

IN THE SUPREME COURT OF WISCONSIN
No. 2021AP1450-OA

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

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

v.

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

THE WISCONSIN LEGISLATURE, GOVERNOR TONY EVERS, IN HIS
OFFICIAL CAPACITY, AND JANET BEWLEY SENATE DEMOCRATIC
MINORITY LEADER, ON BEHALF OF THE SENATE DEMOCRATIC CAUCUS,
Intervenor-Respondents.

HUNTER INTERVENOR-PETITIONERS'
BRIEF IN SUPPORT OF PROPOSED MAPS

Charles G. Curtis, Jr.
Bar No. 1013075
PERKINS COIE LLP
33 E Main St, Ste 201
Madison, Wisconsin 53703-3095
(608) 663-7460
CCurtis@perkinscoie.com

John M. Devaney**
PERKINS COIE LLP
700 Thirteenth St., NW
Washington, D.C. 20005
(202) 654-6200
JDevaney@perkinscoie.com

Christina A. Ford*
William K. Hancock*
Jacob D. Shelly*
ELIAS LAW GROUP LLP
10 G St., NE, Suite 600
Washington, D.C. 20002
(202) 968-4490
CFord@elias.law
WHancock@elias.law
JShelly@elias.law

Attorneys for Hunter Intervenor-Petitioners

*Admitted *Pro Hac Vice*

***Pro Hac Vice* Pending

TABLE OF CONTENTS

INTRODUCTION	6
BACKGROUND	7
ANALYSIS	12
I. The Hunter Congressional Map.....	12
A. The Hunter Congressional Map minimizes changes from the 2011 Map.....	14
B. The Hunter Congressional Map satisfies equal population and VRA requirements.	15
C. Where changes to existing congressional districts were necessary, the changes were made according to traditional redistricting criteria.	15
II. Hunter Assembly Map.....	17
A. The Hunter Assembly Map minimizes changes from the 2011 Map.	17
B. The Hunter Assembly Map meets basic equal population and VRA requirements.	18
C. Where changes to existing assembly districts were necessary, the changes were made according to traditional redistricting criteria.	19
III. Hunter Senate Map	21
A. The Hunter Senate Map minimizes changes from the 2011 enacted plan.	22
B. The Hunter Senate Map meets basic equal population and VRA requirements.	23
C. Where changes to existing senate districts were necessary, the changes were made according to traditional redistricting criteria.	24

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>AFL–CIO v. Elections Bd.</i> , 543 F. Supp. 630 (E.D. Wis.1982)	9, 18
<i>Baldus v. Members of Wis. Government Accountability Bd.</i> , 862 F.Supp.2d 860 (E.D. Wis. 2012)	7, 19
<i>Baldus v. Members of Wisconsin Gov't Accountability Bd.</i> , 849 F. Supp. 2d 840 (E.D. Wis. 2012)	23
<i>Baumgart v. Wendelberger</i> , No. 01-C-0121, 2002 WL 34127471 (E.D. Wis. May 30, 2002)	18
<i>Bethune-Hill v. Virginia State Bd. of Elections</i> , 137 S. Ct. 788 (2017).....	9
<i>Cooper v. Harris</i> , 137 S. Ct. 1455 (2017).....	10
<i>Holt v. 2011 Legislative Reapportionment Comm’n</i> , 38 A.3d 711 (Pa. 2012)	10
<i>Johnson v. De Grandy</i> , 512 U.S. 997 (1994).....	9
<i>Kirkpatrick v. Preisler</i> , 394 U.S. 526 (1969).....	8
<i>LaComb v. Growe</i> , 541 F. Supp. 145 (D. Minn.)	11
<i>League of United Latin American Citizens v. Perry</i> , 548 U.S. 399 (2006).....	11
<i>Miller v. Johnson</i> , 515 U.S. 900 (1995).....	12, 16

<i>Orwoll v. LaComb</i> , 456 U.S. 966 (1982)	11
<i>Prosser v. Elections Bd.</i> , 793 F. Supp. 859 (W.D. Wis. 1992)	22
<i>In re Reapportionment of Colorado General Assembly</i> , 45 P.3d 1237 (Colo. 2002)	10
<i>State ex rel. Reynolds v. Zimmerman</i> , 22 Wis. 2d 544, 126 N.W.2d 551 (1964)	8
<i>In re Senate Joint Resolution of Legislative Apportionment</i> , 83 So.3d 597 (Fla. 2012)	10
<i>Shaw v. Reno</i> , 509 U.S. 630 (1993)	11
<i>Twin Falls County v. Idaho Comm’n on Redistricting</i> , 271 P.3d 1202 (Idaho 2012)	10

Statutes

52 U.S.C. § 10301(a)	9
Wis. Stat. § 4.001	9, 24
Wis. Stat. § 5.15(1)(c)	20, 21

Other Authorities

Wis. Const. art. IV, § 4	10, 11, 20
Wis. Const. art. IV, § 5	9, 11, 24

INTRODUCTION

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

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

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

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

BACKGROUND

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

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

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

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

REDISTRICTING CRITERIA

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ANALYSIS

I. The Hunter Congressional Map

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

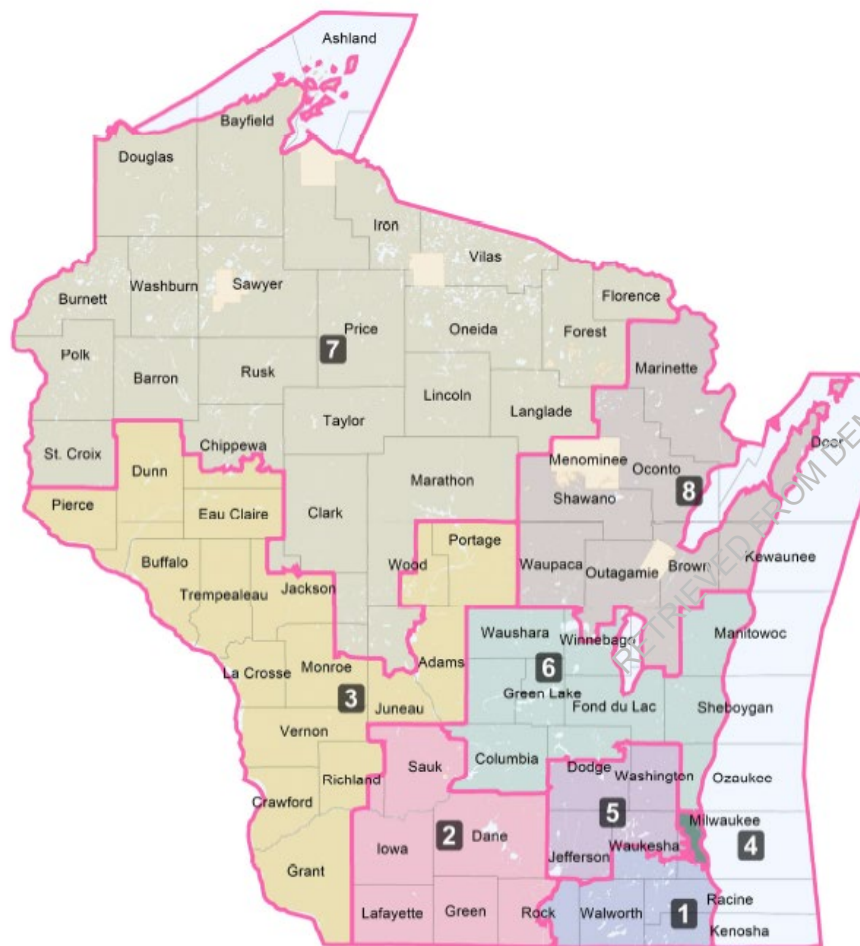
² A precise description of the contours of the Hunter Congressional Map will be provided to the other parties in accordance with the Joint Proposed Discovery Plan. The Hunter Intervenors are prepared to provide the Court with a precise description of the map in whatever format the Court prefers.

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

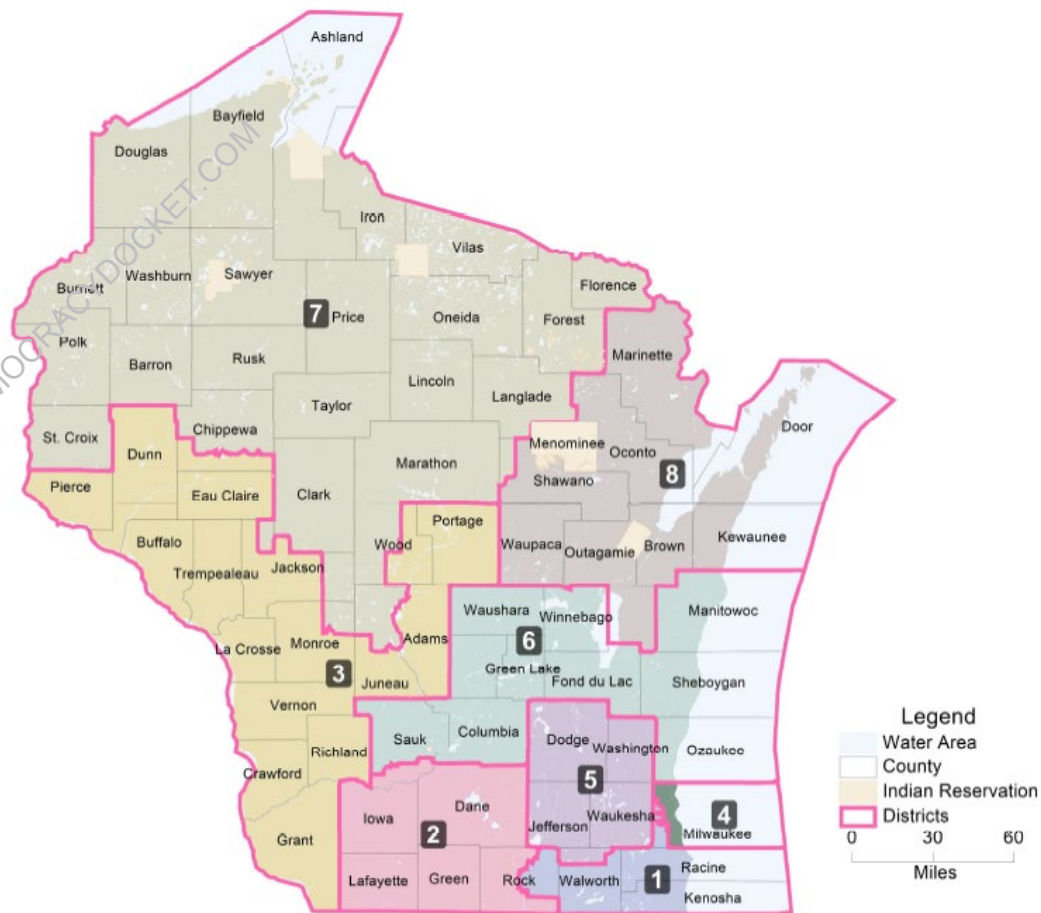
A. The Hunter Congressional Map minimizes changes from the 2011 Map.

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

2011 Congressional Map



Hunter Congressional Map



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

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

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

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

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

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

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

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

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

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

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

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

II. Hunter Assembly Map

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. Hunter Senate Map

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

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

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

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

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

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

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

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

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

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

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

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

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

Not surprisingly, because the Hunter Assembly Map is more compact than the corresponding 2011 Assembly Map, the Hunter Senate Map is also slightly more compact than the 2011 Senate Map. Where the 2011 Senate Map has an average Polsby-Popper score of .27, for example, the Hunter Senate Map has a score of .30, Ex. 1, meaning the Hunter Senate Map is more compact and has fewer irregular boundaries.

Similarly, because the Hunter Assembly Map divides far fewer local boundaries than the 2011 Assembly Map, the Hunter Senate Map necessarily does as well. Where the 2011 Senate Map splits 57 counties, the Hunter Senate Map splits only 42. Ex. 1. Perhaps most notably, where the 2011 Senate Map splits 576 precincts, the Hunter Senate Map splits only 123 precincts. Ex. 1. Much like the Hunter Assembly Map, across every conceivable measure, the Hunter Senate Map splits fewer local boundaries. Ex. 1.

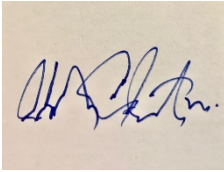
CONCLUSION

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

RETRIEVED FROM DEMOCRACYDOCKET.COM

Dated this 15th day of December, 2021.

Respectfully Submitted,



Charles F. Curtis Jr.

Charles G. Curtis, Jr.
Bar No. 1013075
PERKINS COIE LLP
33 E Main St, Ste 201
Madison, Wisconsin 53703-3095
(608) 663-7460
CCurtis@perkinscoie.com

John M. Devaney**
PERKINS COIE LLP
700 Thirteenth St., NW
Washington, D.C. 20005
(202) 654-6200
JDevaney@perkinscoie.com

Christina A. Ford*
William K. Hancock*
Jacob D. Shelly*
ELIAS LAW GROUP LLP
10 G St., NE, Suite 600
Washington, D.C. 20002
(202) 968-4490
CFord@elias.law
WHancock@elias.law
JShelly@elias.law

Attorneys for Hunter Intervenor-Petitioners

*Admitted *Pro Hac Vice*

***Pro Hac Vice* Pending

FORM AND LENGTH CERTIFICATION

I certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 4,932 words.

Dated: December 15, 2021

/s/ Charles C. Curtis
Charles C. Curtis

RETRIEVED FROM DEMOCRACYDOCKET.COM

CERTIFICATE OF SERVICE

I certify that on this 15th day of December, 2021, I caused a copy of this brief to be served upon counsel for each of the parties via e-mail.

Dated: December 15, 2021

/s/ Charles C. Curtis
Charles C. Curtis

RETRIEVED FROM DEMOCRACYDOCKET.COM