

November 30, 2020

Wisconsin Supreme Court
P.O. Box 1688
Madison, WI 53701-1688

RE: Rules Petition 20-03

(Petition from Scott Jensen and Wisconsin Institute for Law & Liberty)

Dear Honorable Justices of the Supreme Court:

Thank you for this opportunity to comment on this petition on behalf of Common Cause Wisconsin, one of the state's largest and oldest non-partisan advocacy organizations. Common Cause Wisconsin is a citizens' political reform organization with currently more than 7,700 members and activists statewide and in continuous operation in Wisconsin since 1972.

We urge the Court to decline to use its rulemaking authority to amend Wis. Stat. (Rule) 809.70 by adding newly proposed subdivisions (4) and (5) and thereby reject the adoption of Rules Petition 20-03.

Our opposition to the Jensen petition is based on both the narrow scope of interest in the upcoming redistricting process which it seeks to define, as well as the abbreviated period of time in which it proposes the Court to act. Both of these factors undermine and even largely exclude altogether, the interests and concerns of most Wisconsin citizens, including our members. It is important to remember that voters and citizens are the ones whose rights are most impacted by redistricting, and who deserve to be protected by the Court. The petition seeks a rush to judgment without allowing citizens to have their concerns adjudicated and addressed through even the normal channels of judicial review. We discuss these concerns below, but first feel compelled to describe Common Cause Wisconsin's particular stake in this proposal.

Common Cause Wisconsin is the state affiliate of the national organization, Common Cause, headquartered in Washington, D.C. Common Cause and its state

affiliates have been very interested in and involved in the decennial redistricting process in states throughout the nation, including Wisconsin, through citizen education, advocacy, litigation and in other avenues. Support for fair, non-partisan, transparent redistricting processes has been central to the mission and objective of our work. A recent and very prominent example of our involvement in this arena was in the landmark redistricting case before the United States Supreme Court last year, *Rucho v. Common Cause*, No. 18-422, 588 U.S. (2019). While that particular case involved redistricting in the state of North Carolina, there were significant issues raised in the litigation that have important implications for Wisconsin and for the 2021 redistricting process.

In addition, Common Cause Wisconsin has been a leading advocate since the 2011 redistricting process for a much more accessible, visible, transparent and non-partisan redistricting process for 2021. This is because of the extreme secrecy and lack of transparency or accountability that occurred in the last round of redistricting. This petition undermines our efforts to improve the 2021 redistricting process and not repeat the grave errors of 2011.

We are also concerned that the petitioners seek to limit the scope of intervenors in the 2021 redistricting process in Wisconsin to “[t]he Governor, the Senate, the Assembly and political parties” (Jensen Rule subsection (5)(b)). This may exclude the participation of members of Common Cause as well as all other citizens of Wisconsin who are not members of the Legislature or of a political party. Members of Common Cause as well as most, if not all citizens of Wisconsin are affected by, and have an abiding interest and stake in the way in which state legislative and congressional district maps are devised, constructed and implemented in the redistricting process. Rules Petition 20-03 seemingly denies that fact.

Further, Common Cause Wisconsin is deeply concerned about the narrowness and exclusivity of the judicial review of the Wisconsin redistricting process that the petitioners seek. The inability for a record to be developed through the trial court and appellate is problematic in our view. As is the timetable that does not account for the likelihood of federal claims that could flow from maps even after they are blessed by the Court.

While we understand redistricting litigation can involve election deadlines, and thus call for an expeditious process, the proposed rule here unnecessarily rushes and short-

changes review in ways courts have not been compelled to in past redistricting litigation. Rushing this process will undermine public trust in the outcome, particularly if individual and membership groups are excluded from playing an active role.

In sum, we urge the Wisconsin Supreme Court to reject Rules Petition 20-03. Thank you for your consideration of Common Cause Wisconsin's comments.

Sincerely,

Jay Heck

Jay Heck
Executive Director