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No. 2023AP1399-OA

IN THE SUPREME COURT OF WISCONSIN

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 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, CARRIE RIEPL, 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; ANDRE JACQUE, TIM CARPENTER, ROB HUTTON, CHRIS LARSON, DEVIN LEMAHIEU, STEPHEN L. NASS, JOHN JAGLER, MARK SPREITZER, HOWARD 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,

Intervenors-Respondents.

NON-PARTY BRIEF OF COALITION ON LEAD EMERGENCY IN SUPPORT OF PETITIONERS

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Cary Spivak, *Out-of-State Corporate Landlords Are Gobbling Up Milwaukee Homes to Rent Out, and It's Changing the Fabric of Some*

Neighborhoods, Milw. J. Sentinel (Apr. 15, 2021), https://www.jsonline.com/in-depth/news/2021/04/15/milwaukee-rentals-overtaken-corporate-landlords-raking-profits. 7

Claudia Coulton et al., *Making the Case For Lead Safe Housing: Downstream Effects of Lead Exposure on Outcomes for Children & Youth*, 84 Health Place 103118 (2023) 10

Ctrs. for Disease Control and Prevention, *Sources of Lead* (2023), https://www.cdc.gov/nceh/lead/prevention/sources.htm (last visited Oct 31, 2023) 4

Ctrs. for Disease Control & Prevention, *Health Effects of Lead Exposure*, https://www.cdc.gov/nceh/lead/prevention/health-effects.htm (last reviewed Sept. 2, 2022). 4

Ctrs. for Disease Control & Prevention, *Populations at Higher Risk*, https://www.cdc.gov/nceh/lead/prevention/populations.htm (last reviewed Oct. 29, 2021). 5

D.L. Davis, *Yes, GOP Did Oppose $40 Million for Lead Pipe Replacement Because It Helped Milwaukee Too Much*, Politifact (Dec. 3, 2020), https://www.politifact.com/factchecks/2020/dec/04/ chris-larson/yes-gop-did-oppose-40-million-lead-pipe-replacemen/ 19

Elise Gould, *Childhood Lead Poisoning: Conservative Estimates of The Social & Economic Benefits of Lead Hazard Control*, 117 Envtl. Health Perspectives 1162 (2009) 11

Emily E. Lynch & Helen C. S. Meier, *The Intersectional Effect of Poverty, Home Ownership, And Racial/Ethnic Composition on Mean Childhood Blood Lead Levels in Milwaukee County Neighborhoods*, 15 PLOS ONE 6 (2020) 4, 5, 6

Helen J. Binns, Carla Campbell & Mary Jean Brown, *Interpreting and Managing Blood Lead Levels of Less than 10 Mg/DL in Children and Reducing Childhood Exposure to Lead: Recommendations of The Centers For Disease Control And Prevention Advisory Committee On Childhood Lead Poisoning Prevention*, 120 Pediatrics 1288 (2007)... 5

Jacob Faber*, Contemporary Echoes of Segregationist Policy: Spatial Marking and the Persistence of Inequality*, 58 Urb. Stud. 1067 (2020) 8

Katrina Smith Korfmacher, Maria Ayoob & Rebecca Morley, *Rochester's Lead Law: Evaluation of a Local Environmental Health Policy Innovation*, 120 Env't. Health Persp. 309 (2012); Common Ground Health, *Lead Poisoned Continues Decade-Long Decrease* (June 18, 2015), https://www.commongroundhealth.org/news/articles/lead-poisoned-continues-decade-long-decrease 11

Marc V. Levine, *Milwaukee 53206: The Anatomy of Concentrated Disadvantage in an Inner City Neighborhood 2000-2017*, 48 Ctr. for Econ. Dev. 41 Publ'ns (2019)..... 7

Nicholas O. Stephanopoulos, The Causes and Consequences of Gerrymandering, 59 Wm. & Mary L. Rev. 2115 (2018)..... 14

Robert Bullard, Race and Environmental Justice in the United States. 18 Yale J. Int'l L. 319 (1993)..... 23

Robert J. Karp, *Redlining and Lead Poisoning: Causes and Consequences*, 34 J. Health Care for the Poor & Underserved 431–446 (2023)..... 9

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Talis Shelbourne, *Maryland Took Strong Steps to Cut Lead Exposure. Wisconsin Bans Them*. Milw. J. Sentinel (Feb. 15, 2023), https://www.jsonline.com/story/news/2023/02/15/maryland-took-strong-steps-to-cut-lead-exposure-wisconsin-bans-them/69791784007 18

Tom Daykin, *Law Ends Milwaukee Residential Rental Inspection Program*, Milw. J. Sentinel (June 6, 2016), https://www.jsonline.com/story/money/real-estate/commercial/2016/06/07/law-ends-milwaukee-residential-rental-inspection-program 17

Valeria I. Naranjo, Michael Hendricks & Kimberly S. Jones, *Lead Toxicity in Children: An Unremitting Public Health Problem*, 113 Pediatric Neurology 51–55 (2020) 11

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2011 Wis. Act 108 17

2013 Wis. Act 76 17

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INTRODUCTION

The Coalition on Lead Emergency ("COLE") is an unincorporated association whose mission is to prevent and respond to lead poisoning in Milwaukee through partnerships with impacted families, faith leaders, neighborhood-based organizations, environmentalists, health care systems, academics, workforce development providers, non-profits, community activists and dedicated volunteers. COLE's advocacy is guided by its members who are the parents of lead-poisoned children ("COLE Parents"). Most COLE Parents are Black mothers living and working in historically redlined and disinvested neighborhoods on the Northside of Milwaukee. COLE submits this brief on the third question presented:

> If the Court rules that Wisconsin's existing state legislative maps violate the Wisconsin Constitution for either 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)?

COLE writes in support of the Petitioners' and the Governor's position on this question, to argue that in addition to traditional redistricting requirements and criteria, the Court should ensure that any remedial maps avoid partisan bias, are not based on a "least change" approach and promote democracy by ensuring all Wisconsinites' interests are represented in the legislature. COLE Parents have first-hand experience advocating

before the current and previous state legislatures, which were elected under district maps that exhibit partisan bias and that are not responsive to the majority of Wisconsinites. Should new maps be required, COLE Parents' experiences highlight the need for any remedial maps to avoid these characteristics.

Lead poisoning is a persistent public health crisis that causes long-lasting harm to children who are affected. *See infra* Section I.a. The harm of lead poisoning has a geographical distribution that tracks the geography of historic housing discrimination and current disinvestment. *See infra* Section I.b.

Legislative maps with partisan bias have helped retrench an environmental injustice – children suffering from lead poisoning. Partisan maps empower and disempower various Wisconsin communities based on geography. As COLE Parents have advocated for state government to take action to address a tragedy that disproportionately affects them and their families because of where they live, they have been systemically disadvantaged by biased legislative maps that politically disempower them – because of where they live. Legislatures elected under maps with partisan bias have repeatedly and expressly disregarded COLE Parents' concerns – even citing the geographical distribution of lead-related concerns as a reason not to act. *See infra* Section II.b.

COLE Parents' lived experiences, therefore, show that maps with partisan bias are corrosive to basic constitutional principles. These maps deny communities that are bearing geographically disparate environmental injustices a fair opportunity to participate in the political process to end that harm. Therefore, to uphold the principles that all government is founded on the consent of free and equal people and that the "blessings of a free government can only be maintained by a firm adherence to justice…," as provided for by Article I, sections 1 and 22 of the Wisconsin Constitution, any remedial maps should avoid partisan bias and promote legislative democracy for all Wisconsinites.

ARGUMENT

I. Lead poisoning is a devastating public health crisis, disproportionately experienced by Black children who live in formerly redlined, disinvested areas, but there are policy solutions to dramatically lower lead poisoning rates.

a. Lead poisoning basics

Childhood lead poisoning is a persistent public health issue that disproportionately harms lower-income children of color across the country and in Milwaukee. Emily E. Lynch & Helen C. S. Meier, *The Intersectional Effect of Poverty, Home Ownership, And Racial/Ethnic Composition on Mean Childhood Blood Lead*

Levels in Milwaukee County Neighborhoods, 15 PLOS ONE 6 (2020). Lead is a neurotoxin, and the health impacts of lead poisoning include damage to the brain and nervous systems, impaired growth, and development and behavioral problems. Ctrs. for Disease Control & Prevention, *Health Effects of Lead Exposure*, https://www.cdc.gov/nceh/lead/prevention/health-effects.htm (last reviewed Sept. 2, 2022). The effects can be long-lasting, including underperformance in school and increased likelihood of becoming incarcerated. Anna Aizer & Janet Currie, *Lead and Juvenile Delinquency: New Evidence from Linked Birth, School, and Juvenile Detention Records*, 101 Rev. Econ. & Stat. 575–587 (2019). There is no safe level of lead.

Lead is found in paint that was manufactured before 1978, when the production of lead-based paint was banned in the U.S. Ctrs. for Disease Control and Prevention, *Sources of Lead*, https://www.cdc.gov/nceh/lead/prevention/sources.htm (last reviewed Jan. 5, 2023). Lead is also found in contaminated soil, water supply piping and in the air. *Id.* Dust and paint chips from deteriorating surfaces that are covered in lead paint are the most common ways a child is exposed to lead. Helen J. Binns, Carla Campbell & Mary Jean Brown, *Interpreting and Managing Blood Lead Levels of Less than 10 Mg/DL in Children and Reducing Childhood Exposure to Lead: Recommendations of The Centers For Disease Control And Prevention Advisory Committee On*

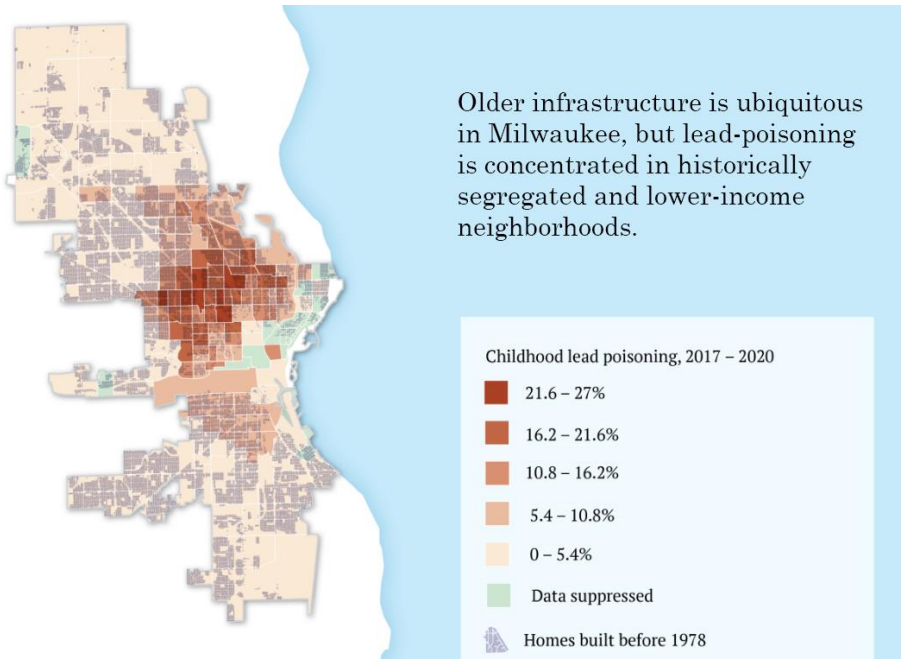
Childhood Lead Poisoning Prevention, 120 Pediatrics 1288 (2007).

In general, children and infants are more vulnerable to lead exposure for several reasons. Lead poisoning hinders proper neurological development during critical stages of a child's growth. Ctrs. for Disease Control & Prevention, *Populations at Higher Risk*, https://www.cdc.gov/nceh/lead/prevention/populations.htm (last reviewed Oct. 29, 2021). A given amount of lead exposure constitutes a proportionally higher percentage of a child's body weight than an adult's, and normal child-like behaviors, like crawling, playing near the ground and putting things in one's mouth, make children more likely to ingest paint chips, dust or lead-leaden soil. *Id.*

b. The geographic distribution of lead poisoning tracks the geography of racial discrimination in housing.

Since chipping and peeling lead paint is the most common source of lead exposure, one might assume that lead poisoning closely geographically correlates with the prevalence of older, pre-1978 housing. However, while pre-1978 housing is fairly ubiquitous in many areas, lead poisoning is not. Lynch & Meier, *supra*, at 7. Consistent with trends across the country, the greatest risk of lead poisoning in Milwaukee exists in

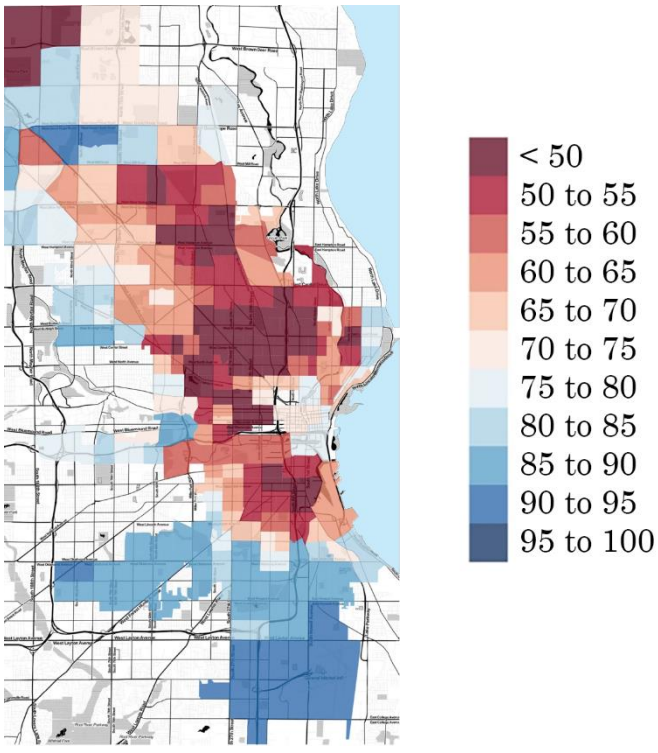
neighborhoods with high poverty and low home ownership, where the housing stock is likely not well maintained and where lead dust and lead chips are most likely to be present. *Id.* at 8. In Milwaukee, the highest rates of childhood lead poisoning are in the northside neighborhoods in the 53206 ZIP Code and surrounding area, where many COLE Parents live. *Id.* at 5.



Source: Wis. Dep't of Health Servs. Childhood Lead Poisoning Data. To protect confidentiality, data are suppressed for census tracts with low numbers of children tested.

These neighborhoods, such as Amani and Lindsay Heights, have some of the lowest rates of homeowners in the state, along with some of the highest rates of poverty. Marc V. Levine, *Milwaukee 53206: The Anatomy of Concentrated Disadvantage in an Inner City Neighborhood 2000-2017*, 48 Ctr. for Econ. Dev. 41

Publ'ns (2019). COLE Parents, like other neighborhood residents, face limited options for housing. Rental properties that are in disrepair and owned by absentee landlords are extremely prevalent. Cary Spivak, *Out-of-State Corporate Landlords Are Gobbling Up Milwaukee Homes to Rent Out, and It's Changing the Fabric of Some Neighborhoods,* Milw. J. Sentinel (Apr. 15, 2021), https://www.jsonline.com/in-depth/news/2021/04/15/milwaukee-rentals-overtaken-corporate-landlords-raking-profits.

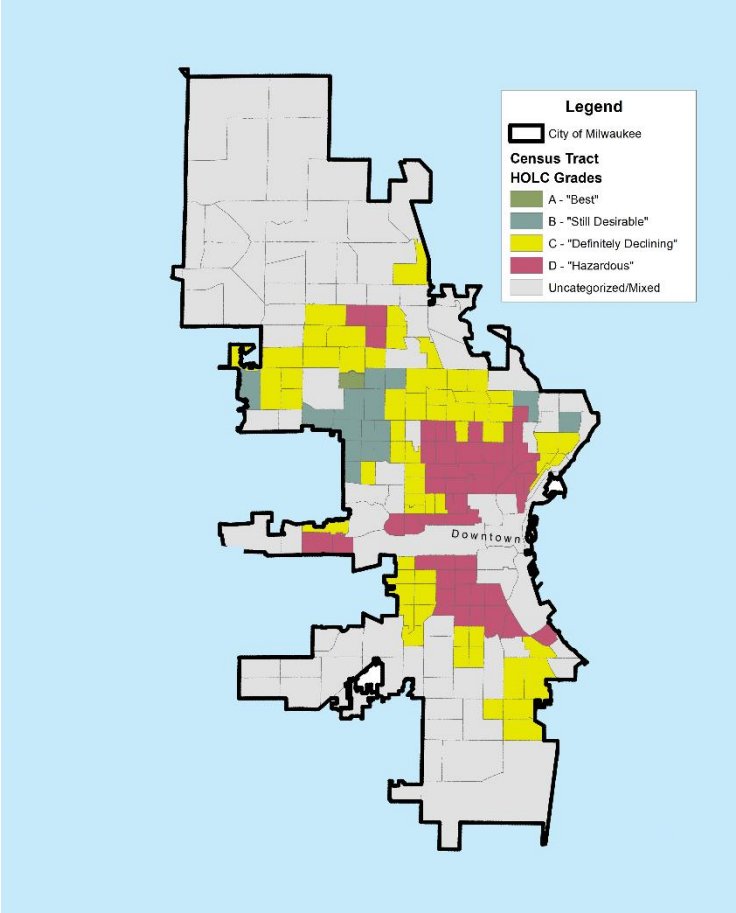


Percentage of owner-occupied housing in Milwaukee, 2019. Source: John Johnson, Marquette University Law School.

Historic housing discrimination is a main driver of ongoing housing inequality in formerly redlined urban areas, like COLE Parents' neighborhoods. Jacob Faber, *Contemporary Echoes of*

Segregationist Policy: Spatial Marking and the Persistence of Inequality, 58 Urb. Stud. 1067–1086 (2020). Like other northern cities, the racial and economic geography of Milwaukee has been shaped by racially motivated housing discrimination. Leah Foltman & Malia Jones, *How Redlining Continues to Shape Racial Segregation in Milwaukee*, Translational Applied Demography (2019), https://apl.wisc.edu/shared/tad/redlining-milwaukee. Through the mid-twentieth century, financial institutions and government agencies systematically denied access to home loans and other housing opportunities based on race, a practice called redlining because the predominantly non-White neighborhoods were encircled in red on maps to designate that restriction on lending. *Id.* "[B]anks refused to lend in predominantly black neighborhoods, leading to lack of reinvestment opportunities and further infrastructure and housing stock decline in already poor areas." *Id.* Studies have demonstrated how historic housing discrimination has continued to negatively affect current housing conditions, homeownership and poverty rates in redlined areas, the very drivers of increased lead exposure for kids currently living in these neighborhoods. *See*, Faber*, supra*, at 1081-2. Indeed, researchers have established that historic redlining has had a profound impact on the severity of lead poisoning in these areas. Robert J. Karp,

Redlining and Lead Poisoning: Causes and Consequences, 34 J. Health Care for the Poor & Underserved 431–446 (2023).



Source: Janelle Armstrong-Brown, Jamie Humphrey & Leah Sussman, *The Long Arm of Redlining: Health Inequities in the Digital Divide*, The Med. Care Blog (Nov. 19, 2021), https://www.themedicalcareblog.com/redlining-digital-divide/.

(Showing redlined areas in Milwaukee based on 1938 Home Owners' Loan Corporation's map).

COLE Parents have lived these trends and seen the consequences for their children first-hand. COLE Parent Shyquetta McElroy says:

> I grew up in a neighborhood in Milwaukee's north side where few people owned their homes. When my son was a newborn, he had high lead levels in his blood samples. We were living in a house that was built way before the 1950s. And so, I think for

> the most part, the exposure that he got to lead came from in that house. I didn't realize the effects that it had on him until he started going to school. At K-5 my son was held back from school. When he had his first Individualized Education Program (IEP), that's when they found out that, well, maybe he has some cognitive delays and educational delays.

Because lead poisoning is most prevalent in communities that have suffered from the economic and social consequences of historical housing discrimination, lead poisoning contributes to a vicious cycle of families being caught in generational cycles of poverty, lower educational attainment and incarceration. Claudia Coulton et al., *Making the Case For Lead Safe Housing: Downstream Effects of Lead Exposure on Outcomes for Children & Youth*, 84 Health Place 103118 (2023).

c. COLE Parents are advocating for proven remedies to end the lead poisoning of their children.

COLE Parents have been determined to interrupt the vicious cycle of lead poisoning. While COLE Parents have made strides to mobilize and educate their community about the dangers of lead and the individual steps parents can take to mitigate lead poisoning risks, effective prevention requires policy action. Karp at 431. Previous nationwide actions, such as banning lead from gasoline and from paint, have remarkably lowered lead poisoning rates for the population as a whole, but, as described above, lead poisoning for children living in formerly redlined areas with deteriorating housing stock remains

stubbornly high. Elise Gould, *Childhood Lead Poisoning: Conservative Estimates of The Social & Economic Benefits of Lead Hazard Control*, 117 Envtl. Health Perspectives 1162–1167 (2009); Valeria I. Naranjo, Michael Hendricks & Kimberly S. Jones, *Lead Toxicity in Children: An Unremitting Public Health Problem*, 113 Pediatric Neurology 51–55 (2020).

One of the most effective policies to reduce lead poisoning in these areas is a requirement that rental housing be inspected for lead hazards and that any lead hazards be addressed before units can be offered for rent. For instance, after enacting a comprehensive lead inspection requirement for rental housing in 2005, Rochester, New York achieved an 85% decrease in childhood lead poisoning. Katrina Smith Korfmacher, Maria Ayoob & Rebecca Morley, *Rochester's Lead Law: Evaluation of a Local Environmental Health Policy Innovation*, 120 Env't. Health Persp. 309–315 (2012); Common Ground Health, *Lead Poisoned Continues Decade-Long Decrease* (June 18, 2015), https://www.commongroundhealth.org/news/articles/lead-poisoned-continues-decade-long-decrease. This policy prescription is considered a best practice to mitigate lead risks in older rental housing. As will be discussed below, Milwaukee's efforts to replicate that success were preempted by the state legislature.

In addition, several other public health policies and practices are critical to addressing lead poisoning. These policies

include increasing childhood screening for lead poisoning, performing investigations when a child has elevated blood levels to identify the sources of exposure, abating in-home lead hazards and providing poisoned children with early intervention services to mitigate the developmental impacts of the poisoning. Other important lead reduction policies include replacing lead-containing water infrastructure and plumbing, as baby formula made with lead-contaminated water is a significant risk for infants. Ronnie Levin & Joel Schwartz, *A Better Cost: Benefit Analysis Yields Better and Fairer Results: EPA's Lead and Copper Rule Revision*, 229 Env't. Rsch. 115738 (2023).

Because COLE Parents understand the need for a systems-level response, they have committed themselves to policy advocacy at the local, state and federal levels. COLE Parent Deanna Branch says, "My son Aiden gave me the courage to speak out and use my voice, to turn my anger at the injustice in the community into action. I'm using my voice to uplift the community because I believe every child deserves to have clean drinking water."

II. The partisan bias of Wisconsin's legislative maps has politically disempowered the communities most impacted by historic redlining and disinvestment and, specifically, COLE Parents, which retrenches the harm of lead poisoning.

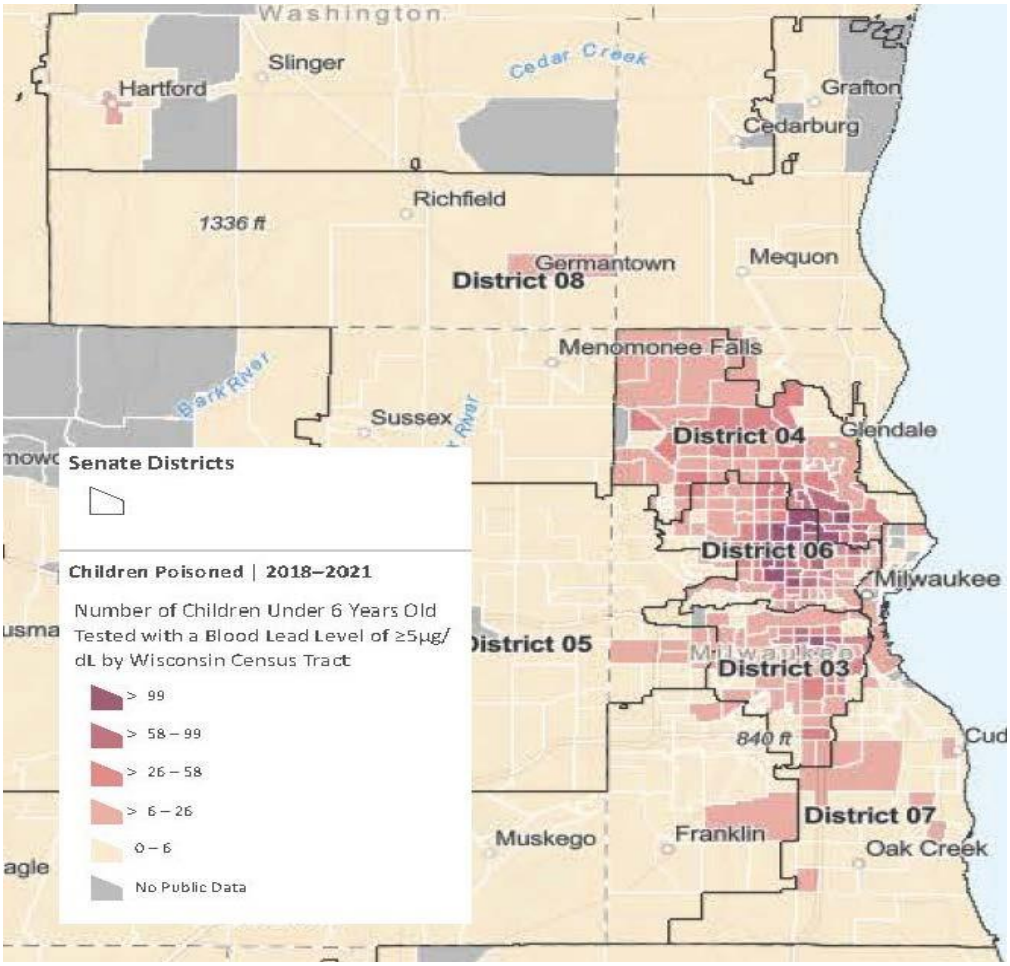
a. The geography of political disempowerment from Wisconsin's legislative maps closely tracks the geography of lead poisoning.

The legislative maps that have governed the elections of state representatives and state senators, since before COLE was founded, have had an extreme partisan bias. The maps instituted in 2011 were designed using a "sharply partisan methodology," *Baldus v. Members of the Wis. Gov't Accountability Bd.*, 849 F. Supp. 2d 840, 858 (E.D. Wis. 2012), to "entrench the Republican Party in power….under any likely future electoral scenario for the remainder of the decade." *Whitford v. Gill*, 218 F. Supp. 3d 837, 896 (W.D. Wis. 2016) (vacated on other grounds). The current maps perpetuate an entrenched partisan bias because they were selected by this Court under the "least change" approach adopted in *Johnson v. Wis. Elections Comm'n*, 2021 WI 87, ¶¶ 7-8, 399 Wis. 2d 469, 967 N.W. 2d 623.

The partisan bias of the legislative maps subverts healthy democratic responsiveness by packing many Democratic voters in as few districts as possible in more densely Democratic parts of the state, and cracking Democratic voters in other parts of the state into safe Republican districts. The maps in place from 2011

to 2021 did this to an extreme degree and did not simply reflect the fact that Democratic voters are more concentrated in some parts of the state, like Milwaukee. *Whitford*, 218 F. Supp. 3d at 911-912 (vacated on other grounds); *see also*, Nicholas O. Stephanopoulos, *The Causes and Consequences of Gerrymandering*, 59 Wm. & Mary L. Rev. 2115, 2146 (2018). As Democratic voters became more numerous and diffuse in Southeastern Wisconsin over the previous decade, the drafters of the current maps responded by altering the district lines. (Pet. ¶ ¶ 61-66.) The effect was to ensure that elected officials from the solidly Democratic areas who represent the neighborhoods of COLE Parents will not be in a legislative majority under any likely scenario, even when Democrats receive a majority of the votes statewide.

The geography of political empowerment and disempowerment at play in the partisan skew of Wisconsin's legislative maps closely tracks the geography of lead poisoning – and the geography of redlining – in the Milwaukee area.



Source: Wis. Dept of Health Servs. Childhood Lead Poisoning Data Explorer.

In this brief, a brief dealing with the topic of partisan bias and legislative maps, one might think the shading on the map above shows voters of a particular party. For instance, the district lines between a Democratic district, such as Senate District 4, and a Republican District, such as Senate District 8, almost exactly divide the red areas from the neutral shading. However, the red shading doesn't represent voters; it represents children with

elevated levels of lead in their blood. Many of the children represented here are the kids of COLE Parents. The boundary between Republican Senate District 5 and Democratic Districts 3 and 6 is another stark example of how the partisan maps divide communities with higher and lower rates of lead poisoning.

b. As a result, COLE Parents have been disempowered in ways that blunted their advocacy, retrenching the harm of lead-poisoning.

COLE Parents have been systemically disempowered by the partisan bias of Wisconsin's legislative district maps, despite the fact COLE is a non-partisan organization and that COLE Parents do not, as a group, identify as Republicans or Democrats. Their disempowerment stems not from how they vote, but from where they live. They have been shut out of having a meaningful and equal say in legislative policymaking by two immutable facts of Wisconsin political reality: (1) the Democratic state representatives and senators that represent their districts have virtually no chance of being in the legislative majorities to make significant policy and budget decisions; and (2) the Republican party that remains in an unshakeable majority has no electoral incentive to respond to COLE Parents, other residents of COLE Parents' neighborhoods or policy concerns that uniquely affect those areas.

This lack of responsiveness by the legislature as it has been constituted under maps with partisan bias has been a consistent pattern for COLE Parents, and that theme has manifested itself in several areas of policymaking.

First, starting in 2011, the legislature, through a series of bills, severely curtailed local authority over rental properties and, importantly, local authority to enact and maintain rental inspections programs. 2011 Wis. Act 108; 2013 Wis. Act 76; 2015 Wis. Act 176; 2017 Wis. Act 317. These actions were particularly devastating for lead poisoning prevention in Milwaukee because, in 2009, Milwaukee had begun implementing a rental inspection program. Tom Daykin, *Law Ends Milwaukee Residential Rental Inspection Program*, Milw. J. Sentinel (June 6, 2016), https://www.jsonline.com/story/money/real-estate/commercial/2016/06/07/law-ends-milwaukee-residential-rental-inspection-program/85618706/. Had the program had time to be fully implemented, evidence from other jurisdictions suggests the program could have dramatically lowered childhood lead poisoning rates. However, Milwaukee was forced to abandon this program in 2016 after state law changes dismantled the city's legal authority and ability to fund inspections. *Id.*

Over the course of the intervening seven years, it became clear that Milwaukee's inability to institute a lead inspection program constituted a significant barrier to making headway in

preventing childhood lead poisoning. Talis Shelbourne, *Maryland Took Strong Steps to Cut Lead Exposure. Wisconsin Bans Them.*, Milw. J. Sentinel (Feb. 15, 2023), https://www.jsonline.com/story/news/2023/02/15/maryland-took-strong-steps-to-cut-lead-exposure-wisconsin-bans-them/69791784007. Nonetheless, earlier this year, Republican members of the joint finance committee rejected a proposal to reinstate the local authority. Omnibus Budget Motion 10 of 2023 J. Comm. Finance (May 2, 2023). Therefore, Milwaukee continues to be prohibited from implementing a proven strategy to prevent children from being lead poisoned.

Second, for over the last half decade the legislature has rejected efforts to update and improve Wisconsin's public health response to childhood lead poisoning. Specifically, in its deliberations on the last three state budgets, the legislature has explicitly declined to update Wisconsin's definition of lead poisoning to reflect 2018 Centers for Disease Control guidance and provide public health investigations and early intervention services to children who are poisoned at the updated threshold. *See* Legislative Fiscal Bureau, Comparative Summary of Provisions 2023 Wisconsin Act 19 at 371, 398-99, 405-06 (2023). These decisions mean Wisconsin will continue to lag behind baseline national standards in its response to childhood lead poisoning.

Third, during the same time period, the legislature has repeatedly rejected efforts to speed up the removal of lead service laterals in Wisconsin. *E.g.*, *Id.* at 288-89, 735. On this issue, legislative leaders explicitly have said they oppose the investment because they did not want too much funding to go to Milwaukee. D.L. Davis, *Yes, GOP Did Oppose $40 Million for Lead Pipe Replacement Because It Helped Milwaukee Too Much*, Politifact (Dec. 3, 2020), https://www.politifact.com/factchecks/2020/dec/04/ chris-larson/yes-gop-did-oppose-40-million-lead-pipe-replacemen/.

The legislature's express rejection of proven measures to address childhood lead poisoning came as COLE Parents actively educated and advocated with all levels of government: local, state and national. Locally, COLE Parents have been very successful advocating with the city government. Federally, COLE Parents have spoken at the White House during a summit on lead and met with Vice President Harris and President Biden. However, their voices have been less impactful in their own state capitol. COLE Parents have testified at state budget hearings and visited with legislators, only to be met with the political reality that majority party legislators are more vocal about the notion that Milwaukee gets "too much" than they are about preventing childhood lead poisoning. *Id.*

While legislative leaders' statements about too much funding going to Milwaukee directly apply to decisions related to removing lead water supply pipes, the sentiment can explain why the legislature has been so unresponsive to the plight of lead poisoned children generally and has turned Wisconsin into a national laggard on this issue. COLE Parents, journalists and others have naturally concluded that a branch of government that does not represent Milwaukee, and never will represent Milwaukee under the current maps, will continue to neglect this public health crisis that disproportionately impacts children in neighborhoods in Milwaukee that bear the legacy of redlining, segregation and disinvestment.

III. The experiences of COLE Parents demonstrate why any new maps should avoid partisan bias, not be based on "least change," and promote legislative democracy.

As a result of the current political reality, COLE Parents have attempted to open dialogues through their faith networks with congregants of mainly affluent, White churches in Republican districts. COLE Parents' hope has been that they might persuade these potential allies to care about childhood lead poisoning and that these suburban residents can convince Republican legislators to start voting for proposals to address the issue.

COLE Parents' current strategy of finding residents of Republican districts to represent COLE's interests to the legislature may or may not prove to be effective. So far it has not. Regardless, it demonstrates why maps with partisan bias violate the state constitution. These maps create second-class citizens who have unequal opportunities to influence state government. This situation is incompatible with Article I, section 1's sweeping guarantee that all power of state government derives from the consent of free and equal people who have "the right to secure equal representation." *State ex rel. Sonneborn v. Sylvester*, 26 Wis. 2d 43, 55, 132 N.W.2d 249, 255 (1965).

Any remedial maps should realize the now-dormant principle that all Wisconsinites are "equally free and independent." Wis. Const. art. I, § 1. The purpose of legislative maps is to form a government that represents Wisconsinites equally, "achieving . . . fair and effective representation for all citizens." *Gaffney v. Cummings,* 412 U.S. 735, 748 (1973) (quoting *Reynolds v. Sims*, 377 U.S. 536). The use of a "least change" approach would unnecessarily perpetuate the current maps' infirmities.

COLE Parents' experiences under the current maps demonstrate why the Court should look to empower voters across the state, making government responsive to them, regardless of where they live. As described above, the public health crisis that

has galvanized COLE Parents has a definite geographical distribution that directly connects to historical discriminatory practices that are now universally condemned as injustices. If the "blessings of free government can only be maintained by firm adherence to justice…," as the framers of Wisconsin's constitution wrote, Wis. Const. art. I, § 22, then certainly any constitutionally healthy government ought to provide Wisconsinites with an equal and fair opportunity to mitigate injustices. Maps that have the effect of unevenly distributing political power geographically have, on the contrary, helped perpetuate the injustice of lead poisoning and withheld the blessings of free government for COLE Parents.

The experiences of COLE Parents point to broader harms that flow from maps with partisan bias; their experiences also exemplify a broader reason the Court should ensure any remedial maps are responsive to the will of Wisconsinites across the state. The disparate geographical distribution of environmental and health burdens is not unique to lead poisoning. Many environmental burdens and benefits, such as air pollution, water contamination and access to natural areas, are unequally distributed in Wisconsin. These environmental benefits and burdens also reflect political and economic disparities related to race and class. *See generally*, Robert Bullard, *Race and Environmental Justice in the United States*, 18 Yale J. Int'l L. 319

(1993). All Wisconsinites should have free and equal opportunities to effectively advocate that state policy protects a healthy environment for their families and communities. COLE Parents' experiences show this goal requires maps that empower and are responsive to all voters.

CONCLUSION

For the reasons stated above, in addition to other required and traditional redistricting criteria, any remedial maps should avoid partisan bias, not be based on a "least change" approach and promote legislative democracy for all Wisconsinites.

Dated this 8th day of November 2023.

Respectfully submitted,

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FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in s. 809.19 (8) (b), (bm), and (c) for a brief produced with a proportional serif font and with this Court's October 6, 2023 order. The length of this brief is 4,100 words.

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