



November 30, 2020

**VIA EMAIL AND U.S. MAIL**

Clerk of the Wisconsin Supreme Court  
Attn: Deputy Clerk-Rules  
P.O. Box 1688  
Madison, WI 53701-10688

Re: Rule Petition 20-03

Dear Honorable Justices of the Wisconsin Supreme Court,

The International Union of Operating Engineers (IUOE) is a labor union with approximately 400,000 members throughout the United States and Canada. The International Union of Operating Engineers, Local 139 is the state-wide Wisconsin local union. We write on behalf of our more than 10,000 Wisconsin operating engineer members to provide comments regarding Rule Petition 20-03 (“the Petition”). We appreciate the opportunity to comment on the Petition. For the reasons below, we urge you to reject the Petition.

Federal congressional and state senate and assembly districts are required to be established by the state legislature, which is accomplished in Wisconsin by the enactment of a statute subject to gubernatorial veto. The Petition seeks to avoid the constitutional role for legislative action and control of the process. Petitioner’s rationale for doing so is to claim: (1) an impasse between a Republican-controlled legislature and a Democratic Governor is inevitable, and (2) speculative delays in the census results justify this Court taking control of redistricting at an unprecedented early stage.

The proposed rule would allow a petition for original jurisdiction to be filed immediately after the census data is delivered to the President and Congress and invites the Court to draw its own map with or without the taking of evidence. The proposed rule could place the Wisconsin Supreme Court in the primary roles of fact finder and district boundary drawer. These roles are inherently and fundamentally political and legislative in nature and are roles an appellate court is not staffed or funded to undertake. We agree with the Petitioner that Wisconsin’s current

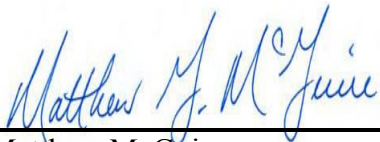
redistricting process lends itself to litigation, but only once the work of the legislature has ended, either by the passage of legislation or impasse. State (or federal) court involvement once the legislative work is completed or stalled is entirely appropriate. However, there is no state or federal constitutional basis for this Court to use the provisions of the proposed rule to supplant the legislative process by taking on the redistricting work that is constitutionally the obligation of lawmakers.

The voters of Wisconsin, including our 10,000 members, have made their opinion on redistricting clear: they want redistricting to be less political, not more political. Fifty-four counties have passed resolutions and twenty-eight counties and nineteen municipalities have passed referenda (many with 70%+ approval) urging the passage of legislation that would reduce the political polarization of redistricting, <https://www.wispolitics.com/2020/fair-elections-project-14-referendums-to-ban-gerrymandering-pass-in-wisconsin/>. A resounding 72% of Wisconsin voters would prefer that redistricting be done by a non-partisan commission, <https://law.marquette.edu/poll/2019/01/24/mlsp51release/>. The legislature alone has the constitutional authority to pass legislation, with the Governor's approval, fundamentally changing how redistricting is accomplished in Wisconsin. The Petition seeks to bypass the will of Wisconsin voters and the authority of the legislature.

If the proposed rule is adopted, Wisconsin will be an outlier amongst the fifty states, and not in a positive way. This Court is the final arbiter of state law. Under the proposed rule, this Court could now also be the body whose redistricting work is challenged for constitutional and other legal infirmities in federal court. The proposed rule would abandon this Court's appellate authority over redistricting disputes and make the Court an active participant in the redistricting process.

As this Court did in 2009, you should decline to exercise your rule-making authority. We urge you to reject the invitation to fundamentally alter the redistricting process in Wisconsin, which is the outcome promoted in the Petition.

International Union of  
Operating Engineers



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