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STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT IV

Case No. 2024AP1074-W

STATE OF WISCONSIN EX REL.
RIDGLAN FARMS INC.,

Petitioner,

v.

CIRCUIT COURT OF DANE COUNTY,
HONORABLE RHONDA L. LANFORD,
WAYNE HSIUNG, DANE4DOGS, LTD.
and ALLIANCE FOR ANIMALS,

Respondents.

RESPONSE OF CIRCUIT COURT OF DANE COUNTY, THE HONORABLE RHONDA L. LANFORD, PRESIDING

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INTRODUCTION

A petition was filed with the Circuit Court of Dane County, the Honorable Rhonda L. Lanford, presiding (hereinafter "the Circuit Judge") under Wis. Stat. § 968.02(3), to bring a criminal complaint against Ridglan Farms Inc. Wisconsin Stat. § 968.02(3) creates a process by which a circuit judge may permit the filing of a criminal complaint where a district attorney has refused to do so, if the circuit judge concludes following a hearing that probable cause exists to issue the complaint.

Though Wis. Stat. § 968.02(3) and Wisconsin Supreme Court precedent expressly *prohibit* the potential defendant from participating in the circuit judge's determination of whether to permit the filing of the complaint, Ridglan Farms asks this Court to issue a supervisory writ compelling the Circuit Judge to do just that. This Court should deny the petition.

Ridglan Farms cannot show that the Circuit Judge has a plain duty to act in direct contravention of plain statutory language and binding caselaw. Nor can Ridglan Farms show that, as the party accused of potential criminal wrongdoing in

the Wis. Stat. § 968.02(3) matter, the recent amendment to Wis. Const. art. I, § 9m creates a plain duty based on rights Ridglan Farms may have invoked in a separate, now-dismissed, criminal case.

While the absence of any plain duty defeats Ridglan Farms' supervisory writ petition, this Court could also deny the petition for an independent reason: Ridglan Farms cannot show that it has speedily pursued its petition when it did not file it until 47 days after the Circuit Judge's challenged holding and offers no explanation for the delay.

BACKGROUND

The Circuit Judge takes this background from the materials attached to the appendix to Ridglan Farms' petition and from Wisconsin Circuit Court Access, https://wcca.wicourts.gov. This Court may take judicial notice of circuit court record entries. *Kirk v. Credit Acceptance Corp.*, 2013 WI App 32, ¶ 5 n.1, 346 Wis. 2d 635, 829 N.W.2d 522.

On March 20, 2024, Wayne Hsiung, Dane4Dogs Ltd., and Alliance for Animals filed a petition for the filing of a criminal complaint against Ridglan Farms pursuant to

Wis. Stat. § 968.02(3), alleging violations of Wis. Stat. §§ 951.14 (providing proper shelter for animals) and 951.02 (mistreating animals). (Pet.-App. 12–37; *see In RE: 968.02(3) Complaint*, Case No. 24-JD-0001 (Dane Cnty.) (Motion entry, Mar. 20, 2024).)

On March 29, 2024, Ridglan Farms submitted a brief in Case No. 24-JD-0001, opposing the petitioners' requested criminal complaint. (*See* Case No. 24-JD-0001 (Other entry Mar. 29, 2024).)

The Circuit Judge held a hearing on April 18, 2024. The circuit court case log reflects that, at the hearing, the "Court review[ed] what submissions will and will not be reviewed by the Court. Court advise[d] the process of upcoming proceedings." (*See* Case No. 24-JD-0001 (Hearing entry Apr. 18, 2024).) It further reflects that the petitioners are "to file pre-trial brief along with a summary of evidence, a list of witnesses and a synopsis of what their testimony will be" by June 28, 2024, and that a hearing is scheduled for July 10, 2024. (*See id.*; *see also* Pet.-App. 122 (notice of July 10, 2024, hearing).)

The transcript of this April 18, 2024, hearing, is not in the materials before this Court. The Circuit Judge does not dispute Ridglan Farms' explanation that at that hearing, the Circuit Judge explained that (1) it would not be considering Ridglan Farms' opposition brief submitted on March 29, 2024, in making its determination under Wis. Stat. § 968.02(3); and (2) Ridglan Farms would not be permitted to participate in the July 10, 2024, evidentiary hearing on the Wis. Stat. § 968.02(3) petition.

Forty-seven days later, on June 4, 2024, Ridglan Farms filed a petition for supervisory writ with this Court. The petition argues that the Circuit Judge has a clear and plain duty to allow it to either (a) participate in Case No. 24-JD-0001 either before or at the July 10, 2024, hearing, or (b) order the July 10, 2024, closed to the public and records from it sealed. (*See generally* Pet. for Supervisory Writ ("Pet.").)

The petition asserts that the Circuit Judge's plain duty derives from Wis. Const. art. I, § 9m, on grounds of Ridglan Farms being a victim of crimes of one of the

petitioners, Wayne Hsiung, in a now-dismissed criminal case. (*See generally id.*)

More specifically, attached to the petition is a criminal complaint in Dane County Case No. 21-CF-1838, charging Hsiung with burglary and felony theft for acts committed with two other individuals. (*See generally id.*; Pet.-App. 1–9 (criminal complaint against Hsiung).) Also attached to the complaint is the State's motion to dismiss the cases against Hsiung and the two other defendants without prejudice. (Pet.-App. 10–11.) The motion reflects that prior to the trial date, "the victims contacted the State . . . and indicated a desire to no longer have the case proceed to trial" based on their concerns for their "physical safety, as well as for their business." (*Id*. at 10.)

Wisconsin Circuit Court Access records reflect that in Dane County Case No. 21-CF-1838, Wayne H. Hsiung was charged with burglary and theft, that the Honorable Mario White presided over the criminal proceedings, and that the circuit court dismissed the case upon the State's motion on

March 8, 2024. *See State v. Hsiung*, Case No. 21-CF-1838 (Dane Cnty.).

On June 7, 2024, this Court entered an order requiring the Circuit Court of Dane County, the Honorable Rhonda L. Lanford, presiding, to file a response to the petition for supervisory writ. This response follows.

LEGAL STANDARD

A supervisory writ "is considered an extraordinary and drastic remedy that is to be issued only upon some grievous exigency." *State ex rel. Kalal v. Cir. Ct. for Dane Cnty.*, 2004 WI 58, ¶ 17, 271 Wis. 2d 633, 681 N.W.2d 110 (citation omitted).

Such an extraordinary remedy will not be granted unless the petitioner establishes four criteria: "(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." *Kalal*, 271 Wis. 2d 633, ¶ 17 (citation omitted).

To show that a circuit court has a plain duty—the third requirement—the petitioner must show that the circuit court's "responsibility to act . . . [is] imperative." *Kalal*, 271 Wis. 2d 633, ¶ 21 (citation omitted). This means a circuit court's duty must be "non-discretionary." *State ex rel. Davis v. Cir. Ct. for Dane Cnty.*, 2024 WI 14, ¶ 26, 411 Wis. 2d 123, 4 N.W.3d 273 (citing *Kalal*, 271 Wis. 2d 633, ¶ 24).

The circuit court's duty must also be "clear and unequivocal" to be a plain duty. *Kalal*, 271 Wis. 2d 633, ¶ 22 (citation omitted). This does not require the duty to be "settled or obvious," as "[t]here may be a plain duty even when it involves 'a novel question of law requiring harmonization.'" *State ex rel. DNR v. Wis. Ct. of Appeals, Dist. IV*, 2018 WI 25, ¶ 11, 380 Wis. 2d 354, 909 N.W.2d 114 (citation omitted). But the absence of "binding precedent" to support the claimed duty is significant to whether a "clear and unequivocal mandate" existed for the circuit court. *Davis*, 411 Wis. 2d 123, ¶ 40.

For example, in its recent *Davis* decision, the Wisconsin Supreme Court rejected a petitioner's argument that a circuit

court had a plain duty to treat a substitution request as timely based on equitable tolling principles, in part because "no court has said that equitable tolling applies" in that situation. *Davis*, 411 Wis. 2d 123, ¶ 40. The absence of "binding precedent" in that circumstance, the Wisconsin Supreme Court reasoned, showed that the circuit court did not have a "clear and unequivocal mandate" to perform the duty that the petitioner alleged must be performed. *Id.*

ARGUMENT

This Court should deny the supervisory writ petition because Ridglan Farms cannot satisfy the third or fourth showings required for this Court to issue the writ.

Most significantly, it cannot show that the Circuit Judge has a plain duty to allow it to participate in the Wis. Stat. § 968.02(3) determination when both plain statutory language and binding caselaw directly prohibit the Circuit Judge from doing so. Ridglan Farms cannot show that Wis. Const. art. I, § 9m's language creates a "clear and unequivocal mandate" that impliedly repeals that statute and overturns that caselaw here.

But this Court could also avoid any consideration of plain duty and deny the petition for the independent reason that Ridglan Farms cannot show that it has "promptly and speedily" pursued its petition with this Court.

I. This Court should deny the supervisory writ petition because the Circuit Judge did not violate any clear and unequivocal duty by following plain statutory language and binding precedent.

A. Both Wis. Stat. § 968.02(3)'s express language and caselaw hold that a potential defendant cannot participate in a judge's determination of whether to permit the filing of a criminal complaint. Ridglan Farms concedes that its request is contrary to caselaw.

Ridglan Farms asks this Court to compel the Circuit Judge to act directly *contrary* to both plain statutory language and binding precedent.

Wisconsin Stat. § 968.02(3) creates a procedure by which a circuit judge may allow the filing of a criminal complaint where a district attorney refuses to do so. Wisconsin Stat. § 968.02(3) provides that "[i]f a district attorney refuses or is unavailable to issue a complaint, a circuit judge may permit the filing of a complaint, if the judge finds there is probable cause to believe that the person to be

charged has committed an offense after conducting a hearing."

This Wis. Stat. § 968.02(3) process is "not a court proceeding." *Gavcus v. Maroney*, 127 Wis. 2d 69, 70, 377 N.W.2d 200 (Ct. App. 1985). Rather, "[t]he statute expressly provides that the proceeding is to be before a circuit judge and there is an express distinction between a judge and a court." *Id.* (citation omitted). There is no right to appeal a judge's decision on a petition under Wis. Stat. § 968.02(3). *Id.* But courts have acknowledged a limited ability to invoke supervisory writ procedure in limited circumstances to obtain review of a judge's decision under Wis. Stat. § 968.02(3). *Kalal*, 271 Wis. 2d 633, ¶ 21.

Critically, Wis. Stat. § 968.02(3) expressly provides that the "hearing" to determine whether probable cause exists to issue the complaint "*shall be ex parte* without the right of cross-examination." The district attorney who has refused to issue a complaint, however, "shall be informed of the hearing and may attend." *Id.*

Thus, the plain statutory language provides that the hearing "shall" occur *without* the involvement of the potential defendant. "[S]hall," of course, is presumed to impose a mandatory requirement. *DNR*, 380 Wis. 2d 354, ¶ 13. That "shall be ex parte" means *must* be ex parte is further reinforced here by the juxtaposition of that prohibition with the allowance that a refusing district attorney "*may* attend." Wis. Stat. § 968.02(3); *see also DNR*, 380 Wis. 2d 354, ¶ 28 (the use of different terms in the same section indicates different meanings).

Given this statutory prohibition on a potential defendant's involvement, the Wisconsin Supreme Court has also expressly held that Wis. Stat. § 968.02(3) "does not confer upon the person who is the subject of a proposed prosecution the right to participate in any way." *Kalal*, 271 Wis. 2d 633, ¶ 18.

This does not, however, mean that a "judge's decision to issue a complaint pursuant to this procedure is completely unreviewable." *Kalal*, 271 Wis. 2d 633, ¶ 20. Instead, if a judge issues a complaint, the defendant "has the same

opportunity to challenge in circuit court the legal and factual sufficiency of that complaint as a defendant named in a complaint" issued by a district attorney. *Id.*

As it must, Ridglan Farms concedes that "case law instructs that it may not participate in the *ex parte* hearing on July 10." (Pet. 13.)

B. Ridglan Farms cannot show that article 1, section 9m creates a clear and unequivocal duty for the Circuit Judge to act directly contrary to statute and binding precedent.

Both plain statutory language and Wisconsin Supreme Court precedent require a circuit judge to do what the Circuit Judge did here—i.e., to do the exact opposite of what Ridglan Farms asks this Court to compel the Circuit Judge to do through a supervisory writ petition. Ridglan Farm, however, argues that Wis. Const. art. I, § 9m, amended in 2020 and commonly referred to as the Marsy's Law Amendment, supports a different result in this context. But Ridglan Farms cannot show that the Wisconsin Constitution's victims' rights protections create a clear and unequivocal duty for the Circuit Judge to act in direct contravention of both Wis. Stat. § 968.02(3) and *Kalal* here.

As this Court recently explained when addressing whether the Marsy's Law Amendment superseded a juvenile delinquency restitution statute, "[i]f a statute conflicts with a constitutional provision, 'the constitutional [provision] prevails over the inconsistent statute,' effectively repealing the statute." *Interest of M.L.J.N.L.*, 2024 WI App 11, ¶ 10, 411 Wis. 2d 174, 4 N.W.3d 633 (alteration in original) (citation omitted). But, importantly, "statutes are presumed constitutional and the presumption of constitutionality applies even where the statute in question predates a constitutional amendment." *Id.* (citation omitted).

Additionally, when interpreting a state constitutional provision, this Court "focus[es] on the constitutional text, reading it reasonably, in context, and with a view of the provision's place within the constitutional structure." *M.L.J.N.L.*, 411 Wis. 2d 174, ¶ 17 (citation omitted).

Ridglan Farms argues that the Marsy's Law Amendment requires the Circuit Judge to let it participate in the Wis. Stat. § 968.02(3) process, either before or at the probable cause hearing. It asserts that this Court should

compel the Circuit Judge to do so because Hsiung was the defendant in a now-dismissed criminal case for burglary and theft from its property. It also asserts that Hsiung is using materials obtained from his alleged criminal acts against it as support for his petition for a criminal complaint under Wis. Stat. § 968.02(3).

As support, Ridglan Farms focuses on Wis. Const. art. I, § 9m(2)(i), which provides that a "victim," as defined under the Amendment, shall be entitled, "[u]pon request, to be heard in any proceeding during which a right of the victim is implicated, including release, plea, sentencing, disposition, parole, revocation, expungement, or pardon." (*See* Pet. 12.) It also notes that the Amendment gives a "victim," as defined under the Amendment, the right "[t]o be treated with dignity, respect, courtesy, sensitivity, and fairness." Wis. Const. art. I, § 9m(2)(a); (*see* Pet. 12).

To be sure, crime victims have rights under the Marsy's Law Amendment, and those rights are to be carefully considered where applicable. But Ridglan Farms cannot show that the Circuit Judge had a clear and unequivocal duty to

allow it to participate in the Wis. Stat. § 968.02(3) complaint consideration process—whether before or at the probable cause hearing—for multiple reasons.

1. Ridglan Farms cannot show any "clear and unequivocal" duty to interpret article I, section 9m as repealing statutory language and overturning caselaw in this context.

First and foremost, Ridglan Farms' position would require the Circuit Judge to hold, as a matter of first impression, that the Marsy's Law Amendment "effectively repeal[ed]" Wis. Stat. § 968.02(3)'s prohibition on a potential defendant's participation where the potential defendant was a victim of a petitioner in a separate criminal case, and effectively overturned *Kalal* in that situation, too. *See M.L.J.N.L.*, 411 Wis. 2d 174, ¶ 10. That alone demonstrates that it cannot prove the clear and unequivocal duty necessary for this Court to issue a supervisory writ. *See Davis*, 411 Wis. 2d 123, ¶ 40.

It is not just that this question is novel—something Ridglan Farms also concedes. (Pet. 14.) A novel question may still create a plain duty. *DNR*, 380 Wis. 2d 354, ¶ 11. Instead,

it is that the action Ridglan Farms seeks through a supervisory writ petition (1) is one that "no court has said" applies, *Davis*, 411 Wis. 2d 123, ¶ 40, *and* (2) would require overcoming the presumption of statutory constitutionality, *M.L.J.N.L.*, 411 Wis. 2d 174, ¶ 10, *and* (3) would require overturning Wisconsin Supreme Court precedent (which a circuit judge cannot do). That is the antithesis of a "clear and unequivocal" duty. *See Kalal*, 271 Wis. 2d 633, ¶ 22 (citation omitted).

One additional point bears mention as to *Kalal*: Ridglan Farms' petition suggests that *Kalal* could be read narrowly, only to prohibit its participation at the Wis. Stat. § 968.02(3) probable cause hearing but not before it (presumably, to allow the Circuit Judge to consider its submitted opposition brief). (*See* Pet. 13.)

But *Kalal* held that a potential defendant lacks "standing" "to participate in any way" under Wis. Stat. § 968.02(3). *Kalal*, 271 Wis. 2d 633, ¶ 18. The Circuit Judge, like this Court, has no ability to disregard language in a

Wisconsin Supreme Court opinion as dicta. *Zarder v. Humana Ins. Co.*, 2010 WI 35, ¶ 58, 324 Wis. 2d 325, 782 N.W.2d 682. And *Kalal* itself involved a potential defendant's attempt to file a motion for reconsideration, not to participate directly in the Wis. Stat. § 968.02(3) hearing. *See Kalal*, 271 Wis. 2d 633, ¶ 18. Ridglan Farms neither can nor does explain why *Kalal*'s result would be different as to a potential defendant's participation before a Wis. Stat. § 968.02(3) hearing, when the point is the same: Wis. Stat. § 968.02(3) expressly prohibits a potential defendant's participation in the determination of whether charges should be brought against it. And if a potential defendant cannot participate at the hearing, the potential defendant cannot participate outside of the hearing to raise arguments that the potential defendant would want to make at the hearing. *See id.*

Because Ridglan Farms cannot show any "clear and unequivocal" duty for the Circuit Judge to act in direct contravention of both statute and caselaw, this Court should

deny the supervisory writ petition. This Court need not and should not go further.

2. Ridglan Farms cannot show any "clear and unequivocal" duty where the Marsy's Law Amendment expressly states that a "victim" does not include "the accused."

If this Court nevertheless concludes it needs to go further, there is another straightforward way to see why Ridglan Farms cannot show any "clear and unequivocal" duty under the Marsy's Law Amendment: the Amendment defines a "[v]ictim" for purposes of its constitutional protections, and "[v]ictim" "does not include the accused." Wis. Const. art. I, § 9m(1)(b).

The precise definition of "the accused" under the Marsy's Law Amendment appears to be another novel question. And this Court need not decide it here, given the Ridglan Farms' burden to show a "plain duty" to warrant a supervisory writ.

But insofar as this Court concludes it needs to consider it, the Amendment itself reflects that "the accused" means something broader than a charged criminal defendant. The

Amendment separately discusses a “defendant’s” rights. *Compare* Wis. Const. art. I, § 9m(6), *with* Wis. Const. art. I, § 9m(1)(b). Different terms used in the same section are generally understood to have different meanings. *See DNR*, 380 Wis. 2d 354, ¶ 28.

Ridglan Farms advances a broad view of the scope and type of matters in which a crime victim’s rights would apply under article I, section 9m. While, as noted further below, its arguments there falter for other reasons, too, even assuming those arguments were otherwise correct, Ridglan Farms *still* could not show a plain duty here because the Amendment itself makes clear that “the accused” cannot invoke the Amendment’s protections. Wis. Const. art. I, § 9m(1)(b).

Put differently, even assuming that the Amendment’s victims’ rights protections could otherwise extend to a Wis. Stat. § 968.02(3) determination, they cannot be invoked by “the accused.” And it is undisputed that Ridglan

Farms is "the accused" in the Wis. Stat. § 968.02(3) matter.[1]

Ridglan Farms cannot show any violation of a "clear and unequivocal" duty under article I, section 9m to allow it to participate in the Wis. Stat. § 968.02(3) proceedings where it is "the accused." This Court need not go further.

3. Ridglan Farms cannot show any "clear and unequivocal" duty under article I, section 9m to be allowed to participate in a matter separate from the criminal case in which it could invoke victims' rights protections.

If this Court nevertheless concludes it needs to go further, Ridglan Farms also cannot show any plain duty on the Circuit Judge's part because it cannot establish that article I, section 9m compels the conclusion that the protections it affords victims in a separate criminal case would apply in the Wis. Stat. § 968.02(3) process at issue here.

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[1] Indeed, given that the Wis. Stat. § 968.02(3) process asks a circuit judge to sit not as a "court" but rather in the position of determining whether probable cause exists to issue a criminal complaint, Ridglan Farms' argument that it should be able to participate in the Wis. Stat. § 968.02(3) as the "accused" is akin to an argument that a potential criminal defendant should be able to participate in a district attorney's charging decisions.

Again, the question is one of first impression. And ultimately, here again, this Court need not decide that question given the standard Ridglan Farms must meet to warrant a supervisory writ. But, if this Court concludes it needs to address it further, Ridglan Farms cannot show that article I, section 9m's language demands that the rights it articulates extend to a separate matter within the criminal justice system where a "victim" in one case is now a potential defendant in another.

Wisconsin Const. art. I, § 9m(2)(i) provides crime "victims" with the right "to be heard in any proceeding during which a right of the victim is implicated, including release, plea, sentencing, disposition, parole, revocation, expungement, or pardon." When read in context, this language reflects a right to be heard at those proceedings concerning the criminal investigation, charges, and sentence of the defendant for the crimes against the "victim."

Wisconsin Const. art. I, § 9m(2) serves to "preserve and protect victims' rights to justice and due process throughout the criminal and juvenile justice process." It provides that the

rights articulated "vest at the time of victimization" and are to be protected "in a manner no less vigorous than . . . the accused." *Id*. In addition to the right to be heard, a victim also has a right, for example: "to attend all proceedings *involving the case*"; "to reasonable and timely information about the status of the *investigation* and the outcome of the *case*"; to, upon request, "attend all proceedings *involving the case*"; to, upon request, "confer with the attorney for the government"; and to "reasonable and timely notification of proceedings." Wis. Const. art. I, § 9m(2)(e), (g), (h), (o).

With this context, a victim's right "to be heard in any proceeding during which a right of the victim is implicated" would include these phases of the criminal justice "process" as well as sentencing-related proceedings after the "case" against the defendant has concluded, such as "parole, revocation, expungement, or pardon." Wis. Const. art. I, § 9m(2), (i). This language does not compel the conclusion that the protection afforded extends to a potential defendant in a Wis. Stat. § 968.02(3) process.

Ridglan Farms nevertheless argues that the rights must extend to a Wis. Stat. § 968.02(3) determination because Wis. Const. art. I, § 9m(4)(a) provides that a "victim" or "victim's attorney" may seek enforcement of the rights articulated "in any circuit court or before any other authority of competent jurisdiction." Ridglan Farms argues that this language must include a determination by a circuit judge (not "court") under Wis. Stat. § 968.02(3) because to hold otherwise would be to render superfluous the language: "or . . . any other authority of competent jurisdiction." (*See* Pet. 14.)

This argument fails because it rests on the mistaken presumption that a circuit judge presiding over a separate Wis. Stat. § 968.02(3) determination is the only "other authority of competent jurisdiction" beyond a "court" to which Wis. Const. art. I, § 9m(4)(a) could be referring. Consider, however, as one of many examples, the Parole Commission. *See generally* Wis. Stat. §§ 304.01, 304.06. The Parole Commission is not a court, and yet a "victim" under article I, section 9m has a right to be heard when the Parole Commission considers whether to release a

defendant. *See generally id.*; Wis. Const. art. I, § 9m(2)(i). That the "other authority" language would not apply in these unique circumstances does not render that language superfluous.

Ridglan Farms also emphasizes that Hsiung intends to use evidence obtained through acts committed against it that resulted in Hsiung's now-dismissed criminal case in support of his request for the judge's issuance of a complaint under Wis. Stat. § 968.02(3). (*See generally* Pet.) But Ridglan Farms does not explain how that would or could broaden the scope of the constitutional language. And even if it could, as argued above, the Marsy's Law Amendment expressly does not apply to protect "the accused."

Additionally, it bears repeating that as the Wisconsin Supreme Court explained in *Kalal*, if the Circuit Judge were to issue a criminal complaint under Wis. Stat. § 968.02(3), then the defendant to that complaint would have the same opportunity to raise legal challenges to the sufficiency of the complaint as a defendant named in a complaint issued by a district attorney. *Kalal*, 271 Wis. 2d 633, ¶ 20.

At base, nothing in Wis. Const. art. I, § 9m compels the conclusion that Ridglan Farms would have a right to participate in the Wis. Stat. § 968.02(3) process because of rights it may have been able to invoke in a separate, now dismissed, criminal case against Hsiung. And Ridglan Farms must show such a conclusion is compelled for this Court to hold that the circuit court has a "clear and unequivocal" duty. *Kalal*, 271 Wis. 2d 633, ¶ 22 (citation omitted).

C. As Ridglan Farms further concedes, whether to close the proceedings is a matter of judicial discretion.

Lastly, Ridglan Farms makes an alternative request that this Court enter a supervisory writ to compel the Circuit Judge to close and otherwise seal the Wis. Stat. § 968.02(3) hearing and evidence. This argument is a non-starter, for reasons Ridglan Farms concedes—it is not required but is rather a matter of judicial discretion. "While Ridglan Farms does not dispute that the *ex parte* hearing statute permits this absurd possibility given the presumption of openness of Wisconsin judicial proceedings, the court *does* have discretion to appropriately tailor this proceeding . . . ." (Pet. 16.)

A court's duty must be "non-discretionary" to be a plain duty for purposes of a supervisory writ. *Davis*, 411 Wis. 2d 123, ¶ 26. Ridglan Farms neither can nor does identify anything or develop any argument as to anything that *requires* a circuit judge to close a Wis. Stat. § 968.02(3) hearing or seal matters related to it. Its analogies to a court's discretion to do so in other types of matters do not create a plain duty here.

* * *

Because the Circuit Judge has no plain duty to allow Ridglan Farms, the potential defendant, to participate in a Wis. Stat. § 968.02(3) determination, it cannot meet the third requisite prong for a supervisory writ. This Court should deny its petition.

II. This Court should deny the supervisory writ petition because the request was not promptly and speedily made.

This Court could also deny Ridglan Farms' supervisory writ petition altogether for another, independent reason: Ridglan Farms cannot establish that it sought a

supervisory writ from this Court "promptly and speedily." *Kalal*, 271 Wis. 2d 633, ¶ 17 (citation omitted).

Ridglan Farms took 47 days—over a month-and-a-half—to file its petition with this Court. The Circuit Judge explained on April 18 that it would not be considering Ridglan Farms' submitted opposition brief or allowing its participation at the probable cause hearing. Ridglan Farms did not file its petition until June 4. Notably, this is over five times longer than the nine days it took Ridglan Farms to submit an opposition brief after Hsiung and others filed the petition for criminal complaint on March 20. (*See* Case No. 24-JD-0001 (Motion entry Mar. 20, 2024, and Other entry Mar. 29, 2024); Pet.-App. 12–37, 113–21.)

Moreover, Ridglan Farms—with the burden to show that its petition was "promptly and speedily" filed—offers no explanation as to why it took over a month-and-a-half to file its supervisory writ petition with this Court. (*See* Pet. 22.) Instead, in one paragraph, it asserts that "[p]recedent recognizes this petition filed within a handful of weeks after

the status hearing, and well in advance of the probable cause hearing, to be sufficiently timely." (*Id.*)

But caselaw does not support this proposition, as Ridglan Farm claims. Consider the differences between the case it cites and the circumstances here. In *State ex rel. CityDeck Landing LLC v. Circuit Court for Brown County*, the Wisconsin Supreme Court rejected a prompt-and-speedy challenge to a 21-day gap between the challenged circuit court order and the filing of the supervisory writ petition with this Court. 2019 WI 15, ¶ 42, 385 Wis. 2d 516, 922 N.W.2d 832. That case concerned a petition for supervisory writ regarding a circuit court order staying arbitration. *See generally id.*

Critically, in rejecting the argument that the petitioner did not act promptly and speedily, the Court emphasized the events that occurred between the circuit court's order and the filing of the writ petition: that the petitioner had sought reconsideration two days after the court's order, which the circuit court ignored; that eight days after that, the court allowed the parties to proceed with a planned mediation; and

that, only *12 days* after that order, the petitioner filed the writ petition. *CityDeck Landing*, 385 Wis. 2d 516, ¶ 42.

Such a holding aligns with other caselaw in which parties in a supervisory writ petition have agreed that a matter of a few days to two weeks satisfy the "promptly and speedily" requirement. *See, e.g.*, *State ex rel. Kormanik v. Brash*, 2022 WI 67, ¶ 18, 404 Wis. 2d 568, 980 N.W.2d 948 (two days); *DNR*, 380 Wis. 2d 354, ¶ 10 (two weeks).

But none of that supports the proposition that filing a supervisory writ petition over a-month-and-a-half after an order satisfies the "speedily" requirement, particularly where there are important dates quickly approaching in the Wis. Stat. § 968.02(3) matter and where Ridglan Farms asks this Court to address novel constitutional arguments.

As reflected in the notice of hearing issued on April 18 that Ridglan Farms attached to its petition, the Circuit Judge has ordered petitioners to file a brief with a summary of evidence by June 28, and the hearing is set for July 10. (Pet.-App. 122; *see also* Case No. 24-JD-0001 (Hearing entry April 18, 2024).) And, indeed, this Court appears to also

understand the urgency created by the delay in Ridglan Farms' petition: it issued an order for a response two days after the petition was filed, gave the Circuit Judge 14 days to respond (roughly one fourth of the time Ridglan Farms took to file its petition) and advised the parties "that the court does not anticipate extending th[e] deadline" it set for the response. (*See* Court of Appeals order, June 7, 2024).

While Ridglan Farms' petition fails on the plain duty prong, this Court could reject its petition on the separate ground that its petition was not "promptly and speedily" filed in this Court. *Kalal*, 271 Wis. 2d 633, ¶ 17 (citation omitted).

CONCLUSION

This Court should deny the petition for supervisory writ.

Dated this 19th day of June 2024.

Respectfully submitted,

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Electronically signed by:

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CERTIFICATE OF E-FILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Court of Appeals Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

I further certify that copies of the above document were mailed on this date to:

Wayne Hsiung
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San Francisco, CA 94108

Alliance for Animals
Post Office Box 1632
Madison, WI 53701-1632

Dated this 19th day of June 2024.

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