

**IN THE SUPREME COURT OF WISCONSIN**

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 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 EVER, IN HIS  
OFFICIAL CAPACITY, AND JANET BEWLEY SENATE DEMOCRATIC  
MINORITY LEADER, ON BEHALF OF THE SENATE DEMOCRATIC CAUCUS,

*Intervenors-Respondents.*

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**JOINT STIPULATION OF FACTS AND LAW**

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\* A complete list of counsel appears on page 113.

## **JOINT STIPULATION OF FACTS<sup>1</sup>**

1. Individual Petitioners and Intervenor-Petitioners allege that they are Wisconsin voters who live in malapportioned districts. The Legislature will stipulate to their alleged residences once the Petitioners and Intervenor-Petitioners submit signed declarations under penalty of perjury stating where they reside.

2. Congressman Glenn Grothman is the duly elected U.S. Representative representing Wisconsin's Sixth Congressional District, where he also resides.

3. Congressman Mike Gallagher is the duly elected U.S. Representative representing Wisconsin's Eighth Congressional District, where he also resides.

4. Congressman Bryan Steil is the duly elected U.S. Representative representing Wisconsin's First Congressional District, where he also resides.

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<sup>1</sup> The Wisconsin Legislature, as Intervenor-Respondent, does not dispute the following facts for purposes of this case only, *Johnson v. Wisconsin Elections Commission*, No. 2021AP1450-OA.

5. Congressman Tom Tiffany is the duly elected U.S. Representative representing Wisconsin's Seventh Congressional District, where he also resides.

6. Congressman Scott Fitzgerald is the duly elected U.S. Representative representing Wisconsin's Fifth Congressional District, where he also resides.

7. The Congressmen all intend to be candidates for reelection in 2022, thereby continuing to serve their respective districts if reelected.

8. *BLOC* Individual Intervenor-Petitioner Cindy Fallona resides at 301 West Morningside Drive, Kaukauna, Wisconsin, in Assembly district 5 and State Senate district 2. Fallona has lived at this residence for over three decades and is a regular voter in Wisconsin elections. Fallona intends to vote in 2022 and is registered at this residence with no plans to register at a different address.

9. *BLOC* Individual Intervenor-Petitioner Lauren Stephenson resides at 1342 East Dayton Street, Madison, Wisconsin in Assembly district 76 and State Senate district 26. Stephenson has lived at this residence for over six years and is a regular voter in Wisconsin elections. Stephenson intends to

vote in 2022 and is registered at this residence with no plans to register at a different address.

10. *BLOC* Individual Intervenor-Petitioner Rebecca Alwin resides at 1422 North Westfield Road, Middleton, Wisconsin, in Assembly district 79 and State Senate district 27. Alwin has lived at this residence for over 25 years and is a regular voter in Wisconsin elections. Alwin intends to vote in 2022 and is registered at this address with no plans to register at a different address.

11. Respondent Wisconsin Elections Commission (WEC) is the state agency responsible “for the administration of chs. 5 to 10 and 12 and other laws relating to elections and election campaigns, other than laws relating to campaign financing.” Wis. Stat. § 5.05(1).

12. Respondents Marge Bostelmann, Julie Glancey, Ann Jacobs, Dean Knudson, Robert Spindell, and Mark Thomsen are commissioners of WEC.

13. Intervenor-Respondent the Wisconsin Legislature is the bicameral legislative branch of the State of Wisconsin.

14. Intervenor-Respondent Governor Tony Evers is the elected Governor of the State of Wisconsin, having assumed office in January 2019.

15. Intervenor-Respondent Janet Bewley is the Wisconsin Senate Democratic Minority Leader. She intervenes on behalf of the Senate Democratic Caucus, which is the minority caucus in the Wisconsin State Senate. She is an elected official, resides in Wisconsin, and performs official duties in Madison, Wisconsin.

16. Wisconsin's political subdivisions include counties, cities, villages, and towns. *See, e.g.*, Wis. Stat. §§ 66.0628(1)(a) and 66.0304(1)(f). Cities, villages, and towns are subdivided into wards, which are "the division of such municipalities into election districts of substantially equal population numbers along common boundaries observing the community of interest of existing neighborhoods and other settlements." Wis. Stat. § 5.02(25).

17. Municipalities in Wisconsin include cities (which tend to be larger incorporated municipalities), villages (typically smaller incorporated municipalities), and towns (which are unincorporated). *See* Wis. Const. art. XI, § 3(1) (cities and villages are incorporated); Wis. Stat. § 5.02(11) ("Municipality' means city, town or village.") *City of Marshfield v. Towns of Cameron*, etc., 24 Wis. 2d 56, 63, 127 N.W.2d 809, 813 (1964) ("towns are denominated 'quasi-municipal corporations'" and are "political subdivisions

and governmental agencies of the state” (additional internal quotation marks omitted)).

18. In Wisconsin, the Census Bureau’s “county subdivisions” are based on MCDs (minor civil divisions), which are primary subcounty governmental units. These include cities, towns, and villages.

19. The Wisconsin Legislative Technology Services Bureau maintains “a statewide data base consisting of multiple boundary information for the entire state.” Wis. Stat. § 13.96(1)(b). The Wisconsin Legislative Technology Services Bureau maintains a data library relating to the 2020 Census Redistricting Data, which is available at <https://legis.wisconsin.gov/ltsb/gis/data/>. 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>.

20. After the 2010 decennial census, the Legislature passed congressional and legislative district maps, which Governor Scott Walker signed into law on August 9, 2011. 2011 Wis. Act 43 and 2011 Wis. Act 44.

21. Population statistics based on 2010 Census Data for each Assembly and Senate district created by 2011 Wis. Act 43, including population and deviation from ideal district population, but not reflecting changes to Assembly Districts 8 and 9 as ordered by the Court in *Baldus v. Members of the Wis. Gov't Accountability Bd.*, 862 F. Supp. 2d 860 (E.D. Wis. 2012), are included as an Appendix to 2011 Wis. Act 43 and are available at <https://docs.legis.wisconsin.gov/2011/related/rd/act43.pdf>.

22. Population statistics based on 2010 Census Data for each Congressional District created by 2011 Wis. Act 44, including population and deviation from ideal district population, are included as an Appendix to 2011 Wis. Act 44 and are available at <https://docs.legis.wisconsin.gov/2011/related/rd/act44.pdf>.

23. On March 22, 2012, a federal district court found that two assembly districts in Act 43 violated Section 2 of the Voting Rights Act. See generally *Baldus v. Members of Wis. Gov't Accountability Bd.*, 849 F. Supp. 2d 840 (E.D. Wis. 2012) (per curiam). On April 11, 2012, the court ordered a remedy that altered the affected districts, Assembly Districts 8 and 9, while leaving all Senate districts and the remaining Assembly districts unchanged.

*Baldus*, 862 F. Supp. 2d 860, 862 (E.D. Wis. 2012). With this modification, Act 43 and Act 44 established Wisconsin's current legislative and congressional district maps, respectively.

24. Wisconsin's existing congressional district maps are set forth in Wis. Stat. §§ 3.11–3.18.

25. Wisconsin's existing state assembly district maps are set forth in Wis. Stat. §§ 4.01–4.99, further adjusted for Assembly Districts 8 and 9 after *Baldus v. Members of Wis. Gov't Accountability Bd.*, 862 F. Supp. 2d 860 (E.D. Wis. 2012).

26. Wisconsin's existing state senate district maps are set forth in Wis. Stat. § 4.009.

27. On April 26, 2021, the United States Census Bureau delivered apportionment counts to the President based upon the 2020 census. On August 12, 2021, the Census Bureau delivered redistricting data to the State of Wisconsin for the 2020 Census in a legacy format.

28. The Legislature has begun drawing new maps for the state-legislative and congressional districts, in light of the 2020 census.

29. The results of the 2020 Census report that Wisconsin's resident population as of April 2020 is 5,893,718. The 2010 Census reported a population of 5,686,986.

30. Using the 2020 Census Redistricting Data, the ideal population for each of Wisconsin's eight congressional districts is 736,715 persons.

31. Using the 2020 Census Redistricting Data, the ideal population for each of Wisconsin's 33 senate districts is 178,598 persons.

32. Using the 2020 Census Redistricting Data, the ideal population for each of Wisconsin's 99 assembly districts is 59,533 persons.

33. Apportionment counts for Wisconsin's existing congressional and state legislative districts, using the 2020 Census Data, are attached as Exhibits A (Assembly), B (Senate), and C (Congress). These apportionment counts are those calculated by LTSB and match those attached to the Legislature's Answer to the omnibus petition.<sup>2</sup>

## **JOINT STIPULATION OF LAW**

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<sup>2</sup> The Wisconsin Legislature does not dispute the apportionment counts for the existing districts as calculated by LTSB and attached as Exhibits A, B, and C. Parties individually reserve the right to supplement, correct, or object to the data in Exhibits A-C or the methodology used to generate it.

1. Article IV, section 3 of the Wisconsin Constitution states, “At its first session after each enumeration made by the authority of the United States, the legislature shall apportion and district anew the members of the senate and assembly, according to the number of inhabitants.”

2. Article I, section 4, clause 1 of the U.S. Constitution states, in part, the “Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof.”

3. Article IV, section 2 of the Wisconsin Constitution states, “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.”

4. Article V, section 10 of the Wisconsin Constitution states: “Every bill which shall have passed the legislature shall, before it becomes a law, be presented to the governor.”

5. Article IV, section 4 of the Wisconsin Constitution states, “The members of the assembly shall be chosen biennially, by single districts, on the Tuesday succeeding the first Monday of November in even-numbered years,

by the qualified electors of the several districts, such districts to be bounded by county, precinct, town or ward lines, to consist of contiguous territory and be in as compact form as practicable."

6. Article IV, section 5 of the Wisconsin Constitution states, "The senators shall be elected by single districts of convenient contiguous territory, at the same time and in the same manner as members of the assembly are required to be chosen; and no assembly district shall be divided in the formation of a senate district. The senate districts shall be numbered in the regular series, and the senators shall be chosen alternately from the odd and even-numbered districts for the term of 4 years."

7. Article I, section 1 of the Wisconsin Constitution states, "All people are born equally free and independent, and have certain inherent rights; among these are life, liberty and the pursuit of happiness; to secure these rights, governments are instituted, deriving their just powers from the consent of the governed."

8. Article I, section 3 of the Wisconsin Constitution states, "Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right, and no laws shall be passed to

restrain or abridge the liberty of speech or of the press. In all criminal prosecutions or indictments for libel, the truth may be given in evidence, and if it shall appear to the jury that the matter charged as libelous be true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact."

9. Article I, section 4 of the Wisconsin Constitution states, "The right of the people peaceably to assemble, to consult for the common good, and to petition the government, or any department thereof, shall never be abridged."

10. Article I, section 22 of the Wisconsin Constitution states, "The blessings of a free government can only be maintained by a firm adherence to justice, moderation, temperance, frugality and virtue, and by frequent recurrence to fundamental principles."

11. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution states, "nor [shall any State] deny to any person within its jurisdiction the equal protection of the laws."

12. Article I, Section 2 of the United States Constitution states in part, "The House of Representatives shall be composed of Members chosen every second Year by the People of the several States. . . . Representatives . . . shall

be apportioned among the several States which may be included within this Union, according to their respective Numbers . . . ”

13. The existing maps do not contain the constitutionally required level of equality between the populations of some of Wisconsin’s congressional districts.

14. The existing maps do not contain the constitutionally required level of equality between the populations of some of Wisconsin’s legislative districts.

15. Maps ordered into effect by courts are “held to higher standards of population equality” than maps enacted into law by legislatures. *Abrams v. Johnson*, 521 U.S. 74, 98 (1997); accord *Chapman v. Meier*, 420 U.S. 1, 26 (1975); see *Connor v. Finch*, 431 U.S. 407, 414 (1977) (“a court will be held to stricter standards in accomplishing its task than will a state legislature”).

16. The Wisconsin Constitution provides that “no assembly district shall be divided in the formation of a senate district.” Wis. Const. art. IV, § 5. With 99 assembly districts and 33 senate districts, three assembly districts must be nested in each senate district.

17. Members of Congress are elected to serve two-year terms. U.S. Const. art. I, §2, cl. 1.

18. Members of the State Assembly are elected to serve two-year terms. Wis. Const. art. IV, §4.

19. Members of the State Senate are elected to serve four-year terms and are chosen alternatively from odd- and even-numbered districts that are “numbered in the regular series.” Wis. Const. art. IV, § 5.

20. Each assembly district shall “consist of contiguous territory” and each senate district shall be of “convenient contiguous territory.” Wis. Const. art. IV, §§4, 5. Contiguity for state assembly districts is satisfied when a district boundary follows the municipal boundaries. Municipal “islands” are legally contiguous with the municipality to which the “island” belongs. Wis. Stat. §5.15(1)(b); Wis. Stat. §4.001(2) (1972); *see Prosser v. Election Bd.*, 793 F. Supp. 859, 866 (W.D. Wis. 1992) (three-judge court).

21. The Wisconsin Constitution requires assembly districts “to be bounded by county, precinct, town or ward lines.” Wis. Const. art. IV, § 4.

22. State law requires ward lines be adjusted to conform with legislative and congressional boundaries in certain circumstances. As

amended in 2011, Wis. Stat. § 5.15(4)(a) provides: “If the legislature, in an act redistricting legislative districts under article IV, section 3, of the constitution, or in redistricting congressional districts, establishes a district boundary within a municipality that does not coincide with the boundary of a ward established under the ordinance or resolution of the municipality, the municipal governing body shall, no later than April 10 of the 2nd year following the year of the federal decennial census on which the act is based, amend the ordinance or resolution to the extent required to effect the act.”

23. “The Equal Protection Clause provides that ‘[n]o State shall ... deny to any person within its jurisdiction the equal protection of the laws.’” *Shaw v. Reno*, 509 U.S. 630, 649 (1993) (quoting U.S. Const., amdt. 14, §1). “[A] plaintiff challenging a reapportionment statute under the Equal Protection Clause may state a claim by alleging that the legislation, though race-neutral on its face, rationally cannot be understood as anything other than an effort to separate voters into different districts on the basis of race, and that the separation lacks sufficient justification.” *Id.* at 649.

24. No part of Wisconsin is subject to Section 5 of the Voting Rights Act.

25. Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, provides as follows: “No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 10303(f)(2) of this title, as provided in subsection (b).” A violation of this section “is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.” 52 U.S.C. §10301(b).

#### **SUGGESTED PROCEDURE FOR RESOLUTION OF DISPUTED FACTS**

1. Some parties anticipate that there could be, other parties anticipate that there will be, some material disputed facts in the event of an impasse. In particular, some parties anticipate that there could, or will, be material disputed facts with respect to the proposed remedies offered by the parties. Those disputed facts could take the following forms:

- a. Whether a party's proposed remedy complies with federal law.
- b. Whether a party's proposed remedy complies with state law.
- c. Whether a party's proposed remedy abides by the order regarding proposed remedies forthcoming from this Court.
- d. What procedures this Court should apply to evaluating proposals and ordering a remedy.

2. In anticipation of any disputes of material fact arising, the following procedures are suggested.

3. The Johnson Petitioners and the Congressmen Intervenor-Petitioners suggest the following procedure:

- a. A party (or parties) who believes a material fact is in dispute may move this Court for the appointment of a referee under Wis. Stat. § 751.09;
  - b. The other parties to this action may file responses to the motion;
  - c. If this Court agrees that material facts must be resolved, it should either resolve the factual dispute based on the parties' submissions or appoint a referee under § 751.09, in its discretion. The referee would, within the schedule set by this Court, take evidence and argument and report findings of fact and recommendations to this Court.
4. The BLOC Petitioners suggest the following procedure:
  - a. The Court informs the parties of the criteria it will use to evaluate maps by November 15, 2021.
  - b. Discovery commences on November 19, 2021 and closes on December 30, 2021. Discovery would include depositions of experts and, if necessary, fact witnesses.

- c. All parties submit expert reports by December 3, 2021, and rebuttal expert reports by December 24, 2021.
- d. All parties submit pre-trial briefs by January 7, 2022, to support the merits of their proposed maps and critique maps submitted by other parties.
- e. The Court holds a 3-5 day trial the week of January 10, 2022, to allow for the full presentation of evidence and argument. At trial, all expert reports and maps would be admitted without direct examination. All parties proposing maps would subject their expert to cross-examination by the Court and parties.
- f. The Court issues its final apportionment plan by January 21, 2022.

5. The Hunter Intervenor-Petitioners believe the Court should (1) solicit proposed maps from the parties, (2) permit expert and fact discovery into the parties' proposals, and (3) hold a trial on the issues presented by the parties' proposals. Any disputed facts listed in this stipulation should be resolved at trial.

6. The WEC Respondents take no position on the procedure for resolution of disputed facts.

7. The Legislature suggests the following procedure:

- a. The Court's schedule should ask the parties, in the event of an impasse, to submit proposed remedial maps supported by argument and evidence as well as responsive materials supported by argument and evidence. As part of these remedial submissions, the parties should submit a supplemental stipulation of facts and law and disputed questions of fact related to remedies.
- b. The schedule should then build in time for a short hearing related to remedies, if necessary to resolve any material issues of fact with respect to the parties' remedial submissions, as described in the supplemental stipulation of facts and law and disputed questions of fact. Either this Court or a referee (*see, e.g.*, Wis. Stat. §751.09) will, within the schedule set by this Court, take evidence and argument

and report findings of fact and recommendations to this Court.

8. The Governor and Senator Bewley, on behalf of the Senate Democrats, believe this Court should hold a trial for purposes of hearing evidence and argument regarding what maps it should adopt or draw. That proceeding should be before this Court, and may be limited to cross-examination and argument after the parties submit their affirmative evidence on proposed new maps and supporting expert testimony.

#### **PARTIES' PRELIMINARY STATEMENTS REGARDING DISPUTED FACTS**

1. The Johnson Petitioners are not proposing any of the facts in the section below containing disputed facts except the facts setting forth the residence and party status of the Johnson Petitioners themselves. With respect to the liability portion of the case, once it becomes clear whether or not the Legislature and Governor will agree on proposed new maps, the Johnson Petitioners believe that the case can be fully decided based on the facts set forth in the section above containing undisputed facts. The Johnson Petitioners join the Legislature's preliminary statement below.

2. The BLOC Intervenor-Petitioners note that in its October 14, 2021 order, the Court ordered that the parties “shall prepare and submit a joint stipulation of facts and law; and shall identify and list disputed facts, if any, and suggest a procedure for resolving them.” (Order at 3) The Court did not identify any specific issues or aspects of this original action to which its order applies; consequently, the BLOC Intervenor-Petitioners do not presume that the Court intended to limit its order in a way assumed by other parties. They have therefore included proposed stipulations of fact (disputed by other parties) that they believe are pertinent to issues raised by the Petitioners and the Legislature, among others, and on which this Court has requested briefing. However, as described in detail in the briefs they filed with this Court on October 25 and November 1, the BLOC Intervenor-Petitioners anticipate that discovery will be necessary, including expert reports and depositions, and that all parties will work to develop a full factual record for presentation to the Court at trial. They do not intend or expect for this document to be preclusive of further proposed stipulations of fact or law submitted by any party, and take the position that no party should be precluded from developing and proposing

additional facts and stipulations before trial by virtue of stipulating to the facts proposed herein.

3. The Hunter Intervenor-Petitioners understand the Court's October 14, 2021 order to solicit joint stipulations of fact and law narrowly related to the preliminary issues in this case: whether Wisconsin's current congressional and legislative maps are unconstitutionally malapportioned and whether this Court must act to develop a new redistricting plan. To that end, the Hunter Intervenor-Petitioners have endeavored to stipulate to facts and include disputed facts that would inform any holding by this Court on those preliminary issues. However, if this Court decides to undertake the task of developing a remedial redistricting plan, there are many other factual and legal questions the Court must address—some of which have already been the subject of briefing requested by the Court. To address the disputed questions of fact related to the remedial redistricting plan, this Court should (1) solicit proposed maps from the parties, (2) permit expert and fact discovery into the parties' proposals, and (3) hold a trial on the issues presented by the parties' proposals. If there are any disputed facts from this joint stipulation that need

to be determined by the Court, those determinations should be included in the same trial on remedial issues.

4. The Congressmen agree with the Legislature's statement below that many of the proposed "disputed facts" in this Joint Stipulation could prove to be entirely irrelevant and that their inclusion in this submission is unhelpful, unproductive, and premature. Accordingly, the Congressmen have not stipulated to those "disputed facts" at this time, nor have they conceded their relevance to this dispute.

5. Citizen Mathematicians and Scientists agree that there are no issues of disputed fact as to their claims that the current congressional and legislative districts are malapportioned in violation of the United States and/or Wisconsin Constitutions and that the Court can enter liability on their malapportionment claims on the basis of facts stipulated to above. To the extent the Court is also considering stipulated facts with respect to remedy, Citizen Mathematicians and Scientists submit that the facts they have submitted are relevant as they serve as benchmarks with respect to the policy choices made by the Legislature and Governor Walker in the last validly enacted congressional district map set forth in Wis. Stat. §§ 3.11–3.18;

assembly district maps set forth in Wis. Stat. §§ 4.01–4.99, as amended by *Baldus v. Members of Wis. Gov’t Accountability Bd.*, 849 F. Supp. 2d 840, 859–60 (E.D. Wis. 2012) (three-judge court); and senate district maps as set forth in Wis. Stat. § 4.009.

6. The WEC Respondents take no position on whether the disputed facts are relevant or appropriately included in this submission.

7. The Legislature does not stipulate to the proposed “disputed facts” at this time or concede their relevance to this dispute. Many of the “disputed facts” could prove to be entirely irrelevant and their inclusion in this submission is unhelpful, unproductive, and premature. Some of the proposed “disputed facts” appear to be largely copied from the *Baldus* litigation, even describing facts as if the year were still 2011 or 2012. All parties and the Court will be better served by a supplemental submission of stipulated and disputed facts regarding proposed remedies after the Court has issued an order with respect to the issues that the parties have briefed and after the proceedings are further along. For the reasons explained in the Legislature’s briefs filed on October 25 and November 1, the Legislature opposes the suggestion that a period for extensive fact or expert discovery is necessary. With respect to fact

discovery, it is not clear what fact discovery would be necessary in light of the parties foregoing stipulations about the number of inhabitants in existing districts and the nature of the issues pending before this Court, largely focused on remedy. With respect to experts, so long as experts disclose their opinions in the form of a declaration or report and, in the event of disputed facts, counsel submits written direct examinations and opposing counsel may conduct live cross-examination, that is sufficient.

8. Governor's statement: As stated in the briefing currently before the Court, the primary task before this Court is to design Wisconsin's new maps, in the event of a very likely political-branch impasse. The stipulations here do not meaningfully address that primary task, as the parties could not agree on including facts or legal principles relevant to that map-drawing. Rather, many stipulations here are relevant to whether the old maps are illegal, which is an issue that is not subject to serious dispute. In other words, the limited scope of these stipulations is a product of disagreements between the parties, and not the reality of this case. Again, this Court will be tasked with designing maps by applying various legal requirements and principles, including avoiding partisan advantage. As some of the disputed facts here

reflect, considerations relevant to that task include various redistricting criteria and the partisan bias of the old maps. Further, the present filing does not include disputed issues of law, as the parties do not interpret this Court's order as requesting statements on disputed issues of law. However, as the briefing on this Court's four questions reflects, there are significant legal disputes regarding the map-drawing phase of this case.

9. Senator Bewley, on behalf of the Senate Democrats, joins the Governor's statement in the preceding paragraph.

**DISPUTED FACTS OR FACTS TO WHICH THE PARTIES WILL NOT STIPULATE TO AT THIS TIME**

**JOHNSON PETITIONERS**

1. Petitioner Billie Johnson resides at 2313 Ravenswood Road, Madison, Wisconsin 53711, in the Second Congressional District, State Assembly District 78, and State Senate District 26.

2. Petitioner Eric O'Keefe resides at 5367 County Road C, Spring Green, Wisconsin 53588, in the Second Congressional District, State Assembly District 51, and State Senate District 17.

3. Petitioner Ed Perkins resides at 4486 N. Whitehawk Drive, Grand Chute, Wisconsin 54913, in the Eighth Congressional District, State Assembly District 56, and State Senate District 19.

4. Petitioner Ronald Zahn resides at 287 Royal Saint Pats Drive, Wrightstown, Wisconsin 54180, in the Eighth Congressional District, State Assembly District 2, and State Senate District 1.

### **BLOC INTERVENOR-PETITIONERS**

#### **Parties**

1. BLOC Intervenor-Petitioners include three nonprofit organizations, each with members or constituents who are citizens, residents, and qualified voters of the United States of America and the State of Wisconsin, residing in various counties and legislative districts, including in now overpopulated districts (the “BLOC Organizational Intervenor-Petitioners”).

2. BLOC Intervenor-Petitioner Black Leaders Organizing for Communities (“BLOC”) is a nonprofit project established in 2017 to ensure a high quality of life and access to opportunities for members of the Black

community in Milwaukee and throughout Wisconsin.<sup>3</sup> BLOC is a year-round civic-engagement organization that has a robust field program to get out the vote and do civic education work door-to-door with community members and through its fellowship program. During 2018, BLOC made 227,000 door attempts in Milwaukee, targeting Black residents to exercise their right to engage in civic life, including voting. BLOC trains its constituents on the civics process and on different ways to make their voices heard, including (but not limited to) voting in each election. BLOC is regarded and used by members of the African-American community in Milwaukee as a resource and conduit through which they can become more engaged in and advocate for rights and political representation for members of their community.

3. BLOC Intervenor-Petitioner Voces de la Frontera (“Voces”) is a nonpartisan, nonprofit, non-stock corporation organized under the laws of the State of Wisconsin, with its principal office located at 515 S. 5th St., in Milwaukee, Wisconsin. Voces, a community-based organization currently with over one thousand dues-paying members, was formed in 2001 to advocate on behalf of the rights of immigrant and low-income workers. Voces currently has

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<sup>3</sup> BLOC is a fiscally sponsored project of Tides Advocacy, a California nonprofit public benefit corporation.

chapters in Milwaukee, Racine, Waukesha, Sheboygan, Walworth County, West Bend, Manitowoc, and Green Bay. Voces is dedicated to educating and organizing its membership and community members to exercise their right to vote as protected by the U.S. Constitution and the Voting Rights Act of 1965. Voces has sought legal redress in multiple cases to protect the voting rights of Wisconsin's Latino voters, including challenging discriminatory legislative districts (as recently as in *Baldus* in 2011) and voter registration and photo ID requirements. Voces seeks to maximize eligible-voter participation through its voter registration efforts and encourage civic engagement through registration and voting.

4. BLOC Intervenor-Petitioner League of Women Voters of Wisconsin ("LWVWI") is a nonpartisan, nonprofit, non-stock corporation organized under the laws of the State of Wisconsin, with its principal office located at 612 West Main St., Suite 200, in the City of Madison, Dane County, Wisconsin. LWVWI is an affiliate of The League of Women Voters of the United States, which has 750 state and local Leagues in all 50 states, the District of Columbia, Puerto Rico, the Virgin Islands, and Hong Kong. LWVWI works to expand informed, active participation in state and local government, giving a

voice to all Wisconsinites. LWVWI, a nonpartisan community-based organization, was formed in 1920, immediately after enactment of the Nineteenth Amendment to the U.S. Constitution granting women's suffrage. LWVWI is dedicated to encouraging its members and the people of Wisconsin to exercise their right to vote as protected by the U.S. Constitution and the Voting Rights Act of 1965. The mission of LWVWI is to promote political responsibility through informed and active participation in government and to act on select governmental issues. LWVWI seeks to maximize eligible-voter participation through its voter registration efforts and encourage civic engagement through registration and voting. LWVWI works with and through 20 local Leagues in the following cities, counties, and areas throughout Wisconsin: Appleton, Ashland/Bayfield Counties, Beloit, Dane County, Door County, the Greater Chippewa Valley, Greater Green Bay, Janesville, the La Crosse area, Manitowoc County, Milwaukee County, the Northwoods, Ozaukee County, the Ripon area, Sheboygan County, the Stevens Point area, the St. Croix Valley, the Whitewater area, Winnebago County, and the Wisconsin Rapids area. These local Leagues have approximately 2,800 members, all of whom are also members of LWVWI. LWVWI has prosecuted lawsuits in state

and federal courts in Wisconsin to vindicate the voting and representational rights of Wisconsin voters; this includes actions such as *Swenson v. Bostelmann*, 20-cv-459-wmc (W.D. Wis. 2020), and *Lewis v. Knudson*, 20-cv-284 (W.D. Wis. 2020).

5. BLOC Organizational Intervenor-Petitioners' members and constituents include voters who reside in various State Senate and Assembly districts across Wisconsin, including districts that are now overpopulated. Because they live in state legislative districts that were approximately equal in population with the other state legislative districts at the time the current districts were configured in 2011, but that are now overpopulated as a result of the state population count released by the Census Bureau on April 26, 2021, their votes are now diluted compared with voters in districts that are now underpopulated.

6. BLOC Intervenor-Petitioners also include individual voters ("BLOC Individual Intervenor-Petitioners") who reside in now-overpopulated districts. The residency of the BLOC Individual Intervenor-Petitioners in three overpopulated districts is summarized here:

Individual Intervenor-Petitioner	State Assembly District	Population compared to 2020 Census ideal	State Senate District	Population compared to 2020 Census ideal
Cindy Fallon	AD 5	+13.26%	SD 2	+2.77%
Lauren Stephenson	AD 76	+20.41%	SD 26	+13.00%
Rebecca Alwin	AD 79	+17.13%	SD 27	+9.47%

### **Redistricting Background, Terminology, and Data**

7. The Perimeter-to-Area (PTA) measure compares the relative length of the perimeter of a district to its area. It represents the area of the district as the proportion of the area of a circle with the same perimeter. The score ranges from 0 to 1, with a value of 1 indicating perfect compactness. This score is achieved if a district is a circle. Most redistricting software generates this measure as the Polsby-Popper statistic.

8. Smallest Circle (SC) scores measure the space occupied by the district as a proportion of the space of the smallest encompassing circle, with values ranging from 0 to 1. A value of 1 indicates perfect compactness and is achieved if a district is a circle. This statistic is often termed the Reock measure by redistricting applications. Ernest C. Reock, Jr. 1961, “A Note: Measuring

Compactness as a Requirement of Legislative Apportionment," *Midwest Journal of Political Science* 5: 70-74.

9. The two most widely used measures of compactness applied to legislative districts are the Perimeter-to-Area measure and the Smallest Circle score. These measures were regularly offered in post-Shaw litigation of the 1990s.

10. The 1972 Assembly map entered by the Legislature split 49 counties.

11. In 1982, the map drawn by the Federal District Court moved 713,225 people (or about 15.2 percent of all persons in Wisconsin according to the 1980 census) into districts where voters would wait six years between opportunities to vote for state senator. *Wisconsin State AFL-CIO v. Elections Board*, 543 F. Supp. 630, 659 (E.D. Wis. 1982).

12. The 1982 Assembly map entered by the *AFL-CIO* court split 41 counties.

### **1983 Legislative Redistricting**

13. Democratic legislators introduced the 1983 Legislative maps as Assembly Bill 1 on July 11, 1983 ("the bill"). A single public hearing was held

that same day. The Assembly passed the bill on July 13, the Senate did so on July 14, and the Governor signed it into law on July 15.

14. On July 11, 1983, Assembly Bill 1 was introduced by the Committee on Assembly Organization. It was read for the first time and referred to the Committee on Elections the same day.

15. On July 11, 1983 – the same day it was introduced—the first and only public hearing also was held.

16. On July 12, 1983, the Committee on Elections recommended its passage, by a vote of 7 to 3.

17. On July 13, 1983, it was read a second time.

18. On July 13, 1983, the rules were suspended; it was read a third time; it passed the Assembly by a vote of 51 to 44; and it was ordered immediately messaged to the Senate.

19. Twelve amendments were offered to the bill in the Assembly; 3 further amendments would be offered in the Senate.

20. On July 14, 1983, it was read the first time in the Senate, and referred to the Committee on Urban Affairs and Government Operations. The Committee recommended passage by a 3 to 2 vote.

21. On July 14, 1983, the rules were suspended and it was read a second time and a third time. The same day, the Senate passed the bill and ordered it immediately messaged.

22. On July 15, 1983, the Governor signed it. It was published as 1983 Wisconsin Act 29 on July 19, 1983.

### **1992 map**

23. In 1992, the map drawn by the *Prosser* Court moved 257,000 persons (or about 5.25 percent of all persons in Wisconsin according to the 1990 census) into districts where voters would wait six years between opportunities to vote for state senator.

24. The 1992 Assembly map entered by the *Prosser* court plan had an overall range of population deviation of .91 percent, with 51 districts above the ideal and 48 districts below. Only one district was more than .5 percent from the ideal. The 1992 Senate map had an overall range of population deviation of .52 percent, with 15 districts above the ideal and 18 below. Joint Final Pretrial Report, Joint Statement of Stipulated Facts, *Whitford v. Gill*, 3:15-cv-00421, at ¶ 200 (W.D. Wis. May 9, 2016), ECF No. 125.

25. The 1992 Assembly map entered by the *Prosser* court split 72 municipalities.

26. The 1992 *Prosser* Court Senate map split 45 municipalities and 35 counties.

27. The 1992 Assembly map entered by the *Prosser* court split 47 counties.

## **2002 map**

28. Wisconsin's population based on the 2000 Census was 5,363,675.

See <https://www.census.gov/prod/cen2000/phc-3-51.pdf>.

29. In 2002, Democrats proposed four different maps with delayed voting effects shown in Table 18.<sup>4</sup>

30. The 2002 Assembly map entered by the *Baumgart* court had an overall range of population deviation of 1.59 percent, with 47 districts above the ideal, 51 districts below, and one at the ideal population. 77 of the 99 Assembly districts were within +/- .5 percent of the ideal population. The 2002 Senate map had an overall range of population deviation of .98 percent, with

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<sup>4</sup> All references to "Tables" are to tables included in Exhibit A to the Joint Pretrial Report filed in *Baldus v. Members of Wis. Gov't Accountability Bd.*, No. 11-cv-562 (E.D. Wis.). See Dkt. 158-1.

15 districts above the ideal, 17 below, and one at the ideal population. 32 of the 33 Senate districts were within +/- .5 percent of the ideal population.

31. The *Baumgart* Court map moved 171,163 persons (3.14% of the state population according to the 2000 census) into districts where voters would wait six years between opportunities to vote for state senator.

32. The 2002 Assembly map entered by the *Baumgart* court split 51 counties.

33. The 2002 Assembly map entered by the *Baumgart* court had compactness according to the “smallest circle” metric of .41 (with a range of .18 to .63). Joint Final Pretrial Report, Joint Statement of Stipulated Facts, *Whitford v. Gill*, 3:15-cv-00421, at ¶¶ 215-16 (W.D. Wis. May 9, 2016), ECF No. 125. The 2012 Assembly map as enacted by the Legislature had compactness according to the “smallest circle” metric of .39 (with a range of .20 to .61).

34. The 2002 Assembly map entered by the *Baumgart* court had a perimeter to area measure of 0.29 (with a range of .06 to .58). The 2012 Assembly map as enacted by the Legislature had a perimeter to area measure of 0.28, with a range of .05 to .56.

35. In 2002, the *Baumgart* Court's Assembly map split 50 municipalities and the Senate map split 24 municipalities.

36. The Baumgart Court Senate map split 42 counties.

### **The 2010 Census and Population Figures**

37. The Bureau of the Census, U.S. Department of Commerce, conducted a decennial census in 2010 of Wisconsin and of all the other states under Article I, Section 2, of the U.S. Constitution.

38. Based on the April 2010 census, the precise ideal population for each of the 33 senate districts in Wisconsin is 172,333 and for each of the 99 assembly districts 57,444. For comparison, under the 2000 Census, the precise ideal population for each senate district had been 162,536, and for each assembly district had been 54,179.

39. Based on the April 2010 census, the precise ideal population for each of the eight congressional districts in Wisconsin is approximately 710,873. However, because dividing the population of Wisconsin (5,686,986) by eight results in a fraction, two districts must each have one additional person.

40. The 2010 census populations in the newly adopted assembly districts range from a low of 57,220 in the 1st Assembly District (224 fewer

than the ideal population of 57,444) to a high of 57,658 in the 45th Assembly District (214 more than the ideal population). Thus, the total population deviation, from the most populous to the least populous district, is 438 persons.

41. The 2010 census populations in the newly adopted senate districts range from a low of 171,722 (611 fewer than the ideal population, the 18th Senate District) to a high of 172,798 (465 more than the ideal population, the 30th Senate District). Thus, the total population deviation, from the most populous to the least populous district, is 1,076 persons.

42. According to the 2010 Census, the Latino population of the city of Milwaukee is 103,001 (17.3 percent of the total), and the Latino voting age population (VAP) is 63,202 (14.6 percent of the total VAP). *See Baldus Tr. Ex. 55* (Mayer Report) at 18.

43. Of the 103,007 Latinos in Milwaukee County, 70,779 (68.1 percent) are concentrated within 939 contiguous census blocks on the near south side. The Latino population makes up 65.6 percent of the population within those census blocks. The area of concentration is roughly square—approximately bounded by I-94 on the north, 1st Street and I-94/43 on the east, Howard Street to the south and 42nd Street to the west. In this area, the Latino community

is both sufficiently large and geographically compact to meet the first prong of the Gingles test. *See Baldus Tr. Ex. 55* (Mayer Report) at 18.

44. According to the 2010 Census, the City of Milwaukee had a population of 594,833 and a voting age population of 433,442. The African-American population in the city of Milwaukee is 239,923 (40.3 percent of the total population) and the African-American voting age population is 156,153 (36 percent of the total voting age population). *See Baldus Tr. Ex. 55* (Mayer Report) at 23.

45. Based on the 2010 census, African-Americans are 6.3 percent of the Wisconsin statewide population and 26.8 percent of the population of Milwaukee County. Over 70 percent of the 358,280 African-American Wisconsinites are in Milwaukee County, and then largely in the City of Milwaukee and north of the East-West Freeway.

### **The Lead-Up to the Passage of 2011 Wisconsin Act 43**

46. On January 4, 2011, the Republican legislative leadership announced to members of the Democratic minority, including Assembly Minority Leader Peter Barca, that the Republican majority would be provided unlimited funds to hire counsel and consultants for purposes of redistricting

legislative districts based on the 2010 census. The Democratic minority was denied any funding for use in the redistricting process. Barca Depo. (*Baldus* Dkt. 152 ) at 13:12- 14:13.

47. Representative Barca and Senate Minority Leader Mark Miller requested that the legislative majority reconsider its decision on redistricting funds by sending a letter to Assembly Speaker Jeff Fitzgerald and Senate Majority Leader Scott Fitzgerald. That request was denied. Barca Depo. (*Baldus* Dkt. 152) at 14:14-18.

48. The Republican majority in the assembly and senate retained the law firm of Michael Best & Friedrich LLP (“Michael Best”) to advise the assembly and senate in the redistricting process. Handrick Depo. (*Baldus* Dkt. 136) at 175:9-14; Declaration of Eric M. McLeod (*Baldus* Dkt. 78).

49. The redistricting legislation was drafted on behalf of the assembly and senate at the direction of the majority party’s political leadership in the assembly and senate.

50. The legislative district boundaries codified in Act 43 were drafted by Adam Foltz, a staff member to Assembly Speaker Fitzgerald; Tad Ottman, a staff member to Senate Majority Leader Fitzgerald; and Joseph Handrick, a

consultant with the law firm of Reinhart Boerner Van Deuren s.c. Foltz Depo. (*Baldus* Dkt. 138) at 11:25-12:1, 106:10-108:21, 285:11-12; Ottman Depo. (*Baldus* Dkt. 140) at 105:11-106:4, 151:8-156:3, 185:4-23; Handrick Depo. (*Baldus* Dkt. 136) at 96:19-99:3, 101:16-21, 102:6-9.

51. Attorneys from Michael Best and Troupis Law Office LLC, consultants retained by Michael Best, and Republican leadership of the assembly and senate met regularly with Foltz, Ottman, and Handrick at the offices of Michael Best to provide guidance on drawing the legislative districts. Foltz Depo. (*Baldus* Dkt. 138) at 32:25-36:2; Handrick Depo. (*Baldus* Dkt. 136) at 41:15- 42:20; Gaddie Depo. (*Baldus* Dkt. 148) at 176:12-179:18.

52. The bill that would become Act 43 was drafted in the offices of the law firm of Michael Best where Foltz and Ottman had offices. Foltz Depo. (*Baldus* Dkt. 138) at 13:16-14:2; Ottman Depo. (*Baldus* Dkt. 140) at 204:10-16; Handrick Depo. (*Baldus* Dkt. 136) at 32:9-24.

53. Foltz, Ottman, and Handrick began their work on the redistricting process at Michael Best in early 2011. Foltz Depo. (*Baldus* Dkt. 138) at 32:10-33:15; Handrick Depo. (*Baldus* Dkt. 136) at 33:23-37:9; *Baldus* Tr. Ex. 4.

54. Meetings with Republican legislators about the redistricting process were held at the Michael Best offices. Foltz Depo. (*Baldus* Dkt. 139) at 263:6-265:5. Democratic lawmakers were not invited to participate in this process. Foltz Depo. (*Baldus* Dkt. 139) at 269:19-270:13.

55. At those meetings, Republican legislators were provided with preliminary maps or a description of their respective legislative districts, along with a table showing the results of past elections in their districts and the results of those same races had they been held in the proposed new districts. Foltz Depo. (*Baldus* Dkt. 139) at 263:6-270:13; Ottman Depo. (*Baldus* Dkt. 141) at 265:22-274:5; *Baldus* Tr. Ex. 100.

56. The Republican legislators who participated in the meetings were shown or informed of “talking points” prepared by Foltz and Ottman. Among the “talking points” expressed to Republican members of the assembly were that they should not believe public comments about the new districts and that the real basis for the new districts was expressed to them in the meetings. Foltz Depo. (*Baldus* Dkt. 139) at 337:5-19, 340:16-344:12; Ottman Depo. (*Baldus* Dkt. 141) at 275:15-281:16; *Baldus* Tr. Ex. 113.

57. Republican legislators who participated in meetings at Michael Best signed confidentiality agreements concerning the content of those meetings. Foltz Depo. (*Baldus* Dkt. 139) at 353:5-20; Ottman Depo. (*Baldus* Dkt. 141) at 274:6-275:14.

58. The public aspects of the redistricting process were completed in 12 days. Act 43 and Act 44 were first made public on July 8, 2011, and the legislature adopted both bills on July 19 and 20, 2011. *See Barca Depo. (Baldus* Dkt. 152) at 15:21-16:3.

59. The Democratic minority in the state legislature was not aware of the meetings at Michael Best and were not aware that the majority's redistricting bills would be introduced in July 2011. *Barca Depo. (Baldus* Dkt. 152) at 41:8-19.

60. In the months preceding the passage of Acts 43 and 44, the state legislative agenda was focused on public employees' collective bargaining rights and, in June, the budget process. *Barca Depo. (Baldus* Dkt. 152) at 58:18-60:23, 63:23-65:14.

61. Historically and by law, the Wisconsin legislature has waited for municipalities to develop new ward boundaries before introducing the new

state legislative district boundaries, because wards are the traditional building blocks used to develop assembly and senate districts. *See* Wis. Stats. §§ 5.15(1)(b) and 59.10(3)(b) (2009-10). In light of this requirement, members of the Democratic minority in the state legislature did not expect any statewide redistricting legislation to be introduced until after municipalities had developed their ward boundaries. Barca Depo. (*Baldus* Dkt. 152) at 57:2-16.

62. As was later publicly revealed, Foltz and Ottman began drafting the legislative districts around April of 2011 using census blocks. Foltz Depo. (*Baldus* Dkt. 138) at 138:4-140:6; Ottman Depo. (*Baldus* Dkt. 140) at 58:23-61:2.

63. The bill that would become Act 39, introduced concurrently with Act 43, requires municipalities to draw or re-draw their local ward boundaries to conform with state legislative redistricting. This change in law allowed the statewide redistricting legislation to be introduced and passed in July 2011, before municipalities had drawn their ward boundaries. Barca Depo (*Baldus* Dkt. 152) at 57:2-16.

64. The rushed, unprecedented, and secretive procedure used by the Legislature to create legislative and congressional districts resulted in

discrepancies, including discrepancies between district and municipal boundaries, that the GAB addressed in a series of internal memorandums beginning in the fall of 2011. Those “anomalies” have caused considerable confusion among municipal and count clerks, voters, and the GAB itself. Kennedy Depo. (*Baldus* Dkt. 144) at 19:12-21, 74:1-76:11.

65. The 12-day period between the public introduction of Acts 43 and 44 and their passage by the legislature was insufficient time for the Democratic minority to develop an alternative map, in particular given the absolute denial of any funding to hire consultants or legal counsel. Barca Depo. (*Baldus* Dkt. 152) at 44:6-45:3, 48:12-49:1. The limited time and lack of resources also made it impossible for the Democratic minority to thoroughly analyze a map proposed by the Wisconsin Democracy Campaign to determine whether it presented a viable and constitutional alternative to Act 43. Barca Depo. (*Baldus* Dkt. 152) at 122:3-17, 124:5-16.

66. It would not have been feasible for the Democratic minority to organize and conduct informational meetings about redistricting between the legislation’s introduction and its ultimate passage. Barca Depo. (*Baldus* Dkt. 152) at 76:2-77:1.

67. The legislature held a single public hearing on Acts 43 and 44, on July 13, 2011 to take testimony on the bills that would become Acts 43. A transcript of the hearing appears as Trial Exhibit 19.<sup>5</sup>

68. No other public hearing was held. Unlike during previous redistricting cycles, the public was denied access to redistricting software during the 2011 redistricting process. White Depo. (*Baldus* Dkt. 145) at 35:9-36:1.

69. The Senate Judiciary Committee recommended the passage of an amended version of the bill that would become Act 43 on July 15, 2011.

70. The 2012 Assembly map as enacted by the Legislature moved a total of 2,357,592 people. *Baldus*, 849 F. Supp. 2d at 849.

71. The 2012 Senate map as enacted by the Legislature moved a total of 1,205,216 people. *Id.*

72. The 2012 Assembly map as enacted by the Legislature split 58 counties.

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<sup>5</sup> All references to “*Baldus* Trial Exhibits” or “*Baldus* Tr. Ex.” are to trial exhibits in *Baldus v. Members of Wis. Gov’t Accountability Bd.*, No. 11-cv-562 (E.D. Wis.).

73. The Senate approved the amended bill that would become Act 43 on July 19, 2011. The assembly approved the bill on July 20, 2011. A copy of Act 43 appears as *Baldus* Trial Exhibit 174. A copy of the legislative history of Act 43 appears as *Baldus* Trial Exhibit 1055.

74. Act 43 creates 99 Assembly districts with populations falling within a range of 0.76 percent (+0.39 percent to -0.37 percent) of the ideal population; 56 districts are above the ideal population, 41 are below the ideal, and two districts are perfectly apportioned. In the Senate, population variations fall within a range of 0.62 percent (+0.35 percent to -0.27 percent); 17 districts are above the ideal population, 14 are below the ideal, and two districts are perfectly apportioned.

75. Act 43 splits 62 municipalities in the Assembly and 37 in the Senate, which is between the numbers of municipal splits in the previous two court-ordered maps.

### **The Impact of Act 43 on State Senate and Assembly Districts**

76. The 2010 census populations in the newly adopted assembly districts range from a low of 57,220 in the 1st Assembly District (224 fewer than the ideal population of 57,444) to a high of 57,658 in the 45th Assembly

District (214 more than the ideal population). Thus, the total population deviation, from the most populous to the least populous district, is 438 persons.

77. The 2010 census populations in the newly adopted senate districts range from a low of 171,722 (611 fewer than the ideal population, the 18th Senate District) to a high of 172,798 (465 more than the ideal population, the 30th Senate District). Thus, the total population deviation, from the most populous to the least populous district, is 1,076 persons.

### **Minority Populations.**

78. Act 43 creates six Assembly Districts on the north side of Milwaukee in which African-Americans of voting age comprise more than 50 percent of the voting age population living in each of those districts. Those six Assembly Districts are: AD 10, 11, 12, 16, 17, and 18.

79. African-Americans comprise 61.79 percent of the voting age population living in AD 10.

80. African-Americans comprise 61.94 percent of the voting age population living in AD 11.

81. African-Americans comprise 51.48 percent of the voting age population living in AD 12.

82. African-Americans comprise 61.34 percent of the voting age population living in AD 16.

83. African-Americans comprise 61.33 percent of the voting age population living in AD 17.

84. African-Americans comprise 60.43 percent of the voting age population living in AD 18.

85. Table 7 shows the racial demographic data on population and voting age population characteristics of Act 43 African-American majority-minority legislative districts, using 2010 census data.

86. Act 43 creates two Senate Districts on the north side of Milwaukee in which African-Americans of voting age comprise more than 50 percent of the voting age population of those districts. Those two Senate Districts are SD 4 and 6.

87. African-Americans comprise 58.4 percent of the voting age population living in SD 4.

88. African-Americans comprise 61.0 percent of the voting age population living in SD 6.

89. Milwaukee's African-American community bears the socioeconomic effects of historic discrimination in employment, education, health, and other areas.

90. According to the 2010 U.S. Census, the Latino population of the City of Milwaukee grew from 71,646 in 2000 to 103,007 in 2010, representing an increase of approximately 44 percent.

91. The data from the April 2010 census indicates that the area of most rapid growth of Milwaukee's Latino community has been on the city's near south side.

92. Act 43 creates two Assembly Districts on the near south side of Milwaukee in which Latinos of voting age comprise more than 50 percent of the voting age population living in each of those districts. Those two Assembly Districts are AD 8 and 9.

93. Latinos comprise 37,750 of the total population living in AD 8, or 65.9 percent of the total population living in AD 8.

94. The core retention for AD 8 is 55.3 percent.

95. Table 9 reflects available data related to the racial composition of the Hispanic majority-minority districts in Milwaukee County, as drawn by

federal courts in 1992 and 2002. Table 10 shows Hispanic demographic data on population and voting age population characteristics of the court-drawn 2002 legislative districts, using 2010 census data.

96. Table 11 shows the Hispanic demographic data on population and voting age population characteristics of Act 43 Hispanic majority-minority legislative districts, using 2010 census data. Table 12 shows the demographics of the Assembly District 8 map proposed by Professor Mayer.

97. Table 13 describes the Hispanic population in Wisconsin as a whole and in Milwaukee County in particular in 2000 and in 2010. Table 14 describes age-related information about the Hispanic community in Wisconsin as a whole, and more specifically in Milwaukee County, and Assembly Districts 8 and 9.

98. Latinos comprise 60.52 percent of the voting age population living in AD 8.

99. Latinos comprise 34,647 of the total population living in AD 9, or 60.54 percent of the total population living in AD 9.

100. Latinos comprise 54.03 percent of the voting age population living in AD 9.

101. The voting-age population of Latinos living in AD 8 and 9 consists of all Latinos above the age of 18 who live in those districts, as measured by the U.S. Census.

102. The actual number of Latinos living in AD 8 and 9 who are eligible to vote consists of the Latino voting-age population who are U.S. citizens. The percentage of the voting-age population of Latinos living in AD 8 and 9 and who are citizens is lower than the overall percentage of Latinos living in AD 8 and 9 who are of voting age.

103. Tables 16(a)-(f) reflect election data in Assembly District 8 from 1998 to 2010.

104. Milwaukee's Latino community bears the socioeconomic effects of historic discrimination in employment, education, health, and other areas, and its depressed socioeconomic status hinders the ability to participate in the electoral process on an equal basis with other members of the electorate.

### **Equal Population**

105. Application of the 2010 census to the district boundaries existing before Act 43 took effect shows that 44 of 99 Assembly seats had populations more than 5.0 percent above or below the ideal, as did 11 of 33 Senate districts.

106. Table 1 describes the population deviation from the ideal for each Assembly and Senate district (using 2010 Census data).

107. Table 2 describes the population for each Assembly District under Act 43 (using 2010 Census data).

108. Table 3 describes the population for each Senate District created by Act 43 (using 2010 Census data).

109. Population deviation in Assembly districts (both under Act 43 and historically) appear in Table 4.

110. Population deviation in Senate districts (both under Act 43 and historically) appear in Table 5.

### **Delayed Voting**

111. Redistricting results in shifts of voters among Senate districts in such a way that some voters will experience delayed voting or disenfranchisement. Voters who previously resided in odd-numbered Senate districts (which vote in midterm years) but who are moved to even-numbered Senate districts (which vote in presidential years) by redistricting will go six years between opportunities to vote for a state senator.

112. Only voters in odd-numbered senate districts can vote for a senator in the 2022 regular election. Residents of even-numbered senate districts cannot vote in a regular senate election until 2024. The last regular senate election for odd-numbered districts was in 2018; for even-numbered districts, the last regular election was in 2020.

113. For voters moved from odd-numbered senate districts to even-numbered senate districts, the most recent opportunity to vote for a state senator in a regular election was in 2018; the next opportunity to do so will be in 2024. This creates a six-year gap between regular senate elections in which they can vote.

### **Treatment of Political Subdivisions**

114. Act 43 splits the City of Beloit into two Assembly Districts, AD 45 and 31.

115. According to the 2010 Census, the City of Beloit has a population of 36,966.

116. Act 43 splits the City of Marshfield into two Assembly Districts, AD 69 and 86.

117. According to the 2010 Census, the City of Marshfield has a population of 19,118.

118. Act 43 splits the City of Appleton into four Assembly Districts, AD 3, 55, 56, and Act 43 splits the City of Racine into three Assembly Districts, AD 62, 64, and 66.

119. Act 43 combines portions of the City of Racine and the City of Kenosha into the same Assembly District, AD 64, despite the two cities being separate communities of interest and not traditionally being included in the same assembly district. *Baldus* Tr. Ex. 20 (Act 43 Assembly map). No rationale has been advanced for combining parts of Racine and Kenosha into a single assembly district. Handrick Depo. (*Baldus* Dkt. 137) at 293:8-13.

### **Compactness.**

120. A variety of statistical measures has evolved to assess compactness, though they usually fall into two categories: those that indicate how closely a district resembles a circle (the most compact shape), and those that measure circular filling. Richard G. Niemi, Bernard Grofman, Carl Carlucci, and Thomas Hofeller. 1990. “Measuring Compactness and the Role of Compactness Standard in a Test for Partisan and Racial Gerrymandering.”

*Journal of Politics* 52: 1155-1181; *see also* H. P. Young. 1988. "Measuring the Compactness of Legislative Districts." *Legislative Studies Quarterly* 13: 105-115.

121. Traditionally, districting plans are assessed in the context of total (average) plan compactness.

122. Compactness scores for Act 43 appear in Table 21.

123. For the ten least compact districts (as measured by the Smallest Circumscribing Circle method), Table 22 lists their compactness scores using other compactness equations.

### **Incumbent Pairing.**

124. The Act 43 map contained ten pairings when adopted. An additional pairing occurred when Rep. Chris Taylor (D) was elected to Assembly District 48 in a July 2011 special election.

125. Of the 11 Assembly pairings, three involve two Democrats, three involve two Republicans, and five involve bipartisan pairings. Until Rep. Taylor's election, more Republicans than Democrats were paired under Act 43.

126. The incumbent pairings and the associated core retentions of the involved incumbents appear in Table 25.

## **General Impacts of 2011 Wisconsin Act 43**

### **Delayed Voting**

127. The delayed voting or disenfranchisement effects of the last three redistricting efforts appear in Table 17.

128. In 2011, Act 43 moved 299,704 persons (5.26 percent of all persons in Wisconsin according to the 2010 census) into new districts that result in similar delayed voting or disenfranchisement. The number of persons per district experiencing delayed voting or disenfranchisement ranges from a low of 133 to a high of 72,431, with an average for the 17 districts involved of 17,630 persons per district.

129. In the summer of 2011, senators in nine of the sixteen even-numbered Senate districts were subject to recall. Expert Report of Ronald Keith Gaddie (“Gaddie Report”) (Trial Exhibit 30) at 5.

130. A total of 164,843 persons who reside in districts in which they would otherwise experience delayed voting also lived in districts where a recall was conducted in 2011. Accounting for the use of the recall, the actual period between voting for a Senator for these 164,843 persons is just three years, not

six. Thus, Act 43 will cause only 134,861 persons to wait six years between opportunities to vote for a Senator. *Id*

131. Table 28 shows the number of persons shifted into each odd-numbered district from an even-numbered district.

132. The average core population retention of the assembly districts—calculated as the simple mean of the core population retention of each district—is 64.8 percent. This means that, on average, less than two-thirds of each district was preserved in the redistricting plan. *Baldus Tr. Ex. 55* (Mayer Report) at 12; *Baldus Tr. Ex. 1019* (corrected pages to Mayer Report) at 12.

133. Act 43 shifts, on average, 53.5 times as many people as necessary to achieve population equality in every assembly district. *Baldus Tr. Ex. 55* (Mayer Report) at 11.

134. In 90 percent of the assembly districts, at least twice as many people as necessary were shifted from one district to another. In 11 districts, at least 100 times as many people as necessary were moved to achieve population equality. *Baldus Tr. Ex. 55* (Mayer Report) at 10.

135. Assembly districts represented by Democrats after the 2010 election have an average core population retention more than 9 percentage

points less than that of Republican districts: the average core population retention for Democrat districts was 59.1 percent, and 68.2 percent for districts represented by Republicans. *Baldus* Tr. Ex. 55 (Mayer Report) at 12; *Baldus* Tr. Ex. 1019 (corrected pages to Mayer Report) at 12.

136. Act 43 combines the City of Racine and the City of Kenosha into a single senate district (SD 22), and combines the rural parts of Racine County and Kenosha County into a separate senate district (SD 21). *Baldus* Tr. Ex. 22 (Act 43 Senate map).

137. In Milwaukee, three assembly districts that historically have been within Milwaukee County are now stretched from the edge of the city well into Waukesha County. As a result, Milwaukee voters in up to six Milwaukee assembly seats will lose their influence in choosing who represents them to voters outside of Milwaukee. *Baldus* Tr. Ex. 20 (Act 43 Assembly map).

138. By splitting municipalities into more than one Assembly and/or Senate district, Act 43 imposes significant additional burdens on those municipalities. (*Baldus* Trial testimony of Steve Barg, City Administrator, City of Marshfield).

139. Act 43 moves more than 49,000 individuals on the western edge of Madison from the 26th senate district into the new 27th senate district. The last regular election in which residents of the 26th district voted for a state senator was in 2008; the next regular senate election in the 27th district will take place in 2014. *Baldus* Tr. Ex. 31 (Diez Report, “Core Constituencies Report: Senate Districts (Act 43)”; Ex. A to Joint Pretrial Report, Table 28.

140. The population of the 27th senate district under the 2002 boundaries is 197,874, or 25,541 greater than the ideal population. Its population as redrawn in Act 43 is 172,449. The net population decrease of 25,425 was achieved by shifting 69,372 people into the 27th district—including more than 49,000 individuals formerly in SD 14, 16, and 26—and shifting another 94,797 people out of the district. *Baldus* Tr. Ex. 55 (Mayer Report), Ex. 3 (“Population Shifts in Senate Districts”); *Baldus* Tr. Ex. 31 (Diez Report, “Core Constituencies Report: Senate Districts (Act 43)”).

141. In the 2002 court-drawn plan, Racine County comprised most of the 21st senate district, and Kenosha County most of the 22nd senate district. Act 43 combines the cities of Kenosha and Racine into the 22nd senate district, placing the remainder of Kenosha and Racine counties into the 21st senate

district. As a result, 72,431 voters are shifted into the 21st senate district from the 22nd senate district. The last regular election in which residents of the 22nd district voted for a state senator was in 2008; the next regular senate election in the 21st district will take place in 2014. *Baldus* Tr. Ex. 31 (Diez Report, “Core Constituencies Report: Senate Districts (Act 43)”).

142. The population of the 21st senate district under the 2002 boundaries is 166,735, or 5,598 less than the ideal population. Its population as redrawn in Act 43 is 172,324. The net population increase of 5,589 was achieved by shifting 72,431 people into the 21st district—all of whom were formerly in the 22nd district—and shifting another 66,842 people out of the district, all but five of whom were moved into the 22nd district. *Baldus* Tr. Ex. 55 (Mayer Report), Ex. 3 (“Population Shifts in Senate Districts”); *Baldus* Tr. Ex. 31 (Diez Report, “Core Constituencies Report: Senate Districts (Act 43)”).

143. The boundaries of the senate districts were not intended to minimize disenfranchisement. In drawing the district boundaries, Foltz and Ottman targeted a disenfranchisement rate of 5.25 percent, a figure derived from the percentage of people disenfranchised by the 1992 court-drawn senate map. As a result, rather than reducing disenfranchisement to the extent

possible—which, in light of technological advances over the past two decades, would likely have resulted in a disenfranchisement rate far lower than that achieved in 1992—Foltz and Ottman affirmatively sought to disenfranchise 5.25 percent of the population. *Baldus* Tr. Ex. 19 at 30-31; Foltz Depo. (*Baldus* Dkt. 138) at 185:4-191:3; Ottman Depo. (*Baldus* Dkt.140) at 190:15-193:2.

144. The statistical analysis by the Wisconsin Legislative Reference Bureau of the 8th Assembly District, as promulgated on May 30, 2002, by U.S. District Court for the Eastern District of Wisconsin, indicated a total population in the year 2000 of 54,074 of which 33,602 were Latino for a Latino population percentage of 62 percent at that time. *See Baldus* Tr. Ex. 55 (Mayer Report) at 18.

145. Assembly Districts 8 and 9, as created by Act 43, do not have a sufficient Latino voting age citizen populations to create effective Latino majorities. *See Baldus* Tr. Ex. 55 (Mayer Report) at 22; *see Baldus* Tr. Ex. 60 (Mayer Rebuttal) at 11-12.

146. Assembly District 8 purports to have a Latino voting age population of 60.54 percent, and Assembly District 9 purports to have a Latino

voting age population of 54.0 percent. The Latino population spread between the two districts is diluted. *See Baldus Tr. Ex. 55* (Mayer Report) at 22.

147. The data from the April 2010 census and the annual American Community Survey indicate that the current population of the Latino community on Milwaukee's near south side in the vicinity of the re-apportioned 8th and 9th Assembly Districts as adopted by the Legislature is now sufficiently large and geographically compact to allow for one Assembly District with an effective voting majority of voting age Latinos who are United States citizens. *See, e.g., Baldus Tr. Ex. 55* (Mayer Report) at 18, 19, 22-23, and Ex. 6; *see Baldus Tr. Ex. 60* (Mayer Rebuttal) at 12-15.

148. Voting age population percentages significantly overstate the appearance of effective political influence of any minority group, and this is especially true for Latinos. *See Baldus Tr. Ex. 60* (Mayer Rebuttal) at 11.

149. Given the historically low voter registration for Latinos, the actual concentration of eligible Latino voters must be well above 50 percent to insure that Latinos have a meaningful opportunity to elect candidates of their choice. *See Baldus Tr. Ex. 60* (Mayer Rebuttal) at 11, 15.

150. The percentage of non-Latino whites of voting age who turn out to vote is larger than the percentage of Latino citizens of voting age who turn out to vote in AD 8 and AD 9. *See Baldus* Tr. Ex. 1025 (spreadsheet produced by Mayer); *see Grofman Depo.* (*Baldus* Dkt. 150) at 178:10-179:24, Gaddie Depo. (*Baldus* Dkt. 148) at 139:17-140:16. The percentage of non-Latino whites of voting age who register to vote is larger than the percentage of Latino citizens of voting age who register to vote in AD 8 and AD 9. *See Baldus* Tr. Ex. 1019 (corrected Exhibit 8 to Mayer Report); *see Morrison Depo.* (*Baldus* Dkt. 149) at 154:10-13.

151. The areas of the predecessor AD 9 that were added to AD 8 pursuant to Act 43 had larger percentages of non-Latino whites of voting age than the areas of the predecessor AD 8 that were retained with the new AD 8 pursuant to Act 43. *See Baldus* Tr. Ex. 184 (Map of AD 8 and 9 with Turnout Rate).

152. The areas of the predecessor AD 9 that were added to AD 8 pursuant to Act 43 have a higher percentage of voter turnout than the areas of the predecessor AD 8 that were retained with the new AD 8 pursuant to Act

43. See *Baldus* Tr. Ex. 184 (Map of AD 8 and 9 with Turnout Rate); see Grofman Depo. (*Baldus* Dkt. 150) at 182:13-22.

153. In every general election since 1998, including 2000, 2002, 2004, 2006, 2008, 2010, AD 8 had the fewest total votes cast of any regular general assembly election held in those years. See Wis. Bluebook 1997-1998, 1999-2000, 2001-2002, 2003-2004, 2005-2006, 2007- 2008.

154. The areas of the predecessor AD 9 that were added to AD 8 pursuant to Act 43 constitute a different community of interest than the areas of the predecessor AD 8 that were retained under new AD 8, created pursuant to Act 43. The residents of the Wilson Park area do not consider themselves to be part of Milwaukee's near south side Latino community. The areas from the predecessor AD 9 added to the new AD 8 represent a different neighborhood known as Wilson Park which has a lower percentage of Latinos who are eligible voters and a higher percentage of non-Latino white voters who have higher voter registration rates and higher turnout rates than do the Latinos who are eligible voters in those portions of the predecessor AD 8 that were retained in the new AD 8. (*Baldus* Trial testimony of John Bartkowski and Christine Neuman-Ortiz).

155. Act 43 divides the predecessor AD 8 almost in half along Cesar Chavez Drive (16th Street) retaining a mere 55% of the predecessor district in the new AD 8 and adding the Wilson Park areas from the predecessor AD 9. *See Baldus* Tr. Ex. 144 (comparing total registered voters with total voter turnout in these newly joined communities of interest during the 2008 presidential election).

156. The area of most rapid growth of Milwaukee's Latino community has been on the city's near south side, centered in the area of the 8th Assembly District. *See* Tr. Exs. 55 (Mayer Report), 1019 (corrected Exhibit 8 from Mayer Report).

157. A comparison of the voter registration rates between Latino and non-Latino individuals demonstrates a large disparity within the City of Milwaukee. The data obtained from the Statewide Voter Registration System (SVRS) for the City of Milwaukee show that more than 76 percent of non-Latinos are registered to vote versus 26 percent of Latinos. *See Baldus* Tr. Ex. 55 (Mayer Report) at 21 and Ex. 8.

158. Voter registration rates for Latinos lag far behind non-Latinos everywhere in the City of Milwaukee due to demographic characteristics (lower

income, higher poverty levels, less formal education), and because significant numbers of Latinos in Wisconsin and the City of Milwaukee are ineligible to vote because they are not citizens. *See Baldus Tr. Ex. 55* (Mayer Report) at 21.

159. The noncitizenship rate for Latinos in the City of Milwaukee, using the 2005-2009 five-year American Community Survey (ACS) data, is 42 percent. *See Baldus Tr. Ex. 60* (Mayer Rebuttal) at 11.

160. The noncitizenship rate for Latinos in the City of Milwaukee, using the 2008 ACS data, is 35.75 percent. *See Baldus Tr. Ex. 55* (Mayer Report) at 22.

161. When the noncitizenship rate of 35.75 percent is taken into account (as it must), as well as the historic low rates of registration even among otherwise eligible Latinos, the percentage of eligible Latinos constituting the voting age population in Assembly District 8 is 49.6 percent and is 43.02 percent in Assembly District 9. *See Baldus Tr. Ex. 55* (Mayer Report) at 22; *see Baldus Tr. Ex. 60* (Mayer Rebuttal) at 11.

162. Using the 42 percent noncitizen rate derived from the five-year ACS data reduces the eligible Latino majorities in Assembly Districts 8 and 9

to 47.07 percent and 40.53 percent, respectively. *See Baldus Tr. Ex. 60* (Mayer Rebuttal) at 11.

163. Latinos who are U.S. citizens comprise between 47.07 percent and 49.6 percent of the voting age population living in AD 8. *See Baldus Tr. Ex. 55* (Mayer Report) at 22; *Baldus Tr. Ex. 60* (Mayer Rebuttal) at 11.

164. Latinos who are U.S. citizens comprise between 40.53 percent and 43.02 percent of the voting age population living in AD 9. *See Baldus Tr. Ex. 55* (Mayer Report) at 22; *Baldus Tr. Ex. 60* (Mayer Rebuttal) at 11.

165. As created by Act 43, Assembly Districts 8 and 9 do not contain enough citizen voting age Latinos to constitute a numerical majority. *See Baldus Tr. Ex. 55* (Mayer Report) at 21; *see Baldus Tr. Ex. 60* (Mayer Rebuttal) at 11-12.

166. It is possible to construct an alternative Assembly District 8 with a Latino voting age population of 70.07 percent and a Latino citizen voting age population of 60.06 percent. *See Baldus Tr. Ex. 55* (Mayer Report) at 19, 22-23, and Ex. 6; *see Baldus Tr. Ex. 60* (Mayer Rebuttal) at 12-15. It is possible and, therefore, necessary to construct a compact Assembly District with a sufficiently large and effective Latino voting population. *Id.*

167. Over the course of the last decade, the political and electoral conduct of Latino voters on Milwaukee's near south side in the vicinity of the predecessor 8th Assembly District demonstrates that the Latino community is politically cohesive. *See Gaddie Depo. (Baldus Dkt. 148)* at 90:9-20; Grofman Depo. (*Baldus* Dkt. 150) at 165:5-15.

168. Minority cohesion and racial bloc voting are evidenced by analyzing voting percentages in elections where one or more Latino candidates ran against one or more white candidates. For example, in the 2011 primary for Milwaukee County Circuit Court Judge in which Latino candidate Pedro Colón ran against multiple white candidates, it was estimated that 58.2 percent of Latinos voted for Colón and 68 percent of white voters cast their ballots for one of the white candidates (i.e., only 32 percent of white voters cast their ballots for Colón). The percentage difference in support was 26.2 percent. In the general election, 66.2 percent of Latinos voted for Colón while 54.7 percent of white voters cast their ballot for the white candidate. *See Baldus Tr. Ex. 55* (Mayer Report) at 19-20, and Ex. 7. These results demonstrate a high rate of racially polarized voting.

169. A very high degree of racially polarized voting is again demonstrated by analyzing the results of the 2008 general election for State Superintendent of Public Instruction where Spanish-surnamed Rose Fernandez ran against Tony Evers. 95.7 percent of Latino voters in Milwaukee County voted for Fernandez versus 40.5 percent of white voters. The difference in support, 55.2 percent, evidences a high degree of racial polarization. *See Baldus* Tr. Ex. 55 (Mayer Report) at 19-20, and Ex. 7.

170. Latinos in the City of Milwaukee are less likely to participate in an election as demonstrated by the disparity in voter registration rates between non-Latinos (over 76 percent) and Latinos (26 percent). *See Baldus* Tr. Ex. 55 (Mayer Report) at 21, and Ex. 8.

171. Barriers to electoral participation also include Wisconsin's voter identification law. 2011 Wis. Act 23; *see Baldus* Tr. Ex. 60 (Mayer Rebuttal) at 15-16. These photographic identification requirements will disproportionately affect Latino citizens and thereby further hinder the ability of Latino citizens to participate in the electoral process on an equal basis with other members of the electorate.

172. Socioeconomic differences between non-Latinos and Latinos—such as lower income, higher poverty levels, and less formal education—all interfere with the ability of Latinos in the City of Milwaukee and Wisconsin to fully participate in the electoral process and elect candidates of their choice. See Grofman Depo. (*Baldus* Dkt. 150) at 172:15-172:24; *see also* Rodriguez Depo. (*Baldus* Dkt. 142) at 178:7-179:1, 179:17-180:5.

173. Voces de la Frontera is the largest membership-based Latino organization in the State of Wisconsin with over 3,000 members who are concentrated mostly in the near-southside area of Milwaukee in the vicinity of the AD 8 and AD 9. Each year, Voces de la Frontera sponsors May Day marches on May 1st in Milwaukee with attendance ranging from 20,000 to over 65,000 members of the Latino community. Voces de la Frontera has focused on Get-Out-The-Vote campaigns and in 2004 successfully registered 5,100 new voters in the predecessor AD 8 and increased voter turnout by 6% in 10 of the wards in that district. In 2006, the civic participation program increased the voter turnout by 32 percent in Milwaukee targeted wards and by 20 percent in Racine targeted wards. (Anticipated testimony of Christine Neumann-Ortiz).

174. Voces de la Frontera actively participated in the redistricting process for the City of Milwaukee and joined with a number of other Latino organizations to form the Latino Redistricting Committee, a bipartisan coalition to advocate on behalf of the Latino community's interests during the redistricting process. Neither organization was contacted by persons involved in the legislative redistricting process that led to the passage of Act 43. Neither organization was provided with an opportunity to provide input regarding the legislative redistricting process. (Anticipated testimony of Christine Neumann-Ortiz).

175. The African-American population is concentrated in the north-central portion of Milwaukee, and a large part lives in areas that are at least 75 percent African-American. 85.7 percent (217,551) of the total African-American population in Milwaukee County (253,764) resides in 3790 contiguous census blocks (of 13,231 blocks within the county). Within these blocks, the African-American population represents 70.6 percent of the total population. *See Baldus Tr. Ex. 55* (Mayer Report) at 23.

176. This area of high concentration is generally in the northern half of the county, and more specifically runs to the northwest away from downtown

Milwaukee—broadly bounded by the Milwaukee County line on the north edge, variously the Milwaukee river and the Canadian National Rail line on the east, I-94 on the southern edge and Highway 41 and the NW county line to the west. See *Baldus* Tr. Ex. 55 (Mayer Report) at 23-24.

177. The depressed socioeconomic status of Milwaukee's African-American community hinders the ability to participate in the electoral process on an equal basis with other members of the electorate. See Grofman Depo. (*Baldus* Dkt. 150) at 208:23-209:17.

178. Minority cohesion and racial bloc voting are evidenced by analyzing voting percentages in elections where one or more African-American candidates ran against one or more white candidates. See *Baldus* Tr. Ex. 55 (Mayer Report) at 24, and Ex. 9. In all of these races, African-American voters were almost always close to unanimous in their support for the African-American candidate, and white voters were uniformly less likely to support the African-American candidate by large margins. These results show a high rate of racially polarized voting. See *id.*

179. In Assembly Districts 10, 11, 16, 17, and 18, the concentration of African-American voters is excessive, far above the threshold (typically, 55

percent) commonly accepted as necessary to achieve effective majority status for African-American voters. *See Baldus* Tr. Ex. 55 (Mayer Report) at 25; *see also* Grofman Depo. (*Baldus* Dkt. 150) at 90:2-17.

180. If the percentage of African-American voting age population is reduced to 55 percent in each of these districts, 12,919 African-American voters would be available for other districts, increasing African-American influence while still retaining effective majorities in the existing majority-minority districts and enhancing the influence of African-Americans in other districts. *See Baldus* Tr. Ex. 55 (Mayer Report) at 25.

181. African-Americans in Milwaukee and Wisconsin are less likely to participate in an election as demonstrated by the disparity in voter registration rates, socioeconomic differences, and other barriers to electoral participation. *See Grofman Depo. (*Baldus* Dkt. 150)* at 208:23-209:17.

182. Traditional race-neutral redistricting criteria, such as compactness, contiguity, and respect for political subdivisions or communities defined by actual shared interests, were subordinated to race when the legislative majority decided to redraw the district lines under Act 43 so that an unnecessarily large number of African-American voters were concentrated in

Assembly Districts 10, 11, 16, 17, and 18, and Latino voters were dispersed into Assembly Districts 8 and 9. There is no race-neutral justification for the creation of these districts under Act 43.

183. District lines could have been drawn in a way that reduces the African-American voting age population to more appropriate levels (i.e., 55 percent) and enhances the influence of African-Americans in other districts, and creates a compact Assembly District 8 with a sufficiently large and effective Latino voting population. *See Baldus Tr. Ex. 55* (Mayer Report) at 19, 22-23, 25, and Ex. 6; *see Baldus Tr. Ex. 60* (Mayer Rebuttal) at 12-15.

### **Core Retention and Act 43**

184. Core retention measures the extent to which constituencies are maintained or disrupted by a proposed map. There are several ways to measure core constituency retention, including the following:

185. Largest Constituency Core Retention: In the new district, what is the largest proportion in the district that was previously together in one particular, previous district?

186. Incumbent Core Retention: In the Incumbent's new district, what proportion of the population comes from their old district? Gaddie Report at ¶ 8 (*Baldus Tr. Ex. 58*).

187. Under Act 43, the average Largest Constituency Core Retention is 66.30 percent in the Assembly, with a low of 30.88 percent and a high of 99.91 percent. The average Senate Largest Constituency Core Retention is 78.82 percent with a low of 57.89 percent and a high of 99.92 percent. Table 23 illustrates the Largest Core Retention scores for the Assembly and Senate districts created by Act 43. Gaddie Report at ¶ 1 (*Baldus Tr. Ex. 58*).

188. In the Assembly, average Incumbent Core Retention is 61.72 percent, with a low of 8.55 percent and a high of 99.91 percent. The average Incumbent Core Retention for Democratic incumbents is 54.74 percent, and 65.88 percent for Republican incumbents. The lowest Democratic Incumbent Core Retention is 8.55 percent, the highest is 99.91 percent; for Republicans, the low is 17.74 percent and the high is 97.67 percent. Gaddie Report at ¶ 8 (*Baldus Tr. Ex. 58*).

189. In the Senate, average Incumbent Core Retention is 78.23 percent, with a low of 42.03 percent and a high of 99.92 percent. Democratic Senate

Incumbent Core Retention averages 78.84 percent, compared to 77.64 percent for Republican incumbents. The low Democratic Senate Incumbent Core Retention score is 42.03 percent, the high is 99.53 percent. Among Republican Senate incumbents, the low is 57.97 percent; the high is 99.92 percent. Gaddie Report at ¶ 8 (*Baldus* Tr. Ex. 58).

190. Table 24 illustrates the Incumbent Core Retention scores for the Assembly and Senate districts created by Act 43. (Diez Report).

### **African-American Majority-Minority Districts**

191. The Milwaukee area is the only part of the State of Wisconsin with a sufficiently large and concentrated African-American population so as to be able to draw Assembly or State Senate districts containing an African-American population or voting age population majority. Expert Report of Bernard Grofman (“Grofman Report”) (*Baldus* Tr. Ex. 140) at ¶ 7.

192. Under the 2002 court-drawn plan, Assembly Districts 10, 11, 16, 17 and 18, have been continuously represented by an African-American since the plan was put into place.

193. Moreover, all major candidates in the Democratic primary in those districts have been black and the winner of the Democratic primary has then

gone on to win the general election with between 91 percent and 100 percent of the vote—most commonly with 100 percent of the vote.

194. Under the 2002 court-drawn plan, in Assembly District 12, which has not been a majority black voting age population district during the decade (having begun at 32.77 percent black VAP according to the 2000 census, and ending up at 48.99 percent Black VAP according to the 2010 census), all winners of the Democratic primary have been white (with the last contested Democratic primary in 2004). All winners of the Democratic primary in Assembly District 12 over the past decade have gone on to win the general election with vote shares ranging from 67 percent to 100 percent, with the last contested general election in 2004.

195. During the period 2002 to 2010, an African-American won every primary and general election in Senate Districts 4 and 6, and the included Assembly Districts, in which there was an African-American candidate with only one exception.

196. In 2002, the federal court created five majority African-American Assembly Districts where minority voters elect a candidate of choice (5.05 percent of seats statewide); of the Senate districts created by the court in 2002,

two are majority African-American districts where minority voters elect a candidate of choice (6.06 percent of seats statewide). Gaddie Report at 3.

197. 2011 Wisconsin Act 43 created six majority African-American Assembly districts and two majority African-American Senate districts. Of the six Assembly districts, five are between 60.4 percent and 61.9 percent African-American voting age population (VAP), and the sixth is 51.5 percent African-American VAP. Gaddie Report at pg. 3, 14 (Table 3); Grofman Report at Exhibit B.

198. Table 8 shows the racial demographic data on population and voting age population characteristics of the court-drawn 2002 African-American majority-minority legislative districts, using 2010 census data.

199. Even if the African-American population in Assembly Districts 10, 11, 16, 17, and 18 were redistributed so that each of these five districts were at exactly 55 percent black voting age population, the African-American population is not large enough to create a seventh majority-minority African-American Assembly district. Expert Report of Kenneth R. Mayer (“Mayer Report”) (*Baldus* Tr. Ex. 55) at 25; *see also* Mayer Depo. (*Baldus* Dkt. 147) at 193:19-23.

200. Senate Districts 4 and 6 (as created by Act 43) contain 98.4 percent of the African-American population found in either Senate Districts 4 or 6 as created by the federal court in 2002. Grofman Report at ¶ 9(a); *see also* Expert Report of John Diez (“Diez Report”) (*Baldus* Tr. Ex. 31) at 2 (referencing data provided by the State of Wisconsin Legislative Technology Service Bureau).

201. In Milwaukee County, the 2002 court-drawn baseline map had sixteen Assembly districts wholly within the county, and another three districts that crossed the county line; the county population (940,164) would have accommodated seventeen whole districts plus a third of another. African-American majority districts constituted 28.8 percent of the potential whole districts that could have been crafted in Milwaukee County, compared to 24.6 percent African-Americans in the county population. African-American majority districts were 26.3 percent of all districts that were wholly or partially in Milwaukee County. Gaddie Report at 4.

202. Act 43 had thirteen Assembly districts wholly within the county, and another eight districts that crossed the county line; the county population (947,735) would have accommodated sixteen whole districts plus half of another. African-American majority districts constitute 36.4 percent of the

potential whole districts that could have been crafted in Milwaukee County, compared to 26.8 percent African-Americans in the county population.

203. African-American majority districts are 28.6 percent of all districts that are wholly or partially in Milwaukee County.

**Hispanic Majority-Minority Assembly Districts.**

204. The state population is 5.9 percent Hispanic origin, and Milwaukee County is 13.3 percent Hispanic. Milwaukee County comprises 37.5 percent of the 335,532 Hispanic Wisconsinites, and that population has its greatest concentration south of the East-West Freeway.

205. The Milwaukee area is the only part of the state with a sufficiently large and concentrated Hispanic population that would allow creation of Assembly districts that contain a Hispanic population or voting age population majority. Grofman Report at ¶ 16.

206. Based on data from the 2010 census, the Hispanic population is not large enough and geographically concentrated enough to create a Hispanic population majority Senate district.

207. Under the 2002 court-drawn map there was one majority Hispanic Assembly seat and no majority Hispanic Senate seats. Gaddie Report at 3.

208. Under the 2002 court-drawn plan, Assembly District 8 has been continuously represented by a Hispanic Assembly member since the plan was put into place. All candidates in the Democratic primary in that district have been Hispanic, and the winner of the Democratic primary has then gone on to win the general election with 100 percent of the vote, i.e., in an uncontested election. The last contested election involving a Republican in the district was 1998 (under the 1992 plan). In that year the Hispanic candidate won the general election with 76 percent of the vote. Grofman Report at ¶ 18.

209. 2011 Wisconsin Act 43 includes two majority Hispanic Assembly districts, one of which is 60.5 percent Hispanic VAP, and the other is 54.0 percent Hispanic VAP. Gaddie Report at 4.

210. The Hispanic citizen voting age population in Assembly District 8 (created by Act 43), as calculated by Prof. Mayer, is 49.6 percent. Mayer Report at 22.

211. From 2000 to 2010, Wisconsin's total population grew 6 percent (from 5,363,675 to 5,686,986). Expert Report of Peter A. Morrison ("Morrison Report") (*Baldus* Tr. Ex. 32) at ¶ 6.

212. From 2000 to 2010, Wisconsin's Hispanic population increased 74 percent (from 192,921 to 336, 056). The Hispanic share of Wisconsin's total population rose as a consequence from 3.6 percent to 5.9 percent.

213. Since 2000, Hispanic numbers within Milwaukee County have registered an overall increase of nearly 44,000 in a County that gained barely 8 thousand residents overall between 2000 and 2010.

214. The Census Bureau's American Community Survey ("ACS") documents an annual influx of 1,812 Hispanic in-migrants to Milwaukee County from another state plus a further 1,140 Hispanic in-migrants from elsewhere in Wisconsin, for a total Hispanic influx of 2,952 domestic in-migrants into Milwaukee County. The ACS data also register a further annual influx of 1,500 Hispanic in-migrants from abroad. The corresponding domestic outflow of Hispanics moving from Milwaukee County to a different county or state totals 2,791.

215. The net effect of these two domestic migration counterflows (4,452 minus 2,791) increases the County's resident population by 1,661 Hispanics each year.

216. This net addition of as many as 1,661 incoming Hispanics to Milwaukee County's population of 126,039 resident Hispanics accounts for what is at most a 1.3 percent annual increase in the number of resident Hispanics. That numerical increase translates into a 0.16 percentage-point increase per year in Hispanics' share of Milwaukee County's population (assuming no foreign-bound out-migration). That is, if net migration continues at its present level, Hispanics' current share of population countywide would grow from 13.3 percent in 2010 to 14.9 percent by 2020.

217. Proportionally more Hispanics are in the under-18 age range relative to non-Hispanics (39 percent compared with 23 percent). Conversely, proportionally fewer Hispanics are in the over-65 age range relative to non-Hispanics (3 percent compared with 13 percent), ages at which significant numbers of eligible voters die off. Furthermore, Hispanics under age 18 are predominantly citizens, whereas many adult Hispanics have yet to become citizens.

218. Professor Mayer testified that, as of 2010, the Hispanic citizen voting age population in Assembly District 8 as drawn by Act 43 is

approximately 49.6%, based on ACS data. *Baldus* Tr. Ex. 55, Mayer Report at 22.

219. Table 15 describes the growth of the Hispanic community in Assembly Districts 8 and 9.

220. Under Act 43, Hispanic majority Assembly districts are 2.02 percent of all districts in the state, 12.1 percent of potential whole districts that might be drawn in Milwaukee County, and 9.5 percent of all districts that are wholly or partially in Milwaukee County. Gaddie Report at 4.

### **Map Creation Considerations.**

221. When drawing redistricting maps in Wisconsin, the map drawers were advised to make certain to address the Voting Rights Act concerns (in Milwaukee County) first so that they wouldn't come back to that point and be unable to address the concerns. Handrick Depo. (*Baldus* Dkt. 137) at 398:1-13. The map drawers also took into account the malapportionment between Milwaukee and Dane County. *Id.* at 398:17-401:7.

222. When a district is underpopulated, it needs to expand in size to bring in additional population. *Id.* at 401:8-12. If the districts surrounding the underpopulated district also need to expand in size to bring in additional

population, it causes a shift in population and increases the minimum number that each district had to increase. *Id.* at 401:13-402:9. This will cause a ripple or domino effect which will also have an impact on core retention. *Id.*

223. When trying to compensate for this ripple effect, and by taking Voter Rights Act concerns into account, compactness of districts will be adversely impacted. *Id.* at 404:11-405:7.

224. Several other redistricting principles could have an impact on the number of delayed voters. *Id.* at 405:8-406:14. For instance, taking communities of interest or compactness into account may change the number of delayed voters. *Id.* at 406:15-25.

225. Pursuant to the figures in the 2010 decennial census, Milwaukee County had to lose an Assembly District and Dane County had to add one. *Id.* at 282:6-9. Three Assembly Districts that had historically been inside the boundaries of Milwaukee County were stretched into Waukesha County due to the ripple/domino effect caused by the malapportionment in Milwaukee and Dane County which caused lines to shift between those two counties. *Id.* at 300:22-302:9.

226. Mr. Handrick did not consider citizen voting age population for the Latino community when he was drawing the maps for Assembly Districts 8 and 9 because that data is not contained in the 2010 decennial census and he was unaware that such data existed. *Id.* at 334:1-6.

227. The only data available to the map drawers was from the United States Census – and the 2010 decennial census. *Id.* at 392:9-11. That census data does not include any information on citizenship. *Id.* at 393:21-24. Based on the computer system available to the map drawers, the software that was available to them, and the data that was available from the census, it was not possible to have drawn maps based on citizen voting age population. *Id.* at 394:21-395:5.

228. There is a public website called Dave's Redistricting where anybody in the public may go on to any state and draw redistricting maps. *Id.* at 391:6-10.

229. Prior to Act 43, the urban and rural areas of Racine were paired in one Senate district (District 21), as were the urban and rural areas of Kenosha in another Senate district (District 22). Act 43 pairs the two urban areas of

Racine and Kenosha counties in one Senate district (District 21), and the more rural parts of each county together in another Senate district (District 22).

230. The Legislature was presented with the option of keeping the urban areas of Racine and Kenosha Counties in one district and the rural parts of Racine and Kenosha Counties in another district. The Legislature chose to keep the urban areas together and the rural parts together. *Id.* at 448:25-449:22.

231. This results in two districts which now each share more in common—urban with urban, rural with rural—throughout each Senate district. *Id.* at 350:19-351:4, and Exhibit 121.

232. A significant portion of the “delayed voting” relates to the Racine/Kenosha area.

233. This results from the Legislative decision to combine urban areas from Racine and Kenosha Counties into one Senate District, and the rural areas of those Counties in a different Senate District. *Id.* at 449:7-450:12.

234. During the development of the maps, the effects of the map on “delayed voting” were considered. When the initial “delayed voting” numbers

were calculated, the Legislature made some changes to the map in order to reduce the number of persons who would be delayed. *Id.* at 450:3-451:9.

### **Partisanship Interests and Impacts of 2011 Wisconsin Act 43**

235. Act 43 was intended to burden the representational rights of Democratic voters throughout the decennial period by impeding their ability to translate their votes into legislative seats. *Whitford v. Gill*, 218 F. Supp. 3d 837, 843 (W.D. Wis. 2016), vacated and remanded on other grounds, 138 S. Ct. 1916, 201 L. Ed. 2d 313 (2018).

236. Act 43 was designed so that regardless of whether the Democratic Party received between 47% and 53% of the statewide vote share in Assembly elections, it would not receive more than 49% of the seats in the Assembly. *Whitford*, 218 F. Supp. 3d at 899 n.257.

237. Act 43 was designed so that regardless of whether the Republican Party received between 47% and 53% of the statewide vote share in Assembly elections, it would not receive less than 50% of the seats in the Assembly. *Whitford*, 218 F. Supp. 3d at 899 n.257.

238. Act 43 burdens the representational rights of Democratic voters in Wisconsin by impeding their ability to translate their votes into legislative

seats, not simply for one election but throughout the life of Act 43. *Whitford*, 218 F. Supp. 3d at 910.

239. As demonstrated by the results of the 2012 and 2014 elections, among other evidence, Act 43 has had its intended effect. *Whitford*, 218 F. Supp. 3d at 843.

240. Act 43 also achieved the intended effect: it secured for Republicans a lasting Assembly majority. It did so by allocating votes among the newly created districts in such a way that, in any likely electoral scenario, the number of Republican seats would not drop below 50%. *Whitford*, 218 F. Supp. 3d at 898.

241. It is clear that the drafters of Act 43 got what they intended to get. There is no question that Act 43 was designed to make it more difficult for Democrats, compared to Republicans, to translate their votes into seats. *Whitford*, 218 F. Supp. 3d at 898.

242. Under Act 43, Republicans are distributed in a much more efficient manner than Democrats. There are only 15 districts with a predicted Republican vote percentage of 60% or greater; this is compared to 25 districts that have a predicted Democratic vote percentage of 60% or greater. In other

words, Democrats have been packed into “safe” Democratic districts. *Whitford*, 218 F. Supp. 3d at 898-99.

243. The 2012 and 2014 election results reveal that the drafters’ design in distributing Republican voters to secure a legislative majority was, in fact, a success. In 2012, Republicans garnered 48.6% of the vote, but secured 60 seats in the Assembly. In 2014, Republicans increased their vote percentage to 52 and secured 63 Assembly seats. *Whitford*, 218 F. Supp. 3d at 899.

244. The discriminatory effect of Act 43 is not explained by the political geography of Wisconsin. *Whitford*, 218 F. Supp. 3d at 843.

245. In 2012, the Republican Party received 48.6% of the two-party statewide vote share for Assembly candidates and won 60 of the 99 seats in the Wisconsin Assembly. *Whitford*, 218 F. Supp. 3d at 853.

246. In 2014, the Republican Party received 52% of the two-party statewide vote share and won 63 assembly seats. *Whitford*, 218 F. Supp. 3d at 853.

247. One purpose of Act 43 was to secure the Republican Party’s control of the state legislature for the decennial period. *Whitford*, 218 F. Supp. 3d at 890.

248. The Act 43 drafters' concern with the durable partisan complexion of the new Assembly map was present from the outset of the legislative process. *Whitford*, 218 F. Supp. 3d at 890.

249. The maps the Act 43 drafters generated, as well as the statistical comparisons made of the various maps, reveal that a focal point of the drafters' efforts was a map that would solidify Republican control. *Whitford*, 218 F. Supp. 3d at 891.

250. One drafter highlighted the long-term effects of Act 43, as reflected in his prepared notes: "The maps we pass will determine who's here 10 years from now," and "[w]e have an opportunity and an obligation to draw these maps that Republicans haven't had in decades." *Whitford*, 218 F. Supp. 3d at 894.

251. From the outset of the redistricting process, the Act 43 drafters sought to understand the partisan effects of the maps they were drawing. They designed a measure of partisanship and confirmed the accuracy of this measure with Professor Gaddie. They used this measure to evaluate regional and statewide maps that they drew. They labeled their maps by reference to their partisanship scores, they evaluated partisan outcomes of the maps, and

they compared the partisanship scores and partisan outcomes of the various maps. When they completed a statewide map, they submitted it to Professor Gaddie to assess the fortitude of the partisan design in the wake of various electoral outcomes. *Whitford*, 218 F. Supp. 3d at 895.

252. The Act 43 map reduced markedly the possibility that the Democrats could regain control of the Assembly even with a majority of the statewide vote. *Whitford*, 218 F. Supp. 3d at 895.

253. Even if their statewide vote fell below 48%, the design of Act 43 ensured that the Republicans would maintain a comfortable majority. *Whitford*, 218 F. Supp. 3d at 895.

254. It is clear that the Act 43 drafters were concerned with, and convinced of, the durability of their plan. *Whitford*, 218 F. Supp. 3d at 895.

255. One of the purposes of Act 43 was to secure Republican control of the Assembly under any likely future electoral scenario for the remainder of the decade, in other words to entrench the Republican Party in power. *Whitford*, 218 F. Supp. 3d at 896.

256. Wisconsin's modest, pro-Republican political geography cannot explain the burden that Act 43 imposes on Democratic voters in Wisconsin. *Whitford*, 218 F. Supp. 3d at 923.

257. In 2012, the Democrats received 51.4% of the statewide vote, but that percentage translated into only 39 Assembly seats. A roughly equivalent vote share for Republicans (52% in 2014), however, translated into 63 seats—a 24 seat disparity. *Whitford*, 218 F. Supp. 3d at 901.

258. When Democrats' vote share fell to 48% in 2014, that percentage translated into 36 Assembly seats. A roughly equivalent vote share for Republicans (48.6% in 2012) translated into 60 seats, a 24 seat disparity. *Whitford*, 218 F. Supp. 3d at 901.

259. Under Act 43, even when Republicans are an electoral minority, their legislative power remains secure. *Whitford*, 218 F. Supp. 3d at 901.

260. The more efficient distribution of Republican voters under Act 43 has allowed the Republican Party to translate its votes into seats with significantly greater ease and to achieve—and preserve—control of the Wisconsin legislature. *Whitford*, 218 F. Supp. 3d at 905.

261. In both of the first two elections held under Act 43, the Republicans obtained a far greater proportion of the Assembly's 99 seats than they would have without the leverage of a considerable and favorable Efficiency Gap. *Whitford*, 218 F. Supp. 3d at 905-06.

262. In 2012, the Republican Party won 61% of Assembly seats with only 48.6% of the statewide vote, resulting in a 13% Efficiency Gap in their favor. *Whitford*, 218 F. Supp. 3d at 905-06.

263. Thus, the Republican Party in 2012 won about 13 Assembly seats in excess of what a party would be expected to win with 49% of the statewide vote. *Whitford*, 218 F. Supp. 3d at 905-06.

264. In 2014, the Republican Party garnered 52% of the statewide vote but secured 64% of Assembly seats, resulting in a pro-Republican Efficiency Gap of 10%. *Whitford*, 218 F. Supp. 3d at 905-06.

265. Thus, the Republican Party in 2014 it won about 10 more Assembly seats than would be expected with 52% of the vote. *Whitford*, 218 F. Supp. 3d at 905-06.

266. In 2016, the Republican Party garnered 51.69% of the statewide vote but secured 64% of the Assembly seats.

267. In 2018, the Republican Party garnered 44.75% of the statewide vote but secured 63% of the Assembly seats.

268. In 2020, the Republican Party garnered 53.8% of the statewide vote but secured 62% of the Assembly seats.

269. Although Wisconsin's natural political geography plays some role in the apportionment process, it does not explain adequately the sizeable disparate effect seen in 2012 and 2014 under Act 43. *Whitford*, 218 F. Supp. 3d at 911.

#### **HUNTER INTERVENOR-PETITIONERS**

1. Intervenor-Petitioner Lisa Hunter resides in Dane County, Wisconsin, within the Second Congressional District, State Senate District 26, and State Assembly District 77.

2. Intervenor-Petitioner Jacob Zabel resides in Dane County, Wisconsin, within the Second Congressional District, State Senate District 26, and State Assembly District 76.

3. Intervenor-Petitioner Jennifer Oh resides in Dane County, Wisconsin, within the Second Congressional District, State Senate District 26, and State Assembly District 78.

4. Intervenor-Petitioner John Persa resides in Waukesha County, Wisconsin, within the Fifth Congressional District, State Senate District 5, and State Assembly District 13.

5. Intervenor-Petitioner Geraldine Schertz resides in Shawano County, Wisconsin, within the Eighth Congressional District, State Senate District 2, and State Assembly District 6.

6. Intervenor-Petitioner Kathleen Qualheim resides in Shawano County, Wisconsin, within the Eighth Congressional District, State Senate District 2, and State Assembly District 6.

7. In 1964, the Wisconsin Supreme Court held that, under the Wisconsin Constitution, legislative districts must be apportioned as a “joint action of the legislature and the governor.” *State ex rel. Reynolds v. Zimmerman*, 22 Wis.2d 544 (1964).

8. Over the last 40 years, the legislature and governor have failed to reach agreement on reapportioned legislative districts three times. In that time, the governor and legislature only reached agreement on new legislative and congressional districts once.

9. After the 1980 decennial census, enactment of a redistricting plan would have required bipartisan agreement. Ultimately, Wisconsin's legislative districts were drawn by a federal court. *See Wis. State AFL-CIO v. Elections Bd.*, 543 F. Supp. 630 (E.D. Wis. 1982).

10. After the 1990 decennial census, enactment of a redistricting plan would have required bipartisan agreement. Ultimately, Wisconsin's legislative districts were drawn by a federal court. *See Prosser v. Elections Bd.*, 793 F. Supp. 859 (W.D. Wis. 1992)

11. After the 2000 decennial census, enactment of a redistricting plan would have required bipartisan agreement. Ultimately, Wisconsin's legislative districts were drawn by a federal court. *See Baumgart v. Wendelberger*, No. 01-C-0121, 02-C-0366, 2002 WL 34127471 (E.D. Wis. May 30, 2002).

12. After the 2010 decennial census, a redistricting plan could be enacted without bipartisan agreement. Then-Governor Scott Walker was a Republican and both chambers of the Wisconsin Legislature had Republican majorities. The Legislature and Governor enacted new legislative and congressional districts in 2011.

**CITIZEN MATHEMATICIANS AND SCIENTISTS INTERVENOR-PETITIONERS**

1. Intervenor Gary Krenz is a registered voter who resides in Milwaukee County and in Senate District 8 and Assembly District 23, both of which the 2020 Census Redistricting Data demonstrates are overpopulated. Dr. Krenz is a Professor Emeritus of Mathematical and Statistical Sciences and an Adjunct Professor of Computer Science at Marquette University. He is a past chair of Marquette's former Mathematics, Statistics and Computer Science Department. Dr. Krenz received Marquette University's Ignatian Pedagogy Award and the Rev. John P. Raynor, S.J., Faculty Award for Teaching Excellence. His research interests include mathematical and statistical modeling and computer science education, for which he has been funded by both the National Institutes of Health and the National Science Foundation. Dr. Krenz received his Ph.D. in Applied Mathematics from Iowa State.

2. Intervenor Sarah J. Hamilton is a registered voter who resides in Milwaukee County and in Senate District 7 and Assembly District 20, both of which the 2020 Census Redistricting Data demonstrates are underpopulated, and lives directly across the street from Assembly District 19, which the 2020 Census Redistricting Data demonstrates is overpopulated. Dr. Hamilton is an

Associate Professor of Mathematics at Marquette University and an Assistant Adjunct Professor at the Medical College of Wisconsin. She has taught courses at Marquette in mathematical modeling and analysis, differential equations, and the theory of optimization. Her research interests include inverse problems, machine learning and data science, and computational imaging for which she has been funded by the National Institutes of Health. She has been named a Project NExT Fellow by the Mathematical Association of America. Dr. Hamilton received her Ph.D. in Mathematics from Colorado State University.

3. Intervenor Stephen Joseph Wright is a registered voter who resides in Dane County, and in Congressional District 2, Senate District 26, and Assembly District 77, all of which the 2020 Census Redistricting Data demonstrates are overpopulated. Dr. Wright is the George B. Dantzig Professor of Computer Sciences at the University of Wisconsin-Madison, where he teaches courses on nonlinear optimization and on linear programming, among other subjects. He is a past Chair of the Mathematical Optimization Society, a former fellow and trustee of the Society for Industrial and Applied Mathematics, and the current Director of the Institute for Foundations of Data

Science. In 2020, he was awarded the Khachiyan Prize, which honors life-time achievements in the area of optimization. Dr. Wright received his Ph.D. in Computer Science from the University of Queensland.

4. Intervenor Jean-Luc Thiffeault is a registered voter who resides in Dane County, and in Congressional District 2, Senate District 26, and Assembly District 77, all of which the 2020 Census Redistricting Data demonstrates are overpopulated. Dr. Thiffeault is a Professor of Applied Mathematics at the University of Wisconsin-Madison, where his research interests include topological dynamics and methods of computational mathematics. He has spoken at over 140 invited research seminars and colloquia and has won the Society for Industrial and Applied Mathematics' outstanding-paper prize. Dr. Thiffeault received his Ph.D. in Physics from the University of Texas at Austin.

5. Intervenor Somesh Jha is a registered voter who resides in Dane County, and in Congressional District 2, Senate District 26, and Assembly District 78, all of which the 2020 Census Redistricting Data demonstrates are overpopulated. Dr. Jha is the Sheldon B. Lubar Chair of Computer Sciences at the University of Wisconsin-Madison, where he researches or teaches

cartography, adversarial machine learning, computational finance, robust optimization, and data science, among other topics. He has received the National Science Foundation CAREER Award, the Computer-Aided Verification Award, and multiple best-paper awards. He is a Fellow of both the Association for Computing Machinery (awarded to the top 1% of ACM members) and the IEEE (recognizing “extraordinary accomplishments” in the IEEE fields of interest). Dr. Jha received his Ph.D. in Computer Science from Carnegie Mellon University.

6. The 2011 Assembly map as enacted by the Legislature split 79 municipalities into 189 parts. The 2011 Senate map as enacted by the Legislature split 48 municipalities into 103 parts. The 2011 congressional map as enacted by the Legislature split 34 municipalities into 68 parts. *See* [https://legis.wisconsin.gov/ltsb/gisdocs/Data2010/act43\\_act44\\_by\\_mcd.pdf](https://legis.wisconsin.gov/ltsb/gisdocs/Data2010/act43_act44_by_mcd.pdf). (A municipality was not counted as broken if it was divided only along county lines.)

7. The 2011 Assembly map as enacted by the Legislature split 58 counties into 229 parts. The 2011 Senate map as enacted by the Legislature split 46 counties into 130 parts. The 2011 Congressional map as enacted by

the Legislature split 12 counties into 27 parts. See [https://legis.wisconsin.gov/ltsb/gisdocs/Data2010/act43\\_act44\\_by\\_mcd.pdf](https://legis.wisconsin.gov/ltsb/gisdocs/Data2010/act43_act44_by_mcd.pdf).

8. The 2011 Assembly map as enacted by the Legislature split 76 wards into 152 parts. The 2011 Senate map as enacted by the Legislature split 30 wards into 60 parts. The 2011 Congressional map as enacted by the Legislature split 29 wards into 58 parts. See WISE\_LR\_Wards\_120511\_WTM.

9. The Perimeter-to-Area measure of compactness used in some prior Wisconsin redistricting processes is commonly referred to today as the Polsby-Popper score. (Joint Final Pretrial Report, Joint Statement of Stipulated Facts, ECF No. 125, *Whitford v. Gill*, 3:15-cv-00421, ¶ 214 (W.D. Wis. May 9, 2016).) The Polsby-Popper score measures a district's jaggedness by comparing its area to the square of the length of its perimeter. A circle, which has a very smooth perimeter, gets a perfect Polsby-Popper score.

10. The Smallest Circle measure of compactness used in some prior Wisconsin redistricting processes is commonly referred to today as the Reock score. (*Id.* ¶ 215.) The Reock score measures a district's elongation by comparing its area to the area of the smallest circle that could circumscribe the

district. Again, a circle, which is not at all elongated, gets a perfect Reock score.

11. The 2011 Assembly map as enacted by the Legislature had a minimum Polsby-Popper score of .048 and a minimum Reock score of .15. The 2011 Senate map as enacted by the Legislature had a minimum Polsby-Popper score of .05 and a minimum Reock score of .13. The 2011 Congressional map as enacted by the Legislature had a minimum Polsby-Popper score of .12 and a minimum Reock score of .30.

12. The 2011 Assembly map as enacted by the Legislature moved a total of 2,357,592 people out of their existing Assembly districts and into new Assembly districts. *Baldus*, 849 F. Supp. 2d at 849.

13. The 2011 Senate map as enacted by the Legislature moved a total of 1,205,216 people out of their existing Senate districts and into new Senate districts. *Id.*

14. The 2011 Congressional map as enacted by the Legislature moved a total of 891,430 people out of their existing Congressional districts and into new Congressional districts.

15. The 2011 Assembly map as enacted by the Legislature had six districts in which Black voters can nominate and elect representatives of their choice. In 2011, the Legislature and Governor Walker attempted to create two majority-Latino assembly districts; but in 2012, the Federal court, applying the Voting Rights Act, ordered the border between those two districts redrawn to render one of the districts highly effective for Latino voters. *See Baldus v. Members of Wis. Gov't Accountability Bd.*, 849 F. Supp. 2d 840, 859–60 (E.D. Wis. 2012) (three-judge court).

16. The 2011 Senate map as enacted by the Legislature had two districts in which Black voters can nominate and elect representatives of their choice and no districts in which Latino voters can nominate and elect representatives of their choice.

17. The 2011 Congressional map as enacted by the Legislature had one district in which Black voters can nominate and elect representatives of their choice and no districts in which Latino voters can nominate and elect representatives of their choice.

18. The closest Republican statewide victory in Wisconsin in the last decade was President Trump's in 2016—by less than a percentage point over

Secretary Clinton. The closest Democratic statewide victory in the last decade was President Biden's in 2020—also by less than a percentage point. In the two elections combined, the Democratic campaigns garnered about 3,013,000 votes, compared with about 3,015,000 votes for the Republican campaigns—almost a perfect tie, with a net Republican advantage of less than one-twentieth of one percentage point. For any given map—congressional, senate, or assembly—it would be reasonable, then, to expect the number of districts carried by each party to be nearly equal, resulting in a score close to zero.

19. The difference in the number of districts carried by Republican candidates and by Democratic candidates in extremely competitive elections (see explanation in prior paragraph) was 24 for the Senate (in two nearly tied elections, 45 districts carried by Republicans and 21 by Democrats), 52 for the Assembly (in two nearly tied elections, 125 districts carried by Republicans, 73 by Democrats), and 8 for Congress (in two nearly tied elections, 12 districts carried by Republicans, 4 by Democrats).

20. In 2014, a good year for Republican candidates in Wisconsin (and nationally), the Republican candidate for State Treasurer won statewide by 4.1 percentage points. In 2018, a good year for Democrats, the Democratic

candidate for State Treasurer won, also by 4.1 points. Neither election featured an incumbent. In a responsive map, a significant fraction of districts would be expected to swing, to reflect this 8.2-point shift in votes.

21. The number of districts that swung from one party to another in paired elections (see explanation in the prior paragraph) for the Assembly was 4 (59 were won by Republicans in both elections, 36 by Democrats, 4 changed hands). For the Senate, the number of districts that swung from one party to another in paired elections was 0 (21 swing districts were won by Republicans in both elections, 12 by Democrats, 0 changed hands). For Congress, the number of districts that swung from one party to another in paired elections was 0 (5 districts were won by Republicans in both elections, 3 by Democrats, 0 changed hands).

#### **WISCONSIN ELECTIONS COMMISSION RESPONDENT**

1. Meagan Wolfe serves as WEC's administrator and Wisconsin's chief elections officer and is generally responsible for managing WEC's programs, staff, and budget. Wolfe believes, based on her experience, that the new redistricting plan must be in place by March 1, 2022—45 days before the circulation of nomination papers begins on April 15, 2022—to give WEC staff

time to complete its necessary tasks, including recording the new boundaries in WisVote, integrating the new redistricting data with existing voter registration and address data, manually reviewing ward map changes and parcel boundary data, and conducting basic quality assurance checks on the data.

**GOVERNOR EVERS INTERVENOR-RESPONDENT**

1. The Governor has a joint role with the Legislature in redistricting. “[L]egislative districts of the state of Wisconsin cannot be apportioned without the joint action of the legislature and the governor.” *State ex rel. Reynolds v. Zimmerman*, 22 Wis. 2d 544, 559, 126 N.W.2d 551 (1964).

2. The Governor agrees that many of the facts about redistricting principles and partisan advantage must be part of this case, but the parties have not reached an agreement on including those facts. Some of those relevant facts are listed by other parties in the contested facts section and are not repeated here.

**SENATOR BEWLEY INTERVENOR-RESPONDENT**

1. The Senate Democratic Caucus and its members have been restricted from receiving the legal advice and participating in attorney-client

communications with the attorneys representing the intervening party described as the “Wisconsin Legislature” in this matter and surrounding redistricting generally. Consequently, the views and interests presented as those of the “Wisconsin Legislature” are only those of the Republican caucuses of that bicameral body, and do not represent the views and interests of the Senate Democratic Caucus.

Dated this 4th day of November, 2021.

Respectfully Submitted,

*Electronically signed by Anthony LoCoco*

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## **EXHIBIT A**

## EXHIBIT A

Existing Act 43 Assembly Districts with 2020 Population  
*Source:* <https://drawyourdistrict.legis.wisconsin.gov/ProposedMaps>

<b>Assembly District</b>	<b>Persons</b>	<b>Deviation</b>	<b>Dev. %</b>
1	59,834	301	0.51%
2	62,808	3,275	5.50%
3	61,884	2,351	3.95%
4	58,716	-817	-1.37%
5	67,155	7,622	12.80%
6	57,397	-2,136	-3.59%
7	59,382	-151	-0.25%
8	53,999	-5,534	-9.30%
9	57,312	-2,221	-3.73%
10	52,628	-6,905	-11.60%
11	54,185	-5,348	-8.98%
12	56,419	-3,114	-5.23%
13	61,779	2,246	3.77%
14	60,136	603	1.01%
15	57,145	-2,388	-4.01%
16	53,739	-5,794	-9.73%
17	55,343	-4,190	-7.04%
18	52,987	-6,546	-11.00%
19	62,056	2,523	4.24%
20	56,812	-2,721	-4.57%
21	58,547	-986	-1.66%
22	60,940	1,407	2.36%
23	60,776	1,243	2.09%
24	60,737	1,204	2.02%
25	57,986	-1,547	-2.60%
26	58,693	-840	-1.41%
27	59,311	-222	-0.37%
28	59,274	-259	-0.44%
29	61,746	2,213	3.72%
30	62,735	3,202	5.38%
31	59,955	422	0.71%
32	59,397	-136	-0.23%
33	58,509	-1,024	-1.72%

34	60,803	1,270	2.13%
35	56,431	-3,102	-5.21%
36	57,713	-1,820	-3.06%
37	61,151	1,618	2.72%
38	61,645	2,112	3.55%
39	58,190	-1,343	-2.26%
40	57,150	-2,383	-4.00%
41	57,738	-1,795	-3.02%
42	58,372	-1,161	-1.95%
43	59,504	-29	-0.05%
44	58,605	-928	-1.56%
45	57,664	-1,869	-3.14%
46	65,087	5,554	9.33%
47	63,653	4,120	6.92%
48	63,758	4,225	7.10%
49	57,952	-1,581	-2.66%
50	58,713	-820	-1.38%
51	56,867	-2,666	-4.48%
52	59,848	315	0.53%
53	58,689	-844	-1.42%
54	57,273	-2,260	-3.80%
55	61,992	2,459	4.13%
56	64,544	5,011	8.42%
57	57,966	-1,567	-2.63%
58	59,053	-480	-0.81%
59	58,160	-1,373	-2.31%
60	59,344	-189	-0.32%
61	59,987	454	0.76%
62	58,422	-1,111	-1.87%
63	59,792	259	0.44%
64	57,846	-1,687	-2.83%
65	57,248	-2,285	-3.84%
66	56,026	-3,507	-5.89%
67	60,512	979	1.64%
68	61,863	2,330	3.91%
69	57,133	-2,400	-4.03%
70	58,313	-1,220	-2.05%
71	57,827	-1,706	-2.87%
72	57,669	-1,864	-3.13%
73	58,507	-1,026	-1.72%

74	59,010	-523	-0.88%
75	58,752	-781	-1.31%
76	71,716	12,183	20.46%
77	62,918	3,385	5.69%
78	66,838	7,305	12.27%
79	70,111	10,578	17.77%
80	65,735	6,202	10.42%
81	59,944	411	0.69%
82	59,749	216	0.36%
83	58,770	-763	-1.28%
84	59,529	-4	-0.01%
85	58,645	-888	-1.49%
86	60,488	955	1.60%
87	57,052	-2,481	-4.17%
88	62,916	3,383	5.68%
89	60,143	610	1.02%
90	57,912	-1,621	-2.72%
91	59,374	-159	-0.27%
92	59,336	-197	-0.33%
93	60,723	1,190	2.00%
94	62,060	2,527	4.24%
95	58,724	-809	-1.36%
96	58,372	-1,161	-1.95%
97	56,595	-2,938	-4.94%
98	61,423	1,890	3.17%
99	57,551	-1,982	-3.33%

## **EXHIBIT B**

## EXHIBIT B

Existing Act 43 Senate Districts with 2020 Population  
*Source:* <https://drawyourdistrict.legis.wisconsin.gov/ProposedMaps>

Senate District	Persons	Deviation	Dev. %
1	184,526	5,928	3.32%
2	183,268	4,670	2.61%
3	170,693	-7,905	-4.43%
4	163,232	-15,366	-8.60%
5	179,060	462	0.26%
6	162,069	-16,529	-9.25%
7	177,415	-1,183	-0.66%
8	182,453	3,855	2.16%
9	175,990	-2,608	-1.46%
10	183,755	5,157	2.89%
11	177,861	-737	-0.41%
12	174,947	-3,651	-2.04%
13	180,986	2,388	1.34%
14	173,260	-5,338	-2.99%
15	175,773	-2,825	-1.58%
16	192,498	13,900	7.78%
17	173,532	-5,066	-2.84%
18	175,810	-2,788	-1.56%
19	184,502	5,904	3.31%
20	176,557	-2,041	-1.14%
21	178,201	-397	-0.22%
22	171,120	-7,478	-4.19%
23	179,508	910	0.51%
24	173,809	-4,789	-2.68%
25	176,269	-2,329	-1.30%
26	201,472	22,874	12.81%
27	195,790	17,192	9.63%
28	178,048	-550	-0.31%
29	176,185	-2,413	-1.35%
30	180,971	2,373	1.33%
31	179,433	835	0.47%
32	179,156	558	0.31%
33	175,569	-3,029	-1.70%

## **EXHIBIT C**

## **EXHIBIT C**

Existing Act 44 Congressional Districts with 2020 Population  
*Source:* <https://drawyourdistrict.legis.wisconsin.gov/ProposedMaps>

<b>Congressional District</b>	<b>Persons</b>	<b>Deviation</b>	<b>Dev. %</b>
1	727,378	-9,337	-1.27%
2	789,396	52,681	7.15%
3	733,633	-3,082	-0.42%
4	695,395	-41,320	-5.61%
5	735,655	-1,060	-0.14%
6	727,761	-8,954	-1.22%
7	732,533	-4,182	-0.57%
8	751,967	15,252	2.07%