

FILED  
08-17-2021  
CIRCUIT COURT  
DANE COUNTY, WI  
2021CV001994  
Honorable Nia Trammell  
Branch 6

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

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STATE OF WISCONSIN  
ex rel. JOSHUA L. KAUL,  
Attorney General of the  
State of Wisconsin,  
17 West Main Street  
Madison, Wisconsin 53703,

Plaintiff,

v.

FREDERICK PREHN, in his  
capacity as a person claiming  
to be a Member of the Wisconsin  
Natural Resources Board,  
413 Jefferson Street  
Wausau, Wisconsin 54403,

Defendant.

Case No.

Civil – Petition for Writ of  
Quo Warranto: 30956

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**COMPLAINT FOR WRIT OF QUO WARRANTO OR,  
IN THE ALTERNATIVE, A DECLARATORY JUDGMENT**

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Plaintiff State of Wisconsin, through its undersigned counsel, as and for  
its complaint against Defendant Frederick Prehn, alleges as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction to hear this matter under Wis. Stat. §§ 784.01, 784.04(1), 801.02(1), 801.02(5), and 806.04.
2. Venue is proper in this county under Wis. Stat. § 801.50.

## PARTIES

3. Plaintiff State of Wisconsin seeks a writ of quo warranto. This remedy is sought in an action by the Attorney General in the name of the state under Wis. Stat. § 784.04.

4. Plaintiff State of Wisconsin also seeks, in the alternative to the writ of quo warranto, a declaratory judgment under Wis. Stat. § 806.04.

5. Defendant Frederick Prehn is a person claiming to be a member of the Natural Resources Board (the “Board”).

## STATUTORY BACKGROUND

6. Wisconsin Stat. ch. 15 establishes the seven-member Board, which directs the Department of Natural Resources (DNR). Wis. Stat. § 15.34.

7. Board members are nominated and appointed by the governor, with the advice and consent of the senate, to serve for the terms prescribed by law. Wis. Stat. § 15.07(1).

8. The law prescribes a fixed term of six years for each Board member, Wis. Stat. § 15.34(2)(a), with the term expiring on May 1 of the final year. Wis. Stat. § 15.07(1)(c). Fixed terms for an even number of years expire in an odd-numbered year. *Id.*

9. Unlike some other public offices, the term for Board members does not include a holdover period. *Compare* Wis. Stat. § 15.34(2)(a) (“The natural resources board shall consist of 7 members appointed for staggered 6-year

terms.”), *with, e.g.*, Wis. Stat. § 188.04 (“The trustees shall severally hold their offices for one year and until their successors are elected.”); Wis. Stat. § 7.30(6)(a) (“[T]he appointed election officials shall hold office for 2 years and until their successors are appointed and qualified.”); Wis. Stat. § 62.14 (Commissioners of the board of public works “shall hold their offices, 1, 2 and 3 years, respectively, and thereafter for 3 years or until their successors are qualified.”).<sup>1</sup>

10. The Board directs and supervises DNR. Wis. Stat. § 15.34(1).

11. Wisconsin Stat. § 17.07 governs the removal of public officers.

a. State officers serving in an office that is filled by appointment of the governor for a fixed term by and with the advice and consent of the senate, can be removed by the governor at any time for cause. Wis. Stat. § 17.07(3).

b. State officers serving in an office that is filled by appointment of the governor with the advice and consent of the senate to serve at the pleasure of the governor, or serving in an office that is filled by appointment of any other officer or body for an indefinite term subject to the concurrence of the governor, may be removed by the governor at any time. Wis. Stat. § 17.07(4).

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<sup>1</sup> Generally, an appointee qualifies upon filing the required oath of office. Wis. Const. art. 4, § 28; Wis. Stat. §§ 19.01(1), 17.01(13).

c. State officers serving to supply a vacancy in any office, elective or appointive, except for justices of the supreme court and judges and the adjutant general, may be removed by the governor at pleasure. Wis. Stat. § 17.04(5).

d. Other state officers serving in an office that is filled by appointment of any officer or body without the concurrence of the governor, may be removed by the officer or body having the authority to make appointments to that office, at pleasure. Wis. Stat. § 17.07(6).

### **FACTUAL BACKGROUND**

12. Prehn was appointed to the Board by former Governor Scott Walker on May 18, 2015.

13. Prehn's appointment was to a six-year term, with his term ending on May 1, 2021.

14. Governor Tony Evers appointed Sandra Naas to the Board on April 30, 2021, to serve in anticipation of Prehn's resignation at or before the last day of his term on May 1.

15. Prehn has claimed he continues to have a right and title to the Board member position, despite the expiration of his term.

16. Prehn has asserted that it is his "choice" to continue on as a Board member for an indefinite period of time.

17. Prehn has cited *State ex rel. Thompson v. Gibson*, 22 Wis. 2d 275, 125 N.W.2d 636 (1964), as authority for his claimed power to continue on as a Board member.

18. The Governor of Wisconsin has not appointed Prehn to be a Board member officer for any period beyond May 1, 2021.

19. Prehn's unlawful claim to the Board member office has usurped and intruded upon the Board member office, effectively preventing Naas from taking a position as a Board member, contrary to Governor Evers' lawful appointment.

20. The Board's next meeting is scheduled for September 21 to 22, 2021.

### CAUSE OF ACTION

21. Plaintiff State of Wisconsin seeks a writ of quo warranto, to remove Prehn from the Board member office. The State of Wisconsin also seeks, in the alternative, a declaratory judgment that Governor Evers may remove Prehn from the Board member office at his pleasure.

22. In *Thompson*, the Wisconsin Supreme Court addressed statutes that were later repealed or amended. For that and additional reasons, it is not controlling.

### Count 1 – Quo Warranto

23. The State of Wisconsin realleges and incorporates by reference all of the above allegations in this complaint.

24. Prehn is no longer serving the term prescribed by law for which he was appointed. *See* Wis. Stat. § 15.34(2)(a).

25. Prehn had no legal entitlement to be a Board member following the expiration of his fixed term on May 1, 2021.

26. By continuing to claim to be a Board member and act as a *de facto* officer, Prehn has usurped, intruded into, or unlawfully held or exercised a public office. *See* Wis. Stat. § 784.04(1)(a).

27. In addition, Prehn is subject to the governor's removal. Wisconsin Stat. § 17.07 sets forth two standards for removal: for cause and at the governor's pleasure. Officers who are serving in an office that is filled by appointment of the governor for a fixed term with the advice and consent of the senate, or that is filled by appointment by any other officer or body for a fixed term subject to the concurrence of the governor, are removable for cause. Wis. Stat. § 17.07(3). With limited exceptions, any other officer—including those serving in offices that are filled for an indefinite term—can be removed at the governor's pleasure. *See* Wis. Stat. § 17.07(4)–(6).

28. Prehn no longer has the “for cause” tenure protection under Wis. Stat. § 17.07(3) afforded to officials who are serving in an office filled by

appointment of the governor for a fixed term by and with the advice and consent of the senate.

29. Prehn has claimed for himself the power to hold office for an indefinite period following the expiration of his term, without the concurrence of the governor.

30. Prehn thus may be removed by Governor Evers, at his pleasure.

31. Therefore, pursuant to Wis. Stat. § 784.13, the State of Wisconsin asks this Court to remove and exclude Prehn from the Board member office that he currently claims to occupy.

### **Count 2 – Declaratory Judgment**

32. Plaintiff realleges and incorporates by reference all of the above allegations in this complaint.

33. In the alternative to removal and exclusion under Count 1 – Quo Warranto, pursuant to Wis. Stat. § 806.04, Plaintiff seeks a declaration that the governor may remove Prehn at his pleasure.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully asks this Court to grant the following relief:

1. An order under Wis. Stat. § 784.13 to remove and exclude Defendant Prehn from the Board position that he currently claims as a *de facto* officer.

2. In the alternative, a declaration that Defendant Prehn may be removed from the Board position by Governor Evers, at his pleasure.

3. Such other additional relief as equity and the nature of the case may require.

Dated this 17th day of August, 2021.

Respectfully submitted,

JOSHUA L. KAUL  
Attorney General of Wisconsin

Electronically signed by:

s/ Gabe Johnson-Karp  
GABE JOHNSON-KARP  
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## CERTIFICATE OF SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed a Complaint for Writ of Quo Warranto or, in the Alternative, a Declaratory Judgment with the clerk of court using the Wisconsin Circuit Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

I further certify that, unless personal service is waived, a copy of the above document will be personally served on:

Frederick Prehn  
413 Jefferson Street  
Wausau, WI 54403

Dated this 17th day of August, 2021.

Electronically signed by:

s/ Gabe Johnson-Karp  

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GABE JOHNSON-KARP  
Assistant Attorney General