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SUPREME COURT

Supreme Court of Wisconsin

No. _____

ELIZABETH BOTHFELD, JO ELLEN BURKE, MARY
COLLINS, CHARLENE GAEBLER-UHING, PAUL HAYES,
SALLY HUCK, TOM KLOOSTERBOER, ELIZABETH
LUDEMAN, and LINDA WEAVER,

Petitioners,

vs.

WISCONSIN ELECTIONS COMMISSION; DON MILLIS,
ROBERT F. SPINDELL, JR., MARGE BOSTELMANN, ANN S.
JACOBS, MARK L. THOMSEN, and CARRIE RIEPLE, in their
official capacities as commissioners of the Wisconsin Election
Commission; and MEAGAN WOLFE, in her official capacity as
administrator of the Wisconsin Elections Commission,

Respondents.

PETITION FOR AN ORIGINAL ACTION

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**Pro hac vice application
forthcoming*

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STATEMENT OF ISSUES PRESENTED

(1) Whether Wisconsin's congressional districting map violates Article I, Section I of the Wisconsin Constitution by depriving Democratic voters of equal protection under law.

(2) Whether Wisconsin's congressional districting map violates Article I, Section 3 of the Wisconsin Constitution by discriminating against voters based upon their expression of political views.

(3) Whether Wisconsin's congressional districting map violates Article I, Section 4 of the Wisconsin Constitution by impairing the ability of individuals with disfavored political preferences from associating in furtherance of their preferred candidates.

(4) Whether Wisconsin's congressional districting map violates Article I, Section 22 of the Wisconsin Constitution by violating fundamental principles, including "justice, moderation, temperance, frugality and virtue," necessary to secure the blessings of a free government.

(5) Whether Wisconsin's congressional districting map violates separation-of-powers principles inherent in the Wisconsin Constitution because it was adopted by this Court according to a self-imposed "least-change" requirement that is inconsistent with the judiciary's independent duties.

INTRODUCTION

1. Wisconsin's congressional map is antithetical to virtually every principle necessary to sustain a representative democracy. It impermissibly disadvantages voters based on their political views and partisan affiliation, systematically disfavoring Democrats *because* they are Democrats.

2. By packing the substantial share of Wisconsin's Democrats into just two congressional districts, while cracking other Democratic communities into uncompetitive Republican districts, the map condemns the party that regularly splits or wins the statewide vote to permanent minority status in the state's congressional delegation.

3. Given the existential threat that this partisan gerrymandering poses to individual rights, it is no wonder that the Wisconsin Constitution is replete with provisions protecting voters from this pernicious form of discrimination.

4. Wisconsin's *equal protection* guarantee protects voters from being arbitrarily singled out by their political opponents for targeted prejudice.

5. Wisconsin's *free speech and association* guarantees protect voters from being silenced from effective electoral participation because of their political views and affiliations.

6. Wisconsin's *free government* guarantee prescribes the essential ingredients for a functioning republic, among them

justice, moderation, temperance, and virtue—each of which is irreconcilable with the self-dealing and gamesmanship inherent in partisan gerrymandering.

7. And—entirely independent of whether Wisconsin's Constitution prohibits partisan gerrymandering—Wisconsin's separation-of-powers principles prohibit the unusual *judicial* genesis of this heavily skewed congressional map.

8. After Wisconsin Republicans enacted across-the-board gerrymanders in 2011, ensconcing themselves in power in the legislature and manipulating the congressional map in their favor, voters protested by making the only move available to them: in advance of the 2020 redistricting cycle, they elected Democratic Governor Tony Evers, who pledged to prevent a repeat of the prior decade's skew.

9. In 2021, the Republican-controlled legislature refused to pass a neutral congressional map that accurately reflected Wisconsin's political geography, and so Governor Evers vetoed the legislature's effort to renew the prior decade's gerrymander. With the legislature unable to override the veto, responsibility fell to this Court to adopt a districting plan.

10. As the pinnacle of Wisconsin's judicial branch, this Court must embody the constitutional virtues of justice and temperance, jealously protect its institutional duties and prerogatives, and exercise its independent judgment to resolve the

cases before it. But in the 2021–22 *Johnson* litigation that culminated in the adoption of new districting plans, the Court abdicated this charge by using criteria that guaranteed that the 2011 partisan skew would be perpetuated.

11. Specifically, a bare majority of the Court committed to selecting the map that made the “least change” to the 2011 map, knowing that a “least-change” map would necessarily be the “least-Democratic” map. This was the one outcome that the political process has explicitly *rejected*—a repeat of the extreme Republican gerrymander.

12. Sure enough, the resulting map reduced Democrats’ share of Wisconsin’s congressional delegation to a mere 25%—the lowest in 70 years, and the lowest mathematically possible today, in a state where Democratic voters consistently comprise half or more of the electorate.

13. This Court has since determined that the novel “least change” approach that directly led to this result lacked any basis in this Court’s precedents, the Wisconsin Constitution, or past Wisconsin redistricting practice. *Clarke v. Wis. Elections Comm’n*, 2023 WI 79, ¶ 62, 410 Wis. 2d 1, 998 N.W.2d 370. Yet the congressional map adopted under the “least change” approach is now in effect and will remain in effect for the remainder of the decade absent this Court’s action.

14. This congressional map directly discriminates against Petitioners, who support Democratic candidates in Wisconsin and—because of that affiliation—are effectively silenced and shut out from casting a meaningful congressional vote. Wisconsin’s Constitution prohibits this injustice several times over. This Court should grant this original action and replace the adopted congressional map with a lawful alternative.

PARTIES

15. Petitioner Elizabeth Bothfeld resides in Dodgeville, where she is registered to vote, and she is currently assigned to Congressional District 2. Ms. Bothfeld consistently votes for Democratic candidates for the U.S. House of Representatives, and she intends to vote in the upcoming congressional elections. The current congressional plan unlawfully packs Democratic voters in Dodgeville into Congressional District 2 and otherwise unlawfully harms her ability and the ability of other Wisconsin Democrats with whom she associates to translate their votes into congressional representation.

16. Petitioner Jo Ellen Burke resides in Eau Claire, where she is registered to vote, and she is currently assigned to Congressional District 3. Ms. Burke consistently votes for Democratic candidates for the U.S. House of Representatives, and she intends to vote in the upcoming congressional elections. The current congressional plan unlawfully limits her ability and the

ability of other Wisconsin Democrats with whom she associates to elect their preferred congressional candidates and translate their votes into congressional representation.

17. Petitioner Mary Collins resides in Richland Center, where she is registered to vote, and she is currently assigned to Congressional District 3. Ms. Collins consistently votes for Democratic candidates for the U.S. House of Representatives, and she intends to vote in the upcoming congressional elections. The current congressional plan unlawfully limits her ability and the ability of other Wisconsin Democrats with whom she associates to elect their preferred congressional candidates and translate their votes into congressional representation.

18. Petitioner Charlene Gaebler-Uhing resides in Brookfield, where she is registered to vote, and she is currently assigned to Congressional District 5. Ms. Gaebler-Uhing consistently votes for Democratic candidates for the U.S. House of Representatives, and she intends to vote in the upcoming congressional elections. The current congressional plan unlawfully limits her ability and the ability of other Wisconsin Democrats with whom she associates to elect their preferred congressional candidates and translate their votes into congressional representation.

19. Petitioner Paul Hayes resides in Cedarburg, where he is registered to vote, and he is currently assigned to Congressional

District 6. Mr. Hayes consistently votes for Democratic candidates for the U.S. House of Representatives, and he intends to vote in the upcoming congressional elections. The current congressional plan unlawfully limits his ability and the ability of other Wisconsin Democrats with whom he associates to elect their preferred congressional candidates and translate their votes into congressional representation.

20. Petitioner Sally Huck resides in Kenosha, where she is registered to vote, and she is currently assigned to Congressional District 1. Ms. Huck consistently votes for Democratic candidates for the U.S. House of Representatives, and she intends to vote in the upcoming congressional elections. The current congressional plan unlawfully limits her ability and the ability of other Wisconsin Democrats with whom she associates to elect their preferred congressional candidates and translate their votes into congressional representation.

21. Petitioner Tom Kloosterboer resides in Markesan, where he is registered to vote, and he is currently assigned to Congressional District 6. Mr. Kloosterboer consistently votes for Democratic candidates for the U.S. House of Representatives, and he intends to vote in the upcoming congressional elections. The current congressional plan unlawfully limits his ability and the ability of other Wisconsin Democrats with whom he associates to

elect their preferred congressional candidates and translate their votes into congressional representation.

22. Petitioner Elizabeth Ludeman resides in Milwaukee, where she is registered to vote, and she is currently assigned to Congressional District 4. Ms. Ludeman consistently votes for Democratic candidates for the U.S. House of Representatives, and she intends to vote in the upcoming congressional elections. The current congressional plan unlawfully packs Democratic voters in Milwaukee into Congressional District 4 and otherwise unlawfully harms her ability and the ability of other Wisconsin Democrats with whom she associates to translate their votes into congressional representation.

23. Petitioner Linda Weaver resides in Milwaukee, where she is registered to vote, and she is currently assigned to Congressional District 4. Ms. Weaver consistently votes for Democratic candidates for the U.S. House of Representatives, and she intends to vote in the upcoming congressional elections. The current congressional plan unlawfully packs Democratic voters in Milwaukee into Congressional District 4 and otherwise unlawfully harms her ability and the ability of other Wisconsin Democrats with whom she associates to translate their votes into congressional representation.

24. Respondent Wisconsin Elections Commission (“WEC”) is the governmental body that administers, enforces, and

implements Wisconsin's laws "relating to elections and election campaigns, other than laws relating to campaign financing." Wis. Stat. § 5.05(1). WEC is responsible for implementing redistricting plans, whether enacted by Wisconsin's political branches or by a court. *See, e.g., Johnson v. Wis. Elections Comm'n*, 2022 WI 19, ¶ 73, 401 Wis. 2d 198, 972 N.W.2d 559 (ordering WEC to implement congressional and legislative maps); *Whitford v. Gill*, No. 15-cv-421-BBC, 2017 WL 383360, at *3 (W.D. Wis. Jan. 27, 2017) (three-judge court) (enjoining WEC members from implementing existing districting map), *vacated on other grounds, Gill v. Whitford*, 585 U.S. 48 (2018); *Baldus v. Members of Wis. Gov't Accountability Bd.*, 862 F. Supp. 2d 860, 863 (E.D. Wis. 2012) (ordering members of WEC's predecessor, the Government Accountability Board ("GAB"), to implement court's alterations to existing State Assembly district plan); *Baumgart v. Wendelberger*, Nos. 01-C-121, 02-C-366, 2002 WL 34127471, at *8 (E.D. Wis. May 30, 2002) (enjoining members of Wisconsin Elections Board—GAB's predecessor—from using existing legislative plan and ordering use of court-drawn plan).

25. Respondents Don Millis, Robert F. Spindell, Jr., Marge Bostelmann, Ann S. Jacobs, Mark L. Thomsen, and Carrie Rieple are the individual members of WEC and are named in their official capacities.

26. Respondent Meagan Wolfe is the Administrator of WEC and is named in her official capacity.

STATEMENT OF FACTS

I. In the 2011 round of redistricting, Republicans engaged in partisan gerrymandering.

27. In Wisconsin, redistricting statutes are enacted pursuant to the regular legislative process. Specifically, a bill must pass both chambers of the legislature and either receive the Governor's signature or obtain enough votes in both legislative chambers to override the Governor's veto. *See* Wis. Const. art. V, § 10.

28. Because the U.S. Constitution requires congressional districts within a state to be equally populated, district lines must be redrawn after each census to reflect population shifts over the prior decade. *See Wesberry v. Sanders*, 376 U.S. 1, 9–10 (1964).

29. In the 2010 elections, Republicans won control of both houses of the legislature and the governorship. The Republican leaders oversaw a redistricting process that was designed to maximize Republican advantage at the expense of Democrats.

30. Andrew D. Speth, chief of staff to Republican Congressman Paul D. Ryan, Jr., took primary responsibility for drafting the new congressional map. *Baldus v. Members of Wis. Gov't Account. Bd.*, 849 F. Supp. 2d 840, 846 (E.D. Wis. 2012).

31. In meetings that Speth held with Wisconsin's Republican members of Congress, the congressmen expressed their desire to draw districts that would maximize the chances for Republicans to be elected. *Id.*

32. The legislature passed Act 44, redrawing the state's congressional districts, in July 2011, and the Governor signed the bill the following month. *Id.*

33. When Wisconsin's three Democratic members of Congress challenged Act 44 as a partisan gerrymander that violated federal law, Republican intervenor-defendants demurred, "asserting frankly that there is nothing wrong with political considerations motivating redistricting." *Id.* at 853.

34. Those considerations were readily apparent in the congressional map.

35. Since 2010, the number of congressional seats held by Democratic members has been substantially below the relative Democratic vote share.

36. In the intervening decade, Republican candidates received, on average, fewer than 50% of the votes cast in statewide races, but secured, on average, more than 60% of the congressional seats.

37. The bias of Wisconsin's 2011 map can also be shown using a metric called the "efficiency gap," which measures the percentage of "wasted" votes that went toward a candidate in

excess of what he needed to win. For decades, Wisconsin's efficiency gap had been less than 6% and, based on Wisconsin's geography, favored Democratic candidates. After the 2011 map was enacted, however, the efficiency gap swung to more than 10% in favor of Republican candidates—a more than 15-point swing in the distribution of wasted votes.

II. In the 2021 round of redistricting, this Court initiated a remarkable and unprecedented deviation from Wisconsin's traditional redistricting principles.

38. Because Democrat Tony Evers was elected governor in 2018, the Republican-controlled legislature was unable to replicate its gerrymander after the 2020 census results were published.

39. The legislature passed discriminatory redistricting plans on November 11, 2021, but Governor Evers vetoed the legislation and the legislature failed to override his veto. *Johnson v. Wis. Elections Comm'n* (“*Johnson I*”), 2021 WI 87, ¶ 17, 399 Wis. 2d 623, 967 N.W.2d 469.

40. As is common when the legislative process fails to remedy a constitutional defect in districting maps (in that case, malapportionment), this Court accepted jurisdiction of an original action to ensure that lawful maps would be in place in advance of the 2022 election. *Id.* ¶ 20.

41. The Court recognized “there is no question that this matter warrants this court's original jurisdiction; any reapportionment or redistricting case is, by definition *publici juris*,

implicating the sovereign rights of the people of this state.” *Id.* (cleaned up) (quoting *Jensen v. Wis. Elections Bd.*, 2002 WI 13, ¶ 17, 249 Wis. 2d 706, 639 N.W.2d 537 (2002)).

42. But the Court departed radically from the settled notion that courts must not “ignore partisan impact in adopting remedial maps.” *Clarke*, 2023 WI 79, ¶ 70; *see also Prosser v. Elections Bd.*, 793 F. Supp. 859, 866 (W.D. Wis. 1992); (“Judges should not select a plan that seeks partisan advantage—that seeks to change the ground rules so that one party can do better than it would do under a plan drawn up by persons having no political agenda.”); *Jackson v. Nassau Cnty. Bd. of Supervisors*, 157 F.R.D. 612, 615 (E.D.N.Y. 1994) (applauding districting plan submitted by a special master who concentrated his energies on devising a plan that “(i) contained the least amount of district-wide population deviation possible, and (ii) was the most fair politically”); *Good v. Austin*, 800 F. Supp. 557, 566–67 (E.D. Mich. 1992) (analyzing “political fairness” of court-drawn plan because it was “apparent that a districting map devised entirely according to nonpolitical criteria could inadvertently result in a plan that unfairly favored one political party over the other”); *Hastert v. State Bd. of Elections*, 777 F. Supp. 634, 659 (N.D. Ill. 1991) (three-judge panel) (judicially adopting a map that “best meets the constitutional requirements of population equality and fairness to racial and language minorities, while achieving a politically fair

projected distribution of congressional seats across party lines”); *Legislature v. Reinecke*, 516 P.2d 6, 38 (Cal. 1973) (affirming redistricting plan proposed by special masters and deeming it “appropriate to consider whether the recommended plans are politically fair”).

43. Instead, this Court *repudiated* any consideration of fairness, *Johnson I*, 2021 WI 87, ¶ 39, escalating the severe risk that it would adopt a set of maps reflecting a severe partisan skew.

44. The Court then *guaranteed* it would perpetuate the partisan bias baked into the 2011 map by committing to adopting a map that reflected the “least-change” to the Republicans’ 2011 power grab. *Id.* ¶ 72.

45. Five of the eight parties involved in the *Johnson* litigation—all but the legislature, the Republican congressmen who directly benefited from the map, and one group of voter petitioners—warned the Court in extensive briefing that the districting maps then in effect were among the most gerrymandered in the country and would be locked in for another decade by a least-change requirement. *See, e.g.*, Oct. 25, 2021 Br. of Gov. Evers at 10 (“A ‘least-change’ approach would enshrine a map found to contain extreme partisan advantage, which courts are not allowed to do.”); Oct. 25, 2021 Br. of Sen. Bewley at 15 (arguing a least-change approach would “result in the non-partisan Wisconsin Supreme Court’s unseemly adoption of a

decade-old, politically gerrymandered redistricting scheme”); Oct. 25, 2021 Br. of Citizen Scientists and Mathematicians at 25 (“Prioritizing Petitioners’ ‘least change’ approach almost certainly means that the maps would not score well with respect to partisan fairness.”); Oct. 25, 2021 Br. of Black Leaders Organizing for Communities, et al., at 39 (“Given the 2011 maps’ stark departure from mandatory and traditional redistricting criteria, it would be inappropriate, and contrary to legal requirements, to use them as a template for a new apportionment.”); Oct. 25, 2021 Br. of Lisa Hunter, et al., at 16 (warning that “a least-change approach would only further entrench and exacerbate the partisan gerrymandering that took place ten years ago”).¹

46. Nonetheless, the lead opinion purported to justify the “least change” standard on separation-of-powers grounds, calling it “a neutral standard,” *Johnson I*, 2021 WI 87, ¶ 76, and “far from a novel idea,” *id.* ¶ 73. The concurrence similarly declared “least change” an “impartial exercise of [the Court’s] limited judicial power.” *Id.* ¶ 86 (Hagedorn, J., concurring).

47. In context, however, “least change” was anything but impartial. “[B]y ratifying outdated partisan political choices”—that is, the brutally skewed maps imposed on Wisconsin by a

¹ Available at

<https://wscca.wicourts.gov/appealHistory.xsl?caseNo=2021AP001450&cacheId=D40BD4CD3F0A730C6B8B52655795843E&recordCount=1&offset=0&linkOnlyToForm=false&sortDirection=DESC>.

Republican trifecta in 2011—least change injected “the court directly into politics.” *Id.* ¶ 89 (Dallet, J., dissenting).

48. The assertion that such an approach was precedented was also incorrect. In truth, “the least-change approach has no ‘general acceptance among reasonable jurists’ when the court’s starting point is a legislatively drawn map” like the 2011 congressional plan. *Id.* ¶ 90 (Dallet, J., dissenting) (quoting majority/lead op., ¶ 73).

49. The Court’s brief experiment with “least change” went poorly. Confined by the court-ordered least-change straight jacket, the parties proposed congressional maps that closely resembled each other and the 2011 map. *See Johnson v. Wis. Elections Comm’n* (“*Johnson II*”), 2022 WI 14, ¶ 14, 400 Wis. 2d 626, 971 N.W.2d 402, (reflecting that each proposed congressional map retained between 91.5% and 94.5% of Wisconsin’s population in their then-existing congressional district), *rev’d on other grounds sub nom.*, *Wis. Legislature v. Wis. Elections Comm’n*, 595 U.S. 398 (2022).

50. While the Court ultimately selected the map submitted by Governor Evers, the Court’s least-change deck-stacking effectively precluded the Court from considering a nonpartisan consensus map that Governor Evers had intended to sponsor. In 2020, the Governor created the People’s Maps Commission, a nonpartisan redistricting commission tasked with

discerning the salient circumstances of Wisconsin’s apportionment and then applying the legally required neutral criteria to draw fair maps. *See* Mem. in Supp. of Mot. to Interv. by Gov. Tony Evers at 5–6, *Johnson v. Wis. Elections Comm’n*, No. 2021AP1450-OA (Wis. Oct. 6, 2021). But because these fair maps necessarily departed from the 2011 gerrymander, this Court made clear that they would not receive consideration.

51. As Justice Hagedorn’s opinion for the Court in *Johnson II* put it: “Our selection of remedial maps in this case is driven solely by the relevant legal requirements and the least change directive the majority adopted in [*Johnson I*]—*not a balancing of traditional redistricting criteria.*” 2022 WI 14, ¶ 11 n.7 (emphasis added).

III. This Court has since overruled the portions of its prior decisions that improperly mandated a “least change” approach.

52. In 2023, a group of petitioners challenged the state’s legislative maps, which were adopted pursuant to the same “least change” mandate this Court applied to the congressional map.

53. In late 2023, this Court properly ended its “least change” misadventure by overruling *Johnson I*’s mandate of that standard and ordering the legislative maps to be redrawn for the 2024 election. *Clarke*, 2023 WI 79, ¶¶ 60–63.

54. As the Court explained, “least change” suffers from both doctrinal and practical defects. *Id.*

55. On a doctrinal level, *Johnson I*'s single-minded focus on “least change” allowed “a judicially-created metric, not derived from the constitutional text, to supersede the constitution.” *Id.* ¶ 62. Whatever prerogative legislators may or may not have to aggrandize their own power, “courts can, and should, hold themselves to a different standard than the legislature regarding the partisanship of remedial maps.” *Id.* ¶ 71. “As a politically neutral and independent institution,” this Court must “take care to avoid selecting”—or enforcing—“remedial maps designed to advantage one political party over another.” *Id.* And “it is not possible to remain neutral and independent by failing to consider partisan impact entirely.” *Id.*

56. And, practically, “[b]ecause no majority of the court agreed on what least change actually meant, the concept amounted to little more than an unclear assortment of possible redistricting metrics.” *Id.* ¶ 61.

57. The Court ultimately overruled the least-change principle adopted in *Johnson* both because it was “based on fundamentals that never garnered consensus,” and because it was “in tension with established districting requirements.” *Id.* ¶ 63.²

² Shortly thereafter, some of the intervenor-plaintiffs in the *Johnson* litigation moved for relief from the 2022 judgment ordering the current congressional map. Justice Protasiewicz declined to participate in the decision on the motion because the case predated her membership on the Court, and the motion was summarily denied. See Order, *Johnson v. Wis. Elections Comm’n*, No. 2021AP1450-OA (Mar. 1, 2024), available

IV. Wisconsin’s current congressional map lacks any basis in law or precedent while perpetuating partisan unfairness.

58. The *Clarke* decision renders the current congressional map, selected in *Johnson II*, lawless in the most literal sense: With the “least change” approach that justified the map’s adoption overruled, the map lacks any basis in Wisconsin redistricting law or precedent. To the contrary, the *Johnson II* map runs roughshod over this Court’s recognized redistricting criteria in service to a now-discredited standard.

59. By necessity, the congressional map adopted by the Court perpetuates key features of the prior decade’s skew.

60. Democratic voters remain packed into Districts 2 and 4—which result in landslide, supermajority elections in favor of Democratic candidates. Democratic voters also remain cracked across Districts 1, 3, 5, and 6, resulting in predictable Republican victories across those Districts.

61. These disparities in voter distribution result in an efficiency gap of over 20 percent—the highest efficiency gap in the last 50 years.

62. PlanScore, a nonpartisan organization that provides objective, quantifiable analysis of districting plans across the country, evaluated Wisconsin’s 2022 congressional map across four

at <https://acefiling.wicourts.gov/document/eFiled/2021AP001450/772761?useAuth=true>.

common metrics of partisan gerrymandering: the efficiency gap, which measures the difference in “inefficient votes”—that is, votes for a losing candidate or votes in excess of what a successful candidate needed to win in each district—divided by the total number of votes cast; the partisan bias, which measures the difference between each party’s seat share and 50% in a hypothetical, perfectly tied election; the mean-median difference, which is a party’s median vote share minus its mean vote share, across all of a plan’s districts; and the declination score, which treats asymmetry in the distribution of votes across districts as indicative of partisan bias in a districting plan.³

63. All four metrics indicate Wisconsin’s 2022 congressional plan results in an extreme pro-Republican skew. The plan’s efficiency gap score is more skewed than 100% of the enacted plans that PlanScore has analyzed nationwide; the partisan bias score is more skewed than 99% of all analyzed plans; the mean-median difference is more skewed than 94% of analyzed plans; and the declination score is more skewed than 98% of all analyzed plans.

64. Between the 1970 cycle, when decennial redistricting was first recognized as a constitutional requirement, and 2010, no

³ Wisconsin 2022-2024 Redistricting Plan, PlanScore, <https://planscore.org/wisconsin/#!2022-plan-ushouse> (last visited May 6, 2025).

Wisconsin congressional map exhibited an efficiency gap greater than 5.3%. The 2011 gerrymander more than doubled the previous record with a 10.7% pro-Republican efficiency gap. The 2022 “least-change” congressional plan more than doubled that score once again in favor of Republicans, with a 22.4% pro-Republican efficiency gap.

65. The Princeton Gerrymandering Project, another nonpartisan evaluator of districting plans, reached a similar conclusion and awarded Wisconsin’s current congressional plan an “F” grade for partisan fairness.⁴

66. This skew was confirmed in the 2022 elections. Even though statewide elections in Wisconsin revealed near-even support for Democratic and Republican candidates—with voters demonstrating a slight but consistent preference for Democrats—the current congressional map delivered 75% of Wisconsin’s congressional districts to Republican candidates.

67. This dramatic skew continued in the 2024 elections. Even though Wisconsin voters were evenly split—re-electing Democratic Senator Tammy Baldwin while committing Wisconsin’s electoral votes to Republican President Donald

⁴ Gerrymandering Project, Wis. 2021 Gov.’s Off. Final Cong. Plan – Enacted, Princeton Univ. (Jan. 26, 2024), <https://gerrymander.princeton.edu/redistricting-report-card/?planId=recAW6q19I516nHpc>.

Trump—the congressional election results remained a stark 6-2 split favoring Republican candidates.

68. This heavy bias is not compelled by neutral legal criteria or by Wisconsin’s political geography. Rather, it reflects the intentional cracking and packing engineered by the 2011 gerrymander that was expressly preserved and perpetuated by this Court in 2022.

COUNT I

Unlawful Partisan Gerrymandering in Violation of the Wisconsin Constitution’s Equal Protection Guarantee, Article I, Section 1

69. Petitioners hereby incorporate all other paragraphs as if fully set forth herein.

70. Article I, Section I of the Wisconsin Constitution provides in relevant part that “[a]ll people are born equally free and independent, and have certain inherent rights.”

71. It is “elementary” that the Wisconsin Constitution “condemn[s] laws which grant special privileges to a favored class.” *In re Christoph*, 205 Wis. 418, 237 N.W. 134, 135 (1931). And this equal protection guarantee enshrines each qualified citizen’s right to vote “in the same manner, at the same time, *and with the same effectiveness*” that any other similarly situated voter enjoys. *State v. Buer*, 174 Wis. 120, 182 N.W. 855, 858 (1921) (emphasis added).

72. The congressional map currently in effect destroys this right by diluting Democratic votes across the state through

packing and cracking that guarantees Republican votes will be more effective at electing congressional candidates of choice.

COUNT II

Unlawful Partisan Gerrymandering in Violation of the Wisconsin Constitution's Free Speech and Association Guarantees, Article I, Sections 3 and 4

73. Petitioners hereby incorporate all other paragraphs as if fully set forth herein.

74. Article I, Section 3 of the Wisconsin Constitution provides in relevant part, “no laws shall be passed to restrain or abridge the liberty of speech.”

75. Article I, Section 4 of the Wisconsin Constitution provides, “The right of the people peaceably to assemble, to consult for the common good, and to petition the government, or any department thereof, shall never be abridged.”

76. As this Court has recognized, voting is an inherently expressive and associative activity. *See State ex rel. Ekern v. Dammann*, 215 Wis. 394, 400, 254 N.W. 759 (1934) (“[T]he right of the voters so to express themselves is a constitutional right that may be regulated but not destroyed by the legislature.”); *Weber v. City of Cedarburg*, 129 Wis. 2d 57, 68, 384 N.W.2d 333, 339 (Wis. 1986) (“The constitutional basis for the freedom of association” is derived from constitutional protections for speech, petitioning, assembly, and voting).

77. By artificially suppressing the number of Democratic voters across several congressional districts, the current map prevents these voters from associating with likeminded citizens on behalf of their preferred candidates and condemns their most sacred form of political speech—their vote—to a meaningless void.

78. This retaliatory viewpoint discrimination cannot survive the strict scrutiny that is required. *See, e.g., Milwaukee Branch of NAACP v. Walker*, 2014 WI 98, ¶ 22, 357 Wis. 2d 469, 851 N.W.2d 262 (2014) (applying strict scrutiny to legislation with a “severe burden on electors’ right to vote”); *Gard v. Wis. State Elections Bd.*, 156 Wis. 2d 28, 44, 456 N.W. 2d 809 (1990) (applying strict scrutiny to “regulations [that] burden first amendment rights of free speech and association”).

79. No compelling—or even legitimate—government interest justifies a discriminatory advantage for Republican votes relative to Democratic votes, and plenty of alternative districting configurations better comply with the relevant legal requirements.

COUNT III

Unlawful Partisan Gerrymandering in Violation of the Wisconsin Constitution’s Free Government Guarantee, Article I, Section 22

80. Petitioners hereby incorporate all other paragraphs as if fully set forth herein.

81. Article I, Section 22 of the Wisconsin Constitution provides, “The blessings of a free government can only be

maintained by a firm adherence to justice, moderation, temperance, frugality and virtue, and by frequent recurrence to fundamental principles.” (The “Free Government Guarantee.”)

82. The Free Government Guarantee is an “‘implied inhibition’ against governmental action with which any legislative scheme must be in compliance.” *Jacobs v. Major*, 139 Wis. 2d 492, 509, 407 N.W.2d 832, 839 (1987) (quoting *State ex rel. Milwaukee Med. Coll. v. Chittenden*, 127 Wis. 468, 521, 107 N.W. 500, 517–18 (1906)). Though implied, the inhibition operates “with quite as much efficiency as would express limitations.” *Id.* (quoting *State ex rel. McGrael v. Phelps*, 114 Wis. 1, 15, 128 N.W. 1041, 1046 (1910)).

83. The Free Government Guarantee is no paper tiger. For over a century, this Court has brought it to bear against legislation that “plainly violates . . . fundamental principles of justice.” *Chittenden*, 127 Wis. at 517; see also, e.g., *In re Cristoph*, 205 Wis. at 418; *Stierle v. Rohmeyer*, 218 Wis. 149, 167, 260 N.W. 647 (1937).

84. Partisan gerrymandering does not reflect the “adherence to justice, moderation, [and] temperance” in lawmaking that is necessary to maintain “a free government.” To the contrary, partisan gerrymandering deprives the voters of their right to participate in meaningful elections that determine the composition of their government.

85. And the plain text of the provision does not limit its application to legislation. *All* official acts must adhere to these virtues in order for the blessings of a free government to be maintained.

86. Thus, the Free Government Guarantee not only prohibits partisan gerrymandering by the legislature, it renders the congressional map adopted by this Court unconstitutional for failure to adhere to the principles of “justice, moderation, [and] temperance” by which this Court is bound.

COUNT IV

Violation of Separation of Powers Doctrine

87. Petitioners hereby incorporate all other paragraphs as if fully set forth herein.

88. The Wisconsin Constitution “created three branches of government, each with distinct functions and powers, and the separation of powers doctrine is implicit in this tripartite division.” *Gabler v. Crime Victims Rts. Bd.*, 2017 WI 67, ¶ 11, 376 Wis. 2d 147, 897 N.W.2d 384 (citations omitted).

89. When presented with a case concerning redistricting maps, it is “the judiciary’s exclusive responsibility to exercise judgment” to resolve that controversy. *Id.* ¶ 37 (emphasis added). The separation of powers doctrine “prevents [this Court] from abdicating [its] core power.” *Tetra Tech EC, Inc. v. Wis. Dep’t of Revenue*, 2018 WI 75, ¶ 48, 382 Wis. 2d 496, 914 N.W.2d 21.

90. Whatever restrictions may or may not constrain *legislators* when drawing electoral maps, courts must “hold themselves to a different standard than the legislature regarding the partisanship of remedial maps.” *Clarke*, 2023 WI 79, ¶ 71.

91. By committing to the now-defunct least-change directive when selecting the congressional map, this Court improperly substituted the partisan judgment that prevailed in the 2011 political process for its own. *See id.* This abdication departed from the standard practice in redistricting litigation where a court, “[a]s a politically neutral and independent institution,” must “take care to avoid selecting”—or enforcing—“remedial maps designed to advantage one political party over another.” *Id.*; *see also Hippert v. Ritchie*, 813 N.W.2d 391, 395 (Minn. 2012) (adopting a remedial plan by utilizing “redistricting principles that advance the interests of the collective public good and preserve the public’s confidence and perception of fairness in the redistricting process”).

92. This Court’s insistence on maximizing adherence to the prior decade’s gerrymander violated its institutional duty and constitutional charge, inflicting an ongoing injury that Petitioners will suffer for three more election cycles unless relief is entered promptly.

STATEMENT OF RELIEF SOUGHT

93. Petitioners respectfully request that this Honorable Court enter the following relief:

- a. Grant this petition;
- b. Schedule expedited briefing, discovery, and/or argument on Petitioners' claims;
- c. Declare that Wisconsin's congressional districting map violates Sections 1, 3, 4, and 22 of Article I of the Wisconsin Constitution, and/or declare that Wisconsin's congressional districting map violates separation-of-powers principles inherent in Wisconsin's Constitution;
- d. Enjoin Respondents from conducting any congressional elections under the current map;
- e. Prescribe procedures for the adoption of a lawful congressional map in time for the 2026 congressional elections, including, for instance, the submission of proposed remedial maps from the parties and/or a special master process similar to that adopted in *Clarke*; and
- f. Grant Petitioners such other and further relief as the Court deems just and appropriate.

STATEMENT OF REASONS TO GRANT THE PETITION

94. Article VII, Section 3 of the Wisconsin Constitution empowers this Court to “hear original actions and proceedings.” *See also* Wis. Stat. § 809.70 (authorizing petition for original action).

95. This Court has long recognized that exercise of its original jurisdiction is appropriate where “a state officer is about to perform an official act materially affecting the interests of the people at large which is contrary to law or imposed upon him by terms of a law which violates constitutional provisions,” and where “the situation is such in a matter publici juris that the remedy in the lower courts is entirely lacking or absolutely inadequate, and hence jurisdiction must be taken or justice will be denied.” *State ex rel. Bolens v. Frear*, 148 Wis. 456, 134 N.W. 673, 686 (1912).

96. Absent court intervention, Respondents will administer congressional elections—affecting voters statewide over the next six years—according to a congressional map that, as detailed in the accompanying memorandum of law, flouts numerous constitutional provisions.

97. This Court has often reflected that there is “no question” that redistricting disputes warrant its original jurisdiction because “any reapportionment or redistricting case is, by definition publici juris, implicating the sovereign rights of the

people in this state.” *Johnson I*, 2021 WI 87, ¶ 4 (quoting *Jensen*, 2002 WI 13, ¶ 17).

98. Because Petitioners bring purely state law claims against a map that was adopted by this Court, no other court can provide Petitioners’ requested relief.

99. Petitioners ask this Court to adjudicate the scope of its own authority when adopting congressional maps, an especially sensitive task warranting this Court’s attention in the first instance.

100. Federal courts other than the U.S. Supreme Court are precluded from hearing challenges to this Court’s decisions. *See Rizzo v. Sheahan*, 266 F.3d 705, 713 (7th Cir. 2001) (“The *Rooker-Feldman* doctrine provides that lower federal courts are precluded from exercising jurisdiction over claims that would require them to review a final judgment of a state court.”).

101. And the U.S. Supreme Court does not have jurisdiction over Petitioners’ purely state law claims. *See* 28 U.S.C. § 1257 (limiting U.S. Supreme Court’s jurisdiction over state supreme court judgments to federal law claims).

102. Ultimately, the task of interpreting the state Constitution lies with this Court. *See State v. Marcus*, 160 Wis. 354, 152, 152 N.W. 419, 421 (1915). Because the Wisconsin Constitution entitles every person “to a certain remedy in the laws

for all injuries,” Wis. Const. art. I § 9, this original action is the necessary mechanism for Petitioners to receive their remedy.

103. Hearing this case as an original action will further permit the violations to be remedied in advance of the 2026 elections. Petitioners—and voters across the state—deserve to participate in the upcoming congressional elections with full enjoyment of the protections mandated by the Wisconsin Constitution. This Court can ensure that just result by accepting jurisdiction and, in due course, granting judgment in favor of Petitioners.

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Dated: May 7, 2025

By: Electronically Signed By
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**Pro hac vice application
forthcoming*

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