

STATE OF WISCONSIN  
SUPREME COURT

---

SCOTT R. JENSEN, personally and as  
Speaker of the Wisconsin Assembly and  
MARY E. PANZER, personally and as  
Minority Leader of the Wisconsin Senate,

Petitioners,

v.

Case No. 02-0057-0A

WISCONSIN ELECTIONS BOARD, an  
independent agency of the State of Wisconsin;  
JERALYN WENDELBERGER, its chairman;  
and each of its members in his or her official  
capacity, DAVID HALBROOKS, R. J.  
JOHNSON, JOHN P. SAVAGE, JOHN C.  
SCHOBBER, STEVEN V. PONTO, BRENDA  
LEWISON, CHRISTINE WISEMAN and  
KEVIN J. KENNEDY, its executive director,

Respondents.

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APPENDIX OF  
INTERVENORS' MEMORANDUM OF LAW  
IN SUPPORT OF THEIR MOTION TO INTERVENE

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

REV. OLEN ARRINGTON, JR, ALVIN BALDUS,  
STEPHEN H. BRAUNGINN, JOHN D. BUENKER,  
ROBERT J. CORNELL, V. JANET CZUPER,  
LEVENS DE BACK, STEVEN P. DOYLE,  
ANTHONY S. EARL, JAMES A. EVANS, DAGOBERTO  
IBARRA, JOHN H. KRAUSE, SR., JOSEPH  
J. KREUSER, FRANK L. NIKOLAY, MELANIE R.  
SCHALLER, ANGELA W. SUTKIEWICZ, and  
OLLIE THOMPSON,

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CLERK

REYNOLDS

Plaintiffs,

Civil Action  
File No.

v.

01 - C - 0121

ELECTIONS BOARD, an independent agency of the  
State of Wisconsin; JOHN P. SAVAGE, its chairman;  
and each of its members in his or her official capacity, DAVID  
HALBROOKS, DON M. MILLIS, RANDALL NASH,  
GREGORY J. PARADISE, CATHERINE SHAW, JUDD  
DAVID STEVENSON, CHRISTINE WISEMAN and  
KEVIN J. KENNEDY, its executive director;

Defendants.

COMPLAINT

The plaintiffs, for their complaint in this matter under 42 U.S.C. § 1983 and 28  
U.S.C. § 2284(a), allege that:

1. This is an action for a declaratory judgment and for injunctive relief,  
involving the rights of the plaintiffs under the U.S. Constitution and federal statute and  
the apportionment of the nine congressional districts in the State of Wisconsin pursuant  
to state law, which has been rendered unconstitutional by the 2000 census. The case

arises under the U.S. Constitution, Article I, § 2, and the Fourteenth Amendment, §§ 1, 2 and 5, and under 42 U.S.C. §§ 1983 and 1988, and the Voting Rights Act, 42 U.S.C. § 1973.

### **JURISDICTION**

2. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1343(a)(3) and (4), 1357 and 2284(a) to hear the claims for legal and equitable relief arising under the U.S. Constitution and under federal law. It also has general jurisdiction under 28 U.S.C. §§ 2201 and 2202, the Declaratory Judgments Act, to grant the declaratory relief requested by the plaintiffs.

3. This action challenges the constitutionality of the apportionment of Wisconsin's congressional districts under Chapter 3 of the Wisconsin Statutes, enacted in 1991, Wis. Act 256, based on the 1990 census of the state's population required by the U.S. Constitution.

4. Accordingly, 28 U.S.C. § 2284(a) requires that a district court of three judges be convened to hear the case. In 1982 and 1992, three-judge panels convened pursuant to 28 U.S.C. § 2284 developed redistricting plans for the state legislature in the absence of valid plans adopted by the legislature and enacted with the Governor's approval.

### **VENUE**

5. The venue for this case is properly in this Court under 28 U.S.C. §§ 1391(b) and (e). Six of the defendants reside in the Eastern District of Wisconsin. The Elections Board meets periodically in Milwaukee. In addition, eleven of the individual plaintiffs reside and vote in this district.

## **PARTIES**

### **Plaintiffs**

6. Reverend Olen Arrington, Jr., is a citizen of the United States and of the State of Wisconsin. A resident and registered voter of Kenosha, Kenosha County, Wisconsin, his residence is in the First Congressional District as that district was established by state law in 1991.

7. John D. Buenker is a citizen of the United States and of the State of Wisconsin. A resident and registered voter of Racine, Racine County, Wisconsin, his residence is in the First Congressional District as that district was established by state law in 1991.

8. V. Janet Czuper is a citizen of the United States and of the State of Wisconsin. A resident and registered voter of Racine, Racine County, Wisconsin, her residence is in the First Congressional District as that district was established by state law in 1991.

9. Anthony S. Earl is a citizen of the United States and of the State of Wisconsin. A resident and registered voter of Madison, Dane County, Wisconsin, his residence is in the Second Congressional District as that district was established by state law in 1991.

10. Stephen H. Braunginn is a citizen of the United States and of the State of Wisconsin. A resident and registered voter of Madison, Dane County, Wisconsin, his residence is in the Second Congressional District as that district was established by state law in 1991.

11. Alvin Baldus is a citizen of the United States and of the State of Wisconsin. A resident and registered voter of Menomonie, Dunn County, Wisconsin, his residence is in the Third Congressional District as that district was established by state law in 1991.

12. Steven P. Doyle is a citizen of the United State and of the State of Wisconsin. A resident and registered voter of Onalaska, La Crosse County, Wisconsin, his residence is in the Third Congressional District as that district was established by state law in 1991.

13. Levens De Back is a citizen of the United States and of the State of Wisconsin. A resident and registered voter of Franklin, Milwaukee County, Wisconsin, his residence is in the Fourth Congressional District as that district was established by state law in 1991.

14. Dagoberto Ibarra is a citizen of the United States and of the State of Wisconsin. A resident and registered voter of Milwaukee, Milwaukee County, Wisconsin, his residence is in the Fourth Congressional District as that district was established by state law in 1991.

15. Ollie Thompson is a citizen of the United States and of the State of Wisconsin. A resident and registered voter of Milwaukee, Milwaukee County, Wisconsin, his residence is in the Fifth Congressional District as that district was established by state law in 1991.

16. James A. Evans is a citizen of the United States and of the State of Wisconsin. A resident and registered voter of Oshkosh, Winnebago County, Wisconsin,

his residence is in the Sixth Congressional District as that district was established by state law in 1991.

17. Frank L. Nikolay is a citizen of the United States and of the State of Wisconsin. A resident and registered voter of Abbotsford, Clark County, Wisconsin, his residence is in the Seventh Congressional District as that district was established by state law in 1991.

18. Melanie R. Schaller is a citizen of the United States and of the State of Wisconsin. A resident and registered voter of Chippewa Falls, Chippewa County, Wisconsin, her residence is in the Seventh Congressional District as that district was established by state law in 1991.

19. Robert J. Cornell is a citizen of the United States and of the State of Wisconsin. A resident and registered voter of De Pere, Brown County, Wisconsin, his residence is in the Eighth Congressional District as that district was established by state law in 1991.

20. Joseph J. Kreuser is a citizen of the United States and of the State of Wisconsin. A resident and registered voter of Menomonee Falls, Waukesha County, Wisconsin, his residence is in the Ninth Congressional District as that district was established by state law in 1991.

21. John H. Krause, Sr., is a citizen of the United States and of the State of Wisconsin. A resident and registered voter of Germantown, Washington County, Wisconsin, his residence is in the Ninth Congressional District as that district was established by state law in 1991.

22. Angela W. Sutkiewicz is a citizen of the United States and of the State of Wisconsin. A resident and registered voter of Sheboygan, Sheboygan County, Wisconsin, her residence is in the Ninth Congressional District as that district was established by state law in 1991.

#### **Defendants**

23. The Elections Board (the "Board") is an independent agency of the State of Wisconsin created by the legislature in § 15.61, Wis. Stats. It has eight members, including a chairman, each of whom has been named individually and as members of the Board as a defendant. The Board's offices are at 132 East Wilson Street, Suite 300, Madison, Wisconsin, 53703, and it meets periodically in Madison and in Milwaukee.

24. The Board has "general authority" over and the "responsibility for the administration of... [the state's] laws relating to elections and election campaigns," § 5.05(1), Wis. Stats., including the election every two years of Wisconsin's representatives in the U.S. House of Representatives. Among its statutory responsibilities, the Board must notify each county clerk under §§ 10.01(2)(a) and 10.72, Wis. Stats., of the date of the primary and general elections and the offices to be filled at those elections by the county's voters. Later, the Board must transmit to each county clerk a certified list of congressional candidates for whom the voters of that county may vote. The Board also issues certificates of election under § 7.70(5), Wis. Stats., to the U.S. House of Representatives and to the candidates elected to serve in it.

25. The Board provides support to local units of government and their employees, including the county clerks in each of Wisconsin's 72 counties, in administering and preparing for the election of members of the U.S. House of



Representatives. For purposes of the State's election law, the counties and their clerks act as agents for the State and for the Board.

26. John P. Savage, Milwaukee, Wisconsin, is the Board's chairman. Its seven other members are: David Halbrooks, Milwaukee, Wisconsin; Don M. Millis, Sun Prairie, Wisconsin; Randall Nash, Whitefish Bay, Wisconsin; Gregory J. Paradise, Madison, Wisconsin; Catherine Shaw, Milwaukee, Wisconsin; Judd David Stevenson, Neenah, Wisconsin; and, Christine Wiseman, Mequon, Wisconsin.

27. Kevin J. Kennedy is the Board's executive director named under § 5.05(1)(a), Wis. Stats. Among his statutory responsibilities, he must attest that the certificates of election issued by the Board are "addressed to the U.S. house of representatives, stating the names of those persons elected as representatives to the congress from this state." § 7.70(5), Wis. Stats.

### FACTS

28. The U.S. Constitution, in Article 1, § 2, provides, in part, that "Representatives shall be apportioned among the several States...according to their respective numbers...." Article 1, § 2, further provides, in part, that "[t]he House of Representatives shall be composed of Members chosen every second Year by the People of the several States...." These provisions, as construed by the U.S. Supreme Court, establish a constitutional guarantee of "one-person, one-vote."

29. Pursuant to 2 U.S.C. § 2a, the President of the United States transmits to Congress, based on the decennial census required by Article I, § 2, "the number of persons in each State" and "the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives...."

30. Under 2 U.S.C. § 2c, "there shall be established by law a number of districts equal to the number of Representatives to which such State is so entitled, and Representatives shall be elected only from districts so established...." For Wisconsin, that number to which the state is "entitled" is now eight, but no such districts have been established by law.

31. From and since 1991, "[b]ased on the certified official results of the 1990 census of population (statewide total: 4,891,769) and the allocation thereunder of congressional representation to this state, the state [has been] divided into 9 congressional districts as nearly equal in population as practicable. Each congressional district, containing approximately 543,530 persons, shall be entitled to elect one representative in the congress of the United States." § 3.001, Wis. Stats. A copy of Chapter 3 of the Wisconsin Statutes, including this provision, is attached as Exhibit A.

32. The 1992 congressional elections and every subsequent biennial congressional election, including the election on November 7, 2000, have been conducted under the district boundaries established by state law in 1991. The next congressional election will take place on November 5, 2002.

33. The Bureau of the Census, U.S. Department of Commerce, conducted a decennial census in 2000 of Wisconsin and of all of the other states under Article I, § 2, of the U.S. Constitution.

34. Under 2 U.S.C. §§ 2a and 2c and 13 U.S.C. § 141(c), the Census Bureau on December 28, 2000 announced and certified the actual enumeration of the apportionment population of Wisconsin at 5,371,210 as of April 1, 2000. A copy of the

Census Bureau's Apportionment Population and Number of Representatives, by state, is attached as Exhibit B.

35. In addition to the population data compiled by the Census Bureau and released on December 28, 2000, the Census Bureau may compile statistically adjusted population data. According to the Bureau, census counts compiled through statistical sampling techniques are significantly more accurate than the actual enumeration determined by the census itself. The statistically adjusted data may be the best census data available.

36. Although the state's resident population, according to the 2000 census, increased by 9.6 percent over the resident population enumerated in the 1990 census, it did not increase as much as did the population in other states. As a result, the state will elect one fewer congressional representative to the U.S. House of Representatives in 2002 than it did in 2000 and, thereafter, the state will have one fewer congressional representative for at least the next 10 years – eight, that is, instead of nine.

37. Based on official population estimates, population shifts during the last decade have generated substantial inequality among Wisconsin's nine existing congressional districts, whose estimated populations now range from a low of roughly 512,145 (the Fifth Congressional District) to a high of roughly 642,712 (the Ninth Congressional District). Thus, the total population deviation, from the most populous to the least populous district, is approximately 130,000 persons.

38. The existing malapportionment of congressional districts in Wisconsin dilutes the voting strength of the plaintiffs residing in relatively overpopulated congressional districts: the relative weight or value of each plaintiff's vote is, by

definition, less than that of any voter residing in a relatively underpopulated congressional district.

39. The Wisconsin legislature has the primary responsibility – under Article I, §§ 2 and 4, and the Fourteenth Amendment, § 2, of the U.S. Constitution, under 2 U.S.C. § 2c, and under the Wisconsin Constitution – to enact a constitutionally valid plan establishing the boundaries for the state's congressional districts after reducing the number of those districts from nine to eight based on the state's 2000 population. To establish new congressional districts, legislation must be passed by both the state senate and the assembly and signed by the Governor.

40. For the 2001-2002 legislative session, which began on January 3, 2001, there are 18 Democratic and 15 Republican members of the Wisconsin State Senate and 56 Republican and 43 Democratic members of the Wisconsin State Assembly.

41. Under §§ 10.01(2)(a) and 10.72(1), Wis. Stats., the Board must notify the county clerks by May 14, 2002 of the offices, including representatives in Congress, which the electors of each county will fill by voting in the primary and general elections. In addition, candidates for Congress must file their petitions for nomination with the Board on or before July 9, 2002 under § 10.72(3)(c), Wis. Stats.

#### **CLAIMS FOR RELIEF**

42. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 41 above.

43. Shifts in population and population growth have rendered the nine congressional districts established by law in 1991 no longer "as equal in population as practicable" as required by the U.S. Constitution.

- A. The population variations between and among the districts are substantial.
- B. The plaintiffs who reside in the 1<sup>st</sup>, 2<sup>nd</sup>, 6<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Congressional Districts, based on the current district lines, are particularly underrepresented in comparison with the residents of other districts.

44. In addition to the malapportionment described above, the absolute reduction in the number of congressional representatives – from nine to eight (the fewest since 1870) – for Wisconsin in the U.S. House of Representatives renders the state malapportioned and its citizens misrepresented.

45. If not otherwise enjoined or directed, the Board will carry out its statutory responsibilities involving congressional elections based on the nine congressional districts, now constitutionally invalid, established by law in 1991. There are no other statutorily- or judicially- defined districts.

46. The state legislature will be unable, on information and belief, to create a constitutionally valid plan of apportionment before the Board's deadlines for the 2002 elections. Because of the partisan division between the senate and assembly, with each party controlling one legislative body, there is no reasonable prospect for a timely redistricting.

47. The malapportionment described above violates the rights of the plaintiffs (and others) under Article I, § 2 and the Equal Protection Clause of the U.S. Constitution to a vote for a member of Congress and to representation in Congress equal to the vote and representation of every other citizen.

48. The facts alleged above constitute a violation of the privileges and immunities of citizenship guaranteed to the plaintiffs by the Privileges or Immunities Clause of the Fourteenth Amendment, § 1, of the U.S. Constitution.

49. The facts alleged above constitute a violation of 2 U.S.C. § 2c because the number of congressional districts established by Wisconsin law no longer equals the number of representatives to which the state is entitled by federal law and the U.S. Constitution.

50. Without redistricting, any elections conducted under the Board's supervision will deprive the individual plaintiffs of their civil rights under color of state law in violation of 42 U.S.C. §§ 1983 and 1988. In addition, the facts alleged above constitute a violation of the Voting Right Act, 42 U.S.C. § 1973.

51. The malapportionment of the state's congressional districts harms the plaintiffs (and others). Until valid redistricting occurs, they cannot know in which congressional district they will reside and vote, nor do they have the ability to hold their congressional representative prospectively accountable for his or her conduct in office:

- A. Citizens who desire to influence the views of members of Congress or candidates for that office are not able to communicate their concerns effectively as citizens because members of Congress or candidates may not be held accountable to those citizens as voters in the next election;
- B. Potential candidates for Congress will not come forward until they know the borders of the districts in which they, as residents of the district, could seek office;

- C. Citizens who desire to communicate with and contribute financially to a candidate for Congress who will represent them, a right guaranteed by the First Amendment, are hindered from doing so until districts are correctly apportioned; and,
- D. Citizens' rights are compromised because of the inability of candidates to campaign effectively and provide a meaningful election choice.

52. The division between the parties in the state legislature, as described above, creates a substantial likelihood that these harms will continue, on information and belief, unless resolved judicially.

#### **RELIEF SOUGHT**

WHEREFORE, the plaintiffs ask that the Court:

1. Immediately request that Hon. Joel M. Flaum, Chief Judge of the U.S. Court of Appeals for the Seventh Circuit, designate two other judges to form a three-judge panel under 28 U.S.C. § 2284(a);
2. Promptly declare the apportionment of Wisconsin's nine congressional districts in Chapter 3 of the Wisconsin Statutes, established by law in 1991 based on the 1990 census, unconstitutional and invalid and the maintenance of those districts a violation of plaintiffs' rights under the U.S. Constitution and federal law;
3. Enjoin the defendants and the Board's employees and agents, including the county clerks in each of Wisconsin's 72 counties, from administering, from preparing for, and from in any way permitting the nomination or election of members of the U.S.

House of Representatives from the nine unconstitutional districts that now exist in Wisconsin;

4. In the absence of a state law, adopted by the legislature and signed by the Governor in a timely fashion to replace Chapter 3 of the Wisconsin Statutes, establish a judicial plan of apportionment to make the state's eight new congressional districts as nearly equal in population as practicable and to meet the requirements of the U.S. Constitution and federal law;

5. Order that any redistricting plan govern the actions of the defendants and the nomination and election of members of the U.S. House of Representatives, beginning with the 2002 primary election or any earlier special election, unless and until a constitutional plan of apportionment has been by law adopted by the legislature and signed by the Governor;

6. Award the plaintiffs their costs, disbursements, and reasonable attorneys' fees incurred in bringing this action; and,



7. Grant such other relief as the Court deems proper.

Dated: February 1, 2001.



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## CHAPTER 3

### CONGRESSIONAL DISTRICTS

- 3.001 Nine congressional districts.  
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**3.001 Nine congressional districts.** Based on the certified official results of the 1990 census of population (statewide total: 4,891,769) and the allocation thereunder of congressional representation to this state, the state is divided into 9 congressional districts as nearly equal in population as practicable. Each congressional district, containing approximately 543,530 persons, shall be entitled to elect one representative in the congress of the United States.

History: 1981 c. 154; 1991 a. 256.

**3.002 Description of territory.** In this chapter:

- (1) "Ward" has the meaning given in s. 4.002.
- (2) Wherever territory is described by geographic boundaries, such boundaries follow the conventions set forth in s. 4.003.

History: 1981 c. 154; 1983 a. 29; 1991 a. 256.

**3.003 Territory omitted from congressional redistricting.** In case any town, village or ward in existence on the effective date of a congressional redistricting act has not been included in any congressional district, such town, village or ward shall be a part of the congressional district by which it is surrounded or, if it falls on the boundary between 2 or more districts, of the adjacent congressional district having the lowest population according to the federal census upon which the redistricting act is based.

History: 1981 c. 154.

**3.01 First congressional district.** The following territory shall constitute the 1st congressional district:

(1) **WHOLE COUNTIES.** The counties of Kenosha, Racine, Rock and Walworth.

(2) **GREEN COUNTY.** That part of the county of Green consisting of:

(a) The towns of Albany, Brooklyn, Decatur, Exeter, Jefferson, Spring Grove and Sylvester;

(b) That part of the town of Mount Pleasant comprising ward 1;

(c) The villages of Albany and Monticello;

(d) That part of the village of Brooklyn located in the county; and

(e) The city of Brodhead.

(3) **JEFFERSON COUNTY.** That part of the county of Jefferson consisting of:

(a) That part of the town of Koshkonong comprising ward 1;

(b) That part of the town of Palmyra comprising ward 2; and

(c) That part of the city of Whitewater located in the county.

(4) **WAUKESHA COUNTY.** That part of the county of Waukesha consisting of:

(a) That part of the town of Mukwonago comprising wards 1, 2, 3, 6, 7 and 8;

(b) That part of the town of Vernon comprising wards 2 and 4; and

(c) The village of Mukwonago.

History: 1981 c. 154; 1991 a. 256; 1995 a. 225.

**3.02 Second congressional district.** The following territory shall constitute the 2nd congressional district:

(1) **WHOLE COUNTIES.** The counties of Columbia, Dane, Iowa, Lafayette, Richland and Sauk.

(2) **DODGE COUNTY.** That part of the county of Dodge consisting of:

(a) The towns of Elba, Fox Lake, Portland, Shields, Trenton and Westford;

(b) That part of the town of Calamus comprising ward 1;

(c) That part of the village of Randolph located in the county;

(d) The city of Fox Lake; and

(e) That part of the city of Columbus located in the county.

(3) **GREEN COUNTY.** That part of the county of Green consisting of:

(a) The towns of Adams, Cadiz, Clarno, Jordan, Monroe, New Glarus, Washington and York;

(b) That part of the town of Mount Pleasant comprising ward 2;

(c) The villages of Browntown and New Glarus;

(d) That part of the village of Belleville located in the county; and

(e) The city of Monroe.

(4) **JEFFERSON COUNTY.** That part of the county of Jefferson consisting of that part of the city of Waterloo comprising wards 1, 2 and 3.

History: 1981 c. 154; 1991 a. 256; 1995 a. 225.

**3.03 Third congressional district.** The following territory shall constitute the 3rd congressional district:

(1) **WHOLE COUNTIES.** The counties of Barron, Buffalo, Crawford, Dunn, Grant, Jackson, La Crosse, Pepin, Pierce, St. Croix, Trempealeau and Vernon.

(2) **CHIPPewa COUNTY.** That part of the county of Chippewa consisting of the town of Edson.

(3) **CLARK COUNTY.** That part of the county of Clark consisting of:

(a) The towns of Beaver, Butler, Dewhurst, Eaton, Foster, Fremont, Grant, Hendren, Hewett, Levis, Loyal, Lynn, Mead, Mentor, Pine Valley, Seif, Sherman, Sherwood, Unity, Warner, Washburn, Weston and York;

(b) The village of Granton; and

(c) The cities of Greenwood, Loyal and Neillsville.

(4) **EAU CLAIRE COUNTY.** That part of the county of Eau Claire consisting of:

(a) The towns of Bridge Creek, Brunswick, Clear Creek, Drammen, Fairchild, Lincoln, Otter Creek, Pleasant Valley, Seymour, Union, Washington and Wilson;

(b) The villages of Fairchild and Fall Creek;

(c) The cities of Altoona and Augusta; and

(d) That part of the city of Eau Claire located in the county.

(5) **MONROE COUNTY.** That part of the county of Monroe consisting of:

EXHIBIT

A

**3.03 CONGRESSIONAL DISTRICTS**

99-00 Wis. Stats. 16

- (a) The towns of Leon, Little Falls, Portland and Sparta; and
- (b) The city of Sparta.
- (6) **POLK COUNTY.** That part of the county of Polk consisting of:
  - (a) The towns of Alden, Black Brook, Clayton, Clear Lake, Farmington, Garfield, Lincoln and Osceola;
  - (b) The villages of Clayton, Clear Lake, Dresser and Osceola; and
  - (c) The city of Amery.

History: 1981 c. 154; 1991 a. 256; 1995 a. 225.

**3.04 Fourth congressional district.** The following territory shall constitute the 4th congressional district:

- (1) **MILWAUKEE COUNTY.** That part of the county of Milwaukee consisting of:
  - (a) The villages of Greendale, Hales Corners and West Milwaukee;
  - (b) The cities of Cudahy, Franklin, Greenfield, Oak Creek, St. Francis, South Milwaukee and West Allis; and
  - (c) That part of the city of Milwaukee south of a line commencing where the East-West freeway (Highway I 94) intersects the western city limits; thence easterly on Highway I 94, downriver along the Menomonee River, upriver along the Milwaukee River, east on E. Juneau Avenue, south on N. Edison Street, east on E. Highland Avenue, southerly on N. Water Street, east on E. Kilbourn Street, south on N. Broadway, east on E. Wisconsin Avenue, north on N. Jefferson Street, east on E. Mason Street, north on N. Jackson Street, west on E. State Street, north on N. Broadway, east on E. Knapp Street, north on N. Jefferson Street, easterly on E. Ogden Avenue, south on N. Van Buren Street, east on E. Juneau Avenue, south on N. Marshall, and east on E. Mason Street and E. Mason Street extended to Lake Michigan.
- (2) **WAUKESHA COUNTY.** That part of the county of Waukesha consisting of:
  - (a) The town of Waukesha;
  - (b) That part of the town of Mukwonago comprising wards 4 and 5;
  - (c) That part of the town of Pewaukee comprising wards 4, 5, 6, 7 and 8;
  - (d) That part of the town of Vernon comprising wards 1, 3, 5, 6, 7, 8, 9 and 10;
  - (e) The village of Big Bend; and
  - (f) The cities of Muskego, New Berlin and Waukesha.

History: 1981 c. 154; 1983 a. 192 s. 303 (5); 1991 a. 256; 1993 a. 213; 1995 a. 225.

**3.05 Fifth congressional district.** The following territory in the county of Milwaukee shall constitute the 5th congressional district:

- (1) The villages of Brown Deer, Fox Point, River Hills, Shorewood and Whitefish Bay;
- (2) That part of the village of Bayside located in the county;
- (3) The cities of Glendale and Wauwatosa; and
- (4) That part of the city of Milwaukee north of a line commencing where the East-West freeway (Highway I 94) intersects the western city limits; thence easterly on Highway I 94, downriver along the Menomonee River, upriver along the Milwaukee River, east on E. Juneau Avenue, south on N. Edison Street, east on E. Highland Avenue, southerly on N. Water Street, east on E. Kilbourn Street, south on N. Broadway, east on E. Wisconsin Avenue, north on N. Jefferson Street, east on E. Mason Street, north on N. Jackson Street, west on E. State Street, north on N. Broadway, east on E. Knapp Street, north on N. Jefferson Street, easterly on E. Ogden Avenue, south on N. Van Buren Street, east on E. Juneau Avenue, south on N. Marshall, and east on E. Mason Street and E. Mason Street extended to Lake Michigan.

History: 1981 c. 154; 1991 a. 256; 1993 a. 213; 1995 a. 225.

**3.06 Sixth congressional district.** The following territory shall constitute the 6th congressional district:

- (1) **WHOLE COUNTIES.** The counties of Adams, Green Lake, Juneau, Marquette, Waupaca, Waushara and Winnebago.
- (2) **BROWN COUNTY.** That part of the county of Brown consisting of:
  - (a) The town of Holland; and
  - (b) That part of the town of Wrightstown comprising ward 3.
- (3) **CALUMET COUNTY.** That part of the county of Calumet consisting of:
  - (a) The towns of Brillion, Brothertown, Charlestown, Chilton, Harrison, New Holstein, Rantoul, Stockbridge and Woodville;
  - (b) The villages of Hilbert, Potter, Sherwood and Stockbridge;
  - (c) The cities of Brillion, Chilton and New Holstein;
  - (d) That part of the city of Kiel located in the county;
  - (e) That part of the city of Menasha located in the county; and
  - (f) That part of the city of Appleton comprising wards 10, 11, 35, 37 and 41.
- (4) **FOND DU LAC COUNTY.** That part of the county of Fond du Lac consisting of:
  - (a) The towns of Alto, Auburn, Byron, Calumet, Eden, Eldorado, Empire, Fond du Lac, Forest, Friendship, Lamartine, Marshfield, Metomen, Oakfield, Osceola, Ripon, Rosendale, Springvale, Taycheedah and Waupun;
  - (b) That part of the town of Ashford comprising ward 1;
  - (c) The villages of Brandon, Campbellsport, Eden, Fairwater, Mount Calvary, North Fond du Lac, Oakfield, Rosendale and St. Cloud;
  - (d) That part of the village of Kewaskum located in the county;
  - (e) The cities of Fond du Lac and Ripon; and
  - (f) That part of the city of Waupun located in the county.
- (5) **MANITOWOC COUNTY.** That part of the county of Manitowoc consisting of:
  - (a) The towns of Cato, Centerville, Eaton, Franklin, Gibson, Kossuth, Liberty, Manitowoc, Manitowoc Rapids, Maple Grove, Meeme, Mishicot, Newton, Rockland, Schleswig, Two Creeks and Two Rivers;
  - (b) That part of the town of Cooperstown comprising ward 2;
  - (c) The villages of Cleveland, Francis Creek, Kellnersville, Maribel, Mishicot, Reedsville, St. Nazianz, Valders and White-law;
  - (d) The cities of Manitowoc and Two Rivers; and
  - (e) That part of the city of Kiel located in the county.
- (6) **MONROE COUNTY.** That part of the county of Monroe consisting of:
  - (a) The towns of Adrian, Angelo, Byron, Clifton, Glendale, Grant, Greenfield, Jefferson, Lafayette, La Grange, Lincoln, New Lyme, Oakdale, Ridgeville, Scott, Sheldon, Tomah, Wellington, Wells and Wilton;
  - (b) The villages of Cashton, Kendall, Melvina, Norwalk, Oakdale, Warrens, Wilton and Wyeville; and
  - (c) The city of Tomah.
- (7) **OUTAGAMIE COUNTY.** That part of the county of Outagamie consisting of:
  - (a) The town of Buchanan; and
  - (b) The villages of Combined Locks, Kimberly and Little Chute.
- (8) **SHEBOYGAN COUNTY.** That part of the county of Sheboygan consisting of:
  - (a) The towns of Greenbush, Lima, Lyndon, Mitchell, Plymouth, Rhine, Russell and Sheboygan Falls;
  - (b) That part of the town of Scott comprising ward 2;

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**CONGRESSIONAL DISTRICTS****3.09**

(c) The villages of Cascade, Elkhart Lake, Glenbeulah and Waldo; and

(d) The city of Plymouth.

History: 1981 c. 154, 155; 1991 a. 256; 1995 a. 225.

**3.07 Seventh congressional district.** The following territory shall constitute the 7th congressional district:

(1) **WHOLE COUNTIES.** The counties of Ashland, Bayfield, Burnett, Douglas, Iron, Lincoln, Marathon, Portage, Price, Rusk, Sawyer, Taylor, Washburn and Wood.

(2) **CHIPPEWA COUNTY.** That part of the county of Chippewa consisting of:

(a) The towns of Anson, Arthur, Auburn, Birch Creek, Bloomer, Cleveland, Colburn, Cooks Valley, Delmar, Eagle Point, Estella, Goetz, Hallie, Howard, Lafayette, Lake Holcombe, Ruby, Sampson, Sigel, Tilden, Wheaton and Woodmohr;

(b) The villages of Boyd and Cadott;

(c) That part of the village of New Auburn located in the county;

(d) The cities of Bloomer, Chippewa Falls, Cornell and Stanley; and

(e) That part of the city of Eau Claire located in the county.

(3) **CLARK COUNTY.** That part of the county of Clark consisting of:

(a) The towns of Colby, Green Grove, Hixon, Hord, Longwood, Mayville, Reseburg, Thorp, Withee and Worden;

(b) The villages of Curtiss, Dorchester and Withee;

(c) That part of the village of Unity located in the county;

(d) The cities of Owen and Thorp;

(e) That part of the city of Abbotsford located in the county; and

(f) That part of the city of Colby located in the county.

(4) **EAU CLAIRE COUNTY.** That part of the county of Eau Claire consisting of the town of Ludington.

(5) **ONEIDA COUNTY.** That part of the county of Oneida consisting of:

(a) The towns of Crescent, Pelican and Woodboro; and

(b) The city of Rhineland.

(6) **POLK COUNTY.** That part of the county of Polk consisting of:

(a) The towns of Apple River, Balsam Lake, Beaver, Bone Lake, Clam Falls, Eureka, Georgetown, Johnstown, Laketown, Lorain, Luck, McKinley, Milltown, St. Croix Falls, Sterling and West Sweden;

(b) The villages of Balsam Lake, Centuria, Frederic, Luck and Milltown;

(c) That part of the village of Turtle Lake located in the county; and

(d) The city of St. Croix Falls.

History: 1981 c. 154; 1991 a. 256; 1995 a. 225.

**3.08 Eighth congressional district.** The following territory shall constitute the 8th congressional district:

(1) **WHOLE COUNTIES.** The counties of Door, Florence, Forest, Kewaunee, Langlade, Marinette, Menominee, Oconto, Shawano and Vilas.

(2) **BROWN COUNTY.** That part of the county of Brown consisting of:

(a) The towns of Bellevue, De Pere, Eaton, Glenmore, Green Bay, Hobart, Humboldt, Lawrence, Morrison, New Denmark, Pittsfield, Rockland, Scott and Suamico;

(b) That part of the town of Wrightstown comprising wards 1 and 2;

(c) The villages of Allouez, Ashwaubenon, Denmark, Howard, Pulaski and Wrightstown; and

(d) The cities of De Pere and Green Bay.

(3) **CALUMET COUNTY.** That part of the county of Calumet consisting of that part of the city of Appleton comprising wards 39 and 40.

(4) **MANITOWOC COUNTY.** That part of the county of Manitowoc consisting of that part of the town of Cooperstown comprising ward 1.

(5) **ONEIDA COUNTY.** That part of the county of Oneida consisting of the towns of Cassian, Enterprise, Hazelhurst, Lake Tomahawk, Little Rice, Lynne, Minocqua, Monico, Newbold, Nokomis, Piehl, Pine Lake, Schoepke, Stella, Sugar Camp, Three Lakes and Woodruff.

(6) **OUTAGAMIE COUNTY.** That part of the county of Outagamie consisting of:

(a) The towns of Black Creek, Bovina, Center, Cicero, Dale, Deer Creek, Ellington, Freedom, Grand Chute, Greenville, Horton, Kaukauna, Liberty, Maine, Maple Creek, Oneida, Osborn, Seymour and Vandenbroek;

(b) The villages of Bear Creek, Black Creek, Hortonville, Nichols and Shiocton;

(c) The cities of Kaukauna and Seymour;

(d) That part of the city of Appleton located in the county; and

(e) That part of the city of New London located in the county.

History: 1981 c. 154, 155; 1991 a. 256; 1995 a. 225.

**3.09 Ninth congressional district.** The following territory shall constitute the 9th congressional district:

(1) **WHOLE COUNTIES.** The counties of Ozaukee and Washington.

(2) **DODGE COUNTY.** That part of the county of Dodge consisting of:

(a) The towns of Ashippun, Beaver Dam, Burnett, Chester, Clyman, Emmet, Herman, Hubbard, Hustisford, Lebanon, Leroy, Lomira, Lowell, Oak Grove, Rubicon, Theresa and Williams-town;

(b) That part of the town of Calamus comprising ward 2;

(c) The villages of Brownsville, Clyman, Hustisford, Iron Ridge, Kekoskee, Lomira, Lowell, Neosho, Reeseville and Theresa;

(d) The cities of Beaver Dam, Horicon, Juneau and Mayville;

(e) That part of the city of Hartford located in the county;

(f) That part of the city of Watertown located in the county; and

(g) That part of the city of Waupun located in the county.

(3) **FOND DU LAC COUNTY.** That part of the county of Fond du Lac consisting of that part of the town of Ashford comprising ward 2.

(4) **JEFFERSON COUNTY.** That part of the county of Jefferson consisting of:

(a) The towns of Aztalan, Cold Spring, Concord, Farmington, Hebron, Ixonia, Jefferson, Lake Mills, Milford, Oakland, Sullivan, Sumner, Waterloo and Watertown;

(b) That part of the town of Koshkonong comprising wards 2, 3, 4 and 5;

(c) That part of the town of Palmyra comprising ward 1;

(d) The villages of Johnson Creek, Palmyra and Sullivan;

(e) That part of the village of Cambridge located in the county;

(f) The cities of Fort Atkinson, Jefferson and Lake Mills;

(g) That part of the city of Watertown located in the county; and

(h) That part of the city of Waterloo comprising wards 4 and 5.

(5) **SHEBOYGAN COUNTY.** That part of the county of Sheboygan consisting of:

(a) The towns of Herman, Holland, Mosel, Sheboygan, Sherman and Wilson;

(b) That part of the town of Scott comprising ward 1;

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(c) The villages of Adell, Cedar Grove, Howards Grove, Kohler, Oostburg and Random Lake; and

(d) The cities of Sheboygan and Sheboygan Falls.

(6) WAUKESHA COUNTY. That part of the county of Waukesha consisting of:

(a) The towns of Brookfield, Delafield, Eagle, Genesee, Lisbon, Merton, Oconomowoc, Ottawa and Summit;

(b) That part of the town of Pewaukee comprising wards 1, 2,

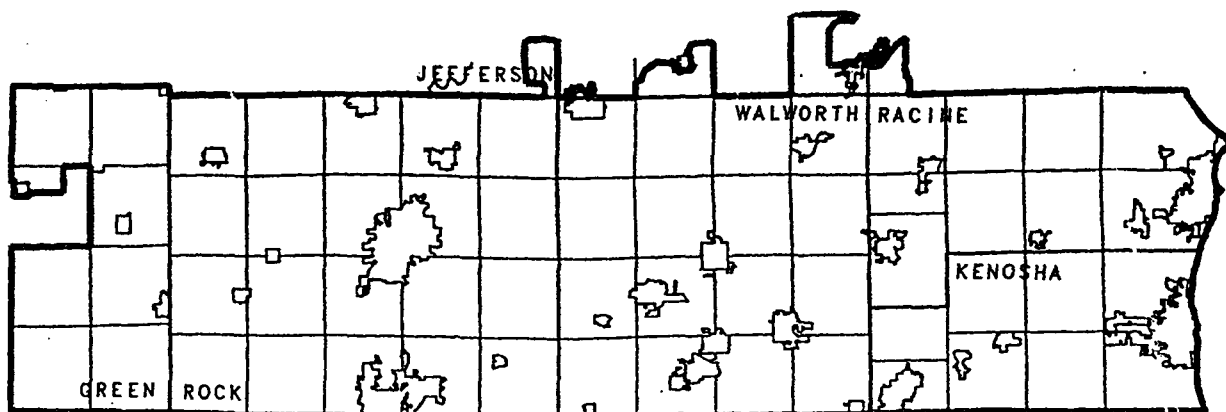
3, 9, 10, 11 and 12;

(c) The villages of Butler, Chenequa, Dousman, Eagle, Elm Grove, Hartland, Lac La Belle, Lannon, Menomonee Falls, Merton, Nashotah, North Prairie, Oconomowoc Lake, Pewaukee, Sussex and Wales;

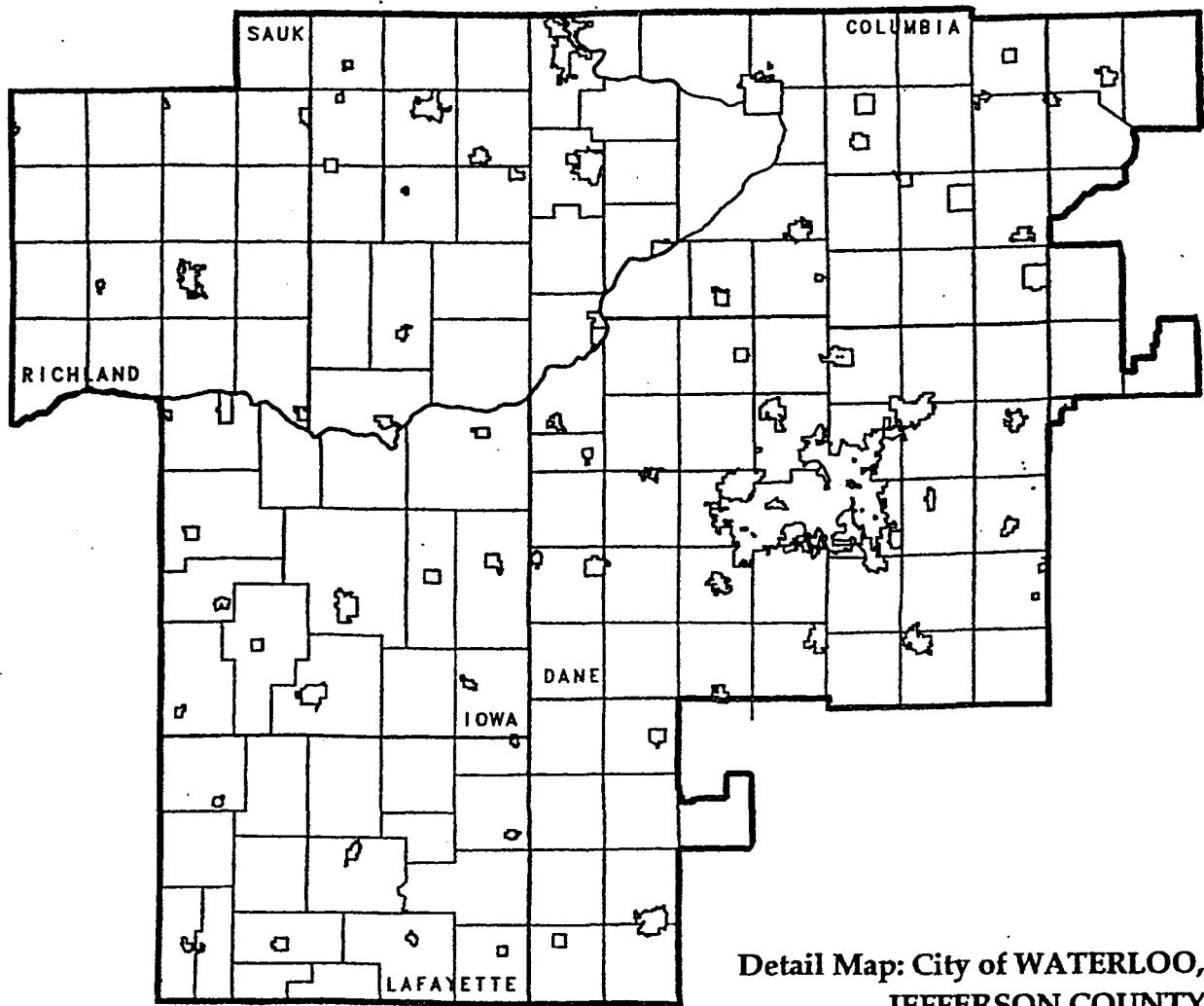
(d) The cities of Brookfield, Delafield and Oconomowoc; and

(e) That part of the city of Milwaukee located in the county.

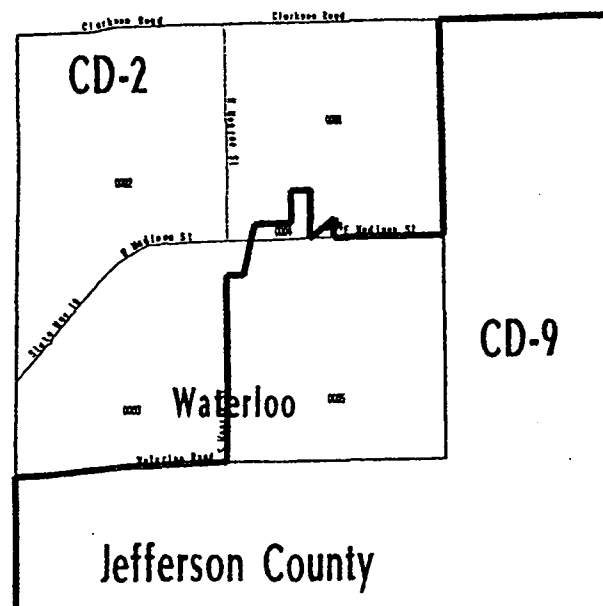
History: 1981 c. 154; 1983 a. 192 s. 303 (5); 1991 a. 256; 1995 a. 225.

**1st CONGRESSIONAL District**

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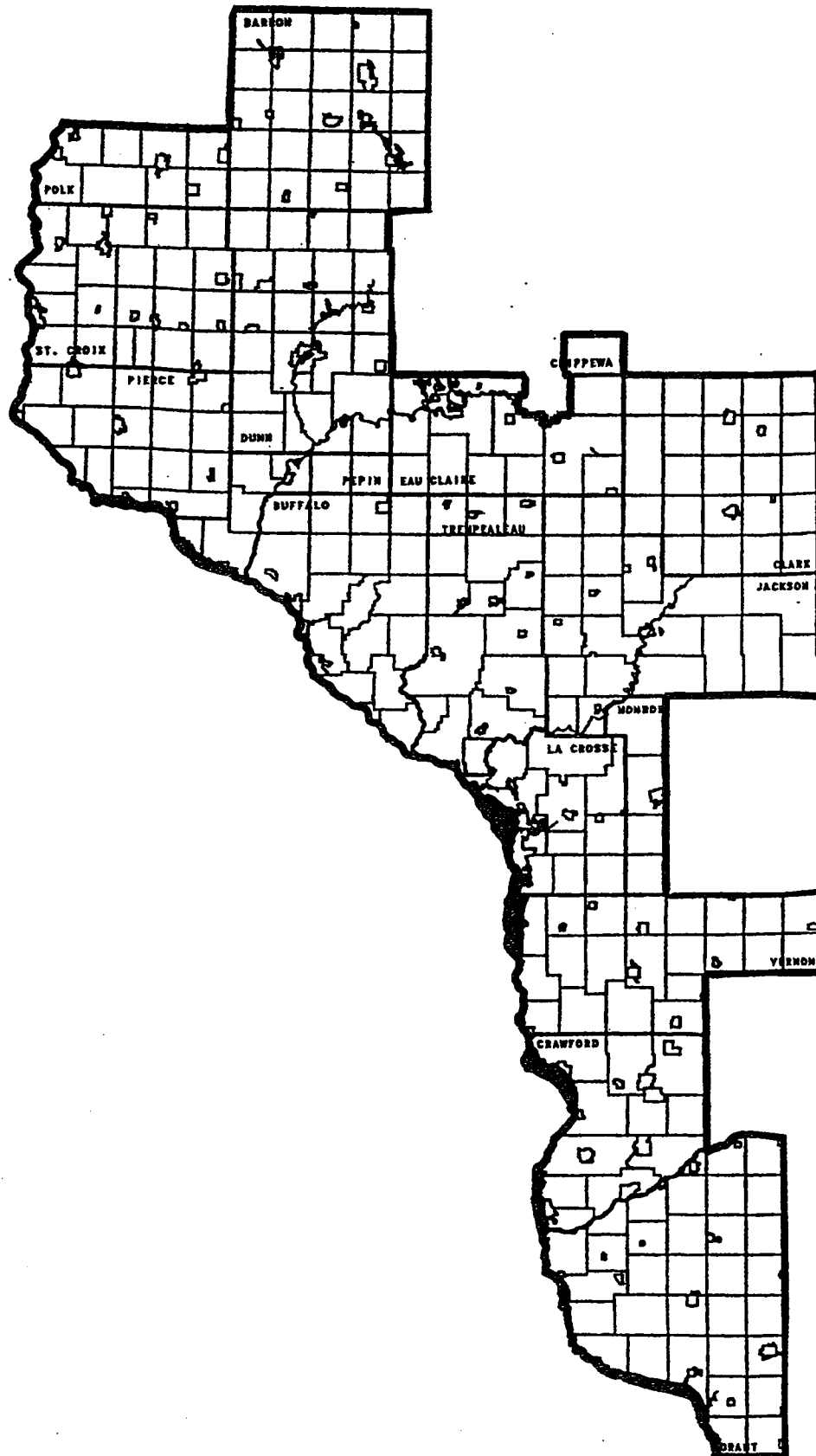
**CONGRESSIONAL DISTRICTS 3.09****2nd CONGRESSIONAL District**

**Detail Map: City of WATERLOO,  
JEFFERSON COUNTY**

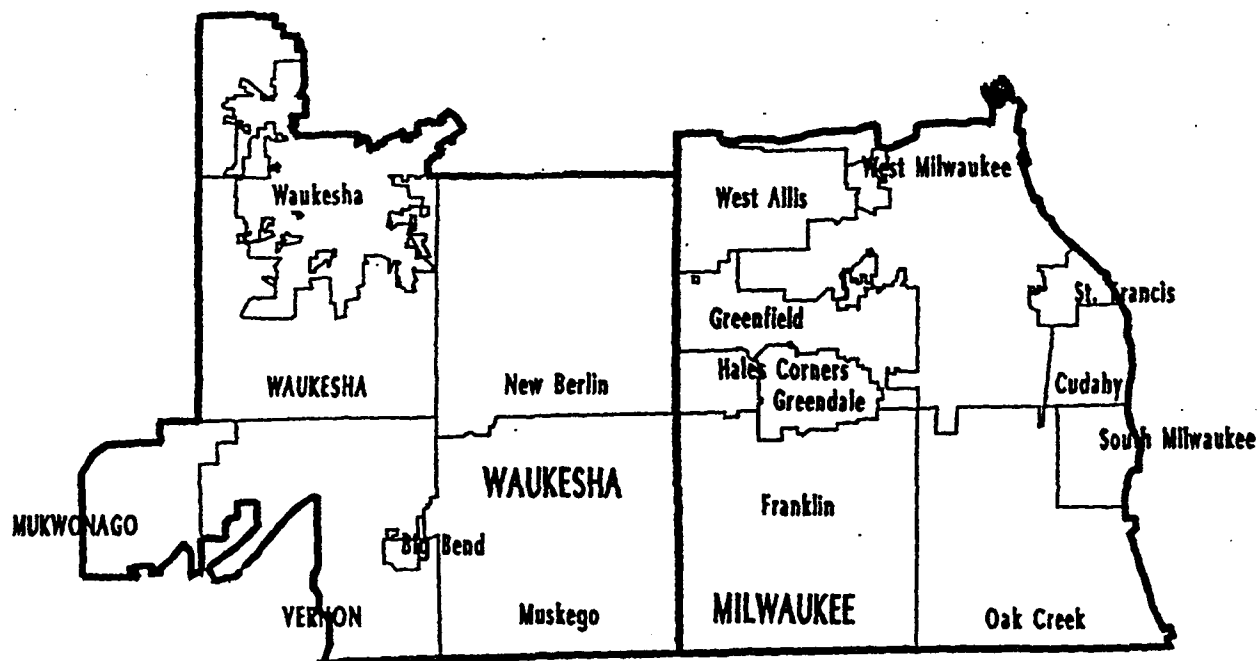
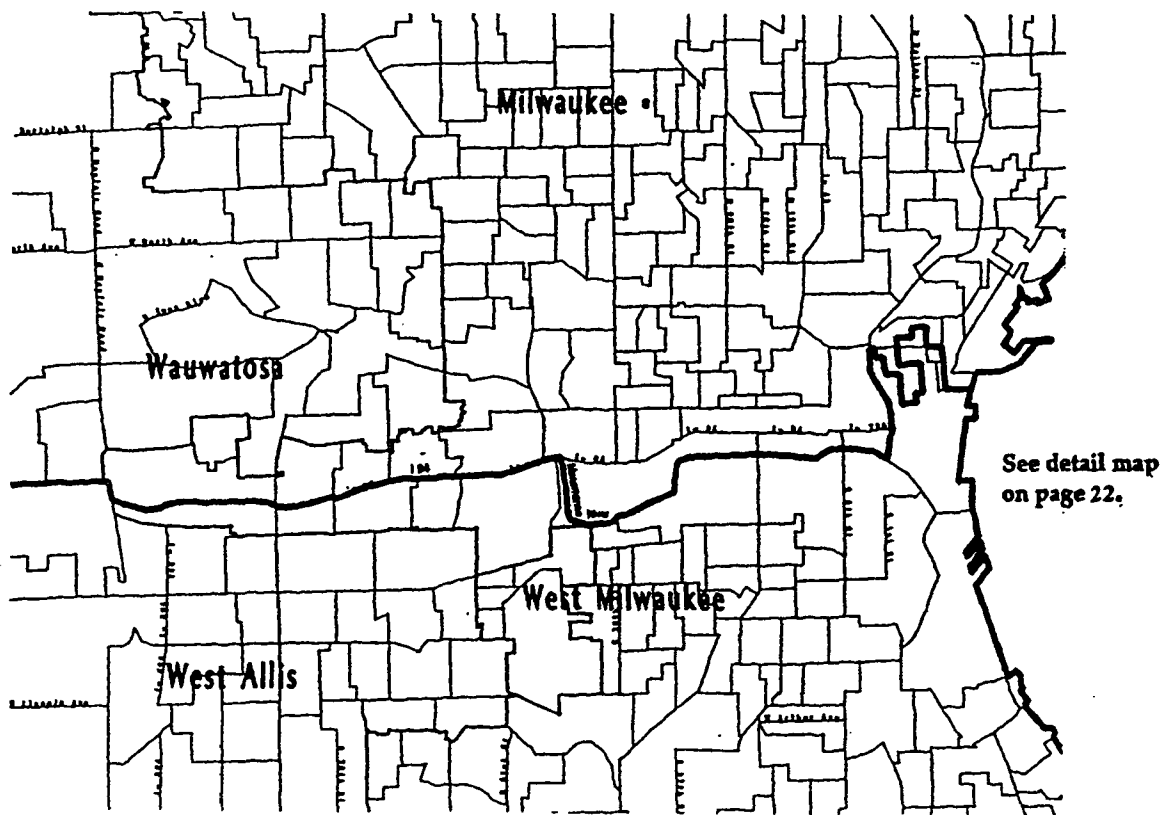


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**3rd CONGRESSIONAL District**

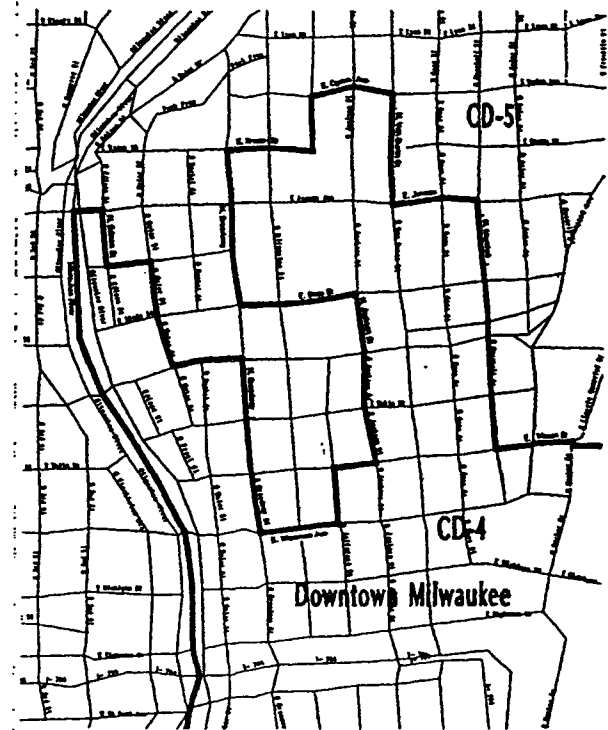
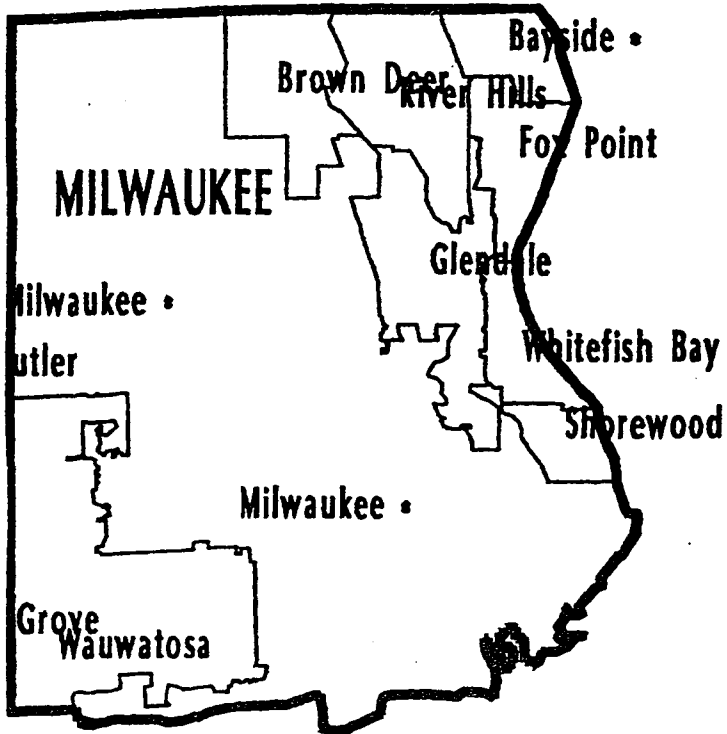
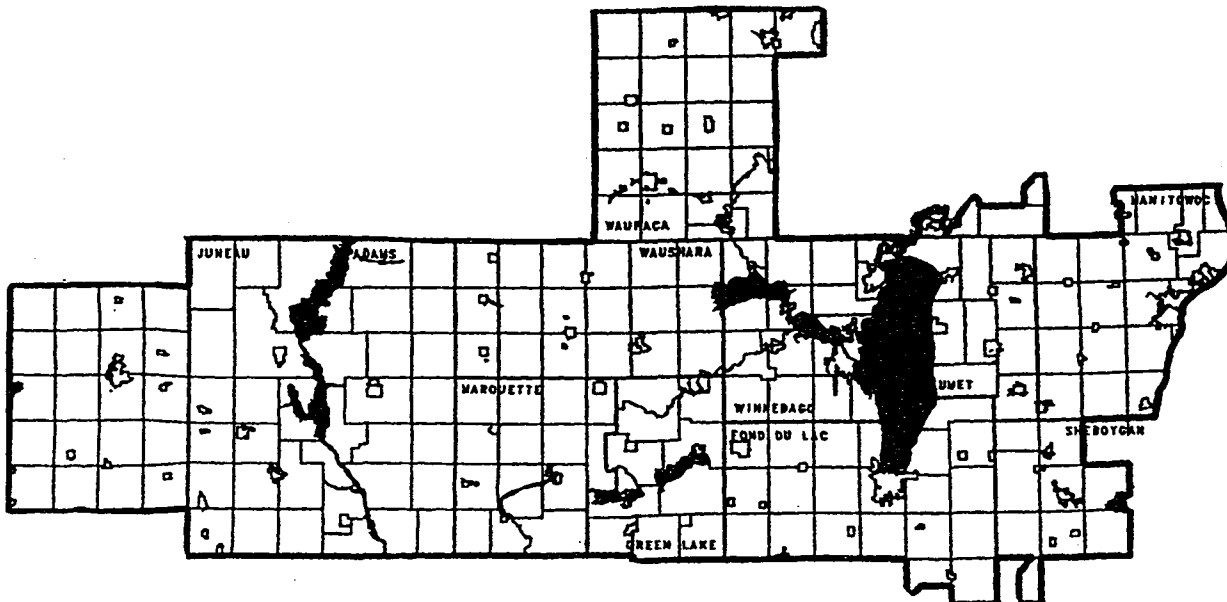
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**CONGRESSIONAL DISTRICTS****3.09****Detail Map: Downtown, MILWAUKEE COUNTY**



**3.09 CONGRESSIONAL DISTRICTS**

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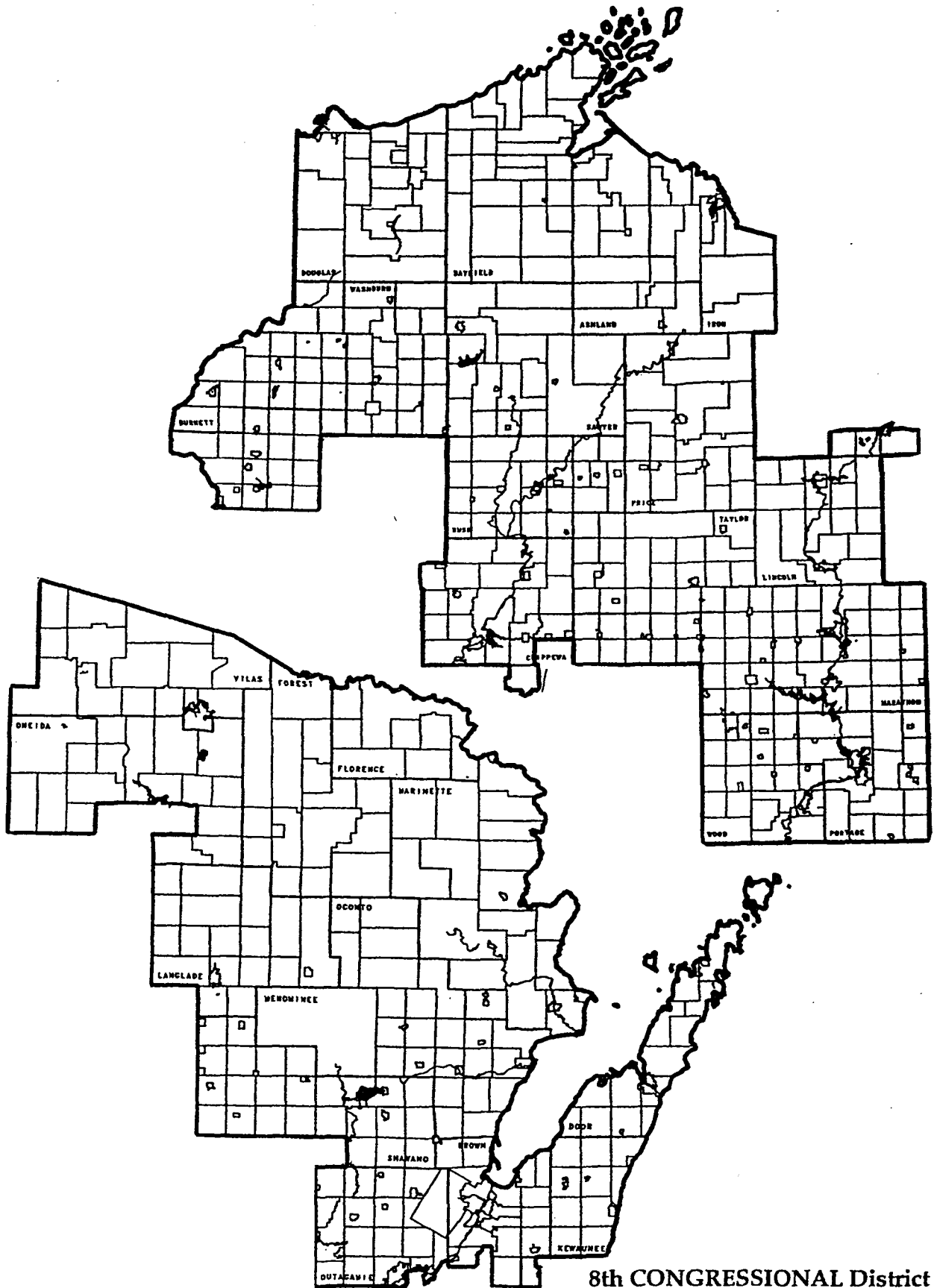
**5th CONGRESSIONAL District****Detail Map: City of MILWAUKEE,  
MILWAUKEE COUNTY****6th CONGRESSIONAL District**

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## CONGRESSIONAL DISTRICTS

3.09

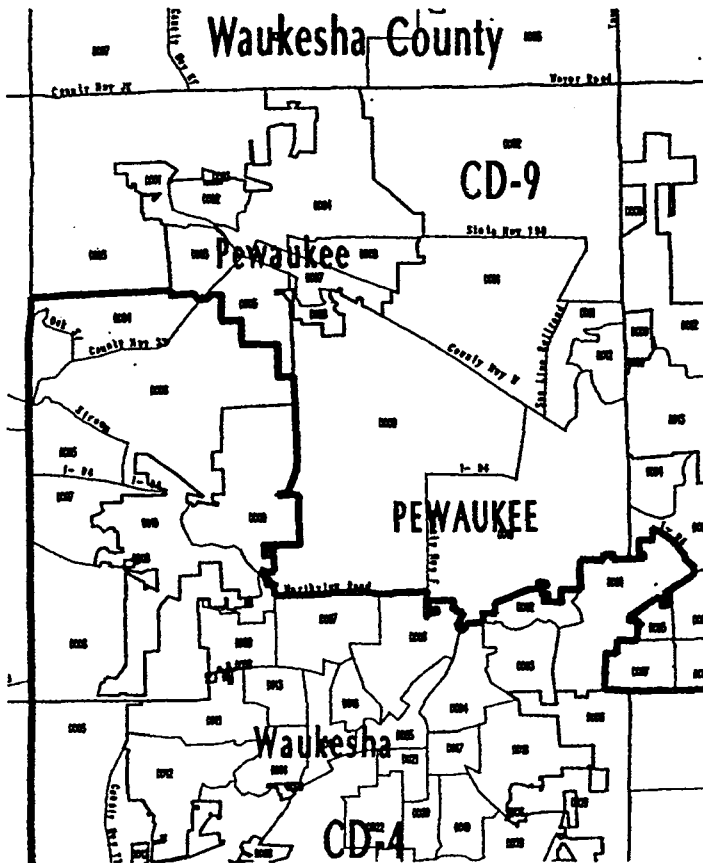
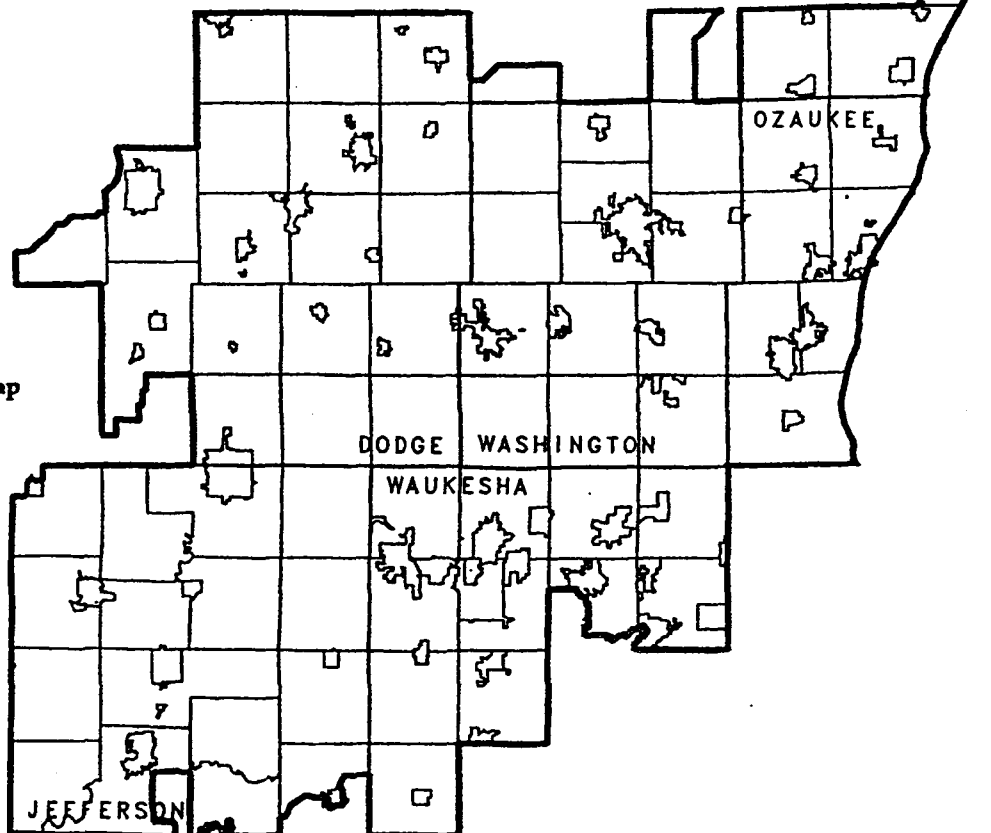
## 7th CONGRESSIONAL District



## 8th CONGRESSIONAL District

**3.09 CONGRESSIONAL DISTRICTS**

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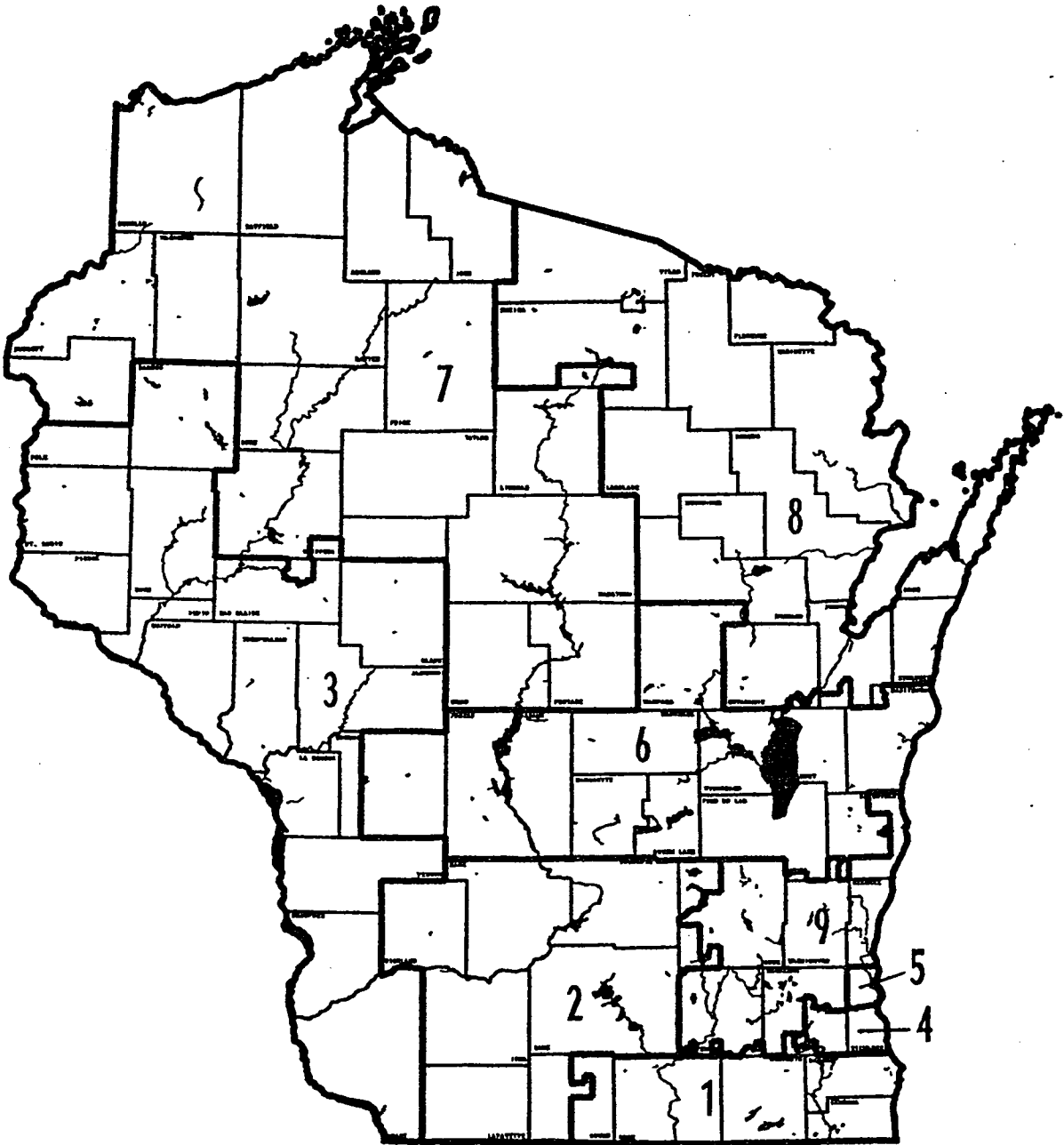
**Detail Map: Town of PEWAUKEE,  
WAUKESHA COUNTY****9th CONGRESSIONAL District**See detail map  
on page 19.

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CONGRESSIONAL DISTRICTS

3.09

## CONGRESSIONAL DISTRICTS



**UNITED STATES DEPARTMENT OF  
COMMERCE  
NEWS**  
WASHINGTON, DC 20230

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CENSUS

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DECEMBER 28, 2000 (THURSDAY)

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CB

Edwin Byerly & Karen Mills (apportionment)  
301-457-2381  
Marc Perry & Campbell Gibson (resident population)  
301-457-2419

**Census 2000 Shows Resident Population of 281,421,906;  
Apportionment Counts Delivered to President**

The Commerce Department's Census Bureau released today the first results from Census 2000, showing the resident population of the United States on April 1, 2000, was 281,421,906, an increase of 13.2 percent over the 248,709,873 persons counted during the 1990 census.

"The participation by the people of this country in Census 2000 not only reversed a three decade decline in response rates, but also played key role in helping produce a quality census," said Commerce Secretary Norman Mineta. Robert Shapiro, under secretary for economic affairs, echoed Mineta. "Consistently on time and under budget, Census 2000 has been the largest and one of the most professional operations run by government," he said, adding that its conduct had "set a standard for future censuses in the 21st century."

The U.S. resident population includes the total number of people in the 50 states and the District of Columbia.

The most populous state in the country was California (33,871,648); the least populous was Wyoming (493,782). The state that gained the most numerically since the 1990 census was California, up 4,111,627. Nevada had the highest percentage growth in population, climbing 66.3 percent (796,424 people) since the last census.

Regionally, the South and West picked up the bulk of the nation's population increase, 14,790,890 and 10,411,850, respectively. The Northeast and Midwest also grew: 2,785,149 and 4,724,144.

Additionally, the resident population of the Commonwealth of Puerto Rico was 3,808,610, an 8.1 percent increase over the number counted a decade earlier.

Prior to this announcement, Mineta, Shapiro and Census Bureau Director Kenneth Prewitt transmitted the Census 2000 apportionment counts to President Clinton three days before the Dec. 31 statutory deadline required by Title 13 of the U.S. Code. (See tables 1-3.)

The apportionment totals transmitted to the President were calculated by a congressionally-defined formula, in accordance with Title 2 of the U.S. Code, to reapportion among the states the 435 seats in the U.S. House of Representatives. The apportionment population consists of the resident population of the 50 states, plus the overseas military and federal



civilian employees and their dependents living with them who could be allocated to a state. Each member of the House represents a population of about 647,000. The populations of the District of Columbia and Puerto Rico are excluded from the apportionment population because they do not have voting seats in the U. S. House of Representatives.

Prewitt noted that since 1790, the first census, "the decennial count has been the basis for our representative form of government. At that time, each member of the House represented about 34,000 residents," Prewitt said. "Since then, the House has more than quadrupled in size, a each member represents about 19 times as many constituents."

President Clinton is scheduled to transmit the apportionment counts to the 107th Congress during the first week of its regular session in January. The reapportioned Congress, which will be the 108th, convenes in January 2003.

-X-

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Table 1. Apportionment Population and Number of Representatives, by State: Census 2000

State	Apportionment Population	Number of Apportioned Representatives Based on Census 2000	Change From 1990 Census Apportionment
Alabama	4,461,130	7	0
Alaska	628,933	1	0
Arizona	5,140,683	8	+2
Arkansas	2,679,733	4	0
California	33,930,798	53	+1
Colorado	4,311,882	7	+1
Connecticut	3,409,535	5	-1
Delaware	785,068	1	0
Florida	16,028,890	25	+2
Georgia	8,206,975	13	+2
Hawaii	1,216,642	2	0
Idaho	1,297,274	2	0
Illinois	12,439,042	19	-1
Indiana	6,090,782	9	-1
Iowa	2,931,923	5	0
Kansas	2,693,824	4	0
Kentucky	4,049,431	6	0
Louisiana	4,480,271	7	0
Maine	1,277,731	2	0
Maryland	5,307,886	8	0
Massachusetts	6,355,568	10	0
Michigan	9,955,829	15	-1
Minnesota	4,925,670	8	0
Mississippi	2,852,927	4	-1
Missouri	5,606,260	9	0
Montana	905,316	1	0
Nebraska	1,715,369	3	0
Nevada	2,002,032	3	+1
New Hampshire	1,238,415	2	0
New Jersey	8,424,354	13	0
New Mexico	1,823,821	3	0
New York	19,004,973	29	-2
North Carolina	8,067,673	13	+1
North Dakota	643,756	1	0
Ohio	11,374,540	18	-1
Oklahoma	3,458,819	5	-1
Oregon	3,428,543	5	0
Pennsylvania	12,300,670	19	-2
Rhode Island	1,049,662	2	0
South Carolina	4,025,061	6	0
South Dakota	756,874	1	0
Tennessee	5,700,037	9	0
Texas	20,903,994	32	+2
Utah	2,236,714	3	0
Vermont	609,890	1	0
Virginia	7,100,702	11	0
Washington	5,908,684	9	0
West Virginia	1,813,077	3	0
Wisconsin	5,371,210	8	-1
Wyoming	495,304	1	0
<b>Total Apportionment Population<sup>1</sup></b>	<b>281,424,177</b>	<b>435</b>	

<sup>1</sup> Includes the resident population for the 50 states, as ascertained by the Twenty-Second Decennial Census under Title 13, United States Code, and counts of overseas U.S. military and federal civilian employees (and their dependents living with them) allocated to their home state, as reported by the employing federal agencies. The apportionment population excludes the population of the District of Columbia.

NOTE: As required by the January 1999 U.S. Supreme Court ruling (Department of Commerce v. House of Representatives, 525 U.S. 316, 119 S. Ct. 765 (1999)), the apportionment population counts do not reflect the use of statistical sampling to correct for overcounting or undercounting.

Source: U.S. Department of Commerce, U.S. Census Bureau.

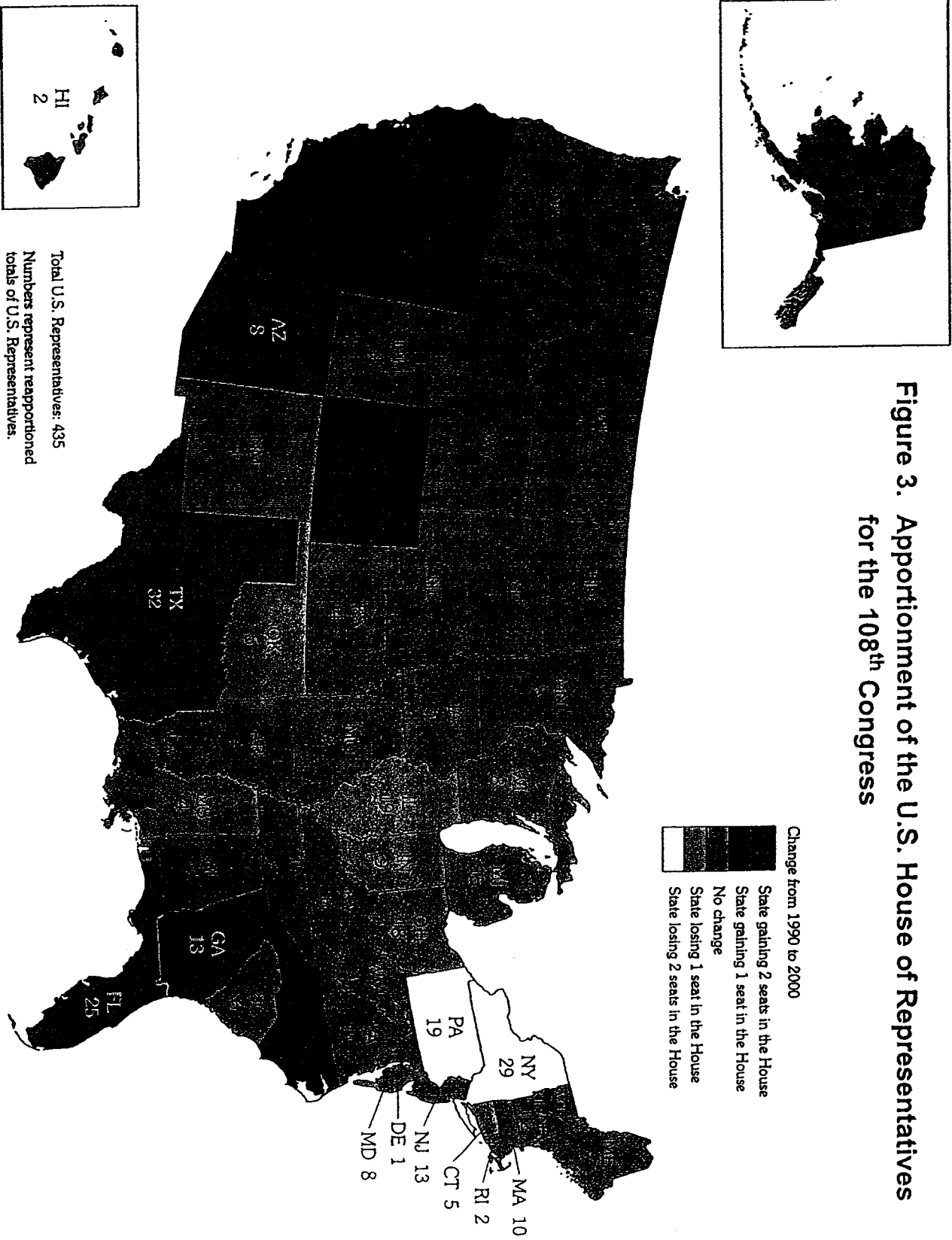
Internet Release date: December 28, 2000

Table A. Apportionment and Apportionment Population Based on the 1990 Census

States	Size of State delegation	Apportionment population	Resident population	United States population abroad
United States .....	435	<sup>1</sup> 249,022,783	248,709,873	922,819
Alabama .....	7	4,062,608	4,040,587	22,021
Alaska .....	1	551,947	550,043	1,904
Arizona .....	6	3,677,985	3,665,228	12,757
Arkansas .....	4	2,362,239	2,350,725	11,514
California .....	52	29,839,250	29,760,021	79,229
Colorado .....	6	3,307,912	3,294,394	13,518
Connecticut .....	6	3,295,669	3,287,116	8,553
Delaware .....	1	668,696	666,168	2,528
District of Columbia .....	...	...	606,900	3,009
Florida .....	23	13,003,362	12,937,926	65,436
Georgia .....	11	6,508,419	6,478,216	30,203
Hawaii .....	2	1,115,274	1,108,229	7,045
Idaho .....	2	1,011,986	1,006,749	5,237
Illinois .....	20	11,466,682	11,430,602	36,080
Indiana .....	10	5,564,228	5,544,159	20,069
Iowa .....	5	2,787,424	2,776,755	10,669
Kansas .....	4	2,485,600	2,477,574	8,026
Kentucky .....	6	3,698,969	3,685,296	13,673
Louisiana .....	7	4,238,216	4,219,973	18,243
Maine .....	2	1,233,223	1,227,928	5,295
Maryland .....	8	4,798,622	4,781,468	17,154
Massachusetts .....	10	6,029,051	6,016,425	12,626
Michigan .....	16	9,328,784	9,295,297	33,487
Minnesota .....	8	4,387,029	4,375,099	11,930
Mississippi .....	5	2,586,443	2,573,216	13,227
Missouri .....	9	5,137,804	5,117,073	20,731
Montana .....	1	803,655	799,065	4,590
Nebraska .....	3	1,584,617	1,578,385	6,232
Nevada .....	2	1,206,152	1,201,833	4,319
New Hampshire .....	2	1,113,915	1,109,252	4,663
New Jersey .....	13	7,748,634	7,730,188	18,446
New Mexico .....	3	1,521,779	1,515,069	6,710
New York .....	31	18,044,505	17,990,455	54,050
North Carolina .....	12	6,657,630	6,628,637	28,993
North Dakota .....	1	641,364	638,800	2,564
Ohio .....	19	10,887,325	10,847,115	40,210
Oklahoma .....	6	3,157,604	3,145,585	12,019
Oregon .....	5	2,853,733	2,842,321	11,412
Pennsylvania .....	21	11,924,710	11,881,643	43,067
Rhode Island .....	2	1,005,984	1,003,464	2,520
South Carolina .....	6	3,505,707	3,486,703	19,004
South Dakota .....	1	699,999	696,004	3,995
Tennessee .....	9	4,896,641	4,877,185	19,456
Texas .....	30	17,059,805	16,986,510	73,295
Utah .....	3	1,727,784	1,722,850	4,934
Vermont .....	1	564,964	562,758	2,206
Virginia .....	11	6,216,568	6,187,358	29,210
Washington .....	9	4,887,941	4,866,692	21,249
West Virginia .....	3	1,801,625	1,793,477	8,148
Wisconsin .....	9	4,906,745	4,891,769	14,976
Wyoming .....	1	455,975	453,588	2,387

<sup>1</sup>The apportionment population does not include the resident or the overseas population for the District of Columbia.





UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

U.S. DISTRICT COURT  
EASTERN DISTRICT-WI  
FILED

'01 FEB -5 A10 41

REV. OLEN ARRINGTON, JR., ALVIN BALDUS,  
STEPHEN H. BRAUNGINN, JOHN D. BUENKER,  
ROBERT J. CORNELL, V. JANET CZUPER,  
LEVENS DE BACK, STEVEN P. DOYLE,  
ANTHONY S. EARL, JAMES A. EVANS,  
DAGOBERTO IBARRA, JOHN H. KRUSE, SR.,  
JOSEPH J. KREUSER, FRANK L. NIKOLAY,  
MELANIE R. SCHALLER, ANGELA W. SUTKIEWICZ,  
and OLLIE THOMPSON,

FERON D. HEDILSKY  
CLERK

Plaintiffs,

v.

Civil Action  
File No. 01-C-0121

ELECTIONS BOARD, an independent agency of the  
State of Wisconsin; JOHN P. SAVAGE, its chairman;  
and each of its members in his or her official capacity,  
DAVID HALBROOKS, DON M. MILLIS, RANDALL  
NASH, GREGORY J. PARADISE, CATHERINE SHAW,  
JUDD DAVID STEVENSON, CHRISTINE WISEMAN  
and KEVIN J. KENNEDY, its executive director,

Defendants.

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**MOTION TO INTERVENE ON BEHALF OF  
INTERVENING PLAINTIFFS**

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The intervening plaintiffs, named below, hereby move to intervene in the above-captioned matter and show the Court as follows:

1. The intervening plaintiffs are all Senators in the Wisconsin State Senate (State Senators). The intervening plaintiffs are all Democrats and comprise the State Senate Democratic Caucus. They are: James R. Baumgart; Roger M. Breske; Brian T. Burke; Charles J. Chvala; Russell S. Decker; Jon Erpenbach; Gary R. George; Richard Grobschmidt; Dave Hansen; Robert Jauch; Mark Meyer; Rodney Moen; Gwendolynne S. Moore; Kimberly Plache; Fred A. Risser; Judy Robson; Kevin W. Shibilski; and Robert D. Wirth. See also ¶¶ 6 - 23 of Proposed Complaint. The intervening plaintiffs are all residents of the State of Wisconsin and are all registered to vote in Wisconsin. A number of the intervening plaintiffs reside in the Eastern District of Wisconsin.

2. Intervention is sought pursuant to Federal Rule of Civil Procedure 24.

3. The State Senators have a direct interest in the outcome of this action in that the redistricting of Congressional districts, along with redistricting of state Assembly and Senatorial districts are obligations committed by law, as an initial matter, to the Wisconsin Legislature, of which the State Senators are members. The State Senators intend to work with other members of the legislature, including the Assembly Republicans who hold the majority in the Assembly, to produce legislation redistricting Wisconsin's Congressional, Senate and Assembly Districts.

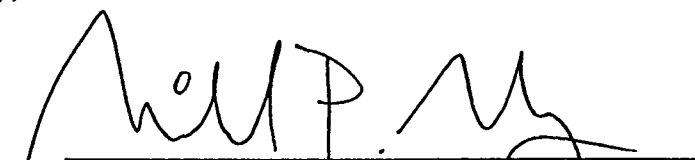
4. The last two efforts at redistricting were decided by courts. In the event efforts at redistricting legislation are not successful, the State Senators submit that judicial efficiency requires that one court consider the factual and legal claims for all redistricting in Wisconsin.

By their proposed complaint to be filed herein, the issue of the redistricting of all congressional and state legislative districts in Wisconsin would be combined in one court.

5. The same underlying facts that make Congressional districts malapportioned under the United States and Wisconsin Constitutions also render the existing state legislative districts to be malapportioned. Thus, the matters set forth in the Proposed Complaint of Intervening Plaintiffs and this action have a common factual and legal basis, and similar remedies.

WHEREFORE, plaintiffs request that the Court grant this motion to intervene, allow them to appear as intervening plaintiffs, and allow them to assert the matters set forth in the attached Proposed Complaint of Intervening Plaintiffs.

Dated this 5th day of February, 2001.



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Michael P. May, State Bar No. 1011610  
James E. Bartzen, State Bar No. 1003047  
Boardman, Suhr, Curry & Field LLP  
Attorneys for Intervening Plaintiffs

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN

---

REV. OLEN ARRINGTON, JR., ALVIN BALDUS,  
STEPHEN H. BRAUNGINN, JOHN D. BUENKER,  
ROBERT J. CORNELL, V. JANET CZUPER,  
LEVENS DE BACK, STEVEN P. DOYLE,  
ANTHONY S. EARL, JAMES A. EVANS,  
DAGOBERTO IBARRA, JOHN H. KRUSE, SR.,  
JOSEPH J. KREUSER, FRANK L. NIKOLAY,  
MELANIE R. SCHALLER, ANGELA W. SUTKIEWICZ,  
and OLLIE THOMPSON,

and

JAMES R. BAUMGART; ROGER M. BRESKE;  
BRIAN T. BURKE; CHARLES J. CHVALA;  
RUSSELL S. DECKER; JON ERPENBACH;  
GARY R. GEORGE; RICHARD GROBSCHMIDT;  
DAVE HANSEN; ROBERT JAUCH;  
MARK MEYER; RODNEY MOEN;  
GWENDOLYNNE S. MOORE; KIMBERLY PLACHE;  
FRED A. RISSER; JUDY ROBSON;  
KEVIN W. SHIBILSKI; and ROBERT D. WIRCH,  
each individually and as members of the  
Wisconsin State Senate,

Proposed Intervening Plaintiffs,

v.

Civil Action  
File No. 01-C-0121

ELECTIONS BOARD, an independent agency of  
the State of Wisconsin; JOHN P. SAVAGE, its  
chairman; and each of its members in his or her  
official capacity, DAVID HALBROOKS, DON M.  
MILLIS, RANDALL NASH, GREGORY J.  
PARADISE, CATHERINE SHAW, JUDD DAVID

STEVENSON, CHRISTINE WISEMAN and  
KEVIN J. KENNEDY, its executive director,

Defendants.

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**PROPOSED COMPLAINT OF INTERVENING PLAINTIFFS**

---

Proposed Intervening Plaintiffs, James R. Baumgart, Roger M. Breske, Brian T. Burke, Charles J. Chvala, Russell S. Decker, Jon Erpenbach, Gary R. George, Richard Grobschmidt, Dave Hansen, Robert Jauch, Mark Meyer, Rodney Moen, Gwendolynne S. Moore, Kimberly Plache, Fred A. Risser, Judy Robson, Kevin W. Shibilski and Robert W. Wirch, by their attorneys, Boardman, Suhr, Curry & Field LLP, hereby state as follows:

**COUNT I**

1. This action arises under the Constitution of the United States, the Fourteenth Amendment, the Fifteenth Amendment, the Constitution of the State of Wisconsin, including Art. I, Sec. 1 and Art. IV, Sec. 3, 42 U.S.C. §§1983 and 1988 and the Voting Rights Act, 42 U.S.C. §1973. The action challenges the constitutionality of the apportionment of the Assembly and Senate districts of the State of Wisconsin (the "Assembly" and "Senate," respectively) as is hereinafter more fully described.

**JURISDICTION**

2. Jurisdiction is conferred on this Court by 28 U.S.C. §§1331, 1343, 1367 and 2284.

3. Proposed Intervening Plaintiffs seek declaratory, injunctive and other relief pursuant to 28 U.S.C. §§2201 and 2202 and Fed. R. Civ. P. 57 and 65.

#### **VENUE**

4. Venue is proper pursuant to 28 U.S.C. §1391 because, inter alia, the claims arise in the Eastern District of Wisconsin in that the conduct of the defendants threatens to cause immediate and irreparable harm, loss and damage to the constitutional rights of certain plaintiffs who reside and vote in this district.

#### **THREE-JUDGE COURT**

5. The convening of a district court of three judges in this action is required by 28 U.S.C. §2284(a) because the action challenges the constitutionality of the apportionment of a statewide legislative body -- the Assembly and Senate of the State of Wisconsin.

#### **PARTIES - PLAINTIFFS**

6. Proposed Intervening Plaintiff James R. Baumgart is a citizen of the United States and the State of Wisconsin and a resident and registered voter in the 26th Assembly District and 9th Senate District of the State of Wisconsin. He resides at 1419 North 16th Street, Sheboygan, Wisconsin, 53081. He brings this action individually and as a Senator in the Senate of the State of Wisconsin.

7. Proposed Intervening Plaintiff Roger M. Breske is a citizen of the United States and the State of Wisconsin and a resident and registered voter in the 36th Assembly District and 12th Senate District of the State of Wisconsin. He resides at 8800 State Highway 29,

Eland, Wisconsin, 54427. He brings this action individually and as a Senator in the Senate of the State of Wisconsin.

8. Proposed Intervening Plaintiff Brian T. Burke is a citizen of the United States and the State of Wisconsin and a resident and registered voter in the 7th Assembly District and 3rd Senate District. He resides at 2029 North 51st Street, Milwaukee, Wisconsin, 53208-1747. He brings this action individually and as a Senator in the Senate of the State of Wisconsin.

9. Proposed Intervening Plaintiff Charles J. Chvala is a citizen of the United States and the State of Wisconsin and a resident and registered voter in the 48th Assembly District and 16th Senate District of the State of Wisconsin. He resides at 1 Coach House Drive, Madison, Wisconsin, 53714. He brings this action individually and as a Senator in the Senate of the State of Wisconsin.

10. Proposed Intervening Plaintiff Russell S. Decker is a citizen of the United States and the State of Wisconsin and a resident and registered voter in the 86th Assembly District and 29th Senate District of the State of Wisconsin. He resides at 6803 Lora Lee Lane, Schofield, Wisconsin, 54476. He brings this action individually and as a Senator in the Senate of the State of Wisconsin.

11. Proposed Intervening Plaintiff Jon Erpenbach is a citizen of the United States and the State of Wisconsin and a resident and registered voter in the 79th Assembly District and 27th Senate District of the State of Wisconsin. He resides at 2385 Branch Street,



Middleton, Wisconsin, 53562. He brings this action individually and as a Senator in the Senate of the State of Wisconsin.

12. Proposed Intervening Plaintiff Gary R. George is a citizen of the United States and the State of Wisconsin and a resident and registered voter in the 16th Assembly District and 6th Senate District of the State of Wisconsin. He resides at 1100 West Wells Street, Milwaukee, Wisconsin, 53233. He brings this action individually and as a Senator in the Senate of the State of Wisconsin.

13. Proposed Intervening Plaintiff Richard Grobschmidt is a citizen of the United States and the State of Wisconsin and a resident and registered voter in the 21st Assembly District and 7th Senate District of the State of Wisconsin. He resides at 912 Lake Drive, South Milwaukee, Wisconsin, 53172. He brings this action individually and as a Senator in the Senate of the State of Wisconsin.

14. Proposed Intervening Plaintiff Dave Hansen is a citizen of the United States and the State of Wisconsin and a resident and registered voter in the 90th Assembly District and 30th Senate District of the State of Wisconsin. He resides at 920 Coppens Road, Green Bay, Wisconsin, 54303. He brings this action individually and as a Senator in the Senate of the State of Wisconsin.

15. Proposed Intervening Plaintiff Robert Jauch is a citizen of the United States and the State of Wisconsin and a resident and registered voter in the 73rd Assembly District and 25th Senate District of the State of Wisconsin. He resides at 5271 South Maple Drive,

Poplar, Wisconsin, 54864-9126. He brings this action individually and as a Senator in the Senate of the State of Wisconsin.

16. Proposed Intervening Plaintiff Mark Meyer is a citizen of the United States and the State of Wisconsin and a resident and registered voter in the 95th Assembly District and 32nd Senate District of the State of Wisconsin. He resides at 1623 Sunset Drive, LaCrosse, Wisconsin, 54601. He brings this action individually and as a Senator in the Senate of the State of Wisconsin.

17. Proposed Intervening Plaintiff Rodney Moen is a citizen of the United States and the State of Wisconsin and a resident and registered voter in the 91st Assembly District and 31st Senate District of the State of Wisconsin. He resides at 18775 Dewey Street, Whitehall, Wisconsin, 54773. He brings this action individually and as a Senator in the Senate of the State of Wisconsin.

18. Proposed Intervening Plaintiff Gwendolynne S. Moore is a citizen of the United States and the State of Wisconsin and a resident and registered voter in the 11th Assembly District and 4th Senate District of the State of Wisconsin. She resides at 4043 North 19th Place, Milwaukee, Wisconsin, 53209. She brings this action individually and as a Senator in the Senate of the State of Wisconsin.

19. Proposed Intervening Plaintiff Kimberly Plache is a citizen of the United States and the State of Wisconsin and a resident and registered voter in the 62nd Assembly District and 21st Senate District of the State of Wisconsin. She resides at 2614 17th Street, Racine,

Wisconsin, 53405. She brings this action individually and as a Senator in the Senate of the State of Wisconsin.

20. Proposed Intervening Plaintiff Fred A. Risser is a citizen of the United States and the State of Wisconsin and a resident and registered voter in the 77th Assembly District and 26th Senate District of the State of Wisconsin. He resides at 5008 Risser Road, Madison, Wisconsin, 53705. He brings this action individually and as a Senator in the Senate of the State of Wisconsin.

21. Proposed Intervening Plaintiff Judith Robson is a citizen of the United States and the State of Wisconsin and a resident and registered voter in the 45th Assembly District and 15th Senate District of the State of Wisconsin. She resides at 2411 East Ridge Road, Beloit, Wisconsin, 53511. She brings this action individually and as a Senator in the Senate of the State of Wisconsin.

22. Proposed Intervening Plaintiff Kevin W. Shibilski is a citizen of the United States and the State of Wisconsin and a resident and registered voter in the 71st Assembly District and 24th Senate District of the State of Wisconsin. He resides at 457 West Scenic Circle, Stevens Point, Wisconsin, 54481. He brings this action individually and as a Senator in the Senate of the State of Wisconsin.

23. Proposed Intervening Plaintiff Robert D. Wirsch is a citizen of the United States and the State of Wisconsin and a resident and registered voter in the 65th Assembly District and 22nd Senate District of the State of Wisconsin. He resides at 3007 Springbrook Road,

Pleasant Prairie, Wisconsin, 53158. He brings this action individually and as a Senator in the Senate of the State of Wisconsin.

**PARTIES - DEFENDANTS**

24. The Elections Board (the "Board") is an independent agency of the State of Wisconsin created by the legislature in §15.61, Wis. Stats. It has eight members, including a chairman, each of whom has been named individually and as members of the Board as a defendant. The Board's offices are at 132 East Wilson Street, Suite 300, Madison, Wisconsin, 53703, and it meets periodically in Madison and in Milwaukee.

25. The Board has "general authority" over and the "responsibility for the administration of . . . [the state's] laws relating to elections and election campaigns," §5.05(1), Wis. Stats., including the elections for the Wisconsin Assembly and Senate.

26. The Board provides support to local units of government and their employees, including the county clerks in each of Wisconsin's 72 counties, in administering and preparing for the election of members of the Wisconsin Assembly and Senate. For purposes of the State's election law, the counties and their clerks act as agents for the State and for the Board.

27. John P. Savage, Milwaukee, Wisconsin, is the Board's chairman. Its seven other members are: David Halbrooks, Milwaukee, Wisconsin; Don M. Millis, Sun Prairie, Wisconsin; Randall Nash, Whitefish Bay, Wisconsin; Gregory J. Paradise, Madison, Wisconsin; Catherine Shaw, Milwaukee, Wisconsin; Judd David Stevenson, Neenah,

Wisconsin; and Christine Wiseman, Mequon, Wisconsin. Kevin J. Kennedy is the Board's executive director named under §5.05(1)(a), Wis. Stats.

### **2000 CENSUS AND DUTY TO REAPPORTION**

28. During 2000, the Bureau of the Census of the United States Department of Commerce conducted a census of the United States, including the State of Wisconsin, pursuant to the Constitution of the United States.

29. The Census Bureau will be releasing its final 2000 census data on or before March 31, 2001. The Census Bureau has already provided estimates of the change in population for the State of Wisconsin from 1990-1999 (the 1999 Estimates).

30. It is the duty of the legislature of the State of Wisconsin under the Constitution of the United States, the Fourteenth and Fifteenth Amendments thereto, to enact a plan of reapportionment for the election of the Senate and Assembly for the State of Wisconsin which meets the requirements of the one-person/one-vote rule, Section 2 of the Voting Rights Act and all other requirements imposed by law.

31. Pursuant to the Constitution of the State of Wisconsin, Article IV, Section 3, the reapportionment of the State Senate and Assembly is to be concluded at the first session after the census.

32. Based upon the 1999 Estimates, the existing legislative districts for Assembly and Senate fail to meet the legal requirements of the U.S. and Wisconsin constitutions. See

attached Exhibit A. The variances shown on the 1999 Estimate will, on information and belief, continue into 2000.

### **INABILITY TO REAPPORTION**

33. Following the 1990 census, the State legislature and the Governor were unable to agree upon a plan of reapportionment, resulting in the current legislative districts being chosen by a three-judge panel. *Prosser, et al. v. Elections Board, et al.*, 793 F. Supp. 859 (W.D. Wis. 1992). The current districts are set forth in Chapter 4 of the Wisconsin Statutes, and attached hereto as Exhibit B.

34. The current make-up of the State Senate and State Assembly, in which the Senate is controlled by Democrats and the Assembly by Republicans, means that the current legislature also may not be able to agree on a plan of redistricting. For example, the Majority Leader of the Assembly Republicans has stated that he intends to use redistricting to "lock in Republican control of the Assembly for a generation." See Exhibit C.

35. In the event the legislature is unable to agree upon a redistricting plan, plaintiffs request that this court establish such a plan.

### **MINORITIES**

36. Voters and potential candidates in the areas of Wisconsin containing high concentrations of African-Americans, Hispanics and Native Americans are subject to the greatest disadvantage if redistricting is not completed in an expeditious manner since:

A. Candidates in such districts are more likely to be members of the minority group of which the district is comprised; and

B. Due to past discrimination, these potential candidates need the greatest opportunity to build name recognition and develop access to campaign contributors, campaign exposure and media exposure in their districts at an early stage in the process.

**CONSTITUTIONAL AND OTHER STATUTORY VIOLATIONS:**  
**DECLARATORY JUDGMENT**

37. The existing Senate and Assembly Districts do not meet the requirements of the one-person/one-vote rule of the Constitution of the United States in that they have substantial variations in population as more fully described in Exhibit A attached hereto and made a part hereof, and denies the Plaintiffs their right to equal protection under the Fourteenth and Fifteenth Amendments to the Constitution of the United States and 42 U.S.C. 1983, and under Article I, Section 1 and Article IV, Section 3 of the Wisconsin Constitution.

38. The existing Senate and Assembly Districts may not meet the requirements of the Voting Rights Act.

**COUNT II**

**CONSTITUTIONAL AND OTHER STATUTORY VIOLATIONS:**  
**INJUNCTIVE RELIEF**

39. Plaintiffs restate and reallege paragraphs 1-39 of Count I as paragraphs 1-39 of Count II as if fully set forth herein.

40. The Defendants are charged with the responsibility of conducting elections for the Senate and Assembly, and in that capacity must conduct elections in accordance with the then-existing legislative districts.

41. If not otherwise enjoined, the State Elections Board with the State Board of Canvassers will prepare for and conduct primary and general elections for the State of Wisconsin in 2002, in violation of the Constitution of the United States, the Fourteenth Amendment, and the Fifteenth Amendment, the Wisconsin Constitution, and 42 U.S.C. §1983 and the rights of these Plaintiffs in particular.

42. Such elections and other pre-election procedures would be in plain violation of the constitutional mandate of one-person/one-vote, Section 2 of the Voting Rights Act and other requirements imposed by law and thus illegal in that, inter alia, the 2000 census will demonstrate substantial variations in the populations of the Senate and Assembly districts of the State of Wisconsin as presently apportioned and the Voting Rights Act requires the consideration of minority Senate and Assembly districts.

### **COUNT III**

#### **CONSTITUTIONAL AND OTHER STATUTORY VIOLATIONS: INJUNCTIVE AND OTHER RELIEF**

43. Plaintiffs restate and reallege paragraphs 1-43 of Counts I and II as paragraphs 1-43 of Count III as if fully set forth herein.

44. In the event that the State of Wisconsin is not able to enact legislation redistricting the Senate and Assembly districts in sufficient time for conducting primary and



general elections, then such elections cannot be held in accordance with the U.S. Constitution, the Fourteenth Amendment, the Fifteenth Amendment, the Voting Rights Act, and 42 U.S.C. §1983.

45. Plaintiffs are prepared to submit a map which constitutionally redistricts the State of Wisconsin and meets all legal requirements, to be adopted by this court in the event the State of Wisconsin fails to enact a legally conforming redistricting.

WHEREFORE, the Plaintiffs respectfully request relief as follows:

- A. A declaration that the existing apportionment of the Senate and Assembly for the State of Wisconsin is unconstitutional and invalid;
- B. That this Court enjoin any and all action of the Defendants which may in any way relate to elections in the existing legislative districts;
- C. If no redistricting legislation is approved by the Wisconsin Legislature, that this Court redistrict the State of Wisconsin into 99 Assembly Districts and 33 Senate Districts;
- D. That this Court grant the Plaintiffs their costs and reasonable attorneys fees pursuant to 42 U.S.C. §1988 and the power of this Court; and
- E. That this Court grant such other and further relief as may be just.

Dated this \_\_\_\_ day of February, 2001.

---

Michael P. May, State Bar No. 1011610  
James E. Bartzen, State Bar No. 1003047  
Boardman, Suhr, Curry & Field LLP  
Attorneys for Intervening Plaintiffs

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Plaintiffs request the immediate appointment of a three-judge panel to hear this matter, pursuant to 28 U.S.C. §2284.

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

---

REV. OLEN ARRINGTON, JR., ALVIN BALDUS,  
STEPHEN H. BRAUNGINN, JOHN D. BUENKER,  
ROBERT J. CORNELL, V. JANET CZUPER,  
LEVENS DE BACK, STEVEN P. DOYLE,  
ANTHONY S. EARL, JAMES A. EVANS,  
DAGOBERTO IBARRA, JOHN H. KRAUSE, SR.,  
JOSEPH J. KREUSER, FRANK L. NIKOLY,  
MELANIE R. SCHALLER, ANGELA W. SUTKIEWICZ,  
and OLLIE THOMPSON,

Plaintiffs,

v.

Case No. 01-C-0121

WISCONSIN ELECTIONS BOARD,  
JOHN P. SAVAGE, DAVID HALBROOKS,  
DON M. MILLIS, RANDALL NASH,  
GREGORY J. PARADISE, CATHERINE SHAW,  
JUDD DAVID STEVENSON, CHRISTINE WISEMAN,  
and KEVIN J. KENNEDY,

Defendants.

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**MOTION TO INTERVENE**

---

TO: Brady C. Williamson, Esq.  
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Michael P. May, Esq.  
Boardman, Suhr, Curry & Field LLP  
One South Pinckney Street, Fourth Floor  
P.O. Box 927  
Madison, Wisconsin 53701-1709

PLEASE TAKE NOTICE that at a time and date to be set by the Court, Scott R. Jensen,  
in his capacity as a member and Speaker of the Wisconsin Assembly and Mary E. Panzer, in her

capacity as a member and Minority Leader of the Wisconsin Senate (collectively, "Intervening Defendants") by and through their counsel, Michael Best & Friedrich LLP and Reinhart, Boerner, Van Deuren, Norris & Rieselbach, S.C., will move this Court for an Order granting Intervening Defendants' Motion to Intervene and granting them leave to file their answer, attached hereto as Exhibit A. Intervening Defendants also intend seek a stay of this action, pending legislative action on congressional redistricting. In support of their Motion, Intervening Defendants state as follows:

### **BASIS FOR MOTION**

1. Intervention is appropriate here because Intervening Defendants have an interest in this action. Intervening Defendants are the Speaker of the Wisconsin Assembly and the Minority Leader of the Wisconsin Senate, as provided for under §§ 13.13(1) and 13.46(3), Stats. As legislative leaders and members of the State Legislature, they have direct, significant and legally protectable interests in this action. Indeed, given their constitutional and statutory roles within the State Legislature, Intervening Defendants have a duty to intervene in this matter. Under the United States Constitution and the Constitution of the State of Wisconsin, and in light of the 2000 census, Intervening Defendants are charged with the authority and obligation to reapportion Wisconsin's congressional districts in a manner that is consistent with constitutional and other legal criteria.

2. Intervention by movants will allow all interested parties to participate in one action concerning the reapportionment of Wisconsin's congressional districts and will avoid the risk of inconsistent results, which may result from the filing of separate lawsuits. Moreover, Intervening Defendants' Motion is timely as no substantive Court proceedings have taken place,

another motion to intervene remains pending before this Court, no discovery has been taken, and no answer has been filed.

3. Intervening Defendants, as Republican leaders of the State Legislature, must be parties to this action as decisions issued and/or any disposition of this action will affect their rights and interests under the law. Absent the participation by Intervening Defendants in this action, any such decisions and/or disposition will likely impair or impede those rights and interests, and, in particular, their interest in ensuring the adoption of a fair plan of reapportionment. The interests of the Republican members of the State Legislature are not adequately represented by any other party to this action, as no party represents the Republican legislators.

4. Although the congressional districts in the State of Wisconsin must be reapportioned in light of the 2000 census, the Constitution of the State of Wisconsin, Article I, §§ 2 and 4, and the Fourteenth Amendment, § 2, of the U.S. Constitution and 2 U.S.C. § 2c and provide the state legislature with the authority and obligation to reapportion Wisconsin's congressional districts. Pending the conclusion of the legislative process concerning reapportionment, this Court should issue a stay of further proceedings in this action. In the event that the legislative process fails to result in the adoption of plan of reapportionment, however, this Court may proceed to consider the matters raised by this action.

5. In the event that this Court were to hear any motion or take any action in this case prior to or after the conclusion of the legislative process on reapportionment, the rights and interests represented by the Intervening Defendants must be heard and considered. Thus, intervention at this time is warranted in order to insure equal and balanced input into any such

Court action. Therefore, intervention as of right under Federal Rule of Civil Procedure 24(a) is warranted.

6. Alternatively, permissive intervention is proper pursuant to Federal Rule of Civil Procedure 24(b) based upon the commonality of issues between this action and Intervening Defendants' rights and interests relative to issues of reapportionment -- the adoption of a reapportionment plan by this Court, in the event that the legislative process fails to yield such a plan, will involve identical considerations of law and of fact, including matters related to the census, population shifts over the past decade and the application of redistricting principles and methods to Wisconsin's congressional districts.

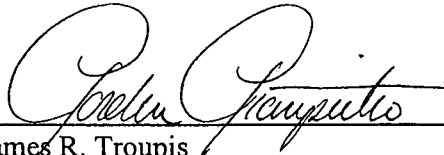
7. Permissive intervention will not unduly delay or prejudice any of the original parties to the action, as Intervening Defendants seek to have the same issues decided and facts considered as the original parties. Intervention is in the interests of judicial economy and principles of fairness.

#### **RELIEF REQUESTED**

Based upon the foregoing, as well as the arguments and facts set forth in Intervening Defendants' related submissions, filed contemporaneously herewith, including its Memorandum in Support of Motion to Intervene, Intervening Defendants request that this Court enter an Order granting Intervening Defendants' Motion to Intervene and leave to file its Intervention Answer, which is attached hereto.

Respectfully submitted this 21<sup>st</sup> day of February, 2001.

MICHAEL BEST & FRIEDRICH LLP

By:   
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Eric M. McLeod  
Gordon P. Giampietro

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Copy mailed to Attorneys for parties by the court pursuant to rule 77(D) Federal rules of civil procedure. 3-2-01

Copy filed to all Counsel 2-28-01

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U.S. DIST. COURT EAST DIST. WISC. FILED FEB 28 2001 O'CLOCK SOFRON B. NEDILSKY
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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN

REV. OLEN ARRINGTON, JR., ALVIN BALDUS,  
STEPHEN H. BRAUNGINN, JOHN D. BUENKER,  
ROBERT J. CORNELL, V. JANET CZUPER,  
LEVENS DE BACK, STEVEN P. DOYLE,  
ANTHONY S. EARL, JAMES A. EVANS,  
DAGOBERTO IBARRA, JOHN H. KRAUSE, SR.,  
JOSEPH J. KREUSER, FRANK L. NIKOLAY,  
MELANIE R. SCHALLER, ANGELA W.  
SUTKIEWICZ, and OLLIE THOMPSON,

Plaintiffs,

v.

Civil Action No. 01-C-0121

ELECTIONS BOARD, an independent agency of  
the State of Wisconsin; JOHN P. SAVAGE, its  
chairman; and each of its members in his or her  
official capacity, DAVID HALBROOKS,  
DON M. MILLIS, RANDALL NASH,  
GREGORY J. PARADISE, CATHERINE SHAW,  
JUDD DAVID STEVENSON, CHRISTINE WISEMAN,  
and KEVIN J. KENNEDY, its executive director,

Defendants.

ORDER DATED Feb 28, 2001 DENYING PARTIES' MOTIONS TO  
EXTEND TIME TO RESPOND TO MOTIONS TO INTERVENE and  
ESTABLISHING SCHEDULE

Plaintiffs, all registered voters in the State of Wisconsin, seek declaratory and  
injunctive relief regarding the apportionment of Wisconsin's congressional districts.  
Plaintiffs allege that the current apportionment violates their rights under the United  
States Constitution and federal statutes. On February 8, 2001, the chief judge of the




Seventh Circuit Court of Appeals designated a three-judge court to preside over this action.

On February 5, 2001, the State Senate Democratic Caucus filed a motion to intervene in this action. On February 21, 2001, Assembly Speaker Scott R. Jensen and Senate Minority Leader Mary E. Panzer, on behalf of the Republican legislators, also filed a motion to intervene in this action. Defendants and plaintiffs have filed motions to extend the time for them to respond to the motions to intervene until April 2001. The court will deny these motions and establish the following schedule:

Any party opposing either motion to intervene shall serve and file a response on or before **March 7, 2001**.

Defendants shall serve and file an answer or otherwise respond to the complaint on or before **March 15, 2001**.

SO ORDERED this 28<sup>th</sup> day of February, 2001.

  
John W. Reynolds  
United States District Judge

AO 72A  
(Rev 8/82)

Plaintiffs, all registered voters in the State of Wisconsin, seek declaratory and injunctive relief regarding the apportionment of Wisconsin's congressional districts. Plaintiffs allege that the current apportionment violates their rights under the United States Constitution and federal statutes. On February 8, 2001, the chief judge of the

ORDER DATED 28 Feb 2001 ESTABLISHING BRIEFING SCHEDULE

### Defendants.

ELECTIONS BOARD, an independent agency of the State of Wisconsin; JOHN P. SAVAGE, its chairman; and each of its members in his or her official capacity, DAVID HALBROOKS, DON M. MILLIS, RANDALL NASH, GREGORY J. PARADISE, CATHERINE SHAW, JUDD DAVID STEVENSON, CHRISTINE WISEMAN, and KEVIN J. KENNEDY, its executive director,

Civil Action No. 01-C-0121

v.

### Plaintiffs,

REV. OLEN ARKINGTON, JR., ALVIN BALDUS, STEPHEN H. BRAUNGINN, JOHN D. BUENKER, ROBERT J. CORNELL, V. JANET CZUPER, LEVENS DE BACK, STEVEN P. DOYLE, ANTHONY S. EARL, JAMES A. EVANS, DAGOBERTO IBARRA, JOHN H. KRAUSE, SR., JOSEPH J. KREUSER, FRANK L. NIKOLAY, MELANIE R. SCHALTER, ANGELA W. SUTKIEWICZ, and OLLIE THOMPSON,

FOR THE EASTERN DISTRICT OF WISCONSIN

U.S. DIST. COURT EAST DIST. WISC.	FILED	FEB 28 2001	AT COURT OF FRON B. NEDILSKY
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**COPY**

Copy mailed to Attorneys for parties by the court pursuant to rule 77(d) Federal rules of civil procedure. 3-2-01  
*Copy furnished to all counsel 2-28-01*

AO 72A  
(Rev. 8/82)

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John W. Reynolds  
United States District Judge

SO ORDERED this 28<sup>th</sup> day of February, 2001.

2001.

and proposed intervenors may, serve and file response briefs on or before March 12, See Illinois v. Chicago, 137 F.3d 474 (7<sup>th</sup> Cir. 1998). Plaintiffs and defendants shall, question: whether there is in existence a justiciable case or controversy in this action.

proposed intervenors if they wish to, shall serve and file briefs on the following

On or before March 7, 2001, the parties to the original lawsuit, and the

filed a motion to intervene in this action.

Senate Minority Leader Mary E. Panzer, on behalf of the Republican legislators, also intervene in this action. On February 21, 2001, Assembly Speaker Scott R. Jensen and

On February 5, 2001, the State Senate Democratic Caucus filed a motion to

action.

Seventh Circuit Court of Appeals designated a three-judge court to preside over this

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

---

REV. OLEN ARRINGTON, JR, ALVIN BALDUS,  
STEPHEN H. BRAUNGINN, JOHN D. BUENKER,  
ROBERT J. CORNELL, V. JANET CZUPER,  
LEVENS DE BACK, STEVEN P. DOYLE,  
ANTHONY S. EARL, JAMES A. EVANS,  
DAGOBERTO IBARRA, JOHN H. KRAUSE, SR.,  
JOSEPH J. KREUSER, FRANK L. NIKOLAY,  
MELANIE R. SCHALLER, ANGELA W.  
SUTKIEWICZ, and OLLIE THOMPSON,

Plaintiffs,

and

Case No. 01-C-121

JAMES R. BAUMGART, ROGER M. BRESKE,  
BRIAN T. BURKE, CHARLES J. CHVALA,  
RUSSELL S. DECKER, JON ERPENBACH,  
GARY R. GEORGE, RICHARD GROBSCHMIDT,  
DAVE HANSEN, ROBERT JAUCH, MARK  
MEYER, RODNEY MOEN, GWENDOLYNNE S.  
MOORE, KIMBERLY PLACHE, FRED A. RISSE,  
JUDY ROBSON, KEVIN W. SHIBILSKI, and  
ROBERT D. WIRCH, each individually and as  
members of the Wisconsin State Senate,

Intervenor-Plaintiffs,

v.

JOHN P. SAVAGE, chair of the Wisconsin State  
Elections Board, and each of the members of the  
Elections Board in his or her official capacity,  
DAVID HALBROOKS, DON M. MILLIS,  
(caption continued on next page)

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**PROPOSED SCHEDULING ORDER**

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RANDALL NASH, GREGORY J. PARADISE,  
CATHERINE SHAW, JUDD DAVID STEVENSON,  
CHRISTINE WISEMAN and KEVIN J. KENNEDY,  
its executive director;

Defendants,

SCOTT R. JENSEN, in his capacity as the Speaker  
of the Wisconsin Assembly, and MARY E. PANZER,  
in her capacity as the Minority Leader of the  
Wisconsin Senate,

Intervenor-Defendants.

---

This matter came before the Court, appointed pursuant to 28 U.S.C. § 2284, for a pretrial status/planning conference on January 7, 2002. The Court noted the following appearances: for the plaintiffs, Brady C. Williamson and Mike B. Wittenwyler, LaFollette Godfrey & Kahn; for the intervenor-plaintiffs, Michael P. May and Sarah A. Zylstra, The Boardman Law Firm; for the defendants, Thomas J. Balistreri, Assistant Attorney General, Wisconsin Department of Justice; and, for the intervenor-defendants, James Troupis and Raymond Taffora, Michael, Best & Friedrich.

At the outset, the Court notes that state law, in Chapter 10, Stats., establishes a detailed chronological schedule of "Election Dates and Notices" for the conduct of the September primary and November, 2002, general elections in the State of Wisconsin. In particular, the Court takes judicial notice that on or before Tuesday, May 14, 2002, the State Elections Board by law must "send[] a type A notice of the September primary and general election to the county clerks" of the state's 72 counties. Sec. 10.72(1)(a), Stats.

That statutory notice, among other things, provides public notice of the offices to be filled in and through the fall 2002 elections, the incumbent for each office, the deadlines for filing

declarations of candidacy and nomination papers, and the dates of the elections. In addition, “[i]f a redistricting since the most recent election [September and November 2000] makes the description of the incumbent’s office of limited usefulness, the notice may contain supplementary information describing the territory in which an election is noticed to be held.” Sec. 10.01(2)(a), Stats. Moreover, “[w]henver an election is to be held within a district, the [statutory] notice shall contain a statement specifying where information concerning district boundaries may be obtained.” *Id.*

This Court already has concluded, in its November 28, 2001 Memorandum Opinion and Order, that the nine current congressional districts in the state are malapportioned and unconstitutional. *Slip opinion*, p. 21. Given the reduction of the number of congressional districts in Wisconsin from nine to eight, beginning with the 2002 elections, the “information concerning district boundaries” will be particularly important to the state’s voters and to prospective candidates.

The states and, particularly, the state legislatures have the “primary responsibility for apportionment of their federal congressional and state legislative districts.” *Slip op.* at 4, quoting *Grove v. Emison*, 507 U.S. 25, 34 (1993). The two processes, one congressional and one legislative, are separate and distinct. They are the subject of separate statutes, *see* Chs. 3, 4, Stats., and historically they have been the subject of separate legislation.

Ultimately, moreover, legislatively-enacted congressional redistricting and state legislative redistricting are subject to judicial review under different federal constitutional standards – congressional redistricting to the exacting standards of Article I, sec. 2, and legislative redistricting under the less demanding standards of the Fourteenth Amendment.

Should this Court find it necessary to redistrict either the state's congressional districts or its legislative districts or both, the Court too would apply different constitutional standards.

The practical dimensions of the two processes suggest their separation as well. Only eight congressional districts need be created while state legislative redistricting will require the construction of 33 state senate districts, each circumscribing three state assembly districts. Accordingly, this order treats the two processes separately—emphasizing, of course, that the Court need not intervene if the legislature promptly adopts appropriate legislation that the governor signs into law.

The Court in its November 28, 2001 Memorandum Opinion and Order stayed “all substantive judicial proceedings...until February 1, 2002....” *Slip op.*, p. 25. The Court hereby extends that stay until March 1, 2002, but it cannot stay the litigative process without jeopardizing the Court's ability to give this matter the consideration it warrants and providing even a minimum amount of time for appeal. Accordingly, based on the requirements of state law, the statements of counsel at the January 7 hearing, and on the parties' stipulated schedule and administrative plan, filed with the Court as ordered on December 19, 2001, and reflected in this order:

**IT IS HEREBY ORDERED** that the following procedures, deadlines and schedules shall govern the litigation and resolution of this case:

#### **GENERAL PROCEDURES**

1. The dates specified for filing and service in this Scheduling Order are mandatory with “filing” defined as filing with the Clerk of the U.S. District Court for the Eastern District of Wisconsin, Milwaukee, Wisconsin, before 5:00 p.m. on the date specified, and “service” defined

as actual delivery of the material to all of the other counsel in the case before 5:00 p.m. on the date specified.

2. The Court will not entertain motions for summary judgment or any other dispositive motion.

### CONGRESSIONAL REDISTRICTING

3. The trial of the matters raised in the Complaint, involving the redistricting of the state's eight congressional districts, shall begin on March 4, 2002, at 9:00 a.m. and continue until completed with three full days reserved for trial.

A. Direct testimony shall be presented by affidavit with the courtroom testimony of all witnesses limited to cross-examination and redirect examination.

B. The Court has recognized four principal parties: plaintiffs, intervening plaintiffs, defendants, and intervening defendants. Each party shall have a total of five hours for its case. All of the time spent by each party, through its counsel, whether in opening or closing statements, argument on motions, in cross-examination or in redirect examination, or otherwise shall be counted against that total allotment. The Court shall designate a court employee to precisely track the time used by each party and, on request, notify the parties of the time remaining for each or any of them.

4. The parties, on January 25, 2002, each shall file and serve a list of the lay and expert witnesses whose testimony they intend to present at trial. Each party shall be limited to a total of eight witnesses.

A. The list shall provide the name, business address, and occupation of each witness.



B. For each witness designated as an "expert," the list shall be accompanied by a resume or vitae, including a list of publications and previous testimony, and a description of the subject matter of the expert's anticipated testimony.

C. The parties, on February 6, 2002, each shall file and serve a list of rebuttal witnesses, if any, and any additional lay or expert witnesses – all subject to the requirements in subparagraph B above. Each party shall be limited to two additional witnesses under this subparagraph.

5. On February 22, 2002, each party shall file and serve an affidavit containing in numbered paragraphs the direct testimony for each witness whose testimony that party intends to present at trial. The affidavits shall be accompanied by any exhibits, including proposed redistricting maps, with narrative descriptions of district boundaries, the party intends to offer with or through the witness.

6. On or before February 27, 2002, the parties shall complete discovery. That date is the deadline for the responses to any interrogatories, requests for production of documents or requests to admit – which pleadings shall have been filed and served no later than 20 calendar days before February 27, 2002. No party shall take more than four depositions; provided, however, that the parties may stipulate to additional depositions as long as the additional depositions have been completed by 5:00 p.m. on March 1, 2002.

7. The parties may, but need not, file and serve trial briefs. Any such briefs shall be limited to 30 pages and shall be filed and served on all counsel no later than February 27, 2002. No reply briefs will be accepted.

8. No party shall file any amended pleading after February 4, 2002; provided, however, that any party may amend any pleading at any time to reflect action taken either by the

Wisconsin State Senate or the Wisconsin State Assembly or the Governor of the State of Wisconsin with respect to congressional redistricting.

9. The Court will hear any motions *in limine* or any other pre-trial motions at the beginning of the trial. All such motions, each with a supporting brief not to exceed 10 pages, shall be filed and served on or before February 25, 2002 with any responsive briefs, not to exceed 10 pages, filed and served on or before March 1, 2002.

#### **LEGISLATIVE REDISTRICTING**

10. The trial of the matters raised in the Intervenor-Plaintiffs' Complaint, involving the redistricting of the state's 99 Assembly and 33 State Senate districts, shall begin on March 18, 2002, at 9:00 a.m. and continue until completed with three full days reserved for trial.

A. Direct testimony shall be presented by affidavit with the courtroom testimony of all witnesses limited to cross-examination and redirect examination.

B. The Court has recognized four principal parties: plaintiffs, intervening plaintiffs, defendants, and intervening defendants. Each party shall have a total of five hours for its case. All of the time spent by each party, through its counsel, whether in opening or closing statements, argument on motions, in cross-examination or in redirect examination, or otherwise shall be counted against that total allotment. The Court shall designate a court employee to precisely track the time used by each party and, on request, notify the parties of the time remaining for each or any of them.

11. The parties, on February 8, 2002, each shall file and serve a list of the lay and expert witnesses whose testimony they intend to present at trial. Each party shall be limited to a total of eight witnesses.

A. The list shall provide the name, business address, and occupation of each witness.

B. For each witness designated as an "expert," the list shall be accompanied by a resume or vitae, including a list of publications and previous testimony, and a description of the subject matter of the expert's anticipated testimony.

C. The parties, on February 20, 2002, each shall file and serve a list of rebuttal witnesses, if any, and any additional lay or expert witnesses – all subject to the requirements in subparagraph B above. Each party shall be limited to two additional witnesses under this subparagraph.

12. On March 8, 2002, each party shall file and serve an affidavit containing in numbered paragraphs the direct testimony for each witness whose testimony that party intends to present at trial. The affidavits shall be accompanied by any exhibits, including proposed redistricting maps, with narrative descriptions of district boundaries, the party intends to offer with or through the witness.

13. On or before March 13, 2002, the parties shall complete discovery. That date is the deadline for the responses to any interrogatories, requests for production of documents or requests to admit – which pleadings shall have been filed and served no later than 20 calendar days before March 13, 2002. No party shall take more than four depositions; provided, however, that the parties may stipulate to additional depositions as long as the additional depositions have been completed by 5:00 p.m. on March 15, 2002.

14. The parties may, but need not, file and serve trial briefs. Any such briefs shall be limited to 30 pages and shall be filed and served on all counsel no later than March 13, 2002. No reply briefs will be accepted.

15. No party shall file any amended pleading after February 18, 2002; provided, however, that any party may amend any pleading at any time to reflect action taken either by the Wisconsin State Senate or the Wisconsin State Assembly or the Governor of the State of Wisconsin with respect to legislative redistricting.

16. The Court will hear any motions *in limine* or any other pre-trial motions at the beginning of the trial. All such motions, each with a supporting brief not to exceed 10 pages, shall be filed and served on or before March 11, 2002, with any responsive briefs, not to exceed 10 pages, filed and served on or before March 15, 2002.

Dated: January \_\_\_\_, 2002.

BY THE COURT:

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**PROPOSED TRIAL SCHEDULE**

	<b><u>Congressional</u></b>	<b><u>Legislative</u></b>
Expert witness list	Jan. 25 (F)	Feb. 8 (F)
Deadline to amend pleadings	Feb. 4 (M)	Feb. 18 (M)
Rebuttal witness list	Feb. 6 (W)	Feb. 20 (W)
Discovery requests	Feb. 6 (W)	Feb. 20 (W)
Witness affidavits (direct testimony)	Feb. 22 (F)	March 8 (F)
Pre-trial motions and briefs	Feb. 25 (M)	March 11 (M)
Complete discovery	Feb. 27 (W)	March 13 (W)
Trial briefs (optional)	Feb. 27 (W)	March 13 (W)
Responsive briefs (pre-trial motions)	March 1 (F)	March 15 (F)
Additional depositions (by stipulation)	March 1 (F)	March 15 (F)
Trial	March 4 – 6 (M-W)	March 18 –20

**MICHAEL BEST  
& FRIEDRICH** LLP  
*Attorneys at Law*

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150 Independent Firms

December 19, 2001

VIA MESSENGER

Michael B. Wittenwyler, Esq.  
LaFollette Godfrey & Kahn  
One E. Main Street, #500  
P.O. Box 2719  
Madison, WI 53701-2719

Re: Arrington, et al. v. Elections Board, et al.  
Case No. 01-C-0121

Dear Mike:

Enclosed please find our submissions for today's filing in the above matter. As we discussed, we will deliver original signed documents from our Milwaukee office to yours. Please call me to discuss the coordination of the filing in Milwaukee.

Very truly yours,

MICHAEL BEST & FRIEDRICH LLP



Eric M. McLeod

EMM:skt

Enclosures

q:\client\013156\0002\b0113384.doc\12/19/01

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

---

REV. OLEN ARRINGTON, JR., ALVIN  
BALDUS, STEPHEN H. BRAUNGINN, JOHN  
D. BUENKER, ROBERT J. CORNELL, V.  
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JOHN H. KRAUSE, SR., JOSEPH J. KREUSER,  
FRANK L. NIKOLY, MELANIE R.  
SCHALLER, ANGEL W. SUTKIEWICZ and  
OLLIE THOMPSON,

Case No. 01-C-0121

Plaintiffs,

And

JAMES R. BAUMGART; ROGER M. BRESKE;  
BRIAN T. BURKE; CHARLES J. CHVALA;  
RUSSELL S. DECKER; JON ERPENBACH;  
GARY R. GEORGE; RICHARD  
GROBSCHMIDT; DAVE HANSEN; ROBERT  
JAUCH; MARK MEYER; RODNEY MOEN;  
GWENDOLYNNE S. MOORE; KIMBERLY  
PLACHE; FRED A. RISSER; JUDY ROBSON;  
KEVIN W. SHIBILSKI; and ROBERT D.  
WIRCH, each individually and as members of  
State Senate,

Intervenor-Plaintiffs,

vs.

JOHN P. SAVAGE, chair of the State of  
Wisconsin Elections Board, and each of its  
members of the Election Board in his or her  
official capacity, DAVID HALBROOKS, DON  
M. MILLIS, RANDALL NASH, GREGORY J.  
PARADISE, CATHERINE SHAW, JUDD  
DAVID STEVENSON, CHRISTINE WISEMAN  
and KEVIN J. KENNEDY, its executive director,

Defendants,

And

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---

SCOTT R. JENSEN, in his capacity as the  
Speaker of the Wisconsin Assembly, and MARY  
E. PANZER, in her capacity as the Minority  
Leader of the Wisconsin Senate,

Intervenor-Defendants.

---

**MEMORANDUM OF JENSEN AND PANZER, INTERVENOR-DEFENDANTS IN  
SUPPORT OF PROPOSED SCHEDULING ORDER**

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This memorandum is respectfully submitted in support of the Proposed Scheduling Order of Jensen and Panzer, Intervenor-Defendants (hereafter "Jensen Intervenors"), which is attached hereto as Exhibit A. The Proposed Scheduling Order follows the Arrington Order in form, but is significantly different in substance. This memorandum discusses some, but not all, of those differences. Also attached are a proposed trial schedule comparing the proposed dates of Jensen Intervenors with the dates proposed by Arrington (Exhibit B), the Scheduling Orders entered in *Prosser v. Elections Board*, 793 F. Supp. 859 (W.D. Wis. 1992) (Legislative Reapportionment 1992) (Exhibit C), and the 2002 Wisconsin state legislative calendar (Exhibit D). In sum, the Jensen Intervenors' proposed trial schedule is intended to provide appropriate deference to the prerogatives of the State of Wisconsin and to track the schedule followed in the 1990 cycle, a schedule which worked quite well for all parties concerned.

I. DEFERENCE TO THE STATE OF WISCONSIN PROCESS.

As this Court has already acknowledged, deference to the State of Wisconsin Legislature and State Courts is an essential component of the redistricting process. *Slip opinion*, p. 4, citing *Grove v. Emison*, 507 U.S. 25 (1993). This principal has been continually reaffirmed. *See, id.*; *see also Scott v. Germano*, 381 U.S. 407 (1965) (*per curiam*); *State of Maryland Committee for Fair Representation v. Tawes*, 377 U.S. 656, 676 n.18 (1964). The state legislative calendar



(Exh. D) provides for certain floor periods during which time the legislature may act on proposed legislation. The January 27 to February 7 and February 26 to March 14 floor periods will address apportionment and legislation will be proposed and it is reasonable to expect that legislation will pass and become law. Accordingly, any schedule to be established in this case should take into account those floor periods and the likelihood of action.

Moreover, the costs of this litigation have been, and will be, considerable. For that reason, as well as judicial economy, it is important that multiple tracks, i.e., legislative initiatives and courtroom proceedings, not occur in tandem, but rather succeed each other. In this instance, the activities and calendaring beginning with amendments to pleadings and ending with a trial ought to be set so as to avoid duplication and increased costs.

The calendar proposed by the Jensen Intervenors acknowledges the right of the state to address reapportionment before the federal court, and acknowledges the ongoing legislative process by proposing substantive activity to occur in this Court in March and April. The Proposed Scheduling Order (Exh. A) provides an expedited process covering virtually the same number of days as the Arrington proposal, but does so after the legislature has had an opportunity to act. In that sense it is virtually identical to the dates followed in the 1990 cycle before a three-judge panel. Since 1990, the Supreme Court has reaffirmed the deference accorded the states (*see, Growe v. Emison*, 507 U.S. 25 (1993)) and those principals strongly support the schedule proposed by the Jensen Intervenors.

Parallel scheduling of federal court proceedings and state action, as suggested by Arrington, would, in effect, demonstrate a patent disregard for, and unnecessarily cynical conclusion about, the legislative process. In 1992, the three-judge panel schedule allowed the legislature to act, without ongoing court proceedings (see Exh. C). Contrary to the implication of

the Arrington proposal, the court's deference in 1992 to the legislature resulted in congressional reapportionment being enacted into law. Moreover, state legislative reapportionment was passed by both houses of the legislature, although it was not ultimately signed by the Governor and did not become law. (Importantly, those plans were presented to the court as an alternative in 1992). Wasting court resources, and the financial resources of the state, should be avoided. The Jensen Intervenor's Proposed Scheduling Order allows for an orderly process, beginning March 1 and ending May 3.

II. THE DATES OF MATTERS SHOULD ALL TRACK PRIOR EFFECTIVE PROCEDURE.

In the 1990 cycle a complaint was filed and maps were drawn for legislative districts. *Prosser v. Elections Board*, 793 F. Supp. 859 (W.D. Wis. 1992). The scheduling orders of that proceeding, attached as Exhibit C, illustrate that the dates allowed by the court provided the legislature an opportunity to completely resolve issues. Once those issues were, or were not, resolved, the court took up the matter of reapportionment. The schedule set out by the prior court worked efficiently and the dates proposed by the Jensen Intervenor's are virtually identical to the 1992 dates. For example, the date for trial was April 27-28, 1992 and the proposed dates for trial here are the week of April 29.<sup>1</sup> The proposal for filing maps of the various parties is March 29 while in 1992 those maps were filed March 30.

---

<sup>1</sup> The Arrington plaintiffs suggest that the date on which the Elections Board is to issue certain notices concerning the fall elections, May 14, 2002, requires a much earlier schedule. This suggestion is erroneous. May 14, 2002 is merely a preliminary notice date. While the statutes specify certain dates for the Elections Board to provide notices of elections along with the circulation and filing of nomination papers for state and national offices, see § 10.72(1) to (3), Stats., the date to file nomination papers for those offices does not occur until July 9, 2002. § 10.72(3)(c)(1), Stats. Moreover, the July 9, 2002 date for filing nomination papers applies "unless the deadline for filing is extended." *Id.* Importantly, during the 1990 cycle the same statutory deadlines applied and the final decision in the *Prosser* case was issued on June 2, 1992, providing ample time to prepare for and conduct the fall elections in that year.

In addition, the Jensen Intervenors' proposal focuses on the submission of maps and testimony as the central point in the process. Again, the lesson of the 1990 cycle was that by focusing on the maps of each party, and the supporting data for those maps, the court was quickly able to discern where disputes existed and what those disputes might be. Similarly, the parties were thus focused from the outset on the ultimate goal – the drawing of fair maps for the State of Wisconsin.

The 1992 proceedings did not digress into meaningless (and costly) discovery motion practice or live testimony, but rather provided an expedited process focused on actual proposals, supported by data. While the Arrington plaintiffs make some passing reference to accommodating the legislative calendar and focusing on ultimate goals, the practical effect of their proposal is the opposite. This emphasis by Arrington is particularly curious given the ongoing hearings focused, in part, on congressional apportionment, the sole subject of the Arrington complaint, and the many published reports suggesting a congressional remap has been agreed on by all sitting members of the Wisconsin congressional delegation and will be taken up and passed by the legislature.

Unlike other proceedings, the issues before this court will be narrow. All the parties will agree that the relief sought will be the drawing of congressional and/or legislative districts.<sup>2</sup> The legal issues posed in these proceedings are not likely to be complex, though they certainly will be contested, and the factual issues can be provided in written form rather than through extensive live direct testimony.

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<sup>2</sup> The Arrington plaintiffs have not sought relief related to anything except the congressional districts. The recent filing of the Chvala Intervenors raises the state legislative districts. The Jensen Intervenors have not sought adjudication of those districts, nor has anyone yet answered the claims of the Chvala complaint. The Jensen Intervenors do not concede at this time that the Court should address in any respect the State legislative districts. Their proposals here are at the Court's invitation and without prejudice to addressing the extent of the Court's power in this case.

The Arrington and Jensen parties agree that limitations in time and method for the presentation of evidence is appropriate and is accomplished by the submission of evidence primarily in advance in written form. The Jensen Intervenors believe the process should first focus on the proposed maps (with supporting data). The Jensen Intervenors' Proposed Scheduling Order (Exh. A) first requires submission of proposals and a vetting of those proposals with replies and amendments (March 29, April 5, April 12, respectively) and second submission of expert (and to a limited degree non-expert) testimony to address the submitted maps (April 19, expert reports and direct testimony). A procedure that submits successive expert reports or repeated testimony at or before maps are proposed will devolve into a contest of paper without meaning. The Court and parties know today what relief is sought (and must be entered) -- reapportioned maps. The focus should be on those proposals, not meaningless posturing. The procedure followed in 1992 achieved that focus.<sup>3</sup> And the Jensen Intervenors propose a similar process in this Court.

All of the parties have access to the same population and other data. While each party may submit different justifications for particular maps, those justifications can be explored through supporting briefs supplied with the maps, through cross-examination and through the requirement for the advance submission of evidence. The Court too will, if it requests that access, have access to the data through state supplied computers. The Court should, we believe, focus on the goal -- maps from the outset and throughout the proceedings.

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<sup>3</sup> For the same reason, paragraph 2 of the Jensen Proposed Scheduling Order limits discovery to that requested and allowed, after hearing an explanation for the necessity of that discovery. The Arrington parties agree, in principal, to limitations, albeit somewhat differently.

### CONCLUSION

In the event the state fails to act, then the Court may intervene, but it should not do so until that intervention is essential. Given the unique nature of the proceeding, the lessons of 1992 panel can be helpful and instructive. The Jensen Intervenors believe the Order of this Court should be entered accordingly.

Respectfully submitted this 19<sup>th</sup> day of December, 2001.

**MICHAEL BEST & FRIEDRICH LLP**

By: \_\_\_\_\_

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Eric M. McLeod  
Gordon P. Giampietro

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Phone: (414) 298-8333

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

---

REV. OLEN ARRINGTON, JR., ALVIN  
BALDUS, STEPHEN H. BRAUNGINN, JOHN  
D. BUENKER, ROBERT J. CORNELL, V.  
JANET CZUPER, LEVENS DE BACK,  
STEVEN P. DOYLE, ANTHONY S. EARL,  
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FRANK L. NIKOLY, MELANIE R.  
SCHALLER, ANGEL W. SUTKIEWICZ and  
OLLIE THOMPSON,

Case No. 01-C-0121

Plaintiffs,

And

JAMES R. BAUMGART; ROGER M. BRESKE;  
BRIAN T. BURKE; CHARLES J. CHVALA;  
RUSSELL S. DECKER; JON ERPENBACH;  
GARY R. GEORGE; RICHARD  
GROBSCHMIDT; DAVE HANSEN; ROBERT  
JAUCH; MARK MEYER; RODNEY MOEN;  
GWENDOLYNNE S. MOORE; KIMBERLY  
PLACHE; FRED A. RISSE; JUDY ROBSON;  
KEVIN W. SHIBILSKI; and ROBERT D.  
WIRCH, each individually and as members of  
State Senate,

Intervenor-Plaintiffs,

vs.

JOHN P. SAVAGE, chair of the State of  
Wisconsin Elections Board, and each of its  
members of the Election Board in his or her  
official capacity, DAVID HALBROOKS, DON  
M. MILLIS, RANDALL NASH, GREGORY J.  
PARADISE, CATHERINE SHAW, JUDD  
DAVID STEVENSON, CHRISTINE WISEMAN  
and KEVIN J. KENNEDY, its executive director,

Defendants,

And

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SCOTT R. JENSEN, in his capacity as the  
Speaker of the Wisconsin Assembly, and MARY  
E. PANZER, in her capacity as the Minority  
Leader of the Wisconsin Senate,

Intervenor-Defendants.

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### PROPOSED SCHEDULING ORDER

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This matter came before the Court, appointed pursuant to 28 U.S.C. § 2284, for a pretrial status/planning conference on January 7, 2002. The Court noted the following appearances: for the plaintiffs, Brady C. Williamson and Mike B. Wittenwyler, LaFollette Godfrey & Kahn,; for the intervenor-plaintiffs, Michael P. May and Sarah A. Zylstra, The Boardman Law Firm; for the defendants, Thomas J. Balistreri, Assistant Attorney General, Wisconsin Department of Justice; and, for the intervenor-defendants, James R. Troupis and Eric M. McLeod, Michael Best & Friedrich LLP.

The states have the "primary responsibility for apportionment of their federal congressional and state legislative districts." *Slip op.* at 4, quoting *Grove v. Emison*, 507 U.S. 25, 34 (1993). The federal congressional and state legislative districts are separate and distinct processes. They are the subject of separate statutes, *see* Chs. 3, 4, Stats., and historically they have been the subject of separate legislation. In 1992 the congressional reapportionment was resolved without court intervention while state legislative reapportionment was resolved by the courts. *Prosser v. Elections Board*, 793 F. Supp. 859 (W.D. Wis. 1992).

The practical dimensions of the two processes suggest their separation as well. Only eight congressional districts need be created while state legislative redistricting will require the construction of 33 state senate districts, each circumscribing three state assembly districts. Accordingly, this Order treats the two processes separately for purposes of trial.

The Court in its November 28, 2001 Memorandum Opinion and Order stayed "all substantive judicial proceedings. . .until February 1, 2002. . . ." *Slip op.*, p. 25. The Court hereby extends that stay until March 1, 2002.

**FURTHER, IT IS HEREBY ORDERED** that the following procedures, deadlines and schedules shall govern the litigation and resolution of this case:

#### **GENERAL PROCEDURES**

1. **Filings and Service.** The dates specified for filing and service in this Scheduling Order are mandatory with "filing" defined as filing with the Clerk of the U.S. District Court for the Eastern District of Wisconsin, Milwaukee, Wisconsin, before 5:00 p.m. on the date specified, and "service" defined as actual delivery of the material to all of the other counsel in the case before 5:00 p.m. on the date specified. All filings shall be provided in triplicate to the Court.

2. No discovery shall be permitted without specific court approval, in advance. As in *Prosser v. Elections Board*, 793 F. Supp. 859 (W.D. Wis. 1992), the procedures set out below are intended to provide complete disclosure of relevant facts on an expedited schedule, and as such discovery shall only be permitted on a demonstration of exceptional need.

#### **CONGRESSIONAL REDISTRICTING**

3. **Trial.** The trial of the matters raised in the Complaint, involving the redistricting of the state's eight congressional districts, shall begin on April 29, 2002, at 9:00 a.m. and continue until completed with two full days reserved for trial.

A. Direct testimony shall be presented by affidavit with the courtroom testimony of all witnesses limited to cross-examination and redirect examination.

B. The Court has recognized four principal parties: plaintiffs, intervening plaintiffs, defendants, and intervening defendants. Each party shall have a total of five



hours for its case. All of the time spent by each party, through its counsel, whether in opening or closing statements, argument on motions, in cross-examination or in redirect examination, or otherwise shall be counted against that total allotment. The Court shall designate a court employee to precisely track the time used by each party and, on request, notify the parties of the time remaining for each or any of them.

4. The parties shall file and serve their proposed maps, with supporting demographic data and description or pictures sufficient to understand the geographic boundaries and briefs in support.

A. The parties shall file and serve their initial proposed maps on March 29, 2002.

B. The parties, on April 5, 2002, each shall file and serve briefs in opposition to the proposed maps.

C. The parties, on April 12, 2002, each shall file and serve any motions for leave to amend their proffered maps, together with their proposed amended maps.

D. The parties, on April 19, 2002, each shall file and serve reply briefs in opposition to proposed amended maps.

5. **Witnesses.** The parties, on April 19, 2002, each shall file and serve a list of the lay and expert witnesses whose testimony they intend to present at trial.

A. The list shall provide the name, business address, and occupation of each witness.

B. For each witness designated as an "expert," the list shall be accompanied by a resume or vitae, including a list of publications and previous testimony, and a

description of the subject matter of the expert's anticipated testimony in accordance with the federal rules.

C. The parties, on April 25, 2002, each shall file and serve a list of rebuttal witnesses, if any, and any additional lay or expert witnesses -- all subject to the requirements in subparagraphs B above. The list of rebuttal witnesses shall be accompanied by a clear statement of the reasons for the failure to previously name that witness and a copy of the direct testimony in accordance with paragraph 6 below. Leave to present such testimony will not be freely granted.

6. **Direct Testimony.** On April 19, 2002, each party shall file and serve an affidavit containing in numbered paragraphs the direct testimony for each witness whose testimony that party intends to present at trial. The affidavits shall be accompanied by any exhibits the party intends to offer with or through the witness.

7. **Trial Briefs.** The parties may, but need not, file and serve trial briefs. Any such briefs shall be served on all counsel no later than April 22, 2002. No reply briefs will be accepted.

8. **Pleadings.** No party shall file any amended pleading after March 15, 2002; provided, however, that any party may amend any pleading at any time to reflect action taken either by the Wisconsin State Senate or the Wisconsin State Assembly or the Governor of the State of Wisconsin with respect to congressional redistricting.

9. **Other Pretrial Motions.**

A. The Court will hear any motions *in limine* or any other pretrial motions at the beginning of the trial. All such motions, each with a supporting brief not to exceed 5

pages, shall be filed and served on or before April 19, 2002 with any responsive briefs, not to exceed 5 pages, filed and served on or before April 25, 2002.

B. Objections to the admissibility of testimony of any witnesses, including objection to the qualifications of any expert, shall be filed and served on or before April 25, 2002.

C. The final list of witnesses the party will present live at trial; and a statement of reasons for that live testimony shall be served on or before April 25, 2002.

### **LEGISLATIVE REDISTRICTING**

10. The trial of the matters raised in the Intervenor-Plaintiff's Complaint, involving the redistricting of the state's 99 Assembly and 33 State Senate districts, shall begin on May 1, 2002, at 9:00 a.m. and continue until completed with three days reserved for trial.

A. Direct testimony shall be presented by affidavit with the courtroom testimony of all witnesses limited to cross-examination and redirect examination.

B. The Court has recognized four principal parties: plaintiffs, intervening plaintiffs, defendants, and intervening defendants. Each party shall have a total of five hours for its case. All of the time spent by each party, through its counsel, whether in opening or closing statements, argument on motions, in cross-examination or in redirect examination, or otherwise shall be counted against that total allotment. The Court shall designate a court employee to precisely track the time used by each party and, on request, notify the parties of the time remaining for each or any of them.

11. The parties shall file and serve their proposed maps, with supporting demographic data and description or pictures sufficient to understand the geographic boundaries and briefs in support.

A. The parties shall file and serve their initial proposed maps on March 29, 2002.

B. The parties, on April 5, 2002, each shall file and serve briefs in opposition to the proposed maps.

C. The parties, on April 12, 2002, each shall file and serve any motions for leave to amend their proffered maps, together with their proposed amended maps.

D. The parties, on April 19, 2002, each shall file and serve reply briefs in opposition to proposed amended maps.

12. Witnesses. The parties, on April 19, 2002, each shall file and serve a list of the lay and expert witnesses whose testimony they intend to present at trial.

A. The list shall provide the name, business address, and occupation of each witness.

B. For each witness designated as an "expert," the list shall be accompanied by a resume or vitae, including a list of publications and previous testimony, and a description of the subject matter of the expert's anticipated testimony in accordance with the federal rules.

C. The parties, on April 25, 2002, each shall file and serve a list of rebuttal witnesses, if any, and any additional lay or expert witnesses -- all subject to the requirements in subparagraphs B above. The list of rebuttal witnesses shall be accompanied by a clear statement of the reasons for the failure to previously name that witness and a copy of the direct testimony in accordance with paragraph 5 below. Leave to present such testimony will not be freely granted.

13. **Direct Testimony.** On April 19, 2002, each party shall file and serve an affidavit containing in numbered paragraphs the direct testimony for each witness whose testimony that party intends to present at trial. The affidavits shall be accompanied by any exhibits the party intends to offer with or through the witness.

14. **Trial Briefs.** The parties may, but need not, file and serve trial briefs. Any such briefs shall be served on all counsel no later than April 22, 2002. No reply briefs will be accepted.

15. **Pleadings.** No party shall file any amended pleading after March 15, 2002; provided, however, that any party may amend any pleading at any time to reflect action taken either by the Wisconsin State Senate or the Wisconsin State Assembly or the Governor of the State of Wisconsin with respect to legislative redistricting.

16. **Other Pretrial Motions.**

A. The Court will hear any motions *in limine* or any other pretrial motions at the beginning of the trial. All such motions, each with a supporting brief not to exceed 5 pages, shall be filed and served on or before April 19, 2002 with any responsive briefs, not to exceed 5 pages, filed and served on or before April 25, 2002.

B. Objections to the admissibility of testimony of any witnesses, including objection to the qualifications of any expert, shall be filed and served on or before April 25, 2002.

C. The final list of witnesses the party will present live at trial; and a statement of reasons for that live testimony shall be served on or before April 25, 2002.

Entered this \_\_\_\_\_ day of January, 2002.

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### PROPOSED TRIAL SCHEDULE

	<u>Jensen et al. Congressional</u>	<u>Congressional Per Arrington</u>	<u>Jensen, et al. Legislative</u>	<u>Legislative Per Arrington</u>
Discovery requests	None	Feb. 6(W)	None	Feb. 20 (W)
Complete discovery	None	Feb. 27 (W)	None	March 13 (W)
Additional depositions (by stipulation)	None	March 1 (F)	None	March 15(F)
Deadline to amend pleadings	March 15 (F)	Feb. 4 (M)	March 15 (F)	Feb. 18 (M)
Proposed maps filed	March 29 (F)		March 29 (F)	
Response in opposition to maps	April 5 (F)		April 5 (F)	
Final amendment and submission of maps to be evidence (copies to Court)	April 12 (F)		April 12 (F)	
Expert witness list/report	April 19 (F)	Jan. 25 (F)	April 19 (F)	Feb. 8 (F)
Pre-trial motions and briefs	April 19 (F)	Feb. 25 (M)	April 19 (F)	March 11 (M)
Reply to oppositions to maps	April 19 (F)		- April 19 (F)	
Witness affidavits (direct testimony)	April 19 (F)	Feb. 22 (F)	April 19 (F)	March 8 (F)

	<u>Jensen et al. Congressional</u>	<u>Congressional Per Arrington</u>	<u>Jensen, et al. Legislative</u>	<u>Legislative Per Arrington</u>
Trial briefs (optional)	April 22 (M)	Feb. 27 (W)	April 22 (M)	March 13 (W)
Rebuttal expert witness list/report	April 25 (Th)	Feb. 6 (W)	April 25 (Th)	Feb. 20 (W)
Responsive briefs (pre-trial motions)	April 25 (Th)	March 1 (F)	April 25 (Th)	March 15 (F)
Objections to admissibility of testimony	April 25 (Th)		April 25 (Th)	
Final list of live witnesses	April 25 (Th)		April 25 (Th)	
Trial	April 29 (M)	March 4-6 (M-W)	May 1 (W)	March 18-20 (M-W)

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FEB 6 1 1992

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

-----

DAVID T. PROSSER, JR., RANDALL J. RADTKE,  
ROBERT T. WELCH, each individually and as  
members of the Wisconsin State Assembly;  
MICHAEL G. ELLIS, DONALD K. STITT, BRIAN D.  
RUDE and MARGARET A. FARROW, each individually  
and as members of the Wisconsin State Senate;  
DEREK KENNER, JACQUELINE D. SCHELLINGER,  
HAFEEZAH AHMAD, KENT VERNON and  
PERFECTO RIVERA, each individually

Plaintiffs,

v.

ORDER

92-C-78-C

ELECTIONS BOARD, an independent agency of  
the State of Wisconsin; GORDON BALDWIN,  
BARBARA KRANIG, J. CURTIS MCKAY, JOHN  
NIEBLER, BRANDON SCHOLZ, BRENT SMITH,  
KIT SORENSON and MARK E. SOSTARICH,  
in their official capacities as members of  
the Elections Board of the State of  
Wisconsin; BOARD OF STATE CANVASSERS, an  
independent agency of the State of Wisconsin;  
GORDON BALDWIN, JAMES E. DOYLE, CATHY S. ZEUSKE,  
MARILYN L. GRAVES, NATHAN S. HEFFERNAN, in  
their official capacities as members or  
potential members of the Board of State Canvassers,

Defendants,

and

WALTER J. KUNICKI, individually and as  
Speaker of the Wisconsin Assembly,  
and FRED A. RISSER, individually and as  
President of the Wisconsin Senate,

Proposed Intervening Defendants.

-----

A copy of this document  
has been mailed to the following:

PANEL JUDGES & COUNSEL

this 20<sup>TH</sup> day of February, 1992 by  
J.M. Dye, Secretary to Judge Crabb

A scheduling conference was held in this case on February 20, 1992, before United States District Judge Barbara B. Crabb. Present were James Troupis and Ruth Heitz, representing plaintiffs; Peter Anderson, Assistant Attorney General for the State of Wisconsin, representing defendants; Brady Williamson and Jeffrey Kassel, representing proposed intervenor Walter Kunicki; and William Dixon, representing proposed intervenor Fred Risser.

I have consulted with the other members of the three-judge panel appointed to hear this challenge to Wisconsin's legislative districts and have informed them of the discussion at the scheduling conference. The panel has agreed to enter the following scheduling order:

Plaintiffs may have until 4:30 p.m., Wednesday, February 26, 1992, in which to file and serve their brief in opposition to the motions to intervene. The proposed intervenors may have until 4:30 p.m. Monday, March <sup>2</sup>, 1992, in which to file and serve their reply brief.

Assuming the motion to intervene is granted, the parties are to submit, simultaneously, their proposed maps no later than March 30, 1992. Briefs in opposition to the proposed maps are to be filed and served no later than April 6, 1992, and reply briefs are to be served and filed no later than April 13, 1992. In preparing their briefs, the parties are asked to address the question whether

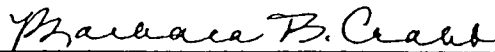
anything in either the state or federal constitutions or in the Voting Rights Act prevents a court from requiring competing parties to submit their "last best offer," from which the court could choose the map that comes closest to achieving the constitutional and statutory goals of fair voting districts.

Also on April 13, 1992, the parties are to advise their opponents, in writing, with a copy to the court, of the names, addresses and areas of expertise of the expert witnesses they intend to call at the hearing to be held on April 27, 1992. No later than April 20, 1992, the parties shall serve and file brief summaries of the anticipated testimony of each expert.

If the motion to intervene is not granted, an expedited schedule will be imposed in place of the one set out above.

Any person wishing to intervene in this action must file a motion to do so no later than March 3, 1992.

Entered this 20<sup>th</sup> day of February, 1992.



BARBARA B. CRABB  
District Judge

on behalf of the three-judge panel of  
Circuit Judge Richard Posner, District Judge Thomas Curran and  
Judge Crabb

RECEIVED BY JRI

APP 17

(DATE)

MICHAEL, BEST &amp; FRIEDRICH

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

-----

DAVID T. PROSSER, JR., RANDALL J. RADTKE,  
ROBERT T. WELCH, each individually and as  
members of the Wisconsin State Assembly;  
MICHAEL G. ELLIS, DONALD K. STITT, BRIAN  
D. RUDE and MARGARET A. FARROW, each  
individually and as members of the  
Wisconsin State Senate; DEREK KENNER,  
JACQUELINE D. SCHELLINGER, HAFEEZAH  
AHMAD, KENT VERNON and PERFECTO RIVERA,  
each individually,

Plaintiffs,

RICHARD COLLINS, individually and in his  
official capacity as President of the  
Wisconsin Education Association Council;  
GEORGE WILLIAMS, individually;  
WISCONSIN EDUCATION ASSOCIATION COUNCIL,  
AFRICAN-AMERICAN COALITION FOR EMPOWERMENT and  
BARBARA WHITE; and DISTRICT COUNCILS 24,  
40 and 48, AFSCME, AFL-CIO,

Intervening Plaintiffs,

v.

ORDER

92-C-0078-C

ELECTIONS BOARD, an independent agency  
of the State of Wisconsin; GORDON  
BALDWIN, BARBARA KRANIG, J. CURTIS MCKAY,  
JOHN NIEBLER, BRANDON SCHOLZ, BRENT  
SMITH, KIT SORENSON and MARK E.  
SOSTARICH, in their official capacities  
as members of the Elections Board of the  
State of Wisconsin; BOARD OF STATE  
CANVASSERS, an independent agency of the  
State of Wisconsin; GORDON BALDWIN, JAMES  
E. DOYLE, CATHY S. ZEUSKE, MARILYN L.  
GRAVES, in their official capacities  
as members or potential members

A copy of this document  
has been mailed to the following:

ALL COUNSEL

this 16<sup>TH</sup> day of April, 1992 by  
J.M. Dye, Secretary to Judge Crabb

of the Board of State Canvassers,  
Defendants,  
and

WALTER J. KUNICKI, individually and as  
Speaker of the Wisconsin Assembly, and  
FRED A. RISSER, individually and as  
President of the Wisconsin Senate;  
GARY R. GEORGE, individually  
and as a member of the Wisconsin State  
Senate; ANNETTE (POLLY) WILLIAMS,  
individually and as a member of the  
Wisconsin State Assembly; MIGUEL BERRY,  
ABEL ORTIZ, and ROSA M. DOMINGUEZ;  
G. SPENCER COGGS; MARCIA P. COGGS,

Intervening Defendants.

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A preliminary pretrial conference was held on April 16, 1992 before the three-judge panel of Circuit Judge Richard Posner, and District Judges Thomas Curran and Barbara B. Crabb. Plaintiffs appeared by James Troupis and Ruth Heitz. The intervening plaintiffs appeared by Ronald Huntley, Robert Frieber, and Bruce Ehlke. Peter Anderson appeared for defendants. Brady Williamson, Jeffrey Kassel, William Dixon, Calvin Eleby, Ann Sulton, John Hendrick, Nancy Wettersten, Celia Jackson, Michael May and Joyce Kiel appeared for the intervening defendants. Also present was Loren Hoffman, Project Coordinator for the Wisconsin Integrated Legislative Information System.

After hearing argument at the conference and after consultation among the judges, the following orders are entered.

1. The motion of defendant Annette (Polly) Williams to bar ACE and Barbara White from further participation in the lawsuit because of their delay in entering their map on the computer system is DENIED.

2. Plaintiffs' motion for summary judgment is GRANTED with respect only to their request for declaratory and injunctive relief relating to the present legislative districts, and with the exception of plaintiffs' claim that the present legislative districts violate the Wisconsin Constitution. IT IS ORDERED that defendants Election Board, an independent agency of the State of Wisconsin; Gordon Baldwin, Barbara Kranig, J. Curtis McKay, John Niebler, Brandon Scholz, Brent Smith, Kit Sorenson and Mark E. Sostarich, in their official capacities as members of the Elections Board of the State of Wisconsin; Board of State Canvassers, an independent agency of the State of Wisconsin; Gordon Baldwin, James E. Doyle, Cathy S. Zeuske, Marilyn L. Graves, in their official capacities as members or potential members of the Board of State Canvassers are ENJOINED from preparing for and conducting the State of Wisconsin's primary and general elections for the Wisconsin Senate and for the Wisconsin Assembly using the existing legislative districts.

3. The court takes under advisement the questions whether the parties may proceed on more than one map and whether the maps may

be amended.

4. Intervening defendants Kunicki and Risser may have until noon, Friday, April 17, 1992, in which to serve and file motions for leave to amend their proffered maps by substituting the map approved by the Wisconsin legislature, together with their proposed amended map and brief in support. The remaining parties may have until 9:00 a.m., Monday, April 20, 1992, in which to serve and file any motions they wish to make for leave to amend their proffered maps, together with their proposed amended maps and briefs in support. Service of these motions is to be made by leaving copies for all opposing counsel in the office of the Clerk of Court for the United States District Court, Western District of Wisconsin.

5. The parties are to file and serve their summaries of expert witness testimony by 4:30 p.m., Monday, April 20, 1992. Service is to be made by leaving copies of the submissions for all opposing counsel in the office of the Chief Clerk of the Wisconsin Senate, Donald Schneider, Suite 402, 1 East Main Street, Madison.

6. At 9:00 a.m. on Wednesday, April 22, 1992, at the federal courthouse, Mr. Hoffman will instruct Judge Crabb in the use of the public access computer for redistricting. Any party may attend, in person or by counsel. Failure to attend will constitute a waiver of the right to attend. The session will be reported by one of the official court reporters.

7. If any or all of the motions to amend the maps are granted, the parties may have until 4:30 p.m., Wednesday, April 22, 1992, in which to serve and file their responses to the proposed amendments. Service shall be made by leaving copies of the responses in Mr. Schneider's office.

8. Also, at 4:30 p.m., Wednesday, April 22, 1992, counsel are to provide each of the judges on the panel with a map or maps of the same size and dimension as the maps of the other parties, together with overlays that will enable the judges to compare district boundaries.

8. No later than 4:30 p.m., Thursday, April 23, 1992, counsel for all parties are to serve (by leaving copies for opposing counsel in Mr. Schneider's office) and file the following information:

- a. Copies of any written materials intended as substitutes for direct testimony of any expert witness;
- b. Objections to the admissibility of testimony of the expert witness of any other party, including objections going to the number of such witnesses listed by any party;
- c. Objections to the qualifications of any expert witness proposed by any other party;
- d. The names of expert witnesses the party wishes to



cross-examine at trial and the purposes of the requested cross-examination;

e. A list of each expert witness the party wishes to present live at trial, in order of importance, and a statement of reasons for the asserted need for live testimony.

Entered this 16<sup>th</sup> day of April, 1992.

Barbara B. Crabb

BARBARA B. CRABB  
District Judge,

on behalf of the three-judge panel of Circuit Judge  
Richard Posner, District Judge Thomas Curran and Judge Crabb

\_\_\_\_\_  
(DATE) MICHAEL, BEST & FRIEDRIC

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

-----

DAVID T. PROSSER, JR., RANDALL J. RADTKE,  
ROBERT T. WELCH, each individually and as  
members of the Wisconsin State Assembly;  
MICHAEL G. ELLIS, DONALD K. STITT, BRIAN  
D. RUDE and MARGARET A. FARROW, each  
individually and as members of the  
Wisconsin State Senate; DEREK KENNER,  
JACQUELINE D. SCHELLINGER, HAFEEZAH  
AHMAD, KENT VERNON and PERFECTO RIVERA,  
each individually,

Plaintiffs,

v.

ORDER

92-C-0078-C

ELECTIONS BOARD, an independent agency  
of the State of Wisconsin; GORDON  
BALDWIN, BARBARA KRANIG, J. CURTIS MCKAY,  
JOHN NIEBLER, BRANDON SCHOLZ, BRENT  
SMITH, KIT SORENSON and MARK E.  
SOSTARICH, in their official capacities  
as members of the Elections Board of the  
State of Wisconsin; BOARD OF STATE  
CANVASSERS, an independent agency of the  
State of Wisconsin; GORDON BALDWIN, JAMES  
E. DOYLE, CATHY S. ZEUSKE, MARILYN L.  
GRAVES, NATHAN S. HEFFERNAN, in their  
official capacities as members or  
potential members of the Board of State  
Canvassers,

Defendants,

and

WALTER J. KUNICKI, individually and as  
Speaker of the Wisconsin Assembly, and  
FRED A. RISSER, individually and as  
President of the Wisconsin Senate,

Intervening Defendants,

1

A copy of this document  
has been mailed to the following:

All parties

this 10th day of March, 1992 by  
J.M. Dye, Secretary to Judge Crabb

and

THE WISCONSIN EDUCATION ASSOCIATION  
COUNCIL, RICHARD COLLINS and GEORGE  
WILLIAMS; GARY R. GEORGE, individually  
and as a member of the Wisconsin State  
Senate; ANNETTE (POLLY) WILLIAMS,  
individually and as a member of the  
Wisconsin State Assembly; and  
CELIA JACKSON,

Proposed Intervening Defendants.

-----

Briefs in opposition to the motions to intervene of the  
proposed intervenors may be served and filed no later than March  
16, 1992; briefs in reply are to be served and filed no later than  
March 20, 1992.

Counsel are reminded to send copies of every submission  
directly to Judges Posner and Curran, as well as to the district  
court in Madison.

Entered this 10<sup>th</sup> day of March, 1992.

Barbara B. Crabb

BARBARA B. CRABB  
District Judge,

on behalf of the three-judge panel of Circuit Judge  
Richard Posner, District Judge Thomas Curran and Judge Crabb

## 2001-2002 SESSION SCHEDULE

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The Wisconsin legislature sets its own schedule through adoption of a joint resolution. The 2001-2002 session schedule was created by 2001 Senate Joint Resolution 1. The schedule is reprinted below.

### 2001

January 3	2001 Inauguration
January 30 to February 1	Floorperiod
February 13 to 15	Floorperiod
March 6 to 22	Floorperiod
April 26	Bills sent to governor
May 1 to 10	Floorperiod
June 5 to June 29 or budget passage	Floorperiod
August 16	Bills sent to governor
October 2 to 4	Floorperiod
October 16 to November 8	Floorperiod
December 13	Bills sent to governor

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### 2002

January 22 to February 7	Floorperiod
February 26 to March 14	Floorperiod (last general business)
April 18	Bills sent to governor
April 30 to May 2	Floorperiod (limited business)
May 7	Bills sent to governor
May 14 to 15	Floorperiod (veto review)
May 16, 2002 to January 6, 2003	Interim, committee work
May 30	Bills sent to governor
January 6, 2003	2003 Inauguration



[Back to Legislative Information](#)

**MICHAEL BEST  
& FRIEDRICH** LLP  
*Attorneys at Law*

JAN 7 2002

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Member: Lex Mundi,  
A Global Network of more than  
150 Independent Firms

January 4, 2002

Sofron B. Nedilsky, Clerk  
U.S. District Court  
Eastern District of Wisconsin  
517 E. Wisconsin Avenue  
Milwaukee, WI 53202-4583

Re: Arrington, et al. v. Elections Board, et al.; Case No. 01-C-0121

Dear Mr. Nedilsky:

In preparation for the scheduling conference on Monday, January 7, we have reviewed the December 19, 2001 filings of the parties concerning the schedule and administrative plan for this case. To the extent this Court may address State Legislative Redistricting, we believe the dates and procedures described in Proposed Scheduling Order of Intervening Defendants Jensen and Panzer remain the most appropriate and timely method for addressing those issues.

However, as to Congressional Redistricting only, a separate and distinct matter, the intervening Defendants no longer object to the Congressional Redistricting case schedule set-out by the Plaintiffs.

We look forward to discussing matters with the Court this coming week.

Very truly yours,

**MICHAEL BEST & FRIEDRICH LLP**

James R. Troupis

JRT:fw

cc: Brady C. Williamson  
Michael P. May ✓  
Thomas J. Balistreri

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