Supreme Court of Wisconsin

2025XX1330 **WIS. BUSINESS LEADERS FOR DEMOCRACY V. WIS. ELECTIONS COMM'N** **2025CV2252**

September 25, 2025

The Court has entered the following order:

On July 10, 2025, this court received written notice from the Dane County Clerk of Courts of the filing of a summons and complaint on July 8, 2025, by Wisconsin Business Leaders for Democracy et al. (WBLD) against the Wisconsin Elections Commission et al. (WEC). The complaint alleges that Wisconsin's current congressional map violates the Wisconsin Constitution in various respects. The Dane County Clerk of Courts enclosed a copy of the summons and complaint in its July 10, 2025 written notice to this court. This court opened miscellaneous Case No. 2025XX1330 to receive these filings.

The letter sent by the Dane County Clerk of Courts office purported to notify this court of the filing of WBLD's summons and complaint pursuant to WIS. STAT. § 801.50(4m), which states that "[n]ot more than 5 days after an action to challenge the apportionment of a congressional or state legislative district is filed, the clerk of courts for the county where the action is filed shall notify the clerk of the supreme court of the filing." This section further states that "[v]enue of an action to challenge the appointment of any congressional or state legislative district shall be as provided in s. 751.035." Section 731.035(1) states that "[u]pon receiving notice under s. 801.50(4m), the supreme court shall appoint a panel consisting of 3 circuit court judges to hear the matter. The supreme court shall choose one judge from each of 3 circuits and shall assign one of the circuits as the venue for all hearings and filings in the matter."

In correspondence received by the court following its receipt of WBLD's summons and complaint, a group of Congressmen and individual voters (collectively, the "Congressmen"), who are not parties to this miscellaneous matter in this court, made a

number of requests of the court, including to be deemed to have intervened in this miscellaneous matter.

To facilitate this court's review,

IT IS ORDERED that within 14 days of the date of this order, the parties shall file simultaneous briefs, not to exceed 30 pages if a monospaced font is used, or 6,600 words if a proportional serif font is used, addressing whether WBLD's complaint filed in the circuit court constitutes "an action to challenge the apportionment of a congressional or state legislative district" under WIS. STAT. § 801.50(4m); and

IT IS FURTHER ORDERED that the parties shall file simultaneous response briefs not to exceed 15 pages if a monospaced font is used, or 3,300 words if a proportional serif font is used, by no more than seven days from the date their initial briefs are filed; and

IT IS FURTHER ORDERED that the court will take no action on the requests made by the Congressmen in their correspondence to this court. If the Congressmen wish to be heard in this matter, the Congressmen may move in this miscellaneous matter for intervention or for leave to participate as amicus curiae.

ANNETTE KINGSLAND ZIEGLER, J., concurring.

¶1 Redistricting occurs every ten years pursuant to the census conducted under the United States Constitution. Following each census, the Wisconsin Legislature is required "to apportion and district anew the members of the senate and assembly, according to the number of inhabitants." Wis. Const. art. IV, § 3. Constitutionally, it is the responsibility of the legislature and the governor—not the judiciary—to redistrict. This case has been filed long after the completion of the most recent decennial census. Unlike the past, this filing does not come to the court because of an impasse between the political branches requiring this court to act so that partisan elections can occur. Rather, over the last four years, elections have been conducted under the congressional districting map adopted by this court after the 2020 decennial census. To be clear, this court then selected Democratic Governor Tony Evers' congressional districting map, which remains in place today. *Johnson v. WEC*, 2022 WI 14, 400 Wis. 2d 626, 971 N.W.2d 402 (*Johnson II*).

¶2 I reluctantly agree with today's order requesting briefing, but briefing should not be confused with a decision to grant relief sought. I caution that this court should not redraw partisan maps, especially since the issue has already been settled. This court already resolved the constitutional impasse and adopted Democratic Governor Tony Evers' congressional map more than four years and several elections ago. Challenges have been repeatedly mounted and consistently denied. At a minimum, the

parties must specifically address why, after years of finality and repeated denials of similar claims, judicial action is warranted now.

¶3 On November 30, 2021, this court established the limited framework for any remedial maps in *Johnson v. WEC*: (1) the court would intervene only to the extent necessary to remedy a "violation of a justiciable and cognizable right found in the United States Constitution, the [Voting Rights Act], or Article IV, Sections 3, 4, or 5 of the Wisconsin Constitution"; (2) the court would not consider "the partisan makeup of districts because it did not implicate any justiciable or cognizable right"; and (3) the court would "adopt the least-change approach to remedy[] any constitutional or statutory infirmities in the existing maps because the constitution preclude[d] the judiciary from interfering with the lawful policy choices of the legislature." *Johnson v. WEC*, 2021 WI 87, ¶81, 399 Wis. 2d 623, 967 N.W.2d 469 (*Johnson I*).

¶4 On March 3, 2022, the court adopted Governor Evers' proposed state legislative maps and congressional districting map. *Johnson II*, 400 Wis. 2d 626. That ruling was appealed to the United States Supreme Court (SCOTUS). SCOTUS summarily reversed this court's adoption of Governor Evers' state legislative maps because the maps violated the Voting Rights Act. However, the congressional map proposed by Governor Evers remained intact. Our court also denied a motion to reconsider the congressional maps.[1]

---

[1] On March 7, 2022, the Wisconsin Legislature-respondents filed a petition for certiorari with the United States Supreme Court (SCOTUS) challenging this court's adoption of the Governor's state legislative maps. The Court granted the Legislature's certiorari petition. Shortly thereafter, the Court summarily reversed, holding that the maps violated the Voting Rights Act. *Wis. Legislature v. WEC*, 595 U.S. 398, 401 (2022) (per curiam). On remand, this court adopted the state legislative maps proposed by the Wisconsin Legislature in *Johnson II*. *Johnson v. WEC*, 2022 WI 19, 401 Wis. 2d 198, 972 N.W.2d 559 (*Johnson III*).

On March 9, 2022, the Congressmen intervenors-petitioners in *Johnson II* (Glenn Grothman, et al.) filed an Emergency Application for Stay Pending Petition for Writ of Certiorari with SCOTUS challenging this court's adoption of Governor Evers' congressional districting map. On March 23, 2022, the Court denied the Congressmen's request. *Grothman v. WEC*, 142 S. Ct. 1410 (2022).

Also on March 23, 2022, the Congressmen intervenors-petitioners filed a motion requesting that this court reconsider its March 3, 2022 opinion and order and issue an order permitting all parties to submit core-retention-maximization congressional maps. On April 15, 2022, we denied the challenge to the congressional maps. *Johnson v. WEC*, No. 2021AP1450-OA,

¶5 The congressional districting map adopted by this court on March 3, 2022, was used in the fall 2022 election.

¶6 In August of 2023, less than one year after the fall 2022 election, two petitions for leave to commence an original action were filed challenging the state legislative maps adopted in *Johnson v. WEC*, 2022 WI 19, 401 Wis. 2d 198, 972 N.W.2d 559 *(Johnson III)*. *Clarke v. WEC*, No. 2023AP1399-OA (filed August 2, 2025); *Wright v. WEC*, No. 2023AP1412-OA (filed August 4, 2025).[2] On December 22, 2023, this court held that the state legislative maps violated the Wisconsin Constitution's contiguous-territory requirement, enjoined further use of those maps, and ordered remedial maps be drawn prior to the 2024 elections. *Clarke v. WEC*, 2023 WI 79, ¶¶3-4, 410 Wis. 2d 1, 998 N.W.2d 370. No challenge was made to the congressional maps.

¶7 In January 2024, litigants from the *Johnson* case[3] filed a motion seeking relief from this court's March 3, 2022 decision and order adopting the congressional districting map in *Johnson II*, 400 Wis. 2d 626. On March 1, 2024, this court denied the motion. *Johnson v. WEC*, No. 2021AP1450-OA, unpublished order (Wis. S. Ct. Mar. 1, 2024) ("[The] motion for relief from judgment is denied.").

¶8 The congressional districting map adopted by this court on March 3, 2022, was again used in the fall 2024 election.

¶9 Less than four months ago, two separate groups of voters each filed an original action petition with our court challenging the congressional districting map. *Bothfeld v. WEC*, No. 2025AP996-OA (filed May 7, 2025); *Felton v WEC*, No. 2025AP999-OA (filed May 8, 2025). This court unanimously denied both original action petitions. *Bothfeld*, No. 2025AP996-OA, unpublished order (Wis. S. Ct. June 25, 2025) ("[T]he

---

unpublished order (Wis. S. Ct. Apr. 15, 2022) ("[T]he motion . . . for reconsideration of this court's March 3, 2022 opinion and order . . . is denied.").

[2] These original actions were, in substance, thinly veiled motions for reconsideration of *Johnson III*, 401 Wis. 2d 198. *See Clarke v. WEC*, 2023 WI 70, 409 Wis. 2d 372, 995 N.W.2d 779 (Ziegler, C.J., dissenting), *and Wright v. WEC*, No. 2023AP1412-OA, published order (Wis. S. Ct. Oct. 6, 2023) (Ziegler, C.J., concurring). The congressional districting map was not challenged in *Clarke* and *Wright*.

[3] The *Johnson* litigants were intervenors-petitioners Lisa Hunter, Jacob Zabel, and John Persa.

petition for leave to commence an original action is denied."); *Felton*, No. 2025AP999-OA, unpublished order (Wis. S. Ct. June 25, 2025) ("[T]he petition for leave to commence an original action is denied.").

¶10 In sum, this court has consistently and repeatedly denied challenges to the now longstanding congressional districting map, which was proposed by Governor Evers and adopted by this court in *Johnson II*, 400 Wis. 2d 626. Before entertaining yet another challenge, I would specifically require the parties to explain why this court should now appoint a three-judge panel—as if starting anew—when both SCOTUS and this court have repeatedly upheld the map. We should be mindful not to engage in, or even entertain, partisan gamesmanship aimed at further gerrymandering Wisconsin.

¶11 Because some of my colleagues apparently believe briefing is necessary for them to make an informed decision, I do not oppose briefing. Thus, I reluctantly concur.

REBECCA GRASSL BRADLEY, J., dissenting.

¶1 The legislature cannot empower a circuit court to review a final judgment of the Wisconsin Supreme Court, nor can the legislature require this court to appoint a circuit court panel to do so. The majority entertains an impermissible collateral attack—in a lower court—on a decision of *this* court, but the Wisconsin Constitution prohibits such a maneuver. Both cases should be dismissed.

¶2 Plaintiffs challenge—in Dane County circuit court—the congressional districting map this court adopted in *Johnson v. Wisconsin Elections Commission ("Johnson II")*. Because a lower court lacks authority to review a judgment of the supreme court, the circuit court should have dismissed both cases. Instead, it assumed jurisdiction and notified this court of the matters under WIS. STAT. § 801.50(4m), ostensibly for the purpose of having this court appoint a three-judge circuit court panel under WIS. STAT. § 751.035(1). The Wisconsin Constitution is superior to the Wisconsin Statutes, and is dispositive.

¶3 The Wisconsin Constitution vests the Wisconsin Supreme Court with superintending and administrative authority over all Wisconsin courts. WIS CONST. art. VII, § 3(1) ("The supreme court shall have superintending and administrative authority over all courts."). "This authority is as broad and as flexible as necessary to insure the due administration of justice in the courts of this state," and allows this court to control the course of litigation in lower courts. *Madison Tchrs., Inc. v. Walker*, 2013 WI 91, ¶16, 351 Wis. 2d 237, 839 N.W.2d 388 (internal quotations omitted); WIS. CONST. art. VII, § 3(2) ("The supreme court may issue all writs necessary in aid of its jurisdiction."). Because the

Wisconsin Supreme Court is superior to Wisconsin's lower courts, a circuit court may not review a final judgment of the Wisconsin Supreme Court. *State v. Arberry*, 2017 WI App 26, ¶5, 375 Wis. 2d 179, 895 N.W.2d 100, aff'd, 2018 WI 7, ¶6, 379 Wis. 2d 254, 905 N.W.2d 832 ("Neither [the court of appeals] nor the circuit court may overrule a holding of our supreme court.") (citing *Cook v. Cook*, 208 Wis. 2d 166, 189, 560 N.W.2d 246 (1997) ("The [Wisconsin] supreme court is the only state court with the power to overrule, modify or withdraw language from a previous supreme court case.")).

¶4 No Wisconsin Circuit Court may review, much less overrule, a decision of the Wisconsin Supreme Court. The legislature cannot require a circuit court to invade a final judgment of the State's highest court. This court orders briefing on a statutory issue, but dismissal is the only constitutional disposition.

¶5 Plaintiffs Wisconsin Business Leaders for Democracy et al. ("WBLD") and Elizabeth Bothfeld et al. ("Bothfeld") have filed actions in the Dane County Circuit Court, challenging the constitutionality of Wisconsin's congressional districting map. WBLD Compl. 3; Bothfeld Compl. 6. Framing their suits as "action[s] to challenge the apportionment of [a] congressional . . . district," under the Wisconsin Statutes, plaintiffs claim this court must appoint a three-judge panel of the Wisconsin circuit court to hear their cases. WBLD Compl. 2-3 (citing WIS. STAT. § 801.50(4m) and 751.035(1)); Bothfeld Compl. 5 (citing same). Section 751.035(1) says, "[u]pon receiving notice under s. 801.50(4m) [of an apportionment challenge], the supreme court **shall** appoint a panel . . . " WIS. STAT. § 751.035(1) (emphasis added).

¶6 The majority questions whether the plaintiffs' actions fall under § 801.50(4m), which covers only an "action to challenge the *apportionment* of [a] congressional . . . district" (emphasis added). "Reapportionment" and "redistricting" aren't the same. *See, e.g., Jensen v. Wis. Elections Bd.*, 2002 WI 13, ¶5 n.2, 249 Wis. 2d 706, 639 N.W.2d 537 (explaining that "reapportionment" constitutes the apportionment of greater or fewer seats to an established district, whereas "redistricting" draws new boundaries entirely). The majority orders the parties to brief the threshold question of "whether [each complaint] constitutes 'an action to challenge the apportionment of [a] congressional or state legislative district' under WIS. STAT. § 801.50(4m)."

¶7 If the majority had started with the constitution, it would not have needed briefing on this statutory issue. The Wisconsin Constitution controls, and it supersedes the legislature's enactments. The constitution requires dismissal because the circuit court is powerless to review a decision of the Wisconsin Supreme Court, much less supplant it.

¶8 Plaintiffs nonetheless claim the statutes—not the Wisconsin Constitution—control these proceedings, and the court endorses that view. WBLD claims § 801.50(4m) places venue in the circuit court, and "neither venue nor jurisdiction (other than to appoint the three-judge panel) presently lies with this Court." Letter in Response to Congressmen from Wisconsin Business Leaders (July 14, 2025). That assertion is manifestly incorrect.

¶9 Under the Wisconsin Constitution, this court's jurisdiction is plenary and without limitation or exception. WIS. CONST. art. VII, § 3(1). "Under the Wisconsin Constitution, [the administration of the courts is] expressly vested in this court; our authority to supervise and administer the Wisconsin court system is not created or circumscribed by the legislature." *State ex rel. J.H. Findorff & Son, Inc. v. Cir. Ct. for Milwaukee Cnty.*, 2000 WI 30, ¶40, 233 Wis. 2d 428, 608 N.W.2d 679 (Jon P. Wilcox, J., concurring). The legislature cannot limit, invade, or strip this court's constitutional authority. *State ex rel. Fourth Nat. Bank of Philadelphia v. Johnson*, 103 Wis. 591, 79 N.W. 1081, 1091–92 (1899) ("By the constitution this court was given power to exercise fully and completely the jurisdiction of superintending control over all inferior courts . . . . No part of that power can be taken away by a statute."); *Gabler v. Crime Victims Rts. Bd.*, 2017 WI 67, ¶35, 376 Wis. 2d 147, 897 N.W.2d 384 (Rebecca Grassl Bradley, J.) ("[T]he legislature is prohibited from unduly burdening or substantially interfering with the judicial branch.") (citation omitted).[4]

¶10 While the Wisconsin Constitution gives circuit courts subject matter jurisdiction over "all matters civil and criminal," WIS. CONST. art. VII, § 8; *Vill. of Trempealeau v. Mikrut*, 2004 WI 79, ¶1, 273 Wis. 2d 76, 681 N.W.2d 190, the circuit court's jurisdiction cannot collide with the final word of the supreme court on any matter. The circuit court must yield to the superior authority of the supreme court. Wisconsin's current congressional districting map is a final judgment of this court. *Johnson v. Wis. Elections Comm'n*, 2022 WI 14, ¶52, 400 Wis. 2d 626, 971 N.W.2d 402 ("*Johnson II*") (adopting Wisconsin's current congressional district map as a remedy ordered by this court). Lacking any authority to review or modify this court's decision, the Dane County Circuit Court should have dismissed both challenges to the *Johnson II* map at the outset.

[4] Section 801.50(4m) is a *venue* statute that cannot confer jurisdiction on a circuit court, nor strip it from this court. Jurisdiction in Wisconsin is constitutional; the legislature lacks authority to deviate from constitutional prescriptions. *City of Eau Claire v. Booth*, 2016 WI 65, 370 Wis. 2d 595, ¶7, 882 N.W.2d 738.

¶11 Since the circuit court did not dismiss these cases, this court must. This court may not appoint a three-judge circuit court panel to revisit *Johnson II*, notwithstanding WIS. STAT. §§ 801.50(4m) and 751.035(1). The Wisconsin Constitution forbids it. This court must uphold the hierarchy of judicial authority the Wisconsin Constitution establishes in Article VII, Sections 3, 5, and 8. Dismissing these actions is the only constitutionally permissible disposition.

¶12 "A collateral attack on a supreme court judgment" like these "would ordinarily be dismissed upon arrival." *Clarke v. Wis. Elections Comm'n*, 2023 WI 79, ¶230, 410 Wis. 2d 1, 998 N.W.2d 370 (Rebecca Grassl Bradley, J., dissenting), *reconsideration denied*, 2024 WI 40, 15 N.W.3d 58 (2024). Political forces continue to use this court to obtain what the democratic process denies them. The Wisconsin Constitution plainly prohibits a circuit court—empaneled by this court or not—from adjudicating a challenge to a final judgment of the supreme court. The majority nevertheless entertains yet another kick at the redistricting cat. Unlike Schrödinger's cat, this one most assuredly has been dead for years. I dissent.

Samuel A. Christensen
Clerk of Supreme Court

Distribution List:

Hon. David D. Conway (Electronic Notice)
Jeff Okazaki (Electronic Notice)
T.R. Edwards (Electronic Notice)
Charlotte Gibson (Electronic Notice)
Karla Z. Keckhaver (Electronic Notice)
Jeffrey A. Mandell (Electronic Notice)
Douglas M. Poland (Electronic Notice)
Lara Sutherlin (Electronic Notice)
Misha Tseytlin (U.S. Mail)