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SUPREME COURT

SUPREME COURT OF WISCONSIN
Appeal No. 2026AP001008

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.

Appeal from the Circuit Court for Dane County
Three-Judge Panel Pursuant to Wis. Stat. § 751.035,
The Honorable David Conway, the Honorable Michael Moran,
and the Honorable Patricia Baker, Presiding
Circuit Court Case No. 25-CV-2252

**BRIEF *AMICI CURIAE* OF POLITICAL SCIENTISTS
IN SUPPORT OF PLAINTIFFS-APPELLANTS**

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INTEREST OF AMICI CURIAE

Amici are scholars whose research and scholarly work focus on redistricting, gerrymandering, and political competition, including the ways in which gerrymandering inhibits political competition.

Kosuke Imai is the Edith and Benjamin Geisinger Professor of Government and of Statistics at Harvard University. He is also an affiliate of the Institute for Quantitative Social Science.

Christopher T. Kenny is a postdoctoral research associate at Princeton University's Initiative for Data-Driven Social Science. He received his Ph.D. in Government from Harvard University in 2025.

Phil Jones is Professor of Political Science and International Relations at the University of Delaware. He is also Editor-in-Chief of *Public Opinion Quarterly*.

John Griffin is Professor of Government at Georgetown University. He also serves as Editor-in-Chief of *Political Science and Research Methods*, the journal of the European Political Science Association.

INTRODUCTION

Political competition is the lifeblood of representative democracy, which depends on elections in which voters go to the polls to elect representatives of their choice, expressing their preferences for the candidate that best represents their views on the issues of the day. In this case, Plaintiffs allege a fundamental breakdown in the basic ground rules of our representative democracy.

According to Plaintiffs, Wisconsin's congressional redistricting map is an anti-competitive gerrymander that has both the purpose and effect of suppressing political competition, resulting in lopsided contests that make it nearly impossible to oust existing incumbents. Anti-competitive

gerrymanders, they argue, violate the Wisconsin Constitution's affirmation that "[a]ll people are born equally free and independent" and that "governments . . . deriv[e] their just powers from the consent of the governed," Wis. Const. art. I, § 1, and eviscerate the state charter's safeguards of "the blessings of a free government" and the equal right to vote, *id.* art. I, § 22; *id.* art. III, § 1.

Given the increasing prevalence of anti-competitive maps in the American political landscape, it is important for courts to resolve disputes like this one, and fortunately, as *amici* have observed based on their extensive professional academic study of redistricting, gerrymandering, and political competition, political science can help give courts the tools to do so. Specifically, tools from political science can help provide manageable standards for courts to adjudicate cases like this one, in which Plaintiffs challenge a map as unconstitutional because of its anti-competitive purpose and effect. Political science can provide tools to identify the line between extreme maps that reflect anti-competitive gerrymanders and maps that provide reasonably competitive elections.

To start, the problem of anticompetitive maps is a serious one. As *amici* are well aware from their research, gerrymanders generally reduce political competition relative to computer-generated maps satisfying all applicable state redistricting criteria, producing lopsided electoral contests that suppress competition between candidates of differing political parties. By artificially diminishing competition, these maps undermine critical democratic values like accountability and responsiveness and thereby harm the electoral process.

When litigants challenge these maps in court, courts can use tools provided by political science to fashion judicially manageable rules to

redress anti-competitive gerrymanders. As *amici* have demonstrated through their professional, peer-reviewed work, political science provides reliable ways to measure how gerrymanders suppress electoral competition, such as examining the margin of victory across multiple elections over a multi-year period. By comparing existing maps with computer-generated alternative maps that satisfy applicable redistricting criteria, these tools enable courts to identify and redress extreme anti-competitive gerrymanders, protect voters' constitutional rights, and vindicate a robust democracy based on "the consent of the governed," Wis. Const. art. I, § 1; see *Clarke v. Wis Elections Comm'n*, 2023 WI 79, ¶ 35, 410 Wis. 2d 1, 998 N.W.2d 370 (enforcing state constitutional requirement of contiguity "as an important tool to constrain districting practices . . . consider[ed] undesirable"); *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.").

ARGUMENT

I. Anti-Competitive Gerrymanders Harm Fundamental Democratic Principles.

As experts on redistricting, *amici* have observed that extreme forms of gerrymandering are becoming more and more commonplace in American politics. Professor Richard Pildes's observation twenty years ago is even truer today: "more and more elections in the United States are becoming little more than formal rituals; they are affairs of acclimation rather than intensely competitive contests that force conflicts over policies and ideologies to the surface and give voters meaningful choice." Richard H. Pildes, *The Constitution and Political Competition*, 30 Nova L. Rev. 253, 253-54 (2006); see also John D. Griffin, *Electoral Competition and Democratic*

Responsiveness: A Defense of the Marginality Hypothesis, 68 J. Pol. 911, 911 (2006) (“[C]ompetitiveness of House elections has been declining for decades, culminating in the reelection of 99% of running House incumbents in the 2002 and 2004 elections.”).

Gerrymandering is hardly the only cause of the decline in political competition, but it certainly shapes today’s electoral system in outsized ways. The “lethal combination of modern technology, partisanship, and incumbent self-dealing renders it possible for state legislatures to assure that nearly all congressional elections are non-competitive.” Pildes, *supra*, at 261. One recent study estimated that “gerrymandering alone eliminated about 20 competitive seats in 2010 and 16 in 2020, relative to the simulated baseline,” producing “roughly a 30 percent reduction in competitive districts.” See Ethan Jasny et al., *Gerrymandering and Geographic Polarization Have Reduced Electoral Competition*, arXiv preprint, at 8 (Aug. 21, 2025), <https://arxiv.org/pdf/2508.15885>.

Compared to computer-generated maps that satisfy all state-redistricting criteria, “enacted plans . . . consistently contain far fewer competitive seats” and “many more safe seats.” *Id.* Now, in the wake of the Supreme Court’s evisceration of the Voting Rights Act in *Louisiana v. Callais*, 146 S. Ct. 1131 (2026), new forms of “aggressive gerrymandering” sanctioned by the ruling are “likely [to] lead to a steep decline in electoral competition,” further “reducing competitive seats.” See Christopher T. Kenny et al., *Weakening the Voting Rights Act Reduces Minority Representation and Electoral Competition* 8 (2026), available at <https://imai.fas.harvard.edu/research/files/callais.pdf>.

Plaintiffs’ allegations here provide a textbook example of an anti-competitive gerrymander designed to protect incumbents of both parties

from political competition. *See* Pildes, *supra*, at 258-59 (discussing the “bipartisan gerrymander, in which the two major parties work as a cartel and risk-aversely agree to allocate political representation to protect as many incumbents as possible”). As Plaintiffs describe in their First Amended Complaint, the current congressional map, a court-imposed map drawn to make as few changes as possible from the legislatively adopted 2011 map, produced lopsided victories for the incumbent in all but one district, with incumbents racking up wins by a median margin of almost thirty percentage points. *See* First Amended Complaint ¶¶ 71-72, Appendix to Plaintiffs-Appellants Br. (“App.”) at 68.

Anti-competitive gerrymanders like those alleged in this case are at odds with two core principles that are fundamental to our democracy. *First*, when lawmakers draw districts that have the purpose and effect of thwarting competition and making it easier for incumbents to sail to reelection in landslide elections, voters have no realistic path to holding congressional representatives accountable. *See* Philip Edward Jones, *The Effect of Political Competition on Democratic Accountability*, 35 *Polit. Behav.* 481, 483 (2013) (“Political competition increases the extent to which voters hold incumbents accountable.”); Pildes, *supra*, at 260 (discussing how districts “artificially manipulated to ensure non-competitive elections” result in “the loss of electoral accountability that is the defining element of representative self-government”). As Professor Jones’s empirical work on the relationship between competition and accountability found, “voters in heterogeneous states are more aware of the ways they are (or are not) represented and more likely to sanction out-of-step incumbents at election time.” Jones, *supra*, at 510; *see also id.* at 512 (“[T]he key conclusion from the empirical analyses

here is that competition enhances, not weakens, democratic accountability.”).

Anti-competitive gerrymanders thus strike at the heart of democracy. As political scientist G. Bingham Powell observed, “[t]he citizens’ ability to throw the rascals out seems fundamental to modern representative democracy because it is the ultimate guarantee of a connection between citizens and policymakers. It enables the citizens to hold the policymakers accountable for their performance. Such accountability is a keystone of majoritarian democratic theory.” G. Bingham Powell, Jr., *Elections as Instruments of Democracy* 47 (2000).

Second, and related, incumbents who do not face the possibility of a competitive election are less likely to be responsive to their constituents. Because “competitiveness boosts responsiveness,” there are “real representational costs” to a system in which lawmakers use their power over redistricting to manipulate electoral lines to rig elections in their favor. *See* Griffin, *supra*, at 919; Jones, *supra*, at 511 (“With lower levels of diversity and political competition comes an increased ability to avoid accountability for one’s record, giving these incumbents greater leeway to shirk from public opinion in making policy decisions.”). Professor Griffin’s empirical work on the relationship found that “more competitive districts induce greater responsiveness among elected officials.” Griffin, *supra*, at 919. In short, “competition [i]s critical to the ability of voters to ensure the responsiveness of elected officials to the voters’ interests through the after-the-fact capacity to vote those officials out of office.” *See* Samuel Issacharoff, *Gerrymandering and Political Cartels*, 116 Harv. L. Rev. 593, 615 (2002).

Fortunately, as the next Section shows, political science provides reliable tools that courts can use to formulate judicially manageable rules to

identify and redress anti-competitive gerrymanders and enforce the Wisconsin Constitution's promise of a government that rests on the "consent of the governed," Wis. Const. art. I, § 1.

II. Political Science Provides Reliable Tools to Gauge the Effects of a Redistricting Map on Political Competition.

Political scientists have developed reliable, well-accepted methods of analyzing redistricting maps and their effect on electoral outcomes. As *amici's* research has demonstrated, by comparing maps enacted by lawmakers against computer-generated maps that satisfy all applicable state districting criteria, political scientists have developed tools to identify gerrymanders and analyze their effects on our democratic system of elections, including on political competition. *See, e.g.,* Christopher T. Kenny et al., *Widespread Partisan Gerrymandering Mostly Cancels Nationally, but Reduces Electoral Competition*, 120 Proc. of Nat'l Acad. of Sci. 1, 5, 4 (2023) (comparing enacted maps against data set containing "5,000 sampled redistricting plans and accompanying precinct-level election and demographic data for each state" and finding that "enacted plans across all states create significantly fewer highly competitive seats"), *available at* <https://www.pnas.org/doi/10.1073/pnas.2217322120>; Jasny, *supra*, at 2, 3 (measuring effect of gerrymandering on political competition using "a state-of-the-art simulation algorithm to generate large ensembles of alternative redistricting plans that adhere to each state's specific redistricting rules" and concluding that "gerrymandering has substantially reduced electoral competition"). In fact, comparing enacted maps against illustrative computer-generated maps that satisfy all relevant districting criteria reveals a consistent pattern of state enacted maps that "decrease electoral competitiveness and responsiveness, limiting the voter's ability to hold

politicians accountable.” Kenny, *Widespread Partisan Gerrymandering*, *supra*, at 5.

This basic method of scientific analysis has been repeatedly approved by courts in a wide range of gerrymandering cases. *See Callais*, 146 S. Ct. at 1158 (2026) (discussing “the increased use and capabilities of computers in drawing districts and creating illustrative maps”); *League of Women Voters v. Commonwealth*, 178 A.3d 737, 818 (Pa. 2018) (relying on “compelling expert statistical evidence” comparing the challenged map with alternative computer generated maps in finding that the challenged map “cannot plausibly be directed at drawing equally populous, compact, and contiguous districts which divide political subdivisions only as necessary to ensure equal population” and therefore “deprives Petitioners of their state constitutional right to free and equal elections”); *Adams v. DeWine*, 195 N.E.3d 74, 86-87 (Ohio 2022) (relying on expert evidence “compar[ing] the enacted plan to thousands of computer-simulated plans”); *Rucho v. Common Cause*, 588 U.S. 684, 737 (2019) (Kagan, J., dissenting) (observing that “the same technologies and data that today facilitate extreme . . . gerrymanders also enable courts to discover them, by exposing just how much they dilute votes”).

As Justice Kagan has observed, courts can reliably assess state redistricting abuses of power using an “extreme outlier approach,” which entails “using advanced computing technology to randomly generate a large collection of districting plans” and then “seeing where the State’s actual plan falls on the spectrum.” *Id.* at 737-38 (Kagan, J., dissenting) (quotation marks omitted). This approach—what Plaintiffs rightly call the “gold standard” in contemporary redistricting litigation, Plaintiffs-Appellants Br. 47—gives courts a reliable way to vindicate fundamental

democratic principles and redress anti-competitive schemes that frustrate the rights of voters to choose their representatives.

To measure the effect of gerrymandering on political competition, political scientists look to an objective measure—the margin of victory—to assess whether an enacted map or a district has an anti-competitive effect as compared to alternative maps that satisfy all applicable state districting criteria. In single-member-district elections, “the traditional measure of competitiveness is the simple difference in observed vote shares between the winner of the seat and the runnerup—expressed as a vote share rather than in raw votes.” Gary W. Cox et al., *Measuring the Competitiveness of Elections*, 28 Pol. Analysis 168, 171 (2020). Under this traditional measure, a competitive election is often regarded as one “decided by less than 10 percentage points.” See Alan I. Abramowitz et al., *Incumbency, Redistricting, and the Decline of Competition in U.S. House Elections*, 68 J. Pol. 75, 75 (2006); see also Cory McCartan et al., *Redistricting Reforms Reduce Gerrymandering by Constraining Partisan Actors*, Am. Pol. Sci. Rev. 1, 15 (2026) (analyzing “the share of competitive seats, where a seat is counted as competitive in proportion to how close its baseline partisanship is to 50%”).

This benchmark, grounded in political science, can help courts smoke out anti-competitive gerrymanders that offend principles of democratic accountability. By comparing an enacted map with alternative maps along these metrics over the course of multiple elections over multiple years, courts can distinguish legislative maps that reliably generate a reasonable measure of competition from those that have the purpose and effect of suppressing competition.

In this case, for example, Plaintiffs' complaint stresses that the congressional districting scheme has had a persistent and enduring anti-competitive effect, observable over sixteen different congressional elections over a multi-year period. *See* First Amended Compl. ¶ 11; App. 52. Across these elections, Plaintiffs allege, the map systematically favored incumbents, producing lopsided wins for incumbent members of Congress in all but one of the state's eight congressional districts, an anti-competitive bias far in excess of what alternative maps would have produced. *Id.* ¶¶ 71, 73; App. 68.

In short, Plaintiffs' allegations, which track established, well-accepted principles of political science, permit a finding that Wisconsin's current congressional plan suppresses political competition, undermines accountability and responsiveness, and degrades democratic representation. The Circuit Court was thus wrong to dismiss Plaintiffs' case without giving them an opportunity to substantiate their claims.

CONCLUSION

For the foregoing reasons, this Court should reverse the judgment of the Circuit Court and remand the case for further proceedings.

Dated September 1, 2026.

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE WITH WIS. STAT. § 809.19(8g)(a)

I hereby certify that this brief conforms to the rules contained in s. 809.19(8) (b), (bm), and (c) for a brief. The length of this brief is 2,479 words.

Dated September 1, 2026.

Respectfully submitted,

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