

James Wigderson: Hagedorn and the law as written

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Forgive the somewhat rambling nature of the newsletter this morning but I have to start with the non-news good news.

We're really pleased so far with the response rate on the [RightWisconsin December Survey](#). We're doing much better than a Gallup poll. However, we're greedy for more.

Please consider following the [link](#) to answer a few brief questions to help us understand our readers. The survey is anonymous, so don't worry about your answers being held against you when you're nominated for the U.S. Supreme Court.

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Speaking of our courts, we have to turn our attention to the Wisconsin Supreme Court which decided 4-3 that the campaign of President Donald Trump has to start their lawsuit at the circuit court level rather than directly in front of our state's highest court. Truthfully, I'm shocked the decision wasn't 7-0 after reading Justice Brian Hagedorn's opinion for the majority.

Hagedorn noted in his opinion that the law clearly states that election cases must begin at the circuit court level. The statute itself reads:

“Within 5 business days after completion of the recount determination by the board of canvassers in all counties concerned, or within 5 business days after completion of the recount determination by the commission chairperson or the chairperson's designee whenever a determination is made by the chairperson or designee, any

candidate, or any elector when for a referendum, aggrieved by the recount may appeal to circuit court.”

This did not please Hagedorn’s fellow conservatives on the court who seemed to claim an unlimited authority for the Supreme Court to choose whatever cases they want to consider. Justice Rebecca Bradley’s dissent was especially unhinged, calling Hagedorn’s adherence to the law the “death of democracy.” It had all of the literary merit of *The Lord of the Rings* if it had been written by Gollum.

Chief Justice Pat Roggensack at least said she would’ve used the circuit court to do the fact-finding work. Roggensack also went a step further in pointing out that what the Trump campaign was requesting, the tossing of over 220,000 ballots, to be a remedy that was too much for the court to consider.

Hagedorn’s adherence to the written word of the law has already drawn scorn from some Republicans complaining he’s a “traitor” or worse. The personal attacks are astounding considering Hagedorn is doing precisely what he promised when he ran for the Supreme Court: make decisions based upon the written law and leave the law-making to the legislature.

Republicans need to ask themselves if they really meant what they said when they claimed they wanted judges to stick to the law rather than invent new laws or ignore the current laws for convenience. Are we governed by the laws, or the caprices of seven robes in chambers sealed to the public?

If the law is to be only what a majority of judges say it is, we may soon find that we have no laws at all.