

FILED
08-02-2023
CLERK OF WISCONSIN
SUPREME COURT

IN THE SUPREME COURT OF WISCONSIN

No. _____

REBECCA CLARKE, RUBEN ANTHONY, TERRY DAWSON, DANA GLASSTEIN, ANN GROVES-LLOYD, CARL HUJET, JERRY IVERSON, TIA JOHNSON, ANGIE KIRST, SELIKA LAWTON, FABIAN MALDONADO, ANNEMARIE MCCLELLAN, JAMES MCNETT, BRITTANY MURIELLO, ELA JOOSTEN (PARI) SCHILS, NATHANIEL SLACK, MARY SMITH-JOHNSON, DENISE (DEE) SWEET, AND GABRIELLE YOUNG,

Petitioners,

v.

WISCONSIN ELECTIONS COMMISSION; DON MILLIS, ROBERT F. SPINDELL, JR., MARK L. THOMSEN, ANN S. JACOBS, MARGE BOSTELMANN, AND JOSEPH J. CZARNEZKI, IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE WISCONSIN ELECTIONS COMMISSION; MEAGAN WOLFE, IN HER OFFICIAL CAPACITY AS THE ADMINISTRATOR OF THE WISCONSIN ELECTIONS COMMISSION; SENATOR ANDRÉ JACQUE, SENATOR TIM CARPENTER, SENATOR ROB HUTTON, SENATOR CHRIS LARSON, SENATOR DEVIN LEMAHIEU, SENATOR STEPHEN L. NASS, SENATOR JOHN JAGLER, SENATOR MARK SPREITZER, SENATOR HOWARD L. MARKLEIN, SENATOR RACHAEL CABRAL-GUEVARA, SENATOR VAN H. WANGGAARD, SENATOR JESSE L. JAMES, SENATOR ROMAINE ROBERT QUINN, SENATOR DIANNE H. HESSELBEIN, SENATOR CORY TOMCZYK, SENATOR JEFF SMITH, AND SENATOR CHRIS KAPENGA, IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE WISCONSIN SENATE,

Respondents.

**PETITION TO THE SUPREME COURT OF WISCONSIN TO TAKE
JURISDICTION OF AN ORIGINAL ACTION**

COUNSEL LISTED ON FOLLOWING PAGE

Mark P. Gaber*
Brent Ferguson*
Hayden Johnson*
Benjamin Phillips*
CAMPAIGN LEGAL
CENTER
1101 14th St. NW, Ste. 400
Washington, DC 20005
202.736.2200

Annabelle E. Harless*
CAMPAIGN LEGAL
CENTER
55 W. Monroe St., Ste. 1925
Chicago, IL 60603
202.732.2200

Ruth M. Greenwood*
Nicholas O. Stephanopoulos*
ELECTION LAW CLINIC
AT HARVARD LAW
SCHOOL
4105 Wasserstein Hall
6 Everett Street
Cambridge, MA 02138
617.998.1010

Daniel S. Lenz, SBN 1082058
T.R. Edwards, SBN 1119447
Elizabeth M. Pierson, SBN 1115866
Scott B. Thompson, SBN 1098161
LAW FORWARD, INC.
222 W. Washington Ave.
Suite 250
Madison, WI 53703
608.556.9120

Douglas M. Poland, SBN 1055189
Jeffrey A. Mandell, SBN 1100406
STAFFORD ROSENBAUM
LLP
222 W. Washington Ave.
Suite 900
P.O. Box 1784
Madison, WI 53701
608.256.0226

Elisabeth S. Theodore*
R. Stanton Jones*
John A. Freedman*
ARNOLD & PORTER KAYE
SCHOLER LLP
601 Massachusetts Ave. NW
Washington, DC 20001
202.942.5000

*Application for admission *pro hac*
vice forthcoming

Attorneys for Petitioners

ISSUES PRESENTED

1. Whether the state legislative redistricting plans proposed by the Legislature and imposed by this Court in *Johnson v. Wisconsin Elections Commission*, 2022 WI 19, 401 Wis. 2d 198, 972 N.W.2d 559 (“*Johnson III*”), are extreme partisan gerrymanders that violate Article I, Section 1 of the Wisconsin Constitution’s guarantee of equal protection under law; and whether this cause of action is justiciable in Wisconsin courts.

2. Whether the state legislative redistricting plans proposed by the Legislature and imposed by this Court in *Johnson III* are extreme partisan gerrymanders that retaliate against voters based on their viewpoint and exercise of free speech and abridge the ability of voters with disfavored political views to associate with others to advance their political beliefs in violation of Article I, Sections 3 and 4 of the Wisconsin Constitution; and whether these causes of action are justiciable in Wisconsin courts.

3. Whether the state legislative redistricting plans proposed by the Legislature and imposed by this Court in *Johnson III* are extreme partisan gerrymanders that fail to “adhere[] to justice, moderation, temperance, frugality, and virtue, ... [and] fundamental principles” in violation of Article I, Section 22 of the Wisconsin Constitution; and whether this cause of action is justiciable in Wisconsin courts.

4. Whether the state legislative redistricting plans proposed by the Legislature and imposed by this Court in *Johnson III* violate the requirement of

Article IV, Sections 4 and 5 of the Wisconsin Constitution that legislators be elected from districts consisting of “contiguous territory.”

5. Whether the state legislative redistricting plans proposed by the Legislature and imposed by this Court in *Johnson III* violate the separation-of-powers principle inherent in the Constitution’s division of legislative, executive, and judicial power by usurping the Governor’s core constitutional power to veto legislation and the Legislature’s core constitutional power to override such a veto.

INTRODUCTION

Wisconsin’s legislative districts are unconstitutional in numerous ways, ranging from an outright assault on Wisconsin voters in retaliation for how they vote and what they believe, to the most basic violation of the Wisconsin Constitution’s express requirements for district configurations. The current districts are invalid, the representatives and senators elected from them unconstitutionally hold office, and this Court’s urgent action is required to ensure that *not one more Wisconsin election* is held using state legislative districts that brazenly flout the language of Wisconsin’s Constitution and the rights of its residents.

First, the maps violate several provisions of the Wisconsin Constitution because they are extreme partisan gerrymanders. They violate Article I, Section 1’s guarantee of equal protection under the law because they systematically classify voters based on partisan affiliation and target the disfavored class of voters with an unequal opportunity to elect their preferred political candidates to state legislative office. They also violate Article I, Sections 3 and 4’s free speech and association

guarantees because they retaliate against voters based upon their expression of political views at the ballot box and impair the ability of individuals with disfavored views to associate for the advancement of their political beliefs. In addition, the maps violate Article I, Section 22's "maintenance of free government" protection that commands that legislative action adhere to justice, moderation, temperance, frugality and virtue, and fundamental principles by disadvantaging Democratic-supporting voters and distorting the electoral process to gain excessive partisan advantage. Each of these constitutional violations requires enjoining further use of the maps. All of these claims are justiciable because judicially manageable standards exist to adjudicate them and because the plain text of the Constitution guarantees in express terms a judicial remedy for all wrongs. *See* Wis. Const. art. I, § 9.

Second, the current legislative districts violate the Wisconsin Constitution's plain-text "contiguous territory" requirement. A staggering 55 assembly districts and 21 senate districts—the majority of seats in each chamber of the Legislature—consist of a patchwork of disconnected pieces that do not share a common border with other parts of the same district. Put differently, those districts include multiple tracts of land that do not touch at all; they are not in actual, physical contact, which is not only the dictionary definition of "contiguous" but was recognized by this Court as a requirement more than 130 years ago. This Court has never held that such districts satisfy the Constitution's express contiguity requirement. Moreover, this Court's two sentences in *Johnson v. Wisconsin Elections Comm'n*, 2021 WI 87, ¶81,

399 Wis. 2d 623, 967 N.W.2d 469 (“*Johnson I*”) and single sentence in *Johnson III* mentioning contiguity did not address whether the legislative maps satisfied the Constitution’s imperative for contiguous districts. Maps that satisfy *both* the constitutional requirement that districts be bounded by county, town, or ward lines *and* consist of contiguous territory can—and must—be drawn.

Third, by imposing as a remedy map the *precise plans* that the Governor vetoed—a veto the Legislature failed to override—this Court’s mandatory injunction in *Johnson III* violated the Wisconsin Constitution’s separation of powers doctrine. *See Johnson III*, 2022 WI 19, ¶187 (Karofsky, J., dissenting) (“Here, the Legislature, having failed to override the gubernatorial veto, submitted the very same proposal to us.”). The Governor’s power to veto legislation and the Legislature’s power to override that veto are core powers of both branches of government that may not be usurped by the Judiciary. Although this Court can and must issue remedial plans when adjudicating redistricting litigation, the Judiciary’s remedial power reaches its constitutional limit when the proposed remedy is the *precise, district-by-district* legislation vetoed by the Governor.

The Petitioners here are voters—citizens of this state who seek to exercise their rights to speak freely, band together to advocate political beliefs, and obtain equal representation through the ballots they cast in lawfully drawn districts. This case is about ending the systematic silencing of voters across the state as punishment for daring to think, believe, and vote differently from a group of politicians who won a single election thirteen years ago and then set out to entrench themselves into

power permanently, the state's Constitution—and the rights of its residents—be damned.

PARTIES

1. Each Petitioner is a qualified, registered voter in the State of Wisconsin, who consistently votes for and supports Democratic Party candidates and policies, and plans to continue voting in Wisconsin elections. They and other Democratic voters have been harmed by the current legislative maps' unconstitutional extreme partisan gerrymander. The gerrymander treats Democrats unequally based on their political beliefs, violating their rights, guaranteed by the Wisconsin Constitution, to equal protection of the law, freedom of speech and association, and to a free government.

2. Some Petitioners reside in districts where they and other Democrats have been “cracked” from other Democratic voters in neighboring districts to prevent the creation of Democratic-performing districts. Others reside in districts where Democrats have been “packed” so that they will always, overwhelmingly elect a Democrat—thus preventing the creation of additional nearby Democratic districts. Either way, the current maps dilute their voting power because of their political preferences.

3. Some Petitioners reside in noncontiguous legislative districts, meaning parts of the district are disconnected and do not touch each other. Petitioners who reside in noncontiguous districts face representational harms from

having legislators who must cross district lines in order to interact with their constituents.

4. Wherever they live in Wisconsin, whether in a packed, cracked, or even somewhat competitive district, contiguous or noncontiguous, each Petitioner has been harmed by the extreme partisan gerrymander. Democrats do not have the same opportunity Republicans have to elect representatives of their choice to the Assembly or the Senate. Democratic voters have been unconstitutionally deprived of the ability to express their views and associate with like-minded voters in an impactful way.

5. In addition to facing harm from having the strength of their votes diluted on a district-by-district basis, Petitioners are harmed by the inability to achieve a Democratic majority in the state legislature. This harms their ability to see laws and policies they favor enacted.

6. Petitioner **Rebecca Clarke** currently serves as a County Supervisor for Sheboygan County, and previously worked for the state as a natural resources educator. She resides at 735 Fairway Dr., Sheboygan, WI 53081, in AD26 and SD9. She ran and lost as a Democratic candidate for the State Assembly in both 2016 and 2018, is a member of the Sheboygan County Democrats, and regularly canvasses for and donates to Democratic candidates. She resides in an assembly district in which she and other Democratic voters are cracked from other nearby Democratic voters. Both AD26 and SD9 are likewise noncontiguous.

7. Petitioner **Dr. Ruben Anthony** is the current President and CEO of the Urban League of Greater Madison, and previously worked for nearly two decades for the Wisconsin Department of Transportation, ultimately serving as Chief Operations Officer. He resides at 4549 Shooting Star Ave., Middleton, WI 53562, in AD80 and SD27. He has been active in politics through fundraising and get-out-the-vote-efforts for many years. He was also a member of the People's Maps Commission in 2020–21. Dr. Anthony resides in state assembly and senate districts in which he and other Democratic voters are packed. Both AD80 and SD27 are likewise noncontiguous.

8. Petitioner **Terry Dawson** is a retired public librarian. He resides at 1131 S. Oneida St., Appleton, WI 54915, in AD 57 and SD19. He is a longtime supporter of Democratic candidates who has contributed volunteer office work and canvassed for several campaigns through the Democratic Party of Outagamie County. He resides in a state Senate district in which he and other Democratic voters are cracked from other nearby Democratic voters.

9. Petitioner **Dana Glasstein** is an English as a Second Language instructor at Waukesha County Technical College. She resides at 12743 North Yvonne Drive, Mequon, WI 53092, in AD24 and SD8. The most recent round of redistricting moved her from AD23 to AD24. She is an active member of the Ozaukee County Democrats and trained canvassers and phone bankers in 2020 and 2022. She resides in state assembly and senate districts in which she is cracked from other nearby Democratic voters and that are noncontiguous.

10. Petitioner **Dr. Ann Groves-Lloyd** is the current Mayor of Lodi, and previously worked for over 20 years as an administrator at the University of Wisconsin. She resides at 304 Lodi St., Lodi WI 53555, in AD42 and SD14. She is a member of the Columbia County Democrats and regularly canvasses for Democrats, and she herself ran to represent AD42 in the Assembly in 2018, losing to the Republican candidate. She resides in state assembly and senate districts in which she is cracked from other nearby Democratic voters and which are noncontiguous.

11. Petitioner **Carl Hujet** is a retired union member who worked for a local newspaper and as a public-school custodian. He resides at 1217 Gross Ave., Green Bay, WI 54304, in AD90 and SD30. He currently serves on the board of the Brown County Democrats, has voted consistently for Democrats for the past 40 years, and has often donated modest amounts to Democratic candidates. He resides in a senate district which in which he is cracked from other nearby Democratic voters.

12. Petitioner **Jerry Iverson** is retired from a career that spanned the private, public, and nonprofit sectors. He resides at 4708 Timber Row, Grand Chute (Appleton), WI 54913, in AD56 and SD19. He was a member of the Fair Maps Coalition and is currently active in the Democratic Party of Wisconsin. He resides in state and senate assembly districts in which he is cracked from other nearby Democratic voters.

13. Petitioner **Tia Johnson** is a self-employed rental property owner and manager who has also taught eighth grade science in the past. She resides at 1621 Indian Rd., Beloit, WI 53511, in AD31 and SD11. She is a member of the Rock County Democrats and has canvassed for Democratic candidates. She resides in state assembly and senate districts in which she is cracked from other nearby Democratic voters and which are noncontiguous.

14. Petitioner **Angie Kirst** taught at Beaver Dam Middle School for 35 years before retiring. She resides at 308 Park Ave., Beaver Dam, WI 53916, in AD80 and SD27. She is active in the Dodge County Democrats, where she plays a leadership role by running social media, attending meetings, knocking on doors, running canvasses, and phone banking. She resides in state assembly and senate districts in which she is cracked from other nearby Democratic voters and which are noncontiguous.

15. Petitioner **Dr. Selika Lawton** is a Professor of History and Race, Ethnicity, Gender, and Sexuality Studies at the University of Wisconsin-Eau Claire, and a member of the Eau Claire Police & Fire Commission. She resides at 2211 Vienna Terrace, Eau Claire, WI 54703, in AD91 and SD31. She has canvassed for local Democrats and previously served as president of her local chapter of the NAACP. She resides in a state assembly district which is packed and a state senate district in which she is cracked from other nearby Democratic voters. Both her state assembly and senate districts are non-contiguous.

16. Petitioner **Fabian Maldonado** is a political organizer currently working for the Milwaukee Teachers' Education Association. He resides at 2105 Taylor Ave., Racine, WI 53403, in AD66 and SD22. He has twice run his own electoral campaigns, once unsuccessfully for Mayor of Racine on a Green Party ticket in 2017, and once successfully as a Democrat for the Racine County Board. He also ran Democrat Jon Tate's primary campaign for Assembly in 2018. He has worked on numerous other Democratic campaigns for state and local office, in his previous professional capacity as political director for Voces de la Frontera, as an organizer for the Working Families Party, and at times as a volunteer. He resides in state assembly and senate districts in which he is cracked from other nearby Democratic voters and which are noncontiguous.

17. Petitioner **Annemarie McClellan** works in healthcare administration and serves as volunteer co-chair of the League of Women Voters for the Greater Chippewa Valley. She resides at 1215 Gilbert Creek Rd., Menomonie, WI 54751, in AD29 and SD10. She served on the People's Maps Commission in 2020–21. She resides in state assembly and senate districts in which she is cracked from other nearby Democratic voters and which are noncontiguous.

18. Petitioner **James McNett** is a retired riverboat captain, woodworker, and owner of 350 acres of land in southwestern Wisconsin, over one third of which is in the Conservation Reserve Program. He resides at 1275 Peniel Rd., Mineral Point, WI 53565, in AD51 and SD17. He resides in state assembly and senate districts in which he is cracked from other nearby Democratic voters.

19. Petitioner **Brittany Muriello** is a stay-at-home mother of four young children, who previously worked in education and early intervention for children with special needs. She resides at 15460 Santa Maria Dr., Brookfield, WI 53005, in AD13 and SD5. She volunteers with the Waukesha County Democrats, and she also volunteers with other Brookfield moms who work towards electing Democrats—or in nonpartisan races, the more liberal candidates. She resides in state assembly and senate districts in which she is cracked from other nearby Democratic voters are her senate district is noncontiguous.

20. Petitioner **Ela Joosten (Pari) Schils** is a student at Miami University in Oxford, Ohio. She resides at N8139 900 St., River Falls, WI 54022, and votes absentee in River Falls, in AD93 and SD31. She voted for the first time in 2022 and volunteered by phone banking for the last presidential election, before she could vote. She is an activist for reproductive rights and the Black Lives Matter movement, and against gun violence. She resides in a Senate district in which she is cracked from other nearby Democratic voters and in state assembly and senate districts that are noncontiguous.

21. Petitioner **Nathaniel Slack** is an independent organic farm auditor and part-time instructor at Western Technical College. He resides at E8370 Kolstad Rd., Viroqua, WI 54665, in AD96 and SD32. He is a member of the Wisconsin Farmers Union and has run for the Vernon County Board. He resides in a state assembly district in which he is cracked from other nearby Democratic voters.

22. Petitioner **Mary Smith-Johnson** is a retired special education teacher. She resides at 1303 E. Third St., Superior, WI 54880, in AD73 and SD25. She is currently co-chair of the Douglas County Democratic Party and has been involved in public education advocacy in Wisconsin as well as union activities in Minnesota, where she worked. She resides in a state assembly district in which she is cracked from other nearby Democratic voters.

23. Petitioner **Denise (Dee) Sweet** is the Native Vote Manager of Wisconsin Conservation Voices, and a former Wisconsin Poet Laureate. A member of the Anishinaabe (Ojibwe, White Earth) Nation, she resides at 239 S. 7th St., Bayfield, WI 54814, in AD74 and SD25. She has canvassed for Democratic candidates over the years and has also been involved with nonpartisan organizations. She resides in a state assembly district in which she is cracked from other nearby Democratic voters.

24. Petitioner **Gabrielle Young** works at a specialty grocery store. She resides at 1817 Carver St., Madison, WI 53713, in AD47 and SD16. She resides in state assembly and senate districts which are packed, and her state assembly and senate districts are non-contiguous. Gabrielle lives in a non-contiguous island that is not attached to the rest of her assembly or senate districts. Her residence was until 2022 in the Town of Madison, which was absorbed into the City of Madison in October 2022. The disconnected piece of AD47 and SD16 in which she resides is thus not even bounded by any municipal border.

25. Respondent Wisconsin Elections Commission is an administrative body created under the laws of Wisconsin that administers and enforces Wisconsin election law and is comprised of six appointed members.

26. The Wisconsin Elections Commission has “the responsibility for the administration of chs. 5 to 10 and 12 [of the Wisconsin statutes] and other laws relating to elections and election campaigns[.]” Wis. Stat. § 5.05(1). This includes responsibilities for implementing apportionment plans. *See* Wis. Stat. § 10.06(1)(f).

27. Respondents Don Millis, Robert F. Spindell, Jr., Mark L. Thomsen, Ann S. Jacobs, Marge Bostelmann, and Joseph J. Czarnezki are the individual members of the Wisconsin Elections Commission and are named in their official capacities.

28. Respondent Meagan Wolfe is the Administrator of the Wisconsin Elections Commission and is named in her official capacity.

29. The Wisconsin Elections Commission, its members, and Administrator Wolfe, have their offices and principal place of business at 201 W. Washington Avenue, Second Floor, Madison, WI 53703.

30. Respondent Senator André Jacque represents SD1. Senator Jacque is named in his official capacity. He was elected to his office in November 2022 from an unconstitutionally configured district. Senator Jacque’s office and principal place of business is located in Room 7 South, State Capitol, 2 East Main Street, Madison, WI 53703.

31. Respondent Senator Tim Carpenter represents SD3. Senator Carpenter is named in his official capacity. He was elected to his office in November 2022 from an unconstitutionally configured district. Senator Carpenter's office and principal place of business is located in Room 109 South, State Capitol, 2 East Main Street, Madison, WI 53703.

32. Respondent Senator Rob Hutton represents SD5. Senator Hutton is named in his official capacity. He was elected to his office in November 2022 from an unconstitutionally configured district. Senator Hutton's office and principal place of business is located in Room 313 South, State Capitol, 2 East Main Street, Madison, WI 53703.

33. Respondent Senator Chris Larson represents SD7. Senator Larson is named in his official capacity. He was elected to his office in November 2022 from an unconstitutionally configured district. Senator Larson's office and principal place of business is located in Room 20 South, State Capitol, 2 East Main Street, Madison, WI 53703.

34. Respondent Senator Devin LeMahieu represents SD9. Senator LeMahieu is named in his official capacity. He was elected to his office in November 2022 from an unconstitutionally configured district. Senator LeMahieu's office and principal place of business is located in Room 211 South, State Capitol, 2 East Main Street, Madison, WI 53703.

35. Respondent Senator Stephen L. Nass represents SD11. Senator Nass is named in his official capacity. He was elected to his office in November 2022

from an unconstitutionally configured district. Senator Nass's office and principal place of business is located in Room 10 South, State Capitol, 2 East Main Street, Madison, WI 53703.

36. Respondent Senator John Jagler represents SD13. Senator Jagler is named in his official capacity. He was elected to his office in November 2022 from an unconstitutionally configured district. Senator Jagler's office and principal place of business is located in Room 131 South, State Capitol, 2 East Main Street, Madison, WI 53703.

37. Respondent Senator Mark Spreitzer represents SD15. Senator Spreitzer is named in his official capacity. He was elected to his office in November 2022 from an unconstitutionally configured district. Senator Spreitzer's office and principal place of business is located in Room 126 South, State Capitol, 2 East Main Street, Madison, WI 53703.

38. Respondent Senator Howard L. Marklein represents SD17. Senator Marklein is named in his official capacity. He was elected to his office in November 2022 from an unconstitutionally configured district. Senator Marklein's office and principal place of business is located in Room 316 East, State Capitol, 2 East Main Street, Madison, WI 53703.

39. Respondent Senator Rachael Cabral-Guevara represents SD19. Senator Cabral-Guevara is named in her official capacity. She was elected to her office in November 2022 from an unconstitutionally configured district. Senator

Cabral-Guevara's office and principal place of business is located in Room 323 South, State Capitol, 2 East Main Street, Madison, WI 53703.

40. Respondent Senator Van H. Wanggaard represents SD21. Senator Wanggaard is named in his official capacity. He was elected to his office in November 2022 from an unconstitutionally configured district. Senator Wanggaard's office and principal place of business is located in Room 122 South, State Capitol, 2 East Main Street, Madison, WI 53703.

41. Respondent Senator Jesse L. James represents SD23. Senator James is named in his official capacity. He was elected to his office in November 2022 from an unconstitutionally configured district. Senator James's office and principal place of business is located in Room 319 South, State Capitol, 2 East Main Street, Madison, WI 53703.

42. Respondent Senator Romaine Robert Quinn represents SD25. Senator Quinn is named in his official capacity. He was elected to his office in November 2022 from an unconstitutionally configured district. Senator Quinn's office and principal place of business is located in Room 123 South, State Capitol, 2 East Main Street, Madison, WI 53703.

43. Respondent Senator Dianne H. Hesselbein represents SD27. Senator Hesselbein is named in her official capacity. She was elected to her office in November 2022 from an unconstitutionally configured district. Senator Hesselbein's office and principal place of business is located in Room 3 South, State Capitol, 2 East Main Street, Madison, WI 53703.

44. Respondent Senator Cory Tomczyk represents SD29. Senator Tomczyk is named in his official capacity. He was elected to his office in November 2022 from an unconstitutionally configured district. Senator Tomczyk's office and principal place of business is located in Room 310 South, State Capitol, 2 East Main Street, Madison, WI 53703.

45. Respondent Senator Jeff Smith represents SD31. Senator Smith is named in his official capacity. He was elected to his office in November 2022 from an unconstitutionally configured district. Senator Smith's office and principal place of business is located in Room 19 South, State Capitol, 2 East Main Street, Madison, WI 53703.

46. Respondent Senator Chris Kapenga represents SD33. Senator Kapenga is named in his official capacity. He was elected to his office in November 2022 from an unconstitutionally configured district. Senator Kapenga's office and principal place of business is located in Room 220 South, State Capitol, 2 East Main Street, Madison, WI 53703.

STATEMENT OF FACTS

A. Political impasse and the Court's prior imposition of the SB 621 districts.

47. On November 12, 2021, the Legislature passed 2021 SB 621 to reapportion Wisconsin's legislative districts following receipt of the 2020 Census data.

48. On November 18, 2021, Governor Evers vetoed that legislation. Wis. St. Leg. 2021-2022, S.B. 621.

49. This Court granted a petition for original action, *Johnson v. Wisconsin Elections Commission*, No. 2021AP1450-OA, seeking an injunction against the then-extant 2011 legislative and congressional plans as unconstitutionally malapportioned and entry of a mandatory injunction imposing a remedial plan that made undefined “least changes” to the defunct, malapportioned plan.

50. By a 4-3 vote, the Court announced it would follow a “least-changes” approach in imposing a remedy. *See Johnson I*, 2021 WI 87, ¶81. But no majority of this Court agreed on a definition of “least changes.” *Compare id.* ¶81 *with id.* ¶¶82-84 & n.4 (Hagedorn, J., concurring) (declining to join aspects of lead opinion defining “least changes” and concluding instead that equitable considerations could inform proper remedy).

51. Following submissions by various parties, the Court voted 4-3 to impose the legislative plans proposed by Governor Evers because they moved the fewest number of people to new districts—a metric called “core retention.” *See Johnson v. Wisconsin Elections Comm’n*, 2022 WI 14, 400 Wis. 2d 626, 971 N.W.2d 402 (“*Johnson II*”). Only Justice Hagedorn concluded both that “least changes” was the proper framework and that core retention was the appropriate definition. The remaining three Justices in the *Johnson II* majority would not have applied a “least-changes” framework. *See id.* ¶¶58-63 (Walsh Bradley, J., concurring). Three other Justices strongly dissented, disagreeing that “least

changes” meant “core retention.” *See id.* ¶134 (Ziegler, C.J., dissenting) (concluding that “least change” also means “county and municipal division and population deviation”); *with id.* ¶211 (Grassl Bradley, J., dissenting) (explaining that “core retention—exists nowhere in the ... Wisconsin Constitution or any statutory law” and its adherence reflects a “dangerous doctrine, effectively overruling the Wisconsin Constitution” (internal quotation marks and citation omitted)).

52. The U.S. Supreme Court reversed this Court’s order in *Johnson II*, holding that it had conducted an insufficient analysis of whether an additional Black majority assembly district was required under the Voting Rights Act in Milwaukee. *See Wisconsin Legislature v. Wisconsin Elections Comm’n*, 142 S. Ct. 1245, 1251 (2022).

53. On remand, by another 4-3 vote, this Court imposed the Legislature’s proposed remedy—the identical SB 621 maps that the Governor had vetoed—as the remedial plan, because the Legislature’s counsel indicated the map had been drawn without consideration of race. *See Johnson III*, 2022 WI 19, ¶48.

54. On May 17, 2022, the Legislature attempted to override the Governor’s veto but failed to do so.

B. The SB 621 maps are extreme partisan gerrymanders.

55. The current legislative maps are extreme partisan gerrymanders.

56. First, the “least-changes” approach reflected in SB 621 amounted to a “gerrylaunders.” *See* Robert Yablon, *Gerrylaunders*, 97 N.Y.U. L. Rev. 985 (2022). “The 2011 map was enacted using a ‘sharply partisan methodology’ by a

legislature no longer in power [in 2021] and a governor whom the voters have since rejected.” *Johnson I*, 2021 WI 87, ¶92 (Dallet, J., dissenting). The drafters of the plan in 2011 implemented a singular goal of maximizing and entrenching the power of Republican voters for an entire decade and diminishing the ability of Democratic voters to translate their votes into representation. The draft maps prepared by the aides to the Republican legislative caucuses in 2011 were labeled “Assertive” or “Aggressive” based on the scope of their distortion.

57. The drafters’ analyses showed that Republicans would retain control of the Legislature regardless of any likely electoral scenario, ensuring that Republicans would retain majority control of the Assembly with less than 47% of the statewide vote, whereas Democrats could not gain majority control with anything less than 54% of the statewide vote. That is, voting would no longer matter—the partisan control of each house of the Legislature would remain consistent regardless of fluctuations in the electorate’s preferences.

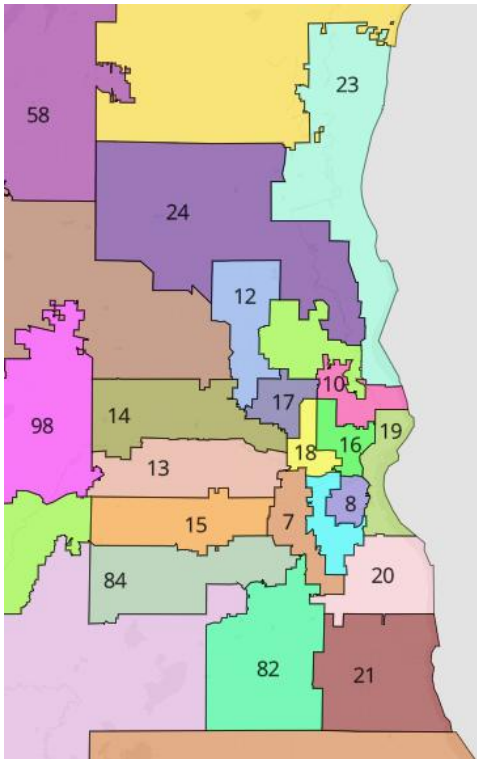
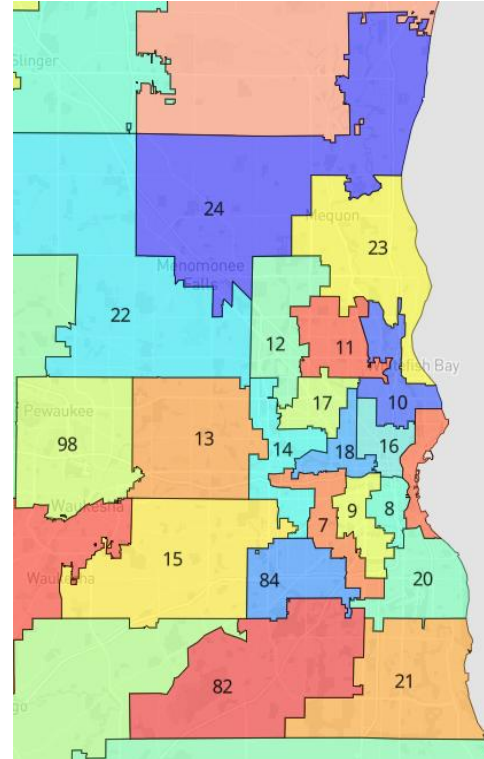
58. In fact, the Republican gerrymander has proved to be even stronger than projected. Since 2012, even when Democrats have won as much as 53% of the statewide vote, they have held no more than 39 of the 99 assembly seats. In the same period, even when Republicans have won as little as 44.8% of the statewide vote, they have held no fewer than 60 of the 99 assembly seats. As intended by the 2011 partisan gerrymander, voting for state legislative districts has no effect on political party control of the Legislature and, therefore, constrains the ability of the people

of the State of Wisconsin to effect legislative outcomes by electing representatives of their choice who reflect their preferred policies.

59. The current map retains over 84% of voters in their 2011 assembly district and over 92% of voters in their 2011 Senate district.

60. Second, the Legislature *exacerbated* the partisan gerrymander with SB 621—the plan vetoed by the Governor and nevertheless imposed by this Court. It reduced by two (from 37 to 35) the number of assembly districts carried by President Biden (who won the 2020 election in Wisconsin) and converted districts that only leaned Republican by the end of the last decade to more safely Republican seats. These machinations cannot be explained by any “least-change” rationale, as they were unnecessary to balance population and frequently were *counterproductive* to balancing population. Rather than minimizing changes to the districts, they were intended to—and did—maximize the voting strength of Republican voters and minimize the voting strength of Democratic voters.

61. For example, consider the Legislature’s alterations to the suburban Milwaukee County, Ozaukee County, and Waukesha County assembly districts:

2011 Maps**Current Maps**

62. Under the 2011 maps, President Biden carried AD13 by a margin of 53.6% to 44.6%, AD14 by a margin of 56.8% to 41.3%, AD23 by a margin of 56.1% to 42.3%, and AD24 by a margin of 51.3% to 47.0%.

63. Under the current maps, the Legislature targeted suburban Milwaukee Democratic voters to retaliate against their expression of political views by packing them into serpentine AD14, which President Biden carried 60.7% to 37.2%, and AD23, which President Biden carried 62.6% to 35.9%, and cracking them in AD13 (converted to a Trump 52.2% to 46.2% district) and AD24 (converted to a Trump 57.4% to 40.9% district).

64. AD23 and AD24 merely swapped territory with one another from the 2011 maps to the current maps, with AD24 losing its northern Milwaukee County

and southern Ozaukee County Democratic voters and gaining northern Ozaukee County Republican voters from AD23. This swap had no population-balance “least-change” purpose—its sole purpose was to pack Democratic voters into AD23 as a way of solidifying AD24 for Republican voters, stopping Democratic voters who were on the verge of winning both seats in the Assembly.

65. Indeed, the partisan gerrymander of AD24 had its desired effect. In a special election held on July 18, 2023, the Republican candidate carried the district by a 53.7% to 46.3% margin—a result that would have likely been the reverse under the district’s prior configuration.

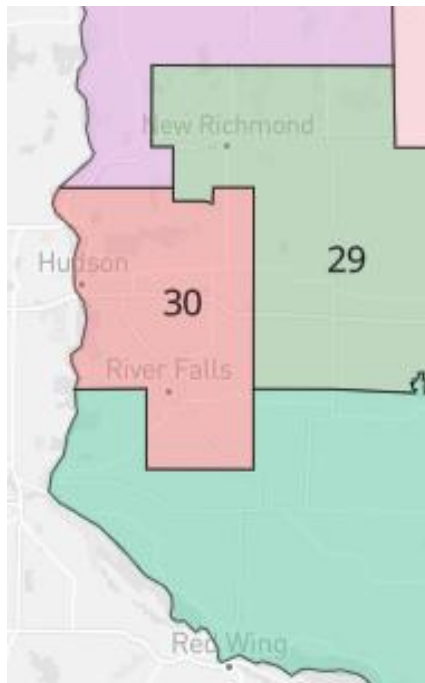
66. The Legislature’s changes to the suburban-Milwaukee assembly districts also resulted in State Senate districts drawn to favor Republican voters and disfavor Democratic voters. For example, SD5 converted from a Biden 53.3% district to a Biden 49.4% district; in the November 2022 election, the Republican Senate candidate won SD5 with 53.3% of the vote. SD8 converted from a Biden 49.2% district to a Biden 46.8% district—a reduction larger than the Republican candidate’s margin of victory in the district in the April 2023 special election for the seat.

67. In northwestern Wisconsin, the current plan converted AD73—a district that was not unconstitutionally malapportioned—from a district carried by President Biden to one carried by President Trump. In the 2022 general election, the seat flipped to Republican control, with that party’s candidate winning 51% to 49%.

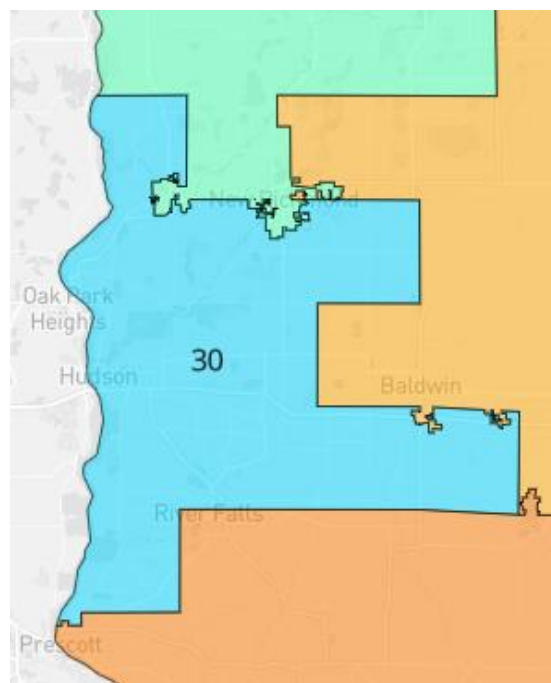
68. Across the state, the Legislature made changes that contravened a goal of population balance in order to target Democratic voters and to prevent them from achieving success at the ballot box in competitive seats.

69. For example, AD30 in Hudson was slightly overpopulated in the 2011 maps and was politically competitive, carried by Trump by a margin of 50.1% to 47.4%. Rather than simply reduce some population by shrinking the area of the district in order to effect “least changes,” the Legislature *expanded* the geographic size of the district to add Republican voters while creating an unnecessary municipal split of River Falls to eliminate Democratic voters from the district. Now, the district is one that Trump carried by a margin of 53.9% to 43.8%. The two versions are shown below:

2011 Maps

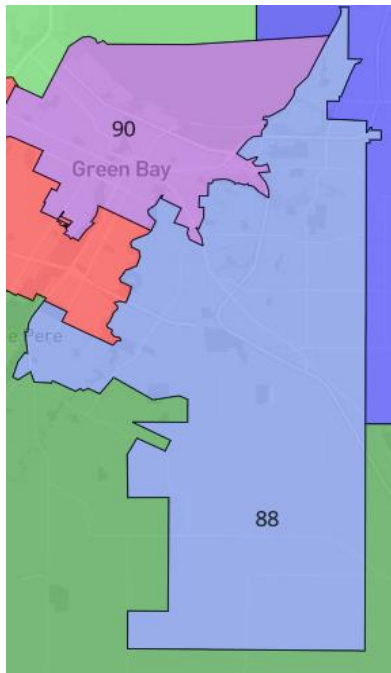


Current Maps

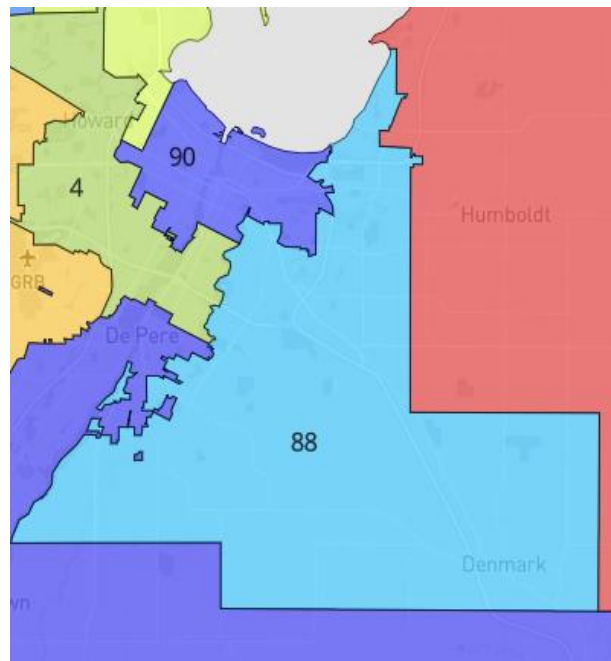


70. Likewise, AD88 in Green Bay was slightly overpopulated in the 2011 maps and was politically competitive, with Trump carrying it 50.3% to 48.0%. Rather than simply remove population by shrinking the district's geographic area, the Legislature expanded its geographic size to add Republican voters while eliminating Democratic voters, converting it to a district that Trump would have carried 53.1% to 45.1%—*and* making it noncontiguous as shown below.

2011 Maps



Current Maps



71. The Senate map is an extreme Republican gerrymander in two ways: (1) by targeting Democratic voters in the drawing of assembly districts; and (2) by selecting which assembly districts to combine to form the three assembly districts within each Senate district. For example, the Fox River Valley cities of Appleton, Neenah, Menasha, and Oshkosh are split between two Republican Senate districts. Green Bay and its suburbs are split among three Republican Senate districts.

Wausau and Stevens Point—nearby central Wisconsin cities that form a community of interest—are split into two Republican Senate districts. And Senate districts in southwestern Wisconsin and in the Madison area are configured to disfavor Democratic voters and favor Republican voters.

72. The extreme partisan gerrymander of Wisconsin’s legislative maps is not an unavoidable consequence of Democratic voters concentrating in Milwaukee and Madison.

73. Rather, the central feature of the gerrymander is its strategic packing and cracking of Democratic voters in places like Eau Claire, Chippewa Falls, Hudson, River Falls, Green Bay, Appleton, Allouez, De Pere, Wausau, Bayfield, Neenah, Menasha, Monroe, Mineral Point, Sheboygan, Racine, Beloit, Dodgeville, Columbus, Beaver Dam, Portage, Spring Green, Platteville, and La Crosse. The idea that the concentration of Democratic voters in Madison and Milwaukee is to blame for the distorted legislative composition is a smokescreen.

74. In all these communities, the Legislature targeted Democratic voters in a retaliatory attack on the expression of their political viewpoints at the ballot box. It is this targeted attack aimed to silence voters across Wisconsin’s small and mid-sized communities—communities that make up the lifeblood of our state—that is at the core of the current maps’ unlawful gerrymander.

75. As a result of the Legislature’s effort to punish certain voters for their political expression and favor others, in the November 2022 election, Republicans won 64 of 99 assembly seats and saw victories that yielded them 22 of 33 senate

seats—a supermajority in the Senate and close to one in the Assembly. At the same time, Democratic candidates won three of the five statewide elections.

76. Indeed, the highest statewide vote getter was Democratic Governor Tony Evers, who received 51.2% of the vote. He carried just 38 assembly districts and 13 senate districts. By contrast, Republican Senator Ron Johnson was reelected with 50.5% of the vote. With a lesser vote share than Governor Evers, Senator Johnson carried 64 assembly districts and 23 senate districts. Senator Johnson carried 70% of the senate seats while winning by a 1 percent margin.

77. By every metric, Wisconsin’s legislative plans score among the most—if not *the* most—skewed in the nation.

C. The SB 621 districts do not consist of “contiguous territory” as required by the Wisconsin Constitution.

78. The Wisconsin Constitution requires, *inter alia*, that members of the Assembly and Senate be elected from districts that consist of “contiguous territory.” Wis. Const. art. IV, §§ 4 & 5.

79. In *Johnson I*, this Court assumed, without any analysis of the plain text or original meaning of the Constitution’s contiguity requirement, that districts could be *noncontiguous* so as to include “municipal islands” created as a result of annexations—a phenomenon that developed a century after the Constitution was written. 2021 WI 87, ¶36. This conflicts with this Court’s consistent adherence to the plain meaning of “contiguous territory” from the earliest days of statehood.

80. This Court first interpreted the term “contiguous territory” in 1880, when it held that several orders of the Board of Supervisors of Oconto County, which attached to the Town of Oconto “lands separated and detached, and not contiguous to the main body of lands in said town,” violated the constitutional requirement that towns must be composed of “contiguous territory.” *Chicago & N.W.R. Co. v. Town of Oconto*, 50 Wis. 189, 6 N.W. 607 (1880). Tying that constitutional requirement specifically to Article IV, Section 4, this Court held:

To so construe the constitution as to authorize the board of supervisors of a county to organize or change the boundaries of a town so that it would be composed of separate, detached, and non-contiguous territory, would most unquestionably restrict the sovereign power of the legislature in the organization of assembly districts “consisting of contiguous territory, and bounded by county, precinct, town, or ward lines.” Article 4, § 4, Const.

Id., 50 Wis. at 196, 6 N.W. at 609.

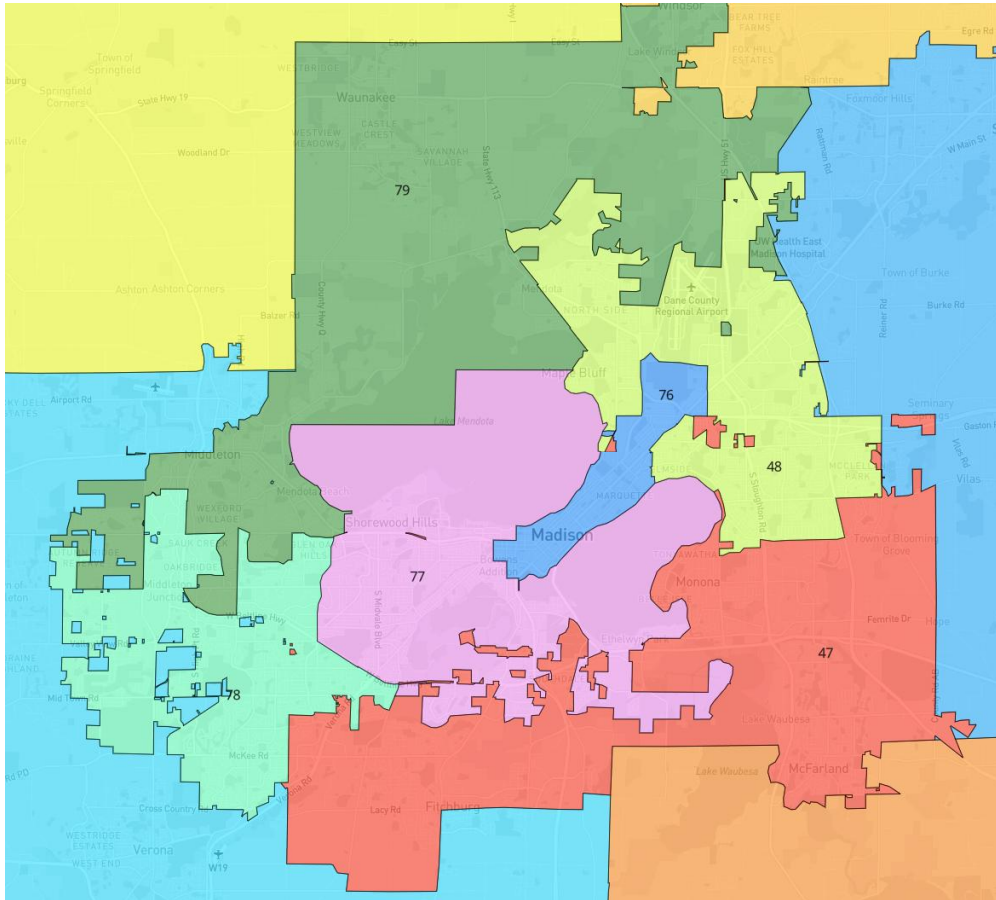
81. The first interpretation of the term “contiguous territory” in the redistricting context came in *State ex rel. Lamb v. Cunningham*, where this Court, interpreting Article IV, Section 4, held that it “requires that each assembly district must consist of contiguous territory; that is to say it cannot be made up of two or more pieces of detached territory.” 83 Wis. 90, 148, 53 N.W. 35, 57 (1892).

82. More recently, this Court interpreted the term “contiguous territory” when used in a statutory context to have the same meaning. *See Town of Wilson v. City of Sheboygan*, 2020 WI 16, ¶¶18-19, 390 Wis. 2d 266, 938 N.W.2d 493 (explaining that “contiguous” means having “some significant degree of physical contact” and that “[w]e have rejected the adoption of a broader definition of

contiguous that includes territory near to, but not actually touching, a municipality” (emphasis in original)).

83. The Legislature has likewise previously understood the Constitution to require actual contiguity. In 1953, the Legislature passed a law “relating to correction of errors in the apportionment of assemblymen,” Ch. 550, Laws of 1953, to correct several noncontiguous aspects of certain assembly districts, *see State ex rel. Thomson v. Zimmerman*, 264 Wis. 644, 61 N.W.2d 300 (1953) (per curiam) (noting that “a few assembly districts” from the 1951 apportionment were “not created entirely of contiguous territory” and the 1953 law “repaired this error by joining isolated areas to the districts in which they are actually contiguous”).

84. The current assembly and senate districts violate this plain text constitutional requirement. Consider, for example, the Madison area assembly districts:

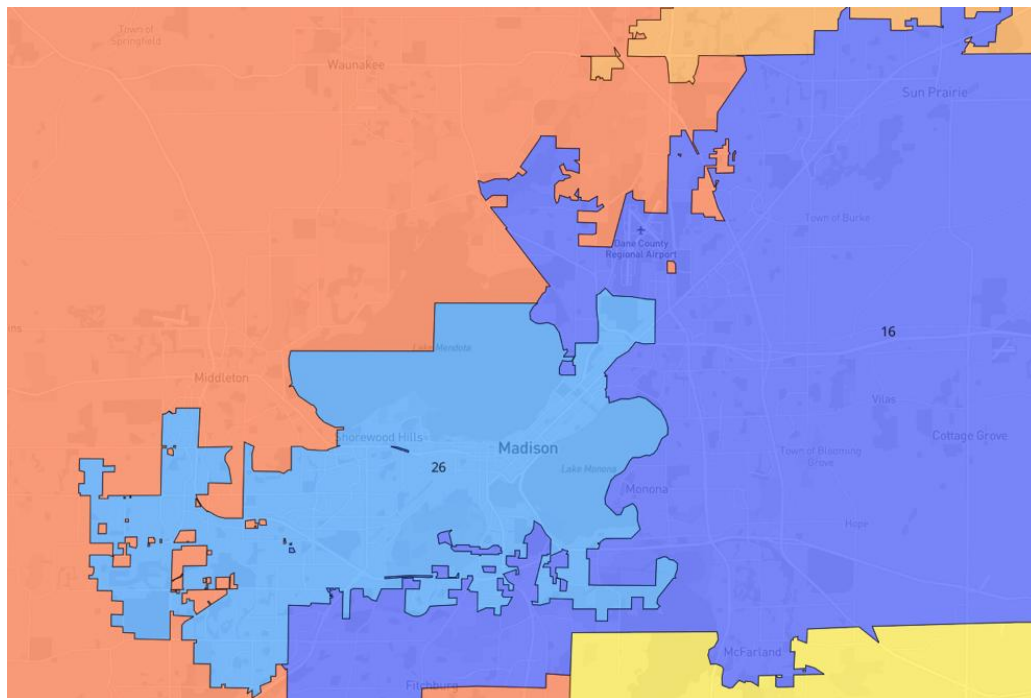


85. These districts are a maze of disconnected, noncontiguous pieces. 654 residents in a stranded piece of AD47 bordering Maple Bluff must traverse two other assembly districts before reaching the rest of their own district—and so too must their legislators to interact with them. The disconnected portions of these districts are sometime miles apart from the rest of the district.

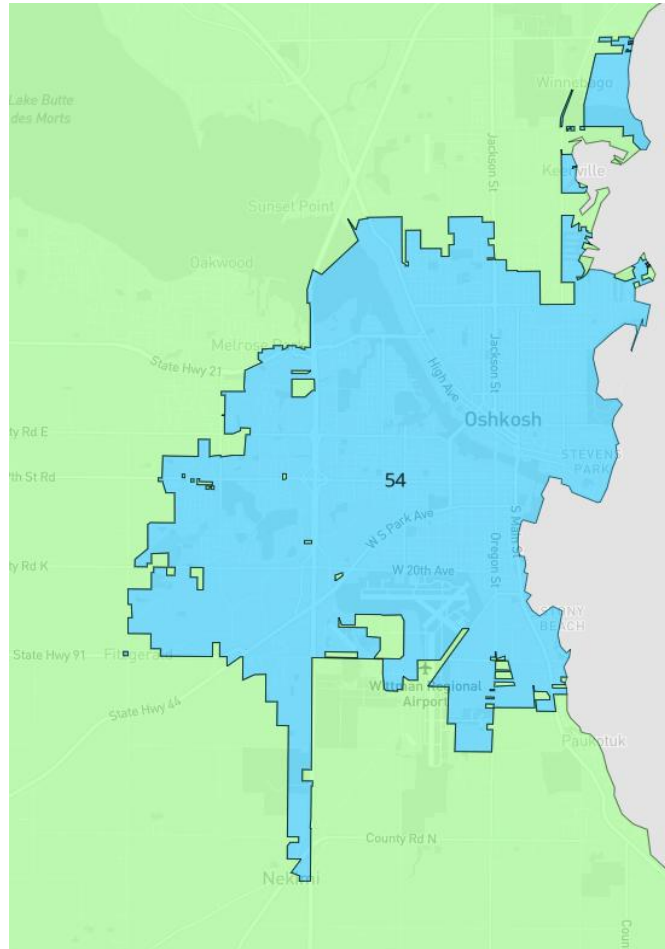
86. To make matters worse, just months after the *Johnson III* Court imposed the assembly map, which assigned the Town of Madison and its

noncontiguous pieces to AD47, the Town of Madison ceased to exist—the culmination of a decades-long plan for its territory to be fully attached to the Cities of Madison and Fitchburg. As a result, the former Town of Madison voters assigned to AD47 but stranded in the middle of Districts 48, 76, 77, and 78 now are officially residents of the City of Madison. So, the City of Madison has disconnected pieces of different assembly districts within its own borders; these pieces of AD47 are not bounded by any municipal border. The same thing will occur in 2027 as the Town of Blooming Grove is scheduled to be absorbed by the City of Madison.

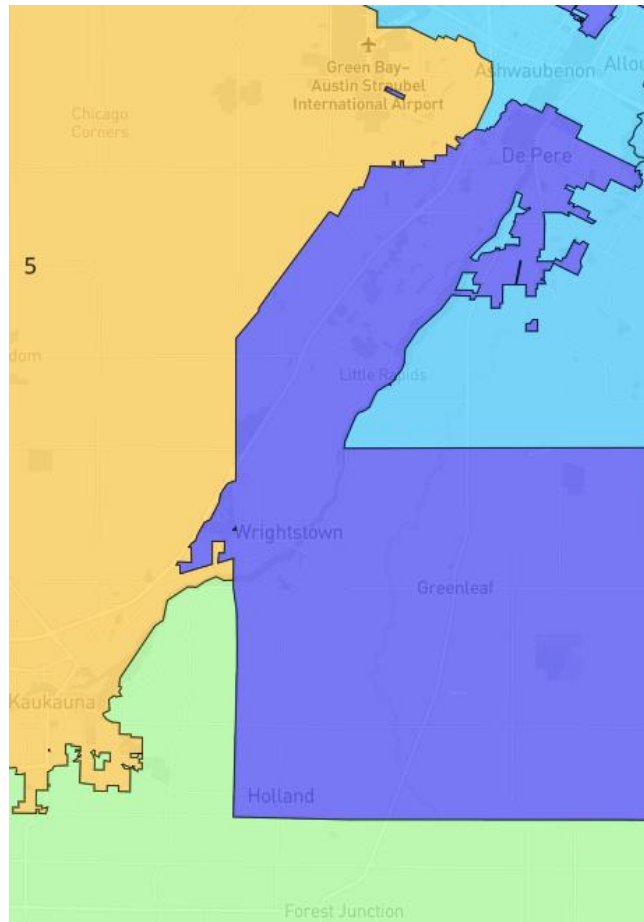
87. The Madison area senate districts suffer from the same defect:



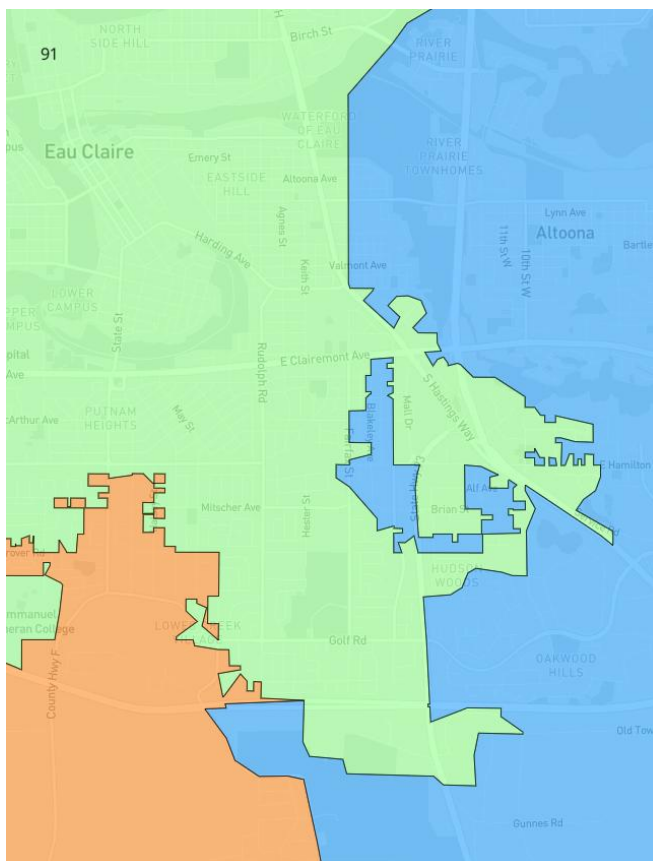
88. This is not just a Madison problem. Here are the Oshkosh-area assembly districts:



89. And the Fox River Valley area's assembly districts:



90. Similarly, the assembly-district borders in Eau Claire:



91. The images shown above are just a sampling. Remarkably, 55 of the current assembly districts, each consisting of between 2 and 40 disconnected pieces of territory, are noncontiguous.¹ And 21 of the current senate districts, each

¹ The following assembly districts in the current plan are noncontiguous: Districts 2, 3, 5, 6, 15, 24-33, 37-48, 52-54, 58-61, 63, 66-68, 70, 72, 76, 79-81, 83, 86, 88, 89, 91, 93-95, and 97-99. The Wisconsin Legislative Technology Services Bureau (“LTSB”) has published images of each current assembly and senate district. See Wis. Leg. Tech. Servs. Bur., <https://legis.wisconsin.gov/ltsb/gis/maps/>. The LTSB also provides interactive maps that permit users to zoom to see greater details. See Wis. Leg. Tech. Servs. Bur., https://data-ltsb.opendata.arcgis.com/datasets/febd43c1d0594447854c02898a10928b_0/explore?location=44.522339%2C-87.723062%2C7.90. The Court may take judicial notice of the maps. See e.g., *State ex rel. Strykowski v. Wilkie*, 81 Wis. 2d 491, 504, 261 N.W.2d 434 (1978) (granting original action petition and taking judicial notice of “materials in the Wisconsin Legislative Reference Bureau”).

consisting of between 2 and 34 disconnected pieces of territory, are noncontiguous.² Over two-thirds of Wisconsinites reside in either noncontiguous senate or assembly districts. The (now-enjoined) 2011 maps were similarly riddled with noncontiguous districts: 42 of their assembly districts and 18 of their senate districts were noncontiguous.

92. This is by no means necessary. Maps can be drawn that adhere to *both* the requirement that assembly districts be “bounded by county, precinct, town, or ward lines” *and* that assembly and senate districts “consist of contiguous territory.” Wis. Const. art. IV, §§ 4 & 5.

CAUSES OF ACTION

Count One

The Current State Assembly and Senate Maps Are Partisan Gerrymanders in Violation of the Wisconsin Constitution’s Equal Protection Guarantee Article I, Section 1

93. Petitioners restate and incorporate by reference all allegations above as though fully set forth in this paragraph.

94. The current maps violate Article I, Section 1 of the Wisconsin Constitution because they have the purpose and effect of depriving a disfavored

² The following senate districts in the current plan are noncontiguous: Districts 1, 2, 5, 8, 9, 11, 13-16, 20-24, 27-31, and 33. See Wis. Leg. Tech. Servs. Bur., <https://legis.wisconsin.gov/ltsb/gis/maps/> (maps of each district); https://data-ltsb.opendata.arcgis.com/datasets/f272ccea2ff0443a789578e14291e76b9_0/explore?location=43.147419%2C-88.954928%2C10.10 (interactive senate map)

class of Wisconsin voters of an equal opportunity to elect state legislative representatives.

95. Article I, Section I states: “All people are born equally free and independent, and have certain inherent rights; among these are life, liberty and the pursuit of happiness; to secure these rights, governments are instituted, deriving their just powers from the consent of the governed.” Wis. Const. art. I, § 1.

96. The current state legislative maps violate Petitioners’ rights under Article I, Section 1 because they arbitrarily classify voters based on partisan affiliation and target the disfavored class of voters for negative differential treatment compared to other similarly situated Wisconsinites.

97. The current state assembly and senate maps intentionally crack Petitioners and other likeminded voters supporting Democratic candidates to prevent them from having an equal opportunity to elect candidates for state legislative office.

98. As a result of the gerrymander, the current maps have a severe partisan skew.

99. Heightened scrutiny applies because the current maps implicate Petitioners’ fundamental right to vote, *see* Wis. Const. art. III, §§ 1 & 2, and create impermissible and suspect classifications.

100. Respondents lack a compelling, or even reasonable, justification for the adverse differential treatment of Petitioners in the current state legislative maps.

101. Neither an attempt to achieve legitimate redistricting goals nor Wisconsin's underlying political geography necessitate the current maps' partisan skew.

102. Petitioners are therefore entitled to declaratory and injunctive relief as more fully set out below.

Count Two

***The Current State Assembly and Senate Maps Are Partisan
Gerrymanders in Violation of the Wisconsin Constitution's Free
Speech and Association Guarantees
Article I, Sections 3 and 4***

103. Petitioners restate and incorporate by reference all allegations above as though fully set forth in this paragraph.

104. Article I, Section 3 states: "Every person may freely speak, write and publish his sentiments on all subjects....and no laws shall be passed to restrain or abridge the liberty of speech or of the press." Wis. Const. art. I, § 3.

105. Article I, Section 4 states: "The right of the people to peaceably assemble, to consult for the common good, and to petition the government, or any department thereof, shall never be abridged." Wis. Const. art. I, § 4.

106. Article I, Sections 3 and 4 together protect the rights of Wisconsinites to free speech and association.

107. The current legislative maps violate Petitioners' free speech and association rights because they retaliate against Petitioners based on their protected

political views and past votes, restrain their ability to express their viewpoints, and abridge their ability to band together with others to advance their political beliefs.

108. The current legislative maps impair Petitioners' ability to recruit volunteers, recruit candidates, register voters, secure contributions, and energize other voters to support Petitioners' expressed political views and associations.

109. The current legislative maps violate Article I, Sections 3 and 4 by targeting voters based on their past voting and expressive preferences, and by systematically drawing district lines to prevent them from being able to associate and elect their preferred candidates who share their political views.

110. The current legislative maps divide voters of opposing political viewpoints and guarantee less-favored voters are not represented in any meaningful way because of their disfavored views.

111. Heightened scrutiny applies because the current maps implicate Petitioners' fundamental rights to free speech and association. *State ex rel. Two Unnamed Petitioners v. Peterson*, 2015 WI 85, ¶37, 363 Wis. 2d 1, 47, 866 N.W.2d 165; *Madison Teachers, Inc. v. Walker*, 2014 WI 99, ¶24, 358 Wis. 2d 1, 851 N.W.2d 337.

112. Defendants have no legitimate, much less compelling, interest in restraining, abridging, or retaliating against Petitioners for their political views and associations.

113. The current state assembly and senate maps are not narrowly tailored to serve any legitimate state interest.

114. Petitioners are therefore entitled to declaratory and injunctive relief as more fully set out below.

Count Three

The Current State Assembly and Senate Maps Are Partisan Gerrymanders in Violation of the Wisconsin Constitution's Free Government Guarantee Article I, Section 22

115. Petitioners restate and incorporate by reference all allegations above as though fully set forth in this paragraph.

116. The current maps violate Article I, Section 22 of the Wisconsin Constitution because they are an extreme departure from a “firm adherence to justice, moderation, temperance, frugality and virtue” and a “frequent recurrence to fundamental principles.” Wis. Const. art. I, § 22.

117. Article I, Section 22 protects the right to equal treatment under the law, as well as extreme and unreasonable legislative action. *See Chicago & N.W. Ry. Co. v. La Follette*, 43 Wis. 2d 631, 636, 169 N.W.2d 441 (1969); *In re Christoph*, 205 Wis. 418, 420, 237 N.W. 134, 135 (1931); *State ex rel. Milwaukee Med. Coll. v. Chittenden*, 127 Wis. 468, 521, 107 N.W. 500, 518 (1906).

118. The current legislative maps violate Article I, Section 22 by disfavoring Democratic-supporting voters and preventing them from having an equal opportunity to participate in the political process.

119. The current legislative maps violate Article I, Section 22 as an extreme and unreasonable legislative action that infringes on Wisconsinites' fundamental rights and distorts the political process in the state.

120. Seeking partisan advantage in the drawing of state legislative districts is not moderate, and furthers no rational state interest, let alone a compelling state interest.

121. Petitioners are therefore entitled to declaratory and injunctive relief as more fully set out below.

Count Four

The Current State Assembly and Senate Maps Violate the Contiguity Requirement Article IV, Sections 4 and 5

122. Petitioners restate and incorporate by reference all allegations above as though fully set forth in this paragraph.

123. Article IV, Section 4 states that assembly districts must be “bounded by county, precinct, town or ward lines [and] consist of contiguous territory.” Wis. Const. art. IV, § 4.

124. Article IV, Section 5 states that senate districts must be “single districts of convenient contiguous territory.” Wis. Const. art. IV, § 5.

125. This Court has held that “contiguous territory” means a district “cannot be made up of two or more pieces of detached territory.” *Lamb*, 83 Wis. at 148, 53 N.W. at 57.

126. The current maps violate Article IV, Sections 4 and 5 on their face because they contain 55 assembly districts and 21 senate districts that have detached, noncontiguous territory.

127. The noncontiguous districts in the current maps are not necessary, as it is possible to draw maps that are “bounded by county, precinct, town or ward lines” and contiguous.

128. Petitioners are therefore entitled to declaratory and injunctive relief as more fully set out below.

Count Five

Violation of Separation of Powers Doctrine

129. Petitioners restate and incorporate by reference all allegations above as though fully set forth in this paragraph.

130. The Governor’s power to veto legislation and the Legislature’s power to override that veto are core powers of both branches of government that are protected by the Wisconsin Constitution.

131. This Court usurped these powers in *Johnson III* by imposing the exact legislation vetoed by Governor Evers in violation of the Constitution.

132. Petitioners are therefore entitled to declaratory and injunctive relief as more fully set out below.

STATEMENT OF RELIEF SOUGHT

If the Court grants the Petition, Petitioners will ask this Court to:

(1) declare the current assembly and senate plans unconstitutional in their entirety and enjoin them from being used in any future election (including the November 2024 election and any earlier special or recall elections that may occur),

(2) declare that a remedial plan will not adhere to any “least-changes” approach but rather must comply with the Constitution’s Article IV requirements and its Article I Declaration of Rights protections, including by ensuring that this Court does not impose maps with a partisan skew,

(3) accept proposed remedial maps from the parties for either (a) review and selection by the Court or (b) review and recommendation to this Court by a referee or special master appointed pursuant to Wis. Stat. §§ 751.09 and 805.06, and

(4) issue a writ *quo warranto* declaring the election of senators in November 2022 from unconstitutionally configured districts to be unlawful, with senators holding those seats being merely *de facto* officers, and order special elections in November 2024 for all odd-numbered state senate districts that would not otherwise occur until November 2026.³

If the Court grants the Petition with respect to Petitioners’ partisan gerrymandering claims,⁴ in addition to requests for relief (1), (3), and (4) above, Petitioners will also ask the Court to:

(5) declare that Petitioners’ partisan gerrymandering claims are justiciable,

³ Pursuant to Wis. Stat. § 784.04(2), Petitioners requested that the Attorney General bring an action seeking a writ of *quo warranto* on July 25, 2023. On July 31, 2023, the Attorney General, through the Department of Justice, notified Petitioners that he would not be bringing such an action. *See* App. 205-206.

⁴ The Court’s adjudication and remedy of Petitioners’ contiguity and separation of powers claims, if guided by the Constitution and the Court’s obligation to ensure that its remedial orders do not unfairly benefit or discriminate against voters on the basis of their political views, should provide full relief and thus could render it unnecessary for the Court to ultimately decide Petitioners’ partisan gerrymandering claims.

(6) declare that Petitioners have stated causes of action for partisan gerrymandering in violation of (a) the Wisconsin Constitution's guarantee of equal protection, (b) the Wisconsin Constitution's guarantee of free expression and right to associate to advance their political beliefs, and (c) the Wisconsin Constitution's maintenance of free government clause;

(7) appoint a referee pursuant to Wis. Stat. §§ 751.09 and 805.06 to conduct an evidentiary hearing on Petitioners' partisan gerrymandering claims and report findings of fact and conclusions of law to this Court, and

(8) receive briefing and argument from the parties supporting or opposing the referee's findings of fact and conclusions of law.

STATEMENT OF THE REASONS WHY THIS COURT SHOULD TAKE JURISDICTION

Wisconsin's Constitution and rules of appellate procedure authorize this Court to take jurisdiction of and hear original actions. Wis. Const. art. VII, § 3; Wis. Stat. § 809.70. Original jurisdiction is appropriate where "the questions presented are of such importance as under the circumstances to call for [a] speedy and authoritative determination by this court in the first instance" jurisdiction. *State ex rel. Ozanne v. Fitzgerald*, 2011 WI 43, ¶99 n.9, 334 Wis. 2d 70, 798 N.W.2d 436 (Abrahamson, C.J., concurring in part and dissenting in part), (citing *Petition of Heil*, 230 Wis. 428, 284 N.W. 42, 50 (1938) (per curiam)). This Court should grant such a petition when the case is a matter of significant public concern and importance, such that it affects the entire state. *State ex rel. La Follette v. Stitt*, 114

Wis. 2d 358, 362, 338 N.W.2d 684 (1983) (“We granted the petition to commence an original action because this matter is *publici juris* and requires a prompt and authoritative determination by this court in the first instance”); *see also Jefferson v. Dane County*, 2020 WI 90, ¶12, 394 Wis. 2d 602, 951 N.W.2d 556 (“Within our original jurisdiction, we have granted declaratory judgment when “a judgment by the court significantly affects the community at large.” (internal citation omitted)).

Only two years ago, this Court explained that cases involving the composition of Wisconsin’s legislative districts should be heard as original actions: “We granted the petition in this case because “[t]here is no question ... that this matter warrants this court’s original jurisdiction; any reapportionment or redistricting case is, by definition *publici juris*, implicating the sovereign rights of the people of this state.” *Johnson I*, 2021 WI 87, ¶20 (quoting *Jensen v. Wis. Elections Bd.*, 2002 WI 13, ¶6, 249 Wis. 2d 706, 639 N.W.2d 537 (per curiam) (internal citation omitted)).⁵ As noted in *Jensen*, this Court has historically exercised its original jurisdiction “in cases involving legislative redistricting” 2002 WI 13, ¶18 (listing cases); *see also Att’y Gen. v. Chi. & N.W. Ry.*, 35 Wis. 425, 518 (1874) (original jurisdiction is appropriate for “judicial questions affecting the sovereignty of the state, its franchises or prerogatives, or the liberties of its people.”).

⁵ In *Jensen*, this Court ultimately declined to take original jurisdiction because there were pending federal court matters. 2002 WI 13, ¶25. The decision was emphatic, however, that absent concerns raised by the then-pending federal litigation, original jurisdiction would be appropriate. *Id.*, ¶18 (“Under circumstances more favorable to an orderly and efficient resolution of the case, we would readily accept original jurisdiction in this matter and decide the important issues that it raises.”).

In addition to these general reasons favoring original jurisdiction, Petitioner's Memorandum of Law provides four reasons why *only* this Court can fully and efficiently adjudicate Petitioners' constitutional challenges to the existing legislative districts and provide an appropriate remedy that ensures that all future Wisconsin legislative elections are conducted in accordance with our Constitution. (Mem. Part I) Each of the reasons, individually and in combination, counsel that this Court exercise its authority and grant the Petition.

CONCLUSION

The Court should grant the Petition and provide such other relief as requested in the accompanying Motion for a Scheduling Order.

Dated this 2nd day of August, 2023.

By *Electronically signed by Daniel S. Lenz*

Daniel S. Lenz, SBN 1082058

T.R. Edwards, SBN 1119447

Elizabeth M. Pierson, SBN 1115866

Scott B. Thompson, SBN 1098161

LAW FORWARD, INC.

222 W. Washington Ave., Suite 250

Madison, WI 53703

608.556.9120

dlenz@lawforward.org

tedwards@lawforward.org

epierson@lawforward.org

sthompson@lawforward.org

Douglas M. Poland, SBN 1055189

Jeffrey A. Mandell, SBN 1100406

STAFFORD ROSENBAUM LLP

222 West Washington Avenue, Suite 900

P.O. Box 1784
Madison, WI 53701-1784
608.256.0226
dpoland@staffordlaw.com
jmandell@staffordlaw.com

Mark P. Gaber*
Brent Ferguson*
Hayden Johnson*
Benjamin Phillips*
CAMPAIGN LEGAL CENTER
1101 14th St. NW Suite 400
Washington, DC 20005
202.736.2200
mgaber@campaignlegal.org
bferguson@campaignlegal.org
hjohnson@campaignlegal.org
bphillips@campaignlegal.org

Annabelle E. Harless*
CAMPAIGN LEGAL CENTER
55 W. Monroe St., Ste. 1925
Chicago, IL 60603
202.736.2200
aharless@campaignlegal.org

Ruth M. Greenwood*
Nicholas O. Stephanopoulos*
ELECTION LAW CLINIC AT
HARVARD LAW SCHOOL
4105 Wasserstein Hall
6 Everett Street
Cambridge, MA 02138
617.998.1010
rgreenwood@law.harvard.edu
nstephanopoulos@law.harvard.edu

Elisabeth S. Theodore*
R. Stanton Jones*
John A. Freedman*
ARNOLD & PORTER KAYE

SCHOLER LLP
601 Massachusetts Ave. NW
Washington, DC 20001
202.942.5000
elisabeth.theodore@arnoldporter.com
stanton.jones@arnoldporter.com
john.freedman@arnoldporter.com

*Application for admission *pro hac vice* forthcoming

Attorneys for Petitioners