



## Bartlett v. Evers

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In *Nancy Bartlett v. Tony Evers*, 2020 WI 68, the Wisconsin Supreme Court accepted an original action<sup>1</sup> challenging four series<sup>2</sup> of Governor Tony Evers' partial vetoes of [2019 Wisconsin Act 9](#). The Court invalidated three of the four challenged vetoes, but did not reach a majority as to the rationale for invalidating any of the three overturned vetoes. Therefore, the Court did not announce any new limits on the Governor's future use of the partial veto authority. This issue brief provides relevant background information, summarizes the Court's [decision](#), and briefly describes the varied and conflicting ways that the Court's justices, in separate writings, articulate the scope of gubernatorial veto power.

### 2019 WISCONSIN ACT 9

On July 3, 2019, Governor Tony Evers signed 2019 Assembly Bill 56, which became 2019 Wisconsin Act 9, the biennial budget act. Pursuant to his authority to approve appropriation bills in whole or in part<sup>3</sup>, the Governor included [78 partial vetoes](#) with his approval of the act. The partial vetoes challenged in *Bartlett* relate to: (1) the school bus modernization fund; (2) the local roads improvement fund; (3) the vapor products tax; and (4) the vehicle fee schedule.

Very generally speaking, the first challenged series of vetoes changed a school bus modernization fund into an alternative fuel fund. The second challenged veto series removed conditions from a local road improvement fund, effectively changing it into a fund for "local grants" or "local supplements," which did not require expenditures for local roads. That veto series also lowered the appropriation amount for the fund from \$90,000,000 to \$75,000,000. The third challenged series of vetoes altered a section that imposed a tax on "vapor products" by expanding the definition of vapor product to include liquid heated by a vaping device. The fourth challenged series of vetoes altered the amount truck owners must pay to register their vehicles, effectively retaining certain fee increases included in the bill by the Legislature for certain truck owners and voiding fee decreases for other truck owners.

### PETITION FOR ORIGINAL ACTION AND PARTIES' ARGUMENTS<sup>4</sup>

On July 31, 2019, the petitioners, a group of Wisconsin taxpayers, filed a petition for original action with the Court challenging the four partial vetoes described above, and the Court took jurisdiction. Additionally, the Legislature<sup>5</sup> filed an amicus brief that generally supported the petitioners' arguments.

The petitioners made a number of arguments for overturning prior partial veto case law and curtailing the Governor's power to exercise the partial veto. The petitioners argued that the Court's past decisions essentially turned the Governor into a one-person Legislature in violation of the Wisconsin Constitution's separation of powers. Specifically, the petitioners asked the Court to overturn prior cases that allow the Governor to strike parts of a bill that are essential, integral, and interdependent parts of those which were approved, and to strike words in a way that alters the meaning and purpose of the law.

The Governor, represented by the Attorney General, defended the validity of his actions in approving Act 9 in part and asked that the Court declare the four challenged partial vetoes valid. The Governor highlighted the longstanding case law that guides the Governor's partial veto powers and the Wisconsin Constitution's text that allows the Governor to approve appropriation bills "in part."

Though the petitioners asked the Court to overrule case law and declare the challenged partial vetoes unconstitutional, it did not ask the Court to reverse the vetoed portions of the enrolled bills to give effect the language drafted by the Legislature. Rather, the petitioners acknowledged that the Governor may have relied on prior case law in making his vetoes, and suggested that the Court use its equitable authority to craft an appropriate remedy, including remanding the vetoes to the Governor to allow him

to reconsider the relevant sections and veto them in a manner consistent with the Court's opinion in this case. Similarly, the Legislature recognized the Governor's reliance on past Court decisions in its amicus brief, and asked that the Court make its remedy apply prospectively.

## WISCONSIN SUPREME COURT DECISION

The Court issued a nine-paragraph *per curiam* opinion, announcing that no substantive rationale received the support of a majority of the Court. However, the *per curiam* opinion makes clear that a majority of the Court reached a conclusion with respect to the constitutionality of each series of vetoes. Specifically, five justices concluded the school bus modernization fund and local roads improvement fund veto series are unconstitutional, and four justices concluded the vapor products tax veto series is unconstitutional. However, five justices concluded the vehicle fee schedule veto series is constitutional.

Because no rationale received a majority vote of the Court, this case did not create any new limits on the Governor's future use of the partial veto authority. Therefore, it is unclear how this case may apply to any future partial veto cases before the Court or how the case may prospectively influence the Governor's use of the authority to approve appropriation bills in whole or in part. Additionally, though both the petitioners and the Legislature asked the Court to craft a remedy that recognized the Governor's reliance on prior case law, the Court declined to do so. Rather, relying on prior partial veto case law, the Court granted relief such that the portions of the enrolled bill that were unconstitutionally vetoed are in full force and effect as drafted by the Legislature.<sup>6</sup>

Though the precedential value of the case appears to be limited to the Court's *per curiam* opinion, the case included opinions by four justices that explained each justice's rationale for their determination of the constitutionality of the four challenged veto series.

Very generally speaking, Chief Justice Roggensack concluded that the vetoes to the school bus modernization fund and the local roads improvement fund are unconstitutional because they resulted in topics and subject matters that were not found in the enrolled bill. Likewise, the Chief Justice concluded that the vapor products tax and vehicle fee schedule vetoes are constitutional because they did not alter the topic or subject matter of the part approved. Justice Ann Walsh Bradley and Justice Dallet concluded that the four series of vetoes are constitutional because each series resulted in objectively complete, entire, and workable laws. Justice Kelly and Justice Rebecca Grassl Bradley concluded that the four series of vetoes are unconstitutional because all four vetoes violate the Wisconsin Constitution's origination clause, amendment clause, and legislative passage clause. Lastly, Justice Hagedorn and Justice Ziegler concluded that the vetoes to the school bus modernization fund, the local roads improvement fund and the vapor products tax are unconstitutional because those vetoes, respectively, created a new policy proposal, a new appropriation, and a new tax. Those two justices also concluded that the vetoes to the vehicle fee schedule are constitutional because they merely negated a legislative policy proposal. Again, however, because the Court did not reach a majority as to any rationale, it remains to be seen whether or how the Court's various opinions may impact any future proceedings.

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<sup>1</sup> Wis. Const. art. VII, s. 3 (2). The Court has invoked its original jurisdiction to interpret the scope of the Governor's partial veto powers on eight prior occasions. *Bartlett*, 2020 WI 68, ¶ 25, fn. 11 (C.J. Roggensack, concurring in part, dissenting in part).

<sup>2</sup> All four of the challenged partial vetoes consist of changes made to multiple sections of Act 9 or multiple changes made to one section of the Act. The Court's *per curiam* opinion does not list the parts of Act 9 that constitute each partial veto, but rather describes the four vetoes at issue in the case as four separate "series" of vetoes. It appears, therefore, that the Court's *per curiam* opinion on constitutionality of each of the four series of vetoes applies equally to all parts of each veto series. For example, even though the gubernatorial "write-down" of the local roads improvement fund from \$90,000,000 to \$75,000,000 would otherwise be constitutional, it appears the court has invalidated all parts of the three unconstitutional veto series.

<sup>3</sup> Wis. Const. art. V, s. 10 (1). For more information about the Governor's partial veto authority, see [Legislative Council, Governor's Partial Veto Authority, Information Memorandum \(August 2015\)](#) or [Legislative Reference Bureau, The Wisconsin Governor's Partial Veto, Reading the Constitution Volume 4 No. 1 \(June 2019\)](#).

<sup>4</sup> The petitioners' original brief and reply brief, the Governor's response brief to both the petitioners and the Legislature, and the Legislature's non-party amicus brief may be viewed [here](#).

<sup>5</sup> This issue brief refers to the legislative leaders who filed the amicus brief in their official capacity as the "Legislature."

<sup>6</sup> The Court's *per curiam* opinion does not address, and this issue brief does not discuss, how the Governor may be required to correct or modify any already-completed administration of the programs or provisions of law created by any of the three invalidated vetoes.