

# Wisconsin Institute for Law & Liberty: Urges Wisconsin Supreme Court to adopt rules petition to hear redistricting challenges

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Collin Roth | WILL Director of Communication

[collin@will-law.org](mailto:collin@will-law.org) | 414-607-2558

The News: Wisconsin Institute for Law & Liberty (WILL) President and General Counsel, Rick Esenberg, will appear at a Wisconsin Supreme Court public hearing, Thursday, to advocate for a rules petition that, if adopted, would enable the Wisconsin Supreme Court to efficiently handle legal challenges to redistricting. In 2002, the Supreme Court decided not to handle a redistricting case because it felt it did not have the proper rules in place to do so. WILL represents Scott Jensen, former Wisconsin Assembly Speaker, the plaintiff in that case, who was promised by the Wisconsin Supreme Court in 2002 that the Court would adopt rules for redistricting cases so that the Supreme Court would be in a position to handle such cases when they came up in the future.

The Quote: WILL President and General Counsel, Rick Esenberg, said, "Redistricting is a function of state government and ought to be adjudicated by state courts. The Wisconsin Supreme Court recognized this in the past and it should adopt a rule that achieves this result."

Background: Redistricting litigation has been common in Wisconsin following the census especially when the executive branch and the legislative branch are held by different parties. There was redistricting litigation in Wisconsin following the 1930, 1940, 1950, 1960, 1980, 1990, 2000 and 2010 censuses. But choosing which court system, state or federal, to resolve the dispute has become a controversy as partisans seek advantage. WILL filed a rules petition with the Wisconsin Supreme Court in June 2020, on behalf of former Wisconsin Assembly Speaker Scott Jensen, to establish procedures so that state courts have an efficient mechanism for handling such cases. During the redistricting legal challenges in the 2000s involving former Speaker Jensen, the Wisconsin Supreme Court deferred to the federal courts because the Supreme Court had not adopted procedures, like the rules petition filed by WILL, to specifically address how the Supreme Court would handle redistricting challenges. In fact, the Court, at the time, pledged to adopt rules in the future to ensure the court could adjudicate redistricting challenges: "to assure the availability of a forum in this court for future redistricting disputes, we will initiate rulemaking proceedings regarding procedures for original jurisdiction in redistricting cases."

WILL's rules petition asks the Court to follow through on that pledge. At the time the Court said that it needed to create new rules for original actions relating to redistricting that would include provisions governing fact-finding, opportunity for public comment and establishing timelines for the process. WILL's rules petition, if adopted, provides procedures that address each of these concerns. In the Jensen case the Court also emphasized, "It is an established constitutional principle in our federal system that congressional reapportionment and state legislative redistricting are primarily state, not federal, prerogatives." This is as true today as it was then. The Wisconsin Supreme Court ought to adopt WILL's rules petition to ensure that the Supreme Court can follow through on its pledge to adjudicate redistricting challenges.

Read More:

- [Rules Petition](#), June 2, 2020
- [Memorandum](#), June 2, 2020