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, CARRIE RIEPLE, 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.

NONPARTY BRIEF OF BILLIE L. JOHNSON, ERIC O'KEEFE, RONALD ZAHN, CHRIS GOEBEL, AARON R. GUENTHER, CHARLES HANNA, TIM HIGGINS, SANDY JANZER, ADAM JARCHOW, GAE MAGNAFICI, TERRY MOULTON, MICHAEL MURPHY, JOSEPH SANFELIPPO, RUTH STRECK AND MARY JO THOMPSON IN OPPOSITION TO PETITION FOR AN ORIGINAL ACTION

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INTEREST OF AMICUS

Amicus Curiae are a group of voters residing in every Congressional district in Wisconsin. This group of *amici* include three of the original four Petitioners from the *Johnson v. Wisconsin Elections Commission* case, the judgment of which is challenged in this action. *Amici* are interested in maintaining the judgment from their case, and in ensuring this Court continues to apply long held understandings of state and federal law.

INTRODUCTION

On the heels of a political campaign whereby partisan operatives made promises to their donors that this Court would redraw the Congressional District lines, Petitioners now seek to make good on those promises. But this Court is a Court of Law, not a tool for partisans to reward their donors. Their overtly partisan request for this Court to take unprecedented action should be denied for a litany of reasons.

First, the entire Petition is premised on the false belief that the current maps were adopted to "punish" one political party over another. Second, the current Congressional maps, proposed by the Governor and adopted by this Court in *Johnson II*, are constitutional and fully comply with all state and federal laws. They have been utilized in two Congressional elections without issue. And third, Petitioners' unprecedented attempt to have this Court take up a mid-decade redraw of Wisconsin's Congressional district lines would violate the U.S. Constitution in a number of ways.

This Court already declined to take up virtually identical claims a year ago, and it should not entertain them now. Although the Petitioners seek to reward donors of their favored candidates, the current Court should not entangle itself in the business of political gamesmanship. This is, and always has been a Court of Law, it should not now become a

Court of partisan vengeance to help Petitioners make good on promises to political donors. The Petition for an Original Action must be denied.

ARGUMENT

There is absolutely no basis for granting this Petition. First, the Petition itself is based on the false premise that the current maps (rather than the candidates nominated for office) are the reason that Petitioners' favored candidates did not win. But the data shows otherwise. For that reason alone, the Petition should be denied.

But even beyond that, the current maps are lawful. The *Johnson II* majority—consisting of Justices Dallet, Hagedorn, Karofsky, and Walsh Bradley—already held that the current Congressional maps comply with "*all* relevant state and federal laws." *Johnson v. Wis. Elections Comm'n*, 2022 WI 14, ¶ 25, 400 Wis. 2d 626, 971 N.W.2d 402 (*Johnson II)* (emphasis added). Those laws have not changed. And although Petitioners would prefer to limit their claims to Wisconsin law, Congressional reapportionment *necessarily* implicates a federal issue because of the federal Elections Clause.

Furthermore, under well-established law, Petitioners' partisan gerrymandering claims are nonjusticiable. The Wisconsin Constitution says nothing about how Congressional Districts are to be apportioned and similarly says nothing about partisan gerrymandering. Petitioners make clear that what they seek is proportionality in Wisconsin's Congressional Districts. But there is no proportionality requirement in the Wisconsin Constitution, and it is precisely this lack of *any* definite standard in *any* provision of the Wisconsin Constitution (or any other Wisconsin law) that makes Petitioners' claims nonjusticiable.

Lastly, in the event this Court decides to grant this Petition anyway, its adjudication of Petitioners' partisan gerrymandering claims would raise significant questions about fairness and due process, as well

as require the recusal of Justice Protasiewicz and Justice Elect-Crawford. That is because Democrats played a key role in electing these two Justices and this Petition has been brought on behalf of *Democratic voters* to obtain the results the Democratic Party paid for. *See* Petition for an Original Action ("Pet.") at ¶¶ 15–23. This Court should not permit such partisan gamesmanship.

I. The Petition is based on a false premise.

From the first paragraph, the Petition is built on a false premise. Petitioners argue the current Congressional maps "systematically disfavor[] Democrats *because* they are Democrats." Pet. ¶ 1. This claim is demonstrably false, and the Petition should be denied.

While it is true that of the eight districts, six are currently represented by Republicans and two are currently represented by Democrats, that alone is an incomplete picture and a fry cry from "systematically" disfavoring one political party. Candidates and campaigns matter. Petitioners seek to have this Court step in and decide which parties should be allowed to win which districts regardless of who the candidates are and what issues they believe in. This Court should not do so, and Petitioners' arguments in support of such action are flawed in several ways.

First, Petitioners assume that voters are immutably Democrat or Republican in much the same way as persons are members of an ethnic group. This is, of course, false. Individual voters can, and do, vote for candidates of different parties. Moreover, the partisan affiliation of even a "straight ticket voter" can change over time. We are, in fact, in the midst of a major partisan affiliation realignment that has been taking place over the past ten years.

Moreover, whether voters prefer Republicans or Democrats is a *function* of the way and extent to which candidates from each party

appeal to voters. Petitioners assume that each party is entitled to maps that allow them to continue to appeal to voters on the basis of their current platforms without needing to change in order to attract the vote. They also assume that parties should not have to adjust candidates to have broader appeal in the districts in which they run. Ultimately, Petitioners assume that candidates are *entitled* to the voters they want, rather than the ones they have. This is fundamentally anti-democratic.

Candidates matter. In 2022, Governor Evers (a Democrat) won re-election with a majority statewide (51.15%), while Senator Ron Johnson (a Republican) won re-election also with a majority statewide (50.41%).[1] That same election saw a Democrat win the Attorney General and Secretary of State races, and a Republican win the State Treasurer race.[2] These statewide results make clear what any Wisconsinite knows to be true: candidates matter in elections—voters are not electing a political party.

In winning re-election in 2022, Governor Evers won three Congressional districts and came within .16% of winning a fourth where no party took a majority of the votes.[3] In other words, Governor Evers

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[1] *See* Wisconsin Elections Commission, *2022 General Election Results,* "Statewide Summary Results" available at: https://elections.wi.gov/sites/default/files/documents/Statewide%20Summary%20Results_1.pdf

[2] *Id.*

[3] Gov. Evers won Congressional Districts 2, 3, and 4, and lost District 1 49.33%-49.49%.

Districts 1 and 3 are both represented by Republicans who significantly outperformed the Democrats' Congressional candidates in those districts (Republican Van Orden defeated Democrat Pfaff in the 3rd 51.8% to 48.1%, despite Evers winning the district as a Democrat; and Republican Steil defeated Democrat Roe in the 1st 54% to 45.1%, despite Evers nearly winning the district outright).

All results and vote totals cited from statewide elections were compiled by Dave's Redistricting and are available at https://davesredistricting.org/.

came within a small number of votes of winning *half* of Wisconsin's Congressional districts. Thus, the districts are not "gerrymandered" to make it impossible for a Democrat to win them. The simple truth is that the Democratic Congressional candidates did not appeal to voters in those districts to the same extent that Governor Evers apparently did.

Indeed, in that very same election, Democrats' candidates for Congress only won two seats.[4] And that was because Wisconsin voters supported *some* Democrats on the ballot rather than *all* Democrats on the ballot—*not* because the maps are gerrymandered. Nevertheless, it is on this basis that Petitioners now ask this Court to throw the plainly fair maps out.

In addition, given the small number of Congressional districts, comparing Congressional seats won to the results of statewide races can be further skewed by incumbency. Incumbents have significant advantages in elections. And after two long-time Democratic incumbents retired, their seats flipped to Republicans in the following election.[5]

Petitioners also seem to assume that the partisan outcome of single member geographic districts should match the partisan vote totals for statewide candidates. This is flat out false. Wisconsin does *not* have a system in which seats are parceled out based on a statewide vote.

While some democracies take this approach, our framers did not create such a system. Instead, we have a system where seats are allocated based on geographic and single-member districts.

[4] Democrat Pocan won in the 2nd District and Democrat Moore won in the 4th District.

[5] In 2010, longtime incumbent Democrat Dave Obey did not run for re-election, and that district was won by Republican Sean Duffy, and in 2022, longtime incumbent Democrat Ron Kind did not run for re-election and that district was subsequently won by Republican Derrick Van Orden.

Representatives, chosen by such a system, will match statewide outcomes only if the voters favoring each party have similar levels of concentration across districts (and of course, we know they do not) or if the mapmaker gerrymanders to compensate for the greater levels of concentration among the voters typically favoring one party. This is one of the first things you see in election law textbooks on redistricting. It is elementary.

This constitutional choice of single member geographic districts precludes any state constitutional standard establishing or presuming that the partisan composition of the legislature should follow the outcome of statewide partisan races. In fact, this choice reflects the rejection of any such standard and necessarily implies that the people of Wisconsin did *not want* districts to be dominated by heavily populated areas with partisan affiliations that might not match the rest of the state. This isn't a bug. It's a feature that this Court is bound to honor.

II. The existing Congressional maps fully comply with all state and federal requirements.

Beyond the fact that the entire Petition is based on a faulty premise, the maps themselves are lawful, and the Petition should be denied.

The *Johnson II* majority—consisting of Justices Dallet, Hagedorn, Karofsky, and Walsh Bradley—already held that the current Congressional maps comply with "*all* relevant state and federal laws." *Johnson II*, 2022 WI 14, ¶ 25. And none of those laws have changed since *Johnson II* was decided. Therefore, and regardless of the *Clarke* Court's remedial-phase rejection of the *Johnson* Court's "least change" approach, a majority of Justices on the current Court have *already agreed* that the current Congressional maps separately and fully comply with the law.

Petitioners claim that the *Johnson II* Court's adoption of the current Congressional maps violates "separation of powers." *See* Petitioners' Memorandum in Support of their Petition for an Original Action at 34–40. But Petitioners do not identify any conflict between the legislative, executive and judicial branches—they simply argue that *Johnson II* was improperly decided because the Court decided to fix only the constitutional violation it found and did not analyze the partisan outcomes. This argument is simply wrong.

When necessary, Courts have a limited remedial role in redistricting disputes because they are not, cannot be, a replacement for the Legislature. *Compare Johnson v. Wis. Elections Comm'n* ("*Johnson* I"), 2021 WI 87, ¶¶ 70–72 (main op.), 399 Wis. 2d 623, 967 N.W.2d 469 *with id*., ¶ 82 (Hagedorn, J., concurring) ("To the extent feasible, a court's role in redistricting should be modest and restrained."); *Johnson II*, 2022 WI 14, ¶¶ 7, 20–25; *id* at ¶ 11 & n.7. In addition, this Court has no duty under federal law or the Wisconsin Constitution to consider partisan fairness when selecting a congressional map. *See Johnson I*, 2021 WI 87, ¶¶39–63 (citing cases).

Courts have long held that the proper role of the judiciary is to fix the constitutional violation(s) it identifies and nothing more. *E.g., Serv. Emps. Int'l Union Loc. 1 ("SEIU") v. Vos*, 2020 WI 67, ¶ 47, 393 Wis. 2d 38, 946 N.W.2d 35 ("It goes to the appropriate reach of the judicial power to say what the law is, and to craft a remedy appropriately tailored to any constitutional violation."); *Linden Land Co. v. Milwaukee Elec. Ry. & Lighting Co.*, 107 Wis. 493, 83 N.W. 851, 856 (1900) ("To go further, and enjoin other acts which, if done, do not affect the rights in litigation in any way, is simply an exercise of arbitrary power, which cannot be defended for a moment."). That is exactly what the *Johnson* Court did.

Indeed, the *Johnson* litigation was *only* about malapportionment, and the 2011 maps at issue were unconstitutional for one, and only one

reason: they no longer complied with population equality requirements. *See Johnson I*, 2021 WI 87, ¶¶ 18–20; *Johnson II*, 2022 WI 14, ¶ 2. The *Johnson* Court fixed that problem and adopted a Congressional map that is consistent with all state and federal laws. *Johnson II*, 2022 WI 14, ¶¶ 13–25. Therefore, the *Johnson* Court properly fulfilled its judicial role, and its decision not to consider partisan outcomes was *not* an abdication of its duties or a violation of the separation of powers doctrine.[6] [7]

III. A mid-decade redraw of the Congressional maps would violate the United States Constitution.

Petitioners frame this as purely an issue of state constitutional law. But the U.S. Constitution is *always* relevant to matters involving federal elections—including Congressional redistricting disputes—and the U.S. Supreme Court has recognized as much. *See Moore v. Harper*, 600 U.S. 1 (2023); *See also Republican Party of Pa. v. Degraffenreid*, 141 S.Ct. 732, 733 (2021) (Thomas, J., dissenting from denial of certiorari) ("For more than a century, this Court has recognized that the Constitution 'operat[es] as a limitation upon the State in respect of any

[6] It is also worth noting that, although the *Johnson* Court did not consider partisan impact, the 2011 Congressional Maps, from which the Johnson Court appropriately corrected the districts' malapportionment following the 2020 census, were the product of a "bipartisan process" that "incorporate[d]… feedback" from Democratic and Republican members of Congress, "avoided putting incumbents together in the same district," and "did not flip districts from majority-Democrat to majority-Republican or *vice versa*." *See Baldus v. Members of Wis. Gov't Accountability Bd.*, 849 F. Supp. 2d 840, 854 (E.D. Wis. 2012) (per curiam) (emphasis in original). These facts only further detract from Petitioners' claims that the existing Congressional maps are gerrymandered.

[7] *Amici* additionally point out that in *Johnson I*, a four Justice majority squarely rejected the Article I arguments Petitioners have raised in support of their partisan gerrymandering claims, stating, "[t]o construe Article I, Sections 1, 3, 4, or 22 as a reservoir of additional requirements would violate axiomatic principles of interpretation … while plunging this court into the political thicket lurking beyond its constitutional boundaries." *Johnson I*, 2021 WI 87, ¶63 (citations omitted).

attempt to circumscribe the legislative power' to regulate federal elections.") (quoting *McPherson v. Blacker*, 146 U.S. 1, 25 (1892)).

The Elections Clause provides that the "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, Sec. 4. And as explained *supra*, Part II, state courts can and do play a remedial role (as this Court did in *Johnson*); however, the U.S. Supreme Court has warned state courts not to "so exceed the bounds of ordinary judicial review as to unconstitutionally intrude upon the role specifically reserved to state legislatures" by the Elections Clause. *Moore,* 600 U.S. at 37.

In *Johnson*, this Court stayed within the bounds of ordinary judicial review by focusing on and correcting the only constitutional violation it found following the 2020 census. *See Johnson II,* 2022 WI 14, ¶11. But Petitioners want this Court to *completely eviscerate* ordinary judicial review and instead blaze a new path to further their *purely partisan* goals. As a result, accepting this Petition would almost certainly exceed "the bounds of ordinary judicial review" in a way that violates the federal Constitution, just as the U.S. Supreme Court warned state courts in *Moore*. *See* 600 U.S. at 37 (2023).

Again, the *Johnson* Court exercised appropriate judicial restraint by fixing only the limited constitutional violation it found, operating well within the bounds of ordinary judicial review. *Johnson II,* 2022 WI 14, ¶¶11, 13–25. This approach reflected a well-recognized rule regarding the proper role of the judiciary, and Petitioners cannot reasonably argue otherwise. *E.g., SEIU*, 2020 WI 67, ¶47; *State ex rel. Memmel v. Mundy*, 75 Wis. 2d 276, 288–89, 249 N.W.2d 573 (1977) ("The extent of an equitable remedy is determined by and may not properly exceed the effect of the constitutional violation."); *Gill v. Whitford*, 585 U.S. 48, ¶ 66

(2018) ("[A] plaintiff's remedy must be 'limited to the inadequacy that produced [his] injury in fact.'") (citation omitted).

Coming back for a second re-draw in the middle of the decade, at the behest of partisans, *and* using a heretofore unheard-of process would violate the Elections Clause. Indeed, this Court's actions in *Clarke* (i.e., reinterpreting the meaning of "contiguous territory" and forcing a redraw of Wisconsin's *state* legislative maps) are not so easily repeated in the context of congressional apportionment *because of* the Elections Clause. Unlike *Clarke*, seats in the United States House of Representatives are at stake, which *necessarily* presents a federal issue. Although Petitioners wish to keep this action rooted only in Wisconsin law, federal law invariably applies, and any "redraw" ordered by this Court will have a federal impact.

IV. Petitioners' partisan gerrymandering claims are nonjusticiable and cannot be appropriately adjudicated in the context of an Original Action.

Aside from the Petition being based on a false premise, the current maps complying with all state and federal laws, and the fact that any attempt to redraw them now would violate the U.S. Constitution, the Petition also has another significant problem: there is *no* reference to *any* definitive standard for evaluating Petitioners' partisan gerrymandering claims—and this glaring absence is telling, because one does not exist.

The complexity—if not impossibility—of taking on Petitioners' partisan gerrymandering claims would necessitate a full-scale trial to determine what standards should apply and to ensure that all interested parties have their day in Court.[8] *Whitford v. Gill* illustrates this point

[8] Because of the impact this action could have on them, *Amici* would seek to intervene as full parties should the Petition for an Original Action be granted.

and contains a lengthy description of the competing evidence submitted to assess a map's partisan effects. *E.g.,* 218 F. Supp. 3d 837, 857–62, 903–910 (W.D. Wis. 2016). Given its partisan basis and focus, this action would likewise require—at minimum—similar competing expert testimony and depositions of those experts. In addition, complicated statistical methods would require a trial, and basic tenets of fairness and due process would require the disclosure of experts, expert discovery, and the opportunity to cross-examine opposing experts. Credibility determinations about that evidence would then have to be made. None of this happened in *Johnson,* and such matters are not appropriately adjudicated in an original action posture.

What's more, this Court previously declined to take up partisan gerrymandering claims *precisely because of* "the need for extensive fact-finding (if not a full-scale trial)" to resolve them. *Clarke v. Wis. Elections Comm'n*, 2023 WI 70, 409 Wis. 2d 372, 375, 995 N.W.2d 779 (citing *Jensen v. Wis. Elections Bd.*, 2002 WI 13, ¶ 20, 249 Wis. 2d 706, 639 N.W.2d 537). And despite numerous attempts, the U.S. Supreme Court has found no workable standards for evaluating partisan gerrymandering claims. *See Rucho v. Common Cause*, 588 U.S. 684 (2019). It is folly to think this Court would be able to find and appropriately adjudicate such a standard—especially in an original action posture.

Indeed, the United States Supreme Court has unequivocally held that claims of partisan gerrymandering are nonjusticiable because such claims are "political questions" that cannot be resolved without a "plausible grant of authority in the Constitution" or any "legal standards to limit and direct their decisions." *Rucho,* 588 U.S. 684 at 718; *see also id.* at 734 (Kagan J., dissenting) ("Judges should not be apportioning political power based on their own vision of electoral fairness, whether proportional representation or any other."). And although Petitioners

pretend otherwise, nothing in the Wisconsin Constitution (or Wisconsin law more generally) addresses partisan fairness or dictates how "partisan gerrymandering" claims are to be evaluated, let alone remedied.

Therefore, even if this Court is inclined to reopen *Johnson*, it does not have authority "to allocate political power and influence" based on its "own vision of electoral fairness." *Id.* at 721 (majority op.), 734 (Kagan, J., dissenting). *See also Upham v. Seamon*, 456 U.S. 37, 42–43 (1982); *Whitcomb v. Chavis*, 403 U.S. 124, 161 (1971); *Baldus,* 849 F. Supp. 2d at 853–54 (E.D. Wis. 2012) (declining to evaluate the merits of a partisan gerrymandering claim in the context of a Wisconsin congressional redistricting dispute). As the *Rucho* Court remarked, Petitioners here—just like the plaintiffs in that case—are asking this Court to "make [its] *own political judgment* about how much representation particular political parties deserve—based on the votes of their supporters—and to rearrange the challenged districts to achieve that end." *Id.* at 705 (emphasis added). But again, Petitioners' claims are nonjusticiable because, just like the U.S. Constitution, the Wisconsin Constitution (and Wisconsin law more generally) does not contain any "legal standards discernable … for making such judgments, let alone limited and precise standards that are clear, manageable, and politically neutral." *Id.* at 707. Recognizing this, the *Johnson* Court explicitly held that claims of partisan fairness and/or partisan gerrymandering are nonjusticiable, and this determination was not overruled in *Clarke*. *Compare Johnson I*, 2021 WI 87, ¶¶ 39–63 *with Clarke*, 2023 WI 79, ¶ 69.

A change in this Court's remedial-phase reasoning—which is what this Petition boils down to—is simply not enough to justify a redraw of Wisconsin's Congressional maps, especially because the current maps have no constitutional or other legal flaws that need to be remedied. Although the Petitioners clearly want a particular outcome, they cannot

simply ask this Court to alter a constitutionally compliant remedy because they think a remedy from the current Court would give them a more favorable result. Petitioners need more, and do not have any cogent argument enabling them to get the result they seek.

V. Granting this Petition would violate due process.

Granting this Petition would also violate due process. "A fair trial in a fair tribunal is a basic requirement of due process." *In re Murchison*, 349 U.S. 133, 136 (1955); *see also Rogers v. Tennessee*, 532 U.S. 451, 462, 467 (2001) (the due process clause requires "fundamental fairness" and protects against "unfair and arbitrary judicial action"); *Moore*, 600 U.S. at 37 (2023) ("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 Article I, Section 4."). A number of significant due process and fundamental fairness concerns are present here.

First, this Court rejected a request to re-draw the current Congressional maps just one year ago.[9] And as identified *supra,* Part III, accepting this Petition would intrude on the Legislature's right to dictate Congressional apportionment under the federal Elections Clause.

In addition, given the nature of the most recent Wisconsin Supreme Court elections, Justice Protasiewicz and Justice-Elect Crawford's participation in this action would violate due process. Both of their Supreme Court campaigns were hyper-partisan and expensive,

[9] *See* Wisconsin Supreme Court Order Denying Motion for Relief from Judgment in *Johnson v. Wis. Elections Comm'n*, 21AP1450-OA, dated March 1, 2024, available at https://acefiling.wicourts.gov/document/eFiled/2021AP001450/772761.

totaling approximately $56 million[10] and $100 million,[11] respectively. And both campaigns contained claims about the fairness of Wisconsin's Congressional districts and/or promises that Wisconsin's Congressional Districts would be redrawn.[12]

That this Petition is *explicitly partisan* (i.e., brought on behalf of Democratic voters) raises further concern. Pet. ¶¶ 15–23. As this Court is well-aware, the Democratic Party was instrumental in funding the campaigns of Justice Protasiewicz and Justice Elect-Crawford. Indeed, during Justice Protasiewicz's Supreme Court campaign, two out of every three dollars raised came from the Democratic Party of Wisconsin

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[10] *See* WisPolitics, *WisPolitics Tracks $56 Million in Spending on Wisconsin Supreme Court Race*, (July 19, 2023) https://www.wispolitics.com/2023/wispolitics-tracks-56-million-in-spending-on-wisconsin-supreme-court-race/#:~:text=WisPolitics%20has%20tracked%20more%20than,first%20time%20in%2015%20years;

[11] Tom O'Connor, *Record $100M spent on Wisconsin Supreme Court race raises concerns over judicial independence*, Wisconsin Examiner, (May 12, 2025), https://wisconsinexaminer.com/2025/05/12/record-100m-spent-on-wisconsin-supreme-court-race-raises-concerns-over-judicial-independence/

[12] *See* Lawrence Andrea, *Supreme Court race puts spotlight on congressional maps as GOP files complaint against Crawford*, Milwaukee Journal Sentinel, (February 26, 2025), available at https://www.jsonline.com/story/news/politics/elections/2025/02/26/gop-files-complaint-against-susan-crawford-on-congressional-maps-issue/80273638007/;

Alison Dirr and Daniel Bice, *Hakeem Jeffries says a Crawford victory could lead to congressional maps better for Democrats*, Milwaukee Journal Sentinel, (March 25, 2025), available at https://www.jsonline.com/story/news/politics/elections/2025/03/25/hakeem-jeffries-says-susan-crawford-could-give-democrats-better-maps/82645251007/;

Channel 3000 / News 3 Now, *Wisconsin Supreme Court debate presented by News 3 Now and WisPolitics,* at 29:20–30:10, YouTube, https://www.youtube.com/watch?v=cUlapkeqyzI (Now-Justice Protasiewicz stating, with regard to Wisconsin's Congressional maps: "You look at Congress… we have eight seats, six are red, two are blue, in a battleground state, so we know something's wrong.").

("DPW").[13] Similarly, the DPW funneled more than $9.3 million to Justice-Elect Crawford's campaign.[14] Partisan funding of this magnitude would present serious concerns about due process and fundamental fairness in the event this Petition is granted, especially given Petitioners' explicit affiliation with the Democratic Party as Democratic voters. *See Caperton v. A.T. Massey Coal Co.,* 556 U.S. 868, 884 (2009) ("there is a serious risk of actual bias … 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."). That Justice Protasiewicz declined to participate in deciding whether to redraw Wisconsin's Congressional Districts just one year ago underscores this point.[15]

Accordingly, this action (if accepted) requires the recusal of Justice Protasiewicz and Justice-Elect Crawford to ensure that all participants receive their due process right to a "fair trial in a fair tribunal." *In re Murchison*, 349 U.S. at 136; *see also Caperton*, 556 U.S. 868 (2009).

CONCLUSION

The Petition for an Original Action should be denied.

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[13] Wisconsin Democracy Campaign, *Protasiewicz Received $2 of Every $3 from Democratic Party*, (March 29, 2023), available at https://www.wisdc.org/news/press-releases/139-press-release-2023/7351-protasiewicz-received-2-of-every-3-from-democratic-party

[14] Wisconsin Democracy Campaign, *PAC and Political Committee Contributors* to: Susan M. Crawford (NP) – Supreme Court, Contributions of $100 or more January 1, 2024 through March 17, 2025*, available at https://www.wisdc.org/index.php?option=com_wdcfinancedatabase&view=campaigncontributions&office=SC&candidate=105906&year=2025&from=&from=2024-01-01&to=2025-03-17

[15] *See supra*, n. 9.

Dated: June 6, 2025.

Respectfully submitted,

WISCONSIN INSTITUTE FOR
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Electronically signed by
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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b),(bm) and (c), as modified by this Court's May 15, 2025 Order, for a brief produced with a proportional serif font. The length of this brief is 4,399 words.

Dated: June 6, 2025

Electronically signed by Lucas T. Vebber
LUCAS T. VEBBER