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**No. 2023AP1412-OA**

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**IN THE SUPREME COURT OF WISCONSIN**

STEPHEN JOSEPH WRIGHT, GARY KRENZ, SARAH J. HAMILTON,  
JEAN-LUC THIFFEAULT, SOMESH JHA, JOANNE KANE, AND LEAH DUDLEY,  
*Petitioners,*

*v.*

WISCONSIN ELECTIONS COMMISSION; DON MILLIS, ROBERT F. SPINDELL, JR.,  
MARK L. THOMSEN, ANN S. JACOBS, MARGE BOSTELMANN, AND JOSEPH J.  
CZARNEZKI, 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.*

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**MEMORANDUM OF LAW IN SUPPORT OF  
THE WISCONSIN LEGISLATURE'S MOTION TO INTERVENE**

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## INTRODUCTION

When four voters challenged Wisconsin's electoral districts after the 2020 Census, this Court granted the Legislature's motion to intervene in that original action. The Citizen Mathematicians and Scientist Petitioners also intervened.<sup>1</sup> The Court ultimately adopted the Legislature's proposed Assembly and Senate maps. See *Johnson v. Wis. Elections Comm'n*, 2022 WI 19, 401 Wis. 2d 198, 972 N.W.2d 559 ("*Johnson III*").

Petitioners now ask the Court to take jurisdiction of a new original action raising the same arguments they already lost. They seek to undo the relief ordered by this Court in *Johnson*. But they do not name the Legislature as a party in their new case, nor do they name other parties from *Johnson*.<sup>2</sup>

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<sup>1</sup> See Clerk's Letter Order ("*Johnson* Intervention Order"), *Johnson v. Wis. Elections Comm'n*, No. 2021AP1450-OA (Oct. 14, 2021) (granting intervention for Petitioners Wright, Krenz, Hamilton, 715.255.0817, and Jha, identifying themselves collectively as the "Citizen Mathematicians and Scientists"); see also Mot. to Intervene, *Hunter v. Bostelmann*, No. 3:21-cv-512 (W.D. Wis.), ECF 65 (filed Sept. 20, 2021) (requesting intervention by Petitioners Kane and Dudley, along with other "Citizen Mathematicians and Scientists"); Order Denying Intervention and Inviting *Amicus* Participation, *id.*, ECF 103 (issued Oct. 6, 2021). Petitioners attach the same expert report already submitted in *Johnson* as part of their Petition here. See Pet. App. 250-83.

<sup>2</sup> Wisconsin law requires that, in actions seeking a declaratory judgment, "all persons shall be made parties who have or claim any interest which would be affected by the declaration." Wis. Stat. § 806.04(11). As the party that advanced the legislative maps ultimately adopted in *Johnson*, the Legislature necessarily has an interest that would be affected by the declaration Petitioners seek. Petitioners' failure to name the Legislature and the *Johnson* petitioners in their Petition is itself sufficient cause to deny the Petition.

The Wisconsin Legislature therefore moves to intervene as a Respondent to vindicate its interests and defend the relief obtained in *Johnson* should this Court grant the Petition.<sup>3</sup> Intervention would be warranted for three independent reasons.

*First*, the Legislature has a right to intervene to safeguard its institutional interests under Section 803.09(1). Wisconsin law provides that “anyone shall be permitted to intervene” when they have an interest in the subject of the action that will be impaired by the action’s disposition and that is not adequately protected by the existing parties. Wis. Stat. § 803.09(1). As the body that passed the map and proposed it as the remedy this Court ultimately adopted in *Johnson*, the Legislature has a unique interest in protecting the judgment it obtained. *Accord id.* § 806.04(11). Separately, as the political branch constitutionally charged with redistricting, the Legislature has an institutional interest in participating in litigation about limitations that the Constitution might (or might not) place on its constitutional role. And as the body that will be reconstituted by the relief

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<sup>3</sup> The Wisconsin Legislature has contemporaneously filed a recusal motion, requesting that Justice Janet Protasiewicz recuse from all aspects of this case including the consideration of this motion, as required by the U.S. Constitution’s Due Process Clause and Wis. Stat. §757.19.

Petitioners seek, the Legislature has an institutional interest in its lawful composition. The proposed original action will impair these unique legislative interests, which will not be adequately protected by the existing parties.

*Second*, the Legislature has a right to intervene under Section 803.09(2m). While the Court's judgment in *Johnson* is not itself a "statute" for purposes of Section 803.09(2m), Petitioners' challenge goes to the constitutionality of Wisconsin's 2011 redistricting statutes and the Court's decision in *Johnson* to take a "least changes" approach to those statutes. Petitioners renew rejected arguments about the construction of the Wisconsin Constitution and the Legislature's redistricting power, and their petition if granted would call into question the construction of state election laws. The Wisconsin Legislature may intervene as of right in these circumstances. *See id.* § 803.09(2m).

*Third*, the Legislature should be permitted to intervene under Section 803.09(2). The Legislature shares Respondents' defenses to Petitioners' claims, which directly implicate the same institutional interests described



above. The Legislature's prompt involvement will not prejudice the existing parties.

For all of these reasons, the Legislature respectfully requests that the Court grant its motion to intervene as a Respondent in this case.

### **BACKGROUND**

A. The Wisconsin Legislature is the bicameral legislative branch of Wisconsin's state government. Wis. Const. art. IV, § 1. It consists of an Assembly and a Senate. The Assembly has 99 districts, with Members elected every two years. *Id.* art. IV, § 4; Wis. Stat. § 4.001. The Senate has 33 districts, with Members serving four-year terms and elections alternating every two years between the even- and odd-numbered districts. Wis. Const. art. IV, § 5; Wis. Stat. § 4.001. Odd-numbered districts are up for election in 2026, and even-numbered districts are up for election in 2024. The Wisconsin Constitution specifically charges the Legislature with creating new legislative districts after each Census. Wis. Const. art. IV, § 3; *Johnson v. Wis. Elections Comm'n*, 2021 WI 87, ¶ 19, 399 Wis. 2d 623, 967 N.W.2d 469 ("*Johnson I*") ("[I]n our constitutional order [redistricting] remains the legislature's duty.").

**B.** This case challenges Wisconsin's existing state legislative districts. This Court adopted those districts in 2022, making minimal changes from existing legislative districts enacted in 2011 Wisconsin Act 43. *See Johnson III*, 2022 WI 19, ¶ 3. That case, like this one, was an original action by Wisconsin voters that challenged the existing legislative maps as malapportioned after the Governor vetoed the Legislature's 2021 redistricting legislation.

The Legislature moved to intervene in *Johnson* under Sections 803.09(1) and (2m) based on its institutional interests and the petitioners' challenge to the constitutionality of the existing maps. Mem. of Law ISO Mot. to Intervene by Wis. Legis. ("*Johnson* Legis. Intervention Mot."), *Johnson*, No. 2021AP1450-OA (Oct. 6, 2021). The Citizen Mathematicians and Scientists moved to intervene too, along with other interested voters. The Court granted all intervention motions. *See Johnson* Intervention Order, *supra*. (granting intervention for Petitioners Krenz, Hamilton, Wright, Thieffeault, and Jha).<sup>4</sup>

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<sup>4</sup> Meanwhile, Petitioners Wright, Thieffeault, Jha, Kane, and Dudley moved to intervene in related federal proceedings and were permitted to participate *as amici*. *See* Mot. to Intervene, *Hunter v. Bostelmann*, No. 3:21-cv-00512 (W.D. Wis.), ECF 65 (filed Sept. 20, 2021); Order Denying Intervention and Inviting *Amicus* Participation, *id.*, ECF 103 (issued Oct. 6, 2021).

After briefing by the parties and intervenors, this Court imposed legislative maps that had been submitted by the Governor, also an intervenor. *Johnson v. Wis. Elections Comm'n*, 2022 WI 14, ¶ 52, 400 Wis. 2d 626, 971 N.W.2d 402 (“*Johnson II*”). The Legislature appealed to the U.S. Supreme Court, which summarily reversed. *Wis. Legis. v. Wis. Elections Comm'n*, 142 S. Ct. 1245 (2022) (per curiam). On remand, this Court imposed the current legislative maps, which were the Legislature’s proposed remedy and also supported by the *Johnson* petitioners in that original action. *Johnson III*, 2022 WI 19, ¶ 73. Before proposing them as a remedy, the Legislature passed the maps by an overwhelming majority in both houses. 2021 Wis. Senate Bill 621.

This Court explained that the current legislative maps “comply with the Equal Protection Clause, along with all other applicable federal and state legal requirements.” *Johnson III*, 2022 WI 19, ¶¶ 3, 70. Among other reasons, the Court held that the maps “are compliant with Wisconsin’s equal apportionment requirements,” “sufficiently respect local government boundaries under the Wisconsin Constitution,” and are composed of districts that “are contiguous and sufficiently compact.” *Id.* ¶¶ 67, 69-70; *see*

*Johnson I*, 2021 WI 87, ¶ 36 (holding that when annexation results in municipal “island[s],” “the district containing detached portions of the municipality is legally contiguous even if the area around the island is part of a different district”).

C. More than a year after this Court adopted the existing legislative maps, and just days after a change in the Court’s membership, Petitioners filed their Petition asking this Court to take jurisdiction of an original action challenging the *Johnson* injunction. Petitioners are a group of Democratic Wisconsin voters. Pet. ¶1. Respondents are the Wisconsin Elections Commission, its Members and Administrator. *Id.* ¶¶19-22. Petitioners argue that the legislative maps this Court has already held to be constitutional violate the Wisconsin Constitution because they reflect extreme partisan gerrymandering and because “they are objectively inferior to other plans that were proposed to this Court,” *id.* ¶¶144-81, and because they violate the constitutional separation of powers, *id.* ¶¶182-90.

If the Court grants their Petition, Petitioners intend to ask the Court to declare “the senate and assembly district plans” unconstitutional and enjoin Respondents from using them to administer any future elections. *Id.*

at p.120. Petitioners will also for “the establishment of new senate and assembly redistricting plans[.]” *Id.* at p.121. And they ask for “an order providing for special senate elections in 2024, for two-year terms, in all odd-numbered senate districts.” *Id.*

If this Court grants the Petition, the Legislature—the party that advanced the maps this Court adopted in *Johnson* and the institutional body Petitioners seek to reconfigure and reconstitute—,must be permitted to intervene.

### ARGUMENT

As this Court explained two years ago in *Johnson*, “Wisconsin courts view intervention favorably as a tool for ‘disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.’” *Johnson* Intervention Order at 2 (quoting *Helgeland v. Wis. Municipalities*, 2008 WI 9, ¶ 38, 307 Wis. 2d 1, 745 N.W.2d 1). For the following three reasons, should the Court grant the Petition, the Legislature’s motion to intervene should be granted, as should any other motions by parties from the *Johnson* litigation.

**I. The Legislature May Intervene as of Right to Protect Its Institutional Interests That Are Directly Related to this Litigation.**

The Legislature satisfies the criteria for intervention as of right under Section 803.09(1). That statute allows parties to intervene to “protect a right that would not otherwise be protected in the litigation.” *City of Madison v. Wis. Emp. Rels. Comm’n*, 2000 WI 39, ¶ 11 n.8, 234 Wis. 2d 550, 610 N.W.2d 94. It provides that “anyone shall be permitted to intervene in an action when” four requirements are satisfied: (1) the motion to intervene is “timely”; (2) “the movant claims an interest relating to the property or transaction which is the subject of the action”; (3) “the movant is so situated that the disposition of the action may as a practical matter impair or impede the movant’s ability to protect that interest”; and (4) “the movant’s interest is [not] adequately represented by existing parties.” Wis. Stat. § 803.09(1) (emphasis added). Because the Legislature here satisfies “each of these four criteria,” it has “a right of intervention.” *Helgeland*, 2008 WI 9, ¶ 39.

**A. The Legislature’s motion to intervene is timely.**

Although there is “no precise formula to determine whether a motion to intervene is timely,” *State ex rel. Bilder v. Delavan Twp.*, 112 Wis. 2d 539, 550, 334 N.W.2d 252 (1983), this motion is timely by any measure. The

Legislature has “promptly” moved to intervene just weeks after the Petition was filed. *Bilder*, 112 Wis. 2d at 550. This is “prior to the commencement of the first hearing.” *Armada Broad., Inc. v. Stirn*, 183 Wis. 2d 463, 472, 516 N.W.2d 357 (1994). Intervention at this early stage will not “prejudice the original parties to the lawsuit.” *Bilder*, 112 Wis. 2d at 550.

**B. The Legislature has multiple interests relating to the subject of the proposed original action.**

The Legislature has multiple “interest[s] relating to the property or transaction which is the subject of the action.” Wis. Stat. § 803.09(1); see *Berger v. N.C. State Conference of the NAACP*, 142 S. Ct. 2191, 2203 (2022) (“[A] full consideration of the State’s practical interests may require the involvement of different voices with different perspectives.”).

*First*, the Legislature has an interest in defending the judgment it won as an intervenor in *Johnson*: an injunction selecting the legislative maps it passed out of both houses of the Legislature and later proposed in the *Johnson* original action. Petitioners in this case seek to undo the judgment in *Johnson*. They seek a declaration that the maps this Court imposed in *Johnson* are unconstitutional and that Respondents must be enjoined from using them in future elections. Pet. at pp.120-21. And they seek that relief based

on arguments already rejected in *Johnson*. Most notably, Petitioners argue that partisan gerrymandering claims are justiciable and cognizable under the State's Constitution. Pet. ¶¶42-49. But as the Court held in *Johnson*, "the partisan makeup of districts does not implicate any justiciable or cognizable right." *Johnson I*, 2021 WI 87, ¶ 8. Petitioners also argue that the districts do not comply with Article IV of the Wisconsin Constitution. Pet. ¶¶172-81. But the Court held in *Johnson* that the districts comply with all state and federal law. *Johnson III*, 2022 WI 19, ¶ 73. Put simply, the Legislature has an interest in protecting the relief obtained in *Johnson*: a ruling that the Legislature's state senate and assembly maps were the only constitutionally permissible judicial remedy for the *Johnson* petitioners' malapportionment claims. *Id.*

*Second*, the Legislature has an institutional interest in safeguarding its constitutionally designated redistricting role. Petitioners' constitutional arguments are not limited to these Petitioners and these proceedings. Petitioners ask for new Court-drawn maps governing all Wisconsin voters. *See* Pet. at pp. 120-21. Without intervention, this requested remedy would afford no opportunity for the Legislature to participate in setting new district lines. But redistricting is the Legislature's responsibility. *See Johnson*



*I*, 2021 WI 87, ¶ 19 (“[I]n our constitutional order [redistricting] remains the legislature’s duty.”); *see* Wis. Const. art. IV, § 3. And Petitioners constitutional arguments intend to bind all future Legislatures in future redistricting cycles. The Legislature has an indisputable institutional interest in participating in these proceedings regarding alleged constitutional limitations to its redistricting power and protecting its “dominant initiating and ongoing role in redistricting.” *Va. House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945, 1954 (2019).

*Third*, the Legislature has an institutional interest in its lawful composition. Cases that “concern[] apportionment ‘and the orderly process of elections therefrom’ . . . directly affect[]” the legislative bodies that stand to be reapportioned. *Sixty-Seventh Minn. State Senate v. Beens*, 406 U.S. 187, 194 (1972) (citation omitted); *cf. Powell v. McCormack*, 395 U.S. 486, 548 (1969) (“Unquestionably, Congress has an interest in preserving its institutional integrity.”). No party has an interest comparable to the Legislature’s in the configuration of electoral districts used to elect members of the Assembly and Senate. This makes the Legislature an “appropriate legal entity for purposes of intervention.” *Beens*, 406 U.S. at 194 (citing *Silver v. Jordan*, 241

F. Supp. 576 (S.D. Cal. 1964) (per curiam) (“The California State Senate’s motion to intervene as a substantially interested party was granted because it would be directly affected by the decree of this court” regarding the lawfulness of its apportionment.), *aff’d*, 381 U.S. 415 (1965) (per curiam)).

Petitioners’ challenge to the State’s electoral districts ultimately seeks to reconstitute the Legislature, including by shortening elected Senators’ constitutionally prescribed terms. Pet. at p.121. Their requested relief cuts not only at the lawfulness of the maps, but also at the lawfulness of the Legislature itself. As the body at the heart of this requested relief, the Legislature has an interest in defending its lawfulness in this action.

Where such “institutional interests are implicated,” intervention is appropriate. *SEIU, Local 1 v. Vos*, 2020 WI 67, ¶ 72, 393 Wis. 2d 38, 946 N.W.2d 35. Petitioners have attempted to thwart those interests by improperly excluding the Legislature from their proposed original action. *See Berger*, 142 S. Ct. at 2201 (explaining that permitting “plaintiffs to make strategic choices to control which state agents they will face across the aisle . . . would risk a hobbled litigation”). That is sufficient reason to deny the petition outright. *See Wis. Stat. § 806.04(11); supra* n.1. It should at least be

remedied by recognizing the Legislature's right to intervene should the Court grant the Petition.

**C. The disposition of the proposed original action may impair or impede the Legislature's ability to protect its interests.**

The Legislature is "so situated that the disposition of the action may as a practical matter impair or impede [its] ability to protect [its] interest[s]." Wis. Stat. § 803.09(1). If Petitioners succeed in their challenge for new Court-drawn lines, the maps the Legislature passed and then proposed in *Johnson* will be invalidated. And future Legislatures will be bound by whatever new rules this Court sets for future redistricting efforts. Allowing this suit to proceed without the Legislature's intervention will deprive the Legislature of its ability to defend its current districts, its current membership, and its future redistricting power. If Petitioners prevail, the Wisconsin Legislature will be reapportioned by this Court with no input from the only body the Wisconsin Constitution charges with redistricting, and future Legislatures' hands will be tied.

**D. The existing parties do not adequately represent the Legislature's interests.**

The Legislature's institutional interests are not "adequately represented by existing parties." Wis. Stat. § 803.09(1). The existing parties

in this case are a group of voters (Petitioners) and the Wisconsin Elections Commission and its Members and Administrator (Respondents). These parties do not share the Legislature's unique institutional interests in this case; they were not on the prevailing side in *Johnson*; and they are not constitutionally charged with redistricting.

No existing party's interests substitute for the Legislature and its unique institutional interests. The Wisconsin Elections Commission (along with its Members and Administrator) is charged with enforcing Wisconsin's election laws. *E.g.*, Wis. Stat. § 7.08; *see* Pet. ¶¶ 25-26. But it does not have any role in the redistricting process, and it played only a minor role in the *Johnson* original action. *See Berger*, 142 S. Ct. at 2197 (“[L]eaders in different branches of government may see the State’s interests at stake in litigation differently.”). The Constitution lodges the redistricting power in “the legislature.” Wis. Const. art. IV, § 3. Because only the Legislature can defend its institutional interests in this case, Section 803.09(1) calls for the Legislature’s intervention.

## II. The Legislature Has a Statutory Right to Intervene Because This Case Challenges the Constitutionality and Construction of State Laws.

The Legislature has a statutory right to intervene under Section 803.09(2m), which permits the Legislature to intervene in any action challenging the “construction or validity of a statute . . . at any time in the action as a matter of right by serving a motion upon the parties.” Wis. Stat. § 803.09(2m).<sup>5</sup> As this Court has explained, Section 803.09(2m) “gives the Legislature a statutory right to participate as a party, with all the rights and privileges of any other party, in litigation defending the state’s interest in the validity of its laws.” *Democratic Nat’l Comm. v. Bostelmann*, 2020 WI 80, ¶ 13, 394 Wis. 2d 33, 949 N.W.2d 423. That dictate applies with full force in cases involving “election-related laws.” *Id.* ¶ 2.<sup>6</sup>

Applied here, at bottom Petitioners’ challenge targets the Legislature’s 2011 Act 43 redistricting legislation. *Johnson* took a least-

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<sup>5</sup> Wis. Stat. § 13.365(3) outlines the procedure for the Legislature’s intervention. Pursuant to that statute, the Joint Committee on Legislative Organization approved the Legislature’s intervention in this suit on August 11, 2023.

<sup>6</sup> Generally, proposed intervenors must submit a separate pleading with their intervention motion. Wis. Stat. § 803.09(3). But in original actions, pleadings are required only when ordered by the Court. *Id.* § 809.70(3). The Legislature will submit whatever future pleadings this Court orders, but at this time none have been ordered. The Legislature has contemporaneously filed a non-party *amicus* brief detailing why the Petition should not be granted.

changes approach to that legislation in devising injunctive relief for Petitioners' malapportionment claim, deviating as necessary to adjust for shifting population but otherwise not making major changes. In *Johnson*, Democratic voters and other intervenors argued that this Court must "redraw the [2011] maps to allocate districts equally between [the] dominant parties" to redress their complaint "that the 2011 [Wisconsin] maps reflect[ed] a partisan gerrymander favoring Republican Party candidates at the expense of Democrat Party candidates." *Johnson I*, 2021 WI 87, ¶ 2. But this Court rejected those arguments, declining as a Court to strike a different partisan balance from that struck by the Legislature in the existing Act 43 districts. *Johnson I*, 2021 WI 87, ¶ 78. Petitioners now renew those same partisan gerrymandering arguments and request a declaratory judgment.<sup>7</sup> See Pet. ¶¶ 93-121 (alleging unconstitutional extreme partisan gerrymander).

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<sup>7</sup> One of many reasons to deny the Petition is that Petitioners cannot seek a declaratory judgment from this Court about one of its own decisions. See Wis. Stat. § 806.04(2). But to the extent Petitioners or this Court construe their action as one seeking declaratory relief about the Legislature's underlying redistricting legislation, then the Legislature necessarily has a right to participate under Sections 803.09(2m) and 806.04(11).

This action also calls into question the construction of statutes determining when special elections may be held. Petitioners request that this Court order special elections for odd-numbered state senate districts. Pet. at p.121. Several state laws govern when special elections may be held. *See, e.g.*, Wis. Stat. § 5.02(19) (defining a “special election” as one to “fill vacancies or to conduct a referendum”); Wis. Stat. § 8.50(4)(e) (providing for special Senate elections “to fill the seat of the member in anticipation of a vacancy, upon receipt of a written resignation from that member”). Whether Petitioners are entitled to the extraordinary remedy of special elections will depend on whether the Court may properly order such relief in these circumstances, which will in turn depend on the construction of state law. The Wisconsin Legislature therefore has the right under Section 803.09(2m) to intervene to “to represent the State of Wisconsin’s interest in the validity of state laws.” *Bostelmann*, 2020 WI 80, ¶ 14.

### **III. At a Minimum, the Legislature Should Be Permitted to Intervene.**

In addition to satisfying the criteria for intervention as of right under Section 803.09(1) and (2m), the Legislature should also be permitted to intervene under Section 803.09(2) if the Court grants the Petition. That statute provides that “[u]pon timely motion anyone may be permitted to

intervene in an action when a movant's claim or defense and the main action have a question of law or fact in common." Wis. Stat. § 803.09(2). It allows for "permissive intervention" at the "court's discretion." *City of Madison*, 2000 WI 39, ¶ 11 n.11. In exercising this discretion, courts "shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." Wis. Stat. § 803.09(2).

Here, the Legislature meets Section 803.09(2)'s requirements and should be permitted to intervene. As explained above, the Legislature's intervention so early in the suit will not cause undue delay or prejudice any existing party. *See supra* p. 9. Furthermore, the Legislature's defenses can be expected to share common questions of law or fact with the main action—for instance, whether partisan-gerrymandering claims are cognizable under the Wisconsin Constitution, whether the legislative maps are unconstitutional, whether this Court violated the separation of powers by adopting those maps in *Johnson*, and whether the Court can (or should) adopt a remedial plan on its own in the first instance. These questions directly implicate the Legislature's significant institutional interests, as outlined above. *See supra* pp. 9-14. And permitting intervention by the



Legislature will further Section 803.09's primary concern with "disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *Bilder*, 112 Wis. 2d at 548-49 (citations omitted).

In short, the Legislature shares many defenses with Respondents, but it will also present additional theories in support of those defenses based upon the Legislature's unique interests. Those interests are not represented by the existing parties. This Court should therefore, at a minimum, exercise its discretion to permit the Legislature to intervene.

### CONCLUSION

Should the Court grant the Petition, this Court should grant the Legislature's motion to intervene.

Dated this 22nd day of August, 2023.

Respectfully submitted,

/s/ Kevin M. St. John

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## FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in § 809.19 (8) (b), (bm), and (c) and § 809.81(4). The length of this brief is 3,990 words as calculated by Microsoft Word.

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Respectfully submitted,

Electronically Signed by

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