**CIVIL DISTRICT COURT**
**PARISH OF ORLEANS**
**STATE OF LOUISIANA**

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| RYAN BERNI, POOJA PRAZID, STEPHEN HANDWERK, AMBER ROBINSON, JAMES BULLMAN, DARRYL MALEK-WILEY, and KIRK GREEN,<br><br>Plaintiffs,<br><br>v.<br><br>R. KYLE ARDOIN, in his official capacity as Louisiana Secretary of State,<br><br>Defendant. | Civil Action<br>No. 2021-03538<br><br>Division C - Section 10 |

**PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT'S EXCEPTIONS TO PLAINTIFFS' AMENDED PETITION**



MAY IT PLEASE THE COURT:

Plaintiffs Ryan Berni, Pooja Prazid, Stephen Handwerk, Amber Robinson, James Bullman, Darryl Malek-Wiley, and Kirk Green, by and through their undersigned counsel, file this memorandum in opposition to the declinatory and peremptory exceptions filed by Defendant Secretary of State R. Kyle Ardoin (the "Secretary") in response to Plaintiffs' amended petition.

On November 16, 2021, this Court squarely rejected the arguments raised by the Secretary in his initial round of declinatory and peremptory exceptions. The Court correctly concluded that this case was ripe for adjudication, noting that "challenges to redistricting laws may be brought immediately upon release of official data showing district imbalance before reapportionment occurs." Judgment with Incorporated Reasons ("Judg.") 1 (citing *Arrington v. Elections Bd.*, 173 F. Supp. 2d 856 (E.D. Wis. 2001) (three-judge panel)). The Court further found "that venue is proper, because Orleans Parish is where plaintiffs' claim arise, in that plaintiffs' causes of action arise from the malapportionment injury suffered in Orleans parish." *Id.* Accordingly, the Court overruled each of the Secretary's exceptions. *Id.*

By his own admission, the Secretary "excepts to the amended and supplemental petition for the same reasons and on the same grounds as he did on the original petition." Mem. in Supp. of Exceptions on Behalf of Sec'y of State to Pls.' First Am. & Suppl. Pet. ("Mem.") 1. Indeed, the two motions are nearly identical, and the Secretary has not even acknowledged—let alone engaged

with—the myriad counterarguments Plaintiffs raised in their prior opposition. The same conclusions previously reached by the Court therefore apply here. Because the Secretary raises the same arguments that the Court already rejected, his latest round of exceptions should also be denied.[1]

Venue is still proper in Orleans Parish, where residents are currently suffering the injury of malapportionment. The current controversy remains live—indeed, the risk of impasse has only increased since Plaintiffs' initiated this action in April—and, consistent with the practice adopted in other states previously and during the current redistricting cycle,[2] the Court must provide the necessary judicial backstop to avoid the harms that will follow from impasse. And the appropriate parties were named in Plaintiffs' amended petition: in redistricting cases, voters in overpopulated districts may sue, and the Secretary must defend.

Once again, the Secretary's exceptions should therefore be denied.



## BACKGROUND

### I. Factual Background

On April 26, 2021, the U.S. Secretary of Commerce delivered the results of the 2020 decennial census to the President. *See* First Am. & Suppl. Pet. for Injunctive & Declaratory Relief ("Am. Pet.") ¶ 17. The results reported that Louisiana now has a resident population of 4,657,757, an increase of more than 120,000 over the 2010 population figure. *See id.* ¶ 18. Because the census data make clear that the state's current congressional districts as enacted in 2011 (the "2011 Plan") do not account for this new population number, this current configuration violates state and federal law. *Id.* ¶ 2. Redrawing of Louisiana's congressional districts is therefore required.

Louisiana law provides that the state's congressional district plan be enacted through legislation, which must pass both chambers of the Legislature and be signed by the Governor. *Id.* ¶ 27 (citing La. Const. art. III, § 6). Consequently, the redistricting needed to avoid the injury of unconstitutional malapportionment is confronting a significant obstacle: partisan deadlock. The

[1] Because the Secretary rehashes his original exceptions nearly verbatim, this opposition in turn largely repeats the same arguments that Plaintiffs made in their previous briefing.

[2] For example, during the 2010 redistricting cycle, a majority of states with divided governments—including Colorado, Minnesota, Mississippi, Nevada, New Mexico, and New York—required judicial intervention to draw congressional maps, legislative maps, or both.

Republican Party currently controls both chambers of the Legislature, but it lacks the supermajority necessary to override a veto from the Democratic governor. *Id.* ¶¶ 4, 27. This partisan division among the state's political branches makes it extremely unlikely that they will pass a lawful congressional redistricting plan in time to be used during the upcoming 2022 congressional elections. Indeed, the Governor has publicly raised the possibility that he might well reject the Legislature's proposed congressional map, stating, "I will veto bills that I believe suffer from defects in terms of basic fairness." Blake Paterson & James Finn, *Gov. John Bel Edwards Will Veto Congressional Maps That Aren't 'Fair.' What Does That Mean?*, Advocate (Nov. 20, 2021), https://www.theadvocate.com/baton_rouge/news/article_8ace3fc4-4998-11ec-a9ff-2b154a8d9dd4.html.[3]

On August 12, 2021, the U.S. Secretary of Commerce delivered to the state its redistricting data file—commonly referred to as "P.L. 94-171 data" in reference to the 1975 legislation that first required this process—in a legacy format that Louisiana can use to tabulate the new population of each political subdivision. Am. Pet. ¶ 22. These data are typically delivered no later than *April* of the year following the decennial census. *Id.* In previous cycles, the congressional redistricting plan would therefore have been enacted by now. (For example, during the 2010 cycle, Louisiana enacted its plan on April 14, 2011.) Thus, even aside from the imminent risk of impasse, the redistricting needed in advance of the 2022 midterm elections must proceed on an unprecedently compressed timetable.



## II. Procedural Background

Recognizing that the pandemic has imposed and will continue to impose significant delays on the congressional redistricting process, Plaintiffs initiated this action by filing their original petition on April 26, 2021, asking the Court "to declare Louisiana's current congressional district plan unconstitutional, enjoin [the Secretary] from using the current plan in any future election, and

[3] The depth of Louisiana's current political divide—and the gridlock that has resulted—was further underscored during the Legislature's historic override session earlier this year. Of the 31 bills that the Governor vetoed, the Legislature failed to overturn a single one. *See* Melinda Deslatte, *Louisiana Veto Session Ends with No Bill Rejections Reversed*, AP (July 21, 2021), https://apnews.com/article/sports-government-and-politics-louisiana-f0d1e34d64f675df356990f97bab22bd; *Vetoed Bills from the 2021 Regular Session*, La. State Legislature, https://www.legis.la.gov/legis/VetoedBillsTable.aspx (last visited Dec. 2, 2021).

implement a new congressional district plan that adheres to the constitutional requirement of one-person, one-vote should the Legislature and Governor fail to do so." *Id.* ¶ 1. The Secretary then filed exceptions on May 24, which Plaintiffs opposed; the Court heard argument on the exceptions on August 20.

On August 19, 2021, Plaintiffs filed their amended petition, which added a new plaintiff, removed two plaintiffs, and made other technical changes to reflect newly released census data. The Secretary thereafter filed a new round of exceptions, which are substantively identical to his original exceptions. *See* Mem. 1. In the interim, the Court held oral argument and subsequently ruled on the Secretary's original exceptions, overruling them all and concluding that Plaintiffs brought a ripe case in the proper venue. *See* Judg. 1.[4]

**ARGUMENT**

The Secretary raises the declinatory exceptions of (1) lack of subject matter jurisdiction and (2) improper venue and the peremptory exceptions of (3) no cause of action and (4) no right of action. For the reasons discussed below, none of these exceptions should be sustained.[5]



[4] The Secretary has noticed his intention to apply for a supervisory writ to the Fourth Circuit Court of Appeal and further argued that "proceedings in this matter should be stayed until a final decision and ruling on the writ application is issued." Sec'y of State's Notice of Intent to Apply for Supervisory Writ & Req. for Stay 2. Plaintiffs do not agree that staying this matter is appropriate. As discussed at length in this opposition brief, redistricting is a fact-intensive process for which time is of the essence, especially given the delays imposed this cycle by the ongoing pandemic. Plaintiffs submit that the gears of judicial redistricting must be put into motion now to avoid unnecessary and harmful delays in the event of impasse. This matter should therefore proceed until and unless the Court of Appeal orders otherwise.

[5] Although not expanded upon in his supporting memorandum, the Secretary also (briefly) suggests that "a determination of the constitutionality of the congressional redistricting at a preliminary injunction proceeding is impermissible." Declinatory & Peremptory Exceptions on Behalf of Sec'y of State to Pls.' First Am. & Suppl. Pet. for Injunctive & Declaratory Relief 3–4. But Plaintiffs do not ask this Court to adjudicate the constitutionality of the state's congressional districts on a motion for preliminary injunction—and, indeed, do not request preliminary relief at all. The Secretary cites no authority suggesting that the Court cannot grant the relief actually sought in Plaintiffs' prayer for relief. *See* Am. Pet. 8.

## I. Declinatory Exceptions

### A. The Court has subject matter jurisdiction.[6]

The Secretary offers a variety of internally inconsistent excuses as to why this Court should not hear this case—none of which divests it of jurisdiction.

First, this case is justiciable. Plaintiffs currently live in malapportioned districts that will be used in future congressional elections unless a new map is timely adopted. Because the Court's intervention can prevent this constitutional harm, the case is not moot. And as the Court already concluded, "challenges to redistricting laws may be brought immediately upon release of official data showing district imbalance before reapportionment occurs." Judg. 1. The Court need not wait until the eve of an unconstitutional election before accepting jurisdiction to remedy Plaintiffs' injuries.

Furthermore, this Court's exercise of its jurisdiction does not infringe upon any other branch of government. Judicial management of impasse litigation is a common, necessary process that is repeated during every redistricting cycle to ensure equal, undiluted votes for all citizens. The Legislature and the Governor remain free to enact a new congressional plan; the Court will need to take further action only if they do not.



#### 1. The controversy is justiciable because Louisiana's districts are currently malapportioned.

The Secretary wrongly claims that this Court lacks subject matter jurisdiction because it is not currently known with complete certainty that the political branches will deadlock and fail to pass a congressional redistricting plan. This argument misses the point—and ignores the relevant legal standard.

There can be no dispute that continued use of the 2011 Plan is unconstitutional. Article I, Section 2 of the U.S. Constitution requires congressional districts to be as equivalent in population as possible "to prevent debasement of voting power and diminution of access to elected representatives." *Kirkpatrick v. Preisler*, 394 U.S. 526, 531 (1969). This constitutional mandate is

[6] Throughout his briefing, the Secretary repeatedly offers variations on the same general theme: that Plaintiffs' alleged injuries are unlikely to transpire and thus this Court lacks jurisdiction to remedy them. *See, e.g.*, Mem. 8–11, 15–17. In the interests of efficiency and economy, Plaintiffs address all of these arguments in this section.

commonly referred to as the "one person, one vote" principle. *See, e.g.*, *Gray v. Sanders*, 372 U.S. 368, 381 (1963). The census data released on April 26, 2021 make clear that the configuration of Louisiana's congressional districts does not account for the current population numbers in the state, violating the "Constitution's plain objective of [] equal representation for equal numbers." *Wesberry v. Sanders*, 376 U.S. 1, 18 (1964); *see also* Am. Pet. ¶ 21; *Arrington*, 173 F. Supp. 2d at 860 ("[A]pportionment schemes become instantly unconstitutional upon the release of new decennial census data." (quotation marks and citations omitted)). The U.S. Census Bureau revealed that Louisiana's population as of April 2020 had increased by more than 120,000 people as compared to ten years earlier, Am. Pet. ¶ 18, and population shifts have not been uniform across the state. In fact, recent data show that there is a greater than *11 percent* population deviation between districts, *see id.* ¶ 25—far from the equal representation the U.S. Constitution requires.

**2. Plaintiffs will be forced to vote using Louisiana's currently unconstitutional congressional map if a new plan is not timely enacted.**

The Secretary wrongly claims that the Court should ignore Louisiana's unconstitutional congressional map and the dilution of Plaintiffs' votes because no one has "propose[d] to utilize [the] current congressional districts drawn in 2011 to hold the regular congressional elections in 2022." Mem. 11. But that is *exactly* what state law requires the Secretary to do.



Louisiana law provides that the state "shall be divided into six congressional districts," and that those "districts *shall be composed as follows*." La. R.S. 18:1276.1 (emphasis added). The statute then lists the composition of the six districts as enacted in the 2011 Plan following the 2010 census. *See id.* The 2011 Plan is thus explicitly prescribed by law, since "[u]nder well-established rules of interpretation, the word 'shall' excludes the possibility of being 'optional' or even subject to 'discretion,' but instead 'shall' means imperative, of similar effect and import with the word 'must.'" *La. Fed'n of Tchrs. v. State*, 2013-0120, p. 26 (La. 5/7/13), 118 So. 3d 1033, 1051 (quotation marks and citations omitted). As Plaintiffs allege in their amended petition, an impasse would "leav[e] the existing plan in place for next year's election" because the Secretary has no discretion to implement a congressional plan that differs from the one prescribed by statute. Am.

Pet. ¶ 29. Unless a new plan is timely adopted, the Secretary *has no choice* but to use the 2011 Plan in the next election.[7]

Armed with his incorrect belief that he could choose not to carry out elections under the 2011 Plan, the Secretary suggests that this matter "is not of sufficient immediacy and reality to warrant the issuance of a declaratory judgment" by relying on cases involving permissive statutes that afforded state actors discretion over whether to apply the law. Mem. 16; *see also Am. Waste & Pollution Control Co. v. St. Martin Par. Police Jury*, 627 So. 2d 158, 163 (La. 1993) (finding action involving discretionary zoning statute "premature because a *permissive* statute must be rendered operative or threatened to be rendered operative prior to being challenged" (emphasis added)); *La. Fed'n of Tchrs. v. State*, 2011-2226, p. 6 (La. 7/2/12), 94 So. 3d 760, 764 (finding challenge to statutory school district waiver scheme nonjusticiable because no waiver had been requested and Board of Education retained discretion over whether to grant waiver at issue). Here, by contrast, the Secretary has no choice but to carry out congressional elections under the 2011 Plan absent a legislatively enacted map or an order from this Court. The statute requiring use of the existing districts is not permissive, and neither the Secretary nor anyone else has discretion to simply disregard the 2011 Plan. *See* La. R.S. 18:1276.1. Thus, when the political branches fail to enact a new plan, the Secretary will have no choice but to carry out congressional elections under the indisputably malapportioned map—unless the Court steps in. And because use of the 2011 Plan is not permissive, the Louisiana Supreme Court's concern about premature adjudication is simply not present in this case.



[7] The Secretary's lack of discretion in this regard is further demonstrated by federal law. "Until a State is redistricted in the manner provided by the law thereof after any apportionment, the Representatives to which such State is entitled under such apportionment shall be elected . . . from the districts then prescribed by the law of such State" if, as here, "there is no change in the number of Representatives," 2 U.S.C. § 2a(c). In other words, unless Louisiana is redistricted in the manner provided by law—which is to say, either through a legislative enactment or judicial intervention—then its congressional representatives must be elected from the districts currently prescribed by state law—which is to say, the 2011 Plan. While the advent of the one-person, one-vote principle has rendered this federal statutory provision unconstitutional, *see Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 811–12 (2015), it nonetheless underscores that there is no automatic or fail-safe method of redistricting other than judicial intervention, and thus that the Secretary would have no choice but to use the 2011 Plan if both the political branches and the judiciary fail to act. And, indeed, the very unconstitutionality of this provision further highlights that any future use of the 2011 Plan, which is unavoidable if redistricting does not occur, will unconstitutionally dilute Plaintiffs' voting rights.

For similar reasons, the Secretary's suggestion that the current action is moot misses the mark. *See* Mem. 13–14. Rather than asking the Secretary to "follow the law that is already in place," Plaintiffs actually seek the opposite relief: an order *preventing* the Secretary from following the currently operative 2011 Plan. *See* La. R.S. 18:1276.1; Am. Pet. 8.

Curiously, both the Secretary's mootness *and* ripeness arguments rely on the same flawed premise: that the malapportionment of Louisiana's congressional districts will somehow resolve itself without judicial intervention—*even if the political branches deadlock*—and thus there is no injury for the Court to remedy at this time. *See* Mem. 13 (suggesting that "the objective [P]laintiffs seek has been accomplished by operation of law" simply because "the Constitution and laws command that the State redistrict"). But that is not the case. There are only two possible avenues for congressional redistricting in Louisiana: either a new plan is enacted through legislation, which passes both chambers of the Legislature and is signed by the Governor, *see* La. Const. art. III, § 6, or a new plan is produced through judicial intervention if the political branches deadlock, *see, e.g.*, *Growe v. Emison*, 507 U.S. 25, 33 (1993). *That's it.* Either the political branches will act, or this Court will act; because the political branches will not, this Court must. There is no third option.



**3. The Court does not need to wait until an unconstitutional election is held to protect Plaintiffs' rights.**

Plaintiffs do not need to wait to seek relief from this imminent and impending constitutional violation—and this Court does not need to delay in exercising its jurisdiction. *See* Judg. 1.

Contrary to the Secretary's argument, "it is not necessary to wait until actual injury is sustained before bringing suit." *State v. Rochon*, 2011-0009, p. 9 (La. 10/25/11), 75 So. 3d 876, 883. Instead, as a general matter, "a plaintiff who challenges a statute must demonstrate a realistic danger of sustaining a direct injury as a result of the statute's operation or enforcement." *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979); *see also La. Associated Gen. Contractors, Inc. v. State ex rel. Div. of Admin.*, 95-2105, p. 7 (La. 3/8/96), 669 So. 2d 1185, 1192 (recognizing that "federal decisions on standing and justiciability should be considered persuasive" (quotation marks and citation omitted)). "It is sufficient if a dispute or controversy as to legal rights is shown, which, in the court's opinion, requires judicial determination—that is, in which the court

is convinced that by adjudication a useful purpose will be served." *Perschall v. State*, 96-0322, p. 16 (La. 7/1/97), 697 So. 2d 240, 251. And the state's "declaratory judgment articles are remedial in nature and must be liberally construed and applied so as to give the procedure full effect within the contours of a justiciable controversy." *Id.* at 18, 697 So. 2d at 253.

Moreover, specific to this case, "challenges to districting laws may be brought immediately upon release of official data showing district imbalance—that is to say, *before* reapportionment occurs." *Arrington*, 173 F. Supp. 2d at 860 (quotation marks and citation omitted). Courts are routinely called upon in situations like this one, and the U.S. Supreme Court has repeatedly recognized that they must act in these circumstances. As it explained five decades ago,

> [w]hile a court sitting as a court of equity might be justified in temporarily refraining from the issuance of injunctive relief in an apportionment case in order to allow for resort to an available political remedy . . . , individual constitutional rights cannot be deprived, or denied judicial effectuation, because of the existence of a nonjudicial remedy through which relief against the alleged malapportionment, which the individual voters seek, might be achieved.

*Lucas v. Forty-Fourth Gen. Assembly*, 377 U.S. 713, 736 (1964). The need for judicial intervention in these cases is underscored by the dire consequences that result from a failure to timely redistrict: once an election has come and gone, and Plaintiffs' votes have been diluted, their injuries cannot be "undone through monetary remedies." *Cunningham v. Adams*, 808 F.2d 815, 821 (11th Cir. 1987); *see also Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) ("A restriction on the fundamental right to vote [] constitutes irreparable injury."). Moreover, Plaintiffs do not allege only a vote dilution injury. Until a lawful congressional map is in place, such that candidates can prepare to run in appropriate districts, Plaintiffs cannot "assess candidate qualifications and positions, organize and advocate for preferred candidates, and associate with like-minded voters." Am. Pet. ¶ 41. Plaintiffs thus face both an *imminent* malapportionment injury and an *ongoing* injury to their associational rights. They need not wait any longer to seek redress from this Court.

A nearly identical case, *Arrington v. Elections Board*, is instructive. The *Arrington* complaint was, like Plaintiffs' original petition, filed shortly after the release of census data identifying how many congressional seats each state would be allotted, and prior to the release of tabulated data used to draw districts. *See* 173 F. Supp. 2d at 858. The *Arrington* plaintiffs resided in districts that had become overpopulated, leaving them "under-represented in comparison with

residents of other districts." *Id.* at 859; *see also* Complaint at 9–11, *Arrington v. Elections Bd.*, No. 01-C-0121 (E.D. Wis. Feb. 1, 2001) (alleging that "population shifts during the last decade have generated substantial inequality among Wisconsin's nine existing congressional districts" which "dilutes the voting strength of the plaintiffs residing in relatively overpopulated congressional districts") (attached as Ex. 1). The *Arrington* plaintiffs sought the same relief Plaintiffs seek here: a declaration that the then-existing districts were unconstitutional; an injunction against the map's use in future elections; and, if the political process did not yield a new plan, judicial intervention to implement a constitutional map. *See* 173 F. Supp. 2d at 859.

The *Arrington* court rejected the argument that the case should be dismissed for lack of standing or ripeness because the possibility remained open that the state legislature would enact a new plan and remedy the plaintiffs' injury, *see id.* at 860–61—the same argument that the Secretary now makes here. That decision was driven by the fact that the *Arrington* plaintiffs alleged that they would be injured if the law remained as it was when the suit was filed and that there was no reasonable prospect that the state legislature would enact a new plan due to a partisan division between the state's political branches. *Compare id.*, *with* Am. Pet. ¶¶ 4, 27–28. The *Arrington* court also noted that the plaintiffs alleged associational harms that manifested long before an election, preventing them from influencing members of congress, contributing to candidates, and more—just as Plaintiffs allege here. *Compare* 173 F. Supp. 2d at 863 n.13, *with* Am. Pet. ¶ 41. The fact that the political branches *could* have prevented the plaintiffs' claimed injury was "irrelevant" to the *Arrington* court's conclusion because the plaintiffs had "realistically allege[d] actual, imminent harm," in part because 12 of the 43 states that needed to redistrict during the prior cycle failed to legislatively enact congressional redistricting plans. 173 F. Supp. 2d at 862. The court ultimately declined to "dismiss the plaintiffs' complaint and wait to see if the legislature enacts its own districting plan in a timely fashion" and instead retained jurisdiction, stayed proceedings, and "establish[ed], under its docket-management powers, a time when it would take evidence and adopt its own plan if the legislature had by then failed to act." *Id.* at 865.

Consistent with *Arrington*'s reasoning, the Minnesota Supreme Court has already put the gears of judicial redistricting into motion under similar circumstances. Like Louisiana, control of Minnesota's political branches is divided between Democrats and Republicans, creating a high

risk of an irreparable impasse that will prevent the enactment of constitutionally apportioned maps in time for next year's elections. Recognizing the need to prepare for judicial intervention, the Minnesota Supreme Court asserted jurisdiction in two lawsuits that alleged legislative deadlock, including one that was filed even *before* the release of census data in April. *See* Order at 1–2, *Sachs v. Simon*, No. A21-0546 (Minn. May 20, 2021) (attached as Ex. 2); Order at 1–3, *Wattson v. Simon*, No. A21-0243 (Minn. Mar. 22, 2021) (attached as Ex. 3). Although the court initially imposed a short stay, it sua sponte lifted the stay in June and appointed a special redistricting panel to "order implementation of judicially determined redistricting plans . . . that satisfy constitutional and statutory requirements in the event that the Legislature and the Governor have not done so in a timely manner," noting that the panel's work "must commence soon in order to permit the judicial branch to fulfill its proper role in assuring that valid redistricting plans are in place for the state legislative and congressional elections in 2022." Order at 2, *Wattson v. Simon*, Nos. A21-0243, A21-0546 (Minn. June 30, 2021) (attached as Ex. 4). The panel has already started its work, addressing procedural issues like intervention, undertaking hearings across the state to foster public input in the redistricting process, and issuing its guiding redistricting principles and plan submission requirements. *See, e.g.*, Scheduling Order No. 1 at 2–3, *Wattson v. Simon*, Nos. A21-0243, A21-0546 (Minn. Spec. Redistricting Panel July 22, 2021) (attached as Ex. 5).[8]



Just as in *Arrington* and in Minnesota, the partisan division between Louisiana's legislature and governor precludes any reasonable prospect that the political process will timely yield a redistricting plan ahead of the 2022 congressional elections—especially given the tightly compressed timeline caused by pandemic-related census delays. *See* Am. Pet. ¶¶ 4, 28–29. And just as in those cases, and many others like them, this Court must intervene to ensure that political

[8] In its order stating its redistricting principles and plan submission requirements, the Minnesota panel suggested that "the issue of the constitutionality of the current districts is not ripe for our decision." Order Stating Preliminary Conclusions, Redistricting Principles, and Requirements for Plan Submissions at 3, *Wattson v. Simon*, Nos. A21-0243, A21-0546 (Minn. Spec. Redistricting Panel Nov. 18, 2021) (attached as Ex. 6). Notably, however, the panel also concluded that it "has subject-matter jurisdiction over [that] action." *Id.* at 2. The panel's reference to "ripeness" is thus better understood as a prudential consideration, as it emphasized that "[t]he task of redrawing the districts falls to the legislature" in the first instance and that the legislative deadline has not yet passed. *Id.* at 3. This conclusion is consistent with Plaintiffs' requested relief in this case. *See* Am. Pet. 8 (asking Court to "[i]mplement a new congressional district plan . . . if the political branches fail to enact a plan").

impasse does not result in the dilution of Plaintiffs' and other Louisianians' voting rights. *See, e.g.*, *Growe*, 507 U.S. at 27; *Scott v. Germano*, 381 U.S. 407, 409 (1965); *Mellow v. Mitchell*, 607 A.2d 204, 205–06 (Pa. 1992); *Flateau v. Anderson*, 537 F. Supp. 257, 259 (S.D.N.Y. 1982) (per curiam) (three-judge panel).

**4. This Court's exercise of its jurisdiction does not usurp the other branches' powers to enact a congressional redistricting plan.**

Contrary to the Secretary's claims, Plaintiffs do not ask the Court to "to take over the functions of all three branches" of government. Mem. 2. As the U.S. Supreme Court has recognized, state courts play a crucial role in protecting voters against dilution when a state's political branches fail to redistrict on their own. *See, e.g.*, *Growe*, 507 U.S. at 33 ("The power of the judiciary of a State to require valid reapportionment or to formulate a valid redistricting plan has not only been recognized by this Court but appropriate action by the States in such cases has been specifically encouraged." (citing *Scott*, 381 U.S. at 409)). Consistent with this principle, Plaintiffs ask this Court to implement its own congressional plan *only* "if the political branches fail to enact a plan." Am. Pet. 8. This request is both necessary and appropriate.



As the Secretary acknowledges, redistricting is "unique." Mem. 11. It is the rare lawmaking activity that is *required* by the U.S. Constitution, which makes it unlike discretionary legislative matters such as naming highways or regulating insurance. Those elective issues are necessarily reserved for the political branches alone because the Legislature's failure to name a segment of the state's transportation infrastructure or regulate insurance audits does not violate any law—and thus could not inflict any legal injury. In stark contrast, a state's failure to fulfill its redistricting obligation unconstitutionally dilutes its citizens' right to vote and impairs their freedom of association. *See* Am. Pet. ¶¶ 33–43. The judiciary's assigned role is to enjoin and redress precisely these sorts of injuries. *See* La. Const. art. I, § 22 ("All courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay, for injury to him in his person, property, reputation, or other rights."); *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 147 (1803) ("It is a settled and invariable principle, that every right, when withheld, must have a remedy, and every injury its proper redress.").

This case does not present any dispute over which institution is responsible in the first instance for congressional redistricting in Louisiana—Plaintiffs and the Secretary agree that task is the Legislature's. *Compare* Am. Pet. ¶ 27, *with* Mem. 12. Instead, the question is how the rights of Louisiana voters will be remedied when the Legislature fails to enact a new congressional plan. The Secretary seems to suggest that the Legislature could decline to redraw its congressional districts after census data is published, and voters in overpopulated districts would be helpless until the Legislature changes its mind. *See* Mem. 12–13 (arguing, without qualification, that "this Court lacks jurisdiction to intercede in redistricting congressional election districts"). Such a scenario would be unconscionable, which is why courts have squarely rejected it. *See Wesberry*, 376 U.S. at 7 (holding, in congressional apportionment case, that "[t]he right to vote is too important in our free society to be stripped of judicial protection" on political question grounds). Where congressional districts are malapportioned—whether because of legislative action *or* inaction—the law "embraces action by state and federal courts." *Branch v. Smith*, 538 U.S. 254, 272 (2003).



None of the requests that Plaintiffs make in their prayer for relief exceeds this Court's institutional power. *See* Am. Pet. 8. Courts routinely enter declaratory judgments and grant injunctive relief. *See* La. Code Civ. Proc. arts. 1871, 3601(A). Merely establishing a litigation schedule is an ordinary—and, given the strict election calendar here, essential—judicial function. *Cf. Konrad v. Jefferson Par. Council*, 520 So. 2d 393, 397 (La. 1988) (recognizing that courts have power "to do all things reasonably necessary for the exercise of their functions as courts"). And judicial adoption of election maps is a necessary remedy when state legislatures fail to satisfy their constitutional redistricting duties. As the U.S. Supreme Court has explained,

> [l]egislative bodies should not leave their reapportionment tasks to the [] courts; but when those with legislative responsibilities do not respond, or the imminence of a state election makes it impractical for them to do so, it becomes the "unwelcome obligation" of the [] court to devise and impose a reapportionment plan pending later legislative action.

*Wise v. Lipscomb*, 437 U.S. 535, 540 (1978) (citation omitted) (quoting *Connor v. Finch*, 431 U.S. 407, 415 (1977)). While *Wise* specifically considered the occasional need for *federal* courts to wield the line-drawing pen, the Court has also recognized and "specifically encouraged" the role of *state* judiciaries to formulate valid redistricting plans when necessary. *Scott*, 381 U.S. at 409;

*see also Growe*, 507 U.S. at 34 (requiring federal courts to defer to state courts' timely efforts to redraw legislative and congressional districts).

All of these decisions recognize that judicial adoption of a redistricting plan neither co-opts nor displaces a legislature's authority. Here, having been assigned the redistricting responsibility in the first instance, the Legislature may not default on its constitutional duty and then claim the branch responsible for redressing constitutional injuries is powerless to do anything. *That* would warp the separation of powers. As the Louisiana Supreme Court has recognized, "from its inception the Louisiana judiciary had an important role in the formulation of law and done far more than merely apply statutory provisions." *Unwired Telecom Corp. v. Parish of Calcasieu*, 2003-0732, p. 18 (La. 1/19/05), 903 So. 2d 392, 405. The relief that Plaintiffs request is entirely consistent with this role.[9]



**B. Venue is proper in Orleans Parish.**

The Secretary argues that "Orleans Parish is an improper venue" for this suit, claiming instead that La. R.S. 13:5104 requires that this action be heard in East Baton Rouge Parish "because the operative events described in the petition all occur" in that jurisdiction. Mem. 1; *see also id.* at 5–8. This argument, however, relies on both a misunderstanding of Louisiana's venue statute and a mischaracterization of Plaintiffs' claims.

A suit against the Secretary "arising out of the discharge of his official duties" can be filed in either of two venues: "the district court of the judicial district in which the state capitol is located or in the district court having jurisdiction in the parish in which the cause of action arises." La. R.S. 13:5104(A). Although East Baton Rouge Parish would be an appropriate venue for this action—as the Secretary notes, "[t]here can be little argument that Louisiana's state capitol is located in East Baton Rouge Parish," Mem. 5—Orleans Parish is *also* a proper venue because it is where Plaintiffs' claims arise. *See* Judg. 1 (concluding "that venue is proper, because Orleans Parish is where plaintiffs' claim arise, in that plaintiffs' causes of action arise from the malapportionment injury suffered in Orleans parish").

[9] Moreover, unlike the plaintiffs in *Hoag v. State*, 2004-0857 (La. 12/1/04), 889 So. 2d 1019, who sought a writ of mandamus to compel the Legislature to appropriate certain funds, Plaintiffs here are not requesting that the Court order the Legislature to do anything. The Secretary's reliance on that case, *see* Mem. 12, is thus unpersuasive.

The Louisiana Supreme Court has explained that "where [a] cause of action arises" is "[t]he place where the operative facts occurred which support the plaintiff's entitlement to recovery." *Impastato v. State*, 2010-1998, p. 2 (La. 11/19/10), 50 So. 3d 1277, 1278 (per curiam). Plaintiffs' two causes of action are premised on the malapportionment of their congressional districts: "[i]n light of the significant population shifts that have occurred since the 2010 Census, and the recent publication of the results of the 2020 Census, the current configuration of Louisiana's congressional districts—which were drawn based on 2010 Census data—is now unconstitutionally malapportioned." Am. Pet. ¶ 37. Courts have made clear that malapportionment is an injury "felt by individuals *in overpopulated districts* who actually suffer a diminution in the efficacy of their votes and their proportional voice in the legislature." *Garcia v. 2011 Legis. Reapportionment Comm'n*, 559 F. App'x 128, 133 (3d Cir. 2014) (emphasis added) (citing *Reynolds v. Sims*, 377 U.S. 533, 561–63 (1964)). Indeed, in such cases, "injury results *only* to those persons domiciled in the under-represented voting districts." *Fairley v. Patterson*, 493 F.2d 598, 603 (5th Cir. 1974) (emphasis added); *cf. United States v. Hays*, 515 U.S. 737, 744–45 (1995) (explaining in standing context that racial gerrymandering injury is felt by voters in gerrymandered districts). In short, Plaintiffs allege injuries stemming from the malapportionment of Louisiana's congressional districts—including injury suffered in Orleans Parish. Under La. R.S. 13:5104(A), Orleans Parish is therefore a proper venue for this action.



The Secretary's arguments to the contrary are unavailing. He claims that "East Baton Rouge is [] the Parish in which the action will arise" because "[c]ongressional maps will be drawn, redistricting debated, bills passed and redistricting approved or vetoed at the state capitol," and thus "all of the operative events relating to redistricting upon which plaintiffs' claims depend will occur in East Baton Rouge." Mem. 5–6. But this mischaracterizes Plaintiffs' claims, which arise from the current malapportionment, *not* from any official action. This is a salient distinction, one illuminated by the Louisiana Supreme Court in *Impastato*. There, the Court "recognized that many courts had held that where a state agency's ministerial or administrative actions are called into question, East Baton Rouge Parish is the only appropriate forum." *Impastato*, 2010-1998, p. 2, 50 So. 3d at 1278. But in that case, the Court expressly noted that the plaintiffs' "causes of action did not arise from hurricane damage to their homes," but instead "from determinations made later by

Road Home personnel in East Baton Rouge Parish." *Id.*, 50 So. 3d at 1278. Here, by contrast, Plaintiffs' causes of action arise from the malapportionment injury suffered in Orleans Parish—*not* from state action in East Baton Rouge Parish. The Secretary's reliance on the Court's opinions in *Colvin v. Louisiana Patient's Compensation Fund Oversight Board*, 2006-1104 (La. 1/17/07), 947 So. 2d 15, *Devillier v. State*, 590 So. 2d 1184 (La. 1991) (per curiam), and similar cases are thus inapposite because those involved challenges to administrative actions that occurred in East Baton Rouge Parish, *not* claims premised on injuries sustained in other jurisdictions. *See Colvin*, 2006-1104, p. 14, 947 So. 2d at 24 ("[T]he operative facts which support plaintiffs' entitlement to recovery, i.e., the PCFOB's administrative decision not to settle their claims, all occurred in East Baton Rouge Parish."); *Devillier*, 590 So. 2d at 1184 ("An action to prohibit a state agency from assessing a statutory fine based on the unconstitutionality of the statute must be brought in East Baton Rouge Parish."); *see also* Mem. 6–8 (relying on cases involving "ministerial duties" and "administrative decision[s] of the state or a state agency").[10]



## II. Peremptory Exceptions

### A. Plaintiffs have stated a cause of action.

The Secretary argues that Plaintiffs fail to state a cause of action, restating his argument that Plaintiffs' claims are "academic, theoretical, or based on a contingency which may or may not arise." Mem. 16. This is, essentially, a rehash of the justiciability argument. For the sake of efficiency, Plaintiffs will briefly summarize their arguments instead of repeating in full the myriad reasons why the Secretary's views on justiciability and ripeness are misguided.

The general rule "is that an exception of no cause of action must be overruled unless the allegations of the petition exclude every reasonable hypothesis other than the premise upon which

[10] Incidentally, Louisiana courts have concluded that the location of a plaintiff's injury *can* constitute an appropriate venue for suit even where the injury is the result of state action or negligence. *See, e.g.*, *Gilbert v. State ex rel. Dep't of Transp. & Dev.*, 2018-49, p. 3 (La. App. 3 Cir. 6/6/18), 2018 WL 2731903, at *2 ("A review of the record reveals that Gilbert's accident, allegedly caused by DOTD's negligence, occurred in Terrebonne Parish."); *Shannon v. Vannoy*, 2017-1722, p. 14 (La. App. 1 Cir. 6/1/18), 251 So. 3d 442, 452 (concluding that, "in accordance with La. R.S. 13:5104(A) and (B)," plaintiff "was required . . . to file suit against Warden Vannoy and the State . . . either in East Baton Rouge Parish *or* East Feliciana Parish" where alleged injury occurred in East Feliciana Parish (emphasis added)); *McKenzie v. Imperial Fire & Cas. Ins. Co.*, 2012-1648, pp. 9–10 (La. App. 1 Cir. 7/30/13), 122 So. 3d 42, 49 ("[T]he action then became subject to the mandatory venue provisions set forth in La. R.S. 13:5104(A) and was transferred to the 22nd JDC for St. Tammany Parish (*where the accident occurred*) . . . ." (emphasis added)).

the defense is based; that is, unless plaintiff has no cause of action under any evidence admissible under the pleadings." *Haskins v. Clary*, 346 So. 2d 193, 195 (La. 1977). For the purpose of determining the validity of the peremptory exception of no cause of action, "all well-pleaded allegations of fact are accepted as true, and if the allegations set forth a cause of action as to any part of the demand, the exception must be overruled." *Id.* at 194. "Liberal rules of pleading prevail in Louisiana and each pleading should be so construed as to do substantial justice." La. Code Civ. Proc. art. 865. Whenever "it can reasonably do so, [a] court should maintain a petition so as to afford the litigant an opportunity to present his evidence." *Haskins*, 346 So. 2d at 194–95.

As discussed at length above—and as pleaded in Plaintiffs' amended petition—Louisiana's congressional districts are unconstitutionally malapportioned and the political branches will fail to adopt new districts in time for the next elections. The resulting injury must be redressed long before the 2022 midterm elections so that candidates can prepare their campaigns and Louisianians, including Plaintiffs, can evaluate their options and associate with like-minded voters. Until and unless the Legislature enacts a lawful map, this Court must prepare to do so. Contrary to the Secretary's representations, Plaintiffs' amended petition is consistent with the ordinary course of redistricting litigation, and this Court has the power to provide the relief that Plaintiffs seek. Both the law and the facts as Plaintiffs have alleged them support this action; Plaintiffs have thus pleaded a cognizable cause of action.



**B. Plaintiffs have a real and actual interest in the matter asserted.**

The Secretary wrongly asserts that "Plaintiffs lack the kind of real and actual interest required by" the Louisiana Code of Civil Procedure because they "do not show that they have a special interest in redistricting apart from the general public." Mem. 2; *see also id.* at 17. To the contrary, Plaintiffs who reside in overpopulated districts have standing to bring this action.

Under Louisiana law, "an action can be brought only by a person having a real and actual interest which he asserts." La. Code Civ. Proc. art. 681. Courts—including the U.S. Supreme Court—have routinely concluded that voters in overpopulated districts possess a particularized injury, distinct from the general public, that conveys standing to bring suit. *See, e.g.*, *Baker v. Carr*, 369 U.S. 186, 206–08 (1962) (holding that voters in overpopulated legislative districts have standing to sue); *Gill v. Whitford*, 138 S. Ct. 1916, 1929–31 (2018) (explaining that "injuries giving

rise to [malapportionment] claims were individual and personal in nature because the claims were brought by voters who alleged facts showing disadvantage to themselves as individuals" (quotation marks and citations omitted)); *see also Bradix v. Advance Stores Co.*, 2017-0166, pp. 4–5 (La. App. 4 Cir. 8/16/17), 226 So. 3d 523, 528 (noting that "federal cases regarding Article III standing . . . . can be persuasive" when considering Louisiana's standing requirement). Plaintiffs here, like the plaintiffs in previous malapportionment cases, "assert[] a plain, direct and adequate interest in maintaining the effectiveness of their votes, not merely a claim of the right possessed by every citizen to require that the government be administered according to law." *Baker*, 369 U.S. at 208 (quotation marks and citations omitted). Because Plaintiffs seek to safeguard their personal voting power against constitutional deprivation, they have asserted a "real and actual interest" in this action.[11]

The Secretary also suggests that "any harm that may befall plaintiffs from a particular reapportionment or redistricting plan that might occur in the future is entirely speculative," Mem. 2; *see also id.* at 19, but this is simply another reiteration of his justiciability argument. And the primary case on which he relies, *Soileau v. Wal-Mart Stores, Inc.*, 2019-0040 (La. 6/26/19), 285 So. 3d 420, is readily distinguishable. There, the plaintiff's claim for relief was explicitly foreclosed by a statute providing that "presentation and filing of the petition . . . *shall be premature* unless" certain predicate circumstances existed. *Id.* at 3, 285 So. 3d at 423 (quoting La. R.S.



[11] The Secretary, incidentally, overplays his hand by suggesting that a "special interest which is separate and distinct from the interest of the public at large" is required of plaintiffs in all cases. Mem. 18 (quoting *All. for Affordable Energy v. Council of City of New Orleans*, 96-0700, p. 6 (La. 7/2/96), 677 So. 2d 424, 428). The Louisiana Supreme Court has specified that "[w]ithout a showing of some special interest in the performance sought *of a public board, officer or commission* which is separate and distinct from the interest of the public at large, plaintiff will not be permitted to proceed." *League of Women Voters of New Orleans v. City of New Orleans*, 381 So. 2d 441, 447 (La. 1980) (emphasis added); *accord All. for Affordable Energy*, 96-0700, p. 6, 677 So. 2d at 428 (distinguishing between "plaintiffs [] seeking to compel [] defendants to perform certain functions," who must "show that they had some special interest which is separate and distinct from the general public," and "a citizen seeking to *restrain* unlawful action by a public entity," who "is not required to demonstrate a special or particular interest distinct from the public at large" (quotation marks and citations omitted)). Here, Plaintiffs are not seeking to compel performance from the Secretary or any other state official; instead, they seek to *enjoin* the Secretary from "implementing . . . Louisiana's current congressional districting plan." Am. Pet. 8. They seek affirmative relief only from this Court, not "a public board, officer or commission." Accordingly, even though Plaintiffs *do* have both a real and actual interest *and* a special interest distinct from the general public, it is not clear that the latter would even be required in this case.

23:1314(A)). Here, by contrast, there is no analogous statute at play. Additionally, unlike the allegations in *Soileau*, the risks of impasse and malapportionment here are neither hypothetical nor abstract: redistricting is required to remedy the constitutional injury of malapportionment; the political branches are poised to deadlock; and the only alternative is judicial intervention.

**C. The Secretary is the appropriate defendant.**

Finally, there can be no question that the Secretary is an appropriate defendant in redistricting litigation. The Secretary is, after all, the "chief election officer in the state." La. R.S. 18:421. And courts have denied previous secretaries' efforts to avoid participation in suits like this one. In *Hall v. Louisiana*, for example, the court found former secretary of state Tom Schedler to be the proper defendant in a redistricting lawsuit because (1) the Secretary enforces election plans, (2) no case law exists suggesting the Secretary is *not* the proper defendant in such cases, (3) the Secretary is often the defendant in voting rights cases, and (4) the Secretary would be forced to comply with and be involved in enforcing any injunctive relief. *See* 974 F. Supp. 2d 978, 993 (M.D. La. 2013). The Secretary must surely be familiar with this line of precedent; his own effort to dismiss a redistricting complaint on similar grounds was denied only two years ago. *See Johnson v. Ardoin*, No. CV 18-625-SDD-EWD, 2019 WL 2329319, at *3 (M.D. La. May 31, 2019) (finding Secretary to be proper defendant in redistricting action and noting that other courts have concluded similarly in other voting rights cases). The Secretary is thus responsible for defending this action.[12]



**CONCLUSION**

This Court has already considered and rejected the arguments that the Secretary now recycles. *See* Judg. 1. This matter is ripe for adjudication and readily justiciable, and the Court should proceed to ensure that the complicated task of redistricting is completed in advance of the upcoming midterm elections. The Secretary's latest exceptions should therefore be denied.

[SIGNATURE BLOCK ON NEXT PAGE]

[12] Outside of Louisiana, courts routinely adjudicate redistricting cases where secretaries of state are named as defendants. *See, e.g.*, *Growe*, 507 U.S. at 27; *White v. Weiser*, 412 U.S. 783, 786 (1973); *Kirkpatrick*, 394 U.S. at 528; *see also supra* Part I.A.3 (discussing current impasse litigation in Minnesota where secretary of state is named defendant).

Dated: December 2, 2021

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the above and foregoing has been sent via electronic mail to all known counsel of record on this 2nd day of December, 2021.

Darrel J. Papillion

# EXHIBIT 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN



'01 FEB -1 A9:11



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,

Civil Action
File No.
01-C-0121

v.

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 1st, 2nd, 6th, 8th and 9th 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.** 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:

(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 Whitelaw;

(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;

(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, Hoard, 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 Rhinelander.

**(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, Hortonia, 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 Williamstown;

(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;

(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;

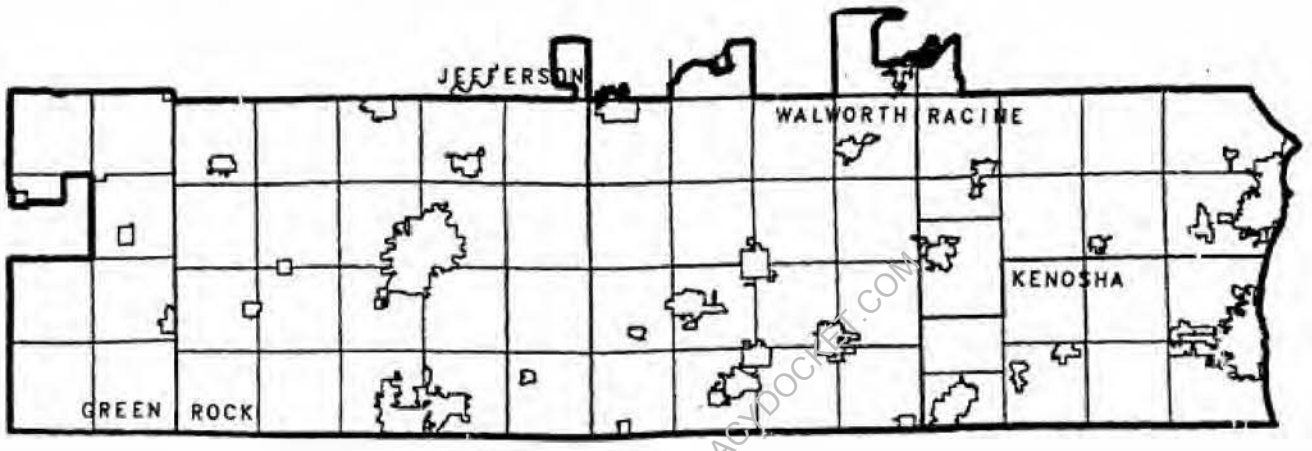
(c) The villages of Butler, Chenequa, Dousman, Eagle, Elm Grove, Hartland, Lac La Belle, Lannon, Menomonee Falls, Merton, Nashotah, North Prairie, Oconomowoc Lake, Pewaukee, Sussex and Wales;

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

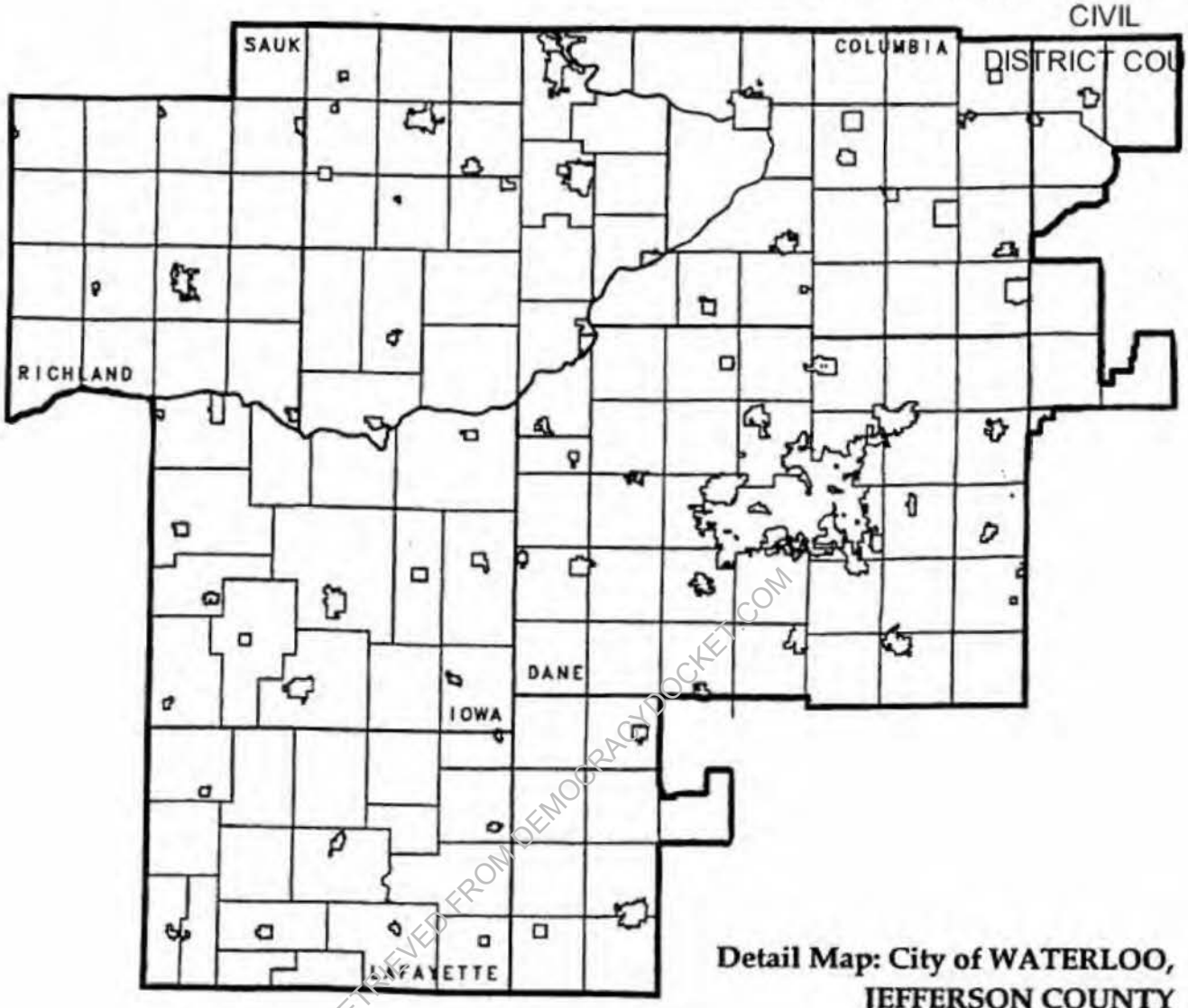
(e) That part of the city of Milwaukee located in the county.

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

## 1st CONGRESSIONAL District

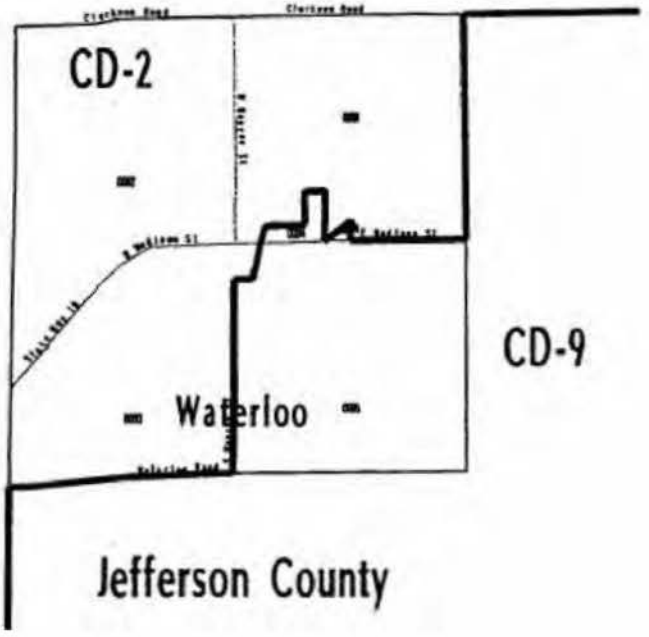


## 2nd CONGRESSIONAL District

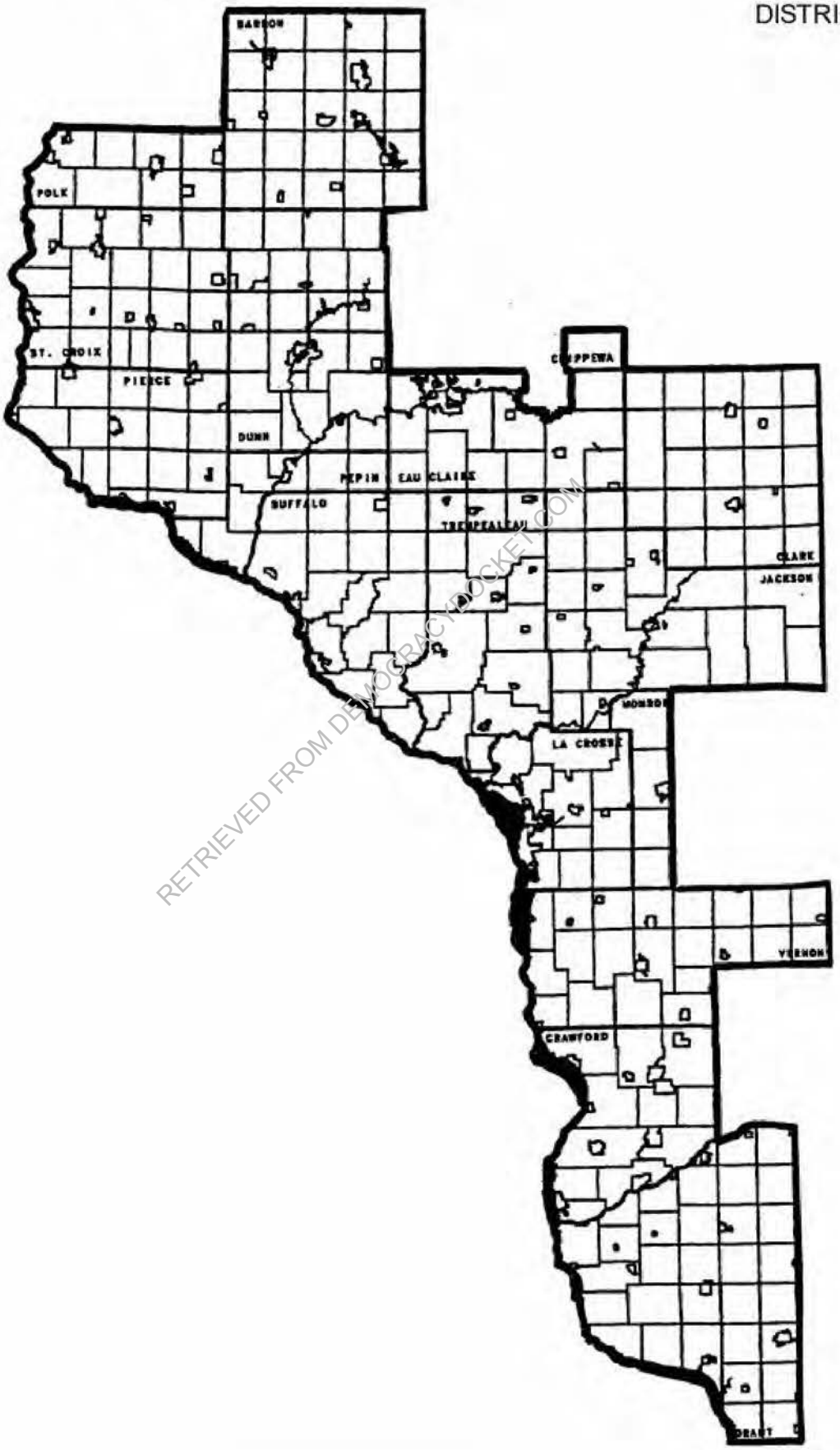


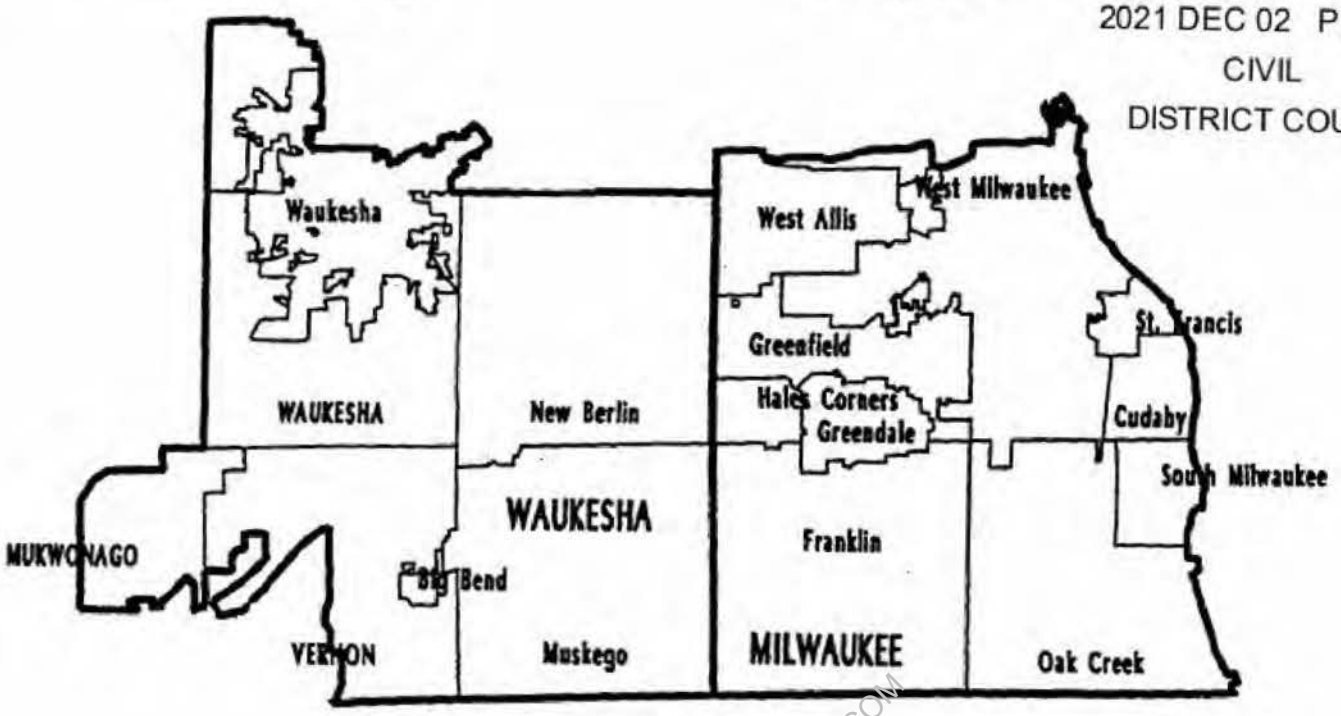



**Detail Map: City of WATERLOO, JEFFERSON COUNTY**



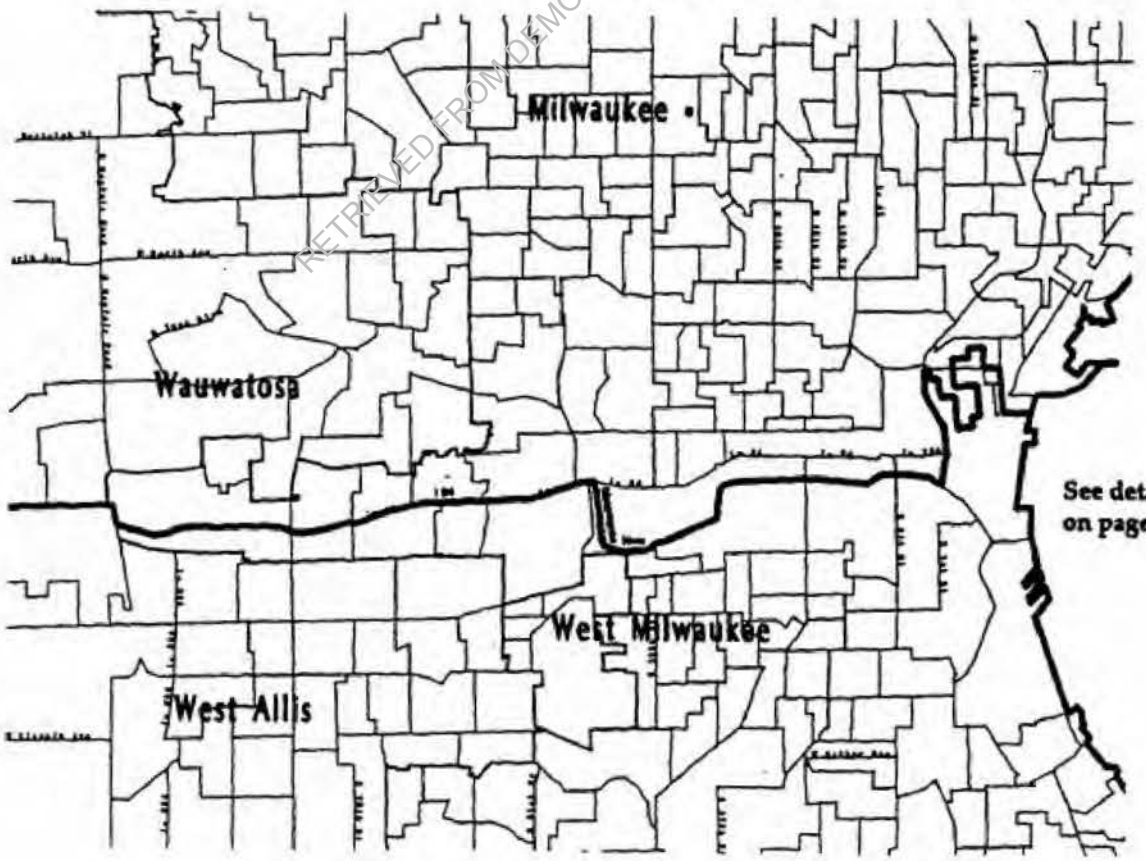
## 3rd CONGRESSIONAL District







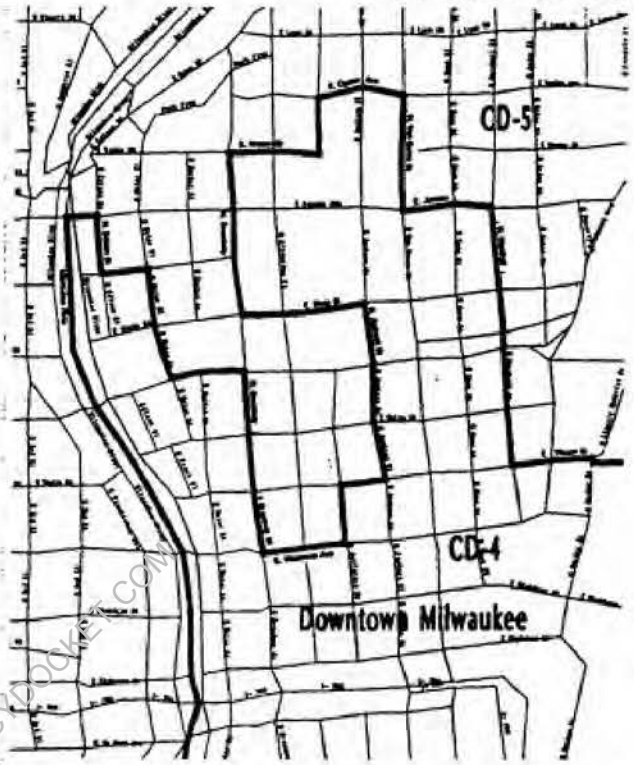

**Detail Map: Downtown, MILWAUKEE COUNTY**




See detail map on page 22.

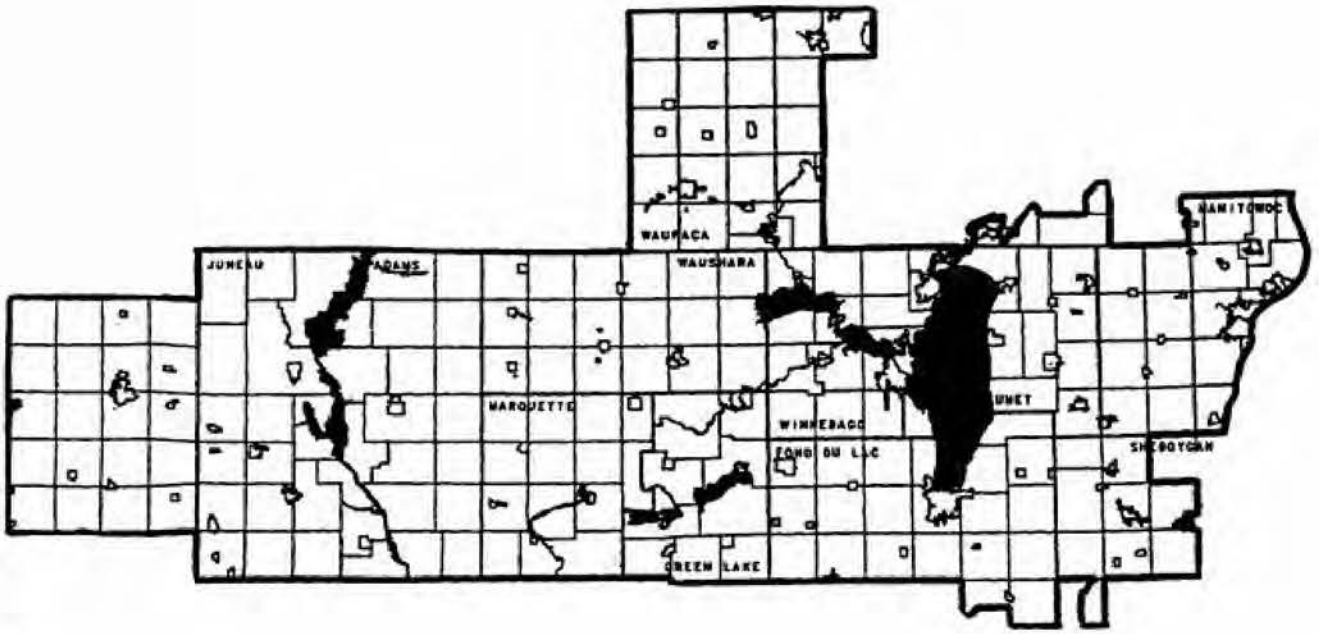
## 5th CONGRESSIONAL District


## Detail Map: City of MILWAUKEE
## MILWAUKEE COUNTY

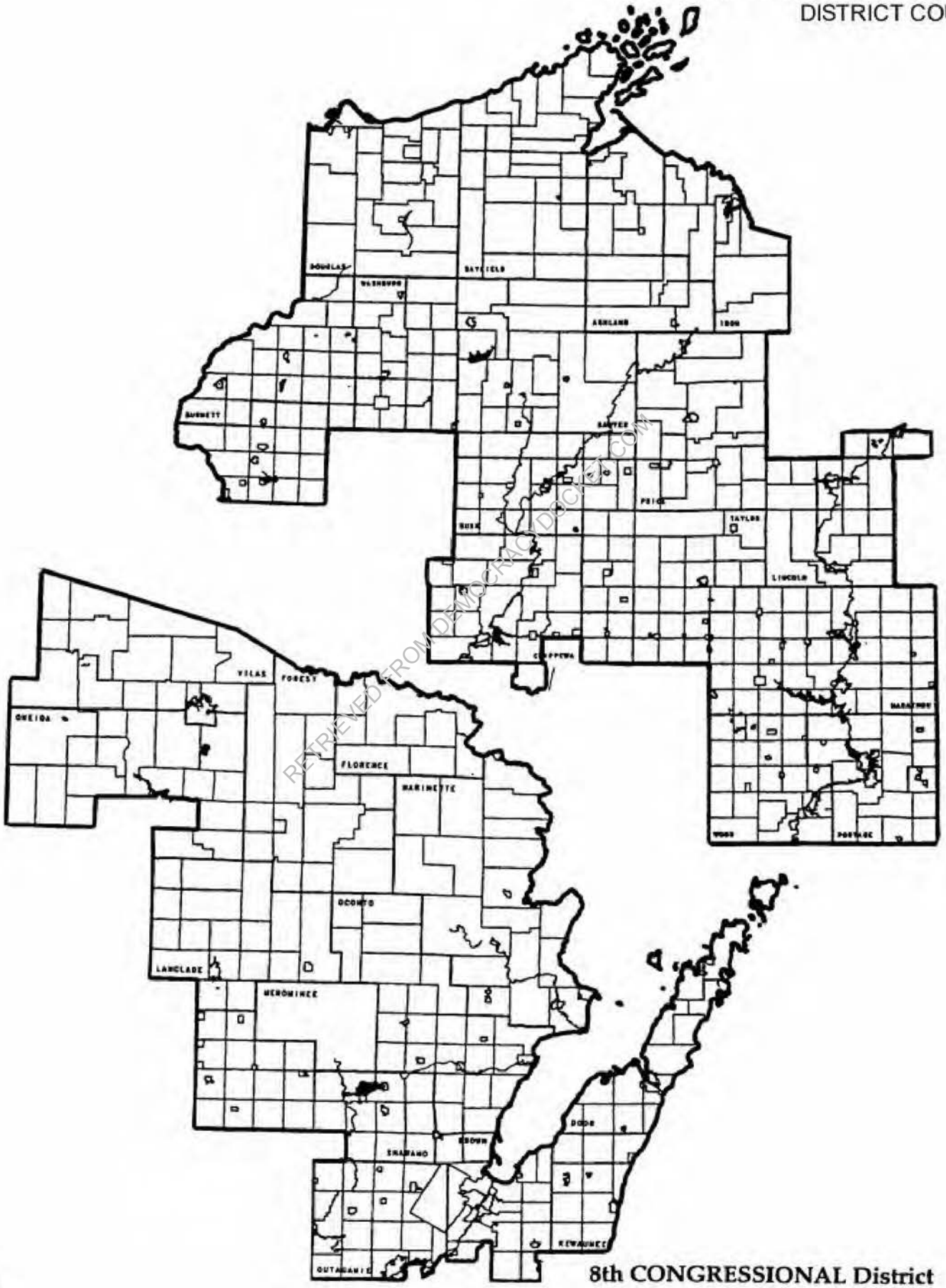




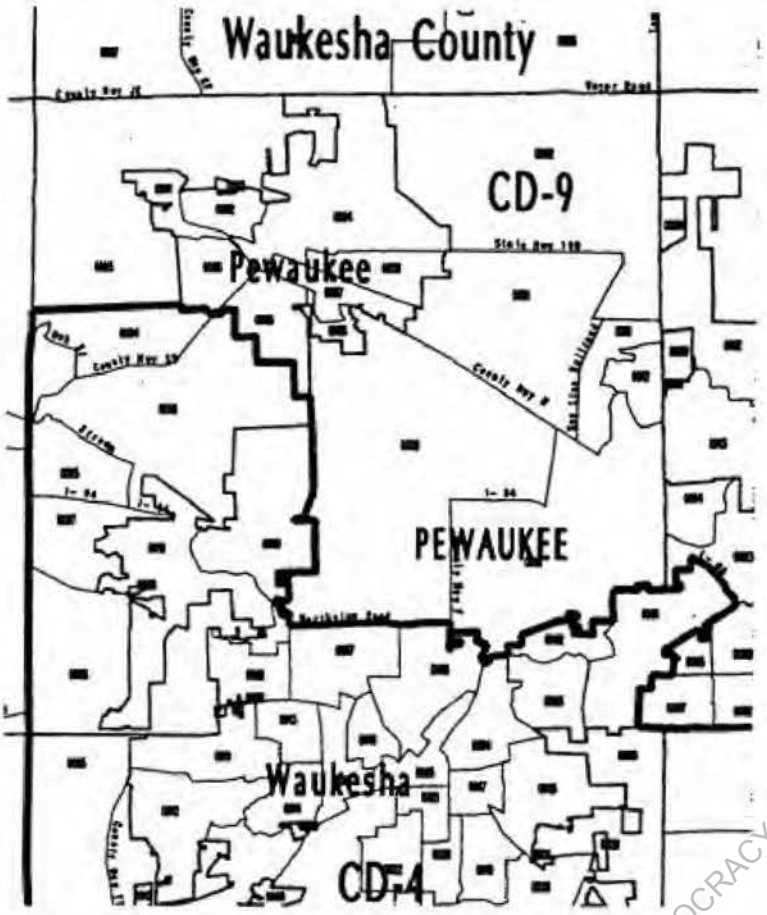

## 6th CONGRESSIONAL District



7th CONGRESSIONAL District

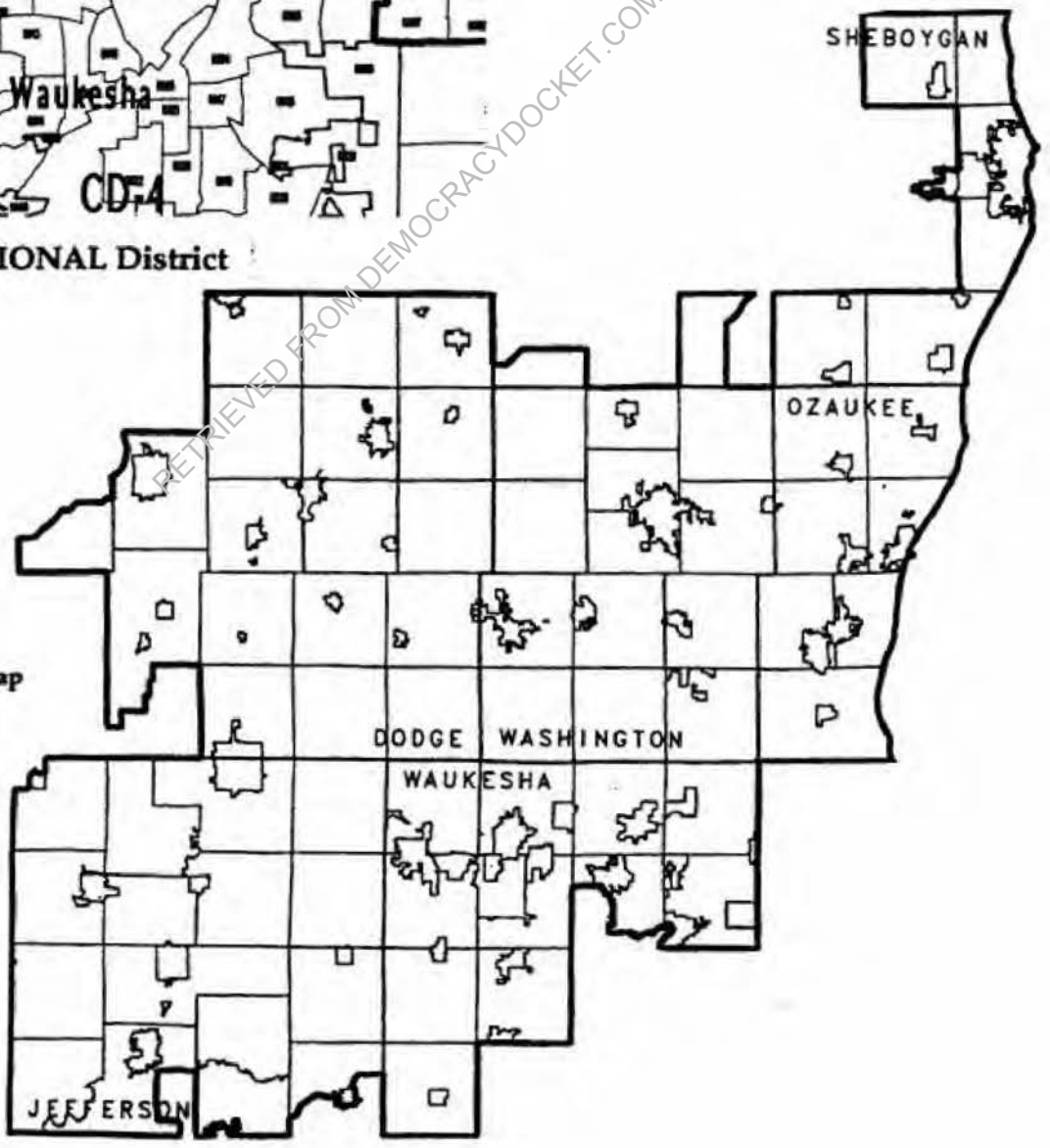



8th CONGRESSIONAL District



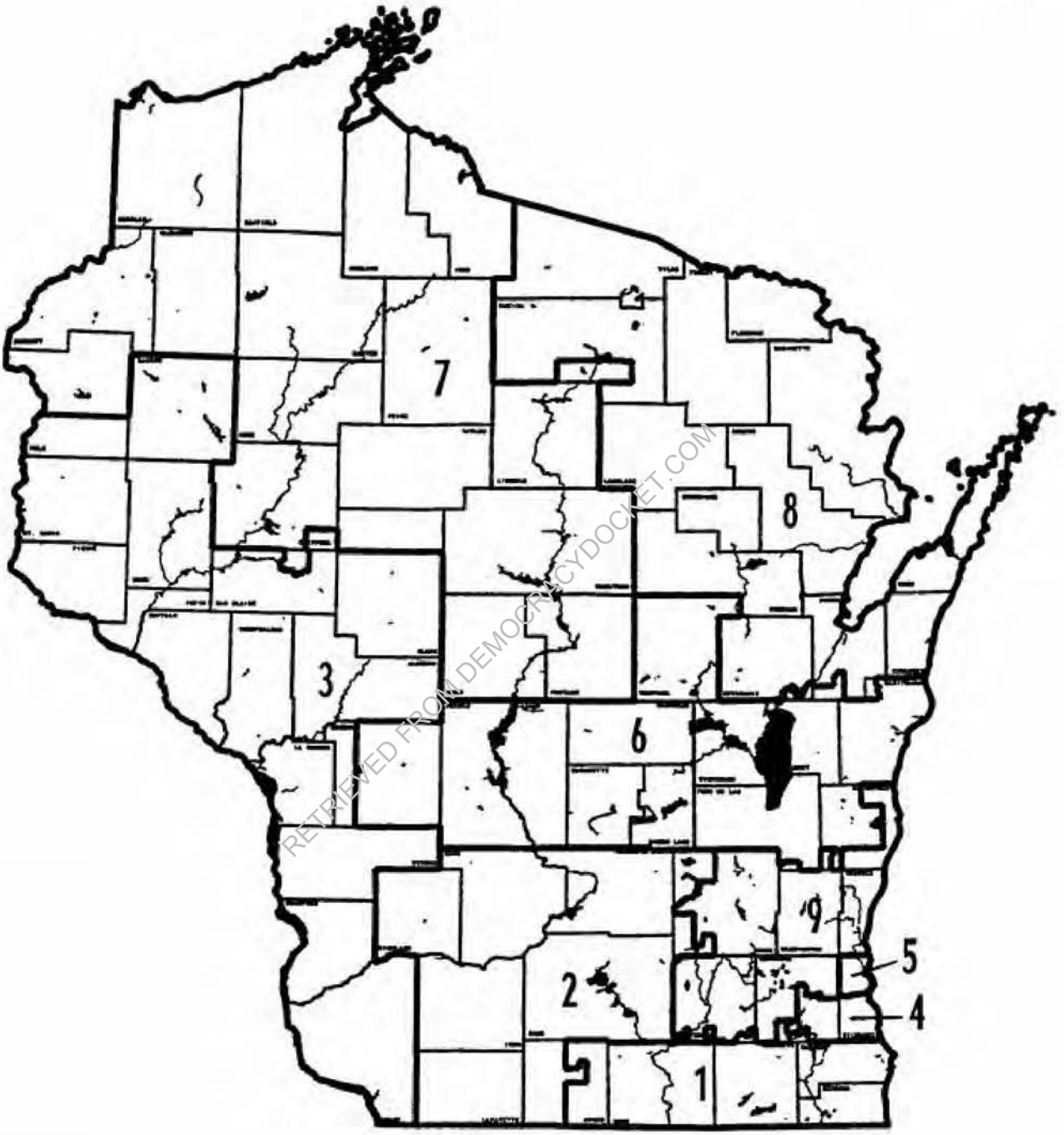

**Detail Map: Town of PEWAUKEE**

**9th CONGRESSIONAL District**




See detail map on page 19.

## CONGRESSIONAL DISTRICTS



UNITED STATES DEPARTMENT OF COMMERCE
NEWS
WASHINGTON, DC 20230

ECONOMICS AND STATISTICS ADMINISTRATION
BUREAU OF THE CENSUS



FOR IMMEDIATE RELEASE AFTER 11:00 A.M. EST
DECEMBER 28, 2000 (THURSDAY)

Decennial Media Relations
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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 ov 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 t 50 states and the District of Columbia.

The most populous state in the country was California (33,871,648); t least populous was Wyoming (493,782). The state that gained the most numerically since the 1990 census was California, up 4,111,627. Nevada h 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 Directo 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. Hou of Representatives. The apportionment population consists of the residen 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 o about 647,000. The populations of the District of Columbia and Puerto Ri 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 t the 107th Congress during the first week of its regular session in January. The reapportioned Congress, which will be the 108th, convenes i January 2003.

-X-

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 |
| **Total Apportionment Population**[1] | 281,424,177 | 435 | |

[1] 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.

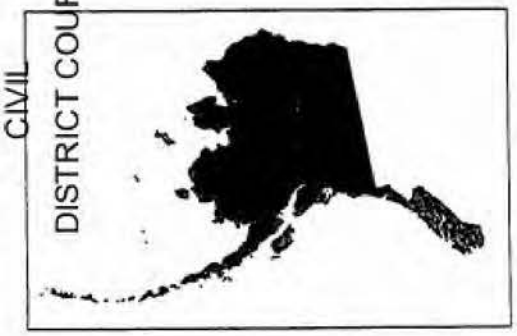
Source: U.S. Department of Commerce, U.S. Census Bureau.

Internet Release date: December 28, 2000

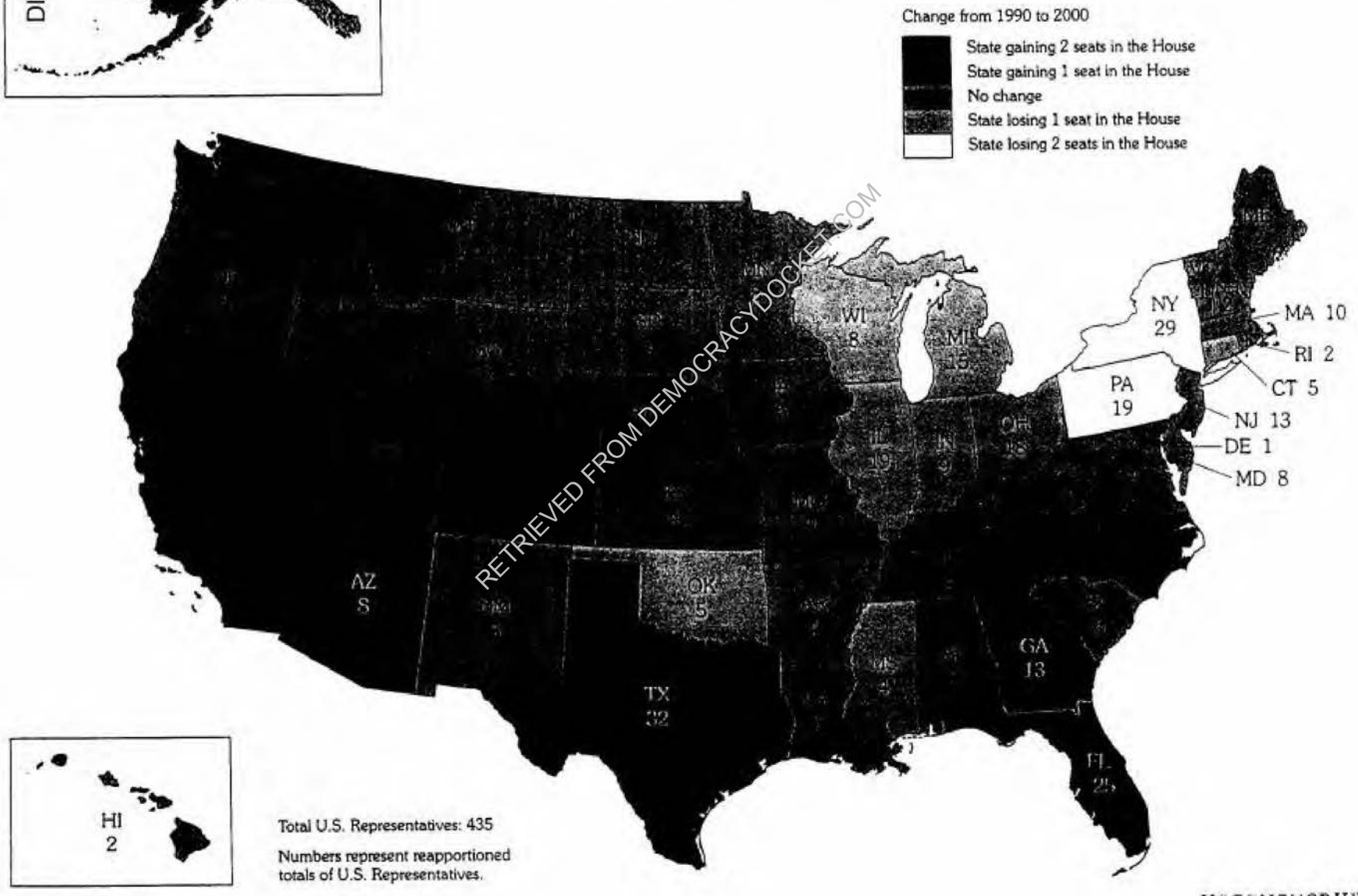
Table A. **Apportionment and Apportionment Population Based on the 1990 Census**

| States | Size of State delegation | Apportionment population | Resident population | United States population abroad |
|---|---|---|---|---|
| United States | 435 | [1]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 |

[1]The apportionment population does not include the resident or the overseas population for the District of Columbia.



## Figure 3. Apportionment of the U.S. House of Representatives for the 108th Congress



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# EXHIBIT 2

STATE OF MINNESOTA

IN SUPREME COURT

A21-0546

Frank Sachs, Dagny Heimisdottir, Michael Arulfo, Tanwi Prigge, Jennifer Guertin, Garrison O'Keith McMurtrey, Mara Lee Glubka, Jeffrey Strand, Danielle Main, and Wayne Grimmer,

Petitioners,

vs.

Steve Simon, Secretary of State of Minnesota,

Respondent.



ORDER

An action was filed on April 26, 2021, in Ramsey County District Court, alleging that Minnesota's current legislative and congressional districts are unconstitutional based on the 2020 Census, thus requiring declaratory and injunctive relief. *Sachs v. Simon*, No. 62-CV-21-2213 (Ramsey Cnty. Dist. Ct.). The plaintiffs in that case then filed a petition with this court, asking us to assume jurisdiction over the Ramsey County action and consolidate the case with *Wattson v. Simon*, No. A21-0243 (filed Feb. 22, 2021), for adjudication by a special redistricting panel.

Respondent Steve Simon supports this request, and also asks the court to stay proceedings in the consolidated cases until further order of the court.

The Chief Justice has the authority to appoint a special redistricting panel under Minn. Stat. §§ 2.724, 480.16 (2020), and did so in 1991, 2001, and 2011. For reasons of

judicial economy, as well as fairness and balance in the resolution of the particularly important and sensitive issues inherent in redistricting, this case should be consolidated with *Wattson*, to allow a special redistricting panel to hear and decide the issues presented by both cases in one proceeding. Accordingly, the request for consolidation is granted.

For the reasons explained in the order granting the petition to appoint a panel in *Wattson*, the appointment of the panel, and further proceedings here and in *Sachs v. Simon*, No. 62-CV-21-2213 (Ramsey Cnty. Dist. Ct.), are stayed. When it is determined that panel action must commence in order to permit the judicial branch to fulfill its proper role in assuring that valid redistricting plans are in place for the 2022 state legislative and congressional elections, the stay of the consolidated cases will be lifted and a panel will be appointed.



Based on all the files, records and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. The petition to consolidate *Sachs v. Simon*, No. A21-0546, with *Wattson v. Simon*, No. A21-0243 be, and the same is, granted. The stay in effect in *Wattson*, No. A21-0243, extends to *Sachs*, No. A21-0546, until further order of this court.

2. Proceedings in *Sachs v. Simon*, No. 62-CV-21-2213 (Ramsey Cnty. Dist. Ct.), are stayed until further order of the Chief Justice.

Dated: May 20, 2021

Lorie S. Gildea
Chief Justice

# EXHIBIT 3

STATE OF MINNESOTA

IN SUPREME COURT

A21-0243

Peter S. Wattson, Joseph Mansky,
Nancy B. Greenwood, Mary E. Kupper,
Douglas W. Backstrom, and James E. Hougas, III,
individually and on behalf of all citizens and
voting residents of Minnesota similarly situated, et al.,

Petitioners,

vs.

Steve Simon, Secretary of State of Minnesota;
and Kendra Olson, Carver County Elections and
Licensing Manager, individually and on behalf of all
Minnesota county chief election officers,

Respondents.



ORDER

An action was filed on February 19, 2021, in Carver County District Court, alleging that Minnesota's current legislative and congressional districts are unconstitutional based on the 2020 Census, thus requiring declaratory and injunctive relief. *Wattson v. Simon*, No. 10-CV-21-127 (Carver Cnty. Dist. Ct.). The plaintiffs in that case then filed a petition with this court, asking us to assume jurisdiction over the Carver County action and any other redistricting actions filed in Minnesota state courts based on the 2020 Census. They also ask the chief justice to appoint a special redistricting panel to hear and decide the issues presented in *Wattson* and any other redistricting cases if the Minnesota Legislature should fail to address those issues.

No response to the petition has been filed. Further, as petitioners note, it is the responsibility of the Legislature, in the first instance, to enact redistricting plans that meet constitutional requirements. *See Cotlow v. Growe*, 622 N.W.2d 561, 563 (Minn. 2001) (recognizing the primacy of the Legislature's role in the redistricting process).

The Chief Justice has the authority to appoint a special redistricting panel under Minn. Stat. §§ 2.724, 480.16 (2020), and did so in 1991, 2001, and 2011. For reasons of judicial economy, as well as fairness and balance in the resolution of the particularly important and sensitive issues inherent in redistricting, a multi-judge panel should be appointed to hear and decide *Wattson v. Simon*, No. 10-CV-21-127, as well as any other redistricting challenges that may be filed based on the 2020 Census. Accordingly, the petition for appointment of a special redistricting panel is granted.



As the parties acknowledge, however, redistricting is initially a legislative function. Minn. Const. art. IV, § 3; *see Growe v. Emison*, 507 U.S. 25, 34 (1993) (stating that reapportionment is primarily a legislative, rather than a judicial, function). For that reason, redistricting panels have not been appointed in previous years until after the Legislature had an opportunity to consider and enact redistricting plans. In addition, the Bureau of the Census has not yet released the 2020 Census data to the state, and as of the date of this order, *Wattson* is the only pending district court matter asserting claims regarding redistricting based on the 2020 Census. Although the need to have state legislative and congressional district lines drawn in time for the 2022 election cycle imposes time constraints on this process, it is important that the primacy of the legislative role in the

redistricting process be respected and that the judiciary not be drawn prematurely into that process.

For these reasons, although the petition to appoint a special redistricting panel to hear and decide issues relating to redistricting that must ultimately be resolved by the judicial branch is granted, the appointment of the panel and further proceedings here and in *Wattson v. Simon*, No. 10-CV-21-127 (Carver Cnty. Dist. Ct.), are stayed. When it is determined that panel action must commence in order to permit the judicial branch to fulfill its proper role in assuring that valid redistricting plans are in place for the 2022 state legislative and congressional elections, the stay will be lifted and a panel will be appointed.

Based on all the files, records and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. The petition for appointment of a special redistricting panel to hear and decide challenges to the validity of state legislative and congressional districts based on the 2020 Census be, and the same is, granted.

2. Appointment of the special redistricting panel and further proceedings in *Wattson v. Simon*, No. 10-CV-21-127 (Carver Cnty. Dist. Ct.), are stayed until further order of the Chief Justice.

Dated: March 22, 2021

Lorie S. Gildea
Chief Justice

# EXHIBIT 4

STATE OF MINNESOTA

IN SUPREME COURT

A21-0243
A21-0546

Peter S. Wattson, Joseph Mansky,
Nancy B. Greenwood, Mary E. Kupper,
Douglas W. Backstrom, and James E. Hougas, III,
individually and on behalf of all citizens and
voting residents of Minnesota similarly situated, et al.,

Petitioners,

vs.

Steve Simon, Secretary of State of Minnesota;
and Kendra Olson, Carver County Elections and
Licensing Manager, individually and on behalf of all
Minnesota county chief election officers,

Respondents,

and

Frank Sachs, Dagny Heimisdottir, Michael Arulfo,
Tanwi Prigge, Jennifer Guertin, Garrison O'Keith
McMurtrey, Mara Lee Glubka, Jeffrey Strand,
Danielle Main, and Wayne Grimmer,

Petitioners,

vs.

Steve Simon, Secretary of State of Minnesota,

Respondent.

ORDER

These matters were filed initially in district court, in Carver County and Ramsey County, with petitions filed before this court that requested appointment of a special redistricting panel to hear and decide challenges to the validity of Minnesota's state legislative and congressional districts based on the 2020 Census. We granted those requests, stayed proceedings in the district courts, stayed appointment of the panel to provide an opportunity for the Legislature to consider and enact redistricting plans, and in an order filed on May 20, 2021, consolidated these cases.

The Minnesota Legislature adjourned its regular session on May 17, 2021, and although now in special session, has not yet enacted redistricting legislation. Future legislative activity on redistricting is a possibility, but there are significant duties and responsibilities in the work required for redistricting. Further, legislative policy requires redistricting plans to be implemented no "later than 25 weeks before the state primary election" in 2022. Minn. Stat. § 204B.14, subd. 1a (2020). Thus, work by a redistricting panel must commence soon in order to permit the judicial branch to fulfill its proper role in assuring that valid redistricting plans are in place for the state legislative and congressional elections in 2022.



Based on all the files, records and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. The stay imposed on proceedings before this court, on March 22, 2021 in *Wattson v. Simon*, No. A21-0243, and on May 20, 2021 in *Sachs v. Simon*, No. A21-0546, be, and the same are each, lifted.

2. Pursuant to Minn. Stat. § 2.724, subd. 1 (2020), and Minn. Stat. § 480.16 (2020), the following judges are appointed as a special redistricting panel to hear and decide all matters, including all pretrial and trial motions, in connection with the claims asserted in the complaints filed in these cases in the district courts, including the ultimate disposition of those actions:

Hon. Louise D. Bjorkman, presiding judge,

Hon. Diane B. Bratvold

Hon. Jay D. Carlson

Hon. Juanita C. Freeman

Hon. Jodi L. Williamson

The redistricting panel shall also hear and decide any additional challenges that are filed in state court to the validity of state legislative and congressional districts based on the 2020 Census.



3. The redistricting panel shall establish the procedures for proceedings before the panel, may decide whether proceedings are held in person or by remote technology, and shall order implementation of judicially determined redistricting plans for state legislative and congressional seats that satisfy constitutional and statutory requirements in the event that the Legislature and the Governor have not done so in a timely manner. *See White v. Weiser*, 412 U.S. 783, 794 (1973) (stating that reapportionment is primarily a legislative matter, but judicial action is appropriate "when a legislature fails to reapportion . . . in a timely fashion after having had an adequate opportunity to do so" (citation omitted) (internal quotation marks omitted)); Minn. Stat. § 204B.14, subd. 3(d) (2020) (requiring

reestablishment of precinct boundaries within 60 days of redistricting or at least 19 weeks before the state primary election, whichever comes first).

4. Proceedings in the actions filed in the district courts, *Wattson v. Simon*, No. 10-CV-21-127 (Carver Cty. Dist. Ct.), and *Sachs v. Simon*, No. 62-CV-21-2213 (Ramsey Cty. Dist. Ct.), remain stayed, subject to the panel's decision otherwise. The parties' unopposed motion filed in this court on June 23, 2021 to amend the complaints in these actions and add additional parties; and, the motion to intervene filed in this court on June 29, 2021, are referred to the panel for consideration and decision.

Dated: June 30, 2021

BY THE COURT:

Lorie S. Gildea
Chief Justice

# EXHIBIT 5

STATE OF MINNESOTA

SPECIAL REDISTRICTING PANEL

A21-0243
A21-0546

Peter S. Wattson, Joseph Mansky, Nancy B. Greenwood, Mary E. Kupper, Douglas W. Backstrom, and James E. Hougas, III, individually and on behalf of all citizens and voting residents of Minnesota similarly situated, and League of Women Voters Minnesota,

Plaintiffs,

vs.

Steve Simon, Secretary of State of Minnesota; and Kendra Olson, Carver County Elections and Licensing Manager, individually and on behalf of all Minnesota county chief election officers,

Defendants,

and

Frank Sachs, Dagny Heimisdottir, Michael Arulfo, Tanwi Prigge, Jennifer Guertin, Garrison O'Keith McMurtrey, Mara Lee Glubka, Jeffrey Strand, Danielle Main, and Wayne Grimmer,

Plaintiffs,

vs.

Steve Simon, Secretary of State of Minnesota,

Defendant.

SCHEDULING ORDER NO. 1

1. *Intervention.* On June 29, 2021, Paul Anderson and six other individuals (the Anderson applicants) filed and served a timely motion to intervene in this matter.[1] On July 15, 2021, Dr. Bruce Corrie, six other individuals, and three organizations (the Corrie applicants) filed and served a timely motion to intervene in this matter. Other persons wishing to intervene pursuant to Minn. R. Civ. P. 24 shall file and serve motions by Wednesday, August 4, 2021. The parties' responses to motions to intervene shall be due on Friday, August 13, 2021.

Parties and persons seeking leave to intervene may request oral argument on this issue. If requested, oral argument will be heard on Tuesday, August 31, 2021, at 1:00 p.m. in Courtroom 300 of the Minnesota Judicial Center. The panel will set the details of the argument at a later date.



2. *Remote Electronic Access to Records.* The decennial redistricting process is a matter of great public interest. The panel anticipates that all of the parties' submissions in this case will be accessible to the public. *See* Minn. R. Pub. Access to Recs. of Jud. Branch 2 (stating that court records are generally publicly accessible), 4, subd. 1 (listing exceptions). They will, therefore, be available for remote access. Minn. R. Pub. Access to Recs. of Jud. Branch 8, subd. 2(g)(1), (h)(3). To facilitate that access, the panel intends

[1] On March 15, 2021, the Anderson applicants filed a notice of intervention and a complaint in intervention in the action the Wattson plaintiffs initiated in Carver County District Court. One week later, the matter was stayed by order of Minnesota Supreme Court Chief Justice Lorie Gildea. In their June 29 motion, the Anderson applicants request confirmation of their intervention or, in the alternative, to intervene. We construe the Anderson applicants' submissions as timely motions to intervene.

to make the parties' submissions available to the public on the Minnesota Judicial Branch's public website, www.mncourts.gov. Any party or movant who wishes to be heard on the issue of remote access to the parties' submissions shall request oral argument in writing no later than Wednesday, August 4, 2021. *See id.*, subd. 2(i) (providing for remote access by order after notice and an opportunity to be heard). If requested, oral argument on this issue will be held in conjunction with oral argument on the issue of intervention.

3. *Public Hearings.* The panel wishes to gather information about Minnesota communities from Minnesota citizens. Members of the public will have the opportunity to provide the panel with facts, opinions, or concerns that may inform the redistricting process. To foster robust and diverse input, we intend to hold a series of public hearings in person around the state between October 11, 2021 and October 20, 2021. Hearings will take place during evening hours to minimize work conflicts for those interested in participating. We will monitor public-health guidance and limit hearing attendance or change to a virtual format if necessary. We will set the locations and schedule for the hearings at a later date.



Dated: July 22, 2021

BY THE PANEL:

Louise Dovre Bjorkman
Presiding Judge

Judge Diane B. Bratvold
Judge Jay D. Carlson
Judge Juanita C. Freeman
Judge Jodi L. Williamson

# EXHIBIT 6

STATE OF MINNESOTA

SPECIAL REDISTRICTING PANEL

A21-0243
A21-0546

Peter S. Wattson, Joseph Mansky, Nancy B. Greenwood, Mary E. Kupper, Douglas W. Backstrom, and James E. Hougas, III, individually and on behalf of all citizens and voting residents of Minnesota similarly situated, and League of Women Voters Minnesota,

Plaintiffs,

and

Paul Anderson, Ida Lano, Chuck Brusven, Karen Lane, Joel Hineman, Carol Wegner, and Daniel Schonhardt,

Plaintiff-Intervenors,

vs.

Steve Simon, Secretary of State of Minnesota; and Kendra Olson, Carver County Elections and Licensing Manager, individually and on behalf of all Minnesota county chief election officers,

Defendants,

and

Frank Sachs, Dagny Heimisdottir, Michael Arulfo, Tanwi Prigge, Jennifer Guertin, Garrison O'Keith McMurtrey, Mara Lee Glubka, Jeffrey Strand, Danielle Main, and Wayne Grimmer,

Plaintiffs,

ORDER STATING PRELIMINARY CONCLUSIONS, REDISTRICTING PRINCIPLES, AND REQUIREMENTS FOR PLAN SUBMISSIONS

and

Dr. Bruce Corrie, Shelly Diaz, Alberder Gillespie, Xiongpao Lee, Abdirazak Mahboub, Aida Simon, Beatriz Winters, Common Cause, OneMinnesota.org, and Voices for Racial Justice,

Plaintiff-Intervenors,

vs.

Steve Simon, Secretary of State of Minnesota,

Defendant.

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**REDISTRICTING CONCLUSIONS AND PRINCIPLES**



In the August 24, 2021 scheduling order, the panel directed the parties to this action to work toward a stipulation on preliminary matters and redistricting principles, and to submit separate written arguments on disputed issues. Based on those submissions and subsequent oral argument, the panel concludes as follows:

**Preliminary Conclusions**

1. *Jurisdiction.* The panel has subject-matter jurisdiction over this action, including all matters pertaining to legislative and congressional redistricting in the State of Minnesota. *Growe v. Emison*, 507 U.S. 25, 33-34 (1993); *see also Hippert v. Ritchie*, No. A11-0152 (Minn. Special Redistricting Panel Nov. 4, 2011) (Order Stating Redistricting Principles and Requirements for Plan Submissions); *Zachman v. Kiffmeyer*, No. C0-01-160 (Minn. Special Redistricting Panel Oct. 29, 2001) (Scheduling Order No. 2). The panel was properly appointed pursuant to the power of the Chief Justice of the

Minnesota Supreme Court to assign judges to hear particular cases. Minn. Stat. §§ 2.724, subd. 1, 480.16 (2020).

2. *Constitutionality of Current Districts.* All parties agree that new legislative and congressional districts must be drawn because the 2020 Census revealed that the current districts are unequal in population. But only Frank Sachs, et al. (the Sachs plaintiffs) urge the panel to rule that the districts are presently unconstitutional. We decline to do so. The task of redrawing the districts falls to the legislature. Minn. Const. art. IV, § 3. The legislature has until February 15, 2022, to pass redistricting legislation and secure the governor's signature. Minn. Stat. § 204B.14, subd. 1a (2020) (setting the deadline for redistricting); *see Sixty-Seventh Minn. State Senate v. Beens*, 406 U.S. 187, 195 (1972) (recognizing that governor has power to veto redistricting legislation). Until that deadline has passed, the issue of the constitutionality of the current districts is not ripe for our decision. *Texas v. United States*, 523 U.S. 296, 300 (1998) ("A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." (quotation omitted)); *Hippert*, No. A11-0152 (Minn. Special Redistricting Panel Nov. 4, 2011) (Order Stating Redistricting Principles and Requirements for Plan Submissions).



3. *Population Data.* The panel and the parties will use the 2020 Census Redistricting Data (Public Law 94-171) Summary File for Minnesota, subject to correction of errors acknowledged by the United States Census Bureau, with population data determined to the census-block level. The appropriate data is available on the website of the Census Bureau's Redistricting Data Office and the website of the Geographic

Information Services Office of the Minnesota Legislative Coordinating Commission. The panel will use Maptitude for Redistricting software to review and analyze all proposed redistricting plans.

4. *Ideal Populations.* The total resident population of the State of Minnesota after the 2020 Census is 5,706,494 people. Minnesota has 8 congressional districts, 67 state senate districts, and 134 state house districts. Minn. Stat. §§ 2.031, subd. 1, .731 (2020). We calculate the ideal population for each type of election district by dividing the state's total population by the number of districts for the particular legislative body. Therefore, the ideal population of a Minnesota congressional district after the 2020 Census is 713,312; the ideal population of a Minnesota state senate district is 85,172; and the ideal population of a Minnesota state house district is 42,586.



5. *Numbering.* There will be a single representative for each congressional district, a single senator for each state senate district, and a single representative for each state house district. Minn. Stat. §§ 2.031, subd. 1, .731. The congressional district numbers will begin with District 1 in the southeast corner of the state and end with District 8 in the northeast corner of the state. Each state senate district will be composed of two nested house districts, A and B. *See* Minn. Const. art. IV, § 3 (requiring that no house district be divided in forming a senate district). The legislative districts will be numbered in a regular series, beginning with House District 1A in the northwest corner of the state and proceeding across the state from west to east, north to south, bypassing the 11-county metropolitan area until the southeast corner has been reached; then to the 11-county metropolitan area outside the cities of Minneapolis and Saint Paul; then to Minneapolis and Saint Paul. *See*

Minn. Const. art. IV, § 3 (requiring senate districts to be numbered in a regular series); Minn. Stat. § 200.02, subd. 24 (2020) (defining "[m]etropolitan area" for purposes of the Minnesota Election Law as the counties of Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, and Wright); *see also Hippert*, No. A11-0152 (Minn. Special Redistricting Panel Nov. 4, 2011) (Order Stating Redistricting Principles and Requirements for Plan Submissions).

**Redistricting Principles**

The panel adopts the following redistricting principles, which are listed in no particular order.



1. To afford each person equal representation, the congressional districts must be as nearly equal in population as is practicable. *Wesberry v. Sanders*, 376 U.S. 1, 7-8 (1964); *see* U.S. Const. art. I, § 2. Because a court-ordered redistricting plan must conform to a higher standard of population equality than a legislative redistricting plan, the goal is absolute population equality. *See Abrams v. Johnson*, 521 U.S. 74, 98 (1997). Minnesota's total population is not divisible into eight congressional districts of equal population, making the ideal result six districts of 713,312 people and two districts of 713,311 people.

2. State legislative districts must also adhere to the concept of population-based representation. *Reynolds v. Sims*, 377 U.S. 533, 568 (1964); *see* U.S. Const. amend. XIV. Some deviation from perfect equality is permissible to accommodate a state's clearly identified, legitimate policy objectives. *Reynolds*, 377 U.S. at 579. But a court performing the task of redistricting is held to a high standard of population equality. *Connor v. Finch*, 431 U.S. 407, 414 (1977). Accordingly, the goal is de minimis deviation from the ideal

district population. *Id.* The population of a legislative district must not deviate more than two percent from the population of the ideal district. *Hippert*, No. A11-0152 (Minn. Special Redistricting Panel Nov. 4, 2011) (Order Stating Redistricting Principles and Requirements for Plan Submissions); *Zachman*, No. C0-01-160 (Minn. Special Redistricting Panel Dec. 11, 2001) (Order Stating Redistricting Principles and Requirements for Plan Submissions). This is a maximum deviation, not a level under which all population deviations will be presumed acceptable.

3. Districts must not be drawn with either the purpose or effect of denying or abridging the voting rights of any United States citizen on account of race, ethnicity, or membership in a language minority group. U.S. Const. amends. XIV, XV; Voting Rights Act of 1965, 52 U.S.C. § 10301(a) (2018). Districts shall be drawn to protect the equal opportunity of racial, ethnic, and language minorities to participate in the political process and elect candidates of their choice, whether alone or in alliance with others. 52 U.S.C. § 10301(b) (2018).



4. The reservation lands of a federally recognized American Indian tribe will be preserved and must not be divided more than necessary to meet constitutional requirements. *See Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 788 (2014) (discussing sovereignty of recognized American Indian tribes). Placing discontiguous portions of reservation lands in separate districts does not constitute a division.

5. Districts must consist of convenient, contiguous territory. Minn. Const. art. IV, § 3; Minn. Stat. § 2.91, subd. 2 (2020). Contiguity by water is sufficient if the body of

water does not pose a serious obstacle to travel within the district. Districts with a tenuous connect only at a single point will not be considered contiguous.

6. Political subdivisions must not be divided more than necessary to meet constitutional requirements. Minn. Stat. § 2.91, subd. 2; *see also Karcher v. Daggett*, 462 U.S. 725, 740-41 (1983); *Reynolds*, 377 U.S. at 580-81.

7. Communities of people with shared interests will be preserved whenever possible to do so in compliance with the preceding principles. *See Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 272 (2015) (describing respect for "communities defined by actual shared interests" as a traditional redistricting principle (quotation omitted)); *see also Hippert*, No. A11-0152 (Minn. Special Redistricting Panel Nov. 4, 2011) (Order Stating Redistricting Principles and Requirements for Plan Submissions); *Zachman*, No. C0-01-160 (Minn. Special Redistricting Panel Dec. 11, 2001) (Order Stating Redistricting Principles and Requirements for Plan Submissions). For purposes of this principle, "communities of interest" include, but are not limited to, groups of Minnesotans with clearly recognizable similarities of social, geographic, cultural, ethnic, economic, occupational, trade, transportation, or other interests. Additional communities of interest will be considered if persuasively established and if consideration thereof would not violate the preceding principles or applicable law.



8. As a factor subordinate to all other redistricting principles, districts should be reasonably compact. *See Miller v. Johnson*, 515 U.S. 900, 916 (1995); *Brown v. Thomson*, 462 U.S. 835, 842 (1983).

9. Districts must not be drawn with the purpose of protecting, promoting, or defeating any incumbent, candidate, or political party. The panel will not draw districts based on the residence of incumbent officeholders and will not consider past election results when drawing districts.

## PLAN SUBMISSION REQUIREMENTS

In the October 26, 2021 scheduling order, the panel directed the parties to submit motions to adopt proposed redistricting plans and supporting memoranda by Tuesday, December 7, 2021. The parties must submit their proposed redistricting plans as follows.



### General Requirements

1. Each party may submit one proposed redistricting plan for the United States House of Representatives, one plan for the Minnesota Senate, and one plan for the Minnesota House of Representatives.

2. Submissions must include electronic files, paper maps, Maptitude-generated reports, and supporting memorandum that includes an explanation of how each report supports the proposed plans.

3. Parties must file their submissions with the Clerk of Appellate Courts.

### Electronic Redistricting Plans

1. The parties must submit each electronic redistricting plan in the form of a separate block-equivalency file. Each file must be in comma-delimited format (.csv) or Excel format (.xlsx) and contain two fields: one that identifies all census blocks in the state, and another that identifies the district to which each census block has been assigned. The parties must not use file-compression software.

2. Each block-equivalency file must assign district numbers using the following conventions:

- Congressional district numbers must contain one character and be labeled 1 through 8.
- State senate district numbers must contain two characters and be labeled 01 through 67.
- State house district numbers must contain three characters and be labeled 01A through 67B.

3. Each party must submit its block-equivalency files via email to StateRedistrictingPanel@courts.state.mn.us.



**Paper Maps**

1. The parties also must submit one paper original and eight paper copies of each congressional and state legislative map. Senate and house plans must be combined on a single map. Maps must be plotted on 17" by 22" paper.

2. Each map must clearly state whether it shows congressional or state legislative districts and identify the party submitting the map.

3. For its proposed congressional plan, each party must include paper maps of (1) the entire state and (2) the 11-county metropolitan area. Each district must be labeled with its district number and population.

4. For its proposed state legislative plan, each party must include paper maps of (1) the entire state; (2) the 11-county metropolitan area; and (3) the cities of Duluth, Mankato, Moorhead, Rochester, and Saint Cloud. Maps of the 11-county metropolitan area and of individual cities must show the names and boundaries of counties, cities, and

townships. On all legislative maps, senate-district areas must be shown as a colored area on the bottom layer with house-district boundaries shown as overlying lines. Each house district must be labeled with its district number (01A through 67B). A separate senate-district label need not be used.

5. All paper maps must include county names and boundaries and the names and boundaries of the reservations of federally recognized American Indian tribes. The parties are encouraged to include major bodies of water, interstate highways, and U.S. highways.

6. The paper maps may include such other details as the parties wish to add, so long as the above boundaries, areas, lines, and labels are discernible.



**Reports**

For each proposed congressional, senate, and house redistricting plan, each party must submit the following Maptitude reports, including the components listed below and standard summary data:

- *Population Summary Report* showing district populations as the total number of persons, and deviations from the ideal as both a number of persons and as a percentage of the population.

- *Plan Components Report* (short format) listing the names and populations of counties within each district and, where a county is split between or among districts, the names and populations of the portion of the split county and each of the split county's whole or partial minor civil divisions (cities and townships) within each district.

- *Contiguity Report* listing all districts and the number of distinct areas within each district.

- *Political Subdivisions Splits Report* listing the split counties, cities, townships, and voting districts (precincts), and the district to which each portion of a split political subdivision or voting district is assigned.

- *Minority Voting-Age Population Report* listing for each district the voting-age population of each racial, ethnic, or language minority, and the total minority voting-age population according to the categories recommended by the United States Department of Justice.

- *Measures of Compactness Reports* stating the results of the Polsby-Popper, Area/Convex Hull, Reock, Population Polygon, and Population Circles measures of compactness for each district.

Any party asserting that its plan preserves a community of interest must also include the following Maptitude report:

- *Community of Interest Report* identifying any community of interest included as a layer in the plan, the census blocks within the community of interest, and the district or districts to which the community of interest has been assigned. The report must also show the number of communities of interest that are split and the number of times a community of interest is split.

Each party must label every page of a report with the report's name, the corresponding proposed plan, and the party submitting the plan.



**Additional Requirements**

These are the minimum requirements for the parties that submit proposed redistricting plans. The parties may submit additional maps, reports, or justification for their proposed redistricting plans.

By stipulation, the parties have agreed to accept service of proposed plans, maps, and reports by email or other mutually agreeable form of electronic service.

The panel is mindful of its role in redistricting and particularly of the primacy of the legislative process. The parties will be filing their proposed redistricting plans by

December 7, 2021, more than one month before the next legislative session begins. To give the legislature and the governor an opportunity to review and consider those proposed plans, each party must provide the legislature and the governor with a block-equivalency file for each proposed plan.

Dated: November 18, 2021

BY THE PANEL:

Louise Dovre Bjorkman
Presiding Judge

Judge Diane B. Bratvold
Judge Jay D. Carlson
Judge Juanita C. Freeman
Judge Jodi L. Williamson

**MEMORANDUM**

The adoption of redistricting principles involves many competing considerations. We take this opportunity to address how we have resolved some of them.

First, we address our decision to draw districts to protect the equal opportunity of racial, ethnic, and language minorities to participate in the political process and to elect representatives of their choice, whether alone or in alliance with others. The "ultimate right" protected by section 2 of the Voting Rights Act is "equality of opportunity." *League of United Latin Am. Citizens v. Perry (LULAC)*, 548 U.S. 399, 428 (2006) (quotation omitted); *see* 52 U.S.C. § 10301(b) (requiring that political processes be "equally open to participation by" racial, ethnic, and language minority voters). This does not mean that "minority-preferred candidates" are guaranteed electoral success. *LULAC*, 548 U.S. at 428 (quotation omitted).



Rather, it means that racial, ethnic, and language minority voters have a right to participate effectively in the political process. *See Thornburg v. Gingles*, 478 U.S. 30, 45 (1986) (discussing factors relevant to equality of opportunity such as the "ability to participate effectively in the political process" or the responsiveness of elected officials to particular voters' needs). A critical part of effective political participation is the formation of alliances around shared interests. *See Johnson v. De Grandy*, 512 U.S. 997, 1020 (1994) (stating that "minority voters are not immune from the obligation to pull, haul, and trade to find common political ground" and can influence elections through "coalitions with voters from other racial and ethnic groups"); *see also Miller*, 515 U.S. at 920 (stating that redistricters may not assume shared interests based on race but may "recognize

communities that have a particular racial makeup, provided its action is directed toward some common thread of relevant interests").[1]

Second, we address our decision to adopt a principle of preserving the reservation lands of federally recognized American Indian tribes. Tribes are "separate sovereigns pre-existing the Constitution" and, as such, exercise "inherent sovereign authority." *Bay Mills Indian Cmty.*, 572 U.S. at 788 (quotations omitted). This means that, unlike political subdivisions, tribes are "independent political communities, qualified to exercise many of the powers and prerogatives of self-government." *Plains Com. Bank v. Long Fam. Land & Cattle Co.*, 554 U.S. 316, 327 (2008) (quotation and citation omitted); *cf. Reynolds*, 377 U.S. at 575 (stating that political subdivisions like cities and counties "never were and never have been considered as sovereign entities").



Consistent with this status, Minnesota "acknowledges and supports" the tribes' "absolute right to existence, self-governance, and self-determination." 2021 Minn. Laws 1st Spec. Sess. ch. 14, art. 11, § 5, at 2369 (to be codified at Minn. Stat. § 10.65). And prior redistricting panels sought to draw district lines that respected reservation lands.

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[1] We observe that the question whether a coalition of multiple racial, ethnic, or language minority groups can jointly assert a claim under section 2 of the Voting Rights Act is not before us and remains undecided. The Supreme Court has assumed without deciding that they can. *Growe*, 507 U.S. at 41. And the federal circuit courts of appeal are split, but most have either assumed or expressly held that a coalition claim is cognizable. *See Pope v. Cnty. of Albany*, 687 F.3d 565, 572-74 & n.5 (2d Cir. 2012) (assuming); *Frank v. Forest Cnty.*, 336 F.3d 570, 575 (7th Cir. 2003) (assuming); *Badillo v. City of Stockton*, 956 F.2d 884, 886 (9th Cir. 1992) (assuming); *Concerned Citizens of Hardee Cnty. v. Hardee Cnty. Bd. of Comm'rs*, 906 F.2d 524, 526 (11th Cir. 1990) (holding); *Campos v. City of Baytown, Texas*, 840 F.2d 1240, 1244 (5th Cir. 1988) (holding). *But see Nixon v. Kent Cnty.*, 76 F.3d 1381, 1387, 1393 (6th Cir. 1996) (en banc) (holding that the Voting Rights Act does not support coalition claims). The Eighth Circuit has not addressed the issue.

*Hippert*, No. A11-0152 (Minn. Special Redistricting Panel Feb. 21, 2012) (Order Adopting Cong. Redistricting Plan); *Hippert*, No. A11-0152 (Minn. Special Redistricting Panel Feb. 21, 2012) (Order Adopting Legis. Redistricting Plan); *Zachman*, No. C0-01-160 (Minn. Special Redistricting Panel Mar. 19, 2002) (Order Adopting Cong. Redistricting Plan); *Zachman*, No. C0-01-160 (Minn. Special Redistricting Panel Mar. 19, 2002) (Order Adopting Legis. Redistricting Plan). The parties agree that we should continue to do so. Respect for the inherent sovereignty of American Indian tribes persuades us to avoid dividing reservation land more than necessary to meet constitutional requirements.

Third, we address our determination that compactness is subordinate to all other redistricting principles. No federal or state law requires that districts be compact. *See Shaw v. Reno*, 509 U.S. 630, 647 (1993) (clarifying that compactness is a traditional principle but not "constitutionally required"). Nor does compactness necessarily benefit Minnesotans. Scientific compactness measures prize districts that form "regular" shapes, like circles or squares. But people do not live in circles or squares; they live in communities. Compactness is therefore not a goal in itself but a tool for ensuring districts have been drawn in accordance with neutral redistricting principles. We also observe that a regularly shaped district may be more easily traveled and therefore more convenient. *See* Minn. Const. art. IV, § 3 (requiring convenient senate districts); Minn. Stat. § 2.91, subd. 2 (requiring convenient congressional and legislative districts). For these reasons, we require that districts be reasonably compact and direct the parties to report on the five compactness measures, as noted above, that will best aid us in applying this principle.

Fourth, we address our principle that districts will not be drawn with the purpose of protecting, promoting, or defeating any incumbent, candidate, or political party. Redistricting is a political process with political consequences. *Connor*, 431 U.S. at 414-15. This is why the task of redistricting falls principally to the branch of government responsible for crafting policy—the legislature. *Id.* at 415. When legislators draw district lines, they not only may but commonly do "take partisan interests into account." *Rucho v. Common Cause*, 139 S. Ct. 2484, 2497 (2019). And courts will not interfere with that practice. *Id.* at 2506-07 (holding that "partisan gerrymandering" claims present nonjusticiable political questions). But when courts draw district lines, they are not merely substitute legislators. Courts lack the "political authoritativeness" to make policy judgments. *Connor*, 431 U.S. at 415; *see also Abrams*, 521 U.S. at 79 (requiring redistricting courts to defer to the underlying policy judgments of their state "to the extent [they] do not lead to violations of the Constitution or the Voting Rights Act"). The role of the courts is simply to "say what the law is." *Rucho*, 139 S. Ct. at 2508 (quoting *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803)); *Ninetieth Minn. State Senate v. Dayton*, 903 N.W.2d 609, 625 (Minn. 2017) (same).



We recognize that prior redistricting panels have considered whether a proposed plan creates undue incumbent protection or excessive incumbent conflicts. *Hippert*, No. A11-0152 (Minn. Special Redistricting Panel Nov. 4, 2011) (Order Stating Redistricting Principles and Requirements for Plan Submissions); *Zachman*, No. C0-01-160 (Minn. Special Redistricting Panel Dec. 11, 2001) (Order Stating Redistricting Principles and Requirements for Plan Submissions). But ultimately, the *Hippert* panel

adopted redistricting plans that the public and the parties praise as fair and balanced by consistently applying neutral principles. *Hippert*, No. A11-0152 (Minn. Special Redistricting Panel Feb. 21, 2012) (Order Adopting Cong. Redistricting Plan) (noting but not removing incumbent conflicts); *Hippert*, No. A11-0152 (Minn. Special Redistricting Panel Feb. 21, 2012) (Order Adopting Legis. Redistricting Plan) (same). As the *Hippert* panel observed, "districts do not exist for the benefit of any particular legislator" or "any political party." *Hippert*, No. A11-0152 (Minn. Special Redistricting Panel Feb. 21, 2012) (Order Adopting Cong. Redistricting Plan); *Hippert*, No. A11-0152 (Minn. Special Redistricting Panel Feb. 21, 2012) (Order Adopting Legis. Redistricting Plan). Consistent with that approach and *Rucho*'s clear instruction that courts not wade into political matters, if we are called upon to draw new districts, we will do so solely through application of our stated neutral redistricting principles.



Finally, we address the request of plaintiff-intervenors Dr. Bruce Corrie, et al. (the Corrie plaintiffs) that we deem individuals incarcerated at the time of the 2020 Census to be residing at their last known place of residence. This position, which they alone urge, is contrary to the parties' stipulation that the panel and the parties will use the 2020 Census Redistricting Data, which places prisoners at the location of their incarceration. *See Karcher*, 462 U.S. at 738 (explaining that "the census data provide the only reliable—albeit less than perfect—indication of the districts' 'real' relative population levels"). And the Corrie plaintiffs acknowledge that no existing law authorizes us to perform the requested reallocation. We conclude that reallocating prisoners constitutes a policy change that is the province of the legislature, not the courts. *See Connor*, 431 U.S. at 415.