



INSTITUTE FOR REFORMING GOVERNMENT

WISCONSIN SUPREME COURT COULD UNDERMINE ACT 10'S PUBLIC EDUCATION SUCCESS

OVERVIEW

Act 10 transformed local government in Wisconsin, including public education which is run by locally elected school boards. Act 10 gave local school boards tremendous new tools to manage their budgets and workforces, ensuring that dollars and quality teachers could stay in the classroom. Teachers unions in particular fought hard against Act 10 in court: the Wisconsin Supreme Court rejected a challenge in *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) rejected a challenge in *Wisconsin Education Association v. Walker*, 705 F.3d 640 (7th Cir. 2013). After years of lawsuits that upheld Act 10, a Dane County judge declared Act 10 violates the state constitution. That decision has been appealed to the Waukesha-based District II Court of Appeals.

WHAT YOU SHOULD KNOW

- » The facts are simple: Act 10 helped schools put more money into the classroom and rewarded the highest-performing teachers. The breathing room and financial flexibility districts now have is directly attributable to Act 10. Savings can now go into classrooms, to special-needs services, or to hire teachers rather than to unsustainably high fringe benefits.
- » The Wisconsin Supreme Court could overturn a decade of progress in public education with a single decision overturning Act 10, which would handcuff locally elected school boards from managing their schools.

WHAT COULD HAPPEN

A reversal of Act 10 would be devastating to Wisconsin's schools. According to a [report from the Wisconsin Institute for Law & Liberty](#), restoring collective bargaining for teacher salaries could cost districts and the state nearly \$650 million annually, eliminating employee contributions to retirement would cost districts and the state about \$422 million annually, and eliminating employee contributions to healthcare would cost districts and the state about \$560 million annually. That amounts to about \$2,000 per student in additional costs.

As a result of the financial costs, districts would be faced with painful decisions. According to one superintendent interviewed by WILL, "if the unions would recertify and we return to the old CBA format, we likely would lose our ability to use the following strategies for hiring and retaining high quality staff: offering higher compensation for hard to fill positions, offering merit pay and the ability to bonus outstanding efforts by employees, offering to compensate for specific continuing education, and the ability to assign teachers to special leadership roles."

The executive director of the Wisconsin Association of School Boards echoed these concerns, commenting if Judge Frost's decision remains in place, it provides no additional resources to school districts, but requires school districts to bargain over wages, hours and conditions of employment. As national NAEP results show Wisconsin students have not recovered from the pandemic, the stakes are high.

WHAT'S NEXT

The Frost case is working its way through the appellate system. The Wisconsin Supreme Court declined immediately hearing the case, instead allowing the Court of Appeals to weigh in. It is likely that the Wisconsin Supreme Court will eventually hear the case.

LEGAL BACKGROUND

The Dane County circuit court's decision striking down Act 10 is currently on appeal. The judge has stayed his decision, i.e., put on a temporary pause while that appeal is heard, because of the disruption that repeal would cause. A federal appeals court has already upheld Act 10 on this same legal theory, regarding the differential treatment of first responders from other types of public employees (*Wisconsin Education Association v. Walker*, 705 F.3d 640 (7th Cir. 2013)). The plaintiffs are asking Wisconsin's courts to ignore the federal court ruling and adopt the same theory as a matter of state constitutional law, which the Wisconsin Supreme Court can do (though it does so rarely).

ZOOM IN

Just as Act 10 had a massive impact on education for the good, a court decision striking down Act 10 would have a huge impact on local schools to the detriment of students.

The Wisconsin Institute for Law & Liberty reported last year that “[r]estoring collective bargaining for teacher salaries could cost districts and the state nearly \$650 million annually.” Their report continued, “Eliminating employee contributions to retirement would cost districts and the state about \$422 million annually.” And then, “Eliminating employee contributions to healthcare would cost districts and the state about \$560 million annually.” Totaled, WILL finds school districts are saving approximately \$1.6 billion annually from Act 10. Those dollars are now available to go into classrooms for curriculum, higher teacher salaries, and other student-centered services rather than fringe benefits driven by union demands.

A [study by Professor Barbara Biasi of the Yale School of Management](#) found that Wisconsin school districts that used the pay flexibility afforded by Act 10 could recruit and retain the most effective teachers. Act 10 allowed districts to change from a strict seniority-based pay system to a flexible-pay system based on merit and market demand, and those districts that embraced the reform attracted many of the best teachers to their ranks.

Another [study by Professor E. Jason Baron of Florida State University](#) also found that school districts which moved to flexible pay also attracted higher quality candidates into the teaching profession. He concluded, “Comparing the quantity of individuals completing a teaching degree in Wisconsin institutions before and after Act 10 and relative to those in similar states, I find that Act 10 led to a 20% increase in the number of awarded teaching degrees. This effect was entirely driven by the most selective institutions, which suggests an increase in the quality of the prospective teacher pool in Wisconsin as a result of the compensation reform.”

A February 2025 [study by economists at the University of Wisconsin-Madison](#) found: “The evidence suggests that Wisconsin’s Act 10 of 2011 improved the efficiency of the state’s public K-12 education system, allowing student performance to improve relative to other states despite a decline in Wisconsin’s ranking of K-12 education expenditures per pupil.”

The anecdotal experience of superintendents, school board members, and teachers across Wisconsin echoes this data.

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