Supreme Court of Wisconsin

2025AP2121-OA **VOCES DE LA FRONTERA, INC. v. GERBER**

December 3, 2025

The Court has entered the following order:

The court having considered the petition for leave to commence an original action filed by petitioner, Voces de la Frontera, Inc.; the joint response to the petition filed by respondents, Sheriff Dave Gerber et al.; and the non-party brief filed by The American Constitutional Rights Union;

IT IS ORDERED that the petition for leave to commence an original action is granted, this court assumes jurisdiction over this entire action, and the petitioner may not raise or argue issues not set forth in the petition for leave to commence an original action except as otherwise ordered below by this court; and

IT IS FURTHER ORDERED that within 30 days after the date of this order the petitioner must file a brief in this court; that within 20 days of filing the respondents must file either a joint response brief or a statement that no brief will be filed; and that if a brief is filed by the respondents, within 10 days of filing the petitioner must file either a reply brief or a statement that no reply brief will be filed. The form, length, pagination, appendix, and certification requirements shall be the same as those governing standard appellate briefing in this court. *See* Wis. Stat. § § (Rule) 809.19, 809.63; and

IT IS FURTHER ORDERED that the parties' briefs shall include a discussion of the following issues:

1. Does WIS. STAT. ch. 818 govern the authority of a sheriff to make a civil arrest only in civil actions pending in Wisconsin courts, or do these

provisions additionally circumscribe a sheriff's authority to make a civil arrest pursuant to a federal immigration detainer; and

2. What impact, if any, does a sheriff's entry into a formal agreement with the federal government pursuant to 8 U.S.C. § 1357(g)(1)—commonly referred to as a "287(g) agreement"—have on the issue stated in the "Issue Presented" section of the original action petition, paying particular attention to the statutory phrase "consistent with State and local law" in 8 U.S.C. § 1357(g)(1); and
3. What impact, if any, does the fact that a sheriff's department participates in immigration enforcement pursuant to 8 U.S.C. § 1357(g)(10), without a 287(g) agreement, have on the issue stated in the "Issue Presented" section of the original action petition; and

IT IS FURTHER ORDERED that any non-party that wishes to file a non-party brief amicus curiae must file a motion for leave of the court to file a non-party brief pursuant to the requirements of Wis. Stat. § (Rule) 809.19(7). Non-parties should also consult this court's Internal Operating Procedure concerning the nature of non-parties who may be granted leave to file a non-party brief. A proposed non-party brief must accompany the motion for leave to file it. Any proposed non-party brief shall not exceed 20 pages if a monospaced font is used or 4,400 words if a proportional serif font is used. Any motion for leave with the proposed non-party brief attached shall be filed no later than 14 days after the filing of the respondents' response brief. Any submission by a non-party that does not comply with Wis. Stat. § (Rule) 809.19(7) and any proposed non-party brief for which this court does not grant leave will not be considered by the court; and

IT IS FURTHER ORDERED that a date for oral argument in this matter shall be established in a future order of the court; and

IT IS FURTHER ORDERED that the allowance of costs, if any, in connection with the granting of the petition will abide the decision of this court on review.

ANNETTE KINGSLAND ZIEGLER, J. and REBECCA GRASSL BRADLEY, J. dissent.

BRIAN K. HAGEDORN, J., writing separately.

When this court grants review in a case, we almost always let our grant order proceed without comment or dissent. It is not unusual for there to be disagreement about which cases to grant; that is part of our process. In fact, if all seven justices are sitting on a case, it takes only three justices to grant review in a normal petition for review, and four

justices to grant review on a petition for bypass or original action.[1] Thus, it is common that we decide to hear a case even though some justices—even a majority—vote not to grant review. And we don't hide the ball. These procedures, and the reasons for them, are published on the court's website in our Internal Operating Procedures.[2] Our orders granting review ordinarily issue without the public knowing how justices voted on the petition.[3]

The reasons for this longstanding tradition against public dissents from a grant order are several. The most oft-cited rationale is that it might lead the parties or the public to think certain justices have settled on a view of the merits prior to briefing.[4] Public writings or denials may also needlessly slow down the gears of justice. In addition, it is common that justices vote for or against taking a case, only to change their minds following briefing and argument.

But our practice in recent years has evolved, largely as a result of this court's newfound fondness for taking cases on an expedited basis. Our disagreements range from the uptick in frequency with which we use this power, the ad hoc process that seems to mark its implementation, and the often-political nature of the cases we tend to prioritize. And these disagreements now occasionally make their way into writings or public dissents at the grant stage.[5]

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[1] Wis. S. Ct. IOP (Sept. 16, 2025).

[2] Wis. S. Ct. IOP (Sept. 16, 2025) ("The purpose of requiring less than a majority of the court to grant a petition for review is to accommodate the general public policy that appellate review is desirable.").

[3] The inverse—dissenting from the denial of a petition for review—is more common. But even that is relatively unusual. Customarily, when a justice votes to take a case, but does not have sufficient additional votes, the court issues a denial order without public dissent or other comment.

[4] I am not implying such an inference would be accurate; I am simply repeating some of the accumulated wisdom that has informed our past practices. *See Evers v. Marklein*, No. 2023AP2020-OA, unpublished order at 5, n.4 (Wis. Feb. 2, 2024) (Hagedorn, J., dissenting) ("Even when justices vote against taking a case, our typical practice is not to publicly say so—largely to preserve neutrality and avoid prejudging a case we have yet to fully consider.").

[5] Indeed, I too have periodically expressed my disagreement with our approach to a case when the court grants review.

Given this, the public may begin to infer that if a justice does not publicly dissent to an order granting review in a case, that justice has joined the order taking the case. That assumption would be unwarranted. Even if some of my colleagues publicly record their dissent, as in this case, that does not necessarily reveal which justices voted for or against the petition in closed conference. A grant order simply means the requisite number of justices voted to grant a petition—in this case, four—nothing more.

Samuel A. Christensen
Clerk of Supreme Court

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