



INSTITUTE FOR REFORMING GOVERNMENT

PROPERTY TAXES COULD SKYROCKET IF WISCONSIN SUPREME COURT OVERTURNS ACT 10

OVERVIEW

Act 10 was a transformational moment in Wisconsin history. **Since its adoption twelve years ago, it has saved Wisconsin taxpayers \$16.8 billion dollars– \$5,600 per separate taxpayer.¹ On an annual basis, it provides hundreds of dollars in property tax relief to homeowners.** It also empowers state agencies and municipal governments to manage their workforces, improving public services. Despite its controversy, the people of Wisconsin re-elected Governor Scott Walker and his legislative allies in the 2012 recall and his 2014 reelection after its passage.

WHAT YOU SHOULD KNOW

- » A Dane County Judge issued a decision in July that would undo “all of the collective bargaining changes” in Act 10, putting the property tax savings and savings for local governments created by Act 10 in jeopardy.
- » The Wisconsin Supreme Court is now considering whether to review the decision repealing Act 10 before the Court of Appeals has a chance to weigh in. Certain members, such as Justice Janet Protasiewicz, have already indicated a desire to overturn Act 10.
- » Repealing Act 10 would set the stage for devastating impacts to state and local taxpayers. It would wipe out hundreds of dollars in annual property tax savings for homeowners and result in potential mass layoffs of public employees and dramatic cuts to state and local programs.

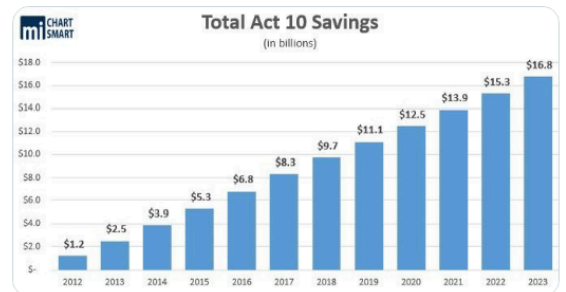
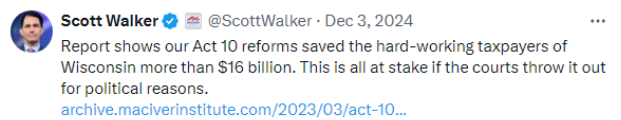
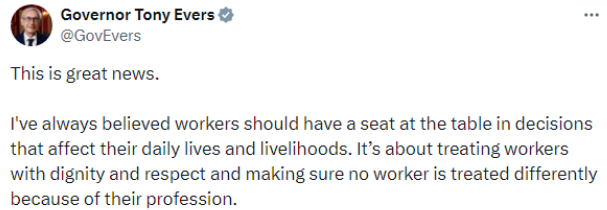
WHAT COULD HAPPEN

If Judge Frost’s decision is ultimately upheld by the Wisconsin Supreme Court, local units of government would again be forced to bargain over every aspect of public employment. In addition, it remains unclear whether a reversal of Act 10 would result in *retroactive* backpay for public employees. In light of the levy limits that constrict the ability of local units of government to raise property taxes, the financial impact to local budgets will be devastating. A possible unintended consequence from such a scenario is the mass layoff of public employees or significant cuts to local and state programs.

Even more problematically, the implications of Judge Frost’s rational basis review could affect more conservative reforms than just Act 10. Under Wisconsin case law, a statute must meet five criteria in order to have a rational basis. Judge Frost himself emphasized the standard that “we are obligated to locate or, in the alternative, construct a rationale that might have influenced the legislative determination.” By straining to ignore every possible rationale for the Legislature’s decision to exempt certain categories of public safety employees from the impact of Act 10, the Court has provided a framework for arguably striking down every major reform passed during the Walker-Kleefisch era.

WHAT'S NEXT

There is an election in April for a Supreme Court seat that will decide if the majority of the Court is liberal or conservative leaning. Numerous Wisconsin groups and politicians have voiced their support or opposition to the ongoing challenge to Act 10.



LEGAL BACKGROUND

Act 10 has survived every single challenge on final appeal in state and federal court. The Wisconsin Supreme Court has upheld it, *Madison Teachers Inc. v. Walker*, 2014 WI 99, and the U.S. Court of Appeals for the Seventh Circuit (the regional federal court with jurisdiction over cases from Wisconsin) has upheld it twice, *Laborers Local 236 v. Walker*, 749 F. 3d 628 (7th Cir. 2014) and *Wisconsin Education Association v. Walker*, 705 F.3d 640 (7th Cir. 2013).

That is now all on the line over a decade later, as Judge Jacob Frost of the Dane County Circuit Court declared Act 10 violates the state constitution in December 2024, in a lawsuit filed soon after the new majority took control of the Wisconsin Supreme Court. That ruling is currently temporarily paused pending appeal. That appeal will almost assuredly reach the Supreme Court, which will have to decide whether to respect precedent or instead to accept an invitation to overturn it based on reasoning already rejected by the federal courts.

ZOOM IN

In July, as Wisconsinites prepared for Fourth of July celebrations, Dane County Judge Jacob Frost issued a decision in *Abbotsford Education Association v. WERC*, marking another challenge to Act 10 passed in 2011. In denying the Legislature’s motion to dismiss, the Court signaled a desire to strike “all of the collective bargaining changes in the Act” and in the process, established a framework for gutting rational basis review. And in December Judge Frost granted Plaintiffs’ Motion for Judgment on the Pleadings, effectively killing most of Act 10.

The implications of the decision are significant. While the Legislature has appealed the decision to the Waukesha-based District II Court of Appeals, a decision overturning Judge Frost’s decision could then be appealed to the Wisconsin Supreme Court, where certain members, such as Justice Protasiewicz, have already indicated a desire to overturn Act 10.

In carving out public safety employees like members of the state patrol, local police officers, and deputy sheriffs, the Legislature was making a rational policy decision to provide additional employment benefits and protections for positions it deemed higher risk and more difficult to recruit for. Whether other law enforcement positions like conservation wardens or Capitol Police should have been included in the category of public safety employees was a legislative determination that Wisconsin courts have historically respected.

When reviewing the challenge to Act 10, Judge Frost refused to sever the portions of Act 10 it found violated the Equal Protection Clause. Judge Frost could have simply struck the distinction between various categories of law enforcement, preserving the remaining provisions of Act 10. Instead, it struck all of the collective bargaining changes brought about by Act 10.

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Endnotes

1 According to the Maclver Institute, total savings from Act 10 has reached \$16.8 billion through 2023. Full analysis found here: [Act 10 Savings Total \\$16.8 Billion Since 2012 | Maclver Institute](#).



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