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STATE OF WISCONSIN
IN SUPREME COURT

Case No. 2024AP0729-OA

JEFFERY A. LEMIEUX and DAVID T. DEVALK,

Petitioners,

v.

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

Respondents.

ORIGINAL ACTION

# RESPONDENTS' BRIEF

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## INTRODUCTION

Revenue limits have long constrained local school districts' ability to raise enough revenue to cover the increasing cost of educating Wisconsin's children. Although the Legislature occasionally raises those limits, in recent years it has done so only on an ad-hoc basis, one biennium at a time. To provide school districts with a more predictable, long-term revenue limit increase, Governor Evers used his partial veto power to effectively remove a sunset that would have ended a $325 per-pupil increase in 2025. He did so by deleting digits to modify dates in the proposed budget bill, a long-standing partial veto method that every governor since Tommy Thompson has used.

Petitioners seek to reimpose that sunset and thereby reduce the future revenue available to school districts using partial veto theories that are foreclosed both by the constitutional text and this Court's case law.

This Court has repeatedly opined that the Governor's power to approve appropriation bills in "part" under article V, § 10(1)(b) is extremely broad. The controlling test remains that the Governor may delete any text aside from individual letters, so long as what remains is a complete and workable law. Petitioners don't ask the Court to revisit that test, unlike the challengers in this Court's last major partial veto case, *Bartlett v. Evers*, 2020 WI 68, 393 Wis. 2d 172, 945 N.W.2d 685 (which did not yield a precedential result). This concession to existing law defeats Petitioners' argument. The vetoes at issue undisputedly leave behind a complete and workable law, and so they comply with article V, § 10(1)(b).

These digit vetoes also comply with article V, § 10(1)(c), which only bars Governors from "creat[ing] a new word by rejecting individual letters." The reason why is obvious: the provision prohibits only vetoes of "letters" to create new "words," not also "digits" to create new "numerals."

Confronted with this textual roadblock, Petitioners attempt twisting verbal gymnastics to redefine article V, § 10(1)(c). But it was only drafted to cover "letter" vetoes, and this Court (including every Justice that has ever mentioned this issue) has consistently distinguished between "digit" and "letter" vetoes. That distinction is supported by both common sense and dictionary definitions, which confirm what 99 out of 100 people stopped on the street would surely say: the characters "0" through "9" are not "letters," much less letters that make up "words." So, the Governor validly deleted digits in compliance with article V, § 10(1)(c), too.

Petitioners' only non-dictionary arguments revolve around case that itself sinks their claim: *Citizens Utility Board v. Klauser*, 194 Wis. 2d 484, 534 N.W.2d 608 (1995) ("*C.U.B.*"). That case observed how, even after article V, § 10(1)(c), Governors may "decrease an appropriation by striking any or all of the digits in [a numeral like] '$350,000.'" *Id.* at 503. This alone disproves Petitioners' theory that the term "letters" in article V, § 10(1)(c) also covers digits.

Because the Governor's partial vetoes comply with both article V, § 10(1)(b) and (1)(c), they should be upheld.

## ISSUES PRESENTED

1. Under article V, § 10(1)(b), did the Governor approve the budget bill in "part" when he deleted digits from the proposed bill before signing it?

The Court should answer "yes."

2. Did the Governor comply with article V, § 10(1)(c), which bars "creat[ing] a new word by rejecting individual letters," when he deleted digits from the proposed budget bill?

The Court should answer "yes."

## STATEMENT ON ORAL ARGUMENT AND PUBLICATION

This Court has scheduled oral argument, and Respondents agree that publication is warranted.

## STATEMENT OF THE CASE

### I. Governor Evers used his partial veto power to remove a 2025 sunset on revenue limit increases for local school districts.

The Legislature has long imposed revenue limits on local school districts, which impact how much money those districts can raise through local property tax levies. *See generally* Legislative Fiscal Bureau, "School District Revenue Limits and Referenda," at 1 (Jan. 2023)[1]; *Vincent v. Voight*, 2000 WI 93, ¶ 76, 236 Wis. 2d 588, 614 N.W.2d 388. Failing to increase that revenue limit can pose problems for school districts, especially during times of rising inflation; the limit can prevent districts from generating enough revenue to cover rising educational costs.

Governor Evers' executive budget proposal for the 2023–25 biennium would have addressed this issue by increasing school districts' revenue limits by $350 per pupil in 2023–24 and $650 per pupil in 2024–25. Thereafter, Governor Evers proposed indexing the per-pupil adjustment to inflation.[2] This would have represented the "largest per pupil adjustments since revenue limits were imposed in

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[1] Wis. Leg. Fiscal Bureau, *School District Revenue Limits and Referenda* Informational Paper, at 1 (Jan. 2023), https://docs.legis.wisconsin.gov/misc/lfb/informational_papers/january_2023/0027_school_district_revenue_limits_and_referenda_informational_paper_27.pdf.

[2] Wis. Leg. Fiscal Bureau, 2023–25 Wis. State Budget, *Comparative Summary of Provisions 2023 Wisconsin Act 19* (Aug. 2023) (R-App. 102–03).

1993–94."[3] The Legislature, however, favored an increase of $325 per pupil until the 2024–25 school year, with no inflationary indexing thereafter.[4] The Legislature passed 2023 Senate Bill 70 and presented it to Governor Evers with those provisions.

Governor Evers responded with a partial veto that effectively eliminated the Legislature's proposed 2025 sunset for the revenue limit increase. In his veto message, he explained that the Legislature's proposal "fail[ed] . . . to address the long-term financial needs of school districts," and that removing the sunset would "provide[ ] school districts with predictable long-term spending authority increases."[5]

To remove this sunset, Governor Evers used a series of digit vetoes. Each was primarily accomplished by deleting from the proposed text "2024–25" the "20" and "–" to instead read "2425." In the excerpts below from the published version of the budget bill, 2023 Wis. Act. 19, the vetoes at issue are depicted in red text:

> **SECTION 402.** 121.905 (3) (c) 9. of the statutes is created to read:
>
> 121.905 **(3)** (c) 9. For the limit for the 2023–24 school year and the 2024–25 school year , add $325 to the result under par. (b).

> **SECTION 403.** 121.91 (2m) (j) (intro.) of the statutes is amended to read:
>
> 121.91 **(2m)** (j) (intro.) Notwithstanding par. (i) and except as provided in subs. (3), (4), and (8), a school district cannot increase its revenues for the 2020–21 school year, the 2023–24 school year , and the 2024–25 school year to an amount that exceeds the amount calculated as follows:

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[3] Dep't of Admin., Div. of Executive Budget & Finance, *State of Wisconsin Budget in Brief* (Feb. 2023) (R-App. 106).

[4] *Supra*, note 2.

[5] Wis. Leg. Reference Bureau, *Executive Partial Veto of 2023 Senate Bill 70* (2023) (R-App. 108).

> **SECTION 404.** 121.91 (2m) (j) 2m. of the statutes is created to read:
>
> 121.91 **(2m)** (j) 2m. In the 2023–24 school year and the 2024–25 school year , add $146.
>
> **SECTION 408.** 121.91 (2m) (t) 1. (intro.) of the statutes is amended to read:
>
> 121.91 **(2m)** (t) 1. (intro.) If 2 or more school districts are consolidated under s. 117.08 or 117.09, in the 2019–20 school year, the consolidated school district's revenue limit shall be determined as provided under par. (im), in the 2020–21 school year, 2023–24 school year , or 2024–25 school year , the consolidated school district's revenue limit shall be determined as provided under par. (j), and in each school year thereafter, the consolidated school district's revenue limit shall be determined as provided under par. (i), except as follows:

*See* 2023 Wis. Act 19, §§ 402–404, 408. The Legislature tried but failed to override each of these partial vetoes. (Pet. ¶¶ 51–52.)

## II. Petitioners seek to reimpose the 2025 sunset on revenue limit increases through this original action.

Through this original action, Petitioners now challenge the Governor's partial vetoes to sections 402–04 and 408 of 2023 Wis. Act 19 as unconstitutional under article V, § 10(1)(b) and (c).

# ARGUMENT

## I. The Governor approved the budget bill in "part," and so the vetoes at issue comply with article V, § 10(1)(b).

Article V, § 10(1)(b) provides that "appropriation bills may be approved in whole or in part by the governor, and the part approved shall become law."

Under this Court's long-standing precedent—which Petitioners do not challenge—that provision merely requires

the Governor's vetoes to leave behind a complete and workable law. The partial vetoes at issue undeniably yield such a law, and so they are valid. Petitioners' contrary theory rests on logic that applies only to "write-in" vetoes, not also vetoes (like the ones here) that simply delete text.

### A. The controlling test is whether a partial veto leaves behind a complete and workable law.

This Court has long interpreted "part"—the key term in article V, § 10(1)(b)—very broadly. In its first partial veto decision, it turned to *Webster's New International Dictionary* to define the term as:

> One of the portions, equal or unequal, into which anything is divided, or regarded as divided; something less than a whole; a number, quantity, mass, or the like, regarded as going to make up, with others or another, a large number, quantity, mass, etc., whether actually separate or not; a piece, fragment, fraction, member or constituent.

*State ex rel. Wis. Telephone Co. v. Henry,* 218 Wis. 302, 313, 260. N.W. 486 (1935) (quoting *Part*, Webster's New International Dictionary (2d ed. (1934)). The Court used this expansive definition to demarcate "what constitutes a 'part' of an appropriation bill, and is therefore subject to a partial veto." *Id.*

To operationalize that broad definition of "part," the Court quickly settled on a "complete and workable law" standard. In the next partial veto case, *State ex rel. Martin v. Zimmerman*, this Court framed the question as "whether the approved parts, taken as a whole, provide a complete workable law." 233 Wis. 442, 289 N.W. 662 (1940). Since

*Zimmerman*, the Court has reiterated this same basic test time and again.[6]

To be sure, the complete and workable law test recently came under attack in *Bartlett*. The challengers there argued that *Henry* erred by adopting an "overly broad definition of 'part.'" *Bartlett*, 393 Wis. 2d 172, ¶ 65 (Roggensack, C.J., concurring in part). A smorgasbord of alternative (and more restrictive) approaches was offered, *see id.*, but none garnered four votes. Instead, the court issued a short per curiam decision accompanied by four separate writings, none of which were joined by more than two justices. The per curiam decision invalidated several partial vetoes but noted that "[n]o rationale has the support of a majority." *Id.* ¶ 4.

Where "separate opinions give . . . distinct reasons for the result," none with majority support, "none of the opinions . . . has any precedential value." *Doe v. Archdiocese of Milwaukee*, 211 Wis. 2d 312, 334 n.11, 565 N.W.2d 94

[6] *See State ex rel. Sundby v. Adamany*, 71 Wis. 2d 118, 130, 237 N.W.2d 910 (1976) ("[T]he partial veto power may be utilized to veto any portion of a bill . . . as long as the portion vetoed is separable and the remaining provisions constitute a complete and workable law."); *State ex rel. Kleczka v. Conta*, 82 Wis. 2d 679, 707, 264 N.W.2d 539 (1978) ("[T]he test of severability has clearly and repeatedly been stated by this court to be simply that what remains be a complete and workable law."); *State ex rel. Wis. Senate v. Thompson*, 144 Wis. 2d 429, 451, 424 N.W.2d 385 (1988) ("[T]he limitation on the exercise of the governor's partial veto authority is that what remains after the veto must be a complete and workable law."); *Citizens Util. Bd. v. Klauser*, 194 Wis. 2d 484, 504–05, 534 N.W.2d 608 (1995) ("[T]his court must be satisfied that the partial veto has the effect of leaving intact a law that is complete, entire, and workable."); *Risser v. Klauser*, 207 Wis. 2d 176, 183, 558 N.W.2d 108 (1997) ("[T]he partial veto must be exercised in such a manner that the part of the bill remaining constitutes a 'complete, entire, and workable law.'" (citation omitted)).

(1997).[7] *Bartlett* therefore is not precedent—indeed, Petitioners do not argue otherwise. Because *Bartlett* has no precedential value, the long-standing complete-and-workable-law test still applies today.[8]

### B. Petitioners do not dispute that the partial vetoes at issue leave behind a complete and workable law.

The partial vetoes challenged here undoubtedly leave behind a "complete, entire, and workable law." *Risser*, 207 Wis. 2d at 183 (citation omitted). Petitioners tacitly concede as much by never arguing otherwise.

Nor could they. As Petitioners themselves explain, before the partial veto, the budget bill would have "approved a two-year increase of the school-district revenue limit." (Pet. Br. 9.) After, the increase will "last through the year 2425." (Pet. Br. 9.) There is plainly nothing unworkable or incomplete about "add[ing] 400 years to [a] two-year increase" (Pet. Br. 9), as shown further by Petitioners' comparison of the pre- and post-veto statutory language (Pet. Br. 16–17).

Because the challenged partial vetoes leave behind a complete and workable law, they complied with article V, § 10(1)(b).

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[7] *See also State v. Elam*, 195 Wis. 2d 683, 685, 538 N.W.2d 249 (1995) (per curiam) ("[A] majority of the participating judges must have agreed on a particular point for it to be considered the opinion of the court.").

[8] While this Court has sometimes tried to extract precedential rules from fractured decisions by the U.S. Supreme Court using the approach outlined in *Marks v. United States*, 430 U.S. 188, 193 (1977), it "has never applied the *Marks* Rule to interpret its own precedent, but only to interpret federal precedent." *Johnson v. Wis. Elections Comm'n*, 2022 WI 14, ¶ 243, 400 Wis. 2d 626, 971 N.W.2d 402 (R. Bradley, J., dissenting).

### C. The unique logic that *C.U.B.* used to justify "write-in" vetoes is irrelevant to vetoes that merely delete text, like those here.

Rather than contest the complete and workable law standard, Petitioners suggest that it is somehow "separate from the threshold question of whether a veto approved 'part' of a bill 'so as to fall within the purview of powers authorized by Art. V., sec. 10(1)(b).'" (Pet. Br. 22 n.22 (citing *C.U.B.*, 194 Wis. 2d at 505).) In other words, Petitioners argue that the Court should use some other test here to determine compliance with article V, § 10(1)(b).

That suggestion misreads this Court's partial veto cases. The complete and workable law standard is precisely how this Court has long operationalized article V, § 10(1)(b)—there is no other "test." For instance, *Thompson* summarized the provision as such: "[T]he governor may, in the exercise of his partial veto authority over appropriation bills, veto individual words, letters and digits, and also may reduce appropriations by striking digits, *as long as what remains after veto is a complete, entire, and workable law*." *Thompson*, 144 Wis. 2d at 437 (emphasis added). To be sure, a subsequent constitutional amendment ratcheted back *Thompson* a bit, but the basic analytical approach still controls: when a partial veto deletes text, the test under article V, § 10(1)(b) is whether a complete and workable law remains.

In Petitioners' view, a different test applies when dealing with numerals. There, a Governor supposedly approves a bill in "part" only when a new, post-veto numeral can be characterized as "less than" the pre-veto numeral. (Pet. Br. 21.)

Petitioners misunderstand article V, § 10(1)(b). When the Governor deletes digits from an appropriation bill—whether from dates, appropriation figures, or any other numerals—what remains of the appropriation bill is "something less than a whole" and "a piece, fragment,

fraction, member, or constituent" of the original. *Thompson*, 144 Wis. 2d at 440. So, the Governor approves "part" of the appropriation bill, in compliance with article V, § 10(1)(b), by deleting individual digits.

To be sure, *C.U.B.* used Petitioners' proposed "less than" logic to justify the unique "write-in" vetoes that the Court addressed for the first time there. In the 1993 budget bill, Governor Thompson had changed a $350,000 figure to $250,000 by replacing the leading digit "3" with a "2" that did not exist in the original bill. *C.U.B.*, 194 Wis. 2d at 489.

That "write-in" presented a twist on prior cases. Everyone agreed that the Governor could have "stri[cken] any or all of the digits in '$350,000.'" *Id.* at 503. He could have deleted the digit "3," for instance, because doing so would have left behind a complete and workable law. But because the Governor did not merely delete "3" and instead "wr[ote] in a smaller number"—"2"—that new method of altering the original bill's text presented an "issue of first impression" that required a "logical extension" of prior cases. *Id* at 502.

To accomplish that "logical extension," *C.U.B.* pointed to a distinct aspect of the "part" definition from *Henry*: that a "part" also can be "something less than a whole; a number, quantity, mass, or the like, regarded as going to make up, with others or another, a larger number, quantity, mass, etc." *Id.* at 505. That unique aspect of the "part" definition validated the challenged write-in veto: "$250,000 is 'part' of $350,000, because $250,000 is 'something less than' $350,000, and $250,000 goes 'to make up, with others ... a larger number,' i.e., $350,000." *Id.* at 505–507.

While *C.U.B.* needed this new "less than" logic to validate the new write-in veto, that special logic is unnecessary and inapplicable when analyzing traditional deletion vetoes. Again, *C.U.B.* observed how prior cases' logic would have justified an ordinary deletion veto "striking any or all of the digits in '$350,000.'" 194 Wis. 2d at 503. When the

Governor merely deletes text (including digits), what remains satisfies article V, § 10(1)(b) because the remnant is a "piece, fragment, fraction, member, or constituent"—in other words, a "part"—of the original bill. *Henry*, 218 Wis. at 313. For such deletions, it is irrelevant whether the remaining text is "less than" the original text, because what survives is a "piece, fragment, fraction, member, or constituent" of the original. *Id.*

None of Petitioners' three reasons for extending *C.U.B.*'s unique "less than" logic from write-in vetoes to digit deletion vetoes is convincing.

First, Petitioners note that *Henry*'s definition of "part" (restated in *Thompson*) applies here. (Pet. Br. 22.) Of course it does, but that gets them nowhere. That definition contains four separate aspects:

> [1] One of the portions, equal or unequal, into which anything is divided, or regarded as divided;
>
> [2] something less than a whole;
>
> [3] a number, quantity, mass, or the like, regarded as going to make up, with others or another, a larger number, quantity, mass, etc., whether actually separate or not;
>
> [4] a piece, fragment, fraction, member or constituent.

*Thompson*, 144 Wis. 2d at 440 (citation omitted).

Neither *Henry* (nor any other case) holds that partial vetoes must satisfy any particular one of these four "part" aspects. Rather, satisfying any of them suffices, and different ones apply to different kinds of partial vetoes. Deletion vetoes like the ones here satisfy at least aspects [2] and [4] of this definition (and arguably [1], too). So, the Governor approves a bill in "part" through a deletion veto, regardless of aspect [3] of the definition. Satisfying aspect [3] is only relevant when dealing with a write-in veto like in *C.U.B.*

Second, Petitioners contend that "[t]here is no legal or logical basis" for limiting *C.U.B.*'s analysis to write-in vetoes. (Pet. Br. 22.) Yet the reason for doing so is obvious: *C.U.B.* required a special logic to justify a special kind of partial veto.

Article V, § 10(1)(b) turns on whether the post-veto text is "part" of the original bill. When text is deleted, that is virtually always true. But when text is instead replaced, the question becomes harder because something new has been added to the original bill. Given this key difference between write-ins and deletions—new text in one but not the other—it is only natural that write-ins require a distinct analysis. And that is precisely what *C.U.B.* recognized by distinguishing between digit deletions—which prior "cases ma[d]e clear" were valid—and write-in vetoes, which presented an "issue of first impression" that required a "logical extension" of those prior cases. 194 Wis. 2d at 502–03.

Third, Petitioners observe that *C.U.B.* "applied only the quantitative aspects of the ['part'] definition from *Henry*." (Pet. Br. 22.) True enough. But Petitioners then draw a puzzling non sequitur from this premise: that the "quantitative aspect" of the definition "applies when a governor strikes one or more digits in a *number*." (Pet. Br. 22 (emphasis in original).) Petitioners may want that to be true, but they point to nothing in *C.U.B.* holding that it is. Again, *C.U.B.* relied on that "quantitative aspect" of the "part" definition because *C.U.B.* confronted a unique write-in veto. A simple digit deletion was permissible under a different aspect of that definition, as "the [prior] cases ma[d]e clear." *C.U.B.*, 194 Wis. 2d at 503.

In sum, nothing in *C.U.B.* justifies extending its "less than" logic beyond write-in vetoes to digit deletion vetoes like the ones here.

* * *

Because it is uncontested that the partial vetoes at issue leave behind a "complete, entire, and workable law," *Risser*, 207 Wis. 2d at 183, they comply with article V, § 10(1)(b).

## II. Article V, § 10(1)(c) permits digit vetoes, as this Court's decisions uniformly confirm.

Article V, § 10(1)(c) provides that "[i]n approving an appropriation bill in part, the governor may not create a new word by rejecting individual letters in the words of the enrolled bill . . . ."

The vetoes at issue comply with this provision because they deleted digits, not letters. In every partial veto case since *Kleczka*, Justices of this Court have consistently distinguished between "digit" and "letter" vetoes—including in the *Thompson* decision that the 1990 constitutional amendment was meant to partly reverse. And an alternative proposed amendment similarly distinguished between "letter" and "digit" vetoes. Because these two kinds of vetoes have always been treated as distinct, the term "letter" in article V, § 10(1)(c) cannot include digits, as Petitioners say.

Moreover, Petitioners' theory squarely conflicts with *C.U.B.*, the first partial veto case decided after the 1990 amendment. *C.U.B.* explained how—even after the amendment—Governors can "decrease an appropriation by striking any or all of the digits in [a numeral like] '$350,000.'" *C.U.B.*, 194 Wis. 2d at 503 (citation omitted). Petitioners' interpretation of "letter" to include "digits" would bar digit vetoes like these, and so it must be wrong.

Because this Court's precedent and the amendment's history confirms the common-sense understanding that "digits" are not "letters," Petitioners' challenge under article V, § 10(1)(c) also fails.

### A. Article V, § 10(1)(c) is interpreted against the backdrop of this Court's partial veto cases.

Petitioners' first argument under article V, § 10(1)(b) does not ask the Court to adopt a novel interpretation of that provision. But Petitioners do ask the Court to reverse course by reinterpreting the phrase "may not create a new word by rejecting individual letters in the words of the enrolled bill" in article V, § 10(1)(c) to cover digit vetoes. A brief word on constitutional interpretation is therefore in order.

This Court employs a layered methodology to interpret constitutional provisions. Three types of analyses are relevant: "the plain meaning, the constitutional debates and practices of the time, and the earliest interpretations of the provision by the legislature, as manifested through the first legislative action following adoption." *Dairyland Greyhound Park, Inc. v. Doyle*, 2006 WI 107, ¶ 19, 295 Wis. 2d 1, 719 N.W.2d 408 (citation omitted).

Here, the analysis begins with the backdrop against which the people of Wisconsin enacted article V, § 10(1)(c): this Court's prior partial veto decisions, especially *Thompson*. This contextual analysis shows that Petitioners' reading of article V, § 10(1)(c) conflicts with the uniform understanding of the provision's framers, this Court, and the Governors who have applied it. Finally, the provision's wording—even considering Petitioners' isolated dictionary definitions—confirms that article V, § 10(1)(c) does not bar digit vetoes.

### B. *Thompson* demonstrates that article V, § 10(1)(c)'s bar on "letter" vetoes does not extend to digits.

The context in which article V, § 10(1)(c) arose shows why the provision does not apply to digit vetoes. *Thompson* separately discussed and upheld vetoes of both "digits" and "letters," and the responsive 1990 constitutional amendment

barred only "letter" vetoes. An alternative proposed amendment would have separately addressed both "letter" and "digit" vetoes, but that amendment failed to pass. This reflects a conscious choice by article V, § 10(1)(c)'s framers and the Wisconsin people to only bar "letter" vetoes, not also "digit" vetoes.

#### 1. *Thompson* addressed "digit" and "letter" vetoes separately, and the responsive 1990 constitutional amendment only covered "letters."

Article V, § 10(1)(c) was enacted in response to this Court's *Thompson* decision. 1987 Senate Joint Resolution 71, which ultimately became the new provision, highlighted *Thompson*'s holding that "the governor has the authority to veto sections, subsections, paragraphs, sentences, words, parts of words, letters and digits [numbers] included in an appropriation bill." (R-App. 115 (1987 Wis. S.J. Res. 71 ("S.J.R. 71") (citing *Thompson*, 144 Wis. 2d at 462)).) Then, the joint resolution described the new proposed text as a "substantive change" to this holding. *Id.*; *see also C.U.B.*, 194 Wis. 2d at 501 (explaining that "[i]n response to the *Wisconsin Senate* case, the Wisconsin legislature proposed a constitutional amendment to Art. V, sec. 10.").

A close look at two different kinds of vetoes upheld in *Thompson*—digit vetoes and letter vetoes—therefore illuminates the specific language chosen for the subsequent amendment.

First, Governor Thompson deleted digits and words—altering both dates and dollar amounts—in a provision allocating funds to an appropriation to increase the availability of elderly benefits specialists:

> (5) From the appropriation under s. 20.435 (4) (dj) the department shall allocate $133,000 in ~~fiscal year~~ 1987~~-88 and $133,000 in fiscal year 1988~~-89 to area agencies on aging for training, supervision and legal back-up services for the benefit specialist program. **Vetoed in Part**

1987 Wis. Act. 27, § 862ae; (R-App. 112–13 (Wis. Leg. Reference Bureau, *Executive Partial Veto of 1987 Senate Bill 100* (Aug. 1987), at § E-83).) This partial veto deleted "88" and "–" from "1987–88" and "1988" from "1988–89" to yield "1987–89."

By deleting digits and a hyphen within text referencing years, Governor Thompson's veto was materially identical to the digit vetoes here:

> SECTION 402. 121.905 (3) (c) 9. of the statutes is created to read:
>
> 121.905 (3) (c) 9. For the limit for ~~the~~ 2023−~~24 school year and the 20~~24~~–~~25 school year , add $325 to the result under par. (b).

(2023 Wis. Act 19, § 402; *see also* 2023 Wis. Act 19, §§ 403–04, 408.)

Separate from this digit veto, Governor Thompson also exercised letter vetoes—that is, vetoes through which he deleted individual letters to create new words.

For example, the Legislature proposed deleting the phrase "the state's share of grants" from Wis. Stat. § 166.03(2)(b)8. (1987–88); Governor Thompson used his partial veto to preserve the letter "a" from "state" and the word "share," and so the phrase "a share" was retained. 1987 Wis. Act. 27, § 1895; (R-App. 110.) Similarly, the Legislature proposed creating a council that "shall consist of 9 members, of whom 4 shall be appointed by the governor . . . ." Governor Thompson vetoed the letter "m" from "whom" (and the word "of" and the numeral "4") to yield "shall consist of 9 members who shall be appointed by the governor." 1987 Wis. Act. 27, § 43r; (R-App. 111.)

In reviewing a challenge to these vetoes (and others), *Thompson* separately treated "digits" and "letters" when framing the question presented: whether "Governor Tommy Thompson exceeded his constitutional partial veto authority when he vetoed phrases, *digits, letters*, and word fragments in the 1987–89 biennial budget bill." *Thompson*, 144 Wis. 2d at 433 (emphasis added); *see also id.* at 434 ("The petitioners' primary contention is that the governor's vetoes were invalid because the governor has no authority under art. V, sec. 10 of the Wisconsin Constitution to veto *individual letters, digits or words*, and has no authority to reduce appropriation amounts.") (emphasis added). Specifying both "digits" and "letters" indicates that the Court thought the different words referred to different things—which is true, given that the two types of vetoes are different, as shown above.

The Court reaffirmed the distinction between "letters" and "digits" throughout the decision, including in its holding:

> [T]he governor may, in the exercise of his partial veto authority over appropriation bills, veto *individual words, letters and digits*, and also may reduce appropriations *by striking digits*, as long as what remains after veto is a complete, entire, and workable law.

*Id.* at 437 (emphasis added). Likewise, it reemphasized later its "conclusion that the governor has the authority to veto sections, subsections, paragraphs, sentences, words, parts of *words, letters, and digits* included in an appropriation bill." *Id.* at 462.

*Thompson* also separated its analysis of single-letter vetoes and digit vetoes, which further indicates that it saw the two as distinct veto varieties. The Court first explained that "prior decisions . . . dictated the result we reach today validating these challenged vetoes of *letters and words*." *Id.* at 456 (emphasis added). But it then noted how prior cases had not decided "whether the governor may reduce a legislatively enacted appropriation"—that is, by deleting

digits. *Id.* In other words, prior cases had resolved the validity of letter vetoes, but not digit vetoes.

The Court concluded that both veto types were permitted: "[C]onsistent with the broad constitutional power we have recognized the governor possesses with *respect to vetoing single letters, words and parts of words* in an appropriation bill . . . the governor has similar broad powers *to reduce or eliminate numbers and amounts of appropriations* in the budget bill." *Id.* at 457 (emphasis added). And even the partial dissent in *Thompson* drew a "sharp contrast" between the "veto [of] individual words and digits" and the "veto [of] individual letters." *Id.* at 474 (Bablitch, J., dissenting in part).

In short, if Petitioners were right that digit vetoes are just a subset of letter vetoes, the *Thompson* opinions would not have addressed the two separately.

*Thompson*'s recognition of the difference between "letter" and "digit" vetoes is therefore the critical backdrop against which the subsequent amendment must be viewed. The Legislature had before it a decision that blessed various kinds of partial vetoes, some involving "letters" and others involving "digits." And what language did the Legislature choose when drafting the proposed amendment that became article V, § 10(1)(c)? Language that barred vetoing "creat[ing] a new word by rejecting individual letters," without any mention of "digits." (R-App. 115 (S.J.R. 71).) Petitioners' reading would deny that language choice any effect.[9]

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[9] It also worth noting that in the Court's prior partial veto decision, *Kleczka*, 82 Wis. 2d 679, Justice Hansen's partial dissent similarly distinguished between "digit" and "letter" vetoes. He first noted a recent attempt "to strike the *digit* '2' from a $25 million bonding authorization," and separately highlighted how another governor "considered striking the *letter* 't' from the word 'thereafter' . . . ." *Id.* at 719–20 (emphasis added). Justice Hansen also explained that, under his preferred approach, a governor

### 2. An alternative proposed constitutional amendment would have separately addressed both "digit" and "letter" vetoes, which further underscores the distinction.

The conscious decision to cover only "letters" becomes even more stark when comparing article V, § 10(1)(c) with an alternative constitutional amendment drafted in response to *Thompson*. 1987 Wis. S.J. Res. 75 ("S.J.R. 75"), introduced the same day as the joint resolution that ultimately became the new amendment, would have created three separate partial veto conditions:

> In approving an appropriation bill in part, the governor: 1) *may reject individual digits* in any number representing an appropriation but may not increase the amount of the appropriation; 2) may not reject an appropriation amount shown in the enrolled bill and write in a different amount; and 3) *may not reject individual letters* in the words of the enrolled bill.

(R-App. 121 (S.J.R. 75 (emphasis added)).)

By using the word "digits" in one condition and "letters" in another, the Legislature showed that it recognized a difference between the two terms. *See Pawlowski v. Am. Fam. Mut. Ins. Co.*, 2009 WI 105, ¶ 22, 322 Wis. 2d 21, 777 N.W.2d 67 ("When the legislature chooses to use two different words, we generally consider each separately and presume that different words have different meanings."). And, again, in what ultimately became article V, § 10(1)(c)—S.J.R. 71—the Legislature chose to bar only "letter" vetoes, not also "digit" vetoes. (R-App. 115 (S.J.R. 71).) Again, that choice must be given effect.

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"would not be able to deal individually with numbers or words, or *single digits or letters*." *Id.* (emphasis added).

Petitioners contend that S.J.R. 75's proposed distinction between "digits" and "letters" somehow helps them. In their view, there would have been "no reason" for S.J.R. 75 to expressly allow "digit" vetoes unless the ban on "letter" vetoes covered digits. (Pet. Br. 33.) In other words, Petitioners posit that S.J.R. 75's digit veto permission functioned as a carveout from the general ban on letter vetoes.

But Petitioners' reading of S.J.R. 75 implausibly ignores its structure. That proposal had three separate veto conditions. The first condition—"may reject individual digits in any number representing an appropriation but may not increase the amount of the appropriation"—itself follows a "general rule-then-carveout" structure: generally, individual digits may be vetoed, but such vetoes may not increase an appropriation amount. In other words, the proposal's first condition stated a general rule ("may reject individual digits") and then a carveout ("but may not increase the amount of the appropriation").

That first condition had no structural relation to the third condition stated later in the proposal: "may not reject individual letters." Petitioners theorize that the text permitting digit vetoes was a carveout from this general letter veto prohibition. But if that were true, the provision would have been structured differently. Instead, the third condition banning letter vetoes would have added a carveout to its general rule—something like, "may not reject individual letters *but may reject individual digits*." But that is not the structure S.J.R. 75's drafters chose. Rather, the provision permitted digit vetoes in a separate, preceding condition, and did not phrase them as carved out from the later letter veto ban.

This all demonstrates that—as *Thompson* also shows—the drafters of S.J.R. 71 and S.J.R. 75 saw "digit" and "letter" vetoes as two distinct veto varieties.

### 3. Vague references in secondary sources cannot override the 1990 amendment's sole focus on "letter" vetoes.

Rather than confront *Thompson* on its specifics, Petitioners cite vague references to "Vanna White" or "pick-a-letter" vetoes, which some people adopted as a shorthand to describe vetoes upheld in *Thompson*. (Pet. Br. 31–32.) Ironically, even that shorthand does not help them extend article V, § 10(1)(c) to digit vetoes, since *Wheel of Fortune* involves contestants who guess letters "A" through "Z" to solve a puzzle made up of words spelled with those letters.[10] Vanna White presumably has never revealed a digit during her decades hosting the show.

In any event, lay discussions of "Vanna White" vetoes cannot substitute for a careful legal analysis of the 1990 amendment's actual text against the backdrop of *Thompson*. As shown above, that analysis shows how *Thompson* did not describe "digit" vetoes as a subset of "letter" vetoes, and that the subsequent 1990 amendment conspicuously barred only "letter" vetoes without also mentioning "digits."

## C. Cases following the 1990 constitutional amendment also disprove Petitioners' theory that article V, § 10(1)(c) bars digit vetoes.

Since the 1990 amendment, this Court has issued three major partial veto decisions: *C.U.B.*, *Risser*, and *Bartlett*. Each one confirms the analysis above: the amendment bars "letter" vetoes, not "digit" vetoes.

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[10] Wheel of Fortune, *Wikipedia,* https://en.wikipedia.org/wiki/Wheel_of_Fortune_(American_game_show) ("Contestants in control spin the wheel to determine a dollar value, then guess a consonant.")

### 1. *C.U.B.* and *Risser* preclude Petitioners' theory.

The Court's first two post-amendment decisions, *C.U.B.* and *Risser*, torpedo Petitioners' theory that article V, § 10(1)(c)'s bar on "letter" vetoes also covers digit vetoes. (Pet. Br. 23–30.)

First, both *C.U.B.* and *Risser* explained how the 1990 amendment only limits "letter" (and not also "digit") vetoes. In *C.U.B.*, the Court described how only the "power to veto letters" was "limited by the 1990 amendment," and not also the separately described "power to veto digits":

> Article V, sec. 10 has been interpreted by this court as allowing the governor the following: (1) the power to veto words and phrases; (2) *the power to veto letters* to create new words (*subsequently limited by the 1990 amendment*); (3) *the power to veto digits*; and (4) the power to reduce appropriations.

194 Wis. 2d at 502 (emphasis added). Similarly, *Risser* connected the 1990 amendment only to letter vetoes, not also digit vetoes:

> Certain principles emerge from the court's interpretations of this language [in article V, § 10(1)] . . . [A] governor *may strike words or digits* from an appropriation bill . . . . However a governor "may not create a new word *by rejecting individual letters* in the words of the enrolled bill." Wis. Const. art. V, § 10(1)(c), (1990 amendment) . . . .

*Risser*, 207 Wis. 2d at 182–83 (citations omitted).

It is impossible to square these two summaries with Petitioners' theory. A governor "may strike words or digits," but, due to the 1990 amendment, he "may not create a new word by rejecting individual letters." *Id.* And the Governor has "the power to veto digits," which was not "subsequently limited by the 1990 amendment." *C.U.B.*, 194 Wis. 2d at 502.

Both cases confirm that digit vetoes survived the 1990 amendment unscathed.[11]

Second, Petitioner's theory conflicts with *C.U.B.*'s specific observation that Governors can still strike digits in numerals: "The parties also agree, and the cases make clear, that Art. V, sec. 10 authorizes the [G]overnor to decrease an appropriation by striking any or all of the digits in '$350,000.'" *Id.* at 503. The Court explained why this remained true, even after the 1990 amendment:

> [T]he amendment as ratified by the citizenry only limits the governor's veto of letters and keeps intact the *Wisconsin Senate* conclusion that the governor has the authority to "reduce or eliminate numbers and amounts of appropriations" and exercise a "partial veto resulting in a reduction in an appropriation."

*Id.* at 501.

If Petitioners were right that article V, § 10(1)(c)'s "letter" veto ban also covers "digits," then the Governor could *not* "decrease an appropriation by striking any or all of the digits in '$350,000,'" as *C.U.B.* said he could. *Id.* at 503. Rather, article V, § 10(1)(c) would bar such a veto because striking digits would be prohibited. *C.U.B.* therefore demonstrates that Petitioners' reading is wrong.

Petitioners never explain how their textual theory accommodates *C.U.B.* Instead, they subtly (and arbitrarily) shift their position to a narrower one: that article V, § 10(1)(c) bars the governor only from "strik[ing] individual digits *in*

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[11] The Legislative Reference Bureau (LRB) has similarly described the Governor's digit veto power as extremely broad: he can "veto any digit in the bill." Richard A. Champagne et al., Wis. Legis. Reference Bureau, *The Wisconsin Governor's Partial Veto after Bartlett v. Evers* (July 2020); (R-App. 123). And LRB contrasts "digit" with "letter" vetoes as every recent case has done: "The governor may veto individual digits but may not create new words by rejecting individual letters." *Id.* (R-App. 124).

*non-appropriation numbers*." (Pet. Br. 31 (emphasis added).) But Petitioners identify no textual reason to draw a line at "non-appropriation numbers." Either "letters" covers "digits," or it doesn't—their textual theory leaves no room for half-measures. And because *C.U.B.* shows that digits can be deleted even after the 1990 amendment, "letters" must not include digits.

#### 2. *C.U.B.* and *Risser* distinguished between appropriation and non-appropriation figures only as to write-in vetoes, not also deletion vetoes.

Although Petitioners offer no textual way to resolve their dilemma, they appeal to how *C.U.B.* and *Risser* limited write-in vetoes to appropriation amounts. (Pet. Br. 34–37.) In their view, those cases support an arbitrary rule *allowing* digit deletions in appropriation figures but *forbidding* them in non-appropriation figures.

Petitioners' reliance on *C.U.B.* and *Risser* again conflates *write-in* vetoes (which were at issue in those cases) with *deletion* vetoes, (which were not). So, when *C.U.B.* "expressly dr[ew] a distinction between appropriation amounts and other parts of appropriation bills, allowing a write-in veto of the former but not the latter" (Pet. Br. 34 (citing *Risser*, 207 Wis. 2d at 188)), that "distinction" applied only to write-in vetoes. *C.U.B.* drew no such distinction as to deletion vetoes. And when *C.U.B.* "rejected the idea that a governor may use a partial veto to 'create new entities, dates, durations, percentages, distances and more'" (Pet. Br. 34 (citing *C.U.B.*, 194 Wis. 2d at 510 n.18)), it was responding to the dissent's hypothetical of a "future governor . . . strik[ing] out a word and writ[ing] in a conceptual part of that word." *C.U.B.*, 194 Wis. 2d at 522 (Abrahamson, J., dissenting). Again, that kind of conceptual write-in is not at issue here—a simple digit deletion is.

This also explains why Petitioners read far too much into an oral argument colloquy from *C.U.B.* (Pet. Br. 34.) While "press[ing] for a standard by which the court might sanction the write-in veto," Justice Geske asked the following question: "Is there any . . . basis upon which you can distinguish between reducing numbers and *reducing conceptually* other concepts?" *Risser*, 207 Wis. 2d at 187–88 (emphasis added). The Governor's counsel responded, "[i]f you allow striking outside of an appropriation number you're going to run into problems very quickly with the 1990 amendment." *Id* at 188. That response did not refer to simple deletion vetoes, but rather to the subject of Justice Geske's question: write-ins that try to "reduc[e] conceptually other concepts." *Id.* So, when counsel conceded the Governor could not change "15 days" to "10 days," *id.*, that has nothing to do with a simple digit deletion veto. Instead, it would require the kind of non-appropriation write-in that *Risser* ultimately barred.

Turning to *Risser*, Petitioners rightly explain that the case "confirmed that the write-in veto is limited to reducing appropriations." (Pet. Br. 35.) But that is exactly why *Risser* (just like *C.U.B.*) does not support their argument: write-in vetoes are different from deletion vetoes. *Risser* addressed only whether the Governor could reduce a numeric bonding limit by writing in a different, smaller one (rather than by simply deleting digits). 207 Wis. 2d at 184. The Court concluded that "the constitution prohibits a write-in veto of monetary figures which are not appropriation amounts." *Id.* at 191. Nowhere, though, did the Court reason that this limitation "stem[med] from the 1990 amendment," as Petitioners say. (Pet. Br. 35.) Rather, it stemmed from *C.U.B.* itself, which "sanctioned the write-in veto but limited its applicability to lowering appropriation amounts and only appropriation amounts." *Risser*, 207 Wis. 2d at 190.

At the very end, Petitioners finally acknowledge that *C.U.B.* and *Risser* "involved write-in vetoes" but argue that the "reasoning in those cases applies to a veto that strikes one or more digits from a number." (Pet. Br. 36.) Again, that is simply not possible, given how both cases expressly blessed digit vetoes. *See C.U.B.*, 194 Wis. 2d at 501; *Risser*, 207 Wis. 2d at 182–83.

Petitioners then backtrack a bit and argue more narrowly that the cases "forbid a governor from striking a digit in a non-appropriation number." (Pet. Br. 36.) Yet they again offer no support in either the text of article V, § 10(1)(c) or this Court's case law for *allowing* digit deletions from appropriation numerals but *forbidding* them for non-appropriation numerals.

Instead, they offer a faulty "modus tollens" syllogism using the holdings of *C.U.B.* and *Risser*. This is just a fancy name for a logic equation familiar to LSAT test-takers: "If *P*, then *Q*. Not *Q*. Therefore, not *P*."[12] Here is how their version would be mapped out:

- "If [*P*] a governor may strike a digit from a number, then [*Q*] he or she may also write in a smaller number."
- [Not *Q*:] "A governor may not write in a smaller *non-appropriation* number."
- [Therefore, not *P*:] "Therefore, a governor may not strike a digit from a *non-appropriation* number."

(Pet. Br. 36 (emphasis added).) But this mapping illustrates how Petitioners twice botch the logic by adding a "non-appropriation" qualifier as the equation unfolds. This renders their conclusion a logical non sequitur.

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[12] Modus tollens, *Wikipedia,* https://en.wikipedia.org/wiki/Modus_tollens.

This logical equation works only by disproving the original premise *Q*: "he or she may also write in a smaller number." But rather than try to disprove that premise, Petitioners substitute a meaningfully different premise by adding "non-appropriation" before "number": that "[a] governor may not write in a smaller *non-appropriation* number." Disproving that different premise (call it *X*) reveals nothing about the truth of the original premise *P*: whether "a governor may strike a digit from a number."

Further, even if Petitioners had disproven the original premise *Q*, it would only falsify the original premise *P*: that "a governor may strike a digit from a number." But they again insert a "non-appropriation" qualifier to arrive at new premise they are supposedly falsifying (call it *Z*): that a governor may "strike a digit from a *non-appropriation* number." That conclusion cannot logically follow from their original premises.

So, Petitioners' so-called "syllogism" does not take the valid form "If *P*, then *Q*. Not *Q*. Therefore, not *P*." Instead, it takes the invalid form "If *P*, then *Q*. Not *X*. Therefore, not *Z*." If anything, this botched logic simply underscores how *C.U.B.* and *Risser*—the foundation of Petitioners' equation—cannot be read to bar the vetoes at issue here.

All of Petitioners' hypotheticals similarly rest on conflating deletion and write-in vetoes. Granted, the Governor may not write in "'37 counties' in place of '72 counties,'" "strik[e] '15' in the phrase '15 days' and writ[e] in '10,'" or "reduce[ ] a figure by $40 million by striking '$1,123,638,100' and writ[e] in '$1,083,638,100'" in a bonding limit. (Pet. Br. 36–37 (citing Risser, 207 Wis. 2d at 185–87).) But that says nothing, as a logical matter, about whether the Governor could instead strike single digits from those figures. Again, such a holding would directly contradict *C.U.B.* and *Risser*, which both expressly observe—without limitation—that the governor may veto "digits." *C.U.B.*, 194 Wis. 2d at

502 (noting governor has "the power to veto digits"); *Risser*, 207 Wis. 2d at 183 ("[A] governor may strike words or digits from an appropriation bill.").

#### 3. *Bartlett* writings also distinguish "letters" from "digits."

Multiple writings in *Bartlett*, although they are not precedent, confirm that members of this Court have always distinguished between "digits" and "letters." Justice Kelly's concurrence critiqued the prevailing view that "the most elemental part of a bill is not an idea, but instead a *letter or a digit*." *Bartlett*, 393 Wis. 2d 172, ¶ 183 (Kelly, J., concurring) (emphasis added). Similarly, he criticized "treating a bill as a potpourri of letters and digits" since, in his view, "the basic part of a bill cannot be a letter or a digit" like "letter 'y' [ ]or the number '5.'" *Id.* ¶¶ 191, 193. Justice Hagedorn, too, observed that "[a] bill is not merely a collection of words, letters, and numbers." *Id.* ¶ 233.

These passages all echo the distinction between "letters" and "digits" that the Court has drawn ever since *Kleczka*.[13]

### D. Every Governor since the 1990 constitutional amendment has continued to veto digits, which underscores the implausibility of Petitioners' theory.

When analyzing constitutional meaning, this Court also examines "early legislative interpretation as evidenced by the first laws passed following the adoption." *State v. Halverson*, 2021 WI 7, ¶ 22, 395 Wis. 2d 385, 953 N.W.2d 847 (citation

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[13] Former Wisconsin Governor Anthony S. Earl similarly recalled how he once vetoed "*letters and digits* to reduce a paragraph of five sentences into a one-sentence paragraph of twenty-two words." Anthony S. Earl, *Personal Reflections on the Partial Veto*, 77 Marq. L. Rev. 437, 440 (1994) (emphasis added).

omitted). In cases involving the scope of the Governor's partial veto power under article V, § 10(1), gubernatorial practice (and the Legislature's response) immediately following the adoption of the relevant provision is similarly informative.

Practice after the 1990 amendment shows that the executive and legislative branches did not understand the new provision to bar digit vetoes. Governors continued to veto digits as if nothing had changed, and the Legislature did not override them.

Begin with the very first budget bill after the 1990 amendment, 1991 Wis. Act 39. In that bill, Governor Thompson exercised at least three digit vetoes like the ones challenged (and upheld) in *Thompson*. The Legislature did not override any of them—in fact, it did not even try.[14]

In one, Governor Thompson deleted the digit "4" in the year "1994" and then preserved the digit "3" from a statute cross-reference elsewhere to yield the new date "1993"[15]:

[14] *See* Wis. Legis. Reference Bureau, *The Veto Override Process in Wisconsin* (2023) (in Table 2, showing no overridden partial vetoes after 1985).

[15] All yellow highlighting in this and the following examples is added to the original to clarify the relevant veto.

SECTION 3466. 562.065 (3) (c) 2g of the statutes is created to read:

562.065 (3) (c) 2g. For dog races, from the total amount deducted under par. (a) on each race day that is on or after January 1, 1994, but before January 1, 1995, a licensee under s. 562.05 (1) (b) shall deposit with the board the following amounts:

**Vetoed in Part**

a. Two percent of the total amount wagered on that race day if the total amount wagered on all previous race days during the year is not more than $25,000,000.

b. Two and one-third percent of the total amount wagered on that race day if the total amount wagered on all previous race days during the year is more than $25,000,000 but not more than $100,000,000.

c. Four and one-third percent of the total amount wagered on that race day if the total amount wagered on all previous race days during the year is more than $100,000,000 but not more than $150,000,000.

d. Six and one-third percent of the total amount wagered on that race day if the total amount wagered on all previous race days during the year is more than $150,000,000 but not more than $200,000,000.

e. Seven and one-third percent of the total amount wagered on that race day if the total amount wagered

**Vetoed in Part**

on all previous race days during the year is more than $200,000,000 but not more than $250,000,000.

f. Eight and one-third percent of the total amount wagered on that race day if the total amount wagered on all previous race days during the year is more than $250,000,000.

SECTION 3467. 562.065 (3) (c) 2r of the statutes is created to read:

562.065 (3) (c) 2r. For dog races, from the total amount deducted under par. (a) on each race day that is on or after January 1, 1995, but before January 1, 1996, a licensee under s. 562.05 (1) (b) shall deposit with the board the following amounts:

1991 Wis. Act 39, §§ 3466–67; (R-App. 130.)[16]

And in another, Governor Thompson deleted the digits "91" and a "–" from the date text "1991–93" to yield "1993":

[16] This veto (designated B-71) does not appear in the Legislature's list of veto override attempts for the budget bill. *See* Index, Bulletin of the Proceedings of the Wisconsin Legislature, 1991–92 Session (R-App. 144–45).

SECTION 9117. **Nonstatutory provisions; educational communications board.**

(4p) DISTANCE EDUCATION PROJECTS.

(a) Upon approval of a plan submitted by the educational communications board to the joint committee on finance on the proposed uses of funds for 2 distance education projects, the joint committee on finance may, notwithstanding section 13.101 (3) (a) of the statutes, supplement the appropriation under section 20.225 (1) (a) of the statutes from the appropriation under section 20.865 (4) (a) of the statutes by $300,000 in each fiscal year of the 1991-93 biennium for the purpose of funding 2 distance education projects.

**Vetoed in Part**

1991 Wis. Act 39, § 9117; (R-App. 131.)[17]

As an example of a digit veto that affected something other than dates (unlike the last two), Governor Thompson vetoed the digit "1" in the text "16 hours" to yield "6 hours":

SECTION 3669. 978.045 (1g) of the statutes is created to read:

978.045 (1g) A district attorney may request a court to appoint a special prosecutor under sub. (1r). The district attorney must receive approval from the department of administration before requesting an appointment that exceeds 16 hours per case. If a district attorney requests an appointment under sub. (1r), the court shall first consider the feasibility of appointing a district attorney, deputy district attorney or assistant district attorney from another prosecutorial unit or an assistant attorney general to serve as a special prosecutor.

**Vetoed in Part**

1991 Wis. Act 39, § 3669; (R-App. 129.)[18]

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[17] This veto (designated C-35) does appear in the Legislature's list of veto override attempts. *See* Index, Bulletin of the Proceedings of the Wisconsin Legislature, 1991–92 Session (R-App. 144–45). However, the Assembly Journal indicates that the Legislature only tried to override veto C-35 as to section 216, not also section 9117—the only one at issue here. *See* Wis. Assembly J., 19th Sess., (Oct. 29, 1991); (R-App. 148).

[18] This veto (designated B-29) also does not appear in the Legislature's list of veto override attempts. *See* Index, Bulletin of

This is just a sample of the digit vetoes from the first budget bill after the 1990 amendment. At the very least, it shows that the Governor—and perhaps also the Legislature—did not view the amendment as barring digit vetoes, including those affecting dates.

Every single governor since Governor Thompson has shared that view, as shown by their similar vetoes, none of which were overridden by the Legislature.

For instance, in the 2001–03 budget bill, Governor McCallum deleted the digits "01" from the date text "November 2001" to yield "November 20":

**2001 Senate Bill 55** – 779

(9m) MAXIMUM SHARED REVENUE PAYMENTS. The treatment of section 79.06 (2) (b) of the statutes first applies to payments made in November 2001.

2001 Wis. Act. 16, § 9344(9m); (R-App. 134.)[19]

And in the 2003–05 budget bill, Governor Doyle partially vetoed digits from both dollars and dates to increase transfers from the petroleum inspection fund to the general fund and to eliminate specific effective dates for the transfer:

**SECTION 9209. Appropriation changes; commerce.**

(1) PETROLEUM INSPECTION FUND TRANSFER. There is transferred from the petroleum inspection fund to the general fund $7,657,400 in fiscal year 2003–04 and $7,657,400 in fiscal year 2004–05. **Vetoed In Part**

SECTION 9210. Appropriation changes; correc-

2003 Wis. Act 33, § 9209; (R-App. 136.)

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the Proceedings of the Wisconsin Legislature, 1991–92 Session (R-App. 144–45).

[19] The red text in this and the next several images represents vetoed text and appears in the original of these images.

Similarly, Governor Walker vetoed digits from two sets of dates in the 2017–19 budget bill (the two vetoes challenged in *Wisconsin Small Businesses United, Inc. v. Brennan*, 2020 WI 69, 393 Wis. 2d 308, 946 N.W.2d 101):

**SECTION 1641m.** 121.91 (4) (o) 4. of the statutes is created to read:

121.91 **(4)** (o) 4. Unless the resolution is adopted before January 1, 2018, subd. 1. applies only to a resolution adopted after December 31, 2018. **Vetoed In Part**

2017 Wis. Act. 59, § 1641m; (R-App. 139–40.)

– 355 – **2017 Wisconsin Act 59**

[2013 Wisconsin Act 229] Section 6 (1) This act takes effect on July 1, ~~2017~~ 2018, and first applies to bad debts resulting from sales completed beginning on July 1, ~~2017~~ 2018. **Vetoed In Part** **Vetoed In Part**

2017 Wis. Act 59, § 2265; (R-App. 141.)[20]

Every governor since the 1990 amendment has exercised digit vetoes like those challenged here, including in the very first budget bill after the amendment. This unbroken line of practice further indicates that Petitioners' interpretation of article V, § 10(1)(c) lacks merit.

[20] In this veto, Governor Walker technically rejected the Legislature's proposed removal of the "20" and the "7" in "2017," accepted its deletion of the "1" in "2017," rejected its insertion of the "201" of "2018," and accepted its insertion of the "8" in "2018."

### E. Dictionaries confirm that article V, § 10(1)(c) does not cover digit vetoes.

Petitioners pay little attention to this history and instead lean heavily into abstract dictionary definitions of "word" and "letter." (Pet. Br. 23–26.) But the dictionary definitions of those words, read in context of article V, § 10(1)(c)'s ban on "creat[ing] a new word by rejecting individual letters," confirm that past courts, governors, and legislatures understood those words correctly: "numerals" are not "words" and "digits" are not "letters."

#### 1. Article V, § 10(1)(c) only covers "letters" that make up a "word," not digits that make up numerals.

Article V, § 10(1)(c) prohibits a governor from "creat[ing] a new word by rejecting individual letters in the words of the enrolled bill." The terms "letter" and "word" must be read in the context of this phrase, not in isolation, as Petitioners would have it. Read in that context, a "word" is made up of "letters," which represent speech sounds that can be combined with each other to form different words.

Petitioners essentially propose to add new words to the provision—"numeral" and "digit"—so that it would instead prohibit "creat[ing] a new word (or numeral) by rejecting individual letters (or digits) in the words (or numerals) of the enrolled bill." But the Wisconsin people did not ratify that wording. More, that sweeping interpretation would prevent the Governor from striking digits from an appropriation, something the constitution permits.

**a. A "word" is a combination of sound characters, and a "letter" is a speech sound within a written alphabet; neither includes a "digit" or a "numeral."**

Petitioners' effort to redefine the constitutional text relies on interpreting "words" as merely a collection of text and ignoring the meaning of "letters" altogether. Read properly and in context, a "word" is a combination of "letters," which are speech sounds within a written alphabet.

A "word" is a "written or printed character or combination of characters *representing a spoken word*." *Webster's Third New Int'l Dictionary* (1986); (R-App. 179.) That is unlike numerals, which are "characters as numbers as distinguished from the words standing for the same numbers." *Number* (syn), *Webster's Third New Int'l Dictionary* (1993); (R-App. 178.)[21] A numeral is therefore written as "10," rather than the word "ten." Looked at differently, "ten" represents the "spoken word" that someone might say out loud—it is a "word"—while "10" represents the concept of the number ten—it is a "numeral." "Numeral" and "word" therefore mean different things.

In trying to conflate the two, Petitioners rely heavily on how dictionaries describe words as made up of "characters." (Pet. Br. 24–25.) In their view, this means the numeral "10" would qualify as a "word" because "1" and "0" might be seen as "characters."

But article V, § 10(1)(c) itself clarifies what kind of characters make up the "words" it covers: "letters." It specifically says, "the governor may not create a new *word*

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[21] While Petitioners use the term "number" to interchangeably cover both numbers written with letters (e.g. "one-thousand") and with numbers written with digits ("1,000"), Respondents use the more precise term "numerals" to reference numbers written using digits.

by rejecting individual *letters* . . . ." In this context, "words" are not made up of just any characters whatsoever; they are made up of "letters." Accordingly, the text "10" cannot be a "word" for purposes of article V, § 10(1)(c), unless the characters "1" and "0" can be called "letters."

And they cannot. Dictionary definitions are clear on this point. Merriam-Webster defines a "letter" as "a symbol usually written or printed representing a speech sound and constituting a unit of an alphabet."[22] Similarly, the Oxford English Dictionary defines a "letter" as "a character representing one or more of the elementary sounds used in speech and language; any of the symbols of an alphabet used in written language."[23] The Cambridge Dictionary and Dictionary.com offer comparable definitions.[24] Petitioners cite a definition that agrees: "a written or printed symbol employed to represent a speech sound or sounds." (Pet. Br. 25–26 (citing *Letter*, Webster's New World College Dictionary (4th ed. 2000 & 3rd ed. 1991)).)[25]

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[22] *Letter*, Merriam-Webster Online, https://www.merriam-webster.com/dictionary/letter; (R-App. 153.)

[23] *Letter*, Oxford English Dictionary Online, https://www.oed.com/search/dictionary/?scope=Entries&q=letter; (R-App. 154.)

[24] *Letter*, Cambridge Dictionary Online, https://dictionary.cambridge.org/us/dictionary/english/letter ("any of the set of symbols used to write a language, representing a sound in the language"); (R-App. 155); *Letter*, Dictionary.com, https://www.dictionary.com/browse/letter ("a symbol or character that is conventionally used in writing and printing to represent a speech sound and that is part of an alphabet"); (R-App. 156.)

[25] *See also Letter*, American Heritage Dictionary (1985) ("[a] written symbol or character representing a speech sound and being a component of an alphabet"); (R-App. 160); *Letter*, Webster's Ninth New Collegiate Dictionary (1989) ("a symbol usu. written or printed representing a speech sound and constituting a unit of an alphabet"); (R-App. 164); *Letter*, Oxford English Dictionary (1989)

Taken together, a "letter" both (1) represents a speech sound and (2) is part of a written alphabet. The characters "0" through "9" satisfy neither component—they are numerical concepts, not "speech sounds," and they are not part of the alphabet. Rather, those characters are "digits," which are universally defined as the numerals 0 through 9.[26] Accordingly, the digits 0 through 9 are not "letters," and numerals written using those digits are not "words" for purposes of article V, § 10(1)(c).

Petitioners cite only one dictionary that might support their idiosyncratic view that "letters" includes "digits," but that definition is a clear outlier and makes little sense on its own terms. *Webster's Third New International Dictionary*[27] begins (as other dictionaries do) by defining "letter" as "a

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("[a] character or mark designed to represent one of the elementary sounds used in speech; one of the symbols that compose the alphabet"); (R-App. 168.)

[26] *See, e.g.*, *Digit,* Merriam-Webster Online, https://www.merriam-webster.com/dictionary/digit ("any of the Arabic numerals 1 to 9 and usually the symbol 0"); (R-App. 169); *Digit*, Oxford English Dictionary Online, https://www.oed.com /search/dictionary/?scope=Entries&q=digit ("any of the nine or (including zero) ten Arabic numerals") (R-App. 170); *Digit*, Dictionary.com, https://dictionary.com/browse/digit ("any of the Arabic figures of 1 through 9 and 0") (R-App. 171); *Digit*, Cambridge Dictionary Online, https://dictionary.cambridge. org/us/dictionary/english/digit ("any one of the ten numbers 0 to 9") (R-App. 172); *Digit*, *Webster's Third International Dictionary* (1986) ("one of the 10 arabic numerals by which all numbers may be expressed"); (R-App. 176.)

[27] Petitioners seem to suggest that definitions in this dictionary are determinative. (Pet. Br. 23–24.) But the statute they cite, Wis. Stat. § 35.17(3), instead says that "[o]n questions of orthography the current edition of Webster's new international dictionary shall be taken as the standard." "Orthography" refers to "correct spelling," not what words mean. *Orthography*, *Webster's Third New Int'l Dictionary* (2002); (R-App. 183.)

conventional symbol usu. written or printed representing alone or in combination a simple or compound speech sound, constituting one of the units of an alphabet."[28] So far, so good.

But *Webster's* then notes that the term "often includ[es] the Arabic numbers." That addendum makes little sense, given how Arabic numbers do not satisfy either part of the earlier definition—they are neither "speech sounds" nor part of "an alphabet." And the addendum makes no sense in the context here: it does not comport with using the term "letter" as a component part of a "word.".

Petitioners also argue that in other contexts, the term "words" can refer to a collection of text that includes numerals. Specifically, they say the phrase "[t]he words of Orwell's *1984*" refers to all text in that novel, including the equation "2 + 2 = 5," and they cite word limit rules where numerals may count as part of a collective "word limit." (Pet. Br. 25–26, 28 (citing *MEA-MFT v. State*, 323 P.3d 198, 201 (Mont. 2014), and Wis. Stat. § 809.19(8)(c)1.–3.)). That collective concept is irrelevant here because "word" in article V, § 10(1)(c) does not refer to a broad collection of text. Instead, the provision refers to individual words made up of individual letters: "creat[ing] a new word by rejecting individual letters." In that context, "word" does not refer to numerals.

In sum, when the term "word" is used to refer to a combination of "individual letters," "word" does not include numeric symbols like "digits" and "numerals," but rather a combination of alphabetical characters representing a spoken word.

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[28] *Letter*, *Webster's Third International Dictionary* (1986); (R-App. 177.)

**b. Petitioners' reading would bar the Governor from striking digits from appropriation amounts, which *C.U.B.* said he can do.**

Petitioners' dictionary analysis further reveals how their theory produces a result inconsistent with this Court's case law: a ban on removing digits from an appropriation to create a new numeral.

Take an appropriation amount of $1,250,555—according to Petitioners, a "word" made up of "letters" that are the digits in the numeral. If the Governor struck the last three digits—according to Petitioners, three "letters"—it would make a new "word," and one meaning something very different: "$1,250." Under Petitioners' abstract dictionary approach, such a veto would violate article V, § 10(1)(c). But this Court held the opposite in both *C.U.B.* and *Risser*. *See C.U.B.*, 194 Wis. 2d at 503 ("Art. V, sec. 10 authorizes the governor to decrease an appropriation by striking any or all of the digits in '$350,000.'"); *Risser*, 207 Wis. 2d at 183 ("[A] governor may strike words or digits from an appropriation bill."). So, the term "letters" in article V, § 10(1)(c) cannot be read to include digits, as Petitioners would have it.

**2. Petitioners' drafting convention and "syntax" arguments cannot alter the plain text.**

Petitioners also try to sidestep the meaning of "letters" and "word" with theories about "drafting conventions" and "syntax." (Pet. Br. 27–30.) Although creative, these arguments cannot solve Petitioners' fatal problem that the provision bars deleting "letters" not "digits," and that a "word" is made up of "letters."

Petitioners point to the Legislative Reference Bureau's bill drafting conventions, which generally require bills and statutes to "use Arabic numerals" to refer to numeric

concepts. (Pet. Br. 27.) Petitioners suggest that "[i]t would be unreasonable to think that when Wisconsin voters amended their constitution in 1990, they understood their new amendment's applicability to hinge on whether the legislature followed this drafting convention." (Pet. Br. 27.) It is unclear how this qualifies as "context" that helps interpret the terms "letter" and "word" as used in article V, § 10(1)(c). As this Court has recognized, it "has no power to toy with the constitutional grant of a partial veto to the governor and to replace it with a veto power that may be more sensible and palatable." *Thompson*, 144 Wis. 2d at 465.

Petitioners also argue that article V, § 10(1)(c) omitted the term "numbers" simply in the interest of brevity. (Pet. Br. 28.) But even if the term "word" in the abstract could include numerals like "10," the context here demonstrates that the covered "words" are made up of "letters," which are not digits. Brevity is served only when an existing term encompasses the omitted concept, and here, "words" and "letters" do not include numerals and digits.

Petitioners turn to a final syntactical point, arguing that the restrictive clause[29] "in the words of the enrolled bill" in the phrase "individual letters in the words of the enrolled bill" somehow redefines "letters" to include digits. (Pet. Br. 29–30.) But the clause merely specifies which letters the provision affects: letters in words in an enrolled bill, not just any letters. Merely identifying the "letters" covered by the provision does not change the basic meaning of a "letter."

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[29] The *Wisconsin Bill Drafting Manual* gives this example: "Cats *that hate water* should be kept indoors." Leg. Reference Bureau, *Wisconsin Bill Drafting Manual* 2023–24 § 2.06(2) (emphasis added); (R-App. 185.) The restrictive clause ("that hate water") simply identifies the specific "cats" to which the entire phrase refers.

In sum, none of Petitioners' arguments change the plain meaning of article V, § 10(1)(c), as revealed by the provision's history, subsequent cases, and dictionary definitions: the provision bars vetoes of "letters" (not "digits") to create new words. Because the challenged partial vetoes did not delete individual letters to create new words, they complied with article V, § 10(1)(c).

### III. If the vetoes at issue are invalid, the Governor should be given another opportunity to consider the affected provisions.

If this Court concludes that the challenged partial vetoes are invalid, it should return the affected provisions to the Governor so he can consider whether to approve those provisions in full or in part, consistent with this Court's decision. When the Governor exercised these partial vetoes, he reasonably relied on this Court's prior decisions, which indicate that digit vetoes are permissible. But if this Court reconsiders and decides they are not, then the Governor deserves another chance to exercise his revised partial veto power.

To be sure, almost 100 years ago this Court suggested that, if invalid partial vetoes are made to a bill passed while the Legislature is in session, then the bill should go into effect without the invalid vetoes. *See State ex rel. Finnegan v. Dammann*, 220 Wis. 143, 264 N.W. 622, 625 (1936); *see also State ex rel. Sundby v. Adamany*, 71 Wis. 2d 118, 125, 237 N.W.2d 910 (1976).

This position overreads article V, § 10(3), which prescribes the result when the Governor fails to act at all on a bill presented to him:

> Any bill not returned by the governor within 6 days (Sundays excepted) after it shall have been presented to the governor shall be law unless the legislature, by final adjournment, prevents the bill's return, in which case it shall not be law.

In other words, the Governor's failure to act yields a valid bill if the Legislature is in session, and vice versa. The provision, however, says nothing about what happens when the Governor *does* act. Instead, article V, § 10(1) and (2) cover that scenario.

And that latter scenario occurred here. The Governor approved and signed 2023 Wis. Act 19 "in part," as article V, § 10(1)(b) allowed him to do. The bill then returned to the Legislature for reconsideration under article V, § 10(2)(b). None of this triggered article V, § 10(3). To be sure, if the Governor had done nothing, 2023 Wis. Act 19 would have taken effect after six days under subsection (3). But he instead acted.

Under these circumstances—where the Governor partially vetoes a bill in reasonable reliance on this Court's prior decisions and then those partial vetoes are invalidated—equity favors giving the Governor another chance to consider the affected provisions.[30] At minimum, nothing in our constitution precludes that result, as Petitioners implicitly concede. (*See* Pet. Br. 40 (acknowledging that the Court "may remand the matter to the Governor").

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[30] Under other hypothetical circumstances where a Governor's partial veto plainly conflicts with article V, § 10(1) or does not reasonably rely on this Court's decisions (for instance, if a veto deletes the individual letter "A," obviously violating article V, § 10(1)(c)), a different result might be appropriate.

## CONCLUSION

This Court should issue a declaration upholding the challenged vetoes.

Dated this 3rd day of September 2024.

Respectfully submitted

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## FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § (Rule) 809.19(8)(b), (bm) and (c) for a brief produced with a proportional serif font. The length of this brief is 10,967 words.

Dated this 3rd day of September 2024.

*Electronically signed by: Colin R. Roth*
COLIN T. ROTH

## CERTIFICATE OF EFILE/SERVICE

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

Dated this 3rd day of September 2024.

*Electronically signed by: Colin R. Roth*
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