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IN THE SUPREME COURT OF WISCONSIN

No. 2023AP1399-OA

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,

GOVERNOR TONY EVERS, IN HIS OFFICIAL CAPACITY; NATHAN ATKINSON, STEPHEN JOSEPH WRIGHT, GARY KRENZ, SARAH J. HAMILTON, JEAN-LUC THIFFEAULT, SOMESH JHA, JOANNE KANE, AND LEAH DUDLEY,

Intervenors-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; ANDRÉ JACQUE, TIM CARPENTER, ROB HUTTON, CHRIS LARSON, DEVIN LEMAHIEU, STEPHEN L. NASS, JOHN JAGLER, MARK SPREITZER, HOWARD L. MARKLEIN, RACHAEL CABRAL-GUEVARA, VAN H. WANGGAARD, JESSE L. JAMES, ROMAINE ROBERT QUINN, DIANNE H. HESSELBEIN, CORY TOMCZYK, JEFF SMITH, AND CHRIS KAPENGA, IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE WISCONSIN SENATE,

Respondents,

WISCONSIN LEGISLATURE; BILLIE JOHNSON, CHRIS GOEBEL, ED PERKINS, ERIC O'KEEFE, JOE SANFELIPPO, TERRY MOULTON, ROBERT JENSEN, RON ZAHN, RUTH ELMER, AND RUTH STRECK,

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STATEMENT ON ORAL ARGUMENT

Intervenors-Petitioners Nathan Atkinson, Stephen Joseph Wright, Gary Krenz, Sarah J. Hamilton, Jean-Luc Thiffeault, Somesh Jha, Joanne Kane, and Leah Dudley (collectively, "Atkinson Intervenors"), through counsel, intend to participate in the oral argument this Court has scheduled for November 21, 2023.

ISSUES PRESENTED

Nathan Atkinson, Stephen Joseph Wright, Gary Krenz, Sarah J. Hamilton, Jean-Luc Thiffeault, Somesh Jha, Joanne Kane, and Leah Dudley (collectively, "Atkinson Intervenors") respectfully address the Issues set forth in this Court's October 6, 2023 Order ("October 6 Order"):

1. Do the existing state legislative maps violate the contiguity requirements contained in Article IV, Sections 4 and 5 of the Wisconsin Constitution?

2. Did the adoption of the existing state legislative maps violate the Wisconsin Constitution's separation of powers?

3. If the court rules that Wisconsin's existing state legislative maps violate the Wisconsin Constitution for either or both of these reasons and the legislature and the governor then fail to adopt state legislative maps that comply with the Wisconsin Constitution, what standards should guide the court in imposing a remedy for the constitutional violation(s)?

4. What fact-finding, if any, will be required if the court determines there is a constitutional violation based on the contiguity clauses and/or the separation-of-powers doctrine and the court is required to craft a remedy for the violation? If fact-finding will be required, what process should be used to resolve questions of fact?

INTRODUCTION

Atkinson Intervenors address the four questions that this Court identified. ***First***, the existing state-legislative maps violate the contiguity requirements of Article IV, §§ 4 and 5 of the Wisconsin Constitution. Indeed, every Wisconsin resident lives in a district that either is or adjoins a noncontiguous district. ***Second,*** the adoption of the existing maps violates the Wisconsin Constitution's separation-of-powers principles because this Court ordered into effect 2021 Senate Bill 621 ("SB 621"), which Governor Evers vetoed and whose veto the Legislature failed to override. ***Third***, if the Court determines that the existing maps violate the Wisconsin Constitution and the Governor and Legislature fail to enact lawful maps, the Court should be guided by the neutral standards set out in the Wisconsin Constitution and federal law as it imposes a remedy. Neither body of law requires a "least change" approach, and the Court must ensure it exercises its remedial authority neutrally and equitably for all Wisconsinites. ***Fourth***, to remedy the infirmities with the existing maps, the Court should invite remedial proposals from the parties. Expert reports, briefing, and argument will likely suffice to resolve any factual issues regarding such proposals; but if factual disputes remain, this Court should refer them to a panel of circuit-court judges, consistent with Wisconsin law.

STATEMENT OF THE CASE

I. Factual Background

On November 12, 2021, following receipt of the 2020 Census data, the Legislature passed SB 621 to reapportion Wisconsin's legislative districts. Wis. St. Leg. 2021–2022, S.B. 621; *see Clarke* Petition ¶47 (Aug. 2, 2023) ("Pet."). On November 18, 2021, Governor Evers vetoed that legislation. Wis. St. Leg. 2021–2022, S.B. 621; *see* Pet. ¶48. Upon his veto, Governor Evers transmitted a message to the Legislature explaining his decision. *See* Message from Tony Evers, Office of the Governor, to the Honorable Members of the Senate (Nov. 18, 2021) ("Governor's Veto Message"). He wrote: "I am vetoing Senate Bill 621 … in [its] entirety because I object to maps designed only to undemocratically serve the politicians who draft them." *Id.* The Legislature never overrode the Governor's veto. Pet. ¶54.

This Court granted a petition to commence an original action. *Johnson v. Wis. Elections Comm'n*, No. 2021AP1450-OA.[1] The petition sought an injunction replacing the unconstitutionally malapportioned 2012

[1] In *Johnson*, five of the eight Atkinson Intervenors (Drs. Wright, Krenz, Hamilton, Thiffeault, and Jha) were intervenors known collectively as the "Citizen Mathematicians and Scientists," or "CMS" group.

legislative maps with remedial maps that made the "least change" to their predecessors while equalizing district populations. Pet. ¶49.

The liability issue in *Johnson* was undisputed because 2020 Census data demonstrated that the 2012 maps no longer satisfied the "one person, one vote" rule. The action therefore focused almost entirely on the remedy. Initially, the Court considered two options, either "creating new maps" itself or asking the parties to submit proposed maps so that the Court could "evaluate" them and then select the best among the parties' proposals. *Johnson v. Wis. Elections Comm'n*, No. 2021AP1450-OA, unpublished order (Wis. Oct. 14, 2021) (per curiam). The Court chose the latter option.

The Court asked the parties for briefs on how it should evaluate the proposed maps, and then voted 4-to-3 to follow a "least change" approach and to not consider the partisan makeup of districts in imposing a remedy. *Johnson v. Wis. Elections Comm'n*, 2021 WI 87, ¶81, 399 Wis. 2d 623, 671, 967 N.W.2d 469, 493 ("*Johnson I*"). No majority agreed on a definition of "least change." *Compare id.* ¶81 *with id.* ¶¶82–84 & n.4 (Hagedorn, J., concurring) (declining to join lead opinion's definition of "least change" and concluding that equitable considerations should inform the proper remedy).

The Court also held, contrary to its decision in *State ex rel. Lamb v. Cunningham*, 83 Wis. 90, 148, 53 N.W. 35, 57 (1892), that districts could

comprise physically noncontiguous territory. *See Johnson I*, 2021 WI 87, ¶36.

On November 17, 2021, the Court ordered briefing on the parties' proposed remedial maps. *Johnson v. Wis. Elections Comm'n*, No. 2021AP1450-OA, unpublished order (Wis. Nov. 17, 2021) (per curiam). All parties and intervenors were permitted to file a proposed state-legislative map (containing both senate and assembly districts), a supporting brief (11,000 words), and an expert report on December 15, 2021. Responsive briefs (5,500 words) were due on December 30, and reply briefs (3,300 words) on January 4, 2022. *Id.*

The parties agreed that expert reports accompanying each round of briefs would be limited to rebutting the prior reports, and they established parameters for exchanging data, documents, and supporting materials related to the reports. Joint Discovery Plan, *Johnson v. Wis. Elections Comm'n*, No. 2021AP1450-OA (Dec. 3, 2021). The parties also agreed that no fact or expert discovery was needed. *Id.* at 2–3.

On January 19, 2022, five weeks after the parties exchanged their proposed maps, the Court held oral argument on the proposals.

Following argument, the Court initially voted 4-to-3 to impose the legislative maps proposed by Governor Evers because they moved the

fewest number of people to new districts—a metric known as "core retention." *Johnson v. Wis. Elections Comm'n*, 2022 WI 14, ¶7, 400 Wis. 2d 626, 635, 971 N.W.2d 402, 407 ("*Johnson II*"). Justice Hagedorn was the only Justice to find both that "least change" was the proper framework and that core retention was the appropriate measure of "least change." The three other Justices who voted to impose Governor Evers's map would not have applied a "least change" framework. *Id.* ¶¶58–63 (Walsh Bradley, J., concurring). Three Justices dissented, arguing that "least change" did not mean core retention. *See id.* ¶134 (Ziegler, C.J., dissenting); *id.* ¶211 (Grassl Bradley, J., dissenting).

The U.S. Supreme Court then summarily reversed this Court's order adopting the legislative maps proposed by the Governor, holding that the Court had conducted an insufficient analysis of whether an additional majority-Black assembly district in Milwaukee was required under the Voting Rights Act and thus could justify the assembly map's race-based districting. *See Wis. Legislature v. Wis. Elections Comm'n*, 595 U.S. 398, 406 (2022) (per curiam).

On remand, this Court voted 4-to-3 to impose the Legislature's proposed maps—the identical SB 621 maps that the Governor had vetoed—because the Legislature averred that it used race-neutral criteria to draw

districts in the Milwaukee area. *See Johnson v. Wis. Elections Comm'n*, 2022 WI 19, ¶73, 401 Wis. 2d 198, 254, 972 N.W.2d 559, 586 ("*Johnson III*").

The resulting map contains 54 (out of 99) noncontiguous assembly districts and 21 (out of 33) noncontiguous senate districts.[2] The 2022 election was conducted under legislative maps that placed every Wisconsinite in an assembly district or a senate district that either is or adjoins a noncontiguous district. *See* Appx. A.

II. Litigation History

On August 2, 2023, the *Clarke* Petitioners filed a Petition to Commence an Original Action asking this Court to invalidate the legislative maps adopted in *Johnson*. On August 4, 2023, Intervenors-Petitioners Wright, Krenz, Hamilton, Thiffeault, Jha, Kane, and Dudley (but not Professor Atkinson) also filed a Petition to Commence an Original Action in this Court raising five counts, each of which alleged that the existing state-legislative maps adopted in *Johnson* constituted "unlawful partisan gerrymandering" in violation of the Wisconsin Constitution. *See* Pet. to

[2] The noncontiguous senate districts ("SDs") are: 1, 2, 5, 8, 9, 11, 13, 14, 15, 16, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31, 33. The noncontiguous assembly districts ("ADs") are: 2, 3, 5, 6, 15, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 52, 53, 54, 58, 59, 60, 61, 63, 66, 67, 68, 70, 72, 76, 79, 80, 81, 83, 86, 88, 91, 93, 94, 95, 97, 98, 99.

Commence Original Action, *Wright v. Wis. Elections Comm'n*, No. 2023AP1412-OA (Aug. 4, 2023).

In separate Orders issued on October 6, 2023, this Court denied the *Wright* Petition and granted the *Clarke* Petition as to only two issues—contiguity and separation of powers. On October 10, Atkinson Intervenors timely filed a Petition in Intervention adopting all parts of the *Clarke* Petition related to the two pending issues. On October 13, this Court granted all intervention motions, including Atkinson Intervenors'.

Atkinson Intervenors file this brief pursuant to the Court's October 6 Order and address its four Issues Presented.

ARGUMENT

I. The Existing Maps Violate Article IV's Contiguity Requirements.

Article IV of the Wisconsin Constitution mandates that assembly and senate districts must consist of "contiguous territory." Wis. Const. art. IV, §§ 4, 5. The requirement is straightforward: All territory within a district must be physically connected, not detached. In other words, every point in the district must be reachable from every other point without crossing the district boundary and entering another district's territory. But under the

existing maps, an outright majority of districts—54[3] of 99 assembly districts and 21 of 33 senate districts—do not consist of contiguous territory. The maps are therefore unconstitutional.

A. Article IV Requires All Parts of a District to Be Physically Connected.

Article IV requires assembly districts to consist of "contiguous territory," Wis. Const. art. IV, § 4, and senate districts to consist of "convenient contiguous territory," *id.* § 5. Text, history, precedent, and purpose reflect a common understanding: Wisconsin's legislative districts must be physically intact.[4]

Text. In interpreting a constitutional provision, this Court "first look[s] at the plain language and meaning of" the text at the time it was ratified. *Coyne v. Walker*, 2016 WI 38, ¶43, 368 Wis. 2d 444, 475–76, 879 N.W.

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[3] Although Petitioners allege 55 noncontiguous assembly districts, *see Clarke* Pet'rs' Memo. in Support of Pet. to Commence an Original Action at 15 (Aug. 2, 2023), the Wisconsin Legislative Technology Services Bureau's maps depict 54, *see* Wis. Legis. Tech. Servs. Bureau, https://legis.wisconsin.gov/ltsb/gis/maps. This Court may take judicial notice of those maps. *See State ex rel. Strykowski v. Wilkie*, 81 Wis. 2d 491, 504–05, 261 N.W.2d 434, 440–41 (1978).

[4] At first glance, a district may not seem physically intact if it contains an island surrounded by a lake or bay. But—unlike a municipal "island" surrounded by another district's territory—an actual island surrounded by water can be reached from any other point in the same district without crossing into another district's territory.

2d 520, 535–36 (citation omitted), *overruled on other grounds by Koschkee v. Taylor*, 2019 WI 76, 387 Wis. 2d 552, 929 N.W.2d 600. In 1848, when the people of Wisconsin ratified the Constitution, the word "contiguous" meant "[t]ouching"; "without intervening space." *Contiguous*, *Contiguously*, Noah Webster, *An American Dictionary of the English Language* 186 (1845); *accord Contiguous*, Rev. James Barclay, *A Complete and Universal Dictionary of the English Language* 218 (1851) ("meeting so as to touch; bordering; applied to countries or places which join"). The word "contiguous" derives from the Latin "contigere"—"to touch." Charles Richardson, *A New Dictionary of the English Language* 408 (1836).

The textual requirement that legislative districts be "contiguous" is not qualified, in contrast to other constitutional criteria for legislative districts. *See State ex rel. Kalal v. Cir. Ct. for Dane Cnty.*, 2004 WI 58, ¶46, 271 Wis. 2d 633, 663, 681 N.W.2d 110, 124 ("language is interpreted … in relation to the language of surrounding or closely-related" provisions). For instance, Article IV, Section 4 provides that legislative districts should "be in as compact form *as practicable*." Wis. Const. art. IV § 4 (emphasis added). Comparing these textual provisions, the natural implication is that the compactness requirement is subject to a practicality limitation. *Johnson I*, 2021 WI 87, ¶37 ("[T]he constitutional text furnishes some latitude in

meeting this [compactness] requirement."). Contiguity is not. *See Heritage Farms, Inc. v. Markel Ins. Co.*, 2009 WI 27, ¶14 n.9, 316 Wis. 2d 47, 59 n.9, 762 N.W.2d 652, 658 n.9 (2009) ("[E]very word excluded from a [provision] must be presumed to have been excluded for a purpose." (citation omitted)). As to assembly districts, the commandment is absolute: They must "consist of contiguous territory." Wis. Const. art. IV, § 4. As to senate districts, there is likewise no "as practicable" modifier; they must comprise "convenient contiguous territory." *Id.* § 5. (A "convenient" senate district avoids having to cover extraordinarily long distances. *See The State of Wisconsin Blue Book* 146–47 (1970) (describing origins of term).)

History. "[P]ractices in existence at the time of the writing of the constitution," which this Court uses to ascertain original meaning, *State v. City of Oak Creek*, 2000 WI 9, ¶18, 232 Wis. 2d 612, 625, 605 N.W.2d 526, 532 (quotation marks omitted), confirm that contiguity refers to physical cohesion. As set out in Wisconsin's Constitution in 1848, which defined the new State's original legislative districts, every district was physically cohesive, with no detached territory. Wis. Const. art. XIV, § 12 (1848); *see The State of Wisconsin Blue Book* 85 (1970) (map of legislative districts defined in the 1848 Constitution). The 1848 Constitution further specified that when towns were split or new towns created, legislative districts must

remain intact—the "new town" could only "be added to either of the adjoining assembly districts." Wis. Const. art. XIV, § 12 (1848).

Wisconsin's legislative districts remained physically contiguous for the next 123 years. *See infra* at 14 & note 5.

Precedent. This Court has likewise recognized that "contiguous" districts must be intact. The Court first addressed contiguity in 1880, when it invalidated an effort by the town of Oconto to attach "lands *separated* and *detached*, and *not contiguous* to the main body of lands in said town." *Chicago & Nw. Ry. Co. v. Town of Oconto*, 50 Wis. 189, 192, 6 N.W. 607, 607 (1880) (emphasis added). The Court explained that permitting the town to incorporate detached territory would interfere with the Legislature's constitutional mandate to formulate "contiguous" legislative districts. *Id.*

The Court next addressed contiguity in 1892, in *State ex rel. Lamb v. Cunningham*, expressly holding that Article IV "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. at 148. The Court emphasized that this constitutional commandment is "absolutely binding." *Id.*

In 2020, in a statutory challenge to the contiguity of a municipal annexation, the Court reaffirmed that "contiguous" means having "some

significant degree of physical contact." *Town of Wilson v. City of Sheboygan*, 2020 WI 16, ¶¶18–19, 390 Wis. 2d 266, 282–83, 938 N.W.2d 493, 501–02 (citations omitted).

Purpose. The inclusion of contiguity as a constitutional requirement for legislative districts serves the purpose of improving democratic functioning. For one, "there is a correlation between geographical propinquity and community of interest, and therefore compactness and contiguity are desirable features in a redistricting plan." *Johnson I*, 2021 WI 87, ¶47 (quotation marks omitted). For another, contiguity ensures that legislators do not have to traverse other districts to reach their own constituents—and conversely, that constituents need not travel far to access their representatives—thereby promoting democratic responsiveness.

What's more, contiguity, like other traditional districting principles, constrains discretion in mapmaking, limiting the ability to manipulate district lines for improper purposes. Indeed, that is why—just six years before the framers of the Wisconsin Constitution wrote the words "contiguous territory" into Article IV—Congress enacted the first in a long series of apportionment acts mandating that congressional districts be "composed of *contiguous territory*." Act of June 25, 1842, ch. 47, 5 Stat. 491 (emphasis added). As the U.S. Supreme Court has explained, Congress in

1842 "specified that [House] districts be 'composed of contiguous territory' … in 'an attempt to forbid the practice of the gerrymander.'" *Rucho v. Common Cause*, 139 S. Ct. 2484, 2495 (2019) (citations omitted); *accord Vieth v. Jubelirer*, 541 U.S. 267, 276 (2004) (plurality opinion) (Congress mandated "contiguous territory" in 1842 to "restrain the practice of political gerrymandering"). Only six years later, Wisconsin's constitutional framers likewise insisted on legislative districts of "contiguous territory," perhaps because the alternative—"[i]ndiscriminate districting"—would "be little more than an open invitation to partisan gerrymandering." *Reynolds v. Sims*, 377 U.S. 533, 578–79 (1964).

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In 1992, without consideration of the text, history, precedent, or purpose of Article IV's contiguity requirements, a three-judge federal district court addressing Wisconsin's legislative reapportionment selected a remedial map with disconnected districts. *Prosser v. Elections Bd.*, 793 F. Supp. 859, 866 (W.D. Wis. 1992). The court found their noncontiguity to be no "serious demerit" because under a 1971 statute—which has since been

repealed[5]—towns were occasionally authorized to annex noncontiguous areas. *Id.* The remedial plan "treat[ed] these 'islands,' as the noncontiguous annexed areas [we]re called, as if they were contiguous." *Id.* The federal court did not address *Lamb*'s rule, even though "a decision of 'the State's highest court'" is "binding on the federal courts." *Animal Sci. Prods., Inc. v. Hebei Welcome Pharm. Co*, 138 S. Ct. 1865, 1868 (2018) (citations omitted).

This Court in *Johnson I* compounded the federal district court's mistake. *See* 2021 WI 87, ¶36. *Johnson I* devoted only two sentences to the contiguity issue, and it cited no authority besides *Prosser*. *Id.* Nor did the *Johnson I* Court hear argument on whether *Prosser* contravened Article IV's plain text, the history and tradition of this State, or this Court's otherwise unbroken precedents.

Today, this Court has the opportunity and obligation to confirm the original meaning of Article IV and to reaffirm its own, clear pre- and post-*Prosser* precedent. *See Tetra Tech EC, Inc. v. Wis. Dep't of Rev.*, 2018 WI 75, ¶82, 382 Wis. 2d 496, 563–64, 914 N.W.2d 21, 54 (advocating correcting

[5] In 1971, the Legislature enacted a statute providing that "[i]sland territory (territory belonging to a city, town or village but not contiguous to the main part thereof) is considered a contiguous part of its municipality." 1971 Wisconsin Act 304, § 1(2). The Legislature repealed the statute. *See* 2011 Wisconsin Act 43, § 2.

an erroneous decision if it was "detrimental to coherence and consistency in the law" or "unsound in principle").[6] This Court should restore the principle it announced in 1880 and 1892 and reiterated as recently as 2020, which "rejected the adoption of a broader definition of contiguous that includes territory near to, but not actually touching, a municipality." *Town of Wilson*, 2020 WI 16, ¶¶18–19.

B. The Existing Maps Flout the Constitution's Contiguity Requirements.

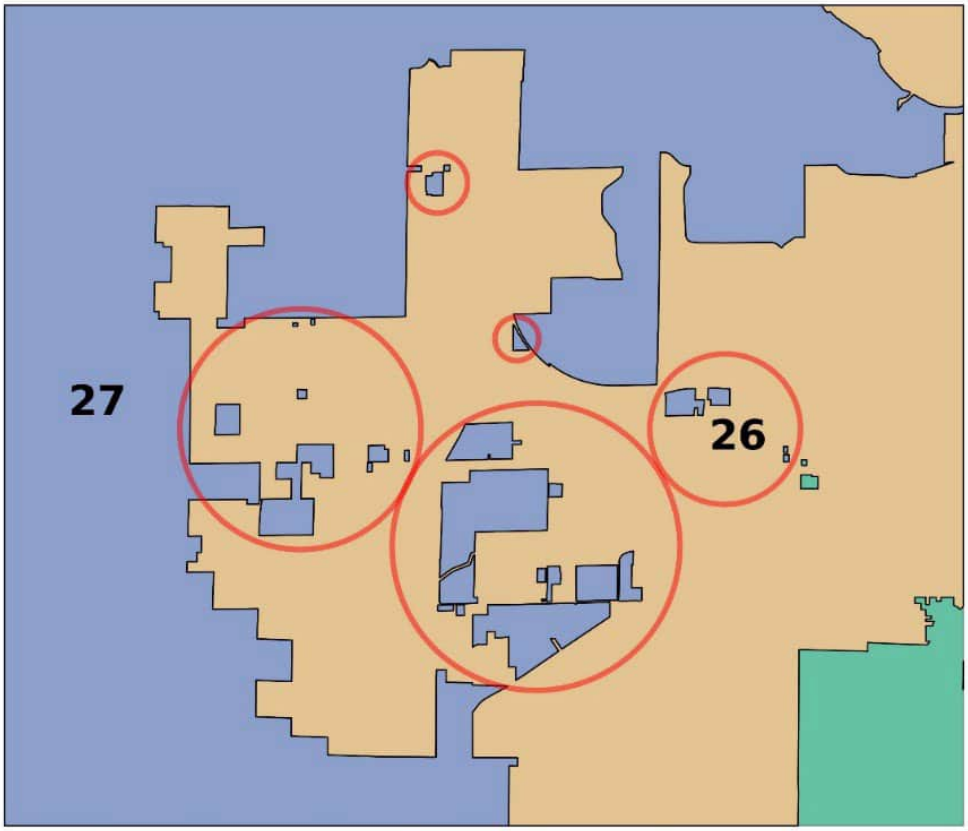
The current maps are plainly unconstitutional. The majority of legislative districts—54 of 99 assembly districts and 21 of 33 senate districts—contain disconnected land.

Consider, for instance, Senate District 27 in south-central Wisconsin, where Intervenor-Petitioner Professor Jha lives. Not only is SD 27 noncontiguous (as illustrated below), but it also borders *four other* noncontiguous senate districts: SD 13, SD 14, SD 15, and SD 16. The

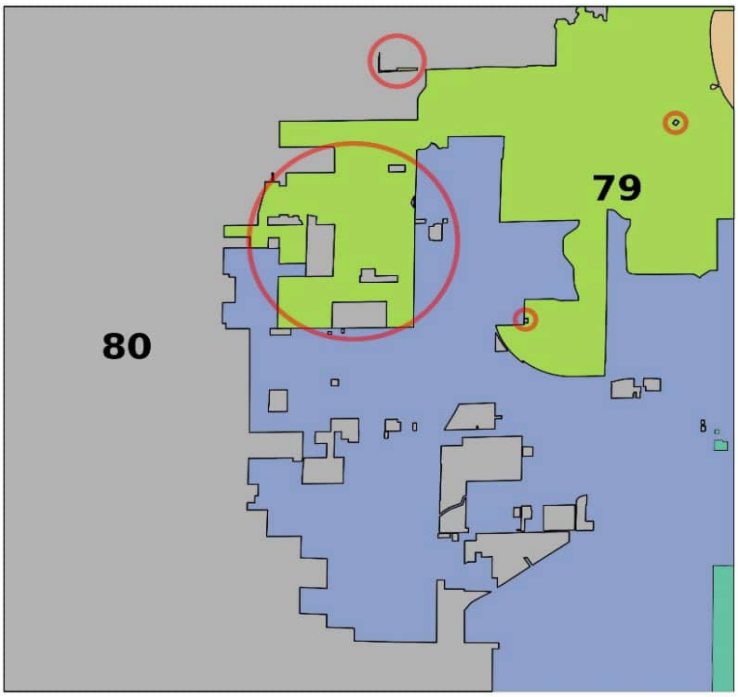
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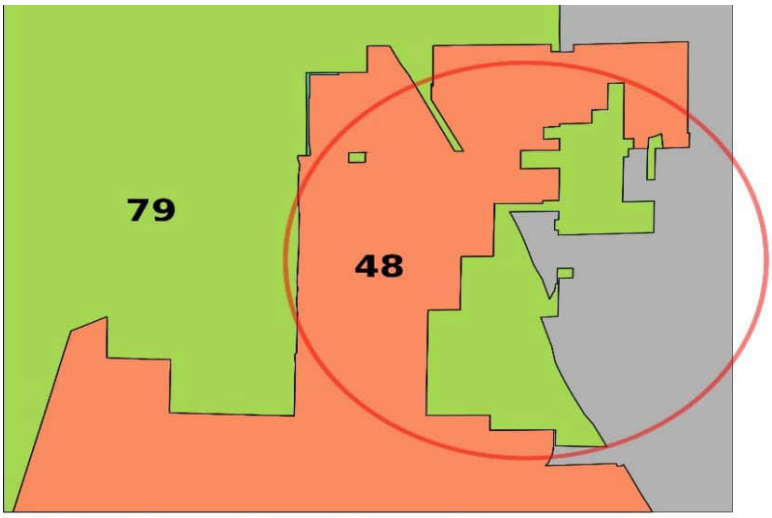
[6] In their October 2021 brief in *Johnson I*, the Citizen Mathematicians and Scientists (*see supra* note 1) argued that districts containing detached territory were unconstitutionally noncontiguous, per *Lamb*. *See* Opening Br. at 13, *Johnson v. Wis. Elections Comm'n*, 2021 WI 87. Only after this Court handed down its decision in *Johnson I* did Citizen Mathematicians and Scientists (and all parties) litigate the remainder of the action with the understanding that *Johnson I*'s reasoning on contiguity established the law of the case.

resulting districts are a confusing jumble, with numerous outcroppings of one district contained in an ocean of another.



Nested in SD 27 is Professor Jha's Assembly District 79. Not only is AD 79 itself noncontiguous, but it also borders *five* other noncontiguous districts:





These maps illustrate a familiar story in Wisconsin. Literally *every* Wisconsin resident lives in a senate district or an assembly district that either is or adjoins a noncontiguous district. *See* Appx. A.

Wisconsin is a national outlier: It is the *only* State where legislative districts consist of noncontiguous territory.[7] This Court must bring Wisconsin's maps into line with its Constitution's text, history, precedent, and purpose, as well as the democratic practice of other States across the country.

II. The Existing Maps' Adoption Violates the Wisconsin Constitution's Separation-of-Powers Principles.

The adoption of the existing maps—the very same maps that the Legislature passed in SB 621, that Governor Evers vetoed, and that the Legislature could not salvage with an override of that veto—also violates the separation of powers enshrined in the Wisconsin Constitution.

"The Wisconsin constitution creates three separate coordinate branches of government …." *State ex rel. Friedrich v. Cir. Ct. for Dane Cnty.*, 192 Wis. 2d 1, 13, 531 N.W.2d 32, 36 (1995) (quoting *State v. Holmes*, 106 Wis. 2d 31, 42, 315 N.W.2d 703, 709 (1982)); *see* Wis. Const. art. IV, § 1; *id.* art. V, § 1; *id.* art. VII, § 2. "Each branch has a core zone of exclusive

[7] *See Contiguity*, Ballotpedia, https://ballotpedia.org/Contiguity ("A total of 49 states require that their state legislative districts … be contiguous."); Alec Ramsay, *Notable Maps*, Medium (Mar. 9, 2021), https://medium.com/dra-2020/notable-maps-66d744933a48 (distinguishing Wisconsin legislative districts' "multiple pieces of geography that aren't all adjacent").

authority into which the other branches may not intrude." *Friedrich*, 192 Wis. 2d at 13–14.

That division is clear as to the branches' roles in enacting legislation, including redistricting legislation. *See State ex rel. Reynolds v. Zimmerman*, 22 Wis. 2d 544, 557–58, 126 N.W.2d 551, 558–59 (1964) (explaining that redistricting legislation in Wisconsin is subject to the ordinary legislative process of presentment and veto). Article V, Section 10 of the Wisconsin Constitution establishes the process: "Every bill which shall have passed the legislature shall, before it becomes a law, be presented to the governor. If the governor approves and signs the bill, the bill shall become law." Wis. Const. art. V, § 10. "If the governor rejects the bill, the governor shall return the bill, together with the objections in writing, to the house in which the bill originated." *Id.*

Article V then provides the process for overriding a veto: "The house of origin shall enter the objections at large upon the journal and proceed to reconsider the bill." *Id.* And it spells out the exclusive means for accomplishing that override: "If, after such reconsideration, two-thirds of the members present agree to pass the bill notwithstanding the objections of the governor, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-

thirds of the members present it shall become law." *Id.* As this Court has explained, "the legislative process is not complete unless and until an enactment has been published" following the Governor's signature or the override of his veto. *Goodland v. Zimmerman*, 243 Wis. 459, 465–66, 10 N.W.2d 180, 182 (1943).

That is not what happened with SB 621. The Legislature passed SB 621. The Governor vetoed SB 621. The Legislature did not override that veto. Instead, the Legislature brought SB 621 to the Court and asked *the Court* to override the veto.

Initially, the *Johnson* Court properly rejected the Legislature's pitch to "use the maps [the Legislature] passed during this redistricting cycle as a starting point." *Johnson I*, 2021 WI 87, ¶72 n.8. The Court explained, "the Legislature's argument fails because the recent legislation *did not survive the political process*." *Id.* (emphasis added). The Court recognized it has "no authority to act as a 'super-legislature' by inserting [itself] into the actual lawmaking function." *Id.* ¶71. That conclusion was in accord with courts across the country in a "line of cases … declin[ing] to afford deference to vetoed plans," reasoning that they represent *failed* legislation—the antithesis of constitutional design. *Carter v. Chapman*, 270 A.3d 444, 460 (Pa.), *cert. denied*, 143 S. Ct. 102 (2022); *see, e.g.*, *Carstens v. Lamm*, 543 F.

Supp. 68, 79 (D. Colo. 1982) (three-judge court); *Hippert v. Ritchie*, 813 N.W.2d 374, 379 n.6 (Minn. 2012); *Hartung v. Bradbury*, 33 P.3d 972, 979 (Or. 2001); *O'Sullivan v. Brier*, 540 F. Supp. 1200, 1202 (D. Kan. 1982) (three-judge court). It was also in accordance with the U.S. Supreme Court's acknowledgement that where "[t]he legislature's efforts … were nullified by the Governor's veto of the Act it passed, an action the executive ha[s] the power to take," the "plan he vetoed" represents "only the legislature's proffered current policy." *Sixty-Seventh Minn. State Senate v. Beens*, 406 U.S. 187, 195, 197 (1972).

At the case's conclusion, however, the very same maps that the Court had correctly refused to use as a "starting point" were ordered into effect as the litigation's ending point. That was wrong. The Wisconsin Constitution "provides only one avenue to override such a veto; no judicial override textually exists." *Johnson III*, 2022 WI 19, ¶187 (Karofsky, J., dissenting).

The separation-of-powers problem with the present maps is twofold. The Wisconsin Constitution allows no branch either "to arrogate to itself control over the other" or "to exercise the power committed by the constitution to another." *Friedrich*, 192 Wis. 2d at 13 (quoting *Holmes*, 106 Wis. 2d at 42). By ordering into effect SB 621, the *Johnson III* Court did both. It arrogated to itself control over the Governor's veto, an essential tool

in checking the Legislature. *See Bushnell v. Town of Beloit*, 10 Wis. 195, 225 (1860). And it exercised the veto-overriding power that the Constitution has committed exclusively to the Legislature. *See Stern v. Marshall*, 564 U.S. 462, 483 (2011) (explaining that the Executive cannot "share with the Judiciary the veto power, or the Congress share with the Judiciary the power to override a Presidential veto"). As the dissent in *Johnson III* observed: "By judicially enacting the very bill that failed the political process, a bare majority of this court, rather than a supermajority of the legislature, has taken the unprecedented step of removing the process of lawmaking from its constitutional confines and overriding a governor's veto ourselves." 2022 WI 19, ¶187 (Karofsky, J. dissenting).

Vitiating the Governor's veto in redistricting poses a particularly acute separation-of-powers problem, as this Court recognized in *Zimmerman* more than half a century ago. There, the Governor had rejected the maps passed by the Legislature, and his veto was not overridden. 22 Wis. 2d at 550. The Legislature then passed a "nearly identical" joint resolution. *Id.* This Court found the resolution invalid, as it effectively nullified the Governor's structural role in redistricting legislation: his veto. "[I]t would be unreasonable," this Court explained, "to hold that the framers of the constitution intended to exclude from the

reapportionment process the one institution guaranteed to represent the majority of the voting inhabitants of the state, the Governor." *Id.* at 556–57. The separation-of-powers violation here is even more egregious. These maps are not "nearly identical" to the maps the Governor vetoed. *Id.* at 550. They *are* the maps the Governor vetoed.

This separation-of-powers violation is important for the Court to cure, as a matter of bedrock democratic principle. The redistricting process set forth in the Wisconsin Constitution is designed to be "a matter for joint action between the legislature and the governor." *Id.* at 558; *see also id.* ("[h]istorically" the process "has been accomplished by the joint efforts of the legislature and the governor in passing and signing into law a particular reapportionment bill"); *State ex rel. Broughton v. Zimmerman*, 261 Wis. 398, 408, 52 N.W.2d 903, 908 (1952) ("All prior reapportionments of the state during the past 104 years of its history have been accomplished in this manner …."), *overruled on other grounds by Zimmerman*, 22 Wis. 2d 544; *Smiley v. Holm*, 285 U.S. 355, 369–70 (1932) (noting "uniform practice" of gubernatorial presentment and veto "wherever the state Constitution provide[s] for such participation as part of the process of making laws"). The reason to require presentment of legislative maps to the Governor and a supermajority of the Legislature to override a veto is to force the political

branches to compromise, to produce maps that promote fair and effective representation for all citizens.

Envisioning how the process should have played out makes the point. The Legislature proposed maps, which the Governor rejected as "designed only to undemocratically serve the politicians who draft[ed] them." Governor's Veto Message at 1. Since the Legislature lacked the two-thirds majority in both houses to override that veto, the next step should have been for the Legislature to propose compromise maps that would address the Governor's concerns and thus garner his signature. Or, if the Governor seemed likely to veto any subsequent proposal, the Legislature could have drawn maps that would earn supermajority legislative support to override his veto.

That never happened. Indeed, the Legislature did not even try to pass new maps. From November 18, 2021, when the Governor vetoed SB 621, to May 17, 2022, when the Legislature ended its session without overriding the veto, the Legislature proposed *zero* alternative plans. *See* Br. of Senator Carpenter *et al.* in Support of Petition for Original Action at 9 n.1 (Aug. 22, 2023). By ordering the Legislature's preferred-but-vetoed maps into law, this Court reversed the incentives, transforming what should have been the Legislature's opening bid into its final offer.

If this separation-of-powers violation is permitted to stand, the ongoing violation threatens to entice future Legislatures to be equally intransigent. As one court put it in explaining why it declined to "override the Governor's veto" by adopting the legislature's map: "[A] partisan state legislature could simply pass any bill it wanted, wait for a gubernatorial veto, file suit on the issue, and have the Court defer to their proposal." *Carstens*, 543 F. Supp. at 79 (three-judge court). Exactly.

III. A Judicially Neutral Approach to Compliance with State and Federal Law Should Guide the Court's Remedy.

If the Court rules that Wisconsin's existing state-legislative maps violate either the Wisconsin Constitution's contiguity or separation-of-powers requirements, and the Legislature and the Governor fail to adopt lawful maps, this Court should be guided by the standards set forth in the Wisconsin Constitution and federal law in imposing a remedy. Neither source of law requires a "least change" remedy, and such a remedy is particularly unwarranted given that the existing court-ordered maps do not reflect constitutionally compliant policy decisions of the political branches. Moreover, the Court must ensure that it exercises its equitable remedial powers equitably, "consistent with [the Court's] role as a non-partisan

institution[,] and avoid choosing maps designed to benefit one political party." *Johnson I*, 2021 WI 87, ¶109 (Dallet, J., dissenting).

A. The Court Should Follow the Plain Text of the Wisconsin Constitution and Federal Law in Crafting a Remedy.

With respect to the constitutional violations here, the Court must ensure that "in remedying the alleged harm … [it does] not … inadvertently choose a remedy that solves one constitutional harm while creating another." *Johnson I*, 2021 WI 87, ¶34. It can do so by requiring strict "adher[ence] to the neutral factors supplied by the state and federal constitutions, the Voting Rights Act, and traditional redistricting criteria." *Johnson I*, 2021 WI 87, ¶94 (Dallet, J., dissenting). Indeed, "[t]he population equality (*i.e.*, 'one person, one vote') principles in the state and federal constitutions and the federal Voting Rights Act, 52 U.S.C. § 10301(a), are universally acknowledged as politically neutral and central to any redistricting plan. Likewise for the remaining requirements of the Wisconsin Constitution, compactness, contiguity, and respect for political subdivision boundaries." *Id.* (citing Wis. Const. art. IV, §§ 3, 4). Specifically, the Court should ensure that any remedial map adheres to the following standards.

Population Equality. A legislative map presumptively complies with the Federal Constitution's one-person, one-vote rule if the "maximum

population deviation" between the largest and smallest district is less than 10% of the average, or ideal, district's population. *Brown v. Thomson*, 462 U.S. 835, 842 (1983).[8] The Wisconsin Constitution also contains an independent equal-population rule requiring that senate and assembly districts be apportioned "according to the number of inhabitants." Wis. Const. art. IV, § 3.

Courts in Wisconsin redistricting cases generally have attempted to constrain maximum population deviations in legislative districts to 2%, so that no district deviates from the ideal by more than 1%. *See Prosser*, 793 F. Supp. at 865–66 (explaining that "[b]elow 1 percent, there are no legally or politically relevant degrees of perfection"); *see also Baumgart v. Wendelberger*, No. 01-C-0121, 2002 WL 34127471, at *2 (E.D. Wis. May 30, 2002) (three-judge court) (reaffirming this conclusion), *amended*, 2002 WL 34127473 (E.D. Wis. July 11, 2002) (three-judge court).

Respect for Political-Subdivision Lines. The Wisconsin Constitution requires assembly districts "to be bounded by county, precinct,

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[8] "Maximum population deviation is the sum of the percentage deviations from perfect population equality of the most- and least-populated districts …. For example, if the largest district is 4.5% overpopulated, and the smallest district is 2.3% underpopulated, the map's maximum population deviation is 6.8%." *Evenwel v. Abbott*, 578 U.S. 54, 60 n.2 (2016) (citations omitted).

town or ward lines." Wis. Const. art. IV, § 4. Operationalizing this requirement: (1) Wisconsin's county-line requirement "'should be followed insofar as it does not compel disregard'" for population equality; (2) Wisconsin's "town and ward lines should be followed" "insofar as [they] may be consistent with population equality"; (3) precinct lines, although expressly listed in the Wisconsin Constitution, should be disregarded because this Court held in 1892 that precincts had ceased to exist as political subdivisions; and (4) village lines, which are not expressly listed in the Wisconsin Constitution, may be used in forming legislative districts because modern-day Wisconsin villages are the equivalent of "towns" or "wards" at the time the Constitution was framed. 60 Op. Att'y Gen. 101, 106–09 (Wis. Att'y Gen. 1971) (citing *State ex rel. Atty. Gen. v. Cunningham*, 81 Wis. 440, 514, 520, 51 N.W. 724, 739, 741 (1892)).

Federal courts adjudicating Wisconsin legislative-districting cases over the last four decades have generally followed this approach, seeking where possible to respect political-subdivision lines. *See Baldus v. Members of Wis. Gov't Accountability Bd.*, 849 F. Supp. 2d 840, 850 (E.D. Wis. 2012) (three-judge court) (discussing significance of "counties, towns, villages, wards, and neighborhoods"); *Baumgart*, 2002 WL 34127471, at *3, *7 (observing that "respect for the prerogatives of the Wisconsin Constitution"

requires adherence to the lines defining "wards and municipalities"); *Prosser*, 793 F. Supp. at 863 (describing efforts to "mak[e] district boundaries follow (so far as possible) rather than cross the boundaries of … political subdivisions" and specifically mentioning "counties, towns, villages, [and] wards"); *Wis. State AFL-CIO v. Elections Bd.*, 543 F. Supp. 630, 636 (E.D. Wis. 1982) (three-judge court) (considering municipal lines).

Contiguity. The Wisconsin Constitution requires assembly districts "to consist of contiguous territory," Wis. Const. art. IV, § 4, and senate districts to consist of "convenient contiguous territory," *id.* § 5. The contiguity requirements are discussed in Part I.

Compactness. The Wisconsin Constitution requires assembly districts to "be in as compact form as practicable." Wis. Const. art. IV, § 4. This Court has "never adopted a particular measure of compactness," but has recognized that "the constitutional text furnishes some latitude in meeting this requirement." *Johnson I*, 2021 WI 87, ¶37. Because the compactness requirement—unlike the Wisconsin Constitution's equal-population, political-subdivision lines, and contiguity requirements—is qualified by the phrase "as practicable," it presumably has a lower priority than the other three requirements. *See Wis. State AFL-CIO*, 543 F. Supp. at 634 (describing the compactness criterion as "secondary" and

"subservient" to both "population equality" and "political subdivision boundaries," and noting that "districts should be reasonably, though not perfectly, compact"); *see also Prosser*, 793 F. Supp. at 863 (rejecting compactness as a basis for "breaking up counties, towns, villages, wards, even neighborhoods").

Nesting: The Wisconsin Constitution provides that "no assembly district shall be divided in the formation of a senate district." Wis. Const. art. IV, § 5. Since the 1970s, membership in the Wisconsin Legislature has been fixed at 33 State Senators and 99 Representatives to the Assembly, *cf. id.* § 2, so three assembly districts must be nested in each senate district.

Minority Electoral Opportunity. The Federal Constitution's Equal Protection Clause prohibits a state from "deny[ing] to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. And the Fifteenth Amendment to the United States Constitution prohibits a State from denying or abridging "[t]he right of citizens of the United States to vote … on account of race [or] color." U.S. Const. amend. XV, § 1. Together, these constitutional provisions bar legislative districting plans marred by the excessive and unjustified use of race and racial data, *see Shaw*

v. Reno, 509 U.S. 630, 639–57 (1993), or by the intentional dilution of minority voting strength, *see Rogers v. Lodge*, 458 U.S. 613, 616–28 (1982).

Section 2 of the Voting Rights Act ("VRA"), 52 U.S.C. § 10301, echoes the Fifteenth Amendment, with one major exception. Instead of prohibiting voting rules denying or abridging a citizen's right to vote "on account of race," it prohibits voting rules imposed or applied "in a manner which *results* in a denial or abridgement of … [a citizen's right] to vote on account of race." 52 U.S.C. § 10301(a) (emphasis added). Under this "results test," Section 2 "turns on the presence of discriminatory effects, not discriminatory intent." *Allen v. Milligan*, 599 U.S. 1, 25 (2023). A voter must show, "based on the totality of circumstances," that "the political processes leading to nomination or election … are not equally open to participation" by members of the voter's racial group "in that [those] members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 52 U.S.C. § 10301(b).

Requiring consideration of "'the totality of circumstances'" permits consideration of "any circumstance that has a logical bearing on whether voting is 'equally open' and affords equal 'opportunity.'" *Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321, 2338 (2021). However, the statute expressly lists only one circumstance that "may be considered" in "the

totality of circumstances": the "extent to which members of [the voter's racial group] have been elected to office." 52 U.S.C. § 10301(b). The statute then provides that nothing in Section 2 "establishes a right to have [these] members … elected in numbers equal to their proportion in the population." *Id.*

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Satisfying all these textually mandated criteria at once—or, rather, maximizing the degree to which they can be harmoniously satisfied—is challenging. Improving a district's performance on one requirement often creates "downstream consequences" for the district's compliance with other requirements. Emily Rong Zhang, *Bolstering Faith with Facts: Supporting Independent Redistricting Commissions with Redistricting Algorithms*, 109 CALIF. L. REV. 987, 1013 (2021). Remedying the contiguity violations in the existing districts, for example, necessarily will impact the districts' degree of population equality, respect for political-subdivision boundaries,[9]

[9] In particular, making districts contiguous could require splitting wards and municipalities, though districts themselves would still follow county, town, or ward lines. Moreover, the existing districts that the Legislature drew in 2021 and this Court adopted in *Johnson III* in 2022 were purportedly based on ward and municipal lines in effect on April 1, 2020 (Census Day). Because many of those lines have changed, the Court should specify *which* ward and municipal lines should now be followed in any remedial proposals the Court invites from the parties. *See infra* at 49.

and compactness. The traditional way to find the right balance has been through trial and error, with a mapmaker using commercial software and a mouse to manually move existing district lines one at a time. But drawing maps this way is both time-consuming and deeply limited. Indeed, "[a] single decision" in the map-drawing process can have "implications for the rest of the map that even seasoned line-drawers cannot always fully account for or predict." *Id.*

The field of computational redistricting that has developed over the past decade changes that. The high-performance computing and algorithmic optimization techniques involved in computational redistricting can quickly sort through millions of alternatives to "zero in on the maps that best meet the redistricting criteria." *Id.* Using computational redistricting, Atkinson Intervenors' team is uniquely situated to offer the Court an answer to the central question facing the Court when evaluating remedial proposals: "What is the best plan?" *Prosser*, 793 F. Supp. at 865.

B. The Court Acts in Equity When It Imposes a Remedy and Accordingly Should Ensure Judicial Neutrality.

Relief in redistricting cases is "fashioned in the light of well-known principles of equity." *Reynolds v. Sims*, 377 U.S. 533, 585 (1964) (quotation marks omitted). "A district court therefore must undertake an 'equitable weighing process' to select a fitting remedy for the legal violations it has

identified, taking account of 'what is necessary, what is fair, and what is workable.'" *North Carolina v. Covington*, 581 U.S. 486, 488 (2017) (citations omitted).

In *Johnson*, this Court took a "least change" approach when exercising its equitable remedial authority. *See supra* at 2–3. But even assuming such an approach were appropriate in *Johnson*, it is not appropriate here for both procedural and substantive reasons, as explained below. Also in *Johnson*, when discussing its authority to remedy malapportionment, this Court reached out in dicta to opine on a question that no party had presented: the justiciability of partisan-gerrymandering claims under the Wisconsin Constitution. *Johnson I*, 2021 WI 87, ¶¶40–63. But regardless of whether partisan-gerrymandering claims are justiciable (a question this Court expressly reserved in its October 6 Order), the answer to that question would not affect this Court's obligation to exercise its equitable remedial discretion equitably, in light of "what is necessary, what is fair, and what is workable." *Covington*, 581 U.S. at 488 (quotation marks omitted); *see also* Richard H. Fallon, Jr., *Judicially Manageable Standards and Constitutional Meaning*, 119 HARV. L. REV. 1274, 1290 n.66 (2006) ("'[C]onsiderations of fairness' play a key role in the design of equitable remedies." (quoting *Kansas v. Colorado*, 543 U.S. 86, 95 (2004))).

1. This Court Is Not Required to Adopt a "Least Change" Approach to Remedying the Violations.

In exercising remedial equitable authority in a redistricting case, neither the Wisconsin Constitution nor federal law requires a "least change" standard. Nor does this Court's decision in *Johnson* mandate that a remedy here must follow the "least change" approach applied in that case. As an initial matter, there is no precedential decision that binds this Court with respect to the "least change" concept because, in *Johnson*, there was no majority agreement on what "least change" meant and how it should be evaluated. *See supra* at 3.

But regardless of its precedential value, a "least change" standard is not appropriate here. "Least change" principles generally are rooted in the idea that there should be judicial deference to legitimate policy choices made by the legislative and executive branches that share primary responsibility for redistricting. *See, e.g.*, *Abrams v. Johnson*, 521 U.S. 74, 79 (1997). But such principles are inapplicable where, for either procedural or substantive reasons, the maps being replaced do not embody such choices. That is the case here.

First, as a procedural matter, unlike in *Johnson*, here the legislative maps that would be replaced were not "passed by the legislature and signed by the governor" and therefore are not due any deference by this Court.

Johnson I, 2021 WI 87, ¶8. Indeed, as explained in Part II, one of the reasons these maps *must* be replaced is that they were rejected by one of the co-equal branches responsible for enacting maps reflecting the State of Wisconsin's redistricting policy. "Least change" has never required judicial deference to maps that *fail* the political process. Such maps reflect the rejection, rather than the embodiment, of the mapmaker's policy choices. *See Johnson III*, 2022 WI 19, ¶187 (Karofsky, J., dissenting); *see supra* at 20–21 (collecting cases).

Second, as a substantive matter, the existing maps do not reflect legitimate policy choices because they pervasively violate the Wisconsin Constitution and inappropriately prioritize "least change" over constitutional compliance. It is not just that the maps are entirely infected by noncontiguity, *see supra* Part I, but also that they repeatedly subordinate the plain text of Wisconsin's constitutional requirements to a principle of "least change" that appears nowhere in the Wisconsin Constitution. "Resorting to a least-change approach does not help [the Court] balance the relevant factors." *Johnson I*, 2021 WI 87, ¶109 (Dallet, J., dissenting). Instead, "[a]dopting the best maps possible based on all the relevant criteria protects [the Court's] neutrality and ensures that the resulting districts foster a representative democracy." *Id.*; *see also Prosser*,

793 F. Supp. at 865. Because the existing legislative plans were not based on the relevant legal requirements, but instead prioritized "least change" over the actual requirements of the Wisconsin Constitution and federal law, the Court need not repeat its "least change" mistake.

2. The Court's Remedy Must Reflect Judicial Neutrality.

Exercising remedial equitable authority in a redistricting case also requires attentiveness to judicial neutrality. But being judicially neutral does not mean being politically blind. In *Johnson*, the majority held that it would not consider the partisan makeup of districts because there was supposedly no "right to partisan fairness" in the Wisconsin Constitution. *Johnson I*, 2021 WI 87, ¶53. But as the dissent pointed out, "there is no logical connection between these conclusions. In fact, willfully blinding the court to the partisan makeup of districts increases the risk that [the Court] will adopt a partisan gerrymander." *Johnson I*, 2021 WI 87, ¶102 (Dallet, J., dissenting). In other words, it is not enough for the Court to adhere to "traditional" districting principles and stay willfully blind to political consequences. Rather, to properly exercise its equitable discretion, the

Court must actively ensure that it is not adopting maps that discriminate against voters based on political viewpoint or party affiliation.

The U.S. Supreme Court explained this obligation half a century ago in *Gaffney v. Cummings*, 412 U.S. 735 (1973), when it noted that a "politically mindless approach" to redistricting that relied solely on "census, not political, data" "may produce, whether intended or not, the most grossly gerrymandered results." *Id.* at 753. The Court thus advocated expressly looking to a redistricting plan's "political impact." *Id.* That is because even a redistricting map with districts that are within acceptable population deviations, contiguous, reasonably compact, and respectful of political-subdivision lines can still be severely biased in favor of one political party and against another. As Justice Scalia correctly stated, "adherence to compactness and respect for political subdivision lines" can coexist with partisan "packing and cracking, whether intentional or no." *Vieth*, 541 U.S. at 298 (plurality opinion). Thus, expressly checking for partisan consequences in a remedial redistricting map is essential to the proper exercise of equitable discretion.

This Court previously has recognized that in exercising its equitable authority to impose a remedy in a redistricting case, the Court cannot adopt a map tainted by partisan unfairness. In *Jensen v. Wisconsin Elections*

Board, this Court quoted with approval the three-judge federal court's opinion in *Prosser*, stating that when the Court is "comparing submitted plans with a view to picking the one … most consistent with judicial neutrality," the Court "should not select a plan that seeks partisan advantage—that seeks to change the ground rules so that one party can do better than it would do under a plan drawn up by persons having no political agenda." 2002 WI 13, ¶12, 249 Wis. 2d 706, 714, 639 N.W.2d 537, 541 (citation and quotation marks omitted). The *Prosser* court had evaluated "the political balance of the state" and ultimately selected as the remedial map "the least partisan" of all the proposed plans. 793 F. Supp. at 871; *see also id.* (noting there was no allegation that the existing districts were "politically biased from the start"). The three-judge court adjudicating the case about Wisconsin's legislative districts in 2002 likewise recognized that "avoiding the creation of partisan advantage" is a "traditional" Wisconsin districting principle that courts should apply when exercising their remedial authority. *Baumgart*, 2002 WL 34127471, at *3.

Other state supreme courts have taken a similar approach when exercising their remedial equitable authority in redistricting cases. *See, e.g.*, *Carter*, 270 A.3d at 470 (holding that the court would "evaluate proposed plans through the use of partisan fairness metrics to ensure that all voters

have 'an equal opportunity to translate their votes into representation'" because "advances in mapmaking have the potential to create a plan that will 'dilute the power of a particular group's vote' despite meeting the traditional core criteria"); *Maestas v. Hall*, 274 P.3d 66, 80 (N.M. 2012) (court-ordered plan should "avoid … political advantage to one political party and disadvantage to the other"); *Peterson v. Borst*, 786 N.E.2d 668, 673 (Ind. 2003) (rejecting plan that "was uniformly endorsed by members of one party and uniformly rejected by members of the other," because it "does not conform to applicable principles of judicial independence and neutrality").[10]

Thus, when exercising its equitable remedial authority, the Court must ensure that the maps it imposes reflect basic democratic principles of majority rule. As the U.S. Supreme Court stated in its seminal 1964 state-legislative districting case, *Reynolds v. Sims*: "Logically, in a society ostensibly grounded on representative government, it would seem

[10] Federal courts have likewise embraced this neutrality principle regarding a court's equitable remedial authority in redistricting cases. *See Clarke* Pet'rs' Memo. in Support of Pet. to Commence an Original Action at 80–81 (citing cases).

reasonable that a majority of the people of a State could elect a majority of that State's legislators." 377 U.S. at 565.

At a minimum, this logic suggests that the Court must ensure that a map does not systematically award most of the legislative seats to one political party if another party's candidates earned most of the votes statewide. Neutral judges should not bless schemes designed to hand the gold medal to the team that finishes second.

To be clear, the Court should invite remedial proposals from the parties. As between proposals that satisfy all constitutionally and statutorily required criteria, the Court should look to the totality of circumstances to choose the map that is "most consistent with judicial neutrality" and avoids putting the Court in the untenable position of "select[ing] a plan that seeks partisan advantage." *Jensen*, 2002 WI 13, ¶12 (quotation marks omitted). Using cutting-edge computational-redistricting methods, Atkinson Intervenors will develop lawful, neutral maps that promote majority rule and will provide the Court with tools to objectively evaluate and compare all of the parties' proposals. *See Carter*, 270 A.3d at 462–63 (noting that in adopting a remedial congressional map, the Pennsylvania Supreme Court "rel[ied] upon the analyses performed by [computational-redistricting expert] Dr. Daryl DeFord, which evaluate[d]

all of the submitted plans using the same methods and data sets," and expressing "appreciat[ion for] Dr. DeFord's efforts in this regard as it allows the Court to engage in an apples-to-apples comparison of the plans on each metric").

IV. Limited Fact-Finding Is Needed at the Remedial Phase, and It Can Be Accomplished Efficiently.

Nearly all the redistricting criteria canvassed in Part III require little or no fact-finding. Once all the parties submit proposed maps for senate and assembly districts, most or all factual issues about those maps can be resolved expeditiously through expert reports and briefs—using the model of the *Johnson* litigation, where the entire process was completed in only five weeks. In this case, if the Court determines, after similarly expedited briefing and expert reports, that no genuine factual disputes remain, then the Court can simply select the best of the parties' proposed remedial maps.

If, however, the Court concludes that there remains a genuine factual dispute about the lawfulness of the seemingly best map, this Court should issue an Order of Reference and send any questions of material fact to a geographically diverse panel of three circuit-court judges for an expedited evidentiary hearing. This Court can then review the panel's factual findings for clear error before entering its own conclusions of law and issuing an injunction establishing remedial senate and assembly maps. *See Wurtz v.*

Fleischman, 97 Wis. 2d 100, 107 n.3, 293 N.W.2d 155, 159 n.3 (1980) (Article VII of the Wisconsin Constitution reserves "to trial courts or to the supreme court under appropriate procedures in the exercise of its constitutional grant of original jurisdiction" the power to make "factual determinations where the evidence is in dispute").

A. Little or No Fact-Finding Will Be Required.

Most or all of the districting criteria described in Part III require little or no fact-finding. For example, once this Court construes the term "contiguous territory" in Sections 4 and 5 of Article IV at the liability phase, assessing whether each proposed remedial map contains only districts consisting of "contiguous territory" will be straightforward. While it is conceivable that competing experts' initial reports might differ as to a specific district's contiguity (*e.g.*, note 3), that is the kind of simple factual dispute that can be resolved through response and reply expert reports.

Other state-law criteria may be similarly easy to resolve. For example, if the Court concludes that the Wisconsin Constitution's language requiring redistricting "according to the number of inhabitants," Wis. Const. art. IV, § 3, means that the maximum population deviation between the largest and smallest assembly districts must be less than some specific percentage of an average district's population, it, again, will be easy to

determine which proposed maps comply with that requirement. And, again, even if initial expert reports disagree about a map's maximum population deviation, that dispute can be resolved through response and reply reports.

The same can be said for determining whether a proposed map's districts are all "bounded by county, … town or ward lines." *Id.* § 4. Either a district boundary is sitting on top of such a line, or it is not. So, too, with Article IV's nesting requirement that "no assembly district shall be divided in the formation of a senate district." *Id.* § 5.

Conceivably, Section 4's requirement that assembly districts "be in as compact form as practicable" after satisfying the other Article IV criteria, *id.* § 4, or Section 5's requirement that senate districts consist of "convenient … territory," *id.* § 5, could give rise to factual disputes. But these disputes, too, are unlikely to remain after response and reply reports and briefs. Redistricting caselaw in Wisconsin and elsewhere routinely looks to just a few well-settled metrics of compactness, and Wisconsin's prior maps provide benchmarks for interpreting districts' compactness scores under each such metric. *See, e.g.*, *Baumgart*, 2002 WL 34127471, at *4, *7 (using "perimeter to area" and "smallest circle" measures); Moon Duchin, *Explainer: Compactness by the Numbers*, *in* POLITICAL GEOMETRY: RETHINKING REDISTRICTING IN THE US WITH MATH, LAW, AND

EVERYTHING IN BETWEEN 29–35 (Moon Duchin & Olivia Walch, eds., 1st ed. 2022).

Experience teaches that if any issues remain open after multiple rounds of expert reports, they would most likely be federal constitutional or statutory issues implicating race. *See Wis. Legislature*, 595 U.S. at 406 (holding that, in *Johnson II*, "the question that our VRA precedents ask and the court failed to answer is whether a race-neutral alternative that did not add a seventh majority-black [assembly] district would deny black voters equal political opportunity"). Even on that front, however, there is reason to believe that this case can be resolved speedily, so long as at least some of the parties—through their mapmaking, expert reports, briefing, and argument—remain devoted to numerical data, objective scientific methods, and some straightforward math. *See generally* Amariah Becker *et al.*, *Computational Redistricting and the Voting Rights Act*, 20 ELECTION L.J. 407, 407–41 (2021).

B. State Statutes and Precedent Dictate a Streamlined, Efficient Process for Resolving Any Factual Questions.

If this Court determines that genuine factual disputes remain after briefing and expert reports on the parties' remedial proposals, the appropriate process is supplied by state statute. Any outstanding factual issues should be referred to a panel of three circuit-court judges that the

members of this Court select from each of three circuits pursuant to Wis. Stat. §§ 751.09 and 751.035.

As a starting point, Section 751.09 of the Wisconsin Statutes provides: "In actions where the supreme court has taken original jurisdiction, the court may refer issues of fact or damages to a circuit court or referee for determination." Wis. Stat. § 751.09. While this provision authorizes the Court to refer "issues of fact" to either "a circuit court" or a "referee," the former comports with the most recent legislative word on procedures for redistricting litigation and, as a practical matter, is better suited to the task.

Section 751.035 supplies specific guidance for this Court's assignment of three circuit-court judges in state-legislative redistricting cases. While that statute speaks to redistricting actions filed in a circuit court, it is instructive as to procedures that this Court, in its discretion, should apply in this original action, given that the statute (enacted in 2011) reflects the political branches' most recent official pronouncement on state redistricting policies. Specifically, Section 751.035(1) provides that "the supreme court shall appoint a panel consisting of 3 circuit court judges to hear the matter [challenging the apportionment of state-legislative districts]" and that "[t]he supreme court shall choose one judge from each of 3 circuits and shall assign one of the circuits as the venue for all hearings." Wis. Stat.

§ 751.035(1). The statute further provides that any order issued by the three-judge panel is subject to direct review in "the supreme court." *Id.* § 751.035(3).

On the practicalities, a three-judge panel has several advantages over a referee. For starters, this action is of statewide significance, and a three-judge panel is necessarily more representative than any solo adjudicator. For similar reasons, three-judge panels are the norm in federal-court cases challenging the constitutionality of districting maps. *See* 28 U.S.C. § 2284(a) (requiring a three-judge federal district court to hear any action "challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body"); *see also id.* § 1253 (authorizing direct review in the U.S. Supreme Court of certain orders from three-judge federal district courts).

Moreover, this action, and the kinds of factual disputes it may entail, is not the type of matter that Wisconsin courts ordinarily assign to referees. In non-jury civil matters, factual issues can be sent to a referee only in "matters of account and of difficult computation of damages" or "upon a showing that some exceptional condition requires it." Wis. Stat. § 805.06(2). The kind of fact-finding that may be required in this case involves no accounting or computation of damages. And there is no "exceptional

condition" requiring routing this action to a referee rather than to a panel of judges who frequently serve as triers of fact. Indeed, the tasks this Court might choose to delegate—hearing live testimony, assessing witnesses' credibility, reviewing exhibits, drawing reasonable inferences from all the evidence, and entering findings of fact—are exactly what circuit-court judges do.

Furthermore, there is no reason to worry about an extended proceeding before a three-judge panel that would tie up judicial resources. No pre-hearing discovery should be allowed, so the judges will not need to oversee any. And an evidentiary hearing is unlikely to last more than two days. *See, e.g.*, *Baldus*, 849 F. Supp. 2d at 847 (two-day trial on Voting Rights Act issues in legislative redistricting case); *Baumgart*, 2002 WL 34127471, at *1 (two-day trial with multiple expert witnesses in legislative redistricting case); *Prosser*, 793 F. Supp. at 862 (two-day hearing with multiple expert witnesses in legislative redistricting case).

Based on this statutory framework, along with the experience of the *Johnson* Court, Atkinson Intervenors respectfully propose the following procedures if the Court invalidates Wisconsin's state-legislative maps:

- Upon ruling on liability, the Court should immediately commence the remedial phase of this action.

- The Court should enjoin Respondent Wisconsin Elections Commission from using the invalidated maps in any future election.
- The Court should issue an opinion setting forth the standards that will guide the Court in imposing a remedy for the maps' constitutional violations, including specifying precisely which set of ward and municipal lines the Court will use when evaluating any remedial proposals. *See supra* Part III (proposing such standards); *supra* note 9 (noting changes in ward and municipal lines since the 2020 Census and since *Johnson*).
- The Court should announce that it will not impose any remedial map if the Legislature and the Governor first enact lawful replacement maps.
- The Court should order a schedule for:
    - Submission from each party (including intervenors) of either one or two state-legislative maps, with each map nesting 99 assembly districts in 33 senate districts;
    - On the same date, submission of initial briefs and accompanying expert reports supporting the party's proposed map(s);
    - Submission of response briefs and accompanying expert reports, responding to the other parties' experts;

  - Submission of reply briefs and accompanying expert reports, replying to the other parties' experts; and
  - Oral argument, limited to one hour per party (including intervenors).

- Upon consideration of the expert reports, briefs, and argument, the Court should issue an opinion resolving all questions of material fact for which no genuine dispute remains.
- If the Court's opinion resolves all questions of material fact in the action, the Court's opinion also should state its conclusions of law and establish new senate and assembly maps that fully cure all constitutional violations in the recently invalidated maps and are designed to optimally comply with the Wisconsin Constitution and federal law.
- If the Court's opinion does not resolve all questions of material fact in the action, the Court should issue an Order of Reference specifying the material questions that remain genuinely disputed and appointing a panel of three circuit-court judges to conduct an expedited evidentiary hearing and to issue findings of fact limited to those precise questions by a particular date.

- The Order of Reference issued by the Court should identify as panel members one judge from each of three circuits and assign one of those circuits as the venue for the evidentiary hearing.
- The Order of Reference also should:
    - Specify and limit the panel's powers to holding an evidentiary hearing; making a record of the evidence offered, admitted, and excluded; preparing a report setting forth findings on the factual issues this Court identified (without legal conclusions); and, by a date certain specified in the Order, filing with the Clerk of this Court the panel's report (with dissenting views, if any), the transcript of the evidentiary hearing, and the original exhibits;
    - In the interests of speed and judicial economy, prohibit the litigants from taking depositions or any other discovery; and
    - Order the panel to exercise its limited powers in a manner consistent with evidentiary hearings and fact-finding in any circuit-court civil action tried without a jury, including application of the Wisconsin Rules of Evidence (Wis. Stat. chs. 901–911).

- The Court should set a deadline for parties and *amici curiae* to file and serve written objections to the panel's report within a week of the report's filing.
- In its discretion, the Court may opt to hold oral argument on the objections and any remaining issues.
- The Court should not set aside the panel's findings of fact unless clearly erroneous.
- With no genuine issue of material fact remaining in the action, the Court can expeditiously issue an opinion stating its conclusions of law and establishing new senate and assembly maps that fully cure all constitutional violations in the recently invalidated maps and are designed to optimally comply with the Wisconsin Constitution and federal law.

CONCLUSION

For the foregoing reasons, this Court should hold that Wisconsin's current state-legislative maps violate the Wisconsin Constitution's contiguity requirements and separation of powers. As this Court proceeds to choose a remedy, it should apply neutral principles established by Wisconsin and federal law and should exercise its equitable remedial powers equitably, without prioritizing a "least change" principle. Should the Court

determine a need for fact-finding, the Court can refer such fact-finding to a three-judge panel in accordance with Wis. Stat. §§ 751.035(1) and 751.09.

Dated: October 16, 2023

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**Pro hac vice* app. pending

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b), (bm), and (c) for a brief. The length of this brief is 10,626 words.

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CERTIFICATION REGARDING APPENDIX

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with Wis. Stat. 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; and (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under Wis Stat. 809.23(3)(a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit-court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Electronically Signed By Sarah A. Zysltra
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Appendix A

SEN	ASM	Discontiguous	Contains Islands	Discontiguous Neighbors
1	1	SD 1	SD 1	SD 2, SD 9, SD 20, SD 30; AD 2, AD 88
	2	SD 1; AD 2	SD 1; AD 2	SD 2, SD 9, SD 20, SD 30; AD 3, AD 5, AD 25, AD 88
	3	SD 1; AD 3	SD 1	SD 2, SD 9, SD 20, SD 30; AD 2, AD 5, AD 25, AD 59
2	4	SD 2	SD 2	SD 1, SD 14, SD 29, SD 30; AD 2, AD 5, AD 6, AD 88
	5	SD 2; AD 5	SD 2; AD 5	SD 1, SD 14, SD 29, SD 30; AD 2, AD 3, AD 6
	6	SD 2; AD 6	SD 2; AD 6	SD 1, SD 14, SD 29, SD 30; AD 5, AD 40
3	7			SD 5, SD 28
	8			SD 5, SD 28
	9			SD 5, SD 28
4	10			SD 5, SD 8
	11			SD 5, SD 8
	12			SD 5, SD 8; AD 24
5	13	SD 5		SD 8, SD 28, SD 33; AD 15, AD 97, AD 98
	14	SD 5		SD 8, SD 28, SD 33; AD 15
	15	SD 5; AD 15		SD 8, SD 28, SD 33; AD 83, AD 97
6	16			SD 5
	17			SD 5
	18			SD 5
7	19			SD 21, SD 28
	20			SD 21, SD 28
	21			SD 21, SD 28
8	22	SD 8	SD 8	SD 5, SD 13, SD 20, SD 33; AD 24, AD 37, AD 58, AD 59, AD 98, AD 99
	23	SD 8	SD 8	SD 5, SD 13, SD 20, SD 33; AD 24
	24	SD 8; AD 24	SD 8; AD 24	SD 5, SD 13, SD 20, SD 33; AD 60
9	25	SD 9; AD 25		SD 1, SD 20; AD 2, AD 3, AD 27, AD 59
	26	SD 9; AD 26	AD 26	SD 1, SD 20; AD 27, AD 59, AD 60
	27	SD 9; AD 27	AD 27	SD 1, SD 20; AD 25, AD 26, AD 59
10	28	AD 28	AD 28	SD 23, SD 31; AD 29, AD 30
	29	AD 29	AD 29	SD 23, SD 31; AD 28, AD 30, AD 67, AD 93
	30	AD 30	AD 30	SD 23, SD 31; AD 28, AD 29, AD 93
11	31	SD 11; AD 31	SD 11; AD 31	SD 13, SD 15, SD 21, SD 28, SD 33; AD 32, AD 33, AD 43, AD 44, AD 45, AD 63, AD 83
	32	SD 11; AD 32	SD 11	SD 13, SD 15, SD 21, SD 28, SD 33; AD 31, AD 61, AD 63
	33	SD 11; AD 33	SD 11; AD 33	SD 13, SD 15, SD 21, SD 28, SD 33; AD 31, AD 38, AD 43, AD 44, AD 83, AD 97

SEN	ASM	Discontiguous	Contains Islands	Discontiguous Neighbors
12	34			SD 2, SD 29, SD 30
	35			SD 2, SD 29, SD 30; AD 6, AD 86
	36			SD 2, SD 29, SD 30; AD 6
13	37	SD 13; AD 37	SD 13; AD 37	SD 8, SD 11, SD 14, SD 15, SD 16, SD 20, SD 27, SD 33; AD 38, AD 39, AD 42, AD 46, AD 79, AD 81, AD 99
	38	SD 13; AD 38	SD 13; AD 38	SD 8, SD 11, SD 14, SD 15, SD 16, SD 20, SD 27, SD 33; AD 33, AD 37, AD 43, AD 46, AD 97, AD 99
	39	SD 13; AD 39	SD 13; AD 39	SD 8, SD 11, SD 14, SD 15, SD 16, SD 20, SD 27, SD 33; AD 37, AD 42, AD 52, AD 59
14	40	SD 14; AD 40	SD 14; AD 40	SD 2, SD 13, SD 24, SD 27; AD 6, AD 41, AD 53, AD 72
	41	SD 14; AD 41	SD 14; AD 41	SD 2, SD 13, SD 24, SD 27; AD 40, AD 42, AD 53, AD 72, AD 81
	42	SD 14; AD 42	SD 14; AD 42	SD 2, SD 13, SD 24, SD 27; AD 37, AD 39, AD 41, AD 53, AD 81
15	43	SD 15; AD 43	SD 15; AD 43	SD 11, SD 13, SD 16, SD 27; AD 31, AD 33, AD 38, AD 44, AD 45, AD 46, AD 47, AD 80
	44	SD 15; AD 44	SD 15; AD 44	SD 11, SD 13, SD 16, SD 27; AD 31, AD 33, AD 43
	45	SD 15; AD 45	SD 15; AD 45	SD 11, SD 13, SD 16, SD 27; AD 31, AD 43, AD 80
16	46	SD 16; AD 46	SD 16; AD 46	SD 13, SD 15, SD 27; AD 37, AD 38, AD 43, AD 47, AD 48, AD 79
	47	SD 16; AD 47	SD 16; AD 47	SD 13, SD 15, SD 27; AD 43, AD 46, AD 48, AD 76, AD 80
	48	SD 16; AD 48	SD 16; AD 48	SD 13, SD 15, SD 27; AD 46, AD 47, AD 76, AD 79
17	49			SD 14, SD 15, SD 24, SD 27
	50			SD 14, SD 15, SD 24, SD 27; AD 41, AD 70, AD 72, AD 81
	51			SD 14, SD 15, SD 24, SD 27; AD 45, AD 80, AD 81
18	52	AD 52	SD 18	SD 13, SD 14, SD 20; AD 39, AD 53, AD 59
	53	AD 53	SD 18; AD 53	SD 13, SD 14, SD 20; AD 40, AD 41, AD 42, AD 52, AD 54
	54	AD 54	SD 18; AD 54	SD 13, SD 14, SD 20; AD 53
19	55		SD 19	SD 1, SD 2, SD 14; AD 40, AD 53
	56		SD 19; AD 56	SD 1, SD 2, SD 14; AD 3, AD 5, AD 6, AD 40
	57		SD 19	SD 1, SD 2, SD 14; AD 3
20	58	SD 20; AD 58	SD 20; AD 58	SD 1, SD 8, SD 9, SD 13; AD 59, AD 60
	59	SD 20; AD 59	SD 20; AD 59	SD 1, SD 8, SD 9, SD 13; AD 3, AD 25, AD 26, AD 27, AD 39, AD 52, AD 58, AD 60
	60	SD 20; AD 60	SD 20; AD 60	SD 1, SD 8, SD 9, SD 13; AD 24, AD 26, AD 58, AD 59

SEN	ASM	Discontiguous	Contains Islands	Discontiguous Neighbors
21	61	SD 21; AD 61	SD 21	SD 11, SD 22, SD 28; AD 32, AD 63
	62	SD 21	SD 21; AD 62	SD 11, SD 22, SD 28; AD 63, AD 66, AD 83
	63	SD 21; AD 63	SD 21	SD 11, SD 22, SD 28; AD 31, AD 32, AD 61, AD 66, AD 83
22	64	SD 22	SD 22; AD 64	SD 21; AD 61, AD 63, AD 66
	65	SD 22	SD 22	SD 21; AD 61
	66	SD 22; AD 66	SD 22	SD 21; AD 63
23	67	SD 23; AD 67	SD 23; AD 67	SD 24, SD 29, SD 31; AD 29, AD 68, AD 91, AD 93
	68	SD 23; AD 68	SD 23; AD 68	SD 24, SD 29, SD 31; AD 67, AD 91, AD 93
	69	SD 23	SD 23; AD 69	SD 24, SD 29, SD 31; AD 68, AD 70, AD 86
24	70	SD 24; AD 70	SD 24	SD 14, SD 23, SD 29, SD 31; AD 72, AD 86, AD 94
	71	SD 24	SD 24; AD 71	SD 14, SD 23, SD 29, SD 31; AD 40, AD 70, AD 72
	72	SD 24; AD 72	SD 24; AD 72	SD 14, SD 23, SD 29, SD 31; AD 40, AD 41, AD 70
25	73		SD 25	SD 23, SD 29; AD 28
	74		SD 25	SD 23, SD 29
	75		SD 25; AD 75	SD 23, SD 29; AD 28, AD 29, AD 67
26	76	AD 76	SD 26	SD 16, SD 27; AD 47, AD 48
	77		SD 26; AD 77	SD 16, SD 27; AD 47, AD 48, AD 76, AD 79
	78		SD 26; AD 78	SD 16, SD 27; AD 47, AD 79, AD 80
27	79	SD 27; AD 79	SD 27; AD 79	SD 13, SD 14, SD 15, SD 16; AD 37, AD 46, AD 48, AD 80, AD 81
	80	SD 27; AD 80	SD 27; AD 80	SD 13, SD 14, SD 15, SD 16; AD 43, AD 45, AD 47, AD 79, AD 81
	81	SD 27; AD 81	SD 27; AD 81	SD 13, SD 14, SD 15, SD 16; AD 37, AD 41, AD 42, AD 79, AD 80
28	82	SD 28	SD 28	SD 5, SD 11, SD 21, SD 33; AD 15, AD 83
	83	SD 28; AD 83	SD 28; AD 83	SD 5, SD 11, SD 21, SD 33; AD 15, AD 31, AD 33, AD 63, AD 97
	84	SD 28	SD 28; AD 84	SD 5, SD 11, SD 21, SD 33; AD 15
29	85	SD 29	AD 85	SD 2, SD 23, SD 24; AD 6, AD 70, AD 86
	86	SD 29; AD 86		SD 2, SD 23, SD 24; AD 70
	87	SD 29		SD 2, SD 23, SD 24; AD 67, AD 68, AD 86
30	88	SD 30; AD 88	SD 30; AD 88	SD 1, SD 2; AD 2
	89	SD 30	SD 30	SD 1, SD 2; AD 6
	90	SD 30	SD 30	SD 1, SD 2; AD 88

SEN	ASM	Discontiguous	Contains Islands	Discontiguous Neighbors
31	91	SD 31; AD 91	SD 31; AD 91	SD 23, SD 24; AD 67, AD 68, AD 93
	92	SD 31	SD 31	SD 23, SD 24; AD 68, AD 70, AD 93, AD 94
	93	SD 31; AD 93	SD 31	SD 23, SD 24; AD 29, AD 30, AD 67, AD 68, AD 91
32	94	AD 94	SD 32; AD 94	SD 24, SD 31; AD 70, AD 95
	95	AD 95	SD 32; AD 95	SD 24, SD 31; AD 94
	96		SD 32; AD 96	SD 24, SD 31; AD 70, AD 94, AD 95
33	97	SD 33; AD 97	SD 33; AD 97	SD 5, SD 8, SD 11, SD 13, SD 28; AD 15, AD 33, AD 38, AD 83, AD 98, AD 99
	98	SD 33; AD 98	SD 33; AD 98	SD 5, SD 8, SD 11, SD 13, SD 28; AD 97, AD 99
	99	SD 33; AD 99	SD 33; AD 99	SD 5, SD 8, SD 11, SD 13, SD 28; AD 37, AD 38, AD 97, AD 98