

SUPREME COURT OF WISCONSIN  
No. 2025AP996-OA

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

*Petitioners,*

*v.*

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

*Respondents.*

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Original Action in the Supreme Court of Wisconsin

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**NOTICE OF MOTION AND UNOPPOSED MOTION TO INTERVENE  
BY WISCONSIN BUSINESS LEADERS FOR DEMOCRACY,  
JOHN A. SCOTT, NICHOLAS G. BAKER, BEVERLY JOHANSEN,  
RACHEL IDA BUFF, KIMBERLY SUHR, SARAH LLOYD,  
NANCY STENCIL, AND MICHAEL BRODD**

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**NOTICE OF MOTION**

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*Attorneys for Respondents*

PLEASE TAKE NOTICE that Proposed Intervenors Wisconsin Business Leaders for Democracy, John A. Scott, Nicholas G. Baker, Beverly Johansen, Rachel Ida Buff, Kimberly Suhr, Sarah Lloyd, Nancy Stencil, and Michael Brodd hereby move to intervene as Petitioners in this action and will appear before this Court at such time and on such date as the Court

may order, and shall then and there present the following Unopposed Motion to Intervene.

### **UNOPPOSED MOTION**

In accordance with this Court’s May 15, 2025 Order and Wis. Stat. §§ 803.09 and (Rule) 809.13, Proposed Intervenors Wisconsin Business Leaders for Democracy, John A. Scott, Nicholas G. Baker, Beverly Johansen, Rachel Ida Buff, Kimberly Suhr, Sarah Lloyd, Nancy Stencil, and Michael Brodd (collectively “Proposed Intervenors”) hereby move this Court to intervene as Petitioners in this action. In support of this Unopposed Motion, and as explained in detail in the accompanying Brief in support of this Unopposed Motion, Proposed Intervenors state as follows:

1. Petitioners initiated this suit on May 8, 2025, by filing a petition for leave to commence original action. On May 15, 2025, this Court issued a scheduling order that set deadlines for responses to and amicus briefs addressing the petition.

2. Petitioners allege that Wisconsin’s current congressional districts are unlawful, and they ask this Court to redraw Wisconsin’s congressional districts. More specifically, Petitioners assert two independent claims: (a) that Wisconsin’s current congressional districts are a partisan gerrymander “antithetical to” Article I, Sections 1, 3, 4, and 22 of the Wisconsin Constitution, and (b) that their adoption by this Court violated the separation of powers. *See* Pet. for Original Action, ¶¶1, 69–93.

3. Proposed Intervenors agree that Wisconsin's current congressional districts are unlawful. In addition or in the alternative to Petitioners' theories, Proposed Intervenors advance a distinct legal theory that is not raised by Petitioners. Briefly summarized, Proposed Intervenors argue that Wisconsin's congressional map is an *anti-competitive* gerrymander that artificially suppresses electoral competition in most of the plan's districts. This claim is conceptually different from partisan gerrymandering, it involves different injuries, and it calls for different remedial considerations. Proposed Intervenors' claim thus provides either an independent or an additional basis to strike down the congressional map. For that reason, Proposed Intervenors now move to intervene in this action as Petitioners.

4. The Court should grant this Unopposed Motion because, as is explained in further detail in the accompanying Brief, Proposed Intervenors satisfy the requirements for intervention by right under Wis. Stat. § 803.09(1):

- a. *First*, Proposed Intervenors' Unopposed Motion to Intervene is timely filed. Proposed Intervenors filed during the Court-established window for responses to the petition, and before this Court took any action in this case. No party to the petition is prejudiced by Proposed Intervenors' Unopposed Motion, and Proposed Intervenors share Petitioners' goal of helping the Court facilitate expeditious adjudication to permit a new, lawful congressional map in time for use in the 2026 elections.
- b. *Second*, Proposed Intervenors' interests are directly related to the subject of this action. Proposed Intervenors are voters who seek more competitive congressional districts in which their votes are

more likely to be meaningful and their representatives are more likely to be accountable and responsive.

- c. *Third*, the relief sought by Petitioners could, if granted, impair Proposed Intervenors' ability to protect their interests. Without intervention by Proposed Intervenors, there is a risk that new congressional districts could be drawn based on redistricting criteria that do not give ample weight to creating more competitive districts across the state, thereby perpetuating the uncompetitive nature of the current map and undermining Proposed Intervenors' and other Wisconsin voters' fair and equal opportunity to participate in the electoral process.
- d. *Fourth*, the original parties do not adequately represent Proposed Intervenors' interests. The Wisconsin Elections Commission and the officials named as additional Respondents are procedurally adverse to Proposed Intervenors. Nor do Respondents have any duty to advocate for Proposed Intervenors' interests or desired relief. And while Proposed Intervenors agree with Petitioners that the current congressional districts violate several provisions of the Wisconsin Constitution, Proposed Intervenors advance a distinct legal claim and analytical approach and seek inclusion of remedial considerations that are not part of Petitioners' theory.

Because Proposed Intervenors satisfy all requirements for intervention as of right, Wisconsin law requires their Unopposed Motion be granted. *Armada Broad., Inc. v. Stirn*, 183 Wis. 2d 463, 471, 516 N.W.2d 357 (1994).

5. Alternatively, Proposed Intervenors should be granted permissive intervention under Wis. Stat. § 803.09(2) because they have a significant stake in the outcome of this case, they would present the Court with valid alternative or supplemental options for resolving the dispute, and their intervention would not unduly delay or prejudice the adjudication of the original rights of the parties. As discussed above, this Unopposed Motion is filed before any further proceedings have occurred, so granting

the Unopposed Motion would neither delay nor prejudice the original parties. And congressional redistricting is both the subject of Petitioners' action and the very issue that Proposed Intervenors seek to address.

6. Counsel for Proposed Intervenors has contacted counsel for Petitioners and Respondents to inquire whether the parties would oppose this Motion. Both Petitioners' counsel and Respondents' counsel have represented that their respective clients take no position on this Motion. Consequently, this Motion is unopposed.

7. In accordance with Wis. Stat. § 803.09(3), Proposed Intervenors attach to this Unopposed Motion their complaint<sup>1</sup> setting forth the claims for which intervention is sought.

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<sup>1</sup> Proposed Intervenors note that there is no statute specifically governing intervention in actions before the Wisconsin Supreme Court. The sole intervention statutes apply to proceedings in the court of appeals and the circuit court. For intervention in appeals, Wis. Stat. § (Rule) 809.13 provides that “[a] person who is not a party to an appeal may file in the *court of appeals* a *petition* to intervene in the appeal” (emphases added). The statute governing intervention generally (including in circuit court actions) requires a motion to intervene to “be accompanied by a *pleading* setting forth the claim ... for which intervention is sought.” Wis. Stat. § 803.09(3) (emphasis added). Not only is there a gap in the statutes with respect to intervention in actions before this Court, but there is also a statutory disconnect about how the accompanying pleading should be labeled. The original action statute requires a “petition,” Wis. Stat. § (Rule) 809.70(1); the appellate intervention statute also requires a “petition,” Wis. Stat. § (Rule) 809.13; and the general intervention statute requires a “pleading,” Wis. Stat. § 803.09(3), but the statute governing pleadings does not recognize a “petition” as a pleading, Wis. Stat. § 802.01(1).

Despite the statutory gap that appears to overlook intervention in this Court and the seeming inconsistency on what an intervenor's pleading should be labeled, this Court nonetheless has granted motions to intervene in previous original actions and has done so without regard to whether the “pleading” accompanying the motion to intervene was titled a “petition,” *see, e.g., Clarke v. Wis. Elections Comm'n*, No. 2023AP1399-OA, Petition in Intervention of Nathan Atkinson, Stephen Joseph Wright, Gary Krenz, Sarah J. Hamilton, Jen-Luc Thiffeault, Somesh Jha, Joanne Kane, and Leah Dudley, filed Oct. 10, 2023 (intervention granted Oct. 13, 2023), or a “complaint,” *see, e.g., Johnson v. Wis. Elections*

WHEREFORE, Proposed Intervenors Wisconsin Business Leaders for Democracy, John A. Scott, Nicholas G. Baker, Beverly Johansen, Rachel Ida Buff, Kimberly Suhr, Sarah Lloyd, Nancy Stencil, and Michael Brodd respectfully request that this Court grant this Unopposed Motion to Intervene and enter an order joining Proposed Intervenors to this action as additional Petitioners.

Dated: June 5, 2025.

Electronically signed by Jeffrey A. Mandell

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*Comm'n*, No. 2021AP001450-OA, Black Leaders Organizing for Communities, Voces de la Frontera, The League of Women Voters of Wisconsin, Cindy Fallona, Lauren Stephenson, and Rebecca Always, Intervenor-Petitioners' Complaint for Declaratory and Injunctive Relief, filed Sept. 24, 2021 (intervention granted Oct. 14, 2021).

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# EXHIBIT

SUPREME COURT OF WISCONSIN  
No. 2025AP996-OA

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ELIZABETH BOTHFELD, JO ELLEN BURKE, MARY COLLINS,  
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WISCONSIN ELECTIONS COMMISSION, DON MILLIS, ROBERT F.  
SPINDELL, JR., MARGE BOSTELMANN, ANN S. JACOBS, MARK L.  
THOMSEN, CARRIE RIEPL, in their official capacities as commissioners of  
the Wisconsin Elections Commission; and MEAGAN WOLFE, in her  
official capacity as administrator of the Wisconsin Elections Commission,

*Respondents.*

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Original Action in the Supreme Court of Wisconsin

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF  
ON BEHALF OF WISCONSIN BUSINESS LEADERS FOR  
DEMOCRACY, JOHN A. SCOTT, NICHOLAS G. BAKER,  
BEVERLY JOHANSEN, RACHEL IDA BUFF, KIMBERLY SUHR,  
SARAH LLOYD, NANCY STENCIL, AND MICHAEL BRODD  
AS INTERVENORS-PETITIONERS**

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Intervenors-Petitioners Wisconsin Business Leaders for Democracy,  
John A. Scott, Nicholas G. Baker, Beverly Johansen, Rachel Ida Buff,  
Kimberly Suhr, Sarah Lloyd, Nancy Stencil, and Michael Brodd bring this  
Complaint for Declaratory and Injunctive Relief against Respondents  
Wisconsin Elections Commission, Don Millis, Robert F. Spindell, Jr., Marge

Bostelmann, Ann S. Jacobs, Mark L. Thomsen, Carrie Riepl, and Meagan Wolfe under Article I, §§ 1 and 22, and Article III of the Wisconsin Constitution. Intervenors-Petitioners allege as follows:

## INTRODUCTION

1. Wisconsin’s current congressional districts were imposed by this Court as part of the *Johnson v. Wisconsin Elections Commission* litigation following the 2020 decennial Census.<sup>1</sup>

2. On February 19, 2024, in the wake of this Court’s decision in *Clarke v. Wisconsin Elections Commission*, 2023 WI 79, 410 Wis. 2d 1, 998 N.W.2d 370, Governor Evers signed into law new state legislative maps adopted by the Wisconsin Legislature through the legislative process, and those new districts are in effect. The congressional map, however, remains the one imposed by this Court in *Johnson II*. See 2022 WI 14, ¶7.

3. In adopting that congressional map, this Court relied primarily on the “least change” criterion it has since repudiated. See *id.* (articulating the least change rationale as the primary criterion in selecting a remedial congressional map); *Clarke*, 2023 WI 79, ¶63 (overturning portions of all three decisions in the *Johnson* litigation to the extent that they “mandate a least change approach”).

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<sup>1</sup> That litigation, No. 2021AP001450–OA, spawned multiple procedural orders and resulted in three published opinions:

- *Johnson v. Wis. Elections Comm’n*, 2021 WI 87, 399 Wis. 2d 623, 967 N.W.2d 469 (*Johnson I*);
- *Johnson v. Wis. Elections Comm’n*, 2022 WI 14, 400 Wis. 2d 626, 971 N.W.2d 402 (*Johnson II*); and
- *Johnson v. Wis. Elections Comm’n*, 2022 WI 19, 401 Wis. 2d 198, 972 N.W.2d 559 (*Johnson III*).

4. The least change approach this Court applied in *Johnson* ensures that Wisconsin's current congressional map closely resembles the congressional map from the prior decade, which was adopted by the Wisconsin Legislature and signed into law by then-Governor Scott Walker. 2011 Wis. Act 44.

5. Act 44 was challenged at the time in court as an unconstitutional partisan gerrymander. *Baldus v. Members of Wis. Gov't Accountability Bd.*, 849 F. Supp. 2d 840 (E.D. Wis. 2012). Act 44 suffered from another deficiency that was not separately challenged in *Baldus*: it imposed districts that were deliberately uncompetitive. In other words, the map enacted in Act 44 was intentionally designed to create districts that protected the incumbent members of Wisconsin's delegation in the U.S. House of Representatives.

6. Not only did the drafters of Act 44 aim for it to produce uncompetitive districts, but the districts they created had precisely that effect. Over the entire, decade-long lifespan of Act 44, not a single incumbent lost, and not one district changed hands from one political party to the other. Across the forty individual district races held under Act 44, the median margin of victory was more than twenty-five percentage points—a blowout by any measure. Only one of these forty races was decided by a margin of fewer than ten percentage points.

7. This Court then replaced the Act 44 map in *Johnson II*, based on a “least change” approach. *Johnson II*, 2022 WI 14, ¶¶7, 11 n.7. The Court had already expressly recognized that the least change approach would

necessarily replicate the defects of the Act 44 map. *Johnson I*, 2021 WI 87, ¶76. It follows that Wisconsin’s current congressional map perpetuates the intentional anti-competitive gerrymander imposed in 2011.

8. An anti-competitive gerrymander occurs when elected officials draw district lines to suppress electoral competition, thereby benefiting incumbent politicians to the detriment of voters. The essence of anti-competitive gerrymandering is that it yields lower levels of competition than would arise under a neutral map not crafted to protect officeholders. Candidates prevail by larger margins; fewer districts are competitive; less legislative turnover occurs; and core democratic values like accountability and responsiveness are undermined.

9. This claim of anti-competitive gerrymandering is distinct from a partisan gerrymandering claim in terms of how liability is determined, who is harmed, and how a violation is remedied. Partisan gerrymandering is commonly defined as “draw[ing] district lines to ‘pack’ and ‘crack’ voters likely to support the disfavored party,” thus unfairly boosting the number of seats won by the line-drawing party. *Rucho v. Common Cause*, 588 U.S. 684, 730 (2019) (Kagan, J., dissenting). An anti-competitive gerrymandering claim is similarly distinct from a racial gerrymandering claim, which asserts that “race was improperly used in the drawing of the boundaries of one or more specific electoral districts.” *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 263 (2015) (emphasis removed).

10. Anti-competitive gerrymanders are every bit as noxious to democracy as partisan gerrymanders and racial gerrymanders. This is

because electoral competition is as central to democracy as partisan fairness and district lines not drawn for racial reasons. This Court has suggested that redistricting with “a desire to preserve the political status quo” is a facet of “gerrymandering.” *State ex rel. Reynolds v. Zimmerman*, 22 Wis. 2d 544, 566, 126 N.W.2d 551 (1964).

11. Wisconsin’s current congressional plan presents a textbook example of an anti-competitive gerrymander. Across the sixteen individual district races held so far under this plan, the median margin of victory has been close to thirty percentage points: a figure even larger than that for Act 44. Only one district (District 3) has seen races decided by fewer than ten percentage points. Moreover, the level of competition would be significantly higher if a neutral line-drawing process that did not aim to suppress competition were employed. Maps created through such a process are both more competitive overall and include more individually competitive districts.

12. An anti-competitive gerrymander, like the one embodied in Wisconsin’s congressional map, is not mutually exclusive of a partisan gerrymander. It is possible for elected officials to both insulate legislators from challenges (an anti-competitive gerrymander) and also draw a map that is highly biased in partisan terms (a partisan gerrymander). Petitioners assert that Wisconsin’s current map is a partisan gerrymander, while Intervenors-Petitioners allege an anti-competitive gerrymander. The claims are not in conflict, and this Court can rely on either, or both, in striking down Wisconsin’s current congressional map.

13. Anti-competitive gerrymanders offend the Wisconsin Constitution in several respects, including by violating the state constitutional guarantees of equal protection to all citizens, the promise to maintain a free government, and the right to vote. Wis. Const. art. I, §§ 1, 22; *id.* art. III.

14. Like other state constitutions, Wisconsin's, through the promise of Equal Protection and Free Government, prohibits drawing district lines in ways that disadvantage certain groups of voters relative to others. Wis. Const. art. I, §§ 1, 22. Where district lines are deliberately and effectively drawn to suppress competition, voters in artificially uncompetitive districts (other than the incumbent officials themselves) are disadvantaged. Their votes are devalued because they have a smaller likelihood of proving decisive. Voters' representation is also impaired because legislators elected from these districts are less accountable and responsive to their constituents.

15. Voters in Wisconsin, like those in other states, have a right to vote grounded in and protected by not only the U.S. Constitution but also their state's constitution. *See* Wis. Const. art. III; *see also, e.g., State ex rel. McGrauel v. Phelps*, 144 Wis. 1, 128 N.W. 1041, 1046 (1910). The Wisconsin Constitution accordingly must provide and does provide a remedy for the harm caused to Intervenor-Petitioners and other Wisconsin voters by the anti-competitive gerrymandering of Wisconsin's congressional districts. Wis. Const. art. I, § 9.

16. As this Court imposed the current congressional map in *Johnson II*, only this Court has the authority to enjoin that map or otherwise alter the order that requires Respondents to hold elections under the map. See, e.g., *Tietsworth v. Harley-Davidson, Inc.*, 2007 WI 97, ¶¶32, 303 Wis. 2d 94, 735 N.W.2d 418 (trial court may not entertain arguments “that conflict with the express or implied mandate of the appellate court”).

17. This Court should review the current congressional map for constitutional defects not previously asserted. These include the anti-competitive gerrymandering claim alleged by Intervenors-Petitioners.

18. Once the Court determines that Wisconsin’s current congressional map violates strictures of the state constitution, it should apply the clear guidelines that it established in *Clarke* for evaluating remedial maps, supplemented by consideration of competitiveness, in fashioning relief to end this anti-competitive gerrymander. 2023 WI 79, ¶¶64–71. Many maps exist that both satisfy the *Clarke* guidelines, including partisan fairness, and do not artificially suppress competition.

## PARTIES

19. According to their Petition for Original Action, Petitioners Elizabeth Bothfeld, Jo Ellen Burke, Mary Collins, Charlene Gaebler-Uhing, Paul Hayes, Sally Huck, Tom Kloosterboer, Elizabeth Ludeman, and Linda Weaver are Wisconsin voters who strongly favor Democrats. Amongst the nine of them, Petitioners reside in Congressional Districts 1, 2, 3, 4, 5, and 6.

20. Intervenor-Petitioner Wisconsin Business Leaders for Democracy (WBLD) is a bipartisan, unincorporated association of

Wisconsin business leaders dedicated to helping ensure equitable access to voting; non-partisan, transparent election policy and administration; and unbiased representation. WBLD understands that preserving responsive, democratic government is critical to the Wisconsin economy and touches the lives of all Wisconsinites. WBLD's mailing address is Wisconsin Business Leaders for Democracy, 333 W. Estabrook Boulevard in the City of Glendale.

21. Among the core principles that WBLD supports is a commitment to increasing competitiveness in the political system to improve the quality of governance. These principles are central to WBLD's mission, and WBLD is committed to taking action in support of these principles. Over the past several years, WBLD's actions have included public education, policy advocacy, and involvement in litigation essential to Wisconsin democracy.

22. WBLD has vocally supported ending gerrymandering in Wisconsin. After this Court's *Clarke* ruling and the Legislature's adoption of Governor Evers's proposed state legislative district maps, WBLD praised the outcome: "As business leaders, we understand that the stability of our economy hinges on the integrity of our democratic institutions." The statement continued by explaining that with fair maps, under which fewer electoral outcomes are foregone conclusions, more voters have meaningful choices, and elected officials have incentives to be responsive to constituent concerns, "are not just political imperatives but moral imperatives that underscore our commitment to a democracy that works for all."

23. As senior executives in several of Wisconsin's largest and most established businesses, the members of WBLD have unparalleled insight into the consequences of policies that have eroded Wisconsin's traditional status as America's most successful laboratory of democracy. Those consequences are profound, both for Wisconsin's civil society and for Wisconsin's business sector.

24. From their vantage, the members of WBLD recognize that in politics, as in business, a lack of competition locks in entrenched interests, stifles innovation and experimentation, and ultimately impairs the interests of the population at large.

25. Both WBLD as an association and its members as individuals are harmed by Wisconsin's anti-competitive gerrymander, which makes recruiting talent to Wisconsin businesses, and therefore to membership and activism with WBLD, more difficult than it otherwise would be. WBLD and its members are further harmed by the anti-competitive gerrymander of Wisconsin's congressional districts because it removes incentives for members of Congress to address obstacles to economic growth, and for the state to retain and recruit new businesses. These levers of growth are uniquely in the hands of Congress, and include increased federal investment, updating outdated regulations, and reducing costs of doing business. Economic growth is thereby slower than it would be if Wisconsin were not in the grips of this anti-competitive gerrymander, which puts our state's business environment at a distinct disadvantage to neighboring states.

26. In addition, by effectively disenfranchising many Wisconsin voters in congressional elections, the anti-competitive gerrymander undermines WBLD's commitment to support free, fair, and regular elections, in which every citizen has equitable access to exercise their right to vote. The anti-competitive gerrymander thus impairs WBLD's interests and renders its actions less effective.

27. The individual Intervenors-Petitioners are Wisconsin residents residing in various counties and congressional districts. They are citizens and qualified voters of the United States of America and the State of Wisconsin.

28. At least one Intervenor-Petitioner resides in each of Wisconsin's congressional districts, including districts rendered unnecessarily uncompetitive by the deliberate design of Wisconsin's congressional map. Because Intervenors-Petitioners live in congressional districts crafted to be less competitive than they otherwise would be, their constitutional rights are violated and they suffer harm.

29. Intervenor-Petitioner John A. Scott resides at 5333 Lathrop Avenue in the Town of Mt. Pleasant, Wisconsin. He regularly votes at this residence in Wisconsin's First Congressional District, and he intends to vote, at this residence, in the 2026 and future congressional elections. Wisconsin's anti-competitive gerrymander effectively disenfranchises him in congressional elections.

30. Intervenor-Petitioner Nicholas G. Baker resides at 2327 17th Avenue in the City of Monroe, Wisconsin. He regularly votes at this

residence in Wisconsin's Second Congressional District, and he intends to vote, at this residence, in the 2026 and future congressional elections. Wisconsin's anti-competitive gerrymander effectively disenfranchises him in congressional elections.

31. Intervenor-Petitioner Beverly Johansen resides at 170 Preston Drive in the City of Platteville. She regularly votes at this residence in Wisconsin's Third Congressional District, and she intends to vote, at this residence, in the 2026 and future congressional elections.

32. Intervenor-Petitioner Rachel Ida Buff resides at 2972 North Hackett Avenue in the City of Milwaukee. She regularly votes at this residence in Wisconsin's Fourth Congressional District, and she intends to vote, at this residence, in the 2026 and future congressional elections. Wisconsin's anti-competitive gerrymander effectively disenfranchises her in congressional elections.

33. Intervenor-Petitioner Kimberly Suhr resides at 602 Mt. Snowdon Road in the Village of Wales. She regularly votes at this residence in Wisconsin's Fifth Congressional District, and she intends to vote, at this residence, in the 2026 and future congressional elections. Wisconsin's anti-competitive gerrymander effectively disenfranchises her in congressional elections.

34. Intervenor-Petitioner Sarah Lloyd resides at W13615 Nelson Road in the Town of Newport. She regularly votes at this residence in Wisconsin's Sixth Congressional District, and she intends to vote, at this residence, in the 2026 and future congressional elections. Wisconsin's anti-

competitive gerrymander effectively disenfranchises her in congressional elections.

35. Intervenor-Petitioner Nancy Stencil resides at 223281 Azalea Road in the City of Wausau. She regularly votes at this residence in Wisconsin's Seventh Congressional District, and she intends to vote, at this residence, in the 2026 and future congressional elections. Wisconsin's anti-competitive gerrymander effectively disenfranchises her in congressional elections.

36. Intervenor-Petitioner Michael Brodd resides at 2182 Seaquist Road in the Village of Sister Bay. He regularly votes at this residence in Wisconsin's Eighth Congressional District, and he intends to vote, at this residence, in the 2026 and future congressional elections. Wisconsin's anti-competitive gerrymander effectively disenfranchises him in congressional elections.

37. Respondent Wisconsin Elections Commission (WEC) is an administrative body created under the laws of Wisconsin. State law charges WEC with responsibility for the administration and enforcement of Wisconsin laws "relating to elections" including Chapters 5 to 10 and 12. Wis. Stat. § 5.05(1), (2w).

38. WEC comprises six appointed members. Wis. Stat. § 15.61(1)(a). Respondents Marge Bostelmann, Ann S. Jacobs, Don Millis, Carrie Riepl, Robert F. Spindell, Jr., and Mark L. Thomsen are those members, and are named here in their official capacities.

39. WEC's appointed Administrator, Respondent Meagan Wolfe, "serve[s] as the chief election officer of this state," and is named here in her official capacity. Wis. Stat. §§ 5.05(3g), 15.61(1)(b)1.

40. By law, WEC's Chairperson is responsible for certifying the state canvass, including the results of congressional elections in each of Wisconsin's eight congressional districts. Wis. Stat. § 7.70(3). After the state canvass has been certified, Respondent WEC issues certificates of election to those individuals elected to the U.S. House of Representatives in each of Wisconsin's eight congressional districts. Wis. Stat. § 7.70(5).

### JURISDICTION AND JUSTICIABILITY

41. On May 7, 2025, Petitioners asked this Court to exercise its original jurisdiction in adjudicating the constitutionality of Wisconsin's congressional map. *See* Wis. Const. art. VII, § 3(2); Wis. Stat. § 809.70.

42. As this Court has previously recognized, "any reapportionment or redistricting case is, by definition *publici juris*, implicating the sovereign rights of the people of this state." *Johnson I*, 2021 WI 87, ¶20 (quoting *Jensen v. Wis. Elections Bd.*, 2002 WI 13, ¶6, 249 Wis. 2d 706, 639 N.W.2d 537 (per curiam));<sup>2</sup> *accord, e.g., Clarke v. Wis. Elections Comm'n*, 2023 WI 70, 409 Wis. 2d 372, 995 N.W.2d 779 ("This court has long deemed redistricting challenges a proper subject for the court's exercise of

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<sup>2</sup> In *Jensen*, this Court ultimately declined to take original jurisdiction because there were pending federal court matters. 2002 WI 13, ¶25. The decision was emphatic, however, that absent concerns raised by then-pending federal litigation, original jurisdiction would be appropriate. *Id.*, ¶18. Here, there is no pending federal litigation.

original jurisdiction. This includes challenges to existing district maps.” (internal citations omitted)).

43. Intervenors-Petitioners also challenge the constitutionality of Wisconsin’s current congressional map, though on a distinct legal basis. The essence of Intervenors-Petitioners’ claim is that a deliberate anti-competitive gerrymander has distorted Wisconsin’s current congressional map such that competition is lower than it would be absent that intent. As a result, voters in unnecessarily uncompetitive districts are harmed and fundamental democratic values—as well as the Wisconsin Constitution—are violated.

44. This Court has personal jurisdiction over all parties, including Respondent WEC. Wis. Stat. § 801.05. All parties to this action—Petitioners, Intervenors-Petitioners, and Respondents, alike—are citizens of Wisconsin for purposes of jurisdiction.

45. Intervenors-Petitioners’ claim of anti-competitive gerrymandering is justiciable. This Court has recognized that redistricting disputes—including claims of unconstitutional gerrymandering—are justiciable because the establishment of district lines is not vested solely in one branch of government, and courts, including this Court, have played a significant role in redistricting. *See, e.g., Johnson I*, 2021 WI 87, ¶¶66; *Johnson II*, 2022 WI 14, ¶¶52; *Johnson III*, 2022 WI 19, ¶¶73; *Clarke*, 2023 WI 79, ¶¶63; *Prosser v. Elections Bd.*, 793 F. Supp. 859, 871 (W.D. Wis. 1992).

46. Justiciability is consistent with the Wisconsin Constitution’s promise that, where a person suffers a wrong, they are entitled to a day in

court. *See* Wis. Const. art 1, § 9; *City of Janesville v. Carpenter*, 77 Wis. 288, 46 N.W. 128, 132 (1890) (situation that “leaves [party] no remedy whatever by which he can ... obtain redress” is “in conflict with section 9 of article 1 of the state constitution”). This Court, through its powers, can—and should—fashion a remedy for the anti-competitive gerrymander perpetuated by Wisconsin’s current congressional map.

47. Intervenors-Petitioners’ claim of anti-competitive gerrymandering is timely as well. As explained below, this claim requires evidence that competition has indeed been (or is likely to be) artificially suppressed. The two election cycles in which Wisconsin’s current congressional map has been used (2022 and 2024) demonstrate the startlingly low level of competition under the map. This concrete proof of lack of competition would not have been available had this claim been filed earlier. *See, e.g., Davis v. Bandemer*, 478 U.S. 109, 135 (1986) (“Relying on a single election to prove unconstitutional [gerrymandering] is unsatisfactory.”); *Whitford v. Gill*, 218 F. Supp. 3d 837, 910 (W.D. Wis. 2016) (ruling in favor of a gerrymandering claim because the impact of the challenged map was “both intended *and likely* to persist for the life of the plan” (emphasis in original)), *vac’d on other grounds*, 585 U.S. 48 (2018).

#### **RELEVANT CONSTITUTIONAL PROVISIONS**

48. The first provision in the Wisconsin Constitution’s Declaration of Rights provides: “All people are born equally free and independent, and have certain inherent rights; among these are life, liberty and the pursuit of happiness; to secure these rights, governments are

instituted, deriving their just powers from the consent of the governed.”  
Wis. Const. art. I, § 1.

49. A later provision in the Declaration of Rights 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.” Wis. Const. art. I, § 22.

50. Article III addresses suffrage and, in concert with the Wisconsin Constitution as a whole, guarantees the right to vote. *See, e.g., Phelps*, 128 N.W. at 1046 (“[T]he right to vote ... is guaranteed both by the Bill of Rights, and the exclusive instrument of voting power contained in section 1, art. 3, of the Constitution, and by the fundamentally declared purpose of government; and the express and implied inhibitions of class legislation, as well. Such declared purpose and the declaration of rights, so far as they go, and the equality clauses,—constitute inhibitions of legislative interference by implication, and with quite as much efficiency as would express limitations, as this court has often held.”).

51. The Wisconsin Constitution enumerates several bases on which voting rights in Wisconsin may be regulated. Wis. Const. art. III, § 2. None of those bases can sanction an anti-competitive gerrymander that renders the votes of many Wisconsinites, including most Intervenors-Petitioners, essentially worthless in elections for representation in the U.S. House of Representatives. This Court, in *Zimmerman*, “condemned gerrymandering,” which it suggested was evident in maps drawn with “a desire to preserve the political status quo.” 22 Wis. 2d at 566; *see also State ex*

*rel. Atty. Gen. v. Cunningham*, 81 Wis. 440, 485, 51 N.W. 724 (1892) (multiple constitutional provisions “were supported and adopted upon the express ground that they would prevent the legislature from gerrymandering the state”).

## WISCONSIN’S ANTI-COMPETITIVE GERRYMANDER

### A. Wisconsin’s 2011 congressional map was intended to be an anti-competitive gerrymander.

52. In 2011, the Governor’s office and both chambers of the Legislature were under Republican control. This meant that Republican officeholders had wide latitude in establishing new district maps for Wisconsin’s state legislature and its congressional districts.

53. At that time, Wisconsin’s congressional delegation comprised five Republican members and three Democratic members.

54. The leadership of the Wisconsin Legislature deferred to their counterparts in Wisconsin’s congressional delegation on the details of Wisconsin’s 2011 congressional map.

55. Then-Representative Paul Ryan took the lead on drawing a new congressional map for Wisconsin. He assigned a member of his staff to collect information from the offices of all current members of the Wisconsin delegation in the U.S. House of Representatives. The resulting map “avoided putting incumbents together in the same district,” and, as of 2012, “did not flip districts from majority-Democrat to majority-Republican or vice versa.” *Baldus*, 849 F. Supp. 2d at 854.

56. The changes to district boundaries in Wisconsin’s 2011 congressional map intentionally made districts less competitive. That is, the

changes to the boundaries deliberately insulated each incumbent from electoral competition.

57. On August 9, 2011, the congressional map drawn by Representative Ryan's office and adopted by the Wisconsin Legislature was signed by Governor Walker. *See* 2011 Wis. Act 44.

**B. Wisconsin's 2011 congressional map was in operation an anti-competitive gerrymander.**

58. After the Wisconsin Legislature adopted the 2011 congressional map, congressional races over the ensuing decade were, as intended, highly uncompetitive.

59. The median margin of victory in these races never dropped below twenty percentage points in any election. In one election (2016), the median margin of victory spiked to well above thirty percentage points. Only a single congressional race over Act 44's entire lifespan (District 3 in 2020) was decided by fewer than ten percentage points.

60. This level of uncompetitiveness would not have arisen had a neutral line-drawing process that did not aim to suppress competition been followed. Maps created through such a process would both have been more competitive overall than Act 44 and included more individually competitive districts.

61. In the decade after Wisconsin's 2011 congressional map was adopted, no incumbent lost a U.S. House of Representatives race in Wisconsin.

**C. This Court’s use of the least change approach carried forward Act 44’s anti-competitive intent.**

62. Upon completion of the 2020 decennial census, the congressional districts enacted in Act 44 were no longer constitutionally apportioned.

63. The Legislature passed new congressional districts in the fall of 2021, but Governor Tony Evers vetoed the legislative proposal.

64. By then, this Court had accepted original jurisdiction over the *Johnson* litigation so that it could ensure Wisconsin would have new districts if the Legislature and the Governor reached an impasse.

65. In *Johnson II*, this Court imposed new congressional districts. 2022 WI 14, ¶7. The congressional map this Court adopted in *Johnson II* was based on a least change rationale, in that it sought to move district lines to the extent required by population shifts reflected in the 2020 decennial census while making the least change possible to the districts promulgated in 2011 Wisconsin Act 44.

66. The congressional map adopted in *Johnson II* kept 94.5% of all Wisconsinites in the congressional district they occupied under 2011 Wisconsin Act 44. The essential features—and the primary flaws—of the 2011 congressional map were necessarily perpetuated by this Court’s adoption in *Johnson II* of a least change congressional map. These flaws include the 2011 congressional map’s intentional and effective effort to suppress competition.

67. After the *Johnson* litigation ended, the Legislature subsequently adopted, and the Governor signed, new maps for state

legislative districts. 2023 Wis. Act 94. At no time since *Johnson II* has the Legislature revisited Wisconsin's congressional map. The congressional map adopted in *Johnson II* remains in place to this day.

**D. Wisconsin's current congressional map is highly uncompetitive.**

68. Like its predecessor, the congressional map adopted in *Johnson II* has had the effect of sharply and unnecessarily dampening competition.

69. In the 2022 and 2024 elections, the victor in each district won by a median margin of almost thirty percentage points.

70. Only one district (District 3) was genuinely competitive in the 2022 and 2024 elections. Outside of District 3, every race was decided by double digits.

71. Wisconsin's current congressional map is less competitive than alternative maps created without considering election results and complying with all federal and state legal requirements. These maps tend to have a lower median margin of victory. They tend to include more competitive districts. And specific districts in these maps tend to be more competitive than their counterparts in Wisconsin's current congressional map.

**E. The anti-competitive gerrymander in Wisconsin's current congressional map violates the state constitution.**

72. The anti-competitive nature of Wisconsin's current congressional map is an affront to the Wisconsin Constitution and violates Intervenor-Petitioners' fundamental rights.

73. While a claim of anti-competitive gerrymandering has not yet been explicitly recognized in Wisconsin, it has strong roots in Wisconsin's constitutional text and values as well as this Court's precedent. *See Zimmerman*, 22 Wis. 2d at 566 ("condemn[ing] gerrymandering," which it suggested was evident in maps drawn with "a desire to preserve the political status quo"); *Cunningham*, 81 Wis. at 485 (expressing hope that state constitutional provisions would "prevent the legislature from gerrymandering the state").

74. The anti-competitive gerrymander embodied in Wisconsin's current congressional map renders the votes of many Wisconsinites, including most Intervenors-Petitioners, essentially worthless in elections for the U.S. House of Representatives.

75. That devaluation of some Wisconsinites' votes makes a mockery of equal protection, undermines the "fundamental principles" enshrined in Article I, § 22, and flagrantly disregards the Wisconsin Constitution's commitment to the fundamental right to vote.

76. Acknowledging electoral competition as a constitutional value ensures that redistricting maps offer "a reasonable potential for the party affiliation of the district's representative to change at least once between federal decennial censuses." *In re Colo. Indep. Legislative Redistricting Comm'n*, 513 P.3d 352, 365 (Colo. 2021). In evaluating competitiveness, courts can consider "factors such as a proposed district's past election results, a proposed district's political party registration data, and evidence-based analyses of proposed districts." *Id.* *See also, e.g.,*

*Harkenrider v. Hochul*, 197 N.E.3d 437, 452–53 (N.Y. 2022) (relying on similar evidence in ruling in favor of a claim that a district plan “discourage[d] competition”).

77. Under this approach, an unconstitutional anti-competitive gerrymander exists where there is evidence (1) of an intent to suppress competition, and (2) that competition was indeed suppressed relative to alternative maps that satisfy all applicable legal requirements.

78. Both prongs of this test are satisfied in this instance.

79. *First*, as described above, there is overwhelming evidence that Wisconsin’s 2011 congressional plan had the motive of stamping out competition. Because Wisconsin’s current congressional map was required to be prepared, and was then chosen, based on the erroneous least change criterion, it necessarily perpetuates the 2011 plan’s anti-competitive intent. See *Johnson I*, 2021 WI 87, ¶76 (expressly recognizing that the least change approach would replicate the defects of Act 44); see also, e.g., *Jacksonville Branch of NAACP v. City of Jacksonville*, 635 F. Supp. 3d 1229, 1288 (M.D. Fla. 2022) (“[B]y prioritizing the maintenance of existing lines, the City adopted a criterion that would inevitably carry forward the effects of the race-based lines originally drawn in 2011.”); Robert Yablon, *Gerrylaundersing*, 97 N.Y.U. L. Rev. 985, 987 (2022) (explaining that “gerrylaundersing is an anti-competitive device—a way for those in power to remain in power”).

80. *Second*, as also explained above, Wisconsin’s current congressional plan effectively suppresses competition. The median margin of victory in races held under the plan to date has been exceptionally large.

Only one district in the plan has exhibited substantial competitiveness. Alternative maps that satisfy all applicable legal requirements tend to be more competitive overall than the current plan. Specific districts in these other maps also tend to be more individually competitive than their analogues in the current plan. Again, this level of uncompetitiveness would not arise in a neutral line-drawing process that did not have lack of competition as its purpose.

81. Absent timely relief, this unconstitutional anti-competitive gerrymander will persist for at least another two years.

## **CLAIMS FOR RELIEF**

### **COUNT I**

*The anti-competitive gerrymander of Wisconsin's congressional map violates the equal protection guarantee in Article I, Section 1 of the Wisconsin Constitution*

82. Intervenors-Petitioners incorporate by reference all paragraphs above as if repeated herein.

83. The rights of each WBLD member, and every Wisconsinite on whose behalf WBLD works, to equal protection of the laws under Article I, § 1 are compromised because Wisconsin's anti-competitive gerrymander renders most of their votes essentially worthless in elections for the U.S. House of Representatives.

84. Individual Intervenors-Petitioners' rights to equal protection of the laws under Article I, § 1 are compromised because Wisconsin's anti-competitive gerrymander renders most of their votes essentially worthless in elections for the U.S. House of Representatives.

85. Moreover, all Intervenors-Petitioners' rights under Article I, § 1 are compromised because Wisconsin's anti-competitive gerrymander diminishes the incentive that congressional representatives in these unnecessarily uncompetitive districts have to represent them accountably and responsively.

86. This impairment is a violation of Intervenors-Petitioners' guarantee of equal protection, enshrined in Article I, § 1 of the Wisconsin Constitution.

87. While Article I, § 1 mirrors portions of the Fourteenth Amendment to the U.S. Constitution, our state constitution is a distinct charter.

88. Article I, § 1 represents Wisconsin's ideals of democracy and affirms our state's aspirations. While jurisprudence specific to Article I, § 1—distinct from its better-known federal analog—is sparse, “[i]t is up to us—judges, lawyers, and citizens—to give effect to the fundamental guarantees of Article I, § 1” and ensure this provision does ‘not receive an unduly limited construction.’” *Matter of Adoption of M.M.C.*, 2024 WI 18, ¶59, 411 Wis. 2d 389, 5 N.W.3d 238 (Dallet, J., concurring) (quoting *State ex rel. Zillmer v. Kreutzberg*, 114 Wis. 530, 533–34, 90 N.W. 1098 (1902)).

89. This “[C]ourt has the power, perhaps the duty, to make sure that the protections of our state constitution remain relevant in light of changing conditions, emerging needs and acceptable changes in social values ... consistent with the clear meaning of the constitution.” *Jacobs v. Major*, 139 Wis. 2d 492, 520, 407 N.W.2d 832 (1987).

90. Article I, § 1 demands that all voters have meaningful opportunities to vote, free from the artificial suppression of electoral competition.

91. Article I, § 1 demands that voters have the opportunity to elect representatives who will represent them accountably and responsively.

92. The anti-competitive gerrymander baked into Wisconsin's current congressional map violates Article I, § 1.

93. This violation of our state constitution demands relief.

## COUNT II

### *The anti-competitive gerrymander of Wisconsin's congressional map violates the promise of a free government in Article I, Section 22 of the Wisconsin Constitution*

94. Intervenors-Petitioners incorporate by reference all paragraphs above as if repeated herein.

95. WBLD's rights under Article I, § 22, both as an association and on behalf of its members, are compromised because Wisconsin's anti-competitive gerrymander undermines the principles of democracy that WBLD advocates and that are also enshrined in Article I, § 22.

96. Individual Intervenors-Petitioners' rights under Article I, § 22 are compromised because Wisconsin's anti-competitive gerrymander renders most of their votes essentially worthless in elections for the U.S. House of Representatives.

97. Moreover, all Intervenors-Petitioners' rights under Article I, § 22 are compromised because Wisconsin's anti-competitive gerrymander diminishes the incentive that congressional representatives in these

unnecessarily uncompetitive districts have to represent them accountably and responsively.

98. Wisconsin's current congressional map violates the promise of a free government that our framers embedded in Art. I, § 22.

99. That promise is an "implied prohibition" against legislative excess. *State ex rel. Milwaukee Med. Coll. v. Chittenden*, 127 Wis. 468, 521, 107 N.W. 500 (1906). Such legislative excess includes the adoption of an anti-competitive gerrymander that undermines core democratic values like the right to vote, democratic accountability, and officeholder responsiveness.

100. The anti-competitive gerrymander baked into Wisconsin's current congressional map violates Article I, § 22.

101. This violation of our state constitution demands relief.

### COUNT III

*The anti-competitive gerrymander of Wisconsin's congressional map violates the right to vote guaranteed by the Wisconsin Constitution.*

102. Intervenors-Petitioners incorporate by reference all paragraphs above as if repeated herein.

103. While WBLD as an association does not have its own voting rights, Wisconsin's anti-competitive gerrymander violates the voting rights of WBLD's members, diminishes public faith in democracy and thereby public receptiveness to WBLD's message, and undermines WBLD's efficacy by compromising the voting rights of WBLD's members and the public as a whole.

104. Individual Intervenors-Petitioners' rights to vote protected by the Wisconsin Constitution are compromised by Wisconsin's anti-

competitive gerrymander, which renders most of their votes essentially worthless in elections for the U.S. House of Representatives.

105. Wisconsin courts have offered the highest protection to the right to vote in Wisconsin. They have recognized that “[t]he right of a qualified elector to cast a ballot for the election of a public officer, which shall be free and equal, is one of the most important of the rights guaranteed” by our state constitution. *State ex rel. Frederick v. Zimmerman*, 254 Wis. 600, 613, 37 N.W.2d 473 (1949).

106. Wisconsin’s anti-competitive gerrymander vitiates that right for many Wisconsinites by rendering the votes of many Wisconsinites, including most Intervenors-Petitioners, virtually meaningless in elections for the U.S. House of Representatives.

107. Moreover, all Intervenors-Petitioners’ voting rights are compromised by Wisconsin’s anti-competitive gerrymander because it diminishes the incentive that congressional representatives in these unnecessarily uncompetitive districts have to represent them accountably and responsively.

108. This violation of our state constitution demands relief.

### **RELIEF SOUGHT**

WHEREFORE, Intervenors-Petitioners respectfully ask that the Court:

A. Declare that Wisconsin’s current congressional map, imposed in the *Johnson* litigation, is an anti-competitive gerrymander that violates Wisconsin Constitution Article I, §§ 1 and 22, and Article III, that it violates

Intervenors-Petitioners’ constitutional rights under these same provisions, and that it is invalid;

B. Enjoin Respondents and their agents from using Wisconsin’s current congressional map in any future election, including by facilitating or certifying the nomination or election of any candidate to serve Wisconsin in the U.S. House of Representatives under the current congressional map;

C. Establish a schedule that will enable the Court—in the absence of a superseding state law, adopted by the Wisconsin Legislature and signed by the Governor in a timely fashion—to adopt and implement a new congressional map with districts that are not unconstitutionally uncompetitive, and that otherwise meet all applicable legal requirements for districting, including partisan fairness;

D. Award Intervenors-Petitioners their costs, disbursements, and reasonable attorneys’ fees incurred in bringing this action, pursuant to Wis. Stat. § 814.01; and

E. Grant such other relief as the Court deems proper.

Dated: June 5, 2025.

*Electronically signed by Jeffrey A. Mandell*

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SUPREME COURT OF WISCONSIN  
No. 2025AP996-OA

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TOM KLOOSTERBOER, ELIZABETH LUDEMAN and LINDA WEAVER,

*Petitioners,*

*v.*

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

*Respondents.*

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Original Action in the Supreme Court of Wisconsin

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**BRIEF IN SUPPORT OF UNOPPOSED MOTION TO INTERVENE BY  
WISCONSIN BUSINESS LEADERS FOR DEMOCRACY,  
JOHN A. SCOTT, NICHOLAS G. BAKER, BEVERLY JOHANSEN,  
RACHEL IDA BUFF, KIMBERLY SUHR, SARAH LLOYD,  
NANCY STENCIL, AND MICHAEL BRODD**

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## INTRODUCTION

The decennial process of drawing legislative districts, also known as redistricting, “determines the political landscape for the ensuing decade and thus public policy for years beyond.” *Jensen v. Wis. Elections Bd.*, 2002 WI 13, ¶10, 249 Wis. 2d 706, 639 N.W.2d 537 (per curiam). This politically charged process necessarily implicates a wide range of different interests and goals, as this Court has seen from its previous experience adjudicating redistricting cases. Alongside the petition pending before this Court, Proposed Intervenors’ claim implicates different interests in Wisconsin’s congressional map that warrant consideration.

Petitioners allege that Wisconsin’s current congressional districts are a partisan gerrymander “antithetical to” Article I, Sections 1, 3, 4, and 22 of the Wisconsin Constitution and that their adoption by this Court violated the separation of powers principles inherent in our state constitution. *See* Pet. for Original Action, ¶¶1, 69–93. On those bases, they ask this Court to vacate the map it selected as most appropriate based on the legal criteria it applied, including the now-discarded “least change” principle, and then to impose a replacement map if necessary.<sup>1</sup> *Id.*, ¶93. Petitioners argue that

---

<sup>1</sup> Upon holding the current congressional map constitutionally invalid as either a partisan gerrymander, a violation of separation of powers, an anti-competitive gerrymander, or all three, the Court should provide an opportunity for the Legislature and the Governor to adopt a new, legally compliant map through the legislative process in time for the 2026 congressional election cycle. *See, e.g., Clarke v. Wis. Elections Comm’n*, 2023 WI 79, ¶57, 410 Wis. 2d 1, 998 N.W.2d 370 (quoting *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978)) (“[W]hen an existing plan is declared unconstitutional, it is ‘appropriate, whenever practicable, to afford a reasonable opportunity for the legislature to meet constitutional requirements by adopting a substitute measure.’”).

because the least change analysis that informed the current map’s selection is contrary to our state constitution (and not in any way required by the federal constitution), the map presently in effect perpetuates the flaws of the congressional map adopted in 2011. *Id.*, ¶¶49–51, 57 (quoting *Johnson v. Wis. Elections Comm’n*, 2022 WI 14, ¶7, 400 Wis. 2d 626, 971 N.W.2d 402, and *Clarke*, 2023 WI 79, ¶63). They further argue that this Court’s use of the (since-vacated) “least change” criterion and failure to evaluate partisan fairness in adopting the congressional map independently violates constitutional separation of powers principles. *Id.*, ¶¶87–92.

Proposed Intervenors Wisconsin Business Leaders for Democracy, John A. Scott, Nicholas G. Baker, Beverly Johansen, Rachel Ida Buff, Kimberly Suhr, Sarah Lloyd, Nancy Stencil, and Michael Brodd (collectively Proposed Intervenors) agree with Petitioners that Wisconsin’s existing congressional districts violate the Wisconsin Constitution and thus seek to intervene as additional petitioners in this proposed original action. But Proposed Intervenors advance a different legal theory to challenge those districts: in addition or in the alternative to Petitioners’ claims, Proposed Intervenors allege that the congressional plan this Court adopted three years ago violates the Wisconsin Constitution because (by virtue of the least change approach required by the *Johnson I* decision) it duplicates and extends the 2011 map’s intentional and effective design to stifle electoral competition.

These two flaws in the congressional plan—the drawing of districts to provide an extreme advantage to one political party *and also* to stifle

competition—cause related but separate constitutional harms.<sup>2</sup> Like manipulating district lines to benefit a particular party (partisan gerrymandering), suppressing competitive electoral contests is a recipe for political stasis, voter disenchantment, and ultimately diminishment of democracy—all incompatible with the Wisconsin Constitution. However, anti-competitive gerrymandering works differently from partisan gerrymandering, injures different parties, and implicates an additional remedial consideration. To ensure that this Court considers this distinct theory in evaluating the constitutionality of the congressional map, either in addition or in the alternative to Petitioners’ claims, Proposed Intervenors move to intervene as Petitioners in this case and submit this brief in support of their request.

### STATEMENT OF INTERESTS

Proposed Intervenors agree with Petitioners that the current congressional map is unconstitutional and must be struck down. Proposed Intervenors have a strong interest both in ridding Wisconsin of its unconstitutional congressional map and in ensuring that any replacement map includes congressional districts that do not continue to artificially stifle

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<sup>2</sup> As Proposed Intervenors expressly allege in the complaint attached to their Motion, an anti-competitive gerrymander, like the one embodied in Wisconsin’s congressional map, is not mutually exclusive of a partisan gerrymander. This Court can rely on either claim, or both, in striking down Wisconsin’s current congressional map. Moreover, Proposed Intervenors agree with Petitioners that the judicial imposition of the current, gerrymandered Wisconsin congressional map is incompatible with separation-of-powers doctrine. *See* Pet. for Original Action, ¶¶87–92.

competitive political contests to represent each of Wisconsin's eight districts in the U.S. House of Representatives.

Proposed Intervenor Wisconsin Business Leaders for Democracy (WBLD) is a bipartisan, unincorporated association of Wisconsin business leaders dedicated to helping ensure equitable access to voting; non-partisan, transparent election policy and administration; and unbiased representation. WBLD understands that preserving responsive, democratic government is critical to the Wisconsin economy and touches the lives of all Wisconsinites. Among the core principles that WBLD supports is a commitment to increasing competitiveness in the political system to improve the quality of governance. As senior executives in several of Wisconsin's largest and most established businesses, the members of WBLD have unparalleled insight into the consequences of policies that have eroded Wisconsin's traditional status as America's most successful laboratory of democracy. Those consequences are profound, both for Wisconsin's civil society and for Wisconsin's business sector. From their vantage, the members of WBLD recognize that in politics, as in business, a lack of competition locks in entrenched interests, stifles innovation and experimentation, and ultimately impairs the interests of the population at large.

Both WBLD as an association and its members as individuals are harmed by Wisconsin's anti-competitive gerrymander, which makes recruiting talent to Wisconsin businesses, and therefore to membership and activism with WBLD, more difficult than it otherwise would be. WBLD and

its members are further harmed by the anti-competitive gerrymander of Wisconsin's congressional districts because it removes incentives for members of Congress to address obstacles to economic growth, and for the state to retain and recruit new businesses. These levers of growth are uniquely in the hands of Congress, and include increased federal investment, updating outdated regulations, and reducing costs of doing business. Economic growth is thereby slower than it would be if Wisconsin were not in the grips of this anti-competitive gerrymander, which puts our state's business environment at a distinct disadvantage to neighboring states. In addition, by effectively disenfranchising many Wisconsin voters in congressional elections, the anti-competitive gerrymander undermines WBLD's commitment to support free, fair, and regular elections, in which every citizen has equitable access to exercise their right to vote. The anti-competitive gerrymander thus impairs WBLD's interests and renders its actions less effective.

Individual Proposed Intervenors John A. Scott, Nicholas G. Baker, Beverly Johansen, Rachel Ida Buff, Kimberly Suhr, Sarah Lloyd, Nancy Stencil, and Michael Brodd are Wisconsin voters who live in each of Wisconsin's congressional districts. Most of them, therefore, suffer from uncompetitive congressional elections in which their votes are effectively worthless due to the deliberate location of district lines to muffle competition.

- John A. Scott resides in Wisconsin's First Congressional District; he is a regular voter in Wisconsin elections and intends to vote, at this residence, in the 2026 and future congressional elections.

- Nicholas G. Baker resides in Wisconsin's Second Congressional District; he is a regular voter in Wisconsin elections and intends to vote, at this residence, in the 2026 and future congressional elections.
- Beverly Johansen resides in Wisconsin's Third Congressional District; she is a regular voter in Wisconsin elections and intends to vote, at this residence, in the 2026 and future congressional elections.
- Rachel Ida Buff resides in Wisconsin's Fourth Congressional District; she is a regular voter in Wisconsin elections and intends to vote, at this residence, in the 2026 and future congressional elections.
- Kimberly Suhr resides in Wisconsin's Fifth Congressional District; she is a regular voter in Wisconsin elections and intends to vote, at this residence, in the 2026 and future congressional elections.
- Sarah Lloyd resides in Wisconsin's Sixth Congressional District; she is a regular voter in Wisconsin elections and intends to vote, at this residence, in the 2026 and future congressional elections.
- Nancy Stencil resides in Wisconsin's Seventh Congressional District; she is a regular voter in Wisconsin elections and intends to vote, at this residence, in the 2026 and future congressional elections.
- Michael Brodd resides in Wisconsin's Eighth Congressional District; he is a regular voter in Wisconsin elections and intends to vote, at this residence, in the 2026 and future congressional elections.

### **LEGAL STANDARD FOR INTERVENTION**

Intervention is proper if movants demonstrate that they meet certain criteria under Wis. Stat. § 803.09. State law provides two avenues for intervention: meeting the standard for mandatory intervention under subsection (1), or for permissive intervention under subsection (2).

To intervene as a matter of right under Wis. Stat. § 803.09(1), Proposed Intervenors must show that:

- (A) their petition to intervene is timely;
- (B) they claim an interest sufficiently related to the subject of this action;
- (C) disposition of this action may as a practical matter impair or impede their ability to protect that interest; and
- (D) the existing parties do not adequately represent their interest.

See *Helgeland v. Wis. Municipalities*, 2008 WI 9, ¶38, 307 Wis. 2d 1, 745 N.W.2d

1. Courts take a “flexible and pragmatic approach to intervention as of right.” *Id.*, ¶40 n.30. “[T]here is interplay between the requirements,” which “must be blended and balanced to determine whether [Proposed Intervenors] have a right to intervene.” *Id.*, ¶39 (footnote omitted). “The analysis is holistic, flexible, and highly fact-specific.” *Id.*, ¶40.

The test for permissive intervention is even more flexible. A court may grant permissive intervention to anyone who would be a proper party. See, e.g., *City of Madison v. WERC*, 2000 WI 39, ¶11 n.11, 234 Wis. 2d 550, 610 N.W.2d 94. The court “shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.” Wis. Stat. § 803.09(2). Section 803.09(2) makes clear that allowing Proposed Intervenors to intervene here is within the Court’s discretion as long as Proposed Intervenors’ position and the main action share a common question of law or fact. *Helgeland*, 2008 WI 9, ¶120.

### **LEGAL BACKGROUND**

Proposed Intervenors allege that Wisconsin’s current congressional plan intentionally and effectively suppresses electoral competition, thereby harming individual voters from both major parties. This claim of *anti-competitive* gerrymandering is distinct from Petitioners’ *partisan*

gerrymandering claim in terms of how liability is determined, who is harmed, and what remedial factors must be considered. Partisan gerrymandering is commonly defined as “draw[ing] district lines to ‘pack’ and ‘crack’ voters likely to support the disfavored party,” thus unfairly boosting the number of seats won by the line-drawing party. *Rucho v. Common Cause*, 588 U.S. 684, 730 (2019) (Kagan, J., dissenting).

The essence of anti-competitive gerrymandering, meanwhile, is that competition is significantly lower than it would be under a neutral map not crafted to protect officeholders. Candidates prevail by larger margins, fewer districts are competitive, less legislative turnover occurs, and core democratic values like accountability and responsiveness are undermined. *See, e.g., In re Colo. Indep. Legislative Redistricting Comm’n*, 513 P.3d 352, 365 (Colo. 2021) (defining “competitiveness” as “a reasonable potential for the party affiliation of the district’s representative to change”); Samuel Issacharoff, *Gerrymandering and Political Cartels*, 116 Harv. L. Rev. 593 (2002). Put another way, Proposed Intervenors’ interest is not *which party* wins districts, but instead the *competitiveness* of the districts individually and as a whole.<sup>3</sup>

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<sup>3</sup> Further illustrating the distinctions among different types of what are commonly and generically referred to as “gerrymandering” claims, there is a third type of gerrymandering—*racial* gerrymandering—that has been broadly recognized and validated under federal law. *See, e.g., Alexander v. S.C. State Conf. of NAACP*, 602 U.S. 1 (2024). These causes of action are so distinct, in fact, that the United States Supreme Court has held that *partisan* gerrymandering claims cannot be litigated in federal courts because those courts do not have jurisdiction to hear them, whereas the Supreme Court continues to recognize that *racial* gerrymandering claims remain viable and enforceable. *See Rucho*, 588 U.S. at 709–10.

These theories also highlight different aspects of Wisconsin's current congressional plan. Unlike the evidence used to demonstrate a partisan gerrymander, the most compelling evidence of an anti-competitive gerrymander is the startling lack of competition in Wisconsin's congressional elections. In the 2022 and 2024 elections, the victor in each district won by a median margin of almost thirty percentage points. Only one district (District 3) was genuinely competitive. Outside of this district, every single race was decided by double digits. Moreover, the level of competition would be significantly higher if a neutral line-drawing process that did not aim to suppress competition were employed. Maps created through such a process are both more competitive overall and include more competitive districts.

Partisan gerrymandering and anti-competitive gerrymandering further diverge in whom they injure. Voters who support, and candidates who affiliate with, the party disadvantaged by partisan gerrymandering are the victims of that practice. Their chief harm is their diminished "collective representation in the legislature." *Gill v. Whitford*, 585 U.S. 48, 68 (2018). Anti-competitive gerrymandering more broadly injures *all* voters—regardless of their party affiliation—who are placed in districts substantially safer than they would be under a neutral map. Voters' choices at the polls matter less, or not at all, in uncompetitive districts. Legislators elected from these districts also have less incentive to represent their constituents effectively. After all, no matter how these representatives behave in office, they are nearly certain not to lose their seats.

Anti-competitive gerrymandering claims require an additional consideration at the remedial stage as well. Under this Court’s ruling in *Clarke*, any remedial map adopted after a successful redistricting challenge must satisfy the equal population requirement, comply with all federal and state criteria, respect traditional line-drawing principles, and avoid partisan unfairness. 2023 WI 79, ¶¶64–71. To cure a finding of anti-competitive gerrymandering, a remedial map also must not artificially suppress competition. Most (let alone all) districts need not be competitive, but a remedial map should be similar in its overall competitiveness to reasonable alternative maps that satisfy all applicable legal requirements. To be clear, this additional consideration is highly feasible. Many maps exist that both meet all the conditions identified in *Clarke* (including partisan fairness) and are as competitive as most comparator maps. The remedies for partisan gerrymandering and for anti-competitive gerrymandering therefore overlap to a considerable extent. The only difference is that the latter claim also necessitates consideration of competitiveness at the remedial stage.

To illustrate the potential pitfalls of *ignoring* competitiveness when assessing partisan gerrymandering as a state constitutional violation, consider how Wisconsin’s congressional plan might be redrawn if it were nullified solely on the basis of partisan unfairness. A remedial map could include four safe Democratic districts, four safe Republican districts, and no competitive districts at all. A map like this would be fair in partisan terms, but it would continue to harm voters of all parties who would be consigned to districts where electoral outcomes are preordained. More specifically, a

map like this would continue to harm Proposed Intervenors, who have an interest in voting in districts in which their choices at the polls matter and their legislators effectively represent them. Accordingly, Proposed Intervenors' interest could be frustrated by a remedy for a partisan gerrymandering violation alone. Their interest is only sure to be respected if a remedy cures *both* the partisan tilt *and* the lack of competition of Wisconsin's congressional plan.<sup>4</sup>

While partisan gerrymandering claims have outnumbered anti-competitive gerrymandering claims in recent years, there have been several of the latter. Some state courts have adjudicated challenges under state constitutional provisions listing electoral competition as a redistricting criterion. *See, e.g., Harkenrider v. Hochul*, 197 N.E.3d 437 (N.Y. 2022); *In re Colo. Indep. Legislative Redistricting Comm'n*, 513 P.3d 352 (Colo. 2021); *Ariz. Minority Coal. for Fair Redistricting v. Ariz. Indep. Redistricting Comm'n*, 208 P.3d 676 (Ariz. 2009). Other state courts have struck down districts or maps, in part because they were artificially uncompetitive, under more general state constitutional provisions. *See, e.g., Matter of 2021 Redistricting Cases*, 528 P.3d 40 (Alaska 2023); *Adams v. DeWine*, 195 N.E.3d 74 (Ohio 2022); *Szeliga v. Lamone*, No. C-02-CV-21-001816, 2022 WL 2132194 (Md. Cir. Ct. Mar. 25, 2022). This Court has not explicitly addressed the question of anti-competitive gerrymandering, but in an earlier decision that “condemned gerrymandering,” it acknowledged the malfeasance of maps drawn with “a

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<sup>4</sup> Conversely, were this Court to rule in favor of Proposed Intervenors' claim, Petitioners' interest in partisan fairness would *not* be undermined. Under *Clarke*, any remedial map must “consider partisan impact” and avoid unnecessary partisan bias. 2023 WI 79, ¶69.

desire to preserve the political status quo.” *State ex rel. Reynolds v. Zimmerman*, 22 Wis. 2d 544, 566, 126 N.W.2d 551 (1964). In sum, ample precedent supports the recognition of anti-competitive gerrymandering as a claim distinct from partisan gerrymandering and calling for distinct remedial considerations.

## ARGUMENT

Proposed Intervenors qualify for both mandatory and permissive intervention. Thus, whichever analysis the Court applies, the result will show that intervention is appropriate here. Proposed Intervenors’ Motion should be granted.

### I. PROPOSED INTERVENORS SATISFY ALL OF THE CRITERIA FOR MANDATORY INTERVENTION.

Proposed Intervenors meet all four requirements for mandatory intervention. Moreover, Wisconsin courts view intervention favorably as a tool for “disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process,” *Helgeland*, 2008 WI 9, ¶44 (quoting *State ex rel. Bilder v. Delavan Twp.*, 112 Wis. 2d 539, 548–49, 334 N.W.2d 252 (1983)). Together, these facts militate strongly in favor of intervention here. The four statutory requirements must be “blended and balanced to determine whether [a party has] the right to intervene.” *Id.*, ¶39 (footnote omitted). The “holistic, flexible” analysis that the Wisconsin Supreme Court has prescribed, *id.* ¶40 (footnote omitted), makes clear that Proposed Intervenors’ Motion satisfies the legal standard and must be granted.

**A. This Motion to Intervene Is Timely and Unopposed.**

There is “no precise formula to determine whether a [petition] to intervene is timely,” but the critical factor is whether the proposed intervenor acted “promptly.” *Bilder*, 112 Wis. 2d at 550. Whether an intervenor acted promptly is determined by “when the proposed intervenor discovered its interest was at risk and how far litigation has proceeded.” *Olivarez v. Unitrin*, 2006 WI App 189, ¶15, 296 Wis. 2d 337, 723 N.W.2d 131 (citing *Roth v. LaFarge Sch. Dist. Bd. of Canvassers*, 2001 WI App 221, ¶17, 247 Wis. 2d 708, 634 N.W.2d 882). The Court also should consider whether intervention will prejudice the original parties. *Bilder*, 112 Wis. 2d at 550.

Petitioners initiated this suit on May 8, 2025 with a petition for leave to commence original action. Proposed Intervenors filed this Motion within the Court-ordered window for responses to the petition, and before this Court took any substantive action in this case; the Motion is not dilatory. This Court has held that an intervention motion filed prior to the first court hearing in a matter was timely. *Armada Broad., Inc. v. Stirn*, 183 Wis. 2d 463, 472, 516 N.W.2d 357 (1994). By moving to intervene so promptly, before this Court has taken any action, Proposed Intervenors undoubtedly satisfy the timeliness element of mandatory intervention.

Nor would there be any prejudice to the original parties by granting this Motion. Proposed Intervenors’ anti-competitive gerrymandering claim is distinct from Petitioners’ partisan gerrymandering claim, and a judicial finding of an anti-competitive gerrymander in no way precludes a finding of and remedy for a partisan gerrymander. Moreover, Petitioners’ stand-

alone separation of powers claim remains an independent basis for striking down the map. The absence of prejudice underscored by the fact that the parties to this action do not oppose their intervention. *See* Intervenor-Petitioners' Unopposed Motion to Intervene, ¶6.

**B. Proposed Intervenors' Interests Are Sufficiently Related to Redistricting.**

No specific test exists for determining whether interests are sufficient to warrant intervention. Instead, a court is tasked with analyzing the facts and circumstances in light of the "policies underlying the intervention statute." *Helgeland*, 2008 WI 9, ¶¶43–44 (footnotes omitted). A proposed intervenor's interest must be of "direct and immediate character" such that "the intervenor will either gain or lose by the direct operation of the judgment." *Id.*, ¶45 (quoting *City of Madison*, 2000 WI 39, ¶11 n.9). An interest "too remote and speculative" will not "support a right of intervention." *Id.*, ¶53.

Proposed Intervenors' interests in the outcome of this dispute are direct and immediate. Eight of the Proposed Intervenors currently reside in the eight U.S. House of Representatives districts in Wisconsin designated by an unconstitutional congressional map. Most of these districts are less electorally competitive than they would be if they were designed through a fair, nonpartisan process. As a result, most if not all of Proposed Intervenors' votes are discounted under the existing congressional map. It follows that Proposed Intervenors have a clear interest in ensuring that their respective congressional districts are reapportioned equally and with partisan fairness, as well as in a way that gives full value to their votes through elections in

which competition is not artificially reduced. Proposed Intervenors here are mostly individual voters, not “lobbying and public education groups, which courts have found to lack legal interests that would support intervention as a matter of right.” *Planned Parenthood of Wis. v. Urmanski*, No. 2024AP330-OA, Order at 2 (Wis. July 2, 2024).<sup>5</sup>

“[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.” *Reynolds v. Sims*, 377 U.S. 533, 555 (1964). As this Court has previously recognized, redistricting affects “public policy for years beyond” the map-drawing process. *Jensen*, 2002 WI 13, ¶10 (per curiam). *Jensen* further establishes that “[t]he people of this state have a strong interest in a redistricting map drawn by an institution of state government—ideally and most properly, the legislature, secondarily, this court.” *Id.*, ¶17. Since *Jensen*, this Court has reaffirmed the importance of individual voters’ interests in redistricting litigation, by approving requests by voters to intervene in both *Clarke* and *Johnson*. See *Clarke v. Wis. Elections Comm’n*, No. 2023AP1399-OA, Order at 1–2 (Wis. Oct. 13, 2023) (granting motions to intervene filed by three different individuals or groups); *Johnson v. Wis. Elections Comm’n*, No. 2021AP1450-OA, Order at 1–2 (Wis. Oct. 14, 2021) (granting motions to intervene filed by five different organizations and groups of individuals). Proposed Intervenors undoubtedly have interests at stake in this case.

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<sup>5</sup> WBLD is a public education group. That alone should not disqualify it from intervention as of right. But, regardless, the individual Proposed Intervenors have standing, which is adequate for intervention to be granted. See, e.g., *Clarke*, 2023 WI 79, ¶¶38–39.

Protecting these interests clearly outweighs any interest the original parties may have in excluding others from this lawsuit, especially given the fact that, as described above, granting permission to intervene at this early stage in the proceedings will neither unduly complicate nor delay the litigation. Allowing intervention now strikes the appropriate balance between the original parties' interests and "allowing persons to join a lawsuit in the interest of the speedy and economical resolution of controversies without rendering the lawsuit fruitlessly complex or unending." *Helgeland*, 2008 WI 9, ¶44. Granting Proposed Intervenors' Motion will thus uphold, rather than contravene, the policies underlying Wis. Stat. § 803.09.

**C. The Disposition of this Case May Impair Proposed Intervenors' Ability to Protect Their Interests.**

The outcome of this litigation "may, as a practical matter, impair or impede the [Intervenors'] ability to protect interests that may be related to the subject of [the] action." *Helgeland*, 2008 WI 9, ¶75 (footnote omitted). Just as a court should "approach intervention as of right generally," this inquiry is taken under a "pragmatic approach ... focus[ed] on the facts of each case and the policies underlying the intervention statute." *Id.*, ¶79.

This litigation addresses congressional redistricting, the electoral and policy ramifications of which resonate far and wide throughout the state. The outcome here could not have a more direct impact on Proposed Intervenors' ability to advocate for their interests in the future. Indeed, if this Court adjudicates Petitioners' claims, it is essential that Proposed Intervenors' views be considered within the litigation. Proposed

Intervenors are focused on ensuring adequate competition both in individual districts and across the congressional map as a whole. This goal will not necessarily be achieved by Petitioners' claim, which seeks primarily to replace the current biased map with one that does not have as severe a partisan skew. The competitiveness of the current map and of any remedial map are of secondary significance to Petitioners, while they are the principal issues of interest to Proposed Intervenors. As described in more detail above, *see supra* "Legal Background," Proposed Intervenors ground their claim in a legal theory distinct from Petitioners' claims, which could involve different remedial considerations from those raised by Petitioners' claims alone. Consequently, denying this motion would exclude not only Proposed Intervenors but also the interests that motivate their arguments and would perpetuate the harms that they seek to remedy.

**D. No Parties Adequately Represent Proposed Intervenors' Interests.**

"[T]he showing required for proving inadequate representation 'should be treated as minimal.'" *Helgeland*, 2008 WI 9, ¶85 (quoting *Armada Broad.*, 183 Wis. 2d at 476 (quoting in turn *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972))). Even if the movant's interests are similar to interests already represented by an existing party, such similarity only weighs against the movant, but is not dispositive. *Braun v. Vote.org*, 2024 WI App 42, ¶25, 413 Wis. 2d 88, 11 N.W.3d 106 (quoting *Helgeland*, 2008 WI 9, ¶86). But "[i]f the interest of the proposed intervenor is not represented at all, ... the proposed intervenor is not adequately represented." Jay E. Grenig, 3 Wis. Prac., Civil Procedure (4th ed.) § 309.2.

In assessing adequacy, courts “must also consider whether either of ... two rebuttable presumptions applies.” *Braun*, 2024 WI App 42, ¶26 (citing *Helgeland*, 2008 WI 9, ¶85). As the *Braun* court summarized:

First, courts typically presume adequate representation when a movant and an existing party have the same ultimate objective in the action. Second, when the putative representative is a governmental body or officer charged by law with representing the interests of the absentee, a presumption of adequate representation arises whether the would-be intervenor is a citizen or subdivision of the governmental entity. If either presumption applies, a more compelling showing of inadequate representation may be required.

*Id.* (internal quotation marks and citations omitted).

Petitioners do not adequately represent Proposed Intervenors’ interests. While Proposed Intervenors share Petitioners’ interest in a congressional map that exhibits partisan fairness, they advance a distinct claim, based on a distinct injury, and advocate additional remedial considerations. These differences are both substantive and significant; their magnitude precludes any suggestion that Petitioners can adequately represent Proposed Intervenors’ views. Petitioners and Proposed Intervenors do not “have the same ultimate objective in th[is] action.” *Id.* (quoting *Helgeland*, 2008 WI 9, ¶90). While both argue that Wisconsin’s current congressional map violates our state constitution and should be struck down, they articulate different reasons to substantiate that conclusion, and Proposed Intervenors seek the application of additional criteria in evaluating any proposed replacement map. *See supra* “Legal Background.” This renders the first presumption inapplicable.

Nor do Respondents, the Wisconsin Elections Commission (WEC) and its officials, adequately represent Proposed Intervenors’ interests.

Proposed Intervenors seek to intervene as petitioners. By definition, they are adverse to WEC and its officials, who are bound to conduct elections using the current map until the Legislature and the Governor adopt new congressional districts, unless this Court prohibits WEC from doing so. Moreover, WEC and its officials have no duty to advocate for Proposed Intervenors' approach. In the two previous redistricting actions that have been litigated in the current decennial redistricting cycle, WEC has taken no substantive position and has advocated only for timely adjudication.<sup>6</sup> Thus, although WEC is "a governmental body or officer charged by law with representing the interests of" voters writ large, *Braun*, 2024 WI App 42, ¶26 (internal quotation marks and citations omitted), the second presumption is

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<sup>6</sup> See, e.g., *Felton v. Wis. Elections Comm'n*, No. 2025AP999-OA, Resp. of Wis. Elections Comm'n and Its Comm'rs and Admin. to Pet. for Leave to Commence an Original Action, at 1–2 (Wis. May 29, 2025) ("[T]he Commission takes no position on the merits of the claims in the petition for leave to commence an original action. The Commission's primary concern is to ensure that any litigation involving congressional district boundaries is conducted in a way that accommodates relevant administrative limitations and statutory deadlines, so that the litigation does not disrupt or impair the proper, efficient, and effective administration of the 2026 election calendar."); *Clarke v. Wis. Elections Comm'n*, No. 2023AP1399-OA, Resp. of Wis. Elections Comm'n and Its Comm'rs and Admin. to Pet. for Leave to Commence an Original Action, at 2 (Wis. Aug. 22, 2023) ("[T]he Commission takes no position on the merits of the claims .... The Commission's primary concern is to ensure that any litigation involving legislative district boundaries is conducted in a way that takes into account relevant administrative limitations and statutory deadlines."); *Johnson v. Wis. Elections Comm'n*, No. 2021AP1450-OA, Letter to Wis. Supreme Ct. from Resp't Wis. Elections Comm'n, at 1 (Wis. Mar. 9, 2022) ("Throughout this original action, the Commission has taken a neutral position on the merits of the case .... Instead, the Commission has asserted that any redistricting plan 'needs to be in place no later than March 1, 2022, in order to enable staff of the Wisconsin Elections Commission to timely and effectively administer Wisconsin's next scheduled congressional and state legislative election.'" (citation omitted)).

also inapposite, because there is no reason to believe that WEC and its officials will adequately represent Proposed Intervenors' interests here.

Because no party represents Proposed Intervenors' interests, all four criteria for mandatory intervention are satisfied. Accordingly, the Court should grant the Petition to Intervene.

## **II. PROPOSED INTERVENORS ALSO MEET ALL CRITERIA FOR PERMISSIVE INTERVENTION.**

Alternatively, Proposed Intervenors should be allowed to intervene with this Court's permission. A court may grant permissive intervention to anyone who would be a proper party. *See, e.g., City of Madison*, 2000 WI 39, ¶11 n.11. In considering a request for permissive intervention, the Court shall "consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." Wis. Stat. § 803.09(2). Absent prejudice, intervention is within the Court's discretion, as long as the movant's claim or defense and the main action share a common question of law or fact. *Helgeland*, 2008 WI 9, ¶120.

Proposed Intervenors have significant interests in the competitiveness of Wisconsin's congressional districts. And Proposed Intervenors seek to articulate and advocate for a distinct legal theory in addition or in the alternative to Petitioners' claims, based on a distinct harm, and leading to distinct remedial considerations not being advanced by any existing party or other potential intervenor. This Court has suggested that where a proposed intervenor has "identified a[] specific 'claim or defense' that they possess regarding" the merits of the case, judicial discretion tilts in favor of permissive intervention. *Planned Parenthood of Wis.*, No. 2024AP330-

OA, Order at 3 (Wis. July 2, 2024) (citing *Keith v. Daley*, 764 F.2d 1265, 1272 (7th Cir. 1985)). Proposed Intervenors have their own unique, specific claim of unconstitutionality here that both arises from a unique harm identified in their complaint and requires remedial considerations different from those sought by Petitioners; it only makes sense that they be granted intervention to participate here. To conclude otherwise would preclude Proposed Intervenors' ability to advocate for their interests, both here and in the future.

Allowing Proposed Intervenors to participate would not prejudice any party to this proceeding nor cause any delay; to the contrary, granting intervention will affirmatively advance this litigation, and the Proposed Intervenors are committed to move as expeditiously as the Court directs. *First*, the Petition for Original Action in this matter has been pending for only a short period of time, and Proposed Intervenors' Unopposed Motion is filed within the Court-ordered window for responses to the Petition. *Second*, given Respondents' history of taking no substantive position in redistricting disputes, including Proposed Intervenors in this litigation will benefit the Court by ensuring that any new law development by the Court in declaring proper districting criteria, adopting processes, and, if necessary, selecting among proposed maps is truly tested through the crucible of adversarial litigation. While Petitioners and Proposed Intervenors both believe the current map is unlawful, their divergent paths to reaching that conclusion and the potentially differing considerations they believe should inform a replacement map will sharpen the advocacy before this Court,

providing greater, more complete information and thereby strengthening the outcome.

For these reasons, inclusion of Proposed Intervenors is proper. Should this Court find that Proposed Intervenors do not meet the standards for intervention as of right, Proposed Intervenors respectfully request that the Court grant them permissive intervention.

### CONCLUSION

For the foregoing reasons, Proposed Intervenors respectfully request that this Court grant this Unopposed Motion to Intervene.

Dated: June 5, 2025.

*Electronically signed by Jeffrey A. Mandell*

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