StaffordRosenbaum LLP
Attorneys

Douglas M. Poland

222 West Washington Avenue, Suite 900
P.O. Box 1784
Madison, WI 53701-1784
DPoland@staffordlaw.com
608.259.2663

March 9, 2022

Via Email & Hand Delivery

Sheila T. Reiff
Clerk of the Supreme Court and Court of Appeals
110 East Main Street, Suite 215
Madison, WI 53703

RE: ***Johnson v. Wisconsin Elections Commission*, No. 2021AP1450-OA – Letter Brief from Intervenor-Petitioners Black Leaders Organizing for Communities, et al., Opposing Expedited Motion for Stay in Response to the Court's Order Dated March 7, 2022**

Dear Ms. Reiff:

The undersigned counsel represent Black Leaders Organizing for Communities, Voces de la Frontera, the League of Women Voters of Wisconsin, Cindy Fallona, Lauren Stephenson, and Rebecca Alwin, Intervenor-Petitioners (collectively the "BLOC Petitioners") in the referenced action. On March 7, 2022, the Supreme Court of Wisconsin issued an order directing the parties to submit letter briefs addressing the Legislature's Expedited Motion for a Stay Pending Appeal. Order (Wis. Mar. 7, 2022). The BLOC Petitioners submit this letter brief in accordance with the Court's order.

INTRODUCTION

One week before the Wisconsin Elections Commission ("WEC") and thousands of local clerks must begin administering the 2022 state legislative elections, the Legislature asks this Court to throw those elections into chaos by staying its order correcting the unconstitutional malapportionment of Wisconsin's legislative districts under the previous

plan, 2011 Wisconsin Act 43. As a threshold matter, the Legislature now asks this Court to abdicate that responsibility by staying its order, despite consistently urging this Court to exercise jurisdiction over this dispute and adopt new state legislative districts rather than allowing the federal district court to do so. Granting the requested stay would essentially undo an entire process and ruling that the Court undertook at the Legislature's request and urging. Contrary to the Legislature's repeated and ***successful*** attempts since September 2021 to have this Court, rather than the federal courts, determine Wisconsin's new districts, the stay the Legislature seeks would allow Wisconsin's districts to be determined by a federal court after all (the U.S. Supreme Court, rather than the federal district court). Why the about-face? Simply because the Legislature does not like the result from this Court. The request for a stay is nakedly self-serving and unprincipled.

Moreover, the Legislature makes this motion without establishing any of the legal criteria for such a stay, and despite the substantial harm it would cause to BLOC Petitioners and the public at large. There is simply no time to drag Wisconsin's electoral districts back into legal uncertainty. This is why the Legislature will not secure the extraordinary relief it seeks from the United States Supreme Court, which has repeatedly rejected—twice just this week[1]—requests to upend state-court redistricting maps. As that Court has reaffirmed, "federal courts ordinarily should not enjoin a state's election laws in the period close to an election" due to the "chaos and confusion" such interference can cause. *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (mem. op.) (Kavanaugh, J., concurring).

LEGAL STANDARD

Courts must consider four factors when reviewing a request to stay an order pending appeal:

> (1) whether the movant makes a strong showing that it is likely to succeed on the merits of the appeal;

[1] *Moore v. Harper*, 595 U.S. ___ (2022) (Kavanaugh, J., concurring); *Toth v. Chapman*, 595 U.S. __ (2022) (mem.).

(2) whether the movant shows that, unless a stay is granted, it will suffer irreparable injury;

(3) whether the movant shows that no substantial harm will come to other interested parties; and

(4) whether the movant shows that a stay will do no harm to the public interest.

Waity v. LeMahieu, 2022 WI 6, ¶49, 400 Wis. 2d 356, 969 N.W.2d 263. "The relevant factors 'are not prerequisites but rather are interrelated considerations that must be balanced together.'" *Id.* (quoting *State v. Gudenschwager*, 191 Wis. 2d 431, 440, 529 N.W.2d 225 (1995)).

I. THE LEGISLATURE HAS NOT MADE A STRONG SHOWING THAT IT IS LIKELY TO SUCCEED ON THE MERITS.

A. The Legislature does not have standing to pursue this appeal.

The Legislature cannot show that it is likely to succeed on the merits of its forthcoming petition for a writ of certiorari because the Legislature lacks standing in federal court to pursue its contention that the seven Milwaukee-area Black opportunity districts this Court adopted were an unconstitutional racial gerrymander. "[S]tanding 'must be met by persons seeking appellate review, just as it must be met by persons appearing in courts in the first instance.'" *Hollingsworth v. Perry*, 570 U.S. 693, 705 (2013) (quoting *Arizonans for Official English v. Arizona*, 520 U.S. 43, 64 (1997)). "To have standing, a litigant must seek relief for an injury that affects him in a personal and individual way." *Id.* (internal quotation marks omitted). A litigant asserting a "generalized grievance" about the "proper application of the Constitution and laws" does not have Article III standing. *Id.* at 706.

As the United States Supreme Court has explained, the injuries caused by a racial gerrymander are "personal" and "include[] being 'personally ... subjected to [a] racial classification.'" *Ala. Legislative Black Caucus v. Alabama*, 575 U.S. 254, 263 (2015) ("*ALBC*") (quoting *Bush v. Vera*, 517 U.S. 952, 957 (1996) (first bracket added)). The injuries "directly threaten a voter who lives in the *district* attacked. But they do not so keenly threaten a voter who lives elsewhere in the State. Indeed, the latter voter normally

lacks standing to pursue a racial gerrymandering claim." *Id.* (emphasis in original). Indeed, as the United States Supreme Court held in *United States v. Hays*, a plaintiff who "resides in a racially gerrymandered district ... has been denied equal treatment because of the [] reliance on racial criteria, and therefore has standing." 515 U.S. 737, 744-45 (1995). But voters who do "not live in such a district ... do[] not suffer those special harms." *Id.* at 745. "[A]bsent specific evidence" showing that an out-of-district voter has been personally subjected to a racial classification in the map, that person "would be asserting only a generalized grievance against governmental conduct of which he or she does not approve" and would not have Article III standing. *Id.*

The Legislature has no standing to pursue its appeal in the United States Supreme Court for several reasons. First, the Legislature is neither a voter nor a membership organization comprised of voters. *See ALBC*, 575 U.S. at 269 (noting that membership organization with members residing in affected districts would have standing). Rather, it is a branch of Wisconsin's government. Second, the Legislature does not reside in any of the seven Black opportunity districts it contends are unconstitutionally racially gerrymandered. Third, the Legislature has not been subjected to a racial classification, nor any of the other representational harms that flow from an unconstitutional racial gerrymander. The Legislature has no race, and has been subjected to no personal racial classification.

Only a voter who resides in the challenged districts and who has been subjected to a racial classification,[2] or a membership organization who has such a voter as its member, has standing to pursue a racial gerrymandering claim against the seven Black opportunity districts ordered by this Court. The Legislature is neither, has suffered no harm, and is instead seeking to pursue a generalized grievance about its view of what the Constitution requires. That is insufficient under Article III, and the Legislature thus lacks standing to

[2] While the Johnson Petitioners have joined the Legislature in the emergency application for a stay directed at the United States Supreme Court, that does not impact the standing analysis here, as none of the Johnson Petitioners reside in the Black opportunity districts at issue and likewise have no standing.

pursue its appeal to the United States Supreme Court. Without standing to appeal, the Legislature cannot show it is likely to succeed on appeal.

B. This Court reached the correct result under Section 2 of the Voting Rights Act (VRA) and the Legislature will have no success in obtaining reversal of this Court's findings.

"When reviewing the likelihood of success on appeal, [] courts must consider the standard of review, along with the possibility that appellate courts may reasonably disagree with its legal analysis." *Waity*, 2022 WI 6, ¶53. To merit a stay at the United States Supreme Court, the Legislature must show that there is "a fair prospect that a majority of the Court will vote to reverse the judgment below." *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam). This Court's factual findings are reviewed only for clear error, and "warrant[] significant deference on appeal to [the United States Supreme] Court." *Cooper v. Harris*, 137 S. Ct. 1455, 1465 (2017) (citing Fed. Rule Civ. P. 52(a)(6); *Easley v. Cromartie*, 532 U.S. 234, 242 (2001)). The United States Supreme Court "may not reverse [a lower court] just because [it] 'would have decided the [matter] differently,'" *Cooper*, 137 S. Ct. at 1465 (citation omitted), as long as "the lower court's view of the evidence is plausible in light of the entire record." *Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321, 2349 (2021); *Cooper*, 137 S. Ct. at 1465; *Anderson v. Bessemer City*, 470 U.S. 564, 573 (1985).

In addition, this Court's task was "to produce districts in the first instance" where the Legislature and Governor reached an impasse, leaving unconstitutionally malapportioned state legislative maps in place. *Johnson v. Wis. Elections Comm'n*, 2022 WI 14, ¶40, __ Wis. 2d __, __ N.W. 2d __. Because of this "unusual procedural posture," the Court, as the relevant state actor, only had to establish "that it had 'good reasons' for concluding that the statute required its action." *Cooper*, 137 S. Ct. at 1464; *ALBC*, 575 U.S. at 279. This standard is explicitly designed to "give[] States 'breathing room' to adopt reasonable compliance measures that may prove, in perfect hindsight, not to have been

needed." *Cooper*, 137 S. Ct. at 1464 (citing *Bethune-Hill v. Virginia State Bd. of Elections*, 137 S. Ct. 788, 802 (2017)).[3]

The Legislature has not shown that this Court clearly erred in concluding that it had good reasons to adopt state legislative maps that provide Black voters with an equal opportunity to elect candidates of their choice in seven state assembly districts. Nor can it. This Court carefully "analyze[d] whether a strong basis in evidence suggests the *Gingles* preconditions are satisfied" and "determin[ed] whether the Governor's propos[ed maps are] within the 'leeway' states have to 'take race-based actions reasonably judged necessary under a proper interpretation of the VRA.'" *Johnson*, 2022 WI 14, ¶41 (quoted source omitted).[4]

Starting with *Gingles* prong 1, the Court noted that it was "undisputed that the Black voting age population in the Milwaukee area is 'sufficiently large and geographically compact' to form a majority in seven 'reasonably configured legislative districts.'" *Id.*, ¶43. In addition, multiple parties submitted maps "demonstrat[ing] that it is now possible to draw a seventh sufficiently large and geographically compact majority-Black district." *Id.* The Court also found that relevant population shifts warranted an additional Black-majority district, finding that over the last decade "the Black population in Wisconsin grew by 4.8% statewide, while the white population fell by 3.4%." *Id.*, ¶48. More specifically, in

[3] This unusual posture also distinguishes this case from the Alabama redistricting cases pending at the United States Supreme Court cited by the Legislature, *Merrill v. Milligan*, 142 S. Ct. 879 (2022) and *Merrill v. Caster*, 656 U.S. ___ (2022), where the district court invalidated a redistricting plan enacted by Alabama's legislature, and in which the United States Supreme Court has mandatory appellate jurisdiction under the three-judge court statute. Here, the Legislature must instead seek a writ of certiorari.

[4] By contrast, the dissenting Justices misunderstand the VRA. For example, one dissenting opinion expressly argues that white bloc voting in the Milwaukee area does not exist because Black representatives like Lena Taylor, LaTonya Johnson, Leon Young, and Jason Fields have been elected to the state legislature. But those representatives were elected from districts *explicitly crafted as Black opportunity districts under the VRA*; it is no surprise the districts elect candidates of choice, and thus do not tell us anything about whether white bloc voting will usually defeat Black voters' candidate of choice *absent* the drawing of VRA compliant districts. In addition, minority candidates running unopposed in elections, such as Leon Young and Jason Fields, are a special circumstance explicitly discounted in white bloc voting analysis under *Thornburg v. Gingles*, 478 U.S. 30, 51 (1986).

Milwaukee County, "the Black Voting age population increased 5.5%, while the white voting age population decreased 9.5%." *Id.*

Turning to *Gingles* prong 2, the Court found that it was "undisputed that Black voters in the Milwaukee area are politically cohesive," and credited the expert analysis from multiple parties that "analyzed voting trends and concluded political cohesion existed." *Id.*, ¶44. This expert analysis included an examination of at least eight probative elections, including nonpartisan primary races, Democratic primary races, and spring general races from 2016-2021, that involved Black candidates running for office, using the widely accepted statistical methods of homogenous precinct analysis, ecological regression, and ecological inference techniques. (BLOC Opening Br. at 36-38). The results demonstrated that "without a doubt" racially polarized voting is present in Milwaukee-area elections and that "Black and white voters consistently prefer different candidates and Black voters 'strongly back' the same candidates for political office 'at very high rates even in multi-candidate primary elections.'" (Collingwood Rpt. at 1, 4-22, 28).

Finally, examining *Gingles* prong 3, the Court found that "the parties offered a strong evidentiary basis to believe white voters in the Milwaukee area vote 'sufficiently as a bloc to usually defeat the minority's preferred candidate.'" *Johnson*, 2022 WI 14, ¶45. The Court relied on "experts from multiple parties … [who] look[ed] at various election contests, with the most comprehensive expert analysis calculating that white voters in the Milwaukee area defeat the preferred candidate of Black voters 57.14% of the time." *Id.*[5] This analysis of elections provides strong evidence that Black-preferred candidates are usually defeated by white bloc voting. *See Gingles*, 478 U.S. at 56; *Missouri State Conf. of the NAACP v. Ferguson-Florissant Sch. Dist.*, 201 F. Supp. 3d 1006, 1039 (E.D. Mo. 2016) ("There is **no** requirement that white voters have an 'unbending or unalterable hostility' to minority-preferred candidates such that those candidates always lose.") (internal citations omitted) (emphasis in original). The Court further noted that no parties seriously disputed

[5] This bloc voting rate is also the most conservative estimate—the bloc voting rate increases to 66.66% if the 2018 Milwaukee County Sheriff Democratic Primary race is excluded for demonstrating special circumstances. (BLOC Opening Br. at 39-41, Collingwood Rpt. at 6-7, 23).

the existence of prong 3 and that any arguments that prong 3 was not met were "virtually unsupported by expert analysis or argument." *Johnson,* 2022 WI 14, ¶45. In addition, the Court also relied on numerous federal courts before it that have applied the VRA to the Milwaukee area. *Id.*; *Baumgart v. Wendelberger*, 2002 WL 34127471 at *5 (E.D. Wis. May 30, 2002) (noting that intervenors "presented expert testimony that all of the *Gingles* criteria were present in Wisconsin in general and the City of Milwaukee in particular); *Gingles*, 478 U.S. at 57 (noting that longtime voting patterns are highly probative of racial polarization).

The Court then analyzed the totality-of-the-circumstances evidence. *Johnson*, 2022 WI 14, ¶46. The Court outlined the non-exhaustive list of factors relevant to the totality analysis and focused in particular on proportionality. *Id.*; *Johnson v. DeGrandy*, 512 U.S. 997, 1017-21 (1994); *United States v. Marengo Cty. Comm'n*, 731 F.2d 1546, 1566 n.33 (11th Cir. 1984) ("There is no requirement that any particular numbers of factors be proved, or that a majority of them point one way or the other.") (quoting S. Rep. No. 97-417, at 29 (1982)).[6] In particular, the Court found that the Black voting age population statewide, in combination with "the baseline of six opportunity districts ten years ago" and Black population growth, provided "good reasons" to "suggest a seventh majority-Black district may be required." *Johnson*, 2022 WI 14, ¶¶48-50. The Court also found the Legislature's proposed assembly districts "problematic under the VRA." *Id.*, ¶49. For example, the Legislature's proposed state assembly plan contained *fewer* majority-Black districts (five) than the 2011 plan (which had six). *Id.* Further, the Court found that one of the Legislature's "proposed districts has a Black voting population of 73.28%, a level some courts have found to be unlawful 'packing' under the VRA." *Id.* (citing *Ketchum v. Byrne*, 740 F.2d 1398, 1418 (7th Cir. 1984)). In light of the evidence presented by the parties, the Court concluded that "the risk of packing Black voters under a six-district configuration further

[6] In addition to proportionality, the Court also found the existence of racially polarized voting (Senate Factor 2). *See, e.g.*, *Gingles*, 478 U.S. at 36-37; *NAACP v. City of Niagara Falls*, 65 F.3d 1002, 1020 n.21 (2d Cir. 1995) ("It will only be the very unusual case in which the plaintiff can establish the existence of the three *Gingles* factors but still have failed to establish a violation of § 2 under a totality of the circumstances.").

suggests drawing seven majority-Black districts is appropriate to avoid minority vote dilution." *Id.*

Assessing the evidentiary record and conducting a careful analysis, this Court concluded that "there are good reasons to believe a seventh majority-Black district is needed to satisfy the VRA." *Id.*, ¶10. The Legislature's stay motion does not even *try* to pinpoint any clear error in this Court's findings, and any argument that the Court's findings are not plausible defies the evidentiary record in this case. Because this Court "ha[d] good reason to think that all the '*Gingles* preconditions' are met, then so too it has good reason to believe that § 2 requires drawing a majority-minority district," *Cooper*, 137 S. Ct. at 1470 (citing *Vera,* 517 U.S. at 978). "Holding otherwise would afford state legislatures too little breathing room, leaving them 'trapped between the competing hazards of liability' under the Voting Rights Act and the Equal Protection Clause." *Bethune-Hill*, 137 S. Ct. at 802 (internal quotation marks and citations omitted). It follows that the Legislature is not likely to succeed on the merits of any appeal.

C. The Legislature cannot show that race predominated in the Court's decision making.

In addition to being unable to demonstrate any clear error in this Court's conclusion that it had good reasons to select state legislative maps that comply with VRA, the Legislature cannot show that race predominated in the Court's decision-making process. *See, e.g.*, *Bethune-Hill*, 137 S. Ct. at 797 ("the p[arty] alleging racial gerrymandering bears the burden 'to show … that race was the predominant factor motivating the [Court's] decision to place a significant number of voters within or without a particular district. To satisfy this burden, the [alleging party] 'must prove that the [Court] subordinated traditional race-neutral districting principles … to racial considerations.") (internal citations omitted). The Legislature has *no evidence whatsoever* that, district-by-district or at all, this Court subordinated other considerations to those of race. This dooms the Legislature's merits appeal.

The Court itself has stated and demonstrated that considerations of race did not predominate over other redistricting criteria in its process of selecting state legislative

maps. In its November 30, 2021 opinion, the Court set out a number of redistricting criteria it would consider, including a "least-change" approach, population equality, compactness, political subdivision splits, contiguity, and compliance with the VRA. *See Johnson v. Wis. Elections Comm'n*, 2021 WI 87, ¶66, 399 Wis. 2d 623, 967 N.W. 2d 469. Of those criteria, there can be no dispute that following a "least-change" approach predominated over every other factor considered in the majority's selection of a state legislative map. This is evident from the March 3 majority opinion, which stated "the first question is which map most complies with our least-change directive," measured through core retention. *Johnson*, 2022 WI 14, ¶7. In fact, the Court selected its preferred plans *based on this criterion alone*, *id.*, ¶8 (noting that "no other proposal comes close" to the Governor's state legislative maps on core retention), and only then analyzed the Governor's plans' compliance with other criteria. *Id.*, ¶9. The Court analyzed VRA considerations last, and only after selecting the plan that best performed on core retention. *Id.*, ¶10.

The dissenting Justices also acknowledge the predominance of core retention over all other criteria. *See Johnson*, 2022 WI 14, ¶74 (Ziegler, C.J., dissenting) (noting "core retention was the sole factor for determining least change and further, for selecting maps."); *Id.*, ¶209 n.1 & 3 (R. Bradley, J., dissenting) (describing the majority's "misapplication of the least-change approach that allows core retention (an extra-legal criterion) to override the United States Constitution, the Wisconsin Constitution, and the VRA."). Indeed, there is no evidence whatsoever here that the Court (or the Governor) subordinated any other criteria to racial considerations; the Court did not look at maps with racial shading data displayed, nor did it set any racial target or tweak any district lines to impact the racial demographics of any districts. The Court also found that the Governor's state legislative maps complied with traditional redistricting criteria, stating "Under the Wisconsin Constitution, all districts are contiguous, sufficiently equal in population, sufficiently compact, appropriately nested, and pay due respect to local boundaries" and "the federal constitution's population equality requirement." *Johnson*, 2022 WI 14, ¶9. Rather, the majority opinion explicitly stated that it had no intent to maximize the number of majority-minority districts:

> To be clear, the VRA does not require drawing maps to maximize the number of majority-minority districts, and we do not seek to do so here. *See De Grandy*, 512 U.S. at 1016-17. Rather, on this record, we conclude selecting a map with seven districts is within the leeway states have to take "actions reasonably judged necessary" to prevent vote dilution under the VRA. *Cooper*, 137 S. Ct. at 1472.

Id., ¶ 50.

The only argument the Legislature attempts to make is that the demographics of the Governor's state assembly map somehow condemn it as a racial gerrymander for unpacking the existing districts and instead creating districts with varying Black voting age populations around 50%. (Leg. Mot. at 5-6).[7] But this argument ignores the evidentiary record that shows the need for seven Black opportunity districts. Further, the Legislature itself conceded in its opening brief before this Court that "there is no requirement that a district exceed 50% BVAP to comply with the Voting Rights Act; indeed, *unnecessarily inflating a district to exceed 50% BVAP can itself violate the Fourteenth Amendment*." (Leg. Opening Br. at 35, n.24) (citing *Cooper*, 137 S. Ct. at 1472) (emphasis added). In fact, the Legislature's own proposed assembly map included an alleged Black opportunity district with a BVAP of just 47.2%. (BLOC Resp. Br. at 9).

In any event, the United States Supreme Court itself created the alleged "mechanical" majority-minority target that the Legislature now argues is unconstitutional. *See, e.g.*, *Bartlett v. Strickland*, 556 U.S. 1, 19 (2009); *Davis v. Chiles*, 139 F.3d 1414, 1425-26 (11th Cir. 1998) (holding that to "penalize" VRA litigants for "attempting to make the very showing that demand[s] would be to make it impossible, as a matter of law, for any plaintiff to bring a successful Section Two action").

Rather than the Court or the Governor, the *Legislature* unlawfully made race the predominant consideration in its districting plan, additionally demonstrating why its plan could not be chosen by the Court. The Legislature praised itself for keeping more Black Wisconsinites in their prior districts than white residents. (Leg. Resp. Br. at 10). However,

---

[7] The Legislature also argues that these demographics "maximize" the number of minority-majority districts. (Leg. Mot. at 7) However, as noted above, the Court stated it did not attempt to maximize the number of majority-minority districts, and there is no evidence in the record as to whether it would be possible to draw additional majority-Black opportunity districts in the Milwaukee area.

unlike the use of race to comply with the VRA, the United States Supreme Court has *never* approved a goal of ensuring that the percentage of "Black Individuals Retained" in new districts exceeds the same percentage for white voters. Not only does maximizing this invented metric undermine VRA compliance by locking in packed Black districts, but it is also the type of race-based statistical target that violates the Equal Protection Clause. *See, e.g.*, *ALBC*, 575 U.S. at 304.

In sum, there is no evidence that race predominated in the Court's selection of state legislative maps. In fact, core retention was the predominant factor considered by the majority opinion and many of the parties who submitted maps. Thus, the Legislature cannot meet its burden of proof and will not succeed on its racial gerrymandering claim.

II. THE BALANCE OF HARMS DECISIVELY FAVORS MOVING FORWARD WITH THE COURT'S MAPS AND DENYING A STAY.

Leaving aside that the Legislature has no meaningful chance of success on its VRA arguments, its cursory balance-of-harms analysis obscures how granting its requested stay threatens substantial injury both to the BLOC Petitioners themselves and the public interest more generally, while a denial of the stay threatens no injury to the Legislature itself. To better understand these harms, it is crucial to first clear away the fog the Legislature drapes over the nature and length of its requested stay.

A. The Legislature's requested stay would affect the districts Wisconsin must use to begin administering the 2022 elections and could be lifted at any time between now and those elections.

First, the Legislature dances around the true meaning of its request: that this Court, by staying its decision, should decline to remedy the unconstitutional malapportionment in the present maps and thereby require Wisconsin to prepare for and hold elections based on existing legislative districts that every party, and this Court, agrees are facially unconstitutional. This would be an abdication of the Court's duty to adopt new districts in the absence of the Legislature and the Governor having done so. *See Johnson*, 2021 WI 87, ¶66 ("If the legislature and the governor reach an impasse, the judiciary has a duty to remedy the constitutional defects in the existing plan.").

The Court has two, and only two, options before it: (1) decline to stay its decision, which would allow Wisconsin's election officials, candidates, potential candidates, and eligible voters, to go forward with the 2022 elections based on the new maps this Court implemented in the face of political impasse; or (2) stay its decision, which would require those same people to instead begin administering elections based on outdated and unquestionably unconstitutional maps, or no maps at all. There is no middle ground. Election deadlines are already quickly approaching, with the first less than one week away.[8] Other deadlines, also set by state statutes, follow quickly. *See* Exhibit A. Wisconsin cannot sit on its hands, waiting for an exceedingly unlikely revision to the maps this Court adopted; it must start administering its elections, using this Court's new maps.[9]

Second, the Legislature also obscures the length of the stay it requests. At times, the Legislature suggests that it is asking for a modest stay that will last only a "short amount of time," perhaps only "two to three weeks." (Leg. Mot. at 12-13). But that misunderstands (or purposely elides) the nature of such a stay. A stay pending appeal, by definition, pauses the lower court's order until the appeal is finally resolved. *See* Wis. Stat. § 808.07(2). And because the United States Supreme Court will have discretion to accept or deny this appeal,[10] two possible timelines arise: One, if the United States Supreme Court *declines* review, the stay would last until that denial (thereafter putting the maps this Court chose back into effect); or two, if the United States Supreme Court *accepts* review, the stay would last until the Court issues a final decision (either affirming this Court's decision or rejecting it).

---

[8] *See* Wis. Stat. §§ 10.01(1), (2)(a), 10.06(1)(f), setting the third Tuesday in March, or March 15 in 2022 as the deadline for WEC to send a Type A notice of the August 9, 2022 Partisan Primary and the November 8, 2022 General Election to county clerks. This notice *must* contain a statement specifying where information concerning district boundaries may be obtained.

[9] In a footnote, the Legislature suggests using the old, malapportioned maps, stating that "a solution" to problems with continued uncertainty would be to "instruct the parties that Act 43 remains in effect while the appeal … is pending." (Leg. Mot. at 13 n.7). But that cannot be an option; tens of thousands of Wisconsinites would be irreparably injured were this Court to leave the state with no constitutional maps to use for imminent legislative and congressional elections.

[10] 28 U.S.C. § 1257 provides that the United States Supreme Court "may" review the decisions of a state's highest court; it has no obligation to grant review in this or any other case decided by a state supreme court.

The only conceivable prospect, then, of a stay lasting only a "short amount of time" is if the Legislature's gambit fails and the United States Supreme Court quickly declines to review this case. But there is no guarantee whatsoever (aside from the Legislature's so-called "anticipat[ion]" of a prompt "indication" (Leg. Mot. at 13)) that any decision from that Court will come so swiftly.[11] Otherwise, if the Court accepts this case for review, it would likely not be argued, much less decided, until sometime during the Court's next term, beginning in October 2022.[12] A stay under these circumstances would almost certainly remain in effect through Wisconsin's upcoming fall 2022 elections.

The balance-of-harms analysis must therefore confront the reality of the choices facing this Court. If this Court stays this decision, Wisconsin will have either no maps to use to prepare for the 2022 elections, or Act 43's decade-old, certainly unconstitutional legislative districts that will unconstitutionally dilute the votes of tens of thousands of Wisconsinites, merely to avoid the speculative *possibility* that this Court got the VRA analysis wrong. Such a stay, however, would be automatically lifted—thereby snapping the districts this Court adopted back into effect—when the United States Supreme Court declines review. However, if this Court *declines* to stay its decision, Wisconsin can move forward with its new maps and almost certainly would not need to change them before the fall 2022 elections (if ever). Even if the Legislature ultimately were to prevail on appeal,

---

[11] As a point of reference, the Legislature filed a writ of mandamus asking the United States Supreme Court to dismiss the parallel federal litigation challenging Wisconsin's legislative districts; it took 73 days for the Court to rule on that request. *See* 21-474 IN RE WISCONSIN LEGISLATURE, Order List: 595 U.S, Dec. 6, 2021, available at https://www.supremecourt.gov/orders/courtorders/120621zor_7lio.pdf (last visited Mar. 5, 2022); *see also* https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/21-474.html (last visited Mar. 5, 2022). Here, the Legislature will need to petition the United States Supreme Court for a writ of certiorari; the process for briefing such a petition is itself quite lengthy. *See* Sup. Ct. R. 12, 15. While the United States Supreme Court has requested responses to the stay application from all parties who wish to be heard, there is no indication that the standard process for considering a petition for certiorari will be expedited. *See* https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/21a471.html (last accessed Mar. 8, 2022).

[12] The merits of the *Merrill v. Milligan* case on which the Legislature relies, where the United States Supreme Court will review a VRA decision regarding Alabama's congressional redistricting, will not be taken up until its October 2022 term (with a decision likely in 2023), suggesting that the same general timeline would likely apply to this case should the Court accept review. *See* https://www.scotusblog.com/case-files/terms/ot2022/ (listing *Merrill* as a case "not (yet) set for argument" during October Term 2022) (last visited Mar. 5, 2022).

no such decision can conceivably arrive before the elections, much less in time for orderly elections to be held based on maps changed by the United States Supreme Court.

There is practically no chance the United States Supreme Court itself would stay this Court's decision given the *Purcell* doctrine, which provides that "federal courts ordinarily should not enjoin a state's election laws in the period close to an election" due to the "chaos and confusion" such orders can cause. *Merrill,* 142 S. Ct. at 880 (mem. op.) (Kavanaugh, J., concurring); *see also Purcell v. Gonzalez*, 549 U.S. 1, 4-6 (2006) (per curiam); *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. 1205, 1207 (2020) (per curiam); *Moore v. Harper*, 595 U.S. ___ (2022) (Kavanaugh, J., concurring). Indeed, the United States Supreme Court's orders just this week denying similar emergency applications for stays of state supreme court rulings in North Carolina and Pennsylvania, including on *Purcell* grounds, give a clear indication that the Legislature's emergency application to the United States Supreme Court is likely to meet a similar fate. *Id* at 1-2.

This realistic view of the Legislature's request brings into clear focus how the balance of harms tilts decisively against a stay, given the "chaos and confusion" it could inject into Wisconsin's administration of the 2022 elections.

B. The Legislature will not suffer any injury, whether or not a stay is granted.

The Legislature must establish that it will suffer irreparable harm absent a stay. *Waity*, 2022 WI 6, ¶49. Evaluating irreparable harm requires the Court to "consider whether the harm can be undone if, on appeal, the … decision is reversed. If the harm cannot be mitigated or remedied upon conclusion of the appeal, that fact must weigh in favor of the movant." *Id.*, ¶57 (quotation marks omitted). The Legislature, in its capacity as a body politic, does not, and cannot, suffer any injury due to the Court's remedial maps.

The Court's remedial maps do not cause any injury to the Legislature as a body. The Legislature is not a voter or a candidate running for office. So long as there are maps in place, elections can occur and the Legislature can be fully populated. The Legislature had its chance to pass maps that would survive a gubernatorial veto, and it did not. The remedial

maps in no way affect the day-to-day functions of the Legislature, nor any future actions of the Legislature.

Tellingly, the Legislature did not address this stay element. It made no effort to argue what, if any, harm might come to the Legislature as a body. That is because no harm exists. Rather, the Legislature focused its argument on public interests, not injuries specific to the *Legislature*. As a result, the Court should not even consider this element because it is undeveloped, and thus the Legislature's motion fails. *See Parsons v. Associated Banc-Corp*, 2017 WI 37, ¶39 n.8, 374 Wis. 2d 513, 893 N.W.2d 212 (courts do not consider undeveloped arguments); *State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (courts "may decline to review issues inadequately briefed.").

Even the most generous reading of the Legislature's motion could merely be construed as an argument that its individual members might suffer an injury, but, even if that were the case, it is irrelevant. None of those members is a party here. The Legislature cherry-picks quotes from representatives discussing maps proposed by the Governor prior to this litigation. (Leg. Mot. at 12). But hypothetical injuries to individual legislators are not even cognizable here since the Legislature is a party solely as a body politic. The body suffers no harm.

Even if there were a harm (which there is not), it could be addressed at the conclusion of the appeal. If the Legislature were to ultimately succeed in its appeal, newly drawn maps would address any injury to the Legislature. Further, if the remedial maps actually do harm the Legislature, it retains the power to propose new maps through the legislative process. This is exactly what the Legislature did in 1983 when it adopted new maps replacing maps drawn by a court the year prior. *See Redistricting in Wisconsin 2020: The LRB Guidebook* at 61[13]; *see also* 1983 Wis. Act 29. Indeed, the Legislature, subject to approval by the Governor, would be initially charged with attempting to redraw the maps. *See Baldus v. Members of Wis. Gov't Accountability Bd.*, 849 F. Supp. 2d 840, 860 (E.D. Wis. 2012) (providing state political branches an opportunity to re-draw map in violation

[13] Available at https://docs.legis.wisconsin.gov/misc/lrb/wisconsin_elections_project/redistricting_wisconsin_2020_1_2.pdf

of Section 2 of the VRA). Thus, given the unique posture of this case, the Legislature is fully able to work with the Governor on creating new maps that ameliorate any "harms" to the Legislature.

The Legislature has not, and cannot, establish that it will suffer any harm from the Court's remedial maps. This alone is fatal to its motion, and requires that the motion to stay be denied.

C. A stay would substantially harm BLOC Petitioners.

Having first failed even to assert that it will suffer harm, the Legislature largely ignores the obvious harm that a stay would impose upon the BLOC Petitioners, stating only that "it is hard to conceive an argument that [the non-movants] will face irreparable harm for the short amount of time that the United States Supreme Court will take to consider the Legislature's request for emergency relief." (Leg. Mot. at 12-13). Not only does this misstate the relevant legal standard—the Court must review whether the non-movants will suffer ***substantial*** harm, not irreparable harm—it also ignores the relevant time frame. What matters here is not how long it will take for the United States Supreme Court to decide whether to act on the appeal, but instead how long it will take for the appeal to reach resolution and the "extent of harm the non-movant will experience" in the meantime "if a stay is entered, but the non-movant is ultimately successful." *Waity*, 2022 WI 6, ¶58 (internal quotation marks and citations omitted).

Here, the stay threatens harm to the BLOC Petitioners that is certainly substantial and potentially irreparable. To reach this conclusion, this Court need only consider the timing. Very little time remains before preparations for the August 2022 primary must begin. As the BLOC Petitioners explained to this Court last October, new state legislative districts must be finalized, and all legal challenges resolved, no later than March 14, 2022 so WEC can meet the March 15 statutory deadline for sending Type A notices regarding the fall elections to county clerks. (BLOC Letter Br., 1, 3-4 (Oct. 6, 2021)). Type A notices must contain a statement specifying where information concerning district boundaries may be obtained. Wis. Stat. §§ 10.01(2)(a), 10.06(1)(f). It logically follows that district boundaries must first be set. To enter a stay now will inevitably create confusion about

which district boundaries apply, almost certainly forcing WEC to miss this first statutory deadline. And to miss one deadline threatens further confusion and delay as each step in the election process is impacted by completion of the immediately preceding step. The Legislature's request thereby would impose a cascading series of harms as one domino topples the next.

To address this timing issue, the Legislature proposes that the Court "instruct the parties that Act 43 remains in effect while the appeal of the constitutionality of the Governor's districts is pending." (Leg. Mot. at 13 n.7). But this is no solution at all, and therein lies the harm. On one hand, if this Court were to stay its decision now, and that stay were to be lifted before the August primary because the United States Supreme Court declines review, mass confusion and upheaval of the administration of the August election will follow. In all likelihood, multiple state statutes would need to be revised, or the nearly 1,850 municipal clerks would have to engage in legal fiction to re-formulate deadlines from thin air to reset timelines for determining which candidates are eligible for election in which districts, re-printing ballots, distributing new ballots to clerks, and potentially even restarting the absentee-voting process. Moreover, district boundaries, and within which district a person resides, control whether a person can run for a particular legislative seat and for whom an elector may sign nominating papers and vote. If the district boundaries change part-way through the election cycle, a person running for office may no longer live in the district they are running to represent. This would impact the BLOC Petitioners in several ways. For example, the candidates for whom the BLOC Individual Petitioners and the members of BLOC Organizational Petitioners may vote could change. Likewise, if candidate eligibility changes, the Organizational Petitioners, who spend considerable resources on voter education campaigns, will have wasted resources informing voters about one set of candidates and will have to spend exponentially more resources to re-educate voters and counteract the confusion created by judicially imposed electoral whiplash.

On the other hand, every party to this case and the Court agrees that the existing legislative maps codified by 2011 Wisconsin Act 43 are unconstitutionally malapportioned. *See Johnson*, 2021 WI 87, ¶2. If this Court enters a stay that is not lifted

until the United States Supreme Court issues a final decision after the fall elections, then BLOC Petitioners will suffer the harm of having been compelled to participate in elections based on districts that are undisputedly unconstitutionally malapportioned. All BLOC Individual Petitioners and many members of the BLOC Organizational Petitioners reside in over-populated districts under Act 43, meaning that their votes are diluted as compared with voters whose reside in under-populated districts. (BLOC Intervention Br. 3-5).

It is therefore beyond dispute that a stay threatens substantial, and potentially irreparable harm, to the BLOC Petitioners, whether a requested stay is lifted before or after the fall 2022 elections.

D. A stay would substantially harm the public interest by creating electoral chaos and forcing election administrators to hold a statewide election using districts that are unconstitutionally malapportioned.

The Legislature's professed inability to even "conceive" of reasons why a stay might injure the public interest willfully ignores the nature and length of its requested stay. (Leg. Mot. at 12). In short, granting a stay would force the public into an escapable dilemma: either (a) the stay lifts sometime between now and the 2022 elections because the United States Supreme Court *declines* review, thereby snapping new districts back into place and causing complete chaos; or (b) the stay remains in place through the 2022 elections because the Court *accepts* review, thereby forcing Wisconsin to conduct statewide elections using unconstitutionally malapportioned maps.[14] Either possibility would cause massive harm to the public interest in orderly and legitimate elections.

Consider the first possibility: this Court grants a stay and then the United States Supreme Court ultimately declines to review the case and issues an order denying the petition for certiorari in **several months**. To explain, after the filing of a petition for a writ of certiorari, a respondent has thirty days to file a response. Sup. Ct. R. 15.3. The Clerk of the Supreme Court then distributes the briefs no less than 14 days after receiving the

[14] In addition, the Legislature has suggested to the U.S. Supreme Court that the 2022 elections could proceed using the Legislature's 2021 proposed maps, which would also be improper. The Governor vetoed those maps, and impasse necessitated this litigation, in which the Court rejected those maps as unacceptable.

response brief. Sup. Ct. R. 15.4. That would push the timeline into late April 2022, meaning the Supreme Court likely would not consider the petition until one of the mid-to-late May 2022 conferences (scheduled for May 12, 19, or 16), with orders coming out as soon as the following Mondays (besides for the Memorial Day weekend).[15] By that time, and before the Supreme Court issues a decision, the machinery of Wisconsin elections is well underway and Wisconsinites will be preparing for those elections in myriad ways using the *old* Act 43 districts. The WEC and local election officials would begin publishing notices of *old* district boundaries throughout March and early April.[16] Candidates would be circulating nomination papers based on *old* districts beginning on April 15, which are then due on June 1. Wis. Stat. § 8.15(1). Ballots for the partisan primaries for *old* districts would be distributed to municipal clerks by June 22, and absentee ballots would begin to be distributed around this time. Wis. Stat. §§ 7.10(1), (3), 7.15(1)(cm). All the while, candidates would be campaigning and voters will be evaluating their choices in *old* districts.

But at some unknowable time during this process, a bolt from the blue would arrive: the United States Supreme Court's decision that it will not hear this case. The stay would automatically lift, this Court's constitutionally valid districts would snap back into place statewide, and utter chaos would ensue. Regardless of how far Wisconsin had proceeded in preparing using the *old* Act 43 districts, it would have to start all over again using this Court's *new* districts. Justice Kavanaugh recognized the immense problems this would cause for candidates, political parties, voters, and the like:

> [I]ndividuals and entities now [would] not know who will be running against whom in [upcoming] primaries .... Filing deadlines need to be met, but candidates cannot be sure what district they need to file for. Indeed, at this point, some potential candidates [would] not even know which district they live in. Nor [would] incumbents know if they now might be running against other incumbents in the upcoming primaries.

[15] https://www.scotusblog.com/events/2022-05/

[16] Exhibit A to this letter brief contains a list of all relevant election deadlines for the 2022 state legislative elections.

Merrill, 142 S. Ct. at 880. And similar problems would arise for election officials at every level statewide:

> Running elections state-wide is extraordinarily complicated and difficult. Those elections require enormous advance preparations by state and local officials, and pose significant logistical challenges. [Last-minute changes] would require heroic efforts by those state and local authorities … —and even heroic efforts likely would not be enough to avoid chaos and confusion.

Id.[17] Although Justice Kavanaugh in *Merrill* was discussing the effect of a federal district court order that modified Alabama's congressional maps four months before a primary election was scheduled, the exact kind of chaos would result from the abrupt lifting of a stay entered here. *See also Moore*, 595 U.S. ___ (2022) (Kavanaugh, J., concurring).

And it is crucial to also recognize that, in this scenario, *the Legislature has lost*. The United States Supreme Court has declined to accept review, meaning this Court's maps remain in place despite the Legislature's repetitive objection. Wisconsin's elections would be thrown into chaos due entirely to the Legislature's meritless appeal. The Legislature barely even addresses this obvious prospect, except to suggest that the stay may not remain in place very long (which implicitly acknowledges that the United States Supreme Court may reject its appeal quickly). (Leg. Mot. at 13-14). But the Legislature has absolutely no way of knowing that, and the consequences are unacceptable even on this shorter duration of the requested stay. The Legislature essentially asks this Court to play Russian roulette by gambling that Wisconsin will not need to swap out its districts in the midst of administering elections across the state.

Consider next the second, perhaps even more troubling, possibility. If this Court grants a stay and the United States Supreme Court accepts review, Wisconsinites will inevitably be forced to conduct the upcoming 2022 state legislative elections with either no clear districts in place, or using districts that every party—the Legislature included—acknowledges violate the fundamental one-person, one-vote principle on which our democracy rests. If this Court grants the Legislature's request not to use the remedial map

[17] This is especially true in Wisconsin, where 1,850 municipal clerks run the State's elections.

that equalizes statewide population among state assembly and senate districts, the votes of hundreds of thousands of Wisconsinites statewide "[would] be diluted," thereby denying them the "constitutionally guaranteed equality of the people's representation." *Johnson*, 2021 WI 87, ¶2. It is hard to imagine any greater harm to the public interest than this. That is why this Court forthrightly acknowledged that "the maps enacted into law in 2011 *cannot constitutionally serve as the basis for future elections*." *Id.*, ¶1 (emphasis added).

On the flip side, if a stay is denied, the Legislature identifies only the harm of conducting elections using purportedly unlawful racially gerrymandered districts.[18] (Leg. Mot. at 14). To be sure, that would be a harm, but *only if* the Legislature ultimately prevails on its appeal. And that is not a likelihood, much less anywhere near a certainty, as it depends on both the United States Supreme Court deciding to review this case *and* then resolving it in the Legislature's favor. Balanced against this *possible* harm is the absolute *certainty* that allowing the 2022 elections to proceed using Act 43's districts (or no clear districts at all) would inflict constitutional harm on *all* Wisconsinites. No reasonable analysis would allow a speculative, hypothetical harm to outweigh the certain one of using maps that "cannot constitutionally serve as the basis" for future elections. *Johnson*, 2022 WI 14, ¶1.

The Legislature never confronts the dilemma that granting a stay would create. It pretends that such a stay would be short-term and somehow "prevent costly and confusing implementation of election procedures." (Leg. Mot. at 14). But upon recognizing how the only possibilities are either (a) that a stay is lifted in the midst of election preparation; or (b) that it is not, thereby forcing Wisconsin to use unconstitutional districts during the fall 2022 elections, it becomes undeniable that the public interest favors denying a stay.

[18] That is a major distinction between this case and *Merrill*. Here, the only maps available are the unconstitutional Act 43 maps, or the Court's adopted maps. The injunction in *Merrill* re-imposed properly apportioned maps. *Merrill*, 142 S. Ct. at 880 (Kavanaugh, J., concurring). Conversely, the Legislature's proposal would impose a constitutional violation on every Wisconsinite.

CONCLUSION

The administration of Wisconsin's 2022 elections begins in less than one week. Even under a more generous (and imaginary) timeline, the Legislature has not made the strong showing that it is likely to succeed on the merits on appeal required for a stay of this Court's order. This Court correctly applied Section 2 of the Voting Rights Act, and the Legislature will not obtain a reversal on appeal. Further, a stay would substantially harm not only BLOC Petitioners, but the public at large. The inescapable reality is that staying this Court's decision would create electoral chaos and likely force election administrators to hold elections using districts that are unconstitutionally malapportioned. In the absence of a stay, the Legislature suffers no injury. This Court should decline the Legislature's request to stay its decision.

Sincerely,

Douglas M. Poland, SBN 1055189
Jeffrey A. Mandell, SBN 1100406
Colin T. Roth, SBN 1103985
Rachel E. Snyder, SBN 1090427
Richard A. Manthe, SBN 1099199
Carly Gerads, SBN 1106808
STAFFORD ROSENBAUM LLP
222 West Washington Avenue, Suite 900
P.O. Box 1784
Madison, WI 53701-1784
dpoland@staffordlaw.com
jmandell@staffordlaw.com
rsnyder@staffordlaw.com
rmanthe@staffordlaw.com
608.256.0226

Mel Barnes, SBN 1096012
LAW FORWARD, INC.
P.O. Box 326
Madison, WI 53703-0326

mbarnes@lawforward.org
608.535.9808

Mark P. Gaber*
Christopher Lamar*
Simone T. Leeper*
CAMPAIGN LEGAL CENTER
1101 14th St. NW, Suite 400
Washington, DC 20005
mgaber@campaignlegalcenter.org
clamar@campaignlegalcenter.org
sleeper@campaignlegalcenter.org
202.736.2200

Annabelle Harless*
CAMPAIGN LEGAL CENTER
55 W. Monroe St., Ste. 1925
Chicago, IL 60603
aharless@campaignlegalcenter.org
312.312.2885

**Admitted pro hac vice*

Attorneys for Intervenor-Petitioners, Black Leaders Organizing for Communities, Voces de la Frontera, the League of Women Voters of Wisconsin, Cindy Fallona, Lauren Stephenson, and Rebecca Alwin

Cc:
By Email

All counsel of record

Exhibit A

Statutory Election-Related Deadlines for 2022

Date	*Event*	*Statutory Cite*
March 15, 2022	Deadline for WEC to send Type A notice of August 9, 2022 Partisan Primary, and November 8, 2022 General Election, to county clerks. **This notice must contain a statement specifying where information concerning district boundaries may be obtained.**	Wis. Stat. §§ 10.01(1), (2)(a), 10.06(1)(f) – 3rd Tuesday in March.
April 5, 2022	Deadline for County clerks to send Type A notice of 2022 Partisan Primary and General Election to municipal clerks.	Wis. Stat. §§ 10.01(2)(a), 10.06(2)(gm) – 1st Tuesday in April.
April 12, 2022	Deadline for County clerks to publish Type A notice of Partisan Primary and General Election for 2022.	Wis. Stat. § 10.06(2)(h) – 2nd Tuesday in April.
April 15, 2022	Candidates may begin to circulate nomination papers for the General Election (and by extension to appear on the Partisan Primary ballot in August).	Wis. Stat. § 8.15(1).
May 20, 2022	Deadline for incumbents not seeking reelection to file Notification of Noncandidacy with the filing officer. (Failure to notify will extend nomination-paper deadline 72 hours for that office.)	Wis. Stat. § 8.15(1) – 2nd Friday prior to the deadline for nomination papers.
June 1, 2022	Deadline for state legislative candidates to file nomination papers, declarations of candidacy, and campaign registration statements with WEC for the General Election (unless incumbent failed to comply with Wis. Stat. § 8.15(1)), in which case deadline is extended 3 days).	Wis. Stat. §§ 8.15(1), 8.20(8)(a), 8.21.
June 4, 2022	Deadline for state candidates to file Statement of Economic Interests with Wisconsin Ethics Commission (unless granted an extension).	Wis. Stat. § 19.43(4) – 3rd day following deadline for nomination papers.
June 4, 2022	Deadline for challenges to nomination papers to be filed (unless incumbent failed to comply with Wis. Stat. § 8.15(1)), in which case deadline is extended 3 days).	Wis. Stat. § 8.07, Wis. Admin. Code § EL 2.07 – within 3 days of deadline to file nomination papers.
June 7, 2022	Last possible day for the deadline for a challenged candidate to file a verified response with the filing officer (unless incumbent failed to comply with Wis. Stat. § 8.15(1), in which case deadline is extended 3 days).	Wis. Admin. Code § EL 2.07(2)(b) – within 3 calendar days of the challenge being filed.

(June 2022)	Filing officers draw names of candidates by lot for placement on the Partisan Primary ballot.	Wis. Stat. §§ 5.60(1)(b), 5.62(3), (4).
June 10, 2022 (or as soon as possible after deadline for determining ballot arrangement)	WEC sends Type B notice information and certification of candidates to county clerks for Partisan Primary.	Wis. Stat. §§ 10.01(2)(b), 10.06(1)(h).
(June 2022)	County clerks prepare ballots and send proofs to WEC for review as soon as possible before printing.	Wis. Stat. §§ 5.72(1), 7.10(2) – as soon as possible.
June 22, 2022	Deadline for county clerks to deliver ballots and supplies to municipal clerks for the Partisan Primary.	Wis. Stat. § 7.10(1), (3) – 48 days before Partisan Primary.
June 23, 2022	State-law deadline for distribution of absentee ballots if requested by this date.	Wis. Stat. § 7.15(cm) – 47 days before Partisan Primary.
June 25, 2022	Federal-law deadline for transmitting ballots to eligible UOCAVA voters.	52 U.S.C.§20302(a)(8) – 45 days before any election including a federal office. *See also United States v. Wisconsin*, No. 3:18-cv-00471-jdp (W.D. Wis. 2018).
July 10, 2022	Deadline for municipality to establish polling places for Partisan Primary, including combining wards for Primary.	Wis. Stat. §§ 5.15(6)(b), 5.25(3) – 30 days before election.
July 12, 2022	Deadline for voters to acquire residence at a new address in a ward or election district in order to vote in the Partisan Primary from that ward or district.	Wis. Stat. §§ 6.02(1), (2).
August 5, 2022	Deadline for write-in candidates to file a registration statement for the Partisan Primary.	Wis. Stat. § 7.50(2)(em) – Friday preceding election.
August 8, 2022	Last day for special voting deputies to conduct absentee voting in nursing homes and care facilities; County clerks publish Type B notice of voting instructions and facsimile ballots for Partisan Primary.	Wis. Stat. §§ 6.875(6), 10.01(2)(b), 10.02, 10.06(2)(j) – Monday preceding the election.
August 9, 2022	**Partisan Primary**	Wis. Stat. § 5.02(12s) – 2nd Tuesday in August.
November 8, 2022	**General Election**	Wis. Stat. § 5.02(5) – Tuesday after the 1st Monday in November.