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SUPREME COURT

STATE OF WISCONSIN
IN SUPREME COURT

No. 2021AP373

DERRICK A. SANDERS,

Petitioner-Appellant,

v.

STATE OF WISCONSIN
CLAIMS BOARD,

Respondent-Respondent-Petitioner.

PETITION FOR REVIEW AND APPENDIX

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TABLE OF CONTENTS

ISSUE PRESENTED..... 3

CRITERIA FOR GRANTING REVIEW 3

STATEMENT OF THE CASE 5

ARGUMENT 12

 I. This Court should grant review to
 address the novel question of
 whether Wis. Stat. § 775.05(4)
 requires the Claims Board to explain
 why it did not refer a request for
 additional compensation to the
 Legislature. 12

 II. This Court should accept review of
 the entire case and reject Sanders’s
 additional arguments. 16

CONCLUSION..... 8

TABLE OF AUTHORITIES

Cases

Sanders v. State of Wisconsin Claims Board,
No. 2021AP373, 2022 WL 2070388 (Wis. Ct. App.
June 9, 2022)4, *passim*

Statutes

Wis. Stat. § 16.007(2)..... 8, 16

Wis. Stat. § 227.49(3)..... 7

Wis. Stat. § 227.57(8)..... 9, 15

Wis. Stat. § 775.05 5, 9

Wis. Stat. § 775.05(2)..... 16

Wis. Stat. § 775.05(4).....3, *passim*

Wis. Stat. § 227.52 7

Wis. Stat. § 227.53 8

ISSUE PRESENTED

Wisconsin Stat. § 775.05(4) provides that if the State of Wisconsin Claims Board (the “Claims Board”) finds that a petitioner was innocent of the crime for which the petitioner was imprisoned, “the claims board shall find the amount which will equitably compensate the petitioner, not to exceed \$25,000.” The statute further provides that “[i]f the claims board finds that the amount it is able to award is not an adequate compensation it shall submit a report specifying an amount which it considers adequate to the chief clerk of each house of the legislature.” Wis. Stat. § 775.05(4).

When a petitioner has requested compensation in excess of the \$25,000 statutory maximum and the Claims Board awards that \$25,000 statutory maximum, does Wis. Stat. § 775.05(4) require the Claims Board to offer an affirmative exercise of discretion as to why it did not submit a report to the Legislature regarding additional compensation?

The circuit court held, “No.”

The Court of Appeals held, “Yes,” and reversed and remanded.

CRITERIA FOR GRANTING REVIEW

In a split decision, the Court of Appeals has effectively rewritten Wis. Stat. § 775.05(4). Its rewriting of the statute imposes an affirmative exercise of discretion upon the Claims Board that the plain statutory language does not require.

The plain language of Wis. Stat. § 775.05(4) requires the Claims Board to address additional compensation only *if* it first makes the affirmative finding that the \$25,000 statutory maximum is inadequate. But the Court of Appeals nevertheless held that Wis. Stat. § 775.05(4), “read as a whole, requires that the Claims Board, when it awards the statutory maximum amount, explain its discretionary determination

that the statutory maximum amount either does or does not constitute adequate compensation.” *Sanders v. State of Wisconsin Claims Board*, No. 2021AP373, 2022 WL 2070388, ¶ 30 (Wis. Ct. App. June 9, 2022), (Pet-App. 105).

Unsurprisingly, “no court has interpreted Wis. Stat. § 775.05(4) as the majority opinion does now.” *Id.* ¶ 81 (Fitzpatrick, J., dissenting), (Pet-App. 113).

Indeed, this Court need look no further than Judge Fitzpatrick’s thorough dissent to see why this Court’s review is warranted. As Judge Fitzpatrick explains, “[t]he majority opinion recasts the Claims Board into a tribunal that sets a total value, such as a jury would. . . and further requires that the Claims Board spell out how the Board determined that exact amount.” *Id.* ¶ 56 (Fitzpatrick, J., dissenting), (Pet-App. 109). In so doing, the “majority opinion has grafted onto” “[t]he unique, two-step statutory mechanism in § 775.05(4)” “a process the legislature has not sanctioned.” *Id.* (Fitzpatrick, J., dissenting), (Pet-App. 109).

“The statutory language is the touchstone of the analysis and should not be shunted to the side.” *Id.* ¶ 85 (Fitzpatrick, J., dissenting), (Pet-App. 114). Yet, that is just what the majority did in its “untethered” analysis. *Id.* ¶ 80 (Fitzpatrick, J., dissenting), (Pet-App. 113). And because there is no other caselaw directly addressing the Claims Board’s exercise of discretion as to compensation under Wis. Stat. § 775.05(4), other parties will continue to rely on the Court of Appeals’ novel rationale in its authored opinion here if this Court does not grant review.

Review of this novel statutory interpretation is thus warranted pursuant to Wis. Stat. §§ (Rule) 809.62(1r)(c)2–3.

STATEMENT OF THE CASE

I. Factual background

In the early 1990s, Sanders and two other men physically assaulted another man at two different houses. (R. 5:31.) After the assault, Sanders's co-actors took the man to another location and one of Sanders's co-actors shot and killed the man. (R. 5:31.) Though Sanders consistently maintained that he did not participate in the shooting, he—following errors of his counsel and the circuit court—pled no contest to first degree intentional homicide as party to a crime and spent over 25 years in prison for his conviction. (R. 5:31–41); *Sanders*, 2022 WL 2070388, ¶ 3, (Pet-App. 101).

II. Sanders's petition and the Claims Board's compensation award

Sanders filed a petition with the Claims Board under Wis. Stat. § 775.05 requesting the statutory maximum of \$25,000 plus additional compensation of \$5,729,965 for lost wages, property, and career opportunities. (R. 5:6, Pet-App. 140); *Sanders*, 2022 WL 2070388, ¶ 4, (Pet-App. 101).

The Claims Board forwarded a copy of the claim to the Milwaukee County District Attorney's office, asking for that office's recommendation regarding the "appropriate response to the claim." (R. 5:61.) The District Attorney's Office responded: "Based upon his review of the facts surrounding the crime and Mr. Sanders' petition for compensation, the Milwaukee District Attorney's Office does not oppose his petition." (R. 5:63.)

The Claims Board deferred its decision on Sanders's petition to allow for a hearing at which both Sanders and the District Attorney's Office could answer questions. (R. 6:16.) Before that hearing, the District Attorney's Office informed the Claims Board that it would not have anyone to send to the meeting and had "nothing further to add other than what was

stated on the record in open court” by the assistant district attorney “at the time this matter was dismissed.” (R. 6:31.)

The Claims Board responded via email, asking: “DA Chisholm’s April 1, 2019, response to the Claims Board stated that the Milwaukee DA’s Office ‘does not oppose’ Mr. Sanders’ petition. To clarify, are you saying that the DA’s office does not oppose payment of \$5,754,965 to Mr. Sanders?” (R. 6:31.) The District Attorney’s Office responded, explaining that their previous letter intended to express their “general support for Mr. Sanders’ petition for compensation.” (R. 6:31.) “We originally saw his form that requested the statutory maximum amount of \$25,000, which we support. Regarding his other claims for damages, which appears to have varied over the course of this process, we are not taking any position on those claims, as we understand the claims board is better situated to make that determination.” (R. 6:31.)

At the hearing on Sanders’s petition, one of the Claims Board members asked him how he arrived at “the \$5 million.” (R. 7:66.) Sanders responded that though he “laid out” his “earning potential,” he was “not trying to say [he] would have earned \$5 million”; rather, he felt that amount was appropriate compensation due to other recent awards. (R. 7:66–67); *Sanders*, 2022 WL 2070388, ¶ 9, (Pet-App. 102).

The Claims Board issued a final compensation decision. (R. 7:56–59, Pet-App. 132–35.) It first found that Sanders was innocent of the homicide crime for which he had been imprisoned; it also reasoned that the entry of his non contest plea was the result of “legal error.” (R. 7:58–59), (Pet-App. 134–35.) The Claims Board further “conclude[d] that compensation in the amount of \$25,000 shall be awarded from the Claims Board appropriation § 20.505(4)(d).” (R. 7:59), (Pet-App. 135.) The Board’s decision reflects a “5-0” vote. (R. 7:59), (Pet-App. 135.)

Sanders subsequently filed a petition for rehearing pursuant to Wis. Stat. § 227.49(3), arguing in part that the Claims Board made a material error of law by not “addressing [his] additional damages claim” or providing “reasoning.” (R. 7:68–71), (Pet-App. 136–39.) He also argued that the Claims Board made a “material error of fact” in concluding that the District Attorney’s Office took no position on his claim for additional damages beyond \$25,000. (R. 7:68–71), (Pet-App. 136–39.)

The Claims Board, through its Chairperson, denied his request. (R. 8:3–6), (Pet-App. 128–31.) As to Sanders’s argument about its exercise of discretion, the Claims Board explained that its decision “clearly states that the board unanimously voted to award compensation in the amount of \$25,000.” (R. 8:4), (Pet-App. 129.) It continued: “Because the Board did not conclude that the amount which it was able to award was ‘not adequate compensation,’ it is not required to submit a report to the legislature ‘specifying an amount which it considers adequate.’” (R. 8:4), (Pet-App. 129.) The “absence of an explicit statement regarding the request for additional damages does not render the Board’s decision incomplete.” (R. 8:4), (Pet-App. 129.)

As to Sanders’s argument about the District Attorney’s Office, the Claims Board explained that the District Attorney’s Office had clarified that it was not opposing Sanders’s petition for \$25,000 but took no position on his request for additional compensation. (R. 8:3), (Pet-App. 128.) It attached the emails reflecting that correspondence. (R. 8:5–6), (Pet-App. 130–31.)

III. Circuit court proceedings

Sanders filed a petition for judicial review under Wis. Stat. §§ 227.52 and 227.53 challenging the Claims Board’s decisions awarding compensation and denying rehearing. (R. 1.) He raised multiple arguments, including that the

Claims Board's exercise of discretion was "inconsistent with agency rule and prior practice" and constituted "a material error in procedure or a failure to follow prescribed procedure" as it did not address his claim for additional damages or explain why it did not "refer the matter to the legislature." (R. 14:5–10.)

In addition to other arguments, Sanders further asserted that the Claims Board acted improperly by relying on "ex parte communication" with the District Attorney's Office "outside the hearing record, and petitioner's knowledge." (R. 14:10–13.) He noted he did not learn about the clarification email communication with the District Attorney's Office until the Claim Board's decision denying rehearing and argued this violated Wis. Stat. § 16.007(2). (R. 14:12–13.) As to how this prejudiced him, Sanders argued that he would have "inquired" about why the Deputy District Attorney offered the clarification about the position in District Attorney's original letter. (R. 14:20–21.)

The Claims Board asked the circuit court to dismiss Sanders's petition and affirm its decision in all respects. (R. 15.) The Claims Board argued that Wis. Stat. § 775.05(4) only requires it to recommend an award of additional damages to the Legislature if it, in its discretion, finds that the statutory maximum is not adequate compensation. (R. 15:7.) Therefore, the statutory language requires no action on a request for additional compensation unless the Claims Board finds that the statutory maximum is inadequate. (R. 15:7.)

The circuit court issued a written decision and order affirming the Claims Board's decision and dismissing Sanders's petition for judicial review. (R. 23), (Pet-App. 121–27.)

The circuit court noted that Sanders pointed to "no administrative rule, policy, or prior practice that requires the

Board to expressly address his additional damages claim in its final decision.” (R. 23:5), (Pet-App. 125). The court found “unpersuasive” Sanders’s reliance on the text of Wis. Stat. § 775.05(4) itself, as that text provides that the Claims Board only needs to submit a recommendation for additional damages “if it finds the statutory maximum is not adequate.” (R. 23:5 (emphasis in original)), (Pet-App. 125.) Because the Claims Board “did not make a finding that \$25,000 was inadequate compensation,” “it was therefore not required to take further action.” (R. 23:5, Pet-App. 125).

The court also held that his argument about “ex parte communication” was “undeveloped and fail[ed] to show that the Board materially relied on any ex parte communication in reaching its final decision.” (R. 23:6, Pet-App. 126).

IV. Proceedings before the Court of Appeals

A. The parties’ appellate arguments

Sanders renewed multiple arguments on appeal. His core argument was that the Claims Board erred by not explicitly addressing his claim for additional compensation beyond the statutory maximum of \$25,000. *Sanders*, 2022 WL 2070388, ¶ 15, (Pet-App. 102). He further renewed his argument that the Claims Board’s request for clarification from the District Attorney’s Office constituted improper “ex parte communications” that prejudiced him. *Id.* ¶ 44, (Pet-App. 107).

Sanders raised additional arguments, including that the Claims Board departed from a “prior agency practice” under Wis. Stat. § 227.57(8) by not awarding him more than the statutory maximum or not explicitly addressing his request for additional compensation. *Id.* ¶ 42, (Pet-App. 107). He also argued that the Claims Board not explicitly addressing his request for additional compensation deprived him of his right to sue the State and of access to courts. *Id.* ¶ 43, (Pet-App. 107). He also suggested other equal protection

and due process arguments as well as a challenge to Wis. Stat. § 775.05 itself. *Id.* ¶ 48, (Pet-App. 108).

The Claims Board argued that, under the plain language of Wis. Stat. § 775.05(4), it need not address additional compensation unless it first makes the affirmative finding that the statutory maximum it may award is inadequate. *Id.* ¶¶ 49–52, (Pet-App. 108–09). Because it did not make that affirmative finding here, no further exercise of discretion was required. *Id.* ¶¶ 49–52, (Pet-App. 108–09). The Claims Board also argued that Sanders could not show he was harmed in any way by the Claims Board not explicitly stating that it found \$25,000 to be adequate compensation when it awarded \$25,000. (Claims Board COA Br. 23.)

The Claims Board argued that Sanders failed to develop his “ex parte communications” argument and could not show any prejudice from the communications with the District Attorney’s Office. *Sanders*, 2022 WL 2070388, ¶¶ 47–48, (Pet-App. 108). The Claims Board argued that Sanders’s other arguments were either undeveloped, forfeited, or failed on their merits. *sanders*, 2022 WL 2070388, ¶¶ 43, 48 n.5, (Pet-App. 107–08, 117–18); *see generally* (Claims Board COA Br.).

B. The majority opinion

In a two-to-one decision authored by Judge Kloppenberg, the Court of Appeals reversed and remanded. *Sanders*, 2022 WL 2070388, (Pet-App. 101–20). The Court held that “Wis. Stat. § 775.05(4), read as a whole, requires that the Claims Board, when it awards the statutory maximum amount, explain its discretionary determination that the statutory maximum either does or does not constitute adequate compensation.” *Id.* ¶ 30, (Pet-App. 105). “Saying that it suffices simply to vote to award the statutory maximum, without any fact-finding or rational supporting the discretionary determination whether the statutory maximum is or is not adequate, eliminates the parameters that guide

our review of the exercise of discretion.” *Id.* ¶ 50, (Pet-App. 108).

The Court concluded that the Claims Board did not properly exercise its discretion because neither its initial decision nor its rehearing decision contained any “fact-finding or analysis” regarding Sanders’s request for compensation above the statutory maximum. *Id.* ¶¶ 31–34, (Pet-App. 105–06). It reversed and remanded for the Claims Board to “properly exercise its discretion as to whether the statutory maximum amount of \$25,000 that it awarded is or is not adequate compensation where, as here, additional compensation was requested.” *Id.* ¶ 53, (Pet-App. 109).

Though the Court of Appeals recognized that it “need not consider” Sanders’s additional arguments, it “briefly” addressed them “for the sake of completeness.” *Sanders*, 2022 WL 2070388, ¶ 48, (Pet-App. 108). The Court rejected all of Sanders’s other arguments outright except his “ex parte communications” argument. *Id.* ¶¶ 41–48 n.5, (Pet-App. 107–08, 117–18.) As to that argument, it pointed to Sanders’s reliance on the Black’s Law Dictionary’s definition of “ex parte communication” and noted that if, as the Claims Board argued, “there is no difference that matters” between the District Attorney’s Office’s statements of position, “it is not clear why the Claims Board sought clarification of the former position and states in its initial decision only the latter position.” *Id.* ¶ 47, (Pet-App. 108).

C. The dissent

Judge Fitzpatrick dissented. *Sanders*, 2022 WL 2070388, ¶¶ 55–112 (Fitzpatrick, J., dissenting), (Pet-App. 109–17).

Judge Fitzpatrick concluded that the majority “grafted” onto Wis. Stat. § 775.05(4) a “process the legislature has not sanctioned and, as a result, those conclusions in the majority opinion are contrary to policy choices made by the

legislature.” *Id.* ¶ 56 (Fitzpatrick, J., dissenting), (Pet-App. 109). “If the legislature wanted an explanation and analysis from the Claims Board in the second step as to why \$25,000 is adequate compensation, the legislature would have stated that. It did not, and that makes all the difference.” *Id.* ¶ 79 (Fitzpatrick, J., dissenting), (Pet-App. 113).

He also agreed with the Claims Board that Sanders could not show any harm as a result of the Claims Board’s failure to explicitly state that it found \$25,000 to be adequate compensation. *Id.* ¶¶ 92–97 (Fitzpatrick, J., dissenting), (Pet-App. 114–15).

As to Sanders’s “ex parte communication” argument, Judge Fitzpatrick concluded that “[n]othing in the applicable statutes leads to the conclusion that ex parte communications are barred in proceedings of the Claims Board.” *Id.* ¶ 102 (Fitzpatrick, J., dissenting), (Pet-App. 116). Judge Fitzpatrick noted that the majority made an argument that “Sanders does not make” regarding the emails with the District Attorney’s Office and concluded that Sanders could not show any prejudice from the communications. *Id.* ¶¶ 105–11 (Fitzpatrick, J., dissenting), (Pet-App. 116–17). Judge Fitzpatrick agreed with the majority’s rejection of Sanders’s other arguments. *Id.* ¶¶ 59–61 (Fitzpatrick, J., dissenting), (Pet-App. 110).

ARGUMENT

- I. This Court should grant review to address the novel question of whether Wis. Stat. § 775.05(4) requires the Claims Board to explain why it did not refer a request for additional compensation to the Legislature.**

Before the Court of Appeals’ decision here, no Wisconsin appellate court had before directly addressed the Claims Board’s requisite exercise of discretion as to compensation

under Wis. Stat. § 775.05(4). The Court of Appeals' decision interprets the statute in a way that both conflicts with the plain language and compels the Claims Board to offer an exercise of discretion that the Legislature has not required. This Court should grant review to rectify this problematic, novel statutory interpretation.

The statutory text of Wis. Stat. § 775.05(4) provides, in full:

If the claims board finds that the petitioner was innocent and that he or she did not by his or her act or failure to act contribute to bring about the conviction and imprisonment for which he or she seeks compensation, the claims board shall find the amount which will equitably compensate the petitioner, not to exceed \$25,000 and a rate of compensation not greater than \$5,000 per year for the imprisonment. Compensation awarded by the claims board shall include any amount to which the board finds the petitioner is entitled for attorneys fees, costs and disbursements. If the claims board finds that the amount it is able to award is not an adequate compensation it shall submit a report specifying the amount which it considers adequate to the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172(2).

As Judge Fitzpatrick recognized in dissent, Wis. Stat. § 775.05(4) “sets forth a two-step mechanism, with discrete processes, for the Claims Board”—a “unique process.” *Sanders*, 2022 WL 2070388, ¶¶ 71–72 (Fitzpatrick, J., dissenting), (Pet-App. 111–12).

First, the statute sets forth what the Claims Board must do if it finds that the petitioner was innocent of the offense for which he served imprisonment and did not through his actions contribute to the conviction or imprisonment: it “shall find the amount which will equitably compensate the petitioner, not to exceed \$25,000.” Wis. Stat. § 775.05(4); *Sanders*, 2022 WL 2070388, ¶ 71 (Fitzpatrick, J., dissenting), (Pet-App. 111–12).

Second, the statute then sets forth what the Claims Board must do “[i]f”—and only if—the Claims Board first makes an affirmative finding that \$25,000 is inadequate compensation: “If the claims board finds that the amount it is able to award is not adequate compensation it shall submit a report specifying the amount which it considers adequate” to the Legislature. Wis. Stat. § 775.05(4).

As Judge Fitzpatrick explained, “the legislature’s choice of the word ‘if’ denotes the clear direction that the remainder of the sentence concerning a report to the legislature is conditional.” *Sanders*, 2022 WL 2070388, ¶ 74 (Fitzpatrick, J., dissenting), (Pet-App. 112). Unless the Claims Board affirmatively finds that \$25,000 is inadequate compensation, Wis. Stat. § 775.05(4) does not require the Claims Board to do anything beyond awarding compensation within the statutory range it is authorized to award.

The Court of Appeals’ decision, however, requires the Claims Board to offer an affirmative exercise of discretion, including findings, explaining why it did *not* determine it necessary to forward a report to the Legislature for additional compensation. Put differently, the “majority opinion’s conclusions demand an explanation and analysis from the Claims Board regarding how much a petitioner’s claim is worth and, after that, an application of the first and second steps of Wis. Stat. § 775.05(4).” *Id.* ¶ 80 (Fitzpatrick, J., dissenting), (Pet-App. 113).

To reach this result, the Court of Appeals concluded that the use of the terms “equitable” and “adequate” “link[ed]” the two compensation provisions in Wis. Stat. § 775.05(4). *Id.* ¶ 29, (Pet-App. 105). And, having concluded that those two words “link[ed]” the provisions, it held that Wis. Stat. § 775.05(4), “read as a whole,” requires the Claims Board to “explain its discretionary determination that the statutory maximum amount either does or does not constitute adequate compensation.” *Id.* ¶ 30, (Pet-App. 105).

But, as Judge Fitzpatrick recognized, this conclusion is nowhere to be found in the plain statutory language. Rather, that language sets specific parameters on the Claims Board's requisite exercise of discretion in accordance with the Legislature's statutory policy choices: "It is not within the authority of the Claims Board, or a court, to require that a petitioner such as Sanders be given any compensation in excess of \$25,000." *Id.* ¶ 72 (Fitzpatrick, J., dissenting), (Pet-App. 112). Instead, "[t]he legislature has reserved that particular decision to itself and, critical to the analysis, the legislature has enacted a specific procedure it has concluded is appropriate and essential for that purpose." *Id.* (Fitzpatrick, J., dissenting), (Pet-App. 112). The majority, however, "recasts the Claims Board into a tribunal that sets a total value, such as a jury would." *Id.* ¶ 56 (Fitzpatrick, J., dissenting), (Pet-App. 109).

This Court should grant review to rectify the majority's novel, erroneous statutory interpretation. The Court of Appeals' holding reads-out the Legislature's use of the word "if" in the second step and replaces it with a requirement that the Claims Board *shall* determine whether the statutory maximum is adequate compensation.

And in so doing, the Court requires the Claims Board to disregard legislative parameters on its discretionary authority. *See* Wis. Stat. § 227.57(8) (providing that courts shall reverse and remand an agency decision if the court "finds that the agency's exercise of discretion is outside of the range of discretion delegated to the agency by law"). This holding is problematic both for the Claims Board's future decisions and, more broadly, for other agency and board exercises of discretion that are prescribed by plain statutory language. Should agencies and boards abide the plain statutory language on their exercises of discretion and risk the Court of Appeals saying they needed to offer further explanation to permit additional court review? Or should they

exercise additional discretion and risk a court saying that they exceeded their lawful authority?

II. This Court should accept review of the entire case and reject Sanders's additional arguments.

This Court should grant this petition and in so doing, accept the entire case and reject Sanders's additional arguments.

To start, this Court should grant review and reject Sanders's "ex parte communication" argument. Though the Court of Appeals did not definitively decide this issue in Sanders's favor, it did not reject the argument, and the majority's discussion of this issue is problematic.

As support for that argument, Sanders pointed to Wis. Stat. § 16.007(2). That subsection, however, provides that, with an exception not relevant here, the Claims Board "shall *not* be bound by common law or statutory rules of evidence." It also provides that the Claims Board "may take official notice of any generally recognized fact or established technical or scientific fact," but the parties "shall be notified" of the noticed facts and "afforded an opportunity to contest the validity of the official notice." Wis. Stat. § 16.007(2). Nothing in that subsection prohibits "ex parte communication" and, indeed, the Claims Board is statutorily required to notify the prosecuting office about a petition for compensation for wrongful imprisonment. Wis. Stat. § 775.05(2).

Yet, in response to the Claims Board's arguments, the Court of Appeals majority looked favorably to Sanders's citation of the Black's Law Dictionary's definition of "ex parte communication." *Sanders*, 2022 WL 2070388, ¶ 47, (Pet-App. 108). This reasoning is just as "untethered" from the statutory language as the Court's Wis. Stat. § 775.05(4) analysis.

As Judge Fitzpatrick recognized, the Court of Appeals majority both articulated a due process argument related to

Sanders “ex parte communication” claim that Sanders did not advance and shrugged off Sanders’s inability to show any prejudice even though that burden rested on Sanders. *Sanders*, 2022 WL 2070388, ¶¶ 45–48, (Pet-App. 107–08); *see also id.* at ¶¶ 98–111 (Fitzpatrick, J., dissenting), (Pet-App. 115–17). Sanders could not show prejudice because both the District Attorney’s Office’s original message and its clarification provided that it had no objection to Sanders’s petition—it simply made clear that it did not oppose the request for the statutory maximum and took no position on additional damages because the Claims Board was better situated to address that. (*Compare* R. 5:63 *with* R. 6:31.)

The majority and dissent have therefore already clarified their positions on Sanders’s “ex parte communication” argument. Should this Court grant this petition, the Claims Board will continue to argue that it did not engage in any improper “ex parte communication” and that Sanders cannot show any prejudice from its communications.

Lastly, while the Court of Appeals (both majority and dissent) rejected Sanders’s additional arguments, should this Court grant review, and should Sanders attempt to renew those additional arguments before this Court, the Claims Board will continue to argue against them.¹

¹ Sanders has appeared *pro se* in the lower court proceedings. Should this Court grant this petition, the Claims Board would, of course, not oppose the Court’s appointment of counsel for Sanders in the proceedings before this Court.

CONCLUSION

This Court should grant the Claims Board's petition for review.

Dated this 8th day of July, 2022.

Respectfully submitted,

JOSHUA L. KAUL
Attorney General of Wisconsin

A handwritten signature in black ink, appearing to read 'H. Jurss', with a large, stylized flourish extending to the right.

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FORM AND LENGTH CERTIFICATION

I hereby certify that this petition or response conforms to the rules contained in Wis. Stat. §§ (Rules) 809.19(8)(b), (bm) and 809.62(4) for a petition or response produced with a proportional serif font. The length of this petition or response is 4,292 words.

Dated this 8th day of July 2022.



HANNAH S. JURSS
Assistant Attorney General

**CERTIFICATE OF COMPLIANCE WITH
WIS. STAT. §§ (RULES) 809.19(12) and
809.62(4)(b) (2019-20)**

I hereby certify that:

I have submitted an electronic copy of this petition or response, excluding the appendix, if any, which complies with the requirements of Wis. Stat. §§ (Rules) 809.19(12) and 809.62(4)(b) (2019-20).

I further certify that:

This electronic petition or response is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this petition or response filed with the court and served on all opposing parties.

Dated this 8th day of July 2022.



HANNAH S. JURSS
Assistant Attorney General

APPENDIX CERTIFICATION

I hereby certify that filed with this petition or response, either as a separate document or as a part of this petition or response, is an appendix that complies with Wis. Stat. § (Rule) 809.62(2)(f) and that contains, at a minimum: (1) a table of contents; (2) the decision and opinion of the court of appeals; and (3) the findings or opinion of the circuit court necessary for an understanding of the petition.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 8th day of July 2022.



HANNAH S. JURSS
Assistant Attorney General

**CERTIFICATE OF COMPLIANCE WITH
WIS. STAT. §§ (RULES) 809.19(13) and 809.62(4)(b)
(2019-20)**

I hereby certify that:

I have submitted an electronic copy of this appendix, which complies with the requirements of Wis. Stat. §§ (Rules) 809.19(13) and 809.62(4)(b) (2019-20).

I further certify that:

This electronic appendix is identical in content to the printed form of the appendix filed as of this date.

A copy of this certificate has been served with the paper copies of this appendix filed with the court and served on all opposing parties.

Dated this 8th day of July 2022.


HANNAH S. JURSS
Assistant Attorney General