INSTITUTE FOR REFORMING GOVERNMENT

IRG COURT WATCH

THE WISCONSIN SUPREME COURT AGREES TO HEAR A CHALLENGE TO WISCONSIN'S CONGRESSIONAL MAP

SUMMARY

On May 29, 2026, a divided Wisconsin Supreme Court agreed to hear an appeal asking it to throw out Wisconsin's congressional map—the same map the court itself adopted in 2022 and has declined to revisit ever since. The challengers, a liberal-aligned group called Wisconsin Business Leaders for Democracy ("WBLD"), claim the map is an unconstitutional "anti-competitive gerrymander." A three-judge panel dismissed the suit because binding precedent forecloses the theory. Rather than route the appeal through the court of appeals, the Supreme Court took it directly.

The item released by the Court on May 29 is a procedural *order*, not a final decision. The court has decided only that it will hear the case. And in doing so, it declined the WBLD's request for expedited treatment of the matter. But the choice to reach out and take a map challenge—over three separate writings from the bench, and without addressing its own jurisdiction—is a signal worth watching.

The order leaves several questions open:

- Does the court intend to reopen congressional districts that have governed Wisconsin's last two elections—with a third already underway?
- Where is the court's authority to grant this appeal *as of right*, when the governing statute says only that an appeal "may be heard"?
- Why did the usual gatekeeping—jurisdiction, a cognizable claim, laches—receive no analysis?

OVERVIEW

WBLD filed suit in Dane County. Under a 2011 law enacted by the Republican-led Legislature, apportionment challenges are heard not by a single judge but by a three-judge panel of circuit-court judges selected by the Supreme Court. *Wis. Stat. §§ 801.50(4m), 751.035*. The panel dismissed WBLD's complaint because, as an inferior tribunal, it had no power to overrule the Supreme Court's precedent adopting the current map—the dismissal was, in the panel's words, "constitutionally required."

WBLD then filed a notice of appeal directly with the Supreme Court and moved to expedite briefing. On May 29, the court denied the motion to expedite and announced that it would hear the appeal under the ordinary rules that govern appeals to the court of appeals. *See* Wis. Stat. (Rule) 809.63. Notably, the court expressly *declined* to decide whether such an appeal is a matter of right or a matter of the court's discretion under § 751.035(3)—reasoning that it need not resolve a question that would not change the outcome. The full order is available here.

WHAT YOU SHOULD KNOW

- Four justices in the court's liberal majority voted to hear the case. Justices Ziegler and Rebecca Grassl Bradley dissented; Justice Hagedorn wrote separately without saying how he voted.
- Justice Ziegler's dissent (joined by Justice R.G. Bradley) faulted the majority for granting review with no analysis of jurisdiction, whether WBLD stated a cognizable claim, the right to appeal, the court's own criteria for review, or the doctrine of laches—and noted that WBLD waited more than 14 years and seven elections to bring the challenge.
- The court has declined to revisit the current congressional map at least four times, and the U.S. Supreme Court declined to review it. The map was proposed by Governor Evers and adopted by the court in *Johnson II* (2022).
- Justice Hagedorn used the order to remind the public that court orders do not record how each justice voted—and that a justice's silence does not mean agreement.
- Over a dissent, the court issued the order *unpublished*, limiting public access to what the dissent called a matter of "public import."

WHAT COULD HAPPEN

- If the court reaches the merits and embraces "anti-competitive gerrymandering" as a state-constitutional theory, it could order new congressional districts mid-decade—redrawing maps used in 2022 and 2024 and on the books for 2026.
- Any such ruling would land amid a nationwide redistricting fight and would be open to federal review. In *Moore v. Harper* (2023), the U.S. Supreme Court cautioned that state courts may not exceed the ordinary bounds of judicial review when regulating federal elections.
- Alternatively, the court could affirm the panel's dismissal—though the dissents question why the court took the case at all if it intends to leave its precedent intact.

WHY IT MATTERS

Redistricting is, in the Wisconsin Supreme Court's own words, "inherently political," and both the U.S. and Wisconsin Constitutions place map-drawing with the Legislature. The court's own precedent warns against reading new limits into the constitution and wading into the "political thicket." The 2011 reform that channels these challenges to a three-judge panel was meant to bring order to redistricting litigation. This appeal is the first real test of how the Supreme Court will treat decisions coming out of that process—including whether it will use the appeal to reopen questions it has repeatedly treated as settled.

Endnotes

1 Order, *Wis. Business Leaders for Democracy v. Wis. Elections Comm'n*, No. 2026AP1008 (Wis. May 29, 2026), available at wicourts.gov.

2 Johnson *v. Wis. Elections Comm'n*, 2022 WI 14 ("Johnson II") (adopting the current congressional map).

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