . . grant[s] the [Superintendent] the executive superintending function over public instruction, while giving the legislature the authority to determine the [Superintendent's] 'qualifications, powers, duties and compensation'"). In other words, Article X, Section 1, does not require the Legislature to give the Superintendent any specific authority, including authority over the school choice programs at issue here. Therefore, Petitioners' superintendent supervision claim necessarily fails.

But even if this Court were inclined to agree with Petitioners that the Superintendent Supervision Clause does require the Legislature to provide the Superintendent with

some level of oversight authority over the school choice programs, Petitioners' claim would still fail. In the school choice programs, the Legislature has *already* granted the Superintendent powerful oversight authority with respect to the participating private schools. For example, schools must submit to an annual financial audit, Wis. Stat. § 119.23(7m)(a)–(b), (9), and the Superintendent can eliminate a school from a program for noncompliance with program requirements, *id.* § 119.23(10)(a)(6). Further, participating private schools are subject to statutory requirements governing instruction, curriculum, and attendance. *See* Wis. Stat. §§ 118.165(1), 118.167. Indeed, the Legislature has provided even more state-superintendent oversight over these programs than at the time this Court concluded, in *Davis* and *Jackson*, that the government exercised sufficient "control" over participating private schools to satisfy the public-purpose requirement. *See supra* p.23.

4. Petitioner's fourth claim alleges that Sections 121.905, 121.91, and 121.92—the supposed "Revenue Limit"[21]—violate both the Uniformity Clause by allegedly

[21] Petitioners call these statutory provisions the "Revenue Limit" or the "Imposed Revenue Limit" and suggest that they collectively operate to bar school districts from raising revenue in excess of a particular amount through property taxes. *See, e.g*, Pet.32–33. For the sake of simplicity, Respondent uses the same terminology in these papers, but notes that Petitioners crucially overlook the fact that these statutes do not actually impose any "Revenue Limit" whatsoever. Rather, as discussed above, *supra* p.10, school districts are free to raise property taxes in amounts greater than Sections 121.905, 121.91, and 121.92 provide by

prohibiting local subdivisions from "levy[ing] a tax for local purposes" and Article X, Section 4 by "interfering with a school district's right to . . . raise and spend revenue" as it sees fit, Pet.55–56. This final claim fails in light of the straightforward, governing statutory text.

Sections 121.905, 121.91, and 121.92 do not, as a statutory matter, impose a revenue limit on school districts; thus they do not prohibit school districts from raising the funds that they see fit to operate their public schools. Although Section 121.905 statutorily prescribes a "revenue ceiling" applicable to local school districts, such districts "may increase [their] revenue ceiling by following the procedures prescribed in s. 121.91(3)." Wis. Stat. § 121.905. Section 121.91(3), in turn, permits school districts to raise funds in excess of Section 121.905's revenue ceiling by submitting a resolution concerning the "proposed excess revenue . . . to the electors of the school district for approval or rejection," in a public referendum. *Id.* § 121.91(3)(a)(1). Thus, school districts may raise whatever funds for education purposes that they require, as long as they follow the statutory procedures for exceeding Section 121.905's revenue ceiling by submitting a public referendum to the people. This straightforward statutory text alone defeats Petitioners' claim, notwithstanding Petitioners' mistaken belief that

---

submitting the issue to a public referendum. *See* Wis. Stat. § 121.91(3).

school districts may never exceed the revenue ceiling under any circumstances.

Petitioners' extensive reliance on *Buse*, 74 Wis. 2d 550, is inapposite. *Buse* held that statutory formulas concerning the equalization of state funding to school districts—which formulas required certain school districts to contribute a portion of their tax revenue to the State for distribution to other school districts—violated the constitutional principles that "the purpose of the tax must be one which pertains to the public purpose of the district within which the tax is to be levied and raised," and that local school districts must "retain the power to raise and spend revenue" to "provide educational opportunities over and above those required by the state." *Id.* at 577. As explained above, the statutory funding mechanisms at issue here—namely, Sections 121.905, 121.91, and 121.92—do not implicate the same concerns, given that they neither "compel one school district to levy and collect a tax for the direct benefit of other school districts," nor prohibit a school district from raising revenue to "provide educational opportunities." *Id.* at 572, 579.

IV. If This Court Grants The Petition, It Should Grant The Legislature's Motion To Intervene As A Respondent And Clarify That Speaker Vos Is Properly Sued Only To Extent That He Speaks For The Assembly

If this Court is inclined to grant the Petition, then Speaker Vos respectfully submits that the Court should also

take two further actions to ensure that the proper Respondents are before the Court in this case.

First, this Court should grant the Legislature's Motion To Intervene, filed simultaneously with this Response. As noted, Petitioners here challenge the constitutionality of the four school choice programs, as well as statutes providing for the funding of public schools, that the Legislature enacted for the State under its constitutional law-making authority. That kind of challenge justifies the Legislature's intervention on three independently sufficient grounds—intervention as of statutory right under Wis. Stat § 803.09(2m); mandatory intervention under Wis. Stat. § 803.09(1); and permissive intervention under Wis. Stat. § 803.09(2).

Second, this Court should dismiss Speaker Vos as a Respondent, insofar as Petitioners have named him as an individual legislator. Under Article IV, § 16, "[n]o member of the legislature shall be liable in any civil action, or criminal prosecution whatever, for words spoken in debate." Wis. Const. art. IV, § 16. This provision confers a "privilege" upon legislators from being "a party to a civil action," *State v. Beno*, 116 Wis. 2d 122, 140–41, 341 N.W.2d 668 (1984), that seeks to hold the legislator liable for "matters that are an integral part of the processes by which members of the legislature participate with respect to the consideration of proposed legislation or with respect to other matters which are within the regular course of the legislative process"—including the "giving of a vote," *id.* at 143–44 (citation omitted); *see also id.*

at 144 (explaining that Article IV, § 16 is "broader than the actual deliberations on the floors of the houses"). Thus, "state legislators have absolute immunity from those actions performed in the scope of their legislative functions." *Zinn v. State*, 112 Wis. 2d 417, 431, 334 N.W.2d 67 (1983). Here, Petitioners have named Speaker Vos as a Respondent for their sweeping constitutional claims, seeking to hold him liable for the Legislature's passage of the four school choice programs and the funding statutes for public schools. Pet.22. Thus, Petitioners plainly seek to hold Speaker Vos liable for his "giving of a vote," which they may not do under Article IV, § 16's grant of immunity to legislators. *Beno*, 116 Wis. 2d at 143–44 (citation omitted).[22]

CONCLUSION

This Court should deny the Petition For Original Action.

[22] Speaker Vos may remain a party in this case to speak on behalf of the Assembly, as he has previously, although that would be unnecessary if this Court permits the Legislature to intervene. *See, e.g., Serv. Emps. Int'l Union, Loc. 1 v. Vos*, 2020 WI 67, 393 Wis. 2d 38, 946 N.W.2d 35.

Dated: November 14, 2023.

Respectfully submitted,

Electronically signed by Misha Tseytlin
MISHA TSEYTLIN
(State Bar No. 1102199)
Counsel of Record
KEVIN M. LEROY
(State Bar No. 1105053)
TROUTMAN PEPPER HAMILTON SANDERS LLP
227 W. Monroe Street,
Suite 3900
Chicago, Illinois 60606
(608) 999-1240
(312) 759-1939 (fax)
misha.tseytlin@troutman.com

Attorneys for Respondent Speaker Robin Vos