

November 27, 2020

In the matter of Rule Petition 20-03 (Amendment to Wis. Stat. § 809.70)

Scott Jensen and the Wisconsin Institute for Law and Liberty (together WILL) have petitioned the Supreme Court to adopt a rule specific to legal challenges to redistricting. WILL's proposed rule presents a procedure which, on paper, may seem reasonably implementable. But as the Court recognized when it considered rulemaking on this issue in 2008-09, adopting a rule on redistricting puts the Court right in the middle of what is a political, not a judicial, question.

Other commenters on this proposed rule will provide the Court with detailed comments pro and con—what it includes that it shouldn't, what it doesn't include that it should, what unanswered questions remain because the language is unclear, general, and vaguely broad or too precise, limiting, and narrowly drawn. And if the Court determines to proceed with this rulemaking, all of those comments and questions will need to be addressed.

I write, as a private citizen and voter, to raise a predicate question: should the Court adopt a rule at all? I think not. Not because the issue is political, complicated, controversial, or simply hard – although it is all of those things. But because the redistricting issue it proposes to solve is inherently not a judicial issue but a legislative one.

I encourage the Court not to lose the forest for the trees. The trees are the details of the proposed rule. The forest is the significant challenge of creating fair maps for Wisconsin voters. Maps that allow voters to pick their elected representatives, not maps that allow elected representatives to pick their voters.

In light of the long and litigious history of legislative map drawing in Wisconsin in the last 40 years, it's time to move away from the current partisan process of the Legislature drawing maps to preserve existing power, maps which present voters in a given district with a choice between extreme and more extreme on only one side of the political spectrum. It's time to try something different -- a nonpartisan commission that will seek maps that are fair to voters and provide those voters with a choice between two truly competitive sides of the political spectrum. To get there requires the Legislature to enact legislation that creates such a nonpartisan commission. Any encouragement the Court can give the Legislature to do exactly that will be a step in the right direction for all Wisconsin voters. Declining to adopt WILL's rule proposal – with or without revisions – is a good first step. It is also a first step in allowing the courts to return to their proper role: ruling on disputes over specific injuries created by the maps, instead of being dragged further and further into drawing the maps themselves. I urge the Court to decline this rulemaking request.

Thank you for the opportunity to comment.

Sincerely,

Linda Bochert
4927 St. Annes Drive
Middleton, WI 53597
(WI State Bar Emeritus Member #1015962)