IN THE SUPREME COURT OF WISCONSIN

No. 2023AP1399

REBECCA CLARKE, RUBEN ANTHONY, TERRY DAWSON, DANA GLASSTEIN, ANN GROVES-LLOYD, CARL HUJET, JERRY IVERSON, TIA JOHNSON, ANGIE KIRST, SELIKA LAWTON, FABIAN MALDONADO, ANNEMARIE MCCLELLAN, JAMES MCNETT, BRITTANY MURIELLO, ELA JOOSTEN (PARI) SCHILS, NATHANIEL SLACK, MARY SMITH-JOHNSON, DENISE SWEET AND GABRIELLE YOUNG,

Petitioners,

GOVERNOR TONY EVERS IN HIS OFFICIAL CAPACITY, NATHAN ATKINSON, STEPHEN JOSEPH WRIGHT, GARY KRENZ, SARAH J. HAMILTON, JEAN-LUC THIFFEAULT, SOMESH JHA, JOANNE KANE AND LEAH DUDLEY,

Intervenors-Petitioners,

v.

WISCONSIN ELECTIONS COMMISSION, DON MILLIS, ROBERT F. SPINDELL, JR., MARK L. THOMSEN, ANN S. JACOBS, MARGE BOSTELMANN, CARRIE RIEPL, IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE WISCONSIN ELECTIONS COMMISSION; MEAGAN WOLFE IN HER OFFICIAL CAPACITY AS THE ADMINISTRATOR OF THE WISCONSIN ELECTIONS COMMISSION; ANDRE JACQUE, TIM CARPENTER, ROB HUTTON, CHRIS LARSON, DEVIN LEMAHIEU, STEPHEN L. NASS, JOHN JAGLER, MARK SPREITZER, HOWARD MARKLEIN, RACHAEL CABRAL-GUEVARA, VAN H. WANGGAARD, JESSE L. JAMES, ROMAINE ROBERT QUINN, DIANNE H. HESSELBEIN, CORY TOMCZYK, JEFF SMITH AND CHRIS KAPENGA IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE WISCONSIN SENATE,

Respondents,

WISCONSIN LEGISLATURE, BILLIE JOHNSON, CHRIS GOEBEL, ED PERKINS, ERIC O'KEEFE, JOE SANFELIPPO, TERRY MOULTON, ROBERT JENSEN, RON ZAHN, RUTH ELMER AND RUTH STRECK,

Intervenors-Respondents.

NON-PARTY BRIEF OF *AMICUS CURIAE* LEGAL SCHOLARS IN RESPONSE TO EXPERT REPORT

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INTEREST OF *AMICI*

Amici, identified in the Appendix, are seven legal scholars with nationally recognized expertise in state constitutional law and election law, including redistricting. They have researched and published extensively in this area and have a professional interest in the integrity of redistricting law and practice. *Amici* were previously granted leave to participate in this case and filed a brief on November 8, 2023.

INTRODUCTION

I. In their February 1 report, this Court's expert consultants stress the importance of the "majoritarian principle"—the idea that redistricting plans should evenhandedly enable a majority of the state's voters to secure a legislative majority for their preferred political party. Report of Dr. Grofman and Dr. Cervas at 16 (Feb. 1, 2024) [hereinafter "Report"]. The consultants observe that "majoritarianism is what is desirable from a normative and social science perspective." *Id.* at 16. This brief explains that, beyond its normative appeal, the majoritarian principle has deep roots in both Wisconsin redistricting practice and the Wisconsin Constitution. Accordingly, as it assesses maps for political neutrality, this Court should pursue options that equitably promote majority rule, and it should reject proposals that would perpetuate the counter-majoritarian status quo.

A. Prior to 2011, Wisconsin's state legislative maps reliably translated the people's aggregate statewide voting preferences into legislative majorities. From the advent of the "one person, one

vote" era in the mid-1960s until 2010, a period spanning more than 20 Wisconsin legislative elections, a party never won control of both the Assembly and Senate despite winning only a minority of the total statewide votes for each chamber. And even in the decades prior, counter-majoritarian outcomes were exceedingly rare. Adopting maps that evenhandedly yield legislative majorities for the party with the most electoral support would thus mark a return to Wisconsin's longstanding majority-rule norm.

B. Majoritarian maps also accord with the Wisconsin Constitution's foundational democratic commitments. The Constitution establishes a system of popular self-government premised on majority rule, with safeguards for minority rights. Constitutional text, history, and precedent all support this understanding. One of the Constitution's prime objectives is to thwart attempted government takeovers by minority factions. Legislative maps that align legislative control with majority support thus advance the state constitution's core democratic precepts. Maps that give a minority faction a significant and asymmetric opportunity to obtain a legislative majority defy those precepts.

II. Speculative concerns about delayed Senate voting are no reason to select a counter-majoritarian plan. The shifting of voters from one Senate cycle to another is an inherent and unexceptional feature of Wisconsin's constitutional design. Such shifts help to ensure that districts reflect current conditions and honor core constitutional values, including majority rule. Conversely, attempting to minimize delays, as the Legislature and

Johnson intervenors urge, would unconstitutionally perpetuate the state's outdated and politically skewed 2011 maps.

ARGUMENT

I. THIS COURT SHOULD ADOPT MAPS THAT PROMOTE MAJORITY RULE

Wisconsin has a strong tradition of districting plans that align legislative control with majority support. That tradition—which lawmakers abandoned in 2011—respected the Wisconsin Constitution's core democratic precepts. Choosing a map that promotes majority rule would help to return redistricting practice to its constitutional moorings.

A. Past Wisconsin legislative maps have respected the majoritarian principle.

Consistent with the state constitution's emphasis on government by popular majorities, every Wisconsin legislative map in recent decades—except for the 2011 maps and the *Johnson* maps—reliably translated a majority of the statewide two-party vote into legislative majorities. Adopting a majoritarian remedial map would accord with this longstanding norm.

Between the end of World War II and 2010, Wisconsin used eight different legislative plans. *See* Legis. Reference Bureau, *Redistricting in Wisconsin 2020: The LRB Guidebook* 44-71 (2020).[1] These maps—four of which were legislatively enacted and four of which were judicially imposed—all produced striking

[1] This account begins in 1946 because, in several preceding decades, third-party candidates routinely won seats in the state legislature, making the majority-rule analysis more difficult.

concordance between the party that received a majority of the statewide vote share in legislative elections and the party that won a majority of legislative seats. (Court-ordered maps were in effect in 1964-1970, 1982, and 1992-2010; legislative maps governed from 1946-1962, 1972-80, and 1984-90. *See id.*) In Assembly elections, a majority of the statewide vote translated into control of the chamber 88 percent of the time.[2] In other words, 29 of 33 Assembly elections resulted in majoritarian outcomes.[3] And not once since the advent of the "one person, one vote" era in the mid-1960s did a minority party manage to win full control in both legislative chambers.[4]

None of these pre-2011 maps displayed glaring inequalities in the ability of the two major parties to convert majority electoral support into legislative majorities. The few instances of minority party control of a chamber simply reflect the inevitable idiosyncrasies of a few close races in a politically competitive state. Each time, the minority party's legislative majority was slim—no more than a few seats, as opposed to the near super-majorities that

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[2] This data is drawn from a prior analysis of counter-majoritarian outcomes from 1968 to 2010, *see* Miriam Seifter, *Countermajoritarian Legislatures: Appendix* 8 (Legal Studies Research Paper Series No. 1721, 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3934016, and from our independent analysis of such outcomes from 1946 to 1966 conducted for this brief based on legislative election results reported in the Wisconsin Blue Blook (1946-1967 editions). Our 1946-1966 analysis has identified two counter-majoritarian Assembly maps—1960 (D two-party vote share of 52.5% yielding 45% D seat share) and 1962 (D two-party vote share of 50.2% yielding a 47% seat share).

[3] These results are similar for the Senate, although the analysis is somewhat more complicated because the Senate's members are elected over two election cycles and special elections impact the vote and seat counts.

[4] The only instances since 1946 in which counter-majoritarian outcomes may have resulted in both chambers were in 1960 and 1962, both of which involved extremely narrow vote margins in both the Senate and Assembly elections.

Republicans won under the Legislature's 2011 plan even in strong Democratic years. And from the mid-1960s to 2010, the rare counter-majoritarianism outcome was limited to a single legislative chamber. The bottom line is that, decade after decade, map after map, majorities overwhelmingly ruled.[5]

As the consultants' report explains, the situation would be very different under the maps proposed by the Legislature and Johnson intervenors. In the consultants' words, those maps "exhibit[] an extreme level of partisan bias." Report at 23. They would perpetuate the glaring political asymmetries baked into the state's 2011 maps and reinforced by the 2022 *Johnson* maps. Republicans would likely maintain lopsided majorities in both chambers even when statewide majorities of voters support Democratic candidates. The Court should instead favor maps that better reflect Wisconsin's pre-2011 majority-rule tradition.

B. Popular self-government is a bedrock commitment of the Wisconsin Constitution

The state's pre-2011 majority-rule maps are no mere historical curiosity; instead, they embody a constitutional imperative. As its text, structure, and history make plain, the Wisconsin Constitution guarantees that the state's people shall govern themselves as political equals through majoritarian institutions that respect minority rights.

[5] To be clear, we do not mean to suggest that the pre-2011 maps were perfect or to endorse all of their particulars. The pre-1966 maps, for instance, had excessive population disparities among districts. But whatever their other shortcomings, it is striking how well the maps performed with respect to majoritarianism.

These democratic principles suffuse the document from start to finish. They find expression in the Preamble's invocation of "the People of Wisconsin"; they permeate the Declaration of Rights[6]; and they are embedded in an array of governmental structures and decision rules, which repeatedly place authority in the hands of popular majorities. *See* Jessica Bulman-Pozen & Miriam Seifter, *The Democracy Principle in State Constitutions*, 119 Mich. L. Rev. 859, 887 (2021) ("To implement the commitment to popular sovereignty, state constitutions generally understand a majority to speak for the people.").

Significantly, after devoting an entire Article to securing the people's fundamental right to vote, Wis. Const. art. III, the Constitution establishes that the leaders of every branch are to be popularly elected, and subject to popular recall, *see id.* art. IV, §§ 4, 5 (legislature); art. V, § 3 (executive); art. VII, § 4(1) (judiciary); art. XIII, § 12 (recall). Consider as well that the Constitution itself was subject to approval by majority vote, *id.* art. XIV, § 9 (repealed 1982); that proposed changes to the Constitution are submitted to the people and approved by majority vote, *id.* art. XII, §§ 1, 2; and

[6] The Declaration of Rights begins by stressing that governments "deriv[e] their just powers from the consent of the governed" and exist to "secure the[] rights" of the people. Wis. Const. art. I, § 1. It then enshrines a series of rights that undergird and sustain popular self-rule. *E.g.*, *id.* art. I, § 3 (free speech and press); § 4 (right "peaceably to assemble," "consult for the common good," and "petition the government"); § 8(1) (due process); § 9 (right to "obtain justice freely"); § 19 (freedom from "religious tests" as qualification for officeholding); § 20 ("strict subordination" of military to civil power). And it expressly urges "frequent recurrence to fundamental principles" to maintain "the blessings of free government." *Id.* § 22; *see also* Jonathan L. Marshfield, *America's Misunderstood Constitutional Rights*, 170 U. Penn. L. Rev. 853, 926 (2022) ("state constitutional rights … prioritize and facilitate popular control over government").

that representatives are selected by the highest number of votes in popular elections, *see, e.g.*, *id.* art. V, § 3.

Individually and collectively, these constitutional provisions manifest what this Court has from its earliest days described as "the fundamental American idea ... that in all popular elections, the will of the majority of the voters voting upon any subject or question submitted shall prevail." *Gillespie v. Palmer*, 20 Wis. 544, 561 (1866) (opinion of Dixon, C.J.). Under this system, legislators "are but the *agents* … of the people" and serve as conduits of the popular will. *Att'y Gen. ex rel. Bashford v. Barstow*, 4 Wis. 567, 743 (1855) (emphasis in original); *see also State v. Frear*, 142 Wis. 320, 125 N.W. 961, 966 (1910) ("Under our form of government the majority may not always be right, but it must of necessity rule."); *Soens v. City of Racine*, 10 Wis. 271, 276 (1860) ("[I]t is equally well settled, that where the powers entrusted are matters of *public concern*, then the voice of the majority shall govern, and their act is the act of the whole." (emphasis in original)); *Bashford*, 4 Wis. at 743 ("[W]e are living under a popular government, one which originated with the people—the rightful source of all political power.").

For the Constitution's creators, "the primary threat to democracy [wa]s 'minority faction—power wielded by the wealthy or well-connected few—rather than majority faction.'" Bulman-Pozen & Seifter, *supra*, at 880 (quoting G. Alan Tarr, *For the People: Direct Democracy in the State Constitutional Tradition*, *in Democracy: How Direct?* 87, 89 (Elliott Abrams ed., 2002)). Indeed, during the state's constitutional drafting process, influential

voices repeatedly emphasized that the document served to facilitate rule by popular majorities and to avoid minoritarian capture. As one prominent participant put it, if "the minority rules the majority," "we no longer have a people's government" and "the fundamental principle of our government is violated." Milo M. Quaife, *The Struggle Over Ratification* 236 (1920) (Marshall M. Strong).[7]

The need for a majoritarian approach to legislative maps follows directly from this constitutional text, history, and precedent. The Constitution tasks the Legislature with making law on behalf of all Wisconsinites. *See* Wis. Const. art. IV § 17(1) ("The style of all laws of the state shall be 'The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:'."). The promise of a government that gives voice to the popular will is gravely undermined when a minority of citizenry wields legislative power at the majority's expense. *Cf.* Jonathan L. Marshfield, *America's Other Separation of Powers Tradition*, 73 Duke L.J. 545, 593 (2023) ("State constitutions are structured principally to empower democratic majorities and regulate government officials.").

The fact that the Constitution provides for legislative representation through single-member districts in no way alters

[7] *See also* Milo M. Quaife, *The Convention of 1846*, at 288 (1919) (Charles Minton Baker) ("[A]n axiom of government in this country [is] that the people are the source of all political power, and to them should their officers and rulers be responsible for the faithful discharge of their respective duties."); *id.* (advocating an elected judiciary as a way to "wrest[] power from the few and vest[] it in its true repository, the many"); *id.* at 590 (Lorenzo Bevans) ("The power to prescribe, to execute, and to adjudicate laws is in the people; and that they act by proxy does not destroy the principle.").

this conclusion. The Constitution's drafters and supporters never meant for single-member districts to provide a pathway for minoritarian capture. To the contrary, they embraced single-member districts for democratic reasons. They saw value in offering voters the responsiveness and accountability that comes with being able to choose representatives attentive to local needs and preferences. And they believed that, while enabling the majority to govern, districted elections would give minority parties at least some voice in the Legislature. *See* Milo M. Quaife, *The Movement for Statehood* 300 (1918) ("Single Districts," Racine *Advocate*) (explaining that single-member districts would assure "the minority in politics … as nearly as possible its proper number of delegates," while also "prevent[ing] what is called gerrymandering"); *see also State ex rel. Atty. Gen. v. Cunningham*, 81 Wis. 440, 51 N.W. 724, 735 (1892) (Pinney, J., concurring) (discussing the people's "right to a fair apportionment of the aggregate of political power"). Gerrymandering was anathema to them, and the districting criteria they placed in the Constitution were intended in part as guardrails against partisan abuses. *See Cunningham*, 51 N.W. at 730 (explaining that the Constitution's districting criteria "were supported on the express ground that they would prevent the legislature from gerrymandering the state").

In short, this Court's expert consultants were right to emphasize the importance of the majoritarian principle. It is a cornerstone of Wisconsin's constitutional system. As it selects a map, this Court should focus on the extent to which the options

before it reliably and symmetrically enable each major political party to convert an electoral majority into an legislative majority. And it should reject maps that would entrench minority rule.

II. SPECULATIVE CONCERNS ABOUT DELAYED SENATE VOTING CANNOT EXCUSE COUNTER-MAJORITARIAN MAPS

This Court should not allow the prospect of a two-year delay in Senate voting for a small fraction of Wisconsinites to prevent the enactment of constitutionally compliant, majoritarian maps. Such delays are an inherent outgrowth of the staggered Senate terms used in Wisconsin and many other states. They work no cognizable legal injury absent irrationality or invidious discrimination, much less amount to actual "disenfranchisement." To the contrary, an uncompromising attempt to avoid delays—as the Legislature advocates—would itself do grave constitutional harm to the people of Wisconsin by perpetuating outdated, counter-majoritarian maps.

Redistricting in Wisconsin, whether done by courts or legislators, has commonly created potential Senate election delays for hundreds of thousands of Wisconsinites. As it pursued its highly partisan 2011 plan, the Legislature shifted nearly 300,000 people to later-voting Senate districts—many times more people than would have been moved if the goal had merely been to re-equalize district populations. *See Baldus v. Members of Wisconsin*

Gov't Accountability Bd., 849 F. Supp. 2d 840, 852 (E.D. Wis. 2012).[8]

Since the nineteenth century, state and federal courts in Wisconsin have repeatedly rejected delay-related objections, concluding that delays generally do not implicate voters' constitutional interests and that mapmakers do not have an obligation to minimize them. *See, e.g.*, *Baldus*, 849 F. Supp. 2d at 852 (describing delays after redistricting as "inevitable" and "presumptively constitutional"); *Wis. State AFL-CIO v. Elections Bd.*, 543 F. Supp. 630, 659 (E.D. Wis. 1982) (describing constitutional objections to court-drawn plan that delayed voting for more than 700,000 people as "a house of cards that collapses when exposed to even the gentle breeze of cursory analysis")[9]; *Cunningham*, 51 N.W. at 745 (Lyon, C.J., concurring) (declining to second-guess legislative decision to alter Senate districts such that "large numbers of electors who were last permitted to vote for senators in 1888 cannot do so again until 1894"). Courts around the country have long reached similar conclusions, indicating that delays do not raise legal concerns so long as they are rational and not invidiously discriminatory.[10]

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[8] *See also Baumgart v. Wendelberger*, No. 01-C-0121, 2002 WL 34127471, at *7 (E.D. Wis. May 30, 2002), amended, No. 01-C-0121, 2002 WL 34127473 (E.D. Wis. July 11, 2002) (delays for 171,613 people in court-adopted plan); *Prosser v. Elections Bd.*, 793 F. Supp. 859, 871 (W.D. Wis. 1992) (delays for 257,000 people in court-adopted plan).

[9] Despite rejecting the legal objection, the court chose to renumber Senate districts in a manner that did not alter "the basic design or integrity of [its] plan" but apparently reduced delays to an unspecified extent. *Wis. State AFL-CIO*, 543 F. Supp. at 659.

[10] *E.g.*, *Donatelli v. Mitchell*, 2 F.3d 508, 515 (3d Cir. 1993); *Republican Party of Oregon v. Keisling*, 959 F.2d 144, 145-46 (9th Cir. 1992); *Legis. v. Reinecke*,

To the extent some of the proposed maps now under consideration produce potential delays that the Legislature and *Johnson* plaintiffs find objectionable, they themselves bear much of the blame. The Legislature shifted significant numbers of people among Senate districts to produce its counter-majoritarian 2011 map. The Legislature and Johnson intervenors then urged this Court two years ago to perpetuate the 2011 map through a "least change" approach, rather than making fresh post-2020 judgments about district configurations. *See Johnson v. Wis. Elections Comm'n ("Johnson III")*, 2022 WI 19, 401 Wis. 2d 198, 972 N.W.2d 559. The resulting 2022 map did not fully remedy the harm caused by the failure of the political branches after 2020 to fulfill their decennial obligation to "district anew." Wis. Const. art. IV, § 3. Replacing an egregiously skewed and outdated map with a neutral and up-to-date one necessarily entails population shifts between Senate districts.

The Legislature's argument for delay minimization ultimately amounts to little more than an attempt to resurrect the "least change" approach that this Court has now properly disclaimed. Although framed in terms of protecting a subset of the state's voters from delay, it would preclude this Court from providing relief that advances the overriding constitutional interests that those voters—and all Wisconsinites—have in

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516 P.2d 6, 12 (Cal. 1973) (accepting voting delays as "the inevitable byproduct of reapportioning a legislative body whose members are elected for staggered four-year terms"); *Pick v. Nelson*, 247 Neb. 487, 493-94, 528 N.W. 2d 309 (Neb. 1995) ("[I]t would be a practical impossibility to redistrict without this effect." (quoting *Carpenter v. State*, 179 Neb. 628, 636, 139 N.W.2d 541 (1966))); *see also Donatelli*, 2 F.3d at 515 (collecting cases); *In re Khanoyan*, 637 S.W.3d 762, 767-68 & n.9 (Tex. 2022) (collecting cases).

majoritarian maps crafted for the post-2020 world. The notion that a good map must be rejected so that more people can vote sooner under a bad one turns both constitutional and equitable principles upside down. After all, when legislative maps have few competitive districts and preclude any meaningful contest for control, the value of everyone's vote is diminished.

Three additional points bear noting: First, the Legislature's figures on delayed voting, *see* Leg. Resp. at 21, represent the total number of people shifted from even- to odd-numbered Senate districts. Only a subset of these people are voters, and as the Legislature acknowledges, *see id.* at 21 n.13, not all of them may in fact experience a voting delay. Some—perhaps many—odd-numbered Senate districts may end up with open seats that will be filled by election sooner than 2026, whether due to incumbent pairings or for any number of other reasons. As the Legislature puts it, "[u]ncertainties abound." *Id.* at 25. The speculative and contingent nature of the Legislature's assertions about the number and partisan identity of voters who may experience delays further weakens the force of any delay-based objections.[11]

Second, despite its professed concerns about delayed voting, the Legislature voted just last month to adopt Assembly Bill 415,

[11] This is especially so given that no more than 10 to 13 percent of Wisconsin residents face even the *possibility* of a delay under any of the proposed maps. Percentages in this range are by no means unusual, and courts have readily accepted similar and larger shifts. *See, e.g.*, *Donatelli*, 2 F.3d at 511 (expressing no concern about a Pennsylvania plan that moved 1.3 million people, or about 11 percent of the state's 1990 population, to later-voting districts); *Wisconsin State AFL-CIO*, 543 F. Supp. at 659 (finding no constitutional problem with a plan that produced potential delays for 15 percent of the state's 1980 population).

a modified version of the map the Governor has proposed in this case—one that, by Legislature's estimate, could create voting delays for about 11 percent of Wisconsinites. Given the oath legislators take to support the United States and Wisconsin Constitutions, they presumably would not have passed that map unless they believed that its population shifts were lawful.

Third, to the extent the Court credits the Legislature's concerns about delayed voting, there is a simple solution: Having already held the 2022 Senate map unlawful, this Court could order new elections for all Senate seats in 2024. Courts elsewhere have sometimes taken this approach when adopting new maps.[12]

CONCLUSION

The majoritarian principle articulated in the report of this Court's expert consultants aligns with both longstanding practice in Wisconsin and the state constitution's foundational democratic principles. As this Court carries out its duty to select politically neutral maps, *see Clarke v. Wis. Elections Comm'n*, 2023 WI 79, 410 Wis. 2d 1, 59, 998 N.W.2d 370, it should prioritize options that

[12] *See, e.g.*, *Egan v. Hammond*, 502 P.2d 856, 873-74 (Ark. 1972) (describing the court's power to truncate legislative terms as "incidental to … general apportionment powers); *Schaefer v. Thomson*, 251 F. Supp. 450, 455 (D. Wyo. 1965) (ordering elections for all state senate districts as "the only way to effectuate a constitutionally constituted state legislature at the next regular session"), *aff'd without opinion sub. nom. Harrison v. Schaefer*, 383 U.S. 269 (1966); *Mann v. Davis*, 238 F. Supp. 458, 460 (E.D. Va. 1964) (ordering truncation of terms where senators were "[e]lected on a void pattern of representation"), *aff'd sub. nom. Hughes v. WMCA, Inc.*, 379 U.S. 694 (1965); *Chavis v. Whitcomb*, 307 F. Supp. 1362, 1366-67 (S.D. Ind. 1969) ("Senators elected in 1968 under what has now been declared to be an unconstitutional statute do not have a vested right to serve out the balance of their 4-year terms."), *rev'd on other grounds*, 403 U.S. 124 (1970).

evenhandedly promote majority rule, and it should reject those that perpetuate the counter-majoritarian status quo.

Dated this 8th day of February, 2024.

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FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8) (b), (bm), and (c) for a brief, as modified by this court's order on December 22, 2024, specifying "that the parties and all amici who have been granted leave to participate may submit a response brief addressing the report" and that "[t]he response briefs shall not exceed 25 pages if a monospaced font is used or 5,500 words if a proportional serif font is used." The length of this brief is 3,765 words.

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