STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY
BRANCH 17

WISCONSIN BUSINESS LEADERS FOR DEMOCRACY, JOHN A. SCOTT, NICHOLAS G. BAKER, BEVERLY JOHANSEN, RACHEL IDA BUFF, KIMBERLY SUHR, SARAH LLOYD, NANCY STENCIL, VIKAS VERMA, *and* JAMES T. LYERLY,

Plaintiffs,

v.

WISCONSIN ELECTIONS COMMISSION, MARGE BOSTELMANN, ANN S. JACOBS, DON MILLIS, ROBERT F. SPINDELL, JR., CARRIE RIEPL, MARK L. THOMSEN, *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.2025CV2252

MEMORANDUM OF LAW 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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INTRODUCTION

Plaintiffs ask this Panel to overturn a final judgment of the Wisconsin Supreme Court adopting Wisconsin's remedial congressional map in *Johnson v. Wisconsin Elections Commission* ("*WEC*"), 2022 WI 14, 400 Wis. 2d 626, 971 N.W.2d 402 ("*Johnson II*"). In issuing its judgment, the Supreme Court held that this map "compl[ies] with all relevant state and federal laws." *Id.* ¶ 25. As lead-Plaintiff Wisconsin Business Leaders for Democracy ("WBLD") conceded before the Supreme Court itself in a prior attempt to challenge this same map, "[the Wisconsin Supreme] Court imposed the current congressional map in *Johnson II*, [so] only th[at] Court has the authority to enjoin that map." Second LeRoy Decl. Ex.1 at 16. Yet, Plaintiffs now ask this Panel to vacate the Supreme Court's final judgment adopting the *Johnson II* map. But WBLD's prior concession was clearly correct. Under the Wisconsin Constitution, the Supreme Court sits atop the State's judicial system, such that no inferior state court—this Panel included—can review its judgments. Since granting Plaintiffs relief would mean overruling the *Johnson II* final judgment, the Wisconsin Constitution requires dismissal of Plaintiffs' Complaint.

Independently fatal to Plaintiffs' lawsuit, their anti-competitive-gerrymandering claims raise nonjusticiable political questions with no constitutional grounding. *Johnson I* held that partisan-gerrymandering claims are nonjusticiable because they raise "purely political question[s]," *Johnson v. WEC*, 2021 WI 87, ¶ 39, 399 Wis. 2d 623, 967 N.W.2d 469 ("*Johnson I*"), including whether a map is "fair" to the two major parties, *id.* ¶ 40. The Constitution, *Johnson I* explained, contains no "judicially manageable standards" to decide such questions. *See id.* ¶¶ 3, 39. That

holding applies to Plaintiffs' anti-competitive-gerrymandering claims as well. Plaintiffs' anti-competitive-gerrymandering claims also implicate legitimate redistricting criteria like incumbency, making the search for such standards even more hopeless here than with regard to the partisan gerrymandering theory that *Johnson I* rejected. The futility of the competitive-gerrymandering inquiry explains why no court in the Nation appears to have adopted Plaintiffs' anti-competitive-gerrymander theory.

And Plaintiffs' lawsuit fails under the U.S. Constitution's Elections Clause for much the same reasons. Adopting their competitive-gerrymandering theory to strike down the *Johnson II* map would involve this Court in redrafting a map that adheres as closely as possible to the 2011 map adopted by the Legislature—which is the body that the Clause empowers to draw such maps—without any grounding in the Wisconsin Constitution's terms or the Wisconsin Supreme Court's caselaw.

STATEMENT

A. The Legislature Enacts A New Congressional Map In 2011, And A Federal Court Dismisses A Challenge To That Map

In 2011, the Legislature adopted Wisconsin's congressional and state-legislative maps. *Id.* ¶ 4. Some plaintiffs challenged those maps in *Baldus v. Members of Wisconsin Government Accountability Board*, 849 F. Supp. 2d 840 (E.D. Wis. 2012). *Baldus* dismissed the claim that the 2011 congressional map constituted a partisan gerrymander, given the plaintiffs' failure to identify any justiciable standards. *See id.* at 853–54. Other plaintiffs later challenged the 2011 state-

legislative maps on partisan-gerrymandering grounds, without challenging the 2011 congressional map on that basis. *See Gill v. Whitford*, 585 U.S. 48, 52–60 (2018).

B. The Wisconsin Supreme Court Adopts A New Congressional Map In *Johnson II* And Then Lead-Plaintiff WBLD Seeks To Challenge That Map Under The Same Theory It Raises Here

As reflected in the 2020 Census, Wisconsin's population had again changed over the prior decade, requiring the State to redraw the 2011 congressional map to achieve population equality. *Johnson I*, 2021 WI 87, ¶ 2. After a political deadlock, the Wisconsin Supreme Court undertook the "unwelcome task" of "redraw[ing]" the congressional district "boundaries" in the *Johnson* case. *Johnson II*, 2022 WI 14, ¶¶ 1–2. *Johnson* ultimately adopted a new map that "compl[ies] with all relevant state and federal laws." *Id.* ¶ 25.

Beginning in *Johnson I*, the Court defined the legal standards under which it would adopt a new map. The Court first articulated the applicable federal and state-law requirements. *Johnson I*, 2021 WI 87, ¶¶ 24–38. *Johnson I* also explained that the Elections Clause of the U.S. Constitution vests the Legislature with broad "discretion to decide how congressional elections are conducted," *id.* ¶ 12 (citing U.S. Const. art. I, § 4), including as to enacting congressional redistricting maps, *see id.* ¶ 64. The Court then explained that it would not consider the partisan makeup of any proposed remedial map, as those considerations constitute nonjusticiable political questions. *Id.* ¶¶ 39–63. Partisan-gerrymandering claims raise the question of "[w]hether a map is 'fair' to the two major political parties," yet the Constitution has no "judicially manageable standards" to "determine the fairness of the partisan makeup of districts." *Id.* ¶¶ 39–40. The Constitution also textually commits the duty

of redistricting to the Legislature, *id.* ¶ 51, which means that the "judiciary" may not "decid[e] what constitutes a 'fair' partisan divide" in a map, *id.* ¶ 45. Thus, partisan-gerrymandering claims are "non-justiciab[le]." *Id.* ¶ 51. The Court explained that it had "searched in earnest" for "a right to partisan fairness" in Article I, Section 1's equal-protection guarantees and in Article I, Section 22's exhortations of "the blessings of a free government," among other places, but "conclude[d] [that] the right does not exist" in these provisions. *Id.* ¶ 53. Instead, "the only Wisconsin constitutional limits [the Court has] ever recognized on the legislature's discretion to redistrict" are found in "Article IV, Sections 3, 4, and 5"—which impose "discrete requirements" unrelated to partisan gerrymandering. *Id.* ¶ 63.

Next, *Johnson I* explained that the Court would follow a "least-change approach" to adopt remedial maps. *Id.* ¶¶ 64–79. That approach required the Court to "us[e] the existing maps," *id.* ¶ 72—*i.e.*, the 2011 congressional map "adopted by the legislature" and "signed by the governor," *id.* ¶ 64—"as a template" for a new remedial map "and implement[ ] only those remedies necessary to resolve constitutional or statutory deficiencies," *id.* ¶ 72 (citation omitted).

Finally, *Johnson II* held that the Governor's proposed congressional map "ma[d]e the least changes from existing congressional district boundaries [drawn in 2011] while complying with all relevant state and federal laws," 2022 WI 14, ¶ 25, so it adopted that map and enjoined WEC to use it "for all upcoming elections," *id.* ¶ 52.

Years later, in June 2025, lead-Plaintiff WBLD and others—represented by the same counsel here—sought to intervene in a challenge to the *Johnson II* map in the

Supreme Court brought as an original-action petition. Second LeRoy Decl. Ex.1. WBLD and its co-parties sought to challenge the *Johnson II* map as an "anti-competitive gerrymander," Second LeRoy Decl. Ex.1 at 13–16, which is the same claim that Plaintiffs bring here, *infra* pp.5–6. Notably, in their Supreme Court filing, WBLD and its co-parties stated that "[the Wisconsin Supreme] Court imposed the current congressional map in *Johnson II*, [so] only th[at] Court has the authority to enjoin that map." Second LeRoy Decl. Ex.1 at 16. On June 25, 2025, the Court denied the original-action petition, thus rejecting WBLD's effort to bring its anti-competitive protection theory to the Court. *See* Dkt.44 at 449–50.

C. Plaintiffs Challenge The *Johnson II* Map Before This Panel, Asserting Their Same Anti-Competitive-Gerrymandering Claim

Plaintiffs filed this action in July 2025, again challenging the *Johnson II* map under the same anti-competitive-gerrymandering theory that WBLD had unsuccessfully raised to the Supreme Court. *See* Dkt.9 ¶¶ 83–97. Plaintiffs allege in their operative First Amended Complaint (hereinafter "Complaint") that the "2011 congressional map" that is the basis for the *Johnson II* map "intentionally made districts less competitive" by having districts "deliberately" drawn to "insulate[ ] each incumbent from electoral competition." Dkt.184 ("Compl.") ¶ 58. Plaintiffs then allege that the Court's use of the "least change" approach to adopt the *Johnson II* map "necessarily perpetuated" the 2011 map's "intentional and effective effort to suppress competition." Compl. ¶ 68. Plaintiffs claim that the *Johnson II* map is an unconstitutional "anti-competitive gerrymander[ ]" in three counts. Compl. ¶ 76. Count I asserts that the map is an "anti-competitive gerrymander" that violates the

equal-protection guarantees of Article I, Section 1 of the Wisconsin Constitution. Compl. ¶¶ 84–95. Count II asserts that it is an "anti-competitive gerrymander" that violates the "free government" guarantee of Article I, Section 22. Compl. ¶¶ 96–103. And Count III asserts that it is an "anti-competitive gerrymander" that violates the right to vote in Article III. Compl. ¶¶ 104–10; *see id.* ¶ 12.

LEGAL STANDARD

A motion to dismiss for failure to state a claim challenges "the legal sufficiency of the complaint," *State ex rel. Zecchino v. Dane Cnty.*, 2018 WI App 19, ¶ 8, 380 Wis. 2d 453, 909 N.W.2d 203 (citation omitted), and dismissal is warranted if the complaint "[f]ail[s] to state a claim upon which relief can be granted," Wis. Stat. § 802.06(2)(a)(6). A motion to dismiss for "[l]ack of jurisdiction over the subject matter," *id.* § 802.06(2)(a)2, must be granted where a court lacks "the power . . . to decide" the action, *City of Eau Claire v. Booth*, 2016 WI 65, ¶ 7, 370 Wis. 2d 595, 882 N.W.2d 738 (citation omitted). Such a motion may also challenge "a court's competency," which is its "'power . . . to exercise its subject matter jurisdiction' in a particular case." *Id.* (citations omitted).

ARGUMENT

I. An Inferior State Court Cannot Grant Plaintiffs Any Relief Because The Wisconsin Supreme Court Adopted *Johnson II* Map, As Plaintiffs Previously Conceded

Under the Wisconsin Constitution, the Supreme Court's decisions bind the State's inferior courts, which have no power to overrule, review, or modify those decisions. This Panel lacks the power to grant Plaintiffs any relief, as that relief would require this Panel to declare that the *Johnson II* map, which the Supreme

Court adopted, is unlawful. Lead Plaintiff WBLD made this very point to the Wisconsin Supreme Court last year when it sought to intervene in an original-action petition challenging the *Johnson II* map. Second LeRoy Decl. Ex.1 at 16.

A. Article VII of the Constitution establishes the Wisconsin state court system. Under Article VII, "[t]he judicial power of this state shall be vested in a unified court system consisting of one supreme court, a court of appeals, a circuit court, such trial courts of general uniform statewide jurisdiction as the legislature may create by law, and a municipal court if authorized by the legislature." Wis. Const. art. VII, § 2. Article VII also sets forth the jurisdiction of "[t]he supreme court," providing that the Supreme Court "shall have superintending and administrative authority over all courts," *id.* § 3(1); "has appellate jurisdiction over all courts and may hear original actions and proceedings," *id.* § 3(2); and "may review judgments and orders of the court of appeals, may remove cases from the court of appeals and may accept cases on certification by the court of appeals," *id.* § 3(3).

The plain text of Article VII, *Coulee Cath. Schs. v. Lab. & Indus. Rev. Comm'n, Dep't of Workforce Dev.*, 2009 WI 88, ¶ 57, 320 Wis. 2d 272, 768 N.W.2d 868, positions the Supreme Court atop the State's judicial system, with all other courts in the State falling below it. Article VII "vest[s]" all of Wisconsin's "judicial power" in a single, "*unified* court system," with "*one* supreme court" at the top. Wis. Const. art. VII, § 2 (emphases added). Article VII gives the Supreme Court "superintending and administrative authority over *all* courts." *Id.* § 3(1) (emphasis added). This language—in particular the terms, "*unified* court system," "*one* supreme court," and

"authority over *all* courts," *id.* §§ 2–3 (emphases added)—means that, "[b]y the constitution," the Supreme Court has all "power to exercise fully and completely the jurisdiction of superintending control over all inferior courts," *State ex rel. Fourth Nat'l Bank of Phila. v. Johnson*, 103 Wis. 591, 79 N.W. 1081, 1091–92 (1899). In other words, "when the framers of the constitution speak of a supreme court, they intended to convey the idea of the highest tribunal in the judicial department of the government." *Attorney General v. Blossom*, 1 Wis. 317, 322 (1853). Thus, "[t]he constitution provides that [the Supreme Court] shall be a court of last resort[ ]—a court whose judgments, so far as they relate to state polity, are final and conclusive." *Ean v. Chi., M. & St. P. Ry. Co.*, 101 Wis. 166, 76 N.W. 329, 330 (1898).

Inferior courts have no constitutional authority to review, let alone reverse, judgments of the Wisconsin Supreme Court. *See* Wis. Const. art. VII, § 3(1). That is why the Supreme Court has repeatedly explained that all lower courts in this State must follow its judgments; only the Supreme Court has the power to review and overturn its own judgments. *See, e.g.*, *Blossom*, 1 Wis. at 322; *Ean*, 76 N.W. at 330; *Fourth Nat'l Bank of Phila.*, 79 N.W. at 1091–92; *see also, e.g.*, *Sutter v. State, Dep't of Nat. Res.*, 69 Wis. 2d 709, 717, 233 N.W.2d 391 (1975); *Cook v. Cook*, 208 Wis. 2d 166, 189, 560 N.W.2d 246 (1997); *State v. Lira*, 2021 WI 81, ¶ 46, 399 Wis. 2d 419, 966 N.W.2d 605; *Matter of Adoption of M.M.C.*, 2024 WI 18, ¶ 8, 411 Wis. 2d 389, 5 N.W.3d 238. The State's lower courts "ha[ve] no power to vacate or set [ ] aside" a judgment of the Supreme Court, *Tietsworth v. Harley-Davidson, Inc.*, 2007 WI 97,

¶ 50, 303 Wis. 2d 94, 735 N.W.2d 418 (citation omitted), or to issue decisions that "conflict with the expressed or implied mandate of the appellate court," *id.* ¶ 32.

Gabler v. Crime Victims Rights Board, 2017 WI 67, 376 Wis. 2d 147, 897 N.W.2d 384, is instructive. *Gabler* considered the claim that the Crime Victims Rights Board ("Board") had the authority "to take action on a complaint" alleging that a judge's judicial decision to postpone a defendant's sentencing had "violated a victim's right." *Id.* ¶ 45. The Supreme Court rejected the Board's assertion of such authority, explaining that, under the Board's theory, the Board could "take action on a complaint against the Wisconsin Supreme Court" itself alleging that a judgment of the Court violated victims' rights. *Id.* That reasoning would undermine the constitutional hierarchy of the State Courts. *See id.* If the Board had the power to review and take action on a complaint against the Supreme Court, then "the members of th[e] [Supreme] [C]ourt would need to initiate a Chapter 227 action" to challenge the Board's action, under the statutory-review regime at issue. *Id.* "But that Chapter 227 action would place a circuit court—and perhaps the intermediate court of appeals—in the absurd, not to mention unconstitutional, position of reviewing the Wisconsin Supreme Court's interpretation of the law." *Id.* "Subjecting [the Supreme Court]'s decisions to review by a circuit court would obviously interfere with [its] duties and responsibilities as Wisconsin's court of last resort." *Id.*

The Wisconsin Supreme Court may not transfer or delegate its supreme judicial authority over the Wisconsin State Courts to any other court or body—even if the Court wanted to. Its authority is unalienable because "constitutional judges

take no power from the constitution, [and] can take none from the legislature, to subdelegate their judicial functions." *Van Slyke v. Trempealeau Cnty. Farmers' Mut. Fire Ins. Co.*, 39 Wis. 390, 392 (1876).

B. Here, granting Plaintiffs relief would require this Panel to declare unconstitutional the map adopted by the Wisconsin Supreme Court's judgment in *Johnson II*. *See* Compl.31. But this Panel has "no power to vacate or set [ ] aside" a judgment from the Supreme Court. *Tietsworth*, 2007 WI 97, ¶ 50.

As an initial matter, this Panel is "inferior" to the Supreme Court, *Fourth Nat'l Bank of Phila.*, 79 N.W. at 1092, constitutionally and statutorily. The Constitution grants the Supreme Court "superintending" authority "over *all* courts." Wis. Const. art. VII, § 3(1) (emphasis added). The Supreme Court is therefore "the highest tribunal in the judicial department of the government," *Blossom*, 1 Wis. at 322, which necessarily places it above a three-judge panel of the Circuit Court authorized under Sections 801.50(4m) and 751.035(1). As a statutory matter, Sections 801.50(4m) and 751.035(1) provide that the Wisconsin Supreme Court is the "appoint[ing]" authority for this "panel," Wis. Stat. § 751.035(1), and may "hear[ ]" any "appeal from any order or decision issued by the panel," *id.* § 751.035(3).

Granting Plaintiffs' requested relief would involve this Panel "vacat[ing]" or "set[ting] [ ] aside," *Tietsworth*, 2007 WI 97, ¶ 50, the Supreme Court's judgment in *Johnson II* that adopted the State's congressional map. Plaintiffs ask this inferior Panel to "[d]eclare that Wisconsin's current congressional map, imposed in the *Johnson* litigation, is an anti-competitive gerrymander that violates [the] Wisconsin

Constitution . . . and that it is invalid," and then to "[e]stablish a schedule that will enable the Court . . . to adopt and implement a new congressional map." Compl.28–29. But Plaintiffs recognize that "[t]he Wisconsin Supreme Court" was responsible for "impos[ing]" the "new Wisconsin congressional districts" and "adopting" the *Johnson II* "congressional map." Compl. ¶¶ 2–3. The Supreme Court found that the "proposed congressional map" it "adopt[ed]" in *Johnson II* "compl[ies] with all relevant state and federal laws." 2022 WI 14, ¶ 25. Thus, it is indisputable that the Supreme Court's judgment adopting the *Johnson II* map is a "final and conclusive" judgment from the Wisconsin Supreme Court. *Sutter*, 69 Wis. 2d at 717; *see also Ean*, 76 N.W. at 330. The Supreme Court is the only Wisconsin court that can "vacate or set [ ] aside" its *Johnson II* judgment. *Tietsworth*, 2007 WI 97, ¶ 50. This explains why WBLD and Plaintiffs' counsel previously stated to the Supreme Court that "only th[at] Court has the authority to enjoin th[e] map." Second LeRoy Decl. Ex.1 at 16.

Gabler offers a useful analogy. If the Board in *Gabler* had taken action related to a judgment of the Supreme Court, that would have resulted in Justices of the Supreme Court initiating a Chapter 227 proceeding in the Circuit Court against the Board—meaning that "a circuit court" would be "in the absurd, *not to mention unconstitutional*, position of reviewing the Wisconsin Supreme Court's interpretation of the law." *Gabler*, 2017 WI 67, ¶ 45 (emphasis added). Similarly, here, Plaintiffs ask this Panel to put itself "in the absurd, not to mention unconstitutional, position of reviewing the Wisconsin Supreme Court's," *id.*, judgment in *Johnson II*, Compl.28.

This Panel, like the hypothetical Circuit Court in *Gabler*, has no authority to review any judgment of the Supreme Court, including the *Johnson II* judgment.

Finally, the Supreme Court's order appointing this Panel has no effect on the above constitutional analysis. In making that appointment, the Supreme Court held that Sections 801.50(4m) and 751.035 "require[ ]" it "to appoint a three-judge panel and designate a circuit court venue." *WBLD v. WEC*, 2025 WI 52, 418 Wis. 2d 515, 518, 27 N.W.3d 522. So, the Court's order simply fulfilled its statutory duty without addressing any merits issues. *See id.* at 516–19. Justice Hagedorn's separate writing makes this point explicitly—without any disagreement from the majority—explaining that any merits "issues" were "not yet [the Supreme Court]'s to decide." *Id.* at 521–22 (Hagedorn, J., concurring in part and dissenting in part). Rather, this "panel will consider all the relevant substantive and procedural arguments in due course." *Id.* The Court's order also did not purport to delegate to this inferior Panel the authority to overrule the judgment in *Johnson II*, *see generally WBLD*, 2025 WI 52—something the Court has no power to do, regardless, *Van Slyke*, 39 Wis. at 392.

II. Plaintiffs' Anti-Competitive-Gerrymandering Claims Fail As A Matter Of Law Because They Raise Only Nonjusticiable Political Questions That Have No Grounding In The Wisconsin Constitution

A. A court may only exercise "[t]he judicial power of this state" in a case, Wis. Const. art. VII, § 2, if it presents a "controversy" that is "justiciable," *Milwaukee Dist. Council 48 v. Milwaukee Cnty.*, 2001 WI 65, ¶ 37, 244 Wis. 2d 333, 627 N.W.2d 866. The justiciability inquiry includes the "political question" doctrine, under which courts refrain from deciding issues that have "no judicially discoverable standards"

and that the Constitution "explicitly assign[s]" to another branch. *Johnson I*, 2021 WI 87, ¶ 40 (citing *Baker v. Carr*, 369 U.S. 186, 217 (1962)).

In *Johnson I*, the Supreme Court held that partisan-gerrymandering claims present only nonjusticiable political questions, with no constitutional grounding. *Id.* ¶¶ 39–63. *Johnson I* explained that such claims turn on "purely political question[s]" that the courts cannot "consider," *id.* ¶ 39—namely, "[w]hether a map is 'fair' to the two major political parties," *id.* ¶ 40. The Constitution does not offer "judicially manageable standards" for courts to "determine the fairness of the makeup of districts" in a redistricting map. *Id.* ¶ 39. And there is no "right under the Wisconsin Constitution to a particular partisan configuration" of a congressional map. *Id.*; *see also id.* ¶ 53. The Constitution includes a "textually demonstrable . . . commitment to confer the duty of redistricting on the state legislature," *id.* ¶ 51, giving no role to the "judiciary" to "decid[e] what constitutes a 'fair' partisan divide" in a map, *id.* ¶ 45. So, "partisan gerrymandering claims" are "non-justiciab[le]." *Id.* ¶ 51.

Johnson I "searched in earnest" for "a right to partisan fairness in Article I, Sections 1, [and] 22 of the Wisconsin Constitution," and "conclude[d] [that] the right does not exist" in any of those provisions. *Id.* ¶ 53. While Article I, Section 1, *id.* ¶¶ 54–59, "enshrines" the guarantee of equal protection of the laws in the State, it "has nothing to say about partisan gerrymanders," *id.* ¶¶ 54–55. As for "Article I, Section 22," it exhorts the conditions for maintaining the "blessings of a free government," but "does not supply" a "legal standard of partisan fairness" either. *Id.* ¶ 62 (citations omitted).

Johnson I then explained that "the *only* Wisconsin constitutional limits [the Court has] ever recognized on the legislature's discretion to redistrict" are found in "Article IV, Sections 3, 4, and 5"—provisions that include "discrete requirements" not touching upon partisan gerrymandering. *Id.* ¶ 63 (emphasis added). "In other words, the standards under the Wisconsin Constitution that govern redistricting are delineated in Article IV," and they do not include a prohibition on partisan gerrymandering. *Id.* There is no "reservoir of additional requirements" for redistricting outside of Article IV, Sections 3–5; to hold otherwise "would violate axiomatic principles of interpretation while plunging th[e] court into the political thicket lurking behind its constitutional boundaries." *Id.* (citations omitted).

B. Here, Plaintiffs assert three anti-competitive-gerrymandering claims against the *Johnson II* map, Compl. ¶¶ 84–110, under three different provisions of the Constitution. Count I claims that the *Johnson II* map is an "anti-competitive gerrymander" under Article I, Section 1's equal-protection guarantees. Compl. ¶¶ 84–95. Count II claims that the map is an "anti-competitive gerrymander" under Article I, Section 22's guarantee of a "free government." Compl. ¶¶ 96–103. And Count III claims that the map is an "anti-competitive gerrymander" under Article III's protections for the right to vote. Compl. ¶¶ 104–10; *see id.* ¶ 12. These claims rest upon the same core allegations: that the 2011 map was drawn to "insulate[ ] each incumbent from electoral competition," Compl. ¶ 58, and the *Johnson II* map "necessarily perpetuated" this "intentional and effective effort to suppress competition" by utilizing the least-change approach, Compl. ¶ 68.

Plaintiffs' anti-competitive-gerrymandering claims are "non-justiciab[le]" political questions under *Johnson I*, similar to the partisan-gerrymandering claims that *Johnson I* discussed. 2021 WI 87, ¶ 51. Indeed, there is even *more* justification for holding that anti-competitive-gerrymandering claims are nonjusticiable under the Constitution than even partisan-gerrymandering claims. The lack of judicially manageable standards for Plaintiffs' novel anti-competitive-gerrymandering theory is likely a reason why—so far as the Congressmen and Individual Voters are aware—no court in the Nation has even attempted to adjudicate such a claim.

Johnson I articulated the universe of justiciable redistricting requirements under the Constitution, and that universe does not include Plaintiffs' anti-competitive-gerrymandering theory. "[T]he *only* Wisconsin constitutional limits" that the Court has "ever recognized on the legislature's discretion to redistrict" are in "Article IV, Sections 3, 4, and 5," and there is no "reservoir of additional requirements" for redistricting outside of those provisions. *Id.* ¶ 63. Yet, Article IV, Sections 3, 4, and 5 do not even arguably contain an anti-competitive-gerrymandering prohibition, *see generally* Wis. Const. art. IV, §§ 3–5, just like they do not contain a partisan-gerrymandering prohibition, *Johnson I*, 2021 WI 87, ¶ 63. That explains why Plaintiffs have not attempted to invoke those provisions as a potential source for their anti-competitive-gerrymandering claims. *See* Compl. ¶¶ 84–110.

While Plaintiffs cite three constitutional provisions as the source of their anti-competitive-gerrymandering claims, none contains a competitive-district mandate.

For Count I, Plaintiffs invoke Article I, Section 1's equal-protection guarantees, Compl. ¶¶ 84–95, but *Johnson I* rejected this provision as a source of a partisan-gerrymandering claim, 2021 WI 87, ¶¶ 54–58, and that holding applies to Plaintiffs' anti-competitive-gerrymandering claim as well. Whether a district is competitive "shift[s] from one election to the next" and is not "permanent." *Id.* ¶ 56. Thus, Article I, Section 1 can have "nothing to say about [anti-competitive] gerrymanders." *Id.* ¶ 55.

For Count II, Plaintiffs rely upon Article I, Section 22, Compl. ¶¶ 96–103, which exhorts the principles needed to maintain "a free government," including "moderation" and "temperance," *Johnson I*, 2021 WI 87, ¶ 62 (quoting Wis. Const. art. I, § 22). *Johnson I* held that this provision does not support partisan-gerrymandering claims, *id.*, and that holding equally applies to anti-competitive-gerrymandering claims. This Panel "fabricat[ing] a legal standard of [competitive] 'fairness'" under Article I, § 22 would reflect neither "moderation" nor "temperance," as that provision "does not supply" any such standard and is not "an open invitation to the judiciary to rewrite duly enacted law." *Id.* (citations omitted).

And for Count III, Plaintiffs depend upon Article III, which contains "[t]he qualification of an elector entitled to vote," *LWV of Wis. Educ. Network, Inc. v. Walker*, 2014 WI 97, ¶ 18, 357 Wis. 2d 360, 851 N.W.2d 302 (citing Wis. Const. art. III, § 1, and other voting-related provisions), *see generally* Wis. Const. art. III, §§ 1m–6. Nothing in Article III suggests support for a justiciable anti-competitive-gerrymandering claim. *See generally* Wis. Const. art. III. Nor does an anti-

competitive-gerrymandering claim have anything to do with the right to vote recognized under Article III, as an allegedly anti-competitive map does not interfere in any way with "casting" a "ballot." *See Milwaukee Branch of NAACP v. Walker*, 2014 WI 98, ¶¶ 2, 26–39, 77, 357 Wis. 2d 469, 851 N.W.2d 262.

Since none of the constitutional provisions that Plaintiffs invoke impose *any* competitive "requirements" or "limits," *Johnson I*, 2021 WI 87, ¶ 63, Plaintiffs' anti-competitive-gerrymandering claims are "non-justiciab[le]," *id.* ¶ 51.

Plaintiffs' anti-competitive-gerrymandering claims are nonjusticiable political questions for the additional reason that, like the partisan-gerrymandering claims discussed in *Johnson I*, Plaintiffs' claims depend upon a court deciding "the fairness of the makeup of districts." *Id.* ¶ 39. For Plaintiffs to prevail, this Panel would have to determine when a redistricting map has unfairly "suppress[ed] competition," Compl. ¶ 79, thereby reaching an unconstitutionally low "level of competitiveness," Compl. ¶ 82. But *Johnson I* explained that there are no "judicially manageable standards" to "determine the fairness of the makeup of districts" in a redistricting map, 2021 WI 87, ¶ 39—a conclusion that applies to competitive fairness just as well as partisan fairness, given the interrelatedness of these concepts, *see Rucho v. Common Cause*, 588 U.S. 684, 691 (2019) (considering and rejecting "competitive[ness]" as a judicially manageable standard for partisan-gerrymandering claims).

Relatedly, adjudicating Plaintiffs' claims would require the Panel to decide, among other imponderables: (1) when a map becomes too "anti-competitive," *compare*

Compl. ¶ 79; (2) whether (and how much) the inquiry changes if one election or another is particularly close, *compare* Compl. ¶¶ 71–73; (3) whether (and how much of) a map's "anti-competitiveness" is attributable to the natural comparison of the strengths of the incumbents and the weaknesses of the non-incumbents or to the "artificial suppression of electoral competition," *compare* Compl. ¶ 92; (4) whether the analysis is different if one party or the other experiences a wave election across the Nation, potentially making races in Wisconsin unusually uncompetitive; (5) whether one or more incumbents' decisions not to run for re-election should affect the inquiry; and so on. "[T]here are no judicially discoverable and manageable standards" in the Wisconsin Constitution "by which to judge" these and the innumerable other issues raised by Plaintiffs' claims. *Johnson I*, 2021 WI 87, ¶ 40 (citations omitted). The Wisconsin Constitution "textually . . . commit[s] . . . the duty of redistricting on the state legislature," *id.* ¶ 51, meaning that this Panel has no authority to "decid[e] what constitutes a 'fair' [competitive] divide" in the *Johnson II* map, *id.* ¶ 45.

There is even a *stronger* case for concluding that Plaintiffs' anti-competitive-gerrymandering claims are nonjusticiable political questions than for the partisan-gerrymandering claims discussed in *Johnson I*. While partisan-gerrymandering claims are nonjusticiable, *id.* ¶¶ 39–63, the U.S. Supreme Court has noted the broadly held view that "[partisan] gerrymandering is incompatible with democratic principles," *Rucho*, 588 U.S. at 718. The same cannot be said for competitiveness or un-competitiveness in elections for multiple reasons.

As a threshold matter, there is a legitimate, robust debate over whether maximizing competitiveness in elections is an unmitigated good. A map must "effectively crack[ ] ideologically congruent voters into separate districts" to create competition, "increasing the absolute number of voters who will be unhappy with the outcome." Thomas L. Brunell, *Rethinking Redistricting: How Drawing Uncompetitive Districts Eliminates Gerrymanders, Enhances Representation, and Improves Attitudes toward Congress*, *PSOnline*, Jan. 2006, at 77. In contrast, when a map contains districts with a significant majority of voters of one party or the other, the vast majority of the voters in each district will likely be pleased with the winner of the election in their district, as such districts generally elect "representatives" who are "closer to their median voters" in views. Justin Buchler, *Competition, Representation and Redistricting: The Case Against Competitive Congressional Districts*, 17 J. Of Theoretical Politics 431, 432, 450 (2005). Thus, competitive districts "do[ ] not uniformly serve democratic interests." Brunell, *supra*, at 77.

Further, maximizing competitiveness of districts "creates a significant and regular conflict with" the traditional, longstanding principle of "maintaining communities of interest as whole entities" within a district. James G. Gimpel & Laurel Harbridge-Yong, *Conflicting Goals of Redistricting: Do Districts That Maximize Competition Reckon with Communities of Interest?*, 19 Election Law Journal: Rules, Politics, and Policy 451, 452 (2020).* That is because "communities

* Available at https://www.researchgate.net/publication/342445048_Conflicting_Goals_of_Redistricting_Do_Districts_That_Maximize_Competition_Reckon_with_Communities_of_Interest.

of interest often express an enduring and one-sided partisan loyalty," making it "difficult to hold them together [in a district] and also achieve the goal of drawing an evenly [competitively] balanced district." *Id.*

The upshot is that whether competition-maximizing or competition-minimizing maps are better or worse as a matter of democratic theory or various "visions of fairness" is a "political, not legal" question. *Rucho*, 588 U.S. at 707. Thus, it is not for the judiciary to "mak[e] such judgements" for the State under the guise of the Constitution. *Id.* ; *accord Johnson I*, 2021 WI 87, ¶ 64.

Additionally, considerations of competitiveness are inexorably intertwined with incumbency, as Plaintiffs alleged here. Compl. ¶¶ 5, 8, 13, 57–58, 81. But courts around the country—including the U.S. Supreme Court—have long held that incumbency is a "legitimate objective[ ]" in redistricting, similar to "making districts compact, respecting municipal boundaries, [and] preserving the cores of prior districts." *Karcher v. Daggett*, 462 U.S. 725, 740 (1983); *see also, e.g.*, *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 259 (2015) (recognizing "protecting incumbents" as a "traditional districting objective[ ]"); *Bush v. Vera*, 517 U.S. 952, 964 (1996) (plurality opinion of O'Connor, J.); *White v. Weiser*, 412 U.S. 783, 791 (1973); *Burns v. Richardson*, 384 U.S. 73, 89 n.6 (1966); *accord GRACE, Inc. v. City of Miami*, 684 F. Supp. 3d 1285, 1319 (S.D. Fla. 2023); *In re Legis. Districting of State*, 805 A.2d 292, 297 (Md. 2002). That is because maintaining incumbent representation furthers the desirable, pro-democratic interests of "maintaining existing relationships between incumbent congressmen and their constituents and preserving the seniority the

members of the State's delegation have achieved in the United States House of Representatives." *White*, 412 U.S. at 791.

It follows that for an anti-competitive-gerrymandering claim to be justiciable, this Panel would have to complete the impossible task of divining judicially manageable standards that determine when the Legislature has put *too much* emphasis on a *legitimate* redistricting criterion of incumbency when making any particular district less competitive. *See Rucho*, 588 U.S. at 700–01, 704, 708.

III. Granting Plaintiffs Relief Would Violate The U.S. Constitution's Elections Clause

The Elections Clause of the U.S. Constitution vests state legislatures with the power to draw congressional maps and, therefore, requires state courts to stay within "the ordinary bounds of judicial review" when reviewing such maps, so as not to "arrogate to themselves the power vested in state legislatures to regulate federal elections." *Moore v. Harper*, 600 U.S. 1, 36 (2023). The Legislature exercised its Elections Clause power when it enacted the 2011 congressional map, and the Supreme Court correctly respected that legislative authority by using a "least changes" approach to adopt the *Johnson II* map, based on the 2011 map. *Johnson I*, 2021 WI 87, ¶¶ 12, 64. Plaintiffs contend that the Supreme Court's preservation of the 2011 map under a least-changes approach violates anti-competitive-gerrymandering principles supposedly found within the Wisconsin Constitution. Yet, the Elections Clause required the Court to use the least-changes approach for

congressional districts.† Moreover, Plaintiffs' competitive-gerrymandering theory has no basis in the text of the Constitution, no foundation in any precedent, and—so far as the Congressmen and Individual Voters are aware—has never been endorsed by any court. Thus, it would exceed "the ordinary bounds of judicial review" in violation of the Elections Clause for this Panel to adopt Plaintiffs' theory and grant them any relief. *Moore*, 600 U.S. at 36 (citation omitted).

A. The Elections Clause provides that "[t]he 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, § 4 (emphasis added). The Elections Clause also provides only one exception: that Congress "may at any time by law make or alter such Regulations." *Id.* Pursuant to that authority, Congress has enacted a statute that provides, "[u]ntil a State is redistricted in the manner provided by the law thereof after any apportionment," if there is no change to the number of Representatives, then Representatives "shall be elected from the districts then prescribed by the law of such State." 2 U.S.C. § 2a(c). Therefore, if the state legislature fails to redistrict following apportionment, the districts then in effect continue without change. *Id.*

The Elections Clause mandates that, when a state court must adopt a remedial congressional map to replace a map adopted by a state legislature, the court must use a least-change approach. "[T]he Elections Clause expressly vests power to carry out

† *Clarke v. WEC*, 2023 WI 79, 410 Wis.2d 1, 998 N.W.2d 370, "overrule[d]" the "portion[ ] of *Johnson I* . . . that mandate[d] a least change approach" to adopting remedial state-legislative maps, but did not address remedial congressional maps, as they were not at issue there, *id.* ¶ 63.

its provisions in '*the Legislature*' of each State"—not in the state courts—and this is "a deliberate choice that [courts] must respect." *Moore*, 600 U.S. at 34 (emphasis added). So, when a court must adopt a remedial redistricting map to replace a prior, legislatively enacted map, the Elections Clause limits the court only to correcting the map's legal defects, thereby avoiding any encroachment upon a state legislature's Elections Clause authority. *See White*, 412 U.S. at 794–95 ("[J]udicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so."); *accord Johnson I*, 2021 WI 87, ¶¶ 12, 64. The Clause requires courts to "honor state policies in the context of congressional reapportionment" as "expressed in statutory and constitutional provisions or in the reapportionment plans proposed by the state legislature." *Id.* at 795. And if judicial relief is necessary to remedy a map's deficiency, such as a violation of the equal-population requirement, the court must strive to retain "the legislative policies underlying the existing plan" that do not likewise contain that defect. *See Abrams v. Johnson*, 521 U.S. 74, 79 (1997). Thus, other than remedying legal violations, courts must respect the policy choices that a state legislature enacts under its Elections Clause authority. *See id.* at 99.

Congress, acting under its Elections Clause authority, has similarly required a least-change approach to congressional districts until state legislatures enact new maps. By federal law, when a State has "no change" in its apportionment—meaning that population changes do not require an "increase" or "decrease" "in the number of

Representatives" allocated to that State—"Representatives [ ] shall be elected from the districts then prescribed by the law of such State" until that "State is redistricted in the manner provided by the law." 2 U.S.C. § 2a(c).

Although "the Elections Clause does not *exempt* state legislatures from the ordinary constraints imposed by state law" when drawing congressional redistricting maps, the Clause does impose vital limits on the interpretation and application of state law by state courts in this context. *Moore*, 600 U.S. at 34 (emphasis added). Specifically, the Elections Clause's grant of authority to state *legislatures* to regulate federal elections means that "state *courts* do not have free rein" to decide whether a congressional map conforms to state law. *Id.* (emphasis added). Rather, state courts called upon to adjudicate state-law challenges to congressional maps must take care to "ensure that [their] interpretations of [state] law do not evade federal law" by "read[ing] state law in such a manner as to circumvent federal constitutional provisions." *Id.* at 34–35. This means that, under the Elections Clause, state courts may not "transgress the ordinary bounds of judicial review such that they arrogate to themselves the power vested in state legislatures to regulate federal elections" and "unconstitutionally intrude upon the role specifically reserved to state legislatures by Article I, Section 4, of the Federal Constitution." *Id.* at 36–37. Justice Kavanaugh offered further guidance on this standard in *Moore*, explaining when a "state court's interpretation of state law in a case implicating the Elections Clause" surpasses the bounds of "ordinary state court review." *Id.* at 38 (Kavanaugh, J., concurring). As he explained, state courts may not "'*impermissibly distort[ ]*' state law 'beyond what a

fair reading required.'" *Id.* (citation omitted; emphasis added). Federal courts reviewing state-court decisions in this area must therefore "examine the law of the State as it existed prior to the action of the [state] court" to determine whether that action constitutes an unconstitutional distortion. *Id.* (citation omitted). This "straightforward standard," *id.* at 39, "ensure[s] that state court interpretations of" state law governing federal election cases "do not evade federal law," *id.* at 34 (majority op.).

B. Plaintiffs' lawsuit fails under the Elections Clause because that Clause required the Wisconsin Supreme Court to adopt a least-change map like the *Johnson II* map out of respect for the Legislature's Elections Clause authority, and because no fair reading of Wisconsin law permits this Panel to adopt Plaintiffs' competitiveness theory and invalidate that map.

In *Johnson II*, the Wisconsin Supreme Court adopted a least-change map that complies with the Elections Clause, *supra* pp.3–5, given that the *Johnson II* map upholds as much as possible the Legislature's policy choices reflected in the 2011 map. The *Johnson II* map (proposed by Governor Evers) is a least-change map because it corrects the 2011 congressional map's unconstitutional malapportionment while preserving 94.5% of that. *Johnson II*, 2022 WI 14, ¶¶ 14–15. So, "mov[ing] the fewest number of people into new districts," the Governor's proposed map reflected the least change from the 2011 congressional map. *Id.*, ¶¶ 15, 19. Further, after noting that the "Wisconsin Constitution contains no explicit requirements related to

congressional redistricting," *id.* ¶ 20, *Johnson II* expressly held that the *Johnson II* map "compl[ies] with all relevant state and federal laws," *id.* ¶ 25.

Congress' exercise of its Elections Clause power confirms this conclusion. As noted above, Congress has provided that, when a State's apportionment remains unchanged, those districts must remain in place until the state legislature changes them. *See* 2 U.S.C. § 2a(c). Since the adoption of the *Johnson II* map, no such change in apportionment has occurred in Wisconsin, and only the Legislature may redistrict. *See* 2022 WI 14, ¶ 20; *see also Johnson I*, 2021 WI 87, ¶¶ 51–52. Until the Legislature exercises its Elections Clause authority to redistrict the whole State, the Wisconsin State Courts must, to the greatest extent possible, preserve existing districts when remedying any constitutional deficiency. *See* 2 U.S.C. § 2a(c). *Johnson II* did this by adopting the congressional map that "ma[d]e the least changes from existing congressional district boundaries while complying with all relevant state and federal laws," 2022 WI 14, ¶ 25, to "remain in effect until new maps" can be "enacted into law" by the Legislature, *id.* ¶ 52.

Johnson II's status as a least-change map, based upon the prior 2011 map, precludes this Court from granting Plaintiffs any relief here, given the requirements of the Elections Clause. Plaintiffs ask this Panel to declare that the *Johnson II* map—adopted by the Wisconsin Supreme Court, after holding that it "compl[ies] with all relevant state and federal laws," *Johnson II*, 2022 WI 14, ¶ 25—violates the Wisconsin Constitution by "perpetuat[ing] . . . the 2011 congressional map's intentional and effective effort to suppress competition." Compl. ¶ 68. In other

words, Plaintiffs challenge the *Johnson II* map precisely because it is a least-change map that is based upon "the 2011 congressional map[ ]." Compl. ¶ 68. Because the Elections Clause required the Wisconsin Supreme Court to adopt a least-change approach in *Johnson*, *supra* pp.3–5, the Elections Clause ends Plaintiffs' challenge to the *Johnson II* map as a matter of law.

Further, this Panel adopting Plaintiffs' novel anti-competitive-gerrymandering theory and invalidating the Wisconsin Supreme Court's *Johnson II* map would also violate the Elections Clause by "transgress[ing] the ordinary bounds of judicial review," *Moore*, 600 U.S. at 36, "impermissibly distort[ing]" the "exist[ing]" Wisconsin law far "'beyond what a fair reading required,'" *id.* at 38–39 (Kavanaugh, J., concurring) (citation omitted). Endorsing Plaintiffs' anti-competitive-gerrymandering theory would "impermissibly distort[ ]" Wisconsin law. *Id.* at 38. That is because Plaintiffs' anti-competitive-gerrymander theory lacks any footing either in Wisconsin precedent or in the text of the Wisconsin Constitution. *See supra* pp.12–21. Thus, "the law of the State as it existed prior to" Plaintiffs' filing of this case provides no support for the adoption of Plaintiffs' theory here. *Moore*, 600 U.S. at 39 (Kavanaugh, J., concurring). The Panel would have to "impermissibly distort[ ]" the Wisconsin Constitution well "beyond what a fair reading required" to afford Plaintiffs any relief, which violates the Elections Clause because a congressional map is involved. *Id.* (citations omitted). In other words, judicially inserting Plaintiffs' alleged "anti-competitive-gerrymandering" prohibitions into the Wisconsin Constitution so that this Panel may second-guess the Legislature's

political choices in congressional map drawing would "read state law in such a manner as to circumvent federal constitutional provisions." *Id.* at 35 (majority op.).

Finally, Plaintiffs' lawsuit asks this Panel to overturn a decision of the Wisconsin Supreme Court, in violation of bedrock principles of judicial hierarchy under the Wisconsin Constitution. No inferior court—this Panel included—may "vacate or set [ ] aside," *Tietsworth*, 2007 WI 97, ¶ 50 (citation omitted), a "final and conclusive" decision of the Wisconsin Supreme Court, *Sutter*, 69 Wis. 2d at 717; *see supra* Part I. Yet, any decision by this inferior Panel to vacate and redraw the *Johnson II* map would necessarily purport to overturn the Supreme Court's *Johnson II* judgment. *See supra* p.8. This Panel is bound by the Elections Clause to reject an approach to deciding a case involving a congressional map that has *never* obtained in our State's history, as that would certainly "transgress the ordinary bounds of judicial review." *Moore*, 600 U.S. at 36.

IV. Laches Also Bars Plaintiffs' Challenge To The *Johnson II* Map

A. Laches bars a claim "when a claimant's failure to promptly bring a claim causes prejudice to the party having to defend against that claim." *Trump v. Biden*, 2020 WI 91, ¶ 10, 394 Wis. 2d 629, 951 N.W.2d 568. Laches applies where: "(1) a party unreasonably delays in bringing a claim; (2) a second party lacks knowledge that the first party would raise that claim; and (3) the second party is prejudiced by the delay." *Wis. Small Bus. United, Inc. v. Brennan*, 2020 WI 69, ¶ 12, 393 Wis. 2d 308, 946 N.W.2d 101.

B. Each of the three elements for laches is satisfied here. First, Plaintiffs' lengthy and unexplained delay in asserting their claims is "unreasonable," *id.* ¶ 14,

particularly given the elections context, *see Trump*, 2020 WI 91, ¶ 30. Plaintiffs could have brought this Complaint over three-and-a-half years ago, after the Supreme Court adopted the *Johnson II* map on March 1, 2022. Plaintiffs claim that they needed at least "two election cycles" to provide enough "evidence" for their claim, Compl. ¶ 47, but that does not help, as Plaintiffs still inexplicably waited *eight months* after the November 2024 Election to file this lawsuit, *compare* Wis. Stat. § 5.02(5), *with* Dkt.9. Second, the Congressmen and Individual Voters "lack[ed] knowledge that [Plaintiffs] would raise th[eir] claim[s]," *Brennan*, 2020 WI 69, ¶ 12, especially more than three years after *Johnson II*. Third, the public, Congressmen, and Individual Voters would suffer significant prejudice from allowing Plaintiffs' unreasonably delayed action to proceed. *See Trump*, 2020 WI 91, ¶¶ 11–12 (citation omitted); *see Brennan*, 2020 WI 69, ¶ 14. The Supreme Court resolved this matter over three years ago by adopting the *Johnson II* map, which everyone justifiably expected to govern for this decade, *see* 2022 WI 14, ¶ 52, and rejected a challenge to that map—including from WBLD and Plaintiffs' counsel—reaffirming that expectation, *supra* pp.4, 11. Revisiting the map again would upset these settled expectations, *Trump*, 2020 WI 91, ¶¶ 11–12, and launch another contentious redistricting fight between the political branches, *see Fouts v. Harris*, 88 F. Supp. 2d 1351, 1354 (S.D. Fla. 1999); *accord* Dkt.60 at 454–59.

CONCLUSION

This Court should grant the Motion To Dismiss.

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Respectfully submitted,

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