

FILED

01-22-2024

CLERK OF WISCONSIN

SUPREME COURT

---

**No. 23AP1399-OA**

---

**In the Supreme Court of Wisconsin**

---

REBECCA CLARKE, RUBEN ANTHONY, TERRY DAWSON, DANA GLASSTEIN, ANN GROVES-LLOYD, CARL HUJET, JERRY IVERSON, TIA JOHNSON, ANGIE KIRST, SELIKA LAWTON, FABIAN MALDONADO, ANNEMARIE MCCLELLAN, JAMES MCNETT, BRITTANY MURIELLO, ELA JOOSTEN (PARI) SCHILS, NATHANIEL SLACK, MARY SMITH-JOHNSON, DENISE SWEET and GABRIELLE YOUNG, PETITIONERS,  
GOVERNOR TONY EVERS, in his official capacity; NATHAN ATKINSON, STEPHEN JOSEPH WRIGHT, GARY KRENZ, SARAH J. HAMILTON, JEAN-LUC THIFFEAULT, SOMESH JHA, JOANNE KANE, and LEAH DUDLEY, INTERVENORS-PETITIONERS

v.

WISCONSIN ELECTIONS COMMISSION, DON MILLIS, ROBERT F. SPINDELL, JR., MARK L. THOMSEN, ANN S. JACOBS, MARGE BOSTELMANN, JOSEPH J. CZARNEZKI, 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 STRECK, INTERVENORS-RESPONDENTS.

---

**RESPONSE BRIEF OF INTERVENORS-RESPONDENTS BILLIE JOHNSON, CHRIS GOEBEL, ED PERKINS, ERIC O'KEEFE, JOE SANFELIPPO, TERRY MOULTON, ROBERT JENSEN, RON ZAHN, RUTH ELMER, AND RUTH STRECK IN SUPPORT OF PROPOSED MAP**

---

WISCONSIN INSTITUTE FOR  
LAW & LIBERTY, INC.

RICHARD M. ESENBERG  
LUKE N. BERG  
NATHALIE E. BURMEISTER  
330 E. Kilbourn Ave., Ste. 725  
Milwaukee, WI 53202  
Phone: (414) 727-9455  
Facsimile: (414) 727-6385

---

## TABLE OF CONTENTS

ARGUMENT.....	4
I. There Is No Good Reason Not to Adopt the Simple Remedy.....	4
II. The Johnson Maps Outperform Every Other Map on the Neutral Criteria Required by the Wisconsin Constitution.....	4
III. All Other Maps Are Blatant Democratic Gerrymanders, as Various Assessments Reveal.....	8
A. Ensemble Analysis .....	9
B. The “Geographic Seats” Metric.....	11
C. Just Looking at the Maps .....	13
D. Rank-Votes Graphs .....	21
E. Incumbent Pairings.....	26
IV. The Johnson Maps Outperform the Clarke Maps on Every Metric Required by the Wisconsin Constitution.....	29
CONCLUSION .....	32

## TABLE OF AUTHORITIES

### Cases

<i>Baumgart v. Wendelberger</i> , No. 01-C-0121, 2002 WL 34127471 (E.D. Wis. May 30, 2002).....	7
<i>Clarke v. Wis. Elections Comm’n</i> , 2023 WI 79, 998 N.W.2d 370.....	30
<i>Johnson v. Wis. Elections Comm’n</i> , 2021 WI 87, 399 Wis. 2d 623, 967 N.W.2d 469.....	7, 13
<i>Prosser v. Elections Bd.</i> , 793 F. Supp. 859 (W.D. Wis. 1992) .....	7, 8, 30
<i>Tennant v. Jefferson Cty. Comm’n</i> , 567 U.S. 758 (2012).....	6

### Other Authorities

Daniel D. Polsby and Robert D. Popper, <i>The Third Criterion: Compactness as a Procedural Safeguard Against Partisan Gerry Mandering</i> , 9:2 Yale Law & Policy Review 301 (1991) .....	14
---	----

## ARGUMENT

### **I. There Is No Good Reason Not to Adopt the Simple Remedy.**

As the Johnson Intervenor-Respondents have argued repeatedly, there is a simple fix to the contiguity violation this Court has identified, as the Legislature's proposal illustrates. *See* Johnson Opening Remedial Br. 5–10. There is no reason, other than purely political reasons, to reject that remedy. It resolves the contiguity issue while moving less than 5,000 people (in the Assembly map), and less than 1,000 (in the Senate map). Legislature's Opening Remedial Br. 24–25. It is what courts do. It provides a remedy for the only constitutional flaw this Court found.

### **II. The Johnson Maps Outperform Every Other Map on the Neutral Criteria Required by the Wisconsin Constitution.**

If this Court rejects the Legislature's proposal for any reason, it should select the Johnson Intervenor-Respondents' maps (the "Johnson Maps"). The Johnson Maps outperform all others<sup>1</sup> on the neutral criteria required by the Wisconsin Constitution (population deviation, county and town splits, and compactness)—and it isn't close.<sup>2</sup> Below are summary charts showing how each map scored. In these charts, the best score among the maps is shaded dark green; the second best, light green; the worst, dark red; the second worst, light red/orange; and in between (if any, depending on ties), yellow. As is immediately apparent, the Johnson Maps are a column of green (and for a head-to-head comparison between the Johnson and Clarke Maps, *see infra* Part IV):

---

<sup>1</sup> All references to the "other maps" or "other submissions" refer to the Clarke, Wright, Governor Evers, and Democratic Senators' Maps.

<sup>2</sup> The Johnson Intervenor-Respondents forgot to state in their opening remedial brief that their maps are properly nested. They are. The Court can confirm via the submitted maps and block assignment files. Senate District 1 consists entirely and solely of Assembly Districts 1–3; Senate District 2 of Assembly Districts 4–6; etc.

ASSEMBLY	Current	Johnson	Clarke	Wright	Evers	D. Sen.
Population Deviation	0.76%	0.98%	0.92%	1.83%	1.96%	1.86%
<b>Splits</b>						
Counties	53	37 (35)	44	47	45	51
Towns*	15	0	8	14	21	24
Cities/Villages	36	34	35	37	33	44
ALL Municipal	51	34	43	51	54	68
TOTAL Splits	104	71	87	98	99	119
<b>Compactness</b>						
Reock <sup>3</sup>	0.36	0.41	0.39	0.39	0.39	0.39
Polsby	0.25	0.35	0.30	0.31	0.35	0.31

\* Not counting the Town of Madison which no longer exists.

SENATE	Current	Johnson	Clarke	Wright	Evers	D. Sen.
Population Deviation	0.57%	0.65%	0.65%	1.19%	1.46%	1.36%
<b>Splits</b>						
Counties	42	29	33	37	33	42
Towns*	7	0	5	7	11	16
Cities/Villages	23	22	23	26	21	31
ALL Municipal	30	22	28	33	32	47
TOTAL Splits	72	51	61	70	65	89
<b>Compactness</b>						
Reock	0.37	0.39	0.39	0.38	0.38	0.36
Polsby	0.23	0.28	0.25	0.25	0.31	0.26

\* Same

<sup>3</sup> The compactness numbers (and all numbers) reported here are all taken from Dave's Redistricting App. Some of the parties report different compactness scores in their briefs. The cause of this discrepancy is not clear—it may be that different software computes these scores differently. Unfortunately, this Court's process does not allow getting to the bottom of this. In any event, the Court should use the same software for each map to compare compactness numbers.

The Johnson Maps have half the population deviation of most other submissions, except for the Clarke Maps, which are about the same. The Johnson Maps split a full 11 (or 13) fewer counties than the next-best map (combining Assembly and Senate splits). The Johnson Maps split zero towns, while all other maps split 13 or more. As the Johnson Intervenor explained in their opening brief, county and town splits should take the highest priority because Wisconsin's constitution prioritizes keeping counties and towns together over cities and villages. Johnson Opening Remedial Br. 12–13. Finally, the Johnson Maps are also more compact than all but the Evers Senate Map (which is only slightly better than the Johnson senate map on the Polsby scale).<sup>4</sup> The Johnson Maps are simply the most consistent with the Wisconsin Constitution.

The other maps do worse on these neutral criteria because they are all Democratic gerrymanders, as explained in more detail below. They are forced to split counties and towns and create winding, less compact districts to increase the number of Democratic-leaning districts.

Two other neutral factors this Court might consider are: (1) the total number of people moved to a new district, which harms voters by introducing a lack of continuity—they wind up being asked to vote for or against incumbents they don't know<sup>5</sup>; and (2) senate disenfranchisement. "Senate disenfranchisement" refers to a two-year delay in the ability of a voter to vote for a Senator by being moved from, in this case, an even Senate district (which will be voting in 2024) to an odd Senate District (which won't vote again until 2026). *See Johnson v.*

---

<sup>4</sup> There are no contiguity issues in any of the maps, except the Democratic Senators' map, which is not contiguous. The "Find non-contiguous districts" tool in Dave's shows multiple non-contiguous parts (beyond just water islands, which all maps have).

<sup>5</sup> *See Tennant v. Jefferson Cty. Comm'n*, 567 U.S. 758, 764 (2012) ("[t]he desire to minimize population shifts between districts is clearly a valid, neutral state policy.")

*Wis. Elections Comm’n*, 2021 WI 87, ¶ 94, n.5, 399 Wis. 2d 623, 967 N.W.2d 469 (Dallet, J., dissenting). As Justice Dallet noted in *Johnson I*, “true neutrality” requires that the effect of “senate disenfranchisement” is kept minimal. *Id.* ¶ 94 (Dallet, J., dissenting). Other case law likewise emphasizes that while redistricting necessarily results in some senate disenfranchisement, “it is not something to be encouraged.” *Prosser v. Elections Bd.*, 793 F. Supp. 859, 866 (W.D. Wis. 1992) (citation omitted); see also *Baumgart v. Wendelberger*, No. 01-C-0121, 2002 WL 34127471, \*3–4, \*7 (E.D. Wis. May 30, 2002) (considering levels of senate disenfranchisement when assessing proposed redistricting plans and adopting the plan with the lowest level).

As the chart below shows, the Johnson Maps far outperform all others (setting aside the simple fix, which is three orders of magnitude better than the rest):

<b>Movement of Voters</b>					
	<b>Johnson</b>	<b>Clarke</b>	<b>Wright</b>	<b>Evers</b>	<b>D. Sen.</b>
Assembly - People Moved	2,786,271	3,627,733	3,598,929	3,323,685	3,155,446
Senate - People Moved	1,477,384	2,332,996	2,696,137	2,218,816	2,195,184
Senate Disenfranchisement	431,396	697,154	750,208	671,543	600,979

\* From data produced by the Legislature, in an appendix to the Legislature’s brief.

Again, the comparison is not particularly close. The Johnson Maps move over 350,000 fewer people in the Assembly maps, and 700,000 fewer people in the Senate maps, than the next closest maps. And, in terms of senate disenfranchisement, the Johnson Maps disenfranchise almost 170,000 fewer people than the next-best submission—the Democratic Senators’ Maps—and almost 319,000 fewer people than the worst-performing map on this margin—the Wright Maps.

In short, there is no reason for this Court to select one of the other maps over the Johnson Maps, other than prioritizing the nonjusticiable call for partisan “proportionality” over the objective criteria actually contained in the Wisconsin Constitution. As explained in our Opening Brief and below, political neutrality does not mean “proportionality,” and the Johnson Maps are politically neutral by a variety of well-recognized metrics.

### **III. All Other Maps Are Blatant Democratic Gerrymanders, as Various Assessments Reveal.**

As the Johnson Intervenors already explained at length, “political neutrality” does *not* mean a map in which some measure of the statewide vote share directly translates into legislative seats. *See* Johnson Opening Remedial Br. 9–10, 22–24. There are polities that have such a system, and, while some think we should too, our Constitution calls for something else. As is obvious but more fully explained below, the single-member geographic districts will be affected by statewide partisanship but also by where partisan voters live. This is a feature of our constitutional system which makes representation of equal groups of voters geographical and calls for geographic breadth rather than merely depth of support. For that reason, any measure of partisan fairness may not include “rigging” the individual districts to match some measure of statewide support. To the contrary, any political neutrality measure must account for the natural political geography of the state. As the Petitioner Parties have all emphasized to this Court, a map must not allow “one party [to] do better than it would do under a plan drawn up by persons having no political agenda,” citing *Prosser*, 793 F. Supp. at 867. *See id.* 26–27.

Once one accounts for the natural political geography of Wisconsin, it becomes immediately apparent that all of the Petitioner Parties’ maps are extreme Democratic gerrymanders. Indeed, they are not even trying to hide their partisan goals. This can be seen in multiple ways.



### A. Ensemble Analysis

One way to estimate the natural effects of a state's political geography is to randomly generate maps and compare how they perform politically. This often generates a bell curve, where the average, or top of the curve, is a good estimate of the effect of natural political geography.

The Johnson Intervenor's expert, Dr. Blunt, randomly generated 20,000 possible Assembly and Senate maps that adhere as closely as possible to the Wisconsin constitution's neutral redistricting criteria. He found that most of the plans he generated yielded, on average, 41–42 Democratic-leaning assembly seats, and around 14 Democratic-leaning senate seats.<sup>6</sup> Blunt Report, 1, 6, 9–10. Using the same election data, the Johnson Maps fall within a seat of this range, yielding one “extra” Democratic-leaning Assembly seat.

The Legislature's expert, Sean Trende (someone who has been hired as a neutral expert in other states) also randomly generated maps—50,000 of them—and reached roughly the same numbers as Dr. Blunt. His simulations found that most maps would yield 42 Democratic-leaning Assembly seats and 13 Democratic-leaning Senate seats.<sup>7</sup> Trende Report, 22, 27. When he generated maps to minimize the number of county and town splits—which is what the Wisconsin Constitution *requires*—the numbers changed slightly, but not much: to 43 Democratic-leaning assembly seats and 12 Democratic-leaning senate seats, mirroring the Johnson maps. *Id.*, 37, 42.

---

<sup>6</sup> Based on composite election data from six statewide elections between 2016–2020, the same six used in Dave's 2016–2020 composite.

<sup>7</sup> Trende used composite election data from 2016-2022, with a few more elections than Blunt.

That two completely independent analyses yielded the same results is not a coincidence—it is because that is the effect of Wisconsin’s natural political geography.

So how do the other maps compare to what natural geography suggests? Shockingly bad, it turns out. Below are the predicted number of Democratic-leaning seats for each map, using two different composites<sup>8</sup>:

Predicted D. Seats		Johnson	Clarke	Wright	Evers	D. Sen.
Blunt		Dave’s 2016-2020 Composite				
Assembly	41–42	43	49	49	49	47
Senate	13–14	13	15	15	15	17
Trende		Dave’s 2016-2022 Composite				
Assembly	42–43	43	51	51	50	47
Senate	12–13	13	16	17	17	18

Notably, *not a single one* of Blunt’s randomly generated Assembly maps had over 44 Democratic-leaning seats, yet all the other maps somehow hit nearly 50. Blunt Rep. 7. Likewise, none of Trende’s randomly generated Assembly maps had over 46 Democratic-leaning districts (and only a tiny few hit that number). Trende Rep. 22. The four petitioner-side maps are extreme Democratic gerrymanders.

Perhaps most revealing of all, none of the other parties conducted any ensemble analysis (random map simulations) of their own. They didn’t do this, of course, because they know what it would show. It exposes how much of an outlier their maps are.

---

<sup>8</sup> Blunt used the same composite as Dave’s 2016-2020. Trende used a composite most similar to Dave’s 2016-2022.

## **B. The “Geographic Seats” Metric**

Yet another estimate of the effects of natural political geography is the “geographic seats” metric, which is reported in Dave’s. As the Johnson Intervenors explained in their opening brief, this metric treats counties as if they were districts with a fractional number of seats proportional to their population, and then assigns those seats to whichever party won that county for a given election (or composite). Because the metric tracks how the party did on a county-by-county basis, this measure is particularly relevant to Wisconsin, as Wisconsin’s constitution prioritizes keeping counties whole.

While it is not possible to actually assign fractional seats and counties must sometimes be split, they are of long-standing origin and were not drawn for political advantage. Counties are good measures of the political geography of the state.

The geographic seats metric depends on what election data one is using. For example, when Tammy Baldwin won in 2018, she won not only 55% of the popular vote, but many counties that Democrats do not usually win. If you use that election when applying the “geographic seats” metric, it predicts 58.83 Democratic seats in the assembly (and the Johnson Maps predict 59).

The chart below produces the “geographic seats” measure for a variety of elections and election composites, and then compares the number of Democratic-leaning districts, for each map, using the same election data. As with the charts above, dark green cells are those closest to the geographic seats measure; light green are second closest; dark red are furthest from geographic seats; light red/orange are second furthest, and yellow are in between (except where ties result in an even set):

STATE ASSEMBLY		Democratic-Leaning Seats				
Geographic Seats		Johnson	Clarke	Wright	Evers	D. Sen.
Trump 16	38.78	38	46	45	45	45
Baldwin 18	58.83	59	59	58	58	58
Biden 20	40.16	41	51	52	49	48
Evers 22	43.69	47	53	53	52	51
Kaul 22	41.47	44	51	51	50	49
Leiber 22	38.27	40	49	50	48	46
Johnson 22	38.43	41	49	50	48	46
16–20 Composite	42.76	43	49	49	49	47
16–22 Composite	42.71	43	51	51	50	47

STATE SENATE		Democratic-Leaning Seats				
Geographic Seats		Johnson	Clarke	Wright	Evers	D. Sen.
Trump 16	12.93	11	14	14	14	16
Baldwin 18	19.61	19	19	18	18	20
Biden 20	13.39	13	17	18	18	18
Evers 22	14.56	15	18	18	18	19
Kaul 22	13.82	14	16	17	17	19
Leiber 22	12.76	11	16	15	15	17
Johnson 22	12.81	11	16	17	16	18
16–20 Composite	14.25	13	15	15	15	17
16–22 Composite	14.24	13	16	17	17	18

As the charts above show, only the Johnson Maps track the geographic seats metric across various elections. No matter which election(s) are applied, they allow either party to pick up more or less seats based on their performance throughout the state, in line with what geography predicts. This is the result one would expect from a map based only on the neutral constitutional requirements of population equality, keeping counties and towns together, and compactness.

The other maps, by stark contrast, all far over-perform for Democrats from what geography would suggest. Not only that, but they

all tend to produce the same number of Democratic-leaning districts across a variety of elections. The Clarke and Wright Assembly maps are particularly bad on this score. And, perhaps unsurprisingly, the Democratic Senators' map is the most extreme partisan gerrymander of the senate, using this metric.

\* \* \* \* \*

In sum, three different independent data points—the geographic seats metric, Blunt's ensemble analysis, and Trende's ensemble analysis—all confirm the exact same thing: the natural political geography of Wisconsin leans in favor of Republicans.

A map that tracks Wisconsin's natural political geography is far more "politically neutral" than one that gerrymanders to overcome that natural disadvantage, as all of the Petitioner Parties' maps clearly do. As Justice Dallet noted in her dissent in *Johnson I*, "[j]udges should not select a plan that seeks partisan advantage—that seeks to change the ground rules so that one party can do better than it would do under a plan drawn up by persons having no political agenda..." 2021 WI 87, ¶ 111 (Dallet, J., dissenting) (citation omitted). Put another way, judges ought not to be in the business of tinkering with the maps to advantage one party over another by, for example, seeking to overcome the impact of the state's existing political geography on single-member geographic districts. The Johnson Maps do not seek any partisan advantage, and the metrics discussed above prove it. If this Court rejects the Johnson Maps in favor of any other submission, it will permit one party—the Democrats—to perform better than they otherwise would, directly contradicting the sentiment above.

### **C. Just Looking at the Maps**

Yet another way to confirm that all other maps are Democratic gerrymanders is simply by looking at them. While some argue that

gerrymanders can be hard to see, that's not so here. Indeed, it is easy to see how they did it.

### **1. Dane County—All Other Maps Slice It Like a Pie**

The Petitioner Parties' maps of Dane County are visually much less compact than the Johnson Maps because they are trying to move as many Democratic voters in Dane County into as many different districts as possible to create an advantage for Democrats. But as Professors Polsby and Popper (the creators of the Polsby-Popper test for compactness) have noted, "The diagnostic mark of the gerrymander is the noncompact district." See Daniel D. Polsby and Robert D. Popper, *The Third Criterion: Compactness as a Procedural Safeguard Against Partisan Gerry Mandering*, 9:2 Yale Law & Policy Review 301 (1991). The lack of compactness in the other parties' maps, as shown in both the charts from Section I (above) and visualizations of how each party splits apart Dane County (below), is a diagnostic marker of gerrymandering.

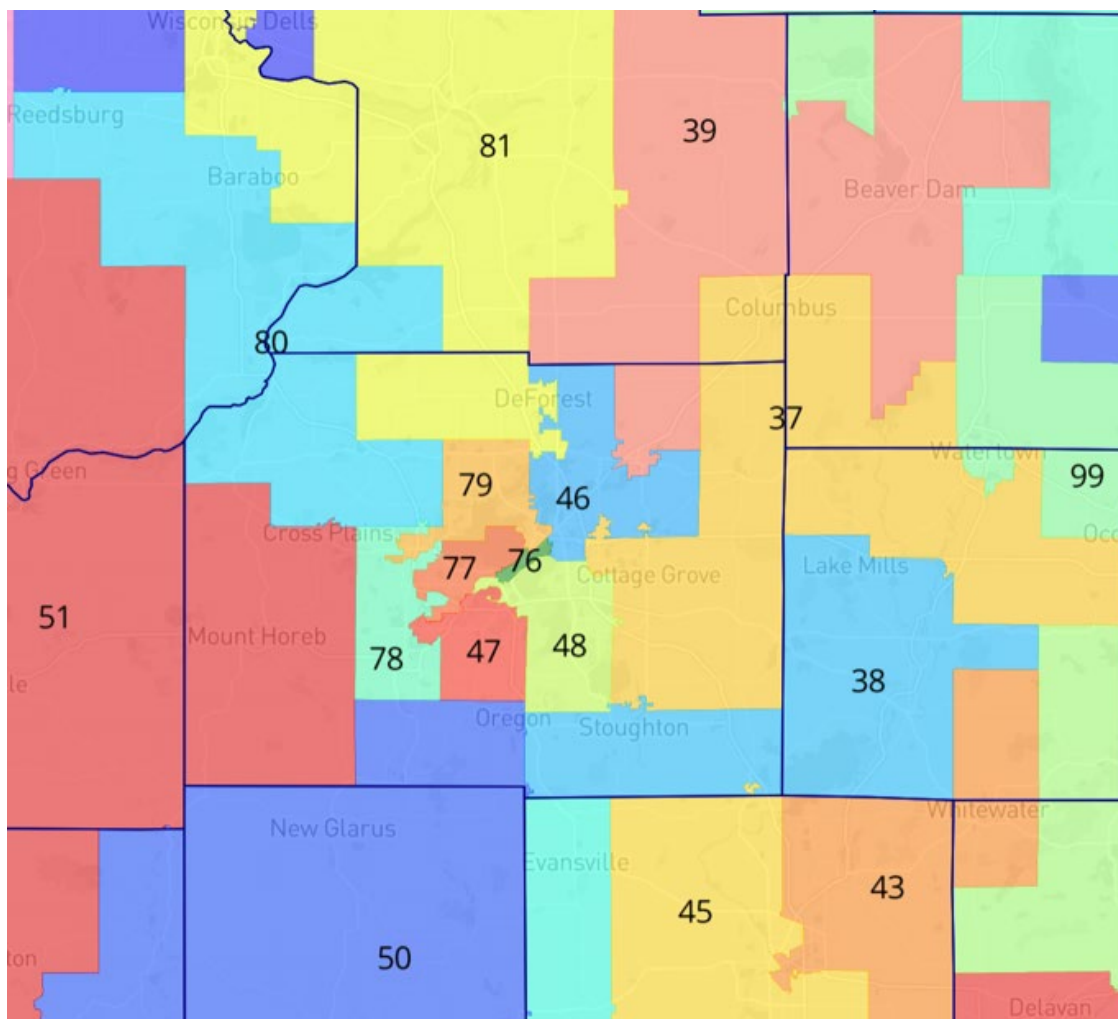
Dane County has enough people for 9.5 assembly districts, yet the Clarke Assembly Map places only seven districts wholly within the county and then fractures the remainder of the county between an additional eight districts.<sup>9</sup> By contrast, the Johnson Assembly Map has only five districts partially located in Dane County and places more whole districts within Dane County than the Clarke Assembly Map does. All of the other Petitioner Parties' maps are similar to the Clarke Map, as shown in the following chart:

---

<sup>9</sup> Dane County has a population of 563,951. The ideal population for each assembly district is 59,533. (563,951/59,533=9.473).

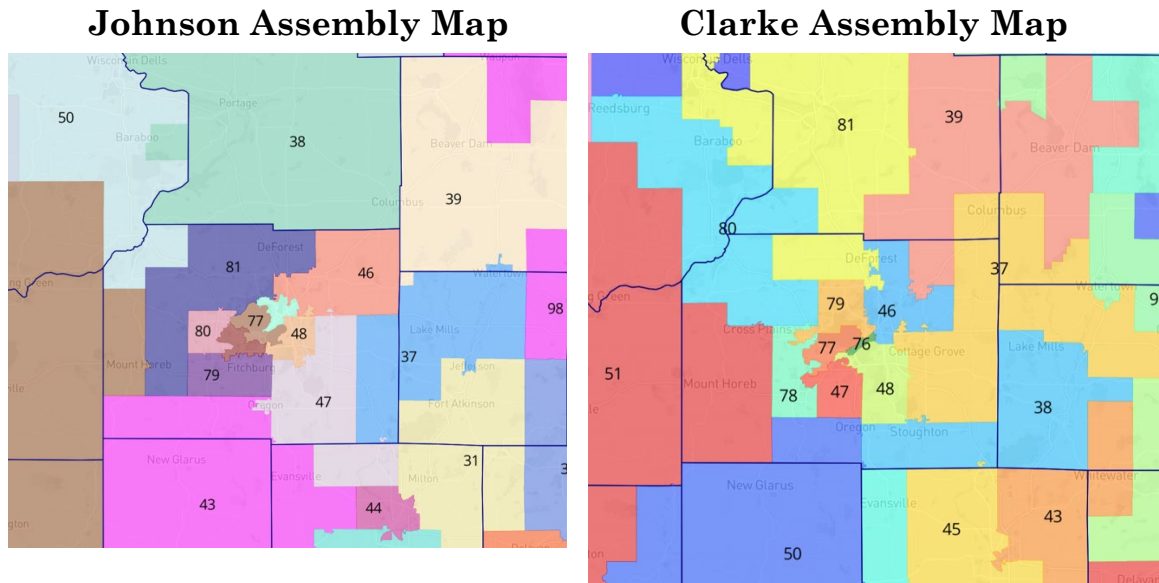
	<b>Johnson</b>	<b>Clarke</b>	<b>Wright</b>	<b>Evers</b>	<b>D. Sen.</b>
Entirely in Dane County	8	7	4	7	5
Partially in Dane County	5	8	9	6	8

In addition, images of how the Petitioner Parties split up Dane County provide a more complete picture of their gerrymandering efforts. Here is a picture of the Dane County area in the Clarke Assembly map:



As is immediately apparent, the Clark map creates a “pinwheel” centered in Madison, splintering it into the surrounding areas. Multiple districts spiral out of Dane County in all directions. For reference, the

Clarke pinwheel consists of districts 37, 38, 39, 45, 50, 51, 80 and 81. This stands in stark contrast with the Johnson Assembly Map. Below are the two maps side-by-side:

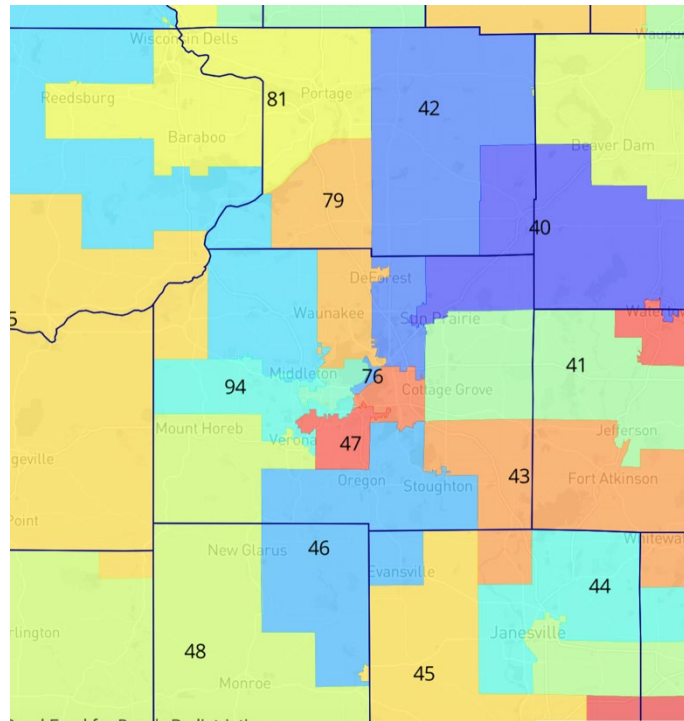


The *Clarke* pinwheel is *not* the result of the need to create equally populated districts. It is also *not* part of an effort to reduce county or municipal splitting. And it most certainly is *not* an effort to improve compactness. The **only** purpose is to create more Democratic seats. It is a classic technique to draw Democratic majorities out of Dane County and pair them with Republican minorities in a number of districts.

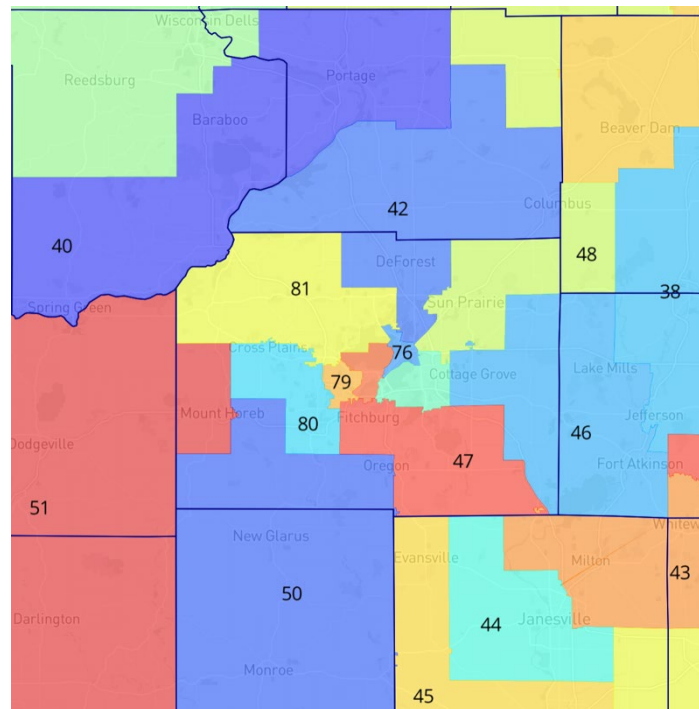
All of the other Petitioner Parties break apart Dane County in a similar, visually-obvious way. Thus, their maps are Democratic gerrymanders for the same reason the Clarke map is a Democratic gerrymander. Below are images of the Dane County area in each of the other Petitioner Parties' assembly maps, revealing the pinwheel formation:



### Wright Assembly Map



### Governor Evers Assembly Map



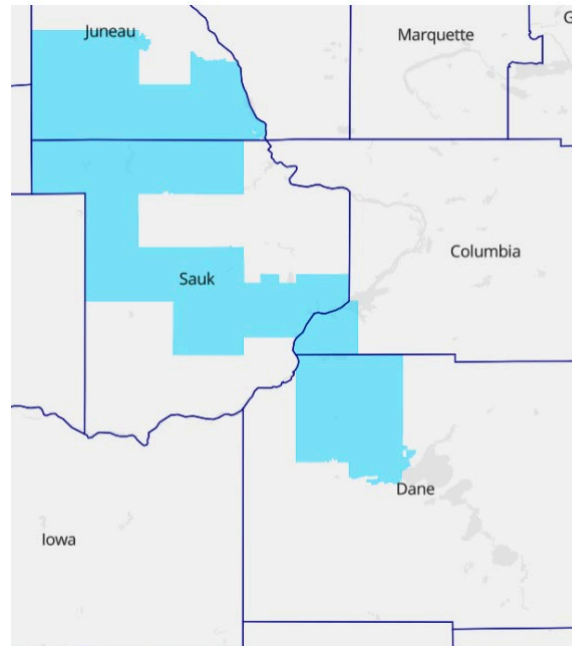
Map of Wisconsin counties colored by the number of people aged 65 and over. The map shows various counties with their corresponding age population percentages. For example, Dodge County is 79%, Portage County is 80%, and Beaver Dam is 58%.

Indeed, the Wright Intervenor's District 80 even *looks* like the district that inspired the name “gerrymander,” winding its way north out of Dane County across four separate counties:

**The Original “Gerrymander”**<sup>10</sup>



**District 80 in Wright Map**



In sum, the pinwheel formation seen in every Petitioner Party's submission is an unequivocal Democratic gerrymander.

## 2. Milwaukee Suburbs

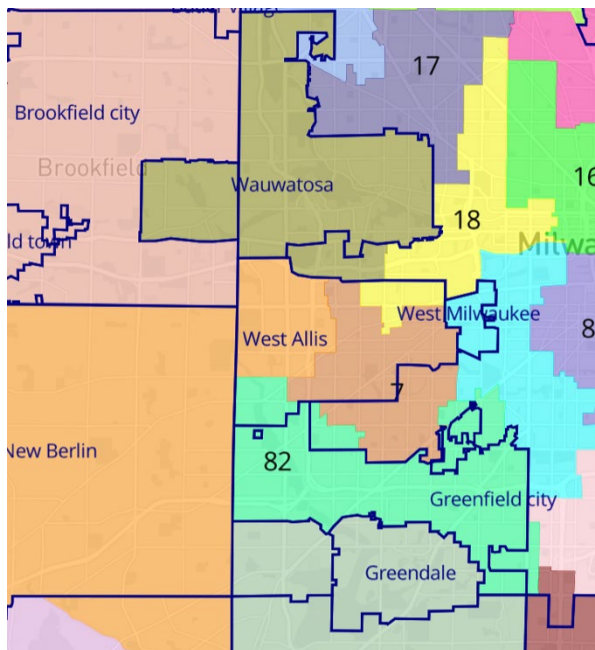
The Petitioner Parties also use municipal splits to gerrymander (which is why they have worse split numbers), especially around the Milwaukee area. As shown below, the Clarke and Wright Maps have

<sup>10</sup> Image available at <https://cdn2.picryl.com/photo/1812/12/31/the-gerrymander-edit-9b3ae3-1024.png>

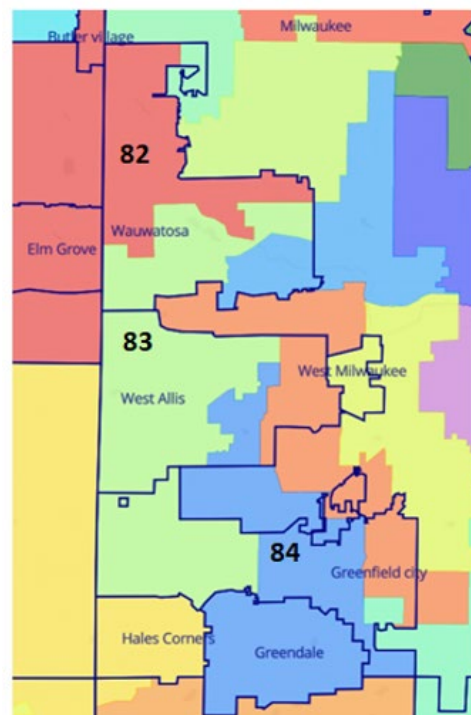
split a number of municipalities in Milwaukee County for the purpose of gaining additional Democratic seats. There is no reason to split the western Milwaukee suburbs the way they do, except to gain a partisan advantage.

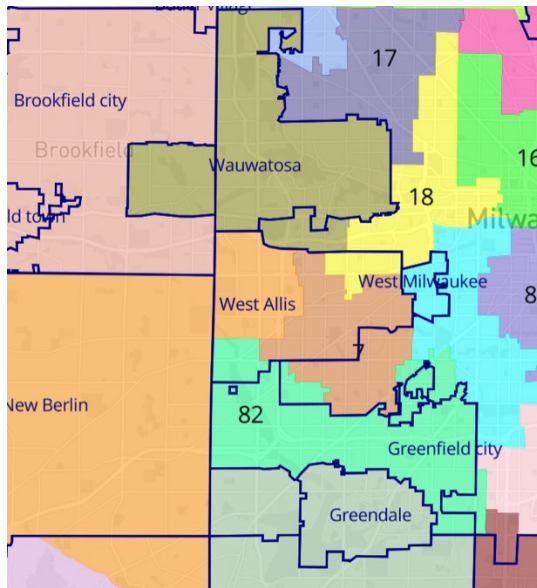
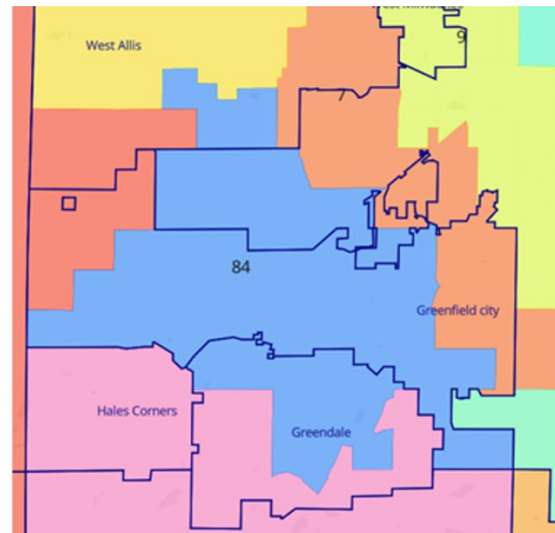
For example, notice how many western Milwaukee County suburbs in the Clarke Assembly Map are not only fractured, but are made up of multiple municipal fragments (District 83 is entirely made of fragments). Districts 82, 83, and 84 in Clarke split Wauwatosa, West Allis and Greenfield into a total of 11 pieces. The Johnson Assembly Map, in contrast, splits only two municipalities in the entire county (Milwaukee and West Allis)—each of which are too large to fit into one assembly district. Similarly, the Wright map creates a district in this area (District 84) that is comprised entirely of municipal fragments. Below are the Clarke and Wright Assembly Maps of the Milwaukee area, next to the Johnson Assembly Map.

**Johnson Assembly Map**



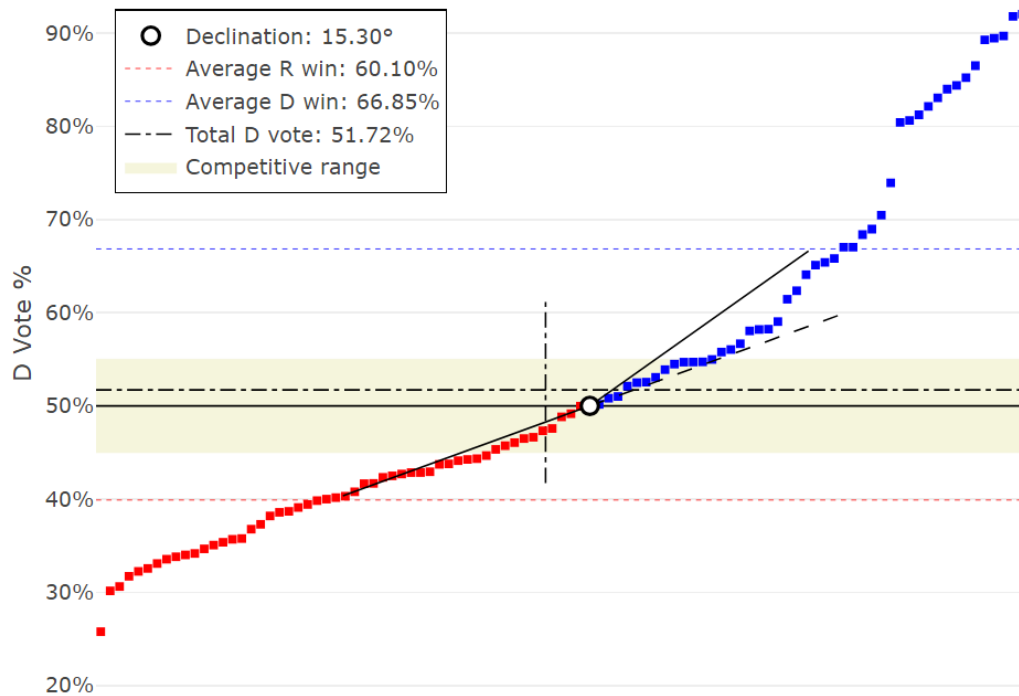
**Clarke Assembly Map**



**Johnson Assembly Map****Wright Assembly Map**

#### **D. Rank-Votes Graphs**

Rank-votes graphs provide yet another way to visualize that all other maps are unabashed Democratic gerrymanders. These are readily available on Dave's Redistricting App. A rank-votes graph simply ranks all the districts in a map from least Democratic to most Democratic, without regard to their assigned district number, for whatever election(s) one is considering. The focal point is around the 50% line—which represents the district(s) closest to 50-50 for a given election. An effective gerrymander focuses there and attempts to move close districts above the line, or to move districts out of the competitive range (the 45–55% range), which is shaded in the charts below. A gerrymander will show anomalies around that point, whereas a neutrally-drawn map will show a gradual and steady incline of seats around where the districts cross the 50-50 line. Below is the rank-votes graph for the **Johnson** Assembly Map, using the most recent statewide election (Governor 2022) (as will all charts in this section):



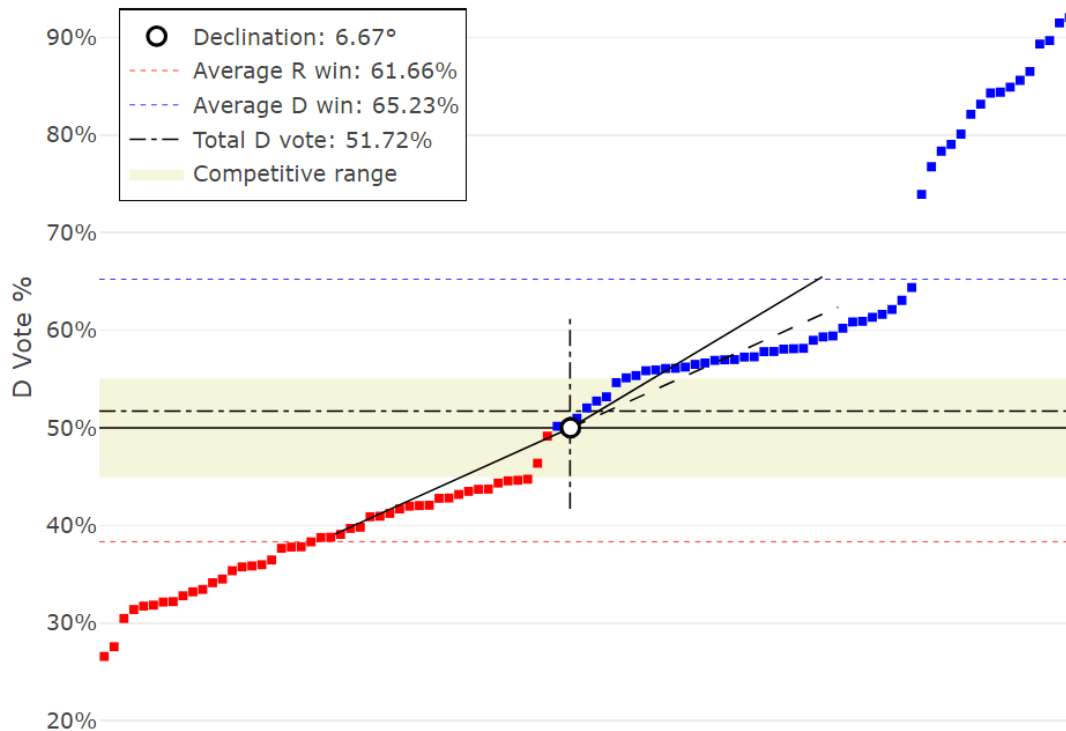
Notice the steady, smooth incline of seats, especially around the 50-50 line. Notice also the high number of seats in the competitive band—a total of 23.

Another way to think about these charts is that it quickly shows how likely it is that a party will improve, in terms of seats, if their share of the vote increases. The districts within 1% of the 50-50 line are likely to be seats gained if the party gains an additional 1% of the statewide vote (same with 2%, 3%, etc).<sup>11</sup>

---

<sup>11</sup> As the Court will see, the high-concentration of Democratic seats at the top end (the far right side of the chart) is unavoidable, as illustrated by the fact that *every* map shows the same. This is due to districts in the heart of Madison and Milwaukee, which have a much higher concentration of Democratic voters than the most Republican districts (the far left side of the chart), no matter how one draws a map.

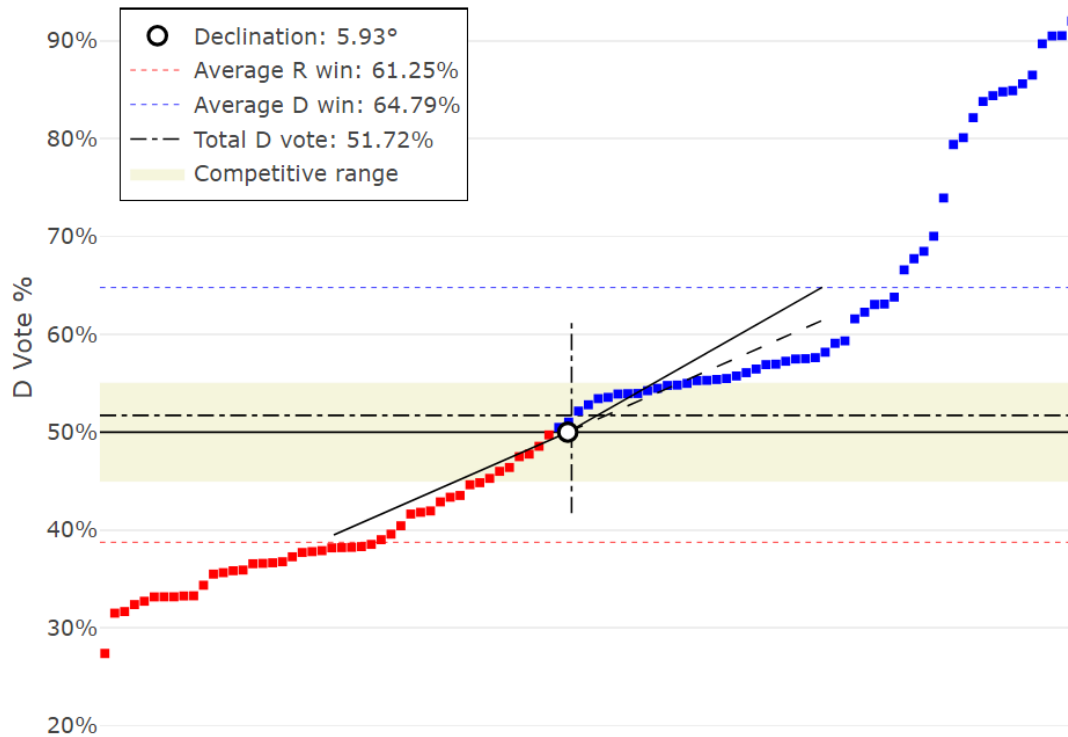
Here, by contrast, is the **Clarke** Assembly Map, which, as noted above, is a particularly egregious gerrymander:



Notice the sharp change in incline around where the districts cross the 50-50 line, as well as how few competitive seats there are in the 45-55 range. There are only 11, less than half that in the Johnson Assembly Map. This suggests that, even if either party were to gain as much as an additional 5% of the statewide vote share in a particular election cycle, very few seats would change. In other words, the Clarke Map is designed—even optimized—to create “safe” Democratic seats. That explains why, in the geographic seats table discussed above, the Clarke Map produces roughly the same number of Democratic seats (around 50) across a variety of elections, even elections Republicans won.



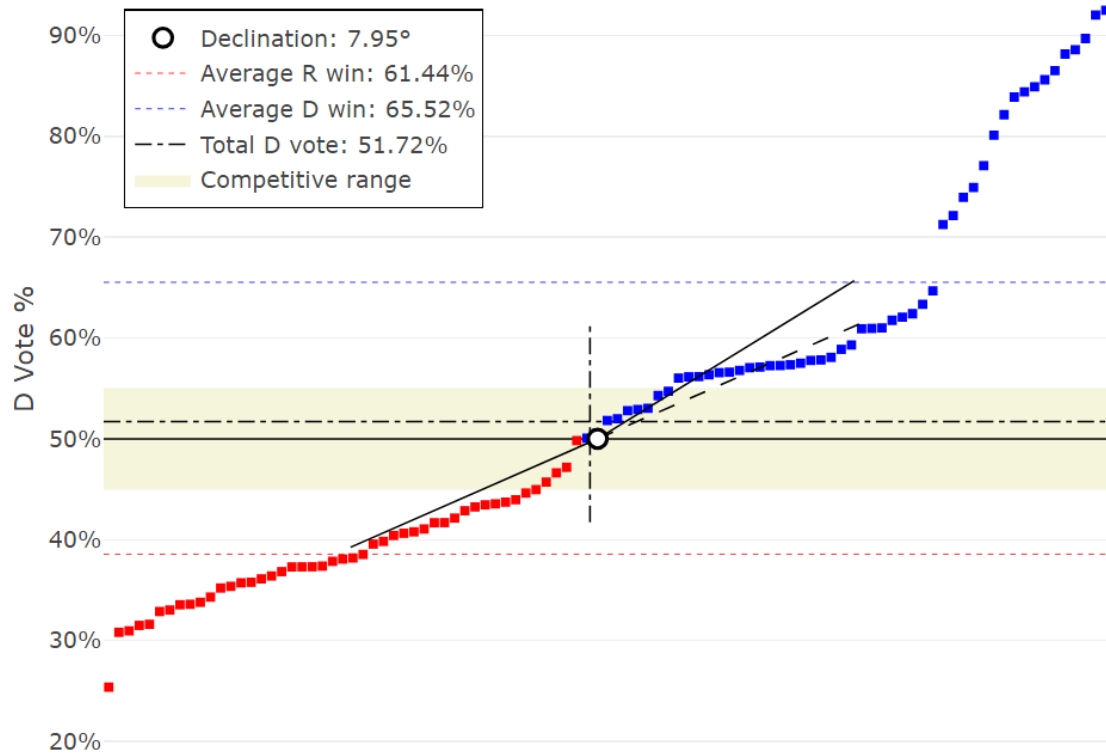
The others all tell a similar story. Here is the **Wright** Assembly Map:



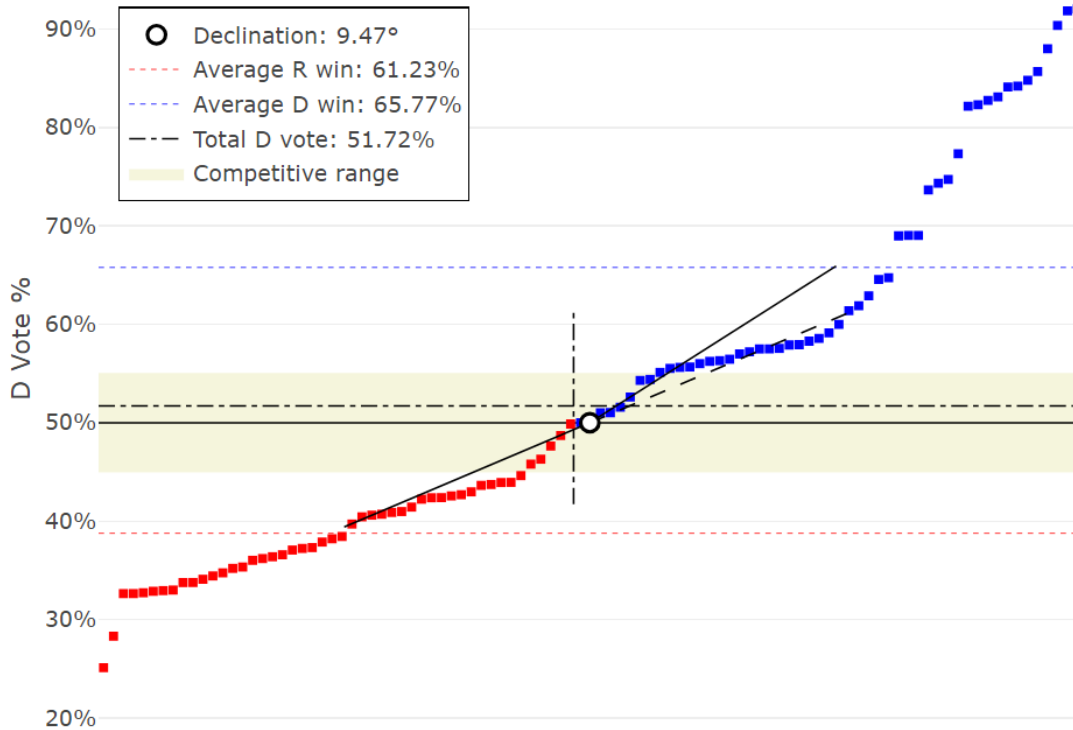
Again, notice the bump up around the 50-50 line—a design to create safe Democratic seats. The Wright map does have 24 seats in the competitive range, but as the chart shows, most are in the 53–54% Democratic-leaning range.



And the **Governor's** Assembly Map, which has only 13 districts in the competitive range:



And finally, the **Democratic Senators'** Assembly Map, which has only 16 seats in the competitive range:



These are just examples from one election (the most recent) and only the Assembly maps. The Court can easily view rank-votes graphs for the Senate maps and a variety of elections in Dave's.

### E. Incumbent Pairings

As noted in *Prosser*, “a partisan redistricting plan will seek to ‘pair’ (place in the same district) as many legislators of the opposite party, and as few of their own party, as possible.” 793 F. Supp. at 864. So, if this Court desires to limit *partisan* redistricting plans, the number of opposing party incumbent pairings is a tell-tale sign of plans submitted with partisan interests in mind.

There are currently more Republican incumbents than Democratic incumbents, so non-partisan maps are likely to have more Republican

pairs than Democratic pairs. But a partisan map will take this to extremes. Take, for example, the Clarke Maps: they pair 16 sets of Republican incumbents and only 1 set of Democratic incumbents. The Governor's Maps pair 14 sets of Republicans and 2 sets of Democrats. In addition, the Clarke Maps pit 35 Republican incumbents against another incumbent, but only 5 Democrats. Likewise, the Governor's Maps have 31 Republican incumbents running against other incumbents, but only 4 Democrats. The maps submitted by the other parties are just as bad.

Below is a chart showing the pairings in each map, by party:

<b>COMBINED ASSEMBLY AND SENATE MAPS</b>					
	Johnson	Clarke	Wright	Evers	D.Sen.
<b>Summary Statistics</b>					
D/D Pairs	5	1	3	2	3
R/R Pairs	12	16	15	14	11
D/R Pairs	3	7	5	4	7
Trios	1 D/R/R	1 D/D/D 1 R/R/R	2 R/R/R	1 R/R/R	2 R/R/R
Incumbent D's Paired	10	5	6	4	6
Incumbent R's Paired	26	35	36	31	28
<b>District Lean (using Dave's 2016–2020 Composite)</b>					
D/R Pairs Favoring D	2	6	5	4	7
D/R Pairs Favoring R	1	1	0	0	0
All D's Pairs/Trios Favoring R	0	0	0	0	0
All R's Pairs/Trios Favoring D	1	3	2	2	1

\* Based on a report produced by the Legislature in the Legislature's appendix.

The Johnson Maps have a total of 12 Republican pairings and 5 Democratic pairings—a ratio that is very close to, but actually higher than, the ratio of Republican to Democratic incumbent legislators (slightly fewer D/D pairings than one would expect just based on the

number of incumbent Democrats: 64% of the incumbent legislators are Republicans; 70% of the Johnson pairings are Republican/Republican). In other words, the Johnson Maps' number of D/D and R/R incumbent pairings is consistent with the total number of incumbents, while the other parties have a disproportionately high number of R/R incumbent pairings and an inappropriately low number of D/D incumbent pairings such that the other parties' proposed maps must be characterized as a partisan gerrymander.

The picture is even worse if the Court takes a closer look at which incumbents are likely to lose in all the pairings. In D/R pairings, for instance, which incumbent is likely to lose depends on the partisan lean of that district. That analysis reveals that the other parties' maps were drawn to win additional seats for Democrats by placing D/R incumbent pairs almost exclusively into Democratic-leaning districts. The Clarke Map does so 6 times (out of 7) and the Governor's Map does so 4 times (out of 5). Across all 4 different sets of maps submitted by the other parties, there are 23 instances of districts that pair one Democratic incumbent with one Republican incumbent, and of those districts, 22 favor Democrats.

Even more incredibly, across all of the maps submitted by the other parties, there are 8 instances of pairs or trios of Republican incumbents being placed together in districts that lean Democratic. By contrast, there are no instances of that happening to a pair of Democratic incumbents in the Johnson Maps or any of the other 4 submissions by the other parties.

The most partisan action of all, however, is perpetrated by the Clarke, Governor Evers, and Senate Democrats' maps, all of which include an instance—in the state senate—of grouping three Republican incumbents together in a single senate district with a Democratic partisan tilt. In other words, they are deliberately trying to kill three birds with one stone.

By comparison, the Johnson Maps have 3 Democratic/Republican pairs, with 2 of those seats tilting Democratic and 1 tilting Republican. Even more striking—the Johnson Maps have a single instance of three incumbents being placed together: 1 Democrat and 2 Republicans in a district that favors Democrats.

Putting this all together, here is a chart that tabulates the total number of likely incumbent losses for each map:

<b>COMBINED ASSEMBLY AND SENATE MAPS<sup>12</sup></b>					
	Johnson	Clarke	Wright	Evers	D. Sen.
Exp. D Incumbents Lost	6	4	3	2	3
Exp. R Incumbents Lost	17	27	26	22	23

\*Same as chart above

The whole point here is that the maps submitted by the other four parties display the hallmark of partisan gerrymandering pointed out by the Court in *Prosser*—many Republican pairings and very few Democratic pairings, taken far beyond what is expected given current incumbency. That is not an accident. It is a tactic designed to gain a partisan advantage.

#### **IV. The Johnson Maps Outperform the Clarke Maps on Every Metric Required by the Wisconsin Constitution.**

Based on the charts in Section I showing how the Johnson Maps compare to the other four submissions on Wisconsin's constitutionally-

---

<sup>12</sup> These numbers are calculated as follows. For every R/R and D/D pair, one of the two will necessarily lose. For any pair or trio where the district leans toward the other party, both (or all three) are expected to lose. And for mixed pairings, one of the incumbents in the party the district leans is expected to win and the rest to lose.

required neutral criteria, it may be tempting to conclude that the Johnson Maps and Clarke Maps are close contenders. They are not.

The only criteria on which the Clarke Maps have a better score than the Johnson Maps is population deviation in the Assembly (the Senate maps tie) and both the Johnson Maps and the Clarke Maps fall below 1% population deviation in the Assembly. This Court has already noted that “[b]elow 1 percent, there are no legally or politically relevant degrees of perfection.” *Clarke v. Wis. Elections Comm’n*, 2023 WI 79, ¶ 64, 998 N.W.2d 370 (citing *Prosser*, 793 F. Supp. at 866).

On the next page, the Johnson and Clarke Maps are compared in detail on the remaining criteria:

Johnson and Clarke Map Comparison		Johnson Maps	Clarke Maps	Difference if Clarke Chosen Over Johnson
Splits (Assembly and Senate)				
County Splits		66 (64)	77	+13 county splits
Town Splits		0	13	+13 town splits
All Municipal Splits		56	71	+15 municipal splits
Compactness				
Reock (Assembly)		0.41	0.39	Less Compact by 0.02
Reock (Senate)		0.39	0.39	No difference
Polsby (Assembly)		0.35	0.30	Less Compact by 0.05
Polsby (Senate)		0.28	0.25	Less Compact by 0.0303
Predicted Democrat Seats Based on Ensemble Analysis				
Blunt Report		Dave's 2016-2020 Composite		
Assembly	41-42	43	49	+6 Democrat
Senate	13-14	13	15	+2 Democrat
Trendle Report		Dave's 2016-2022 Composite		
Assembly	42-43	43	51	+8 Democrat
Senate	12-13	13	16	+3 Democrat
Geographic Seats – Measure of “Natural Political Geography”				
Tracks Geographic Seats? Yes/No		Yes	No	Clarke Does Not Track
Pinwheel Formation in Dane County				
Pinwheel Formation: Yes or No		No	Yes	Clarke Has Pinwheel Formation
Rank-Votes Graph Performance (Assembly)				
Anomalies at 50/50 line? Yes/No		No	Yes	Clarke Maps have sharp incline at 50/50 line.
Paired Incumbents (Assembly and Senate)				
D/D Pairs		5	1	Out of proportion to Democratic Incumbents
R/R Pairs		12	16	Out of proportion to Republican Incumbents
Movement of Voters				
Assem. People Moved		2,786,271	3,627,733	+841,462
Senate People Moved		1,477,384	2,332,996	+855,612
Senate Disenfr.		431,396	697,154	+265,758

As explained throughout this brief, the Clarke Maps score worse than the Johnson Maps because the Johnson Maps were created without partisan advantage in mind, whereas it is apparent that the Clarke Maps were created to gerrymander in favor of Democrats.

### CONCLUSION

If this Court declines to adopt the Legislature's remedy, then it must select the Johnson Maps. They far outperform all other submissions on Wisconsin's constitutionally-required neutral criteria, and are the only ones that are neutral (and demonstrably so), by closely tracking Wisconsin's natural political geography.

Dated: January 22, 2024.

Respectfully submitted,

WISCONSIN INSTITUTE FOR  
LAW & LIBERTY, INC.

*Electronically signed by Luke N. Berg*

Richard M. Esenberg (WI Bar No. 1005622)

Luke N. Berg (WI Bar No. 1095644)

Nathalie E. Burmeister (WI Bar No.  
1126820)

330 East Kilbourn Avenue, Suite 725

Milwaukee, WI 53202

Telephone: (414) 727-9455

Facsimile: (414) 727-6385

Rick@will-law.org

Luke@will-law.org

Nathalie@will-law.org

*Attorneys for Intervenors-Respondents Billie  
Johnson, Chris Goebel, Ed Perkins, Eric  
O'Keefe, Joe Sanfelippo, Terry Moulton,  
Robert Jensen, Ron Zahn, Ruth Elmer, and  
Ruth Streck*



### **CERTIFICATION**

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b), (c) for a brief produced with a proportional serif font. The length of this brief is 5,486 words.

Dated: January 22, 2024.

*Electronically Signed by Luke N. Berg*

LUKE N. BERG