

IN THE SUPREME COURT OF WISCONSIN

No. 2021AP1450-OA

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

Petitioners,

BLACK LEADERS ORGANIZING FOR COMMUNITIES, VOCES DE LA
FRONTERA, LEAGUE OF WOMEN VOTERS OF WISCONSIN, CINDY
FALLONA, LAUREN STEPHENSON, REBECCA ALWIN, CONGRESSMAN
GLENN GROTHMAN, CONGRESSMAN MIKE GALLAGHER,
CONGRESSMAN BRYAN STEIL, CONGRESSMAN TOM TIFFANY,
CONGRESSMAN SCOTT FITZGERALD, LISA HUNTER, JACOB ZABEL,
JENNIFER OH, JOHN PERSA, GERALDINE SCHERTZ, KATHLEEN
QUALHEIM, GARY KRENZ, SARAH J. HAMILTON, STEPHEN JOSEPH
WRIGHT, JEAN-LUC THIFFEAULT, AND SOMESH JHA,

Intervenors-Petitioners,

v.

WISCONSIN ELECTIONS COMMISSION, MARGE BOSTELMANN IN HER
OFFICIAL CAPACITY AS A MEMBER OF THE WISCONSIN ELECTIONS
COMMISSION, JULIE GLANCEY IN HER OFFICIAL CAPACITY AS A
MEMBER OF THE WISCONSIN ELECTIONS COMMISSION, ANN JACOBS
IN HER OFFICIAL CAPACITY AS A MEMBER OF THE WISCONSIN
ELECTIONS COMMISSION, DEAN KNUDSON IN HIS OFFICIAL
CAPACITY AS A MEMBER OF THE WISCONSIN ELECTIONS
COMMISSION, ROBERT SPINDELL, JR. IN HIS OFFICIAL CAPACITY AS
A MEMBER OF THE WISCONSIN ELECTIONS COMMISSION AND MARK
THOMSEN IN HIS OFFICIAL CAPACITY AS A MEMBER OF THE
WISCONSIN ELECTIONS COMMISSION,

Respondents,

THE WISCONSIN LEGISLATURE, GOVERNOR TONY EVERS, IN HIS
OFFICIAL CAPACITY, AND JANET BEWLEY SENATE DEMOCRATIC
MINORITY LEADER, ON BEHALF OF THE SENATE DEMOCRATIC
CAUCUS,

Intervenors-Respondents.

**OMNIBUS AMENDED PETITION TO THE SUPREME
COURT OF WISCONSIN TO TAKE JURISDICTION OF AN
ORIGINAL ACTION**

*A complete list of counsel appears on page 70.

ISSUES PRESENTED¹

1. Whether the Petitioners, Intervenor-Petitioners the Congressmen, and Intervenor-Petitioners Citizen Mathematicians and Scientists, who, based on the 2020 Census results, live in or represent malapportioned state legislative and congressional districts, are entitled to a declaration that the existing apportionment maps as set forth in Wis. Stat. §§ 3.11-3.18 (for congressional districts, which the Petitioners, the Congressmen, and Intervenor-Petitioners Citizen Mathematicians and Scientists challenge) and §§ 4.01-4.99 (for state assembly districts, which the Congressmen do not challenge) and § 4.009 (for state senate districts, which the Congressmen do not challenge) violate the one person one vote principle, contained in art. I, Section 1 and art. IV of the Wisconsin Constitution.²

¹ The parties do not each join each of the numbered paragraphs in this amended petition. The final section of the petition contains statements of each party as to those paragraphs that the party does not join.

² This Court has not previously held that Articles I or IV of the Wisconsin Constitution impose a one person, one vote requirement on congressional districts. Intervenor-Petitioners Citizen Mathematicians and Scientists join this allegation to preserve their rights.

2. Whether the BLOC Intervenor-Petitioners who, based on the 2020 Census results, live in or represent individuals who live in malapportioned districts, are entitled to declaration that the existing apportionment maps as set forth in §§ 4.01-4.99 (for state assembly districts) and § 4.009 (for state senate districts) violate the one person one vote principle, guaranteed by the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and contained in art. IV of the Wisconsin Constitution.

3. Whether the Intervenor-Petitioners Citizen Mathematicians and Scientists, who based on the 2020 Census results, live in malapportioned state legislative and congressional districts, are entitled to a declaration that Wisconsin's current apportionment maps as set forth in Wis. Stat. §§ 3.11-3.18 (for congressional districts) and §§ 4.01-4.99 (for state assembly districts) and § 4.009 (for state senate districts) violate the one

person one vote principle under Article I, Section 2 of the U.S. Constitution or the Fourteenth Amendment.³

4. Whether the Petitioners and the Congressmen are entitled to an injunction prohibiting the Respondents from administering any election for Congressional and—for Petitioners only—State Senate, or State Assembly seats until a new apportionment plan is adopted and in place that satisfies the requirements of art. I, Section 1 and art. IV of the Wisconsin Constitution. Further, in the absence of an amended state law with a lawful apportionment plan, whether the Petitioners (as to congressional and state legislative districts) and the Congressmen (as to congressional districts only) are entitled to an establishment of a judicial plan of apportionment to meet the requirements of art. I, Section 1 and art. IV of the Wisconsin Constitution.

³ Intervenor-Petitioners Citizen Mathematicians and Scientists claim that the current congressional plan is malapportioned in violation of the United States Constitution and that the current legislative plan is malapportioned in violation of both the United States and the Wisconsin Constitutions. Petitioners and other Intervenor-Petitioners have pled their congressional and legislative malapportionment claims as arising solely under the Wisconsin Constitution. If the Court wishes to streamline this action by confining it to state-law issues, Citizen Mathematicians and Scientists respectfully will withdraw their request for relief under federal law and proceed on the state-law claims.

5. Whether the BLOC Intervenor-Petitioners are entitled to an injunction prohibiting the Respondents from administering any election for State Senate or State Assembly seats until a new apportionment plan is adopted and in place that satisfies the requirements of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and art. IV of the Wisconsin Constitution, and, in the absence of an amended state law with a lawful apportionment plan, establishment of a judicial plan of apportionment to meet the requirements of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and art. IV of the Wisconsin Constitution.

6. Whether the Intervenor-Petitioners Citizen Mathematicians and Scientists are entitled to an injunction prohibiting the Respondents from administering any regularly scheduled election for Congressional, State Senate, or State Assembly seats until a new apportionment plan is adopted and in place that satisfies all applicable constitutional requirements, including, where relevant, the requirements of art. IV of the Wisconsin Constitution, and, in the absence of an amended state

law with a lawful apportionment plan, establishment of a judicial plan of apportionment to meet all applicable constitutional requirements, including, where relevant, the requirements of art. IV of the Wisconsin Constitution.

7. Whether, in the absence of an amended state law with a lawful apportionment plan, the Hunter Intervenors-Petitioners are entitled to the establishment of a timely judicial plan of apportionment to meet the requirements of art. IV of the Wisconsin Constitution with sufficient time to protect associational activities in advance of the 2022 election.

INTRODUCTION

8. The results of the 2020 census make clear what everyone knew would occur. Based on population increases and decreases in different geographic areas, the existing apportionment plans for Wisconsin's Congressional, State Senate and State Assembly seats no longer meet the Wisconsin constitutional requirements summarized in the principle of one person, one vote.

9. Nor do the plans meet the U.S. constitutional requirements summarized in the principle of one person, one vote.

10. In *State ex rel. Reynolds v. Zimmerman*, 22 Wis. 2d 544, 564, 126 N.W.2d 551 (1964), this Court said, with respect to redistricting cases, that such cases involve a denial of voting rights under art. IV of the Wisconsin Constitution (as well as the equal protection clause of the U.S. Constitution).

11. The Court's statement in *Reynolds v. Zimmerman* was limited to legislative redistricting cases.

12. Further, other provisions of the Wisconsin Constitution require equal apportionment for Wisconsin's congressional districts, including, but not limited to, the equal-protection clause found in Article I, Section 1. See *County of Kenosha v. C. & S. Management, Inc.*, 223 Wis. 2d 373, 393, 588 N.W.2d 236 (1999) (explaining that Article I, § 1 offers "essentially the same" protection as does the U.S. Constitution's Equal Protection Clause); *Evenwel v. Abbott*, 136 S. Ct. 1120, 1124 (2016).

13. The Petitioners, BLOC Intervenor-Petitioners, Hunter Intervenor-Petitioners, and Intervenor-Petitioners Citizen Mathematicians and Scientists, among many others, now live in or represent individuals who live in state and/or congressional voting districts that have many more people than live in other districts and, as a result, have a diluted vote relative to the votes of others who live in less populated districts.

14. That situation requires that a new apportionment plan with new maps be adopted to replace the election districts currently set forth in Wis. Stat. §§ 3.11-3.18 (for the congressional districts) and §§ 4.01-4.99 (for the state assembly districts) and § 4.009 (for the state senate districts).

15. Two groups of Wisconsin voters have already filed actions in federal court, *see Hunter v. Bostelmann*, No. 21-cv-512 (W.D. Wis. Aug. 13, 2021) and *Black Leaders Organizing for Communities v. Spindell*, No. 21-cv-534 (W.D. Wis. Aug. 23, 2021) (consolidated with *Hunter*, and collectively referred to as “*Hunter*”), seeking similar relief to the relief being sought herein.

16. The U.S. Constitution directly endows the States with the primary duty to redraw their congressional districts. U.S. Const. art. I, § 4 (“The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof[.]”)

17. And, although the federal and state courts have concurrent jurisdiction to decide redistricting matters, the U.S. Supreme Court has made it clear that the states’ role is primary. *Grove v. Emison*, 507 U.S. 25, 34 (1993).

18. This Court said the same in *Jensen v. Wisconsin Elections Bd.*, 2002 WI 13, ¶5, 249 Wis. 2d 706, 639 N.W.2d 537: “It is an established constitutional principle in our federal system that congressional reapportionment and state legislative redistricting are primarily state, not federal, prerogatives.”

19. Given that the state’s role is primary, this Court previously noted that if the Legislature is unable to timely enact a new redistricting map, this Court’s “participation in the resolution of these issues would ordinarily be highly appropriate.” *Jensen*, 249 Wis. 2d 706, ¶4.

20. Further, this Court said that in our State, “[t]he people . . . have a strong interest in a redistricting map drawn by an institution of state government—ideally and most properly, the legislature, secondarily, this court.” *Id.* at ¶17.

21. Thus, redistricting is initially a state matter both with respect to the legislative function and the judicial function.

22. The Petitioners, Congressmen, and Intervenors-Petitioners Citizen Mathematicians and Scientists should not be required to resort to a federal court, and only a federal court, to protect their state constitutional rights. In *Reynolds v. Zimmerman*, this Court said that “***there is no reason for Wisconsin citizens to have to rely upon the federal courts for the indirect protection of their state constitutional rights.***” 22 Wis. 2d at 564 (emphasis added).

23. Instead, if the Legislature and the Governor “fail[] to reapportion according to constitutional requisites in a timely fashion after having had an adequate opportunity to do so,” then this Court has the duty to adopt a congressional redistricting plan

for the State. Order Granting Petition at 2, No.2021AP1450-OA (Wis. *amended* Sept. 24, 2021).

24. It is equally clear, however, that should this Court not timely adopt new state and congressional districts that comply with federal law, the federal court presiding over the pending *Hunter* action will adjudicate the federal rights at stake. *See Hunter*, Opinion and Order at 3 (Oct. 6, 2021) (“Federal rights are at stake, so this court will stand by to draw the maps – should it become necessary. ... It is appropriate for this court to provide a date by which the state must act to avoid federal involvement in redistricting. *Grove v. Emison*, 507 U.S. 25, 36 (1993). ... [T]he court will reserve five days beginning January 31, 2022, for trial of this matter.”).

JURISDICTION AND VENUE

25. On August 23, 2021, Petitioners asked this Court to exercise original jurisdiction regarding the unconstitutionality of Wisconsin’s malapportioned legislative districts. This Court granted the petition, and accepted original jurisdiction pursuant to Wis. Stat. § (Rule) 809.70.

26. BLOC Intervenor-Petitioners also challenge 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 Wisconsin Government Accountability Board*, 849 F. Supp. 2d 840 (E.D. Wis. 2012) (per curiam) (three-judge panel). The current legislative district boundaries were based on the 2010 census of the state's population, now superseded by the 2020 census.

27. This Court has personal jurisdiction over all Respondents and Intervenor-Respondents.

28. Respondents Spindell, Thomsen, Knudson, Glancey, Jacobs, and Bostelmann are state officials who reside in Wisconsin and perform official duties in Madison, Wisconsin. Intervenor-Respondents likewise are all either branches of state government or state officials who reside or are located in Wisconsin and perform official duties in Madison, Wisconsin.

PARTIES

29. Petitioners and Intervenors-Petitioners Citizen Mathematicians and Scientists are Wisconsin voters who live in malapportioned districts. Each of the districts the parties live in fail the one person, one vote constitutional standard, under which population equality across districts ensures that each Wisconsinite's vote counts equally.

30. Petitioner Billie Johnson resides at 2313 Ravenswood Road, Madison, Wisconsin 53711, in the Second Congressional District, State Assembly District 78, and State Senate District 26. Because of the latest reapportionment count, Petitioner Johnson's vote is unconstitutionally diluted, counting less than if he lived in a different district.

31. Petitioner Eric O'Keefe resides at 5367 County Road C, Spring Green, Wisconsin 53588, in the Second Congressional District, State Assembly District 51, and State Senate District 17. Because of the latest reapportionment count, Petitioner O'Keefe's vote is unconstitutionally diluted, counting less than if he lived in a different district.

32. Petitioner Ed Perkins resides at 4486 N. Whitehawk Drive, Grand Chute, Wisconsin 54913, in the Eighth Congressional District, State Assembly District 56, and State Senate District 19. Because of the latest reapportionment count, Petitioner Perkins' vote is unconstitutionally diluted, counting less than if he lived in a different district.

33. Petitioner Ronald Zahn resides at 287 Royal Saint Pats Drive, Wrightstown, Wisconsin 54180, in the Eighth Congressional District, State Assembly District 2, and State Senate District 1. Because of the latest reapportionment count, Petitioner Zahn's vote is unconstitutionally diluted, counting less than if he lived in a different district.

34. BLOC Intervenor-Petitioners include three nonprofit organizations, 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 overpopulated districts (the "BLOC Organizational Intervenor-Petitioners").

35. BLOC Intervenor-Petitioner 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.⁴ 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 life, 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.

⁴ BLOC is a fiscally sponsored project of Tides Advocacy, a California nonprofit public benefit corporation.

36. BLOC Intervenor-Petitioner 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 Milwaukee, 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, 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 U.S. 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.

37. BLOC Intervenor-Petitioner 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 enactment of the Nineteenth Amendment to the U.S. Constitution 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 U.S. 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 LaCrosse 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 such as *Swenson v. Bostelmann*, 20-cv-459-wmc (W.D. Wis. 2020), and *Lewis v. Knudson*, 20-cv-284 (W.D. Wis. 2020).

38. BLOC Organizational Intervenor-Petitioners' members and constituents include voters who reside in various State Senate and Assembly districts across Wisconsin, including

districts that are now overpopulated. 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 overpopulated 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 underpopulated.

39. BLOC Intervenor-Petitioners also include individual voters (“BLOC Individual Intervenor-Petitioners”) who reside in now-overpopulated districts. The residency of the BLOC Individual Intervenor-Petitioners in three overpopulated districts is summarized here:

Individual Intervenor-Petitioner	State Assembly District	Population compared to 2020 Census ideal	State Senate District	Population compared to 2020 Census ideal
Cindy Fallona	AD5	+13.26%	SD2	+2.77%
Lauren Stephenson	AD76	+20.41%	SD26	+13.00%
Rebecca Alwin	AD79	+17.13%	SD27	+9.47%

40. BLOC Individual Intervenor-Petitioner Cindy Fallona resides at 301 West Morningside Drive, Kaukana, Wisconsin, in

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.

41. BLOC Individual Intervenor-Petitioner Lauren Stephenson resides at 1342 East Dayton Street, Madison, Wisconsin in 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.

42. BLOC Individual Intervenor-Petitioner Rebecca Alwin resides at 1422 North Westfield Road, Middleton, Wisconsin, in 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 address with no plans to register at a different address.

43. Congressman Glenn Grothman is the duly elected U.S. Representative representing Wisconsin's Sixth Congressional District, where he also resides.

44. Congressman Mike Gallagher is the duly elected U.S. Representative representing Wisconsin's Eighth Congressional District, where he also resides.

45. Congressman Bryan Steil is the duly elected U.S. Representative representing Wisconsin's First Congressional District, where he also resides.

46. Congressman Tom Tiffany is the duly elected U.S. Representative representing Wisconsin's Seventh Congressional District, where he also resides.

47. Congressman Scott Fitzgerald is the duly elected U.S. Representative representing Wisconsin's Fifth Congressional District, where he also resides.

48. The Congressmen all intend to be candidates for reelection in 2022, thereby continuing to serve their respective districts if reelected.

49. Intervenor-Petitioners Lisa Hunter, Jacob Zabel, Jennifer Oh, John Persa, Geraldine Schertz, and Kathleen Qualheim (the “Hunter Intervenors”) have filed similar claims in federal court. *See Hunter v. Bostelmann*, 21-CV-512, Complaint (W.D. Wis. Aug 13, 2021).

50. Intervenor-Petitioner Lisa Hunter resides in Dane County, Wisconsin, within the Second Congressional District, State Senate District 26, and State Assembly District 77. The Second Congressional District, State Senate District 26, and State Assembly District 77 are overpopulated.

51. Intervenor-Petitioner Jacob Zabel resides in Dane County, Wisconsin, within the Second Congressional District, State Senate District 26, and State Assembly District 76. The Second Congressional District, State Senate District 26, and State Assembly District 76 are overpopulated.

52. Intervenor-Petitioner Jennifer Oh resides in Dane County, Wisconsin, within the Second Congressional District, State Senate District 26, and State Assembly District 78. The Second Congressional District, State Senate District 26, and State Assembly District 78 are overpopulated.

53. Intervenor-Petitioner John Persa resides in Waukesha County, Wisconsin, within the Fifth Congressional District, State Senate District 5, and State Assembly District 13. State Senate District 5 and State Assembly District 13 are overpopulated.

54. Intervenor-Petitioner Geraldine Schertz resides in Shawano County, Wisconsin, within the Eighth Congressional District, State Senate District 2, and State Assembly District 6. The Eighth Congressional District and State Senate District 2 are overpopulated.

55. Intervenor-Petitioner Kathleen Qualheim resides in Shawano County, Wisconsin, within the Eighth Congressional District, State Senate District 2, and State Assembly District 6. The Eighth Congressional District and State Senate District 2 are overpopulated.

56. Intervenor-Petitioner Gary Krenz is a registered voter who resides in Milwaukee County and in Senate District 8 and Assembly District 23, both of which the 2020 Census Redistricting Data demonstrates are overpopulated.

57. Dr. Krenz is a Professor Emeritus of Mathematical and Statistical Sciences and an Adjunct Professor of Computer Science at Marquette University. He is a past chair of Marquette's former Mathematics, Statistics and Computer Science Department. Dr. Krenz received Marquette University's Ignatian Pedagogy Award and the Rev. John P. Raynor, S.J., Faculty Award for Teaching Excellence. His research interests include mathematical and statistical modeling and computer-science education, for which he has been funded by both the National Institutes of Health and the National Science Foundation. Dr. Krenz received his Ph.D. in Applied Mathematics from Iowa State.

58. Intervenor-Petitioner Sarah J. Hamilton is a registered voter who resides in Milwaukee County and in Senate District 7 and Assembly District 20, both of which the 2020 Census Redistricting Data demonstrates are underpopulated, and lives

directly across the street from Assembly District 19, which the 2020 Census Redistricting Data demonstrates is overpopulated.

59. Dr. Hamilton is an Associate Professor of Mathematics at Marquette University and an Assistant Adjunct Professor at the Medical College of Wisconsin. She has taught courses at Marquette in mathematical modeling and analysis, differential equations, and the theory of optimization. Her research interests include inverse problems, machine learning and data science, and computational imaging for which she has been funded by the National Institutes of Health. She has been named a Project NextT Fellow by the Mathematical Association of America. Dr. Hamilton received her Ph.D. in Mathematics from Colorado State University.

60. Intervenor-Petitioner Stephen Joseph Wright is a registered voter who resides in Dane County, and in Congressional District 2, Senate District 26, and Assembly District 77, all of which the 2020 Census Redistricting Data demonstrates are overpopulated.

61. Dr. Wright is the George B. Dantzig Professor of Computer Sciences at the University of Wisconsin-Madison, where he teaches courses on nonlinear optimization and on linear programming, among other subjects. He is a past Chair of the Mathematical Optimization Society, a former fellow and trustee of the Society for Industrial and Applied Mathematics, and the current Director of the Institute for Foundations of Data Science. In 2020, he was awarded the Khachiyan Prize, which honors lifetime achievements in the area of optimization. Dr. Wright received his Ph.D. in Computer Science from the University of Queensland.

62. Intervenor-Petitioner Jean-Luc Thiffeault is a registered voter who resides in Dane County, and in Congressional District 2, Senate District 26, and Assembly District 77, all of which the 2020 Census Redistricting Data demonstrates are overpopulated.

63. Dr. Thiffeault is a Professor of Applied Mathematics at the University of Wisconsin-Madison, where his research interests include topological dynamics and methods of

computational mathematics. He has spoken at over 140 invited research seminars and colloquia and has won the Society for Industrial and Applied Mathematics' outstanding-paper prize. Dr. Thiffeault received his Ph.D. in Physics from the University of Texas at Austin.

64. Intervenor-Petitioner Somesh Jha is a registered voter who resides in Dane County, and in Congressional District 2, Senate District 26, and Assembly District 78, all of which the 2020 Census Redistricting Data demonstrates are overpopulated.

65. Dr. Jha is the Sheldon B. Lubar Chair of Computer Sciences at the University of Wisconsin-Madison, where he researches or teaches cartography, adversarial machine learning, computational finance, robust optimization, and data science, among other topics. He has received the National Science Foundation CAREER Award, the Computer-Aided Verification Award, and multiple best-paper awards. He is a Fellow of both the Association for Computing Machinery (awarded to the top 1% of ACM members) and the IEEE (recognizing "extraordinary

accomplishments” in the IEEE fields of interest). Dr. Jha received his Ph.D. in Computer Science from Carnegie Mellon University.

66. Respondent Wisconsin Elections Commission (“WEC”) is a governmental agency created under Wis. Stat. § 5.05 and charged with the responsibility for the administration of Chapters 5 and 6 of the Wisconsin Statutes and other laws relating to elections and election campaigns, other than laws relating to campaign financing. WEC has its offices and principal place of business at 212 E. Washington Avenue, 3rd Floor, Madison, Wisconsin 53703.

67. Respondents Marge Bostelmann, Julie Glancey, Ann Jacobs, Dean Knudson, Robert Spindell, and Mark Thomsen are commissioners of WEC. The WEC Commissioners are sued solely in their official capacities.

68. WEC is responsible for the administration and enforcement of Wisconsin laws “relating to elections,” including Chapters 5 to 10 and 12 of the Wisconsin Statutes. 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. 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.

69. Intervenor-Respondent the Wisconsin Legislature is the bicameral legislative branch of Wisconsin's government. Wis. Const. art. IV, § 1. It has the responsibility to create Wisconsin's congressional and state legislative districts. U.S. Const. art. I, §4, cl. 1; Wis. Const. art. IV, §3.

70. Intervenor-Respondent Governor Tony Evers, intervening in his official capacity, is the Governor of the State of Wisconsin. This Court's precedent recognizes a joint role for the Governor with the Legislature in redistricting. The Governor's Executive Order #66 created the nonpartisan People's Maps Commission, which is tasked with seeking input and drawing impartial maps for the Legislature and Governor to consider.

71. Intervenor-Respondent Janet Bewley, Senate Democratic Minority Leader, has intervened on behalf of the

Senate Democratic Caucus. The Senate Democrats are the minority caucus in the Wisconsin State Senate. The Wisconsin Senate as a whole, and the Wisconsin Assembly together comprise the Wisconsin Legislature.

STATEMENT OF FACTS

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

73. 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.

74. The U.S. Constitution requires that the members of the Wisconsin Legislature be elected on the basis of equal representation. *Arrington v. Elections Bd.*, 173 F. Supp. 2d 856, 860 (E.D. Wis. 2001) (citing U.S. Const. art. I, § 2).

75. There must be population equality across districts under the command of the “one person, one vote” principle.

76. Thus, the State Senate and Assembly districts must be reapportioned after each Federal census to be substantially equal in population.

77. 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.”

78. 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 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 v. Sims*, 377 U.S. 533, 561-68 (1964).

79. The Wisconsin Constitution similarly guarantees that each citizen shall have substantially equal legislative representation.⁵

80. As this Court said in *Reynolds v. Zimmerman*, “sec. 3, art. IV, Wis. Const., contains a precise standard of apportionment—the legislature shall apportion districts according to the number of inhabitants.” 22 Wis. 2d at 564.

81. Further, other provisions of the Wisconsin Constitution require equal apportionment for Wisconsin’s congressional districts, including, but not limited to, the equal-protection clause found in Article I, § I, *see County of Kenosha*, 223 Wis. 2d at 393 (explaining that Article I, § 1 offers “essentially the same” protection as does the U.S. Constitution’s Equal Protection Clause); *Evenwel*, 136 S. Ct. at 1124.

82. This Court has further acknowledged, however, that “a mathematical equality of population in each senate and assembly district is impossible to achieve, given the requirement

⁵ The Congressmen note that this includes substantially equal representation in Congress.

that the boundaries of local political units must be considered in the execution of the standard of per capita equality of representation.” *Reynolds v. Zimmerman*, 22 Wis. 2d at 564.

83. This comports with the federal standard for population equality in that states must draw congressional districts with populations as close to perfect equality as possible, *Evenwel v. Abbott*, ___ U.S. ___, 136 S. Ct. 1120, 1124 (2016), while the federal standard for state legislative districts is more lenient.

84. For example, in 2011, when the Legislature drew the existing maps for congressional districts it “apportion[ed] the 2010 census population of the state of Wisconsin perfectly.” *Baldus v. Members of Wisconsin Gov't Accountability Bd.*, 849 F. Supp. 2d 840, 853 (E.D. Wis. 2012).

85. The report from the Legislative Reference Bureau on the proposed bill adopting the existing 2011 congressional maps stated that the population in Congressional Districts 3, 4, 5, 6, 7, and 8 was 710,873 and in Congressional Districts 1 and 2 was 710,874—a difference of one person.

86. 2011 Wisconsin Act 43 divided the official state population determined by the 2010 Census into 33 State Senate districts and 99 Assembly districts with relatively equal populations. *See* Wis. Stat. ch. 4. The revisions ordered by the *Baldus* court in 2012 did not disturb the approximate equality, despite modifying two Assembly districts. In 2012 each State Senate district contained a population of approximately 172,333 residents, and each Assembly district contained a population of approximately 57,444 residents.

87. Except for a dispute regarding whether Hispanics in the Milwaukee area were entitled to one majority Hispanic assembly district or two minority influenced assembly districts (which dispute was ultimately resolved), the existing congressional, state senate and state assembly maps now contained in Wis. Stat. §§ 3.11-3.18 (for the congressional districts) and §§ 4.01-4.99 (for the state assembly districts) and § 4.009 (for the state senate districts), were held to meet all of the traditional redistricting criteria including equality of population. *Baldus*, 849 F. Supp. 2d 840.

88. 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.

89. 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.

90. On August 12, 2021 the United States Census Bureau delivered apportionment counts to the President based upon the 2020 census.

91. Under 2 U.S.C. §§ 2a and 2c and 13 U.S.C. § 141(c), on April 26, 2021, the Census Bureau 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 1.

92. In other words, from 2010 to 2020, the population of Wisconsin increased from 5,686,986 to 5,893,718.

93. Because there are eight Wisconsin congressional districts, the ideal population of each district is 736,715.

94. However, the apportionment counts establish the following with respect to the populations now contained in each of the eight Wisconsin congressional districts:

1st Congressional District – 727,452

2nd Congressional District – 789,393

3rd Congressional District – 733,584

4th Congressional District – 695,395

5th Congressional District – 735,571

6th Congressional District – 727,774

7th Congressional District – 732,582

8th Congressional District – 751,967

95. As a result, there is no longer the required level of equality among the populations in the eight Wisconsin congressional districts needed to meet the constitutional requirement of one person, one vote.

96. The 2nd and 8th Congressional Districts, where the Petitioners reside and—with respect to the 8th Congressional District—which Congressman Gallagher represents, are overpopulated.

97. Intervenors-Petitioners Wright, Thiffeault, and Jha likewise reside in the 2nd and 8th Congressional Districts.

98. The data for state legislative redistricting similarly shows that new maps for the state legislative seats are necessary. Given the total population of Wisconsin, the ideal population for each of Wisconsin's 99 assembly districts is 59,533, and the ideal population for each of Wisconsin's 33 senate districts is 178,598.

99. Yet the assembly and senate districts in which the Petitioners reside are now malapportioned: Assembly District 78 (Johnson – 67,142); Assembly District 51 (O'Keefe – 56,878); Assembly District 56 (Perkins – 64,544); Assembly District 2 (Zahn

– 62,564); Senate District 26 (Johnson – 201,819); Senate District 17 (O’Keefe – 173,532); Senate District 19 (Perkins – 184,473); Senate District 1 (Zahn – 184,304).

100. Likewise, BLOC Individual Intervenor-Petitioners and members and constituents of BLOC Organizational Intervenor-Petitioners are similarly impacted by the population shifts over the past decade, resulting in the 2011 state legislative districts now giving some Wisconsinites’ votes more weight than others. Voters living in Assembly district 76 (Stephenson) – 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 that are now *less* populated than the ideal district population. Voters in the 37 other overpopulated districts suffer similar harm: Assembly districts 79 (Alwin), 5 (Fallona), 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. Due to

these population changes, the current overall population deviation for Act 43 is about 32%.

101. The same population-growth imbalances affect state Senate districts, with some voters suffering vote dilution and other benefitting from heightened voting efficiency. Senate district 26 (Stephenson) has grown to exceed the current ideal population of 178,598 by 13.00%; Senate district 27 (Alwin) by 9.47%; and Senate district 16 by 7.78%. Meanwhile, numerous state Senate districts are not underpopulated relative to the ideal state Senate district size.

102. Likewise, the assembly and senate districts in which the Intervenor-Petitioners Citizen Mathematicians and Scientists reside are now malapportioned: Assembly District 20 (Hamilton – 56,812); Assembly District 78 (Jha – 67,142); Assembly District 23 (Krenz – 60,761); Assembly District 77 (Thiffeault, Wright – 62,992); Senate District 7 (Hamilton – 177,968); Senate District 26 (Jha, Thiffeault, Wright – 201,819); Senate District 8 (Krenz – 182,248).

103. The facial malapportionment of state legislative districts dilutes the voting strength of Petitioners, Individual Intervenor-Petitioners, and the members and constituents of Organizational Intervenor-Petitioners 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 underpopulated district.

104. The Legislature has begun drawing new maps for these state and congressional districts, in light of the 2020 census.

105. The Petitioners and the Congressmen (as to congressional districts only) are entitled to new apportionment maps that continue to meet all of the traditional redistricting criteria including equality of population.

106. The Intervenor-Petitioners Citizen Mathematicians and Scientists and the BLOC Intervenor-Petitioners are entitled to new apportionment maps that meet all of the legally mandated redistricting criteria, including equality of population.

107. 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.

108. This lawsuit is already ripe although the Legislature may yet pass, and the Governor may yet approve, maps that redress the Petitioners' and Intervenors-Petitioners Citizen Mathematicians and Scientists' injuries. *Cf. generally Arrington v. Elections Bd.*, 173 F. Supp. 2d 856, 860 (E.D. Wis. 2001) ("Since it is impossible for legislative districts to remain equipopulous from decade to decade, challenges to districting laws may be brought immediately upon release of official data showing district imbalance—that is to say, “*before* reapportionment occurs.” (quoting Pamela S. Karlan, *The Right to Vote: Some Pessimism about Formalism*, 71 Tex. L. Rev. 1705, 1726 (1993))). Consequently, this Court should accept jurisdiction of this case.

109. It should also stay it until the Legislature adopts a constitutionally adequate apportionment plan.

110. 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).

111. 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.

112. In the last four decades, when Republicans and Democrats have 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. Only in 2010—when Republicans held trifecta

control of Wisconsin's state government—did Wisconsin enact a redistricting plan through the political branches.

113. That plan, too, required judicial intervention to give Wisconsin a legally compliant legislative-district map.

114. 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 failed to reach a compromise, requiring a federal court to step in and assume the constitutionally mandated reapportionment of state-legislative districts. *See Baumgart v. Wendelberger*, No. 01C-0121, 2002 WL 34127471, (E.D. Wis. May 30, 2002) (per curiam), *amended by* No. 01-C-0121, 2002 WL 34127473 (E.D. Wis. July 11, 2002); *Prosser v. Elections Bd.*, 793 F. Supp. 859 (W.D. Wis. 1992) (per curiam); *Wisconsin State AFL-CIO v. Elections Bd.*, 543 F. Supp. 630 (E.D. Wis. 1982).

115. 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, in the BLOC Intervenor-Petitioners' view new districts must be set before 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 WEC is June 1, 2022. *Id.* 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 before election day. *See* Wis. Stat. §7.15. In addition, because state law requires municipalities to adjust any ward boundaries that conflict with state legislative district boundaries no later than April 10, 2022, Wis. Stat. § 5.15(4)(a), and there are practical steps for municipalities to take to notice and adopt any such changes,

state legislative district boundaries must be in place several weeks before. Thus, while the primary election occurs in August, new districts must be in place several months before that date for WEC to comply with state law, and so that candidates may appear on the ballot for the election on that date.

116. 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). The deadline to file those 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 the Hunter Intervenors' ability to associate with like-minded citizens; educate themselves on the positions of their would-be representatives; and identify, recruit, 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.”).⁶

117. If this Court is not prepared to act in the event that the Legislature and Governor fail to enact a redistricting plan, then there is a risk the 2022 election will be held using illegal district maps, depriving the Intervenor-Petitioners of their constitutional rights.

118. If the State Legislature does not, while this litigation is pending, adopt new maps that are approved by the Governor and which meet all of the traditional redistricting criteria including equality of population, then the Petitioners and the Congressmen (with respect to the congressional districts only) request that this Court do so, applying the principle of making the least number of changes to the existing maps as are necessary to meet the requirement of equal population and the remaining traditional redistricting criteria. This “least changes” approach is consistent

⁶ Sections 3 and 4, art. I, of the Wisconsin Constitution “guarantee the same freedom of speech and right of assembly and petition as do the First and Fourteenth amendments of the United States constitution.” *Lawson v. Hous. Auth. of City of Milwaukee*, 270 Wis. 269, 274, 70 N.W.2d 605 (1955).

with past practice, *Baumgart v. Wendelberger*, No. 01-C-0121, 02-C-0366, 2002 WL 34127471, *7 (E.D. Wis. May 30, 2002) (unpublished) (court begins with last-enacted maps), *amended*, No. 01-C-0121, 02-C-0366, 2002 WL 34127473 (E.D. Wis. July 11, 2002) (unpublished), and “creates the least perturbation in the political balance of the state.” *Prosser v. Elections Bd.*, 793 F. Supp. 859, 871 (W.D. Wis. 1992).

119. If the State Legislature does not, while this litigation is pending, adopt new maps that are approved by the Governor and which meet all of the legally mandated traditional redistricting criteria including equality of population, then the Intervenor-Petitioners Citizen Mathematicians and Scientists request that this Court do so.

120. The Hunter Intervenor affirmatively oppose Petitioners’ suggested redistricting criteria. The proposed “least changes” approach is arbitrary, conflicts with traditional redistricting criteria, and has no basis in law. Moreover, this Court must consider the political outcomes of any redistricting plan, to ensure Wisconsin voters are fairly represented. The existing maps

are a deliberate and extreme partisan gerrymander—and arbitrarily enforcing a “least-changes” approach only serves to solidify a map the people of Wisconsin oppose.

121. BLOC Intervenor-Petitioners also request that that this Court adopt new maps, but urge this Court to do so pursuant to state and federal constitutional and statutory requirements. As noted below, they disagree with Petitioners that a least changes approach is a valid legal criterion or is appropriate here.

122. It is the view of Intervenor-Petitioners Citizen Mathematicians and Scientists that if this Court ultimately must adopt new redistricting plans for the people of Wisconsin, it should do so with parties that have access to computational-redistricting methodologies, optimization techniques, and data science, as well as the Nation’s best quantitative redistricting experts. The experts that the Citizen Mathematicians and Scientists will bring to this litigation will assist with the task of adopting new redistricting plans through the use of high-speed computers and algorithmic techniques that promote fair and effective representation for all Wisconsinites.

123. On August 23, 2021, Petitioners filed their first Petition For Original Action with this Court, and this Court granted the Petition on September 22, 2021, accepting this case for consideration in its original jurisdiction. Order Granting Petition at 2–3, No.2021AP1450-OA (Wis. *amended* Sept. 24, 2021).

124. On October 14, 2021, this Court granted the intervention motions of all Intervenor Petitioners and then ordered Petitioners and Intervenor Petitioners to file this Omnibus Amended Petition. Order, *Johnson*, No. 2021AP1450-OA at 2–3.

**PETITIONERS’ AND THE CONGRESSMEN’S
STATEMENTS OF RELIEF SOUGHT**

125. The Petitioners and the Congressmen (as to the congressional districts only) ask this Court to declare that a new constitutional apportionment plan is necessary under the Wisconsin Constitution for both the state legislative (Petitioners’ request) and congressional districts (Petitioners’ and the Congressmen’s request), as Wisconsin’s existing state legislative and congressional districts are malapportioned, in violation of the Wisconsin Constitution, including Article I, § 1, and Article IV.

126. This Court should enjoin the Respondents from administering any state legislative election (Petitioners' request) and congressional election (Petitioners' and the Congressmen's request) under the existing maps and then stay this matter until the Legislature has adopted a new apportionment plan and then, if any challenge is made to the new maps, rule on the constitutionality of such plan.

127. If the Legislature does not pass new state legislative and congressional maps that are approved by the Governor and which meet all of the traditional redistricting criteria including equality of population, then the Petitioners request that this Court do so with respect to the state legislative maps, and the Petitioners and the Congressmen request that this Court do so with respect to the congressional maps. In so doing, the Petitioners and the Congressmen (with respect to the congressional districts only) intend to urge the Court to create districts that are equal in population, contiguous, compact, and that maximize "continuity," moving the fewest number of voters to a district currently represented by someone other than that voter's current

representative. The Petitioners and the Congressmen intend to argue that the Court need not and should not take into account projections of the likely political impact of the maps. Such considerations are not required under the United States Constitution, *see Rucho v. Common Cause*, 588 U.S. ___, 139 S. Ct. 2484 (2018), or the Wisconsin Constitution. The Petitioners intend to ask that this Court approve maps in time for candidates to timely circulate nomination papers for the Fall 2022 elections.

**BLOC INTERVENOR-PETITIONERS' STATEMENT OF
RELIEF SOUGHT**

128. 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 districts, violates the U.S. Constitution and the Wisconsin Constitution. The 2020 Census rendered the state's 2011 legislative districts unconstitutional, which harms or threatens to harm BLOC Intervenor-Petitioners' constitutional rights unless future elections under the current districts are enjoined.

129. 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 and state constitutions. The population variations between and among the districts are substantial.

130. BLOC Organizational Intervenor-Petitioners' 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.

131. BLOC Organizational Intervenor-Petitioners' 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.

132. Multiple BLOC Individual Intervenor-Petitioners 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 underpopulated.

133. 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.

134. The boundaries and the populations they define, unless modified, violate the principal 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.

135. BLOC Intervenor-Petitioners and their members and constituents are also harmed because, until valid redistricting occurs, they cannot know in which Senate or Assembly district individuals will reside and vote. Therefore, they cannot effectively hold their representatives accountable for their conduct and policy positions advocated in office. BLOC Intervenor-Petitioners 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 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 BLOC Intervenor-Petitioners or their members, until potential candidates know the borders of the districts in which they, as residents, could seek office; and

c. BLOC Intervenor-Petitioners and their 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.

136. BLOC Intervenor-Petitioners' and their members' and constituents' rights are compromised because of the inability of candidates to campaign effectively and provide a meaningful election choice.

137. BLOC Intervenor-Petitioners ask that the Court:

a. Declare that the current configuration of Wisconsin's 33 Senate districts and 99 Assembly districts, based on the 2020 Census, established by 2011 Wisconsin Act 43, and modified by *Baldus*, is unconstitutional and invalid and the maintenance of those districts for the August 2022 primary election and November 8, 2022 general election violates BLOC Intervenor-Petitioners' constitutional rights;

b. Enjoin Respondents 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;

c. 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, and within the time frame set by the federal court for trial of the *Hunter* action, 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;

d. Award BLOC Intervenor-Petitioners their costs, disbursements, and reasonable attorneys' fees incurred in bringing this action, pursuant to Wis. Stat. § 814.01 and 42 U.S.C. § 1988; and

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

138. BLOC Intervenor-Petitioners ask this Court to adopt reapportioned legislative district maps in the event that the Legislature and Governor fail to do so, but disagree with Petitioners both that a stay is warranted, given the highly compressed time frame within which new maps must be enacted, and that adopting a “least-changes” approach to developing new maps is legally sound. Rather, BLOC Intervenor Petitioners ask this Court to develop new maps based on state and federal constitutional and statutory requirements, with consideration given to traditional redistricting criteria, which do not include a “least changes” approach. In addition to having equal, or nearly equal population, legislative districts must be contiguous and compact and must be drawn so as to keep political units (counties, precincts, towns, and wards) intact. Wis. Const. art. IV, sec. 4. They must comply with the Voting Rights Act of 1965 and with U.S. Constitutional limitations, such as those imposed on racial gerrymandering. Finally, they must take into consideration

traditional redistricting criteria, such as the preservation of communities of interest.

HUNTER INTERVENORS' STATEMENT OF RELIEF SOUGHT

139. The Hunter Intervenors respectfully request that this Court:

- a. Declare that the current configurations of Wisconsin's State Assembly and State Senate Districts, Wis Stat. §§ 4.01-4.99, 4.009, violate art. IV of the Wisconsin Constitution;
- b. Declare whether the current configuration of Wisconsin's congressional districts, Wis. Stat. §§ 3.11-3.18, violates art. IV of the Wisconsin Constitution⁷;
- c. Establish a schedule that will enable the Court to adopt and implement lawful redistricting plans with sufficient notice to preserve associational activities in advance of

⁷ Because article IV of the Wisconsin Constitution exclusively concerns legislative districts, the Court should not recognize a claim for congressional malapportionment. If the Court disagrees, and as explained in their Motion to Intervene, the Hunter Intervenors do seek to be heard on this claim.

the 2022 election protected by art. I sections 3 and 4 of the Wisconsin Constitution;

- d. Implement lawful redistricting plans that comply with art. IV of the Wisconsin Constitution;
- e. Grant such other and further relief as the Court deems just and proper.

**INTERVENORS-PETITIONERS CITIZEN
MATHEMATICIANS AND SCIENTISTS' STATEMENT OF
RELIEF SOUGHT**

140. The Intervenor-Petitioners Citizen Mathematicians and Scientists ask this Court to grant this petition, declare that a new constitutional apportionment plan is necessary under the Wisconsin and U.S. Constitutions, and enjoin the Respondents from administering any regularly scheduled election under the existing maps. Further, if the Legislature does not approve new maps that are approved by the Governor and which meet all of the legally mandated traditional redistricting criteria including equality of population, then the Intervenor-Petitioners Citizen Mathematicians and Scientists request that this Court do so. In so doing, the Intervenor-Petitioners intend to urge the Court to

create districts that are equal in population, contiguous, and compact. The Intervenor-Petitioners intend to ask that this Court approve maps in time for candidates to timely circulate nomination papers for the 2022 elections. The Intervenor-Petitioners Citizen Mathematicians and Scientists request that this Court adopt redistricting plans for the people of Wisconsin that are based on computational redistricting methodologies, optimization techniques, and data science using high-speed computers and algorithmic techniques that promote fair and effective representation for all Wisconsinites.

REASONS WHY THIS COURT SHOULD TAKE JURISDICTION

141. As noted above, this Court has already granted Petitioners' first Petition and accepted this case for consideration in its original jurisdiction, explaining that Petitioners claim that "the results of the 2020 census show that Wisconsin's congressional and state legislative districts . . . are malapportioned and no longer meet the requirements of the

Wisconsin Constitution.” Order Granting Petition at 1, No.2021AP1450-OA (Wis. *amended* Sept. 24, 2021).

142. This Court’s grant of Petitioners’ first Petition was correct. It is an established constitutional principle, recognized by both the U.S. Supreme Court and this Court, that congressional and state legislative redistricting is primarily a state and not a federal prerogative. This Court has a duty under both to exercise its jurisdiction.

143. A violation of the one person, one vote principle is a violation of the Wisconsin Constitution, including art. I, Section I and art. IV.⁸

144. A violation of the one person, one vote principle is a violation of Article I, Section 2 of the United States Constitution or the Fourteenth Amendment.

145. Given that the Petitioners, the Congressmen (with respect to the congressional districts), and Intervenors-Petitioners

⁸ As noted above, this Court has not previously held that Articles I or IV of the Wisconsin Constitution impose a one person, one vote requirement on congressional districts. Intervenors-Petitioners Citizen Mathematicians and Scientists join this allegation to preserve their rights.

Citizen Mathematicians and Scientists assert rights under the Wisconsin Constitution and that the U.S. Supreme Court and this Court have recognized that reapportionment, including reapportionment undertaken by courts when the political branches cannot agree, is primarily a state responsibility, there is no reason that they should have to rely upon the federal court rather than this Court to protect those rights. To the contrary, they ought to be able to appeal to the courts of the state of Wisconsin.

146. In *Jensen* this Court said that “there is no question” that legislative redistricting actions warrant “this court’s original jurisdiction; any reapportionment or redistricting case is, by definition, *publici juris*, implicating the sovereign rights of the people of this state.” *Jensen*, 249 Wis.2d 706, ¶17.

147. Further, the time for the resolution of redistricting litigation is so short (especially given the delay in the completion of the 2020 census) that completing both a circuit court action and appellate review within the available period of time would be extremely difficult.

148. Therefore, if the Legislature and the Governor “fail[] to reapportion according to constitutional requisites in a timely fashion after having had an adequate opportunity to do so,” then this Court has the duty to adopt state legislative and congressional redistricting plans for the State. Order Granting Petition at 2, No.2021AP1450-OA (Wis. *amended* Sept. 24, 2021).

149. It is not yet known precisely when or if the Legislature will adopt new redistricting maps.

150. However, the Legislature has begun to draw new maps for the State.

151. The redistricting map after the 1990 census was not completed by the Legislature until April 14, 1992.⁹ After the 2000 census, each house approved its own map on March 7, 2002 but neither house acted on the other’s proposed map.¹⁰ The redistricting map after the 2010 census was approved by the Legislature on July 19, 2011 (but that date was based on receiving

⁹ Michael Keane, *Redistricting in Wisconsin* 14, Wisconsin Legislative Reference Bureau (Apr. 1, 2016), *available at* https://www.wisdc.org/images/files/pdf_imported/redistricting/redistricting_april2016_leg_ref_bureau.pdf.

¹⁰ *Id.*

the state level redistricting counts from the Census Bureau on March 10, 2011).¹¹ The 2011 maps were the quickest done by the Legislature in the last three decades of redistricting and were done in a situation where the state actually received the state level data 21 days before the March 31st deadline and where the Legislature and the Governorship were in the hands of the same party.

152. Here, given the delay in census results and the fact that Wisconsin currently has divided government, it is likely that new maps, if they are approved, would not be approved until November, toward the end of the year.

153. Under current law, candidates may begin circulating nomination papers for the 2022 elections on April 15, 2022, which papers must be filed no later than June 1.¹²

154. Given the probable timeline discussed in the previous paragraphs, litigation regarding the Legislature's proposed maps cannot proceed on the merits until approximately the end of the year when the Legislature has completed proposed maps.

¹¹ *Id.* at 15.

¹² *See* Wis. Stat. § 8.15.

155. However, the case must be completed in time for candidates to begin circulating nomination papers by April 15, 2022. That would be an extremely difficult time frame for both a circuit court action and Supreme Court review.

156. While this litigation may require some fact finding, the requirements of hearing and resolving those questions are not beyond the capacities of a referee. In 2012, the trial before a three-judge panel of a challenge to the enacted maps took only about two days. *Baldus*, 849 F. Supp. 2d at 847. This Court routinely refers matters of comparable length to a referee in attorney discipline matters and can do so here. Wis. Stat. § 751.09. Further, the Congressmen state that they do not believe that any fact finding would be necessary as to the congressional district maps.

CONCLUSION

157. For the foregoing reasons, the Petitioners and the Congressmen (with respect to the congressional districts) respectfully request that this Court: (a) declare that a new constitutional apportionment plan is necessary under the Wisconsin Constitution—including because of the equal-

population principle of Article I, Section 1, and Article IV—
(b) enjoin the Respondents from administering any election under the existing maps; (c) stay this matter until the Legislature has adopted a new apportionment plan; and then (d) rule on the constitutionality of such plan (if there is any challenge thereto).

158. Further, if the Legislature does not approve new maps that are approved by the Governor and which meet all of the traditional redistricting criteria including equality of population, then the Petitioners and the Congressmen (with respect to the congressional districts) request that this Court do so, applying the principle of making the least number of changes to the existing maps as are necessary to meet the requirement of equal population and the remaining traditional redistricting criteria and that this Court do so in time for candidates to timely circulate nomination papers for the Fall 2022 elections.

159. BLOC Intervenor-Petitioners agree that the Court should adopt new legislative district maps, but urge the Court to do so in accordance with state and federal constitutional and statutory requirements, with due consideration given to

traditional redistricting criteria, such as respect for communities of interest, as is appropriate under existing legal authority. BLOC Intervenor-Petitioners disagree with Petitioners that the least changes approach is legally valid or appropriate here. BLOC Intervenor-Petitioners further request that that the Court adopt new legislative district maps sufficiently before January 31, 2022, the date reserved by the federal court for trial of the claims in the consolidated *Hunter* and *BLOC* cases, so that the legislative districts this Court adopts may be analyzed for compliance with federal law, and any claims that those districts violate federal law may be prepared for trial beginning on January 31, 2022.

160. For the foregoing reasons, the Intervenor-Petitioners Citizen Mathematicians and Scientists respectfully request that this Court declare that a new constitutional apportionment plan is necessary under the Wisconsin Constitution, and enjoin the Respondents from administering any regularly scheduled election under the existing maps. Further, if the Legislature does not approve new maps that are approved by the Governor and which meet all of the legally mandated traditional redistricting criteria

including equality of population, then the Intervenor-Petitioners request that this Court do so and that and that this Court do so in time for candidates to timely circulate nomination papers for the 2022 elections.

161. Intervenor-Petitioners Citizen Mathematicians and Scientists request that this Court adopt redistricting plans for the people of Wisconsin that are based on computational redistricting methodologies, optimization techniques, and data science using high-speed computers and algorithmic techniques that promote fair and effective representation for all Wisconsinites.

**STATEMENT OF PETITIONERS AND INTERVENORS-
PETITIONERS ON OMNIBUS AMENDED PETITION**

162. The Petitioners join each numbered paragraph of this omnibus amended petition except for the following paragraphs (including footnotes, tables, and exhibits) and footnotes: n.2, 2-3, 5-7, 9, 11, 24-26, 34-65, 68, 72-74, 76-79, 86, 88-89, 91, 97, 100-103, 106-107, 110-17, 119-122, 128-140, n.8, 144, 159-61, and 163-66. The Petitioners additionally note as follows. In their initial original action petition, the Petitioners specifically observed that

they did “not raise a claim under the federal constitution in this proceeding.” Pet. at 2 n.1. Certain of the intervening parties, however, do raise federal claims. The Petitioners do not join these claims. They do intend to submit argument relating to any proposed or adopted maps and their compliance with relevant state and/or federal laws identified by this Court and/or the parties.

163. The BLOC Intervenor-Petitioners join each numbered paragraph of this omnibus petition except for paragraphs 1, 3-4, 6-7, n. 5, 87, 93-97, 105, 109, 118, 125-127, 139(b), n. 7, 142, 145-148, 154-158, 162, 164-166.

164. The Congressmen join each numbered paragraph of this omnibus amended petition except:

- a. For paragraph 11, the Congressmen specifically object and do not join, as it is an erroneous assertion, based on *State ex rel. Reynolds v. Zimmerman*, 22 Wis. 2d 544, 126 N.W.2d 551 (1964);
- b. For paragraphs 17 (to the extent that it claims that a federal court may retain jurisdiction over a redistricting

dispute when there is no evidence that the state branches, including the state courts, will timely fail to complete their redistricting duty), 24, 113, 120, 121 (to the extent that it departs from the “least-changes” approach), 122, 128–138, 139, and 140, the footnote to 143 (disputing the application of art. IV of the Wisconsin Constitution to congressional districts), and paragraph 154, the Congressmen object and do not join;

c. For paragraphs 2–3, 5–7, 9, 74, 77–78, 115–16, 144, 151, 159–63, and 165–66, the Congressmen do not join.

Finally, certain of the intervening parties raise federal claims. The Congressmen do not join these claims.

165. The Hunter Intervenors join each numbered paragraph of this omnibus amended petition except for the following paragraphs (or any footnote therein): 1-6, 9-12, 14, 16-48, 56-65, 68-71, 74-87, 91, 96, 97, 99-107, 109, 115, 118, 119, 121, 122, 125-138, 140-164, 166.

166. The Intervenors-Petitioners Citizen Mathematicians and Scientists join each numbered paragraph of this omnibus

amended petition except for paragraphs 4, 12, 81, 87, 109, 115, 116, 118, 125-139, 142, 154, 156, 158, 162-165. The Intervenor-Petitioners Citizen Mathematicians and Scientists do not join fn.5.

Dated this 21st day of October, 2021.

Electronically signed by Anthony LoCoco

Richard Esenberg SBN 1005622

Anthony LoCoco SBN 1101773

Lucas Vebber SBN 1067543

WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.

330 East Kilbourn Avenue, Suite 725

Milwaukee, Wisconsin 53202-3141

Phone: (414) 727-9455

Rick@will-law.org

ALoCoco@will-law.org

Lucas@will-law.org

Attorneys for Petitioners

Electronically signed by Misha Tseytlin

Misha Tseytlin SBN: 1102199

Kevin M. LeRoy SBN: 1105053

TROUTMAN SANDERS LLP

1 N. Wacker Dr., Ste. 2905

Chicago, IL 60606

Phone: (608) 999-1240 (MT)

misha.tseytlin@troutman.com

kevin.leroy@troutman.com

Attorneys for Intervenor-Petitioners Congressmen Glenn Grothman, Mike Gallagher, Bryan Steil, Tom Tiffany, and Scott Fitzgerald

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
Carly Gerads, SBN 1106808
STAFFORD ROSENBAUM LLP
P.O. Box 1784
Madison, WI 53701-1784
Phone: (608) 256-0226
dpoland@staffordlaw.com
jmandell@staffordlaw.com
rsnyder@staffordlaw.com
rmanthe@staffordlaw.com
cgerads@staffordlaw.com

Mel Barnes SBN: 1096012
LAW FORWARD, INC.
Post Office Box 326
Madison, WI 53703
Phone: (608) 535-9808
mbarnes@lawforward.org

Annabelle E. Harless *PHV
CAMPAIGN LEGAL CENTER
55 West Monroe Street, Suite 1925
Chicago, IL 60603
Phone (312) 312-2885
aharless@campaignlegal.org

Mark P. Gaber *PHV
Christopher Lamar *PHV
CAMPAIGN LEGAL CENTER
1101 14th Street NW, Suite 400

Washington, D.C. 20005
Phone: (202) 736-2200
mgaber@campaignlegal.org
clamar@campaignlegal.org

Attorneys for Intervenors-Petitioners Black Leaders Organizing for Communities, Voces De La Frontera, The League of Women Voters of Wisconsin, Cindy Fallona, Lauren Stephenson, and Rebecca Alwin.

Electronically signed by Charles G. Curtis, Jr.

Charles G. Curtis, Jr. SBN: 1013075
PERKINS COIE LLP
1 E. Main St., Suite 201
Madison, WI 53703

Aria C. Branch *PHV
Christina Ford *PHV
William K Hancock, III *PHV
Jacob Shelly *PHV
ELIAS LAW GROUP
10 G St. NE, Suite 600
Washington, DC 20002

Attorneys for Intervenor-Petitioners Lisa Hunter, et al.

Electronically signed by Michael P. May

Michael P. May SBN: 1011610
Sarah A. Zylstra SBN: 1033159
Tanner G. Jean-Louis SBN: 1122401
BOARDMAN & CLARK LLP
1 S. Pinckney St., Ste 410
P.O. Box 927
Madison, WI 53701

Phone: (608) 257-9521
mmay@boardmanclark.com
szylstra@boardmanclark.com
tjeanlouis@boardmanclark.com

David J. Bradford *PHV
JENNER & BLOCK LLP
353 N. Clark Street
Chicago, IL 60654
(312) 923-2975
dbradford@jenner.com

*Attorneys for Intervenors-Petitioners Citizen Mathematicians
and Scientists (Gary Krenz, et al.)*

U.S. Department of Commerce
U.S. Census Bureau

Table 1. APPORTIONMENT POPULATION AND NUMBER OF REPRESENTATIVES BY STATE: 2020 CENSUS

STATE	APPORTIONMENT POPULATION (APRIL 1, 2020)	NUMBER OF APPORTIONED REPRESENTATIVES BASED ON 2020 CENSUS ²	CHANGE FROM 2010 CENSUS APPORTIONMENT
Alabama	5,030,053	7	0
Alaska	736,081	1	0
Arizona	7,158,923	9	0
Arkansas	3,013,756	4	0
California	39,576,757	52	-1
Colorado	5,782,171	8	1
Connecticut	3,608,298	5	0
Delaware	990,837	1	0
Florida	21,570,527	28	1
Georgia	10,725,274	14	0
Hawaii	1,460,137	2	0
Idaho	1,841,377	2	0
Illinois	12,822,739	17	-1
Indiana	6,790,280	9	0
Iowa	3,192,406	4	0
Kansas	2,940,865	4	0
Kentucky	4,509,342	6	0
Louisiana	4,661,468	6	0
Maine	1,363,582	2	0
Maryland	6,185,278	8	0
Massachusetts	7,033,469	9	0
Michigan	10,084,442	13	-1
Minnesota	5,709,752	8	0
Mississippi	2,963,914	4	0
Missouri	6,160,281	8	0
Montana	1,085,407	2	1
Nebraska	1,963,333	3	0
Nevada	3,108,462	4	0
New Hampshire	1,379,089	2	0
New Jersey	9,294,493	12	0
New Mexico	2,120,220	3	0
New York	20,215,751	26	-1
North Carolina	10,453,948	14	1
North Dakota	779,702	1	0
Ohio	11,808,848	15	-1
Oklahoma	3,963,516	5	0
Oregon	4,241,500	6	1
Pennsylvania	13,011,844	17	-1
Rhode Island	1,098,163	2	0
South Carolina	5,124,712	7	0
South Dakota	887,770	1	0
Tennessee	6,916,897	9	0
Texas	29,183,290	38	2
Utah	3,275,252	4	0
Vermont	643,503	1	0
Virginia	8,654,542	11	0
Washington	7,715,946	10	0
West Virginia	1,795,045	2	-1
Wisconsin	5,897,473	8	0
Wyoming	577,719	1	0
TOTAL APPORTIONMENT POPULATION ¹	331,108,434	435	

¹ Includes the resident population for the 50 states, as ascertained by the Twenty-Fourth Decennial Census under Title 13, United States Code, and counts of U.S. military and federal civilian employees living overseas (and their dependents living with them overseas) allocated to their home state, as reported by the employing federal agencies. The apportionment population excludes the population of the District of Columbia. The counts of overseas personnel (and dependents) are used for apportionment purposes only.

² The U.S. Census Bureau prepared these calculations using the existing size of the U.S. House of Representatives (435 members) and the Method of Equal Proportions, as provided for in Title 2, United States Code, Sections 2a and 2b.