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Testimony before the Senate Committee on Judiciary and Public Safety

Senator André Jacque

January 30, 2024

Chairman Wanggaard and Colleagues:

Thank you for the opportunity to testify in support of Senate Bill 275. The specialized, problem-solving court approach has been rapidly growing throughout the justice system. The most common types of problem-solving courts are drug treatment court and OWI courts, but a wide range of other specialty courts, such as mental health, juvenile, domestic violence, and veteran's courts also address underlying issues related to a participant's criminal behavior. Problem-solving courts work across multiple disciplines and institutions to use interventions that treat offenders while also holding them accountable for their criminal actions.

This proposal provides statutory authority for two types of specialty courts that have been operating in Wisconsin for years with no authorization by state rule or statutory authority: treatment courts and business courts.

Substance addiction treatment courts enable non-violent offenders to voluntarily participate and receive drug treatment services instead of a jail or prison sentence. The intent is to reduce recidivism, increase public safety, and relieve pressure on the court system by focusing our criminal justice resources on violent offenders who pose the greatest risk and must be removed from our communities. Many problem-solving court programs in Wisconsin receive funding through the Treatment Alternatives and Diversion (TAD) grant program, administered by the Wisconsin Department of Justice. Programs are typically overseen at the county level by a local Criminal Justice Coordinating Council.

Similarly, the bill also provides for the statutory establishment of commercial courts. In 2017, the Wisconsin Supreme Court approved a pilot project authorizing dedicated circuit court judicial dockets for large-claim commercial cases and have reauthorized and expanded it twice since in 2020 and 2022, with a current expiration date of July 30, 2024. Wisconsin joined a growing number of states - today numbering about 30, including every one of our bordering states-- that have established a specialized commercial court to promote consistency and efficiency in the court system for these types of cases. This pilot project operates in several regions of the state and offers streamlined procedures for legal disputes between business litigants to get results economically and more expeditiously than generally occurs. The initiative was further expanded by allowing parties throughout Wisconsin to use it by jointly petitioning to have their case heard on the commercial docket.

Despite an initial lack of recognition by the bar that the commercial docket was a mandatory docket, usage has grown substantially and approximately 90% of the lawyers who have tried cases before the business court have expressed a high degree of satisfaction in the promptness of resolution of business cases, the fairness of the results and the competence of the judges. Wisconsin's commercial courts have improved the quality and predictability of justice in connection with business disputes and made Wisconsin a more desirable forum for resolving business disputes. Wisconsin's Business Court judges have worked to coordinate consistent practices and obtained specialized training from the American College of Business Court Judges. Thanks to the support of the Wisconsin judiciary and Supreme Court, these specialized courts have achieved their objectives and performed beyond expectations, and have earned a stability greater than that which can be granted by Supreme Court rule.

Legislative action to recognize these specialty courts within state statute will put in place a permanent system for more effective treatment of underlying issues impacting the criminal justice system, reduce recidivism, and aid the efficient resolution of commercial disputes and help provide more certainty for our economy.

This proposal has no fiscal impact; these specialized courts can operate with existing resources.

Thank you for your consideration of Senate Bill 275. I'm happy to answer any questions.

SENATE BILL 275

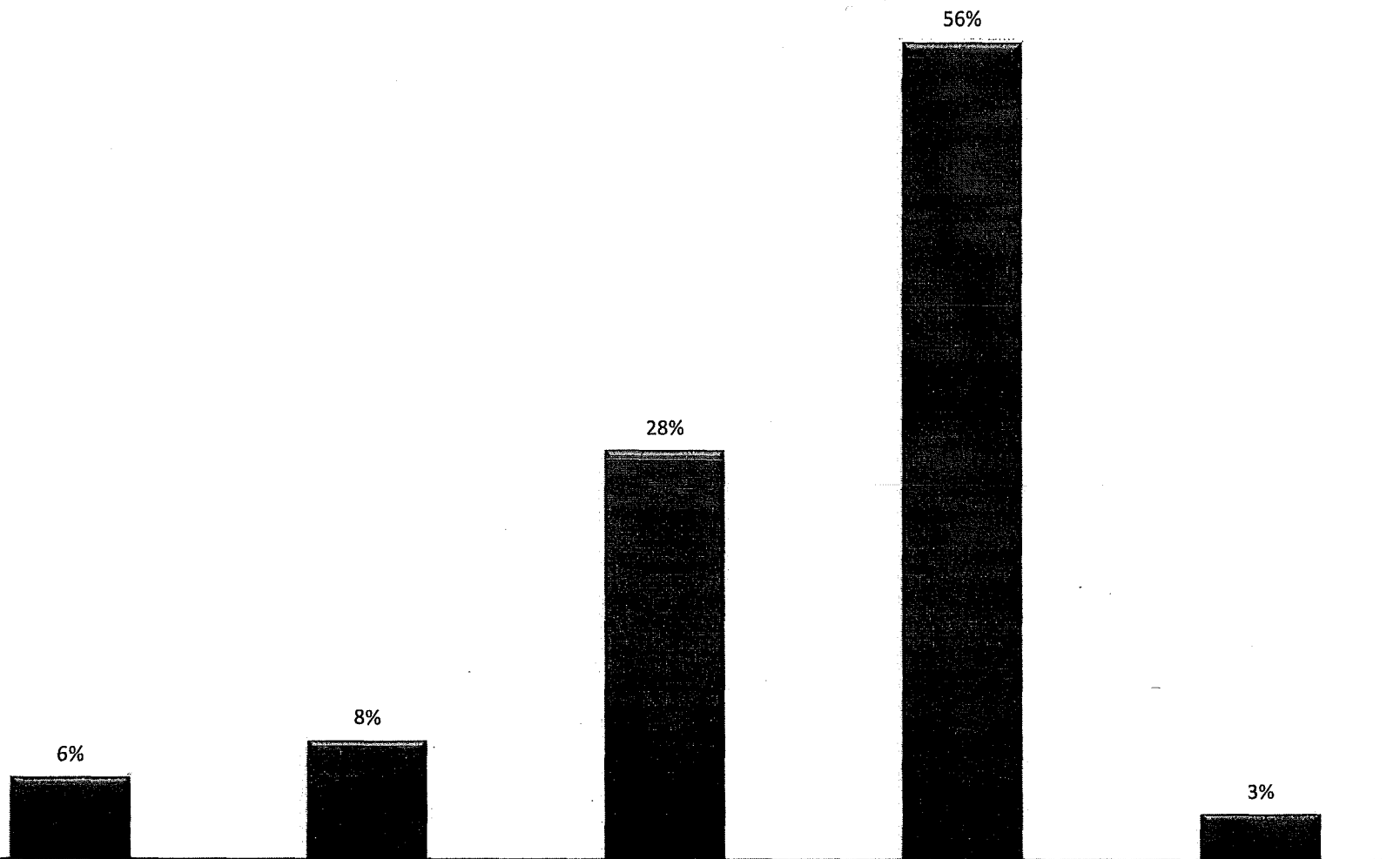
More than 200 attorneys have participated on behalf of their clients in the Commercial Docket pilot program since the court began the program in 2017.

They have overwhelmingly asked that the program continue as a permanent component of the Wisconsin Court System.

With Senate Bill 275 the legislature has the opportunity to meet that request.

(See attached)

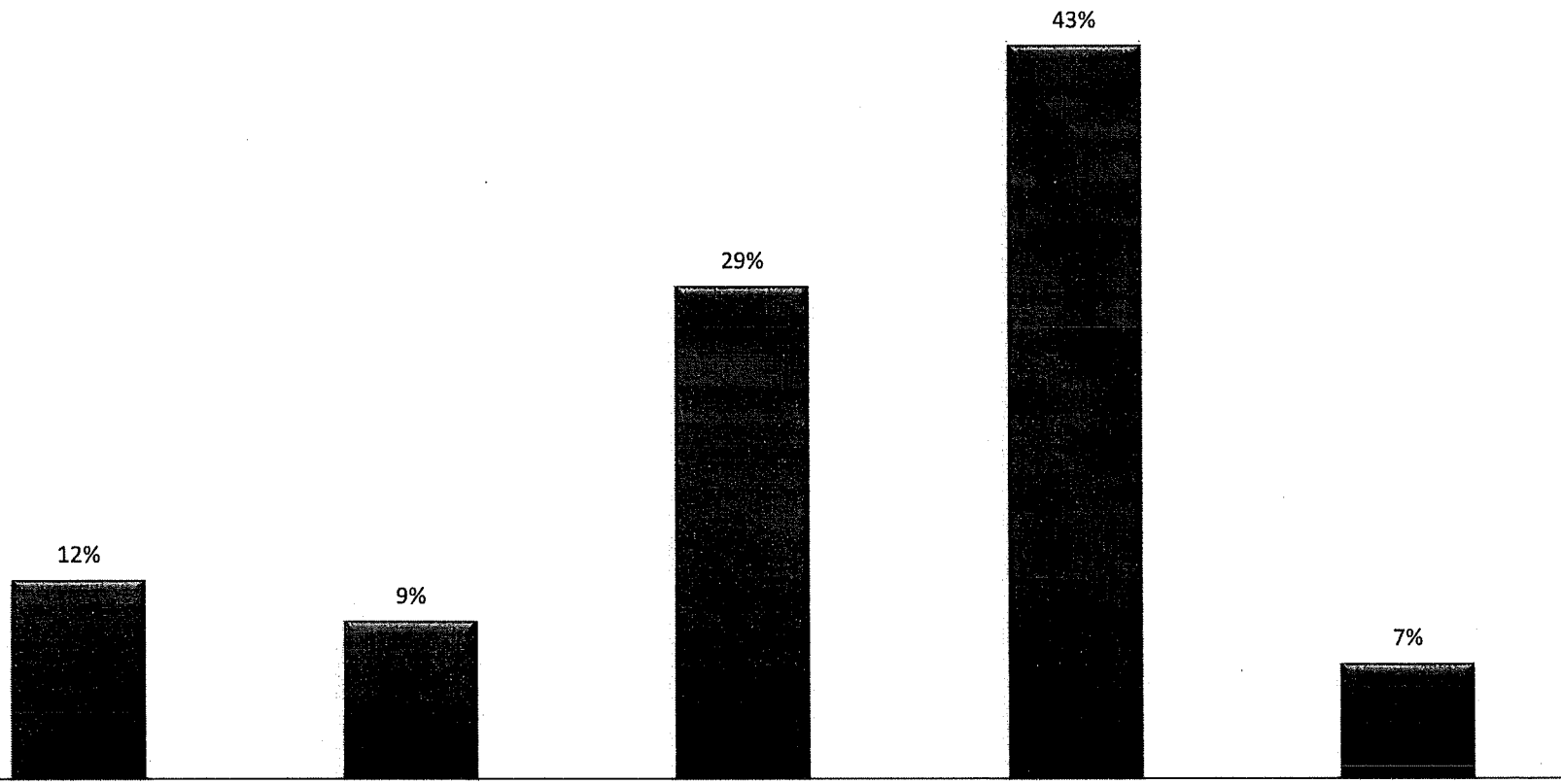
Q9. I believe the commercial court docket should become a permanent component of the Wisconsin Court System.



I do not believe this at all. I slightly believe this to be true. I somewhat believe this to be true. I strongly believe this to be true. Not Applicable / Unanswered

Q8. Achieving a resolution of the case at a lower overall cost (work time and expenses).

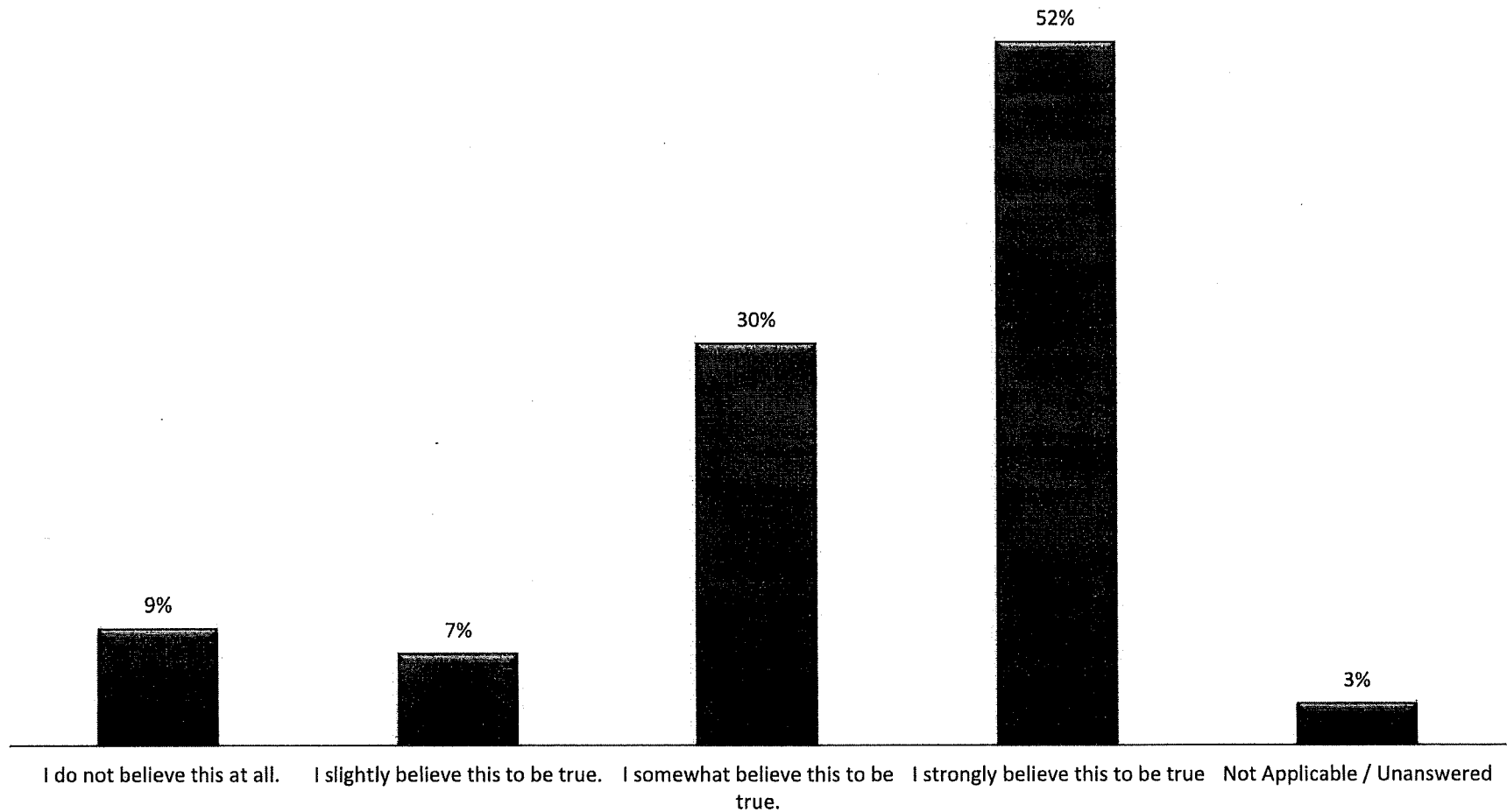
I believe the commercial court docket demonstrated this feature more effectively than the traditional circuit court docket.



I do not believe this at all. I slightly believe this to be true. I somewhat believe this to be true. I strongly believe this to be true. Not Applicable / Unanswered

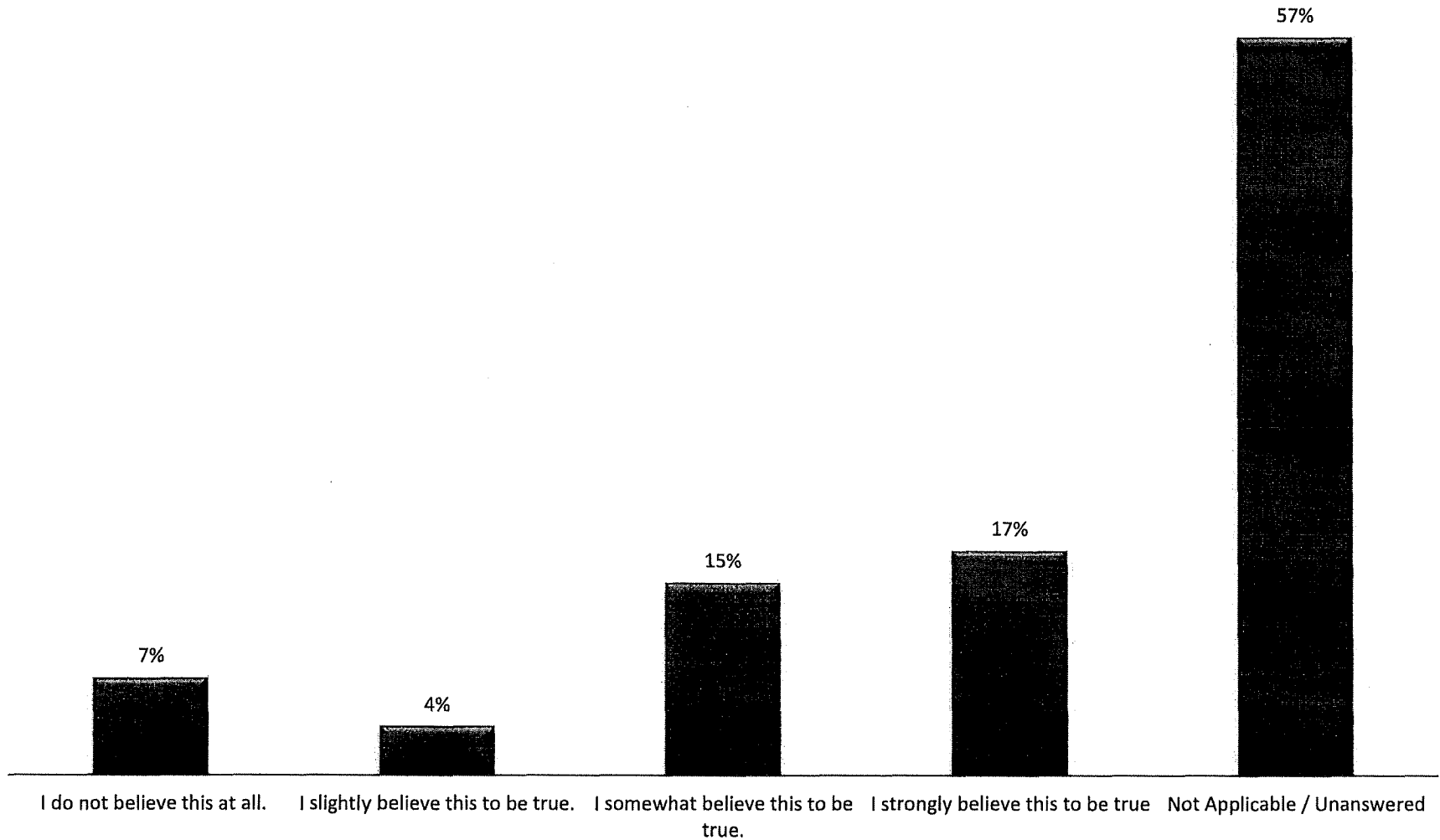
Q7. Reducing delays in bringing the case to trial or settlement.

I believe the commercial court docket demonstrated this feature more effectively than the traditional circuit court docket.



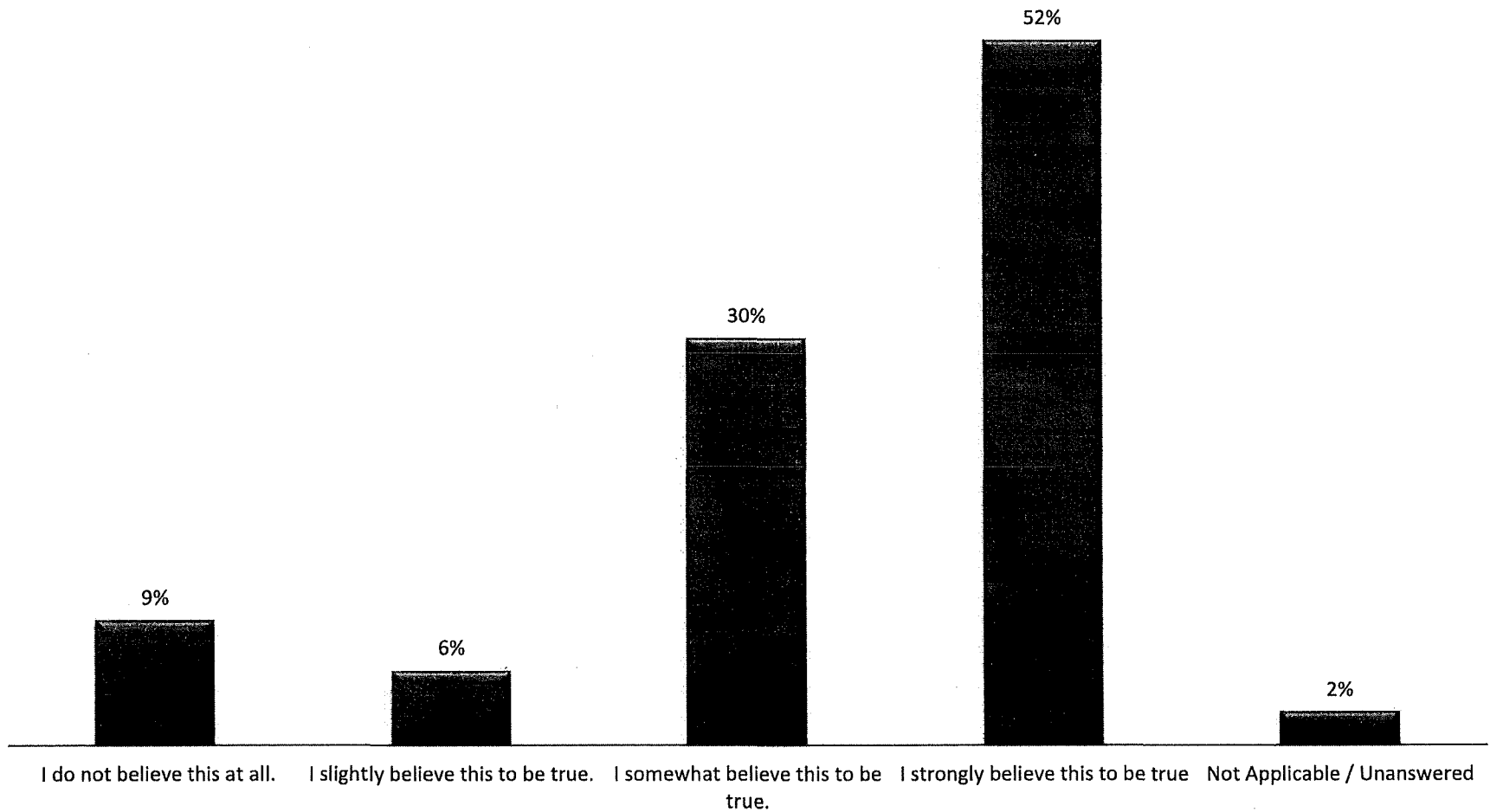
Q6. Judge effectively managing the trial.

I believe the commercial court docket demonstrated this feature more effectively than the traditional circuit court docket.



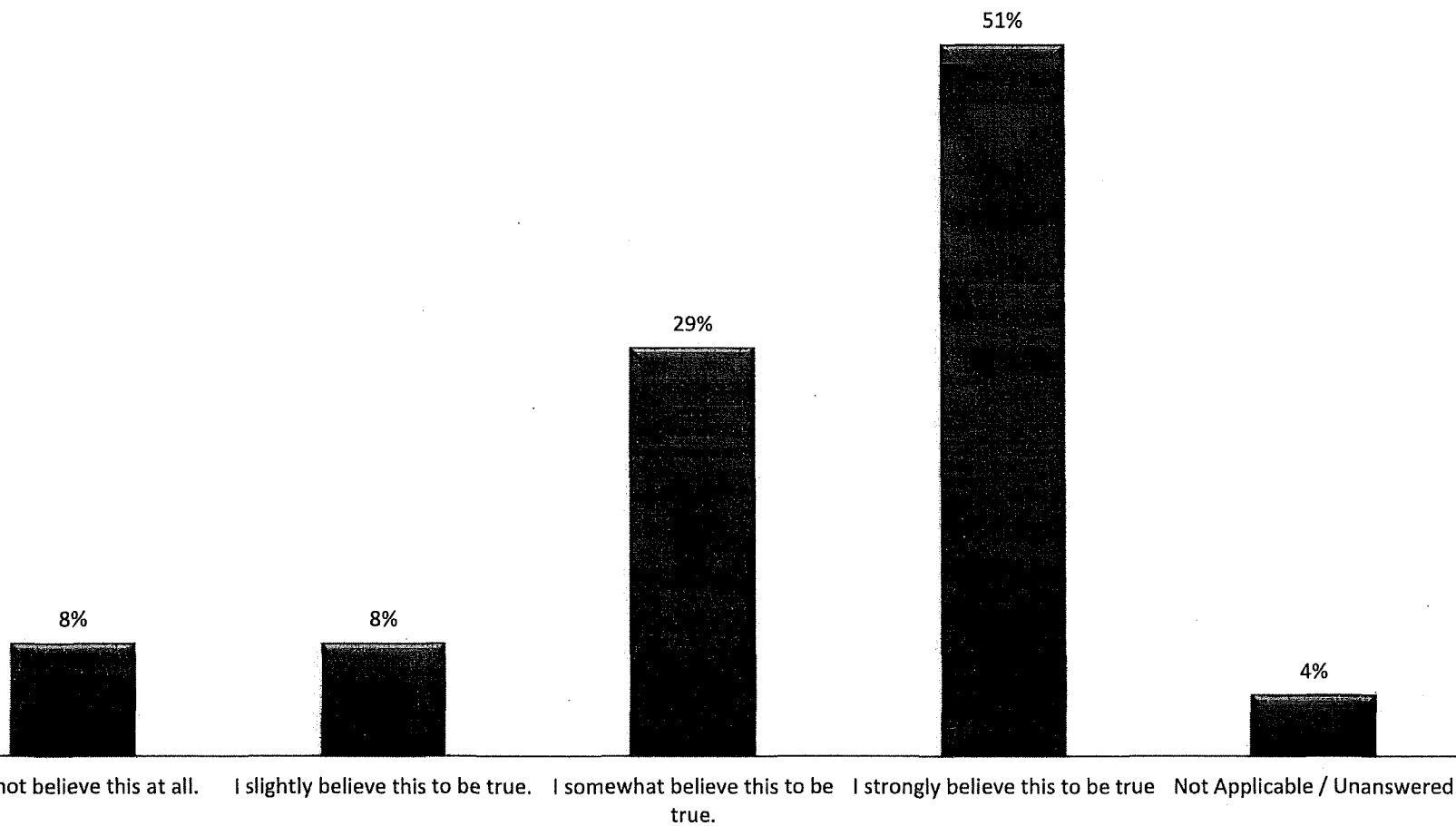
Q5. Judge employing an effective strategy for settling the case.

I believe the commercial court docket demonstrated this feature more effectively than the traditional circuit court docket.



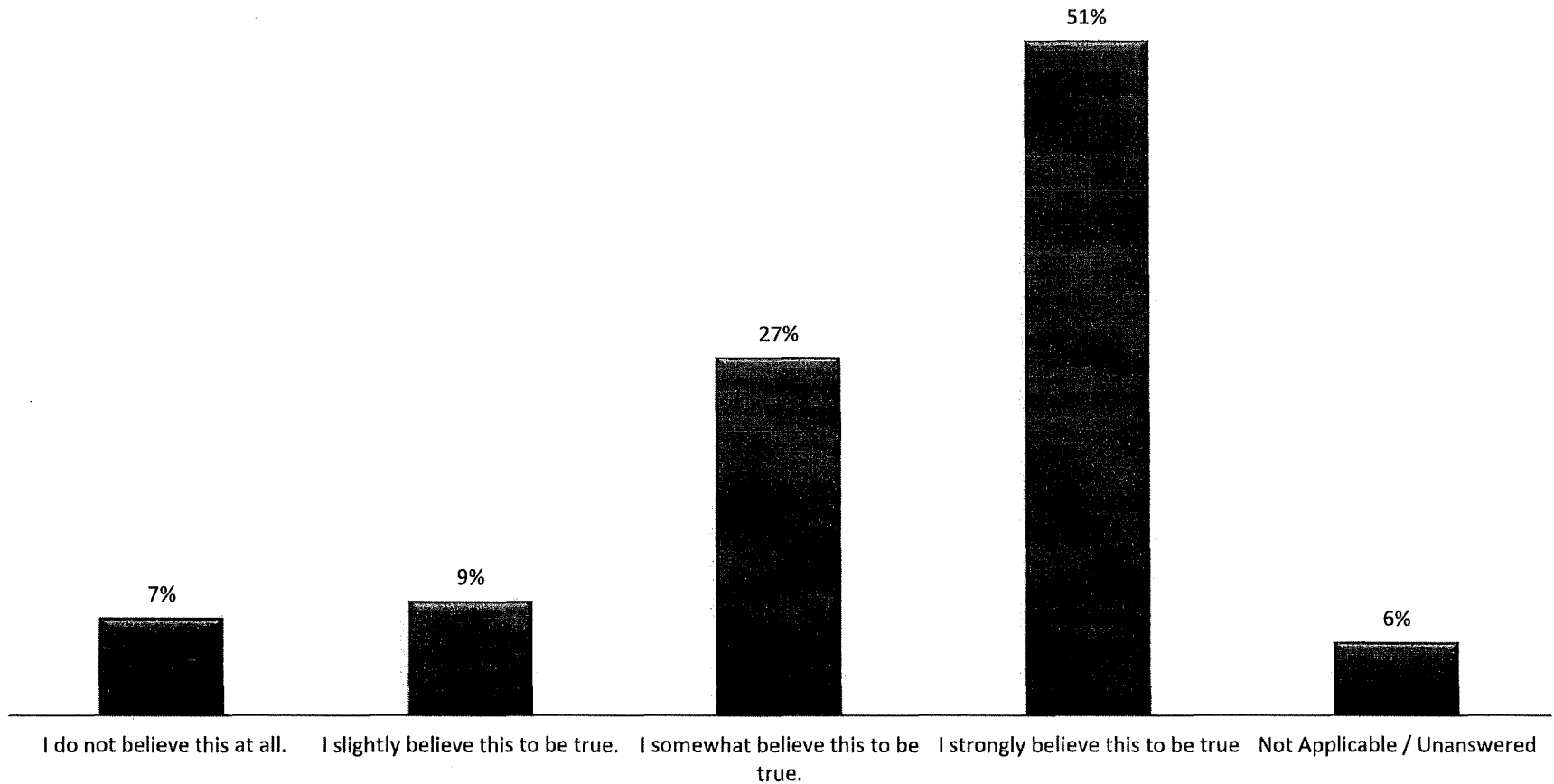
Q4. Limiting the number of continuances.

I believe the commercial court docket demonstrated this feature more effectively than the traditional circuit court docket.



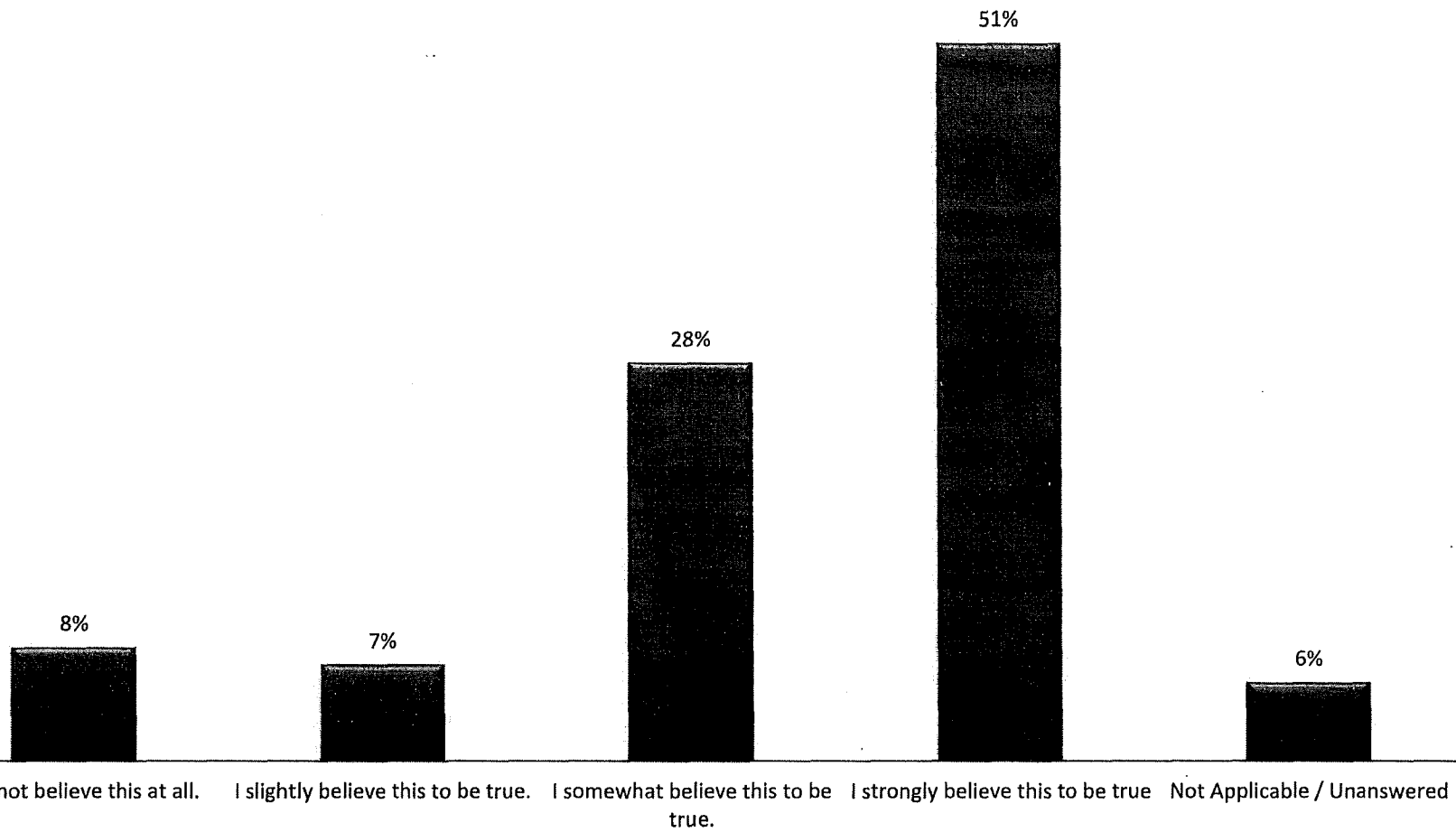
Q3. Effectively managing discovery-related issues.

I believe the commercial court docket demonstrated this feature more effectively than the traditional circuit court docket.



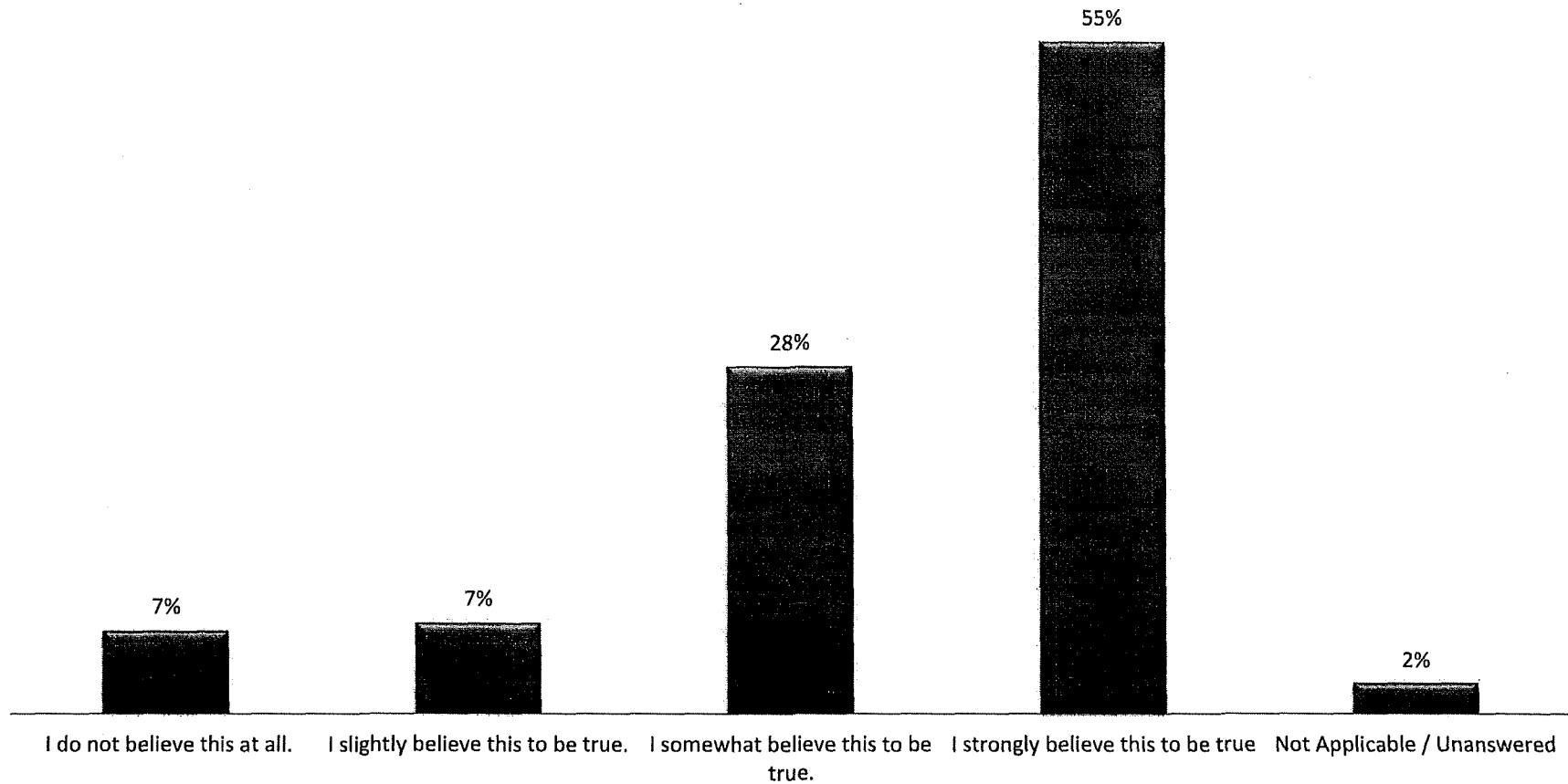
Q2. Developing a detailed case management timeline with the court.

I believe the commercial court docket demonstrated this feature more effectively than the traditional circuit court docket.



Q1. Providing a judge with experience in managing complex business litigation cases.

I believe the commercial court docket demonstrated this feature more effectively than the traditional circuit court docket.





MEMO

DATE: January 30, 2024
TO: Senate Committee on Judiciary and Public Safety
FROM: Alex Ignatowski, Director of State Budget and Government Reform
RE: IRG Action Support for SB 275, Statutory Recognition of the Commercial Docket

Chairman Wanggaard and Committee Members, thank you for the opportunity to share IRG Action Fund's support for Senate Bill 275.

In April of 2017, the Wisconsin Supreme Court created the Commercial Docket Pilot Project which would operate in Waukesha County and the eighth circuit court district. The pilot project was a test run of a separate commercial docket, or what is commonly referred to as a business court, in Wisconsin. The commercial docket was set up to handle large claims made in complex business related cases. To do this, then-Chief Justice Pat Roggensack brought together a group of expert attorneys and judges. The result was a success. [Roughly 90% of litigants](#) who had their case heard in the commercial docket were satisfied with the proceedings - this includes parties that won and lost their cases. Having been established by Supreme Court rule, the commercial docket reappraised in 2020 and 2022. However, if the court fails to act this year, the commercial docket pilot project will expire as of July 30, 2024.

The bill before you today, SB 275, would recognize the commercial docket in statute. Under this legislation, the Chief Justice, after taking considerations from judges, must select and assign judges to the commercial docket. These judges would then hear cases that pertain to the areas of law that are outlined in the bill.

A commercial docket puts judges with expertise in commercial litigation over cases that involve complex business dealings. This is important, as most judges have backgrounds in criminal law and may lack experience in civil matters. There are several benefits to creating a separate commercial docket. First, cases that are heard in these courts will have greater efficiency. Rather than having a judge needing to do their "homework" and take information from litigators on the legal theories of commercial law, judges with expertise and continuing education will be able to work through their caseload effectively. It would also allow for businesses, large and small, to have timely resolutions to their cases. Secondly, a commercial docket approach gives more consistency in application of the law. Predictable, consistent legal interpretation leads to stability in the marketplace, ensuring that Wisconsin businesses know the legal lines they operate under. Lastly, almost [thirty states](#), both liberal and conservative, have a designated commercial docket. Delaware was the first and most famous with its creation of the [Court of Chancery](#) in 1792. Wisconsin cannot afford to fall behind other states that continue to innovate.

Thank you for your time and respectfully ask for your support of Senate Bill 275.



January 30, 2024
SENATE Bill 275
Judiciary and Public Safety

Chairman Wanggaard and members of the Committee,

Thank you for conducting this hearing on SB275. The Badger Institute urges you to approve this bill that recognizes the need for a specialized docket for commercial cases.

Many circuit judges rise to the bench through political appointments nowadays. Of the 22 circuit court judges Ballotpedia lists as having been appointed since September 2019, very few have any commercial or business litigation background.

The vast majority worked previously and predominantly as public defenders or assistant district attorneys or in a government position, according to a review of their backgrounds by the Badger Institute. Two were long-time politicians. At least two worked for Legal Action. Another two worked in county corporation counsel's offices. Some had experience in private practice, but at most a handful, and perhaps only three, appear to have had any substantial experience in business litigation.

Regardless of the value to society of work as a public defender, and it is worth a great deal, the lack of background in the specialized field of business disputes can delay justice.

Judges can learn, of course, but that too is easier when there is a commercial docket and when judges can take training in specialty subjects that come up in disputes.

Some argue that specialized commercial dockets would create a new "two-tiered court system."

In reality, allowing judges to focus on areas in which they have particular expertise is common. Wisconsin courts specialize in drunken driving cases, mental health cases, domestic violence cases, veterans' cases. Juvenile-court judges must understand Adverse Child Experience scores and trauma. Drug court judges need to understand addiction. So, too, does Wisconsin need judges who have the background to swiftly understand franchisor-franchisee claims or tortious business activity. That isn't two-tier justice any more than separating divorces from OWIs is.

Litigants appreciate these courts, according to a survey of all the businesses whose disputes were handled in Wisconsin's pilot project. Did the business court do a better job than traditional civil courts in limiting delays? Ninety-four percent of the contending parties said yes. Did it do better at lowering legal costs? Eighty-six percent said true. Did the judge do better at moving the case to trial or settlement? Ninety-four percent said yes. *Should the business court be made permanent?* Ninety-six percent said yes, 58% strongly so.

The surveys are of both the winners and the losers in cases, illustrating that what disputants need, win or lose, is a prompt answer.

The real winners include not just one party or another but Wisconsin as a whole. Depending on businesses are networks of employees, customers and vendors. All these Wisconsinites – everyone who works for, buys from or sells to a business – are hurt when disputes drag on or when uncertainty over getting to a resolution simply chases an employer, a supplier or a buyer off to some state with a more favorable legal climate.

We hope you will quickly advance this measure on behalf of all Wisconsinites.

Thank you for your consideration.

ATTORNEY RICHARD G. NIESS

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madniess@aol.com

February 7, 2024

To: Senate Committee on Judiciary and Public Safety

Re: Opposition to 2023 Senate Bill 275 (Business Court Proposal)

Dear Senators:

Senate Bill 275's business court provisions should not be enacted because they (1) materially compromise judicial independence in Wisconsin, (2) violate the fundamental principle that all persons/entities stand as equals before our courts, (3) transfer substantial control over business litigation from our democratically elected judges in each county into the hands of the very business interests whose cases are being adjudicated, (4) upend the constitutional balance of power between co-equal branches of government by invading what is more properly the domain of the courts, and (5) impose unfunded administrative burdens on our already underfunded court system. In sum, the bill places a thumb on the scales of justice in favor of big business, contrary to Wisconsin's constitutional and statutory design.

The defective business court proposed by SB 275 has already existed in identical form for almost seven years in Wisconsin as a Supreme Court-created "pilot" project despite:

- (1) No data demonstrating any need for the court in the first place; commercial cases had been satisfactorily adjudicated by circuit courts for over 175 years;
- (2) No data gathered over the past seven years showing any improvement in the quality, timeliness or efficiency in the disposition of commercial cases since the "pilot" began;
- (3) No data demonstrating any advantages offered by business courts over traditional circuit courts statewide in any aspect of handling commercial

litigation. It is pure myth that business cases are more difficult for circuit courts to resolve than countless other civil cases that populate their dockets, such as medical malpractice, constitutional litigation, prisoner litigation, administrative agency reviews, child custody disputes, service contracts, warranties, legal malpractice with its “case within a case,” insurance bad faith, landlord-tenant disputes, product liability, wrongful death, property tax litigation, home construction cases, will contests, on and on. How many docket-specific courts should we create?

- (4) Substantial opposition from attorneys, judges and citizens who recognize the business court’s corrupting influence over our court system and, more importantly, the raw deal it represents for the people of our state.

Under the Wisconsin Constitution and current statutes, circuit courts in Wisconsin have general jurisdiction over all matters civil and criminal, including commercial cases. Circuit judges are elected by the voters in each county to carry out this mission within their counties, including the handling of all commercial disputes. To eliminate the perception that any litigant might achieve an unfair advantage over other litigants through judicial assignment, all civil cases in Dane County and other counties with multiple judges are randomly assigned among all experienced civil division judges. This process includes commercial cases. Additionally, automatic substitution rights are available as a last resort for all litigants who still may have concerns about the judges assigned to their cases.

In short, the perception that litigants are getting a fair shake from an unbiased judge is every bit as important to the delivery of a just result in our court system as is the reality.

SB 275, however, destroys both the perception and the reality.

The Chief Justice—not the voters—hand-picks the judges to hear commercial docket cases under SB 275. The bill provides that less than ten percent of all Wisconsin circuit judges (24 out of 261) will be authorized to hear any cases in the commercial docket. Some of these judges will hail from courts several counties away from where a business case is filed.

Moreover, many counties including Milwaukee are excluded from the mandatory commercial docket altogether. Query: Why are big business cases handled one way in some counties and differently in others under SB 275? How does such a structure promote public confidence that the court system is even-handed for all?

In the Supreme Court's "pilot" mentioned above, the same special interests now pushing SB 275 prevailed upon then-Chief Justice Roggensack to likewise hand-select an exclusive, limited number of judges to hear all cases in the commercial docket. The Chief Justice then collaborated with business interests regarding which ones to choose. These same business interests and their lawyers simultaneously created the rules controlling commercial litigation procedure, and even facilitated out-of-state training by entities funded by big business such as the Koch brothers.

The result? A two-tiered system of justice—one for big business, and one for everybody else—in violation of the fundamental precept of justice that all who enter the courtroom stand equally before the law.

No other civil cases are handled this way in Wisconsin.

Finally, by embedding the business court proposal within legislation that ostensibly concerns treatment courts, the SB 275 sponsors disingenuously engage in pure political legerdemain. The bill merely mentions treatment courts in passing without actually providing anything of value to further their work. Thus, rejecting SB 275 will not adversely impact treatment courts in any manner. The bill's sponsors are apparently hoping that, by dint of association in SB 275, some of the legitimate shine from Wisconsin's already-existing treatment courts will distract the public from appreciating the corruption and other shortcomings embodied in the proposed business court.

The business court model enshrined in SB 275 is a Trojan Horse offering from special interests that should alarm anyone concerned about judicial independence and equal access to justice in Wisconsin courts. It is a slippery slope to a Pandora's box of potential specialty courts unfairly influenced by special-interests rather than, more appropriately, controlled by Wisconsin voters. Even ignoring its ethical warts and the undeniable image problem they create for our court system, SB 275 provides no demonstrated advantages to businesses litigating commercial cases.

For these reasons, our Supreme Court will undoubtedly terminate its business court "pilot" project on July 30 of this year. SB 275 should likewise be rejected.

Thank you.

Sincerely yours,

/s/

Richard G. Niess

Dane County Circuit Court Judge, retired (2004-2020)

Cc: Senators Wanggaard, Jacque, Wimberger, Knodl, James,
Roys, and Johnson (by email attachment)

Committee Clerk Eric Barbour (by email attachment)

Attorney Mel Barnes, Office of the Governor (by email
attachment)