

IN THE SUPREME COURT OF WISCONSIN

No. 2026AP1008

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-Appellants,

v.

WISCONSIN ELECTIONS COMMISSION, MARGE BOSTELMANN,
ANN S. JACOBS, DON MILLIS, ROBERT F. SPINDELL, JR.,
CARRIE RIEPL, MARK L. THOMSEN AND MEAGAN WOLFE,
Defendants-Respondents,

BILLIE JOHNSON, CHRIS GOEBEL, AARON GUENTHER,
CHARLES HANNA, TIM HIGGINS, LOU KOWIESKI, CHRIS MULLER,
ERIC O'KEEFE, CRAIG ROSAND, RUTH STRECK, RONALD ZAHN,
GLENN GROTHMAN, BRYAN STEIL, TOM TIFFANY,
SCOTT FITZGERALD, DERRICK VAN ORDEN, TONY WIED,
GREGORY HUTCHESON, PATRICK KELLER, PATRICK MCCALVY,
MIKE MOELLER AND WISCONSIN STATE LEGISLATURE,
Intervenors-Defendants-Respondents.

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INTEREST OF *AMICI*

Amici, identified in the Appendix, are eight legal scholars with nationally recognized expertise in state constitutional law and election law, including redistricting. They write and publish extensively in these areas and have a professional interest in promoting a sound understanding of the constitutional and democratic principles implicated here.

INTRODUCTION

Anti-competitive gerrymandering flouts the Wisconsin Constitution's foundational democratic commitments. From start to finish, the Constitution's text and structure prioritize popular self-rule, placing the people firmly in control of those who govern in their name. When mapmakers shield representatives from electoral competition and accountability, they exceed their constitutionally conferred redistricting authority.

Recognizing this redistricting constraint aligns with interpretive and substantive principles this Court has long embraced, including in its separation-of-powers and public-purpose jurisprudence. Wisconsin's Constitution, moreover, imposes no justiciability barriers to reviewing gerrymandering claims. To the contrary, state courts provide an indispensable check on mapmakers who seek to serve themselves rather than the people. Plaintiffs' claim is thus judicially cognizable. (*Amici* express no view here on the claim's ultimate merits or on other procedural questions.)

ARGUMENT

I. THE WISCONSIN CONSTITUTION'S CORE DEMOCRATIC COMMITMENTS SHOULD GUIDE THIS COURT'S ANALYSIS

As the Court considers this case, it should center the Wisconsin Constitution's bedrock democratic commitments. Through text and structure, the Constitution embraces popular sovereignty, political equality, and majority rule as core animating principles. *See* Jessica Bulman-Pozen & Miriam Seifter, *The Democracy Principle in State Constitutions*, 119 Mich. L. Rev. 859, 864 (2021). Its foundational premise is that government belongs to and serves the people.

Provision after provision confirms that the Constitution is, fundamentally, a blueprint for self-rule. The Declaration of Rights begins by recognizing that governments “deriv[e] their just powers from the consent of the governed” and exist to “secure” the rights of the people, who “are born equally free and independent.” Wis. Const. art. I, § 1; *Att’y Gen. ex rel. Bashford v. Barstow*, 4 Wis. 567, 660 (1855) (“We regard it as a fundamental principle, that sovereignty resides in the people ... and in them alone.”); Milo M. Quaife, *The Convention of 1846*, 288 (1919) (Charles Minton Baker) (“[A]n axiom of government in this country [is] that the people are the source of all political power.”). Proceeding from this premise, the Declaration enshrines rights that undergird self-governance, including free speech and press, assembly, petitioning the government, religious freedom, and due process. Wis. Const. art. I; *see also* Jonathan L. Marshfield, *America’s Misunderstood*

Constitutional Rights, 170 U. Penn. L. Rev. 853, 926 (2022) (“[S]tate constitutional rights ... prioritize and facilitate popular control over government”). The Declaration also calls for “frequent recurrence to fundamental principles” to maintain the “blessings of a free government,” Wis. Const. art. I, § 22, affirming that the document’s overarching democratic objectives should guide constitutional interpretation.

Following the Declaration, the Constitution devotes an entire Article to “Suffrage,” expressly and broadly enshrining the fundamental right to vote. *Id.* art. III. It then places the people at the helm of each branch of government, establishing popular elections for the legislature, executive officials, and the judiciary. *Id.* art. IV, §§ 4, 5; art. V, § 3; art. VII, § 4(1); *see also id.* art. XIII, § 12 (recall); Milo M. Quaife, *The Struggle Over Ratification* 236 (1920) (Marshall M. Strong) (If “the minority rules the majority,” “we have no longer a people’s government” and “the fundamental principle of our government is violated.”). The Constitution’s distribution of authority to three independent branches is itself a democracy-facilitating design choice. *See* Jonathan L. Marshfield, *America’s Other Separation of Powers Tradition*, 73 Duke L.J. 545, 551 (2023) (“[T]he ‘public accountability’ rationale for the separation of powers ... is at the core of state constitutional design.”).

Democratic principles also underpinned the Constitution’s adoption of single-member legislative districts. Constitutional drafters and supporters espoused the importance of “bring[ing] the power closer to the people” to keep lawmakers accountable. Milo

M. Quaife, *The Movement for Statehood* 299 (1918) (“Single Districts,” Racine Advocate); *id.* at 515 (Racine County Convention Resolution) (with single-member districts, “representatives of the people ... may be individually responsible to, and immediately represent, their constituencies”). And the drafters specified certain criteria for those districts as one safeguard against gerrymandering, which they regarded as democratically illegitimate. *See id.* at 300 (“Single Districts,” Racine Advocate) (writing that single-member districts assure “the minority in politics ... as nearly as possible its proper number of delegates” and “prevent what is called gerrymandering”); *State ex rel. Atty. Gen. v. Cunningham*, 81 Wis. 440, 485, 51 N.W. 724 (1892) (The Constitution’s districting criteria “were supported and adopted upon the express ground that they would prevent the legislature from gerrymandering the state.”).

Thus, from start to finish, a democratic spirit suffuses the Wisconsin Constitution, guaranteeing that the people shall govern themselves as political equals through majoritarian institutions that respect minority rights. This democracy principle properly informs constitutional interpretation. It calls for courts to treat democratically dubious practices—including efforts to entrench incumbents and diminish public accountability—as constitutionally suspect. *Cf. Mothering Just. v. Atty. Gen.*, 29 N.W.3d 346, 356 & n.10 (Mich. 2024) (recognizing the Michigan Constitution’s “commitment to ‘the democracy principle’” and describing it as “a helpful tool to analyze our laws” since

“‘democracy’ itself is core to our Constitution and must inform the lens we use to interpret laws”).

II. THE CONSTITUTION’S DEMOCRACY PRINCIPLE CONSTRAINS POLITICAL MANIPULATION OF ELECTORAL DISTRICTS

Construing the Wisconsin Constitution to curb anti-competitive (and partisan) gerrymandering accords with the document’s democracy-infused text, structure, and history. Redistricting is best understood as a representation-facilitating power—or, perhaps more aptly, a representation-facilitating duty. The constitutional role of mapmakers is to operationalize the people’s right to choose representatives and hold them electorally accountable. When those in power instead enact maps that needlessly suppress competition, entrench incumbents, or stack the partisan deck, they exceed their constitutional authority and violate the people’s fundamental right to democratic self-rule. Giving mapmakers free rein to manipulate district boundaries to favor themselves and evade accountability would flout the fundamental principle that “officers are but the *agents*, and not the *rulers*, of the people.” *Barstow*, 4 Wis. at 743 (original emphasis).

This Court has long recognized that the constitutional function of redistricting is to promote—not subvert—responsive and accountable governance. In the late nineteenth century, concerns about political entrenchment animated the Court’s decision to police legislative manipulations of district populations, rather than treat such matters as purely political questions. *See*

Cunningham, 81 Wis. 440; *see also id.* at 501 (Pinney, J., concurring) (discussing the people’s “right to a fair apportionment of the aggregate of the political power”). Later, the Court stressed the importance of assessing the legislature’s apportionment power “in relation to the fundamental purpose of the constitution as a whole, to wit: to create and define the institutions whereby a representative democratic form of government may effectively function.” *State ex rel. Reynolds v. Zimmerman*, 22 Wis. 2d 544, 555, 126 N.W.2d 551 (1964).

Other state courts similarly understand that the redistricting power comes with democratic guardrails and that entrenchment schemes are constitutionally objectionable. As the New Mexico Supreme Court recently put it:

“[W]e fail to see how all political power would be ‘vested in and derived from the people’ and how ‘all government of right [would] originate[] with the people’ and be ‘founded upon their will,’ as required by the Popular Sovereignty Clause, if the will of an entrenched political party were to supersede the will of New Mexicans.”

Grisham v. Van Soelen, 539 P.3d 272, 284 (N.M. 2023); *see also Legislature v. Reinecke*, 516 P.2d 6, 10 (Cal. 1973) (“[T]o give incumbents the additional advantage of districting designed to preserve the status quo would be unfair both to nonincumbent candidates and to the electors of the new districts who wished to support such candidates.”); Pls.-Appellants’ Br. 42–45 (collecting additional cases).

Resisting this conclusion, Defendants-Respondents essentially argue that, because Article IV does not specifically delineate criteria for congressional redistricting, the state

constitution leaves lawmakers free to redistrict as they wish. This Court’s precedents do not support that myopic, magic-words interpretive approach, and even Defendants-Respondents do not fully embrace it. Notably, the Congressmen accept that the broad principles enshrined in Article I, § 1, are properly understood to bar “racial gerrymandering” and require “congressional districts with as close to equal population as possible,” even though the text does not specifically dictate either rule. Congressmen’s Br. 35.

This Court routinely uses structural inferences to demarcate constitutional constraints on governmental authority. Consider two examples that, as a matter of both interpretive modality and substantive principle, strongly support the claim that the Wisconsin Constitution limits anti-competitive gerrymandering:

First, the separation of powers. “Although the principle of separation of powers is not expressly stated in the Wisconsin constitution,” the document’s structural division of authority anchors doctrines designed to keep governmental actors from overreaching. *State v. Holmes*, 106 Wis. 2d 31, 42, 315 N.W.2d 703 (1982). The Court has developed a framework—again, without express textual direction—for assessing whether one branch has “impair[ed] [another’s] proper functioning,” in part by classifying powers as “core” or “shared.” *Gabler v. Crime Victims Rts. Bd.*, 2017 WI 67, ¶¶31–35, 376 Wis. 2d 147, 897 N.W.2d 384 (internal quotations omitted); *see also Kaul v. Wis. State Legis.*, 2025 WI 23, ¶¶10–14, 416 Wis. 2d 322, 21 N.W.3d 513. Just as the Court draws on the Wisconsin Constitution’s structural logic to constrain governmental actors when they aggrandize themselves relative to

another branch, it should do the same when those actors aggrandize themselves relative to the people—the very source of their authority.

Indeed, the democratic commitments that suffuse this Court’s separation-of-powers jurisprudence show why the Wisconsin Constitution is properly understood to restrict gerrymandering. By keeping the branches from encroaching upon one another, this Court aims to avoid “dangerous concentration[s] of power” that could threaten the people’s ability to self-govern. *Evers v. Marklein*, 2024 WI 31, ¶20, 412 Wis. 2d 525, 8 N.W.3d 395. “Maintaining the separation of powers,” this Court recently stressed, “is essential to the preservation of liberty and a government accountable to the people.” *Id.* at ¶34; *see also Gabler*, 2017 WI 67, ¶2 (preserving each branch’s core powers “serves as a bulwark protecting the people against tyranny”). It would be discordant to hold that a Constitution so staunchly opposed to unchecked power and so committed to popular control gives lawmakers carte blanche to skew district lines to curtail competition and thwart public accountability. If the Constitution prohibits the legislature from usurping another branch’s authority in ways that “undermine democratic governance” and “disrupt the governmental accountability the separation of powers facilitates,” *Marklein I*, 2024 WI 31, ¶29, then surely it also prevents the legislature from wresting power directly from the people through gerrymandering.

Second, the public purpose doctrine. As with the separation of powers, “no specific language in the state constitution

establish[es] the public purpose doctrine,” but it is nevertheless “firmly accepted as a basic constitutional tenet.” *Town of Beloit v. Cnty. of Rock*, 2003 WI 8, ¶27, 259 Wis.2d 37, 657 N.W.2d 344. Judicially derived from the broad text of Article I, §§ 1 and 22, the doctrine holds that the legislature’s regulatory and spending powers extend only to acts “reasonably for the public benefit.” *State v. Redmon*, 134 Wis. 89, 106, 114 N.W. 137 (1907); *see also State ex rel. Warren v. Nusbaum*, 59 Wis.2d 391, 414, 208 N.W.2d 780 (1973) (“Public funds may be expended for only public purposes.”); *State ex rel. Zillmer v. Kreutzberg*, 114 Wis. 530, 549, 90 N.W. 1098 (1902) (“[T]he legislation ... must be void, unless we can discover both the existence of a public need, and at least tendency of the statute to provide therefor.”). The idea is that, because the people vest government with power solely to promote public ends, government officials act unconstitutionally if they use their authority to serve themselves rather than their constituents.

Public purpose doctrine, like separation-of-powers doctrine, directly bolsters the constitutional case for constraining gerrymandering. The doctrine recognizes that the foundational democratic precepts set out in Article I, § 1, serve as a “broad general restriction of legislative power.” *Redmon*, 134 Wis. at 101. If it is “abhorrent to the constitution” for lawmakers—public servants—to regulate or spend “for other than a public purpose,” *Nusbaum*, 59 Wis.2d at 414, then it would make little sense to hold that they are free to adopt maps that benefit themselves and their allies at the expense of public responsiveness and accountability.

III. ANTI-COMPETITIVE GERRYMANDERING CLAIMS ARE JUSTICIABLE

Nothing precludes Wisconsin courts from adjudicating anti-competitive gerrymandering claims. From the start, this Court has acted to keep government officials from exceeding their constitutional authority, even in the most politically contentious disputes. *See Barstow*, 4 Wis. 567 (concluding that the state’s governor was unlawfully holding office). This includes a long history of adjudicating redistricting controversies. *See Cunningham*, 81 Wis. 440. As the Court stressed when it first rejected calls to treat such disputes as nonjusticiable, “courts of justice have the right and are in duty bound to test every law by the constitution.” *Id.* at 478; *id.* at 483 (“If the remedy for these great public wrongs cannot be found in this court it exists nowhere.”).

For at least two overarching reasons, the U.S. Supreme Court’s nonjusticiability holding in *Rucho v. Common Cause*, 588 U.S. 684, 719 (2019), lacks persuasive value when it comes to state anti-competitive (or partisan) gerrymandering claims in state court:

First, as detailed above, the substantive constitutional provisions and principles differ. The Wisconsin Constitution’s democratic commitments and safeguards surpass those of the U.S. Constitution, and Article I, § 22, expressly urges “frequent recurrence to fundamental principles.” *Cf. Rucho*, 588 U.S. at 719 (writing that “state constitutions can provide standards and guidance for state courts to apply” to constrain gerrymandering.).

Second, the Wisconsin Constitution defines the judicial power differently, and more expansively, than Article III of the U.S. Constitution. *Compare* U.S. Const. art. III, § 2 (authorizing federal courts to hear discrete categories of “cases” or “controversies”), *with* Wis. Const. art. VII, §§ 3(2), 8 (vesting circuit courts with “jurisdiction in all matters civil and criminal within this state” and this Court with “appellate jurisdiction over all courts”); *cf. id.* art. I, § 9 (entitling every person to a remedy for wrongs and right “to obtain justice freely”). Wisconsin’s courts, moreover, do not face the countermajoritarian difficulty of their unelected federal counterparts. *Cf. Rucho*, 588 U.S. at 719 (noting the “unelected and politically unaccountable” nature of the federal judiciary). Because the state’s jurists derive their power directly from the people, they play a more “democratically embedded”—and democracy sustaining—role. Jessica Bulman-Pozen & Miriam Seifter, *State Constitutional Rights and Democratic Proportionality*, 123 Colum. L. Rev. 1855, 1891 (2023); *see also* Helen Hershkoff, *State Courts and the “Passive Virtues”:* *Rethinking the Judicial Function*, 114 Harv. L. Rev. 1833, 1886–91 (2001).

Underscoring these salient federal-state differences, state supreme courts have increasingly disclaimed *Rucho* and adjudicated political gerrymandering claims. *E.g., Grisham*, 539 P.3d at 281 (rejecting idea that “concerns regarding federal standards of justiciability should override state judicial concerns regarding constitutional violations”); *League of Women Voters v. Commonwealth*, 178 A.3d 737, 741 (Pa. 2018) (“While federal

courts have ... been unable to settle on a workable standard ... under the federal Constitution, we find no such barriers under our [constitution].”); *Matter of 2021 Redistricting Cases*, 528 P.3d 40, 92 (Alaska 2023) (rejecting *Rucho* based on Alaska’s constitutional history and case law). In all, at least ten high courts—a strong majority of those to have considered the question—have held that their state constitutions impose judicially enforceable limits on partisan gerrymandering. See Harry Black & Emily Lau, *Status of Partisan Gerrymandering Claims Across the Country*, State Democracy Rsch. Initiative (2024) (updated Aug. 10, 2026) <https://statedemocracy.law.wisc.edu/our-work/status-of-partisan-gerrymandering-claims-across-the-country>.

Resolving anti-competitive gerrymandering claims pursuant to the run-of-the-mill intent-plus-effects framework that Plaintiffs propose is no less judicially manageable than resolving partisan gerrymandering claims in these other states. Nor does it pose any discernability or manageability challenges beyond those routinely handled in other types of state constitutional litigation. *Cf. Clarke v. Wis. Elections Comm’n*, 2023 WI 79, ¶14, 410 Wis. 2d 1, 998 N.W.2d 370 (“Much of the Wisconsin Constitution is set out in broad terms, the interpretation of which may lead to difficult questions and require a complex balancing of interests.”).

Consider the separation-of-powers and public purpose doctrines discussed above. This Court has acknowledged that it is often “difficult to determine where the functions of one branch end and those of another begin” and identified “vast stretches of ambiguous territory.” *Holmes*, 106 Wis. 2d at 43 (internal

quotations omitted); *see also Marklein I*, 2024 WI 31, ¶11 (describing “shared powers” as “[i]ncapable of precise classification”). Yet far from throwing up its hands, this Court has been “assiduous in patrolling the borders between the branches” through a combination of judicially developed bright-line rules and flexible standards. *Id.* at ¶31 (internal quotations omitted). There are likewise no precise guideposts for determining whether legislative action offers any “benefit to the public.” *Town of Beloit*, 2003 WI 8, ¶20–21. Although the public purpose doctrine resolves doubts in the legislature’s favor, the Court has not abdicated its responsibility to step in if the legislative mischief is “clear and palpable.” *Id.* (internal quotations omitted). This Court’s track record developing and applying these doctrines—as well as many others—confirms that the Court is fully capable of enforcing constitutional limits on gerrymandering.

A final point: Everything set forth above also explains why adjudicating anti-competitive gerrymandering claims is entirely consistent with the U.S. Constitution’s Elections Clause. Concluding that the Wisconsin Constitution’s bedrock textual and structural commitments to democracy disallow district maps that needlessly shield incumbents from electoral accountability is an utterly “ordinary” exercise of judicial review. *Moore v. Harper*, 600 U.S. 1, 36 (2023). Such a ruling, moreover, would not “arrogate” legislative power given that Wisconsin’s current congressional map was judicially, not legislatively, adopted. *Id.*

CONCLUSION

Applying the Wisconsin Constitution's core democratic principles, this Court should hold that anti-competitive gerrymandering claims are judicially cognizable.

Dated this 20th day of August, 2026.

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FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8) (b), (bm), and (c) for a brief. The length of this brief is 3,000 words.

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