

November 19, 2020

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Honorable Justices of the Supreme Court  
Wisconsin Supreme Court  
PO Box 1688  
Madison, WI 53701-1688

RE: Rules Petition 20-03  
Petition for Proposed Rule to Amend  
Wis. Stat. 809.70 (Relating to Original Actions)

Writing in opposition to this Rule Change

Dear Honorable Justices of the Supreme Court

I am writing to you express my opposition to the proposed rule change that has been submitted by Scott Jensen and the Wisconsin Institute for Law and Liberty.

For full disclosure, I am a County Board Supervisor in Outagamie County representing District 24. My letter and opposition to this rule change is not to be construed as an opinion of the County Board, County Administration or any other County Board Supervisor or Officer. I am writing as a private citizen and a lifetime resident of the State of Wisconsin that is very concerned about this change to the process of redistricting for representative districts in Wisconsin.

I have carefully reviewed the above referenced rule change document. I have reviewed other documents in support of this change as well as documents opposed to the rule change.

Since I am not an attorney, I found it difficult to wade through the legal arguments presented in the documents. However, I have drawn my conclusions based on the way that this rule change could and will likely impact our citizens. In general, the rule change is designed to circumvent the normal judiciary process and go directly to the Supreme Court to approve maps or the Court to draw its own maps. Allowing political parties to be the primary group to provide input on maps is a clear violation of our Wisconsin Constitution. The development of a legislatively approved nonpartisan Fair Maps Commission with open meetings and citizen input is the right approach to setting nonpartisan representative district maps.

In my humble opinion, we should look to our State Constitution to see what it says about who must drive the decision making in this State. The Constitution's Preamble states as follows: "We, the people of Wisconsin, grateful to Almighty God for our freedom, in order to secure its blessings, form a more perfect government, insure domestic tranquility and promote the general welfare, do establish this constitution."

Please note that the Preamble does not say: "We, the Democratic and Republican parties" nor does it say "We, the Legislature" nor does it say "We, the Governor". The Constitution says; "We, the people." I think in these days it is often overlooked that we the people have the first and most important right to set policy for our government and not political parties. Why would we ignore the Wisconsin Constitution for partisan political expediency? This proposed rule change attempts to circumvent the true meaning of our Constitution as to who really should set the rules on how WE the people are to be governed.

To demonstrate, the Wisconsin Constitution has three paragraphs within Article 1 that describe what can be done to impact what happens with our government and how our government should operate for the people. First is the section on Free Speech; Libel. The second is the Right of the people to Assemble and Petition and thirdly the Maintenance of Free Government.

**Free Speech; Libel:** Within this paragraph it says: "no laws shall be passed to restrain or abridge the liberty of speech or the press". When reviewing the aforementioned rule change, it becomes evident that the Supreme Court would restrain or abridge the ability of nonpartisan groups and individuals to provide input to the Supreme Court. Political parties would take precedent even though their partisan opinions will draw district maps to their liking. Again, the free speech of the people shall not be restrained or abridged by the law.

**Right to Assemble and Petition:** "The Right of the People to peaceably assemble, to consult for the common good and to petition the government or any other department thereof shall never be abridged". It should be noted that this statement does not say "it might be allowed" or it "may be allowed" when it comes to petitioning the government. It says that this right "shall never be abridged". This proposed rule change, in its' intent, is to abridge the rights of the people to petition the government and is an affront to our Constitutional rights.

Political parties may not like the fact that these words are in the Constitution because public input is uncomfortable, inefficient or time consuming. When you dig deep into this rule change, the main focus is "efficiency" by ignoring the historically and necessary process of lower State and Federal Court rulings. This most important process of setting voting districts should not be about efficiency. In my humble opinion, the process of input from the people and due process is the right way to do things when it relates to setting voting districts for the next 10 years. Circumventing the normal redistricting process "in the name of efficiency" flies in the face of our Constitution and our right to petition the government.

**Maintenance of Free Government:** “The blessings of a free government can only be maintained by a firm adherence to justice, moderation, temperance, frugality and virtue and by frequent recurrence of fundamental principles”. Political parties in fact are a creature of the public and not created by our Constitution. Where does it say “political parties” in our Constitution? It doesn’t. The Constitution refers to the legislature but does not refer to political parties. Are we deviating from the recurrence of our fundamental principles when the courts rely on “political parties” to be the primary group to be heard by the courts?

This rule change is a direct attack on our Constitutional right for “frequent recurrence of fundamental principles”. What are those fundamental principles? Free speech, right to petition and due process when it comes to decisions especially when those decisions will impact the policy direction of this State for the next ten years. This rule change violates the clear requirement of staying within our fundamental principles.

Most of realize that the current system for setting district maps is not efficient and can be frustrating for all concerned. However, we must understand that this is the way our founders wanted it to be. They wanted the process of governing to be deliberate. The process for determining representative districts was designed to encourage debate.

Please do not allow a rule change to expedite a process that would circumvent our “fundamental principle” for the voice of the people.

I have some additional points to underscore my objections to this rule change:

1. Redistricting is one of the most complex and difficult tasks of government and one that is fundamental to the principle of one person and one vote. It should never be rushed. On the contrary, public confidence in government depends on an open and transparent process.
2. In 2009, after several years of exhaustive study, the Wisconsin Supreme Court decided against making a rule change such as the one currently proposed. In 2009, some of the current members of the Supreme Court were opposed to this rule change with detailed opinions on why they were opposed.
3. Adopting this rule risks increased politicization of the Court and a decrease in citizens’ trust in it. Public interest in redistricting is at an all-time high in Wisconsin. This is not a time to exclude public testimony when 54 of Wisconsin’s 72 counties have passed Board resolutions and 28 have passed referendums in favor of a nonpartisan redistricting process. In fact, these referendums have passed 100% of the time when Wisconsinites have had the opportunity to vote, most with more than 70% support for demands for nonpartisan redistricting. You should not ignore the voice of the people.

I close with excerpts from the Farewell Speech of President George Washington. He warns us about the development of factions and parties. I think he would look very dimly on the approach to rely on political parties as the primary source of information about voting districts. We should heed his warnings of the "baneful effects" of political parties on our government.

All obstructions to the execution of the laws, all combinations and associations, under whatever plausible character, with the real design to direct, control, counteract, or awe the regular deliberation and action of the constituted authorities, are destructive of this fundamental principle, and of fatal tendency. They serve to organize faction, to give it an artificial and extraordinary force; to put, in the place of the delegated will of the nation the will of a party, often a small but artful and enterprising minority of the community; and, according to the alternate triumphs of different parties, to make the public administration the mirror of the ill-concerted and incongruous projects of faction, rather than the organ of consistent and wholesome plans digested by common counsels and modified by mutual interests.

However combinations or associations of the above description may now and then answer popular ends, they are likely, in the course of time and things, to become potent engines, by which cunning, ambitious, and unprincipled men will be enabled to subvert the power of the people and to usurp for themselves the reins of government, destroying afterwards the very engines which have lifted them to unjust dominion.

I have already intimated to you the danger of parties in the State, with particular reference to the founding of them on geographical discriminations. Let me now take a more comprehensive view, and warn you in the most solemn manner against the baneful effects of the spirit of party generally.

This spirit, unfortunately, is inseparable from our nature, having its root in the strongest passions of the human mind. It exists under different shapes in all governments, more or less stifled, controlled, or repressed; but, in those of the popular form, it is seen in its greatest rankness, and is truly their worst enemy.

The alternate domination of one faction over another, sharpened by the spirit of revenge, natural to party dissension, which in different ages and countries has perpetrated the most horrid enormities, is itself a frightful despotism. But this leads at length to a more formal and permanent despotism. The disorders and miseries which result gradually incline the minds of men to seek security and repose in the absolute power of an individual; and sooner or later the chief of some prevailing faction, more able or more fortunate than his competitors, turns this disposition to the purposes of his own elevation, on the ruins of public liberty.

Without looking forward to an extremity of this kind (which nevertheless ought not to be entirely out of sight), the common and continual mischiefs of the spirit of party are sufficient to make it the interest and duty of a wise people to discourage and restrain it.

It serves always to distract the public councils and enfeeble the public administration. It agitates the community with ill-founded jealousies and false alarms, kindles the animosity of one part against another, foment occasionally riot and insurrection. It opens the door to foreign influence and corruption, which finds a facilitated access to the government itself through the channels of party passions. Thus the policy and the will of one country are subjected to the policy and will of another.

I do not think it is necessary for additional comment on his important words and warnings. I remain opposed to this rule change. Thank you.

  
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