

FILED
02-08-2024
CLERK OF WISCONSIN
SUPREME COURT

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 (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,

Intervenor-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; ANDRÉ JACQUE, TIM CARPENTER, ROB HUTTON,
CHRIS LARSON, DEVIN LEMAHIEU, STEPHEN L. NASS, JOHN JAGLER, MARK SPREITZER,
HOWARD L. 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,

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INTRODUCTION

The Report from Dr. Grofman and Dr. Cervas confirms the Wright Petitioners' conclusions that the Legislature's Map and the Johnson Map are not viable remedial proposals. Among the other four options, the Court should choose the Wright Map for Wisconsin. The Wright Map does just what this team of leading mathematicians and computer scientists at Wisconsin's flagship universities set out to do: demonstrate that a neutral approach to remedying the constitutional violations at issue can in fact deliver responsive, majoritarian maps that adhere to all state and federal requirements. Produced with cutting-edge computational-redistricting techniques, the Wright Map meets all the Court's criteria and can be put into place immediately with no need for any technical corrections.

As explained in the Report, each of the four viable proposals has its strengths. But only the Wright Map offers the possibility of majoritarian outcomes in *both* houses of the Legislature beginning this November, thus ensuring that voters do not have to wait another two years to achieve true democratic responsiveness; only the Wright Map fully respects the sovereignty of Wisconsin's Tribes and keeps their reservations intact to the maximum extent possible, thus earning the support of *amicus* the Midwest Alliance of Sovereign Tribes; and only the Wright Map keeps every ward in the state intact, thereby simplifying election administration for local election officials, as explained by *amicus* the Wisconsin Justice Initiative. Overall, based on the Report and the entire record in this case, this is the right map for Wisconsin.

ARGUMENT

I. The Report Confirms that the Court Should Reject the Maps Submitted by the Legislature and Johnson Intervenors.

The Report labels both the Legislature’s Map and the Johnson Map as “partisan gerrymander[s],” Rpt. 13, 14 n.26, 22, 23, 25, concluding that they demonstrate the “kind of insulation from the forces of electoral change” that is the very “hallmark of a gerrymander,” Rpt. 24. Dr. Grofman and Dr. Cervas thus confirm the Wright Petitioners’ conclusion that both maps “utterly (and concededly) fail to comply with the fundamental principle of judicial neutrality, which requires avoiding undue partisan impact.” Wright Remedial Response Br. 7 (Jan. 22, 2024) [“Response Br.”].

The Report further recognizes that the Legislature and Johnson Intervenors are “theoretically and empirically” incorrect in contending that Wisconsin’s “electoral geography” requires adoption of skewed maps—not least because that contention is “contradicted” by the other maps submitted to the Court. Rpt. 23–24. Indeed, as the Wright Petitioners previously stated: The “Wright Map refutes the myth that Wisconsin’s political geography dictates the extreme partisan skew in the 2022 Map.” Response Br. 6.

The Report also confirms the Wright Petitioners’ conclusion that both the Legislature’s Map and the Johnson Map repeatedly violate the constitutional mandate that all assembly districts be “bounded by county, precinct, town or ward lines.” Wis. Const. art. IV, § 4; *see* Rpt. 25. The Report finds that 46 of the Legislature’s 99 assembly districts and 19 of Johnson’s 99 assembly districts violate this straightforward constitutional requirement. Rpt. 21–22 table 11 (showing that only the Wright Map, the Clarke Map, and the 2022 Map fully comply with the Constitution’s “bounded by” requirement). Neither the Legislature nor Johnson

Intervenors “took literally the requirement” in Article IV, Section 4 that ward, town, and county lines “*must* be used as district boundaries.” Rpt. 8 (citing *Clarke v. Wis. Elections Comm’n*, 2023 WI 79, ¶11, 410 Wis. 2d 1, 998 N.W.2d 370 [“Op.”]). These pervasive violations of the Wisconsin Constitution’s “bounded by” requirement provide yet more reason to reject both the Legislature’s Map and the Johnson Map.

II. The Report Confirms that the Wright Map Meets All the Court’s Criteria.

The Report confirms that the Wright Map meets all six mandatory districting requirements, performs strongly on four nonmandatory traditional districting criteria, and is politically neutral. As to neutrality, the Wright Map excels in offering partisan symmetry, electoral responsiveness, and the opportunity for immediate majority rule in both legislative chambers.

A. Population Equality

The Report confirms that the Wright Map has “a total population deviation less than 2%” and thus complies with the Court’s population-equality requirement. Rpt. 4; *see* Response Br. 12–16 & figures 2–3 & table 2 (showing compliance with Wisconsin’s 2% population-equality standard); Wright Remedial Initial Br. 17–19 (Jan. 12, 2024) (same) [“Initial Br.”].

B. Bounded by County, Town, or Ward Lines

The Report confirms that the Wright Map’s assembly districts are bounded entirely by county, town, or ward lines. Rpt. 21–22 table 11; *see* Response Br. 16; Initial Br. 19.

The Report finds this requirement unsatisfied by two assembly districts in the Democratic Senators’ Map and two assembly districts in the Governor’s Map. Rpt. 21–22 table 11; *see* Response Br. 16 n.4 (identifying Democratic Senators’ Assembly Districts 50 and 78 and Governor’s

Assembly Districts 77 and 78 as districts whose boundaries “do not sit on ward lines”). Dr. Grofman and Dr. Cervas acknowledge Article IV, Section 4’s “literal[] ... requirement that ward [lines], along with town and count[y lines,] *must* be used as district boundaries,” Rpt. 8 & n.15 (citing Op. ¶11), but “did not feel it necessary” to make technical corrections to those districts, Rpt. 24.

Although the Report recognizes that the “legal implications of ward splits data are for the Court to determine,” Rpt. 6 n.11, Article IV, Section 4 is clear that all assembly districts—and, because of nesting, all senate districts—must be entirely “bounded” by ward lines (or by ward lines that also serve as county and/or town lines). Every inch of the assembly-district and senate-district boundaries in the Wright Map follows that constitutional command. *See* Response Br. 11, 16–17 & table 3, 24; Initial Br. 19–20, 31, 32. The Clarke Map is the only other map to meet that requirement, though it splits a single ward by placing its discontinuous pieces in separate districts. *See* Rpt. 21–22 table 11.¹

The Report also considers the extent to which assembly districts split counties, towns, and wards, Rpt. 3, 5–8, and confirms that the Wright Map does “considerably better at reducing all subdivision splits” than does the

¹ The Report at various points conflates questions about the permissibility of ward splitting—which includes separating discontinuous parts of a ward into different districts—with the requirement that districts be bounded by ward lines—which is violated when a district boundary slices through the middle of a ward’s territory. *See* Rpt. 6 & n.11, 8, 21, 25. The Report also notes Johnson Intervenor’s (incorrect) claim that ward splitting does not matter because wards can be redrawn to conform to district boundaries. Rpt. 6 n.11. That the Johnson Intervenor and Legislature spent significant time and energy negotiating a Joint Stipulation about how to count ward splits belies their claim that ward splitting does not matter. And, as explained in the *amicus* brief from the Wisconsin Justice Initiative, ward splitting does matter. Preserving wards is an important constitutional criterion that constrains mapmakers’ discretion, promotes fair districting, and fosters efficient election administration. Wis. Justice Initiative Amicus Br. 9–10, 18–19.

2022 Map and “satisf[ies] these good government criteria,” Rpt. 21. It also shows that, for both the Assembly and the Senate, the Wright Map has fewer total county splits than the Democratic Senators’ Map, fewer total town splits than both the Democratic Senators’ Map and the Governor’s Map, and fewer total ward splits than *all* the other proposed maps. Rpt. 7 table 2.² Indeed, the Wright Map is the only map that splits zero wards.

C. Contiguous Territory

The Report confirms that the Wright Map’s assembly and senate districts consist of contiguous territory and thus “satisfy contiguity requirements.” Rpt. 9; *see* Response Br. 11–12 & table 1; Initial Br. 16–17. The Report also finds minor “technical contiguity issues in the Democratic Senators’ plan,” though Dr. Grofman and Dr. Cervas declined to suggest specific corrections. Rpt. 9; *see infra* note 8.³

D. Compactness

The Report confirms that the Wright Map’s districts “satisfy the compactness requirement.” Rpt. 9; *see* Response Br. 19–20 & figures 4–5; Initial Br. 21–25 & figure 1.

² Table 2 misreports the Wright Assembly Map’s towns split (15, not 14) and total town splits (17, not 16) and the Governor’s Assembly Map’s wards split (5, not 4) and total ward splits (5, not 4). *Compare id.*, with Response Br. App. 8 table 4, 9 table 5. These differences are not material to the Report’s conclusions.

³ Dr. Grofman and Dr. Cervas state that they were unable to locate the noncontiguous districts in the Legislature’s Map and the Johnson Map that the Wright Petitioners identified in their January 22 Appendix. Rpt. 8–9 (citing Response Br. App. 5 table 1). Though not material because the Report concludes that the Court should not consider either the Legislature’s Map or the Johnson Map for other reasons, *see supra* Part I, the noncontiguous districts are as follows: (1) The Legislature’s Assembly District 41 contains three islands in Green Lake (two off of Terrace Beach and a third in Pigeon Cove) in the Town of Brooklyn separated from the rest of that district by the Legislature’s Assembly District 42; and (2) Johnson’s Assembly District 89 and Senate District 30 include Little Tail Point (a peninsula in Dead Horse Bay) in the Village of Suamico that is connected to the rest of the district by land, but only by crossing through the territory of Assembly District 35 and Senate District 12.

E. Numbering and Nesting

The Report confirms that the Wright Map satisfies the requirement that three “[a]ssembly districts must be “nested” within a senate district.” Rpt. 2 n.2 (quoting Op. ¶65 n.27); *see id.* at 21; *see also* Response Br. 20; Initial Br. 25.

Dr. Grofman and Dr. Cervas suggest that “the court may wish to consider a more geographically consistent numbering of Assembly and Senate districts,” Rpt. 21, but do not explain what “geographically consistent” means or how they would implement that concept consistent with Wisconsin law. There is no need for any renumbering. *See* Initial Br. 25 (citing Wis. Const. art. IV, § 5; Wis. Stat. §§ 4.001, 4.009); *id.* at 49–50 (explaining how the Wright Map’s senate districts are numbered in a regular series); Response Br. 20, 36–40 (same).

F. The Equal Protection Clause and the Voting Rights Act

The Report confirms that the Wright Map has no “equal protection issues or issues under the Voting Rights Act.” Rpt. 22; *see id.* at 9 (referring to “compliance with equal protection and/or the Voting Rights Act”). As the Wright Petitioners previously explained with respect to the Wright Map specifically, “there can be no suggestion that race predominated” because the map neither uses a “race-based rule” nor “single[s] out voters in the 2022 Map’s majority-minority districts for differential treatment.” Response Br. 20–21; *see* Initial Br. 25–27 (explaining why the Wright Map is “race-neutral”).

G. Reducing County Splits

The Report confirms that the Wright Map splits fewer counties than the 2022 Map or the Democratic Senators’ Map and explains that the Wright Map might have had even fewer county splits if it had split more wards. Rpt.

7–8 & table 2 & n.15; *see* Response Br. 22–23 & tables 5–6 (detailing the Wright Map’s respect for counties); Initial Br. 28–29 & table 2 (same). However, this Court has expressly stated that the “smaller political subdivisions” are especially inappropriate for splitting, Op. ¶66, and wards are the smallest political subdivision. By contrast, 25 Wisconsin counties *must* be split to comply with the Constitution’s population-equality requirement. *See* Response Br. 22; Initial Br. 20, 28.

H. Reducing Municipal Splits

The Report confirms that the Wright Map has fewer municipal (city, village, and town) splits than the Governor’s Map (in the two chambers combined) or the Democratic Senators’ Map (in each chamber). Rpt. 8 table 3; *see* Response Br. 23–24 & table 7; Initial Br. 29–30 & tables 3–4. For example, the Wright Map keeps intact in a single senate district Eau Claire, Oshkosh, and La Crosse, and in a single assembly district Sheboygan, Wausau, and Middleton. Response Br. 23–24.

I. Minimizing Ward Splits

The Report confirms that the Wright Map is the only proposed map whose assembly and senate districts do not split any of Wisconsin’s roughly 7,000 wards. Rpt. 7 table 2. That attribute is grounded in the Constitution’s “bounded by” provision and helps avoid a host of election-administration and voter-privacy issues. *See* Response Br. 24 (citing, *inter alia*, Wis. Const. art. IV, § 4); Initial Br. 31; *see also* Wis. Justice Initiative Amicus Br. 7–10, 15–19.

J. Preserving Communities of Interest

With one major exception, Dr. Grofman and Dr. Cervas find the parties’ community-of-interest claims “hard to evaluate” or “clearly differentiate.” Rpt. 9; *cf.* Response Br. 24–28 & table 8 & figures 6–9

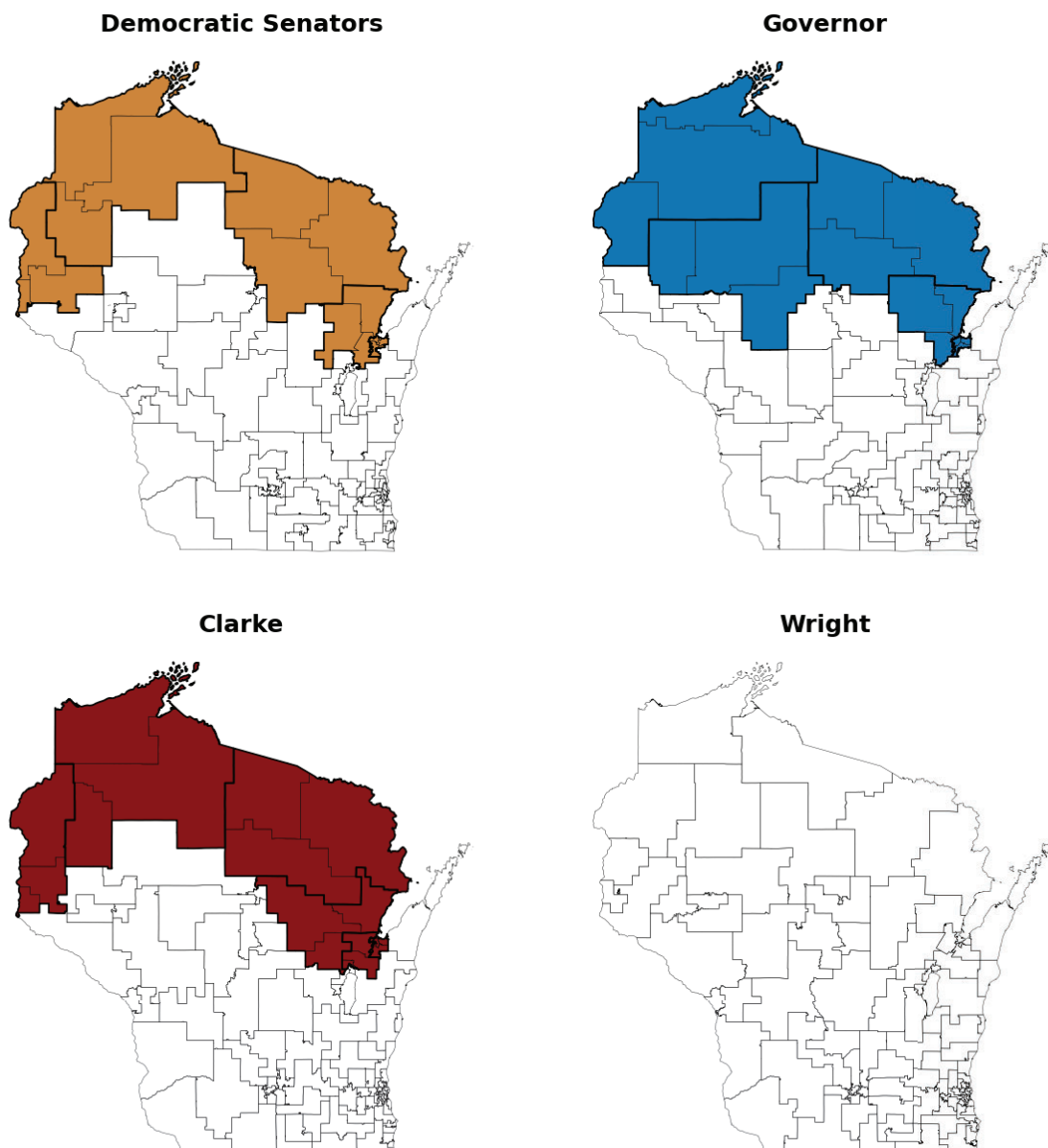
(showing how the Wright Map preserves communities of interest); Initial Br. 31–35 (same); Weichelt Rpt. 1–32; DeFord Rpt. 19–22 & tables 6–9.

The notable exception is the Wright Map’s unique respect for the reservations of 10 of Wisconsin’s 11 federally recognized Indian Tribes. Rpt. 10–11 & nn.17–18 & figure 1, 22 & n.30. As the Report explains, these reservations each “represent a distinct, cognizable, and geographically definable community of interest,” and it is possible to “quantitatively assess[]” the “extent to which these communities are maintained within electoral districts for representation.” Rpt. 10. The Report concludes that “[t]he Wright Plan stood out” in minimizing “reservation splits” and “total [reservation] pieces.” Rpt. 10. By contrast, each of the other proposed maps raises “issues related to protection of the boundaries of Native American reservations” by splitting at least four of them. Rpt. 22; *see* Response Br. App. 17 table 9; DeFord Rpt. 19–20.⁴

The Report speculates that “any of the plans could ... retain[] Native American tribal reservations at least somewhat wholly within individual districts.” Rpt. 10. But as Figure 1 shows, the changes required to the other viable maps would be extensive, and those adjustments would inevitably come at the cost of poorer performance on other criteria. DeFord Rpt. 6–7.

⁴ The Report also debunks the Legislature’s false assertion that the Wright Map splits the Oneida Reservation. Rpt. 22 n.30.

Figure 1. Districts that Would Have to Be Redrawn to Preserve Indian Reservations on Par with the Wright Map.



Given Dr. Grofman and Dr. Cervas's decision not to suggest any technical corrections to any map, the Court should compare the maps presently before it—and the Wright Map uniquely excels on this community-of-interest metric. As the Tribal *amici curiae*—the Midwest Alliance of Sovereign Tribes and the Lac du Flambeau Tribe—state in their

brief, a court that “strives to preserve and keep intact local governments and political subdivisions such as counties and municipalities surely should pay the same respect to Tribal governments and their American Indian reservations.” Tribal Amici Br. 6. After analyzing each of the proposed maps, the Tribal *amici* conclude that the Wright Map “is, hands down, the best map for all of Wisconsin, including Wisconsin’s Indian people and communities.” *Id.* at 3.

K. Political Neutrality and Partisan Symmetry

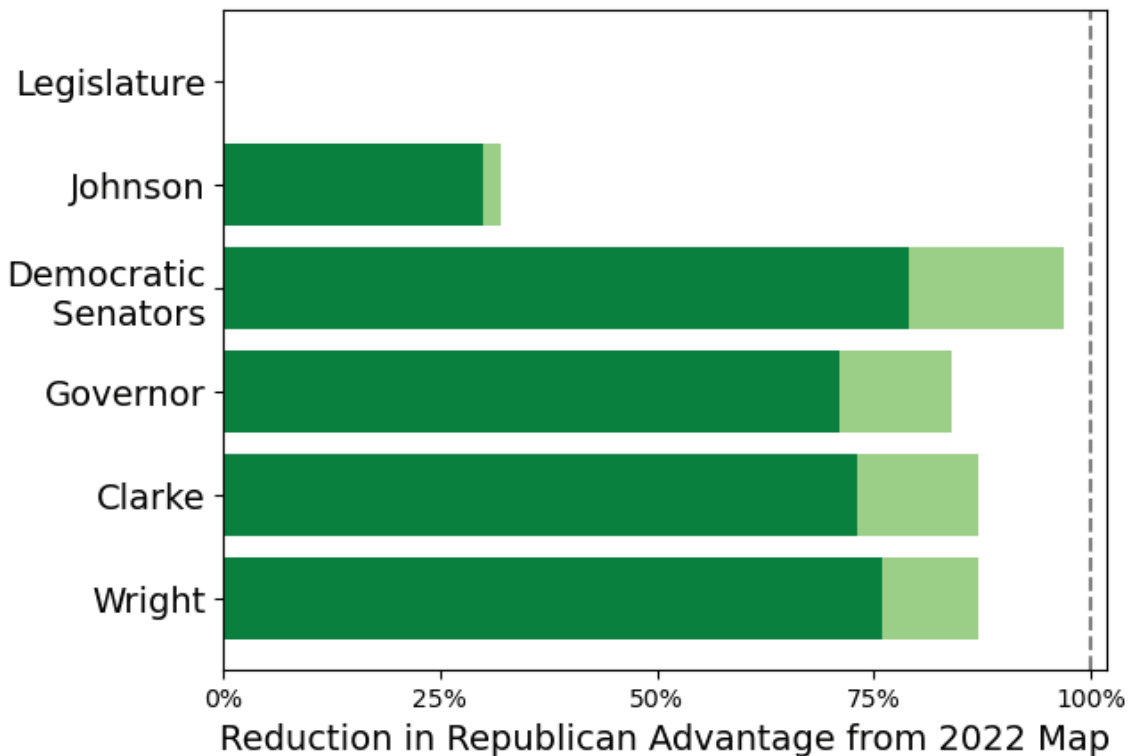
The Report confirms that the Wright Map satisfies the principles of political neutrality and majority rule because, under the Wright Map, “most of the time, the party that wins the most votes will win the most seats” in both the Assembly and the Senate. Rpt. 23–24; *see* Response Br. 28–32 & figure 10 & tables 9–10 (reaching the same conclusion using Dr. DeFord’s Wisconsin-specific model based not only on statewide elections but also on ward-level returns in state-legislative elections, incumbency factors, and recent trends); Initial Br. 39–48 & figures 2–3 (same); *cf.* Rpt. 12 n.22 (describing “a complex interplay of factors” affecting election results).

Importantly, Dr. Grofman and Dr. Cervas conclude that even the best proposed remedial maps merely reduce—but do not wholly eliminate—the pro-Republican bias in the 2022 Map. Rpt. 22–24 & table 12; *see also id.* at 20–21 (identifying the four proposals that “are markedly more politically neutral” than the 2022 Map). The Wright Map and the other three viable proposals, they find, retain “modest levels of partisan bias” and thus “remain tilted toward the Republicans.” Rpt. 23–24; *see also id.* at 16 (“modest Republican-leaning partisan bias”). So any claim that these maps are Democratic gerrymanders would be meritless. Rpt. 16 (stating that the

four maps' levels of neutrality would be "viewed as acceptable" by other state courts applying state constitutional law).

This conclusion is strongly backed by "the three metrics of majoritarianism and political neutrality" that Dr. Grofman and Dr. Cervas identify. Rpt. 22–23. Data from their Table 12 (Rpt. 22) shows that—according to two of the three metrics, the Mean-Minus-Median Gap and Partisan Bias—the Wright Map eliminates about 76% to 87% of the pro-Republican skew from the 2022 Map. That reduction in partisan skew is slightly better than the Clarke Map (73% to 87%) and the Governor's Map (71% to 84%), and slightly worse than the Democratic Senators' Map (79% to 97%). For comparison's sake: The Johnson Map eliminates only 30% to 32% of the 2022 Map's pro-Republican skew, and the Legislature's Map does not eliminate the skew at all. Figure 2 portrays these reductions in pro-Republican skew, as measured by the Mean-Minus-Median Gap and Partisan Bias metrics, with dark green representing the reduction in bias under both measures and light green representing the reduction in bias under a single measure.

Figure 2. Percentage of the 2022 Map’s Pro-Republican Skew Eliminated by Each Proposed Remedial Map.



Dr. Grofman and Dr. Cervas’s third majoritarian metric—what they call “majoritarian concordance”—requires a bit more explanation. Rpt. 14–21 & tables 7–10. At first glance, it might appear, especially from the Report’s Table 10 (Rpt. 19), that the Majoritarian Concordance metric is in tension with the Mean-Minus-Median Gap and Partisan Bias metrics. Specifically, it might appear that, although the differences are limited, the Clarke Map and the Governor’s Map somewhat outperform the Wright Map and the Democratic Senators’ Map under the Majoritarian Concordance metric—the opposite of what the other two metrics indicate. But that is incorrect.

In fact, the Wright Map and the Democratic Senators’ Map outperform the Clarke Map and the Governor’s Map on this Majoritarian

Concordance metric in that each generates similar percentages regardless of whether one looks at statewide elections in which *Republicans* prevailed or statewide elections in which *Democrats* prevailed. As Dr. Grofman and Dr. Cervas explain, the key question here is whether there is “a partisan difference in majoritarian concordance such that there is more likely to be majoritarian concordance when a particular party wins the statewide vote as compared to the situation where the other party wins the statewide vote.” Rpt. 15; *id.* at 19 (“[I]t is important to distinguish between the parties.”).

The Wright Map performs equally well in both kinds of statewide elections, with Majoritarian Concordance of 62.5%⁵ in the 8 elections with Republican winners and 66.7% in the 18 elections with Democratic winners. The Democratic Senators’ Map does even better, with Majoritarian Concordance of 75.0% and 72.2%, respectively. By contrast, the Clarke Map and the Governor’s Map are more asymmetric: Both are majoritarian 100.0% of the time (8 out of 8 elections) when Republicans won, but only 66.7% of the time (12 of 18) when Democrats won.

Reproduced below is a new version of the Report’s Table 10 (Rpt. 19) with corrected percentages (*supra* note 5) and with a bottom row showing the *gap* between how faithfully each map translates Republican statewide majorities and Democratic statewide majorities (smaller percentages are better). It is this bottom row (rather than the one in the Report’s Table 10)

⁵ There are two arithmetic errors in the Report’s Majoritarian Concordance Table 10 (Rpt. 19). As Tables 7 and 8 (Rpt. 17–18) show, and as the Report’s text states, there are “eight elections in which the Republican candidate won [the] most statewide votes.” Rpt. 19. In the Wright Map, the Republican candidates carried a majority of districts in five of those eight elections, which should be 62.5% (not 61.1%); similarly, under the Democratic Senators’ Map, the Republican candidates carried a majority of districts in six of those eight elections, which is 75.0% (not 77.8%). Rpt. 17–18 tables 7–8.

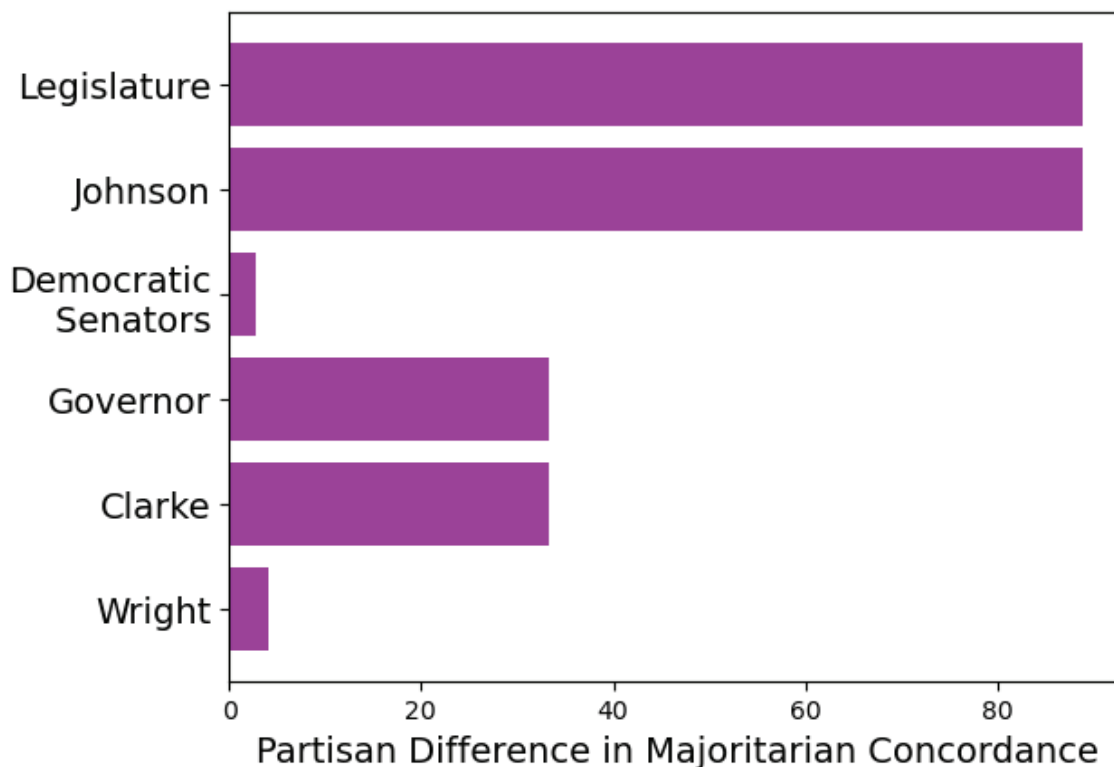
that addresses the question that Dr. Grofman and Dr. Cervas correctly pose.
See supra page 17.

Table 1. Majoritarian Concordance and Partisan Effects.

	<i>Current (2022)</i>	<i>Legislature</i>	<i>Johnson</i>	<i>Dem. Sen.</i>	<i>Governor</i>	<i>Clarke</i>	<i>Wright</i>
Republican Statewide Majority	100.0%	100.0%	100.0%	75.0%	100.0%	100.0%	62.5%
Democratic Statewide Majority	11.1%	11.1%	11.1%	72.2%	66.7%	66.7%	66.7%
Partisan Difference (Absolute Value)— Smaller Is Better	88.9%	88.9%	88.9%	2.8%	33.3%	33.3%	4.2%

Figure 3 displays graphically the data in the table's bottom row.

Figure 3. Partisan Differences in Majoritarian Concordance (Less Partisan Difference Is Better).



Thus, all three of Dr. Grofman and Dr. Cervas's metrics of majoritarianism and political neutrality suggest approximate symmetry for the four viable maps in both the Assembly and the Senate, while giving slightly better scores to the Wright Map and the Democratic Senators' Map. The Democratic Senators' Map's scores, however, are mainly a function of its senate map scoring very well, while its assembly map has more pro-Republican skew than any of the other viable remedial maps. *See, e.g.*, Rpt. 17 table 7 (showing that the Democratic Senators' Assembly Map generates antimajoritarian outcomes (*i.e.*, Republican seat majorities) in five of the nine elections won by Democratic statewide candidates). By contrast, the

Wright Map has significantly better balance between the two chambers' maps. *See, e.g., id.* (showing antimajoritarian outcomes in the Assembly in two elections won by Democratic statewide candidates and two elections won by Republican statewide candidates); *see also* Response Br. 31 & table 9 (showing the Wright Senate Map to be more neutral than the Democratic Senators' Assembly Map). All in all, on the metrics that Dr. Grofman and Dr. Cervas rely on, the Wright Map does best on political neutrality and partisan symmetry. Response Br. 28.

L. Electoral Responsiveness

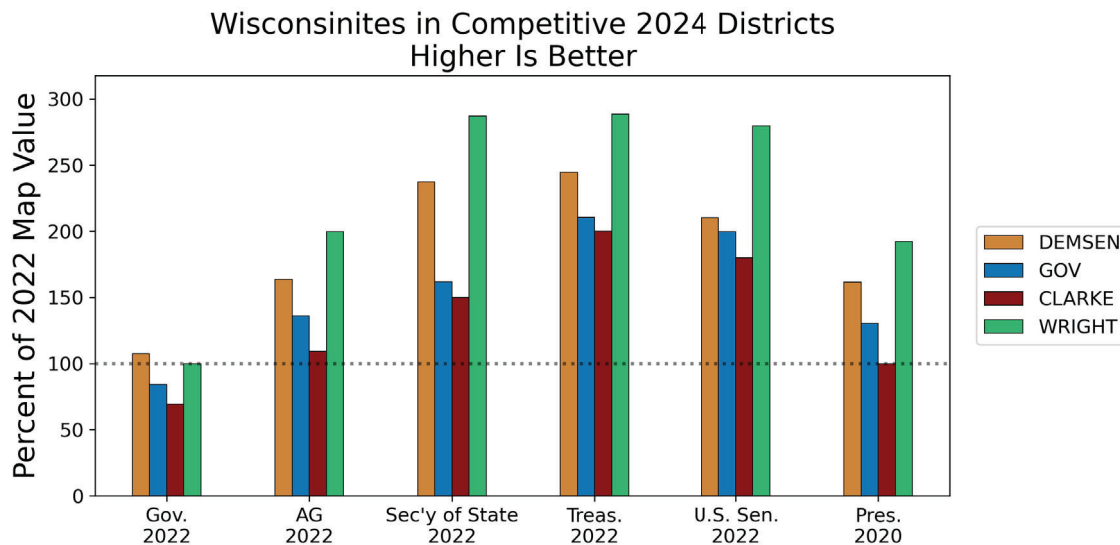
The Report confirms that the Wright Map would “create a competitive environment, ... reflect the political competitiveness of the state,” and avoid “insulat[ing Wisconsin] from the forces of electoral change.” Rpt. 23–24; *see* Response Br. 32–36 & table 11 & figures 11–16 (showing that the Wright Map is responsive to the will of the electorate and sensitive to shifts in voter preferences); Initial Br. 48–49 (same).⁶

The Report explains the importance of competitive districts in a responsive map: “An important measure of a fair electoral plan’s efficacy is its responsiveness to changes in the voting landscape.” Rpt. 12 n.22. Maps “demonstrating this property of responsiveness—where an increase in a candidate or party’s vote share leads to an increase in the number of seats won—align with the principle of representing the changing dynamics of voter sentiment.” *Id.* This perfectly describes the Wright Map.

⁶ Commentators and *amici* also have recognized this feature of the Wright Map. *See, e.g.,* Craig Gilbert, *In a 50/50 Wisconsin Electorate, What Does a “Neutral” Election Map Look Like*, Milwaukee J.-Sentinel (Jan. 29, 2024) (noting that the Wright Map has “the highest number of competitive Assembly seats” with 15, while other viable “maps have between 8 and 10”); Petering Amicus Br. 17 table 5 & figure 6 (similar).

Indeed, as Figure 4 shows, based on the six most recent statewide elections that Dr. Grofman and Dr. Cervas analyze, it is likely that far more Wisconsinites would be able to vote this year in competitive assembly or senate elections (in the 47%-to-53% range) under the Wright Map than under the now-invalidated 2022 Map (signified by the horizontal dotted line) or under any of the other three viable proposed maps.

Figure 4. Wisconsinites Residing in Assembly and/or Senate Districts Expected to Be Competitive in November 2024.



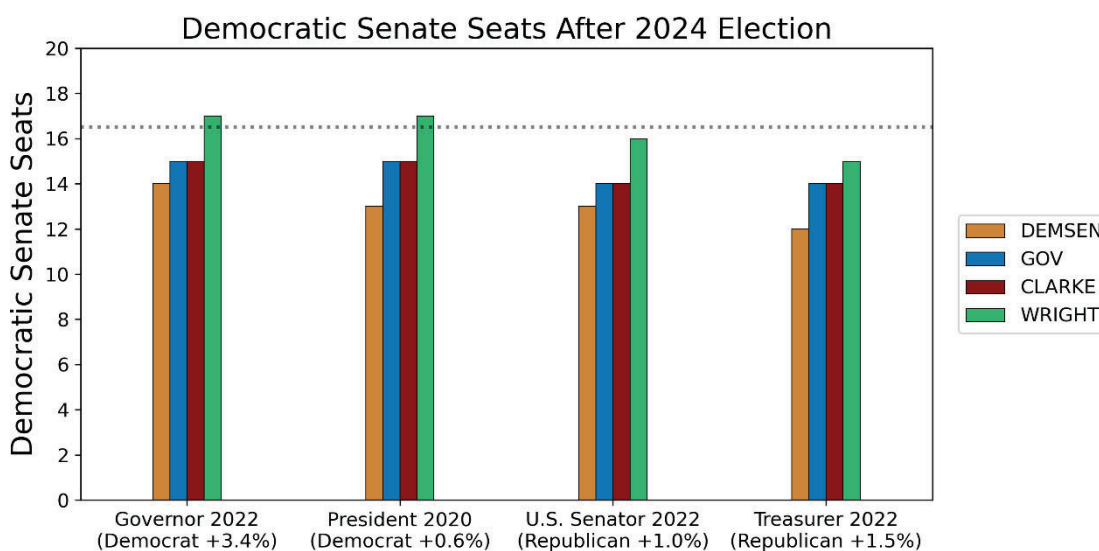
M. Majority Rule Without Delay

The Report acknowledges the significance of Wisconsin's staggered senate elections. Rpt. 21. Because of the 2011/2022 gerrymander, the class of holdover Senators elected in 2022 from odd-numbered, skewed districts is troublingly imbalanced, with 12 Republicans and only 5 Democrats. Initial Br. 49–50. Fortunately, however, the Wright Map contains enough competitive senate districts, including even-numbered ones, to put control of the next Wisconsin Senate squarely where it belongs—in the hands of Wisconsin's voters—starting this November. *Id.* Unlike any other proposed

remedial map, the Wright Map is poised to let Wisconsin’s voters decide who controls the Senate starting in 2024. If this November’s general election tilts Republican, the Wright Map (like other proposed maps) would be expected to return a Republican Senate. But if the election tilts Democratic, the Wright Map (and only the Wright Map) would allow Democrats to control the chamber. Response Br. 36–40 & tables 12–13 & figure 17.

Figure 5 shows that, with the Wright Map, Republicans would continue to control the Senate if voting resembles the Republican-leaning 2022 contests for Treasurer or U.S. Senator, while Democrats would control if voting resembles the Democratic-leaning 2022 gubernatorial or 2020 presidential election, as indicated by the Figure’s green bars topping the dotted horizontal line representing a 50/50 seat share. Response Br. 38 table 12.

Figure 5. Democratic Seats in the Next Senate if 2024 Voting Tracks Two Recent Democratic or Two Recent Republican Statewide Victories.



The Wright Map is the only proposed remedy that does not preordain two more years of Republican control of the Senate even if most Wisconsin

voters cast their ballots for Democratic senate candidates this November. *Id.* This alone is reason for the Court to adopt the Wright Map over the other proposals, all of which, in effect, sentence the people of Wisconsin to two more years of “least change” in the upper house of their Legislature.⁷

III. The Court Should Choose the Wright Map for Wisconsin.

Because the Wright Map satisfies all the Court’s mandatory districting requirements, excels on the nonmandatory traditional districting criteria, and minimizes partisan impact—all without requiring any technical corrections—the Court should choose the Wright Map for Wisconsin. There is no reason to accept the offer from Dr. Grofman and Dr. Cervas to create a new map at this late stage. Rpt. 25. Indeed, their offer is inconsistent with the Court’s December 22 Order [“Order”]. Order at 4 (noting that Dr. Grofman and Dr. Cervas should “submit their own proposed remedial map” “[o]nly if” none of the parties’ January 12, 2024 submissions “meets the

⁷ The Legislature has complained that some voters will need to wait six years for a new senate election. But that is “an inevitable concomitant of redistricting” in a state with staggered senate elections. *Prosser v. Elections Bd.*, 793 F. Supp. 859, 866 (W.D. Wis. 1992) (three-judge court); *see also Wis. State AFL-CIO v. Elections Bd.*, 543 F. Supp. 630, 659 (E.D. Wis. 1982) (three-judge court) (dismissing this argument as a “house of cards that collapses when exposed to even the gentle breeze of cursory analysis” and as “contrary to common sense”). Indeed, “[s]ome degree of temporary disenfranchisement in the wake of redistricting is seen as inevitable, and thus as presumptively constitutional [under the Equal Protection Clause], so long as no particular group is uniquely burdened.” *Baldus v. Members of Wis. Gov’t Accountability Bd.*, 849 F. Supp. 2d 840, 852 (E.D. Wis. 2012) (three-judge court). The Legislature claims Republicans are “uniquely burdened” here, Legis. Br. 22–23 (Jan. 22, 2024) (citing, *inter alia*, *Anderson v. Celebrezze*, 460 U.S. 780, 786–88 (1983)), but that claim is in some tension, to say the least, with the Legislature’s position that assessing partisan impacts implicates a nonjusticiable political question. Any disproportionate impact on Republicans is a byproduct of the Wright Map’s correction of the 2022 Map’s extreme Republican gerrymandering; and in any event, the Legislature has not cited a single case finding a federal constitutional violation based on the partisan composition of the voters temporarily affected by redistricting. Finally, contrary to the Legislature’s assertion that strict scrutiny should apply (Legis. Br. 23–24), “[c]ourts that have addressed equal protection claims brought by voters who were temporarily disenfranchised after a reapportionment have consistently applied rational-basis review.” *Donatelli v. Mitchell*, 2 F.3d 508, 514 (3d Cir. 1993) (collecting cases).

criteria identified in the court’s December 22, 2023 opinion” (emphasis added)).⁸ The Report finds that the Wright Map clearly meets all the Court’s criteria and requires no technical corrections. Rpt. 4–25. Thus, no new map is warranted.

In any event, producing a map “quickly” that would “improve performance on most or all of the Court[-]mandated criteria,” as Dr. Grofman and Dr. Cervas have offered (Rpt. 25), could prove difficult. Even minor changes to a map often trigger a cascade of unforeseen “ripple” effects. The Wright team had the benefit of cutting-edge computational-redistricting techniques that systematically evaluated more than *one hundred million* potential maps before arriving at the Wright Map as the one that best balances the specific criteria the Court delineated in its December 22 Opinion.

Given that the Wright Map already fulfills all the criteria thoroughly briefed by all parties, the Court need not address the additional guidance Dr. Grofman and Dr. Cervas requested in order to draw a new map. Their questions about whether “ward boundaries [must] be preserved” (Rpt. 21) can be averted by choosing the one map that has no ward splits at all—the Wright Map. *See supra* Part II-B and Part II-I. Questions about whether “to improve the performance of most plans with respect to treatment of the

⁸ Though the Court’s Order did not contemplate a new map, the Court did instruct Dr. Grofman and Dr. Cervas to “suggest” and fully “explain[] in their report” any “technical corrections or minor changes to the parties’ submissions *as required*.” Order at 4 (emphasis added). Despite finding certain issues with other parties’ submissions, Dr. Grofman and Dr. Cervas “did not feel it necessary to do so.” Rpt. 24. Instead, they either “leave these technical corrections to the litigants[,] since choices [about exactly how to make these corrections] may have other implications for [the] degree of satisfaction of court-designated criteria,” Rpt. 9, or suggest that technical corrections could be “addressed ... by the Wisconsin Legislative Technology Services Bureau (LTSB),” Rpt. 21.

Native American reservations” (Rpt. 22) could be avoided by choosing the one map that is already essentially perfect on this criterion—the Wright Map. *See supra* Part II-J. And deciding how to “handle [district] renumbering” (Rpt. 21) is unnecessary if the Court adopts the one map that needs no “renumbering” to put control of the Senate in the hands of the voters this November—again, the Wright Map. *See supra* Part II-M.

All parties and the Court’s consultants have had a chance to thoroughly vet the Wright Map. It was presented, along with five other remedial maps, on January 12; accompanied by underlying data and digital files; supported by expert reports, initial briefs, and appendices; then by response briefs and appendices; then analyzed by the Court’s two expert consultants; and (today) subjected to further remedial analysis by all parties and *amici* in light of the consultants’ findings. The Court’s December 22 Order does not contemplate a new map at this stage of the litigation precisely because the Court wished to subject each party’s proposal to that same equal and exacting scrutiny. In short, there is no reason to create and then adopt a new map that was not subject to the Court’s extensive vetting process when the Court has before it a map that has been thoroughly tested and satisfies every single criterion this Court articulated in its December 22 Opinion.

* * *

The Wright Map is presented here not by political actors with political agendas, but instead by Wisconsin citizens who have dedicated their lives to applying mathematical and scientific principles to solve problems. They have worked with an expert team using computational redistricting to solve the problem of how best to comply simultaneously with all the criteria

articulated by the Court in order to deliver fair and lawful representation to their fellow Wisconsin citizens.

The Court need not choose between maps offered by members of the legislative or executive branches. Instead, the Court can choose the map that offers the best solution for a lawful, neutral remedy that can be adopted immediately with no technical corrections and that would bring majority rule and democratic accountability to both legislative chambers without delay.

CONCLUSION

Consistent with Dr. Grofman and Dr. Cervas's analyses of the six remedial maps proposed on January 12, 2024, the Court should adopt the Wright Map as the best map for the people of Wisconsin and order the Wisconsin Elections Commission to use the Wright Map in legislative elections in 2024 and thereafter.

Dated: February 8, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this Brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this Brief is 5,470 words.

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