

FILED

01-04-2024

CLERK OF WISCONSIN
SUPREME COURT

IN THE SUPREME COURT OF WISCONSIN

No. 2023AP1399

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

Respondents,

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.

PETITIONERS' APPENDIX IN SUPPORT OF RESPONSE
TO MOTION FOR RECONSIDERATION

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CERTIFICATION BY ATTORNEY

I hereby certify that filed with this brief is an appendix that complies with s. 809.19(2) (a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under s. 809.23 (3) (a) or (b); and (4) portions the record essential to an understanding of the issues raised, including oral or written rulings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 one or more initials or other appropriate pseudonym or designation 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 Daniel S. Lenz
Daniel S. Lenz

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

MARCUS CASTER, *et al.*,)

Plaintiffs,)

v.)

Case No.: 2:21-cv-1536-AMM

WES ALLEN, *in his official*)

capacity as Alabama Secretary of)

***State, et al.*,**)

Defendants.)

ORDER

“In 2020, the decennial census revealed that Alabama’s population had grown by 5.1%,” and “the Alabama Legislature’s Committee on Reapportionment began creating a new districting map.” *Allen v. Milligan*, No. 21-1086, 2023 WL 3872517, at *8 (U.S. June 8, 2023). “The Alabama Legislature enacted [a new] map [(“the Plan”)],” and Governor Ivey signed the Plan into law on November 4, 2021. *Id.* “Three groups of plaintiffs brought suit seeking to stop Alabama’s Secretary of State from conducting congressional elections under” the Plan. *See Caster v. Allen*, No. 2:21-cv-1536 (N.D. Ala.); *Milligan v. Allen*, No. 2:21-cv-1530 (N.D. Ala.); *Singleton v. Allen*, No. 2:21-cv-1291 (N.D. Ala.).

A preliminary injunction hearing began on January 4, 2022, and concluded on January 12. On January 24, 2022, the court preliminarily enjoined Alabama from

using the Plan in the forthcoming elections, finding that Alabama's 2021 redistricting map likely violates § 2 of the Voting Rights Act, and that the "appropriate remedy is a congressional redistricting plan that includes either an additional majority-Black congressional district, or an additional district in which Black voters otherwise have an opportunity to elect a representative of their choice." *Caster* Doc. 101 at 6; *Milligan* Doc. 106 at 5. The Defendants appealed to the Supreme Court.

Recognizing that "redistricting and reapportioning legislative bodies is a legislative task which the federal courts should make every effort not to pre-empt," *Wise v. Lipscomb*, 437 U.S. 535, 539-40 (1978) (opinion of White, J.), this court gave the Alabama Legislature the first opportunity to draw a new map. After it appeared increasingly unlikely that the Legislature would act, the court notified the parties of its intent to appoint a special master and cartographer. *See, e.g., Caster* Doc. 119; *Milligan* Doc. 129. After affording the parties an opportunity to object, the court appointed a special master and cartographer on February 7, 2022. *See Caster* Doc. 120; *Milligan* Doc. 130. Later that day, the Supreme Court stayed the preliminary injunction.

On June 8, 2023, the Supreme Court affirmed the preliminary injunction in all respects. *See Allen*, 2023 WL 3872517, at *5. The Supreme Court then vacated the stay on June 12, 2023. *See Allen v. Caster*, No. 21-1087, 2023 WL 3937600, at *1

(U.S. June 12, 2023); *Allen v. Milligan*, No. 21-1086, 2023 WL 3937599, at *1 (U.S. June 12, 2023). Accordingly, the preliminary injunction and appointment orders remain in effect.

From the inception of this action, the court has been acutely aware that these proceedings are time-sensitive. As the court awaited the Supreme Court's decision, the undersigned instructed Secretary Allen "to inform the court . . . of the latest date by which a Congressional map must be in place for it to be used in the 2024 election." *Caster* Doc. 147 at 1; *Milligan* Doc. 145. Secretary Allen responded: "a new plan by around October 1, 2023, would provide enough time to reassign voters, print and distribute ballots, and otherwise conduct the forthcoming 2024 primary elections based on the new map." *Caster* Doc. 148 at 7; *Milligan* Doc. 147.

The court held a status conference on June 16, 2023, to discuss the next steps in these cases. Before the status conference, the Secretary and intervening Defendants filed a notice advising the court that "the Alabama Legislature intends to enact a new congressional redistricting plan that will repeal and replace the 2021 Plan" and requesting that the court allow the Legislature until July 21, 2023 to enact the new plan. *Caster* Doc. 154 at 2; *Milligan* Doc. 166.

For their part, the *Milligan* and *Caster* Plaintiffs moved the court for a scheduling order setting deadlines for a remedial process to follow the July 21, 2023 date the Defendants offered. *Caster* Doc. 155. Although the *Singleton* Plaintiffs did

not formally join that filing, they informed the court at the status conference that they do not object to the relief requested. No set of Plaintiffs objected to the July 21, 2023 date the Defendants offered.

At the status conference, the parties indicated substantial agreement on the appropriate next steps for these proceedings. In light of their agreement, the time-sensitivity of these proceedings, and the provisions of *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006), the court **ORDERS** as follows:

1. During the status conference, the Defendants requested the opportunity to provide supplemental briefing on or before June 20, 2023 regarding the impact, if any, of *North Carolina v. Covington*, 138 S. Ct. 2548 (2018), on the appropriate remedial process. The request is **GRANTED**. The supplemental brief is due on or before the close of business **JUNE 20, 2023**.

2. Consistent with Supreme Court precedent holding that the state legislature must have the first opportunity to draw a new map, if practicable, the Court will not require the parties to engage in any discovery or further proceedings until after **JULY 21, 2023**. If at any time, however, any party concludes that further proceedings are necessary, they may promptly advise the court in a written pleading.

3. The Defendants are **DIRECTED** to provide this court with a status report on **JULY 7, 2023**, and again on **JULY 14, 2023**, regarding the status of the Alabama Legislature's efforts to enact a new congressional districting plan. The

Defendants are further **DIRECTED** to advise the court on or before **JULY 21, 2023** whether a new congressional plan has been enacted by the Alabama Legislature.

4. The court will not instruct either the special master or the cartographer to conduct any work until after **JULY 21, 2023**.

5. If the Alabama Legislature enacts a new plan and any set of Plaintiffs objects to that plan, such Plaintiffs are **DIRECTED** to file their objections in detail on or before **JULY 28, 2023**, including such data, documents, and reports as may be appropriate. The Defendants, in turn, are directed to file their response to any such filing no later than **AUGUST 4, 2023**. Plaintiffs shall have until the close of business on **AUGUST 7, 2023**, to file any reply.

6. In consultation with the parties, the court had previously ordered that these proceedings be trial-ready by July 31, 2023. That date is **GENERALLY CONTINUED**.

7. If a hearing becomes necessary for any purpose regarding a new plan enacted by the Alabama Legislature, that hearing will commence on **AUGUST 14, 2023**. The court has set this date based on consultation with and the agreement of the parties that it is appropriate.

8. If the parties anticipate that any set of Plaintiffs will object to a new plan enacted by the Alabama Legislature, the parties are **DIRECTED** to file with the court a joint proposed scheduling order on or before **JULY 26, 2023**, which will


include stipulated dates to accommodate discovery, expert witness disclosures, and any other appropriate proceedings related to the anticipated objection and the August 14 hearing date.

9. If the Alabama Legislature is unable to enact a new plan, because the preliminary injunction remains in effect, the parties are **ADVISED** that the special master and cartographer will commence work on a remedial map after July 21, 2023.

10. Nothing in the foregoing order limits the Defendants' right to a permanent injunction proceeding at a future date if necessary. The court has adopted the foregoing schedule based on Defendants' agreement that any such proceeding shall not occur before the 2024 congressional elections.

11. If any material circumstance changes, the parties may promptly advise the court in a written pleading.

DONE and **ORDERED** this 20th day of June, 2023.



ANNA M. MANASCO
UNITED STATES DISTRICT JUDGE

[J-1-2018]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

LEAGUE OF WOMEN VOTERS OF : No. 159 MM 2017
PENNSYLVANIA, CARMEN FEBO SAN :
MIGUEL, JAMES SOLOMON, JOHN :
GREINER, JOHN CAPOWSKI, :
GRETCHEN BRANDT, THOMAS :
RENTSCHLER, MARY ELIZABETH :
LAWN, LISA ISAACS, DON LANCASTER, :
JORDI COMAS, ROBERT SMITH, :
WILLIAM MARX, RICHARD MANTELL, :
PRISCILLA MCNULTY, THOMAS :
ULRICH, ROBERT MCKINSTRY, MARK :
LICHTY, LORRAINE PETROSKY, :

Petitioners

v.

THE COMMONWEALTH OF :
PENNSYLVANIA; THE PENNSYLVANIA :
GENERAL ASSEMBLY; THOMAS W. :
WOLF, IN HIS CAPACITY AS :
GOVERNOR OF PENNSYLVANIA; :
MICHAEL J. STACK III, IN HIS CAPACITY :
AS LIEUTENANT GOVERNOR OF :
PENNSYLVANIA AND PRESIDENT OF :
THE PENNSYLVANIA SENATE; :
MICHAEL C. TURZAI, IN HIS CAPACITY :
AS SPEAKER OF THE PENNSYLVANIA :
HOUSE OF REPRESENTATIVES; :
JOSEPH B. SCARNATI III, IN HIS :
CAPACITY AS PENNSYLVANIA SENATE :
PRESIDENT PRO TEMPORE; ROBERT :
TORRES, IN HIS CAPACITY AS ACTING :
SECRETARY OF THE :
COMMONWEALTH OF PENNSYLVANIA; :
JONATHAN M. MARKS, IN HIS :
CAPACITY AS COMMISSIONER OF THE :
BUREAU OF COMMISSIONS, :
ELECTIONS, AND LEGISLATION OF :

THE PENNSYLVANIA DEPARTMENT OF :
 STATE, :
 :
 Respondents :

ORDER

PER CURIAM

AND NOW, this 26th day of January, 2018, in furtherance of this Court's Order of January 22, 2018, and in anticipation of the possible eventuality that the General Assembly and the Governor do not enact a remedial congressional districting plan by the time periods specified in that Order, the Court orders as follows.

Pursuant to Paragraph "Third" of our Order of January 22, 2018:

First, this Court appoints Professor Nathaniel Persily as an advisor to assist the Court in adopting, if necessary, a remedial congressional redistricting plan.

Second, the Pennsylvania General Assembly shall submit to the Court, or direct the Legislative Data Processing Center to submit to the Court, no later than **January 31, 2018 at noon**, ESRI shape files that contain the current boundaries of all Pennsylvania municipalities and precincts.

Third, any redistricting plan the parties or intervenors choose to submit to the Court for its consideration shall include the following:

a. A 2010 Census block equivalency and ESRI shape file expressing the plan.

b. A report detailing the compactness of the districts according to each of the following measures: Reock; Schwartzberg; Polsby-Popper; Population Polygon; and Minimum Convex Polygon.

c. A report detailing the number of counties split by each district and split in the plan as a whole.

d. A report detailing the number of municipalities split by each district and the plan as a whole.

e. A report detailing the number of precincts split by each district and the plan as a whole.

f. A statement explaining the proposed plan's compliance with this Court's Order of January 22, 2018.

Fourth, the parties and intervenors shall submit to the Court, no later than **January 31, 2018 at noon**, a 2010 Census block equivalency and ESRI shape file for the maps which formed the basis for the expert testimony and reports offered into evidence in the proceedings before the Commonwealth Court. All such maps shall be labeled consistently with the parties' or intervenors' exhibits and descriptions therein.

Justice Baer files a Concurring and Dissenting Statement.

Chief Justice Saylor and Justice Mundy dissent.

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

In Case No. 2022-0184, Theresa Norelli & a. v. Secretary of State & a., the court on May 12, 2022, issued the following order:

In furtherance of our opinion issued today, the court hereby appoints Professor Nathaniel Persily to serve as special master in this case. See RSA 490:8 (2010). A special master is a judicial officer with the attendant obligation of impartiality. See Tuftonboro v. Willard, 89 N.H. 253, 260-61 (1938) (stating that the impartiality obligation of Part I, Article 35 of the New Hampshire Constitution applies to court-appointed masters, referees, and auditors); see also N.H. Sup. Ct. R. 38 (definition of “judge” in the Code of Judicial Conduct includes “a referee or other master”). Accordingly, ex parte communications with the special master are prohibited. See N.H. Sup. Ct. R. 38 (Rule 2.9 of the Code); N.H. R. Prof. Cond. 3.5. As a judicial officer, neither the special master nor staff members acting at his direction may be subjected to cross-examination, and all confidential computer and other confidential files prepared by or for the special master in connection with this case are entitled to the same level of protection from production or disclosure as are the confidential materials of the court itself.

The special master shall prepare and issue to the court, no earlier than May 27, 2022, a report and a recommended congressional redistricting plan for New Hampshire pursuant to the criteria set forth in our opinion and this order. The special master’s appointment, although effective immediately, does not preclude the legislature from enacting a congressional redistricting plan on or before May 26, 2022 — the date identified to us as the last date for legislative action in this session on a congressional redistricting plan, unless the legislature were to suspend its rules or to meet in special session.

In developing a recommended congressional redistricting plan, the special master shall use 2020 federal census data, P.L. 94-171, and shall modify the existing congressional districts, as established by RSA 662:1 (2016), only to the extent required to comply with the following criteria and “least change” standards:

1. Districts shall be as equal in population as practicable, in accordance with Article I, Section 2 of the United States Constitution;

2. The redistricting plan shall comply with the Voting Rights Act of 1965, as amended, 52 U.S.C. § 10101 *et seq.*, and any other applicable federal law;
3. Districts shall be made of contiguous territory;
4. To the greatest extent practicable, each district shall contain roughly the same constituents as it does under the current congressional district statute, such that the core of each district is maintained, with contiguous populations added or subtracted as necessary to correct the population deviations, *see Below v. Secretary of State*, 148 N.H. 1, 13-14, 28 (2002);
5. The plan shall not divide towns, city wards, or unincorporated places, unless they have previously requested by referendum to be divided, or unless the division is necessary to achieve compliance with the population equality required by Article I, Section 2 of the United States Constitution; and
6. The special master shall not consider political data or partisan factors, such as party registration statistics, prior election results, or future election prospects.

The New Hampshire Senate Minority Leader and the New Hampshire House of Representatives Minority Leader (the legislative *amici curiae*) previously submitted, with their memorandum of law on the preliminary questions, a proposed congressional redistricting plan that they contend is a “least change” plan. By 5:00 p.m. on May 16, 2022, interested parties, intervenors, and any other person participating or seeking to participate as an *amicus curiae* may submit, through the court’s electronic filing (e-filing) system, their proposed redistricting plan, accompanied by such supporting data, documentation, or memoranda that they deem helpful to the special master’s evaluation of their proposed plan’s compliance with our opinion and this order.

By 1:00 p.m. on May 18, 2022, interested parties, intervenors, and any person participating or seeking to participate as an *amicus curiae* may submit, through the court’s e-filing system, a response to any proposed redistricting plan, including the proposed plan previously submitted by the legislative *amici curiae*.

An in-person hearing before the special master will be held at the court on May 19, 2022, at 1:00 p.m., to provide an opportunity for plan proponents to present arguments in favor of their plans and for opponents of particular plans to respond. Following the hearing, the special master shall select a proposed redistricting plan — or shall formulate one on his own — that he recommends for adoption by the court. The special master’s report and recommended

congressional redistricting plan shall be issued to the court no earlier than May 27, 2022, and then promptly distributed by the clerk's office to persons who have appeared in this case.

If necessary, oral argument on the special master's report and recommendation will be held before the justices of the supreme court on May 31, 2022, at 9:00 a.m.

As stated in our orders of April 11 and May 5, 2022, the court will terminate this proceeding if a congressional redistricting plan is validly enacted by the legislature at any time prior to the close of this case.

MacDonald, C.J., and Hicks, Bassett, Hantz Marconi, and Donovan, JJ., concurred.

**Timothy A. Gudas,
Clerk**

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SUSAN SOTO PALMER, *et al.*,

Plaintiffs,

v.

STEVEN HOBBS, *et al.*,

Defendants,

And

JOSE TREVINO, *et al.*,

Intervenor-Defendants.

CASE NO. 3:22-cv-05035-RSL

ORDER

On August 10, 2023, the Court found that the boundaries of Washington Legislative District 15, in combination with the social, economic, and historical conditions in the Yakima Valley region, results in an inequality in the electoral opportunities enjoyed by white and Latino voters in the area. Judgment was entered in plaintiffs' favor on their Section 2 Voting Rights Act claim, and the State of Washington was given an opportunity to adopt revised legislative district maps for the Yakima Valley region pursuant to the process set forth in the Washington State Constitution and state statutes. When news reports indicated that the Majority Caucus Leaders of both houses of the Washington State

ORDER - 1

1 Legislature had declined to reconvene the bipartisan redistricting commission, the State
2 was directed to file a status report notifying the Court of the Legislature's position. Having
3 reviewed the State's submission and the responses of plaintiffs and the Minority Caucus
4 Leaders, the Court finds as follows:

6 Given the practical realities of the situation as revealed by the submissions of the
7 interested parties, the Court will not wait until the last minute to begin its own redistricting
8 efforts. If, as the Minority Caucus Leaders hope, the Legislature is able to adopt revised
9 legislative maps for the Yakima Valley region in a timely manner, the Court's parallel
10 process, set forth below, will have been unnecessary. The likelihood that that will happen
11 has lessened significantly since the Court issued its Memorandum of Decision, however.
12 Establishing earlier deadlines for the presentation of alternative remedial proposals will
13 allow a more deliberate and informed evaluation of those proposals.

16 The parties shall meet and confer with the goal of reaching a consensus on a
17 legislative district map that will provide equal electoral opportunities for both white and
18 Latino voters in the Yakima Valley regions, keeping in mind the social, economic, and
19 historical conditions discussed in the Memorandum of Decision. If the parties are unable to
20 reach agreement, they shall (a) further confer regarding nominees to act as Special Master
21 to assist the Court in the assessment of proposed remedial plans and to make modifications
22 to those plans as necessary and (b) file alternative remedial proposals and nominations on
23 the following schedule:
24
25
26

ORDER - 2

December 1, 2023 -- Deadline for the parties¹ to submit remedial proposals,² supporting memoranda, and exhibits (including expert reports).

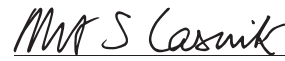
December 1, 2023 – Deadline for the parties to jointly identify three candidates for the Special Master position (including their resumes/CVs, a statement of interest, availability, and capacity) and to provide their respective positions on each candidate.

December 22, 2023 – Deadline for the parties to submit memoranda and exhibits (including rebuttal expert reports) in response to the remedial proposals.

January 5, 2024 – Deadline for the parties to submit memoranda and exhibits (including sur-rebuttal expert reports) in reply.

IT IS SO ORDERED.

Dated this 4th day of October, 2023.


Robert S. Lasnik
United States District Judge

¹ No party has identified an individual or entity that has unique information or perspective that could help the Court beyond the assistance that the parties and their lawyers are able to provide, nor have they shown any other justification for the allowance of amicus briefs.

² The parties shall discuss the format and functionality of the remedial proposals, but the Court generally favors plaintiffs' suggestions that the maps include important roadways, important geographical markers, and voting precinct boundaries, that the maps be in a zoomable pdf format, and that the proposals include demographic data (e.g., total population per district and race by district of total population and citizen voting age population). Contemporaneous with the filing, all counsel of record shall be provided shapefiles, a comma separated value file, or an equivalent file that is sufficient to load the proposed plan into commonly available mapping software.



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You are hereby notified that the Court has entered the following order:

No. 2021AP1450-OA Johnson v. Wisconsin Elections Commission

Pending before the court is an original action filed by petitioners, Billie Johnson, et al. Briefing is underway and proposed remedial maps were filed on December 15, 2021, in accordance with the terms of this court's November 17, 2021 order and its opinion filed November 30, 2021, Johnson v. Wisconsin Elections Commission, 2021 WI 87. Responses were filed on December 30, 2021.

Together with their response, intervenor-petitioners Congressmen Glenn Grothman, Mike Gallagher, Bryan Steil, Tom Tiffany, and Scott Fitzgerald ("the Congressmen"), filed a motion seeking leave to "submit a modified version of their Proposed Remedial Map for this Court's consideration." The Congressmen's motion states that the Johnson petitioners do not oppose their motion but intervenors-petitioners Governor Tony Evers in his official capacity; Senator Janet Bewley, State Democratic Minority Leader; Citizen Mathematicians and Scientists; Lisa Hunter, et al., and Black Leaders Organizing for Communities, et al., all oppose the motion.

Page 2

January 4, 2022

No. 2021AP1450-OA Johnson v. Wisconsin Elections Commission

Our order issued November 17, 2021 stated, inter alia that “any party that filed a proposed map and subsequently determines that it merits a correction or modification, may file a motion seeking the court’s leave to amend the proposed map. Such motion shall include a description of the amendments, the reasons for them, a proposed amended map, and shall state whether the motion is unopposed by other the parties.” Our November 17, 2021 order further advised the parties that the court retained the option of requesting responses from the other parties to such a motion. Accordingly,

IT IS ORDERED that the motion of the intervenor-petitioners Congressmen Glenn Grothman, Mike Gallagher, Bryan Steil, Tom Tiffany, and Scott Fitzgerald seeking leave to “submit a modified version of their Proposed Remedial Map for this Court’s consideration” is held in abeyance until further order of the court;

IT IS FURTHER ORDERED that on or before 4:00 p.m. on January 5, 2022, the other parties may file a response to the intervenor-petitioners Congressmen Glenn Grothman, Mike Gallagher, Bryan Steil, Tom Tiffany, and Scott Fitzgerald’s motion seeking leave to “submit a modified version of their Proposed Remedial Map for this Court’s consideration.” The response shall not exceed 10 pages if a monospaced font is used or 2,200 words if a proportional serif font is used, but the parties are encouraged to strive for brevity. The court does not anticipate permitting a reply from the Congressmen and this order does not alter the existing briefing schedule;

IT IS FURTHER ORDERED that all filings in this matter shall be filed as an attachment in pdf format to an email addressed to clerk@wicourts.gov. See Wis. Stat. §§ 809.70, 809.80 and 809.81. A paper original and 10 copies of each filed document must be received by the clerk of this court by 12:00 noon of the business day following submission by email, with the document bearing the following notation on the top of the first page: "This document was previously filed via email."

Sheila T. Reiff
Clerk of Supreme Court

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January 4, 2022

No. 2021AP1450-OA Johnson v. Wisconsin Elections Commission

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January 4, 2022

No. 2021AP1450-OA Johnson v. Wisconsin Elections Commission

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January 31, 2022

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You are hereby notified that the Court has entered the following order:

No. 2021AP1450-OA Johnson v. Wisconsin Elections Commission

On January 25, 2022, Lisa Hunter, et al. (the "Hunter Intervenors") filed a motion asking the court for leave to provide certain information set forth in the motion in response to questions and statements that arose during argument, and further requesting that "[s]hould this Court require a one-person population range, the Hunter Intervenors respectfully reiterate their request to submit a technical, non-substantive modification to their proposed congressional map." A response to the motion was filed on January 26, 2022, by Congressmen Glenn Grothman, Mike Gallagher, Bryan Steil, Tom Tiffany and Scott Fitzgerald (the "Congressmen Intervenors") asking, inter alia, the court to deny the Hunter Intervenors' request for permission to provide information and responses to questions raised at oral argument. The Congressmen Intervenors further request that if the court grants permission to the Hunter Intervenors to submit a modified version of their proposed congressional map, all parties must be granted an opportunity to file modified maps in response to questions raised at oral argument. Therefore,

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January 31, 2022

No. 2021AP1450-OA Johnson v. Wisconsin Elections Commission

IT IS ORDERED that the Hunter Intervenors' motion seeking leave to provide the information contained in the filing dated January 25, 2022 is granted and the document is accepted for filing;

IT IS FURTHER ORDERED that the Congressmen Intervenors' response to the motion is accepted for filing;

IT IS FURTHER ORDERED that the other parties may file a letter response to the Hunter Intervenors' motion, not to exceed five pages in length if a monospaced font is used or 1,100 words if a proportional serif font is used, no later than 12:00 p.m. on February 2, 2022;

IT IS FURTHER ORDERED that the Hunter Intervenors' request for leave to provide a modified proposed congressional map is held in abeyance until further order of the court; and

IT IS FURTHER ORDERED that the filings in this matter shall be filed as an attachment in .pdf format to an email addressed to clerk@wicourts.gov. See Wis. Stat. §§ 809.70, 809.80 and 809.81. Seventeen paper copies of each submission must be received by the clerk of this court by 9:00 a.m. of the business day following submission by email, with the paper document bearing the following notation on the top of the first page: "This document was previously filed via email."

Sheila T. Reiff
Clerk of Supreme Court

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January 31, 2022

No. 2021AP1450-OA Johnson v. Wisconsin Elections Commission

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January 31, 2022

No. 2021AP1450-OA Johnson v. Wisconsin Elections Commission

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March 7, 2022

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You are hereby notified that the Court has entered the following order:

No. 2021AP1450-OA Johnson v. Wisconsin Elections Commission

On March 3, 2022, this court issued a decision enjoining Wisconsin's existing congressional and legislative districts and ordering new district plans proposed by Wisconsin Governor Tony Evers. Johnson v. Wisconsin Elections Comm'n, 2022 WI 14. On March 4, 2022, the Wisconsin Legislature filed an expedited motion asking this court to stay the court's injunction as it applies to Wisconsin's senate and assembly districts, pending the Wisconsin Legislature's intended appeal to the United States Supreme Court.

IT IS ORDERED that any party that wishes to file a response to the Wisconsin Legislature's expedited motion for a stay pending appeal may submit a letter brief no later than 11:00 a.m. on March 9, 2022;

IT IS FURTHER ORDERED that all filings in this matter shall be filed as an attachment in .pdf format to an email addressed to clerk@wicourts.gov. See Wis. Stat. §§ 809.70, 809.80 and

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March 7, 2022

No. 2021AP1450-OA Johnson v. Wisconsin Elections Commission

809.81. A paper original and 10 copies of each filed document must be received by the clerk of this court by 12:00 noon of the business day following submission by email, with the document bearing the following notation on the top of the first page: "This document was previously filed via email"; and

IT IS FURTHER ORDERED that requests for additional briefing or extensions will be viewed with disfavor.

Sheila T. Reiff
Clerk of Supreme Court

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March 7, 2022

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March 7, 2022

No. 2021AP1450-OA Johnson v. Wisconsin Elections Commission

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December 11, 2020

To:

Hon. Stephen A. Simanek
Reserve Judge

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You are hereby notified that the Court has entered the following order:

No. 2020AP2038

Trump v. Biden L.C. #2020CV7092

A notice of appeal and a petition for bypass having been filed by plaintiffs-appellants, Donald J. Trump, et al., and counsel for the plaintiffs-appellants having represented that the defendants-respondents have authorized him to state that they do not object to granting the petition for bypass in this matter;

IT IS ORDERED that the petition for bypass is granted and this court assumes jurisdiction over this action; and

Page 2

December 11, 2020

No. 2020AP2038

Trump v. Biden L.C. #2020CV7092

IT IS FURTHER ORDERED that, given the time constraints in this matter, the court will also rely on the parties' filings that have already been made in the circuit court. The parties shall file electronic copies of those filings with the clerk of this court by 4:30 p.m. on Friday, December 11, 2020. Copies of all such filings shall be filed in this court as attachments in pdf format to one or more emails addressed to clerk@wicourts.gov. See Wis. Stat. §§ 809.14, 809.80, and 809.81; and

IT IS FURTHER ORDERED that, on or before 10:00 p.m. on Friday, December 11, 2020, each party may file a supplemental brief in this court, which shall be no longer than 25 pages in length. These supplemental briefs shall be filed by all parties at the same time, and no response briefs shall be permitted. Each supplemental brief shall be filed as an attachment in pdf format to an email addressed to clerk@wicourts.gov. See Wis. Stat. §§ 809.14, 809.80, and 809.81. The parties shall file a paper original and two paper copies of each supplemental brief with the clerk of this court by 10:00 a.m. on Monday, December 14, 2020, with the following notation on the top of the first page: "This document was previously filed via email;" and

IT IS FURTHER ORDERED that the court will not accept any non-party briefs in this matter; and

IT IS FURTHER ORDERED that the clerk of the Milwaukee County Circuit Court shall immediately transmit to the clerk of this court via electronic means the notice of appeal and docketing statement filed by plaintiffs-appellants in Milwaukee County Case No. 2020CV7092; and

IT IS FURTHER ORDERED that the clerk of the Milwaukee County Circuit Court shall electronically transmit the record in Milwaukee County Case No. 2020CV7092 to the clerk of this court by 4:30 p.m. on Friday, December 11, 2020; and

IT IS FURTHER ORDERED that the statement on transcript in this matter is waived; and

IT IS FURTHER ORDERED that, as soon as possible and no later than 5:00 p.m. on December 11, 2020, Court Reporter Kristin Menzia, who recorded the proceedings before the circuit court on December 11, 2020, shall initially file an electronic copy of the transcript of those proceedings, including the oral decision issued by the circuit court, with this court by attaching the transcript as a pdf file attached to an email addressed to clerk@wicourts.gov. The court reporter shall subsequently file the original certified hard copy of the transcript of the December 11, 2020 proceedings with the clerk of this court, who shall ensure that the transcript is added to the circuit court record in this matter. The plaintiffs-appellants-petitioners shall make arrangements for the payment of the transcript; and

IT IS FURTHER ORDERED that the court will hear oral argument in this matter at 12:00 p.m. on Saturday, December 12, 2020. The plaintiffs-appellants-petitioners shall have 45 minutes of oral argument time, of which counsel may reserve no more than 10 minutes for rebuttal. The

Page 3

December 11, 2020

No. 2020AP2038

Trump v. Biden L.C. #2020CV7092

defendants-respondents shall also have 45 minutes of oral argument time, which they shall allocate among themselves. By no later than 10:00 p.m. on December 11, 2020, counsel for defendants-respondents shall advise the clerk of this court via an email to clerk@wicourts.gov as to the allocation on which they have agreed. Due to the COVID-19 pandemic, oral arguments before the court will be conducted via videoconferencing. The hearing room will not be open to the public. The court will endeavor to make the proceedings available for viewing on the Wisconsin Eye website. Counsel in this case will receive instructions from the Marshal of this court regarding the procedures for appearing remotely.

Sheila T. Reiff
Clerk of Supreme Court

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May 5, 2020

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You are hereby notified that the Court has entered the following order:

No. 2020AP828-OA Fabick v. Palm

A petition for leave to commence an original action under Wis. Stat. § (Rule) 809.70, a motion for injunctive relief, and a combined legal memorandum in support of both the petition and the motion having been filed on behalf of petitioners, Jeré Fabick, et al.;

IT IS ORDERED that respondents, Andrea Palm, Julie Willems Van Dijk, and Nicole Safar, in their official capacities as executives of the Wisconsin Department of Health Services; Josh Kaul, in his official capacity as Attorney General of Wisconsin; David Erwin, in his official capacity as Chief of the Wisconsin State Capitol Police; David Mahoney, in his official capacity as Sheriff of Dane County, Wisconsin; Ismael Ozanne, in his official capacity as District Attorney of Dane County, Wisconsin; Eric Severson, in his official capacity as Sheriff of Waukesha County, Wisconsin; Susan Oppen, in her official capacity as the District Attorney of Waukesha County, Wisconsin; Kurt Picknell, in his official capacity as Sheriff of Walworth County, Wisconsin; and Zeke Wiedenfeld, in his official capacity as District Attorney of Walworth County, Wisconsin, shall respond to the petition and the motion by 4:00 p.m. on May 8, 2020. Any response shall be

Page 2

May 5, 2020

No. 2020AP828-OA

Fabick v. Palm

filed as an attachment in pdf format to an email addressed to clerk@wicourts.gov. See Wis. Stat. §§ 809.14, 809.80, and 809.81. The respondents shall also mail or deliver a paper original and one copy of any response to the clerk of this court with the following notation on the top of the first page: “This document was previously filed via email.”; and

IT IS FURTHER ORDERED that the petitioners may file a reply in support of the petition and the motion by 4:00 p.m. on May 11, 2020. The filing shall be accomplished in the manner set forth in the preceding paragraph; and

IT IS FURTHER ORDERED that any non-party that wishes to file a brief in support of or in opposition to the petition for leave to commence an original action and the motion for injunction must file a motion for leave of the court to file a non-party brief pursuant to the requirements of Wis. Stat. § (Rule) 809.19(7). Non-parties should also consult this court’s Internal Operating Procedure III.B.6.c. concerning the nature of non-parties who may be granted leave to file a non-party brief. A proposed non-party brief must accompany the motion for leave to file it. Any proposed non-party brief shall be limited to the issues of whether this court should grant or deny the petition and the accompanying motion for injunctive relief, and it shall not exceed 20 pages if a monospaced font is used or 4,400 words if a proportional serif font is used. Any motion for leave with the proposed non-party brief attached shall be filed no later than 4:00 p.m. on May 8, 2020. Any submission by a non-party that does not comply with Wis. Stat. § (Rule) 809.19(7) and any proposed non-party brief for which this court does not grant leave will not be considered by the court.

Sheila T. Reiff
Clerk of Supreme Court



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You are hereby notified that the Court has entered the following order:

No. 2020AP765-OA Wisconsin Legislature v. Palm

A petition for leave to commence an original action under Wis. Stat. § (Rule) 809.70, a motion for temporary injunctive relief, and a combined legal memorandum in support of both the petition and the motion having been filed on behalf of petitioner, the Wisconsin Legislature;

IT IS ORDERED that respondents, Andrea Palm, Julie Willems Van Dijk, and Nicole Safar, in their official capacities as executives of the Wisconsin Department of Health Services, shall file a response to the petition and the motion by 4:00 p.m. on April 28, 2020. The response shall be filed as an attachment in pdf format to an email addressed to clerk@wicourts.gov. See Wis. Stat. §§ 809.14, 809.80, and 809.81. The respondents shall also mail or deliver a paper original and one copy of the response to the clerk of this court with the following notation on the top of the first page: "This document was previously filed via email."; and

IT IS FURTHER ORDERED that the petitioner may file a reply in support of the petition and the motion by 4:00 p.m. on April 30, 2020. The filing shall be accomplished in the manner set forth in the preceding paragraph; and

IT IS FURTHER ORDERED that any non-party that wishes to file a brief in support of or in opposition to the petition for leave to commence an original action and the motion for temporary injunction must file a motion for leave of the court to file a non-party brief pursuant to the

Page 2

April 21, 2020

No. 2020AP765-OA

Wisconsin Legislature v. Palm

requirements of Wis. Stat. § (Rule) 809.19(7). Non-parties should also consult this court's Internal Operating Procedure III.B.6.c. concerning the nature of non-parties who may be granted leave to file a non-party brief. A proposed non-party brief must accompany the motion for leave to file it. Any proposed non-party brief shall be limited to the issues of whether this court should grant or deny the petition and the accompanying motion for temporary injunctive relief, and it shall not exceed 20 pages if a monospaced font is used or 4,400 words if a proportional serif font is used. Any motion for leave with the proposed non-party brief attached shall be filed no later than 4:00 p.m. on Wednesday, April 29, 2020. Any submission by a non-party that does not comply with Wis. Stat. § (Rule) 809.19(7) and any proposed non-party brief for which this court does not grant leave will not be considered by the court.

Sheila T. Reiff
Clerk of Supreme Court



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Supreme Court of Wisconsin

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April 6, 2020

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You are hereby notified that the Court has entered the following order:

No. 2020AP608-OA Wisconsin Legislature v. Evers

A petition for leave to commence an original action under Wis. Stat. § (Rule) 809.70, a supporting legal memorandum, and a motion for temporary injunctive relief having been filed on behalf of petitioner, the Wisconsin Legislature;

IT IS ORDERED that respondent, Tony Evers, in his official capacity as Governor of the State of Wisconsin, shall electronically file a response to the petition by 3:30 p.m. on April 6, 2020, via email addressed to clerk@wicourts.gov.

DANIEL KELLY, J., did not participate.

Sheila T. Reiff
Clerk of Supreme Court

No. 2021AP1450-OA

IN THE SUPREME COURT OF WISCONSIN

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

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

v.

WISCONSIN ELECTIONS COMMISSION, MARGE BOSTELMANN, in her official
capacity as a member of the Wisconsin Elections Commission, JULIE
GLANCEY, in her official capacity as a member of the Wisconsin Elections
Commission, ANN JACOBS, in her official capacity as a member of the
Wisconsin Elections Commission, DEAN KNUDSON, in his official capacity as
a member of the Wisconsin Elections Commission,
ROBERT SPINDELL, JR., in his official capacity as a member of the Wisconsin
Elections Commission, AND MARK THOMSEN, in his official capacity as a
member of the Wisconsin Elections Commission,
Respondents,

THE WISCONSIN LEGISLATURE, GOVERNOR TONY EVERS, in his
official capacity, AND JANET BEWLEY SENATE DEMOCRATIC MINORITY
LEADER, on behalf of the Senate Democratic Caucus,
Intervenors-Respondents.

PROPOSED JOINT DISCOVERY PLAN

Pursuant to the Court's Order of November 17, 2021, the Parties submit the following Joint Discovery Plan:

1. Scope and Subjects of Discovery; Completion.

a. Scope.

- i. Discovery shall be limited to material that is relevant to whether (and to what degree) the Parties' proposed state legislative and congressional apportionment remedial plans comply with the requirements of state and federal law and other parameters set forth in the Court's decision of November 30, 2021.

b. Fact Discovery.

- i. The parties agree that in light of stipulations and the Court's November 30 Order, at this time they do not anticipate that fact discovery is needed beyond the exchange of maps, expert disclosures, and any documents or data that a party intends to rely upon or an expert has relied upon. Noted below, government GIS and Census redistricting data are publicly available on websites maintained by the United States Census Bureau and the Wisconsin Legislative Technology Services Bureau. As indicated below, the Parties stipulate to the authenticity and admissibility of such records.

- ii. If any party seeks to take discovery, it shall do so between December 15 and 23, or otherwise by agreement of the parties or leave of court.¹
- c. **Expert Discovery.** The Parties agree that, to the extent the federal and Wisconsin rules are different, expert disclosures, reports, and discovery of communications shall be consistent with Federal Rules of Civil Procedure 26(a)(2)(B), (a)(2)(E), (b)(4), (e), as opposed to the Wisconsin rules which would otherwise be applicable.
- d. **Time to Complete Discovery.** Except as stipulated herein and as may be otherwise stipulated, discovery shall be completed by December 23, 2021.

2. Initial Disclosures.

- a. The Parties agree that by December 8, the Parties shall disclose all individuals other than experts whose testimony the party intends to use at any possible evidentiary hearing contemplated in the Court's November 17, 2021 Order. This disclosure obligation is ongoing.

3. Expert Disclosures

- a. Timing.
 - i. Initial expert disclosures shall be made on December 15, 2021.
 - ii. All Parties agree that any Party may submit an expert report as an attachment to the Responsive

¹ The Parties do not waive their rights to object to any discovery sought by any other party.

Briefs due December 30. The scope of any expert report or affidavit submitted with the Responsive Brief must be limited to rebutting initial briefs, maps, and reports.

- iii. All Parties agree that any Party may submit an expert report as an attachment to the Reply Briefs due January 4. The scope of any expert report or affidavit submitted with the Reply Brief must be limited to rebutting responsive briefs and reports.
- iv. The Parties may disclose additional experts in connection with the Parties' Responsive and Reply briefs.

b. Reports.

- i. Expert reports or affidavits shall contain all components specified in Fed. R. Civ. P. 26(a)(2)(B), including compensation and work history, as well as identification of facts, data, and assumptions relied upon, and a list of materials relied upon.
- ii. The Parties recognize that the Court previously ordered that expert reports or affidavits shall “strive for brevity and shall contain an executive summary not to exceed 1,100 words.”
- iii. Parties and experts have a duty to supplement per Fed. R. Civ. P. 26(a)(2)(E) and (e).

c. Documents and Supporting Materials.

- i. No later than the day following the disclosure of any expert report or affidavit, sponsoring Parties

must make available facts or data considered by the expert witness in forming his or her opinion otherwise not disclosed and available in the expert reports. Without limitation, this disclosure shall include any raw data (that is not otherwise clearly identified and publicly available), any modified data, r-files, statistical analysis, formulas, other backup sufficient to replicate analysis, inaccessible articles or books, and similar materials relied upon. The Parties agree to make good faith efforts to make such information available the same day as the disclosure of the expert report or affidavit.

d. Depositions.

- i. The parties agree there will be no expert depositions.

4. **Production of Maps.**

- a. Proposed maps shall be disclosed in the following formats: CSV, Shapefile, and PDF.
- b. Each CSV file must contain two fields: one that identifies all census blocks in the state, and another that identifies the district to which each census block has been assigned. File compression software shall not be used.
- c. Parties shall exchange proposed maps with the expert disclosures on December 15, 2021.

5. Production of Other Documents; Stipulations.

- a. Petitioners, the Legislature, the BLOC and Hunter Intervenor-Petitioners, the Congressmen, the Governor, the Citizen Mathematicians and Scientists, the Wisconsin Elections Commission Respondents, and Senator Bewley stipulate to the authenticity and admissibility of the 2020 Census Redistricting Data available at <https://legis.wisconsin.gov/ltsb/gis/data/> and listed under the subheadings “U.S. DOJ Summarized Fields” and “2020 TIGER Geography & P.L. 94-171 Redistricting Data as U.S. DOJ Summarized Fields.”
- b. Petitioners, the Legislature, the BLOC and Hunter Intervenor-Petitioners, the Congressmen, the Governor, the Citizen Mathematicians and Scientists, the Wisconsin Elections Commission Respondents, and Senator Bewley stipulate to the authenticity and admissibility of the relevant portions of the legislative record (including Legislative Reference Bureau and Legislative Council materials) contained on the Legislature’s website for the following bills and resolutions:
 - i. 2021 Wisconsin Senate Bill 621 (available at <https://docs.legis.wisconsin.gov/2021/proposals/reg/sen/bill/sb621> and referenced legislative journal entries).
 - ii. 2021 Wisconsin Senate Bill 622 (available at <https://docs.legis.wisconsin.gov/2021/proposals/reg/>

- sen/bill/sb622 and referenced legislative journal entries).
- iii. 2021 Wisconsin Assembly Bill 624 (available at <https://docs.legis.wisconsin.gov/2021/proposals/ab624> and referenced legislative journal entries).
 - iv. 2021 Wisconsin Assembly Bill 625 (available at <https://docs.legis.wisconsin.gov/2021/proposals/reg/asm/bill/ab625> and referenced legislative journal entries).
 - v. 2021 Senate Joint Resolution 65 (available at https://docs.legis.wisconsin.gov/2021/proposals/reg/sen/joint_resolution/sjr65 and reference legislative journal entries).
- c. The Legislature created a website relating to redistricting that, among other things, allowed the public to submit proposed maps between September 1, 2021 through October 15, 2021. This website used the domains <https://drawyourdistrict.legis.wisconsin.gov> and <https://redistricting.legis.wisconsin.gov>. Petitioners, the Legislature, the Congressmen, the Citizen Mathematicians and Scientists stipulate to the authenticity and admissibility of all materials contained at the domains <https://drawyourdistrict.legis.wisconsin.gov> and <https://redistricting.legis.wisconsin.gov> as of the date of this submission.

- d. Petitioners, the Legislature, the BLOC and Hunter Intervenor-Petitioners, the Governor, the Congressmen, the Citizen Mathematicians and Scientists, the Wisconsin Elections Commission Respondents, and Senator Bewley stipulate to the authenticity and admissibility of Executive Order #66, which can be accessed through the Legislature's website at https://docs.legis.wisconsin.gov/code/executive_orders/2019_tony_evers/2020-66.pdf.
- e. The Citizen Mathematicians and Scientists stipulate to the authenticity and admissibility of the General Election Returns from the Election Data section of the above website (<https://legis.wisconsin.gov/ltsb/gis/data/>).
- f. The Citizen Mathematicians and Scientists stipulate to the authenticity and admissibility of the CVAP (Special Tabulation by Race and Ethnicity) data for the five-year period ending in 2019, available at <https://www.census.gov/programs-surveys/decennial-census/about/voting-rights/cvap.2019.html>.
- g. The Citizen Mathematicians and Scientists stipulate to the authenticity and admissibility of the Shapefiles of American Indian Lands from the Census PL Data, titled AMIN shapefile: tl_2020_55_aiannh20.zip", which is available at https://www2.census.gov/geo/tiger/TIGER2020PL/STATE/55_WISCONSIN/55/, as well as the blockfiles of the same information, which is titled

“BlockAssign_ST55_WI_AIANNH.txt,” available at <https://www.census.gov/geographies/reference-files/time-series/geo/block-assignment-files.html>

- h. The Governor, the Wisconsin Elections Commission Respondents, and the Citizen Mathematicians and Scientists stipulate to the authenticity and admissibility of the Primary Election Returns from the Wisconsin Elections Commission, available at <https://elections.wi.gov/elections-voting/results-all>.
- i. The Parties agree to work cooperatively to join all parties where possible to the above-stipulations and to enter additional stipulations. Parties agree to enter such stipulations by January 11, 2022, and shall file those completed and additional stipulations with the Court by January 12, 2022.
- j. If the Parties contemplate substantial production of documents, other than those stipulated to above, then all production shall be in a format mutually agreed upon in a separate Electronically Stored Information (ESI) discovery protocol.

6. Service of Documents

- a. The Parties stipulate service and production of discovery by electronic mail.
- b. The Parties stipulate that publicly available government records, including for example the legislative record, need not be re-produced during the discovery phase.

7. Claims of Privilege and Work Product.

- a. The Parties agree that any documents in any format that contain privileged information or legal work product (and all copies) shall be immediately returned to the producing party if the documents appear on their face to have been inadvertently produced or if there is notice of the inadvertent production within 10 days after the producing party discovers that the inadvertent production occurred. The Parties agree that the recipient of such inadvertently produced information will not use the information, in any way, in the prosecution of the recipient's case. Further, the Parties agree that the recipient may not assert that the producing Party waived privilege or work product protection based upon the inadvertent production; however, the recipient may challenge the assertion of the privilege and seek a Court order denying such privilege.

8. Post-Briefing Procedures. Should the Court decide an evidentiary hearing “on one or more of four consecutive days beginning January 18, 2022” is necessary, the Parties may negotiate additional pretrial disclosure deadlines (*e.g.*, exhibit lists, witness lists, and the like) at a later date. The Parties offer the following comments on potential proceedings:

- a. Should the Court decide an evidentiary hearing “on one or more of four consecutive days beginning January 18, 2022” is necessary, The Legislature proposes that

Parties shall exchange written direct testimony of all fact and expert witnesses no later than January 11, 2022. The expert written direct testimony may be the experts' report(s), but is not required to be the experts' reports given the potential for written direct testimony to streamline the issues. Direct testimony would be filed with the Court no later than January 12, 2022. Absent stipulation by all Parties, witnesses for whom a sponsoring party has submitted direct testimony shall be made available for live cross-examination and re-direct.

- b. Should the Court decide an evidentiary hearing "on one or more of four consecutive days beginning January 18, 2022" is necessary, the Citizen Mathematicians and Scientists take no position on whether expert direct testimony should occur live at the hearing or be in the form of written direct testimony. If the Court prefers written direct testimony, however, the Citizen Mathematicians and Scientists submit that, for the sake of judicial economy, each Party's expert reports or affidavits serve as its written expert direct testimony and no additional written direct testimony be permitted. Absent stipulation by all Parties, witnesses for whom a sponsoring party has submitted direct testimony shall be made available for live cross-examination, re-direct, and re-cross.

- c. The Petitioners and the Congressmen state that any evidentiary hearing appears to be unnecessary, since the parties have agreed that no fact discovery is needed beyond exchange of maps, expert disclosures, and disclosure of data relied upon by experts.
- d. The BLOC and Hunter Intervenor-Petitioners, the Governor, and Senator Bewley agree with the Petitioners and the Congressmen that any evidentiary hearing appears to be unnecessary, since the parties have agreed that no fact discovery is needed beyond exchange of maps, expert disclosures, and disclosure of data relied upon by experts. Should the Court decide an evidentiary hearing “on one or more of four consecutive days beginning January 18, 2022” is necessary,” the BLOC and Hunter Intervenor-Petitioners, the Governor, and Senator Bewley propose the expert reports and affidavits submitted to the Court shall serve as the direct testimony for all witnesses, whether expert or otherwise, in this proceeding. Cross-examination of expert witnesses may be unnecessary, but the parties can make expert witnesses available if the court would like oral expert testimony.
- e. The Wisconsin Elections Commission Respondents take no position on post-briefing procedures.

Dated December 3, 2021.

Respectfully Submitted,

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STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CVS 014001

COMMON CAUSE, *et al.*
Plaintiffs,

V.

Representative DAVID R. LEWIS,
in his official capacity as Senior
Chairman of the House Select
Committee on Redistricting, et al.,
Defendants.

ORDER

THIS MATTER is presently in the remedy phase of the litigation following the Court's September 3, 2019, entry of Judgment wherein the Court declared the 2017 House and Senate plans unconstitutional and permanently enjoined Legislative Defendants and State Defendants, and their respective agents, officers, and employees, from preparing for or administering the 2020 primary and general elections for House and Senate districts in certain county groupings. As ordered in its entry of Judgment, the General Assembly has until September 18, 2019, to enact Remedial Maps for the House and Senate legislative districts for the 2020 election (hereinafter "Remedial Maps") in conformity with the Court's Judgment.

The Court, in its discretion and in furtherance of its review of any Remedial Maps enacted by the General Assembly, hereby ORDERS the following:

1. Legislative Defendants shall file with the Court by 5:00 p.m. on September 19, 2019, the newly enacted House and Senate Remedial Maps, including:
 - a. block equivalency files in .CSV format for each district and the plan as a whole;
 - b. Environmental Systems Research Institute, Inc. (ESRI) shapefiles for each district and the plans as a whole;
 - c. color maps in .PDF format of the Statewide Remedial Maps and each redrawn county grouping; and,

- d. population totals and deviations for each district based on the 2010 Census P.L. 94-171 dataset.
2. Legislative Defendants shall thereafter file with the Court by 5:00 p.m. on September 23, 2019:
 - a. Transcripts of all Senate Committee on Redistricting and Elections hearings, House Committee on Redistricting hearings, and General Assembly floor debates;
 - b. The “stat pack” for the State legislative plans in place prior to 2017, the 2017 enacted State legislative plans, and the newly-enacted Remedial Maps;
 - c. The criteria the Senate Committee on Redistricting and Elections, House Committee on Redistricting, and General Assembly applied in drawing the districts in the Remedial Maps;
 - d. The process followed by the Senate Committee on Redistricting and Elections, House Committee on Redistricting, and General Assembly in drawing and enacting the Remedial Maps, including a description of and explanation for:
 - i. the choice of a base map to begin the redrawing process in the Senate Committee on Redistricting and Elections and the House Committee on Redistricting;
 - ii. any amendments considered, whether adopted or not, and made thereto;
 - iii. the manner in which, within a redrawn county grouping, any traversal of county lines is authorized by *Stephenson I*, *Stephenson II*, *Dickson I*, and *Dickson II*;
 - iv. the efforts undertaken to draw legislative districts in the Remedial Maps that improve the compactness of the districts when compared to districts in place prior to the 2017 enacted maps, as well as the values used as to the criteria of compactness;
 - v. the efforts undertaken to draw legislative districts in the Remedial Maps that split fewer precincts, or voting districts (VTDs), when compared to districts in place prior to the 2017 enacted maps;
 - vi. the manner in which municipal boundaries were considered when drawing the districts in the Remedial Maps;
 - vii. the extent to which incumbency protection was a factor in the redrawing of a district, including the identity of the incumbent(s) for whom the base map was altered to avoid pairing incumbents in the same district, why a specific incumbent was protected, and what efforts were taken to not pair incumbents unduly in the same district;
 - viii. the extent to which partisan considerations and election results data were a factor in the drawing of the Remedial Maps;

- e. The identity of all participants involved in the process of drawing and enacting the Remedial Maps; and,
 - f. Any alternative maps considered by the Senate Committee on Redistricting and Elections, House Committee on Redistricting, or the General Assembly.
3. Any party in this case objecting to the Remedial Maps may inform the Court of its objections by filing with the Court by 5:00 p.m. on September 27, 2019, a response brief explaining the party's objections to any newly-enacted remedial district or county grouping. An objecting party may include with its response brief an alternative remedial map, subject to the same submission requirements described above for submission of the enacted Remedial Maps.
 4. Any party in this case may file with the Court by 5:00 p.m. on October 4, 2019, a reply brief to an objecting party's response brief and alternative remedial map.

In its September 3, 2019, Judgment, the Court also notified the parties of the Court's intent to appoint a referee. The parties have since provided the Court with names and qualifications of suggested referees, and the Court has communicated with and reviewed the qualifications of each of the referees suggested by the parties in this case. After a careful and thorough consideration of each candidate, the Court HEREBY NOTIFIES the parties that the Court will retain Professor Nathaniel Persily as the Referee in this matter to (1) assist the Court in reviewing any Remedial Maps enacted by the General Assembly, and (2) to develop remedial maps for the Court should the General Assembly fail to enact lawful Remedial Maps within the time allowed.

The Court is satisfied that Professor Persily has the requisite qualifications and experience to serve as the Referee in this matter. Professor Persily has beneficial experience, having served as the Special Master in the *Covington* litigation, as well as extensive and impressive practical and academic experience in the field. Professor Persily has also consulted about election matters on a bipartisan basis, has no apparent conflicts of interest, and has time available to complete the work required by his appointment as Referee in this matter.

The Court will enter a subsequent Order appointing Professor Persily as the Referee, providing instructions for his work in this matter, addressing other matters set forth in Rule 53 of the North Carolina Rules of Civil Procedure, and addressing any other outstanding scheduling and housekeeping matters.

So ORDERED, this the 13th day of September, 2019.

/s/ Paul C. Ridgeway

Paul C. Ridgeway, Superior Court Judge

/s/ Joseph N. Crosswhite

Joseph N. Crosswhite, Superior Court Judge

/s/ Alma L. Hinton

Alma L. Hinton, Superior Court Judge

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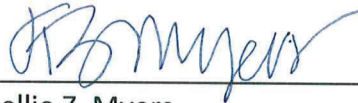
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This the 13th day of September, 2019.



Kellie Z. Myers

Trial Court Administrator – 10th Judicial District
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STATE OF NORTH CAROLINA

COUNTY OF WAKE

NORTH CAROLINA LEAGUE, OF
CONSERVATION VOTERS, INC., *et al.*,
Plaintiffs,

COMMON CAUSE,
Plaintiff-Intervenor,

v.

REPRESENTATIVE DESTIN HALL, in
his official capacity as Chair of the House
Standing Committee on Redistricting, *et*
al.,
Defendants.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 21 CVS 015426

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STATE OF NORTH CAROLINA

COUNTY OF WAKE

REBECCA HARPER, *et al.*,
Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, in
his official capacity as Chair of the House
Standing Committee on Redistricting, *et*
al.,
Defendants.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 21 CVS 500085

ORDER ON SUBMISSION OF REMEDIAL PLANS FOR COURT REVIEW

THIS MATTER is presently in the remedy phase of the litigation following the Order entered by the Supreme Court of North Carolina on February 4, 2022.

On January 11, 2022, this Court entered a Final Judgment wherein this Court upheld the constitutionality of the 2021 Enacted State Legislative and Congressional redistricting plans (hereinafter "Enacted Plans") and ordered that the candidate filing period for the 2022

primary and municipal elections be set to resume at 8:00 A.M. on February 24, 2022, and continue through 12:00 noon on March 4, 2022.

Thereafter, Harper Plaintiffs, North Carolina League of Conservation Voters Plaintiffs, and Plaintiff-Intervenor Common Cause (hereinafter collectively referred to as “Plaintiffs”) appealed this Court’s Judgment directly to the Supreme Court of North Carolina. On February 4, 2022, the Supreme Court of North Carolina entered an Order, with opinion to follow, adopting in full this Court’s findings of fact in the January 11, 2022, Judgment; however, the Supreme Court concluded that the Enacted Plans are unconstitutional under N.C. Const., art. I, §§ 10, 12, 14, and 19 and remanded the action to this Court for remedial proceedings.

The Supreme Court’s Order requires the submission to this Court of remedial state legislative and congressional redistricting plans that “satisfy all provisions of the North Carolina Constitution” (hereinafter referred to as “Proposed Remedial Plans”); both the General Assembly, and any parties to this action who choose to submit Proposed Remedial Plans for this Court’s consideration, must submit such Proposed Remedial Plans on or before February 18, 2022, at 5:00 p.m. SCONC Order ¶ 9. Following an expedited review and comment period in which parties may file and submit to this Court comments on any submitted plans by February 21, 2022, this Court must approve or adopt constitutionally-compliant remedial plans by noon on February 23, 2022.

In order to comport with the timelines established by the Supreme Court of North Carolina, and ensure that the conditions of the Supreme Court’s Order are met, this Court, in its discretion and in furtherance of its review of any Proposed Remedial Plans enacted by the General Assembly or submitted to this Court for selection, hereby ORDERS the following:

1. Notwithstanding the General Assembly having the opportunity to draw Remedial Plans in the first instance and due to the expedited timeline for the Court’s review

of any Proposed Remedial Plans, the Court, by subsequent Order, will promptly appoint a Special Master.

- a. The purpose of the appointed Special Master will be to 1) assist the Court in reviewing any Proposed Remedial Plans enacted and submitted by the General Assembly or otherwise submitted to the Court by a party to these consolidated cases; and 2) assist the Court in fulfilling the Supreme Court's directive to this Court to develop remedial maps based upon the findings in this Court's Judgment should the General Assembly fail to enact Proposed Remedial Plans compliant with the Supreme Court's Order within the time allowed.
- b. No later than 5:00 P.M. on February 9, 2022, the parties may submit to the Court names and qualifications of suggested Special Masters.
- c. The Court will thereafter appoint a Special Master by subsequent order of this Court. Such order will provide further instruction on, among other things, the data sets and files for the Proposed Remedial Plans to be submitted to the Court that will be necessary for the Special Master to assist the Court.
- d. All materials submitted to the Court pertaining to any Proposed Remedial Maps will be required to be served upon the Special Master contemporaneously when submitting the materials to the Court.

2. On February 18, 2022, in addition to submitting Proposed Remedial Plans to the Court as ordered by the Supreme Court, the General Assembly, and any party to this action submitting a Proposed Remedial Plan that it wishes for this Court to consider for selection, shall contemporaneously include in writing with its submission of Proposed Remedial Plans the information the Supreme Court has set forth in its Order pertaining to redistricting plans in general and the ordered Proposed Remedial Plans specifically. This written submission shall provide an explanation of the data and other considerations the mapmaker relied upon to create the submitted Proposed Remedial Plan and to determine that the Proposed Remedial Plans are constitutional (*i.e.*, compliant with the Supreme Court's Order), including but not limited to the following information:

- a. The results of the required initial assessment of whether a racially polarized voting analysis requires the drawing of a district in an area of the state to comply with Section 2 of the Voting Rights Act. SCONC Order ¶ 8.

- b. Whether the mapmaker adhered to traditional neutral districting criteria—specifically including the “drawing of single-member districts which are as nearly equal in population as practicable, which consist of contiguous territory, which are geographically compact, and which maintain whole counties”—and an explanation as to how the mapmaker did so without “subordinat[ing] them to partisan criteria. SCONC Order ¶¶ 6, 8. Such information may include the manner in which, within a redrawn state legislative county grouping, any traversal of county lines is authorized by *Stephenson I*, *Stephenson II*, *Dickson I*, and *Dickson II*; the efforts, if any, undertaken to draw districts in the Proposed Remedial Plans that improve the compactness of the districts as well as the values used as to the criteria of compactness; the efforts undertaken, if any, to draw state legislative districts in the Proposed Remedial Plans that split fewer precincts, or voting districts (VTDs); the manner in which municipal boundaries were considered when drawing the districts in the Proposed Remedial Plans.
- c. Whether the mapmaker considered incumbency protection and, if so, an explanation as to how “it is applied even handedly, is not perpetuating a prior unconstitutional redistricting plan, and is consistent with the equal voting power requirements of the state constitution.” SCONC Order ¶ 7. Such information may include the identity of the incumbent(s) for whom the plan was altered to avoid pairing incumbents in the same district, why a specific incumbent was protected, and what efforts were taken to not pair incumbents unduly in the same district.
- d. Whether there is a meaningful partisan skew that necessarily results from North Carolina’s unique political geography. SCONC Order ¶ 6.
- e. What methods were employed in evaluating the partisan fairness of the plan—e.g., “mean-median difference analysis, efficiency gap analysis, close-votes, close seats analysis, and partisan symmetry analysis”—as partisan fairness is defined in Paragraph 5 of the Order. SCONC Order ¶ 6.
- f. Whether the statistical metrics indicate a “significant likelihood that the districting plan will give the voters of all political parties substantially equal opportunity to translate votes into seats across the plan.” SCONC Order ¶ 6.

3. The General Assembly through Legislative Defendants, and any party to this action submitting a Proposed Remedial Plan for the Court’s possible selection, shall also contemporaneously provide the following information with the submitted Proposed Remedial Plan and the required written submission detailed above:

- a. A description of and explanation for the choice of a base map to begin the redrawing process for the Proposed Remedial Plans, as well as any

amendments or changes considered, whether adopted or not, and made thereto, and any alternative maps considered by the mapmakers. For the General Assembly, this shall also include any alternative maps considered by the Senate Committee on Redistricting and Elections, House Committee on Redistricting, or the General Assembly as a whole.

- b. In addition to the partisan analysis required by the Supreme Court's Order or this Order, the extent to which partisan considerations and election results data were a factor in the drawing of the Proposed Remedial Plans.
- c. The identity of all participants involved in the process of drawing the Proposed Remedial Plans submitted to the Court.

4. All materials required to be submitted to this Court by the Supreme Court's Order or this Order shall be submitted as provided in paragraph 3 of the December 13, 2021, Case Scheduling Order.

5. This Order is subject to supplementation through further Orders of the Court.

SO ORDERED, this the 8 day of February, 2022.



A. Graham Shirley, Superior Court Judge

/s/ Nathaniel J. Poovey

Nathaniel J. Poovey, Superior Court Judge

/s/ Dawn M. Layton

Dawn M. Layton, Superior Court Judge

CERTIFICATE OF SERVICE

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Service is made upon local counsel for all attorneys who have been granted pro hac vice admission, with the same effect as if personally made on a foreign attorney within this state.

This the 8th day of February 2022.

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March 27, 2019

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You are hereby notified that the Court has entered the following order:

2019AP559

The League of Women Voters v. Tony Evers
(L. C. 2019CV84)

Before Stark, P.J., Hruz and Seidl, JJ.

App.073

The Wisconsin Legislature (the Legislature) moves to stay a temporary injunction issued by the Dane County Circuit Court in a lawsuit filed against Wisconsin Governor Tony Evers (the Governor) by The League of Women Voters of Wisconsin, Disability Rights of Wisconsin, Inc., Black Leaders Organizing for Communities, Guillermo Aceves, Michael Cain, John Greene, and Michael Doyle (collectively, the Plaintiffs), pending the Legislature's appeal of that injunction. The Plaintiffs' lawsuit seeks a declaratory judgment that a December 2018 extraordinary session held by the Legislature after the last scheduled floorperiod of the 2018 regular session, was unconstitutionally convened. Specifically, the Plaintiffs are challenging three legislative acts passed and eighty-two confirmations made during the extraordinary session on the grounds that the Legislature was not meeting at such time as provided by law, as required by WIS. CONST. art. IV, WIS. STAT. § 11. The circuit court permitted the Legislature to intervene in the declaratory judgment action as a defendant.

The legislature has provided by law, in WIS. STAT. § 13.02, that the legislature "shall meet annually," and that its "regular session" shall commence on the first Tuesday after the eighth day of January each year unless otherwise provided in § 13.02(3), which in turn authorizes the legislature's joint committee on legislative organization to provide a "work schedule" for the legislative session, to be submitted as a joint resolution. The work schedule adopted by the legislature in 2017 Senate Joint Resolution 1 provides that the biennial session period of 2017 shall end on January 7, 2019, and that every day of the biennial session period not scheduled as a floorperiod or day to conduct an organizational meeting is available to convene an extraordinary session.

In a nutshell, the Plaintiffs' central position is that the only meeting of the legislature whose time is provided by law is the regular session, and that the 2018 regular session ended

with an adjournment sine die following the last scheduled floor period. The Legislature's central position is that meetings of the legislature are not limited to regular sessions and can include extraordinary sessions as authorized by the work schedule in the joint resolution that itself was created pursuant to statute.

The court issued a temporary injunction that prohibits the Governor and the Legislature from enforcing any legislation that was enacted, or any confirmation of a nominee for state office that occurred, during the extraordinary session, while the declaratory judgment action is pending. The court contemporaneously denied the Legislature's request to stay the injunction pending appeal. The Legislature has now filed an appeal as of right challenging the temporary injunction, as well as the present motion seeking emergency review of the circuit court's denial of a stay. This court has permitted the Department of Justice (DOJ) to participate on the motion for relief pending appeal because the underlying case involves a challenge to the constitutionality of several statutes.

This court has the power to stay a judgment, grant an injunction, or enter other orders to preserve the existing state of affairs or the effectiveness of a judgment subsequently to be entered. WIS. STAT. § 808.07(2)(a) (2017-18).¹ Because the Legislature first sought relief in the circuit court under the procedure set forth in § 808.07(2)(a)3. and WIS. STAT. RULE 809.12, we review the circuit court's decision to deny a stay pending appeal under an erroneous exercise of discretion standard. *State v. Gudenschwager*, 191 Wis. 2d 431, 439-40, 529 N.W.2d 225 (1995). We will sustain a discretionary determination as long as the court examined the relevant

¹ All references to the Wisconsin Statutes are to the 2017-18 version.

facts, applied a proper standard of law, and employed a demonstrated rational process to make a conclusion a reasonable judge could reach. *Id.* at 440.

The criteria for staying a judgment are that: (1) the moving party is likely to succeed on the merits; (2) the moving party will suffer irreparable harm if the stay is not granted; (3) no substantial harm will come to the other interested parties if the stay is granted; and (4) the stay would not harm the public interest. *Id.* These factors are interrelated and must be balanced on a case-by-case basis. *Id.*

“[T]he probability of success that must be demonstrated is inversely proportional to the amount of irreparable injury the [movant] will suffer absent the stay,” but must in any case be more than a “mere ‘possibility.’” *Id.* at 441 (citation omitted). It does not require a finely calibrated evaluation of the merits, or even a determination that it is more likely than not than an appeal would succeed. *Id.* The likelihood of success on appeal may instead be based upon the standard of review or any applicable legal presumption that may apply in a particular case. *See Scullion v. Wisconsin Power & Light Co.*, 2000 WI App 120, ¶¶18-23, 237 Wis. 2d 498, 614 N.W.2d 565. An alleged irreparable injury “must be evaluated in terms of its substantiality, the likelihood of its occurrence, and the proof provided by the movant.” *Gudenschwager*, 191 Wis. 2d at 441-42.

As a threshold matter, we observe that some parties have conflated the Plaintiffs’ likelihood of success on the underlying declaratory judgment action with the Legislature’s likelihood of success in challenging the temporary injunction on appeal. This confusion seemingly arises from the procedural posture of this case, where we have a motion for a stay within an interlocutory appeal of a temporary injunction. To clarify, this court’s present focus is

on whether the circuit court properly denied the Legislature's request for a stay pending appeal (taking into account an analysis of the merits of the temporary injunction), not whether it properly granted the Plaintiffs a temporary injunction (taking into account the likelihood of success on the declaratory judgment action). The latter question goes to the merits of the appeal, which will be addressed after full briefing.

We further note that some parties have framed their harm arguments for the second, third and fourth *Gudenschwager* factors in terms of injuries they believe are caused, or benefits that are accomplished by, the legislative acts passed during the extraordinary session. We emphasize that it is not our role to determine the wisdom of the legislation itself. Rather, our evaluation of the second, third and fourth factors balances any harm that might result in the absence of a stay in the event that the decision on appeal is ultimately reversed against any harm that might result from the imposition of a stay in the event that the decision on appeal is ultimately affirmed.

That being said, we recognize that the interests at stake in a particular case do not always fit squarely within one of the enumerated factors in *Gudenschwager*. Here, the evaluation of the potential harms from granting or denying a stay is complicated by the fact that the Governor and the Legislature have taken different positions on behalf of the State, and each asserts conflicting public interests. Furthermore, the fact that the Legislature and the Governor each represent the State necessarily conflates their interests with those of the public. As a practical matter then, the balancing test as a whole must be flexible enough to accommodate some variation regarding under which of the final three factors a particular alleged harm is discussed. Flexibility as to where a particular harm is discussed does not alter a movant's overall burden to address any facts relevant to one of the required factors in some manner, and to ultimately demonstrate that all of the combined factors favoring a stay outweigh all of the combined factors opposing a stay.

We turn next to an evaluation of the circuit court's exercise of discretion in this case. The court explicitly considered each of the four *Gudenschwager* factors before denying the Legislature's request for a stay. The court first determined the Legislature had shown "no likelihood of success on appeal" based upon the same analysis of the merits of the underlying declaratory judgment action that the court had just employed in its decision to grant a temporary injunction. As to the second factor, the court reasoned that the Legislature suffered no irreparable injury because there is no law preventing it "from promptly reintroducing and passing the laws proposed in Acts 368, 369 and 370 during scheduled regular sessions in the current biennial period." The court characterized the Legislature's argument on the third factor as "an alarmist domino-theory collapse of laws previously produced by 'extraordinary sessions.'" It determined that the theory was purely speculative and unsupported by either the law or the facts of record. Finally, the court concluded that the public would be harmed by a stay, relying again on its conclusion regarding the merits of the Plaintiffs' claims, and further stating there was nothing "more destructive to Wisconsin's constitutional democracy than for courts to abdicate their constitutional responsibilities by knowingly enforcing unconstitutional and, therefore, non-existent laws."

We conclude that the circuit court erroneously exercised its discretion by misapplying the first two of the *Gudenschwager* factors. First, regarding the likelihood of success on appeal, the Legislature argues that the circuit court failed to provide the challenged legislative acts a presumption of constitutionality generally accorded to duly enacted statutes and otherwise ran afoul of separation of powers concerns. The other parties respond that the acts are not entitled to the presumption because they are being challenged on a procedural basis—that is to say, that they were not duly enacted. We conclude it is unnecessary to resolve that dispute here because,

regardless whether a presumption applied, the issue presented in the underlying lawsuit is still a constitutional question of first impression that will be subject to de novo review on appeal. The circuit court's failure to factor into its analysis that the underlying case presents an issue of first impression, in turn, caused the circuit court to underestimate the Legislature's chance of prevailing on its challenge to the temporary injunction. It was not necessary for the court to conclude that the Legislature was more likely than not to prevail on its appeal of the injunction; only that there was more than a "mere possibility" that it would do so. *Gudenschwager*, 191 Wis. 2d at 441. This is especially so given our following discussion of the second factor, which we find to be paramount.

Second, regarding alleged irreparable harm to the legislature in the absence of a stay, the circuit court erred in evaluating such alleged irreparable harm under the presumption that the challenged acts and confirmations would ultimately be found invalid, and it failed to evaluate the alleged irreparable harm that could result from enjoining legislative acts and confirmations that may ultimately be found to be valid, such that those acts and confirmations would continue in effect subsequent to their effective dates. We acknowledge that not all of the potential harms the Legislature alleges are equally persuasive. For instance, the Legislature's claim that, in the absence of a stay, there will be an avalanche of new challenges to other legislative acts that were enacted during other extraordinary sessions is completely inapposite because, of course, a stay of the legislative acts and confirmations at issue in this case would in no way prevent the filing of any other such lawsuits. However, the alleged irreparable harm that we deem to be the most significant is the claim that the people of a state always suffer a form of irreparable harm any time statutes enacted by their representatives are enjoined. This claim of an intangible

representational injury is the flip side of the potential harm that the circuit court recognized that would result from enforcing an invalid law, and it is no less powerful.

Taking into account the circuit court's underestimation of the Legislature's likelihood of success on appeal and the irreparable injury that could result in the absence of staying a temporary injunction that prohibits enforcement of potentially valid legislation and appointments, we conclude the court's balancing of the four *Gudenschwager* factors was inherently flawed. We conclude the first two factors outweigh any potential harms to any parties identified in the third and fourth factors. Therefore, we grant the requested stay.

Therefore,

IT IS ORDERED that the temporary injunction issued by the circuit court on March 21, 2019, is hereby stayed pending the Legislature's appeal.

IT IS FURTHER ORDERED that this appeal shall be expedited. The record shall be transmitted within three business days from this order, unless one of the parties promptly advises us that there are additional transcripts that need to be produced. The Legislature's initial appellant's brief and appendix shall be due April 10, 2019, the response briefs of the respondents and the DOJ shall be due April 23, 2019, and the Legislature's reply brief shall be due April 30, 2019.

IT IS FURTHER ORDERED that this order will be disseminated solely by email or fax to those parties who have provided such contact information to the court.

Sheila T. Reiff
Clerk of Court of Appeals