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**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.*

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# PETITIONERS' BRIEF IN SUPPORT OF REMEDIAL MAPS

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## ISSUES PRESENTED

1. Whether the Petitioners' remedial maps, submitted along with this brief and other supporting materials in accordance with the Court's December 22, 2023 Order, satisfy the redistricting requirements of state and federal law described in the Court's December 22, 2023 opinion.

2. Whether the Petitioners' remedial maps satisfy the traditional redistricting criteria described in the Court's Opinion.

3. Whether the Petitioners' remedial maps are politically neutral.

## STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Oral argument is not warranted at this phase of the litigation under the standards in Wis. Stat. § (Rule) 809.22 and pursuant to the Court's December 22, 2023 Order.

Publication is proper under the standards in Wis. Stat. § (Rule) 809.23(1) because the issues raised here are of statewide import and will provide guidance relevant to future decennial redistricting and litigation.

## STATEMENT OF THE CASE

On December 22, 2023, the Court held that Wisconsin's legislative maps violate the state constitution. *Clarke v. Wis. Elections Comm'n*, 2023 WI 79, ¶3, __ Wis. 2d __, 998 N.W.2d 370 (Dec. 22, 2023). Having found the maps unconstitutional, the Court urged the Legislature to create new maps that satisfy all constitutional requirements. *Id.*, ¶4. However, mindful of the need to have constitutional maps in place in time to comply with all legal requirements necessary to prepare for and administer the November 2024 General Election and the possibility that the Legislature might not pass new maps, the Court invited the parties to submit proposed remedial maps for the Court's review and, if necessary, selection. *Id.*, ¶¶4, 58, 75-76. In a separate order issued the same day, the Court detailed the process and appointed two qualified consultants to assist the Court in the remedial phase, while emphasizing that the Court must adopt remedial maps in the absence of a legislative solution. Order, *Clarke v. Wisconsin Elections Comm'n*, No. 23AP1399-OA (Wis. Dec. 22, 2023); *Clarke*, 2023 WI 79, ¶58 ("If the legislative process does not result in remedial legislative maps, then it will be the job of this court to adopt remedial maps.").

The Court's decision addressed the various constitutional and traditional criteria that the Court, like other courts addressing remedial redistricting, would consider. *Id.*, ¶¶63-70. Districts must be (1) nearly equal in population, (2) contiguous, and (3) compact. *Id.*, ¶65. In addition, assembly districts must be "bounded by county, precinct, town or ward lines," which the Court applies by

considering the extent to which assembly districts split counties, towns, and wards. *Id.*, ¶66. Assembly districts must also meet the numbering and nesting requirements of Article IV, Sections 2, 4, and 5. *Id.*, ¶65. Additionally, legislative maps must meet the requirements of federal law, including complying with the Equal Protection Clause and the Voting Rights Act of 1965. *Id.*, ¶67. The Court also said it would consider traditional redistricting criteria including reducing municipal splits and preserving communities of interest. *Id.*, ¶68. Finally, to maintain its constitutional role as the only politically neutral branch of government, the Court indicated it would consider partisan information to avoid selecting a remedial map designed to favor voters of a single political party over other Wisconsin voters. *Id.*, ¶71.

In accordance with the Court's December 22, 2023 opinion, the contemporaneous order, and the December 26, 2023 letter from the Court-appointed consultants identifying technical requirements, the Clarke Petitioners submit, along with this brief, proposed remedial maps for the Wisconsin Assembly and Wisconsin Senate ("Clarke assembly map" and "Clarke senate map" and, collectively "Clarke maps"). The Clarke maps meet all criteria set forth in the Court's opinion while remedying the endemic noncontiguity that rendered the current[1] maps unconstitutional.

The Clarke maps are supported not only by this brief, but also by the expert reports of professors Christopher Warshaw and Aaron Weinschenk, and by the

[1] "Current map" or "current maps" as used in this brief refer to the maps enjoined by the Court. *Clarke*, 2023 WI 79, ¶3.

Declaration of Keith Gabbie. Prof. Warshaw is a nationally renowned political scientist and statistician, whose work focuses on "public opinion, representation, elections, and polarization in American Politics." App. 010 (Warshaw). Prof. Warshaw is widely published in this area and has provided expert analyses in eleven redistricting-related cases. App. 008-010 (Warshaw). Prof. Warshaw explains that the Clarke maps satisfy the legal requirements of population equality, contiguity, compactness, and nesting, while also respecting county, town, or ward lines. App. 012-021 (Warshaw). Moreover, Prof. Warshaw found that the Clarke maps contain relatively few municipal splits and are politically neutral based on widely accepted metrics. App. 015-017, 022-029 (Warshaw).

Prof. Weinschenk is a tenured professor at the University of Wisconsin-Green Bay, where he serves as the Chair of Political Science. App. 061 (Weinschenk). Prof. Weinschenk's academic research focuses on "voting, campaigns and elections, political participation, public opinion, and political psychology." App. 061 (Weinschenk). Prof. Weinschenk has been widely published on those topics. App. 061 (Weinschenk). Much of Prof. Weinschenk's work is focused on Wisconsin, about which he has written extensively. Prof. Weinschenk has also been involved in applied work regarding Wisconsin communities. App. 061-062 (Weinschenk). Prof. Weinschenk's opinions in this case focus on Wisconsin's communities of interest. He describes how the current assembly and senate districts divide communities throughout the state and how the Clarke maps

preserve those communities of interest by placing them within legislative districts, thereby promoting representative governance in the state. App. 064 (Weinschenk).

The Clarke maps are also supported by declaration of Prof. Ronald Keith Gaddie. Prof. Gaddie is the Hoffman Endowed Chair and Professor of Political Science at Texas Christian University in Fort Worth, Texas, and has authored several books on elections, campaigns and voting rights. For 13 years, Prof. Gaddie has served as a redistricting and election law expert and consultant, and is particularly knowledgeable regarding Wisconsin's legislative districts, having served as an expert in *Baldus v. Members of the Government Accountability Board* on behalf of the defendants in that case, the Wisconsin Government Accountability Board. Prof. Gaddie has assessed the Clarke Petitioners' proposed maps and finds them to be responsive and politically neutral. App. 125-126 (Gaddie).

The Clarke maps perform well on each of the criteria the Court has identified. Should the Legislature be unable, or unwilling, to pass constitutional maps, the Court should select these remedial maps for use in future Wisconsin legislative elections.

## ARGUMENT

### I. The Clarke maps satisfy the redistricting requirements of state and federal law.

The Clarke maps satisfy the redistricting requirements of state and federal law, including: (1) population equality; (2) contiguity; (3) being bounded by county,

town, or ward lines; (4) compactness; (5) nesting of assembly districts within senate districts; and (6) the Equal Protection Clause and Voting Rights Act.

### A. The Clarke maps satisfy the equal-population requirement.

The Clarke maps satisfy the equal population requirement. A court-imposed remedial map is "held to a higher standard than state legislatures" in equally populating districts and must have "little more than de minimis variation" in district population. *Clarke*, 2023 WI 79, ¶64 (internal citation omitted). In its discussion of the redistricting principles guiding the remedial process, this Court cited several court-imposed remedial maps in Wisconsin with overall deviations ranging from 0.52% to 1.88% as satisfying this de minimis standard. *See id.*; *see also Johnson v. Wis. Elections Comm'n*, 2022 WI 14, ¶36, 400 Wis. 2d 626, 971 N.W.2d 402 ("*Johnson II*"), *overruled on other grounds*, *Clarke*, 2023 WI 79. The Court also observed that "[b]elow 1 percent, there are no legally or politically relevant degrees of perfection." *Clarke*, 2023 WI 79, ¶64 (quoting *Prosser v. Elections Bd.*, 793 F. Supp. 859, 866 (W.D. Wis. 1992)).

The Clarke maps meet this standard. The Clarke assembly map has an overall population deviation (from the district with the lowest population to the district with the highest population) of 0.92% and an average deviation per district of just 0.23%. App. 012-013 (Warshaw). The Clarke senate map has an overall population deviation of 0.65% and an average deviation per district of just 0.14%. App. 013 (Warshaw). These population deviations fall on the low end of the range of prior

court-imposed or legislatively enacted redistricting maps in Wisconsin, as the chart below shows.

**Wisconsin Assembly Map Population Deviations**

| **Map** | **Average Deviation** | **Maximum Deviation** |
|---|---|---|
| 1992 *Prosser* court-imposed | Not available[2] | 0.91% |
| 2002 *Baumgart* court-imposed | Not available | 1.59% |
| 2011 Act 43 | 0.16% | 0.76% |
| 2022 *Johnson II* court-imposed | 0.47% | 1.88% |
| 2022 *Johnson III* court-imposed | 0.19% | 0.76% |
| **2024 Clarke Map** | **0.23%** | **0.92%** |

**Wisconsin Senate Map Population Deviations**

| **Map** | **Average Deviation** | **Maximum Deviation** |
|---|---|---|
| 1992 *Prosser* court-imposed | Not available | 0.52% |
| 2002 *Baumgart* court-imposed | Not available | 0.98% |
| 2011 Act 43 | 0.09% | 0.62% |
| 2022 *Johnson II* court-imposed | 0.25% | 1.21% |
| 2022 *Johnson III* court-imposed | 0.10% | 0.57% |
| **2024 Clarke Map** | **0.14%** | **0.65%** |

App. 013 (Warshaw).

The Clarke maps satisfy the de minimis population-deviation requirements for court-imposed remedial maps.

[2] This information was not available from expert reports from litigation over certain prior maps.

### B. The Clarke maps have contiguous districts.

The Clarke maps have contiguous districts. Districts satisfy the Wisconsin Constitution's contiguity requirements where their territory is "touching such that one could travel from one point in the district to any other point in the district without crossing district lines." *Clarke*, 2023 WI 79 ¶66. This standard permits districts containing physical islands (land separated from the rest of the district by water) and districts containing territory that meets only at single a "touch point." *Id.* ¶¶27-29.

The Clarke maps are 100% contiguous. To be clear, several districts bordering water (*e.g.* Lake Superior, Lake Michigan, Green Bay, and Lake Winnebago) include actual islands, a feature that complies with the contiguity requirement.[3] *Clarke*, 2023 WI 79, ¶27; App. 018-019 (Warshaw). One assembly district and its corresponding senate district (assembly district 54) (senate district 18) also contain a single ward that connects at a "touch point" to the rest of the district. This is because the districts are bounded by the boundary line separating the Town of Buchanan and the Village of Combined Locks in Outagamie County. App. 019 (Warshaw). The Town of Buchanan contains a single ward (Ward 7), with zero population, that meets at a point with the rest of the Town. App. 019 (Warshaw). That single instance of touch-point contiguity is within the boundaries of a town—as opposed to connecting two distinct towns by touch point—and does not affect the

[3] These districts are Clarke assembly districts 1, 21, 36, 42, 52, 57, 73, 74, and 88 and Clarke senate districts 1, 7, 12, 14, 18, 19, 25, and 30. App. 018-019 (Warshaw).

district's compactness and satisfies the contiguity requirement. *See Clarke*, 2023 WI 79, ¶¶28-29; App. 019 (Warshaw).

The Clarke maps fully comply with the Constitution's contiguity requirements.

### C. The Clarke maps' districts are bounded by county, town, or ward lines.

The Clarke maps satisfy the constitutional requirement that assembly districts be "bounded by county, [] town or ward lines." Wis. Const. art. IV, § 4. In assessing a remedial map's compliance with this requirement, this Court "considers the extent to which assembly districts split counties, towns, and wards (particularly towns and wards as the smaller political subdivisions), although [it] no longer interpret[s] the requirement to entirely prohibit any splitting of the enumerated political subdivisions." *Clarke*, 2023 WI 79, ¶66.

The Clarke maps score particularly well in this regard. Every district in the Clark assembly map has outer boundaries that follow a county, town, or ward line. App. 013 (Warshaw). And the maps minimize county, town, and ward splits.

#### 1. The Clarke maps minimize county splits.

The Clarke maps minimize the number of county splits, outperforming on this metric all prior maps extending back more than 30 years. The Clarke assembly map splits 44 counties. App. 014 (Warshaw). The Clarke senate map splits 34

counties. App. 014 (Warshaw).[4] As shown in the chart below, this is substantially fewer county splits than prior maps have included.

**Wisconsin Assembly Plans County Splits[5]**

| **Map** | **No. of Counties Split** | **Total Splits** | **Number of Districts Within Split Counties** |
|---|---|---|---|
| 1992 *Prosser* court-imposed | 47 | Not available | Not available |
| 2002 *Baumgart* court-imposed | 51 | Not available | Not available |
| 2011 Act 43 | 58 | 177 | 235 |
| 2022 *Johnson II* court-imposed | 53 | 177 | 230 |
| 2022 *Johnson III* court-imposed | 53 | 159 | 212 |
| **2024 Clarke Map** | **44** | **152** | **196** |

[4] One of these 34 is Monroe County, and it is only split by a single Census Block with zero population. This is to keep the Village of Ontario—primarily located in Vernon County with a single unpopulated Census Block extending into Monroe County—whole. App. 014 (Warshaw).

[5] "Total Splits" refers to the number of lines through a political subdivision, *i.e.*, a county containing two districts is split once. "Number of Districts Within Split Counties", which Prof. Warshaw describes as "Split district-county intersections," refers to the number of districts contained within all the split political subdivisions reported in a chart.

**Wisconsin Senate Plans County Splits**

| **Map** | **No. of Counties Split** | **Total Splits** | **Number of Districts Within Split Counties** |
|---|---|---|---|
| 1992 *Prosser* court-imposed | 35 | Not available | Not available |
| 2002 *Baumgart* court-imposed | 42 | Not available | Not available |
| 2011 Act 43 | 47 | 88 | 135 |
| 2022 *Johnson II* court-imposed | 45 | 92 | 137 |
| 2022 *Johnson III* court-imposed | 42 | 73 | 115 |
| **2024 Clarke Map** | **34** | **73** | **107** |

App. 014 (Warshaw).

**2. The Clarke maps minimize town splits.**

The Clarke maps also minimize town splits. This Court has emphasized the importance of avoiding splits of Wisconsin's towns (relative to counties, cities, or villages), because they are included in the Constitution's "bounded" provision (unlike cities and villages) and are smaller with fewer residents. *See Clarke*, 2023 WI 79, ¶66; *Johnson v. Wis. Elections Comm'n*, 2021 WI 87, ¶35, 399 Wis. 2d 623, 967 N.W.2d 469 ("*Johnson I*"), *overruled on other grounds*, *Clarke*, 2023 WI 79 (noting that "the smaller the political subdivision, the easier it may be to preserve its boundaries"). The Clarke maps split fewer towns than the current maps, as shown below.

**Assembly Map Town Split Comparison**

| **Map** | **No. of Towns Split** | **Total Splits** |
|---|---|---|
| 2022 *Johnson III* court-imposed | 16 | 16 |
| **2024 Clarke Map** | 10 | 13 |

**Senate Map County Split Comparison**

| **Map** | **No. of Towns Split** | **Total Splits** |
|---|---|---|
| 2022 *Johnson III* court-imposed | 8 | 8 |
| **2024 Clarke Map** | 6 | 7 |

App. 015 (Warshaw).

Notably, the few towns split by the Clarke maps include two that have been or will soon be absorbed by other municipalities—the Town of Madison and the Town of Blooming Grove in Dane County.[6] App. 017, 037, 039 (Warshaw). Although the Town of Madison existed in the 2020 LTSB redistricting data file, it no longer exists in reality—it was attached to the Cities of Madison and Fitchburg in October 2022. App. 017 (Warshaw). The Town of Blooming Grove, also, will cease to exist as of 2027 when it is absorbed into the City of Madison. App. 017 (Warshaw). Of the towns that still exist today, the Clarke assembly map actually splits only 9 and the senate map splits only 7.

[6] These are the only towns split into more than two pieces.

### 3. The Clarke map splits a single ward—a Town of Madison ward—that no longer exists.

The Clarke maps split only a single ward—Town of Madison Ward 3. App. 017 (Warshaw). The bulk of this ward is in Clarke assembly district 47 with two small noncontiguous pieces of the ward in Clarke assembly district 78. Like the Town of Madison, this ward exists only as part of the 2020 LTSB redistricting data set, which predated the ward's dissolution on October 31, 2022. As Prof. Warshaw explains, the City of Madison has since absorbed Town of Madison Ward 3 and replaced its noncontiguous pieces with individual wards of the City of Madison. App. 017-018 (Warshaw). As a result, while this "counts" as a ward split within the 2020 LTSB redistricting dataset, it has no relevance in the real world. The Clarke maps "split" this ward because of its complicated geography—it stretched a significant distance and interlocked with City of Madison Ward 91 which in turn had noncontiguous pieces of Town of Middleton Ward 8 within its border. App. 018 (Warshaw). "Splitting" it improved the compactness of the districts and minimized municipal splits of still-extant municipalities. Given that the ward and its municipality no longer exist—and its replacement ward boundaries in effect today are *not* split by the Clarke maps, its illusory split was a prudent decision.

Moreover, even accepting Town of Madison Ward 3 as one to consider, splitting it does not affect the conclusion that every district in the Clarke maps is bounded by county, town, or ward lines. The ward itself is noncontiguous, and its pieces are located within the interior area of Clarke assembly districts 47 and 78.

Splitting this ward thus does not cause the exterior boundaries of either district to depart from their adherence to county, town, or ward lines. App. 019 (Warshaw).[7]

**D. The Clarke maps have compact districts.**

The Clarke maps have compact districts. Article IV, Section 4 of the Wisconsin Constitution requires that assembly districts be "in as compact form as practicable," but Article IV, section 5 contains no compactness requirement for senate districts. "[T]he constitutional text furnishes some latitude in meeting this requirement." *Johnson I*, 2021 WI 87, ¶37. "Compactness is generally defined as 'closely united in territory,' although this court has never adopted a particular measure of compactness." *Clarke*, 2023 WI 79, ¶66 (quoting *Wisconsin State AFL-CIO v. Elections Bd.*, 543 F. Supp. 630, 634 (E.D. Wis. 1982)). In *Johnson II*, this Court observed that once a map passes the bar of being sufficiently compact to satisfy the constitutional requirement, "better performance ... becomes commendable, but not constitutionally required." *Johnson II*, 2022 WI 14, ¶35.

Two commonly used metrics for compactness are the "Reock" score—which measures the ratio of a district's area to its smallest surrounding circle—and the "Polsby-Popper" score—which focuses on the length of the perimeter of a district. Higher scores generally reflect more compact districts. App. 020 (Warshaw). As Prof. Warshaw explains, the Polsby-Popper score in particular—with its emphasis on the length of the perimeter of a district's boundary—is affected by irregular

[7] Consistent with the parties' stipulation, we do not report here "splits" of the wards with erroneous ward fragments in the LTSB redistricting data set.

boundaries found along water and of many of Wisconsin's municipalities. App. 020-021 (Warshaw). Better adhering to municipality boundaries thus may have the effect of the Polsby-Popper score decreasing—warranting care in interpreting its values. App. 021 (Warshaw).

Notably, the Clarke maps both exceed the Reock and Polsby-Popper scores of the current maps, which this Court found sufficient to satisfy the constitutional compactness requirement in *Johnson III*. *Johnson v. Wis. Elections Comm'n*, 2022 WI 19, ¶70, 401 Wis. 2d 198, 972 N.W.2d 559 ("*Johnson III*"). They also exceed the scores for the map the Governor proposed in *Johnson*, which this Court initially adopted and found to be sufficiently compact in *Johnson II*. *Johnson II*, 2022 WI 14, ¶36; App. 020 (Warshaw). A comparison of compactness scores is shown in the table below.

**Assembly Map Compactness Score Comparison**

| **Map** | **Polsby-Popper Score** | **Reock Score** |
|---|---|---|
| 2002 *Baumgart* court-imposed | 0.29 | 0.41 |
| 2011 Act 43 | 0.231 | 0.392 |
| 2022 *Johnson II* court-imposed | 0.250 | 0.400 |
| 2022 *Johnson III* court-imposed | 0.243 | 0.382 |
| **2024 Clarke Map** | **0.302** | **0.406** |

**Senate Map Compactness Score Comparison**

| **Map** | **Polsby-Popper Score** | **Reock Score** |
|---|---|---|
| 2011 Act 43 | 0.200 | 0.403 |
| 2022 *Johnson II* court-imposed | 0.216 | 0.394 |
| 2022 *Johnson III* court-imposed | 0.224 | 0.397 |
| **2024 Clarke Map** | **0.253** | **0.404** |

App. 020 (Warshaw).

The Clarke maps satisfy the compactness requirement.

### E. The Clarke maps comply with the requirement of nested assembly districts.

The Clarke maps comply with the requirement of Article IV, Section 5 that assembly districts be nested within senate districts. That is, each senate district within the Clarke map contains three assembly districts, and "no assembly district [is] divided in the formation of a senate district." Wis. Const. art. IV, § 5; App. 021 (Warshaw).[8]

### F. The Clarke maps comply with the Equal Protection Clause and Voting Rights Act.

The Clarke maps comply with the federal Constitution's Equal Protection Clause and the Voting Rights Act. These issues were thoroughly litigated in *Johnson*, including at the U.S. Supreme Court. *See Wisconsin Legislature v. Wis. Elections Comm'n*, 595 U.S. 398 (2022) (per curiam). In *Johnson*, the parties disputed whether the Voting Rights Act required the creation of a seventh Black opportunity district in the state assembly. *See Johnson III*, 2022 WI 19, ¶58. The U.S. Supreme Court held that this Court had not sufficiently supported its decision imposing an assembly map that had intentionally created such a district consistent with the requirements of the Equal Protection Clause. *Wisconsin Legislature*, 595 U.S. at 404-06. On remand, this Court concluded that there was not "a 'strong basis in evidence'" that the VRA requires the use of race to draw majority-black

[8] To the extent an odd-numbered senator was to no longer reside in the district they represent, they continue to represent that district until the next election held in that district. 72 Wis. Op. Atty. Gen. 172, 172-176 (1983).

legislative districts." *Johnson III*, 2022 WI 19, ¶30. Accepting the Legislature's assertion, this Court concluded in *Johnson III* that the "Legislature utilized 'race-neutral' criteria to draw districts in the Milwaukee area." *Id.*, ¶48. The Court likewise concluded that the configuration was legally compliant and that there was no evidence that the Voting Rights Act required any alteration to the Milwaukee City districts in dispute in the litigation. *Johnson III*, 2022 WI 19, ¶59.

Given the Legislature's assertion of race-neutrality, this Court's finding that this assertion was true, and this Court's conclusion with respect to the VRA compliance of the relevant districts in *Johnson III*, the Clarke maps simply import the configuration of the City of Milwaukee assembly and senate districts in the *Johnson III* map.[9]

The Clarke maps are race-neutral and thus comply with the federal Constitution's Equal Protection Clause. And, in light of this Court's *Johnson III*

[9] The parties have agreed to use a dataset that includes Census Block assignments for wards in this case; in *Johnson* the parties used a geographic "shapefile" of the wards. The "block assignment file" is more precise, in that it specifically assigns Census Blocks to wards, rather than relying on projection of geographic shapes onto a map. In checking to ensure that the Clarke maps adhere to ward boundaries using the stipulated block assignment file, it was discovered that a number of zero-population census blocks (usually fragments of streets) were misassigned in the current maps in the City of Milwaukee districts. So as to not split these wards, the Clarke maps make these minor technical corrections in the City of Milwaukee. Doing so affects zero population, is race neutral, and respects ward boundaries.

The only assembly districts within any part in the City of Milwaukee's boundaries in the current map that vary from their configuration in the Clarke map are Assembly Districts 20 and 84. These districts are outside the area of the City that was at issue in *Johnson*'s discussion of the Equal Protection Clause and the Voting Rights Act, and their changes are race-neutral. District 84 in the current map contains a noncontiguous piece of District 15 and must be altered to comply with this Court's decision. District 20's alteration ensures that the Cities of St. Francis, Cudahy, and South Milwaukee, which form a community of interest, App. 068-069 (Weinschenk), are included in a single assembly district.

decision regarding the absence of a Voting Rights Act violation with respect to that configuration and the absence of any suggestion (much less any claim) to the contrary in this case, the Clarke maps likewise comply with the Voting Rights Act.

## II. The Clarke maps follow other traditional redistricting criteria.

In addition to meeting the criteria required by federal or state law, the Clarke maps meet the other traditional redistricting criteria the Court has identified in its order. The Clarke maps do this by minimizing municipal splits—reducing the number of splits in the current maps—and respecting and preserving Wisconsin's communities of interest.

### A. The Clarke maps have few municipal splits.

Legislative maps should avoid splitting municipalities—towns, cities, and villages—more than necessary to meet other districting criteria. *Clarke,* 2023 WI 79, ¶68 & n.29. This is one of the "traditional districting criteria not specifically outlined in the Wisconsin or United States Constitution" this Court will consider. *Id*; *see also Baumgart v. Wendelberger*, Nos. 01–C–0121 & 02–C–0366, 2002 WL 34127471, at *3 (E.D. Wis. May 30, 2002), *amended by* 2002 WL 34127473 (E.D. Wis. July 11, 2002) ("Although avoiding the division of counties is no longer an inviolable principle, respect for the prerogatives of the Wisconsin Constitution dictate that wards and municipalities be kept whole where possible."). It may, however, be necessary to split some municipalities to comply with constitutional requirements. *Clarke,* 2023 WI 79, ¶68; *see also Wisconsin State AFL-CIO,* 543 F.

Supp. at 636; *State ex rel. Lamb v. Cunningham*, 83 Wis. 90, 148, 468, 53 N.W. 35 (1892).

There is no specific standard or threshold for how many municipal splits are acceptable. The Court in *Johnson III* ultimately approved the Legislature's maps, which split 52 municipalities. *Johnson III*, 2022 WI 19, ¶68; App. 015 (Warshaw). This was consistent with past courts' approval of maps including between 50 and 115 municipal splits. *Id.*, ¶69 (collecting cases). The Clarke maps split fewer municipalities than any Wisconsin court-imposed or legislatively enacted map in at least the past 30 years, as the table below shows:

**Assembly Map Municipal Splits Comparison**

| **Map** | **No. of Municipalities Split** | **Total Splits** | **Number of Districts Within Split Municipalities**[10] |
|---|---|---|---|
| 1992 *Prosser* court-imposed | 72 | Not available | Not available |
| 2002 *Baumgart* court-imposed | 50 | Not available | Not available |
| 2011 Act 43 | 62 | Not available | Not available |
| 2022 *Johnson II* court-imposed | 115 | 181 | 296 |
| 2022 *Johnson III* court-imposed | 52 | 83 | 135 |
| **2024 Clarke Map** | 45 | 77 | 122 |

[10] Described in Prof. Warshaw's report as "Split Municipality-District Intersections."

**Senate Map Municipal Splits Comparison**

| Map | No. of Municipalities Split | Total Splits | Number of Districts Within Split Municipalities |
|---|---|---|---|
| 1992 *Prosser* court-imposed | 45 | Not available | Not available |
| 2002 *Baumgart* court-imposed | 24 | Not available | Not available |
| 2011 Act 43 | 37 | Not available | Not available |
| 2022 *Johnson II* court-imposed | 76 | 95 | 171 |
| 2022 *Johnson III* court-imposed | 31 | 38 | 69 |
| **2024 Clarke Map** | 29 | 38 | 67 |

App. 015 (Warshaw).

The chart below shows the breakdown of splits by city, village, or town for the Clarke maps compared to the *Johnson III* maps—highlighting the substantial decrease in town splits in the Clarke maps.

| | City Splits | Inters-ections | Village Splits | Inters-ections | Town Splits | Inters-ections | Total Municipal Splits |
|---|---|---|---|---|---|---|---|
| **Current assembly map** | **25** | **55** | **11** | **12** | **16** | **16** | **52** |
| **Clarke assembly map** | **22** | **51** | **13** | **13** | **10** | **13** | **45** |
| **Current senate map** | **17** | **24** | **6** | **6** | **8** | **8** | **31** |
| **Clarke senate map** | **16** | **24** | **7** | **7** | **6** | **7** | **29** |

App. 015 (Warshaw). Despite the Johnson Intervenors' warnings that interpreting contiguity "to mean literal contiguity ... will necessarily increase the number of municipal splits" (Johnson Int. Oct. 30, 2023, Br. 17), the Clarke maps not only achieve contiguity but ***reduce*** municipal splits. In other words, consistent with the Wisconsin Constitution and the Court's instruction, the Clarke maps remedy the current maps' endemic noncontiguity, fully meet the Court's criteria, and minimize town splits while simultaneously reducing the total number of municipal splits. *Clarke*, 2023 WI 79, ¶¶66, 68.

**B. The Clarke maps preserve communities of interest.**

The Court should select remedial maps, like the Clarke maps, that protect and promote Wisconsin's communities of interest. "To be an effective representative, a legislator must represent a district that has a reasonable homogeneity of needs and interests." *Prosser*, 793 F. Supp. at 863. The Court has already instructed the parties that preserving communities of interest is among the traditional redistricting criteria it would consider. *Clarke*, 2023 WI 79, ¶68. This accords with prior court decisions selecting remedial maps for the state. *Baumgart*, 2002 WL 34127471, *3 (noting that "federal courts have accepted some deviation from perfect population equality to comply with 'traditional' redistricting criteria," including "maintaining traditional communities of interest"). The Legislative Reference Bureau included this criterion in its redistricting handbook. *See* 2020 Wis. Legislative Reference Bureau, *Redistricting in Wisconsin 2020: The LRB Guidebook*, 1 Wisconsin Elections Project, no. 2, at 17. As Justice Hagedorn

explained, "one universally recognized redistricting criterion is communities of interest. It is not a legal requirement, but it may nonetheless be an appropriate, useful, and neutral factor to weigh." *Johnson I*, 2021 WI 87, ¶83 (Hagedorn, J., concurring) (citations omitted). The U.S. Supreme Court and courts throughout the country have recognized the importance of communities of interest in formulating or selecting redistricting maps. *See, e.g., Evenwel v. Abbott*, 578 U.S. 54, 59 (2016); *Abrams v. Johnson*, 521 U.S. 74, 99-100 (1997); *Bethune-Hill v. Va. State Bd. of Elections*, 368 F. Supp. 3d 872, 877, 882 (E.D. Va. 2019); *Carstens v. Lamm*, 543 F. Supp. 68, 91 (D. Colo. 1982). The Clarke maps meet this traditional redistricting criterion by preserving communities of interest, often by making whole communities that had been separated under the current maps.

**1. Communities of interest are groups of people unified by shared concerns, interests, and/or values.**

Communities of interest are best defined as groups of people who are "united by shared interests or values" or "legislative concerns" and "who might therefore benefit from cohesive representation in the legislature." App. 064 (Weinschenk) (citations omitted). Prof. Weinschenk relied on definitions of "communities of interest" from sources including the Brennan Center for Justice and the Electoral Knowledge Network. *See* App. 063-064 (Weinschenk). To identify communities of interest, Prof. Weinschenk examined primary sources such as government reports and the websites of local governments, chambers of commerce, and tourism boards,

explaining that such sources "are useful because they are places where communities articulate their identities, interests, and aspirations." *Id.*

This definition accords with those used by courts across the country. For example, in *Carstens*, the federal district court stated: "For our purposes, communities of interest represent distinctive units which share common concerns with respect to one or more identifiable features such as geography, demography, ethnicity, culture, socio-economic status or trade." 543 F. Supp. at 91. A separate district court in Louisiana adopted this definition: "reflecting some characteristic that has an impact on the representational interests or priorities of voters, or on the way voters interact with each other to elect or communicate with a representative." *Terrebonne Branch NAACP v. Jindal*, No. 3:14-CV-69-JJB-EWD, 2019 WL 4398509, at *5 (M.D. La. Apr. 29, 2019), report and recommendation adopted sub nom. *Terrebonne Par. Branch NAACP v. Edwards*, 399 F. Supp. 3d 608 (M.D. La. 2019). "The social and economic interests common to the population of an area which are probable subjects of legislative action, generally termed a 'community of interests' … should be considered in determining whether the area should be included within or excluded from a proposed district in order that all of the citizens of the district might be represented reasonably, fairly and effectively." *Legislature v. Reinecke*, 516 P.2d 6, 16 (1973).

### 2. The Clarke assembly map preserves communities of interest by reuniting or combining areas with shared identities, concerns, and interests.

Like any state or area, Wisconsin contains innumerable communities of interest. Prof. Weinschenk's analysis is neither intended to, nor can, address every such community across the state. Rather, Prof. Weinschenk's analysis, described briefly below, focuses on illustrative, significant geographic communities which are divided in the current maps and treated more appropriately in the Clarke maps.

*Northeast Wisconsin: Two Rivers and Manitowoc.* The cities of Two Rivers and Manitowoc are a community of interest. App. 065 (Weinschenk). These cities are economically linked and participate jointly in promoting tourism to the area and in a regional chamber of commerce. *Id.* They are connected by a single transportation line. *Id.* And they work together on shared issues of concern. *Id*. The current assembly map divides the two cities—the City of Two Rivers is in assembly district 2 but Manitowoc is not. (*Id.*) The Clarke assembly map reunites the two communities into district 2 and, importantly, does not include the City of De Pere, a city closely aligned with the City of Green Bay and part of the Green Bay metropolitan area. App. 067 (Weinschenk).

*Southeast Wisconsin: Southern Milwaukee County.* The shoreline cities of Cudahy, St. Francis, and South Milwaukee form a community of interest in Milwaukee County, south of the City of Milwaukee, all of which have shared interests in the environmental conditions of the lakeshore as well as economic development and regional transportation issues. App. 068 (Weinschenk). These

municipalities identify themselves, collectively, as the South Shore and participate in the South Shore Chamber of Commerce. *Id.* South Milwaukee and Cudahy also share a health department, which partners with Cudahy in an Environmental Health Consortium. App. 068 (Weinschenk). The current assembly map splits these three municipalities into two assembly districts. The Clarke map recombines all three into a single district—district 21. *Id.*

*The Sheboygan Area*. The City of Sheboygan has a history dating back to well before statehood. The City of Sheboygan has a unique economic history, Sheboygan residents have areas of shared concern, and the City Council has passed a resolution urging action from the Legislature and Governor on road repair and transportation funding. App. 070 (Weinschenk). This type of collective action indicates a shared interest relevant to their representation in the Legislature. The current assembly map divides the City of Sheboygan, with parts in district 26 and parts in district 27. The Clarke assembly map keeps the City whole within district 25, and connects it with the neighboring Village of Kohler, with which it shares a municipal court. App. 071 (Weinschenk).

*Northwestern Wisconsin: River Falls*. Similarly, residents of the City of River Falls constitute a community of interest. The current assembly map divides River Falls between districts 30 and 93. Like Sheboygan, River Falls has passed resolutions seeking action from the Legislature. App. 072 (Weinschenk). The Clarke assembly map reunites the City of River Falls and joins it with the City of Hudson within district 30, a nearby community linked by, for example, a single newspaper

and membership in the St. Croix Economic Development Corporation. App. 073 (Weinschenk).

*South Central Wisconsin: Beloit*. Both the cities of Beloit and Whitewater, as well as the University of Wisconsin at Whitewater, are communities of interest in southern Wisconsin. These communities have petitioned the Legislature and Governor on legislative priorities. App. 074 (Weinschenk). The current assembly map divides and weakens these communities, lumping parts of each into different districts and splitting the University. *Id*. The Clarke assembly map would keep both the City of Whitewater, along with the University of Wisconsin-Whitewater, wholly contained in assembly district 43.[11] App. 076 (Weinschenk). Similarly, the City of Beloit is left whole and within district 44. *Id.* This configuration offers more effective representation for both communities.

*The Fox Valley: Neenah-Menasha.* The cities of Neenah and Menasha form a community of interest in the Fox Valley. Despite being separate municipalities, these cities are deeply connected, sharing a municipal court, sewerage commission, and a fire and rescue department. App. 077 (Weinschenk). The cities share a common identity. *Id.* Although not required to do so, the current assembly maps divide the two. *Id.* The Clarke assembly map, however, reunites this community in assembly district 53.[12] App. 078 (Weinschenk).

[11] With the exception of the University of Wisconsin-Madison campus, which must be divided to maintain population equality, the Clarke maps divide no university campuses.

[12] The Outagamie County portions of these cities are in district 53. A small part of Menasha is in Calumet County, and that territory has noncontiguous interlocking aspects with Harrison and Appleton that prevented this portion from being included.

*Central Wisconsin: Stevens Point and Portage County*. The City of Stevens Point and its surrounding area in Portage County is a community of interest in central Wisconsin. The Stevens Point area contains the City itself, as well as the more rural communities in the county, which are linked by tourism and recreation. App. 079 (Weinschenk). The current assembly map, though, divides the area: the northwest corner of Portage County is disconnected from the City of Stevens Point and is put, instead, with communities as far away as the City of Sparta in the Driftless area to the southwest. *Id.* The current configuration of assembly district 70 meanders across the state. By contrast, the Clarke assembly map reconnects the Stevens Point region into a compact district—Clarke assembly district 87—in the center of the state. App. 081 (Weinschenk).

*Northwest Wisconsin: Superior and Douglas County*. The City of Superior and the surrounding area in Douglas County form a community of interest in the northwest. This community is defined by its proximity to Lake Superior, which is an interest shared by the City of Bayfield. App. 083 (Weinschenk). The community has a single chamber of commerce that promotes tourism in the Superior-Douglas County area. *Id.* The current assembly map divides Douglas County, with portions split between districts 73 and 74. The Clarke assembly map would keep this community wholly in Clarke assembly district 73. App. 085 (Weinschenk).

*North Central Wisconsin: Marshfield*. Like many other regional cities in Wisconsin, the City of Marshfield and its residents have specific concerns relevant to the Legislature, including concerns related to the City's ability to fund fire and

emergency services. App. 086 (Weinschenk). The current assembly map, consistent with its treatment of other such cities, divides Marshfield between assembly districts 86 and 69. *Id.* Instead of recognizing the shared interests of residents of Marshfield, the current map gloms those residents in district 86 into the Wausau area. *Id.* The Clarke assembly map instead keeps the Marshfield community together in Clarke assembly district 69, while simultaneously reconnecting the City of Wausau with much of its surrounding area. App. 087 (Weinschenk).

*Northeastern Wisconsin: The Green Bay Metropolitan Area*. The cities of Oconto and Peshtigo, along with the villages of Pound and Coleman, are rural communities in the northeast portion of the state. The City of Oconto, for example, defines itself as part of the Northwoods. App. 088 (Weinschenk). The current assembly map, however, connects these communities not to similar rural areas with shared concerns, but to the west side of the City of Green Bay, Wisconsin's third-largest city. *Id.* At the same time, the current map divides municipalities that consider themselves to be part of the Green Bay area from the City. *Id.* The Clarke assembly map reconnects the City of Green Bay with communities like the Village of Allouez, with which it shares a long-standing connection and economic ties, in Clarke assembly district 89. App. 090 (Weinschenk). That district would no longer contain rural communities disconnected from the urban Green Bay area. *Id.*

### 3. The Clarke senate map preserves communities of interest.

By uniting communities with shared characteristics and connections, the Clarke senate map also preserves and maintains Wisconsin's communities of interest. Consider the following illustrative examples.

*Northeast Wisconsin: The Fox Valley.* Municipalities such as the towns of Seymour and Grand Chute and the City Kaukauna are part of Wisconsin's Fox Valley, and are connected economically to the Greater Green Bay Area. App. 091 (Weinschenk). The current senate map, however, puts those municipalities in a senate district with rural communities like the villages of Bowler, Wittenberg, Gresham, and Bonduel. *Id.* Clarke senate district 2 reconnects the Fox Valley communities with the Village of Howard and the Greater Green Bay area, while also connecting the more rural communities with similar communities like the cities of Oconto and Oconto Falls. App. 092 (Weinschenk).

*Southeast Wisconsin: Southwest Milwaukee County.* The cities of Greenfield and Greendale are both suburban communities close to the City of Milwaukee. Greenfield, for example, describes itself as a "first ring suburb." App. 103 (Weinschenk). The current senate map nonetheless pairs these suburban areas not only with 10 wards in the City of Milwaukee *but also* with rural areas like the Village of Eagle, an agricultural community in southwest Waukesha County, and the Village of East Troy, in Walworth County. *Id.* The current map also divides the Town of Waterford (into districts 28 and 21). The Clarke senate map instead creates a compact suburban district—Clarke senate district 28—in the Milwaukee area,

containing most of Greenfield, Greendale, as well as the City of West Allis and the Village of Elm Grove. App. 105 (Weinschenk).

*Southwest Wisconsin: The Driftless area*. Wisconsin's Driftless area is an area with shared geography, economic development, and tourism in the southwest of the state. App. 095 (Weinschenk). The area has a shared planning commission focused on economic development. *Id.* The current senate map, however, divides the Driftless and stretches to connect such disparate communities as the cities of Lancaster and Fennimore in the far southwest with the City of Necedah in the center of the state, far from the Driftless. Similarly, the current map connects a portion of Green County, also in the southwest, with portions of the cities of Janesville and Beloit. App. 098 (Weinschenk). The Clarke senate map, by contract, includes a compact southwest senate district—Clarke senate district 17—that incorporates much of the Driftless area, including all of Green County, without dividing counties or appending far-flung territory to the east and north. *Id.*

*Oshkosh, Neenah-Menasha, and Appleton*. The Fox Cities of Oshkosh, Neenah-Menasha, and Appleton share "a strong economic link." App. 098 (Weinschenk). They are all included in a Combined Statistical Area by the federal Office of Management and Budget (OMB) and are contained within the counties designated as being part of the Fox Cities Regional Chamber Partnership. *Id.* The current senate map, however, includes only part of the City of Appleton and the cities of Neenah and Menasha in a senate district. Oshkosh is not included. *Id.* The

Clarke senate map remedies this, creating a Fox Cities senate district, Clarke senate district 18, which includes all four municipalities. App. 099 (Weinschenk).

*Central Wisconsin: Stevens Point, Wausau, and Wisconsin Rapids*. Similarly, the cities of Stevens Point, Wausau, and Wisconsin Rapids are all part of one Combined Statistical Area. App. 100 (Weinschenk). The cities also share long-standing economic ties. *Id.* The current senate map divides the cities of Stevens Point and Wisconsin Rapids in senate district 24, from the City of Wausau in district 29. *Id.* The Clarke senate map, however, combines all three in Clarke senate district 29, reuniting this community of interest in central Wisconsin. App. 102 (Weinschenk).

*Southeast Wisconsin: Northern Milwaukee County*. Similarly, areas to the north of the City of Milwaukee in northeast Milwaukee County, including municipalities like the City of Mequon, the Village of Germantown, and the Village of Menomonee Falls, form a community of interest as northern suburban communities. App. 093-094 (Weinschenk). The City of Port Washington, like the Villages of Grafton and Whitefish Bay, are lakefront municipalities with shared interests, and many of these municipalities share media and economic development ties. *Id.* The current senate map, however, links this area of northeastern Milwaukee County with more rural and exurban areas to the west, like the Town of Erin and Villages of Sussex and Richfield, in senate district 8. The Clarke map maintains the northern suburban communities like Mequon, Germantown, and Menomonee Falls into a single cohesive senate district 8. App. 094 (Weinschenk).

*Northeast Wisconsin: The Green Bay Metropolitan Area*: The area surrounding the City of Green Bay, Wisconsin's third largest city, is a community of interest, defined by shared tourism and economic interests. App. 106 (Weinschenk). The current senate map divides the area into a remarkable *three* senate districts. One senate district extends from the downtown Green Bay to rural areas in the northern part of the state. *Id*. The Clarke senate map repairs this defect by creating a compact senate district—Clarke senate district 30—within the Green Bay metropolitan area. App. 107 (Weinschenk).

*Western Wisconsin: Eau Claire, Menomonie, and Chippewa Falls*. Finally, in the western part of the state, the cities of Eau Claire, Menonomie, and Chippewa Falls are a community of interest. All three, and their surrounding areas, are linked by economic activity, including frac sand mining and agriculture, as well as an alliance among their chambers of commerce. App. 108 (Weinschenk). They are also connected through the I-94 corridor. *Id.* Unsurprisingly, these cities are also all part of the single "Eau Claire-Menomonie, WI" Combined Statistical area, as well as an agricultural enterprise area designated by the Wisconsin Department of Agriculture, Trade, and Consumer Protection. *Id.* Remarkably, the current senate map somehow divides this community of interest into three senate districts: senate districts 31 (including the City of Eau Claire), 10 (including Menomonie), and 23 (including Chippewa Falls). The Clarke senate map reconnects and preserves the "Golden Triangle" community of interest into one senate district, Clarke senate district 31. App. 110 (Weinschenk).

* * *

Both the Clarke senate and assembly map would preserve, rather than divide, communities of interest across the state and meet the traditional redistricting criteria set by the Court.[13]

## III. The Clarke maps are politically neutral.

Finally, the Clarke maps perform well in terms of political neutrality. As the Court instructed, Petitioners have assessed the maps' partisan impact and confirmed that they do not substantially "privilege" or "advantage" "one political party over another." *Clarke,* 2023 WI 79, ¶¶70-71. Under any application of accepted methods for determining maps' partisan effects, the conclusion is the same: The Clarke maps are politically neutral, exhibiting at most a modest pro-Republican tilt in certain analyses.

[13] In light of the widespread constitutional violations in the current maps and the Court's need to ensure judicial neutrality by not choosing a map that favors certain voters over others based upon their political views, the Court has correctly excluded consideration of delayed senate voting resulting from alterations to the current maps. It bears noting, however, that, when this issue arose in the *Baldus* litigation, counsel for the Government Accountability Board (including former Justice Dan Kelly) contended that delayed senate voting raised no *legal* issue and cited the *Wisconsin State AFL-CIO* court's rejection of a legal claim challenging the delayed voting of 713,225 residents. *See* Defendants' Brief in Support of their Mot. for Summ. J. at 27-28, *Baldus v. Gov't Accountability Bd.*, No. 2:11-cv-00562-JPS-DPW-RMD (Feb. 10, 2012), Doc. 129; *see Wis. State AFL-CIO*, 543 F. Supp. at 659 (characterizing objection to delay of senate voting for over 713,000 residents as "a house of cards that collapses when exposed to even the gentle breeze of cursory analysis"); *Baldus*, 849 F. Supp. 2d at 852 (noting Government Accountability Board's advocacy for a 750,000 person ceiling for delayed senate voting, and finding that delayed senate voting was "inevitable" and rejecting claim that 2011 maps were unlawful on that basis).

### A. The Clarke maps score well on standard metrics of partisan neutrality.

Courts, redistricting experts, and political scientists commonly use several approaches to evaluate the partisan impact of district maps. One straightforward method is to ascertain whether candidates who prevail statewide also win majorities of legislative districts. If the statewide winner is also the candidate who wins the most districts, that means the map achieves the intuitive democratic value of *majoritarianism*. A statewide majority translates into a majority of seats and thus controls the legislative chamber. And if the map exhibits this property across a range of elections, featuring statewide winners from both parties, then the map is *responsive* to shifts in the electorate, too. As voters change their minds from one election to another, the map registers and reflects these swings in public opinion. *See, e.g.*, *League of Women Voters of Ohio v. Ohio Redistricting Comm'n*, 198 N.E.3d 812, 825 (Ohio 2022) (*LWVOH III*) (criticizing map as "politically asymmetric"); *Carter v. Chapman*, 270 A.3d 444, 470 (Pa. 2022) (examining map's partisan fairness in part by "attempt[ing] to ascertain a map's responsiveness to voters, evaluating whether a party with a majority of votes is likely to win a majority of seats"); *Harper v. Hall*, 868 S.E.2d 499, 519-20, 547 (N.C. 2022) (*Harper I*), *superseded on other grounds*, 886 S.E.2d 393 (N.C. 2023).

In addition, as Prof. Warshaw explains, courts, redistricting experts, and political scientists frequently rely on quantitative metrics of the partisan effects of district maps. The most widely used of these metrics are partisan symmetry (also

known as partisan bias), the efficiency gap, the mean-median difference, and the declination. In his report, Prof. Warshaw defines each of these metrics and discusses how each captures an aspect of political neutrality. App. 022-024 (Warshaw). All these metrics have been relied upon heavily by courts addressing redistricting issues. *See, e.g.*, *Harper v. Hall*, 881 S.E.2d 156, 166-69, 177 (N.C. 2022) (*Harper II*), *superseded on other grounds*, 886 S.E.2d 393 (N.C. 2023) (partisan symmetry, efficiency gap, mean-median difference, and declination); *Carter*, 270 A.3d at 475 (Donohue, J., concurring) (partisan symmetry, efficiency gap, mean-median difference, and declination); *Harper I*, 868 S.E.2d at 520-21, 523, 547-48, 552, 554 (partisan symmetry, efficiency gap, and mean-median difference); *Adams v. DeWine*, 195 N.E.3d 74, 91-92 (Ohio 2022) (partisan symmetry, efficiency gap, mean-median difference, and declination); *League of Women Voters of Ohio v. Ohio Redistricting Comm'n*, 192 N.E.3d 379, 411 (Ohio 2022) (*LWVOH I*) (partisan symmetry); *League of Women Voters of Pa. v. Commonwealth*, 178 A.3d 737, 777-78, 817, 820 (Pa. 2018) (efficiency gap and mean-median difference);

As Prof. Warshaw observes, in highly competitive states like Wisconsin, these metrics are closely correlated. App. 023-024 (Warshaw). A district map with a large pro-Democratic partisan asymmetry, for example, is very likely to have a large pro-Democratic efficiency gap, mean-median difference, and declination. Accordingly, there is no need for this Court to prioritize one or more metrics. In a context like this one, the metrics all should—and do—tell the same story: that the Clarke maps are politically neutral and therefore consistent with the criteria set forth

by the Court. *Astra Aktiebolag v. Andrx Pharms., Inc*., 222 F. Supp. 2d 423, 494 (S.D.N.Y. 2002), aff'd sub nom. *In re Omeprazole Pat. Litig.*, 84 F. App'x 76 (Fed. Cir. 2003) (reliability of expert evidence confirmed when different methods verify results); *see also, e.g.*, *Bayer ex rel. Petrucelli v. Dobbins*, 2016 WI App 65, ¶¶20-21, 371 Wis. 2d 428, 885 N.W.2d 173 (admissibility and weight of expert evidence in Wisconsin are analyzed under equivalent of the federal *Daubert* framework).

All the approaches to assessing the partisan effects of district maps require electoral data for their implementation. Statewide election results, for offices like president, governor, or senator, are commonly used for this purpose. Any measure of partisan impact can be calculated for a district map using any statewide election. *See, e.g.*, *Carter*, 270 A.3d at 473-75 (Donohue, J., concurring); *Adams*, 195 N.E.3d at 80; *League of Women Voters of Pa.*, 178 A.3d at 772-73. Another way to compute measures of district maps' partisan effects is using a regression model. A model typically links *legislative* election results (the dependent variable) to *statewide* election results and data about the incumbency status of legislative candidates (the independent variables). The model's outputs are then plugged into the formulas for the various partisan impact metrics. *See, e.g.*, *Common Cause v. Rucho*, 318 F. Supp. 3d 777, 878 (M.D.N.C. 2018), *vacated on other grounds*, 139 S. Ct. 2484 (2019); *Whitford v. Gill*, 218 F. Supp. 3d 837, 847-48, 857-59, 891, 899, 924 (W.D. Wis. 2016), *vacated on other grounds*, *Gill v. Whitford*, 138 S. Ct. 1916 (2018).

While some regression models are proprietary, the PlanScore website makes one publicly available.[14] The PlanScore model, based on legislative and presidential election results from 2012 to 2020, enables any user to upload a district map for any state and to have it analyzed instantly using the model's outputs. *See Unified District Model*, PlanScore (May 2022), https://planscore.org/models/data/2022F/; *see also Score a Plan*, PlanScore, https://planscore.org/upload.html (last visited Jan. 12, 2024). Due to its transparency and ease of use, the PlanScore model has been used in redistricting litigation. *See, e.g.*, *Harper II*, 881 S.E.2d at 204 (Newby, J., dissenting); *Harkenrider v. Hochul*, No. E2022-0116CV, 2022 WL 1951609, at *2, *10–11 (N.Y. Sup. Ct. May 20, 2022); *Carter*, 270 A.3d at 474-75 (Donohue, J., concurring). For the same reasons, Prof. Warshaw evaluates the Clarke maps using *both* statewide election results and the PlanScore model. App. 024-029 (Warshaw).

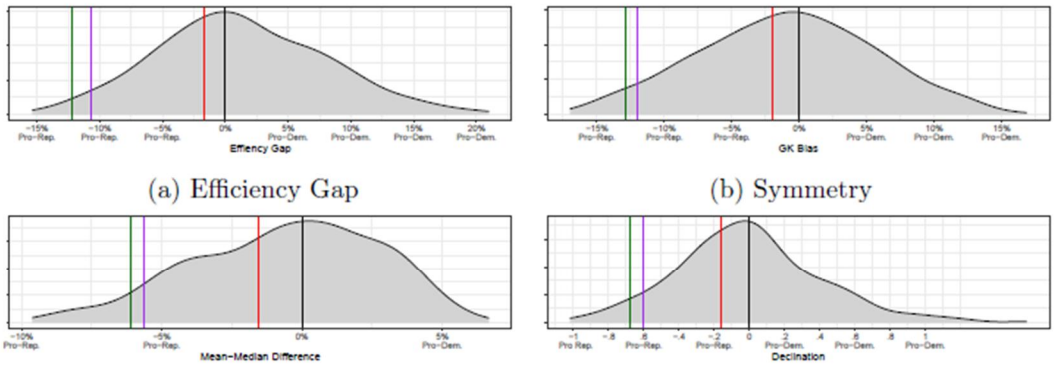
Prof. Warshaw finds that candidates who prevail statewide also generally win majorities of legislative districts under the Clarke maps. Between 2014 and 2022, there were seventeen statewide contests on the November general election ballot in Wisconsin for the positions of U.S. president, governor, U.S. senator, attorney general, secretary of state, and treasurer. Over these seventeen elections, the candidate who prevailed statewide also would have carried a majority of seats under

[14] Two attorneys for the Clarke Petitioners, Attorneys Greenwood and Stephanopoulos, are part of a team that operates PlanScore. Clarke Petitioners' expert Prof. Warshaw serves on the social science advisory team for PlanScore. The Campaign Legal Center, a nonpartisan nonprofit that also serves as counsel for the Clarke Petitioners, formerly hosted the website and provided support in collecting and uploading proposed plans as they were introduced during the 2021-22 redistricting cycle to provide transparency for the public.

the Clarke assembly map fifteen times. Likewise, the prevailing statewide candidate also would have carried a majority of seats under the Clarke senate map thirteen times. In the handful of cases in which the prevailing statewide candidate would *not* also have carried a majority of seats, that candidate was a Democrat. App. 027 (Warshaw).

Prof. Warshaw further finds that the quantitative metrics of district maps' partisan effects confirm the political neutrality of the Clarke maps. The charts below, from Prof. Warshaw's report, show how the Clarke maps compare to historical legislative maps nationwide as well as both Wisconsin's 2011 and 2022 maps. The distributions of historical maps are shown in gray, with black lines indicating political neutrality. To the left (maybe counterintuitively) the maps become more skewed in Republicans' favor; to the right they become more tilted in a Democratic direction. The red lines indicate where the Clarke maps fall in the distributions, the purple lines indicate where the 2011 Wisconsin maps fall, and the green lines indicate where the 2022 *Johnson III* maps fall. As the charts make clear, the Clarke

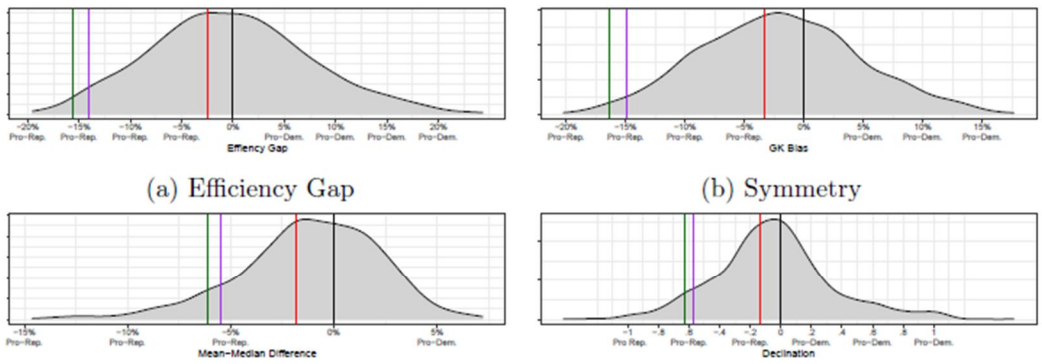
maps fall in the range of political neutrality, unlike the 2011 or 2022 maps.




(a) Efficiency Gap (b) Symmetry

(c) Mean-Median Difference (d) Declination

Figure 5: Graphs of composite metrics for Clarke Assembly plan (in red) compared to enacted 2011 (in purple) and 2022 Wisconsin plans (in green), and previous plans across the country from 1972-2022.




(a) Efficiency Gap (b) Symmetry

(c) Mean-Median Difference (d) Declination

Figure 6: Graphs of composite metrics for Clarke Senate plan (in red) compared to enacted 2011 (purple) and 2022 Wisconsin plans (green), and previous plans across the country from 1972-2022.

App. 027-029 (Warshaw).

Moreover, as noted above, Prof. Warshaw also assesses the Clarke maps using the PlanScore model. The resulting scores are largely consistent with those produced using the set of statewide elections. If anything, the scores based on the PlanScore model are somewhat more pro-Republican and thus suggest that the

Clarke maps are modestly biased in Republicans' favor. As Prof. Warshaw puts it, each of the Clarke maps "continues to have a pro-Republican tilt, but it is more neutral than the 2022 plan." App. 028 (Warshaw).

Prof. Gaddie, who served as a litigation expert for the Government Accountability Board in the 2011-2012 *Baldus* litigation, also has assessed the Clarke Petitioners' maps and finds that they "afford far greater partisan fairness" than the current (enjoined) plans, "coming as close as one might practically achieve to political neutrality" and "result[ing] in a responsive, competitive mapping scheme." App. 125-126 (Gaddie).

### B. Wisconsin's political geography cannot justify a skewed remedial map.

In the past, the Legislature has contended that the Wisconsin's political geography benefits Republicans. In other words, because of where Democratic and Republican voters live, the application of traditional line-drawing criteria necessarily yields pro-Republican maps. *See, e.g.*, *Whitford*, 218 F. Supp. 3d at 912. Even before this case, this argument had been rejected by scholars and courts alike. When Assembly maps are randomly generated by a computer algorithm that satisfies all legal criteria, their efficiency gaps are mostly close to zero. *See* Jowei Chen, *The Impact of Political Geography on Wisconsin Redistricting: An Analysis of Wisconsin's Act 43 Assembly Districting Plan*, 16 Election L.J. 443, 448 (2017). Roughly equivalent proportions of Democratic and Republican voters in Wisconsin live in competitive areas. *See* Nicholas Eubank & Jonathan Rodden, *Who Is My*

*Neighbor? The Spatial Efficiency of Partisanship*, 7 Stat. & Pub. Pol'y 87, 94 (2020). And in *Whitford*, the three-judge federal district court held that Wisconsin's political geography did not explain the extreme pro-Republican tilt of the Assembly map used in the 2010s. *See Whitford*, 218 F. Supp. 3d at 912-27.

The Clarke maps further refute this argument. As explained above, the maps satisfy all legal and traditional redistricting criteria. In fact, the maps generally perform *better* in these respects than did the maps invalidated earlier in this litigation. Yet the Clarke maps are close to perfectly neutral in most analyses. The maps therefore establish that the spatial patterns of Wisconsin voters, in combination with standard redistricting criteria, do *not* necessarily result in pro-Republican maps. Rather, neutrally drawn Wisconsin maps can ensure that voters get to decide how many Republicans or Democrats should represent them in the Legislature—without the maps impeding their ability to make that choice.

## CONCLUSION

Petitioners respectfully request that this Honorable Court enter a decision and order adopting the Petitioners' proposed remedial Wisconsin State Assembly and Wisconsin State Senate Legislative maps.

Respectfully submitted this 12th day of January, 2024.

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## CERTIFICATION REGARDING FORM AND LENGTH

I hereby certify that this brief conforms to the rules contained in s. 809.19(8)(b), (bm), and (c) for a brief. The length of this brief is 9,505 words.

Dated this 12th day of January, 2024.

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