STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

Elizabeth Bothfeld, Jo Ellen Burke, Mary Collins, Charlene Gaebler-Uhing, Kathleen Gilmore, Paul Hayes, Sally Huck, Thomas Kloosterboer, Elizabeth Ludeman, Gregory St Onge, and Linda Weaver,

Plaintiffs,

Case No. 2025-CV-2432

v.

Wisconsin Elections Commission, Marge Bostelmann, Ann S. Jacobs, Don Millis, Robert F. Spindell, Jr., Carrie Riepl, Mark L. Thomsen and Meagan Wolfe,

Defendants.

BRIEF IN SUPPORT OF MOTION OF BILLIE JOHNSON, CHRIS GOEBEL, AARON GUENTHER, CHARLES HANNA, TIM HIGGINS, LOU KOWIESKI, CHRIS MULLER, ERIC O'KEEFE, CRAIG ROSAND, RUTH STRECK AND RONALD ZAHN TO INTERVENE AS DEFENDANTS

INTRODUCTION

This action is the latest in a several-years-long attempt to redraw Wisconsin's Congressional district lines by arguing that they amount to a "partisan gerrymander." Those Congressional District lines were adopted in the original *Johnson* litigation and movants here include several original petitioners from that case and voters from every Congressional district. Movants now seek to once again defend those maps from Plaintiffs' unfounded lawsuit.

As explained herein, Movants meet all of the requirements for intervention of right. In the alternative, they seek and should be granted permissive intervention in this case.

BACKGROUND

Plaintiffs filed this action in the Dane County Circuit Court on July 21, 2025. (Dkt. 9). On July 22, 2025, the Dane County Clerk of Courts notified the Supreme Court of the filing and informed the court that an action was filed under 801.50(4m) and requesting that the Court appoint a panel consisting of 3 circuit court judges to hear the case.

On July 23, 2025, Proposed Intervenor Congressmen and Individual Voters filed a letter with the Wisconsin Supreme Court requesting briefing on whether or not this was an action requiring a three-judge panel to be appointed under state law or not. On September 25, 2025, the Supreme Court ordered briefing on whether the complaint filed in this action constitutes an action to challenge the apportionment of a congressional or state legislative district under Wis. Stat. § 801.50(4m). *Bothfeld, et al. v. Wis. Elections Comm'n, et al.*, No. 2025XX1438 (Wis. Sept. 25, 2025) (order). Movants filed a non-party brief in response to that order, which explained why this action was meritless and should be dismissed. *Billie Johnson, et al.*, *Nonparty Brief in Support of Dismissal*, *Bothfeld, et al. v. Wisc. Elections Comm'n, et al.*, No. 2025XX1438 (Wis. Oct. 9, 2025).

On November 25, 2025, the Wisconsin Supreme Court did appoint a three judge panel to hear this case (*Bothfeld, et al. v. Wis. Elections Comm'n, et al*., 2025

WI 53), and now, just a week later (which included the Thanksgiving holiday), Movants filed their motion to intervene in this action.

ARGUMENT

I. Movants are Entitled to Intervene as of Right.

Movants satisfy all four requirements to intervene as of right: (a) their motion is timely; (b) they have an interest sufficiently related to the subject of the action; (c) disposition of the action may, as a practical matter, impair or impede their ability to protect that interest; and (d) the existing parties do not adequately represent Movants' interests. *Helgeland v. Wisconsin Municipalities*, 2008 WI 9, ¶ 38, 307 Wis. 2d 1, 745 N.W.2d 1 (footnotes omitted); Wis. Stat. § 803.09(1). Both Wisconsin and federal case law may be used to apply these four factors because § 803.09(1) is modeled after Federal Rule of Civil Procedure 24(a)(2). *Helgeland*, 2008 WI 9, ¶ 37.

A. This Motion is Timely.

This motion is timely. A motion is considered timely if "in view of all the circumstances the proposed intervenor acted promptly." *State ex rel. Bilder v. Delavan Twp.*, 112 Wis. 2d 539, 550, 334 N.W.2d 252 (1983). This action was first filed on July 21, 2025. On July 22, 2025, notice was given to the Wisconsin Supreme Court that this action was filed, and a three-judge panel was requested. An answer was filed by the existing Defendants on August 25, 2025. Dkt. 29.

Eleven days later, on September 5, 2025, Plaintiffs filed a Motion for Judgment on the Pleadings. Dkt. 43. On September 16, 2025, the Defendants filed a response to that motion objecting to the motion and a briefing schedule, because no panel had yet been appointed. Dkt. 48:2. On September 23, 2025, Judge Genovese, whose court the

case was assigned to while the Supreme Court's decision on whether to appoint a three-judge panel was pending, entered an order denying the request for a briefing schedule, stating that the Supreme Court had not yet appointed a panel and any action before then would "contravene the statutory scheme developed in these cases." Dkt. 48.

On September 25, 2025, the Wisconsin Supreme Court ordered briefing on whether a three-judge panel should be appointed in this matter. *Bothfeld , et al. v. Wis. Elections Comm'n, et al.*, No. 2025XX1438 (Wis. Sept. 25, 2025) (order). Movants filed a nonparty brief in response to that order. Among other things, that brief argued that the complaint was meritless and should be dismissed. *Billie Johnson, et al.*, *Nonparty Brief in Support of Dismissal*, *Bothfeld, et al. v. Wisconsin Elections Comm'n, et al.*, No. 2025XX1438 (Wis. Oct. 9, 2025). In moving to file that brief, Movants also explained they had been following the case and "if [the] Court allows it to proceed, they intend to move to intervene in the circuit court." *Billie Johnson, et al.*, *Motion for Leave to File a Nonparty Brief*, *Bothfeld, et al. v. Wis. Elections Comm'n, et al.*, No. 2025XX1438 (Wis. Oct. 9, 2025). The Wisconsin Supreme Court issued an order on November 25, 2025, appointing a three-judge panel to hear these claims and setting the venue for this case in Dane County. *Bothfeld, et al. v. Wis. Elections Comm'n, et al*., 2025 WI 53. Movants sought intervention within one week after that order, which included the Thanksgiving holiday.

As a result, this motion is timely.

B. Movants Have Multiple Interests in this Action.

Movants have multiple, independently sufficient interests in this action. Wisconsin courts assess whether a movant's interests are "sufficiently related" to an action by employing a "pragmatic, policy-based approach" that views the asserted interest[s] "practically, rather than technically." *Bilder,* 112 Wis. 2d at 547–48. In other words, judicial efficiency matters, and a movant's asserted interests function "primarily [as] a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with … due process." *Id.* at 548–49 (citation omitted). While there must be some "sense in which the interest is 'of such direct and immediate character that the intervenor will either gain or lose by the direct operation of the judgment,'" *Helgeland,* 2008 WI 9, ¶ 45, the movant's interest does not have to be "'judicially enforceable' in a separate proceeding." *Wolff v. Town of Jamestown*, 229 Wis. 2d 738, 744, 601 N.W.2d 301 (Ct. App. 1999). Additionally, an interest that is "special, personal, or unique" weighs in favor of intervention. *Helgeland,* 2008 WI 9, ¶¶ 116.

Movants assert multiple, sufficiently related interests in this action: (1) as voters, Movants have an interest in maintaining their current district lines, and in not being thrust into new districts in the middle of a decade after several elections under the current district lines; (2) Movants have an interest in maintaining their single-member geographic Congressional districts which are not tied to any statewide electoral results; and (3) several Movants in particular have an interest in defending the judgment they obtained in *Johnson*, their prior litigation, which is being attacked in this action.

First, as Wisconsin voters who both live in Wisconsin and vote in Wisconsin Congressional elections, Movants are subject to the existing apportionment maps, have voted under those maps for the past two electoral cycles, and would be directly affected if this Court were to replace those maps with a new one. Goebel Decl. ¶¶ 2–4; Johnson Decl. ¶¶ 2–4; O'Keefe Decl. ¶¶ 2–4; Muller Decl. ¶¶ 2–4; Hanna Decl. ¶¶ 2–4; Higgins Decl. ¶¶ 2-4; Kowieski Decl. ¶¶ 2–4; Guenther Decl. ¶¶ 2–4; Streck Decl. ¶¶ 2–4; Rosand Decl. ¶¶ 2–4; Zahn Decl. ¶¶ 2–4. Movants have all spent time learning who their representatives and the boundaries of their districts. Goebel Decl. ¶ 5; Johnson Decl. ¶ 5; O'Keefe Decl. ¶ 5; Muller Decl. ¶ 5; Hanna Decl. ¶ 5; Higgins Decl. ¶ 5; Kowieski Decl. ¶ 5; Guenther Decl. ¶ 5; Streck Decl. ¶ 5; Rosand Decl. ¶ 5; Zahn Decl. ¶ 5. And as the United States Supreme Court has stated, "[c]ourt orders affecting elections, *especially conflicting orders*, can themselves result in voter confusion and consequent incentive to remain away from the polls." *Purcell v. Gonzalez,* 549 U.S. 1, 4–5 (2006) (emphasis added).

Movants believe the existing maps are lawful and do not want to be placed in different districts based upon the invalid criteria proposed by Plaintiffs in this case in the middle of a decade. Goebel Decl. ¶¶ 6–7; Johnson Decl. ¶¶ 6–7; O'Keefe Decl. ¶¶ 6–7; Muller Decl. ¶¶ 6–7; Hanna Decl. ¶¶ 6–7; Higgins Decl. ¶¶ 6–7; Kowieski Decl. ¶¶ 6–7; Guenther Decl. ¶¶ 6–7; Streck Decl. ¶¶ 6–7; Rosand Decl. ¶¶ 6–7; Zahn Decl. ¶¶ 6–7.

As voters, Movants are in the same posture as Plaintiffs. If Plaintiffs have standing to challenge the existing Congressional maps, then Movants necessarily

have an interest in intervening to defend the existing maps from their attack. If this Court were to permit some voters to challenge the existing maps while denying other voters the ability to intervene to defend those maps, it would raise serious questions of fairness, impartiality, and due process. *See, e.g.*, *LaChance v. Erickson*, 522 U.S. 262, 266 (1998) (the "core" of procedural due process is a "meaningful opportunity to be heard").[1]

Given that there are conflicting, mirror-image interests on either side in any redistricting case, like there are here, courts regularly allow multiple parties—including individuals, voters, and voter groups—to intervene. Indeed, in *Johnson*, the Supreme Court "granted intervention to all parties that sought it," recognizing the broad-reaching effects its decision would have. *Johnson II*, 2022 WI 14, ¶ 2. The Wisconsin Supreme Court did the same in *Clarke v. Wisconsin Elections Commission*, 2023 WI 79, ¶ 8 (noting that the court "permitted several parties to intervene"); *See also*, *Order* at 2, *Clarke v. Wisconsin Elections Commission*, No. 2023AP1399-OA (Wis., October 12, 2023) (granting "all intervention motions.").

Voters and voter groups have been permitted to intervene in many other redistricting cases as well. *See Wisconsin State AFL-CIO v. Elections Bd.*, 543 F. Supp. 630 (E.D. Wis. 1982) (the League of Women Voters and several individuals were among those permitted to intervene in redistricting litigation following the 1980

[1] Moreover, as the United States Supreme Court has recognized, there are no judicially discernible standards for assessing claims that maps are "too" partisan or "just right." *Rucho v. Common Cause*, 139 S. Ct. 2484, 2497 (2019). Adopting new maps without discernible legal standards would itself violate due process.

decennial census); *Prosser v. Elections Bd.*, 793 F. Supp. 859 (W.D. Wis. 1992) (per curiam) (several individuals were permitted to participate as intervening defendants in redistricting litigation following the 1990 decennial census); *Baldus v. Members of Wisconsin Gov't Accountability Bd.*, 849 F. Supp. 2d 840, 847 (E.D. Wis. 2012) (per curiam) (this consolidated action was initiated by a group of individual voters and Voces de la Frontera, Inc., and members of both political parties were permitted to intervene). In each case, a variety of parties including individuals, voters, and voter groups who disagreed with the arguments of, and outcome sought by, the original plaintiffs were permitted to intervene in order to protect their interests.

Moreover, laches also prevents this Court from issuing the relief that Plaintiffs have asked for, and the rationale for that doctrine reinforces Movants' interest here. As the Supreme Court has noted, "[e]xtreme diligence and promptness are required on election-related matters." *Trump v. Biden*, 2020 WI 91, ¶ 11, 394 Wis. 2d 629, 951 N.W.2d 568 (citation omitted). While *Trump* involved election administration, laches also applies in redistricting cases and has sometimes barred redistricting claims entirely, because "voters have come to know their districts and candidates, and will be confused by change," and because Court-ordered redistricting that falls too close in time to mandatory, census-based redistricting can result in "voter confusion, instability, dislocation, and financial and logistical burden on the state." *Fouts v. Harris,* 88 F. Supp. 2d 1351, 1354 (S.D. Fla. 1999), *aff'd sub nom. Chandler v. Harris*, 529 U.S. 1084 (2000) (citing *White v. Daniel,* 909 F.2d 99, 104 (4th Cir. 1990)); *see also Knox v. Milwaukee Cnty. Bd. of Elections Comm'rs*, 581 F. Supp. 399, 405, 408

(E.D. Wis. 1984) (applying laches and denying motion for a preliminary injunction in a Milwaukee County redistricting lawsuit). Indeed, Plaintiffs here claim that the alleged infirmity in the districts goes back even further than the *Johnson* Court's adoption of them—they argue these districts "perpetuate" the "partisan bias" Congressional map from the prior decade adopted by 2011 Wisconsin Act 44 ("Act 44"). Compl., Dkt 9 at ¶51.

And, unlike in *Clarke*, where the challengers "ran out of time" to bring their claims before the 2022 elections and so it was not "unreasonable delay" to bring them prior to the 2024 elections, here Plaintiffs waited until after those elections to bring this action. Laches applies here, and for related reasons, Movants' interest in maintaining the current Congressional districts is sufficient to intervene.

Second, Movants also all have an interest in maintaining their single-member geographic Congressional districts which are required by federal law. 2 U.S.C. § 2c. Federal law requires states to have a separate geographic district for each congressional seat in the state.

Here again, Plaintiffs legal claims support Movants' interests in this case. Plaintiffs are asking the Court to strike the current maps and instead impose a new map under a novel question of law that has been directly rejected by our Wisconsin Supreme Court. Plaintiffs argue the current maps are "contrary to Wisconsin precedent, constitutional principles, and the judiciary's institutional duty and constitutional charge." Compl., Dkt. 9 at ¶82. But the Wisconsin constitution says nothing of partisan gerrymandering, and the Wisconsin Supreme Court has already

held that these exact provisions cited by Plaintiffs (sections 1, 3, 4, and 22 of Article I) do not " say [any]thing about partisan gerrymandering" or impose any "limits on redistricting." *Johnson I*, 2021 WI 87, ¶¶ 53–63. As the Wisconsin Supreme Court noted, the text of these provisions does not mention districts, redistricting, or gerrymandering (of any flavor). *Id*. ¶¶ 55–58, 62. Instead, the "only Wisconsin constitutional limits" on redistricting are found in "Article IV, Sections 3, 4, and 5." *Id.* Put differently, "Article IV [is] the exclusive repository of state constitutional limits on redistricting." *Id.* 63. "To construe Article I, Sections 1, 3, 4, or 22 as a reservoir of additional requirements would violate axiomatic principles of interpretation, … while plunging this court into the political thicket lurking beyond its constitutional boundaries." *Id.* ¶ 63. While *Clarke* overruled parts of *Johnson I*, it did not overrule this part. 2023 WI 79, ¶¶ 24 (overruling any "passing statements about the contiguity requirements), 63 (overruling "any portions … that mandate a least change approach"). Movants' interest is in maintaining these constitutional principles, and that interest is under attack by Plaintiffs' suit.

Further, Plaintiffs' complaint does not offer any workable standard, and Movants have an interest in participating in that process, should this case reach the remedy stage. Plaintiffs briefly invoke four supposedly "objective" measures—"the efficiency gap," "partisan bias" score, the "mean-median difference," and the "declination score"—but how these are supposed to interact, or where to draw the line, is anyone's guess. Compl., Dkt. 9 at ¶69. But again, none of this has any textual basis in the Wisconsin Constitution. Instead, to adopt the maps that Plaintiffs seek,

a Court would need to change district boundaries in a way that effectively tracks a statewide partisan vote share. But geographic districts (which again, are required by federal law) are inherently local and therefore do not, and cannot, mirror the statewide vote, as Plaintiffs urge. The idea that statewide vote share should be applied to single-member geographic districts is wrong for two reasons. First, it wrongly assumes that partisan voters are evenly distributed throughout the State of Wisconsin. Second, it wrongly assumes that voters' partisan preference is an immutable characteristic that could be projected forward.

To elaborate on the first: federal law requires Representatives to be elected by single member geographic districts. In doing so, federal law ensures that Congressional elections are localized and tied to specific geographic areas, rather than statewide elections. In this way, federal law protects local interests, rather than guarantee any particular partisan outcome based on the statewide vote totals in any given state.

Regarding the second, candidates and issues matter in elections. Plaintiffs here effectively argue that we all must pretend that candidates and issues do not matter, and instead adhere only to blind partisanship.

But this approach ignores federal law and would instead impose a *de facto* proportional representation system on the people of Wisconsin. Plaintiffs raise a state constitutional claim seeking to declare the current maps an unlawful partisan gerrymander. But this approach—treating Wisconsin's Congressional districts as interconnected—would subordinate the federal mandate for single-member

geographic districts and once again ask Wisconsin Courts to answer a political question absent any "'clear, manageable, and politically neutral'" standard found anywhere in Wisconsin law. *Rucho v. Common Cause*, 588 U.S. 684, 703 (2019) (quoted source omitted). Indeed, Petitioners' goal here is nothing more than "a desire for proportional representation" under a different name. *Id.* at 704. Plaintiffs' goal, therefore, is to undermine federal law and, if successful their efforts would put Wisconsin's district maps in direct conflict with 2 U.S.C. § 2c and U.S. Supreme Court precedent on questions of partisan fairness.

Movants have an interest in ensuring Wisconsin continues to comply with federal law, including the mandate of single-member geographic districts.

Third, Movants have an interest in defending the judgment they obtained in *Johnson*. After a lengthy litigation process, the Supreme Court adopted congressional maps drawn by the Governor because the Legislative and Executive branches could not agree on a map. *See Johnson I,* 2021 WI 87*,* ¶ 18 (main op.)*; Johnson II*, 2022 WI 14, ¶ 3 (main op.); *Johnson III*, 2022 WI 19, ¶ 155 (Hagedorn, J., concurring). Several of the movants here were also parties in the *Johnson* litigation. Johnson Decl. ¶9; O'Keefe Decl. ¶9; Zahn Decl. ¶9.

The *Johnson* Movants, as prior prevailing Plaintiffs, and all Movants collectively, as Wisconsin voters, desire to argue that the principles articulated, accepted, and applied in selecting the Congressional maps in *Johnson* should not be altered.

Other courts have allowed the prevailing parties in prior litigation to intervene to defend their judgment from a collateral attack in a subsequent case. *See McQuilken v. A & R Dev. Corp.*, 510 F. Supp. 797, 803 (E.D. Pa. 1981) (holding that the plaintiff in a prior case could intervene to "protect their legal interest in obtaining full compliance with the judgment" they won in prior litigation). In a similar vein, multiple courts have held that a party who played an instrumental role in achieving some policy measure has an interest in intervening to defend that result from subsequent collateral attack. *See*, *e.g.*, *Idaho Farm Bureau Fed'n v. Babbitt*, 58 F.3d 1392, 1397 (9th Cir. 1995) ("A public interest group is entitled as a matter of right to intervene in an action challenging the legality of a measure it has supported."); *Mausolf v. Babbit,* 85 F.3d 1295, 1296, 1302 (8th Cir. 1996) (granting intervention as of right to conservation groups that had consistently engaged in prior proceedings to defend challenged snowmobile restrictions at a national park).

This action directly challenges the judgment in *Johnson*—adopting the maps that are in place today and have been for two election cycles. The *Johnson* Movants spent significant time and energy litigating *Johnson* and have an interest in defending the judgment and holdings they obtained in that case from collateral attack in this action.

C. Disposition of this Action May, as a Practical Matter, Impair or Impede Movants' Ability to Protect Their Interests.

Disposition of this action in favor of Plaintiffs will, as a practical matter, impede Movants' ability to protect their stated interests. As with the interest component, Wisconsin courts assess this factor by taking a "pragmatic approach" that

"focus[es] on the facts of [the] case and the policies underlying the intervention statute." *Helgeland,* 2008 WI 9, ¶ 79. In addition, two particular factors are considered: (1) "the extent to which an adverse holding in the action would apply to the movant's particular circumstances" and (2) "the extent to which the action into which the movant seeks to intervene will result in a novel holding of law." *Id.* ¶¶ 80–81.

A holding for Plaintiffs will directly apply to Movants' circumstances by—at the very least—subjecting them to redrawn maps for their Congressional districts, which would be drawn based upon partisan, statewide vote totals. And, with respect to the *Johnson* Movants in particular, it will take away the judgment they won just a few years ago. Moreover, this Court attempting to reverse the Supreme Court's own decision from a few years ago and impose new maps under a new process, would certainly qualify as a novel holding of law, and raises significant questions of judicial authority. Therefore, disposition of the action in favor of Plaintiffs would impede Movants' ability to protect their interests.

D. Existing Parties Do Not Adequately Represent Movants' Interests.

The existing parties in this case do not adequately represent Movants' interests. While adequate representation is presumed when a "movant and an existing party have the same ultimate objective" or when "the putative representative is a governmental body or officer charged by law with representing the interests of the absentee," these presumptions are not applicable here, and even if they were, they are rebuttable. *Helgeland,* 2008 WI 9, ¶¶ 90–91.

WEC has decided that it will take no position on this case and is not going to actively litigate these claims (see e.g., WEC's answer, Dkt. 29). But even if WEC was going to litigate this case, Movants have a unique interest as voters that is not represented by any of the existing parties. WEC was not a successful plaintiff in the *Johnson* case. WEC is also not a voter.

Finally, although Plaintiffs are purportedly voters, their interests and position on the merits of this action are directly at odds with Movants' interests and position. Therefore, Movants' interests are unique.

II. Alternatively, Movants Should be Granted Permissive Intervention.

Alternatively, this Court should grant Movants' motion on a permissive basis. Permissive intervention may be granted if Movants satisfy three elements: (1) filing a timely motion; (2) asserting a claim or defense that has a question of law or fact in common with the main action; and (3) Movants' involvement will not "unduly delay or prejudice the adjudication of the rights of the original parties." *Helgeland,* 2008 WI 9, ¶¶119–20; Wis. Stat. § 803.09(2). Movants satisfy all three elements.

As explained above, Movants have acted promptly in responding to the Supreme Court's order appointing a three-judge panel in this matter and filed this intervention motion within a week of the Supreme Court doing so. Movants also assert defenses that have questions of law or fact in common with this action because they desire to defend *Johnson* and disagree with the arguments made and outcomes sought by Plaintiffs. In addition, Movants' involvement will not "unduly delay or prejudice the adjudication of the rights of the original parties." Movants commit to complying with all other relevant deadlines if this motion is granted.

Due to its underlying political nature, redistricting is always a contentious issue. Movants should be permitted to intervene in this action so that their views on this important matter can be properly heard and considered.

CONCLUSION

This Court should grant Movants' motion to intervene.

Dated: December 2, 2025

Respectfully Submitted,

WISCONSIN INSTITUTE
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Electronically signed by
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