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No.2025AP996-OA

In the Supreme Court of Wisconsin

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

v.

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

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

MOTION OF 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 TO INTERVENE AS RESPONDENTS TO OPPOSE THE PETITION AND FILE A MOTION TO RECUSE JUSTICE JANET C. PROTASIEWICZ, OR, ALTERNATIVELY, TO FILE A NONPARTY BRIEF IN OPPOSITION TO THE PETITION

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INTRODUCTION[1]

Congressmen Glenn Grothman, Bryan Steil, Tom Tiffany, Scott Fitzgerald, Derrick Van Orden, and Tony Wied (the "Congressmen"), and individual voters Gregory Hutcheson, Patrick Keller, Patrick McCalvy, and Mike Moeller (the "Individual Voters") respectfully move to intervene as Respondents to oppose this Petition For Original Action and to file a Motion To Recuse Justice Janet C. Protasiewicz. The Congressmen and the Individual Voters have simultaneously filed with this Motion To Intervene a proposed Response In Opposition To The Petition, as well as their proposed Motion To Recuse Justice Janet C. Protasiewicz.[2] If this Court denies intervention, the Congressmen and the Individual Voters then respectfully request in the alternative that the Court accept their proposed Response In Opposition To The Petition as a Nonparty Brief In Opposition To The Petition. This proposed Response In Opposition To The Petition does not exceed 4,400 words,

[1] The Congressmen and Individual Voters have moved to intervene and oppose a similar petition for original action challenging this same congressional map in *Felton v. WEC*, No.2025AP999-OA (Wis.). Given the similar interests and considerations involved, this brief reproduces in large part what the Congressmen and Individual Voters filed in that case, with certain limited changes relevant to the difference as between the two equally meritless petitions.

[2] The Congressmen and Individual Voters have moved to intervene at this time so there is no doubt that they can move for recusal of Justice Protasiewicz.

thus it would comply with this Court's May 15, 2025 Order setting out the requirements for such nonparty briefs in this case.

The Congressmen and the Individual Voters satisfy this Court's requirements to intervene. The Congressmen have a direct interest in the existing boundaries of Wisconsin's congressional districts, adopted by *Johnson v. WEC*, 2022 WI 14, 400 Wis. 2d 626, 971 N.W.2d 402 *("Johnson II")*, given their status as elected representatives to Congress who intend to run for reelection in 2026. The Individual Voters, for their part, have expended significant time and resources campaigning for the Congressmen, and intend to do the same toward their reelection in the 2026 election cycle. The Petition threatens these interests, however, as it claims that the *Johnson* map is an unconstitutional partisan gerrymander. *See* Pet. ¶¶ 69–86. Further, to remedy that claimed violation, the Petition asks this Court to "replace the adopted congressional map with a lawful alternative" before the upcoming 2026 elections on an expedited basis. Pet. ¶ 14. Accordingly, this Court should grant the Congressmen and the Individual Voters intervention as of right or, at minimum, permissive intervention, so that they may defend their significant interests. In *Johnson* itself, this Court granted intervention to certain of the Congressmen here, as well as to other

individual voters. *See* App.99–102 (Order, *Johnson v. WEC*, No.2021AP1450-OA (Wis. Oct. 14, 2021)).[3]

STATEMENT OF INTEREST

The Congressmen are the duly elected Representatives to the U.S. House of Representatives from six of Wisconsin's eight congressional districts, who all intend to be candidates for reelection from those same districts in 2026. *See* App.281–98 (Declarations of Congressmen Glenn Grothman, Bryan Steil, Tom Tiffany, Scott Fitzgerald, Derrick Van Orden, and Tony Wied). The Congressmen 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, 485, 51 N.W. 724 (1892); *accord McCormick v. United States*, 500 U.S. 257, 272 (1991). The Congressmen have invested substantial time and resources to understand the needs of their constituents. App.281–98.

The Congressmen's relationships with their constituents and their intent to run for reelection in 2026 give them a substantial interest in this case. Petitioners challenge the lawfulness of the map adopted by

[3] Citations of "App." refer to the Appendix that the Congressmen and the Individual Voters have filed to support this Motion.

this Court in *Johnson* that drew the existing lines of the Congressmen's districts, which lines were to govern the 2026 election when the Congressmen will be running for reelection. *See Johnson II*, 2022 WI 14, ¶¶ 1–2. That challenge "affect[s] the Congressmen directly and substantially" 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." *League of Women Voters of Mich. v. Johnson*, 902 F.3d 572, 579 (6th Cir. 2018); *see* App.281–98. This is why this Court allowed certain of the Congressmen—namely, those who had intended to seek reelection in the then-upcoming 2022 election—to intervene in *Johnson*. *See* App.99–100. And it is why 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*, No.3:21-cv-512, Dkt.60 at 3–4 (W.D. Wis. Sept. 16, 2021) ("*Hunter* Order"); Order, *Baldus v. Members of Wis. Gov't Accountability Bd.*, No.2:11-cv-562, 2011 WL 5834275, at *2 (E.D. Wis. Nov. 21, 2011); *Ohio A. Philip Randolph Inst. v. Smith*, No.1:18-cv-357, 2018 WL 8805953, at *1 (S.D. Ohio Aug. 16, 2018). Finally, and analogously, this is why 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.

The Individual Voters are Wisconsinites who vote in Wisconsin elections, reside within districts drawn by the existing congressional map, and would be directly affected if this Court were to replace that map. App.299–310 (Declarations of Individual Voters Mike Moeller, Gregory Hutcheson, Patrick McCalvy, and Patrick Keller). Each of the Individual Voters campaigned and voted for Congressmen elected from the current map and intend to campaign for their reelection during the 2026 election cycle. App.299–310. These political activities give the Individual Voters an interest in this case. Petitioners seek to undo Wisconsin's existing congressional district map, *infra* p.26, which will negatively impact the Individual Voters' campaign activities during the 2026 election cycle. Courts regularly allow voters to intervene in redistricting cases, including this Court in both *Clarke* and *Johnson*. *See* App.111–14 (Order Granting Intervention Mots., *Clarke v. WEC*, No.2023AP1399-OA (Wis. Oct. 13, 2023)); App.99–102.

BACKGROUND

A. In 2011, the Legislature and Governor engaged in a "bipartisan process" to draw Wisconsin's congressional and state-legislative maps. *Baldus v. Members of Wis. Gov't Accountability Bd.*, 862 F. Supp. 2d 860, 862 (E.D. Wis. 2012); *Johnson v. WEC*, 2021 WI 87, ¶ 4, 399 Wis. 2d 623, 967 N.W.2d 469 ("*Johnson I*"). In 2021, changes in Wisconsin's population data required modifications to the maps to ensure population equality between the districts. *Johnson I*, 2021 WI 87, ¶ 2. When the Legislature and the Governor came to an impasse in adopting the remedial maps, this Court confronted the "unwelcome task" of "redraw[ing] the boundaries" through an exercise of its original jurisdiction in *Johnson*. *Johnson II*, 2022 WI 14, ¶¶ 1–2.

B. At the beginning stages of the *Johnson* litigation, this Court granted intervention to many different parties and coalitions of parties—including certain of the Congressmen here,[4] as well as other individual voters. *See* App.99–102; *see also Johnson II*, 2022 WI 14, ¶ 2 (noting that the Court "granted intervention to all parties that sought it").

[4] As relevant here, Congressmen Glenn Grothman, Bryan Steil, Tom Tiffany, and Scott Fitzgerald moved to intervene in *Johnson*, and the Court granted their motion. *See* App.99–100. In November 2022, after this Court decided *Johnson*, Congressman Derrick Van Orden was elected to serve as the representative from Wisconsin's Third District. App.293–95. In November 2024, Congressman Tony Wied was elected to serve as the representative from Wisconsin's Eighth District. App.296–98.

C. In *Johnson I*, the Court considered the constitutionality of the 2011 map and explained the standard it would apply in remedying the malapportionment aspect of it. 2021 WI 87, ¶ 4. The Court first rejected certain petitioners' arguments that the 2011 map violated Wisconsin Constitution Article I, Sections 1, 3, 4, and 22 as a partisan gerrymander, concluding that nothing in the Wisconsin Constitution guaranteed a "right to partisan fairness" and the Court was "not responsible for vindicating generalized partisan preferences." *Id.* ¶¶ 4, 53–63. The Court explained that partisan gerrymandering did not violate Article I, Section 1's Equal Protection Clause because, irrespective of how legislatures draw districts, they do not "select who will occupy the resulting seats"—"[v]oters retain their freedom to choose among candidates." *Id.* ¶ 55. Partisan gerrymandering similarly did not violate the free speech and association guarantees of Article I, Sections 3 and 4 because "[e]ven after the most severe partisan gerrymanders, citizen remain free to 'run for office, express their political views, endorse and campaign for their favorite candidates, vote, and otherwise influence the political process through their expression." *Id.* ¶ 60 (citation omitted). Finally, the Court concluded that nothing in Article I,

Section 22, which guarantees a just Government, supplied a standard of partisan fairness prohibiting gerrymandering. *Id.* ¶ 62.

D. In *Johnson II*, the Court ultimately adopted the proposed congressional redistricting map submitted by Governor Tony Evers, which was based on the 2011 map. 2022 WI 14, ¶¶ 7, 13. In adopting the Governor's proposed map, the Court explained that the map complied "with all state and federal legal requirements." *Id.* ¶ 12. The Court further concluded that the Governor's map satisfied the "least change" approach adopted by the Court in *Johnson I*, because, "in the aggregate," his proposed map "move[d] the fewest number of people into new districts" when compared to Wisconsin's legislatively adopted 2011 congressional map. *Id.* ¶ 19; *see generally Clarke v. WEC*, 2023 WI 79, 410 Wis. 2d 1, 998 N.W.2d 370, ¶ 63 (overruling "any portions of" *Johnson I* "that mandate a least change approach" as to state legislative maps).

E. After this Court adopted the Governor's proposed congressional map in *Johnson II*, each of the Congressmen here sought and won election or reelection to be the representative to Congress from their respective congressional districts, as drawn in that map. App.281–98. Each of the Congressmen here also intend to seek reelection under the

Johnson II map in the upcoming 2026 election, thereby continuing to represent their constituents in these districts in Congress. App.281–98.

The Individual Voters, for their part, all spent significant time and resources campaigning for certain of the Congressmen during the 2024 election cycle. App.299–310. They then voted for their respective Congressman. App.299–310. And each of the Individual Voters intends and expects to do the same in the 2026 election cycle, again spending significant time and resources campaigning for their respective Congressman's reelection. App.299–310.

F. On January 16, 2024, certain *Johnson II* clarified that approach and adopted Governor Evers' congressional map—certain *Johnson* intervenor-petitioners represented by the Elias Law Group filed a Motion For Relief From Judgment. App.152–56 (Mot. For Relief From J., *Johnson*, No.2021AP1450-OA (Jan. 16, 2024)). That motion asked this Court to throw out the congressional map it adopted in *Johnson II* and replace it with a new one. *See* App.128–47, 148 n.6 (Mem. In Supp. Of Mot. For Relief From J. at 14–33, 34 n.6, *Johnson*, No.2021AP1450-OA (Jan. 16, 2024)). As justification for that extraordinary request, the motion explained that this Court had rejected the least-change-only approach when adopting remedial state-legislative

maps in *Clarke*. App.122. The motion also claimed that the *Johnson II* congressional map "subjects voters to intolerable partisan unfairness" because it is too favorable to Republicans. App.135; *see* App.135–40. In their view, this Court was constitutionally required to consider "partisan outcomes" when adopting a remedial congressional map. App.145.

The Congressmen opposed that relief-from-judgment motion on various grounds, while also filing a motion to recuse Justice Protasiewicz. As the Congressmen explained, *Clarke*'s overruling of the least-change-only approach for remedying unlawful state legislative maps does not imply that all maps drawn under this approach are unlawful, nor does it retroactively affect the *Johnson II* congressional map or address its applicability to congressional maps generally. *See* App.239–52 (Resp. Of The Congressmen, *Johnson*, No.2021AP1450-OA (Jan. 29, 2024)). The Congressmen also explained that the *Johnson II* map was redrawn by Governor Evers based on "Wisconsin's 2011 congressional map, which map a federal court had explained was a bipartisan negotiated map." App.212 (citing *Baldus*, 849 F. Supp. 2d at 853–54). Further, the Congressmen explained that the intervenor-petitioners' motion failed to satisfy the necessary prerequisites for reopening *Johnson*. App.253–65. As for the Motion To Recuse Justice

Protasiewicz, the Congressmen argued that numerous campaign statements that she made required recusal. *See* App.157–205 (Mem. In Supp. Of Mot. To Recuse, *Johnson*, No.2021AP1450-OA (Jan. 29, 2024) (joined by intervenor-respondent the Wisconsin State Legislature, along with certain individual petitioners)).

The Court denied the *Johnson* motion without explanation. *See* App.271–74 (Order, *Johnson*, No.2021AP1450-OA (Mar. 1, 2024)). Justice Protasiewicz denied the Congressmen's recusal motion as moot, issuing a separate order stating that she did not participate in the Court's decision because she "was not a member of the court when it issued its [original] decision and order." App.275–76 (Order of Justice Protasiewicz at 1–2, *Johnson*, No.2021AP1450-OA (Mar. 1, 2024)).

G. Now, four years after *Johnson I*'s conclusion that the partisan gerrymandering does not offend the Wisconsin Constitution and three years after this Court adopted the Governor's proposed congressional map in *Johnson II*, Petitioners—represented by the Elias Law Group—have filed this Petition For Original Action claiming that this map is an unconstitutional partisan gerrymander and also a separation-of-powers violation, given its adherence to *Johnson I*'s least-change approach. Pet. ¶¶ 69–92. Petitioners then claim that, to remedy the *Johnson* map's

alleged unconstitutionality, this Court must "replace the adopted congressional map with a lawful alternative" on an "expedited" basis, "in time for the 2026 congressional elections." Pet. ¶¶ 14, 93.

ARGUMENT

Section 803.09 of the Wisconsin Statutes governs intervention, including in a case before this Court in its original jurisdiction. *See Clarke v. WEC*, 2023 WI 70, 409 Wis. 2d 372, 375, 995 N.W.2d 779; App.100. As relevant here, Section 803.09 recognizes two forms of intervention: as of right, Wis. Stat. § 803.09(1), and permissive, *id.* § 803.09(2); *see Helgeland v. Wis. Muns.*, 2008 WI 9, ¶¶ 35, 119, 307 Wis. 2d 1, 745 N.W.2d 1. For intervention as of right, Section 803.09(1) states 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. § 803.09(1). For permissive intervention, Section 803.09(2) provides 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." *Id.* § 803.09(2); *see also id.* § 803.09(3) (requiring submission of proposed "pleading setting forth the claim or defense for which intervention is sought"). Both Sections 803.09(1) and 803.09(2) are "based on" Federal Rule of Civil Procedure 24, and this Court has held that cases interpreting the federal Rule 24 "provide guidance" for "interpreting and applying" Section 803.09. *Helgeland*, 2008 WI 9, ¶¶ 37, 119.

The Congressmen and the Individual Voters satisfy Section 803.09(1), so this Court should grant them intervention as of right. *Infra* Part I.A. Alternatively, this Court should grant them permissive intervention because they also meet all of Section 803.09(2)'s requirements. *Infra* Part I.B. But should the Court deny intervention, it should still accept the proposed Response In Opposition To The Petition For Original Action as a Nonparty Brief opposing the Petition, given that the Congressmen and the Individual Voters satisfy the standards for nonparty status under Wis. Stat. § (Rule) 809.19(7) and Wis. Sup. Ct. IOP III.B.6.c, and that the proposed Response does not exceed 4,400 words under this Court's May 15, 2025 Order. *Infra* Part II.

I. This Court Should Grant Intervention To The Congressmen And the Individual Voters

A. This Court Should Grant Intervention As Of Right Under Section 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 demonstrate 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 show that "the existing parties do not adequately represent the movant's interest." *Id.* While a movant must meet each requirement, the Court conducts a "holistic, flexible, and highly fact-specific" review to determine whether a movant satisfies Section 803.09(1). *Id.* ¶¶ 39–40. The Court need not analyze "the criteria . . . 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. Here, the Congressmen and the Individual Voters satisfy each of Section 803.09(1)'s elements here, thus the Court should grant them intervention as Respondents as of right.

1. *The Congressmen and Individual Voters' Motion is timely*. Whether a motion to intervene is timely "is left to the discretion of the [ ] court." *Id.* ¶ 42. Here, the Motion is timely because it was filed within the 21-day period for the named Respondents to respond to the Petition. Order at 1, *Bothfeld v. WEC*, No.2025AP996-OA (May 15, 2025); *see Clarke*, 409 Wis. 2d at 374–75; *accord Liebert v. WEC*, 345 F.R.D. 169, 171 (W.D. Wis. 2023) ("[T]he motion to intervene is timely because [intervenor] filed it shortly after plaintiffs filed the lawsuit[.]").

2. *The Congressmen and the Individual Voters 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 under Section 803.09(1), 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 the movant "will either gain or lose by the direct operation of

the judgment" and that these interests are not simply "remotely related to the subject of the action." *Id.* ¶ 45 (citations omitted).

Just like in *Johnson*, the Congressmen have a direct and substantial interest in this case, and they "will either gain or lose" should this Court render a "judgment" declaring the *Johnson* congressional maps invalid and ordering the adoption of new congressional 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*, 81 Wis. at 485; *accord McCormick*, 500 U.S. at 272, and they all intend to run for reelection in 2026 to continue to represent their constituents' interests, App.281–98. Further, and relatedly, the Congressmen have all 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); *see* App.281–98. The "contours of the maps" of the districts that the Congressmen represent 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 adopted by this Court in *Johnson II*, *see Johnson*, 902 F.3d at 579; *accord Jensen*, 2002 WI 13, ¶ 1.

The Individual Voters also possess a direct and substantial interest in this litigation, as they too will "either gain or lose" if this Court decides to invalidate the *Johnson II* congressional map and mandate the creation of a new map for the State. *Helgeland*, 2008 WI 9, ¶ 45 (citation omitted). The Individual Voters are registered Wisconsin voters. App.299–310. Each invested significant time and resources campaigning for the Congressmen in the 2024 election cycle, and each expects to do the same to support their 2026 reelection bids. App.299–310. These are core political activities, giving the Individual Voters a substantial interest in ensuring that any redistricting plan protects their right to associate with like-minded individuals in advance of the 2026 election. Under these circumstances, the Individual Voters' interests are 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, ¶ 45 (citations omitted).

This Court appeared to recognize the weight of these interests of the Congressmen and the Individual Voters in *Johnson*, where the Court granted intervention to certain of the Congressmen and other individual voters there. *See* App.99–102.

As explained above, *supra* p.9, certain of the Congressmen successfully moved to intervene before this Court in *Johnson* in order to protect their interests in the contours of the districts that they represented, *see* App.99–100. To support that successful intervention, these Congressmen cited the same interests that they have put forward here: their status as elected representatives from those districts and their intent to seek reelection in the then-upcoming 2022 election. App.3–5 (Congressmen Br. In Supp. Of Mot. To Intervene at 1–3, *Johnson*, No.2021AP1450-OA (Oct. 6, 2021)). This Court then found those interests sufficient for intervention in *Johnson*, explaining that all the intervention motions before it there—including the Congressmen's motion—had a valid "interest relating to the subject of this redistricting action." App.100; *accord Cunningham*, 81 Wis. at 485 (noting legislators' interest in "promot[ing] and protect[ing] the[ ] interests" of their constituents in established districts who share "close relations" and "common feeling[s] and interests").

This Court also granted the other individual voters in *Johnson* permission to intervene. Those voters, like the Individual Voters here, stated that they "ha[d] a compelling interest in ensuring new districts are drawn according to constitutional requirements," in order "to protect their right to associate with like-minded individuals." App.26, 31 (Hunter Br. In Supp. Of Mot. To Intervene at 2, 7, *Johnson*, No.2021AP1450-OA (Oct. 6, 2021)). This Court accepted this reasoning and granted the motion to intervene. *See* App.99–102.

Federal courts likewise regularly allow members of Congress to intervene in redistricting litigation, based upon those members' interests in their relationships with their constituents and the contours of their districts, as well as individual voters, based upon their interest in protecting their core political activities. *See Helgeland*, 2008 WI 9, ¶ 37 (federal intervention cases "provide guidance" to this Court).

For example, in *Johnson*, 902 F.3d 572—the leading federal case in this area—the Sixth Circuit granted intervention by permission to congressional members in a redistricting challenge due to the "relationship between constituent and representative" and the fact 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 3–4; Order, *Baldus*, 2011 WL 5834275, at *2; *Smith*, 2018 WL 8805953, at *1, although also resting the decision on permissive-intervention grounds, *see infra* Part I.B. Nevertheless, even permissive-intervention federal cases provide support for the Congressmen's intervention as of right here, especially given the Court's "broad[ ] pragmatic approach" to this inquiry under Wisconsin law. *Helgeland*, 2008 WI 9, ¶ 43 (citations omitted); *accord Johnson II*, 2022 WI 14, ¶ 2 (observing that the Court "granted intervention to all parties that sought it").

As for the Individual Voters, federal courts also regularly allow their intervention to protect their interest in the contours of the congressional district in which they reside. *See, e.g.*, *Johnson v. Mortham*, 915 F. Supp. 1529, 1536 (N.D. Fla. 1995) ("Registered voters have . . . a sufficiently substantial interest to intervene, in an action challenging the voting district in which the voters are registered."); *League of United Latin Am. Citizens, Council No. 4434 v. Clements*, 999 F.2d 831, 844–45 (5th Cir. 1993) (en banc) (holding that judges had standing as voters in county to intervene in action

challenging judicial elections in that county); *Smith v. Bd. of Election Comm'rs for City of Chi.*, 103 F.R.D. 161, 162–63 (N.D. Ill. 1984).

3. *This case may impair the Congressmen and the Individual Voters' core, direct interests in the contours of the districts.* The Congressmen have a core interest in their relationships with their constituents and the Individual Voters have a core political interest in the time and resources they have spent—and plan to continue spending—campaigning and voting for the Congressmen, which interests are closely tied to the "contours of the map[ ]" adopted by this Court in *Johnson II*. *Johnson*, 902 F.3d at 579; *see* App.100–01. The case here "may, as a practical matter, impair or impede" that interest, *Helgeland*, 2008 WI 9, ¶ 75, because Petitioners have asked this Court to declare that the *Johnson II* map violates the Wisconsin Constitution and replace the map with a new one—including the submission of proposed maps for the Court to adopt—in time for the 2026 congressional elections, Pet. ¶¶ 14, 93. Therefore, Petitioners' claim here puts the Congressmen and the Individual Voters' interests in the *Johnson II* map directly at stake. *See Helgeland*, 2008 WI 9, ¶ 75; *accord* App.100–01.

4. *The existing parties do not adequately represent the Congressmen or the Individual Voters' interests.* Finally, a proposed intervenor must

show that no other party "adequately represent[s]" its interests. *Helgeland*, 2008 WI 9, ¶ 38 (citing Wis. Stat. § 803.09(1)). This showing need only be "minimal," although it 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." *Id.* ¶¶ 85–86 (citations omitted).

Here, none of the existing parties represent the Congressmen's significant interest in their relationships with their constituents, which interest is closely tied to the current contours of Wisconsin's congressional maps. *Id.* ¶¶ 90–91; *accord* App.100–01. The Congressmen are elected representatives to the U.S. House of Representatives who intend to seek reelection in 2026, and so they also have a distinct "representative interest" in this litigation that no parties share with the Congressmen. *Johnson*, 902 F.3d at 579; *accord* App.100–01. Similarly, none of the existing parties represent the Individual Voters' own interests in protecting their interest in their core political activities.

Petitioners' interests are directly opposed to the Congressmen and the Individual Voters' interests. Petitioners brought this Petition to have this Court "[d]eclare" that the congressional map adopted by this

Court in *Johnson II* is unconstitutional and "replace the adopted congressional map with a lawful alternative" "in time for the 2026 congressional election." Pet. ¶¶ 14, 93. The Congressmen and the Individual Voters' interests, in direct contrast, are to preserve the *Johnson II* congressional map, given the Congressmen's direct representative interests in the relationships they have built with their current constituents and the Individual Voters' interests in associating with like-minded people to campaign for the Congressmen's reelection, which interests are closely tied to the current boundaries of Wisconsin's congressional districts. App.281–98.

Respondents—WEC, the WEC Commissioners, and the WEC Administrator, in their official capacities—also do not share the Congressmen's or the Individual Voters' interests here. As shown by Respondents' prior representations in *Johnson*, *Clarke*, and *Felton*, their interests in cases challenging Wisconsin's redistricting maps are solely in implementing the final redistricting map approved by this Court, App.44, 96–97, 103, 107–08, 278–79 (Letter Br. at 2, *Johnson*, No.2021AP1450-OA (Oct. 6, 2021); Resp. to Omnibus Pet. at 49–50, *Johnson*, No.2021AP1450-OA (Oct. 6, 2021); Resp. to Wisconsin Legislature's Mot. for Stay at 1, *Johnson*, No.2021AP1450-OA (Mar. 9,

2022); Resp. of Wisconsin Elections Commission and Its Commissioners and Administrator to Court Order of October 6, 2023, *Clarke v. WEC*, 2023AP001399 (Oct. 16, 2023); Resp. of Wisconsin Elections Commission and Its Commissioners to Pet. for Leave to Commence an Original Action at 1–2, *Felton*, No.2025AP999-OA (May 29, 2025)), as they carry out their duties 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."). Thus, Respondents have no interest in the specific contours of any particular map, *see* App.44, 96–97, 103, 107–08, 278–79, nor are they "charged by law" to defend the Congressmen and the Individual Voters' interests here, *Helgeland*, 2008 WI 9, ¶¶ 85–86. Again, the Congressmen and the Individual Voters, for their part, do have a personal, direct, and significant interest in the contours of the *Johnson II* congressional map. App.281–310.

The Congressmen and the Individual Voters easily clear the "minimal" necessary showing that Petitioners' and Respondents' representation here would be inadequate to protect the Congressmen and the Individual Voters' interests—indeed, the Congressmen and the Individual Voters would even satisfy any potentially applicable higher standards, were they to somehow apply here. *Helgeland*, 2008 WI 9, ¶ 85

(citations omitted); *accord* App.100–01. Petitioners' representation would be inadequate, as they seek to upend the existing map, while the Congressmen and the Individual Voters seek to preserve it. The Respondents' representation would also be inadequate, as they will not defend the existing map—unlike the Congressmen—but rather must only implement whatever final map this Court approves.

B. Alternatively, This Court Should Permit The Intervention Under Section 803.09(2)

If this Court does not conclude that the Congressmen and/or the Individual Voters have satisfied Section 803.09(1)'s requirements for intervention as of right, *but see* Part I.A, then the Congressmen and the Individual Voters respectfully request that the Court grant them permissive intervention under Section 803.09(2). Permissive intervention 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. § 803.09(2); *Helgeland*, 2008 WI 9, ¶ 119. After a proposed-intervenor makes those showings, "the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties," Wis. Stat. § 803.09(2), along with any 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 and the Individual Voters satisfy the only two required elements for permissive intervention under Section 803.09(2). First, the Congressmen and the Individual Voters' Motion To Intervene is timely, as already described above. *Supra* p.20. Second, as shown in the Congressmen and the Individual Voters' simultaneously filed proposed Response In Opposition To The Petition ("Opp."), *see* Wis. Sat. § 803.09(3), the Congressmen and the Individual Voters are raising "defense[s]" here that share "a question of law or fact in common" with "the main action." Wis. Stat. § 803.09(2); *Helgeland*, 2008 WI 9, ¶ 119. Specifically, if this Court were to grant the Petition, the Congressmen and the Individual Voters would intend to argue that Petitioners' constitutional challenges to the *Johnson II* map fail as a matter of law. For example, the Congressmen and the Individual Voters would argue that this Court has already held that partisan gerrymandering is not a cognizable claim under the Wisconsin Constitution. *See Johnson I*, 399 Wis. 2d, ¶¶ 53–63. They would further argue that the *Johnson II* map was not adopted with an intent to entrench the Republican Party in the Wisconsin delegation majority—as

it was based on what a federal district court correctly found to be a "bipartisan process," *Baldus*, 849 F. Supp. 2d at 853–54, and modified by Democratic Governor Evers—and, in any event, does not have that entrenching, partisan effect. Finally, the Congressmen and Individual Voters would intend to argue that accepting Petitioners' position would violate the U.S. Constitution's Elections Clause under *Moore v. Harper*, 600 U.S. 1 (2023).

Beyond these two required elements, the Congressmen and the Individual Voters would satisfy any other factors relevant for permissive intervention here. For example, the Congressmen and the Individual Voters' interests here are substantial and direct. The Congressmen serve their constituents as elected Representatives, and they intend to run for reelection in 2026. App.281–98. Because the "contours of the maps" of the districts "determin[e] which constituents the Congressmen must court for votes and represent in the legislature," this case "directly and substantially" affects the Congressmen, who are "not adequately represented by existing parties." *Johnson*, 902 F.3d at 579; *see* App.100. Further, the Individual Voters invested substantial time and effort campaigning to elect their respective Congressmen, and each intends to do the same for the 2026 election, giving them a substantial interest in

the existing congressional map due to their right to associate with like-minded people. App.299–310. Finally, permitting the Congressmen and Individual Voters to intervene will not "unduly delay or prejudice the adjudication of the rights of the original parties." Wis. Stat. § 803.09(2). The Congressmen and the Individual Voters have moved to intervene at the earliest stage of this case, so no party's ability to mount any claim or defense would be unfairly disadvantaged by their participation here. Further, the Congressmen and the Individual Voters' presence here would "benefit" the Court by allowing it to receive more fulsome "input" on all issues raised by the Petition, as the Court recognized as to the intervenors in *Johnson* under similar circumstances. *See* App.99–102; *accord Clarke*, 410 Wis. 2d ¶ 8.

II. Alternatively, This Court Should Permit The Congressmen And Voters To File A Nonparty Brief In Opposition To The Petition

Alternatively, the Congressmen and the Individual Voters respectfully request that this Court accepts their Proposed Response In Opposition To The Petition For Original Action as a Nonparty Brief In Opposition To The Petition For Original Action.

A motion to file a nonparty brief "may [be] granted . . . if it appears that the movant has a special knowledge or experience in the matter at issue in the proceedings so as to render a brief from the movant of

significant value to the court." Wis. Sup. Ct. IOP III.B.6.c. And here, this Court ordered that "[a]ny proposed non-party brief shall not exceed . . . 4,400 words if a proportional serif font is used." Order at 1, *Bothfeld*, No.2025AP996-OA (May 15, 2025).

The Congressmen and the Individual Voters have "special knowledge [and] experience" in the redistricting issues raised by the Petition, thus "render[ing] a brief from [them] of significant value to the court." Wis. Sup. Ct. IOP III.B.6.c. The Congressmen are all duly elected Representatives to the U.S. House of Representatives from six of Wisconsin's congressional districts, and they all intend to be candidates for reelection in 2026. Given this status as elected members of Congress, each Congressman has the solemn duty to "promote and protect their [constituents'] interests," requiring them to develop "close[ ] relations" and "common feeling[s] and interests" with the citizens of the districts from which they were elected. *Cunningham*, 81 Wis. 440, 485; *accord McCormick*, 500 U.S. at 272. The Individual Voters, meanwhile, have invested significant time and resources campaigning for the Congressmen to represent them under the current congressional district map and intend to do the same in the next election cycle. Further, the Congressmen and the Individual Voters' proposed brief is within this

Court's 4,400 word limit, Order at 1, *Bothfeld*, No.2025AP996-OA (May 15, 2025), and complies with all other relevant requirements.

CONCLUSION

This Court should grant the Congressmen and Individual Voters' Motion To Intervene and accept for filing the Congressmen and Individual Voters' Response In Opposition To The Petition as well as their Motion To Recuse Justice Janet C. Protasiewicz. Alternatively, if this Court denies intervention to the Congressmen and Individual Voters, the Court should accept the Congressmen and Individual Voters' proposed Response In Opposition To The Petition as a Nonparty Brief In Opposition To The Petition.

Dated: June 5, 2025.

Respectfully submitted,

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