STATE OF WISCONSIN

IN SUPREME COURT

Case No. 2020AP2003

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

Plaintiffs-Respondents,

v.

WISCONSIN ELECTIONS COMMISSION, ANN S. JACOBS, in her 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-Appellants.

ON CERTIFICATION FROM DISTRICT III OF THE WISCONSIN COURT OF APPEALS FOLLOWING APPEAL FROM A FINAL DECISION AND ORDER ENTERED IN THE DANE COUNTY CIRCUIT COURT, THE HONORABLE FRANK D. REMINGTON, PRESIDING

INITIAL BRIEF AND APPENDIX OF DEFENDANTS-APPELLANTS

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INTRODUCTION

The Wisconsin Constitution entrusts the Legislature with broad discretion to determine the manner to present a constitutional amendment to voters. Only narrow limitations exist on the Legislature's exercise of its discretion.

First, the ballot question—a concise statement that serves to identify the matter to be voted upon—must fairly present the real question and may not present an entirely different question. The former requirement means that the ballot question must communicate the amendment's essential purpose, and the latter prohibits the Legislature from communicating that the amendment will accomplish something *different* than its essential purpose. The ballot question is only one of multiple pieces of information the Legislature requires be provided from which voters may learn about the amendment and need not communicate every detail or potential effect of an amendment.

Second, if provisions of an amendment do not relate to a common purpose, the Legislature must submit them as separate amendments. A constitutional amendment may be multifaceted and complex. As long as the multiple provisions relate to a common general purpose, the Legislature has constitutional discretion to submit them as a single amendment.

In May 2019, after two years of public debate and with bipartisan support, the Wisconsin Legislature passed a joint resolution placing a proposed constitutional amendment on the ballot for the April 7, 2020, election. The proposed amendment (the "Amendment"), commonly known as Marsy's Law, proposed changes to Wis. Const. art. I, § 9m, Wisconsin's constitutional provision for crime victims' rights.

The Legislature properly exercised its broad discretion in its presentation of the ballot question and its submission of

a single amendment. First, the Ballot Question concisely communicated the Amendment's essential purpose: that it would give crime victims additional rights, strengthen the protection of victims' rights, but leave defendants' federal constitutional rights intact. The Legislature's chosen phrasing did not present an entirely different question than the Amendment's purpose. Second, as all of the Amendment's provisions concerned the common purpose of strengthening crime victims' rights, the Legislature properly exercised its discretion in submitting one proposed amendment to voters.

ISSUES PRESENTED

1. Did the Legislature improperly exercise its broad discretion under Wis. Const. art. XII, § 1 in writing the Ballot Question by failing to describe the Amendment's essential purpose or presenting an entirely different question?

The circuit court held that the Legislature improperly exercised its discretion.

The Court of Appeals certified this question.

This Court should answer no.

2. Did the Legislature improperly exercise its broad discretion under Wis. Const. art. XII, § 1 to present the Amendment to the voters as a single amendment?

The circuit court held that the Legislature improperly exercised its discretion.

The Court of Appeals certified this question.

This Court should answer no.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

This Court's acceptance of the certification demonstrates that both oral argument and publication are warranted.

STATEMENT OF THE CASE

I. Wisconsin's protection of crime victims' rights and the text of the Amendment.

Wisconsin has long recognized the importance of protecting the rights of crime victims. It was one of the first states to pass a Crime Victims' Bill of Rights, and Wisconsites voted to constitutionalize victims' rights in the early 1990s. *See* Wis. Const. art. I, § 9m (2017–18) (created April 1993); *see generally* Wis. Stat. ch. 950.

The prior version of article I, section 9m read:

> This state shall treat crime victims, as defined by law, with fairness, dignity and respect for their privacy. This state shall ensure that crime victims have all of the following privileges and protections as provided by law: timely disposition of the case; the opportunity to attend court proceedings unless the trial court finds sequestration is necessary to a fair trial for the defendant; reasonable protection from the accused throughout the criminal justice process; notification of court proceedings; the opportunity to confer with the prosecution; the opportunity to make a statement to the court at disposition; restitution; compensation; and information about the outcome of the case and the release of the accused. The legislature shall provide remedies for the violation of this section. 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), (A-App. 167).

The Amendment enhanced the prior version of article I, section 9m by giving victims new rights and strengthening the protections of their constitutional rights.[1] (*See* R. 24; 25, A-App. 162–63; R. 1:10 ¶¶ 28, 31.)

It amended article I, section 9m into six sections. Section 9m(1) now provides a definition for "victim" that is similar to the longstanding statutory definition in Wis. Stat. § 950.02(4). It provides that "victim," in certain circumstances, may include persons beyond the person against whom a crime was committed.

The introductory language of section 9m(2) contains a purpose statement: "to preserve and protect victims' rights to justice and due process throughout the criminal and juvenile justice process." Under section 9m(2), victims shall be entitled to the enumerated rights, which "shall vest at the time of victimization and be protected by law in a manner no less vigorous than the protections afforded to the accused." *Id.*

Many of the enumerated rights added through the Amendment echo the prior version of section 9m, or similar provisions in previously existing Wisconsin law:

> a. To be treated with dignity, respect, courtesy, sensitivity, and fairness.[2]
>
> b. To privacy.[3]

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[1] For a complete blackline of the changes made by the Amendment, (*see* R. 25, A-App. 162–63). Defendants-Appellants have also provided in their appendix clean copies of article I, section 9m before and after the Amendment took effect. (A-App. 165–67.)

[2] *See* Wis. Const. art. I, § 9m (2017–18) and Wis. Stat. § 950.04(1v)(ag) (requiring that crime victims were treated "with fairness, dignity and respect" for their privacy).

[3] *Id.*

c. To proceedings free from unreasonable delay.[4]

d. To timely disposition of the case, free from unreasonable delay.[5]

e. Upon request, to attend all proceedings involving the case.[6]

f. To reasonable protection from the accused throughout the criminal and juvenile justice process.[7]

g. Upon request, to reasonable and timely notification of proceedings.[8]

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[4] *See* Wis. Const. art. I, § 9m (2017–18) (ensuring victims had "timely disposition of the case"); Wis. Stat. § 950.04(1v)(ar), (k) (the right to "a speedy disposition of the case").

[5] *Id.*

[6] *See* Wis. Const. art. I, § 9m (2017–18) (victims had "the opportunity to attend court proceedings"); Wis. Stat. § 950.04(1v)(b) (victims' right to "attend court proceedings in the case"); *see also* Wis. Stat. § 950.04(1v)(em), (nn), (nx).

[7] *See* Wis. Const. art. I, § 9m (2017–18) (ensuring victims had "reasonable protection from the accused throughout the criminal justice process"); Wis. Stat. §§ 950.04(1v)(e), 967.10(2), 938.2965(2) (victims' right to a waiting area or minimal contact with the accused).

[8] *See* Wis. Const. art. I, § 9m (2017–18) (ensuring that victims had "notification of court proceedings"); Wis. Stat. § 950.04(1v)(g) (reasonable attempts are made "to notify the victim of hearings or court proceedings"); Wis. Stat. § 950.04(1v)(f), (gm), (vm), (ym) (victims' right to notification or reasonable attempts at notification).

> h. Upon request, to confer with the attorney for the government.[9]
>
> i. Upon request, to be heard in any proceeding during which a right of the victim is implicated, including release, plea, sentencing, disposition, parole, revocation, expungement, or pardon.[10]
>
> j. To have information pertaining to the economic, physical, and psychological effect upon the victim of the offense submitted to the authority with jurisdiction over the case and to have that information considered by that authority.[11]
>
> k. Upon request, to timely notice of any release or escape of the accused or death of the accused if the accused is in custody or on supervision at the time of death.[12]

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[9] *See* Wis. Const. art. I, § 9m (2017–18) (victims had "the opportunity to confer with the prosecution"); Wis. Stat. § 950.04(1v)(i) (victims shall have opportunity to consult with intake workers, district attorneys, and corporation counsel in juvenile cases); *see also* Wis. Stat. § 950.04(1v)(j) (right to "the opportunity to consult with the prosecution").

[10] *See* Wis. Stat. § 950.105 (victims' right to assert "his or her rights as a crime victim" in a court in the county in which the alleged violation occurred).

[11] *See* Wis. Const. art. I, § 9m (2017–18) (victims had "the opportunity to make a statement to the court at disposition"); Wis. Stat. § 950.04(1v)(pm) (victims' right to "have the court provided with information pertaining to the economic, physical and psychological effect of the crime upon the victim").

[12] *See* Wis. Const. art. I, § 9m (2017–18) (ensuring that victims had "information about . . . the release of the accused");

> l. To refuse an interview, deposition, or other discovery request made by the accused or any person acting on behalf of the accused.[13]
>
> m. To full restitution from any person who has been ordered to pay restitution to the victim and to be provided with assistance collecting restitution.[14]
>
> n. To compensation as provided by law.[15]
>
> o. Upon request, to reasonable and timely information about status of the investigation and the outcome of the case.[16]

Wis. Stat. § 950.04(1v)(um), (v), (vg), (w), (x), (xm) (victims' right to have district attorneys and relevant state agencies make "a reasonable attempt to notify the victim" regarding conditional releases, community confinements, parole revocation, release to supervision, etc.).

[13] *See* Wis. Stat. § 950.04(1v)(er) (victims' right to "not be compelled to submit to a pretrial interview or deposition by a defendant or his or her attorney"); Wis. Stat. § 971.23(6c) ("Except as provided in s. 967.04, the defendant or his or her attorney may not compel a victim of a crime to submit to a pretrial interview or deposition.").

[14] *See* Wis. Const. art. I, § 9m (2017–18) (ensuring victims' right to "restitution"); Wis. Stat. § 950.04(1v)(q) (victims' right to "restitution"); and Wis. Stat. § 950.04(1v)(r) (victims' right to "a judgment for unpaid restitution").

[15] *See* Wis. Const. art. I, § 9m (2017–18) (ensuring that victims received "compensation"); Wis. Stat. § 950.04(1v)(rm) (victims' right to "compensation").

[16] *See* Wis. Const. art. I, § 9m (2017–18) (ensuring that victims had "information about the outcome of the case"); Wis. Stat. § 950.04(1v)(y) (victims' right to "reasonable attempts made to

> p. To timely notice about all rights upon this section and all other rights, privileges, or protections of the victim provided by law, including how such rights, privileges, or protections are enforced.[17]

Wis. Const. art. I, § 9m(2)(a)–(p).

Section 9m(3) states that, except as provided under subsection (2)(n), all provisions of this section are self-executing, but the Legislature may prescribe further remedies for violations and procedures for enforcement.[18]

Section 9m(4) explains that victims may assert their rights in court, and may obtain review of adverse decisions concerning their rights; it also provides that courts should act promptly and provide a remedy for a violation of a victim's right.[19]

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notify the victim concerning actions taken in a juvenile proceeding"); Wis. Stat. § 950.04(1v)(zm) (victims' right to "request information from a district attorney concerning the disposition of a case").

[17] *See* Wis. Stat. § 950.04(1v)(t) (victims' right to "receive information from law enforcement agencies"); Wis. Stat. § 950.04(1v)(u) (victims' right to "receive information from district attorneys"); Wis. Stat. § 950.04(1v)(y) (victims' right to "reasonable attempts made to notify the victim concerning actions taken in a juvenile proceeding"); Wis. Stat. § 950.08(2) (the Wisconsin Department of Justice shall inform crime victims about their rights and victim services).

[18] *See* Wis. Const. art. I, § 9m (2017–18) ("The legislature shall provide remedies for the violation of this section.").

[19] *See* Wis. Const. art. I, § 9m (2017–18) (requiring that the Legislature provided remedies for violation of victims' rights); Wis. Stat. § 950.105 (victims' right to assert "his or her rights" in a court in the county in which the alleged violation occurred).

Section 9m(5) clarifies that an action for money damages may not be brought against the state or state actors.

Lastly, section 9m(6) provides that article I, section 9m is "not intended and may not be interpreted to supersede a defendant's federal constitutional rights," and that it does not "afford party status in a proceeding to any victim."

II. The Legislature approved the Amendment and formulated the ballot question.

Wisconsin Const. art. XII, § 1 articulates the procedure that must be followed to amend the constitution. Each legislative house must agree by majority vote to adopt the proposal. Wis. Const. art. XII, § 1. In the next legislative session, each house must again agree by majority vote and submit the same proposal to the people for approval and ratification. *Id.*

Here, the Legislature first considered the Amendment in 2017. (R. 24.) It was approved by a bipartisan majority vote in both houses and became 2017 Enrolled Joint Resolution 13. (R. 24.) The 2019 Legislature also considered the Amendment, set forth in 2019 Senate Joint Resolution 2. (R. 25, A-App. 162–64; R. 26; 27.) Both houses of the Legislature agreed by majority vote to approve the Amendment's second consideration, which became 2019 Enrolled Joint Resolution 3.[20]

The Legislature's Joint Resolution provided the text of the ballot question:

> Question 1: "**Additional rights of crime victims.** Shall section 9m of article I of the constitution, which gives certain rights to crime

[20] *See History for Senate Joint Resolution 2*, Wisconsin State Legislature,https://docs.legis.wisconsin.gov/2019/proposals/sjr2. (last visited March 18, 2022).

> 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?"

(R. 25:3, A-App. 164.)

The Amendment was submitted to a vote at the April 7, 2020, election. (R. 19:3 ¶ 7.) This triggered statutory duties for Wisconsin Election Commission ("WEC") and municipal clerks. (R. 19:3 ¶ 7.)

After WEC certified the referendum question, municipal clerks prepared and published three types of notices to inform voters about the Amendment. The Type A notice provided the Ballot Question and information on where a copy of the Amendment's entire text could be obtained. Wis. Stat. §§ 10.01(2)(a), 10.06(2)(f); (R. 19:4–5 ¶ 12; 20.) The Type B notice provided sample ballots and voting instructions. Wis. Stat. § 10.01(2)(b); (R. 19:5 ¶ 14; 21.) The Type C notice included the full text of the Amendment; it also included an explanatory statement explaining the effects of a "yes" or "no" vote prepared by the Attorney General. Wis. Stat. § 10.01(2)(c); (R. 19:5–6 ¶¶ 15–16.)

Wisconsin voters approved and ratified the Amendment by a three-to-one margin. The election results were certified on May 4, 2020, and the Amendment became effective that day. *See* Wis. Stat. § 7.70(3)(h).

III. Proceedings below.

Before the election, Plaintiffs filed a complaint alleging that the Ballot Question violated Wis. Const. art. XII, § 1, because it did not sufficiently inform voters about the substance and ramifications of the Amendment. (R. 1:11–14.)

They also claimed that the Ballot Question violated the separate amendment rule under Wis. Const. art. XII, § 1. (R. 1:14–17.)

Plaintiffs moved for a temporary injunction to prevent the Amendment from appearing on the April 2020 ballot, which the circuit court denied. (R. 2; 29; 47.)

After the Amendment passed, Plaintiffs filed a motion for a declaratory judgment. Following briefing and argument, (R. 35–36; 38–41), the circuit court struck down the ballot question on four grounds and permanently enjoined the Amendment. (R. 42–44, A-App. 123–61.)

First, the circuit court concluded the Legislature's wording of the Ballot Question was deficient because it did not communicate "every essential"; specifically, that the Amendment "would abrogate the rights of individuals accused of a crime of their right to a fair trial." (R. 42:12, A-App. 137.)

Next, the circuit court held that the Legislature misled voters through the Ballot Question in two ways. First, it concluded that the Ballot Question misled voters into "[s]tripping the rights formerly provided the accused that were in the State Constitution but assuring the voter that this does not change the United States Constitution." (R. 42:25, A-App. 150.) Second, it concluded that the Ballot Question was misleading because it explained that victims' rights would be protected "with equal force" to protections afforded the accused, while the Amendment itself provides that victims' rights will be "protected by law in a manner no less vigorous than the protections afforded to the accused." (R. 42:15–20, A-App. 140–45.) The court reasoned that "equal" connotes the "same," while "no less vigorous" could mean "greater to that which is equal." (R. 42:18, A-App. 143.)

Lastly, the circuit court explained that the Legislature should have submitted two amendments because

"expand[ing] the definition of a crime victim [ ] to give crime victims greater rights" is "sufficiently distinct" from "curtail[ing] the rights of persons only accused of committing a crime." (R. 42:30, A-App. 155.)

Following Defendants' appeal and briefing, the Court of Appeals certified this case. (COA Cert., A-App. 103–122.) It first stressed that no Wisconsin caselaw has applied the "every essential" test to a ballot question. (COA Cert. at 3, 8–11, A-App. 105, 110–13.) Second, it explained that little Wisconsin guidance exists on how a court determines whether a ballot question was misleading. (COA Cert. at 3, 12–16, A-App. 105, 114–18.) Third, the court explained that though Wisconsin caselaw does provide guidance on application of the constitutional separate-amendment requirement, further guidance would be helpful. (COA Cert. at 4, 16–19, A-App. 106, 118–21.) This Court granted the certification. (A-App. 101–2.)

STANDARD OF REVIEW

Whether Wisconsin properly amended its constitution is a question of law reviewed de novo. *McConkey v. Van Hollen*, 2010 WI 57, ¶ 12, 326 Wis. 2d 1, 783 N.W.2d 855.

ARGUMENT

I. The Ballot Question communicated the Amendment's essential purpose and did not present an entirely different question.

A. A Wisconsin court's deferential review asks whether the Legislature's ballot question failed to communicate the Amendment's essential purpose or presented an entirely different question.

1. The Wisconsin Constitution affords the Legislature broad discretion in writing a ballot question.

Article XII, section 1 states in relevant part that "it shall be the duty of the legislature to 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. This Court has repeatedly recognized that article XII, section 1 "grants the Legislature considerable discretion in the manner in which amendments are drafted and submitted to the people" for a vote. *McConkey*, 326 Wis. 2d 1, ¶ 40; *see also Milwaukee All. Against Racist and Political Repression*, 106 Wis. 2d 593, 604, 317 N.W.2d 420 (1982).

The wording of the ballot question rests within this broad legislative discretion. Wis. Stat. § 13.175; *Milwaukee All.*, 106 Wis. 2d at 603. Entrusting the Legislature with the question's form is "highly desirable," because the Legislature is capable of exercising "the highest degree of care and foresight" so as not to "thwart[ ] the will of the people." *State ex rel. Ekern v. Zimmerman*, 187 Wis. 180, 204 N.W. 803, 811 (1925).

The question for reviewing courts is *not* whether the court—or any party for that matter—would have worded the

question differently, as the ballot question need not be "entirely free from doubt." *Ekern*, 204 N.W. at 813. The question is also *not* "the wisdom or constitutionality of the substance of the amendment." *McConkey*, 326 Wis. 2d 1, ¶ 23 (citation omitted); *Milwaukee All.*, 106 Wis. 2d at 602–03 (rejecting arguments that "intertwined" debating the "wisdom" of the amendment and "the alleged infringement of basic civil rights" with the deferential legal analysis of whether the Legislature "met the constitutional and statutory requirements for submitting the amendment to the electorate").

2. A ballot question is a concise statement identifying the question to be voted upon.

Through various statutes, the Legislature has prescribed the manner for submitting proposed amendments to the people. Wis. Const. art. XII, § 1; *Ekern*, 204 N.W. at 810–12 (1925).[21] The statutes govern the proper form of the ballot question and the required types of election notices. (*See* Statement of the Case sec. II., *supra*.)

Notably, Wis. Stat. § 5.64(2) specifies that the ballot must contain "a concise statement of each question in accordance with the act or resolution directing submission." Wis. Stat. § 5.64(2)(am); *Ekern*, 204 N.W. at 810 (citation omitted). "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 Com., Inc. v. City of Milwaukee*, 2011 WI App 45, ¶ 15, 332 Wis. 2d 459, 798 N.W.2d 287 ("*MMAC*") (citing Webster's Third New International Dictionary 471 (1993)); *see also*

[21] The relevant statutes have since been amended and renumbered. *Compare, e.g.*, Wis. Stat. §§ 6.10, 6.19(6), 6.23(8) (1923), *with* Wis. Stat. §§ 10.01–10.02, 10.06, 5.64(2).

American Heritage Dictionary (defining "concise" as "[e]xpressing much in few words; clear and succinct.")[22]

A "concise" statement is all that is required because the ballot question serves simply to identify the question to be voted upon, *not* to explain the amendment in detail or educate voters on the proposed amendment's potential legal or policy implications. Wis. Const. art. XII, § 1; *Ekern*, 204 N.W. at 810–13; *Milwaukee All.*, 106 Wis. 2d at 603–04, 610.

Rather, other statutory publication requirements work with the ballot question as "a part of the submission," which work together to educate and inform the voter. *Ekern*, 204 N.W. at 810–13. Voters are expected to review these election notices and apprise themselves of public debate, and educate themselves on the substance and implications of a proposed amendment. *Id*. at 808.

The "notice requirements, in particular the posting at each polling place," for example, gives "elector[s] entering the voting booth . . . the opportunity to read the entire [proposal] along with the ballot question before—in fact just moments before—reading the ballot in the voting booth and casting his or her vote." *MMAC*, 332 Wis. 2d 459, ¶ 33 (discussing the validity of an ordinance enacted under Wisconsin's direct legislation statute).

Such notice requirements, as opposed to the ballot question itself, inform the voter about the "details." *Id.* Indeed, the ballot question's role in the process is that of "a simple ministerial duty, which any high school student of average ability would be able to do." *Ekern*, 204 N.W. at 812.

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[22] "Concise," American Heritage Dictionary, *available at*: https://ahdictionary.com/word/search.html?q=concise.

3. Two narrow limitations exist on the Legislature's broad discretion in presenting the ballot question.

The Legislature's discretion in writing the ballot question is subject to two narrow limitations. The Legislature improperly exercises its discretion if the ballot question (1) "failed to present the real question" or (2) "presented an entirely different question." *Ekern*, 204 N.W. at 813; *see also, e.g., League of Women Voters Minnesota v. Ritchie*, 819 N.W.2d 636, 647 (Minn. 2012) ("*League*") (Minnesota Supreme Court articulating a similar ballot-question standard of review as "limited to determining whether the ballot question as framed is 'so unreasonable and misleading as to be a palpable evasion of the constitutional requirement to submit the law to a popular vote" (citation omitted).)

a. A ballot question must articulate the amendment's essential purpose.

As to the requirement that the ballot question present the "real question," this Court in *Ekern* explained that the question must "must reasonably, intelligently, and fairly comprise or have reference to every essential of the amendment." *Id*.

Ekern did not develop or apply what "every essential" meant. *See generally id.* The central issue concerned whether the Legislature had lawfully delegated the drafting to the Secretary of State. *MMAC*, 332 Wis. 2d 459, ¶¶ 21–23 (discussing *Ekern*). And though this Court in *State ex rel. Thomson v. Zimmerman*, 264 Wis. 644, 659, 60 N.W.2d 416 (1953) cited *Ekern* for imposing an "every essential" requirement on the ballot question, there too this Court did not need to develop or apply that standard. (*See also* COA Cert. at 9, A-App. 111.) This case thus presents this Court

with the first opportunity to meaningfully explain and apply this standard.

Given (1) the deference courts must afford the Legislature's manner of presentation and (2) the limited function of the ballot question itself to identify the subject to be voted upon, this Court should hold that the "every essential" standard requires that the Legislature "fairly express" the "clear and essential purpose" of the proposed amendment in the ballot question. Put differently, as long as the ballot question fairly expresses the clear and essential purpose of the amendment, the Legislature's chosen presentation cannot be said to have "failed to present the real question." *Ekern*, 204 N.W. at 811; *see also MMAC*, 332 Wis. 2d 459, ¶ 39 (ballot question analysis asks whether it constituted a "brief statement of the general purpose").

This is the standard Minnesota courts, for example, apply under very similar constitutional and statutory requirements. *League*, 819 N.W.2d at 650; *Breza v. Kiffmeyer,* 723 N.W.2d 633, 636 (Minn. 2006). Similar to the "concise statement" required under Wisconsin law, Minnesota requires that a ballot question should be a "concise statement of the nature of the question." Minn. Stat. § 204B.36, subd. 3. The question "shall be sufficient to identify the amendment clearly and to distinguish the question from every other question on the ballot at the same time." Minn. Stat. § 410.12, subd. 4. And just as in Wisconsin, the form and manner of submitting a ballot question to Minnesota voters is "left to the judgment and discretion" of the legislative body. *Samuels v. City of Minneapolis*, 966 N.W.2d 245, 251 (Minn. 2021) (citation omitted). Thus, the Minnesota Legislature's discretion in fashioning the ballot question will be upheld if the "clear and essential purpose" of the proposed amendment is "fairly expressed" in the ballot question. *Id.* (citation omitted.)

And under this deferential standard, because a ballot question serves to identify the matter to be voted upon, *must* be concise, and should be simple enough that an average highschooler could understand the task to communicate the question, communicating the amendment's "essential purpose" does *not* require that any and all hypothetical or conceivable "effects of the amendment at issue be included on the ballot." *League*, 819 N.W.2d at 650–51. As this Court has recognized, "the general purpose of a constitutional amendment is not an interpretive riddle." *McConkey*, 326 Wis. 2d 1, ¶ 44. And there is simply no way (and no requirement) for a question to both be concise *and* laundry-list every possible detail and hypothetical effect.

b. The ballot question cannot present an entirely different question than the amendment.

The second narrow limitation on the Legislature's broad discretion in crafting the ballot question occurs if the ballot question "presented an entirely different question" than the amendment itself. *Ekern*, 204 N.W. at 813. This limitation must be viewed in conjunction with the limited purpose and requirements of the ballot question. "If the subject is important enough to be mentioned on the ballot it is so important that it must be mentioned in accord with the fact." *Thomson*, 264 Wis. at 660.

Put differently, this limited review asks whether the Legislature, in articulating the amendment's essential purpose, "did not present the real question but by error or mistake presented an entirely different one." *Thomson*, 264 Wis. at 660.

Critically, this limited imposition on the Legislature's discretion does *not* demand that the ballot question use the

exact same language as the amendment. *See League*, 819 N.W.2d at 651 ("We acknowledge that the ballot question. . . does not use the same words used in the amendment itself nor does it list all of the potential effects. . . [t]hese failures may be criticized. . . [but] the proper role for the judiciary. . . is not to second-guess the wisdom of policy decisions that the constitution commits to one of the political branches"); *see also Milwaukee All.*, 106 Wis. 2d at 609.

That is the very point of deference to the Legislature's discretion: the Legislature is constitutionally tasked with identifying to voters the subject to be voted upon. As long as their chosen wording cannot be said to have "presented an entirely different question" than the amendment itself, *Ekern*, 204 N.W. at 813, then courts must defer to the co-equal branch's exercise of its constitutional authority.

B. The Legislature properly exercised its broad discretion in writing the Ballot Question.

The Ballot Question here in no way violated the Legislature's broad discretion: it communicated the Amendment's essential purpose, and did not present an entirely different question.

Rather, both Plaintiffs and the circuit court fell into the trap this Court warned against: "interwin[ing]" a debate about the "wisdom" and potential effects of an amendment into an analysis of whether the Legislature met its "constitutional and statutory requirements for submitting the amendment to the electorate." *Milwaukee All.*, 106 Wis. 2d at 602–03; *McConkey*, 326 Wis. 2d 1, ¶ 23.

1. The Ballot Question concisely communicated the Amendment's essential purpose.

a. The Ballot Question explained that the Amendment would provide victims with additional rights and strengthen protection of victims' rights.

The Ballot Question here concisely conveyed the essential purpose of the Amendment: to (1) give crime victims additional rights, (2) enhance the level of protection of these rights, and (3) specify that the Amendment may not be interpreted to supersede a defendant's federal constitutional rights or to afford party status in a proceeding to any victim. The Ballot Question stated:

> **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?"

(R. 25:3, A-App. 164.) This question concisely communicated the essential purpose of the Amendment, which is all that was required. Whether the question could have been alternatively worded is not a debate for this Court.

b. The circuit court improperly imposed a duty to explain the possible effects of the Amendment.

The circuit court erred in treating potential perceived effects of the Amendment as an "essential" purpose that

needed to be communicated in the Ballot Question, on the theory that it needed to discuss the effects on the state constitutional rights of the accused. (R. 42:5–6, 20–26, A-App. 130–31, 145–51.) That was incorrect: a possible "*effect*" of the Amendment on the rights of the accused, (R. 42:6, A-App. 131)—that is, the perceived or speculative *legal impacts* of the Amendment—is not what the Ballot Question either had to or should have communicated.

Other courts have similarly rejected a "any-possible-effects" test. *See League,* 819 N.W.2d at 646–47 (Minn. 2012) (explaining that "[w]e did not require, as a condition of upholding the ballot question . . . that the effects of the amendment at issue be included on the ballot."); *Richardson v. Martin*, 444 S.W.3d 855, 861 (Ark. 2014) ("it is not necessary that a ballot title include every possible consequence or impact of a proposed measure").

And rightly so. Consider, at a basic level, how often this Court and others across Wisconsin are called upon to interpret our state constitution. Further consider that an amendment to the Constitution will of course have an effect on the law of Wisconsin (indeed, that is why the Constitution is being amended). If the Legislature's constitutionally enshrined discretion in crafting a ballot question can be usurped by courts because the Legislature did not proactively address *in the ballot question* all conceivable effects, it is hard to see how courts would actually be affording *any* deference to the Legislature.

Moreover, when courts are called upon to interpret constitutional challenges, they are presented with a specific claim and a factual record. Without a specific dispute, it is impossible to properly analyze an alleged conflict between one section of the constitution and another. Requiring an impact analysis within the concise ballot question would only confuse

and raise an entirely new set of problems about whose views to include, and in what form.

The Ballot Question also was not required to fully educate voters on every detail or conceivable ramification of the Amendment—other notice requirements served that role. *See Ekern*, 204 N.W. at 808–12.

The Ballot Question communicated that the Amendment would give crime victims additional rights, further communicated that crime victims' rights would be protected in a more significant manner, and specified that the additional victim rights and enforcement could not supersede a defendant's federal constitutional rights. It fairly and concisely summarized the essential purpose of the Amendment, and falls squarely within the Legislature's constitutional authority and discretion.

2. The Ballot Question did not present an entirely different question.

Not only did the Ballot Question fairly communicate the changes that would occur pursuant to the Amendment, nothing in the Ballot Question "presented an entirely different question" from the Amendment itself. *Ekern*, 204 N.W. at 811.

a. The Ballot Question was not misleading concerning the potential effects on a defendant's ability to request that a victim be sequestered.

The circuit court held that the Ballot Question misled voters because it did not specifically discuss victim sequestration. That conclusion was wrong in two critical ways.

The previous version of article I, section 9m stated that victims had the opportunity to attend court proceedings "unless the trial court finds sequestration is necessary to a fair trial for the defendant." Wis. Const. art. I, § 9m (2017–18). The Amendment provides that the victims "shall be entitled," "[u]pon request, to attend all proceedings involving the case." Wis. Const. art. I, § 9m(2)(e). Section 9m thus no longer contains the "fair trial" explicit caveat to a victim's right to attend proceedings.

To the circuit court, this change "eliminated" "existing State Constitutional rights"— defendants' "right to a fair trial as explicitly recognized in the now repealed provisions of Wisconsin's Constitution." (R. 42:5–6, 12–13, A-App. 130–31, 137–38.)

First, the circuit court's conclusion rested on the premise that Wisconsin's 1993 adoption of article I, section 9m created a distinct constitutional right for defendants. (*See* R. 42:21, A-App. 146.) That is wrong. Wisconsin's Constitution has separate provisions articulating defendants' rights. Wis. Const. art. I, §§ 5–8. Article I, section 9m created a provision for the rights of "Victims of crime."

There is no support for the circuit court's opinion that the 1993 amendment created a new and distinct "fair trial" constitutional right for criminal defendants—whether in general or specific to sequestration. A defendant could not have pointed to the previous version of article I, section 9m to argue that a court's failure to allow a witness to testify violated his right to a "fair trial." And sequestration as a means to protect a defendant's fair-trial right was not a new concept in 1993. In 1977, for example, the supreme court held that the "purpose of a sequestration order is to assure a fair trial." *Nyberg v. State*, 75 Wis. 2d 400, 409, 249 N.W.2d 524 (1977), *overruled on other grounds by State v. Ferron*, 219 Wis. 2d 481, 579 N.W.2d 654 (1998).

Instead, a criminal defendant's fair trial rights are protected under the Fourteenth Amendment and article I, § 7 of the Wisconsin Constitution, not under article I, section 9m. *See, e.g., State v. Faucher*, 227 Wis. 2d 700, 596 N.W.2d 770 (1999) (discussing a defendant's fair-trial right). The circuit court here improperly viewed article I, section 9m's original limitation on the *scope* of victims' rights as the *creation* of a separate right for defendants.

Significantly, the 1993 ballot question for the original adoption of article I, section 9m simply asked whether the constitution should be amended to require "fair and dignified treatment of crime victims" and to ensure "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 visited March 18, 2022). It did not mention creating a new right for defendants.

Thus, to accept the circuit court's conclusion, this Court would have to effectively hold that the 1993 ballot question was *also* constitutionally deficient because it failed to advise voters of an essential purpose of the amendment—the creation of a new constitutional right for criminal defendants. But the 1993 ballot question was not deficient, and the Ballot Question here was not misleading.

Second, and more importantly, the circuit court demanded far more of the Ballot Question than was required. The Ballot Question simply served to help voters identify the matter at hand; the voters were expected to read the various notices and independently educate themselves about the implications of the Amendment. *Ekern*, 204 N.W. at 808–12.

The circuit court suggested that it "would have been much clearer" if the Legislature had informed voters that the "fair trial" language was being withdrawn. (R. 42:25, A-App. 150.) But the Legislature had "considerable discretion" in how it phrased the Ballot Question. *McConkey*, 326 Wis. 2d 1, ¶ 40. That the circuit court may have phrased it differently does not make it an entirely different question than the Amendment.

The circuit court's reasoning, at its heart, was again that the Legislature should have explained minute details and effects of the Amendment. But the law imposes no such onerous demand. In *League*, for example, the Minnesota Supreme Court acknowledged that the language of the ballot question did not "explicitly address" certain provisions of the proposed constitutional amendment, did not "use the same words used in the amendment itself," and did not "list all of the potential effects of implementation," which were "failures" that could be "criticized." 819 N.W.2d at 649, 651 (also describing the ballot language as an "amalgamation" of various provisions). Nonetheless, the court held that these differences between the proposed constitutional amendment and the ballot question did not make the question misleading because the "essential purpose" of the proposed amendment was communicated by the language of the question. *Id.* at 651.

Here, just as there, the Ballot Question did not need to explicitly address every detail of the Amendment. It adequately communicated the Amendment's essential purpose that victims would now have additional rights, while leaving the defendant's federal constitutional protections intact. That was not misleading.

b. The Ballot Question was not misleading with regard to potential effects on defendants' state constitutional rights.

The circuit court also concluded that the Ballot Question was misleading because it did not specifically advise voters that language would be removed from article I, section 9m: "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 (1993–94), and replaced with "This section is not intended and may not be interpreted to supersede a defendant's federal constitutional rights . . . ." Wis. Const. art. I, § 9m(6).

The circuit court ruled that this change eliminated defendants' state constitutional rights and "lull[ed] the voter into thinking that the source of existing substantive and procedural rights [for defendants] are found only within the United States Constitution." (R. 42:22, 25, A-App. 147, 150.) Here too, the circuit court's reasoning strayed from the relevant legal test.

First, the circuit court again assigned more work to the Ballot Question than was due. In the circuit court's view, the Ballot Question was misleading because it did not communicate what the increase to victims' rights meant for the balancing of those rights with defendants' rights. But the relevant question was whether the Ballot Question presented an "entirely different question" from what the Amendment would accomplish. *Ekern*, 204 N.W. at 811, and the Ballot Question did not do that.

Far from presenting an entirely different question, the Ballot Question told voters that: (1) article I, section 9m would be amended to give victims "additional rights"; (2) those rights would now by default be protected with "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." (R. 25:3, A-App. 164.) The Ballot Question did not have to broadly educate voters on the rest of the Wisconsin Constitution. *Id*. at 808–12.

The circuit court's reasoning again improperly rested on concerns about *possible effects* of the Amendment in particular cases. The circuit court stressed that, as a result of the Amendment, the "State Constitution does not now answer the question of how courts should balance a conflict between the rights of crime victims with the rights of persons accused of a crime." (R. 42:13, A-App. 138.) But the Ballot Question did not have to anticipate and answer how effects of the law might play out in individual cases.

The Ballot Question did not have to inform voters of all possible implications of the Amendment. *Ekern*, 204 N.W. at 808–12. Seemingly every constitutional amendment will have significant implications. If a ballot question may be struck down for not identifying all of them, it is hard to fathom a ballot question that would survive.

The circuit court concluded that the Ballot Question gave voters "the wrong impression that they were only approving amendments relating to the creation" of victims' rights. (R. 42:11, A-App. 136.) But the only constitutional provision being amended was indeed the *victims*' rights provision.

Further, there is nothing to indicate that the circuit court's concerns will even prove correct. Indeed, the circuit court directly asked Plaintiffs at argument to give an example of a circumstance where "elevating the rights of crime victims [would] further compromise or interfere with the rights of criminal defendants"; tellingly, Plaintiffs could not offer *any* meaningful example. (*See* R. 48:64–67.) Given the Legislature's broad discretion, it would be problematic for this

Court to strike down the Ballot Question based on speculative concerns that may never prove true.

For example, the circuit court emphasized that the Wisconsin Constitution may provide greater rights to defendants than the U.S. Constitution. (R. 42:13, 23, A-App. 138, 148.) But consider how many steps are required to get from that fact to the court's conclusion that the Amendment lessened a defendant's rights under the Wisconsin Constitution: (1) because the Wisconsin Constitution may provide greater protections, there may be circumstances where it affords defendants a particular right that the federal constitution does not; (2) *if* that happens, such a right may possibly come into conflict with a victims' constitutional right; and (3) *if* that happens, a judge in a particular case may prioritize the victim's right. The Ballot Question neither could have nor had to fully inform the voter of every potential ramification. *Ekern*, 204 N.W. at 808–12.

Ultimately, the circuit court's real concern rested with implementation of the *Amendment* itself: "The reverberations from these amendments will be felt as lower courts struggle to balance the competing rights of victims as against the rights of the accused." (R. 42:25, A-App. 150.) But the analysis before the court was *not* "the wisdom or constitutionality of the substance of the amendment." *McConkey*, 326 Wis. 2d 1, ¶ 23 (citation omitted); *Milwaukee All.*, 106 Wis. 2d at 602–03.

The proper question was whether the Legislature violated its broad discretion by presenting an "entirely different question" to the voters than the amendment itself. *Ekern*, 204 N.W. at 811; *Thomson*, 264 Wis. at 260. The answer is no: the Ballot Question told voters that an upward shift would occur for victims' rights, and told voters where the boundary on those rights would now be relative to defendants'

rights. Its phrasing did not have to be "entirely free from doubt." *Ekern*, 204 N.W. at 813.

c. The Ballot Question's explanation that victims' rights would be protected "with equal force" did not present an entirely different question.

Lastly, the circuit court concluded that the Ballot Question presented an "entirely different question" by explaining that the Amendment would "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." (R. 25:3, A-App. 164.) That, too, is incorrect. The Amendment did what it said it would: it elevated the protection of victims' rights to the level of protection afforded defendants' rights.

The circuit court deemed the Ballot Question misleading because it said victims' rights would be protected "with equal force," while the Amendment itself says that victims' rights will be "protected by law in a manner *no less vigorous* than the protections afforded to the accused." Wis. Const. art. I § 9m(2). The court reasoned that "equal" connotes the "same" while "no less vigorous" could mean "greater to that which is equal." (R. 42:18, A-App. 143.) This reasoning is incorrect on multiple fronts.

First, the circuit court's conclusion is the very "hypercritical" second-guessing of word choice our case law forecloses. *Morris v. Ellis*, 221 Wis. 307, 266 N.W. 921, 925 (1936). The language described the level of *protection* provided to rights, as opposed to the amount or nature of rights themselves. And insofar as victims' rights previously existed, they had not been protected as aggressively as defendants' rights. Indeed, as the Wisconsin Supreme Court explained in 1983 when discussing Wis. Stat. ch. 950's use of

"no less vigorous," "[t]he language . . . is indicative of a widely held societal concern that the criminal justice system too often tramples upon the victims of crime in an effort to do 'justice' for perpetrators of such crimes." *State v. Burns*, 112 Wis. 2d 131, 142, 332 N.W.2d 757 (1983).

The Legislature thus had to communicate to voters that the Amendment would elevate the strength of the protection of victims' rights from below the level afforded defendants' rights, up to that level.

Explaining this in concise, understandable fashion was not an easy task. "[N]o less vigorous"—the language used in the Amendment—is not necessarily commonly used language. The circuit court recognized this: "[N]obody talks like that, no less vigorous. That's not a very precise terminology"; "The words 'no less vigorous' are not so easily understood." (R. 47:33; 42:18, A-App. 143.) And ballot question drafting is supposed to be so "simple" that "any high school student of average ability" could do it. *Ekern*, 204 N.W. at 812. So, the Legislature chose more commonly understood language, and explained in simple terms that if the Amendment passed, victims' rights would be protected with "equal force" to the protections afforded the accused. This was not misleading. *See, e.g., Samuels*, 966 N.W.2d at 251 (court declined to "wordsmith the language of a ballot question, even if 'badly done," because the "question fairly communicate[d] the 'essential purpose' of the proposed amendment) (citation omitted). There is *no* requirement that the Legislature use the exact same language.

But even if the language is not "entirely free from doubt," *Ekern*, 204 N.W. at 813, this Court still should affirm

given the Legislature's broad discretion.[23] Any subtle difference in language, to the extent it suggests a different meaning, does not rise to the level of presenting an "entirely different question" such that the essential purpose of the Amendment was not clearly or fairly communicated to the voter.

Second, the circuit court's conclusion again rested on hypothetical concerns about possible effects of the Amendment. It depended on the predicate assumption that the Amendment could result in particular circumstances where victims' rights would be protected with *more* vigor than defendants' rights. (*See* R. 42:19, A-App. 144.)

But, here again, the circuit court saddled the Ballot Question with a greater burden than it had to carry. It did not have to address every possible argument a party could make or every possible ramification. Rather, courts expect voters to review notices and educate themselves as to possible implications. *Ekern*, 204 N.W. at 810–12. As required, this Ballot Question undeniably communicated that the Amendment would elevate the protection of victims' rights from a second-tier—below defendants' rights—upwards.

Consider, for example, the difference between this case and *Thomson*, 264 Wis. at 660, the one instance where this Court invalidated a ballot question for a proposed constitutional amendment. This Court there concluded that the ballot question was misleading because the proposed amendment would free the Legislature from observance of any lines in apportioning senate districts, but the ballot question stated that if passed, "the legislature *shall* apportion

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[23] The circuit court also suggested the Legislature could have just ignored the level of protection of victims' rights in the ballot question. (R. 42:20, A-App. 145.) This is further second-guessing that does not defer to the Legislature's discretion.

senate districts along town, etc., lines." *Id.* That question could not be said to be proper exercise of writing a concise statement of the matter to be voted upon, because it told voters the amendment would accomplish the opposite of what it actually would. *See id.*

Unlike in *Thomson*, the Ballot Question here, did not advise voters that the Amendment would accomplish the opposite of what the question stated. It told voters that protection of historically second-tier victims' rights would be elevated to the level of defendants' rights. Any possible shades of difference between protecting victims' rights with "equal force" and protecting victims' rights "no less vigorously" are immaterial to the key shift the Amendment accomplished.

Third, the language of the Amendment was consistent with preexisting statutory law; essentially "constitutionalize[d] the status quo" of victims' rights long set forth in Wis. Stat. ch. 950. *See McConkey*, 326 Wis. 2d 1, ¶ 53. For decades, our statutes have provided that victims' rights are to be "honored and protected . . . in a manner no less vigorous than the protections afforded criminal defendants." Wis. Stat. § 950.01 (1981–82). Defendants have found no examples of a Wisconsin court interpreting "no less vigorous" to mean victims' rights should be protected with force beyond that afforded defendants' rights.

The Legislature had "considerable discretion" in phrasing. *McConkey*, 326 Wis. 2d 1, ¶ 40. The question fairly communicated the elevation in the level of protection of victims' rights.[24]

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[24] The circuit court's questioning of the Legislature's reference to "rights" of crime victims but "protections" of the accused fails for the same reason. (*See* R. 42:17, A-App. 142.)

II. The Legislature properly exercised its discretion to present a single amendment.

Just as the Legislature properly exercised its discretion in crafting the ballot question, so too did it properly submit a single amendment to voters. Every provision of the amendment connects to the common purpose of strengthening crime victims' rights.

A. If an amendment's propositions are connected to a single overall purpose, the Legislature has discretion to submit them to the voters as one amendment.

The separate amendment rule provides 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.

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. Rather, the only requirement is that "the propositions must 'tend to effect or carry out' the [amendment's] purpose." *Id.* ¶ 41 (quoting *Thomson*, 264 Wis. at 656). And the text and historical context should generally make the purpose of the amendment apparent. *Id.* ¶ 44.

In other words, if all propositions are simply connected with each other, the Legislature may submit them as a single proposed amendment. *Id.* ¶ 42.

Here again, the Legislature has "considerable discretion": "It 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." *Id.* ¶¶ 40–41 (citation

omitted). Courts may strike the Legislature's discretionary choice "only in exceedingly rare circumstances." *Id.* ¶ 40.

This Court has on multiple occasions considered whether a ballot question violates the separate-amendment rule: *State ex rel. Hudd v. Timme*, 54 Wis. 318, 11 N.W. 785 (1882); *Thomson*, 264 Wis. 644; *McConkey*, 326 Wis. 2d 1; and *Milwaukee All.*, 106 Wis. 2d 593.

Most instructive here is *Milwaukee Alliance*. There, the Legislature submitted a single proposed amendment to revise the right to bail to a concept of conditional release. *Milwaukee All.*, 106 Wis. 2d at 600. The amendment authorized the Legislature to permit circuit courts to deny release on bail for a limited period to certain accused persons without requiring monetary conditions. *Id.* Challengers argued that the issues of conditional release and anti-monetary bail should have been submitted to the voters as separate questions. *Id.* at 607.

This Court rejected their argument because they did not apply the proper test. *Id.* at 607–08. It explained that the amendment's purpose was to change the provision from the limited concept of bail to the concept of conditional release. *Id.* at 607. While "[t]here may be disagreement with the philosophy of that purpose," the question presented "contained integral and related aspects of the amendment's total purpose." *Id.* at 608. The court further reasoned that a single amendment could cover several propositions, all tending to effect and carry out one general object or purpose, and all connected with one subject. *Id.*

B. The Amendment was properly submitted as a single amendment because all provisions concerned crime victims' rights.

For the same reasons stated in *Milwaukee Alliance*, the Amendment here did not contain separate amendments requiring separate questions. 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." Wis. Const. art. I, § 9m(2)(intro.).

The previous constitutional structure confirms the Amendment's purpose. The quoted provision above replaced the purpose language in article I, section 9m: "This state shall treat crime victims, as defined by law, with fairness, dignity and respect for their privacy. This state shall ensure that crime victims have all of the following privileges and protections as provided by law." Wis. Const. art. I, § 9m (2017–18). This Court held that the first quoted sentence constituted a statement of purpose because it "uses very broad terms to describe how the State must treat crime victims," and "requires the State to 'ensure' that crime victims have a number of 'privileges and protections,' which are articulated in detail [below]." *Schilling v. State Crime Victims Rts. Bd.*, 2005 WI 17, ¶ 17, 278 Wis. 2d 216, 692 N.W.2d 623. The Amendment replaced that purpose statement with text that uses similarly broad language to describe the Amendment's aim in protecting victims' rights.

The entirety of the Amendment relates to the purpose of protecting the rights of crime victims by: (1) defining who is a "victim;" (2) outlining the specific constitutional rights of victims; (3) specifying the force by which those rights are to be protected; (4) stating how these victims' rights can be enforced and remedied; (5) clarifying that a cause of action for damages for violations of victims' rights cannot be brought against state actors; and (6) specifying that the Amendment may not be interpreted to allow victims' rights to supersede defendants' rights or afford victims party status. All of these provisions relate to describing, preserving, and protecting crime victims' rights, which the Amendment identifies as its

purpose. The Legislature thus properly exercised its discretion in submitting one amendment to the voters.

The circuit court ruled that the Amendment should have been submitted as two amendments because it "expand[ed] the definition of a crime victim" and "g[a]ve crime victims greater rights and at the same time curtail[ed] the rights of persons only accused of committing a crime." (R. 42:30, A-App. 155.) By looking at speculative legal implications and effects of the Amendment, the circuit court departed from consideration of the Amendment's common purpose—to elevate and protect the rights of crime victims, was properly submitted as a single Amendment.[25]

[25] The circuit court "enjoined" the Amendment. (R. 44, A-App. 124–25.) As argued, this Court should reverse. To the extent this Court nevertheless affirm, Defendants submit that the proper relief would be affirming the declaration that the Ballot Question did not meet all constitutional and statutory requirements, and therefore, "there has been no valid submission to or ratification by the people of the [ ] amendment," rendering the Amendment invalid. *Thomson*, 264 Wis. at 660.

CONCLUSION

Defendants-Appellants respectfully request that this Court reverse the circuit court's November 3, 2020, Decision and Order, as well as the circuit court's November 23, 2020, Judgment.

Dated this 21st day of March 2022.

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 9,141 words.

Dated this 21st day of March 2022.

JODY J. SCHMELZER
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CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § (RULE) 809.19(12) (2019-20)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § (Rule) 809.19(12) (2019-20).

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This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

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Dated this 21st day of March 2022.

JODY J. SCHMELZER
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APPENDIX CERTIFICATION

I hereby certify that filed with this brief is an appendix that complies with Wis. Stat. § (Rule) 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under § (Rule) 809.23 (3)(a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

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JODY J. SCHMELZER
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