

November 30, 2020

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Clerk of the Wisconsin Supreme Court and Court of Appeals  
P.O. Box 1688, Madison, WI 53701-1688  
Attn: Deputy Clerk-Rules

SENT VIA EMAIL AND HAND-DELIVERED

Re: Rule Petition 20-03, In re Petition for Proposed Rule to Amend Wis. Stat § 809.70

Dear Honorable Justices of the Supreme Court:

I write on behalf of All On The Line, Wisconsin (“All On The Line” or “AOTL-WI”) to provide comments regarding Rule Petition 20-03 (the “Petition” or “Proposed Rule”). All On The Line is a campaign of the National Redistricting Action Fund, a grassroots organization committed to fighting gerrymandering and ensuring that redistricting is fair and results in maps that reflect the will of the voters. Though All On The Line welcomes the Court’s interest in adopting rules that govern how it should handle legal challenges to redistricting, I write today to express our strong opposition to the adoption of the Petition. As proposed, the Petition will enshrine an opaque judicial procedure, unnecessarily restrict community involvement in the map-drawing process, and establish an insufficient fact-finding regime. We urge the Court to reject the rule as proposed.

First, the Petition establishes an opaque redistricting process that has the potential to confuse the public and raise doubts about the fairness of the resulting maps. For starters, the Proposed Rule does not provide guidance on procedural rules and offers no details on what a “hearing” on a potential map will look like. And while proposed subsection (5)(h) provides for “a hearing on the proposed plan,” nothing else in the Proposed Rule states the scope of such a hearing, provides how parties and affected groups can participate, or even dictates how papers can be filed with the Court. As drafted, the Petition merely suggests that the court use Chapters 802-804 of the Wisconsin Rules of Civil Procedure. That is hardly sufficient. This permissive approach falls far short of establishing any definitive rule or providing appropriate guidance to litigants or the public. If the Court adopts this Proposed Rule, the redistricting process will become incomprehensible to everyday Wisconsinites.

Second, the Petition unnecessarily silences community voices under the façade of inclusion. While subsection (5)(f) of the Proposed Rule permits the parties and interested persons to submit redistricting plans to the Court once it grants the original action petition, for example, subsection (5)(g) does not make clear who is permitted to object or rebut the Court's proposed map plan, but instead suspends the creation of that list to a later date. This could lead to absurd results, such as a group being able to submit a proposed map, but not being able to submit an objection or rebuttal to the Court's plan, and vice versa. Moreover, the Petition will preclude participation by community groups that lack the sophistication to understand brand new judicial procedures or lack the technology to draw their own map. The Court's rules should not limit public input on a proposed map where the rules of civil procedure or prudential considerations could not.

Third, the Petition fails to establish a fact-finding regime capable of providing the court with sufficient information to finalize a mapping plan. Subsection (5)(c) of the Proposed Rule allows the Court to dispose of a redistricting challenge on the documents or to call for additional evidence, briefing, and argument. And Subsection (5)(e) states that if the Court determines that disputed issues of material fact must be resolved based on oral testimony, it *may* refer those issues to a circuit court or referee for determination and later report. But the Proposed Rule does not provide adversarial evidentiary presentation on the matter or later review of the circuit court or referee's factual findings. When the Court exercises original jurisdiction authority, then, those cases will suffer from an under-developed factual record, as compared to cases it hears following full trial-level proceedings and appellate review. If the Court intends to exercise its original jurisdiction power and bypass the typical fact-finding stages of litigation, the Proposed Rule all but guarantees that facts will be insufficiently developed and/or reviewed.

Finally, the Petition fails to offer procedures that meet the mandate set by this Court in *Jensen v. Wisconsin Elections Board*. In *Jensen*, this Court said that if the Court takes on a redistricting action through original action, there must be a procedure established to do so. The Court further said that those procedures must include, at a minimum, "deadlines for the development and submission of proposed plans, some form of fact finding (if not a full-scale trial), legal briefing, public hearing, and decision." In fact, this Court summarily rejected its own committee's recommendations for original action procedures after six years of briefings, public hearings, and reports following *Jensen*.

For all of the above reasons, Petition should be rejected. If the rules were to change, any new procedure would have to (1) be understood by the parties and the public; (2) permit all parties and interested persons to submit proposed map plans, and also submit objections or rebuttals

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to the Court's proposed plan, if any; and (3) allow a robust fact-finding process akin to a trial. We urge the Court to reject the Petition.

Respectfully submitted,

Elizabeth Treviño

Wisconsin State Director, All On The Line