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SUPREME COURT

No.2025AP999-OA

In the Supreme Court of Wisconsin

KATE FELTON, LOREN DE LONAY, KYLE JOHNSON, RAYMOND SPELLMAN,
VALERIA CERDA, LYNN CAREY, RAFAEL SALAS, CURTIS GAUTHIER, *and*
PATRICIA SCIESZINKSI,
PETITIONERS,

v.

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

On Petition To The Supreme Court To
Take Jurisdiction Of An Original Action

APPENDIX OF PROPOSED INTERVENOR-RESPONDENTS
CONGRESSMEN GLENN GROTHMAN, BRYAN STEIL, TOM
TIFFANY, SCOTT FITZGERALD, DERRICK VAN ORDEN, AND TONY
WIED, AND INDIVIDUAL VOTERS GREGORY HUTCHESON,
PATRICK KELLER, PATRICK MCCALVY, AND MIKE MOELLER

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CERTIFICATION

I hereby certify that filed with this brief is an appendix that complies with s. 809.19 (2) (a) to the extent applicable to petitions for original actions and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under s. 809.23 (3) (a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using one or more initials or other appropriate pseudonym or designation instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 29th day of May, 2025.

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ELECTIONS, JUSTICE, POLITICS, SUPREME COURT

Milwaukee County Judge Janet Protasiewicz announces candidacy for state Supreme Court

Protasiewicz running for seat being vacated by retiring Justice Patience Roggensack

BY THE ASSOCIATED PRESS • MAY 25, 2022



The Wisconsin Supreme Court on Wednesday, June 9, 2021, at the Wisconsin State Capitol in Madison, Wis.
Angela Major/WPR

Milwaukee County Circuit Judge Janet Protasiewicz says that she will run for the Wisconsin Supreme Court next year to fill a seat currently held by the conservative former chief justice.

The Larry Meiller Show

The Ideas Network • [Schedule](#)

Retiring Justice Patience Roggensack, who turns 82 in July, isn’t seeking a third 10-year term. She is part of the four-justice conservative majority on the seven-member court.

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Protasiewicz said in a statement Wednesday launching her candidacy that “radical right-wing extremists” are attacking “our most closely-held constitutional rights.”

Numerous others are mulling whether to run, including former conservative state Supreme Court Justice Dan Kelly.

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milwaukee journal sentinel

POLITICS

Wisconsin Supreme Court candidate Janet Protasiewicz assails state's election maps as 'rigged'



Corrinne Hess

Milwaukee Journal Sentinel

Published 3:23 p.m. CT Jan. 9, 2023 | Updated 4:14 p.m. CT Jan. 9, 2023

MADISON – Speaking at a campaign forum Monday, Wisconsin Supreme Court candidate Janet Protasiewicz called state election maps "rigged" and designed to take away votes from people in larger communities including Dane and Milwaukee counties.

"They do not reflect people in this state. I don't think you could sell any reasonable person that the maps are fair," said Protasiewicz, a Milwaukee County judge and one of four running for a seat on the state Supreme Court. "I can't tell you what I would do on a particular case, but I can tell you my values, and the maps are wrong."

In April 2022, the court ruled 4-3 in favor of a legislative redistricting plan drawn by Republican lawmakers giving the party's candidates in the Legislature a bigger advantage over the next decade.

More: Wisconsin finally has its new election maps. Here is how we got there and what the end result means for voters

New maps are drawn every 10 years.

Former Supreme Court Justice Daniel Kelly, seeking a return to the bench, said the court's responsibility was limited to considering legal challenges, not political challenges.

"When someone tells you what their values are to a legal challenge, they are telling you how they will decide a case," Kelly said. "Unless we are dead set on tearing down the distinctions of the branches of government, we need to make sure the court exists for deciding legal distinctions."

Protasiewicz and Kelly joined the other two candidates, Waukesha County Court Judge Jennifer Dorow and Dane County Judge Everett Mitchell, during a forum sponsored by WisPolitics.com.

Mitchell agreed with Protasiewicz's assessment of the state's election maps, saying they only benefit the status quo. He said he hopes future maps are less partisan and represent Wisconsin's diversity.

On most questions, Dorow read from a prepared script and did not answer fully, saying the issues, including election maps and gun control might be before the court.

The four candidates are in a hotly contested race for conservative Justice Patience Roggensack's seat, which could swing the makeup of the court from its current 4-3 conservative majority.

On Monday, Roggensack endorsed Dorow, one of two conservative candidates running. Kelly, the other conservative, served with Roggensack. Kelly was appointed to the court in 2016 and lost his bid for a 10-year term in 2020 to Jill Karofsky, a member of the court's liberal minority.

Protasiewicz and Mitchell are both liberals running with the support of Democrats.

Each candidate highlighted the individual experiences that they say will make them the best candidate for the 10-year term on the Supreme Court.

The candidates also pledged to not let outside funding influence how they would rule from the bench if elected and to recuse themselves if there is a conflict of interest.

The top two vote-getters during the primary on Feb. 21 will go onto the April 4 general election.

While abortion is likely to be one of the key issues in the Supreme Court race, it was not a focus of Monday's forum. Republican legislative leaders have said they don't want the race to become a one-issue contest.

Assembly Speaker Robin Vos hopes the Republican-controlled Legislature can introduce amendments to the state's abortion ban or write a new law that will be signed by Gov. Tony Evers so the state Supreme Court doesn't have to weigh in. But Evers has repeatedly said he wouldn't sign a bill unless it codifies abortion rules in place under the five decades of *Roe v. Wade*.

State leaders have grappled with abortion policy since the U.S. Supreme Court struck down its 1973 ruling legalizing abortion nationwide, leaving it up to state officials to decide their rules. The decision put back into effect the state's 1849 law banning doctors from providing abortions unless women would die without the procedure.

Mitchell and Protasiewicz cited the Dobbs decision as the court's worst ruling in the last 50 years.

Candidates' fundraising varies widely

Early campaign finance reports show Protasiewicz, who declared her candidacy last May, raised \$756,217 in the second half of 2022, pushing her fundraising last year to \$924,449, according to figures released by her campaign Monday.

Mitchell, who declared his candidacy last June, raised \$24,471 in the first six months of 2022 and had \$27,767 in his campaign account on June 30. The latest campaign finance report for Kelly, who entered the race last September, showed he raised nothing in the first six months of 2022 and had \$16,581 in his campaign account on June 30, left over from his unsuccessful 2020 court race, according to the Wisconsin Democracy Campaign.

Dorow, who entered the race in November, has not raised any campaign cash since 2012 when she ran for her first six-year term for circuit judge, according to the Wisconsin Democracy Campaign.

Campaign finance reports for the last half of 2022 are due Jan. 17.



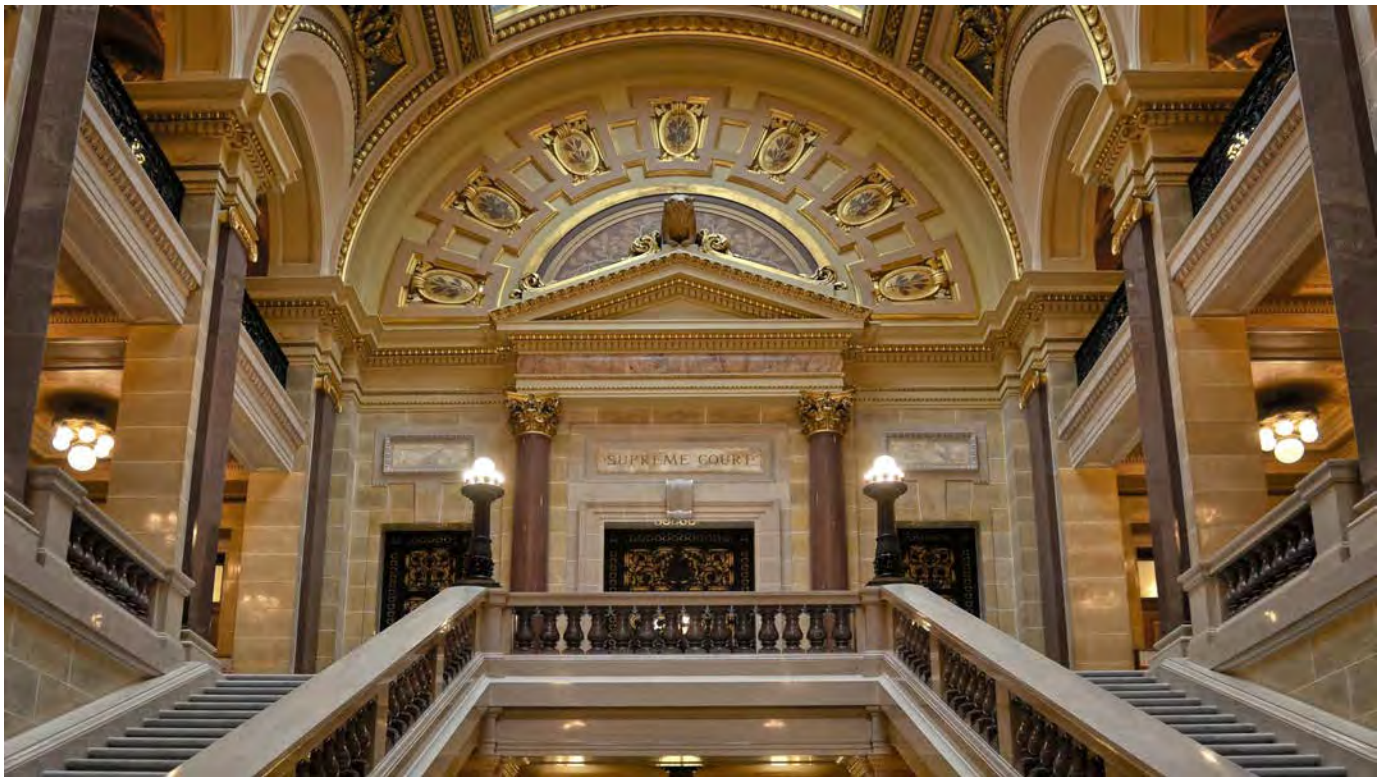
ELECTIONS, JUSTICE, POLITICS, STATE CAPITOL

Wisconsin Supreme Court candidates discuss abortion, redistricting at Madison forum

The race between Jennifer Dorow, Dan Kelly, Everett Mitchell and Janet Protasiewicz could swing the ideological balance of the court

BY SHAWN JOHNSON • JANUARY 9, 2023

Listen



Wisconsin Supreme Court. [Richard Hurd](#) (CC-BY)

The four candidates running for a pivotal seat on the Wisconsin Supreme Court laid out how they'd approach the job during a forum in Madison Monday, with some of the candidates sending strong signals about their views on issues like redistricting and abortion.

Waukesha County Judge Jennifer Dorow, former Wisconsin Supreme Court Justice Dan Kelly, Dane County Circuit Court Judge Everett Mitchell and Milwaukee County Circuit Court Judge Janet Protasiewicz are all seeking a 10-year term on the court to replace conservative Justice Patience Roggensack, who is retiring. Roggensack endorsed Dorow Monday.

The court currently has a 4-3 conservative majority, meaning **the race could flip the ideological balance of the court**. While the race is officially nonpartisan,

App.6

Dorow and Kelly are supported by Republicans while Mitchell and Protasiewicz are backed by Democrats.

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The forum comes a little more than a month before voters head to the polls in a Feb. 21 primary. The top two vote-getters will advance to the general election on April 4.

Here are some of the issues they addressed.

Abortion

While the candidates were not asked directly about abortion, the issue came up when they were asked to name the worst Supreme Court ruling they'd seen in the last 30 years.

Mitchell and Protasiewicz both listed U.S. Supreme Court's *Dobbs v. Jackson Women's Health Organization* decision, which overturned *Roe v. Wade* and reversed decades of precedent guaranteeing abortion rights.

"It was the first time in my study of the law that I can see that the Supreme Court went and took a right," Mitchell said.

Mitchell said the decision had left behind **chaos where each state is making its own decisions** about reproductive choice.

"We're dealing with the consequences of the instability all throughout our country, and all throughout many people's lives right now," Mitchell said.

Protasiewicz said she was surprised the U.S. Supreme Court overturned *Roe*.

"That is the epitome and definition of judicial activism," Protasiewicz said.

"Three generations of women have counted on *Roe v. Wade*, to allow them to make their own decisions in regard to reproductive rights."

Protasiewicz said she couldn't say where she would end up on the issue on a case involving abortion, but she said that she could share her personal values when it comes to the issue.

“My value is that women should be able to make their reproductive right decisions themselves,” Protasiewicz said.

Neither Kelly nor Dorow mentioned Roe in their answers. Both were once appointed to judicial positions by former Republican Gov. Scott Walker, where they were asked a similar question on their applications.

At the time, Kelly, whom Walker appointed to the Wisconsin Supreme Court, cited a 2005 ruling that expanded the government’s power of eminent domain, according to the forum moderator.

“This is significant interference with the liberties that our Constitution protects,” Kelly said. “And so I think that opinion stands up well as one of the worst opinions.”

In her application to the Waukesha County Circuit Court, the forum moderator said, Dorow cited the **2003 U.S. Supreme Court decision** overturning a Texas anti-sodomy law. She did not address that case or provide another example in her answer to the question Monday, instead saying she would follow the law regardless of whether she liked it.

“Sometimes, the words, or even the statutes themselves, are stupid,” Dorow said. “But stupid doesn’t mean unconstitutional. It doesn’t matter to my job whether I liked the words or even agree with the law. My job is to apply the words and what they mean.”

Redistricting

The candidates were also asked about the Wisconsin Supreme Court’s decisions in the state’s last round of redistricting, where conservative justices decided to approve a map that took a “**least changes**” approach to redistricting. In practice, that meant approving a map that adhered closely to the one Republicans passed and Walker signed in 2011.

Following a string of court decisions that included an appeal to the U.S. Supreme Court, **Wisconsin’s conservative majority eventually approved the legislative redistricting plan** passed by Republican lawmakers in 2021, which had an even stronger GOP advantage than the map the Legislature passed a decade earlier. In last year’s elections, Republicans grew their majorities in the Legislature, even as Democratic Gov. Tony Evers won his race statewide.

Protasiewicz and Mitchell both attacked the decision.

“Let’s be clear here: the maps are rigged,” Protasiewicz said. “I don’t think you could sell to any reasonable person that the maps are fair.”

Protasiewicz said the idea of a “least changes” map might sound good to people, but in practice it had taken meaningful representation away from voters.

“I see no basis for it in the Constitution, no basis in caselaw,” Protasiewicz said.

Mitchell said that democracy had become “broken” in many ways and called for legislators to draw districts in a fair, nonpartisan way. Mitchell, who is Black, also criticized the use of “least changes” as a rationale for map-drawing.

“Anytime as an African American in judicial spaces (you) hear the words “least change approach,” it just brings up all kinds of past trauma of how people didn’t want to change stuff because it did not empower our communities,” Mitchell said. “It always means more oppression and more pain for folks who don’t have a voice in the political process.”

Kelly, who was not on the court when justices issued their redistricting decisions, largely defended the court’s approach to redistricting.

“The phrase ‘least change’ is meant to capture what the court’s responsibility is when it has to consider a redistricting map,” Kelly said. “When a map comes to the court ... the court’s responsibility is limited to considering the legal challenges, not the political challenges.”

Kelly also criticized Protasiewicz for weighing in on redistricting.

“I think when someone tells you what their values are in answer to a legal question, they’re telling you how they’re going to decide a case,” Kelly said.

Dorow described the recent redistricting process as “interesting” but declined to weigh in on the maps, or discuss the court’s rationale, noting that there was talk of bringing additional redistricting lawsuits in state court.

“So I will not put myself in a position to prejudge anything,” Dorow said. “But as with any case, I will listen to the challenge, and I will apply the law to the facts at hand.”

Recusal

With so much focus on Wisconsin’s Supreme Court, the state’s political parties and outside interest groups are expected to spend millions of dollars trying to influence the contest. Many of those groups could some day have business before the court.

Right now, it’s up to justices to decide when to recuse themselves from those cases, although there has been an effort to get the court to adopt consistent recusal standards.

Dorow voiced support for the current standard, which leaves it up to justices to decide when they can hear cases.

“My integrity cannot be bought by anyone,” Dorow said. “Justice requires that judges and justices hear the cases that come before the court. We have an ethical obligation to diligently take care of our cases.”

Kelly also voiced support for the current system.

“Only we can truly know whether we are going to be adversely impacted by someone’s contribution,” Kelly said. “It would be extraordinarily difficult to develop a standard of recusal.”

Mitchell also did not endorse new recusal standards, saying it was up to justices to be frank with people who come into their courtroom.

“If you cannot listen to evidence in a fair manner, then you need to make sure that you give the person in front of you the due respect to tell them I need to get off this particular case,” Mitchell said.

Protasiewicz endorsed the idea of new recusal standards but didn’t say where the line should be drawn that would require justices to step aside in cases involving their supporters or critics.

“There has to be a recusal rule,” Protasiewicz said. “The public has to weigh in. I’m not going to sit here and tell you what I think an exact number is.”

Monday’s forum was **organized by Wispolitics** and moderated by WisPolitics Editor JR Ross and CBS58 Capitol reporter Emilee Fannon.

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WisPolitics State Supreme Court Election Forum
January 9, 2023

Page 2 1 ANNOUNCER: You're watching 2 WisconsinEye, an independent, non-profit, public 3 affairs network engaging the citizens of 4 Wisconsin since 2007 through access to government 5 proceedings and public policy events. 6 To support programs like this, please 7 consider a tax deductible donation at 8 Wiseye.org/donate or by texting Wiseye to 44321. 9 JEFF MAYERS: All right, hi there 10 everybody. I'm Jeff Mayers from WisPolitics.com. 11 Thanks very much for coming to this event. We 12 have a very important Supreme Court race and your 13 attendance shows it. 14 I want to thank our sponsors, of 15 course. State Bar of Wisconsin, thank you very 16 much, who we do debate, Attorney General debate 17 and Supreme Court debate with the State Bar every 18 time there's an important race. So, candidates, 19 the winners who emerge will be invited, and I 20 hope you nod your yes right now that you will be 21 part of the State Bar debate. Yes, there you go. 22 All right. I did my job, Larry. 23 I also want to thank our other sponsor, 24 of course, the Wisconsin Institute for Law and 25 Liberty. Thank you very much, Will, and all your	Page 4 1 statement in alphabetical order. We did draw 2 names in the back on who will be going first for 3 opening remarks, so with that, we have Everett 4 Mitchell who will be going first. Then we will 5 be taking questions from myself and JR, and then 6 we'll be gathering some questions from the 7 audience to wrap up this 90-minute debate. 8 All right. Well, with that, we'll 9 start with opening remarks, so Judge Everett 10 Mitchell, you can begin. 11 JUDGE EVERETT MITCHELL: Well, good 12 afternoon, Wisconsin. Good afternoon, guests. 13 My name is Everett Mitchell and I'm running for 14 Wisconsin Supreme Court because I believe our 15 state deserves the justice that reflects the 16 diversity and ideas and values of our entire 17 state. 18 For too long, partisanship has 19 separated us so that we're not able to have the 20 representation that Wisconsin people need. And 21 as a judge since 2016, I've learned that justice 22 is not just what you say; justice is what you do. 23 And I believe that we need a justice can 24 represent what that means for our state. 25 I've worked hard as a judge to be tough
Page 3 1 guests for being part of this event. 2 Okay, so this is not a debate; it's a 3 forum, so I ask you to please refrain from jeers 4 or boos or wild applause or shouts of joy; just 5 try to keep it contained, okay, please. Please 6 silence your phones if you can. 7 So this is not being livestreamed; it's 8 being recorded for a full broadcast later today 9 by WisconsinEye, and when we get the link, we'll 10 post it at our site and we'll also distribute it 11 in our products, so you can go to WisPolitics.com 12 later on for that. 13 So again, silence your phones. Thank 14 you very much for attending. I'm now going to 15 turn it over to the co-hosts of the WisconsinEye 16 program that we are also part of called "Rewind." 17 JR Ross, he's the WisPolitics.com editor, and 18 Emilee Fannon, she's the Capitol bureau chief for 19 Channel 58 out of Milwaukee. 20 So please welcome them and the 21 candidates. 22 EMILEE FANNON: So I will begin just 23 talking to you guys about the format that we'll 24 be doing today. Each candidate will have a 90- 25 second opening remarks and each will make a	Page 5 1 but fair. I've worked hard to be proactive in 2 our community rather than reactive, to address 3 public safety as the needs of Dane County heads 4 on. Like a couple of my opponents here, I've 5 been a former prosecutor and now a judge, handing 6 out punishment when necessary, but giving out 7 hope when it's entirely needed as well. 8 What separates me from my opponents is 9 this: I've also worked with community leaders, 10 faith leaders, school officials, LGBTQ leaders, 11 police chiefs, sheriffs, and rank-and-file 12 officers to take on crime, to stop it before it 13 starts, and to prevent people from becoming 14 victims in the first place. 15 One of my proudest accomplishments is 16 establishing the Juvenile Empowerment Team 17 Committee, where we work with rank-and-file 18 officers, school officials to go out and work 19 with young people to ensure that they are not 20 committing crimes in the first place, because if 21 they're not committing crimes, that means their 22 futures are protected and there are no victims 23 being harmed at the same time. My commitment to 24 our young people is that here in Dane County, we 25 want to make sure that crime is stopped, and I

Page 6 1 want to bring that vision and that passion 2 throughout our entire state. 3 I want people to know that you not only 4 can trust the work that I have done, but also 5 trust the vision that I have for what the rule of 6 law and what our Supreme Court can be able to 7 provide for our entire state. 8 I look forward to this conversation and 9 you getting to know a little bit more about me 10 and me getting to be able to answer your 11 questions about the things and the values of our 12 state that will continue to be forward for the 13 next 10 years. Thank you so very much. 14 EMILEE FANNON: Up next is going to be 15 Janet Protasiewicz. 16 JUDGE JANET PROTASIEWICZ: Thank you 17 very much. Well, first, I would like to thank 18 WisPolitics for hosting this forum and thank all 19 of you for turning out today to hear us talk 20 about our views and what we think about some of 21 the issues that may or may not come before the 22 Wisconsin Supreme Court in such a critically 23 important race. 24 I got into this race to bring change 25 and common sense back to our Supreme Court. I	Page 8 1 state. I have spent time listening to people and 2 hearing about what they think is important and I 3 know what they think is important. What they 4 want is the extremism to stop immediately; that 5 is what people want. 6 I am here to tell you that I am -- 7 EMILEE FANNON: Judge, your time is up 8 if you could wrap up your final remarks. 9 JUDGE JANET PROTASIEWICZ: -- that 10 change, common sense candidate. Thank you. 11 EMILEE FANNON: Next up is Judge 12 Jennifer Dorow. 13 JUDGE JENNIFER DOROW: Well, thank you 14 to WisPolitics for hosting this forum, to the 15 moderators, and to the audience both here and who 16 will eventually watch online today for taking 17 time out of your busy schedule to be here. 18 I am Judge Jennier Dorow. I'm a wife, 19 I'm a mother, I'm a coach, and I'm a judge. I'm 20 a lifetime resident of Wisconsin. This is my 21 home. 22 Over my 26-year legal career, I have 23 served as a prosecutor, a private practice 24 attorney, and an advocate for abused and 25 neglected children. And for the last 11 years, I
Page 7 1 started thinking about it last spring. I could 2 not sit back and watch extreme right-wing 3 partisans hijack our Supreme Court, and that is 4 why I got into this race: change and common 5 sense. 6 My entire life has been dedicated to 7 community service; that is all I have ever wanted 8 to do. For the past 30 years, I have worked as a 9 prosecutor in Milwaukee County and a judge in 10 Milwaukee County. As a prosecutor, I handled 11 some of the most violent troubling cases that 12 could ever come before a court and that affect a 13 community in so very many ways. As a judge, I 14 just came off of three years in homicide and 15 sexual assault court. I have worked very, very 16 hard to keep the community safe and make the 17 tough calls necessary to ensure safety and uphold 18 peoples' constitutional rights. 19 I got into this race late last spring, 20 and I can tell you I have been all over our 21 beautiful state and, my God, our state is 22 beautiful, it is gorgeous. I have been 23 everywhere. During this period of time, I have 24 garnered over 1,000 endorsements from judges, 25 community leaders, and attorneys across our	Page 9 1 have served as a Waukesha County judge having won 2 two elections as a trial court judge. 3 I am running for the Supreme Court 4 because the people of this great state of 5 Wisconsin need and deserve a justice who will 6 uphold the rule of law, protect our 7 constitutional rights, and not inject their 8 political bias by legislating from the bench. 9 I have a depth and a breadth of 10 experience, unlike any other candidate, and an 11 unwavering commitment to a fair and impartial 12 judiciary. I'm also the choice of law 13 enforcement for the Wisconsin Supreme Court, 14 having earned bipartisan support and more law 15 enforcement endorsements than any other candidate 16 on this stage. 17 I also love this state and care deeply 18 for its future. I want to do my part to ensure 19 that my children, my children's children, and the 20 families of Wisconsin have a safe and secure 21 state in which to live, work, and play, and where 22 judges and justices protect our constitutional 23 rights. 24 EMILEE FANNON: Your time is up, please 25 wrap up.

Page 10 1 JUDGE JENNIFER DOROW: I've done that 2 as a trial court judge and now I'd be honored to 3 do that on the Wisconsin Supreme Court. 4 EMILEE FANNON: Justice Dan Kelly, your 5 opening remarks. 6 JUSTICE DAN KELLY: Thank you. Well, 7 good afternoon everyone. I'd like to take just a 8 moment to introduce myself to you. I came to 9 Wisconsin 40 years ago as a young man getting 10 ready to study at Carroll College. 11 I fell in love with the people of 12 Wisconsin the very first day I was here because 13 of the very first people that I met. They were 14 the most warm and welcoming people that you could 15 imagine, and over a long weekend of camping and 16 fishing, they taught me what it is to be a 17 Wisconsinite. I learned from them that 18 Wisconsinites are the people of the open hand and 19 the generous hearts. 20 A few years later, I met my wife at 21 intervarsity Christian fellowship meeting at 22 school, and 33 years and five children later, 23 they're my treasures. 24 The people of Wisconsin are the same as 25 when I met them 40 years ago: the people of the	Page 12 1 millions of dollars on this race because what is 2 perceived to be at stake and they expect the 3 candidate they support will vote the "right" way. 4 Can you point to any ruling you've issued or 5 personal experience with the law that shows 6 you'll be an independent thinker on the Court 7 rather than a reliable vote for one side or the 8 other? 9 JUDGE JANET PROTASIEWICZ: Thank you. 10 Judicial independence is absolutely crucial and 11 critical. Wisconsinites deserve a court that is 12 independent. Wisconsinites deserve a court where 13 there's not a thumb on the scale. Wisconsinites 14 deserve a court where outcomes are not 15 preordained. 16 So the question is, what have I done to 17 show you that I'm a judicial independent. 18 Plenty. I am in court every single day. I told 19 you I just came off of three years in homicide 20 and sexual assault court; before that, I spent 21 two years in a high intensity drug trafficking 22 court; before that, a year in domestic violence 23 court. 24 Every single day, I heard arguments 25 from district attorneys, from defense attorneys,
Page 11 1 open hand and the generous heart. That's one of 2 the reasons it has been such an honor and a 3 privilege to serve you as one of your Supreme 4 Court justices. And this afternoon, I'm looking 5 forward to continuing a conversation that I 6 started many years ago about the proper role and 7 function of our Supreme Court and how critical it 8 is to elect a justice whose commitment is to 9 understanding and applying the original public 10 meaning of our Constitution, preserving the rule 11 of law, and preventing politics from interfering 12 with the work of the Court. 13 Thank you so much. 14 JR ROSS: Now much like we drew who 15 would speak first opening comments, we're going 16 to rotate who answers each question for us to 17 keep it fair. 18 Judge Protasiewicz, you get the first 19 question here. This race is for ideological 20 control of the Supreme Court. We know judges 21 often hate labels, so public views Judges 22 Mitchell Protasiewicz is left of center; they 23 view Judge Dorow and Justice Kelly as right of 24 center. 25 Outside groups are poised to spend	Page 13 1 and I've heard victims tell me what's important 2 to them. How do you know I'm independent? Even 3 though I'm a career prosecutor, I side with the 4 person or party who I think is most appropriate. 5 Sometimes I do what the state want, sometimes I 6 do what the defense wants, but you never know. I 7 follow the law, I uphold the Constitution, and 8 that's what I plan to do and that's what I plan 9 to continue to do if you elect me as your next 10 Justice of the Wisconsin Supreme Court. 11 Wisconsinites deserve better than what 12 we have had. We deserve much better and that is 13 what I plan to do, fair and independent all the 14 time. 15 JR ROSS: Judge Dorow, you're next with 16 that question. 17 JUDGE JENNIFER DOROW: Thank you. The 18 core of my judicial approach has always been 19 fairness and impartiality. The people who appear 20 before a judge expect and deserve this. I say 21 they should demand this. 22 For the past 11 years, I have 23 administered justice fairly, faithfully, and 24 impartially. Sometimes judges are faced with 25 difficult litigants. I recently had such an

Page 14 1 experience in a case that I handled. The 2 citizens of Wisconsin got a very unique 3 opportunity to see my approach to fairness and 4 justice, and I was deeply touched by the feedback 5 that I got from around the world for how I 6 handled that case. I heard from judges across 7 the country and even inmates who sent letters 8 praising my efforts to be fair and impartial in 9 the face of extreme disrespect, disruption, and 10 at times even vile behavior. 11 Through it all, I protected the very 12 rights of the person who engaged in this behavior 13 while also ensuring that the rights of the 14 victims and the witnesses were also protected. 15 You can expect nothing less from me as your next 16 Supreme Court Justice. Fairness, impartiality; 17 that is what I will be. 18 JR ROSS: Justice Kelly. 19 JUSTICE DAN KELLY: Thank you. I think 20 it's important to emphasize the significance of 21 the premise to that question. Politics is poison 22 to the work of the Court. 23 Now everybody who comes to the court, 24 regardless of what they might tell you, everybody 25 has political beliefs. The question is whether	Page 16 1 every concurrence has been based 100 percent on 2 what the law is, not on what I think it ought to 3 be, and certainly not on what any political party 4 or member of the legislature thinks that it ought 5 to be. 6 My commitment has always been the same: 7 simply applying the law and using rigorous logic 8 to reach the conclusion so that the people of 9 Wisconsin can have confidence that the decisions 10 of the Court are solely informed by the law. 11 And I've written my opinions in such a 12 way that they're accessible to anyone, regardless 13 of whether they have a legal background, because 14 I understand that I'm using borrowed authority 15 from the people of Wisconsin, and every opinion 16 that I write is my report to the people of 17 Wisconsin on what I have done with their borrowed 18 authority. And so, I've made it accessible, I've 19 made it logical so that anyone in this state can 20 confirm that the opinions that I write are 21 commanded solely by the law. 22 JR ROSS: Judge Mitchell. 23 JUDGE EVERETT MITCHELL: I would say 24 that shortly after I took the bench, one of the 25 first things I realized is how unfair the system
Page 15 1 you can set them aside to do the work of the 2 Court. In order to do that, you need to have a 3 methodology developed and ready at hand that you 4 can apply consistently every single day and 5 making sure that the results of the decision are 6 commanded by the law and are not influenced by 7 one's personal beliefs or personal politics. 8 The methodology I use is really quick 9 straightforward. I start always with the 10 premises, the law that applies to the case, and 11 then I exercise rigorous logic to move from those 12 premises all the way down to the conclusion. And 13 when you're done, you should be able to look back 14 and see an unbroken chain of logic connecting the 15 premises to the conclusion, and if you see an 16 unbroken chain, that's your guarantee that the 17 conclusion is commanded by the law, rather than 18 by the individual's personal preferences or 19 personal politics. 20 Now I've been told that there are some 21 of the opinions that I've written on the Court 22 that have not been the favorites of those might 23 be considered otherwise to be my supporters. 24 Because, in truth, every opinion that I've 25 written for the Supreme Court, every dissent,	Page 17 1 truly is. There are so many inequalities within 2 our system that if you don't have the income to 3 be able to have representation in the court 4 system your voice isn't heard. 5 Fairness for me meant to make sure that 6 my courtroom was a place where every voice had an 7 opportunity to be heard, regardless of the income 8 that you did or did not have, regardless of your 9 race, regardless of your self-identified gender, 10 and was to give a space so that people could be 11 heard regardless of those things. 12 And when you're a judge who oversees 13 juvenile cases, it becomes even more important 14 because you're not dealing with adults; you're 15 dealing with children who often have no voice. 16 Children don't have a lobbyist group who can come 17 in and lobby for how you treat them, so it's up 18 to the judge who hears those cases to make sure 19 that they're creating an environment that is both 20 fair, that is honest, and most importantly, 21 transparent in those cases. 22 I do believe that there are times when 23 politics can try its best to enter into that 24 space, but a judge who is committed to the rule 25 of law and committed to fairness in our state

Page 18 1 will make sure that they understand that when 2 that person comes in, you don't ask them are you 3 Republican, are you Democrat, are you Green 4 Party, are you Independent. They're 5 Wisconsinites and they deserve to have their 6 cases heard without any bias whatsoever. 7 And I always say any judge who comes to 8 the bench with a predetermined idea already 9 should recuse him- or herself from the process 10 because the fairness of our system is at stake; 11 the integrity of the court system is at stake. 12 And so we have to suspend those things, so at 13 that moment in which somebody needs to be heard, 14 that we remain curious to the facts that are 15 being brought before us. And when you lose that 16 curiosity, you're no longer a judge, you're no 17 longer; you're a partisan tool that somebody can 18 use to be able to get what you want. 19 And I can promise you, I have a whole 20 lot in my resume that shows you I'm nobody's 21 tool. I stand on the beliefs, I stand on what's 22 right, I stand on what's fair, and I live in that 23 moment and I believe what it is. 24 I remember as a pastor when I had to 25 marry -- when I was compelled to marry a same-sex	Page 20 1 And so I made that decision to uphold 2 the decision related to the Scott Walker 3 administration because, for me, that is the job, 4 and afterwards, we can go get some beers. And he 5 was mad at me for two and a half years, but I had 6 to do the job that I was called -- that I was 7 committed to do and that's what I did in that 8 moment. Thank you. 9 EMILEE FANNON: All right. Continuing 10 in our order, Judge Dorow, we will start with you 11 with this question: 12 The State Supreme Court has rejected 13 past petitions asking the Justices to set a 14 recusal standard for cases in which a party has 15 contributed to their campaign. Essentially, the 16 Court has said it is up to each judge to make a 17 decision on whether they can be impartial. 18 Still, the State Democratic and Republican 19 Parties are already fundraising for the race and 20 are expected to spend millions of dollars in this 21 campaign. 22 One, do you believe the Court was 23 correct in rejecting requests to set a standard 24 for recusal and, two, will you hear cases 25 involving the state political parties knowing
Page 19 1 couple in my congregation and people told me, 2 they said we don't do that. Black Baptist 3 preachers don't do that. And I said to them, I 4 said, we're going to stand on what is right, even 5 before the Supreme Court gave us cover to do so. 6 And I married those two women in my congregation 7 because they had been together 42 years and when 8 they asked me would I do it, I said of course, I 9 will. I don't many straight people that's been 10 together 42 years. 11 And so I married that same-sex couple 12 and I pastor the only open and affirming 13 congregation. Why? Because I'm independent and 14 I cannot be controlled by others, groups, or 15 influencers. 16 So the example that you said give us an 17 example, I remember when I had a case before me 18 with a lawyer that I loved to death, came into my 19 courtroom, and he presented something before me, 20 and I remember that it was against Scott Walker. 21 And I looked at the law, looked at the facts, and 22 everything in me said this is about the rule of 23 law, not about my friend; that's not my friend in 24 this moment. He's a litigant and I got to make 25 sure I follow the rule of law.	Page 21 1 they will and likely spend against you in this 2 race? 3 JUDGE JENNIFER DOROW: Well, first and 4 foremost, my integrity cannot be bought by 5 anyone. We have rules and statutes already that 6 address recusal and they are important. I would, 7 of course, follow them and apply them to the 8 facts of any given case. At the same time, I 9 know that recusal is often used as a weapon by 10 litigants to secure the judges they prefer and 11 that is wrong. 12 Justice requires that judges and 13 justices hear the cases that come before the 14 Court. We have an ethical obligation to 15 diligently take care of our cases. That is the 16 job that the people of Wisconsin and of our 17 counties elect us to do. 18 I often think of recusal in the context 19 of a one judge county. A judge in a one judge 20 county knows probably everyone, or at least a 21 large portion of that county's population. And 22 if we start looking at money, why don't we look 23 at time or why don't we look at the efforts that 24 other people put even into our campaigns. But if 25 a judge in a one judge county would recuse

Page 22 1 himself based on every relationship that that 2 judge had, even if it's just a litigant or an 3 attorney or even a financial donation without 4 more, that judge wouldn't handle the cases that 5 that judge was elected to do. 6 We can still look at the cases from a 7 broader perspective even when they come to the 8 Supreme Court. And again, go back to the rules, 9 go back to the law because the law is important 10 and our statutes and our Supreme Court rules on 11 recusal and the case law that talks about them 12 are very important and I would start with that 13 and I would then apply those laws and those 14 principles to the facts of the case before me. 15 EMILEE FANNON: Thank you. Justice 16 Kelly, you are next. 17 JUSTICE DAN KELLY: Here's where I 18 start. I understand that all of the authority to 19 create and maintain governments in the State of 20 Wisconsin comes from -- well, you, we the people 21 of Wisconsin, and it comes to us only as a loan 22 and that loan is mediated by the Constitution of 23 that the people of Wisconsin decided to create 24 and maintain. 25 And the point of this is that the	Page 24 1 supporting us, or conversely, by someone who has 2 spent against us in a campaign. 3 The truth of the matter is it would be 4 extraordinarily difficult to develop a standard 5 of recusal that could capture all of those 6 elements and all of those dynamics in a way that 7 could be administered in an intelligent fashion. 8 The real key to recusal is this: It's 9 the choice of the people of Wisconsin and who 10 they send to their Supreme Court and that has to 11 begin with a level of trust in who you send. It 12 has to be a commitment to looking at the 13 character of the person and understanding that 14 that person will stay true to the law and will 15 not allow other factors to influence the way they 16 decide cases. 17 And that if they should encounter a 18 circumstance in which there is an outside factor 19 that is so powerful, so dynamic that would 20 threaten to change the results of a case, that 21 that person would have the integrity and the 22 honor to step aside, and that's what recusal is 23 about. 24 EMILEE FANNON: Up next is Judge 25 Everett Mitchell.
Page 23 1 question of recusal is for the people of 2 Wisconsin to decide if they believe that there 3 should be new rules or different rules governing 4 how that is handled. Right now, what they've 5 decided is that there is a cap on contributions 6 to judicial candidates and that's their call. 7 They believe that to be an appropriate way of 8 handling that issue. 9 The people of Wisconsin decided that 10 our judiciary is to be an elected judiciary. 11 There are many different ways of doing that: You 12 could have an appointive judiciary; you could 13 have a Senate confirmation for judicial nominees. 14 But Wisconsin has decided on elections and they 15 know well enough that elections require the 16 candidates have the ability to get their messages 17 out to the people of Wisconsin. And so, they put 18 their stamp of approval on the contributions they 19 think is appropriate for a judicial candidate to 20 receive and continue to sit on cases. 21 Now, I think on top of that is the 22 individual responsibility of the Supreme Court 23 justice. Only we can truly know whether we are 24 going to be adversely impacted by someone's 25 contribution, by someone's time or efforts in	Page 25 1 JUDGE EVERETT MITCHELL: So if you ever 2 go to the Wisconsin Supreme Court website, 3 there's a seal. It's a beautiful seal because 4 it's different than the other seals that I've 5 seen representing justice. The Wisconsin Supreme 6 Court seal has a hand that's holding the scale, 7 and that hand that's holding the scale is meant 8 to say that there's a certain balance that judges 9 and justices are supposed to have when it comes 10 to thinking about what justice should look like 11 in every case. 12 So when I think about recusal, I think 13 about that symbol; that when a judge's hand 14 starts to tilt the balance in a different 15 direction, he or she needs to make sure that they 16 recuse themselves. I think that is the ultimate 17 decision that we all make. 18 I get that question all the time as a 19 person who's always in the community. The first 20 thing people always ask, Judge, will you have to 21 recuse yourself because you know so many people. 22 I say, no, just because I'm popular doesn't mean 23 I got to recuse myself from every case. What it 24 means is that I have to make sure that there is a 25 standard in which I review and I explain the

Page 26 1 relationships up front. 2 I think what has often made the court 3 seem as though it's a dark place is because 4 justices and judges are not always honest about 5 the relationships that they have when they see 6 them in the courtroom. So any time I see 7 somebody that comes up, I make sure every party 8 is aware of what that relationship may look like, 9 and I make sure that every party is aware that 10 those things are important and they may be in 11 play so that everybody understands the rules of 12 engagement in that moment that we're going to 13 address the particular case. 14 Because my view has always been, we 15 should never be at the point where we're tipping 16 the balance of power in one direction or the 17 other because of relationships that we have. As 18 I said earlier, it is about curiosity, and I 19 think that there are rules related to recusal. 20 And if you are in a position where you 21 do believe that you can no longer effectively, 22 fairly, impartially administer a decision or you 23 will be able to make rulings in a particular case 24 even before it goes before a jury or if you have 25 it to answer yourself in a court trial, if you	Page 28 1 know many of the people on our cases. We always 2 disclose I know the plaintiff, I know the 3 respondent, I know the defendant, you know, I 4 know the defendant's attorney is one of my court 5 commissioners; we always disclose that. 6 But I take it a step further when it 7 comes to the political contributions. I think 8 that due to the extreme partisanship and the 9 amount of money that comes into races like this, 10 we absolutely need a recusal rule. Now what 11 should that recusal rule be? I think the public 12 should be able to weight in on that. 13 I know that it has been talked about 14 and presented to the Supreme Court in the past 15 and the idea of talking about the recusal rule 16 has been rejected, but I think there should be 17 open hearings about that. I don't think I'm in 18 the minority. I can tell you that there are a 19 majority of retired Wisconsin Circuit Court 20 judges who also think that there should be a 21 recusal rule. 22 And I also understand that there are 23 limits as to how much money an individual or a 24 union can contribute to a personal campaign, and 25 in this particular campaign, an individual can
Page 27 1 cannot listen to evidence in a fair manner, then 2 you need to make sure that you give the person in 3 front of you the due respect to tell them I need 4 to get off this particular case. 5 And that goes back to the integrity of 6 the individuals that you elect to be in these 7 positions. That goes back to people 8 understanding that it's not about having a 9 particular victory. It is about their persons or 10 the persons or the bodies or the issues that are 11 in front of you, make sure that they get 12 litigated fairly in a way that brings and holds 13 the integrity of our court system and place at 14 the same time. 15 So again, I'll go back to that example. 16 I think you need a justice who has even hand and 17 they make sure that they don't tilt it, but they 18 let the facts tilt it in a direction that it's 19 supposed to go. Thank you. 20 EMILEE FANNON: Judge Protasiewicz up 21 next. 22 JUDGE JANET PROTASIEWICZ: I think we 23 need a recusal rule. I think we have two 24 distinct scenarios that we've been talking about. 25 Sure, we all go into our courtrooms and we all	Page 29 1 contribute \$20,000 to my campaign. The question 2 is if you're on the Supreme Court, does \$20,000 3 sway you or not. Each individual would have 4 their own answer to that. 5 However, that's not what we're talking 6 about. We're talking about outside money that's 7 going to come into this campaign in millions and 8 millions of dollars, millions of dollars; that is 9 why there has to be a recusal rule. The public 10 has to weigh in. 11 I'm not going to sit here and tell you 12 what I think an exact number is, but I absolutely 13 think there has to be a hearing, the public has 14 to weigh in, and I think there should be a 15 recusal rule 100 percent. Thank you. 16 JR ROSS: Judge, Dorow, did you answer 17 the question? 18 JUDGE JENNIFER DOROW: I answered the 19 question. 20 JR ROSS: All right, just making sure 21 we're on the same page. 22 EMILEE FANNON: We're taking them in 23 the same order. 24 JR ROSS: Justice Kelly, you're up 25 next. Now, Judge Dorow and Justice Kelly, the

Page 30 1 applications you filled out for an appointment to 2 the bench asked you for the worst ruling by the 3 Wisconsin Supreme Court in the last 30 years. 4 Judge Dorow, in 2011, you cited a 2003 U.S. 5 Supreme Court ruling overturning a Texas anti- 6 sodomy law. Justice Kelly, you cited a 2005 7 ruling from that Court that said -- that justify 8 the government taking private property to be put 9 to a more productive economic use. 10 For the two of you, I want to know is 11 that still the worst decision you've seen in the 12 last three decades. 13 For Judges Mitchell and Protasiewicz, 14 what's the worst ruling you've seen in the last 15 few decades in Wisconsin or U.S. Supreme Courts. 16 So Justice Kelly up first. 17 JUSTICE DAN KELLY: I think that stands 18 up well. You know, we look at our Wisconsin 19 Constitution and the very first article and the 20 very first section says that we are endowed with 21 inalienable rights, that amongst these are life 22 and liberty and the pursuit of happiness, and 23 that governments are created to protect those 24 rights gaining their just powers from the consent 25 to the government.	Page 32 1 opinions. 2 JR ROSS: Thank you. Judge Mitchell. 3 JUDGE EVERETT MITCHELL: So I think for 4 me there are a lot of Supreme Court decisions in 5 various categories that have had very adverse 6 impacts. I think I can think of no other greater 7 impact that I have seen with the overturning of 8 the Roe decision. 9 I think the overturning of the Roe 10 decision really put at jeopardy of privacy that 11 we were founded in the Fourteenth Amendment as a 12 critical place of infrastructure of how we 13 understood the law. It was one of the first 14 times that I can remember in my own history that 15 a right was reached into the lives of people and 16 taken away. 17 While we also understand that, you 18 know, the decision really focused a lot on, you 19 know, precedent, it also invalidated the ways in 20 which courts often use precedence to make sure 21 that we're ensuring the rights of individuals are 22 consistently maintained and protected at the same 23 time. 24 The invalidation of a protection for 25 reproductive choice also was telegraphed through
Page 31 1 When the government steps in and takes 2 private property, it's not just an economic 3 problem for the person who loses the property; 4 it's also a question of liberty. You've acquired 5 that property, whether it's real estate or 6 personal property, for a reason: because you 7 believed that it would be productive, that it 8 would be enjoyable, because it would advance your 9 pursuit of happiness. 10 And when the government steps in and 11 takes that from you, it has to have a really good 12 reason and there has to be just compensation, but 13 the just compensation only takes care of the 14 financial aspect of that intrusion. 15 So I think any opinion of a Court that 16 allow for the government to, without regard to 17 absolute necessity of taking it for the purpose 18 of public use, that would allow a government to 19 take that property is inappropriate. See, the 20 problem in that case was it was not being taken 21 for public use; private use, transferring it from 22 one private party to another, and this is a 23 significant interference with the liberties that 24 our Constitution protects, so I think that 25 opinion stands up well as one of the worst	Page 33 1 Justice Thomas to also look at, you know, not 2 only same gender relationships but also, you 3 know, all of the other constitutional rights that 4 we also seen as protected as well. So I think 5 overturning that also put our country in a very, 6 you know, chaotic place where you may have 50 7 different types of interpretations about 8 reproductive choice. 9 And our states are struggling to try to 10 figure out where these things mean because that 11 was taken away from something that the majority 12 of individuals in our communities in our states 13 had also thought was foundational at that time. 14 So there are a lot of consequential 15 decisions, whether we're talking about Shelby 16 County v. Holder that talked about voting rights 17 or Graham v. Connor that talked about the 18 engagement around police reform. But this one is 19 significant because it was the first time in my 20 study of the law that I can see that the Supreme 21 Court went and took a right for which that had 22 been a right for people for over 50 years and 23 we're dealing with the consequences of that 24 instability all throughout our country and all 25 throughout many peoples' lives right now, so I'll

Page 34 1 leave it with that. 2 JR ROSS: Thank you. Judge 3 Protasiewicz. 4 JUDGE JANET PROTASIEWICZ: I agree. I 5 think the Dobbs decision is the worst Supreme 6 Court decision that comes to mind. That is the 7 epitome and definition of judicial activism. 8 Quite frankly, I was surprised when they reached 9 and rendered that decision. Three generations of 10 women have counted on Roe v. Wade to allow them 11 to make their own decisions in regard to 12 reproductive rights. 13 Now, I can't tell you where I'll end up 14 on any case. I can tell you a little bit about 15 my values, and I assume I'd be asked about that 16 because it's no secret what my values are in 17 regard to Roe v. Wade and in regard to the Dobbs 18 case. Privacy issue is paramount. 19 My value is that women should be able 20 to make their reproductive right decisions 21 themselves. Sure, go ahead, talk to your clergy, 22 talk to your family, talk to your healthcare 23 provider. But in the end, my values tell me that 24 that should be your decision. 25 That is exactly why we need to bring	Page 36 1 but I'm not running for the legislature, none of 2 us are. I'm running for a seat on the Wisconsin 3 Supreme Court. Politics have absolutely no place 4 in the courtroom and we should not be legislators 5 in robes. Thank you. 6 EMILEE FANNON: All right. This next 7 question we'll start with Judge Mitchell. We now 8 want to flip that question that we just asked you 9 around. What ruling has most shaped your 10 judicial philosophy? 11 JUDGE EVERETT MITCHELL: If you have a 12 judicial philosophy, it is rooted in probably a 13 judicial mentor that you've used to better 14 understand how the law understands. 15 Part of my judicial is Justice Thurgood 16 Marshall. And I think his argument in the Brown 17 v. Board of Education when it overturned the 18 separate but equal doctrine was one of those 19 decisions when you're growing up as a young man 20 learning about what the law is, that you 21 understand how the law can be used to oppress and 22 demean and hurt communities of color because of 23 the fact that they're using the law as a 24 foundation for that erosion. 25 And so, the fact that, you know,
Page 35 1 common sense back to the Court. That's exactly 2 why we need to bring change back to the Court to 3 not only uphold our Constitution, to not only 4 employ stare decisis, but to uphold the will of 5 the people who have relied on I think three 6 generations -- would that be 50 years 7 potentially? -- three generations of women. 8 Many women never knew a world before 9 Roe; now, they certainly do. So, to me, that is 10 the most critically poor decision and, as I 11 indicated earlier, an absolute example of 12 judicial activism. 13 JR ROSS: Thank you. Judge Dorow. 14 JUDGE JENNIFER DOROW: Thank you. I'll 15 be honest with all of you, sometimes I don't 16 personally agree with the law that I'm applying 17 and I'm sure that's also true for the U.S. and 18 Wisconsin Supreme Court justices. Sometimes the 19 words or even the statutes themselves are stupid, 20 but stupid doesn't mean unconstitutional. It 21 doesn't matter to my job whether I like the words 22 or even to agree with the law. My job is to 23 apply the words and what they mean. 24 If I were running for the senate or 25 assembly, I might campaign on changing some laws,	Page 37 1 Justice Marshall was educated by Charles Hamilton 2 Houston at Howard University and he was educated 3 on the idea that the Fourteenth Amendment could 4 be the vehicle that is used to change the 5 dynamics of how we understood the law and that 6 you can use the law as a force for good, that you 7 can use the law as a force for change and making 8 peoples' lives better. 9 No, we're not up here trying to be 10 legislators, but even the language of the law 11 that we're supposed to enforce itself should make 12 sure that lives are being better if we have the 13 discretion to do so. 14 And it was Justice Marshall's ways in 15 which he thought about the law and using the law 16 that gave me a sense of purpose to my own 17 judicial philosophy so that when I think about 18 the discretion that judges have -- and trust me, 19 Wisconsin, judges, especially those who served in 20 the district courts, we have a lot of discretion 21 where we can implement all kinds of things that 22 are not codified in statute, nor in case law, 23 that you have to make ruling on every day, so you 24 make those decisions. 25 And so, I still remember the time that

Page 38 1 I have these ideas about Justice Marshall using 2 it and Brown v. Board of Education and the 3 decision to desegregate all these schools to 4 bring our communities together. I think about 5 the times in my courtroom, like, when I had the 6 young child come into my courtroom -- blonde, 7 blue-eyed child -- in handcuffs, belts, and 8 restraints. And I asked myself, what do I use my 9 discretion for in this moment to make this child 10 better, to make sure that the lives of these 11 children are better. 12 And when I pushed toward taking away 13 handcuffs off of children, not only in Dane 14 County, but also joining the petition that we get 15 before the Supreme Court to do it statewide, it 16 was a reminder that the law not only is about 17 what's in books and statutes and case law, but 18 the law is what it looks like in the lives of 19 people who have the impact to change something 20 that is wrong before you. 21 And that is what is a judge is supposed 22 to do also, not only just follow patterns and 23 trends with everybody else is, but ask the 24 critical question of why are we doing this and 25 can we change it.	Page 40 1 couple of them that have really impacted me. We 2 talked about Brown v. Board of Education; we 3 talked a little bit about Plessy v. Ferguson, you 4 know, it's a precursor. And I think it's 5 critical that when you look at those two cases 6 you see that Plessy v. Ferguson talked about 7 separate but equal. What did we learn back in 8 high school? Always separate, never equal; 9 that's what we learned in Plessy v. Ferguson. 10 Then we come forward to the Board of 11 Education where those laws were struck down. And 12 to me and my judicial philosophy, what it tells 13 you, is that we are a living, breathing document 14 and our laws change and they evolve and the case 15 law changes and evolves. I think that that is 16 critically important. 17 So fairness, evolution, no thumb on the 18 scale, everybody being treated equitably would be 19 what I would have to say is my judicial 20 philosophy. 21 EMILEE FANNON: Judge Dorow. 22 JUDGE JENNIFER DOROW: So the role of a 23 judge at its core is to apply the law, not make 24 it. Laws are written and words have meaning. 25 Everybody knows this. We use words every single
Page 39 1 And so, always paying attention to how 2 passionately Justice Marshall argued for 3 integration in a world that seemed to be set in 4 how we do things gave me the courage to do some 5 of the stuff that I have done to make the 6 judiciary reflect a certain value system of 7 fairness, kindness, and equality. 8 EMILEE FANNON: Judge Protasiewicz. 9 JUDGE JANET PROTASIEWICZ: Judicial 10 philosophy is -- I'm not going to say it's 11 complicated. It is what you do every single day 12 that you walk into your courtroom, and my goal 13 and my judicial philosophy is that every single 14 person who walks into my courtroom gets a fair 15 shake. 16 I'm a commonsense judge, I was a 17 commonsense prosecutor, and I'll be a commonsense 18 justice on your Supreme Court. There's no thumb 19 on the scale putting down a weight toward one 20 side or the other. Everybody is treated 21 absolutely fairly. I've rendered some sentences 22 that parties don't like, but my goal is when they 23 walk out of the courtroom that everybody feels as 24 though they've been treated fairly. 25 In regard to specific cases, I have a	Page 41 1 day in the contracts we enter into, in the wills 2 we make so that they will be applied upon our 3 death. We expect that the words we use in those 4 moments of our wills and our contracts won't be 5 twisted later on by giving them a meaning that we 6 didn't intend or, frankly, wasn't even in 7 existence when we used them. Statutes and the 8 Constitution should be treated no differently. 9 The role of a judge should not be 10 interfered with by our political views. We wear 11 a black robe in part to tell of our authority, 12 but also to shield us from the biases and the 13 prejudice that we undoubtedly bring from our 14 personal experiences. 15 You know, I've spent 9 of my 11 years 16 on the trial court bench in key leadership 17 positions dedicating my career to improving the 18 justice system. I have been appointed three 19 times by the Wisconsin Supreme Court to serve as 20 a chief judge, and I've been selected and have 21 the honor and privilege by my peers to serve as 22 the chair of the committee of chief judges or 23 chief of the chiefs, as we affectionately refer 24 to it. That is where judges can really have an 25 impact on improving the justice system.

Page 42 1 Of course, we need to be fair and 2 impartial in every case that comes before us. 3 The litigants deserve it, the victims deserve it, 4 the families of everyone involved, the accused, 5 they deserve it as well. But it starts and ends 6 with our commitment to be fair and impartial and 7 give due respect to the role that our founders 8 gave to us when they instituted the three 9 branches of government. Thank you. 10 EMILEE FANNON: Justice Kelly. 11 JUSTICE DAN KELLY: I'm influenced by 12 all of the court opinions in which the justices 13 have demonstrated fidelity to the Constitution; 14 that's the north star for us, fidelity to the 15 Constitution. 16 Now sometimes circumstances call for 17 the Constitution to change, and that's why both 18 the United States Constitution and our Wisconsin 19 Constitution provide for amendments, amendments 20 in which the people and their representatives 21 decide how and when those Constitutions are going 22 to change. 23 It does not change in the hands of the 24 Court. It must not ever change in the hands of 25 the Court. That is a fundamentally illegitimate	Page 44 1 apologize for that, but I wrote the opinion in 2 Tetra Tech v. Department of Revenue. Now that 3 wasn't a case as monumental as Plessy and Brown, 4 but it was a question of whether the Supreme 5 Court of the State of Wisconsin had gone off on a 6 wrong track for about 100 years. And the 7 question there was who decides as a final matter 8 how to apply the law: Is it an executive agency 9 or is it the Supreme Court, the branch that the 10 people of Wisconsin have entrusted with the 11 judicial power? 12 And over a course of about 100 years, 13 the Supreme Court had slowly begin deferring to 14 administrative agencies' interpretation of the 15 law, and they concluded that we have to defer to 16 what they think the law is. So we researched 17 that, we compared it to the Constitution, and we 18 concluded that those precedents were wrong. They 19 were wrong the day they were decided; they were 20 wrong every day after that. 21 And so, it was our responsibility and 22 our job to correct that wrong and it was my honor 23 to write the opinion in Tetra Tech in which we 24 said we are repatriating the authority of the 25 Court where it belongs, with the judiciary. And
Page 43 1 step to take, and the reason for that is because 2 of the nature of the authority that we wield. 3 You see, when the people of Wisconsin put 4 together our Constitution, they did not ask us 5 what our views on the Constitution were. They 6 did not ask us to decide what laws are good and 7 effective and which are not. They asked us to do 8 one thing: Please decide our cases according to 9 the way the law is written, and we -- we, the 10 people -- will take care of it if those laws or 11 the Constitution needs to change. 12 Now, there's been mention both of 13 Plessy and Brown v. Board of Education, and I 14 think that's a great example. Plessy was wrong. 15 It was wrong the day it was decided; it was wrong 16 every day after that. And when Brown came along 17 and overruled it, it was not because they took 18 the Constitution into their own hands to change 19 it. It is because they looked at Plessy and the 20 compared it to the Constitution and they said 21 Plessy was simply wrong and we are fixing that 22 error. 23 Now I'm the only candidate in this race 24 who has experience doing that sort of thing. Now 25 this might be a little self-referential and I	Page 45 1 the consequence of that is that when you have 2 cases in which the government is a party, you 3 will be assured that it's the Court applying the 4 law and not your opponent in the courtroom. 5 JR ROSS: Thank you. Emilee will tell 6 you from our (indiscernible), I'm a redistricting 7 dork, total and complete absolute dork. So I 8 want to apologize to our two justices here for 9 summarizing the dozens and dozens and dozens of 10 pages you guys wrote about redistricting in the 11 past year and a half. 12 That said, Judge Protasiewicz, the 13 Court issued several rulings in that case. One 14 was the parties decided to take a least change 15 approach map they submitted. They then 16 eventually picked a map drawn by (indiscernible) 17 lawmakers because it followed that directive and 18 was race neutral. 19 My question is, was the Court correct 20 to require a least change approach, and do you 21 believe there are conditions in Wisconsin that 22 meet the requirements to allow race to be 23 considered as a factor in drawing political 24 boundaries? 25 JUDGE JANET PROTASIEWICZ: So let's be

Page 46 1 clear here: the maps are rigged, bottom line, 2 absolutely positively rigged. They do not 3 reflect the people in this state. They do not 4 reflect accurately representation in neither the 5 state assembly or the state senate; they are 6 rigged, period. I'm coming right out and saying 7 that. 8 I don't think you could sell to any 9 reasonable person that the maps are fair. Least 10 change approach, I mean, I think the idea of it 11 might sound good to some people. I see no basis 12 for it in the Constitution, no basis in case law. 13 Basically, what the least change approach has 14 done, has taken votes away from -- or meaningful 15 votes away from people in large communities in 16 Dane County and in Milwaukee County. 17 I believe the gerrymandering decision 18 was wrong. As I indicated to you before, I can't 19 ever tell you what I'm going to do on a 20 particular case, but I can tell you values, my 21 common sense tell you that it's wrong. And I was 22 talking to somebody and the person used this 23 phrase with me in regard to the maps -- I wrote 24 it down so I get it right because I think it is 25 so interesting. They said, "In the State of	Page 48 1 challenges, so I will not put myself in a 2 position to prejudge anything. But as with any 3 case, I will listen to the challenge and I will 4 apply the law to the facts at hand. Thank you. 5 JR ROSS: Justice Kelly. 6 JUSTICE DAN KELLY: I think when 7 someone tells you what their values are in an 8 answer to a legal question, they're telling you 9 how they're going to decide a case. 10 A redistricting map is an entirely 11 political act: It involves political calculation, 12 it involves communities of interest, it involves 13 give and take, it involves compromise, it 14 involves the political process; it is political 15 from start to end. 16 Now there are legal elements to a map. 17 The phrase least change is meant to capture what 18 the Court's responsibility is when it has to 19 consider a redistricting map. See, we do have 20 legal standards for what a map must do. It has 21 to have equal population. And if you look at our 22 Constitution, Article 4, Section 4, it tells us 23 that the districts must be compact and 24 contiguous. These are legal requirements, and 25 Courts are for the law and the law alone. It is
Page 47 1 Wisconsin, do the voters choose the politicians 2 or do the politicians choose the voters," right, 3 and that absolutely resonates with me. 4 So as I've indicated, I think those 5 maps are rigged. I think they're unfair. I 6 don't think they fairly reflect the population in 7 our state. Thank you. 8 JR ROSS: Judge Dorow. 9 JUDGE JENNIFER DOROW: I think we all 10 would agree that what happened this past year was 11 very interesting and unique. Following the 12 Census every 10 years, the legislature and the 13 governor are tasked with coming up with new maps. 14 The process is guided by the principle of one 15 person/one vote, the Voting Rights Act, and the 16 Wisconsin Constitution. 17 When the legislature and the governor 18 could not agree on the new maps, the Supreme 19 Court was asked to step in. And then, of course, 20 we saw the very unusual back and forth between 21 the Wisconsin Supreme Court and the United States 22 Supreme Court. Ultimately, after the U.S. 23 Supreme Court reversed our court, the 2020 map 24 proposed by the legislature was adopted. 25 Now, there is talk about further	Page 49 1 not for politics. 2 And so, when a map comes to the Court 3 with a challenge that it is unlawful in some 4 regard, the Court's responsibility is limited to 5 considering the legal challenges, not the 6 political challenges. 7 How districts get apportioned according 8 to political considerations must have no purchase 9 in the courts, unless we are dead set on tearing 10 down the distinctions between the branches of 11 government that our Constitution creates. But if 12 we are going to preserve the constitutional 13 order, if we are going to make sure our courts 14 exist wholly and only for the purpose of deciding 15 legal questions, then we can't let our values, 16 our personal values or our personal politics 17 reorient what the different branches of 18 government are supposed to do. 19 When that map comes to the Court, its 20 mandate is the same as with respect to every 21 other case that has ever come before the Court or 22 will ever come before the Court: decide questions 23 of law, not politics. 24 JR ROSS: Thank you. Judge Mitchell. 25 JUDGE EVERETT MITCHELL: I think I'll

Page 50 1 start my comments around this idea from Justice 2 Ginsburg in her dissent in Shelby County, Alabama 3 v. Holder, and Justice Ginsburg said: 4 "The evolution of voting discrimination 5 into more subtle second-generation barriers is 6 powerful evidence that a remedy as effective as 7 preclearance remains vital to protect minority 8 voting rights and to prevent backsliding." She 9 said the second-generation barriers are no longer 10 subtle. 11 It's a reminder that when we think 12 about the nature of maps and the decision that 13 the Supreme Court in many ways had to make that 14 decision is because our democracy in many ways 15 has become broken; the partisanship has become 16 broken. And now, they're looking to courts to 17 answer questions for which the courts should be 18 focused on the law, but now we're being forced to 19 answer questions because democracy is no longer 20 working. 21 So I think in order to restore peoples' 22 faith in our democracy, what we need to do is to 23 ensure that legislative districts are drawn in a 24 fair, non-partisan way. And I think the way how 25 extremely partisan our maps have gotten, we're	Page 52 1 approach, it just brings up all kind of past 2 trauma of how people didn't want to change stuff 3 because it did not empower our communities and 4 our communities, whether it is Black or whether 5 it is Native. 6 I'll bet you if you ask a Native, 7 you'll hear the same thing, our indigenous 8 community would say the same thing: least change 9 approach always means the same, it always means 10 wait, it always means never, and it always means 11 more oppression and more pain for folks who don't 12 have a voice in the political process. 13 So the role in which we are to play, we 14 all have values, and it is important to you to 15 know our values so you can decide who you want to 16 be sitting in that black robe making decisions 17 about the values of our state. 18 I'm going to say this and I'm done. I 19 wasn't born in Wisconsin, but I chose Wisconsin 20 as a place to have my children, as a place to 21 build community because of the values of the 22 people that I see in this state, all throughout 23 this state. My wife and I have traveled this 24 entire state with the intended purpose of 25 introducing the state to a judge named Everett
Page 51 1 saying to folks, both on the left and to the 2 right, that your voices don't matter in these 3 districts, only party leadership does. 4 So I think you're right in the sense 5 that, yes, the law is a place for us to consider 6 these bigger things, but it's also the 7 implications that our laws will have upon the 8 lives of people that I believe our Constitution 9 asks for us to be able to make. 10 Just an example that we were given 11 earlier when we talked about overturning Plessy 12 and implementing Brown v. Board of Education, 13 they implemented that idea not because they were 14 following the law, because they understood the 15 implications of having children educated in 16 separate environments and what that meant. 17 It's also the understanding of why the 18 Supreme Court also supported same gender marriage 19 because of the social implications for what this 20 also looked like as it relates to privacy. 21 So I believe our maps that we have now 22 have riddled so many people of a particular voice 23 that is necessary and the standard of least 24 change approach. Anytime as an African American 25 in judicial spaces hear the word least change	Page 53 1 Mitchell, and everybody in my community was, 2 like, you got to be careful where you go 3 throughout the state. And I said to them when I 4 gave a five-minute speech and the person asked me 5 do you want to come hang out with us later, I 6 was, like, okay, this is Wisconsin, because it is 7 more welcoming. 8 And those are the people that I make 9 sure that we pay attention to in that space 10 because they are the ones who we are making a 11 Constitution commitment to ensure that we're 12 following the rule of law a particular kind of 13 way. Thank you. 14 EMILEE FANNON: All right. We'll do 15 one more question for all of you and then take 16 some audience questions. Judge Dorow, we'll 17 start with you on this one. 18 The U.S. Supreme Court ruled in 2008 19 that the right to bear arms doesn't only apply to 20 militia but to all individuals. In doing so, it 21 overturned the District of Columbia's handgun ban 22 and requirement that lawfully owned rifles and 23 shotguns be kept unloaded, disassembled, or bound 24 by a trigger lock. 25 Would you have sided with the majority

Page 54 1 or minority in that case and please explain why. 2 JUDGE EVERETT MITCHELL: Can you read 3 that question one more time? That was like 19 4 statements in one. 5 EMILEE FANNON: Thank you. I will 6 repeat it one more time. 7 JUDGE EVERETT MITCHELL: Okay, go 8 ahead. 9 EMILEE FANNON: The U.S. Supreme Court 10 ruled in 2008 that the right to bear arms doesn't 11 only apply to militia but to all individuals. In 12 doing so, it overturned the District of 13 Columbia's handgun ban and requirement that 14 lawfully owned rifles and shotguns be kept 15 unloaded, disassembled, or bound by a trigger 16 lock. 17 The question is, would you have sided 18 with the majority or minority in that case and 19 please explain why. Judge Dorow. 20 JUDGE JENNIFER DOROW: In our country, 21 we have not only the Constitution that's made up 22 of the original words of our founders, but then 23 we have the Bill of Rights. And within that Bill 24 of Rights, there are a number of very important 25 rights that are important to our communities, are	Page 56 1 again, I will start with the law and I will apply 2 that law to the facts, every decision every time. 3 EMILEE FANNON: Thank you. Justice 4 Kelly. 5 JUSTICE DAN KELLY: So I have heard the 6 Second Amendment is something of a controversial 7 provision of our Bill of Rights. You know, one 8 of the reasons that we can reach constitutional 9 language is to put it beyond the reach of simple 10 majority rule, right? It might be that at any 11 given time in our history, the people would favor 12 the keeping and bearing of arms. 13 And then time goes along, circumstances 14 change, and people might decide, well, I don't 15 like that so much anymore. Well, we have a way 16 of accommodating those changes in time; we call 17 it amendments. The Second Amendment came into 18 existence, as its name states, as an amendment; 19 did not exist in the original Constitution. 20 So the question is when we see that 21 language that promises the right to keep and bear 22 arms, what do we do with it. Do we take a survey 23 of current impressions and preferences and 24 determine do most people like the terms of the 25 Second Amendment, and if they do, then we will
Page 55 1 important to our democracy, and I believe we 2 shouldn't pick and choose which ones we need to 3 follow. 4 As with any case before me, I'm going 5 to start with the law. I'm going to look at what 6 the law means. I'm going to consider the 7 challenge that is before me, the facts of that 8 case, and then apply the law as written to the 9 facts of that case. That's really at the core of 10 what a judge and justice is. 11 I think we all can imagine a variety of 12 settings where the Second Amendment is brought to 13 the Supreme Court for a decision or that is 14 implicated in a case. I want to be true to my 15 ethical obligations about not prejudging or 16 letting my personal biases or opinions or even 17 what I want the law to be or not be influence 18 what I do. And that means I need to start again, 19 as I've said before, with the facts, with the 20 law, and only render a decision that addresses 21 those very specific things. 22 So because cases raising the Second 23 Amendment are very likely to come before the 24 Supreme Court, I'm going to leave my answer at 25 that and make a pledge to all of you that, once	Page 57 1 uphold the terms and we will say that it is okay 2 to keep and bear arms. Or do we say, you know, 3 times have changed and people really aren't that 4 committed to the keeping and bearing of arms 5 anymore, and so, as justices, we're going to 6 strike that down. 7 The role the Court is to not look at 8 passing fads and fancies, changes in political 9 opinion; it is to apply the law. 10 Now in this instance, the question is 11 what did that language mean when it was passed 12 and adopted in 1791. So the role of the Court is 13 to discover the original public meaning of the 14 terms included in the Second Amendment and then 15 to have faithfully applied those without regard 16 to what opinion polls might say today about the 17 popularity, or lack thereof, of the Second 18 Amendment, and that's the role of a justice and I 19 can tell you it's not easy. 20 There are rulings that I've made that 21 were commanded by our law, by our Constitution, 22 and I was raked over the coals sometimes by the 23 left, sometimes by the right. But my commitment 24 every single time was simply applying the law as 25 it exists. Because my confidence is in the

Page 58 1 people of Wisconsin, that if they are so opposed 2 to a particular standard, if they are so desirous 3 of change in the law, they will move heaven and 4 earth to make sure that it changes, and they've 5 done that a lot. You can look at our 6 Constitution and go through and see all the 7 amendments that have occurred over time. 8 So my confidence is in the people of 9 Wisconsin, not in four lawyers sitting in a 10 Madison courtroom thinking that they know what 11 the Constitution ought to say, thinking they know 12 what the law ought to be. Our responsibility is 13 to set that aside and wait for the people of 14 Wisconsin to make their call. 15 Do I think the Heller decision was 16 right? Of course, it was. It inquired into the 17 original public meaning of the Second Amendment 18 and that's precisely what it meant: the right to 19 keep and bear arms. Do I understand there are 20 people who wished that that were not true? Yes, 21 I do. And to those of you, I suggest you do your 22 organizing and you follow the constitutional 23 process for changing that, rather than asking 24 your members of the Court to disregard their oath 25 of office, to steal the power of the people of	Page 60 1 mother's life. It is reminded that guns are not 2 toys. How we play with guns are not toys. How 3 we talk about these guns and these mass violent 4 tools that are being used to take lives of so 5 many people is a consistent reminder of us; that 6 the decisions that we make and how we make them 7 and how we understand the rule of law and what 8 that looks like has real implications on peoples' 9 lives. 10 Now I'm a carry and conceal owner, and 11 so I have my permit and so, I recognize the 12 importance of the Second Amendment and I 13 recognize and I own that because that is an 14 important value that I think everybody should 15 have. But the stuff that we're seeing right now 16 has far reaching implications of people whose 17 lives are being taken on an everyday basis. 18 Murder rates all the way in Milwaukee and 19 different states around us remind us of the 20 critical nature in which we are supposed to be 21 engaging in these conversations. 22 We may not understand how we will rule 23 because of the fact that, you know, we're 24 supposed to follow the rule of law. It is clear 25 that when certain facts come to us in a certain
Page 59 1 Wisconsin, of the legislature to change it 2 themselves. 3 EMILEE FANNON: Thank you. Judge 4 Mitchell. 5 JUDGE EVERETT MITCHELL: I'll start by 6 answering your question upfront, and since I 7 didn't actually hear the facts of that case, I'm 8 not going to tell you how I would rule in that 9 case. Does that make sense, no? All right. 10 But in terms of values, what I think is 11 very important is I think Dan said something when 12 he talked about, well, one group that disagrees 13 is that we should really be paying attention to 14 our law enforcement officers, our rank-and-file, 15 who also indicated that the number of guns on the 16 street outnumber the amount of Americans that we 17 have. Everybody in America, if we look at all 18 the guns on the street, everybody could have 19 seven guns on them. 20 And I think listening to groups of 21 people, one of them our law enforcement who have 22 been saying about the number of guns on the 23 streets makes their job almost unsafe. 24 I think about the tragic case of the 25 young man 10 years old in Milwaukee took his	Page 61 1 kind of way, it is important for us to think 2 about the implications that our rulings will have 3 on the facts that are being presented to us. And 4 when we make our rulings and when we demonstrate 5 our rulings, we need to make sure that they're 6 narrowly tailored so as not to, you know, lean so 7 far one way to give one group of influence or 8 lean another way that totally takes away the 9 capacity of one group not to be able to get the 10 voice and advocacy that they need. 11 Because at the end of the day, you 12 know, lives are being lost when we're not being 13 attentive to the commitment that we have to the 14 rule of law, but also to the lives that are 15 impacted when we don't do our jobs as 16 consistently and importantly as we need to, so 17 thank you. 18 EMILEE FANNON: Thank you. Judge 19 Protasiewicz. 20 JUDGE JANET PROTASIEWICZ: That's a 21 very challenging question. I have not carefully 22 read the dissent; I have not carefully read the 23 majority opinion. I don't know what the 24 legislative history is behind the law in the 25 District of Columbia. I didn't hear the

Page 62 1 attorneys' arguments; I haven't reviewed the 2 briefs, so I'm not able to tell you do I agree 3 with the majority or the dissent in that case. I 4 can't tell you. 5 What I can tell you is it's all a 6 balancing act. Obviously, we have the Second 7 Amendment: people are entitled to bear firearms; 8 we all know that. I also can tell you that I 9 know lots of responsible firearm owners, many 10 responsible firearm owners. I also have seen 11 many irresponsible firearm users. 12 So the question becomes, was that an 13 overreach by the United States Supreme Court or 14 was it an appropriate decision? On this 15 particular case, I'll tell you I am well aware of 16 what's going on in the community with firearms. 17 I am well aware that the community is frequently 18 -- the people in the community frequently don't 19 feel like they're safe because of the number of 20 firearms in the community. But like I said 21 earlier, I can also tell you there are many, many 22 responsible firearms owners and firearms users. 23 So I am not going to take a position on 24 this case until I very carefully read it. Thank 25 you.	Page 64 1 motive force. That belongs to the executive 2 branch. All it has is its judgment, and he goes 3 on to say that even the execution of that 4 judgment is entirely dependent on the executive 5 branch. It is the least dangerous, but only so 6 far as it does its job and only its job. 7 He went on to say that if it should 8 ever combine itself with the powers of the 9 legislature, that would then become the very 10 definition of tyranny. 11 What I've heard a fair amount this 12 afternoon is my opponents talking about their 13 values and what they think that the law ought to 14 do. That is the step towards the combination of 15 the power of the judiciary and the legislature. 16 That is a step we cannot take. 17 Alexander Hamilton is my favorite 18 because he explained the importance of keeping 19 those branches separate and he went on to explain 20 the dangers that occur if the court steps outside 21 of its constitutionally limited role, so that's 22 why he's my favorite, and great Broadway 23 production. 24 I'm sorry, that was maybe four 25 sentences.
Page 63 1 JR ROSS: Thank you. We're getting 2 close to time. We have two quick audience 3 questions. The first one, I'm hoping you do it 4 in three sentences or less, all right: favorite 5 founding father and why. Justice Kelly, you are 6 up first. 7 JUSTICE DAN KELLY: I guess I'd have to 8 say Alexander Hamilton. 9 JUDGE EVERETT MITCHELL: Oh, come on, 10 man. Everybody going to say Alexander Hamilton, 11 people seen the musical. 12 JUSTICE DAN KELLY: So here's the 13 thing. So I can't rap, but he's still my 14 favorite, and I think the reason for that is 15 because he wrote so extensively about the nature 16 of the court and its function. He really was the 17 first expositor of the important but limited role 18 that the court has in a constitutional scheme of 19 government. 20 He understood the dangers that happened 21 when you combined the powers of different 22 branches into one. He called the court the least 23 dangerous branch. Why? Because it has neither 24 the power of the sword nor the purse. It can't 25 require anything; it can't do anything with	Page 65 1 JUDGE EVERETT MITCHELL: Four run-on 2 sentences. 3 JUSTICE DAN KELLY: Indeed, they were. 4 JR ROSS: Judge Mitchell. 5 JUDGE EVERETT MITCHELL: Well, to go 6 off of what he said, Alexander Hamilton, I'm not 7 going to take away my shot, all right. I think 8 for me if I have to give an answer, which is 9 always complex, you know, for African American 10 whose communities were enslaved during the time 11 of the founding of this country. 12 I would say Thomas Jefferson probably 13 gives me the greatest one because he also penned 14 those revolutionary words, "Life, liberty, and 15 the pursuit of happiness," but he was also the 16 one who also codified the idea of what race is in 17 the notes of State of Virginia when he said that 18 blacks are inferior and whites are superior, 19 giving our country the first time a theory of 20 race in our country. 21 So it is the juxtaposition of founding 22 fathers who also aspired for what this young 23 country to become, but it's also recognition that 24 as they had the aspiration for some, they didn't 25 have that aspiration for others. And so, I live

Page 66 1 in that intricate space of balance between those 2 two communities at the same time because there 3 were so many who were not included in that space. 4 And yet at the same time, those are the 5 same values, again, that my mentor and, you know, 6 God mentor, Justice Marshall said that we have a 7 right to live in as well, and they use that same 8 argument to say we should overturn these laws 9 that oppress people and make sure that we have 10 integration in our community. 11 So you stole Alexander Hamilton, so I 12 had to go to Thomas Jefferson. 13 JR ROSS: Judge Protasiewicz please. 14 JUDGE JANET PROTASIEWICZ: Our founding 15 fathers were obviously a brilliant group, but 16 they had some flaws, right? I like the two 17 founding fathers that my opponents have 18 mentioned, so I'll just go with somebody else. 19 I'll take John Adams: brilliant, creative, 20 hardworking, hard scrappy New Englander, staying 21 away from Abigail fighting so hard to form this 22 country, so I'll go with John Adams. 23 JR ROSS: Thank you. Judge Dorow. 24 JUDGE JENNIFER DOROW: I'm going to 25 take a little bit different approach to this and	Page 68 1 in the law. In 1965 when the signed the Voting 2 Rights Act, the whole intention of the Voting 3 Rights Act was that all branches of government, 4 including civil rights leaders who endured the 5 brutality of Selma, was to expand access for all 6 people to participate in the political process at 7 the local, state, and national level. Any time 8 we have an erosion of that law and those 9 principles, we're losing what is foundation for 10 our community. 11 So I say for me, obviously, I don't 12 know facts, I don't know what cases may be 13 brought, I don't know any of those issues, but I 14 can tell you that being able to overcome so much 15 in the historical nature of our communities so we 16 could be able to check that box is in my DNA. 17 And so it is a consistent value that I want to 18 make sure that we protect that value and we make 19 sure that within our discretion to be able to 20 view the law a certain way, that the lenses that 21 we have are rooted in making sure that we protect 22 that. 23 I don't wear glasses, but I have a 24 bifocal-like lens when it comes to the 25 Constitution. I believe we have to have a sense
Page 67 1 I think back to our very first president, George 2 Washington. And the reason why I'm selecting him 3 is because he had an unwavering commitment to his 4 faith in the face of incredible tyranny, a man 5 who kind of like a David against Goliath, went 6 out and led our troops in battle against the 7 tyrannical government that King George had thrust 8 upon the Colonies. 9 And even though there weren't a lot of 10 founding mothers, I know there were a lot of 11 women supporting those men, women like Betsy 12 Ross, of course. But I can still look at someone 13 like George Washington and be very proud of his 14 faith and how he brought that faith to his role 15 as president, and I'm proud to say I like him a 16 lot. 17 EMILEE FANNON: All right, last 18 question for all candidates. The state's high 19 court has and is expected to hear many cases 20 addressing voting laws. 21 Judge Mitchell, we'll start with you. 22 How do you plan to protect voting rights? 23 JUDGE EVERETT MITCHELL: You know, as 24 I've always talked about, for me, voting is an 25 essential part of my values because it is rooted	Page 69 1 where we pay attention to the historical nature 2 of the document, but we also have to have a 3 living approach to it to understand the 4 implications of where the law moves us to. 5 And so, for me, there's nothing more 6 critical than the voice of the democracy of 7 people and making sure that they have access to 8 the ballot and making sure they have access to 9 the right to vote, and that goes from no matter 10 how young you are, how old you are, everybody 11 should make sure that they have access to that. 12 And when we can make those decisions and we do, I 13 think we must lean always on the side of opening 14 our democracy, rather than shrinking it. 15 EMILEE FANNON: Thank you. Judge 16 Protasiewicz. 17 JUDGE JANET PROTASIEWICZ: Thank you. 18 I think this question dovetails into some of the 19 areas that we've already talked about, right: our 20 founding fathers, maps, gerrymandering. And I 21 suspect the reason we are asked about our 22 favorite patriot or founding father has to do 23 with what are values are, what our history has 24 taught us, what we think, what we think going 25 forward.

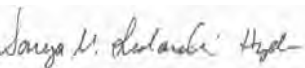
Page 70 1 Remember, we fought that battle against 2 Great Britain in the 1700s when it wasn't 3 necessarily popular. A third of the people 4 wanted to split from Great Britain, a third of 5 the people wanted to stay with Great Britain, and 6 about a third of the people were indifferent, 7 right? 8 But that third who were really, really 9 fighting to separate were fighting to separate 10 for one reason: they wanted fair representation. 11 Remember the Boston Tea Party, remember the Stamp 12 Act, everything we've talked about, taxation 13 without representation? It all comes back to 14 that, and then that question dovetails with that 15 gerrymandering question. 16 When I said to all of you do the voters 17 pick the politicians or do the politicians pick 18 the voters, right? It all comes back to 19 representation and every single person's voice 20 should be heard. That is what is so critically 21 unique about this country: every single person's 22 voice should be heard. 23 So will cases be coming to the 24 Wisconsin Supreme Court? I would suspect so. 25 But I can tell you our entire history is all	Page 72 1 the job. See, this goes back to the whole 2 question about what is the proper role and 3 function of the court within a constitutional 4 construct. Now, I know we're sitting here 5 talking about a Supreme Court election and so, 6 we're focused pretty heavily on the court side of 7 it. 8 But a justice never loses sight of the 9 fact that the justice resides in only one third 10 of the government created by our Constitution, 11 and the protection of voting rights is a 12 collaborative work amongst the three branches. 13 The legislature makes the law, the executive 14 executes the law, and the court does one thing: 15 it resolves legal questions about the law. It 16 doesn't tell the legislature you didn't think 17 wisely about this. It doesn't tell the 18 legislature there's a better way of doing this. 19 It doesn't tell the executive you should be more 20 energetic. 21 A proper justice concentrates on simply 22 the role of the court: to decide disputed 23 questions of law and use that to resolve the case 24 and nothing more. 25 Now some might have more ambitions for
Page 71 1 about our democracy and having everybody's voice 2 heard. Thank you. 3 EMILEE FANNON: Judge Dorow. 4 JUDGE JENNIFER DOROW: So not only is 5 the right to vote essential, it is core to our 6 democracy. I also believe that election 7 integrity is vital. The system needs to be fair 8 and reliable and the people need to be confident 9 that it works as it should. 10 In future cases making ballot access 11 claims, I will apply well-developed case law from 12 the United States Supreme Court. And as with any 13 case that comes before the Court, I will listen 14 to the challenge and then apply the law fairly 15 and faithfully to the facts of that case. Thank 16 you. 17 EMILEE FANNON: Thank you. Justice 18 Kelly. 19 JUSTICE DAN KELLY: So I believe part 20 of the question was how will you enforce the law. 21 Could you read the part again? 22 EMILEE FANNON: How do you plan to 23 protect voting rights. 24 JUSTICE DAN KELLY: All right. So my 25 plan to protect voting rights is to do my part of	Page 73 1 the role. Some may look at voting rights and say 2 we need to be more active in this, we need to 3 reach outside the authority of the courts, we 4 need to adopt laws that I think should be in 5 place, or perhaps we'll just stretch the 6 boundaries creatively of the laws that are 7 already there. That's not for us to do. 8 That would break faith not only with 9 our Constitution, it would break faith with we 10 the people of Wisconsin, because it would be 11 going beyond what you have asked us to do, and 12 we'd be venturing into that space that Alexander 13 Hamilton warned about where tyranny resides when 14 we start combining our power with the power of 15 the other branches. 16 How will I protect? First and 17 foremost, by not exercising anything but judicial 18 authority, and then by faithfully applying the 19 terms of the law that your representatives and 20 legislature have chosen, and then relying on the 21 people of Wisconsin that if they think there 22 needs to be a different standard that you'll take 23 care of business and you'll let your legislators 24 know that there needs to be a different standard. 25 Thank you.

Page 74

1 JR ROSS: Thank you. Thank you to all
2 four of you coming today. Thank you to our
3 sponsors, Wisconsin State Bar. Thank you all for
4 coming. We appreciate the time. On behalf of
5 Aimee and myself, have a wonderful day.
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Page 75

1 C E R T I F I C A T I O N
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3 I, Sonya Ledanski Hyde, certify that the
4 foregoing transcript is a true and accurate
5 record of the proceedings.
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ELECTIONS

Candidates tangle over political issues, judicial perspectives at first 2023 Wisconsin Supreme Court forum

The two conservatives and two liberals running in the 2023 race for an open seat on the state's high court were offered questions about high-profile issues of law and its application to difficult and disputed issues.

By [ZAC SCHULTZ](#)

January 10, 2023



Judge Jennifer Dorow, former Justice Daniel Kelly, Judge Everett Mitchell and Judge Janet Protasiewicz participate in a panel forum for Wisconsin Supreme Court candidates in Madison on Jan. 10, 2023. (Credit: PBS Wisconsin)

The four candidates [running for a seat](#) on the Wisconsin Supreme Court in 2023 have a short window of time to make an impression before the Feb. 21 primary election, and they wasted no time at a Jan. 9 forum in Madison trying to define themselves to potential voters.

Milwaukee County Judge [Janet Protasiewicz](#) only made it to her second sentence in her introductory statement before attacking the conservative majority on the state's high court.

"I could not sit back and watch extreme right-wing partisans hijack our Supreme Court," Protasiewicz said

Dane County Judge [Everett Mitchell](#) hopes to be the first Black justice elected to the Wisconsin Supreme Court, a goal he referenced in his opening sentence.

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[Meet the candidates running in the 2023 Wisconsin Supreme Court primary](#)

"I believe our state deserves a justice that reflects the diversity and ideas and values of our entire state," Mitchell said.

[Daniel Kelly](#) is a former justice on the court, having been appointed in 2016 by then-Gov. Scott Walker, a Republican. Kelly made no reference to [losing his bid for re-election](#) in 2020, instead portraying himself as a quasi-incumbent.

"Now, I'm the only candidate in this race who has experience doing this sort of thing," Kelly said.

Waukesha County Judge [Jennifer Dorow](#) made an early reference to [her claim to fame](#), which is presiding as judge in the highly-publicized 2022 trial

of Darrell Brooks, who was [convicted](#) in the 2021 Waukesha Christmas parade murders.

“I heard from judges across the country and even inmates, who sent letters praising my efforts to be fair and impartial in the face of extreme disrespect, disruption and at times even vile behavior,” Dorow said.

When it comes to their broader political ideologies, Dorow and Kelly are conservatives and Protasiewicz and Mitchell are liberals.

The winner will replace the retiring [Justice Patience Roggensack](#).

The remaining justices can generally be divided into blocks of three conservatives and three liberals, so the 2023 election will determine the ideological balance of the court just as it is set to render decisions over issues like abortion rights and another potential battle over redistricting.

Redistricting was a topic of discussion at the forum, as Protasiewicz made it clear what she thought about the state Supreme Court’s decisions to [use Republican-created maps](#) for legislative districts.

“So let’s be clear here. The maps are rigged — bottom line. Absolutely, positively rigged. They do not reflect the people in the state,” she said. “They are rigged, period.”

It is [expected](#) that if liberal justices control the court, Democrats will attempt to get the court to relitigate the current maps, something Protasiewicz is prepared for.

“I believe the gerrymandering decision was wrong. As I indicated to you before, I can’t ever tell you what I would do on a particular case, but I can tell you my values and common sense tell you that it’s wrong,” Protasiewicz said

Kelly agreed with the decision by the conservative majority on the high court to implement the Republican maps, and criticized Protasiewicz for her stance.

“I think when someone tells you what their values are, in answer to a legal question, they’re telling you how they’re going to decide the case,” Kelly said.

Dorow spent most of the time during her answers referencing a plastic binder of notes in front of her, often declining to give specific answers, including about redistricting.

“Now there is talk about further challenges. So I will not put myself in a position to prejudge anything. But as with any case, I will listen to the challenge and I will apply the law to the task at hand,” Dorow said.

Mitchell argued that voters should hear about the values of the candidates.

“We all have values, and it is important to you to know our values so you can decide who you want to be sitting in that black robe making decisions about the values of our state,” he said.

During his four years on the court, Kelly sided with the conservative justices and conservative plaintiffs on every controversial case he heard, but said politics were never part of his motivation.

“Politics is poison to the work of the court. Everybody who comes to the court — regardless of what they might tell you — has political beliefs. The question is whether you can set them aside to do the work of the court,” said Kelly.

Dorow spoke from a similar position.

“So the role of the judge at its core is to apply the law, not make it. Laws are written and words have meaning. Everybody knows this,” she said.

Mitchell spoke emotionally about the power of the courts to make change in society, referencing the Voting Rights Act and *Brown v. Board of Education*, the 1954 U.S. Supreme Court case that struck down segregation in public schools.

“You can use the law as a force for good — that you can use the law as a force for change and making people’s lives better,” Mitchell said.

Protasiewicz echoed that position, describing the legal theory of a constitution as a living document.

“(It is) a living, breathing document and our laws change and they evolve and the case law changes and evolves,” she said.

That was too much for Kelly, who referenced [Alexander Hamilton’s writings](#) on the role of the courts.

“If it should ever combine itself with the powers of the Legislature, that would then become the very definition of tyranny,” Kelly paraphrased. “But I have heard a fair amount [of] my opponents talking about their values and what they think that the law ought to do. That is the step towards the combination of the power of the judiciary and the Legislature. That is a step we cannot take.”

The primary election for the 2023 Wisconsin Supreme Court election is on Tuesday, Feb. 21, from which the top two vote-getters will move on to face off in the spring election on Tuesday, April 4. More information about the candidates and race is available at [Wisconsin Vote](#).

https://madison.com/news/local/govt-and-politics/elections/candidate-q-a-wisconsin-supreme-court/article_fb416ee5-a99e-5a8f-b43d-d4652861a65e.html

TOPICAL TOP STORY

ELECTION 2023 | WISCONSIN SUPREME COURT

Candidate Q&A: Wisconsin Supreme Court

Alexander Shur | Wisconsin State Journal

Jan 30, 2023



The candidates for the Wisconsin Supreme Court are, from left, Waukesha County Circuit Judge Jennifer Dorow, former Justice Dan Kelly, Dane County Circuit Judge Everett Mitchell and Milwaukee County Circuit Judge Janet Protasiewicz.

JOHN HART, STATE JOURNAL ARCHIVES

Alexander Shur | Wisconsin State Journal

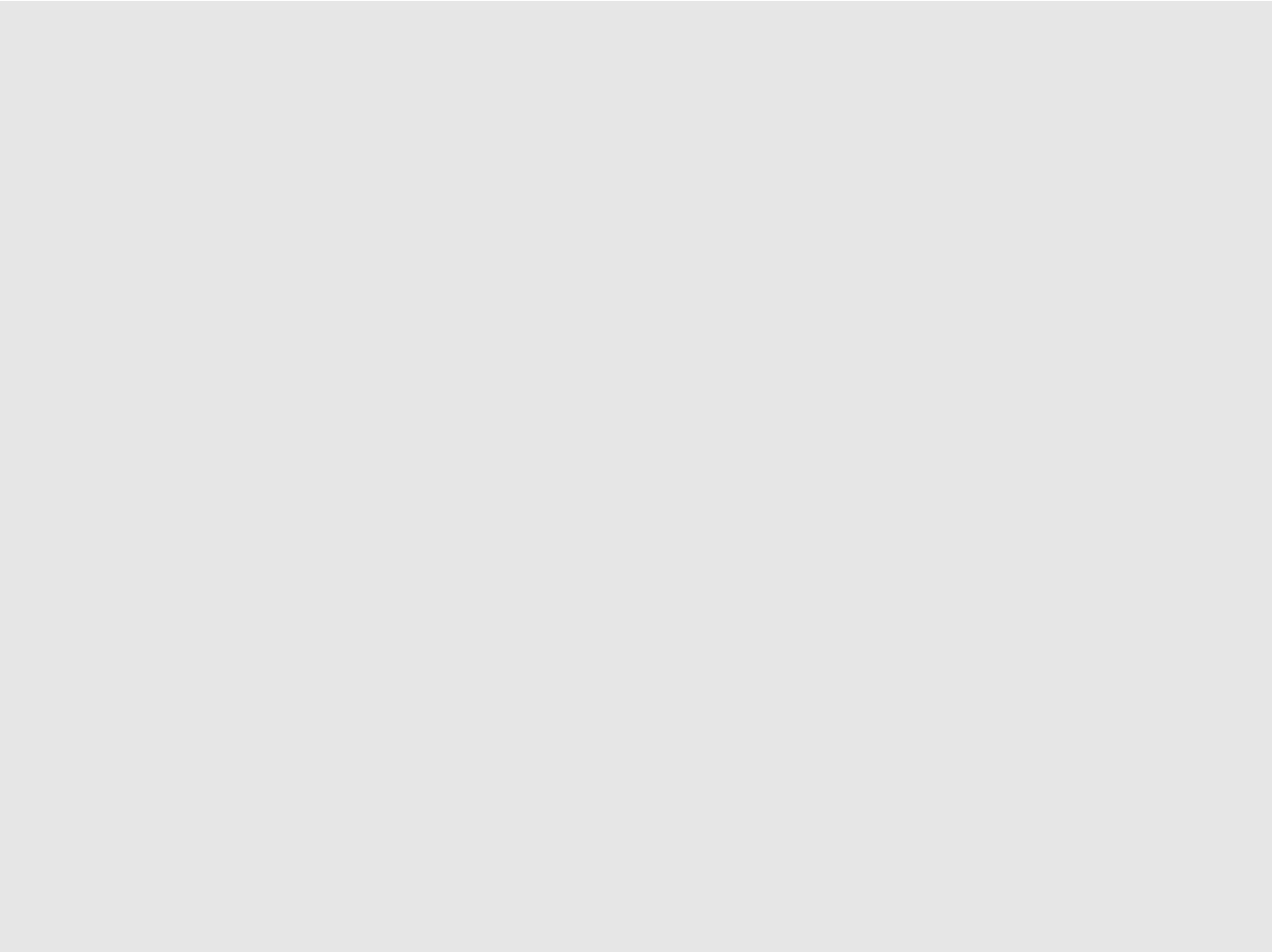
Responses to the Wisconsin State Journal's candidate questionnaire. The four candidates will face off in the Feb. 21 primary, with the top two vote-getters advancing to the April 4 general election.



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Dorow

JOHN HART, STATE JOURNAL

Jennifer Dorow

Age: 52

Hometown: Waukesha

Family: Husband Brian, three children

Current position: Circuit Court Judge Waukesha County and Chief Judge of the Third Judicial District

Other public service: Chair, Waukesha County Evidence Based Decision-Making Initiative (fully incorporated as CJCC); Secretary, Highlands of River Reserve Homeowners Association; Waukesha County Community Foundation Women of Distinction Event Committee; Past Member and Chair, Waukesha-Ozaukee-Washington Youth Council; Past Member, Waukesha-Ozaukee-Washington Workforce Development Board; Past Member, Waukesha County Preventing Alcohol Related Crashes Task Force and DS2 Committee; Board Member, Waukesha Noon Kiwanis

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Education: Marquette University and Regent University School of Law

Website: www.judgejennifer.com

Kelly

JOHN HART STATE JOURNAL

Daniel Kelly

Age: 58

Hometown: Ottawa

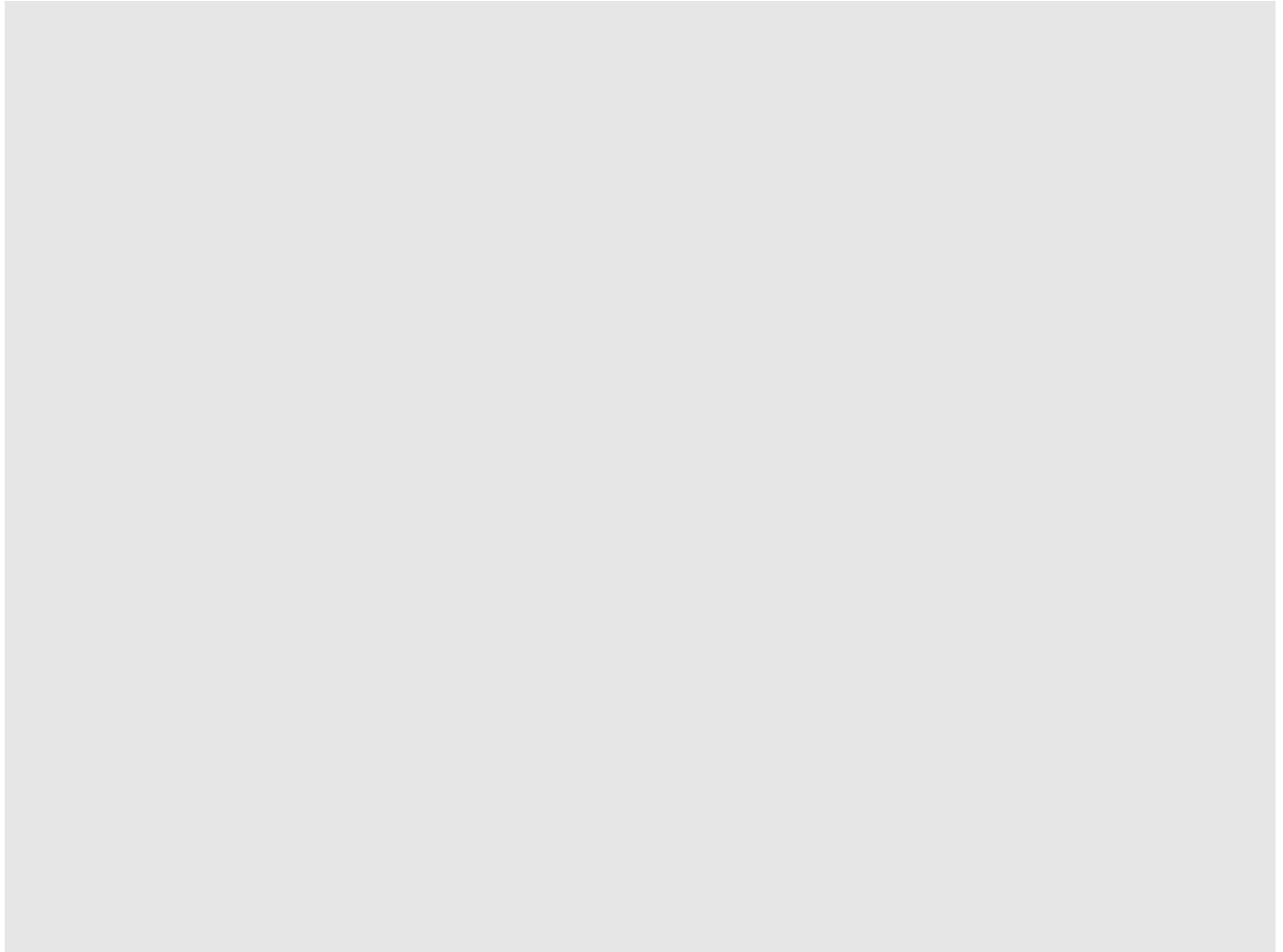
Family: Wife, five children

Current position: Consultant

Prior elected office: Justice, Wisconsin Supreme Court (by appointment)

Education: Bachelor's degree in political science with a minor in Spanish from Carroll College; law degree from Regent University

Website: justicedanielkelly.com



Mitchell

JOHN HART, STATE JOURNAL

Everett Mitchell

Age: 45

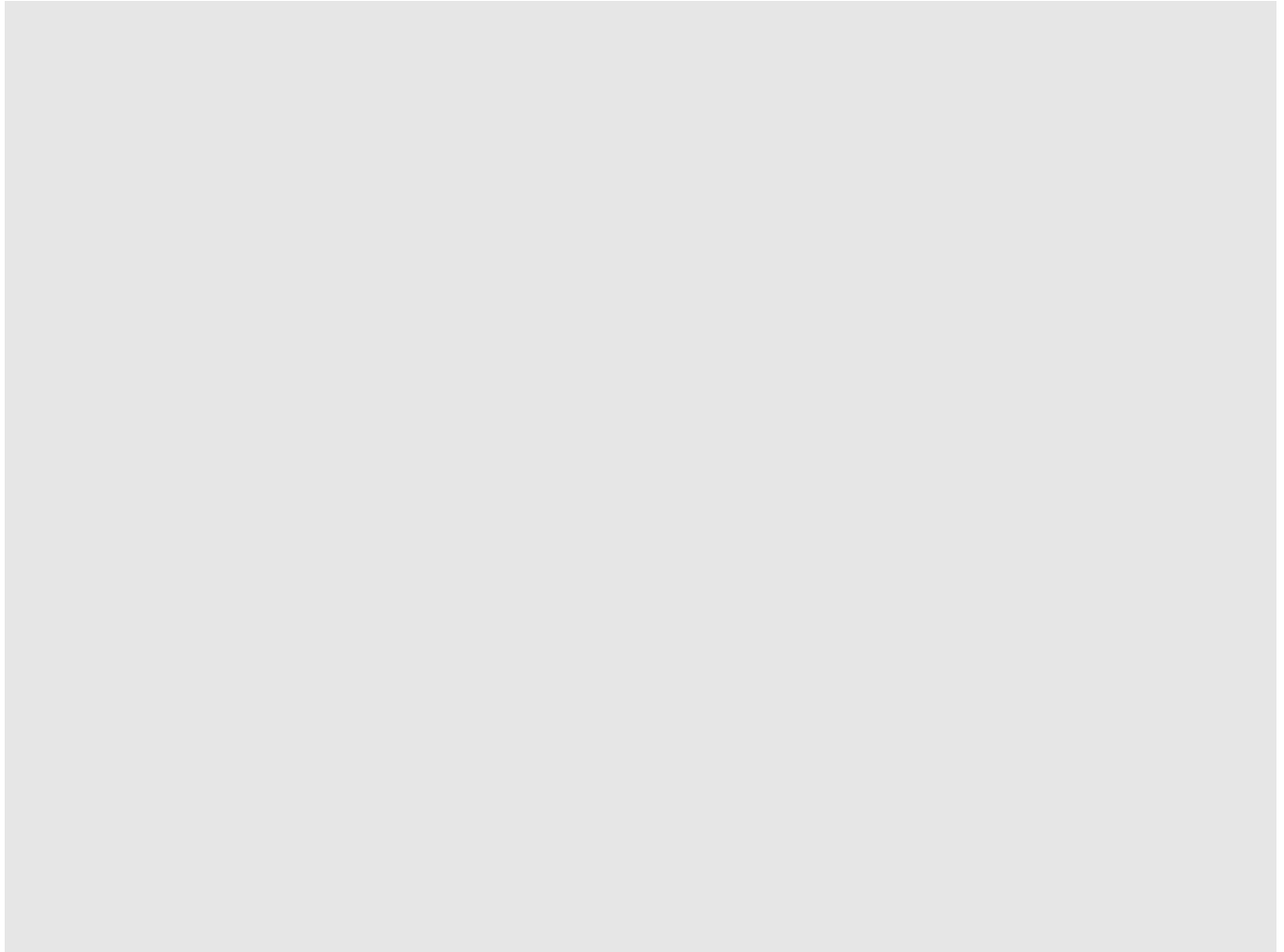
Hometown: Sun Prairie

Family: Married to Mankah Zama Mitchell; children Braylon, 10, Sydney, 17

Current position: Dane County Circuit Court judge; Adjunct professor, UW Madison Law School; senior pastor, Christ the Solid Rock Baptist Church

Education: Bachelor's degrees in mathematics and religion from Morehouse College; master's of divinity and master's of theology from Princeton Theological Seminary; law degree from the University of Wisconsin Law School

Website: judgemitchellforjustice.com



Protasiewicz

JOHN HART, STATE JOURNAL

Janet Protasiewicz

Age: 60

Hometown: Franklin

Family: Married to Gregory Sell, stepchildren

Current position: Milwaukee County Circuit Court judge

Prior elected office: Milwaukee County Circuit Court
App.40

Other public service: Served on the boards of the Association of Marquette University Women, the American Red Cross-Wisconsin Chapter, the Polish Heritage Alliance and Marquette University Law School Alumni Association

Education: Bachelor's degree from UW-Milwaukee; law degree from Marquette University

Website: janetforjustice.com

Q&A

Every Wisconsin Supreme Court justice claims to be independent, yet each falls into one of two ideological camps. Why should voters believe you'll be any different?

Dorow: I believe judges must ascribe to neutral principles of judicial decision-making: The law means what it says, as understood when it was enacted, and judges don't get to red-pencil the text to avoid outcomes they don't like. Applying that principle, I've reached plenty of outcomes in my 11 years as a trial judge that clashed with my personal views. I'm sure that'll continue to happen when I'm a justice.

Kelly: My service on the (Wisconsin Supreme Court) demonstrates I am committed to preserving and applying the original public meaning of our constitutions. I wrote my opinions in a manner designed to squeeze out all personal politics and preferences. I did this by using rigorous logic to move from the premises of the case (the law) to the conclusion. An unbroken chain of logic guarantees the conclusion is commanded by the law.

Mitchell: Just as religion must be separate from the state, partisanship should be separate from justice. Justice, fairness, and equity before the law are paramount.

Protasiewicz: Over the past several months I've heard from people across Wisconsin who are tired of a Wisconsin Supreme Court that puts partisan politics ahead of the rule of law. I'm committed to being an impartial, nonpartisan justice who believes in upholding our Constitution, protecting our rights and keeping Wisconsinites safe. As a judge and 25-year prosecutor, I know how important it is to return common sense to the court.

What one decision you either issued or joined in the majority best typifies your approach to the law?

Dorow: In the recent **Waukesha parade tragedy case**, citizens had the opportunity to witness my commitment to fairness and justice in the face of extreme disrespect and disruption. Through it all, I protected the rights of the person who engaged in this behavior, while also ensuring the rights of victims and witnesses were also protected. I remained impartial, enforced the rule of law and protected the rights of all involved.

Kelly: In Tetra Tech v. DOR, the court had to determine whether it would follow a long line of cases in which the court ceded part of its authority to the executive branch. My opinion describes how those cases conflict with the terms of our Constitution. My commitment to our Constitution is reflected in my conclusion that the Constitution must always take precedence over all else.

Mitchell: Most of my cases involve minors so I cannot speak to them specifically. What I can say is that I seek to apply justice whenever I can. And to treat everyone who comes before me with the dignity that they deserve.

Protasiewicz: I'm proud of my record as a judge and prosecutor. My job is to uphold the Constitution. Sometimes there are laws that I disagree with, but my duty to the people of Wisconsin is to apply the law and common sense. I've done this throughout my career and look forward to serving the state as the next Supreme Court justice.

What recent Wisconsin Supreme Court decision do you feel the court got wrong?

Dorow: In last year's **State v. Richey**, a divided court held the police were wrong to pull over a motorcyclist on suspicion of drunken driving — what turned out to be his eighth offense — even though an officer had witnessed his erratic and reckless driving and had called it in. Justice Roggensack, joined by justices Ziegler and Hagedorn, dissented, explaining the stop was entirely reasonable given the “articulable facts.” I agree.

Kelly: Becker v. Dane County. The Supreme Court upheld a COVID-related public health order modeled on the order at issue in **Wisconsin Legislature v. Palm**. The court failed to acknowledge that local levels of government must respect the separation of powers just as much as the state government. Therefore, the court erred in upholding the Dane County order for the reasons outlined in my separate opinion in *Palm*.

Mitchell: I believe the “**least changes**” **approach** adopted by our Supreme Court for their ruling on gerrymandering is wrong. It is not supported by precedent. And it unfairly robs the voters of their voice in the process.

Protasiewicz: I've been clear that I believe the **court's decision last year regarding legislative maps** was wrong. As the dissent noted, Wisconsin's current maps fail to deliver representative government to the people of Wisconsin, and the process was not rooted in the law. This was a decision rooted in partisan extremism, not common sense. I'll always be an impartial justice who upholds our Constitution.

Editor's note: An earlier version of this story included incomplete information on Everett Mitchell's education. In addition to his bachelor's and master's degrees, he has a law degree from the University of Wisconsin Law School.



JUSTICE, POLITICS, SUPREME COURT

Janet Protasiewicz thinks judicial candidates should be open about their values

Balance of power on court could swing if liberal-backed candidate wins April general election; primary is Tuesday

BY JONAH BELECKIS • FEBRUARY 14, 2023

Listen



Milwaukee County Judge Janet Protasiewicz. Photo courtesy of Janet Protasiewicz's campaign

Milwaukee County Judge Janet Protasiewicz said recently that those running for the state Supreme Court should share their values with voters in races where candidates typically keep their cards close to their chest.

She is one of four candidates running in the Feb. 21 primary as conservative

1A

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Protasiewicz and **Dane County Judge Everett Mitchell** are being backed by liberals. **Former state Supreme Court Justice Daniel Kelly** and Waukesha County Judge Jennifer Dorow have support from conservatives.

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Wisconsin Public Radio’s “**Central Time**” recently invited the candidates to discuss their campaigns on the program. Only Dorow declined the invitation.

Protasiewicz, a former prosecutor, has said the U.S. Supreme Court made a mistake when last summer it **overturned the landmark Roe v. Wade decision**. She has also criticized the state’s electoral maps.

*Read about the interviews with **Mitchell here** and **Kelly here**. The following from Protasiewicz was lightly edited for brevity and clarity.*

Rob Ferrett: What is your case for being on the court?

Janet Protasiewicz: The reason I’m running for the state Supreme Court is to bring back change and common sense to our court. I’m a follow-the-law, common-sense judge — not an uber-partisan. There has been so much extreme partisanship on our Wisconsin Supreme Court, and that’s why I’m running.

RF: Groups that support you view you as a liberal. So do groups that oppose you. What would you say to them?

JP: Labels are interesting. Yes, I am very, very progressive when it comes to social issues. But I would also say that there are issues that, quite frankly, go across all party lines, such as community safety, judicial philosophy, being a fair jurist, being nonpartisan, not having a thumb on the scale when it comes to issues that are going to come before the Supreme Court, and not being an activist judge. We need common sense. We don’t need extreme partisanship, and I will root every decision in the law.

created them unfavorably. Could Republicans count on you to not have your thumb on the scale?

JP: Absolutely. I said the maps are rigged. Wisconsin is a battleground state. I don't think you could sell to any rational person that the maps are fair. Just look at them with the numbers in the Wisconsin State Senate (and) the numbers from the Wisconsin State Assembly. Just look at those numbers. You know that something is wrong.

But what I have told everyone: While I state that those maps are rigged and while I talk about some of the other issues that are important to both me and all Wisconsinites, all of my decisions are going to be rooted in the law. I plan to follow the law. I tell you what my values are because I think that Supreme Court candidates should share with the community and the electorate what their values are. Nonetheless, I will uphold the law (and) follow the Constitution when I make any decisions. Nothing is prejudged.

RF: How would you handle the ongoing legal conflict around the state's 1849 abortion ban? The state Department of Justice contends it is in conflict with a later law.

JP: I can't make any specific comments as to what I would do when elected as a Supreme Court justice. What I have told people regarding the 1849 (ban): I have been very, very clear that my values are that women have the right to choose. I have stated that I disagreed with the (U.S.) Supreme Court's decision on this. Quite frankly, I was surprised when the U.S. Supreme Court decided to take away a fundamental right that so many people in our country had for such a long time.

I would also say that this is the same type of decision making that people are tired of. They don't want that from our Wisconsin Supreme Court. So, we currently have a majority on the court who are making decisions based on right-wing partisan beliefs — not the Constitution and not the law. We need to bring that change back to the courts. We should get away from that right-wing extremism and back to common sense.

READ MORE: Wisconsin Supreme Court candidates discuss abortion, redistricting at Madison forum

RF: What would be your standards for when you should recuse yourself from a particular case on the state Supreme Court?

JP: There needs to be a recusal rule. I have been very, very open about that. Just

absolutely needs to weigh in on that. But I really, really believe a recusal rule is appropriate for lots of reasons.

Other candidates have opposed additional rules. I think that's wrong. I will obviously follow any recusal rules. But there are people who really believe that so much money is being poured into these races and so much of it by outside groups — should a Supreme Court justice really sit on a case where millions of dollars of outside money have come in on your behalf? I don't think that people think that's fair. People think that that puts a thumb on the scale.

RF: Usually, voters are picking politicians to enact certain policies they like. How should voters decide what judge to vote for?

JP: You have to look at the person's judicial philosophy — how they plan to run their courtroom, how they plan to treat people, whether or not they are able to be fair and appropriate under all circumstances. Judicial philosophy, it's critical. I tell people I can't tell you where I'm going to end up on a case, but I can tell you I'm going to root my decisions in the law.

We need to get away from hyper-partisanship and predetermined outcomes by ideologues. We absolutely need to do that. The Supreme Court should be different in many instances than the other branches of government. People should really, really be able to look up to our Supreme Court and believe that it is a bastion of dignity and integrity and that they are going to have a fair shake across the board in our courts.

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Wisconsin's Judicial Election Donnybrook

The Democratic candidate for the state Supreme Court is all but saying how she'd vote on cases.

By The Editorial Board [Follow](#)

Feb. 26, 2023 1:06 pm ET



Judge Janet Protasiewicz and her husband Randy Nass during her election night party as she advances as a candidate in the April 4 election for Wisconsin Supreme Court on Tuesday, Feb. 21 in Milwaukee. PHOTO: EBONY COX/ASSOCIATED PRESS

Judicial elections used to be sleepy, nonpartisan affairs, but not anymore. A race for an open Supreme Court seat in Wisconsin has become a brawl with the Democratic candidate all but declaring how she'll rule on cases.

Conservatives on the Wisconsin court hold a 4-3 majority, but conservative Justice Patience Roggensack is retiring. Democrats are giddy at the prospect of controlling the court for the first time in more than a decade, and they're not hiding their ambition to turn it into a policy engine.

In last week's four-way judicial primary, Milwaukee County Circuit Judge Janet Protasiewicz led the field with some 46.5% of the vote and conservative Daniel Kelly finished second with about 24%. They eliminated conservative Judge Jennifer Dorow (22%) and liberal Judge Everett Mitchell (7.5%). The runoff is on April 4.

Judicial candidates are traditionally circumspect about their policy views so as not to give the appearance of prejudging cases. Judge Protasiewicz has abandoned such legal niceties, all but forecasting her views on future cases. She's been especially blunt on abortion rights. When the U.S. Supreme Court returned abortion policy to the states last year, Wisconsin law reverted to an 1849 statute that makes performing an abortion a felony except to save the woman's life.

In one ad called "Janet for Justice—Common Sense," she says, "I believe in a woman's freedom to make her own decision on abortion. It's time for a change."

But changing the law is the job of the Legislature and Governor.

She has also criticized the state's contested judicial maps, calling them "rigged" though the Supreme Court reviewed them in 2022. "They do not reflect people in this state. I don't think you could sell any reasonable person that the maps are fair," Ms. Protasiewicz told a candidate forum. "I can't tell you what I would do on a particular case, but I can tell you my values, and the maps are wrong." No one believes she won't overturn the maps in a future case.

Also in her potential line of fire: Act 10, the landmark 2011 law that limited the ability of government unions in Wisconsin to collectively bargain. The state's right-to-work law, voter ID requirements and a voucher program for private schools could also be vulnerable.

Mr. Kelly, the GOP nominee, is running largely against Judge Protasiewicz's record of leniency toward felony defendants. One irony is that Democrats spent heavily to help Mr. Kelly get through the primary because they think he'll be easier to beat. He was appointed by former Gov. Scott Walker in 2016 but lost a retention election in 2020 after being endorsed by Donald Trump. In last week's primary he was third after fellow conservative Jennifer Dorow and Ms. Protasiewicz in Waukesha County, a GOP stronghold.

The race is sure to be the most expensive judicial election in Wisconsin history—with more than \$6 million already spent by candidates and outside groups. Judge Protasiewicz raised some \$2 million in the primary, more than the other three candidates combined. National progressives are pouring money into the contest. Mr. Kelly is counting on conservative donor Richard Uihlein's Fair Courts America, but he'll need much more to be competitive with the progressive machine.

The Wisconsin spectacle shows how much the judiciary is now being treated like the third political branch of government. It's a depressing turn of events, but that is where we are.

Appeared in the February 27, 2023, print edition as 'Wisconsin's Judicial Donnybrook'.

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ELECTIONS

Protasiewicz pledges to recuse in lawsuits from Democrats, while Kelly declines to pledge for Republican cases

Wisconsin Supreme Court candidate Janet Protasiewicz says she would not hear cases brought by the state Democratic Party, while opponent Daniel Kelly would not make a pledge for cases by the Republican Party.

Associated Press

March 1, 2023



Milwaukee County Circuit Court Judge Janet Protasiewicz participates in a form for Wisconsin Supreme Court candidates on Jan. 10, 2023. (Credit:

PBS Wisconsin)

By Scott Bauer, AP

MADISON, Wis. (AP) — The Democrats' choice in a high-stakes Wisconsin Supreme Court race said March 1 that she would not hear cases brought by the Wisconsin Democratic Party because it has donated \$2.5 million to her campaign.

But her Republican-backed opponent would not make a similar pledge for cases brought by the Republican Party.

Milwaukee County Circuit Judge Janet Protasiewicz [faces](#) Dan Kelly in the April 4 election, with majority control of the state's highest court at stake.

The court is expected to hear a challenge to Wisconsin's 1849 law banning abortion, and liberals have promised to put a case before the court that would allow it to overturn Republican-drawn legislative districts.

Protasiewicz said she would not recuse herself from cases involving abortion or legislative redistricting, even though groups active on those issues are backing her campaign.

The winner of the race will also be in place heading into the 2024 presidential election in battleground Wisconsin. The court, currently controlled 4-3 by conservatives, came within one vote of overturning President Joe Biden's narrow 2020 win in the state.

With so much on the line, the race has already broken national spending records for a state supreme court election. More than \$18 million has been spent so far, with more than a month to go before Election Day. The previous record spent on a state supreme court race was just over \$15 million in Illinois in 2004.

Protasiewicz was asked after she spoke at a meeting of the Wisconsin Counties Association about whether she would step aside from cases brought by Democrats given the party's donation of \$2.5 million to her campaign in late February.

"I think that \$2.5 million is obviously a significant amount of money," Protasiewicz told reporters. "I don't know if the public could really say she's fair when she's received two and a half million dollars from a particular entity."

She said her decision would only apply to cases brought by the Democratic Party, not cases brought by others who are supported by Democrats.

Kelly, who also spoke to county officials, declined to make a similar pledge for cases involving the Wisconsin Republican Party, which donated money and helped run his 2020 campaign. He said he would decide recusal on a case-by-case basis.

Kelly [worked for Republicans](#), providing legal advice to the chairman of the Wisconsin Republican Party about its plan to field fake electors for former President Donald Trump after he lost in 2020. Kelly said he spoke with the GOP chairman for about 30 minutes, but declined to offer details on March 1 citing attorney-client privilege.

The Biden electors have [sued](#) the fake Trump electors and are seeking \$2.4 million in damages. Kelly said he would recuse himself from that case if it were to make it to the Supreme Court and his conversation was part of the lawsuit.

Trump endorsed Kelly in the 2020 race. When asked if he was seeking Trump's endorsement this year, Kelly said March 1: "I've not really thought about it that much."

Protasiewicz's position on recusal is the same as that taken by Justice Jill Karofsky in 2020 when she won the race that year against Kelly. He was

appointed to the court in 2016 and served four years. He is now running again for a full 10-year term, with majority control of the court at stake.

Protasiewicz has made her support for abortion rights a centerpiece of her campaign. Kelly has accused her of going too far and essentially of committing to voting to overturn the state's abortion ban, should the case come before the court as expected.

Protasiewicz has not said how she would rule on that or any other specific case.

Kelly blasted Protasiewicz for prioritizing “the rule of Janet” over the rule of law.

“Janet having promised to put her thumb on the scales of justice, in some cases at least, I think that really raises the question of whether she can safely serve on the Supreme Court consistently with the constitutional rules of ethics,” Kelly said.

Kelly is endorsed by three anti-abortion groups in Wisconsin, and the leader of Wisconsin Right to Life said in 2016 that Kelly [had done legal work](#) for the group. When asked March 1 what that entailed, Kelly said, “Frankly, I don’t even recall.”

Protasiewicz also said she did not anticipate recusing herself from cases involving redistricting. Kelly has accused her of improperly signaling that she would overturn the GOP-drawn maps since she has called them “rigged.”

A liberal voting rights attorney has promised to bring a new lawsuit challenging the GOP maps should Protasiewicz win. Whoever wins the April election will join the court in August.

Associated Press/Report for America writer Harm Venhuizen contributed to this report.

https://captimes.com/news/government/protasiewicz-would-enjoy-taking-a-fresh-look-at-wisconsin-voting-maps/article_d07fbe12-79e6-5c78-a702-3de7b444b332.html

Protasiewicz would ‘enjoy taking a fresh look’ at Wisconsin voting maps

By Jessie Opoien and Jack Kelly

Mar 2, 2023



Milwaukee County Circuit Judge Janet Protasiewicz, a liberal, and former state Supreme Court Justice Daniel Kelly, a conservative, will battle April 4 for a seat on the state's high court being vacated by retiring conservative Justice Patience Roggensack.

RUTHIE HAUGE

Milwaukee County Circuit Judge Janet Protasiewicz said Wednesday she would “enjoy taking a fresh look” at Wisconsin’s electoral maps if elected to the state Supreme Court — a look that would come from a court led by a liberal majority for the first time since 2008.

“I would anticipate that I would enjoy taking a fresh look at the gerrymandering question,” Protasiewicz said on a recent episode of “Wedge Issues,” the Cap Times’ politics podcast.

Protasiewicz's comments about redistricting aren't surprising, as she said at a January candidate forum that the state's maps are "rigged" — but they serve as an illustration of the lines ostensibly nonpartisan candidates walk as judicial races become increasingly driven by partisan influences.

The Milwaukee County judge made similar assertions on the latest episode of "Wedge Issues," released Thursday, adding that she would not recuse herself from hearing a challenge to the maps despite her comments on the campaign trail.

"I think anybody with any sense knows our maps are rigged," Protasiewicz said. "We have amongst the most gerrymandered maps in the entire country. I have told people, 'I don't think you can sell, to any rational person, that our maps are fair.'"

If she's elected, Protasiewicz said, "I would anticipate that at some point, we'll be looking at those maps," adding that the state's intense and close statewide elections are not reflected in the dominant Republican majorities in the Legislature.

Protasiewicz, a liberal, and former state Supreme Court Justice Daniel Kelly, a conservative, will battle April 4 for a seat on the state's high court being vacated by retiring conservative Justice Patience Roggensack.

Protasiewicz and Kelly both emerged from Feb. 21's four-way primary. Protasiewicz led the way with about 46% of the vote, followed by Kelly who earned about 24% of the vote. Conservative Waukesha County Circuit Judge Jennifer Dorow trailed Kelly by about 2 points, and Dane County Circuit Court Judge Everett Mitchell, a liberal, finished a distant fourth.

The race has attracted national attention and has already reached the milestone of becoming the most expensive judicial contest in American history.

In addition to her criticism of the state's legislative boundaries, Protasiewicz has also been outspoken in her support for abortion access — another issue all but certain to come before the state's high court as a challenge to Wisconsin's 1849 abortion ban makes its way through the legal system.

Kelly has accused Protasiewicz of planning to “place her thumb on the scales of justice to ensure the results satisfy her personal interests.”

“If we do not resist this assault on our Constitution and our liberties, we will lose the Rule of Law, and will find ourselves saddled with the Rule of Janet,” Kelly said in a statement following the primary election.

“We must not allow this to come to pass.”

Protasiewicz told the Cap Times she believes the public has a right to know the personal values of the candidates they elect, arguing that her personal beliefs don’t prevent her from applying the law in cases where the two conflict.

“I think that everybody knows that anybody running for any type of office has their own personal opinions and their own personal values,” Protasiewicz said. “And the question is, do you want to hide those opinions and those values from the public? Are they entitled to know what your personal feelings are? I mean, we've all got them. So the question is, do we hide them? Or do we let the public know?”

We’ve invited former state Supreme Court Justice Daniel Kelly to join us on an upcoming episode and look forward to sharing that conversation soon. Subscribe to Wedge Issues on [Apple Podcasts](#), [Spotify](#), [Google Podcasts](#) or anywhere else you find podcasts.

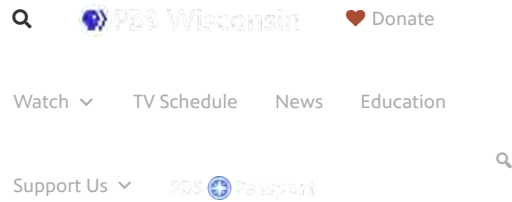


Wedge Issues

Janet Protasiewicz, 'common sense' and the Wisconsin Supreme Court

00:00 / 19:35

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ELECTIONS

Janet Protasiewicz, Daniel Kelly on Wisconsin redistricting

The politics of gerrymandering election maps and its effects on the balance of power in the state Legislature is a high-profile issue in the 2023 race for an open seat on the Wisconsin Supreme Court.

By [ZAC SCHULTZ](#) | Here & Now
March 9, 2023



On April 4, voters will choose between Janet Protasiewicz and Daniel Kelly and determine the future ideological balance of the Wisconsin Supreme Court. But that same election will determine whether the court will look backwards as well.

“So that’s when I say, yes, those maps are rigged,” said Protasiewicz, who has made clear she believes Wisconsin’s legislative maps are gerrymandered in favor of Republicans.

Protasiewicz said the state Supreme Court erred twice on its path to approving those maps.

The first error came in 2021 when the court's conservative majority announced they would not draw new legislative boundaries, but would instead choose from [maps](#) submitted by Gov. Tony Evers and the Republican-controlled Legislature.

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The best map, according to the court, was one that kept the new boundaries as close to the existing boundaries as possible, so as to have the fewest number of voters switch legislative districts.

It was [called](#) the “least change” methodology — a new precedent, invented by the court.

“There’s no legal precedent. There’s nothing in the Constitution. There’s nothing in case law,” Protasiewicz said. “So you get this ‘least change’ rule that, quite frankly, if you talk to an uneducated voter about it, they might say, ‘you know, it sounds like it kind of makes sense — right? — kind of on its face makes sense, kind of, keeping the districts together.’”

However, ‘least change’ only cemented in the [advantage](#) Republicans drew for themselves 10 years earlier.

Even the “least change” map [submitted](#) by Evers still created districts that ensured a Republican majority in the Legislature.

“This is where I say democracy’s on the line. You look at what’s happening in our state. You look at what the Republicans did with the redistricting. You look at the fact that the maps were — 10 years ago — a problem,” said Protasiewicz. “I would say that the maps are a bigger problem. You’ll hear people argue that the Republicans used very, very sophisticated computer technology to draw those maps and to draw those maps in a way that are absolutely the most favorable to them. So that’s when I say, yes, those maps are rigged.”

Daniel Kelly served on the court from 2016 until he lost re-election in 2020, and was not on the bench when the court decided the redistricting case.

However, he said the decision makes sense.

“The phrase ‘least change’ is meant to encompass the idea that we take the maps as they’re written, and then we look for the legal errors, and we fix the legal errors and we leave everything else the same,” said Kelly.

Past redistricting cases were decided in federal court, but Republicans wanted this case before the Wisconsin Supreme Court.

Kelly said the idea of fairness in the maps is a political question, something the court must avoid.

“The members of this court have not been entrusted with making political decisions, only legal decisions. And so their job is just to address those legal imperfections in that map,” he said. “When they’re done addressing those, it is to step aside and then wait for the people of Wisconsin to work on their Legislature and their governor to get to a map that is politically acceptable to the state.

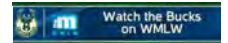
In the spring of 2022, using the ‘least change’ criteria, Justice Brian Hagedorn joined the three liberals on the court to [choose](#) Evers’ legislative maps, which [created](#) an additional African-American majority Assembly seat in the Milwaukee area, something they [argued](#) was required under the Voting Rights Act.

Republicans appealed to the United States Supreme Court, which [struck down](#) the maps, [saying](#) there wasn’t enough evidence to support [invoking](#) the Voting Rights Act.

Hagedorn then joined the conservatives in [picking the Republican-drawn maps](#), which Protasiewicz said was the court’s second major error and something she expects the court to revisit [if she wins](#).

One of the things that was in the [dissent](#) from the Wisconsin Supreme Court regarding the redistricting case — especially after it came back from the U.S. Supreme Court — was that they felt that the court could hold a trial to actually determine whether it was warranted to add an additional district under the Voting Rights Act in Milwaukee or not. Is that an issue she would expect to come back before the court, given that the dissent almost envisioned it?

“I would think so,” said Protasiewicz. “I would think so.”



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In only state Supreme Court debate, candidates trade accusations of partisan ties

By: [A.J. Bayatpour](#) [Facebook](#) | [Twitter](#)

Posted: Mar 21, 2023 10:33 AM CST | **Updated:** Mar 21, 2023 4:44 PM CST

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NOW: In only state Supreme Court debate, candidates trade accusations

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MADISON, Wis. (CBS 58) --The two final candidates for Wisconsin's upcoming Supreme Court election accused one another of having troubling political connections Tuesday during the only debate they'll have during this campaign.

Liberal candidate Janet Protasiewicz, a Milwaukee County Circuit Court judge, and Dan Kelly, a former state Supreme Court justice who currently is a private attorney, fielded a variety of questions ranging from abortion and redistricting to whether they'd recuse themselves from cases involving groups who've campaigned against them.

The April 4 election will decide who controls the state's high court. Conservatives currently have a 4-3 advantage. The court's balance may well determine the outcome of future challenges to the state's abortion ban, its legislative voting districts and election laws.

CBS 58 Capitol correspondent Emilee Fannon was one of three reporters asking questions to Protasiewicz and Kelly during the debate.

Throughout the debate, the candidates pointed to their opponent's ties to partisan politics.

"My opponent is accepting millions from the Democratic Party of Wisconsin, and that presents a major problem," Kelly said about Protasiewicz accepting \$2.5 million from state Democratic party.

Protasiewicz countered by attacking Kelly over his conversations with the state Republican party's former chair, [Andrew Hitt, who discussed](#) with Kelly the effort after the 2020 election to submit an alternate slate of 10 fake electors for former President Donald Trump.

"I am running against one of the most extreme partisan candidate in the history of this state," Protasiewicz said.

Kelly maintained he was unaware of the fake elector plan when Hitt contacted him. Protasiewicz also pointed to Kelly taking the Wisconsin GOP as a client in recent months.

Kelly said Protasiewicz was misleading voters because there's a difference between working for Republicans and taking on the party as a client.

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Abortion

Throughout the campaign, abortion has been one of the race's defining issues. Pro-life groups, such as [Right to Life Wisconsin](#) and [Pro-Life Wisconsin](#), have backed Kelly.

Pro-choice groups, including [Planned Parenthood](#) and [EMILY's List](#), have shared their support for Protasiewicz. The Milwaukee judge repeated Tuesday she personally believes women should have the right to abortion, but that doesn't automatically mean she'd vote to strike down Wisconsin's ban, which makes it a felony to provide abortion, and only makes exceptions for cases where a mother's life is at risk.

"I've been clear any decision I render will be based solely on the law and constitution. I've told everyone I'm making no promises to you," Protasiewicz said. "My personal opinion is that should be the woman's right to make the reproductive health decision, period."

Protasiewicz said Kelly's endorsements were proof he'd be a reliable vote to uphold the abortion ban, citing the Pro-Life website that states it endorses candidates "who have pledged to champion pro-life values."

Kelly accused her of making another misleading remark and argued those endorsements are not an indicator of how he's rule from the bench.

"This seem to be a pattern for Janet, just telling lies about me. You don't know what I'm thinking about that abortion ban," Kelly said. "You have no idea. What I know is this: the endorsements I receive are entirely based on conversations I have with individuals and organizations in which they ask me, 'What kind of justice will you be?'"

Redistricting

With the possibility of a future challenge to the state's maps, Kelly criticized his opponent for talking about how she may approach redistricting after calling the current maps "rigged."

"We know the maps are not fair," Protasiewicz said. "We have battleground elections. We know they are not fair."

Kelly accusing Protasiewicz of plotting to "steal legislative authority," from the GOP-controlled Legislature, who's responsible for redrawing the maps every 10 years.

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Kelly criticized Protasiewicz for not sentencing someone convicted of sexual assault because of the COVID-19 pandemic.

"It's interesting that a handful of cases have been cherrypicked and selected and twisted," she said.

The Milwaukee judge and former prosecutor also added she would not have served in those roles if "the community and the rest of my colleagues thought I wasn't handing down sufficient sentence."

Other Takeaways

Kelly said he will not accept campaign funds from the state Republican Party after stating a few weeks ago he would welcome their support. The former justice is receiving some assistance from party officials for get out the vote efforts and research.

Protasiewicz also suggested possible changes to settle case law when asked about Act 10, absentee ballot drop boxes, and the governor's emergency powers, all controversial issues that have been upheld by the high court.

"Obviously, we all follow precedent all the time. That's what you want to do, Protasiewicz said. "But you know, precedent changes."

Both candidates did signal support for a [proposed constitutional amendment](#) to give judges more discretion when setting bail amounts. It will appear on the April 4th ballot.

Early, in-person absentee voting for the spring election began Tuesday. Early voting dates and times vary by municipality. You can find your election day polling place or request a mailed absentee ballot at myvote.wi.gov.



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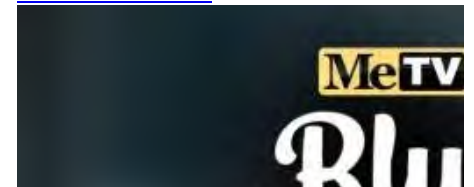
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Live: Supreme Court debate courtesy WISC-TV
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POLITICS & GOVERNMENT

Supreme Court candidates accuse each other of lying, extremism in sole debate

BY: **HENRY REDMAN** - MARCH 21, 2023 2:27 PM



📷 Dan Kelly and Janet Protasiewicz met on Tuesday for the only debate in the Wisconsin Supreme Court race. (Henry Redman | Wisconsin Examiner)

This story has been updated.

In the only debate of an increasingly expensive and heated campaign between Milwaukee County Judge Janet Protasiewicz and former Supreme Court Justice [Dan Kelly](#) for an open seat on the Wisconsin Supreme Court, the two candidates exchanged attacks over their impartiality, legal histories and political allegiances.

During the debate, hosted Tuesday afternoon by the Wisconsin State Bar, each candidate made several accusations that the other is a liar.

The race for the seat, set to become vacant following the retirement of conservative Justice Patience Roggensack, will determine the

ideological sway of the seven-member court. While the race is officially nonpartisan, Kelly is running as a conservative and Protasiewicz as a liberal.

The first time the court's lean has been up for grabs in more than a decade, the race has blown away national fundraising records for judicial campaigns.

Kelly served on the court for four years from 2016 to 2020 after being appointed to an open seat by former Republican Gov. Scott Walker. He lost reelection to liberal Justice Jill Karofsky by a 10-point margin.

On Tuesday, Kelly's attacks on Protasiewicz grew increasingly pointed as he argued – as he has throughout the race – that she would bring her political views to the bench. Several times, Kelly said Protasiewicz was a liar or slandering him.

“Again, this is you being quick to lie,” Kelly said in response to Protasiewicz saying the support he's received from outside political organizations signals which political side his decisions will benefit. “This has been apparent in all your ads against me. It's been apparent every time you speak about me. It's just full of deceit.”

Protasiewicz, on the other hand, regularly argued that Kelly's history of [working for the Republican party](#) and its related interest groups should signal how he will rule – even though throughout the campaign he's said he will only decide based on the rule of law.

“I am running against probably one of the most extreme partisan characters in the history of the state,” Protasiewicz said. “This is somebody who advised the Republican Party on the fake electors. This is somebody who was running his former office out of the Republican Party headquarters. This is somebody who's given legal advice to the Republican Party over and over and over.”

The race for the open seat has taken on an increased importance because the court is likely to play a major role in coming years as the arbiter between the divided government in Wisconsin's executive and legislative branches. The winner of the race will likely be the swing vote in cases over abortion access, the state's legislative maps and voting rights.

Throughout the campaign, Protasiewicz has repeatedly shared what her [“personal values”](#) are over abortion rights, saying she believes women should have the right to choose to get an abortion. Kelly has often pointed to these statements as evidence she is pre-judging a case.

A [lawsuit](#) against Wisconsin's 1849 outlawing abortion is currently pending in the courts and the winner is likely to play an important role in its outcome.

"I would say that I have been very clear about my values to the electorate because I think the electorate deserves to know what the person's values are rather than hiding," Protasiewicz said. "I've also been very clear that any decision that I render will be made based solely on the law and the Constitution. I have told everyone I am making no promises to you. But I can tell you that if my opponent is elected, I can tell you with 100% certainty, that 1849 abortion ban will stay on the books."

Protasiewicz, who has received endorsements from Planned Parenthood and Emily's List, organizations that favor abortion rights, pointed to Kelly's endorsements from anti-abortion groups such as Wisconsin Right to Life as evidence he's also signaled his views on the issue.

Wisconsin Right to Life, which is working to strengthen Wisconsin's abortion ban, states on its political endorsement web page that candidates pledge to support their values to receive their endorsement.

"The Wisconsin Right to Life Political Action Committee endorses candidates who have pledged to champion pro-life values and stand with Wisconsin Right to Life's legislative strategy," the page states. "In judicial elections, the Wisconsin Right to Life Political Action Committee endorses candidates whose judicial philosophies and values fit with those of Wisconsin Right to Life."

Kelly said Protasiewicz was lying when she said his endorsements show he has made pledges on the issue.

"That's absolutely not true, once again," Kelly said. "So this seems to be a pattern for you, Janet, is telling lies about me. So you don't know what I'm thinking about that abortion ban. You have no idea, these things you do not know. What I know is this: the endorsements I've received are entirely because of conversations that I have with individuals or organizations in which they asked me what kind of a justice will you be and I explained to them at length the role of a jurist instead of talking about politics, which is all you do."

Whoever wins the race will also be a crucial vote in a likely challenge to the state's legislative maps, which are frequently characterized as the most gerrymandered political lines in the country.

Protasiewicz has said several times throughout the campaign that the maps are “rigged.” On Tuesday, she indicated she agreed with the dissent written by the court’s liberal justices in the state Supreme Court case that decided the maps last year.

“I think the map issue is really kind of easy, actually. I don’t think anybody thinks those maps are fair, anybody,” she said. “But the question is, am I able to carefully make a decision on a case? Of course I am. It’s what I’ve spent my entire career doing, follow laws I don’t always necessarily like or agree with, you follow the law, that’s what you do. I can assure you that every single case that I will ever handle will be rooted in the law 100%. If you look at the dissent in that maps case, that dissent is what I will tell you I agree with.”

Kelly, who was one of the lawyers who worked with Republicans to install the 2011 maps that entrenched the state’s gerrymandering, said that is another example of an issue in which Protasiewicz is pre-judging a case.

“Well there you have it, I think she’s just told you how she’d resolve the case,” Kelly said. “See this is the problem you have when we get a candidate who does nothing to talk about her personal politics. She’s already told each and every one of us how she will approach this and although she says the formulaic words that she will follow the law, she’s never said one thing in this campaign that would lead to any reasonable belief that that’s what she would do.”

The candidates also sparred over the increasingly negative attack ads that have aired about them during the campaign.

Protasiewicz regularly alluded to the complaints raised in her campaign’s ads which paint Kelly as a partisan extremist with a “corrupt” history of siding with groups that had supported him financially and participating in Republican efforts to overturn the 2020 election.

“He is a true threat to our democracy,” she said on Tuesday.

Kelly countered that he was just one of many lawyers who advised the Republican party as it searched for ways to change the results of the 2020 election in the weeks and months after it was won by Joe Biden.

Throughout the race, Kelly and outside groups supporting him have regularly highlighted sentencing decisions Protasiewicz made in a handful of cases in which sexual offenders were given little or no prison time. On Tuesday, she said that a few cases were “cherry picked” out of the thousands of sentencing decisions she’s made while serving as a judge in Milwaukee County and when Kelly gave

direct quotes, she said she'd like to see the transcripts because "it certainly doesn't sound like anything I would do."

In one case, Kelly accused her of not giving a 25-year-old man who got a 15-year-old girl pregnant jail time because of COVID.

The transcripts from the sentencing hearing show that she did say "But for COVID, I would be giving you some House of Correction time." The transcripts also show that the prosecutor in the case did not recommend a jail or prison term, instead recommending the defendant be placed on probation.

In another case highlighted during the debate, Kelly accused Protasiewicz of telling a defendant, who pleaded guilty to sexually assaulting his cousin, that she saw "good" in him.

Protasiewicz did say there were "a lot of good things" in the defendant's character, the transcripts show. Yet the transcripts also show she said the offense was "phenomenally serious" and warranted a heftier sentence because of that.

The prosecutor in the case did not recommend a sentence, instead leaving the decision to Protasiewicz, who imposed 14 months of imprisonment and 18 months of extended supervision.

The Supreme Court election is set for April 4. Early voting has already begun. Voters can check with their local clerk's offices for hours and locations.



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HENRY REDMAN  

Henry Redman is a staff reporter for the Wisconsin Examiner who focuses on covering Wisconsin's towns and rural areas. He previously covered crime and courts at the Daily Jefferson County Union. A lifelong Midwesterner, he was born in Cleveland, Ohio and graduated from Loyola University Chicago with a degree in journalism in May 2019.

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ELECTIONS

Wisconsin Supreme Court candidates clash over abortion, maps in only 2023 debate

The only debate between 2023 Wisconsin Supreme Court candidates Dan Kelly and Janet Protasiewicz came hours after early in-person voting began ahead of the April 4 election.

Associated Press
March 21, 2023



Wisconsin Supreme Court candidates Republican-backed Dan Kelly and Democratic-supported Janet Protasiewicz participate in a debate on March 21, 2023, in Madison. (Credit: AP Photo / Morry Gash)

By Scott Bauer, AP

MADISON, Wis. (AP) — The liberal candidate for a seat on the Wisconsin Supreme Court didn't back down from her support for abortion rights or her belief that the state's Republican-drawn legislative maps are unfair during a debate on March 21 in which her GOP-backed opponent accused her of being "bought and paid for" by Democrats.

Janet Protasiewicz called her conservative opponent, Dan Kelly, “a true threat to our democracy” because he consulted with Republicans about their plan to seat fake electors to support Donald Trump after he lost Wisconsin in 2020.

Whoever wins the April 4 election for a seat vacated by the retirement of a conservative justice will determine majority control of the court for at least the next two years, including leading up to the 2024 presidential election. Control of the court, which came within a vote of overturning Trump's 2020 defeat in the state, could be crucial, with abortion access, legislative redistricting, voting rights and other key issues at stake. The millions already spent have made it the most expensive state Supreme Court race in U.S. history.

Kelly repeatedly accused the Democratic-backed Protasiewicz of lying about his role in the fake elector plan, his abortion stance and other issues, telling her, “You’re willing to say anything to get what you want.”



Wisconsin Supreme Court candidate Republican-backed Dan Kelly participates in a debate on March 21, 2023, in Madison. (Credit: AP Photo/Morry Gash)

Protasiewicz [has focused her candidacy](#) on her support for abortion rights, stopping just short of saying how she would rule on a lawsuit challenging the state's abortion ban first passed in 1849 — a year after statehood. She reiterated March 21 that she hadn't made up her mind on how she would rule, but she said Kelly had.

“My personal opinion is that should be a woman's right: to make a reproductive health decision. Period,” she said. “If my opponent is elected, I can tell you with 100% certainty that (the) 1849 abortion ban will stay on the books.”

Kelly defended his support from the state's three largest anti-abortion groups and said he made no pledge to them to uphold the ban, as Protasiewicz has alleged.

"This seems to be a pattern for you Janet, just tell a lie," Kelly said. "You don't know what I'm thinking about that abortion ban. You have no idea. ... I had no conversations with those organizations about how I would rule on any issue, including the abortion issue."

Kelly, who [previously did work](#) for Wisconsin Right to Life, has not said how he would rule on the challenge to the abortion ban should it reach the court. But he did write in a blog post years ago that abortion "takes the life of an unborn child."

On redistricting, Protasiewicz was asked how she could fairly hear the case given that the Democratic Party has given her campaign \$2.5 million. She said she would recuse herself from any case brought by the party, but challenges to the [Republican-drawn maps](#) are expected to come from others.

"The map issue is really kind of easy, actually," Protasiewicz said. "I don't think anybody thinks those maps are fair. Anybody."



Wisconsin Supreme Court candidate Democratic-supported Janet Protasiewicz participates in a debate on March 21, 2023, in Madison. (Credit: AP Photo / Morry Gash)

Protasiewicz said she agreed with the liberal dissenting justices in a case that challenged the Republican-drawn maps.

"There you have it," Kelly said in response. "She just told you how she would resolve the case."

Protasiewicz accused Kelly of being unfair with his campaign ads accusing her of handing down soft sentences in numerous criminal cases she has handled as a Milwaukee County circuit court judge.

"I have spent my entire career protecting this community," she said.

Kelly, a former state Supreme Court justice, has long ties to the Republican Party, having [previously worked for Republicans](#). Kelly was endorsed by Trump in 2020. This year, he has the backing of Scott Presler, a Virginia native who planned several “stop the steal” rallies and was on the U.S. Capitol grounds on Jan. 6, 2021. He was in Wisconsin in March helping to raise money and support for Kelly through personal appearances on conservative talk radio.

Protasiewicz’s endorsements include Hillary Clinton, Planned Parenthood and EMILY’s List, which works nationwide to elect Democratic abortion rights supporters.

The debate at the Wisconsin Bar Association, co-sponsored by WISC-TV and WisPolitics.com, came on the same day that early, in-person voting began. Early voting runs through April 2.



Madison residents cast their votes at the Warner Park Community Recreation Center on the first day of early voting on March 21, 2023. Wisconsin voters began casting ballots in person in the state’s high-stakes Supreme Court race, hours before the two candidates were slated to meet for their only debate two weeks before Election Day. (Credit: AP Photo / Morry Gash)

Elizabeth Doe, 73, was the first person to cast a ballot in Wisconsin’s liberal capital, Madison, doing so shortly after 9 a.m. at a community center. She said she voted for Protasiewicz because of her concerns over “reproductive rights.”

“You can’t take that right away,” Doe said.

The [contest](#) has already broken national spending records for a Supreme Court race, with the two sides having spent at least \$22 million to date. WisPolitics.com estimated that more than \$30 million had been spent on the race as of mid-March, which would be roughly double the \$15.2 million spent on a 2004 Illinois Supreme Court race that had held the mark as the most expensive.

**Post****Justice-elect Janet Protasiewicz**

@janetforjustice



Everything is on the line April 4. From reproductive freedom to the outcome of the 2024 election – Judge Janet Protasiewicz will always protect the rights of Wisconsinites, and will bring fairness back to the Wisconsin Supreme Court.

janetforjustice.com/fairness

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ELECTIONS

How could the 2023 Wisconsin Supreme Court election impact medical malpractice lawsuits?

A liberal majority on the Wisconsin Supreme Court once struck down caps on payouts to victims and then a conservative majority late upheld them — would a high court under liberal control revisit the issue?

Wisconsin Watch
March 31, 2023



During their only debate, Wisconsin Supreme Court candidates Daniel Kelly and Janet Protasiewicz discussed their views on court precedent. (*Credit: Joey Prestley / Wisconsin Watch*)



By Matt Mencarini, Wisconsin Watch

In the past two decades, the Wisconsin Supreme Court has flip flopped on whether a limit on damages in medical malpractice lawsuits is constitutional.

In three cases involving people who suffered horrific, life-altering injuries or died due to negligence from doctors, the court set three different precedents, including one that overturned one of those precedents.

In the 2023 Supreme Court election, liberals could retake a majority for the first time in 15 years, meaning issues previously settled by the conservative-controlled court could be revisited — again.

Back in 2004, the court [ruled](#) the state's \$300,000 cap on noneconomic damages — money a jury awards to compensate for pain and suffering — was constitutional in a medical malpractice wrongful death case involving a 5-year-old girl who died when a doctor failed to diagnose her acute diabetic ketoacidosis.

RELATED STORIES

[Wisconsin's three precedent-setting malpractice cases explained](#)

A year later, after a liberal justice was appointed to replace a conservative one, the court tossed a cap involving injury but not death, [finding](#) it violated the equal protection clause of the state constitution. In that case, a doctor's error when delivering a baby left the boy's arm deformed.

Then, 13 years later in 2018, a conservative-dominated court [ruled](#) that the new cap set in 2006 at \$750,000 did not violate that same part of the constitution. The case involved the failure of

doctors to diagnose a catastrophic infection in Ascaris Mayo, leading to amputation of all four of her limbs, who had been awarded more than \$15 million by a jury.

As the medical malpractice issue shows, sharp changes in case law hinge on how the sitting justices view the importance of judicial precedent.

At their only debate on March 21, both candidates were asked that question. Both said they were open to overturning precedent.

Liberal Milwaukee County Circuit Judge Janet Protasiewicz used the U.S. Supreme Court examples of the 1896 case, *Plessy v. Ferguson*, which found racial segregation in “separate but equal” public accommodations to be constitutional; and *Brown v. Board of Education*, a 1954 decision that struck down *Plessy* as discriminatory when it comes to public schools.

“Precedent changes when things need to change to be fair and work well for absolutely, you know, everybody in our society and everybody in our community,” she said. “So of course, we give great, great weight to precedent, but it doesn’t mean that it doesn’t change from time to time.”

Former Wisconsin Supreme Court Justice Daniel Kelly didn’t cite an example, but said justices must look at how current precedent comports with the “original authority” contained in a specific statute or section of the constitution.

“We don’t want to simply follow what’s been done before if we know it’s wrong,” the conservative former jurist said. “To do that would just be to propagate errors from now until the end of time. And that’s not what we do. And that’s not the role of the court.”

Kelly was in the majority for the 2018 precedent-setting case that upheld the \$750,000 cap in the Mayo case but did not author a separate opinion.

Stare decisis at the Wisconsin Supreme Court

Precedent is often addressed at length in briefs to the court and between justices as they draft opinions. The arguments revolve around *stare decisis*, ([Latin for “let the decision stand”](#)) the notion that justices should honor precedents set by their own courts to provide consistency and enhance public perception of the court’s integrity.

Writing in the 2005 case that found the medical malpractice cap unconstitutional, then-Chief Justice Shirley Abrahamson dismissed arguments the court should uphold a precedent set just a year earlier. Precedent is “not mechanical in application, nor is it a rule to be inexorably followed,” she wrote, adding that *stare decisis* didn’t apply because the 2005 case was about a grievous injury, not a wrongful death.



Then-Chief Justice Shirley Abrahamson wrote the majority opinion in the 2005 Wisconsin Supreme Court case that found limits on jury awards in medical malpractice cases violated the state constitution. (Credit: Lukas Keapproth / Wisconsin Watch)

Precedents are intended to ensure that courts have strong reason to overturn past decisions, due to changes in the law or circumstances.

Writing a dissent in the Mayo case, Justice Ann Walsh Bradley noted the court’s precedent from 13 years prior rejecting the malpractice award cap. She cited another state Supreme Court opinion that said justices shouldn’t overturn past cases “merely because the composition of the court has changed.”

Chad Oldfather, a Marquette University Law School professor who teaches state constitutional law, said the Supreme Court has overturned its own precedents in recent years, but the liberal justices have frequently made the point that the court shouldn't do it often.

"So I think that, too, plays a role here," he said, "in the sense that it's going to make them less inclined to revisit questions because they've been, you know, sort of singing this song consistently for the past few years of 'No, we really ought to adhere to what we've decided in the past.'"

Courts play role in medical malpractice law

In 2014, the [*Milwaukee Journal Sentinel*](#) reported the number of medical malpractice lawsuits filed in Wisconsin had dropped by more than 50% since 1999. The balance in the state-run insurance fund — created to avoid rising malpractice insurance premiums — had ballooned to \$1.15 billion, the newspaper reported, a total larger than all the money it has paid out during its 39-year history.

That year, \$21.6 million was paid out in Wisconsin malpractice cases, the lowest annual total since 1990, according to federal data.

The fund surpassed \$1.2 billion in 2020 and, according to a report released in March, has decreased but remains above \$1 billion. In 2022, \$20.1 million was paid out in malpractice payouts. And since 2014, nine medical malpractice insurance policies increased in cost and the same number either stayed flat or decreased, according to Medical Liability Monitor, a trade publication that tracks rates.

J. Michael End, a Milwaukee medical malpractice attorney, said he thought the horrible circumstances before the Supreme Court in the Mayo case presented justices with the best reasons he had seen to prove the cap should be tossed for good.

“I thought that if there was ever a case that would’ve brought about a change in the law, that was it,” End said.

End was cautious to predict whether a medical malpractice cap case would return to the Supreme Court if the April 4 election goes in Protasiewicz’s favor. But it could, perhaps years from now.

End said any challenge to the cap would likely take years, noting the Mayo decision came eight years after the plaintiff lost her arms and legs in 2011.

Because there are now fewer medical malpractice cases, the pool of possible challenges is relatively small. A lawsuit would also need to have noneconomic damages in excess of \$750,000, with rulings from the trial court judge and Court of Appeals that allowed for the case to even reach the Supreme Court.

“There may well be the opposite result someday,” End said, “because we’re going to have new justices on the Supreme Court.”

Kelly didn’t respond to questions for this story.

Protasiewicz declined to say which case — the one tossing or the one affirming the cap — should be precedent in Wisconsin, saying she’d have to hear a case and its arguments before reaching a conclusion on what should be done going forward.

“There should be a very high bar to overturning prior decisions,” she told Wisconsin Watch when asked her views on precedent. “If a precedent is no longer workable or doesn’t meet constitutional standards, reversing precedent can happen, but those examples should be few and far between.”

The nonprofit [Wisconsin Watch](#) collaborates with WPR, PBS Wisconsin, other news media and the University of Wisconsin-Madison School of Journalism and Mass Communication. All works created, published, posted or disseminated by Wisconsin Watch do not necessarily reflect the views or opinions of UW-Madison or any of its affiliates.

POLITICS

The First Electoral Test of Trump's Indictment

The most consequential election of 2023 is in Wisconsin.

By Ronald Brownstein



Illustration by The Atlantic. Sources: Jamie Kelter Davis / The New York Times / Redux.

MARCH 31, 2023

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SAVE 

The most important election of 2023 may also offer crucial insights into the most important election of 2024.

Next Tuesday's vote for an open seat on the Wisconsin Supreme Court has been justifiably described as the most consequential election in the nation this year, because it will determine whether liberals or conservatives control a majority of the body. The election's outcome will likely decide whether abortion in the state is completely banned and whether the severely gerrymandered state legislative maps that have locked in overwhelming Republican majorities since 2011 are allowed to remain in place.

But the contest between the liberal Milwaukee County Circuit Court judge Janet Protasiewicz and the conservative former state-supreme-court justice Dan Kelly has also become a revealing test of the electoral strength of the most powerful wedge issues that each party is likely to stress in next year's presidential race.

Protasiewicz and her allies have centered her campaign on portraying Kelly as a threat to legal abortion and an accomplice in Donald Trump's schemes to undermine democracy—the same issues that helped Democrats perform unexpectedly well in last November's elections. Kelly and his allies have centered his campaign on presenting Protasiewicz as soft on crime, the same accusation that Republicans stressed in many of their winning campaigns last year.

With the choice framed so starkly, in a state that has been so evenly balanced between the parties, Tuesday's result will measure which of those arguments remains more potent, particularly among the suburban voters who loom as the critical swing bloc in 2024's presidential contest.

If Kelly wins, after being significantly outspent on television, it would underscore how much risk Democrats face from rising public anxiety about crime. But a Protasiewicz win, which most political observers in Wisconsin expect, would suggest that support for legalized abortion has accelerated the recoil from the Trump-era GOP that is already evident among college-educated suburban voters. And such a shift could restore a narrow but decisive advantage for Democrats in a state at the absolute tipping point of presidential elections.

"The margins are still very narrow, and of course the economy and other issues will come into play next year, but if it simply becomes a test between abortion and crime, I would say yes, [abortion] is more powerful by a slight, slight margin," says Paul Maslin, a Democratic pollster who has worked in Wisconsin for decades.

Read: How working-class white voters became the GOP's foundation

Like the state itself, the Wisconsin Supreme Court is closely divided. Conservatives now hold a 4–3 majority (though Brian Hagedorn, one of the four conservative justices, has voted with the liberals on some key cases, particularly four rulings denying Trump's effort to overturn the state's 2020 election results). The retirement of a conservative justice has provided Democrats this opportunity to secure a 4–3 liberal majority.

Though Tuesday's election is technically nonpartisan, the race has become a brawl between the two parties. The state GOP is mounting an extensive get-out-the-vote campaign for Kelly, who was appointed to the state supreme court by Republican then-Governor Scott Walker to fill an unexpired term in 2016 before losing his bid for a full term in 2020. State Democrats, meanwhile, have raised and transferred millions of dollars into the campaign for Protasiewicz, who served as an assistant

county district attorney before winning election as a county-circuit-court judge . The tension between the race's openly partisan character and traditional notions of judicial neutrality and nonpartisanship has itself become a central point of contention in the campaign.

Protasiewicz has pushed the envelope for a judicial candidate by offering voters explicit declarations of her views. She has unequivocally affirmed her support for legal abortion, described the gerrymandered state legislative maps as “rigged,” and declared that the signature legislation Walker passed to eviscerate the power of the state's public-sector unions is unconstitutional. But in the next breath she insists that those views—which she calls her “values”—will not affect her decisions on the bench.

The juxtaposition of those two assertions can be head-spinning. At a forum this week on the University of Wisconsin at Milwaukee campus, Protasiewicz declared, “I've been very clear with everybody that I think women should have a right to choose. Obviously, I can't comment about what I would do on any case. That robe goes on; my personal opinions go out the door.”

After her appearance, I asked Protasiewicz why her “values” should matter to voters if they are irrelevant once she dons her judicial robe. “I truly believe that people have an absolute right to know what a candidate's personal thoughts and personal values are,” she answered. Even if, I asked, they are irrelevant to your decisions? “I put them aside,” she said.

Kelly and other Republicans have argued that Protasiewicz's candid expression of her “values” renders her too partisan for a judicial position. (At the Milwaukee forum, the conservative state-supreme-court justice Rebecca Bradley, appearing for Kelly, maintained that Protasiewicz would be forced to recuse herself from cases involving abortion, redistricting, and other issues because she has expressed such clear positions on them—a view that other legal experts reject.) But Kelly is, to say the least, an imperfect messenger for the argument that anyone else is too biased. He has been far more involved than Protasiewicz in direct partisan activities: Kelly has served as a paid legal adviser to the state's leading anti-abortion group as well as to the state Republican Party.

Andrew Hitt, the former state GOP chairman, testified to the congressional committee investigating the January 6 insurrection that he had “pretty extensive conversations” with Kelly and another lawyer about the fake-electors scheme that Trump supporters developed after the 2020 election in order to overturn President Joe Biden’s victory in Wisconsin. Kelly says his involvement was limited to a single 30-minute conversation in which he explained he was not “in the loop” on the plans. But at the sole debate between the candidates earlier this month, Protasiewicz described Kelly as “a true threat to our democracy.”

In the past, local observers say, Wisconsin Supreme Court elections have more narrowly centered on debates about crime and criminal justice (even though the court isn’t directly involved in handing down sentences). “Law-and-order candidates have traditionally done very well,” Mark Jefferson, the executive director of the state Republican Party, told me.

Read: The four quadrants of American politics

Kelly is running in that tradition. Ads from his campaign’s final days are focused almost exclusively on lashing Protasiewicz over rulings she made to sentence a rapist and other violent offenders to limited or no jail time. So many sheriffs are appearing in Kelly ads that it’s reasonable to wonder who is still patrolling the state’s highways this week.

Protasiewicz has responded with ads defending her record on crime, and also jabbing Kelly over his work as a criminal-defense attorney. But mostly her advertising has insisted that Kelly would uphold the 1849 state abortion ban that snapped back into effect when the U.S. Supreme Court last year overturned *Roe v. Wade*. (Both sides agree that the state supreme court will eventually need to decide whether to sustain or strike down that law, which prohibits abortions in almost all cases, and is now being challenged in a lower state court.) Protasiewicz and the groups supporting her are heavily stressing abortion in their ads and have aired nearly four times as many ads across all subjects as Kelly and his backers, according to AdImpact, a group that tracks ad purchases. (That disparity exists largely because Democrats have raised enough

money to allow her to buy the ads directly through her campaign, which receives lower rates, while Kelly's relying mostly on outside groups that must pay higher rates.)

That huge tactical advantage for her is one reason some observers are cautious about drawing too many conclusions from next week's outcome. Conversely, Trump's indictment yesterday might inspire enough Republican turnout to lift Kelly, especially because far fewer people vote in these off-year contests than on a typical November Election Day.

Yet a Protasiewicz win could put an exclamation point on a subtle but discernible shift in the state's political direction.

Though close elections are usually the rule in Wisconsin, early in this century it often leaned Democratic. The state was part of what I termed the "blue wall": the 18 states that voted for Democratic presidential candidates in all six elections from 1992 through 2012. (Democrats actually started their Wisconsin presidential winning streak in 1988.) Democrats also controlled both U.S. Senate seats throughout most of that same period, and the governorship for two terms after 2002.

But the tide began to shift around 2010, with the election of Republican Governor Walker and a GOP sweep of the state legislature. In 2016, two years after Walker won reelection, Trump dislodged Wisconsin from the blue wall, carrying it by 22,748 votes. Like Trump's 2016 victories in Pennsylvania and Michigan, which had also been part of the "blue wall," the former president's Wisconsin breakthrough symbolized his success at forging a winning coalition that revolved around massive margins among non-college-educated and non-urban white voters.

Charles Franklin, the director of the Marquette Law School poll in the state, says Wisconsin today remains divided almost evenly between the parties: 45 percent of voters identify as Republicans, 44 percent as Democrats, and the rest are unaffiliated. Yet since Trump's initial victory, Democrats have won most of the state's key contests. The Democrat Tony Evers beat Walker for governor by about 30,000 votes in 2018 and won reelection by triple that amount last year. In 2018, Democratic Senator Tammy Baldwin won a landslide reelection. Democrats also won big in state-

supreme-court elections in 2018 and 2020. Biden carried the state by about 21,000 votes in 2020. The major Republican victories over this period have been narrow ones: Hagedorn's 6,000-vote 2019 win for the state supreme court and the roughly 27,000-vote win last November by GOP Senator Ron Johnson over the Democrat Mandela Barnes.

Those results suggest that Democrats have come out slightly ahead from the demographic and geographic re-sorting of the electorate that Trump accelerated here. As in states across the country, Republicans have grown stronger in heavily blue-collar and white rural areas, primarily across Wisconsin's northern and western counties where Democrats once competed effectively. But Democrats have been boosted by offsetting gains in the state's most populous cities and towns, many of them relatively more racially diverse or better educated. (About 90 percent of Wisconsin voters are white.)

Craig Gilbert, a fellow with Marquette University Law School's Lubar Center for Public Policy Research and Civic Education, calculated that from the 2018–22 governor races, Evers improved his performance in *all* 30 communities that cast the most votes except for Kenosha (where he was hurt by a backlash against the 2020 riots over the police shooting of a Black man in the city). The places where Republicans are winning “simply aren't growing,” while Democrats are generally improving in the places that are adding population, Devin Remiker, the executive director of the Wisconsin Democratic Party, told me. “It's getting harder and harder for them to keep up with that trend.”

Democrats have benefited from improved showings mostly in two areas. One is the so-called WOW suburban counties (Waukesha, Ozaukee, and Washington) around Milwaukee. Though the GOP still comfortably wins all three, Democrats have noticeably narrowed its margins. As Gilbert calculated, in Waukesha, which he described as “the most important Republican county in Wisconsin,” 21 communities have shifted at least 20 points toward the Democrats in gubernatorial races since 2014.

Even more significant has been the explosive Democratic gains in Dane County, the highly educated hub for biotech, insurance, and government jobs centered on the city of Madison, home to both the flagship campus of the University of Wisconsin and the state capital. The Democratic share of the vote in Dane County has increased from about 70 percent for Hillary Clinton in 2016 to 75 percent for Biden in 2020 to 79 percent for Evers in 2022; Dane actually provided Evers a larger net vote margin than Milwaukee County did, something that would have been almost unimaginable even a decade ago. Franklin says Dane has become a triple threat for Democrats: “It is growing fast, the turnout keeps rising, and the lopsided partisan margins keep growing.”

The flip side of the Democrats’ improving performance in Dane and the Milwaukee suburbs is rising concern in the party about lackluster turnout among Black voters, especially in Milwaukee. Some local leaders fear that a political competition between the parties focusing more on social issues such as abortion simply doesn’t engage enough lower-income Black voters, who are focused more on material needs such as jobs and health care. “If people feel like their issues are not going to be reflected, they are going to sit out,” Angela Lang, the executive director of the group Black Leaders Organizing for Communities, told me.

Lagging Milwaukee turnout next week would be another signal that Democrats, as in 2020, continue to face challenges not only with non-college-educated whites, but also with blue-collar voters of color. But if abortion rights, in effect, trump crime and allow Protasiewicz to extend the Democrats’ gains in white-collar suburbs, that could signal trouble for anti-abortion Republican presidential candidates in 2024—not only in Wisconsin but in the suburbs of any swing state. The Democrats’ rural and inner-city troubles in Wisconsin, which still might allow Kelly to eke out an upset win, testify to the fragility of a modern Democratic coalition bonded less by economic interests than by cultural values. But a Protasiewicz win, in a state that Republicans probably must recapture to regain the White House in 2024, would demonstrate again that there’s formidable power in that new coalition too.

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In a supreme court race like no other, Wisconsin's political future is up for grabs

APRIL 2, 2023 · 5:01 AM ET

HEARD ON WEEKEND EDITION SUNDAY

By Shawn Johnson

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Judge Janet Protasiewicz points at former Justice Dan Kelly during a debate March 21 at the State Bar Center in Madison, Wis.

Angela Major/WPR

MADISON, Wis. — An election on Tuesday could change the political trajectory of Wisconsin, a perennial swing state, by flipping the ideological balance of the state Supreme Court for the first time in 15 years.

The race comes at a critical time for Wisconsin, with a challenge to the state's pre-Civil War abortion ban already working its way to the court and legal fights ahead of the next presidential election right around the corner.

The stakes of the race go beyond a single issue. Should liberals win control of the court for the first time since 2008, they're almost certain to hear a challenge to Wisconsin's Republican-drawn redistricting maps, which have helped cement conservative priorities for more than a decade.

Republicans are framing the race in terms of what they could lose, which they contend includes key pillars of former Republican Gov. Scott Walker's legacy.

Abortion rights and gerrymandering

On a recent Saturday night in Madison, people lined up down the street outside the Barrymore Theater for a live recording of the show "Pod Save America." The hosts — speechwriters who worked for former President Barack Obama — hold celebrity status in Madison, a Democratic stronghold that's proven critical to recent statewide victories in Wisconsin.

This show is aimed at turning out the Democratic vote for Milwaukee County Judge Janet Protasiewicz in her race against former state Supreme Court Justice Dan Kelly, the Republican favorite. (Races for Supreme Court in Wisconsin are officially nonpartisan, but that's not how it works in practice.)

At the front of the line before the doors opened, Ariel Hendrickson, a Madison resident, said the election boiled down to two issues.

"Abortion rights and making sure that gerrymandering does not get any worse in our state," Hendrickson said.





Melissa Johnson holds a sign in support of Wisconsin state Supreme Court candidate Judge Janet Protasiewicz during a rally on March 11 in Appleton, Wis.

Angela Major/WPR

Abortion has been a major issue in Wisconsin since the U.S. Supreme Court struck down *Roe v. Wade* last summer, a ruling that reinstated a long-dormant abortion ban first written in 1849. Democrats have featured it prominently in their ads for statewide office over the past year, and it's been the bedrock of Protasiewicz's campaign.

National spending records broken

"I know people keep saying this, but this is probably one of the most important elections for Wisconsin," said Sheila Hosseini, also of Madison. "Especially because reproductive rights are on the line."

In a state like Wisconsin where close elections are a way of life, voters are accustomed to hearing every couple of years — or in this case, every few months — that the latest campaign is the most important one yet.

But there's actually so much riding on Wisconsin's court race this year, that it might fit that billing, says University of Wisconsin-Madison political science and law professor Howard Schweber.

"I have to agree, I think this election really does live up to its hype," Schweber says. "In the sense that the stakes are extraordinarily high across an extraordinarily broad range of issues."



Supporters of former Justice Dan Kelly attend a St. Patrick's Day party with Republican speakers on March 16 at Clifford's Supper Club in Hales Corners, Wis.

Angela Major/WPR

Money has poured into the race, doubling, and by one estimate, tripling the old national record for spending in a state Supreme Court campaign.

According to the Brennan Center for Justice, the old record of \$15.2 million was set in a 2004 race for the Illinois Supreme Court. According to the center's tracking, nearly \$29 million had been spent on political ads in Wisconsin's race. Another running tally by the Wisconsin political news site WisPolitics found total spending on the race had hit \$45 million.

"It shows that Wisconsin just tends to be the center of the political universe," says Anthony Chergosky, a professor of political science at the University of Wisconsin-La Crosse. "And it also shows that money is flowing into this high stakes battle over abortion in the post-*Roe v. Wade* political landscape."

For some Republicans, more than a decade of GOP accomplishments are on the ballot

For Republican activists, the Supreme Court election is less about what they could gain and more about what they could lose.

At a Republican get-out-the-vote party in the Milwaukee suburb of Hales Corners, organizers warned that a long list of GOP wins could get struck down if liberals win the court, including election laws like voter ID and laws that strengthen gun owner rights.



Former Justice Dan Kelly attends a Republican event for St. Patrick's Day on March 16 at Clifford's Supper Club in Hales Corners, Wis.

Angela Major/WPR

Former Gov. Walker's signature law curbing union rights could also be in danger if the court flips, according to Orville Seymer, a longtime Republican activist.

Protasiewicz was among the tens of thousands who marched against the law in 2011. She also signed a recall petition against Walker.

"All those things, they don't appear on the ballot, but they really are on the ballot," Seymer said at the GOP event. "People are voting on those issues. And the people here in this room — conservative people — they want to maintain that."

While seemingly everyone else is framing the court race in terms of issues, Kelly has notably avoided them.

"If I were to start talking about my political views, that would be no more relevant to this race than who I think the Packers' next quarterback ought to be," he said at a Milwaukee Press Club forum in March.

As a private lawyer, Kelly once defended Republicans' legislative maps in federal court, and his recent clients included state and national Republican parties. Kelly offered legal counsel to the state party after the 2020 presidential election when Republicans used fake electors in an effort to contest former President Donald Trump's narrow loss in Wisconsin.

It's not that Kelly has never shared his views. About a decade ago, Kelly wrote in a blog that abortion took the life of a human being, and he wrote a passage in a book comparing affirmative action to slavery.

As a judicial candidate, he says it's inappropriate for him to share his political views, since a judge's job is applying the law.

"I am running to be the most boring Supreme Court justice in the history of the country," Kelly said. "Because the role of the court is not to be original. It's not to be innovative."

Protasiewicz says voters want to hear where candidates stand

Protasiewicz, who spent decades as a prosecutor and judge in Milwaukee County, has no such hesitation when it comes to sharing her personal beliefs, particularly on abortion.

During a brief interview at the "Pod Save America" event, Protasiewicz was asked what kind of a difference she could make if she's elected to the court.



Judge Janet Protasiewicz, center, waves to the audience during a *Pod Save America* live podcast event March 18 at the Barrymore Theatre in Madison, Wis.

Angela Major/WPR

"I have been very, very forthright that my personal value is that women have a right to choose," Protasiewicz said. "Reproductive choices belong to the person."

Asked about Wisconsin's Republican-drawn legislative districts, which the court's conservative majority endorsed last year, Protasiewicz was similarly outspoken.

"Our maps are rigged in this state," she said. "I would certainly welcome the opportunity to have a fresh look at our maps."

For Democrats in this moment, the Supreme Court race means everything. With a liberal majority on the court and new maps, their hope is that they could finally push the state's politics to the left like neighboring Minnesota and Michigan.

That prospect has helped Protasiewicz smash candidate fundraising records, drawing from a network of Democratic donors around the country and a handful of wealthy donors, like George Soros and Illinois Gov. JB Pritzker, who've made million-dollar donations to the state Democratic Party.

Conservatives were badly outspent in the early stages of the race but have closed the funding gap recently. The state's largest business lobby, Wisconsin Manufacturers and Commerce, and a group funded by GOP megadonor Richard

Uihlein, have spent more than \$10 million on ads attacking Protasiewicz as soft on crime.

Both parties have also described this race in presidential terms because whichever side wins will have a majority on the court ahead of the 2024 presidential race. That means they'll get to hear election lawsuits in Wisconsin, the swing state where each campaign feels a little more important than the last.



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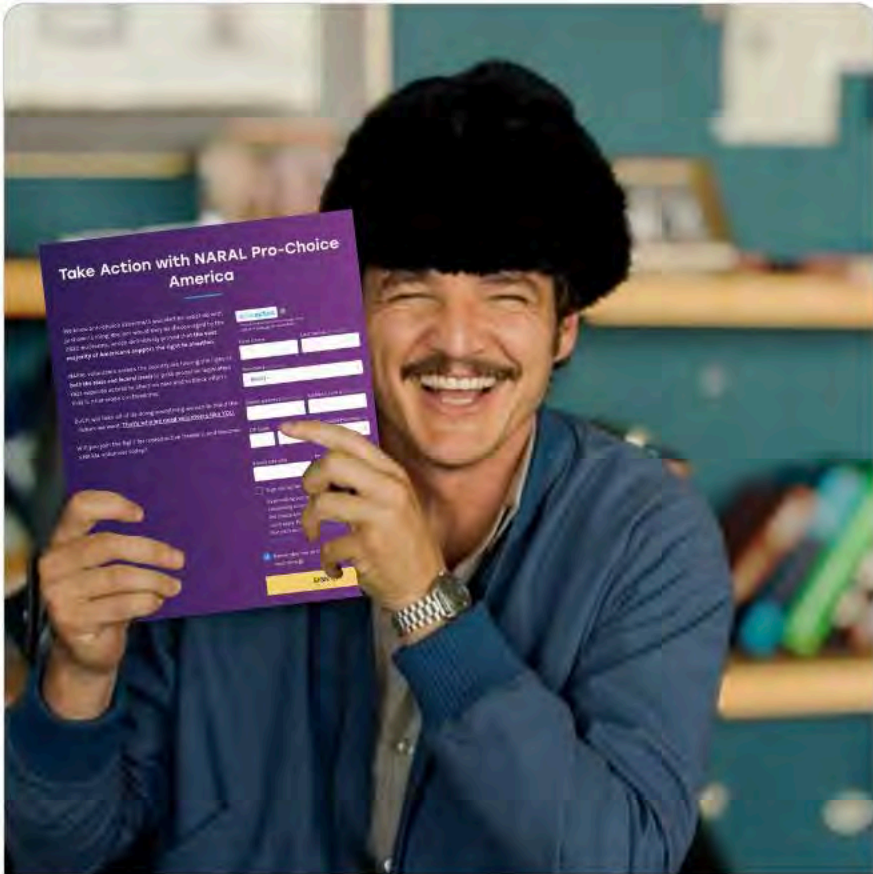
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 **Janet for Justice**
April 3, 2023 · 🌐

Everything is on the line tomorrow. From reproductive freedom to the outcome of the 2024 election, Judge Janet Protasiewicz will protect the rights of ALL Wisconsinites and bring fairness back to the court.

janetforjustice.com/vote



 **Reproductive Freedom for All** 🌐
April 3, 2023 · 🌐

Election Day is tomorrow in Wisconsin and the stakes couldn't be higher. Judge Protasiewicz is running against Daniel Kelly, an anti-choice judge who has been endorsed by numerous extremist groups. If Judge Protasiewicz wins, the court will lose its conservative majority—and that could have huge consequences for the whole nation. Sign up to textbank with NARAL tomorrow for **Janet for Justice!** 🗳️ [#WisconsinSupremeCourt naral.org/WitextbankFB/](https://naral.org/WitextbankFB/)

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Liberal Wins Wisconsin Court Race, in Victory for Abortion Rights Backers

Janet Protasiewicz prevailed in the state's highly consequential contest for the Supreme Court, which will now be likely to reverse the state's abortion ban and end the use of gerrymandered legislative maps.



By Reid J. Epstein

April 4, 2023

Sign Up for On Politics, for Times subscribers only. A Times reader's guide to the political news in Washington and across the nation. [Get it sent to your inbox.](#)

MILWAUKEE — Wisconsin voters on Tuesday chose to upend the political direction of their state by electing a liberal candidate to the State Supreme Court, flipping majority control from conservatives, according to The Associated Press. The result means that in the next year, the court is likely to reverse the state's abortion ban and end the use of gerrymandered legislative maps drawn by Republicans.

Janet Protasiewicz, a liberal Milwaukee County judge, overwhelmingly defeated Daniel Kelly, a conservative former Wisconsin Supreme Court justice who sought a return to the bench. With more than 95 percent of votes counted by Wednesday morning, Judge Protasiewicz led by 11 percentage points, a huge margin in the narrowly divided state.

"Our state is taking a step forward to a better and brighter future where our rights and freedoms will be protected," she told jubilant supporters at her victory party in Milwaukee.

The contest, which featured over \$40 million in spending, was the most expensive judicial election in American history. Early on, Democrats recognized the importance of the race for a swing seat on the top court in one of the country's perennial political battlegrounds. Millions of dollars from out of state poured into Wisconsin to back Judge Protasiewicz, and a host of national Democratic groups rallied behind her campaign.

Judge Protasiewicz, 60, shattered long-held notions of how judicial candidates should conduct themselves by making her political priorities central to her campaign. She made explicit her support for abortion rights and called the maps, which gave Republicans near-supermajority control of the Legislature, "rigged" and "unfair."

Her election to a 10-year term for an officially nonpartisan seat gives Wisconsin's liberals a 4-to-3 majority on the court, which has been controlled by conservatives since 2008. Liberals will hold a court majority until at least 2025, when a liberal justice's term expires. A conservative justice's term ends in 2026.

As the race was called Tuesday night, the court's three sitting liberal justices embraced at Judge Protasiewicz's election night party in Milwaukee, as onlookers cried tears of joy. During her speech, the judge and the other three liberal justices clasped their hands together in the air in celebration.

"Today's results mean two very important and special things," Judge Protasiewicz said. "First, it means that Wisconsin voters have made their voices heard. They have chosen to reject partisan extremism in this state. And second, it means our democracy will always prevail."



Supporters of Judge Protasiewicz gathered in Milwaukee on Tuesday night. "Our state is taking a step forward to a better and brighter future where our rights and freedoms will be protected," she said in her speech. Jamie Kelter Davis for The New York Times

Justice Kelly, 59, evinced the bitterness of the campaign with a testy concession speech that acknowledged his defeat and portended doom for the state. He called his rival's campaign "truly beneath contempt" and decried "the rancid slanders that were launched against me."

"I wish that I'd be able to concede to a worthy opponent, but I do not have a worthy opponent," Justice Kelly told supporters in Green Lake, Wis. He had not called Judge Protasiewicz by the time she delivered her victory remarks.

He concluded the final speech of his campaign by saying, "I wish Wisconsin the best of luck, because I think it's going to need it."

Judge Protasiewicz made a calculation from the start of the race that Wisconsin voters would reward her for making clear her positions on abortion rights and the state's maps — issues most likely to animate and energize the base of the Democratic Party.

In an interview at her home on Tuesday before the results were known, Judge Protasiewicz (pronounced pro-tuh-SAY-witz) attributed her success on the campaign trail to the decision to inform voters of what she called “my values,” as opposed to Justice Kelly, who used fewer specifics about his positions.

“Rather than reading between the lines and having to do your sleuthing around like I think people have to do with him, I think I would rather just let people know what my values are,” she said. “We’ll see tonight if the electorate appreciates that candor or not.”

Over the last dozen years, the court has served as an important backstop for Wisconsin Republicans. It certified as constitutional Gov. Scott Walker’s early overhauls to state government, including the Act 10 law that gutted public employee unions, as well as voting restrictions like a requirement for a state-issued identification and a ban on ballot drop boxes.

In 2020, Wisconsin’s Supreme Court was the only one in the country to agree to hear President Donald J. Trump’s challenge to the presidential election. Mr. Trump sought to invalidate 200,000 ballots from the state’s two largest Democratic counties. The Wisconsin court rejected his claim on a 4-to-3 vote, with one of the conservative justices siding with the court’s three liberals on procedural grounds.

That key vote gave this year’s court race extra importance, because the justices will weigh in on voting and election issues surrounding the 2024 election. Wisconsin, where Mr. Trump’s triumph in 2016 interrupted a string of Democratic presidential victories going back to 1988, is set to again be ferociously contested.

The court has acted in Republicans’ interest on issues that have received little attention outside the state.

In 2020, a year after Gov. Tony Evers, a Democrat, succeeded Mr. Walker, conservative justices agreed to limit his line-item veto authority, which generations of Wisconsin governors from both parties had used. Last year, the court’s conservatives allowed a Walker appointee whose term had expired to remain in office over Mr. Evers’s objection.

Once Judge Protasiewicz assumes her place on the court on Aug. 1, the first priority for Wisconsin Democrats will be to bring a case to challenge the current legislative maps, which have given Republicans all but unbreakable control of the state government in Madison.

Jeffrey A. Mandell, the president of Law Forward, a progressive law firm that has represented Mr. Evers, said he would file a legal request for the Supreme Court to hear a redistricting case the day after Judge Protasiewicz is seated.

“Pretty much everything problematic in Wisconsin flows from the gerrymandering,” Mr. Mandell said in an interview on Tuesday. “Trying to address the gerrymander and reverse the extreme partisan gerrymandering we have is the highest priority.”

The state’s abortion ban, which was enacted in 1849, seven decades before women could vote, is already being challenged by Josh Kaul, Wisconsin’s Democratic attorney general. This week, a circuit court in Dane County scheduled the first oral arguments on Mr. Kaul’s case for May 4, but whichever way a county judge rules, the case is all but certain to advance on appeal to the State Supreme Court later this year.

Dan Simmons contributed reporting from Green Lake, Wis.

Reid J. Epstein covers campaigns and elections from Washington. Before joining The Times in 2019, he worked at The Wall Street Journal, Politico, Newsday and The Milwaukee Journal Sentinel. More about Reid J. Epstein

A version of this article appears in print on , Section A, Page 20 of the New York edition with the headline: Liberal Wins Wisconsin Court Race, in Victory for Abortion Rights Backers

CAMPAIGN FINANCE REPORT STATE OF WISCONSIN CF-2		
COMMITTEE IDENTIFICATION		
Filing Period Name:	July Continuing 2023 Covers all activity from 03/21/2023 through 06/30/2023	OFFICE USE ONLY Committee ID: 0105892
Name of Committee/Corporation:	Friends of Justice Daniel Kelly	
Street Address:	8383 Greenway Boulevard Suite 600	
City, State and Zip:	Middleton, WI 53562	
SUMMARY OF RECEIPTS AND DISBURSEMENTS		
	Column A This Period	Column B Calendar Year-To-Date
1. RECEIPTS		
1A. Contributions (Including Loans) from Individuals	\$623,344.80	\$2,377,875.43
1B. Contributions from Committees (Transfers-In)	\$430,974.00	\$989,904.67
1C. Other Income and Commercial Loans	\$20,328.28	\$20,328.28
TOTAL RECEIPTS (Add totals from 1A, 1B and 1C)	\$1,074,647.08	\$3,388,108.38
2. DISBURSEMENTS		
2A. Gross Expenditures	\$1,469,684.87	\$3,664,601.67
2B. Contributions to Committees (Transfers-Out)	\$0.00	\$0.00
TOTAL DISBURSEMENTS (Add totals from 2A and 2B)	\$1,469,684.87	\$3,664,601.67
CASH SUMMARY		
Cash Balance Beginning of Report*	\$395,098.21	
Total Receipts	\$1,074,647.08	
Subtotal	\$1,469,745.29	
Total Disbursements	\$1,469,684.87	
CASH BALANCE END OF REPORT *	\$60.42	
INCURRED OBLIGATIONS		
(Balance at the Close of This Period-3A)	\$0.00	
LOANS (Balance at the Close of This Period-3B)	\$0.00	

*Cash Balance as reported by committee

I certify that I have examined this report and to the best of my knowledge and belief it is true, correct and complete.

Type or Print Name of Candidate or Treasurer: Turke, Jon	Signature of Candidate or Treasurer	Date: Daytime Phone:

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The complete report, with all the schedules is 238 pages long.

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CAMPAIGN FINANCE REPORT STATE OF WISCONSIN CF-2		
COMMITTEE IDENTIFICATION		
Filing Period Name:	July Continuing 2023 Covers all activity from 03/21/2023 through 06/30/2023	OFFICE USE ONLY Committee ID: 0106639
Name of Committee/Corporation:	Janet for Justice	
Street Address:	1314 S. 1st Street, #145	
City, State and Zip:	Milwaukee, WI 53204	
SUMMARY OF RECEIPTS AND DISBURSEMENTS		
	Column A This Period	Column B Calendar Year-To-Date
1. RECEIPTS		
1A. Contributions (Including Loans) from Individuals	\$1,499,754.60	\$5,438,469.61
1B. Contributions from Committees (Transfers-In)	\$1,199,691.09	\$10,371,419.50
1C. Other Income and Commercial Loans	\$100.00	\$100.00
TOTAL RECEIPTS (Add totals from 1A, 1B and 1C)	\$2,699,545.69	\$15,809,989.11
2. DISBURSEMENTS		
2A. Gross Expenditures	\$5,481,363.44	\$16,540,350.31
2B. Contributions to Committees (Transfers-Out)	\$0.00	\$0.00
TOTAL DISBURSEMENTS (Add totals from 2A and 2B)	\$5,481,363.44	\$16,540,350.31
CASH SUMMARY		
Cash Balance Beginning of Report*	\$2,786,368.50	
Total Receipts	\$2,699,545.69	
Subtotal	\$5,485,914.19	
Total Disbursements	\$5,481,363.44	
CASH BALANCE END OF REPORT *	\$4,550.75	
INCURRED OBLIGATIONS		
(Balance at the Close of This Period-3A)	\$0.00	
LOANS (Balance at the Close of This Period-3B)	\$0.00	

*Cash Balance as reported by committee

I certify that I have examined this report and to the best of my knowledge and belief it is true, correct and complete.

Type or Print Name of Candidate or Treasurer: Steinle, Michael	Signature of Candidate or Treasurer	Date: Daytime Phone:

NOTE: The information on this form is required by ss.11.06, 11.20, Wis. Stats. Failure to provide the information may subject you to the penalties of ss.11.60, 11.61, Wis. Stats.

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ELECTIONS, POLITICS, STATE CAPITOL

Justice Janet Protasiewicz is sworn in, giving liberals control of Wisconsin Supreme Court

Protasiewicz's oath of office Tuesday gives liberals a majority on the court for the first time since 2008

BY SHAWN JOHNSON • AUGUST 1, 2023

Listen



Wisconsin Supreme Court Justice-elect Janet Protasiewicz is sworn in by Justice Ann Walsh Bradley on Tuesday, Aug. 1, 2023, at the Wisconsin State Capitol in Madison, Wis. *Angela Major/WPR*

Promising to ensure justice and fairness for all, Justice Janet Protasiewicz was officially sworn in to a 10-year term on the Wisconsin Supreme Court Tuesday, flipping the court from a conservative to a liberal majority for the first time since 2008.

The investiture ceremony bore similarities to a governor's inauguration. Hundreds gathered in the state Capitol rotunda to hear Protasiewicz speak,

The Larry Meiller Show

The Ideas Network • [Schedule](#)



A crowd watches as speakers give remarks during the investiture of Justice-elect Janet Protasiewicz on Tuesday, Aug. 1, 2023, at the Wisconsin State Capitol in Madison, Wis. *Angela Major/WPR*

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Protasiewicz, who spoke for just over 20 minutes, largely avoided some of the hot-button themes that helped her mobilize Democratic voters in her high-turnout, double-digit victory in April. Absent was any mention of her belief that women have a right to choose when it comes to abortion or her assertion that the political maps drawn by Republicans were “rigged.”

Instead, Protasiewicz talked about her time growing up on Milwaukee's south side, spending 25 years as a prosecutor in the Milwaukee County District Attorney's office and most of the last decade as a circuit court judge.

“All of those long hours led to an incredible opportunity to see our judicial system up close, and it allowed me to see what I believe is universal,” she said. “And that is everyone should get a fair shot to demand justice and not feel like the thumb is on the scale against them.”

The Larry Meiller Show

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Wisconsin Supreme Court Justice Janet Protasiewicz is greeted with applause after swearing in Tuesday, Aug. 1, 2023, at the Wisconsin State Capitol in Madison, Wis. *Angela Major/WPR*

While the court is officially nonpartisan, the political ramifications of Protasiewicz's win are massive. For the past 15 years, the court was regularly an ally to Republicans, upholding many of the laws signed during the tenure of former Republican Gov. Scott Walker.

Now, with a challenge to the state's pre-Civil War abortion ban already working its way through the state court system and a challenge to the state's redistricting plan looming, a high court run by liberal justices will have the final say.

The court's other three liberals — Justices Ann Walsh Bradley, Rebecca Dallet and Jill Karofsky — were all in attendance at Tuesday's ceremony.

"What an amazing day," Bradley said during her own speech before administering the oath of office to Protasiewicz. "I say let us rejoice and be glad."



Wisconsin Supreme Court Justice Ann Walsh Bradley gives a thumbs up before giving remarks at Justice-elect Janet Protasiewicz's investiture Tuesday, Aug. 1, 2023, at the Wisconsin State Capitol in Madison, Wis. *Angela Major/WPR*

Dallet, who used her own investiture speech in 2018 to call on courts to be more inclusive of people of color, hit on similar themes during a brief speech Tuesday. Dallet said she'd gotten to know Protasiewicz well during their experience as prosecutors and judges in Milwaukee County.

"She knows that our system is imperfect, and we must work hard to reduce inequity," Dallet said. "And make sure that we live up to the promise of America, that all of us are treated equally before the law."

Protasiewicz replaces former conservative Justice Patience Roggensack, who retired Friday. Roggensack was first elected 20 years ago and decided not to seek a third term.

Among the remaining conservatives on the court, only swing Justice Brian Hagedorn attended Tuesday's investiture, sitting in the front row next to Karofsky.



Wisconsin Supreme Court Justices Brian Hagedorn, left, and Jill Karofsky, right, sit together during Justice-elect Janet Protasiewicz's investiture Tuesday, Aug. 1, 2023, at the Wisconsin State Capitol in Madison, Wis. *Angela Major/WPR*

“To my colleagues who are here today,” Protasiewicz said, “I’m under no illusion that we will always agree. But I respect each of you immensely. And you have my promise to work with you to fulfill our duties to the people of Wisconsin.”

The court’s other conservatives, Chief Justice Annette Ziegler and Justice Rebecca Bradley, did not attend Tuesday’s ceremony. Justice Rebecca Bradley campaigned hard for Protasiewicz’s opponent, **former conservative Justice Dan Kelly**.

Conservatives were also critical of the court’s new liberal majority after it was reported Monday **by WISN-AM** that the court planned to fire Randy Koschnick, the director of the state court system since 2017. Koschnick, a conservative, ran an unsuccessful campaign for Supreme Court in 2009. He previously worked as a judge and public defender in Jefferson County.

“Political purges of court employees are beyond the pale,” Justice Rebecca Bradley told WisPolitics in a text message Tuesday.

Other changes to the court’s day-to-day operations could also be in store. While Ziegler was recently elected by her peers to a two-year term as chief justice, the court’s new liberal majority is expected to eventually choose a new chief to replace her.



Wisconsin Supreme Court Justice-elect Janet Protasiewicz is sworn in by Justice Ann Walsh Bradley on Tuesday, Aug. 1, 2023, at the Wisconsin State Capitol in Madison, Wis. *Angela Major/WPR*

Protasiewicz won't have to stand for reelection for another decade, meaning she can remain on the seven-member court until at least 2033.

Barring the unexpected, the next chance conservatives have to flip the court back will be in April 2025, when Justice Ann Walsh Bradley is up for reelection. Conservatives would then be on the defensive again in 2026, when Justice Rebecca Bradley's ten-year term is up.

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VOTING RIGHTS POLITICS SUPREME COURT

America's worst gerrymander may soon finally die

The lawsuit seeking to transform Wisconsin into a democracy, explained.

By Ian Millhiser | Aug 3, 2023, 4:40pm EDT



Justice Janet Protasiewicz, potential savior of democracy in Wisconsin. | Jeff Schear/Getty Images for WisDems

***Ian Millhiser** is a senior correspondent at Vox, where he focuses on the Supreme Court, the Constitution, and the decline of liberal democracy in the United States. He received a JD from Duke University and is the author of two books on the Supreme Court.*

The state of Wisconsin does not choose its state legislature in free and fair elections, and it has not done so for a very long time. A **new lawsuit**, filed just one day after Democrats effectively gained a majority on the state Supreme Court, seeks to change that.

The suit, known as *Clarke v. Wisconsin Elections Commission*, seeks to reverse gerrymanders that have **all-but-guaranteed Republican control of the state legislature** — no matter which party Wisconsin voters supported in the last election.

In 2010, the Republican Party had its best performance in any recent federal election, **gaining 63 seats in the US House of Representatives** and making similar gains in many states. This election occurred right before a redistricting cycle, moreover — the Constitution **requires every state to redraw its legislative maps every 10 years** — so Republicans used their large majorities in many states to draw aggressive gerrymanders.

Indeed, Wisconsin's Republican gerrymander is so aggressive that it is practically impossible for Democrats to gain control of the state legislature. In 2018, for example, Democratic state assembly candidates received 54 percent of the popular vote in Wisconsin, but **Republicans still won 63 of the assembly's 99 seats** — just three seats short of the **two-thirds supermajority** Republicans would need to override a gubernatorial veto.

The judiciary, at both the state and federal levels, is complicit in this effort to lock Democrats out of power in Wisconsin. In *Rucho v. Common Cause* (2019), for example, the US Supreme Court held that no federal court may ever consider a lawsuit challenging a partisan gerrymander, overruling the Court's previous decision in *Davis v. Bandemer* (1986).

Three years later, Wisconsin drew new maps which were still very favorable to Republicans, but that included an additional Black-majority district — raising the number of state assembly districts with a Black majority from six to seven. These new maps did not last long, however, because the US Supreme Court struck them down in *Wisconsin Legislature v. Wisconsin Elections Commission* (2022) due to concerns that these maps **may have done too much to increase Black representation**.

In response to this US Supreme Court decision, the state Supreme Court, which was then controlled by Republicans, adopted another set of maps proposed by the state's gerrymandered legislature — **maps that had previously been vetoed by Democratic Gov. Tony Evers**. As Justice Jill Karofsky wrote in dissent, by

implementing the new Republican maps over the governor's veto, "this court judicially overrides the Governor's veto, thus nullifying the will of the Wisconsin voters who elected that governor into office."

These judicially imposed maps maintained the GOP's lock on the state legislature. The 2022 Wisconsin electorate was fairly evenly divided between Democrats and Republicans (Evers **won his reelection bid by a little more than 3 percentage points**, but US Sen. Ron Johnson, a Republican, also **won his race by about a single point**). Yet Republicans **won 64 seats in the state assembly (out of 99), and 22 of the 33 seats in the state senate**.

Legally, not much has changed since the state Supreme Court imposed the Republican Party's preferred maps on the state in 2022. But politically, there has been one enormous change. Former Justice Patience Roggensack, who joined the decision implementing the Republican maps, retired. On Tuesday, she was replaced by Justice Janet Protasiewicz, who **campaigns against the gerrymandered maps** and then **won her election in a landslide**.

Protasiewicz's elevation to the state's highest court also gave Democrats a 4-3 majority (technically, Supreme Court races in Wisconsin are nonpartisan, but every recent race has pitted a liberal supported by Democrats against a conservative supported by the GOP), meaning that there's now a very high likelihood that the state's Republican gerrymander will fall. Indeed, the plaintiffs in *Clarke* ask the Wisconsin Supreme Court to require every member of the state legislature, including state senators who would not ordinarily run for election until 2026, **to stand for election in 2024** — a remedy that may be necessary if the court does strike down the state senate maps, because otherwise there will be some senators who represent districts drawn using the old maps and some who represent districts under new maps.

If the court grants this request, that would mean that Wisconsin would have its first competitive state legislative election in over a decade.

So what are the *Clarke* plaintiffs' legal arguments?

The *Clarke* plaintiffs raise several constitutional objections to Wisconsin's gerrymandered maps, some of which will be familiar to anyone who follows partisan gerrymandering lawsuits closely, and others that are specific to Wisconsin.

Like most states and the federal government, for example, Wisconsin's constitution includes a ban on certain forms of discrimination (Wisconsin's equal protection provision states that "**all people are born equally free and independent**"). The *Clarke* plaintiffs argue that partisan gerrymandering violates this anti-discrimination guarantee by allowing "a majority of the Legislature to create superior and inferior classes of voters based on viewpoint" — that is, by drawing maps that effectively give Republicans more voting power than Democrats.

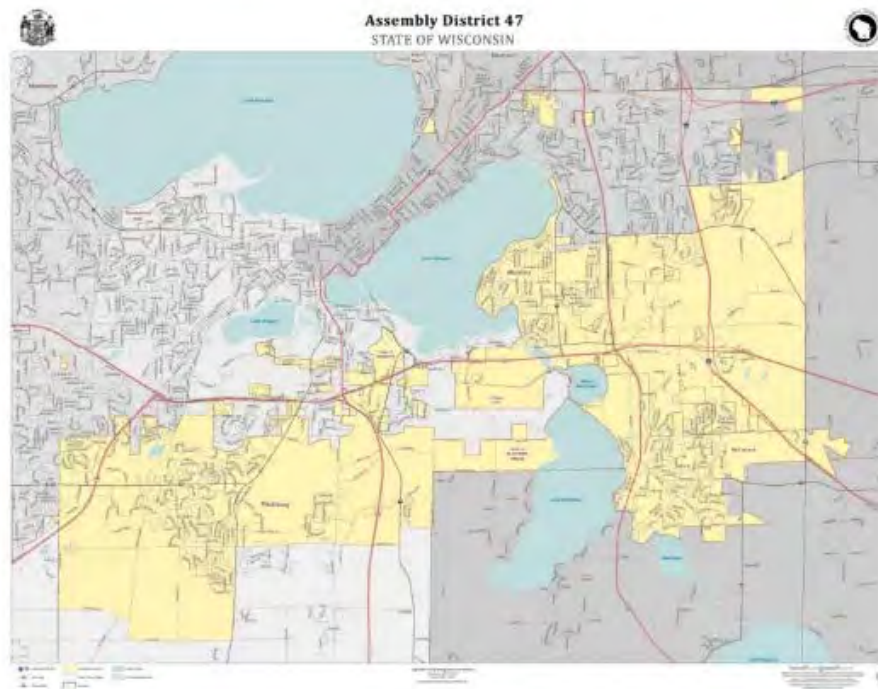
Additionally, Wisconsin's constitution includes a provision similar to the federal First Amendment, which provides that "**every person may freely speak, write and publish his sentiments on all subjects**." The *Clarke* plaintiffs argue that partisan gerrymanders violate this provision because, by giving less representation to Democrats, the state effectively retaliates against those voters because of their political views.

These sorts of claims, that partisan gerrymanders amount to unlawful discrimination on the basis of viewpoint, are a mainstay of lawsuits challenging such gerrymanders, and **they have been for a very long time.**

But the *Clarke* plaintiffs also raise several additional claims that are unique to Wisconsin. One of their most potent arguments is that the state Supreme Court, when it was controlled by Republicans in 2022, **violated the state's separation of powers** when it implemented the exact same maps that were previously vetoed by the governor.

“The Constitution grants the Governor — not the Judiciary — the power to approve or reject by veto, legislation,” the plaintiffs argue. Similarly, the state constitution “grants the Legislature — not the Judiciary — exclusive power to override gubernatorial vetoes.” Yet, when the state Supreme Court implemented the very same map that the governor had previously vetoed, it effectively seized the legislature’s power to decide whether to override that veto.

Additionally, the state constitution provides that legislative districts must “**consist of contiguous territory**,” meaning that every part of the district must be geographically connected to the rest of the district. But the plaintiffs claim that, under the GOP’s maps, “a remarkable 55 assembly districts, consisting of between 2 and 40 disconnected pieces of territory, and 21 senate districts, consisting of between 2 and 34 disconnected pieces of territory, are noncontiguous.” They also **include a map of one of these noncontiguous districts** in their brief (the yellow areas are all parts of a single noncontiguous district).



Petitioner’s Memorandum of Law in *Clarke v. Wisconsin Elections Commission*.

It remains to be seen which of these arguments are embraced by the state Supreme Court’s new majority. It is possible that the court will hand down a fairly narrow decision, which might require the noncontiguous

districts to be redrawn but that does not reach any of the more philosophical questions about when gerrymandering crosses the line into unconstitutional discrimination. It is equally possible that the new majority will hand down a more sweeping decision that lays out broader rules prohibiting partisan gerrymanders in the future.

Even a decision striking down only the noncontiguous districts could result in a wholesale redrawing of the maps, however, because the plaintiffs claim that so many districts are noncontiguous. And, given that the court's more liberal justices have long complained about partisan gerrymandering, the fact that Protasiewicz openly campaigned against such gerrymandering, and the fact that she won in a landslide, it is very likely that the court will hand down some kind of decision ordering Wisconsin to redraw its maps.

Indeed, it would be a catastrophic outcome for democracy if the court did not do so. The US Supreme Court's decision in *Rucho* locked Democrats who wanted to be able to fairly compete for election in Wisconsin out of federal court. And the gerrymander itself prevents Democrats from appealing to the state legislature for relief. In electing Protasiewicz, Wisconsin's voters turned to the only remaining institution that can eliminate the state's gerrymandered maps.

If the state Supreme Court does not act, pursuant to the clear mandate voters gave Protasiewicz in her recent election, there is no one left to restore democracy to the state of Wisconsin.

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Contributions of \$100 or more January 1, 2022 through June 30, 2023

Date	Contributor	City	Employer	Amount
03/23/2023	A, Home Number	Allen, TX	No Employer Identified	\$100.00
03/31/2023	Aaberg, Donald	Vancouver, WA	No Employer Identified	\$100.00
03/18/2023	Aala, Maribeth	Brooklyn, NY	Pinay Pictures	\$2,000.00
02/08/2023	Aaronson, Mark	Oakland, CA	Retired	\$500.00
03/25/2023	Abarbanel, Eliot	Oak Park, IL	Law Offices of Eliot Abarbanel	\$250.00
03/03/2023	Abelson, Richard	Arlington, VA	AFSCME	\$200.00
03/11/2023	Aber-Towns, Matthew	Raleigh, NC	North Caroline Association of Educators	\$250.00
02/23/2023	Aberly, Naomi	Boston, MA	Fairness Project	\$1,000.00
03/02/2023	Aberly, Naomi	Boston, MA	Fairness Project	\$2,500.00
10/07/2022	Abert, Grant D	Madison, WI	Kailo Fund	\$100.00

Total Big Money Contributions: \$5,218,348.67

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Janet C Protasiewicz (NP) - Supreme Court

Contributions of \$100 or more January 1, 2022 through June 30, 2023

PAC	Interest Group	Amount
Democratic Party of Wisconsin	Political/Ideological	\$9,919,873.74
AFT Wisconsin	Labor Unions	\$18,000.00
Amalgamated Transit Union - ATU (Federal)	Labor Unions	\$18,000.00
American Federation of Teachers #212	Labor Unions	\$18,000.00
D R I V E (Teamsters)	Labor Unions	\$18,000.00
End Citizens United (Federal)	Political/Ideological	\$18,000.00
IBEW Local 14 COPE Fund	Labor Unions	\$18,000.00
IBEW Local 494	Labor Unions	\$18,000.00
National Education Association (Federal)	Labor Unions	\$18,000.00
Operating Engineers 139 PAC	Labor Unions	\$18,000.00

Total PAC Contributions: \$10,429,319.50

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Wisconsin is known as a swing state with a proud history of progressive traditions. From our state motto of “Forward” to our legacy as the birthplace of public sector unions and the first state to pass the 19th Amendment, we have a vibrant progressive tradition. In Wisconsin, across race, class and geography we strive to take care of our communities and advance a democracy that includes all of our voices.

For the past two decades, Wisconsin has been ground zero for testing rightwing ideas that violate our democratic values. This well-funded rightwing legal infrastructure has specifically focused on restricting access to the polls, entrenching minority-rule through partisan gerrymandering and consolidating legislative authority and undoing the framework of Wisconsin’s democracy. Law Forward stands in direct opposition to this coordinated campaign, and is on the frontlines—in the courts and in public spaces—to repel these anti-democratic attacks.

Since opening our doors in 2020, Law Forward has engaged in crucial democracy fights for ballot access, led the fight for fair districts, protected separation of powers, advocated for the judiciary’s constitutional role, and convened broad coalitions—including key Wisconsin nonprofits, government officials, and national allies to resist election subversion and ensure fair, free elections.



Our co-founders, Jeff Mandell and Doug Poland, had the idea of a progressive organization that would defend Wisconsin from rightwing attacks and grow our state’s proud, progressive traditions. Their vision to build an organization that stands up to the minority-rule being propped up by legislative leadership and fight back against a systematic effort to undercut democratic norms and disenfranchise voters is a reality today. At its core, Law Forward exists to protect democracy. The mission started with redistricting litigation and a public education campaign, an effort led by Law Forward’s original staff



attorney, Mel Barnes, who now serves as Governor Tony Evers’ chief legal counsel. We strove to put a stop to the current gerrymander, one of the most consequential issues affecting democracy in Wisconsin. At the time Law Forward launched we could not have imagined all the work that would prove necessary just to preserve voting rights and fair election administration. Today, Law Forward works on multiple fronts to fight for a state where Wisconsinites can participate in free, fair elections where their votes matter.

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App. No. 03-7

**IN THE
SUPREME COURT OF THE UNITED STATES**

MICHAEL A. NEWDOW,
Petitioner
v.

THE UNITED STATES OF AMERICA, ET AL.

**On Petition for Writ of Certiorari
to the United States Court of Appeals for the Ninth Circuit**

SUGGESTION FOR RECUSAL OF JUSTICE SCALIA

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Petitioner Michael A. Newdow respectfully suggests that Justice Scalia recuse himself from the consideration of this case.

BACKGROUND

Fifty years after its debut in 1892, the Pledge of Allegiance was codified by the Congress of the United States. Pub. L. No. 623, Ch. 435, § 7, 56 Stat. 380 (1942) (codified at 36 U.S.C. § 172). At that time, the Pledge contained no religious verbiage, and thus raised no religion clause concerns. However, in 1954, Section 172 was amended so that the words, “under God,” were subsequently included. Pub. L. No. 396, Ch. 297, 68 Stat. 249 (1954).¹ Since then, many American citizens – atheistic and theistic alike – have been offended by the apparent Establishment Clause violation.

On March 8, 2000, Petitioner herein (“Newdow”) filed suit in the United States District Court for the Eastern District of California, challenging the constitutionality of the Pledge and seeking to have the words, “under God,” removed. Although the District Court ruled against him on a Fed. R. Civ. P. Rule 12(b)(6) Motion to Dismiss, the Ninth Circuit Court of Appeals reversed that decision. Newdow v. United States Cong., 292 F.3d 597 (9th Cir. Cal. 2002), *amended, reh’g denied, reh’g en banc denied* 321 F.3d 772 (9th Cir. 2003). In a two to one opinion, the panel majority wrote:

To recite the Pledge is not to describe the United States; instead, it is to swear allegiance to the values for which the flag stands: unity, indivisibility, liberty, justice, and--since 1954--monotheism.

¹ In 1998, Title 36 was revised (Pub. L. No. 105-225, § 2(a), 112 Stat. 1494 (1998)), and Section 172 removed. Accordingly, the Pledge is now found at 4 U.S.C. § 4.

Newdow v. United States Cong., 328 F.3d 466, 487 (9th Cir. 2003). Thus, focusing on Newdow's standing as a parent with a child in the public schools, the Court determined that "the school district's policy and practice of teacher-led recitation of the Pledge, with the inclusion of the added words 'under God,' violates the Establishment Clause." *Id.*, at 490. Petitions for certiorari are pending before this Court. Apps. No. 02-1574, 02-1624 and 03-7.

A firestorm of controversy arose when the opinion was first released. This reaction was clearly the result of the religious aspects of this case, and the value theistic Americans place upon the worship of God. The associated passions – though understandable – are the very reason we have an Establishment Clause, and, perhaps in this arena more than any other, it is essential that the judiciary present a neutral front. To be sure, the individual judges and justices may be assumed to hold fervid religious beliefs. However, those beliefs – whatever form they take – cannot give the appearance of a bias which might interfere with impartial legal analysis. Because some of his statements and activities have called that impartiality into question, recusal by Justice Scalia is indicated.

LEGAL STANDARD

28 U.S.C. § 455 (a) states, "Any justice, judge, or magistrate [magistrate judge] of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." For the reasons that follow, Newdow believes that the impartiality of Justice Scalia indisputably "might reasonably be questioned" in the case at bar.

JUSTICE SCALIA'S STATEMENTS AND ACTIVITIES

According to reliable news accounts (Exhibit A), Justice Scalia was “the main speaker at an event for Religious Freedom Day” held on January 12, 2003. There, Justice Scalia apparently indicated that the Ninth Circuit decision in the instant case was based on a flawed reading of the Establishment Clause. Yet it is highly unlikely that the Justice had ever read any of the briefs in the case, and – although his knowledge base is prodigious – it is doubtful that Justice Scalia has been fully apprised of all the facts related to Congress’s Act of 1954. Under such circumstances – where he prematurely indicated that a lower court’s decision was wrong in a case he would likely hear – one might certainly reasonably question his impartiality.

The fact that he chose to give these remarks at an event in which the Knights of Columbus played a sponsoring role (Exhibit B) is especially noteworthy. The Knights of Columbus is the organization that “led the effort to officially include the words ‘under God’ in the Pledge of Allegiance to the American flag.”² In fact, since Justice Scalia made his comments, the Knights of Columbus has submitted an *amicus* brief in the hope of overturning the Ninth Circuit’s decision. Exhibit C. In that document, it is claimed that “American concepts of freedom flow from an authority higher than the State.”³ That idea is, of course, found nowhere in the text of the Constitution. Yet it is a foundational concept of the brief which, of necessity, turns atheists such as Newdow into “outsiders, not full members of the political community.”⁴ Certainly Justice Scalia was aware of the Knights’ hosting of the Religious

² Accessed on August 18, 2003 at the organization’s official web site, <http://www.kofc.org/knights/history/history.cfm>.

³ Brief *Amicus Curiae* of the Knights of Columbus, at 1.

⁴ Lynch v. Donnelly, 465 U.S. 668, 688 (1984) (O’Connor, J., concurring).

Freedom Day activities, and it is likely that he is also cognizant of the role that organization played in effecting the change in the Pledge. That he deliberately chose to allude to the Ninth Circuit's ruling in such a venue gives further cause to reasonably question his impartiality in this litigation.

LEGAL ANALYSIS

It should first be noted that Justice Scalia's voluntary, disapproving statements about the lower court's ruling – in a case obviously destined to come before him – is at odds with the Code of Conduct for United States Judges. Canon 3(A)(6) of that Code states (in pertinent part) that “A judge should avoid public comment on the merits of a pending or impending action.” Justice Scalia's comments on January 12, 2003 unequivocally violated that Canon.⁵

Under current case law, the totality of these circumstances supports recusal. Liteky v. United States, 510 U.S. 540 (1994) – authored by Justice Scalia, himself – reviewed the meaning of 28 U.S.C. § 455, especially in view of the “massive changes”⁶ made in 1974. It was specifically noted that, “what matters is not the reality of bias or prejudice but its appearance. Quite simply and quite universally, recusal [i]s required whenever ‘impartiality might reasonably be questioned.’”⁷ Moreover, subsection (a) “covers all aspects of partiality”⁸

⁵ It should be pointed out that Canon 3(C)(1) mirrors 28 USCS § 455 (a) in stating that “A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned.”

⁶ 510 U.S., at 546.

⁷ 510 U.S., at 548.

⁸ 510 U.S., at 553.

Justice Kennedy's concurrence also made the point that recusal is mandatory here:

[T]he central inquiry under § 455(a) is the appearance of partiality, not its place of origin;⁹

Disqualification is required if an objective observer would entertain reasonable questions about the judge's impartiality. If a judge's attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely, the judge must be disqualified. Indeed, in such circumstances, I should think that any judge who understands the judicial office and oath would be the first to insist that another judge hear the case;¹⁰ and

Section 455(a) ... addresses the appearance of partiality, guaranteeing not only that a partisan judge will not sit, but also that no reasonable person will have that suspicion.¹¹

Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847 (1988) – another Supreme Court case that considered 28 U.S.C. § 455 in depth – similarly emphasized that “a violation of § 455(a) is established when a reasonable person, knowing the relevant facts, would expect that a justice, judge, or magistrate knew of circumstances creating an appearance of partiality, notwithstanding a finding that the judge was not actually conscious of those circumstances.”¹²

Along these lines, the lower courts have determined that:

[T]he judge's actual state of mind, purity of heart, incorruptibility, or lack of partiality are not the issue. ... The standard is purely objective. The inquiry is limited to outward manifestations and reasonable inferences drawn therefrom. In applying the test, the initial inquiry is whether a reasonable factual basis exists for calling the judge's impartiality into question.

United States v. Cooley, 1 F.3d 985, 993 (10th Cir. 1993).

⁹ 510 U.S., at 563 (Kennedy, J., concurring).

¹⁰ 510 U.S., at 564 (Kennedy, J., concurring).

¹¹ 510 U.S., at 567 (Kennedy, J., concurring).

¹² Liljeberg, 486 U.S. at 850.

It should be emphasized that it is not only the statements Justice Scalia has made that are of concern. His conscious decision to appear as the “featured speaker” at an event sponsored by the Knights of Columbus – the religious organization that initiated the drive to place “under God” into the Pledge – and to use that forum to decry the Ninth Circuit’s ruling is of enormous moment. In fact, it was “the judge’s expressive conduct in deliberately making the choice to appear in such a forum at a sensitive time to deliver strong views on matters which were likely to be ongoing before him”¹³ that resulted in the Tenth Circuit’s determination that the District Judge in Cooley should have recused himself.

The foregoing in no way suggests that a judge or justice, even in an extrajudicial setting, is prohibited from enunciating his views on legal matters. On the contrary, “expressions of opinion on legal issues are not disqualifying” (Leaman v. Ohio Dep’t of Mental Retardation & Developmental Disabilities, 825 F.2d 946, 950 (6th Cir. 1987) (note 1), and “[a] judge’s views on legal issues may not serve as the basis for motions to disqualify.” (United States v. Conforte, 624 F.2d 869, 882 (9th Cir. 1980)). However, Justice Scalia’s challenged actions go far beyond such an enunciation. In January 2003, he indicated that he has already applied his Establishment Clause analysis to the case at bar and reached his conclusion before ever reading the briefs or hearing the arguments. That is what provides the grounds for recusal.

The Court has noted the importance of “ensur[ing] that our deliberations will have the benefit of adversary presentation and a full development of the relevant facts.” Bender v. Williamsport Area School Dist., 475 U.S. 534, 542 (1986). Here, a justice has indicated that

¹³ Cooley, 1 F.3d at 995.

he is prepared to rule in a given manner absent such deliberations, precisely the situation for which 28 U.S.C. § 455 (a) was promulgated. If “[t]he test is whether an objective, disinterested, lay observer fully informed of the facts underlying the grounds on which recusal was sought would entertain a significant doubt about the judge’s impartiality,” Parker v. Connors Steel Co., 855 F.2d 1510, 1524 (11th Cir. 1988), then it would seem that the following would lead to exactly that doubt:

- The constitutionality of the words, “under God,” in the Pledge of Allegiance is at issue;
- A justice – fully aware that the case would soon likely appear before him – accepted a speaking invitation sponsored by the organization that “led the effort to officially include the words ‘under God’ in the Pledge of Allegiance;”
- At that venue, the justice indicated – before the first petition ever reached his court – that the case was wrongly decided in the court below.

“[T]he appearance of partiality is as dangerous as the fact of it.” Conforte, 624 F.2d at 881. Because “a judge is under an affirmative, self-enforcing obligation to recuse himself *sua sponte* whenever the proper grounds exist.” United States v. Kelly, 888 F.2d 732, 744 (11th Cir. 1989), Justice Scalia should recuse himself from deliberations in this litigation.

CONCLUSION

For the foregoing reasons, it is respectfully suggested that Justice Scalia recuse himself from any consideration of the instant litigation.

Under penalty of perjury, I affirm that the foregoing Motion is made in the good faith belief that the facts are true, that the arguments are appropriate, and that recusal by Justice Scalia will best serve the interests of justice and the integrity of the judiciary.

September 5, 2003

Respectfully submitted,

Michael Newdow, Petitioner

No. 2021AP1450

In the Supreme Court of Wisconsin

BILLIE JOHNSON, ERIC O'KEEFE, ED PERKINS,
and RONALD ZAHN,
PETITIONERS,

v.

WISCONSIN ELECTIONS COMMISSION, MARGE BOSTELMANN *in her official capacity as a member of the Wisconsin Elections Commission*, JULIE GLANCEY *in her official capacity as a member of the Wisconsin Elections Commission*, ANN JACOBS *in her official capacity as a member of the Wisconsin Elections Commission*, DEAN KNUDSON *in his official capacity as a member of the Wisconsin Elections Commission*, ROBERT SPINDELL, JR. *in his official capacity as a member of the Wisconsin Elections Commission* and MARK THOMSEN *in his official capacity as a member of the Wisconsin Elections Commission*,
RESPONDENTS.

On Petition To The Supreme Court To
Take Jurisdiction Of An Original Action

**MEMORANDUM OF CONGRESSMEN GLENN GROTHMAN,
MIKE GALLAGHER, BRYAN STEIL, TOM TIFFANY, AND
SCOTT FITZGERALD IN SUPPORT OF THEIR MOTION TO
INTERVENE AS PETITIONERS**

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INTRODUCTION

Congressmen Glenn Grothman, Mike Gallagher, Bryan Steil, Tom Tiffany, and Scott Fitzgerald (hereinafter “the Congressmen”) respectfully move to intervene as Petitioners. The Congressmen have a direct interest in the contours of Wisconsin’s congressional districts given their status as elected representatives who all intend to run for reelection in 2022. Accordingly, this Court should grant the Congressmen intervention as of right or, at minimum, permissive intervention, as members of Congress are regularly permitted to intervene in redistricting challenges.

Counsel for the Congressmen conferred with counsel for Petitioners and Respondents: Petitioners do not oppose the Congressmen’s motion, and Respondents take no position.

STATEMENT OF INTEREST

The Congressmen are the duly elected Representatives to the U.S. House of Representatives from five of Wisconsin’s eight congressional districts, who all intend to be candidates for reelection in 2022. And each Congressman also resides within his district. Appendix to Congressmen’s Intervention

Memorandum (“App.”) at 1–27. The Congressmen all have the solemn duty to “promote and protect their [constituents] interests,” which duty requires them to kindle “close relations” and “common feeling[s] and interests” with the citizens of the districts from which they were elected. *State ex rel. Att’y Gen. v. Cunningham*, 81 Wis. 440, 51 N.W. 724, 730 (1892); accord *McCormick v. United States*, 500 U.S. 257, 272 (1991). Accordingly, each Congressman has invested substantial time and resources to understand the needs of the constituents in the districts that they represent. App. 1–27.

The Congressmen’s solemn relationship with their constituents and their intent to run for reelection in 2022 give them a substantial interest in the ongoing redistricting process for Wisconsin’s congressional districts. This is because the “contours of the maps” for Wisconsin’s congressional districts “determin[e] which constituents the Congressmen must court for votes and represent in the legislature,” so any change to those contours “affect[s] the Congressmen directly and substantially.” *League of Women Voters of Michigan v. Johnson*, 902 F.3d 572, 579 (6th Cir.

2018); App. 1–27. For these reasons, federal courts regularly permit members of Congress to intervene in redistricting actions related to their maps. *See, e.g., Johnson*, 902 F.3d at 579; Order, *Hunter v. Bostelmann*, Nos. 3:21cv512-jdp-ajs-eeec, *et al.*, Dkt.60 at 3–4, (W.D. Wis. Sept. 16, 2021) (hereinafter “*Hunter Order*”); *Baldus v. Members of Wis. Gov’t Accountability Bd.*, No. 2:11cv562-JPS-DPW-RMD, 2011 WL 5834275, at *2 (E.D. Wis. Nov. 21, 2011); *Ohio A. Philip Randolph Inst. v. Smith*, No. 1:18cv357, 2018 WL 8805953, at *1 (S.D. Ohio Aug. 16, 2018). And, analogously, this Court in *Jensen v. Wisconsin Elections Board*, 2002 WI 13, 249 Wis. 2d 706, 639 N.W.2d 537 (per curiam), permitted leaders of the minority party in the Assembly and Senate to intervene in support of the interests of “Senate and Assembly Democrats,” in a case involving “state legislative redistricting.” *Id.* ¶ 1.

ARGUMENT

Rule 803.09 governs intervention, including in a case before this Court in its original jurisdiction. *See* Amended Order Granting Petition at 3, *Johnson v. Wis. Elections Comm’n*, No.2021AP1450-OA (Wis. Sept. 24, 2021)

(hereinafter “*Johnson* Order”) (instructing proposed intervenors to “address[] the requirements of Wis. Stat. § (Rule) 803.09”). As relevant here, Rule 803.09 recognizes two forms of intervention: intervention as of right, Wis. Stat. § (Rule) 803.09(1), and permissive intervention, Wis. Stat. § (Rule) 803.09(2); see *Helgeland v. Wis. Municipalities*, 2008 WI 9, ¶¶ 35, 119, 307 Wis. 2d 1, 745 N.W.2d 1. For intervention as of right, Rule 803.09(1) provides that “[u]pon timely motion anyone shall be permitted to intervene in an action when the movant claims an interest relating to the property or transaction which is the subject of the action and the movant is so situated that the disposition of the action may as a practical matter impair or impede the movant’s ability to protect that interest, unless the movant’s interest is adequately represented by existing parties.” Wis. Stat. § (Rule) 803.09(1). For permissive intervention, in turn, Rule 803.09(2) states that “[u]pon timely motion anyone may be permitted to intervene in an action when a movant’s claim or defense and the main action have a question of law or fact in common”—and “[i]n exercising its discretion the court shall

consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.” Wis. Stat. § (Rule) 803.09(2); *see generally* Wis. Stat. § (Rule) 803.09(3) (requiring submission of proposed “pleading setting forth the claim or defense for which intervention is sought”). This Court has held that Rules 803.09(1) and 803.09(2) are “based on” Federal Rule of Civil Procedure 24, and that cases interpreting the federal rule thus “provide guidance” to this Court “in interpreting and applying” Rule 803.09. *Helgeland*, 2008 WI 9, ¶¶ 37, 119.

Here, the Congressmen satisfy the requirements of Rule 803.09(1), thus this Court should grant them intervention as of right. *Infra* Part I. Alternatively, the Congressmen meet the requirements for Rule 803.09(2), so this Court should grant them permissive intervention. *Infra* Part II.

I. This Court Should Grant the Congressmen Intervention As Of Right Under Rule 803.09(1)

“A movant must satisfy four requirements to intervene as a matter of right under Wis. Stat. § 803.09(1).” *Helgeland*, 2008 WI 9, ¶ 38. First, “the movant’s motion to intervene

[must be] timely.” *Id.* Second, the movant must “claim[] an interest sufficiently related to the subject of the action.” *Id.* Third, the movant must show that “disposition of the action may as a practical matter impair or impede the movant’s ability to protect that interest.” *Id.* And fourth, the movant must demonstrate that “the existing parties do not adequately represent the movant’s interest.” *Id.* Although satisfaction of each element is required, this Court conducts a “holistic, flexible, and highly fact-specific” review to determine whether a movant satisfies Rule 803.09(1). *Id.* ¶¶ 39–40. Further, “the criteria need not be analyzed in isolation from one another, and a movant’s strong showing with respect to one requirement may contribute to the movant’s ability to meet other requirements as well.” *Id.* ¶ 39. Whether a movant satisfies Rule 803.09(1) “is a question of law.” *Id.* ¶ 41.

The Congressmen satisfy the Rule 803.09(1) elements.

1. *The Congressmen’s Motion is timely.* Whether a motion to intervene is timely “is left to the discretion of the [] court.” *Id.* ¶ 42. Here, this Court ordered all prospective intervenors to file their intervention motions by Wednesday,

October 6, 2021. *Johnson* Order at 3. Since the Congressmen have met this deadline, their Motion To Intervene is timely.

2. *The Congressmen have a substantial interest that is closely related to this action.* To determine whether a movant's interest is sufficient to support intervention as of right, this Court "employ[s] a broad[] pragmatic approach" that rejects "precise test[s]" and "technical[]" requirements. *Helgeland*, 2008 WI 9, ¶ 43 (citations omitted); accord *Armada Broad., Inc. v. Stirn*, 183 Wis. 2d 463, 472–75, 516 N.W.2d 357 (1994). Thus, this Court "treat[s] the interest test as primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *Helgeland*, 2008 WI 9, ¶ 44 (citation omitted). So, to satisfy this requirement, the movant need only show that he "will either gain or lose by the direct operation of the judgment" and that his claimed interests are not simply "remotely related to the subject of the action." *Id.* ¶ 45 (citations omitted).

The Congressmen have a direct and substantial interest in this case, and they "will either gain or lose" should

this Court render a “judgment” adopting new congressional district maps for the State. *Id.* As elected representatives, the Congressmen are duty-bound to “promote and protect their [constituents’] interests” by representing them in the U.S. House of Representatives, *Cunningham*, 51 N.W. at 730; accord *McCormick*, 500 U.S. at 272, and they all intend to run for reelection in 2022 to continue to represent their constituents’ interests, *supra* p. 2. Further, and relatedly, the Congressmen have invested substantial time and resources developing the “relationship between” themselves as “representative[s]” and their “constituent[s]” so that they may more effectively serve them in the House. *Johnson*, 902 F.3d at 579 (citation omitted); *supra* p. 2. It is the “contours of the maps” of the districts that the Congressmen represent that directly “determin[e] which constituents the Congressmen must court for votes and represent in the legislature” in this manner. *Johnson*, 902 F.3d at 579. Therefore, the Congressmen stand to “gain or lose” directly from any “judgment” from this Court adopting new congressional maps, *Helgeland*, 2008 WI 9, ¶ 45 (citations omitted), to the extent

that judgment either preserves or disregards the existing lines of Wisconsin's congressional districts, *see Johnson*, 902 F.3d at 579 (holding that changing the “contours” of district lines will “directly and substantially” affect members of Congress); *supra* pp. 2–3; *accord Jensen*, 2002 WI 13, ¶ 1.

The clear tie between the Congressmen's relationship with their constituents and the contours of the districts is why federal courts regularly grant members of Congress intervention to protect their interest in redistricting litigation. *See Helgeland*, 2008 WI 9, ¶ 37 (federal intervention cases “provide guidance” to this Court). The Sixth Circuit's opinion in *Johnson*, 902 F.3d 572, is the leading federal case on this issue. There, the Sixth Circuit ordered the grant of intervention in a redistricting challenge to members of Congress because of “the relationship between constituent and representative” and the understanding that “the contours of the maps affect the Congressmen directly and substantially by determining which constituents the Congressmen must court for votes and represent.” *Id.* at 579 (citation omitted). Other federal courts are in accord. *See*,

e.g., *Hunter Order* at 3 (granting intervention to the Congressmen since they are “incumbents and prospective candidates” who have “a substantial interest in the redistricting process”); *Baldus*, 2011 WL 5834275, at *2 (granting intervention to Wisconsin’s Republican and Democratic Congressmembers); *Smith*, 2018 WL 8805953, at *1 (similar, as to Congressmembers from Ohio). While these federal courts granted permissive intervention, *see infra* Part II, the Congressmen respectfully submit that the “close relations” and the strength of the “common feeling[s] and interests” that they have with their constituents, as well as their intent to run for reelection suffice for intervention as of right, *Cunningham*, 51 N.W. at 730—especially under the “broad[] pragmatic approach” that this Court employs as a matter of Wisconsin law, *Helgeland*, 2008 WI 9, ¶ 43 (citations omitted).

3. *This case may impair the Congressmen’s core, direct interests in the contours of the districts.* As the Congressmen just explained, they have a core interest in their relationship with their constituents that is closely tied to the “contours of

the maps.” *Johnson*, 902 F.3d at 579; accord *Jensen*, 2002 WI 13, ¶ 1. The case here “may, as a practical matter, impair or impede” that interest, *Helgeland*, 2008 WI 9, ¶ 75, since Petitioners have asked this Court to “adopt a new [congressional] apportionment plan” if the “legislature fails to reapportion according to constitutional requisites in a timely fashion after having had an adequate opportunity to do so,” *Johnson* Order at 1–2 (citation omitted). Therefore, Petitioners’ claim puts the Congressmen’s interests directly at stake in this case. See *Helgeland*, 2008 WI 9, ¶ 75.

4. *The existing parties do not adequately represent the Congressmen’s interests.* Finally, a proposed intervenor must show that no other party adequately represents its interests, which requires only a “minimal” showing—although the necessary showing may be higher “[i]f a movant’s interest is identical to that of one of the parties, or if a party is charged by law with representing the movant’s interest.” *Helgeland*, 2008 WI 9, ¶¶ 85–86 (citations omitted).

Here, none of the existing parties represent the Congressmen's significant interest in the redistricting of Wisconsin's congressional districts. *Id.* ¶¶ 90–91.

Petitioners brought their Petition to defend their own individual interests as “Wisconsin voters,” and therefore, they cannot possibly represent the Congressmen's interest here. Pet. at 5–6. “[T]he Congressmen's interest” “differ[s] from” Petitioners' individual interests. *Johnson*, 902 F.3d at 579. The Congressmen are elected representatives to the House who intend to seek reelection in 2022, and so they have a distinct “representative interest” in this litigation that Petitioners do not share. *Id.*

Respondents (collectively, the “Commission”) do not represent the Congressmen's interest either. The Commission's interest is in implementing the final redistricting maps as it carries out its duty to administer elections under Wisconsin law. *See* Wis. Stat. chs. 5–10, 12; *accord Johnson*, 902 F.3d at 579 (“provid[ing] fair and smooth administration of elections”). The Congressmen's interest is different, as they *do* have a specific, representative interest in

“the contours of the maps,” *Johnson*, 902 F.3d at 579, and thus “will either gain or lose” in proportion to how this Court reapportions the congressional districts, *Helgeland*, 2008 WI 9, ¶ 45 (citations omitted).

The interests of other potential intervenors are not relevant here, as potential intervenors are not “*existing parties*.” *Helgeland*, 2008 WI 9, ¶ 85 (emphasis added); accord *Helgeland v. Wis. Municipalities*, 2006 WI App 216, ¶ 24, 296 Wis. 2d 880, 724 N.W.2d 208, *aff’d*, 2008 WI 9. In any event, no potential intervenors could adequately represent the Congressmen, since they would not share the Congressmen’s “representative interest” as current officeholders who intend to run for reelection. *Johnson*, 902 F.3d at 579

The Congressmen plainly make the “minimal” showing that the other parties’ representation may be inadequate, and, indeed, would satisfy any higher standard, if such a higher standard were held to be applicable. *Helgeland*, 2008 WI 9, ¶ 85 (citations omitted). Petitioners’ request for this Court to draw a new congressional map, should the

Legislature and Governor fail to do so, most clearly shows this inadequacy. *See* Pet. at 1; *accord Johnson* Order at 1. To draw Wisconsin's congressional maps, a map drawer must follow the "standards for redistricting" that are "set[] forth" in the U.S. Constitution, federal law, the Wisconsin Constitution and Wisconsin law. *See Jensen*, 2002 WI 13, ¶¶ 4, 6, 11 & nn.1 & 3. Further, a map drawer may then take account of other "traditional redistricting criteria," such as "preserving the cores of prior districts" and "avoiding contests between incumbent Representatives." *League of Women Voters of Chicago ("LWV") v. City of Chicago*, 757 F.3d 722, 726 (7th Cir. 2014) (citations omitted). Given the significant differences among the interests of Petitioners, the Commission, and the Congressmen, they all may well differently "rank the relative importance of those traditional criteria and [differently] weigh how much deviation from each to allow." *Rucho v. Common Cause*, 139 S. Ct. 2484, 2501 (2019). To take a particularly obvious example, it is reasonable to conclude that "avoiding contests between incumbent Representatives" will be more important, in-kind,

to the Congressmen than to the Petitioners and the Commission, as only the Congressmen would be the prospective candidates potentially being paired against each other. *LWV*, 757 F.3d at 726 (citations omitted).

II. Alternatively, This Court Should Permit The Congressmen To Intervene Under Rule 803.09(2)

If this Court does not conclude that the Congressmen have satisfied Rule 803.09(1)'s requirements for intervention as of right, then the Congressmen respectfully request that it grant them permissive intervention under Rule 803.09(2). Permissive intervention under Rule 803.09(2) requires only that the movant "timely" move to intervene and that he has a "claim or defense" that has "a question of law or fact in common" with "the main action." Wis. Stat. § (Rule) 803.09(2); *Helgeland*, 2008 WI 9, ¶ 119. Then, "the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties," Wis. Stat. § (Rule) 803.09(2), along with other relevant factors, *Helgeland*, 2008 WI 9, ¶¶ 120–27; *see generally City of Madison v. Wis. Emp. Rels. Comm'n*, 2000 WI 39, ¶ 11 n.11, 234 Wis. 2d 550, 610 N.W.2d 94.

Here, the Congressmen satisfy the only two required elements for permissive intervention under Rule 803.09(2).

The Congressmen's Motion To Intervene is timely, as already described above. *Supra* pp. 6–7.

Further, the Congressmen have simultaneously filed a proposed Petition that raises a “claim” sharing “a question of law or fact in common” with Petitioners’ Petition. Wis. Stat. § (Rule) 803.09(2); *Helgeland*, 2008 WI 9, ¶ 119. Specifically, the proposed Petition raises the common question of whether Wisconsin’s existing congressional districts violate the equal-population principle found in the Wisconsin Constitution, including, without limitation, Article I, Section 1 and Article IV. *See* Proposed Pet. at 8; Pet. at 1. That is consistent with the scope of this Court’s Order granting the Petition, which covers all provisions “of the Wisconsin Constitution” relevant to whether the state and congressional districts are unconstitutionally “malapportioned.” *Johnson* Order at 1. Article IV, for example, provides that the Legislature must “apportion” the state legislative districts “according to the number of inhabitants,” Wis. Const. art. IV, § 3, thereby

requiring the “one person, one vote” rule, which is logically applicable to all apportionment by the Legislature, including as to congressional districts, *see State ex rel. Reynolds v. Zimmerman*, 22 Wis. 2d 544, 564, 126 N.W.2d 551 (1964). As for Article I, Section 1, this provision offers “essentially the same” protection as does the U.S. Constitution’s Equal Protection Clause, *see County of Kenosha v. C. & S. Mgmt., Inc.*, 223 Wis. 2d 373, 393, 588 N.W.2d 236 (1999), thereby clearly including the “one-person, one-vote” rule for all districts, including congressional districts, *Evenwel v. Abbott*, 136 S. Ct. 1120, 1124 (2016), and thus prohibiting “malapportioned” districts, in the words of this Court’s Order granting the Petition here, *Johnson* Order at 1.

As for other relevant factors supporting permissive intervention, the Congressmen’s interest here is substantial and direct. The Congressmen serve their constituents as elected Representatives, and they intend to run for reelection. *Supra* p. 2. So, since the “contours of the maps” of the districts “determin[e] which constituents the Congressmen must court for votes and represent in the legislature,” the

Congressmen are “directly and substantially” affected by this case. *Johnson*, 902 F.3d at 579.

Granting the Congressmen intervention will not “unduly delay or prejudice the adjudication of the rights of the original parties.” Wis. Stat. § (Rule) 803.09(2). This Court has already recognized that it would “benefit from the input of . . . prospective intervenors” on certain issues in this case. *Johnson* Order at 2–3. Further, the Congressmen’s presence could *facilitate* this Court’s timely consideration of the constitutional issues here by eliminating unnecessary and entirely meritless motion-to-dismiss practice from the *Hunter* Plaintiffs with regard to the congressional districts. In the parallel federal proceedings, the *Hunter* Plaintiffs sought to forward their cynical forum-shopping agenda of keeping redistricting away from this Court, *see* Nonparty Br. of the Congressmen at 6, No. 2021AP1450 (Wis. Sept. 8, 2021), by arguing that Petitioners’ equal-population claim for the congressional districts was somehow not properly before this Court, because Petitioners cited only Article IV, not Article I, Section 1, to support that claim. Pls.’ Resp. To Second Mot.

To Stay, *Hunter*, Nos. 3:21cv512, Dkt. 93 at 5–6, Nos.21-cv-512 (W.D. Wis. Oct. 1, 2021). Granting the Congressmen’s Motion would eliminate any need for this Court to trouble itself with such meritless arguments, as the Congressmen’s proposed Petition explicitly cites to both Article IV *and* Article I, Section 1 to support the same equal-population claim against the congressional districts on which this Court has already granted Petitioners’ Petition in this case. Proposed Pet. at 8.

CONCLUSION

This Court should grant the Congressmen’s Motion To Intervene.

Dated: October 6, 2021.

Respectfully submitted,



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Supreme Court of Wisconsin

NO. 2021AP001450 - OA

BILLIE JOHNSON, ERIC O'KEEFE, ED PERKINS, AND
RONALD ZAHN,

Petitioners,

LISA HUNTER, JACOB ZABEL, JENNIFER OH, JOHN
PERSA, GERALDINE SCHERTZ, AND KATHLEEN
QUALHEIM,

Proposed Intervenor-Petitioners,

vs.

WISCONSIN ELECTIONS COMMISSION, MARGE
BOSTELMANN, JULIE GLANCEY, ANN JACOBS, DEAN
KNUDSON, ROBERT SPINDELL, AND MARK THOMSEN, IN
THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE
WISCONSIN ELECTION COMMISSION,

Respondents.

**BRIEF IN SUPPORT OF MOTION TO INTERVENE OF
PROPOSED INTERVENOR-PETITIONERS LISA
HUNTER, JACOB ZABEL, JENNIFER OH, JOHN PERSA,
GERALDINE SCHERTZ, AND KATHLEEN QUALHEIM**

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INTRODUCTION

On August 12, 2021, the Census Bureau released detailed population data that confirmed what everyone expected—Wisconsin’s congressional and state legislative districts are malapportioned. The very next day, Lisa Hunter, Jacob Zabel, Jennifer Oh, John Persa, Geraldine Schertz, and Kathleen Qualheim (“Proposed Intervenor”), filed suit in federal court, requesting declaratory and injunctive relief to ensure lawful maps are adopted—either by the Legislature or by the court—in advance of the 2022 elections. *See Complaint, Hunter v. Bostelmann*, No. 21-CV-512 (W.D. Wis. Aug. 13, 2021). Ten days later, Petitioners filed a similar state law petition in this Court. At the outset, Petitioners expressed their intent to preempt Proposed Intervenor’s federal claims proceeding in a trial court. Pet. at 4-5. Indeed, Petitioners have now filed multiple motions to stay that federal action. *See Hunter v. Bostelmann*, 21-CV-512, Dkt. Nos. 21.2, 79 (W.D. Wis.). Not only does this action threaten to halt litigation Proposed Intervenor are already pursuing in another

forum, but Petitioners purport to advance unfounded redistricting criteria that would be inconsistent with Wisconsin's constitutional protections. Therefore, Proposed Intervenor move to join this action and introduce their own malapportionment claims against Wisconsin's redistricting maps.

The four prerequisites for intervention as of right are easily satisfied. First, this timely motion is filed mere days after the Petition was granted and according to the schedule this Court has ordered. Second, Proposed Intervenor—each of whom resides in a congressional and/or legislative district that recent census data confirm to be significantly overpopulated—have a compelling interest in ensuring new districts are drawn according to constitutional requirements. Third, denial of the motion would impair Proposed Intervenor's ability to protect their interests because the face of the Petition makes clear Petitioners' intent to foreclose Proposed Intervenor's federal action. If Proposed Intervenor's federal action is stayed and they are not permitted to

intervene here, then they will be precluded from protecting their own constitutional rights.

And fourth, Petitioners do not adequately represent Proposed Intervenor's interests. Petitioners do not reside in all of the same overpopulated districts as Proposed Intervenor, and so Proposed Intervenor alone have an interest in ensuring each of their districts is drawn correctly. Further, Petitioners did not bring an associational rights claim; only Proposed Intervenor are interested in advising this Court on how art. I, sections 3 and 4 of the Wisconsin Constitution implicate redistricting litigation. Finally, Petitioners ask the Court to adopt and prioritize redistricting criteria that are not found anywhere in state or federal law—namely, that any Court-drawn map move the fewest number of voters between districts. Because Proposed Intervenor have an interest in districts that are drawn fairly and lawfully according to statutory and constitutional criteria—which may or may not closely mirror districts as drawn in the previous cycle—Proposed Intervenor cannot rely on Petitioners for adequate

representation. Nor can Proposed Intervenor rely on Respondents for adequate representation, as the WEC is merely an administrative body—with no power to change the maps nor any interest in protecting Proposed Intervenor’s rights with respect to those maps.

Accordingly, Proposed Intervenor is entitled to intervene under Wis. Stat. § 803.09(1) to ensure their interests are fully heard. In the alternative, this Court should exercise its discretion to permit intervention under Wis. Stat. § 803.09(2) to promote the efficient and effective resolution of this action. Consistent with Wis. Stat. § 803.09(3), Proposed Intervenor’s motion is accompanied by their Complaint in Intervention. This Court should take jurisdiction over and resolve the Proposed Intervenor’s claims along with the Johnson Petition.

ARGUMENT

I. Proposed Intervenor is entitled to intervene as a matter of right.

A party has the right to intervene under Wis. Stat. § 803.09(1) if four conditions are met: (1) the motion to intervene

is timely; (2) the movant claims an interest sufficiently related to the subject of the action; (3) the movant is so situated that the disposition of the action may as a practical matter impair or impede the movant's ability to protect its interests; and (4) the movant's interests are not adequately represented by the existing parties. Wis. Stat. § 803.09(1); *see also Helgeland v. Wis. Muns.*, 2008 WI 9, ¶¶ 37–38, 307 Wis. 2d 1, 745 N.W.2d 1. Proposed Intervenor easily meet each of these conditions and are entitled to intervene as a matter of right.

A. Proposed Intervenor's Motion to Intervene is timely.

First, the Motion to Intervene is timely. Proposed Intervenor participated at the outset of this action as non-parties and are now seeking intervention at the earliest possible stage of this action—pursuant to this Court's request for intervention motions by October 6, 2021. And given that Petitioners request the Court "accept jurisdiction of this case and stay it," Pet. at 12, there is no risk of any delay to the subsequent consideration of the merits. In light of "all the circumstances," it is clear that Proposed

Intervenors have “acted promptly.” *State ex rel. Bilder v. Delavan Twp.*, 112 Wis.2d 539, 550–51, (1983) (holding that moving to intervene within “nine days after the action was filed” was timely, even though a proposed settlement was already before the court).

B. Proposed Intervenors have compelling interests at stake in this action.

Proposed Intervenors clearly have compelling interests in the issues addressed in the Petition. Proposed Intervenors are registered Wisconsin voters who live in congressional, State Senate, and/or State Assembly districts that are overpopulated. Proposed Intervenors’ right to an equal vote will be denied absent the implementation of new redistricting plans. Proposed Intervenors share Petitioners’ view that, “given the delay in census results and the fact that Wisconsin currently has divided government,” it is unlikely the political branches will be able to implement new maps in time for the 2022 election. Pet. at 16-17. Thus, absent court action, Proposed Intervenors’ “right to vote [will] simply not [be] the same right to vote as that of those living in a favored part of the State.” *Reynolds v. Sims*, 377 U.S. 533, 563

(1964). Specifically, Proposed Intervenorors have a compelling interest in ensuring that any redistricting plan is adopted in a timely manner to protect their right to associate with like-minded individuals in advance of the 2022 election. Under these circumstances, Proposed Intervenorors' interest is squarely "of such direct and immediate character that the intervenor will either gain or lose by the direct operation of the judgment." *Helgeland*, 2008 WI 9 at ¶ 45.

C. Denial of the Motion to Intervene would impair Proposed Intervenorors' ability to protect their interests.

Denial of Proposed Intervenorors' Motion would leave their critical interests unprotected. With respect to this element of the test for intervention, as with others, this Court has emphasized "a pragmatic approach" and a "focus on the facts of each case and the policies underlying the intervention statute." *Helgeland*, 2008 WI 9, ¶ 79 (citing Moore's Fed. Prac. § 24.03(3)(a), at 24–42).

Here, Proposed Intervenorors are intimately affected by the outcome of this litigation—both as voters and litigants. As voters,

Proposed Intervenorors are interested in how the districts where they reside are drawn and how their constitutional rights are protected—all issues that this Court has been asked to resolve in the first instance. And as litigants, Proposed Intervenorors are uniquely affected by the Court’s handling of this suit. Proposed Intervenorors have already filed a similar action in federal court to vindicate their constitutional rights. *See Hunter v. Bostelmann*, No. 21-cv-512 (W.D. Wis. Aug. 13, 2021). Petitioners have expressly requested that this Court take up the matter and assume responsibility of Wisconsin’s redistricting maps over the federal court. Pet. at 4 (citing *Jensen v. Wis. Elections Bd.*, 249 Wis. 2d 706, 717 (2002)). Petitioners have since intervened in that concurrent federal suit and filed multiple motions to stay. *See Hunter v. Bostelmann*, 21-CV-512, Dkt. Nos. 21.2, 79 (W.D. Wis.). If the federal suit is stayed pending judgment from this Court—as Petitioners have requested—then Proposed Intervenorors’ ability to vindicate their rights will be directly implicated and possibly foreclosed by this proceeding.

Of particular note, Petitioners' attempts to stay the Proposed Intervenor's federal litigation have also extended to the issue of Wisconsin's congressional maps. They do so despite having, in their Petition before this Court, expressly disavowed any federal claims, Pet. at 2, and only raising a challenge to congressional districts under the "one person one vote principle, contained in art. IV of the Wisconsin Constitution." Pet. at 1. By its plain terms, art. IV creates Wisconsin's legislative branch and only applies to senate and assembly districts. Thus, Proposed Intervenor has argued, both to this Court and the federal court, that the Petition does not state a cognizable claim as it relates to Wisconsin's congressional districts. *See Johnson v. Wis. Elections Comm'n*, No. 2021AP1450-OA, Amicus Brief at 13-15 (Sept. 7, 2021); *Hunter v. Bostelmann*, 21-CV-512, Dkt. No. 93, Opposition at 5-6 (W.D. Wis. Oct. 1 2021). Indeed, the lone case that Petitioners cited as a basis for their congressional claim, *State ex rel. Reynolds v. Zimmerman*, 22 Wis. 2d 544, 126 N.W.2d 551

(1964), exclusively concerns reapportioning Wisconsin's state legislative districts.

This Court has not yet reached the question of whether Petitioners' claim as to Wisconsin's congressional districts is properly raised in this original action, *Johnson v. Wisconsin Elections Comm'n*, No. 2021AP1450-OA, Order at 3 (Sept. 22, 2021) ("To the extent this order does not address other requests for relief contained in the petition, we take no action on those requests at this time."), but given the interconnectedness of this action and the parallel federal litigation, Proposed Intervenor are intensely interested in discerning whether this Court will interpret art. IV of the Wisconsin Constitution to impose a one person, one vote requirement on congressional districts, as well as state legislative districts. If this Court determines that art. IV does impose requirements on congressional districts, Proposed Intervenor are

prepared to assist the Court in applying that rule to Wisconsin's existing map.¹

D. Proposed Intervenor's interests are not adequately represented by the current parties.

Finally, Proposed Intervenor's interests are not adequately represented by the existing parties. The burden to satisfy this factor is "minimal." *Armada Broad., Inc. v. Stirn*, 183 Wis. 2d 463, 476, 516 N.W.2d 357, 361-62 (1994) (quoting *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)). When there is a realistic possibility that the existing parties' representation of the proposed intervenor's interests will be inadequate, "all reasonable doubts are to be resolved in favor of allowing the movant to intervene and be heard on [its] own behalf." 1 Jean W. Di Motto, *Wisconsin Civil Procedure Before Trial* § 4.61, at 41 (2d ed. 2002)

¹ In the accompanying pleading, Proposed Intervenor's plead a claim for congressional malapportionment under art. IV of the Wisconsin Constitution out of an abundance of caution and to ensure that, if this Court recognizes such a claim, Proposed Intervenor's are able to fully participate in this Court's adjudication of the congressional plan. However, Proposed Intervenor's position is that, by its terms, art. IV applies only to state legislative districts and cannot support a congressional malapportionment claim.

(citing *Chiles v. Thornburgh*, 865 F.2d 1197, 1214 (11th Cir. 1989)).

Neither Petitioners nor Respondents adequately represent Proposed Intervenor's interests.

First and foremost, only Proposed Intervenor is seeking to protect the associational rights of Wisconsin voters. Delays and uncertainty have already been introduced by the impending impasse between the Governor and the Legislature. Wisconsin voters have a right to timely know what districts they reside in, which candidates they can vote for, and where their associational activities should be directed. No other party adequately represents those interests because no other party has introduced those interests to this Court. Moreover, the other parties' omission of these issues is likely to produce disagreements over what timeline this Court must operate under—a critical question immediately before the Court.

Second, Proposed Intervenor and Petitioners bring claims on behalf of distinct malapportioned districts in Wisconsin. Petitioners reside in only four overpopulated state legislative

districts: Senate Districts 26 and 19, and Assembly Districts 78 and 56. In contrast, Proposed Intervenor include voters from five additional overpopulated districts: Senate Districts 2 and 5, and Assembly Districts 13, 76, and 77. Proposed Intervenor's connection to districts that are unrepresented in Petitioners' action is particularly important given Petitioners' misguided suggestions about how this Court should approach redistricting. For example, Petitioners' request that this court follow a "least changes approach," Pet. at 12, would subordinate other traditional redistricting criteria that may better vindicate Proposed Intervenor's rights and interests.

Finally, Proposed Intervenor similarly cannot rely on the Wisconsin Elections Commission (WEC) to represent their interests. Though the WEC is entrusted with administering elections, *see* Wis. Stat. § 5.05, it has no power to alter Wisconsin's district maps and it has no interest in ensuring that the maps preserve any of Proposed Intervenor's rights or interests. In fact, in the Proposed Intervenor's federal suit, the WEC has stated that

it has “no authority to draw district maps and, accordingly, takes no position in this consolidated action as to the particulars of any maps.” *Hunter v. Bostelmann*, 21-CV-512, Dkt. No. 98, Joint Discovery Plan at 3 (W.D. Wis. Oct. 1, 2021). Only Proposed Intervenor can adequately represent their constitutional rights in this action.

II. In the alternative, the Court should exercise its discretion under Wis. Stat. § 803.09(2) to permit Proposed Intervenor to intervene.

In the alternative, this Court should permit intervention under Wis. Stat. § 803.09(2). This Court can exercise its broad discretion to permit a party to intervene any time (1) the “movant’s claim or defense and the main action have a question of law and fact in common,” (2) intervention will not “unduly delay or prejudice the adjudication of the rights of the original parties,” and (3) the motion is timely. Wis. Stat. § 803.09(2); *see also Helgeland*, 2008 WI 9, ¶¶ 119–20. Even when courts deny intervention as of right, they often find that permissive intervention is appropriate.

See, e.g., City of Chicago v. Fed. Emergency Mgmt. Agency, 660 F.3d 980, 986 (7th Cir. 2011).

Here, Proposed Intervenorors meet the criteria for permissive intervention. The timeliness of this motion remains beyond dispute. Especially given Petitioners' request that the Court immediately stay this action, there is no prospect for undue delay or prejudice to the original parties' rights. And Proposed Intervenorors' parallel claims necessarily raise common questions of law and fact, including the appropriate schedule for court intervention and the necessity of properly apportioned districts. Proposed Intervenorors are prepared to contribute to the complete development of the factual and legal issues before this Court to permit a resolution of this suit in advance of the 2022 election.

CONCLUSION

For the reasons stated above, this Court should grant Proposed Intervenorors' motion to intervene as of right. In the alternative, this Court should exercise its discretion and grant the Proposed Intervenorors permissive intervention.

Dated: October 6, 2021

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Respectfully submitted,

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FORM AND LENGTH CERTIFICATION

I certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b), (bm), and (c) for a brief produced with a proportional serif font. The length of this brief is 2,478 words.

Dated: October 6, 2021

/s/ Aria C. Branch
Aria C. Branch

CERTIFICATE OF SERVICE

I certify that on this 6th day of October, 2021, I caused a copy of this brief to be served upon counsel for each of the parties via e-mail and Federal Express.

Dated: October 6, 2021

/s/ Aria C. Branch
Aria C. Branch



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DEPARTMENT OF JUSTICE

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October 6, 2021

Ms. Sheila T. Reiff
Clerk of Supreme Court
110 East Main Street, Suite 215
Madison, WI 53701-1688

Re: *Johnson v. Wisconsin Elections Commission*,
Case No. 2021AP1450-OA

Dear Ms. Reiff:

We write on behalf of Respondents, Wisconsin Elections Commission and all six commissioners in their official capacities, in response to the supreme court's September 22, 2021, order, as amended on September 24, 2021. The court directed the parties and prospective intervenors to address the following question:

When (identify a specific date) must a new redistricting plan be in place, and what key factors were considered to identify this date?

Order, Sept. 22, 2021, as amended.

Respondents submit that, in order to enable the Commission to accurately integrate new districting data into its statewide election databases, and to timely and effectively administer the fall 2022 general election, a new redistricting plan must be in place no later than March 1, 2022. This is the same date provided to a three-judge panel of the federal district court presiding over *Hunter v. Bostelmann*, No. 21-CV-512-jdp-ajs-eec (W.D. Wis.) and *Black Leaders Organizing for Communities v. Spindell*, No. 21-CV-534-jdp-ajs-eec (W.D. Wis.), an ongoing consolidated federal redistricting case. This March 1, 2022, date is based on the following factors.

Ms. Sheila T. Reiff
Clerk of Supreme Court
October 6, 2021
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Wisconsin's congressional and state legislative districts must be reapportioned on the basis of the 2020 census data prior to any future congressional or state legislative election. *See* U.S. Const. art. I, §§ 2, 4; U.S. Const. amend. XIV, § 2; Wis. Const. art. IV, § 3.

The next general election for congressional and state legislative seats in Wisconsin is November 8, 2022; the partisan primary for that election is August 9, 2022.

State law requires the Wisconsin Elections Commission to administer elections. *See generally* Wis. Stat. ch. 5–10, 12. The Commission has no authority to draw district maps and, accordingly, takes no position in this original action as to the particulars of the maps. Nonetheless, the Commission takes its statutory charge seriously and advocates for final maps to be in place by March 1, 2022, a pragmatic date by which it believes it can properly, effectively, and timely administer the fall general election.

Administering an election requires that the Commission perform much work well before election day, especially in the year after the census data is released. Once new congressional and state legislative district boundaries have been determined, Commission staff must begin the complex process of recording these new boundaries in WisVote—the statewide election management and voter registration system. Staff must integrate the new redistricting data with existing voter registration and address data. This process includes manual review of ward map changes and parcel boundary data throughout the state of Wisconsin, to ensure accurate and efficient implementation of new redistricting data. Communication with municipal clerks about certain addresses is required because only local clerks would have such knowledge.¹ Manual review of ward map changes and parcel boundary data is a crucial task in administering an election because it ensures that each voter receives the correct ballot and is correctly located in their proper districts.

Wisconsin voters and candidates must know their proper districts far ahead of the fall general election. For instance, the period for candidates to circulate nominating petitions for the general election begins on April 15, 2022, and runs through June 1, 2022. If map boundaries are not drawn and finalized well before April

¹ While Commission staff will likely not need to contact every municipal clerk in Wisconsin, there are 1,851 clerks in the state.

Ms. Sheila T. Reiff
Clerk of Supreme Court
October 6, 2021
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15, candidates will not know in what district they reside and in turn will not know for what office they can run. And voters will not know what candidates' petitions they may properly sign. Improper residency of both a candidate and signor of a petition are bases for a challenge to a candidate's nomination papers. *See* Wis. Stat. §§ 6.10 (elector residence), 8.07 (Commission's authority to promulgate rules re validity of nomination papers), 8.30 (candidates ineligible for ballot placement), 8.40 (petition requirements); Wis. Admin. Code EL §§ 2.05 (treatment and sufficiency of nomination papers), 2.07 (challenges to nomination papers); *see also* Wis. Stat. § 8.28 (challenges to sitting office holder's residency). Therefore, before candidates can begin to prepare and circulate nomination papers, Commission staff must produce new district lists for nomination paper review. Further, both before and after the new maps are applied to the state-wide system, the Commission must perform basic quality assurance checks on the data.

Thus, the statutory foundation for Respondents' proposed March 1, 2022, deadline is the April 15, 2022, nomination paper date under Wis. Stat. § 8.15. If new maps are not in place at least 45 days before April 15, 2022, there is a significant risk that there will be errors in the statewide system and, in turn, less time for the Commission to correct those errors before circulation of nomination papers begins. The Legislature has prescribed that nomination papers for the fall general election must circulate between April 15 and June 1, 2022. The Commission must respect that statutory mandate and is in no position to advocate for delaying or shortening that time period.

Moreover, Commission staff will be performing this necessary work of recording new boundaries in WisVote while simultaneously administering the spring 2022 statewide election—for State Superintendent of Public Instruction, Court of Appeals Judge, Districts I, II and III, and Circuit Court Judge—with an election date of April 6, 2022.

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For the Commission to properly, timely, and effectively administer the fall general election—which includes the nominating petition circulation process starting on April 15, 2022—a new congressional and state legislative district plan should be in place no later than March 1, 2022.

Sincerely,



Steven C. Kilpatrick
Assistant Attorney General

SCK:srh

cc: Karla Keckhaver/Thomas Bellavia
Co-Counsel for Respondents

Richard Esenberg/Anthony LoCoco/Lucas Vebber
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Ms. Sheila T. Reiff
Clerk of Supreme Court
October 6, 2021
Page 5

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Counsel for BLOC, et al.

STATE OF WISCONSIN
IN SUPREME COURT

No. 2021AP1450-OA

BILLIE JOHNSON, ERIC
O'KEEFE, ED PERKINS, and
RONALD ZAHN,

Petitioners,

BLACK LEADERS ORGANIZING
FOR COMMUNITIES, VOCES DE
LA FRONTERA, LEAGUE OF
WOMEN VOTERS OF
WISCONSIN, CINDY FALLONA,
LAUREN STEPHENSON,
REBECCA ALWIN,
CONGRESSMAN GLENN
GROTHMAN, CONGRESSMAN
MIKE GALLAGHER,
CONGRESSMAN BRYAN STEIL,
CONGRESSMAN TOM TIFFANY,
CONGRESSMAN SCOTT
FITZGERALD, LISA HUNTER,
JACOB ZABEL, JENNIFER OH,
JOHN PERSA, GERALDINE
SCHERTZ, KATHLEEN
QUALHEIM, GARY KRENZ,
SARAH J. HAMILTON,
STEPHEN JOSEPH WRIGHT,
JEAN-LUC THIFFEAULT, and
SOMESH JHA,

Intervenors-Petitioners,

v.

WISCONSIN ELECTIONS
COMMISSION, MARGE
BOSTELMANN, in her official
capacity as a member of the
Wisconsin Elections Commission,

JULIE GLANCEY, in her official capacity as a member of the Wisconsin Elections Commission, ANN JACOBS, in her official capacity as a member of the Wisconsin Elections Commission, DEAN KNUDSON, in his official capacity as a member of the Wisconsin Elections Commission, ROBERT SPINDELL, JR., in his official capacity as a member of the Wisconsin Elections Commission, and MARK THOMSEN, in his official capacity as a member of the Wisconsin Elections Commission,

Respondents,

THE WISCONSIN LEGISLATURE, GOVERNOR TONY EVERS, in his official capacity, and JANET BEWLEY, Senate Democratic Minority Leader on behalf of the Senate Democratic Caucus,

Intervenors-Respondents.

**ANSWER TO OMNIBUS AMENDED PETITION BY
WISCONSIN ELECTIONS COMMISSION
RESPONDENTS**

Answering the Omnibus Amended Petition in the above matter, Respondents Wisconsin Elections Commission and Marge Bostelmann, Julie Glancey, Ann Jacobs, Dean Knudson, Robert Spindell, Jr., and Mark Thomsen, in their

official capacities as members of the Wisconsin Elections Commission (collectively, the “WEC Respondents”), hereby ADMIT, DENY, and ALLEGE as follows:

ISSUE PRESENTED

1. ADMIT that the issue presented to the Court in this action include the issues described in paragraph 1. The WEC Respondents take no position on the allegations in this paragraph.

2. ADMIT that the issue presented to the Court in this action include the issues described in paragraph 2. The WEC Respondents take no position on the allegations in this paragraph.

3. ADMIT that the issue presented to the Court in this action include the issues described in paragraph 3. The WEC Respondents take no position on the allegations in this paragraph.

4. ADMIT that the issue presented to the Court in this action include the issues described in paragraph 4. The WEC Respondents take no position on the allegations in this paragraph.

5. ADMIT that the issue presented to the Court in this action include the issues described in paragraph 5. The WEC Respondents take no position on the allegations in this paragraph.

6. ADMIT that the issue presented to the Court in this action include the issues described in paragraph 6. The WEC Respondents take no position on the allegations in this paragraph.

7. ADMIT that the issue presented to the Court in this action include the issues described in paragraph 7. The WEC Respondents take no position on the allegations in this paragraph.

INTRODUCTION

8. ADMIT that the 2020 census results show population changes in different geographic areas, but otherwise ALLEGE that those census results speak for themselves, and DENY any characterization of them contrary to their express terms. Further ALLEGE that the United States and Wisconsin Constitutions require that congressional and state legislative districts be reapportioned on the basis of population data obtained in each decennial

U.S. census and that Wisconsin's current districts must be reapportioned prior to any future congressional or state legislative election. *See* U.S. Const., art. I, §§ 2, 4; U.S. Const. amend. XIV, § 2; Wis. Const., art. IV, § 3. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

9. ADMIT that the 2020 census results show population changes in different geographic areas, but otherwise ALLEGE that those census results speak for themselves, and DENY any characterization of them contrary to their express terms. Further ALLEGE that the United States and Wisconsin Constitutions require that congressional and state legislative districts be reapportioned on the basis of population data obtained in each decennial U.S. census and that Wisconsin's current districts must be reapportioned prior to any future congressional or state legislative election. *See* U.S. Const., art. I, §§ 2, 4; U.S. Const. amend. XIV, § 2; Wis. Const., art. IV, § 3. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

10. ALLEGE that the court decision referred to in the paragraph speaks for itself, and DENY any characterization of it contrary to its express terms. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

11. ALLEGE that the court decision referred to in the paragraph speaks for itself, and DENY any characterization of it contrary to its express terms. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

12. ALLEGE that the constitutional provisions and court decisions referred to in the paragraph speak for themselves, and DENY any characterization of them contrary to their express terms. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

13. ADMIT that population changes have occurred in various districts since the 2010 census, but LACK knowledge or information sufficient to form a belief as to the truth of any other factual allegations or characterizations in the paragraph, and thus DENY. In all other respects, ALLEGE

that this paragraph contains only legal conclusions to which no responsive pleading is required.

14. ALLEGE that the United States and Wisconsin Constitutions require that congressional and state legislative districts be reapportioned on the basis of the 2020 census data prior to any future congressional or state legislative election. *See* U.S. Const., art. I, §§ 2, 4; U.S. Const. amend. XIV, § 2; Wis. Const., art. IV, § 3. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

15. ADMIT.

16. ALLEGE that the constitutional provision referred to in this paragraph speaks for itself, and DENY any characterization of it contrary to its express terms. In all other respects, ALLEGE that the paragraph contains only legal conclusions to which no responsive pleading is required.

Further ALLEGE that, in addition to the powers and duties of state officials and state courts, federal courts have the power to ensure that congressional and state legislative districts are lawfully reapportioned on the basis of the 2020

census data prior to any future congressional or state legislative election.

17. ADMIT that federal and state courts have concurrent jurisdiction to decide redistricting matters. ALLEGE that the court decision referred to in this paragraph speaks for itself, and DENY any characterization of it contrary to its express terms. In all other respects, ALLEGE that the paragraph contains only legal conclusions to which no responsive pleading is required.

18. ALLEGE that the court decision referred to in this paragraph speaks for itself, and DENY any characterization of it contrary to its express terms. In all other respects, ALLEGE that the paragraph contains only legal conclusions to which no responsive pleading is required.

19. ALLEGE that the court decision referred to in this paragraph speaks for itself, and DENY any characterization of it contrary to its express terms. In all other respects, ALLEGE that the paragraph contains only legal conclusions to which no responsive pleading is required.

20. ALLEGE that the court decision referred to in this paragraph speaks for itself, and DENY any

characterization of it contrary to its express terms. In all other respects, ALLEGE that the paragraph contains only legal conclusions to which no responsive pleading is required.

21. ALLEGE that the paragraph contains only legal conclusions to which no responsive pleading is required.

22. ALLEGE that the court decision referred to in this paragraph speaks for itself, and DENY any characterization of it contrary to its express terms. In all other respects, ALLEGE that the paragraph contains only legal conclusions to which no responsive pleading is required.

23. ALLEGE that the order referred to in this paragraph speaks for itself, and DENY any characterization of it contrary to its express terms.

24. ALLEGE that the order and court decision referred to in this paragraph speak for themselves, and DENY any characterization of them contrary to their express terms.

JURISDICTION AND VENUE

25. ADMIT.

26. ADMIT.

27. ADMIT.

28. ADMIT.

PARTIES

29. LACK knowledge or information sufficient to form a belief as to the truth of any factual allegations in this paragraph, and thus DENY. In all other respects, ALLEGE that the paragraph contains only legal conclusions to which no responsive pleading is required.

30. ADMIT the allegations in the first sentence of this paragraph. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

31. ADMIT the allegations in the first sentence of this paragraph. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

32. ADMIT the allegations in the first sentence of this paragraph. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

33. ADMIT the allegations in the first sentence of this paragraph. In all other respects, ALLEGE that this

paragraph contains only legal conclusions to which no responsive pleading is required.

34. ADMIT that BLOC Intervenor-Petitioners include three nonprofit groups, each with members or constituents who are citizens, residents, and qualified voters of the United States of America and the State of Wisconsin, residing in various counties and legislative districts. LACK knowledge or information sufficient to form a belief as to the truth of any other factual allegations in the paragraph, and thus DENY. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

35. ADMIT the allegations in the first two sentences of this paragraph. LACK knowledge or information sufficient to form a belief as to the truth of any other factual allegations or characterizations in the paragraph, and thus DENY.

36. ADMIT the allegations in the first sentence of this paragraph. LACK knowledge or information sufficient to form a belief as to the truth of any other factual allegations or characterizations in the paragraph, and thus DENY.

37. ADMIT the allegations in the first three sentences of the paragraph. LACK knowledge or information sufficient to form a belief as to the truth of any other factual allegations or characterizations in the paragraph, and thus DENY.

38. ADMIT that the BLOC Organizational Intervenor-Petitioners' members and constituents include voters who reside in various State Senate and Assembly districts in Wisconsin. ALLEGE that the population data referred to in this paragraph speak for themselves, and DENY any characterization of them contrary to their express terms. LACK knowledge or information sufficient to form a belief as to the truth of any other factual allegations or characterizations in the paragraph, and thus DENY. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

39. ADMIT that BLOC Intervenor-Petitioners include individual voters who reside in the legislative districts identified in this paragraph. LACK knowledge or information sufficient to form a belief as to the truth of any other factual allegations or characterizations in the paragraph, and thus

DENY. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

40. ADMIT.

41. ADMIT.

42. ADMIT.

43. ADMIT.

44. ADMIT.

45. ADMIT.

46. ADMIT.

47. ADMIT.

48. ADMIT.

49. ADMIT.

50. ADMIT the allegations in the first sentence of this paragraph. ALLEGE that the remainder of the paragraph contains only legal conclusions to which no responsive pleading is required.

51. ADMIT the allegations in the first sentence of this paragraph. ALLEGE that the remainder of the paragraph contains only legal conclusions to which no responsive pleading is required.

52. ADMIT the allegations in the first sentence of this paragraph. ALLEGE that the remainder of the paragraph contains only legal conclusions to which no responsive pleading is required.

53. ADMIT the allegations in the first sentence of this paragraph. ALLEGE that the remainder of the paragraph contains only legal conclusions to which no responsive pleading is required.

54. ADMIT the allegations in the first sentence of this paragraph. ALLEGE that the remainder of the paragraph contains only legal conclusions to which no responsive pleading is required.

55. ADMIT the allegations in the first sentence of this paragraph. ALLEGE that the remainder of the paragraph contains only legal conclusions to which no responsive pleading is required.

56. ALLEGE that the population data referred to in this paragraph speak for themselves, and DENY any characterization of them contrary to their express terms. ADMIT all other factual allegations in the paragraph.

ALLEGE that the remainder of the paragraph contains only legal conclusions to which no responsive pleading is required.

57. LACK knowledge or information sufficient to form a belief as to the truth of any factual allegations in this paragraph, and thus DENY.

58. ALLEGE that the population data referred to in this paragraph speak for themselves, and DENY any characterization of them contrary to their express terms. ADMIT all other factual allegations in the paragraph. ALLEGE that the remainder of the paragraph contains only legal conclusions to which no responsive pleading is required.

59. LACK knowledge or information sufficient to form a belief as to the truth of any factual allegations in this paragraph, and thus DENY.

60. ALLEGE that the population data referred to in this paragraph speak for themselves, and DENY any characterization of them contrary to their express terms. ADMIT all other factual allegations in the paragraph. ALLEGE that the remainder of the paragraph contains only legal conclusions to which no responsive pleading is required.

61. LACK knowledge or information sufficient to form a belief as to the truth of any factual allegations in this paragraph, and thus DENY.

62. ALLEGE that the population data referred to in this paragraph speak for themselves, and DENY any characterization of them contrary to their express terms. ADMIT all other factual allegations in the paragraph. ALLEGE that the remainder of the paragraph contains only legal conclusions to which no responsive pleading is required.

63. LACK knowledge or information sufficient to form a belief as to the truth of any factual allegations in this paragraph, and thus DENY.

64. ALLEGE that the population data referred to in this paragraph speak for themselves, and DENY any characterization of them contrary to their express terms. ADMIT all other factual allegations in the paragraph. ALLEGE that the remainder of the paragraph contains only legal conclusions to which no responsive pleading is required.

65. LACK knowledge or information sufficient to form a belief as to the truth of any factual allegations in this paragraph, and thus DENY.

66. ADMIT.

67. ADMIT.

68. ADMIT.

69. ALLEGE that the constitutional provisions referred to in this paragraph speak for themselves, and DENY any characterization of them contrary to their express terms. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

70. ADMIT all factual allegations in this paragraph. ALLEGE that the remainder of the paragraph contains only legal conclusions to which no responsive pleading is required.

71. ADMIT.

STATEMENT OF FACTS

72. ADMIT.

73. ALLEGE that the court decision referred to in this paragraph speaks for itself, and DENY any characterization of it contrary to its express terms. Otherwise, ADMIT that every election cycle since 2012 has used the district plans enacted in August 2011, subject to adjustments ordered by the court in the referenced case.

74. ADMIT that the Wisconsin and United States Constitutions require that state legislative districts be reapportioned on the basis of population data obtained in each decennial U.S. census and that Wisconsin's current districts must be reapportioned prior to any future state legislative election. *See Wis. Const., art. IV, § 3; U.S. Const. amend. XIV, § 2.* ALLEGE that the court decision referenced in this paragraph speaks for itself, and DENY any characterization of it contrary to its express terms. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

75. ALLEGE that the paragraph contains only legal conclusions to which no responsive pleading is required.

76. ADMIT that the Wisconsin and United States Constitutions require that state legislative districts be reapportioned on the basis of population data obtained in each decennial U.S. census and that Wisconsin's current districts must be reapportioned prior to any future state legislative election. *See Wis. Const., art. IV, § 3; U.S. Const. amend. XIV, § 2.* In all other respects, ALLEGE that this paragraph

contains only legal conclusions to which no responsive pleading is required.

77. ADMIT that the referenced constitutional provision includes the quoted language.

78. ADMIT that the referenced constitutional provision includes the quoted language. ALLEGE that the referenced constitutional provision and court decision speak for themselves, and DENY any characterization of them contrary to their express terms. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

79. ALLEGE that the Wisconsin Constitution speaks for itself, and DENY any characterization of it contrary to its express terms. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

80. ALLEGE that the court decision referred to in the paragraph speaks for itself, and DENY any characterization of it contrary to its express terms. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

81. ALLEGE that the constitutional provisions and court decisions referred to in the paragraph speak for themselves, and DENY any characterization of them contrary to their express terms. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

82. ALLEGE that the court decision referred to in the paragraph speaks for itself, and DENY any characterization of it contrary to its express terms. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

83. ALLEGE that the court decision referred to in the paragraph speaks for itself, and DENY any characterization of it contrary to its express terms. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

84. ALLEGE that the court decision referred to in the paragraph speaks for itself, and DENY any characterization of it contrary to its express terms. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

85. ALLEGE that the report referred to in this paragraph speaks for itself, and DENY any characterization of it contrary to its express terms.

86. ADMIT the factual allegations in the first sentence of this paragraph. ALLEGE that the census data, statutory provisions, and court decision referred to in the paragraph speak for themselves, and DENY any characterization of them contrary to their express terms.

87. ALLEGE that the court decision referred to in this paragraph speaks for itself, and DENY any characterization of it contrary to its express terms.

88. ADMIT.

89. ADMIT.

90. ALLEGE that 2020 U.S. census data was delivered to Wisconsin officials on August 12, 2021. LACK knowledge or information sufficient to form a belief as to the truth of any other allegations in this paragraph, and thus DENY.

91. ADMIT that 2020 census results that included the population of Wisconsin were announced on April 26, 2021. Otherwise ALLEGE that the 2020 census results speak

for themselves, and DENY any characterization of them contrary to their express terms.

92. ALLEGE that the 2010 and 2020 census results speak for themselves, and DENY any characterization of them contrary to their express terms.

93. ADMIT that Wisconsin currently has eight congressional districts. Otherwise ALLEGE that the 2020 census results speak for themselves, and DENY any characterization of them contrary to their express terms.

94. ALLEGE that the 2020 census results speak for themselves, and DENY any characterization of them contrary to their express terms.

95. ALLEGE that the 2020 census results speak for themselves, and DENY any characterization of them contrary to their express terms. Further ALLEGE that the United States Constitution requires that congressional districts be reapportioned on the basis of the 2020 census data prior to any future congressional election. *See* U.S. Const., art. I, §§ 2, 4; U.S. Const. amend. XIV, § 2. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

96. ADMIT that Petitioners reside in the 2nd and 8th Congressional Districts and that Congressman Gallagher represents the 8th Congressional District. ALLEGE that the 2020 census results speak for themselves, and DENY any characterization of them contrary to their express terms. Further ALLEGE that the United States Constitution requires that congressional districts be reapportioned on the basis of the 2020 census data prior to any future congressional election. *See* U.S. Const., art. I, §§ 2, 4; U.S. Const. amend. XIV, § 2. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

97. ADMIT.

98. ALLEGE that the 2020 census results speak for themselves, and DENY any characterization of them contrary to their express terms. Further ALLEGE that the Wisconsin and United States Constitutions require that state legislative districts be reapportioned on the basis of the 2020 census data prior to any future state legislative election. *See* Wis. Const., art. IV, § 3; U.S. Const. amend. XIV, § 2. In all other respects,

ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

99. ADMIT that the Petitioners reside in the indicated districts. ALLEGE that the 2020 census results speak for themselves, and DENY any characterization of them contrary to their express terms. In all other respects, ALLEGE that the paragraph contains only legal conclusions to which no responsive pleading is required.

100. ADMIT that BLOC Individual Intervenor-Petitioners and members and constituents of BLOC Organizational Intervenor-Petitioners reside in the indicated districts. ALLEGE that the census data referred to in this paragraph speak for themselves, and DENY any characterization of them contrary to their express terms. Further ALLEGE that the Wisconsin and United States Constitutions require that state legislative districts be reapportioned on the basis of the 2020 census data prior to any future state legislative election. *See* Wis. Const., art. IV, § 3; U.S. Const. amend. XIV. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

101. ALLEGE that the census data referred to in this paragraph speak for themselves, and DENY any characterization of them contrary to their express terms. Further ALLEGE that the Wisconsin and United States Constitutions require that state legislative districts be reapportioned on the basis of the 2020 census data prior to any future state legislative election. *See* Wis. Const., art. IV, § 3; U.S. Const. amend. XIV. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

102. ADMIT that Intervenor-Petitioners Citizen Mathematicians and Scientists reside in the indicated districts. ALLEGE that the census data referred to in this paragraph speak for themselves, and DENY any characterization of them contrary to their express terms. Further ALLEGE that the Wisconsin and United States Constitutions require that state legislative districts be reapportioned on the basis of the 2020 census data prior to any future state legislative election. *See* Wis. Const., art. IV, § 3; U.S. Const. amend. XIV. In all other respects, ALLEGE

that this paragraph contains only legal conclusions to which no responsive pleading is required.

103. ALLEGE that the Wisconsin and United States Constitutions require that state legislative districts be reapportioned on the basis of the 2020 census data prior to any future state legislative election. *See* Wis. Const., art. IV, § 3; U.S. Const. amend. XIV. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

104. ADMIT.

105. ALLEGE that the Wisconsin and United States Constitutions require that state legislative districts be reapportioned on the basis of the 2020 census data prior to any future state legislative election. *See* Wis. Const., art. IV, § 3; U.S. Const. amend. XIV. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

106. ALLEGE that the Wisconsin and United States Constitutions require that state legislative districts be reapportioned on the basis of the 2020 census data prior to any future state legislative election. *See* Wis. Const., art. IV,

§ 3; U.S. Const. amend. XIV. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

107. ADMIT.

108. ADMIT that the Legislature and Governor still may enact a new district plan without court intervention. ALLEGE that the court decision and law review article referred to in this paragraph speak for themselves, and DENY any characterization of them contrary to their express terms. In all other respects, ALLEGE that the paragraph contains only legal conclusions to which no responsive pleading is required.

109. ADMIT that the Legislature and Governor still may enact a new district plan without court intervention. ALLEGE that a new congressional and state legislative district 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. In all other respects, ALLEGE that the paragraph contains only legal conclusions to which no responsive pleading is required.

110. ALLEGE that the court decision referred to in the paragraph speaks for itself, and DENY any characterization of it contrary to its express terms. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

111. ADMIT the allegations in the first sentence of this paragraph. LACK knowledge or information sufficient to form a belief as to the truth of any other factual allegations or characterizations in the paragraph, and thus DENY.

Further ALLEGE that a new congressional and state legislative district 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. Additionally ALLEGE that, in light of the fact that 2020 census data was not delivered to Wisconsin officials until August 12, 2021, and in light of the current partisan divisions between the Wisconsin Legislature and the Governor, there is a meaningful possibility that the Legislature and the Governor will not be able to put a new

district plan in place by March 1, 2022, without involvement of a court.

112. ADMIT that federal courts have been involved in Wisconsin's redistricting process in some previous decades. Further ADMIT that, during the 2010 redistricting cycle, Wisconsin had a Republican Governor and a Republican majority in both chambers of the Legislature. LACK knowledge or information sufficient to form a belief as to the truth of any other factual allegations or characterizations in the paragraph, and thus DENY.

113. ADMIT that the Legislature and Governor enacted a legislative district plan in 2011, and that some districts were revised by court order. LACK knowledge or information sufficient to form a belief as to the truth of any other factual allegations or characterizations in the paragraph, and thus DENY. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

114. ADMIT the allegations in the first two sentences of this paragraph. Further ADMIT that the Legislature and Governor have not enacted a legislative district plan in every

decennial cycle, and that federal courts have been involved in the redistricting process in some previous decades. ALLEGE that the court decisions referred to in the paragraph speak for themselves, and DENY any characterization of them contrary to their express terms.

Further ALLEGE that a new congressional and state legislative district 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. Additionally ALLEGE that, in light of the fact that 2020 census data was not delivered to Wisconsin officials until August 12, 2021, and in light of the current partisan divisions between the Wisconsin Legislature and the Governor, there is a meaningful possibility that the Legislature and the Governor will not be able to put a new district plan in place by March 1, 2022, without involvement of a court.

115. ADMIT that the partisan primary for the next state legislative election in Wisconsin is scheduled for August 9, 2022, and that, on or before March 15, 2022, the

Wisconsin Elections Commission must send to each county clerk a Notice of Election that includes territorial information about any recent redistricting. *See* Wis. Stat. § 10.06(1)(f) (requiring a type A notice) and § 10.01(2)(a) (prescribing the content of a type A notice). Further ALLEGE that, independent of the March 15, 2022, notice deadline, a new legislative district 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 the partisan primary on August 9, 2022.

116. ALLEGE that the statute and court decision referred to in this paragraph speak for themselves, and DENY any characterization of them contrary to their express terms. Further ALLEGE that a new congressional and state legislative district 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. LACK knowledge or information sufficient to form a belief as to the truth of any other factual allegations or characterizations in the paragraph, and thus

DENY. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

117. ALLEGE that the United States and Wisconsin Constitutions require that congressional and state legislative districts be reapportioned on the basis of population data obtained in each decennial U.S. census and that Wisconsin's current districts must be reapportioned prior to any future congressional or state legislative election. *See* U.S. Const., art. I, §§ 2, 4; U.S. Const. amend. XIV, § 2; Wis. Const., art. IV, § 3. Further ALLEGE that, without regard to whether a new district plan is established by the Legislature and the Governor or by a court, such a 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. LACK knowledge or information sufficient to form a belief as to the truth of any other factual allegations or characterizations in the paragraph, and thus DENY. In all other respects, ALLEGE that this paragraph

contains only legal conclusions to which no responsive pleading is required.

118. ADMIT that the Petitioners and the Congressmen seek the relief described in this paragraph. ALLEGE that the court decisions referred to in this paragraph speak for themselves, and DENY any characterization of them contrary to their express terms. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

119. ADMIT that the Intervenor-Petitioners Citizen Mathematicians and Scientists seek the relief described in this paragraph.

120. ADMIT that the Hunter Intervenors take the positions described in this paragraph. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

121. ADMIT that the BLOC Intervenor-Petitioners seek the relief and take the positions described in this paragraph. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

122. ADMIT that the Intervenor-Petitioners Citizen Mathematicians and Scientists take the positions described in this paragraph. LACK knowledge or information sufficient to form a belief as to the truth of any other factual allegations or characterizations in the paragraph, and thus DENY. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

123. ADMIT.

124. ADMIT.

**PETITIONERS' AND THE CONGRESSMEN'S
STATEMENTS OF RELIEF SOUGHT**

125. ADMIT that the Petitioners and the Congressmen seek the relief and take the positions described in this paragraph. LACK knowledge or information sufficient to form a belief as to the truth of any other factual allegations or characterizations in the paragraph, and thus DENY. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

126. ADMIT that the Petitioners and the Congressmen seek the relief described in this paragraph, and that the Legislature and Governor still may enact a new

district plan without court intervention. ALLEGE that a new congressional and state legislative district 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. Further ALLEGE that injunctive relief against the WEC Respondents is not necessary or appropriate at the present time. In all other respects, ALLEGE that the paragraph contains only legal conclusions to which no responsive pleading is required.

127. ADMIT that the Petitioners and the Congressmen seek the relief and take the positions described in this paragraph. ALLEGE that the constitutional provisions and court decision referred to in the paragraph speak for themselves, and DENY any characterization of them contrary to their express terms. In all other respects, ALLEGE that the paragraph contains only legal conclusions to which no responsive pleading is required.

**BLOC INTERVENOR-PETITIONERS' STATEMENT
OF RELIEF SOUGHT**

128. ALLEGE that the 2020 Census results, the U.S. Constitution, and the Wisconsin Constitution speak for themselves, and DENY any characterization of them contrary to their express terms. Further ALLEGE that injunctive relief against the WEC Respondents is not necessary or appropriate at the present time. In all other respects, ALLEGE that the paragraph contains only legal conclusions to which no responsive pleading is required.

129. ALLEGE that the population data in the 2010 and 2020 census results speak for themselves, and DENY any characterization of them contrary to their express terms. LACK knowledge or information sufficient to form a belief as to the truth of any other factual allegations or characterizations in the paragraph, and thus DENY. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

130. ALLEGE that the population data in the 2010 and 2020 census results speak for themselves, and DENY any characterization of them contrary to their express terms.

LACK knowledge or information sufficient to form a belief as to the truth of any other factual allegations or characterizations in the paragraph, and thus DENY. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

131. ALLEGE that the population data in the 2010 and 2020 census results speak for themselves, and DENY any characterization of them contrary to their express terms. LACK knowledge or information sufficient to form a belief as to the truth of any other factual allegations or characterizations in the paragraph, and thus DENY. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

132. ALLEGE that the population data in the 2010 and 2020 census results speak for themselves, and DENY any characterization of them contrary to their express terms. LACK knowledge or information sufficient to form a belief as to the truth of any other factual allegations or characterizations in the paragraph, and thus DENY. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

133. ADMIT that WEC is responsible for administering any election in accordance with the applicable district maps legally in effect at the time of the election. ALLEGE that the Wisconsin and United States Constitutions require that state legislative districts be reapportioned on the basis of the 2020 census data prior to any future state legislative election. *See* Wis. Const., art. IV, § 3; U.S. Const. amend. XIV. Further ALLEGE that injunctive relief against the WEC Respondents is not necessary or appropriate at the present time.

134. ALLEGE that the boundaries and populations of the existing congressional and state legislative districts speak for themselves, and DENY any characterization of them contrary to their express terms. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

135. LACK knowledge or information sufficient to form a belief as to the truth of any factual allegations in this paragraph, and thus DENY. In all other respects, ALLEGE that the paragraph contains only legal conclusions to which no responsive pleading is required.

136. ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

137. In response to BLOC Intervenor-Petitioners' request for relief in paragraph 137, the WEC Respondents ALLEGE as follows:

- The Wisconsin and United States Constitutions require that Wisconsin's state legislative districts be reapportioned on the basis of the 2020 census data prior to any future state legislative election.
- Without regard to whether a new legislative district plan is established by the Legislature and the Governor or by a court, such a 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.
- In light of the fact that 2020 census data was not delivered to Wisconsin officials until August 12, 2021, and in light of the current partisan divisions between the Wisconsin Legislature and the Governor, there is a meaningful possibility that the Legislature and the Governor will not be able to put a new district plan in place by March 1, 2022, without involvement of a court.
- The Wisconsin Elections Commission has no legal authority to create or alter district boundaries and no party has alleged any actual or imminent violation of the United States or Wisconsin Constitutions by any of the WEC Respondents. The WEC Respondents thus are not liable for BLOC Intervenor-Petitioners' costs, disbursements, or attorney's fees.

- Injunctive relief against the WEC Respondents is not necessary or appropriate at the present time.

138. ADMIT that the BLOC Intervenor-Petitioners seek the relief and take the positions described in this paragraph, and that the Legislature and Governor still may enact a new district plan without court intervention. ALLEGE that a new congressional and state legislative district 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. Further ALLEGE that the constitutional and statutory provisions referred to in the paragraph speak for themselves, and DENY any characterization of them contrary to their express terms. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

HUNTER INTERVENORS' STATEMENT OF RELIEF SOUGHT

139. In response to the Hunter Intervenor's request for relief in paragraph 139, the WEC Respondents ALLEGE as follows:

- The United States and Wisconsin Constitutions require that Wisconsin's congressional and state legislative districts be reapportioned on the basis of the 2020 census data prior to any future congressional or state legislative election.
- Without regard to whether a new congressional and state legislative district plan is established by the Legislature and the Governor or by a court, such a 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.
- In light of the fact that 2020 census data was not delivered to Wisconsin officials until August 12, 2021, and in light of the current partisan divisions between the Wisconsin Legislature and the Governor, there is a meaningful possibility that the Legislature and the Governor will not be able to put a new district plan in place by March 1, 2022, without involvement of a court.
- The Wisconsin Elections Commission has no legal authority to create or alter district boundaries and no party has alleged any actual or imminent violation of the United States or Wisconsin Constitutions by any of the WEC Respondents. The WEC Respondents thus are not liable for Hunter Intervenor's costs, disbursements, or attorney's fees.

**INTERVENORS-PETITIONERS CITIZEN
MATHEMATICIANS AND SCIENTISTS' STATEMENT
OF RELIEF SOUGHT**

140. In response to the Intervenor-Petitioners Citizen Mathematicians and Scientists' request for relief in paragraph 140, the WEC Respondents ALLEGE as follows:

- The United States and Wisconsin Constitutions require that Wisconsin's congressional and state legislative districts be reapportioned on the basis of the 2020 census data prior to any future congressional or state legislative election.
- Without regard to whether a new congressional and legislative district plan is established by the Legislature and the Governor or by a court, such a 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.
- In light of the fact that 2020 census data was not delivered to Wisconsin officials until August 12, 2021, and in light of the current partisan divisions between the Wisconsin Legislature and the Governor, there is a meaningful possibility that the Legislature and the Governor will not be able to put a new district plan in place by March 1, 2022, without involvement of a court.
- Injunctive relief against the WEC Respondents is not necessary or appropriate at the present time.

- In all other respects, this paragraph contains only legal conclusions to which no responsive pleading is required.

REASONS WHY THIS COURT SHOULD TAKE JURISDICTION

141. ADMIT that this Court has already assumed original jurisdiction over this matter and ALLEGE that it is thus unnecessary to develop further reasons why the Court should take jurisdiction. ALLEGE that the order referred to in this paragraph speaks for itself, and DENY any characterization of it contrary to its express terms.

142. ADMIT that this Court has already assumed original jurisdiction over this matter and ALLEGE that it is thus unnecessary to develop further reasons why the Court should take jurisdiction. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

143. ALLEGE that the constitutional provisions referred to in this paragraph speak for themselves, and DENY any characterization of them contrary to their express terms. In all other respects, ALLEGE that the paragraph contains

only legal conclusions to which no responsive pleading is required.

144. ALLEGE that the constitutional provisions referred to in this paragraph speak for themselves, and DENY any characterization of them contrary to their express terms. In all other respects, ALLEGE that the paragraph contains only legal conclusions to which no responsive pleading is required.

145. ALLEGE that this Court has already assumed original jurisdiction over this matter and that it is thus unnecessary to develop further reasons why the Court should take jurisdiction. In all other respects, ALLEGE that the paragraph contains only legal conclusions to which no responsive pleading is required.

146. ALLEGE that this Court has already assumed original jurisdiction over this matter and that it is thus unnecessary to develop further reasons why the Court should take jurisdiction. Further ALLEGE that the court decision referred to in this paragraph speaks for itself, and DENY any characterization of it contrary to its express terms. In all

other respects, ALLEGE that the paragraph contains only legal conclusions to which no responsive pleading is required.

147. ALLEGE that this Court has already assumed original jurisdiction over this matter and that it is thus unnecessary to develop further reasons why the Court should take jurisdiction. Further ALLEGE that without regard to whether a new congressional and legislative district plan is established by the Legislature and the Governor or by a court, such a 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.

148. ALLEGE that the order referred to in this paragraph speaks for itself, and DENY any characterization of it contrary to its express terms.

149. ADMIT.

150. ADMIT.

151. ADMIT.

152. ADMIT that it is unlikely that new maps could be in place before November 2021. LACK knowledge or information sufficient to form a belief as to the truth of any

other factual allegations or characterizations in this paragraph, and thus DENY.

153. ADMIT.

154. ALLEGE that without regard to whether a new congressional and legislative district plan is established by the Legislature and the Governor or by a court, such a 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.

155. ALLEGE that this Court has already assumed original jurisdiction over this matter and that it is thus unnecessary to develop further reasons why the Court should take jurisdiction. Further ALLEGE that without regard to whether a new congressional and legislative district plan is established by the Legislature and the Governor or by a court, such a 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.

156. The WEC Respondents take no position on the allegations in this paragraph.

CONCLUSION

157. ADMIT that the Petitioners and the Congressmen seek the relief described in this paragraph. ALLEGE that the Legislature and Governor still may enact a new district plan without court intervention. Further ALLEGE that without regard to whether a new congressional and legislative district plan is established by the Legislature and the Governor or by a court, such a 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. Additionally ALLEGE that injunctive relief against the WEC Respondents is not necessary or appropriate at the present time. In all other respects, ALLEGE that the paragraph contains only legal conclusions to which no responsive pleading is required.

158. ADMIT that the Petitioners and the Congressmen seek the relief and take the positions described in this paragraph. In all other respects, ALLEGE that the

paragraph contains only legal conclusions to which no responsive pleading is required.

159. ADMIT that the BLOC Intervenor-Petitioners seek the relief and take the positions described in this paragraph. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

160. ADMIT that the Intervenor-Petitioners Citizen Mathematicians and Scientists seek the relief and take the positions described in this paragraph. ALLEGE that injunctive relief against the WEC Respondents is not necessary or appropriate at the present time. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

161. ADMIT that the Intervenor-Petitioners Citizen Mathematicians and Scientists seek the relief and take the positions described in this paragraph.

**STATEMENT OF PETITIONERS AND
INTERVENORS-PETITIONERS ON OMNIBUS
AMENDED PETITION**

162. ADMIT that the Petitioners join the indicated portions of the omnibus amended petition and take the positions described in this paragraph.

163. ADMIT that the BLOC Intervenor-Petitioners join the portions of the omnibus amended petition indicated in this paragraph.

164. ADMIT that the Congressmen join the indicated portions of the omnibus amended petition and take the positions described in this paragraph.

165. ADMIT that the Hunter Intervenors join the portions of the omnibus amended petition indicated in this paragraph.

166. ADMIT that the Intervenors-Petitioners Citizen Mathematicians and Scientists join the portions of the omnibus amended petition indicated in this paragraph.

DEFENSES

1. The Wisconsin Elections Commission has no legal authority to create or alter district boundaries and no party

has alleged any actual or imminent violation of state or federal law by any of the WEC Respondents.

WHEREFORE, the WEC Respondents respectfully ask the Court to issue such orders as it deems just and proper to ensure that a new congressional and state legislative district plan for Wisconsin is in place no later than March 1, 2022.

Dated this 28th day of October 2021.

Respectfully submitted,

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October 14, 2021

To:

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*Address list continued on page 4.

You are hereby notified that the Court has entered the following order:

No. 2021AP1450-OA Johnson v. Wisconsin Elections Commission

On September 22, 2021, this court granted the petition for leave to commence an original action filed by petitioners Billie Johnson, et al., and invited intervention motions to be filed no later than October 6, 2021.

On September 24, 2021, the court received a notice of motion and unopposed motion to intervene as petitioners filed by Black Leaders Organizing for Communities, et al. (plaintiffs in Black Leaders Organizing for Communities v. Spindell, No. 21-CV-534 (W.D. Wis. Aug. 23, 2021), consolidated with Case No. 21-CV-512) together with a supporting brief.

On October 6, 2021, the court received additional intervention motions and supporting documents from proposed-intervenor-petitioners Congressmen Glenn Grothman, Mike Gallagher, Brian Steil, Tom Tiffany, and Scott Fitzgerald (“Congressmen”); proposed-intervenor-petitioners Gary Krenz, Sarah J. Hamilton, Stephen Joseph Wright, Jean-Luc Thiffeault, and Somesh Jha (a group of Wisconsin voters who identify themselves as the “Citizen Mathematicians and

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Scientists"); proposed-intervenor-petitioners Lisa Hunter, Jacob Zabel, Jennifer Oh, John Persa, Geraldine Schertz, and Kathleen Qualheim (plaintiffs in Hunter v. Bostelmann, No. 21-CV-512 (W.D. Wis. Aug. 13, 2021)); proposed-intervenor-respondent the Wisconsin Legislature; proposed-intervenor-respondent Governor Tony Evers, in his official capacity; and proposed-intervenor-respondent Janet Bewley, Senate Democratic Minority Leader, on behalf of the Senate Democratic Caucus.

On October 13, 2021, the court received responses pertaining to the intervention motions from the petitioners Billie Johnson, et al.; proposed-intervenor-petitioners Congressmen; proposed-intervenor-petitioners Citizen Mathematicians and Scientists; proposed-intervenor-petitioners Lisa Hunter, et al.; and proposed-intervenor-respondent the Wisconsin Legislature.¹

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." See Helgeland v. Wis. Municipalities, 2008 WI 9, ¶38, 307 Wis. 2d 1, 9, ¶44, 745 N.W.2d 1 (quoting State ex rel. Bilder v. Delavan Twp., 112 Wis. 2d 539, 548-49, 334 N.W.2d 252 (1983)). We have evaluated each intervention motion and determined that all are timely; each movant claims an interest relating to the subject of this redistricting action; each is so situated that the disposition of the action may as a practical matter impair or impede the movant's ability to protect that interest; and that each movant has demonstrated that its interest is not adequately represented by existing parties. See Wis. Stat. § 803.09. Therefore,

IT IS ORDERED that each of the pending motions to intervene is granted;

The intervenor-petitioners have each submitted with their motions to intervene a proposed complaint for declaratory and injunctive relief/petition for original action. The court wishes to have one controlling petition, rather than multiple petitions in this action. Therefore, no later than 12:00 noon on October 21, 2021, the petitioners and the intervenor-petitioners shall file a single omnibus amended petition that, in numbered paragraph form, restates the previously asserted allegations and claims advanced by petitioners Billie Johnson, et al., and states the allegations and claims of each intervening petitioner as provided in its proposed complaints/petition, with those claims and allegations consolidated to the extent possible. No additional memorandum of law shall accompany the omnibus amended petition. This omnibus amended petition shall supersede the previously filed petition in this action;

IT IS FURTHER ORDERED that no later than 12:00 noon on October 28, 2021, the respondents and intervenor-respondents shall each file an answer to the omnibus amended petition;

¹ The court also received letter briefs responding to the question of the timing of a new redistricting plan from the petitioners Billie Johnson, et al.; respondents Wisconsin Elections Commission, et al.; proposed-intervenor-petitioners Congressmen; proposed-intervenor-petitioners Black Leaders Organizing for Communities, et al.; proposed-intervenor-petitioners Citizen Mathematicians and Scientists; proposed-intervenor-petitioners Lisa Hunter, et al.; and proposed-intervenor-respondent the Wisconsin Legislature.

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IT IS FURTHER ORDERED that no later than 12:00 noon on November 4, 2021, the petitioners, intervenor-petitioners, respondents, and intervenor-respondents shall prepare and submit a joint stipulation of facts and law; and shall identify and list disputed facts, if any, and suggest a procedure for resolving them; and

IT IS FURTHER ORDERED that all filings in this matter shall be filed as an attachment in pdf format to an email addressed to clerk@wicourts.gov. See, Wis. Stat. §§ 809.14, 809.70, 809.80, and 809.81. A paper original and 10 copies of each filed document must be received by the clerk of this court by 12:00 p.m. of the business day following submission by email, with the document bearing the following notation on the top of the first page: “This document was previously filed via email;” and

IT IS FURTHER ORDERED that requests for additional briefing or extensions will be viewed with disfavor.

Sheila T. Reiff
Clerk of Supreme Court

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No. 2021AP1450-OA Johnson v. Wisconsin Elections Commission

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March 9, 2022

Via Email and Hand Delivery

Ms. Sheila T. Reiff
Clerk of Supreme Court
110 East Main Street, Suite 215
Madison, WI 53701-1688

Re: *Johnson v. Wisconsin Elections Commission*,
Case No. 2021AP1450-OA

Dear Ms. Reiff:

We write on behalf of Respondents, Wisconsin Elections Commission and all six commissioners in their official capacities (the "Commission"), in the above-referenced original action.

This Court issued a decision, dated March 3, 2022, enjoining Wisconsin's existing legislative (and congressional) districts and ordering new district plans proposed by Governor Evers. The next day, the Wisconsin Legislature filed an expedited motion to stay this Court's injunction and order as it applies to Wisconsin's senate and assembly districts, pending the Legislature's appeal to the United States Supreme Court, which was later filed March 7. Also on March 7, this Court ordered that any party wishing to file a response to the Legislature's expedited motion may file a letter brief no later than by 11:00 a.m. today. The Commission files this letter brief in response.

Throughout this original action, the Commission has taken a neutral position on the merits of the case—that is, which party's maps, based on the results of the 2020 census, should govern the state's subsequent elections. 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." (E.g., Answer to Omnibus Amended Petition by Wisconsin Elections

Ms. Sheila T. Reiff
Clerk of Supreme Court
March 9, 2022
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Commission Respondents ¶ 137; *see also* Commission Ltr. Br. dated Oct. 13, 2021.) This Court achieved that goal by ordering expedited briefing and argument throughout this action and ultimately issuing a final decision on March 3.

Although the Commission continues to take no position on the legal merits of any of the proposed maps, granting the Legislature's requested stay would be contrary to the goal of providing final state senate and assembly district maps in time for them to be properly implemented for the fall general election. As explained before, Commission staff needs to record the maps' new boundaries in WisVote, integrate the new redistricting data with existing voter registration and address data, and manually review ward map changes and parcel boundary data to ensure that each voter is correctly located in their proper districts. These tasks must be completed before the candidate nominating petition circulation period begins on April 15, because candidates need to know which district they reside in and which office they can run for, and voters need to know which candidates' petitions they can properly sign. This Court's March 3 injunction and order gives Commission staff the necessary time to complete this work and perform basic quality assurance checks on the data. Conversely, staying that decision on or after today's date would impair the Commission staff's ability to make necessary preparations for the April 15 beginning of the nominating petition circulation period.

Finally, if this Court were to issue a stay, the Commission would be left with the 2011 maps that sparked this original action in the first place—maps which all parties agree are unconstitutionally malapportioned.

Sincerely,

ERIC J. WILSON
Deputy Attorney General



Steven C. Kilpatrick

Karla Z. Keckhaver
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Assistant Attorneys General

Ms. Sheila T. Reiff
Clerk of Supreme Court
March 9, 2022
Page 3

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FILED

08-02-2023

CLERK OF WISCONSIN

SUPREME COURT

IN THE SUPREME COURT OF WISCONSIN

No. _____

REBECCA CLARKE, RUBEN ANTHONY, TERRY DAWSON, DANA GLASSTEIN, ANN GROVES-LLOYD, CARL HUJET, JERRY IVERSON, TIA JOHNSON, ANGIE KIRST, SELIKA LAWTON, FABIAN MALDONADO, ANNEMARIE MCCLELLAN, JAMES MCNETT, BRITTANY MURIELLO, ELA JOOSTEN (PARI) SCHILS, NATHANIEL SLACK, MARY SMITH-JOHNSON, DENISE (DEE) SWEET, AND GABRIELLE YOUNG,

Petitioners,

v.

WISCONSIN ELECTIONS COMMISSION; DON MILLIS, ROBERT F. SPINDELL, JR., MARK L. THOMSEN, ANN S. JACOBS, MARGE BOSTELMANN, AND JOSEPH J. CZARNEZKI, IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE WISCONSIN ELECTIONS COMMISSION; MEAGAN WOLFE, IN HER OFFICIAL CAPACITY AS THE ADMINISTRATOR OF THE WISCONSIN ELECTIONS COMMISSION; SENATOR ANDRÉ JACQUE, SENATOR TIM CARPENTER, SENATOR ROB HUTTON, SENATOR CHRIS LARSON, SENATOR DEVIN LEMAHIEU, SENATOR STEPHEN L. NASS, SENATOR JOHN JAGLER, SENATOR MARK SPREITZER, SENATOR HOWARD L. MARKLEIN, SENATOR RACHAEL CABRAL-GUEVARA, SENATOR VAN H. WANGGAARD, SENATOR JESSE L. JAMES, SENATOR ROMAINE ROBERT QUINN, SENATOR DIANNE H. HESSELBEIN, SENATOR CORY TOMCZYK, SENATOR JEFF SMITH, AND SENATOR CHRIS KAPENGA, IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE WISCONSIN SENATE,

Respondents.

**PETITION TO THE SUPREME COURT OF WISCONSIN TO TAKE
JURISDICTION OF AN ORIGINAL ACTION**

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Attorneys for Petitioners

ISSUES PRESENTED

1. Whether the state legislative redistricting plans proposed by the Legislature and imposed by this Court in *Johnson v. Wisconsin Elections Commission*, 2022 WI 19, 401 Wis. 2d 198, 972 N.W.2d 559 (“*Johnson III*”), are extreme partisan gerrymanders that violate Article I, Section 1 of the Wisconsin Constitution’s guarantee of equal protection under law; and whether this cause of action is justiciable in Wisconsin courts.

2. Whether the state legislative redistricting plans proposed by the Legislature and imposed by this Court in *Johnson III* are extreme partisan gerrymanders that retaliate against voters based on their viewpoint and exercise of free speech and abridge the ability of voters with disfavored political views to associate with others to advance their political beliefs in violation of Article I, Sections 3 and 4 of the Wisconsin Constitution; and whether these causes of action are justiciable in Wisconsin courts.

3. Whether the state legislative redistricting plans proposed by the Legislature and imposed by this Court in *Johnson III* are extreme partisan gerrymanders that fail to “adhere[] to justice, moderation, temperance, frugality, and virtue, ... [and] fundamental principles” in violation of Article I, Section 22 of the Wisconsin Constitution; and whether this cause of action is justiciable in Wisconsin courts.

4. Whether the state legislative redistricting plans proposed by the Legislature and imposed by this Court in *Johnson III* violate the requirement of

5. Whether the state legislative redistricting plans proposed by the Legislature and imposed by this Court in *Johnson III* violate the separation-of-powers principle inherent in the Constitution’s division of legislative, executive, and judicial power by usurping the Governor’s core constitutional power to veto legislation and the Legislature’s core constitutional power to override such a veto.

INTRODUCTION

Wisconsin’s legislative districts are unconstitutional in numerous ways, ranging from an outright assault on Wisconsin voters in retaliation for how they vote and what they believe, to the most basic violation of the Wisconsin Constitution’s express requirements for district configurations. The current districts are invalid, the representatives and senators elected from them unconstitutionally hold office, and this Court’s urgent action is required to ensure that *not one more Wisconsin election* is held using state legislative districts that brazenly flout the language of Wisconsin’s Constitution and the rights of its residents.

First, the maps violate several provisions of the Wisconsin Constitution because they are extreme partisan gerrymanders. They violate Article I, Section 1's guarantee of equal protection under the law because they systematically classify voters based on partisan affiliation and target the disfavored class of voters with an unequal opportunity to elect their preferred political candidates to state legislative office. They also violate Article I, Sections 3 and 4's free speech and association

guarantees because they retaliate against voters based upon their expression of political views at the ballot box and impair the ability of individuals with disfavored views to associate for the advancement of their political beliefs. In addition, the maps violate Article I, Section 22's "maintenance of free government" protection that commands that legislative action adhere to justice, moderation, temperance, frugality and virtue, and fundamental principles by disadvantaging Democratic-supporting voters and distorting the electoral process to gain excessive partisan advantage. Each of these constitutional violations requires enjoining further use of the maps. All of these claims are justiciable because judicially manageable standards exist to adjudicate them and because the plain text of the Constitution guarantees in express terms a judicial remedy for all wrongs. *See* Wis. Const. art. I, § 9.

Second, the current legislative districts violate the Wisconsin Constitution's plain-text "contiguous territory" requirement. A staggering 55 assembly districts and 21 senate districts—the majority of seats in each chamber of the Legislature—consist of a patchwork of disconnected pieces that do not share a common border with other parts of the same district. Put differently, those districts include multiple tracts of land that do not touch at all; they are not in actual, physical contact, which is not only the dictionary definition of "contiguous" but was recognized by this Court as a requirement more than 130 years ago. This Court has never held that such districts satisfy the Constitution's express contiguity requirement. Moreover, this Court's two sentences in *Johnson v. Wisconsin Elections Comm'n*, 2021 WI 87, ¶81,

399 Wis. 2d 623, 967 N.W.2d 469 (“*Johnson I*”) and single sentence in *Johnson III* mentioning contiguity did not address whether the legislative maps satisfied the Constitution’s imperative for contiguous districts. Maps that satisfy *both* the constitutional requirement that districts be bounded by county, town, or ward lines *and* consist of contiguous territory can—and must—be drawn.

Third, by imposing as a remedy map the *precise plans* that the Governor vetoed—a veto the Legislature failed to override—this Court’s mandatory injunction in *Johnson III* violated the Wisconsin Constitution’s separation of powers doctrine. *See Johnson III*, 2022 WI 19, ¶187 (Karofsky, J., dissenting) (“Here, the Legislature, having failed to override the gubernatorial veto, submitted the very same proposal to us.”). The Governor’s power to veto legislation and the Legislature’s power to override that veto are core powers of both branches of government that may not be usurped by the Judiciary. Although this Court can and must issue remedial plans when adjudicating redistricting litigation, the Judiciary’s remedial power reaches its constitutional limit when the proposed remedy is the *precise, district-by-district* legislation vetoed by the Governor.

The Petitioners here are voters—citizens of this state who seek to exercise their rights to speak freely, band together to advocate political beliefs, and obtain equal representation through the ballots they cast in lawfully drawn districts. This case is about ending the systematic silencing of voters across the state as punishment for daring to think, believe, and vote differently from a group of politicians who won a single election thirteen years ago and then set out to entrench themselves into

power permanently, the state's Constitution—and the rights of its residents—be damned.

PARTIES

1. Each Petitioner is a qualified, registered voter in the State of Wisconsin, who consistently votes for and supports Democratic Party candidates and policies, and plans to continue voting in Wisconsin elections. They and other Democratic voters have been harmed by the current legislative maps' unconstitutional extreme partisan gerrymander. The gerrymander treats Democrats unequally based on their political beliefs, violating their rights, guaranteed by the Wisconsin Constitution, to equal protection of the law, freedom of speech and association, and to a free government.

2. Some Petitioners reside in districts where they and other Democrats have been “cracked” from other Democratic voters in neighboring districts to prevent the creation of Democratic-performing districts. Others reside in districts where Democrats have been “packed” so that they will always, overwhelmingly elect a Democrat—thus preventing the creation of additional nearby Democratic districts. Either way, the current maps dilute their voting power because of their political preferences.

3. Some Petitioners reside in noncontiguous legislative districts, meaning parts of the district are disconnected and do not touch each other. Petitioners who reside in noncontiguous districts face representational harms from

having legislators who must cross district lines in order to interact with their constituents.

4. Wherever they live in Wisconsin, whether in a packed, cracked, or even somewhat competitive district, contiguous or noncontiguous, each Petitioner has been harmed by the extreme partisan gerrymander. Democrats do not have the same opportunity Republicans have to elect representatives of their choice to the Assembly or the Senate. Democratic voters have been unconstitutionally deprived of the ability to express their views and associate with like-minded voters in an impactful way.

5. In addition to facing harm from having the strength of their votes diluted on a district-by-district basis, Petitioners are harmed by the inability to achieve a Democratic majority in the state legislature. This harms their ability to see laws and policies they favor enacted.

6. Petitioner **Rebecca Clarke** currently serves as a County Supervisor for Sheboygan County, and previously worked for the state as a natural resources educator. She resides at 735 Fairway Dr., Sheboygan, WI 53081, in AD26 and SD9. She ran and lost as a Democratic candidate for the State Assembly in both 2016 and 2018, is a member of the Sheboygan County Democrats, and regularly canvasses for and donates to Democratic candidates. She resides in an assembly district in which she and other Democratic voters are cracked from other nearby Democratic voters. Both AD26 and SD9 are likewise noncontiguous.

7. Petitioner **Dr. Ruben Anthony** is the current President and CEO of the Urban League of Greater Madison, and previously worked for nearly two decades for the Wisconsin Department of Transportation, ultimately serving as Chief Operations Officer. He resides at 4549 Shooting Star Ave., Middleton, WI 53562, in AD80 and SD27. He has been active in politics through fundraising and get-out-the-vote-efforts for many years. He was also a member of the People's Maps Commission in 2020–21. Dr. Anthony resides in state assembly and senate districts in which he and other Democratic voters are packed. Both AD80 and SD27 are likewise noncontiguous.

8. Petitioner **Terry Dawson** is a retired public librarian. He resides at 1131 S. Oneida St., Appleton, WI 54915, in AD 57 and SD19. He is a longtime supporter of Democratic candidates who has contributed volunteer office work and canvassed for several campaigns through the Democratic Party of Outagamie County. He resides in a state Senate district in which he and other Democratic voters are cracked from other nearby Democratic voters.

9. Petitioner **Dana Glasstein** is an English as a Second Language instructor at Waukesha County Technical College. She resides at 12743 North Yvonne Drive, Mequon, WI 53092, in AD24 and SD8. The most recent round of redistricting moved her from AD23 to AD24. She is an active member of the Ozaukee County Democrats and trained canvassers and phone bankers in 2020 and 2022. She resides in state assembly and senate districts in which she is cracked from other nearby Democratic voters and that are noncontiguous.

10. Petitioner **Dr. Ann Groves-Lloyd** is the current Mayor of Lodi, and previously worked for over 20 years as an administrator at the University of Wisconsin. She resides at 304 Lodi St., Lodi WI 53555, in AD42 and SD14. She is a member of the Columbia County Democrats and regularly canvasses for Democrats, and she herself ran to represent AD42 in the Assembly in 2018, losing to the Republican candidate. She resides in state assembly and senate districts in which she is cracked from other nearby Democratic voters and which are noncontiguous.

11. Petitioner **Carl Hujet** is a retired union member who worked for a local newspaper and as a public-school custodian. He resides at 1217 Gross Ave., Green Bay, WI 54304, in AD90 and SD30. He currently serves on the board of the Brown County Democrats, has voted consistently for Democrats for the past 40 years, and has often donated modest amounts to Democratic candidates. He resides in a senate district which in which he is cracked from other nearby Democratic voters.

12. Petitioner **Jerry Iverson** is retired from a career that spanned the private, public, and nonprofit sectors. He resides at 4708 Timber Row, Grand Chute (Appleton), WI 54913, in AD56 and SD19. He was a member of the Fair Maps Coalition and is currently active in the Democratic Party of Wisconsin. He resides in state and senate assembly districts in which he is cracked from other nearby Democratic voters.

13. Petitioner **Tia Johnson** is a self-employed rental property owner and manager who has also taught eighth grade science in the past. She resides at 1621 Indian Rd., Beloit, WI 53511, in AD31 and SD11. She is a member of the Rock County Democrats and has canvassed for Democratic candidates. She resides in state assembly and senate districts in which she is cracked from other nearby Democratic voters and which are noncontiguous.

14. Petitioner **Angie Kirst** taught at Beaver Dam Middle School for 35 years before retiring. She resides at 308 Park Ave., Beaver Dam, WI 53916, in AD80 and SD27. She is active in the Dodge County Democrats, where she plays a leadership role by running social media, attending meetings, knocking on doors, running canvasses, and phone banking. She resides in state assembly and senate districts in which she is cracked from other nearby Democratic voters and which are noncontiguous.

15. Petitioner **Dr. Selika Lawton** is a Professor of History and Race, Ethnicity, Gender, and Sexuality Studies at the University of Wisconsin-Eau Claire, and a member of the Eau Claire Police & Fire Commission. She resides at 2211 Vienna Terrace, Eau Claire, WI 54703, in AD91 and SD31. She has canvassed for local Democrats and previously served as president of her local chapter of the NAACP. She resides in a state assembly district which is packed and a state senate district in which she is cracked from other nearby Democratic voters. Both her state assembly and senate districts are non-contiguous.

16. Petitioner **Fabian Maldonado** is a political organizer currently working for the Milwaukee Teachers' Education Association. He resides at 2105 Taylor Ave., Racine, WI 53403, in AD66 and SD22. He has twice run his own electoral campaigns, once unsuccessfully for Mayor of Racine on a Green Party ticket in 2017, and once successfully as a Democrat for the Racine County Board. He also ran Democrat Jon Tate's primary campaign for Assembly in 2018. He has worked on numerous other Democratic campaigns for state and local office, in his previous professional capacity as political director for Voces de la Frontera, as an organizer for the Working Families Party, and at times as a volunteer. He resides in state assembly and senate districts in which he is cracked from other nearby Democratic voters and which are noncontiguous.

17. Petitioner **Annemarie McClellan** works in healthcare administration and serves as volunteer co-chair of the League of Women Voters for the Greater Chippewa Valley. She resides at 1215 Gilbert Creek Rd., Menomonie, WI 54751, in AD29 and SD10. She served on the People's Maps Commission in 2020–21. She resides in state assembly and senate districts in which she is cracked from other nearby Democratic voters and which are noncontiguous.

18. Petitioner **James McNett** is a retired riverboat captain, woodworker, and owner of 350 acres of land in southwestern Wisconsin, over one third of which is in the Conservation Reserve Program. He resides at 1275 Peniel Rd., Mineral Point, WI 53565, in AD51 and SD17. He resides in state assembly and senate districts in which he is cracked from other nearby Democratic voters.

19. Petitioner **Brittany Muriello** is a stay-at-home mother of four young children, who previously worked in education and early intervention for children with special needs. She resides at 15460 Santa Maria Dr., Brookfield, WI 53005, in AD13 and SD5. She volunteers with the Waukesha County Democrats, and she also volunteers with other Brookfield moms who work towards electing Democrats—or in nonpartisan races, the more liberal candidates. She resides in state assembly and senate districts in which she is cracked from other nearby Democratic voters are her senate district is noncontiguous.

20. Petitioner **Ela Joosten (Pari) Schils** is a student at Miami University in Oxford, Ohio. She resides at N8139 900 St., River Falls, WI 54022, and votes absentee in River Falls, in AD93 and SD31. She voted for the first time in 2022 and volunteered by phone banking for the last presidential election, before she could vote. She is an activist for reproductive rights and the Black Lives Matter movement, and against gun violence. She resides in a Senate district in which she is cracked from other nearby Democratic voters and in state assembly and senate districts that are noncontiguous.

21. Petitioner **Nathaniel Slack** is an independent organic farm auditor and part-time instructor at Western Technical College. He resides at E8370 Kolstad Rd., Viroqua, WI 54665, in AD96 and SD32. He is a member of the Wisconsin Farmers Union and has run for the Vernon County Board. He resides in a state assembly district in which he is cracked from other nearby Democratic voters.

22. Petitioner **Mary Smith-Johnson** is a retired special education teacher. She resides at 1303 E. Third St., Superior, WI 54880, in AD73 and SD25. She is currently co-chair of the Douglas County Democratic Party and has been involved in public education advocacy in Wisconsin as well as union activities in Minnesota, where she worked. She resides in a state assembly district in which she is cracked from other nearby Democratic voters.

23. Petitioner **Denise (Dee) Sweet** is the Native Vote Manager of Wisconsin Conservation Voices, and a former Wisconsin Poet Laureate. A member of the Anishinaabe (Ojibwe, White Earth) Nation, she resides at 239 S. 7th St., Bayfield, WI 54814, in AD74 and SD25. She has canvassed for Democratic candidates over the years and has also been involved with nonpartisan organizations. She resides in a state assembly district in which she is cracked from other nearby Democratic voters.

24. Petitioner **Gabrielle Young** works at a specialty grocery store. She resides at 1817 Carver St., Madison, WI 53713, in AD47 and SD16. She resides in state assembly and senate districts which are packed, and her state assembly and senate districts are non-contiguous. Gabrielle lives in a non-contiguous island that is not attached to the rest of her assembly or senate districts. Her residence was until 2022 in the Town of Madison, which was absorbed into the City of Madison in October 2022. The disconnected piece of AD47 and SD16 in which she resides is thus not even bounded by any municipal border.

25. Respondent Wisconsin Elections Commission is an administrative body created under the laws of Wisconsin that administers and enforces Wisconsin election law and is comprised of six appointed members.

26. The Wisconsin Elections Commission has “the responsibility for the administration of chs. 5 to 10 and 12 [of the Wisconsin statutes] and other laws relating to elections and election campaigns[.]” Wis. Stat. § 5.05(1). This includes responsibilities for implementing apportionment plans. *See* Wis. Stat. § 10.06(1)(f).

27. Respondents Don Millis, Robert F. Spindell, Jr., Mark L. Thomsen, Ann S. Jacobs, Marge Bostelmann, and Joseph J. Czarnezki are the individual members of the Wisconsin Elections Commission and are named in their official capacities.

28. Respondent Meagan Wolfe is the Administrator of the Wisconsin Elections Commission and is named in her official capacity.

29. The Wisconsin Elections Commission, its members, and Administrator Wolfe, have their offices and principal place of business at 201 W. Washington Avenue, Second Floor, Madison, WI 53703.

30. Respondent Senator André Jacque represents SD1. Senator Jacque is named in his official capacity. He was elected to his office in November 2022 from an unconstitutionally configured district. Senator Jacque’s office and principal place of business is located in Room 7 South, State Capitol, 2 East Main Street, Madison, WI 53703.

31. Respondent Senator Tim Carpenter represents SD3. Senator Carpenter is named in his official capacity. He was elected to his office in November 2022 from an unconstitutionally configured district. Senator Carpenter's office and principal place of business is located in Room 109 South, State Capitol, 2 East Main Street, Madison, WI 53703.

32. Respondent Senator Rob Hutton represents SD5. Senator Hutton is named in his official capacity. He was elected to his office in November 2022 from an unconstitutionally configured district. Senator Hutton's office and principal place of business is located in Room 313 South, State Capitol, 2 East Main Street, Madison, WI 53703.

33. Respondent Senator Chris Larson represents SD7. Senator Larson is named in his official capacity. He was elected to his office in November 2022 from an unconstitutionally configured district. Senator Larson's office and principal place of business is located in Room 20 South, State Capitol, 2 East Main Street, Madison, WI 53703.

34. Respondent Senator Devin LeMahieu represents SD9. Senator LeMahieu is named in his official capacity. He was elected to his office in November 2022 from an unconstitutionally configured district. Senator LeMahieu's office and principal place of business is located in Room 211 South, State Capitol, 2 East Main Street, Madison, WI 53703.

35. Respondent Senator Stephen L. Nass represents SD11. Senator Nass is named in his official capacity. He was elected to his office in November 2022

from an unconstitutionally configured district. Senator Nass's office and principal place of business is located in Room 10 South, State Capitol, 2 East Main Street, Madison, WI 53703.

36. Respondent Senator John Jagler represents SD13. Senator Jagler is named in his official capacity. He was elected to his office in November 2022 from an unconstitutionally configured district. Senator Jagler's office and principal place of business is located in Room 131 South, State Capitol, 2 East Main Street, Madison, WI 53703.

37. Respondent Senator Mark Spreitzer represents SD15. Senator Spreitzer is named in his official capacity. He was elected to his office in November 2022 from an unconstitutionally configured district. Senator Spreitzer's office and principal place of business is located in Room 126 South, State Capitol, 2 East Main Street, Madison, WI 53703.

38. Respondent Senator Howard L. Marklein represents SD17. Senator Marklein is named in his official capacity. He was elected to his office in November 2022 from an unconstitutionally configured district. Senator Marklein's office and principal place of business is located in Room 316 East, State Capitol, 2 East Main Street, Madison, WI 53703.

39. Respondent Senator Rachael Cabral-Guevara represents SD19. Senator Cabral-Guevara is named in her official capacity. She was elected to her office in November 2022 from an unconstitutionally configured district. Senator

Cabral-Guevara's office and principal place of business is located in Room 323 South, State Capitol, 2 East Main Street, Madison, WI 53703.

40. Respondent Senator Van H. Wanggaard represents SD21. Senator Wanggaard is named in his official capacity. He was elected to his office in November 2022 from an unconstitutionally configured district. Senator Wanggaard's office and principal place of business is located in Room 122 South, State Capitol, 2 East Main Street, Madison, WI 53703.

41. Respondent Senator Jesse L. James represents SD23. Senator James is named in his official capacity. He was elected to his office in November 2022 from an unconstitutionally configured district. Senator James's office and principal place of business is located in Room 319 South, State Capitol, 2 East Main Street, Madison, WI 53703.

42. Respondent Senator Romaine Robert Quinn represents SD25. Senator Quinn is named in his official capacity. He was elected to his office in November 2022 from an unconstitutionally configured district. Senator Quinn's office and principal place of business is located in Room 123 South, State Capitol, 2 East Main Street, Madison, WI 53703.

43. Respondent Senator Dianne H. Hesselbein represents SD27. Senator Hesselbein is named in her official capacity. She was elected to her office in November 2022 from an unconstitutionally configured district. Senator Hesselbein's office and principal place of business is located in Room 3 South, State Capitol, 2 East Main Street, Madison, WI 53703.

44. Respondent Senator Cory Tomczyk represents SD29. Senator Tomczyk is named in his official capacity. He was elected to his office in November 2022 from an unconstitutionally configured district. Senator Tomczyk's office and principal place of business is located in Room 310 South, State Capitol, 2 East Main Street, Madison, WI 53703.

45. Respondent Senator Jeff Smith represents SD31. Senator Smith is named in his official capacity. He was elected to his office in November 2022 from an unconstitutionally configured district. Senator Smith's office and principal place of business is located in Room 19 South, State Capitol, 2 East Main Street, Madison, WI 53703.

46. Respondent Senator Chris Kapenga represents SD33. Senator Kapenga is named in his official capacity. He was elected to his office in November 2022 from an unconstitutionally configured district. Senator Kapenga's office and principal place of business is located in Room 220 South, State Capitol, 2 East Main Street, Madison, WI 53703.

STATEMENT OF FACTS

A. Political impasse and the Court's prior imposition of the SB 621 districts.

47. On November 12, 2021, the Legislature passed 2021 SB 621 to reapportion Wisconsin's legislative districts following receipt of the 2020 Census data.

48. On November 18, 2021, Governor Evers vetoed that legislation. Wis. St. Leg. 2021-2022, S.B. 621.

49. This Court granted a petition for original action, *Johnson v. Wisconsin Elections Commission*, No. 2021AP1450-OA, seeking an injunction against the then-extant 2011 legislative and congressional plans as unconstitutionally malapportioned and entry of a mandatory injunction imposing a remedial plan that made undefined “least changes” to the defunct, malapportioned plan.

50. By a 4-3 vote, the Court announced it would follow a “least-changes” approach in imposing a remedy. *See Johnson I*, 2021 WI 87, ¶81. But no majority of this Court agreed on a definition of “least changes.” *Compare id.* ¶81 with *id.* ¶¶82-84 & n.4 (Hagedorn, J., concurring) (declining to join aspects of lead opinion defining “least changes” and concluding instead that equitable considerations could inform proper remedy).

51. Following submissions by various parties, the Court voted 4-3 to impose the legislative plans proposed by Governor Evers because they moved the fewest number of people to new districts—a metric called “core retention.” *See Johnson v. Wisconsin Elections Comm’n*, 2022 WI 14, 400 Wis. 2d 626, 971 N.W.2d 402 (“*Johnson II*”). Only Justice Hagedorn concluded both that “least changes” was the proper framework and that core retention was the appropriate definition. The remaining three Justices in the *Johnson II* majority would not have applied a “least-changes” framework. *See id.* ¶¶58-63 (Walsh Bradley, J., concurring). Three other Justices strongly dissented, disagreeing that “least

changes” meant “core retention.” *See id.* ¶134 (Ziegler, C.J., dissenting) (concluding that “least change” also means “county and municipal division and population deviation”); *with id.* ¶211 (Grassl Bradley, J., dissenting) (explaining that “core retention—exists nowhere in the ... Wisconsin Constitution or any statutory law” and its adherence reflects a “dangerous doctrine, effectively overruling the Wisconsin Constitution” (internal quotation marks and citation omitted)).

52. The U.S. Supreme Court reversed this Court’s order in *Johnson II*, holding that it had conducted an insufficient analysis of whether an additional Black majority assembly district was required under the Voting Rights Act in Milwaukee. *See Wisconsin Legislature v. Wisconsin Elections Comm’n*, 142 S. Ct. 1245, 1251 (2022).

53. On remand, by another 4-3 vote, this Court imposed the Legislature’s proposed remedy—the identical SB 621 maps that the Governor had vetoed—as the remedial plan, because the Legislature’s counsel indicated the map had been drawn without consideration of race. *See Johnson III*, 2022 WI 19, ¶48.

54. On May 17, 2022, the Legislature attempted to override the Governor’s veto but failed to do so.

B. The SB 621 maps are extreme partisan gerrymanders.

55. The current legislative maps are extreme partisan gerrymanders.

56. First, the “least-changes” approach reflected in SB 621 amounted to a “gerrylaundry.” *See* Robert Yablon, *Gerrylaundry*, 97 N.Y.U. L. Rev. 985 (2022). “The 2011 map was enacted using a ‘sharply partisan methodology’ by a

legislature no longer in power [in 2021] and a governor whom the voters have since rejected.” *Johnson I*, 2021 WI 87, ¶92 (Dallet, J., dissenting). The drafters of the plan in 2011 implemented a singular goal of maximizing and entrenching the power of Republican voters for an entire decade and diminishing the ability of Democratic voters to translate their votes into representation. The draft maps prepared by the aides to the Republican legislative caucuses in 2011 were labeled “Assertive” or “Aggressive” based on the scope of their distortion.

57. The drafters’ analyses showed that Republicans would retain control of the Legislature regardless of any likely electoral scenario, ensuring that Republicans would retain majority control of the Assembly with less than 47% of the statewide vote, whereas Democrats could not gain majority control with anything less than 54% of the statewide vote. That is, voting would no longer matter—the partisan control of each house of the Legislature would remain consistent regardless of fluctuations in the electorate’s preferences.

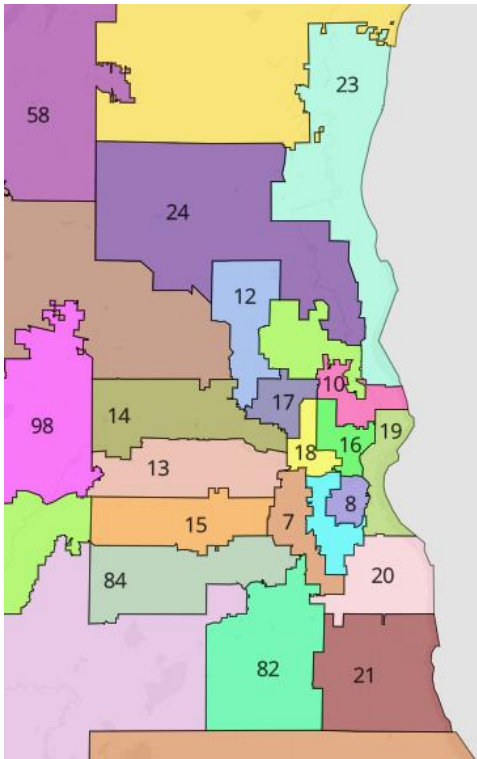
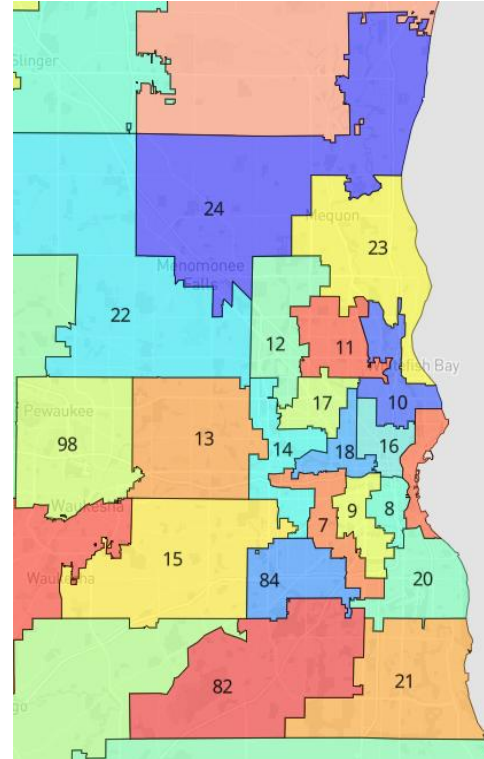
58. In fact, the Republican gerrymander has proved to be even stronger than projected. Since 2012, even when Democrats have won as much as 53% of the statewide vote, they have held no more than 39 of the 99 assembly seats. In the same period, even when Republicans have won as little as 44.8% of the statewide vote, they have held no fewer than 60 of the 99 assembly seats. As intended by the 2011 partisan gerrymander, voting for state legislative districts has no effect on political party control of the Legislature and, therefore, constrains the ability of the people

of the State of Wisconsin to effect legislative outcomes by electing representatives of their choice who reflect their preferred policies.

59. The current map retains over 84% of voters in their 2011 assembly district and over 92% of voters in their 2011 Senate district.

60. Second, the Legislature *exacerbated* the partisan gerrymander with SB 621—the plan vetoed by the Governor and nevertheless imposed by this Court. It reduced by two (from 37 to 35) the number of assembly districts carried by President Biden (who won the 2020 election in Wisconsin) and converted districts that only leaned Republican by the end of the last decade to more safely Republican seats. These machinations cannot be explained by any “least-change” rationale, as they were unnecessary to balance population and frequently were *counterproductive* to balancing population. Rather than minimizing changes to the districts, they were intended to—and did—maximize the voting strength of Republican voters and minimize the voting strength of Democratic voters.

61. For example, consider the Legislature’s alterations to the suburban Milwaukee County, Ozaukee County, and Waukesha County assembly districts:

2011 Maps**Current Maps**

62. Under the 2011 maps, President Biden carried AD13 by a margin of 53.6% to 44.6%, AD14 by a margin of 56.8% to 41.3%, AD23 by a margin of 56.1% to 42.3%, and AD24 by a margin of 51.3% to 47.0%.

63. Under the current maps, the Legislature targeted suburban Milwaukee Democratic voters to retaliate against their expression of political views by packing them into serpentine AD14, which President Biden carried 60.7% to 37.2%, and AD23, which President Biden carried 62.6% to 35.9%, and cracking them in AD13 (converted to a Trump 52.2% to 46.2% district) and AD24 (converted to a Trump 57.4% to 40.9% district).

64. AD23 and AD24 merely swapped territory with one another from the 2011 maps to the current maps, with AD24 losing its northern Milwaukee County

and southern Ozaukee County Democratic voters and gaining northern Ozaukee County Republican voters from AD23. This swap had no population-balance “least-change” purpose—its sole purpose was to pack Democratic voters into AD23 as a way of solidifying AD24 for Republican voters, stopping Democratic voters who were on the verge of winning both seats in the Assembly.

65. Indeed, the partisan gerrymander of AD24 had its desired effect. In a special election held on July 18, 2023, the Republican candidate carried the district by a 53.7% to 46.3% margin—a result that would have likely been the reverse under the district’s prior configuration.

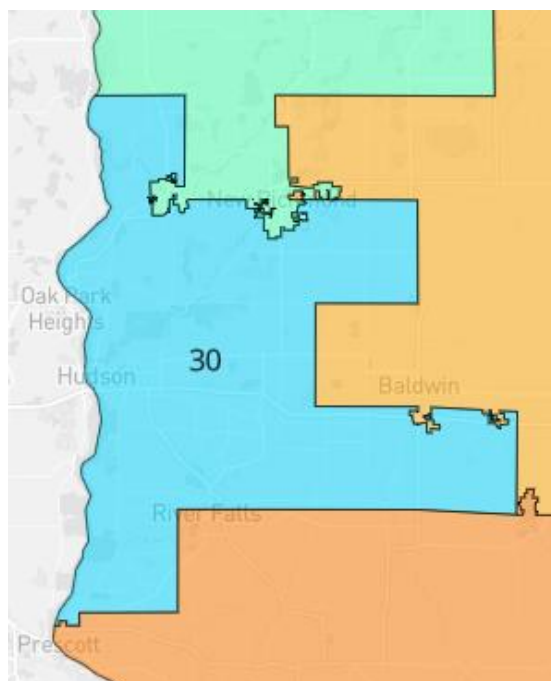
66. The Legislature’s changes to the suburban-Milwaukee assembly districts also resulted in State Senate districts drawn to favor Republican voters and disfavor Democratic voters. For example, SD5 converted from a Biden 53.3% district to a Biden 49.4% district; in the November 2022 election, the Republican Senate candidate won SD5 with 53.3% of the vote. SD8 converted from a Biden 49.2% district to a Biden 46.8% district—a reduction larger than the Republican candidate’s margin of victory in the district in the April 2023 special election for the seat.

67. In northwestern Wisconsin, the current plan converted AD73—a district that was not unconstitutionally malapportioned—from a district carried by President Biden to one carried by President Trump. In the 2022 general election, the seat flipped to Republican control, with that party’s candidate winning 51% to 49%.

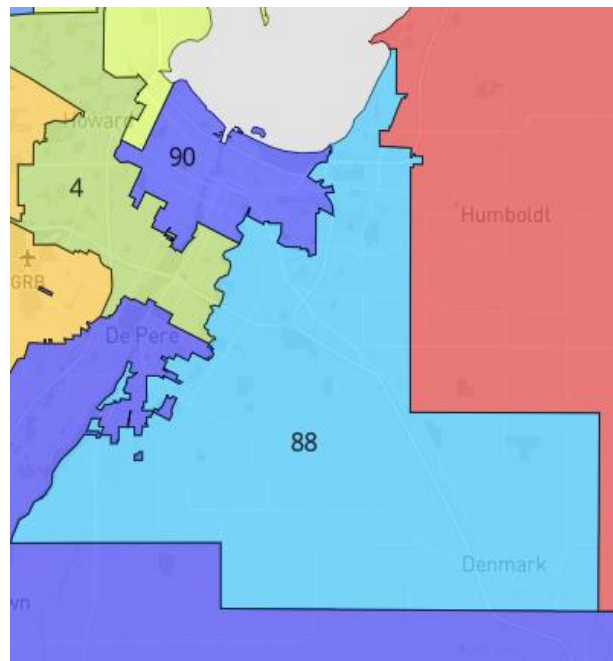
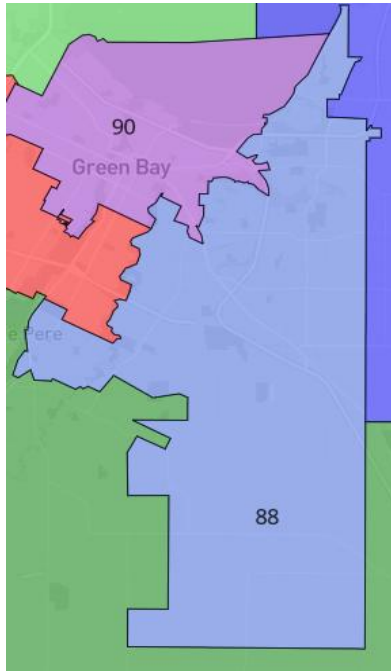
68. Across the state, the Legislature made changes that contravened a goal

69. For example, AD30 in Hudson was slightly overpopulated in the 2011

Current Maps



Current Maps



71. The Senate map is an extreme Republican gerrymander in two ways: (1) by targeting Democratic voters in the drawing of assembly districts; and (2) by selecting which assembly districts to combine to form the three assembly districts within each Senate district. For example, the Fox River Valley cities of Appleton, Neenah, Menasha, and Oshkosh are split between two Republican Senate districts. Green Bay and its suburbs are split among three Republican Senate districts.

Wausau and Stevens Point—nearby central Wisconsin cities that form a community of interest—are split into two Republican Senate districts. And Senate districts in southwestern Wisconsin and in the Madison area are configured to disfavor Democratic voters and favor Republican voters.

72. The extreme partisan gerrymander of Wisconsin’s legislative maps is not an unavoidable consequence of Democratic voters concentrating in Milwaukee and Madison.

73. Rather, the central feature of the gerrymander is its strategic packing and cracking of Democratic voters in places like Eau Claire, Chippewa Falls, Hudson, River Falls, Green Bay, Appleton, Allouez, De Pere, Wausau, Bayfield, Neenah, Menasha, Monroe, Mineral Point, Sheboygan, Racine, Beloit, Dodgeville, Columbus, Beaver Dam, Portage, Spring Green, Platteville, and La Crosse. The idea that the concentration of Democratic voters in Madison and Milwaukee is to blame for the distorted legislative composition is a smokescreen.

74. In all these communities, the Legislature targeted Democratic voters in a retaliatory attack on the expression of their political viewpoints at the ballot box. It is this targeted attack aimed to silence voters across Wisconsin’s small and mid-sized communities—communities that make up the lifeblood of our state—that is at the core of the current maps’ unlawful gerrymander.

75. As a result of the Legislature’s effort to punish certain voters for their political expression and favor others, in the November 2022 election, Republicans won 64 of 99 assembly seats and saw victories that yielded them 22 of 33 senate

seats—a supermajority in the Senate and close to one in the Assembly. At the same time, Democratic candidates won three of the five statewide elections.

76. Indeed, the highest statewide vote getter was Democratic Governor Tony Evers, who received 51.2% of the vote. He carried just 38 assembly districts and 13 senate districts. By contrast, Republican Senator Ron Johnson was reelected with 50.5% of the vote. With a lesser vote share than Governor Evers, Senator Johnson carried 64 assembly districts and 23 senate districts. Senator Johnson carried 70% of the senate seats while winning by a 1 percent margin.

77. By every metric, Wisconsin’s legislative plans score among the most—if not *the* most—skewed in the nation.

C. The SB 621 districts do not consist of “contiguous territory” as required by the Wisconsin Constitution.

78. The Wisconsin Constitution requires, *inter alia*, that members of the Assembly and Senate be elected from districts that consist of “contiguous territory.” Wis. Const. art. IV, §§ 4 & 5.

79. In *Johnson I*, this Court assumed, without any analysis of the plain text or original meaning of the Constitution’s contiguity requirement, that districts could be *noncontiguous* so as to include “municipal islands” created as a result of annexations—a phenomenon that developed a century after the Constitution was written. 2021 WI 87, ¶36. This conflicts with this Court’s consistent adherence to the plain meaning of “contiguous territory” from the earliest days of statehood.

80. This Court first interpreted the term “contiguous territory” in 1880, when it held that several orders of the Board of Supervisors of Oconto County, which attached to the Town of Oconto “lands separated and detached, and not contiguous to the main body of lands in said town,” violated the constitutional requirement that towns must be composed of “contiguous territory.” *Chicago & N.W.R. Co. v. Town of Oconto*, 50 Wis. 189, 6 N.W. 607 (1880). Tying that constitutional requirement specifically to Article IV, Section 4, this Court held:

To so construe the constitution as to authorize the board of supervisors of a county to organize or change the boundaries of a town so that it would be composed of separate, detached, and non-contiguous territory, would most unquestionably restrict the sovereign power of the legislature in the organization of assembly districts “consisting of contiguous territory, and bounded by county, precinct, town, or ward lines.” Article 4, § 4, Const.

Id., 50 Wis. at 196, 6 N.W. at 609.

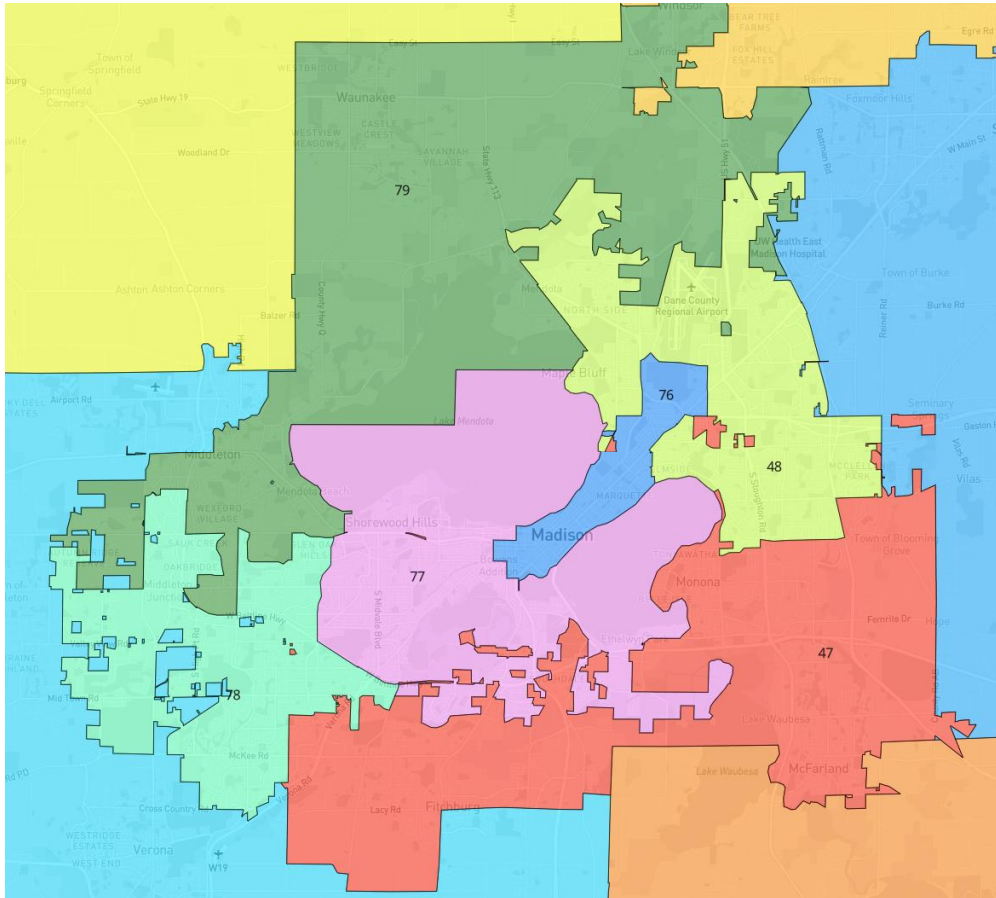
81. The first interpretation of the term “contiguous territory” in the redistricting context came in *State ex rel. Lamb v. Cunningham*, where this Court, interpreting Article IV, Section 4, held that it “requires that each assembly district must consist of contiguous territory; that is to say it cannot be made up of two or more pieces of detached territory.” 83 Wis. 90, 148, 53 N.W. 35, 57 (1892).

82. More recently, this Court interpreted the term “contiguous territory” when used in a statutory context to have the same meaning. *See Town of Wilson v. City of Sheboygan*, 2020 WI 16, ¶¶18-19, 390 Wis. 2d 266, 938 N.W.2d 493 (explaining that “contiguous” means having “some significant degree of physical contact” and that “[w]e have rejected the adoption of a broader definition of

contiguous that includes territory near to, but not actually touching, a municipality” (emphasis in original)).

83. The Legislature has likewise previously understood the Constitution to require actual contiguity. In 1953, the Legislature passed a law “relating to correction of errors in the apportionment of assemblymen,” Ch. 550, Laws of 1953, to correct several noncontiguous aspects of certain assembly districts, *see State ex rel. Thomson v. Zimmerman*, 264 Wis. 644, 61 N.W.2d 300 (1953) (per curiam) (noting that “a few assembly districts” from the 1951 apportionment were “not created entirely of contiguous territory” and the 1953 law “repaired this error by joining isolated areas to the districts in which they are actually contiguous”).

84. The current assembly and senate districts violate this plain text constitutional requirement. Consider, for example, the Madison area assembly districts:

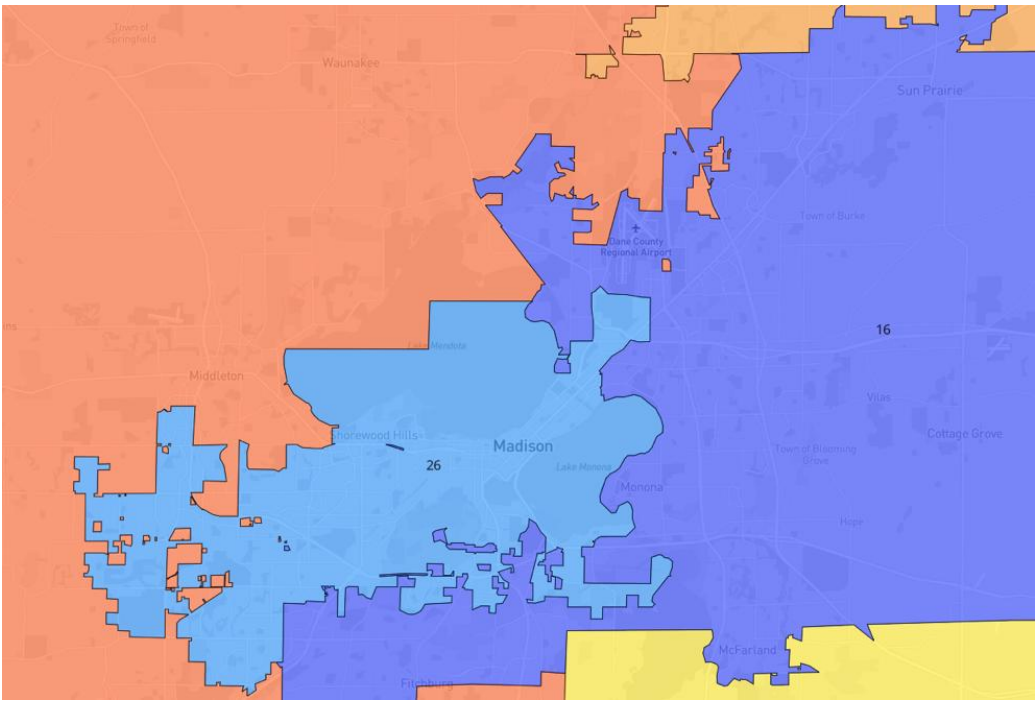


85. These districts are a maze of disconnected, noncontiguous pieces. 654 residents in a stranded piece of AD47 bordering Maple Bluff must traverse two other assembly districts before reaching the rest of their own district—and so too must their legislators to interact with them. The disconnected portions of these districts are sometime miles apart from the rest of the district.

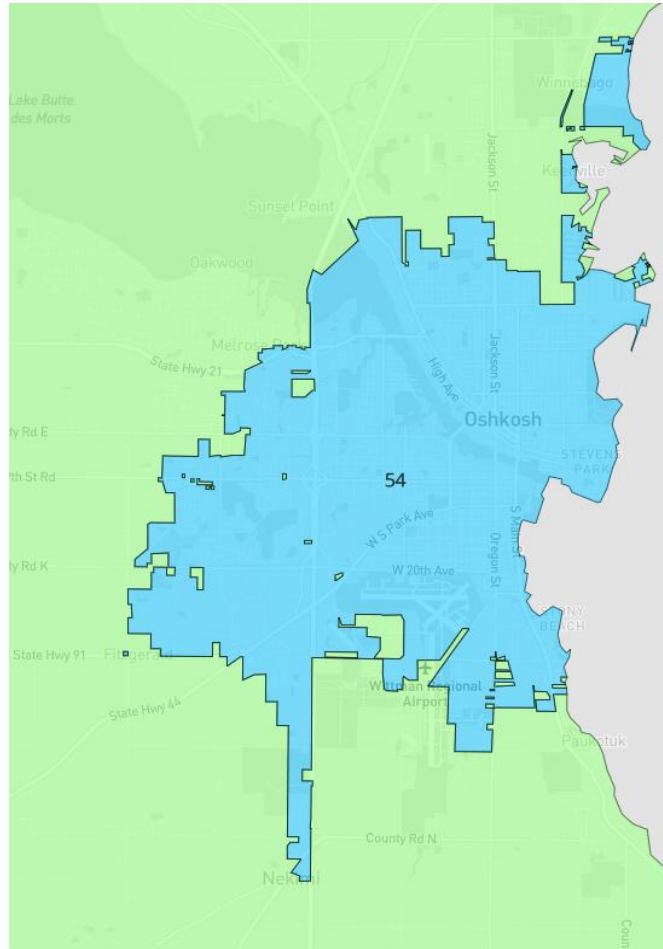
86. To make matters worse, just months after the *Johnson III* Court imposed the assembly map, which assigned the Town of Madison and its

noncontiguous pieces to AD47, the Town of Madison ceased to exist—the culmination of a decades-long plan for its territory to be fully attached to the Cities of Madison and Fitchburg. As a result, the former Town of Madison voters assigned to AD47 but stranded in the middle of Districts 48, 76, 77, and 78 now are officially residents of the City of Madison. So, the City of Madison has disconnected pieces of different assembly districts within its own borders; these pieces of AD47 are not bounded by any municipal border. The same thing will occur in 2027 as the Town of Blooming Grove is scheduled to be absorbed by the City of Madison.

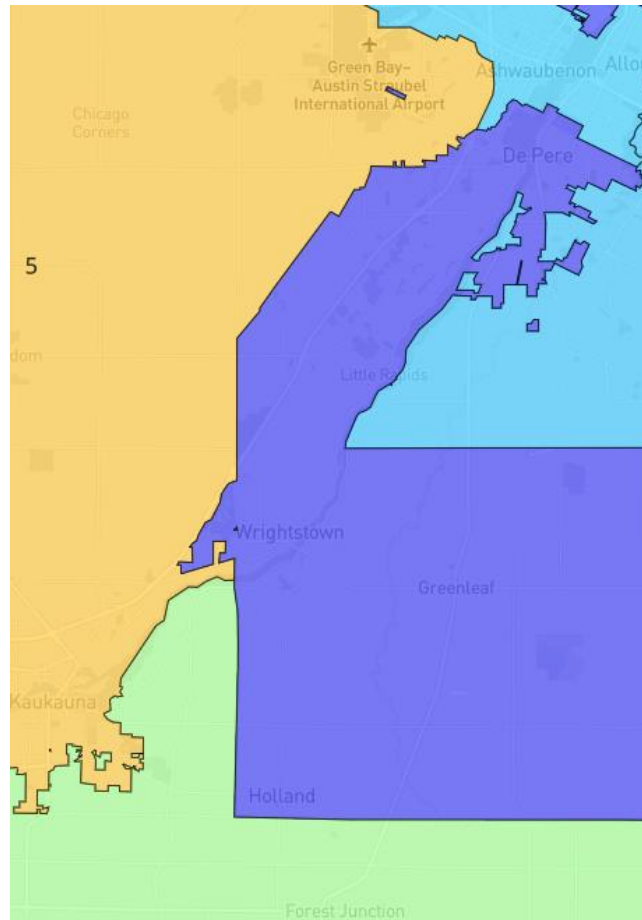
87. The Madison area senate districts suffer from the same defect:



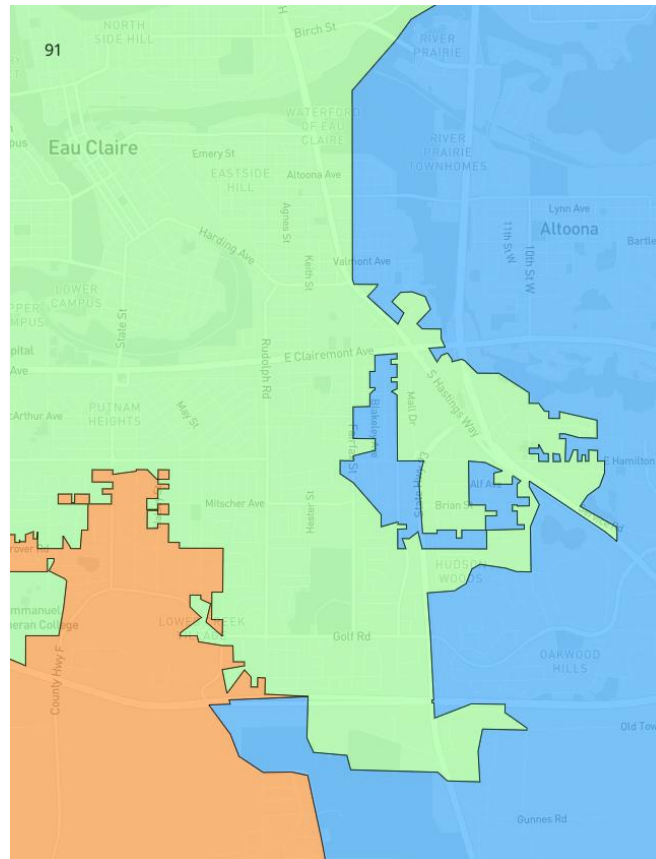
88. This is not just a Madison problem. Here are the Oshkosh-area assembly districts:



89. And the Fox River Valley area's assembly districts:



90. Similarly, the assembly-district borders in Eau Claire:



91. The images shown above are just a sampling. Remarkably, 55 of the current assembly districts, each consisting of between 2 and 40 disconnected pieces of territory, are noncontiguous.¹ And 21 of the current senate districts, each

¹ The following assembly districts in the current plan are noncontiguous: Districts 2, 3, 5, 6, 15, 24-33, 37-48, 52-54, 58-61, 63, 66-68, 70, 72, 76, 79-81, 83, 86, 88, 89, 91, 93-95, and 97-99. The Wisconsin Legislative Technology Services Bureau (“LTSB”) has published images of each current assembly and senate district. See Wis. Leg. Tech. Servs. Bur., <https://legis.wisconsin.gov/ltsb/gis/maps/>. The LTSB also provides interactive maps that permit users to zoom to see greater details. See Wis. Leg. Tech. Servs. Bur., https://data-ltsb.opendata.arcgis.com/datasets/febd43c1d0594447854c02898a10928b_0/explore?location=44.522339%2C-87.723062%2C7.90. The Court may take judicial notice of the maps. See e.g., *State ex rel. Strykowski v. Wilkie*, 81 Wis. 2d 491, 504, 261 N.W.2d 434 (1978) (granting original action petition and taking judicial notice of “materials in the Wisconsin Legislative Reference Bureau”).

consisting of between 2 and 34 disconnected pieces of territory, are noncontiguous.² Over two-thirds of Wisconsinites reside in either noncontiguous senate or assembly districts. The (now-enjoined) 2011 maps were similarly riddled with noncontiguous districts: 42 of their assembly districts and 18 of their senate districts were noncontiguous.

92. This is by no means necessary. Maps can be drawn that adhere to *both* the requirement that assembly districts be “bounded by county, precinct, town, or ward lines” *and* that assembly and senate districts “consist of contiguous territory.” Wis. Const. art. IV, §§ 4 & 5.

CAUSES OF ACTION

Count One

The Current State Assembly and Senate Maps Are Partisan Gerrymanders in Violation of the Wisconsin Constitution’s Equal Protection Guarantee Article I, Section 1

93. Petitioners restate and incorporate by reference all allegations above as though fully set forth in this paragraph.

94. The current maps violate Article I, Section 1 of the Wisconsin Constitution because they have the purpose and effect of depriving a disfavored

² The following senate districts in the current plan are noncontiguous: Districts 1, 2, 5, 8, 9, 11, 13-16, 20-24, 27-31, and 33. See Wis. Leg. Tech. Servs. Bur., <https://legis.wisconsin.gov/ltsb/gis/maps/> (maps of each district); https://data-ltsb.opendata.arcgis.com/datasets/f272cce2ff0443a789578e14291e76b9_0/explore?location=43.147419%2C-88.954928%2C10.10 (interactive senate map)

class of Wisconsin voters of an equal opportunity to elect state legislative representatives.

95. Article I, Section I states: “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.

96. The current state legislative maps violate Petitioners’ rights under Article I, Section 1 because they arbitrarily classify voters based on partisan affiliation and target the disfavored class of voters for negative differential treatment compared to other similarly situated Wisconsin residents.

97. The current state assembly and senate maps intentionally crack Petitioners and other likeminded voters supporting Democratic candidates to prevent them from having an equal opportunity to elect candidates for state legislative office.

98. As a result of the gerrymander, the current maps have a severe partisan skew.

99. Heightened scrutiny applies because the current maps implicate Petitioners’ fundamental right to vote, *see* Wis. Const. art. III, §§ 1 & 2, and create impermissible and suspect classifications.

100. Respondents lack a compelling, or even reasonable, justification for the adverse differential treatment of Petitioners in the current state legislative maps.

101. Neither an attempt to achieve legitimate redistricting goals nor Wisconsin's underlying political geography necessitate the current maps' partisan skew.

102. Petitioners are therefore entitled to declaratory and injunctive relief as more fully set out below.

Count Two

***The Current State Assembly and Senate Maps Are Partisan
Gerrymanders in Violation of the Wisconsin Constitution's Free
Speech and Association Guarantees
Article I, Sections 3 and 4***

103. Petitioners restate and incorporate by reference all allegations above as though fully set forth in this paragraph.

104. Article I, Section 3 states: "Every person may freely speak, write and publish his sentiments on all subjects....and no laws shall be passed to restrain or abridge the liberty of speech or of the press." Wis. Const. art. I, § 3.

105. Article I, Section 4 states: "The right of the people to peaceably assemble, to consult for the common good, and to petition the government, or any department thereof, shall never be abridged." Wis. Const. art. I, § 4.

106. Article I, Sections 3 and 4 together protect the rights of Wisconsinites to free speech and association.

107. The current legislative maps violate Petitioners' free speech and association rights because they retaliate against Petitioners based on their protected

political views and past votes, restrain their ability to express their viewpoints, and abridge their ability to band together with others to advance their political beliefs.

108. The current legislative maps impair Petitioners' ability to recruit volunteers, recruit candidates, register voters, secure contributions, and energize other voters to support Petitioners' expressed political views and associations.

109. The current legislative maps violate Article I, Sections 3 and 4 by targeting voters based on their past voting and expressive preferences, and by systematically drawing district lines to prevent them from being able to associate and elect their preferred candidates who share their political views.

110. The current legislative maps divide voters of opposing political viewpoints and guarantee less-favored voters are not represented in any meaningful way because of their disfavored views.

111. Heightened scrutiny applies because the current maps implicate Petitioners' fundamental rights to free speech and association. *State ex rel. Two Unnamed Petitioners v. Peterson*, 2015 WI 85, ¶37, 363 Wis. 2d 1, 47, 866 N.W.2d 165; *Madison Teachers, Inc. v. Walker*, 2014 WI 99, ¶24, 358 Wis. 2d 1, 851 N.W.2d 337.

112. Defendants have no legitimate, much less compelling, interest in restraining, abridging, or retaliating against Petitioners for their political views and associations.

113. The current state assembly and senate maps are not narrowly tailored to serve any legitimate state interest.

114. Petitioners are therefore entitled to declaratory and injunctive relief as more fully set out below.

Count Three

The Current State Assembly and Senate Maps Are Partisan Gerrymanders in Violation of the Wisconsin Constitution's Free Government Guarantee Article I, Section 22

115. Petitioners restate and incorporate by reference all allegations above as though fully set forth in this paragraph.

116. The current maps violate Article I, Section 22 of the Wisconsin Constitution because they are an extreme departure from a “firm adherence to justice, moderation, temperance, frugality and virtue” and a “frequent recurrence to fundamental principles.” Wis. Const. art. I, § 22.

117. Article I, Section 22 protects the right to equal treatment under the law, as well as extreme and unreasonable legislative action. *See Chicago & N.W. Ry. Co. v. La Follette*, 43 Wis. 2d 631, 636, 169 N.W.2d 441 (1969); *In re Christoph*, 205 Wis. 418, 420, 237 N.W. 134, 135 (1931); *State ex rel. Milwaukee Med. Coll. v. Chittenden*, 127 Wis. 468, 521, 107 N.W. 500, 518 (1906).

118. The current legislative maps violate Article I, Section 22 by disfavoring Democratic-supporting voters and preventing them from having an equal opportunity to participate in the political process.

119. The current legislative maps violate Article I, Section 22 as an extreme and unreasonable legislative action that infringes on Wisconsinites' fundamental rights and distorts the political process in the state.

120. Seeking partisan advantage in the drawing of state legislative districts is not moderate, and furthers no rational state interest, let alone a compelling state interest.

121. Petitioners are therefore entitled to declaratory and injunctive relief as more fully set out below.

Count Four

The Current State Assembly and Senate Maps Violate the Contiguity Requirement Article IV, Sections 4 and 5

122. Petitioners restate and incorporate by reference all allegations above as though fully set forth in this paragraph.

123. Article IV, Section 4 states that assembly districts must be “bounded by county, precinct, town or ward lines [and] consist of contiguous territory.” Wis. Const. art. IV, § 4.

124. Article IV, Section 5 states that senate districts must be “single districts of convenient contiguous territory.” Wis. Const. art. IV, § 5.

125. This Court has held that “contiguous territory” means a district “cannot be made up of two or more pieces of detached territory.” *Lamb*, 83 Wis. at 148, 53 N.W. at 57.

126. The current maps violate Article IV, Sections 4 and 5 on their face because they contain 55 assembly districts and 21 senate districts that have detached, noncontiguous territory.

127. The noncontiguous districts in the current maps are not necessary, as it is possible to draw maps that are “bounded by county, precinct, town or ward lines” and contiguous.

128. Petitioners are therefore entitled to declaratory and injunctive relief as more fully set out below.

Count Five

Violation of Separation of Powers Doctrine

129. Petitioners restate and incorporate by reference all allegations above as though fully set forth in this paragraph.

130. The Governor’s power to veto legislation and the Legislature’s power to override that veto are core powers of both branches of government that are protected by the Wisconsin Constitution.

131. This Court usurped these powers in *Johnson III* by imposing the exact legislation vetoed by Governor Evers in violation of the Constitution.

132. Petitioners are therefore entitled to declaratory and injunctive relief as more fully set out below.

STATEMENT OF RELIEF SOUGHT

If the Court grants the Petition, Petitioners will ask this Court to:

(1) declare the current assembly and senate plans unconstitutional in their entirety and enjoin them from being used in any future election (including the November 2024 election and any earlier special or recall elections that may occur),

(2) declare that a remedial plan will not adhere to any “least-changes” approach but rather must comply with the Constitution’s Article IV requirements and its Article I Declaration of Rights protections, including by ensuring that this Court does not impose maps with a partisan skew,

(3) accept proposed remedial maps from the parties for either (a) review and selection by the Court or (b) review and recommendation to this Court by a referee or special master appointed pursuant to Wis. Stat. §§ 751.09 and 805.06, and

(4) issue a writ *quo warranto* declaring the election of senators in November 2022 from unconstitutionally configured districts to be unlawful, with senators holding those seats being merely *de facto* officers, and order special elections in November 2024 for all odd-numbered state senate districts that would not otherwise occur until November 2026.³

If the Court grants the Petition with respect to Petitioners’ partisan gerrymandering claims,⁴ in addition to requests for relief (1), (3), and (4) above, Petitioners will also ask the Court to:

(5) declare that Petitioners’ partisan gerrymandering claims are justiciable,

³ Pursuant to Wis. Stat. § 784.04(2), Petitioners requested that the Attorney General bring an action seeking a writ of *quo warranto* on July 25, 2023. On July 31, 2023, the Attorney General, through the Department of Justice, notified Petitioners that he would not be bringing such an action. *See* App. 205-206.

⁴ The Court’s adjudication and remedy of Petitioners’ contiguity and separation of powers claims, if guided by the Constitution and the Court’s obligation to ensure that its remedial orders do not unfairly benefit or discriminate against voters on the basis of their political views, should provide full relief and thus could render it unnecessary for the Court to ultimately decide Petitioners’ partisan gerrymandering claims.

Wis. 2d 358, 362, 338 N.W.2d 684 (1983) (“We granted the petition to commence an original action because this matter is *publici juris* and requires a prompt and authoritative determination by this court in the first instance”); *see also Jefferson v. Dane County*, 2020 WI 90, ¶12, 394 Wis. 2d 602, 951 N.W.2d 556 (“Within our original jurisdiction, we have granted declaratory judgment when “a judgment by the court significantly affects the community at large.” (internal citation omitted)).

Only two years ago, this Court explained that cases involving the composition of Wisconsin’s legislative districts should be heard as original actions: “We granted the petition in this case because ‘[t]here is no question ... that this matter warrants this court’s original jurisdiction; any reapportionment or redistricting case is, by definition *publici juris*, implicating the sovereign rights of the people of this state.’” *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) (internal citation omitted)).⁵ As noted in *Jensen*, this Court has historically exercised its original jurisdiction “in cases involving legislative redistricting” 2002 WI 13, ¶18 (listing cases); *see also Att’y Gen. v. Chi. & N.W. Ry.*, 35 Wis. 425, 518 (1874) (original jurisdiction is appropriate for “judicial questions affecting the sovereignty of the state, its franchises or prerogatives, or the liberties of its people.”).

⁵ 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 the then-pending federal litigation, original jurisdiction would be appropriate. *Id.*, ¶18 (“Under circumstances more favorable to an orderly and efficient resolution of the case, we would readily accept original jurisdiction in this matter and decide the important issues that it raises.”).

In addition to these general reasons favoring original jurisdiction, Petitioner’s Memorandum of Law provides four reasons why *only* this Court can fully and efficiently adjudicate Petitioners’ constitutional challenges to the existing legislative districts and provide an appropriate remedy that ensures that all future Wisconsin legislative elections are conducted in accordance with our Constitution. (Mem. Part I) Each of the reasons, individually and in combination, counsel that this Court exercise its authority and grant the Petition.

CONCLUSION

The Court should grant the Petition and provide such other relief as requested in the accompanying Motion for a Scheduling Order.

Dated this 2nd day of August, 2023.

By Electronically signed by Daniel S. Lenz

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FILED

10-16-2023

CLERK OF WISCONSIN

SUPREME COURT

STATE OF WISCONSIN
IN SUPREME COURT

Case No. 2023AP1399-OA

REBECCA CLARKE, RUBEN ANTHONY, TERRY
DAWSON, DANA GLASSTEIN, ANN GROVES-LLOYD,
CARL HUJET, JERRY IVERSON, TIA JOHNSON, ANGIE
KIRST, SELIKA LAWTON, FABIAN MALDONADO,
ANNEMARIE MCCLELLAN, JAMES MCNETT,
BRITTANY MURIELLO, ELA JOOSTEN (PARI) SCHILS,
NATHANIEL SLACK, MARY SMITH-JOHNSON,
DENISE SWEET, and GABRIELLE YOUNG,

Petitioners,

GOVERNOR TONY EVERS IN HIS OFFICIAL
CAPACITY, NATHAN ATKINSON, STEPHEN JOSEPH
WRIGHT, GARY KRENZ, SARAH J. HAMILTON, JEAN-
LUC THIFFEAULT, SOMESH JHA, JOANNE KANE, and
LEAH DUDLEY,

Intervenors-Petitioners,

v.

WISCONSIN ELECTIONS COMMISSION; DON MILLIS,
ROBERT F. SPINDELL, JR., MARK L. THOMSEN, ANN
S. JACOBS, MARGE BOSTELMANN, JOSEPH J.
CZARNEZKI, IN THEIR OFFICIAL CAPACITIES AS
MEMBERS OF THE WISCONSIN ELECTIONS
COMMISSION; AND MEAGAN WOLFE, IN HER
OFFICIAL CAPACITY AS ADMINISTRATOR OF THE
WISCONSIN ELECTIONS COMMISSION; ANDRE
JACQUE, TIM CARPENTER, ROB HUTTON, CHRIS
LARSON, DEVIN LEMAHIEU, STEPHEN L. NASS,
JOHN JAGLER, MARK SPREITZER, HOWARD
MARKLEIN, RACHAEL CABRAL-GUEVARA, VAN H.
WANGGAARD, JESSE L. JAMES, ROMAINE ROBERT
QUINN, DIANNE H. HESSELBEIN, CORY TOMCZYK,
JEFF SMITH, AND CHRIS KAPENGA, IN THEIR
OFFICIAL CAPACITIES OF THE WISCONSIN SENATE,

Respondents,

WISCONSIN LEGISLATURE, BILLIE JOHNSON,
CHRIS GOEBEL, ED PERKINS, ERIC O'KEEFE, JOE
SANFELIPPO, TERRY MOULTON, ROBERT JENSEN,
RON ZAHN, RUTH ELMER, and RUTH STRECK,

Intervenor-Respondents.

**RESPONSE OF WISCONSIN ELECTIONS
COMMISSION AND ITS COMMISSIONERS AND
ADMINISTRATOR TO COURT ORDER
OF OCTOBER 6, 2023**

The Commission Respondents in this matter—the Wisconsin Elections Commission; Don Millis, Robert F. Spindell, Jr., Mark L. Thomsen, Ann S. Jacobs, Marge Bostelmann, Joseph J. Czarnezki, in their official capacities as members of the Commission; and Meagan Wolfe, in her official capacity as administrator of the Commission—by undersigned counsel, submit the following statement in response to the Court's order of October 6, 2023:

The Court has enumerated four questions and directed the parties, by noon on October 16, 2023, to file either a brief addressing them or a statement that no brief will be filed. As noted in their prior response to the original action petition, the Commission respondents have no role or interest in determining where legislative district boundaries are located and thus take no position on the merits of the claims in the petition, including Issues 4 and 5. Accordingly, the Commission respondents do not intend to file a brief on the questions posed by the Court.

The Commission respondents reiterate that their primary concern is to ensure that any litigation involving electoral district boundaries is conducted in a way that takes into account relevant administrative limitations and statutory deadlines, so that the litigation does not disrupt or

impair the proper, efficient, and effective administration of the 2024 election calendar. In particular, the process for circulating candidate nomination petitions for the November 2024 general election begins on April 15, 2024. If this litigation results in any changes to existing district maps, Commission staff would be required to record the new boundaries in the statewide election management system and integrate the new districting data with existing voter registration and address data in advance of that petition circulation process. Any new maps thus would need to be in place by March 15, 2024, to permit the prerequisite steps to be completed before the petition circulation process begins on April 15, 2024.

The Court has scheduled oral argument in this matter on Tuesday, November 21, 2023. If the Court were to find a constitutional violation, any subsequent remedial proceedings should be scheduled consistent with the above time parameters. The Commission respondents remain prepared to provide more specific calendar information and additional explanation at an appropriate time, if requested by the Court.

Dated this 16th day of October 2023.

Respectfully submitted,

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Wisconsin

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CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this *Response of Wisconsin Elections Commission and Its Commissioners and Administrator to Court Order of October 6, 2023*, with the clerk of court using the Wisconsin Appellate Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 16th day of October 2023.

Electronically signed by:

Steven C. Kilpatrick

STEVEN C. KILPATRICK

Assistant Attorney General



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10-13-2023

CLERK OF WISCONSIN

SUPREME COURT

October 13, 2023

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Rachel A. Snyder
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You are hereby notified that court has issued the following order:

No. 2023AP1399-OA Clarke v. Wisconsin Elections Commission

Pending before the court are three motions to intervene from the following proposed-intervenors: (1) Governor Tony Evers, in his official capacity; (2) Nathan Atkinson, Stephen Joseph Wright, Gary Krenz, Sarah J. Hamilton, Jean-Luc Thiffeault, Somesh Jha, Joanne Kane, and Leah Dudley; and (3) Billie Johnson, Eric O'Keefe, Ed Perkins, Ronald Zahn, Chris Goebel, Robert Jensen, Ruth Elmer, Terry Moulton, Joe Sanfelippo, and Ruth Streck. Each group of proposed-intervenors seeks intervention as a matter of right under Wis. Stat. § 803.09(1), or alternatively, by permission pursuant to Wis. Stat. § 803.09(2).

Intervenor-Respondent Wisconsin Legislature and the Republican Senator Respondents¹ filed a response indicating that they do not oppose any of the intervention motions, but are preserving all arguments and defenses. Petitioners² filed a response indicating that they do not

¹ Senators Rachael Cabral-Guevara, Rob Hutton, Andre Jacque, John Jagler, Jesse L. James, Chris Kapenga, Devin LeMahieu, Howard L. Marklein, Stephen L. Nass, Romaine Robert Quinn, Cory Tomczyk, and Van H. Wanggaard.

² Rebecca Clarke, Ruben Anthony, Terry Dawson, Dana Glasstein, Ann Groves-Lloyd, Carl Hujet, Jerry Iverson, Tia Johnson, Angie Kirst, Selika Lawton, Fabian Maldonado,

Page 2

October 13, 2023

No. 2023AP1399-OA Clarke v. Wisconsin Elections Commission

oppose the intervention motions filed by Governor Evers or Nathan Atkinson et al. However, Petitioners suggest that this court should deny the intervention motion filed by Billie Johnson et al. and instead allow these proposed intervenors to participate as amici curiae and participate in oral argument.

Having considered all filings,

IT IS ORDERED that all intervention motions are granted;

IT IS FURTHER ORDERED that the caption in the above-matter shall be amended to designate Governor Tony Evers, in his official capacity, and Nathan Atkinson, Stephen Joseph Wright, Gary Krenz, Sarah J. Hamilton, Jean-Luc Thiffeault, Somesh Jha, Joanne Kane, and Leah Dudley as Intervenor-Petitioners;

IT IS FURTHER ORDERED that the caption in the above-matter shall be further amended to designate Billie Johnson, Eric O’Keefe, Ed Perkins, Ronald Zahn, Chris Goebel, Robert Jensen, Ruth Elmer, Terry Moulton, Joe Sanfelippo, and Ruth Streck as Intervenor-Respondents; and

IT IS FURTHER ORDERED that all Wisconsin attorneys participating in this case must each opt in to this case in the appellate court electronic filing system. All Wisconsin attorneys who are not already opted in for this case are hereby ordered to do so as soon as possible and no later than five days from the date of this order.

Samuel A. Christensen
Clerk of Supreme Court

Annemarie McClellan, James McNett, Brittany Muriello, Ela Joosten (Pari) Schils, Nathaniel Slack, Mary Smith-Johnson, Denise (Dee) Sweet, and Gabrielle Young.

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October 13, 2023

No. 2023AP1399-OA Clarke v. Wisconsin Elections Commission

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October 13, 2023

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01-16-2024

CLERK OF WISCONSIN
SUPREME COURT

Supreme Court of Wisconsin

No. 2021AP1450-OA

BILLIE JOHNSON, ERIC O'KEEFE, ED PERKINS AND RONALD ZAHN,

Petitioners,

BLACK LEADERS ORGANIZING FOR COMMUNITIES, VOCES DE LA
FRONTERA, LEAGUE OF WOMEN VOTERS OF WISCONSIN, CINDY FALLONA,
LAUREN STEPHENSON, REBECCA ALWIN, CONGRESSMAN GLENN
GROTHMAN, CONGRESSMAN MIKE GALLAGHER, CONGRESSMAN BRYAN
STEIL, CONGRESSMAN TOM TIFFANY, CONGRESSMAN SCOTT FITZGERALD,
LISA HUNTER, JACOB ZABEL, JENNIFER OH, JOHN PERSA, GERALDINE
SCHERTZ, KATHLEEN QUALHEIM, GARY KRENZ, SARAH J. HAMILTON,
STEPHEN JOSEPH WRIGHT, JEAN-LUC THIFFEAULT, AND SOMESH JHA,

Intervenors-Petitioners,

v.

WISCONSIN ELECTIONS COMMISSION, MARGE BOSTELMANN IN HER
OFFICIAL CAPACITY AS A MEMBER OF THE WISCONSIN ELECTIONS
COMMISSION, DON MILLIS IN HIS OFFICIAL CAPACITY AS A MEMBER OF THE
WISCONSIN ELECTIONS COMMISSION, ANN JACOBS IN HER OFFICIAL
CAPACITY AS A MEMBER OF THE WISCONSIN ELECTIONS COMMISSION,
CARRIE RIEPL IN HER OFFICIAL CAPACITY AS A MEMBER OF THE WISCONSIN
ELECTIONS COMMISSION, ROBERT SPINDELL, JR. IN HIS OFFICIAL
CAPACITY AS A MEMBER OF THE WISCONSIN ELECTIONS COMMISSION, AND
MARK THOMSEN IN HIS OFFICIAL CAPACITY AS A MEMBER OF THE
WISCONSIN ELECTIONS COMMISSION,

Respondents,

THE WISCONSIN LEGISLATURE, GOVERNOR TONY EVERS, IN HIS OFFICIAL
CAPACITY, AND DIANNE HESSELBEIN, SENATE DEMOCRATIC MINORITY
LEADER, ON BEHALF OF THE SENATE DEMOCRATIC CAUCUS,

Intervenors-Respondents.

**MEMORANDUM IN SUPPORT OF INTERVENORS-
PETITIONERS LISA HUNTER, JACOB ZABEL, AND
JOHN PERSA'S MOTION FOR RELIEF FROM
JUDGMENT**

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**Admitted pro hac vice*

***Pro hac vice application
forthcoming*

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Wis. Stat. § 806.07(1)(g)	<i>passim</i>
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Other Authorities

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INTRODUCTION

Just over three weeks ago, this Court overruled “any portions of *Johnson I*, *Johnson II*, and *Johnson III* that mandate a least change approach.” *Clarke v. Wis. Elections Comm’n*, 2023 WI 79, ¶ 63, 998 N.W.2d 370.¹ As the Court explained, the “least change” approach to redistricting was never sound in principle and has proven “unworkable in practice.” *Id.* ¶¶ 60–63. The Court thus struck the “least change” principle in its entirety out of Wisconsin law.

The *Clarke* decision renders the current congressional map, selected in *Johnson II*, lawless in the most literal sense: With the “least change” approach that justified the map’s adoption overruled, the map now lacks any basis in Wisconsin redistricting law or precedent. To the contrary, the *Johnson II* map runs roughshod over this Court’s recognized redistricting criteria in quixotic service to a now-discredited standard. In the process, the map perpetuates the partisan unfairness that has radically skewed Wisconsin’s districting maps since 2011. And its continued

¹ *Johnson I* is the November 30, 2021, order in this action announcing the Court’s criteria for map selection, 2021 WI 87, 399 Wis. 2d 623, 967 N.W.2d 469; *Johnson II* is the March 1, 2022, order applying those criteria to adopt congressional and legislative maps, 2022 WI 14, 400 Wis. 2d 626, 971 N.W.2d 402; and *Johnson III*, is the April 15, 2022, order adopting different legislative maps on remand from the U.S. Supreme Court, 2022 WI 19, 401 Wis. 2d 198, 972 N.W.2d 559.

imposition on Wisconsin voters undermines the separation of powers because the Court has a duty to independently adjudicate the merits of a judicially adopted map.

The *Johnson II* map, all told, is an equitable impasse remedy the Court is enforcing on a continuing basis with no equitable justification. Thus, absent a course correction, an avowedly lawless map will remain in effect until *at least 2031* and will govern *four* rounds of congressional elections. That would subject the Hunter Intervenor-Petitioners—and all other Wisconsin voters—to a full decade of elections under a congressional map that lacks any basis in state law.²

Such a result cannot stand. And it need not, for the Wisconsin statutes provide an able mechanism for relief from the *Johnson II* judgment. See Wis. Stat. § 806.07(1)(g), (h). Where a judgment’s prospective application “is no longer equitable,” *id.* § (g), or where “other reasons” justify relief, *id.* § (h), this Court may grant a party relief from judgment. Those standards are satisfied here.

The Court should grant relief from judgment and resume the remedial process that *Johnson I* derailed by soliciting from the

² In this brief and the accompanying motion, “Hunter Intervenor-Petitioners” refers to Lisa Hunter, Jacob Zabel, and John Persa. Jennifer Oh, Geraldine Schertz, and Kathleen Qualheim are no longer seeking relief in this action.

parties new congressional map proposals that comply with Wisconsin law *as clarified by Clarke*. Specifically, because a remedial map operates by judicial power alone, *Clarke* makes clear that the Court cannot “ignore partisan impact.” 2023 WI 79, ¶ 70. *Johnson I*’s least-change approach, and *Johnson II*’s selection of a congressional remedy constrained by that approach, flout that fundamental commitment. In that sense, those decisions comprised a serious deviation from this Court’s otherwise-longstanding commitment to partisan neutrality and the proper judicial role.

Fortunately, there is still time to undo the damage by granting relief from judgment, inviting the parties to make new submissions, and selecting a map that fully complies with current Wisconsin law. Granting such relief will fulfill this Court’s constitutional duty to independently adjudicate the validity of Wisconsin’s congressional maps; failing to act will double down on a now-discredited legal principle and subject Wisconsin voters to a full decade under congressional maps that lack any basis in Wisconsin law. Justice and equity require relief.

BACKGROUND

Johnson I initiated a remarkable and unprecedented deviation from Wisconsin’s traditional redistricting principles. There, a fractured majority of the Court announced a novel standard that would govern the remedy in this case: so-called

“least change.” *Johnson I*, 2021 WI 87, ¶¶ 64–79 (lead opinion); *id.* ¶¶ 82–87 (Hagedorn, J., concurring). The lead opinion purported to justify this standard on separation-of-powers grounds, calling it “a neutral standard,” *id.* ¶ 76, and “far from a novel idea,” *id.* ¶ 73. The concurrence similarly declared “least change” an “impartial exercise of [the Court’s] limited judicial power.” *Id.* ¶ 86 (Hagedorn, J., concurring). In context, however, “least change” was anything but impartial: “by ratifying outdated partisan political choices”—the brutally skewed maps imposed on Wisconsin by a Republican trifecta in 2011—least change injected “the court directly into politics.” *Id.* ¶ 89 (Dallet, J., dissenting). The assertion that such an approach was precedented rang just as hollow. In truth, “the least-change approach has no ‘general acceptance among reasonable jurists’ when the court’s starting point is a legislatively drawn map” like the 2011 congressional plan. *Id.* ¶ 90 (Dallet, J., dissenting).

The Court’s brief experiment with “least change” went poorly. The fractured majority in *Johnson I* “never fully enumerated [the applicable] metrics or explained their relative importance, let alone defined a least-change approach in a coherent way.” *Clarke*, 2023 WI 79, ¶ 61; *see also Johnson I*, 2021 WI 87, ¶¶ 64–79 (lead opinion); *id.* ¶¶ 82–87 (Hagedorn, J., concurring). Subsequently, in *Johnson II*, it turned out that no four-justice coalition agreed both with the “least change” approach

and about what it entailed. Justice Hagedorn’s opinion for the Court treated “least change” as equivalent to core retention, and on that basis ordered adoption of the current congressional map. 2022 WI 14, ¶¶ 1–25 (lead opinion). The *Johnson I* dissenters concurred in the judgment but continued to object to any least-change requirement. *Id.* ¶ 54 (Walsh Bradley, J., concurring in the judgment) (describing the analysis as “[c]ircumscribed by [the *Johnson I*] decision and the parties’ reliance upon it when crafting their submissions”).

The rest of the original *Johnson I* majority dissented. One dissenter blasted core retention as coming “out of thin air,” *id.* ¶ 135 (Zeigler, C.J., dissenting), while another called it a means to a “judicially-partisan outcome” based on “subjective policy preferences,” *id.* ¶ 211 (Grassl Bradley, J., dissenting). One dissenter even questioned whether the Court’s mandate was proper given the Justices’ votes: “Despite six justices agreeing core retention should not be the sole governing criterion in this case, a majority nevertheless selects the Governor’s maps ostensibly on this basis [P]roperly applied, [*Johnson I*] stands in opposition to the majority’s decision.” *Id.* ¶ 209 n.1 (Grassl Bradley, J., dissenting).

The Court’s remedial determination as to the best congressional map in *Johnson II* turned entirely on *Johnson I*’s instruction that “least change”—in some form—would be the

criterion for selecting a remedial map. As Justice Hagedorn’s opinion for the Court in *Johnson II* put it: “Our selection of remedial maps in this case is driven *solely* by the relevant legal requirements and the least change directive the majority adopted in the November 30 order—not a *balancing of traditional redistricting criteria*.” *Id.* ¶ 11 n.7 (emphasis added).

Clarke properly ended this Court’s “least change” misadventure by overruling *Johnson I*’s mandate of that standard. 2023 WI 79, ¶¶ 60–63. As the Court explained, “least change” suffers from both principled and practical defects. *Id.* On a principled level, *Johnson I*’s single-minded focus on “least change” allowed “a judicially-created metric, not derived from the constitutional text, to supersede the constitution.” *Id.* ¶ 62. And, practically, “[b]ecause no majority of the court agreed on what least change actually meant, the concept amounted to little more than an unclear assortment of possible redistricting metrics.” *Id.* ¶ 61. The least-change principle thus had to be overruled both because it was “based on fundamentals that never garnered consensus,” and because it was “in tension with established districting requirements.” *Id.* ¶ 63.

The Court denied a motion to reconsider its merits decision in *Clarke* just five days ago, on January 11. Order re: Motion for Reconsideration, *Clarke v. Wis. Elections Comm’n*, No. 2023AP1399-OA (Jan. 11, 2024).

ARGUMENT

I. The Court should grant relief from *Johnson II*'s judgment adopting the current congressional plan.

The Court should grant the motion for relief from judgment. Wisconsin law authorizes such relief “[o]n motion and upon such terms as are just” for “the following reasons” (among others): (i) “[i]t is no longer equitable that the judgment should have prospective application,” Wis. Stat. § 806.07(1)(g); or (ii) “[a]ny other reasons justifying relief from the operation of the judgment,” Wis. Stat. § 806.07(1)(h).³ The relief-from-judgment statute must be “construed liberally because of its remedial nature.” *Connor v. Connor*, 2001 WI 49, ¶ 28, 243 Wis. 2d 279, 627 N.W.2d 182. A motion under the provisions invoked here is timely so long as it is made “within a reasonable time.” Wis. Stat. § 806.07(2).

Because continued enforcement of the *Johnson II* congressional remedy would be profoundly inequitable and unjust, Hunter Intervenor-Petitioners are entitled to relief from judgment under Wis. Stat. § 806.07(1)(g) and (h). Subsection (g)’s chief function is to allow relief from a continuing judgment, most often a permanent injunction, where a “change in conditions” means “it would be inequitable for the original judgment to be

³ Wis. Stat. § 806.07(1)(f) authorizes relief from judgment where “[a] prior judgment upon which the judgment is based has been reversed or otherwise vacated.”

enforced prospectively.” *State ex rel. M.L.B. v. D.G.H.*, 122 Wis. 2d 536, 543–44, 363 N.W.2d 419 (1985) (analogizing subsection (g) to Federal Rule 60(b)(5)). Among other circumstances, such inequity exists where continued enforcement “would be detrimental to the public interest.” *Wis. Dep’t of Corrections v. Kliesmet*, 211 Wis. 2d 254, 261, 564 N.W.2d 742 (1997) (quoting *Rufo v. Inmates of the Suffolk Cnty. Jail*, 502 U.S. 367, 384 (1992)).

Subsection (h), in turn, “is written in broad terms and obviously extends the grounds for relief beyond those provided for in the preceding subsections: under subsection (h) the ground for granting relief is ‘justice[.]’” *M.L.B.*, 122 Wis. 2d at 544–45, 363 N.W.2d 419. Subsection (h) accordingly “must be liberally construed to allow relief from judgments whenever such action is appropriate to accomplish justice.” *Conrad v. Conrad*, 92 Wis. 2d 407, 418, 284 N.W.2d 674 (1979) (internal quotation marks omitted) (analogizing subsection (h) to Federal Rule 60(b)(6)). This Court has called subsection (h) a grant of “broad discretionary authority” that “invokes the pure equity power of the court.” *Mullen v. Coolong*, 153 Wis. 2d 401, 407, 451 N.W.2d 412 (1990).⁴

⁴ When a movant seeks relief under subsection (h) that would be available under Wis. Stat. § 806.07(1)(a), (b), or (c), but is time-barred by subsection (2), the Court has typically required a showing of “extraordinary circumstances.” *M.L.B.*, 122 Wis. 2d at 549–50, 363 N.W.2d 419. Several recent cases suggest this showing is a prerequisite to *any* motion under subsection (h), not

Relief from the congressional map is appropriate under either or both provisions for four related reasons. *First*, *Clarke* renders this Court's remedial *Johnson II* order a continuing redistricting remedy with no continuing basis in Wisconsin redistricting principles. The public interest favors conducting future elections under a lawful map, and equity and justice require affording Hunter Intervenors-Petitioners the full and fair

just those seeking time-barred relief that would have been available under subsections (a), (b), or (c) if the movant had not delayed. *See, e.g., Miller v. Hanover Ins. Co.*, 2010 WI 75, ¶ 34, 326 Wis. 2d 640, 785 N.W.2d 493. Yet where relief would not have been available under those subsections regardless of timing, this Court has affirmed a grant of relief under subsection (h) *without* finding “extraordinary circumstances.” *See Mullen*, 153 Wis. 2d at 408–11, 451 N.W.2d 412. The Court has never resolved this tension in its precedents.

The Court should not require a showing of “extraordinary circumstances” to grant relief from judgment under subsection (h) here. Movants do not seek time-barred relief that would have been available under subsections (a), (b), or (c), so the original justification for requiring a heightened and extratextual showing of “extraordinary circumstances” does not apply. *See M.L.B.*, 122 Wis. 2d at 549–50, 363 N.W.2d 419.

In any case, the circumstances here *are* extraordinary. As set out below, Wisconsin has congressional maps that lack all basis in current state law, impose gross partisan unfairness, and undermine the separation of powers—yet are to be applied to *four more congressional elections* by virtue of this Court's *Johnson II* mandate.

opportunity to propose a remedy they were denied in *Johnson II*. *Second*, the *Johnson II* map, adopted under the least-change principle, suffers from serious partisan unfairness. It thus effectively enlists this Court’s authority to further partisan ends in direct contravention of *Clarke*. *See Johnson I*, 2021 WI 87, ¶ 39. *Third*, the least-change approach that led the Court to adopt the *Johnson II* map contravenes separation-of-powers principles by abdicating this Court’s duty of independent judgment. The resulting remedy’s continued enforcement for the rest of the decade will inflict that harm on Wisconsin’s constitutional order on an ongoing basis. *Fourth*, the motion is timely because it comes at “a reasonable time”—just weeks after the merits decision in *Clarke* and just days after reconsideration of that decision was denied.

A. The *Johnson II* map is a prospective remedy with no basis in current law.

The only justification in Wisconsin law for the *Johnson II* remedial order was *Johnson I*'s imposition of the “least change” approach to redistricting. *See supra* Background. That novel principle lacked any basis in this Court’s precedents, the Wisconsin Constitution, or past Wisconsin redistricting practice. *Clarke*, 2023 WI 79, ¶ 62; *Johnson I*, 2021 WI 87, ¶¶ 89–90 (Dallet,

J., dissenting). With *Johnson I* overruled, “least change” now has no basis in Wisconsin law at all. *Clarke*, 2023 WI 79, ¶¶ 60–63.

Yet the congressional map adopted under the “least change” approach is now in effect and will remain in effect for the remainder of the decade absent this Court’s action. With *Johnson I* nullified, that map amounts to little more than an exercise of “raw judicial power,” *Clarke*, 2023 WI 79, ¶ 125 (Ziegler, C.J., dissenting)—it governs the state’s congressional boundaries not because Wisconsin’s Constitution and laws require it, but because four Justices once voted for it “[c]ircumscribed by [the *Johnson I*] decision and the parties’ reliance upon it when crafting their submissions,” *Johnson II*, 2022 WI 14, ¶ 54 (Walsh Bradley, J., concurring). Relief is appropriate on this basis alone: Imposing an arbitrary and unjustified map on Wisconsin’s next *four* congressional elections is profoundly “inequitable,” *M.L.B.*, 122 Wis. 2d at 544–45, 363 N.W.2d 419, and “would be detrimental to the public interest,” *Kliesmet*, 211 Wis. 2d at 261, 564 N.W.2d 742. Equity, justice, and the public interest favor elections conducted using congressional boundaries that comply with state law.

Further, only relief from judgment will afford the Hunter Intervenor-Petitioners just and equitable treatment. *Clarke* overruled more than just “*the law* applied by the court in making its [*Johnson II*] adjudication.” *Schauer v. DeNeveau Homeowners Ass’n, Inc.*, 194 Wis. 2d 62, 75, 533 N.W.2d 470 (1995) (emphasis

added). *Johnson I* was not, with respect to *Johnson II*, merely an unrelated precedent that provided a rule of law. To the contrary, the *Johnson I* mandate was the entire basis for the *Johnson II* judgment. That mandate dictated both the form of the remedial maps proposed by the parties—which were the only final remedies available to the Court—and the Court’s selection from among those proposed remedies. See *Johnson II*, 2022 WI 14, ¶ 54 (Walsh Bradley, J., concurring in the judgment).⁵

After *Clarke*, it is thus clear that Hunter Intervenor-Petitioners were deprived of a fair opportunity to propose a

⁵ For this reason, *Clarke*’s repudiation of *Johnson I* may permit relief from judgment not only under subsections (g) and (h) but also under subsection (f). That provision applies where “[a] prior judgment upon which the judgment is based has been reversed or otherwise vacated.” Wis. Stat. § 806.07(1)(f) (emphasis added). Here, in the terms of this Court’s subsection (f) case law, a “prior judgment”—*Johnson I*—has “actually served as the basis for a subsequent judgment, order, or stipulation”—*Johnson II*. *Schauer*, 194 Wis. 2d at 75, 533 N.W.2d 470. And, arguably, the prior judgment has now been “reversed or otherwise vacated”—namely, by *Clarke*.

Hunter Intervenor-Petitioners recognize that *Clarke* expressed the Court’s intent to “overrule”—rather than to “reverse” or “otherwise vacate”—“any portions of *Johnson I*, *Johnson II*, and *Johnson III* that mandate a least change approach,” *Clarke*, 2023 WI 79, ¶ 63. Accordingly, Hunter Intervenor-Petitioners presently move under subsections (g) and (h). If the Court determines *Clarke* “reverse[d] or otherwise vacate[d]” the *Johnson I* judgment, Hunter Intervenor-

congressional map that complies with state law *properly understood*. Having won relief on their malapportionment claim, Hunter Intervenor-Petitioners were never given a chance to propose a remedy informed by recognized redistricting principles. And they suffered that result even though their *Johnson I* brief pressed the very arguments about the proper remedial framework that *Clarke* subsequently vindicated. See *Hunter Intervenor-Petitioners' Brief Addressing Court's October 14 Order* at 3–18; *Clarke*, 2023 WI 79, ¶¶ 60–63. Although it is now too late for the Court to grant Hunter Intervenor-Petitioners the remedial opportunity they were denied with regard to the 2022 election, that opportunity need not be denied for future elections.

This Court’s decision in *Mullen* supports relief from judgment in such circumstances. *See* 153 Wis. 2d at 408, 451 N.W.2d 412. In *Mullen*, this Court reversed the Court of Appeals’ decision reversing a grant of relief from judgment under Wis. Stat. § 806.07(1)(h). *Id.* at 403. Mullen, a personal-injury plaintiff, had pressed a novel legal theory on appeal but lost at the Court of Appeals. *Id.* at 403–04. This Court then denied her petition for review. *Id.* Unbeknownst to Mullen, the Court had granted

Petitioners request that the Court construe the motion as also requesting relief under subsection (f). *See State v. Holmes*, 106 Wis. 2d 31, 39–40, 315 N.W.2d 703, 707 (1982) (recognizing Wisconsin appellate courts’ authority to address issues *sua sponte* in interest of justice).

another petition pressing the same theory earlier that year. *Id.* After Mullen settled her claim for a pittance, the Court adopted her theory in the other case and “specifically overruled” the Court of Appeals decision against Mullen. *Id.* at 404–05. In those circumstances, this Court held relief from judgment proper because it had “reached the precise result Mullen advocated in her petition for review.” *Id.* at 408.

Analogous circumstances warrant relief from judgment here. In *Johnson I*, Hunter Intervenor-Petitioners pressed the “precise” objections to “least change” that the Court vindicated in *Clarke*. And *Clarke* “specifically overruled” *Johnson I*. The only material difference from *Mullen* is that here, Hunter Intervenor-Petitioners seek only *prospective* relief from the judgment—which makes the “balance between the competing values of finality and fairness,” *Mullen*, 153 Wis. 2d at 407, 451 N.W.2d 412, tilt even more clearly in favor of relief.

B. The *Johnson II* map subjects Wisconsin voters to intolerable partisan unfairness.

In *Clarke*, this Court confirmed that it must not “ignore partisan impact in adopting remedial maps.” 2023 WI 79, ¶ 70. Consistent with that principle, relief from judgment should be granted here because the *Johnson II* congressional map emerged from ignoring precisely that and, as a result, has a profoundly unfair partisan impact. As an analysis of a variety of common statistical metrics confirms, the current map is “extremely

favorable to the Republican Party”—more skewed than any Wisconsin congressional map in at least half a century, and more skewed than the vast majority of congressional plans from comparable states over the past three redistricting cycles. Expert Aff. of Dr. Jonathan Rodden (“Rodden Aff.”) ¶ 44, Ex. A. And just as this Court may not, consistent with its proper role, adopt an unfair partisan map as a remedy in the first instance, *Clarke*, 2023 WI 79, ¶ 70, it may not enforce such a map as a remedy on an ongoing, prospective basis. Whether choosing the map in advance of the first election after a decennial census or continuing to enforce it for the remaining elections under that census, the Court’s authority is brought to bear in service of one party’s partisan advantage in an election. *Clarke* properly rejects such usurpation of the proper judicial role.

Wisconsin’s 2011 congressional map had a marked partisan skew. Though Democrats won a majority of the statewide vote share in 2012, 2018, and 2020, and just below a majority in 2014 and 2016, the results were functionally predetermined: The Republican trifecta enacted a map that ensured Republican candidates always won five seats and Democrats just three. Rodden Aff. ¶ 14. Although the partisan skew of the 2011 map is plain to see, relief here does not require the Court to decide whether that map—or partisan gerrymandering by the Legislature more generally—violates the Wisconsin Constitution.

Nor does the Court need to conduct “extensive fact-finding,” *Clarke*, 2023 WI 70 ¶ 7, into legislative intent to decide whether the lingering taint of the 2011 map renders the current map unlawful, *see, e.g., Whitford v. Gill*, 218 F. Supp. 3d 837, 846–53 (W.D. Wis. 2016) (three-judge panel), *vacated*, 138 S. Ct. 1916 (2018). Whatever prerogative legislators may or may not have to aggrandize their own power, “courts can, and should, hold themselves to a different standard than the legislature regarding the partisanship of remedial maps.” *Clarke*, 2023 WI 79, ¶ 71. “As a politically neutral and independent institution,” this Court must “take care to avoid selecting”—or enforcing—“remedial maps designed to advantage one political party over another.” *Id.* And “it is not possible to remain neutral and independent by failing to consider partisan impact entirely.” *Id.*

Yet *Johnson I* embraced precisely the “politically mindless approach” that *Clarke* warns against. *Id.* (quoting *Gaffney v. Cummings*, 412 U.S. 735, 753 (1973)). Faced with the duty of adopting maps for Wisconsin elections after a political impasse in *Johnson I*, a bare majority of the Court expressly refused to consider partisan fairness. *Johnson I*, 2021 WI 87, ¶ 39. That in itself was improper; as *Clarke* explained, courts cannot “ignore partisan impact in adopting remedial maps.” 2023 WI 79, ¶ 70. Worse yet, the *Johnson I* majority then guaranteed that the remedial map would richly and unjustly reward a particular

partisan faction by transforming the map-selection process into a contest over who could submit a configuration that most closely resembled the skewed 2011 congressional map. *Johnson I*, 2021 WI 87, ¶ 72. The majority set the Court on that path notwithstanding the parties' abundant warnings that the 2011 map was incurably skewed and its use as benchmark would perpetuate gross partisan unfairness. See, e.g., *Hunter Intervenor-Petitioners' Brief Addressing Court's October 14 Order* at 3–18.

The resulting congressional map selected in *Johnson II* has partisan effects that are even more severe than its 2011 progenitor. Dr. Jonathan Rodden, a professor of political science at Stanford University, calculated that the share of congressional seats won by Republican candidates relative to the share of the statewide vote won by Republican candidates is more distorted in Wisconsin under the 2022 map (where Republicans won 75% of the state's congressional seats despite winning only 50% of the statewide vote) than it has been in virtually any other state in modern history. Rodden Aff. ¶ 20. Dr. Rodden also computed other metrics—including the efficiency gap, partisan bias, and mean-median difference—commonly used by political scientists to evaluate a districting map's partisan fairness and again found that the *Johnson II* map is an extreme outlier favoring Republicans. Rodden Aff. ¶¶ 26–38.

Clarke declares the Court's firm commitment not to be dragooned into the service of partisan mapmaking even when it comes garbed in putatively neutral standards. *Clarke*, 2023 WI 79, ¶ 70; see also Robert Yablon, *Gerrylaundrying*, 97 N.Y.U. L. Rev. 985, 1003–12, 1056 (2022) (explaining how least change and related concepts are “so laden with political considerations” that they “cannot properly drive judicial mapmaking” (internal quotation marks omitted)). “Unlike the legislative and executive branches, which are political by nature, this court must remain politically neutral.” *Clarke*, 2023 WI 79, ¶ 70. To ensure that neutrality, “judges should not select a plan that seeks partisan advantage[.]” *Id.* (quoting *Jensen v. Wis. Elections Bd.*, 2002 WI 13, ¶ 12, 249 Wis. 2d 706, 639 N.W.2d 537).

These principles dictate granting relief from judgment here. Just as the Court lacks “free license to enact maps that privilege one political party over another,” *id.*, it lacks license to enforce such maps as continuing and prospective impasse remedies. A map adopted to remedy an impasse draws its legal force directly from the authority of the Court that orders its use, not from statute. See *State ex rel. Reynolds v. Zimmerman*, 22 Wis. 2d 544, 559–64, 126 N.W.2d 551 (establishing this Court's authority to adopt impasse maps). And an impasse map is a form of permanent injunction, so is necessarily within the adopting court's “continuing jurisdiction.” *Whitford v. Gill*, No. 15-cv-421-bbc, 2017 WL 2623104, at *1 (W.D.

Wis. Feb. 22, 2017) (three-judge panel) (explaining that a court’s ongoing authority over an impasse map is inherent). Accordingly, each future election held under the *Johnson II* map will violate the Court’s commitment not to exercise its jurisdiction “to change the ground rules so that one party can do better than it would do under a plan drawn up by persons having no political agenda.” *Clarke*, 2023 WI 79, ¶ 70 (quoting *Jensen*, 2002 WI 13, ¶ 12).

It follows that relief from judgment is warranted. Put simply, “[i]t is no longer equitable that the [*Johnson II*] judgment should have prospective application.” Wis. Stat. § 806.07(1)(g). Rather, the “public interest,” *Kliesmet*, 211 Wis. 2d at 261, 564 N.W.2d 742, will be best served by the Court reclaiming its proper role as neutral arbiter and concluding the remedial process under neutral, traditional redistricting criteria.

C. The *Johnson II* map’s continued enforcement undermines the separation of powers.

As discussed, Wisconsin’s congressional map resulted from a flawed “least-change” approach that this Court has since overruled. *Clarke*, 2023 WI 79, ¶ 63. In addition to perpetuating and exacerbating the partisan skew of the 2011 map, this approach, “based on fundamentals that never garnered consensus” and “in tension with established districting requirements,” *id.*, undermined Wisconsin’s separation of powers. Accordingly, leaving the map in place for the balance of the decade will inflict an ongoing harm on Wisconsin’s constitutional order.

Wisconsin's Constitution "created three branches of government, each with distinct functions and powers, and the separation of powers doctrine is implicit in this tripartite division." *Gabler v. Crime Victims Rts. Bd.*, 2017 WI 67, ¶ 11, 376 Wis. 2d 147, 897 N.W.2d 384 (citations omitted). The "judicial power" was exclusively vested in this Court, "and that judicial power confers on [this Court] an *exclusive* responsibility to exercise *independent* judgment in cases over which [it] preside[s]." *Id.* ¶ 46 (emphasis added). The separation of powers doctrine "prevents [this Court] from abdicating [its] core power." *Tetra Tech EC, Inc. v. Wis. Dep't of Revenue*, 2018 WI 75, ¶ 48, 382 Wis. 2d 496, 914 N.W.2d 21.

This Court's duty to exercise independent judgment is especially important in redistricting cases, which require this Court to resolve disputes between the Legislative and Executive branches. To strike the careful balance required in such cases, the Court "must consider numerous constitutional requirements when adopting remedial maps" and "cannot allow a judicially-created metric, not derived from the constitutional text, to supersede the constitution." *Clarke*, 2023 WI 79 ¶ 62. But when faced with an impasse between the political branches after the 2020 census, this Court declined to exercise its independent judgment and failed to "balance . . . requirements and considerations essential to the mapmaking process." *Id.* Instead, this Court "declared that the overarching approach to adopting remedial maps was for them to

‘reflect the least change necessary’ from the previous maps.” *Id.*
¶ 62 (quoting *Johnson I*, 2021 WI 87, ¶ 72).

This Court was explicit that the purpose of the least-change framework was to “minimize judicial policymaking,” *Johnson II*, 2022 WI 14, ¶ 11, and defer to the “policy choices of the legislature” as constituted a decade earlier, *Johnson I*, 2021 WI 87, ¶ 81. But the Court’s effort to “remov[e] [itself] from the political fray,” *id.* ¶ 77, ignored three key principles regarding the judiciary’s duty in resolving questions about redistricting maps.

First, “it is not possible to remain neutral and independent by failing to consider partisan impact entirely.” *Clarke*, 2023 WL 79, ¶ 71. To the contrary, to maintain judicial independence, this Court has an affirmative duty to “take care to avoid selecting remedial maps designed to advantage one political party over another.” *Id.* That is because a “politically mindless approach may produce, whether intended or not, the most grossly gerrymandered results.” *Id.* (internal quotation omitted). State high courts across the country have properly recognized that the separation of powers requires the judiciary’s scrupulous observance of its duty of independence in this context. *See, e.g., Maestas v. Hall*, 2012-NMSC-006, ¶¶ 28–29, 274 P.3d 66, 76 (determining that to preserve “judicial independence” and “avoid the appearance of partisan politics,” a court “should not select a plan that seeks partisan advantage”).

Second, courts “called upon to perform redistricting are, of course, judicially legislating.” *Jensen*, 2002 WI 13, ¶¶ 9–11. Indeed, federal courts defer to state courts on redistricting matters precisely *because* it is a “highly political task.” *Grove v. Emison*, 507 U.S. 25, 33 (1993); *see also id.* (“The power of the judiciary of a State to require valid reapportionment or to formulate a valid redistricting plan has not only been recognized by this Court but appropriate action by the States in such cases has been specifically encouraged.” (quoting *Scott v. Germano*, 381 U.S. 407, 409 (1965))). State courts are thus empowered to independently craft redistricting plans when legislatures “refuse[] to reapportion themselves” because “citizens have a right to have their legislature properly apportioned and their congressional districts properly drawn and the responsibility for seeing that this right is enforced rests with the states, not the federal courts.” *Alexander v. Taylor*, 2002 OK 59, ¶¶ 14, 16, 51 P.3d 1204, 1209, as corrected (June 27, 2002).

Deferring to a decade-old map—enacted by a decade-old legislative body and signed by a governor whom Wisconsin voters deposed at the polls years before the current redistricting cycle began—does not properly discharge this responsibility. Contrary to the Court’s least-change approach, the Court’s constitutional duty to exercise its independent judgment is neither qualified nor quieted by the politicized nature of the task before it.

Third, to maintain its independence, the judiciary’s role in redistricting cannot be circumscribed by deference to any one political branch. When a state court is “thrust into the position of choosing a redistricting plan due to the political stalemate between the Legislature and the Governor,” it must “endeavor[] to adopt a plan” that is “superior or comparable to all of the plans submitted” based “[f]irst and foremost” on “the traditional core criteria” that guide the state’s redistricting decisions. *Carter v. Chapman*, 270 A.3d 444, 451, 461-62 (Pa. 2022), cert. denied sub nom. *Costello v. Carter*, 143 S. Ct. 102 (2022); see also *Hippert v. Ritchie*, 813 N.W.2d 391, 395 (Minn. 2012) (adopting a remedial plan by utilizing “redistricting principles that advance the interests of the collective public good and preserve the public’s confidence and perception of fairness in the redistricting process”).

There are no shortcuts to this endeavor. State courts cannot fulfill their redistricting duties and maintain their independence by deferring to prior plans. *See, e.g., Carter*, 270 A.3d at 464 (recognizing the court’s duty to ensure that the remedial map “satisfie[d] the requisite traditional core criteria while balancing the subordinate historical considerations” and was “reflective of and responsive to the partisan preferences of the Commonwealth’s voters.”); *Wattson v. Simon*, 970 N.W.2d 42, 45–46 (Minn. 2022) (balancing seven core principles to guide its task of drawing new legislative districts).

This Court has a constitutional duty, when called upon to break an impasse, to independently analyze the merits of proposed redistricting plans by applying a wide range of redistricting criteria, including partisan outcomes. This Court's failure to discharge that duty with respect to Wisconsin's congressional maps was an affront to the separation of powers. Each election conducted under the *Johnson II* map will compound that affront. Justice and equity accordingly dictate granting relief from the judgment requiring that map's continued application.

D. The motion for relief from judgment is timely.

Section 806.07(2) dictates that a motion for relief from judgment under subsections (g) or (h) is timely so long as it is made "within a reasonable time." Determining what counts as "a reasonable time" entails "a case-by-case analysis of all relevant facts." *State ex rel. Cynthia M.S. v. Michael F.C.*, 181 Wis. 2d 618, 627, 511 N.W.2d 868 (1994). That "analysis should be guided" by Wis. Stat. § 806.07's purpose, namely, "to do substantial justice when the circumstances so warrant." *Id.* Notably, while motions under subsections (a) or (c) must be brought "not more than one year after the judgment was entered or the order or stipulation was made," Wis. Stat. § 806.07(2), that constraint does not apply to motions under subsections (g) or (h). This Court in *Cynthia M.S.*, a subsection (h) case, held a motion for relief timely though it was

made *eleven years* after the order in question issued. 181 Wis. 2d at 622, 511 N.W.2d 868.

The “reasonable time” standard is easily satisfied here because the Court decided *Clarke*—the appropriate measuring stick—just over three weeks ago, and denied reconsideration of that decision just last week. Specifically, *Clarke* overruled *Johnson I*’s mandate of the “least change” approach, reaffirmed *Jensen*, and corrected *Johnson I*’s deviation from the Court’s previous commitment to partisan neutrality in service of the separation of powers. The motion is thus plainly timely in light of “all relevant factors.” *Cynthia M.S.*, 181 Wis. 2d at 627, 511 N.W.2d 868. Moreover, granting relief will do “substantial justice” by ensuring that Wisconsin voters are not subjected to a baseless and inequitable congressional map for the next four elections. *See id.*

At this juncture, the *Johnson II* congressional map is the vestigial artifact of a remedial process that took a wrong turn. It is lawless in justification, partisan in effect, and backwards under Wisconsin’s constitutional order. Its continued application will harm Wisconsin voters in every election it governs without any basis in law or logic. In such circumstances, subsections (g) and (h) of Wis. Stat. § 806.07(1) each give this Court substantial discretion to correct the map—an ongoing, equitable impasse remedy under the Court’s supervision—in service of equity, justice, and the

public interest. The Court should exercise that discretion here and grant the motion.

II. The Court should resume the congressional remedial process and select the plan that best satisfies redistricting criteria grounded in Wisconsin law.

With *Johnson I* properly repudiated, this Court should resume the congressional remedial process at the point at which it was derailed. Specifically, the Court should solicit the parties to prepare proposed maps that remedy the pre-*Johnson* map's malapportionment. The Court should then select a remedial map that complies with Wisconsin law as clarified by *Clarke*.

Unlike in *Clarke*, the Court need not give the political branches the opportunity to enact a new congressional map in the first instance. *See Clarke*, 2023 WI 79, ¶ 4. *Clarke* presented a contiguity claim not presented or litigated in *Johnson*. This motion, by contrast, tests the continuing viability of the *Johnson* remedy adopted by this Court. Because that remedy was an impasse remedy, the political branches are not entitled to a first-instance opportunity to enact a valid map—they already had their shot and failed. The Court then took up the pen, whereupon *Johnson I*’s imposition of an unlawful “least change” methodology improperly “[c]ircumscribed” the parties’ remedial proposals. *Johnson II*, 2022 WI 14, ¶ 54 (Walsh Bradley, J., concurring in the judgment). To correct that misstep, all that is required is to give the parties to the impasse litigation another opportunity to

propose maps drafted in accordance with the proper, lawful criteria, and to select a map consistent with those criteria.⁶

In evaluating the parties' proposals and selecting a map to govern Wisconsin's congressional elections for the balance of the decade, the Court should follow the law *as clarified by Clarke*. Under binding federal precedent, congressional districts must have equal population, *Wesberry v. Sanders*, 376 U.S. 1 (1964); may not be drawn predominantly on the basis of race, *Miller v. Johnson*, 515 U.S. 900 (1995); and must provide members of any protected class an equal opportunity to elect candidates of choice, *Allen v. Milligan*, 599 U.S. 1 (2023). Under state law, the Court should fully and properly perform its neutral role by considering whether the proposed maps have an unfair partisan impact. *Clarke*, 2023 WI 79, ¶ 70. And the Court should give due weight to

⁶ If, however, the Court disagrees, Hunter Intervenor-Petitioners request that the Court order the same parallel remedial process as in *Clarke*, see 2023 WI 79, ¶ 76, to ensure a valid map is in place for the 2024 election cycle, see Response of Wisconsin Elections Commission to Court Order of October 6, 2023, at 3, *Clarke v. Wis. Elections Comm'n*, No. 2023AP1399-OA (Oct. 16, 2023) (Wisconsin Elections Commission indicating in *Clarke* that maps “need to be in place by March 15, 2024, to permit the prerequisite steps to be completed before the petition circulation process begins”); see also Response Brief of Atkinson Intervenor at 51 n.29, *Clarke v. Wis. Elections Comm'n*, No. 2023AP1399-OA (Oct. 30, 2023) (noting that courts in Wisconsin adopted legislative districts in mid-April in both 2012 and 2022).

Wisconsin's traditional redistricting criteria, such as contiguity, compactness, and preservation of communities of interest. Although those considerations are not mandatory in congressional redistricting, their application is appropriate in light of longstanding practice. *See id.*, ¶ 68 (applying nonmandatory but traditional redistricting criteria in the legislative context).

CONCLUSION

Hunter Intervenor-Petitioners respectfully request that the Court grant the motion for relief from judgment.

Dated: January 16, 2024

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forthcoming

CERTIFICATE AS TO FORM AND WORD COUNT

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b), (bm), and (c) for a brief. Excluding the caption, table of contents, table of authorities, signatures, and these certifications, the length of this brief is 6,389 words as calculated by Microsoft Word.

Dated: January 16, 2024

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CERTIFICATE OF SERVICE

I certify that on this 16th day of January, 2024, I caused a copy of this brief to be served upon counsel for each of the parties via email.

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FILED

01-16-2024

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SUPREME COURT

Supreme Court of Wisconsin

No. 2021AP1450-OA

BILLIE JOHNSON, ERIC O'KEEFE, ED PERKINS AND RONALD ZAHN,

Petitioners,

BLACK LEADERS ORGANIZING FOR COMMUNITIES, VOCES DE LA
FRONTERA, LEAGUE OF WOMEN VOTERS OF WISCONSIN, CINDY FALLONA,
LAUREN STEPHENSON, REBECCA ALWIN, CONGRESSMAN GLENN
GROTHMAN, CONGRESSMAN MIKE GALLAGHER, CONGRESSMAN BRYAN
STEIL, CONGRESSMAN TOM TIFFANY, CONGRESSMAN SCOTT FITZGERALD,
LISA HUNTER, JACOB ZABEL, JENNIFER OH, JOHN PERSA, GERALDINE
SCHERTZ, KATHLEEN QUALHEIM, GARY KRENZ, SARAH J. HAMILTON,
STEPHEN JOSEPH WRIGHT, JEAN-LUC THIFFEAULT, AND SOMESH JHA,

Intervenors-Petitioners,

v.

WISCONSIN ELECTIONS COMMISSION, MARGE BOSTELMANN IN HER
OFFICIAL CAPACITY AS A MEMBER OF THE WISCONSIN ELECTIONS
COMMISSION, DON MILLIS IN HIS OFFICIAL CAPACITY AS A MEMBER OF THE
WISCONSIN ELECTIONS COMMISSION, ANN JACOBS IN HER OFFICIAL
CAPACITY AS A MEMBER OF THE WISCONSIN ELECTIONS COMMISSION,
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ELECTIONS COMMISSION, ROBERT SPINDELL, JR. IN HIS OFFICIAL
CAPACITY AS A MEMBER OF THE WISCONSIN ELECTIONS COMMISSION, AND
MARK THOMSEN IN HIS OFFICIAL CAPACITY AS A MEMBER OF THE
WISCONSIN ELECTIONS COMMISSION,

Respondents,

THE WISCONSIN LEGISLATURE, GOVERNOR TONY EVERS, IN HIS OFFICIAL
CAPACITY, AND DIANNE HESSELBEIN, SENATE DEMOCRATIC MINORITY
LEADER, ON BEHALF OF THE SENATE DEMOCRATIC CAUCUS,

Intervenors-Respondents.

**INTERVENORS-PETITIONERS LISA HUNTER, JACOB
ZABEL, AND JOHN PERSA'S MOTION FOR RELIEF
FROM JUDGMENT**

Pursuant to Wisconsin Statutes § 806.07(1)(g) and (h), Intervenor-Petitioners Lisa Hunter, Jacob Zabel, and John Persa (the “Hunter Intervenor-Petitioners”) respectfully move the Court for relief from its March 3, 2022, decision and judgment (the “*Johnson II*” decision) adopting a congressional map as an impasse remedy.¹ That decision and judgment were based upon the Court’s November 30, 2021, determination (“*Johnson I*”) that the parties’ redistricting plans would be evaluated using the “least change” standard. On December 22, 2023, this Court “overrule[d] any portions of *Johnson I*, *Johnson II*, and *Johnson III* that mandate a least change approach.” *Clarke v. Wis. Elections Comm’n*, 2023 WI 79, ¶¶ 61–63. The Court denied reconsideration of that decision on January 11, 2024. Order re: Motion for Reconsideration, *Clarke v. Wis. Elections Comm’n*, No. 2023AP1399-OA (Jan. 11, 2024).

Relief from the *Johnson II* judgment is warranted in light of *Clarke*. The *Johnson II* congressional map’s “prospective application” to control Wisconsin’s congressional elections for the

¹ Intervenor-Petitioners Jennifer Oh, Geraldine Schertz, and Kathleen Qualheim are no longer seeking relief in this action.

In the caption, Wisconsin Elections Commissioners Don Millis and Carrie Riepl have been substituted as Respondents in place of their predecessors in office, Julie Glancey and Dean Knudson. Senate Democratic Minority Leader Dianne Hesselbein has been substituted as Intervenor-Respondent in place of her predecessor in office, Janet Bewley. See Wis. Stat. § 803.10(4).

balance of the decade is “no longer equitable,” Wis. Stat. § 806.07(1)(g), and relief is also justified for several “other reasons,” *id.* § (h). Accordingly, on the grounds set forth in more detail in the accompanying memorandum, the Court should:

- (1) Grant the Hunter Intervenor-Petitioners relief from the *Johnson II* judgment imposing Wisconsin’s current congressional map as a prospective impasse remedy;
- (2) Permit the parties to submit remedial congressional plans that satisfy Wisconsin’s judicial redistricting criteria for congressional maps as clarified by *Clarke*; and
- (3) Adopt a plan satisfying those criteria as Wisconsin’s congressional map for the remainder of the decade as soon as practicable, and in time for the 2024 congressional elections.

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forthcoming*

CERTIFICATE OF SERVICE

I certify that on this 16th day of January, 2024, I caused a copy of this motion to be served upon counsel for each of the parties via email.

Dated: January 16, 2024

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Diane M. Welsh

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CLERK OF WISCONSIN
SUPREME COURT

No. 2021AP1450-OA

IN THE SUPREME COURT OF WISCONSIN

BILLIE JOHNSON, ERIC O'KEEFE, ED PERKINS, AND RONALD ZAHN,

Petitioners,

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Intervenors-Petitioners,

v.

WISCONSIN ELECTIONS COMMISSION, MARGE BOSTELMANN, in her official capacity as a member of the Wisconsin Elections Commission, JULIE GLANCEY, in her official capacity as a member of the Wisconsin Elections Commission, ANN JACOBS, in her official capacity as a member of the Wisconsin Elections Commission, DEAN KNUDSON, in his official capacity as a member of the Wisconsin Elections Commission, ROBERT SPINDELL, JR., in his official capacity as a member of the Wisconsin Elections Commission, AND MARK THOMSEN, in his official capacity as a member of the Wisconsin Elections Commission,

Respondents,

THE WISCONSIN LEGISLATURE, GOVERNOR TONY EVERS, in his official capacity, AND JANET BEWLEY SENATE DEMOCRATIC MINORITY LEADER, on behalf of the Senate Democratic Caucus,

Intervenors-Respondents.

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO RECUSE JUSTICE PROTASIEWICZ BY INTERVENOR-RESPONDENT WISCONSIN LEGISLATURE, PETITIONERS BILLIE JOHNSON, ERIC O'KEEFE, ED PERKINS, AND RONALD ZAHN, AND INTERVENORS-PETITIONERS CONGRESSMEN GLENN GROTHMAN, MIKE GALLAGHER, BRYAN STEIL, TOM TIFFANY, AND SCOTT FITZGERALD

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INTRODUCTION

The Democratic Party of Wisconsin contributed nearly \$10 million to Justice Janet Protasiewicz’s campaign for a seat on the Wisconsin Supreme Court—more than all other donors to her campaign combined, and more than three times the size of the campaign contribution in *Caperton v. A.T. Massey Coal. Co.*, 556 U.S. 868 (2009). During her campaign, Justice Protasiewicz declared Wisconsin’s districts “rigged” in favor of Republicans.¹ “I don’t think you could sell to any rational person that the maps are fair,” she said.² She disavowed this case specifically. She said *Johnson’s* “least change” approach was “totally unfair.”³ As to the congressional maps, she said “we know something’s wrong” when “we have eight seats—six are red, two are blue,

¹ Zac Schultz, *Candidates tangle over political issues, judicial perspectives at first 2023 Wisconsin Supreme Court forum*, PBS Wis. (Jan. 10, 2023), <https://perma.cc/HC4L-NFUS> (App.10); WisPolitics State Supreme Court Election Forum Tr. 45:25-46:7 (Jan. 9, 2023) [hereinafter *Supreme Court Forum*] (App.24-25); see Corrinne Hess, *Wisconsin Supreme Court candidate Janet Protasiewicz assails state’s election maps as ‘rigged,’* Milwaukee J. Sentinel (Jan. 9, 2023), <https://perma.cc/8T33-Z5M6> (App.33).

² Jonah Beleckis, *Janet Protasiewicz thinks judicial candidates should be open about their values*, Wis. Pub. Radio (Feb. 14, 2023), <https://perma.cc/2QWV-69Q5> (App.38).

³ Channel 3000 / News 3 Now, *Wisconsin Supreme Court debate presented by News 3 Now and WisPolitics*, at 29:20-30:10, YouTube, <https://bit.ly/3HAAtZtv> [hereinafter *Supreme Court Debate*].

in a battleground state.”⁴ She “welcome[d] the opportunity to have a fresh look at our maps.”⁵ And she pledged how she would rule: “If you look at the dissent in that maps case” — *this case* — “that dissent is what I will tell you I agree with.”⁶ Electoral districts could be redrawn to change “the outcome of the 2024 election,” she promised.⁷

And lo and behold, with Justice Protasiewicz now on this Court, the “Democratic law firm” representing Hunter Intervenors has now asked for new maps drawn by the newly constituted Court, “upend[ing] Wisconsin’s congressional races months before the 2024 election.”⁸ Hunter intervenors want new congressional districts in less than 7 weeks’ time.⁹

⁴ *Id.*

⁵ Shawn Johnson, *In a supreme court race like no other, Wisconsin’s political future is up for grabs*, NPR (Apr. 2, 2023), <https://perma.cc/W2YA-WPA2> (App.46).

⁶ Henry Redman, *Supreme Court candidates accuse each other of lying, extremism in sole debate*, Wis. Exam’r (Mar. 21, 2023), <https://perma.cc/5KLA-S2FV> (App.51).

⁷ @janetforjustice, Twitter (Mar. 27, 2023, 12:47 PM), <https://perma.cc/YAL9-JR8R> (App.53); Janet for Justice, Facebook (Apr. 3, 2023), <https://perma.cc/HVD7-PXD5> (App.54).

⁸ Anya Van Wagtendonk, *Democratic law firm files challenge to Wisconsin’s congressional maps*, Wis. Public Radio (Jan. 17, 2024), <https://perma.cc/TX2L-C6SG> (App.55); see also Marc Elias, *Opinion, Early Victories in the Fight for Democracy in Wisconsin*, Democracy Docket (Jan. 26, 2024), <https://perma.cc/6F9N-P8QF> (App.58).

⁹ In the legislative redistricting case, the Wisconsin Elections Commission said modifications to district lines must be in place by March 15, 2024. See Response of

The Due Process Clause of the Fourteenth Amendment and state law demand Justice Protasiewicz’s recusal. Just as a judicial candidate could not declare, “John Smith is guilty” and then, once elected, hear his appeal, Justice Protasiewicz cannot decide to re-open *this case* after she has declared that she agreed with the dissenters in *this case* and that “something’s wrong” with the congressional districts already adopted in *this case*. See *Caperton*, 556 U.S. at 886; Wis. Stat. §757.19(2)(f)-(g). Should she participate, these entire proceedings will be tainted with structural error. See *Williams v. Pennsylvania*, 579 U.S. 1, 14 (2016).

BACKGROUND

A. Hunter Intervenors seek “relief from judgment” entered nearly two years ago in this case. This case began when it appeared that the Legislature and Governor would not be able to agree on new redistricting legislation. *See Johnson v. Wis. Elections Comm’n* (Johnson

the Wis. Elections Comm’n 3, *Clarke v. Wis. Elections Comm’n*, No. 2023AP1399-OA (Oct. 16, 2023). Candidates for both state legislative office and federal office have the same initial filing deadline of June 3, 2024. *See State Candidates*, Wis. Elections Comm’n, <https://perma.cc/M2Q2-VCGE> (Form ELIS-9, 2024 Ballot Access Checklist for Legislative Office Candidates) (App.61); *Federal Candidates*, Wis. Elections Comm’n, <https://perma.cc/4YPC-NN3D> (Form ELIS-14, 2024 Ballot Access Checklist for Federal Candidates in Wisconsin) (App.62).

I), 2021 WI 87, ¶2, 399 Wis. 2d 623, 967 N.W.2d 469. Voters initiated this original action. *Id.* ¶5. They claimed the existing congressional and state legislative districts, enacted in 2011, were malapportioned. *Id.* The parties agreed, and this Court proceeded to the remedial phase. *Id.* ¶7.

Parties proposed remedies that equalized population across all districts and complied with other state and federal constitutional and statutory requirements. *See id.* ¶¶24-37; *see also* Order (Nov. 17, 2021). The Court emphasized that it could not do more than remedy the malapportionment claims. *Johnson I*, 2021 WI 87, ¶¶64-68. “[D]oing anything more than securing legal rights would be profoundly incompatible with Wisconsin’s commitment to a nonpartisan judiciary.” *Id.* ¶75. Accordingly, the Court instructed the parties to take “a ‘least-change’ approach” to the existing lines. *Id.* ¶81. As Justice Hagedorn explained in his concurring opinion, “our role is appropriately limited to altering current district boundaries only as needed to comply with legal requirements.” *Id.* ¶82 (Hagedorn, J., concurring). The Court could not “simply ignore the law on the books”—here, 2011 Act 44—

“and draft a new one more to its liking.” *Id.* ¶84. Rather, the Court had to begin with that last-enacted redistricting statute. *Id.* ¶64 (majority op.). For the congressional districts, the Court recognized that the federal Elections Clause gives “*state legislature’s* discretion to decide how congressional elections are conducted,” and the Court could not “unsettle th[at] constitutional allocation of power” by “[t]reading further than necessary” to remedy the malapportionment claim. *Id.* ¶12, 64 (emphasis added); see U.S. Const. art. I, §4, cl.1.

Three justices dissented from that remedial approach. They argued that “applying that approach to 2011’s maps affirmatively perpetuates the partisan agenda of politicians no longer in power.” *Johnson I*, 2021 WI 87, ¶¶93 (Dallet, J., dissenting, joined by Walsh Bradley and Karofsky, JJ.); *see also Johnson v. Wis. Elections Comm’n (Johnson III)*, 2022 WI 19, ¶¶159, 184, 401 Wis. 2d 198, 972 N.W.2d 559 (Karofsky, J., dissenting, joined by Walsh Bradley and Dallet, JJ.) (stating that the maps have “glaring partisan motivations” and that “the court wandered astray following the sirens’ call of ‘least change’”).

Clarifying and then applying the least-change approach in *Johnson II*, this Court chose the Governor’s proposed remedy for Wisconsin’s congressional districts. See *Johnson v. Wisconsin Elections Commission (Johnson II)*, 2022 WI 14, 400 Wis. 2d 626, 971 N.W.2d 402. The Court held that the Governor’s proposed adjustments met all state and federal constitutional requirements. *Johnson II*, 2022 WI 14, ¶¶7, 20-25, 52. That remains true today, as Hunter Intervenors’ “motion for relief from judgment” implicitly concedes.

B. After the *Johnson* litigation ended—or so everyone thought—Justice Patience Drake Roggensack announced her retirement, creating a vacancy on this Court to be filled by the 2023 election.¹⁰ Among the candidates was now-Justice Protasiewicz.

Criticism of *this case* became a central part of the campaign. Detailed below, she repeatedly and emphatically expressed her views that Wisconsin’s districts are “gerrymandered,” “rigged,” “unfair,”

¹⁰ Associated Press, *Milwaukee County Judge Janet Protasiewicz announces candidacy for state Supreme Court*, Wis. Pub. Radio (May 25, 2022), <https://perma.cc/RMK5-G34R> (App.63-64).

and “wrong.” She invited an opportunity to give Wisconsin’s districts a “fresh look,” stating she would “agree with the dissent” in *Johnson*.

On January 9, before the primary election, Justice Protasiewicz participated in a candidate forum.¹¹ Asked about this case, Justice Protasiewicz said, “I believe the gerrymandering decision was wrong.”¹² She chastised the districts adjusted in *Johnson*: “So let’s be clear here: The maps are rigged, bottom line, absolutely positively rigged. They do not reflect the people in this state.”¹³

Justice Protasiewicz gave several public interviews echoing the same statements. On Wisconsin Public Radio's *Central Time*, she stated, "I don't think you could sell to any rational person that the maps are fair."¹⁴ On the *Cap Times's Wedge Issues*, she stated, "I would anticipate that I would enjoy taking a fresh look at the

¹¹ Schultz, *supra* n.1, <https://perma.cc/HC4L-NFUS> (App.8).

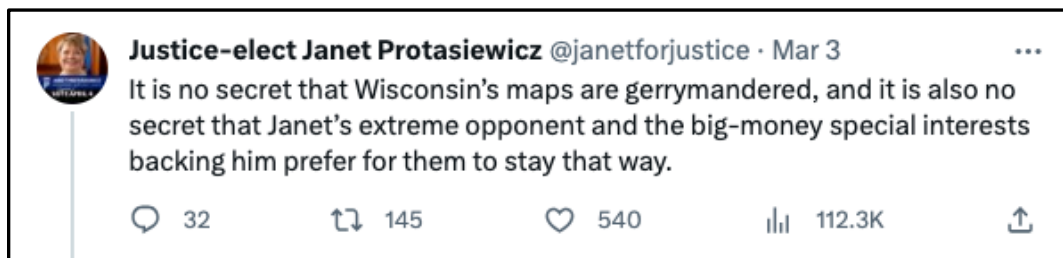
¹² *Supreme Court Forum*, *supra* n.1, at 46:17-18 (App.25); see Alexander Shur, *Candidate Q&A: Wisconsin Supreme Court*, Wis. State J. (Jan. 30, 2023), <https://perma.cc/J4V6-E5RQ> (App.71) (reporting that Justice Protasiewicz made “clear that [she] believe[s] the court’s decision last year regarding legislative maps [in *Johnson*] was wrong”).

¹³ *Supreme Court Forum*, *supra* n.1, at 45:25-46:3 (App.24-25); *see also* Hess, *supra* n.1, <https://perma.cc/8T33-Z5M6> (App.33).

¹⁴ Beleckis, *supra* n.2, <https://perma.cc/2QWV-69Q5> (App.38).

gerrymandering question.”¹⁵ She said Wisconsin’s maps are “amongst the most gerrymandered maps in the entire country.”¹⁶ In an interview on PBS, when asked about this case’s “least change” remedial approach, she responded, “There’s no legal precedent. There’s nothing in the Constitution. There’s nothing in case law.”¹⁷ And in a live interview for NPR’s *Pod Save America*, she proclaimed, “Our maps are rigged in this state.”¹⁸ And she “welcome[d] the opportunity to have a fresh look at our maps.”¹⁹

Justice Protasiewicz also decried the maps on her campaign’s social media accounts.²⁰



¹⁵ Jessie Opoien & Jack Kelly, *Protasiewicz would ‘enjoy taking a fresh look’ at Wisconsin voting maps*, Cap Times (Mar. 2, 2023), <https://perma.cc/THH2-VH3Q> (App.72).

¹⁶ *Id.*

¹⁷ Zac Schultz, *Janet Protasiewicz, Daniel Kelly on Wisconsin redistricting*, PBS Wis. (Mar. 9, 2023), <https://perma.cc/R45C-RDPV> (App.76).

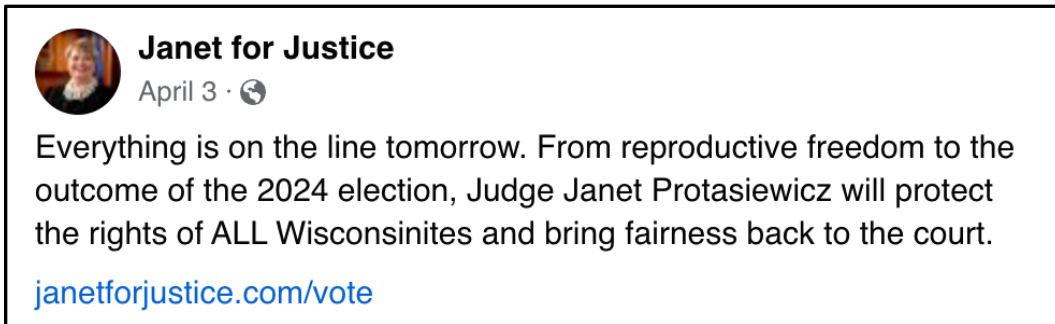
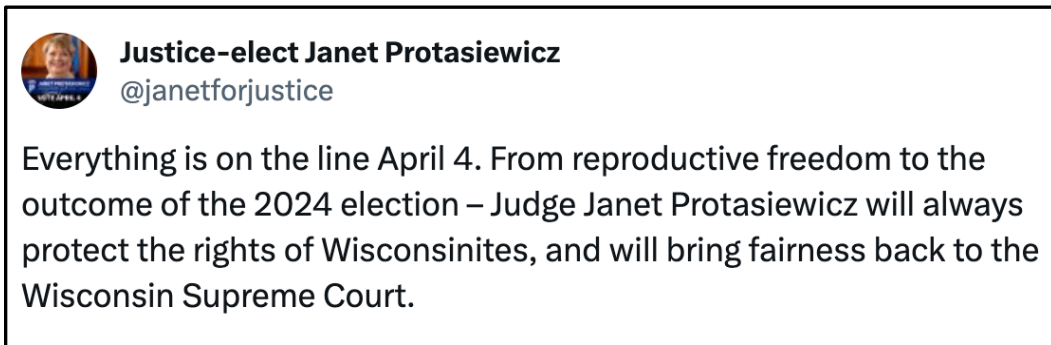
¹⁸ Johnson, *supra* n.5, <https://perma.cc/W2YA-WPA2> (App.46).

¹⁹ *Id.*

²⁰ @janetforjustice, Twitter (Mar. 3, 2023, 6:31 PM), <https://perma.cc/75S9-A772> (App.78); @janetforjustice, Twitter (Mar. 7, 2023, 2:15 PM), <https://perma.cc/E3F8-HU8G> (App.79).



She assured voters that her election to the Wisconsin Supreme Court would change “the outcome of the 2024 election.”²¹



On March 21, 2023, before the general election, Justice Protasiewicz debated her opponent, former Justice Dan Kelly. The validity

²¹ @janetforjustice, *supra* n.7, <https://perma.cc/YAL9-JR8R> (App.53); Janet for Justice, *supra* n.7, <https://perma.cc/HVD7-PXD5> (App.54).

of the maps was one of the main topics. “The map issue is really kind of easy,” Justice Protasiewicz said.²² “If you look at the dissent in that maps case, that dissent is what I will tell you I agree with.”²³ “We know the maps are not fair,” she said. “We have battleground elections. We know they are not fair.”²⁴ “You look at Congress—you know, we have eight seats—six are red, two are blue, in a battleground state. So, we know something’s wrong.”²⁵ Justice Protasiewicz described the least-change approach as “totally unfair.”²⁶ She continued, “We know that this least-change rule certainly inhibits people’s ability to cast a vote and a vote that counts. . . . Everybody’s vote should count and with this least-change rule, everybody’s vote is not counting.”²⁷

²² Scott Bauer, *Wisconsin Supreme Court candidates clash over abortion, maps in only 2023 debate*, PBS Wis. (Mar. 21, 2023), <https://perma.cc/SE77-ED4Z> (App.82).

²³ Redman, *supra* n.6, <https://perma.cc/5KLA-S2FV> (App.51).

²⁴ A.J. Bayatpour, *In only state Supreme Court debate, candidates trade accusations of partisan ties*, CBS 58 (Mar. 21, 2023), <https://perma.cc/87BY-66CB> (App.86).

²⁵ *Supreme Court Debate*, *supra* n.3, at 29:40-29:49, <https://bit.ly/3HAtZtv>.

²⁶ *Id.* at 29:21-29:28.

²⁷ *Id.* at 29:39-30:10.

In April, Justice Protasiewicz won the election. It was the most expensive state supreme court race in U.S. history.²⁸ The Protasiewicz campaign spent more than \$16 million dollars, more than four times her opponent's total campaign spending.²⁹ The Democratic Party of Wisconsin contributed \$9.9 million of that total, including \$8.3 million in direct transfers.³⁰

The day after Justice Protasiewicz was elected, the executive director of liberal Law Forward announced that the group would file a new redistricting lawsuit.³¹ As for when, Law Forward promised that the suit would come “in the weeks or months after Justice-elect Janet

²⁸ Patrick Marley, *Liberals win control of Wisconsin Supreme Court ahead of abortion case*, Wash. Post (Apr. 4, 2023), <https://perma.cc/ZA99-QR5D> (App.88); see WisPolitics tracks \$56 Million in spending on Wisconsin Supreme Court race, WisPolitics (July 19, 2023), <https://perma.cc/8A97-2JHC> (App.93) (reporting total spending of more than \$56 million).

²⁹ *WisPolitics*, *supra* n.28, <https://perma.cc/8A97-2JHC> (App.94); *see* Janet for Justice, Campaign Finance Report, Form CF-2 (July 2023), <https://perma.cc/X6FA-QTSL> (App.96) (reporting \$16.54 million in campaign disbursements); Friends of Justice Daniel Kelly, Campaign Finance Report, Form CF-2 (July 2023), <https://perma.cc/P2EW-D9KU> (App.98) (reporting \$3.66 million in campaign disbursements).

³⁰ See *WisPolitics*, *supra* n.28, <https://perma.cc/8A97-2JHC> (App.94); *Campaign contributions: PAC and Political Committee Contributors to: Janet C Protasiewicz* (NP) – *Supreme Court*, Wis. Democracy Campaign, <https://perma.cc/9EZD-V69A> (App.101).

³¹ Jack Kelly, *Liberal law firm to argue gerrymandering violates Wisconsin Constitution*, Cap Times (Apr. 6, 2023), <https://perma.cc/5TCG-4EQF> (App.103-04).

Protasiewicz is sworn in on Aug. 1.”³² They made good on that promise, filing an original action the day after Justice Protasiewicz’s investiture to challenge the State’s assembly and senate districts. *See* Pet., *Clarke v. Wis. Elections Comm’n*, No. 2023AP1399-OA (Aug. 2, 2023). Absent from Law Forward’s petition was a claim that *congressional* districts should be redrawn, even though they’d foreshadowed one such possible challenge months earlier. *See* Brief of Amici Curiae Law Forward et al. at 37, *Moore v. Harper* (U.S. No. 21-1271) (“The law is developing in Wisconsin,” and “state courts could soon be tasked with applying statutory limits on partisan gerrymandering of congressional districts.”).

C. In *Clarke*, the Legislature and Republican Senators named as Respondents moved for Justice Protasiewicz’s recusal. She denied the motion. *Clarke v. Wis. Elections Comm’n*, 2023 WI 66, --- Wis. 2d ---, 995 N.W.2d 735 (Protasiewicz, J.). The same day, the Court refused to take up the petitioners’ claims that legislative districts were “partisan gerrymanders.” The Court explained that there was not enough time

³² *Id.*

before the 2024 elections to address partisan-gerrymandering claims given “the need for extensive fact-finding (if not a full-scale trial).” *Clarke v. Wis. Elections Comm’n*, 2023 WI 70, --- Wis. 2d ---, 995 N.W.2d 779, 781. The case was reduced to a dispute about Wisconsin’s constitutional contiguity requirement for state legislative districts, Wis. Const. art. IV, §§4-5, an issue both factually absent for *Johnson II*’s congressional lines and legally irrelevant to Wisconsin congressional districts.

In December, this Court held that the state legislative districts were unconstitutionally noncontiguous and invited parties to propose remedies redrawing assembly and senate districts statewide “in time for the 2024 election.” *Clarke v. Wis. Elections Comm’n*, 2023 WI 79, ¶¶4, 75, --- Wis. 2d ---, 998 N.W.2d 370. For those proposed assembly and senate districts, the Court “overrule[d] any portions of *Johnson I*, *Johnson II*, and *Johnson III* that mandate a least change approach.” *Id.* ¶63. That overruling did not purport to extend to the congressional districts—not at issue in *Clarke*—nor did it address the federal Elections Clause in any way.

On January 12, 2024, parties in *Clarke* proposed sweeping statewide redraws designed to “shrink” Republican majorities in the state senate and assembly.³³

D. On January 16, 2024—presumably after seeing parties’ proposed remedies in *Clarke*—Hunter Intervenor moved for relief from this Court’s earlier decision and judgment adopting the Governor’s proposed congressional districts as the current congressional district lines. They argue that *Clarke*’s overruling of *Johnson I*’s “mandate” of “a least change approach,” 2023 WI 79, ¶63, leaves the current congressional map with “no basis in Wisconsin law,” Memo. ISO Mot. Relief J. 17-18, even though they nowhere allege that the Governor’s congressional districts violate any actual state or federal constitutional provision. Then they say what they really want: a statewide redraw of the congressional map less favorable to Republicans. *Id.* at 8.

³³ Scott Bauer, *Wisconsin Republicans’ large majorities expected to shrink under new legislative maps*, AP (Jan. 15, 2024), <https://bit.ly/4b5S1dk> (App.107).

ARGUMENT

I. Due Process Requires Justice Protasiewicz's Recusal.

The Due Process Clause of the Fourteenth Amendment “guarantees ‘an absence of actual bias’ on the part of a judge.” *Williams*, 579 U.S. at 8. Recusal thus is necessary when a judge’s participation in a case creates a “serious risk,” “based on objective and reasonable perceptions,” of “actual bias or prejudgment.” *Caperton*, 556 U.S. at 884.

There is a serious risk of prejudgment here because Justice Protasiewicz’s statements during her campaign show that she has prejudged this case. *See Williams*, 579 U.S. at 12. Campaign statements that “something’s wrong” with the 6-2 Republican majority in Wisconsin’s congressional delegation, that maps are “rigged,” that least-changes is “totally unfair,” and that the *Johnson* dissenters were right might be good and well on the campaign trail, but they are not without consequences in the courtroom.

There also is a serious risk of actual bias here. The “Democratic law firm” that asks this Court to reopen this case boasts that they are “the nation’s largest law firm focused on representing the Democratic Party” and “Democratic campaigns,” and its attorneys “have

collectively represented hundreds of Democratic campaigns, organizations, and PACs—including every national Democratic Party organization.”³⁴ Coincidentally, they are back in this Court after the Democratic Party of Wisconsin contributed \$10 million to Justice Protasiewicz’s campaign, marking “a significant and disproportionate influence” on her election. *Caperton*, 556 U.S. at 884. And they are asking the Court for new districts to reduce what they call “partisan unfairness.” Memo. ISO Mot. Relief J. 8.

A. Due process requires recusal so that the case is not unconstitutionally pre-decided.

Hunter Intervenor’s motion requires this Court to decide whether the *Johnson II* districts “suffer[] from serious partisan unfairness” and must be redrawn. Memo. ISO Mot. Relief J. 17. That question was pre-decided on the campaign trail: “something’s wrong” with the congressional districts adjusted by this Court in this case—specifically, the politics.³⁵ And Justice Protasiewicz said she agreed

³⁴ See *About*, Elias Law Grp., <https://perma.cc/DGA3-GU52> (App.111) (“Elias Law Group is the nation’s largest law firm focused on representing the Democratic Party, Democratic campaigns, nonprofit organizations, and individuals committed to securing a progressive future.”); see also Van Wagtendonk, *supra* n.8, <https://perma.cc/TX2L-C6SG> (App.55).

³⁵ *Supreme Court Debate*, *supra* n.3, at 29:20-30:10, <https://bit.ly/3HAtZtv>.

with the dissenters *in this very case*.³⁶ Such campaign statements evince at least a “serious risk” of “prejudgment.” *Caperton*, 556 U.S. at 884. And a due process “problem arises when the judge has prejudged the facts or the outcome of the dispute before her.” *Franklin v. McCaughtry*, 398 F.3d 955, 962 (7th Cir. 2005).

1. Justice Protasiewicz's public statements indicate that Hunter Intervenor's motion has been prejudged.

Hunter Intervenors’ motion argues that the congressional map, adopted using a least-change approach, “has a profoundly unfair partisan impact.” Memo. ISO Mot. Relief J. 21. Justice Protasiewicz already said she agrees: “that [least-change] methodology is totally unfair.”³⁷ “I see no basis for it in the Constitution, no basis in caselaw.”³⁸ “There’s no legal precedent.”³⁹ “You look at Congress—you know, we have eight seats—six are red, two are blue, in a battleground state. So,

³⁶ Redman, *supra* n.6, <https://perma.cc/5KLA-S2FV> (App.51).

³⁷ *Supreme Court Debate*, *supra* n.3, at 29:21-29:28, <https://bit.ly/3HAtZtv>.

³⁸ Shawn Johnson, *Wisconsin Supreme Court candidates discuss abortion, redistricting at Madison forum*, Wis. Pub. Radio (Jan. 9, 2023), <https://perma.cc/NF68-NQ35> (App.114).

³⁹ Schultz, *supra* n.17, <https://perma.cc/R45C-RDPV> (App.76).

we know something's wrong."⁴⁰ "We know the maps are not fair. . .

We have battleground elections. We know they are not fair.”⁴¹

Hunter Intervenor asserts that the current congressional map “suffers from serious partisan unfairness” and “is ‘extremely favorable to the Republican Party’ — . . . more skewed than the vast majority of congressional plans from comparable states over the past three redistricting cycles.” Mem. ISO Mot. Relief J. 17, 21-22. That’s not even true—the map was drawn by Governor Evers, and based upon the bipartisan 2011 map, *Baldus v. Members of Wis. Gov’t Accountability Bd.*, 849 F. Supp. 2d 840, 853-54 (E.D. Wis. 2012) (three-judge court). And yet, Justice Protasiewicz already said she agrees with Hunter Intervenor: “something’s wrong” with the congressional map.⁴² The least-changes approach is “totally unfair.”⁴³ And “[i]f you look at the dissent in that maps case” — this case — “that dissent is what I will tell you I agree with.”⁴⁴ “I believe the gerrymandering decision” — this case —

⁴⁰ *Supreme Court Debate*, *supra* n.3, at 29:40-29:49, <https://bit.ly/3HAtZtv>.

⁴¹ Bayatpour, *supra* n.24, <https://perma.cc/87BY-66CB> (App.86).

⁴² *Supreme Court Debate*, *supra* n.3, at 29:40-29:49, <https://bit.ly/3HAtZtv>.

⁴³ *Id.* at 29:21-29:28.

⁴⁴ Redman, *supra* n.6, <https://perma.cc/5KLA-S2FV> (App.51).

"was wrong. . . . I can tell you my values and common sense tell you that it's wrong."⁴⁵ "[T]he maps"—adopted in this case—"are wrong."⁴⁶ Based on her repeatedly publicly stated view that *Johnson's* remedy was "gerrymandered," "rigged," "unfair," and "wrong," Justice Protasiewicz invited an opportunity "to have a fresh look at our maps"⁴⁷ and "a fresh look at the gerrymandering question."⁴⁸ And she promised a fresh outcome: "Precedent changes when things need to change to be fair."⁴⁹ Electing her could change "the outcome of the 2024 election," she promised.⁵⁰

While these statements might be permissible speech on the campaign trail, they require recusal in the courtroom. Justice Protasiewicz cannot now decide this case that she has publicly prejudged. *See Williams*, 579 U.S. 1 (holding state supreme court justice had to recuse from prisoner's post-conviction petition where justice gave

⁴⁵ Schultz, *supra* n.1, <https://perma.cc/HC4L-NFUS> (App.10).

⁴⁶ Hess, *supra* n.1, <https://perma.cc/8T33-Z5M6> (App.33).

⁴⁷ Johnson, *supra* n.5, <https://perma.cc/W2YA-WPA2> (App.46).

⁴⁸ Opoien & Kelly, *supra* n.15, <https://perma.cc/THH2-VH3Q> (App.72).

⁴⁹ Matt Mencarini, *How could the 2023 Wisconsin Supreme Court election impact medical malpractice lawsuits?*, PBS Wis. (Mar. 31, 2023), <https://perma.cc/V87K-LC4C> (App.119).

⁵⁰ @janetforjustice, *supra* n.7, <https://perma.cc/YAL9-JR8R> (App.53); Janet for Justice, *supra* n.7, <https://perma.cc/HVD7-PXD5> (App.54).

approval to seek death penalty in prisoner's case as district attorney nearly 30 years earlier). For example, U.S. Supreme Court Justice Antonin Scalia—whom Justice Protasiewicz invoked repeatedly in her *Clarke* opinion refusing to recuse—recused in *Elk Grove Unified School District v. Newdow*, a case concerning the constitutionality of the phrase “under God” in the Pledge of Allegiance, after he publicly criticized the case he was asked to review.⁵¹

Due process entitles every litigant “to ‘a proceeding in which he may present his case with assurance’ that no member of the court is ‘predisposed to find against him.’” *Id.* at 16. The prejudgment shown on the campaign trail is not “neutral” as required by the Due Process Clause. *Ward v. Village of Monroeville*, 409 U.S. 57, 62 (1972). “[T]he balance” is not “nice, clear and true” as due process requires; it has already tipped. *Tumey v. Ohio*, 273 U.S. 510, 532 (1927); *see*

⁵¹ See Caprice L. Roberts, *The Fox Guarding the Henhouse?: Recusal and the Procedural Void in the Court of Last Resort*, 57 Rutgers L. Rev. 107, 122-25 (2004); *see also* Jacqueline L. Salmon, *Scalia Defends Public Expression of Faith*, Wash. Post. (Jan. 13, 2003), <https://perma.cc/VRV2-TU3F> (App.123) (“In a short speech to about 150 people gathered in a small park in Fredericksburg . . . , Scalia criticized court decisions in recent years that have outlawed expressions of religious faith in public events. He cited as an example a California federal court ruling last summer that the words ‘under God’ in the Pledge of Allegiance were a violation of the separation of church and state.”).

Williams, 579 U.S. at 9 (describing “risk that the judge ‘would be so psychologically wedded’ to . . . her previous position . . . that [she] ‘would consciously or unconsciously avoid the appearance of having erred or changed position’”). Justice Protasiewicz has already said the map Hunter Intervenors want redrawn is “gerrymandered,” “rigged,” “unfair,” and “wrong.” *See supra* pp.12-16. She expressly stated that she “agree[s]” with “the dissent” in this very case⁵² and that the majority was “totally unfair.”⁵³ These statements are a promise to “ma[k]e new law” in this case, to achieve a desired outcome. *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 822 (1986). They “mean she has clearly prejudged the case”⁵⁴ in a way irreconcilable with due process. The statements show that she “has prejudged the facts or the outcome of the dispute before her”; thus, she “cannot render a decision that comports with due process.” *Franklin*, 398 F.3d at 962.

⁵² Redman, *supra* n.6, <https://perma.cc/5KLA-S2FV> (App.51).

⁵³ *Supreme Court Debate*, *supra* n.3, at 29:21-29:28, <https://bit.ly/3HAtZtv>.

⁵⁴ Editorial Board, Opinion, *Judicial Ethics at Work in Wisconsin*, Wall St. J. (Aug. 2, 2023) <https://perma.cc/8Q6T-CHL6> (App.125).

2. The context of Justice Protasiewicz's public statements underscores the risk of prejudgment.

The context of Justice Protasiewicz’s campaign statements further confirms the serious risk of prejudgment. *Caperton*, 556 U.S. at 884. Justice Protasiewicz’s public criticism of the electoral maps no doubt had a “significant . . . influence in placing [her] on this case.” *Id.* at 884. It was a focal point of her successful campaign. As one commentator put it, Justice Protasiewicz “campaign[ed] against the gerrymandered maps and then won her election in a landslide.”⁵⁵

The central “influence” Justice Protasiewicz’s criticism of the maps played on her “election under all the circumstances ‘would offer a possible temptation to the average . . . judge to . . . lead [her] not to hold the balance nice, clear and true.’” *Caperton*, 556 U.S. at 885. Justice Protasiewicz publicly staked out her position on the maps. The logical

⁵⁵ Ian Millhiser, *America's worst gerrymander may soon finally die*, Vox (Aug. 3, 2023), <https://perma.cc/E4U7-GMF6> (App.128); see also Reid J. Epstein, *Liberal Wins Wisconsin Court Race, in Victory for Abortion Rights Backers*, N.Y. Times (Apr. 4, 2023), <https://perma.cc/A6NP-S4TC> (App.133) (“Judge Protasiewicz made a calculation from the start of the race that Wisconsin voters would reward her for making clear her positions on abortion rights and the state’s maps—issues most likely to animate and energize the base of the Democratic Party.”); Shawn Johnson, *Justice Janet Protasiewicz is sworn in, giving liberals control of Wisconsin Supreme Court*, Wis. Pub. Radio (Aug. 1, 2023), <https://perma.cc/8KVV-MQDN> (App.136) (observing that Justice Protasiewicz’s criticism of the maps “helped her mobilize Democratic voters in her high-turnout, double-digit victory”).

inference is that she did so to appeal to major donors and voters. And she promised them that her victory would change “the outcome of the 2024 election.”⁵⁶ As one newspaper put it during her campaign, “No one believes she won’t overturn the maps in a future case.”⁵⁷ “The real question,” according to one commentator, “is not *if* the new majority will strike down these maps, but *when*.”⁵⁸ There is a significant risk Justice Protasiewicz “would consciously or unconsciously avoid the appearance of having erred or changed position.” *Williams*, 579 U.S. at 9.

B. The serious risk of prejudgment and bias cannot be downplayed.

Efforts to temper these statements do not erase them. Justice Protasiewicz described her views on the maps as statements about “values.” She explained that her “values and common sense tell you that [Johnson is] wrong.”⁵⁹ Whatever the label, her statements go

⁵⁶ @janetforjustice, *supra* n.7, <https://perma.cc/YAL9-JR8R> (App.53); Janet for Justice, *supra* n.7, <https://perma.cc/HVD7-PXD5> (App.54).

⁵⁷ Editorial Board, Opinion, *Wisconsin’s Judicial Election Donnybrook*, Wall St. J. (Feb. 26, 2023), <https://perma.cc/25X6-XD3X> (App.142).

⁵⁸ Mark Joseph Stern, *The Rule of Janet Is Here. Wisconsin Republicans Should Be Afraid.*, Slate (Aug. 3, 2023), <https://perma.cc/MK6M-EBHR> (App.143).

⁵⁹ Schultz, *supra* n.1, <https://perma.cc/HC4L-NFUS> (App.10).

directly to the merits of a specific case now before the Court. Justice Protasiewicz drew the connection herself: “I can’t tell you what I would do on a particular case, but I can tell you my values, and the maps are wrong.”⁶⁰ Justice Protasiewicz has said what she would do on this case: “that dissent is what I will tell you I agree with.”⁶¹

At times, Justice Protasiewicz followed her express declaration that the “maps are rigged” with assurances that “all of my decisions are going to be rooted in the law.”⁶² But pairing an express statement of prejudgment with general assurances does not somehow negate the appearance of prejudgment. *See, e.g., Papa v. New Haven Fed’n of Teachers*, 444 A.2d 196, 208-09 (Conn. 1982) (recusal required under Connecticut law where judge expressed prejudgment of a case in the newspaper, even though he “emphasized he was expressing his own opinions, separate from his actions in the courtroom”).

Justice Protasiewicz’s references to “values” and “common sense” are particularly problematic in the context of redistricting and

⁶⁰ Hess, *supra* n.1, <https://perma.cc/8T33-Z5M6> (App.33).

⁶¹ Redman, *supra* n.6, <https://perma.cc/5KLA-S2FV> (App.51).

⁶² Beleckis, *supra* n.2, <https://perma.cc/2QWV-69Q5> (App.38).

claims of partisan advantage. This Court already held in this very case that the Wisconsin Constitution provides no standards by which to judge whether an electoral map has “‘too much’ partisanship.” *Johnson I*, 2021 WI 87, ¶52; see also *Clarke*, 2023 WI 79, ¶71 (“consideration of partisan impact will not supersede constitutionally mandated criteria such as equal apportionment or contiguity”). Without any legal standards, Hunter Intervenor’s request for a new congressional map can be resolved only by political ones. See *Johnson I*, 2021 WI 87, ¶¶40–52. Indeed, *Clarke*’s “partisan impact” standard—left entirely undefined—effectively boils down to the “values” and “common sense” of a majority of justices. See *id.* ¶44 (“what constitutes a ‘fair’ map poses an entirely subjective question”). Accordingly, statements on the campaign trail about so-called “values” and “common sense,” leading to the conclusion that “something’s wrong” with a 6-2 Republican congressional delegation, are very much an indication of how a judge, without any legal standards to deploy, would resolve the policy question Hunter Intervenor would put before the Court.

Nor can Justice Protasiewicz's campaign statements be excused as mere "general observation[s] about the law." *Laird v. Tatum*, 409 U.S. 824, 836 n.5 (1972) (mem. of Rehnquist, J.). She expressly stated how she would apply the law in this case (the "Constitution" and "caselaw"⁶³) to the facts (the "rigged"⁶⁴ and "gerrymandered"⁶⁵ maps this Court adopted in *Johnson*). See *Franklin*, 398 F.3d at 962 (unlike "general opinion[s] regarding a law," statements evincing "the judge has prejudged the facts or the outcome of the dispute" are constitutionally disqualifying); Note, *Disqualification of Judges and Justices in the Federal Courts*, 86 Harv. L. Rev. 736, 758 (1973) ("Prejudgment of the merits of a case gives rise to a much greater danger of partiality or its appearance than do preexisting views on legal issues which may be involved in the case."). And she has announced that her mind is firmly made up on the outcome: "we know something's wrong" with the 6-2 Republican congressional delegation.⁶⁶ "The map issue is

⁶³ *Johnson*, *supra* n.38, <https://perma.cc/NF68-NQ35> (App.114).

⁶⁴ *Schultz*, *supra* n.1, <https://perma.cc/HC4L-NFUS> (App.10).

⁶⁵ *Opoien & Kelly*, *supra* n.15, <https://perma.cc/THH2-VH3Q> (App.73).

⁶⁶ *Supreme Court Debate*, *supra* n.3, at 29:40-29:49, <https://bit.ly/3HAtZtv>.

really kind of easy, actually.”⁶⁷ The maps are “[a]bsolutely, positively rigged.”⁶⁸

These statements also go far beyond garden-variety campaign rhetoric. As observers recognized, Justice Protasiewicz spoke with an unprecedented candor about her predetermined views on the *Johnson* maps. The campaign “featured comment . . . that went beyond the norm for judicial candidates.”⁶⁹ Justice Protasiewicz “pushed the envelope for a judicial candidate by offering voters explicit declarations of her views.”⁷⁰ And in doing so, she “shattered long-held notions of how judicial candidates should conduct themselves by making her political priorities central to her campaign.”⁷¹ The statements are “rare” and “exceptional.” *Caperton*, 556 U.S. at 884, 890.

Even by Justice Protasiewicz’s own logic in *Clarke*, recusal would be warranted here. In *Clarke*, Justice Protasiewicz described that case as “an unrelated civil case that involves different parties”

⁶⁷ Bauer, *supra* n.22, <https://perma.cc/SE77-ED4Z> (App.82).

⁶⁸ Schultz, *supra* n.1, <https://perma.cc/HC4L-NFUS> (App.10).

⁶⁹ Ruth Marcus, Opinion, *Wisconsin notwithstanding, electing judges is a terrible idea*, Wash. Post (Apr. 6, 2023), <https://perma.cc/ESK7-MNQQ> (App.149).

⁷⁰ Ronald Brownstein, *The First Electoral Test of Trump's Indictment*, Atlantic (Mar. 31, 2023), <https://perma.cc/CL5C-W5QY> (App.154).

⁷¹ Epstein, *supra* n.55, <https://perma.cc/A6NP-S4TC> (App.131).

and distinguished it from the “pending” case in *Caperton. Clarke*, 2023 WI 66, ¶¶12-15 (cleaned up). Even assuming *Clarke* were “an unrelated civil case” with “different parties” —it is not, *see Clarke*, 2023 WI 79, ¶¶93, 95, 123, 143-46 (Ziegler, C.J., dissenting)—here, Hunter Intervenors participated in *Johnson* and have filed a motion to reopen in *Johnson*. There is no writing around the fact that Justice Protasiewicz is being asked to cast a vote to reopen the very case that she said was wrongly decided, “unfair,” and “rigged.” That separates this case from merely “expressing an opinion on an issue.” *Contra Clarke*, 2023 WI 66, ¶62. Justice Protasiewicz has expressed an opinion *on this case*: inviting this motion to reopen to take a “fresh look” and stating her agreement with the *Johnson* dissenters. The only “judge shopping,” *id.* ¶74, is by Hunter Intervenors. Nearly two years after the Court entered the *Johnson II* injunction, they want the newly constituted Court to reopen the same case in accordance with their Democrat priorities and Democrat promises.

C. Recusal is required to prevent a constitutionally intolerable probability of actual bias given enormous Democratic Party campaign contributions.

The Due Process Clause guarantees a “fair trial in a fair tribunal.” *In re Murchison*, 349 U.S. 133, 136 (1955). A fair tribunal requires an “unbiased judge.” *Johnson v. Mississippi*, 403 U.S. 212, 216 (1971). Consistent with due process, “no judge ‘can . . . try cases where he has an interest in the outcome.’” *Lavoie*, 475 U.S. at 822. A judge must be “wholly disinterested,” *Williams*, 579 U.S. at 9, and “detached,” *Ward*, 409 U.S. at 62. A biased judge is thus constitutionally disqualified from hearing a case.

Due process “do[es] not require proof of actual bias.” *Caperton*, 556 U.S. at 883. Courts must determine whether the “situation is one which would offer a possible temptation to the average judge to lead him not to hold the balance nice, clear and true.” *Lavoie*, 475 U.S. at 822 (cleaned up). Courts assess whether “the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.” *Caperton*, 556 U.S. at 872. They consider “all the circumstances of th[e] case,” *id.* “under a realistic appraisal of psychological tendencies and human weakness,” *id.* at 883. The question is “whether, as an objective matter, the average judge in his position is

likely to be neutral, or whether there is an unconstitutional potential for bias.” *Williams*, 579 U.S. at 8 (cleaned up). Even the appearance of bias can be constitutionally disqualifying. See *Withrow v. Larkin*, 421 U.S. 35, 47 (1975) (“Not only is a biased decisionmaker constitutionally unacceptable but ‘our system of law has always endeavored to prevent even the probability of unfairness.’”).

In the context of judicial elections, the U.S. Supreme Court has held:

there is a serious risk of actual bias—based on objective and reasonable perceptions—when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising funds or directing the judge’s election campaign when the case was pending or imminent.

Caperton, 556 U.S. at 884. The Court identified three guiding considerations: (1) “the contribution’s relative size in comparison to the total amount of money contributed to the campaign”; (2) “the total amount spent in the election”; and (3) “the apparent effect such contribution had on the outcome of the election.” *Id.*

The due process claim in *Caperton* centered on a contribution of \$3 million to a campaign for the West Virginia Supreme Court by Don

Blankenship, the chairman, president, and CEO of A.T. Massey Coal Company. *Id.* at 873. His total contributions exceeded all other supporters. *Id.* So far so good, except that at the time of the campaign, the West Virginia Supreme Court was expected to hear the appeal of a \$50 million verdict against Massey. *Id.* The plaintiff in that suit moved to disqualify the new justice, which the justice denied. *Id.* And the West Virginia Supreme Court ultimately reversed the jury verdict against Massey. *Id.* at 874-75.

The U.S. Supreme Court reversed, holding that the justice's failure to recuse violated due process for two primary reasons. First, Blankenship had "a significant and disproportionate influence in placing [the new justice] on the case." *Id.* at 884. His \$3 million contribution "eclipsed the total amount spent by all other . . . supporters and exceeded by 300% the amount spent by [the new justice's] campaign committee." *Id.* The Court emphasized that "[d]ue process requires an objective inquiry into whether the contributor's influence on the election under all the circumstances would offer a possible

temptation to the average judge to lead him not to hold the balance nice, clear and true.” *Id.* at 885 (cleaned up).

Second, “[t]he temporal relationship between the campaign contributions, the justice’s election, and the pendency of the case” increased the “serious, objective risk of actual bias” because it was “apparent” that the target of the campaign contributions would “review a judgment that cost his biggest donor’s company \$50 million.” *Id.* at 886. Based on “these extreme facts,” the Court held that “the probability of actual bias rises to an unconstitutional level.” *Id.* at 886-87.

As it was in *Caperton*, here Justice Protasiewicz received “disproportionate” support in her campaign from a single donor that had a vested interest in the outcome of further proceedings in this case. *Caperton*, 556 U.S. at 884. The Democratic Party of Wisconsin’s contribution of nearly \$10 million is more than three times the size of the problematic contribution in *Caperton*. It accounts for 59% of the total amount spent by Justice Protasiewicz in the campaign, and it dwarfed

her opponent's total campaign expenditures of \$3.66 million.⁷² She has thus committed to recuse from all cases involving the Democratic Party of Wisconsin to preserve the perception that "she's fair."⁷³ And for good reason, for the Democratic Party's contribution gave her "a significant advantage over [her opponent] and his allies on TV ahead of the April election" and "was a big factor in the disparity in points on TV."⁷⁴ The Democratic Party of Wisconsin's contribution unquestionably had a "significant and disproportionate influence" on her election. *Caperton*, 556 U.S. at 884.

Moreover, as in *Caperton*, the “temporal relationship” between the Democratic Party’s contributions, Justice Protasiewicz’s election, and Hunter Intervenors’ motion creates a “serious, objective risk of actual bias.” *Id.* at 886. While the Democratic Party was contributing millions of dollars to Justice Protasiewicz’s campaign, Justice

⁷² *WisPolitics*, *supra* n.28, <https://perma.cc/8A97-2JHC> (App.93-94) (reporting total spending of more than \$56 million); Janet for Justice, *supra* n.29, <https://perma.cc/X6FA-QTSL> (App.96) (reporting \$16.54 million in campaign disbursements); Friends of Justice Daniel Kelly, *supra* n.29, <https://perma.cc/P2EW-D9KU> (App.98) (reporting \$3.66 million in campaign disbursements).

⁷³ Scott Bauer, *Protasiewicz pledges to recuse in lawsuits from Democrats, while Kelly declines to pledge for Republican cases*, PBS Wis. (Mar. 1, 2023), <https://perma.cc/NFX2-37GZ> (App.161).

⁷⁴ *WisPolitics*, *supra* n.28, <https://perma.cc/8A97-2JHC> (App.94).

Protasiewicz was on the campaign trail declaring Wisconsin’s districts to be “rigged” and welcoming an opportunity to revisit them. It was not only “reasonably foreseeable” that her election would lead to a new challenge to Wisconsin’s congressional districts; she invited it herself. *Id.* When Justice Protasiewicz was elected, “it became at once apparent that, absent recusal,” she would revisit *Johnson*—the alleged obstacle to her biggest donor’s control of the Wisconsin congressional delegation. *See id.* (noting that the newly elected justice “would review a judgment that cost his biggest donor’s company \$50 million”).

If the Democratic Party were trying to reopen this case in its own name, Justice Protasiewicz would recuse.⁷⁵ There is no basis for drawing a different line for Hunter Intervenors, who seek new districts more favorable to Democrats. Memo. ISO Mot. Relief J. 8. They allege no constitutional violation in the congressional districts; they ask only for a do-over to obtain a map less “favorable to the Republican Party.” *Id.* at 21-22. Their motion turns on assertions of “a marked *partisan* skew,” “*partisan* gerrymandering by the Legislature,” and

⁷⁵ Bauer, *supra* n.73, <https://perma.cc/NFX2-37GZ> (App.161).

“intolerable *partisan* unfairness.” *Id.* (emphasis added). Their very aim is to “reallocat[e] power and influence between political parties.” *Rucho v. Common Cause*, 139 S. Ct. 2484, 2502 (2019). Any suggestion that the motion does not sufficiently implicate the Democratic Party of Wisconsin is willfully blind to the facts. Recusal from this case should be automatic. The motion is simply another attempt by the Democratic Party’s leading law firm⁷⁶ to “cash in” after “[p]rogressives spent big to elect Justice Janet Protasiewicz.”⁷⁷ *Cf. State v. Herrmann*, 2015 WI 84, ¶40, 364 Wis. 2d 336, 867 N.W.2d 772 (Walsh Bradley, J.) (“judges must be perceived as beyond price”).

The nature of Hunter Intervenor’s motion heightens both the risk of actual bias and the resulting harm. Redistricting is “one of the most intensely partisan aspects of American political life.” *Rucho v. Common Cause*, 139 S. Ct. 2484, 2507 (2019). Hunter Intervenor’s request for a court-drawn map is a request for this Court to “recast itself as a redistricting commission in order to make its own political

⁷⁶ See *Vendor/Recipient Profile: Elias Law Group*, Open Secrets, <https://perma.cc/ZS8U-Z2V7> (App.163) (reporting nearly \$13 million from Democratic Congressional Campaign Committee for 2022 election cycle).

⁷⁷ Editorial Board, *supra* n.54, <https://perma.cc/8Q6T-CHL6> (App.124).

judgment about how much representation particular political parties deserve.” *Johnson I*, 2021 WI 87, ¶45 (cleaned up). A court engaging in this enterprise looks like “a policymaking body rather than a law-declaring one.” *Id.* ¶52. Concerns of bias are at their zenith.

* * *

With a campaign message so clear and Democrat donations at record levels,⁷⁸ “all the circumstances of this case” require recusal to avoid “a risk of actual bias or prejudgment” that the guarantee of due process will not tolerate. *Caperton*, 556 U.S. at 872, 884.

II. Wisconsin Law Requires Recusal.

Wisconsin state law also “creates a mandatory duty for judges to disqualify themselves in certain circumstances.” *State v. Allen*, 2010 WI 10, ¶43 n.17, 322 Wis. 2d 372, 778 N.W.2d 863 (per curiam). Relevant here, “[a]ny judge” —including any “supreme court justice[]” — “shall disqualify” herself from any case where “she cannot, or it appears . . . she cannot, act in an impartial manner” or she “has a

⁷⁸ Reid J. Epstein, *Costly Court Race Points to a Politicized Future for Judicial Elections*, N.Y. Times (Mar. 28, 2023), <https://perma.cc/8ZN2-QKXU> (App.165-67); see Brownstein, *supra* n.70, <https://perma.cc/K8X3-JBBV> (App.154) (“The juxtaposition of those two assertions can be head-spinning.”).

significant . . . personal interest in the outcome of the matter.” Wis. Stat. §757.19(1), (2)(f)-(g). In either of these circumstances, recusal “must occur.” *Id.* §757.19(4).

A. This case cannot be reopened in an impartial manner.

Wisconsin’s mandatory disqualification statute requires recusal when “a judge determines that, for any reason, he or she cannot, or it appears he or she cannot, act in an impartial manner.” Wis. Stat. § 757.19(2)(g). This Court’s rules likewise require recusal where a judge is not impartial or appears not to be impartial. Supreme Court Rule 60.04(4) provides that “a judge shall recuse himself or herself in a proceeding . . . when reasonable, well-informed persons knowledgeable about judicial ethics standards and the justice system and aware of the facts and circumstances the judge knows or reasonably should know would reasonably question the judge’s ability to be impartial.” SCR 60.04(4). The rule further provides for recusal when “[t]he judge, while a judge or a candidate for judicial office, has made a public statement that commits, or appears to commit, the judge with respect to . . . [a]n issue in the proceeding” or “[t]he controversy in the proceeding.” SCR 60.04(4)(f). This rule recognizes the simple reality

that campaign statements—like any other statements—can evince a judge’s partiality. Cf. *Storms v. Action Wis. Inc.*, 2008 WI 110, ¶21, 314 Wis. 2d 510, 754 N.W.2d 480 (“[J]udges and candidates for judicial office can announce their views on political and legal issues as long as they are not pledges or promises to decide cases in a certain way.”).

A judge who has predetermined the merits of a case is not impartial. “‘Impartiality’ means the absence of bias or prejudice in favor of, or against, particular parties, or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge.” SCR 60.01(7m). A judge who has prejudged a case does not have an open mind. Under the judicial ethics laws, then, “prejudgment can require recusal.” *Herrmann*, 364 Wis. 2d at 397 n.14 (Ziegler, J., concurring). No Wisconsin judge can prejudge a case. Wis. Stat. §757.19(2)(g).

Campaign statements specific to this case preclude Justice Protasiewicz from participating here. *See id.* Having campaigned on the idea that maps are “rigged,” “something’s wrong” with the

congressional maps, and *Johnson* was wrongly decided, Justice Protasiewicz cannot now cast a vote as to whether to reopen *Johnson*.

At the very least, because of Justice Protasiewicz’s campaign statements, it “appears . . . she cannot[] act in an impartial manner.” *Id.*; see SCR 60.04(4)(f). A judicial candidate’s campaign statements of prejudgment can give the impression that, “in order to obtain [victory], he deliberately was announcing in advance, without benefit of judicial oath, briefs, or argument, how he would decide a particular question that might come before him as a judge.” *Laird*, 409 U.S. at 836 n.5 (mem. of Rehnquist, J.). “Judges are not politicians, even when they come to the bench by way of the ballot.” *Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 437 (2015). When judicial candidates campaign like politicians by proclaiming how they intend to vote on particular matters, it creates the perception that they will not “apply the law without fear or favor.” *Id.* at 438; see *State ex rel. La Russa v. Himes*, 197 So. 762, 763 (Fla. 1940) (a judge’s “oath of office limits his declarations from the stump”).

B. Justice Protasiewicz has a significant personal interest in the outcome of this matter.

Wisconsin’s mandatory disqualification statute also requires
recusal when “a judge has a significant financial or personal interest
in the outcome of the matter.” Wis. Stat. §757.19(2)(f). Disqualification
under this provision is “fact specific” and “determined objectively.”
State v. Harrell, 199 Wis. 2d 654, 658, 546 N.W.2d 115 (1996). The “very
existence” of a significant personal interest in the outcome of a case
“creates a disqualification by law,” *id.*, regardless whether the judge
is actually “ab[le] to act impartially in a case,” *State v. Am. TV & Ap-
pliance of Madison, Inc.*, 151 Wis. 2d 175, 182, 443 N.W.2d 662 (1989).

Interests requiring recusal can be “financial” or other “personal interest[s].” Wis. Stat. §757.19(2)(f). The interest must be “substantial” rather than “remote.” *Goodman v. Wis. Elec. Power Co.*, 248 Wis. 52, 58, 20 N.W.2d 553 (1945). And “[i]t must be established by evidence and reasonable inferences.” *State ex rel. Dressler v. Cir. Ct. for Racine Cnty.*, 163 Wis. 2d 622, 643, 472 N.W.2d 532 (Ct. App. 1991).

Applied here, Justice Protasiewicz repeatedly declared to voters how she would vote on the merits of this case. *See supra* pp.12-16.

They were a centerpiece of her successful campaign. *See supra* pp.12-17. She assured voters that her election would change the “outcome of the 2024 election.” *Supra* p.15. And she scored nearly \$10 million in Democratic Party campaign contributions. *Supra* p.17.

Hunter Intervenors now offer Justice Protasiewicz exactly the opportunity she had asked for—a “fresh look”—with respect to the congressional maps. They do so in the very same case that Justice Protasiewicz already stated how she would rule: “that dissent is what I will tell you I agree with.”⁷⁹ Having invited this opportunity and campaigned on it, Justice Protasiewicz plainly has a personal interest in its outcome that requires her recusal.

* * *

In sum, Justice Protasiewicz’s campaign statements demonstrate that she “cannot, or it appears . . . she cannot, act in an impartial manner” and that she “has a significant . . . personal interest in the outcome of the matter.” Wis. Stat. §757.19(2)(f)-(g). She should therefore be recused under Wisconsin’s judicial ethics laws.

⁷⁹ Redman, *supra* n.6, <https://perma.cc/5KLA-S2FV> (App.51).

CONCLUSION

For the foregoing reasons, Movants' request that Justice Protasiewicz recuse from all aspects of this case.

Dated this 29th day of January, 2024.

Respectfully submitted,

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CERTIFICATION REGARDING LENGTH AND FORM

I hereby certify that this brief conforms to the rules contained in Wis. Stat. §809.81, which governs the form of documents filed in this court where Chapter 809 does not expressly provide for alternate formatting. The length of this brief is 7,836 words as calculated by Microsoft Word.

Dated this 29th day of January, 2024

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SUPREME COURT

No. 2021AP1450-OA

IN THE SUPREME COURT OF WISCONSIN

BILLIE JOHNSON, ERIC O'KEEFE, ED PERKINS, AND RONALD ZAHN,

Petitioners,

BLACK LEADERS ORGANIZING FOR COMMUNITIES, VOCES DE LA FRONTERA, LEAGUE OF WOMEN VOTERS OF WISCONSIN, CINDY FALLONA, LAUREN STEPHENSON, REBECCA ALWIN, CONGRESSMAN GLENN GROTHMAN, CONGRESSMAN MIKE GALLAGHER, CONGRESSMAN BRYAN STEIL, CONGRESSMAN TOM TIFFANY, CONGRESSMAN SCOTT FITZGERALD, LISA HUNTER, JACOB ZABEL, JENNIFER OH, JOHN PERSA, GERALDINE SCHERTZ, KATHLEEN QUALHEIM, GARY KRENZ, SARAH J. HAMILTON, STEPHEN JOSEPH WRIGHT, JEAN-LUC THIFFEAULT, AND SOMESH JHA,

Intervenors-Petitioners,

v.

WISCONSIN ELECTIONS COMMISSION, MARGE BOSTELMANN, in her official capacity as a member of the Wisconsin Elections Commission, JULIE GLANCEY, in her official capacity as a member of the Wisconsin Elections Commission, ANN JACOBS, in her official capacity as a member of the Wisconsin Elections Commission, DEAN KNUDSON, in his official capacity as a member of the Wisconsin Elections Commission, ROBERT SPINDELL, JR., in his official capacity as a member of the Wisconsin Elections Commission, AND MARK THOMSEN, in his official capacity as a member of the Wisconsin Elections Commission,

Respondents,

THE WISCONSIN LEGISLATURE, GOVERNOR TONY EVERS, in his official capacity, AND JANET BEWLEY SENATE DEMOCRATIC MINORITY LEADER, on behalf of the Senate Democratic Caucus,

Intervenors-Respondents.

MOTION TO RECUSE JUSTICE PROTASIEWICZ BY INTERVENOR-RESPONDENT WISCONSIN LEGISLATURE, PETITIONERS BILLIE JOHNSON, ERIC O'KEEFE, ED PERKINS, AND RONALD ZAHN, AND INTERVENORS-PETITIONERS CONGRESSMEN GLENN GROTHMAN, MIKE GALLAGHER, BRYAN STEIL, TOM TIFFANY, AND SCOTT FITZGERALD

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Intervenor-Respondent the Wisconsin Legislature; Petitioners Billie Johnson, Eric O’Keefe, Ed Perkins, and Ronald Zahn; and Intervenor-Petitioners Congressmen Glenn Grothman, Mike Gallagher, Bryan Steil, Tom Tiffany, and Scott Fitzgerald hereby move to recuse Justice Janet Protasiewicz. For the reasons stated in the accompanying memorandum of law, the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Wis. Stat. §§757.19(2)(f)-(g) require recusal.

1. Hunter Intervenor have asked this Court to reopen this case and redraw congressional district lines. They ask the Court to “resume the congressional remedial process” and draw districts less “favorable to the Republican Party,” Memo. ISO Mot. Relief J. 21-22, 33, “in time for the 2024 congressional elections,” Mot. Relief J. 3.

2. The existing congressional district boundaries were adopted by this Court as part of a mandatory injunction entered in 2022. See *Johnson v. Wis. Elections Comm’n (Johnson II)*, 2022 WI 14, 400 Wis. 2d 626, 971 N.W.2d 402. The Governor proposed that remedy,

and Hunter Intervenors said it complied with state and federal law and asked the Court to adopt it. *See* Hunter Br. 13 (Dec. 30, 2021).

3. During her campaign for a seat on the Wisconsin Supreme Court, Justice Protasiewicz publicly declared Wisconsin's districts "rigged" in favor of Republicans.¹ She criticized the Court's "least change" approach as "totally unfair."² As to the congressional maps, she stated, "You look at Congress—you know, we have eight seats—six are red, two are blue, in a battleground state. So, we know something's wrong."³ Justice Protasiewicz "welcome[d] the opportunity to have a fresh look at our maps."⁴ She said that she agreed with the dissenters in this case.⁵ And she promised supporters and

¹ Zac Schultz, *Candidates tangle over political issues, judicial perspectives at first 2023 Wisconsin Supreme Court forum*, PBS Wis. (Jan. 10, 2023), <https://perma.cc/HC4L-NFUS> (App.10); WisPolitics State Supreme Court Election Forum Tr. 45:25-46:7 (Jan. 9, 2023) (App.24-25); *see* Corrinne Hess, *Wisconsin Supreme Court candidate Janet Protasiewicz assails state's election maps as 'rigged,' Milwaukee J. Sentinel* (Jan. 9, 2023), <https://perma.cc/8T33-Z5M6> (App.33).

² Channel 3000 / News 3 Now, *Wisconsin Supreme Court debate presented by News 3 Now and WisPolitics*, at 29:20-30:10, YouTube, <https://bit.ly/3HAAtZtv> [hereinafter *Supreme Court Debate*].

³ *Id.*

⁴ Shawn Johnson, *In a supreme court race like no other, Wisconsin's political future is up for grabs*, NPR (Apr. 2, 2023), <https://perma.cc/W2YA-WPA2> (App.46).

⁵ Henry Redman, *Supreme Court candidates accuse each other of lying, extremism in sole debate*, Wis. Exam'r (Mar. 21, 2023), <https://perma.cc/5KLA-S2FV> (App.51).

donors that electoral districts could be redrawn to change “the outcome of the 2024 election.”⁶

4. Moreover, the Democratic Party of Wisconsin contributed nearly \$10 million to Janet Protasiewicz’s campaign—more than all other donors to her campaign combined, and more than three times the size of the campaign contribution that triggered the due process violation in *Caperton v. A.T. Massey Coal. Co.*, 556 U.S. 868 (2009).

5. The Due Process Clause of the Fourteenth Amendment to the United States Constitution requires recusal. A justice cannot decide a case she has prejudged or when her participation otherwise creates a serious risk of actual bias. Justice Protasiewicz’s public campaign statements establish a constitutionally intolerable risk that she has prejudged the merits of this case. She has already said, “If you look at the dissent in that maps case” — *this case* — “that dissent is what I will tell you I agree with.”⁷ And she has already said that “something’s wrong” with the existing 6-2 Republican congressional

⁶ @janetforjustice, Twitter (Mar. 27, 2023, 12:47 PM), <https://perma.cc/YAL9-JR8R> (App.53); Janet for Justice, Facebook (Apr. 3, 2023), <https://perma.cc/HVD7-PXD5> (App.54).

⁷ Redman, *supra* n.5, <https://perma.cc/5KLA-S2FV> (App.51).

delegation.⁸ In addition, the risk of actual bias exists here because the Democratic Party of Wisconsin—the primary and intended beneficiary of Hunter Intervenor’s motion to reopen this case to obtain redrawn congressional district lines more favorable to Democrats—was the main contributor to Justice Protasiewicz’s campaign for a seat on this Court, providing almost \$10 million of the \$16.7 million spent by her campaign.

6. Wisconsin law also requires Justice Protasiewicz to recuse from these proceedings because “she cannot, or it appears . . . she cannot, act in an impartial manner” and because “she has a significant . . . personal interest in the outcome of the matter.” Wis. Stat. §757.19(2)(f)-(g).

WHEREFORE, movants request that Justice Protasiewicz recuse from all aspects of these proceedings, including Hunter Intervenor’s pending motion for relief from judgment.

⁸ *Supreme Court Debate*, *supra* n.2, <https://bit.ly/3HAtZtv>.

Dated this 29th day of January, 2024.

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In the Supreme Court of Wisconsin

BILLIE JOHNSON, ERIC O'KEEFE, ED PERKINS *and* RONALD ZAHN,
PETITIONERS,

BLACK LEADERS ORGANIZING FOR COMMUNITIES, VOCES DE LA
FRONTERA, LEAGUE OF WOMEN VOTERS OF WISCONSIN, CINDY FALLONA,
LAUREN STEPHENSON, REBECCA ALWIN, CONGRESSMAN GLENN
GROTHMAN, CONGRESSMAN MIKE GALLAGHER, CONGRESSMAN BRYAN
STEIL, CONGRESSMAN TOM TIFFANY, CONGRESSMAN SCOTT FITZGERALD,
LISA HUNTER, JACOB ZABEL, JENNIFER OH, JOHN PERSA, GERALDINE
SCHERTZ, KATHLEEN QUALHEIM, GARY KRENZ, SARAH J. HAMILTON,
STEPHEN JOSEPH WRIGHT, JEAN-LUC THIFFEAULT, *and* SOMESH JHA,
INTERVENOR-PETITIONERS,

v.

WISCONSIN ELECTIONS COMMISSION, MARGE BOSTELMANN, IN HER
OFFICIAL CAPACITY AS A MEMBER OF THE WISCONSIN ELECTIONS
COMMISSION, JULIE GLANCEY, IN HER OFFICIAL CAPACITY AS A MEMBER OF
THE WISCONSIN ELECTIONS COMMISSION, ANN JACOBS, IN HER OFFICIAL
CAPACITY AS A MEMBER OF THE WISCONSIN ELECTIONS COMMISSION,
DEAN KNUDSON, IN HIS OFFICIAL CAPACITY AS A MEMBER OF THE
WISCONSIN ELECTIONS COMMISSION, ROBERT SPINDELL, JR., IN HIS
OFFICIAL CAPACITY AS A MEMBER OF THE WISCONSIN ELECTIONS
COMMISSION, *and* MARK THOMSEN, IN HIS OFFICIAL CAPACITY AS A
MEMBER OF THE WISCONSIN ELECTIONS COMMISSION,
RESPONDENTS,

THE WISCONSIN LEGISLATURE, GOVERNOR TONY EVERS, IN HIS
OFFICIAL CAPACITY, *and* JANET BEWLEY, SENATE DEMOCRATIC
MINORITY LEADER, ON BEHALF OF THE SENATE DEMOCRATIC CAUCUS,
INTERVENOR-RESPONDENTS.

RESPONSE OF THE CONGRESSMEN IN OPPOSITION TO *HUNTER* INTERVENOR-PETITIONERS' MOTION FOR RELIEF FROM JUDGMENT

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INTRODUCTION

On January 16, 2024, the *Hunter* Intervenor-Petitioners filed a challenge to this Court's *March 3, 2022* selection of Democratic Governor Tony Evers' remedial congressional map in *Johnson v. Wis. Elections Commission*, 2022 WI 14, 400 Wis. 2d 626, 971 N.W.2d 402, after holding that the map "complie[d] with the federal Constitution and all other applicable laws," *id.* ¶ 9. Governor Evers had based what became the *Johnson II* map on Wisconsin's 2011 congressional map, which map a federal court had explained was a bipartisan negotiated map. *Baldus v. Members of Wis. Gov't Accountability Bd.*, 849 F. Supp. 2d 840, 853–54 (E.D. Wis. 2012) (per curiam). The *Hunter* Intervenor-Petitioners nevertheless ask this Court to throw out the *Johnson* Congressional map based upon the theory that *Clarke v. Wisconsin Elections Commission*, 2023 WI 79, 998 N.W.2d 370, retroactively renders that map unlawful. This Court should deny this untimely Motion, which is based upon the cynical hypothesis that this Court will throw out Governor Evers' proposed map because the map did not generate more Democratic Congressmen in the Wisconsin delegation in the 2022 elections.

As a threshold matter, the *Hunter* Intervenor-Petitioners' egregious delay in filing this Motion should be the end of the matter. The *Hunter* Intervenor-Petitioners should have raised their objections to *Johnson II*'s adoption of a remedial congressional map more than a year and a half ago, by filing a timely motion for reconsideration under Wis. Stat. § (Rule) 809.24(1). If that delay were not enough, the *Hunter* Intervenor-Petitioners did not even file their Motion on or around August 2, 2023, when the *Clarke* petitioners challenged the *Johnson* state legislative maps. The *Hunter* Intervenor-Petitioners' inexcusable delay has created a deeply unfair situation. To take just one example, the undersigned had no reason to participate in *Clarke*, given that the petitioners there decided only to challenge the state legislative maps. But now the *Hunter* Intervenor-Petitioners seek to bootstrap *Clarke* to invalidate the *Johnson II* congressional map. That clumsy maneuver, if successful, would deprive the undersigned of any fair notice or opportunity to be heard on issues critically impacting their core interests.

The *Hunter* Intervenor-Petitioners' Motion fails for multiple other reasons. *First*, *Clarke* overruled *Johnson*'s least-change-

focused approach and endorsed a different method for adopting a remedial state legislative map when a prior one is found to be unlawful. But that new approach is only relevant *after* a finding that a map is illegal in some respect; here, the *Hunter* Intervenor-Petitioners do not challenge the substantive lawfulness of the *Johnson II* congressional map. *Second*, *Clarke* did not (and could not have) overruled *Johnson*’s “least change” holding as to remedial congressional maps, in particular, given that any judicial changes to legislatively adopted maps (like the 2011 congressional map) are subject to the U.S. Constitution’s Elections Clause, which is an issue upon which *Clarke* did not opine. *Third*, the *Hunter* Intervenor-Petitioners are not entitled to relief from the *Johnson II* judgment because they have not shown “extraordinary circumstances” or “significant change in circumstances” under either Wis. Stat. § 806.07(1)(g) or (h).

While this Court should have no trouble denying the *Hunter* Intervenor-Petitioners' Motion out of hand, if this Court were inclined to consider granting any relief, there is not enough time to adjudicate these issues fairly before the 2024 elections. Even following the timeline set by *Clarke* alone, there is not enough time

for the parties to propose, and for this Court to adopt, a new congressional map by the March 15, 2024, deadline that the Wisconsin Elections Commission has identified. In any event, far more time is necessary here than in *Clarke*, given that the *Hunter* Intervenor-Petitioners only just filed their Motion. Before proceeding any further, this Court would need to permit additional proceedings to address at least two threshold issues. First, this Court must afford the parties the opportunity to litigate fully whether reopening the judgment is equitable under Wis. Stat. § 806.07(1)(g) or (h), by allowing adversarial testing of the *Hunter* Intervenor-Petitioners' allegation that the map is a pro-Republican gerrymander. Second, this Court must also give the parties the chance to litigate the issue of whether the U.S. Constitution's Elections Clause requires that state courts use a "least changes" approach when adopting remedial congressional maps, as *Johnson* held. *Clarke* had no occasion to consider this Elections Clause issue, let alone decide whether to overrule *Johnson* on this point, because no congressional map was at issue.

This Court should deny the Motion in its entirety.

BACKGROUND

A. In 2011, the Wisconsin State Legislature adopted a new congressional map. *Johnson v. Wis. Elections Comm'n*, 2021 WI 87, ¶¶ 1, 8, 399 Wis. 2d 623, 967 N.W.2d 469 (“*Johnson I*”), *overruled in part by Clarke*, 2023 WI 79. After this map’s enactment, certain plaintiffs challenged the map as an unconstitutional partisan gerrymander before a federal three-judge panel, in *Baldus*, 849 F. Supp. 2d at 840. While dismissing that partisan-gerrymandering claim for failure to identify a justiciable standard, the panel explained that based upon the evidence before that court, the 2011 congressional map was drafted in a “bipartisan process” that “incorporate[d] . . . feedback” from both Wisconsin Republicans and Wisconsin Democrats in Congress. *Id.* at 853–54. Thereafter, other plaintiffs challenged the 2011 Assembly map as a partisan gerrymander, while declining to challenge the 2011 congressional map on that basis. *See Gill v. Whitford*, 138 S. Ct. 1916, 1922–23 (2018).

B. Following the 2020 census, the U.S. Constitution’s “one person, one vote” rule required Wisconsin to redraw both its 2011 congressional district map, *Wesberry v. Sanders*, 376 U.S. 1, 7–8 (1964); U.S. Const. art. I, § 2, and its 2011 state legislative map,

Reynolds v. Sims, 377 U.S. 533, 561 (1964); U.S. Const. amend. XIV, § 2, as the prior maps had become unconstitutionally malapportioned, *Johnson I*, 2021 WI 87, ¶ 1. Anticipating political gridlock, the *Johnson* Petitioners initiated this case on August 23, 2021, by filing of a Petition For Original Action—over 14 months before the November 8, 2022 election. Pet. Original Action (“*Johnson* Pet.”), *Johnson*, No.2021AP1450-OA (Wis. Aug. 23, 2021). The *Johnson* Petitioners asserted the claim that the State’s 2011 state legislative map and 2011 congressional-district map were now malapportioned and asked this Court to adopt remedial maps in advance of the 2022 election, given the political deadlock over the map-drawing process that ultimately occurred. *Johnson* Pet. ¶¶ 29–32, 45. This Court granted the *Johnson* Petition on September 22, 2021. Order, *Johnson*, No.2021AP1450-OA (Wis. Sept. 22, 2021), and the undersigned, the *Hunter* Intervenor-Petitioners,¹ and Governor Tony Evers (among others) intervened. Order, *Johnson*, No.2021AP1450-OA (Wis. Oct. 14, 2021).

¹ At the time of their intervention, the *Hunter* Intervenor-Petitioners were Lisa Hunter, Jacob Zabel, Jennifer Oh, John Persa, Geraldine Schertz, and Kathleen Qualheim. *See* Mot. to Intervene, *Johnson*, No.2021AP001450-OA (Wis. Oct. 6, 2021). Only Lisa Hunter, Jacob Zabel, and John Persa filed the present Motion For Relief From Judgment. Mem. In Support Of Mot. (“Mem.”) 9 n.2, *Johnson*, No.2021AP1450-OA (Wis. Jan. 16, 2024).

This Court issued *Johnson I* on November 30, 2021, 2021 WI 87—months before the March 1, 2022 date that the Wisconsin Elections Commission (“WEC”) had put forward as the deadline needed for new maps, see WEC Letter Br., *Johnson*, No.2021AP1450-OA (Wis. Oct. 6, 2021). *Johnson I* entered the (uncontested) declarations that the 2011 congressional map and the 2011 state legislative map were now malapportioned under Article I, Section 2 and the Equal Protection Clause of the U.S. Constitution, respectively; identified the legal requirements for remedial congressional maps and state legislative maps in Wisconsin; and set out the process that this Court would use to adopt remedial maps, including the remedial congressional map. *Johnson I*, 2021 WI 87, ¶¶ 2, 16, 24–38, 64–79.

As for the legal requirements for a remedial congressional map in Wisconsin, *Johnson I* explained that such a map must comply with the U.S. Constitution’s one person, one vote requirement, *id.* ¶ 25; the federal statutory prohibition on multimember congressional districts, *id.* ¶ 27; and the Voting Rights Act, *id.* *Johnson I* explained that it would not consider the “partisan fairness” of the congressional districts, as that presents

a “non-justiciable,” “purely political question.” *Id.* ¶¶ 39–40 (citing *Rucho v. Common Cause*, 139 S. Ct. 2484, 2494 (2019)).

Johnson I held that this Court would follow the “least change approach,” 2021 WI 87, ¶¶ 72–73, using the “existing maps ‘as a template’ and implementing only those remedies necessary to resolve constitutional or statutory deficiencies”—namely, as relevant here, the maps’ malapportionment—so that the remedial maps “reflect the least change necessary” to the prior legislatively adopted maps to bring them into legal compliance, *id.* ¶ 72 (citation omitted). As to the remedial congressional maps, in particular, *Johnson I* recognized that its “least change” approach followed from the U.S. Constitution’s Elections Clause, given the Legislature’s constitutional role in congressional redistricting under that Clause. 2021 WI 87, ¶ 12. “[T]he United States Constitution does not substantially constrain state legislatures’ discretion to decide how congressional elections are conducted,” including as to the drawing and adopting of congressional redistricting maps. *Id.* (citing U.S. Const. art. I, § 4). So, when this Court adopts remedial maps, it must “[t]read[] [no] further than necessary to remedy [a map’s] current legal deficiencies,” so

as not to “intrude upon the constitutional prerogative of the political branches.” *Id.* ¶ 64. Thus, *Johnson’s* least-changes holding as to congressional maps was based, at least in part, on the U.S. Constitution’s Elections Clause. *See id.* ¶¶ 12, 64.

After this Court issued *Johnson I*, no party—including the *Hunter* Intervenor-Petitioners—moved for reconsideration, *see* Wis. Stat. § 805.17(3); instead, the parties prepared and submitted their proposed remedial maps to comply with *Johnson I’s* “least change approach,” *see Johnson II*, 2022 WI 14, ¶ 5. Pursuant to a November 17, 2021 order, the parties in *Johnson* submitted their proposed remedial maps, supporting briefs, and expert reports by December 15, 2021; their response briefs addressing other parties’ proposed remedial maps and expert reports by December 30, 2021; and their reply briefs in support of their proposed remedial maps by January 4, 2022. Order at 2, *Johnson*, No.2021AP1450-OA (Wis. Nov. 17, 2021). The undersigned, Governor Evers, the *Hunter* Intervenor-Petitioners, and the Citizen Mathematicians submitted proposed remedial congressional maps, along with supporting briefs and expert reports. *Johnson II*, 2022 WI 14, ¶ 7.

This Court then heard oral argument on the various proposed remedial maps on January 19, 2022, and issued its *Johnson II* opinion selecting the remedial maps for the State on March 1, 2022, *id.*—the date WEC had disclosed as the deadline for an orderly election, *supra* p.13. *Johnson II* clarified what this Court would consider when applying the “least change” analysis declared in *Johnson I* for congressional districts. *Johnson II*, 2022 WI 14, ¶¶ 11–25 & nn.7–8. Specifically, this Court’s “least change” approach considered two factors only: core retention maximization and compliance with all legal requirements. *Id.* *Johnson II* then adopted Governor Tony Evers’ proposed remedial congressional map, as well as Governor Evers’ proposed remedial state legislative maps. *Id.*, ¶¶ 7, 10, 52. This Court held that Governor Evers’ proposed congressional map “complie[d] with the federal Constitution and all other applicable laws,” *id.*, as well as with the Wisconsin Constitution’s requirements that the “districts [be] contiguous, sufficiently equal in population, sufficiently compact, appropriately nested, and pay due respect to local boundaries,” *id.* ¶ 9. Finally, this Court made similar conclusions in *Johnson II* as to Governor Evers’ proposed state legislative map. *Id.* ¶¶ 8–9.

The undersigned and the Legislature both applied to the U.S. Supreme Court to review this Court’s adoption of Governor Evers’ proposed remedial maps in *Johnson II*. See *Grothman v. Wis. Elections Comm’n*, 142 S. Ct. 1410 (2022); *Wis. Legislature v. Wis. Elections Comm’n*, 595 U.S. 398 (2022). The U.S. Supreme Court construed the Legislature’s application as a petition for certiorari, granted the petition, and reversed this Court’s adoption of Governor Evers’ remedial state legislative maps on federal equal-protection grounds, *Wis. Legislature*, 595 U.S. at 406, a violation that this Court subsequently remedied on April 15, 2022, by adopting the Legislature’s proposed remedial state legislative maps, *Johnson v. Wis. Elections Comm’n*, 2022 WI 19, 401 Wis. 2d 198, 972 N.W.2d 559 (“*Johnson III*”), *overruled in part by Clarke*, 2023 WI 79. The U.S. Supreme Court denied the undersigned’s application. *Grothman*, 142 S. Ct. 1410.²

Finally, and notably for purposes of the present Motion, the undersigned also timely moved this Court for reconsideration of

² In addition to their filing with the U.S. Supreme Court after *Johnson II*, the undersigned also moved this Court to, as relevant, permit all parties to submit new proposed remedial maps in light of *Johnson II*'s clarification of the “least change” approach. Congressmen’s Emergency Mot., *Johnson*, No.2021AP1450-OA (Wis. Mar. 7, 2022). This Court denied that Motion. Order, *Johnson*, No.2021AP1450-OA (Wis. Apr. 15, 2022).

Johnson II, as to its adoption of Governor Evers' proposed congressional map. Congressmen's Mot. Recons., *Johnson*, No.2021AP1450-OA (Wis. Mar. 23, 2022) (also renewing the then-pending request to submit new proposed remedial maps). This Court denied that reconsideration motion, with Justice R.G. Bradley dissenting. Order, *Johnson*, No.2021AP1450-OA (Wis. Apr. 15, 2022). The *Hunter* Intervenor-Petitioners did not move for reconsideration of *Johnson II*.

C. Shortly after the 2023 Wisconsin Supreme Court election, Law Forward threatened to file a new lawsuit challenging the *Johnson* maps "in the weeks or months after Justice-elect Janet Protasiewicz is sworn in." Jack Kelly, *Liberal Law Firm to Argue Gerrymandering Violates Wisconsin Constitution*, The Cap Times (Apr. 6, 2023).³ Law Forward's threat included challenging the *Johnson II* congressional map, as reflected in an amicus brief that Law Forward had filed in the U.S. Supreme Court. Br. Amici Curiae Law Forward, *et al.* Supp. Resp'ts at 31–37, *Moore v. Harper*, 600 U.S. 1 (2023) (No. 21-1271).

³ Available at https://captimes.com/news/government/liberal-law-firm-to-argue-gerrymandering-violates-wisconsin-constitution/article_2dfb9757-6d2d-58ba-9461-10b3d20d5f00.html (last visited Jan. 29, 2024).

D. On August 2, 2023, the *Clarke* petitioners, represented by Law Forward, made good—in part—on their threats, filing a new petition for original action challenging some of the *Johnson* maps. Pet. Original Action, *Clarke*, No.2023AP1399-OA (Wis. Aug. 2, 2023). The *Clarke* petitioners claimed that *Johnson III*'s remedial *state legislative maps* were unconstitutional partisan gerrymanders, violated the Constitution's contiguity requirement, and violated the Constitution's separation of powers. *See id.* at 3–4. But, contrary to Law Forward's initial posturing, the *Clarke* petitioners decided not to sue over the *Johnson II* congressional map. Law Forward was unable to bring a claim for partisan gerrymandering against the *Johnson II* congressional map—despite its initial threat—because the map was based on the 2011 congressional map, which was the result of a bipartisan process, and it was Governor Evers who proposed the alterations to that map. And it could not raise its contiguity or separation-of-powers arguments against the *Johnson II* congressional map either, as that map violated neither of those theories.

On October 6, 2023, this Court granted the *Clarke* petition and provided an initial schedule for the litigation. *Clarke v. Wis.*

Elections Comm’n, 2023 WI 70, 995 N.W.2d 779. This Court limited the *Clarke* petitioners’ case to their contiguity and separation-of-powers claims, including because the partisan-gerrymandering claim would “need [] extensive fact-finding (if not a full-scale trial),” which “counsels against addressing them at this time.” *Id.* at 781 (citation omitted). This Court set an expedited briefing schedule that ordered all parties and would-be intervenors to file briefs by October 16, 2023, addressing, among other questions, “what standards should guide this Court in imposing a remedy for the constitutional violation(s)” that this Court may find in the *Johnson III*’s legislative maps. *Id.* at 781–82. WEC told this Court that it needed remedial maps in place by March 15, 2024, in order to administer orderly elections. WEC’s Resp. at 3, *Clarke*, No.2023AP1399-OA (Wis. Oct. 16, 2023).

This Court issued *Clarke* on December 22, 2023. *Clarke*, 2023 WI 79. In the merits section of *Clarke*, this Court held that *Johnson III*'s remedial state legislative maps were unconstitutional under the Wisconsin Constitution because many districts in those maps were non-contiguous. *Id.* ¶¶ 10–55. Then, in the remedies section, this Court “describe[d] the role of this

Court in the remedial [map-drawing] process” and “articulate[d] the principles the [C]ourt will follow when adopting remedial maps.” *Id.* ¶ 56. As part of this remedies section, this Court overruled *Johnson’s* least-change-focused approach to drawing remedial state legislative maps, *id.* ¶ 63, meaning that this Court would no longer use the “least change” metric as “the overarching approach to adopting remedial maps,” *id.* ¶ 62. Instead, this Court explained that “least change (if actually agreed upon) could be relevant to traditional districting criteria” and “balanced with other factors,” in appropriate circumstances, as this Court evaluates potential remedial state legislative maps. *Id.*

E. On January 16, 2024—more than two years and one month after *Johnson I* adopted the “least change” approach, and more than a year and a half after *Johnson II* clarified that approach and adopted Governor Evers’ congressional map—the *Hunter* Intervenor-Petitioners filed the present Motion, asking this Court to throw out the *Johnson II* Congressional map because *Clarke* rejected the least-changes-only approach to remedying constitutional violations, and to replace that map with a new one

for the 2024 elections. See Memo. Supp. Mot. (“Mem.”), *Johnson*, No.2021AP1450-OA (Wis. Jan. 16, 2024).

ARGUMENT

I. The *Hunter* Intervenor-Petitioners’ Motion Is Plainly Untimely Under Wis. Stat. § 806.07(2)

A. Section 806.07(2) requires that motions for relief from judgment “shall be made within a reasonable time.” Wis. Stat. § 806.07(2). This is “necessary . . . to insure the orderly disposition of cases and encourage the finality of judgments, thus improving the administration of justice.” *Rhodes v. Terry*, 91 Wis. 2d 165, 173, 280 N.W.2d 248 (1979). Without this reasonable-time rule, “anytime a case was subsequently reversed, overruled, or called into question” in a manner that even arguably affected a previous final judgment, the “wheels of justice [would grind] to a halt under the sheer weight of . . . requests” for relief from judgment. *Sukala v. Heritage Mut. Ins. Co.*, 2005 WI 83, ¶ 30, 282 Wis. 2d 46, 698 N.W.2d 610 (Wilcox, J., concurring).

To determine whether a motion for relief from judgment complies with Section 806.07(2)’s “reasonable time” requirement, this Court performs a “case by case analysis” encompassing a “thorough review of all relevant factors,” *State ex rel. Cynthia M.S.*

v. Michael F.C., 181 Wis. 2d 618, 627, 630, 511 N.W.2d 868 (1994), and weighing the “particular facts and circumstances of the case,” *Rhodes*, 91 Wis. at 173. A court must “achieve a balance between fairness in the resolution of disputes and the policy favoring the finality of judgments.” *Vill. of Trempealeau v. Mikrut*, 2004 WI 79, ¶ 36, 273 Wis. 2d 76, 681 N.W.2d 190 (citation omitted). Thus, a court should only grant relief from judgment where “the sanctity of the final judgment is outweighed by ‘the incessant command of this Court’s conscience that justice be done in light of *all* the facts.’” *Id.* (citation omitted). This “comprehensive review of all factors relevant” can proceed by considering “the basis for the moving party’s delay, and prejudice to the party opposing the motion,” along with any appropriate consideration of “extraordinary circumstances.” *Cynthia M.S.*, 181 Wis. 2d at 627–28.

The *Hunter* Intervenor-Petitioners egregiously delayed in moving for relief from the *Johnson II* judgment—failing first to seek timely reconsideration, unlike the undersigned, and failing even to file their motion with the *Clarke* petitioners last August. *Infra* Part I.B. Further, the *Hunter* Intervenor-Petitioners’ delay is highly prejudicial. *Infra* Part I.C.

B. The *Hunter* Intervenor-Petitioners’ Motion For Relief is just an untimely request for reconsideration of *Johnson I* and/or *Johnson II*’s “least change” approach. See Wis. Stat. § (Rule) 809.24(1) (motion for reconsideration must be filed “within 20 days after the date of a decision”). Thus, the *Hunter* Intervenor-Petitioners’ one-year-and-ten-month delay in filing this Motion after this Court decided *Johnson II* is inexcusable, and this Court should reject the Motion on this basis alone. *Vill. Of Trempealeau*, 2004 WI 79, ¶ 36; *Cynthia M.S.*, 181 Wis. 2d at 628.

All of the substantive arguments that the *Hunter* Intervenor-Petitioners put forward in their Motion For Relief From Judgment could have—and, indeed, should have—been raised in timely motions for reconsideration after *Johnson I* and/or *Johnson II*. See Wis. Stat. § (Rule) 809.24. Specifically, in their Motion now, the *Hunter* Intervenor-Petitioners claim that that the “least change” approach adopted in *Johnson* “lacked any basis in this Court’s precedents, the Wisconsin Constitution, or past Wisconsin redistricting practice.” Mem.17–21. They argue that the *Johnson II* congressional map is an “intolerable” partisan gerrymander because it was based on “Wisconsin’s 2011

congressional map,” which, in the *Hunter* Intervenor-Petitioners’ view, “had a marked partisan skew.” Mem.21–26. And they allege that the “least change” approach “undermine[s] Wisconsin’s separation of powers” because, they claim, it infringes upon this Court’s “duty to exercise independent judgment,” rather than “[d]eferring” to the decisions of the political branches. Mem.26–31. These arguments belong in a timely, post-decision motion for reconsideration: each identifies “points of law” made in *Johnson I* and/or *Johnson II* that the *Hunter* Intervenor-Petitioners “allege[] to be erroneously decided,” while providing “supporting argument.” Wis. Stat. § (Rule) 809.24(1).

The undersigned’s own timely motion for reconsideration of *Johnson II* demonstrates how and when the *Hunter* Intervenor-Petitioners should properly have raised the arguments to this Court. In the undersigned’s view, *Johnson II* clarified *Johnson I*’s “least change” approach by explaining what factors this Court would consider—namely, core retention maximization and compliance with all other legal requirements—when adopting a proposed remedial congressional map. See Congressmen’s Mot. Recons. 1–4, *Johnson*, No.2021AP1450-OA (Wis. Mar. 23, 2022).

So, given *Johnson II*'s development of *Johnson I* on this point, the undersigned asked this Court to reconsider *Johnson II*'s decision adopting the Governor's proposed map and to allow the parties to submit new proposed maps under *Johnson II*'s clarified "least changes" standard. *Id.* at 3–4. This Court, as noted, denied the undersigned's timely post-*Johnson II* reconsideration motion. Order, *Johnson*, No.2021AP1450-OA (Wis. Apr. 15, 2022).

Nothing prevented the *Hunter* Intervenor-Petitioners from similarly moving for reconsideration after *Johnson I* and/or *Johnson II*. That is, after *Johnson I* and/or *Johnson II*, the *Hunter* Intervenor-Petitioners were fully capable of arguing to this Court, in a timely reconsideration motion, that the “least change” approach adopted by this Court lacked a sufficient basis in Wisconsin law, permitted intolerable partisan unfairness in the State’s remedial congressional map, and violated Wisconsin’s separation of powers, while asserting the very reasons articulated in their Motion here. *See* Mem.17–31. The *Hunter* Intervenor-Petitioners did not file such a motion, and they have not even attempted to offer any excuse for that failure now. *See* Mem.31–33. So, while the *Hunter* Intervenor-Petitioners claim that they

were “never given a chance [in the *Johnson* litigation] to propose a remedy informed by recognized redistricting principles,” Mem.20, that is the role of timely reconsideration motions, *see* Wis. Stat. § (Rule) 809.24(1).

If the *Hunter* Intervenor-Petitioners were being candid, they would have explained that they chose not to file this Motion within the 20-day period for reconsideration, *id.*, because they believed that they had little prospect of success before this Court, as constituted then. But the *Hunter* Intervenor-Petitioners choosing to wait to bring the claims in their Motion until the composition of this Court has changed is not a valid basis for delay. *See Vill. Of Trempealeau*, 2004 WI 79, ¶ 36; *Cynthia M.S.*, 181 Wis. 2d at 628. “The decision to overturn a prior case must not be undertaken merely because the composition of this Court has changed.” *Johnson Controls, Inc. v. Emps. Ins. of Wausau*, 2003 WI 108, ¶ 95, 264 Wis. 2d 60, 665 N.W.2d 257 (citing *State v. Stevens*, 181 Wis. 2d 410, 442, 511 N.W.2d 591 (1994) (Abrahamson, J., concurring)). To hold otherwise would only “undermine[] confidence in the reliability of court decisions.” *Id.*

While this Court in *Clarke* rejected the laches argument raised against the *Clarke* petitioners’ contiguity claim, 2023 WI 79, ¶¶ 41–43, that laches holding does not excuse the *Hunter* Intervenor-Petitioners’ extreme delay here. *Clarke* considered whether *Johnson III*’s state legislative map was unconstitutional based on a contiguity argument that no party in *Johnson* had previously raised, and thus that this Court had not previously considered. 2023 WI 79, ¶ 7. Here, in contrast, the parties already raised and exhaustively litigated the issue of whether the least-change-focused approach should apply to the adoption of remedial congressional maps in *Johnson*, and this Court specifically decided that issue when it concluded, in *Johnson I*, that it would follow that approach. See 2021 WI 87, ¶¶ 64–79.

In any event, the *Hunter* Intervenor-Petitioners’ delay in bringing their claims here is much worse than the *Clarke* petitioners’ wait. In *Clarke*, the petitioners brought their claims in August 2023, *Clarke*, 2023 WI 70, providing this Court over five months—a period that this Court believed respected “the need for expediency” in the case, 2023 WI 79, ¶ 76—to resolve the claims and adopt remedial legislative maps before the March 15, 2024

deadline that WEC had disclosed to this Court. WEC Resp. at 3, *Clarke*, No.2023AP1399-OA (Wis. Oct. 16, 2023)). The *Hunter* Intervenor-Petitioners waited until *January of the election year* to do the same, thereby depriving this Court and the parties of the opportunity to consider meaningfully the issues raised in their Motion, even on an expedited basis. *Contra Clarke*, 2023 WI 70.

C. The *Hunter* Intervenor-Petitioners' delay is prejudicial.

With regard to the People, the *Hunter* Intervenor-Petitioners’ delay in challenging the *Johnson II* congressional map created justifiable reliance on that map. Waiting to bring a redistricting challenge until after a challenged plan has governed elections can cause voter confusion because, especially after an election, “voters have come to know their districts and candidates,” *Fouts v. Harris*, 88 F. Supp. 2d 1351, 1354 (S.D. Fla. 1999), *aff’d sub nom. Chandler v. Harris*, 529 U.S. 1084 (2000)—including, for example, by volunteering for, or donating to, their candidates’ campaigns in their districts—and so they “will be confused by change,” *id.* By challenging the *Johnson II* remedial congressional map now, only about six weeks before the WEC must receive redistricting maps to run an orderly election, WEC Resp. at 3,

Clarke, No.2023AP1399 (Wis. Oct. 16, 2023), the *Hunter* Intervenor-Petitioners seek to upset the People's legitimate reliance interest and create deep uncertainty for the 2024 election and, more broadly, for the rest of the decade.

As to all congressional candidates and their supporters in the Wisconsin, including the undersigned and their supporters, the *Hunter* Intervenor-Petitioners' delay threatens their legitimate reliance interests in *Johnson II*'s remedial congressional map. All congressional candidates—incumbents and challengers alike—have been working diligently to understand the needs, concerns, and interests of their respective districts by investing time and resources to develop relationships with constituents, all based on the understanding that the *Johnson II* map would govern “all upcoming elections.” *Johnson II*, 2022 WI 14, ¶ 52; accord *League of Women Voters of Mich. v. Johnson*, 902 F.3d 572, 579 (6th Cir. 2018). That is, congressional candidates have invested substantial time developing the “relationship between” themselves as “representative[s]”—either incumbent representatives or hopeful representatives—and their “constituent[s],” so that they may win election in 2024 and effectively serve their districts. *League of*

Women Voters of Mich., 902 F.3d at 579. For example, as Congressman Steil previously explained to this Court, his district changed significantly under the *Johnson II* congressional map, absorbing several new communities that he had not previously represented. Second Aff. Congressman Bryan Steil, ¶¶ 6–8, *Johnson*, No.2021AP1450 (Wis. Mar. 7, 2022). Thus, Congressmen Steil had to expend significant time and resources to develop the “requisite close relationship” to secure the votes and represent the interests of these new constituents. *Id.* ¶ 8. Other congressional candidates, incumbent and challenger alike, have likewise expended similarly significant time and resources.

The undersigned’s reliance on the *Johnson II* remedial map was unquestionably reasonable and justified. The only two lawsuits filed to challenge the State’s remedial maps—*Clarke* and *Wright v. Wisconsin Elections Commission*, 2023 WI 71, 995 N.W.2d 771⁴—concerned *only* the remedial state legislative maps. *See Clarke*, 2023 WI 79; *Wright*, 995 N.W.2d 771, 772 (Ziegler, C.J., concurring). So, because *Clarke* did not involve the undersigned’s interests, they had no reason to participate in *Clarke*. But the

⁴ This Court denied the *Wright* Petition for Original Action on October 6, 2023. *See Wright*, 2023 WI 71.

Hunter Intervenor-Petitioners now seek retroactively to invalidate the *Johnson II* congressional map based on *Clarke*. Had the undersigned had any reason to anticipate that such a bizarre collateral attack on the congressional map was forthcoming based on what *Clarke* decided, they would have sought to intervene in *Clarke* to explain why any clarification or modification of *Johnson’s* “least changes” approach should not occur and, at minimum, should not apply to remedial congressional maps. *See infra* Part II.A.2. Thus, the *Hunter* Intervenor-Petitioners’ delay here has deprived the undersigned of fair “notice” that *Clarke* could affect their legitimate interests in the *Johnson II* judgment and any “meaningful” “opportunity for a hearing” in *Clarke*. *City of W. Covina v. Perkins*, 525 U.S. 234, 240 (1999).

D. The *Hunter* Intervenor-Petitioners' limited arguments regarding timeliness are all wrong. Mem.31–33.

The *Hunter* Intervenor-Petitioners concede that the reasonable-time inquiry under Section 806.07(2) must consider “all relevant fact[or]s,” Mem.31 (quoting *Cynthia M.S.*, 181 Wis. 2d at 627), but they then analyze only *one* supposedly relevant factor to the timeliness inquiry: this Court issuing *Clarke* on December 22,

2023, “over three weeks” before the *Hunter* Intervenor-Petitioners filed their Motion here, Mem.32. This is not the relevant time period for determining whether their Motion meets the “reasonable time” requirement. Rather, the *Hunter* Intervenor-Petitioners could have—and, indeed, should have—raised all of the arguments against the *Johnson II* judgment that they raise here in a timely filed motion for reconsideration, filed either within 20 days after *Johnson I* and/or *Johnson II*. *Supra* Part I.B. At minimum, the *Hunter* Intervenor-Petitioners could have asserted these arguments at the same time as the *Clarke* petitioners. Yet, the *Hunter* Intervenor-Petitioners do not even try to explain why they did not assert their challenge at those points in time. In any event, even if the *Hunter* Intervenor-Petitioners had some credible reason for not filing this Motion until now, that would not overcome the other powerful reasonable-time factors—namely, the extreme prejudice resulting from their delay. *See Cynthia M.S.*, 181 Wis. 2d at 627–28.

The *Hunter* Intervenor-Petitioners then cite *Cynthia M.S.*, *id.*, but that case is entirely unavailing, Mem.31–32. In *Cynthia M.S.*, this Court affirmed a circuit court’s order that the petitioner

had timely moved for relief from a paternity-action judgment, although the petitioner waited 11 years to seek relief. 181 Wis. 2d at 620–23, 627–30. This Court rested its decision primarily on three factors: (a) the petitioner was “unsophisticated,” “had been intimidated by the entire [legal] process,” and “lack[ed] [] experience with both the legal process and with [paternity] testing of this type”; (b) the circuit court found that the respondent “would not suffer prejudice” and had “elected not to present any evidence of prejudice”; and (c) in the “context of a paternity suit,” “circumstances may exist that contribute to a mother’s delay in pursuing a paternity action.” *Id.* at 628–29. Here, the *Hunter* Intervenor-Petitioners are represented by sophisticated counsel; the prejudice would be substantial if relief were granted, *see supra* Part I.C; and none of the sensitivities particular to paternity actions bear even remotely in the redistricting context.

II. The *Hunter* Intervenor-Petitioners’ Motion Is Fatally Flawed In Multiple Other Respects

Under Section 806.07, a court may “relieve a party or legal representative from a judgment” upon a timely request if, among other specified reasons: “(g) It is no longer equitable that the judgment should have prospective application” in light of an

intervening change in circumstances, Wis. Stat. § 806.07(1)(g); or “(h) [there are] [a]ny other reasons justifying relief from the operation of the judgment” in light of an intervening change in circumstances, *id.* § 806.07(1)(g). A party seeking relief from judgment under either Subsection 806.07(1)(g) or Subsection 806.07(1)(h) faces a heavy burden. *See Wis. Dep’t of Corr. v. Kliesmet*, 211 Wis. 2d 254, 260–61, 564 N.W.2d 742 (1997) (addressing Subsection 806.07(1)(g)); *State ex rel. M.L.B. v. D.G.H.*, 122 Wis. 2d 536, 549–50, 363 N.W.2d 419 (1985) (addressing Subsection 806.07(1)(h)). Further, Section 806.07 is “based” on Federal Rule of Civil Procedure 60(b), thus federal Rule 60(b) precedent may provide “assistance in construction of sec. 806.07.” *M.L.B.*, 122 Wis. 2d at 542.

Obtaining relief under either Subsection 806.07(1)(g) or Subsection 806.07(1)(h) requires the party to make two showings. First, to even be eligible for relief under either Subsection, a party must identify an intervening, legally relevant change. *See Sukala*, 2005 WI 83, ¶¶ 13–14, 18. Then, for relief under Subsection 806.07(1)(g), in particular, the party must show that the “prospective application” of the challenged judgment or order is “no

longer equitable” due to “a significant change in circumstances warrant[ing]” relief, *Kliesmet*, 211 Wis. 2d ¶¶ 9, 12 (citation omitted), such as “changed factual conditions [that] make compliance with the [judgment] *substantially* more onerous,” *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 384 (1992) (emphasis added). As for relief under Subsection 806.07(1)(h), the movant must show that the intervening change in circumstances presents “extraordinary circumstances” to justify upsetting “the sanctity of the final judgment.” *M.L.B.*, 122 Wis. 2d at 549–50.

The *Hunter* Intervenor-Petitioners failed to make either required showing. The *Hunter* Intervenor-Petitioners have not shown that *Clarke*’s overruling of *Johnson I*’s least-change-focused approach is a relevant intervening change in circumstances for two independent reasons. *Infra* Part II.A.1–2. And in any event, the *Hunter* Intervenor-Petitioners have not shown that *Clarke*’s adoption of a different remedial approach presents “extraordinary circumstances” or a “significant change in circumstances” as to justify any relief. *Infra* Part II.B.

A. *Clarke's* Holding That The “Least Change” Approach Is No Longer Mandatory When Replacing Unlawful State Legislative Maps Does Not Retroactively Make The *Johnson* Congressional Map Unlawful

The *Hunter* Intervenor-Petitioners’ assert that *Clarke* constitutes a change in circumstances that entitles them to relief. But the *Hunter* Intervenor-Petitioners are wrong for two independently sufficient reasons. First, *Clarke* never suggested that the new approach that this Court would use to remedy the state legislative maps’ contiguity violation would invalidate or otherwise unsettle any prior maps that are not themselves infected with any unconstitutionality or illegality. *Infra* Part II.A.1. Second, even if *Clarke* did retroactively cast doubt on the validity of any prior, lawfully drawn remedial maps, it did not do so with respect to any prior *congressional* maps. *Infra* Part II.A.2.

1. *Clarke* Did Not Purport To Hold That Any Map Adopted Under The Least-Change-Focused Approach Is Now Unlawful

Clarke did not affect the lawfulness of any lawful, prior-adopted maps, as *Clarke's* own reasoning makes clear.

a. In *Clarke*, this Court heard two constitutional challenges brought by the petitioners to the remedial state legislative maps that this Court had adopted in *Johnson III*. *Clarke*, 2023 WI 79,

¶¶ 2–3, 3 n.8, 8. Specifically, this Court considered a claim that the remedial state legislative maps violated the Wisconsin Constitution’s contiguity requirement, *Clarke*, 2023 WI 79, ¶¶ 2–3, and that the process of adopting the *Johnson III* remedial state legislative maps—with this Court adopting as a remedial map the same map previously passed by the Legislature, but vetoed by the Governor—violated the separation of powers, *id.* ¶¶ 2–3 & n.8, 8; *id.* ¶ 192 n.5 (R.G. Bradley, J., dissenting) (citing *Johnson III*, 2022 WI 19, ¶187 (Karofsky, J., dissenting)).

Clarke then agreed with the petitioners’ contiguity claim and declared the *Johnson III* remedial state legislative maps unconstitutional under the Wisconsin Constitution. *Id.* ¶¶ 1–3, 10–35, 56 (majority op.). As *Clarke* held, a significant number of districts in the *Johnson III* remedial state legislative maps “include separate, detached territory.” *Id.* ¶ 1. But Article IV, Sections 4 and 5 of the Wisconsin Constitution require “Wisconsin’s state legislative districts [to] be composed of physically adjoining territory.” *Id.* ¶ 3. So, “[b]ecause the current state legislative districts [adopted by this Court in *Johnson III*] contain separate, detached territory,” they “therefore violate the

constitution’s contiguity requirements.” *Id.* ¶ 3; *see also id.* ¶¶ 10–35, 56.

Only *after* holding that the *Johnson III* remedial state legislative maps were unconstitutional did *Clarke* then turn to the question of how to remedy the infirmity in the *Johnson III* remedial state legislative maps. *Id.* ¶¶ 3–4, 9, 56. That is, *Clarke* “*first* address[ed] whether the existing state legislative districts violate the Wisconsin Constitution’s contiguity requirements” *and then*, in the remedies section of its opinion, “explain[ed] the process and relevant considerations that will guide this Court in adopting remedial maps” to correct that constitutional violation. *Id.* ¶ 9 (emphasis added). The reason for this, as this Court explained, is that only “when faced with unconstitutional maps” does this Court then have the “role to adopt valid remedial maps,” *id.* ¶ 58, necessarily raising the question of what “principles this court will use in adopting remedial maps,” *id.* ¶ 60.

Clarke’s overruling of *Johnson’s* least-change-focused approach to drawing remedial state legislative maps occurred solely in the remedies section of the *Clarke* opinion. *Id.* ¶¶ 56, 60–63. In *Johnson I*, this Court had held that its “role” when adopting

remedial maps was to take “the ‘least change’ approach,” meaning that this Court would adopt a remedial map that “reflect[s] the least change from the prior maps necessary to comport with relevant legal requirements.” *Id.* ¶¶ 60–61 (quoting *Johnson I*, 2021 WI 87, ¶ 72) (citation omitted; alterations omitted)). *Clarke* held that this least-change-focused approach “was far more complicated in reality,” “did not fit easily or consistently into the balance of other requirements and considerations essential to the mapmaking process,” and “is unworkable in practice.” *Id.* ¶¶ 61–63. Thus, *Clarke* overruled *Johnson I*’s least-change-focused approach and adopted different “principles that will guide this Court’s process in adopting remedial maps.” *Id.* ¶ 63. *Clarke*’s new “principles” for adopting remedial state legislative maps may still include consideration of “least change” as a relevant factor, to be “balanced with other factors,” so long as “least change” is not “the overarching approach to adopting remedial maps.” *Id.* ¶ 62.

So, in sum, *Clarke* first deciding the legality of the challenged maps and only then moving to remedies after determining the maps were unlawful shows that *Clarke*’s new

process for adopting remedial maps is *only* relevant *after* this Court has determined that a map is illegal.

b. Here, this proper reading of *Clarke* as conditioning the application of its approach to adopting remedial maps on a finding that a map is unlawful defeats the *Hunter* Intervenor-Petitioners' Motion. Nothing in *Clarke* casts doubt on the legality of the *Johnson II* congressional map. The *Hunter* Intervenor-Petitioners have not formally challenged *any* substantive portion or feature of the *Johnson II* congressional map. *See generally* Mem.14–35; *accord* Mem.21–26. Thus, the *Hunter* Intervenor-Petitioners cannot show that the *Clarke* decision is an actual and intervening change in law, so as to even be eligible for relief from judgment under Subsections 806.07(1)(g) or 806.07(1)(h). *Kliesmet*, 211 Wis. 2d at ¶¶ 9, 12–13; *Sukala*, 2005 WI 83, ¶¶ 13, 18.

c. The *Hunter* Intervenor-Petitioners' arguments that *Clarke* rendered the *Johnson II* congressional map unlawful fail.

The *Hunter* Intervenor-Petitioners claim that because *Clarke* rejected *Johnson*'s remedial approach, the *Johnson II* congressional map now has "no basis in current law," Mem.17, but that is wrong. The U.S. Constitution gives States the right to

congressional representation, U.S. Const. art. I, § 2, while also vesting the State Legislature with wide latitude to determine how those representatives are elected, *id.* § 4. Wisconsin law, in turn, provides for the drawing of congressional maps, Wis. Stat. §§ 3.11–.18, and this Court understands that it may step in to complete that task as a judicial remedy in the event the legislative process fails to result in an enacted map, *see Johnson I*, 2021 WI 87, ¶¶ 64–71; *Clarke*, 2023 WI 79, ¶¶ 57–58. This Court did that in *Johnson II*, adopting a remedial congressional map. *See supra* pp.16–17. Thus, it is the U.S. Constitution and Wisconsin law that provide the lawful bases for *Johnson II*'s remedial congressional map, bases that *Clarke* clearly did not disturb.

The *Hunter* Intervenor-Petitioners also argue that the *Johnson II* congressional map may violate the separation of powers, Mem.26–31, but that argument has no basis in *Clarke*, and thus it does not identify any legally relevant intervening change in the law under Subsections 806.07(1)(g) or 806.07(1)(h), *Kliesmet*, 211 Wis. 2d at ¶¶ 9, 12–13; *Sukala*, 2005 WI 83, ¶¶ 13, 18. Indeed, *Clarke* expressly declined to consider any separation-of-powers argument against the remedial state legislative maps at issue

there, given its contiguity holding, thus specifically disclaiming any development in Wisconsin's separation-of-powers doctrine since *Johnson II. Clarke*, 2023 WI 79, ¶ 3 n.8.

In any event, the *Hunter* Intervenor-Petitioners' separation-of-powers argument is wrong. They claim that *Johnson II*'s remedial congressional map may violate the separation of powers because *Clarke* requires consideration of the "partisan impact" of a map, Mem.28 (quoting *Clarke*, 2023 WI 79, ¶ 71), but that portion of *Clarke* comes from its remedial section and thus does not impose a "partisan impact" requirement for a congressional map to be substantively lawful, *supra* pp.39–41 (citing *Clarke*, 2023 WI 79, ¶¶ 56, 60–63). Next, they cursorily argue that *Johnson*'s least-change-focused approach "does not properly discharge th[e] [Court's] responsibility" to "exercise its independent judgment," Mem.29, but *Johnson I* independently determined all substantive legal requirements for proposed remedial congressional maps, 2021 WI 87, ¶¶ 24–38, and then *Johnson II* independently concluded that Governor Evers' proposed map both satisfied these requirements and best fulfilled the least-change-focused approach, 2022 WI 14, ¶¶ 13–25. Finally, they claim that *Johnson*'s least-

change-focused approach may violate the separation of powers by giving “deference to any *one* political branch,” Mem.30 (emphasis added), but this approach respects “the constitutional prerogatives of [both] the *political branches*,” *Johnson I*, 2021 WI 87, ¶ 64 (emphasis added), and here, *Johnson II* adopted Governor Evers’ proposed remedial congressional map, 2022 WI 14, ¶¶ 13–25, which map was based on the “bipartisan,” legislatively adopted 2011 map, *Baldus*, 849 F. Supp. 2d at 853–54.

2. *Clarke* Did Not Address Whether Its Remedial Approach Applies To Congressional Maps In Light Of Article I, Section 4 Of The U.S. Constitution

a. In *Johnson I*, this Court recognized that the Elections Clause of the U.S. Constitution vests the Legislature with broad “discretion to decide how congressional elections are conducted,” 2021 WI 87, ¶ 12 (citing U.S. Const. art. I, § 4), which extends to the drawing and enacting of congressional redistricting maps. Given the Legislature’s constitutional role in congressional redistricting, *Johnson I* recognized that this Court’s own role in drawing remedial congressional maps must be correspondingly limited. 2021 WI 87, ¶ 64. When this Court is called upon to adopt a remedial congressional map, this Court must “[t]read[] [no]

further than necessary to remedy [a map's] current legal deficiencies," "because the constitution . . . precludes the judiciary from interfering with the lawful policy choices of the legislature." *Id.* ¶¶ 64, 81; *see also id.* ¶ 12. This federal constitutional framing shows that *Johnson*'s holding that this Court must apply the "least change" approach when adopting a remedial congressional map is necessarily based on, at least in part, federal Elections Clause considerations. *See id.* ¶¶ 12, 64.

The U.S. Supreme Court's post-*Johnson* decision in *Moore v. Harper*, 600 U.S. 1 (2023), further supports *Johnson*'s application of the "least change" approach with respect to remedial congressional maps based upon the Election Clause. In *Moore*, the Court held that the Elections Clause imposes limits on state-court intervention in congressional redistricting. 600 U.S. at 37. The Court explained that, in interpreting state redistricting law, "state courts may not so exceed the bounds of ordinary judicial review as to unconstitutionally intrude upon the role specifically reserved to state legislatures by" the Elections Clause. *Id.* So, if a state court does stray beyond those "bounds of ordinary judicial review" when considering state legislative action over redistricting, that would

be a federal Elections Clause violation that the U.S. Supreme Court stands ready to review. *See id.*

b. In *Clarke*, this Court considered *only* a challenge to the remedial state legislative maps, and it found those maps unconstitutionally non-contiguous under the Wisconsin Constitution, before then discussing the approach it would adopt to remedy the constitutional error. 2023 WI 79, ¶¶ 1–2. So, because *Clarke* involved only a state constitutional challenge to *Johnson III*'s remedial state legislative maps—to the exclusion of *Johnson II*'s remedial congressional map—this Court had no reason to discuss the U.S. Constitution's Elections Clause or its effect on the remedial map-drawing process for congressional maps. Therefore, *Clarke* did not overrule *Johnson II*'s least-change-focused approach as to remedial congressional maps—an approach that, as explained above, flows from the federal Elections Clause not at issue in *Clarke*. *Supra* pp.44–46.

c. Reading *Clarke* as having *sub silentio* rejected the least-change-focused approach for remedial congressional maps would violate the Elections Clause, a point that the undersigned would develop if this Court ordered briefing on the issue. *See infra*

Part III. To summarize very briefly, the Elections Clause provides that “[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State *by the Legislature thereof*.” U.S. Const. art. I, § 4 (emphasis added). As the U.S. Supreme Court held in *Moore*, the Elections Clause prohibits a state court from exceeding the “bounds of ordinary judicial review” when reviewing state-legislative action over congressional redistricting. 600 U.S. at 37. A court refusing to apply a “least change” approach when adopting a congressional map exceeds the “bounds of ordinary judicial review.” *Id.* A straightforward hypothetical shows why: if a state court had to remedy a redistricting map that was malapportioned by only 100 persons, that court would obviously violate the Election Clause by drawing an entirely new map that gave no regard to the map that the Legislature had previously adopted. This Court would be engaging in *substantive redistricting*—making policy judgments about what map is “best” as a normative matter, rather than simply fixing the constitutional defect before it—which is a role that the Election Clause reserves to each State’s legislature.

B. The *Hunter* Intervenor-Petitioners Also Failed To Satisfy The “Extraordinary Circumstances” Or “Significant Change In Circumstances” Prerequisites For Reopening *Johnson*

1. As relevant here, a party may obtain relief from a judgment under Subsection 806.07(1)(g) or (h) due to an actual and intervening change in circumstances since the entry of the judgment if the party shows—under Subsection 806.07(1)(g)—that “prospective application” of the challenged judgment or order is “no longer equitable,” Wis. Stat. § 806.07(1)(g); *Kliesmet*, 211 Wis. 2d at ¶¶ 9, 12–13, or—under Subsection 806.07(1)(h)—that “other reasons justif[y] relief,” Wis. Stat. § 806.07(1)(h); *Sukala*, 2005 WI 83, ¶ 9. Both Subsection 806.07(1)(g) or (h) impose heavy burdens on a movant to demonstrate the movant’s entitlement to relief from the judgment, including because of the “legitimate public interest in the finality of judgments.” *M.L.B.*, 122 Wis. 2d at 556 (“[F]inality is important and th[us] subsection (h) should be used sparingly.”); *State ex rel. R.A.S. v. J.M.*, 114 Wis. 2d 305, 307–08, 338 N.W.2d 851 (Ct. App. 1983) (similar, as to Subsection (g)).

With respect to Subsection 806.07(1)(g), as relevant here, a movant may only possibly obtain relief from the judgment if the movant shows that the “prospective application” of the challenged

judgment or order is “no longer equitable” due to “a significant change in circumstances warrant[ing]” relief, *Kliesmet*, 211 Wis. 2d ¶ 10, 12. Such a change could be, for example, “changed factual conditions [that] make compliance with the [judgment] substantially more onerous.” *Rufo*, 502 U.S. at 384.

With respect to Subsection 806.07(1)(h), a movant may only possibly obtain relief from the judgment if the movant shows that, “in view of all the facts, ‘extraordinary circumstances’ exist which justify relief.” *Cynthia M.S.*, 181 Wis. 2d at 625 (citation omitted). Under this “‘extraordinary circumstances’ test,” *id.*, this Court must consider whether “the sanctity of the final judgment is outweighed by the incessant command of this Court’s conscience that justice be done in light of *all* the facts.” *Sukala*, 2005 WI 83, ¶ 12 (citation omitted). This Court has identified five non-exhaustive factors to guide this extraordinary-circumstances “examination”: “[1] whether the judgment was the result of the conscientious, deliberate and well-informed choice of the claimant; [2] whether the claimant received the effective assistance of counsel; [3] whether relief is sought from a judgment in which there has been no judicial consideration of the merits and the

interest of deciding the particular case on the merits outweighs the finality of judgments; [4] whether there is a meritorious defense to the claim; and [5] whether there are intervening circumstances making it inequitable to grant relief.” *Id.* ¶ 11 (citation omitted).

Finally, this Court has repeatedly concluded that a change in the law is not, standing alone, an extraordinary circumstance that justifies relief from a final judgment. Brown v. Mosser Lee Co., 164 Wis. 2d 612, 623, 476 N.W.2d 294 (1991) (“[T]he overruling of prior precedent has never been considered grounds for reopening preexisting judgments based in whole or in part on that precedent.”); Sukala, 2005 WI 83, ¶ 9; accord Schwochert v. Am. Fam. Mut. Ins. Co., 166 Wis. 2d 97, 102, 479 N.W.2d 190 (Ct. App. 1991), aff’d, 172 Wis. 2d 628, 494 N.W.2d 201 (1993).

2. The *Hunter* Intervenor-Petitioners failed to meet their heavy burden to show that they are entitled to relief from the *Johnson II* judgment under either Subsections (h) or (g). See Mem.14–35 (not distinguishing between these Subsections).

To begin, the *Hunter* Intervenor-Petitioners failed to establish the first four factors of the “‘extraordinary circumstances’ test.” *Cynthia M.S.*, 181 Wis. 2d at 625 (citation omitted). First,

the *Johnson II* judgment was “the result of the conscientious, deliberate and well-informed choice of the [*Hunter* Intervenor-Petitioners],” *Sukala*, 2005 WI 83, ¶ 11 (citation omitted), given their robust involvement in the *Johnson* litigation, *supra* pp.11–18. Second, the *Hunter* Intervenor-Petitioners “received the effective assistance of counsel” during the *Johnson* litigation, *Sukala*, 2005 WI 83, ¶ 11 (citation omitted), as they were represented by sophisticated counsel who regularly handle redistricting litigation nationwide. Third, the *Hunter* Intervenor-Petitioners are seeking relief from a judgment that resulted in “judicial consideration of the merits.” *Sukala*, 2005 WI 83, ¶ 11 (citation omitted). And fourth, the *Hunter* Intervenor-Petitioners do not possess any “meritorious defense” to the remedial congressional map that *Johnson II* adopted, *Sukala*, 2005 WI 83, ¶ 11 (citation omitted), because they have not argued that this map is substantively unlawful, *supra* pp.41–42.

The *Hunter* Intervenor-Petitioners also failed to establish the fifth factor of the “‘extraordinary circumstances’ test,” *Cynthia M.S.*, 181 Wis. 2d at 625 (citation omitted)—namely, “whether there are intervening circumstances making it inequitable not to

grant relief,” *Sukala*, 2005 WI 83, ¶ 11. This factor overlaps with the Subsection (g) inquiry relevant here. See Wis. Stat. § 806.07(1)(g) (“It is no longer equitable that the judgment should have prospective application.”).

Again, the *Hunter* Intervenor-Petitioners’ delayed filing of this Motion means that adopting new congressional maps would cause injustice to candidates for congressional office, their supporters, and the People as a whole. Congressional candidates and their supporters—including the undersigned, their challengers, and all other congressional candidates—have already been campaigning for months in anticipation of the upcoming election, spending significant time and money reaching out to voters in the districts that *Johnson II* established. Voters in these districts have gotten to know these candidates and may have donated time or money to their campaigns. Changing the district lines at the eleventh hour would significantly unsettle these campaign efforts, blindsiding both the candidates and the ordinary citizens, “caus[ing] unnecessary election chaos or confusion.” *Johnson III*, 2022 WI 19, ¶ 138 (R.G. Bradley, J., concurring), see *id.*, ¶ 210 (Karofsky, J., dissenting); *Clarke*, 2023 WI 79, ¶ 56

(recognizing “that [the 2024] legislative elections are fast-approaching, and that remedial maps must be adopted in time for the fall primary in August 2024”). About six weeks remain before March 15, 2024—the date WEC has disclosed as the deadline to adopt remedial maps for an orderly election. *Supra* p.20. Thus, Wisconsin is out of time to adopt a new congressional map for the 2024 elections. *Sukala*, 2005 WI 83, ¶ 11; *supra* p.20.

The undersigned would suffer prejudice should this Court undo *Johnson II*'s final judgment. *Sukala*, 2005 WI 83, ¶ 11; *supra* Part I.C. Having litigated the contours of their congressional districts in *Johnson*, and having no reason to believe *Clarke* would upend the *Johnson II* congressional map, the undersigned justifiably understood that this map would govern “all upcoming elections.” *See Johnson II*, 2022 WI 14, ¶ 52. Unsettling this justifiable reliance on this final judgment, especially at this late date, would be highly prejudicial, as it would significantly harm the undersigned's ability to get to know their voters and run effective campaigns in time for the August primaries, while causing voter confusion and disenfranchisement. Thus, it is

plainly “inequitable to grant [the *Hunter* Intervenor-Petitioners] relief.” *Sukala*, 2005 WI 83, ¶ 11.

Finally, the *Hunter* Intervenor-Petitioners’ gamesmanship deprived the undersigned of fair “notice” that *Clarke* could affect their legitimate interests in the *Johnson II* judgment, and of any fair “opportunity to be heard” in *Clarke*. See *Milewski v. Town of Dover*, 2017 WI 79, ¶ 23, 377 Wis. 2d 38, 899 N.W.2d 303 (citations omitted). As a result, the *Hunter* Intervenor-Petitioners’ belated attempt to bootstrap *Clarke* to invalidate *Johnson II*’s remedial congressional map would prejudice the undersigned and their constituents. The undersigned are duty-bound to “promote and protect their [constituents’] interests” by representing them in the U.S. House of Representatives, *State ex rel. Att’y Gen. v. Cunningham*, 81 Wis. 440, 51 N.W. 724, 730 (1892); accord *McCormick v. United States*, 500 U.S. 257, 272 (1991). The “contours of the maps” of the districts “determin[e] which constituents the Congressmen must court for votes and represent in the legislature.” *Johnson*, 902 F.3d at 579. Depriving the undersigned of the opportunity for a full and fair hearing on the

lawfulness of their districts would be inequitable, weighing heavily against granting the *Hunter* Intervenor-Petitioners' motion.

3. The *Hunter* Intervenor-Petitioners' points here are unpersuasive.

First, the *Hunter* Intervenor-Petitioners claim that the “extraordinary circumstances” test should not apply here, Mem.15 n.4, but that is wrong. The *Hunter* Intervenor-Petitioners urge this Court to overlook the lack of extraordinary circumstances because they “do not seek time-barred relief that would have been available” under one of Section 806.07’s other subsections, Mem.15 n.4, but extraordinary circumstances typically *are* required to justify relief under Section 806.07(1), regardless of whether the movant seeks relief that would otherwise be time-barred, Mem.15 n.4 (citing *Miller v. Hanover Ins. Co.*, 2020 WI 75, ¶ 34, 326 Wis. 2d 640, 785 N.W.2d 493). “Extraordinary circumstances” remains an essential element of a claim under Subsection 806.07(1)(h), *M.L.B.*, 122 Wis. 2d at 549, which “is appropriately used to address intervening changes in the law only in unique and extraordinary circumstances,” *Sukala*, 2005 WI 83, ¶ 12.

Second, the *Hunter* Intervenor-Petitioners’ repeated reliance on *Mullen v. Coolong*, 153 Wis. 2d 401, 451 N.W.2d 412 (1990), to water down the extraordinary-circumstances standard is unavailing. Mem.15 & n.4, 20, 21. Plaintiff Mullen timely filed a petition for review with this Court raising a particular legal issue. While plaintiff Mullen’s petition was pending before this Court, this Court granted review in a separate case—*Nicholson v. Home Insurance Companies*, 137 Wis. 2d 581, 405 N.W.2d 327 (1987)—which “posed the identical question of law raised by Mullen in her petition for review,” *Mullen*, 153 Wis. 2d at 404. Yet, despite its grant in *Nicholson*, this Court denied Mullen’s petition for review while *Nicholson* was pending. *Id.* at 404–05. “Meanwhile, after the petition for review in *Mullen I* was denied, and apparently unaware that *Nicholson* was pending,” plaintiff Mullen “accepted a settlement offer of \$500.000 to settle her claims,” and the circuit court entered judgment in her case. *Id.* at 405. After this Court issued *Nicholson*, plaintiff Mullen moved for relief from judgment in the circuit court, and this Court affirmed the circuit court’s grant of that motion, explaining that “[t]he determinative fact in this case is that [this Court] denied a petition for review in

Mullen I at the very same time when the same issue was before [this Court] in *Nicholson*.” *Id.* at 408 (emphasis added). Thus, despite plaintiff Mullen filing a timely petition for review challenging the *Mullen I* decision entered in her case, this Court denied that petition and then “reached the precise result [in *Nicholson* that] Mullen advocated in her petition for review in *Mullen I*.” *Id.* These “unique facts” demonstrated that the circuit court’s discretionary grant of relief from judgment was appropriate. *Id.*

This case is nothing like *Mullen*, given that the “determinative fact” justifying relief in *Mullen* is missing here. *Id.* at 408. In *Mullen*, the plaintiff’s timely filed petition for review was “denied . . . at the very same time when the same issue was before [this Court] in *Nicholson*.” *Id.* at 408. Here, *Hunter* Intervenor-Petitioners *never* timely moved for reconsideration of the *Johnson I* or *Johnson II* judgments, *supra* pp.15, 18, and *there was never a time when such a (nonexistent) reconsideration motion was pending* “at the very same time when the same issue was before [this Court] in [*Clarke*],” *Mullen*, 153 Wis. 2d at 408. In any event, as explained elsewhere in this Response, *see supra* Part II.A, the *Hunter* Intervenor-Petitioners’ Motion does not present “the

identical question of law” or the “identical arguments” as in *Clarke, Mullen*, 153 Wis. 2d at 404.

Third, the *Hunter* Intervenor-Petitioners claim they were “never given a chance to propose a remedy informed by recognized redistricting principles,” Mem.20, but that is false. The *Hunter* Intervenor-Petitioners fully aired their position with respect to the “proper remedial framework” in their *Johnson I* brief, as they acknowledge, Mem.20, and they could have timely filed for reconsideration of *Johnson I* or *Johnson II*. Yet, the *Hunter* Intervenor-Petitioners declined to move for reconsideration of either of those decisions, without putting forward any explanation. The undersigned, for their part, did timely move for reconsideration of the *Johnson II* decision, explaining their view that *Johnson II* clarified *Johnson I*’s “least change” approach, justifying submission of another round of proposed maps from the parties. *Supra* p.18. The *Hunter* Intervenor-Petitioners had the same opportunity to seek reconsideration as the undersigned, and they cannot now claim to have “never [been] given a chance” to be heard on the issues in their Motion. Mem.20.

Fourth, the *Hunter* Intervenor-Petitioners claim that relief from judgment is justified because the remedial congressional map “subjects Wisconsin voters to intolerable partisan unfairness,” Mem.21–26, but this is supported by nothing more than a one-sided, untested presentation. As explained above, the only court to have considered the partisanship of the 2011 congressional map—which formed the basis of *Johnson II*’s remedial congressional map—concluded that this map resulted from a “bipartisan process” that incorporated input from both Republicans and Democrats. *Baldus*, 849 F. Supp. 2d at 853–54. Further, Governor Evers proposed the only changes to the 2011 congressional map before *Johnson II* adopted his remedial congressional map. *Supra* pp.16–17. Given this, if this Court does not reject this Motion outright, this Court must permit the undersigned to test the *Hunter* Intervenor-Petitioners’ partisan-gerrymandering assertions through adversarial litigation before this Court, in which this Court must consider, among other elements, proof of (or lack of) impermissible partisan intent from the map-drawers. *See, e.g., League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 375 (2015); *Harkenrider v. Hochul*, 38

N.Y.3d 494, 519 (2022); *League of Women Voters of Pa. v. Pennsylvania*, 178 A.3d 737, 786 (2018); *Rucho*, 139 S. Ct. at 2516 (Kagan, J., dissenting).

Finally, the *Hunter* Intervenor-Petitioners claim a right to relief under Subsection 806.07(1)(f), Mem.19 n.5, but this argument is wrong. *Clarke* overruled portions of *Johnson I* and *Johnson II* with respect to the procedural approach for remedial mapmaking, but it did not “reverse[] or otherwise vacate” that judgment. Wis. Stat. § 806.07(1)(f); *Clarke*, 2023 WI 79, ¶ 63. The *Hunter* Intervenor-Petitioners appear to concede as much, burying this argument in a footnote. Mem.19 n.5.

III. If This Court Is Nevertheless Inclined To Reopen *Johnson*, Further Proceedings Are Necessary

If this Court considers accepting *Hunter* Intervenor-Petitioners' invitation to reopen the *Johnson II* judgment, *but see supra* Part I–II, it should make clear that there is not enough time to decide all of the issues that the *Hunter* Intervenor-Petitioners have raised before the 2024 elections.

Given that the *Hunter* Intervenor-Petitioners did not file their Motion For Relief From Judgment until January 16, 2024, there is not enough time for this Court to conduct litigation to

adopt a remedial congressional map in advance of the 2024 elections, even relying solely on the schedule this Court set in *Clarke*. This Court already recognized in *Clarke* “that [the 2024] legislative elections are fast-approaching, and that remedial maps must be adopted in time for the fall primary in August 2024.” *Clarke*, 2023 WI 79, ¶ 56. Further, as WEC explained in *Clarke*—and as the *Hunter* Intervenor-Petitioners appear to concede—remedial maps must be in place by March 15, 2024, for WEC to conduct an orderly election. *Supra* p.20. Thus, if this Court were to order the drawing of new remedial congressional maps here, this Court’s process would have to complete *in only about six weeks of time, at best*. That is not enough time.

For comparison, in *Clarke*, it took this Court about five months from the date of the filing of the petition challenging *Johnson II*’s remedial state legislative maps to declare those maps unconstitutional, demonstrating that these extremely weighty issues take appropriate time to be decided correctly. *Clarke*, 2023 WI 79; *supra* pp.20–21. Further, after *Clarke* struck down those maps, this Court provided the parties with additional time to draw proposed remedial maps for this Court’s own thorough

consideration. Specifically, this Court provided the parties with three weeks to submit proposed maps and expert reports (January 12, 2024) and an additional ten days to file responses to other parties' proposed maps (January 22, 2024). Order at 3, *Clarke*, No.2023AP1399-OA (Wis. Dec. 22, 2023). This Court also provided its court-appointed consultants with almost six weeks to prepare their written report (February 1, 2024), *id.* at 4, with the parties having an additional week thereafter to file responses to that report (February 8, 2024), *id.* Further, as the experience of *Clarke* shows, the complex, delicate process of drawing remedial maps inevitably triggers important motions practice among the parties, requiring additional time for the parties and this Court to resolve properly. *See generally* Dkt., *Clarke*, No.2023AP1399-OA (Wis.).

In any event, even the timetable set by *Clarke* would not be adequate for this Court to resolve this litigation, given the need for this Court to address at least two threshold issues before it could even possibly consider new proposed remedial congressional maps.

First, before this Court could even possibly adopt a new remedial congressional map to replace the one adopted in *Johnson II*, this Court must allow for full litigation over the

partisan-gerrymandering issues that the *Hunter* Intervenor-Petitioners have raised in their Motion, as part of their burden under Wis. Stat. § 806.07(1)(g) and (h). Mem.21–26. The *Hunter* Intervenor-Petitioners believe that it is equitable to grant relief from *Johnson II*'s remedial congressional map because that map “subjects Wisconsin voters to intolerable partisan unfairness,” Mem.21–26, thus establishing the “extraordinary circumstances” or “significant change in circumstances” needed to upset the *Johnson II* judgment’s finality here, see Mem.15 n.4. Even if this Court were to entertain the fiction that the *Hunter* Intervenor-Petitioners’ Motion was timely, and even if this Court were to accept their misreading of *Clarke*, by the *Hunter* Intervenor-Petitioners’ own logic, the *Johnson II* map should remain in place—*i.e.*, the *Hunter* Intervenor-Petitioners should *not* obtain relief from the *Johnson II* judgment—if the remedial congressional map is not a partisan gerrymander. See Mem.15 n.4, 21–26. Accordingly, to have the fair opportunity to defend against the *Hunter* Intervenor-Petitioners’ Motion, see *City of W. Covina*, 525 U.S. at 240, this Court must allow the undersigned to rebut the allegation that the *Johnson II* congressional map is a partisan

gerrymander. Finally, it is worth repeating here that the only neutral tribunal to have considered whether the 2011 congressional map—upon which *Johnson II*'s remedial congressional map is heavily based—was impermissibly partisan found that it was the result of a “bipartisan process,” *Baldus*, 849 F. Supp. 2d at 853–54, and the only changes to that 2011 map in *Johnson II* were proposed by Governor Evers, *supra* pp.16–17.

Second, this Court must also afford the undersigned a fair opportunity to be heard on their claim that the Elections Clause requires that state courts use a “least changes” approach when adopting remedial congressional maps, as discussed above, which issue *Clarke* never considered. *See supra* Part II.A.2. Given that remedial congressional maps were not before this Court in *Clarke*, *Clarke* had no occasion to consider or decide this federal Elections Clause issue in *Johnson II*. Thus, if this Court were to consider whether to reopen *Johnson II*, this Court must provide all parties with the opportunity to brief this Elections Clause issue fully, and should also consider holding oral argument on this issue. *See City of W. Covina*, 525 U.S. at 240.

CONCLUSION

This Court should deny the *Hunter* Intervenor-Petitioners' Motion For Relief From Judgment.

Dated: January 29, 2024.

Respectfully submitted,

Electronically signed by Misha Tseytlin

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*Distribution list continued on pages 2-4.

You are hereby notified that the Court has entered the following order:

No. 2021AP1450-OA Johnson v. Wisconsin Elections Commission

On January 16, 2024, intervenors-petitioners, Lisa Hunter et al., filed a motion and supporting memorandum asking for relief from the decision and order entered by this court on March 3, 2022. On January 29, 2024, a response to the motion was filed by intervenors-petitioners, Stephen Joseph Wright et al. ("Citizen Mathematicians and Scientists"). On January 30, 2024, separate responses to the motion were filed by petitioners, Billie Johnson et al.; intervenors-petitioners, Congressmen Glenn Grothman et al.; and intervenor-respondent, the Wisconsin Legislature. On February 1, 2024, intervenor-respondent, Senate Democratic Minority Leader Dianne Hesselbein, on behalf of the Senate Democratic Caucus, filed a letter with the court taking no position on the motion. On February 9, 2024, intervenors-petitioners, Lisa Hunter et al., filed a motion for leave to file a reply in support of their motion for relief from judgment with a proposed reply. On February 19, 2024, Governor Evers filed a letter advising the court that he had signed Senate Bill 488 into law, which has created 2023 Wisconsin Act 94, but which does not impact the motion for relief from judgment in this case. The Governor's letter also speaks in favor of this court reviewing its decision in this case with respect to the adoption of congressional district maps. The court having considered all of the filings,

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March 1, 2024

No. 2021AP1450-OA Johnson v. Wisconsin Elections Commission

IT IS ORDERED that the motion for leave to file a reply in support of the motion for relief from judgment is granted, and the proposed reply is accepted for filing; and

IT IS FURTHER ORDERED that motion for relief from judgment is denied.

JANET C. PROTASIEWICZ, J., did not participate.

REBECCA GRASSL BRADLEY, J. (*concurring*). This motion comes as no surprise after the court's new majority telegraphed its willingness to rebalance political power in the state of Wisconsin by overturning Johnson v. Wisconsin Elections Commission, 2021 WI 87, 399 Wis. 2d 623, 967 N.W.2d 469 (Johnson I), and Johnson v. Wisconsin Elections Commission, 2022 WI 19, 401 Wis. 2d 198, 972 N.W.2d 559 (Johnson III). The new majority's reckless abandonment of settled legal precedent in Clarke v. Wisconsin Elections Commission, 2023 WI 79, 410 Wis. 2d 1, 998 N.W.2d 370, incentivizes litigants to bring politically divisive cases to this court regardless of their legal merit. While the court rightfully denies this motion, it likely won't be long until the new majority flexes its political power again to advance a partisan agenda despite the damage inflicted on the independence and integrity of the court.

I am authorized to state that Chief Justice ANNETTE KINGSLAND ZIEGLER joins this concurrence.

Samuel A. Christensen
Clerk of Supreme Court

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March 1, 2024

No. 2021AP1450-OA Johnson v. Wisconsin Elections Commission

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March 1, 2024

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FILED

03-01-2024

CLERK OF WISCONSIN

SUPREME COURT

March 1, 2024

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*Distribution list continued on pages 2-3.

You are hereby notified that Janet C. Protasiewicz, J., has issued the following order:

No. 2021AP1450-OA Johnson v. Wisconsin Elections Commission

Intervenors-Petitioners Lisa Hunter, Jacob Zabel, and John Persa have moved the court for relief from that part of its March 3, 2022 decision and order that adopted new Congressional district maps. On January 29, 2024, a motion directed to me individually seeking my recusal from participating in the court's resolution of the motion for relief was filed by Intervenor-Respondent Wisconsin Legislature; Petitioners Billie Johnson, Eric O'Keefe, Ed Perkins, and Ronald Zahn; and Intervenors-Petitioners Congressmen Glenn Grothman, Mike Gallagher, Bryan Steil, Tom Tiffany, and Scott Fitzgerald.

I decline to participate in this proceeding because I was not a member of the court when it issued its March 3, 2022 decision and order. See, e.g., Greenwald Family Ltd. P'ship v. Village of Mukwonago, No. 2021AP69-FT, unpublished order (Wis. Sept. 26, 2023) (Protasiewicz, J. not participating). The motion seeking my recusal is moot, and, thus, I do not reach the question of whether the law requires my recusal.

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March 1, 2024

No. 2021AP1450-OA Johnson v. Wisconsin Elections Commission

IT IS ORDERED that the Motion to Recuse is denied as moot.

Samuel A. Christensen
Clerk of Supreme Court

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March 1, 2024

No. 2021AP1450-OA Johnson v. Wisconsin Elections Commission

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August 26, 2021

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You are hereby notified that the Court has entered the following order:

No. 2021AP1450-OA Johnson v. Wisconsin Elections Commission

A petition for leave to commence an original action under Wis. Stat. § (Rule) 809.70 and a supporting legal memorandum having been filed on behalf of petitioners, Billie Johnson, et al.;

IT IS ORDERED that respondents, Wisconsin Elections Commission and Marge Bostelmann, Julie Glancey, Ann Jacobs, Dean Knudson, Robert Spindell, Jr., and Mark Thomsen, all in their official capacities as members of the Wisconsin Elections Commission, shall file one or more responses to the petition by 4:00 p.m. on Friday, September 3, 2021. Each response shall be filed as an attachment in pdf format to an email addressed to clerk@wicourts.gov. See Wis. Stat. §§ 809.14, 809.80, and 809.81. The respondents shall also ensure that a paper original and 10 copies of each response are received by the clerk of this court by 4:30 p.m. on Friday, September 3, 2021, with the following notation on the top of the first page: "This document was previously filed via email."

IT IS FURTHER ORDERED that any non-party that wishes to file a non-party brief amicus curiae in support of or in opposition to the petition must file a motion for leave of the court to file a non-party brief pursuant to the requirements of Wis. Stat. § (Rule) 809.19(7). Non-parties should also consult this court's Internal Operating Procedure III.B.6.c. concerning the nature of non-parties who may be granted leave to file a non-party brief. A proposed non-party brief must accompany the motion for leave to file it. Any proposed non-party brief shall not exceed 15 pages if a monospaced font is used or 3,300 words if a proportional serif font is used. Any motion for

Page 2

August 26, 2021

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leave with the proposed non-party brief attached shall be filed no later than 4:00 p.m. on Tuesday, September 7, 2021, and shall be filed as an attachment in pdf format to an email addressed to clerk@wicourts.gov. The non-party shall also ensure a paper original and 10 copies of the brief are received by the clerk of this court by 4:00 p.m. on Wednesday, September 8, 2021, with the following notation on the top of the first page: "This document was previously filed via email." Any submission by a non-party that does not comply with Wis. Stat. § (Rule) 809.19(7) and any proposed non-party brief for which this court does not grant leave will not be considered by the court.

Sheila T. Reiff
Clerk of Supreme Court



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September 22, 2021

Amended September 24, 2021

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You are hereby notified that the Court has entered the following AMENDED order (amended to correct statutory citation on page 3):

No. 2021AP1450-OA Johnson v. Wisconsin Elections Commission

On August 23, 2021, petitioners Billie Johnson, et al., four Wisconsin voters who claim that the results of the 2020 census show that Wisconsin's congressional and state legislative districts—including the voters' districts—are malapportioned and no longer meet the requirements of the Wisconsin Constitution, filed a petition for leave to commence an original action under Wis. Stat. § (Rule) 809.70, together with a supporting memorandum. The petitioners ask, inter alia, that we assume original jurisdiction, then “stay this matter until the Legislature has adopted a new apportionment plan” or if the legislative process fails, that this court adopt a new apportionment plan.

On September 3, 2021, the named respondents, Wisconsin Elections Commission, et al., filed a response, opposing the petition, arguing primarily that existing original jurisdiction

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September 22, 2021 *Amended September 24, 2021*

No. 2021AP1450-OA Johnson v. Wisconsin Elections Commission

procedures cannot accommodate the fact-finding intensive requirements of this case and noting that there are two cases pending in federal district court that raise similar claims.¹

On September 7, 2021, the court received motions for leave to file a non-party brief/amicus curiae from: (1) the Wisconsin Legislature; (2) Congressmen Glenn Grothman, Mike Gallagher, Brian Steil, Tom Tiffany, and Scott Fitzgerald; (3) Attorney Daniel R. Suhr; (4) Lisa Hunter, et al. (plaintiffs in Hunter v. Bostelmann, No. 21-CV-512 (W.D. Wis. Aug. 13, 2021)); and (5) Black Leaders Organizing for Communities, et al. (plaintiffs in Black Leaders Organizing for Communities v. Spindell, No. 21-CV-534 (W.D. Wis. Aug. 23, 2021)). By order dated September 8, 2021, the court granted each of these motions. The non-party briefs and their appendices, if any, were accepted for filing.

This court has long deemed redistricting challenges a proper subject for the court's exercise of its original jurisdiction. See, e.g., Jensen v. Wisconsin Elections Board, 2002 WI 13, ¶17, 249 Wis. 2d 706, 639 N.W.2d 537 (2002) ("there is no question" that redistricting actions warrant "this court's original jurisdiction; any reapportionment or redistricting case is, by definition, *publici juris*, implicating the sovereign rights of the people of this state."); State ex rel. Reynolds v. Zimmerman, 22 Wis. 2d 544, 557, 126 N.W.2d 551 (1964) (observing that reapportionment "is vital to the functioning of our government").

We are mindful that judicial relief becomes appropriate in reapportionment cases *only* when a legislature fails to reapportion according to constitutional requisites in a timely fashion after having had an adequate opportunity to do so. See e.g., Zimmerman, 22 Wis. 2d at 570. We cannot emphasize strongly enough that our Constitution places primary responsibility for the apportionment of Wisconsin legislative districts on the legislature. See Wis. Const. art. IV §§ 3, 4. Redistricting plans must be approved by a majority of both the Senate and Assembly, and are subject to gubernatorial veto. Id.; Wis. Const., art. V, § 10; Zimmerman, 22 Wis. 2d at 558 (recognizing that the legislature must present redistricting legislation to the governor for approval or veto under the Wisconsin Constitution's Presentment Clause; both the governor and the legislature are indispensable parts of the legislative process).

As the respondents observed, the petitioners do not say how long this court should give the Legislature and the Governor to accomplish their constitutional responsibilities before the court would need to embark on the task the petitioners have asked of us in order to ensure its timely completion. We would benefit from the parties' input on this issue, and we would benefit from the input of amici and prospective intervenors on the issue as well. Accordingly,

IT IS ORDERED that the petition for leave to commence an original action is granted;

¹ Hunter v. Bostelmann, No. 21-CV-512 (W.D. Wis. Aug. 13, 2021) and Black Leaders Organizing for Communities v. Spindell, No. 21-CV-534 (W.D. Wis. Aug. 23, 2021).

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IT IS FURTHER ORDERED that any prospective intervenor must file a motion to intervene together with a supporting memorandum addressing the requirements of Wis. Stat. § (Rule) 803.09 no later than 4:00 p.m. on October 6, 2021;

IT IS FURTHER ORDERED that the parties, amici, and proposed intervenors may each file a single response to the collective motions to intervene no later than 12:00 p.m. on October 13, 2021, provided that amici who seek to intervene may file only a single response to the proposed intervention motions, which shall be filed in their capacity as amici. Each response shall not exceed 15 pages if a monospaced font is used or 3,300 words if a proportional serif font is used;

IT IS FURTHER ORDERED that the parties and prospective intervenors are each directed to submit simultaneous letter briefs no later than 4:00 p.m. on October 6, 2021, addressing the following question:

When (identify a specific date) must a new redistricting plan be in place, and what key factors were considered to identify this date?

Amici may, but are not required to file a response to this question. The simultaneous letter briefs shall not exceed 15 pages if a monospaced font is used or 3,300 words if a proportional serif font is used;

IT IS FURTHER ORDERED that the parties, each amicus, and each proposed intervenor may file a single response to the letter briefs addressing timing, which shall not exceed 15 pages if a monospaced font is used or 3,300 words if a proportional serif font is used, by no later than 12:00 p.m. on October 13, 2021;

IT IS FURTHER ORDERED that if the court determines that additional briefing or a reply will assist the court, it will request additional briefing; given the time sensitive nature of this action, unsolicited briefing and requests for briefing extensions will be disfavored;

IT IS FURTHER ORDERED that all filings in this matter shall be filed as an attachment in pdf format to an email addressed to clerk@wicourts.gov. See Wis. Stat. §§ 809.14, 809.80, and 809.81. A paper original and 10 copies of each filed document must be received by the clerk of this court by 4:00 p.m. of the business day following submission by email, with the document bearing the following notation on the top of the first page: “This document was previously filed via email.”

We deem the petitioners’ other requests to be premature. We decline to formally declare, at the onset, that a new apportionment plan is needed. While the parties and amici generally concur that this is true, we have, as yet, an inadequate record before us upon which to make such a pronouncement. We also decline to stay this action at this time and we deny the petitioners’ request that we enjoin the respondents “from administering any election for Congressional, State or Assembly seats” until a new plan is in place. To the extent this order does not address other requests for relief contained in the petition, we take no action on those requests at this time.

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No. 2021AP1450-OA Johnson v. Wisconsin Elections Commission

REBECCA GRASSL BRADLEY, J. (*concurring*). Nearly 150 years ago, shortly after statehood, this court declared, "the purpose of the constitution was: 'To make this court indeed a supreme judicial tribunal over the whole state; . . . a court of first resort on all judicial questions affecting the sovereignty of the state, its franchises or prerogatives, or the liberties of its people.'" Petition of Heil, 230 Wis. 428, 436, 284 N.W. 42 (1938) (per curiam) (quoting Attorney Gen. v. Chicago & N.W. Ry., 35 Wis. 425, 518 (1874)) (emphasis added). More recently, in 2002, we unanimously declared in Jensen v. WEC, "[i]t is an established constitutional principle in our federal system that congressional reapportionment and state legislative redistricting are primarily state, not federal prerogatives." 2002 WI 13, ¶15, 249 Wis. 2d 706, 639 N.W.2d 537 (per curiam) (denying petition for leave to commence an original action) (citations omitted) (emphasis added). The United States Supreme Court agrees: "[T]he Constitution leaves with the States primary responsibility for apportionment of their federal congressional and state legislative districts." Grove v. Emison, 507 U.S. 25, 34 (1993) (citing U.S. Const. art. I, § 2)).

Consistent with the Constitution, "the Court has required federal judges to defer consideration of disputes involving redistricting where the State, through its legislative or judicial branch, has begun to address that highly political task itself." Id. at 33; see also id. at 34 (quoting Chapman v. Meier, 420 U.S. 1, 27 (1975)) ("We say once again what has been said on many occasions: reapportionment is primarily the duty and responsibility of the State through its legislature or other body, rather than a federal court."). "Absent evidence that these state branches will fail to perform that duty, a federal court must neither affirmatively obstruct state reapportionment nor permit federal litigation to be used to impede it." Id. at 34; see also Scott v. Germano, 381 U.S. 407, 409 (1965) (internal citations omitted) ("The power of the judiciary of a State to require valid reapportionment or to formulate a valid redistricting plan has not only been recognized by this Court but appropriate action by the States in such cases has been specifically encouraged. The case is remanded with directions that the District Court enter an order fixing a reasonable time within which the appropriate agencies of the State of Illinois, including its Supreme Court, may validly redistrict the Illinois State Senate[.]").

Spurning this longstanding precedent, including the United States Supreme Court's clear directive that states are primarily responsible for redistricting, with federal courts standing by only as a last resort, Grove, 507 U.S. at 33, Justice Rebecca Frank Dallet insists this case belongs in federal court. It doesn't. The petitioners are Wisconsin voters who allege they live in malapportioned districts. Following our unequivocal statement in Jensen that "congressional reapportionment and state legislative redistricting are primarily state, not federal prerogatives," they filed this case against the Wisconsin Elections Commission (WEC) and its commissioners in their official capacity, expressly relying on Article IV of the Wisconsin Constitution. It is primarily the duty of this court, not any federal court, to resolve such redistricting disputes.

Although this court has punted its responsibilities to the federal courts in the past, we have previously exercised our original jurisdiction to hear redistricting cases, and we have implemented a judicially-created redistricting plan when the political branches have reached an impasse. State ex rel. Reynolds v. Zimmerman, 23 Wis. 2d 606, 128 N.W.2d 16 (1964) (per curiam). See

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generally Michael Gallagher, Joseph Kreye & Staci Duros, Redistricting in Wisconsin 2020, at 20 (2020), https://docs.legis.wisconsin.gov/misc/lrb/wisconsin_elections_project/redistricting_wisconsin_2020_1_2.pdf ("Prior to the 1960s, redistricting disputes in Wisconsin were typically filed with the state supreme court under that court's original jurisdiction. . . . [I]n pre-1960s redistricting cycles, the Wisconsin Supreme Court would entertain challenges to existing redistricting laws, and occasionally invalidate redistricting plans it found unconstitutional."). Justice Dallet must misunderstand the gist of our decision in Jensen if she actually believes it stands for the proposition that this court should abandon Wisconsin's sovereign prerogative to implement redistricting plans to federal courts. As Justice Ann Walsh Bradley characterized Jensen during a 2009 administrative conference concerning whether this court should establish rules to handle redistricting petitions: "I start with [what] the unanimous court said, in the Jensen case, noting the established constitutional principle that redistricting is primarily a state, not federal prerogative. That's what a unanimous court said. . . . I think that was correct then, and I think it is correct now. . . . I see this as a matter of doing your job."²

While in Jensen we denied a petition for original action requesting this court to consider redistricting claims, our decision was driven by the timing of the petition, which was filed on January 7, 2002. Jensen, 249 Wis. 2d 709, ¶1. By the time we denied the petition, analogous federal litigation had been ongoing for more than a year. Id., ¶13. The federal litigation was "well along[.]" Id. We were concerned about disrupting Wisconsin's upcoming elections but reaffirmed the long-established principle that this court should decide any disputes related to redistricting:

There is no question but that this matter warrants this court's original jurisdiction; any reapportionment or redistricting case is, by definition, *publici juris*, implicating the sovereign rights of the people of this state. See Petition of Heil, 230 Wis. 428, 443, 284 N.W. 42 (1939). The 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. Grove unequivocally reaffirmed that the principles of federalism and comity establish the institutions of state government—legislative and judicial—as primary in matters of reapportionment and redistricting. Had our jurisdiction been invoked earlier, the public interest might well have been served by our hearing and deciding this case. As it stands, it is not.

Id., ¶17 (emphasis added). Justice Dallet does not acknowledge this key factual distinction between this petition and the one in Jensen. As then-Chief Justice Shirley Abrahamson explained: "[I]n Jensen, we said 'no' for the reasons set forth, but it wasn't a jurisdictional matter. It was a discretionary matter based on the facts and circumstances."³ None of the facts or circumstances

² Supreme Court Open Administrative Conference, at 39:36 (Jan. 22, 2009) (statement of Ann Walsh Bradley, J.) (emphasis added), <https://wiseye.org/2009/01/22/supreme-court-open-administrative-conference-3/>.

³ Id. at 1:03:03 (statement of Shirley S. Abrahamson, C.J.).

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inducing denial of the Jensen petition warrant leaving our responsibilities to the federal courts this time. The two federal cases were filed just a few weeks ago, and they are far from "well along."

Justice Dallet criticizes the petitioners for bringing this dispute "prematurely" and "inject[ing] the court into the political process[.]" By contrast, in rejecting an original action filed against the WEC last year, she—along with a majority of this court—faulted the petitioner for nothing more than a negligible delay, speculating it would disrupt the election. Hawkins v. WEC, 2020 WI 75, ¶5, 393 Wis. 2d 629, 948 N.W.2d 877 (per curiam) (denying petition for leave to commence an original action) ("Although we do not render any decision on whether the respondents have proven that the doctrine of laches applies under these circumstances, having considered all of the parties' filings, we conclude the petitioners delayed in seeking relief in a situation with a very short deadline and that under the circumstances, including the fact that the fall 2020 general election has essentially begun, it is too late to grant petitioners any form of relief that would be feasible and not cause confusion and undue damage to both the Wisconsin electors who want to vote and the other candidates in all of the various races on the general election ballot."); id., ¶86 (Rebecca Grassl Bradley, J., dissenting from denial of petition for leave to commence an original action) ("The majority pretends the court lacks 'sufficient time to complete our review and award any effective relief.' What nonsense. Wisconsin law unquestionably requires that Mr. Hawkins and Ms. Walker appear on the ballot.").

A federal court just rejected the argument that Justice Dallet embraces in this case. Two similar lawsuits were filed in federal court and recently consolidated.⁴ Just last week, the federal court denied a motion by the Wisconsin Legislature to dismiss the case for lack of ripeness. It wrote:

The Legislature . . . says that the . . . plaintiffs' injuries are purely speculative because the legislative redistricting process has not yet had a chance to fail. Dkt. 9-2. In making these arguments the Legislature relies heavily on Grove v. Emison, a case in which the [United States] Supreme Court held that a federal three-judge panel had erred in not deferring to the Minnesota courts' redistricting efforts and by enjoining the state courts from implementing their own plans. 507 U.S. 25, 37 (1993) ("What occurred here was not a last-minute federal court rescue of the Minnesota electoral process, but a race to beat the [state courts'] Special Redistricting Panel to the finish line."). . . .

This court understands the state government's primacy in redistricting its legislative and congressional maps. . . . But the Grove Court did not conclude that the federal case was unripe And this panel is not impeding or superseding any concurrent state redistricting process, steps that that [sic] might run afoul of Grove.

. . . .

⁴ Black Leaders Organization for Communities v. Spindell, No. 21-CV-534 (W.D. Wis. Aug. 23, 2021); Hunter v. Bostelmann, No. 21-CV-512 (W.D. Wis. Aug. 13, 2021).

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No. 2021AP1450-OA Johnson v. Wisconsin Elections Commission

These parties argue that the panel should forestall from any action until the state court system hears the case. But there is yet no indication that the state courts will entertain redistricting in the face of an impasse between the legislature and governor. . . . The court and the parties must prepare now to resolve the redistricting dispute, should the state fail to establish new maps in time for the 2022 election.

Hunter v. Bostelmann, Nos. 21-CV-512 & 21-CV-534, slip op., at 6–8 (W.D. Wis. Sept. 16, 2021). By granting this petition, we now inform the federal court that we "will entertain redistricting in the face of an impasse between the legislature and governor[.]" recognizing, as the federal court does, that both this "court and the parties must prepare now to resolve the redistricting dispute" in order to ensure resolution "in time for the 2022 election." If instead we chose to sit idly by, the federal courts would logically interpret our inaction as a sign that we would not act should the political branches reach an impasse.⁵ As a matter of comity,⁶ we owe the federal courts an answer on how we plan to proceed, and we furnish that answer by granting this petition.

Justice Dallet argues federal courts have "done this [redistricting] three times" but since 1964, "we have never done it." This court, however, resolved redistricting challenges on numerous occasions before 1964.⁷ Even if we had not, Justice Dallet's rationale offers flimsy support for her

⁵ Justice Dallet asserts "by granting the petition now, the court fails to give space for the legislature to fulfill its constitutional duties." The legislature itself apparently disagrees, having filed an amicus brief in support of the petition. It contends the plaintiffs in the federal cases "raced to the federal courthouse. . . . These [federal] cases threaten to usurp the State's primacy in redistricting. . . . To protect the State's constitutional prerogative in redistricting and to prevent federal interference, the Court should exercise original jurisdiction over this action." Legislature's Amicus Br. at 6–7.

⁶ Comity, Garner's Dictionary of Legal Usage (3d ed. 2011) ("comity = courtesy among political entities (as nations or courts of different jurisdictions)[.]").

⁷ Michael Gallagher, Joseph Kreye & Staci Duros, Redistricting in Wisconsin 2020, at 40–54 (2020), https://docs.legis.wisconsin.gov/misc/lrb/wisconsin_elections_project/redistricting_wisconsin_2020_1_2.pdf (discussing several redistricting cases in which this court exercised its original jurisdiction: (1) State ex rel. Attorney General v. Cunningham, 81 Wis. 440, 51 N.W. 724 (1892); (2) State ex rel. Lamb v. Cunningham, 83 Wis. 90, 53 N.W. 35 (1892); (3) State ex rel. Bowman v. Dammann, 209 Wis. 21, 243 N.W. 481 (1932); (4) State ex rel. Broughton v. Zimmerman, 261 Wis. 398, 52 N.W.2d 903 (1952); (5) State ex rel. Reynolds v. Zimmerman, 22 Wis. 2d 544, 126 N.W.2d 551 (1964); (6) State ex rel. Reynolds v. Zimmerman, 23 Wis. 2d 606, 128 N.W.2d 16 (1964) (per curiam)); see also Supreme Court Open Administrative Conference, *supra* note 1, at 41:56 (statement of Ann Walsh Bradley, J.) ("I look at our history since 1920, and in 1920 the districts were reapportioned by the legislature. In the 1930s, it went into state court. [Bowman]. In the 1940s, it again went into state court. [Martin v. Zimmerman, 249 Wis. 101, 23 N.W.2d 610 (1946) (denying petition for leave to commence original action)] In the 50s, it

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conclusion to deny this petition—it is a self-fulfilling prophecy. We should not abrogate our duty now just because we have done so in the past.

Justice Dallet is convinced the issues presented in the petition will require substantial factual development. Perhaps, although she seems to be making some assumptions about ultimate remedies, which is putting "the cart before the horse[.]" Wis. Voter Alliance v. WEC, No. 2020AP1930-OA, unpublished dispositional order, at 4 (Roggensack, C.J., dissenting from denial of petition for leave to commence an original action). "We grant petitions to exercise our jurisdiction based on whether the legal issues presented are of state wide concern, not based on the remedies requested." Id. (citing Heil, 230 Wis. 428). The respondents suggest that if we decide to implement a judicially-created redistricting plan, we will have to start from scratch—a position Justice Dallet seems to accept. While that may be one option, federal courts often start with the existing plan and use it "as a template[.]" Baumgart v. Wendelberger, No. 01-C-0121, 2002 WL 34127471, at *7 (E.D. Wis. May 30, 2002); see also Hippert v. Ritchie, 813 N.W.2d 374, 380 (Minn. Spec. Redistricting Panel 2012) (quoting LaComb v. Growe, 541 F. Supp. 145, 151 (D. Minn. 1982)) ("Because courts engaged in redistricting lack the authority to make the political decisions that the Legislature and the Governor can make through their enactment of redistricting legislation, the panel utilizes a least-change strategy where feasible.").

Justice Dallet may be confusing a one person, one vote claim with a partisan gerrymandering claim, which the United States Supreme Court has declared nonjusticiable in the federal courts. "[T]he one-person, one-vote rule is relatively easy to administer as a matter of math. The same cannot be said of partisan gerrymandering claims, because the Constitution supplies no objective measure for assessing whether a districting map treats a political party fairly." Rucho v. Common Cause, 139 S. Ct. 2484, 2501 (2019). For this reason, among others, the United States Supreme Court has

concluded that partisan gerrymandering claims present political questions beyond the reach of the federal courts. Federal judges have no license to reallocate political power between the two major political parties, with no plausible grant of authority in the Constitution, and no legal standards to limit and direct their decisions. "[J]udicial action must be governed by standard, by rule," and must be "principled, rational, and based upon reasoned distinctions' found in the Constitution or laws. Judicial review of partisan gerrymandering does not meet those basic requirements."

went into state court in [Broughton], and a couple of other cases in the 50s. In the 60s, it went into both the federal and state court in [Wisconsin v. Zimmerman, 205 F. Supp. 673 (W.D. Wis. 1962)] and [Reynolds]. In the 70s, after the 1970 census, the reapportionment legislation was not challenged. 1971 law, chapter 304. 1980s it went into the federal court in [AFL-CIO v. Elections Board, 543 F. Supp. 630 (1982)] . . . In the 90s it went into the federal court, and again we know [Jensen v. WEC, 2002 WI 13, 249 Wis. 2d 706, 639 N.W.2d 537 (per curiam) (denying petition for leave to commence an original action)] in the 2000s it went into . . . federal court and state court.").

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Id. at 2506–07 (quoting Vieth v. Jubelirer, 541 U.S. 267, 278, 279 (2004) (plurality opinion)).

Nevertheless, the court may use existing mechanisms should Justice Dallet's concern become reality. See State ex rel. Ozanne v. Fitzgerald, 2011 WI 43, ¶148, 334 Wis. 2d 70, 798 N.W.2d 436 (Crooks, J., concurring/dissenting) (quotations omitted) ("There are mechanisms which have been utilized, such as appointment of a special master, perhaps a reserve judge, to conduct fact-finding under the continued jurisdiction/supervision of this court."). "[W]hen the legal issue that we wish to address requires it, we have taken cases that do require factual development, referring any necessary factual determinations to a referee or to a circuit court." Wis. Voter Alliance, No. 2020AP1930-OA, at 4 (Roggensack, C.J., dissenting from denial of petition for leave to commence an original action) (citations omitted). Justice Dallet does not explain why these mechanisms do not present viable options, should the need arise for fact-finding.

Next, Justice Dallet misinterprets our statutes by asserting we are "circumvent[ing] the statutory process for addressing redistricting challenges." Wisconsin Stat. § 801.50(4m) (2019–20) provides:

Venue of an action to challenge the apportionment of any congressional or state legislative district shall be as provided in s. 751.035. Not more than 5 days after an action to challenge the apportionment of a congressional or state legislative district is filed, the clerk of courts for the county where the action is filed shall notify the clerk of the supreme court of the filing.

(Emphasis added). This statute governs only a case filed in the circuit court, not an original action filed in this court. Wisconsin Stat. § 751.035 provides:

Upon receiving notice under s. 801.50 (4m), the supreme court shall appoint a panel consisting of 3 circuit court judges to hear the matter. The supreme court shall choose one judge from each of 3 circuits and shall assign one of the circuits as the venue for all hearings and filings in the matter.

Collectively, these statutes prevent a single judge in a single county from deciding—at least in the first instance—important redistricting questions of statewide importance. They have no bearing on the present petition.

More fundamentally, Justice Dallet misunderstands the nature of our original jurisdiction. She inaccurately asserts "the legislature has established a specific process for resolving redistricting claims, and we should not allow the parties to ignore it" while also acknowledging "nothing necessarily prevent[s] us from granting" this petition. The Wisconsin Constitution establishes our original jurisdiction. Article VI, § 3(2) states, "[t]he supreme court . . . may hear original actions and proceedings." This grant of original jurisdiction has been described as

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"extraordinarily broad"⁸ and "practically unlimited in scope."⁹ In contrast, Article VII, § 5(3), which established the court of appeals' subject matter jurisdiction, provides: "The appeals court shall have such appellate jurisdiction in the district, including jurisdiction to review administrative proceedings, as the legislature may provide by law[.]" (Emphasis added). The text of our constitution is clear: "No statute . . . can circumscribe the constitutional jurisdiction of the Wisconsin Supreme Court to hear this (or any) case as an original action. 'The Wisconsin Constitution IS the law—and it reigns supreme over any statute.'" Trump v. Evers, No. 2020AP1971-OA, unpublished dispositional order, at 5–6 (Wis. Dec. 3, 2020) (Rebecca Grassl Bradley, J., dissenting from denial of petition for leave to commence an original action) (quoting Wisconsin Legis. v. Palm, 2020 WI 42, ¶67 n.3, 391 Wis. 2d 497, 942 N.W.2d 900 (Rebecca Grassl Bradley, J., concurring)); see also Skylar Reese Croy, As I See It: Examining the Supreme Court's Original Jurisdiction, Wis. Law. July-Aug. 2021, at 30, 32, <https://www.wisbar.org/NewsPublications/WisconsinLawyer/Pages/Article.aspx?Volume=94&Issue=7&ArticleID=28514> ("Several sources support the proposition that the Wisconsin Supreme Court's original jurisdiction cannot be limited by statute.").

This court remains mindful of the political nature of redistricting, the responsibility for which rests with the people's elected representatives in the legislature. In Jensen, we explained:

[R]edistricting remains an inherently political and legislative—not judicial—task. Courts called upon to perform redistricting are, of course, judicially legislating, that is, writing the law rather than interpreting it, which is not their usual—and usually not their proper—role. Redistricting determines the political landscape for the ensuing decade and thus public policy for years beyond. The framers in their wisdom entrusted this decennial exercise to the legislative branch because the give-and-take of the legislative process, involving as it does representatives elected by the people to make precisely these sorts of political and policy decisions, is preferable to any other.

Jensen, 249 Wis. 2d 706, ¶10. However, we have also recognized that "[t]he Wisconsin Constitution sets forth standards for redistricting" and "there is no reason for Wisconsin citizens to have to rely upon the federal courts for the indirect protection of their state constitutional rights." Id., ¶¶6, 8 (quoted source omitted). Because "this court is the final arbiter of questions arising under the Wisconsin Constitution" it must "stand ready to carry out its responsibility to

⁸ Skylar Reese Croy, As I See It: Examining the Supreme Court's Original Jurisdiction, Wis. Law. July-Aug. 2021, at 30, 31, <https://www.wisbar.org/NewsPublications/WisconsinLawyer/Pages/Article.aspx?Volume=94&Issue=7&ArticleID=28514>.

⁹ Jay E. Grenig, 1 Wisconsin Pleading and Practice Forms § 2:34 (2020).

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faithfully adjudicate any such questions in appropriate circumstances, should that become necessary." *Id.*, ¶25 (citation omitted).

Since Jensen, and after this court declined in 2009 to establish procedures for resolving redistricting actions, the United States Supreme Court removed political questions—such as partisan gerrymander claims—from federal judicial review, denying federal judges any "license to reallocate political power between the two major political parties[.]" Rucho, 139 S. Ct. at 2507. This circumscription of the judicial role in redistricting challenges to the interpretation and application of law should alleviate any concerns about the courts exercising anything but judicial power in these matters.¹⁰

In a perfect world, the political branches—not the judiciary—would implement a redistricting plan after every decennial census. Our precedent says the legislature can enact a redistricting plan only if the plan is subject to presentment. State ex rel. Reynolds v. Zimmerman, 22 Wis. 2d 544, 559, 126 N.W.2d 551 (1964); see State ex rel. Broughton v. Zimmerman, 261 Wis. 398, 407–08, 52 N.W. 93 (1952), overruled in part by Reynolds, 22 Wis. 2d 544 ("The power and duty imposed upon the legislature by the constitution to reapportion the state after each federal census can only be exercised by both the houses of the legislature passing a bill that becomes a law upon the signature of the governor, or, if the governor should veto it, upon repassage by the required vote over his veto, and publication."); see also State ex rel. Cunningham v. Attorney General, 81 Wis. 440, 506, 51 N.W. 724 (1892) (Pinney, J., concurring) ("[B]y an unbroken usage extending from the organization of the state, more than 40 years ago, . . . [the power of apportioning and redistricting] has been used and exercised as a legislative power executed in the form of a law, approved by the governor, and published in the General Laws."). In a state with a history of divided government, our precedent has created a constitutional conundrum.

Under the United States Constitution, states are effectively required to redistrict after every decennial census to comply with a principle commonly called "one person, one vote."¹¹ Similarly,

¹⁰ Justice Dallet cites League of Women Voters v. Pennsylvania, 178 A.3d 737 (Pa. 2018) for the proposition that "claims of partisan gerrymandering are cognizable under the Pennsylvania Constitution[.]" Why this matters is unclear. Additionally, she fails to mention that the Pennsylvania Constitution contains a Free and Equal Elections Clause; no analogous provision exists in the Wisconsin Constitution. This clause states: "Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." Pa. Const. art. I, § 5. In League of Women Voters, the Pennsylvania Supreme Court held partisan gerrymandering claims were justiciable under that particular provision. 178 A.3d at 813–14. The court went so far as to note that claims under the Fourteenth Amendment's Equal Protection Clause are "distinct" and "remain subject to entirely separate jurisprudential considerations." *Id.* at 813.

¹¹ Article I, § 2 of the United States Constitution requires members of the House of Representatives to be chosen "by the People of the several states." The United States Supreme Court has construed this section to mean "that as nearly as practicable one man's vote in a congressional election is to be worth as much as another's." Wesberry v. Sims, 376 U.S. 1, 7–8

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Article IV, Section 3 of the Wisconsin Constitution states: "At its first session after each enumeration made by the authority of the United States, the legislature shall apportion and district anew the members of the senate and assembly, according to the number of inhabitants." Applying our precedent to redistricting disputes arising during a time of divided government, the political branches can quickly reach an impasse if the legislature passes a redistricting plan and the governor vetoes it. Courts then face a choice: On one hand, the court can avoid the "political thicket"¹² by refusing to do anything. This course of action prevents the judiciary from exercising powers vested in the political branches but it has a remarkable drawback: It allows inequality in the political process to go unchecked. As Justice Ann Walsh Bradley has explained, "[a]lthough . . . separation of powers is a cornerstone of our democracy, so is equal representation."¹³ Alternatively, courts can enter the thicket.

Since the 1890s, this court has often chosen the latter course. In State ex rel. Attorney General v. Cunningham, we stated, while discussing restrictions on the legislature's redistricting power:

The right of the people to make their own laws through their own representatives, so fundamental in and essential to free government, the convention sought to guard by these restrictions. That most dangerous doctrine, that these and other restrictions upon the power of the legislature are merely declaratory, and not mandatory, should not be encouraged even to the degree of discussing the question. The convention, in making a constitution, had a higher duty to perform than to give the legislature advice.

(1964). Under the Fourteenth Amendment's Equal Protection Clause, the Court has articulated a similar requirement for state legislative districts. Reynolds v. Sims, 377 U.S. 533, 577 (1964) ("By holding that as a federal constitutional requisite both houses of a state legislature must be apportioned on a population basis, we mean that the Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable."); see also Maryland Committee for Fair Representation v. Tawes, 377 U.S. 656, 674–75 (1964) (holding even state senate districts must comply with one person, one vote).

¹² Colegrove v. Green, 328 U.S. 549, 556 (1946) (plurality opinion), abrogation recognized by Evenwel v. Abbott, 577 U.S. 937 (2016) ("Courts ought not to enter this political thicket. The remedy for unfairness in districting is to secure State legislatures that will apportion properly, or to invoke the ample powers of Congress. The Constitution has many commands that are not enforceable by courts because they clearly fall outside the conditions and purposes that circumscribe judicial action.").

¹³ Supreme Court Open Administrative Conference, supra note 1, at 40:50 (statement of Ann Walsh Bradley, J.).

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81 Wis. at 485 (majority opinion) (emphasis added). We concluded, "the restrictions on the power of the legislature to make apportionment, found in sections 3, 4, and 5 of article 4 of the constitution are mandatory and imperative, not subject to legislative discretion." *Id.* at 486 (emphasis added). We also emphasized "the judicial power to declare . . . [an] apportionment act unconstitutional, and to set it aside as absolutely void[.]" *Id.* It remains the province of the judiciary to declare, in cases presented to us, the constitutional obligations of (and limitations on) the other branches of government.

In Wisconsin's modern history, redistricting has primarily fallen to the judiciary. In *Jensen* we noted, "in the four decades since *Baker v. Carr* . . . and *Reynolds v. Sims* . . . the matter of redistricting has been resolved by the legislature without court involvement exactly once, in 1972." 249 Wis. 2d 706, ¶7. We have a history of letting federal courts handle these matters, perhaps because it removes us from the thicket of political conflicts. Our job, however, is not to avoid controversy but to declare the law. *See State v. Herрман*, 2015 WI 84, ¶156, 364 Wis. 2d 336, 867 N.W.2d 772 (Ziegler, J., concurring) (quoting John G. Roberts, Chief Justice, U.S. Supreme Court, 2011 Year-End Report on the Federal Judiciary, at 9 (Dec. 31, 2011), <http://www.supremecourt.gov/publicinfo/year-end/2011year-endreport.pdf>)). After all, "[o]ur fundamental role is to pass on the constitutionality [of laws]."¹⁴

"Elections are the foundation of American government and their integrity is of such monumental importance that any threat to their validity should trigger not only our concern but our prompt action." *Trump*, No. 2020AP1971-OA, at 5 (Rebecca Grassl Bradley, J., dissenting from denial of petition for leave to commence an original action) (quoted source omitted). Redistricting ensures fair elections by preserving constitutionally-guaranteed equal representation for the people. *See* James Wilson *Lectures on Law* (1791), in 2 *Collected Works of James Wilson* 837 (2007) ("[A]ll elections ought to be equal. Elections are equal, when a given number of citizens, in one part of the state, choose as many representatives, as are chosen by the same number of citizens, in any other part of the state. In this manner, the proportion of representatives and of constituents will remain invariably the same."). It is beyond question that "the court has the power to declare a legislative plan constitutional or unconstitutional. The court has the power, . . . on a legal finding of unconstitutionality, to draw lines and exercise its constitutional function of equal representation."¹⁵ Fundamentally, this court has a duty to resolve redistricting disputes; doing so does not threaten the separation of powers nor does it risk a concentration of power in the judicial branch:

[T]he courts were designed to be an intermediate body between the people and the legislature in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a

¹⁴ *Id.* at 45:32 (statement of Ann Walsh Bradley, J.).

¹⁵ *Id.* at 1:42:23 (statement of Shirley S. Abrahamson, C.J.).

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fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body.

The Federalist No. 78, at 467 (Alexander Hamilton) (Clinton Rossiter ed. 1961). While some may wish to "let this cup pass" this is "our job Let's do our job."¹⁶ For all of these reasons, I concur with the court's decision to grant this petition.

REBECCA FRANK DALLET, J. (*dissenting*). As is often the case with original-jurisdiction petitions, the question is not whether we can grant the petition but whether we should. After the political process has an opportunity to play out, we may need to get involved in redistricting. But now is not the time and this petition is not the way. The majority's order prematurely injects the court into the political process, risks undermining the court's independence, and circumvents the statutory process for addressing redistricting challenges. The court should therefore deny the petition. I dissent.

There are good reasons for the court to avoid inserting itself into the redistricting process at all. Under the Wisconsin Constitution, it is the legislature's duty, not the court's, to pass a redistricting plan after each national census.¹⁷ See, e.g., Wis. Const. arts. IV, VII; see also James Madison, The Federalist No. 47 (1788) (explaining the heightened threat to citizens' liberty when the judiciary acts as the legislature). Indeed, avoiding usurping the legislature's role is an important reason the court has stayed out of previous redistricting battles. See Jensen v. Wis. Elections Bd., 2002 WI 13, ¶10, 249 Wis. 2d 706, 639 N.W.2d 537 ("Courts called upon to perform redistricting are, of course, judicially legislating, that is, writing the law rather than interpreting it, which is not their usual—and usually not their proper—role." (emphasis omitted)). As Chief Justice Ziegler and Justice Roggensack have noted, should the court take control of the redistricting process, the court would impermissibly transform itself into a "super-legislature"¹⁸ by "insert[ing itself] into the actual lawmaking function."¹⁹ See also, e.g., id., ¶10 ("The framers in their wisdom entrusted this decennial exercise [of redistricting] to the legislative branch because the give-and-take of the legislative process, involving as it does representatives elected by the people to make precisely these sorts of political and policy decisions, is preferable to any other.").

Redistricting is, in other words, an inherently political and partisan endeavor. Yet the court must strive to be apolitical—or at least nonpartisan. Both current and former members of the court have explained that it "would be a mistake" to "immerse[the court] in the partisan political

¹⁶ Id. at 45:36 (statement of Ann Walsh Bradley, J.) (emphasis added).

¹⁷ "At its first session after each enumeration made by the authority of the United States, the legislature shall apportion and district anew the members of the senate and assembly, according to the number of inhabitants." Wis. Cont. art. IV, § 3.

¹⁸ <https://wiseye.org/2009/01/22/supreme-court-open-administrative-conference-3/>.

¹⁹ Id.

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process”²⁰ of redistricting because doing so “is totally inconsistent with our jobs as [a] nonpartisan judiciary.”²¹ Those apt observations ring even truer today given Wisconsin’s hyper-partisan politics.

That said, there are times when a court must become involved in redistricting. If the legislature fails to fulfill its constitutional duty by either enacting no new district maps or enacting unconstitutional maps, then the voters may turn to the courts to vindicate the right to vote in equally populated districts that are “convenient [and] contiguous” and “as compact . . . as practicable”. See Wis. Const. art. IV, §§ 2-5; Jensen, 249 Wis. 2d 706, ¶¶7–11. Here, the legislature has not even proposed, let alone enacted, new district maps. The political process has not failed; it has barely started. The majority recognizes as much, explaining that the court should involve itself in redistricting only after the legislature has had an “adequate opportunity” to act. Yet by granting the petition now, the court fails to give space for the legislature to fulfill its constitutional duties.²² We should let this political process play out in the political branches.

Of course, if the political process fails, then courts have a role to play. Either state or federal courts may hear redistricting challenges, although there are some such challenges that only a state court can hear. For instance, while the federal courts have held that partisan gerrymandering claims are nonjusticiable under the federal constitution, Rucho v. Common Cause, 139 S. Ct. 2484, 2506–07 (2019), it is up to state courts to determine whether the same is true under their state constitutions. See id. at 2507; see also League of Women Voters v. Pennsylvania, 178 A.3d 737, 814, 821 (Pa. 2018) (holding that claims of partisan gerrymandering are cognizable under the Pennsylvania Constitution and striking down the state’s Congressional map on that basis). We have never addressed whether partisan gerrymandering may violate the Wisconsin Constitution, and, so far, no party has raised such a claim here.

For other redistricting claims, there are several reasons why it is best for the federal courts to handle them, particularly when they involve federal law. First, since the United States Supreme Court revolutionized the law on redistricting in Reynolds v. Sims, 377 U.S. 533 (1964), the federal

²⁰ Id. (Justice Gableman).

²¹ Id. (Justice Roggensack).

²² The legislature made these same points in arguing for the dismissal of a redistricting action in federal court, pointing out that such litigation is “wildly premature” because the legislature’s process is barely underway. See Hunter v. Bostelmann, No. 3:21-cv-512-jdp-ajs-ec (W.D. Wis. Aug. 17, 2021), ECF No. 9-3, at 6–7.

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courts have “done this [redistricting] three times.”²³ See Baumgart v. Wendelberger, No. 01-C-0121, 2002 WL 34127471 (E.D. Wis. May 30, 2002); Prosser v. Elections Bd., 793 F. Supp. 859 (E.D. Wis. 1992); Wis. State AFL-CIO v. Elections Bd., 543 F. Supp. 630 (E.D. Wis. 1982). Post-Reynolds, we have never done it. The last time we drew district maps was in May 1964, before Reynolds was decided. See State ex rel. Reynolds v. Zimmerman, 23 Wis. 2d 606 (1964). Second, the federal courts have experience with the unique complexities of federal Voting Rights Act claims, the resolution of which is “integral to the drawing of statewide maps.” See, e.g., Hunter v. Bostelmann, No. 3:21-cv-00512-jdp-ajs-ec (W.D. Wis. Sept. 16, 2021), ECF No. 60, at 5. We have no such experience. Third, unlike this court, the federal courts are made up of judges serving lifetime appointments, so they are “not . . . apt to be seen as partisans when they do the job of redistricting.”²⁴ Finally, the federal courts will likely have the last word anyway. Whatever plan the legislature or this court adopts, it will be subject to challenge in a separate action filed in federal court and appealable to the United States Supreme Court. See Jensen, 249 Wis. 2d 706, ¶16. Thus, any new district maps will be final only after the completion of both direct and collateral review in federal courts, raising the specter of further uncertainty and delay. See id. (“At best, such a scenario would delay and disrupt the [upcoming] election season . . .”).

Despite all of the reasons for preferring a federal forum, this court has chosen to step in via our original jurisdiction. But the legislature has established a specific process for resolving redistricting claims, and we should not allow the parties to ignore it. Following the last round of redistricting, the legislature enacted Wis. Stat. §§ 751.035 and 801.50(4m). See 2011 Wis. Act 39, §§ 28, 29. Under those statutes, a party may file a challenge to legislative or congressional apportionment in the circuit court. The circuit court must notify this court of that filing, at which point we are required to appoint a panel of three circuit court judges to hear the case. Parties may appeal the panel’s decisions to this court, but not to the court of appeals. § 751.035(3). This process mirrors the federal one, under which redistricting challenges are typically heard by a three-judge district court, whose decisions are appealable only to the United States Supreme Court. See generally 28 U.S.C. §§ 1253, 2284. The process under §§ 751.035 and 801.50(4m), like the well-tested federal process, thus ensures swift appellate review of the panel’s work while delegating to trial judges traditional trial-court tasks, such as motion practice and fact finding.

There is little doubt that substantial motion practice and extensive fact finding will be necessary in a case like this one. Both federal law and the Wisconsin Constitution require that any court-ordered redistricting plans account for many competing interests, among them are:

²³ <https://wiseye.org/2009/01/22/supreme-court-open-administrative-conference-3/> (Chief Justice Ziegler). In 2008, Justice Prosser promised to vote “every time” against granting an original action related to redistricting. See <https://wiseye.org/2008/04/08/supreme-court-rules-hearing-and-open-administrative-conference-part-3-of-4/>. Instead, he would “let [the parties] go to the federal court.” Id.

²⁴ <https://wiseye.org/2009/01/22/supreme-court-open-administrative-conference-3/> (Justice Roggensack).

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- minimizing district changes (sometimes called “core retention”);
- population equality;
- “compactness”;
- maintaining traditional communities of interest;
- avoiding splitting municipal or ward boundaries;
- compliance with the federal Voting Rights Act; and
- minimizing so-called “disenfranchisement,” which occurs when voters are shifted from odd- to even-numbered senate districts, thus temporarily depriving them of a vote for a state senator.

See, e.g., Baumgart, 2002 WL 34127471, at *3. The list makes clear that, while the one-person-one-vote principle may be “relatively easy to administer as a matter of math,” see Rucho, 139 S. Ct. at 2501, it gets much more complicated after that. “Population equality” is but one of the myriad fact-intensive and often countervailing factors courts must balance. Not to mention that “there is a nearly infinite set of district configurations that would generate approximate population equality across districts, and no one supposes that a court should be indifferent among all members of the set.” See Prosser, 793 F. Supp. at 863. Courts must therefore balance the population-equality factor against many others, a task that requires extensive fact finding and consideration of experts’ and other witnesses’ testimony. Simply put, it requires a trial court, which we are “obviously not.” See Jensen, 249 Wis. 2d 706, ¶20 (adding that “our current original jurisdiction procedures would have to substantially modified in order to accommodate the requirements” of redistricting litigation).

We need only look to the last court-ordered redistricting of Wisconsin to appreciate the arduous task the court likely faces. There, a three-judge district court considered sixteen plans suggested by a variety of parties. See Baumgart, 2002 WL 34127471, at *4–7. It ultimately adopted none of them because each had “unredeemable flaws.” See id. at *6. The federal court had to create its own plan, which “involved some subjective choices,” such as deciding “which communities to exclude from overpopulated districts and to include in underpopulated districts.” Id. at *7. In doing so, the court relied on the parties’ affidavits, expert testimony, and testimony at a multi-day trial in which the parties “vigorously” disputed several factual questions. See id. at *4, *7. In the end, the court spelled out—in a discussion spanning more than twenty pages and delving down to the ward level—the precise districts across the entire state. See id. at *8–31.

Baumgart demonstrates that courts addressing redistricting challenges inevitably face myriad factual questions, questions we are ill equipped to handle as a court of last resort. See Jensen, 249 Wis. 2d 706, ¶20. This court’s proper role—to resolve complex legal issues involving undisputed facts—is accounted for in Wis. Stat. §§ 751.035 and 801.50(4m), which reserve fact-finding for the circuit court and appellate review for this court. The majority offers no rationale for ignoring this workable process.

The majority’s resort to Jensen fails to justify exercising our original jurisdiction here. Indeed, Jensen counsels squarely against it, seeing as there are two ongoing consolidated federal redistricting cases. Just last week, the three-judge district court declined to dismiss those cases.

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September 22, 2021 *Amended September 24, 2021*

No. 2021AP1450-OA Johnson v. Wisconsin Elections Commission

See Hunter, No. 3:21-cv-512-jdp-ajs-eec (W.D. Wis. Sept. 16, 2021), ECF No. 60, at 9. Moving forward, the court suggested that although it may impose a “limited stay” to let the state process run its course, it would also set a “schedule that will allow for the timely resolution of the case should the state process languish or fail.” Id. at 8. Our adding this original action to the mix “put[s] this case and any redistricting map it would produce on a collision course” with the pending federal cases,” risking further uncertainty for both voters and candidates in the 2022 elections. See Jensen, 249 Wis. 2d 706, ¶16. Although we acknowledged in Jensen that redistricting challenges likely meet our criteria for original jurisdiction, see id., ¶17, that was nine years before the legislature enacted Wis. Stat. §§ 751.035 and 801.50(4m). Moreover, whether this petition meets our original-jurisdiction criteria is beside the point. Again, the question is not whether we can take the case but whether we should.

We have been in this situation before. Just last term, we denied then-President Trump’s original action petition challenging the recount of the presidential election results because Wis. Stat. § 9.01(11) requires candidates to file such challenges in the circuit court. See Trump v. Evers, No. 2020AP1971-OA, order (Wis. Dec. 3, 2020). As in this case, nothing necessarily prevented us from granting Trump’s petition, but we rightly decided that when the legislature establishes a process for specific actions, we should follow that process. See id. (Hagedorn, J., concurring). There is no reason to chart a different course now.

The majority’s order charts no course whatsoever. It drops the court into the redistricting wilderness without even a compass. The order sets forth no plan for how seven Justices with no experience in drawing district maps should go about this Herculean task while simultaneously attending to the rest of the court’s docket. Although I trust my colleagues as jurists, I do not share their confidence that we can simultaneously be legislators, cartographers, and mathematicians. Acting as if we can is bad for the court and worse for the people of Wisconsin. Redistricting is a difficult process when it involves only two branches of government. The majority now prematurely, inappropriately, and recklessly involves the third.

For all of these reasons, the court should deny the petition. I dissent.

I am authorized to state that Justices ANN WALSH BRADLEY and JILL J. KAROFISKY join this dissent.

Sheila T. Reiff
Clerk of Supreme Court

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September 22, 2021 *Amended September 24, 2021*

No. 2021AP1450-OA Johnson v. Wisconsin Elections Commission

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No. 2025AP999

In the Supreme Court of Wisconsin

KATE FELTON, LOREN DE LONAY, KYLE JOHNSON, RAYMOND
SPELLMAN, VALERIA CERDA, LYNN CAREY, RAFAEL SALAS, CURTIS
GAUTHIER, *and* PATRICIA SCIESZINKSI,
PETITIONERS,

v.

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

On Petition To The Supreme Court To
Take Jurisdiction Of An Original Action

DECLARATION OF CONGRESSMAN GLENN S. GROTHMAN

I, Congressman Glenn S. Grothman, hereby declare, pursuant to Wis. Stat. § 887.015, as follows:

1. I am a duly elected member of the U.S. House of Representatives, representing Wisconsin's Sixth Congressional District. I ran for, and won, the 2024 election to be the Representative to the U.S. House of Representatives for Wisconsin's Sixth Congressional District.

2. I also reside within Wisconsin's Sixth Congressional District.

3. As the Sixth District's duly elected Representative, I have a substantial interest in my District and a significant relationship with my constituents. Since it is my duty to serve my constituents—including drafting, revising and supporting legislation that improve their lives—I have invested substantial time to get to know Wisconsinites who live in the District.

4. Further, I plan to run for reelection to the U.S. House of Representatives in 2026 to continue to serve as the Representative of Wisconsin's Sixth District.

5. For these reasons, I have a significant interest in this lawsuit, including in any redrawing of the boundaries of the Sixth

Congressional District for the 2026 Election that this Court may order. After all, if this Court were to order a change in the Sixth District's boundaries, I would need to spend time getting to know the needs and interests of Wisconsinites that were added to the District, both in order to win reelection and to represent those Wisconsinites' interest should I prevail in my race.

Signed on the 26th day of May, 2025, at Sheboygan (city or other locality), Wisconsin (state or country).

Printed Name:

Glenn Grothman

Signature:

[Signature]

No. 2025AP999

In the Supreme Court of Wisconsin

KATE FELTON, LOREN DE LONAY, KYLE JOHNSON, RAYMOND
SPELLMAN, VALERIA CERDA, LYNN CAREY, RAFAEL SALAS, CURTIS
GAUTHIER, *and* PATRICIA SCIESZINKSI,
PETITIONERS,

v.

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

On Petition To The Supreme Court To
Take Jurisdiction Of An Original Action

DECLARATION OF CONGRESSMAN BRYAN G. STEIL

I, Congressman Bryan G. Steil, hereby declare, pursuant to Wis. Stat. § 887.015, as follows:

1. I am a duly elected member of the U.S. House of Representatives, representing Wisconsin's First Congressional District. I ran for, and won, the 2024 election to be the Representative to the U.S. House of Representatives for Wisconsin's First Congressional District.

2. I also reside within Wisconsin's First Congressional District.

3. As the First District's duly elected Representative, I have a substantial interest in my District and a significant relationship with my constituents. Since it is my duty to serve my constituents—including drafting, revising and supporting legislation that improve their lives—I have invested substantial time to get to know Wisconsinites who live in the District.

4. Further, I plan to run for reelection to the U.S. House of Representatives in 2026 to continue to serve as the Representative of Wisconsin's First District.

5. For these reasons, I have a significant interest in this lawsuit, including in any redrawing of the boundaries of the First

Congressional District for the 2026 Election that this Court may order. After all, if this Court were to order a change in the First District's boundaries, I would need to spend time getting to know the needs and interests of Wisconsinites that were added to the District, both in order to win reelection and to represent those Wisconsinites' interest should I prevail in my race.

I declare under penalty of false swearing under the law of Wisconsin that the foregoing is true and correct

Signed on the 28th day of May, 2025, at Janesville (city or other locality), Wisconsin (state or country).

Printed Name: Bryan G. Steil

Signature: _____



*Electronically signed by Congressman Bryan G.
Steil*

No. 2025AP999

In the Supreme Court of Wisconsin

KATE FELTON, LOREN DE LONAY, KYLE JOHNSON, RAYMOND
SPELLMAN, VALERIA CERDA, LYNN CAREY, RAFAEL SALAS, CURTIS
GAUTHIER, *and* PATRICIA SCIESZINKSI,
PETITIONERS,

v.

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

On Petition To The Supreme Court To
Take Jurisdiction Of An Original Action

DECLARATION OF CONGRESSMAN THOMAS P. TIFFANY

I, Congressman Thomas P. Tiffany, hereby declare, pursuant to Wis. Stat. § 887.015, as follows:

1. I am a duly elected member of the U.S. House of Representatives, representing Wisconsin's Seventh Congressional District. I ran for, and won, the 2024 election to be the Representative to the U.S. House of Representatives for Wisconsin's Seventh Congressional District.

2. I also reside within Wisconsin's Seventh Congressional District.

3. As the Seventh District's duly elected Representative, I have a substantial interest in my District and a significant relationship with my constituents. Since it is my duty to serve my constituents—including drafting, revising and supporting legislation that improve their lives—I have invested substantial time to get to know Wisconsinites who live in the District.

4. Further, I plan to run for reelection to the U.S. House of Representatives in 2026 to continue to serve as the Representative of Wisconsin's Seventh District.

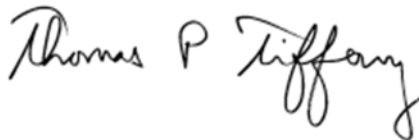
5. For these reasons, I have a significant interest in this lawsuit, including in any redrawing of the boundaries of the

Seventh Congressional District for the 2026 Election that this Court may order. After all, if this Court were to order a change in the Seventh District's boundaries, I would need to spend time getting to know the needs and interests of Wisconsinites that were added to the District, both in order to win reelection and to represent those Wisconsinites' interest should I prevail in my race.

Signed on the 28th day of May, 2025, at Minocqua (city or other locality), Wisconsin (state or country).

Printed Name: Thomas P. Tiffany

Signature: _____

A handwritten signature in cursive script that reads "Thomas P. Tiffany". The signature is written in black ink and is positioned above a horizontal line.

Electronically signed by Congressman Thomas P. Tiffany

No. 2025AP999

In the Supreme Court of Wisconsin

KATE FELTON, LOREN DE LONAY, KYLE JOHNSON, RAYMOND
SPELLMAN, VALERIA CERDA, LYNN CAREY, RAFAEL SALAS, CURTIS
GAUTHIER, *and* PATRICIA SCIESZINKSI,
PETITIONERS,

v.

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

On Petition To The Supreme Court To
Take Jurisdiction Of An Original Action

DECLARATION OF CONGRESSMAN SCOTT L. FITZGERALD

I, Congressman Scott L. Fitzgerald, hereby declare, pursuant to Wis. Stat. § 887.015, as follows:

1. I am a duly elected member of the U.S. House of Representatives, representing Wisconsin's Fifth Congressional District. I ran for, and won, the 2024 election to be the Representative to the U.S. House of Representatives for Wisconsin's Fifth Congressional District.

2. I also reside within Wisconsin's Fifth Congressional District.

3. As the Fifth District's duly elected Representative, I have a substantial interest in my District and a significant relationship with my constituents. Since it is my duty to serve my constituents—including drafting, revising and supporting legislation that improve their lives—I have invested substantial time to get to know Wisconsinites who live in the District.

4. Further, I plan to run for reelection to the U.S. House of Representatives in 2026 to continue to serve as the Representative of Wisconsin's Fifth District.

5. For these reasons, I have a significant interest in this lawsuit, including in any redrawing of the boundaries of the Fifth

Congressional District for the 2026 Election that this Court may order. After all, if this Court were to order a change in the Fifth District's boundaries, I would need to spend time getting to know the needs and interests of Wisconsinites that were added to the District, both in order to win reelection and to represent those Wisconsinites' interest should I prevail in my race.

Signed on the 28th day of May, 2025, at Juneau (city or other locality), Wisconsin (state or country).

Printed Name: Scott L. Fitzgerald

Signature: Electronically Signed by Congressman Scott L.
Fitzgerald

No. 2025AP999

In the Supreme Court of Wisconsin

KATE FELTON, LOREN DE LONAY, KYLE JOHNSON, RAYMOND
SPELLMAN, VALERIA CERDA, LYNN CAREY, RAFAEL SALAS, CURTIS
GAUTHIER, *and* PATRICIA SCIESZINKSI,
PETITIONERS,

v.

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

On Petition To The Supreme Court To
Take Jurisdiction Of An Original Action

DECLARATION OF CONGRESSMAN DERRICK VAN ORDEN

I, Congressman Derrick Van Orden, hereby declare, pursuant to Wis. Stat. § 887.015, as follows:

1. I am a duly elected member of the U.S. House of Representatives, representing Wisconsin's Third Congressional District. I ran for, and won, the 2024 election to be the Representative to the U.S. House of Representatives for Wisconsin's Third Congressional District.

2. I also reside within Wisconsin's Third Congressional District.

3. As the Third District's duly elected Representative, I have a substantial interest in my District and a significant relationship with my constituents. Since it is my duty to serve my constituents—including drafting, revising and supporting legislation that improve their lives—I have invested substantial time to get to know Wisconsinites who live in the District.

4. Further, I plan to run for reelection to the U.S. House of Representatives in 2026 to continue to serve as the Representative of Wisconsin's Third District.

5. For these reasons, I have a significant interest in this lawsuit, including in any redrawing of the boundaries of the Third

Congressional District for the 2026 Election that this Court may order. After all, if this Court were to order a change in the Third District's boundaries, I would need to spend time getting to know the needs and interests of Wisconsinites that were added to the District, both in order to win reelection and to represent those Wisconsinites' interest should I prevail in my race.

Signed on the 28 day of May, 2025, at Oconomowoc
(city or other locality), Wisconsin (state or country).

Printed Name: Derrick Van Orden

Signature:



*Electronically signed by Congressman Derrick
Van Orden*

No. 2025AP999

In the Supreme Court of Wisconsin

KATE FELTON, LOREN DE LONAY, KYLE JOHNSON, RAYMOND
SPELLMAN, VALERIA CERDA, LYNN CAREY, RAFAEL SALAS, CURTIS
GAUTHIER, *and* PATRICIA SCIESZINKSI,
PETITIONERS,

v.

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

On Petition To The Supreme Court To
Take Jurisdiction Of An Original Action

DECLARATION OF CONGRESSMAN TONY WIED

No. 2025AP999

In the Supreme Court of Wisconsin

KATE FELTON, LOREN DE LONAY, KYLE JOHNSON, RAYMOND SPELLMAN, VALERIA
CERDA, LYNN CAREY, AND LINDA WEAVER,
PETITIONERS,

v.

WISCONSIN ELECTIONS COMMISSION; ANN S. JACOBS, MARK L. THOMSEN, CARRIE
RIEPL, DON M. MILLIS, ROBERT F. SPINDELL, JR., AND, MARGE BOSTELMANN, 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,

ON PETITION TO THE SUPREME COURT TO
TAKE JURISDICTION OF AN ORIGINAL ACTION

DECLARATION OF CONGRESSMAN TONY C. WIED

□

I, Congressman Tony C. Wied, hereby declare, pursuant to Wis. Stat. § 887.015, as follows:

1. I am a duly elected member of the U.S. House of Representatives, representing Wisconsin's Eighth Congressional District. I ran for, and won, the 2024 election to be the Representative to the U.S. House of Representatives for Wisconsin's Eighth Congressional District.

2. I also reside within Wisconsin's Eighth Congressional District.

3. As the Eighth District's duly elected Representative, I have a substantial interest in my District and a significant relationship with my constituents. Since it is my duty to serve my constituents—including drafting, revising, and supporting legislation that improve their lives—I have invested substantial time to get to know Wisconsinites who live in the District.

4. Further, I plan to run for reelection to the U.S. House of Representatives in 2026 to continue to serve as the Representative of Wisconsin's Eighth District.

5. For these reasons, I have a significant interest in this lawsuit, including in any redrawing of the boundaries of the Eighth Congressional District for the 2026 Election that this Court may order. After all, if this Court were to order a change in the Eighth District's boundaries, I would need to spend time getting to know the needs and interests of Wisconsinites that were added to the District, both in order to win reelection and to represent those Wisconsinites' interest should I prevail in my race.

Signed on the 27 day of May, 2025, at De Pere (city or other
locality), Wisconsin (state or country).

Printed Name:

Tony Wied

Signature:

[Handwritten Signature]

No. 2025AP999

In the Supreme Court of Wisconsin

KATE FELTON, LOREN DE LONAY, KYLE JOHNSON, RAYMOND
SPELLMAN, VALERIA CERDA, LYNN CAREY, RAFAEL SALAS, CURTIS
GAUTHIER, *and* PATRICIA SCIESZINKSI,
PETITIONERS,

v.

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

On Petition To The Supreme Court To
Take Jurisdiction Of An Original Action

DECLARATION OF MIKE MOELLER

I, Mike Moeller, hereby declare, pursuant to Wis. Stat. § 887.015, as follows:

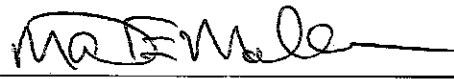
1. This declaration is based on my personal knowledge.
2. I am over the age of 18 and I am a registered voter in the State of Wisconsin.
3. My primary residence is located in South Milwaukee, Wisconsin.
4. My primary residence is located within Wisconsin's First Congressional District.
5. In the November 2024 general election for the U.S. House of Representatives, I voted for Congressman Bryan Steil.
6. Further, in the months and weeks before the November 2024 general election for the U.S. House of Representatives, I spent significant time and resources campaigning for the reelection of Congressman Bryan Steil—whom, again, I voted for in the November 2024 election.
7. For the upcoming November 2026 general election for the U.S. House of Representatives, I again intend to vote for Congressman Bryan Steil.

8. Further, as with the November 2024 election, I expect to spend significant time and resources campaigning for the reelection of Congressman Bryan Steil in the months and weeks before the November 2026 general election for the U.S. House of Representatives.

I declare under penalty of false swearing under the law of Wisconsin that the foregoing is true and correct.

Signed on the 28 day of May, 2025, at South Milwaukee (city or other locality), Wisconsin (state or country).

Printed Name: Michael E. Moeller

Signature: 

No. 2025AP999

In the Supreme Court of Wisconsin

KATE FELTON, LOREN DE LONAY, KYLE JOHNSON, RAYMOND
SPELLMAN, VALERIA CERDA, LYNN CAREY, RAFAEL SALAS, CURTIS
GAUTHIER, *and* PATRICIA SCIESZINKSI,
PETITIONERS,

v.

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

On Petition To The Supreme Court To
Take Jurisdiction Of An Original Action

DECLARATION OF GREGORY HUTCHESON

I, Gregory Hutcheson, hereby declare, pursuant to Wis. Stat. § 887.015, as follows:

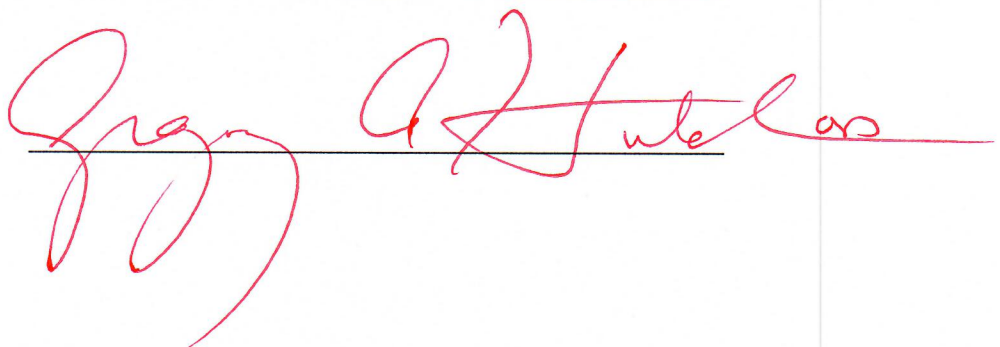
1. This declaration is based on my personal knowledge.
2. I am over the age of 18 and I am a registered voter in the State of Wisconsin.
3. My primary residence is located in Nekoosa, Wisconsin.
4. My primary residence is located within Wisconsin's Third Congressional District.
5. In the November 2024 general election for the U.S. House of Representatives, I voted for Congressman Derrick Van Orden.
6. Further, in the months and weeks before the November 2024 general election for the U.S. House of Representatives, I spent significant time and resources campaigning for the reelection of Congressman Derrick Van Orden—whom, again, I voted for in the November 2024 election.
7. For the upcoming November 2026 general election for the U.S. House of Representatives, I again intend to vote for Congressman Derrick Van Orden.

8. Further, as with the November 2024 election, I expect to spend significant time and resources campaigning for the reelection of Congressman Derrick Van Orden in the months and weeks before the November 2026 general election for the U.S. House of Representatives.

I declare under penalty of false swearing under the law of Wisconsin that the foregoing is true and correct.

Signed on the 27th day of May, 2025, at Friendship (city or other locality), Wisconsin (state or country).

Printed Name: GREGORY A. HUTCHESON

Signature: 

No. 2025AP999

In the Supreme Court of Wisconsin

KATE FELTON, LOREN DE LONAY, KYLE JOHNSON, RAYMOND
SPELLMAN, VALERIA CERDA, LYNN CAREY, RAFAEL SALAS, CURTIS
GAUTHIER, *and* PATRICIA SCIESZINKSI,
PETITIONERS,

v.

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

On Petition To The Supreme Court To
Take Jurisdiction Of An Original Action

DECLARATION OF PATRICK MCCALVY

I, Patrick McCalvy, hereby declare, pursuant to Wis. Stat. § 887.015, as follows:

1. This declaration is based on my personal knowledge.
2. I am over the age of 18 and I am a registered voter in the State of Wisconsin.
3. My primary residence is located in Green Bay, Wisconsin.
4. My primary residence is located within Wisconsin's Eighth Congressional District.
5. In the November 2024 general election for the U.S. House of Representatives, I voted for Congressman Tony Wied.
6. Further, in the months and weeks before the November 2024 general election for the U.S. House of Representatives, I spent significant time and resources campaigning for the reelection of Congressman Tony Wied—whom, again, I voted for in the November 2024 election.
7. For the upcoming November 2026 general election for the U.S. House of Representatives, I again intend to vote for Congressman Tony Wied.

8. Further, as with the November 2024 election, I expect to spend significant time and resources campaigning for the reelection of Congressman Tony Wied in the months and weeks before the November 2026 general election for the U.S. House of Representatives.

I declare under penalty of false swearing under the law of Wisconsin that the foregoing is true and correct.

Signed on the 27 day of May, 2025, at GREEN BAY (city or other locality), WISCONSIN (state or country).

Printed Name:

PATRICK J. McCALVY

Signature:

Patrick J. McCaivy

No. 2025AP999

In the Supreme Court of Wisconsin

KATE FELTON, LOREN DE LONAY, KYLE JOHNSON, RAYMOND
SPELLMAN, VALERIA CERDA, LYNN CAREY, RAFAEL SALAS, CURTIS
GAUTHIER, *and* PATRICIA SCIESZINKSI,
PETITIONERS,

v.

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

On Petition To The Supreme Court To
Take Jurisdiction Of An Original Action

DECLARATION OF PATRICK KELLER

I, Patrick Keller, hereby declare, pursuant to Wis. Stat. § 887.015, as follows:

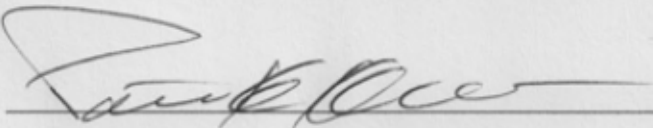
1. This declaration is based on my personal knowledge.
2. I am over the age of 18 and I am a registered voter in the State of Wisconsin.
3. My primary residence is located in Plover, Wisconsin.
4. My primary residence is located within Wisconsin's Third Congressional District.
5. In the November 2024 general election for the U.S. House of Representatives, I voted for Congressman Derrick Van Orden.
6. Further, in the months and weeks before the November 2024 general election for the U.S. House of Representatives, I spent significant time and resources campaigning for the reelection of Congressman Derrick Van Orden—whom, again, I voted for in the November 2024 election.
7. For the upcoming November 2026 general election for the U.S. House of Representatives, I again intend to vote for Congressman Derrick Van Orden.

8. Further, as with the November 2024 election, I expect to spend significant time and resources campaigning for the reelection of Congressman Derrick Van Orden in the months and weeks before the November 2026 general election for the U.S. House of Representatives.

I declare under penalty of false swearing under the law of Wisconsin that the foregoing is true and correct.

Signed on the 27 day of May, 2025, at Plover
(city or other locality), Wisconsin, USA (state or country).

Printed Name: PATRICK K. KELLER

Signature: 

No.2025AP999-OA

In the Supreme Court of Wisconsin

KATE FELTON, LOREN DE LONAY, KYLE JOHNSON, RAYMOND SPELLMAN,
VALERIA CERDA, LYNN CAREY, RAFAEL SALAS, CURTIS GAUTHIER, *and*
PATRICIA SCIESZINKSI,
PETITIONERS,

v.

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

On Petition To The Supreme Court To
Take Jurisdiction Of An Original Action

DECLARATION OF KEVIN M. LEROY

I, Kevin M. LeRoy, hereby declare, pursuant to Wis. Stat. § 887.015, as follows:

1. I am counsel for Proposed-Intervenor-Respondents Congressmen Glenn Grothman, Bryan Steil, Tom Tiffany, Scott Fitzgerald, Derrick Van Orden, and Tony Wied, as well as Individual Voters Gregory Hutcheson, Patrick Keller, Patrick McCalvy, and Mike Moeller in the above-captioned matter.

2. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of Associated Press, *Milwaukee County Judge Janet Protasiewicz announces candidacy for state Supreme Court*, Wis. Pub. Radio (May 25, 2022).

3. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of Corrinne Hess, *Wisconsin Supreme Court candidate Janet Protasiewicz assails state's election maps as 'rigged,' Milwaukee J. Sentinel* (Jan. 9, 2023).

4. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of Shawn Johnson, *Wisconsin Supreme Court candidates discuss abortion, redistricting at Madison forum*, Wis. Pub. Radio (Jan. 9, 2023)

5. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of the Transcript of WisPolitics State Supreme Court Election Forum (Jan. 9, 2023).

6. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of Zac Schultz, *Candidates tangle over political issues, judicial perspectives at first 2023 Wisconsin Supreme Court forum*, PBS Wis. (Jan. 10, 2023).

7. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of Alexander Shur, *Candidate Q&A: Wisconsin Supreme Court*, Wis. State J. (Jan. 30, 2023).

8. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of Jonah Beleckis, *Janet Protasiewicz thinks judicial candidates should be open about their values*, Wis. Pub. Radio (Feb. 14, 2023).

9. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of Editorial Board, Opinion, *Wisconsin's Judicial Election Donnybrook*, Wall St. J. (Feb. 26, 2023).

10. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of Scott Bauer, *Protasiewicz*

pledges to recuse in lawsuits from Democrats, while Kelly declines to pledge for Republican cases, PBS Wis. (Mar. 1, 2023).

11. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of Jessie Opoien & Jack Kelly, *Protasiewicz would ‘enjoy taking a fresh look’ at Wisconsin voting maps*, Cap Times (Mar. 2, 2023).

12. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of Zac Schultz, *Janet Protasiewicz, Daniel Kelly on Wisconsin redistricting*, PBS Wis. (Mar. 9, 2023).

13. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of A.J. Bayatpour, *In only state Supreme Court debate, candidates trade accusations of partisan ties*, CBS 58 (Mar. 21, 2023).

14. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of Henry Redman, *Supreme Court candidates accuse each other of lying, extremism in sole debate*, Wis. Exam’r (Mar. 21, 2023)

15. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of Scott Bauer, *Wisconsin*

Supreme Court candidates clash over abortion, maps in only 2023 debate, PBS Wis. (Mar. 21, 2023).

16. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of @janetforjustice, Twitter (Mar. 27, 2023, 12:47 PM).

17. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of Matt Mencarini, *How could the 2023 Wisconsin Supreme Court election impact medical malpractice lawsuits?*, PBS Wis. (Mar. 31, 2023).

18. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of Ronald Brownstein, *The First Electoral Test of Trump's Indictment*, Atlantic (Mar. 31, 2023).

19. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of Shawn Johnson, *In a supreme court race like no other, Wisconsin's political future is up for grabs*, NPR (Apr. 2, 2023).

20. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of Janet for Justice, Facebook (Apr. 3, 2023).

21. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of Reid J. Epstein, *Liberal Wins Wisconsin Court Race, in Victory for Abortion Rights Backers*, N.Y. Times (Apr. 4, 2023).

22. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of Friends of Justice Daniel Kelly, Campaign Finance Report, Form CF-2 (July 2023).

23. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of Janet for Justice, Campaign Finance Report, Form CF-2 (July 2023).

24. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of Shawn Johnson, *Justice Janet Protasiewicz is sworn in, giving liberals control of Wisconsin Supreme Court*, Wis. Pub. Radio (Aug. 1, 2023).

25. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of Ian Millhiser, *America's worst gerrymander may soon finally die*, Vox (Aug. 3, 2023).

26. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of *About*, Elias Law Group.

27. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of *Campaign contributions: PAC and Political Committee Contributors to: Janet C Protasiewicz (NP) – Supreme Court*, Wis. Democracy Campaign.

28. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of *Our Story*, Law Forward.

29. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of Suggestion For Recusal, *Newdow v. United States*, No.03-7 (U.S. Sept. 5, 2003) (exhibits omitted).

30. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of Congressmen Br. In Supp. Of Mot. To Intervene, *Johnson v. Wis. Elections Comm’n*, No.2021AP1450-OA (Wis. Oct. 6, 2021).

31. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of Hunter Br. In Supp. Of Mot. To Intervene, *Johnson v. Wis. Elections Comm’n*, No.2021AP1450-OA (Wis. Oct. 6, 2021).

32. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of Letter Br. Of Wis.

Elections Comm'n, *Johnson v. Wisc. Elections Comm'n*, No.2021AP1450-OA (Wis. Oct. 6, 2021).

33. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of Answer To Omnibus Pet. By Wis. Elections Comm'n, *Johnson v. Wis. Elections Comm'n*, No.2021AP1450-OA (Oct. 6, 2021).

34. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of Order, *Johnson v. Wis. Elections Comm'n*, No.2021AP1450-OA (Wis. Oct. 14, 2021).

35. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of Resp. Of Wis. Elections Comm'n To Wis. Legislature's Mot. For Stay, *Johnson v. Wis. Elections Comm'n*, No.2021AP1450-OA (Wis. Mar. 9, 2022).

36. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of Pet., *Clarke v. Wis. Elections Comm'n*, No.2023AP1399-OA (Wis. Aug. 2, 2023).

37. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of Response Of Wis. Elections Comm'n To Ct. Order of Oct. 6, 2023, *Clarke v. Wis. Elections Comm'n*, No.2023AP1399-OA (Wis. Oct. 16, 2023).

38. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of Order Granting Intervention Mots., *Clarke v. Wis. Elections Comm'n*, No.2023AP1399-OA (Wis. Oct. 13, 2023).

39. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of Mem. In Supp. Of Mot. For Relief From J., *Johnson v. Wis. Elections Comm'n*, No.2021AP1450-OA (Wis. Jan. 16, 2024) (exhibits omitted).

40. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of Mot. For Relief From J., *Johnson v. Wis. Elections Comm'n*, No.2021AP1450-OA (Wis. Jan. 16, 2024).

41. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of Mem. In Supp. Of Mot. To Recuse Justice Protasiewicz, *Johnson v. Wis. Elections Comm'n*, No.2021AP1450-OA (Wis. Jan. 29, 2024).

42. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of Mot. To Recuse Justice Protasiewicz, *Johnson v. Wis. Elections Comm'n*, No.2021AP1450-OA (Wis. Jan. 29, 2024).

43. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of Resp. Of Congressmen In Opp. To Mot. For Relief From J., *Johnson v. Wis. Elections Comm'n*, No.2021AP1450-OA (Wis. Jan. 29, 2024).

44. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of Order, *Johnson v. Wis. Elections Comm'n*, No.2021AP1450-OA (Wis. Mar. 1, 2024).

45. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of the Order of Justice Protasiewicz, in *Johnson v. Wis. Elections Comm'n*, No.2021AP1450-OA (Wis. Mar. 1, 2024).

46. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of Order, *Johnson v. Wis. Elections Comm'n*, No.2021AP1450-OA (Wis. Aug. 26, 2021).

47. Included in this Appendix at the location indicated in the Table of Contents is a true and correct copy of Am. Order, *Johnson v. Wis. Elections Comm'n*, No.2021AP1450-OA (Wis. Sep. 24, 2021).

Signed on the 29th day of May, 2025, at Madison (city or other locality), Wisconsin (state or country).

Printed Name: Kevin M. LeRoy

Signature: *Electronically signed by Kevin M. LeRoy*

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