No._____

LOUISIANA COURT OF APPEAL

FOURTH CIRCUIT, STATE OF LOUISIANA

CAMERON ENGLISH, RYAN BERNI, POOJA PRAZID, LYNDA WOOLARD, STEPHEN HANDWERK, AMBER ROBINSON, JAMES BULLMAN, KIRK GREEN AND DARRYL MALEK-WILEY,

PLAINTIFFS/RESPONDENTS

VS.

R. KYLE ARDOIN, IN HIS OFFICIAL CAPACITY AS LOUISIANA SECRETARY OF STATE,

DEFENDANT/APPLICANT

ON APPLICATION FOR WRIT OF SUPERVISORY REVIEW OF JUDGMENTS OF THE ORLEANS CIVIL DISTRICT COURT, PARISH OF ORLEANS, STATE OF LOUISIANA,
CASE NO. 2021-03538, DIVISION C – SECTION 10
HONORABLE SIDNEY H CATES, IV, PRESIDING JUDGE
A CIVIL PROCEEDING

---REQUEST FOR EXPEDITED CONSIDERATION AND STAY---

SECRETARY OF STATE'S ORIGINAL APPLICATION FOR SUPERVISORY WRITS TO THE HONORABLE SIDNEY H. CATES, IV, DISTRICT JUDGE

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REQUEST FOR EXPEDITED CONSIDERATION AND STAY

MAY IT PLEASE THE COURT:

Kyle Ardoin, in his official capacity as Louisiana Secretary of State, brings this application for supervisory writs to review related rulings by the district court denying exceptions filed by the Secretary of State to both the plaintiffs' original petition and to plaintiffs' amended and supplemental petition. The Secretary of State initially filed Dilatory Exceptions of Lack of Subject Matter Jurisdiction and Improper Venue and Peremptory Exceptions of No Cause of Action and No Right of Action on May 24, 2021. These exceptions were heard on August 20, 2021 and overruled by Judgment with Incorporate Reasons on November 16, 2021.

In the interim the plaintiffs filed an amended and supplemental petition entitled *First Amended and Supplemental Petition for Injunctive and Declaratory Relief*. The amended and supplemental filing did not, in the Secretary of State's view, materially change the original petition, and the Secretary filed a second set of dilatory and peremptory exceptions on the same grounds as his first. The second set of exceptions were set for hearing on December 10, 2021 and submitted on the parties' memorandums. The district court overruled the exceptions in a Judgment rendered on December 10, 2021.

The Secretary of State filed a notice of intent to apply for supervisory writs on each of the Secretary's Exceptions and included a request for a stay. In both instances, the district court denied the stay request.

Fundamental questions as to the courts' jurisdiction and as to Orleans Parish as a proper venue impel expeditious consideration and a stay of further proceedings by this Court. The case arises out of the decennial reapportionment and redistricting of U.S. Congressional districts in Louisiana. The plaintiffs suit contests redistricting even though redistricting has not yet been undertaken, much less accomplished, by

the Legislature. Rather, the plaintiffs allege that partisan difference in the Legislature and the Governor's office are such that redistricting might not occur, and the Orleans Parish District Court needs to intercede and direct the redistricting process through a judgment for declaratory and injunctive relief to these plaintiffs. Additionally, the sole defendant in the case, the Secretary of State plays no role in the redistricting process so that the plaintiffs have no standing to sue him to interdict Congressional redistricting.

The Secretary excepted as being filed in an improper venue because suits filed against the State, a state agency, officer or employee for conduct arising out of his official duties must be brought in the district court in which the state capitol is located or where the suit arises. The courts Louisiana have consistently held that venue for suits arising out of the performance of the duties of a state official lies in the parish where the official conduct occurs. Although the acts and conduct challenged in the plaintiffs' suit are speculative and have not yet occurred, none of the acts or conduct sought to be prohibited will occur in Orleans Parish making it an impermissible venue for this suit.

The Secretary of State submits that further proceedings in this matter should be stayed until a final decision and ruling on the writ application is issued on the grounds that a determination of subject matter jurisdiction and venue would render any further judgment herein null and void and without effect at a great cost to the Secretary of State. Proceeding with a case in an improper venue has been considered to be grounds to expedite consideration of a writ or appeal since proceeding in an improper venue results in irreparable injury and cannot be as a practical matter be corrected once the case is tried. See, *Chambers v. LeBlanc*, 598 So. 2d 337 (La. 1992); *Patterson v. Alexander & Hamilton, Inc.*, 2002-1230 (La. App. 1 Cir. 4/2/03), 844 So. 2d 412, 415 and cases cited therein. Allowing this case to proceed to a final

judgment with jurisdiction and venue in serious doubt warrants expeditious treatment and a stay to prevent irreparable injury to the Secretary of State.

WHEREFORE, Kyle R. Ardoin, in his official capacity as Secretary of State, prays that this Court grant the Secretary's request for expeditious of the supervisory writ and further order that further proceedings be stayed pending a decision and ruling on this writ application.

Respectfully submitted,

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AFFIDAVIT OF VERIFICATION AND CERTIFICATE

BEFORE ME, personally came and appeared:

Carey T. Jones

who deposed and stated that he is an attorney representing the Defendant-Applicant, Kyle Ardoin, in his official capacity as the Secretary of State of the state of Louisiana and that copies of this Request for Expedited Consideration and Stay were duly served upon the following by electronic transmission concurrent with the electronic filing with the Court at the email address provided below:

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s/Carey T. Jones
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SWORN TO AND SUBSCRIBED before me, this 16th day of December, 2021.

s/Lauryn Sudduth
NOTARY PUBLIC
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BAR ROLL NUMBER: 37945
My Commission is for Life

MAY IT PLEASE THE COURT:

I. JURISDICTIONAL STATEMENT

This Court's jurisdiction is invoked under La. Const. art. V, § 10. Defendant, Kyle Ardoin, in his official capacity as Secretary of State of the State of Louisiana, respectfully requests supervisory review of two related rulings by the Honorable Sidney H. Cates, IV of the Orleans Parish Civil District Court, Orleans Parish, Louisiana, denying the Secretary of State's Declinatory Exceptions of Improper Venue and Lack of Subject Matter Jurisdiction and Peremptory Exceptions of No Cause of Action and No Right of Action to the original and the amended and supplemental petitions filed by the plaintiffs.[1]

II. STATEMENT OF THE CASE

A. BACKGROUND FOR THE WRIT APPLICATION

The Secretary of State seeks this Court's review of related rulings by the Orleans Parish Civil District Court, Orleans Parish, Louisiana, denying the Secretary of State's Declinatory Exceptions of Improper Venue and Lack of Subject Matter Jurisdiction and Peremptory Exceptions of No Cause of Action and No Right of Action on the original and the amended and supplemental petitions filed by the plaintiffs.

This litigation and the Secretary of State's exceptions must be considered against the backdrop of the 2020 decennial apportionment and redistricting of U.S. Congressional districts. Elections for United States Senators and members of the House of Representatives proceed under different constitutional and statutory provisions. Voters in each state elect two Senators every six years. U.S. Const. art.

[1] Exhibits A and K, Judgment with Incorporated Reasons rendered November 16, 2021, and Judgment rendered December 10, 2021.

I, § 3, cl. 1. Because Senators are elected statewide, their election districts are coterminous with the boundaries of the state and need not be periodically redrawn to take account of population changes.

With respect to members of the United States House of Representatives, voters elect Representatives every two years from districts within each state. U.S. Const. art I, § 2, cl. 1. Membership of the House of Representatives is apportioned by Congress according to a formula known as the method of equal proportions to allocate the number of representatives for each state based upon that state's population according to decennial census data. U.S. Const. art. I, § 2, cl. 3; amend. XIV, § 2; 2 USC 2a(a). Once Congress apportions the number of members to which each state is entitled, the states then establish districts from which the voters shall elect one Representative. 2 USC § 2a(a-c). In order to ensure that each citizen's vote is weighted equally (one-man-one-vote), representative districts in a state must be roughly equal in population. *Wesberry v. Sanders*, 376 U.S. 1 (1964).

The job of drawing districts with equal populations for the election of members of Congress falls to state legislative bodies pursuant to U.S. Const. art. I, § 4, cl. 1. Under 2 USC §2a(a), Congressional election districts are re-drawn every 10 years following each decennial census in order to maintain the population balance necessary to sustain the one-man-one-vote principle. Assigning the number of House members for each state is called "reapportionment." "Redistricting" refers to the process of re-drawing Congressional election districts although "reapportionment" and "redistricting" are sometimes used interchangeably.

Louisiana has chosen to redistrict its U.S. Congressional districts by statute. The districts adopted in 2011 are found at La. R.S. 18:1276.1. With respect to the enactment of statutes, the Louisiana Constitution provides that, "[t]he legislative power of the state is vested in a legislature, consisting of a Senate and a House of

Representatives." La. Const. art. III, § 1. The legislature shall enact no law except by a bill introduced during a session of its legislative bodies. La. Const. art. III, § 15. The Governor is vested with the authority to approve or veto bills pursuant to La. Const. art. III, § 18. Thus, redistricting in Louisiana is a political process assigned to the Legislature subject to veto by the Governor. The work of redistricting occurs in the state capitol where both the legislature and the governor perform their official duties.

This lawsuit challenges the reapportionment/redistricting of Louisiana's U.S. Congressional districts in the decennial reapportionment and redistricting of Representatives following the 2020 census. While the number of Congressional seats has been allocated based upon 2020 census data for the current reapportionment,[2] the Legislature has not yet proposed or enacted a plan for Louisiana's U.S. Congressional districts from which the State's six Representatives will be elected. The plaintiffs allege, nonetheless, that they are unsettled by the prospect of failure on the part of the Legislature and Governor and might at some point in the future be aggrieved by partisan indecision in the Congressional redistricting process. They cite as the basis of their concern the speculative and groundless proposition that the political branches of state government will inevitably fail to develop a consensus plan. On such allegations, plaintiffs petitioned the Orleans Parish District Court to seize control of the Congressional redistricting process by granting them declaratory and injunctive relief.

Otherwise, plaintiffs allege that they, like all Louisiana citizens at the commencement of the decennial redistricting process, reside in Congressional districts in which the population numbers are out of balance. In fact, the requirement

[2] https://www.census.gov/data/tables/2020/dec/2020-apportionment-data.html

for reapportionment and redistricting presumes that the population of Congressional districts will be unbalanced at the end of each decennial census. Populations shift for any number of reasons over a 10 year period, and both Congress and the states are given statutory mandates to realign Congressional districts in order to restore the population balance within the districts. However, the plaintiffs here are no more aggrieved than any other citizen, and it cannot be known at this juncture whether or not these plaintiffs may be legally aggrieved by the reapportionment and redistricting process. Redistricting has not occurred, and plaintiffs allege no concrete harm associated with the population imbalance in their particular district. There are no Congressional elections scheduled or proposed prior to the fall of 2022, after redistricting has been accomplished.

Against that background, the Secretary of State excepted to the suit for the following reasons:

1. The Court lacks subject matter jurisdiction. The case does not present a justiciable controversy capable of resolution by the court. Plaintiffs ask the court to issue an advisory opinion based upon a hypothetical set of facts. Moreover, pre-enforcement of the Legislature's and Governor's responsibilities by the court would violate the separation of powers established in La. Const. art. II, § 2 of the Louisiana Constitution. The courts cannot invade the province of the legislative and executive branches of government assume control over the functions of all three branches. The case presents a political question, and the Courts cannot interject themselves into the political process.

2. The suit is filed in the wrong venue. Orleans Parish is an improper venue because the operative events described in the petition all occur in the state capital, which is in East Baton Rouge Parish. Congressional reapportionment and redistricting is a matter for the Legislature and the Governor, both of whom carry

out their official acts in East Baton Rouge Parish. Similarly, the official decisions and actions of the Secretary of State with respect to elections occur in East Baton Rouge Parish.

3. Plaintiffs do not state a cause of action. Plaintiffs fail to allege facts as required by the Louisiana pleading requirements in La. Code Civ. P. arts. 854, 891. Rather, the petition imagines a set of possibilities that may or may not occur with no colorable allegation that any of the events challenged in the petition pose an imminent or immediate threat of harm to these plaintiffs or anyone else.

4. Plaintiffs have no right of action. Plaintiffs lack the kind of real and actual interest required by La. Code. Civ. P. art. 681. Plaintiffs do not show that they have a special interest in redistricting apart from the general public. Additionally, any harm that may befall plaintiffs from a particular reapportionment or redistricting plan that might be drawn in the future is entirely a matter of speculation. Plaintiffs have no right to contest a reapportionment or redistricting plan that has not been devised or put in place, much less taken up by the political branches. Moreover, plaintiffs make no showing that they have standing to sue the Secretary of State in connection with the reapportionment and redistricting process. Plaintiffs allege that reapportionment and redistricting are the responsibility of the "political branches"[3] of state government, not the Secretary of State, who has no substantial connection or meaningful involvement in the redistricting process.

B. RELEVANT PROCEDURAL HISTORY

On April 26, 2021, plaintiffs filed *Petition for Injunctive and Declaratory Relief* challenging Louisiana's U.S. Congressional redistricting plan that is yet to be proposed or adopted by the Legislature.[4] Plaintiffs also contest the use of presently

[3] ¶¶ 4, 5, 6, 27, 28, and Prayer for Relief ¶¶ (c) and (d).

[4] Petition for Declaratory and Injunctive Relief attached as Exhibit D.

existing districts for future Congressional elections even though plaintiffs do not allege or show that any such elections are scheduled, proposed, contemplated or threatened.

In response to the petition, the Secretary of State filed *Declinatory Exceptions of Lack of Subject Matter Jurisdiction and Venue and Peremptory Exceptions of No Cause and No Right of Action* on May 24, 2021.[5] Plaintiffs opposed the exceptions.[6] The Secretary of State filed a reply to plaintiffs' opposition.[7] The district court set the Secretary's exceptions for hearing, and the exceptions were argued on August 20, 2021.[8]

The district court denied the exceptions in *Judgment With Incorporated Reasons* rendered and signed on November 16, 2021.[9] The Secretary filed a *Notice of Intent to Apply for Supervisory Writs and Request for Stay* on November 23, 2021. The district court set a return date of December 16, 2021 in which to perfect the writ application and denied the request for a stay.[10]

In the interim, on August 19, 2021, plaintiffs filed *First Amended and Supplemental Petition for Injunctive and Declaratory Relief.*[11] The district court allowed the filing by Order signed on August 20, 2021.[12]

The amended and supplemental petition modified the original in the following respects: **(1)** added Darryl Malek-Wiley as named plaintiff, removed Cameron English and Lynda Woodard as named plaintiffs and changed the heading of the suit accordingly; **(2)** added in ¶¶ 2 and 22 that census data was delivered by the Secretary

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5 Declinatory and Peremptory Exceptions by the Secretary of State with supporting memorandum attached as Exhibit E.
6 Exhibit G.
7 Exhibit H.
8 Rule to Show Cause, Exhibit F.
9 Exhibit A.
10 Exhibit M.
11 Exhibit N.
12 Exhibit O.

of Commerce to the Governor and legislative leaders on August 12, 2021; **(3)** refers to data as "these data" in ¶ 23 of the amended and supplemental petition rather than "recent data" used in the original petition; **(4)** alleges new and different population numbers in Louisiana's Congressional districts in ¶ 24; **(5)** allege in the amended and supplemental petition that Congressional District 2 is underpopulated in ¶ 25 of the amended and supplemental petition instead of the allegation that Congressional District 2 is overpopulated in the original petition; **(6)** adds an allegation that the legislature did not override any of the Governor's vetoes from the 2021 Regular Legislative Session in ¶ 28; and **(7)** in ¶ 36 of the amended and supplemental petition changed their numbers for alleged deviations between Congressional districts from ¶ 35 of the original petition.

The Secretary of State viewed the amended and supplemental petition as suffering from the same infirmities as the original in all material respects and filed a second set of exceptions substantially similar to his first on September 8, 2021.[13] The plaintiffs opposed the second exceptions.[14] The Secretary filed a reply to plaintiffs' opposition.[15] The hearing on the second set of exceptions was scheduled for December 10, 2021[16]. Prior to the hearing, the parties agreed to submit the second set of exceptions for decision on the parties' memorandums.

Thereafter, the district court rendered *Judgment* on December 10, 2021 denying the Secretary's exceptions to the amended and supplemental petition.[17] The Secretary filed a second *Notice of Intent to Apply for Supervisory Writs and Request for Stay* on December 13, 2021, and the district court signed the notice of intent on

13 Exhibit P.
14 Exhibit R.
15 Exhibit S.
16 Exhibit Q.
17 Exhibit K.

December 14, 2021 and set a return date of December 16, 2021 and again, denied the request for a stay.[18]

Beyond that, there are no motions, exceptions, hearings or other matters pending before the district court. Answer has not been filed. Discovery has not commenced. The case is not scheduled for trial.

Because this application for supervisory writs involves the same issues and relates to the same exceptions to the original petition and the amended and supplemental petition and were brought by the Secretary of State as the sole defendant, this application for writs seeks review of the district court's rulings on all of the Secretary of State's exceptions.

III. ISSUES AND QUESTIONS OF LAW PRESENTED

Issue No. 1. Louisiana courts have consistently declined to exercise jurisdiction when the allegations upon which a petition rests are speculative, uncertain, hypothetical and may or may not occur.

This litigation questions what the legal implications might be if the political branches of government should fail to redistrict U.S. Congressional districts or what might happen if an election were proposed and called in one of Louisiana's Congressional districts prior to reapportionment/redistricting.

Issue: (a) Is the exercise of jurisdiction by the district courts in Louisiana limited to deciding actual concrete disputes of sufficiency immediacy and reality that they present a justiciable controversy?

(b) Are the courts of Louisiana authorized to give advisory opinions based upon speculation about events that may or may not occur?

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[18] Exhibit M.

Issue No. 2: Redistricting U.S. Congressional districts is assigned to the political branches of State government, particularly the legislature and the Governor.

Plaintiffs in this case petition the court to intercede in the redistricting process to direct the political branches on how to conduct the decennial redistricting of Congressional districts.

Issue: Can the district courts of the State inject themselves into the political process to take control of Congressional redistricting?

Issue No. 3: The courts of Louisiana have routinely held that the parish where the state capitol is located is the appropriate venue, insofar as the relief requested involves forcing state agents to perform ministerial duties. The cause of action in such cases is deemed to arise in the parish in which the State officers involved in redistricting perform their duties.

The plaintiffs urge the court to adopt an interpretation of La. R.S. 13:5104 that would allow suit to be filed in all of the district courts of the State in which a citizen can allege to be aggrieved by an imbalance in population numbers prior to the redistricting of U.S. Congressional districts.

Issue: Is the parish in which the involved State officials perform their official duties with regard to redistricting and calling elections the proper venue for challenging their official conduct?

Issue No. 4: With respect to the Exception of No Cause of Action:

Issue: Does the plaintiffs' petition or amended supplemented petition assert factual allegations sufficient to entitle them to the relief they seek?

Issue No. 5: With respect to the Exception of No Right of Action:

Issue: Do the plaintiffs plead a distinct and present legal interest as required by La. Code Civ. P. art. 681.

IV. ASSIGNMENTS OF ERROR:

ASSIGNMENT OF ERROR NO. 1:

The trial court erred in assuming jurisdiction over a case in which the plaintiffs seek an advisory opinion on speculative, hypothetical propositions that rest on prospective developments and events that may or may not occur.

ASSIGNMENT OF ERROR NO. 2:

The trial court erred in resorting to a Wisconsin federal court decision based upon Wisconsin statutory law as controlling over well-established legal principles of Louisiana law in ruling that Louisiana district courts may exercise jurisdiction over cases that effectively serve as a "placeholder" for a justiciable controversy if and when one should arise.

ASSIGNMENT OF ERROR NO. 3:

The trial court misapplied the venue provisions in La. R.S. 13:5104 to expand permissive venues to all district courts of the State without limitation or consideration of where the operative events giving rise to the suit occurred.

ASSIGNMENT OF ERROR NO. 4:

The trial court erred in concluding that the original and the amended and supplemental petitions allege particular and concrete facts rather than a set of mere possibilities when it denied the Secretary of State's exception of no cause of action.

ASSIGNMENT OF ERROR NO. 5:

The trial court erred in concluding that the right to demand reapportion and redistricting prior to the statutory deadline set for the States to complete the process is an actionable right.

V. MEMORANDUM

A. ASSIGNMENTS OF ERROR NOS. 1 AND 2. THE COURTS LACK JURISDICTION TO ANSWER HYPOTHETICAL QUESTIONS ABOUT SPECULATIVE PROPOSITIONS THAT MAY NEVER ARISE

"It is fundamental in our law that courts sit to administer justice in actual cases and that they do not and will not act on feigned ones, even with the consent of the parties." *St. Charles Par. Sch. Bd. v. GAF Corp.,* 512 So. 2d 1165, 1173 (La. 1987), *on reh'g* (Aug. 7, 1987).

Jurisdiction is defined as the "legal power and authority of a court to hear and determine an action or proceeding involving the legal relations of the parties, and to grant the relief to which they are entitled." La. Code Civ. P. art. 1. Jurisdiction over subject matter is "the legal power and authority of a court to hear and determine a particular class of actions or proceedings, based upon the object of the demand, the amount in dispute, or the value of the rights asserted." La. Code Civ. P. art. 2.

Subject matter jurisdiction is created by either the constitution or a legislative enactment, and cannot be waived or conferred by the consent of the parties. A judgment rendered by a court which has no jurisdiction over the subject matter of the action or proceeding is null and void. La. Code Civ. P. art. 3. The First Circuit Court of Appeal summarized the law governing an objection of lack of subject matter jurisdiction in *Citizens Against Multi-Chem v. Louisiana Dep't of Envtl. Quality:*

> A court's power to grant relief is premised upon its subject matter jurisdiction over the case or controversy before it, which cannot be waived or conferred by consent. *Wilson v. City of Ponchatoula,* 2009–0303 (La.10/9/09), 18 So.3d 1272. The district courts have exclusive original jurisdiction over most matters, and concurrent original jurisdiction with trial courts of limited jurisdiction. *See* La. Const. art. V, § 16. Subject matter jurisdiction is a threshold issue, insofar as a judgment rendered by a court that has no jurisdiction over the subject matter of the action or proceeding is void. *See* La. C.C.P. art. 2; *IberiaBank v. Live Oak Circle Dev., L.L.C.,* 2012–1636 (La.App. 1 Cir. 5/13/13), 118 So.3d 27, 30.

> The objection of lack of subject matter jurisdiction is used to question the court's legal power and authority to hear and determine a particular class of actions or proceedings based upon the object of the demand, the amount in dispute, or the value of the right asserted. *See* La. C.C.P. art. 2; *IberiaBank,* 118 So.3d at 30….

13-1416 (La. App. 1 Cir. 5/22/14); 145 So.3d 471, 474–75, *reh'g denied* (6/13/14), *writ denied,* 14-1464 (La. 10/10/14); 151 So.3d 586.

Absent jurisdiction, a court is without legal authority to hear and decide a case.

i. *Subject matter jurisdiction and the necessity of a justiciable controversy*

It is well settled in the jurisprudence of this state that courts will not decide abstract, hypothetical, or moot controversies or render advisory opinions with respect to such controversies. *Cat's Meow, Inc. v. City of New Orleans, Dept. of Finance*, 98-0601 (La. 10/20/98); 720 So.2d 1186, 1193; *see also, Shepherd v. Schedler*, 15-1750 (La. 01/27/16); 209 So.3d 752, 764. Cases submitted for adjudication must be justiciable, ripe for decision, and not brought prematurely. *Prator v. Caddo Parish*, 04-0794 (La. 12/1/04); 888 So.2d 812, 815.

This case is not ripe for adjudication. Generally, the ripeness doctrine is viewed as being both constitutionally required and judicially prudent. *Matherne v. Gray Ins. Co.*, 95-0975 (La. 10/16/95), 661 So. 2d 432, 435. Louisiana courts are disinclined to issue advisory opinions based upon hypothetical and speculative theories about future events that might never occur. *Ring v. State, Dep't of Transp. & Dev.*, 2002-1367 (La. 1/14/03), 835 So. 2d 423, 427. The plaintiffs here allege only hypothetical, not actual or concrete, harm. That something may or may not happen is not a sufficient jurisdictional basis for a lawsuit in Louisiana.

Plaintiffs attach a few cases and orders from various courts from Wisconsin and Minnesota that allowed suits to stand under the laws of those states, but none are controlling on jurisdiction in Louisiana courts. Certainly, other courts in other

state jurisdictions have dismissed claims similar to that asserted by the plaintiffs in this case. One such example from a court in the Commonwealth of Pennsylvania is attached.[19] The Pennsylvania decision is well-reasoned and supportive of the Secretary of State's position in this case. However, like the cases advanced by the plaintiffs, the Pennsylvania case is not decided under Louisiana law and has no greater applicability than do the cases submitted by the plaintiffs.

Louisiana Code of Civil Procedure article 1871 authorizes the judicial declaration of "rights, status, and other legal relations whether or not further relief is or could be claimed." A declaratory judgment action is designed to provide a means for adjudication of rights and obligations in cases involving an actual controversy that has not reached the stage where either party can seek a coercive remedy. *Code v. Dep't of Pub. Safety & Corr*, 11-1282 (La. App. 1 Cir. 10/24/12); 103 So.3d 1118, 1126, *writ denied*, 12-2516 (La. 1/23/13); 105 So.3d 59. The function of a declaratory judgment is simply to establish the rights of the parties or express the opinion of the court on a question of law without ordering anything to be done. *Id.* at 1127. But our jurisprudence has limited the availability of declaratory judgment by holding that "courts will only act in cases of a present, justiciable controversy and will not render merely advisory opinions." *Id.*

Because of the almost infinite variety of factual scenarios with which courts may be presented, a precise definition of a justiciable controversy is neither practicable nor desirable. *Id.* However, a justiciable controversy has been broadly defined as one involving "adverse parties with opposing claims ripe for judicial determination," involving "specific adversarial questions asserted by interested parties based on existing facts." *Id.* (quoting *Prator v. Caddo Parish*, 04-0794 (La.

[19] *Carter, et al v. Degraffenreid*, et al, No. 132 M.D. of Pa. 2021, Attachment A to Secretary's Memorandum in Reply on the Second Set of Exceptions, Exhibit S.

12/1/04); 888 So.2d 812, 816). A justiciable controversy for purposes of declaratory judgment is one involving uncertain or disputed rights in "an immediate and genuine situation," and must be a "substantial and actual dispute" as to the legal relations of "parties who have real, adverse interests." *Id.* (quoting *Prator*, 888 So.2d at 817).

The Louisiana Supreme Court discussed "justiciable controversy" relative to declaratory judgment actions in *Abbott v. Parker*, explaining:

> A "justiciable controversy" connotes, in the present sense, an existing actual and substantial dispute, as distinguished from one that is merely hypothetical or abstract, and a dispute which involves the legal relations of the parties who have real adverse interests, and upon which the judgment of the court may effectively operate through a decree of conclusive character. Further, the plaintiff should have a legally protectable and tangible interest at stake, and the dispute presented should be of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

249 So.2d 908, 918 (La. 1971); *see also Prator*, 888 So.2d at 815–17. A court must refuse to entertain an action for a declaration of rights if the issue presented is academic, theoretical, or based on a contingency which may or may not arise. *American Waste & Pollution Control Co. v. St. Martin Parish Police Jury*, 627 So.2d 158, 162 (La. 1993). The absence of any justiciable controversy then deprives this Court of subject matter jurisdiction. *See Duplantis v. La. Bd. of Ethics*, 00-1750 (La. 03/23/01), 782 So. 2d 582, 589 (courts are without jurisdiction to render advisory opinions and may only review matters that are justiciable).

Consequently, a declaratory action cannot generally be maintained unless it involves some specific adversary question or controversy asserted by interested parties and is based on an existing state of facts. *Tugwell v. Members of Bd. of Hwys*., 83 So.2d 893, 899 (La.1955). Declaratory relief is not available to an applicant unless the case presents an actual and existing justiciable controversy, not a hypothetical one La. Code Civ. P. art.1881; *LA Independent Auto Dealers Ass'n v.*

State, 295 So.2d 796 (La.1974); *Rambin v. Caddo Parish Police Jury*, 316 So.2d 499, 501 (La.App. 2 Cir. 1975).

In the case of an injunction under La. Code Civ. P. art 3601, the same principals hold true. The courts cannot indulge in speculative and theoretical exercises upon a supposed set of facts. "It is well settled that courts should not decide abstract, hypothetical or moot controversies, or render advisory opinions with respect to such controversies." *Balluff v. Riverside Indoor Soccer II, L.L.C.*, 07-780 (La. App. 5 Cir. 3/11/08), 982 So. 2d 199, 201. Injury that may never materialize cannot form the basis of a plea for injunctive relief.

Plaintiffs' plea for declaratory judgment and injunctive relief in this case fails to assert a justiciable controversy. Plaintiffs do not allege that a reapportionment plan for the 2022 congressional elections has been put in place nor that the Governor and the legislature have developed and put into effect any reapportionment plan for congressional elections beginning in 2022. Neither do plaintiffs allege that the Secretary of State or anyone else proposes to utilize current congressional districts drawn in 2011 to hold the regular congressional elections in 2022.

The petition alleges primarily that plaintiffs rights might be effected in the future depending on what happens with congressional redistricting, which is not yet underway, and secondarily that their rights may be prejudiced should the State decide to move forward with the 2022 congressional elections based upon the 2011 election districts from the last decennial reapportionment, which plaintiffs do not allege is proposed, under consideration or even legally possible.

The kind of "what if" scenarios posited by plaintiffs in their pleadings do not present a justiciable controversy ripe for adjudication. This Court lacks subject matter jurisdiction over the case.

ii. *The Separation of Powers Provision in the Louisiana Constitution Precludes the Court's Involvement in the Political Process of Reapportionment and Redistricting*

The redistricting of U.S. Congressional offices apportioned by Congress is a unique political process to be conducted by the state legislature subject to veto by the Governor to the exclusion of the district courts under La. Const. art. II, § 2. The redistricting process precludes the Court's usurpation of the role of the two political branches of government, and the Court cannot preempt the political branches as the plaintiffs ask them to do. The Court's engagement in the formulation of districts reaches beyond the authority given them in the Constitution.

The United States Constitution provides in Article I, § 4, cl. 1 that "[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof." The U.S. Supreme Court noted the role of legislative bodies in redistricting congressional election districts: "[O]ur precedent teaches that redistricting is a legislative function, to be performed in accordance with the State's prescriptions for lawmaking, which may include the referendum and the Governor's veto." *Arizona State Legislature v. Arizona Indep. Redistricting Comm'n,* 576 U.S. 787 (2015).

Louisiana has chosen to establish congressional districts through the enactment of a statute in accordance the ordinary legislative process. La. R.S. 18:1276.1. The process is inherently political to be carried out by the political branches of government. The three branches of state government in Louisiana are established in La. Const. art. II, § 1 as the legislative, executive and judicial branches, each with powers fixed by the Constitution. Article II, § 2 provides that no one branch of government can exercise power belonging to another.

In that regard, the Louisiana Legislature is invested with the power to pass laws. The Louisiana Constitution provides that, the legislative power of the state is vested in a legislature, consisting of a Senate and a House of Representatives. La. Const. art. III, § 1. The legislature shall enact no law except by a bill introduced during that session. La. Const. art. III, § 15. The Governor is vested with the authority to approve or veto bills pursuant to La. Const. art. III, § 18. Because Louisiana has chosen to redistrict congressional election districts by statute, the legislature is responsible for congressional redistricting in Louisiana, subject to the Governor's approval or veto of any such redistricting plan.

Unquestionably, the redistricting of congressional election districts belongs to the legislature and the Governor as the political branches of state government, not to the district courts of the State. The judicial branch of state government is not permitted to infringe upon the express powers of the legislative and executive branches by Article II, § 2 of the Constitution. *Hoag v. State*, 2004-0857, 889 So. 2d 1019, 1022. The courts are not allowed to make decisions reserved to the legislature and the Governor. The courts of the state have uniformly upheld the legislature's powers free from interference by the courts to adopt and amend laws. The function of the judiciary is to interpret laws; it is the legislature's function to draft and enact them. *Mathews v. Steib*, 2011-0356 (La. App. 1 Cir. 12/15/11), 82 So. 3d 483, 486, *writ denied*, 2012-0106 (La. 3/23/12), 85 So. 3d 90. The amendment of a statute is addressed to the legislature and not the courts. *Succession of Farrell*, 200 La. 29, 34, 7 So. 2d 605, 606 (1942).

Plaintiffs here asked the Court to exercise powers that it does not have under the Louisiana Constitution, and this Court must act to ensure that governmental powers granted under the Constitution are properly exercised. Plaintiffs want the Orleans Parish District Court to intercede in the congressional redistricting process

and usurp the powers expressly granted to the legislature by both the U.S. and Louisiana Constitutions. The courts are not given such power in the Louisiana Constitutional scheme. It was error for the district court to deny the Secretary of State's jurisdictional exception.

iii. The State is Barred from Using 2011 Districts for the 2022 Congressional Elections, and Plaintiffs' Claim In That Regard is Moot

Plaintiffs ask the Court to issue an order declaring the 2011 congressional election districts to be inoperable for the 2022 congressional elections in Louisiana. However, the Constitution and laws command that the State redistrict for the 2022 elections, and the objective plaintiffs seek has been accomplished by operation of law. See, U.S. Const. art. I, § 2, cl. 3; amend. XIV, § 2; 2 USC § 2a. The requested court order would merely direct the defendant to follow the law that is already in place, and such a court order would have no practical effect and would change nothing. The states are required to draw new districts based upon changes in population assuming that the census numbers reflect the need for reconfiguration of the districts. The states have no discretion. Louisiana must elect their allotted members of the House of Representatives from new districts following each decennial census. The law leaves no dispute or controversy for the Court to resolve in that regard.

An issue is moot when a judgment or decree on that issue has been "deprived of practical significance" or "made abstract or purely academic." *In re E.W.*, 09–1589 (La.App. 1 Cir. 5/7/10), 38 So.3d 1033, 1037. Thus, a case is moot when a rendered judgment or decree can serve no useful purpose and give no practical relief or effect. *Stevens v. St. Tammany Par. Gov't*, 2016-0197 (La. App. 1 Cir. 1/18/17), 212 So. 3d 562, 566–67. If the case is moot, then "there is no subject matter on

which the judgment of the court can operate." *Ulrich v. Robinson*, 2018-0534 (La. 3/26/19), 282 So. 3d 180, 186.

When a judgment can change nothing, it is deemed moot. "A "moot" case is one in which a judgment can serve no useful purpose and give no practical effect. When a case is moot, there is simply no subject matter on which the judgment of the court could operate. *State in Int. of J.H.*, 2013-1026 (La. App. 4 Cir. 3/19/14), 137 So. 3d 748, 750 [internal citations omitted].

A case is moot when whatever it is that the plaintiff sued for has already happened or happened in the course of litigation. In such cases, a court pronouncement would not change anything.

Here, plaintiffs' petition the Court to declare that 2011 districts cannot be used for the 2022 congressional elections, and the Secretary of State should be enjoined from doing so. Plaintiffs want to enjoin what the Constitution and applicable statutes expressly prohibit by mandating that states redistrict congressional election districts every 10 years so that congressional elections must be held in reconfigured election districts. U.S. Const. art. I, § 2, cl. 3; amend. XIV, § 2; 2 USC § 2a. Plaintiffs want to declare and enjoin the defendant from doing something he cannot do under the law without even alleging that any such actions are contemplated or imminent. A condition, to be enjoined in litigation, must currently exist or be imminent. *Faubourg Marigny Imp. Ass'n, Inc. v. City of New Orleans*, 2015-1308 (La. App. 4 Cir. 5/25/16), 195 So. 3d 606, 618.

Additionally, plaintiffs' allegations with regard to the use of 2011 congressional election districts are entirely speculative and refer to an uncertain event, not even rumored to the Secretary's knowledge, leaving the Court without any basis to act. *Id.* Plaintiffs do not allege that a violation of constitutional and statutory law is contemplated by any Louisiana official much less that such an event is real,

imminent or threatened. A condition to be enjoined in litigation must currently exist or be imminent. *Id.*

The Court lacks jurisdiction to entertain a plea that is moot by virtue of statutory and constitutional mandates that accomplish plaintiffs' objective. Any order the court might issue in response to plaintiffs' plea would be surplusage and have no practical effect. The claim relative to the existence and use of 2011 congressional election districts is moot by virtue of federal and state mandates.

B. ASSIGNMENT OF ERROR NO. 3. VENUE UNDER LA. R.S. 13:5104 LIES IN THE PARISH IN WHICH THE DEFENDANT STATE OFFICIAL PERFORMS HIS DUTIES, WHICH IN THIS INSTANCE IS THE PARISH IN WHICH THE STATE CAPITOL IS LOCATED

The Secretary of State excepts to venue pursuant to La. Code Civ. P. art. 925(4). The Civil District Court is not the proper venue in which to adjudicate this cause of action. Specifically, La. R.S. 13:5104 provides in pertinent part that:

> All suits filed against the state of Louisiana or any state agency or against an officer or employee of the state or state agency for conduct arising out of the discharge of his official duties or within the course and scope of his employment shall be instituted before 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.

Suit can be brought against the State in the judicial district in which the state capitol is located or in the district having jurisdiction in the parish in which the cause of action arose. Under either prong of the statute, the proper venue is the Nineteenth Judicial District in East Baton Rouge Parish.

There can be little argument that Louisiana's state capitol is located in East Baton Rouge Parish. The Nineteenth Judicial District is the court in and for East Baton Rouge Parish, and accordingly, constitutes the proper venue to bring this suit under La. R.S. 13:5104(A).

East Baton Rouge is also the Parish in which the action will arise, if ever it

does. Congressional maps will be drawn, redistricting debated, bills passed and redistricting approved or vetoed at the state capitol. Thus, all of the operative events relating to redistricting upon which plaintiffs' claims depend will occur in East Baton Rouge.

Plaintiffs also request an order enjoining the Secretary of State from using the 2011 congressional districts for the 2022 congressional elections. Plaintiffs do not, because they cannot, allege that such a plan or proposal is in the works, but even if there were, all decisions relating to that plan would occur in East Baton Rouge Parish, which again makes the Nineteenth Judicial District the court of proper venue for the case. This is not to suggest that the Secretary of State could or would use a prior decennial congressional election plan once the deadline for congressional redistricting has passed. Certainly, no such plan is contemplated. However, for venue purposes any such decision would be made by state officials who carry out their duties in East Baton Rouge Parish.

The courts have routinely held that the parish where the state capitol is located is the appropriate venue, insofar as the relief requested involves forcing state agents to perform ministerial duties. *Anderson v. State of Louisiana, et al*., 05-0551 (La.App. 3 Cir. 11/2/05), 916 So.2d 431; *Cameron Parish Police Jury v. McKeithen*, 02-1202 (La.App. 3 Cir. 10/14/02), 827 So.2d 666, *writ denied*, 02-2547, 02-2548 (La. 10/23/02), 827 So.2d 1148; *Abshire v. State, through Dept. of Ins*., 93-923 (La.App. 3 Cir. 4/6/94), 636 So.2d 627, *writ denied*, 94-1213 (La. 6/24/94), 640 So.2d 1332.

The seminal case on where a suit arises, *Colvin v. Louisiana Patient's Compensation Fund Oversight Board, et al*,[20] determined "where the cause of action

[20] *Colvin v. Louisiana Patient's Compensation Fund Oversight Board, et al*., 06-1104 (La. 1/17/07), 947 So.2d 15.

arose" to be the place where the operative facts occurred. After noting the differing standards applied to La. R.S. 13:5104(A) by the various appellate circuits throughout the state, the Supreme Court explained:

> Courts of appeal have recognized that the question of what constitutes the situs of a cause of action has been the source of much consternation among the circuits and has eluded a precise definition. *Anderson v. State*, 05-0551 (La.App. 3 Cir. 11/2/05), 916 So.2d 431, 435, *writ denied*, 05-02493 (La.6/2/06), 929 So.2d 1243; *Commercial Nat. Bank in Shreveport v. First Nat. Bank of Fairfield, Tex*., 603 So.2d 270 (La.App. 2 Cir.), *writ denied*, 605 So.2d 1151 (La.1992); *V.C. Nora*, *supra*; *Abshire v. State, through Dept. of Ins*., 93-923 (La.App. 3 Cir. 4/6/94), 636 So.2d 627, *writ denied*, 94-1213 (La.6/24/94), 640 So.2d 1332. After reviewing the applicable law and the purpose of the venue statutes, we agree with and adopt the test first set for by the Fourth Circuit in *Avenal v. State, Dept. of Natural Resources*, 95-0836 (La.App. 4 Cir. 11/30/95), 668 So.2d 1150, *writ denied*, 96-198 (La.1/26/96), 667 So.2d 524. In *Avenal*, the court held that "**the place where the operative facts occurred which support plaintiff's entitlement to recovery is where the cause of action aris[es]" for venue purposes under La. R.S. 13:5014(A).**
>
> In this case, the 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. Indeed, several courts have held that where a state agency's ministerial or administrative actions are called into question, East Baton Rouge offers the only appropriate forum, as that is both "the district in which the state capitol is located" and "the district having jurisdiction in the parish in which the cause of action arose." *Anderson v. State*, *supra*; *Cameron Parish Police Jury v. McKeithan*, 02-1202 (La.App. 3 Cir. 10/14/02), 827 So.2d 666, *writ denied*, 02-2547, 02-2548 (La.10/23/02), 827 So.2d 1148, 1149; *Abshire v. State*, *supra*.
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> . . .
>
> A contrary conclusion could result in undue encumbrances upon the state's governing apparatus at its very highest reaches, an absurd consequence we are certain could not have been intended by the redactors of our code of civil procedure. *See generally Turner v. Collector of Revenue*, 209 So.2d 301 (La.App. 4 Cir.1968).[21]

In more recent cases, the courts have made it clear that the operative events giving rise to a suit occur in East Baton Rouge Parish when an administrative

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[21] *Id.*, 947 So.2d at 13 (Emphasis added) (citing *Avenal v. State, Dept. of Natural Resources*, 95-0836 (La.App. 4 Cir. 11/30/95), 668 So.2d 1150, *writ denied*, 96-198 (La.1/26/96), 667 So.2d 524.

decision of the state or a state agency in brought into question. See, *LeBlanc v. Thomas*, 2008-2869 (La. 10/20/09), 23 So. 3d 241. By the same token, the Louisiana Supreme Court found that venue in a case involving administrative decisions in settlements in the Road Home program arose in the parish where the administrative decisions were made (East Baton Rouge) not in the parish where plaintiffs homes sustained damage. *Roger v. Anpac Louisiana Ins. Co.*, 2010-1099 (La. 11/19/10), 50 So. 3d 1275.

East Baton Rouge is the proper and exclusive venue for the plaintiffs' actions. The operative facts, whether in developing a redistricting plan or deciding the appropriate districts for the 2022 elections, take place in East Baton Rouge Parish. The creation of the congressional plan will occur only in East Baton Rouge Parish. Similarly, any decision to use the 2011 plan for other elections would be made by state political officials who carry out their duties in East Baton Rouge Parish.

The plaintiffs' notion of venue where a person is aggrieved would make every judicial district in the state a proper venue for any plaintiff complaining that they live in a congressional district with a population imbalance at the commencement of the reapportionment process and would thus allow any or all of the district courts of the state to assume control of the redistricting process. The State could be called upon to defend all 64 parishes were the plaintiffs' view of venue accepted as proper. The Secretary of State could well be called upon to comply with 64 court orders that may be contradictory and conflicting. Any citizen could claim to be aggrieved by a population imbalance in their district and petition the district court in their parish to declare their congressional district unlawfully apportioned. The courts of Louisiana have not adopted such an expansive interpretation of the venue provision of La. R.S. 13:5104, and this Court should reverse the district courts judgments to the extent his rulings so interpret the venue statute.

The trial court's decision finding the Orleans Parish Civil District Court to be a proper venue for this suit should be reversed and the suit either be dismissed or transferred to the 19th JDC, East Baton Rouge Parish pursuant to La. R.S. 13:5104(A) and in accordance with *Habig v. Popeye's Inc.*, 553 So. 2d 963 (La. App. 4 Cir. 1989).

C. Assignment of Error No. 4. The plaintiffs' allegations are not sufficient to entitle them to the relief they seek

Neither the original nor the amended and supplemental petitions in this case state a cause of action. The function of the objection of no cause of action is to test the legal sufficiency of the petition by determining whether the law affords a remedy on the facts alleged in the pleading. *Everything on Wheels Subaru, Inc. v. Subaru South, Inc.*, 616 So.2d 1234, 1235 (La. 1993); *Copeland v. Treasure Chest Casino, LLC*, 01-1122 (La. App. 1 Cir. 6/21/02); 822 So.2d 68, 70. No evidence may be introduced to support or controvert the objection that the petition fails to state a cause of action. La. Code Civ. Proc. art. 931. The exception is triable on the face of the pleading, and for the purpose of determining the issues raised by the exception, the well-pleaded facts in the pleading must be accepted as true. *Richardson v. Richardson*, 02-2415 (La. App. 1 Cir. 7/9/03); 859 So.2d 81, 86. Thus, the only issue at the trial of the exception is whether, on the face of the petition, the plaintiff is legally entitled to the relief sought. *Perere v. Louisiana Television Broadcasting Corp.*, 97-2873 (La. App. 1 Cir. 11/6/98); 721 So.2d 1075, 1077.

Since Louisiana has retained a system of fact pleadings, conclusory allegations of a plaintiff do not set forth a cause of action. *Montalvo v. Sondes*, 93-2813, 93-2813 (La. 5/23/94); 637 So.2d 127, 131. Conclusions of law, as opposed to factual statements, are improper to state causes of action. *Nat'l Gypsum Co. v. Ace Wholesale, Inc.*, 98-1196 (La. App. 5 Cir. 6/1/99); 738 So.2d 128, 130. Vague

references, suppositions, and legal conclusions cannot take the place of succinct and definite facts upon which a cause of action must depend. *Jackson v. Home Depot, Inc.*, 04-1653 (La. App. 1 Cir. 6/10/05); 906 So.2d 721, 728. A court should sustain the exception when the allegations of the petition, accepted as true, afford no remedy to the plaintiff for the particular grievance. *Harris v. Brustowicz*, 95-0027 (La. App. 1 Cir. 10/6/95); 671 So.2d 440, 442.

With respect to the use of 2011 districts to hold 2022 elections, plaintiffs do not plead any colorable allegations that the Secretary of State has the authority or intention to do so. Plaintiffs simply argue almost as a *non sequitur* that the Court should declare that the 2011 district map cannot be used to hold 2022 elections. The law dictates that the State redraw the districts for congressional elections in 2022. Plaintiffs' cause of action in that regard is not only rendered moot by the statutory framework for redistricting, but the petition makes no allegations to suggest that there is some claim to the contrary.

Further, the plaintiff must have no legally protectable and tangible interest at stake, and the dispute alleged is not of sufficient immediacy and reality to warrant the issuance of a declaratory judgment. *Louisiana Fed'n of Tchrs. v. State*, 2011-2226 (La. 7/2/12), 94 So. 3d 760, 763. A court must refuse to entertain an action for a declaration of rights if the issue presented is academic, theoretical, or based on a contingency which may or may not arise. *American Waste & Pollution Control Co. v. St. Martin Parish Police Jury,* 627 So.2d 158, 162 (La.1993). Further, a case is not ripe for review unless it raises more than a generalized, speculative fear of unconstitutional action. *State v. Rochon,* p. 7, 11–0009 (La.10/25/11), 75 So.3d 876, 882.

Plaintiffs here seek a declaratory judgment on speculative allegations that the defendant might do something at some undefined point in the future. Their

allegations do no more than suggest a mere possibility of something occurring rather than setting out specific, particularized and immediate concrete facts that are actual and existing. Were the Court to accept plaintiffs' allegations as true, it would have nothing more than rank speculation to act on, which the courts unanimously hold cannot form the basis for a cause of action. See, *Purpera v. Robinson*, 2020-0815 (La. App. 1 Cir. 2/19/21), *writ denied,* 2021-00406 (La. 5/11/21).

Nor do plaintiffs allege plausible facts to support their claim that the partisan divide in our executive and legislative branches will lead to the "significant likelihood the political branches will reach an impasse this cycle." The Legislature and the Governor pass bills into law on a pretty frequent basis, and the plaintiffs' dim view of their ability to do so here is not the kind of factual allegation essential to plead a cause of action. In their amended and supplemental petition, plaintiffs tout the legislature's declination to override an objection as signifying something about their suit. However, such an allegation suggests that the statue's constitutional process functioned as it should, not that paralysis has infected the political process.

The same holds true for the plea for injunctive relief. Plaintiffs failed to allege a basic foundational requirement for injunctive relief: actual or imminent harm irreparable to the plaintiffs. *Louisiana Fed'n of Tchrs. v. State*, 2011-2226 (La. 7/2/12), 94 So. 3d 760, 763. Actual or imminent harm can hardly be asserted in the absence of an actual and existing redistricting plan or an intention to use existing in the 2022 congressional elections. Plaintiffs thus failed to state a cause of action for injunctive relief.

Louisiana law provides that an injunction shall issue only "in cases where irreparable injury, loss, or damage may otherwise result to the applicant, or in other cases specifically provided by law." La. Code Civ. P. art. 3601(A). The hypothetical harm claimed by the plaintiffs' in this case is not particularized as to them as opposed

to the public at large in each of the congressional districts. A plaintiff must have a real and actual interest in the action he asserts, La. Code Civ. P. art. 681. Without a showing of some special interest 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). There is no colorable allegation that these plaintiffs are situated any differently than any other member of the general public with respect to congressional districts, and their failure to so allege is fatal to their injunction plea.

Defendants' Exception of No Cause of Action should be maintained with respect to both injunctive and declaratory relief whether claimed in the original petition or the amended and supplemental petition.

D. ASSIGNMENT OF ERROR NO. 5. NO RIGHT OF ACTION

Plaintiffs fail to demonstrate a real and actual interest in the matter asserted in the petition. La. Code Civ. P. art. 681. Nothing in the plaintiffs' allegations shows that they have a "real and actual" interest in this case; instead, their interest is hypothetical and theoretical based upon conjecture and speculation. "[W]hether a litigant has standing to assert a claim is tested via an exception of no right of action." *Bradix v. Advance Stores Co., Inc.*, 2017-0166 (La. App. 4 Cir. 8/16/17), 226 So. 3d 523, 528. Here, as in *Bradix,* the plaintiffs do not assert that they presently possess a claim, have sustained or may imminently suffer some injury. Until they do, if they ever do, they have no right of action to assert and lack standing to bring the suit.

To have standing the plaintiff must assert an adequate interest in himself, which the law recognizes, against a defendant having a substantial adverse interest. *Howard v. Administrators of Tulane Educ. Fund*, 2007-2224 (La. 7/1/08), 986 So. 2d 47, 54. Plaintiffs fail on both counts – fail to assert an existing adequate interest in future redistricting of congressional districts and fail to show a substantial adverse

interest on the part of the Secretary of State who has no role in redrawing congressional election districts.

The foundation for plaintiffs' suit consists in the allegation that "the partisan division among Louisiana's political branches makes it extremely unlikely they will pass a lawful congressional redistricting plan in time to be used during the upcoming 2022 election" … "leaving the existing plan in place for the next year's election." Pet. at 5, ¶ 27-28. Plaintiffs' claims as set out in the petition lie against the "political branches" of state government rather than the Secretary of State. And even at that, plaintiffs' bet that the political branches will fail does not implicate the Secretary of State. The Secretary of State will not fail to redistrict anything. He is not involved in the process. Plaintiffs have no grievance against him and no standing to sue him.

Plaintiffs fare no better claiming that the failure to timely yield a new plan "is likely to significantly, if not severely, burden plaintiffs' First Amendment right to association." Pet. at 8, ¶ 41. The phrase "is likely to" is innately hypothetical, and therefore insufficient to form a justiciable controversy that will result in injury to these particular plaintiffs. "Without a showing of a special interest that is separate and distinct from the interest of the general public, a plaintiff may not proceed." *Vieux Carre Prop. Owners, Residents & Assocs., Inc. v. Hotel Royal, L.L.C.*, 2009-0641 (La. App. 4 Cir. 2/3/10), 55 So. 3d 1, 7, *on reh'g* (Jan. 5, 2011), *writ denied*, 2011-0258 (La. 4/29/11), 62 So. 3d 112. For this Court to act, plaintiffs are required to give the Court something to act on, i.e. a "special interest which is separate and distinct from the interest of the public at large." *All. For Affordable Energy v. Council of City of New Orleans*, 96-0700 (La. 7/2/96), 677 So. 2d 424, 428. Absent such a showing, they do not have a right of action.

Recently, the Louisiana Supreme Court in *Soileau v. Wal-Mart Stores, Inc.,* 2019-0040, p. 6 (La. 6/26/19); 285 So.3d 420, 425, dismissed a case based upon the

plaintiff's failure to demonstrate convincingly that a real and actual dispute had been presented. Citing *St. Charles Parish School Bd. v. GAF, Corp*., the Court ruled that the plaintiff based her claims on "abstract harm she might suffer in the future" and that "[t]he injury resulting from this purported conflict of interest is not based on any actual facts or occurrences; rather, she asks the court to assume that she will suffer harm if certain hypothetical facts occur." *Soileau*, 285 So.3d at 425. The Louisiana Supreme Court ruled that, "[w]e decline to render an advisory opinion based on facts which may or may not occur at some unspecified time in the future." *Id*.

The Court's reasoning in *Soileau* applies here. Plaintiffs' claims are purely about things that may or may not occur. As plaintiffs themselves allege, the requisite Census data has yet to be delivered to the proper state officials. Plaintiffs do not allege that the Legislature and the Governor have developed or adopted any redistricting plan. Plaintiffs allege merely that the Legislature and the Governor have the responsibility to develop a redistricting plan at some point in the future and then proceed to disparage their ability to fulfill their responsibilities to redistrict. Plaintiffs' claims are purely hypothetical, and this Court should refrain from rendering a speculative judgment based upon what might or might not occur in congressional redistricting.

Plaintiffs do not allege that reapportionment or redistricting have yet happened. Clearly, plaintiffs have no standing to assert any right or injury particularly where they have brought no justiciable controversy to the Court.

But even to the extent plaintiffs seek merely to restrain the Secretary, they still fail to make a showing of personal "interest" to establish a justiciable controversy. All that the Petition alleges is speculative, theoretical harms. Because plaintiffs have failed to show that they have a right to sue according to the applicable standards, this Court should sustain the defendant's exception of no right of action. *See Howard*,

2007-2224 (La. 7/1/08), 986 So. 2d at 59 (noting that an exception of no right of action is the proper vehicle to challenge a plaintiff's standing).

Then there is the question of standing to sue the Secretary of State who has no material role in redistricting congressional office. The plaintiffs allege no such role for the Secretary. Neither the United States nor the Louisiana Constitution assign him a substantive role in the process. Plaintiffs do not allege that the Secretary might cause them some grievance when redistricting does occur. The Secretary of State does not enforce any of the redistricting statutes, and nothing in the petition's allegations show that the Secretary proposes an election plan in which the expired districts will be used, much less that the Secretary of State has the authority to do so. Absent some showing that the Secretary has a connection to congressional redistricting or that the plaintiffs will be injured by anything the Secretary has authority to do, they simply do not have standing to sue him.

All indications are that the Legislature or Governor will call a special session to consider reapportionment/redistricting for mid to late February, 2022. A decision on this supervisory writ prior to the development and proposal of districts and the call of the special session is imperative to prevent the entanglement of the reapportionment process with litigation that is likely to and may be intentionally employed to detract from legislative deliberation. Prompt consideration of the writ application is critical to allow for the development of maps and for the development of districts, certainly no later than 30 days for the filing of this application.

VI. PRAYER

Plaintiffs brought this matter in the improper venue, do not present a justiciable controversy for this Court's determination, failed to properly allege a cause of action, and lack the right or standing to bring suit. For the foregoing

reasons, the Secretary of State respectfully prays that this Court reverse the trial court's rulings on each and every of the Secretary of State's exceptions and dismiss plaintiffs' demands at plaintiffs' cost. Alternatively, the Secretary of State asks that the case be remanded to the district court for transfer to the court of proper venue in the 19th Judicial District Court for the Parish of East Baton Rouge.

Respectfully submitted,

JEFF LANDRY
ATTORNEY GENERAL

BY: *s/Carey T. Jones*
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And by:

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Counsel for Secretary of State

VI. AFFIDAVIT OF VERIFICATION AND CERTIFICATE

BEFORE ME, personally came and appeared:

Carey T. Jones

Who deposed and stated that he is an attorney representing the Defendant-Applicant, Kyle Ardoin, in his official capacity as the Secretary of State of the state of Louisiana and that all the facts alleged in the foregoing Application for Supervisory Writs are true and correct to the best of his knowledge and that copies of this Application were duly served upon the following by electronic transmission at the email address provided below:

Trial Court Judge:

Honorable Sidney H. Cates IV
Judge, Division C
Civil District Court
Parish of Orleans
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s/Carey T. Jones
Carey T. Jones

SWORN TO AND SUBSCRIBED before me, this 16th day of December, 2021.

s/Lauryn Sudduth
NOTARY PUBLIC
PRINTED NAME: Lauryn Sudduth
BAR ROLL NUMBER: 37945
My Commission is for Life

VIII. APPENDIX – RECORD DOCUMENTS (EXHIBITS)

FIRST SET OF EXCEPTIONS

Exhibit A	Judgment With Incorporated Reasons
Exhibit B	Docket Entry for August 20, 2021
Exhibit C	Notice of Intent to Apply for Supervisory and Stay
Exhibit D	Petition for Injunctive and Declaratory Relief
Exhibit E	Declinatory and Peremptory Exceptions and Memorandum On Behalf of the Secretary of State
Exhibit F	Rule to Show Cause
Exhibit G	Plaintiff's Memorandum in Opposition to Defendant's Exceptions (with exhibits 1-5)
Exhibit H	Reply Memorandum in Support of Exceptions on Behalf of the Secretary of State
Exhibit I	Amended Supplemental Authority
Exhibit J	Response to Plaintiffs' Notice of Supplemental Authority and Request for Judicial Notice

SECOND SET OF EXCEPTIONS

Exhibit K	Judgment
Exhibit L	Docket Entry for December 10, 2021
Exhibit M	Notice of Intent to Apply for Supervisory Writs and Request for Stay with district court's Order
Exhibit N	First Amended and Supplemental Petition for Injunctive and Declaratory Relief
Exhibit O	Order (allowing filing)
Exhibit P	Declinatory and Peremptory Exceptions and Memorandum in Support On Behalf of the Secretary of State
Exhibit Q	Order (setting hearing)
Exhibit R	Plaintiffs' Memorandum in Opposition to Defendant's Exceptions to Plaintiffs Amended Petition (with exhibits 1-6)

Exhibit S Secretary of State's Reply to Plaintiffs' Opposition to Exceptions

First Set of Exceptions

Rec'd ~~11~~ 11/22/2021 CRC

Civil District Court for the Parish of Orleans
STATE OF LOUISIANA

No: 2021 - 03538

Division/Section: C-10

ENGLISH, CAMERON
versus
ARDOIN, KYLE

Date Case Filed: 4/26/2021

NOTICE OF SIGNING OF JUDGMENT

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Lalitha Madduri
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Jacob Shelly
10 G Street NE, Ste. 600
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In accordance with Article 1913 C.C.P., you are hereby notified that Judgment in the above entitled and numbered cause was signed on November 16, 2021

New Orleans, Louisiana
November 17, 2021

MINUTE CLERK

Jaw

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 2021-3538 **DIVISION "C"** **SECTION 10**

RYAN BERNI, ET AL.

VERSUS

R. KYLE ARDOIN, IN HIS OFFICIAL CAPACITY AS

LOUISIANA SECRETARY OF STATE

JUDGMENT WITH INCORPORATED REASONS

This matter came for hearing on August 20, 2021 on Defendant's, R. Kyle Ardoin, in his official capacity as the Secretary of State for the State of Louisiana, Declinatory Exceptions of Improper Venue and Lack of Subject Matter Jurisdiction, and Peremptory Exceptions of No Cause of Action and No Right of Action.

Present: Celia Cangelosi, Jeffrey Wale, and Lauryn Sudduth, Attorneys for the Defendant R.Kyle Ardoin, in his official capacity as Louisiana Secretary of State;

Darrel Papillion, Jennifer Wise Moroux, Abha Khanna, Jonathan Hawley, Laletha Madduri, and Jacob Shelly, attorneys for the Plaintiffs

After considering the pleadings, memoranda, argument of counsel, and the law, the Court finds that challenges to redistricting laws may be brought immediately upon release of official data showing district imbalance before reapportionment occurs in accordance with *Arrington v. Election Board*, 173 F.Supp. 2d. 858 (E.D. Wis. Feb. 1, 2001). The Court also finds 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 and therefore:

IT IS ORDERED, ADJUDGED AND DECREED that Defendant's Declinatory exception of Improper Venue is hereby **OVERRULED**.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant's Declinatory exception of Lack of Subject Matter Jurisdiction is hereby **OVERRULED**.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant's peremptory exception of No Cause of Action is hereby **OVERRULED**.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant's peremptory exception of No Right of Action is hereby **OVERRULED**.

JUDGMENT READ, RENDERED, AND SIGNED in New Orleans, Louisiana, this 16th day of November, 2021.

JUDGE SIDNEY H. CATES, IV

A TRUE COPY

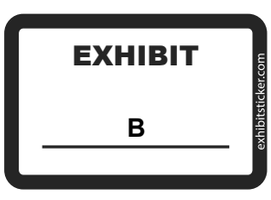
DEPUTY CLERK, CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LA

Honorable Sidney H. Cates IV

Section 10 - Division C

GENERAL DOCKET FOR 8/20/2021

2021 - 03538	**TYPE: DECLARATORY JUDGMENT**		**Position: 0**
ENGLISH, CAMERON		Carey T Jones Darrel J Papillion	(225) 975-2410 (225) 236-3636
versus			
ARDOIN, KYLE		Celia R Cangelosi	(225) 231-1453
RIV	**Exception of Improper Venue**		Order Signed: 05/24/2021
Mover: Celia R Cangelosi (225) 231-1453			
Rule Remarks: ad//filed by Def. Kyle Ardoin @10am via Zoom.			
Disp.: Overruled		Disp. Date: 11/16/2021	
RLJ	**Exception of Lack of Jurisdiction**		Order Signed: 05/24/2021
Mover: Celia R Cangelosi (225) 231-1453			
Rule Remarks: ad/filed by Kyle Ardoin @10am via Zoom.			
Disp.: Overruled		Disp. Date: 11/16/2021	
RCR	**Exception of no Cause or Right of Action**		Order Signed: 05/24/2021
Mover: Celia R Cangelosi (225) 231-1453			
Rule Remarks: ad/filed by Kyle Ardoin @10am via Zoom.			
Disp.: Overruled		Disp. Date: 11/16/2021	



CIVIL DISTRICT COURT

PARISH OF ORLEANS, STATE OF LOUISIANA

NUMBER 2021-03538 **DIVISION C – SECTION 10**

CAMERON ENGLISH, ET AL.

VERUS

R. KYLE ARDOIN, IN HIS OFFICIAL CAPACITY AS LOUISIANA SECRETARY OF STATE

****

SECRETARY OF STATE'S NOTICE OF INTENT TO APPLY FOR SUPERVISORY WRIT AND REQUEST FOR STAY

NOW INTO COURT, through undersigned counsel, comes Kyle R. Ardoin, in his official capacity as Secretary of State of the State of Louisiana, and respectfully submits the Notice of Intent to Apply for Supervisory Writs as follows:

I.

On May 24, 2021, the Secretary of State filed Dilatory and Peremptory Exceptions seeking dismissal of all of the Plaintiffs' claims on the following grounds:

A.

Defendant excepted for lack of Subject Matter Jurisdiction, pursuant to La. Code Civ. Proc. art. 925(A)(6) for lack of a case or controversy between the Defendants and the Plaintiffs.

B.

Defendant further excepted for lack of Subject Matter Jurisdiction because the Plaintiffs' petition the Court to intervene in the political process and substitute the Court's judgment for that of the Legislature in violation of Article II, § 2 of the Louisiana Constitution.

C.

Defendant excepted to improper venue because suits filed against the State, a state agency, officer or employee for conduct arising out of his official duties must be brought in the district court in which the state capitol is located. None of the acts or conduct sought to be prohibited will occur, if they occur, in Orleans Parish making it an impermissible venue for this suit.

D.

Defendants further excepted that Plaintiffs have no real and actual interest in the litigation and further lack standing to sue and thus have No Cause of Action because the allegations contained in the Plaintiffs petition are theoretical, speculative and hypothetical requesting relief based upon future events that may or may not occur.

E.

Defendant excepted for no right of action because the Plaintiffs claim that congressional redistricting could potentially cause them injury. Nor can the Plaintiffs obtain injunctive relief against the Secretary of State who has no role in reapportionment and the redistricting of U.S. congressional districts so that the harm or injury that the Plaintiffs think might occur cannot be traced to the Secretary of State, and an injunction against him cannot redress the Plaintiffs' concerns.

II.

On November 16, 2021 the Court signed and issued a Judgment With Incorporated Reasons denying the Defendant's exceptions.

III.

Pursuant to Uniform Court of Appeal Rule 4-2, Kyle R. Ardoin, in his official capacity as Secretary of State, gives notice of his intent to apply to the Fourth Circuit Court of Appeal for a writ of supervisory review of the ruling denying the Defendant's exceptions.

IV.

The Secretary of State submits that further proceedings in this matter should be stayed until a final decision and ruling on the writ application is issued on the grounds that a determination of subject matter jurisdiction and venue would render any further judgment herein null and void and without effect. Moreover, this case involves election matters and would interfere with the work of the Louisiana Legislature in conducting its decennial reapportionment and redistricting responsibilities.

V.

The Secretary of State requests that this Court set a return date as provided by law.

VI.

The Secretary of State further requests that the Court stay further proceedings pending a decision and ruling on his application for a writ.

WHEREFORE, Kyle R. Ardoin, in his official capacity as Secretary of State, prays:

I. That with respect to the Court's Judgment With Incorporated Reasons of November 16, 2021 denying his exceptions, the Court set a return date by which the Secretary of State shall file a writ application, and,

II. That the Court order further proceedings stayed pending a decision and ruling on the writ application.

Respectfully submitted,

JEFF LANDRY
ATTORNEY GENERAL

BY: 

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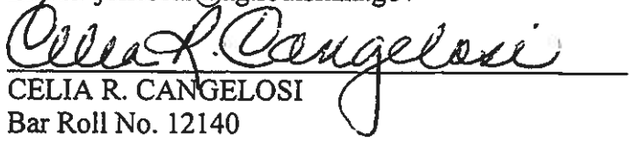

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Counsel for Kyle R. Ardoin, in his official capacity as Secretary of State

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel for all represented parties to this proceeding by electronic mail and by mailing the same to each by first class United States mail, properly addressed, and postage prepaid on this 23rd day of November, 2021.

CAREY T. JONES

CIVIL DISTRICT COURT

PARISH OF ORLEANS, STATE OF LOUISIANA

NUMBER 2021-03538 **DIVISION C – SECTION 10**

CAMERON ENGLISH, ET AL.

VERUS

R. KYLE ARDOIN, IN HIS OFFICIAL CAPACITY AS LOUISIANA SECRETARY OF STATE

****

ORDER

CONSIDERING the Secretary of State' Notice of Intent to Apply for Supervisory Writ,

IT IS HEREBY ORDERED that, with respect to the Court's Judgment With Incorporated Reasons signed on November 16, 2021 denying the Secretary of State's exceptions, the Court hereby sets a return date of December 16, 2021 by which the Secretary of State shall file any corresponding writ application.

IT IS FURTHER ORDERED that further proceedings in this matter be and they are hereby stayed pending a final decision and ruling on the Secretary of State's application for writs.

THUS DONE AND SIGNED in New Orleans, Louisiana on this 30 day of November, 2021.

JUDGE SIDNEY H. CATES, IV
ORLEANS CIVIL DISTRICT COURT

CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

CAMERON ENGLISH, RYAN BERNI, POOJA PRAZID, LYNDA WOOLARD, STEPHEN HANDWERK, AMBER ROBINSON, JAMES BULLMAN, and KIRK GREEN, Plaintiffs, v. R. KYLE ARDOIN, in his official capacity as Louisiana Secretary of State, Defendant.	Civil Action No. _____

PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

Plaintiffs Cameron English, Ryan Berni, Pooja Prazid, Lynda Woolard, Stephen Handwerk, Amber Robinson, James Bullman, and Kirk Green, by and through their undersigned counsel, file this Petition for Declaratory and Injunctive Relief against Defendant R. Kyle Ardoin, in his official capacity as Louisiana Secretary of State, and allege as follows:

NATURE OF THE ACTION

1. This is an action challenging Louisiana's current congressional districts, which were rendered unconstitutionally malapportioned by a decade of population shifts. Plaintiffs ask this Court to declare Louisiana's current congressional district plan unconstitutional, enjoin Defendant from using the current plan in any future election, and 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.

2. On April 26, 2021, the U.S. Secretary of Commerce delivered the apportionment data obtained by the 2020 Census to the President. Those data make clear that the configuration of Louisiana's congressional districts does not account for the current population numbers in Louisiana, in violation of state and federal law. *See Arrington v. Elections Bd.*, 173 F. Supp. 2d 856, 860 (E.D. Wis. 2001) (three-judge court) (explaining that "existing apportionment schemes become instantly unconstitutional upon the release of new decennial census data" (internal quotation marks omitted)).

3. Specifically, the current configuration of Louisiana's congressional districts, *see* La. Rev. Stat. § 18:1276.1, violates Article I, Section 2 of the U.S. Constitution and Article I, Sections 7 and 9 of the Louisiana Constitution. The current congressional plan therefore cannot be

used in any upcoming elections, including the 2022 elections.

4. There is no reasonable prospect that Louisiana's political branches will reach consensus to enact a lawful congressional district plan in time to be used in the upcoming 2022 elections. Governor John Bel Edwards is a Democrat, while the State House of Representatives and State Senate are controlled by Republicans who lack the supermajority necessary to override a veto from the Governor. There is no reason to believe that the political divisions between the parties are amenable to compromise. Put simply, it is near-certain that Louisiana's political branches will fail to reach consensus on a new congressional plan.

5. Because Louisiana's political branches will likely fail to enact a new congressional district plan, this Court should intervene to protect the constitutional rights of Plaintiffs and voters across this state. Absent this Court's intervention, Plaintiffs will be forced to cast unequal votes in violation of their constitutional rights.

6. While there is still time for the Legislature and the Governor to enact a new congressional plan, this Court should assume jurisdiction now and establish a schedule that will enable the Court to adopt its own plan in the near-certain event that the political branches fail to timely do so.

JURISDICTION AND VENUE

7. This Court has original jurisdiction over the subject matter of this action pursuant to Article V, Section 16(A) of the Louisiana Constitution because the matter concerns "the right to office or other public position" and "civil or political right[s]."

8. Venue is proper in this District because the cause of action arises in the parish where this court has jurisdiction. *See* La. Rev. Stat. § 13:5104(A).

9. This Court has authority to enter a declaratory judgment in this action under Louisiana Code of Civil Procedure Article 1871. This Court also has the authority to grant injunctive relief under the Louisiana Code of Civil Procedure. *See* La. Code Civ. P. 3601(A).

PARTIES

10. Plaintiffs are citizens of the United States and are registered to vote in Louisiana. Plaintiffs intend to advocate and vote for Democratic candidates in the upcoming 2022 primary and general elections. Plaintiffs reside in the following congressional districts.

Plaintiff's Name	Parish of Residence	Congressional District
Ryan Berni	Orleans	1
Pooja Prazid	St. Bernard	1
Cameron English	Orleans	2
Lynda Woolard	Orleans	2
Stephen Handwerk	Lafayette	3
Amber Robinson	Lafayette	3
James Bullman	East Baton Rouge	6
Kirk Green	East Baton Rouge	6

11. Plaintiffs reside in districts that are now likely overpopulated relative to other districts in the state. If the 2022 elections are held pursuant to the map currently in place, then Plaintiffs will be deprived of their right to cast an equal vote, as guaranteed to them by the U.S. Constitution and the Louisiana Constitution.

12. Defendant R. Kyle Ardoin is the Louisiana Secretary of State. He is the "chief election officer of the state," La. Rev. Stat. § 18:421(A), and as such will be "involved in providing, implementing, and/or enforcing whatever injunctive or prospective relief may be granted" to Plaintiffs. *Hall v. Louisiana*, 974 F. Supp. 2d 978, 993 (M.D. La. 2013).

FACTUAL ALLEGATIONS

I. Louisiana's current congressional districts were drawn using 2010 Census data.

13. Louisiana's current congressional district map was drawn in 2011 using 2010 Census data. The congressional district plan was enacted on April 14, 2011.

14. According to the 2010 Census, Louisiana had a population of 4,533,372. Accordingly, a decade ago, the ideal population for each of Louisiana's six congressional districts (i.e., the state's total population divided by the number of districts) was 755,562 persons.

15. The 2010 congressional plan had a maximum deviation (i.e., the difference between the most populated district and least populated district) of 162 people.

16. That plan has been used in every Louisiana election since 2012.

II. The 2020 Census is complete.

17. In 2020, the U.S. Census Bureau conducted the decennial census required by Article I, Section 2 of the U.S. Constitution. On April 26, 2021, the U.S. Secretary of Commerce delivered the results of the 2020 Census to the President.

18. The results of the 2020 Census report that Louisiana's resident population, as of April 2020, is 4,657,757. This is an increase from a decade ago, when the 2010 Census reported a

population of 4,533,372.

19. Louisiana will again be apportioned six congressional districts for the next decade.

20. According to the 2020 Census results, the ideal population for each of Louisiana's congressional districts is 776,293.

III. As a result of significant population shifts in the past decade, Louisiana's congressional districts are unconstitutionally malapportioned.

21. In the past decade, Louisiana's population has shifted significantly. Because the 2020 Census has now been completed, the 2010 population data used to draw Louisiana's congressional districts are obsolete, and any prior justifications for the existing map's deviations from population equality are no longer applicable.

22. By mid-to-late August 2021, the U.S. Secretary of Commerce will deliver to Louisiana its redistricting data file in a legacy format, which the state may use to tabulate the new population of each political subdivision.[1] On or around September 30, 2021, the U.S. Secretary of Commerce will deliver to Louisiana that same detailed population data showing the new population of each political subdivision in a tabulated format.[2] These data are commonly referred to as "P.L. 94-171 data," a reference to the 1975 legislation that first required this process, and are typically delivered no later than April of the year following the Census. *See* Pub. L. No. 94-171, 89 Stat. 1023 (1975).

23. Recent Census Bureau data make clear that significant population shifts have occurred in Louisiana since 2010, skewing the current congressional districts far from population equality.

24. The table below estimates how the populations of each of Louisiana's congressional districts shifted between 2010 and 2019. For each district, the "2010 Population" column represents the district's 2010 population according to the 2010 Census, and the "2019 Population" column indicates the district's estimated 2019 population according to the Census Bureau's 2019 American Community Survey (ACS) 1-Year Survey. The "Shift" column represents the shift in population between 2010 and 2019, and the "Deviation from Ideal 2019 Population" and "Percent Deviation from Ideal 2019 Population" columns show how far the estimated 2019 population of

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[1] *See U.S. Census Bureau Statement on Release of Legacy Format Summary Redistricting Data File*, U.S. Census Bureau (Mar. 15, 2021), https://www.census.gov/newsroom/press-releases/2021/statement-legacy-format-redistricting.html.

[2] *See Census Bureau Statement on Redistricting Data Timeline*, U.S. Census Bureau (Feb. 12, 2021), https://www.census.gov/newsroom/press-releases/2021/statement-redistricting-data-timeline.html.

each district strays from the ideal 2019 congressional district population.

District	2010 Population	2019 Population	Shift	Deviation from Ideal 2019 Population	Percent Deviation from Ideal 2019 Population
1	755,445	799,917	+44,472	+25,118	+3.24%
2	755,538	788,021	+32,483	+13,222	+1.71%
3	755,596	785,101	+29,505	+10,302	+1.33%
4	755,605	737,675	-17,930	-37,124	-4.79%
5	755,581	734,377	-21,204	-40,422	-5.22%
6	755,607	803,704	+48,097	+28,905	+3.73%

25. The table above indicates population shifts since 2010 have rendered Congressional Districts 4 and 5 significantly underpopulated, and Congressional Districts 1, 2, 3, and 6 significantly overpopulated. Indeed, according to these estimates, the maximum deviation among Louisiana's congressional districts (i.e., the difference between the most and least populated districts divided by the ideal district population) increased from 0 to nearly 9 percent between 2010 and 2019.

26. Due to these population shifts, Louisiana's existing congressional district map is unconstitutionally malapportioned. If used in any future election, this district configuration will unconstitutionally dilute the strength of Plaintiffs' votes because Plaintiffs live in districts with populations that are significantly larger than those in which other voters live.

IV. Louisiana's political branches will likely fail to enact a lawful congressional district map in time for the next election.

27. In Louisiana, a congressional district plan is enacted through legislation, which must pass both chambers of the Legislature and be signed by the Governor. *See* La. Const. art. III, § 6. Currently, both chambers of Louisiana's Legislature are controlled by the Republican Party and the Governor is a Democrat. The partisan division among Louisiana's political branches makes it extremely unlikely they will pass a lawful congressional redistricting plan in time to be used during the upcoming 2022 election.

28. The Census delays have compressed the amount of time during which the legislative process would normally take place. This increases the already significant likelihood the political branches will reach an impasse this cycle and fail to enact a new congressional district plan, leaving the existing plan in place for next year's election. To avoid such an unconstitutional outcome, this Court must intervene to ensure Plaintiffs' and other Louisianians' voting strength is not diluted.

29. It is in the interest of voters, candidates, and Louisiana's entire electoral apparatus that finalized congressional districts be put in place as soon as possible. Potential congressional candidates cannot make strategic decisions—including, most importantly, whether to run at all—without knowing their district boundaries. And voters have a variety of interests in knowing as soon as possible the districts in which they reside and will vote, and the precise contours of those districts. These interests include deciding which candidates to support and whether to encourage others to run; holding elected representatives accountable for their conduct in office; and advocating for and organizing around candidates who will share their views, including by working together with other district voters in support of favored candidates.

30. Delaying the adoption of the new plan will substantially interfere with Plaintiffs' abilities to associate with like-minded citizens, educate themselves on the positions of their would-be representatives, and advocate for the candidates they prefer. *Cf. Anderson v. Celebrezze*, 460 U.S. 780, 787–88 (1983) ("The [absence] of candidates also burdens voters' freedom of association, because an election campaign is an effective platform for the expression of views on the issues of the day, and a candidate serves as a rallying point for like-minded citizens.").

31. In light of Louisiana's likely impasse, this Court must intervene to ensure Plaintiffs and other Louisiana voters do not suffer unconstitutional vote dilution.

CLAIMS FOR RELIEF

COUNT I

Violation of Article I, Section 2 of the United States Constitution
Congressional Malapportionment

32. Plaintiffs reallege and reincorporate by reference all prior paragraphs of this Petition and the paragraphs in the count below as though fully set forth herein.

33. Article 1, Section 2 of the U.S. Constitution provides that members of the U.S. House of Representatives "shall be apportioned among the several States . . . according to their respective Numbers." This provision "intends that when qualified voters elect member of Congress each vote be given as much weight as any other vote," *Wesberry v. Sanders*, 376 U.S. 1, 7 (1964), meaning that state congressional districts in a state must "achieve population equality 'as nearly as is practicable,'" *Karcher v. Daggett*, 462 U.S. 725, 730 (1983) (quoting *Wesberry*, 376 U.S. at 7–8).

34. Article I, Section 2 "permits only the limited population variances which are unavoidable despite a good-faith effort to achieve absolute equality, or for which justification is

shown." *Id.* at 730 (quoting *Kirkpatrick v. Preisler*, 394 U.S. 526, 531 (1969)). *Any* variation from exact population equality must be narrowly justified. *See id.* at 731.

35. As a result of this requirement, when Louisiana's existing congressional plan was enacted in 2011, the deviation in population among districts was no more than 162 people. Now, as indicated in the table above, the population deviation among the current congressional districts may be as high as 69,327 people.

36. In 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. No justification can be offered for the deviation among the congressional districts because any justification would be based on outdated population data.

37. Any future use of Louisiana's current congressional district plan would violate Plaintiffs' constitutional right to an undiluted vote.

COUNT II

Violation of Article I, Sections 7 and 9 of the Louisiana Constitution Freedom of Association

38. Plaintiffs reallege and reincorporate by reference all prior paragraphs of this Petition and the paragraphs in the count below as though fully set forth herein.

39. The Louisiana Constitution provides that "[n]o law shall curtail or restrain the freedom of speech" and "[n]o law shall impair the right of any person to assemble peaceably." La. Const. art. I, §§ 7, 9. "The freedom of association protected by the First and Fourteenth Amendments of the U.S. Constitution is also guaranteed by Article I, Sections 7 and 9 of the Louisiana Constitution of 1974." *Shane v. Parish of Jefferson*, 209 So. 3d 726, 741 (La. 2015) (citing *La. Republican Party v. Foster*, 674 So. 2d 225, 229 (La. 1996)). "The fundamental right of freedom of association protected by these constitutional provisions includes the right of persons to engage in partisan political organizations," and any "state action that may have the effect of curtailing the freedom to associate is subject to the closest scrutiny." *Id.* at 741 & n.11 (citing *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460–61 (1958)).

40. Impeding candidates' abilities to run for political office—and, consequently, Plaintiffs' abilities to assess candidate qualifications and positions, organize and advocate for preferred candidates, and associate with like-minded voters—infringes on Plaintiffs' First Amendment right to association. *See, e.g.*, *Anderson*, 460 U.S. at 787–88 & n.8.

41. Given the delay in publication of the 2020 Census data and the near-certain deadlock among the political branches in adopting a new congressional district plan, it is significantly unlikely that the legislative process will timely yield a new plan. This would deprive Plaintiffs of the ability to associate with others from the same lawfully apportioned congressional districts and, therefore, is likely to significantly, if not severely, burden Plaintiffs' First Amendment right to association.

42. There is no legitimate, let alone compelling, interest that can justify this burden.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

a. Declare that the current configuration of Louisiana's congressional districts, *see* La. Rev. Stat. § 18:1276.1, violates Article I, Section 2 of the U.S. Constitution and Article I, Sections 7 and 9 of the Louisiana Constitution;

b. Enjoin Defendant, his respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, from implementing, enforcing, or giving any effect to Louisiana's current congressional districting plan;

c. Establish a schedule that will enable the Court to adopt and implement a new congressional district plan by a date certain should the political branches fail to enact such plan by that time;

d. Implement a new congressional district plan that complies with Article I, Section 2 of the U.S. Constitution and Article I, Sections 7 and 9 of the Louisiana Constitution, if the political branches fail to enact a plan by a date certain set by this Court;

e. Grant such other and further relief, including but not limited to all costs of these proceedings as well as any attorneys' fees that may be legally proper under applicable law, as the Court deems just and proper.

[SIGNATURE BLOCK ON NEXT PAGE]

Dated: April 26, 2021

Respectfully submitted,

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**Pro Hac Vice* Application Forthcoming

CIVIL DISTRICT COURT

PARISH OF ORLEANS, STATE OF LOUISIANA

NUMBER 2021-03538 DIVISION C – SECTION 10

CAMERON ENGLISH, ET AL.

VERUS

R. KYLE ARDOIN, IN HIS OFFICIAL CAPACITY AS LOUISIANA SECRETARY OF STATE

****

DECLINATORY AND PEREMPTORY EXCEPTIONS ON BEHALF OF THE SECRETARY OF STATE

NOW INTO COURT, through undersigned counsel, solely for the purposes of these exceptions, comes Defendant, R. Kyle Ardoin, in his official capacity as the Secretary of State for the State of Louisiana, who pleads declinatory and peremptory exceptions in response to the "Petition for Injunctive and Declaratory Relief," representing as follows:

DECLINATORY EXCEPTIONS

I.

The Secretary of State pleads the declinatory exceptions of improper venue, pursuant to La. Code Civ. Proc. art. 925(A)(4), and lack of subject matter jurisdiction, pursuant to La. Code Civ. Proc. art. 925(A)(6).

Improper Venue

II.

The Civil District Court of New Orleans is not the proper venue for this suit.

III.

Suits filed against the State or state agency, officer or employee of the state for conduct arising out of the discharge of his official duties or within the course and scope of his employment shall be instituted before the district court of the judicial district in which the state capitol is located, which is East Baton Rouge Parish, or in the parish in which the cause of action arose, again in East Baton Rouge Parish where the official acts sued upon occur. *See* La. R.S. 13:5104.

Lack of Subject Matter Jurisdiction

IV.

Additionally, this Court lacks jurisdiction over the subject matter of the action. Plaintiffs' petition does not present a justiciable controversy as the allegations of the petition are speculative, conjectural and theoretical, and this Court lacks jurisdiction to render a hypothetical and advisory opinion based upon events that may or may not come to pass.

V.

The court also lacks subject matter jurisdiction on the grounds that the plaintiffs ask the Court to intervene in a political process that lies within the authority of the legislative and executive branches of government.

VI.

Louisiana Constitution Article II, § 2 and the doctrine of Separation of Powers prohibits a court from issuing a judgment enjoining/mandating the exercise of legislative discretion. Although a court has authority to interpret and declare the law, the judicial branch has no authority to prohibit or require the legislature from enacting legislation or carrying out its constitutional decision-making authority.

VII.

The action seeking a declaration and injunction to prevent the use of 2011 congressional election districts for the 2022 congressional elections petitions to enjoin acts that are prohibited by constitution and statute so that any order by the Court would have no practical effect and change nothing such that the action is moot upon its inception.

PEREMPTORY EXCEPTIONS

VIII.

The Secretary pleads the following peremptory exceptions, raising the objection of no cause of action pursuant to La. Code Civ. Proc. art. 927(A)(4) and no right of action pursuant to La. Code Civ. Proc. Art. 927(A)(5).

No Cause of Action

IX.

Courts must refuse to entertain an action for a declaration of rights if the issue presented is academic, theoretical or based on a contingency which may or may not arise. See, *American Waste & Pollution v. St. Martin Parish Police Jury*, 627 So.2d 158 (La.1993).

X.

Nothing in state law authorizes the Courts to usurp the constitutional authority of the executive and legislative branches based upon the cynical notion that the political branches of state government are certain to fail in developing a redistricting plan for U.S. congressional elections.

XI.

Further, viewed as an action for injunctive relief, plaintiffs fail to state a cause of action absent allegations of irreparable harm that is concrete, real and actual.

No Right of Action

XII.

Similarly, Plaintiffs have no right of action or standing in this case. Except in limited circumstances, an injunction may only be issued in favor of plaintiffs who may suffer irreparable injury, and Plaintiffs have not alleged they may suffer irreparable harm different from the general population.

XIII.

Plaintiffs lack standing against the Secretary of State who has no substantial role or authority in the reapportionment and/or redistricting process or decisions affecting where 2022 elections will be held and cannot cause the plaintiffs the kind of harm they complain of even if events unfold in the way plaintiffs anticipate they might.

XIV.

Further, and out of an abundance of caution, defendant avers that a determination of the constitutionality of the congressional redistricting at a preliminary injunction proceeding is impermissible. The constitutionality of a statute cannot be determined on a preliminary

injunction. *Barber v. Louisiana Workforce Commission*, 2015-1700 (La. 10/9/15), 176 So.3d 398. Constitutionality of an act of the legislature may be decided only after a trial of the merits rather than at the preliminary injunction stage.

WHEREFORE, the Secretary of State, for the reasons more fully expressed in the attached memorandum in support of these exceptions, prays that these exceptions be maintained and that the petition be dismissed at plaintiffs' cost and for full, general and equitable relief.

Respectfully submitted,

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Counsel for the Secretary of State

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing exceptions with proposed rule to show cause has on this date been served upon all known counsel of record by electronic mail at the email address provided.

New Orleans, Louisiana, this 24th day of May, 2021.

Lauryn Sudduth

Lauryn A. Sudduth

FILED

CIVIL DISTRICT COURT

PARISH OF ORLEANS, STATE OF LOUISIANA

NUMBER 2021-03538 **DIVISION C – SECTION 10**

CAMERON ENGLISH, ET AL.

VERUS

R. KYLE ARDOIN, IN HIS OFFICIAL CAPACITY AS LOUISIANA SECRETARY OF STATE

****

RULE TO SHOW CAUSE

Considering the foregoing *Declinatory and Peremptory Exceptions*;

IT IS HEREBY ORDERED that Plaintiffs appear and show cause on the 20th day of August, 2021 at 10:00 a.m. via ZOOM why the Court should not sustain the declinatory and peremptory exceptions filed by Exceptor, R. Kyle Ardoin, in his official capacity as the Louisiana Secretary of State.

New Orleans, Louisiana this 24th day of May, 2021.

APRIL DAVENPORT
LAW CLERK
Division "C"
BY ORDER OF THE COURT

A TRUE COPY
DEPUTY CLERK, CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LA

CIVIL DISTRICT COURT

PARISH OF ORLEANS, STATE OF LOUISIANA

NUMBER 2021-03538 **DIVISION C – SECTION 10**

CAMERON ENGLISH, ET AL.

VERUS

R. KYLE ARDOIN, IN HIS OFFICIAL CAPACITY AS LOUISIANA SECRETARY OF STATE

****

MEMORANDUM IN SUPPORT OF EXCEPTIONS ON BEHALF OF THE SECRETARY OF STATE

MAY IT PLEASE THE COURT:

To borrow from Saints lore, this is the coulda, woulda, shoulda case. Nothing in the plaintiffs' petition is real or factual – the allegations are all might be's. Plaintiffs' claims rest on future events that may or may not come to pass. They rely upon pure conjecture and speculation based upon little else than the plaintiffs' cynical view of the state of Louisiana politics. The allegations of the petition are mere conclusory statements bereft of factual content rather than facts that can be determined through the litigation process. This suit is tantamount to plaintiffs suing for damages alleging that they are substantially certain to be injured in a car crash because Louisianans are such bad drivers.

Beyond that, what is wrong with this suit?

1. **The suit is filed in the wrong venue.** Orleans Parish is an improper venue because the operative events described in the petition all occur (or are presupposed to occur) in East Baton Rouge Parish. Congressional reapportionment and redistricting is a matter for the Legislature and the Governor, both of whom carry out their official acts in East Baton Rouge Parish.

2. **The Court lacks subject matter jurisdiction.** The case does not present a justiciable controversy capable of resolution by the court. Plaintiffs ask the court to issue an advisory opinion based upon a hypothetical set of facts. Moreover, pre-enforcement of the Legislature's and Governor's responsibilities by the court would violate the separation of powers

established in La. Const. art. II, § 2 of the Louisiana Constitution. The courts cannot invade the province of the legislative and executive branches of government on the grounds that a group of plaintiffs want them to take over the functions of all three branches. The case presents a political question, and the Courts cannot interject themselves into the political process.

3. **Plaintiffs do not state a cause of action.** Plaintiffs fail to allege facts as required by the Louisiana pleading requirements in La. Code Civ. P. arts. 854, 891. Rather, the petition imagines a set of possibilities that, like Pinocchio's wish, may or may not come true. Plaintiffs allege no more than something has a chance of happening. Were the Court to assume as true, for the no cause analysis, that something unforeseen could happen in the congressional redistricting process, it would still have no basis in fact or law for granting plaintiffs a remedy.

4. **Plaintiffs have no right of action.** Plaintiffs lack the kind of real and actual interest required by La. Code. Civ. P. art. 681. Plaintiffs do not show that they have a special interest in redistricting apart from the general public. Additionally, any harm that may befall plaintiffs from a particular reapportionment or redistricting plan that might occur in the future is entirely speculative, and plaintiffs have no right to contest a reapportionment or redistricting plan that has not been devised or put in place, much less yet been taken up politically.

Moreover, plaintiffs make no showing that they have standing to sue the Secretary of State in connection with reapportionment and redistricting. Plaintiffs allege that reapportionment and redistricting are the responsibility of the "political branches" of state government, not the Secretary of State, who has no substantial connection or involvement in the redistricting process.

The Secretary of State has excepted to the petition on the foregoing grounds, and each and every of his exceptions should be maintained and the case dismissed.

STATEMENT OF THE CASE

Plaintiffs filed this suit in the Civil District Court for Orleans Parish on April 26, 2021, the same day that the 2020 Census Apportionment Results were delivered to the President. Generally, plaintiffs claim potential violations of Article I, Section 2 of the United States Constitution asserting congressional malapportionment in Louisiana's 2011 congressional districts and La. Const. art. I, Sections 7 and 9 for curtailment of associational rights.

But, the petition does not pretend to be based on existing facts that might afford these plaintiffs some relief. Consider these allegations lifted directly from plaintiffs' petition:

- There is no reasonable prospect that Louisiana's political branches will reach consensus to enact a lawful congressional district plan in time to be used in the upcoming 2022 elections. Petition ¶ 4.
- Because Louisiana's political branches will likely fail to enact a new congressional district plan, this Court should intervene to protect the constitutional rights of plaintiffs and voters across this state. Petition ¶ 5.
- By mid-to-late August 2021, the U.S. Secretary of Commerce will deliver to Louisiana its redistricting data file in a legacy format, which the state may use to tabulate the new population of each political subdivision. On or around September 30, 2021, the U.S. Secretary of Commerce will deliver to Louisiana that same detailed population data showing the new population of each political subdivision in a tabulated format. Petition ¶ 22.
- The partisan division among Louisiana's political branches makes it extremely unlikely they will pass a lawful congressional redistricting plan in time to be used during the upcoming 2022 election. Petition ¶ 27.
- This increases the already significant likelihood the political branches will reach an impasse this cycle and fail to enact a new congressional district plan, leaving the existing plan in place for next year's election. Petition ¶ 28.
- Given the delay in publication of the 2020 Census data and the near-certain deadlock among the political branches in adopting a new congressional district plan, it is significantly unlikely that the legislative process will timely yield a new plan. Petition ¶ 41.

Plaintiffs do not allege that the Governor and the Legislature have developed and put into effect any reapportionment plan for congressional elections beginning in 2022. Neither do plaintiffs allege that the Secretary of State or anyone else proposes to utilize current congressional districts drawn in 2011 to hold the regular congressional elections in 2022. The petition alleges that plaintiffs' rights might be affected depending on what happens with respect

to congressional reapportionment and redistricting, which is not yet underway, and secondarily that their rights might be prejudiced should the State decide to move forward with the 2022 congressional elections based upon the 2011 election districts from the last decennial reapportionment, which plaintiffs do not allege is proposed or even under consideration.

Plaintiffs petition seeks to invoke the Court's jurisdiction on the off chance they might have a cause of action at some point in the future. They claim, not that they are, but that they might be aggrieved by partisan indecision in the congressional redistricting process upon the speculative and groundless proposition that the political branches of state government will fail to develop a consensus plan before census data is even reported.

As defendant, the Secretary of State excepts to the fictive nature of the petition by raising the declinatory exceptions of Improper Venue and Lack of Subject Matter Jurisdiction and the peremptory exceptions of No Cause of Action and No Right of Action.

CONGRESSIONAL REDISTRICTING AT A GLANCE

The suit relates to the redistricting of U.S. Congressional districts, and a brief word about that process might prove helpful.

Elections for United States Senators and members of the House of Representatives are obviously different. Senators are elected every 6 years. U.S. Const. art. I, § 3, cl. 1. Two Senators are elected from each state. *Id.* Senators are elected statewide so that their election districts are coterminous with the boundaries of the state and need not be changed to take account of population changes.

Members of the United States House of Representatives are apportioned and elected by another process. They are elected every two years. U.S. Const. art I, § 2, cl. 1. Membership of the House of Representatives is apportioned by Congress, which allocates the number of representatives for each state based upon that state's population according to decennial census data. U.S. Const. art. I, § 2, cl. 3; amend. XIV, § 2. Once Congress apportions the number of members to which each state is entitled, the states then establish districts from which one representative per district is elected. 2 USC § 2a(a-c). In order to ensure that each citizen's vote is weighted equally (one-man-one-vote), representative districts must be roughly equal in population. *Wesberry v. Sanders*, 376 U.S. 1 (1964).

The job of drawing districts with equal populations for the election of members of Congress falls to state legislative bodies pursuant to U.S. Const. art. I, § 4, cl. 1. Under 2 USC §2a(a), election districts are re-drawn every 10 years following each decennial census in order to maintain the population balance necessary for the one-man-one-vote principle. Assigning the number of House members for each state is called "reapportionment." Re-drawing congressional election districts is referred to as "redistricting," although "reapportionment" and "redistricting" are sometimes used interchangeably.

Louisiana has chosen to redistrict U.S. Congressional districts by statute. The districts adopted in 2011 are found at La. R.S. 18:1276.1. With respect to the enactment of statutes, the Louisiana Constitution provides that, "[t]he legislative power of the state is vested in a legislature, consisting of a Senate and a House of Representatives." La. Const. art. III, § 1. The legislature shall enact no law except by a bill introduced during that session, and propose no constitutional amendment except by a joint resolution introduced during that session, which shall be processed as a bill. La. Const. art. III, § 15. The Governor is vested with the authority to approve or veto bills pursuant to La. Const. art. III, § 18. Thus, redistricting in Louisiana is a political process assigned to the Legislature and the Governor. The work of redistricting occurs in the state capitol where both the legislature and the governor perform their official duties.

LAW AND ANALYSIS

I. Declinatory Exceptions

A. Improper Venue

The Secretary of State excepts to venue pursuant to La. Code Civ. P. art. 925(4). The Civil District Court is not the proper venue in which to adjudicate this cause of action. Specifically, La. R.S. 13:5104 provides in pertinent part that:

> All suits filed against the state of Louisiana or any state agency or against an officer or employee of the state or state agency for conduct arising out of the discharge of his official duties or within the course and scope of his employment shall be instituted before 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.

Suit can be brought against the State in the judicial district in which the state capitol is

located or in the district having jurisdiction in the parish in which the cause of action arose. Under either prong of the statute, the proper venue is the Nineteenth Judicial District in East Baton Rouge Parish.

There can be little argument that Louisiana's state capitol is located in East Baton Rouge Parish. The Nineteenth Judicial District is the court in and for East Baton Rouge Parish, and accordingly, constitutes a proper venue to bring this suit under La. R.S. 13:5104(A).

East Baton Rouge is also the Parish in which the action will arise, if ever it does. Congressional maps will be drawn, redistricting debated, bills passed and redistricting approved or vetoed at the state capitol. Thus, all of the operative events relating to redistricting upon which plaintiffs' claims depend will occur in East Baton Rouge.

Plaintiffs also request an order enjoining the Secretary of State from using the 2011 congressional districts for the 2022 congressional elections. Plaintiffs do not, because they cannot, allege that such a plan or proposal is in the works, but even if there were, all decisions relating to that plan would occur in East Baton Rouge Parish, which again makes the Nineteenth Judicial District the court of proper venue for the case. This is not to suggest that the Secretary of State could or would use a prior decennial congressional election plan once the deadline for congressional redistricting has passed. However, for venue purposes any such decision would be made by state officials who carry out their duties in East Baton Rouge Parish.

Courts have routinely held that the parish where the state capitol is located is the appropriate venue, insofar as the relief requested involves forcing state agents to perform ministerial duties. *Anderson v. State of Louisiana, et al.*, 05-0551 (La.App. 3 Cir. 11/2/05), 916 So.2d 431; *Cameron Parish Police Jury v. McKeithen*, 02-1202 (La.App. 3 Cir. 10/14/02), 827 So.2d 666, *writ denied*, 02-2547, 02-2548 (La. 10/23/02), 827 So.2d 1148; *Abshire v. State, through Dept. of Ins.*, 93-923 (La.App. 3 Cir. 4/6/94), 636 So.2d 627, *writ denied*, 94-1213 (La. 6/24/94), 640 So.2d 1332. No further need for comment on venue for suits against state agencies.

The seminal case on where a suit arises, *Colvin v. Louisiana Patient's Compensation*

Fund Oversight Board, et al,[1] determined "where the cause of action arose" to be the place where the operative facts occurred. After noting the differing standards applied to La. R.S. 13:5104(A) by the various appellate circuits throughout the state, the Supreme Court explained:

> Courts of appeal have recognized that the question of what constitutes the situs of a cause of action has been the source of much consternation among the circuits and has eluded a precise definition. *Anderson v. State*, 05-0551 (La.App. 3 Cir. 11/2/05), 916 So.2d 431, 435, *writ denied*, 05-02493 (La.6/2/06), 929 So.2d 1243; *Commercial Nat. Bank in Shreveport v. First Nat. Bank of Fairfield, Tex.*, 603 So.2d 270 (La.App. 2 Cir.), *writ denied*, 605 So.2d 1151 (La.1992); *V.C. Nora, supra*; *Abshire v. State, through Dept. of Ins.*, 93-923 (La.App. 3 Cir. 4/6/94), 636 So.2d 627, *writ denied*, 94-1213 (La.6/24/94), 640 So.2d 1332. After reviewing the applicable law and the purpose of the venue statutes, we agree with and adopt the test first set for by the Fourth Circuit in *Avenal v. State, Dept. of Natural Resources*, 95-0836 (La.App. 4 Cir. 11/30/95), 668 So.2d 1150, *writ denied*, 96-198 (La.1/26/96), 667 So.2d 524. In *Avenal*, the court held that "**the place where the operative facts occurred which support plaintiff's entitlement to recovery is where the cause of action aris[es]" for venue purposes under La. R.S. 13:5014(A).**
>
> In this case, the 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. Indeed, several courts have held that where a state agency's ministerial or administrative actions are called into question, East Baton Rouge offers the only appropriate forum, as that is both "the district in which the state capitol is located" and "the district having jurisdiction in the parish in which the cause of action arose." *Anderson v. State*, *supra*; *Cameron Parish Police Jury v. McKeithan*, 02-1202 (La.App. 3 Cir. 10/14/02), 827 So.2d 666, *writ denied*, 02-2547, 02-2548 (La.10/23/02), 827 So.2d 1148, 1149; *Abshire v. State*, *supra*.
>
> . . .
>
> A contrary conclusion could result in undue encumbrances upon the state's governing apparatus at its very highest reaches, an absurd consequence we are certain could not have been intended by the redactors of our code of civil procedure. *See generally Turner v. Collector of Revenue*, 209 So.2d 301 (La.App. 4 Cir.1968).[2]

Even prior to *Colvin* the Louisiana Supreme Court's 1991 decision in *Devillier, et al. v. State of Louisiana, et al.*, 590 So.2d 1184 (La.1991), held:

> This suit is not based on a cause of action which arose against a state agency in St. Martin Parish. Although the event which gave rise to the fine assessed by the state agency occurred in St. Martin Parish, this suit was filed to declare the unconstitutionality of the statute under which the fine was assessed. 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.

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[1] *Colvin v. Louisiana Patient's Compensation Fund Oversight Board, et al.*, 06-1104 (La. 1/17/07), 947 So.2d 15.

[2] *Id.*, 947 So.2d at 13 (Emphasis added) (citing *Avenal v. State, Dept. of Natural Resources*, 95-0836 (La.App. 4 Cir. 11/30/95), 668 So.2d 1150, *writ denied*, 96-198 (La.1/26/96), 667 So.2d 524.

In more recent cases, the courts have made it clear that the operative events giving rise to a suit occur in East Baton Rouge Parish when an administrative decision of the state or a state agency in brought into question. *LeBlanc v. Thomas*, 2008-2869 (La. 10/20/09), 23 So. 3d 241. By the same token, the Louisiana Supreme Court found that venue in a case involving administrative decisions in settlements in the Road Home program arose in the parish where the administrative decisions were made (East Baton Rouge) not in the parish where plaintiffs homes sustained damage. *Roger v. Anpac Louisiana Ins. Co.*, 2010-1099 (La. 11/19/10), 50 So. 3d 1275.

East Baton Rouge is the proper and exclusive venue for the plaintiffs' actions. The operative facts, whether in developing a redistricting plan or deciding the appropriate districts for the 2022 elections, take place in East Baton Rouge Parish. The creation of the congressional plan will occur only in East Baton Rouge Parish. Any decision to use the 2011 plan for other elections would be made by state political officials who carry out their duties in East Baton Rouge Parish.

Plaintiffs' petition should be dismissed pursuant to La. Code Civ. P. art. 121. In the alternative, the Court may transfer the case to the 19th JDC, East Baton Rouge Parish pursuant to La. R.S. 13:5104(A) in accordance with *Habig v. Popeye's Inc.*, 553 So. 2d 963 (La. Ct. App. 1989).

B. <u>Lack of Subject Matter Jurisdiction</u>

"It is fundamental in our law that courts sit to administer justice in actual cases and that they do not and will not act on feigned ones, even with the consent of the parties." *St. Charles Par. Sch. Bd. v. GAF Corp.,* 512 So. 2d 1165, 1173 (La. 1987), *on reh'g* (Aug. 7, 1987).

Jurisdiction is defined as the "legal power and authority of a court to hear and determine an action or proceeding involving the legal relations of the parties, and to grant the relief to which they are entitled." La. Code Civ. P. art. 1. Jurisdiction over subject matter is "the legal power and authority of a court to hear and determine a particular class of actions or proceedings, based upon the object of the demand, the amount in dispute, or the value of the rights asserted." La. Code Civ. P. art. 2.

Subject matter jurisdiction is created by either the constitution or a legislative enactment, and cannot be waived or conferred by the consent of the parties. A judgment rendered by a court which has no jurisdiction over the subject matter of the action or proceeding is null and void. La. Code Civ. P. art. 3. The First Circuit Court of Appeal summarized the law governing an objection of lack of subject matter jurisdiction in *Citizens Against Multi-Chem v. Louisiana Dep't of Envtl. Quality:*

> A court's power to grant relief is premised upon its subject matter jurisdiction over the case or controversy before it, which cannot be waived or conferred by consent. *Wilson v. City of Ponchatoula,* 2009–0303 (La.10/9/09), 18 So.3d 1272. The district courts have exclusive original jurisdiction over most matters, and concurrent original jurisdiction with trial courts of limited jurisdiction. *See* La. Const. art. V, § 16. Subject matter jurisdiction is a threshold issue, insofar as a judgment rendered by a court that has no jurisdiction over the subject matter of the action or proceeding is void. *See* La. C.C.P. art. 2; *IberiaBank v. Live Oak Circle Dev., L.L.C.,* 2012–1636 (La.App. 1 Cir. 5/13/13), 118 So.3d 27, 30.
>
> The objection of lack of subject matter jurisdiction is used to question the court's legal power and authority to hear and determine a particular class of actions or proceedings based upon the object of the demand, the amount in dispute, or the value of the right asserted. *See* La. C.C.P. art. 2; *IberiaBank,* 118 So.3d at 30....
>
> Subject matter jurisdiction cannot be waived by the parties, and the lack thereof can be recognized by the court at any time, with or without a formal exception. *See* La. C.C.P. arts. 3 and 925(A)(6); *IberiaBank,* 118 So.3d at 30. A declinatory exception pleaded before or in the answer must be tried and decided in advance of the trial of the case. La. C.C.P. art. 929. At the trial of a declinatory exception, evidence may be introduced to support or controvert any of the objections pleaded, when the grounds thereof do not appear from the petition. La. C.C.P. art. 930.

13-1416 (La. App. 1 Cir. 5/22/14); 145 So.3d 471, 474–75, *reh'g denied* (6/13/14), *writ denied,* 14-1464 (La. 10/10/14); 151 So.3d 586.

Absent jurisdiction, a court is without legal authority to hear and decide a case.

i. *Subject matter jurisdiction and the necessity of a justiciable controversy*

It is well settled in the jurisprudence of this state that courts will not decide abstract, hypothetical, or moot controversies or render advisory opinions with respect to such controversies. *Cat's Meow, Inc. v. City of New Orleans, Dept. of Finance*, 98-0601 (La. 10/20/98); 720 So.2d 1186, 1193; *see also Shepherd v. Schedler*, 15-1750 (La. 01/27/16); 209 So.3d 752, 764. Cases submitted for adjudication must be justiciable, ripe for decision, and not brought prematurely. *Prator v. Caddo Parish*, 04-0794 (La. 12/1/04); 888 So.2d 812, 815.

Louisiana Code of Civil Procedure article 1871 authorizes the judicial declaration of "rights, status, and other legal relations whether or not further relief is or could be claimed." A declaratory judgment action is designed to provide a means for adjudication of rights and obligations in cases involving an actual controversy that has not reached the stage where either party can seek a coercive remedy. *Code v. Dep't of Pub. Safety & Corr*, 11-1282 (La. App. 1 Cir. 10/24/12); 103 So.3d 1118, 1126, *writ denied*, 12-2516 (La. 1/23/13); 105 So.3d 59. The function of a declaratory judgment is simply to establish the rights of the parties or express the opinion of the court on a question of law without ordering anything to be done. *Id.* at 1127. But our jurisprudence has limited the availability of declaratory judgment by holding that "courts will only act in cases of a present, justiciable controversy and will not render merely advisory opinions." *Id.*

Because of the almost infinite variety of factual scenarios with which courts may be presented, a precise definition of a justiciable controversy is neither practicable nor desirable. *Id.* However, a justiciable controversy has been broadly defined as one involving "adverse parties with opposing claims ripe for judicial determination," involving "specific adversarial questions asserted by interested parties based on existing facts." *Id.* (quoting *Prator v. Caddo Parish*, 04-0794 (La. 12/1/04); 888 So.2d 812, 816). A justiciable controversy for declaratory judgment purposes is one involving uncertain or disputed rights in "an immediate and genuine situation," and must be a "substantial and actual dispute" as to the legal relations of "parties who have real, adverse interests." *Id.* (quoting *Prator*, 888 So.2d at 817).

The Louisiana Supreme Court discussed "justiciable controversy" relative to declaratory judgment actions in *Abbott v. Parker*, explaining:

> A "justiciable controversy" connotes, in the present sense, an existing actual and substantial dispute, as distinguished from one that is merely hypothetical or abstract, and a dispute which involves the legal relations of the parties who have real adverse interests, and upon which the judgment of the court may effectively operate through a decree of conclusive character. Further, the plaintiff should have a legally protectable and tangible interest at stake, and the dispute presented should be of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

249 So.2d 908, 918 (La. 1971); *see also Prator*, 888 So.2d at 815–17. A court must refuse to entertain an action for a declaration of rights if the issue presented is academic, theoretical, or

based on a contingency which may or may not arise. *American Waste & Pollution Control Co. v. St. Martin Parish Police Jury*, 627 So.2d 158, 162 (La. 1993). The absence of any justiciable controversy then deprives this Court of subject matter jurisdiction. *See Duplantis v. La. Bd. of Ethics*, 00-1750 (La. 03/23/01), 782 So. 2d 582, 589 (courts are without jurisdiction to render advisory opinions and may only review matters that are justiciable).

Consequently, a declaratory action cannot generally be maintained unless it involves some specific adversary question or controversy asserted by interested parties and is based on an existing state of facts. *Tugwell v. Members of Bd. of Hwys.*, 83 So.2d 893, 899 (La.1955). Declaratory relief is not available to an applicant unless the case presents an actual and existing justiciable controversy, not a hypothetical one La. Code Civ. P. art.1881; *LA Independent Auto Dealers Ass'n v. State*, 295 So.2d 796 (La.1974); *Rambin v. Caddo Parish Police Jury*, 316 So.2d 499, 501 (La.App. 2 Cir. 1975).

In the case of an injunction under La. Code Civ. P. art 3601, the same rule holds true. The courts cannot indulge in speculative and theoretical exercises upon a supposed set of facts. "It is well settled that courts should not decide abstract, hypothetical or moot controversies, or render advisory opinions with respect to such controversies." *Balluff v. Riverside Indoor Soccer II, L.L.C.*, 07-780 (La. App. 5 Cir. 3/11/08), 982 So. 2d 199, 201. Injury that may never materialize cannot form the basis of a plea for injunctive relief.

Plaintiffs' petition for declaratory judgment and injunctive relief fails to assert a justiciable controversy. Plaintiffs do not allege that a reapportionment plan for the 2022 congressional elections has been put in place nor that the Governor and the legislature have developed and put into effect any reapportionment plan for congressional elections beginning in 2022. Neither do plaintiffs allege that the Secretary of State or anyone else proposes to utilize current congressional districts drawn in 2011 to hold the regular congressional elections in 2022. The petition alleges primarily that plaintiffs rights might be effected in the future depending on what happens with congressional redistricting, which is not yet underway, and secondarily that their rights may be prejudiced should the State decide to move forward with the 2022 congressional elections based upon the 2011 election districts from the last decennial

reapportionment, which plaintiffs do not allege is proposed, under consideration or even legally possible.

The kind of "what if" scenarios posited by plaintiffs do not present a justiciable controversy ripe for adjudication. This Court lacks subject matter jurisdiction over the case.

ii. *The Separation of Powers Provision in the Louisiana Constitution Precludes the Court's Involvement in the Political Process of Reapportionment and Redistricting*

The redistricting of U.S. Congressional offices apportioned by Congress is a unique political process to be conducted by the state legislature subject to veto by the Governor to the exclusion of the district courts. The redistricting process precludes the Court's usurpation of the role of the two political branches of government, and the Court cannot preempt the political branches as the plaintiffs ask them to do. The Court's engagement in the formulation of districts reaches beyond the authority given them in the Constitution.

The United States Constitution provides in Article I, § 4, cl. 1 that "[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof." The U.S. Supreme Court noted the role of legislative bodies in redistricting congressional election districts: "[O]ur precedent teaches that redistricting is a legislative function, to be performed in accordance with the State's prescriptions for lawmaking, which may include the referendum and the Governor's veto." *Arizona State Legislature v. Arizona Indep. Redistricting Comm'n,* 576 U.S. 787 (2015).

Louisiana has chosen to establish congressional districts through the enactment of a statute in accordance the ordinary legislative process. La. R.S. 18:1276.1. The process is inherently political to be carried out by the political branches of government. The three branches of state government in Louisiana are established in La. Const. art. II, § 1 as the legislative, executive and judicial branches, each with powers fixed by the Constitution. Article II, § 2 provides that no one branch of government can exercise power belonging to another.

In that regard, the Louisiana Legislature is invested with the power to pass laws. The Louisiana Constitution provides that, the legislative power of the state is vested in a legislature, consisting of a Senate and a House of Representatives. La. Const. art. III, § 1. The legislature

shall enact no law except by a bill introduced during that session. La. Const. art. III, § 15. The Governor is vested with the authority to approve or veto bills pursuant to La. Const. art. III, § 18. Because Louisiana has chosen to redistrict congressional election districts by statute, the legislature is responsible for congressional redistricting in Louisiana, subject to the Governor's approval or veto of any such redistricting plan.

Rredistricting of congressional election districts belongs to the legislature and the Governor as the political branches of state government, not to the courts. The judicial branch of state government is not permitted to infringe upon the express powers of the legislative and executive branches by Article II, § 2 of the Constitution. *Hoag v. State*, 2004-0857, 889 So. 2d 1019, 1022. The courts are not allowed to make decisions reserved to the legislature and the Governor. The courts of the state have uniformly upheld the legislature's powers free from interference by the courts to adopt and amend laws. The function of the judiciary is to interpret laws; it is the legislature's function to draft and enact them. *Mathews v. Steib*, 2011-0356 (La. App. 1 Cir. 12/15/11), 82 So. 3d 483, 486, *writ denied*, 2012-0106 (La. 3/23/12), 85 So. 3d 90. The amendment of a statute is addressed to the legislature and not the courts. *Succession of Farrell*, 200 La. 29, 34, 7 So. 2d 605, 606 (1942).

Plaintiffs here ask this Court to exercise powers that it does not have under the Louisiana Constitution. Plaintiffs invite the Court to intervene in the congressional redistricting process and usurp the powers expressly granted to the legislature by both the U.S. and Louisiana Constitutions. The Court are not given such power in the Louisiana Constitutional scheme. Accordingly, this Court lacks jurisdiction to intercede in redistricting congressional election districts, a task assigned to the political branches. This Court must decline plaintiffs' invitation to involve itself in a political process.

iii. The State is Barred from Using 2011 Districts for the 2022 Congressional Elections, and Plaintiffs' Claim In That Regard is Moot

Plaintiffs ask the Court to issue an order declaring the 2011 congressional election districts to be inoperable for the 2022 congressional elections in Louisiana. However, the Constitution and laws command that the State redistrict for the 2022 elections, and the objective plaintiffs seek has been accomplished by operation of law. See, U.S. Const. art. I, § 2, cl. 3;

amend. XIV, § 2; 2 USC § 2a. The requested court order would merely direct the defendant to follow the law that is already in place, and such a court order would have no practical effect and would change nothing. The states are required to draw new districts based upon changes in population assuming that the census numbers reflect the need for reconfiguration of the districts. The states have no discretion. Louisiana must elect their allotted members of the House of Representatives from new districts following each decennial census. The law leaves no dispute or controversy for the Court to resolve in that regard.

An issue is moot when a judgment or decree on that issue has been "deprived of practical significance" or "made abstract or purely academic." *In re E.W.*, 09–1589 (La.App. 1 Cir. 5/7/10), 38 So.3d 1033, 1037. Thus, a case is moot when a rendered judgment or decree can serve no useful purpose and give no practical relief or effect. *Stevens v. St. Tammany Par. Gov't*, 2016-0197 (La. App. 1 Cir. 1/18/17), 212 So. 3d 562, 566–67. If the case is moot, then "there is no subject matter on which the judgment of the court can operate." *Ulrich v. Robinson*, 2018-0534 (La. 3/26/19), 282 So. 3d 180, 186.

When a judgment can change nothing, it is deemed moot. "A "moot" case is one in which a judgment can serve no useful purpose and give no practical effect. When a case is moot, there is simply no subject matter on which the judgment of the court could operate. *State in Int. of J.H.*, 2013-1026 (La. App. 4 Cir. 3/19/14), 137 So. 3d 748, 750 [internal citations omitted].

A case is moot when whatever it is that the plaintiff sued for has already happened or happened in the course of litigation. In such cases, a court pronouncement would not change anything.

Here, plaintiffs' petition the Court to declare that 2011 districts cannot be used for the 2022 congressional elections, and the Secretary of State should be enjoined from doing so. Plaintiffs want to enjoin what the Constitution and applicable statutes expressly prohibit by mandating that states redistrict congressional election districts every 10 years so that congressional elections must be held in reconfigured election districts. U.S. Const. art. I, § 2, cl. 3; amend. XIV, § 2; 2 USC § 2a. Plaintiffs want to declare and enjoin the defendant from doing something he cannot do under the law without even alleging that any such actions are contemplated or imminent.

A condition to be enjoined in litigation must currently exist or be imminent. *Faubourg Marigny Imp. Ass'n, Inc. v. City of New Orleans*, 2015-1308 (La. App. 4 Cir. 5/25/16), 195 So. 3d 606, 618.

Additionally, plaintiffs' allegations with regard to the use of 2011 congressional election districts are entirely speculative and refer to an uncertain event, not even rumored to the Secretary's knowledge, leaving the Court without any basis to act. *Id.* Plaintiffs do not allege that a violation of constitutional and statutory law is contemplated by any Louisiana official much less that such an event is real or imminent. A condition to be enjoined in litigation must currently exist or be imminent. *Faubourg Marigny Imp. Ass'n, Inc. v. City of New Orleans*, 2015-1308 (La. App. 4 Cir. 5/25/16), 195 So. 3d 606, 618. A party cannot just take a notion without any factual basis that someone might violate the law and sue to stop them. Yet, the plaintiffs have done so here.

The Court lacks jurisdiction to entertain a plea that is moot by virtue of statutory and constitutional mandates that accomplish plaintiffs' objective. Any order the court might issue in response to plaintiffs' plea would be surplusage and have no practical effect and would change nothing. The claim relative to the existence and use of 2011 congressional election districts is moot.

II. Peremptory Exceptions

A. No Cause of Action

The petition in this case does not state a cause of action. The function of the objection of no cause of action is to test the legal sufficiency of the petition by determining whether the law affords a remedy on the facts alleged in the pleading. *Everything on Wheels Subaru, Inc. v. Subaru South, Inc.*, 616 So.2d 1234, 1235 (La. 1993); *Copeland v. Treasure Chest Casino, LLC*, 01-1122 (La. App. 1 Cir. 6/21/02); 822 So.2d 68, 70. No evidence may be introduced to support or controvert the objection that the petition fails to state a cause of action. La. Code Civ. Proc. art. 931. The exception is triable on the face of the pleading, and for the purpose of determining the issues raised by the exception, the well-pleaded facts in the pleading must be accepted as true. *Richardson v. Richardson*, 02-2415 (La. App. 1 Cir. 7/9/03); 859 So.2d 81, 86. Thus, the only issue at the trial of the exception is whether, on the face of the petition, the plaintiff is

legally entitled to the relief sought. *Perere v. Louisiana Television Broadcasting Corp.*, 97-2873 (La. App. 1 Cir. 11/6/98); 721 So.2d 1075, 1077.

Since Louisiana has retained a system of fact pleadings, conclusory allegations of a plaintiff do not set forth a cause of action. *Montalvo v. Sondes*, 93-2813, 93-2813 (La. 5/23/94); 637 So.2d 127, 131. Conclusions of law, as opposed to factual statements, are improper to state causes of action. *Nat'l Gypsum Co. v. Ace Wholesale, Inc.*, 98-1196 (La. App. 5 Cir. 6/1/99); 738 So.2d 128, 130. Vague references, suppositions, and legal conclusions cannot take the place of succinct and definite facts upon which a cause of action must depend. *Jackson v. Home Depot, Inc.*, 04-1653 (La. App. 1 Cir. 6/10/05); 906 So.2d 721, 728. A court should sustain the exception when the allegations of the petition, accepted as true, afford no remedy to the plaintiff for the particular grievance. *Harris v. Brustowicz*, 95-0027 (La. App. 1 Cir. 10/6/95); 671 So.2d 440, 442.

With respect to the use of 2011 districts to hold 2022 elections, plaintiffs do not plead any colorable allegations that the Secretary of State has the authority or intention to do so. Plaintiffs simply argue almost as a *non sequitur* that the Court should declare that the 2011 district map cannot be used to hold 2022 elections. The law dictates that the State redraw the districts for congressional elections in 2022. Plaintiffs' cause of action in that regard is not only rendered moot by the statutory framework for redistricting, but the petition makes no allegations to suggest that there is some claim to the contrary.

Further, the plaintiff must have no legally protectable and tangible interest at stake, and the dispute alleged is not of sufficient immediacy and reality to warrant the issuance of a declaratory judgment. *Louisiana Fed'n of Tchrs. v. State*, 2011-2226 (La. 7/2/12), 94 So. 3d 760, 763. A court must refuse to entertain an action for a declaration of rights if the issue presented is academic, theoretical, or based on a contingency which may or may not arise. *American Waste & Pollution Control Co. v. St. Martin Parish Police Jury,* 627 So.2d 158, 162 (La.1993). Further, a case is not ripe for review unless it raises more than a generalized, speculative fear of unconstitutional action. *State v. Rochon,* p. 7, 11–0009 (La.10/25/11), 75 So.3d 876, 882.

Plaintiffs here seek a declaratory judgment on speculative allegations that the defendant might do something at some undefined point in the future. Their allegations do no more than

suggest a mere possibility of something occurring rather than setting out specific, particularized and immediate concrete facts that are actual and existing. Were the Court to accept plaintiffs' allegations as true, it would have nothing more than rank speculation to act on, which the courts unanimously hold cannot form the basis for a cause of action. See, *Purpera v. Robinson*, 2020-0815 (La. App. 1 Cir. 2/19/21), *writ denied,* 2021-00406 (La. 5/11/21).

Plaintiffs' reliance upon a 2019 American Community Survey in the petition adds little to state a cause of action to declare 2011 districts malapportioned. At this juncture, the relative population estimates for 2011 districts are immaterial. There is no election proposed or pending using the 2011 districts. Moreover, plaintiffs concede that the data they rely on in their petition is outdated coming from a 2019 American Community Survey. Pet. at 4, ¶ 24. Putting aside the issue of the intervening events since 2019 such as the COVID-19 pandemic and a record-breaking 2020 hurricane season that saw five hurricanes hit Louisiana[3], the American Community Survey is not and does not purport to be official census data. The Census is "an official count of the population, which determines congressional representation" that "[c]ounts every person living in the 50 states, District of Columbia, and the five U.S. territories."[4] Conversely, the American Community Survey is only sent to a "sample of addresses (about 3.5 million) in the 50 states, District of Columbia, and Puerto Rico" to gather data that shows how people live and work in order to provide information about the social and economic needs of the community.[5]

Plaintiffs' plea for a court takeover of the redistricting process thus rests on pretty spongy ground. Pleading unreliable data merely highlights that the census data that will ultimately serve as the basis for reapportionment is lacking at this stage of the process. In fact, plaintiffs themselves admit in their pleadings that the operative data for reapportionment and redistricting will not be released until this fall. Pet at 4, ¶ 22.

Nor do plaintiffs allege plausible facts to support their claim that the partisan divide in our executive and legislative branches will lead to the "significant likelihood the political

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3 Wells, C., 2020. *2020 hurricane season officially ends; here are the records it set.* [online] NOLA.com. Available at: <https://www.nola.com/news/hurricane/article_d17ea1e2-2e5b-11eb-bcf4-f70bcbd968ee.html> [Accessed 7 May 2021].

4 The United States Census Bureau. 2020. *ACS and the 2020 Census*. [online] Available at: <https://www.census.gov/programs-surveys/acs/about/acs-and-census.html> [Accessed 7 May 2021].

5 *Id.*

branches will reach an impasse this cycle." Who made that up? The Legislature and the Governor pass bills into law on a pretty frequent basis, and the plaintiffs' dim view of their ability to do so here is not the kind of factual allegation essential to plead a cause of action.

The same holds true for the plea for injunctive relief. Plaintiffs failed to allege a basic foundational requirement for injunctive relief: actual or imminent harm irreparable to the plaintiffs. *Louisiana Fed'n of Tchrs. v. State*, 2011-2226 (La. 7/2/12), 94 So. 3d 760, 763. Actual or imminent harm can hardly be asserted in the absence of an actual and existing redistricting plan. Plaintiffs thus failed to state a cause of action for injunctive relief.

Louisiana law provides that an injunction shall issue only "in cases where irreparable injury, loss, or damage may otherwise result to the applicant, or in other cases specifically provided by law." La. Code Civ. P. art. 3601(A). The hypothetical harm claimed by the plaintiffs' in this case is not particularized as to them as opposed to the public at large in each of the congressional districts. A plaintiff must have a real and actual interest in the action he asserts, La. Code Civ. P. art. 681. Without a showing of some special interest 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). There is no colorable allegation that these plaintiffs are situated any differently than any other member of the general public with respect to congressional districts, and their failure to so allege is fatal to their injunction plea.

Defendants' Exception of No Cause of Action should be maintained with respect to both injunctive and declaratory relief.

B. No Right of Action

Plaintiffs fail to demonstrate a real and actual interest in the matter asserted in the petition. La. Code Civ. P. art. 681. Nothing in the plaintiffs' allegations shows that they have a "real and actual" interest in this case; instead, their interest is hypothetical and theoretical based upon conjecture and speculation. "[W]hether a litigant has standing to assert a claim is tested via an exception of no right of action." *Bradix v. Advance Stores Co., Inc.*, 2017-0166 (La. App. 4 Cir. 8/16/17), 226 So. 3d 523, 528. Here, as in *Bradix,* the plaintiffs do not assert that they

presently possess a claim, have sustained or may imminently suffer some injury. Until they do, if they ever do, they have no right of action to assert and lack standing to bring the suit.

To have standing the plaintiff must assert an adequate interest in himself, which the law recognizes, against a defendant having a substantial adverse interest. *Howard v. Administrators of Tulane Educ. Fund*, 2007-2224 (La. 7/1/08), 986 So. 2d 47, 54. Plaintiffs fail on both counts – fail to assert an existing adequate interest in future redistricting of congressional districts and fail to show a substantial adverse interest on the part of the Secretary of State who has no role in redrawing congressional election districts.

The foundation for plaintiffs' suit consists in the allegation that "the partisan division among Louisiana's political branches makes it extremely unlikely they will pass a lawful congressional redistricting plan in time to be used during the upcoming 2022 election" … "leaving the existing plan in place for the next year's election." Pet. at 5, ¶ 27-28. Plaintiffs' claims as set out in the petition lie against the "political branches" of state government rather than the Secretary of State. And even at that, plaintiffs' bet that the political branches will fail does not implicate the Secretary of State. The Secretary of State will not fail to redistrict anything. He is not involved in the process. Plaintiffs have no grievance against him and no standing to sue him.

Plaintiffs fare no better claiming that the failure to timely yield a new plan "is likely to significantly, if not severely, burden plaintiffs' First Amendment right to association." Pet. at 8, ¶ 41. The phrase "is likely to" is innately hypothetical, and therefore insufficient to form a justiciable controversy that will result in injury to these particular plaintiffs. "Without a showing of a special interest that is separate and distinct from the interest of the general public, a plaintiff may not proceed." *Vieux Carre Prop. Owners, Residents & Assocs., Inc. v. Hotel Royal, L.L.C.*, 2009-0641 (La. App. 4 Cir. 2/3/10), 55 So. 3d 1, 7, *on reh'g* (Jan. 5, 2011), *writ denied*, 2011-0258 (La. 4/29/11), 62 So. 3d 112. For this Court to act, plaintiffs are required to give the Court something to act on, i.e. a "special interest which is separate and distinct from the interest of the public at large." *All. For Affordable Energy v. Council of City of New Orleans*, 96-0700 (La. 7/2/96), 677 So. 2d 424, 428. Absent such a showing, they do not have a right of action.

Recently, the Louisiana Supreme Court in *Soileau v. Wal-Mart Stores, Inc.,* 2019-0040, p. 6 (La. 6/26/19); 285 So.3d 420, 425, dismissed a case based upon the plaintiff's failure to demonstrate convincingly that a real and actual dispute had been presented. Citing *St. Charles Parish School Bd. v. GAF, Corp.*, the Court ruled that the plaintiff based her claims on "abstract harm she might suffer in the future" and that "[t]he injury resulting from this purported conflict of interest is not based on any actual facts or occurrences; rather, she asks the court to assume that she will suffer harm if certain hypothetical facts occur." *Soileau*, 285 So.3d at 425. The Louisiana Supreme Court ruled that, "[w]e decline to render an advisory opinion based on facts which may or may not occur at some unspecified time in the future." *Id.*

The Court's reasoning in *Soileau* applies here. Plaintiffs' claims are purely about things that may or may not occur. As plaintiffs themselves allege, the requisite Census data has yet to be delivered to the proper state officials. Plaintiffs do not allege that the Legislature and the Governor have developed or adopted any redistricting plan. Plaintiffs allege merely that the Legislature and the Governor have the responsibility to develop a redistricting plan at some point in the future and then proceed to disparage their ability to fulfill their responsibilities to redistrict. Plaintiffs' claims are purely hypothetical, and this Court should refrain from rendering a speculative judgment based upon what might or might not occur in congressional redistricting.

Plaintiffs do not allege that reapportionment or redistricting have yet happened. Clearly, plaintiffs have no standing to assert any right or injury particularly where they have brought no justiciable controversy to the Court.

But even to the extent plaintiffs seek merely to restrain the Secretary, they still fail to make a showing of personal "interest" to establish a justiciable controversy. All that the Petition alleges is speculative, theoretical harms. Because plaintiffs have failed to show that they have a right to sue according to the applicable standards, this Court should sustain the defendant's exception of no right of action. *See Howard*, 2007-2224 (La. 7/1/08), 986 So. 2d at 59 (noting that an exception of no right of action is the proper vehicle to challenge a plaintiff's standing).

Then there is the question of standing to sue the Secretary of State who has no appreciable role in redistricting congressional office. The plaintiffs allege no such role for the Secretary. Neither the United States nor the Louisiana Constitution assign him a substantive role

in the process. Plaintiffs do not allege that the Secretary might cause them some grievance when redistricting does occur. The Secretary of State does not enforce any of the redistricting statutes, and nothing in the petition's allegations show that the Secretary proposes an election plan in which the expired districts will be used, much less that the Secretary of State has the authority to do so. Absent some showing that the Secretary has a connection to congressional redistricting or that the plaintiffs will be injured by anything the Secretary has authority to do, they simply do not have standing to sue him.

CONCLUSION

Plaintiffs brought this matter in the improper venue, do not present a justiciable controversy for this Court's determination, failed to properly allege a cause of action, and lack the right or standing to bring suit For the foregoing reasons, the Secretary of State respectfully requests that this Court sustain these exceptions and dismiss plaintiffs' petition at plaintiffs' cost.

Respectfully submitted,

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Counsel for the Secretary of State

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing Memorandum has on this date been served upon all known counsel of record by electronic mail at the email address provided.

New Orleans, Louisiana, this 24th day of May, 2021.

Lauryn Sudduth
Lauryn A. Sudduth

FILED

CIVIL DISTRICT COURT

PARISH OF ORLEANS, STATE OF LOUISIANA

NUMBER 2021-03538 DIVISION C – SECTION 10

CAMERON ENGLISH, ET AL.

VERUS

R. KYLE ARDOIN, IN HIS OFFICIAL CAPACITY AS LOUISIANA SECRETARY OF STATE

****

RULE TO SHOW CAUSE

Considering the foregoing *Declinatory and Peremptory Exceptions*;

IT IS HEREBY ORDERED that Plaintiffs appear and show cause on the 20th day of August, 2021 at 10:00 a.m. via ZOOM why the Court should not sustain the declinatory and peremptory exceptions filed by Exceptor, R. Kyle Ardoin, in his official capacity as the Louisiana Secretary of State.

New Orleans, Louisiana this 24th day of May, 2021.

APRIL D DAVENPORT
LAW CLERK
Division "C"
BY ORDER OF THE COURT

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CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

CAMERON ENGLISH, RYAN BERNI, POOJA PRAZID, LYNDA WOOLARD, STEPHEN HANDWERK, AMBER ROBINSON, JAMES BULLMAN, and KIRK GREEN, Plaintiffs, v. R. KYLE ARDOIN, in his official capacity as Louisiana Secretary of State, Defendant.	Civil Action No. 2021-03538 Division C - Section 10

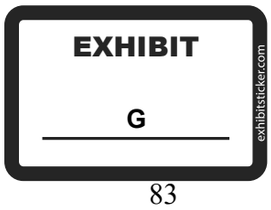
PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT'S EXCEPTIONS

MAY IT PLEASE THE COURT:

Plaintiffs Cameron English, Ryan Berni, Pooja Prazid, Lynda Woolard, Stephen Handwerk, Amber Robinson, James Bullman, 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 the tumultuous decade since Louisiana's current congressional map was enacted, the state has changed. Hundreds of thousands of new Louisianians were born, and hundreds of thousands died; people from around the world came to live in Louisiana, and some former Louisiana residents sought opportunities elsewhere; and all the while, the flux and churn of internal migration redistributed Louisianians across the state's 64 parishes. The result: each of Louisiana's six congressional districts is now malapportioned. Because the U.S. Constitution prohibits malapportioned districts, continued use of the map as it stands today is unconstitutional. And absent court intervention or new legislation, state law would force the Secretary to use this unconstitutional map in the upcoming congressional elections.

That is why Plaintiffs have filed this lawsuit—and why this Court can hear it. Louisiana has a Democratic governor and a Republican-controlled legislature. Where control of the lawmaking process is divided in this way, states often fail to enact new redistricting plans; that is,



they suffer impasse.[1] And courts, in turn, often accept jurisdiction over actions like this one and set schedules that will ensure that new, constitutional districts are drawn well in advance of upcoming candidate filing deadlines and elections. This is the modest relief that Plaintiffs seek: a declaration that the current congressional map is unconstitutionally malapportioned; an injunction prohibiting its continued use; and a schedule with clear deadlines to ensure a lawful map is adopted, whether legislatively or judicially, sufficiently in advance of the next federal election. If the political impasse persists past the Court's deadline, then—and *only* then—the Court will be tasked with adopting a plan of its own.

The need for the Court to proceed with this action is clear. Endorsing the Secretary's position that the Court may not even accept jurisdiction despite malapportioned districts would expose Plaintiffs and their fellow Louisianians to serious constitutional injury. Fortunately, the Secretary's position is wrong. Louisiana's judiciary has the power and duty to act when a plaintiff has established that injury is imminently impending, and that judicial process must begin *now* to make available the tailored relief that courts across the country routinely provide in similar circumstances during every redistricting cycle. Indeed, in Minnesota—where, like Louisiana, Democrats control the governorship but not both houses of the legislature—the Supreme Court has *already* taken steps to adjudicate lawsuits alleging a likely impasse between the political branches.

The Secretary's exceptions provide no compelling argument to the contrary. Venue is proper in Orleans Parish, where residents are currently suffering the injury of malapportionment. The current controversy is live, and courts *must* provide the necessary judicial backstop to avoid the harms that will follow from impasse. And the appropriate parties have been named: in redistricting cases, voters in overpopulated districts may sue, and the Secretary must defend.

The Secretary's exceptions should therefore be denied.

[1] As the U.S. Supreme Court has noted, "[p]olitics and political considerations are inseparable from districting and apportionment." *Gaffney v. Cummings*, 412 U.S. 735, 753 (1973). Indeed, the 2010 redistricting cycle demonstrated the debilitating effect partisan divides can have on the reapportionment process. In a majority of states with divided governments—including Colorado, Minnesota, Mississippi, Nevada, New Mexico, and New York—courts were required to draw congressional maps, legislative maps, or both.

BACKGROUND

On April 26, 2021, the U.S. Secretary of Commerce delivered the results of the 2020 decennial census to the President. *See* Pet. for Injunctive & Declaratory Relief ("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 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, as if to underscore the depth of Louisiana's current political divide and the gridlock that has resulted, of the 31 bills that the Governor vetoed this year, the Legislature failed to overturn a *single one* during its historic override session. *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 Aug. 12, 2021).

Today, the U.S. Secretary of Commerce will deliver 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. *Id.* ¶ 22. On or around September 30, 2021, the U.S. Secretary of Commerce will deliver that same detailed population data showing the new population of each political subdivision in a tabulated format. *Id.* These latter 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.

Ultimately, the pandemic has imposed significant delays on an already fraught process for which time is of the essence. Plaintiffs accordingly brought this action, 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 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 thereafter filed his declinatory and peremptory exceptions, advancing several procedural and substantive objections. *See generally* Mem. in Supp. of Exceptions on Behalf of Sec'y of State ("Mem.").

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.[2]

I. Declinatory Exceptions

A. The Court has subject matter jurisdiction.[3]

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.

[2] 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 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* Pet. 8.

[3] 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, 15–18. In the interests of efficiency and economy, Plaintiffs address all of these arguments in this section.

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 the Court need not wait until the eve of an unconstitutional election before accepting jurisdiction to remedy Plaintiffs' injuries, as evidenced by the fact that the Minnesota Supreme Court has already commenced judicial proceedings to avoid precisely this sort of constitutional injury.

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 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* Pet. ¶ 17; *Arrington v. Elections Bd.*, 173 F. Supp. 2d 856, 860 (E.D. Wis. 2001) (three-judge panel) ("[A]pportionment schemes become instantly unconstitutional upon the release of new decennial census data." (quotations marks and citation 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, Pet. ¶ 18, and population shifts have not been uniform across the state. In fact, recent data show that there is a nearly *10 percent* population deviation between districts, *see id.* ¶ 15—far from the equal representation the U.S. Constitution requires.

The Secretary questions this census data, claiming that it is "outdated." Mem. 17. This argument misses the point. It is not the *precise* population discrepancies between congressional districts that render them unconstitutional, but the unquestionable existence of *any* discrepancies at all. Absent a specific justification for each particular population deviation, congressional districts must have "precise mathematical equality." *Kirkpatrick*, 394 U.S. at 530–31. Article I, Section 2 "permits only the limited population variances which are unavoidable despite a good-faith effort to achieve absolute equality, or for which justification is shown." *Id.* at 531. There is no such justification for the population deviations here.

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 (quotations marks and citations omitted). As Plaintiffs allege in their 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. Pet. ¶ 28. Unless

a new plan is timely adopted, the Secretary *has no choice* but to use the 2011 Plan in the next election.[4]

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.

[4] 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; 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.

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" (quotations 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 (quotations 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." Pet. ¶ 40. 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' 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* 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* Pet. ¶ 40. 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 six weeks ago 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, allowing public access to filings, and announcing "a series of public hearings in person around the state" to "foster robust and diverse input" and give the public "the opportunity to provide the panel with facts, opinions, or concerns that may inform the redistricting process." 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).

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* Pet. ¶¶ 4, 27–28. And just as in those cases, and many others like them, this Court must intervene to ensure that political 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." Pet. 8. This request is both necessary and appropriate.

As the Secretary acknowledges, redistricting is "unique." Mem. 12. 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* Pet. ¶¶ 32–42. 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* Pet. ¶ 27, *with* Mem. 13. 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* 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 coopts 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.[5]

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. 6—Orleans Parish is *also* a proper venue because it is where Plaintiffs' claims arise.[6]

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

[5] 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. 13, is thus unpersuasive.

[6] Alternatively, should the Court conclude that venue is only proper in East Baton Rouge Parish, then Plaintiffs agree that transfer rather than dismissal is the appropriate remedy. *See Habig v. Popeye's Inc.*, 553 So. 2d 963, 967 (La. 1989); Mem. 8.

congressional districts—which were drawn based on 2010 Census data—is now unconstitutionally malapportioned." Pet. ¶ 36. 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. 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").[7]

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 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.

[7] 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)).

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' 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' 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 19. 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" (quotations 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 (quotations 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.[8]

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 20, 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. 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.

[8] 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. 19 (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" (quotations 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." 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.

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.[9]

CONCLUSION

"No right is more precious in a free country than that of having a voice in the election of those who make the laws." *Wesberry*, 376 U.S. at 17. Consistent with this constitutional dictate and the one-person, one-vote principle, courts regularly intervene to ensure that congressional maps are properly redistricted—particularly where, as here, divided government risks an impasse.

Faced with this commonplace request for judicial relief, the Secretary tries to portray Plaintiffs' case as an unwarranted expansion of the Court's jurisdiction, an intrusion into the ambit of the political branches, and a cynical misrepresentation of Louisiana politics. But none of the exceptions raised by the Secretary changes the fact that Plaintiffs are entitled to relief. The state's congressional districts are malapportioned, the political branches are poised to deadlock, and this Court's immediate intervention is needed to ensure that a new map is timely adopted and that Plaintiffs' votes are not diluted. The course of action Plaintiffs seek in the face of impasse is not only prudent, but amply supported by both precedent and state law. 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.

[9] 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).

For the foregoing reasons, the Secretary's exceptions should be denied.

Dated: August 12, 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 12th day of August, 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,

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.

Civil Action
File No.
01-C-0121

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.
3.002 Description of territory.
3.003 Territory omitted from congressional redistricting.
3.01 First congressional district.
3.02 Second congressional district.
3.03 Third congressional district.
3.04 Fourth congressional district.
3.05 Fifth congressional district.
3.06 Sixth congressional district.
3.07 Seventh congressional district.
3.08 Eighth congressional district.
3.09 Ninth congressional district.

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;

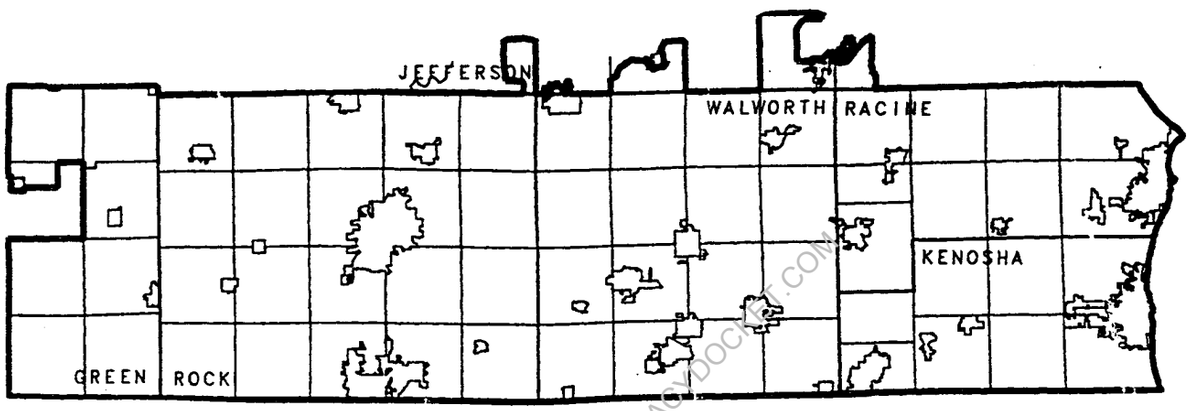
(c) The villages of Butler, Chenequa, Dousman, Eagle, Elm Grove, Hartland, Lac La Belle, Lannon, Menomonee Falls, Merton, Nashotah, North Prairie, Oconomowoc Lake, Pewaukee, Sussex and Wales;

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

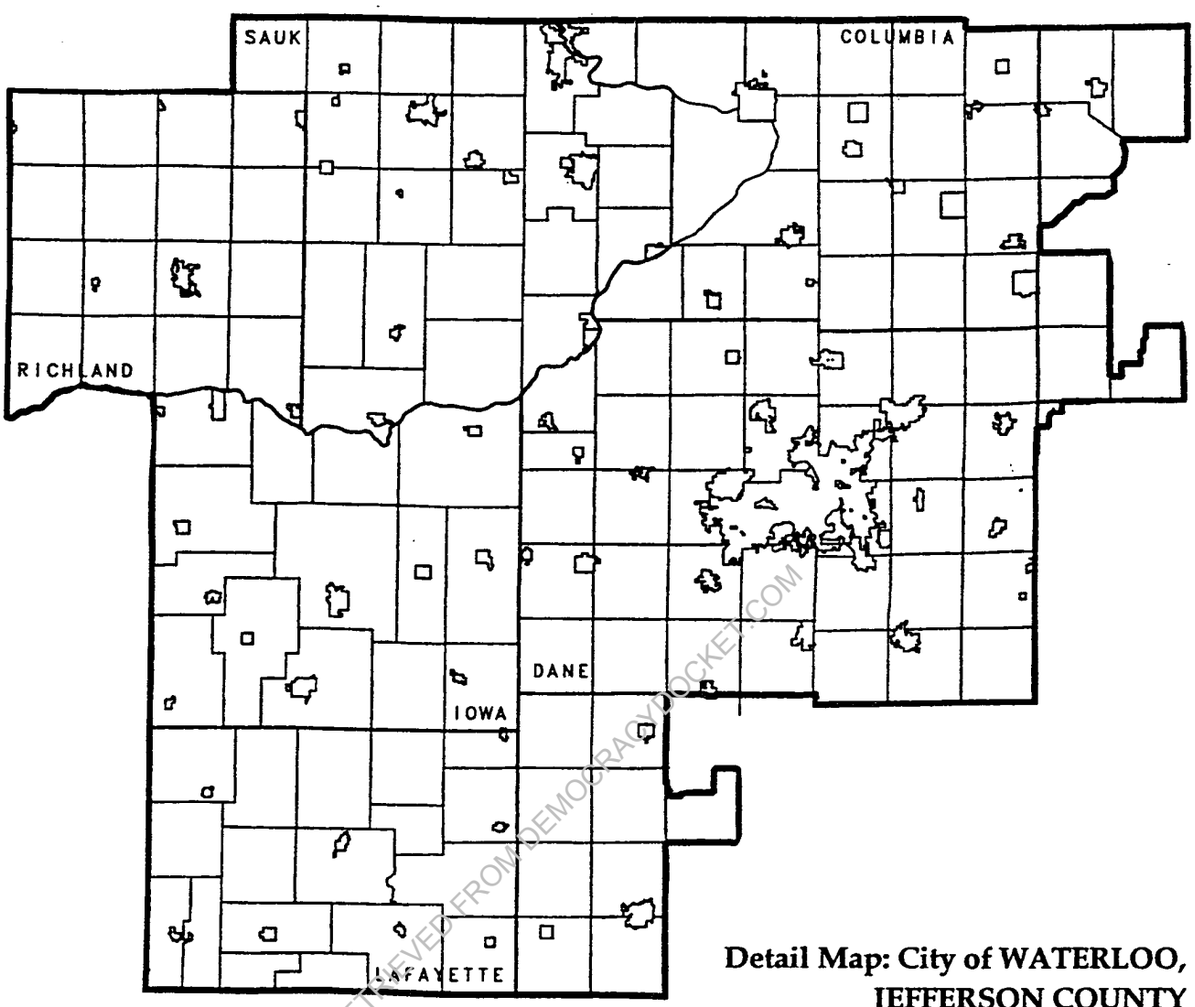
(e) That part of the city of Milwaukee located in the county.

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

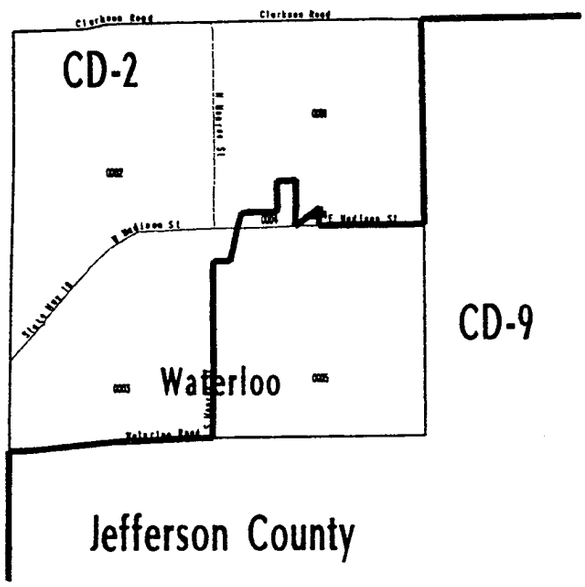
1st CONGRESSIONAL District



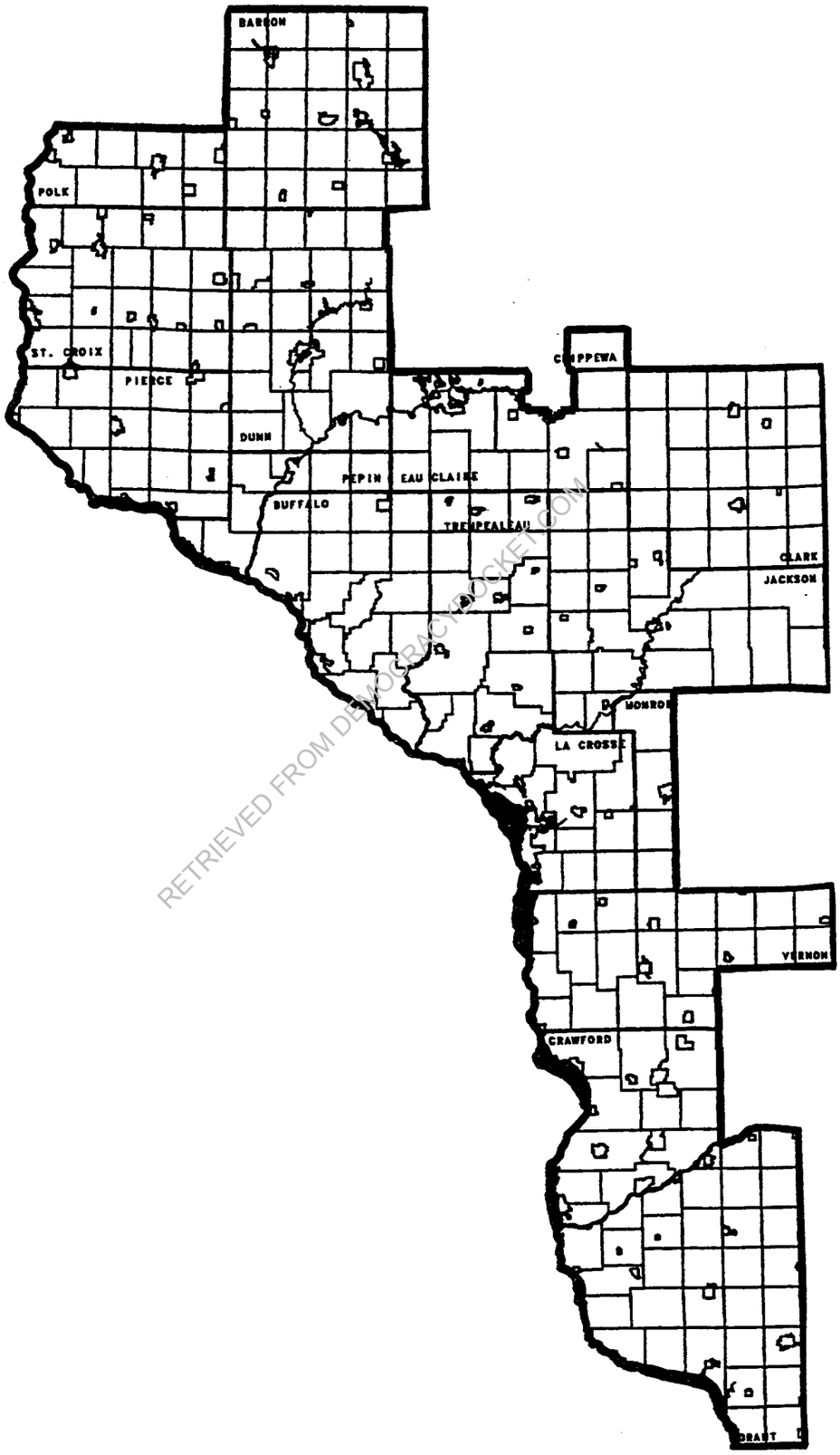
2nd CONGRESSIONAL District

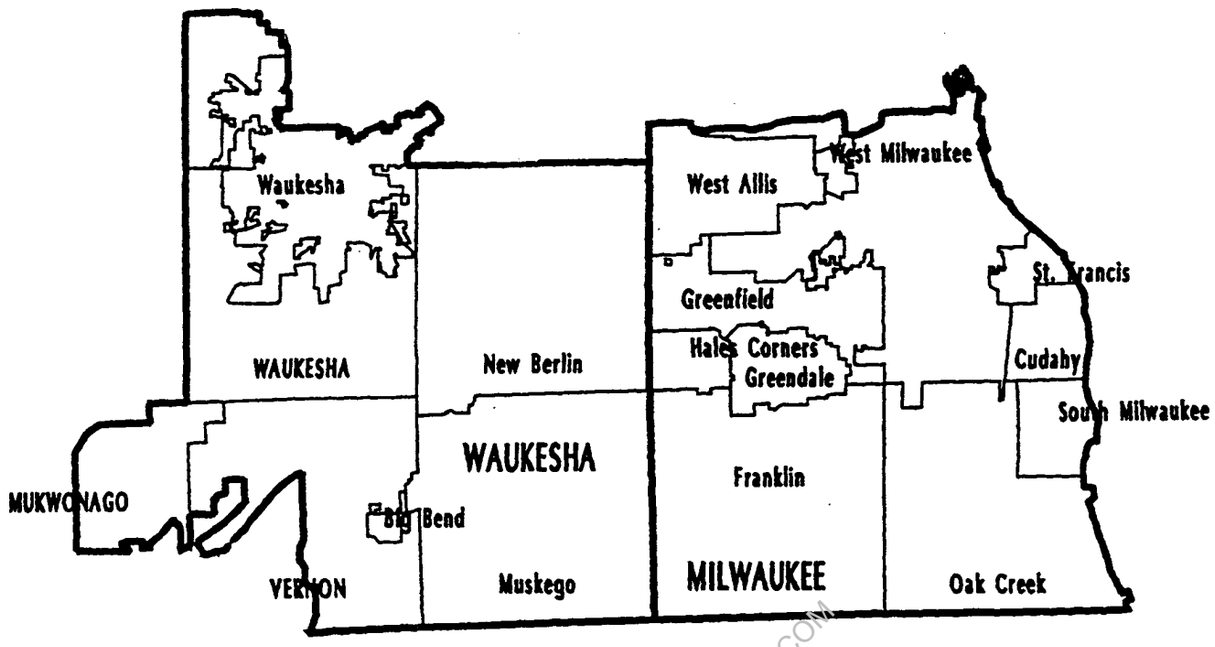


Detail Map: City of WATERLOO, JEFFERSON COUNTY

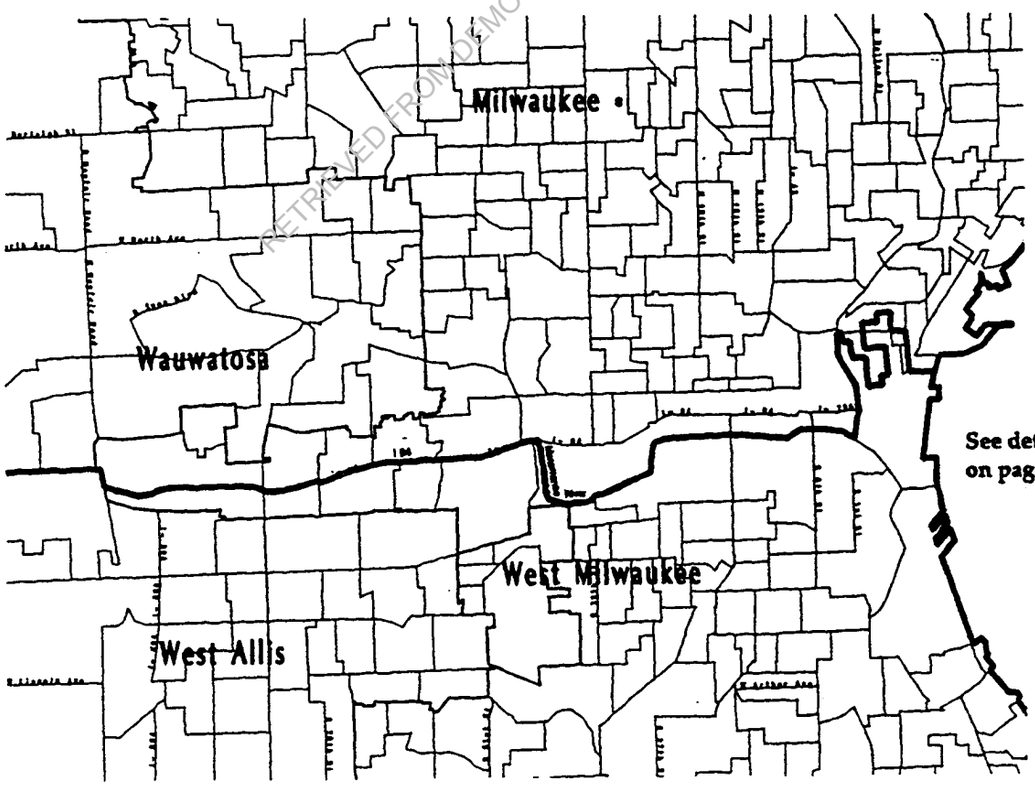


3rd CONGRESSIONAL District



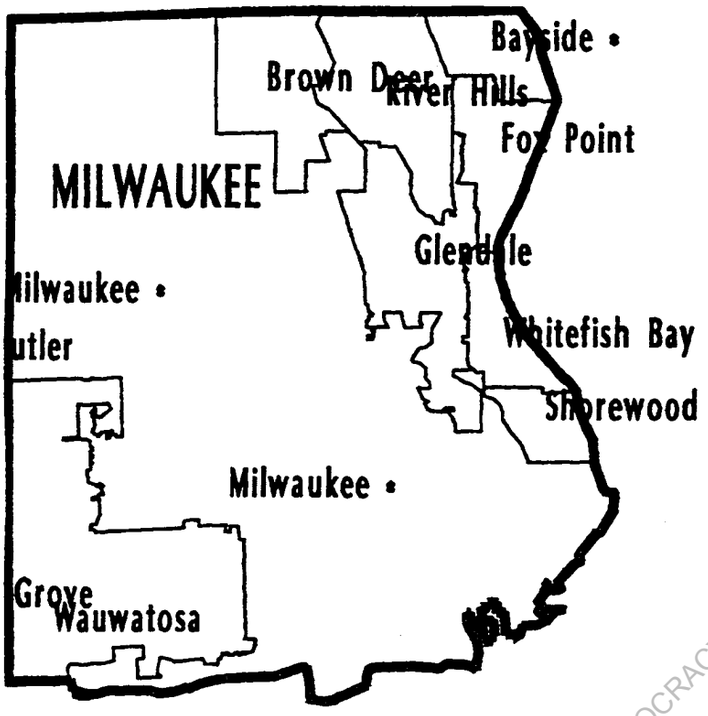


Detail Map: Downtown, MILWAUKEE COUNTY

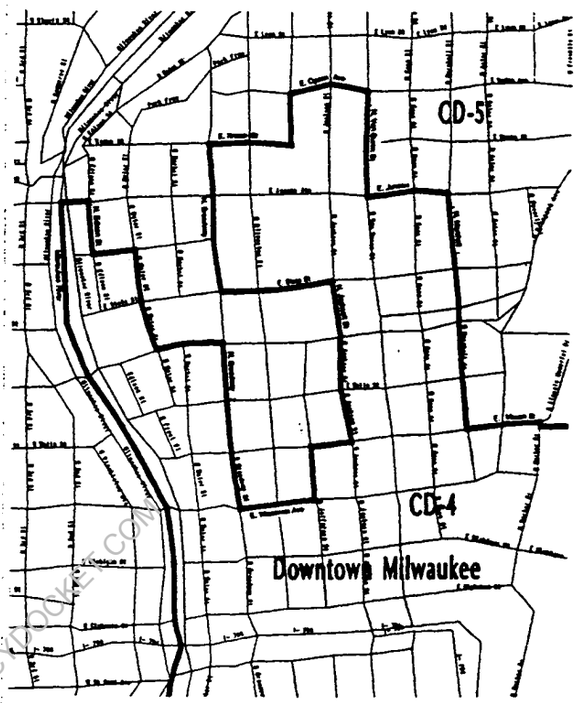


See detail map on page 22.

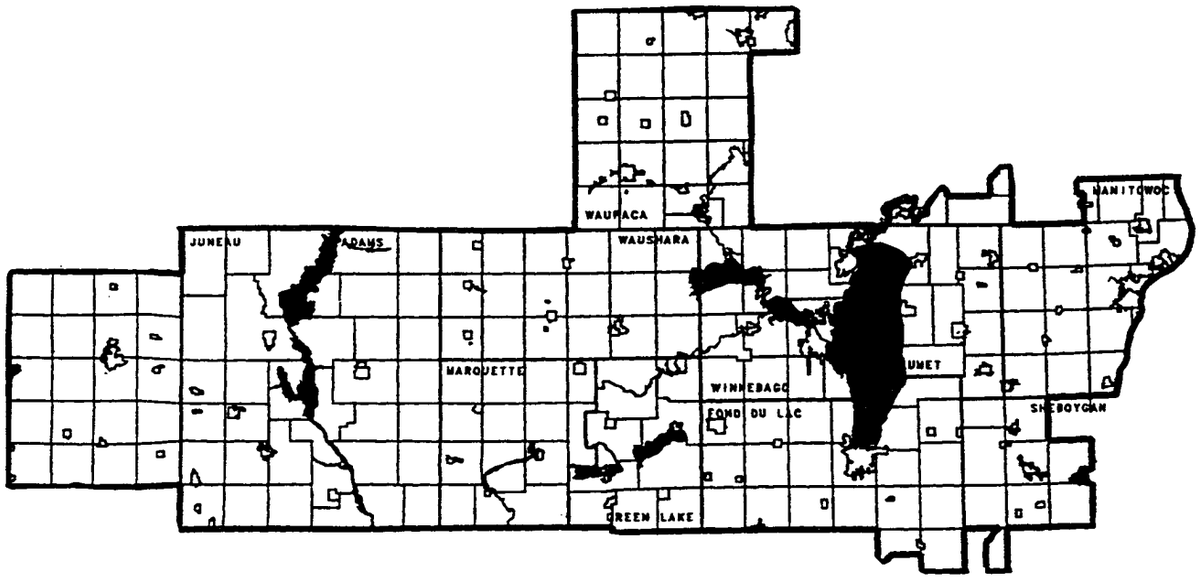
5th CONGRESSIONAL District



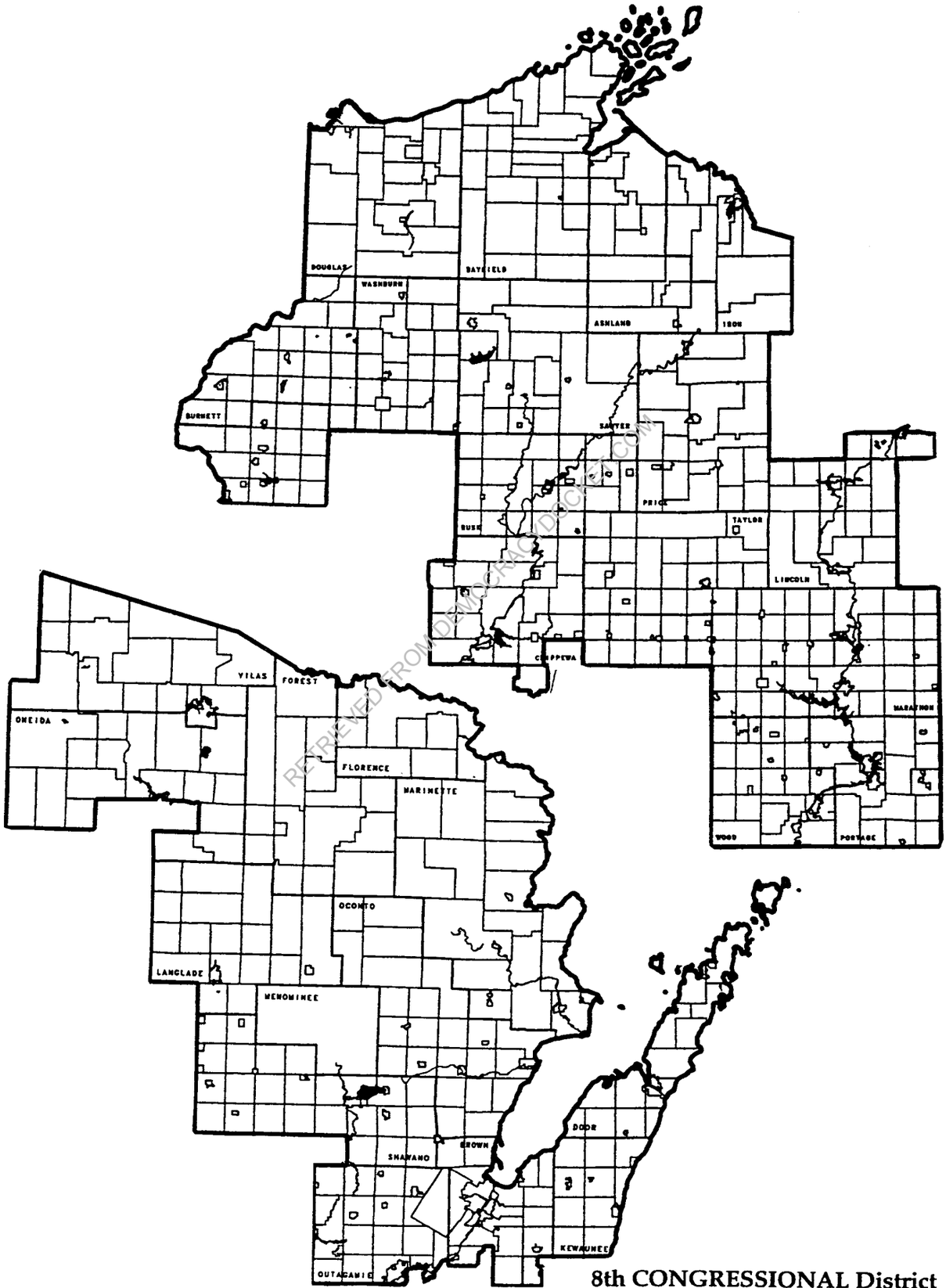
Detail Map: City of MILWAUKEE, MILWAUKEE COUNTY



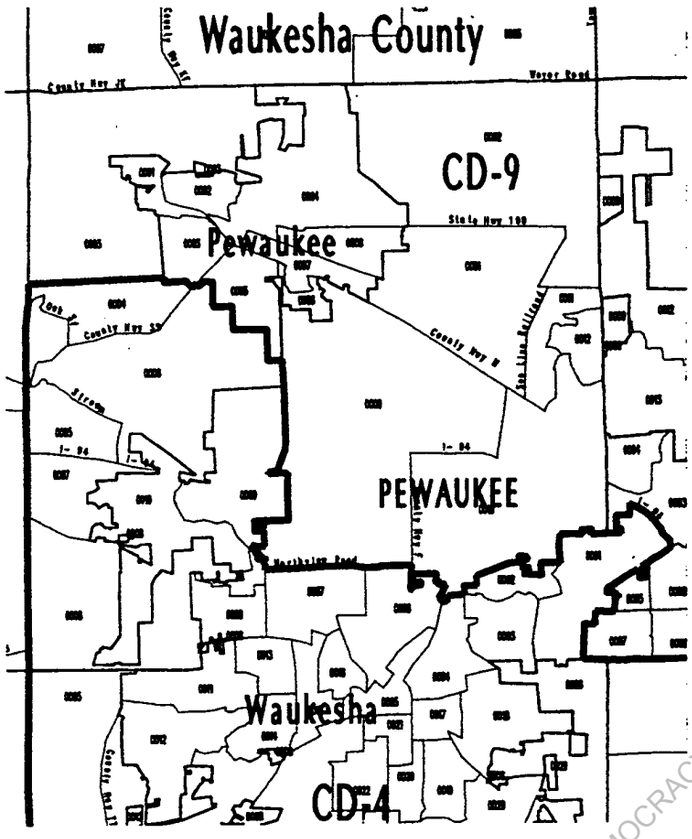
6th CONGRESSIONAL District



7th CONGRESSIONAL District

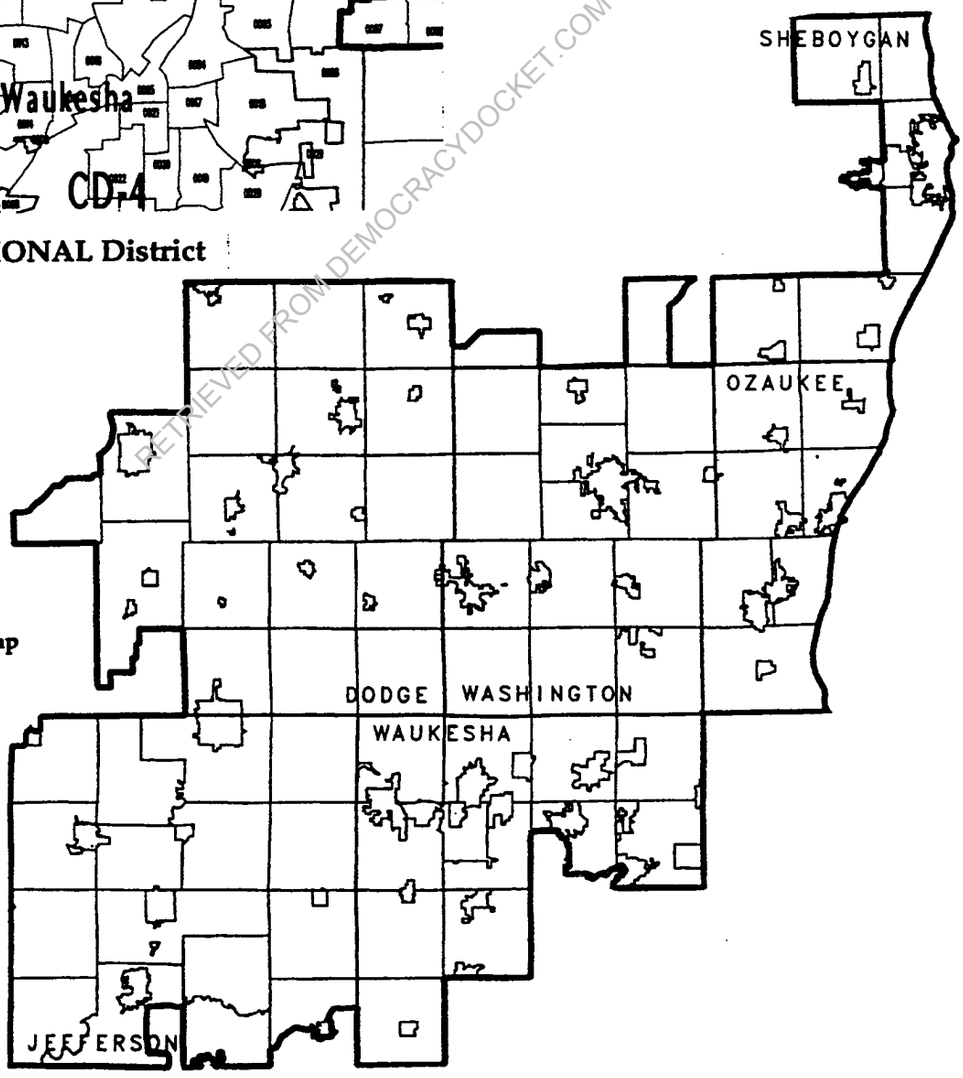


8th CONGRESSIONAL District



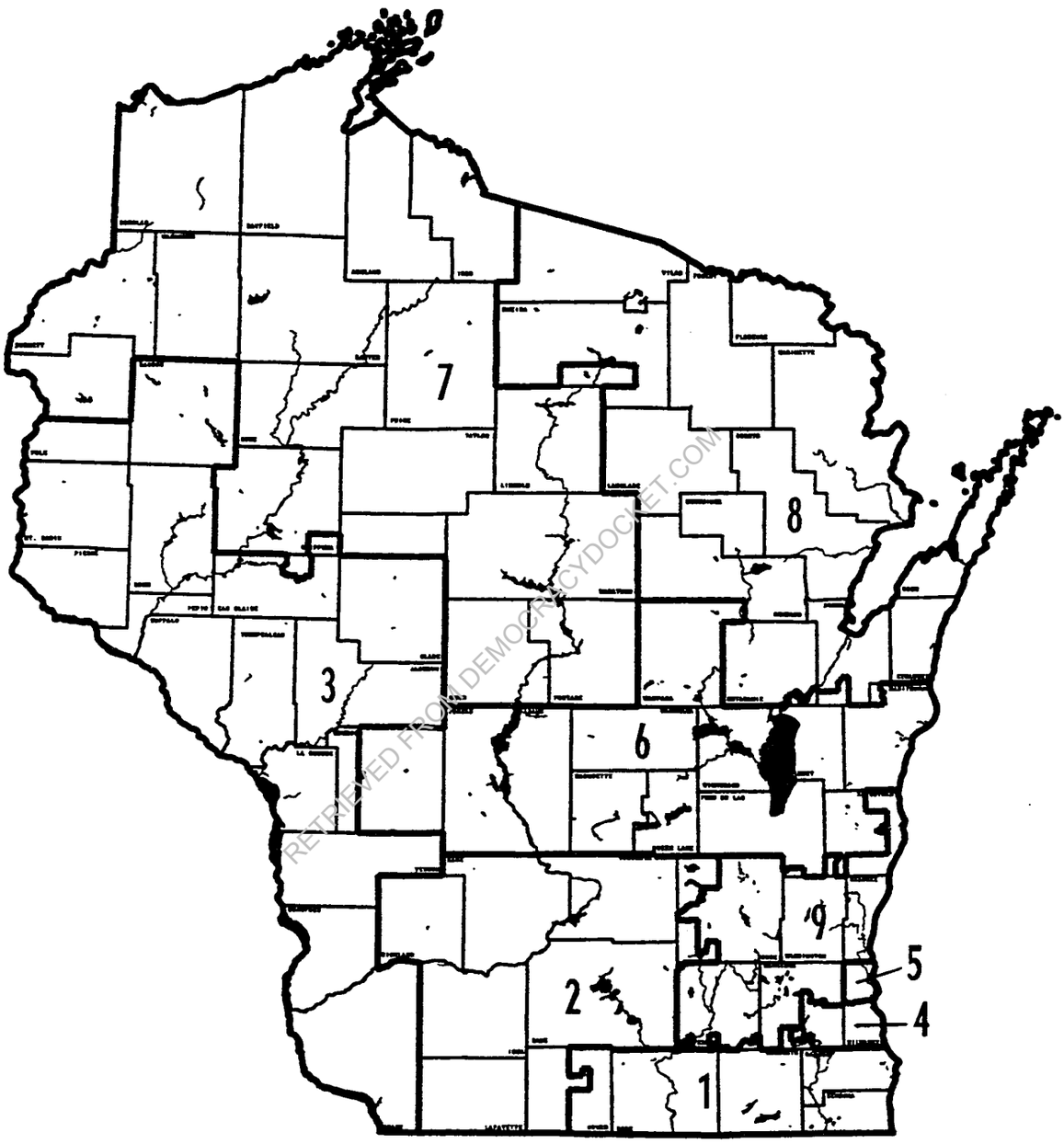
Detail Map: Town of PEWAUKEE, WAUKESHA COUNTY

9th CONGRESSIONAL District



See detail map on page 19.

CONGRESSIONAL DISTRICTS



UNITED STATES DEPARTMENT OF
COMMERCE
NEWS
WASHINGTON, DC 20230

ECONOMICS
AND
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ADMINISTRATION

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

CB

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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-

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

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

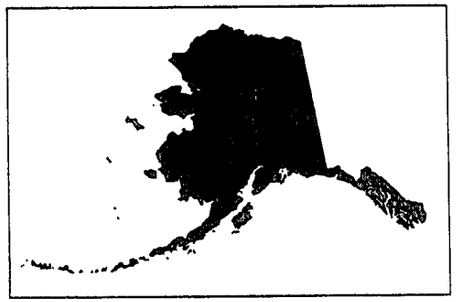

Figure 3. Apportionment of the U.S. House of Representatives for the 108th Congress

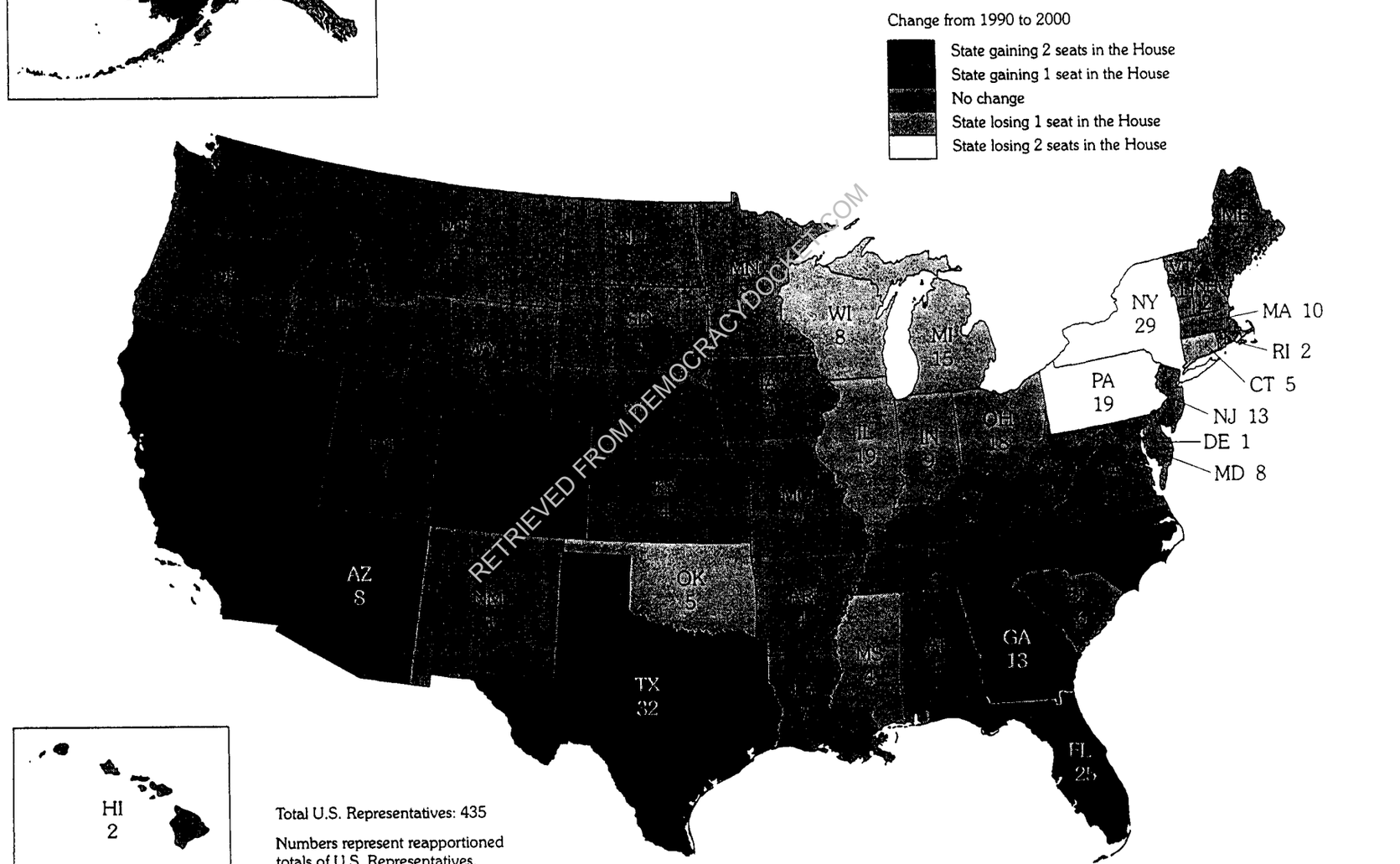

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EXHIBIT 2

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

CIVIL DISTRICT COURT

PARISH OF ORLEANS, STATE OF LOUISIANA

NUMBER 2021-03538 **DIVISION C – SECTION 10**

CAMERON ENGLISH, ET AL.

VERUS

R. KYLE ARDOIN, IN HIS OFFICIAL CAPACITY AS LOUISIANA SECRETARY OF STATE

****

REPLY MEMORANDUM IN SUPPORT OF EXCEPTIONS ON BEHALF OF THE SECRETARY OF STATE

MAY IT PLEASE THE COURT:

The Court cannot exercise its jurisdiction over a mere possibility. The announced intention of a government official that he will take action that presents an immediate threat of irreparable injury in some circumstances may form the basis for injunctive relief. No allegation in the present petition, though, describes a threat of conduct or action, much less conduct or action that can be described as immediate or imminent. Nor do the cases cited in plaintiffs' opposition memorandum deal with Louisiana law's requirements for stating a cause of action or the right to assert such a cause.

Then there is the question of how the case can proceed. It is impossible to assert defenses against the prospect of an event that has not occurred, may never occur, or may not occur in the way the plaintiffs guess that it might. Discovery cannot be conducted. Interrogatories cannot be directed or answered on speculation. The defendants can hardly depose a witness to ask them what might transpire in the next 8 to 10 months. There is no way to determine whether districts that have not been proposed or devised contain an equal number of citizens and/or voters. The parties have no way to address whether traditional reapportionment factors have been taken into account since the reapportionment of districts has not occurred. The Court cannot rule on whether the Constitution has been violated or Section 2 of the Voting Rights Act has been breached. This suit is the equivalent of contesting the terms of a will before the testator's death.

The political branches of government will develop a Congressional reapportionment plan as required by the Constitution. The plaintiffs may have a grievance once a plan is developed, and their suit may have an object that will serve as the basis of a cause of action. However, the reapportionment plan will be develop in Baton Rouge, the State Capital designated by the Louisiana Constitution, and any suit contesting the plan must be filed where the State government does its business. La. Const. art. XII, § 1. The petition put before this Court does not assert a claim or cause of action over which the Court may exercise its jurisdiction.

The suit should be dismissed.

Respectfully submitted,

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And by:

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Counsel for the Secretary of State

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing Memorandum has on this date been served upon all known counsel of record by electronic mail at the email address provided.

Baton Rouge, Louisiana, this 16th day of August, 2021.

Jeffrey M. Wale

CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

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

PLAINTIFFS' AMENDED NOTICE OF SUPPLEMENTAL AUTHORITY

On September 17, 2021, Plaintiffs filed a Notice of Supplemental Authority, which included outdated contact information in the signature block for some of Plaintiffs' counsel who recently switched law firms from Perkins Coie LLP to the newly formed Elias Law Group LLP. Plaintiffs now file this Amended Notice of Supplemental Authority with the corrected contact information for these counsel. In all other respects, the Notice is unchanged, and Plaintiffs respectfully represent as follows:

In their Memorandum in Opposition to Defendant's Exceptions ("Opp.") and at the related hearing on August 20, 2021, Plaintiffs argued that their challenge to Louisiana's malapportioned congressional districts is justiciable and ripe. In support of those arguments, Plaintiffs pointed to the regularity with which other courts have adjudicated comparable cases, noting in particular that Minnesota courts already accepted jurisdiction of a similar redistricting impasse case earlier this summer. *See, e.g.*, Opp. 2 n.1, 10–11.

Yesterday, a three-judge panel in Wisconsin joined the growing chorus. *See* Opinion and Order, *Hunter v. Bostelmann*, No. 21-cv-512-jdp-ajs-eec (W.D. Wis. Sept. 16, 2021), ECF No. 60 (attached as Ex. A). There, the panel rejected arguments that the plaintiffs' claims were nonjusticiable and premature, explaining that "the malapportionment complaint presented a case or controversy that the court should retain" and "plaintiffs properly alleged a sufficient injury by stating that their votes would be diluted by unconstitutional maps." *Id.* at 7 (citing *Arrington v. Elections Bd.*, 173 F. Supp. 2d 856 (E.D. Wis. 2001)). Given "the urgent requirement of prompt action," the court recognized that it "must prepare now to resolve the redistricting dispute, should the state fail to establish new maps in time for the 2022 elections." *Id.* at 8.

Plaintiffs respectfully request that this Court take notice of the *Hunter* decision and deny Defendant's Exceptions for the same reasons.

Dated: September 17, 2021

Respectfully submitted,

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*Admitted *Pro Hac Vice*

/s/ Darrel J. Papillion
Darrel J. Papillion (Bar Roll No. 23243)
Renee Chabert Crasto (Bar Roll No. 31657)
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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 20th day of September, 2021.

/s/ Darrel J. Papillion
Darrel J. Papillion

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

LISA HUNTER, JACOB ZABEL, JENNIFER OH, JOHN PERSA, GERALDINE SCHERTZ, and KATHLEEN QUALHEIM,

Plaintiffs,

v.

MARGE BOSTELMANN, JULIE M. GLANCEY, ANN S. JACOBS, DEAN KNUDSON, ROBERT F. SPINDELL, JR., and MARK L. THOMSEN, in their official capacities as members of the Wisconsin Elections Commission,

Defendants,

and

WISCONSIN LEGISLATURE,

Intervenor-Defendant.

OPINION and ORDER

21-cv-512-jdp-ajs-eec

BLACK LEADERS ORGANIZING FOR COMMUNITIES, VOCES DE LA FRONTERA, the LEAGUE OF WOMEN VOTERS OF WISCONSIN, CINDY FALLONA, LAUREN STEPHENSON, and REBECCA ALWIN,

Plaintiffs,

v.

MARGE BOSTELMANN, JULIE M. GLANCEY, ANN S. JACOBS, DEAN KNUDSON, ROBERT F. SPINDELL, JR., and MARK L. THOMSEN, in their official capacities as members of the Wisconsin Elections Commission, and MEAGAN WOLFE, in her official capacity as the administrator of the Wisconsin Elections Commission,

Defendants.

OPINION and ORDER

21-cv-534-jdp-ajs-eec

EXHIBIT A

This panel has been assigned two cases about the malapportionment of Wisconsin's state legislative and congressional districts following the 2020 census. Case No. 21-cv-512 is brought by a group of individuals that the court will call "the Hunter plaintiffs" because the first named plaintiff is Lisa Hunter. Case No. 21-cv-534 is brought by a number of individuals and organizations that the court will call "the BLOC plaintiffs" because the first named plaintiff is Black Leaders Organizing for Communities. There are several motions pending in the two cases that the court will address in this opinion.

A. Motions for intervention in Case No. 21-cv-512

Three sets of proposed intervenors seek to join the '512 case: (1) other Wisconsin residents bringing malapportionment claims who have also filed a petition for original action in the Wisconsin Supreme Court (the Johnson intervenors), Dkt. 21; (2) Wisconsin members of the United States House of Representatives who say that they are probable candidates to run again in 2022 (the Congressmen), Dkt. 30; and (3) Tony Evers, the Wisconsin governor, Dkt. 50.[1] The court has already granted the Wisconsin Legislature's motion to intervene in the '512 case. Dkt. 24, at 2–3.

As the court has already discussed with regard to the Legislature, permissive intervention under Rule 24(b) is appropriate if the motion is timely and the proposed intervenor "has a claim or defense that shares with the main action a common question of law or fact." Rule 24(b)(1)(B). The decision whether to allow intervention is committed to the discretion of the court, *Sokaogon Chippewa Cmty. v. Babbitt*, 214 F.3d 941, 949 (7th Cir. 2000), but "the court must consider whether the intervention will unduly delay or prejudice the

[1] All docket citations are to entries in Case No. 21-cv-512 unless otherwise noted.

adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3); *see also Planned Parenthood of Wisconsin, Inc. v. Kaul*, 942 F.3d 793, 803 (7th Cir. 2019).

The Johnson intervenors' proposed complaint shares questions of law and fact with the Hunter plaintiffs' complaint because they raise virtually identical claims regarding legislative and congressional malapportionment. That itself isn't dispositive because every Wisconsin voter who lives in one of the now-overpopulated districts holds the same interest as the Hunter plaintiffs. But the Johnson intervenors' motion to intervene is timely, unopposed, and they have an additional interest that militates in favor of their intervention: they've filed a petition for original action in the Wisconsin Supreme Court and they seek a stay of this federal action pending resolution by either the state legislative process or court proceedings. *Johnson v. Wisconsin Elections Comm'n*, No. 2021AP1450; *see also* Dkt. 21-2 (proposed motion to stay). The Johnson intervenors pledge to work within whatever schedule the court adopts, so the court sees no disadvantage to the other parties. The court will grant the Johnson intervenors' motion to intervene.

The Congressmen's motion to intervene is also timely, but unlike the Johnson intervenors' motion, it is opposed. The Hunter plaintiffs argue that the Congressmen do not have any special entitlement to control the drawing of their districts. That's a fair point, but as the Congressmen point out, other courts have concluded that incumbents and prospective candidates have a substantial interest in the redistricting process. *See, e.g.*, *League of Women Voters of Michigan v. Johnson*, 902 F.3d 572, 579 (6th Cir. 2018) (reversing denial of permissive intervention for members of Congress, stating that "the contours of the maps affect the Congressmen directly and substantially by determining which constituents the Congressmen must court for votes and represent in the legislature."); *Baldus v. Members of Wisconsin Gov't*

Accountability Bd., No. 11-CV-562, 2011 WL 5834275, at *2 (E.D. Wis. Nov. 21, 2011) ("intervenors are much more likely to run for congressional election and thus have a substantial interest in establishing the boundaries of their congressional districts").

The Hunter plaintiffs attempt to distinguish *Baldus* and the Michigan case because those involved challenges to already-drawn maps as opposed to the required decennial redistricting at issue in this case. The Hunter plaintiffs say that representatives elected in 2020 would know their districts could be redrawn before the 2022 election. The court is not persuaded that this distinction is material: in each of these scenarios a legislator faces potential revisions to his or her district boundaries before the next election. And as the Hunter plaintiffs concede, redistricting courts may consider a proposed map's treatment of incumbents. *Bush v. Vera*, 517 U.S. 952, 964 (1996) ("And we have recognized incumbency protection, at least in the limited form of avoiding contests between incumbents, as a legitimate state goal." (internal quotation marks omitted)). The last time a federal panel considered congressional redistricting—following the 2000 census—the court allowed members of Congress to intervene, citing *Bush*. *Arrington v. Elections Bd.*, No. 01-CV-121, slip op. at 4 (E.D. Wis. Feb. 13, 2002). Based on these authorities, permissive intervention is appropriate for the Congressmen.

Briefing has not been completed on Governor Evers's motion to intervene, but given the addition of the other intervenors, particularly the legislature, there is no principled reason to deny Evers's motion. Evers can make the same case for intervention as the Legislature, with whom he shares responsibility for enacting a state law establishing new districts in light of the 2020 Census.[2] The court will grant Evers's motion for intervention.

[2] Evers has taken the initiative to establish a "People's Maps Commission," to produce district maps that he is apparently prepared to support. Executive Order No. 66, Relating to Creating the People's Maps Commission (Jan. 27, 2020), https://evers.wi.gov/Documents/EO/EO066-

Now that that court has granted these motions to intervene, the existing parties represent the spectrum of legitimate interests in Wisconsin's decennial redistricting. This case is already complicated, especially in light of the time available to resolve it. So any further requests to intervene will require a particularly compelling showing.

B. Proposed amended complaint in Case No. 21-cv-534

The BLOC plaintiffs have filed a proposed amended complaint adding a claim under Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, and eight individual plaintiffs who bring that claim, alleging that they live in Wisconsin Assembly districts that have been racially gerrymandered. Dkt. 22-1 in the '534 case. They acknowledge that leave of court is required because they seek to add new plaintiffs. *Williams v. United States Postal Serv.*, 873 F.2d 1069, 1072 n.2 (7th Cir. 1989). They note that they contacted the Elections Commission defendants (the only defendants of record at this point in that case) and that defendants do not oppose the motion. Dkt. 22 in the '534 case, at 4.

Leave to amend should be freely given when justice so requires. *Id.* at 1072; *see also* Fed. R. Civ. P. 15(a)(2). The court will grant the BLOC plaintiffs leave to amend the complaint. The amendment expands the substantive scope of the case. But their request comes early in the proceedings, and the Voting Rights Act claim involves race-based districting issues that are integral to the drawing of statewide maps. Including those claims in this case would be more efficient than entertaining them in a separate case.

PeoplesMapsCommission.pdf.

C. Consolidation

The court has already expressed its inclination to consolidate the two cases, and the parties were given a chance to state their positions on consolidation. Dkt. 24, at 3. The court extended this deadline after the BLOC plaintiffs sought to amend their complaint. Dkt. 46. Even after this extension, no party opposes consolidation. The court concludes that it is appropriate to consolidate the two actions for all purposes, to provide the most efficient resolution of the related claims raised by the parties in the two cases.

The Legislature has filed a motion to intervene in the '534 case, Dkt. 10 in that case. Because the court is consolidating the two cases, the Legislature's motion will be denied as moot, with the understanding that all the parties are now full participants in both cases.

D. Motions to dismiss

The Legislature has moved to dismiss the '512 case, contending that the lawsuit is not ripe and that the Hunter plaintiffs lack standing; it says that the Hunter plaintiffs' injuries are purely speculative because the legislative redistricting process has not yet had a chance to fail. Dkt. 9-2. In making these arguments the Legislature relies heavily on *Growe v. Emison*, a case in which the Supreme Court held that a federal three-judge panel had erred in not deferring to the Minnesota courts' redistricting efforts and by enjoining the state courts from implementing their own plans. 507 U.S. 25, 37 (1993) ("What occurred here was not a last-minute federal-court rescue of the Minnesota electoral process, but a race to beat the [state courts'] Special Redistricting Panel to the finish line."). The Congressmen filed a similar proposed motion with their motion to intervene, Dkt. 30-2, and the Johnson intervenors filed a similar motion to stay proceedings along with their motion for intervention, Dkt. 21-2.

This court understands the state government's primacy in redistricting its legislative and congressional maps. *Id.* at 34 ("'We say once again what has been said on many occasions: reapportionment is primarily the duty and responsibility of the State through its legislature or other body, rather than of a federal court.'" (quoting *Chapman v. Meier*, 420 U.S. 1, 27 (1975))). But the *Growe* Court did not conclude that the federal case was unripe or that the plaintiffs lacked standing. And this panel is not impeding or superseding any concurrent state redistricting process, steps that that might run afoul of *Growe*.

This court will follow the approach taken by the federal panel handling Wisconsin redistricting after the 2000 census, *Arrington v. Elections Bd.*, 173 F. Supp. 2d 856 (E.D. Wis. 2001). That panel considered the same ripeness and standing concerns at issue here and concluded that the malapportionment complaint presented a case or controversy that the court should retain. *Id.* at 860–67. In particular, the panel concluded that plaintiffs properly alleged a sufficient injury by stating that their votes would be diluted by unconstitutional maps. *Id.* at 862–64. To avoid interfering with state processes, the panel concluded that it was appropriate to stay proceedings "until the appropriate state bodies have attempted—and failed—to do so on their own." *Id.* at 867.

The motions to dismiss have not been fully briefed, but the court already has three briefs advocating for dismissal or stay, by the Legislature, Dkt. 9-3, the Congressmen, Dkt. 30-3, and the Johnson intervenors, Dkt. 21-3. These parties argue that the panel should forestall from any action until the state court system hears the case. But there is yet no indication that the state courts will entertain redistricting in the face of an impasse between the legislature and the governor. Federal panels—not state courts—have intervened in the last three redistricting cycles in which Wisconsin has had a divided government. *See Baumgart v.*

Wendelberger, Nos. 01-C-0121, 02-C-0366, 2002 WL 34127471 (E.D. Wis. May 30, 2002); *Prosser v. Elections Bd.*, 793 F. Supp. 859 (W.D. Wis. 1992); *Wisconsin State AFL-CIO v. Elections Bd.*, 543 F. Supp. 630 (E.D. Wis. 1982). Given this historical pattern, and the urgent requirement of prompt action, the panel will deny the Legislature's motion to dismiss. The court and the parties must prepare now to resolve the redistricting dispute, should the state fail to establish new maps in time for the 2022 elections.[3]

The motions for an indefinite stay will be denied, but the issue of a more limited stay will be considered at the upcoming status conference. *See* Dkt. 58. The court is inclined to follow the *Arrington* approach by imposing a limited stay to give the legislative process, and perhaps the state courts, the first opportunity to enact new maps. But the court will set a schedule that will allow for the timely resolution of the case should the state process languish or fail. The parties' joint submission on the schedule, Dkt. 54, was unhelpful, but the court will take the parties' input on the schedule, given this general framework, at the status conference.

ORDER

IT IS ORDERED that:

1. The motion to intervene filed by Billie Johnson, Eric O'Keefe, Ed Perkins, and Ronald Zahn, Dkt. 21 in Case No. 21-cv-512, is GRANTED.

[3] The movants contend that the current redistricting cycle will diverge from the historical pattern because the Johnson intervenors have filed a petition for original action in the Wisconsin Supreme Court. If the Wisconsin Supreme Court grants the petition, the parties should inform the court and the court will consider the Supreme Court's action in setting the schedule.

2. The motion to intervene filed by Scott Fitzgerald, Mike Gallagher, Glenn Grothman, Bryan Steil, and Tom Tiffany, Dkt. 30 in Case No. 21-cv-512, is GRANTED.

3. The motion to intervene filed by Tony Evers, Dkt. 50 in Case No. 21-cv-512, is GRANTED.

4. The BLOC plaintiffs' motion for leave to amend their complaint, Dkt. 22 in Case No. 21-cv-534, is GRANTED.

5. Case No. 21-cv-534 is CONSOLIDATED with Case No. 21-cv-512 for all purposes. Going forward, all filings for either case should be filed in Case No. 21-cv-512.

6. The Legislature's motion to intervene in Case No. 21-cv-534, Dkt. 10 in the '534 case, is DENIED as moot.

7. The Legislature's motions to dismiss, Dkt. 9-2 in Case No. 21-cv-512 and Dkt. 11-2 in Case No. 21-cv-534, are DENIED.

8. The motion to dismiss filed by Scott Fitzgerald, Mike Gallagher, Glenn Grothman, Bryan Steil, and Tom Tiffany, Dkt. 30-2 in Case No. 21-cv-512, is DENIED.

9. The motion to stay filed by Billie Johnson, Eric O'Keefe, Ed Perkins, and Ronald Zahn, Dkt. 21-2 in Case No. 21-cv-512, is DENIED.

Entered September 16, 2021.

BY THE COURT:

/s/_____
JAMES D. PETERSON
District Judge

/s/_____
AMY J. ST. EVE
Circuit Judge

/s/_____
EDMOND E. CHANG
District Judge

CIVIL DISTRICT COURT

PARISH OF ORLEANS, STATE OF LOUISIANA

NUMBER 2021-03538 **DIVISION C – SECTION 10**

RYAN BERNI, ET AL.

VERUS

R. KYLE ARDOIN, IN HIS OFFICIAL CAPACITY AS LOUISIANA SECRETARY OF STATE

****

RESPONSE TO PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY AND REQUEST FOR JUDICIAL NOTICE

NOW INTO COURT, through undersigned counsel, solely for the purposes of his pending exceptions, comes Defendant, R. Kyle Ardoin, in his official capacity as the Secretary of State for the State of Louisiana, to respond to Plaintiffs' Notice of Supplemental Authority and to submit a request for Judicial Notice.

Plaintiffs' Notice of Supplemental Authority

On or about September 17, 2021, Plaintiffs filed a "Notice of Supplemental Authority", inviting the Court's attention to a federal case from Wisconsin, *Hunter v. Bostelmann*, No. 21-cv-512-jdp-ajs-eec (W.D. Wis. Sept. 16, 2021). The Secretary of State respectfully excepts to the Court's consideration of such supplemental authority in this matter, for three distinct reasons.

First, the complaint in *Hunter v. Bostelman* was made pursuant to the *Wisconsin* Constitution:

> In Wisconsin, legislative and congressional district plans ordinarily are enacted through legislation, which requires the consent of both legislative chambers and the Governor (unless both legislative chambers override the Governor's veto by a two-third vote). See State ex rel. Reynolds v. Zimmerman, 22 Wis. 2d 544, 553-59, 126 N.W.2d 551, 557-59 (1964); **Wis. Const. art. V, § 10(2)(a).**

Hunter v. Bostelmann, No. 21-cv-512-jdp-ajs-eec (W.D. Wis. Sept. 16, 2021), ECF No. 1. (Emphasis added). This Court is governed by the Louisiana Constitution and Louisiana law. As such, a Wisconsin case from a federal court has no influence here.

Second, the Wisconsin case cited by Plaintiffs pointed to the historical cases of deadlock in Wisconsin in past redistricting cycles, where federal courts had to intercede:

> Federal panels—not state courts—have intervened in the last three redistricting cycles in which Wisconsin has had a divided government. *See Baumgart v. Wendelberger*, Nos. 01-C-0121, 02-C-0366, 2002 WL 34127471 (E.D. Wis. May

30, 2002); *Prosser v. Elections Bd.*, 793 F. Supp. 859 (W.D. Wis. 1992); *Wisconsin State AFL-CIO v. Elections Bd.*, 543 F. Supp. 630 (E.D. Wis. 1982).

Hunter v. Bostelmann, No. 21-cv-512-jdp-ajs-eec (W.D. Wis. Sept. 16, 2021), ECF No. 60. Plaintiffs here have not cited a single instance of any deadlock in Louisiana regarding redistricting. Nor have Plaintiffs cited to a history of court intervention, be it state or federal, in the Congressional redistricting process.

Third, the case cited to by Plaintiffs is a *federal* case, not a *state* case. As the Wisconsin case points out, *federal* courts have intervened to solve Wisconsin's redistricting woes, not *state* courts. Authority from the Wisconsin federal court relying upon Wisconsin clearly has no application here. Even to the extent the Wisconsin case may discuss federal constitutional provisions, "lower federal court decisions do not bind this court's interpretations of federal constitutional law." *State v. Penns*, 99-2916 (La. 12/20/99); 758 So.2d 776, 777. The case cited by the plaintiffs serves as no authority at all in this Court, supplemental or otherwise.

Plaintiffs here are attempting to rewrite Louisiana's constitution, and completely bypass the legislative process. Plaintiffs are without a right of action and the court is without jurisdiction to address such a matter.

There is no indication that the legislature does not plan to act and redraw the congressional districts. In fact, there was a committee meeting held on September 17, 2021, where redistricting was discussed and guidelines were adopted. https://house.louisiana.gov/H_Video/VideoArchivePlayer?v=house/2021/sep/0917_21_HG_Joint. The Legislature is well aware that they have to act before December 31, 2022, pursuant to U.S. Const. art I. and applicable federal laws. *Id.* Plaintiffs' suit is nothing more than a hypothetical scenario that the plaintiffs are setting forth. It is improper.

As an analogy, Plaintiffs' claims may be treated like a failure to exhaust administrative remedy, which is a jurisdictional issue. Plaintiffs cannot bypass the legislative process and go straight to the courts to remedy a problem that has not yet occurred. This matter should be dismissed.

Request for Judicial Notice

Pursuant to La. C.E. art. 201, the Secretary of State respectfully requests this Court take judicial notice of the Legislature's actions in commencing the redistricting process in Louisiana. On September 17, 2021, a Joint Committee meeting of the House and Governmental Affairs

Committee and Senate and Governmental Affairs Committee met to begin the process of redistricting. The video of the meeting, and associated documents and presentations, may be found on the official legislative website: https://redist.legis.la.gov/default_Meetings. The Secretary of State maintains that this information will be helpful in aiding the Court's determination that the State is proceeding with redistricting appropriately and pursuant to Louisiana law.

Respectfully submitted,

Celia R. Cangelosi
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Facsimile: (225) 231-1456
Email: celiacan@bellsouth.net

And by:

JEFF LANDRY
ATTORNEY GENERAL

BY:
Carey T. Jones (LSBA #07474)
Jeffrey M. Wale (LSBA #36070)
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Counsel for the Secretary of State

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing Memorandum has on this date been served upon all known counsel of record by electronic mail at the email address provided.

New Orleans, Louisiana, this 22 day of September, 2021.

Lauryn Sudduth
Lauryn A. Sudduth

Second Set of Exceptions

Civil District Court for the Parish of Orleans
STATE OF LOUISIANA

No: 2021 - 03538

Division/Section: C-10

ENGLISH, CAMERON
versus
ARDOIN, KYLE

Date Case Filed: 4/26/2021

NOTICE OF SIGNING OF JUDGMENT

TO:

Darrel J Papillion Esq 23243
12345 PERKINS ROAD
BUILDING ONE
Baton Rouge, LA 70810

Celia R Cangelosi Esq 12140
5551 Corporate Blvd.
Suite 101
Baton Rouge, LA 70808

Jeffrey Wale
P.O. Box 94005
Baton Rouge, LA 70802

Lauryn Sudduth
P.O. Box 94005
Baton Rouge, LA 70802

In accordance with Article 1913 C.C.P., you are hereby notified that Judgment In the above entitled and numbered cause was signed on December 10, 2021

New Orleans, Louisiana
December 10, 2021

MINUTE CLERK

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 2021-3538 **DIVISION "C"** **SECTION 10**

RYAN BERNI, ET AL.

VERSUS

R. KYLE ARDOIN, IN HIS OFFICIAL CAPACITY AS LOUISIANA SECRETARY OF STATE

JUDGMENT

This matter was set for hearing on December 10, 2021 on Defendant's, R. Kyle Ardoin, in his official capacity as the Secretary of State for the State of Louisiana, Declinatory and Peremptory Exceptions to Plaintiffs' *First Amended and Supplemental Petition for Injunctive and Declaratory Relief*. The parties waived oral argument and the matter was submitted on written briefs.

After considering the pleadings, memoranda, and the law:

IT IS ORDERED, ADJUDGED AND DECREED that Defendant's declinatory exception of Improper Venue is hereby **OVERRULED**.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant's declinatory exception of Lack of Subject Matter Jurisdiction is hereby **OVERRULED**.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant's peremptory exception of No Cause of Action is hereby **OVERRULED**.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant's peremptory exception of No Right of Action is hereby **OVERRULED**.

JUDGMENT READ, RENDERED, AND SIGNED in New Orleans, Louisiana, this 10th day of December, 2021.

JUDGE SIDNEY H. CATES, IV

Honorable Sidney H. Cates IV

Section 10 - Division C

GENERAL DOCKET FOR 12/10/2021

2020 - 06115	**TYPE: MOTOR VEHICLE PRODUCT LIABILITY**		**Position: 0**
SUAREZ, LUIS ANTHONY		Leo Caillier	(504) 717-5402
versus			
SAFE AUTO INSURANCE COMPANY ETAL		Paul M Donovan	(504) 454-6808
RSJ	**Summary Judgment.**		Order Signed: 09/24/2021

Mover: Christian A Shofstahl (985) 674-1801

Rule Remarks: == ZOOM = ay/ MOTION FOR SUMMARY JUDGMENT by Safe Auto - 9:30 a.m.

Disp.: Granted Disp. Date: 12/10/2021

Disposition Remarks: Judgment is a final judgment, granting Safe Auto the right to terminate defense.

2021 - 03538	**TYPE: DECLARATORY JUDGMENT**		**Position: 0**
ENGLISH, CAMERON		Carey T Jones Darrel J Papillion	(225) 975-2410 (225) 236-3636
versus			
ARDOIN, KYLE		Celia R Cangelosi	(225) 231-1453
RIV	**Exception of Improper Venue**		Order Signed: 10/28/2021

Mover: Celia R Cangelosi (225) 231-1453

Rule Remarks: ad/@10:30am via zoom -- Exception of Improper Venue to Plaintiffs' First Amended and Supplemental Petition filed by Sec. of State, Kyle Ardoin

Disp.: Overruled Disp. Date: 12/10/2021

RLJ	**Exception of Lack of Jurisdiction**	Order Signed: 10/28/2021

Mover: Celia R Cangelosi (225) 231-1453

Rule Remarks: ad/@10:30am via zoom -- Exception of Lack of Subject Matter Jurisdiction of Plaintiffs' First Amended and Supplemental Petition filed by the Sec. of State, Kyle Adoin

Disp.: Overruled Disp. Date: 12/10/2021

NCA	**Exception of No Cause of Action**	Order Signed: 10/28/2021

Mover: Celia R Cangelosi (225) 231-1453

Rule Remarks: ad/@10:30am via zoom -- Exception of No Cause of Action of Plaintiffs' First Amended and Supplemental Petition filed by the Sec. of State, Kyle Adoin

Disp.: Overruled Disp. Date: 12/10/2021

NRA	**Exception of No Right of Action**	Order Signed: 10/28/2021

Mover: Celia R Cangelosi (225) 231-1453

Rule Remarks: ad/@10:30am via zoom -- Exception of Right of Action of Plaintiffs' First Amended and Supplemental Petition filed by the Sec. of State, Kyle Adoin

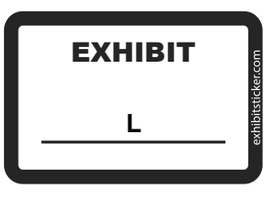
Disp.: Overruled Disp. Date: 12/10/2021

2021 - 04783	**TYPE: DEFAMATION**		**Position: 0**
CALDWELL, JOSEPH		Clarence Roby	(504) 486-7700
versus			
DILLARD UNIVERSITY ON NEW ORLEANS ETAL			
NCA	**Exception of No Cause of Action**		Order Signed: 09/24/2021

Mover: Darren A Patin (504) 836-5986

Rule Remarks: == ZOOM == ay/ PEREMPTORY EXCEPTION OF NO CAUSE OF ACTION (costs) by defs - 10 a.m.

Disp.: Overruled Disp. Date: 12/10/2021



CIVIL DISTRICT COURT

PARISH OF ORLEANS, STATE OF LOUISIANA

NUMBER 2021-03538 **DIVISION C – SECTION 10**

CAMERON ENGLISH, ET AL.

VERUS

R. KYLE ARDOIN, IN HIS OFFICIAL CAPACITY AS LOUISIANA SECRETARY OF STATE

****

SECRETARY OF STATE'S NOTICE OF INTENT TO APPLY FOR SUPERVISORY WRIT AND REQUEST FOR STAY

NOW INTO COURT, through undersigned counsel, comes Kyle R. Ardoin, in his official capacity as Secretary of State of the State of Louisiana, and respectfully submits the Notice of Intent to Apply for Supervisory Writs as follows:

I.

On September 8, 2021, the Secretary of State filed Dilatory and Peremptory Exceptions seeking dismissal of all of the Plaintiffs' claims as set out in Plaintiffs' *First Amended and Supplemental Petition for Injunctive and Declaratory Relief* on the following grounds:

A.

Defendant excepted for lack of Subject Matter Jurisdiction, pursuant to La. Code Civ. Proc. art. 925(A)(6) for lack of a case or controversy between the Defendants and the Plaintiffs.

B.

Defendant further excepted for lack of Subject Matter Jurisdiction because the Plaintiffs' petition the Court to intervene in the political process and substitute the Court's judgment for that of the Legislature in violation of Article II, § 2 of the Louisiana Constitution.

C.

Defendant excepted to improper venue because suits filed against the State, a state agency, officer or employee for conduct arising out of his official duties must be brought in the district court in which the state capitol is located. None of the acts or conduct sought to be prohibited will occur, if they occur, in Orleans Parish making it an impermissible venue for this suit.

VERIFIED
12/13/2021

D.

Defendants further excepted that Plaintiffs have no real and actual interest in the litigation and further lack standing to sue and thus have No Cause of Action because the allegations contained in the Plaintiffs petition are theoretical, speculative and hypothetical requesting relief based upon future events that may or may not occur.

E.

Defendant excepted for no right of action because the Plaintiffs claim that congressional redistricting could potentially cause them injury. Nor can the Plaintiffs obtain injunctive relief against the Secretary of State who has no role in reapportionment and the redistricting of U.S. congressional districts so that the harm or injury that the Plaintiffs think might occur cannot be traced to the Secretary of State, and an injunction against him cannot redress the Plaintiffs' concerns.

II.

On December 10, 2021 the Court signed and issued a Judgment denying the Defendant's exceptions.

III.

Pursuant to Uniform Court of Appeal Rule 4-2, Kyle R. Ardoin, in his official capacity as Secretary of State, gives notice of his intent to apply to the Fourth Circuit Court of Appeal for a writ of supervisory review of the referenced ruling denying the Defendant's exceptions.

IV.

The Secretary of State submits that further proceedings in this matter should be stayed until a final decision and ruling on the writ application is issued on the grounds that a determination of subject matter jurisdiction and venue would render any further judgment herein null and void and without effect. Moreover, this case involves election matters and would interfere with the work of the Louisiana Legislature in conducting its decennial reapportionment and redistricting responsibilities.

V.

The Secretary of State requests that this Court set a return date as provided by law.

VI.

The Secretary of State further requests that the Court stay further proceedings pending a decision and ruling on his application for a writ.

WHEREFORE, Kyle R. Ardoin, in his official capacity as Secretary of State, prays:

I. That with respect to the Court's Judgment of December 10, 2021 denying his exceptions, the Court set a return date by which the Secretary of State shall file a writ application, and,

II. That the Court order further proceedings stayed pending a decision and ruling on this writ application.

Respectfully submitted,

JEFF LANDRY
ATTORNEY GENERAL

BY: Lauryn Sudduth

Carey T. Jones (LSBA #07474)
Jeffrey M. Wale (LSBA #36070)
Lauryn A. Sudduth (LSBA #37945)
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sudduthl@ag.louisiana.gov

Counsel for the Secretary of State

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel for all represented parties to this proceeding by electronic mail and by mailing the same to each by first class United States mail, properly addressed, and postage prepaid on this 13th day of December, 2021.

Lauryn Sudduth

Lauryn A. Sudduth

FILED
2021 DEC 13 PM 2:
CIVIL
DISTRICT COURT

CIVIL DISTRICT COURT

PARISH OF ORLEANS, STATE OF LOUISIANA

NUMBER 2021-03538 **DIVISION C – SECTION 10**

CAMERON ENGLISH, ET AL.

VERUS

R. KYLE ARDOIN, IN HIS OFFICIAL CAPACITY AS LOUISIANA SECRETARY OF STATE

****

ORDER

CONSIDERING the Secretary of State' Notice of Intent to Apply for Supervisory Writ,

IT IS HEREBY ORDERED that, with respect to the Court's *Judgment* signed on December 10, 2021 denying the Secretary of State's exceptions, the Court hereby sets a return date of December 16, 2021 by which the Secretary of State shall file any corresponding writ application.

IT IS FURTHER ORDERED that further proceedings in this matter be and they are hereby stayed pending a final decision and ruling on the Secretary of State's application for writs.

THUS DONE AND SIGNED in New Orleans, Louisiana on this 13th day of December, 2021.

JUDGE SIDNEY H. CATES, IV
ORLEANS CIVIL DISTRICT COURT

DENIED

A TRUE COPY

DEPUTY CLERK CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LA

VERIFIED

CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

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

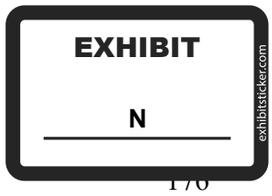
FIRST AMENDED AND SUPPLEMENTAL PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

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 First Amended and Supplemental Petition for Declaratory and Injunctive Relief against Defendant R. Kyle Ardoin, in his official capacity as Louisiana Secretary of State, and allege as follows:

NATURE OF THE ACTION

1. This is an action challenging Louisiana's current congressional districts, which were rendered unconstitutionally malapportioned by a decade of population shifts. Plaintiffs ask this Court to declare Louisiana's current congressional district plan unconstitutional, enjoin Defendant from using the current plan in any future election, and implement a new congressional district plan that adheres to the constitutional requirement of one-person, one-vote should the Legislature and the Governor fail to do so.

2. On April 26, 2021, the U.S. Secretary of Commerce delivered the apportionment data obtained by the 2020 Census to the President. These data were followed by the census-block results of the 2020 Census, which the U.S. Secretary of Commerce delivered to the Governor and legislative leaders on August 12, 2021. These data make clear that the configuration of Louisiana's congressional districts does not account for the current population numbers in Louisiana, in violation of state and federal law. *See Arrington v. Elections Bd.*, 173 F. Supp. 2d 856, 860 (E.D. Wis. 2001) (three-judge court) (explaining that "existing apportionment schemes become instantly unconstitutional upon the release of new decennial census data" (internal quotation marks omitted)).



3. Specifically, the current configuration of Louisiana's congressional districts, *see* La. Rev. Stat. § 18:1276.1, violates Article I, Section 2 of the U.S. Constitution and Article I, Sections 7 and 9 of the Louisiana Constitution. The current congressional plan therefore cannot be used in any upcoming elections, including the 2022 elections.

4. There is no reasonable prospect that Louisiana's political branches will reach consensus to enact a lawful congressional district plan in time to be used in the upcoming 2022 elections. Governor John Bel Edwards is a Democrat, while the State House of Representatives and State Senate are controlled by Republicans who lack the supermajority necessary to override a veto from the Governor. There is no reason to believe that the political divisions between the parties are amenable to compromise. Put simply, it is near-certain that Louisiana's political branches will fail to reach consensus on a new congressional plan.

5. Because Louisiana's political branches will likely fail to enact a new congressional district plan, this Court should intervene to protect the constitutional rights of Plaintiffs and voters across this state. Absent this Court's intervention, Plaintiffs will be forced to cast unequal votes in violation of their constitutional rights.

6. While there is still time for the Legislature and the Governor to enact a new congressional plan, this Court should assume jurisdiction now and establish a schedule that will enable the Court to adopt its own plan in the near-certain event that the political branches fail to timely do so.

JURISDICTION AND VENUE

7. This Court has original jurisdiction over the subject matter of this action pursuant to Article V, Section 16(A) of the Louisiana Constitution because the matter concerns "the right to office or other public position" and "civil or political right[s]."

8. Venue is proper in this District because the cause of action arises in the parish where this court has jurisdiction. *See* La. Rev. Stat. § 13:5104(A).

9. This Court has authority to enter a declaratory judgment in this action under Louisiana Code of Civil Procedure Article 1871. This Court also has the authority to grant injunctive relief under the Louisiana Code of Civil Procedure. *See* La. Code Civ. P. 3601(A).

PARTIES

10. Plaintiffs are citizens of the United States and are registered to vote in Louisiana. Plaintiffs intend to advocate and vote for Democratic candidates in the upcoming 2022 primary and general elections. Plaintiffs reside in the following congressional districts.

Plaintiff's Name	Parish of Residence	Congressional District
Ryan Berni	Orleans	1
Darryl Malek-Wiley	Orleans	1
Pooja Prazid	St. Bernard	1
Stephen Handwerk	Lafayette	3
Amber Robinson	Lafayette	3
James Bullman	East Baton Rouge	6
Kirk Green	East Baton Rouge	6

11. Plaintiffs reside in districts that are now likely overpopulated relative to other districts in the state. If the 2022 elections are held pursuant to the map currently in place, then Plaintiffs will be deprived of their right to cast an equal vote, as guaranteed to them by the U.S. Constitution and the Louisiana Constitution.

12. Defendant R. Kyle Ardoin is the Louisiana Secretary of State. He is the "chief election officer of the state," La. Rev. Stat. § 18:421(A), and as such will be "involved in providing, implementing, and/or enforcing whatever injunctive or prospective relief may be granted" to Plaintiffs. *Hall v. Louisiana*, 974 F. Supp. 2d 978, 993 (M.D. La. 2013).

FACTUAL ALLEGATIONS

I. Louisiana's current congressional districts were drawn using 2010 Census data.

13. Louisiana's current congressional district map was drawn in 2011 using 2010 Census data. The congressional district plan was enacted on April 14, 2011.

14. According to the 2010 Census, Louisiana had a population of 4,533,372. Accordingly, a decade ago, the ideal population for each of Louisiana's six congressional districts (i.e., the state's total population divided by the number of districts) was 755,562 persons.

15. The 2010 congressional plan had a maximum deviation (i.e., the difference between the most populated district and least populated district) of 162 people.

16. That plan has been used in every Louisiana election since 2012.

II. The 2020 Census is complete.

17. In 2020, the U.S. Census Bureau conducted the decennial census required by Article I, Section 2 of the U.S. Constitution. On April 26, 2021, the U.S. Secretary of Commerce delivered the results of the 2020 Census to the President.

18. The results of the 2020 Census report that Louisiana's resident population, as of April 2020, is 4,657,757. This is an increase from a decade ago, when the 2010 Census reported a population of 4,533,372.

19. Louisiana will again be apportioned six congressional districts for the next decade.

20. According to the 2020 Census results, the ideal population for each of Louisiana's congressional districts is 776,293.

III. As a result of significant population shifts in the past decade, Louisiana's congressional districts are unconstitutionally malapportioned.

21. In the past decade, Louisiana's population has shifted significantly. Because the 2020 Census has now been completed, the 2010 population data used to draw Louisiana's congressional districts are obsolete, and any prior justifications for the existing map's deviations from population equality are no longer applicable.

22. On August 12, 2021, the U.S. Census Bureau delivered to Louisiana its redistricting file in a legacy format, which the State may use to tabulate the new population of each political subdivision. These data are commonly referred to as "P.L. 94-171 data," a reference to the legislation enacting this process, and are typically delivered no later than April of the year following the Census. *See* Pub. L. No. 94-171, 89 Stat. 1023 (1975).

23. These data make clear that significant population shifts have occurred in Louisiana since 2010, skewing the current congressional districts far from population equality.

24. The table below, generated from the P.L. 94-171 data file provided by the Census Bureau on August 12, 2021, shows how the populations of each of Louisiana's congressional districts shifted between 2010 and 2020. For each district, the "2010 Population" column represents the district's 2010 population according to the 2010 Census, and the "2020 Population" column indicates the district's 2020 population according to the P.L. 94-171 data. The "Shift" column represents the shift in population between 2010 and 2020. The "Deviation from Ideal 2020 Population" column shows how far the 2020 population of each district strays from the ideal 2020 congressional district population. And "Percent Deviation from Ideal 2020 Population" column shows that deviation as a percentage of the ideal 2020 district population.

District	2010 Population	2020 Population	Shift	Deviation from Ideal 2020 Population	Percent Deviation from Ideal 2020 Population
1	755,445	812,585	57,140	+36,292	+4.68%
2	755,538	775,292	19,754	-1,001	-0.13%
3	755,596	785,824	30,228	+9,531	+1.23%
4	755,605	728,346	-27,259	-47,947	-6.18%
5	755,581	739,244	-16,337	-37,049	-4.77%
6	755,607	816,466	60,859	+40,173	+5.17%

25. The table above indicates population shifts since 2010 have rendered Congressional Districts 2, 4, and 5 underpopulated, and Congressional Districts 1, 3, and 6 significantly overpopulated. Indeed, according to these figures, the maximum deviation among Louisiana's congressional districts (i.e., the difference between the most and least populated districts divided by the ideal district population) increased from 0 to over 11 percent between 2010 and 2020.

26. Due to these population shifts, Louisiana's existing congressional district map is unconstitutionally malapportioned. If used in any future election, this district configuration will unconstitutionally dilute the strength of Plaintiffs' votes because Plaintiffs live in districts with populations that are significantly larger than those in which other voters live.

IV. Louisiana's political branches will likely fail to enact a lawful congressional district map in time for the next election.

27. In Louisiana, a congressional district plan is enacted through legislation, which must pass both chambers of the Legislature and be signed by the Governor. *See* La. Const. art. III, § 6. Currently, both chambers of Louisiana's Legislature are controlled by the Republican Party and the Governor is a Democrat. The partisan division among Louisiana's political branches makes it extremely unlikely they will pass a lawful congressional redistricting plan in time to be used during the upcoming 2022 election.

28. Demonstrating the irreconcilable divide between these two branches, the Governor issued 31 vetoes in the recent legislative session—including at least three vetoes of election-related bills—and the Legislature failed to override *a single one*. Indeed, Louisiana's Legislature has not overturned a gubernatorial veto since 1993.

29. The Census delays have compressed the amount of time during which the legislative process would normally take place. This increases the already significant likelihood the political branches will reach an impasse this cycle and fail to enact a new congressional district plan, leaving the existing plan in place for next year's election. To avoid such an unconstitutional

outcome, this Court must intervene to ensure Plaintiffs' and other Louisianians' voting strength is not diluted.

30. It is in the interest of voters, candidates, and Louisiana's entire electoral apparatus that finalized congressional districts be put in place as soon as possible. Potential congressional candidates cannot make strategic decisions—including, most importantly, whether to run at all—without knowing their district boundaries. And voters have a variety of interests in knowing as soon as possible the districts in which they reside and will vote, and the precise contours of those districts. These interests include deciding which candidates to support and whether to encourage others to run; holding elected representatives accountable for their conduct in office; and advocating for and organizing around candidates who will share their views, including by working together with other district voters in support of favored candidates.

31. Delaying the adoption of the new plan will substantially interfere with Plaintiffs' abilities to associate with like-minded citizens, educate themselves on the positions of their would-be representatives, and advocate for the candidates they prefer. *Cf. Anderson v. Celebrezze*, 460 U.S. 780, 787–88 (1983) ("The [absence] of candidates also burdens voters' freedom of association, because an election campaign is an effective platform for the expression of views on the issues of the day, and a candidate serves as a rallying point for like-minded citizens.").

32. In light of Louisiana's likely impasse, this Court must intervene to ensure Plaintiffs and other Louisiana voters do not suffer unconstitutional vote dilution.

CLAIMS FOR RELIEF

COUNT I

Violation of Article I, Section 2 of the United States Constitution
Congressional Malapportionment

33. Plaintiffs reallege and reincorporate by reference all prior paragraphs of this Petition and the paragraphs in the count below as though fully set forth herein.

34. Article 1, Section 2 of the U.S. Constitution provides that members of the U.S. House of Representatives "shall be apportioned among the several States . . . according to their respective Numbers." This provision "intends that when qualified voters elect member of Congress each vote be given as much weight as any other vote," *Wesberry v. Sanders*, 376 U.S. 1, 7 (1964), meaning that state congressional districts in a state must "achieve population equality 'as nearly as is practicable,'" *Karcher v. Daggett*, 462 U.S. 725, 730 (1983) (quoting *Wesberry*, 376 U.S. at 7–8).

35. Article I, Section 2 "permits only the limited population variances which are unavoidable despite a good-faith effort to achieve absolute equality, or for which justification is shown." *Id.* at 730 (quoting *Kirkpatrick v. Preisler*, 394 U.S. 526, 531 (1969)). *Any* variation from exact population equality must be narrowly justified. *See id.* at 731.

36. As a result of this requirement, when Louisiana's existing congressional plan was enacted in 2011, the deviation in population among districts was no more than 162 people. Now, as indicated in the table above, the population deviation among the current congressional districts is 88,120 people.

37. In 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. No justification can be offered for the deviation among the congressional districts because any justification would be based on outdated population data.

38. Any future use of Louisiana's current congressional district plan would violate Plaintiffs' constitutional right to an undiluted vote.

COUNT II

Violation of Article I, Sections 7 and 9 of the Louisiana Constitution
Freedom of Association

39. Plaintiffs reallege and reincorporate by reference all prior paragraphs of this Petition and the paragraphs in the count below as though fully set forth herein.

40. The Louisiana Constitution provides that "[n]o law shall curtail or restrain the freedom of speech" and "[n]o law shall impair the right of any person to assemble peaceably." La. Const. art. I, §§ 7, 9. "The freedom of association protected by the First and Fourteenth Amendments of the U.S. Constitution is also guaranteed by Article I, Sections 7 and 9 of the Louisiana Constitution of 1974." *Shane v. Parish of Jefferson*, 209 So. 3d 726, 741 (La. 2015) (citing *La. Republican Party v. Foster*, 674 So. 2d 225, 229 (La. 1996)). "The fundamental right of freedom of association protected by these constitutional provisions includes the right of persons to engage in partisan political organizations," and any "state action that may have the effect of curtailing the freedom to associate is subject to the closest scrutiny." *Id*. at 741 & n.11 (citing *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460–61 (1958)).

41. Impeding candidates' abilities to run for political office—and, consequently, Plaintiffs' abilities to assess candidate qualifications and positions, organize and advocate for

preferred candidates, and associate with like-minded voters—infringes on Plaintiffs' First Amendment right to association. *See, e.g.*, *Anderson*, 460 U.S. at 787–88 & n.8.

42. Given the delay in publication of the 2020 Census data and the near-certain deadlock among the political branches in adopting a new congressional district plan, it is significantly unlikely that the legislative process will timely yield a new plan. This would deprive Plaintiffs of the ability to associate with others from the same lawfully apportioned congressional districts and, therefore, is likely to significantly, if not severely, burden Plaintiffs' First Amendment right to association.

43. There is no legitimate, let alone compelling, interest that can justify this burden.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

a. Declare that the current configuration of Louisiana's congressional districts, *see* La. Rev. Stat. § 18:1276.1, violates Article I, Section 2 of the U.S. Constitution and Article I, Sections 7 and 9 of the Louisiana Constitution;

b. Enjoin Defendant, his respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, from implementing, enforcing, or giving any effect to Louisiana's current congressional districting plan;

c. Establish a schedule that will enable the Court to adopt and implement a new congressional district plan by a date certain should the political branches fail to enact such plan by that time;

d. Implement a new congressional district plan that complies with Article I, Section 2 of the U.S. Constitution and Article I, Sections 7 and 9 of the Louisiana Constitution, if the political branches fail to enact a plan by a date certain set by this Court;

e. Grant such other and further relief, including but not limited to all costs of these proceedings as well as any attorneys' fees that may be legally proper under applicable law, as the Court deems just and proper.

[SIGNATURE BLOCK ON NEXT PAGE]

Dated: August 19, 2021

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*Admitted *Pro Hac Vice*

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing has been electronically mailed this date to all known counsel of record on this 19th day of August, 2021.

Darrel Papillion

CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

CAMERON ENGLISH, RYAN BERNI, POOJA PRAZID, LYNDA WOOLARD, STEPHEN HANDWERK, AMBER ROBINSON, JAMES BULLMAN, and KIRK GREEN, Plaintiffs, v. R. KYLE ARDOIN, in his official capacity as Louisiana Secretary of State, Defendant.	Civil Action No. 2021-03538 Division C - Section 10

ORDER

Considering the foregoing *Motion for Leave to File First Amended and Supplemental Petition for Injunctive and Declaratory Relief and to Amend Case Caption*;

IT IS ORDERED, ADJUDGED, AND DECREED that the Motion for Leave filed by Plaintiffs Cameron English, Ryan Berni, Pooja Prazid, Lynda Woolard, Stephen Handwerk, Amber Robinson, James Bullman, and Kirk Green is GRANTED, the case caption is amended, and plaintiffs' First Amended and Supplemental Petition for Injunctive and Declaratory Relief is filed, as prayed for and according to law.

New Orleans, Louisiana, this 20th day of August, 2021.

HONORABLE SIDNEY H. CATES IV
Judge, Orleans Parish Judicial District

CIVIL DISTRICT COURT

PARISH OF ORLEANS, STATE OF LOUISIANA

NUMBER 2021-03538 **DIVISION C – SECTION 10**

RYAN BERNI, ET AL.

VERUS

R. KYLE ARDOIN, IN HIS OFFICIAL CAPACITY AS LOUISIANA SECRETARY OF STATE

****

DECLINATORY AND PEREMPTORY EXCEPTIONS ON BEHALF OF THE SECRETARY OF STATE TO PLAINTIFFS' FIRST AMENDED AND SUPPLEMENTAL PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

NOW INTO COURT, through undersigned counsel, appearing solely for the purposes of these exceptions, comes Defendant, R. Kyle Ardoin, in his official capacity as the Secretary of State for the State of Louisiana, who pleads declinatory and peremptory exceptions in response to the *First Amended and Supplemental Petition for Injunctive and Declaratory Relief*, representing as follows:

DECLINATORY EXCEPTIONS

I.

The Secretary of State pleads the declinatory exceptions of improper venue, pursuant to La. Code Civ. Proc. art. 925(A)(4), and lack of subject matter jurisdiction, pursuant to La. Code Civ. Proc. art. 925(A)(6).

Improper Venue

II.

The Civil District Court of New Orleans is not the proper venue for this suit because the operative events described in the amended and supplemental petition take place in East Baton Rouge Parish and is the only permissible venue for this suit..

III.

Suits filed against the State or state agency, officer or employee of the state for conduct arising out of the discharge of his official duties or within the course and scope of his employment shall be instituted before the district court of the judicial district in which the state capitol is located.

which is East Baton Rouge Parish, or in the parish in which the cause of action arose, again in East Baton Rouge Parish where the official acts sued upon occur. *See* La. R.S. 13:5104.

Lack of Subject Matter Jurisdiction

IV.

Additionally, this Court lacks jurisdiction over the subject matter of this action. Plaintiffs' petition does not present a justiciable controversy as the allegations of the petition are speculative, conjectural and theoretical, and this Court lacks jurisdiction to render a hypothetical and advisory opinion based upon a scenario that may or may not come to pass.

V.

The court also lacks subject matter jurisdiction on the grounds that the plaintiffs ask the Court to intervene in a political process that lies within the authority of the legislative and executive branches of government.

VI.

Louisiana Constitution Article II, § 2 and the doctrine of Separation of Powers prohibit a court from issuing a judgment enjoining/mandating the exercise of legislative discretion. Although a court has authority to interpret and declare the law, the judicial branch has no authority to prohibit or require the legislature from enacting legislation or carrying out its constitutional decision-making authority.

VII.

In seeking a declaration and an injunction to prevent the use of 2011 congressional election districts for the 2022 congressional elections plaintiffs ask the court to enjoin acts that are prohibited by constitution and statute so that any order by the Court would have no practical effect and would change nothing such that the action is moot upon its inception.

PEREMPTORY EXCEPTIONS

VIII.

The Secretary pleads the following peremptory exceptions, raising the objection of no cause of action pursuant to La. Code Civ. Proc. art. 927(A)(4) and no right of action pursuant to La. Code Civ. Proc. Art. 927(A)(5).

No Cause of Action

IX.

Courts must refuse to entertain an action for a declaration of rights if the issue presented is academic, theoretical or based on a contingency which may or may not arise. See, *American Waste & Pollution v. St. Martin Parish Police Jury*, 627 So.2d 158 (La.1993).

X.

Nothing in state law authorizes the courts to usurp the constitutional authority of the executive and legislative branches based upon the cynical notion that the political branches of state government are certain to fail in developing a redistricting plan for U.S. congressional elections.

XI.

Further, viewed as an action for injunctive relief, plaintiffs fail to state a cause of action absent allegations of irreparable harm that is concrete, real and actual.

No Right of Action

XII.

Similarly, Plaintiffs have no right of action or standing in this case. Except in limited circumstances, an injunction may only be issued in favor of plaintiffs who may suffer irreparable injury, and Plaintiffs have not alleged they may suffer irreparable harm different from the general population.

XIII.

Plaintiffs lack standing against the Secretary of State who has no substantial role or authority in the reapportionment and/or redistricting process or decisions affecting where 2022 elections will be held and cannot cause the plaintiffs the kind of harm they complain of even if events unfold in the way plaintiffs anticipate they might.

XIV.

Further, and out of an abundance of caution, defendant avers that a determination of the constitutionality of the congressional redistricting at a preliminary injunction proceeding is impermissible. The constitutionality of a statute cannot be determined on a preliminary injunction. *Barber v. Louisiana Workforce Commission*, 2015-1700 (La. 10/9/15), 176 So.3d 398.

Constitutionality of an act of the legislature may be decided only after a trial of the merits rather than at the preliminary injunction stage.

WHEREFORE, the Secretary of State, for the reasons more fully expressed in the attached memorandum in support of these exceptions, prays that these exceptions be maintained and that the petition be dismissed at plaintiffs' cost and for full, general and equitable relief.

Respectfully submitted,

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Counsel for the Secretary of State

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing exceptions with proposed rule to show cause has on this date been served upon all known counsel of record by electronic mail at the email address provided.

New Orleans, Louisiana, this 8th day of September, 2021.

~~Lauryn A. Suddoth~~
Jeffrey M. Wale

CIVIL DISTRICT COURT

PARISH OF ORLEANS, STATE OF LOUISIANA

NUMBER 2021-03538 **DIVISION C – SECTION 10**

RYAN BERNI, ET AL.

VERUS

R. KYLE ARDOIN, IN HIS OFFICIAL CAPACITY AS LOUISIANA SECRETARY OF STATE

****

RULE TO SHOW CAUSE

Considering the foregoing *Declinatory and Peremptory Exceptions*;

IT IS HEREBY ORDERED that Plaintiffs appear and show cause on the 10th day of December, 2021 AT 10:30 via ZOOM a.m. why the Court should not sustain the declinatory and peremptory exceptions to the *First Amended and Supplemental Petition for Injunctive and Declaratory Relief* filed by Exceptor, R. Kyle Ardoin, in his official capacity as the Louisiana Secretary of State.

New Orleans, Louisiana this 28th day of October, 2021.

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CIVIL DISTRICT COURT

PARISH OF ORLEANS, STATE OF LOUISIANA

NUMBER 2021-03538 **DIVISION C – SECTION 10**

RYAN BERNI, ET AL.

VERUS

R. KYLE ARDOIN, IN HIS OFFICIAL CAPACITY AS LOUISIANA SECRETARY OF STATE

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CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

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

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[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).

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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,

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.

Civil Action
File No.
01-C-0121

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.
3.002 Description of territory.
3.003 Territory omitted from congressional redistricting.
3.01 First congressional district.
3.02 Second congressional district.
3.03 Third congressional district.
3.04 Fourth congressional district.
3.05 Fifth congressional district.
3.06 Sixth congressional district.
3.07 Seventh congressional district.
3.08 Eighth congressional district.
3.09 Ninth congressional district.

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;

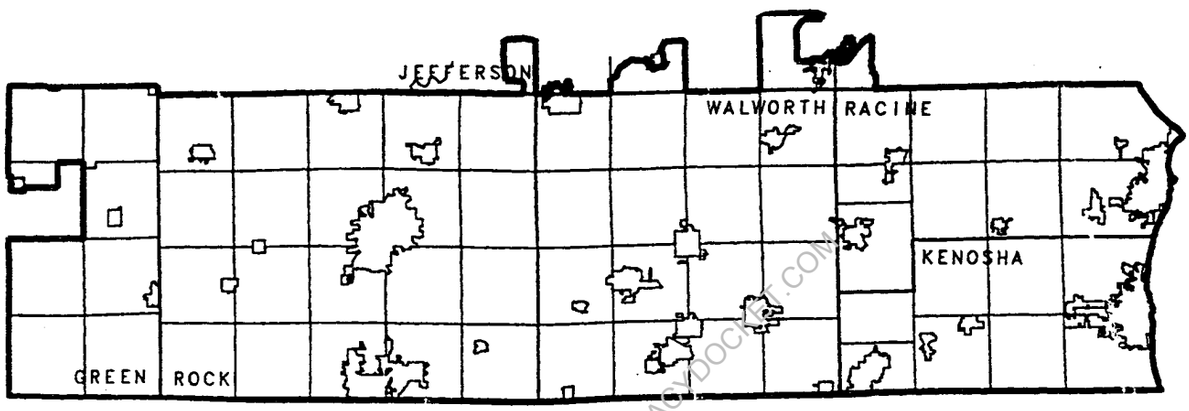
(c) The villages of Butler, Chenequa, Dousman, Eagle, Elm Grove, Hartland, Lac La Belle, Lannon, Menomonee Falls, Merton, Nashotah, North Prairie, Oconomowoc Lake, Pewaukee, Sussex and Wales;

(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



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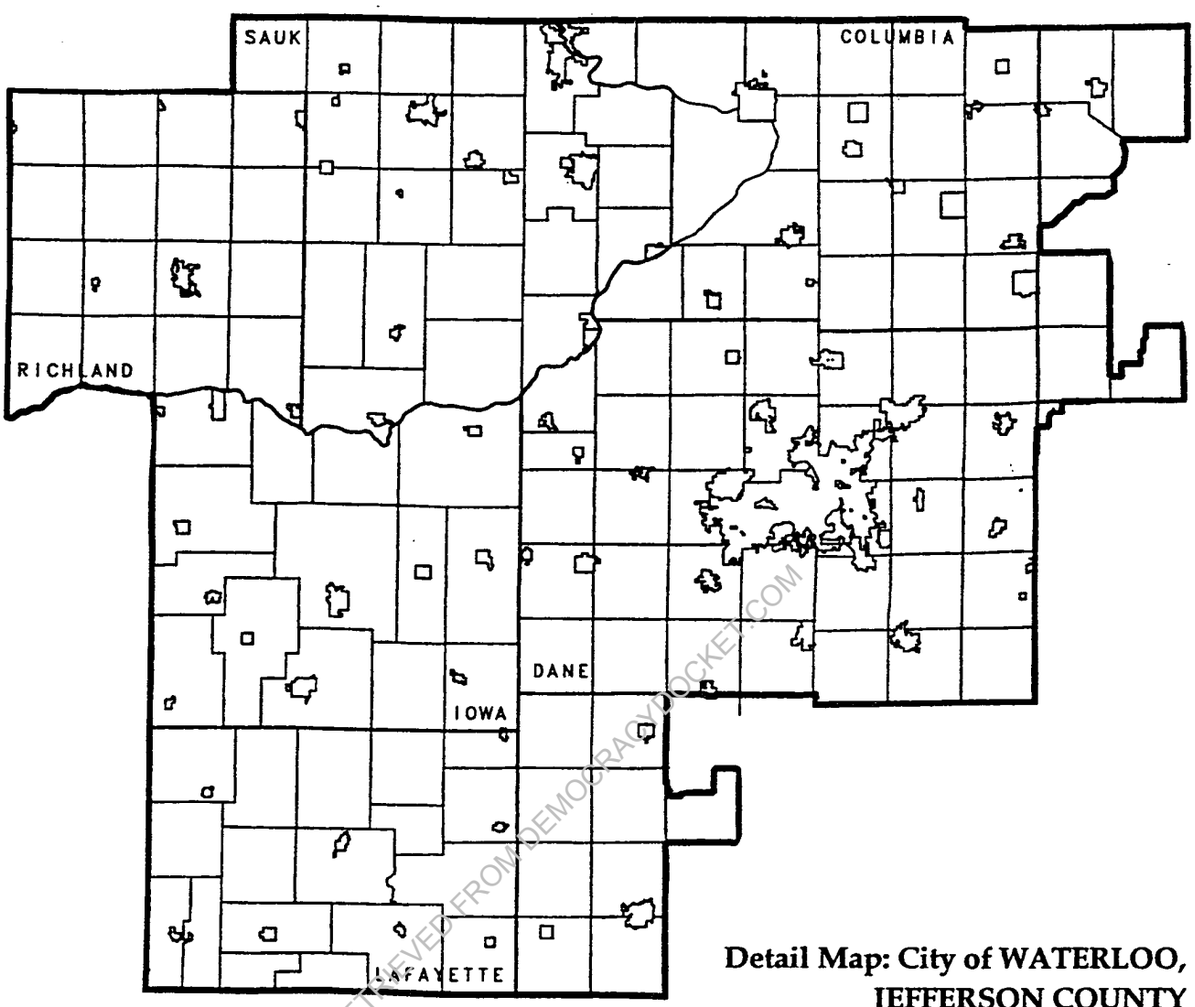
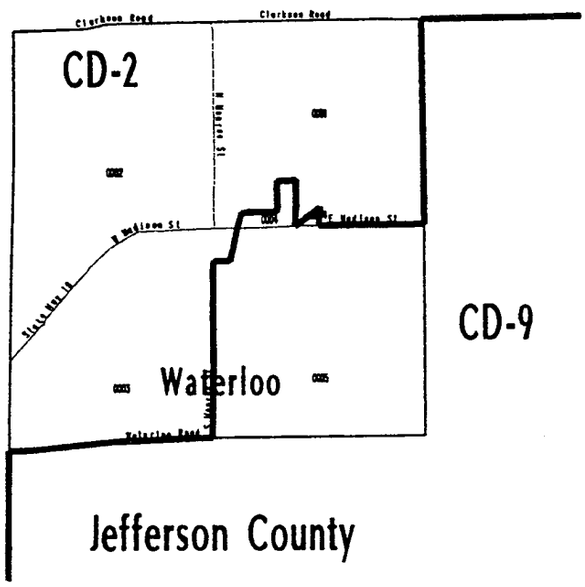
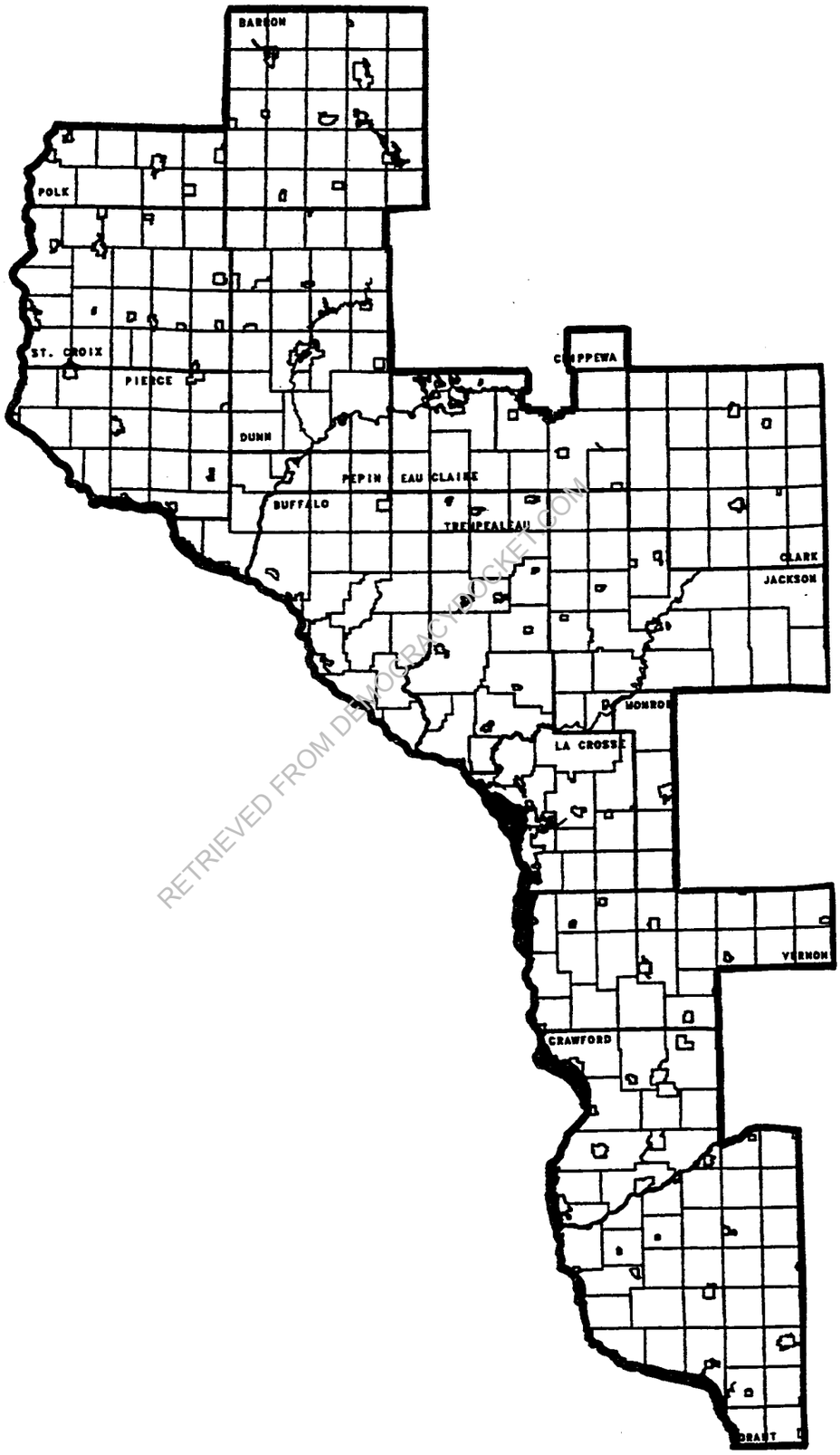
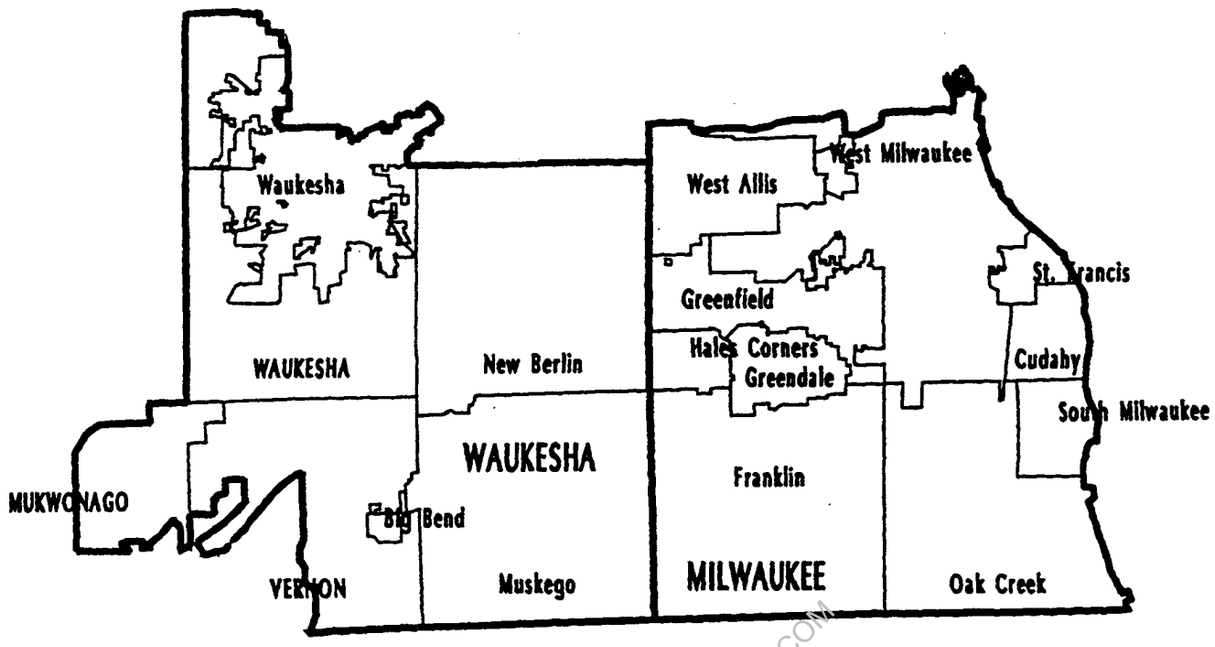


Detail Map: City of WATERLOO, JEFFERSON COUNTY

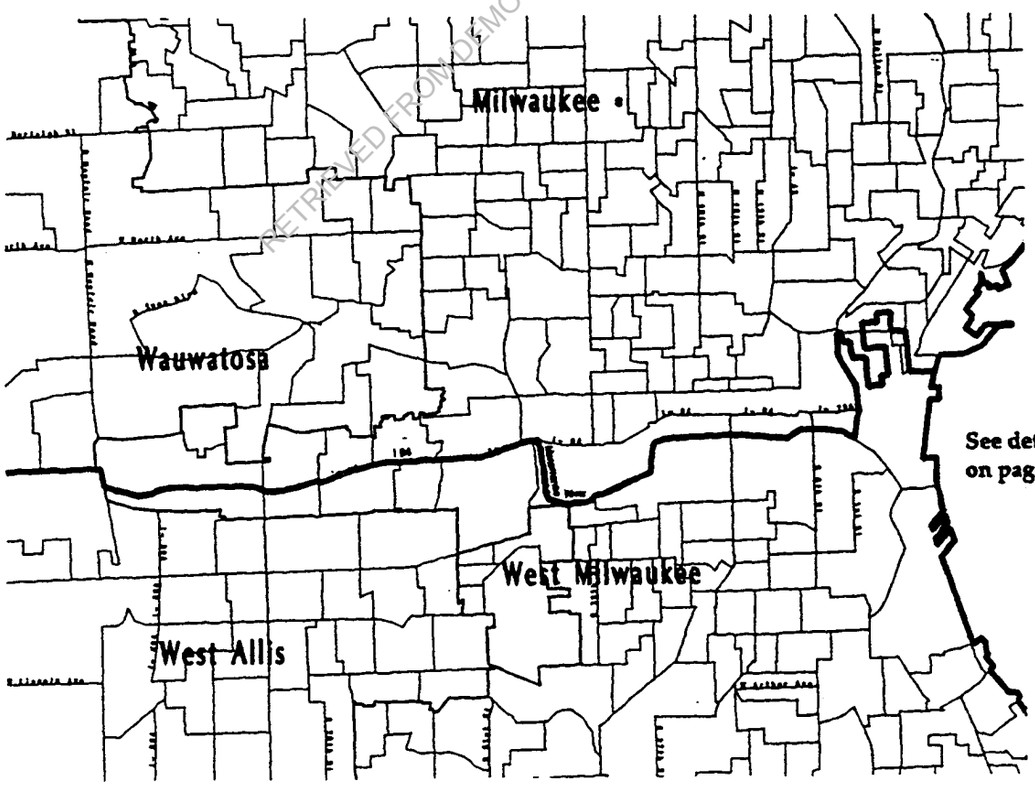


3rd CONGRESSIONAL District



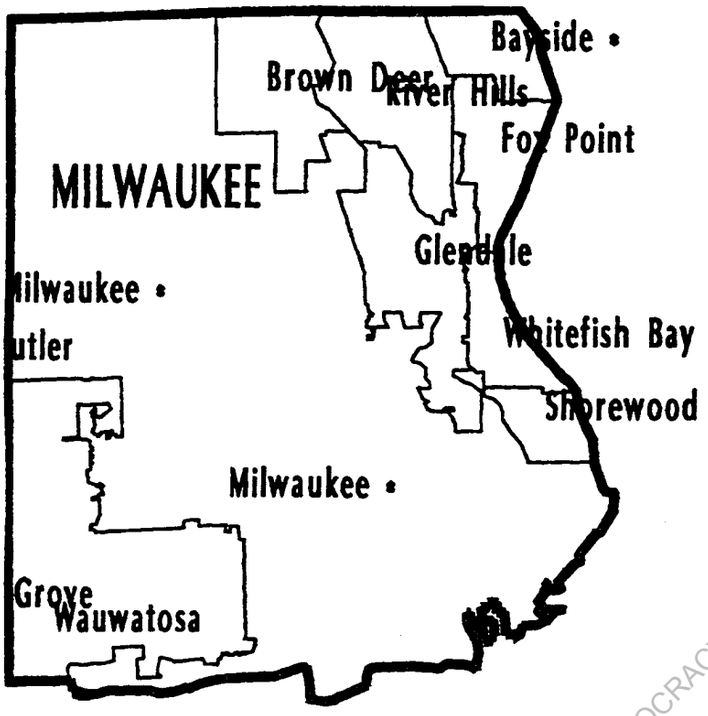


Detail Map: Downtown, MILWAUKEE COUNTY

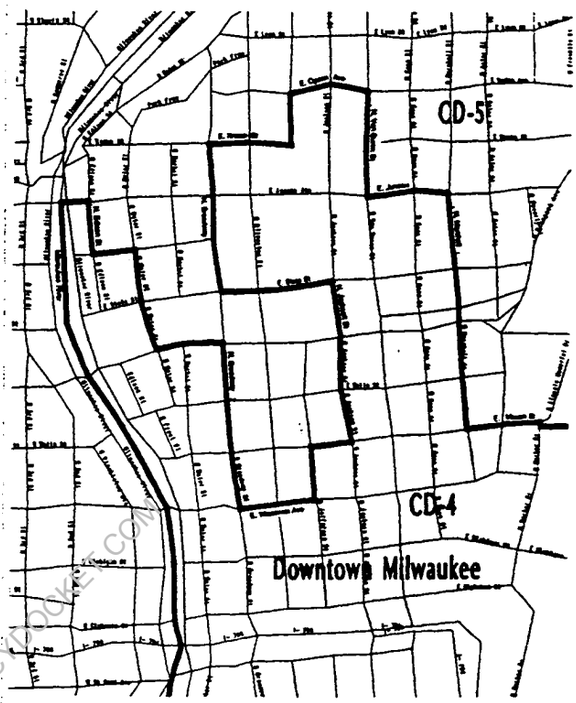


See detail map on page 22.

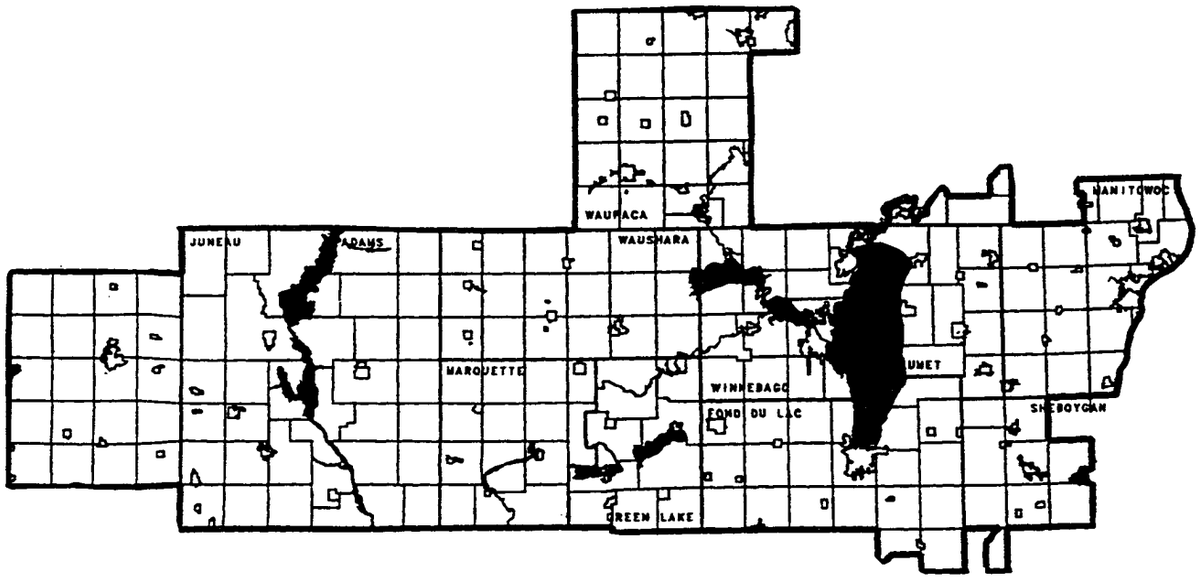
5th CONGRESSIONAL District



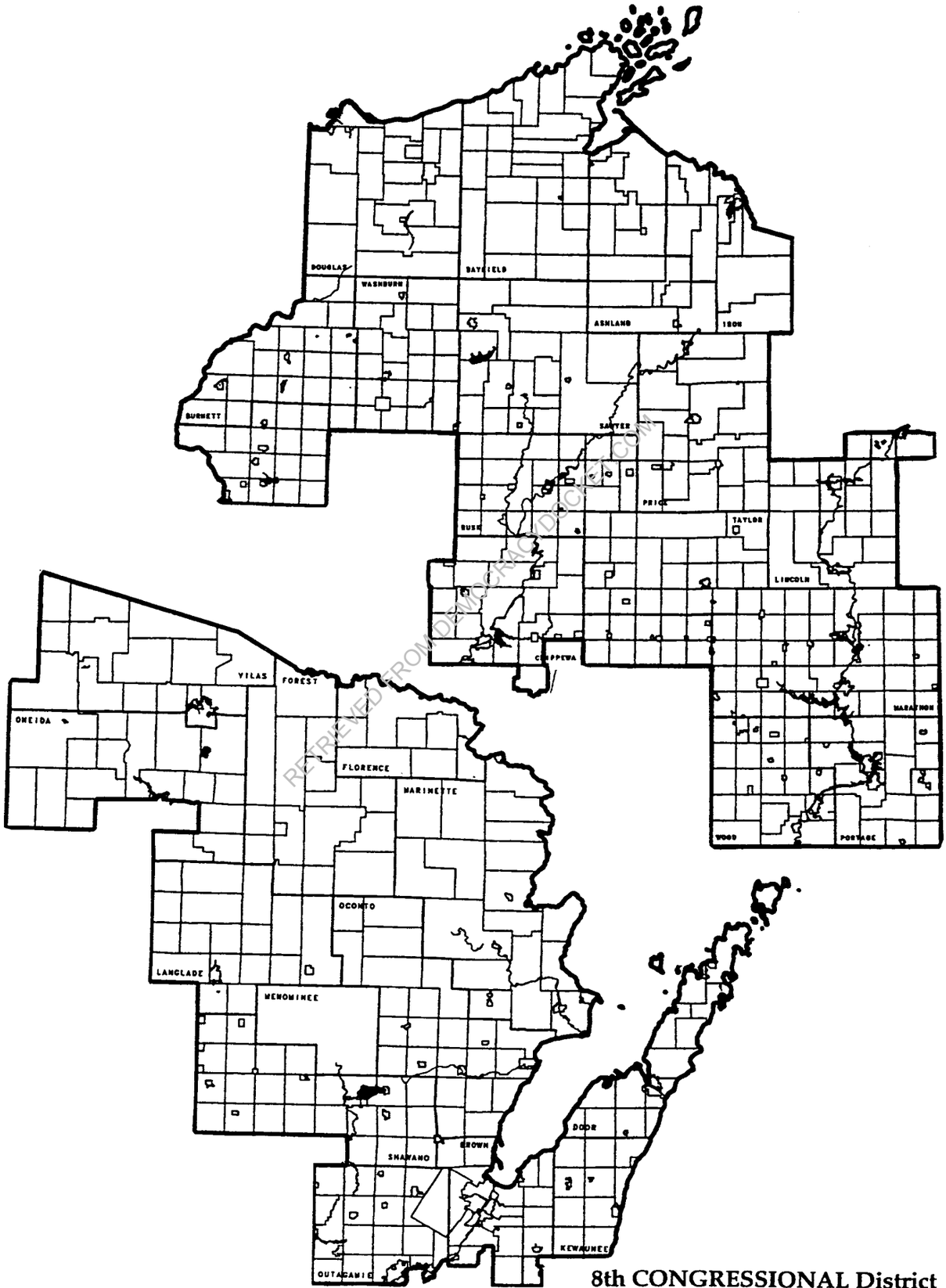
Detail Map: City of MILWAUKEE, MILWAUKEE COUNTY



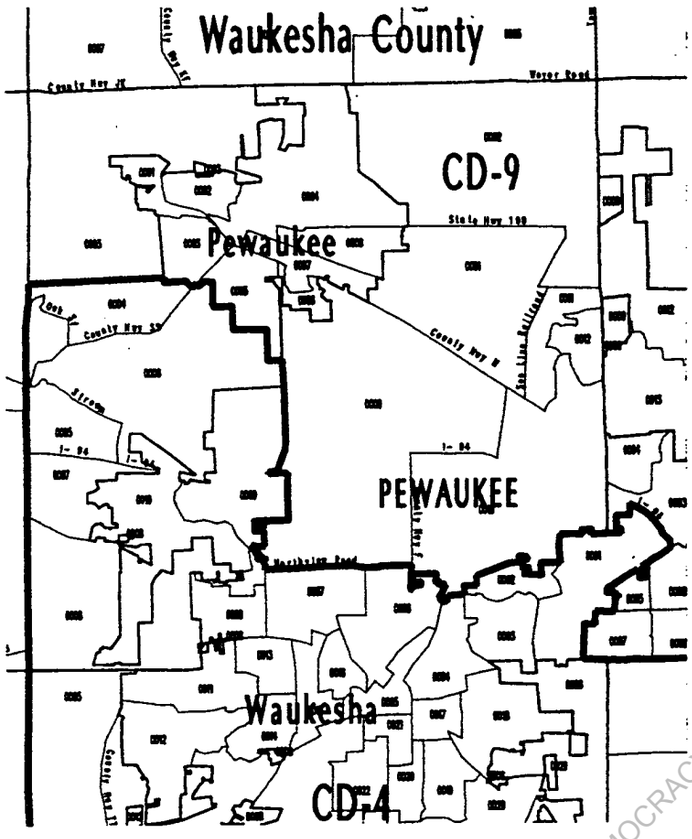
6th CONGRESSIONAL District



7th CONGRESSIONAL District

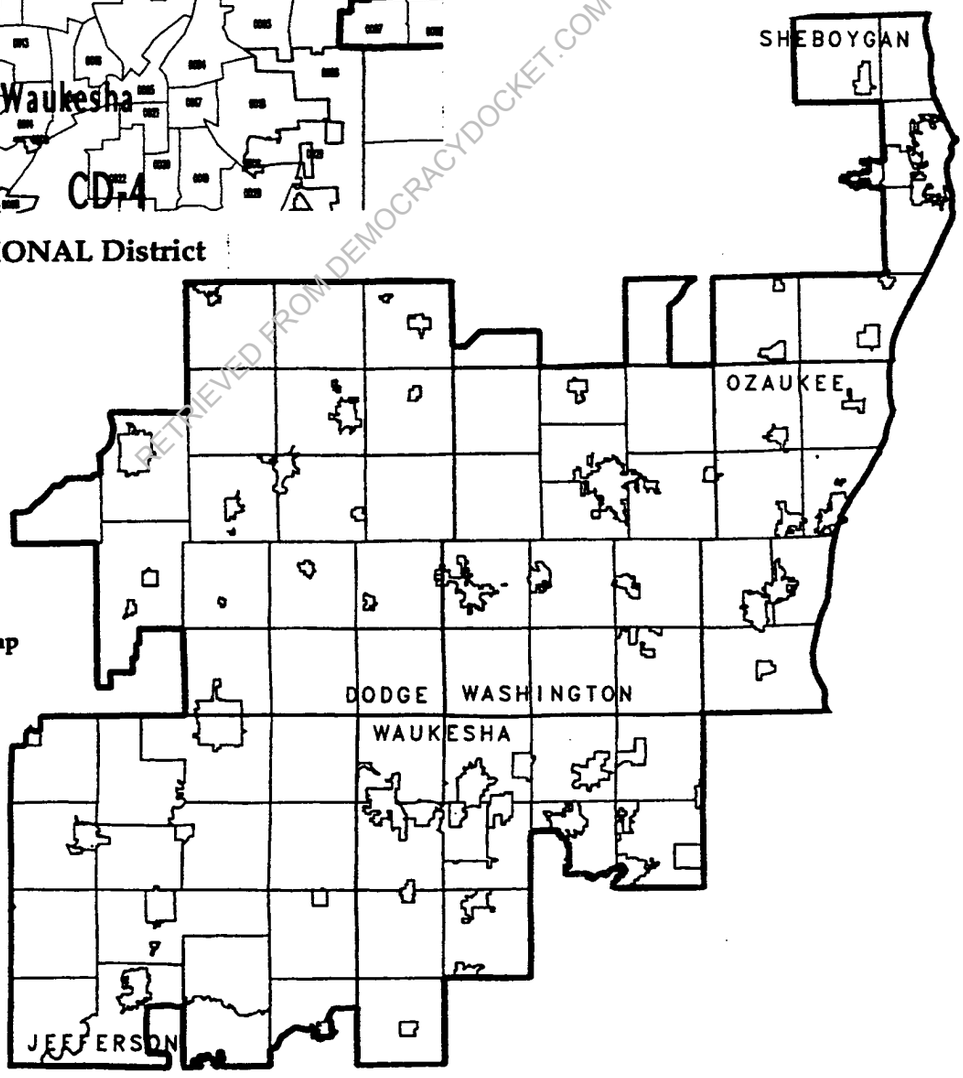


8th CONGRESSIONAL District



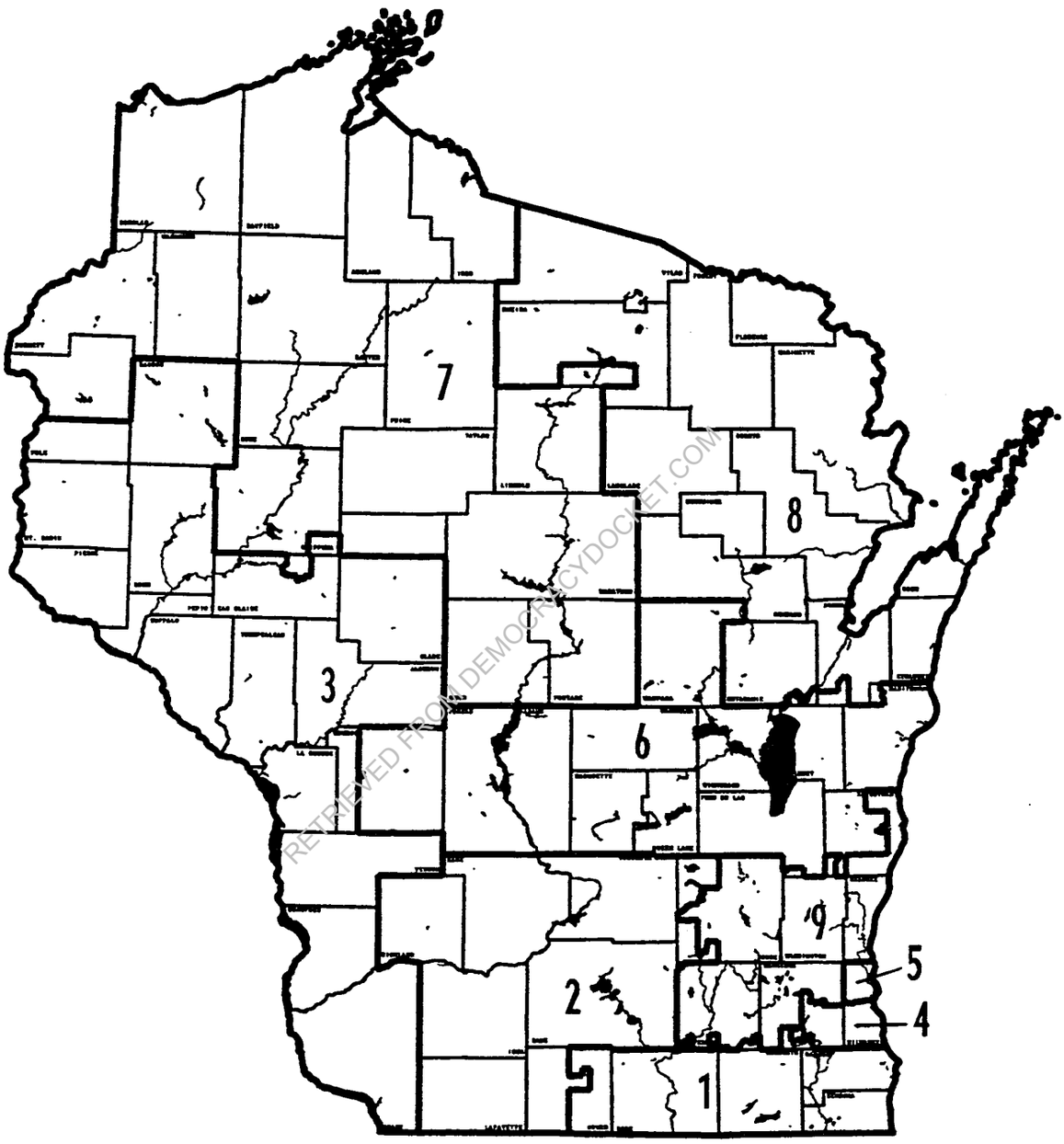
Detail Map: Town of PEWAUKEE, WAUKESHA COUNTY

9th CONGRESSIONAL District



See detail map on page 19.

CONGRESSIONAL DISTRICTS



UNITED STATES DEPARTMENT OF
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WASHINGTON, DC 20230

ECONOMICS
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ADMINISTRATION

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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

EXHIBIT
B

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-

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

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

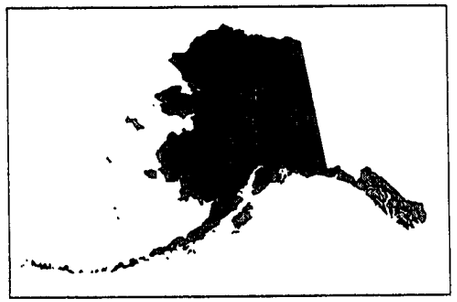

Figure 3. Apportionment of the U.S. House of Representatives for the 108th Congress

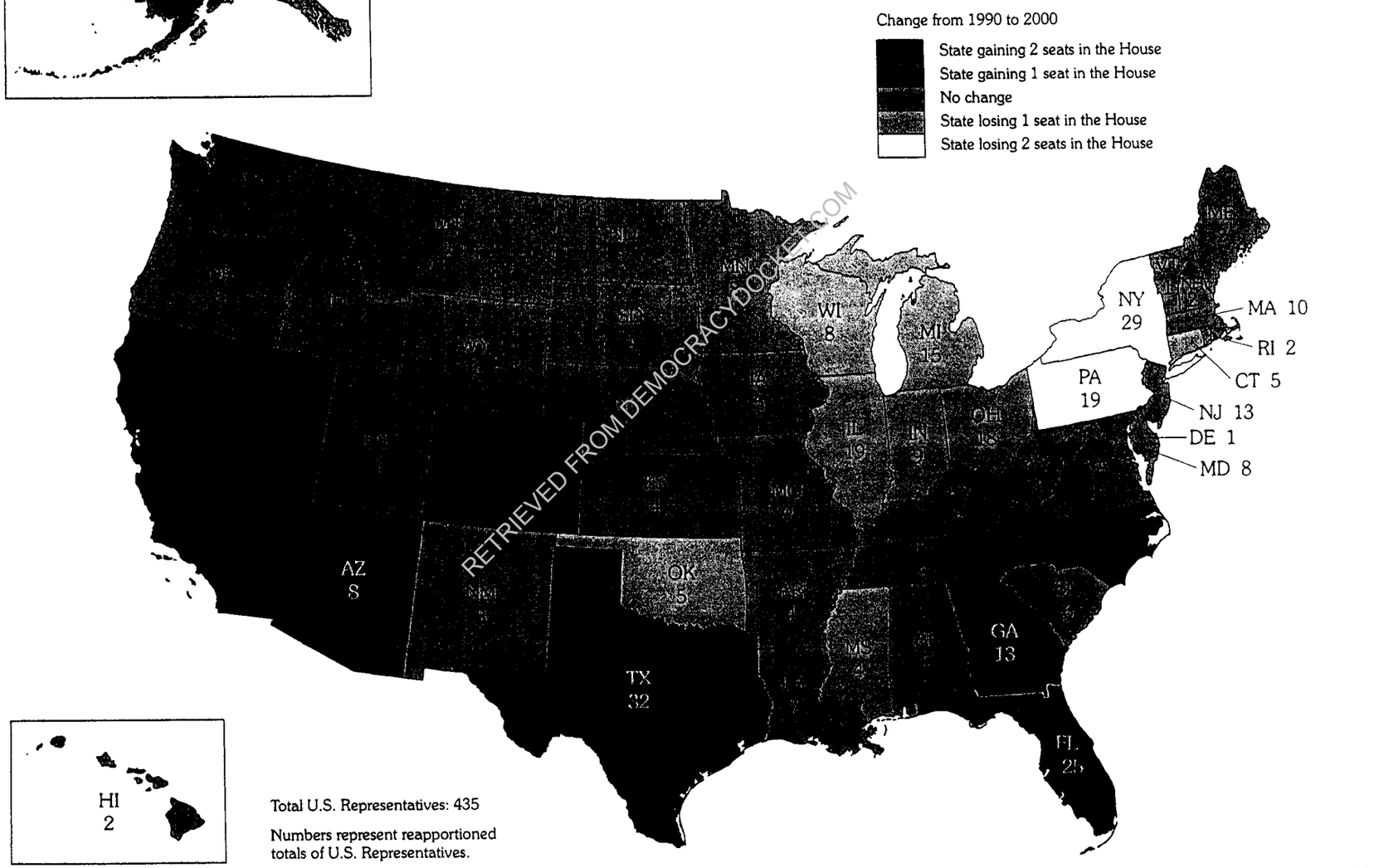

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EXHIBIT 2

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

FILED

November 18, 2021

OFFICE OF APPELLATE COURTS

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.

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 by 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 areas that 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 color-themed 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.

CIVIL DISTRICT COURT

PARISH OF ORLEANS, STATE OF LOUISIANA

NUMBER 2021-03538 **DIVISION C – SECTION 10**

CAMERON ENGLISH, ET AL.

VERUS

R. KYLE ARDOIN, IN HIS OFFICIAL CAPACITY AS LOUISIANA SECRETARY OF STATE

****

SECRETARY OF STATE'S REPLY TO
PLAINTIFF'S OPPOSITION TO EXCEPTIONS

MAY IT PLEASE THE COURT:

The Secretary of State excepted to the Plaintiffs' supplemental and amended petition because the case in not in a legal posture under Louisiana law to go forward, particularly in the Orleans Parish District Court. This brief memorandum in reply to the plaintiffs' opposition to the Secretary's exceptions is offered to raise a couple of additional points on the jurisdiction and venue exceptions.

This lawsuit challenges the reapportionment/redistricting of Louisiana's U.S. Congressional districts in the decennial reapportionment and redistricting of Representatives required by U.S. Const. art. I, § 2, cl. 3; amend. XIV, § 2 and 2 USC § 2a(a-c). While the number of Congressional members have been allocated based upon 2020 census data[1] for the current reapportionment, no redistricting plan has yet been proposed or enacted for Louisiana's U.S. Congressional districts from which its six Representatives will be elected. The plaintiffs allege, nonetheless, that they are unsettled by the prospect of failure on the part of the Legislature and Governor and might at some point in the future be aggrieved by partisan indecision in the congressional redistricting process. They cite as the basis of their concern the speculative and groundless proposition that the political branches of state government will fail to develop a consensus plan. On such allegations, they petition the Orleans Parish District Court to seize

[1] https://www.census.gov/data/tables/2020/dec/2020-apportionment-data.html

control of the congressional redistricting process by granting them declaratory and injunctive relief.

Otherwise, plaintiffs allege that they, like all Louisiana citizens at the commencement of the decennial redistricting process, reside in congressional districts in which the population numbers are out of balance. But, plaintiffs allege no harm associated with the population imbalance in their particular district. There are no congressional elections scheduled or proposed prior to the fall of 2022, after redistricting as required by statute, has been accomplished. Plaintiffs may be aggravated by the politics of reapportionment, but they are not in any legal sense aggrieved or threatened by any harm as a result.

Subject Matter Jurisdiction

This case is not ripe for adjudication. Generally, the ripeness doctrine is viewed as being both constitutionally required and judicially prudent. *Matherne v. Gray Ins. Co.*, 95-0975 (La. 10/16/95), 661 So. 2d 432, 435. Louisiana courts are disinclined to issue advisory opinions based upon hypothetical and speculative theories about future events that might never occur. See, *Ring v. State, Dep't of Transp. & Dev.*, 2002-1367 (La. 1/14/03), 835 So. 2d 423, 427. The plaintiffs here allege only hypothetical, not actual or concrete, harm. That something may or may not happen is not a sufficient jurisdictional basis for a lawsuit in Louisiana.

Plaintiffs attach a few cases and orders from various courts that allowed suits to stand under some other state's law, but none are controlling in Louisiana. Certainly, other courts in other state jurisdictions have dismissed claims similar to that asserted by the plaintiffs in this case. One such example from a court in the Commonwealth of Pennsylvania is attached.[2] The decision is well-reasoned and supportive of the Secretary of State's position in this case. However, like the cases advanced by the plaintiffs, the Pennsylvania case is not decided under Louisiana law and has no greater applicability than do the cases submitted by the plaintiffs.

Venue

In their opposition memorandum, plaintiffs argue that the Secretary of State does not understand the venue provision in La. R.S. 13:5104. Fortunately for the Secretary, the courts of Louisiana do and have consistently held that for purposes of the § 5104, venue lies where the

[2] Carter, et al v. Degraffenreid, et al, No. 132, M.D. 2021.

official acts or omissions or administrative decisions that give rise to the complaint are made. *Roger v. Anpac Louisiana Ins. Co.*, 2010-1099 (La. 11/19/10), 50 So. 3d 1275; *Willis-Knighton Health Sys., Inc. v. Nw. Louisiana Council of Governments*, 49,282 (La. App. 2 Cir. 1/21/15), 162 So. 3d 396, 402, *writ denied*, 2015-0362 (La. 4/24/15), 173 So. 3d 1165. If the plaintiffs will at some point be harmed by the failure to redistrict the State's congressional seats, it will necessarily be the result of decisions made by the Legislature, the Governor and the Secretary of State all of whom conduct their duties in East Baton Rouge Parish. Were a special election be called to fill a vacancy in congressional office, the same officials, all in the state capital, would make decisions about the election in that district. The Nineteenth Judicial District as the district court in which the state capitol is located and in which the involved officials carry out their duties is the court of proper venue for this suit.

The plaintiffs' notion of venue would make every judicial district in the state a proper venue for any plaintiff complaining that they live in a congressional district with a population imbalance at the commencement of the reapportionment process and would thus allow any or all of the district courts of the state to assume control of the redistricting process. The State could be called upon to defend all 64 parishes were the plaintiffs' view of venue to prevail. Any citizen could claim to be aggrieved by such an imbalance and petition the district court in their parish to declare their district unlawfully apportioned. The courts of Louisiana have not adopted such an expansive interpretation of the venue provision of La. R.S. 13:5104.

No Cause of Action and No Right of Action

The Secretary's memorandum supporting the exceptions adequately addressed the grounds for these exceptions, and no further argument is needed.

CONCLUSION

The Secretary of State respectfully submits that his exceptions, one and all, should be maintained and the plaintiffs case dismissed accordingly.

Respectfully submitted,

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Counsel for the Secretary of State

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing Memorandum has on this date been served upon all known counsel of record by electronic mail at the email address provided.

Baton Rouge, Louisiana, this 8th day of December, 2021.

CAREY T. JONES

EXHIBIT A

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Carol Ann Carter; Monica Parrilla; Rebecca Poyourow; William Tung; Roseanne Milazzo; Burt Siegel; Susan Cassanelli; Lee Cassanelli; Lynn Wachman; Michael Guttman; Maya Fonkeu; Brady Hill; Mary Ellen Balchunis; Tom DeWall; Stephanie McNulty; and Janet Temin,	:	
Petitioners	:	
v.	:	No. 132 M.D. 2021
	:	Argued: October 5, 2021
Veronica Degraffenreid, in her official capacity as the Acting Secretary of the Commonwealth of Pennsylvania; Jessica Mathis, in her official capacity as Director for the Pennsylvania Bureau of Election Services and Notaries,	:	
Respondents	:	

BEFORE: HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE MICHAEL H. WOJCIK, Judge (P.)
HONORABLE ELLEN CEISLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE WOJCIK

FILED: October 8, 2021

Before this special panel[1] are the Preliminary Objections (POs) of Respondents Veronica Degraffenreid, in her official capacity as the Acting Secretary

[1] *See* Section 112(b) of the Internal Operating Procedures of the Commonwealth Court, 210 Pa. Code §69.112(b) ("The President Judge may designate Judges to serve on a special court . . . panel to hear election law matters, appellate or original jurisdiction, on an expedited basis.").

of the Commonwealth of Pennsylvania, Jessica Mathis, in her official capacity as Director for the Pennsylvania Bureau of Election Services and Notaries (collectively, Respondents), and Intervenors Speaker of the Pennsylvania House of Representatives Bryan Cutler, Majority Leader of the Pennsylvania House of Representatives Kerry Benninghoff, President Pro Tempore of the Pennsylvania Senate Jake Corman, and Majority Leader of the Pennsylvania Senate Kim Ward (collectively, Intervenors)[2] to Petitioners'[3] Petition for Review (Petition) addressed to this Court's original jurisdiction.[4]

I. Petition for Review

On April 26, 2021, Petitioners filed the Petition against Respondents challenging the current congressional district map based on the 2020 Census. Petitioners identify themselves as 16 citizens of the United States (U.S.) who are registered to vote in Pennsylvania in 11 different federal congressional districts.[5]

[2] Following a hearing, by Memorandum Opinion and Order dated September 2, 2021, this Court granted Intervenors leave to intervene. *Carter v. DeGraffenreid* (Pa. Cmwlth., No. 132 M.D. 2021, filed September 2, 2021).

[3] Petitioners are Carol Ann Carter, Monica Parrilla, Rebecca Poyourow, William Tung, Roseanne Milazzo, Burt Siegel, Susan Cassanelli, Lee Cassanelli, Lynn Wachman, Michael Guttman, Maya Fonkeu; Brady Hill; Mary Ellen Balchunis, Tom DeWall, Stephanie McNulty, and Janet Temin.

[4] Pursuant to Section 761(a)(1) of the Judicial Code, this Court has "original jurisdiction of all civil actions or proceedings . . . [a]gainst the Commonwealth, including any officer thereof, acting in his official capacity." 42 Pa. C.S. §761(a)(1).

[5] Specifically, Petitioners reside in Bucks, Chester, Cumberland, Dauphin, Delaware, Lancaster, Montgomery, Northampton, and Philadelphia Counties and in congressional districts 1 through 7, 10, and 11.

Petitioners intend to advocate and vote for Democratic candidates in the upcoming 2022 primary and general elections. Petition, ¶11.

As we detailed in the September 2, 2021 Memorandum Opinion,[6] the Petition provides details regarding the results of the 2020 Census, the dates by which the U.S. Secretary of Commerce must provide the U.S. President and the states with the apportionment data, and the effect of the COVID-19 pandemic on the delivery of that data. The Petition further explains that, while the Commonwealth's population increased from the last decennial census, the 2020 Census shows that the Commonwealth will lose a representative seat in the U.S. House of Representatives. Starting with the upcoming 2022 elections, the Commonwealth will have 17 representatives in the U.S. House of Representatives, 1 fewer than the current 18 representatives. The Commonwealth's congressional district map must be redrawn to accommodate for the loss of a seat in the U.S. House of Representatives. Petitioners claim that the Commonwealth's current congressional districts are "unconstitutionally malapportioned" due to shifts in population within the Commonwealth. Petition, ¶2. They believe that the congressional districts in which they live are overpopulated, while other districts are underpopulated, and that, consequently, their votes for members of the U.S. House of Representatives are diluted. Petition, ¶¶18-21.

The Petition observes that Pennsylvania law does not set a deadline by which a new congressional district map must be put in place prior to the first congressional election following a census. According to Petitioners, it is in the best interest of voters, candidates, and the Commonwealth's entire electoral apparatus to have a new, final congressional district map in place prior to February 15, 2022, the

[6] *See Carter*, slip op. at 3-6.

date on which candidates may begin collecting signatures on nomination petitions for placement on the primary election ballot. Petition, ¶¶30-31.

The Petition informs that the Commonwealth's current congressional district map was drawn by the Pennsylvania Supreme Court in *League of Women Voters of Pennsylvania v. Commonwealth*, 181 A.3d 1083 (Pa. 2018) (*League of Women Voters III*), after the Republican-controlled General Assembly and Democratic Governor failed to agree upon a new congressional district map following the Supreme Court's invalidation of the Commonwealth's 2011 congressional district map. The current political climate has not changed since 2018, as Republican representatives maintain the majority in both houses of the General Assembly and Governor Tom Wolf is a Democrat. For these reasons, Petitioners contend that it is "unlikely" that the political branches of the government will agree upon a new congressional district map. Petition, ¶¶8, 29, 32, 42, 52.

Petitioners present four counts alleging that the current congressional district map violates: (1) Article I, Section 5 of the Pennsylvania Constitution (free and equal elections clause);[7] (2) 2 U.S.C. §2c (relating to districting for U.S. House of Representatives);[8] (3) Article I, Section 20 of the Pennsylvania Constitution

[7] Pa. Const. art. I, §5. Article I, Section 5 of the Pennsylvania Constitution, states: "Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage."

[8] 2 U.S.C. §2c provides:

> In each State entitled in the Ninety-first Congress or in any subsequent Congress thereafter to more than one Representative under an apportionment made pursuant to the provisions of section 2a(a) of this title, 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

(Footnote continued on next page...)

(relating to right to petition);[9] and (4) Article I, Section 2 of the U.S. Constitution (relating to qualifications for member of the U.S. House of Representatives).[10]

> districts so established, no district to elect more than one Representative (except that a State which is entitled to more than one Representative and which has in all previous elections elected its Representatives at Large may elect its Representatives at Large to the Ninety-first Congress).

[9] Pa. Const. art. I, §20. Article I, Section 20 of the Pennsylvania Constitution provides: "The citizens have a right in a peaceable manner to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances or other proper purposes, by petition, address or remonstrance."

[10] U.S. Const. art. I, §2. Article I, Section 2 of the U.S. Constitution provides:

> The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.
>
> No Person shall be a Representative who shall not have attained to the Age of twenty[-]five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.
>
> [Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.] The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four,

(Footnote continued on next page...)

For relief, Petitioners seek both declaratory and injunctive relief. Specifically, they ask the Court to:

> a. Declare that the current configuration of Pennsylvania's congressional districts violates . . . the Pennsylvania Constitution [and] . . . the U.S. Constitution . . . ;
>
> b. Enjoin Respondents, their respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, from implementing, enforcing, or giving any effect to Pennsylvania's current congressional district plan;
>
> c. Establish a schedule that will enable the Court to adopt and implement a new congressional district plan by a date certain should the political branches fail to enact such plan by that time;
>
> d. Implement a new congressional district plan that complies with . . . the Pennsylvania Constitution [and] . . . the U.S. Constitution . . . , if the political branches fail to enact a plan by a date certain set by this Court;
>
> e. Award Petitioners their costs, disbursements, and reasonable attorneys' fees; and
>
> f. Grant such other and further relief as the Court deems just and proper.

Petition at 21-22.

Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies. The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

II. Preliminary Objections

In response to the Petition, Respondents and Intervenors filed POs. Both Respondents and Intervenors preliminarily object on the bases that Petitioners lack standing and their claims are not ripe pursuant to Pa.R.Civ.P. 1028(a)(4), (5).[11] Additionally, Intervenors object on the grounds that the claims are nonjusticiable and that Petitioners fail to otherwise state a claim upon which relief may be granted.[12]

A. Standing

With regard to standing, Respondents and Intervenors both assert that Petitioners lack capacity to sue because they are not aggrieved. Petitioners' claims turn on one key fact – whether or not there will be a new congressional district plan in time for the 2022 primary election. Petitioners' claims are predicated on the supposition that because the General Assembly is controlled by one political party, the Governor is a member of another political party, and there has been "conflict" between these actors in the past, it is highly unlikely that Pennsylvania will enact a new congressional district plan in time for the 2022 primary election, which would cause them harm. The possible harm is wholly contingent on future events, which

[11] Pa.R.Civ.P. 1028(a)(4), (5) provides: "Preliminary objections may be filed by any party to any pleading and are limited to the following grounds: . . . (4) legal insufficiency of a pleading (demurrer); [and] (5) lack of capacity to sue[.]"

[12] "In ruling on preliminary objections, the courts must accept as true all well-pled facts that are material and all inferences reasonably deducible from the facts." *Pennsylvania Independent Oil and Gas Association v. Department of Environmental Protection*, 135 A.3d 1118, 1123 (Pa. Cmwlth. 2015), *aff'd*, 161 A.3d 949 (Pa. 2017) (quoting *Guarrasi v. Scott*, 25 A.3d 394, 400 n.5 (Pa. Cmwlth. 2011)). "However, we 'are not required to accept as true any unwarranted factual inferences, conclusions of law or expressions of opinion.'" *Id.* (quoting *Guarrasi*, 25 A.3d at 400 n.5). "To sustain preliminary objections, 'it must appear with certainty that the law will permit no recovery' and '[a]ny doubt must be resolved in favor of the non-moving party.'" *Id.* (quoting *Guarrasi*, 25 A.3d at 400 n.5).

may never happen. Petitioners' failure to demonstrate an immediate interest defeats standing.

The hallmark of standing is that "a person who is not adversely affected in any way by the matter he seeks to challenge is not 'aggrieved' thereby." *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269, 280 (Pa. 1975). An individual is aggrieved if he has a "substantial, direct and immediate interest in the outcome of the litigation." *Fumo v. City of Philadelphia*, 972 A.2d 487, 496 (Pa. 2009). "[A]n interest is 'immediate' if the causal connection is not remote or speculative." *Pittsburgh Palisades Park, LLC v. Commonwealth*, 888 A.2d 655, 660 (Pa. 2005).

Our Supreme Court addressed standing in *Office of Governor v. Donahue*, 98 A.3d 1223, 1229 (Pa. 2014), explaining:

> In Pennsylvania, the doctrine of standing . . . is a prudential, judicially created principle designed to winnow out litigants who have no direct interest in a judicial matter. *In re Hickson*, [821 A.2d 1238, 1243 (Pa. 2003)]. For standing to exist, the underlying controversy *must be real and concrete*, such that the party initiating the legal action has, in fact, been "aggrieved." *Pittsburgh Palisades Park*, [888 A.2d at 659]. . . . As this Court explained in *William Penn Parking Garage*, "the core concept [of standing] is that a person who is not adversely affected in any way by the matter he seeks to challenge is not 'aggrieved' thereby and has no standing to obtain a judicial resolution to his challenge." 346 A.2d at 280-81. A party is aggrieved for purposes of establishing standing when the party has a "substantial, direct and immediate interest" in the outcome of litigation. *Johnson* [*v. American Standard*, 8 A.3d 318, 329 (Pa. 2010)] (quoting *Fumo*[, 972 A.2d at 496]). A party's interest is substantial when it surpasses the interest of all citizens in procuring obedience to the law; it is direct when the asserted violation shares a causal connection with the alleged harm; finally, *a party's interest is immediate when the causal*

connection with the alleged harm is neither remote nor speculative. Id. [(emphasis added).]

Here, Petitioners' allegations fail to meet the immediacy test. Petitioners do not allege that they have sustained a present or imminent legally cognizable injury or otherwise sufficiently develop facts to permit judicial resolution at this juncture. Petitioners' claims are predicated on what may happen in the event a new congressional map is not enacted before the 2022 primary election.

At this juncture, Petitioners' claims are premature. Petitioners filed this suit in April 2021 on the heels of the 2020 Census release without ever giving the General Assembly and the Governor an opportunity to act. In fact, Petitioners allege that the U.S. Secretary of Commerce was not expected to deliver to Pennsylvania the redistricting data in legacy format until mid-to-late-August 2021, or the same detailed population data showing the new population of each political subdivision in a tabulated format until September 30, 2021.[13] Petition, ¶23.

Petitioners' action is premised on their belief that it is "extremely unlikely" that the branches will pass a lawful congressional redistricting plan in time for the upcoming 2022 election. Petition, ¶29. Petitioners attribute this unlikelihood to the divided political branches. Petition, ¶29. Both chambers of the General Assembly are controlled by the Republican Party and the Governor is a Democrat. Petition, ¶29. The Republican control of the General Assembly is not large enough to override a gubernatorial veto. Petition, ¶29. However, Petitioners do not allege that the political branches have announced a present impasse.

[13] The U.S. Census Bureau provided redistricting data in legacy format for all states on August 12, 2021. *See* https://www.census.gov/programs-surveys/decennial-census/data/datasets/rdo.html (last visited October 5, 2021).

Nor do they allege that a legislative impasse is a *fait accompli* based on the political divide between the General Assembly and the Governor. In fact, Petitioners admit that, in the last two years, legislation has passed with bipartisan support and without a gubernatorial veto, despite the current political division. Respondents' Preliminary Objections, ¶10; Petitioners' Answer to Respondents' Preliminary Objections, ¶10; *see, e.g.*, Act 77 of 2019[14] (allowing all eligible voters to vote by mail-in ballot); Act 12 of 2020[15] (changes to voting by mail-in electors and sweeping temporary measures to respond to the COVID-19 pandemic).

Petitioners acknowledge, as they must, that "there is still time for the General Assembly and the Governor to enact a new congressional plan." Petition, ¶9. Petitioners also acknowledge that Pennsylvania law does not set a deadline by which congressional redistricting plans must be in place prior to the first congressional election following the census. Petition, ¶30. Petitioners allege that "it is in everyone's interests – candidates and voters alike – that district boundaries are set" prior to February 15, 2022 – the first day for candidates to circulate and file nomination petitions for the 2022 primary election. Petition, ¶31. There is still ample time for the lawmakers to act.[16] *See League of Women Voters of Pennsylvania v. Commonwealth*, 178 A.3d 737, 743 (Pa. 2018) (*League of Women Voters II*)

[14] Act of October 31, 2019, P.L. 552, No. 77.

[15] Act of March 27, 2020, P.L. 41, No. 12.

[16] Respondents concede that February 15, 2022, is a key date for redistricting. "In order to ensure efficient election administration, allow for timely notice to candidates, and permit proper implementation of the new congressional districts," Respondents assert that "the Department of State must receive a final and legally binding congressional district map no later than January 24, 2022." Respondents' Brief at 5; *see* Respondents' Preliminary Objections, ¶¶13-17. "In order to account for potential litigation, Respondents believe that a new map must be signed into law by the end of December 2021." Respondents' Brief at 5; *see* Respondents' Preliminary Objections, ¶17.

(noting that the congressional district map that followed the 2010 Census was signed into law on December 22, 2011).

Should lawmakers fail to act, Pennsylvania courts have demonstrated the ability to move swiftly to implement remedial congressional districting plans, which further undermines Petitioners' demand for immediate, premature relief. In *Mellow v. Mitchell*, 607 A.2d 204, 205 (Pa. 1992), eight Democratic state senators brought an action on January 28, 1992, the first day to circulate nominating petitions that year, asking the Supreme Court to create a new congressional district plan due to an impasse. On March 10, 1992, only 42 days after the suit was filed, the Supreme Court adopted a remedial plan. Similarly, in *League of Women Voters of Pennsylvania v. Commonwealth*, 175 A.3d 282 (Pa. 2018) (*League of Women Voters I*), on January 22, 2018, the Supreme Court struck down the 2011 congressional district plan. *See League of Women Voters II*, 178 A.3d at 825. On February 19, 2018, just 28 days later, the Supreme Court adopted a remedial plan. *League of Women Voters III*, 181 A.3d at 1089-1121.

Although it is possible that the General Assembly and the Governor may reach an impasse on the congressional redistricting legislation, the mere possibility is not sufficient to state a cognizable claim. "[A]ny possible harm to Petitioners is wholly contingent on future events," which may never occur. *Pittsburgh Pallisades Park*, 888 A.2d at 660. Because no one can predict what will happen in negotiations between the General Assembly and the Governor, the facts underlying the Petition and alleged harm are far too speculative and uncertain to

constitute an immediate interest. Petitioners cannot reserve their place in line to be the lead petitioners in the event that future impasse litigation becomes necessary.[17]

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[17] Petitioners rely upon jurisprudence from Wisconsin and Minnesota to support their position that they have standing to prosecute their claims and that their claims are ripe at this juncture. Petitioners' Memorandum of Law in Opposition to Preliminary Objections, at 2; *see Arrington v. Elections Board*, 173 F. Supp. 2d 856 (E.D. Wis. 2001); *Wattson v. Simon* (Minn., Nos. A21-0243, A21-0546, filed June 30, 2021); *see also Sachs v. Simon* (Minn., No. A21-0546, filed May 20, 2021). According to Petitioners, the courts in Wisconsin and Minnesota accepted jurisdiction in similar redistricting cases where a risk of impasse was alleged. The Wisconsin Supreme Court found that the complaint presented a justiciable controversy upon recognizing that "challenges to districting laws may be brought immediately upon release of official data showing district imbalance." *Arrington*, 173 F. Supp. 2d at 860 (citations omitted). Recently, the Minnesota Supreme Court appointed a special redistricting panel to "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," noting that the redistricting 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 election in 2022." *Wattson*, Order at 2-3.

First, we are not bound by decisions from courts in other jurisdictions. *E.N. v. M. School District*, 928 A.2d 453, 466 n.20 (Pa. Cmwlth. 2007); *Ferraro v. Temple University*, 185 A.3d 396, 404 (Pa. Super. 2018). Second, although we may use such decisions "for guidance to the degree they are found to be useful, persuasive, and . . . not incompatible with Pennsylvania law," such is not the case here. *Ferraro*, 185 A.3d at 404. In Minnesota, a "special redistricting panel," comprised of judges, conducts public outreach and factfinding to prepare itself to address any redistricting litigation that may arise. *Wattson*, Order at 2-3. Pennsylvania has no such counterpart. Minnesota also has statutory deadlines. *Wattson*, Order at 2 (citing "Minn. Stat. §204B.14, subd. 1a (2020)," which provides that redistricting plans are to be implemented no "later than 25 weeks before the state primary election" in 2022). Given the panel's expansive role and the statutory deadline, the Minnesota Supreme Court concluded that the panel should commence its work in the summer of 2021. *Wattson*, Order at 3. That decision, under those unique circumstances, has no bearing on the standing and ripeness issues under Pennsylvania jurisprudence. Furthermore, the Minnesota orders do not contain any analysis regarding the standing and ripeness issues presented here.

Arrington is similarly unpersuasive. There, two groups of legislators - the Wisconsin State Senate Democratic Caucus, who intervened as plaintiffs, and the Wisconsin State Senate's Speaker and Minority Leader, who intervened as defendants - filed briefs agreeing that the case was

(Footnote continued on next page...)

Although we recognize that Petitioners' rights might be abridged at some future point in time, at this juncture, the alleged harm is too remote and too speculative to warrant judicial resolution of the dispute. Petitioners' allegations fail to demonstrate the immediacy required to confer standing. We, therefore, sustain Respondents' and Intervenors' POs on the basis that Petitioners lack standing to litigate their claims.

B. Ripeness

Next, Respondents and Intervenors preliminarily object to the Petition on the basis that Petitioners' claims are not ripe because the claims are based on uncertain and contingent events that may never occur.

"There is considerable overlap between the doctrines of standing and ripeness, especially where the contentions regarding lack of justiciability are focused on arguments that the interest asserted by the petitioner is speculative, not concrete, or would require the court to offer an advisory opinion." *Robinson Township, Washington County v. Commonwealth*, 83 A.3d 901, 917 (Pa. 2013). Like standing, the principles of ripeness "mandates the presence of an actual controversy." *Bayada Nurses, Inc. v. Department of Labor and Industry*, 8 A.3d 866, 874 (Pa. 2010). Unlike standing, "ripeness also reflects the separate concern that relevant facts are not sufficiently developed to permit judicial resolution of the dispute." *Robinson Township*, 83 A.3d at 917.

Under the ripeness doctrine, "[w]here no actual controversy exists, a claim is not justiciable and a declaratory judgment action cannot be maintained."

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justiciable and that "legislative failure to redistrict is a very real possibility." 173 F. Supp. 2d at 858-59, 864. Based on these admissions, the *Arrington* Court accepted jurisdiction. *Id.* at 864. Conversely, here, the political branches have not taken such a position. Further, *Arrington* interpreted federal law as applied to the Wisconsin legislative process, which is not applicable here.

Cherry v. City of Philadelphia, 692 A.2d 1082, 1085 (Pa. 1997). In other words, declaratory judgment is not appropriate to determine rights in anticipation of events that may never occur; the presence of an actual controversy is generally required. *Id.* The same holds true for actions seeking injunctive relief. *Mazur v. Washington County Redevelopment Authority*, 954 A.2d 50, 56 (Pa. Cmwlth. 2008).

"In deciding whether the doctrine of ripeness bars our consideration . . . we consider [(1)] whether the issues are adequately developed for judicial review and [(2)] what hardships the parties will suffer if review is delayed." *Township of Derry v. Pennsylvania Department of Labor and Industry*, 932 A.2d 56, 57-58 (Pa. 2007) (internal citations and quotations omitted). As for whether the issues are "adequately developed," we examine "whether the claim involves uncertain and contingent events that may not occur as anticipated or at all; the amount of fact finding required to resolve the issue; and whether the parties to the action are sufficiently adverse." *Id.*

Rooted in the first part of this test is the principle that "[o]nly where there is a real controversy may a party obtain a declaratory judgment. A declaratory judgment must not be employed to determine rights in anticipation of events [that] may never occur or for consideration of moot cases or as a medium for the rendition of an advisory opinion which may prove to be purely academic." *Gulnac by Gulnac v. South Butler County School District*, 587 A.2d 699, 701 (Pa. 1991) (internal citations omitted); *accord City of Philadelphia v. Philadelphia Transportation Co.*, 171 A.2d 768, 770 (Pa. 1961). "Under the 'hardship' analysis, we may address the merits even if the case is not as fully developed as we would like, *if refusal to do so would place a demonstrable hardship on the party*." *Township of Derry*, 932 A.2d at 58 (emphasis added).

Petitioners' claims are premised on the fear that there will not be a new congressional district plan in place in time for the 2022 primary election. Petitioners allege that it is highly likely that Pennsylvania's political branches will "be at an impasse this cycle" and "fail to enact a new congressional district plan." Petition, ¶33. However, the issues are not adequately developed because these events may never occur. As Petitioners acknowledge, there is still time for lawmakers to enact a new congressional district plan. Petition, ¶9. Petitioners' claims also ignore the presumption that public officials will faithfully discharge their duties. *In re Redevelopment Authority of Philadelphia*, 938 A.2d 341, 345 (Pa. 2007).

Additionally, Petitioners will not suffer any hardship if review is delayed. *Only if* the General Assembly and the Governor fail to adopt a new congressional district plan by an arbitrary deadline will the alleged constitutional and statutory violations occur. As this Court observed, "[a]t this juncture, it is not known how the redistricting process will proceed." *Carter*, slip op. at 12. "The events which might bring these parties into actual conflict are thus too remote to justify our resolution of this dispute by declaratory judgment." *South Whitehall Township v. Department of Transportation*, 475 A.2d 166, 169 (Pa. Cmwlth. 1984).

The fact that the current districts may not have equal numbers of voters does not give rise to a constitutional injury. "Malapportionment's harm is felt by individuals in overpopulated districts who actually suffer a diminution in the efficacy of their votes and the proportional voice in the legislature." *Garcia v. 2011 Legislative Reapportionment Commission*, 559 F. App'x 128, 133 (3d Cir. 2014). Petitioners will not suffer an injury based on malapportionment harm until an election occurs using malapportioned districts.

Because Petitioners have alleged no immediate harm and their claims are contingent on future uncertainties, Petitioners' claims are not ripe for disposition. We, therefore, sustain Respondents' and Intervenors' POs on the basis that the dispute is not ripe.[18]

III. Conclusion

Based on the foregoing discussion, we sustain Respondents' and Intervenors' POs based on a lack of standing and ripeness as to all four counts of the Petition. Accordingly, we dismiss the Petition without prejudice.[19]

MICHAEL H. WOJCIK, Judge

[18] We recognize that there may come a time when Petitioners' claims ripen, and they will have standing to pursue the claims in the Petition; however, that time is not now.

[19] In light of this disposition, we decline to address Intervenors' additional POs.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Carol Ann Carter; Monica Parrilla; Rebecca Poyourow; William Tung; Roseanne Milazzo; Burt Siegel; Susan Cassanelli; Lee Cassanelli; Lynn Wachman; Michael Guttman; Maya Fonkeu; Brady Hill; Mary Ellen Balchunis; Tom DeWall; Stephanie McNulty; and Janet Temin,	:	
Petitioners	:	
v.	:	No. 132 M.D. 2021
Veronica Degraffenreid, in her official capacity as the Acting Secretary of the Commonwealth of Pennsylvania; Jessica Mathis, in her official capacity as Director for the Pennsylvania Bureau of Election Services and Notaries,	:	
Respondents	:	

ORDER

AND NOW, this 8th day of October, 2021, Respondents' and Intervenors' Preliminary Objections relating to lack of standing and ripeness are SUSTAINED. Petitioners' Petition for Review is DISMISSED WITHOUT PREJUDICE.

MICHAEL H. WOJCIK, Judge