STATE OF WISCONSIN

IN SUPREME COURT

Case No. 2019AP1376-OA

NANCY BARTLETT, RICHARD BOWERS, JR., and TED KENEKLIS,

Petitioners,

v.

TONY EVERS, in his official capacity as Governor of the State of Wisconsin, JOEL BRENNAN, in his official capacity as Secretary of the Wisconsin Department of Administration, WISCONSIN DEPARTMENT OF ADMINISTRATION, CRAIG THOMPSON, in his official capacity as Secretary of the Wisconsin Department of Transportation, WISCONSIN DEPARTMENT OF TRANSPORTATION, PETER BARCA, in his official capacity as Secretary of the Wisconsin Department of Revenue, and WISCONSIN DEPARTMENT OF REVENUE,

Respondents.

RESPONSE TO PETITION FOR ORIGINAL ACTION

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ISSUE PRESENTED

Should this Petition for an Original Action be denied because the issues it raises are meritless under long-established law and do not warrant this Court's attention prior to litigation in the lower courts?

INTRODUCTION

The Wisconsin State Constitution grants the Governor the authority to exercise a partial veto when approving an appropriations bill presented by the Legislature. Wis. Const. art. V, § 10(1). This constitutional authority has been confirmed by almost a century of this Court's precedent and two amendments to article V, section 10 of the Wisconsin State Constitution.

Governor Tony Evers exercised his constitutional authority to partially veto numerous provisions of 2019 Wis. Act 9 ("Act 9"), the 2019–2021 biennial state budget, including the four provisions challenged by the Petitioners. The challenged vetoes are, like many similar partial vetoes by prior administrations, permissible under the Constitution and this Court's precedent. Petitioners ask this Court to take jurisdiction of this original action challenging Governor Evers' exercise of his constitutional authority to partially veto four sections of Act 9. Governor Evers and the other Respondents oppose the Petition.

This Court has reviewed challenges to Governors' use of their partial veto authority eight times since that authority was added to the Wisconsin Constitution in 1930. In 1990 and 2008, article V, section 10 was amended to add two narrow restrictions to the Governor's partial veto power. Petitioners' arguments challenging the exercise of Governor Evers' partial-veto authority in this case directly contradict the plain language of the Wisconsin Constitution. Moreover, they run

afoul of this Court's partial-veto jurisprudence in its entirety. They also ignore the Legislature's own implicit approval of that jurisprudence by its failure to amend article V, section 10 in the manner urged by Petitioners.

Petitioners explicitly ask this Court to overrule one of its prior decisions, but their arguments are so expansive that they would (if successful) require this Court to overrule all or part of almost every opinion it has written in this area. These extreme arguments are meritless and should not form the basis for this Court exercising its original jurisdiction.

STATEMENT OF THE CASE

The Wisconsin State Assembly and Senate passed a biennial budget bill for the 2019–2021 biennium on June 25–26, 2019. *See* 2019 Assembly Bill 56. The budget bill was presented to the Governor pursuant to article V, section 10(1)(a), for his signature. Governor Evers, using his authority to approve appropriations bills "in whole or in part," Wis. Const. art. V, § 10(1)(b), signed the budget bill with partial vetoes on July 3, 2019. *See* 2019 Wis. Act 9. Act 9 was published the next day, July 4, 2019. *See id.*

On July 31, 2019, Petitioners filed a Petition for Original Action and Memorandum in Support asking this Court to take jurisdiction of the original action. Pursuant to an order from this Court dated August 5, 2019, Petitioners filed an Amended Petition on August 19, 2019.

Petitioners challenge four of Governor Evers' partial vetoes in their Petition. First, they challenge the partial veto broadening the availability of Volkswagen-settlement grant program approved, but narrowly restricted, by the Legislature. (Am. Pet. ¶¶ 18–44.) Second, they challenge the partial veto broadening the availability of a Department of Transportation program for local transportation grants approved, but narrowly restricted, by the Legislature.

(Am. Pet. ¶¶ 45–67.) Third, they challenge the partial veto of the weight-based registration fee schedule for trucks. (Am. Pet. ¶¶ 68–83.) Fourth, they challenge the partial veto broadening the definition of "vapor product" to ensure the consistent taxation of all similar and related vapor products. (Am. Pet. ¶¶ 84–100.)

Pursuant to the Court's order of August 5, 2019, Respondents now answer the Amended Petition and file this Memorandum asking this Court not to take jurisdiction of this original action.

ARGUMENT

This Court should deny the Petition for Original Action because it is meritless and does not warrant this Court's attention prior to litigation in the lower courts.

A. This Court has wisely expressed a reluctance to exercise original jurisdiction in partial-veto cases automatically.

A person may request this Court "to take jurisdiction of an original action." Wis. Stat. § 809.70(1). The Court may accept or refuse jurisdiction in its discretion. *See id.* Factors the Court may consider include whether the case raises a matter of *publici juris*, whether the matter raised requires a prompt decision by this Court, and whether the parties stipulate to any material facts. *Citizens Util. Bd. v. Klauser*, 194 Wis. 2d 484, 488 n.1, 534 N.W.2d 608 (1995) (hereinafter, "*CUB*").

This Court has taken jurisdiction of original actions challenging the Governor's exercise of the constitutional partial-veto authority on several occasions. *Id.* Nevertheless, the Court has expressed "a reluctance to take these cases as a matter of course." *Id.* The Court has admonished parties not

to conclude that its past acceptance of partial-veto original actions means it will invariably agree to hear such challenges in the first instance.

> [I]t would be a serious mistake to interpret our acceptance of jurisdiction in this cause as a general willingness to thrust the court into the political arena and referee on a biennial basis the assertions of power of the executive and legislative branches in relation to the appropriations act.

Wis. Senate v. Thompson, 144 Wis. 2d 429, 434 n.3, 424 N.W.2d 385 (1988) (quoting *Brownson v. Firestone*, 382 So. 2d 654, 671 (Fla. 1980).).

A survey of the partial-veto cases this Court has accepted as original actions shows that the cases accepted have had some arguable legal merit even where the petitioners were ultimately unsuccessful. The Court's acceptance of these cases does not set a precedent for accepting a partial-veto challenge foreclosed by decades of precedent, like those advanced in the present Petition.

Since the partial-veto provision was added to the Wisconsin Constitution in 1930, this Court has considered challenges to the Governor's use of that authority in eight original actions.

Three early cases addressed several essential issues presented by the new partial-veto provision, and were appropriately considered under this Court's original action jurisdiction. *State ex rel. Wisconsin Telephone Co. v. Henry*, 218 Wis. 302, 260 N.W. 486 (1935), concerned the Governor's power to partially veto (1) provisos or conditions "inseparably connected to the appropriation," and (2) non-appropriation parts of an appropriation bill. *Id.* at 309. The Court did not reach the first question, because the Governor had not vetoed any such provisos or conditions. *Id.* at 309. On the second, the Court held that a Governor can veto any separable part of an

appropriation bill, even one that does not appropriate funds. *Id.* at 314–15.

Henry created the "workable law" standard, the test that has been consistently followed in all subsequent partial veto cases:

> [T]he parts approved, as they were in the bill, as it was when originally introduced, and as they continued therein at all times . . . constitute, in and by themselves, *a complete, entire, and workable law*, for the appropriation for relief purposes . . . and for the allotment and use of that appropriation . . . .

Henry, 218 Wis. at 314 (emphasis added).

The *Henry* case also explained that the partial-veto power grants the Governor a coequal role in the appropriations process. Referring to the newly minted partial-veto amendment, the Court wrote:

> [T]here is nothing in that provision which warrants the inference or conclusion that the governor's power or partial veto was not intended to be as *coextensive* as the legislature's power to join and enact separable pieces of legislation in an appropriation bill. As the legislature can do that in this state, there are reasons why the governor should have a *coextensive power of partial veto*, to enable him to pass, in the exercise of his *quasi-legislative function*, on each separable piece of legislation or law on its own merits.

Henry, 218 Wis. at 315 (emphasis added).

Original jurisdiction resolved two other open questions over the next five years. In *State ex rel. Finnegan v. Dammann*, 220 Wis. 143, 264 N.W. 622 (1936), the Court affirmed that the Governor's partial-veto authority is limited to appropriations bills, and does not extend to a non-appropriations bill, even one that "indirectly affects continuing revolving fund appropriations theretofore enacted." *Id.* at 147–49. In *State ex rel. Martin v. Zimmerman*,

233 Wis. 442, 289 N.W. 622 (1940), the Court held that the Legislature could not prevent the Governor's use of the partial veto by adjourning *sine die* before the expiration of the period constitutionally provided for the Governor's signature. And *Martin* reaffirmed that the non-vetoed provisions of an appropriations bill become law if the "the approved parts, taken as a whole, provide a complete workable law." *Id.* at 449–50.

This Court also held in *Martin* that the constitutional partial-veto power authorizes the Governor to partially veto legislation in a manner that changes the Legislature's policy aims. The *Martin* petitioners argued that the challenged partial veto "so changed the legislative program or policy provided in [the Legislature's bill], as to render the parts approved constituting [the final Act] invalid." 233 Wis. at 449–50. The Court "conceded that the governor's partial disapproval did effectuate a change in policy," as did the partial veto in *Henry*, but that did not matter to the controlling test: whether the partial veto resulted in a "complete workable law." *Id.* It did, and so the partial veto was constitutional.

The next case accepted by this Court, *State ex rel. Sundby v. Adamany*, 71 Wis. 2d 118, 237 N.W.2d 910 (1976), rejected even more soundly than *Martin* had the argument that a partial veto cannot modify the Legislature's policy choices:

> Some argument is advanced that in the exercise of the item veto the governor can negative what the legislature has done but not bring about an affirmative change in the result intended by the legislature. We are not impressed by this argued distinction. Every veto has both a negative and affirmative ring about it. There is always a change of policy involved. We think the constitutional requisites of art. V, sec. 10, fully anticipate that the governor's

> action may alter the policy as written in the bill sent to the governor by the legislature.

Sundby, 71 Wis. 2d at 134.

Two years later, the Court granted original jurisdiction to resolve the question that *Henry* left unanswered. *See State ex rel. Kleczka v. Conta*, 82 Wis. 2d 679, 264 N.W.2d 539 (1978). Acting Governor Martin Schreiber partially vetoed the 1977 budget bill by striking individual words from one section of the bill, and striking a "proviso/condition" section entirely. *Id.* at 685. The petitioners argued that the Governor's partial-veto authority did not allow him to either "strike language from a bill unless it is severable" or "strike from the bill provisos or conditions on an appropriation that were placed thereon by the Legislature." *Id.* at 686. The Court upheld the veto, concluding that the only relevant "severability" test is whether the partial veto creates a "complete and workable law." *Id.* at 707.

More specifically, the Court explained that "provisos or conditions" are—like any other language in an appropriations bill—subject to the partial veto power. *Id.* at 714. The Court expressly based its conclusion on the bedrock principles set forth in *Henry* and *Martin*. First, the partial veto of provisos and conditions is subject to the workable-law test. The Governor may remove "provisos and conditions to an appropriation so long as the net result of the partial veto is a complete, entire, and workable bill which the legislature itself could have passed in the first instance." *Kleczka*, 82 Wis. 2d at 715.

Second, the Governor has the constitutional authority to change the Legislature's preferred policy choices this way. Acting Governor Schreiber's partial veto of a condition placed on an appropriation "changed the policy of the law as envisaged by the Legislature . . . . These are policy changes, legislative in nature, which the Constitution authorized him

to make." *Id.* Thus, the fact that the partial veto changed the legislative policy "does not lead to the conclusion that the veto power was unconstitutionally exercised." *Id.* at 709. Third, the partial veto is part of the "coextensive" appropriations power the Governor shares with the Legislature. *Id.* at 708–09.

The Court went on to note that the Legislature has a constitutional remedy if it disagrees with the Governor's policy modifications.

> It should be borne in mind, of course, that the very section of the Constitution which gives to the Governor the authority to change policy by the exercise of a partial veto also gives the final disposition and resolution of policy matters to the Legislature. The Governor's changed policy can ultimately remain in effect only if the Legislature acquiesces in a partial veto by its refusal or failure to override the Governor's objections.

Kleczka, 82 Wis. 2d at 709.

In short, *Kleczka*'s holding that the Governor may use the partial veto to strike "provisos or conditions" rested firmly on the partial-veto jurisprudence built up by this Court since the 1930s.

Ten years later, this Court exercised original jurisdiction in *Wisconsin Senate v. Thompson*, which was so significant that it led to a constitutional amendment. In *Thompson*, the petitioners challenged 37 of Governor Tommy Thompson's partial vetoes to the 1988–89 biennial budget bill. The petitioners complained that Governor Thompson had no constitutional authority "to veto individual letters, digits or words, and [had] no authority to reduce appropriation amounts." *Thompson*, 144 Wis. 2d at 434. The Court rejected both arguments, holding that the Governor may "veto individual words, letters and digits, and may also reduce appropriations by striking digits, as long as what remains

after veto is a complete, entire, and workable law." *Id.* at 437. These important questions, though "presaged" by the earlier cases, *id.*, had remained open and thus warranted original jurisdiction. Although not at issue in its analysis, the *Thompson* Court favorably cited *Kleczka*'s "provisos or conditions" holding. *Id.* at 449–50 (citing *Kleczka*, 82 Wis. 2d at 714–15).

The Legislature and Wisconsin citizens balked at one part of *Thompson*'s holding and amended the Wisconsin Constitution in response. A new subsection was added, providing that: "In approving an appropriation bill in part, the governor may not create a new word by rejecting individual letters in the words of an enrolled bill." Wis. Const. art. V, § 10(1)(c) (1991–92). The amendment, however, did not overturn any other prior holdings (such as *Kleczka*) nor did it alter the basic test that had existed since *Henry*: that "the parts approved . . . constitute, in and by themselves, a complete, entire, and workable law." 218 Wis. at 314.

Governor Thompson's use of the veto pen later raised two other open issues that this Court exercised its original jurisdiction to resolve. In *CUB*, the petitioners challenged his use of a "write-in veto" to reduce appropriation amounts (rather than just striking digits, the practice *Thompson* approved). The Court rejected the petitioners' argument and embraced the view that, because the Governor could strike digits, he could also write in a smaller appropriation amount. 194 Wis. 2d at 503, 506. Last, in *Risser v. Klauser*, 207 Wis. 2d 176, 58 N.W.2d 108 (1997), the petitioners challenged Governor Thompson's use of a "write-in veto" to reduce a monetary figure that was not itself an appropriation. *Id.* at 181. The Court sided with the petitioners, holding that Governor may only reduce numbers that express an appropriation amount. *Id.* at 203.

After the last of this Court's partial-veto cases, the Legislature amended article V, section 10 a second time. In 2008, the Constitution was amended to provide that the Governor "may not create a new sentence by combining parts of 2 or more sentences of the enrolled bill." Wis. Const. art. V, § 10(1)(c) (2009–10). This amendment was in response to partial vetoes by Governors Thompson and James Doyle, which pulled together words from different sentences in appropriations bills to stitch together new mandates. The 2008 amendment did not address *Kleczka* or any other aspect of this Court's partial-veto jurisprudence.

Each time this Court has exercised its original jurisdiction to consider the Governor's partial-veto power, the case presented unresolved legal questions. The Court's acceptance of those cases does not set a precedent that original jurisdiction is appropriate in every partial veto case, regardless of merit.

B. This Court should deny the Petitioners' request that it take jurisdiction of this original action because the issues raised are not meritorious under the Constitution and this Court's long-established law.

This Court has warned would-be litigants that it will not accept original action jurisdiction in every partial-veto case, because doing so would "thrust [the Court] into the political arena and referee on a biennial basis the assertions of power of the executive and legislative branches in relation to the appropriations act." *Thompson*, 144 Wis. 2d at 434 n.3 (citation omitted). In line with that admonition, this Court should refuse jurisdiction where, as here, Petitioners bring a partial-veto challenge that has no legal merit. Eighty years of this Court's decisions and two constitutional amendments foreclose their attempt to reinvent the partial-veto doctrine. Thus, this Petition is in stark contrast to the cases discussed

above, which presented novel issues suitable for this Court's original jurisdiction.

1. Overview of Petitioners' arguments.

Petitioners' principal theme is that this Court must overrule *Kleczka*, which held that the Governor can use the partial veto to strike a "condition or proviso" related to an approved appropriation. (Mem. 14–16; Am. Pet. ¶ 111.) Because the lower courts do not have the power to overrule this Court's decisions, Petitioners argue that an original action in this Court is therefore necessary. (Am. Pet. ¶ 112 (citing *Cook v. Cook*, 208 Wis. 2d 166, 189–90, 560 N.W.2d 246 (1997)).) What Petitioners fail to acknowledge is that their request is much bigger than this. The *Kleczka* Court based its conclusion on three bedrock principles drawn from nearly 45 years of case law. To overrule *Kleczka*, this Court must also overrule most of its partial-veto case law and ignore two constitutional amendments.

In addition, Petitioners complain that, through his partial vetoes, Governor Evers "created new laws never approved by the Legislature." (Am. Pet. ¶¶ 106–07; *accord* Mem. 3, 13.) Further, they accuse the Governor of overstepping his constitutional role. (Am. Pet. ¶¶ 106–07.) These two arguments ignore the plain language of the Constitution and the fact that this Court has long recognized that the partial veto provision gives the Governor coequal power with the Legislature in the appropriations context.

Finally, Petitioners assert that the Governor may not approve one part of an appropriations bill "while disapproving of provisions which are 'essential, integral, and interdependent parts of those which [he] approved.'" (Mem. 4 (quoting *Henry*, 218 Wis. at 317); *accord* Am. Pet. ¶ 105.) Petitioners imply that this is the governing constitutional test. It is not.

Petitioners' arguments are so extreme, and so contrary to eighty years of settled law, that they are meritless and do not warrant granting original jurisdiction.

2. This Court should not take original jurisdiction of this case to overrule *Kleczka*, which would entail overruling the Court's entire partial-veto jurisprudence.

The *Kleczka* Court based its conclusion on three bedrock principles drawn from nearly 45 years of case law. *Kleczka*, 82 Wis. 2d at 715. The Court should not take jurisdiction of this original action to overrule *Kleczka*, because that case is entirely consistent with this Court's previous case law. To overrule *Kleczka*, this Court would have to overrule the entire body of partial-veto law in Wisconsin.

First, the *Kleczka* Court held that, if the partial veto of a condition or proviso leaves a complete and workable law, it is constitutional. 82 Wis. 2d at 715. This "workable law" standard, which originated in *Henry*, has been repeated in nearly all of the subsequent partial-veto cases. *See Risser*, 207 Wis. 2d at 205; *CUB*, 194 Wis. 2d at 504–05; *Thompson*, 144 Wis. 2d at 437, 462–63; *Kleczka*, 82 Wis. 2d at 707, 709; *Sundby*, 71 Wis. 2d at 135; *Martin*, 233 Wis. at 449–50.

Second, this Court held in *Kleczka* that the Governor may alter the Legislature's chosen policy goals by the removal of provisos or conditions. *Kleczka*, 82 Wis. 2d at 715. This principle goes back to *Martin*, and has been reiterated in subsequent cases. *See CUB*, 194 Wis. 2d at 496, 508; *Thompson*, 144 Wis. 2d at 448–49; *Sundby*, 71 Wis. 2d at 134; *Martin*, 233 Wis. at 449–50.

Finally, this Court held that the Governor is constitutionally authorized to remove conditions or provisos because his power to legislate is "coextensive" with the

Legislature's in the appropriations context. *Kleczka*, 82 Wis. 2d at 708–09. This idea, first seen in *Henry*, has been repeated throughout the partial-veto cases. *See CUB*, 194 Wis. 2d at 508; *Thompson*, 144 Wis. 2d at 450–51, 454; *Kleczka*, 82 Wis. 2d at 708; *Sundby*, 71 Wis. 2d at 134.

Petitioners bring this original action asking this Court to overrule *Kleczka*. But, to grant Petitioners the relief they seek, this Court must not only overrule *Kleczka*, but also all or part of *Risser*; *CUB*; *Thompson*; *Sundby*; *Martin*; and *Henry*.

3. Petitioners' arguments about Governor Evers' alleged misuse of the partial-veto power are foreclosed by this Court's partial-veto jurisprudence.

Petitioners' other arguments fail for the same reasons their anti-*Kleczka* arguments do—they are foreclosed by decades of partial-veto precedent affirming and reaffirming the bedrock principles first enunciated in *Henry* and *Martin*.

Petitioners complain that, through his partial vetoes, Governor Evers "created new laws never approved by the Legislature." (Am. Pet. ¶¶ 106–07; *accord* Mem. 3, 13.) Petitioners conveniently ignore the fact that (as noted above) this Court has recognized since *Henry* that although the Governor and the Legislature play different roles in the appropriations process, their powers are "coextensive." *Henry* 218 Wis. at 315; *accord CUB*, 194 Wis. 2d at 508; *Thompson*, 144 Wis. 2d at 450–51, 454; *Kleczka*, 82 Wis. 2d at 708; *Sundby*, 71 Wis. 2d at 134. They also ignore the fact that (again, as noted above) since *Martin*, this Court has recognized the Governor's power to "bring about an affirmative change in the result intended by the legislature" by the exercise of the partial veto. *Sundby*, 71 Wis. 2d at 134;

accord CUB, 194 Wis. 2d at 496, 508; *Thompson*, 144 Wis. 2d at 448–49; *Martin*, 233 Wis. at 449–50.

Petitioners also wrongly accuse Governor Evers of overstepping his constitutional role. (Am. Pet. ¶¶ 106–07.) They refer to "the exclusive vesting of legislative power in the Assembly and Senate," citing article VIII, sections 2 and 8 of the Wisconsin Constitution, but ignore article V, section 10. (Mem. 1, 18, 20.) They misunderstand the role of the Governor and the Legislature in the appropriations process. Money may be paid out of the treasury only pursuant to an appropriation. Wis. Const. art. VIII, § 2. A three-fifths quorum of each house of the Legislature is required for the initial approval of an appropriation bill. *Id.* at art. VIII, § 8. After the Legislature's approval, the bill must be presented to the Governor, who may approve it "in whole or in part." *Id.* at art. V, § 10. Since *Henry*, this Court has interpreted these provisions as giving the Governor and the Legislature coextensive roles in the appropriations context. The partial veto—and the Governor's exercise of it—are a core part of his role in the appropriations process. *See CUB*, 194 Wis. 2d at 508; *Thompson*, 144 Wis. 2d at 450–51, 454; *Kleczka*, 82 Wis. 2d at 708; *Sundby*, 71 Wis. 2d at 134; *Henry*, 218 Wis. at 315. By emphasizing the article VIII provisions—and ignoring article V, section 10—Petitioners appear to be asking this Court to write article V, section 10 (and the Governor's role in appropriations) out of the Wisconsin Constitution. This Court simply cannot do what Petitioners ask of it.

Throughout their filings, Petitioners assert that the Governor may not approve one part of an appropriations bill "while disapproving of provisions which are 'essential, integral, and interdependent parts of those which [he] approved.'" (Mem. 4 (quoting *Henry*, 218 Wis. at 317); *accord* Am. Pet. ¶ 105.) Petitioners imply that the "essential, integral, and interdependent parts" language represents a

controlling legal standard. This language from *Henry* is not the governing standard. The *Henry* Court did not present it as such, and no subsequent case has suggested that it might be. Indeed, the phrase has never even been used in any of this Court's post-*Henry* cases. Petitioners' attempt to give this phrase a legal stature it does not have is misleading.

Like their direct attack on *Kleczka*, Petitioners' arguments about the Governor's alleged misuse of the partial-veto authority are foreclosed by decades of this Court's opinions. The arguments have no merit and do not warrant this Court's review in an original action.

4. The 1990 and 2008 constitutional amendments to article V, section 10 signal the Legislature's acquiescence in this Court's partial-veto jurisprudence.

Not only do Petitioners ignore the weight of decades of this Court's partial-veto opinions, they ignore the import of the two narrow amendments to article V, section 10 that were enacted in 1990 and 2008.

After decades of gubernatorial partial vetoes and eight opinions by this Court, the Legislature decided to limit the Governor's exercise of the partial veto in two narrow respects. First, in 1990, the Legislature (negating part of the *Thompson* decision) put an end to the so-called "Vanna White veto," in which the Governor creates new words by striking individual letters from words used in the Legislature's bill. *See* Wis. Const. art. V, § 10. Second, in 2008, the Legislature put an end to the so-called "Frankenstein veto," in which the Governor creates a new sentence by combining and striking language from multiple sentences. *See id.* These amendments to article V, section 10 could have gone much further, but they did not.

The Legislature did not amend the Constitution to nullify *Kleczka*—which has now been on the books for over forty years—and provide that the Governor may not strike out "conditions or provisos" related to approved appropriations language. Nor did it take any other action to curb or reverse the course of this Court's decisions—going back to *Henry* and *Martin*—recognizing the Governor's constitutional authority to change legislative policy and acknowledging the Governor's constitutional partial veto power in the appropriations process. If, as Petitioners argue, this Court has gotten the Governor's exercise of the partial veto power so wrong for the last 85 years, why hasn't the Legislature corrected it? Except for putting an end to the Vanna White and Frankenstein vetoes, the Legislature has endorsed, through its silence, all of this Court's opinions.

* * * * * * *

Petitioners ask this Court to overrule almost every aspect of its partial-veto case law. Their request is so extreme, and so at odds with the Legislature's modest constitutional amendments in 1990 and 2008, that it borders on the frivolous. At best, these arguments are meritless. It follows that the petition raises no serious question justifying immediate review in this forum. This Court should deny the

request to take jurisdiction over this original action.[1]

CONCLUSION

Respondents respectfully request that this Court deny the petition for original action.

Dated this 9th day of September, 2019.

Respectfully submitted,

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[1] Petitioners allege that two of Governor Evers' partial vetoes violate the non-delegation doctrine. (Am. Pet. ¶¶ 37, 60.) The allegations are ill-defined and undeveloped, and Respondents are thus unable to answer them. *See State v. Jones*, 2002 WI App 196, ¶ 38 n.6, 257 Wis. 2d 319, 651 N.W.2d 305 (undeveloped argument merits no response and court need not address it). In any event, it appears that Petitioners' non-delegation challenge rests on existing precedent and so does not provide an independent reason for this Court to take the original action. The lower courts are fully capable of resolving such issues. *See, e.g., Gilbert v. Med. Exam'g Bd.*, 119 Wis. 2d 168, 172–75, 349 N.W.2d 68 (1984).

CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 4,682 words.

Dated this 9th day of September, 2019.

MAURA FJ WHELAN
Assistant Attorney General