FILED
07-23-2024
CLERK OF WISCONSIN
SUPREME COURT

In the Supreme Court of Wisconsin

No. 2024AP729-OA

JEFFERY A. LEMIEUX and DAVID T. DEVALK,

Petitioners,

v.

TONY EVERS, Governor of Wisconsin, SARAH GODLEWSKI, Secretary of State of Wisconsin, and JILL UNDERLY, Wisconsin State Superintendent of Public Instruction,

Respondents.

PETITIONERS' OPENING BRIEF

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INTRODUCTION

This case seeks to enforce the will of Wisconsin voters and the constitutional limits on the governor's partial-veto power.

The facts are simple. In the 2023–2025 biennium budget bill, the Wisconsin Legislature approved a two-year increase of the school-district revenue limit. Under the guise of a partial veto, however, Governor Tony Evers added 400 years to that two-year increase. As passed by the legislature, this revenue-limit increase would have lasted through the "2024–25" school year. But wielding his pen, the Governor struck the "20" and the dash in the phrase "2024–25," making the increase last through the year 2425, four centuries beyond the year the legislature drafted and approved.

Known as Item Veto A-1, this veto authorizes school districts to increase their property taxes for 402 years without voters' approval via referendum. If left intact, this veto will result in "the highest single-year increase in revenue limits in state history."[1]

This veto "is clearly not the right way" to increase school funding,[2] and it has been the butt of jokes on a national stage.[3] Despite being "amusing," this veto "is no way to run a railroad, let alone a state."[4]

This veto is also unconstitutional—for two independent reasons. First, Wisconsin's governor may approve an appropriation bill "in part,"

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[1] Jessie Opoien, *Business Group Challenges Evers' Creative Veto that Extended School Aid for 400 Years*," MILWAUKEE JOURNAL SENTINEL, April 15, 2024, https://www.jsonline.com/story/news/politics/2024/04/15/wmc-challenges-evers-partial-veto-that-extended-school-aid-400-years/73329834007/.

[2] Phil Hands, "Hands on Wisconsin: Gov. Tony Evers' Veto Pen Is Dangerous in the Wrong Hands," WISCONSIN STATE JOURNAL, April 17, 2024, https://madison.com/opinion/cartoon/phil-hands-cartoon-evers-veto-dangerouspen/article_be651508-fc36-11ee-b065-f7aef0185558.html.

[3] *See, e.g.*, Christopher Kuhagen, *Ken Jennings Jokes He Wants to Become Wisconsin's Governor After Seeing What Tony Evers Did with His Veto Pen in State Budget*, MILWAUKEE JOURNAL SENTINEL, July 6, 2023, https://www.jsonline.com/story/news/politics/2023/07/05/ken-jennings-reacts-to-wisconsin-governor-tony-evers-using-partial-veto-2425/70385455007/.

[4] Sam Kraemer, "Lawsuit Asks WI Supreme Court to Strike Down Ever's [*sic*] 400-Year Veto," FOX6 MILWAUKEE, April 15, 2024 (quoting University of Wisconsin–Madison Professor Emeritus Howard Schweber), https://www.fox6now.com/news/400-year-veto-lawsuit-wisconsin-supreme-court-evers.

but Governor Evers's 402-year increase of the school-district revenue limit is not "part" of the legislatively approved two-year increase. Second, in 1990, Wisconsin voters amended our state constitution to prohibit the so-called "Vanna White" or "pick-a-letter" veto. Item Veto A-1 is a Vanna White veto.

This Court should declare Item Veto A-1 invalid on either or both grounds.

ISSUES PRESENTED

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

This Court should answer "yes."

2. 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?

This Court should answer "yes."

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Petitioners request oral argument and publication.

STATEMENT OF THE CASE

I. After governors began using the partial veto in novel ways, Wisconsin voters reined in this power.

In 1930, voters amended the Wisconsin Constitution to authorize "a governor to approve appropriation bills 'in whole or in part.'" *Risser v. Klauser*, 207 Wis. 2d 176, 182, 558 N.W.2d 108 (1997) (quoting Wis. Const. art. V, § 10(1)(b)).

Since the 1970s, governors have increasingly used the partial veto to alter bills in creative ways contrary to the legislature's intent. Wisconsin voters amended the constitution in 1990 to eliminate one of the most egregious misuses of that power.

A. Governor Lucey invents the "digit veto" and the "editing veto" in the 1970s.

"Use of the partial veto was minimal up until the early 1970's when it became a more popular tool to craft policy." *Citizens Util. Bd. (C.U.B.) v. Klauser*, 194 Wis. 2d 484, 491–92, 534 N.W.2d 608 (1995) (footnote omitted). Two new types of partial vetoes came about in the 1970s: the digit veto and the editing veto.

"[I]n 1971, Governor Patrick J. Lucey was the first governor to use the partial veto to remove a single digit from an appropriation—thereby inventing the 'digit veto.'" *Id.* at 492. In a budget bill, Governor Lucey "reduced a $25 million highway bonding authorization to $5 million by striking the digit '2.'" Richard A. Champagne et al., Legislative Reference Bureau, *The Wisconsin Governor's Partial Veto*, Reading the Constitution (June 2019), at 15.[5]

Four years later, Governor Lucey invented the "editing veto" by striking "'not' in the phrase 'not less than 50%,'" turning a 50% floor into a 50% ceiling. *Id.*

B. Governor Earl invents the "pick-a-letter" or "Vanna White" veto in 1983.

About a decade later, "in 1983, Governor Anthony S. Earl invented another version of the partial veto—the 'pick-a-letter veto' (the selective vetoing of letters to form a new word, or of digits to form a new number)." *C.U.B.*, 194 Wis. 2d at 492. "The pick-a-letter veto is also commonly called the 'Vanna White veto,' in reference to the co-host of television's 'Wheel of Fortune' game show." Benjamin W. Proctor, Comment, *Wisconsin's Chief Legislator: The Governor's Partial Veto Authority and the New Tipping Point*, 90 Marq. L. Rev. 739, 745 n.48 (2007). On that show, contestants pick letters and then Vanna White "flips letters to reveal word phrases." Champagne, *supra*, at 15.

[5] https://docs.legis.wisconsin.gov/misc/lrb/reading_the_constitution/reading_the_constitution_4_1.pdf. This brief subsequently refers to the Legislative Reference Bureau as "LRB."

C. By a 4–3 vote, this Court upholds the digit veto and the Vanna White veto in 1988, sparking a backlash.

This Court upheld the Vanna White veto and the digit veto in *State ex rel. Wisconsin Senate v. Thompson*, 144 Wis. 2d 429, 424 N.W.2d 385 (1988). *See C.U.B.*, 194 Wis. 2d at 498–99 (discussing *Wisconsin Senate*). Addressing the Vanna White veto, this Court held that a governor may "veto individual … letters and digits." *Wisconsin Senate*, 144 Wis. 2d at 437. Regarding the digit veto, this Court held that a governor "also may reduce appropriations by striking digits." *Id.*

Three justices—William Bablitch, Shirley Abrahamson, and Donald Steinmetz—concurred in part and dissented in part. They agreed with the Court that a governor may veto "individual digits to effect a reduction in an appropriation." *Id.* at 474 (Bablitch, J., concurring and dissenting in part). This Court was therefore unanimous in upholding the digit veto. They disagreed, however, with the portion of the Court's decision upholding the Vanna White veto. They argued the Vanna White veto "is an invitation to terrible abuse." *Id.* at 466–67. They further argued that "it is a usurpation of the legislature's power to legislate and a violation of the doctrine of separation of powers between the coordinate branches of government to permit the executive branch to create new words and, in effect, new law through the selective excision of individual letters." *Id.* at 471.

This Court's decision in *Wisconsin Senate* was widely criticized. "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." Mary E. Burke, *The Wisconsin Partial Veto: Past, Present and Future*, 1989 Wis. L. Rev. 1395, 1426 (1989). "Some Republicans, however, also believed that the governor enjoyed too much partial veto power." *Id.* at 1426 n.243. Some Democratic lawmakers even described this sweeping power as

"dictatorial"[6] and "analogiz[ed] the governor of Wisconsin to the kings of England."[7]

D. Voters amend the constitution to abrogate *Wisconsin Senate* and forbid the Vanna White veto in 1990.

The legislature swiftly responded to *Wisconsin Senate*. "Fewer than three weeks after [this Court decided the case], the legislature, with both houses controlled by the Democrats, held a one-day extraordinary session to adopt" a resolution proposing a constitutional amendment to abrogate the *Wisconsin Senate* decision. Champagne, *supra*, at 16; S.J.R. 71, 1987–88 Wis. Legis. (1988).

"The amendment passed by wide margins in both the Senate and the Assembly." Burke, *supra*, at 1397; *see also* 1 Bulletin of the Proceedings of the Wisconsin Legislature, 1987–88 Sess. 181 (1988). After the legislature passed the amendment by a wide margin on second consideration, more than 60 percent of Wisconsin voters approved it in an April 1990 referendum. *Burke, supra*, at 1397 & n.19, 1425–1426 & nn.241–242. This amendment added language to the constitution prohibiting "the governor from 'creat[ing] a new word by rejecting individual letters in the words of the enrolled bill.'" *C.U.B.*, 194 Wis. 2d at 501 (quoting Wis. Const. art. V, § 10(1)(c)).[8] This "referendum was cast in partisan terms,"[9] "but Democrats declined to call it a partisan victory."[10]

This constitutional amendment "officially eliminat[ed] the Vanna White veto." Champagne, *supra*, at 16. As noted above, this type of veto

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[6] Associated Press, *Thompson's Veto Powers Challenged*, WISCONSIN STATE JOURNAL, March 27, 1990, at 2B.

[7] *Risser v. Thompson*, 930 F.2d 549, 552 (7th Cir. 1991).

[8] The word "enroll" here is a term of art: "After a bill passes both houses in the same form, the LRB enrolls the bill by incorporating into the bill's text all amendments adopted by both houses and any corrections." LRB, *Wisconsin Bill Drafting Manual*, 2023–24 App. F § (7).

[9] Joe Beck, *Referendum on Veto Heads Toward Passage*, WISCONSIN STATE JOURNAL, April 4, 1990, at 3A.

[10] Matt Pommer, *Governor Loses Letter Veto Power*, THE CAPITAL TIMES, April 4, 1990, at 5A.

involves "the selective vetoing of letters to form a new word, or *of digits to form a new number*." *C.U.B.*, 194 Wis. 2d at 492 (emphasis added).

E. In 2017, Governor Walker revives the Vanna White veto, using it to strike individual digits in dates.

In Wisconsin's 2017–19 biennial budget bill, the legislature created two moratoriums. The first related to an "existing law that enabled school districts to increase their revenue limits by adopting a resolution based on energy efficiency efforts." *Wisconsin Small Businesses United, Inc. (WSBU) v. Brennan*, 2020 WI 69, ¶7, 393 Wis. 2d 308, 946 N.W.2d 101. Under the legislatively approved text of the budget bill, this incentive was paused only until "December 31, 2018." *Id.* Governor Scott Walker, however, used his pen to turn "December 31, 2018" into "December 3018." *Id.* That veto thus stripped school districts of this revenue-raising tool—and ended this financial incentive for energy efficiency—for 1,001 years. *Id.*

The second moratorium tolled the implementation of a policy allowing third-party lenders to "take tax deductions for bad debts." *Id.* ¶8. The legislature intended to pause this policy for one more year, through "July 1, ~~2017~~ 2018" (the legislature crossed out "2017" from an old moratorium and wrote in "2018" to create a new one). *Id.* But Governor Walker revised it to read "July 1, 20~~1~~7 ~~201~~8," extending the pause until "July 1, 2078." *Id.* That veto therefore turned a one-year moratorium into a 61-year moratorium. *Id.*

Four months after the 2017–19 biennium expired, WSBU filed a petition for an original action challenging the constitutionality of those two vetoes. *Id.* ¶1. Although this Court granted WSBU's petition, it did not reach the merits of those vetoes. It instead concluded the challenge was "barred by the equitable doctrine of laches" because WSBU had filed its petition "too late." *Id.*

II. In 2023, Governor Evers uses a Vanna White veto to allow school districts to raise their property taxes for 400 years without voter approval.

A. State law generally forbids school districts from increasing property taxes without voter approval.

"One source of school funding is the property tax." *Vincent v. Voight*, 2000 WI 93, ¶5, 236 Wis. 2d 588, 614 N.W.2d 388. Each school district may impose its own property tax to fund the schools within it. *Id.*

To relieve taxpayers, Wisconsin law limits the amount a school district can levy each year. *Id.* ¶76. Revenue limits have long been imposed in Wisconsin. The 1993–95 budget first "imposed revenue limits on school districts" for a five-year period. Legislative Fiscal Bureau, "School District Revenue Limits and Referenda," at 1 (Jan. 2023).[11] Once that period ended, those limits "were modified and made permanent." *Id.* Since then, the legislature has maintained these limits, though it has periodically modified them to reflect the cost of education. For the 2019–20 school year, for example, the legislature increased "the levy limit by $175 per pupil." *See* Wis. Stat. § 121.91(2m)(im).[12]

The legislature has authorized school districts to exceed their revenue limits by holding a referendum. *See* Wis. Stat. § 121.91(3)(a)1. So in effect, "[r]evenue limits do not absolutely bar school districts from increas[ing] spending—they merely require a voter referendum to do so." *Vincent*, 2000 WI 93, ¶76.

B. By striking two digits and a dash, Governor Evers lengthens a two-year increase of the school-district revenue limit by 400 years.

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.[13] The next day, the Wisconsin Assembly passed the Budget Bill. *State of Wis. Assembly J.*, June 29,

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

[12] This brief cites the 2021–22 Wisconsin Statutes, unless otherwise noted.

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

2023, at 229.[14] On June 30, it was presented to Governor Evers. *State of Wis. Senate J.*, June 30, 2023, at 335.[15]

As passed by the legislature, the Budget Bill would have allowed school districts to exceed their revenue limit by $325 per student for two school years only, thus reserving to future legislatures (or to voters) the discretion to extend this permission. Legislative Fiscal Bureau, Partial Vetoes of 2023 Wisconsin Act 19 (July 7, 2023), at 1 (Item A-1).[16]

Despite that deliberate reservation, Governor Evers unilaterally extended the Budget Bill's revenue-limit increase by 400 years. To achieve this end, "[t]he Governor's partial 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.* Specifically, the Governor altered four appearances of the phrase "2024–25" to read "2425" by striking the "20" and the dash. These vetoes are collectively known as Item Veto A-1. *Id.*

The table below quotes the four relevant sections of the Budget Bill. The left column displays the legislature's language, with Item Veto A-1 in strikethrough font. The right column shows the Budget Bill's text with Item Veto A-1 incorporated.

Item Veto A-1	Published 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:	**SECTION 403.** 121.91 (2m) (j) (intro.) of the statutes is amended to read:

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

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

[16] 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.

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

2023 Wisconsin Act 19, at 158–159, §§ 402–04, 408.[17]

Along with this veto, Governor Evers issued a message declaring 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.[18]

One day later, the Budget Bill with Governor Evers's vetoes was published as 2023 Wisconsin Act 19. *State of Wis. Senate J.*, July 5, 2023, at 347.[19]

More than two months after publication, the senate voted in favor of overriding Item Veto A-1. *State of Wis. Senate J.*, Sept. 14, 2023, at 440.[20] That same day, the senate requested the assembly also hold a vote, but the assembly did not. *See State of Wis. Assembly J.*, Sept. 14, 2023, at 287.[21]

As a result, Item Veto A-1 authorizes school districts to increase revenue by $325 per pupil each year for 400 additional years—without voters' approval via referendum.

III. A retired art professor and a substitute teacher challenge Item Veto A-1.

Jeffery A. LeMieux and David T. DeValk—a retired art professor and a substitute teacher—filed a petition for an original action on April 15, 2024, alleging that Item Veto A-1 violates Article V, § 10(1)(b) and (c) of the Wisconsin Constitution. This Court granted that petition on June 17, 2024.

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[17] https://docs.legis.wisconsin.gov/2023/related/acts/19.pdf.

[18] 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.

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

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

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

SUMMARY OF ARGUMENT

I. Item Veto A-1 is unlawful under Article V, § 10(1)(b) of the Wisconsin Constitution. This provision authorizes a governor to approve an appropriation bill "in part." Item Veto A-1 did not approve an appropriation bill in part. It instead transformed the legislatively approved two-year increase of the school-district revenue limit into a 402-year increase. This 402-year duration is not part of the two-year duration the legislature approved.

II. Item Veto A-1 also violates Article V, § 10(1)(c) of the Wisconsin Constitution. This provision bans the "Vanna White" veto. The selective striking of digits to form a new number is a type of Vanna White veto. By removing the "20" and the dash in the phrase "2024–25," Item Veto A-1 is an unconstitutional Vanna White veto.

ARGUMENT

I. Item Veto A-1 exceeds Article V, § 10(1)(b) of the Wisconsin Constitution because it did not approve a bill in part.

This Court should declare Item Veto A-1 invalid because it exceeds the partial-veto power in Article V, § 10(1)(b) of the Wisconsin Constitution.

A. Article V, § 10(1)(b) does not authorize a governor to lengthen a legislatively approved duration.

Constitutional analysis begins with the text. *State v. Randall*, 2019 WI 80, ¶9, 387 Wis. 2d 744, 930 N.W.2d 223. As amended in 1930, the Wisconsin Constitution states that "[a]ppropriation 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).

So "to fall within the purview of powers authorized by Art. V., sec. 10(1)(b)," a partial veto must approve "part" of an appropriation bill. *See C.U.B.*, 194 Wis. 2d at 505. Just five years after section 10(1)(b) was adopted, this Court recognized that as applied to numbers, the "ordinary and accepted meaning" of "part" is straightforward: "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) (quoting *Webster's New International Dictionary* at 1781 (2d ed.))).

This Court has held that a 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).

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." *C.U.B.*, 194 Wis. 2d 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.

In *C.U.B.*, Governor Thompson partially vetoed a $350,000 appropriation by striking the "3" and replacing it with a "2," reducing the appropriation to $250,000. *Id.* at 489. This Court explained that "the appropriateness of the governor's partial veto" hinged on "a determination as to whether $250,000 is 'part' of $350,000 so as to fall within the purview of powers authorized by Art. V., sec. 10(1)(b)." *Id.* at 505. Using the definition of "part" from *Henry*, the Court held that "$250,000 is 'part' of $350,000, because $250,000 is 'something less than' $350,000, and $250,000 goes 'to make up, with others … a larger number,' i.e., $350,000." *Id.* at 505–06. The Court explained that "[t]his 'common sense' reading of the word part, in terms of appropriation amounts, is what we believe is intended in sec. 10(1)(b)." *Id.* at 506.

The Court noted that the argument against this partial veto "elevates form over substance in contravention of common sense and prior case law." *Id.* at 506. The petitioners conceded the governor could reduce the $350,000 appropriation by striking any or all of the digits in it. *Id.* at 507. Given that concession, the Court concluded "it seems

absurd that he could not also reduce the sum to $250,000, which ... is clearly a 'part' of $350,000." *Id.* The Court thus *refused* to focus on "form," i.e., whether the number as partially vetoed was "composed of the digits found in the original" number. *See id.* at 507 & n.15. It instead focused on "substance," i.e., whether the number as partially vetoed was quantitatively smaller than the original number. *See id.* at 507.

B. Item Veto A-1 is unconstitutional because it lengthened a legislatively approved duration.

By striking individual digits in the Budget Bill, Governor Evers turned a two-year duration into a 402-year duration. This veto falls outside the power to approve an appropriation bill in part.

To borrow language from *C.U.B.*, "the appropriateness of" Item Veto A-1 hinges on "whether [this veto's 402-year duration] is 'part' of [the legislatively approved two-year duration] so as to fall within the purview of powers authorized by Art. V., sec. 10(1)(b)." *See C.U.B.*, 194 Wis. 2d at 505. As presented to the Governor, the Budget Bill authorized a revenue increase in the 2023–2024 and 2024–2025 school years only. In effect, this legislative decision created a two-year duration. The Governor's veto, by contrast, created a different and much longer duration of 402 years. This 402-year duration is not "less than," and thus not "part" of, the legislatively authorized two-year duration. *See id.* (quoting *Henry*, 218 Wis. at 313). Therefore, this veto does not "fall within the purview of powers authorized by Art. V., sec. 10(1)(b)." *See id.*

A contrary view "elevates form over substance in contravention of common sense and prior case law." *See id.* at 506. The number "2425" is not "part" of "2024–25" simply because "2425" introduces no new digits and uses fewer of them. A governor approves a number in part by making it smaller in substance. *See id.* at 506 n.13. Here, by *adding* 400 years to a revenue-limit increase, Governor Evers did not approve "part" of the legislatively authorized two-year increase.

As was argued in *WSBU*, the Governor here might argue that the *Henry* definition of "part" applies only to write-in vetoes. But he would be wrong for three reasons.

First, this Court adopted that definition of "part" in *Henry* and reiterated it in *Wisconsin Senate*, 144 Wis. 2d at 440. Neither *Henry* nor *Wisconsin Senate* involved a write-in veto. *See id.* at 460 n.17 (declining to decide whether write-in vetoes are constitutional).

Second, as the governor argued in *C.U.B.*, striking a number and writing in a smaller one "is no different than striking out individual digits." *C.U.B.*, 194 Wis. 2d at 503. Indeed, this Court called that distinction "absurd." *Id.* at 507. There is thus no legal or logical basis for applying the *C.U.B.* "part" analysis to write-in vetoes but not to Vanna White vetoes; those types of vetoes are substantively identical. Striking the "20" and the dash in the phrase "2024–25" is substantively no different than striking that entire phrase and writing in "2425" (or any other year, such as "2400"). The quantitative "part" analysis from *C.U.B.* applies to any of those vetoes.

Third, the *C.U.B.* Court applied only the quantitative aspects of the definition from *Henry*. The *C.U.B.* Court explained that "[a]s relevant" there, the word "part" meant "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.* at 505 (emphases added) (quoting *Henry*, 218 Wis. at 313). That definition applies when a governor strikes one or more digits in a *number*—as Governor Evers did here and as Governor Thompson did in *C.U.B.* The quantitative definition of "part" used in *C.U.B.* applies here.

In short, because Item Veto A-1 did not approve an appropriation bill "in part," it exceeds Article V, § 10(1)(b) of the Wisconsin Constitution. This Court need not go any further.[22]

[22] The partial-veto power is subject to other limitations not relevant here. For example, a partial veto must result in a germane provision and leave a "complete, entire, and workable law." *Risser*, 207 Wis. 2d at 183 (citations omitted). Those two tests are distinct from the limitation in Article V, § 10(1)(c). *See id.* They are also separate from the threshold question of whether a veto approved "part" of a bill "so as to fall within the purview of powers authorized by Art. V., sec. 10(1)(b)." *See C.U.B.*, 194 Wis. 2d at 505. Here, LeMieux and DeValk do not rely on the germaneness or workability test.

II. Item Veto A-1 violates Article V, § 10(1)(c) of the Wisconsin Constitution because it is a Vanna White veto.

Even if Item Veto A-1 falls within the partial-veto power under Article V, § 10(1)(b), it is invalid because it falls within the express limitation of that power in section 10(1)(c).

As noted, constitutional analysis begins with the text. *Randall*, 2019 WI 80, ¶9. The text here reads: "the governor may not create a new word by rejecting individual letters in the words of the enrolled bill." Wis. Const. Art. V, § 10(1)(c).

The definitions of "word" and "letter" include numbers. Those definitions apply to section 10(1)(c) in light of its plain meaning, its purpose and history, and this Court's precedents. Item Veto A-1 thus violates section 10(1)(c).

A. Numbers are words.

The "proper" approach to textual interpretation is not "literalistic." *State ex rel. Kalal v. Cir. Ct. for Dane Cnty.*, 2004 WI 58, ¶52, 271 Wis. 2d 633, 681 N.W.2d 110. Neither is it strict nor performed in a vacuum. *See State v. Kizer*, 2022 WI 58, ¶6, 403 Wis. 2d 142, 976 N.W.2d 356; *State v. Dinkins*, 2012 WI 24, ¶29, 339 Wis. 2d 78, 810 N.W.2d 787. The proper approach gives text reasonable meaning, avoiding "absurd or unreasonable results." *Kalal*, 2004 WI 58, ¶46 (citations omitted). Words take "ordinary and accepted" meanings. *See C.U.B.*, 194 Wis. 2d at 505. General terms must "be accorded their full and fair scope." *Benson v. City of Madison*, 2017 WI 65, ¶25, 376 Wis. 2d 35, 897 N.W.2d 16 (citation omitted). They may not "be arbitrarily limited." *Id.* This all is true for both statutes and constitutions. *See id.*; *see also Wisconsin Justice Initiative, Inc. v. WEC*, 2023 WI 38, ¶21, 407 Wis. 2d 87, 990 N.W.2d 122.

This Court often consults dictionaries when interpreting constitutional language. *See, e.g.*, *Clarke v. WEC*, 2023 WI 79, ¶¶16–17, 410 Wis. 2d 1, 998 N.W.2d 370. It did just that when interpreting Article V, § 10(1)(b). *See C.U.B.*, 194 Wis. 2d at 505. "On questions of orthography the current edition of Webster's new international dictionary shall be taken as the standard." Wis. Stat. § 35.17(3); *accord* Wis. Stat. § 35.17 (1989–90); Wis. Stat. § 35.17 (1987–88); *see also* LRB,

Wisconsin Bill Drafting Manual 1987–1988 § 2.01(1)(h); LRB, *Wisconsin Bill Drafting Manual* 2023–24 § 2.02(2). In 1988–1990, *Webster's Third New International Dictionary* was the current edition.

This dictionary defines "word" as a "written or printed character or combination of characters representing a spoken word." Word, *Webster's Third New International Dictionary* (1993). This meaning is widely recognized by other authoritative dictionaries, which define "word" to mean:

- "[A] written or printed character or combination of characters representing a spoken word; *especially*: any segment of written or printed discourse ordinarily appearing between spaces or between a space and a punctuation mark." Word, *Merriam-Webster's Unabridged Dictionary* (last visited June 20, 2024).
- "[T]he written or printed character, or combination of characters, expressing [an articulate sound or series of sounds communicating an idea] of discourse; as, the words on a page." Word, *Webster's Second New International Dictionary* (1934).
- "A written (engraved, printed, etc.) character or set of characters representing [an idea]." Word, *Oxford English Dictionary* (2d ed. 1989).
- "A written or printed character or combination of characters representing a spoken word." Word, *Merriam Webster's Collegiate Dictionary* (10th ed. 2002).
- "A written or printed character or combination of characters representing a spoken word." Word, *Merriam Webster's Collegiate Dictionary* (9th ed. 1983).
- "A sound or a combination of sounds, or its representation in writing or printing, that symbolizes and communicates a meaning and may consist of a single morpheme or combination of morphemes." Word, *The American Heritage Dictionary of the English Language* (3d ed. 1992).
- "A unit of language, consisting of one or more spoken sounds or their written representation, that functions as a principal

> carrier of meaning." Word, *Random House Dictionary of the English Language* (2d ed. 1987).

To best understand the scope of these definitions, the meaning of "character" is important. And this word is broad; it denotes any "graphic symbol standing for a sound, syllable, or notion, used in writing or in printing." Character, *Oxford English Dictionary* (2d ed. 1989).

Authoritative dictionaries thus show that "numbers and discrete combinations of numbers, are words." *MEA-MFT v. State*, 323 P.3d 198, 201 (Mont. 2014). Because a word is a set of characters, this "widely supported" definition "includes numbers." *Id.* For example, "13" is a set of characters that represents a combination of sounds or notions that conveys a meaning: "'13' means and is read as the word 'thirteen.'" *Id.* Both "13" and "thirteen" are words that refer to a number, just like "dog" is a word that refers to an animal. To argue "13" or "thirteen" is not a word because it is a number is like arguing "dog" is not a word because it is an animal.

Alphanumeric words also help show why numbers are words. For example, "COVID-19" is a word. True, it contains alphabetic letters, a hyphen, and Arabic numbers.[23] But its inclusion of those characters does not render "COVID-19" something other than a word; it merely renders it a specific type of word, an alphanumeric word.[24] Therefore, because "COVID-19" is a word, a governor would unlawfully create a new word by striking "9" all the same as by striking "VID."

As this example also shows, a digit is a type of letter because letters are the individual characters that compose words. Indeed, the term "letter" "often includ[es] the arabic numbers." Letter, *Webster's Third New International Dictionary* (1993). That's because a letter is "a

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[23] The alternative to Roman numbers (e.g., I, V, and X), Arabic numbers are figures like "1, 2, 3, 4, etc."—the numeric figures often used in the English language. Arabic, *Oxford English Dictionary* (2d ed. 1989).

[24] The LRB has long recognized alphanumeric words, such as "18-year-old," "4-lane highway," and "3rd-party loans." LRB, *Wisconsin Bill Drafting Manual* 1987–88 § 2.01(2). The current edition of Webster's New International Dictionary—the statutory standard on questions of spelling—also recognizes alphanumeric words, like "401(k)" and "3-D printer." *See* 401(k), 3-D printer, *Merriam-Webster's Unabridged Dictionary* (last visited July 23, 2024).

written or printed symbol employed to represent a speech sound or sounds." Letter, *Webster's New World College Dictionary* (4th ed. 2000 & 3rd ed. 1991).

These inclusive senses of "word" and "letter" are common in the law. The rules of appellate procedure, for instance, limit how many "words" a brief may contain. Wis. Stat. § 809.19(8)(c)1.–3. Only a penchant for frivolity would drive an attorney to argue he did not exceed a word limit because many of the "words" in his brief were merely "numbers." And sometimes, even, the term takes a meaning that is leaps and bounds broader than the one it takes here. For instance, in England's Defamation Act of 1952, "words" includes reference to any "pictures, visual images, gestures and other methods of signifying meaning." Word, *Words and Phrases Legally Defined* (1970). It takes the same definition in the Theatres Act of 1968. *Id*. These examples shore up what authoritative dictionaries confirm: numbers are words.

B. The Wisconsin Constitution bans a governor from striking individual digits in non-appropriation numbers to create a new number.

With the ordinary meanings of "word" and "letter" in mind, Article V, § 10(1)(c) of the Wisconsin Constitution forbids a governor from creating a new number by rejecting individual digits in a non-appropriation number. The plain meaning of this constitutional provision, its purpose and history, and cases applying it compel this view.

1. The plain meaning of Article V, § 10(1)(c) bans a governor from creating new numbers by striking individual digits.

The plain meaning of Article V, § 10(1)(c) confirms that it bans a governor from performing a Vanna White veto by striking individual digits. The text here reads: "the governor may not create a new word by rejecting individual letters in the words of the enrolled bill." Wis. Const. Art. V, § 10(1)(c). This clause restricts a governor's power to strike not only individual alphabetic letters like "A" and "B" but also individual digits like "1" and "2."

More than just widely recognized and used, the inclusive meanings of "word" and "letter" *must* apply in section 10(1)(c). "Many words have multiple dictionary definitions; the applicable definition depends upon the context in which the word is used." *Ho-Chunk Nation v. DOR*, 2009 WI 48, ¶23, 317 Wis. 2d 553, 766 N.W.2d 738 (quoting *Kalal*, 2004 WI 58, ¶49). Divorced from context, "word" can take many definitions. Within section 10(1)(c), however, only the inclusive definitions are sensible. Drafting conventions and syntax support this conclusion.

Drafting conventions. The legislature's drafting conventions indicate that Article V, § 10(1)(c) limits a governor's ability to alter both numerals and numeric words. This constitutional provision applies to "appropriation bill[s]." Wis. Const. art. V, § 10(1)(c). By definition, appropriation bills use numbers that specify dollar amounts. *See Risser*, 207 Wis. 2d at 192–93. Crucially, when section 10(1)(c) was adopted, the LRB's drafting manual required, with few exceptions, that statutes "use Arabic numerals." LRB, *Wisconsin Bill Drafting Manual* 1987–88 § 2.02(1); LRB, *Wisconsin Bill Drafting Manual* 1989–90 § 2.02. This convention prevails in large part today, too, both in legal drafting and in ordinary writing. *See* LRB, *Wisconsin Bill Drafting Manual* 2023–24 § 2.10(1)–(3); Uniform Law Commission, *Drafting Rules and Style Manual*, Rule 807 (2023); *Chicago Manual of Style* §§ 9.2, 9.3 (17th ed. 2017); William A. Sabin, *The Gregg Reference Manual* ¶401.a (9th ed. 1992). It would be unreasonable to think that when Wisconsin voters amended their constitution in 1990, they understood their new amendment's applicability to hinge on whether the legislature followed this drafting convention. The scope of a governor's executive power does not depend on a scrivener's fealty to her handbook.

A hypothetical veto illustrates this point. If Article V, § 10(1)(c) applied to numeric words but not to numerals, the validity of a partial veto could hinge on whether the legislature expressed a number by using alphabetic letters or digits. For example, under that arbitrary application, a governor *could* alter "$17 million" to read "$7 million" but could *not* alter "seventeen million dollars" to read "seven million dollars." In section 10(1)(c), the terms "letters" and "words" encompass whatever characters or sets of characters are contained in an enrolled bill.

Another legislative drafting convention helps show that Article V, § 10(1)(c)'s ban on Vanna White vetoes applies to numbers. Brevity is generally preferred in all types of writing, especially drafting statutory and constitutional language. As the LRB advises, "Omit language which serves no legal purpose. If a word has the same meaning as a phrase, use the word. … Use the shortest sentence that conveys the intended meaning. … Unnecessary language is more likely to mislead than to help." LRB, *Wisconsin Bill Drafting Manual* 1987–88 § 2.001(2). Had the drafters of Article V, § 10(1)(c) mentioned numbers explicitly, they would have contravened this wisdom because "words" includes numbers.

Syntax. The syntax of section 10(1)(c) also demands that "words" be given an inclusive meaning.[25] The constitution refers to "words *of the enrolled bill*." Wis. Const. Art. V, § 10(1)(c) (emphasis added). This phrasing—"words *of* [noun]"—cannot be ignored; it casts a particular meaning onto the term "words." To explain, when followed by a preposition (usually "in" or "of"[26]) plus a source of text (like a book, a speech, or a bill), "words" *always* embraces every character or set of characters used within the identified source of text. Put another way, when this syntactical structure (words + of + [source]) is present, "words" necessarily takes the meaning described with dictionaries above. This inescapable conclusion emerges from patterns of ordinary, everyday English usage.

To see how, take one example of ordinary English usage. Imagine someone says, "The words of Orwell's *1984* still hold great power." That sentence is sound, even though *1984* contains the famed fallacy that "2 + 2 = 5." Using ordinary English-speaking instincts, the listener understands that the speaker is not avoiding any reference to "2 + 2 = 5." Quite the opposite. The listener understands that the speaker is *including* that equation among the book's "words." The reason for this implicit understanding is: when someone refers to the words *of a*

[25] This Court uses syntax to determine plain meaning. *See, e.g.*, *S.A.M. v. Meister*, 2016 WI 22, ¶29, 367 Wis. 2d 447, 876 N.W.2d 746.

[26] The word "of," in this context, is "used as a function word to indicate the material, parts, or elements composing something or the contents held by something." Of, *Merriam-Webster's Unabridged Dictionary* (last visited July 22, 2024).

particular source, the person refers to everything written in that source, including numbers.

Imagine the term "words" were not necessarily so inclusive when used this way. Then to express the sentiment above, a person would need to say, "The words *and numbers* of *1984* still hold great power." But nobody would say that. Besides sounding stilted, this phrasing is provably outside the English mainstream. According to one widely cited electronic database of actual English usage, people do not say "words and numbers of" or similar expressions.[27] In all the billion-plus examples of English usage in that database, not once does "words and numbers of," "words and numerals of," or "words and digits of"—or any of those phrases flipped, like "numbers and words of"—appear. This database confirms what common sense suggests: the phrase "words and numbers of" is *un*ordinary. In the "words of [source]" phrasing, the term "words" necessarily captures numbers. Thus, limiting "words" in Article V, § 10(1)(c) to include only alphabetic words would require this Court to ignore a solid pattern—really, a fact—of ordinary English syntax and usage. And imposing this limit would force the legislature to use *un*ordinary English to express a sentiment it once articulated perfectly well with ordinary English alone.

Letters include numbers, too. The meaning of "words" in Article V, § 10(1)(c) indicates that the phrase "individual letters" includes individual numerals like "1" and "2." The constitution uses the phrase "individual *letters in the words* of the enrolled bill." Wis. Const. art. V, § 10(1)(c) (emphasis added). "In the words" modifies—that is, helps

[27] This database, the Corpus of Contemporary American English, is a massive, searchable collection of words both spoken and written since 1990. *See* Corpus of Contemporary American English, https://www.english-corpora.org/coca/ (last visited July 1, 2024); *Corpus of Contemporary American English (COCA)*, U. of Va. Libr., https://library.virginia.edu/data/datasources/licensed/corpus-of-contemporary-american-english-coca (last visited July 1, 2024). Its abundance of data, gathered from a galaxy of sources, allows users to home in on nuances that go unexamined in traditional authorities like dictionaries and usage manuals. *See, e.g.*, *Caesars Ent. Corp. v. Int'l Union of Operating Engineers Loc. 68 Pension Fund*, 932 F.3d 91, 95 (3d Cir. 2019); *Richards v. Cox*, 450 P.3d 1074, 1079–80 (Utah 2019); *State v. Lantis*, 447 P.3d 875, 880 (Idaho 2019); *People v. Harris*, 885 N.W.2d 832, 838–39 & nn.29–30 (Mich. 2016); *Wilson v. Safelite Grp., Inc.*, 930 F.3d 429, 440 (6th Cir. 2019) (Thapar, J., concurring).

define—the term "letters." *See* LRB, *Wisconsin Bill Drafting Manual* 2023–24 § 2.06(2)(a) (explaining that restrictive clauses "describe and define the word modified"). Under basic rules of grammar, "letters" thus refers to the characters composing "words." Because "words" includes numbers, the characters composing words include numerals. As noted above, this conception is normal: the term "letter" "often includ[es] the arabic numbers." Letter, *Webster's Third New International Dictionary* (1993). *C.U.B.* demonstrates this point. In *C.U.B.*, this Court used the term "pick-a-*letter* veto" to refer to the selective vetoing "of *digits* to form a new number," thus indicating that digits are letters. *See C.U.B.*, 194 Wis. 2d at 492 (emphases added).

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Statutes, rules, constitutions—laws of every sort—consist of more than alphabetic letters. Many laws include numbers. Indeed, Article V, § 10 itself uses numerals multiple times: section 10(1)(c) uses the numeral "2," and section 10(3) uses "6." As another example, many statutes use "standard industry classification" or SIC codes, which are "four-digit numerical codes" used to "identify the primary business of [an] establishment." *See, e.g.*, Wis. Stat. § 66.1113(1)(d)1.–21. (listing SIC codes for "tourism-related retailers," like "5441 — [c]andy, nut and confectionary stores"). When a law uses numerals, those numerals form operative and important parts of the legal text. This is especially true of *appropriation* bills, which specify sums down to the penny. Section 10(1)(c)'s reference to "words" and "letters" includes numbers. A contrary view would be acontextual, hyperliteral, and wrong.

2. The purpose and history of Article V, § 10(1)(c) confirm that a governor may not strike individual digits in a non-appropriation number to create a new number.

"The purpose of construing a constitutional amendment is to give effect to the intent of the framers and of the people who adopted it. Constitutions should be construed so as to promote the objects for which they were framed and adopted." *Dairyland Greyhound Park, Inc. v. Doyle*, 2006 WI 107, ¶19, 295 Wis. 2d 1, 719 N.W.2d 408 (citation omitted). "[A] paramount rule of constitutional construction is that the

intent of the provision 'is to be ascertained, not alone by considering the words of any part of the instrument, but by ascertaining the general purpose of the whole….'" *Id.* ¶24 (citation omitted).

When interpreting a constitutional provision, this Court considers "text and relevant history to determine the original understanding of [the] provision." *Wisconsin Justice Initiative*, 2023 WI 38, ¶60.[28] Also relevant are "precedent, context, historical practice and tradition." *Id.* ¶94 (Dallet, J., concurring). "The spirit or intention of the statute should govern over the literal or technical meaning of the language used." *State v. Morford*, 2004 WI 5, ¶44, 268 Wis. 2d 300, 674 N.W.2d 349 (citation omitted). That is, "a strict and literal interpretation" should not "defeat the purpose of the statute." *See Kalal*, 2004 WI 58, ¶56.

The purpose and history of Article V, § 10(1)(c) are thus important to its meaning. And its purpose and history show that a governor may not strike individual digits in non-appropriation numbers.

As explained above, Wisconsin voters approved a 1990 constitutional amendment that "officially eliminat[ed] the Vanna White veto." Champagne, *supra*, at 16. Many sources, including contemporary newspapers, confirm this point.[29] Indeed, "Vanna White herself sent Rep. Dave Travis, a lead author of the amendment, an autographed picture to commemorate its passage." Champagne, *supra*, at 16 n.95.

Crucially, the Vanna White or "pick-a-letter veto" refers to "the selective vetoing of letters to form a new word, or of *digits to form a new*

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[28] When determining original understanding, courts may consider the drafters' intent, the ratifiers' intent, and the public's understanding. *See* Scott Rosenow, *The Ninth Amendment: Textual Support for Marriage Freedom*, 28 Wis. J.L. Gender & Soc'y 39, 55 & n.195 (2013).

[29] *See, e.g.*, LRB, *Wisconsin Briefs*, Brief 08-4 (March 2008), at 3 (noting this "amendment effectively eliminated the 'pick-a-letter' veto"), http://lrbdigital.legis.wisconsin.gov/digital/collection/p16831coll2/id/1181/rec/22; Neil H. Shiveley, *Voters Ratify Ban on Letter Vetoes*, MILWAUKEE STATE JOURNAL, April 4, 1990, at 1 (noting this amendment "curbed" what "was dubbed the 'Vanna White veto'"); Beck, *supra* note 9, at 3A (noting this amendment "will deprive [the governor] of the so-called 'Vanna White veto'"); Pommer, *supra* note 10, at 5A (noting this amendment "eliminated" what "had been dubbed the 'Vanna White veto power'"); Associated Press, *supra* note 6, at 2B (noting this amendment would "eliminate so-called 'Vanna White' vetoes").

number." *C.U.B.*, 194 Wis. 2d at 492 (emphasis added) (citing *The Partial Veto in Wisconsin—An Update*, Informational Bulletin 87–IB–3 (Aug. 1988)). Other contemporary sources also show the Vanna White veto was understood to include striking digits to form a new number. For example, in a memo published just before the 1990 amendment was presented to voters, the LRB described the "pick-a-letter veto" as "the selective vetoing of letters to form a new word *or digits to form a new number*."[30] The LRB defined the pick-a-letter veto the same way in a memo published shortly after the amendment's first consideration.[31]

This history shows that the Vanna White veto, which the 1990 amendment abolished, was always understood to include striking individual digits to form a new number.

To be sure, the 1990 amendment "keeps intact" a governor's authority under Article V, § 10(1)(b) to "'reduce or eliminate numbers and amounts of *appropriations'* and exercise a 'partial veto resulting in a reduction in an *appropriation*.'" *C.U.B.*, 194 Wis. 2d at 501 (emphases added) (quoting *Wisconsin Senate*, 144 Wis. 2d at 457, 461). The amendment thus did not affect a governor's ability to strike individual digits in one limited sense: a governor may "*decrease an appropriation* by striking any or all of the digits in [it]." *Id.* at 503 (emphasis added) (citing *Wisconsin Senate*, 144 Wis. 2d at 457). This means a governor may still exercise a "digit veto," which (distinct from the Vanna White veto) is the removal of a "digit from an appropriation." *Id.* at 492; *see also* Champagne, *supra*, at 14–15 (discussing the digit veto, the Vanna White veto, and the 1990 amendment's effect). After all, "an important rationale of the partial veto is clearly linked to expenditure reduction and fiscal balance." *C.U.B.*, 194 Wis. 2d at 509.

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[30] LRB, *Wisconsin Briefs*, *Constitutional Amendment to Be Considered by the Wisconsin Electorate*, Brief 90-3 (April 3, 1990), at 5, https://libraryguides.law.marquette.edu/WI_constitutions_history_and_revisions/lrb_materials.

[31] LRB, *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.

An alternate version of what became the 1990 amendment confirms that a governor may not strike individual digits in non-appropriation numbers. "Several different amendments were put forth by legislative leaders prior to the 1990 referendum." *C.U.B.*, 194 Wis. 2d at 501 n.11. One of those proposed amendments stated, "In approving an appropriation bill in part, the governor: 1) *may reject individual digits in any number representing an appropriation* but may not increase the among of the appropriation; 2) may not reject an appropriation amount shown in the enrolled bill and write in a different amount; and 3) *may not reject individual letters* in the words of the enrolled bill." S.J.R. 75, 1987–88 Wis. Legis. (1988), at 2 (emphases added); *see also C.U.B.*, 194 Wis. 2d at 501 n.11. This proposed amendment thus shows that the legislature recognized the difference between a "digit veto" (which reduces an appropriation) and a pick-a-letter veto (which does not). Relatedly, it also shows that the legislature understood that the pick-a-letter veto included the striking of individual digits—because otherwise there would have been no reason to explicitly preserve the power to strike digits from appropriations.

In short, Article V, § 10(1)(c) forbids striking individual letters or digits except when reducing an appropriation. Again, a "digit veto" (which reduces an appropriation) is distinct from a Vanna White veto that selectively deletes "digits to form a new number." *C.U.B.*, 194 Wis. 2d at 492. As one contemporary newspaper confirms, the 1990 amendment "curbed the executive's power to cross out letters in legislation to create new words, *new numbers* and new meanings," but it did not affect the "digit vetoes" Governor Lucey had created.[32] The history and purpose of the 1990 amendment show that section 10(1)(c) forbids the Vanna White veto of individual alphabetic letters or digits.

[32] Shiveley, *supra* note 28, at 1, 10 (emphasis added).

3. This Court's precedents confirm that Article V, § 10(1)(c) bans selective striking of individual digits in non-appropriation numbers.

This Court's prior decisions also confirm that Article V, § 10(1)(c) bans the selective striking of digits to form a new non-appropriation number.[33]

At oral argument in *C.U.B.*, counsel for the governor recognized that the 1990 amendment banned a governor from striking any individual digit unless that digit is part of an appropriation number. And this Court agreed. During that oral argument, counsel for the governor said, "If you allow striking outside of an appropriation number you're going to run into problems very quickly with the 1990 amendment." *Risser*, 207 Wis. 2d at 188 (quoting oral argument transcript from *C.U.B.*). "For example," the governor's counsel explained, "if the legislature passes a bill that says 'something shall happen in 15 days' and the governor can cross that out and write in the number '10,' we have created a problem because if the legislature had written out in script 'fifteen' under the new constitutional amendment he could not cross out the letters to get to 'ten.'" *Id.* (quoting oral argument transcript from *C.U.B.*).

Crucially, this Court in *C.U.B.* "adopt[ed] the limited rule proposed by counsel for the Governor," thus "expressly draw[ing] a distinction between appropriation amounts and other parts of appropriation bills, allowing a write-in veto of the former but not the latter." *Risser*, 207 Wis. 2d at 188 (discussing *C.U.B.*). Although the governor conceded that he may not "partially veto the word 'year' and write in 'ten days,'" this Court felt "compelled ... to explain why it is not a valid concern for the future." *C.U.B.*, 194 Wis. 2d at 504. The Court *rejected* the idea that a governor may use a partial veto to "create new entities, dates, durations, percentages, distances and more." *Id.* at 510 n.18. To extend the partial-veto power to those concepts, "this court would have to overrule the

[33] This Court may consider precedent when interpreting a constitutional provision. *See Wisconsin Justice Initiative*, 2023 WI 38, ¶94 (Dallet, J., concurring).

present decision's limitation to reduce only monetary appropriations." *Id.*

Two years after *C.U.B.*, this Court in *Risser* confirmed that the write-in veto is limited to reducing appropriations. The petitioners in *Risser* challenged a write-in veto that reduced a limit on revenue bonds. *Risser*, 207 Wis. 2d at 185. The governor argued "that the write-in veto applies to any monetary figure in an appropriation bill and is not limited to appropriation amounts." *Id.* at 186. This Court disagreed. It explained that "the *C.U.B.* court sanctioned the write-in veto but limited its applicability to lowering appropriation amounts and only appropriation amounts." *Id.* at 190. It noted that "in *C.U.B.* the court relied on the oral argument in which the Governor's counsel focused explicitly on the critical necessity to limit the write-in veto power of a governor to appropriation amounts." *Id.* at 187. As noted, this limitation stems from the 1990 amendment to Article V, § 10. *Id.* at 188.

The Court also cited the governor's budgetary discretion—one of the main rationales for the partial-veto power—as a reason for limiting the write-in veto to appropriation amounts. It explained that a "rationale for the partial veto" is "the governor's significant constitutional role in the budget process." *Id.* at 197. "The budgetary control rationale is consistent with limiting the write-in power of the governor to the reduction of appropriation amounts." *Id.* "A write-in veto power which extends beyond the reduction of appropriation amounts intrudes too far into the constitutional grant of legislative power vested in the Senate and the Assembly." *Id.*[34]

Also crucially, when limiting the write-in veto to appropriation numbers, this Court twice *rejected* any distinction between numerals and numeric words. In *C.U.B.*, this Court noted that this limit on the write-in veto power applies regardless of whether an appropriation amount is "written out in words or specified with numerals." *C.U.B.*, 194 Wis. 2d at 506 n.13. In rejecting any distinction between numerals and numeric words, the Court explained that "what matters is the distinction between

[34] Like the digit veto (which strikes a digit from an appropriation number), the write-in veto is a "subset of the partial veto" power under Article V, § 10(1)(b). *Risser*, 207 Wis. 2d at 180–81.

an appropriation sum and a non-appropriation sum." *Id.* The Court reiterated those points in *Risser*, noting that "[i]t is of no import whether the appropriation amount is expressed in numerals or numeric words." *Risser*, 207 Wis. 2d at 203 n.19.

Although *C.U.B.* and *Risser* involved write-in vetoes, the reasoning in those cases applies to a veto that strikes one or more digits from a number. The *C.U.B.* Court and the governor rejected any distinction between a digit veto and a write-in veto of an appropriation amount. The governor argued "that striking numerals in an appropriation and writing in other numerals to create a smaller dollar figure is no different than striking out individual digits to create a smaller dollar figure." *C.U.B.*, 194 Wis. 2d at 503. This Court *agreed* with that argument. It rejected as "absurd" and "arbitrar[y]" any distinction between striking one or more digits from an appropriation number and striking the same to write in a smaller number. *Id.* at 507 & n.14. That distinction "elevates form over substance in contravention of common sense and prior case law." *Id.* at 507.

The rules of logic thus confirm that *C.U.B.* and *Risser* forbid a governor from striking a digit in a non-appropriation number. The following syllogism shows why:

- If a governor may strike a digit from a number, then he or she may also write in a smaller number. *See C.U.B.*, 194 Wis. 2d at 506–07 & nn.14–15.
- A governor may not write in a smaller non-appropriation number. *Risser*, 207 Wis. 2d at 181.
- Therefore, a governor may not strike a digit from a non-appropriation number.[35]

Hypothetical vetoes show why that conclusion is sound. For example, even the governor in *Risser* conceded that he could *not* write in "'37 counties' in place of '72 counties.'" *Risser*, 207 Wis. 2d at 186. By the same logic, a governor could not strike "72" and write in "7" or achieve

[35] This syllogism is an application of *modus tollens*. *See Modus ponens and modus tollens*, Encyclopedia Britannica (last accessed June 24, 2024), https://www.britannica.com/topic/modus-ponens.

the same result by striking just the "2." All these hypothetical vetoes would violate Article V, § 10(1)(c).

This point is further demonstrated by the hypothetical veto mentioned during oral argument in *C.U.B.* by the governor's counsel. There, the governor's counsel acknowledged that Article V, § 10(1)(c) would forbid a governor from striking "15" in the phrase "15 days" and writing in "10." *Risser*, 207 Wis. 2d at 188 (discussing *C.U.B.*). Under that logic, a governor also could not strike "15" and write in "5" or achieve the same result by striking just the "1."

The disputed veto in *Risser* also shows why writing in a number is no different from striking digits. In *Risser*, the governor reduced a figure by $40 million by striking "$1,123,638,100" and writing in "$1,083,638,100." *Risser*, 207 Wis. 2d at 185. Because this Court held that veto unconstitutional, it would be arbitrary to think the governor could have instead struck one or more digits without writing in a new number—a move that would have reduced the same number by at least $1 billion. *See C.U.B.*, 194 Wis. 2d at 507 n.14 (recognizing the "arbitrariness" of allowing a governor to strike digits in a number not subject to a write-in veto).

In short, *C.U.B.* and *Risser* confirm that the 1990 amendment to Article V, § 10 bars a governor from striking individual digits in non-appropriation numbers. This limitation applies if a number is written as a numeral or a numeric word. The 1990 amendment preserved a governor's ability to strike digits *from appropriation amounts*—not from other numbers. The governor's counsel advanced this view in *C.U.B.*, and this Court agreed.

* * * * *

Article V, § 10(1)(c) bans a governor from striking individual characters in non-appropriation numbers. This provision eliminated the Vanna White veto, which includes striking an individual digit to form a new number. This Court's prior decisions confirm that section 10(1)(c) allows a governor to strike individual digits *only* in *appropriation* numbers—and this limitation applies if the legislature expresses a number with numerals or as a numeric word. The ordinary definitions of

"word" and "letter" also support this view. A contrary conclusion would afford a governor unlimited power to alter numerals, which form critical pieces of any bill, especially appropriation bills.

C. Item Veto A-1 violates Article V, § 10(1)(c) because it struck individual digits to create a new year.

The plain meaning, purpose, and history of Article V, § 10(1)(c)—plus this Court's precedents—show that this clause bans a governor from striking individual digits in non-appropriation numbers. This clause *allows* a governor to strike one or more digits to *reduce an appropriation* but otherwise bans striking individual digits to form new numbers, like a new year. That principle, easily applied here, renders Item Veto A-1 unconstitutional.

Again, the Governor struck individual digits to form a new year: he struck the "20" and the dash in "2024–25" to make "2425." *See supra* at 16–18. This alteration is a "pick-a-letter veto" because it involved "the selective vetoing ... of digits to form a new number." *See C.U.B.*, 194 Wis. 2d at 492. Wisconsin voters adopted Article V, § 10(1)(c) to ban the pick-a-letter veto. *See supra* at 31–33.

This veto did not strike a "digit from an appropriation," so it is *not* a permissible "digit veto." *See C.U.B.*, 194 Wis. 2d at 492. "[A]n appropriation involves an expenditure or setting aside of public funds for a particular purpose." *Risser*, 207 Wis. 2d at 193. Provisions that authorize revenue raising are *not* appropriations. *See id.* at 193. Indeed, "revenue raising and appropriation are more nearly antonyms than synonyms." *Id.*

Item Veto A-1 authorizes the raising of revenue; it does not reduce an appropriation. Far from appropriating any funds, the language the Governor struck spoke to school districts' revenue limits. *See* 2023 Wis. Act 19, §§ 402–404, 408; *see also supra* at 16–18. And in effect, Item Veto A-1 allows school district to raise their revenue limits by $325 per pupil—for 400 years and without voter approval. *See supra* at 15–18. Because an increase in revenue is not a reduction of an appropriation, Item Veto A-1 is unconstitutional.

Relatedly, because Article V, § 10(1)(c) forbids a governor from striking individual digits in non-appropriation numbers, a governor may not use a partial veto to "create new entities, dates, durations, percentages, distances and more." *See C.U.B.*, 194 Wis. 2d at 510 n.18. Even "conceptual 'reduction[s]'" of "dates" and "times" amount to impermissible partial vetoes. *See id.* at 509. Here, Item Veto A-1 turned one date into another and transformed a two-year increase of school districts' revenue limits into a 402-year increase. Using the partial-veto power to create new dates and durations is unconstitutional. *See id.* at 504–10 & n.18.

A contrary view would elevate "form over substance." *See id.* at 507. A hypothetical veto illustrates why. In *Risser*, this Court held that a governor may *not* write in "new numbers except when the part disapproved is a monetary figure which expresses an appropriation amount in an appropriation bill and the inserted number is a lesser appropriation amount." *Risser*, 207 Wis. 2d at 203. Governor Evers would have violated that holding had he struck the entire phrase "2024–25" and written in "2425." Nothing distinguishes that hypothetical veto from Item Veto A-1.

In sum, this Court should declare Item Veto A-1 invalid because Article V, § 10(1)(c) of the Wisconsin Constitution prohibits it. The Governor struck individual digits to create a new year and to authorize increased government revenue. Section 10(1)(c) forbids this kind of veto.

III. This Court should declare 2023 Wisconsin Act 19 to be in effect without Item Veto A-1, or it should remand the matter to the Governor.

Because Item Veto A-1 is unconstitutional, this Court must determine the remedy. The proper remedy is to declare 2023 Wisconsin Act 19 to be in effect without Item Veto A-1.[36] Alternatively, this Court may remand to the Governor.

When invalidating a partial veto, a court does not "speculat[e] whether the Governor would or would not have signed the act had he

[36] This Court has broad power to enter declaratory judgment in an original action. *See Clarke*, 2023 WI 79, ¶53.

correctly determined the extent of his powers partially to veto it." *State ex rel. Finnegan v. Dammann*, 220 Wis. 143, 150, 264 N.W. 622 (1936). "If a governor's affirmative approval is not necessary for a bill to become law, the parts of the bill vetoed become law as though there had not been an invalid partial veto." 80 Wis. Op. Att'y Gen. 327, 330 (1992) (citing *Finnegan*, 220 Wis. at 149). "The Wisconsin Constitution requires the Governor's affirmative approval for a bill to become a law only if the Legislature's adjournment prevents the governor from returning the bill to the Legislature…." *Id.* at 330–31 (citing Wis. Const. Art. V, § 10(3)).

When a legislature adjourns within the meaning of Article V, § 10, "it ceases to exist, and consequently has no further opportunity to exercise its constitutional right to reconsider a bill disapproved by the Governor and to pass it over his veto. Its officers are no longer officers. Their tenure of office ends at the moment of adjournment." *State ex rel. Sullivan v. Dammann*, 221 Wis. 551, 559, 267 N.W. 433 (1936). The legislature has only "one biennial session." *Id.* at 562. Article V, § 10 refers to the "final" adjournment of that session. *See id.* at 560.

The proper remedy here is thus to declare 2023 Wisconsin Act 19 to be in effect without Item Veto A-1. The legislature still has not adjourned its 2023 legislative session for purposes of Article V, § 10. The biennial session of the 2023 Wisconsin Legislature "ends at noon on Monday, January 6, 2025." S.J.R. 1, 2023–24 Wis. Legis., (2023), § 1(1).[37] Under Article V, § 10(3), Act 19 thus did not need the Governor's approval to become law. Because Item Veto A-1 is invalid, the relevant portions of Act 19 are in effect "as if they had not been vetoed." *See* 80 Wis. Op. Att'y Gen. at 331 (quoting *State ex rel. Sundby v. Adamany*, 71 Wis. 2d 118, 125, 237 N.W.2d 910 (1976)).

Alternatively, this Court may remand the matter to the Governor so he can reconsider sections 402, 403, 404, and 408 of Act 19 consistent with this Court's opinion.

[37] https://docs.legis.wisconsin.gov/2023/related/enrolled/sjr1.

CONCLUSION

This Court should declare the following: (1) Article V, § 10(1)(b) of the Wisconsin Constitution does not authorize a governor to strike text in an enrolled bill to create a larger duration than the one approved by the legislature; (2) Article V, § 10(1)(c) of the Wisconsin Constitution forbids a governor from striking individual digits in an enrolled bill to create a new year; and (3) Item Veto A-1 of 2023 Wisconsin Act 19 is unconstitutional and invalid.

Dated this 23rd day of July 2024.

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FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b), (bm) and (c) for a brief produced with a proportional serif font. The length of the relevant portions of this brief is 10,910 words.

Dated this 23rd day of July 2024.

Electronically signed by

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CERTIFICATE OF E-FILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Supreme Court and Court of Appeals Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 23rd day of July 2024.

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