

---

In the Supreme Court of Wisconsin  
No. 2021-AP-1450-OA

---

BILLIE JOHNSON, ERIC O'KEEFE, ED PERKINS AND RONALD  
ZAHN,

*Petitioners,*

v.

WISCONSIN ELECTIONS COMMISSION, MARGE BOSTELMANN,  
JULIE GLANCEY, ANN JACOBS, DEAN KNUDSON, ROBERT  
SPINDELL, AND MARK THOMSEN, IN THEIR OFFICIAL  
CAPACITIES AS MEMBERS OF THE WISCONSIN ELECTION  
COMMISSION,

*Respondents.*

---

**APPENDIX OF THE WISCONSIN LEGISLATURE**

---

**BELL GIFTOS ST. JOHN LLC**  
KEVIN M. ST. JOHN  
State Bar No. 1054815  
5325 Wall Street, Suite 2200  
Madison, WI 53718  
608.216.7995  
kstjohn@bellgiftos.com

**LAWFAIR LLC**  
ADAM MORTARA  
State Bar No. 1038391  
125 South Wacker, Suite 300  
Chicago, IL 60606  
773.750.7154  
mortara@lawfairllc.com

## **TABLE OF CONTENTS**

Complaint for Declaratory and Injunctive Relief. Western District of Wisconsin, 3:21-cv-512-jdp-ajs-eec, August 13, 2021	3 - 23
Complaint for Declaratory and Injunctive Relief. Western District of Wisconsin, 3:21-cv-534-jdp-ajs-eec, August 23, 2021	24 - 41

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN**

LISA HUNTER; JACOB ZABEL; JENNIFER  
OH; JOHN PERSA; GERALDINE SCHERTZ;  
and KATHLEEN QUALHEIM,

Plaintiffs,

v.

MARGE BOSTELMANN, JULIE M. GLANCEY,  
ANN S. JACOBS, DEAN KNUDSON, ROBERT  
F. SPINDELL, JR., and MARK L. THOMSEN, in  
their official capacities as members of the  
Wisconsin Elections Commission,

Defendants.

Civil Action No. 21-cv-512

**Three-Judge Court Requested**

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs LISA HUNTER, JACOB ZABEL, JENNIFER OH, JOHN PERSA, GERALDINE SCHERTZ, and KATHLEEN QUAAHLEIM, by and through their undersigned counsel, file this Complaint for Declaratory and Injunctive Relief against Defendants MARGE BOSTELMANN, JULIE M. GLANCEY, ANN S. JACOBS, DEAN KNUDSON, ROBERT F. SPINDELL, JR., and MARK L. THOMSEN, in their official capacities as members of the Wisconsin Elections Commission, and allege as follows:

**NATURE OF THE ACTION**

1. This is an action challenging Wisconsin's current legislative and congressional districts, which are unconstitutionally malapportioned. Plaintiffs ask this Court to declare Wisconsin's current legislative and congressional district plans unconstitutional; enjoin Defendants from using the current district plans in any future election; and implement new legislative and congressional district plans that adhere to the constitutional requirement of one-person, one-vote should the Legislature and the Governor fail to do so.

2. On August 12, 2021, the U.S. Secretary of Commerce delivered census-block results of the 2020 Census to Wisconsin’s Governor and legislative leaders. These data confirm the inevitable reality that population shifts that occurred during the last decade have rendered Wisconsin’s state legislative and congressional districts unconstitutionally malapportioned. *See Arrington v. Elections Bd.*, 173 F. Supp. 2d 856, 860 (E.D. Wis. 2001) (three-judge court) (explaining that “existing apportionment schemes become instantly unconstitutional upon the release of new decennial census data” (internal quotation marks omitted)).

3. Specifically, the current district configurations of Wisconsin’s State Assembly and State Senate, Wis. Stat. §§ 4.01-4.99 (State Assembly districts), 4.009 (State Senate districts), violate the Fourteenth Amendment to the U.S. Constitution, and the current configuration of Wisconsin’s congressional districts, Wis. Stat. §§ 3.11-3.18, violates Article I, Section 2 of the U.S. Constitution. Because they are unconstitutional, the current legislative and congressional district plans cannot be used in any upcoming election, including the 2022 election.

4. Moreover, delays in the creation of new legislative and congressional plans threaten to violate Plaintiffs’ right to associate under the First and Fourteenth Amendments to the U.S. Constitution.

5. In Wisconsin, legislative and congressional district plans ordinarily are enacted through legislation, which requires the consent of both legislative chambers and the Governor (unless both legislative chambers override the Governor’s veto by a two-third vote). *See State ex rel. Reynolds v. Zimmerman*, 22 Wis. 2d 544, 553-59, 126 N.W.2d 551, 557-59 (1964); Wis. Const. art. V, § 10(2)(a).

6. There is no reasonable prospect that Wisconsin’s political branches will reach consensus to enact lawful legislative and congressional district plans in time to be used in the

upcoming 2022 election. Governor Tony Evers is a Democrat, and the State Assembly and State Senate are controlled by Republicans (though they lack veto-proof majorities). In the last four decades, each time Wisconsin’s political branches were split along partisan lines, federal judicial intervention was necessary to implement new state legislative plans. This history of frequent impasse led the Wisconsin Supreme Court to observe “the reality that redistricting is now almost always resolved through litigation rather than legislation.” *Jensen v. Wis. Elections Bd.*, 2002 WI 13, ¶ 10, 249 Wis. 2d 706, 713, 639 N.W.2d 537, 540 (2002). If anything, in the wake of the 2018 and 2020 elections, the hyper-partisan divisions have only gotten worse, leading to a “very real possibility” that Wisconsin’s political branches will fail to reach consensus on new legislative and congressional plans. *Arrington*, 173 F. Supp. 2d at 864.

7. Given the high likelihood of impasse, this Court should prepare itself to intervene to protect the constitutional rights of Plaintiffs and voters across this State. While there is still time for the Legislature and Governor to enact new plans, this Court should assume jurisdiction now and establish a schedule that will enable the Court to adopt its own plans in the near-certain event that the political branches fail timely to do so.

8. This action “challeng[es] the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body.” 28 U.S.C. § 2284(a). Accordingly, a three-judge district court “shall be convened” for this case. *Id.* Plaintiffs respectfully request that this Court notify the Chief Judge of the U.S. Court of Appeals for the Seventh Circuit of this action and request that two judges be added to this Court for the purpose of adjudicating the merits of this dispute. *Id.* § 2284(b)(1).

### JURISDICTION AND VENUE

9. Plaintiffs bring this action under 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the United States Constitution. This Court has original

jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1343 because the matters in controversy arise under the Constitution and laws of the United States and involve the assertion of a deprivation, under color of state law, of a right under the Constitution of the United States. This Court has the authority to enter a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202, and authority to enter injunctive relief under Federal Rule of Civil Procedure 65.

10. This Court has personal jurisdiction over Defendants, who are sued in their official capacities and reside within this State.

11. Venue is proper in the Western District of Wisconsin because a substantial part of the events that give rise to Plaintiffs' claims have occurred and will occur in this District, 28 U.S.C. § 1391(b)(2), and because all Defendants, who are sued in their official capacities, have their office in this District, *id.* § 1391(b)(1).

12. A three-judge district court has jurisdiction to adjudicate this dispute because Plaintiffs "challeng[e] the constitutionality of the apportionment of [Wisconsin's] congressional districts or the apportionment of [Wisconsin's] statewide legislative body." 28 U.S.C. § 2284(a).

### PARTIES

13. Plaintiffs are citizens of the United States and are registered to vote in Wisconsin. Plaintiffs intend to advocate and vote for Democratic candidates in the upcoming 2022 primary and general elections. Plaintiffs reside in the following congressional and legislative districts.

Plaintiff	County of Residence	Congressional District	State Senate District	State Assembly District
Lisa Hunter	Dane	2	26	77
Jacob Zabel	Dane	2	26	76
Jennifer Oh	Dane	2	26	78
John Persa	Waukesha	5	5	13
Geraldine Schertz	Shawano	8	2	6

Kathleen Qualheim	Shawano	8	2	6
-------------------	---------	---	---	---

14. As the tables provided below demonstrate, Plaintiffs reside in districts that are overpopulated relative to other districts in the state. Plaintiffs Hunter, Zabel, and Oh’s congressional, State Senate, and State Assembly districts are all overpopulated. Plaintiff Persa’s State Senate and State Assembly districts (but not his congressional district) are overpopulated. And Plaintiff Schertz and Qualheim’s congressional and State Senate districts (but not their State Assembly district) are overpopulated. If the 2022 election is held pursuant to the maps that are currently in place, then Plaintiffs will be deprived of their right to cast an equal vote, as guaranteed to them by the U.S. Constitution.

15. Defendants Marge Bostelmann, Julie M. Glancey, Ann S. Jacobs, Dean Knudson, Robert F. Spindell, Jr., and Mark L. Thomsen are the six Commissioners of the Wisconsin Elections Commission (“WEC”). They are named as defendants in their official capacities only. The WEC is the governmental body that administers, enforces, and implements Wisconsin’s laws “relating to elections and election campaigns, other than laws relating to campaign financing.” Wis. Stat. § 5.05(1). The WEC is responsible for implementing redistricting plans, whether enacted by Wisconsin’s political branches or by a court. *See id.* §§ 3.11-3.18 (setting forth current congressional district boundaries); 4.009 (setting forth current State Senate districts); 4.01-4.99 (setting forth current State Assembly districts); *see also Whitford v. Gill*, No. 15-cv-421-BBC, 2017 WL 383360, at \*3 (W.D. Wis. Jan. 27, 2017) (three-judge court) (enjoining members of the WEC from using existing Assembly map), *vacated on other grounds by Gill v. Whitford*, 138 S. Ct. 1916 (2018); *Baldus v. Members of Wis. Gov’t Accountability Bd.*, 862 F. Supp. 2d 860, 863 (E.D. Wis. 2012) (ordering members of the WEC’s predecessor, the Government Accountability Board (“GAB”), to implement the court’s alterations to the existing State Assembly district plan);

*Baumgart v. Wendelberger*, Nos. 01-C-121, 02-C-366, 2002 WL 34127471, at \*8 (E.D. Wis. May 30, 2002) (enjoining members of the Wisconsin Elections Board—the GAB’s predecessor—from using existing legislative plan and ordering use of court-drawn plan due to the Legislature’s failure to enact new plans following the 2000 Census).

## FACTUAL ALLEGATIONS

### **I. Wisconsin’s current legislative and congressional districts were drawn using 2010 Census data.**

16. On August 9, 2011, over a decade ago, Governor Scott Walker signed legislation creating new state legislative and congressional districts, which were drawn using then-recently published 2010 Census data.

17. According to the 2010 Census, Wisconsin had a population of 5,686,986. Accordingly, a decade ago, the ideal population for each of Wisconsin’s eight congressional districts (*i.e.*, the State’s total population divided by the number of districts) was 710,873 persons. Similarly, the ideal population for each State Senate district was 172,333 persons, and the ideal population for each State Assembly district was 57,444 persons.

18. According to 2010 Census data, the new congressional plan had a maximum deviation (*i.e.*, the difference between the most populated district and least populated district) of exactly one person: six districts had a population of 710,873, and two districts had a population of 710,874. The new State Assembly plan had a deviation of 438 persons (.8% of the ideal district population), and the new State Senate plan had a deviation of 1,076 persons (.6% of the ideal district population).

19. In April 2012, a federal court made slight adjustments to Assembly Districts 8 and 9. *See Baldus*, 862 F. Supp. 2d at 863. Otherwise, the legislative and congressional plans passed in August 2011 have been used in every election cycle since 2012.



## **II. The 2020 Census is now complete.**

20. In 2020, the U.S. Census Bureau conducted the decennial census required by Article I, Section 2 of the U.S. Constitution. On April 26, 2021, the U.S. Secretary of Commerce delivered the results of the 2020 Census to the President.

21. The results of the 2020 Census report that Wisconsin's resident population as of April 2020 is 5,893,718. This is a significant increase from a decade ago, when the 2010 Census reported a population of 5,686,986. Wisconsin will again be apportioned eight congressional districts for the next decade.

22. According to the 2020 Census results, the ideal population for each of Wisconsin's eight congressional districts (*i.e.*, the State's total population divided by the number of districts) is 736,715; the ideal population for Wisconsin's 99 State Assembly districts is 59,533; and the ideal population for Wisconsin's 33 State Senate districts is 178,598.

## **III. As a result of significant population shifts in the past decade and the publication of the 2020 Census results, Wisconsin's legislative and congressional districts are unconstitutionally malapportioned.**

23. In the past decade, Wisconsin's population has shifted significantly. Because the 2020 Census has now been completed, the 2010 population data used to draw Wisconsin's current legislative and congressional districts are obsolete, and any prior justifications for the existing maps' deviations from population equality are inapplicable.

24. On August 12, 2021, the U.S. Census Bureau delivered to Wisconsin its redistricting data file in a legacy format, which the State may use to tabulate the new population of each political subdivision. These data are commonly referred to as "P.L. 94-171 data," a reference to the legislation enacting this process, and are typically delivered no later than April of the year following the Census. *See* Pub. L. No. 94-171, 89 Stat. 1023 (1975).

25. These data make clear that significant population shifts have occurred in Wisconsin

since 2010, skewing the current legislative and congressional districts far from population equality.

26. The table below, generated from the P.L. 94-171 data file provided by the Census Bureau on August 12, 2021, shows how the populations of each of Wisconsin's congressional districts have shifted between 2010 and 2020. For each district, the "2010 Population" column represents the district's 2010 population according to the 2010 Census, and the "2020 Population" column indicates the district's 2020 population according to the P.L. 94-171 data. The "Shift" column represents the shift in population between 2010 and 2020. The "Deviation from Ideal 2020 Population" column shows how far the 2020 population of each district strays from the ideal 2020 congressional district population. And the "Percent Deviation" column shows that deviation as a percentage of the ideal 2020 district population.

District	2010 Population	2020 Population	Shift	Deviation from Ideal 2020 Population	Percent Deviation
1	710,874	727,452	+16,578	-9,262	-1.26%
2	710,874	789,393	+78,519	+52,679	+7.15%
3	710,873	733,584	+22,711	-3,130	-0.42%
4	710,873	695,395	-15,478	-41,319	-5.61%
5	710,873	735,571	+24,698	-1,143	-0.16%
6	710,873	727,774	+16,901	-8,940	-1.21%
7	710,873	732,582	+21,709	-4,132	-0.56%
8	710,873	751,967	+41,094	+15,253	+2.07%

27. The table above indicates that population shifts since 2010 have rendered Wisconsin's First, Third, Fourth, Fifth, Sixth, and Seventh Congressional Districts underpopulated, and its Second and Eighth Congressional Districts significantly overpopulated. According to these figures, the maximum deviation among Wisconsin's congressional districts increased from 0 to nearly 13 percent between 2010 and 2020.

28. The populations of each of Wisconsin's state legislative districts have similarly shifted in the past decade. **Exhibit A** to this Complaint provides the same table showing, for each

State Assembly district, the 2010 population, 2020 population, population shift between 2010 and 2020, deviation from the district's current ideal population, and percent deviation from the district's current ideal population. **Exhibit B** to this Complaint provides the same information for each State Senate district.

29. According to **Exhibit A**, the maximum deviation among State Assembly districts increased from .8 percent to 32 percent between 2010 and 2020. And according to **Exhibit B**, the maximum deviation among State Senate districts increased from .6 percent to over 22 percent between 2010 and 2020.

30. In light of these population shifts, Wisconsin's existing legislative and congressional district configurations are unconstitutionally malapportioned. If used in any future election, these district configurations would unconstitutionally dilute the strength of Plaintiffs' votes in legislative and congressional elections because Plaintiffs live in districts with populations that are significantly larger than those in which other voters live.

#### **IV. Wisconsin's political branches will likely fail to enact lawful legislative or congressional district maps in time for the next election.**

31. In Wisconsin, legislative and congressional district plans are enacted through legislation, which must pass both chambers of the Legislature and be signed by the Governor (unless the Legislature overrides the Governor's veto). *See State ex rel. Reynolds v. Zimmerman*, 22 Wis. 2d 544, 553-59, 126 N.W.2d 551, 557-59 (1964). Currently, both chambers of Wisconsin's Legislature are controlled by Republicans, and the Governor is a Democrat. The Republican control of the Legislature is not large enough to override a gubernatorial veto. The partisan division among Wisconsin's political branches makes it extremely unlikely that they will pass lawful legislative or congressional redistricting plans in time to be implemented during the upcoming 2022 election.

32. Except for the 2010 redistricting cycle—during which Republicans held trifecta control of Wisconsin’s state government—Wisconsin’s redistricting process has been rife with partisan gridlock. In the last four decades, when Republicans and Democrats controlled competing political branches of Wisconsin’s government, the parties have been unable to enact state legislative redistricting plans. As a result, federal courts were forced to intervene in the process of redrawing state legislative districting plans during the 1980, 1990, and 2000 redistricting cycles.

33. Once again, Wisconsin is entering a new redistricting cycle with political branches divided along partisan lines. If anything, the partisan differences among the major parties have only grown since they last attempted to reach consensus on redistricting plans. In the two years he has been in office, Governor Evers has been in nearly constant conflict with the Republican-controlled Legislature over a broad range of policies, such as the state’s response to the COVID-19 pandemic, election administration, Medicaid expansion, budget measures, abortion, and professional licensing, with the Governor using his veto power on many occasions. When it became clear that Republicans had failed to obtain a veto-proof majority in the Legislature in the November 2020 election, Governor Evers pointed immediately to the fact that he would retain the “ability to veto [] bad district lines through redistricting.”<sup>1</sup> Earlier that year, when Governor Evers created an independent redistricting commission meant to produce fair statewide maps, Republican legislative leadership indicated that they would ignore the commission’s proposals.<sup>2</sup>

34. On August 10, 2021, Governor Evers vetoed a series of bills passed by the Legislature seeking to alter the rules regarding applying for, delivering, and processing of absentee

---

<sup>1</sup> Mitchell Schmidt, *GOP Falls Short of Veto-Proof Majorities in Wisconsin Legislature*, Wis. State J. (Nov. 5, 2020), <https://tinyurl.com/wj6m3d98>.

<sup>2</sup> Scott Bauer, *Wisconsin Republicans Dismiss Nonpartisan Redistricting Plan*, Assoc. Press (Jan. 23, 2020), <https://tinyurl.com/7vh569yb>.

ballots, further illustrating and confirming the persistent gridlock between the Legislature and Governor Evers, especially on election issues.<sup>3</sup>

35. Moreover, the Census Bureau’s significant delays in distributing Wisconsin’s population data have compressed the amount of time during which the legislative process would normally take place. This increases the already significant likelihood the political branches will reach an impasse this cycle and fail to enact new legislative and congressional district plans, leaving the existing plans in place for next year’s election. To avoid such an unconstitutional outcome, this Court must prepare to intervene to ensure Plaintiffs’ and other Wisconsinites’ voting strength is not diluted.

36. The Wisconsin Constitution requires the Legislature to draw new legislative lines “[a]t its first session after each enumeration made by the authority of the United States.” Wis. Const. art. IV, § 3. The current legislative session will terminate when the following session begins in early January 2022. *See* Wis. Stat. § 13.02(2) (calling for new annual sessions to begin “on the first Tuesday after the 8th day of January in each year”). Wisconsin law does not set a deadline by which congressional redistricting plans must be in place. Nonetheless, it is in the interests of voters, candidates, and Wisconsin’s entire electoral apparatus that finalized legislative and congressional districts be put in place as soon as possible, well before candidates in those districts must begin to collect signatures on their nomination papers. Potential candidates cannot make strategic decisions—including, most importantly, whether to run at all—without knowing the district boundaries. And voters have a variety of interests in knowing as soon as possible the districts in which they reside and will vote, and the precise contours of those districts. These interests include

---

<sup>3</sup> Scott Bauer, *Wisconsin Governor Vetoes GOP Bills to Restrict Absentees*, Assoc. Press (Aug. 10, 2021), <https://tinyurl.com/e4he92sj>.

deciding which candidates to support and whether to encourage others to run; holding elected representatives accountable for their conduct in office; and advocating for and organizing around candidates who will share their views in Congress or the Wisconsin Legislature, including by working together with other district voters in support of favored candidates.

37. Candidates seeking to appear on the ballot for the 2022 partisan primary election will begin circulating nomination papers as early as April 15, 2022. Wis. Stat. § 8.15(1). And the deadline to file nomination papers is June 1, 2022. *Id.* It is in everyone’s best interest—voters and candidates alike—that district boundaries are set well before the start of the formal nomination process. Delaying the adoption of new plans even until this deadline will substantially interfere with Plaintiffs’ ability to associate with like-minded citizens, educate themselves on the positions of their would-be representatives, and advocate for the candidates they prefer. *Cf. Anderson v. Celebrezze*, 460 U.S. 780, 787-88 (1983) (“The [absence] of candidates also burdens voters’ freedom of association, because an election campaign is an effective platform for the expression of views on the issues of the day, and a candidate serves as a rallying-point for like-minded citizens.”).

38. If this Court is not prepared to act in the event that the Legislature and Governor fail to enact new legislative or congressional plans, then the 2022 election will be held using illegal district maps, depriving Plaintiffs of their constitutional rights.

## CLAIMS FOR RELIEF

### COUNT I

#### Violation of the Fourteenth Amendment to the U.S. Constitution 42 U.S.C. § 1983 Legislative Malapportionment

39. Plaintiffs reallege and reincorporate by reference all prior paragraphs of this

Complaint and the paragraphs in the counts below as though fully set forth herein.

40. The Fourteenth Amendment to the U.S. Constitution prohibits a state from “deny[ing] to any person within its jurisdiction the equal protection of the laws.” This provision “requires that the seats in both houses of a bicameral state legislature [] be apportioned on a population basis.” *Reynolds v. Sims*, 377 U.S. 533, 568 (1964).

41. In light of the significant population shifts that have occurred since the 2010 Census, and the recent publication of the results of the 2020 Census, the current configurations of Wisconsin’s legislative districts—which were drawn based on 2010 Census data—are unconstitutionally malapportioned. These districts are no longer apportioned on a “population basis.” Instead, they are based on outdated population data collected more than a decade ago.

42. Wisconsin’s current state legislative plan places voters into districts with significantly disparate populations, causing voters in overpopulated districts, like Plaintiffs, to experience vote dilution compared to voters in districts with comparatively smaller populations.

43. Any future use of Wisconsin’s current legislative plan would violate Plaintiffs’ constitutional right to cast an equal vote.

## **COUNT II**

### **Violation of Article I, Section 2 of the U.S. Constitution**

#### **42 U.S.C. § 1983**

#### **Congressional Malapportionment**

44. Plaintiffs reallege and reincorporate by reference all prior paragraphs of this Complaint and the paragraphs in the count below as though fully set forth herein.

45. Article I, Section 2 of the U.S. Constitution requires “that when qualified voters elect members of Congress each vote be given as much weight as any other vote.” *Wesberry v. Sanders*, 376 U.S. 1, 7 (1964). This means that congressional districts must “achieve population

equality ‘as nearly as is practicable.’” *Karcher v. Daggett*, 462 U.S. 725, 730 (1983) (quoting *Wesberry*, 376 U.S. at 7-8).

46. Article I, Section 2 requires an even higher standard of exact population equality among congressional districts than what the Fourteenth Amendment requires of state legislative districts. It “permits only the limited population variances which are unavoidable despite a good-faith effort to achieve absolute equality, or for which justification is shown.” *Karcher*, 462 U.S. at 730 (quoting *Kirkpatrick v. Preisler*, 394 U.S. 526, 531 (1969)). Any variation from “absolute population equality” must be narrowly justified. *Id.* at 732-33.

47. As a result of this requirement, when Wisconsin’s existing congressional plan was enacted in 2010, the deviation in population among districts was no more than *one person*. Now, the population deviation among the current congressional districts is nearly 94,000 people.

48. Given the significant population shifts that have occurred since the 2010 Census, and the recent publication of the results of the 2020 Census, Wisconsin’s congressional districts—which were drawn based on 2010 Census data—are now unconstitutionally malapportioned. No justification can be offered for the deviation among the congressional districts because any existing justification would be based on outdated 2010 population data.

49. Any future use of Wisconsin’s current congressional district plan would violate Plaintiffs’ constitutional right to an undiluted vote.

### **COUNT III**

#### **Violation of the First and Fourteenth Amendments to the U.S. Constitution 42 U.S.C. § 1983 Freedom of Association**

50. Plaintiffs reallege and reincorporate by reference all prior paragraphs of this Complaint as though fully set forth herein.



51. Among other rights, the First Amendment protects the “freedom of association” from infringement by the federal government and applies to state governments pursuant to the Fourteenth Amendment. *See Williams v. Rhodes*, 393 U.S. 23, 30-31 (1968) (citing *New York Times Co. v. Sullivan*, 376 U.S. 254, 276-77 (1964)).

52. Impeding candidates’ ability to run for political office—and, consequently, Plaintiffs’ ability to assess candidate qualifications and positions, organize and advocate for preferred candidates, and associate with like-minded voters—infringes on Plaintiffs’ First Amendment right to association. *See, e.g., Anderson*, 460 U.S. at 787-88 & n.8.

53. Given the delay in publication of the 2020 Census data and the near-certain deadlock among the political branches in adopting new legislative and congressional district plans, it is significantly unlikely that the legislative process will timely yield new plans. This would deprive Plaintiffs of the ability to associate with others from the same lawfully apportioned legislative and congressional districts, and, therefore, is likely to significantly, if not severely, burden Plaintiffs’ First Amendment right to association.

54. Defendants can assert no legitimate, let alone compelling, interest that justifies this burden.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs respectfully request that this Court:

- a. Notify the Chief Judge of the U.S. Court of Appeals for the Seventh Circuit of this action and request that two other judges be designated to form a three-judge district court, 28 U.S.C. § 2284(b)(1);
- b. Declare that the current configurations of Wisconsin’s State Assembly and State Senate districts, Wis. Stat. §§ 4.01-4.99, 4.009, violate the First and Fourteenth Amendments

- to the United States Constitution;
- c. Declare that the current configuration of Wisconsin's congressional districts, Wis. Stat. §§ 3.11-3.18, violates Article I, Section 2 of, and the First and Fourteenth Amendments to, the United States Constitution;
  - d. Permanently enjoin Defendants, their respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, from implementing, enforcing, or giving any effect to Wisconsin's current legislative or congressional districting plans;
  - e. Establish a schedule that will enable the Court to adopt and implement new legislative and congressional district plans by a date certain should the political branches fail to enact such plans by that time;
  - f. Implement a new legislative district plan that complies with the Fourteenth Amendment to the U.S. Constitution, and a new congressional district plan that complies with Article I, Section 2 of the U.S. Constitution;
  - g. Award Plaintiffs their costs, disbursements, and reasonable attorneys' fees incurred in bringing this action, pursuant to 42 U.S.C. § 1988 and other applicable laws; and
  - h. Grant such other and further relief as the Court deems just and proper.

Dated: August 13, 2021

Charles G. Curtis Jr.  
PERKINS COIE LLP  
33 East Main Street, Suite 201  
Madison, WI 53703-3095  
Telephone: (608) 663-5411  
Facsimile: (608) 283-4462  
CCurtis@perkinscoie.com

Respectfully submitted,

/s/ Aria C. Branch

Marc E. Elias  
Aria C. Branch  
Daniel C. Osher\*  
Jacob Shelly\*  
Christina A. Ford\*  
PERKINS COIE LLP  
700 Thirteenth Street, NW Suite 800  
Washington, DC 20005-3960  
Telephone: (202) 654-6200  
Facsimile: (202) 654-6211  
MElias@perkinscoie.com  
ABranch@perkinscoie.com  
DOsher@perkinscoie.com  
JShelly@perkinscoie.com  
ChristinaFord@perkinscoie.com

\*Motion for *Pro Hac Vice* Admission Forthcoming

**Exhibit A: Shifts in State Assembly Districts**

<b>District</b>	<b>2010 Population</b>	<b>2020 Population</b>	<b>Shift</b>	<b>Deviation from Ideal Population</b>	<b>Percent Deviation</b>
1	57,220	59,834	+2,614	+301	+0.51%
2	57,649	62,564	+4,915	+3,031	+5.09%
3	57,444	61,906	+4,462	+2,373	+3.99%
4	57,486	58,716	+1,230	-817	-1.37%
5	57,470	67,428	+9,958	+7,895	+13.26%
6	57,505	57,409	-96	-2,124	-3.57%
7	57,498	59,355	+1,857	-178	-0.30%
8	57,196	53,999	-3,197	-5,534	-9.30%
9	57,283	57,339	+56	-2,194	-3.69%
10	57,428	52,628	-4,800	-6,905	-11.60%
11	57,503	54,275	-3,228	-5,258	-8.83%
12	57,494	56,305	-1,189	-3,228	-5.42%
13	57,452	61,779	+4,327	+2,246	+3.77%
14	57,597	60,136	+2,539	+603	+1.01%
15	57,372	57,145	-227	-2,388	-4.01%
16	57,458	53,739	-3,719	-5,794	-9.73%
17	57,354	55,343	-2,011	-4,190	-7.04%
18	57,480	52,987	-4,493	-6,546	-11.00%
19	57,546	62,056	+4,510	+2,523	+4.24%
20	57,428	56,812	-616	-2,721	-4.57%
21	57,449	59,100	+1,651	-433	-0.73%
22	57,495	60,750	+3,255	+1,217	+2.04%
23	57,579	60,761	+3,182	+1,228	+2.06%
24	57,282	60,737	+3,455	+1,204	+2.02%
25	57,322	57,986	+664	-1,547	-2.60%
26	57,581	58,710	+1,129	-823	-1.38%
27	57,536	59,294	+1,758	-239	-0.40%
28	57,467	59,274	+1,807	-259	-0.44%
29	57,537	61,746	+4,209	+2,213	+3.72%
30	57,241	62,735	+5,494	+3,202	+5.38%
31	57,240	59,952	+2,712	+419	+0.70%
32	57,524	59,397	+1,873	-136	-0.23%
33	57,565	58,490	+925	-1,043	-1.75%
34	57,387	60,803	+3,416	+1,270	+2.13%
35	57,562	56,431	-1,131	-3,102	-5.21%
36	57,432	57,713	+281	-1,820	-3.06%
37	57,507	61,182	+3,675	+1,649	+2.77%
38	57,493	61,646	+4,153	+2,113	+3.55%
39	57,387	58,192	+805	-1,341	-2.25%
40	57,366	57,138	-228	-2,395	-4.02%

41	57,337	57,743	+406	-1,790	-3.01%
42	57,285	58,322	+1,037	-1,211	-2.03%
43	57,443	59,492	+2,049	-41	-0.07%
44	57,395	58,574	+1,179	-959	-1.61%
45	57,658	57,664	+6	-1,869	-3.14%
46	57,458	65,092	+7,634	+5,559	+9.34%
47	57,465	63,646	+6,181	+4,113	+6.91%
48	57,506	63,754	+6,248	+4,221	+7.09%
49	57,346	57,941	+595	-1,592	-2.67%
50	57,624	58,713	+1,089	-820	-1.38%
51	57,580	56,878	-702	-2,655	-4.46%
52	57,232	59,848	+2,616	+315	+0.53%
53	57,240	58,579	+1,339	-954	-1.60%
54	57,250	57,411	+161	-2,122	-3.56%
55	57,493	61,992	+4,499	+2,459	+4.13%
56	57,582	64,544	+6,962	+5,011	+8.42%
57	57,501	57,937	+436	-1,596	-2.68%
58	57,227	59,054	+1,827	-479	-0.80%
59	57,391	58,158	+767	-1,375	-2.31%
60	57,385	59,358	+1,973	-175	-0.29%
61	57,614	59,972	+2,358	+439	+0.74%
62	57,345	58,422	+1,077	-1,111	-1.87%
63	57,365	59,808	+2,443	+275	+0.46%
64	57,270	57,845	+575	-1,688	-2.84%
65	57,455	57,248	-207	-2,285	-3.84%
66	57,545	56,026	-1,519	-3,507	-5.89%
67	57,239	60,513	+3,274	+980	+1.65%
68	57,261	61,896	+4,635	+2,363	+3.97%
69	57,649	57,134	-515	-2,399	-4.03%
70	57,552	58,276	+724	-1,257	-2.11%
71	57,519	57,866	+347	-1,667	-2.80%
72	57,449	57,669	+220	-1,864	-3.13%
73	57,453	58,507	+1,054	-1,026	-1.72%
74	57,494	59,010	+1,516	-523	-0.88%
75	57,462	58,751	+1,289	-782	-1.31%
76	57,617	71,685	+14,068	+12,152	+20.41%
77	57,433	62,992	+5,559	+3,459	+5.81%
78	57,546	67,142	+9,596	+7,609	+12.78%
79	57,461	69,732	+12,271	+10,199	+17.13%
80	57,585	65,830	+8,245	+6,297	+10.58%
81	57,403	59,943	+2,540	+410	+0.69%
82	57,430	59,196	+1,766	-337	-0.57%
83	57,423	58,770	+1,347	-763	-1.28%
84	57,365	59,529	+2,164	-4	-0.01%
85	57,480	58,671	+1,191	-862	-1.45%

86	57,454	60,462	+3,008	+929	+1.56%
87	57,358	57,051	-307	-2,482	-4.17%
88	57,556	62,894	+5,338	+3,361	+5.65%
89	57,634	60,143	+2,509	+610	+1.02%
90	57,608	57,912	+304	-1,621	-2.72%
91	57,359	59,397	+2,038	-136	-0.23%
92	57,431	59,334	+1,903	-199	-0.33%
93	57,548	60,667	+3,119	+1,134	+1.90%
94	57,266	62,080	+4,814	+2,547	+4.28%
95	57,372	58,704	+1,332	-829	-1.39%
96	57,484	58,372	+888	-1,161	-1.95%
97	57,279	56,590	-689	-2,943	-4.94%
98	57,513	61,407	+3,894	+1,874	+3.15%
99	57,496	57,780	+284	-1,753	-2.94%

**Exhibit B: Shifts in State Senate Districts**

<b>District</b>	<b>2010 Population</b>	<b>2020 Population</b>	<b>Shift</b>	<b>Deviation from Ideal Population</b>	<b>Percent Deviation</b>
1	172,313	184,304	+11,991	+5,706	+3.19%
2	172,461	183,553	+11,092	+4,955	+2.77%
3	171,977	170,693	-1,284	-7,905	-4.43%
4	172,425	163,208	-9,217	-15,390	-8.62%
5	172,421	179,060	+6,639	+462	+0.26%
6	172,292	162,069	-10,223	-16,529	-9.25%
7	172,423	177,968	+5,545	-630	-0.35%
8	172,356	182,248	+9,892	+3,650	+2.04%
9	172,439	175,990	+3,551	-2,608	-1.46%
10	172,245	183,755	+11,510	+5,157	+2.89%
11	172,329	177,839	+5,510	-759	-0.42%
12	172,381	174,947	+2,566	-3,651	-2.04%
13	172,387	181,020	+8,633	+2,422	+1.36%
14	171,988	173,203	+1,215	-5,395	-3.02%
15	172,496	175,730	+3,234	-2,868	-1.61%
16	172,429	192,492	+20,063	+13,894	+7.78%
17	172,550	173,532	+982	-5,066	-2.84%
18	171,722	175,838	+4,116	-2,760	-1.55%
19	172,576	184,473	+11,897	+5,875	+3.29%
20	172,003	176,570	+4,567	-2,028	-1.14%
21	172,324	178,202	+5,878	-396	-0.22%
22	172,270	171,119	-1,151	-7,479	-4.19%
23	172,149	179,543	+7,394	+945	+0.53%
24	172,520	173,811	+1,291	-4,787	-2.68%
25	172,409	176,268	+3,859	-2,330	-1.30%
26	172,596	201,819	+29,223	+23,221	+13.00%
27	172,449	195,505	+23,056	+16,907	+9.47%
28	172,218	177,495	+5,277	-1,103	-0.62%
29	172,292	176,184	+3,892	-2,414	-1.35%
30	172,798	180,949	+8,151	+2,351	+1.32%
31	172,338	179,398	+7,060	+800	+0.45%
32	172,122	179,156	+7,034	+558	+0.31%
33	172,288	175,777	+3,489	-2,821	-1.58%

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

---

BLACK LEADERS ORGANIZING FOR  
COMMUNITIES, VOCES DE LA FRONTERA,  
the LEAGUE OF WOMEN VOTERS OF  
WISCONSIN, CINDY FALLONA, LAUREN  
STEPHENSON, and REBECCA ALWIN,

Plaintiffs,

v.

ROBERT F. SPINDELL, JR., MARK L.  
THOMSEN, DEAN KNUDSON, ANN S.  
JACOBS, JULIE M. GLANCEY, MARGE  
BOSTELMANN, in their official capacity as  
members of the Wisconsin Election Commission,  
MEAGAN WOLFE, in her official capacity as the  
Administrator of the Wisconsin Elections  
Commission,

Defendants.

Civil Action

File No. \_\_\_\_\_

(Three-judge panel requested)

---

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

---

Plaintiffs Black Leaders Organizing for Communities, Voces de la Frontera, the League of Women Voters of Wisconsin, Cindy Fallona, Lauren Stephenson, and Rebecca Alwin bring this Complaint for Declaratory and Injunctive Relief against defendants Robert F. Spindell, Jr., Mark L. Thomsen, Dean Knudson, Julie M. Glancey, Ann S. Jacobs, and Marge Bostelmann, in their official capacities as members of the Wisconsin Elections Commission, and against defendant Meagan Wolfe, in her official capacity as the Administrator of the Wisconsin Elections Commission, (collectively, “Defendants”), under 42 U.S.C. § 1983 and 28 U.S.C. § 2284(a), and state and allege as follows:



## INTRODUCTION

Wisconsin's current state legislative districts were adopted by the Wisconsin State Legislature and signed by Wisconsin's Governor as 2011 Wisconsin Act 43, and later modified by a federal court in *Baldus v. Members of the Government Accountability Board*, 862 F. Supp. 2d 860, 863 (E.D. Wis. 2012). The current districts are based on state population and demographic data collected by the U.S. Census Bureau in 2010. On August 12, 2021, the U.S. Census Bureau released Wisconsin's state population data (Public Law 94-171 data) from the 2020 Census. As those data reveal, Wisconsin gained 199,243 residents in the past decade, a population shift that has rendered the existing state legislative districts unequally populated, and therefore malapportioned under state and federal law. More specifically, the current state legislative districts violate the basic democratic tenet of "one person, one vote,"<sup>1</sup> and therefore violate Plaintiffs' rights under the Fourteenth Amendment to the U.S. Constitution.

This malapportionment became actionable in this Court with the Census Bureau's release of the 2020 Federal Census count of Wisconsin's population, and, with the Public Law 94-171 data now released, it is clear precisely where population shifts have occurred within the state. *See Arrington v. Elections Bd.*, 173 F. Supp. 2d 856, 860 (E.D. Wis. 2001). Indeed, on August 13, 2021, six Wisconsin residents who intend to advocate and vote for Democratic Party of Wisconsin candidates in the coming 2022 primary and general elections filed a complaint in this Court, alleging that current Wisconsin state legislative districts are unconstitutionally malapportioned based on the 2020 Census data. *See Hunter, et al. v. Bostelmann, et al.*, No. 21-cv-00512 (W.D. Wis.).

---

<sup>1</sup> *See Reynolds v. Sims*, 377 U.S. 533, 562–64 (1964); *See also Baker v. Carr*, 369 U.S. 186, 207-208 (1962).

Plaintiffs in this action are nonpartisan organizations that have members and constituencies whose votes are diluted because they live in districts that are now over-populated in violation of their constitutional rights, as well as individual voters who suffer the same harm. Plaintiffs therefore seek a declaratory judgment that the current state legislative districts violate the United States Constitution; a permanent injunction barring Defendants from holding future elections under the current scheme for Wisconsin State Senate and State Assembly districts; and an order implementing new state legislative districts that adhere to the requirements of federal and state law should the Legislature and Governor fail to adopt such districts through the legislative process.

The Wisconsin Constitution requires new legislative districts to be drawn in light of the U.S. Census Bureau's release of 2020 census data. Wis. Const. art. IV, § 3. The primary duty for reapportionment rests with the state legislature, with a new plan to be approved by the governor. *State ex Rel. Reynolds v. Zimmerman*, 22 Wis. 2d 544, 556-59, 126 N.W.2d 551 (1964). However, in every past decade since the 1980s when there has been a partisan divide among the Senate, the Assembly, and/or the Governor, there has been a legislative impasse requiring judicial intervention. *See Prosser v. Elections Bd.*, 793 F. Supp. 859 (W.D. Wis. 1992); *Wis. State AFL-CIO v. Elections Bd.*, 543 F. Supp. 630 (E.D. Wis. 1982); *Baumgart v. Wendelberger*, Nos. 01-C-0121 & 02-C-0366, 2002 WL 34127471 (E.D. Wis. May 30, 2002), *amended by* 2002 WL 34127473 (E.D. Wis. July 11, 2002). The Senate and Assembly currently have majorities of elected Republican representatives, whereas the Governor is a Democrat.

Since Governor Evers assumed office in January 2019, the Governor and the Legislature have disagreed on many significant policy issues that appear to fall along partisan political lines, such as the Governor's Administration's orders requiring Wisconsinites to remain at home and later, use face-coverings, during the COVID-19 pandemic;<sup>2</sup> the appropriate use of federal aid for

---

<sup>2</sup> *Wis. Legislature v. Palm*, 2020 WI 42, 391 Wis. 2d 497, 942 N.W.2d 900, and 2021 Senate Joint Resolution

COVID relief;<sup>3</sup> limiting the authority of public health entities;<sup>4</sup> vaccination requirements by employers or other entities;<sup>5</sup> Department of Transportation policy;<sup>6</sup> and raffle and sweepstakes laws;<sup>7</sup> among others.<sup>8</sup> The low likelihood of the Legislature and the Governor reaching agreement on a redistricting plan for state legislative districts in the 2020 cycle is further reflected in the current Legislature's frequent resort to the courts to challenge executive action in lieu of seeking political compromise. *See, e.g., Wis. Legislature v. Palm*, 2020 WI 42, 391 Wis. 2d 497, 942 N.W.2d 900; *Wis. Legislature v. Evers*, No. 2020AP608-OA (Wis. Apr. 6, 2020) (attached as Exhibit 1); *Fabick v. Evers*, 2021 WI 28 (Legislature filed a brief as *amicus curiae* in support of a challenge to the Governor's emergency powers); *Bartlett v. Evers*, 2020 WI 68, 393 Wis. 2d 172, 945 N.W.2d 685 (Legislature filed a brief as *amicus curiae* in support of a challenge to the Governor's veto authority). Indeed, legislative leadership has already retained private counsel in preparation for redistricting litigation this year. *See Waity v. Vos*, No. 21-CV-589 (Dane Co. Cir. Ct. Apr. 29, 2021) (holding void *ab initio* contracts for redistricting litigation counsel signed in December 2020) (copy attached as Exhibit 2), *petition for bypass granted sub nom Waity v. LeMahieu*, No. 2021-AP-802 (Wis. July 15, 2021) (attached as Exhibit 3), *and decision stayed sub nom Waity v. LeMahieu*, No. 2021-AP-802 (attached as Exhibit 4). The pending action by

---

3 (terminating 2021 Executive Order #104), available at <https://docs.legis.wisconsin.gov/2021/related/enrolled/sjr3>.

<sup>3</sup> See, e.g., veto messages for 2021 [AB232](#), [AB234](#), [AB235](#), [AB236](#), [AB237](#), [AB238](#), [AB239](#), [AB240](#), [AB241](#), [AB243](#), and [SB183](#), available at [https://docs.legis.wisconsin.gov/2021/related/veto\\_messages](https://docs.legis.wisconsin.gov/2021/related/veto_messages).

<sup>4</sup> See veto messages for 2021 [AB1](#), available at [https://docs.legis.wisconsin.gov/2021/related/veto\\_messages](https://docs.legis.wisconsin.gov/2021/related/veto_messages).

<sup>5</sup> *Id.*

<sup>6</sup> See veto messages for 2019 [AB273](#) and [AB284](#), available at [https://docs.legis.wisconsin.gov/2019/related/veto\\_messages](https://docs.legis.wisconsin.gov/2019/related/veto_messages).

<sup>7</sup> See veto messages for 2019 [SB292](#) and [SB43](#), available at [https://docs.legis.wisconsin.gov/2019/related/veto\\_messages](https://docs.legis.wisconsin.gov/2019/related/veto_messages).

<sup>8</sup> See veto messages for 2021 [SB39](#) (sports and extracurriculars by charter school students), and 2021 [SB38](#) (return to offices for state employees during COVID-19 pandemic), available at [https://docs.legis.wisconsin.gov/2021/related/veto\\_messages](https://docs.legis.wisconsin.gov/2021/related/veto_messages); and veto messages for 2019 [AB4](#) (tax policy), [AB53](#) (student directory data definition), [AB76](#) (training hours for nurse aids), and [AB179](#), [AB180](#), [AB182](#), and [AB183](#) (abortion care policy), available at [https://docs.legis.wisconsin.gov/2019/related/veto\\_messages](https://docs.legis.wisconsin.gov/2019/related/veto_messages).

Wisconsin residents who support the Democratic Party and its candidates for elected office, and the Legislature's motion to intervene in that case, further diminishes the chances that the Legislature and Governor will reach a legislative compromise on new legislative districts.

Consequently, past practice, the current partisan divide in Wisconsin's government, and the pending action by Democratic voters alleging a malapportionment in state legislative districts all strongly indicate that legislative impasse over new state legislative districts will occur, and that once again the federal court will be required to resolve the conflict.

### **JURISDICTION AND VENUE**

1. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1343(a)(3) and (4), 1357, and 2284 to hear the claims for legal and equitable relief arising under the federal and state constitutions. It also has general jurisdiction under 28 U.S.C. §§ 2201 and 2202, the Declaratory Judgments Act, to grant the declaratory relief requested by Plaintiffs.

2. This action challenges the constitutionality of the apportionment of Wisconsin's legislative districts, found in Chapter 4 of the Wisconsin Statutes and revised as ordered by the U.S. District Court for the Eastern District of Wisconsin in *Baldus v. Members of the Wisconsin Government Accountability Board*, 849 F. Supp. 2d 840 (E.D. Wis. 2012) (per curiam) (three-judge panel). The current state legislative district boundaries were based on the 2010 census of the state's population, now superseded by the 2020 census.

3. 28 U.S.C. § 2284(a) requires that a district court of three judges be convened to hear the case. In 1982, 1992, and 2002, three-judge panels convened pursuant to 28 U.S.C. § 2284 resolved complaints like this one, developing redistricting plans for the state legislature in the absence of valid plans adopted by the Legislature and enacted with the Governor's approval. *See Prosser*, 793 F. Supp. 859; *AFL-CIO*, 543 F. Supp. 630; *Baumgart v. Wendelberger*, 2002 WL 3412747, amended by 2002 WL 34127473.

4. This Court has personal jurisdiction over all Defendants. Defendants Spindell, Thomsen, Knudson, Glancey, Jacobs, Bostelmann, and Wolfe are state officials who reside in Wisconsin and perform official duties in Madison, Wisconsin.

5. Venue is proper in this Court under 28 U.S.C. §§ 1391(b) and (e). At least two of the defendants resides in the Western District of Wisconsin, and Defendants are state officials performing official duties in Madison, Wisconsin. Members of two Plaintiff organizations reside and vote in this district, and two Individual Plaintiffs, Stephenson and Alwin, also reside and vote in this district.

## PARTIES

### *Plaintiffs*

6. Plaintiffs include three nonprofit groups, each with members or constituents who are citizens, residents, and qualified voters of the United States of America and the State of Wisconsin, residing in various counties and legislative districts, including in now-over-populated districts (the “Organizational Plaintiffs”).

7. Plaintiff Black Leaders Organizing for Communities (“BLOC”) is a nonprofit project established in 2017 to ensure a high quality of life and access to opportunities for members of the Black community in Milwaukee and throughout Wisconsin. BLOC is a year-round civic-engagement organization that has a robust field program to get out the vote and do civic education work door-to-door with community members and through its fellowship program. During 2018 BLOC made 227,000 door attempts in Milwaukee, targeting Black residents to exercise their right to engage in civic participation including voting. BLOC trains its constituents on the civics process and on different ways to make their voices heard, including (but not limited to) voting in each election. BLOC is regarded and used by members of the African-American community in

Milwaukee as a resource and conduit through which they can become more engaged in and advocate for rights and political representation for members of their community.

8. Plaintiff Voces de la Frontera (“Voces”) is a nonpartisan, nonprofit, non-stock corporation organized under the laws of the State of Wisconsin with its principal office located at 515 S. 5th St., in the City of Milwaukee, Milwaukee County, Wisconsin. Voces, a community-based organization currently with over one thousand dues-paying members, was formed in 2001 to advocate on behalf of the rights of immigrant and low-income workers. Voces currently has chapters in Milwaukee, Racine, Waukesha, Sheboygan, Walworth County, Madison, West Bend, Manitowoc, and Green Bay. Voces is dedicated to educating and organizing its membership and community members to exercise their right to vote as protected by the Constitution and the Voting Rights Act of 1965. Voces has sought legal redress in multiple cases to protect the voting rights of Wisconsin’s Latino voters, including challenging discriminatory legislative districts (as recently as in *Baldus* in 2011) and voter registration and photo ID requirements. Voces seeks to maximize eligible-voter participation through its voter-registration efforts and encourage civic engagement through registration and voting.

9. Plaintiff League of Women Voters of Wisconsin (“LWVWI”) is a nonpartisan, nonprofit, non-stock corporation organized under the laws of the State of Wisconsin with its principal office located at 612 West Main St., Suite 200, in the City of Madison, Dane County, Wisconsin. LWVWI is an affiliate of The League of Women Voters of the United States, which has 750 state and local Leagues in all 50 states, the District of Columbia, Puerto Rico, the Virgin Islands, and Hong Kong. LWVWI works to expand informed, active participation in state and local government, giving a voice to all Wisconsinites. LWVWI, a nonpartisan community-based organization, was formed in 1920, immediately after the enactment of the Nineteenth Amendment granting women’s suffrage. LWVWI is dedicated to encouraging its members and the people of

Wisconsin to exercise their right to vote as protected by the Constitution and the Voting Rights Act of 1965. The mission of LWVWI is to promote political responsibility through informed and active participation in government and to act on select governmental issues. LWVWI seeks to maximize eligible-voter participation through its voter-registration efforts and encourage civic engagement through registration and voting. LWVWI works with and through 20 local Leagues in the following cities, counties, and areas throughout Wisconsin: Appleton, Ashland/Bayfield Counties, Beloit, Dane County, Door County, the Greater Chippewa Valley, Greater Green Bay, Janesville, the La Crosse area, Manitowoc County, Milwaukee County, the Northwoods, Ozaukee County, the Ripon area, Sheboygan County, the Stevens Point area, the St. Croix Valley, the Whitewater area, Winnebago County, and the Wisconsin Rapids area. These local Leagues have approximately 2,800 members, all of whom are also members of LWVWI. LWVWI has prosecuted lawsuits in state and federal courts in Wisconsin to vindicate the voting and representational rights of Wisconsin voters; this includes actions in this Court, such as *Swenson v. Bostelmann*, 20-cv-459-wmc (W.D. Wis. 2020), and *Lewis v. Knudson*, 20-cv-284 (W.D. Wis. 2020).

10. Organizational Plaintiffs' members and constituents include voters who reside in various State Senate and Assembly districts across Wisconsin, including districts that are now over-populated. Because they live in state legislative districts that were approximately equal in population with the other state legislative districts at the time the current districts were configured in 2011, but that are now over-populated as a result of the state population count released by the Census Bureau on April 26, 2021, their votes are now diluted compared with voters in districts that are now under-populated. This vote dilution constitutes a specific and personal injury to each voter in an over-populated district that can be addressed by a federal court. *See Reynolds*, 377 U.S. at 561; *Baker*, 369 U. S. at 206.

11. Plaintiffs also include three individual voters who reside in now-over-populated districts (the “Individual Plaintiffs”). The residency of Individual Plaintiffs is summarized here:

<b>Individual Plaintiff</b>	<b>State Assembly District</b>	<b>Population compared to 2020 Census ideal</b>	<b>State Senate District</b>	<b>Population compared to 2020 Census ideal</b>
Cindy Fallona	AD5	+13.26%	SD2	+2.77%
Lauren Stephenson	AD76	+20.41%	SD26	+13.00%
Rebecca Alwin	AD79	+17.13%	SD27	+9.47%

12. Individual Plaintiff Cindy Fallona resides in Wisconsin Assembly district 5 and State Senate district 2. Fallona has lived at this residence for over three decades and is a regular voter in Wisconsin elections. Fallona intends to vote in 2022 and is registered at this residence, with no plans to register at a different address.

13. Individual Plaintiff Lauren Stephenson resides in Wisconsin Assembly district 76 and State Senate district 26. Stephenson has lived at this residence for over six years and is a regular voter in Wisconsin elections. Stephenson intends to vote in 2022 and is registered at this residence, with no plans to register at a different address.

14. Individual Plaintiff Rebecca Alwin resides in Wisconsin Assembly district 79 and State Senate district 27. Alwin has lived at this residence for over 25 years and is a regular voter in Wisconsin elections. Alwin intends to vote in 2022 and is registered at this residence, with no plans to register at a different address.

### ***Defendants***

15. Defendants Robert F. Spindell, Jr., Mark L. Thomsen, Dean Knudson, Julie M. Glancey, Ann S. Jacobs, and Marge Bostelmann are sued in their official capacities as the members of the Wisconsin Elections Commission (“WEC”).

16. Defendant Meagan Wolfe is sued in her official capacity as the Administrator of the WEC.



17. The WEC has the responsibility for the administration and enforcement of Wisconsin laws “relating to elections” including Chapters 5 to 10 and 12. Wis. Stat. § 5.05(1). This includes the election every two years of Wisconsin’s representatives in the state Assembly and every four years its representatives in the state Senate. The WEC provides support to local clerks in each of Wisconsin’s 72 counties, in administering and preparing for the election of members of the Wisconsin Legislature.

18. Defendant Wolfe, as commission administrator, is the chief election officer of the state. Wis. Stat. § 5.05(3g).

## FACTS AND CONSTITUTIONAL PROVISIONS

19. The U.S. Constitution requires that the members of the Wisconsin Legislature be elected on the basis of equal representation. *Arrington*, 173 F. Supp. 2d at 860 (citing U.S. Const. art. I, § 2). The State Senate and Assembly districts must therefore be reapportioned after each Federal Census to be substantially equal in population.

20. The Due Process Clause of the Fifth Amendment to the U.S. Constitution provides that “[n]o person shall ... be deprived of life, liberty, or property, without due process of law.”

21. The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution provides, in pertinent part:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This provision guarantees to the citizens of each state the right to vote in state elections, and that each citizen shall have substantially equal legislative representation regardless of what part of the state they live in, giving each person’s vote equal power. *Reynolds*, 377 U.S. 533, 561-68 (1964).

22. 2011 Wisconsin Act 43 divided the official state population determined by the 2010 Census into 33 Senate districts and 99 Assembly districts with relatively equal populations. The revisions ordered by the court *Baldus* in 2012 did not disturb this approximate equality, despite modifying two Assembly districts. In 2012, each Senate district contained a population of approximately 172,333 residents, and each Assembly district contained a population of approximately 57,444. A copy of Chapter 4 of the Wisconsin Statutes, embodying 2011 Wisconsin Act 43, is attached as Exhibit 5.

23. The 2012 state legislative elections, and every subsequent biennial legislative election, including the November 6, 2020 election, have been conducted under the district boundaries created by Act 43, as modified by *Baldus*. The next regular state legislative primary election is scheduled for August 9, 2022, and the next regular state legislative general election is scheduled for November 8, 2022.<sup>9</sup>

24. The Bureau of the Census, U.S. Department of Commerce, conducted a decennial census of Wisconsin and of all the other states in 2020 under Article I, Section 2, of the U.S. Constitution.

25. Under 2 U.S.C. §§ 2a and 2c and 13 U.S.C. § 141(c), the Census Bureau on April 26, 2021 announced and certified the actual enumeration of the population of Wisconsin at 5,893,718 as of April 1, 2020, a population increase of approximately 200,000 people from the 2010 census. A copy of the Census Bureau’s Apportionment Population and Number of Representatives, by state, is attached as Exhibit 6.

---

<sup>9</sup> “Upcoming Elections,” Wisconsin Elections Commission, available at: <https://elections.wi.gov/elections-voting/elections>.

26. Based on the 2020 Census, the precise ideal population for each Senate district in Wisconsin is 178,598 and for each Assembly district 59,533 (each an increase compared to the same figures from 2010).

27. The 2020 Census's P.L. 94-171 data, released August 12, 2021, demonstrate that Wisconsin's population has not grown uniformly across all 33 Senate and 99 Assembly districts. The data reveal substantial population disparities, indicating which districts are now over- and under-populated in reference to the 2020 Census's "ideal" district populations for Wisconsin's Senate and Assembly districts.

28. Because of population shifts over the past decade, the 2011 state legislative districts now give some Wisconsinites' votes more weight than others. Voters living in Assembly district 76—where the population is 20.41% greater than the ideal population based on the 2020 Census—have their votes diluted. This is particularly true compared to voters in other districts like Assembly district 10—now 11.60% *less* populated than the ideal district population. Voters in the 37 other overpopulated districts suffer similar harm: Assembly districts 79, 5, 78, and 80 have grown overpopulated in the past decade (with populations now 17.13%, 13.26%, 12.78%, and 10.58% over the ideal district population, respectively). Other districts are now underpopulated, giving voters who reside there an outsized voice in electing their state representative. Assembly districts 18, 16, and 8, for example, now have populations 11.00%, 9.73%, and 9.30% below the ideal population of 59,533, respectively, based on the 2020 Census.

29. The same population growth imbalances affect Senate districts, with some voters suffering vote dilution and others benefitting from heightened voting efficiency. Senate district 26 has grown to exceed the current ideal district population of 178,598 by 13.00%; Senate district 27 by 9.47%; and Senate district 16 by 7.78%. Meanwhile Senate district 6 is now underpopulated

by 9.25% relative to the ideal Senate district size and Senate districts 4, 3, and 22 are 8.62%, 4.43%, and 4.19% below the ideal size.

30. This facial and uncontradicted malapportionment of state legislative districts dilutes the voting strength of Individual Plaintiffs residing in the overpopulated districts: the weight or value of each voter in a relatively overpopulated district is, by definition, less than that of any voter residing in a relatively under-populated district.

31. Article IV, section 3, of the Wisconsin Constitution assigns the Legislature and Governor responsibility for enacting a constitutionally valid plan for the state's legislative districts.

32. In each of the previous four decades, when control over Wisconsin's government has been divided between members of the Republican and Democratic Parties, however, the Legislature and Governor have not met that responsibility. Instead, a federal court has established district boundaries to ensure the constitutional guarantees for citizens and voters.

33. In the most recent round of decennial redistricting in 2011, the Legislature and Governor did enact a legislative district plan, but that plan, too, required judicial intervention to give Wisconsin a legally compliant legislative district map.

34. The legislature elected in November 2020 convened for the first time on January 4, 2021. Both the Senate and Assembly are controlled by Republican majorities, while the Governor is a Democrat. Each time in the past four decades that Wisconsin has had divided partisan control when redistricting was required, the political branches have failed to reach a compromise, requiring a federal court to step in and assume the constitutionally mandated reapportionment of state legislative districts. *See Prosser*, 793 F. Supp. 859; *AFL-CIO*, 543 F. Supp. 630; *Baumgart*, 2002 WL 34127471, *amended by* 2002 WL 34127473. The low likelihood

of an enacted redistricting plan in the current cycle is evidenced by the Legislature's recent preference for litigation over legislation, as described in detail above.

35. The deadline for new districts to be in place is driven by the 2022 elections for state legislative seats. The date of the primary for these elections is dictated by state statute, and in 2022 will be August 9. Because there are a number of steps leading up to an election, however, new districts must be set no later than March 15, 2022. This is the statutory deadline for the WEC to notify county clerks of which offices will be voted on, and where information about district boundaries can be found. This notice informs potential candidates of district boundaries, so they can begin circulating nomination papers for signature by voters within those districts on April 15, 2022. Wis. Stat. § 8.15(1). The statutory deadline for completed nomination papers to be submitted to the WEC is June 1, 2022. *Id.* The WEC must then certify which candidates have qualified for ballot access, followed by ballot design, testing, printing, and then distribution of absentee ballots, which must begin no later than 47 days election day. *See* Wis. Stat. § 7.15. Thus, while the primary election occurs in August, new districts must be in place several months before that date for the WEC to comply with state law, and so that candidates may appear on the ballot for the election on that date.

## **CLAIMS FOR RELIEF**

### **COUNT I**

#### ***Malapportionment in Violation of the Equal Protection Clause***

36. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 35 above.

37. A state statute that effects district populations and boundaries that discriminate against citizens in highly populous legislative districts, by definition preferring voters in less populous legislative districts, violates the U.S. Constitution. The 2020 Census rendered the state's

2011 legislative districts unconstitutional, which harms or threatens to harm Plaintiffs’ constitutional rights unless future elections under the current districts are enjoined.

38. Shifts in population and population growth have rendered the 33 Senate districts and 99 Assembly districts created by 2011 Wisconsin Act 43 and modified by *Baldus* no longer roughly equal in population, as required by the federal constitution. The population variations between and among the districts are substantial.

39. Organizational Plaintiffs’ members and constituents who reside in the overpopulated 16th, 26th, and 27th Senate districts, among others, based on the existing district lines, are particularly underrepresented in comparison with the residents of other districts.

40. Organizational Plaintiffs’ members and constituents who reside in the overpopulated 5th, 46th, 48th, 56th, 76th, 78th, 79th, and 80th Assembly districts, among others, based on the existing district lines, are particularly underrepresented in comparison with the residents of other districts.

41. Individual Plaintiffs reside in State Senate and Assembly districts that are overpopulated, and therefore their votes are diluted compared to Wisconsin residents in districts that are now under-populated.

42. If not otherwise enjoined or directed, the WEC will have no choice but to carry out its statutory responsibilities for administering the upcoming 2022 legislative elections based on the now unconstitutional Senate and Assembly districts adopted in 2011 Wisconsin Act 43.

43. The boundaries and the populations they define, unless modified, violate the principle of “one person, one vote” and do not guarantee that the vote and representation in the Wisconsin legislature for every citizen is equivalent to the vote and representation of every other citizen.

44. Plaintiffs and their members and constituents are also harmed because, until valid redistricting occurs, they cannot know in which Senate and Assembly district individuals will reside and vote. Therefore, they cannot effectively hold their representatives accountable for their conduct and policy positions advocated in office. Plaintiffs engage in accountability and voter-education efforts that are hindered by the lack of a valid redistricting plan because:

a. Their members and constituents who desire to influence the views of members of the Wisconsin Legislature or candidates for the Senate and Assembly are not able to communicate their concerns effectively because members of the legislature or legislative candidates may not be held accountable to those citizens as voters in the next election;

b. Potential candidates for the legislature will not be able to come forward, and be supported or opposed by Plaintiffs or their members, until potential candidates know the borders of the districts in which they, as residents of the district, could seek office; and,

c. Plaintiffs' members and constituents who desire to communicate with and contribute financially to candidates for the legislature who may or will represent them, a right guaranteed by the First Amendment, are hindered from doing so until districts are correctly reapportioned;

45. Plaintiffs' members and constituents' rights are compromised because of the inability of candidates to campaign effectively and provide a meaningful election choice.

### **RELIEF SOUGHT**

WHEREFORE, Plaintiffs ask that the Court:

A. Immediately request that Hon. Diane S. Sykes, Chief Judge of the U.S. Court of Appeals for the Seventh Circuit, designate two other judges to form a three-judge panel under 28 U.S.C. § 2284(a);

B. Declare that the current configuration of Wisconsin's 33 Senate districts and 99 Assembly districts, established by 2011 Wisconsin Act 43 and modified by *Baldus*, based on the 2010 Census, is unconstitutional and invalid and the maintenance of those districts for the August 2022 primary election and November 8, 2022 general election violates Plaintiffs' federal and state constitutional rights;

C. Enjoin Defendants and the WEC's employees and agents, including the county clerks in each of Wisconsin's 72 counties and Wisconsin's 1,850 municipal clerks and election commissions, from administering, enforcing, preparing for, or in any way permitting the nomination or election of members of the Wisconsin Legislature from the unconstitutional Senate districts and unconstitutional Assembly districts that now exist in Wisconsin for the August 2022 primary election and November 2022 general election;

D. Establish a schedule that will enable the Court, in the absence of a constitutional state law, adopted by the Wisconsin Legislature and signed by the Governor in a timely fashion, to adopt and implement new State Senate and Assembly district plans with districts substantially equal in population and that otherwise meet the requirements of the U.S. Constitution and statutes and the Wisconsin Constitution and statutes;

E. Award Plaintiffs their costs, disbursements, and reasonable attorneys' fees incurred in bringing this action; and,

F. Grant such other relief as the Court deems proper.



Dated: August 23, 2021.

By: Electronically signed by Douglas M. Poland  
Douglas M. Poland, SBN 1055189  
Jeffrey A. Mandell, SBN 1100406  
Rachel E. Snyder, SBN 1090427  
Richard A. Manthe, SBN 1099199  
STAFFORD ROSENBAUM LLP  
222 West Washington Avenue, Suite 900  
P.O. Box 1784  
Madison, WI 53701-1784  
dpoland@staffordlaw.com  
jmandell@staffordlaw.com  
rsnyder@staffordlaw.com  
rmanthe@staffordlaw.com  
608.256.0226

Mel Barnes, SBN 1096012  
LAW FORWARD, INC.  
P.O. Box 326  
Madison, WI 53703-0326  
mbarnes@lawforward.org  
608.535.9808

Mark P. Gaber\*  
CAMPAIGN LEGAL CENTER  
1101 14th St. NW Suite 400  
Washington, DC 20005  
mgaber@campaignlegal.org  
202.736.2200

Annabelle Harless\*  
CAMPAIGN LEGAL CENTER  
55 W. Monroe St., Ste. 1925  
Chicago, IL 60603  
aharless@campaignlegal.org  
312.312.2885

*Attorneys for Plaintiffs*

\*Application for general admission in the Western  
District of Wisconsin currently pending