

FILED
02-08-2024
CLERK OF WISCONSIN
SUPREME COURT

IN THE SUPREME COURT OF WISCONSIN

No. 2023AP1399

REBECCA CLARKE, RUBEN ANTHONY, TERRY DAWSON, DANA GLASSTEIN, ANN GROVES-LLOYD, CARL HUJET, JERRY IVERSON, TIA JOHNSON, ANGIE KIRST, SELIKA LAWTON, FABIAN MALDONADO, ANNEMARIE MCCLELLAN, JAMES MCNETT, BRITTANY MURIELLO, ELA JOOSTEN (PARI) SCHILS, NATHANIEL SLACK, MARY SMITH-JOHNSON, DENISE (DEE) SWEET, AND GABRIELLE YOUNG,

Petitioners,

GOVERNOR TONY EVERS, IN HIS OFFICIAL CAPACITY; NATHAN ATKINSON, STEPHEN JOSEPH WRIGHT, GARY KRENZ, SARAH J. HAMILTON, JEAN-LUC THIFFEAULT, SOMESH JHA, JOANNE KANE, AND LEAH DUDLEY,

Intervenors-Petitioners

v.

WISCONSIN ELECTIONS COMMISSION; DON MILLIS, ROBERT F. SPINDELL, JR., MARK L. THOMSEN, ANN S. JACOBS, MARGE BOSTELMANN, AND CARRIE RIEPL, IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE WISCONSIN ELECTIONS COMMISSION; MEAGAN WOLFE, IN HER OFFICIAL CAPACITY AS THE ADMINISTRATOR OF THE WISCONSIN ELECTIONS COMMISSION; SENATOR ANDRÉ JACQUE, SENATOR TIM CARPENTER, SENATOR ROB HUTTON, SENATOR CHRIS LARSON, SENATOR DEVIN LEMAHIEU, SENATOR STEPHEN L. NASS, SENATOR JOHN JAGLER, SENATOR MARK SPREITZER, SENATOR HOWARD L. MARKLEIN, SENATOR RACHAEL CABRAL-GUEVARA, SENATOR VAN H. WANGGAARD, SENATOR JESSE L. JAMES, SENATOR ROMAINE ROBERT QUINN, SENATOR DIANNE H. HESSELBEIN, SENATOR CORY TOMCZYK, SENATOR JEFF SMITH, AND SENATOR CHRIS KAPENGA, IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE WISCONSIN SENATE,

Respondents,

WISCONSIN LEGISLATURE; BILLIE JOHNSON, CHRIS GOEBEL, ED PERKINS, ERIC O'KEEFE, JOE SANFELIPPO, TERRY MOULTON, ROBERT JENSEN, RON ZAHN, RUTH ELMER, AND RUTH STRECK,

Intervenors-Respondents.

PETITIONERS' RESPONSE TO CONSULTANTS' REPORTS

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INTRODUCTION

This Court's independent, nonpartisan consultants have confirmed what the Clarke Petitioners have previously said: four parties (the Clarke Petitioners, the Governor, the Democratic Senators, and the Wright Intervenors) submitted proposed maps that adhere to the Constitution's requirements and this Court's criteria, while the Legislature and the Johnson Intervenors did not. Pet'rs' Jan. 22, 2024 Resp. Br. 6-11, 22-30. Most remarkable are the Legislature's proposed maps, which illustrate the ripple effects that follow from the extensive contiguity violations of the enjoined maps. The Legislature's proposed maps would more than double the number of municipal splits and splinter more than 100 wards due to the Legislature's blinkered insistence on clinging to the non-constitutional "least change" criterion, which this Court has rejected.

More fundamentally, almost half of the Legislature's proposed assembly districts are not bounded by ward lines, as the Constitution requires. This disqualifying flaw is shared by the Johnson Intervenors' maps. Given the failure of the Legislature and the Johnson Intervenors to comply with Article IV's "bounded" requirement, the Court need not even reach Drs. Grofman and Cervas's conclusion that both the Legislature's maps and the Johnson Intervenors' maps fail to meet this Court's requirement that new maps be politically neutral, as both would provide Republican candidates a massive electoral advantage. But that, too, is indisputable.

Accordingly, that leaves four maps that comport with the Constitution's requirements and are eligible for this Court's consideration—those submitted by the

Clarke Petitioners, the Governor, the Democratic Senators, and the Wright Intervenors. While all are substantial improvements over the current maps, the Clarke maps outperform the others on the majority of the constitutionally mandated criteria, including assembly population deviation, senate population deviation, assembly county splits, assembly town splits, and senate town splits. Moreover, the Clarke maps:

- “split” only a single defunct ward (from a town that no longer exists) that has since been replaced by new wards kept whole in the Clarke maps;
- split the fewest municipalities among the four eligible submissions in both the assembly and the senate maps;
- tie for first on majoritarian concordance in election outcomes; and
- have the second fewest splits of Native American reservations. The few reservations that are split are justified by countervailing concerns regarding avoiding county splits, municipal splits, and other community of interest splits that must also be weighed, as illustrated below.

In choosing among four good maps that are similar on other criteria, the best course of action for this Court is to select those maps that achieve the best performance overall on the constitutionally mandated criteria and split the fewest municipalities—the Clarke maps. The Clarke maps outperform nearly every court-ordered or legislatively drawn map in Wisconsin from the past 30 years on these neutral metrics. And the political neutrality of the Clarke map would ensure that this

Court maintains its judicial neutrality in remedying the violation in the enjoined maps.

ARGUMENT

I. **The Legislature's maps and the Johnson Intervenors' maps are disqualified from consideration.**

The Consultants' Report confirms why the Legislature's and the Johnson Intervenors' maps should be disqualified from further consideration. As explained in the Clarke Petitioners' January 22, 2024 response brief (at 6-11), a substantial number of the assembly districts in the Legislature's and the Johnson Intervenors' maps are not "bounded by county, [] town or ward lines." Wis. Const. art. IV, § 4. Drs. Grofman and Cervas confirmed this: only 54% of the Legislature's and 81% of the Johnson Intervenors' assembly districts comply with Article IV's "bounded" requirement. *See* Consultants' Report 21; *see also id.* 25 ("[T]he Johnson plan appears to have a substantial number of fails of the 'bounded by' constitutional criteria.").

By contrast, **100%** of the Clarke assembly districts comply with both the "bounded" requirement **and** the contiguity requirement. *Id.* 8-9, 21. With a map available that complies with **all** constitutional requirements, there is no need to "balance" one requirement against another in evaluating the Legislature's and the Johnson Intervenors' maps: the Court need not consider these two submissions, which indisputably traded one constitutional violation (noncontiguity) for another

(failure to bound districts). The Court should not select a map that does not satisfy constitutional requirements when it has options that satisfy *all* such requirements.

The indisputable failure to satisfy the “bounded” requirement disqualifies the Legislature’s and the Johnson Intervenors’ maps, and the Court should end its consideration of those maps on that basis alone. But even if failing to abide by that constitutional requirement were not sufficient to disqualify those two sets of maps, Drs. Grofman and Cervas also confirmed what the Clarke Petitioners reported in their previous brief: neither the Legislature’s maps nor the Johnson Intervenors’ maps are politically neutral. Consultants’ Report 25. Drs. Grofman and Cervas have flatly—and correctly—rejected the Legislature’s and the Johnson Intervenors’ contention that maps cannot be “politically neutral” in Wisconsin unless they “favor Republicans at a level substantially disproportionate with their statewide vote share.” Legislature’s Jan. 12, 2024 Opening Br. 57. According to Drs. Grofman and Cervas, “in Wisconsin, geography is not destiny. The plan chosen determines whether political neutrality (and other criteria) will be served.” Consultants’ Report 24. The Clarke maps score better on almost all constitutionally mandated and traditional redistricting criteria than any court-imposed or legislatively adopted Wisconsin legislative map over the past 30 years. And they manage this while maintaining political neutrality, as demonstrated in their tie for first place on majoritarian concordance with electoral outcomes. *Id.* 18-19.

The Consultants’ Report confirms that the Legislature’s and the Johnson Intervenors’ political geography argument is, and always has been, a smokescreen

to hide their deliberate deviation from political neutrality. That goal has been effectuated through their treatment of communities across Wisconsin like Sheboygan, Beloit, Green Bay, Appleton, Neenah/Menasha, Wausau, Superior, Eau Claire, Whitewater, Fort Atkinson, Lake Mills, Spring Green, with the purpose of entrenching one political party. There is no need for this Court to abandon judicial neutrality—or to give its imprimatur to a party submission that does the same—and the Court should not do so.

II. The Clarke maps perform best on the mandatory constitutional criteria.

The Consultants' Report confirms that four maps remain eligible for the Court's consideration—the Clarke Petitioners', the Governor's, the Democratic Senators', and the Wright Intervenors'. All four eligible submissions are stark improvements over the maps this Court enjoined. But the Clarke maps edge out the others overall on the mandatory constitutional criteria, which are of primary importance. *See Clarke v. Wis. Elections Comm'n*, 2023 WI 79, ¶68, 410 Wis. 2d 1, 998 N.W.2d 370 (explaining that other considerations “will not supersede constitutionally mandated criteria”).¹

Population Equality. The Clarke maps have the lowest population deviation, by far: the Clarke maps' overall deviation is half that of the next-closest submission.

¹ As Drs. Grofman and Cervas noted, the four maps are indistinguishable in terms of compactness. *See* Consultants' Report 8-9. Likewise, Drs. Grofman and Cervas agree with the parties—including the Legislature and Johnson Intervenors—that the Court need not revisit the Voting Rights Act and Equal Protection Clause if it adopts a remedial plan that maintains the current configurations of City of Milwaukee districts that the Court held in *Johnson III* raised no concerns under federal law.

Specifically, the Clarke assembly map has an overall population deviation of 0.9%, compared to the range of 1.8% to 2% among the others. *See* Consultants' Report 5. The Clarke senate map has an overall population deviation of 0.6%, compared to the range of 1.2% to 1.5% among the others. *Id.* The Clarke maps are also the only submission with population deviations below 1%. *See Clarke*, 2023 WI 79, ¶64 (“[B]elow 1 percent, there is no legally or politically relevant degrees of perfection” (quoting *Prosser v. Elections Bd.*, 793 F. Supp. 859, 870 (1992))). Choosing the maps with the lowest population deviation accords with the Court’s “judicial duty to ‘achieve the goal of population equality with little more than de minimis variation.’” *Clarke*, 2023 WI 79, ¶64 (quoting *Connor v. Finch*, 431 U.S. 420 (1977)).

County Splits. The Clarke assembly map splits fewer counties (44) than the other three eligible maps: Governor (45), Wright (47), and Democratic Senators (51). *See* Consultants' Report 7. Among the senate maps, the Governor’s map has the fewest county splits (33) with the Clarke map a close second (34).² The Wright senate map splits three more counties (37), and the Democratic Senators eight more (42).³

² As Dr. Warshaw previously explained, one of these is the result of a single, zero population Census block included in a different district to keep a municipal boundary whole. Pet’rs Jan. 12, 2024 App. 14 n.6.

³ The Wright Intervenors isolate two subsets of counties in their response brief to suggest that their submission is best on county splits. Wright Intervenors’ Jan. 22, 2024 Resp. Br. 22-23. In fact, the Wright maps place third among the four submissions on county splits in both the assembly and senate maps. *See* Consultants' Report 7.

Town Splits. The Court looks closely at town splits in assessing maps. *Clarke*, 2023 WI 79, ¶66 (noting that splitting “smaller political subdivisions” warrants particular scrutiny). The Clarke assembly map splits fewer towns (10) than the other three submissions: Wright (14), Governor (22), and Democratic Senators (27). *See* Consultants’ Report 7. The Clarke senate map likewise splits fewer towns (6) than the others: Wright (8), Governor (12), and Democratic Senators (16). *Id.*

Ward Splits. The Clarke maps appear to split a single ward—Town of Madison Ward 3—a noncontiguous ward made up of six separate pieces. This ward is a special case: the Town of Madison no longer exists. Pet’rs Jan. 12, 2024 App. 17-18. The ward’s six detached pieces are now all separate City of Madison wards, and each of those is kept whole in the Clarke maps. *Id.* So the Clarke maps actually split no wards. This “split” was advisable because it improved compactness and adherence to communities of interest without having any effect on the “bounded” requirement and without requiring a change to any *current* ward. Given the elimination of this former ward, the tradeoffs tip in favor of splitting it.⁴

In any event, even counting this ward split, the Clarke maps rank second on this measure with just one ward split.

⁴ The Governor and Democratic Senators likewise split this ward. By keeping this ward whole, the Wright Intervenors created an unusually shaped senate district 32 in their proposal, which extends from the Illinois and Iowa borders into the City of Madison with a protruding “hand” extending three “fingers” eastward into Madison to keep whole what used to be Town of Madison Ward 3. Likewise, the Clarke, Governor, and Democratic Senators maps maintain two senate districts either wholly or nearly wholly contained in Dane County, while the Wright Intervenors reduce that to one such district.

* * *

To summarize, while the Court has multiple good choices, the Clarke maps score best on a majority of the constitutional metrics upon which the four eligible submissions can be differentiated. The Clarke maps have the top performance on (1) assembly population deviation, (2) senate population deviation, (3) assembly county splits, (4) assembly town splits, and (5) senate town splits. The Clarke senate map is barely behind the Governor's senate map on county splits. And, depending on how ward splits are assessed, the Clarke maps are either tied with or barely behind the Wright maps. Given the similarity of the four eligible options in many respects, the Court is well-served to rely upon these quantifiable constitutional metrics in making its determination: the Clarke maps achieve the top rank on the majority of constitutional metrics and are tied or place a close second on the remaining constitutional criteria.

III. The Clarke maps have the fewest municipal splits.

Drs. Grofman and Cervas also confirm that the Clarke maps split the fewest municipalities of the four eligible submissions. The Clarke assembly map splits 45 municipalities. *See* Consultants' Report 8. Among the remaining constitutional maps, the Wright assembly map splits 52, the Governor's assembly map splits 55, and the Democratic Senators' assembly map splits 72. *Id.* The Clarke maps also best adhere to this Court's precedent that town splits, in particular, should be minimized. *See supra.* The Clarke senate map also contains the fewest municipal splits among the four eligible submissions. It splits 29 municipalities; the Governor's senate map

splits 33, the Wright senate map splits 34, and the Democratic Senators' senate map splits 48. *See* Consultants' Report 8.

IV. The Clarke maps perform second-best in respecting tribal reservation boundaries.

The Clarke maps perform second-best in respecting tribal reservation boundaries—a consideration the Clarke Petitioners agree is important. *See* Wright Intervenors' Jan. 22, 2024 Resp. App. 17; *see also* Consultants' Report 10. The Clarke maps keep seven tribal reservations wholly intact in assembly and senate districts. As with most aspects of drawing legislative districts, however, there are competing considerations—stemming both from constitutional mandates and from concerns about communities of interest—that make perfect adherence to all tribal land boundaries difficult. Of the eleven federally recognized Indian tribes in Wisconsin, the Clarke maps split three reservations that the Wright maps do not: (1) the St. Croix Chippewa, (2) the Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation (“Lac du Flambeau Band”), and (3) the Oneida Nation. *See* Amicus Br. of Midwest Alliance of Sovereign Tribes and Lac du Flambeau Tribe 5. Each of these involves countervailing concerns.

First, because the St. Croix Chippewa Reservation consists of separated lands spread across four counties (Burnett, Polk, Washburn, and Barron) that together exceed the population of an assembly district, maintaining it whole

necessarily increases county splits.⁵ The Clarke map places the bulk of the St. Croix tribal lands in AD28 but maintains Barron County in a single assembly district. The Governor and Democratic Senators likewise keep Barron County whole. By contrast, the Wright map keeps the various pieces of the St. Croix Reservation whole, but in doing so splits Barron County among four assembly districts. Here, maintenance of boundaries for a county—a political subdivision with constitutional status in Article IV—is a competing concern that must be considered. *See Clarke*, 2023 WI 79, ¶68 (explaining that “the court will consider . . . preserving communities of interest,” but that this consideration “will not supersede constitutionally mandated criteria.”).

Second, the vast majority of the Lac du Flambeau Band Reservation is in southwestern Vilas County (kept whole in the Clarke map), with a small portion extending across the county line into the Town of Sherman in Iron County.⁶ The Clarke and Governor’s maps leave AD34 unchanged from its current configuration, which includes all of Vilas County and all but one town of Oneida County. This configuration maintains the Northwoods tourism communities of Rhinelander,

⁵ *See* Wis. State Tribal Relations Initiative, *Where are the tribes?*, http://witribes.wi.gov/section_print.asp?linkid=731&locid=57.

⁶ *See supra* note 5.

Minocqua, and Eagle River together in a single district, as they have been since 1983.⁷

The Town of Sherman in Iron County could be added to AD34 in the Clarke assembly map without changing the map's overall population deviation, given the small population (286 people) of the Town. That configuration would make the Lac du Flambeau Band whole, but doing so would require splitting Iron County, which is currently maintained whole in the Clarke map. *See Clarke*, 2023 WI 79, ¶68 (prioritizing constitutional criteria over communities of interest). Although the Wright map places the reservation in a single district, in doing so it separates Rhinelander from Eagle River and Minocqua, placing these communities in separate districts that span nearly the entire width of the northern tier of the state. These countervailing constitutional and community of interest concerns must be considered.

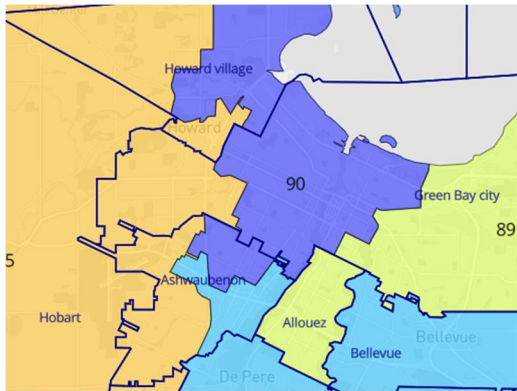
Third, The Oneida Nation covers parts of Outagamie and Brown Counties, including all of the Town of Oneida in Outagamie County, all of the Village of Hobart in Brown County, and parts of the City of Green Bay, the Village of Ashwaubenon, the Village of Howard, and the Town of Pittsfield in Brown County.⁸ Because of the number of municipalities the Oneida Nation crosses, it is especially difficult to maintain it whole without triggering a cascade of municipal splits. For

⁷ *See* State of Wisconsin Blue Books (1983, 1993, 2003, 2013, 2023), <https://search.library.wisc.edu/digital/AZ2BBQ7OUYLAX78W>.

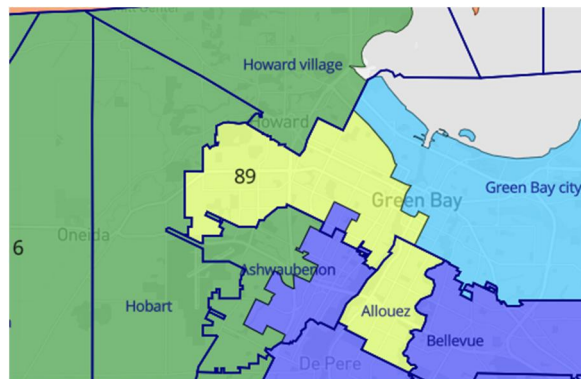
⁸ *See supra* note 5.

example, by maintaining the Oneida Nation in a single assembly district, the Wright map splits substantial parts of the City of Green Bay across three assembly districts and two senate districts, splits the Village of Howard into two assembly districts and two senate districts, and splits the Village of Ashwaubenon into three assembly districts. By contrast, the Clarke map places nearly all of Green Bay in just two assembly districts and a single senate district, maintains the Village of Howard whole, and splits Ashwaubenon into just two assembly districts. The Governor and Democratic Senators have similar configurations aimed at minimizing splits of these municipalities. The images below compare the Wright and Clarke maps' treatment of the Green Bay area, illustrating the tradeoff between splitting municipalities and maintaining the Oneida Nation Reservation in a single district.

Wright Assembly Map



Clarke Assembly Map



* * *

To summarize, the Clarke maps perform second-best in maintaining tribal lands intact in legislative districts, keeping seven Reservations whole. The Clarke Petitioners recognize the importance of keeping tribal lands intact in legislative

districts to the extent possible. For the three Reservations that the Clarke maps split that the Wright maps do not, competing Article IV concerns regarding county splits and nonconstitutional concerns regarding municipal splits and other communities of interest must be weighed. *See Clarke*, 2023 WI 79, ¶68.

V. The Clarke maps are politically neutral and, together with the Governor's maps, have the highest majoritarian concordance.

As Drs. Grofman and Cervas explain, the maps submitted by the Clarke Petitioners, the Governor, the Democratic Senators, and the Wright Intervenors are all politically neutral. The most desirable metric “from a normative and social science perspective” is majoritarian concordance—*i.e.*, the rate at which winning statewide candidates carry a majority of districts in a given map. Consultants’ Report 16 (“[I]n a democratic framework, it is preferable for the majority party to usually attain government control, reflecting the will of the electorate.”). On this metric, the Clarke maps and the Governor’s maps tie for the highest rate at 76.9%, with the Democratic Senators in third with 73.1% and the Wright Intervenors in fourth place with 65.4%. *See Consultants’ Report* 19.⁹

This means that, although all four maps are politically neutral, the Clarke maps and the Governor’s maps make it most likely that the winning candidate will

⁹ The data belie any suggestion by the Legislature or the Johnson Intervenors that the Clarke maps favor Democrats. In the few instances where the Clarke maps do not achieve majoritarian concordance, the *Republican* candidate lost statewide but would have won a majority of seats under the maps. *See Consultants’ Report* 19.

carry a majority of legislative seats. Majority rule, of course, is the foundation of American government.¹⁰

VI. The Legislature's delayed senate voting arguments are misplaced.

The Legislature in its response brief contended that there was some unspecified “federal right” involved in delayed senate voting attributable to redistricting and complain about three other maps (but not the Clarke map):

It appears the Governor and Senate Democrats disenfranchise Intervenor Billie Johnson. And Wright Intervenors would have 100,000 more Trump voters skip their next scheduled senate election than Biden voters.

Legislature's Jan. 22, 2024 Resp. Br. 23.

While the Legislature raises no argument in this regard with respect to the Clarke maps, *id.*, its arguments regarding this issue are misplaced. The only appropriate remedy (and the only remedies courts have imposed in the few instances such claims have prevailed) are special elections, not alterations to a map. *See, e.g., Dollinger v. Jefferson Cnty. Comm'rs Court*, 335 F. Supp. 340, 343–44 (E.D. Tex. 1971) (ordering special elections); *Scott v. Lack*, 332 F. Supp. 220, 222 (E.D. Tex. 1971) (same); *In re Khanoyan*, 637 S.W.3d 762, 770 (Tex. 2022) (explaining that if a claim of delayed voting was viable, the potential remedy would be a special election under the new maps in affected districts). The Clarke Petitioners have no

¹⁰ The Wright Intervenors highlight that they renumbered senate districts to overcome the effect of staggered elections and hasten the ability of Democrats to potentially win control of the state senate in 2024. Wright Intervenors' Jan. 22, 2024 Resp. Br. 36-40. Whether or not this is an appropriate consideration for the Court, voters are empowered to seek earlier state senate elections via recall petitions if they so desire regardless of which map the Court selects. *See Wis. Const. art. XIII, § 12.*

objection to special elections. Pet'rs' Jan. 22, 2024 Resp. Br. 31 n.16. But the Legislature has said it does not want special elections, and in doing so, the Legislature necessarily waived any objection it has to delayed voting by refusing the sole judicial remedy available to resolve its purported concern. *See* Legislature's Oct. 30, 2023 Resp. Br. 54-55.

Moreover, the Clarke Petitioners, the Governor, and the Democratic Senators would all cause fewer people to experience delayed voting than courts in Wisconsin have previously approved. *Compare Wis. State AFL-CIO v. Elections Bd.*, 543 F. Supp. 630, 659 (E.D. Wis. 1982) (characterizing an objection to a delay of senate voting for over 713,000 residents to “a house of cards that collapses when exposed to even the gentle breeze of cursory analysis”), *and Baldus v. Members of the Wis. Gov't Accountability Bd.*, 849 F. Supp. 2d 840, 852 (E.D. Wis. 2012) (noting the Government Accountability Board's advocacy by former Justice Dan Kelly for a 750,000-person ceiling for delayed senate voting), *with* Legislature's Jan. 22, 2024 Resp. Br. 23 (identifying the Clarke, Governor's, and Democratic Senators' maps as all falling below these numbers).

Finally, the Legislature's suggestion that “heightened scrutiny” is triggered if Republicans are affected by delayed voting more than Democrats, Legislature's Jan. 22, 2024 Resp. Br. 23-24, is breathtakingly bold. The Legislature has repeatedly argued—in Wisconsin federal courts, in this Court (including in this case), and in the U.S. Supreme Court—that partisan affiliation is not a suspect classification and that claims based upon the partisan effects of redistricting are nonjusticiable. The

Legislature does not even believe that voters' partisan affiliation can be ascertained from their voting history, yet that is the very data it presents in its brief to support this notion. *See id.* 23. The Legislature's contention that the Court should be wary of some *federal* law issue is particularly misplaced. *See Rucho v. Common Cause*, 139 S. Ct. 2484 (2019). In any event, the Legislature's undeveloped argument is meritless. Any partisan differential in delayed senate voting is attributable to the partisan differential in the districts that were noncontiguous. Of the 21 noncontiguous senate districts in the current map, 16 are represented by Republican senators.¹¹ Of the 12 contiguous senate districts, 6 are represented by Republican senators and 6 are represented by Democratic senators.¹² Remediating the noncontiguity in the senate districts *necessarily* has a greater effect on Republicans. Punctuating this fact, the two parties with near 50-50 partisan effects in their delayed senate voting as reported by the Legislature's response brief—the Democratic Senators and the Johnson Intervenors—are the only parties who altered the *contiguous* City of Milwaukee districts represented by Democratic senators.

The Legislature's undeveloped argument about delayed voting is misplaced on the law and facts.¹³

¹¹ Senate districts 1, 2, 5, 8, 9, 11, 13-16, 20-24, 27-31, and 33 are noncontiguous. Of those, all but districts 15, 16, 22, 27, and 31 are held by Republicans.

¹² Senate districts 3, 4, 6, 7, 10, 12, 17-19, 25, 26, and 32.

¹³ For these reasons, the Court need not accept the invitation of Drs. Grofman and Cervas to develop an algorithm to evaluate potential renumbering of districts. *See* Consultants' Report 21.

VII. Additional work by the consultants is not needed.

Drs. Grofman and Cervas note that they are willing to make various further adjustments to the map submissions. *See* Consultants' Report 25. Given their conclusion that the Clarke maps, among others, satisfy the criteria outlined in the Court's December 22 opinion, and that no further factfinding is necessary, further alterations by the Consultants would only cause delay. The Clarke maps outperform every Wisconsin legislative map from the past 30 years on *nearly every* metric. The Clarke maps will restore Wisconsin to constitutionally designed legislative districts and ensure that this Court retains judicial neutrality in imposing them.

CONCLUSION

For the foregoing reasons, the Court should order the Wisconsin Elections Commission to implement the Clarke maps for future general, special, and recall elections occurring after the date of the Court's order.¹⁴

Respectfully submitted this 8th day of February, 2024.

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¹⁴ On January 23, 2024, the Clarke Petitioners filed a letter noting two Milwaukee City wards that were inadvertently assigned to assembly district 9 rather than 7 in their map and provided the Court, the consultants, and the parties with a potential technical corrections block assignment file for their assembly map. The Court could order either the original version or the technical corrections version of the Clarke assembly map into effect without any material effect. The Clarke senate map is unaffected.

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CERTIFICATION REGARDING FORM AND LENGTH

I hereby certify that this brief conforms to the rules contained in s. 809.19(8) (b), (bm), and (c) for a brief. The length of this brief is 4,194 words.

Electronically signed by Daniel S. Lenz
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