Case No. _____

IN THE WISCONSIN COURT OF APPEALS

DISTRICT IV

STATE EX REL. RIDGLAN FARMS, INC.,
Petitioner,

v.

CIRCUIT COURT FOR DANE COUNTY,
THE HONORABLE RHONDA L. LANFORD, PRESIDING
WAYNE H. HSIUNG, DANE4DOGS LTD., AND ALLIANCE FOR ANIMALS
Respondents.

Dane County Circuit Court Case No. 24JD01

OPPOSITION TO PETITION FOR SUPERVISORY WRIT AND SUPPORTING MEMORANDUM

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INTRODUCTION

Ridglan Farms has engaged in repeated and well-documented instances of animal cruelty. Due to the Dane County District Attorney's failure to prosecute this cruelty, three parties—Dane4Dogs, a Madison-based nonprofit dedicated to the welfare of dogs and cats; Wayne Hsiung, an animal cruelty investigator; and Alliance for Animals, a local animal advocacy organization—filed a § 968.02(3) petition for a special prosecutor in Dane County Circuit Court.

Since this petition was filed, Ridglan Farms has repeatedly and improperly sought to undermine the proceeding. Ridglan filed an Opposition in the Circuit Court, even though § 968.02(3) and its attendant case law unambiguously state that the proceeding is *ex parte* and that the putative defendant has no right to participate whatsoever. When the Circuit Judge rightly rejected Ridglan's filing (and Petitioners' Motion to Strike or in the Alternative Reply), Ridglan filed this Petition for a Supervisory Writ. The transparent goal of both the Opposition and the Petition for a Supervisory Writ is to force the Circuit Judge to entertain their arguments—even if they are then dismissed—in contravention of § 968.02(3). Ridglan's goal is to halt or hide the § 968.02(3) proceeding by whatever means possible.

Ridglan's Petition advances a novel and over-expansive interpretation of Wisconsin Constitution article I, § 9m, also known as "Marsy's Law." Under Ridglan's interpretation, if someone is an alleged victim of a crime, that individual has a perpetual right to intervene in any proceeding involving the alleged defendant, even if charges have been dismissed or the proceeding is wholly unrelated to the initial victimization. Ridglan's theory is atextual and unworkable. Ridglan is not a victim because there is no active investigation, case, or proceeding of any kind in which it is a victim. And even if Ridglan were a victim, the § 968.02(3) proceeding is entirely separate from any proceeding in which Ridglan has victims' rights.

Ridglan cannot meet the high bar required to show a "plain duty" and thus merit the issuance of a writ. As Wisconsin courts have held for similarly situated putative defendants, Ridglan has other adequate remedies available, making a supervisory writ an improper vehicle for its arguments. Ridglan also cannot show the existence of a plain duty to permit it to participate in the § 968.02(3) proceeding or close the proceeding to the public. Marsy's Law does not apply to the accused in a § 968.02(3) proceeding, and the decision to close a proceeding to the public is precisely the kind of discretionary act that is *not* subject to a supervisory writ. Ridglan's novel and over-expansive reading of Marsy's

Law would create absurd and unpredictable results if permitted by this Court. Accordingly, the Court should deny Ridglan's Petition for a Supervisory Writ.

STATEMENT OF FACTS

Ridglan Farms is a commercial facility located in Dane County, Wisconsin, that breeds and sells beagle dogs for use in laboratory experiments and also, separately, performs experiments on dogs in a distinct facility. Ridglan has been repeatedly cited for violations by federal, state, and nonprofit-accreditation authorities. In 2013, Ridglan was cited by the Association for the Assessment and Accreditation of Laboratory Animal Care for failing to use sterile techniques and instruments for "devocalization" surgeries. First Am. Pet. Filing Criminal Compl. (hereinafter "Petition for Special Prosecutor"), Ex. B. In 2016, the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) cited Ridglan for wire flooring that allowed puppies' legs to fall through and housing that induced psychological distress, as evidenced by dogs engaging in circling, pacing, and wall bouncing. *Id.* at Ex. C. Just a year later, in 2017, activist investigators found the same problems: dogs with injured paws from the improper flooring and dogs ceaselessly spinning in their cages. *Id.* at Ex. J. In 2022, a former

employee witnessed these same problems, still uncorrected. *Id.* at Exs. A, I. The employee also saw non-veterinarians engage in surgical procedures without anesthesia, blood control, or any aftercare—a mutilation that Ridglan called "cherry eye surgery." *Id.* Recently, in December 2023, the United States Department of Agriculture's Animal and Plant Health Inspection Service cited Ridglan *again* for having improper flooring that permitted puppies' legs to pass through. *Id.* at Ex. E. These ongoing inhumane conditions, detailed by government inspection reports, activist-investigators, and former employees, have led to numerous advocacy campaigns from local animal organizations. The conditions, importantly, relate only to Ridglan's breeding operations and not its separate research facility.

One investigation of Ridglan received special attention from news media and Dane County law enforcement. In April 2017, Wayne Hsiung and other cruelty investigators conducted a site visit to Ridglan's facility in Mt. Horeb, Wisconsin. *Id.* at J. After entering an unlocked door to the facility, the investigators documented numerous inhumane conditions including the same wire mesh floors observed by both state and federal inspectors. *Id.* The investigators also found dogs with lesions on their paws and dogs suffering from obvious signs of distress and severe psychological trauma, including repetitive pacing and spinning in cages.

Id. Mr. Hsiung and the other investigators removed three beagle dogs who were in need of veterinary care and were commercially worthless to Ridglan Farms due to the animals' physical and psychological deterioration. *Id.* All three dogs received immediate veterinary care and were placed in permanent loving homes. Mr. Hsiung and two others were ultimately charged with burglary and theft in connection with their April 2017 visit to Ridglan Farms (Case Nos. 2021CF001837, 2021CF001838, 2021CF001839). P. App. 1-3. As part of their defense, Mr. Hsiung and his two co-defendants filed a Motion in Limine asking the court to allow evidence relevant to the affirmative defenses of defense of others, coercion, and necessity at trial.[1] The defenses would have made evidence of Ridglan's mistreatment of dogs directly relevant in the criminal trial. On the day the motion was to be argued, the Dane County District Attorney's Office instead sought the dismissal of all criminal charges against Mr. Hsiung and the two co-defendants. P-App. 10. The prosecution sought dismissal at Ridglan's request, claiming that Ridglan had received death threats and no longer wanted to proceed with the prosecution. *Id.* Despite the objections of Mr. Hsiung and his co-

[1] Bill Lueders, *A Crime of Compassion?*, ISTHMUS (Mar. 7, 2024), https://isthmus.com/news/cover-story/a-crime-of-compassion.

defendants, who wanted an opportunity to clear their name, the case was dismissed on March 8, 2024.[2]

On March 20, 2024, Petitioners Dane4Dogs, a nonprofit organization based in Madison, Wisconsin, and Wayne Hsiung filed a Petition for the Filing of a Criminal Complaint. P-App. 12. On April 15, the Petitioners filed an Amended Complaint that added Alliance for Animals, another Wisconsin-based animal nonprofit, as a Petitioner. Drawing on government inspection reports, footage from investigators, and an eyewitness account from a former employee, the Petition seeks the appointment of a special prosecutor pursuant to Wisconsin Statute § 968.02(3) to prosecute Ridglan for violating Wisconsin animal cruelty laws.

On March 29, 2024, nine days after the filing of the initial Petition for a Special Prosecutor, Ridglan filed an Opposition with the Circuit Judge, asserting that its actions were exempt from Wisconsin animal cruelty laws by statutory exemption. P. App. 113. Petitioners filed a Motion to Strike or in the Alternative Reply, arguing, among other things, that § 968.02(3) establishes an *ex parte* proceeding in which Ridglan, as the putative defendant, has no right to participate and that

[2] Bill Lueders, *Ridglan Farms Beagle 'Rescue' Case Dismissed*, ISTHMUS (Mar. 8, 2024), https://isthmus.com/news/news/Ridglan-Farms-beagle-rescue-case-dismissed.

the exemption cited by Ridglan applies only to research—and not breeding—facilities. The Motion to Strike or in the Alternative Reply is appended to this Brief. Ridglan's Opposition never addressed the *ex parte* issue, even though the Petition for a Special Prosecutor explicitly noted that the proceeding was *ex parte* and the cases to which Ridglan cited repeatedly held that the putative defendant had no right to participate. At a hearing on April 18, the Circuit Judge stated that she did not read Ridglan's Opposition or Petitioner's Motion to Strike or in the Alternative Reply because the proceeding was *ex parte*. Seemingly undeterred, Ridglan filed this Petition for Supervisory Writ and Supporting Memorandum, now arguing that it has a right to participate in the § 968.02(3) proceeding under Marsy's Law.

LEGAL STANDARD

A petition for a supervisory writ must show: "(1) an appeal is an inadequate remedy; (2) grave hardship or irreparable harm will result; (3) the duty of the trial court is plain and it must have acted or intends to act in violation of that duty; and (4) the request for relief is made promptly and speedily." *State ex rel. Kalal v. Cir. Ct. for Dane Cnty.*, 271 Wis. 2d 633, 649 (2004) (quoting *Burnett v. Alt*, 224 Wis.2d 72, 96–97 (1999)). A supervisory writ is "an extraordinary and drastic remedy that

is to be issued only upon some grievous exigency." *Id.* (quoting *State ex rel. Dressler v. Circuit Court for Racine County*, 163 Wis.2d 622, 630 (Ct. App. 1991)).

The bar for finding a "plain duty" is high. To be "plain," the duty must be "clear and unequivocal and, under the facts, the responsibility to act [is] imperative." *State ex rel. Dep't of Nat. Res. v. Wisconsin Ct. of Appeals*, 380 Wis. 2d 354, 366 (2018). The duty must be "non-discretionary." *State ex rel. Kalal*, 271 Wis. 2d at 652. Thus, a court's alleged failure to find a refusal to prosecute under Wisconsin Statute § 968.02(3) is not the kind of error subject to review under a supervisory writ because this obligation requires an exercise of judgment by the court and is not "a plain, clear, non-discretionary, and imperative duty of the sort necessary for a supervisory writ." *Id.* Put simply, to be a "plain" duty, the duty must be clear *and* non-discretionary *and* be of a kind that, if violated, would result in immediate, irreparable harm.

ARGUMENT

I. A supervisory writ is improper because Ridglan has other adequate remedies at its disposal.

Ridglan argues that an appeal is an inadequate remedy because a judge's order under § 968.02(3) is not appealable, and, in any case, the injury is the probable cause hearing itself, not its result. Pet. Supervisory

Writ and Supp. Mem. at 20 (hereinafter "Petition for Supervisory Writ"). But Ridglan does not cite any law to support its claim that a probable cause hearing itself can be an injury. Indeed, this would dangerously expand the notion of injury under Wisconsin law by making the mere fact of an investigation a ground for seeking appellate intervention.

Further, the Supreme Court of Wisconsin has explicitly held that there are adequate remedies to correct an erroneous ruling under § 968.02(3):

> To the extent that a circuit judge's decision to permit the filing of a complaint under Wis. Stat. § 968.02(3) is legally or factually unsupported, the defendant named in the complaint may seek its dismissal in the circuit court after it has been filed, and may pursue standard appellate remedies thereafter.

State ex rel. Kalal, 271 Wis. 2d at 652. In other words, a supervisory writ is an improper vehicle for policing a circuit judge's § 968.02(3) decision because adequate remedies exist. Further, Ridglan's claim that they would have to wait until conviction to appeal an improper circuit court decision is simply incorrect. If a special prosecutor is appointed, Ridglan can promptly file a motion to dismiss in the circuit court before a criminal trial takes place. The Court should deny Ridglan's petition for a supervisory writ because other adequate remedies exist, and entertaining Ridglan's petition would drastically expand the notion of

"injury," granting free rein to file a writ petition in the appellate court for any individual who wants to contest an investigation against them.

II. There is no plain duty to permit Ridglan to participate in the *ex parte* § 968.02(3) hearing because Ridglan is not a victim in any ongoing criminal case and even if it were, this § 968.02(3) proceeding is distinct from any case in which Ridglan can claim victims' rights.

Ridglan argues that it has a right to participate in the *ex parte* § 968.02(3) hearing because its rights as a victim are implicated. Petition for Supervisory Writ at 12-15. In particular, Ridglan claims it was a victim of a crime in *State v. Hsiung*, a prosecution of Petitioner Wayne Hsiung for entering Ridglan's facilities in 2017. *Id.* at 11. Because Mr. Hsiung is one of the petitioners in the § 968.02(3) proceeding and footage he collected at Ridglan may be shown during that proceeding, Ridglan now claims it has a victim's right to participate in the proceeding. *Id.* Ridglan acknowledges that its theory is novel and would expand Marsy's Law well beyond its current scope. *Id.* at 14-15. But Marsy's Law does not apply to the *ex parte* § 968.02(3) hearing because Ridglan is not a victim, and even if Ridglan were a victim, this proceeding is entirely separate from the proceeding in which Ridglan has victims' rights.

A. Ridglan Farms is not a victim in any ongoing criminal case.

First and foremost, there is no active case in which Ridglan Farms is a victim. As Ridglan itself acknowledges, Ridglan asked for the charges

against Mr. Hsiung to be dismissed, and the prosecution accordingly dismissed all charges against him. *There is no active investigation, charge, or other proceeding pending against Mr. Hsiung for his investigation of Ridglan*. When charges are dismissed or a defendant is acquitted, Marsy's Law no longer applies. The protections of Marsy's Law "vest at the time of victimization" and continue "throughout the criminal and juvenile justice process." Wis. Const. art. I, § 9m. In the absence of any criminal process—as when cases are dismissed or a defendant is acquitted—Marsy's Law does not apply and the individual cannot claim rights.

Ridglan wants to have its cake and eat it too—to dismiss charges against Mr. Hsiung but claim perpetual victimhood anyway. At the time, Mr. Hsiung objected to the dismissal of the charges against him because he wanted an opportunity to clear his name.[3] Mr. Hsiung has steadfastly maintained that his investigation of Ridglan Farms was lawful, and activists have been acquitted in strikingly similar cases.[4] Ridglan asked for the charges to be dismissed—perhaps out of a concern for having a spotlight focused on their cruel practices—but now Ridglan seeks to

[3] Bill Lueders, *Ridglan Farms Beagle 'Rescue' Case Dismissed*, ISTHMUS (Mar. 8, 2024), https://isthmus.com/news/news/Ridglan-Farms-beagle-rescue-case-dismissed.
[4] Marina Bolotnikova, *The Fight Against Factory Farming Is Winning Criminal Trials*, VOX (Mar. 21, 2023), https://www.vox.com/future-perfect/23647682/factory-farming-dxe-criminal-trial-rescue.

claim victims' rights for a case that no longer exists. Ridglan should not be permitted to ask for the dismissal of charges against Mr. Hsiung, but then claim a right to intervene in any legal dispute involving Mr. Hsiung.

Ridglan's interpretation of Marsy's Law is novel and over-expansive, essentially creating a rights-bearing perpetual victimhood. Under Ridglan's theory, as long as there was ever an allegation of criminal conduct, the alleged victim would have a right to intervene in any legal affair involving the alleged victim and alleged perpetrator. This theory of perpetual victimhood is much broader than anything countenanced by any state that has enacted Marsy's Law.

B. Even if Ridglan could claim perpetual victimhood, the protections of Marsy's Law apply only to the criminal case in which Ridglan was a victim, *not* other legal proceedings.

When faced with an interpretative issue of first impression, Wisconsin courts must confine themselves to the "plain meaning" of the text, including "the context in which it is used." *State ex rel. Kalal v. Cir. Ct. for Dane Cnty.*, 271 Wis. 2d 633, 663 (2004). In this case, the text and context of Marsy's Law is straightforward and dispositive: the rights of Marsy's Law apply only to the criminal case in which a party is a victim, not to other legal proceedings.

First, Marsy's Law defines victim in a manner that excludes an accused party: "'Victim' does not include the accused . . ." Wis. Const. art.

I, § 9m(1)(b). Even if Ridglan is a victim in some other proceeding, Ridglan is undoubtedly the "accused" in this § 968.02(3) proceeding. In fact, Wisconsin courts have repeatedly referred to the putative defendant in a § 968.02 proceeding as the "accused." *See, e.g.*, *State ex rel. Newspapers, Inc. v. Cir. Ct. for Milwaukee Cnty.*, 124 Wis. 2d 499, 517 (1985) (Ceci, J., dissenting); *State v. Doe*, 78 Wis. 2d 161, 165–66 (1977).

Second, Marsy's Law specifies that victims' rights attach "throughout *the* criminal and juvenile justice process." Wis. Const. art. I, § 9m(2) (emphasis added). "The" is a definite article used to indicate that a following noun "has been previously specified by context." *The*, Merriam-Webster.com, https://www.merriam-webster.com/dictionary/the (last visited June 11, 2024). Put simply, "the" indicates that the rights attach to a *particular* criminal process, not legal processes in general. Context makes it clear that the criminal process in question is the one initiated by the "victimization" and carried through to "release, plea, sentencing, disposition, parole, revocation, expungement, or pardon." Wis. Const. art. I, § 9m(2)(i). In other words, Marsy's Law provides procedural rights to a victim in the particular case in which they have been victimized, not in other legal processes, even if they involve the same parties.

Third, Marsy's Law repeatedly refers to "the case," indicating that the victims' rights are limited to a single, specific criminal case. *See id.* at § 9m(2)(d) ("timely disposition of *the case*"); § 9m(2)(e) ("all proceedings involving *the case*"); § 9m(2)(j) ("have information . . . submitted to the authority with jurisdiction over *the case*"). "Case" is singular and modified by the definite article "the," indicating that Marsy's Law applies to the particular criminal case in which the individual was a victim, *not* other proceedings. This reading is confirmed by the fact that Marsy's Law lists the proceedings "during which a right of the victim is implicated," namely "release, plea, sentencing, disposition, parole, revocation, expungement, or pardon." *Id.* at § 9m(2)(i). These are all proceedings stemming *directly* from the criminal case in which the rightsholder was a victim.

Ridglan seems to argue that the facts in this case are unusual and thus not captured by the plain text of Marsy's Law. Petition for Supervisory Writ at 13. But courts must limit themselves to the text of enactments, not sweeping statements of purpose. *State ex rel. Kalal*, 271 Wis. 2d at 663. Plus, Marsy's Law could easily have been more capacious, such as by giving alleged victims rights in civil processes. It is not uncommon for individuals in a criminal case to also be involved in independent civil litigation, often involving third parties. Marsy's Law

could have extended victim protections to this separate civil litigation. But it did not do so. Instead, the text—and context—of the enactment is strictly limited to all proceedings originating directly from "the case."

Fourth, Marsy's Law grants the victim a right "to confer with the attorney for the government." Wis. Const. art. I, § 9m(2)(h). Again, the definite article "the" indicates that this refers to a specific attorney for the government, namely the prosecutor in the victim's criminal case. Further, the reference to an "attorney for the government" shows that Marsy's Law is limited to only the kinds of proceedings that have an attorney for the government, specifically prosecutions of criminal defendants. A proceeding under Wisconsin Statute § 968.02(3) does not have an attorney for the government, indicating that it is not the kind of proceeding to which Marsy's Law could apply.

Finally, adopting Ridglan's novel and over-expansive construction of Marsy's Law would create an unreasonable result. Section 968.02(3) uses mandatory language, explicitly stating that the proceeding "shall be ex parte." The Wisconsin Supreme Court has also addressed the right of the accused to participate in such a proceeding, holding: "The statute does not confer upon the person who is the subject of a proposed prosecution the right to participate *in any way*." *State ex rel. Kalal*, 271 Wis. 2d at 650 (emphasis added). The law could not be clearer: Ridglan

has no right to participate in a § 968.02(3) proceeding in which it is the putative defendant. Adopting Ridglan's theory of Marsy's Law would directly contradict § 968.02(3) and the Supreme Court's holding in *Kalal*. This is an "absurd" and "unreasonable result[]," and the Court should adopt a reading of Marsy's Law that avoids this needless conflict. *State ex rel. Kalal*, 271 Wis. 2d at 663.

Moreover, Ridglan's theory would lead to unpredictable and absurd results in the criminal justice system. Consider the following all-too-common scenario. Two individuals in a domestic partnership commit criminal acts against one another. Each is thus a victim and a perpetrator in separate proceedings. Adopting Ridglan's theory would permit the perpetrator to invoke victim protections in the proceeding in which they are a perpetrator. To make matters worse, imagine if one of the parties seeks an ex parte temporary restraining order because their life is threatened by their partner. Under Ridglan's theory, such an ex parte application—a routine measure for keeping domestic violence victims safe—would be improper because the perpetrator would have a right to intervene under Marsy's Law just because they are also purportedly a victim in the relationship. The Wisconsin Supreme Court has instructed courts to interpret statutes "to avoid absurd or

unreasonable results." *State ex rel. Kalal*, 271 Wis. 2d at 663. Accordingly, this Court should reject Ridglan's theory.

C. This § 968.02(3) proceeding is a wholly separate proceeding from *State v. Hsiung*.

Even if Ridglan can claim extant victims' rights from *State v. Hsiung*, those rights have no application to this § 968.02(3) proceeding because it is a wholly separate proceeding. The two proceedings are pursuant to different statutory authorizations and concern different alleged criminal conduct. The proceeding against Mr. Hsiung alleged burglary and theft for an investigation into Ridglan Farms in 2017. The proceeding in which Ridglan is a putative defendant alleges animal cruelty from 2016 to at least 2023. These are different facts brought under different statutes.

Tellingly, the proceedings also have different parties. *State v. Hsiung* was a criminal case brought by the state of Wisconsin against Mr. Hsiung. This § 968.02(3) proceeding is brought by three private entities—Dane4Dogs Ltd., Wayne Hsiung, and Alliance for Animals—against Ridglan Farms. Ridglan misleadingly claims that this amounts to a "shuffling around of the parties' positions" and means Ridglan "is being re-victimized" by Mr. Hsiung. Petition for Supervisory Writ at 11, 13. But Dane4Dogs, not Mr. Hsiung, is the lead petitioner in the

§ 968.02(3) proceeding. And the proceeding could go forward just the same *without* Mr. Hsiung as a petitioner. In other words, the two proceedings are wholly distinct because Mr. Hsiung is not an indispensable party to the § 968.02(3) proceeding, and Ridglan cannot conceivably claim procedural rights against Dane4Dogs and Alliance for Animals.

Ridglan tries to draw a connection between the § 968.02(3) proceeding and *State v. Hsiung* by suggesting that the § 968.02(3) proceeding is "tainted" because it would rely on evidence "that only exist[s] because of the prior criminal acts of Hsiung and others." Petition for Supervisory Writ at 15-16. But this argument is without merit. First, Mr. Hsiung is presumed innocent, and no jury has convicted him or anyone else of "criminal acts" at Ridglan Farms. Mr. Hsiung has long maintained the lawfulness of his investigation of Ridglan, and other animal advocates have been vindicated in similar investigations.[5] Second, the § 968.02(3) Petition relies on evidence from government inspectors and a former employee. *See* First Am. Pet. Filing of a Criminal Compl., Ex. C (DATCP Inspection Report); Ex. E (USDA Inspection Report); Ex. A (discussing whistleblower's firsthand knowledge of animal

[5] *See* Bolotnikova, *supra* note 4.

cruelty); Ex. I (same); Ex. J (same). The notion that the Petition rests only on Mr. Hsiung's video footage and personal experiences is simply false. Third, it is well established that evidence obtained wrongfully by a private entity is not "tainted" and is admissible in court. *See United States v. Jacobsen*, 466 U.S. 109, 113 (1984); *State v. Berggren*, 320 Wis. 2d 209, 226–27 (Wis. Ct. App. 2009). Moreover, a hearing under § 968.02(3) is a probable cause hearing, in which the traditional rules of evidence do not apply. *See State v. Moats*, 156 Wis. 2d 74, 85 (1990) (holding that a "constitutionally tainted confession" was admissible to determine probable cause "and a trial court can rely on such a statement in deciding that probable cause exists"); *see also* Wis. Stat. § 971.31 ("[O]bjections to the admissibility of statements of a defendant shall not be made at a preliminary examination and not until an information has been filed."). The fact that some evidence in the § 968.02(3) proceeding may stem from Mr. Hsiung's investigation of Ridglan Farms does not make the § 968.02(3) proceeding part of the criminal case against Mr. Hsiung, and it does not entitle Ridglan to any procedural rights under Marsy's Law.

D. As the putative defendant, Ridglan does not have a right to participate in any way in the § 968.02(3) proceeding.

Ridglan claims that the circuit court violated a plain duty by failing to consider Ridglan's opposition. Petition for Supervisory Writ at 13. Ridglan does not cite any supporting case law, and all existing authority is to the contrary. As discussed *supra*, § 968.02(3) states that the proceeding "shall be ex parte," and the Wisconsin Supreme Court held that "[t]he statute does not confer upon the person who is the subject of a proposed prosecution the right to participate *in any way*." *State ex rel. Kalal*, 271 Wis. 2d at 650 (emphasis added). The "clear and unequivocal" duty of the court is thus to *exclude* Ridglan from the § 968.02(3) proceeding, as the court rightly did. *State ex rel. Dep't of Nat. Res. v. Wisconsin Ct. of Appeals, Dist. IV*, 380 Wis. 2d 354, 366 (Wis. 2018).

Ridglan tries to wriggle out of the statutory text and *Kalal* by arguing that § 968.02(3) allows their participation *before* the *ex parte* hearing. Petition for Supervisory Writ at 13. To begin with, this novel interpretation is certainly not "clear and unequivocal." *Id.* It also would undermine the very purpose of an *ex parte* hearing. If Ridglan could intervene at an earlier stage, then the value of a later *ex parte* hearing would be greatly diminished. The "action" would take place at the earlier hearing with the putative defendant, leaving the heart of the § 968.02(3) procedure—the *ex parte* hearing—a meaningless addendum.

In summary, the circuit court does not have a plain duty to permit Ridglan to participate in the § 968.02(3) proceeding. First, Ridglan is not a victim of any ongoing criminal proceeding that could vest it with rights under Marsy's Law because the charges in *State v. Hsiung* were dismissed. Second, even if Ridglan could claim perpetual victimhood under *State v. Hsiung*, the § 968.02(3) proceeding is a wholly separate and distinct proceeding in which Ridglan does not have any rights under Marsy's Law. Finally, § 968.02(3) clearly denies Ridglan a right to participate in any way. Ridglan's tortured reading of Marsy's Law conflicts with the text of Marsy's Law, creates conflicts with other statutes like § 968.02(3), and produces absurd results in other areas of the criminal justice system.[6] As a result, the Court should deny Ridglan's petition.

III. There is no plain duty to close the § 968.02(3) proceeding to the public, and doing so would violate established state law.

[6] In fact, it is troubling that Ridglan filed this Petition for a Supervisory Writ in the first place, as it is a transparent attempt to circumvent the procedure of § 968.02(3). Judge Lanford correctly struck Ridglan's Opposition in the Circuit Court because a § 968.02(3) proceeding is *ex parte*. Undeterred, Ridglan filed this Petition for a Supervisory Writ, including an appendix with their Opposition, essentially guaranteeing that Judge Lanford would read their Opposition—even though that is directly contrary to the § 968.02(3) procedure. The Court should deny Ridglan's Petition to prevent future putative defendants from circumventing § 968.02(3) in the same way.

"[A] section 968.02(3) hearing is subject to the same presumption of openness that applies to most judicial proceedings in Wisconsin." *State ex rel. Newspapers, Inc. v. Cir. Ct. for Milwaukee Cnty.*,124 Wis. 2d 499, 505 (1985) (reversing trial court and granting petition to open proceedings under § 968.02(3) to the public). Moreover, while a court has the discretion to close a proceeding to the public, "[t]he standard to be met before that discretion can be exercised is strict," involving circumstances that are "compelling," "substantial," and "most weighty and overwhelming." *Id.* No such circumstances exist in this case. Indeed, while Ridglan asserts that reputational interests and concerns over a fair trial are the basis for its extraordinary request, it fails to note that the Supreme Court of Wisconsin reversed a trial court and ordered that a proceeding be made open to the public, if those interests and concerns could be mitigated using other methods, such as voir dire at trial. *Id.* Indeed, the Supreme Court of Wisconsin has held that it is *especially* important for § 968.02(3) proceedings to be open because they serve as a public check on the district attorney:

> More important, a section 968.02(3) hearing is designed to be a method of scrutinizing the district attorney's decision to issue a complaint—a decision which the prosecutor usually makes out of the public eye. Thus the very purpose of the statute—to make possible the examination of the charging process in the rare instance—would be defeated if the procedures were closed for other than compelling reasons.

Id. at 506. Accordingly, if the Circuit Court ordered the hearing to be sealed, as in *Newspapers,* it would be a clear abuse of discretion.

Even if that were not the case, however, the Court's decision to hold a public hearing is not a violation of any plain duty that entitles Ridglan to relief under a supervisory writ. To be a "plain duty," the duty must be "clear and unequivocal" and "non-discretionary." *State ex rel. Kalal*, 271 Wis. 2d at 651-52. But the decision to close a hearing to the public is a discretionary one. *See State ex rel. Newspapers, Inc.*, 124 Wis. 2d at 507 (holding that a court has "the *discretion* to close a courtroom to the public" and "[t]he standard to be met before that *discretion* can be exercised is strict") (emphasis added).

Circuit judges in similar proceedings have not closed those to the public. For example, the University of Wisconsin has twice been subject to § 968.02(3) proceedings because of alleged animal cruelty. In 2010, a hearing was held to determine whether UW-Madison officials had violated anti-cruelty laws by engaging in fatal decompression experiments involving sheep.[7] In 2023, a hearing was held to determine whether other UW-Madison officials had violated anti-cruelty laws for

[7] Bill Lueders, *Judge Opens Door to Criminal Charges Over UW-Madison Sheep Experiments*, ISTHMUS (June 3, 2010), https://isthmus.com/news/news/judge-opens-door-to-criminal-charges-over-uw-madison-sheep-experiments.

their mistreatment of primates in a primate lab.[8] Both hearings were open to the public and analogous to the hearing that will consider Ridglan's animal cruelty. In fact, the risk of irreparable harm was likely greater for the UW-Madison hearings because those petitions directly targeted individuals working in those labs. In contrast, the Petitioners in this case are pursuing charges only against Ridglan Farms as a corporate entity, thereby shielding the individuals at Ridglan from public scrutiny or reputational harm.

CONCLUSION

This Court should deny Ridglan's Petition for a Supervisory Writ because other adequate remedies exist, Marsy's Law does not grant Ridglan any rights in the § 968.02(3) proceeding, and the § 968.02(3) hearing must rightfully be open to the public.

Dated: June 20, 2024

[8] Bill Lueders, *Judge Says UW-Madison Primate Center Conditions Are Shocking, but Rejects Call for Prosecution*, ISTHMUS (Nov. 7, 2023), https://isthmus.com/news/news/judge-says-uw-madison-primate-center-conditions-are-shocking.

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FORM AND LENGTH CERTIFICATION

I hereby certify that this petition and memorandum conforms to the rules contained in Wisconsin Statutes § 809.51(1) for a petition and memorandum produced with a proportional serif font. The length of this petition and memorandum is 5,299 words.

Dated this 4th day of June, 2024.

Electronically signed by
Kristin Schrank

CERTIFICATE OF SERVICE

I certify that on June 20, 2024, I electronically filed this brief and accompanying appendix using the Court's E-filing system.

Dated this 20th day of June, 2024.

Electronically signed by
Kristin Schrank