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CIRCUIT COURT
DANE COUNTY, WI
2025CV002252

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

Wisconsin Business Leaders for Democracy, et al.,

Plaintiffs,

Case No. 2025-CV-2252

v.

Wisconsin Elections Commission, et al.,

Defendants.

JOHNSON INTERVENORS' MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

INTRODUCTION

Plaintiffs' legal theory in this case is that Wisconsin's current Congressional maps are what Plaintiffs call an "anti-competitive gerrymander," and supposedly a "textbook example" of one. Dkt. 184, ¶11[1]. Never mind that no "textbook" defines such a thing; and that *no other case in the entire country,* either in state or federal court, has ever used that phrase or recognized such a claim.

Even Plaintiffs' own use of the term is ambiguous. Sometimes they seem to say that it means a district that is drawn in a way that leads to a lopsided partisan result for one party or the other. At other times they seem to say that it applies only to a

[1] Plaintiffs filed their initial complaint on July 8, 2025 (Dkt. 9). On January 7, 2026, Plaintiffs filed an amended complaint (Dkt. 152). On January 8, 2026, Plaintiffs filed what they called a "corrected" amended complaint fixing what they called a "typo" in paragraph 32. (Dkt. 184, *see also* Plaintiffs' letter to the Court explaining this, Dkt. 185). Plaintiffs will cite to the corrected amended complaint (Dkt. 184) in this brief.

district that is drawn to make it likely that an incumbent will be re-elected. But whichever alternative meaning Plaintiffs ultimately settle on, it is not recognized as a viable legal claim anywhere in the country.

In fact, an "anti-competitive gerrymander" is not even a notion promoted in the creative halls of academia. Only three law review articles use the words "anti-competitive gerrymander," one in a footnote referencing this very case, and the other two from nearly twenty years ago, and then only in passing. And one of those authors subsequently concluded that the lines drawn for congressional districts are *not* a major factor affecting competitiveness in Congressional elections. Even Plaintiffs admit that their fringe legal theory "has not yet been explicitly recognized in Wisconsin", Dkt. 184, ¶75, and they do not and cannot point to a place where it has been recognized.

Plaintiffs' theory is not only unheard of, it is also foreclosed by the Supreme Court's decision in *Johnson I*, a part of which *Clarke* did not overrule. *Johnson v. WEC*, 2021 WI 87, ¶¶53–63, 399 Wis. 2d 623, 967 N.W.2d 469 (holding that Article 1 §§ 1 and 22 do not impose "limits on redistricting"); *Clarke v. WEC*, 2023 WI 79, ¶63, 410 Wis. 2d 1, 998 N.W.2d 370 (overruling those "portions" of *Johnson I* "that mandate a least change approach").

It was the Supreme Court in *Johnson* that approved the maps now being challenged in this Court and this Court does not have the authority to rule that the maps adopted by the Supreme Court are invalid. Moreover, the Supreme Court has already, several times, rejected attempts to challenge the current Congressional

maps, including one raising the exact theory brought here. Order Denying Motion for Relief from Judgment, *Johnson v. WEC*, No. 21AP1450-OA (Mar 1, 2024); *Bothfeld v. WEC*, No. 2025AP996-OA (original action petition denied June 25, 2025); *Felton v WEC*, No. 2025AP999-OA (same).

Plaintiffs' theory does not even make sense. If the current Congressional maps are an "anti-competitive gerrymander," then the same would be true for any other *state or local* district maps where the margins of victory are high. Local races, state legislative races, and congressional races are frequently decided in run-away fashion. The reality is that this is not evidence of an unconstitutional, "anti-competitive gerrymander." Rather, it is just the normal result of geography, the candidates and issues, and localized, winner-take-all districts. Like it or not, that is the constitutional design. U.S. Const. art. I, §§ 2, 4; Wis. Const. art. IV, §§ 3–5.

Even setting aside the merits, Plaintiffs' lawsuit is wildly inappropriate given Wisconsin's system of courts. Just a few months ago, the very same Plaintiffs, represented by the exact same lawyers, told the Supreme Court that it and *only it* could hear the claims they now raise in circuit court. In their words to the Supreme Court, "[because] this Court imposed the current congressional map in *Johnson II*, only this Court has the authority to enjoin that map or otherwise alter the order that requires Respondents to hold elections under the map."[2] After the attempt to bring these at the Supreme Court was rebuffedunanimouslythey then filed this case in

[2] Proposed Compl. for Decl. and Inj. Relief On Behalf Of Wisconsin Business Leaders For Democracy, et al., ¶16, *Bothfeld v. Wis. Elections Comm'n*, No. 2025AP996-OA (filed June 5, 2025).

Dane County Circuit Court and did the very thing they previously said was prohibited, filing this collateral attack on the Supreme Court's judgment. They were right the first time—this Court does not have the legal authority to toss out maps approved by the Supreme Court.

Finally, if any case is barred by laches, this is it. According to Plaintiffs, the problem is not, primarily, the maps drawn in late 2021 during the *Johnson* litigation (those maps, after all, were Governor Evers' maps and were adopted by the Supreme Court), but instead the maps drawn in 2011. Plaintiffs' theory is that the 2011 maps were designed to protect the incumbents at the time, and the alleged "anti-competitive" features of the 2011 map were "carried forward" in 2021. Dkt. 184, ¶¶60–69. But if that is Plaintiffs' theory, this case could have and should have been brought a decade ago. Even if "two election cycles" are necessary, *see* Dkt. 184, ¶47, Plaintiffs could have filed this lawsuit in 2014, after "two election cycles" under the 2011 map … or in 2016, after three cycles … or in 2018, after four … or in 2020, after five … or in 2022, after six … or in 2024, after seven. Yet they waited until now.

At some point the redistricting merry-go-round has to stop, to give Wisconsin's voters, candidates, and everyone else involved in the electoral process some stability—and faith in the rule of law. This case is a fig leaf (and a tiny one, at that) to hide a naked grab at political power. This Court should not entertain it, and the motion to dismiss should be granted.

Plaintiffs' lawsuit should be dead on arrival. It is meritless on its face, procedurally improper, and barred by laches. This Court should grant this motion

and dismiss this case in its entirety. Allowing this case to proceed will undermine faith in the rule of law and "creat[e] instability and dislocation in the electoral system." *White v. Daniel*, 909 F.2d 99, 104 (4th Cir. 1990).

BACKGROUND

The elections clause vests the power to set Congressional district boundaries in the various state legislatures. Wisconsin's legislature exercises this power by establishing Congressional district boundaries in the Wisconsin state statutes. *See* Wis. Stat. Ch. 3. Following the 2010 decennial census, the legislature adopted, and the governor signed into law, new congressional district lines. 2011 Wisconsin Act 44. Following the 2020 decennial census, those district lines needed to be updated again. Only at that time "the legislature drew maps, [and] the governor vetoed them[.]" *Johnson v. WEC*, 2021 WI 87, ¶2, 399 Wis.2d 623, 967 N.W.2d 469 (*"Johnson I"*). To resolve this impasse, the Wisconsin Supreme Court agreed to exercise its original jurisdiction to hear the case. *Johnson I*, 2021 WI 87, ¶6.

In the *Johnson* litigation, when the Supreme Court reviewed the then-malapportioned 2011 maps (following the 2020 census), it stated that it "will remedy that malapportionment, while ensuring the maps satisfy all other constitutional and statutory requirements." *Johnson I*, 2021 WI 87, ¶4. The Court began by first rejecting any partisan gerrymandering claims as nonjusticiable political questions. *Id.* (explaining that partisan gerrymander claims "have no basis in the constitution or any other law and therefore must be resolved through the political process and not

by the judiciary."); *See also Id.* ¶¶55, 60, 62 (concluding that Wis. Const. Art. I, §§ 1, 3, 4, and 22 do not provide justiciable standards for partisan gerrymandering).

In *Johnson v. WEC*, 2022 WI 14, 400 Wis.2d 626, 971 N.W.2d 402 ("*Johnson II*"), the Wisconsin Supreme Court adopted Governor Evers' proposed Congressional maps finding that they "move[d] the fewest number of people into new districts" from Wisconsin's most recently adopted 2011 map. *Id.* ¶19.

What ensued from there has been a multi-year effort to reverse the Supreme Court's adoption of those maps. First, in January of 2024, several intervenors in the original *Johnson* litigation filed what they called a "Motion for Relief from Judgment" arguing that, in light of *Clarke*, the adoption of Congressional Maps in *Johnson II* should be overturned and new maps should be selected. Motion for Relief from Judgment, *Johnson v. WEC*, No. 21AP1450-OA (Jan. 16, 2024). That motion was denied. Order Denying Motion for Relief from Judgment, *Johnson v. WEC*, No. 21AP1450-OA (Mar 1, 2024).

Last year, two separate petitions for original actions were filed with the Supreme Court. *See* Pet. for Original Action, *Bothfeld v. Wis. Elections Comm'n*, No. 2025AP996-OA (filed May 7, 2025); Pet. for Original Action, *Felton v. Wis. Elections Comm'n*, No. 2025AP999-OA (filed May 8, 2025). The *Bothfeld* petition brought various partisan gerrymandering claims seeking to throw out and replace the current Congressional map. The Plaintiffs in this action filed to intervene in that action, seeking to bring "anti-competitive gerrymander" claims much like the claims they now bring here. *See* Notice of Motion and Unopposed Motion to Intervene by

Wisconsin Business Leaders for Democracy, et al., *Bothfeld v. WEC*, No. 2025AP996-OA (June 5, 2025). The *Felton v. WEC* petition sought similarly to throw out the *Johnson* congressional map and replace it with something new. Both petitions were unanimously denied by the Wisconsin Supreme Court. *Bothfeld v. WEC*, No. 2025AP996-OA (original action petition denied June 25, 2025); *Felton v WEC*, No. 2025AP999-OA (same).

Following those failed attempts to bring these claims at the Supreme Court, the Petitioners in the *Bothfeld v. WEC* original action re-filed in the Dane County Circuit Court on July 21, 2025. (Dane County Case No. 2025CV2432, Dkt. 9). Several weeks later, rather than move to intervene again in *Bothfeld*, the Plaintiffs brought this separate action, also in the Dane County Circuit Court (Dkt. 9).

On November 25, 2025, the Wisconsin Supreme Court appointed this three-judge panel to hear this case (*WBLD, et al. v. Wis. Elections Comm'n, et al.*, 2025 WI 52). The panel subsequently entered an initial scheduling order (Dkt. 108), and now, pursuant to that order, the Johnson Intervenors file this motion to dismiss this action in full.

STANDARD OF REVIEW

Pursuant to Wis. Stat. § 802.06(2)(a), particular defenses to a claim for relief may be presented "by motion" including the defense of "failure to state a claim upon which relief can be granted." Wis. Stat. § 802.06(2)(a)6.

"[T]o satisfy Wis. Stat. § 802.02(1)(a), a complaint must plead facts, which if true, would entitle the plaintiff to relief." *Data Key Partners v. Permira Advisors LLC*,

2014 WI 86, ¶21, 356 Wis. 2d 665, 849 N.W.2d 693. To avoid dismissal, "[p]laintiffs must allege facts that plausibly suggest they are entitled to relief." *Id.* ¶31. In determining the sufficiency of a complaint, a court will "assume the facts set forth in the complaint are true and consider only the facts set forth therein." *Peterson v. Volkswagen of America, Inc.*, 2005 WI 61, ¶15, 281 Wis. 2d 39, 697 N.W.2d 61. The court does not accept legal conclusions as true. *Data Key Partners*, 2014 WI 86, ¶19.

ARGUMENT

The complaint does not "plead facts, which if true, would entitle [P]laintiff[s] to relief." *Id.* ¶21. This Court should therefore grant the motion and dismiss this case pursuant to Wis. Stat. § 802.06(2)(a)6.

I. Plaintiffs' Suit is an Improper Collateral Attack on a Judgment of the Supreme Court and Should Be Dismissed.

The Supreme Court's mandate in *Johnson II* "adopt[ed] the Governor's proposed congressional … maps," "enjoined [the Wisconsin Elections Commission] from conducting elections under the 2011 maps," and "ordered [it] to implement the congressional … maps submitted by Governor Evers for all upcoming elections." 2022 WI 14, ¶52, 400 Wis. 2d 626, 971 N.W.2d 402.

As Plaintiffs themselves previously told the Supreme Court (*see n. 2, supra*), their lawsuit would require a lower court to overrule and/or modify the Supreme Court's judgment in *Johnson II*. But this Court lacks the authority to take such an action. The Wisconsin Supreme Court is "the only state court with the power to overrule, modify or withdraw language from a previous supreme court case." *Cook v. Cook*, 208 Wis. 2d 166, 189, 560 N.W.2d 246 (1997). "Neither [the court of appeals]

nor the circuit court may overrule a holding of our supreme court." *State v. Arberry*, 2017 WI App 26, ¶5, 375 Wis. 2d 179, 895 N.W.2d 100.

Likewise, lower courts have "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 (quoting *Hoan v. J. Co.*, 241 Wis. 483, 485, 6 N.W.2d 185 (1942), or do anything that "conflict[s] with the expressed or implied mandate of the appellate court." *Id.* ¶32. If a party believes an order of the Supreme Court warrants modification, the proper vehicle is a motion, filed with the Supreme Court, to amend its judgment. *Id.* ¶48. As noted above, that was already tried. *See* Order Denying Motion for Relief from Judgment, *Johnson v. WEC*, No. 21AP1450-OA (Mar 1, 2024).

Even setting aside the basic hierarchy of our court system, the Supreme Court has also "recognized [a] general disfavor of allowing collateral challenges" because "they disrupt the finality of prior judgments and thereby tend to undermine confidence in the integrity of our procedures and inevitably delay and impair the orderly administration of justice." *In re Brianca M.W.*, 2007 WI 30, ¶28, 299 Wis. 2d 637, 728 N.W.2d 652 (citations omitted).

The complaint should be dismissed for that reason alone.

II. Plaintiffs' Claims Fail as a Matter of Law.

Even ignoring the procedural impropriety of Plaintiffs' lawsuit, their legal claims are also meritless on their face and must be dismissed.

Plaintiffs' legal theory is that Wisconsin's current Congressional map is an "anti-competitive gerrymander," which, they tell us, is a "distinct [claim] from a partisan gerrymandering claim." Dkt. 184, ¶¶8–9. While they admit, in passing, that

"a claim of anti-competitive gerrymandering has not yet been explicitly recognized in Wisconsin" (or anywhere else, for that matter), they represent that this new theory has "strong roots" in the "constitutional text," "principles," and "precedent." *Id.* ¶75. What "text," "principles," and "precedent," exactly? Plaintiffs are a little short on details at this point, but they invoke Article I, § 1, Article I, § 22, the right to vote, and/or some mysterious combination of the three. *Id.* ¶¶84–110.

The immediate problem, of course, is that the Supreme Court has already held that Article I, §§ 1 and 22, do not impose any "limits on redistricting." *Johnson I*, 2021 WI 87, ¶¶53–63. As the Supreme Court noted, nothing in the text of either provision says anything whatsoever about districts, redistricting, or gerrymandering (of any flavor). *Id.* ¶¶55–58, 62. Instead, the "only Wisconsin constitutional limits" on redistricting are found in "Article IV, Sections 3, 4, and 5." *Id.* Put differently, "Article IV [is] the exclusive repository of state constitutional limits on redistricting." *Id.* ¶63. "To construe Article I, Sections 1 … or 22 as a reservoir of additional requirements would violate axiomatic principles of interpretation, … while plunging this court into the political thicket lurking beyond its constitutional boundaries." *Id.* ¶63. While *Clarke* overruled parts of *Johnson I*, it did not overrule this part. 2023 WI 79, ¶¶24 (overruling any "passing statements about the contiguity requirements), 63 (overruling "any portions … that mandate a least change approach").

Even setting *Johnson I* aside, there is no textual basis for an "anticompetitive gerrymandering" claim in Article I, § 1. That provision reads: "All people are born equally free and independent, and have certain inherent rights; among these are life,

liberty and the pursuit of happiness; to secure these rights, governments are instituted, deriving their just powers from the consent of the governed." And there is no mention of districts, districting, or gerrymandering, either "partisan" or "anticompetitive."

Perhaps Plaintiffs believe that avoiding "anti-competitive gerrymandering" is one of our "inherent rights." But that would require some historical foundation for such a right—or, at the very least, some theory as to why that would be an "inherent" right—but Plaintiffs offer nothing, and certainly no precedent from Wisconsin, that supports their previously-unheard-of theory. Instead, the closest they come to a theory is that Article I, § 1 embodies the "ideals" and "aspirations" of "democracy" and that it is for "judges" and "lawyers" to decide what those are. Dkt. 184, ¶90. In other words, they want the panel to simply make it up on the fly.

Article I, § 22 is not helpful to them either. That provision reads, "The blessings of a free government can only be maintained by a firm adherence to justice, moderation, temperance, frugality and virtue, and by frequent recurrence to fundamental principles." Again, there is no mention whatsoever of districts, districting, or gerrymandering. No matter, Plaintiffs assert that their newfound right is floating somewhere among the "principles of democracy" in Article I, § 22. But again, Plaintiffs don't provide any foundation, in either history or precedent, for this new right. As the Supreme Court put it in *Johnson I*, "fabricat[ing] a legal standard" from this provision when its text "does not supply one [ ] would represent anything but 'moderation' or 'temperance.'" 2021 WI 87, ¶62.

Invoking the "right to vote" is even more of a stretch. Nothing about the current Congressional maps interferes with the right to vote. The right to vote does not include a right to elect one's preferred candidate, or even to a competitive election. If it did, every candidate who loses by a significant margin (be it in a race for Congress or a state legislature, or even a county board or aldermanic district, etc.) could argue that they lost because of an "anti-competitive" map—rather than their own failure to connect with the electorate in their district.

But surely some case, somewhere, has recognized an "anticompetitive gerrymandering" claim, right? Right?? Plaintiffs haven't cited one. And a Westlaw search for the phrase "anti-competitive gerrymander" (or "gerrymander*ing*") across *all* state and federal courts, at all levels, yields *zero cases*. In other words, no court, in any jurisdiction, has ever used that phrase. The closest case Plaintiffs can muster is *Harkenrider v. Hochul*, 38 N.Y.3d 494, 197 N.E.3d 437 (2022), but that case involved only a "partisan gerrymandering claim," *id.* at 518–20 (which Plaintiffs say "is distinct from" their claim, Dkt. 184, ¶9), and regardless, it was based on a recent amendment to the New York State Constitution that explicitly addresses partisan gerrymandering. There is no analogue in Wisconsin.[3]

Maybe this is a new theory being developed in the hallowed halls of legal academia? Wrong again. A Westlaw search of the same phrase across 4,000 secondary sources—surveys, summaries, newsletters, over 1,000 law reviews and journals, and

[3] Likewise, *In re Colorado Indep. Legislative Redistricting Comm'n*, 2021 CO 76, 513 P.3d 352, is based on a unique provision of the Colorado constitution, with no comparable provision in the Wisconsin Constitution. *Id.* ¶¶12–13, 56–61.

over 2,000 treatises—yields exactly five results: two of which are just newsletters reporting Plaintiffs' lawsuits; one is a recent law review article which mentions this case in a footnote and rejects the idea of an "anti-competitive gerrymander" claim[4]; and then two law review articles from the early 2000s which use the phrase only once or twice in passing, and even then only descriptively; neither attempts to develop a theory of an independent legal claim for "anti-competitive gerrymandering."

In one of the two early 2000s articles, for example, Professor Richard Pildes speculates that redistricting has been used to "deliberately suppress competitive elections." Richard H. Pildes, *The Constitution and Political Competition*, 30 Nova L. Rev. 253, 255 (2006). But his article punts on what "specific standards courts can employ to respond" to this; he concludes that this "cannot adequately be addressed here." *Id*. at 276. And, notably, just a few years later, Professor Pildes wrote that he was "no longer convinced [that gerrymandering] is a significant cause of increased polarization, nor do I believe we could do much about it, even if it were." Richard H. Pildes, *Why the Center Does Not Hold: The Causes of Hyperpolarized Democracy in America*, 99 Cal. L. Rev. 273, 308 (2011). As he writes later in that article, the empirical "evidence that gerrymandering is a major cause of the decline in competitive elections is not powerful." Instead, "the major causes for the decline in

[4] *See* Anthony Sikorski, *Partisan Impact? Rejecting the Wisconsin Supreme Court's New Remedial Redistricting Criterion*, 109 Marq. L. Rev. 455, 503, n.330 (2025) ("[A] cursory review of the dictionary definitions and second constitutional convention debates . . . indicates that the Wisconsin Constitution does not prohibit the drawing of "safe" districts for either political party.")

competitive elections appear to lie elsewhere than the districting process[,] … [like] the increasing geographic concentration of like-minded voters." 99 Cal. L. Rev. 273 at 312.[5]

Humorously, notwithstanding essentially zero support for their fringe legal theory, Plaintiffs boldly assert that Wisconsin's Congressional maps are a "textbook example" of an "anti-competitive gerrymander." Dkt. 184, ¶11. Of course, Plaintiffs don't actually cite a textbook—or law review article, or case, or anything, for that matter. But trust them, this is a "textbook" example of something nefarious and illegal that no one has ever heard of before.

But Plaintiffs' theory is divorced from political reality. Plaintiffs allege that "[a]cross the forty individual district races held under Act 44, the median margin of victory was more than twenty-five percentage points—a blowout by any measure." Dkt. 184, ¶6. Plaintiffs apparently believe that Wisconsin is an outlier in this regard and that the result is based on obviously unconstitutional conduct. But under Plaintiffs' theory, it would mean that most Congressional districts in the country are unconstitutional, and again, would subject state legislative and local districts to the same fate. Good luck to any candidate who works extremely hard and generates tremendous popular support—their opponent will just claim "uncompetitive gerrymander" to invalidate the results.

[5] The only other article to use the phrase "anti-competitive gerrymander" has been cited only once outside of this litigation. Peter J. Jenkins, *The Supreme Court's Confused Election Law Jurisprudence: Should Competitiveness Matter?*, 2007 B.Y.U. L. Rev. 167 (2007).

Plaintiffs' theory is not only divorced from political reality, it also lacks common sense. Every map will have a range of more and less competitive districts. Even if there were a constitutional right to a "competitive" map, Plaintiffs don't provide any way for courts to determine when a map is uncompetitive enough to violate any such right. And if the panel were to make one up, ex nihilo—which appears to be Plaintiffs' hope—it may well doom state and local district maps. Round and round we go.

III. Plaintiffs' Lawsuit is Barred By Laches.

Laches is a "well-settled doctrine" that applies to bar relief "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; *Wisconsin Small Businesses United, Inc. v. Brennan*, 2020 WI 69, ¶11, 393 Wis.2d 308, 946 N.W.2d 101. And laches "has particular import in the election context," where unreasonable delay causes "obvious and immense" prejudice to "election officials, [ ] candidates, … and to voters statewide." *Trump*, 2020 WI 91, ¶¶11–12.

Courts have applied laches to bar tardy redistricting challenges because "voters have come to know their districts and candidates, and will be confused by change," and because Court-ordered redistricting can result in "voter confusion, instability, dislocation, and financial and logistical burden on the state." *Fouts v. Harris,* 88 F. Supp.2d 1351, 1354–55 (S.D. Fla. 1999), *aff'd sub nom. Chandler v. Harris*, 529 U.S. 1084, 120 S.Ct. 1716 (2000); *White,* 909 F.2d at 104; *see also Knox v. Milwaukee Cnty. Bd. of Elections Comm'rs*, 581 F. Supp. 399, 405, 408 (E.D. Wis.

1984) (applying laches and denying motion for a preliminary injunction in a Milwaukee County redistricting lawsuit).

There are three elements to a laches claim: "unreasonable delay, lack of knowledge a claim would be brought, and prejudice." *Brennan*, 2020 WI 69, ¶1. Once each element is proven, "application of laches is left to the sound discretion of the court asked to apply this equitable bar." *Id.* ¶12. All three elements are easily met here.

First, unreasonable delay. As explained above, Plaintiffs' theory as to why the current Congressional map is an "anti-competitive gerrymander" is based on how it was adopted *back in 2011*. Dkt. 184, ¶¶ 48–65. Although that map has since been replaced, Plaintiffs claim that its alleged flaws were "perpetuated" in 2021. *Id.* Yet no fewer than *seven* Congressional elections have occurred during the fourteen years since the supposed constitutional violation in 2011: 2012, 2014, 2016, 2018, 2020, 2022, and 2024. Courts have found similar delay—even much less delay—to be unreasonable in redistricting cases. *Fouts*, 88 F. Supp. 2d at 1354 (7 years, 4 elections); *White*, 909 F.2d at 102–103 (17 years). And even Plaintiffs' "separation of powers" claim amounts to an unreasonable delay. *Knox*, 581 F. Supp. at 404 ("31 months after the approval of the tentative proposal and 22 months after the adoption of the final plan.").

Second, neither the Defendants nor the other interested parties (voters, the Congressmen, the Legislature, etc.) had any reason to believe this claim would be

brought many years and seven elections after it could have been filed. This element is easily satisfied. *See Trump*, 2020 WI 91, ¶ 23; *Brennan*, 2020 WI 69, ¶18.

Lastly, Plaintiffs' unreasonable delay causes multiple kinds of prejudice. First, courts have recognized that long-delayed redistricting cases prejudice voters, "who have come to know their districts and candidates, and will be confused by change." *Fouts*, 88 F. Supp. 2d at 1354; *White*, 909 F.2d at 104 ("two reapportionments within a short period of two years would greatly prejudice the County and its citizens by creating instability and dislocation in the electoral system"); *see also Reynolds v. Sims*, 377 U.S. 533, 583, 84 S.Ct. 1362 (1964) ("Limitations on the frequency of reapportionment are justified by the need for stability and continuity in the organization of the legislative system."). The current representatives will be prejudiced in the same way, having come to know their districts and constituencies. The state—and its taxpayers—will also be prejudiced by the "financial and logistical burden" caused by rinse-and-repeat redistricting. *E.g.*, *Fouts*, 88 F. Supp. 2d at 1354; *White*, 909 F.2d at 104 (emphasizing "great financial and logistical burdens").

Finally, Plaintiffs' unreasonable delay causes "evidentiary prejudice." *State ex rel. Wren v. Richardson*, 2019 WI 110, ¶33, 389 Wis.2d 516, 936 N.W.2d 587. Plaintiffs heavily emphasize the *intent* of the drafters of the 2011 map. Dkt. 184, ¶¶48–55. But proving or disproving intent is much more difficult fifteen years after the fact. The Supreme Court has recognized that "the loss of evidence," the unavailability of a witness, and the "unreliability of memories" are "precisely the kind of thing[s] laches is aimed at." *Wren*, 2019 WI 110, ¶¶33–34.

Plaintiffs waited far too long to bring their claim, and this Court can and should dismiss it based on laches.

IV. Any Relief for Plaintiff Would Violate the Elections Clause.

Finally, if the panel allows this case to proceed and ultimately invalidates the current Congressional maps, it will violate the federal elections clause.

Article I, section 4, of the United States Constitution vests in State *Legislatures* the authority to "prescribe" the "times, places and manner of holding elections for Senators and Representatives." In *Moore v. Harper*, 600 U.S. 1, 143 S.Ct. 2065 (2023), the United States Supreme Court held that, while "the Elections Clause does not exempt state legislatures from the ordinary constraints imposed by state law, state courts do not have free rein." 600 U.S. at 34. 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." *Id.* at 36.

While Courts have a role to play to resolve impasses in the redistricting process, as our Supreme Court did when it selected the Congressional maps in *Johnson*, that role is limited. To take this mid-decade second bite at the apple that Plaintiffs are seeking here under a novel and never-before recognized legal theory would almost certainly "transgress the ordinary bounds of judicial review" in a way that would violate the elections clause.

As explained above, Plaintiffs' claims are so meritless and without any textual or historical support that accepting them and moving forward with this case would transgress even this high standard.

CONCLUSION

For the reasons explained herein, the panel should grant this motion and dismiss this case in its entirety.

Dated January 15, 2026.

Respectfully Submitted,

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