

COPY

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 8

BROWN COUNTY

STATE EX REL. CARL W. KUEHNE,
GREGORY A. DEPAS,
RICHARD A. HUXFORD,
WILL STARK and
WILLIAM H. WANGERIN,

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MAY 22 2008

USA M. WILSON
CLERK OF COURTS
BROWN COUNTY, WI

USA M. WILSON
CLERK OF COURTS
BROWN COUNTY, WI

Plaintiffs,

vs.

Case No. 08-CV-406
(Case Codes 30701, 30704)

SARAH BURDETTE, Town Clerk,
CAROL HUTJENS and
TOWN OF LEDGEVIEW,

Defendants.

ORDER & JUDGMENT

WHEREAS, on April 28, 2008, the Court entered an Order granting Plaintiffs' Request for a Permanent Injunction and declaring Wis. Stat. § 66.0203(11) unconstitutional. The courts Decision and Order being incorporated herein by reference as though attached and made a part of this Judgment.

NOW, THEREFORE, THE COURT FINDS that:

- 1) Wis. Stat. § 66.0203(11) violates Article IV, Section 18 of the Wisconsin Constitution.
- 2) Wis. Stat. § 66.0203(11) violates Article IV, Section 31(9) of the Wisconsin Constitution.
- 3) Wis. Stat. § 66.0203(11) violates Article IV, Section 32 of the Wisconsin Constitution.
- 4) No public hearings on Wis. Stat. § 66.0203(11) were held prior to the statutes passage and the statute was smuggled and log rolled through the legislature without the benefit of deliberate legislative consideration.

- 5) Nothing in Wis. Stat. § 66.0203(11) is directed to the state at large, it does not have a statewide dimension; it does not have a direct or immediate effect on statewide concern or interest.
- 6) Wis. Stat. § 66.0203(11) is discriminatory towards all other Towns in the State of Wisconsin except the Town of Ledgeview and the statute shows favoritism toward the Town of Ledgeview.
- 7) That if the Plaintiffs' request for a permanent injunction is not granted, they will suffer irreparable harm.
- 8) That granting the Plaintiffs' request for a permanent injunction and summary judgment clearly serves public interest.

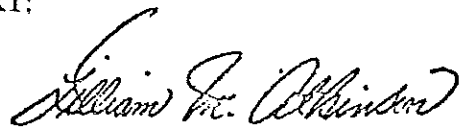
NOW, THEREFORE, THE COURT ORDERS that:

- 1) The Plaintiffs' request for a permanent injunction enjoining the Town of Ledgeview from utilizing Wis. Stat. § 66.0203(11) to become a Village is **GRANTED**.
- 2) The Plaintiffs' Motion for Summary Judgment is **GRANTED**.

Dated this 20 day of May, 2008.

BY THE COURT:

By: 151



Honorable William Atkinson
Circuit Court Judge, Branch VIII

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH VIII

BROWN COUNTY

GREGORY A. DEPAS, RICHARD A.
HUXFORD, CARL W. KUEHNE, WILL
STARK, and WILLIAM H. WANGERIN,

Plaintiffs,

-vs-

TOWN OF LEDGEVIEW, STATE OF
WISCONSIN, DEPARTMENT OF
ADMINISTRATION, and MICHAEL L.
MORGAN, SECRETARY,

Defendants.

INJUNCTION HEARING
(Partial Transcript)

Case No. 08 CV 406

BEFORE: Honorable William M. Atkinson
Circuit Court Judge, Br. VIII

DATE: April 28, 2008

PLACE: Brown County Courthouse
Circuit Court, Branch VIII
100 S. Jefferson Street
Green Bay, WI 54301

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APPEARANCES

WARREN M. WANEZEK and DAVID DAUL, Attorneys at Law, P.O.
Box 22250, Green Bay, Wisconsin 54305, appearing on behalf of the plaintiffs.

LAWRENCE E. BECHLER, Attorney at Law, P.O. Box 2038,
Madison, Wisconsin 53701, appearing on behalf of the Town of Ledgeview.

Jennifer J. Fick
Official Court Reporter

1 The following is a partial transcript
2 consisting only of the decision of the Court.

3 P R O C E E D I N G S

4 (Portion not transcribed.)

5 THE COURT: First let me indicate that I have
6 the highest respect for the ballot box and for the voters
7 of the Town of Ledgeview. I also have the highest
8 respect for the oath of office I took when I was elected
9 to this position, and I swore that I would uphold the
10 Constitution of the United States and the Constitution of
11 the State of Wisconsin.

12 I am satisfied that the legislative
13 enactment of 66.0203(11) in fact does violate the
14 Constitution of the State of Wisconsin. I understand it
15 is a heavy burden for me to make such ruling, but I
16 cannot avoid the clear, plain language of the Wisconsin
17 Constitution. I'm satisfied that it violates Section 18
18 of Article IV.

19 I find it significant that there were no
20 public hearings on this matter. This statute was enacted
21 as part of the budget bill. The budget bill was enacted
22 under much public criticism and public pressure. I
23 recall that the local newspaper was running a daily count
24 of how many days the state was operating without a
25 budget, and it was day sixteen and day twenty-seven and

1 day thirty-one. And pressure was being put on the
2 legislature through letters to the editor and TV segments
3 regarding services of the state might close down,
4 different municipal unions or other interested parties
5 were putting pressure on, and as each day went by, there
6 was pressure for the state to pass the budget that year.
7 And here we have a proposal slipped in under Motion 999
8 that had -- I don't know, I can't recall the number, but
9 it seemed to be a dozen when I read it at least but it
10 might be an approximation -- but a dozen little
11 miscellaneous add-ons besides the other motions that were
12 added on.

13 And when you look at the language of some
14 of the case law, you know, Article IV Section 18 exists
15 to encourage the legislature to devote its time to the
16 state at large, it's primary responsibility. Nothing in
17 this legislation is directed towards the state at large.
18 It's to avoid the spectre of favoritism and
19 discrimination, a potential which is inherent in laws of
20 limited applicability.

21 Think of this. There is approximately one
22 thousand two hundred fifty-nine townships in the State of
23 Wisconsin, and this legislative act applies only to one.
24 Clearly it discriminates against the one thousand two
25 hundred fifty-eight townships that have to go through a

1 completely different process, a process that Ledgeview
2 wasn't able to satisfactorily complete to become a
3 township. Clearly that's discriminatory towards those
4 townships. It's clearly favoritism towards the Town of
5 Ledgeview.

6 You have to agree the way this was placed
7 in this miscellaneous motion inside legislation in which
8 there was excessive publicity and pressure to pass, that
9 it was, quote, smuggled and log rolled through the
10 legislation and without the benefit of deliberate
11 legislative consideration, there was no consideration of
12 66.0203(11) of the legislature. There were too many
13 bigger issues inside this entire bill. Clearly it does
14 not have any statewide dimension to it, and it doesn't
15 have a direct or immediate effect on statewide concern or
16 interest.

17 I'm also satisfied that it violates
18 Article IV Section 31(9) and 32 when you look over the
19 five elements set forth in the Libertarian Party case,
20 clearly it does not pass muster when you consider that.
21 I'm not persuaded by the defense counsel argument that it
22 doesn't come under Section 31(9) because it has an ever-
23 so-technical distinction between their argument that it's
24 a requirement for incorporation regarding the referendum.
25 Clearly that subsection talks about incorporating a

1 municipality such as this township, and I'm satisfied
2 that the statute does come under 31(9) of Article IV.

3 I'm going to grant summary judgment to the
4 plaintiffs. I'm satisfied that there is irreparable
5 harm, and I find so on all the grounds pled by the
6 plaintiffs. I'm satisfied that it clearly does serve a
7 public interest.

8 I would hope that in the event the case is
9 appealed, that the court of appeals or supreme court
10 would find there is significant public interest in just
11 maintaining the constitutionality of enactments by the
12 state legislature. The constitution has an inherent
13 value in and of itself that we as citizens should be
14 concerned with legislation that violates its articles.
15 The legislature knows how to change its own statutes, and
16 they could have changed the statutes to allow all
17 townships to no longer have to pass the muster by going
18 through the Department of Administration requirements.
19 They could have changed it to allow any township can
20 become a village simply by referendum, but they chose
21 only to allow one township to do that in this piece of
22 legislation and that was Ledgeview, and they ignored the
23 other one thousand two hundred fifty-eight townships.

24 Also, you know, Exhibit No. 5 clearly
25 showed that the senior legislative attorney waived the

1 red flag to everyone saying, you know, look, this is a
2 private or local bill, and the Wisconsin court could find
3 it unconstitutional under Article IV Section 18, and for
4 whatever reason everyone seemed to ignore the red flag
5 and decided that they would just go ahead with the
6 legislation, perhaps in hopes that the residents simply
7 wouldn't notice or couldn't afford to do it. I respect
8 the citizens that take on such a financial burden of
9 proceeding to court to declare a statute
10 unconstitutional. It's a heavy price to pay to be a
11 citizen and stand up for the rights under the Wisconsin
12 Constitution.

13 So, the injunction then would permanently
14 enjoin the Town of Ledgeview from pursuing for
15 incorporation to village status under 66.0203(11).
16 Obviously they have a right to proceed to village status
17 under the statutes that are applicable to all the
18 townships in state. So, I want to make it clear that my
19 ruling does not affect those rights whatsoever. It is
20 strictly only under 66.0202 -- 03(11).

21 All right. You can draft an order, and I
22 realize making an oral decision on the bench, sometimes I
23 may not have covered all the findings that may be
24 necessary. So, if you believe, Mr. Wanezek, there are
25 findings that should be made, you can make any proposed

1 additional findings, and if I find those are findings I
2 wish to enter, I'll then enter such orders.

3 MR. WANEZEK: I will submit that to you Your
4 Honor on the five-day rule with a copy to Mr. Bechler.

5 THE COURT: All right. Thank you very much.
6 Court stands in recess.

7 MR. BECHLER: Thank you, Your Honor.

8 (Whereupon, the proceedings were therefore
9 concluded.)

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