



November 25, 2020

Wisconsin Supreme Court
P.O. Box 1688
Madison, Wisconsin 53701-1688

Re: Rule Petition 20-03 relating to original actions

FILED

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**CLERK OF SUPREME COURT
OF WISCONSIN**

Dear Honorable Justices of the Wisconsin Supreme Court,

On behalf of the Wisconsin Farmers Union, I write to you regarding Rule Petition 20-03 to amend Wis. Stat. (Rule) § 809.70 relating to original actions. Thank you for the opportunity to comment on the Petition. In this letter, we raise a number of concerns with the Petition and with the procedural rules set forth within it. We urge you to oppose Rule Petition 20-03 for the following reasons:

- I. Adopting this Rule encourages overuse of the original action and denies the Court discretion to decide when original jurisdiction is appropriate

The Petition states that all redistricting cases shall be presented to the Wisconsin Supreme Court via petition for an original action. Allowing redistricting cases to bypass lower courts will limit the opportunity for fact-finding and public input and reduce opportunities for appellate review of cases that are of utmost importance to Wisconsin voters. Original actions should only be accepted under extraordinary circumstances, rather than anticipated as the standard procedure for all redistricting cases.

- II. Adopting this Rule invites early litigation and risks politicizing the Court

In 2009, the Court voted not to invoke its rulemaking authority to adopt procedural rules for redistricting cases, citing concerns that doing so would encourage inherently political redistricting disputes to be resolved in court rather than in the legislature. It was argued that adopting rules for redistricting cases would undermine the integrity of the Court as an unbiased arbiter of political conflicts. These concerns hold more weight today as the political climate in Wisconsin has become increasingly polarized and the issue of redistricting has become

increasingly partisan. Redistricting should be conducted in such a way that makes every effort to avoid litigation, particularly given the divided control over state government in Wisconsin. Lawmakers must be encouraged to work across the aisle to develop legislative district maps that are acceptable to both major political parties, fair to Wisconsin voters, and unlikely to invite legal challenges.

III. The procedural rules have not been thoroughly vetted

The 2009 decision not to promulgate rules for redistricting cases followed six years of research and vetting by a court-appointed committee. Rule Petition 20-03 will be heard by the Court only six months after it was filed, and the procedural rules set forth in the Petition have not been thoroughly researched or vetted by anyone besides the petitioner. Any rule change promulgated by the Court must be given a robust analysis and review process, especially with regards to redistricting cases as they impact every Wisconsin voter and the very foundation of democracy.

IV. The procedural rules give special preference to partisan interests

The procedural rules set forth in the proposed rule specify that the Governor, state legislature, and "political parties" may engage in litigation related to redistricting, however the rules do not specify how or whether nonpartisan groups or citizens acting on their own behalf may participate. Historically individual citizens and nonpartisan organizations have challenged legislative district maps they believe to be unconstitutional; under the procedural rules set forth in the Petition, such groups can be lawfully excluded from engaging in redistricting litigation. To give participation rights only to political entities would exclude parties who have an equal interest and right to participate in the legal process.

Thank you again for the opportunity to comment on Rule Petition 20-03. We respectfully urge you to oppose the Petition and abandon the process of promulgating unique redistricting rules.

Sincerely,



Darin Von Ruden
President, Wisconsin Farmers Union