Court decision on Act 10 spurs memories, speculation

By WisPolitics

Scott Walker's Act 10 more than 13 years ago spurred massive protests on the Capitol Square in Madison and helped the former Republican governor make a national name for himself.

Now a Dane County court decision against key parts of Act 10 is spurring speculation as to how big of an issue it could be in the spring 2025 Supreme Court race that will decide philosophical control of the high court.

Republicans aren't giving up on Act 10. Assembly Speaker Robin Vos and Senate Majority Leader Devin LeMahieu are vowing to appeal the ruling that restored collective bargaining powers for public employees who lost them.

Dane County Judge Jacob Frost this summer found parts of the law unconstitutional because it treated some public safety employees, such as municipal police officers, differently from others in law enforcement, such as wardens working for the Department of Natural Resources. He issued his ruling in early December.

GOP lawmakers had asked Frost to only strike down the definition of public safety employees but otherwise leave the law largely intact.

But he rejected that in his early December written decision.

“This lawsuit came more than a decade after Act 10 became law and after many courts rejected the same meritless legal challenges,” Vos, R-Rochester, said. “Act 10 has saved Wisconsin taxpayers more than $16 billion. We look forward to presenting our arguments on appeal.”

The 2011 law barred general employees from negotiating for anything other than base wage increases that were capped by changes in the consumer price index.

Frost struck down that measure along with two other key components of the law:

• Requiring 51% of all members in a bargaining unit to certify the union while allowing a simple majority of those who voted to certify for those who fell under the public safety employee definition.

• Allowing union dues to be deducted from the paychecks of public safety employees but barring the practice for others.

In all, Frost struck down 87 provisions from Act 10 and another three from a 2015 law that modified the original statute.

Public employee unions and workers who were part of the suit challenging the law hailed the ruling. They also noted it is likely the case will be tied up in the courts “for some time” with expected appeals.

Plaintiff Ben Gruber, a conservation warden and president of AFSCME Local 1215, said the decision was personal for him and his coworkers.

“As a conservation warden, having full collective bargaining rights means we will again have a voice on the job to improve our workplace and make sure that Wisconsin is a safe place for everyone,” he said. “We realize there may still be a fight ahead of us in the courts, but make no mistake, we’re ready to keep fighting until we all have a seat at the table again.”

Frost had asked both the unions who challenged the law and GOP lawmakers how he should implement his decision that found some parts unconstitutional.

In their argument, GOP lawmakers argued Frost should only strike down two provisions of Act 10 that defined a “public safety employee.” Those covered by that definition included municipal police, deputy sheriffs, firefighters and some members of the State Patrol.

Lawmakers then wanted the Wisconsin Employment Relations Commission to issue a new definition. But Frost wrote in his ruling that made no sense because the Legislature has previously argued the courts can’t “decide the policy and define a term the Legislature already defined.”

Frost added, “Interpreting ‘public safety employee’ after striking the legislated definition would be an exercise in the absurd.”

That’s because there would be no statutory definition to guide a future interpretation, and both WERC and the courts would have to analyze the statutes and legislative history to determine a new meaning. But that legislative history would show lawmakers intended to
carve out exceptions for some public safety employees, and a court or WERC would be barred from following that definition after Frost’s ruling that doing so is unconstitutional.

Dem Gov. Tony Evers, who has proposed restoring collective bargaining powers in his state budgets only for GOP lawmakers to reject the provisions, called the ruling “great news for Wisconsin workers.”

“I’ve always believed workers should have a seat at the table in decisions that affect their daily lives and livelihoods,” Evers said. “It’s about treating workers with dignity and respect and making sure no worker is treated differently because of their profession.”

Republicans have been critical of Frost for hearing the case after his name and signature appeared on a petition to recall Walker that matched the address where he lived at the time.

“For over a decade, liberal activists have attacked reforms that have saved Wisconsin taxpayers tens of billions of dollars,” LeMahieu said. “Despite Act 10 being upheld repeatedly by state and federal courts, an activist Dane County judge decided to issue a ruling suddenly deciding Wisconsin’s law is unconstitutional. We will appeal this
decision immediately.”

Frost’s ruling gave the unions seven days to draft a formal judgment for him to sign. That has to be finalized before an appeal can be filed.

The case also could become an issue in this spring’s state Supreme Court race, which will again determine ideological control. The two declared candidates are Dane County Judge Susan Crawford and former GOP Attorney General Brad Schimel, now a Waukesha County judge. Crawford was part of a legal team that unsuccessfully challenged Act 10 in a 2011 lawsuit.

Though the court is now controlled 4-3 by liberals, Justice Janet Protasiewicz said during her 2023 campaign that she might recuse from cases involving Act 10 after she signed a recall petition and protested the law.

Schimel, the only announced conservative candidate and a former GOP attorney general, slammed the ruling in a post on X. The campaign called it the “latest instance of the Left using the justice system to satisfy their donors and dismantle laws they don’t like. It’s why
Democrats have anointed a radical Dane County judge (who helped lead the fight to overturn Act 10) to be their pawn on the Wisconsin Supreme Court.”

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