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DANE COUNTY CIRCUIT COURT

BY ORDER OF THE COURT:

Date Signed: April 28, 2026

s/David Conway
Dane County Circuit Judge
Branch 17

s/Michael Moran
Marathon County Circuit Judge
Branch 5

s/Patricia Baker
Portage County Circuit Judge
Branch 3

STATE OF WISCONSIN — CIRCUIT COURT — DANE COUNTY
THREE-JUDGE PANEL
PURSUANT TO WIS. STAT. § 751.035

WISCONSIN BUSINESS LEADERS
FOR DEMOCRACY, *et al.*,

Plaintiffs,

v.

WISCONSIN ELECTIONS
COMMISSION, *et al.*,

Defendants.

MEMORANDUM AND ORDER

Case No. 2025CV002252

Plaintiffs have brought this lawsuit to challenge the constitutionality of Wisconsin's eight-district congressional map. They advance a novel legal theory called "anti-competitive gerrymandering" to argue that the current map, imposed by the Wisconsin Supreme Court in 2022, perpetuates an intentionally uncompetitive gerrymander enacted in 2011, to protect Wisconsin's congressional delegation from electoral competition. Plaintiffs contend that this theory finds solid footing in Wisconsin's constitutional text, historical tradition, and legal precedent. They ask this three-judge panel to declare the current map unconstitutional, enjoin its further use, and adopt a new congressional map that meets constitutional standards. Three interested groups have intervened in this lawsuit and now ask the Court to dismiss Plaintiffs' claims on various grounds.

While Plaintiffs have constructed a detailed theory to support their claims, this panel does not write on a blank slate when it comes to the use of partisan considerations in redistricting. The Wisconsin Supreme Court explored the topic in significant detail when it imposed the existing congressional map in 2022. At that time, the Court held that the partisan composition of electoral districts raises a non-justiciable political question, and that the state constitutional provisions at issue in this case say nothing about redistricting. These holdings are dispositive of Plaintiffs' claims, and this panel, as an inferior court, is obligated to obey them. Until the Supreme Court says otherwise, Plaintiffs' claims are non-justiciable and non-cognizable under Wisconsin law. Therefore, the panel must grant the pending motions and dismiss this action.

BACKGROUND

The Court accepts as true the following alleged facts and reasonable inferences therefrom, which are taken from Plaintiffs' first amended complaint. Dkt. 184.

I. THE PARTIES

Plaintiff Wisconsin Business Leaders for Democracy ("WBLD") is a bipartisan association of "senior executives in several of Wisconsin's largest and most established businesses" who are dedicated to ensuring equitable access to voting and unbiased representation. Dkt. 184 ¶¶ 16–23. Nine individual plaintiffs, at least one of whom resides in each of Wisconsin's congressional districts and all of whom intend to vote in future congressional elections, have joined the WBLD in bringing this lawsuit.[1] *Id.* ¶¶ 24–33.

Defendants Wisconsin Elections Commission ("WEC"), its six appointed members, and its appointed administrator, are the agency and officials responsible for administering

[1] The individual plaintiffs are John A. Scott (1st district), Nicholas G. Baker (2nd district), Beverly Johansen (3rd district), Rachel Ida Buff (4th district), Kimberly Suhr (5th district), Sarah Lloyd (6th district), Nancy Stencil (7th district), Vikas Verma (8th district), and James T. Lyerly (8th district).

Wisconsin's election laws.[2] *Id.* ¶¶ 34–37. In their answer, the WEC Defendants "take no position on the allegations, claims, and relief requested in Plaintiffs' complaint," other than as needed to ensure this litigation "does not disrupt or impair the proper, efficient, and effective administration of the 2026 election calendar." Dkt. 29.

Three groups of interested parties have intervened as defendants to fulfill the adversarial function left vacant by the WEC: (1) the Wisconsin State Legislature, Dkts. 69, 77; (2) six United States Congressmen joined by four individual voters,[3] Dkts. 42, 76; and (3) eleven individual voters led by Billie Johnson and other original petitioners from the *Johnson v. WEC* litigation,[4] Dkts. 50, 79 (collectively, "Intervenors").

II. FACTUAL ALLEGATIONS

Plaintiffs challenge the constitutionality of Wisconsin's current congressional districts implemented by the Wisconsin Supreme Court in 2022 (the "2022 map"). These districts, they allege, are merely a continuation of an anti-competitive gerrymander that began when Governor Scott Walker signed into law a deliberately uncompetitive congressional map following the 2010 census (the "2011 map"). *See* 2011 Wis. Act 44. The Court will first address the alleged origin of the 2011 map before turning to the 2022 map.

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[2] The WEC's administrator is Defendant Meagan Wolfe, and its six members are Defendants Marge Bostelmann, Ann S. Jacobs, Don Millis, Carrie Riepl, Robert F. Spindell, Jr., and Mark L. Thomsen.

[3] The Congressmen are United States Representatives Glenn Grothman, Bryan Steil, Tom Tiffany, Scott Fitzgerald, Derrick Van Orden, and Tony Wied. The individual voters joining the Congressmen are Gregory Hutcheson, Patrick Keller, Patrick McCalvy, and Mike Moeller.

[4] The Johnson Defendants are Billie Johnson, Chris Goebel, Aaron Guenther, Charles Hanna, Tim Higgins, Lou Kowieski, Chris Muller, Eric O'Keefe, Craig Rosand, Ruth Streck, and Ronald Zahn.

A. 2011 Map

In 2011, the Wisconsin Legislature began its decennial duty of creating new federal and state electoral maps. Dkt. 184 ¶ 1; U.S. Const. art. I, §§ 1–2. The Legislature's leaders tasked their federal counterparts with proposing updates for each of the state's eight congressional districts. Dkt. 184 ¶ 55. In response, Representative Paul Ryan's office led a bipartisan effort to draw new district boundaries. *Id.* ¶ 56. His staff collected information from all eight members (five Republicans and three Democrats) regarding what changes each would like considered for the new map. *Id.* ¶¶ 54, 56. After taking each member's feedback into account, Representative Ryan's office designed a congressional map that "intentionally made districts less competitive" and "deliberately insulated each incumbent from electoral competition." *Id.* ¶¶ 58, 81. The Legislature adopted Representative Ryan's map, which Governor Scott Walker signed into law as 2011 Wisconsin Act 44 on August 9, 2011. *Id.* ¶ 59.

After enactment of the 2011 map, Wisconsin experienced a decade of highly uncompetitive congressional elections in which no incumbent ever lost a race. Dkt. 184 ¶¶ 60, 63. Of the forty congressional races during this period, the median margin of victory never fell below twenty percentage points in any election and only one race was ever decided by fewer than ten points. *Id.* ¶¶ 6, 61. If the Legislature had used a neutral line-drawing process, Wisconsin would have seen more competitive congressional races and more individually competitive districts. *Id.* ¶ 62.

B. 2022 Map

In 2021, the Wisconsin Legislature again undertook the task of drawing new federal and state electoral maps after the 2020 census. Dkt. 184 ¶¶ 2, 64. The Legislature approved a new congressional map in Fall 2021, but Governor Tony Evers vetoed the bill. *Id.* ¶¶ 2, 65. While

this was happening, the Wisconsin Supreme Court accepted original jurisdiction in *Johnson v. WEC* to ensure that Wisconsin would have properly apportioned districts in the event the political branches reached an impasse. *Id.* ¶ 66.

In November 2021, the Supreme Court issued an initial decision defining its role in redistricting and identifying the standards it would use to create new electoral maps in *Johnson v. WEC*, 2021 WI 87, ¶¶ 24–81, 399 Wis. 2d 623, 967 N.W.2d 469 ("*Johnson I*"). Dkt. 184 ¶ 2–3. There, the Court held it would remedy the existing malapportionment by making only those changes to the 2011 map necessary to satisfy the one-person, one-vote requirement and other constitutional and statutory mandates (*i.e.*, the "least-change" approach).[5] *Id.*

In March 2022, the Supreme Court issued a decision adopting a new congressional map in *Johnson v. WEC*, 2022 WI 14, 400 Wis. 2d 626, 971 N.W.2d 402 ("*Johnson II*"). Dkt. 184 ¶ 67. Based on the least-change approach, the resulting map kept 94.5% of all voters in the districts they previously occupied, thereby perpetuating the 2011 map's intentionally anti-competitive features. *Id.* ¶¶ 7, 68, 81. The 2022 map remains in place to this day. *Id.* ¶ 69.

Under the 2022 map, Wisconsin has continued to see highly uncompetitive congressional elections. Dkt. 184 ¶ 70. In 2022 and 2024, the median margin of victory in each of the sixteen races approached thirty percentage points, with only one district (3rd District) decided by single digits. *Id.* ¶¶ 11, 71–72, 82. Alternative maps created using a neutral line-drawing process would have a lower median margin of victory and more competitive districts. *Id.* ¶¶ 11, 73, 82.

[5] The *Johnson I* court also addressed the justiciability of partisan gerrymandering claims and constitutional limits on legislative redistricting, as explained in more detail below.

III. PLAINTIFFS' LEGAL CLAIMS

Plaintiffs allege that the 2022 map is an anti-competitive gerrymander that violates three sections of the Wisconsin Constitution: (1) the equal protection guarantee of Article I, Section 1 (Count 1), Dkt. 184 ¶¶ 84–95; (2) the promise of free government of Article I, Section 22 (Count 2), *Id.* ¶¶ 96–103; and (3) the right to vote guaranteed by Article III, "in concert with the Wisconsin Constitution as a whole" (Count 3), *Id.* ¶¶ 50, 104–110. The same basic theory underlies each claim—namely, that the 2011 map was created to "insulate[] each incumbent from electoral competition," and that the 2022 map "necessarily perpetuated" this anti-competitive gerrymander by relying on the least-change approach to redistricting. *Id.* ¶¶ 58, 68.

Although Plaintiffs admit that no Wisconsin court has ever recognized an anti-competitive gerrymandering claim, they argue that such a claim has "strong roots in Wisconsin's constitutional text and principles, as well as our Supreme Court's precedent." *Id.* ¶ 75. In their view, an unlawful gerrymander exists where "there is evidence (1) of an intent to suppress competition, and (2) that competition was indeed suppressed relative to alternative maps that satisfy all applicable legal requirements." *Id.* ¶¶ 79–82. As relief, Plaintiffs ask the Court to "[d]eclare that Wisconsin's current congressional map, imposed in the *Johnson* litigation, is an anti-competitive gerrymander"; to "[e]njoin Defendants and their agents from using Wisconsin's current congressional map in any future election"; and "to adopt and implement a new congressional map with districts that are not unconstitutionally uncompetitive." *Id.* at 31.

IV. PROCEDURAL POSTURE

On July 8, 2025, Plaintiffs filed this redistricting lawsuit in Dane County Circuit Court along with a request asking the clerk of court to notify the Supreme Court of the filing. Dkts. 9–10; *see also* Wis. Stat. § 801.50(4m) (requiring the clerk to notify the Supreme Court "[n]ot more

than 5 days after an action to challenge the apportionment of a congressional or state legislative district is filed"). The clerk informed the Supreme Court by letter on July 10, 2025. Dkt. 12. Thereafter, the parties engaged in a period of litigation before the high court to determine how this case would proceed. *See WBLD, et al. v. WEC, et al.*, No. 2025XX001330.

On November 25, 2025, the Supreme Court appointed the above-signed three-judge panel to hear this case pursuant to Wis. Stat. § 751.035(1). Dkt. 40. In doing so, the Court imbued this panel with no apparent authority beyond that of a circuit court. *See id.* On December 4, the panel granted unopposed motions to intervene filed by the three Intervenor groups. Dkts. 73, 76–77, 79. At a scheduling conference on December 12, the Court set a briefing schedule for the motions to dismiss now pending. Dkt. 108. Those motions are briefed and ready for disposition.

STANDARD OF REVIEW

Wis. Stat. § 802.06(2)(a)6 permits dismissal of a cause of action that fails to state a claim upon which relief can be granted. When analyzing the legal sufficiency of a complaint, the Court begins with the basic civil pleading standard: A complaint must set forth "[a] short and plain statement of the claim, identifying the . . . transactions or occurrences out of which the claim arises and showing that the pleader is entitled to relief." Wis. Stat. § 802.02(1)(a). To satisfy this general standard, a plaintiff must allege factual allegations which, if true, would "plausibly suggest a violation of applicable law." *Data Key Partners v. Permira Advisers, LLC*, 2014 WI 86, ¶ 21, 356 Wis. 2d 665, 849 N.W.2d 693. "[T]he sufficiency of a complaint depends on the substantive law that underlies the claim made because it is the substantive law that drives what facts must be pled." *Id.* ¶ 31.

OPINION

Intervenors argue that Plaintiffs' anti-competitive gerrymandering claims are not legally cognizable because (1) the partisan makeup of a congressional district presents a non-justiciable political question, and (2) the state constitutional provisions upon which Plaintiffs' claims are based impose no limits on redistricting.[6] Dkt. 188 at 21–24; Dkt. 191 at 9–15; Dkt. 193 at 18–27. Upon careful review of the law, the panel concludes that Intervenors are correct. The Wisconsin Supreme Court has held that claims of the sort Plaintiffs allege are not actionable under Wisconsin law, and this panel, as an inferior tribunal exercising the powers of a circuit court, has no authority to modify or overrule that precedent. *Cook v. Cook*, 208 Wis. 2d 166, 189, 560 N.W.2d 246 (1997) ("The supreme court is the only state court with the power to overrule, modify or withdraw language from a previous supreme court case"). The panel is left with no option but to dismiss Plaintiffs' claims.

I. ANTI-COMPETITIVE GERRYMANDERING CLAIMS ARE NON-JUSTICIABLE

The Intervenors contend that anti-competitive gerrymandering claims raise political questions delegated to the legislative branch and beyond the reach of state courts. Dkt. 188 at 21–24; Dkt. 191 at 9–15; Dkt. 193 at 18–27. They urge the Court to look no further than *Johnson I*, 2021 WI 87, ¶¶ 40–52, for binding authority requiring dismissal of Plaintiffs' claims on justiciability grounds. In response, Plaintiffs argue that this case involves anti-competitive gerrymandering—a "distinct legal theory" from the partisan gerrymandering claims at issue in *Johnson I*. Dkt. 198 at 44. They further contend that *Johnson I*'s partisan gerrymandering

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[6] Intervenors also assert three other reasons for dismissing Plaintiffs' claims: (1) this panel lacks authority to modify an injunction issued by the Wisconsin Supreme Court; (2) Plaintiffs' claims are barred by laches; and (3) Plaintiffs' requested relief would violate the Elections Clause of the United States Constitution. Dkts. 188, 191, 193. Having resolved this case on other grounds, the panel need not address these theories and expresses no opinion as to their merit.

holding is "at most an advisory opinion with no precedential value" because the issue was not before the Court and the lead opinion did not garner support from the majority of the justices. *Id.*

In *Johnson I*, the Wisconsin Supreme Court was asked to decide, among other things, whether the 2011 map was a "partisan gerrymander favoring Republican Party candidates," and whether the Court should "redraw the maps to allocate districts equally between the[] dominant parties." 2021 WI 87, ¶ 2. There, the Court held that "partisan fairness" in redistricting "presents a purely political question" beyond the competence of state courts to adjudicate. *Id.* ¶¶ 39–52. To reach this conclusion, the Court relied on two core principles. *Id.* ¶ 40.

First, the Court found that no "judicially discoverable and manageable standards" exist for judging partisan fairness. *Id.* As the Court explained, the state's partisan divide is fluid and partisan identity is difficult to ascertain because Wisconsin does not require party registration. *Id.* ¶ 43. In addition, the Court found that the "fairness" of a map "poses an entirely subjective question with no governing standards grounded in law." *Id.* ¶ 44. "Nothing in the Wisconsin Constitution authorizes this court to recast itself as a redistricting commission in order 'to make [its] own political judgment about how much representation particular political parties deserve.'" *Id.* ¶ 45 (quoting *Rucho v. Common Cause*, 588 U.S. 684, 705 (2019)).

Second, the Court concluded that "the Wisconsin Constitution unequivocally assigns the task of redistricting to the legislature, leaving no basis for claiming that partisanship in redistricting raises constitutional concerns." *Johnson I*, 2021 WI 87, ¶ 51. "The Wisconsin Constitution's 'textually demonstrable constitutional commitment' to confer the duty of redistricting on the state legislature evidences the non-justiciability of partisan gerrymandering claims." *Id.* ¶ 51 (quoting *Baker v. Carr*, 369 U.S. 186, 217 (1962)). "Politicians pass many

statutes with an eye toward securing their elections and giving their party a leg up" and "[g]errymandered districts are no different." *Johnson I*, 2021 WI 87, ¶ 51 (quote omitted).

Here, Plaintiffs' anti-competitive gerrymandering claims are functionally equivalent to partisan gerrymandering claims, at least for purposes of the political question analysis. In a two-party system, partisan fairness and competitiveness are correlated: a more competitive map is typically a fairer map, whereas less competition usually means less partisan fairness. The objective of both theories is to change the "the partisan makeup of districts," whether by achieving proportional representation, electoral competitiveness, or both. *Id.* ¶ 8. It is therefore unsurprising that the same factors that *Johnson I* relied on when finding partisan gerrymandering non-justiciable apply with equal force to anti-competitive gerrymandering. Just like with partisan fairness, the competitiveness of a district is difficult to ascertain due to the fluctuating nature of political identity and the lack of party registration. Likewise, the competitiveness of a map poses the same type of "subjective question with no governing standards" as the fairness of a map. *Id.* ¶ 44. And the Wisconsin Constitution's delegation of redistricting authority to the legislature must also permit anti-competitive intent if it permits partisan intent. The concepts overlap.

Plaintiffs incorrectly characterize *Johnson I*'s partisan gerrymandering holding as a non-binding "advisory opinion."[7] Although *Johnson I* was a fractured plurality/majority opinion, four of the seven justices joined the lead opinion's holding on the issue. *See* 2021 WI 87, ¶¶ 82 n.4, 86 n.17 (Hagedorn, J., concurring). Partisan gerrymandering was also an issue before the Court, which requested briefing on whether "the partisan makeup of districts [is] a valid factor

[7] The Supreme Court has subsequently referred to partisan gerrymandering as "an important and unresolved legal question." *Clarke v. WEC*, 2023 WI 79, ¶ 7, 410 Wis. 2d 1, 998 N.W.2d 370. But the panel does not infer from this cursory statement that the Supreme Court intended to overrule its detailed holding in *Johnson I*. When the Supreme Court decides to depart from precedent, it does not do so "casually" but rather by "carefully and fully" explaining its decision. *Johnson Controls, Inc. v. Employers Ins. of Wausau*, 2003 WI 108, ¶ 94, 264 Wis. 2d 60, 655 N.W.2d 257.

for us to consider in evaluating or creating new maps." *Id.* ¶ 7. Even if the Supreme Court could have resolved the case without addressing partisan gerrymandering, this panel still would not be at liberty to disregard the Court's statements as "dicta" or an "advisory opinion." *Zarder v. Humana Ins. Co.*, 2010 WI 35, ¶ 58, 324 Wis. 2d 325, 782 N.W.2d 682 (lower courts "may not dismiss a statement from an opinion by [the Supreme Court] by concluding that it is dictum").

In sum, the panel is unable to meaningfully distinguish between "fairness" and "competitiveness" for purposes of *Johnson I*. The Supreme Court has held that the "Wisconsin Constitution contains 'no plausible grant of authority' to the judiciary to determine whether maps are fair to the major parties." *Johnson I*, 2021 WI 87, ¶ 52 (quoting *Rucho*, 588 U.S. at 718). It necessarily follows that the Constitution also contains no grant of authority to determine whether maps are competitive between the major parties. The only Court with the authority to change this outcome is the Wisconsin Supreme Court. The panel must therefore follow binding precedent and dismiss Plaintiffs' claims as non-justiciable political questions.

II. THE WISCONSIN CONSTITUTIONAL PROVISIONS AT ISSUE IN THIS CASE DO NOT IMPOSE ANY LIMITATIONS ON REDISTRICTING

The Intervenors also rely on *Johnson I* to alternatively argue that the constitutional provisions underlying Plaintiffs' claims impose no limits on redistricting. Dkt. 188 at 21–24; Dkt. 191 at 9–10; Dkt. 193 at 20–23. According to them, Plaintiffs cannot state a claim for unconstitutional redistricting based on provisions that the Supreme Court has said have nothing to do with drawing electoral maps. *Id.* For their part, Plaintiffs assert that *Johnson I's* holding is a non-binding "advisory opinion"—a position the panel has already rejected above—and that *Johnson I* does not address claims brought under Article III. Dkt. 198 at 39–63. Plaintiffs also offer a comprehensive and historically-based argument for why the Wisconsin Constitution

prohibits anti-competitive gerrymandering. *Id.* But the panel does not reach these latter arguments because *Johnson I* again controls and requires dismissal for failure to state a claim.

In the amended complaint, Plaintiffs have alleged anti-competitive gerrymandering in violation of three provisions of the Wisconsin Constitution:

> Article I, Section 1. 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.
>
> Article I, Section 22. The blessing 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.
>
> Article III, Section 1. Only a United States citizen age 18 or older who is a resident of an election district in this state is a qualified elector of that district who may vote in an election for national, state, or local office or at a statewide or local referendum.[8]

Dkt. 184 ¶¶ 84–110.

In *Johnson I*, the Wisconsin Supreme Court held that the "standards under the Wisconsin Constitution that govern redistricting are delineated in Article IV."[9] 2021 WI 87, ¶ 63 ("These are the only Wisconsin constitutional limits we have ever recognized on the legislature's discretion to redistrict"). It cautioned that 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.* (quotes omitted). In the Supreme Court's words, "[n]othing supports the notion that Article I, Section 1 of the Wisconsin Constitution was originally understood—or has ever been

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[8] Plaintiffs allege a generalized violation of the "right to vote protected by the Wisconsin Constitution," which they claim arises for Article III "in concert with the Wisconsin Constitution as a whole." Dkt. 184 ¶¶ 50, 106.

[9] Article IV, Sections 3, 4, and 5 impose "a series of discrete requirements governing redistricting," including one-person, one-vote and other geographic limitations not relevant to this case. *See Johnson I*, 2021 WI 87, ¶¶ 33–38, 63.

interpreted—to regulate partisanship in redistricting." *Id.* ¶ 58. And "[w]hatever operative effect Section 22 may have, it cannot constitute an open invitation to the judiciary to rewrite duly enacted law by imposing our subjective policy preferences in the name of 'justice.'" *Id.* ¶ 62. While *Johnson I* did not directly address Article III or the generalized "right to vote," the Supreme Court effectively foreclosed this avenue as well by holding that Article IV contains "the exclusive repository of state constitutional limits on redistricting." *Id.* ¶ 63.

The Supreme Court is the ultimate interpreter of our state constitution. When the Court speaks, its words are final unless and until it says otherwise. Because this panel is bound by the Court's interpretations, it must alternatively dismiss Plaintiffs' claims for failure to state a cognizable constitutional cause of action.

ORDER

IT IS ORDERED that Intervenor-Defendant Wisconsin State Legislature's motion to dismiss (Dkt. 187) is GRANTED.

IT IS FURTHER ORDERED that Intervenor-Defendants Billie Johnson, Chris Goebel, Aaron Guenther, Charles Hanna, Tim Higgins, Lou Kowieski, Chris Muller, Eric O'Keefe, Craig Rosand, Ruth Streck, and Ronald Zahn's motion to dismiss (Dkt. 190) is GRANTED.

IT IS FURTHER ORDERED that 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's motion to dismiss (Dkt. 192) is GRANTED.

IT IS FURTHER ORDERED that this case is dismissed with prejudice.

This is a final order for purposes of appeal