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SUPREME COURT

In the Supreme Court of Wisconsin

No. 2024AP_____-OA

JEFFERY A. LEMIEUX and DAVID T. DEVALK,

Petitioners,

v.

TONY EVERS, in his official capacity as Governor of Wisconsin, SARAH GODLEWSKI, in her official capacity as Secretary of State of Wisconsin, and JILL UNDERLY, in her official capacity as Wisconsin State Superintendent of Public Instruction,

Respondents.

PETITION FOR AN ORIGINAL ACTION

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ISSUES PRESENTED

1. Does Article V, § 10(1)(c) of the Wisconsin Constitution forbid a governor from deleting digits in an enrolled bill to create a new year?

2. Does a governor exceed his or her partial-veto authority under Article V, § 10(1)(b) of the Wisconsin Constitution by deleting language in an enrolled bill to create a longer duration than the one that the legislature approved?

INTRODUCTION

3. Wisconsin school districts may increase their revenue multiple ways. Voters may approve a referendum to exceed their district's revenue limit. The legislature may also increase that revenue limit because it is statutory—and school districts may then raise revenue up to that new limit without needing voter approval.

4. In the 2023–2025 biennium budget bill, the Wisconsin Legislature approved a two-year increase of the school district revenue limit. Governor Tony Evers used a partial veto, however, to add 400 years to that two-year increase.

5. This partial veto is profoundly undemocratic. Besides harnessing lawmaking power vested in the legislature, this partial veto deprived Wisconsin voters of their ability to decide via referendum whether to allow their respective school district to increase their property taxes for 400 years.

6. That point warrants emphasis: this partial veto allows school districts to raise their property taxes for 400 years *without voter approval*.

7. Not only undemocratic, this partial veto violates the Wisconsin Constitution for two separate reasons.

8. First, this partial veto violates Article V, § 10(1)(c) of the Wisconsin Constitution.

9. As approved by voters in 1990, this clause "prohibits the governor from 'creat[ing] a new word by rejecting individual letters in the words of the enrolled bill.'" *Citizens Util. Bd. v. Klauser*, 194 Wis. 2d 484, 501, 534 N.W.2d 608 (1995) (alteration in original) (quoting Wis. Const. Art. V, § 10(1)(c)).

10. This 1990 "amendment effectively eliminated the 'pick-a-letter' veto." Legislative Reference Bureau, *Wisconsin Briefs*, Brief 08-4 (March 2008), at 3.[1] The "pick-a-letter veto" is "the selective vetoing of letters to form a new word, or of *digits to form a new number*." *Citizens Util. Bd.*, 194 Wis. 2d at 492 (emphasis added).

11. The 1990 amendment was adopted in response to *State ex rel. Wisconsin Senate v. Thompson*, 144 Wis. 2d 429, 424 N.W.2d 385 (1988), where this Court upheld partial vetoes by then-Governor Tommy Thompson and "affirmed the authority of

[1] Available at https://libraryguides.law.marquette.edu/WI_constitutions_history_and_revisions/lrb_materials.

Wisconsin governors to veto 'parts' of appropriation bills as small as single digits and individual letters." Mary E. Burke, *The Wisconsin Partial Veto: Past, Present and Future*, 1989 Wis. L. Rev. 1395, 1395 (1989).

12. "Many observers, especially Democrats, agreed that the sweeping partial veto authority created problems that needed to be addressed somehow, even with a 'stopgap' constitutional amendment." *Id.* at 1426 (footnote omitted). "Some Republicans, however, also believed that the governor enjoyed too much partial veto power." *Id.* at 1426 n.243.

13. "Fewer than three weeks after [this Court decided *Wisconsin Senate*], the legislature, with both houses controlled by the Democrats, held a one-day extraordinary session to adopt" a resolution proposing a constitutional amendment to limit that decision. Richard A. Champagne et al., Legislative Reference Bureau, "The Wisconsin Governor's Partial Veto," *Reading the Constitution* (June 2019), at 16.[2]

14. "The amendment passed by wide margins in both the Senate and the Assembly." Burke, *supra*, at 1397.

15. After the legislature passed the proposed constitutional amendment a second time by a wide margin, more than 60 percent of Wisconsin voters approved it in an April 1990

[2] Available at https://docs.legis.wisconsin.gov/misc/lrb/reading_the_constitution/reading_the_constitution_4_1.pdf.

referendum. *Id.* at 1397 & n.19, 1425–1426 & nn.241–242; *see also* Champagne, *supra*, at 16 n.95.

16. The 1990 amendment to Article V, § 10(1)(c) "keeps intact" the governor's power to use the partial veto to reduce appropriations. *Citizens Util. Bd.*, 194 Wis. 2d at 501.

17. The partial veto at issue here is an unconstitutional "pick-a-letter" veto, not a reduction of an appropriation. It struck individual digits to create a new year four centuries further into the future. This partial veto thus violates Article V, § 10(1)(c).

18. This partial veto is unlawful for a second reason: it exceeds the governor's authority under Article V, § 10(1)(b).

19. This clause states: "Appropriation bills may be approved in whole or *in part* by the governor, and the part approved shall become law." Wis. Const. art. V, § 10(1)(b) (emphasis added).

20. So "to fall within the purview of powers authorized by Art. V., sec. 10(1)(b)," a partial veto must approve a "part" of an appropriation bill. *See Citizens Util. Bd.*, 194 Wis. 2d at 505.

21. The word "part" in section 10(1)(b) means "something less than a whole; a number, quantity, mass, or the like, regarded as going to make up, with others or another, a larger number, quantity, mass, etc." *Id.* (quoting *State ex rel. Wisconsin Tel. Co. v. Henry*, 218 Wis. 302, 313, 260 N.W. 486 (1935)).

22. The partial veto at issue is not an approval of "part" of a bill.

23. As enrolled and presented to the Governor, the biennial budget bill authorized a school district revenue increase in the 2023–2024 and 2024–2025 academic years only.

24. This partial veto authorizes additional revenue increases beginning in the year 2025 through the year 2425.

25. The Governor's 400-year increase of the revenue limit is not a "part" of the legislatively authorized two-year increase.

26. This Court should use its original jurisdiction to grant this petition and declare that this partial veto violates Article V, § 10(1)(b) and (c).

27. This Court routinely hears original actions that challenge partial vetoes.

28. About four years ago, this Court heard an original action that raised the same question as the first issue presented here. The Court, however, did not resolve the issue. *See Wisconsin Small Businesses United, Inc. v. Brennan*, 2020 WI 69, ¶¶ 1, 6, 393 Wis. 2d 308, 946 N.W.2d 101. There, the petitioners argued then-Governor Scott Walker had violated Article V, § 10(1)(c) by striking individual digits to create a new year—such as by altering "December 31, 2018" to read "December 3018." *Id.* ¶¶ 6–8.

29. This petition challenges a materially identical exercise of the partial veto. The Court should grant original jurisdiction here to resolve that important issue.

STATEMENT OF FACTS

The Parties

30. Petitioner Jeffery A. LeMieux is a homeowner in Green Bay, Wisconsin. He is a retired professor. He holds a bachelor of fine arts from the University of Wisconsin–Oshkosh and a master of fine arts from the University of Wisconsin–Madison. He previously taught art and art history as a tenured professor at a public college in Georgia. He pays taxes to the State of Wisconsin and to local governmental bodies, including property taxes levied by a school district.

31. Petitioner David T. DeValk resides in Kimberly, Wisconsin. He holds a bachelor's degree in biology with a minor in educational studies from Ripon College. He has completed his student-teaching practicum in Wisconsin public schools. He currently works as a substitute teacher in the Fox Valley. He pays taxes to the State of Wisconsin.

32. Petitioners Jeffery A. LeMieux and David T. DeValk are seeking to commence this original action on behalf of all taxpayers in Wisconsin to protect them from pecuniary harm. This Court has liberally allowed taxpayers to file original actions to challenge the validity of partial vetoes. *See, e.g.*, *Wisconsin Senate*,

144 Wis. 2d at 436; *State ex rel. Sundby v. Adamany*, 71 Wis. 2d 118, 124, 237 N.W.2d 910 (1976).

33. Respondent Tony Evers is the Governor of the State of Wisconsin. Acting in his official capacity, Governor Evers exercised the partial veto that is being challenged in this petition. In exercising this partial veto, Governor Evers violated Article V, § 10(1)(b) and (c) of the Wisconsin Constitution.

34. Respondent Sarah Godlewski is the Secretary of State of Wisconsin. The secretary of state "has the legal duty to publish the laws as enacted by the legislature and governor, including the budget." *Sundby*, 71 Wis. 2d at 125. If partial vetoes are held invalid, "the secretary of state has a mandatory duty to publish those sections of the enactment as if they had not been vetoed." *Id.*

35. Respondent Jill Underly is the Wisconsin State Superintendent of Public Instruction. The state superintendent is charged with supervising and administering public education and is specifically charged with assessing penalties on school districts that exceed the permissible revenue limits. Wis. Stat. § 121.92.

Background on School District Revenue Limits

36. "One source of school funding is the property tax, which applies directly to each local district." *Vincent v. Voight*, 2000 WI 93, ¶ 5, 236 Wis. 2d 588, 614 N.W.2d 388. In order "to provide property tax relief," Wisconsin law imposes "revenue limits" on school districts. *Id.* ¶ 76.

37. These revenue limits are longstanding. "The 1993–95 budget (1993 Act 16) imposed revenue limits on school districts for the five-year period 1993–94 through 1997–98." Legislative Fiscal Bureau, "School District Revenue Limits and Referenda," at 1 (Jan. 2023).[3] "The revenue limits were modified and made permanent in the 1995–97 budget (1995 Act 27)." *Id.*

38. Under current law and subject to certain exceptions, "no school district may increase its revenues for the 2015–16 school year or for any school year thereafter to an amount that exceeds" a specific formula. Wis. Stat. § 121.91(2m)(i).

39. Under one exception, voters may approve a referendum to exceed the revenue limit that would otherwise apply to their school district. Wis. Stat. § 121.91(3)(a)1. "Revenue limits do not absolutely bar school districts from increased spending—they merely require a voter referendum to do so." *Vincent*, 2000 WI 93, ¶ 76.

40. The legislature may create exemptions from the revenue limit or otherwise increase that limit, and it has done so. For example, the legislature increased the revenue limit by $175 per pupil "for the 2019–20 school year." *See* Wis. Stat. § 121.91(2m)(im).

[3] Available at https://docs.legis.wisconsin.gov/misc/lfb/informational_papers/january_2023/0027_school_district_revenue_limits_and_referenda_informational_paper_27.pdf.

Procedural Background

41. On June 28, 2023, the Wisconsin Senate passed 2023 Senate Bill 70, the budget bill for the 2023–2025 biennium ("Budget Bill"). *State of Wis. Senate J.*, June 28, 2023, at 330.[4]

42. The next day, the Wisconsin Assembly passed the Budget Bill. *State of Wis. Assembly J.*, June 29, 2023, at 229.[5]

43. The legislature presented the Budget Bill to Governor Evers on June 30. *State of Wis. Senate J.*, June 30, 2023, at 335.[6]

44. In the Budget Bill, the legislature allowed school districts to exceed their revenue limit by $325 per student for two years. "As passed by the Legislature, Senate Bill 70 would have set the per pupil adjustment under revenue limits at $325 in 2023–24 and 2024–25, and there would have been no per pupil adjustment in 2025–26 and each year thereafter." Legislative Fiscal Bureau, Partial Vetoes of 2023 Wisconsin Act 19 (July 7, 2023), at 1.[7]

45. However, by striking individual digits in the Budget Bill, Governor Evers allowed the $325 per-pupil revenue-limit increase to last through the year 2425. "The Governor's partial

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[4] Available at https://docs.legis.wisconsin.gov/2023/related/journals/senate/20230628.pdf.

[5] Available at https://docs.legis.wisconsin.gov/2023/related/journals/assembly/20230629.pdf.

[6] Available at https://docs.legis.wisconsin.gov/2023/related/journals/senate/20230630.pdf.

[7] Available at https://docs.legis.wisconsin.gov/misc/lfb/budget/2023_25_biennial_budget/295_summary_of_partial_vetoes_of_2023_wisconsin_act_19_7_7_23.

veto modified the language of the per pupil adjustment that set the $325 amount 'in the 2023–24 school year and the 2024–25 school year' by deleting words and digits to instead set the $325 amount 'in 2023–2425.'" *Id.*

46. Specifically, the Governor altered "2024–25" to read "2425" in four sections of the Budget Bill. The Governor achieved this change by striking the "20" and the en dash.

47. The table below quotes the four sections of the Budget Bill that are the subject of this partial veto. The left column displays the legislature's language with the partial vetoes in strikethrough font; the underlining indicates language that the legislature added to existing law. The right column shows the bill language with the partial vetoes incorporated.

Partial Veto	Final Form
SECTION 402. 121.905 (3) (c) 9. of the statutes is created to read: 121.905 (3) (c) 9. For the limit for ~~the~~ 2023–~~24 school year and the 20~~24=25 ~~school year~~ , add $325 to the result under par. (b).	**SECTION 402.** 121.905 (3) (c) 9. of the statutes is created to read: 121.905 (3) (c) 9. For the limit for 2023–2425, add $325 to the result under par. (b).
SECTION 403. 121.91 (2m) (j) (intro.) of the statutes is amended to read: 121.91 (2m) (j) (intro.) Notwithstanding par. (i) and except as provided in subs. (3),	**SECTION 403.** 121.91 (2m) (j) (intro.) of the statutes is amended to read: 121.91 (2m) (j) (intro.) Notwithstanding par. (i) and except as provided in subs. (3),

(4), and (8), a school district cannot increase its revenues for the 2020−21 school year~~,~~ ~~the 2023−24 school~~ year ~~, and the 2024=25 school year~~ to an amount that exceeds the amount calculated as follows:	(4), and (8), a school district cannot increase its revenues for the 2020−21 school year−year 2425 to an amount that exceeds the amount calculated as follows:
SECTION 404. 121.91 (2m) (j) 2m. of the statutes is created to read: 121.91 (2m) (j) 2m. In ~~the~~ 2023−~~24 school year and the 2024=25 school year~~ , add $146. . . .	**SECTION 404.** 121.91 (2m) (j) 2m. of the statutes is created to read: 121.91 (2m) (j) 2m. In 2023−2425, add $146. . . .
SECTION 408. 121.91 (2m) (t) 1. (intro.) of the statutes is amended to read: 121.91 (**2m**) (t) 1. (intro.) If 2 or more school districts are consolidated under s. 117.08 or 117.09, in the 2019–20 school year, the consolidated school district's revenue limit shall be determined as provided under par. (im), in the 2020–21 school year, 2023~~–24 school~~ year~~, or 2024=25 school year~~, the consolidated school district's revenue limit shall be determined as provided under par. (j), and in each school year thereafter, the consolidated school district's revenue limit shall be determined as	**SECTION 408**. 121.91 (2m) (t) 1. (intro.) of the statutes is amended to read: 121.91 (**2m**) (t) 1. (intro.) If 2 or more school districts are consolidated under s. 117.08 or 117.09, in the 2019–20 school year, the consolidated school district's revenue limit shall be determined as provided under par. (im), in the 2020–21 school year, 2023–year 2425, the consolidated school district's revenue limit shall be determined as provided under par. (j), and in each school year thereafter, the consolidated school district's revenue limit shall be determined as

provided under par. (i), except as follows:	provided under par. (i), except as follows:

2023 Wisconsin Act 19, at 158–159, §§ 402–04, 408.[8]

48. The partial vetoes of sections 402 through 404 and 408 of the Budget Bill are collectively known as Item Veto A-1. Legislative Fiscal Bureau, Partial Vetoes of 2023 Wisconsin Act 19 (July 7, 2023), at 1.[9]

49. Governor Evers explained in his veto message that, as a result of this partial veto, he was "requesting the Department of Public Instruction provide and account for this per pupil revenue limit adjustment authority of $179 plus $146 for a total of $325 in each year from 2023–24 until 2425." 2023 Wisconsin Act 19: Veto Message, at 1.[10]

50. On July 6, 2023, the Budget Bill with Governor Evers' vetoes was published as 2023 Wisconsin Act 19. *State of Wis. Senate J.*, July 5, 2023, at 347.[11]

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[8] Available at https://docs.legis.wisconsin.gov/2023/related/acts/19.pdf.

[9] Available at https://docs.legis.wisconsin.gov/misc/lfb/budget/2023_25_biennial_budget/295_summary_of_partial_vetoes_of_2023_wisconsin_act_19_7_7_23.

[10] Available at https://docs.legis.wisconsin.gov/2023/related/veto_messages/2023_wisconsin_act_19.pdf. *See also State of Wis. Senate J.*, July 5, 2023, at 362, https://docs.legis.wisconsin.gov/2023/related/journals/senate/20230705.pdf.

[11] Available at https://docs.legis.wisconsin.gov/2023/related/journals/senate/20230705.pdf.

51. On September 14, 2023, the senate voted to override Item Veto A-1. *State of Wis. Senate J.*, Sept. 14, 2023, at 440.[12]

52. That same day, the senate requested the assembly do the same, but the assembly did not vote on whether to override Item Veto A-1. *See State of Wis. Assembly J.*, Sept. 14, 2023, at 287.[13]

53. The relevant statutes now incorporate Item Veto A-1. *See* Wis. Stat. §§ 121.905, 121.91 (2021–22).[14]

54. This partial veto authorizes school districts to increase their revenue by $325 per pupil each year for 400 additional years—without voter approval.

CAUSES OF ACTION

Count One:

Item Veto A-1 violates Article V, § 10(1)(c) of the Wisconsin Constitution

55. As amended by voters in 1990, the Wisconsin Constitution "prohibits the governor from 'creat[ing] a new word by rejecting individual letters in the words of the enrolled bill.'" *Citizens Util. Bd.*, 194 Wis. 2d at 501 (alteration in original) (quoting Wis. Const. Art. V, § 10(1)(c)).

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[12] Available at https://docs.legis.wisconsin.gov/2023/related/journals/senate/20230914.pdf.

[13] Available at https://docs.legis.wisconsin.gov/2023/related/journals/assembly/20230914.pdf.

[14] Available at https://docs.legis.wisconsin.gov/statutes/statutes/121.pdf.

56. This 1990 amendment "officially eliminat[ed] the Vanna White veto,"[15] also known as "the 'pick-a-letter' veto."[16]

57. The "pick-a-letter veto" refers to "the *selective vetoing* of letters to form a new word, or *of digits to form a new number*." *Citizens Util. Bd.*, 194 Wis. 2d at 492 (emphases added).[17]

58. This 1990 amendment "keeps intact" the governor's power to use the partial veto to reduce appropriations. *Citizens Util. Bd.*, 194 Wis. 2d at 501.

59. A partial veto that strikes a "digit from an appropriation" is known as the "digit veto," *id.* at 492, which is a term of art.

60. A digit veto is different from a pick-a-letter veto that strikes digits. *See id.*

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[15] Richard A. Champagne et al., Legislative Reference Bureau, "The Wisconsin Governor's Partial Veto," *Reading the Constitution* (June 2019), at 16, https://docs.legis.wisconsin.gov/misc/lrb/reading_the_constitution/reading_the_constitution_4_1.pdf.

[16] Legislative Reference Bureau, Wisconsin Briefs, Brief 08-4 (March 2008), at 3 (noting the 1990 "amendment effectively eliminated the 'pick-a-letter' veto"), https://libraryguides.law.marquette.edu/WI_constitutions_history_and_revisions/lrb_materials.

[17] *See also, e.g.*, Legislative Reference Bureau, *Wisconsin Briefs*, *Constitutional Amendment to Be Considered by the Wisconsin Electorate*, Brief 90-3 (April 3, 1990), at 5 (defining the "pick-a-letter veto" as "the selective vetoing of letters to form a new word or digits to form a new number"), https://libraryguides.law.marquette.edu/WI_constitutions_history_and_revisions/lrb_materials; Legislative Reference Bureau, *Constitutional Amendments Given "First Consideration" Approval by the 1987 Wisconsin Legislature*, Informational Bulletin 89-IB-1 (Jan. 1989), at 4–5 (defining "the 'pick-a-letter veto'" as "the selective vetoing of letters to form a new word, or of digits to form a new number"), https://libraryguides.law.marquette.edu/WI_constitutions_history_and_revisions/lrb_materials.

61. In *Citizens Utility Board*, counsel for the governor argued that the 1990 amendment allowed a governor to strike numbers in appropriation amounts but not other numbers, including dates. *Risser v. Klauser*, 207 Wis. 2d 176, 188, 558 N.W.2d 108 (1997) (discussing *Citizens Utility Board*). This Court "adopt[ed] the limited rule proposed by counsel for the Governor," thus "draw[ing] a distinction between appropriation amounts and other parts of appropriation bills." *Id.* (discussing *Citizens Utility Board*).

62. Indeed, this Court indicated that the partial-veto power does not allow a governor to create new dates and durations. *See Citizens Util. Bd.*, 194 Wis. 2d at 504, 509, 510 n.18.

63. The partial veto at issue here struck individual digits to create a new year.

64. This partial veto did not strike one or more digits to reduce an appropriation.

65. This partial veto is thus a Vanna White veto, also known as a pick-a-letter veto. It is not a digit veto.

66. This partial veto thus violates Article V, § 10(1)(c) of the Wisconsin Constitution. This Court should so declare.

Count Two:

Item Veto A-1 exceeds the partial-veto power in Article V, § 10(1)(b) of the Wisconsin Constitution

67. Even if Article V, § 10(1)(c) does not forbid a governor from creating new dates and durations, a governor exceeds the partial-veto power in Article V, § 10(1)(b) by striking language to create a larger duration than the one approved by the legislature.

68. As amended in 1930, the Wisconsin Constitution authorizes "a governor to approve appropriation bills 'in whole or in part.'" *Risser*, 207 Wis. 2d at 182 (quoting Wis. Const. art. V, § 10(1)(b)).

69. This provision states: "Appropriation bills may be approved in whole or *in part* by the governor, and the part approved shall become law." Wis. Const. art. V, § 10(1)(b) (emphasis added).

70. So "to fall within the purview of powers authorized by Art. V., sec. 10(1)(b)," a partial veto must approve a "part" of an appropriation bill. *See Citizens Util. Bd.*, 194 Wis. 2d at 505.

71. "[T]his court has recognized that the word 'part' as used in sec. 10(1)(b) should be given its ordinary and accepted meaning." *Id.* (citing *Henry*, 218 Wis. at 313).

72. The word "part" has a straightforward meaning when applied to numbers: it means "something less than a whole; a number, quantity, mass, or the like, regarded as going to make up, with others or another, a larger number, quantity, mass, etc." *Id.*

(quoting *Henry*, 218 Wis. at 313 (quoting Webster's New International Dictionary 1781 (2 ed.))).

73. This Court has held that the governor's authority "to approve appropriation bills 'in part'" includes "broad powers to *reduce or eliminate* numbers." *Wisconsin Senate*, 144 Wis. 2d at 457 (emphasis added). In *Wisconsin Senate*, this Court upheld partial vetoes in which "the governor *reduced* numbers, other than appropriations by striking single digits in the text of the budget bill." *Id.* at 457 n.14 (emphasis added).[18]

74. This Court has also held that "the governor has the power to approve *part* of an appropriation bill by *reducing* the amount of money appropriated so long as the number is part of the original appropriation." *Id.* at 510 (emphases added). "[A] 'part' of a larger appropriation sum is any sum, whether written out in words or specified with numerals, that is smaller than the original larger appropriation sum." *Id.* at 506 n.13.

75. For example, "[t]he striking of the '3' in $350,000 and replacing it with a '2' to reduce the appropriation to $250,000 should be considered an authorized exercise of the governor's power to 'approve in part' an appropriation." *Id.*

[18] As explained above, Article V, § 10(1)(c) forbids a governor from striking individual digits in non-appropriation numbers. Assuming for the sake of argument that a governor's broad power to *reduce non-appropriation* numbers survived the adoption of section 10(1)(c), a veto exceeds section 10(1)(b) if it *enlarges* a number approved by the legislature.

76. Unlike those partial vetoes in *Wisconsin Senate* and *Citizens Utility Board*, the Governor's veto here increased (rather than reduced or eliminated) the duration that the legislature had adopted. This veto thus did not approve "in part" the duration that the legislature had adopted.

77. This veto turned a two-year revenue-limit increase through the 2024–2025 academic year into a 402-year increase through the year 2425.

78. This 402-year duration is not less than, and thus is not a "part" of, the two-year duration that the legislature authorized.

79. By adding 400 years to the legislatively approved two-year duration, Governor Evers exceeded his partial-veto power under Article V, § 10(1)(b) of the Wisconsin Constitution. This Court should so declare.

STATEMENT OF RELIEF SOUGHT

80. If the Court grants this petition, the Petitioners will ask the Court to provide the following relief:

a. declare that Article V, § 10(1)(c) of the Wisconsin Constitution forbids the governor from striking individual digits in an enrolled bill to create a new year;

b. declare that Article V, § 10(1)(b) of the Wisconsin Constitution does not authorize the governor to strike language in an enrolled bill to create a larger

duration than the one approved by the legislature; and

c. declare invalid Item Veto A-1 of 2023 Wisconsin Act 19.

STATEMENT OF THE REASONS WHY THIS COURT SHOULD GRANT JURISDICTION

81. Wisconsin's Constitution and rules of appellate procedure authorize this Court to take jurisdiction of and hear original actions. Wis. Const. art. VII, § 3; Wis. Stat. § 809.70.

82. "A governor's authority to alter legislation granted in Wis. Const. art. V, § 10 is part of the constitution's carefully balanced separation of powers between the executive and the legislative branches." *Risser*, 207 Wis. 2d at 183. "It is the judiciary's role to declare the boundaries which the constitution sets between the other two branches." *Id.*

83. To that end, this Court routinely grants original jurisdiction in cases that challenge partial vetoes. Indeed, all this Court's partial-veto cases have been original actions. *See, e.g.*, *Bartlett v. Evers*, 2020 WI 68, 393 Wis. 2d 172, 945 N.W.2d 685 (per curiam); *Wisconsin Small Businesses United, Inc. v. Brennan*, 2020 WI 69, 393 Wis. 2d 308, 946 N.W.2d 101; *Risser v. Klauser*, 207 Wis. 2d 176, 558 N.W.2d 108 (1997); *Citizens Util. Bd. v. Klauser*, 194 Wis. 2d 484, 534 N.W.2d 608 (1995); *State ex rel. Wisconsin Senate v. Thompson*, 144 Wis. 2d 429, 424 N.W.2d 385 (1988); *State ex rel. Kleczka v. Conta*, 82 Wis. 2d 679, 264 N.W.2d

539 (1978); *State ex rel. Sundby v. Adamany*, 71 Wis. 2d 118, 237 N.W.2d 910 (1976); *State ex rel. Martin v. Zimmerman*, 233 Wis. 442, 289 N.W. 662 (1940); *State ex rel. Finnegan v. Dammann*, 220 Wis. 143, 264 N.W. 622 (1936); *State ex rel. Wisconsin Tel. Co. v. Henry*, 218 Wis. 302, 260 N.W. 486 (1935).

84. About four years ago, this Court granted original jurisdiction in a case that presented the same issue that is raised here. In that case, then-Governor Walker used the partial veto to strike individual digits to change certain years in an enrolled bill. *Wisconsin Small Businesses United*, 2020 WI 69, ¶¶ 7–8. For example, Governor Walker altered "December 31, 2018" to read "December 3018." *Id.* ¶ 7. The petitioners argued that those partial vetoes "violated the constitutional prohibition against creating new words by striking individual letters in words." *Id.* ¶ 6 (citing Wis. Const. art. V, § 10(1)(c)). This Court, however, applied the doctrine of laches and thus declined to resolve the merits of that case. *Id.* ¶ 1. Laches applied there because the petitioners' claim had become actionable more than two years before they filed their original action, and by then "the new biennial budget had gone into effect." *Id.* ¶ 15.

85. This Court should grant original jurisdiction here to resolve the question left unanswered in *Wisconsin Small Businesses United*: whether Article V, § 10(1)(c) forbids the governor from striking individual digits to create new dates. That

issue was significant enough for this Court to grant original jurisdiction in *Wisconsin Small Businesses United*. Because this issue still needs a clear answer, the Court should hear this case to resolve that important legal issue.

86. This Court should also decide the other issue raised in this petition: whether a governor exceeds his or her partial-veto authority under Article V, § 10(1)(b) of the Wisconsin Constitution by deleting language in an enrolled bill to create a longer duration than the one approved by the legislature. This Court has noted that, although a governor may "reduce the monetary amount of an appropriation," the Court had "never discussed the conceptual 'reduction' of any other elements of an appropriation bill (i.e., dates, times, counties, cities, groups, etc.)." *Citizens Util. Bd.*, 194 Wis. 2d at 509. The Court in *Citizens Utility Board* indicated that a governor may not use a partial veto to create new dates and durations. *Id.* at 504, 510 n.18. The Court also indicated that a governor approves an appropriation in "part" by *reducing* the amount appropriated. *Id.* at 505–10.

87. The Court should grant this petition to make clear that *Citizens Utility Board* forbids a governor from using a partial veto to expand a legislatively approved duration of time.

88. More generally, this Court will grant a petition for an original action when the case "is *publici juris* and requires a prompt and authoritative determination by this court in the first

instance." *See State ex rel. La Follette v. Stitt*, 114 Wis. 2d 358, 362, 338 N.W.2d 684 (1983); *see also Jefferson v. Dane County*, 2020 WI 90, ¶ 12, 394 Wis. 2d 602, 951 N.W.2d 556. In other words, this Court "reserve[s] [its] original jurisdiction for rare cases that involve purely legal questions of statewide concern that, because of some exigency, cannot satisfactorily proceed through the traditional legal process." *Gahl on behalf of Zingsheim v. Aurora Health Care, Inc.*, 2023 WI 35, __ Wis. 2d __, 989 N.W.2d 561, 603 (App. D) (Dallet, J., dissenting from order granting leave to commence an original action).

89. This case meets those three standards. It involves a purely legal question of statewide interest and presents an exigency.

90. First, the two issues presented in this case are purely legal questions—whether a specific partial veto exceeds the governor's constitutional authority. Resolving these two related issues should not involve any factual dispute or require any fact finding.

91. Second, the issues presented are significant for multiple reasons. Because the separation of powers is implicated, the scope of the governor's partial-veto authority under the Wisconsin Constitution is a significant issue that affects the whole state. And the partial veto at issue here also involves a significant statewide issue: whether school districts may increase their

property taxes every year for 400 additional years without voter approval.

92. Indeed, this veto has garnered national attention. Referring to this veto, an academic at Rutgers University stated, "Many people in Wisconsin, I suspect, are surprised that the governor can do this." Scott Bauer, AP NEWS, *"Wisconsin governor's 400-year veto angers opponents in state with long history of creative cuts"* (July 6, 2023).[19] Wisconsinites should be surprised at this veto because they outlawed the Vanna White veto in 1990—and because a veto of this nature never fell within the authority conferred by Article V, § 10(1)(b).

93. Third and finally, this case is exigent enough to justify skipping the circuit court and court of appeals. If a court declares a partial veto invalid, the vetoed portion of the enrolled bill is in full force as drafted by the legislature. *See Sundby*, 71 Wis. 2d at 125. Without the partial veto at issue here, school districts may increase their revenue limit by $325 per pupil without voter approval through the 2024–2025 academic year. *See* 2023 Wisconsin Act 19, §§ 402–04; Legislative Fiscal Bureau, Partial Vetoes of 2023 Wisconsin Act 19 (July 7, 2023), at 1 (Item A-1).[20] By granting original jurisdiction here, this Court would ensure

[19] Available at https://apnews.com/article/evers-veto-400-years-wisconsin-school-funding-67a7847e4a24ea86f7d16123356f770d.

[20] Available at https://docs.legis.wisconsin.gov/misc/lfb/budget/2023_25_biennial_budget/295_summary_of_partial_vetoes_of_2023_wisconsin_act_19_7_7_23.

that this case is resolved before the 2024–2025 academic year ends. An original action in this Court would give school districts sufficient time to budget for the 2025–2026 academic year and give the legislature time to consider another possible revenue-limit increase for school districts.

CONCLUSION

94. For the reasons set forth in this petition, the Petitioners respectfully request that this Court exercise its original jurisdiction over this action and grant a declaratory judgment in the Petitioners' favor.

Dated this 15th day of April 2024.

Respectfully submitted,

Electronically signed by

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