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CLERK OF WISCONSIN
SUPREME COURT

Supreme Court of Wisconsin

NO. 2026AP1008 **WIS. BUSINESS LEADERS FOR DEMOCRACY V. WIS. ELECTIONS COMM'N** **L.C. #2025CV2252**

May 29, 2026

The Court has entered the following order:

On April 28, 2026, plaintiffs-appellants, Wisconsin Business Leaders for Democracy et al. (collectively, "WBLD"), filed a notice of appeal in *Wisconsin Business Leaders for Democracy v. Wis. Elections Comm'n*, Dane County Case No. 2025CV2252, appealing from the April 28, 2026 decision of the three-judge panel dismissing their complaint.

On April 29, 2026, WBLD filed a motion to expedite the briefing and oral argument of this appeal.

In a letter filed May 1, 2026, intervenors-defendants-respondents, Billie Johnson and other individual voters (collectively, "Johnson"), note that under WIS. STAT. § 751.035(3), "[a]n appeal from any order or decision issued by the [three-judge] panel . . . *may be heard* by the supreme court and may not be heard by a court of appeals for any district." (Emphasis added.) Johnson asserts that, by its use of the phrase "may be heard," § 751.035(3) provides only that a litigant in an apportionment challenge may request this court to exercise discretion to grant an appeal from any order or decision issued by the three-judge panel. Further, Johnson contends that a litigant is required to ask for such an appeal by filing a petition for review under WIS. STAT. § 808.10 and § (Rule) 809.62. Thus, Johnson submits that this court should either: (1) dismiss this appeal and direct WBLD to file a petition for review, if WBLD still wants to pursue an appeal; or (2) set forth a briefing schedule on whether this court should exercise its discretion to grant review of this matter pursuant to the criteria for review set forth in WIS. STAT. § 809.62(1r).

On May 1, 2026, intervenor-defendant-respondent, the Wisconsin Legislature, filed a letter joining the position stated in Johnson's May 1, 2026 letter.

The court has not previously had an opportunity to interpret the language of WIS. STAT. § 751.035(3). Although no motion is presently before us, we acknowledge that there is an unresolved question as to whether an appeal from a final decision or order of a panel in an apportionment challenge is a matter of right or a matter of this court's discretion. We conclude that it is not necessary to resolve this issue in this case because it will not affect the outcome. *See, e.g., State ex rel. Greenway v. Cnty. Ct. of St. Croix Cnty.*, 32 Wis. 2d 6, 10, 144 N.W.2d 569 (1966) (unnecessary to decide which version of statute applied, since the result would be the same under either version). Even if an appeal from a final decision of a panel in an apportionment challenge under WIS. STAT. § 751.035 is a matter of this court's discretion, the court has decided that this appeal will be heard. We will therefore not address the contents of the letters filed on May 1, 2026.

This court has also decided that the expedited briefing and argument schedule proposed by WBLD is not necessary for this appeal and that the appellate rules governing procedures in the court of appeals will apply to this matter unless otherwise ordered by this court in a future order. *See* WIS. STAT. § (Rule) 809.63.

Therefore,

IT IS ORDERED that plaintiffs-appellants' motion to expedite is denied. The rules that ordinarily govern procedures in appeals to the court of appeals will apply to this appeal, including the procedures for filing a docketing statement, for filing a statement on transcript, for establishing the deadlines for the filing of briefs, etc., unless otherwise ordered by this court in a future order. *See* WIS. STAT. § (Rule) 809.63.

REBECCA FRANK DALLET, J., with whom JILL J. KAROFSKY, C.J., JANET C. PROTASIEWICZ, and SUSAN M. CRAWFORD, JJ., join, concurring.

¶1 I join the court's order, which states that the court will hear this appeal on the schedule and under the rules that govern every ordinary appeal in the court of appeals.

¶2 I write separately to respond to the false, inappropriate, and disingenuous charges leveled by the dissents. Today's order reflects the court's decision to hear this case, nothing more. Deciding to hear a case does not reflect any weighing of the merits of any party's claims, let alone prejudgment about who will prevail and why. *But see* Justice Rebecca Grassl Bradley's dissent, ¶19. We do not prejudge cases, and for that reason, we

do not comment at this early stage on the parties' legal theories, or try to develop arguments in favor of one side or another. *But see* Justice Ziegler's dissent, ¶¶7–16. Instead, we must—as a majority of this court does—stick to our neutral role, and let the parties argue their case before we render judgment. When the time comes to issue our decision, we will follow the law wherever it leads. Accordingly, I respectfully concur.

ANNETTE KINGSLAND ZIEGLER, J., with whom REBECCA GRASSL BRADLEY, J. joins, dissenting.

¶3 Today, my colleagues have decided, without any analysis, to hear the appeal filed by the Wisconsin Business Leaders for Democracy, et al. (collectively hereinafter "WBLD"), appealing the April 28, 2026 decision of the three-judge panel dismissing its complaint. I dissent from the court's decision to accept review of this matter for this reason, and a number of the reasons stated in my prior writings in this matter. *See WBLD v. WEC*, 2025 WI 52, 418 Wis. 2d 515, 27 N.W.3d 522 (Ziegler, J., dissenting) (published order appointing three-judge panel); *WBLD v. WEC*, No. 2025XX1330, unpublished order (Wis. Sept. 25, 2025) (Ziegler, J., concurring) (reluctantly agreeing with order for briefing on whether WBLD's complaint filed in circuit court constituted an action to challenge apportionment of a congressional or state legislative district under WIS. STAT. § 801.50(4m)). Whether WBLD has a right to appeal is, at a minimum, questionable. The court's actions thus far in this unique and unprecedented case, unfortunately, have the taint of judicial activism, evidencing a lack of restraint. Before granting this appeal, we should stop and consider whether WBLD has stated a cognizable claim and whether we can even provide the relief that WBLD seeks. Continuing to entertain this newfound theory, and now affording an appeal, for a map that was implemented some time ago and has been repeatedly used in elections, smacks of judicial overreach and should raise eyebrows. Making matters worse, unlike many matters of the court, this order will not be published, thus limiting accessibility of the public. In a matter like this, which is an unprecedented matter of public import, every effort should be made to make the public aware of this issue. Because this case is in such a highly unusual procedural posture, this order should be published and readily available to the public.

¶4 Like sending this case to the panel, our court's review of the panel's dismissal seems to be, at best, unnecessary make work. Because the panel could not overturn our precedent regarding the map at issue, the panel had no choice but to dismiss WBLD's creative pleading. Moreover, our court too has previously and repeatedly denied further consideration of the court's adopted congressional map, as was drawn by Governor Evers. One would certainly hope that the majority is not entertaining the notion

of revisiting and perhaps even redrawing congressional maps, but it begs the question: Why else would this appeal be heard?

¶5 With a shocking lack of hesitation, a majority of our court now accepts review of the panel's dismissal. It does so without even a word of analysis about jurisdiction, whether there exists a cognizable claim or whether there is a right to appeal. The appeal is granted without a transparent application of our criteria for review. If in reality the court wishes to review *Johnson I* and *II*,[1] rather than whether the panel's dismissal was proper, it has engaged in legal shenanigans, transforming this case into an original action under the guise of an appeal. If this is indeed the case, WIS. STAT. § 801.50(4m) was not the proper avenue to pursue. Others have tried to attack the Evers' congressional map by filing original actions, but those have been consistently denied. *See infra*, ¶6. In short, the incongruous nature of this case is demonstrated by the fact that the panel could never grant the relief being sought, but yet the case was sent to it. And, even if the court were to somehow determine that the panel was incorrect to dismiss the complaint, the panel would be in the same predicament, constrained by the *Johnson I* and *II* decisions.

¶6 From the start, sending this matter to the panel was improper because the panel was not constitutionally empowered to overturn our precedent. On this congressional map, we have spoken. In accordance, the panel concluded:

> The Wisconsin Supreme Court has held that claims of the sort [WBLD] allege[s] are not actionable under Wisconsin law, and this panel, as an inferior tribunal exercising the powers of a circuit court, has no authority to modify or overrule that precedent. . . . The panel is left with no option but to dismiss [WBLD's] claims.

¶7 The three-judge panel's dismissal order was not only predictable, but it was constitutionally required. Despite knowing this constitutional fact to be true, the

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[1] *Johnson v. WEC*, 2021 WI 87, 399 Wis. 2d 623, 967 N.W.2d 469 ("*Johnson I*") (*Johnson I* set the parameters for redistricting maps); *Johnson v. WEC*, 2022 WI 14, 400 Wis. 2d 626, 971 N.W.2d 402 ("*Johnson II*"), *summarily rev'd sub nom. Wis. Legislature v. Wis. Elections Comm'n*, 595 U.S. 398 (2022) (per curiam) (In *Johnson II* the state legislative maps drawn by the court were summarily reversed by the United States Supreme Court because they violated Section 2 of the Voting Rights Act, 52 U.S.C. § 10301. However, the congressional map adopted by the court, Governor Evers' map, remained intact.).

majority, nonetheless, adopted WBLD's request to send this matter to the panel even though the majority could not have expected a different result. And how could they? WBLD has not explained how its new legal theory is supported in the law or how the panel could possibly grant the requested relief. And, our court is not requiring any such showing or consideration. Specifically, WBLD's complaint requested that the panel declare the current congressional map, proposed and drafted by Governor Evers, to be unconstitutional. It also asked the panel to adopt a new congressional map, despite the fact that this court already adopted the Governor's map in *Johnson II*. *See WBLD v. WEC*, 418 Wis. 2d 515 (Ziegler, J., dissenting); *WBLD v. WEC*, No. 2025XX1330 (Ziegler, J., concurring). The allegations WBLD makes are that the Democratic governor proposed a congressional map, that is "anti-competitive," against his own party. In other words, WBLD is asking this court, under an unknown legal theory, to make the Democratic governor's map even more Democratic. The majority does not require anything more about how this new theory could be grounded in the law or how it might differ from previous partisan gerrymandering challenges. Regardless, a majority of this court assented to WBLD's request, even though we have repeatedly denied requests to reconsider the imposition of Governor Evers' congressional map.

¶8 To be clear, this court has decided that Governor Evers' congressional map, adopted in *Johnson II*, would not be reviewed—four times. *Johnson v. WEC*, No. 2021AP1450-OA, unpublished order (Wis. Apr. 15, 2022) ("[T]he motion . . . for reconsideration of this court's March 3, 2022 opinion and order . . . is denied."); *Johnson v. WEC*, No. 2021AP1450-OA, unpublished order (Wis. Mar. 1, 2024) ("[The] motion for relief from judgment is denied."); *Bothfeld v WEC*, No. 2025AP996-OA, unpublished order (Wis. June 25, 2025) ("[T]he petition for leave to commence an original action is denied."); *Felton v WEC*, No. 2025AP999-OA, unpublished order (Wis. June 25, 2025) ("[T]he petition for leave to commence an original action is denied."). The United States Supreme Court also declined to review a challenge to the *Johnson II* congressional map. *Grothman v. WEC*, 142 S. Ct. 1410 (2022). And, when the court decided the *Johnson* cases,[2] it was because an impasse existed between the legislature and the governor. We do not have that problem

[2] The *Johnson* cases refer to the series of cases starting with *Johnson v. Wisconsin Elections Commission*, No. 2021AP1450-OA, decided by this court during its 2021-22 term. *See Johnson I*, 399 Wis. 2d 623; *Johnson II*, 400 Wis. 2d 626, *summarily rev'd sub nom. Wis. Legislature v. Wis. Elections Comm'n*, 595 U.S. 398 (2022) (per curiam); and *Johnson v.* WEC, 2022 WI 19, 401 Wis. 2d 198, 972 N.W.2d 559 ("*Johnson III*").

now, and we are many years and several elections down the road. Unlike when the *Johnson* cases arose, our court is not faced with an impasse between the other branches which are constitutionally tasked with map drawing, nor is there the undeniable need for maps because of impending elections. How does WBLD reconcile that distinction here?

¶9 Moreover, WBLD has yet to explain how this court has jurisdiction to hear this challenge. Wisconsin's statute indeed resembles 28 U.S.C. § 1253 in the federal system. Like Wisconsin's provision, under that federal statute, the United States Supreme Court "may" accept an appeal of a final order from a three-judge panel. 28 U.S.C. § 1253. Unlike Wisconsin, in Supreme Court appeals, the appellant must file a jurisdictional statement. U.S. Sup. Ct. R. 18.3. This ensures that the party is properly before the Court as it "ensures that we act as judges, and do not engage in policymaking properly left to elected representatives." *Hollingsworth v. Perry*, 570 U.S. 693, 700 (2013). After considering its jurisdiction, the Court may dispose of the case or order briefing on the Court's jurisdiction and the appellant's standing. *See, e.g.*, *Gill v. Whitford*, 585 U.S. 48, 73 (2018) (remanding the case to the district court to brief standing). If we are to employ this procedure, we should require more before granting the appeal.

¶10 And WBLD has yet to explain why the court should once again implement a new map (and whose map) when there has been no constitutional impasse. As tempting as it might be, it is not our constitutional responsibility to draw maps, particularly when it comes to federal congressional maps. The Constitution vests redistricting responsibility exclusively in "the Legislature thereof." U.S. Const. Art. I, § 4. The role of Wisconsin courts in congressional redistricting is also limited by the Wisconsin Constitution. And here, the court in *Johnson I*, 399 Wis. 2d 623, and *Johnson II*, 400 Wis. 2d 626, already held that Article I, sections 1 and 22 of the Wisconsin Constitution do not impose limits on redistricting; rather, the only constitutional constraints appear in Wis. Const. Art. IV, §§ 3, 4, and 5. *Johnson I*, 399 Wis. 2d 623, ¶¶53–63. Our court has already recognized that reading additional limits into Article I would violate basic interpretive principles and thrust the judiciary into a "political thicket" beyond its authority. *Id.*, ¶63. This court would be wise to avoid traversing that briar patch. In other words, redistricting is not a judicial task, and it is "inherently political." *Jensen v. Wis. Elections Bd.*, 2002 WI 13, ¶10, 249 Wis. 2d 706, 639 N.W.2d 537.

¶11 Notably, WBLD's allegations are essentially that the Democratic governor's congressional map, which this court accepted in *Johnson II*, is "anti-competitive" because it does not favor the Democratic Party enough. The majority requires no explanation of how Governor Evers drew maps that were anti-competitive against his own party. And,

as a practical matter, for at least four years, elections have been conducted under the congressional map proposed by Democratic Governor Tony Evers and adopted by this court in *Johnson II*. 400 Wis. 2d 626, ¶52. Because WBLD seems to mount a collateral attack based upon a political plea rather than one rooted in law, our court should be particularly careful about weighing in again.

¶12 We should be asking WBLD: Why are you bringing this challenge now? Is this a recognized legal theory? Could the panel grant the relief you requested given our precedent? Is this another attack on the congressional map, like the original actions in the past, masquerading as a Wis. Stat. § 801.50(4m) case? Why is this case appropriate for us to hear now, on review of the panel's decision? How does this challenge survive laches given our precedent?

¶13 WBLD alleges that Wisconsin's congressional map is a holdover from "anti-competitive" 2011 maps. While this legal theory has lean support in the law, even if this is so, WBLD waited over 14 years and seven elections to bring this unprecedented request. Such delay would seem to be unreasonable, inexplicable, and highly prejudicial. According to our court's own words, "'[l]aches is an affirmative, equitable defense designed to bar relief when a claimant's failure to promptly bring a claim causes prejudice to the party having to defend against that claim.'" *Trump v. Biden*, 2020 WI 91, ¶113, 394 Wis. 2d 629, 951 N.W.2d 568 (Annette Kingsland Ziegler, J., dissenting) (quoting *Wis. Small Bus. United, Inc. v. Brennan*, 2020 WI 69, ¶11, 393 Wis. 2d 308, 946 N.W.2d 101). But, ostensibly, those principles seem to ring hollow in this case.

¶14 If this case were to be treated as past cases were, the court would undertake a laches analysis. *See Clarke v. WEC*, 2023 WI 79, ¶37, 401 Wis. 2d 1, 998 N.W.2d 370 (finding laches inapplicable to a lawsuit filed a year and half after *Johnson III*, 401 Wis. 2d 198); *Trump v. Biden*, 394 Wis. 2d 629, ¶3 (applying laches to dispose of 3 of 4 election challenges); *Hawkins v. WEC*, 2020 WI 75, ¶5, 393 Wis. 2d 629, 948 N.W.2d 877 (per curiam) (not applying laches to bar action filed two days after certification of candidates for election). Notably, even when no controlling precedent existed, the laches doctrine prompted dismissal. *See Trump v. Biden*, 394 Wis. 2d 629, ¶3. If the majority applied the same laches analysis here, these claims would seemingly be barred. But, alas, no such analysis occurs and it seems a different standard is being employed in this case, begging the question: Why?

¶15 What remains unknown, is how this case will develop. The panel essentially declared that, given *Johnson I* and *II*, it cannot act. ("Upon careful review of

the law, the panel concludes . . . [t]he Wisconsin Supreme Court has held that claims of the sort [WBLD] allege[s] are not actionable under Wisconsin law, and this panel, as an inferior tribunal exercising the powers of a circuit court, has no authority to modify or overrule that precedent. . . . The panel is left with no option but to dismiss [WBLD's] claims."). We must now wait to see. But to be clear, accepting review without fully weighing and considering jurisdiction, whether this is a cognizable claim upon which relief could be granted by the panel, whether review is required or wise, our criteria for review, or the doctrine of laches, unnecessarily places this court in a political thicket.

¶16 Perhaps WBLD can explain these lingering questions. Until it does, WBLD's litigation seems to bring a political fight, which belongs in the partisan branches, to this court. Before our court steps into another map battle, we should demand that litigation be rooted in law and that it is a claim upon which relief could have been granted. If it is relief being sought by this court redrawing maps, that is more akin to an original action, which has been repeatedly decided the same way. To be clear, it matters not which political party is seeking different maps, we should be mindful of the difference between the need to act and the will to act. This lawsuit purports to advance the Democratic Party's position in elections by court, not legislative, action. Instead of welcoming this opportunity to overstep our boundaries, we should be particularly cognizant of the judiciary's role in reapportionment or redistricting, so not to tread on the constitutional domain of the other branches. And, in this political climate, especially when other states are reengaging in map drawing, and those battles are being fought in court,[3] our court

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[3] *E.g.*, David A. Lieb & Geoff Mulvihill, *Virginia Supreme Court strikes down Democrats' redrawn US House maps, giving Republicans a win*, AP NEWS (May 8, 2026, 5:03 PM), https://apnews.com/article/redistricting-virginia-congress-democrats-republicans-12a31037f3c9a94d3cb9fbcaaf84d94f; Mitch Perry, *DeSantis' new congressional map faces first legal challenge*, FLORIDA PHOENIX (MAY 4, 2026, 4:50 PM), https://floridaphoenix.com/2026/05/04/desantis-new-congressional-map-faces-first-legal-challenge/; Ana Ceballos, *California under pressure — again — as partisan redistricting wars escalate*, LOS ANGELES TIMES (May 7, 2026 3:00 AM), https://www.latimes.com/politics/story/2026-05-07/california-could-test-limits-of-new-era-of-partisan-redistricting-efforts; Rudi Keller, *Missouri Supreme Court to hear two challenges to gerrymandered congressional map*, MISSOURI INDEPENDENT (May 12, 2026, 12:34 PM), https://krcgtv.com/news/local/missouri-supreme-court-to-hear-two-challenges-to-gerrymandered-congressional-map; Jessica Holdman, *SC House advances efforts to redraw the state's congressional districts*, SOUTH CAROLINA DAILY GAZETTE (May 6, 2026, 9:30 PM), https://scdailygazette.com/2026/05/06/sc-house-advances-efforts-to-redraw-the-states-congressional-districts/; David A. Lieb, *A state-by-state guide to the redistricting fight*, PBS (May 8,

should be wary of weighing in, particularly without analyzing whether it is required. Regardless of what might enhance the partisan political advantage of any political party, it comes at great cost to the judicial system and judicial independence.

¶17 It is indeed rare that I feel compelled to object to hearing a case. But here, I have concluded this is too important to stand silent. The public should be informed of the requests afoot and it should have the opportunity to stay abreast of these proceedings. And, of course, the briefing and arguments could cause me to conclude that this appeal was proper and relief should be granted. We shall see.

¶18 For all the foregoing reasons, the novel theory called "anti-competitive gerrymandering" should be not entertained by this court without further inquiry, of which the majority demands none. I respectfully dissent.

REBECCA GRASSL BRADLEY, J., dissenting.

¶19 An astonishingly activist court will once again revisit precedent it doesn't like in order to do the bidding of its political masters. The Democratic Party bought multiple seats on this court[4] to achieve yet another outcome unobtainable

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2026, 4:18 PM), https://www.pbs.org/newshour/amp/politics/a-state-by-state-guide-to-the-redistricting-fight.

[4] The Democratic Party elected Janet Protasiewicz to this court in 2023 with nearly $10 million in donations, which, combined with independent spending by PACs and plenty of cash from out of state donors, *tripled* the national record for state supreme court races. *WisPolitics Tracks $56 Million in Spending on Wisconsin Supreme Court Race*, WISPOLITICS (July 19, 2023), https://www.wispolitics.com/2023/wispolitics-tracks-56-million-in-spending-on-wisconsin-supreme-court-race/; *see also* Douglas Keith, *The Politics of Judicial Elections 2023–24*, BRENNAN CTR FOR JUST. (February 26, 2026), https://www.brennancenter.org/our-work/research-reports/politics-judicial-elections-2023-24. Democrats elected Susan Crawford in 2025 with another $10.7 million, in an election that surpassed *$100 million* in donations. *WisPolitics Tally: Supreme Court Race Spending Tops $100M, Nearly Doubling Previous Record*, WISPOLITICS (March 28, 2025), https://www.wispolitics.com/2025/250328report/.

During her campaign, Protasiewicz referred to Wisconsin's electoral maps—on at least nine occasions—as "unfair" and "rigged." *Clarke v. Wis. Elections Comm'n*, 2023 WI 66, ¶16, ¶52 n. 22, 409 Wis. 2d 249, 995 N.W.2d 735. She sanitized her campaign promises as nothing more than an expression of her "values." *Id.*, ¶17. Asked whether Protasiewicz "went a little too far," Crawford said no: "Not based on what I saw . . . I think she was *making an observation about the*

democratically.[5] Like last time,[6] the United States Supreme Court will likely reverse the majority's unlawful ruling and protect our Republic.[7] No kings. No queens either.

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facts of the legislative maps and not saying how she would decide any future case before the Wisconsin Supreme Court." Jason Calvi, *Wisconsin Supreme Court Race, District Map Possibly on the Line*, FOX6 (March 26, 2025), https://www.fox6now.com/news/wisconsin-supreme-court-race-redistricting-impact (emphasis added). Progressive candidates' recent campaign tactics are nothing more than gaslighting.

> "To know and not to know, to be conscious of complete truthfulness while telling carefully constructed lies, to hold simultaneously two opinions which cancelled out, knowing them to be contradictory and believing in both of them, to use logic against logic, to repudiate morality while laying claim to it, to believe that democracy was impossible and that the Party was the guardian of democracy . . . . Even to understand the word 'doublethink' involved the use of doublethink."

GEORGE ORWELL, NINETEEN EIGHTY-FOUR 36 (Plume | Harcourt Brace Book 2003) (1949).

Exhibiting a classic case of projection, Justice Rebecca Frank Dallet doubles down on doublethink in her attacks on the dissents. *See* Justice Dallet's Concurrence, ¶2. Joined by her progressive colleagues (as always), Justice Dallet denies prejudging this case and professes neutrality. No one is fooled. For the progressive majority in redistricting cases, the "law" somehow always leads to victories for Democrats, at the expense of democracy. *See generally Johnson v. Wis. Elections Comm'n*, 2022 WI 14, 400 Wis. 2d 626, 971 N.W.2d 402 (Johnson II) (adopting Governor Tony Evers' proposed congressional map and state legislative maps and rejecting the legislature's), *rev'd summarily sub nom.*, *Wis. Legislature v. Wis. Elections Comm'n*, 595 U.S. 398 (2022), *and overruled by Clarke v. Wis. Elections Comm'n*, 2023 WI 79, 410 Wis. 2d 1, 998 N.W.2d 370; *Clarke*, 410 Wis. 2d 1(adopting Governor Tony Evers' position and invalidating the legislature's redistricting maps).

[5] *Clarke*, 410 Wis. 2d 1, ¶¶185-263 (Rebecca Grassl Bradley, J., dissenting).

[6] *See generally Johnson II*, 400 Wis. 2d 626, *rev'd summarily sub nom.*, *Wis. Legislature v. Wis. Elections Comm'n*, 595 U.S. 398 (2022).

[7] *See Moore v. Harper,* 600 U.S. 1, 36 (2023) ("[S]tate courts may not transgress the ordinary bounds of judicial review such that they arrogate to themselves the power vested in state legislatures to regulate federal elections."); U.S. CONST., art. I, § 4, cl. 1 ("The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof . . . .").

BRIAN K. HAGEDORN, J., writing separately.

¶20 This action comes to us in a unique posture. This case is not an original action filed in our court; rather, it is an ordinary circuit court case filed in Dane County. But because of the claims raised, a law passed in 2011 specified that the action must be heard not by a single circuit court judge, but by a panel of three circuit court judges selected by this court. WIS. STAT. § 801.50(4m); 751.035(1) (2023–24).[8] We appointed the panel, which then dismissed the action on the merits. The losing party has now appealed.

¶21 Ordinarily, a party has the right to appeal an adverse decision from the circuit court to the court of appeals. WIS. STAT. § 808.03(1). Once the court of appeals issues a decision, the losing party can ask this court to hear the case, which we may do at our discretion. WIS. STAT. § 809.62(1m)(a)1. A party can also petition to bypass the court of appeals and come straight to us, which we may grant or deny. WIS. STAT. § 808.05. According to our internal operating procedures, the vote of only three justices is sufficient to grant review in a normal petition for review, while four are needed to grant a petition for bypass.[9] And absent specification otherwise, the court can generally issue any order with the vote of four justices.

¶22 Yet the 2011 law governing this appeal specifies a different procedure—one we have not had occasion to apply. It states that an appeal of the decision "may be heard by the supreme court and may not be heard by a court of appeals for any district." WIS. STAT. § 751.035(3). This raises a question about whether this appeal is as of right—that is, one we must hear—or whether this court has discretion to hear or not hear the case. We do not address this issue, however, because a majority of the court has voted to hear this appeal regardless. The court's order thus reflects the internal vote of the court.

¶23 Unlike our final written opinions, orders of the court typically issue without notation of which justices voted for or against it—though this does not mean all justices were in accord. Disagreements are normal even though they are not usually made public. Historically, dissents to orders granting review in a case were rare, and declining to

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[8] All subsequent references to the Wisconsin Statutes are to the 2023–24 version.

[9] Wis. S. Ct. IOP III.B. (Sept. 16, 2025).

comment is still the default practice.[10] In recent years, however, such writings have become more common in cases involving unique and consequential issues. Most justices (including me) have at times weighed into the court's decision to hear a case.

¶24 The prevalence of this newer trend, however, could signal to the public that when a justice publicly dissents or comments, this means all justices are likewise expressing their views on the court's order. This inference would be incorrect. Therefore, I write separately to bring light to our standard practices, and to once again clarify that the failure to publicly dissent or comment on an order does not mean a justice agrees with the order.[11] Justices regularly vote against granting review or disagree with other aspects of an order, while refraining from public comment at this stage of the litigation. Our internal operating procedures respect the right of justices to address the court's decision to hear a case, or to refrain from comment.

Samuel A. Christensen
Clerk of Supreme Court

[10] This practice contrasts with our final written opinions in cases in which the votes of each justice are recorded, and we regularly write independently to express our agreements and disagreements.

[11] *See Voces de la Frontera, Inc. v. Gerber*, No. 2025AP2121-OA, unpublished order at 2–4 (Wis. Dec. 3, 2025) (Hagedorn, J., writing separately).

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