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IN THE SUPREME COURT OF WISCONSIN
NO. 2023AP1399-OA

Rebecca Clarke, Ruben Anthony, Terry Dawson, Dana Glasstein, Ann Groves-Lloyd, Carl Hujet, Jerry Iverson, Tia Johnson, Angie Kirst, Selika Lawton, Fabian Maldonado, Annemarie McClellan, James McNett, Brittany Muriello, Ela Joosten (Pari) Schils, Nathaniel Slack, Mary Smith-Johnson, Denise Sweet and Gabrielle Young,

Petitioners,

Governor Tony Evers, in his official capacity; Nathan Atkinson, Stephen Joseph Wright, Gary Krenz, Sarah J. Hamilton, Jean-Luc Theffeault, 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 Election Commission; Meagan Wolfe, in her official capacity as the Administrator of the Wisconsin Elections Commission; Andre Jacque, Tim Carpenter, Rob Hutton, Chris Larson, Devin LeMahieu, Stephen L. Nass, John Jagler, Mark Spreitzer, Howard Marklein, Rachael Cabral-Guevara, Van H. Wanggaard, Jesse L. James, Romaine Robert Quinn, Dianne H. Hesselbein, Cory Tomczyk, Jeff Smith, and Chris Kapenga, in their official capacities as Members of the Wisconsin Senate,

Respondents,

Wisconsin Legislature; Billie Johnson, Chris Goebel, Ed Perkins, Eric O'Keefe, Joe Sanfelippo, Terry Moulton, Robert Jensen, Ron Zahn, Ruth Elmer and Ruth Steck,
Intervenors-Respondents.

IN AN ORIGINAL ACTION TO THE SUPREME COURT OF WISCONSIN

CORRECTED BRIEF IN SUPPORT OF SENATORS CARPENTER, LARSON, SPREITZER, HESSELBEIN, AND SMITH'S PROPOSED REMEDIAL MAP

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INTRODUCTION

The people of the State of Wisconsin established the Wisconsin Constitution to secure the blessings of our freedom, insure domestic tranquility, promote the general welfare, and "form a more perfect government." *Wis. Const., Preamble*. As Senators and as Justices, it is always our charge to advance these goals. This case, and particularly the remedial phase of this case, very directly presents the opportunity to secure the blessings of our freedom through the formation of "a more perfect government."

Per the Court's invitation in its December 22, 2023 Decision and Order, Senators Tim Carpenter, Chris Larson, Mark Spreitzer, Dianne H. Hesselbein, and Jeff Smith (the "Democratic Senator Respondents") submit herewith a proposed remedial map of the state assembly and senate districts that first and foremost meets all requirements of the Wisconsin Constitution: its proposed districts satisfy population equality requirements; respect county, precinct, town and ward lines; are absolutely contiguous; are practicably compact; and the senate districts are comprised of "nested" assembly district. Second, the proposed map, prepared without consideration of race and utilizing only race-neutral factors, complies with federal law with respect to its treatment of racial minority voting populations. Third, the proposed map utilizes the traditional mapmaking technique of preserving communities of interest: indeed, it reunites communities split and fractured in recent previous maps in service of extreme partisan gerrymandering. Preserving the voice of the various communities with common needs and interests will facilitate the expression of the communities' preferences and ensure responsive representative democracy in the development of public policy

in the legislature. Finally, The Democratic Senator Respondents propose a map that promotes democracy. Wisconsin is a "purple state," where statewide races are typically won and lost by single-digit margins. The proposed map gives a meaningful opportunity to each of the two major political parties to win a majority of legislative seats with a majority of the statewide vote. Consequently, this proposed map is also in alignment with the Court's independent, nonpartisan role. Selection of the map proposed by the Democratic Senator Respondents will ensure a court-selected map that is not "designed to advantage one political party over another." *Clarke v. WEC*, 2023 WI 79, ¶ 71.

The details of the proposed map, and how it meets all of the criteria laid out in the Court's December 22, 2023 Decision, are detailed herein and in the accompanying Expert Report of Kenneth R. Mayer, Ph.D. in Support of Remedial Maps Proposed by the Democratic Senator Respondents (the "Mayer Report").

ARGUMENT

1. The proposed map satisfies constitutional population equality requirements.

Both the Wisconsin and Federal Constitutions require "a state's population to be distributed equally amongst legislative districts with only minor deviations." *Clarke v. WEC,* 2023 WI 79, ¶ 64; Wis. Const. art. IV, § 3; *State* ex rel. *Reynolds v. Zimmerman*, 22 Wis. 2d 544, 555-56, 126 N.W. 2d 551 (1964); U.S. Const. amend. XIV; *Reynolds v. Sims*, 377 U.S. 533, 577-79, 84 S.Ct. 1362 (1964). Courts charged with selecting Wisconsin maps have endorsed population deviation below 2%. *Clarke*, 2023 WI 79, ¶ 64; *Johnson v. WEC*, 2022 WI 14, ¶ 36, 400 Wis. 2d 626, 971 N.W.2d 402 (1.20% for

senate districts and 1.88% for assembly districts), overruled on other grounds by *Wisconsin Legislature v. WEC*, 595 U.S. 398, 142 S.Ct. 1245 ("*Johnson II*"); *Johnson v. WEC*, 2022 WI 19, ¶ 49, 401 Wis. 2d 198, 972 N.W.2d 559 (0.57% deviation for senate districts and 1.88% for assembly districts), overruled on other grounds by *Clarke*, 2023 WI 79 ("*Johnson III*"); *Baldus v. Members of Wisconsin Gov't Accountability Bd.*, 849 F. Supp. 2d 840, 851 (E.D. Wis. 2012) (0.62% deviation for senate districts and 0.76% for assembly districts); *Wis. St. AFL-CIO v. Elections Bd.*, 543 F. Supp. 630, 634 (E.D. Wis. 1982) (population deviations "should, if possible, be kept below 2%.").

The proposed map is well within the acceptable range of population deviation. The districts in the assembly map range from 0.92% under and 0.94% over the ideal population of 59,533, producing a total deviation of 1.86%. The districts in the senate map range from 0.76% under and 0.60% over the ideal population of 178,598, producing a total deviation of 1.36%. *Mayer Report at 5, Appx. A Tables A1 and A2.* These figures are far below the presumptively unconstitutional threshold of 10%. *Brown v. Thomson*, 462 U.S. 835, 842-43, 103 S.Ct. 2690 (1983).

2. The proposed map respects county, precinct, town and ward lines.

The Wisconsin Constitution requires assembly districts "to be bounded by county, precinct, town or ward lines." Wis. Const., Art. IV, § 4. As to 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)." *Clarke*, 2023 WI 79, ¶ 66. Wisconsin jurisprudence recognizes that one-person, one-vote requirements preclude bounding every assembly district by county, precinct, town, and ward

lines. *Id.* (citing *Johnson v. WEC*, 2021 WI 87, ¶ 35, 399 Wis. 2d 623, 967 N.W.2d 469) ("*Johnson I*"). Even so, "respect for the prerogatives of the Wisconsin Constitution dictate that wards and municipalities be kept whole where possible." *Johnson I*, 2021 WI 87, ¶ 35.

The proposed map satisfies the "bounded by" requirement of Art. IV, § 4 by minimizing political subdivision splits and nearly eliminating ward splits entirely. *Clarke*, 2023 WI 79, ¶ 66. As discussed in further detail below, the proposed map reunites municipalities that were previously divided in service of an extreme partisan gerrymander. Although municipal splits are necessary to accomplish population equality, the proposed Assembly plan splits only 51 counties and 67 cities, towns and villages. The proposed Senate plan splits only 42 counties and 41 cities, towns and villages. *Mayer Report at 5-6, Appx A Tables A3 and A4.*

With respect to ward splits, the proposed map virtually eliminates them. There are one or two, depending on what counts as a split. The first resulted from the requirement to maintain district contiguity, causing a choice between splitting the Town of Middleton, or splitting Madison ward 106, into two separate assembly districts. The second ward split should not even be counted as a split because it results from three Town of Madison census blocks that are in the middle of a City of Madison ward. The Town of Madison no longer exists and consequently the three blocks are now part of the City of Madison. *Mayer Report at 6.*

3. Districts within the proposed map are absolutely contiguous.

Wis. Const. Art. IV, § 4 requires each assembly district "to consist of contiguous territory." Wis. Const. Art. IV, § 5 also requires senate districts be of "convenient contiguous territory." Contiguity "is no mere technical requirement," but rather, an "important tool" to constrain "undesirable" redistricting practices such as gerrymandering. *Clarke*, 2023 WI 79, ¶ 35.

"[F]or a district to be composed of contiguous territory, its territory must be touching such that one could travel from one point in the district without crossing district lines." *Id.* ¶ 66. "A district can still be contiguous if it contains territory with portions of land separated by water." *Id.* ¶ 27.

As this Court held, the *Johnson III* map[1] violated these constitutional contiguity directives. *Id.* ¶ 30. The proposed map corrects these violations and adheres to the contiguity requirements. That is, there are no noncontiguous land areas in the proposed map. *Mayer Report at 6-7.*

The proposed map contains two examples of touch-point contiguity, which occurs "when territory is contiguous only because it is joined at a single point." *Clarke*, 2023 WI 79, ¶ 29. While touch-point contiguity does not run afoul the Wisconsin constitution, it may be evidence that "traditional districting criteria were compromised." *Id.* (citing *Covington v. North Carolina*, 316 F.R.D 117, 141 (M.D.N.C. 2016)). However, these instances of touch-point contiguity were to further, not subvert, constitutional districting requirements and more specifically, to preserve municipal lines, as detailed next. *See Johnson III*, 2022 WI 19, ¶ 66 ("We are particularly skeptical of town and ward splits…").

[1] Also referred to herein and in the Mayer Report as the "current map" and "SB 621."

The boundary lines of AD 86 and AD 72 follow the municipal boundaries of the City of Mosinee and Town of Mosinee. A single ward in the Town of Mosinee (Mosinee-T 0001) is connected to the Town of Mosinee by a single touch-point and otherwise surrounded by the City of Mosinee. Consequently, this map touch-point contiguity keeps both the Town of Mosinee and City of Mosinee whole, avoiding an unnecessary municipal split. *Mayer Report at 7.*

Similarly, the Village of Mount Pleasant in Racine County borders Assembly districts 66 and 62. An unpopulated Census block in ward 16 is point contiguous with the rest of the ward and otherwise surrounded by Assembly district 62. The block is retained in Assembly district 66 to prevent a municipal split and maintain the entire ward within a single district. *Id.*

4. The districts in the proposed map are practicably compact.

Wis. Const. Art. IV, § 4 requires assembly districts to "be in as compact form as practicable." An assembly district meets this constitutional directive if it is "closely united in territory," but there is no "particular measure of compactness." *Clarke,* 2023 WI 79, ¶ 66 (citing *Wisconsin State AFL-CIO v. Elections Bd.*, 543 F. Supp. 630, 634 (E.D. Wis. 1982)). Wis. Const. Art. IV, § 5 similarly requires senate districts to consist of "convenient contiguous territory." The compactness requirement "helps make for districts that are more geographically cohesive—and therefore more likely to reflect a reasonably homogeneous slate of interests than districts with scattered pockets of isolated communities." *Id.* ¶ 35.

The proposed map scores well on the constitutional requirement of compactness. Overall, the proposed plan average Reock value is 0.403 for the Assembly and 0.361 for the Senate. *Mayer Report at 7-8.*

5. The proposed map nests assembly districts within senate districts.

Wis. Const. Art. IV, § 5 requires that "no assembly district shall be divided in the formation of a senate district." Each of the 33 senate districts must be made up of 3 assembly districts. Wis. Stat. § 4.001. Accordingly, all assembly districts shall be "nested" within a senate district. *Clarke*, 2023 WI 79, ¶ 65. The proposed map meets this requirement.

6. The proposed map complies with federal law with respect to its treatment of racial minority voting populations.

In creating their proposed remedial map, the Democratic Senator Respondents did not consider race and drew lines based upon traditional, race-neutral factors. There is no evidence suggesting that the proposed map sorts voters on the basis of race. *Mayer Report at 11.* Consequently, the Democratic Senator Respondents' proposed map complies with the Equal Protection Clause and the Voting Rights Act.

a. The proposed map is compliant with the Equal Protection Clause.

"[M]aps must comply with the Equal Protection Clause" of the United States Constitution. *Clarke*, 2023 WI 79, ¶ 67 (citing *Wis. Legislature v. Wis. Elections Comm'n*, 595 U.S. 398, 401 (2022)). The Equal Protection Clause of the 14th Amendment to the U.S. Constitution prohibits redistricting maps that "sort voters on the basis of race." *Wis. Legislature*, 595 U.S. at 401 (citing *Shaw v. Reno*, 509 U.S. 630, 643, 113 S.Ct. 2816 (1993)).

Race-conscious mapmaking will trigger, and must survive, strict scrutiny; that is, the use of race must be narrowly tailored to achieve a compelling state interest. *Id.* (citing *Miller v. Johnson*, 515 U.S. 900, 904 (1995)). Ensuring compliance with the Voting Rights Act of 1965 is considered a compelling state interest. *Id.* (citing *Cooper v. Harris*, 581 U.S. 285, 291, 137 S.Ct. 1455 (2017)).

"Only those maps that purposefully discriminate between individuals are subject to strict scrutiny." *Johnson III*, 2022 WI 19, ¶ 49. A remedial map may also trigger strict scrutiny when "though race neutral on their face, [the mapmaker] is motivated by a racial purpose or object." *Id.* (citing *Miller*, 515 U.S. 900 at 913). However, "[t]he standard to demonstrate racial motivations through circumstantial evidence alone is high and rarely met. The map must be so highly irregular that, on its face, it rationally cannot be understood as anything other than an effort to segregate[e] ... voters on the basis of race." *Id.* (citing *Miller*, 515 U.S. at 914).

Ultimately, "[c]ourts recognize that redistricting is a sensitive process which involves a complex interplay of forces; mapmakers are presumed to be acting in a good faith, race-neutral manner." *Id.* (citing *Miller*, 515 U.S. at 915-16) (internal quotations omitted). Evidence bolstering this good faith, race-neutral presumption includes low population deviation, low number of local government splits, few incumbency pairings, compactness, preservation of communities of interest and absence of "highly irregular features." *Id.* ¶ 50 (citing *Miller*, 515 U.S. at 916).

In *Johnson III*, this Court held that the "Legislature utilized 'race-neutral' criteria to draw districts in the Milwaukee area" in SB 621 and

upheld the Legislature's configuration of districts in the City of Milwaukee under both the Equal Protection Clause and federal Voting Rights Act. *Johnson III*, 2022 WI 19, ¶¶48, 59. As a result, in their proposed map, the Democratic Senator Respondents began with the existing boundary lines in SB 621 for each of the assembly districts in Milwaukee area senate districts 4 and 6, and made minor alterations to the boundaries based upon traditional redistricting criteria. In doing so, the Democratic Senator Respondents did not consider race.

First, to preserve a community of interest of the north shore Milwaukee suburbs, the Democratic Senator Respondents removed the Village of Shorewood from assembly district 10 and reunited it with the rest of the north shore in assembly district 23. *Mayer Report at 11. See Wisconsin State AFL-CIO v. Elections Bd.,* 543 F. Supp. 630, 639 (E.D. Wis. 1982) (identifying the north shore suburbs of Milwaukee as a community of interest). To account for the resulting population loss, they then adjusted district lines to meet appropriate population levels in the surrounding districts. These changes resulted in the Village of Brown Deer moving from assembly district 23 to assembly district 11, removing a municipal split (Brown Deer is split in SB 621).

Second, in senate district 6, the Democratic Senator Respondents moved the western district boundary eastward to eliminate a municipal split in the City of Wauwatosa and place Wauwatosa entirely in senate district 5. *Mayer Report at 11. See Wisconsin State AFL-CIO,* 543 F. Supp. at 638-39 (identifying the City of Wauwatosa suburb as a community of interest). This affected the boundary lines of assembly district 18, which is nested in senate district 6. Changes were then made to the surrounding districts to ensure equal population among those districts.

Finally, for assembly districts 8 and 9, the Democratic Senator Respondents began with the existing boundary lines that were found compliant with the Equal Protection Clause and VRA in *Johnson III* and ordered by the federal district court in *Baldus* to remedy the VRA violations found in the 2011 legislative maps. *Johnson III*, 2022 WI 19, ¶¶ 48, 59; *Baldus v. Members of Wisconsin Gov't Accountability Bd.*, 862 F. Supp. 2d 860, 863 (E.D. Wis. 2012). Assembly district 8 was not altered. *Mayer Report at 12.* Assembly district 9 was only altered to accommodate deviations in population and ensure the principle of one-person-one vote in each district. *Id.*

After the map was drawn, the Democratic Senator Respondents analyzed it *only* to ensure the changes had minimal to no effect on the nature of the districts' demographic characteristics, as required by the Voting Rights Act. *Mayer Report at 11; Wis. Legislature*, 142 S. Ct. at 1250-51; ("The question that our VRA precedents ask…is whether a race-neutral [map]…would deny [minority] voters equal political opportunity."); *see also Bethune-Hill v. Virigina Bd. of Elections*, 368 F. Supp. 3d 872, 880-81 (E.D. Va. 2019) (approving examining a district's demographics after a remedial map was created using race-neutral factors to ensure compliance with the VRA); *see also Johnson III*, 2022 WI 19, ¶ 19 (complying with the Voting Rights Act of 1965 is a compelling interest and must be narrowly tailored).

Because the Democratic Senator Respondents' map is race neutral, it does not violate the Equal Protection Clause. Therefore, the Democratic Senator Respondents are entitled to the presumption of acting in a "good-faith, race-neutral manner," which may be overcome only if there is a presence of "highly irregular features." *Johnson III*, 2022 WI 19, ¶ 50. No such factors are present in the remedial map. The population deviation in

these districts is well within the acceptable range. Each district is contained within Milwaukee County. In fact, two of the alterations to these existing boundaries were to remedy unnecessary political subdivision splits. There are no incumbency pairings in these districts. *Mayer Report Appx. A Tables A8 and A9.* The districts score well on compactness measures, and in fact, the assembly districts score *better* on compactness than the SB 621 maps. *Mayer Report at 12-13.* The districts honor communities of interest and were drawn to better preserve communities of interest in the northern and western Milwaukee suburbs. *Mayer Report at 11.*

Ultimately, the proposed remedial map and mapmaking process is compliant with the federal Equal Protection Clause.

b. The proposed map is compliant with the VRA.

"[M]aps must [also] comply with…the Voting Rights Act of 1965." *Clarke*, 2023 WI 79, ¶ 67 (citing *Wis. Legislature*, 595 U.S. at 401). Section 2 of the VRA prohibits "vote dilution," which occurs if electoral districts "are not equally open to participation of a [racial or ethnic minority]" such that those members "have less opportunity than other members of the electorate to participate in the political process and elect representatives of their choice." 52 U.S.C. § 10301(b). In evaluating a proposed map's compliance with the VRA, "[t]he question that our VRA precedents ask…is whether a race-neutral [map]…would deny [minority] voters equal political opportunity." *Wis. Legislature*, 142 S. Ct. at 1250-51; *Johnson III*, 2022 WI 19, ¶ 48 n.8 ("A race-neutral map can comply with the VRA.").

As described above, the proposed map started with the existing boundary lines of the SB 621 map districts that were already found to be compliant with the VRA by the *Johnson* and *Baldus* courts and made minor boundary alterations based upon traditional redistricting factors. *Johnson*

III, 2022 WI 19, ¶ 59; *Baldus*, 849 F. Supp. 2d at 848, 852-59.[2] Even after making changes to these boundaries to address the disruptions in communities of interest and political subdivisions, Dr. Mayer's core retention analysis reveals the proposed map retains a substantial core of the SB 621 districts.[3] *Mayer Report at 12.* Based upon the minimal changes to existing districts, there is no indication that voters in these districts will be denied an equal opportunity to elect candidates of choice. *Id.* What's more, these districts are also more compact than the SB 621 districts, which further indicates that the interests of minority voters are protected in these districts. *Id. at 12*; *Clarke*, 2023 WI 79, ¶35 ("compactness" ensures that districts reflect "reasonably homogenous slate of interests"). Accordingly, the proposed map is compliant with the VRA.

7. The proposed map reunites and preserves communities of interest.

This Court will also consider the extent to which the parties' proposed maps preserve or disrupt communities of interest. *Clarke*, 2023 WI 79, ¶ 68. Courts that have addressed Wisconsin remedial maps have defined a community of interest as a "local community and government." *Johnson III*, 2022 WI 14, ¶ 134 n.19 (citing *Johnson I*, 2021 WI 87, ¶ 83

[2] The "cores" of the districts scrutinized for VRA compliance in the *Baldus* litigation were retained in SB 621. *Baldus,* 849 F. Supp. 2d at 848, 852-59; Expert Report of Dr. John Alford ¶ 12, *Johnson v. Wisconsin Elections Commission*, 2022 WI 14 (2021AP001450), (Dec. 15, 2021); ("The Legislature's districts retain all or nearly all of the population of the existing districts challenged…in *Baldus*, including all or nearly all of the Black or Hispanic population.").

[3] While this Court ruled that it would not consider "least change" principles in adopting a remedial map, *Clarke*, 2023 WI 79 ¶ 60, the Democratic Senator Respondents rely on this core retention metric solely to illustrate that their proposed map largely keeps intact districts previously found by courts to be compliant with the VRA.

(Hagedorn, J., concurring)); *see also Maestas v. Hall*, 2012-NMSC-006, 274 P.3d 66, 78 ("We interpret communities of interest to include a contiguous population that shares common economic, social, and cultural interests which should be included within a single district for purposes of its effective and fair representation.") (internal citation omitted). Similarly, political scientists who study redistricting define a community of interest as "a geographically bounded set of people who live in a reasonably compact and generally cognizable area, and are a politically cohesive group of people that share similar social, cultural or economic interests." *Mayer Report at 13* (citing Grofman and Cervas).

Preserving communities of interest is a critical redistricting consideration because "[t]o be an effective representative, a legislator must represent a district that has a **reasonable homogeneity of needs and interests**; otherwise the policies [they] support will not represent the preferences of most of his constituents." *Prosser v. Elections Bd.*, 793 F. Supp. 859, 863 (W.D. Wis. 1992) (emphasis added). This criterion, however, may not supersede constitutionally mandated districting requirements. *Clarke*, 2023 WI 79, ¶ 68.

The Democratic Senator Respondents restore communities of interest that were disrupted by the predecessor extreme partisan gerrymandered maps and take care not to divide such communities. *Clarke*, 2023 WI 79, ¶ 68. The plan's unification and preservation of numerous communities of interest are detailed and illustrated in Dr. Mayer's accompanying expert and briefly summarized here.

The north shore suburbs of Milwaukee, and the City of Wauwatosa, have each long been recognized in redistricting litigation as communities of interest. *Wisconsin State AFL-CIO*, 543 F. Supp. at 638-39. As discussed in

the previous section, the proposed map unifies the Village of Shorewood with the rest of the suburbs on the north shore of Lake Michigan. It also removes a split through Wauwatosa, unifying it within senate district 4. *See also Mayer Report at 11.*

The proposed map restores several other communities of interest that were also fractured under recent previous maps. For instance, under SB 621, the City of Green Bay was unnecessarily fractured into four assembly districts and two senate districts, and as part of that arrangement, Lambeau Field was in a different senate district than the rest of the city. The proposed map reunites these geographies within a single senate district and two assembly districts, with most of the city in the same district as Lambeau Field. *Mayer Report at 15-16.* It goes almost without saying that Lambeau Field is an economic and social powerhouse that drives the Green Bay community, and that community should be represented by a common senator and assemblyperson.

The proposed map also unifies municipalities with common interests, such as those in the Fox River Valley along the Lake Winnebago shoreline; the cities of Manitowoc and Two Rivers (which share a visitors and convention bureau); and the largest cities of Central Wisconsin: Wausau and Stevens Point. *Mayer Report at 19.* Similarly, the proposed map unifies the rural areas of Central and Northern Wisconsin into a highly compact rural district that is connected by Wisconsin Highway 29. *Mayer Report at 20.* It does the same for the rural communities in Southwest Wisconsin, which previously were fractured including with an incoherent senate district that snaked over 200 miles from the southwest corner of the state almost up to Wisconsin Rapids. Under the proposed map, this portion of the state is a single senate district that is joined by US-151 and

follows the Wisconsin River between Spring Green and the Mississippi River. *Mayer Report at 23.*

In sum, the communities of interest to which Wisconsin voters belong should be recognized and respected in drawing district maps, so as to enable elected officials to effectively represent their interests in the statehouse. The Democratic Senator Representatives' proposed map unifies these communities to enable them to have a voice in the political decisions of the day, consistent with traditional mapmaking principles.

8. The proposed map gives the two major political parties a meaningful opportunity to win a majority of legislative seats with a majority of the statewide vote.

As this Court will remain judicially independent and politically neutral in selecting a remedial map, it will consider "partisan impact" of the map it chooses, to ensure that it does not "seek partisan advantage" and is not "designed to advantage one political party over another." *Clarke*, 2023 WI 79, ¶¶ 70-71 (citing *Jensen v. Wisconsin Elections Bd.*, 2002 WI 13, 249 Wis. 2d 706, ¶ 12, 639 N.W.2d 537). "Partisan impact will not supersede constitutionally mandated criteria." *Id.* ¶ 71.

While numerous metrics exist to evaluate political neutrality, other state supreme courts have not favored one metric over another, but rather, look "wholistically to a [remedial map's] performance across the [metrics]." *Carter v. Chapman*, 270 A.3d 444, 470 (Pa.), *cert. denied sub nom. Costello v. Carter*, 143 S. Ct. 102, 214 L. Ed. 2d 22 (2022). Dr. Mayer's report relies upon numerous metrics to evaluate political neutrality that are well accepted by courts and political scientists alike. *Mayer Report at 24-31; see also Harper v. Hall*, 2022-NCSC-17, ¶ 163, 380 N.C. 317, 868 S.E.2d 499,

(approving "mean-median difference analysis; efficiency gap analysis; close-votes, close-seats analysis; and partisan symmetry analysis" as measures of partisanship advantage), *aff'd sub nom. Moore v. Harper*, 600 U.S. 1, 143 S. Ct. 2065 (2023).

A hallmark of political neutrality is competitiveness. *Clarke*, 2023 WI 79, ¶ 71 ("[W]e will take care to avoid selecting remedial maps designed to advantage one political party over another."); *Maestas*, 274 P.3d at 80 (noting that competitive maps "avoid…political advantage to one political party" and are "healthy in our representative government because competitive districts allow for the ability of voters to express changed political opinions and preferences") (citing *Alexander v. Taylor*, 51 P.3d 1204, 1212 (Okla. 2002)); *Hall v. Moreno*, 2012 CO 14, ¶ 52, 270 P.3d 961, ("[C]onsideration of competitiveness is consistent with the ultimate goal of maximizing fair and effective representation.").

Competitiveness is exactly what the proposed map ensures: it allows the majority of voters to have the equal opportunity to secure the majority of seats in an election cycle. One way to measure competitiveness is by the number of competitive seats. Previous partisan performance in past elections demonstrates that Democrats narrowly edged out Republicans in statewide vote share: 50.5% to 48.2%. *Mayer Report at 24.* Under these vote totals, the proposed assembly map creates 16 competitive districts;[4] that is, 16 percent of the assembly. *Mayer Report at 24-25*. The senate map creates 9 competitive districts, which is 27 percent of the senate. *Mayer Report at 24,*

[4] A "competitive district" is defined as a less than 10% difference in baseline vote shares between Democrats and Republican seats. *Mayer Report at 24.*

Appx. A Tables A7 and A8 (breaking down partisan baseline vote share in each district).

Dr. Mayer also evaluates the competitiveness of the electoral system as a whole. Specifically, metrics like partisan bias and partisan symmetry measure whether, in fact, the vote share a party receives translates into a roughly proportional number of seats. *Mayer Report at 24-26*; *see LULAC v. Perry*, 548 U.S. 399 (2006) (Stevens, J., concurring in part and dissenting in part) (stating that partisan symmetry is "widely accepted by scholars as providing a measure of partisan fairness in electoral systems"); *Harper*, 868 S.E.2d at 547-48 (partisan symmetry analysis is useful in assessing whether a "meaningful partisan skew necessarily results from [a state's] unique political geography.").

The partisan bias metric evaluates how many "excess" seats and votes a party receives when they obtain 50% of the vote compared to 50% of the seats. *Mayer Report at 24*. The proposed assembly plan has an approximate +4-seat Republican bias and +2.0% Republican vote bias. *Id.* In other words, if Republicans receive 50% of the statewide vote, the party can expect to win 54 assembly seats and can win the majority in the assembly with 48.0% of the statewide vote. *Id.* This is a marked improvement from the SB 621 map, which has a roughly 11-seat bias for Republicans and allows them to win the majority with only 45.9 % of the statewide vote. *Mayer Report at* 24 *n.12*. Under the proposed senate map, Republicans have a roughly 1-seat bias at 50% of the vote and can win the majority with 49.4% of the statewide vote. *Mayer Report at 25.* Again, this is considerable improvement from SB 621, which has a roughly 5-seat bias at 50% of the statewide vote for Republicans and can allow the party to win the majority with only 45.8% of the statewide vote. *Mayer Report at 25 n.13*.

The partisan symmetry metric evaluates how parties perform at the percentages of the vote and whether parties are treated equally in the percentage of votes to seat conversions. *Mayer Report at 26.* The closer the global symmetry value is to "0.0%," the more symmetric the map and the more that equal vote percentages will translate into the same number of seats. *Id.* Under the proposed assembly map, the global symmetric value is +3.2% Republicans (compared to +4.6 Republicans under the current map). *Id.* Under the proposed senate map, the global symmetric value is +2.6Republicans (compared to +5.7% Republicans under the current map). *Id.* As these metrics make clear, the map proposed by the Democratic Senator Respondents gives each party roughly the same opportunity to win the majority of seats.

Dr. Mayer also conducts several analyses to measure how diffuse different kinds of voters are across electoral districts. To do this, he utilizes efficiency gap, mean-median value, and declination metrics. *Mayer Report at 27-28*. Critically, these measures shed light onto whether a proposed map has gerrymandered districts through "packing" certain types of voters into certain districts, or "cracking" certain types of voters across several districts. *See Johnson III*, 2022 WI 19, ¶ 172 ("Packing occurs when the map lines place large numbers of [voters] into few districts so that they might have as few representatives as possible. Cracking occurs when the map lines spread small numbers of the remaining [voters] across many districts so that their influence within those districts is minimal.") (Karofsky, J., dissenting).

Across all these metrics, the proposed map scores significantly better than the SB 621 map. The proposed assembly plan has an efficiency gap score ("EG") of 4.0% (compared to the current map's EG of 11.3%) and the

proposed senate map has an EG of 0.8% (compared to the current map's EG of 2.7%). *Mayer Report at 27.* As to the mean-median score—where higher values reflect packing of voters—the proposed assembly map has a value of 2.3% and the proposed senate map has a value of -0.52%. *Id.* By contrast, the current map has an assembly mean-median score of 6.6% and senate mean-median score of 6.1%. *Id.*

The declination metric evaluates how many districts a party wins narrowly. *Mayer Report at 27.* The higher the value, the more districts are won in a lopsided fashion. *Id.* The proposed assembly map has a declination less than half the value of the current map, and the proposed senate map has a declination score that is almost a sixth of the current map's score. *Mayer Report at 27-28.*

Finally, Dr. Mayer concludes that the minimal number of incumbent pairings indicates that the Democratic Senator Respondents are not engaged in unfair "partisan targeting" with their proposed map, and any differences between parties are the result of geography. *Mayer Report at 29.* While Republican pairings are higher than Democratic pairings, this is to be expected, as Republicans currently hold the majority in both the assembly and senate. Pairings are roughly equivalent to the percentage of seats each party holds. *Mayer Report at 29, Appx A Tables A8 and A-9.*

In sum, based upon all of these various metrics looking at partisan bias, competitiveness and neutrality, Dr. Mayer concluded that "there is no doubt that the proposed maps for Assembly and Senate districts are *far* more neutral than the existing maps" and "provide both parties with a meaningful opportunity to win a majority of seats once their statewide vote share exceeds 50%." *Mayer Report at 29* (emphasis in original). A

summary of each partisan neutrality metric Dr. Mayer evaluated is reproduced here.

Summary of Measures of Partisan Neutrality										
	Dem Seats at 50-50 vote	**Dem Seats at Baseline (50.5%)**	**Dem Vote Share to Obtain Majority**	**Comp. Seats**	**Seats Bias**	**Votes Bias**	**Global Symmetry**	**Efficiency Gap**	**Mean-Median**	**Declination**
Assembly	45	47	52.2%	20	4.6%	2.2%	4.6%	4.5%	3.0%	10.3°
Senate	16	17	51.2%	10	3.3%	1.2%	2.7%	2.7%	0.9%	6.6°

Mayer Report at 31.

As this summary demonstrates, the remedial map proposed by the Democratic Senator Respondents is by all measures non-partisan and aligned with interests of judicial independence. The Court should select this map as the remedial map in this case.

CONCLUSION

The Democratic Senator Respondents respectfully request that the Court adopt their proposed map to remedy the previous finding of unconstitutionality of the current state legislative map.

Respectfully submitted this 16th day of January 2024.

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CERTIFICATION

I hereby certify that this brief conforms to the Court's December 22, 2023 Order for a brief in support of a proposed map and the rules contained in s. 809.19(8)(b), (bm), and (c) for a brief. The length of this brief is 5,519 words.

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