In the Supreme Court of the United States

CONGRESSMAN GLENN GROTHMAN, CONGRESSMAN MIKE GALLAGHER, CONGRESSMAN BRYAN STEIL, CONGRESSMAN TOM TIFFANY, CONGRESSMAN SCOTT FITZGERALD, APPLICANTS,

v.

MARGE BOSTELMANN, *in her official capacity as a Member of the Wisconsin Elections Commission*, ET AL., RESPONDENTS.

APPENDIX TO EMERGENCY APPLICATION FOR STAY

VOLUME II OF II

On Application For Stay, Or, In The Alternative, On Petition For A Writ Of Certiorari To The Wisconsin Supreme Court

To the Honorable Amy Coney Barrett
Associate Justice of the Supreme Court of the United States
and Circuit Justice for the Seventh Circuit

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No. 2021AP1450-OA

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LAUREN STEPHENSON, REBECCA ALWIN, CONGRESSMAN GLENN
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STEIL, CONGRESSMAN TOM TIFFANY, CONGRESSMAN SCOTT FITZGERALD,
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Intervenor-Petitioners,

v.

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COMMISSION, JULIE GLANCEY IN HER OFFICIAL CAPACITY AS A MEMBER OF
THE WISCONSIN ELECTIONS COMMISSION, ANN JACOBS IN HER OFFICIAL
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Intervenor-Respondents.

HUNTER INTERVENOR-PETITIONERS'
BRIEF IN SUPPORT OF PROPOSED MAPS

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INTRODUCTION

Two weeks ago, this Court made clear that when it adopts new reapportionment plans for Wisconsin, it will seek to make only the minimum changes necessary to bring Wisconsin's current districts into constitutional compliance. The Hunter Intervenor-Petitioners took that instruction seriously. Using the 2011 enacted reapportionment plans as a starting point, the proposed Hunter Plans intentionally maintain the cores of current districts, adjusting boundaries only when necessary to equalize population. As the accompanying expert report of Dr. Stephen Ansolabehere shows, the proposed Hunter Congressional Map retains nearly 95% of the existing geography of Wisconsin's 2011 congressional districts and over 93% of the congressional districts' core populations. While such a high percentage is not mathematically possible to achieve for Wisconsin's legislative districts—the vast majority of which need to change boundaries to account for population gain or loss—the Hunter Assembly Map retains well over 70% of the existing geography and core populations of Wisconsin's 2011 assembly districts, and the Hunter Senate Map retains over 80% of the existing geography and core populations of Wisconsin's 2011 senate districts. Notably, the Hunter Plans make far fewer changes to Wisconsin's 2011 districts than do the redistricting plans that the Wisconsin Legislature attempted to enact earlier this year.

Where district boundary changes *were* necessary to meet population equality, the Hunter Intervenors strove to adjust those boundaries in ways that improved the plans' compliance with objective traditional redistricting criteria, such as increasing compactness and minimizing splits of political subdivision boundaries, such as counties or

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precincts. And the Hunter Maps do indeed improve on those criteria. Using the most common measures of compactness, for example, the Hunter Assembly Map is more compact and divides far fewer local boundaries than the 2011 assembly plan does. Because assembly districts are nested into senate districts, the same is true of the Hunter Senate Map. The Hunter Congressional Map, too, is more compact and divides fewer localities than the 2011 plan.

The proposed Hunter Maps do everything this Court asked for in devising new plans. They make very few changes to Wisconsin's existing districts. They do not second-guess the political branches' decisions from the prior decade. And where they must adjust existing boundaries to equalize population, they do so in ways that measurably improve the plans' consistency with traditional redistricting criteria. Accordingly, the Hunter Intervenors ask the Court to adopt their maps in full.

BACKGROUND

As this Court recounted in its November 30, 2021 Opinion, the Legislature and Governor last enacted redistricting plans for congressional, state senate, and state assembly districts in 2011 (the "2011 Maps"). Nov. 30 Order ¶ 14. In 2012, a federal court adjusted the 2011 state assembly map to comply with Section 2 of the Voting Rights Act (VRA). *See Baldus v. Members of Wis. Government Accountability Bd.*, 862 F.Supp.2d 860 (E.D. Wis. 2012). Many of these districts are now unconstitutionally malapportioned, and Wisconsin's political branches have failed to agree to new plans. Order ¶¶ 15-18. At Petitioners' request, this Court has decided to adopt new plans itself. *Id.* ¶¶ 19-20.

Four justices of the Court agree that the judicially adopted plans should attempt to minimize changes from the 2011 Maps. *See id.* ¶ 81

(plurality op.), ¶ 87 (Hagedorn, J., concurring). Justice Hagedorn, as well as the three dissenting Justices, recognized that it also may be appropriate to weigh proposed maps' consistency with traditional redistricting criteria, including compactness, minimizing municipal splits, protecting communities of interest, and minimizing the number of voters who must wait six years between voting for their state senator. *Id.* ¶ 83 (Hagedorn, J., concurring); *see also id.* ¶ 94 (Dallet, J., dissenting). The other three justices in the plurality opinion also recognized that principles of federalism give states limited flexibility "to pursue other legitimate policy objectives," including the objectives of respecting political boundaries and having districts that are contiguous and compact. *Id.* ¶ 26.

Pursuant to the Court's instructions, the Hunter Intervenor-Petitioners today submit proposed maps that comply with the least-change approach, the accompanying expert report of Dr. Stephen Ansolabehere, and this brief.

REDISTRICTING CRITERIA

Consistent with the plurality opinion and Justice Hagedorn's concurrence, the Hunter Intervenors have proposed maps that deviate from the 2011 Maps only to the extent necessary to comply with the following requirements and criteria:

1. ***Population equality.*** For congressional districts, the federal Constitution "permits only the limited population variances which are unavoidable despite a good-faith effort to achieve absolute equality." *Kirkpatrick v. Preisler*, 394 U.S. 526, 531 (1969). Similarly, under state law, "a valid apportionment [of legislative districts] should be as close an approximation to exactness as possible." *State ex rel. Reynolds v.*

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Zimmerman, 22 Wis. 2d 544, 565, 126 N.W.2d 551, 563 (1964). Traditionally, Wisconsin courts resolving impasse disputes have set a threshold of 2% population deviation or less for legislative districts. *See AFL–CIO v. Elections Bd.*, 543 F. Supp. 630, 634 (E.D. Wis.1982).

2. ***Equal Protection Clause.*** The Fourteenth Amendment's "Equal Protection Clause prohibits a State, without sufficient justification, from 'separating its citizens into different voting districts on the basis of race.'" *Bethune-Hill v. Virginia State Bd. of Elections*, 137 S. Ct. 788, 797 (2017) (quoting *Miller v. Johnson*, 515 U.S. 900, 911 (1995)).

3. ***Voting Rights Act.*** Section 2 of the Voting Rights Act prohibits the adoption of congressional or legislative districts that results in a denial or abridgement of the right to vote on account of race, color, or membership in a language minority group. 52 U.S.C. § 10301(a). A district map violates Section 2 if it "dilute[s] the voting strength of politically cohesive minority group members, whether by fragmenting the minority voters among several districts where a bloc-voting majority can routinely outvote them, or by packing them into one or a small number of districts to minimize their influence in the districts next door." *Johnson v. De Grandy*, 512 U.S. 997, 1007 (1994). "Section 2 prohibits either sort of line-drawing where its result, interact[ing] with social and historical conditions, impairs the ability of a protected class to elect its candidate of choice on an equal basis with other voters." *Id.* (internal citations omitted).

4. ***Nesting*** (state senate districts only). Wisconsin law requires that three assembly districts shall be nested in each senate district, and that no assembly district shall be divided in the formation of a senate district. Wis. Stat. § 4.001, Wis. Const. art. IV, § 5. Accordingly, any changes to

assembly districts require corresponding changes to the senate districts in which they are contained.

5. ***Local boundaries.*** The Wisconsin Constitution requires assembly districts to "be bounded by county, precinct, town, or ward lines." Wis. Const. art. IV, § 4. As this Court has observed, "respect for the prerogatives of the Wisconsin Constitution dictate that wards and municipalities be kept whole where possible." Nov. 30 Order ¶ 35 (quoting *Baumgart v. Wendelberger*, No. 01-C-0121, 2002 WL 34127471, at *3 (E.D. Wis. May 30, 2002)). *Accord Twin Falls County v. Idaho Comm'n on Redistricting*, 271 P.3d 1202, 1207 (Idaho 2012) (holding invalid redistricting plan that split more counties than necessary to comply with the federal Constitution); *In re Senate Joint Resolution of Legislative Apportionment*, 83 So.3d 597, 664, 683 (Fla. 2012) (holding invalid state senate redistricting plan where it was possible to draw districts that were more visually compact and kept more counties together)*; In re Reapportionment of Colorado General Assembly*, 45 P.3d 1237, 1252 (Colo. 2002) (holding county splits are permissible in a redistricting plan only upon "an adequate factual showing that less drastic alternatives could not have satisfied the equal population requirement"); *Holt v. 2011 Legislative Reapportionment Comm'n*, 38 A.3d 711, 757 (Pa. 2012) (finding state legislative plan unconstitutional where it "made subdivision splits that were not absolutely necessary, and certainly could not be justified on the population equality or other grounds proffered"). The United States Supreme Court has also recognized that following political boundaries is a traditional principle for congressional redistricting. *See, e.g.*, *Cooper v. Harris*, 137 S. Ct.

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1455, 1469 n.3, 1473 (2017); *League of United Latin American Citizens v. Perry*, 548 U.S. 399, 433 (2006).[1]

6. **Compactness.** The Wisconsin Constitution requires assembly districts to "be in as compact form as practicable." Wis. Const. art. IV, § 4. State senate districts, in turn, must be composed of "convenient contiguous territory." *Id.* art. IV, § 5. While this Court has never defined the term "convenient" in this context, a similar requirement in Minnesota has been interpreted to mean "[w]ithin easy reach; easily accessible." *LaComb v. Growe*, 541 F. Supp. 145, 150 (D. Minn.) (three-judge panel) (quoting *Convenient, The Compact Edition of the Oxford English Dictionary* (1971)), aff'd sub nom. *Orwoll v. LaComb*, 456 U.S. 966 (1982)). Thus, this requirement reasonably means that Wisconsin's senate districts should be compact and not unnecessarily meander. Congressional districts should similarly follow the traditional redistricting criteria of compactness. *See, e.g.*, *Shaw v. Reno*, 509 U.S. 630, 646-47 (1993).

7. **Communities of interest.** Maintaining and uniting communities of interest is a "universally recognized redistricting criterion." *See* Nov. 30 Order ¶ 83 (Hagedorn, J. concurring); *see also United Latin Am.*

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[1] At every stage of this litigation, the Hunter Intervenors have argued that this Court does not have jurisdiction to hear claims related to congressional redistricting because neither the Johnson Petitioners nor any Intervenors have identified or pleaded any cognizable state law claim pertaining to these districts. *See* Nov. 30 Order at ¶ 113 (Dallet, J., dissenting) (recognizing dispute). Instead, the Johnson Petitioners brought their congressional claim under article IV, section 4 of the Wisconsin Constitution, which requires state assembly districts to be "bounded by county, precinct, town or ward lines, to consist of contiguous territory and be in as compact form as possible." Johnson Pet. at 1. To the extent this section provides jurisdiction for congressional claims, which this Court appears to have accepted, it should also provide the relevant principles for congressional redistricting.

Citizens v. Perry, 548 U.S. 399, 548 (2006); *Miller v. Johnson*, 515 U.S. 900, 916 (1995).

8. ***Delayed voting*** (state senate districts only). Because Wisconsin senate elections are staggered, minimizing the number of voters who must wait six years between voting for their state senator is another traditional and neutral redistricting criterion that may assist the Court. *See id.* at ¶ 83, n.9 (Hagedorn, J., concurring) (citing *Prosser v. Elections Bd.*, 793 F. Supp. 859, 864 (W.D. Wis. 1992)).

ANALYSIS

I.   The Hunter Congressional Map

The Hunter Intervenors' proposed congressional map is appended to this brief as Exhibit 2 (the "Hunter Congressional Map").[2] The Hunter Congressional Map applies the criteria enumerated by the Court in its November 30 Order and is the appropriate remedy for the deficiencies of the current congressional map. The Hunter Congressional Map supplies a least-change remedy, equalizes population across Wisconsin's congressional districts, respects the legal protections for minority voting rights, and best serves traditional redistricting criteria when it does adjust district boundaries to comply with other legal requirements. For example, the Hunter Congressional Map makes minor changes to the 2011 Map necessary to address a significant population disparity between the Madison-based Second Congressional District, which is overpopulated by over 52,000 people, and the Milwaukee-based Fourth Congressional District, which is underpopulated by over 41,300 people.

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[2] A precise description of the contours of the Hunter Congressional Map will be provided to the other parties in accordance with the Joint Proposed Discovery Plan. The Hunter Intervenors are prepared to provide the Court with a precise description of the map in whatever format the Court prefers.

See Ex. 1, Ansolabehere Expert Report (hereinafter Ex. 1). Because these districts are not adjacent and cannot trade populations directly with each other, the Hunter Congressional Map shifts a portion of the Second District's excess population eastward through the First, Fifth, and Sixth Congressional Districts to replenish the Fourth District. The Hunter Congressional Map performs these modest adjustments in a manner that improves district compactness and eliminates county splits.

A.   The Hunter Congressional Map minimizes changes from the 2011 Map.

Using the existing congressional map as a starting point, the Hunter Congressional Map endeavors to equalize population while minimizing deviations from the current map. The general approach is to shift population from overpopulated congressional districts into underpopulated districts. The Fourth Congressional District is the most underpopulated congressional district in Wisconsin. It is surrounded by the First, Fifth, and Sixth Congressional Districts—all of which are also underpopulated. As a result, when population is moved into the Fourth Congressional District from its neighboring districts, those shifts rippled outward. To achieve equal population while minimizing this ripple effect, the overpopulated Second Congressional District is shifted eastward. Even with those necessary, population-driven changes, the Hunter Congressional Map keeps over 93% of Wisconsin's population in their existing district. Further, under the Hunter Congressional Map, 95% of Wisconsin's geography does not change districts. See Ex. 1.

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2011 Congressional Map

Hunter Congressional Map

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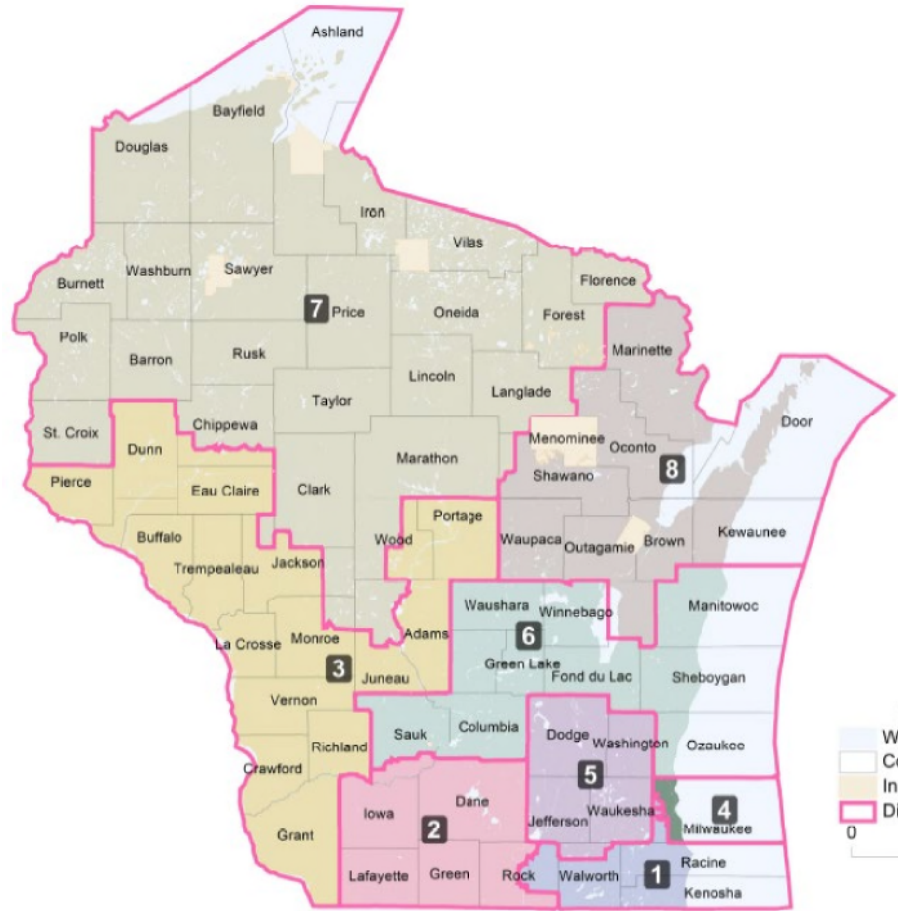
B. The Hunter Congressional Map satisfies equal population and VRA requirements.

Based on the enumeration conducted as part of the 2020 Census, the population of Wisconsin is 5,893,718 people. As the Court noted in its November 30 Order, "[a]bsolute population equality is the paramount objective" for congressional districts. Order ¶ 25. To equally divide Wisconsin's population among its eight congressional districts, each district should contain about 736,715 residents, plus or minus one person.

Under the current congressional map, Wisconsin's population is unequally divided. The Second and Eighth Congressional Districts are overpopulated, and the First, Third, Fourth, Fifth, Sixth, and Seventh Congressional Districts are underpopulated. As a result, population must be shifted from the Second and Eighth Congressional Districts into the remaining districts. The Hunter Congressional Map populates all eight districts with 736,715 persons, give or take one person, thereby achieving the requisite population equality. Ex. 1.

As the Court noted in its November 30 Order, the Voting Rights Act prohibits redistricting plans that result in "the denial or abridgment of the right to vote on account of race, color, or membership in a language minority." Order ¶ 27. The Hunter Congressional Map was not drawn with the purpose of denying or abridging minority voting rights, nor would it have the effect of denying or abridging minority voting rights.

C. Where changes to existing congressional districts were necessary, the changes were made according to traditional redistricting criteria.

As noted in Justice Hagedorn's concurrence, it is appropriate for the Court to consider traditional districting criteria in selecting a remedy. Order ¶ 83. In the congressional context, these criteria include

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compactness, contiguity, preservation of political boundaries, and preservation of communities of interest. *See, e.g.*, *Miller v. Johnson*, 515 U.S. 900, 916 (1995) (holding traditional redistricting principles can include "compactness, contiguity, and respect for political subdivisions or communities defined by actual shared interests").

The shifts in Wisconsin's population can be corrected while improving Wisconsin's congressional map with respect to these traditional redistricting principles. The Hunter Congressional Map equalizes population, while also improving compactness, reducing splits of political jurisdictions, and uniting communities of interest.

In terms of compactness, the Hunter Congressional Map has better index scores than the 2011 Map. Using a Reock Score and a Polsby-Popper Score, Dr. Ansolabehere measured the average compactness of the 2011 Map and the Hunter Congressional Map. Ex. 1. Both scores range from 0 to 1, with larger scores representing more compact districts. Overall, while the Reock score stays the same compared to the 2011 Map, the Hunter Map's Polsby-Popper score increases notably from .29 to .36, meaning it is more compact and less irregularly shaped than the 2011 Map. Ex. 1.

In terms of its treatment of political subdivisions, the Hunter Congressional Map splits far fewer subdivisions than the 2011 Map. The Hunter Congressional map reunites Waukesha County in the Fifth Congressional District. Further, the Hunter Congressional Map *reduces by half* the number of precincts and civil divisions that are split by the 2011 Map. Ex. 1.

In terms of communities of interest, the Hunter Congressional Map unites, preserves, and reduces divisions among key counties, cities,

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and regions. Under the 2011 Map, Waukesha City is split from the rest of Waukesha County. The Hunter Congressional Map unites the entirety of Waukesha County in the Fifth Congressional District. Similarly, population is moved into the Third District by adding the townships of Buena Vista, Cazenovia, and Ithaca, which unites the entirety of Richland County.

II.   Hunter Assembly Map

The Hunter Intervenors' proposed assembly map is appended to this brief as Exhibit 3 (the "Hunter Assembly Map"). Based on the criteria enumerated by the Court in its November 30 Order, the Hunter Assembly Map is the appropriate remedy for the deficiencies of the current assembly map. The Hunter Assembly Map supplies a least-change remedy, respects the legal protections for minority voting rights, and best serves traditional redistricting criteria when it does adjust district boundaries to comply with other legal requirements.

A.   The Hunter Assembly Map minimizes changes from the 2011 Map.

Using the 2011 Map as a starting point, the Hunter Assembly Map sought to move district boundaries only to correct for equal population requirements and to comply with other legal requirements, such as the VRA. Compared to the Hunter Congressional Map, the Proposed Assembly Plan required more extensive changes due to widespread deviations from population equality throughout the state. As a starting point, for example, the vast majority of assembly districts in the existing map currently exceed 2% population deviation, Ex. 1, the generally recognized threshold for legislative districts in Wisconsin's prior impasse litigation, *see infra* at 18, and today, some assembly districts vary by nearly 20,000 persons. Ex. 1. Over the past decade, for example, Dane

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County has grown substantially, requiring the creation of new assembly districts in that area, while Milwaukee County has shrunk in population, necessarily requiring its districts to expand its geographic footprint to comply with equal population requirements. Ex. 1.

Even with these inherent changes in Wisconsin's population over the past decade, the Assembly Districts in the Hunter Assembly Map cover 73% of the geography and 71% of the same population as the corresponding districts in the 2011 Map. Ex. 1. Additionally, the Hunter Assembly Map keeps the same numbering of Assembly Districts as in the 2011 Map. Ex. 1.

B.   The Hunter Assembly Map meets basic equal population and VRA requirements.

As the Court noted in its November 30 Order, legislative districts should respect "one-person, one-vote" principles and come "'as close an approximation to exactness as possible.'" Order ¶ 28 (quoting *State ex rel. Attorney General v. Cunningham*, 81 Wis. 440, 484, 51 N.W. 724 (1892)). But as the Court recognized, legislative districts are not required to meet the mathematical perfection required for congressional districts. Order ¶ 26.

The Hunter Assembly Map complies with equal population requirements by putting forward 99 assembly districts with a maximum deviation of only 1.82% persons. Ex. 1. This deviation is consistent with population deviations from prior courts which have implemented remedial assembly plans after impasse, and fully within the 2% *de minimis* population deviations endorsed by prior Wisconsin impasse courts. *See AFL–CIO v. Elections Bd.,* 543 F.Supp. 630, 634 (E.D.Wis.1982) (setting 2% deviation threshold for legislative plans); *see also Baumgart v. Wendelberger*, No. 01-C-0121, 2002 WL 34127471, at

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*7 (E.D. Wis. May 30, 2002) (court-ordered plan to resolve impasse had population deviation of 1.48%).[3]

As this Court also noted in its Order, legislative districts, including assembly districts, must comply with the Voting Rights Act. Order ¶ 27. Last redistricting cycle, a federal court ordered that Assembly Districts 8 and 9 be drawn to give Hispanic citizens the opportunity to elect their candidate of choice. *See Baldus v. Members of Wis. Gov't Accountability Bd.,* 862 F. Supp. 2d 860, 862 (E.D. Wis. 2012). Wisconsin's assembly plan has also traditionally had a significant number of districts in Milwaukee that have offered Black citizens the opportunity to elect their candidate of choice, consistent with the VRA. Ex. 1.

The Hunter Assembly Map ensures two districts (ADs 8 and 9) continue to allow Wisconsin's Hispanic citizens to elect their candidate of choice, just as in the 2011 Map. Seven districts in the Milwaukee area (ADs 10, 11, 12, 16, 17, 18, and 23) also allow Wisconsin's Black citizens an opportunity to elect their candidates of choice. Ex. 1.

C. Where changes to existing assembly districts were necessary, the changes were made according to traditional redistricting criteria.

Where the Hunter Assembly Map changes existing boundaries to assembly districts to meet legal requirements, it does so in ways that further traditional redistricting criteria, such as compactness. Compared to the 2011 enacted plan, the Hunter Assembly Map creates more compact assembly districts across the two most common measures of compactness. Ex. 1. Where the 2011 Map has an average Polsby-Popper

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[3] Because this Court did not set a specific threshold for population deviation for legislative districts in its November 30 Order establishing criteria, the Hunter Petitioner-Intervenors rely on prior Wisconsin impasse precedent as a guide.

score of .26, for example, the Hunter Assembly Map has a score of .36—
an increase of an entire tenth of a point from the existing plan, meaning
the Hunter Assembly Map is significantly more compact. Ex. 1. For this
reason, the Hunter Plan complies with the Wisconsin Constitution's
requirement, and this Court's Order, that assembly districts be compact.
See Wis. Const. art. IV, § 4; Order ¶ 37.

Where the Hunter Assembly Map changed existing assembly
district boundaries to meet legal requirements, it also strove to reduce
splits to local boundaries, consistent with the Wisconsin Constitution
and this Court's Order. *See* Wis. Const. art. IV, § 4 (directing assembly
districts to "be bounded by county, precinct, town or ward lines"); Order
¶ 35 (recognizing such lines should be preserved where possible). The
Hunter Assembly Map scores extraordinarily well on this benchmark.
Where the current assembly plan splits 59 counties, the Hunter
Assembly Map splits only 50. Ex. 1. Perhaps most notably, where the
2011 Map splits 665 precincts, the Hunter Assembly Map splits only 222
precincts. Ex. 1. Furthermore, as this Court recognized, any judicial
remedy should refrain from policy considerations and defer, where
possible, to duly enacted legislative processes. Order ¶ 19. In accordance
with this prerogative, the Hunter Intervenors Assembly Map, where
possible, follows newly adjusted municipal ward lines, particularly in the
three municipalities with the most substantial population change, where
wards can be expected to change more substantially, and thus, may have
to be adjusted more substantially. *See* Wis. Stat. § 5.15(1)(c). This allows
for deference to a duly enacted policy of a political body while
simultaneously   best   achieving   compliance   with   constitutional

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requirements. *See* Wis. Const. art. IV, § 4 (directing assembly districts to "be bounded by county, precinct, town or ward lines").[4]

Across every conceivable measure, the Hunter Assembly Map splits fewer local boundaries. Ex. 1. Doing so did not require significant changes to the existing district boundaries. Take one example: AD 73, near Lake Superior, was just slightly underpopulated in the existing assembly plan. Ex. 1. By adding the remainder of Douglas County to the district, the Hunter Plan reaches population equality for AD 73, and eliminates a county split in the process.

Finally, where the Hunter Assembly Map changed existing boundaries to assembly districts to meet legal requirements, it also strove to unite communities of interest, another traditional redistricting principle. Order ¶ 83. While uniting communities of interest is not quantifiably *measurable* like increasing compactness or reducing municipal splits is, it is still readily explainable, and perhaps one of the most important measures to Wisconsin voters and candidates alike. Take one straightforward example: AD 45, in Rock County, was slightly underpopulated in the existing assembly plan. Ex. 1. By adding the remainder of Beloit to the district to reach population equality, the Hunter Assembly Map was able to unite a community of interest and reduce a city split in one change.

III.   Hunter Senate Map

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[4] While under a 2011 statutory amendment, municipalities are required to modify their wards "to effect an act of the legislature redistricting," Wis. Stat. § 5.15(1)(c), as this is the first occasion for a court to consider a malapportionment claim since that amendment, no court has had occasion to determine whether, under the statute, municipalities may adjust their wards in response to a court-ordered redistricting. The Hunter Intervenors respectfully submit that to best accord with the limited role of a court in redistricting, *see* Order ¶ 19, that any court-ordered districting plan should follow new, duly enacted municipal ward lines where possible.

The Hunter Intervenors' proposed senate map is appended to this brief as Exhibit 4 (the "Hunter Senate Map"). Based on the criteria enumerated by the Court in its November 30 Order, the Hunter Senate Map is the appropriate remedy for the deficiencies of the 2011 Senate Map. The Hunter Senate Map supplies a least-change remedy, respects the legal protections for minority voting rights, and best serves traditional redistricting criteria when it does adjust district boundaries to comply with other legal requirements.

A.   The Hunter Senate Map minimizes changes from the 2011 enacted plan.

Because each Wisconsin senate district consists solely of three assembly districts (a feature known as "nesting"), a senate plan minimizes changes from the 2011 enacted plan to the extent it (1) relies on a minimal change assembly plan and (2) moves as few voters into differently numbered senate districts as possible, thus minimizing the number of voters who will experience delayed voting in Wisconsin senate elections. The Hunter Senate Map does both.

First, building off a least-change assembly plan, the Hunter Senate Map covers over 80% of the same geography and population as the corresponding districts in the 2011 Map. Ex. 1.

Second, the Hunter Senate Map also makes a concerted effort to keep Wisconsin voters on the same senate election cycle to minimize the number of voters who will go six years without voting in Wisconsin senate elections, something Wisconsin impasse courts have traditionally considered, *see Prosser v. Elections Bd.*, 793 F. Supp. 859, 864 (W.D. Wis. 1992)), and which Justice Hagedorn's concurrence identifies as a relevant factor. Order ¶ 83 (Hagedorn, J., concurring). The best method to eliminate this temporal disenfranchisement is to keep voters who were

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in even-numbered senate districts in the existing senate plan in even-numbered senate districts in the new senate plan, and vice versa. Ex. 1. The Hunter Senate Map does this. In designing the plan, Dr. Ansolabehere followed the same numbering approach to senate districts that the 2011 senate plan employed wherever possible. Ex. 1. And where it is no longer possible to follow the identical numbering pattern—which occurs only in two districts—the Hunter Senate Map aims to keep even-numbered senate voters and odd-numbered senate voters with the same alignment in this plan, too. Ex. 1. For that reason, under the Hunter Senate Map, only 4% of Wisconsin voters will experience delayed voting in Wisconsin senate elections, Ex. 1, significantly less than the nearly 300,000 voters who experienced the same when the Wisconsin Legislature moved them out of their senate districts in enacting the 2011 map. *See Baldus v. Members of Wisconsin Gov't Accountability Bd.*, 849 F. Supp. 2d 840, 852-53 (E.D. Wis. 2012).

B.   The Hunter Senate Map meets basic equal population and VRA requirements.

The Hunter Senate Map complies with equal population requirements by putting forward 33 senate districts, each composed of three assembly districts, that range from a minimum of 177,745 persons to a maximum of 179,443 persons. Ex. 1. Overall, this means that the maximum absolute deviation in the assembly plan is only .95%. Ex. 1. This deviation is far lower than the 2% *de minimis* population deviations endorsed by prior Wisconsin impasse courts for legislative districts. *See supra* at 18.

As previously noted, legislative districts must comply with the Voting Rights Act. Order ¶ 27. While the *Baldus* panel required Wisconsin to draw two-majority Hispanic assembly districts to comply

with the VRA (ADs 8 and 9), it did not analyze the extent to which Wisconsin was required to draw a minority opportunity district in the senate. Nevertheless, the 2011 Map paired ADs 8 and 9 into the same senate district—SD 3—and the Hunter Senate Map does the same here, keeping the majority-minority population above 50%. Ex. 1.

C. Where changes to existing senate districts were necessary, the changes were made according to traditional redistricting criteria.

Where the Hunter Senate Map changes existing boundaries to assembly districts to meet legal requirements, it does so only to accommodate the shape of the new assembly districts, as Wisconsin senate districts must do by law. *See* Wis. Stat. § 4.001, Wis. Const. art. IV, § 5.

Not surprisingly, because the Hunter Assembly Map is more compact than the corresponding 2011 Assembly Map, the Hunter Senate Map is also slightly more compact than the 2011 Senate Map. Where the 2011 Senate Map has an average Polsby-Popper score of .27, for example, the Hunter Senate Map has a score of .30, Ex. 1, meaning the Hunter Senate Map is more compact and has fewer irregular boundaries.
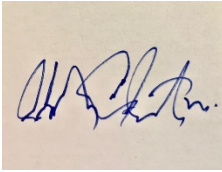
Similarly, because the Hunter Assembly Map divides far fewer local boundaries than the 2011 Assembly Map, the Hunter Senate Map necessarily does as well. Where the 2011 Senate Map splits 57 counties, the Hunter Senate Map splits only 42. Ex. 1. Perhaps most notably, where the 2011 Senate Map splits 576 precincts, the Hunter Senate Map splits only 123 precincts. Ex. 1. Much like the Hunter Assembly Map, across every conceivable measure, the Hunter Senate Map splits fewer local boundaries. Ex. 1.

CONCLUSION

For the foregoing reasons, the Court should adopt the congressional map, state senate map, and state assembly map proposed by the Hunter Intervenors.

Dated this 15th day of December, 2021.

Respectfully Submitted,

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FORM AND LENGTH CERTIFICATION

I certify that this brief conforms to the rules contained in

Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a

proportional serif font. The length of this brief is 4,932 words.

Dated: December 15, 2021

/s/ Charles C. Curtis
Charles C. Curtis

CERTIFICATE OF SERVICE

I certify that on this 15th day of December, 2021, I caused

a copy of this brief to be served upon counsel for each of the

parties via e-mail.

Dated: December 15, 2021   */s/ Charles C. Curtis*
                                   Charles C. Curtis

IN THE SUPREME COURT OF WISCONSIN

No. 2021AP001450 OA

BILLIE JOHNSON, ERIC O'KEEFE, ED PERKINS and RONALD ZAHN,

Petitioners,

BLACK LEADERS ORGANIZING FOR COMMUNITIES, VOCES DE LA FRONTERA, LEAGUE OF WOMEN VOTERS OF WISCONSIN, CINDY FALLONA, LAUREN STEPHENSON, REBECCA ALWIN, CONGRESSMAN GLENN GROTHMAN, CONGRESSMAN MIKE GALLAGHER, CONGRESSMAN BRYAN STEIL, CONGRESSMAN TOM TIFFANY, CONGRESSMAN SCOTT FITZGERALD, LISA HUNTER, JACOB ZABEL, JENNIFER OH, JOHN PERSA, GERALDINE SCHERTZ, KATHLEEN QUALHEIM, GARY KRENZ, SARAH J. HAMILTON, STEPHEN JOSEPH WRIGHT, JEAN-LUC THIFFEAULT, and SOMESH JHA,

Intervenors-Petitioners,

v.

WISCONSIN ELECTIONS COMMISSION, MARGE BOSTELMANN in her official capacity as a member of the Wisconsin Elections Commission, JULIE GLANCEY in her official capacity as a member of the Wisconsin Elections Commission, ANN JACOBS in her official capacity as a member of the Wisconsin Elections Commission, DEAN KNUDSON in his official capacity as a member of the Wisconsin Elections Commission, ROBERT SPINDELL, JR. in his official capacity as a member of the Wisconsin Elections Commission and MARK THOMSEN in his official capacity as a member of the Wisconsin Elections Commission,

Respondents,

THE WISCONSIN LEGISLATURE, GOVERNOR TONY EVERS, in his official capacity, and JANET BEWLEY SENATE DEMOCRATIC MINORITY LEADER, on behalf of the Senate Democratic Caucus,

Intervenors-Respondents.

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Pursuant to the Court's November 30, 2021 Order (the "Order"), Intervenors-Petitioners Citizen Mathematicians and Scientists respectfully submit the following brief in support of their proposed congressional, senate, and assembly maps (together the "MathSci Proposed Maps").

INTRODUCTION

As this Court set forth in its Order, "all parties agree the existing maps, enacted into law in 2011, are now unconstitutional" due to malapportionment, and this Court must "provide a remedy." Order ¶ 2. In doing so, this Court will "ensure preservation of the[] justiciable and cognizable rights explicitly protected" under the United States Constitution, the Voting Rights Act ("VRA"), and Article IV, Sections 3, 4, and 5 of the Wisconsin Constitution. *Id.* ¶ 38.

To assist the Court in providing a remedy, the parties were "invited to submit congressional and state legislative maps that comply with all relevant legal requirements, and that endeavor to minimize deviation from existing law." *Id.* ¶ 87 (Hagedorn, J., concurring). The parties were also invited to discuss "other, traditional redistricting criteria," while recognizing that the Court's "primary concern is modifying only what [it] must to ensure the 2022 elections are conducted under districts that comply with all relevant state and federal laws." *Id.*

The Citizen Mathematicians and Scientists submit that their Proposed Maps are the proper remedies for the Court to adopt. The Citizen Mathematicians and Scientists started with the 2011 Maps and then used computational redistricting to bring the 2011 Maps into full compliance with not only the equal-population requirement given the

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2020 Census Data, but also all other applicable state and federal legal requirements.

In Part I, the Citizen Mathematicians and Scientists briefly describe the new field of "computational redistricting." In Part II, the Citizen Mathematicians and Scientists discuss how their Proposed Maps accord with the principle of "least change" while applying 2020 Census Data to bring the 2011 Maps into full compliance with the mandates of the U.S. Constitution, the VRA, and the Wisconsin Constitution. Part III provides a detailed explanation of each legal requirement, the hierarchy of the legal requirements as they have been applied in Wisconsin, and how the Proposed Maps meet each legal requirement. In Part IV, the Citizen Mathematicians and Scientists explain how their Proposed Maps also address other traditional redistricting criteria in addition to all applicable legal requirements.[1]

ARGUMENT

I.   COMPUTATIONAL REDISTRICTING CAN OPTIMIZE COMPLIANCE WITH LEGAL REQUIREMENTS.

Redistricting involves balancing a variety of legal requirements. Unfortunately, improving compliance with one requirement often creates "downstream consequences" for compliance with other requirements.[2] For example, "[d]eciding to keep a county whole instead of splitting it across two districts changes at least the boundaries of all neighboring districts, and could come at the cost of other

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[1] The Citizen Mathematicians and Scientists attach to this brief their Proposed Congressional, Senate, and Assembly Maps. Specifically, the Citizen Mathematicians and Scientists attach a statewide congressional map along with eight district-specific maps, a statewide senate map and two insets, and a statewide assembly map with five insets. Citizen Mathematicians and Scientists also attach an expert report analyzing their proposed maps.

[2] Emily Rong Zhang, *Bolstering Faith with Facts: Supporting Independent Redistricting Commissions with Redistricting Algorithms*, 109 CAL. L. REV. 987, 1013 (2021).

redistricting criteria, such as making the map as a whole less compact."[3] Similarly, optimizing population balance sometimes comes at the price of diminished respect for political subdivisions. The traditional way to find the right balance has been through trial and error, with a mapmaker using commercial software to move existing district lines one at a time. But drawing maps by hand is both time-consuming and fundamentally limited. Indeed, "[a] single decision" in the map-drawing process can have "implications for the rest of the map that even seasoned line-drawers cannot always fully account for or predict."[4]

The field of computational redistricting that has developed over the past decade is a game-changer. The high-performance computing and optimization techniques involved in computational redistricting can apply the Census Bureau's latest data to existing maps and then sort through millions of alternatives to "zero in on the maps that best meet the redistricting criteria."[5] Computational redistricting is particularly effective at sifting through various geographic combinations to optimize compliance with legal requirements while constraining deviations from prior district boundaries.

Before explaining further, some terminology may be helpful. As used in this brief, a *legal requirement* is a criterion mandated under federal or state law, as articulated in the Court's November 30 Order:

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[3] *Id.*

[4] *Id.*

[5] *Id.*; *see also, e.g.*, Siobhan Roberts, *Mathematicians Are Deploying Algorithms to Stop Gerrymandering*, MIT TECH. REV. (Aug. 12, 2021), https://www.technologyreview.com/2021/08/12/1031567/ mathematicians-algorithms-stop-gerrymandering/; Moon Duchin, *Geometry Versus Gerrymandering: Mathematicians Are Developing Statistical Forensics to Identify Districts that Disenfranchise Voters*, SCI. AM. (Nov. 2018), https://www.scientificamerican.com/article/ geometry-versus-gerrymandering/; Amariah Becker, Moon Duchin, Dara Gold & Sam Hirsch, *Computational Redistricting and the Voting Rights Act*, 20 ELECTION L.J. (forthcoming 2022), https://www. liebertpub.com/doi/10.1089/elj.2020.0704.

population equality, minority electoral opportunity sufficient to comply with the VRA, respect for political subdivisions, contiguity, compactness, and nesting of assembly districts. Order ¶¶ 24–38; *id.* ¶ 82 n.4 (Hagedorn, J., concurring). A *traditional redistricting principle* is an additional consideration that, while not legally mandated, may assist a redistricter in selecting among "multiple proposed maps that comply with all relevant legal requirements, and that have equally compelling arguments for why the proposed map most aligns with current district boundaries." *Id.* ¶ 83 (Hagedorn, J., concurring). Traditional redistricting criteria for congressional districts in Wisconsin include compactness, respect for political subdivisions, and preserving communities of interest. For legislative districts, traditional redistricting criteria include preserving communities of interest and numbering senate districts to reduce the number of people who will have to wait an extra two years to vote for state senator. *See id.*

A *metric* is a precise, quantifiable measure of how well a district, or an entire map, satisfies a legal requirement or pursues the goal set forth in a traditional redistricting principle. For example, population equality is a legal requirement, and maximum population deviation (the difference between a plan's largest and smallest districts) is a metric. This population deviation metric can be expressed either as a number of persons (so a map in which all districts contain either 736,714 or 736,715 residents has a maximum population deviation of one person) or as a percentage of the population of an ideal district (for example, 1 person divided by 736,715 persons is 0.000136%). Most of the metrics described below, including the metric for the principle of population equality, are like golf scores: the lower, the better. A few, however,

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like the metrics used to measure compactness, are like hockey scores: the higher, the better.

As demonstrated below, the Citizen Mathematicians and Scientists believe that the MathSci Proposed Maps approach the best metrics that can be attained on the full set of legal requirements and traditional districting criteria while still minimizing deviation from the 2011 Maps.

II.   THE MATHSCI PROPOSED MAPS ACCORD WITH THE PRINCIPLE OF LEAST CHANGE.

The November 30 Order emphasized that the appropriate approach for courts to follow in the event of an impasse between the political branches in drawing a map is "to start with the laws currently on the books." Order ¶ 85 (Hagedorn, J., concurring). As the Court explained, "the maps drawn in 2011 were enacted by the legislature and signed into law by the governor." Order ¶ 4. However, those maps "no longer comply with the constitutional requirement of an equal number of citizens in each … district." *Id.*

In addition to new Census Data, there have also been other changes in the state. For example, in the years since 2011, Wisconsin cities and villages have continued to annex portions of surrounding towns, thus changing the borders of the towns and wards that the Constitution requires redistricting plans to respect, at least when drawing assembly (and by extension, senate) lines.[6] To illustrate the significance of these changes, note that when the 2011 Assembly Map

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[6] According to the Wisconsin Department of Administration's Municipal Data System (MDS), Wisconsin cities and villages have filed more than 150 official border changes with the state since 2014. *See* Municipal Data System, Corporate Boundaries, available at https://mds.wi.gov/View/CorporateBoundries (last accessed Dec. 14, 2021).

was enacted, the districts split 79 *then-current* municipal lines.[7] Ten years later, shifts in the borders of municipalities caused the same 2011 Assembly Map to split 126 of the *present* municipal lines. Duchin Report § 8, Table 14. These changes to the circumstances facing the Court—like the shifts in population—mean that certain "lawful policy choices of the legislature" in 2011 may no longer accord with the dictates of federal law or the Wisconsin Constitution. Order ¶ 81 (Hagedorn, J., concurring).

Accordingly, the task taken up by the Citizen Mathematicians and Scientists was to make "necessary modifications to accord with legal requirements" given the changes in the state since 2011. *Id.* ¶ 85. Those legal requirements, which are discussed in the next section, are found in "United States Constitution, or Article IV, Sections 3, 4, or 5 of the Wisconsin Constitution." *Id.* ¶ 81. The MathSci Proposed Maps resist "[t]reading further than necessary to remedy [the existing maps'] current legal deficiencies" and instead "'reflect the least change' necessary for the maps to comport with the relevant legal requirements." Order ¶¶ 64, 72 (quoting *Wright v. City of Albany*, 306 F. Supp. 2d 1228, 1237 (M.D. Ga. 2003)).

The maps that the Citizen Mathematicians and Scientists propose were generated by essentially "[u]sing the existing maps 'as a template.'" *Id.* ¶ 72 (quoting *Baumgart v. Wendelberger*, No. 01-C-0121, 2002 WL 34127471, at *7 (E.D. Wis. May 30, 2002) (three-judge court), *amended*, No. 01-C-0121, 2002 WL 34127473 (E.D. Wis. July 11, 2002)). With the power of computational redistricting, Citizen Mathematicians and Scientists' experts were able to generate maps that

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[7]*See* https://legis.wisconsin.gov/ltsb/gisdocs/Data2010/act43_act44_w_bvb_by_ ward.pdf. For a longer discussion of split municipalities, see section III.B.1 below.

remedied the malapportionment present in the 2011 Maps while also optimizing compliance with all relevant legal requirements. Among the set of maps that complied with all legal requirements, the Citizen Mathematicians and Scientists then identified maps that also best served traditional redistricting criteria, including preserving communities of interest and minimizing the number of people who would have to wait six years to vote for their senator. *Id.* ¶ 47; *see also id.* ¶ 83 (Hagedorn, J., concurring). Although the approach is rigorous, the outcome is minimalist inasmuch as it "alter[s] current district boundaries only as needed to comply with legal requirements." *Id.* ¶ 82.

Several metrics illustrate the degree to which the MathSci Proposed Maps exhibit a "least-change" approach with respect to the existing maps.

First, the MathSci Proposed Maps perform well on the metric of population displacement, which measures the number (or share) of people who are reassigned to a new district. *See* Duchin Report § 5.3. This is measured by totaling the 2020 population in census blocks that are in a different district in the proposed map relative to the 2011 enacted map. *Id.* A version of this metric, sometimes described as "core retention," has been used previously in Wisconsin and elsewhere. *See Baumgart*, 2002 WL 34127471, at *7 (average level of core retention in 2002 court-adopted plan was 76.7%); *see also Martin v. August-Richmond Cnty., Ga., Comm'n*, No. CV 112-058, 2012 WL 2339499, at *3 (S.D. Ga. June 19, 2012) (court "preserved the core constituency of each district" by retaining at least 74.19% of the "benchmark district[s]" in the prior maps). Here, the MathSci Proposed Congressional Map has a core retention rate of 91.5%; the Proposed

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Senate Map has a core retention rate of 74.3%; and the Proposed Assembly Map has a core retention rate of 61.0%.

Second, the MathSci Proposed Maps minimize the extent to which the new map "alters district boundaries." Order ¶ 82 (Hagedorn, J., concurring); *see also Stenger v. Kellett*, No. 4:11-cv-2230, 2012 WL 601017, at *3 (E.D. Mo. Feb. 23, 2012) (noting that a "frequently used model" is "to begin with the current boundaries and change them as little as possible"); *Bodker v. Taylor*, No. 1:02-cv-999, 2002 WL 32587312, at *5 (N.D. Ga. June 5, 2002) (referencing "small, though constitutionally necessary, change in the district lines in accordance with the minimum change doctrine").

There are multiple ways to measure this. One metric, known as area displacement, is calculated by measuring the share of the state's land area that is reassigned to a new district. Duchin Report § 5.3. Here, the MathSci Proposed Congressional Map displaced less than 3% of Wisconsin's land area.

Another metric focuses on the district lines or boundaries themselves. This metric, which can be called the "buffer distance," asks how much the boundaries of a given district in the enacted map would have to be pushed outward, or "buffered," in a new map to contain all of the same district. Duchin Report § 5.3 & Fig. 5. For example, as explained in the supporting expert report, if the maximum distance between the old map and the new map at any given point is 8.8 miles, then the "buffer" would be the outline that lies 8.8 miles beyond the old map at every point. *Id.*

Yet another metric is to look at units of "overlap" between the districts, as Justice Hagedorn suggested in his concurrence. Order ¶ 85 n.13. Justice Hagedorn used the unit of counties in evaluating the map drawn by this Court in *Zimmerman*, asking how many of the new

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districts consist of some or all of the same counties as the parallel predecessor districts. Order ¶ 85 n.13 (*comparing State ex rel. Reynolds v. Zimmerman*, 23 Wis. 2d 606, 617–18, 128 N.W.2d 16 (1964) ("*Zimmerman I*"), *with* Wis. Stat. § 4.02 (1963-64)). (As described *infra*, counties are a natural unit to consider given their stable boundaries and their historic importance in Wisconsin.)   A more demanding metric of overlap would measure how many districts in the Proposed Maps share at least some population with their parallel predecessor districts. Duchin Report § 5.3. As shown below, both of these metrics demonstrate the "striking" similarities between the MathSci Proposed Maps and the 2011 Maps. *See id*. For example, while Justice Hagedorn applauded the 1964 Court-ordered map for overlapping with the pre-existing statutory map in 31 of 33 senate districts, *see id.*, the MathSci Proposed Senate Map overlaps perfectly, in 33 of 33 districts.

TABLE 1: Least Change[8]						
	MathSci Proposed Maps					
	Population Displacement	**Core Retention**	**Area Displacement**	**Average Buffer Distance**	**Overlap**	**County Overlap**
Assembly	2,299,625 (39.0%)	61.0%	1947.9 mi^2	13.0 miles	85/99	87/99
Senate	1,513,824 (25.7%)	74.3%	1470.6 mi^2	17.0 miles	33/33	33/33
Congressional	500,785 (8.5%)	91.5%	150.4 mi^2	5.1 miles	8/8	8/8

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[8] Duchin Report, Tables 5, 10, 16.

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III.   THE MATHSCI PROPOSED MAPS BRING THE 2011 MAPS INTO FULL COMPLIANCE WITH ALL FEDERAL AND STATE LEGAL REQUIREMENTS.

As described above, the Citizen Mathematicians and Scientists hewed closely to the 2011 Maps. However, deviations from the 2011 Maps were necessary to comply with all applicable legal requirements. Those requirements and the metrics measuring how well the MathSci Proposed Maps achieve those requirements are set forth below. In each case, the Citizen Mathematicians and Scientists were able to improve on the 2011 Maps' compliance with the applicable legal requirements.

A.   Vote-Dilution Requirements

The foremost legal requirements in redistricting concern two forms of vote dilution. Quantitative vote dilution—the harm inflicted on persons residing in overpopulated districts—is prohibited by both the United States and Wisconsin Constitutions. Qualitative vote dilution—the harm inflicted on persons, such as members of racial or ethnic minority groups, whose voting strength is weakened even in equally populated districts—is prohibited primarily by the Federal Constitution and the Voting Rights Act.

1.   Equal Population

Chief among the legal requirements for redistricting is the principle of one person, one vote. *See Abrams v. Johnson*, 521 U.S. 74, 98 (1997); *Wesberry v. Sanders*, 376 U.S. 1 7–8 (1964); Order ¶ 24. Indeed, that is the entire reason redistricting is necessary. The command under the Federal Constitution's Article I, Section 2, "that Representatives be chosen 'by the People of the several States,'" *Wesberry v. Sanders*, 376 U.S. at 7, has been interpreted as requiring "absolute population equality" in congressional districts, *Karcher v. Daggett*, 462 U.S. 725, 732 (1983). Thus, in 2011, the Wisconsin plan

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enacted by the legislature and signed by the Governor limited the deviation among congressional districts to a single person. *See* National Conference of State Legislatures, *Redistricting Law 2010, Table 3: Population Equality of 2000s Districts* (Nov. 2009).[9] To do the same in 2021, the number of people of in any congressional district should not deviate by more than one person from the ideal congressional district of 736,714.75 people. Order ¶ 15.

The federal requirement of "equal protection" that the Fourteenth Amendment imposes upon state legislative districts is more flexible and has been interpreted to allow population deviations up to ten percent. Order ¶ 26; *Brown v. Thomson,* 462 U.S. 835, 842 (1983). The Wisconsin Constitution, however, is far more demanding and "places ... heavy emphasis on the requirement that the legislative districts be apportioned" as equally as possible. *State ex rel. Reynolds v. Zimmerman*, 22 Wis. 2d 544, 556, 126 N.W.2d 551 (1964) ("*Zimmerman II*"). The plain text of the Constitution requires that the legislature "apportion and district anew the members of the senate and assembly, *according to the number of inhabitants*." Wis. Const. art. IV, § 3 (emphasis added); *see also* Order ¶ 19; *Zimmerman II*, 22 Wis. 2d at 565 ("The 'rationality' of apportioning representatives in direct ratio to the population was affirmed when the constitution, embodying the … specific standard of sec. 3, art. IV, was ratified.").

As this Court recognized in its November 30 Order, the Wisconsin Constitution demands, with respect to legislative district populations, that "there should be *as close an approximation to exactness as possible*, and this is the utmost limit on the exercise of

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[9] Available at https://www.ncsl.org/Portals/1/Documents/Redistricting/Redistricting_2010.pdf#page=59.

legislative discretion." Order ¶ 33 (emphasis added) (quoting *State ex rel. Att'y Gen. v. Cunningham*, 81 Wis. 440, 484, 51 N.W. 724 (1892)). The significance of this provision cannot be overstated: As this Court put it, "[o]ur system of representative democracy would be a sham if our representatives in the legislature did not in fact represent the people 'according to the number of inhabitants.'" *Forseth v. Sweet*, 38 Wis. 2d 676, 688, 158 N.W.2d 370, 376 (1968).

Since the Governor vetoed the first apportionment bill in 1851 for failing to achieve an appropriate level of population equality, Order ¶ 33,[10] the extent to which "an approximation of exactness" is indeed possible has grown dramatically due to advances in technology. In the last three redistricting cycles, the maximum population deviation among Wisconsin senate and assembly districts was about 1.6%. Duchin Report § 5.1. While the other legal requirements in the Wisconsin Constitution make it difficult to achieve in state legislative districting the one-person deviations that have become standard in the congressional context, this recent track record shows that population deviation can and should be minimized.

Taken together, these precedents make clear that (A) congressional-district populations must be exactly equal (*i.e.*, at most, only one person apart); and (B) legislative districts should contain only the amount of deviation necessary to achieve other legal requirements set forth in the Court's Order. Given that in the last three redistricting cycles, the maximum population deviation among legislative districts

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[10] The very first apportionment act passed under the Wisconsin Constitution in 1851 was vetoed because the "disproportion in the number of inhabitants in senate and assembly districts" was "unconstitutional as not being according to the number of inhabitants." *Cunningham*, 81 Wis. at 512 (Pinney, J., concurring).

was about 1.6%, any plan that exceeds a 2% deviation is presumptively unconstitutional.

<p style="text-align:center">* * *</p>

The MathSci Proposed Maps properly prioritize population equality as the most important objective. Each congressional district contains either 736,714 or 736,715 people and thus does not deviate from the ideal by more than a single person. *See* Order ¶ 15. The maximum population deviation is 0.74% for assembly districts and 0.50% for senate districts. Duchin Report §§ 7, 8. Each of these figures is substantially lower than 1.6%, *i.e.*, the maximum population deviation for any legislative district in the last three redistricting cycles, and is lower than the maximum population deviation reflected in the 2011 Maps. And Citizen Mathematicians and Scientists would have pushed those percentages even lower, were it not for the need to adhere to county lines wherever possible and to ward lines invariably. *See infra* Part III.B.1 (discussing Wis. Const. art. IV, § 3). By keeping population deviation to a minimum, the Citizen Mathematicians and Scientists have ensured that their Proposed Maps serve the most fundamental redistricting requirement under both the United States and Wisconsin Constitutions.

TABLE 2: Population Equality		
	2011 Maps Maximum Population Deviation[11]	**MathSci Proposed Maps Maximum Population Deviation[12]**
Assembly	0.76%	0.74%
Senate	0.62%	0.50%
Congressional	0.0001%	0.0001%

2.   Minority Voting Rights

Any maps adopted by the Court must comply with the Fourteenth Amendment to the Federal Constitution, which bars the excessive and unjustified use of race and racial data and the intentional dilution of minority voting strength. *See Shaw v. Reno*, 509 U.S. 630, 639–57 (1993); *Rogers v. Lodge*, 458 U.S. 613, 616–28 (1982). Further, the maps must comply with Section 2 of the Voting Rights Act ("VRA"), which "prohibits the denial or abridgment of the right to vote on account of race, color, or membership in a language minority group." Order ¶ 27; *see* 52 U.S.C. § 10301.

The VRA prohibits both intentional and unintentional vote dilution. *Thornburg v. Gingles*, 478 U.S. 30, 43–44 (1986); Order ¶ 27. It provides that, irrespective of discriminatory intent, members of a racial or language-minority group must not "have less opportunity than other members of the electorate" to "nominat[e]" and "elect representatives of their choice," based on "the totality of circumstances." 52 U.S.C. § 10301(b).

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[11] Exhibit A to Joint Pretrial Report at 11-12, *Baldus v. Gov't Accountability Bd.*, No. 11-cv-562 (E.D. Wis. Feb. 14, 2012), ECF No. 158-1; Joint Pretrial Report at 51, *Baldus v. Gov't Accountability Bd.*, No. 11-cv-562 (E.D. Wis. Feb. 14, 2012), ECF No. 158.

[12] Duchin Report, Tables 1, 6, 12.

In practice, where voting is racially polarized—more specifically, when a bloc-voting majority usually will defeat "candidates supported by a politically cohesive, geographically insular minority group," *Gingles*, 478 U.S. at 49—Section 2 of the VRA may require replacing one or more districts that elect candidates preferred by the majority group with districts that would nominate and elect candidates preferred by minority voters. *See Johnson v. De Grandy*, 512 U.S. 997, 1008 (1994). To guard against potential violations of Section 2 of the VRA, a redistricting plan should provide effective opportunities for minority group members to nominate and elect their preferred candidates in a number of districts that is "roughly proportional" to the minority group's share of the state's citizen voting-age population, or "CVAP." *League of United Latin Am. Citizens v. Perry (LULAC)*, 548 U.S. 399, 436–38 (2006); *see De Grandy*, 512 U.S. at 1000.

To that end, a district in which a minority group constitutes less than 50% of the voting-age population but can still nominate and elect minority-preferred candidates "can … [and] should" count as a minority-effective district when assessing compliance with the Voting Rights Act. *Bartlett v. Strickland*, 556 U.S. 1, 24 (2009) (plurality opinion); *see also Cooper v. Harris*, 137 S. Ct. 1455, 1469–72 (2017) (holding that the VRA did not require the state to "ramp up" the Black percentage in an effective "crossover" district, where Black voters had scored consistent victories despite lacking an arithmetic majority of the voting-age population). In other words, whether a proposed plan complies with the VRA depends on the actual electoral opportunity for minority voters, not on "particular numerical minority percentage[s]." *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 275 (2015); *see also Cooper*, 137 S. Ct. at 1469; *Bethune-Hill v. Va. State Bd. of*

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Elections, 137 S. Ct. 788, 799, 801–02 (2017); *Bush v. Vera*, 517 U.S. 952, 969–72 (1996).

<p style="text-align:center">∗   ∗   ∗</p>

The 2011 legislative maps, as modified by a 2012 federal-court order in *Baldus v. Members of Wisconsin Government Accountability Board*, 849 F. Supp. 2d 840 (E.D. Wis. 2012) (three-judge court), contained two senate districts and six assembly districts in which Black voters had a realistic opportunity to elect their candidates of choice and 1 assembly district in which Latino voters had such an opportunity.

The MathSci Proposed Maps reflect changes to the demographics of Wisconsin in the intervening years. Since 2011, population increases have brought with them demographic shifts that must be taken into account under the VRA. As has been widely reported, the state's population growth over the past ten years was primarily among people of color. The state's white population dropped by 3.4%, while the Latino population grew by 33.1% and the Black population grew by 4.8%.[13] The state also saw a large increase in the number of people who identify as two or more races. That number grew by 244% to 359,534, up from 104,317 a decade ago.[14]

Accordingly, the MathSci Proposed Maps reflect these demographic shifts and contain *seven* assembly districts in which Black voters have an opportunity to elect their candidates of choice and *two* assembly districts in which Latino voters have an opportunity to elect their candidates of choice. These nine assembly districts are nested into

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[13] Molly Beck, *Wisconsin Grows Modestly and More Diverse While Milwaukee Plummets to 1930s Levels, Census Data Show*, MILWAUKEE J. SENTINEL (Aug. 12, 2021), https://www.jsonline.com/story/   news/politics/2021/08/12/census-wisconsin-grows-modestly-while-milwaukee-drops-1930-s-levels/8110913002/.
[14] *Id*.

<p style="text-align:center">16</p>

three senate districts that are effective for minority voters to elect their candidates of choice.

Specifically, proposed Senate Districts 3, 4, and 6 are all majority-minority districts, with voting-age populations that are 41% Latino, 52% Black, and 51% Black, respectively. By contrast, the adult population in each of these three districts is only about one-third white. And in the Proposed Assembly Map, Assembly Districts 8 and 9 have voting-age populations that are at least 58% Latino, and the other seven districts (Assembly Districts 7, 10, 11, 12, 16, 17, and 18) are each solidly effective for Black voters, who constitute anywhere from 35% to 84% of the districts' voting-age populations.

With these districts, the Citizen Mathematicians and Scientists can "ensure any remedy [the Court] impose[s] satisfies the requirements of the VRA." Order ¶ 27.

B.   Additional Wisconsin Constitutional Requirements

The Wisconsin Constitution contains several other legal requirements in addition to population equality. Order ¶ 34. This Court and others have sometimes described these requirements as being of "secondary importance." *Id.* (quoting *Wis. State AFL-CIO v. Elections Bd.*, 543 F. Supp. 630, 635 (E.D. Wis. 1982) (three-judge court)). However, they are secondary in importance only to the preeminent legal requirement of redistricting "according to the number of inhabitants." Order ¶ 34; *see also AFL-CIO*, 543 F. Supp. at 634–35 (rejecting argument that population inequality should be excused due to respect for political subdivisions). The emphasis in certain decisions on the primacy of population equality (and relative subordination of other factors) reflects that, for much of its history, Wisconsin prioritized respect for counties over population equality. *See AFL-CIO*, 543 F. Supp. at 635. The discussion of certain Wisconsin constitutional

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requirements as being of "secondary importance" must be evaluated in the context of this history.

As noted at the outset, redistricting involves balancing multiple factors. Prior judicial discussions of the relative weights of these factors were heavily influenced by the assumption that it was perhaps impossible to achieve population equality while complying with the other factors. *See AFL-CIO*, 543 F. Supp. at 635 (assuming that "maintaining the integrity of county lines" is "generally incompatib[le] with population equality"). With their Proposed Maps, however, the Citizen Mathematicians and Scientists have proved that population equality, respect for political subdivisions, and compactness can largely be reconciled.

1. Respect for Political Subdivisions

Wisconsin has always placed a high priority on respect for political subdivisions, and in particular on maintaining the integrity of counties, towns, and wards. As this Court recognized in its Order, under Article IV, Section 4 of the Wisconsin Constitution, assembly districts must "be bounded by county, precinct, town or ward lines." Wis. Const. art. IV, § 4; Order ¶ 35.[15] Because assembly districts nest in senate districts, this bounding requirement necessarily controls senate districts as well. Although respect for political subdivisions is not a legal requirement for congressional districts, it has always been

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[15] "[T]he precinct of the constitution disappeared when the uniform system of town and county government prescribed by the constitution . . . became fully operative. We have now no civil subdivision, other than towns and wards, which are the equivalent of the precinct of territorial times." *Cunningham*, 81 Wis. at 520 (Lyon, C.J., concurring).

considered a traditional neutral redistricting principle for Wisconsin's congressional-district boundaries.

Under Wisconsin law, all political subdivisions are not created equal. Indeed, the text and the history of Article IV, Section 4 leave no doubt that the foremost consideration when drawing legislative districts must always be the integrity of counties and county lines.

Counties

The history and context of Article IV, Section 4 is set forth in this Court's 1892 decision in *State ex rel. Attorney General v. Cunningham*, 81 Wis. 440, 51 N.W. 724 (1892) ("*Cunningham*"), which this Court recognized as "seminal." Order ¶ 28. As the decision explains, "[u]p to the time of the constitutional convention representation had been by counties." 81 Wis. at 512 (Pinney, J., concurring). Even as that system was replaced with a district system, many of the delegates shared the view that "each county was regarded in the nature of a small republic, or in the light of a family, and each organized county had a separate interest." *Id.* at 513 (internal quotation marks omitted). Given the primacy of counties, the delegates added the above language as an amendment to the original language of the Constitution to avoid "dismemberment of counties in the formation of assembly districts." *Cunningham*, 81 Wis. at 526 (Lyon, C.J., concurring). At the time the amendment was adopted, it meant that "each county having sufficient population should have its own representative in the legislature, chosen by its own electors and them only, and owing no divided, perhaps conflicting, allegiance to any other constituency." *Id.*

This principle—that the county should be the primary unit for creating a legislative map—reflected a deeply held view of the

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importance of counties to representative government. As the Court observed in *Cunningham*:

> The county is the chief civil subdivision of the state. It, or its equivalent, has existed from the first in all the states and territories of the Union. It has always been the medium through which the state performs some of its most important functions, particularly that of raising revenue…. The people of a county have common interests and objects, peculiar to themselves, and intimate public relations with each other. The electors thereof vote for the same public officers; are subject to the same jurisdiction of and attend the same courts; some of them sit upon the same juries and in the same board of supervisors; and all have a common interest in all county affairs.

Id. at 525–26.[16]

The primacy of counties in Wisconsin state government continues to the present day. Counties have been treated as the primary geographic unit in Wisconsin outside the electoral context and are given broad authority to "act and decision-make on local affairs." *Jackson Cnty. v. State, Dep't of Nat. Res.*, 2006 WI 96, ¶ 31, 293 Wis. 2d 497, 519, 717 N.W.2d 713, 724; *see Cunningham*, 81 Wis. at 525 (county's "governing body has always been clothed with important legislative powers, of a local character, directly affecting the welfare of all the people within its borders").

In addition, unlike municipalities and wards that change over time, counties are a constant fixture in the geography of Wisconsin's government. Of Wisconsin's current 72 counties, 58 had been founded by 1861. The Wisconsin Cartographer's Guild, *Wisconsin's Past and*

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[16] *See also Cunningham*, 81 Wis. at 485 (Orton, J., concurring) ("The people have a commendable pride in their own counties, and have more or less a common feeling and interests, and participate together in all their county affairs. They have a right to be represented by their own members of the legislature, and the members themselves can better represent them, and promote and protect their interests. . . . That most dangerous doctrine, that these and other restrictions upon the power of the legislature are merely declaratory, and not mandatory, should not be encouraged even to the extent of discussing the question. The convention, in making a constitution, had a higher duty to perform than to give the legislature advice.").

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Present, a Historical Atlas 70–71 (1998). The most recent county change occurred in 1961, when the county of Menominee was formed out of reservation lands in two other counties, and the next most recent change occurred in 1901. *Id.* By contrast, the borders of municipalities are often in flux, as city and village governments annex nearby properties to expand their tax base. *See* Eric Mueller, Wisconsin Legislative Reference Bureau, 4 LRB Reports 12, *The Municipal Annexation Process in Wisconsin* 1 (July 2020).[17]

Reflecting the primacy of counties in the state's system of government, from the enactment of the Wisconsin Constitution until the U.S. Supreme Court's decision in *Reynolds v. Sims*, 377 U.S. 533 (1964). Wisconsin's redistricting plans generally (a) divided only those counties that were larger than the ideal district based on population and (b) joined only whole counties in districts. *See AFL-CIO*, 543 F. Supp. at 635 (noting that "[c]ounty lines were considered to be 'inviolable' in Wisconsin" and that "Assembly districts which divided counties were held unconstitutional except where a county was entitled to more than one state Representative"); *see also* The Wisconsin Cartographer's Guild, *Wisconsin's Past and Present, a Historical Atlas* 84 (1998) (showing a map of 1892 legislative districts compared to county boundaries). But the U.S. Supreme Court's decision in *Reynolds* rendered it impossible to keep counties perfectly intact when redistricting. *See AFL-CIO*, 543 F. Supp. at 635 (noting that an "intact-

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[17] Available at https://docs.legis.wisconsin.gov/misc/lrb/lrb_reports/municipal_annexation_process_4_12.pdf

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county plan" ... "established population deviation ranges" that would be impermissible under *Reynolds v. Sims*).

While this change in the law meant that the integrity of counties could no longer be prioritized over population equality, it did nothing to undermine the enduring significance of counties. Preservation of counties remains a constitutional requirement that should be respected "insofar as it does not compel disregard" for population equality. 60 Op. Att'y Gen. 101, 106–09 (Wis. Att'y Gen. 1971) (internal quotation marks omitted).

*   *   *

The MathSci Proposed Maps reflect the Wisconsin Constitution's historical recognition of the primacy of counties and the importance of keeping them whole. The degree of county integrity achieved by the Citizen Mathematicians and Scientists can be seen by comparing the number of counties split by the MathSci Proposed Maps to the number split by the 2011 Maps. The number of splits is calculated by counting the number of counties that appear in more than one district. The number of parts is calculated by counting how many different districts the counties are split into.

TABLE 3: County Integrity		
	2011 Maps[18]	**MathSci Proposed Maps**[19]
Assembly	58 splits (229 parts)[20]	40 splits (175 parts)
Senate	46 splits (130 parts)	28 splits (86 parts)
Congressional	12 splits (27 parts)	7 splits (15 parts)

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[18] *See* https://legis.wisconsin.gov/ltsb/gisdocs/Data2010/act43_act44_by_mcd.pdf.

[19] Duchin Report, Tables 3, 8, 14.

[20] As used in Table 2, the number of county "splits" represents the number of counties that are divided among more than one district. The number of "parts" represents the number of discrete pieces into which the counties are divided. "Parts" are equivalent to "pieces," as that term is used in the Duchin Report.

Wards and Towns

In addition to county lines, Article IV, Section 4 requires consideration of ward lines. As the opinions in *Cunningham* explain, the necessity to draw some districts on town and ward lines that are not county lines "only arises because the constitution provides for choosing members of assembly by single member districts, and some counties have a sufficient number of inhabitants to entitle each of them to more than one member of assembly." 81 Wis. at 522 (Lyon, C.J., concurring). Thus, "the assembly districts should be bounded by county lines until the necessity arises for bounding them by town or ward lines which are not county lines also." *Id.* In other words, while the size of counties may require them to be split more often than smaller units of government, those splits are permissible only to the extent that they are dictated by the need to equalize population.

Like counties, towns and wards are constitutionally required to be respected. Wis. Const. art. IV, § 4; Order ¶ 35. Wards are the smallest political subdivisions in Wisconsin, and counties are made up of perfectly nested wards. *Prosser v. Elections Bd.*, 793 F. Supp. 859, 862 (W.D. Wis. 1992); *Baldus*, 849 F. Supp. 2d at 845. Where possible and practicable, each ward is to consist of whole census blocks; be kept compact; observe the community of interest of existing neighborhoods and other settlements; be confined to a single municipality; and be only in one county supervisory board district. *See* Wis. Stat. § 5.15. Wards are "the basic unit of Wisconsin state government for voting purposes." *Prosser*, 793 F. Supp. at 866; *see also Baldus*, 849 F. Supp. 2d at 845 ("redistricting has always proceeded on a 'bottom up' basis: ward lines would be redrawn based on the new census figures, villages and towns would recompute their populations, and the counties would build on

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those figures"); *Town of Blooming Grove v. City of Madison*, 275 Wis. 342, 347, 81 N.W.2d 721, 723 (1957) ("Since the earliest days ... apportionment acts of the legislature have listed ... wards ... when dividing counties into assembly districts."); *City of Janesville v. Rock Cnty.*, 107 Wis. 2d 187, 190, 319 N.W.2d 891, 893 (Ct. App. 1982) (wards are the "basic building blocks to be used by the legislature, county boards and municipal governing bodies in redistricting their respective election districts"). As one court put it: "You vote by ward." *Prosser*, 793 F. Supp. at 866.

<p align="center">* * *</p>

The MathSci Proposed Assembly and Senate Maps use wards as the building blocks for their districts and thus do not divide even a single ward. *See* Wis. Const. art. IV, § 4; Order ¶ 35.[21] The MathSci Congressional Map splits wards only enough to achieve absolute population equality.

TABLE 4: Ward Integrity[22]	
	MathSci Proposed Maps[23]
Assembly	0
Senate	0
Congressional	8

Incorporated municipalities (cities and villages)

Cities and villages—unlike counties, towns, and wards—are not required to be preserved in legislative redistricting, according to the

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[21] As noted in the parties' joint stipulation, the Wisconsin Legislative Technology Services Bureau publishes 2020 U.S. Census Data by Ward information in CSV, KML, Shapefile, and GeoJSON formats, which are available at https://data-ltsb.opendata.arcgis.com/datasets/LTSB::2020-us-census-data-by-ward/about. Joint Stipulation of Facts and Law ¶ 19 (Nov. 14, 2021).

[22] Duchin Report, Tables 3, 8, 14.

[23] In 2011, rather than draw the district maps to fit the wards, the ward lines were drawn after the district maps were adopted. *See* 2011 Wisconsin Act 39.

plain text of the Wisconsin Constitution. *State ex rel. Lamb v. Cunningham*, 83 Wis. 90, 148, 53 N.W. 35 (1892) (Cassoday, J., concurring) (constitution "speaks of 'ward lines,' but contains no other reference to cities"). That is because, "when the Constitution was adopted, there existed in the territory villages with town lines passing through and dividing them into two parts. In such cases the dismemberment of the villages could not be prevented without dismembering towns." *Cunningham*, 81 Wis. at 742. "The inference is irresistible that such lines are so specified to prevent the dismemberment of counties, as well as towns and wards, while the lines of cities and villages are not specified as such boundaries, because it would be necessary to disregard them, and dismember such municipalities, in order to prevent the dismemberment of counties and towns." *Id.*; *see also AFL-CIO*, 543 F. Supp. at 635–36 (discussing caselaw regarding status of city and village borders). Accordingly, there is no constitutional requirement to keep cities or villages intact.

Nonetheless, there is a long history of evaluating redistricting plans in part based on the number of cities and villages, as well as towns, that are split, at least to the extent they are not split along county lines. *See AFL-CIO*, 543 F. Supp. at 636 (noting intent to use municipal splits "sparingly"). Consistent with this guidance, federal courts in Wisconsin have sought to avoid dividing cities and villages, even though their integrity is not enshrined in the Wisconsin Constitution. *Baldus*, 849 F. Supp. 2d at 850 (emphasizing significance of avoiding breaking up villages, among other subdivisions); *Baumgart*, 2002 WL 34127471, at *3, *7 (observing that "municipalities [should] be kept whole where possible" and that the court was guided by the "neutral principle[] of maintaining municipal boundaries," including those of cities and villages).

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Although they prioritize county and ward integrity as required by the constitutional text, the MathSci Proposed Maps nonetheless also perform well with regard to municipality splits. The below table reports the number of municipalities that are split by the MathSci Proposed Maps, with a municipality being defined as the portion of a city, village, or town that falls within a single county. (In other words, if a city or village spans two counties, it would count as two municipalities for the purposes of this table.)

TABLE 5: Municipal Integrity[24]	
	MathSci Proposed Maps[25]
Assembly	70 splits (176 parts)
Senate	31 splits (69 parts)
Congressional	13 splits (27 parts)

These numbers compare favorably to the number of municipalities that the 2011 Maps split when enacted. Though calculated slightly differently, the 2011 Assembly Map split 79 municipalities, the 2011 Senate Map split 48 municipalities, and the 2011 Congressional Map split 34 municipalities.[26]

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[24] As used in Table 4, the number of municipal "splits" represents the number of municipalities that are divided among more than one district (excluding splits that align with county boundaries). The number of "parts" represents the number of discrete pieces into which the municipalities are divided. "Parts" are equivalent to "pieces," as that term is used in the Duchin Report.

[25] Duchin Report, Tables 3, 8, 14.

[26] *See* https://legis.wisconsin.gov/ltsb/gisdocs/Data2010/act43_act44_w_bvb_by_ward.pdf. In this data, a "municipality" that crosses county lines is defined as one municipality, not two. However, because the data about the 2011 Maps excludes municipal splits that fall along county lines, the split count for the MathSci Proposed Maps, if anything, inflates the number of municipal splits compared to the data provided for the 2011 Maps.

By prioritizing respect for the integrity of counties and wards, the MathSci Proposed Maps best comply with the plain text of Article IV, Section 4 of the Wisconsin Constitution as well as judicial precedent. Further, the Citizen Mathematicians and Scientists accomplish this while attaining a level of population equality that would be unparalleled in the history of Wisconsin legislative redistricting. *See supra* at 11-12.

2.   Contiguity

The Wisconsin Constitution requires that assembly districts "consist of contiguous territory." Wis. Const. art. IV, § 4. This contiguity requirement "generally means a district 'cannot be made up of two or more pieces of detached territory.'" Order ¶ 36 (quoting *Cunningham*, 83 Wis. at 148, 53 N.W. at 57). Likewise, under the Wisconsin Constitution, senate districts should consist of "convenient contiguous territory." Wis. Const. art. IV, § 5; Order ¶ 37. Finally, contiguity has always been considered a traditional redistricting criterion for congressional districts.

An exception to this general rule of contiguity lies where "annexation by municipalities creates a municipal 'island.'" Order ¶ 36. Such annexations are common in Wisconsin.[27] In that circumstance, a district may contain detached portions of a single municipality and still be deemed contiguous for purposes of the state constitutional requirement, so long as "the distance between town and [annexed] island is slight." *Prosser*, 793 F. Supp. at 866; *see also id.* ("literal contiguity" not required, where municipal islands are

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[27] Since 2012, over 800 proposed annexations by cities and villages were reviewed and categorized as "in the public interest." Municipal Data System, available at https://mds.wi.gov/View/Petitions (filtering for "in the public interest") (last accessed Dec. 14, 2021).

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concerned); Order ¶ 36.   Wards, too, are sometimes themselves discontiguous due to these "islands."   Wis. Stat. §§ 5.15(1)(b), 5.15(2)(f)(3).   While the caselaw does not specifically discuss discontiguous wards, any discontiguity in districts created by these ward "islands" should be subject to the same rule as discontiguous municipalities.

<p style="text-align:center">*   *   *</p>

The MathSci Proposed Maps are contiguous as defined under Wisconsin law.   Wis. Const. art. IV, § 4; Order ¶ 36.

3.   Geographic Compactness

The Wisconsin Constitution mandates that assembly districts be "in as compact form as practicable."   Wis. Const. art. IV, § 4; Order ¶ 37; *Zimmerman I*, 23 Wis. 2d at 606.   "The term 'compact' has not been defined in Wisconsin, but other states with similar constitutional requirements have defined 'compact' as meaning closely united in territory."   *AFL-CIO*, 543 F. Supp. at 634 (citing *People ex rel. Woodyatt v. Thompson*, 40 N.E. 307 (Ill. 1895)).   While this requirement does not technically apply to senate districts, due to Wisconsin's nesting system, the compactness requirement for assembly districts necessarily implicates senate districts.   Moreover, while compactness is not a legal requirement for congressional districts, it has always been considered a traditional redistricting criterion.

The level of compactness required by the Wisconsin Constitution is defined not in absolute terms, but in relation to what is "practicable."   This Court and others have been clear, however, that compactness remains a constitutional *requirement*.   Indeed, within the limits of what is practicable, and balanced against other constitutional requirements, including population equality, compactness can be a proper basis for choosing one plan over another.   *See Zimmerman I*, 23

<p style="text-align:center">28</p>

<p style="text-align:center">App. 309</p>

Wis. 2d at 607 (rejecting certain plans for lack of compactness and ruling that "compactness compelled adoption of the alternatives embodied in the present judgment"); *see also Baumgart*, 2002 WL 34127471, at *7 (court endeavored to "create physically compact senate districts" and noted that "[d]istrict compactness levels" in its plans were higher than in the plans submitted by the parties).

The enshrining of compactness within the Wisconsin Constitution recognizes that compactness is a "desirable feature[]" in a district. *Prosser*, 793 F. Supp. at 863. Compactness "reduce[s] travel time and costs," in turn "mak[ing] it easier for candidates for the legislature to campaign for office and once elected to maintain close and continuing contact with the people they represent." *Id.* Further, compactness is one of several "proxies for homogeneity of political interests." *Id.*

Although this Court has not adopted a metric for compactness, Order ¶ 37, other courts have relied on mathematical measures of compactness including the Polsby-Popper and Reock scores. *See, e.g.*, *Cooper*, 137 S. Ct. at 1475; *League of Women Voters of Fla. v. Detzner*, 179 So. 3d 258, 283 (Fla. 2015); *League of Women Voters of Pa. v. Commonwealth*, 178 A.3d 737, 818 (Pa. 2018); *Vesilind v. Va. State Bd. of Elections*, 813 S.E.2d 739, 743 (Va. 2018); *see also Baumgart*, 2002 WL 34127471, at *4, *7 (using "perimeter to area" and "smallest circle" measures); *Prosser*, 793 F. Supp. at 863–64 (citing Daniel D. Polsby & Robert D. Popper, *The Third Criterion: Compactness as a Procedural Safeguard Against Partisan Gerrymandering*, 9 YALE L. & POL'Y REV. 301 (1991)).

The Polsby-Popper score compares a district's area to its perimeter to measure its jaggedness. Duchin Report § 5.2. The Reock score compares a district's area to the area of the smallest circle that

could circumscribe the district, thus measuring the district's elongation. *Id.* A circular district gets a perfect score of 1 under both measures.[28]

The "cut edges" score is another metric used to calculate compactness. It counts how many adjacent pairs of geographical units receive different district assignments—*i.e.*, how much work would have to be done to separate the districts from each other. *Id.* Unlike Polsby-Popper and Reock, it does not measure the compactness of each district's shape, but rather computes a compactness score for the entire map. And unlike the other two measures, a cut-edges score improves if it gets lower, not higher.

<p style="text-align:center">*   *   *</p>

The districts in each of the MathSci Proposed Maps score well on each of these three measures of compactness, including when compared to the last validly enacted plan:

	TABLE 6: Compactness[29]					
	2011 Maps			**MathSci Proposed Maps**		
	Block Cut Edges (lower is better)	**Average Polsby-Popper** (higher is better)	**Average Reock** (higher is better)	**Block Cut Edges** (lower is better)	**Average Polsby-Popper** (higher is better)	**Average Reock** (higher is better)
Assembly	18,994	0.260	0.390	17,781	0.282	0.406
Senate	10,928	0.230	0.402	9,754	0.260	0.402
Congressional	4,293	0.209	0.440	3,228	0.305	0.464

4.   Nesting

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[28] These measures are more useful for comparing districts within the same State, rather than comparing districts across different States, since they depend on various factors (*e.g.*, the shape of the State's external boundary) that are not relevant to the reasons for demanding geographically compact districts.

[29] Duchin Report, Tables 4, 9, 15.

<p style="text-align:center">30</p>
<p style="text-align:center">App. 311</p>

The Wisconsin Constitution provides that no assembly district may be "divided in the formation of a senate district." Wis. Const. art. IV, § 5; Order ¶ 37. In other words, assembly districts must be cleanly nested inside senate districts. *Zimmerman I*, 23 Wis. 2d at 607 ("Assembly district lines are held inviolable. Senate districts consist of whole assembly districts …"). Further, "the number of the members of the assembly shall never be less than fifty-four nor more than one hundred. The senate shall consist of a number not more than one-third nor less than one-fourth of the number of the members of the assembly." Wis. Const. art. IV, § 2. Coupled with the population-equality standard, this means that each senate district must contain the same number of assembly districts. Since membership in the Wisconsin Legislature is fixed at 33 State Senators and 99 Representatives to the Assembly, three assembly districts must be nested in each senate district. *See* Wisconsin Legislative Reference Bureau, *Redistricting in Wisconsin 2020: The LRB Guidebook* 19 n.80 (2020).[30]

<center>*   *   *</center>

The MathSci Proposed Maps satisfy this requirement, since the 99 assembly districts nest perfectly into 33 senate districts.

IV. THE MATHSCI PROPOSED MAPS APPROPRIATELY REFLECT TRADITIONAL REDISTRICTING CRITERIA.

Justice Hagedorn's concurring opinion recognizes that "[l]egal standards . . . are not the only permissible judicial considerations when constructing a proper remedy." Order ¶ 83 (Hagedorn, J., concurring).

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

<center>31</center>
<center>App. 312</center>

Certain "traditional and neutral" redistricting criteria, though not legally mandated, can help a court sitting in equity in "exercising [its] judgment to choose the best" map among several that meet the legal requirements. *Id.*

By adhering to a neutral, scientific approach, the Citizen Mathematicians and Scientists can offer maps that appropriately take into account these traditional redistricting criteria without compromising compliance with any legal requirements or straying from the least-change principle.

As noted above, for congressional maps, the only true legal "requirements" are absolute population equality and adherence to the VRA. *See Mahan v. Howell*, 410 U.S. 315, 322 (1973) (population equality); Order ¶ 27 (VRA). Nonetheless, several of the factors considered under the Wisconsin Constitution—respect for political subdivisions, compactness, and contiguity—are traditional redistricting criteria that powerfully inform the selection of a congressional map among several that satisfy applicable legal requirements. The application of these factors to congressional maps, however, may be less stringent than to the assembly and senate maps, for which these same factors function as constitutional requirements.

In addition, there are at least two traditional and neutral redistricting criteria that can and should influence this Court's choice among maps that meet all other requirements: respect for communities of interest (which applies to both congressional and state legislative plans) and minimizing the number of Wisconsin citizens who must wait six years, from 2018 to 2024, for the opportunity to choose their state senator (which applies only to the senate plans).

A.   Respect for Communities of Interest

Communities of interest are a "universally recognized redistricting criterion." Order ¶ 83 (Hagedorn, J., concurring). This criterion is an "appropriate, useful, and neutral factor to weigh," even if it is not legally required. *Id.*; *see Abrams v. Johnson*, 521 U.S. 74, 100 (1997) (district court properly considered preserving communities of interest in formulating redistricting plans). Consistent with this principle, federal courts in Wisconsin have taken communities of interest into account in evaluating and developing prior redistricting plans. For example, in *Baumgart*, the court noted that "[w]hen making the necessary changes to the boundaries of the existing districts, the court was guided by the neutral principles of maintaining municipal boundaries and uniting communities of interest." 2002 WL 34127471, at *7. The objective of preserving communities of interest overlaps with and is served by certain legal requirements for redistricting discussed above. As courts have recognized, this objective is "[c]losely related to the goal of maintaining the integrity of county and municipal lines." *AFL-CIO*, 543 F. Supp. at 636; Wis. Stat. § 5.15(1)(b) ("To suit the convenience of the voters residing therein each ward shall, as far as practicable, be kept compact and observe the community of interest of existing neighborhoods and other settlements."); *see also Prosser*, 793 F. Supp. at 863 ("There is some although of course not a complete correlation between geographical propinquity and community of interests."). Additionally, an "important aspect" of preserving communities of interest is "avoiding any dilution in the voting strength of racial and ethnic minorities." *AFL-CIO*, 543 F. Supp. at 636; *see also Abrams*, 521 U.S. at 94 (analyzing minority population in a particular district as a community of interest).

In general, "communities of interest" or "COIs" refer to distinct geographic areas whose residents have common social, cultural, economic, or policy interests. Duchin Report § 5.4. A map is deemed to preserve a community of interest if a single district mostly or wholly contains it (in the case of smaller COIs) or if the community of interest mostly or wholly contains a district (in the case of larger COIs). *Id.* Communities of interest generally are defined from within the community by the people who live there. In connection with the 2021 redistricting cycle, the People's Maps Commission requested and received 1,191 submissions from Wisconsin residents concerning proposed communities of interest that residents wanted to see preserved in the redistricting process. Duchin Report § 5.4. Mathematicians then analyzed those submissions and synthesized them into 36 distinct communities of interest, including five predominantly Black neighborhoods on the north side of Milwaukee. *Id.* Each community of interest was defined by its shared interests, as described more fully in Appendix C to Professor Duchin's report. Mathematicians then devised a way to measure whether and how a redistricting plan preserved a community of interest by defining a "threshold" percentage for preservation. *Id.* If a community of interest has above that threshold percentage of its residents within a single district, the COI is preserved. *Id.* Similarly, if the proportion of a district's residents that belong to a single community of interest is above that threshold percentage, the COI is preserved. *Id.*

* * *

The MathSci Proposed Maps substantially preserve the 36 communities of interest identified through the People's Maps Project. Using 85% as the relevant threshold percentage—meaning that a COI is preserved either if a district has 85% of its population in the COI or

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if at least 85% of the COI's population resides in a single district—the MathSci Proposed Congressional Map preserves 23 communities of interest, Duchin Report § 6; the MathSci Proposed Senate Map preserves 17 communities of interest, *id.* § 7; and the MathSci Proposed Assembly Map preserves 31 communities of interest. Moreover, the MathSci Proposed Maps enhance preservation of communities of interest by creating minority opportunity districts in northern Milwaukee County, consistent with Section 2 of the VRA. *See supra* at 16-17. Likewise, by following ward boundaries and minimizing other municipal splits, the MathSci Proposed Maps serve the additional objective of preserving communities of interest. *See supra* at 25, 27.

> **B.   Minimizing Number of Voters Who Must Wait Six Years Before Voting in State Senate Elections.**

An additional "traditional and neutral redistricting criterion that may assist [the Court], but does not implicate a legal right per se, is the goal of minimizing the number of voters who must wait six years between voting for their state senator." Order ¶ 83 n.9 (Hagedorn, J., concurring). The Wisconsin Constitution provides that "senators shall be chosen alternately from the odd and even-numbered districts for the term of 4 years." Wis. Const. art. IV, § 5. Residents of odd-numbered districts voted in state senate elections in 2018, while residents of even-numbered districts voted in state senate elections in 2020. To the extent possible without compromising legal redistricting requirements, the map adopted by the Court should preserve the normal cycle of voting for a state senator once every four years by keeping voters from old odd-numbered districts in new odd-numbered districts and keeping voters from old even-numbered districts in new even-numbered districts. *See Prosser*, 793 F. Supp. at 864.

<center>*   *   *</center>

<center>35</center>

<center>App. 316</center>

The MathSci Proposed Senate Map moves only 422,492 residents, or 7.17% of all Wisconsinites, from odd to even districts.
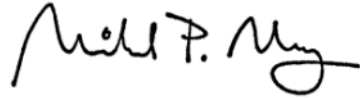
CONCLUSION

The MathSci Proposed Maps provide remedies that ensure the preservation of the justiciable and cognizable rights explicitly protected under the United States Constitution, the Voting Rights Act, and Article IV, Sections 3, 4, and 5 of the Wisconsin Constitution, while minimizing deviation from existing law and appropriately considering traditional neutral redistricting criteria. The Citizen Mathematicians and Scientists urge the Court to adopt their Proposed Maps for Congress, the Senate, and the Assembly.

Dated this 15th day of December 2021.

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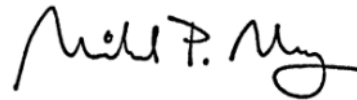
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FORM & LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 9,171 words.

BOARDMAN & CLARK LLP
By

_____

Michael P. May

CERTIFICATION OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that:
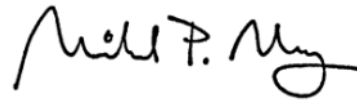
I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of § 809.19(12).

I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

BOARDMAN & CLARK LLP
By

_____
Michael P. May

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No. 2021AP1450-OA

In the Supreme Court of Wisconsin

BILLIE JOHNSON, ERIC O'KEEFE, ED PERKINS *and* RONALD ZAHN,
PETITIONERS,

BLACK LEADERS ORGANIZING FOR COMMUNITIES, VOCES DE LA
FRONTERA, LEAGUE OF WOMEN VOTERS OF WISCONSIN, CINDY FALLONA,
LAUREN STEPHENSON, REBECCA ALWIN, CONGRESSMAN GLENN
GROTHMAN, CONGRESSMAN MIKE GALLAGHER, CONGRESSMAN BRYAN
STEIL, CONGRESSMAN TOM TIFFANY, CONGRESSMAN SCOTT FITZGERALD,
LISA HUNTER, JACOB ZABEL, JENNIFER OH, JOHN PERSA, GERALDINE
SCHERTZ, KATHLEEN QUALHEIM, GARY KRENZ, SARAH J. HAMILTON,
STEPHEN JOSEPH WRIGHT, JEAN-LUC THIFFEAULT, *and* SOMESH JHA,
INTERVENORS-PETITIONERS,

v.

WISCONSIN ELECTIONS COMMISSION, MARGE BOSTELMANN, IN HER
OFFICIAL CAPACITY AS A MEMBER OF THE WISCONSIN ELECTIONS
COMMISSION, JULIE GLANCEY, IN HER OFFICIAL CAPACITY AS A MEMBER OF
THE WISCONSIN ELECTIONS COMMISSION, ANN JACOBS, IN HER OFFICIAL
CAPACITY AS A MEMBER OF THE WISCONSIN ELECTIONS COMMISSION,
DEAN KNUDSON, IN HIS OFFICIAL CAPACITY AS A MEMBER OF THE
WISCONSIN ELECTIONS COMMISSION, ROBERT SPINDELL, JR., IN HIS
OFFICIAL CAPACITY AS A MEMBER OF THE WISCONSIN ELECTIONS
COMMISSION, *and* MARK THOMSEN, IN HIS OFFICIAL CAPACITY AS A
MEMBER OF THE WISCONSIN ELECTIONS COMMISSION,
RESPONDENTS,

THE WISCONSIN LEGISLATURE, GOVERNOR TONY EVERS, IN HIS OFFICIAL
CAPACITY, *and* JANET BEWLEY, SENATE DEMOCRATIC MINORITY LEADER,
ON BEHALF OF THE SENATE DEMOCRATIC CAUCUS,
INTERVENORS-RESPONDENTS.

**MOTION OF CONGRESSMEN GLENN GROTHMAN, MIKE
GALLAGHER, BRYAN STEIL, TOM TIFFANY, AND SCOTT
FITZGERALD TO SUBMIT THEIR MODIFIED VERSION OF
THEIR PROPOSED REMEDIAL CONGRESSIONAL MAP, PER
THIS COURT'S NOVEMBER 17, 2021 ORDER**

Intervenor-Petitioners Congressmen Glenn Grothman, Mike Gallagher, Bryan Steil, Tom Tiffany, and Scott Fitzgerald (hereinafter "the Congressmen"), respectfully move to submit a modified version of their Proposed Remedial Map for this Court's consideration, in its remedial discretion, and respectfully request that this Court grant this Motion (if this Court deems a motion necessary) for the following reasons:

1.   On December 15, 2021, the Congressmen submitted a proposed remedial congressional map ("Proposed Remedial Map"), along with a Brief that explained how this map best complied with this Court's governing standards in *Johnson v. Wisconsin Elections Commission*, 2021 WI 87. *See* Br. Of Congressmen Supp. Their Proposed Congressional District Map, *Johnson v. Wis. Elections Comm'n*, No.2021AP1450-OA (Wis. Dec. 15, 2021) ("Congressmen Br.").

2.   Among other "least changes" to correcting the malapportionment of the existing congressional districts, the Proposed Remedial Map shifts District 3's narrow appendage into

- 2 -

central Wisconsin, which ends in Stevens Point, to District 7, as part of their "least change" approach. Congressmen Br.37–39. That is, the Proposed Remedial Map's move of Stevens Point from District 3 to District 7 aids in equally apportioning these two districts, while also removing four county splits caused by District 3's long, narrow appendage into central Wisconsin. Congressmen Br.38. Further, this change achieves population equality in a manner that best respects Wisconsin's political geography. Congressmen Br. 37–39. As a larger municipality situated squarely in central Wisconsin, Stevens Point has more in common with nearby Wausau—located in District 7—than with District 3's Eau Claire or La Crosse, which are firmly within Wisconsin's west. Congressmen Br. 38–39.

3. The proposed remedial congressional maps submitted by the Governor, the Hunter Petitioners, and the Citizen Mathematicians all retain District 3's long, narrow appendage into central Wisconsin. *See* Gov. Tony Evers's Br. In Supp. Of Proposed Maps at 25, *Johnson v. Wis. Elections Comm'n*, No.2021AP1450-

- 3 -

OA (Wis. Dec. 15, 2021) ("Gov.Br."); Hunter Int.-Pet'rs' Br. In

Supp. Of Proposed Maps at 14, *Johnson v. Wis. Elections Comm'n*,

No.2021AP1450-OA (Wis. Dec. 15, 2021) ("Hunter Br."); Expert

Rep. of Dr. Moon Duchin On Behalf Of Int.-Pet'rs Citizen

Mathematicians at 4, *Johnson v. Wis. Election*, No.2021AP1450-

OA (Wis. Dec. 15, 2021) ("Duchin Expert Rep.").

4.   While the Congressmen continue to believe that the

Proposed Remedial Map's elimination of District 3's long, narrow

appendage best complies with *Johnson*, if this Court agrees with

the Governor, the Hunter Petitioners, and the Citizenship

Scientists that District 3's narrow appendage should remain, then

the only logical solution consistent with *Johnson* would be to adopt

the Congressmen's Proposed Remedial Map, while simply

modifying it to keep this appendage in District 3—a modification

reflected in the modified version of the Proposed Remedial Map

that the Congressmen move for submission here.

5.   Specifically, the modified version of the Proposed

Remedial Map retains all of the Proposed Remedial Map's "least

- 4 -

changes," except as to District 3's northern border. *See* Ex. A to this Motion (picture of map); Ex. A to Second Affidavit of Tom Schreibel at 19–20 (hereinafter "Schreibel Resp. Expert Rep."); Order, *Johnson v. Wis. Elections Comm'n*, No.2021AP1450-OA, at 3 (Wis. Nov. 17, 2021) ("Nov. 17 Order") (requiring "a description of the amendments" and "a proposed amended map"). As to that border, the modified version of the Proposed Remedial Map largely retains District 3's long, narrow appendage into central Wisconsin, adjusting it only slightly to equalize population by shifting the southern and eastern portions of Portage County to District 8. *See* Ex. A; Schreibel Resp. Expert Rep.20. Then, the modified version of the Proposed Remedial Map marginally adjusts District 3's already-existing split of Chippewa County with District 7 to equalize these districts. *See* Ex. A; Schreibel Resp. Expert Rep.20. These changes are generally consistent with the other parties' treatment of District 3's northern border, including as to its long, narrow appendage into central Wisconsin. *See* Gov.Br.25; Hunter Br.14; Duchin Expert Rep.4.

- 5 -

6.   The modified version of the Proposed Remedial Map overall would move 226,723 people into new districts, comprising 3.84% of the population, which would be less than the number of people that the other proposed remedial maps move. Schreibel Resp. Expert Rep.19. Further, it would equally apportion the State, while remaining consistent with Wisconsin's political geography in all other respects—except as to District 3's appendage. *See* Congressmen Br.34–44. The modified version of the Proposed Remedial Map would also comply with the equal-population requirement, given that it also perfectly apportions Wisconsin's eight congressional districts. *See* Congressmen Br.28. It would adhere to the anti-racial-gerrymandering mandate since it only adjusts the existing boundary lines to reapportion the State. *See* Congressmen Br.29–30. And it would comply with the Voting Rights Act ("VRA"), as it does not make any VRA-implicating changes to the existing map. *See* Congressmen Br.30–31. Finally, the modified version of the Proposed Remedial Map splits 14 counties and 22 municipalities. Schreibel Resp. Expert Rep.22.

- 6 -

7.   To be clear, the Congressmen believe that their original Proposed Remedial Map better complies with *Johnson* than the modified version of the Proposed Remedial Map. Thus, they are submitting the modified version of the Proposed Remedial Map for this Court's own consideration, in its remedial discretion, should this Court agree with the Governor, the Hunter Petitioners, and the Citizenship Mathematicians that District 3's narrow appendage into central Wisconsin should remain in a remedial congressional map.

8.   While the Congressmen are unsure whether the submission of such an alternative (as opposed to a replacement) map, for this Court's own remedial consideration, requires them to submit a motion to put such a map before this Court, under this Court's November 17 Order, they file this Motion out of an abundance of caution.

9.   The Johnson Petitioners do not oppose this Motion. The Governor, Senator Bewley, the Citizen Mathematicians, the Hunter Petitioners, and the BLOC Petitioners oppose this motion.

- 7 -

The Legislature and Wisconsin Elections Commission take no position on this Motion at this time. *See* Nov. 17 Order at 3.

10.   Finally, Counsel for the Congressmen have disclosed today the modified version of the Proposed Remedial Map to counsel for the other parties in PDF, CSV, and Shapefile formats, consistent with the parties' Proposed Joint Discovery Plan. *See* Proposed Joint Discovery Plan at 5, *Johnson v. Wis. Elections Comm'n,* No.2021AP1450-OA (Wis. Dec. 3, 2021).

For the foregoing reasons, the Congressmen respectfully request that this Court grant this Motion.

App. 329

Dated: December 30, 2021.

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EXHIBIT A

App. 333

Marshfield

Wisconsin Rapids

7

3

Eau Claire

La Crosse

Winona

App. 334

STATE OF WISCONSIN

IN SUPREME COURT

Case No. 2021AP1450-OA

BILLIE JOHNSON, ERIC O'KEEFE,
ED PERKINS AND RONALD ZAHN,

             Petitioners,

BLACK LEADERS ORGANIZING
FOR COMMUNITIES, VOCES DE LA
FRONTERA, LEAGUE OF WOMEN
VOTERS OF WISCONSIN, CINDY
FALLONA, LAUREN STEPHENSON,
REBECCA ALWIN, CONGRESSMAN
GLENN GROTHMAN, CONGRESSMAN
BRYAN STEIL, CONGRESSMAN TOM
TIFFANY, CONGRESSMAN SCOTT
FITZGERALD, LISA HUNTER, JACOB
ZABEL, JENNIFER OH, JOHN PERSA,
GERALDINE SCHERTZ, KATHLEEN
QUALHEIM, GARY KRENZ, SARAH J.
HAMILTON, STEPHEN JOSEPH
WRIGHT, JEAN-LUC THIFFEAULT,
and SOMESH JHA,

             Intervenors-Petitioners,

      v.

WISCONSIN ELECTIONS COMMISSION,
MARGE BOSTELMANN in her official
capacity as a member of the Wisconsin
Elections Commission, JULIE GLANCEY
in her official capacity as a member of
the Wisconsin Elections Commission,
ANN JACOBS in her official capacity as
a member of the Wisconsin Elections
Commission, DEAN KNUDSON in his
official capacity as a member of the
Wisconsin Elections Commission, ROBERT
SPINDELL, JR. in his official capacity as

a member of the Wisconsin Elections
Commission and MARK THOMSEN in
his official capacity as a member of the
Wisconsin Elections Commission,

    Respondents,

THE WISCONSIN LEGISLATURE,
GOVERNOR TONY EVERS, in his official
capacity, and JANET BEWLEY Senate
Democratic Minority Leader, on behalf of
the Senate Democratic Caucus,

    Intervenors-Respondents.

ORIGINAL ACTION

GOVERNOR TONY EVERS'S
MOTION TO FILE CORRECTED PROPOSED STATE MAPS

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2

Intervenor-Respondent Governor Tony Evers moves to file a corrected Assembly map and corresponding Senate map pursuant to this Court's November 17, 2021, order. The corrections are technical, affect only a very small amount of population, and would be helpful for the local administration of the maps if they are selected.

1.   This Court's November 17, 2021, order provides that parties may move to submit amended maps if it determines that the map "merits a correction." If so, the party shall submit a description of the corrections, reasons for them, a proposed amended map, and state whether the motion is opposed.

2.   The Governor proposed Assembly, Senate, and congressional maps on December 15, 2021.

3.   Subsequently, it was determined that technical corrections to the Assembly and Senate maps are warranted to aid with their administration. These corrections remove splits that inadvertently severed very small segments of some municipalities, leaving zero-population or very small population remnants.

4.   These corrections ensure that small amounts of a municipality are not excluded from districts that otherwise encompass a municipality. Failing to make these corrections would make legal descriptions of the districts more cumbersome, such as those in chapter 4 of the Wisconsin Statutes. Further, the corrections would simplify future local election administration.

5.   The first set of proposed technical corrections are listed in Attachment A, Part I, and fix map projection errors. In drafting the submitted maps, 2011 maps were used as a guide. Because the 2011 maps do not project perfectly onto 2020 US Census blocks, mapping software incorrectly assigned some districts on the margins of the 2011 districts. The 2011 map lines used as a drafting guide were sometimes

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incorrect by very small margins, resulting in some placement of lines at the edges of municipalities that inadvertently separated small segments with little or no population.

6.   For example, the Governor's originally proposed Assembly map splits the town of New Holstein in Calumet County between Districts 59 and 27; however, the portion of the town in District 27 contains *no* population. (Clelland Resp. Rep. 26.) An image illustrating this problem is below.
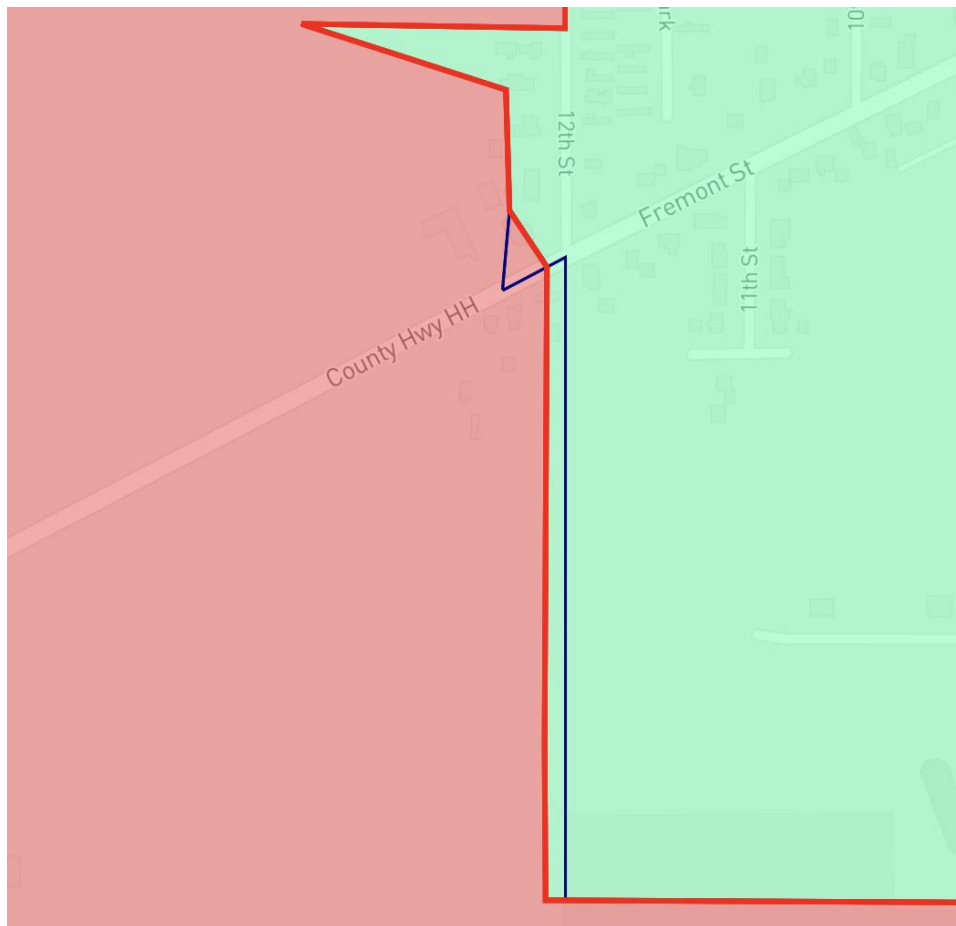
The red line is the incorrect projection of the 2011 plan, and the current New Holstein boundary is the blue line adjacent to it. The proposed correction moves the district line to follow the actual New Holstein boundary, and also does so for other municipalities listed in Attachment A, Part I.

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7.   In Attachment A, Part I, most of the Governor's proposed corrections (32) affect zero population, while some (17) affect a very small amount of population, totaling 216 people. While some corrections unify municipalities, they do not meaningfully affect core retention, population equality, or disenfranchisement numbers discussed by the parties. Similarly, because the changes are very small geographically, there is no meaningful impact on other measures, like compactness. Those figures are either identical, or nearly identical, to the figures reported in the Governor's existing expert reports, as confirmed in the Supplemental Clelland Report in Attachment D to this motion.

8.   The second set of proposed technical corrections are found in Attachment A, Part II, and correct a small number of other inadvertent municipality splits that have no or very little population. These 12 instances were unintended during the map-drafting process and were largely based on inadvertently splitting recent annexations. That resulted in the accidental splitting of a few municipal areas with no or little population separate from the rest of the municipality.

9.   For example, the Governor's originally proposed Assembly map splits the Village of Cottage Grove between Districts 46 and 47; however, the portion of the Village in District 47 currently contains no population. An image illustrating this situation is below.

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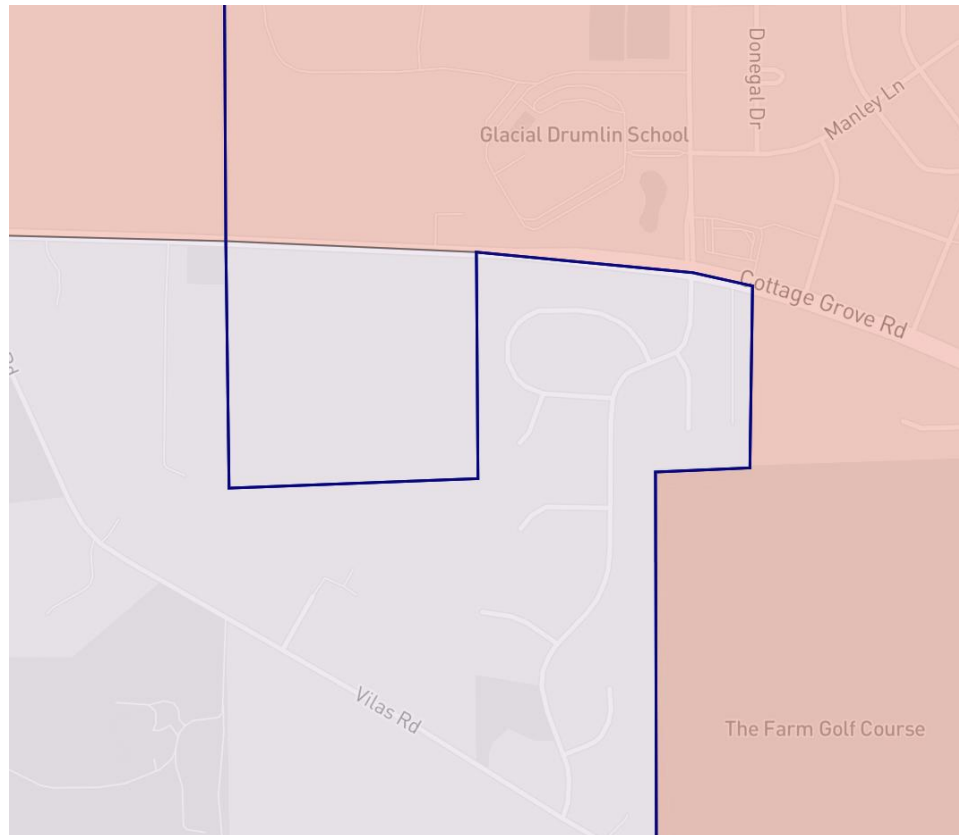
In this example, the blue line is the Village of Cottage Grove boundary, and the two shaded color areas represent Districts 46 (red) and 47 (grey). The village is largely within District 46, but a small portion is in District 47. This was inadvertent.

10.   Seven of the corrections in Attachment A, Part II, affect no population. The remaining 5 corrections affect a total of 123 people. Like the corrections listed in Attachment A, Part I, the corrections in Part II do not meaningfully affect the core retention, population equality, or disenfranchisement numbers discussed by the parties. Similarly, because the changes are very small geographically, there is no meaningful impact on other measures, like compactness, as confirmed in the Supplemental Clelland Report in Attachment D to this motion.

11.   In sum, all of the technical corrections described in this motion and its appendices move a total of 339 people

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and the corresponding line movement is very small. There is no meaningful impact on the measures discussed in the previous reports (other than a somewhat lower number of municipal splits). For example, for the Assembly map, the maximum population deviation, the deviation range, and the mean deviation are all the same percentages. (Clelland Suppl. Rep. 2, App. D; Clelland Initial Rep. 7.) For the Senate map, those figures also are all the same, with the exception of the range below the ideal, which changes one-hundredth of one percent from 0.57% below to 0.58% below. (*Id.*) Using the LTSB data, the core population movement percentage remains the same for the Assembly map and is within one-hundredth of one percent for the Senate map, which changes from 7.83% to 7.82% movement. (Clelland Suppl. Rep. 2, App. D.) The percentage of temporarily disenfranchised voters is unchanged in the Senate map (and is slightly lower in raw numbers). (Clelland Suppl. Rep. 4, App. D.) Further, the Reock compactness scores are identical, and the Polsby-Popper compactness scores are less than one-hundredth of one percent different. (Clelland Suppl. Rep. 4, App. D.) These and other updated figures are provided in the supplemental report in Attachment D.

      12.   A list of the resulting Census Block changes is provided in Attachment B.

      13.   The maps in Attachment C reflect the corrected Assembly districts. In addition, because the Senate districts are made up of those corrected Assembly districts, a corresponding updated Senate map also is submitted in Attachment C.

      14.   Data files of the CSV and Shapefiles for the corrected Assembly map and corresponding Senate map are available at the following link: https://www.dropbox.com/sh/a94yyx9a30z6or4/AABck9PHlSu2fxF_PyRWcE-Ra?dl=0.

<center>7</center>

15.   The Johnson Petitioners, BLOC, and Senator Bewley do not oppose the motion. The Legislature does not oppose the motion because the Governor has provided a supplemental expert report. The Hunter Intervenors do not oppose the motion based on their conclusion that the Governor is seeking to make corrections and not introduce a new map, which was the basis for their opposition to the Congressmen's motion. The Citizen Mathematicians oppose this motion. The Congressmen take no position on this motion because it does not impact any proposed congressional map, but do note that the Governor's motion and the Hunter Petitioners' position on that motion are both inconsistent with the position that these parties took on the Congressmen's pending motion. The Wisconsin Elections Commission take no position on the motion.

16.   For the reasons stated, the Governor respectfully requests that the Court grant this motion to accept the corrected Assembly map and corresponding Senate map as amendments to the Governor's state proposals.

Dated this 6th day of January 2022.

Respectfully submitted,

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CERTIFICATE OF FILING/SERVICE

I hereby certify that *Governor Tony Evers's Motion to File Corrected Proposed State Maps* was email filed in pdf form to clerk@wicourts.gov, on January 6, 2022.

I further certify eleven copies of this motion, with the notation that "This document was previously filed via email," were hand-delivered for filing to the Wisconsin Supreme Court Clerk's Office, 110 East Main Street, Madison, WI 53701, on January 6, 2022.

I further certify that on this day, I caused service of a copy of this brief to be sent via electronic mail to counsel for all parties who have consented to service by email. I caused service of copies to be sent by U.S. mail and electronic mail to all counsel of record who have not consented to service by email.

Dated this 6th day of January 2022.

_____
ANTHONY D. RUSSOMANNO
Assistant Attorney General

9

STATE OF WISCONSIN

I N S U P R E M E C O U R T

Case No. 2021AP1450-OA

BILLIE JOHNSON, ERIC O'KEEFE,
ED PERKINS AND RONALD ZAHN,

Petitioners,

BLACK LEADERS ORGANIZING
FOR COMMUNITIES, VOCES DE LA
FRONTERA, LEAGUE OF WOMEN
VOTERS OF WISCONSIN, CINDY
FALLONA, LAUREN STEPHENSON,
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BRYAN STEIL, CONGRESSMAN TOM
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GERALDINE SCHERTZ, KATHLEEN
QUALHEIM, GARY KRENZ, SARAH J.
HAMILTON, STEPHEN JOSEPH
WRIGHT, JEAN-LUC THIFFEAULT,
and SOMESH JHA,

Intervenors-Petitioners,

v.

WISCONSIN ELECTIONS COMMISSION,
MARGE BOSTELMANN in her official
capacity as a member of the Wisconsin
Elections Commission, JULIE GLANCEY
in her official capacity as a member of
the Wisconsin Elections Commission,
ANN JACOBS in her official capacity as
a member of the Wisconsin Elections
Commission, DEAN KNUDSON in his
official capacity as a member of the
Wisconsin Elections Commission, ROBERT

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SPINDELL, JR. in his official capacity as
a member of the Wisconsin Elections
Commission and MARK THOMSEN in
his official capacity as a member of the
Wisconsin Elections Commission,

        Respondents,

THE WISCONSIN LEGISLATURE,
GOVERNOR TONY EVERS, in his official
capacity, and JANET BEWLEY Senate
Democratic Minority Leader, on behalf of
the Senate Democratic Caucus,

        Intervenors-Respondents.

ORIGINAL ACTION

ATTACHMENT A TO MOTION TO FILE CORRECTED PROPOSED STATE MAPS

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Attachment A

This attachment describes the changes made in Intervenor-Respondent Governor Tony Evers's Motion to File Corrected Proposed State Maps pursuant to this Court's November 17, 2021, order. As stated in the motion, these corrections are warranted for two reasons.

I.   Corrections due to projection errors in mapping software.

A.   Changes that affect no population.

- Village of Allouez, Brown County (made whole in the 4th taking parts from the 90th)
- Town of Berry, Dane County (made whole in the 79th taking parts from the 80th)
- Town of Buchanan, Outagamie County (made whole in the 3rd taking parts from the 57th)
- Village of Cambridge (made whole in the 38th taking parts from the 33rd)
- Town of Cameron, Wood County (made whole in the 69th taking parts from the 86th)
- City of Delavan, Walworth County (made whole in the 32nd taking parts from the 31st)
- Town of Germantown, Washington County (made whole in the 24th taking parts from the 58th)
- Town of Grafton, Ozaukee County (made whole in the 23rd taking parts from the 60th)
- Village of Hartland, Waukesha County (made whole in the 99th taking parts from the 22nd)
- Town of Irving, Jackson County (made whole in the 92nd taking parts from the 70th)
- Town of Manitowish Waters, Vilas County (made whole in the 34th taking parts from the 74th)

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- Village of McFarland, Dane County (made whole in the 47th taking parts from the 46th)
- Village of Mukwonago (made whole in the 83rd taking parts from the 97th)
- Town of New Holstein, Calumet County (made whole in the 59th taking parts from the 27th)
- Town of Newport, Columbia County (made whole in the 81st taking parts from the 41st)
- Village of North Fond du Lac, Fond du Lac County (made whole in the 53rd taking parts from the 97th)
- City of Onalaska, La Crosse County (made whole in the 94th taking parts from the 95th)
- Town of Oregon, Dane County (made whole in the 80th taking parts from the 43rd)
- City of Portage, Columbia County (made whole in the 81st taking parts from the 42nd)
- Town of Plymouth, Rock County (made whole in the 43rd taking parts from the 45th)
- Village of Pulaski (made whole in the 6th taking parts from the 36th)
- Town of Randall, Kenosha County (made whole in the 61st taking parts from the 32nd)
- Town of Rib Mountain, Marathon County (made whole in the 86th taking parts from the 85th)
- Town of Seymour, Eau Claire County (made whole in the 68th taking parts from the 91st)
- Town of Sheboygan, Sheboygan County (made whole in the 27th taking parts from the 26th)
- Village of Slinger, Washington County (made whole in the 58th taking parts of the 24th)
- City of Stevens Point, Portage County (made whole in the 71st taking parts of the 70th)
- Town of Sylvester, Green County (made whole in the 45th taking parts from the 51st)

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- Village of Turtle Lake (made whole in the 75th taking parts of the 28th)
- Town of Vienna, Dane County (made whole in the 79th taking parts from the 42nd)
- Town of Wheaton, Chippewa County (made whole in the 67th taking parts from the 91st)
- Town of Whitewater, Walworth County (made whole in the 43rd taking parts from the 31st)

B.   Changes that affect small amounts of population.

- Town of Burke, Dane County (12 people moved into the 37th from the 48th, making Burke whole)
- Town of Brockway, Jackson County (2 people moved into the 92nd from the 70th, making Brockway whole)
- Town of Columbus, Columbia County (9 people moved into the 42nd from the 37th, making Columbus whole)
- Town of Delton, Sauk County (25 people moved into the 81st from the 41st, making Delton whole)
- Town of Fond du Lac, Fond du Lac County (6 people moved into the 52nd from the 53rd, making Fond du Lac whole)
- Town of Fort Winnebago, Columbia County (4 people moved into the 42nd from the 81st, making Fort Winnebago whole)
- Village of Grafton, Ozaukee County (15 people moved into the 23rd from the 60th, making Grafton whole)
- Town of Janesville, Rock County (26 people moved into the 43rd from the 44th, making Janesville whole)
- City of Kaukauna (8 people moved into the 5th from the 3rd, making Kaukauna whole)
- City of Kiel (1 person moved into the 27th from the 59th, making Kiel whole)

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- Town of Koshkonong, Jefferson County (2 people in a non-contiguous portion of Koshkonong moved into the 43rd from the 33rd)
- Town of Middleton, Dane County (4 people moved into the 79th from the 78th, making Middleton whole)
- Town of Lisbon, Waukesha County (66 people on Lisbon's western boundary moved into the 22nd from the 99th)
- City of Pewaukee, Waukesha County (16 people moved into the 98th from the 99th, making Pewaukee whole)
- Town of Rock, Rock County (11 people moved into the 43rd from the 44th, making Rock whole)
- Town of Rutland, Dane County (3 people moved into the 43rd from the 80th, making Rutland whole)
- Town of Washington, Eau Claire County (4 people moved into the 93rd from the 68th and, 2 people moved into the 93rd from the 91st, making Washington whole)

II.   Corrections due to other inadvertent splits.

A.   Changes that affect no population.

- City of Altoona, Eau Claire County (made whole in the 68th taking parts from the 93rd)
- Village of Brooklyn (made whole in the 80th taking parts from the 43rd)*
- City of Columbus, Columbia County (made whole in the 37th taking parts from the 42nd)
- Village of Cottage Grove, Dane County (made whole in the 46th taking parts of the 47th)
- Village of Marathon City, Marathon County (made whole in the 86th taking parts from the 87th)

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- Village of Montfort (made whole in the 49th taking parts from the 51st)
- Village of Rockland, La Crosse County (made whole in the 94th taking parts from the 70th)

B.   Changes that affect small amounts of population.

- Village of Dousman, Waukesha County (3 people moved into the 99th from the 97th)
- Village of Lake Delton, Sauk County (35 people moved into the 41st from the 81st, making Lake Delton whole)
- City of Fort Atkinson, Jefferson County (26 people moved into the 33rd from the 43rd)
- Village of Merton, Waukesha County (44 people moved into the 99th from the 22nd)*
- City of Neenah, Winnebago County (15 people moved into the 55th from the 53rd)

*The Villages of Brooklyn and Merton also required corrections due to projection errors, but they also have been listed here due to an additional inadvertent split.

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Attachment A

Governor's Corrected Least Changes Assembly Map

Census Block Comparison List			
Census Block ID	Assigned District in Submitted Governor's Least Changes Assembly Map	Assigned District in Corrected Governor's Least Changes Assembly Map	Population in Census Block
550090208002005	90	4	0
550090208002006	90	4	0
550150203064005	3	5	0
550150206004030	59	27	1
550150206004033	27	59	0
550150206004055	59	27	0
550170104003065	91	67	0
550219703003028	41	81	0
550219704011036	42	81	0
550219705001052	42	81	0
550219705001053	42	81	0
550219705002003	42	81	0
550219705002004	81	42	0
550219705002008	81	42	4
550219705002018	42	81	0
550219705002019	42	81	0
550219706003059	42	81	0
550219706003088	42	81	0
550219706003089	42	81	0
550219711001100	37	42	0
550219711001106	42	37	0
550219712002005	42	37	0
550219712002006	42	37	0
550219712002008	37	42	0
550219712002011	37	42	0
550219712002041	37	42	0
550219712002043	37	42	9
550219712002044	42	37	0
550219712003013	42	37	0
550219712003022	42	37	0
550219712003023	42	37	0
550219712004040	42	37	0
550219712004041	42	37	0
550250004062002	78	79	0
550250026033009	48	37	0
550250026033022	48	37	6
550250026033031	48	37	6
550250026033034	48	37	0
550250109032002	78	79	4
550250109054020	78	79	0
550250109054023	78	79	0
550250109054025	78	79	0

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Governor's Corrected Least Changes Assembly Map

Census Block Comparison List			
Census Block ID	Assigned District in Submitted Governor's Least Changes Assembly Map	Assigned District in Corrected Governor's Least Changes Assembly Map	Population in Census Block
550250109054027	78	79	0
550250120024122	46	47	0
550250120032011	47	46	0
550250124002073	43	80	0
550250124002080	43	80	0
550250124002082	80	43	3
550250124002099	43	80	0
550250125011028	43	80	0
550250125011033	43	80	0
550250125013011	43	80	0
550250130001055	80	79	0
550250132012095	42	79	0
550350003025002	93	68	0
550350003026020	68	93	0
550350003026034	93	68	0
550350003026038	91	93	0
550350003026043	91	93	2
550350004021055	68	93	4
550350005023041	91	68	0
550350008031033	91	93	0
550350008034003	91	93	0
550350009003033	91	93	0
550350009003050	91	93	0
550390413001070	53	52	0
550390413002010	52	53	0
550390413002026	53	52	6
550459604002028	51	45	0
550499503001054	51	49	0
550539601001062	70	92	0
550539601001063	70	92	0
550539601001147	70	92	0
550539601003214	70	92	0
550539601003217	70	92	2
550539601003219	70	92	0
550551006021045	33	38	0
550551013003024	33	43	0
550551013003028	33	43	2
550551013003031	43	33	14
550551013003032	43	33	1
550551013003036	43	33	0
550551013003067	43	33	11
550590030013028	32	61	0

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Attachment B

Governor's Corrected Least Changes Assembly Map

Census Block Comparison List			
Census Block ID	Assigned District in Submitted Governor's Least Changes Assembly Map	Assigned District in Corrected Governor's Least Changes Assembly Map	Population in Census Block
550590030014003	32	61	0
550590030014034	32	61	0
550630105004020	95	94	0
550730008002017	85	86	0
550730023023054	87	86	0
550819509003050	70	94	0
550831013012031	36	6	0
550870106012011	57	3	0
550870121011004	3	5	0
550870121011008	3	5	0
550870121011030	3	5	8
550870121011035	3	5	0
550896401023024	60	23	0
550896402011005	60	23	0
550896501031005	60	23	15
550896501041015	60	23	0
550896501042004	60	23	0
550959605002015	28	75	0
550959605002023	28	75	0
550959605002024	28	75	0
550959605002025	28	75	0
550959605002026	28	75	0
550979605003126	70	71	0
551050005001018	44	43	2
551050012012001	44	43	2
551050012012003	44	43	0
551050012012004	44	43	0
551050012012026	44	43	13
551050012012054	44	43	0
551050012013001	44	43	0
551050012022009	44	43	3
551050012022063	44	43	0
551050012022070	44	43	0
551050012022071	44	43	6
551050014002015	44	43	0
551050014002053	44	43	0
551050014002054	44	43	0
551050014002055	44	43	0
551050014002056	44	43	0
551050014002057	44	43	0
551050014002069	44	43	3
551050014002085	44	43	8

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Attachment B

Governor's Corrected Least Changes Assembly Map

Census Block Comparison List			
Census Block ID	**Assigned District in Submitted Governor's Least Changes Assembly Map**	**Assigned District in Corrected Governor's Least Changes Assembly Map**	**Population in Census Block**
551050028002029	45	43	0
551110001021009	81	41	0
551110001021026	81	41	0
551110001021027	81	41	0
551110001021031	81	41	0
551110001021041	41	81	0
551110001021044	41	81	0
551110001021048	81	41	0
551110001022002	81	41	14
551110001022014	81	41	0
551110001022017	81	41	0
551110001022019	81	41	0
551110001022021	81	41	0
551110001022022	81	41	5
551110001022023	81	41	0
551110001022026	81	41	0
551110001022027	81	41	0
551110001031038	81	41	16
551110001031044	41	81	0
551110001031045	41	81	0
551110001031068	41	81	18
551110001031069	41	81	6
551110001031075	41	81	0
551110001031076	41	81	0
551110001031084	81	41	0
551110001031110	81	41	0
551110001041003	41	81	0
551110001041025	41	81	0
551110001041026	81	41	0
551110001041057	81	41	0
551110001041059	41	81	0
551110001041073	81	41	0
551110001041074	81	41	0
551110001041099	41	81	0
551110002002060	41	81	1
551170004002033	26	27	0
551170004002078	26	27	0
551259400002027	74	34	0
551259506011145	74	34	0
551270003014029	31	43	0
551270007012022	31	32	0
551270007012026	31	32	0

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Governor's Corrected Least Changes Assembly Map

Census Block Comparison List			
Census Block ID	Assigned District in Submitted Governor's Least Changes Assembly Map	Assigned District in Corrected Governor's Least Changes Assembly Map	Population in Census Block
551314401052001	24	58	0
551314401052002	24	58	0
551314601011056	58	24	0
551332032001007	99	98	1
551332032001008	99	98	0
551332032001009	99	98	0
551332032001010	99	98	0
551332033031010	99	22	18
551332033031014	99	22	8
551332033031026	99	98	0
551332033031027	99	22	6
551332033031028	99	22	17
551332033031029	99	22	5
551332033031030	99	22	0
551332033031040	99	98	0
551332033031041	99	98	0
551332033032005	99	98	4
551332033032016	99	98	0
551332033032017	99	98	11
551332034051032	22	99	17
551332034051034	22	99	8
551332034051040	22	99	15
551332034051041	22	99	4
551332034051044	22	99	0
551332034051045	99	22	0
551332034051051	22	99	0
551332034051053	99	22	12
551332039022011	97	83	0
551332040031009	97	99	0
551332040031024	97	99	0
551332041001042	97	99	0
551332041001043	97	99	3
551390023003021	53	55	15
551410104002016	86	69	0
		Total Population Moved in Correction:	339

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Attachment B

Governor's Least Changes Assembly

Madison Inset

Milwaukee Inset

Attachment C

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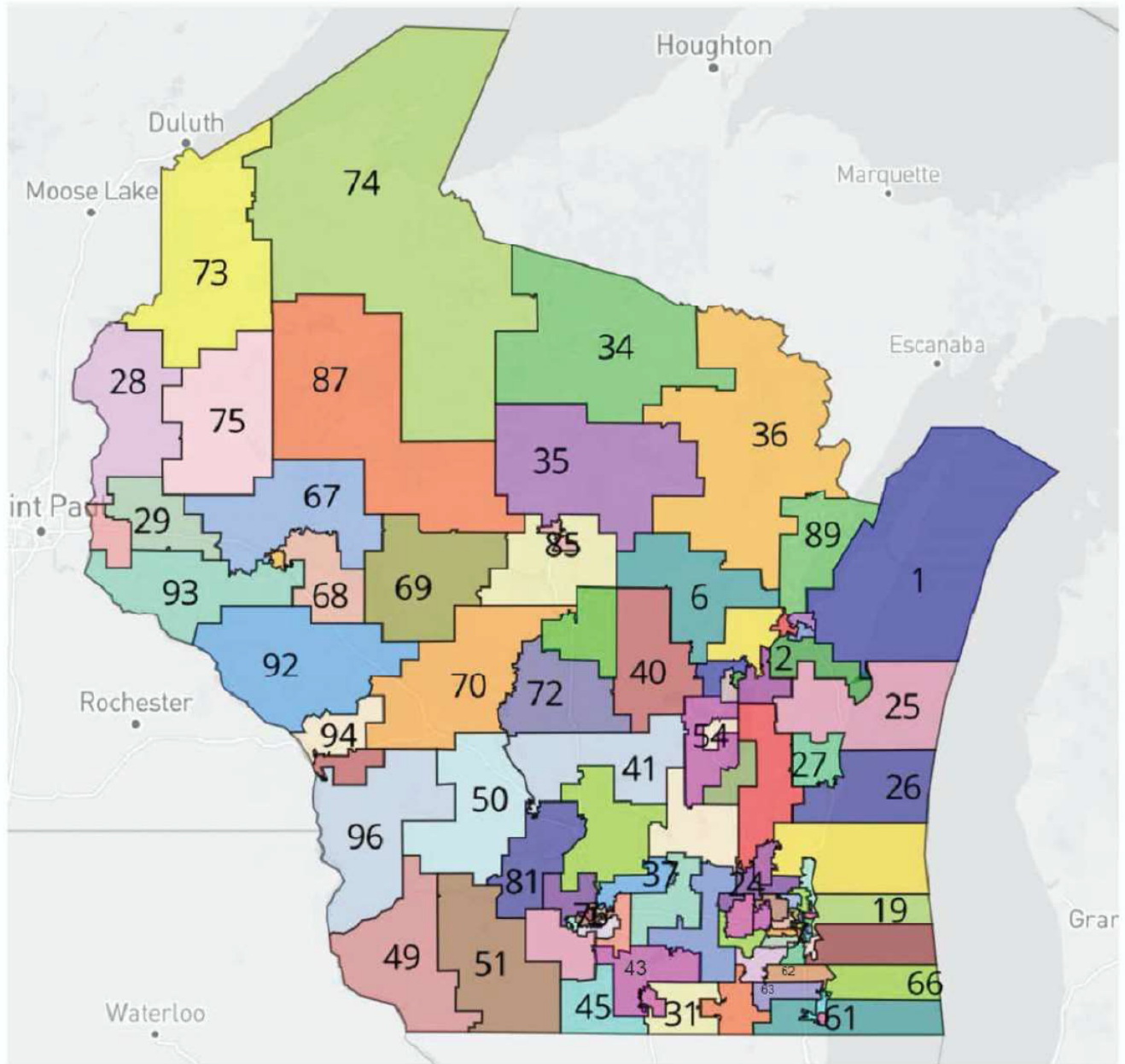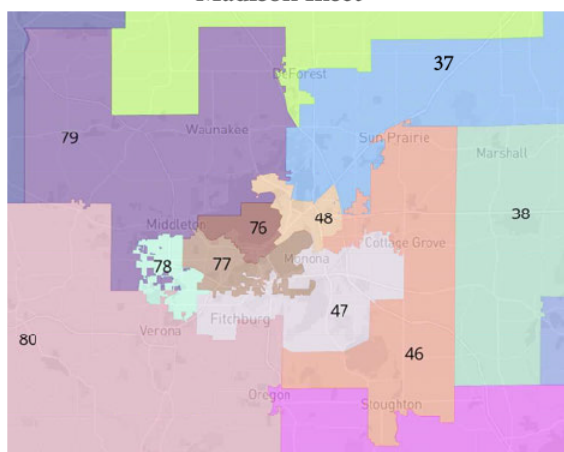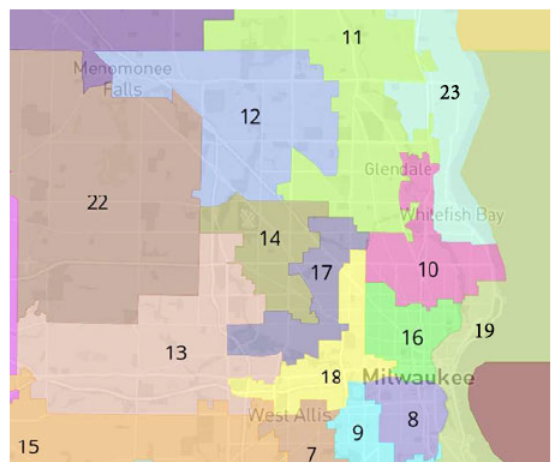
Green Bay Area Inset
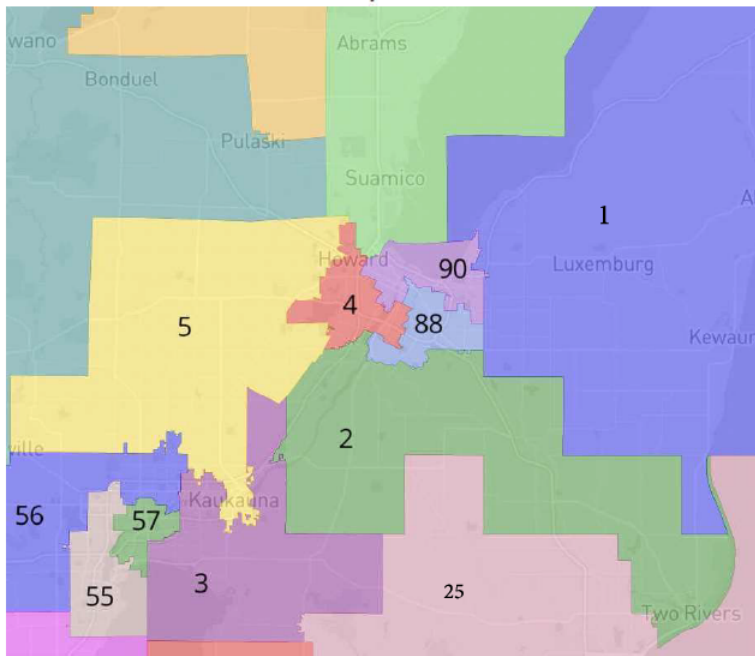
Eau Claire/Chippewa Falls Inset

Southeast WI Inset

Attachment C
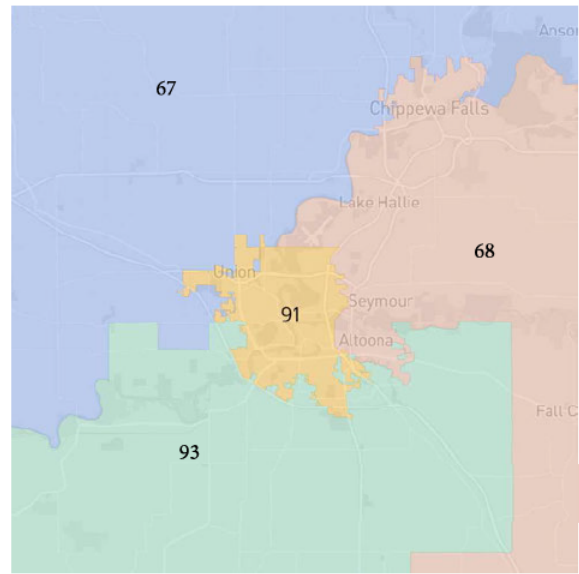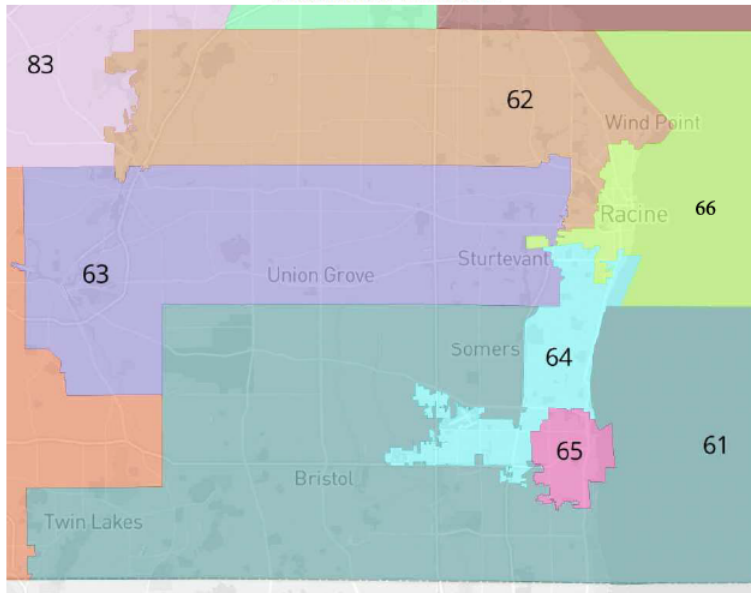
Governor's Least Changes Senate

Madison Inset

Milwaukee Inset

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Attachment C
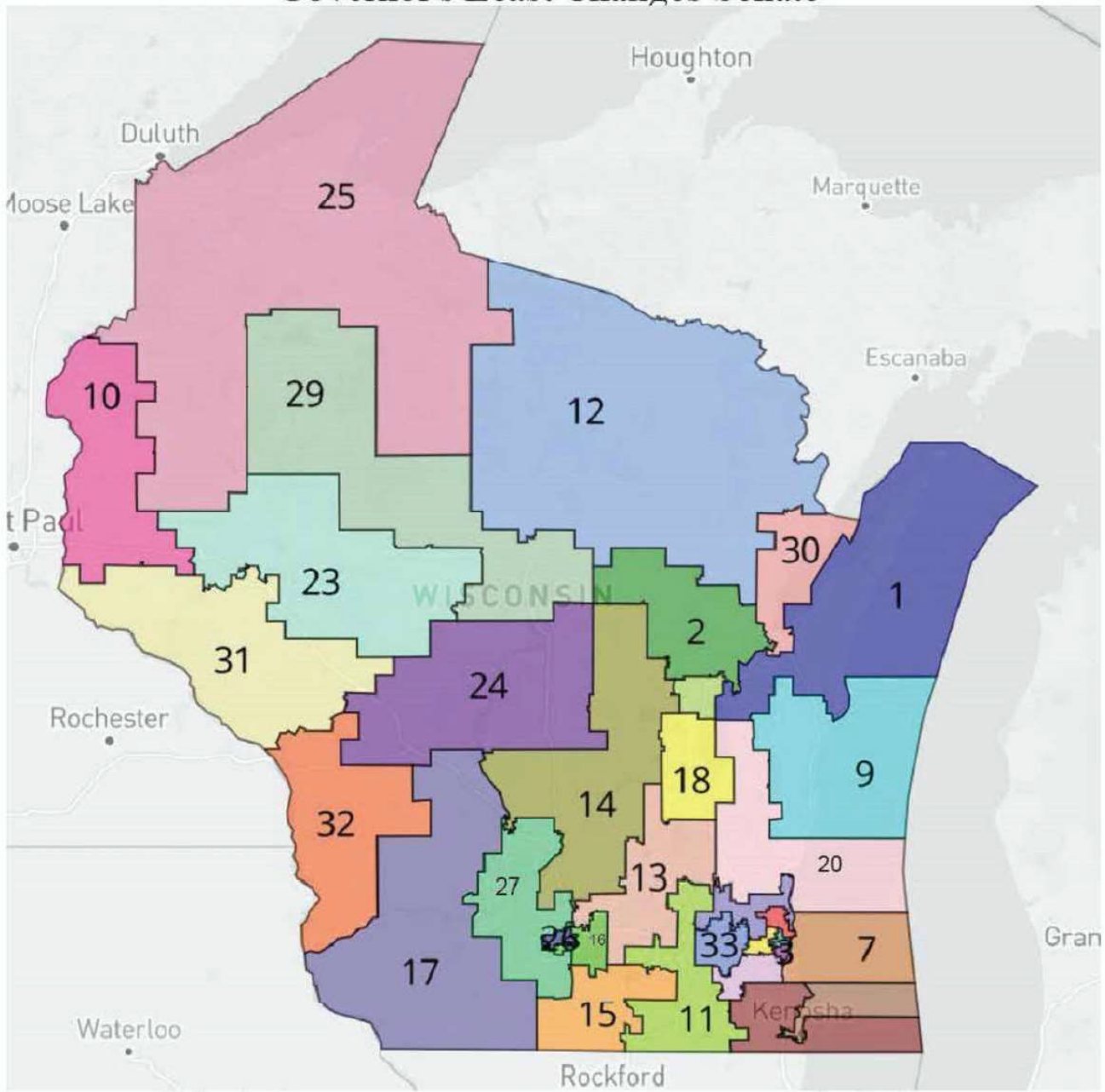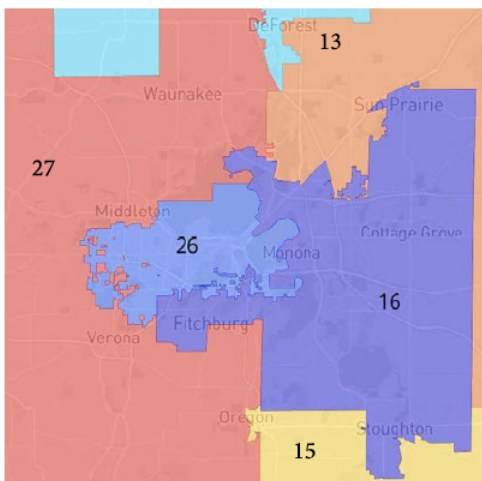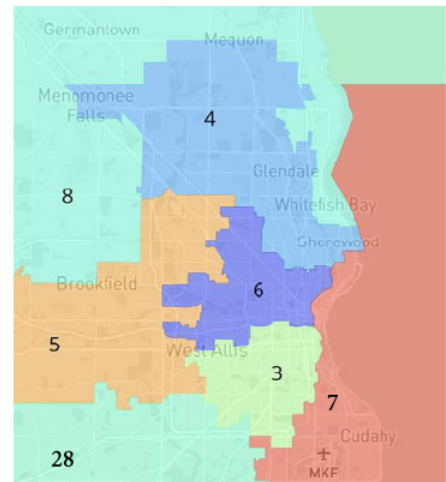
Green Bay Inset

Southeast WI Inset

Attachment C
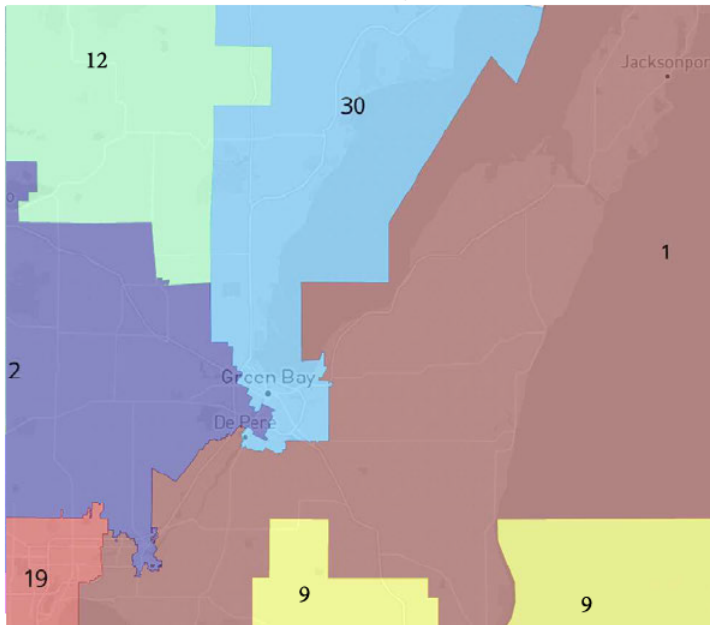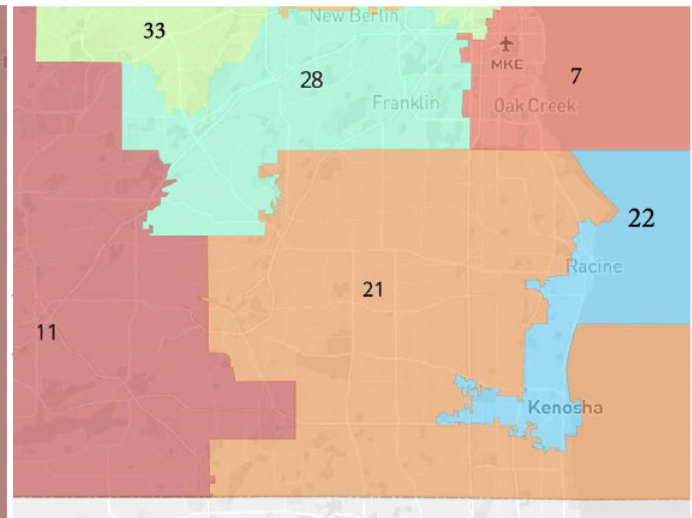
Supplemental Report in Support of Governor Evers's Proposed Corrected State Legislative District Plans

Jeanne Clelland

January 5, 2022

1   Introduction

My qualifications were described in my first report [1]. I have been retained to evaluate the Governor's proposed district plans for the Wisconsin State Assembly, the Wisconsin State Senate, and the U.S. House of Representatives (a.k.a. "Congress"), regarding their statistical properties.

This report will focus on Governor Evers's Proposed Corrected State Legislative District Plans, referred to here as the "Corrected Governor's Plans" for the State Assembly and State Senate. (The originally submitted Governor's plans will be referred to as the "Original Governor's Plans.") Statistics for the Corrected Governor's Plans will be presented, along with comparisons to the Original Governor's Plans and the Legislature's plans (referred to here as the "SB 621 Plans") for some measures.

The only meaningful changes in the Corrected Governor's Plans to any of the results presented in my first two reports for the Original Governor's Plans are in the numbers of town splits and all municipal splits. The Corrected Governor's Plans split many fewer towns and municipalities than the Original Governor's Plans; detailed comparisons are presented in Tables 7 and 8 in Section 6.

2   Population Deviation

According to the 2020 Census, Wisconsin's total population is 5,893,718. Since Wisconsin has 99 State Assembly districts and 33 State Senate districts, the ideal district populations are 59,533 for State Assembly districts and 178,598 for State Senate districts.

Tables 1 and 2 show the mean, maximum positive/negative, and overall deviations from these ideal populations for each of the Corrected Governor's Plans, in both absolute and percentage terms.

Attachment D

State Assembly	Corrected Governor's Plan	
Deviation from Ideal Population	Persons	Percentage
Mean Deviation	281	0.47%
Largest Positive Deviation	584	0.98%
Largest Negative Deviation	−537	−0.90%
Overall Range in Deviation	± 1,121	±1.88%

Table 1: Population Deviation for Governor's State Assembly District Plan

State Senate	Corrected Governor's Plan	
Deviation from Ideal Population	Persons	Percentage
Mean Deviation	449	0.25%
Largest Positive Deviation	1,112	0.62%
Largest Negative Deviation	−1,042	−0.58%
Overall Range in Deviation	± 2,138	± 1.20%

Table 2: Population Deviation for Governor's State Senate District Plan

3   Core Population Movement

Core population movement measures the number of persons who are moved to a different district when redistricting takes place, i.e., persons whose district number in the 2011 enacted plan is different from their district number in the new plan.

In my previous reports [1], [2], I discussed the discrepancies between the Census Bureau's and the LTSB's assignments of 2020 Census blocks to 2011 enacted districts, and the (small) impact of these discrepancies on the computation of core population movement. As in my second report [2], here I will report statistics for core population movement relative to the LTSB's version of the 2011 enacted districts.

Total core population movement values for the Corrected Governor's Plans, in both absolute and percentage terms, are shown in Table 3, along with data for the Original Governor's Plans and the SB 621 Plans to provide context.

	Corrected Gov. Plans		Original Gov. Plans		SB 621 Plans	
Core Pop. Movement	Persons	Percentage	Persons	Percentage	Persons	Percentage
State Assembly Plans	837,426	14.21%	837,659	14.21%	933,604	15.84%
State Senate Plans	461,029	7.82%	461,228	7.83%	459,061	7.79%

Table 3: Core Population Movement

For a more detailed analysis by district, Tables 9, 10, and 11 in Appendix A show, for each Assembly district, how many persons were moved out of or into that district between the 2011 enacted plan

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Attachment D

and either the Corrected Governor's Plan or the SB 621 Plan. Table 12 in Appendix A shows the analogous data for each Senate district.

This data is is also depicted graphically in Figures 1 (Assembly) and 2 (Senate), as follows: Districts in the Corrected Governor's Plans and the SB 621 Plans were each sorted from lowest to highest movement either out of or into the district, and the resulting sorted lists of numbers of persons moved in each district are plotted. (Note that the sorted ordering of the districts is not the same in both plans.)
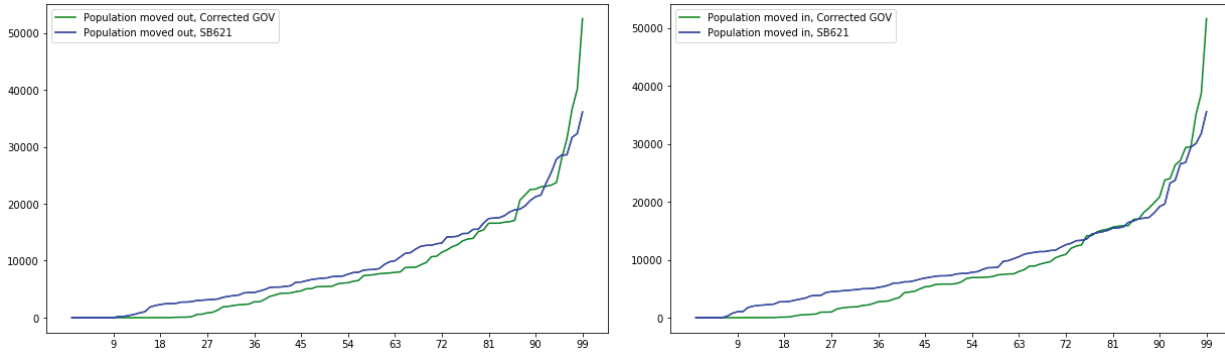
Figure 1: Sorted core population movement by district, State Assembly
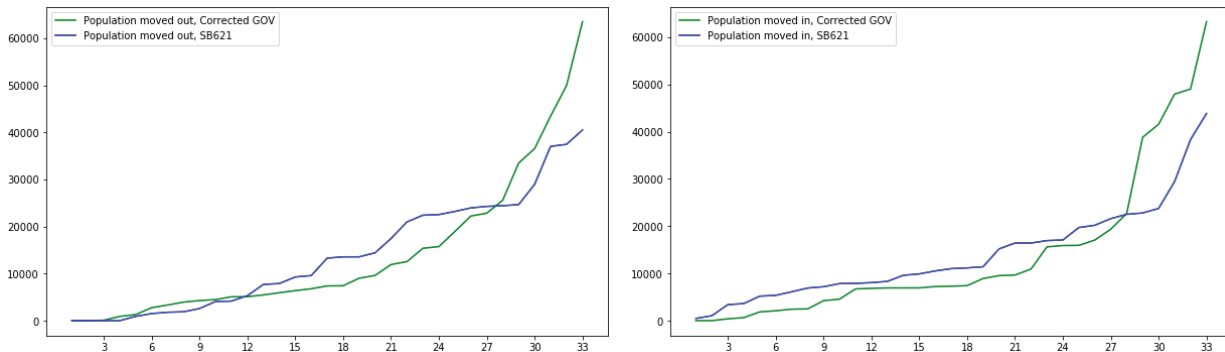
Figure 2: Sorted core population movement by district, State Senate

These plots illustrate that, while the districts with the greatest movement in the Corrected Governor's Plan have higher movement than the districts with the greatest movement in the SB 621 Plan, the movement in most districts is slightly lower in the Corrected Governor's Plan than in the SB 621 Plan, resulting in lower total core population movement in the Corrected Governor's Plan.

4   Disenfranchised Population

Disenfranchised population measures the number of persons from odd-numbered State Senate districts who are moved to even-numbered State Senate districts. These voters would have been eligible to vote in a State Senate election in 2022 if they had not been moved, but they will now not be able to vote in a State Senate election until 2024.

Attachment D

As for core population movement, I will report statistics for the disenfranchised population relative to the LTSB's version of the 2011 enacted districts. The disenfranchised population for the Corrected Governor's Senate Plan, in both absolute and percentage terms, is shown in Table 4, along with data for the Original Governor's Plan and the SB 621 Plan to provide context.

	Corrected Gov. Plan		Original Gov. Plan		SB 621 Plan	
Disenfranchised Pop.	Persons	Percentage	Persons	Percentage	Persons	Percentage
State Senate Plans	139,606	2.37%	139,677	2.37%	138,753	2.35%

Table 4: Disenfranchised Population

5   Compactness

In my previous reports [1], [2], I discussed the well-known Polsby-Popper and Reock compactness scores, as well as the cut edges score. As I emphasized in those reports, the Polsby-Popper and Reock scores are extremely sensitive to differences in map projections and resolutions, and scores reported here may differ from those computed using different map projections. For my computations, I have used the map projection NAD_1983_Wisconsin_TM_US_Ft (WKID 102219), which is the base projection in the shapefiles provided by the LTSB at https://legis.wisconsin.gov/ltsb/gis/data/.

The mean, maximum, and minimum of the Polsby-Popper and Reock scores for the each of the Corrected Governor's Plans are shown in Tables 5 and 6, along with the cut edges scores. (Note that Polsby-Popper and Reock scores are computed for each individual district, while the cut edges score is a single score for an entire district plan.) Values for the Original Governor's Plans are included for comparison.

State Assembly	Corrected Gov. Plan			Original Gov. Plan		
Compactness Scores	Mean	Max	Min	Mean	Max	Min
Polsby-Popper	0.250	0.523	0.057	0.251	0.523	0.056
Reock	0.397	0.652	0.147	0.397	0.652	0.147
Cut Edges	18,449			18,441		

Table 5: Compactness Scores for State Assembly District Plans

State Senate	Corrected Gov. Plan			Original Gov. Plan		
Compactness Scores	Mean	Max	Min	Mean	Max	Min
Polsby-Popper	0.216	0.431	0.053	0.217	0.433	0.053
Reock	0.392	0.607	0.135	0.392	0.607	0.135
Cut Edges	11,150			11,147		

Table 6: Compactness Scores for State Senate District Plans

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6   Municipal Splits

Municipal splits measure the number of municipalities (cites, towns, or villages) that are split between two or more districts. The numbers of towns split and all municipalities split for the Corrected Governor's Plans are shown in Tables 7 and 8, along with the values for the Original Governor's Plans and both versions of the 2011 enacted plans for comparison. (Based on the analysis in Section 3 of [2], I believe that comparison with the Census Bureau's version is more appropriate.)

Town Splits	Corrected Gov.	Original Gov.	2011 (Census)	2011 (LTSB)
State Assembly	50	80	89	36
State Senate	32	55	55	20

Table 7: Town Splits

Municipal Splits	Corrected Gov.	Original Gov.	2011 (Census)	2011 (LTSB)
State Assembly	115	174	188	125
State Senate	76	118	123	84

Table 8: Municipal Splits

7   Previous Expert Testimony and Compensation

This information remains the same as in my initial report [1]. I have not served as an expert witness in any other case in the past 4 years. I am being compensated at the rate of $250 per hour for my work on this case.

References

[1] Jeanne Clelland, *Expert Report in Support of Governor Evers's Proposed District Plans*, Expert report to Wisconsin Supreme Court for Johnson v. Wisconsin Election Commission, 2021, available at https://www.wicourts.gov/courts/supreme/origact/2021ap1450.htm.

[2] _____ , *Response Report in Support of Governor Evers's Proposed District Plans*, Expert report to Wisconsin Supreme Court for Johnson v. Wisconsin Election Commission, 2021.

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A   Core Population Movement by District

This Appendix contains tables that describe the core population movement by district in the Corrected Governor's Plans and the SB 621 Plans.

- Tables 9, 10, and 11 show the core population movement by district in the Corrected Governor's and SB 621 Assembly plans.

- Table 12 shows the core population movement by district in the Corrected Governor's and SB 621 Senate plans.

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District	Corrected Governor's Plan			SB 621 Plan		
	Moved out	Moved in	Total moved	Moved out	Moved in	Total moved
1	0	0	0	390	0	390
2	6,522	2,754	9,276	14,189	11,145	25,334
3	8,844	6,774	15,618	8,340	6,184	14,524
4	0	946	946	6,227	7,147	13,374
5	7,717	295	8,012	19,051	11,270	30,321
6	0	2,185	2,185	9,348	11,405	20,753
7	16,578	17,053	33,631	7,622	7,843	15,465
8	0	5,425	5,425	0	5,363	5,363
9	5,425	7,572	12,997	5,363	7,622	12,985
10	7,447	14,134	21,581	6,482	13,357	19,839
11	23,724	29,495	53,219	7,911	13,291	21,202
12	23,267	26,356	49,623	6,809	9,741	165,50
13	22,512	20,848	43,360	32,334	30,106	62,440
14	52,488	51,636	104,124	36,104	35,577	71,681
15	13,483	15,781	29,264	21,514	23,745	45,259
16	4,694	10,333	15,027	0	5,975	5,975
17	22,960	27,151	50,111	3,139	7,231	10,370
18	12,794	18,967	31,761	7,208	13,567	20,775
19	5,462	2,422	7,884	2,736	0	2,736
20	20,626	23,773	44,399	0	2,736	2,736
21	16,843	18,204	35,047	0	1,045	1,045
22	21,570	19,874	41,444	18,544	17,070	35,614
23	1,968	506	2,474	20,580	19,187	39,767
24	36,628	35,150	71,778	27,839	26,805	54,644
25	4,267	5,874	10,141	4,921	6,395	11,316
26	0	973	973	1,864	2,811	4,675
27	17	1	18	2,306	2,722	5,028
28	0	0	0	14,182	14,651	28,833
29	5,086	3,203	8,289	18,933	16,691	35,624
30	3,203	0	3,203	14,761	11,589	26,350
31	610	9	619	23,583	23,222	46,805
32	0	0	0	12,685	12,844	25,529
33	15,112	15,890	31,002	25,488	26,570	52,058

Table 9: Persons Moved in State Assembly Districts (Districts 1-33)

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District	Corrected Governor's Plan			SB 621 Plan		
	Moved out	Moved in	Total moved	Moved out	Moved in	Total moved
34	4,558	3,448	8,006	6,911	5,628	12,539
35	4,343	7,002	11,345	3,859	6,986	10,845
36	2,778	4,558	7,336	6,986	8,714	15,700
37	40,112	38,718	78,830	8,612	6,843	15,455
38	31,354	29,390	60,744	10,639	8,612	19,251
39	7,851	9,229	17,080	6,683	7,930	14,613
40	2,296	4,977	7,273	5,377	7,545	12,922
41	3,740	5,800	9,540	15,493	17,186	32,679
42	10,700	11,967	22,667	14,283	15,493	29,776
43	87	91	178	31,642	31,823	63,465
44	91	621	712	3,561	4,697	8,258
45	0	1,466	1,466	5,605	7,633	13,238
46	23,057	16,967	40,024	17,403	11,636	29,039
47	3,958	128	4,086	6,237	2,175	8,412
48	27,918	24,001	51,919	11,292	7,231	18,523
49	2,779	4,429	7,208	0	1,756	1,756
50	5,445	6,203	11,648	3,738	4,481	8,219
51	8,795	10,924	19,719	1,037	3,835	4,872
52	0	6	6	5,305	5,036	10,341
53	6,123	7,103	13,226	5,487	6,643	12,130
54	172	2,796	2,968	220	2,335	2,555
55	9,676	7,532	17,208	7,236	4,781	12,017
56	11,895	6,928	18,823	14,794	9,846	24,640
57	7,546	9,458	17,004	3,179	4,630	7,809
58	0	1	1	4,673	5,227	9,900
59	5,930	6,929	12,859	9,817	11,406	21,223
60	1	0	1	10	0	10
61	15	0	15	578	0	578
62	7,390	8,898	16,288	7,304	8,307	15,611
63	0	16	16	3,273	3,015	6,288
64	2,133	4,297	6,430	3,027	4,543	7,570
65	0	2,117	2,117	0	2,117	2,117
66	4,282	7,390	11,672	3,965	7,304	11,269

Table 10: Persons Moved in State Assembly Districts (Districts 34-66)

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District	Corrected Governor's Plan			SB 621 Plan		
	Moved out	Moved in	Total moved	Moved out	Moved in	Total moved
67	16,580	15,618	32,198	16,578	15,657	32,235
68	16,756	14,809	31,565	17,886	15,445	33,331
69	5,522	8,276	13,798	7,970	10,184	18,154
70	8,017	9,652	17,669	2,730	3,853	6,583
71	0	1,673	1,673	2,123	3,743	5,866
72	0	1,874	1,874	2,516	4,371	6,887
73	0	566	566	9,984	10,944	20,928
74	0	0	0	4,408	4,985	9,393
75	566	1,849	2,415	4,335	4,999	9,334
76	22,565	10,676	33,241	12,052	0	12,052
77	10,778	7,963	18,741	8,420	4,863	13,283
78	7,947	460	8,407	13,094	5,980	19,074
79	15,391	5,323	20,714	28,556	18,132	46,688
80	12,448	5,797	18,245	21,238	15,058	36,296
81	1,901	956	2,857	17,546	17,320	34,866
82	2,256	1,782	4,038	12,966	12,581	25,547
83	13,912	15,112	29,024	28,567	29,434	58,001
84	7,772	7,465	15,237	19,634	19,641	39,275
85	11,478	12,355	23,833	0	1,027	1,027
86	16,579	15,878	32,457	3,056	2,276	5,332
87	840	2,890	3,730	841	3,200	4,041
88	17,084	14,185	31,269	15,524	12,150	27,674
89	939	0	939	2,803	1,988	4,791
90	13,803	15,269	29,072	4,400	6,201	10,601
91	60	81	141	216	255	471
92	0	0	0	8,452	8,640	17,092
93	1,327	16	1,343	17,478	16,448	33,926
94	8,832	5,793	14,625	2,466	0	2,466
95	6,062	6,950	13,012	0	755	755
96	5,081	5,727	10,808	2,443	3,383	5,826
97	9,287	12,558	21,845	11,403	14,441	25,844
98	2,391	0	2,391	12,541	10,524	23,065
99	6,380	8,899	15,279	12,699	14,825	27,524

Table 11: Persons Moved in State Assembly Districts (Districts 67-99)

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District	Corrected Governor's Plan			SB 621 Plan		
	Moved out	Moved in	Total moved	Moved out	Moved in	Total moved
1	15,366	9,528	24,894	22,529	16,939	39,468
2	6,771	2,480	9,251	14,402	9,598	24,000
3	9,006	17,053	26,059	0	7,843	7,843
4	33,474	49,021	82,495	0	15,187	15,187
5	63,501	63,283	126,784	24,269	23,745	48,014
6	25,558	41,561	67,119	0	16,426	16,426
7	5,462	6,930	12,392	0	1,045	1,045
8	43,440	38,804	82,244	20,971	17,070	38,041
9	4,267	6,831	11,098	4,064	6,901	10,965
10	5,086	0	5,086	24,652	19,707	44,359
11	15,722	15,899	31,621	37,447	38,327	75,774
12	895	4,224	5,119	1,783	5,355	7,138
13	49,927	47,947	97,874	13,550	11,001	24,551
14	9,598	15,606	25,204	17,438	22,509	39,947
15	85	2,085	2,170	40,498	43,843	84,341
16	36,530	22,693	59,223	24,410	10,520	34,930
17	6,376	10,913	17,289	1,880	7,177	9,057
18	3,321	6,931	10,252	5,305	8,307	13,612
19	11,909	6,710	18,619	9,574	3,622	13,196
20	5,930	6,929	12,859	9,273	11,406	20,679
21	7,405	8,914	16,319	7,882	8,049	15,931
22	16	7,405	7,421	910	7,882	8,792
23	7,371	7,216	14,587	23,937	22,789	46,726
24	4,470	9,652	14,122	1,503	6,101	7,604
25	0	1,849	1,849	7,690	9,891	17,581
26	22,827	636	23,463	23,194	471	23,665
27	22,209	4,545	26,754	37,013	20,183	57,196
28	18,926	19,345	38,271	28,945	29,434	58,379
29	5,064	7,290	12,354	2,572	5,178	7,750
30	2,754	382	3,136	13,547	11,159	24,706
31	1,290	0	1,290	22,393	21,590	43,983
32	3,937	2,432	6,369	4,154	3,383	7,537
33	12,536	15,935	28,471	13,276	16,423	29,699

Table 12: Persons Moved in State Senate Districts

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Supreme Court of Wisconsin

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You are hereby notified that the Court has entered the following order:

No. 2021AP1450-OA   Johnson v. Wisconsin Elections Commission

On December 30, 2020, intervenors-petitioners, Congressmen Glen Grothman, Mike Gallagher, Bryan Steil, Tom Tiffany, and Scott Fitzgerald ("Congressmen") filed a motion for leave to submit an alternative version of their proposed remedial congressional map. The Congressmen's motion indicates that they stand by the map they submitted on December 15, 2021, but acknowledge that some of the other proposed maps propose retaining a narrow configuration for District 3, so they offer an alternative version of a congressional map that would do this as well.

By order dated January 4, 2022, the court permitted the parties to respond to the Congressmen's motion. Responses opposing the motion were filed by intervenor-respondent, Governor Tony Evers, intervenor-respondent, Senator Janey Bewley, intervenors-petitioners, Citizens Mathematicians and Scientists, intervenors-petitioners, Hunter, et al., and intervenors-

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petitioners, Black Leaders Organizing for Communities, et al. ("BLOC"). The Legislature filed a letter taking no position on the motion.

Also pending before the court is a motion filed on January 3, 2022 by intervenors-petitioners, BLOC, et al., seeking leave to file a corrected version of their proposed remedial assembly and senate maps, and a motion filed on January 6, 2022 by intervenor-respondent, Governor Tony Evers, seeking leave to file a corrected version of his proposed remedial assembly and senate maps.

Our order of November 17, 2021, provided that parties could submit only a single set of maps and provided a process by which parties could file a motion to amend their maps. Consistent with our order, Governor Evers and BLOC brought motions to amend their maps. They ask us to disregard their initial maps and consider only their maps as amended. Because our prior order plainly contemplated this type of motion, both are properly granted.

The Congressmen's motion, however, is different-in-kind. It is not a motion to amend a previously submitted map. Rather, the Congressmen ask us to consider an alternative map while expressly standing by their initial map. In essence, the Congressmen ask us to accept two congressional maps from them, while accepting only one such map from every other party. This plainly runs afoul of our direction that each party may submit only a single set of maps. Therefore,

IT IS ORDERED that the motion of intervenors-petitioners, Congressmen Glen Grothman, Mike Gallagher, Bryan Steil, Tom Tiffany, and Scott Fitzgerald ("Congressmen") is denied. The Congressmen's map, submitted as Exhibit A to its motion is not accepted and will not be further considered by the court;

IT IS FURTHER ORDERED that the motion of intervenors-petitioners, Black Leaders Organizing for Communities, et al., is granted. The corrected assembly and senate maps filed as Exhibits C and D to their January 3, 2022 motion shall replace the maps previously filed by these intervenors-petitioners on December 15, 2020; and

IT IS FURTHER ORDERED that the motion of intervenor-respondent, Governor Tony Evers, is granted. The corrected assembly and senate maps filed in Attachment C to his January 6, 2022 motion shall replace the maps previously filed by Governor Evers on December 15, 2020.

PATIENCE DRAKE ROGGENSACK, J. (*dissenting*). Redistricting is a new challenge for this court, and as such I would accept all assistance from all parties. The majority seems to hold this view for Governor Evers and the BLOC plaintiffs, but a different view for the Congressmen.

I don't know whether the second map the Congressmen would like to submit will be helpful or not. It is possible that it would have provided no more than what we actually will hear in rebuttal during oral arguments later this month.

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In addition, I have already reviewed Governor Evers' map and that of the BLOC plaintiffs, as I assume most justices have. Therefore, the court is permitting Governor Evers and the BLOC plaintiffs to file second maps that have very significant changes. For example, Governor Evers'

- Original Assembly map had 174 Municipal splits, but his "corrected" map has 115 Municipal splits.
- His Senate map had 118 Municipal splits, but his "corrected" map has 76 Municipal splits.
- His original Assembly map also had 80 Town splits, but his "corrected" map has 50 Town splits.
- His original Senate map also had 55 Town Splits but his "corrected" map has 32.

The Governor is not making minor "corrections."

As explained above, I have studied the maps already submitted. Therefore, we should permit all to refile their maps or no party should do so. Because I would treat all parties the same and grant all three motions, I respectfully dissent from the portion of this Order that denies the Congressmen's motion.

I am authorized to state that Chief Justice ANNETTE KINGSLAND ZIEGLER and Justice REBECCA GRASSL BRADLEY join this dissent.

Sheila T. Reiff
Clerk of Supreme Court

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February 2, 2022

(Via email file and paper service)

Ms. Sheila T. Reiff
Clerk of Supreme Court
110 East Main Street, Suite 215
Madison, WI 53701-1688

Re: *Johnson v. Wisconsin Elections Commission*, No. 2021AP1450,
Response regarding Hunter Intervenor-Petitioners' motion

Dear Ms. Reiff:

Pursuant to this Court's January 31, 2022, order, the Governor provides the following response regarding the Hunter Intervenor-Petitioners' motion submitting additional information on congressional maps.

The Governor agrees with the points stated in the Hunter Intervenors' filing and joins it. Specifically, the Hunter Intervenors' filing demonstrates that a deviation of plus-or-minus-one (or a range of two) is commonplace in congressional maps, especially where it is undisputed that districts with perfect equality cannot be drawn. Further, the Congressmen still have pointed to no case holding that having a deviation of plus-or-minus-one is unlawful or could support a cognizable claim under these circumstances.

Because there is no basis for concluding it is unlawful or cognizable as a claim, there is no reason to alter the districts in the Hunter Intervenors' or Governor's maps. However, it should be noted that this extremely small, technical issue bears no relationship to the substantially different alternative map previously proposed by the Congressmen that this Court already ruled it would not consider.

Sincerely,

Anthony D. Russomanno
Assistant Attorney General

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Ms. Sheila T. Reiff
February 2, 2021
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No. 2021AP1450-OA

In the Supreme Court of Wisconsin

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PETITIONERS,

BLACK LEADERS ORGANIZING FOR COMMUNITIES, VOCES DE LA
FRONTERA, LEAGUE OF WOMEN VOTERS OF WISCONSIN, CINDY FALLONA,
LAUREN STEPHENSON, REBECCA ALWIN, CONGRESSMAN GLENN
GROTHMAN, CONGRESSMAN MIKE GALLAGHER, CONGRESSMAN BRYAN
STEIL, CONGRESSMAN TOM TIFFANY, CONGRESSMAN SCOTT FITZGERALD,
LISA HUNTER, JACOB ZABEL, JENNIFER OH, JOHN PERSA, GERALDINE
SCHERTZ, KATHLEEN QUALHEIM, GARY KRENZ, SARAH J. HAMILTON,
STEPHEN JOSEPH WRIGHT, JEAN-LUC THIFFEAULT, *and* SOMESH JHA,
INTERVENORS-PETITIONERS,

v.

WISCONSIN ELECTIONS COMMISSION, MARGE BOSTELMANN, IN HER
OFFICIAL CAPACITY AS A MEMBER OF THE WISCONSIN ELECTIONS
COMMISSION, JULIE GLANCEY, IN HER OFFICIAL CAPACITY AS A MEMBER OF
THE WISCONSIN ELECTIONS COMMISSION, ANN JACOBS, IN HER OFFICIAL
CAPACITY AS A MEMBER OF THE WISCONSIN ELECTIONS COMMISSION,
DEAN KNUDSON, IN HIS OFFICIAL CAPACITY AS A MEMBER OF THE
WISCONSIN ELECTIONS COMMISSION, ROBERT SPINDELL, JR., IN HIS
OFFICIAL CAPACITY AS A MEMBER OF THE WISCONSIN ELECTIONS
COMMISSION, *and* MARK THOMSEN, IN HIS OFFICIAL CAPACITY AS A
MEMBER OF THE WISCONSIN ELECTIONS COMMISSION,
RESPONDENTS,

THE WISCONSIN LEGISLATURE, GOVERNOR TONY EVERS, IN HIS OFFICIAL
CAPACITY, *and* JANET BEWLEY, SENATE DEMOCRATIC MINORITY LEADER,
ON BEHALF OF THE SENATE DEMOCRATIC CAUCUS,
INTERVENORS-RESPONDENTS.

**EMERGENCY MOTION OF THE CONGRESSMEN FOR AN
ORDER BOTH STAYING THIS COURT'S JUDGMENT
PENDING THEIR FILING OF A PETITION FOR CERTIORARI
WITH THE U.S. SUPREME COURT AND PERMITTING ALL
PARTIES TO SUBMIT EQUIPOPULOUS, CORE-RETENTION-
MAXIMIZATION CONGRESSIONAL MAPS THIS WEEK**

The Congressmen respectfully move this Court to stay its March 3, 2022 judgment as it relates to the congressional map, pending the Congressmen's filing of a petition for a writ of certiorari with the U.S. Supreme Court. The Congressmen respectfully submit that the Supreme Court is likely to grant review, and reverse, on two constitutional issues: (1) the Governor's congressional map, which this Court adopted, violates Article I, Section 2 of the U.S. Constitution; and (2) this Court's adoption of the Governor's congressional map without giving the parties an opportunity to submit proposed maps under its newly announced core-retention-maximization-only methodology for choosing congressional maps violates the Due Process Clause.

The Congressmen further respectfully request that this Court should pair this grant of a stay with an order permitting all parties to submit, within a 24-hour period, congressional maps that maximize core retention, which submissions would permit this Court to moot any need for U.S. Supreme Court involvement. Creating an equipopulous, core-retention-only-map is a trivially

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easy endeavor, which would allow all parties to submit to this Court maps that move more than 97,000 fewer people than does the Governor's congressional map. There could be no basis in law or the best interests of the people of this State for this Court to adopt a map that—**objectively and without any question**—does not comply with the core-retention-maximization-only rule that this Court set out in its March 3 decision as to the congressional maps. Indeed, given the trivial simplicity of creating a lawful, core-retention-maximization-only congressional map, this Court could and should resolve this issue through the parties' submissions *this week*, which would also allow the parties to check each other's core-retention and population-equality math (and, of course, given the extremely limited changes with an equipopulous, core-retention-maximization-only congressional map, it is exceedingly unlikely that any other legal issues could arise with any proposed map).

The Congressmen respectfully request a ruling on this motion **by Wednesday, March 9, 2022**, when they plan to seek emergency injunctive relief from the U.S. Supreme Court.

With those considerations in mind, the Congressmen state the grounds for this Motion immediately below:

1.　　On November 30, 2021, this Court held that it would select congressional maps based upon a "least-change approach." *Johnson v. Wis. Elections Comm'n*, 2021 WI 87, ¶¶ 64–79, 399 Wis. 2d 623, 967 N.W.2d 623 ("*Johnson I*"). In doing so, this Court cited a series of least-changes cases that while giving properly significant weight to core retention, also considered other indicia of least changes, including not splitting up existing communities of interest, when deciding to adopt a least-change map. *Id.* ¶ 73 (citing *Crumly v. Cobb Cty. Bd. of Elections & Voter Registration*, 892 F. Supp. 2d 1333, 1344–45, 1347–50 (N.D. Ga. 2012); *Martin v. Augusta-Richmond Cty. Comm'n*, No. CV 112–058, 2012 WL 2339499, at *3 (S.D. Ga. June 19, 2012); *Below v. Gardner*, 963 A.2d 785, 794–95 (N.H. 2002); *Alexander v. Taylor*, 51 P.3d 1204,

1211–12 (Okla. 2002); *Bodker v. Taylor*, No. 1:02-cv-999, 2002 WL 32587312, at *5, *7 (N.D. Ga. June 5, 2002); *Markham v. Fulton Cty. Bd. of Registrations & Elections*, No. 1:02-cv-1111, 2002 WL 32587313, at *6 (N.D. Ga. May 29, 2002)). Then, in a concurring opinion, Justice Hagedorn—*whose vote was essential to the Court's majority*—explained that if the Court were to "receive multiple proposed maps that comply with all relevant legal requirements, and that have equally compelling arguments for why the proposed map most algins with current district boundaries," then the Court would consider compliance with "communities of interest" or "other traditional redistricting criteria," to "choose the best alternative" map for the State. *Id.* ¶ 83 (Hagedorn, J., concurring).

2.   Thereafter, on December 15, four parties submitted proposed congressional remedial maps: (1) a group of private citizens under the moniker "the Citizen Mathematicians and Scientists"; (2) the Congressmen; (3) Governor Tony Evers; and (4) another group of private citizens under the name "the Hunter intervenors-petitioners." *Johnson v. Wis. Elections Comm'n*, 2022

WI 14, ¶ 7 ("*Johnson II*")*; see* Br. Of Congressmen Supporting

Proposed Congressional District Map, *Johnson v. Wis. Elections*

Comm'n, No.2021AP1450-OA (Wis. Dec. 15, 2021) ("Congressmen

Br."); Gov. Tony Evers's Br. In Supp. Of Proposed Maps, *Johnson*

v. Wis. Elections Comm'n, No.2021AP1450-OA (Wis. Dec. 15, 2021)

("Gov. Br."); Hunter Intervenor-Pet'rs' Br. In Supp. Of Proposed

Maps, *Johnson v. Wis. Elections Comm'n*, No.2021AP1450-OA

(Wis. Dec. 15, 2021) ("Hunter Br."); Br. of Intervenors-Pet'rs

Citizen Mathematicians & Scientists, *Johnson v. Wis. Elections*

Comm'n, No.2021AP1450-OA (Wis. Dec. 15, 2021) ("Citizen Math.

Br."). Each party's proposed map focused—understandably—on

both core retention *and* community-of-interest considerations,

including avoiding the splitting of counties and municipalities.

Congressmen Br. 31–44; Gov. Br. 18–19; Hunter Br. 15–17; Citizen

Math. Br. 31–35. **No party submitted a proposed map that**

claimed to focus only on core-retention-maximization and,

therefore, no party came close to submitting a map that

would move the number of people that would obtain if the

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map drawers' only goal were core-retention-maximization and compliance with the law.

3.   On March 3, this Court ruled—as relevant to this Motion—that for the congressional districts, it would consider only two factors: core-retention-maximization and compliance with the law, in deciding which of the submitted congressional maps to select. *Johnson II*, 2022 WI 14, ¶¶ 11–25 & nn.7–8.

4.   This Court then adopted the Governor's proposed map, concluding that this map performed best on core-retention-maximization of the four maps that this Court accepted. *Id.* ¶¶ 13–19. This Court also held that the Governor's malapportioned map complied with Article I, Section 2 of the U.S. Constitution, despite acknowledging that "there is 'no excuse for the failure to meet the objective of equal representation for equal numbers of people in congressional districting other than the practical impossibility of drawing equal districts with mathematical precision.'" *Id.* ¶ 22 (quoting *Mahan v. Howell*, 410 U.S. 315, 322 (1973)). This Court then reasoned that the "excuse" for this map's deviation from

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perfect population equality was maximizing core retention, even though the Governor had conceded that the *only* reason for his map's deviation was his mistake view of the law, *see infra* ¶ 7.

5.   "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; (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.

6.   The Congressmen have made a strong showing of likelihood of success on the merits that they are likely to succeed before the U.S. Supreme Court on two federal constitutional issues, and the U.S. Supreme Court is likely to grant relief on both issues and reverse this Court's adoption of the Governor's congressional map. *See id.* ¶ 49.

7.   The U.S. Supreme Court is likely to grant review of, and reverse, this Court's decision that the Governor's malapportioned map complies with Article I, Section 2 of the U.S. Constitution. In *Evenwel v. Abbott*, 578 U.S. 54 (2016), the Court held that "States must draw congressional districts with populations *as close to perfect equality as possible*," *id.* at 59 (emphasis added), and there is no dispute that the Governor's map has a greater population deviation than is "possible." *See id.*; *Johnson II*, 2022 WI 14, ¶ 21. Further, even if the U.S. Supreme Court concludes that the pre-*Evenwel* rule from *Karcher v. Daggett*, 462 U.S. 725 (1983), still applies, the Governor's congressional map is still unconstitutional because the Governor did not offer any "justification" for his map's failure to achieve perfect population equality, other than his mistake about the requirements of Article I, Section 2, and the U.S. Supreme Court's case law. *See id.* at 734. Indeed, the Governor admitted this at oral argument before this Court. Oral Argument Recording at

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2:13:00–2:15:34.* And while this Court held that the requisite justification for this population deviation was maximizing core retention, no party before this Court raised this argument, *see United States v. Sineneng-Smith*, 140 S. Ct. 1575, 1581 (2020), which is not factually correct regardless. The Governor did not claim that his map's population deviation was in service of maximizing core retention, and—in any event—this Court had before it a demonstration map from the Congressmen that moved far fewer people and achieved "populations as close to perfect equality as possible." *Evenwel v. Abbott*, 578 U.S. at 59; Congressmen's Mot. to Submit Modified Version Of Proposed Remedial Congressional Map, *Johnson v. Wis. Elections Comm'n*, No. 2021AP1450-OA (Dec. 30, 2021). The U.S. Supreme Court is unlikely to conclude that, just because the Governor's map has greater core maximization than any of the other three maps that this Court chose to look at, this is a sufficient justification for

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* Available at https://wiseye.org/2022/01/19/wisconsin-supreme-court-oral-arguments-johnson-v-wisconsin-elections-commission/ (last visited Mar. 7, 2022).

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violating the U.S. Constitution, when it is undisputed that a higher core-retention map could have easily been achieved without sacrificing any of the State's interests.

8.   The U.S. Supreme Court is also likely to grant review on, and reverse, this Court's decision to announce and then apply a core-retention-maximization-only methodology for choosing a congressional map on March 3, without giving the parties an opportunity to submit maps under that methodology. The Due Process Clause requires allowing a party "a chance to put his evidence in" under a newly announced legal standard. *See Saunders v. Shaw*, 244 U.S. 317, 319–20 (1917); *accord Reich v. Collins*, 513 U.S. 106, 110–14 (1994); *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (1950); *Bouie v. City of Columbia*, 378 U.S. 347, 353–55 (1964). In this case, this Court on November 30, 2021, announced a least-changes methodology that included not only considerations of core-retention, but also other well-recognized least-changes factors, such as not unnecessarily splitting up existing communities of interests—including existing

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counties and municipalities—consistent with every prior least-changes decision that this Court cited. *Johnson I*, 2021 WI 87, ¶¶ 72–73 (collecting cases); *id.* ¶ 83 (Hagedorn, J., concurring). Every party submitting proposed remedial congressional maps thereafter put forward proposed maps that used core maximization as one of multiple least-changes factors. *See supra* ¶ 2. Yet, in its March 3 decision, this Court unexpectedly and without warning adopted a core-maximization-only methodology, and then selected from the parties' submissions based on that methodology. *Johnson II*, 2022 WI 14, ¶¶ 11–25 & nn.7–8. This violated the parties' due-process rights because had this Court announced a core-maximization-only methodology before the parties submitted maps, *every* party's congressional submission would have been far different. Indeed, it would have been trivially easy for every party to move (at least) 97,000 fewer people than they did in their submissions of December 15, if they disregarded considerations of communities of interests, including county and municipal splits, in the pursuit of core-retention-maximization.

9.   The Congressmen will suffer multiple forms of irreparable harm absent stay relief. *See Waity*, 2022 WI 6, ¶ 49. Adoption of the Governor's unconstitutional map will require the Congressmen to run and vote in unconstitutionally malapportioned districts, while also expending substantial, unrecoverable resources campaigning in communities that they have not previously represented. Second Aff. Of Congressman Bryan Steil, ¶¶ 7–9. Further, the Congressmen will suffer irreparable harm from the loss of their due-process rights to a fair judicial process. The Due Process Clause gives the Congressmen a constitutional right to "put [their] evidence in" under this Court's newly-announced core-maximization-only standard, *Saunders*, 244 U.S. at 319–20, and the map that they would submit under this standard would move more than 97,000 fewer people than does the Governor's congressional map.
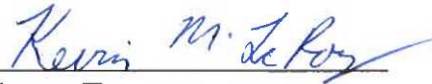
10.   No party would suffer any prejudice from this Court issuing the requested relief, and the public interest would greatly benefit from such a stay. As a threshold matter, safeguarding the

rights enshrined in the U.S. Constitution protects all parties' interests, *Wesberry v. Sanders*, 376 U.S. 1, 7–8 (1964), as well as forwards the public's core concerns, as a matter of law, *Nken v. Holder*, 556 U.S. 418, 435 (2009); *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers). Further, granting this motion would benefit all concerned parties, especially considering how trivially easy it would be for this Court to resolve all Article I, Section 2, and Due Process Clause concerns raised herein. Submitting a core-maximization-only congressional map that complies with all legal requirements, including Article I, Section 2, is a trivially easy exercise, which any interested party could accomplish within a 24-hour period. The parties' checking each other's core-retention and population-equality math would take no more time than that. This Court could then—acting within a week—simply choose the constitutional map that moves the fewest number of people out of the prior districts based upon core-retention and equal population figures. The resulting map would

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far better achieve the rule of law that this Court set out in its March 3 decision than does the Governor's congressional map.

For the foregoing reasons, the Congressmen respectfully request that this Court grant this Motion.

Dated: March 7, 2022.

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App. 391

No. 2021AP1450-OA

In the Supreme Court of Wisconsin

BILLIE JOHNSON, ERIC O'KEEFE, ED PERKINS *and* RONALD ZAHN,
PETITIONERS,

BLACK LEADERS ORGANIZING FOR COMMUNITIES, VOCES DE LA
FRONTERA, LEAGUE OF WOMEN VOTERS OF WISCONSIN, CINDY FALLONA,
LAUREN STEPHENSON, REBECCA ALWIN, CONGRESSMAN GLENN
GROTHMAN, CONGRESSMAN MIKE GALLAGHER, CONGRESSMAN BRYAN
STEIL, CONGRESSMAN TOM TIFFANY, CONGRESSMAN SCOTT FITZGERALD,
LISA HUNTER, JACOB ZABEL, JENNIFER OH, JOHN PERSA, GERALDINE
SCHERTZ, KATHLEEN QUALHEIM, GARY KRENZ, SARAH J. HAMILTON,
STEPHEN JOSEPH WRIGHT, JEAN-LUC THIFFEAULT, *and* SOMESH JHA,
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DEAN KNUDSON, IN HIS OFFICIAL CAPACITY AS A MEMBER OF THE
WISCONSIN ELECTIONS COMMISSION, ROBERT SPINDELL, JR., IN HIS
OFFICIAL CAPACITY AS A MEMBER OF THE WISCONSIN ELECTIONS
COMMISSION, *and* MARK THOMSEN, IN HIS OFFICIAL CAPACITY AS A
MEMBER OF THE WISCONSIN ELECTIONS COMMISSION,
RESPONDENTS,

THE WISCONSIN LEGISLATURE, GOVERNOR TONY EVERS, IN HIS OFFICIAL
CAPACITY, *and* JANET BEWLEY, SENATE DEMOCRATIC MINORITY LEADER,
ON BEHALF OF THE SENATE DEMOCRATIC CAUCUS,
INTERVENORS-RESPONDENTS.

SECOND AFFIDAVIT OF CONGRESSMAN BRYAN STEIL

STATE OF _Washington DC_)
) ss.
COUNTY OF _Washington DC_)

Congressman Bryan Steil, being duly sworn on oath, deposes and says:

1. I am a duly elected member of the U.S. House of Representatives, representing Wisconsin's First Congressional District.

2. I also reside in the First Congressional District and am a registered voter there.

3. I plan to run for reelection to the U.S. House of Representatives in 2022 to continue to serve as the Representative of Wisconsin's District 1.

4. As District 1's duly elected Representative, I have both a substantial interest in this District and a significant relationship with my constituents.

5. Further, given my duty as a Congressman to, among other things, serve my constituents and support legislation in Congress

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that will be to their benefit, I have invested substantial time and resources to understand their needs.

6. The Governor's proposed congressional map for Wisconsin ("Governor's Map"), which this Court recently adopted as Wisconsin's remedial redistricting map, makes a number of significant changes to District 1, which changes add significant new communities into District 1.

7. Given that these communities were not a part of District 1 under Wisconsin's prior congressional map, I have not previously represented these communities in the U.S. House of Representatives.

8. Further, given my intent to run for reelection in District 1, I must now expend this significant time and resources, so that I may develop the requisite close relationship with these communities and secure their vote as their representative in the U.S. House of Representatives in 2022.

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9. Further, the Governor's Map is unconstitutionally malapportioned, meaning that I would now be running and voting in an unconstitutional congressional district.

FURTHER AFFIANT SAYETH NOT

REP. BRYAN STEIL

SWORN AND SUBSCRIBED BEFORE ME

This 7ᵗʰ day of March, 2022

Notary Public,

State of ___District of Columbia___

Michael J. Orrick
Notary Public, District of Columbia
My Commission Expires 4/30/2023

My Commission expires: _____

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