STATE OF WISCONSIN : CIRCUIT COURT : DANE COUNTY

WISCONSIN JUSTICE INITIATIVE, INC.

Et. al, CASE NO.

Plaintiffs,

v.

WISCONSIN ELECTIONS COMMISSION

Et. al,

Defendants.

BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR A TEMPORARY INJUNCTION

INTRODUCTION

Plaintiffs Wisconsin Justice Initiative, Inc., Jacqueline E. Boynton, Jerome F. Buting, Craig R. Johnson, and Fred A. Risser, by their counsel, have moved this Court pursuant to Wis. Stats. §813.02, for a temporary injunction to restrain the defendants Wisconsin Elections Commission, Commission Chair Dean Knudson, Secretary of State Douglas LaFollette, and Attorney General Josh Kaul from placing upon the April 7, 2020 ballot a question proposing changes to the Wisconsin Constitution devised by the 2019 Wisconsin State Legislature, and to restrain them from tabulating or certifying votes on that question, pending determination of the merits of this action. The proposed amendment, which provides certain constitutional rights to crime victims, is informally known as "Marsy's Law," and was the brainchild and personal cause of billionaire and now convicted drug felon Henry Nicholas III. The amendment and the question to appear on the ballot are contained in 2019 Enrolled Senate Joint Resolution 3, which is identical to 2019 Senate Joint Resolution 2 (Complaint, Exhibit A). The Complaint alleges

that the question does not meet the requirements of Wisconsin Constitution Article XII, section 1, and that a temporary injunction is needed to preserve the status quo pending this litigation and to avoid irreparable injury that would occur if the proposed amendment is put before the public in the form of an improper and insufficient question. That Question reads as follows:

> QUESTION 1: "Additional rights of crime victims. Shall section 9m of article I of the constitution, which gives certain rights to crime victims, be amended to give crime victims additional rights, to require that the rights of crime victims be protected with equal force to the protections afforded the accused while leaving the federal constitutional rights of the accused intact, and to allow crime victims to enforce their rights in court?"

The proposed amendment is deceptively sweeping. The simple ballot question masks a complicated bill twice as long as the U.S. Bill of Rights. It adds to the Constitution 16 new or expanded "victims' rights" in criminal cases that will create entirely new categories of "victims" and would add duties and requirements for already overburdened law enforcement, state prosecutors, the courts and the state prison system.

Question 1 informs the public that it amends the constitution to give crime victims additional rights, but it fails to inform the voting public 1) regarding the nature of those expanded constitutional rights; 2) that the amendment also expands the constitutional definition of crime victim; and 3) that it infringes upon an accused's current Wisconsin constitutional rights and either amends, supersedes, or conflicts with Wisconsin Constitution Article I, Sections 7 and 8, and 4) conflicts with U.S. Constitution Amendments V, VI, and XIV. In addition, while Question 1 states that the amendment leaves "the federal constitutional rights of the accused intact," this misstates the actual language of the amendment and misleads the public. Each of these failures violates requirements that the ballot question regarding a proposed amendment provide a full and fair summary of the proposed change to the Constitution and not mislead the public. In addition, the proposed changes to the Constitution represent more than one

amendment, and thus, separate questions are required in order "that the people may vote for or against such amendments separately." Wis. Const. Article XII, section 1.

Submission for a vote under these circumstances would be arbitrary and unlawful. Allowing the defendants to proceed with steps to place the proposed amendment on the April 2020 ballot with Question 1 would be furthering an invalid and useless act, misinforming the voting public, and burdening taxpayers with the costs of conducting and tabulating an invalid ballot question, not to mention the likely costs of litigating the amendment's validity if it were to be approved by the public.

Plaintiffs' Motion for a Temporary Injunction and this supporting Brief are based on the language of 2019 Enrolled Senate Joint Resolution 3 and on the Affidavits of Jacqueline E. Boynton, Jerome F. Buting, Craig R. Johnson, and Gretchen Schuldt, filed with this Brief.

QUESTION 1 IS LEGALLY INSUFFICIENT BECAUSE IT FAILS TO INFORM THE VOTING PUBLIC OF THE NATURE OF THE EXPANDED CONSTITUTIONAL RIGHTS THAT IT CREATES AND TO INFORM THEM THAT THE PROPOSED AMENDMENT EXPANDS THE CONSTITUTIONAL DEFINITION OF CRIME VICTIM

Article 1, section 9m of the Wisconsin Constitution, the current victims' rights section, was created by constitutional amendment in 1993. It states in part, "**This state shall treat crime victims, as defined by law**, with fairness, dignity and respect for their privacy." It goes on to require the state to ensure that crime victims have a variety of specified privileges and protections. At the time of the 1993 amendment, "victim" as defined in Wis. Stat. §950.02, the victims' rights chapter, meant "a person against whom a crime has been committed." The currently proposed amendment includes multiple new or expanded constitutional rights for crime victims and alleged crime victims which do not currently exist in Article 1, section 9m.

The proposed amendment includes 16 categories of new or expanded constitutional rights for crime victims and alleged crime victims, which new or expanded rights do not exist in article

1, section 9m as it exists today. In addition, a victim is entitled to seek enforcement of each of these rights at any time (either personally, by an attorney or by other lawful representative) in any circuit court or other competent authority, which are required to act promptly on such request. Victims may obtain review of all adverse decisions concerning their rights as victims by filing petitions for supervisory writ in the court of appeals and supreme court. While stating that the amendment is not intended to afford party status in a proceeding to any victim, the constitutional rights which it guarantees amount to making a victim a party in all but name.

This amendment erodes the core foundation of the criminal justice system: that a prosecution is between the state and an accused citizen who is presumed to be innocent until proven guilty, not a contest between two private citizens. Thus, the prosecutor's duty is not simply to be an advocate for convicting everyone accused of crime and obtaining the maximum possible sentence. Rather, as our Supreme Court has explained in *State v. Conger*, 2010 WI 56, P19, 325 Wis. 2d 664, 664, 797 N.W. 2d 341, 349 (2010):

> Indeed, the prosecutor's role has been called "'quasi-judicial' in the sense that it is his or her duty to administer justice rather than simply obtain convictions." *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, P28, 271 Wis. 2d 633, 681 N.W.2d 110.

The amendment gives victims an undefined and unlimited right to privacy, which the state is required to protect by law "in a manner no less vigorous than the protections afforded to the accused." It creates a constitutional right for victims to refuse an interview, deposition, or other discovery request made by the accused or any person acting on behalf of the accused. It gives victims a constitutional right to confer with the attorney for the government and to be heard in any proceeding. It gives numerous other constitutional rights to victims, including an unlimited right to seek court review of any adverse decision relating to those rights at each and every stage in the criminal justice system. While denying that it makes victims a "party" to any

proceeding, it effectively transforms the criminal justice system into a three-way contest, between 1) the prosecutor, whose duty under the law on behalf of the state is to obtain justice, not simply to obtain convictions in all cases; 2) the accused, who seeks to demonstrate his or her innocence or to obtain the least punishment for an offense; and 3) alleged victim(s), who may be seeking justice, or may be motivated by vengeance, revenge, a desire for money, or simple animosity for someone they rightly or wrongly believe committed a crime against them. Occasionally, a "victim" may even seek to harm someone they knowingly falsely accuse of a crime. Question 1 fails to inform the public that it entails such a radical transformation of the state's criminal justice system.

The proposed amendment also amends and expands the definition of crime victim to include many persons who were not previously considered crime victims under the Wisconsin Constitution. It does so in part by assigning the status of crime victim at the time of the person's "victimization." It also expands the constitutional definition of crime victim to include categories of representatives for victims who are deceased or physically or emotionally unable to exercise their rights, including in addition to a variety of relatives, any person who resided with a deceased victim at the time of death. This would include, among others, unrelated college roommates or apartment mates, and unrelated in-home caretakers if they were living in the deceased victim's home. However, Question 1 does not mention, or even suggest, that the amendment being proposed expands the current Wisconsin Constitution definition of crime victim.

In *State ex rel. Thomson v. Zimmerman*, 264 Wis. 644, 60 N.W. 2d 416, 423 (1953), quoting *State ex rel. Ekern v. Zimmerman*, 187 Wis. 180, 204 N.W. 803 (1925), the Wisconsin Supreme Court addressed the consequences of putting a proposed constitutional amendment to

the voters with an inadequate ballot question, and described the requirements for a valid amendment ballot question as follows:

> Had the Legislature in the present case prescribe[sic] the form of submission in a manner which would have failed to present the real question, or had they, by error or mistake, presented an entirely different question, no claim could be made that the proposed amendment would have been validly enacted. In other words, even if the form is prescribed by the Legislature, it must reasonably, intelligently, and fairly comprise or have reference to every essential of the amendment. . . ."[T]he principal and essential criterion consists in a submission of a question or a form which has for its object and purpose an intelligent and comprehensive submission to the people, so that the latter may be fully informed on the subject upon which they are required to exercise a franchise."

In *Thomson*, the constitutional amendment made changes to the way in which legislative districts were to be formed, by adding area as a factor to be considered along with population in forming senate districts, by dropping a then existing exclusion of Indians and military in calculating population for districting, and by dropping a then existing prohibition against dividing assembly districts when forming senate districts. The ballot question on the proposed amendment read as follows: "Shall sections 3, 4 and 5 of article IV of the constitution be amended so that the legislature shall apportion, along town, village or ward lines, the senate districts on the basis of area and population and the assembly districts according to population?" 60 N.W. 2d at 651. It was argued, in support of the validity of the amendment, that the expansion of the definition of the persons to be counted in the apportionment of population was merely a detail related to the subject matter of the amendment, changing how senate districts would be formed. The Supreme Court rejected this view, holding:

> A change of almost equal importance is that which revokes the provision of art. IV, sec. 3, Const., excluding untaxed Indians and the military from those who are to be counted in determining the representation to which a district is entitled, who, though they are not residents in the sense of being eligible to vote, in the case of the military see art. III, sec. 5, Const., are nevertheless to be added by the proposed amendment when a district's representation in the legislature is calculated. We consider that a constitutional change in the individuals to be

> counted is not a detail of a main purpose to consider area in senate districts but is a separate matter which must be submitted as a separate amendment.

60 N.W. 2d at 657.

Here, contrary to the requirements for amending the Wisconsin Constitution as set forth in *Thomson* and in *Ekern*, Question 1 does not inform the voting public of anything regarding the nature or scope of the numerous constitutional rights it would enact for victims of crime. Nor does it have reference to expanding the constitutional definition of crime victim. It is not comprehensive, as it does not even mention that the amendment expands the definition of "victim;" which it does in a way that disregards its plain or common meaning. *Ekern*, 204 N.W. at 808, provides important guidance here regarding the public understanding of words used in a Constitution:

> Words or terms used in a Constitution, being dependent on ratification by the people, must be understood in the sense most obvious to the common understanding at the time of its adoption, although a different rule might be applied in interpreting statutes and acts of the legislature. . . .[I]t is presumed that words appearing in a Constitution have been used according to their plain, natural, and usual significance and import, and the courts are not at liberty to disregard the plain meaning of words of a Constitution in order to search for some other conjectured intent.

Clearly, Question 1 does not fully inform the voting public on the proposed amendment upon which they are to vote. As a result, if it is put to the voters using Question 1, it is clear that "no claim could be made that the proposed amendment would have been validly enacted." In fact, *Thomson* requires that informing the voting public that the amendment expanded the Constitutional definition of crime victim is not only sufficiently important to be included in the ballot question, but that it is sufficiently important and distinct from expanding the rights of crime victims to require a separate ballot question on separate amendments, as argued in a later section of this brief.

Submission for a vote under these circumstances would be arbitrary and unlawful. Allowing the defendants to proceed with steps to place the proposed amendment on the April 2020 ballot with Question 1 would be furthering an invalid and useless act, misinforming the voting public, and burdening taxpayers with the costs of conducting and tabulating an invalid ballot question, not to mention the likely costs of litigating the amendment's validity if it were to be approved by the public.

QUESTION 1 IS LEGALLY INSUFFICIENT BECAUSE IT FAILS TO INFORM THE VOTING PUBLIC THAT THE PROPOSED AMENDMENT CONFLICTS WITH OR AMENDS WIS. CONSTITUTION ART. I, SECTIONS 7 AND 8, AND CONFLICTS WITH U.S. CONST. AMENDS. V, VI, AND XIV

The proposed amendment states at Section 5 that it "is not intended and may not be interpreted to supersede a defendant's federal constitutional rights." However, the amendment does not state that the proposed victims' rights yield to a federal constitutional right if the two are in conflict. In fact, the proposed amendment states at Section 1 that victims' rights shall "be protected by law in a manner no less vigorous than the protections afforded to the accused." The proposed amendment contains no language defining or limiting its impact on the Wisconsin Constitution's current protections of the rights of persons accused of crimes. Nothing in the amendment states that it does not amend, supersede or override an accused's current Wisconsin constitutional rights, nor does it state that the proposed victim's rights yield to an accused's current Wisconsin constitutional rights.

The plain language of the amendment, together with Plaintiffs' affidavits demonstrate that the proposed amendment on its face infringes an accused's current rights under the U.S. and Wisconsin Constitutions in several ways, including but not limited to:

a) Infringing on the presumption of innocence and right of an accused to a fair trial and due process by imposing a constitutional determination that a crime has occurred and giving rights to an alleged "crime victim" prior to a conviction having been determined;

b) Infringing on the right of an accused to a fair trial and due process by requiring that a court allow an alleged victim to attend all court proceedings, **even if sequestration is necessary for a fair trial**;

c) Infringing on the right of an accused to a bail hearing, a right to release without bail in appropriate circumstances, and a right a speedy trial by permitting delays if an alleged victim insists on attending all proceedings but is unavailable on dates and at times that otherwise would be set by the court, if required notices or rights of an alleged victim to file petitions for supervisory writs in the appellate courts delay trial proceedings, or if an alleged victim insists on frequent conferences with the attorney for the government during court proceedings; and

d) Infringing on the rights of an accused to a fair trial, to be informed of the nature and cause of the accusation, to confront witnesses, to have compulsory process for obtaining witnesses in his favor, and to be provided with exculpatory evidence if an alleged crime victim refuses an interview, deposition, or other discovery request made by the accused or his or her representative.

e) Infringing on an accused person's right to a public trial as guaranteed by the Wisconsin Constitution as a result of victim's right to "privacy" and the right "to be treated with ...sensitivity."

The proposed amendment thus amends, conflicts with, or violates Wisconsin Constitution article I, sections 7 and 8 and conflicts with or violates United States Constitution Amendments V, VI, and XIV. The affidavits of Plaintiffs Buting and Johnson demonstrate how their

representation of accused clients and the rights of those accused clients will likely be severely impacted by the conflict between the proposed amendment and the rights of an accused as guaranteed by the Wisconsin and U.S. Constitutions. In addition, the proposed amendment's conflicts with the rights of the accused under the Wisconsin and U.S. Constitutions will likely result in extensive litigation that will burden an already overburdened criminal justice system, delay court proceedings, and incur large costs to counties, to the State of Wisconsin, to persons accused of crimes, and to victims themselves.

The weight of those Affidavits is buttressed by the reasoning of the Commonwealth Court of Pennsylvania in a recent Memorandum Opinion in *League of Women Voters of Pennsylvania v. Kathy Boockvar*, No. 578 M.D. 2019, 2019 Pa. Commw. Unpub LEXIS 623 (October 30, 2019), affirmed by the Supreme Court of Pennsylvania on November 4, 2019, 2019 Pa. LEXIS 6171, in which the court granted a Preliminary Injunction enjoining Pennsylvania state officials from tabulating and certifying votes in the November 2019 General Election relating to a ballot question regarding a proposed amendment of the Pennsylvania Constitution to enact a version of Marsy's law largely similar to that proposed for Wisconsin in 2019 Enrolled Joint Senate Resolution 3. (Copies attached as Ex. A to the Affidavit of Dennis M Grzezinski.)

While the language of the Pennsylvania amendment, and the standards for constitutional law amendments in Pennsylvania are not identical to those in Wisconsin, the Pennsylvania court's analysis is noteworthy in that it found that the "Proposed Amendment, by its plain language will immediately, profoundly, and irreparably impact individuals who are accused of crimes, the criminal justice system as a whole, and most likely victims as well." *Ibid.*, Opinion, p. 15. Further, "it may amend multiple existing constitutional articles and sections across multiple subject matters. In specific, it proposes changes to multiple enumerated constitutional

rights of the accused – including the right to a speedy trial, the right to confront witnesses, . . . the right to pretrial release, the right to post-conviction relief, and the right to appeal – as well as changes to the public's right of access to court proceedings." *Ibid.*, Opinion p. 29. The court's analysis concluded:

> For the purposes of this preliminary injunction only, Petitioners have persuaded the Court that the ballot question fails to fairly, adequately and clearly inform the electorate of the Proposed Amendment." *Ibid*., Opinion p 36.

While the Pennsylvania court decision is not authoritative precedent here, its reasoning is informative, instructive, and convincing. Here, Plaintiffs submit, Question 1 fails to inform voters that the proposed amendment will either directly conflict with or in effect amend an accused's rights under the current Wisconsin Constitution. The Question fails to mention or make any reference to the subject of an accused's rights under the Wisconsin Constitution. That failure, like the failure to inform the voting public that the amendment expands the definition of crime victim, renders any election based on Question 1 invalid and void under the requirements of *Thomson* and *Ekern* as set forth in the previous section of this brief.

Moreover, Question 1 states to voters that the proposed amendment gives certain rights to crime victims "while leaving the federal constitutional rights of the accused intact." Instead, as demonstrated above, the proposed amendment will likely infringe upon an accused's rights under the U.S. Constitution. Thus, the question is not merely insufficient by omission, but is misleading and fatally defective, by misstating the contents and impact of the proposed amendment. The Court in *Thomson* was presented with such a defect, and dealt with it as follows:

> The ballot question is expressed in mandatory language: if the amendment is ratified the legislature shall apportion senate districts along town, etc., lines; yet the actual amendment, Joint Resolution No. 9, has no such mandate at all and under it the legislature is uncontrolled except that the territory enclosed shall be

> 'contiguous' and 'convenient'. . . .It does not lie in our mouths to say that that which the people think of sufficient importance to put in their constitution is in fact so unimportant that misinformation concerning it printed on the very ballot to be cast on the subject, may be disregarded. **If the subject is important enough to be mentioned on the ballot it is so important that it must be mentioned in accord with the fact.** The question as actually submitted did not present the real question but by error or mistake presented an entirely different one and, therefore, as stated by Mr. Justice Doerfler in *State ex rel. Ekern v. Zimmerman, supra*, no claim can be made that the proposed amendment is validly enacted.

60 N.W. 2d at 660 (Emphasis supplied)

Here, Question 1 demonstrates that the relationship of the proposed amendment to the federal constitutional rights of the accused is important enough to be mentioned on the ballot, but the question misstates the facts. Thus, it fails to present the real question before the voters; fails to reasonably, intelligently, and fairly comprise or reference every essential of the amendment; and fails to fully inform the voting pubic of the subject upon which they are required to exercise a franchise.

Submission for a vote under these circumstances would be arbitrary and unlawful. Allowing the defendants to proceed with steps to place the proposed amendment on the April 2020 ballot with Question 1 would be furthering an invalid and useless act, misinforming the voting public, and burdening taxpayers with the costs of conducting and tabulating an invalid ballot question, not to mention the likely costs of litigating the amendment's validity if it were to be approved by the public.

QUESTION 1 IS LEGALLY INSUFFICIENT BECAUSE THE PROPOSED AMENDMENT CONTAINS MORE THAN ONE SUBJECT, REQUIRING SEPARATE BALLOT QUESTIONS

The proposed constitutional amendment in 2019 Enrolled Joint Resolution 3 amends and expands the rights of crime victims. It also amends and expands the definition of crime victims to include many persons who were not previously constitutionally considered to be crime

victims. In *Thomson*, the ballot question addressed the subject of the proposed amendment, which was the method to be used in forming senate districts. In addition to adding area as a factor to be used in senate districting, the amendment included changes which expanded the categories of persons to be included in the population to be allocated among districts, by doing away with the exclusion of Indians and military persons. *Thomson* held that these were distinct and separate subjects, which required that they be submitted to the public with separate ballot questions. 60 N.W. 2d at 657. Plaintiffs submit that separate ballot questions are required here, one for the expansion of crime victims' constitutional rights, and another for adding categories of persons to the constitutional definition, just as a separate question was needed for expanding the categories of persons to be counted for districting in *Thomson*.

Moreover, as explained in greater detail above, the amendment here commits the state in Section 1 to protect crime victims' rights "in a manner no less vigorous than the protections afforded to the accused." The expansion of victims' rights in the proposed amendment is otherwise silent regarding the amendment's impact on the current protections of the accused under Wis. Const. Article I, Sections 7 and 8. Plaintiffs' pleadings and affidavits demonstrate that the proposed amendment either amends or infringes upon those Section 7 and 8 protections.

Altering the Wisconsin Constitution in a way that amends or infringes upon current Wisconsin constitutional protections of the rights of the accused, or that otherwise alters the balance between those protections and the rights of alleged crime victims, is a distinctly different subject than "expanding the rights of crime victims." Altering the language or the effect of the Wisconsin Constitution's protections of the rights of the accused simply cannot be characterized as a detail related to expanding crime victims' rights. Nor are they propositions that are

"dependent upon or connected with the same general purpose," as stated in the more recent cases of *Milwaukee Alliance v. Elections Bd*., 106 Wis. 2d 597, 317 N.W. 2d 420((Wis., 1982), and *Conkey v. Hollen,* 2010 WI 57, P30, 783 N.W. 2d 855, 862, 326 Wis 2d 1(Wis., 2010), as the test for when different propositions may be put before the voters as one amendment with a single question.

Plaintiffs respectfully submit that a stealth amendment or partial repeal of the Wisconsin Constitution's protections of the rights of the accused would result from the proposed amendment. This cannot be done without a separate ballot question, under the direct meaning of the words of Article XII, Section 1 that "if more than one amendment be submitted, they shall be submitted in such manner that the people may vote for or against such amendments separately."

Submission for a vote under these circumstances would be arbitrary and unlawful. Allowing the defendants to proceed with steps to place the proposed amendment on the April 2020 ballot with Question 1 would be furthering an invalid and useless act, misinforming the voting public, and burdening taxpayers with the costs of conducting and tabulating an invalid ballot question, not to mention the likely costs of litigating the amendment's validity if it were to be approved by the public.

PLAINTIFFS MEET THE REQUIREMENTS FOR A TEMPORARY INJUNCTION

Temporary injunctions are authorized by Wis. Stats. Section 813.02, which provides in relevant part:

> **Temporary injunction; when granted.**
> (1)(a) When it appears from a party's pleading that the party is entitled to judgment and any part thereof consists in restraining some act, the commission or continuance of which during the litigation would injure the party, or when during the litigation it shall appear that a party is doing or threatens or is about to do, or is procuring or suffering some act to be done in violation of the rights of another party and tending to render the judgment ineffectual, a temporary injunction may be granted to restrain such act.

In *Shearer v. Congdon*, 25 Wis 2d 663, 131 N.W. 2d 377 (1964), the Supreme Court explained the requirements for obtaining a temporary injunction as follows:

> [W]here the complaint states a cause of action and the motion papers disclose a reasonable probability of plaintiff's ultimate success, it is well-nigh an imperative duty of the court to preserve the status quo by temporary injunction, if its disturbance pendente lite will render futile in considerable degree the judgment sought, or cause serious and irreparable injury to one party; especially if injury to the other is slight, or of character easily compensable in money; and that the discretion vested in the court is largely over the question of terms of the restraint and the protection of rights by bonds from one party to the other.

More recently, in *School Dist. v. Wisconsin Interscholastic Ath Ass'n,* 210 Wis. 2d 365, 370, 563 N.W.2d 585 (Ct. App. 1997), the court explained that a circuit court is to consider the following in deciding whether to grant or deny a temporary injunction:

> Injunctions, whether temporary or permanent, are not to be issued lightly. The cause must be substantial. A temporary injunction is not to be issued unless the movant has shown a reasonable probability of ultimate success on the merits. Temporary injunctions are to be issued only when necessary to preserve the status quo. Injunctions are not to be issued without a showing of a lack of adequate remedy at law and irreparable harm, but at the temporary injunction stage the requirement of irreparable injury is met by showing that, without it to preserve the status quo pendente lite, the permanent injunction sought would be rendered futile.

Here, if defendant officials proceed to bring the proposed amendments before the voting public using a ballot that contains Question 1, the rights of the plaintiffs, and of the voters would be seriously and substantially harmed, without any remedy at law. Protection of the right to vote includes more than simply protecting the right to cast a ballot. As the greater part of this brief demonstrates, protecting the right to vote most definitely includes protecting voters from being presented with a ballot on amending the Wisconsin Constitution that contains a Question for their consideration that fails to meet the Constitution's requirements. Question 1 clearly fails to satisfy the constitutional requirements for putting the amendments proposed in 2019 Enrolled Senate Joint Resolution 3 before the voters.

If defendants proceed with preparing, printing, and distributing ballots that contain an invalid Question, and then tabulating the resulting invalid votes, and certifying an invalid election, this would amount to immeasurable harm. The plaintiffs and their clients, and the public would suffer until the election results were ruled invalid. In addition, the voters would suffer, for having been forced to consider how to vote on the basis of an inadequate and misleading Question, and then having their vote invalidated. Meanwhile, the interests of the taxpayers of this state, which would be paying for useless and wasteful acts, would be harmed, with no method of recompense. There would be no remedy at law for the confusion and distress that would result if the voting proceeded, nor for the waste of public funds, only to result in invalidation of the result, in the event the amendment was approved by the voters. On the other hand, if a temporary injunction is issued pending this litigation, in the unlikely event that Question 1 were finally determined to be adequate, despite its obvious flaws, the proposed amendments to the Constitution could be presented at the next election. The public interest, and the balance of any harms, clearly favors issuance of an injunction pending this litigation. Moreover, since there is no financial or monetary harm to the defendants resulting from what would merely be a delay in presenting the ballot question to the public if they were to prevail, any bond or security required for issuance of the injunction should be nominal.

CONCLUSION

For the reasons set forth above, the plaintiffs have brought this action for a declaratory judgment requesting that this court declare that Question 1 does not satisfy legal requirements for the proposed ballot question, and that any election based on Question would be void. Plaintiffs respectfully submit that this Motion for a Temporary Injunction pending this litigation should be granted because they have demonstrated that they are likely to prevail on the merits of this

action, that they lack an adequate remedy at law, and that irreparable injury will occur to them and to the voters and taxpayers of this state if an injunction is not issued.

Dated: December 18, 2019.

Electronically signed by Dennis M. Grzezinski
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