STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY
BRANCH 13

ELIZABETH BOTHFELD, JO ELLEN BURKE, MARY COLLINS, CHARLENE GAEBLER-UHING, KATHLEEN GILMORE, PAUL HAYES, SALLY HUCK, THOMAS KLOOSTERBOER, ELIZABETH LUDEMAN, GREGORY ST. ONGE, *and* LINDA WEAVER,

Plaintiffs,

v.

WISCONSIN ELECTIONS COMMISSION, MARGE BOSTELMANN, ANN S. JACOBS, DON M. MILLIS, ROBERT F. SPINDELL, JR., CARRIE RIEPL, MARK L. THOMPSON, *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*,

Defendants.

Case No.2025CV2432

REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM AND/OR FOR LACK OF JURISDICTION OF INTERVENOR-DEFENDANTS CONGRESSMEN GLENN GROTHMAN, BRYAN STEIL, TOM TIFFANY, SCOTT FITZGERALD, DERRICK VAN ORDEN, AND TONY WIED AND INDIVIDUAL VOTERS GREGORY HUTCHESON, PATRICK KELLER, PATRICK MCCALVY, AND MIKE MOELLER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

INTRODUCTION

Plaintiffs have no response to the Congressmen and Individual Voters' lead argument that this Panel has no authority to overrule the *judgment* of our State's highest court in *Johnson v. Wisconsin Elections Commission* ("*WEC*"), 2022 WI 14, 400 Wis. 2d 626, 971 N.W.2d 402 ("*Johnson II*"), which adopted the congressional map challenged here and held that it "compl[ies] with all relevant state and federal laws." *Id.* ¶ 25. Instead, Plaintiffs argue that *Clarke v. WEC*, 2023 WI 79, 410 Wis. 2d 1, 998 N.W.2d 370, overruled the least-change reasoning in *Johnson v. WEC*, 2021 WI 87, 399 Wis. 2d 623, 967 N.W.2d 469 ("*Johnson I*"), including as to congressional maps. But an *opinion* of the Supreme Court is distinct from its *judgment*. So, while Plaintiffs badly misread *Clarke*, that is ultimately irrelevant. They do not dispute that the *Johnson II* judgment remains valid unless and until the Supreme Court overturns it, which is the end of this case.

Plaintiffs similarly have no cogent answers to the Congressmen and Individual Voters' other arguments. *Johnson I* clearly makes Plaintiffs' claims nonjusticiable political questions, so they assert that the relevant holding of *Johnson I* is dicta or, if not, that *Clarke* overruled *Johnson I*. But *Johnson I*'s reasoning on the political-question doctrine clearly was not dicta, but rather was core to the Court's articulation of its remedial methodology; and, regardless, the Wisconsin Supreme Court has held that lower courts cannot refuse to follow even its well-considered dicta. In any event, *Clarke* did not overturn *Johnson I*'s political-question holding as to partisan gerrymandering (since *Clarke* specifically declined to adjudicate the partisan-gerrymandering claim in that case) and did not even arguably consider whether the

least-change approach governs remedial congressional redistricting in light of the U.S. Constitution's Elections Clause (since *Clarke* involved only state legislative maps, which are not subject to the Elections Clause). And on that last point, Plaintiffs largely ignore the Congressmen and Individual Voters' Elections Clause arguments, including by failing to dispute that this Panel purporting to overrule the *Johnson II* judgment by adopting either of Plaintiffs' novel theories would exceed the ordinary bounds of judicial review.*

This Court should grant the Motion To Dismiss.

ARGUMENT

I. Plaintiffs Have No Serious Answer To The Fatal Jurisdictional Point That This Panel Has No Power To Overrule The Wisconsin Supreme Court's *Judgment* Adopting The *Johnson II* Map

A. This Panel cannot award Plaintiffs any relief because the *Johnson II* map was adopted by a *judgment* of the Wisconsin Supreme Court, and no inferior court in the State—including this Panel—has the power to overrule the Supreme Court's judgments. Dkt.145 ("Cong.Mem.") at 10–17. The Wisconsin Constitution establishes the Supreme Court as the head of the Wisconsin State Courts, meaning that all other state courts must faithfully apply, not review and reverse, that Court's judgments. Cong.Mem.10–13. Here, Plaintiffs request that this Panel overrule the Wisconsin Supreme Court's judgment that adopted the *Johnson II* map. Cong.Mem.15–16. Since this Panel is inferior to the Supreme Court, like all other

* This Reply responds only to arguments in Plaintiffs' Response/Reply that relate to the Motion To Dismiss. It does not address, for example, Plaintiffs' argument that their separation-of-powers claim is free of factual disputes, Dkt.151 ("Pls.Resp.") at 21–23, insofar as that argument relates to Plaintiffs' Motion For Judgment On The Pleadings.

state courts in Wisconsin, it has no authority to grant Plaintiffs their requested relief. Cong.Mem.14–15. Indeed, some Plaintiffs and their counsel admitted this very point in their failed *Bothfeld* original-action petition just last year. Cong.Mem.10.

B. Plaintiffs ignore this argument because they have no answer. Instead, they focus on a different point entirely: their theory that *Clarke* overturned *Johnson I*'s least-change approach for congressional maps. *See* Pls.Resp.11–14. While Plaintiffs are wrong because *Clarke* did not involve a congressional map, *see infra* Part II, their point is irrelevant for purposes of this Court's authority to grant Plaintiffs relief from the *Johnson II* judgment. "There is a wide difference between 'decisions' and 'opinions'" issued by a court. *In re O'Brien's Est.*, 273 Wis. 223, 227, 77 N.W.2d 609 (1956). Even if *Clarke* had held that the *Johnson I* opinion was "bad law" for congressional maps, Pls.Resp.2, 11–12; *but see infra* pp.9–11, *Clarke* did not even purport to review or overrule the *judgment* in *Johnson II*, *see In re O'Brien's Est.*, 273 Wis. at 227. "A court's ultimate decision"—that is, its judgment—"is *separate* from the court's opinion." *State v. Castillo*, 213 Wis. 2d 488, 491, 570 N.W.2d 44 (1997) (emphasis added). This is why, for example, "a party may not petition [the Wisconsin Supreme Court] for review if it merely disagrees with the rationale expressed in the [lower court's] opinion." *Id.* (citations omitted). It is why, in the criminal context, a judgment of conviction in a closed case remains valid even if the Wisconsin Supreme Court subsequently repudiates the reasoning of the opinions in that closed case. *See State v. Lagundoye*, 2004 WI 4, ¶¶ 11–13, 268 Wis. 2d 77, 674 N.W.2d 526. And it is why, in the civil context, the Supreme Court's "overruling of prior precedent" neither

invalidates "preexisting judgments based in whole or in part on that precedent" nor itself qualifies as "grounds for reopening" those "preexisting judgments." *See Brown v. Mosser Lee Co.*, 164 Wis. 2d 612, 623, 476 N.W.2d 294 (1991).†

Indeed, the only time Plaintiffs even attempt to address this core defect in their lawsuit is a brief assertion that *Johnson II* "recognized the residual power of lower [state] courts to provide prospective relief" against the *Johnson II* judgment, Pls.Resp.14, given that the Court stated that its "order shall remain in effect until new maps are enacted into law or *a court* otherwise directs," 2022 WI 14, ¶ 52 (emphasis added). As the Congressmen and Individual Voters have explained—with no contradiction from Plaintiffs, *see generally* Pls.Resp.11–14—the Wisconsin Supreme Court cannot constitutionally authorize lower state courts to sit in review of its own judgments, Cong.Mem.13–14 (collecting authorities). Given that undisputed principle, *Johnson II*'s statement that its "order shall remain in effect until . . . *a court* otherwise directs," 2022 WI 14, ¶ 52 (emphasis added), cannot be read as referring to lower state courts. Instead, this statement must refer to the Wisconsin Supreme Court itself, *see Johnson v. WEC*, 2022 WI 19, 401 Wis. 2d 198, 972 N.W.2d 559 *("Johnson III")*; or a federal court, if a federal plaintiff with Article III

† Plaintiffs cannot explain away their prior (entirely correct) concession on this score. In their *Bothfeld* original-action petition, at Paragraph 98, Plaintiffs admitted that "[b]ecause [they] bring purely state law claims against a map that was adopted by [the Wisconsin Supreme Court], *no other court* can provide [their] requested relief." Dkt.60 at 320 (emphasis added). They then doubled down on this concession, stating at Paragraph 102 that "this original action is the *necessary* mechanism for [them] to receive their remedy." Dkt.60 at 321 (emphasis added). Plaintiffs' new claim that these passages only "explain[ed] that no *federal* court could grant relief" and that the need to "bypass[ ] the lower state courts" was due solely to "efficiency reasons," Pls.Resp.13–14, are contrary to the words they put in their pleading.

standing were to show that the *Johnson II* map violated some federal law or the U.S. Constitution, as the Supremacy Clause can override any state-law principles or state-law-based court judgments, U.S. Const. art. VI, cl. 2.

II. All Of Plaintiffs' Claims Fail As A Matter Of Law

A. All Of Plaintiffs Claims Raise Nonjusticiable Political Questions

1. Even if this Court had the authority to overrule the Wisconsin Supreme Court's judgment in *Johnson II*, *contra supra* Part I, this Court must still dismiss Plaintiffs' Complaint because all of their claims raise nonjusticiable political questions, Cong.Mem.17–22. *Johnson I* held that partisan-gerrymandering claims are nonjusticiable political questions—including because they depend upon questions of "fairness" that lack judicially manageable constitutional standards, Cong.Mem.17–19—and that there is no "right under the Wisconsin Constitution to a particular partisan configuration" of a congressional map, including in "Article I, Sections 1, 3, 4, or 22," Cong.Mem.18–19 (quoting *Johnson I*, 2021 WI 87, ¶¶ 39, 53). Thus, under *Johnson I*, Plaintiffs' partisan-gerrymandering claims are nonjusticiable political questions. Cong.Mem.19–21. For much the same reason, *Johnson I*'s rationale also means that Plaintiffs' separation-of-powers claim is nonjusticiable, as that claim requires (somehow) assessing the partisan "fairness" of the 2011 redistricting map to determine whether *Johnson II* was too "partisan" when it carried that map forward under the least-change approach. Cong.Mem.21–22 (quoting Dkt.9 ¶ 80).

2. Plaintiffs assert that their partisan-gerrymandering claims are justiciable, Pls.Resp.25–34, despite *Johnson I*'s express holdings to the contrary. Plaintiffs do not, however, separately argue that their separation-of-powers claim is justiciable,

see generally Pls.Resp.25–34, although the Congressmen and Individual Voters specifically challenged that claim on nonjusticiability grounds as well, Cong.Mem.21–22. The closest that Plaintiffs come to addressing the justiciability of their separation-of-powers claim is in the portion of their Response/Reply arguing that this claim does not depend upon factual conclusions regarding the "alleged partisan judgments of 2011" and the like. Pls.Resp.21–23. But even there, Plaintiffs concede that their separation-of-powers claim depends upon a finding that *Johnson II* failed to "avoid selecting remedial maps *designed to advantage one political party over the other*." Pls.Resp.22 (quoting *Clarke*, 2023 WI 79, ¶ 71) (emphasis altered). That is a nonjusticiable question of partisan fairness under *Johnson I*.

As for Plaintiffs' arguments about the nonjusticiability of their partisan-gerrymandering claims, they spend pages attempting to explain how "multiple provisions of the Wisconsin Constitution" and associated case law each "support[ ] an independent cause of action" for these claims. Pls.Resp.26–31 (citing Wis. Const. art. I, § 1; Wis. Const. art. I, §§ 3–4; Wis. Const. art. I, § 22, and associated case law). But given *Johnson I*'s holding that there is no "right under the Wisconsin Constitution to a particular partisan configuration" of a congressional map and that the "Constitution [s]ays [n]othing [a]bout [p]artisan [g]errymandering," 2021 WI 87, ¶¶ 39, 53, none of the constitutional provisions or associated case law that Plaintiffs cite supports them. Again, *Johnson I* "searched in earnest" for "a right to partisan fairness in Article I, Sections 1, 3, 4, or 22 of the Wisconsin Constitution," *id.* ¶ 53—the same provisions that Plaintiffs invoke, Pls.Resp.26–31—yet "conclude[d] [that]

the right does not exist," 2021 WI 87, ¶ 53. And the Court decided *Johnson I* after the other Supreme Court cases that Plaintiffs cite, *see* Pls.Resp.26–31, so those prior cases do not even arguably supplant *Johnson I*, *see Betthauser v. Med. Protective Co.*, 164 Wis. 2d 343, 350, 474 N.W.2d 783 (Ct. App. 1991).

To avoid *Johnson I*, Plaintiffs claim that *Johnson I*'s treatment of partisan gerrymandering is "dictum" that this Panel need not follow. Pls.Resp.33. This is incorrect for two reasons. As a threshold matter, *Johnson I*'s conclusion that the Wisconsin Constitution does not recognize partisan-gerrymandering claims is an express holding, under the standard that Plaintiffs themselves invoke. Pls.Resp.33. That is because it was "necessary for [the Court's] decision," Pls.Resp.33 (citations omitted), over how to remedy the malapportionment of the 2011 map with a remedial map, which was the core dispute between the parties in *Johnson*, *see Johnson I*, 2021 WI 87, ¶¶ 2–3, 7. This is why the Court in *Johnson I* stated that "[w]e *hold* . . . the partisan makeup of districts does not implicate any justiciable or cognizable right," in a section of the opinion titled "Procedural History *And Holding*." *Id.* ¶¶ 5, 8 (formatting altered; emphases added). In any event, the Supreme Court has also held that lower state courts "may not dismiss a statement from an opinion by [the Supreme Court] by concluding that it is dictum," *Zarder v. Humana Ins. Co.*, 2010 WI 35, ¶¶ 50–58, 324 Wis. 2d 325, 782 N.W.2d 682; *compare* Pls.Resp.33 (citing only pre-*Zarder* cases for the opposite proposition), so this Panel cannot avoid *Johnson I*'s partisan-gerrymandering decision on those grounds.

Plaintiffs then argue, alternatively, that "*Johnson I*'s statements on partisan fairness in redistricting are no longer good law" after *Clarke*. Pls.Resp.33–34. But *Clarke* did not overrule *Johnson I*'s holding that partisan-gerrymandering claims are nonjusticiable, even as it did "overrule" the "*portion[ ]* of *Johnson I* . . . that mandate[d] a least change approach" to adopting remedial state-legislative maps, *Clarke*, 2023 WI 79, ¶ 63 (emphasis added). Indeed, the Supreme Court in *Clarke* specifically declined to consider the partisan-gerrymandering claim against the *Johnson III* state-legislative maps raised there. *Clarke v. WEC*, 2023 WI 70, 409 Wis. 2d 372, 373–74, 995 N.W.2d 779. Plaintiffs cite *Clarke*'s statement that the "extreme-partisan-gerrymandering claim" there "presented an important and unresolved legal question," 2023 WI 79, ¶ 7, asserting that this overruled *Johnson I*'s partisan-gerrymandering-nonjusticiability holding, Pls.Resp.34. But the Court does not "careless[ly]" or "lightly," *Johnson Controls, Inc. v. Emps. Ins. of Wausau*, 2003 WI 108, ¶¶ 94–95, 264 Wis. 2d 60, 665 N.W.2d 257 (citations omitted), overrule prior precedent in a single terse sentence that does not even mention the *stare decisis* test. Instead, to overrule precedent, the Court carefully explains both why the precedent is wrong and why *stare decisis* does not compel adhering to it—as *Clarke* itself demonstrates when overruling other portions of *Johnson*. 2023 WI 79, ¶¶ 24, 60–63.

B. Plaintiffs' Separation-Of-Powers Claim Also Fails As Matter Of Law, As *Clarke* Did Not Hold That All Least-Change Congressional Maps Violate The Separation-Of-Powers Doctrine

1. Plaintiffs' separation-of-powers claim also fails because their theory has no basis in the constitutional text or case law. Cong.Mem.22–29. In *Johnson I*, the Court held that it would employ a least-change approach for adopting remedial maps

based upon multiple considerations—including, for congressional maps, the Elections Clause—while also noting the approach's general acceptance among courts across the country. Cong.Mem.25–26. *Johnson I*'s adoption of the least-change approach is not an unconstitutional abdication of the judiciary's core power to say what the law is, in violation of the separation of powers. Cong.Mem.26–27. Rather, it reflects the Court's own independent assessment of how it will engage in the unwelcome task of judicial redistricting. Cong.Mem.27–28. While *Clarke* overruled *Johnson*'s least-change approach with respect to state-legislative maps and selected a different methodology, that does not transform *Johnson*'s adoption of this approach into a separation-of-powers violation. Cong.Mem.27–28. *Clarke* did not invoke the separation of powers in rejecting least-changes for state legislative maps, but rather concluded that its experience over "the course of the *Johnson* litigation" and its "practice" with the least-change approach called for a change in "the court's process in adopting remedial maps." 2023 WI 79, ¶ 63; Cong.Mem.28–29.

2. Plaintiffs respond by attempting to rewrite *Clarke* into a separation-of-powers decision. Pls.Resp.14–16. While *Clarke* rejected *Johnson I*'s least-change approach for remedial state-legislative maps going forward, it did not then hold that *Johnson I*'s adoption of the least-change approach violated the Court's responsibility to independently say what the law is. *See* 2023 WI 79, ¶¶ 56–76. Rather, *Clarke* rejected the least-change approach for the following reasons: "[t]he fundamental problem in *Johnson* was the inability of th[e] court to agree upon the actual meaning of 'least change' in practice"; "least change did not fit easily or consistently into the

balance of other requirements and considerations essential to the mapmaking process"; and "'least change' is unworkable in practice." *Id.* ¶¶ 61–63. That is not the language of a separation-of-powers violation. *Compare Tetra Tech EC, Inc. v. Wis. Dep't of Revenue*, 2018 WI 75, ¶¶ 82–84, 382 Wis. 2d 496, 914 N.W.2d 21.

Plaintiffs attempt to dismiss the Congressmen and Individual Voters' point that *Clarke* only addressed *Johnson I*'s least-change approach in the opinion's remedies section, rather than in the liability section, Pls.Resp.17, but the point is plain from the structure of the Court's opinion, *see* Cong.Mem.28–29. If *Clarke* stood for the proposition that any map adopted via the least-change approach violated the separation of powers, the Court would have said so in the opinion's liability portion. Indeed, that would have been the most straightforward resolution of *Clarke*, as the *Johnson III* map under review there was indisputably a least-change map. *Johnson III*, 2022 WI 19, ¶¶ 71–72. Nevertheless, *Clarke* did not hold that a map adopted under the least-change approach is "a constitutionally defective map" for that reason alone, Pls.Resp.17, which is why a discussion of the least-change approach is absent from the liability portion of *Clarke*.

Plaintiffs next claim that it is "artificial and lack[ing] [in] any legal or logical basis" to read *Clarke* as applying only to remedial state-legislative maps, rather than to remedial congressional maps like the *Johnson II* map as well. Pls.Resp.17–18. But there is a cogent reason to understand *Clarke* this way—or, at minimum, to hold that *Clarke* did not address issues specific to judicial redistricting of congressional maps. The Elections Clause vests "in each State by the Legislature thereof" the authority

over "[t]he Times, Places and Manner of holding Elections for Senators and Representatives," U.S. Const. art. I, § 4, cl. 1, including, as relevant here, the primary authority over congressional redistricting, *see Moore v. Harper*, 600 U.S. 1, 34–36 (2023). The Elections Clause thus limits the Wisconsin Supreme Court's authority when adopting remedial congressional maps, but not remedial state-legislative maps, *infra* Part III, and only the *Johnson III* state-legislative maps were at issue in *Clarke*, 2023 WI 79, ¶¶ 1–2, 7. Elections Clause issues were "not argued" in *Clarke*, were "not necessary" to its "judgment," and, accordingly, were "not [ ] considered" there. *Godfrey v. Thornton*, 46 Wis. 677, 1 N.W. 362, 370 (1879).

Finally, Plaintiffs attempt to recharacterize *Clarke* as involving the separation-of-powers violation at issue in *Tetra Tech*, Pls.Resp.20–21, but this too fails. *Johnson I*'s least-change approach did not require "blind deference" to the legal decisions of any other branch as to the meaning of a state law, Pls.Resp.20, which was the separation-of-powers issue in *Tetra Tech*, 2018 WI 75, ¶ 56 (lead op. of Kelly, J.). Instead, the least-change approach recognizes that the nonlegal "political considerations" or "consequences," *State ex rel. Wis. Senate v. Thompson*, 144 Wis. 2d 429, 436–37, 424 N.W.2d 385 (1988), inherent in the redistricting process should not be considered by the Court as it adopts a remedial map, *see Johnson I*, 2021 WI 87, ¶¶ 64–81. And while *Clarke* sets a different path for remedial state-legislative maps, that was not due to any separation-of-powers concerns. *Supra* pp.9–10.

III. The U.S. Constitution's Elections Clause Also Independently Forecloses Plaintiffs' Requested Relief

A. The U.S. Constitution's Elections Clause also precludes granting Plaintiffs relief on any of their theories, as the Congressmen and Individual Voters explained. Cong.Mem.29–38. When adopting remedial congressional maps to address specifically a particular legal violation in the map—such as a violation of the one-person, one-vote principle—the Elections Clause requires courts to use a least-change approach to preserve state-legislative policy choices as much as possible, so as to respect state legislatures' Elections Clause authority. Cong.Mem.30–31. And while "the Elections Clause does not exempt state legislatures from the ordinary constraints imposed by state law," it does prohibit state courts from "transgress[ing] the ordinary bounds of judicial review" when reviewing congressional maps adopted by a state legislature. *Moore*, 600 U.S. at 34, 36–37; Cong.Mem.31–32. Here, the Elections Clause required the Wisconsin Supreme Court to adopt a least-change map like the *Johnson II* map, which adjusted the legislatively adopted 2011 map only to remedy any legal errors in it (that is, unconstitutional malapportionment after the 2020 Census). Cong.Mem.32–34. And while Plaintiffs claim that the *Johnson II* map violates the separation of powers and is an unconstitutional partisan gerrymander, endorsing those theories would transgress the ordinary bounds of judicial review under *Moore*, contrary to the Elections Clause, given that neither has any basis in constitutional text or precedent and would require this inferior Panel to overrule the Supreme Court's judgment in *Johnson II*. Cong.Mem.34–38.

B. Plaintiffs' Response/Reply largely avoids these Elections Clause arguments. *See* Pls.Resp.34–40. Plaintiffs do not dispute that this Panel adopting Plaintiffs' separation-of-powers and partisan-gerrymandering theories would violate the Elections Clause if those theories lack any grounding in prior law or the Wisconsin Constitution's text, or if they were already specifically rejected by the Supreme Court. *See* Pls.Resp.34–40. Nor do Plaintiffs dispute that this Panel purporting to overrule the Wisconsin Supreme Court's judgment adopting the *Johnson II* map would likewise violate the Elections Clause. *See generally* Pls.Resp.34–40. As for the few Elections Clause arguments that Plaintiffs do make, they misunderstand the Congressmen and Individual Voters' Elections Clause position altogether.

First, Plaintiffs cite a variety of cases where courts have adopted remedial redistricting maps that seek "partisan fairness" and then argue that no case has "interpret[ed] the Elections Clause to require state courts adopting new districting maps to lend their imprimatur to a prior decade's partisan skew." Pls.Resp.35–37. But many of their cited cases did not involve remedial congressional maps, *see, e.g.*, *Prosser v. Elections Bd.*, 793 F. Supp. 859, 867 (W.D. Wis. 1992), and none of the cases that did consider remedial congressional maps addressed the Elections Clause, *see, e.g.*, *Carter v. Chapman*, 270 A.3d 444, 450 (Pa. 2022), and all were decided before the U.S. Supreme Court's landmark Elections Clause decision in *Moore*, *see* Pls.Resp.35–37. Under *Moore* and the Elections Clause's plain text, state courts must "respect" the vested authority of state legislatures over congressional redistricting,

Moore, 600 U.S. at 34, by carrying forward lawful state-legislative policies through a least-change approach, *supra* p.12.

Second, in a footnote, Plaintiffs criticize the Congressmen and Individual Voters' reliance on *Abrams v. Johnson*, 521 U.S. 74 (1997), and *White v. Weiser*, 412 U.S. 783 (1973), claiming that they do not support the conclusion that the Elections Clause requires state courts to use a least-change approach for remedial congressional maps. Pls.Resp.37 n.10. Plaintiffs' reading of these cases is wrong. *Abrams* clearly holds that, "[w]hen faced with the necessity of drawing district lines by judicial order, a court, as a general rule, should be guided by the legislative policies underlying the existing plan, to the extent those policies [are lawful]." 521 U.S. at 79. It then (at the page cited by Plaintiffs, Pls.Resp.37 n.10) explained that the district court there was nevertheless "justified" "[u]nder the circumstances" in "making substantial changes to the existing plan" only because the "constitutional violation [at issue] affect[ed] a large geographic area of the State" and the changes were still "consistent with Georgia's traditional districting principles." 521 U.S. at 86. As for *White*, it explained that district courts should "defer to state policy in fashioning [the] relief" of a remedial map if "that policy is consistent with constitutional norms and is not itself vulnerable to legal challenge." 412 U.S. at 797.

Finally, Plaintiffs claim that the "Elections Clause-hook here is significantly weaker" than in *Moore* because the *Johnson II* map was adopted by the Wisconsin Supreme Court, not the Legislature. Pls.Resp.38. This again misses the point. The Elections Clause required the Wisconsin Supreme Court to adopt a remedial

congressional map under a least-change approach because the 2011 map was adopted by the Legislature, and the *Johnson II* map satisfies that obligation. *Supra* p.12. The *Johnson II* map embodies respect for the Legislature's Elections Clause authority. Failing to give that map that respect under the Elections Clause would create an end run around this constitutional provision, authorizing state courts to seize primary redistricting authority for their States. And that risk is only heightened if courts may invalidate prior remedial maps based upon entirely novel theories—like Plaintiffs' separation-of-powers and partisan-gerrymandering theories, Cong.Mem.34–38—that have no grounding in the prior state law or constitutional text.

IV. Plaintiffs Cannot Rebut Laches' Straightforward Application Here

A. Laches bars this lawsuit. Cong.Mem.38–40. Plaintiffs argue that "claims seeking prospective relief" cannot trigger laches, Pls.Resp.6 (emphasis omitted), but Wisconsin law does not support that assertion. Plaintiffs claim that they did not unreasonably delay because they filed with the Supreme Court shortly after *Clarke*, Pls.Resp.8–9, but the relevant filing is Plaintiffs' Complaint with this Court. They argue that everyone should have "anticipate[d]" this case, Pls.Resp.9, but "[s]ome people might call that *chutzpah*," *Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U.S. 721, 766 (2011) (Kagan, J., dissenting), given Plaintiffs' concession in the *Bothfeld* petition, *supra* p.4 n.†. And Plaintiffs claim there is no prejudice from their delay, Pls.Resp.9–11, but the Congressmen and Individual Voters' have invested substantial resources relying on the *Johnson II* map, Cong.Mem.39–40.

CONCLUSION

This Court should grant the Motion To Dismiss.

Dated: February 4, 2026

Respectfully submitted,

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