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Shorewood WI 53211

November 28, 2020

Re: Rule Petition 20-03, In re Petition for Proposed Rule to Amend Wis. Stat. Sec. 809.70 (Related to Redistricting)

I write this comment on the above-referenced rule petition in my individual capacity. I am a member of the League of Women Voters but do not purport to represent the League.

Thank you for the opportunity to submit a comment.

My Position, Generally

I respectfully request that the court reject the proposed rule in its entirety.

.In recent years, many Wisconsinites voting in referendums, a number of county boards, and several nonpartisan groups have supported more nonpartisanship in map-drawing. I support that, as well, and the League of Women Voters has taken that position for decades.

The proposed rule and supporting petition, in contrast, are not just premised on the idea that map-drawing would continue to be a political contest involving the legislature and governor but take things a step further by encouraging — indeed, requiring — the Wisconsin Supreme Court to assume an enhanced role in map-drawing. The effects of the proposal would be (1) less judicial transparency; (2) a limitation on the ability of Wisconsin voters and nonpartisan groups to actively participate in redistricting decisions; and (3) greater politicization of the Wisconsin Supreme Court.

This is exactly the wrong direction to go in the face of so many Wisconsinites crying out for a less politicized, fairer way of map-drawing.

In *Ruchco v. Common Cause*, 588 U.S. ____ (2019), the United States Supreme Court, although holding that political gerrymandering cases are not justiciable by federal courts (while one man-one vote and racial gerrymandering cases still are), states that “Our conclusion does not condone excessive partisan gerrymandering. Nor does our conclusion condemn complaints about redistricting to echo into a void.” (p. 31)

The Court then goes on to list numerous examples of how states have changed their laws and constitutions to make redistricting less partisan. While the Court seems to acknowledge that state courts have an ongoing role to play in resolving challenges to redistricting, it nowhere recommends vesting enhanced power in a state’s highest court as a solution. Nor do I.

More Specific Points

1. ***Less Judicial Transparency.*** A traditional trial and appeals process to resolve redistricting challenges allows Wisconsin voters and groups to follow cases throughout the process and, if motivated and possible, get involved. Vesting judicial resolution in a single court — the Wisconsin Supreme Court — would diminish the ability to follow cases and participate in them. Further, if the proposed rule was adopted, Wisconsin voters and groups might have little knowledge of the roadmap the Wisconsin Supreme Court would be following in resolving challenges. This is because the proposed rule sets forth certain procedures and deadlines for the Wisconsin Supreme Court to follow and then goes on to provide that the court may disregard almost all of them. The rationale, according to the petition? “Because circumstances can always change.”

Along these same lines, the removal of redistricting cases from the state trial courts would limit the opportunity to “experiment” with appropriate standards to be used in redistricting cases. Now that the United States Supreme Court has shut down the ability of Wisconsinites to seek redress for alleged partisan gerrymandering wrongs in the federal courts, it is important that a variety of legal views come out of state trial courts — making for a more informed and participatory Wisconsin electorate and aiding the higher courts in their assessments of options.

2. ***Additional Limitations on Rights to Participate.*** The proposed rule would confer a legal right to intervene in redistricting cases solely to the governor, the branches of the legislature, and political parties. Indeed, the petition refers to these parties as “all appropriate parties.” Giving the right to intervene to only these parties would be a further diminishment of voters’ and nonpartisan groups’ ability to participate in redistricting decisions.
3. ***Politicization of the Court.*** Although everything about the Wisconsin Supreme Court, from how justices are elected to the code of conduct for deciding cases, is designed to be non-political, the court (like all courts) is frequently accused of “legislating from the bench.” Sometimes the criticism comes from the left and sometimes from the right. Often it is misplaced, but the fact is that voters want their courts to be as apolitical as possible and become disenchanted with the judiciary when they perceive it as being too politicized. These types of problems would be exacerbated if the proposed rule would become law, giving the Supreme Court even more authority than it has now to draw redistricting maps.

Respectfully submitted, Linda M. Laarman