



Wisconsin

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November 25, 2020

Sent Via Electronic Mail and Hand Delivery

Clerk of Supreme Court
Attention: Deputy Clerk-Rules
P.O. Box 1688
Madison, WI 53701-1688
clerk@wicourts.gov

RE: Written Comments Regarding Petition 20-03, In re Petition for Proposed Rule to Amend Wis. Stat. § 809.70 (Relating to Redistricting)

Dear Clerk of Supreme Court:

I write on behalf of the American Civil Liberties Union of Wisconsin (“ACLU”), a non-partisan organization to provide comments regarding Rule Petition 20-03 (the “Petition”). The ACLU works to protect the civil liberties and civil rights of all Wisconsin residents and appreciates the opportunity to comment on the Petition. The ACLU has long fought for free and fair elections and for the right of every Wisconsin voter to cast a ballot that counts.

The rules, if adopted, will increase the politicization of the Court while they decrease the public trust in the redistricting process. The Court considered, and in 2009 a majority of the Court rejected, a similar petition that requested the Court have the ability to take original jurisdiction in state legislative redistricting cases.¹ As Justice Prosser stated during the 2009 rulemaking process, the Court taking original jurisdiction in redistricting cases would be a “fundamental institutional mistake for this Court” as it would place the Court at the center of the political arena.² The current petition is no more necessary now than it was in 2009, and if implemented would raise the same problems Justice Prosser identified more than a decade ago. The proposed rule does not assuage the concerns that it would increase the politicization of the Court and undermine the Court’s institutional legitimacy.

¹ *In the matter of the adoption of procedures for original action cases involving state legislative redistricting*, Rule Petition 02-03, Wisconsin Supreme Court (Jan. 30, 2009) (Matter dismissed and administrative conference canceled), at, <https://www.wicourts.gov/sc/rulhear/DisplayDocument.pdf?content=pdf&seqNo=35414>.

² See, Recording of Supreme Court Open Administrative Conference (Jan. 22, 2009) starting at the 22:30 minute mark. <https://wiseye.org/2009/01/22/supreme-court-open-administrative-conference-3/>. This conference was set by Notice dated Oct. 1, 2008, regarding Rule Petition 02-03. <https://www.wicourts.gov/sc/rulhear/DisplayDocument.pdf?content=pdf&seqNo=34214>.

To the contrary, if accepted, the proposed rule will undermine the public's trust in the Court and in the redistricting process. It is clear that the public wants a fair, impartial process: over the past few years, 34 county boards have passed resolutions, and voters in 28 Wisconsin counties and 19 municipalities throughout the state have passed referendums, in support of fair electoral maps and a non-partisan 2021-22 redistricting process.³

The Petition stands in direct opposition to this widespread public sentiment. The Petition instead requests that the political parties be allowed to bring a redistricting challenge to the Court as soon as the U.S. Census Bureau delivers apportionment counts to the President and Congress - potentially even before the legislative process begins, much less before there is any public involvement in that legislative process. The consequence of this is clear - the Court will place itself, and allow political parties to place themselves, at the center of the redistricting process that the public wants to be impartial and nonpartisan. If the Court decides to interject itself as a central player in the redistricting process, the intensity of the Court's politicization in the eyes of the public will increase, while the public's trust in the impartiality of the redistricting diminished markedly as well.

We appreciate this opportunity to comment on this Petition and strongly encourage the Court to reject it.

Respectfully Submitted,

Christopher Ott
Executive Director
American Civil Liberties Union of Wisconsin

³ Dave Zweifel, "Plain Talk: Wisconsin Voters Want Fair Maps," *The Capital Times* (Nov. 8, 2020), last viewed Nov. 24, 2020, at, https://madison.com/ct/opinion/column/dave_zweifel/plain-talk-wisconsin-voters-want-fair-maps/article_a6aeacc3-bc77-57f2-8e57-f777203415e3.html.