No. 2025AP999-OA

In the Supreme Court of Wisconsin

KATE FELTON, LOREN DE LONAY, KYLE JOHNSON, RAYMOND SPELLMAN, VALERIA CERDA, LYNN CAREY, RAFAEL SALAS, CURTIS GAUTHIER, AND PATRICIA SCIESZINSKI
PETITIONERS,
V.
WISCONSIN ELECTIONS COMMISSION, ANN S. JACOBS, MARK L. THOMSEN, CARRIE RIEPL, DON M. MILLIS, ROBERT F. SPINDELL, JR., MARGE BOSTELMANN, IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE WISCONSIN ELECTIONS COMMISSION AND MEAGAN WOLFE, IN HER OFFICIAL CAPACITY AS THE ADMINISTRATOR OF THE WISCONSIN ELECTIONS COMMISSION,
RESPONDENTS.

NONPARTY BRIEF OF BILLIE L. JOHNSON, ERIC O'KEEFE, RONALD ZAHN, CHRIS GOEBEL, AARON R. GUENTHER, CHARLES HANNA, TIM HIGGINS, SANDY JANZER, ADAM JARCHOW, GAE MAGNAFICI, TERRY MOULTON, MICHAEL MURPHY, JOSEPH SANFELIPPO, RUTH STRECK AND MARY JO THOMPSON IN OPPOSITION TO PETITION FOR AN ORIGINAL ACTION

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INTEREST OF AMICUS

Amicus Curiae are a group of voters who collectively reside in every Congressional district in Wisconsin. This group of *amici* include three of the original Petitioners from the *Johnson v. Wisconsin Elections Commission* case, the judgment of which is challenged in this action. *Amici* are interested in maintaining the judgment from the *Johnson* case, and in ensuring this Court continues to apply long held understandings of state and federal law.

INTRODUCTION

In the wake of a contentious, hyper-partisan Wisconsin Supreme Court election in which political operatives on behalf of Justice-Elect Crawford promised a re-draw of Wisconsin's Congressional District lines, Petitioners hope to provide this Court with a way to follow through on that promise.

But this Court adopted the current Congressional maps three years ago, holding that they complied "all relevant state and federal laws." *Johnson v. WEC*, 2022 WI 14, ¶ 25, 400 Wis. 2d 626, 971 N.W.2d 402 (*Johnson II)*. And just one year ago, this Court declined to reexamine them. They have also been used in two Congressional elections without issue.

On what basis do the Petitioners seek to raise the question of Congressional maps for the third time in four years? What serious flaw exists that would justify such an extraordinary step? It turns out that one of the Congressional Districts has two more voters than three of the seven remaining districts. Because of *one single voter* (out of a statewide total of 5,893,722), Petitioners want these maps to be thrown out and redrawn in a way that would benefit one political party. They want to do this, moreover, without proving that there has been any actionable political gerrymander.

Of course, Petitioners can't find a single case in which anything remotely like this has been done. That is not surprising. No one has ever had the unmitigated gall to bring such a claim. No one has ever had the temerity to treat a state Supreme Court as a partisan board of revision who can be expected to do whatever a political actor expects it to do.

To call this an overreach is a gross understatement. This Court should not entangle itself in the business of political gamesmanship. The Petition for an Original Action must be denied.

ARGUMENT

Petitioners assert that Wisconsin's current congressional maps are malapportioned because when they were created, Districts 4, 6, and 8 had 736,714 people, Districts 1, 2, 5, and 7 had 736,715 people, and District 3 had 736,716 people. The Petitioners claim that the two-person difference between District 3 on the one hand and Districts 4, 6 and 8 on the other hand, means that District 3 has one person too many for purposes of the "one-person, one vote" constitutional principle and so, a voter should have been moved to one of Districts 4, 6 and 8. In a clumsy attempt to avoid federal review of a Congressional map, Petitioners make this claim *solely* under the Wisconsin Constitution and do not assert that this difference violates the U.S. Constitution. The Petition should be rejected for several reasons.

I. Petitioners' arguments are meritless.

A. One "extra" voter does not make a constitutional claim.

The *Johnson II* majority—consisting of Justices Dallet, Hagedorn, Karofsky, and Walsh Bradley—already held that the current Congressional maps comply with "*all* relevant state and federal laws," including the argument based on a "two-voter" deviation. *Johnson II*, 2022 WI 14, ¶ 24 ("We conclude the two-person deviation between the most- and least-populated districts in the Governor's proposed map does

not violate the United States Constitution."). Additionally, Petitioners' claim flies in the face of the same majority's holding that, even were this a matter of concern, eliminating this single misplaced voter would violate the traditional redistricting principle of core retention. *Id.* ¶ 25.

Perhaps realizing this, Petitioners attempt to equate *Clarke v. Wis. Elections Commission's* rejection of "least change" with a rejection of "core retention" and suggest that this warrants a changed result. It does not. Again, the *Johnson II* majority not only concluded that the current maps could be justified by the traditional redistricting principle of "core retention," but also *separately and independently* held that the current maps comply with "all relevant state and federal laws." *Id.* ¶ 25. In other words, regardless of whether the *Johnson* Court's "least change" analysis will be applied in any future apportionment challenges, a majority of Justices on the current Court have *already agreed* that the current Congressional maps separately fully comply with the law.

Beyond that, "core retention" and "least change" are not the same. *See* Petitioners' Memorandum in Support of their Petition for an Original Action at 15, 22–24. As the *Johnson II*, Court remarked, "core retention represents the percentage of people on average that remain in the same district they were in previously," and while "core retention is … central to a least change review" it is "not the only relevant metric." *Id.* ¶ 13 & n.9. In addition, the *Clarke* Court's disagreement with *Johnson*'s "least change" approach *did not* disavow "core retention" as a valid redistricting metric. *Clarke v. Wis. Elections Comm'n,* 2023 WI 79, ¶ 61, 410 Wis. 2d 1, 998 N.W.2d 370.[1]

[1] This makes sense, given that most of the *Clarke* majority joined the main opinion in *Johnson II*.

B. The Wisconsin Constitution has nothing to add.

This leaves Petitioners arguing that they have discovered a hitherto unnoticed command—somewhere in the Wisconsin Constitution—that the existence of a single voter creating a two-voter deviation between some districts constitutes a "malapportionment" that justifies throwing out maps that have survived not one, but two, legal attacks.

But the Wisconsin Constitution says nothing about Congressional apportionment, and this Court must respect the dictates of the federal Elections Clause, which gives the Wisconsin Legislature the *sole authority* to apportion Wisconsin's Congressional districts. When necessary, Courts have a limited remedial role, consistent with the proper role of the judiciary, but are not a replacement for the Legislature, and cannot be. *Compare Johnson v. Wis. Elections Comm'n* ("*Johnson* I"), 2021 WI 87, ¶¶ 70–72 (main op.), 399 Wis. 2d 623, 967 N.W.2d 469 *with id*., ¶ 82 (Hagedorn, J., concurring) ("To the extent feasible, a court's role in redistricting should be modest and restrained."); *Johnson II*, 2022 WI 14, ¶¶ 7, 20–25; *id* at ¶ 11 & n.7.

Petitioners' astonishing new requirement is found nowhere in our state's Constitution. This Court has long held that "[t]he equal protection clause in the Wisconsin Constitution requires the identical interpretation as that given to the parallel provision of the United States Constitution." *State v. Heft*, 185 Wis. 2d 288, 293 n. 3, 517 N.W.2d 494 (1994); *see also Blake v. Jossart*, 2016 WI 57, ¶ 28, 370 Wis. 2d 1, 884 N.W.2d 484 ("As a general principle, this court treats these provisions of the United States and Wisconsin Constitutions as consistent with each other in their due process and equal protection guarantees."); *id*., ¶ 28, n. 15 (citing cases). While "[s]tates must draw congressional districts with populations as close to perfect equality as possible," the same is not true for state and local districts where "jurisdictions are permitted to deviate somewhat from perfect population equality…". *Evenwel v.*

Abbott, 578 U.S. 54, 59 (2016). Indeed, at the state and local level, even rather significant population deviations are acceptable. *See id.* at 60 ("Where the maximum population deviation between the largest and smallest district is less than 10%, the Court has held, a state or local legislative map presumptively complies with the one-person, one-vote rule. Maximum deviations above 10% are presumptively impermissible.")

While the United States Supreme Court has required more exacting equality for Congressional Districts be of equal population, this more stringent standard comes from Article I, Section 2 of the United States Constitution. Petitioners assert no claim under the United States Constitution and, as noted above and as recognized by this Court in *Johnson II*, even that more stringent standard does not support the Petitioners' claim here.

There is not any provision in Wisconsin's Constitution that would impose such a requirement. The Wisconsin Constitution has no provision identical to Article 1, Section 2 of the United States Constitution. If such a requirement could be found somewhere in the state's equal protection guarantee (and it never has been), it would apply equally to all state and local districts. Because nothing in the Wisconsin Constitution requires greater population equality for Congressional districts than for state legislative districts, Petitioners' argument, if accepted, would mean that virtually *all* state and local districts in Wisconsin are unconstitutional. Wisconsin's existing legislative district populations deviate by hundreds of residents, for example.

Petitioners also attempt to distinguish *Tennant v. Jefferson Cnty. Comm'n*, 567 U.S. 758 (2012), arguing that the population deviation deemed acceptable in that case was due to West Virginia's state constitutional requirement that congressional districts keep counties whole, which stands in contrast to the Wisconsin Constitution's silence

on the issue and allegedly renders Wisconsin's Congressional apportionment devoid of any "flexibility for 'some legitimate state objective.'" *See* Petitioners' Memorandum in Support of their Petition for an Original Action at 17–18 & n.6. But again, the Wisconsin Constitution's silence on congressional apportionment does *not* automatically mean the current map was adopted without a legitimate basis.

As this Court said in *Johnson II*, "[i]f the law is clear that a two-person deviation (or more) is unacceptable, then nearly a third of states with more than one congressional district have apparently not gotten the message." *Johnson II*, 2022 WI 14, ¶ 23. (noting that 14 states all had greater than single-person deviations: "Arkansas (428), Georgia (2), Hawaii (691), Idaho (682), Iowa (76), Kansas (15), Kentucky (334), Louisiana (249), Mississippi (134), New Hampshire (4), Oregon (2), Texas (32), Washington (19), and West Virginia (4,871)"). Those numbers cited by the Supreme Court were all for districts adopted following the 2010 census. The same source shows that following the 2020 census, the number of states with greater than a one person deviation increased from 14 to 20: Arizona (2), Arkansas (710), California (2), Georgia (2), Hawaii (2,481), Indiana (2), Iowa (94), Louisiana (65), Massachusetts (2), Michigan (1,122), Mississippi (2), Nebraska (25), New Jersey (2), New Mexico (14), North Carolina (2), Pennsylvania (2), Rhode Island (1,223), Washington (27), West Virginia (1,582), and Wisconsin (2).[2]

What's more, on multiple occasions, the U.S. Supreme Court has recognized that "[t]he desire to minimize population shifts between districts is a valid, neutral state policy." *Tennant v. Jefferson County Comm'n*, 567 U.S. at 764–65 (citing *Turner v. Arkansas*, 784 F. Supp.

[2] *See* National Conference of State Legislatures, "2020 Redistricting Deviation Table," available at https://www.ncsl.org/elections-and-campaigns/2020-redistricting-deviation-table.

585, 588–89 (E.D. Ark. 1991), *summarily aff'd*, 504 U.S. 952 (1992)); *see also Karcher v. Daggett,* 462 U.S. 725, 740 (1983) ("preserving the cores of prior districts" is a legitimate basis for minor population deviations in congressional districts). And in Wisconsin redistricting disputes, courts have repeatedly recognized the importance of minimizing population shifts when correcting malapportionment. *E.g., Baumgart v. Wendelberger*, No. 01-C-0121, 2002 WL 34127471, at * 3 (E.D. Wis. May 30. 2002), *amended,* No. 01-C-0121, 2002 WL 34127473 (E.D. Wis. July 11, 2002) (Identifying "core retention" as an acceptable basis for "some deviation from perfect population equality" in the context of "Congressional redistricting plans.") (citation omitted); *Prosser v. Elections Bd.,* 793 F. Supp. 859, 866 (W.D. Wis. 1992); *Baldus v. Members of Wis. Gov't Accountability Bd.,* 849 F. Supp. 2d 840, 849–52 (E.D. Wis. 2012) (per curiam). Minimizing population shifts—i.e., "core retention"—is therefore a valid, long-acknowledged redistricting consideration that furthers a legitimate interest, and there is no basis for concluding the *Johnson II* Court erred in applying "core retention" to select the current map.

Petitioners would also prefer that Congressional redistricting prioritizes the minimization of county splits. *See* Petitioners' Memorandum in Support of their Petition for an Original Action at 25–29. But this objective, as a *constitutional* matter, applies only to districts for the *state* legislature. Again, the Wisconsin Constitution is silent as to any criteria that *must* be considered for congressional reapportionment, and core retention is a valid, longstanding redistricting principle. Therefore, Petitioners' disagreement with the *Johnson* Court's focus on core retention is *not a legal claim*, and mere disagreement with the *Johnson II* Court's rationale is plainly not enough to reopen *Johnson.*

II. The Elections Clause of the United States Constitution prevents a redraw by this Court of Wisconsin's Congressional maps.

Petitioners conspicuously claim that the *Johnson* Court violated *only* the equal protection guarantees of Article 1, Section 1, of the *Wisconsin* Constitution when it implemented the current Congressional maps. But the United States Constitution is *always* relevant to matters involving federal elections—including Congressional redistricting disputes—and the U.S. Supreme Court has recognized as much. *See Moore v. Harper*, 600 U.S. 1 (2023); *See also Republican Party of Pa. v. Degraffenreid*, 141 S. Ct. 732, 733 (2021) (Thomas, J., dissenting from denial of certiorari) ("For more than a century, this Court has recognized that the Constitution 'operat[es] as a limitation upon the State in respect of any attempt to circumscribe the legislative power' to regulate federal elections.") (quoting *McPherson v. Blacker*, 146 U.S. 1, 25 (1892)).

Indeed, the U.S. Supreme Court has held that "[s]tate courts retain the authority to apply state constitutional restraints when legislatures act under the power conferred upon them by the Elections Clause… *[as long as] state courts [do] not so exceed the bounds of ordinary judicial review as to unconstitutionally intrude upon the role specifically reserved to state legislatures*" by the Elections Clause. *Moore,* 600 U.S. at 37 (emphasis added). Therefore, by focusing on and applying "core retention" as part of a necessary remedial process following the 2020 census, the *Johnson* Court stayed within the bounds of ordinary judicial review. *See Johnson II,* 2022 WI 14, ¶¶ 7, 11.

In a footnote, Petitioners try to evade this clear U.S. Constitutional problem by claiming that reopening *Johnson II* would not fall within the U.S. Supreme Court's warning not to "unconstitutionally intrude upon the role" of the Wisconsin Legislature. *See* Petitioners' Memorandum in Support of their Petition for an Original Action at 25, n.14. But this is

not a serious argument. The Petitioners ask this Court to announce a new and previously undetected limitation on Congressional redistricting that is more onerous than that imposed by the federal equal protection clause without explaining why the state equal protection guarantee would find this one stray voter dispositive. Moreover, Petitioners' ultimate "ask" is for this Court to go far beyond remedying any alleged constitutional violation by re-drawing the maps it already adopted, this time with partisan objectives in mind. It asks this Court to make political judgments about what the projected partisan outcomes of Congressional races "should" be. Such an undertaking— generally accompanied by claims of gerrymandering that are neither formally asserted by Petitioners nor litigated by this Court—go well beyond the remedial task faced by a court asked to reapportion districts.

For congressional districts, that is a matter left to state legislatures. Accepting this Petition would almost certainly exceed "the bounds of ordinary judicial review" in a way that violates the federal Constitution, just as the U.S. Supreme Court warned state courts in *Moore*. *See* 600 U.S. at 37 (2023).

Again, the *Johnson* Court exercised appropriate judicial restraint by fixing only the limited constitutional violation it found with the previous district maps. *Johnson II,* 2022 WI 14, ¶¶ 11, 13–25. This approach reflected a well-recognized rule regarding the proper role of the judiciary, and Petitioners cannot reasonably argue otherwise. *E.g., Serv. Emps. Int'l Union Loc. 1 v. Vos*, 2020 WI 67, ¶ 47, 393 Wis. 2d 38, 946 N.W.2d 35 ("It goes to the appropriate reach of the judicial power to say what the law is, and to craft a remedy appropriately tailored to any constitutional violation."); *State ex rel. Memmel v. Mundy*, 75 Wis. 2d 276, 288–89, 249 N.W.2d 573 (1977) ("The extent of an equitable remedy is determined by and may not properly exceed the effect of the constitutional violation.").

Indeed, this Court's actions in *Clarke* (i.e., reinterpreting the meaning of "contiguous territory" and forcing a redraw of Wisconsin's *state* legislative maps) are not so easily repeated in the context of congressional apportionment *because of* the Elections Clause. Unlike *Clarke*, seats in the United States House of Representatives are at stake, which *necessarily* presents a federal issue here. Although Petitioners wish to keep this action rooted only in Wisconsin law, federal law invariably applies, and any "redraw" ordered by this Court will have a federal impact.

III. Reopening *Johnson* would violate due process.

"A fair trial in a fair tribunal is a basic requirement of due process," *In re Murchison*, 349 U.S. 133, 136 (1955); *see also Rogers v. Tennessee*, 532 U.S. 451, 462, 467 (2001) (the due process clause requires "fundamental fairness" and protects against "unfair and arbitrary judicial action."); *Moore v. Harper*, 600 U.S. 1, 37 (2023). Several due process concerns are present here.

First, this Court rejected a request to re-draw the current Congressional maps just one year ago.[3] And as explained throughout this brief, the current Congressional map was already, *explicitly* deemed compliant with all state and federal laws. *Johnson II*, 2022 WI 14, ¶ 25. Given that this Court already declined to revisit the current Congressional maps, due process cautions against granting this Petition. In addition, accepting this Petition would intrude on the Legislature's right to dictate Congressional apportionment under the federal Elections Clause. This growing line of parties with the same interest filing a series of cases claiming to have "found something new' makes a mockery of

[3] *See* Wisconsin Supreme Court Order Denying Motion for Relief in *Johnson v. Wis. Elections Comm'n*, 21AP1450-OA, dated March 1, 2024, available at https://acefiling.wicourts.gov/document/eFiled/2021AP001450/772761

judicial finality and raises grave questions about the relationship between judicial elections and the law.

Furthermore, given the nature of the most recent Wisconsin Supreme Court elections, Justice Protasiewicz and Justice-Elect Crawford's participation in this action would also violate due process. Both of their Supreme Court campaigns were hyper-partisan and expensive, totaling approximately $56 million[4] and $100 million,[5] respectively. Both campaigns also contained claims about the fairness of Wisconsin's Congressional districts and/or promises that Wisconsin's Congressional Districts would be redrawn.[6] Accordingly, this action (if accepted) requires the recusal of Justice Protasiewicz and Justice-Elect Crawford to ensure that all participants receive their due process right

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[4] *See* WisPolitics, *WisPolitics Tracks $56 Million in Spending on Wisconsin Supreme Court Race*, (July 19, 2023) https://www.wispolitics.com/2023/wispolitics-tracks-56-million-in-spending-on-wisconsin-supreme-court-race/#:~:text=WisPolitics%20has%20tracked%20more%20than,first%20time%20in%2015%20years;

[5] Tom O'Connor, *Record $100M spent on Wisconsin Supreme Court race raises concerns over judicial independence*, Wisconsin Examiner, (May 12, 2025), https://wisconsinexaminer.com/2025/05/12/record-100m-spent-on-wisconsin-supreme-court-race-raises-concerns-over-judicial-independence/

[6] *See* Lawrence Andrea, *Supreme Court race puts spotlight on congressional maps as GOP files complaint against Crawford*, Milwaukee Journal Sentinel, (February 26, 2025), available at https://www.jsonline.com/story/news/politics/elections/2025/02/26/gop-files-complaint-against-susan-crawford-on-congressional-maps-issue/80273638007/; Alison Dirr and Daniel Bice, *Hakeem Jeffries says a Crawford victory could lead to congressional maps better for Democrats*, (March 25, 2025), available at https://www.jsonline.com/story/news/politics/elections/2025/02/26/gop-files-complaint-against-susan-crawford-on-congressional-maps-issue/80273638007/; Channel 3000 / News 3 Now, *Wisconsin Supreme Court debate presented by News 3 Now and WisPolitics,* at 29:20-30:10, YouTube, https://www.youtube.com/watch?v=cUlapkeqyzI (Now-Justice Protasiewicz stating, with regard to Wisconsin's Congressional maps: "You look at Congress… we have eight seats, six are red, two are blue, in a battleground state, so we know something's wrong.").

to a "fair trial in a fair tribunal." *In re Murchison*, 349 U.S. at 136.[7] That Justice Protasiewicz declined to participate in deciding whether to grant the Hunter Intervenors' motion for reconsideration in *Johnson* underscores this point.[8]

IV. Redrawing the existing Congressional maps would not result in greater equality.

That is because of the numerous population shifts that have occurred since the 2020 census and the absence of adequately updated data.

The United States Supreme Court has acknowledged that "any" redistricting standard "involves a certain artificiality" because "even the census data are not perfect" and "population counts for particular localities are outdated long before they are completed." *Karcher v. Daggett*, 462 U.S. 725, 732 (1983). Courts allow this fiction because there is no other way to do it. But to extend that fiction of accuracy to 5 years after the census was taken and to a time after congressional elections have been held is to turn a necessary, temporary fiction into a total farce.[9]

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[7] Furthermore, in *Caperton v. Massey*, the United States Supreme Court concluded that "there is a serious risk of actual bias … when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising funds or directing the judge's election campaign when the case was pending or imminent." 556 U.S. 868, 876 (2009). Although it is currently unclear who all the parties to this action will be if this Court grants the Petition, *Amici* contend that the participation of Justice Protasiewicz and Justice-Elect Crawford presents an additional, potential due process violation under *Caperton*.

[8] *See supra*, n. 3.

[9] Petitioners claim it is "irrelevant that Wisconsin's population has undoubtedly shifted since the 2020 Census." *See* Petitioners' Memorandum in Support of their Petition for an Original Action at 22, n. 12. However, the main case they cite,

This is particularly so when the constitutional flaw to be remedied is population inequality. Here, our practical reliance on the 2020 census is being challenged because of one voter creating a two-voter discrepancy between District 3 and three other districts. After five years, there is no way that use of this 2020 data will result in a greater degree of equality. One could use updated American Community Survey data, but that data is only an estimate, not the enumeration that is necessary to address single-digit deviations among individual congressional districts.

Even if this Court were to hold that it is unconstitutional to have one person too many in one of Wisconsin's multiple congressional districts (and *amici* are unaware of any court that have ever held that),[10] any new map based on now hopelessly outdated data would make all voters in the state worse off. No voter could be confident that they would be in a congressional district that has *ever* had an equal population to any other congressional district in the state. The infinitesimal increase in equality would be swamped by population challenges, the absence of an enumeration, and the unavailability of the block-level data required to obtain a deviation of only one voter among districts.

Put another way, there is absolutely no way to know whether any maps this Court could ultimately impose *better* reflects the one person, one vote ideal than the current maps—in fact, any newly drawn maps based on the 2020 census data could, and almost certainly would, be *worse*. Imposing new maps under those circumstances would violate the

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League of United Latin American Citizens v. Perry, 548 U.S. 399, 421 (2006), involved a dispute about mid-decade redistricting enacted by the Texas *state legislature—not* mid-decade redistricting imposed by the Court. And in any event, the fact that redistricting is *always* based on a legal fiction cautions against judicial action under the current circumstances.

[10] In justifying the population deviation in the current maps, the *Johnson II* court stated, "We know of no case in which a court has struck down a map based on a two-person deviation." 2022 WI 14, ¶ 23.

"one person, one vote" rights of Wisconsin voters, including *amici*. *See Reynolds v. Sims,* 377 U.S. 533, 568 (1964). Under these circumstances redrawing the maps on the grounds urged by the Petitioners does not even provide the cover of a fig leaf on what is a blatant political ploy. Petitioners propose to use a one allegedly misplaced voter to draw new districts that will have greater deviation from equality than the challenged maps. Their goal is not to remedy malapportionment. Their goal is a political result.

V. This Court should not permit Petitioners to engage in partisan gamesmanship.

Petitioners' request that this Court "consider partisan impact" is another reason why the Petition should be denied. *See* Petitioners' Memorandum in Support of their Petition for an Original Action at 31. The United States Supreme Court has unequivocally held that claims of partisan gerrymandering are nonjusticiable because such claims are "political questions" that cannot be resolved without a "plausible grant of authority in the Constitution" or any "legal standards to limit and direct their decisions." *Rucho v. Common Cause*, 588 U.S. 684, 718 (2019); *see also id*. at 734 (Kagan J., dissenting) ("Judges should not be apportioning political power based on their own vision of electoral fairness, whether proportional representation or any other.") Even if this Court is inclined to reopen *Johnson*, it does not have authority "to allocate political power and influence" based on its "own vision of electoral fairness." *Id.* at 721 (majority op.), 734 (Kagan, J., dissenting). *See also Upham v. Seamon*, 456 U.S. 37, 42–43 (1982); *Whitcomb v. Chavis*, 403 U.S. 124, 161 (1971); *Baldus,* 849 F. Supp. 2d at 853–54 (E.D. Wis. 2012) (declining to evaluate the merits of a partisan gerrymandering claim in the context of a Wisconsin congressional redistricting dispute).

Much like the United States Constitution, nothing in the Wisconsin Constitution (or Wisconsin law more generally) addresses "partisan fairness" or dictates how "partisan gerrymandering" claims are to be evaluated, let alone remedied. The legislature has specified single member geographic districts. This necessarily means that the outcome of these district elections might not match the statewide distribution of votes for a particular party. Setting that—or something like it—as the standard would violate the legislature's choice and, therefore, the United States Constitution. [11] [12]

CONCLUSION

The Petition for an Original Action should be denied.

Dated: May 30, 2025.

Respectfully submitted,

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[11] Because the state constitution also specifies single member geographic districts, there cannot be any state constitutional principle setting such proportionality as a standard.

[12] Because of the impact this action could have on them, *amici* would seek to intervene as full parties should the Petition for an Original Action be granted.

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b),(bm) and (c), as modified by this Court's May 15, 2025 Order, for a brief produced with a proportional serif font. The length of this brief is 4,313 words.

Dated: May 30, 2025.

Electronically signed by Lucas T. Vebber
LUCAS T. VEBBER