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DANE COUNTY, WI
2025CV002432

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

ELIZABETH BOTHFELD, *et al.*, Plaintiffs, v. WISCONSIN ELECTIONS COMMISSION, *et al.*, Defendants.	Declaratory Judgment Case No. 2025CV002432 Case Code: 30701, 30704

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR JUDGMENT ON THE PLEADINGS

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INTRODUCTION

In 2023, the Wisconsin Supreme Court held that the primary criterion it previously used to redistrict the State—requiring the "least change" from the state and congressional districting maps adopted in 2011—was unlawful and fundamentally inconsistent with the judiciary's obligations as "a politically neutral and independent institution." *Clarke v. Wis. Elections Comm'n*, 2023 WI 79, ¶ 71, 410 Wis. 2d 1, 998 N.W.2d 370. Because *Clarke*'s repudiation of the least-change standard for redistricting is binding precedent, Plaintiffs are entitled to judgment on their claim challenging the current congressional map—which was indisputably selected based on that least-change standard—as violating the Wisconsin Constitution's separation of powers. *See* Compl., Count I.[1] The "least change" criterion violates the separation of powers because, as the Wisconsin Supreme Court reasoned in *Clarke*, it required the judiciary to cede its authority to the political branches in breach of its dual duties of neutrality and independence in a manner that "supersede[d] the constitution." *Id.* ¶ 62. That clear violation of law adversely affects the rights and interests of Plaintiffs and countless other Wisconsin voters. This court should enjoin any further use of the map and order that a new map be drawn that complies with the criteria prescribed by the Court in *Clarke*.

BACKGROUND

The facts relevant to this motion are beyond dispute and set forth in judicially noticeable court decisions. *See* Wis. Stat. § 902.01. In 2021, the Democratic Governor—elected on a promise to end the Republicans' partisan gerrymandering—vetoed the Republican-controlled legislature's new legislative and congressional maps required by population changes reflected in the 2020

[1] Plaintiffs do not move at this time for judgment on their partisan gerrymandering claims. As *Clarke* makes clear, the institutional constraints on judicial mapdrawing that Plaintiffs invoke in Count I are independent of partisan gerrymandering doctrine. *See Clarke*, 2023 WI 79, ¶¶ 70–71.

census. *See Johnson v. Wis. Elections Comm'n* ("*Johnson I*"), 2021 WI 87, ¶¶ 4, 9, 399 Wis. 2d 623, 967 N.W.2d 469. Given the existing districts' malapportionment and the political branches' impasse, the task of adopting new maps fell to the Wisconsin Supreme Court. *See id.* ¶ 20.

The Court's initial task was to determine the criteria that it would use to select new maps. First, the Court foreswore any consideration of districts' partisan composition. *Id.* ¶ 39. Second, citing primarily to non-binding federal-court cases from Georgia, the Court pledged to adopt maps that made the "least change" to the district configurations enacted in 2011. *Id.* ¶¶ 72–73.

Five of the eight parties involved in the *Johnson* litigation warned the Court that adopting a "least change" method would not result in neutral, nonpartisan mapdrawing, but instead enshrine—this time with the Court's imprimatur—a highly skewed map with odd boundaries that heavily favored Republican candidates. This is because the districting maps that were then in effect—and from which the Court was working to effectuate the "least change"—were among the most gerrymandered in the country. *See, e.g.*, Br. of Gov. Evers at 10, *Johnson I* (Wis. Oct. 25, 2021) ("A 'least-change' approach would enshrine a map found to contain extreme partisan advantage, which courts are not allowed to do."); Br. of Sen. Bewley at 15, *Johnson I* (Wis. Oct. 25, 2021) (arguing a least-change approach would "result in the non-partisan Wisconsin Supreme Court's unseemly adoption of a decade-old, politically gerrymandered redistricting scheme"); Br. of Citizen Scientists & Mathematicians at 25, *Johnson I* (Wis. Oct. 25, 2021) ("Prioritizing Petitioners' 'least change' approach almost certainly means that the maps would not score well with respect to partisan fairness."); Br. of Black Leaders Organizing for Communities, et al., at 39, *Johnson I* (Wis. Oct. 25, 2021) ("Given the 2011 maps' stark departure from mandatory and traditional redistricting criteria, it would be inappropriate, and contrary to legal requirements, to use them as a template for a new apportionment."); Br. of Lisa Hunter, et al., at 16, *Johnson I* (Wis.

Oct. 25, 2021) (warning that "a least-change approach would only further entrench and exacerbate the partisan gerrymandering that took place ten years ago").

The Court acknowledged the widely held concerns that the old maps—enacted by the 2011 Republican-controlled legislature and then-Governor Scott Walker—were infected with partisan bias, and that using those maps as "a starting point perpetuates a partisan gerrymander." *Johnson I*, 2021 WI ¶ 76. Nevertheless, the majority decided to prioritize adherence to the 2011 maps. *Id.* ¶ 77. As a result, the Court ultimately adopted a new congressional map that closely replicated the highly gerrymandered 2011 map—94.5% of Wisconsin's population was reassigned to their then-existing congressional district—perpetuating any partisan machinations embedded in the prior plan. *See Johnson v. Wis. Elections Comm'n* ("*Johnson II*"), 2022 WI 14, ¶ 7, 400 Wis. 2d 626, 971 N.W.2d 402, *rev'd on other grounds sub nom., Wis. Legislature v. Wis. Elections Comm'n*, 595 U.S. 398 (2022); *see also Johnson v. Wis. Elections Comm'n* ("*Johnson III*"), 2022 WI 19, ¶ 3, 401 Wis. 2d 198, 972 N.W.2d 559 (adopting state legislative maps that had "minimal changes" from prior maps).

Three Justices dissented, warning that having "stepped out of our traditional judicial role and into 'the political thicket' of redistricting, it is vital that this court remain neutral and nonpartisan," *Johnson I*, 2021 WI 87, ¶ 88 (Dallet, J., dissenting), and the inevitable result of the "least change" standard was directly contrary to that bedrock judicial principle. *Id.* ¶ 89 (explaining that far from removing the Court from the "political fray," the least change approach "does the opposite").

The state legislative maps adopted pursuant to this "least change" approach lasted only a single election cycle. In 2023, in adjudicating a challenge to those maps' compliance with the state constitution, the Wisconsin Supreme Court expressly "overrule[d] any portions of *Johnson*

I, *Johnson II*, and *Johnson III* that mandate a "least change" approach." *Clarke*, 2023 WI 79, ¶ 63. In doing so, the Court recognized that the "least change" standard did not comport with "other requirements and considerations essential to the mapmaking process," many of which derive from constitutional and statutory requirements: population size, county and other local boundary lines, contiguity, compactness, federal law, avoiding municipal splits, preserving communities of interest, and avoiding partisan skew. *Id.* ¶¶ 62, 64–69. The Court further concluded that *Johnson*'s "politically mindless" commitment to the least-change criterion violated the judiciary's duty to serve as a "politically neutral and independent institution." *Id.* ¶ 71.

Clarke resolved that, while the legislative and executive branches are "political by nature," the judicial branch must "remain politically neutral" to avoid producing "grossly gerrymandered results." *Id.* ¶¶ 70–71 (quoting *Gaffney v. Cummings*, 412 U.S. 735, 753 (1973)). Further repudiating *Johnson*, the Court ruled that the judiciary *must* consider partisan impact to avoid "enact[ing] maps that privilege one party over another." *Id.* In other words, "judges should not select a plan that seeks partisan advantage … even if they would not be entitled to invalidate an enacted plan that did so." *Id.* (quoting *Jensen v. Wis. Elections Bd.*, 2002 WI 13, ¶ 12, 249 Wis. 2d 706, 714, 639 N.W.2d 537, 541). Ultimately, the Court held, "We cannot allow a judicially-created metric, not derived from the constitutional text, to supersede the constitution." *Id.* ¶ 62.

The Court enjoined the use of the court-adopted state legislative maps for the 2024 elections, *id.* ¶¶ 75–76, and the political branches agreed to remedial maps that cured the contiguity violation. But since only the state legislative maps were before the Court in *Clarke*, Wisconsin's

congressional map—drawn and selected based on the same improper "least change" criterion as the state legislative maps—remains in force.[2]

Under *Clarke*'s binding precedent, the congressional map clearly violates the Wisconsin Constitution—to the ongoing detriment of Plaintiffs in the 2026, 2028, and 2030 congressional elections. Its use should therefore be enjoined and a new map selected using the criteria prescribed in *Clarke*.

LEGAL STANDARD

Judgment on the pleadings is appropriate when "the complaint is sufficient to state a claim and the responsive pleadings raise no material issues of fact." *Freedom from Religion Found., Inc. v. Thompson*, 164 Wis. 2d 736, 741, 476 N.W.2d 318, 320 (Ct. App. 1991). Thus, a judgment on the pleadings is essentially "a summary judgment minus affidavits and other supporting documents," *Schuster v. Altenberg*, 144 Wis. 2d 223, 228, 424 N.W.2d 159, 161 (1988) (quotation omitted), and a motion for judgment on the pleadings "shall be treated" as a motion for summary judgment if matters outside the pleadings are presented to the court, Wis. Stat. § 802.06(3).

Parties may move for judgment on the pleadings "[a]fter issue is joined between all parties but within time so as not to delay the trial." *Id.* Issue was joined when Defendants filed their Answer on September 5, 2025. *See* Dkt. No. 41, Defs.' Answer & Statement of No Position (Sept. 5, 2025); *see also Bell v. Emps. Mut. Cas. Co. of Des Moines, IA*, 215 Wis. 2d 322, 572 N.W.2d

[2] On January 16, 2024, certain intervenors in *Johnson* sought to re-open those proceedings in light of *Clarke*. The Court denied the intervenors' motion without comment, with Justice Protasiewicz declining to participate because she "was not a member of the [*Johnson*] court." Order Denying Mot. for Relief from J. & Order Denying Mot. to Recuse, *Johnson I* (Wis. March 1, 2024). On May 7, 2025, several of Plaintiffs here petitioned the Wisconsin Supreme Court for leave to commence an original action challenging the congressional map, but the Court denied the petition, also without comment. *See* Order, *Bothfeld v. Wis. Elections Comm'n*, No. 2025AP996-OA (Wis. June 25, 2025).

901 (Ct. App. 1997) (unpublished table decision) ("[I]ssue is joined when the original answer is served"). The present motion for judgment on the pleadings is filed the same day.

ARGUMENT

Plaintiffs—voters in each of Wisconsin's congressional districts—move for judgment on the pleadings on a straightforward issue of settled law: Wisconsin's congressional map was improperly selected with a "judicially-created metric" that the Wisconsin Supreme Court has since held "supersede[s] the constitution." *Clarke*, 2023 WI 79, ¶ 62. The improper map must be replaced with a proper new one that is free of that legal defect.

I. Plaintiffs are entitled to judgment on the pleadings because the congressional map was drawn using the unlawful "least change" criterion.

The since-overruled *Johnson* Court that adopted Wisconsin's current congressional map prioritized the improper "least-change" criterion at the expense of neutral criteria. *Johnson I*, 2021 WI 87, ¶ 81. The Court has since found that approach incompatible with the judicial role and "supersedes the constitution." *Clark*, 2023 WI 79, ¶¶ 60–63, 69–71. Accordingly, under binding Wisconsin precedent, the current congressional map is unlawful. Absent judicial relief, the current congressional map will be implemented in the next three congressional elections, causing Plaintiffs irreparable harm. *See Singleton v. Merrill*, 582 F. Supp. 3d 924, 1026 (N.D. Ala. 2022) (holding "plaintiffs will suffer an irreparable harm if they must vote in the 2022 congressional elections based on a redistricting plan" that violates the law), *aff'd sub nom. Allen v. Milligan*, 599 U.S. 1 (2023); *see also Jacksonville Branch of NAACP v. City of Jacksonville*, No. 22-13544, 2022 WL 16754389, at *5 (11th Cir. Nov. 7, 2022) ("Given that [racial] gerrymandering would constitute irreparable harm to the Appellees, and the public has no interest in enforcing unconstitutional redistricting plans, we decline to require the residents of Jacksonville to live for the next four years in districts defined by a map that is substantially likely to be unconstitutional.").

This court has the power and obligation to provide Plaintiffs relief. The court has "all the powers . . . necessary to the full and complete jurisdiction of the causes and parties and the full and complete administration of justice." Wis. Stat. § 753.03; *see also* Wis. Const. art. VII, § 8 (circuit court jurisdiction covers "all matters" "[e]xcept as otherwise provided by law"). The full and complete administration of justice in this matter requires enjoining the use of Wisconsin's unlawful congressional map. The principle of vertical *stare decisis* requires this court to "faithfully apply the decisions" of the Wisconsin Supreme Court, including its overruling of *Johnson* in *Clarke*. *See Friends of Frame Park, U.A. v. City of Waukesha*, 2022 WI 57, ¶ 56, 403 Wis. 2d 1, 976 N.W.2d 263 (R. Bradley, J., concurring) (quoting Daniel R. Suhr and Kevin LeRoy, *The Past and the Present: Stare Decisis in Wisconsin Law*, 102 Marq. L. Rev. 839, 844–45 (2019)). To faithfully apply *Clarke*, this court must follow *Clarke*'s prohibition on allowing the "least change" principle "to supersede the constitution," 2023 WI 79, ¶ 62, and enjoin the use of the unconstitutional map in future congressional elections.

II. The "least change" criterion violates the separation of powers.

It is "the judiciary's exclusive responsibility to exercise judgment" to resolve cases and controversies before it. *Gabler v. Crime Victims Rts. Bd.*, 2017 WI 67, ¶ 36, 376 Wis. 2d 147, 897 N.W.2d 384. The separation of powers doctrine "prevents [the judiciary] 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. By committing to the now-defunct least-change directive when selecting the congressional map, the Wisconsin Supreme Court improperly substituted the partisan judgment that prevailed in the 2011 political process for its own. *Clarke*, 2023 WI 79, ¶ 71. Here, the congressional map was drawn contrary to the judiciary's institutional duty and constitutional charge.

A. Separation of powers requires Wisconsin courts to exercise neutral and independent judgment.

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*, 2017 WI 67, ¶ 11 (citations omitted). Each of the three branches of government is prohibited from "effectively delegate[ing]" any power that "intrinsically belongs to that branch." *In re Constitutionality of Section 251.18, Wis. Statutes*, 204 Wis. 501, 236 N.W. 717, 718 (1931). The "judicial power" is vested in the Wisconsin courts, *Gabler*, 2017 WI 67, ¶ 46, and the separation of powers doctrine accordingly "prevents [courts] from abdicating [their] core power," *Tetra Tech*, 2018 WI 75, ¶ 48. That power confers "an exclusive responsibility to exercise ***independent*** judgment in cases over which [the judiciary] preside[s]." *Gabler*, 2017 WI 67, ¶ 46 (emphasis added); *see also Clarke*, 2023 WI 79, ¶ 71 (holding the judiciary has twin duties: to be "neutral and independent"); *Tetra Tech,* 2018 WI 75, ¶ 83 (similar).

Fulfilling those duties is especially important in the redistricting context, where courts are required to resolve disputes between the legislative and executive branches. Unlike those branches—which are "political by nature"—courts must remain "neutral," and they must maintain that neutrality "regardless of whether a case involves an extreme partisan gerrymandering challenge." *Clarke*, 2023 WI 79, ¶ 70. When the judiciary extends undue deference to other branches—such as by acquiescing to the partisan goals embedded in a prior decade's districting map—it abdicates "what is unmistakably core judicial power." *Tetra Tech*, 2018 WI 75, ¶ 56. As a result, the Court held in *Clarke* that, to strike the careful balance required in redistricting cases, courts "must consider numerous constitutional requirements"—including an independent assessment of partisan fairness—"when adopting remedial maps." *Clarke*, 2023 WI 79, ¶¶ 62, 70.

The separation of power principles embodied in the Wisconsin Constitution are "essential for the preservation of liberty and a government accountable to the people." *Evers v. Marklein*, 2024 WI 31, ¶ 34, 412 Wis. 2d 525, 8 N.W.3d 395; *see also League of Women Voters of Wis. v. Evers,* 2019 WI 75, ¶ 31, 387 Wis. 2d 511, 534, 929 N.W.2d 209, 220 ("By vesting certain powers exclusively within each of the three co-equal branches of government, the drafters of the Wisconsin Constitution recognized the importance of dispersing governmental power in order to protect individual liberty and avoid tyranny."). As a result, the "dynamic between and among the branches is not the only object" of concern: separation of powers are meant to "protect the individual as well." *Bond v. United States*, 564 U.S. 211, 222 (2011). For that reason, "the claims of individuals—not of Government departments—have been the principal source of judicial decisions concerning separation of powers and checks and balances." *Id.*; *see also id.* at 223 ("If the constitutional structure of our Government that protects individual liberty is compromised, individuals who suffer otherwise justiciable injury may object.").

B. The "least change" criterion used to select Wisconsin's congressional map required the Court to violate its duties of neutrality and independence.

Courts cannot fulfill their duties of neutrality and independence by ignoring the foreseeable partisan impact of the districting maps they select or embracing the partisan goals of previous political actors. Setting aside whether the Wisconsin Constitution permits the political branches to gerrymander maps for partisan gains, courts are held to a higher standard: They must affirmatively "take care to *avoid* selecting remedial maps designed to advantage one political party over another." *Clarke*, 2023 WI 79, ¶ 71 (emphasis added).

That is not how Wisconsin's current congressional map was adopted. The Court heard repeated warnings that the old maps it was committed to replicating were rife with partisan bias. *See Johnson I*, 2021 WI 87, ¶ 76 (dismissing concerns that using skewed maps "as a starting point

perpetuates a partisan gerrymander"); *see also id.* ¶ 88 (Dallet, J., dissenting) ("The upshot" of *Johnson* "is to elevate outdated partisan choices over neutral redistricting criteria."). Nevertheless, in adopting the current congressional map in accordance with the "least change" approach, the *Johnson* Court lent its imprimatur to that partisan manipulation, to the exclusion of all neutral redistricting factors. This choice violated the Court's dual obligations of neutrality and independence.

1. The least change criterion is not neutral.

First, ignoring partisan impact is not neutral. Quite the opposite: "it is not possible to remain neutral and independent by failing to consider partisan impact entirely." *Clarke*, 2023 WI 79, ¶ 71. To remain "neutral and independent," courts have an affirmative duty to ensure the maps they adopt do not deliver unearned electoral windfalls to a political party. *Id.* Otherwise, a "politically mindless approach may produce, whether intended or not, the most grossly gerrymandered results." *Id.* ¶ 60 (internal quotation omitted); *see also Johnson I*, 2021 WI 87, ¶ 93 (Dallet, J., dissenting) ("[T]he least-change approach is not the 'neutral standard' the majority/lead opinion portrays it as. Rather, applying that approach to 2011's maps affirmatively perpetuates the partisan agenda of politicians no longer in power."); *Good v. Austin*, 800 F. Supp. 557, 566–67 (E.D. Mich. 1992) (analyzing "political fairness" of court-drawn plan because it was "apparent that a districting map devised entirely according to nonpolitical criteria could inadvertently result in a plan that unfairly favored one political party over the other").

Importantly for this narrow motion, the conclusion that *courts* must steadfastly avoid selecting maps with partisan bias in no way depends on a finding that the *political branches* may not engage in a partisan gerrymander. *Clarke* made this undeniably clear, holding that "***even if*** [courts] would not be entitled to invalidate an enacted plan" as a partisan gerrymander, courts themselves—when called to engage in redistricting—must still avoid "select[ing] a plan that seeks

a partisan advantage." *Clarke*, 2023 WI 79, ¶ 70 (quoting *Jensen*, 249 Wis. 2d 706, ¶12) (emphasis added); *see also Prosser v. Elections Bd.*, 793 F. Supp. 859, 867 (W.D. Wis. 1992) (same). That is because courts' "political neutrality must be maintained" even when confronted with a "case involv[ing] an extreme partisan gerrymandering challenge." *Clarke*, 2023 WI 79, ¶ 70 "Whatever role politics may legitimately play in the decisions and maneuverings of the legislative and executive branches, if those branches cannot reach a political resolution and the dispute spills over into" court, "the resolution must be judicial, not political." *Id.* (quoting *Peterson v. Borst*, 786 N.E.2d 668, 673 (Ind. 2003)); *see also Johnson I*, 2021 WI 87, ¶ 93 (Dallet, J., dissenting) ("There is a significant difference between second-guessing the partisan fairness of a map drawn by an inherently partisan legislature, which would have the virtue of political legitimacy, and our task here, which is to pick the plan (or devise our own) most consistent with judicial neutrality." (cleaned up)); *Burling v. Chandler*, 148 N.H. 143, 156, 804 A.2d 471, 483 (N.H. 2002) (devising its own redistricting plan because "[e]ach plan ha[d] calculated partisan political consequences").

In short: regardless of whether the political branches may draw maps for partisan advantage, the judiciary must carefully ensure it does not become complicit in such schemes. Maintaining a "non-partisan judiciary goes to the very core of democracy and to established principles of separation of powers." *Johnson III*, 2022 WI 19, ¶ 184, n.9 (Karofsky, J., dissenting). And it "should be beyond dispute that . . . a non-partisan court, cannot implement a map with blatantly partisan motivations." *Id.*

2. The least change criterion is incompatible with judicial independence.

Second, deferring to political actors no longer in office abdicates the judiciary's responsibility to act with independence. The political branches in Wisconsin failed to enact any congressional map after the 2020 census. While some deference to the political branches may be appropriate when a court *reviews* a districting map *enacted by* the political branches, *see, e.g.,*

Graham v. Thornburgh, 207 F. Supp. 2d 1280, 1296 (D. Kan. 2002) ("[A] federal court should defer" to a plan "the legislature has enacted and the governor has signed into law" (quotation omitted)), the case for deference disappears when there is no "recently enacted state plan to which" the court could defer. *Perry v. Perez*, 565 U.S. 388, 396 (2012) (explaining that where "there [is] no recently enacted state plan to which the District Court could turn," a court is "perhaps compelled to design an interim map based on its own notion of the public good" (citing *Balderas v. Texas*, No. 6:01CV158, 2001 WL 36403750, at *3 (E.D. Tex. Nov. 14, 2001) (considering "partisan outcomes" in devising congressional redistricting plan when political branches were at a stalemate), *summarily aff'd*, 536 U.S. 919, 122 (2002)); *see also Hippert v. Ritchie*, 813 N.W.2d 374, 380, n.6 (Minn. 2012) (finding deference appropriate only to a redistricting plan "that has been duly enacted by the state's legislative and executive branches of government"). In other words, when the Court is not faced with the question of whether "some enacted plan [is] constitutional," but rather what plan the court should "promulgate in order to rectify the admitted constitutional violation," courts must seek the "best plan," not defer to the political branches. *Prosser*, 793 F. Supp. at 865. *Cf. Miss. State Conf. of NAACP v. State Bd. of Election Comm'rs*, No. 3:22-CV-734, 2025 WL 1318806, at *6 (S.D. Miss. May 7, 2025) ("[T]he significant deference to be given to legally compliant plans developed by a legislature . . . does not apply to the plan developed by a litigant").

Moreover, even if some deference to a decade-old map were warranted, *excessive* judicial deference violates the separation of powers. *See Tetra Tech*, 2018 WI 75, ¶ 63 (holding "[c]eding judicial power" by giving "great weight" deference to agencies is "from a separation of powers perspective, unacceptably problematic"). The deference embedded in the least-change criterion was clearly excessive: As *Clarke* observed, the *Johnson* Court did not follow a "cabined" view

that treats least change as one of many relevant factors but instead made least change its "overarching approach" to redistricting. *Clarke*, 2023 WI 79, ¶ 62. That degree of judicial deference cannot be squared with the Wisconsin Constitution's separation of powers.

Judicial independence is particularly vital in redistricting. Courts called upon to engage in redistricting "must consider numerous constitutional requirements when adopting remedial maps." *Id.*; *see also id.* ¶¶ 64-69 (listing requirements). Since the least-change approach's guiding light is similarity to prior maps, it suppresses consideration of these "established districting requirements," thus requiring courts to abrogate their responsibility to independently balance these constitutional and statutory requirements. *Id.* ¶ 63; *see also Johnson I,* 2021 WI 87, ¶ 88 (Dallet, J., dissenting) ("The upshot" of least change "is to elevate outdated partisan choices over neutral redistricting criteria."); *Carter*, 270 A.3d at 451, 461–62 (applying "traditional core criteria" to adopt a map that is "superior or comparable" to all other submitted after being "thrust into the position of choosing a redistricting plan due to the political stalemate between the Legislature and the Governor"); *Hippert*, 813 N.W.2d at 395 (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").

* * *

The least change standard—a "judicially-created metric not derived from the constitutional text"—cannot be permitted to "supersede the constitution" to the ongoing detriment of Wisconsin voters. *Clarke*, 2023 WI 79, ¶ 62. "A court's adoption of a plan that represents one political party's idea of how district boundaries should be drawn does not conform to the constitutional principle of judicial independence and neutrality." *Id.* ¶ 70 (quoting *Maestas v. Hall*, 274 P.3d 66, 76 (N.M. 2012)).

CONCLUSION

Plaintiffs respectfully request that this Court grant judgment on the pleadings on Count 1 of the Complaint; declare that Wisconsin's congressional map violates the separation of powers; enjoin its use going forward; and order a remedy in time to take effect for the 2026 congressional elections.

Dated: September 5, 2025

By: *Electronically signed by Barret V. Van Sicklen*

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