STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY
BRANCH 8

WISCONSIN JUSTICE INITIATIVE, INC., a Wisconsin nonstock corporation, JACQUELINE E. BOYNTON, JEROME F. BUTING, CRAIG R. JOHNSON, and FRED A. RISSER,

Plaintiffs,

v. Case No. 19-CV-3485

WISCONSIN ELECTIONS COMMISSION, DEAN KNUDSON in his official capacity as CHAIR OF THE WISCONSIN ELECTIONS COMMISSION, DOUGLAS LA FOLLETTE in his official capacity as SECRETARY OF STATE OF WISCONSIN, and JOSH KAUL in his official capacity as ATTORNEY GENERAL OF WISCONSIN,

Defendants.

BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION FOR DECLARATORY JUDGMENT AND PERMANENT INJUNCTION

INTRODUCTION

On April 7, 2020, Wisconsin voters overwhelmingly ratified a statewide referendum proposing an amendment to the Wisconsin Constitution's article 1, section 9m (the "Amendment"). The Amendment enhances crime victim rights by giving crime victims new rights and strengthening protection and enforcement of the rights. The results from the April 2020 election were certified on May 4, 2020, and

the Amendment became effective on that day.[1] The passage of this crime victim rights constitutional amendment was the culmination of a three-year legislative process that, after public debate and bipartisan support, passed two successive legislative sessions.

Plaintiffs now seek to invalidate the Amendment by challenging the legal sufficiency of the April 7 ballot question (the "Ballot Question"), which read:

> **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?"

(Schmelzer Aff., Ex. E:3.) They argue that the Legislature's Ballot Question did not reference every essential of the Amendment, that it was misleading, and that it contained more than one amendment.

Plaintiffs' real complaint, though, is with the Amendment itself. Cloaked as a ballot-question challenge, they attempt to attack the merits of the Amendment from various angles. Ultimately, however, the question before the Court is not whether Plaintiffs, or even this Court, agree with the Amendment; the question is whether the Ballot Question was *so* off-base as to overcome the significant deference this Court must afford the Legislature's chosen phrasing, and require this Court to intervene in

[1] *See* Wisconsin Elections Commission, Wisconsin Election Results, April 2020 Spring Election and Presidential Preference Primary Results, https://elections.wi.gov/index.php/node/6855 (last visited July 15, 2020).

this important constitutional process between the people's elected representatives and the people themselves. The Plaintiffs have not made that showing.

Plaintiffs' arguments fail on all fronts. First, there is an overarching flaw to Plaintiffs' arguments. This Court must limit its review of the Ballot Question to whether the Legislature acted within its broad discretion specifically vested in that body by the constitution. Plaintiffs do not contest this principle, but they fail to meaningfully apply this deference to the questions presented here.

Second, the Ballot Question was sufficiently informative. The level of detail Plaintiffs demand is not the law in Wisconsin; Wisconsin law views the ballot question in the context of statutory notice requirements, the election process, and the duty of the voters to fully educate themselves during this process. The ballot question serves as a concise summary of the subject to be voted upon. Plaintiffs ask it to be a detailed recitation of every component and potential consequence of the Amendment, but the law has no such requirement.

Third, the Ballot Question neither contains misstatements nor is it misleading, much less in a way that would render it void. Plaintiffs claim, for example, that allowing victims to remain in the courtroom elevates victim rights over those of the accused—and that the Ballot Question, in turn, was required to report that fact. But the Amendment does nothing more than protect victims' *equal* access to the courtroom, which is consistent with the Ballot Question's "with equal force" language.

Fourth, the Legislature properly exercised its broad discretion to submit the Amendment in a single question. That is because all aspects of the Amendment support the common purpose of enhancing crime victims' rights.

None of Plaintiffs' arguments are sufficient to overcome the Legislature's proper exercise of its authority and discretion. Plaintiffs' request for declaratory relief and a permanent injunction should be denied, and the ballot question should be declared valid.

ARGUMENT

I. The Court affords the Legislature significant deference and only considers whether the Ballot Question was outside of the Legislature's broad discretion.

At the February 7, 2020, hearing, the Court expressed uncertainty over the applicable standard of review it should apply in this case. This Court discussed various potential standards:

> And by what quantum does Mr. Grzezinski need prove that; just by preponderance of the evidence, clear and convincing evidence, or beyond a reasonable doubt? I mean, we can frame the question and you can describe the question we frame, but a standard of review is an indication of by what quantum of evidence? I mean, in a civil case, it's ordinarily just more likely than not. In a punitive damage [sic], it's by clear and convincing evidence. And in a criminal case, it's beyond a reasonable doubt. And so is too when challenging the constitutionality of a statute. These are well stated. I didn't find a case specifically where an appellate court stepped back, in addition to framing the question, paused to consider by what quantum of evidence.

(Oral Arg. Tr. 11:12–12:3, Feb. 7, 2020.)

To answer the Court's question, neither party has a burden of proof at this point—the question to be answered is legal. However, because formation of the ballot question rests in the Legislature's discretion, the Court's role must be limited to ensuring that the Legislature did not act outside its broad discretion.

A. As the cases reflect, courts give great deference to the Legislature's framing of the ballot question, which is reaffirmed by separation of powers principles.

To start, this Court must approach its analysis from a standpoint of significant deference to the Legislature's actions. As the Wisconsin Supreme Court has emphasized time and again, the Legislature has significant discretion in its framing of the ballot question; that discretion necessarily limits this Court's review.

The constitution grants the Legislature "considerable discretion in the manner in which amendments are drafted and submitted to the people." *McConkey v. Van Hollen*, 2010 WI 57, ¶ 40, 326 Wis. 2d 1, 783 N.W.2d 855. This "great latitude" means that a showing of "mere irregularity" will not suffice, and that a ballot question's phrasing need not be "entirely free from doubt." *State ex rel. Thomson v. Peoples State Bank*, 272 Wis. 614, 623, 76 N.W.2d 370 (1956); *State ex rel. Ekern v. Zimmerman*, 187 Wis. 180, 204 N.W. 803, 813 (1925). Finally, it means that "hypercritical" differences will not invalidate a ballot question where "its true import is obvious and not calculated to mislead a voter." *Morris v. Ellis*, 221 Wis. 307, 266 N.W. 921, 925 (1936).

This deference means that this Court's analysis must be limited to a narrow assessment of whether the Ballot Question was so detached from the Amendment so

as to exceed the bounds of the Legislature's broad discretion. As the Wisconsin Supreme Court explained in *Milwaukee Alliance*, the courts' framework is "whether the legislature in the formation of the question acted reasonably and within their constitutional grant of authority and discretion." *Milwaukee All. Against Racist & Political Repression v. Elections Bd. of Wis.*, 106 Wis. 2d 593, 604, 317 N.W.2d 420 (1982) ("*Milwaukee Alliance*"). Within that framework, a ballot question may only be invalidated if it "failed to present the real question," or "presented an entirely different question" than that posed by the Amendment. *Ekern*, 204 N.W. at 811.

Separation-of-power principles underscore this required deference. The Wisconsin Constitution confers discretion on the Legislature to determine how to present proposed constitutional amendments to the people: the Legislature must "submit such proposed amendment or amendments to the people *in such manner and at such time as the legislature shall prescribe*." Wis. Const. art. XII, § 1 (emphasis added). Thus, barring the exceptional case, our constitution entrusts the Legislature—not our courts—to weigh and carry out this important task.

The Wisconsin Supreme Court has recently reiterated the importance of deferring to the constitutional authority and discretion of the Legislature. In *League of Women Voters of Wis. v. Evers*, 2019 WI 75, 387 Wis. 2d 511, 929 N.W.2d 209 ("*League of Women Voters*"), the court addressed whether the process the Legislature took during a 2018 extraordinary session to pass "lame duck" legislation and confirm gubernatorial 82 appointments was constitutional. In addressing that topic, the court stressed that the judiciary may not interfere with the Legislature's execution of its

constitutional duties: "[T]his court will not, under separation of powers concepts and affording the comity and respect due a co-equal branch of state government, interfere with the conduct of legislative affairs." *Id.* ¶ 36 (alteration in original) (citation omitted). The court explained that upon completion of the legislative process, a court may "consider whether the power of the legislature has been constitutionally exercised or whether the law enacted in the exercise of its power is valid." *Id.* (citation omitted). However, "[t]he process by which laws are enacted . . . falls beyond the powers of judicial review." *Id.* The court concluded by stating that its role was to "serve[ ] as a check on the Legislature's actions only to the extent necessary to ensure the people's elected lawmakers comply with our constitution in every respect." *Id.* ¶ 41.

Though *League of Women Voters* involved a different form of legislative action, the separation of powers doctrine underlying its holding is equally relevant here. Plaintiffs similarly challenge "whether the constitutionally prescribed requirements have been followed for the *process* by which the legislature proposes constitutional amendments for ratification by the voters." (Pls.' Br. 4–5) (emphasis added). And like the processes discussed *League of Women Voters*, the constitution confers discretion on the *Legislature* to determine how to present proposed constitutional amendments to the people.[2]

[2] The court mere days ago again reaffirmed the importance of adherence to separation-of-powers principles. "We are more than two centuries into the American constitutional experiment, but the separation of powers is not an anachronism from a bygone era." *Serv. Emps. Int'l Union v. Vos*, 2020 WI 67, ¶ 30, ___ Wis. 2d ___, ___ N.W.2d ___ ("*SEIU*").

Consistent with the line of ballot questions cited above and these principles, this Court should afford great deference to the Legislature's constitutional role to decide "in such manner and at such time" to present the question. *See* Wis. Const. art. XII, § 1. Indeed, under the reasoning in *League of Women Voters*, "adherence to the rules or statutes" that prescribe the manner and content of the ballot question may even be seen as "a matter entirely within legislative control and discretion, not subject to judicial review." *League of Women Voters*, 387 Wis. 2d 511, ¶ 40 (citation omitted).

At a minimum, it is clear that the strong deference noted in the ballot cases like *Ekern* to *Milwaukee Alliance* must be given effect. At most, the Court's review must be quite narrow, limited only to whether the Ballot Question was so detached from the Amendment as to be violative of the Legislature's broad discretion.

B. At most, this Court should approach its narrow review by asking whether the Amendment falls within the broad discretion of the Legislature, regardless of whether the challenge is viewed as "facial."

At the February hearing, this Court questioned whether the standard applicable to a facial challenge of a statute is applicable here. While the challengers here are, in effect, arguing that the Amendment is wholly invalid—thus giving it the character of a facial, as opposed to an as-applied, challenge—that gloss would not significantly change the inquiry. Under any view, the bar is very high: a court would need to conclude that it can invade what is normally the Legislature's province

because the ballot question was so inconsistent with the Amendment so as to exceed the Legislature's broad discretion.[3]

When a party makes a facial challenge to a statute, the party typically must show that the law cannot be enforced "under any circumstances." *League of Women Voters*, 383 Wis. 2d 1, ¶ 33. Not only that, but the challenger bears a heavy burden because "legislative enactments are presumed constitutional, and we will resolve any reasonable doubt in favor of upholding the provision as constitutional." *Mayo v. Wis. Injured Patients & Families Comp. Fund*, 2018 WI 78, ¶ 36, 383 Wis. 2d 1, 914 N.W.2d 678 (citation omitted). The challenging party must prove that the statute is unconstitutional "beyond a reasonable doubt." *League of Women Voters of Wis. Educ. Network, Inc. v. Walker*, 2014 WI 97, ¶ 17, 357 Wis. 2d 360, 851 N.W.2d 302.

However, the Wisconsin Supreme Court has specifically explained that the question of the sufficiency of a ballot question is "an issue of law, and no burden should have been assessed to either litigant." *Milwaukee Alliance*, 106 Wis. 2d at 604. In *Milwaukee Alliance*, the court considered whether a ballot question for a constitutional amendment revising the right to bail violated the separate amendment rule and failed to adequately and total inform voters of the nature of the amendment. The court explained that, "[c]ollateral to those issues is whether placing the question

[3] This is similar to the deferential standard of reviewed applied by the court in *Dep't of State v. Hollander*, 256 So. 3d 1300, 1311 (Fla. 2018). There, the court acknowledged that it "must act with extreme care, caution, and restraint before it removes a constitutional amendment from the vote of the people," and thus "must approve an initiative unless it is clearly and conclusively defective." *Hollander*, 256 So. 3d at 1307 (citations omitted).

on the ballot was a mere ministerial function of the legislature or a discretionary act entitled to a presumption of regularity and therefore vulnerable to attack only upon proof beyond a reasonable doubt." *Id*. at 602. It went on to hold that because "[t]he factual basis of the challenge . . . was agreed to, namely the language of the question submitted to the electorate," that it was a matter of law, and no burden attached. *Id.* at 604.

While no burden applies, as already discussed, it similarly will be very rare for a challenger to succeed. That is because the standard of review itself has, built within it, the presumption that the Legislature acts constitutionally and, in turn, tremendous deference to the Legislature's discretion. Thus, the net effect on a challenger is similar: in ballot question cases, courts acknowledge the presumption that all acts of the Legislature are constitutional unless shown otherwise and, in addition, courts recognize that the task of drafting the particular wording of the question is for the Legislature, and it cannot simply be second-guess by litigations or the courts. *See State ex rel. Thomson v. Zimmerman*, 264 Wis. 644, 648, 60 N.W.2d 416 (1953); *Thomson*, 272 Wis. at 623; *Ekern*, 204 N.W. at 813.

Plaintiffs incorrectly argue that the Legislature's actions here do not benefit from the presumption of constitutionality or significant deference because there was "no role for the governor." (Pls.' Br. 4.) Plaintiffs' argument misses the mark, because the governor's role in passing a law has nothing to do with the presumption of constitutionality or the deference due here. Rather, "[t]he presumption of constitutionality is based on respect for a co-equal branch of government, and it

promotes due deference to legislative acts." *League of Women Voters*, 357 Wis. 2d 360, ¶ 16. Thus, unsurprisingly, in *Thomson*—a case heavily relied upon by Plaintiffs—the Court specifically acknowledged that, "there is a presumption that all acts of the legislature are constitutional until established otherwise." *Thomson*, 264 Wis. at 648 (citation omitted).

It remains the case that, only if the question was so detached from the Amendment that it "failed to present the real question" or "presented an entirely different question," may this Court conclude that the Legislature violated its broad discretion. *Ekern*, 204 N.W. at 811.

II. The Ballot Question was proper because it is concise and contains all essentials of the Amendment.

Plaintiffs claim that the ballot question violates Wis. Const. art. XII, § 1 because it does not contain all the essentials of the Amendment. They say that is the case because it did not (a) specify each provision of the Amendment; (b) advise that the Amendment created a guarantee of supreme court jurisdiction for victims; (c) inform voters that the Amendment makes victims parties in "all but name only;" (d) explain that the Amendment "expanded" the definition of "victim;" (e) discuss that the Amendment removed the reference to a defendant's right to "fair trial;" and (f) elaborate on the Amendment's effects on the interplay between a victim's rights and a defendant's rights.

Most of these arguments rest on Plaintiffs' opinions about the Amendment, instead of the actual results of the Amendment. Additionally, Plaintiffs' arguments ask far more of the ballot question than either is or should be required; they ignore

the great deference due and instead engage in second-guessing. These arguments fail because it cannot be said that the Ballot Question was so detached from the Amendment as to exceed the Legislature's broad discretion.

A. The Ballot Question did not have to specify each of the 16 victim rights provisions in the Amendment.

Plaintiffs contend that "[t]he new amendments include 16 categories of new or expanded constitutional rights for crime victims," but the ballot question "did not inform the voting public of anything regarding the nature or scope of the numerous constitutional rights it would enact for victims of crime." (Pls.' Br. 6, 10.) It seems their theory is that the ballot question must essentially duplicate the language of the amendment—despite the fact that the ballot question is to be concise; it is not intended to be a reproduction.

Along these lines, at the February 7 hearing, the court expressed skepticism regarding Plaintiffs' objections to these types of "omissions" from the Ballot Question:

> You said these things aren't said in the question. Well . . . if that's your problem, go read the bill.

(Oral Arg. Tr. 54:13–19, Feb. 7, 2020.) The court went on to note that:

> I tend to agree with the defendants that their response is to assume the voters have read the underlying language. . . . *Ekern* says you can say less . . . .

(*Id*. at 55:2–6.) That is correct, as was already addressed in Defendants' opposition brief for the injunction hearing. (*See* Defs.' Br. in Opp'n, Dkt. 25:24–31.) Defendants adopt those arguments and do not repeat them in full here.

It suffices to point out that, as acknowledged by *Ekern*, the ballot question does not exist in isolation but rather is one part of the amendment ratification process. *Ekern*, 204 N.W. at 810–13. This process includes notice of the amendment text and explanation of what a vote on the proposed amendment means. (*See* Defs.' Br. in Opp'n, Dkt. 25:11–14.) The *Ekern* court made clear that the statutory publication requirements, including publication of the entire text of the amendment and the official statement of the effect of a "yes" or "no" vote, work together to educate and inform the voter. *Ekern*, 204 N.W. at 810–12. Voters are expected to review these notices, apprise themselves of public debate, and educate themselves as to the substance and implications of a proposed amendment. *Id*. at 808. These other requirements do the heavy lifting to educate and inform the voters; the ballot question provides a concise statement designed to help the voter identify the matter to be voted upon. *See id*. at 808–12.

With this process in mind, *Ekern* found that the ballot question "must reasonably, intelligently, and fairly comprise or have reference to every essential of the amendment." *Id*. at 811. But there is no need to articulate each of the 16 additional rights presented in the Amendment on the ballot question in order to accomplish that. Under Wis. Stat. § 5.64(2)(am), the ballot must contain "a concise statement of each question in accordance with the act or resolution directing submission." The common meaning of "concise" is "marked by brevity in expression

or by compact statement without elaboration or superfluous detail." *Metro. Milwaukee Ass'n of Commerce, Inc. v. City of Milwaukee*, 2011 WI App 45, ¶ 15, 332 Wis. 2d 459, 798 N.W.2d 287, citing *Concise*, Webster's Third New Int'l Dictionary (unbar. 1993).

Plaintiffs' argument that all 16 crime victim rights in the amendment should have been in the Ballot Question is contrary to the constitution's broad grant of discretion to the Legislature, the "concise statement" requirement of Wis. Stat. § 5.64(2), and *Ekern*'s explanation that the ballot question is just one piece of the puzzle. In fact, *Ekern* explains that the drafting of the ballot question is "a simple ministerial duty, which any high school student of average ability would be able to do." *Ekern*, 204 N.W. at 812.

As required, the Ballot Question concisely informed voters of the question—whether to add additional rights, protections, and enforcement mechanisms for crime victims—and was therefore within the broad discretion vested in the Legislature.

B. The Amendment does not create guaranteed Wisconsin Supreme Court jurisdiction for crime victims.

Plaintiffs next contend that the Ballot Question failed *Ekern*'s "every essential of the amendment" test because it did not inform voters that the Amendment created a "new, unique form of mandatory Supreme Court jurisdiction for alleged victims." (Pls.' Br. 11.) As explained, the Ballot Question properly identified the essentials of the amendment—this particular topic would be no different, as the question

explained that the amendment provided for enforcement mechanisms. Further, Plaintiffs' reading of the Amendment is incorrect, anyway.

Plaintiffs' argument improperly conflates two separate subsections of the Amendment, section 9m(4)(b) and (a). Under section 9m(4)(a), a crime victim may seek enforcement of their rights "in any circuit court or before any other authority of competent jurisdiction." Wis. Const. art. I, § 9m(4)(a). Section 9m(4)(a) goes on to state that "[t]he court or other authority with jurisdiction over the case shall act promptly on such a request and afford a remedy for the violation of any right of the victim." *Id.* It is clear that this language pertains to actions at the trial level to enforce a crime victim's rights, not appellate proceedings, which are separately addressed in section 9m(4)(b). Under Wis. Const. art. I, § 9m(4)(b), "[v]ictims may obtain review of all adverse decisions concerning their rights as victims by courts or other authorities with jurisdiction under par. (a) by filing petitions for supervisory writ in the court of appeals and supreme court."

Wisconsin Const. art. I, § 9m(4)(b) provides victims a means to seek "review" of a circuit court decision adversely affecting their rights through a supervisory writ. There is nothing new or unique about this process, except that victims—who are not parties to the underlying criminal proceedings—are now afforded this type of review. *See* Wis. Stat. §§ 809.51, 809.71. Supervisory writs are typically filed first in the court of appeals. Wis. Stat. § 809.71. And there is no suggestion in the Amendment that a victim can bypass the court of appeals and go directly to the supreme court without

making the requisite showing under Wis. Stat. § 809.71 ("A person seeking a supervisory writ from the supreme court shall first file a petition for supervisory writ in the court of appeals under s. 809.51 unless it is impractical to seek the writ in the court of appeals.").

Nothing in the Amendment creates a new form of mandatory supreme court jurisdiction for crime victims only. The Ballot Question could not have been defective for omitting it.

C. The Ballot Question fairly referenced a crime victim's increased involvement in the criminal justice system.

Plaintiffs argue that the Ballot Question failed to inform the public that the Amendment is a "radical transformation" of the criminal justice system to a "three-way contest" between the prosecutor, the defendant, and the victim, making a "victim a party in all but name." (Pls.' Br. 8.) This argument fails because (1) it is Plaintiffs' opinion of the amendment, as opposed to what the amendment actually accomplishes, and (2) the Ballot Question *did* adequately inform voters that the Amendment would give victims increased rights within the justice system.

First, Plaintiffs misstate what the Amendment actually says. It does not make crime victims a party to the defendant's criminal case. The amended constitutional text specifically explains that the "section is not intended and may not be interpreted . . . to afford party status in any proceeding to any victim." Wis. Const. art. I, § 9m(6).

Plaintiffs' opinion that the Amendment nonetheless makes victims a party "in all but name" is just that. (Pls.' Br. 7.) Their theory seems to be that victims may have different objectives or motives than a prosecutor. (*Id*. at 7–8.) But the possibility of differing interests does not make victims a party. Indeed, the Amendment does not confer on victims any prosecutorial powers, such as the power to file charges or enter into a plea agreement. Nor does the Amendment confer on victims any rights of criminal defendants, such as the rights to subpoena witnesses or to refuse to testify at trial.[4]

Second, the Ballot Question properly describes what the Amendment actually does. It protects a victim's rights to be heard and accounted for in the criminal justice system where a victim is not a party. In so doing, the Amendment built upon a victim's rights to be heard and accounted already afforded by Wis. Const. art. I, § 9m. So, when the Ballot Question asked voters whether "section 9m of article I of the constitution, which gives certain rights to crime victims, be amended to give crime victims additional rights," and to more strongly protect and enforce those rights, the question adequately advised voters. *See Ekern*, 204 N.W. at 808–12.

[4] Perhaps the closest to a defendant's rights is the right to timely disposition of the case. But our constitution already provided victims with that right before this Amendment. *Compare* Wis. Const. art. I, § 9m (2017–18) (articulating a victim's right to "timely disposition of the case"), *with* Wis. Const. art. I, § 9m (2020) (articulating a victim's right to "timely disposition of the case, free from unreasonable delay").

D. The Ballot Question did not need to explain that the Amendment incorporated Wisconsin's longstanding definition of "victim."

Plaintiffs next argue that the Ballot Question was deficient for not explaining the Amendment's "expanded" definition of "victim." (Pls.' Br. 8–11.) Plaintiffs argue that the definition "disregards [the word's] plain or common meaning," as it includes representatives for victims who are deceased or unable to exercise their rights, and others close to deceased victims. (*Id*.) Plaintiffs also deem it significant that victim status attaches at the time a person becomes the victim of a crime. (*Id*. at 8.)

But these arguments—which imply there has been a sea change—are misguided. The Amendment's definition of "victim" is essentially the same definition of "victim" that has long existed in Wisconsin statutes. *See* Wis. Stat. §§ 950.02(4)–(5).[5]

Plaintiffs derive their argument from a passage in *Ekern*, where the court simply noted that "terms used in a Constitution . . . must be understood in the sense most obvious to the common understanding at the time of its adoption." *Ekern*, 204 N.W. at 808 (citation omitted); (Pls.' Br. 10–11). But this proposition is not helpful

[5] In addition to incorporating what already is express in the statutes, the constitutional definition provides that a representative cannot speak for a victim when a court finds that representative would not act in the victim's best interest, and it also provides that victimhood vests "at the time of victimization." Wis. Const. art. I, § 9m(1)(b), (2). These nuances of course were not stated in the Ballot Question and Plaintiffs make no argument explaining why they would need to be. It is plain that a person is not a victim's "representative" if the person is not actually representing her. And the statutes have long explained that a "victim" includes a person against whom a "crime has been committed," thus attaching the definition to the act of the crime being committed.

to them for two reasons. First, the Amendment does reflect the prevailing understanding of "victim" as already found in the statutes. Second, Plaintiffs misapply *Ekern*, anyway. In the quoted passage, the Wisconsin Supreme Court was simply discussing how to discern the meaning of a constitutional amendment. *Ekern*, 204 N.W.2d at 808. That principle of interpretation is not a rule governing how a ballot question must be drafted. Rather, what *Ekern* does support is that is reasonable to the expect that voters will be familiar with our law. And Wisconsin law has, for years, defined "victim" in essentially the same way as the Amendment.

The Ballot Question did not need to explain Wisconsin's already-accepted definition of "victim" to avoid confusion or to explain the chief goal of the Amendment.[6]

[6] Consider, for example, the Arkansas Supreme Court's rejection of an argument that a ballot question was defective for not defining "key terms" in the amendment, and for using "misleading" terms; the terms included "casino," "franchise holder," "net casino gaming receipts," and "wholesaler." *Stiritz v. Martin*, 556 S.W.3d 523, 527–29 (Ar. 2018). The court explained that a ballot question is fine if it used terms that are "readily understandable," but may be problematic if it includes undefined terms that are "obscure" or "highly technical," or "attempt to mislead voters." *Id.* at 528. The court concluded that the challenged terms did "not require definitions in order for voters to understand [the] amendment's scope and import." *Id.* As the court stressed, the ultimate question is whether the voters can make an intelligent decision based on the ballot question—the ballot question is *not* required to "include every detail, term, [or] definition." *Id.* (citation omitted). This Court should hold the same here.

E. The Ballot Question did not need to state that the Amendment removed language from the existing victim's rights constitutional provision about sequestration.

Plaintiffs next contend that the Ballot Question did not alert voters that the Amendment "strike[s] from the Constitution its only reference to 'fair trial for the defendant" in that it strikes "from the Constitution a defendant's right to have a victim witness sequestered when necessary for a fair trial." (Pls.' Br. 11.) Plaintiffs argue that the Ballot Question needed to, but did not, advise voters that "[c]hanges were being made to the Wisconsin constitutional rights of the accused." (*Id.*)

Plaintiffs' argument again conflates their view of the Amendment with what it actually says. Plaintiffs' argument about a defendant's "fair trial" right concerns only one change in language—in the *victim's* rights provision of the constitution, not in the provisions articulating a defendant's rights.

Wisconsin Const. art. I, § 9m, adopted in 1993, provided that victims had "the opportunity to attend court proceedings *unless the trial court finds sequestration is necessary to a fair trial for the defendant*." (Emphasis added). This did not create a new right for criminal defendants; rather, it created new rights for crime victims, and established the scope of those rights. Indeed, the 1993 ballot question made no mention of the creation of a defendant's right to sequester victims. Instead, it was similar in substance and concision to the Ballot Question at issue here:

> "Rights of victims of crime". Shall section 9m of article I of the constitution be created requiring fair and dignified treatment of crime victims with respect for their privacy and to ensuring that the guaranteed privileges and protections of crime victims are protected by

> appropriate remedies in the law without limiting any legal rights of the accused?"

Wisconsin Briefs, *Constitutional Amendments and Advisory Referenda To Be Considered by Wisconsin Voters April 6, 1993*, LRB–93–WB–4, at 2, http://lrbdigital.legis.wisconsin.gov/digital/collection/p16831coll2/id/592/ (last accessed July 15, 2020).[7]

Through the present Amendment, the victim's right section now explains that victims have the right, "[u]pon request, to attend all proceedings involving the case." Wis. Const. art. I, § 9m(2)(e) (2020). While it no longer specifically references "sequestration," it remains the case that the constitution otherwise specifically provides that this section "may not be interpreted to supersede a defendant's federal constitutional rights." Wis. Const. art. I, § 9m(6). This Amendment simply built upon a victim's already-existing Wisconsin constitutional right to attend court proceedings. By the Amendment's plain language, if a defendant's federal constitutional rights to a fair trial would be violated by the victim's presence in court, the victim's right to attend court proceedings cannot supersede the defendant's right.

[7] The fact that this language was added to the Wisconsin Constitution in 1993 also undercuts Plaintiffs' argument suggesting that the Amendment somehow jeopardizes fundamental rights of a criminal defendant. For example, contrast it with the supreme court of Florida's decision in *Armstrong v. Harris*, 773 So. 2d 7 (Fla. 2000), which Plaintiffs attempt to rely on for support. (*See* Plaintiffs' Br. 17.) Unlike the scenario here, the Florida amendment "nullif[ied] a fundamental state right that [had] existed in the Declaration of Rights *since this state's birth*," without the ballot question giving any "hint of the radical change in state constitutional law that the text actually foments." *Armstrong*, 773 So. 2d at 21–22. There is no similar radical change to a longstanding right here.

Thus, the Ballot Question adequately communicated that a shift would occur concerning a victim's right to be present—that victims would now have additional access to the courtroom, while leaving the defendant's federal constitutional protections intact. Again, the Ballot Question did not need to give every detail. *See Ekern*, 204 N.W. 803, 808–12.

F. The Ballot Question sufficiently communicated the Amendment's effect on the interplay between a victim's rights and a defendant's rights in Wis. Const. art. I, § 9m.

Lastly, Plaintiffs argue that Ballot Question did not contain every "essential element" because it did not advise voters about the change in the "carveout" language about a defendant's rights. (Pls.' Br. 12–14.) Article I, section 9m used to provide the following: "Nothing in this section, or in any statute enacted pursuant to this section, shall limit any right of the accused which may be provided by law." Wis. Const. art. I, § 9m (2017–18). By the Amendment, that language now provides, in relevant part: "This section is not intended and may not be interpreted to supersede a defendant's federal constitutional rights . . . ." Wis. Const. art. I, § 9m(6) (2020).

Plaintiffs argue that the previous "carveout" language was "much more expansive," as it explained that a victim's rights could not limit *any* right of any accused, but the current version only discusses a defendant's federal constitutional rights. (Pls.' Br. 12–14.) They note that the previous language prevented a victim's rights from "limit[ing]" a defendant's rights, whereas the amended version prevents a victim's rights from "superseding" a defendant's rights, which the plaintiffs argue is less protective of a defendant's rights. (*Id*. at 13.) Boiled down, Plaintiffs' complaint

here is that the Ballot Question did not communicate what the increases to victims' rights meant for the balancing of those rights with defendants' rights.

To the contrary, the Ballot Question did just that. It communicated that (1) Wis. Const. art. I, § 9m would be amended to give crime victims "additional rights;" (2) those rights would now be, by default, given "equal force to the protections afforded the accused;" but (3) the Amendment would not allow a victim's rights to trump the "federal constitutional rights of the accused."

The Ballot Question thus adequately and concisely communicated the essential nature of the amendment. *See Ekern*, 204 N.W. at 808–12. At its core, Plaintiffs' argument again is that they would have phrased it differently, or more dramatically, given their opinions about what they believe the Amendment might mean in a particular case. But that view falls far short of showing that the Legislature exceeded its broad discretion in its chosen phrasing. *See Thomson*, 272 Wis. at 623; *Ekern*, 204 N.W.2d at 813. A challenger could always criticize phrasing, no matter how the ballot question is worded, and that sensibly is not the test. Rather, these decisions are vested in the Legislature, and this Court should defer to the Legislature's broad discretion.

III. The Ballot Question does not contain misstatements about the Amendment.

In addition to critiquing its inclusion of details, Plaintiffs argue that the Ballot Question was "misleading and fatally defective." (Pls.' Br. 16.) They point out that the Ballot Question uses of the phrase "with equal force" to describe how a victim's rights are protected, whereas the Amendment's text uses the phrase "in a manner no less

vigorous." They also point to the Ballot Question's use of the term "accused," whereas the Amendment uses the term "defendant."

These critiques should be rejected because there is no requirement that identical language be used. What matters here is that the Legislature did not present an "entirely different question" when it used common terminology to explain the essentials of the Amendment—it properly exercised its broad discretion. *Ekern*, 204 N.W. at 811. The Ballot Question's "true import" was sufficiently "obvious." *Morris*, 266 N.W. at 925.

A. The "with equal force" phrasing does not present an entirely different question than that posed by the Amendment.

The Ballot Question states that the Amendment will "require that the rights of crime victims be *protected with equal force* to the protections afforded the accused." (Schmelzer Aff., Ex. E:3) (emphasis added).) Plaintiffs argue that this phrase is misleading because the Amendment requires the rights of victims to "be *protected by law in a manner no less vigorous* than the protections afforded to the accused." *See* Wis. Const. art. I § 9m(2) (emphasis added). Plaintiffs contend that this difference is significant enough to invalidate the Amendment because "no less vigorous than" actually means "equal to or greater than," which is not the same as "equal." (Pls.' Br. 14.) This hypercritical view should be rejected; it quibbles with phrasing and not the essential point being conveyed.

As the Court acknowledged at the February 7 hearing, the Amendment's phrase "no less vigorous" is not common parlance: "Quite honestly, nobody talks like that, no less vigorous. That's not a very precise terminology." (Oral Arg. Tr. 33:3–5, Feb. 7, 2020.) It would have been proper for the Legislature to similarly address that concern when crafting the concise ballot question. It has the discretion to phrase it so that the amendment is "understood in the sense most obvious to the common understanding." *See Ekern*, 204 N.W. at 808 (citation omitted). Even though "equal to or greater" may not always be the exact same as "equal," the variation here "effectuates no substantial difference" as a practical matter. *Milwaukee Alliance*, 106 Wis. 2d at 609. This is similar to changing the word "shall" to "may," which the Wisconsin Supreme Court found was "no change in meaning or substance" in the context of a ballot question. *Id.*

Plaintiffs argue that the difference between "equal" and "no less vigorous" is demonstrated in section 9m(2)(e) of the Amendment, where it provides crime victims the right, "[u]pon request, to attend all proceedings involving the case." *See* Wis. Const. art. I § 9m(2)(e). The Amendment removed the phrase, "unless the trial court finds sequestration is necessary to a fair trial for the defendant" from this section. (*See* Schmelzer Aff., Ex. E:1.) This, Plaintiffs claim, "demonstrates the explicit prioritization of protecting a victim's privacy rights over an accused's fair trial rights." (Pls.' Br. 15.)

However, that section does not prioritize a victim's rights over a defendant's rights. Plaintiffs' argument overlooks the relevant verb—"*protected*." The Ballot Question properly described the Amendment's elevation in the level of *protection* of victims' rights, from statutory to constitutional protections. And defendants' rights have always been constitutionally protected. Indeed, on its face, Wis. Const. art. I, § 9(m)(6) of the Amendment provides that it is "not intended and may not be interpreted to supersede a defendant's federal constitutional rights."[8]

Plaintiffs' view of the difference between "no less vigorous" and "equal" is further undermined by the fact the same language—"no less vigorous"—already is included in the current crime victim rights statute, Wis. Stat. § 950.01. In effect, "[t]his amendment was therefore an effort to preserve and constitutionalize the status quo," *McConkey*, 326 Wis. 2d 1, ¶ 53, not a the type of "drastic, revolutionary alteration of the existing [ ] requirements on the subject" that invalidated the ballot question in *Thomson*. *Thomson*, 264 Wis. at 656. Further, Plaintiffs point to no example of a court interpreting that statutory language to mean that victims' rights are protected with greater force then those of the accused.

[8] This is supported by the Amendment's legislative history indicating that the Amendment "put[s] victims' rights on the same legal playing field as criminal rights," though "[v]ictims' rights will NOT be given more weight than a defendant's rights." (Schmelzer Aff., Ex. F:1.) Written testimony also states that the Amendment "elevates the rights of the victim to a level more equal to that of the defendant by updating the victims' rights amendment to Wisconsin's constitution." (Schmelzer Aff., Ex. G:1.)

Contrasting this case to what Plaintiffs rely on in *Thomson* is instructive. There, a constitutional amendment provided that both geographic area and population could be used as factors when forming new state senate districts. *Id.* at 649, 654. The amendment permitted the Legislature to ignore assembly districts in the creation of senate districts. But the ballot question phrased this change differently; it described the amendment as providing "that the legislature *shall* apportion" the senate district in a specific manner. The court held that the use of this type of mandatory language did not present the "real question" because the amendment did the opposite: it actually "frees the legislature from the observance of any lines whatever in apportioning senate districts." *Id.* at 660. *Thomson* is the rare case where the Wisconsin Supreme Court invalidated an amendment because—even with the Legislature's broad discretion—the ballot question was blatantly wrong. That is not the case here.

The Ballot Question presented the voters with the real question posed by the Amendment. Using the more easily understood "equal force" for the concise question is not the type of drastic, substantial difference that could void the Amendment.

B. The Ballot Question did not mislead the public about the effect of the Amendment on defendants' rights.

Plaintiffs next argue that the Ballot Question was "grossly misleading" by stating that the Amendment leaves "the federal constitutional rights of the accused intact." (Pls.' Br. 15.) Plaintiffs argue this is misleading because the Amendment refers to the federal constitutional rights of a "defendant," not an "accused" as stated

in the Ballot Question. (*Id.*) They also argue it is misleading because the question did not communicate that "any rights of the accused were being changed." (*Id.* at 16.) Again, Plaintiffs' contentions are "hypercritical" and will not invalidate a ballot question. *Morris*, 266 N.W.2d at 925.

To start, Plaintiffs' argument about federal constitutional rights ignores basic rules of federalism. *Nothing* in the Wisconsin Constitution can violate the individual protections of an accused person or a defendant that are guaranteed by the U.S. Constitution. *See, e.g.*, *Taylor v. Conta*, 106 Wis. 2d 321, 331, 316 N.W.2d 814 (1982) ("Wisconsin must stay within the limits set by the federal constitution for the protection of individuals . . . .").[9] Thus, Plaintiffs' attempt to draw a substantive distinction between the rights of the "accused" and the rights of the "defendant" protected by the federal constitution makes no practical difference: any protections in the U.S. Constitution are there, no matter what. It makes no difference that the Ballot Question used a commonly understood term (distinguishing "crime victims" from the person "accused" of a crime).[10]

[9] Even absent this fundamental tenet of federalism, Plaintiffs cannot point to any meaningful way in which the victims' rights articulated in the Amendment could jeopardize the constitutional rights of an individual accused of, but not yet charged with, a crime.

[10] It bears noting that, on the one hand, Plaintiffs complain that the Ballot Question did not discuss the specific definition of "victim," but on the other hand fault the Ballot Question for not using the *more* technical term "defendant," as opposed to the "accused."

And to the extent Plaintiffs argue that the text misleads because it does not reveal there are changes being made, that is incorrect. As already explained in section II.E., *supra*, the Amendment *did* communicate that victims will receive additional rights beyond those previously included in Wis. Const. art. I, § 9m; those rights will now be protected with equal force to the protections given an accused; but the Amendment will not do so in such a way that will infringe upon the federal constitutional rights of that accused person.

Of note, the Florida Supreme Court rejected a similar argument concerning Florida's Marsy's Law ballot question. *State v. Hollander*, 256 So. 3d 1300 (Fla. 2018). The challengers there also argued that the ballot question was misleading because it did not discuss the effect it would have on a defendant's rights. *Id.* at 1308. For example, the challengers argued that the Amendment could undermine a defendant's speedy trial right. *Id.* at 1308–09. Notably, the Florida ballot question did not mention a defendant *at all*. *See id.* The Florida Supreme Court rejected these arguments because a defendant's rights could not be subordinated to a victim's rights. *Id.*

Instead of grappling with that on-point Florida decision, Plaintiffs instead rely on a different Florida case, A*rmstrong*, but that case does not help them. *Armstrong* concerned a proposed amendment to change the language "cruel *or* unusual punishment" to "cruel *and* unusual punishment." *Armstrong v. Harris*, 773 So. 2d 7, 17 (Fla. 2000) (emphasis added). This change eviscerated a Florida constitutional protection that had, from the state constitution's inception, provided *additional*

constitutional protections beyond the federal constitution. *Id.* And though this change applied to punishments for all crimes—not just the death penalty—the ballot question buried the issue within discussion of changes to provisions about the death penalty. The Florida Supreme Court concluded that this ballot question was misleading because nowhere was it "mentioned—or even hinted at" that the Amendment would "nullify a longstanding constitutional provision that applies to *all* criminal punishments." *Id.* at 18.

Although Wisconsin precedent controls here, and requires deference to the Legislature's choices, if a Florida case were consulted, it is *Hollander* not *Armstrong* that would be instructive. The primary aim of this Amendment is to afford crime victims additional rights and further the ability to protect and enforce those rights. The Ballot Question made that sufficiently clear and explained the Amendment's limitations as it relates to the rights of defendants.

For the same reasons, Plaintiffs' reliance on *Florida Department of State v. Florida State Conference of NAACP Branches*, 43 So. 3d 662 (Fla. 2010), and *City & County of Honolulu v. Hawaii*, 431 P.3d 1228 (Haw. 2018), is unpersuasive. In both of those cases, like in *Armstrong*, the ballot question failed to inform voters of the "chief purpose" and "chief effect" of the Amendment. *Florida State Conference of NAACP Branches*, 43 So. 3d at 669; *City & Cty. of Honolulu*, 431 P.3d at 1240. Here, on the other hand, the Ballot Question communicated an increase in constitutional rights and protections for crime victims (the "chief purpose"). It also went further to explain how this shift would interplay with a defendant's rights. Plaintiffs may not

agree with the Amendment itself, but their disagreement does not make the Ballot Question misleading.

The Ballot Question presented the real question to Wisconsin voters and comes nowhere close to violating the Legislature's broad discretion.

IV. The Legislature properly exercised its discretion to submit the Amendment as a single amendment.

The Wisconsin Constitution specifies "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." Wis. Const. art. XII, § 1. This language is known as the separate amendment rule. The rule "does not prohibit a single constitutional amendment from being complex or multifaceted, or from containing a variety of specific prescriptions and proscriptions." *McConkey*, 326 Wis. 2d 1, ¶ 26. Because the constitution assigns "considerable discretion" to the Legislature regarding the manner that it submits amendments to the people for a vote, this limit applies "only in exceedingly rare circumstances." *Id.* ¶ 40.

Plaintiffs rehash their temporary-injunction argument that the Amendment's expansion of crime victims' constitutional rights should have been separated from the provision that contains the definition of victim. (Pls.' Br. 19.) That argument already was briefed thoroughly, and those arguments are incorporated by reference here. (*See* Defs.' Br. in Opp'n, Dkt. 25:18–24.)

It suffices to say that what Plaintiffs point to violates no principle but rather is squarely within what is permitted. They are "several distinct propositions" within the Amendment that "relate to the same subject matter and are designed to

accomplish one general purpose," namely, the protection and enforcement of crime victims' rights. *McConkey*, 326 Wis. 2d 1, ¶ 41. Propositions relating to the same subject and "*connected with*" the same general purpose are properly joined in one amendment. *Id.* ¶ 42. That is the case here.

There can be no serious argument that the definition of crime victims is not *connected with* expanding the rights those crime victims. The text of the Amendment reveals a general, unified purpose: "to preserve and protect victims' rights to justice and due process throughout the criminal and juvenile justice process." (Schmelzer Aff., Ex. E:1.) As the Wisconsin Supreme Court stressed in both *McConkey* and *Milwaukee Alliance*, "[i]t is within the discretion of the legislature to submit several distinct propositions as one amendment if they relate to the same subject matter and are designed to accomplish one general purpose." *McConkey*, 326 Wis. 2d 1, ¶ 41 (quoting *Milwaukee Alliance*, 106 Wis. 2d at 604–05).

Plaintiffs rely on *Thomson* as the rare time a Wisconsin court struck down a constitutional amendment under the separate amendment rule. But as Defendants explained before, that case is easily distinguishable because the amendment at issue involved different subjects. There, the main purpose of the Amendment was to take area as well as population into account in apportioning senate districts. But there were also provisions about counting military personnel and "Indians not taxed" when creating senate and assembly districts, as well as eliminating the requirement of county line boundaries for assembly districts. The former, however, "has nothing whatever to do with the senate," and a change in the

individuals to be counted is not related to senate districts. *Thomson*, 264 Wis. at 654, 657.

Unlike the amendment at issue in *Thomson*, the inclusion of the definition of "victim" and the expansion of the rights to be constitutionally afforded those victims is unquestionably connected to the Amendment's purpose of protecting crime victim's rights. While Plaintiffs' clearly "disagree[ ] with the philosophy of that purpose," the Amendment contains "integral and related aspects of the amendment's total purpose" and need not be broken into separate amendments. *Milwaukee Alliance*, 106 Wis. 2d at 608. The Legislature properly exercised its discretion in submitting the proposed amendment as one amendment.

Those principles are decisive and nothing Plaintiffs could argue would change that. For example, Plaintiffs discuss the 1993 victim rights amendment, where state law had defined "victim" as "[a] person against whom a crime has been committed." *See* Wis. Stat. § 950.02(4) (1993–94). Subsequently, in 1997, Wis. Stat. § 950.02(4) was amended consistent with what the Amendment provides as a definition. It is unclear, but Plaintiffs seem to argue that this series of events matters to the separate-amendment rule, but clearly it does not. What matters is that the Amendment fairly encompasses a unified purpose.

Plaintiffs cite *McConkey*, but it contains no principle that helps them. To the contrary, it helps show why the Amendment was proper. *McConkey* explains that the status of Wisconsin law *at the time the amendment passed* was relevant in

understanding the amendment's plain and general purpose. *McConkey*, 326 Wis. 2d 1, ¶¶ 53–54. The amendment was "an effort to preserve and constitutionalize the status quo," which was taken to "ensure" that the status of marriage as it then existed in Wis. Stat. § 765.001(2) "could not be rendered illusory by later legislative or court action." *Id.* ¶¶ 53, 55.

The same can be said here. The definition of "victim" under section 9m(1) of the Amendment is, as explained, essentially the same as the statutory definition of "victim" in Wisconsin since 1997. *See* Wis. Const. art. I, § 9m(1); Wis. Stat. § 950.02(4). Just as in *McConkey*, the general purpose of the Amendment can be gleaned by this statutory definition of "victim" and the current status quo.

Lastly, Plaintiffs argue that the Legislature should have actually presented the Amendment as *four* separate amendments. For all of the reasons already discussed, this argument is without merit. *McConkey* expressly rejects the contention that "each distinct proposition must be submitted separately, noting that such interpretation of the separate-amendment rule is "absurd" and "would make amending the constitution unduly difficult." *McConkey*, 326 Wis. 2d 1, ¶ 29. Further—as is true with all of their claims—Plaintiffs' argument ignores the Wisconsin Supreme Court's repeated and clear direction that the legislature has considerable discretion to determine how to present amendments to the voters. *See, e.g.*, *id.* ¶ 40 ("We reaffirm this court's repeated holdings that the constitution grants the Legislature considerable discretion in the manner in which amendments are drafted and submitted to the people.").

Like the amendments in *McConkey* and *Milwaukee Alliance*, all propositions in the Amendment are connected with that purpose and do not require a separate amendment. Therefore, the Ballot Question did not violate the separate amendment rule of Wis. Const. art. XII, § 1. As with all of their arguments, Plaintiffs seek to leverage details, but that is not the proper inquiry. This is not a game of second-guessing. Rather, again, the constitution sensibly vests broad discretion with the Legislature to select language for the concise question that appears on the ballot. It properly did here, and so Plaintiffs' challenge should be rejected.[11]

[11] Plaintiffs request a declaration invalidating the Amendment and a permanent injunction "requiring the Secretary of State to strike the amendments from the constitution, and prohibiting the Attorney General from implementing or otherwise enforcing the amendments." (Pls.' Br. 21–22.) Plaintiffs are not entitled to any relief, for the reasons discussed. Further, there would be no basis to enter an injunction. That is because a "declaratory judgment against a government officer is the functional equivalent of an injunction," and "the government official will adhere to a judicial decision declaring a statute facially unconstitutional." *Madison Teachers, Inc. v. Walker*, 2013 WI 91, ¶ 33, 351 Wis. 2d 237, 839 N.W.2d 388 (Abrahamson dissenting). Courts "have long presumed that officials of the Executive Branch will adhere to the law as declared by the court. As a result, the declaratory judgment is the functional equivalent of an injunction." *Comm. on Judiciary of U.S. House of Representatives v. Miers*, 542 F.3d 909, 911 (D.C. Cir. 2008); *see also* Mark P. Gergen, John M. Golden & Henry E. Smith, *The Supreme Court's Accidental Revolution? The Test for Permanent Injunctions*, 112 Colum. L. Rev. 203, 206, 241 (2012) (noting that courts have determined no additional requirements are needed to render a declaratory judgment effective against a government actor unless "a party cannot be trusted to respect rights in the future," thus requiring an injunction).

CONCLUSION

The Court should deny Plaintiffs' motion for a declaratory judgment and permanent injunction, and enter a declaration that the Amendment was validly enacted pursuant to Wis. Const. art. XII, § 1.[12]

Dated this 15th day of July, 2020.

Respectfully submitted,

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[12] Pursuant to Wis. Stat. § 806.04(1), "[t]he declaration may be either affirmative or negative." Rather than granting a judgment dismissing Plaintiffs' declaratory judgment action, the Wisconsin Supreme Court has held that the preferred procedure is for the trial court to make a declaratory adjudication in favor of defendants. *Just v. Marinette Cty.*, 56 Wis. 2d 7, 24, 201 N.W.2d 761 (1972).

CERTIFICATE OF SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed a Brief in Opposition to Plaintiffs' Motion for Declaratory Judgment and Permanent Injunction with the clerk of court using the Wisconsin Circuit Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 15th day of July, 2020.

Electronically signed by:

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