IN THE SUPREME COURT OF WISCONSIN

No. 2021AP001450 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.

RESPONSE BRIEF OF INTERVENORS-PETITIONERS CITIZEN MATHEMATICIANS AND SCIENTISTS

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INTRODUCTION

While there is consensus among the parties as to many of the standards that apply to legislative and congressional redistricting, there is a stark divide when it comes to the two issues specifically raised by the Court—first, whether the Court should apply the "least change" approach that Petitioners advocate; and second, whether the Court should consider the partisan makeup of districts when evaluating or creating new maps. As to these two questions, the other parties generally fall into one of two camps. On the propriety of a "least change" approach, one set of parties argues that the Court is *required* to adopt a "least change" approach, while the other set of parties argues that such an approach is essentially forbidden. And on whether the Court should consider the partisan makeup of districts, the same parties who urge strict adherence to "least change" insist that the Court must be completely blind to partisan impacts, while many of the same parties who argue that "least change" is invalid advocate instead for prioritizing partisan fairness.

Citizen Mathematicians and Scientists do not fall neatly into either of these two camps. On "least change," Citizen Mathematicians and Scientists recognize the value of looking to the last maps validly adopted by the Legislature and signed by the Governor and then using only those new maps that perform as well or better than the prior maps on all the required redistricting criteria. Accordingly, Citizen Mathematicians and Scientists advocate a "best map" approach that uses the Legislature and Governor Walker's 2011 maps as a benchmark, but does not freeze existing lines in place. And on the question of partisan makeup, Citizen Mathematicians and Scientists again split the difference. Citizen Mathematicians and Scientists' position is neither that the Court should prioritize nor that it should

ignore the partisan impacts of redistricting. A simple way to express Citizen Mathematicians and Scientists' position is that as between two plans that comply with all other applicable redistricting criteria, the Court should not blind itself to differences in the partisan consequences of the two plans and should instead choose the one that also scores better on standard measures of partisan fairness.

As to the Court's question of how the litigation process should unfold, it appears that all parties generally concur that the Court should solicit from the parties proposed remedial maps and expert reports detailing the features of those maps. Though the parties differ on the timing and exact details of the litigation process, Citizen Mathematicians and Scientists agree that it would be helpful to receive guidance from this Court as to the criteria the Court would like to see measured in the plans submitted to it. Citizens Mathematicians and Scientists offer herein a simple, straightforward method for the Court to make comparisons that are data-based and scientifically sound. And as stated previously, Citizens Mathematicians and Scientists stand ready to provide this Court with redistricting plans drawn through high-performance computing using cutting-edge algorithmic techniques that can demonstrate the various possibilities to the Court, as well as the tradeoffs that must be made if the Court wishes to prioritize one criterion over another.

ARGUMENT

I. THE COURT SHOULD NEITHER IGNORE NOR PRIORITIZE A "LEAST CHANGE" APPROACH WHEN EVALUATING OR CREATING NEW MAPS.

The other parties differ sharply on the question whether the Court should use a "least change" approach to remedial redistricting plans. One set of parties—Billie Johnson, Eric O'Keefe, Ed Perkins, Ronald Zahn (the "Petitioners"), Congressmen Glenn Grothman, Mike Gallagher, Bryan Steil, Tom Tiffany, and Scott Fitzgerald (the "Congressmen"), and the Wisconsin Legislature (the "Legislature")—argues that the Court is *required* to apply a "least change" approach. *See* Congressmen Br. at 2 (arguing it is the Court's "responsibility" to use a "least change" approach when imposing a remedial redistricting plan); Petitioners Br. at 21 (arguing that the Court has a "duty to assess the constitutionality of laws rather than to draft them from scratch" and therefore should use "least change"); Legislature Br. at 32 (arguing that if the Court does not use the Legislature's passed-but-vetoed plan as a starting point, then the "presumptive remedial map is the existing map, adjusted as necessary for population shifts").[1]

[1] The Legislature's primary argument that its "forthcoming redistricting plans are the presumptive remedy," even if the Governor vetoes those plans (Legislature Br. at 16), is squarely foreclosed by this Court's decision in *State ex rel. Reynolds v. Zimmerman*, 22 Wis. 2d 544, 126 N.W.2d 551 (1964). This Court reaffirmed *Zimmerman* in its decision accepting original jurisdiction of this action. *See* Order Granting Petition at 2 (Sept. 22, 2021, *amended* Sept. 24, 2021) (citing *Zimmerman* for the principle that "the legislature must present redistricting legislation to the governor for approval or veto under the Wisconsin Constitution's Presentment Clause; both the governor and the legislature are indispensable parts of the legislative process"). Ignoring this Court's Order, the Legislature claims that "*Zimmerman* is on shaky ground." Legislature Br. at 20. But the U.S. Supreme Court's decision in *Smiley v. Holm*, 285 U.S. 355 (1932), shows that *Zimmerman* stands on a very strong foundation. The *Smiley* Court held that because redistricting "involves lawmaking," it must be done "in accordance with the method which the State has prescribed for legislative enactments," including gubernatorial approval. *Id*. at 366-68; *see also Ariz. State Legislature v. Ariz. Indep Redistricting*

The other set of parties—Governor Tony Evers (the "Governor"), Lisa Hunter et al. (the "Hunter Intervenors"), Black Leaders Organizing for Communities et al. (the "BLOC Intervenors"), and Janet Bewley, Senate Democratic Minority Leader (the "Senate Democrats")—argues that the Court is essentially *forbidden* from using a "least change" approach. *See* Senate Democrats Br. at 14–15 (arguing that "least change" would "violate the … laws and principles that the Court is required to apply"); BLOC Br. at 23 (arguing that "least change" would "radically depart from this Court's extensive precedent in interpreting and applying the express language of state statutes and the Wisconsin Constitution"); Hunter Br. at 14 (arguing that the Court would be preserving Voting Rights Act and constitutional violations in the existing maps if it used a "least change" approach); Governor Br. at 8 (arguing that using "least change" would contravene the will of the voters).

Citizen Mathematicians and Scientists respectfully disagree with both positions. As expressed in their opening brief, Citizen Mathematicians and Scientists do not support a "least change" approach that requires freezing the existing districts in place, but they do recognize that the 2011 maps were the last maps duly enacted by the Legislature and signed by Governor Walker and therefore the Court can look to them as benchmarks with respect to the legitimate policy

Comm'n, 576 U.S. 787, 806–07 (2015) (reaffirming *Smiley*). Importantly, the Minnesota constitutional provision at issue in *Smiley*—similar to the Wisconsin constitutional provision that the Legislature relies on here—separately provided the Minnesota Legislature with the "power to prescribe the bounds of Congressional, Senatorial and Representative Districts, and to apportion anew the Senators and Representatives among the several Districts." Minn. Const. of 1857, art. IV, § 23 (now Minn. Const. art. IV, § 3). But that independent font of redistricting authority did not excuse the obligation to have redistricting legislation approved by the Governor in *Smiley* just as it does not here.

choices made by the State. Opening Br. at 19–27. Moreover, Citizen Mathematicians and Scientists acknowledge there is real value in stability for voters and accountability for legislators. Therefore, measuring the degree of stability and accountability in any new remedial map as compared to the degree of stability and accountability retained in the 2011 maps is a perfectly valid exercise of this Court's authority. Accordingly, the Court is not forbidden from looking to the 2011 maps for guidance and is not precluded from considering the degree to which any new map differs from the 2011 map.

But, just as clearly, the Court is not *required* to take the "least change" approach advocated by Petitioners. As multiple parties argue, nothing in Wisconsin's Constitution or statutes demands a "least change" approach. *See, e.g.*, BLOC Br. at 22–23; Hunter Br. at 14. If anything, the Wisconsin Constitution suggests the opposite approach. *See* BLOC Br. at 31–36 (construing the word "anew" in Wis. Const. art. IV, § 3). Nor is a "least change" approach consistent with past practice in Wisconsin. *See* Opening Br. at 27–29 (explaining the courts' processes in the 1990 and 2000 rounds of redistricting).

The Legislature and the Congressmen rely almost entirely on Federal authority to claim that "least change" is the required equitable approach for the judiciary when imposing remedial redistricting plans. *See* Legislature Br. at 32–36; Congressmen Br. at 17–18. But the Legislature and the Congressmen neglect to acknowledge that the animating principle underlying all the decisions they cite about the purported equitable limits on the Court's remedial redistricting authority is *federalism*. As the U.S. Supreme Court has explained: "*Federal* courts are barred from intervening in state apportionment in the absence of a violation of *federal* law precisely because it is the domain of the States, and not the federal courts, to conduct

apportionment in the first place. Time and again we have emphasized that reapportionment is primarily the duty and responsibility of the State through its legislature or other body, rather than of a *federal* court." *Voinovich v. Quilter*, 507 U.S. 146, 156 (1993) (internal quotation marks omitted) (emphasis added). That principle is what leads the cases relied on by the Legislature and the Congressmen to hold that a *Federal* court cannot rewrite *State* policy with respect to redistricting. *See* Legislature Br. at 32–36; Congressmen Br. at 17–22 (citing *North Carolina v. Covington*, 138 S. Ct. 2548, 2554–55 (2018) (per curiam) (Federal district court "is not free … to disregard the political program of a state legislature" on basis other than Federal law (ellipsis in original) (internal quotation marks omitted)); *Perry v. Perez*, 565 U.S. 388, 393 (2012) (per curiam) (similar); *Upham v. Seamon*, 456 U.S. 37, 41–42 (1982) (per curiam) (same); *White v. Weiser*, 412 U.S. 783, 795 (1973) (same)).

But this Court stands on a different footing with respect to its remedial redistricting authority. It is a co-equal branch of State government and is charged with the primary responsibility of adopting a State redistricting plan when the legislative and executive branches fail to fulfill their constitutional responsibility to do so. Indeed, the "power of the judiciary of a State to require valid reapportionment or to formulate a valid redistricting plan has not only been recognized by [the U.S. Supreme] Court but appropriate action by the States in such cases has been specifically encouraged." *Scott v. Germano*, 381 U.S. 407, 409 (1965) (per curiam) (internal citations omitted). In line with this role, this Court has recognized that, absent "a timely legislative compromise, [the Court's] participation in the resolution" of the "important state and federal legal and political issues" involved in redistricting is "highly appropriate" because these issues "go to the

heart of our system of representative democracy." *Jensen v. Wis. Elections Bd.*, 2002 WI 13, ¶4, 249 Wis. 2d 706, 639 N.W.2d 537. Thus, contrary to the cramped view offered by the Legislature and the Congressmen, this Court's proper role is as a full participant in deciding what the State's redistricting plans should look like. And that is true even though the "Constitution places primary responsibility for the apportionment of Wisconsin legislative districts on the legislature." Order Granting Petition at 2 (Sept. 22, 2021, *amended* Sept. 24, 2021).

In adopting new redistricting maps, this Court may look to the last validly enacted redistricting plan adopted by the Legislature and signed by Governor Walker to determine certain benchmarks (*see infra* pages 15–20), but must always hold itself to "higher standards" than would apply to the Legislature. *Abrams v. Johnson*, 521 U.S. 74, 98 (1997); *accord Chapman v. Meier*, 420 U.S. 1, 26 (1975); *see Connor v. Finch*, 431 U.S. 407, 414 (1977) ("a court will be held to stricter standards … than will a state legislature"). A valid "least change" approach would be to look at the way the Legislature and the Governor implemented the redistricting criteria in 2011 and then implement the same redistricting criteria in 2021 at least as well as, if not better than, the Legislature and the Governor did in 2011 to achieve the "best map." One of those criteria could be the degree to which the map promotes stability for voters and accountability for representatives by keeping voters in the same districts. But that would be just one criterion, not the overriding approach.

The "best map" approach is fully consistent with the principle that any judicial remedy must be tailored to the violation. Contrary to what the Legislature, the Congressmen, and the Petitioners argue, a malapportionment violation is not just an infringement of numerical or statistical standards. Rather, it is a violation of voters' "right to elect

legislators in a free and unimpaired fashion." *Reynolds v. Sims*, 377 U.S. 533, 562 (1964). Accordingly, a proper remedy for malapportionment does not simply move voters from one district to another to equalize populations, but instead balances State policies and criteria to safeguard all voters' rights to elect legislators in a "free and unimpaired fashion," taking into account that there have been significant shifts in much more than just raw population numbers over the past decade.

Indeed, this Court was the very first State Supreme Court to have recognized the harm that malapportionment actually inflicts on citizens' ability to vote in a free and unimpaired fashion. In the *State ex rel. Attorney General v. Cunningham* decisions in 1892, the Wisconsin Supreme Court issued the "earliest state supreme court decision invalidating a legislative district under an apportionment provision of any state constitution." James A. Gardner, *Foreword: Representation Without Party: Lessons from State Constitutional Attempts to Control Gerrymandering*, 37 RUTGERS L.J. 881, 927 (2006). And the Court did so after finding that the Legislature had attempted "to preserve the political status quo" and thus "preserve the power of the majority party." *State ex rel. Reynolds v. Zimmerman*, 22 Wis. 2d 544, 563, 126 N.W.2d 551, 562 (1964) (citing *State ex rel. Lamb v. Cunningham*, 83 Wis. 90, 53 N.W. 35 (1892)). Accordingly, this Court has long recognized that malapportionment is about more than just numerical equality.

In sum, Citizen Mathematicians and Scientists urge the Court to value the "least change" principle for what it is meant to be—not a way to freeze district lines in place, but a way to recognize the legitimate policy choices made by the State's political branches the last time they

validly enacted a map together, including the choice of how much to value stability for voters and accountability for legislators.

II. THE COURT SHOULD NEITHER IGNORE NOR PRIORITIZE THE PARTISAN MAKEUP OF DISTRICTS WHEN EVALUATING OR CREATING NEW MAPS.

The same parties who urge the Court to adopt a "least change" approach claim that the Court is absolutely prohibited from looking at the partisan impacts of such an approach. *See* Congressmen Br. at 2 (arguing that "least change" "leaves no room for consideration of the partisan makeup of the map" and that partisan makeup has "no legal relevance under either state or federal law" in any event); Legislature Br. at 41 ("The Court cannot consider partisanship when evaluating proposed remedies."); Petitioners' Br. at 28 (arguing that the partisan makeup of districts "cannot be" a factor this Court considers).

Conversely, parties who argued that a "least change" approach is invalid urge the Court to place an absolute priority on partisan fairness in any plan it adopts. *See* Senate Democrats Br. at 14 (arguing that the Court should "elevate [partisan influence] above other factors"); Hunter Br. at 2, 5 (arguing that "this Court should focus its efforts on adopting maps that minimize partisan bias" and, because the "current maps are about as far from fair as the Legislature could possibly achieve, it is imperative that any judicially enacted plans not replicate that partisan prejudice").

Here, too, respectfully, Citizen Mathematicians and Scientists do not agree with either extreme. Under the Federal Constitution, this Court cannot stay blind to partisan outcomes because the Court has an obligation to ensure that it does not inadvertently adopt a map that grants either political party an extreme advantage. *See* Opening Br. at 29–34. But the Court need not prioritize partisan fairness above all else

either. Rather, the Court should look first for a plan that meets all constitutionally and statutorily required redistricting criteria, and then check the plan's partisan impacts. As between two plans that score well with respect to all the other criteria, the Court should choose the plan that also scores better on standard measures of partisan fairness. That is the approach "most consistent with judicial neutrality" and avoids putting the Court in the untenable position of "select[ing] a plan that seeks partisan advantage." *Jensen*, 249 Wis. 2d 706, ¶12 (quotation marks omitted).

Willfully blinding oneself to partisan outcomes is not an option. The Congressmen's claim that "nothing in Wisconsin or federal law makes political considerations relevant to the legality of a map, including a remedial map," Congressmen Br. at 24, is flat wrong. Both Federal constitutional and statutory law requires courts to consider districts' partisan makeup when assessing a map's legality. As explained in Citizen Mathematicians and Scientists' opening brief, severe partisan gerrymandering remains unconstitutional under Federal law, even though there is no Federal remedy for a claim of partisan gerrymandering following the U.S. Supreme Court's decision in *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019). Opening Br. at 29–30. Because this Court is bound by the Federal Constitution, it has a duty to avoid adopting a remedial redistricting plan that results in an unconstitutional partisan gerrymander. The Court cannot choose to ignore partisan consequences.

Federal statutory law also demands consideration of districts' partisan makeup. Although all parties appear to agree that any map adopted by this Court must comply with the Voting Rights Act ("VRA"), the parties largely ignore that the Court *must* consider partisan data and electoral outcomes as part of its analysis under the

VRA of whether a map's districts provide minority voters with "less opportunity than other members of the electorate … to elect representatives of their choice." 52 U.S.C. § 10301(b). A map that denies equal electoral opportunity is unlawfully dilutive, but the Court cannot assess electoral opportunity without looking at electoral outcomes. *See* Opening Br. at 9–11. Accordingly, because it has an obligation to comply with the VRA as well as with the Federal Constitution, the Court cannot blind itself to partisan outcomes in the manner the Legislature, the Congressmen, and the Petitioners propose.

Citizen Mathematicians and Scientists also observe that no other party advocates that this Court should consider the partisan makeup of districts to ensure that at least some of them are competitive for Wisconsin voters, which is arguably essential to guaranteeing Wisconsin a republican form of government. *See* Opening Br. at 34. Particularly in a State like Wisconsin, where the statewide vote is closely divided, there should be a significant number of districts in which control realistically can change hands from election to election as public opinion shifts. This point is distinct from partisan fairness: In a highly competitive State like Wisconsin, if half the districts were solidly Republican and half were solidly Democratic, the map might not be "unfair" to either political party; but the absence of competitive districts would render the map wholly unresponsive to public opinion and thus unfair to the People as a whole.

Because no other party advocates for competitive districts, one might infer that that both sides simply want safe seats for their respective parties or special interests. As Citizen Mathematicians and Scientists previously argued, when a map is devoid, or nearly devoid, of competitive districts, outcomes are preordained, and elections lose their meaning. *See* Opening Br. at 34. Accordingly, although it is not

constitutionally or statutorily required, Citizen Mathematicians and Scientists urge this Court to consider making districts more responsive to the People of Wisconsin, which would require consideration of their partisan makeup.

III. THE COURT SHOULD ADOPT A "BEST MAP" APPROACH WITH ARTICULATED, MEASURABLE CRITERIA WHEN EVALUATING OR CREATING NEW MAPS.

While the parties differ on the timing and exact details, it appears that all parties broadly support a streamlined litigation process that centers on each party submitting a proposed map or maps for the Court's consideration, along with expert reports describing each map's key features. Citizen Mathematicians and Scientists have deemed this the "best map" approach, and have described how the three-judge courts implemented such an approach in both the 1990s and 2000s. *See* Opening Br. at 27–29.

Only the Hunter Intervenors argue affirmatively that this Court should use a "special master" to assist with the litigation, but it appears the role they envision for the special master is simply to evaluate plans, not to draw maps. *See* Hunter Br. at 32–33. Citizen Mathematicians and Scientists respectfully suggest that this Court is perfectly able to evaluate the maps submitted to it, much as the Federal three-judge courts did in both the 1990s and the 2000s. Accordingly, for this reason as well as those previously discussed in their opening brief, Citizen Mathematicians and Scientists do not believe a special master is needed for this litigation. Opening Br. at 37–38.

In terms of next steps, if the Legislature and the Governor fail to reach a bipartisan compromise in the next few weeks, Citizen Mathematicians and Scientists respectfully suggest that this Court then could provide the parties with its views on the four questions briefed

by all the parties, along with a set of articulated, measurable criteria for the parties' proposed maps. There is already agreement among the parties on many of the criteria proposed in Citizen Mathematicians and Scientists' opening brief, as noted below:

Population Equality: All parties appear to agree that, for the congressional map, absolute population equality is the paramount objective. Other than Petitioners, all parties likewise appear to agree that while the Federal Constitution generally tolerates maximum population deviations of up to 10% for legislative districts, any population deviation for Wisconsin's legislative districts should be *de minimis*. Therefore, it seems most parties would concur with Citizen Mathematicians and Scientists' proposal to cap tolerable deviations for the legislative districts at plus or minus 1%, for a 2% maximum population deviation.

Minority Voting Rights: All parties agree that the legislative and congressional plans must comply with the Voting Rights Act, as well as the Fourteenth and Fifteenth Amendments to the Federal Constitution. Accordingly, all parties agree that this Court must ensure that any map it adopts provides minority voters with the same opportunity to elect their candidates of choice as is enjoyed by other voters, and that the Court must avoid the excessive and unjustified use of race.

Nesting: All parties appear to agree that three assembly districts must nest within each senate district.

Numbering of Districts: No party disputes the interpretation of the senate district-numbering provision proposed by Citizen Mathematicians and Scientists.

Contiguity: No party disputes that legislative districts must consist of convenient contiguous territory. Some parties acknowledge

that this does not require "literal" contiguity where a town has annexed noncontiguous "islands." The parties disagree as to whether the Court should consider contiguity for congressional districts, with the Congressmen arguing that it should be considered only to the extent it is consistent with a "least change" approach.

Respect for Political Subdivisions: The parties agree that legislative districts should be bounded by county, municipal, or ward lines. The parties disagree as to whether the Court should consider preservation of political subdivisions for congressional districts, with the Congressmen arguing that such preservation should be considered only to the extent it is consistent with a "least change" approach.

Geographic Compactness: The parties agree that assembly districts must be in as compact form as practicable. The parties disagree as to whether the Court should consider compactness for the senate or congressional maps, with the Congressmen arguing that compactness should be considered only to the extent it is consistent with a "least change" approach. Of those parties that agree compactness should be considered, there is general consensus that the Polsby-Popper and Reock scores are among the proper measures.

Respect for Communities Defined by Actual Shared Interests: Only some parties urge the Court to look to communities of interest.

Stability: As described above with respect to the discussion about a "least change" approach, some parties argue that the degree to which district lines remain stable should be viewed positively while others argue that stability of districts is a negative factor.

Competitiveness or Responsiveness: As described above, only Citizen Mathematicians and Scientists raised this criterion.

Partisan Fairness: As described above, the parties disagree on whether the Court should consider partisan fairness.

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For purposes of comparing the parties' maps against one another with respect to these criteria, the Court might adopt a "scorecard" or "report card" similar to the following. Importantly, this proposed "scorecard" uses the plans enacted by the Legislature and signed by Governor Walker in 2011 as the suggested benchmark or "floor" below which any new plan (such as the scorecard's hypothetical plans A, B, C, and D) cannot drop.

Traditional, Neutral Redistricting Principle	**Metric**[2]	**Legislative Map Enacted by 2011 Legislature and Governor Walker**	**Proposed New Legislative Map A**	**Proposed New Legislative Map B**	**Congressional Map Enacted by 2011 Legislature and Governor Walker**	**Proposed New Cong'l Map C**	**Proposed New Cong'l Map D**
Population equality	*Maximum population deviation*	Senate: 1076 persons, or 0.62%. Assembly: 438 persons, or 0.76%.			1 person, or 0.0001%.		
Minority voting rights	Number of effective minority districts	Senate: 2 Black districts. 0 Latino districts. Assembly: 6 Black districts. 1 Latino district.[3]			1 Black district. 0 Latino districts.		
Nesting	3 assembly districts per 1 senate district?	99 assembly districts perfectly nested into 33 senate districts.			(Not applicable.)		
Numbering	Regular series?	Yes, for senate districts 1 to 33, assembly districts 1 to 99.			Yes, for congressional districts 1 to 8.		
Contiguity	Legal contiguity?	Yes, for all 33 senate districts, 99 assembly districts.			Yes, for all 8 congressional districts.		
Respect for counties and municipalities (cities, villages, and towns, collectively called "county subdivisions" by the Census Bureau)	*Number broken, number of parts*[4]	Senate: 46 counties broken into 130 parts. 48 municipalities broken into 103 parts. Assembly: 58 counties broken into 229 parts. 79 municipalities broken into 189 parts.			12 counties broken into 27 parts. 34 municipalities broken into 68 parts.		
Wards and communities of interest	*Number of wards broken, number of parts*	Senate: TBD (to be determined). Assembly: TBD.			TBD.		

[2] Metrics are *italicized* if a lower number is preferable. Metrics are in regular typeface if a higher number is preferable.

[3] In 2011, the Legislature and Governor Walker attempted to create two majority-Latino assembly districts; but in 2012, the Federal court, applying the Voting Rights Act, ordered the border between those two districts redrawn to render one of the districts highly effective for Latino voters. *See Baldus v. Members of Wis. Gov't Accountability Bd.*, 849 F. Supp. 2d 840, 859–60 (E.D. Wis. 2012) (three-judge court).

[4] In this table a municipality is not counted as broken if it was divided only along county lines.

Traditional, Neutral Redistricting Principle	**Metric**[2]	**Legislative Map Enacted by 2011 Legislature and Governor Walker**	**Proposed New Legislative Map A**	**Proposed New Legislative Map B**	**Congressional Map Enacted by 2011 Legislature and Governor Walker**	**Proposed New Cong'l Map C**	**Proposed New Cong'l Map D**
Geographic compactness	Minimum Polsby-Popper and Reock scores	Senate: 0.05 Polsby-Popper 0.13 Reock. Assembly: 0.048 Polsby-Popper 0.15 Reock.			0.12 Polsby-Popper 0.30 Reock.		
Stability	*Number of residents moved*	Senate: 1,205,216. Assembly: 2,357,592.			891,430.		
Partisan fairness	*Difference between number of districts carried by Republican candidates and by Democratic candidates in extremely competitive elections*[5]	Senate: 24 (in two nearly tied elections, 45 districts carried by Republicans, 21 by Democrats). Assembly: 52 (in two nearly tied elections, 125 districts carried by Republicans, 73 by Democrats).			8 (in two nearly tied elections, 12 districts carried by Republicans, 4 by Democrats).		

[5] This is just one of many reasonable measures of partisan fairness. The closest Republican statewide victory in Wisconsin in the last decade was President Trump's in 2016—by less than a percentage point over Secretary Clinton. The closest Democratic statewide victory in the last decade was President Biden's in 2020—also by less than a percentage point. In the two elections combined, the Democratic campaigns garnered about 3,013,000 votes, compared with about 3,015,000 votes for the Republican campaigns—almost a perfect tie, with a net Republican advantage of less than one-twentieth of one percentage point. For any given map—congressional, senate, or assembly—it would be reasonable, then, to expect the number of districts carried by each party to be nearly equal, resulting in a score close to zero.

Traditional, Neutral Redistricting Principle	Metric[2]	Legislative Map Enacted by 2011 Legislature and Governor Walker	Proposed New Legislative Map A	Proposed New Legislative Map B	Congressional Map Enacted by 2011 Legislature and Governor Walker	Proposed New Cong'l Map C	Proposed New Cong'l Map D
Competitive-ness and responsiveness	Number of districts that swung from one party to another in paired elections[6]	Senate: 0 swing districts (21 districts were won by Republicans in both elections; 12 by Democrats; 0 changed hands). Assembly: 4 swing districts (59 were won by Republicans in both elections; 36 by Democrats; 4 changed hands).			0 swing districts (5 districts were won by Republicans in both elections; 3 by Democrats; 0 changed hands).		

[6] This is just one of many reasonable measures of competitiveness or responsiveness. In 2014, a good year for Republican candidates in Wisconsin (and nationally), the Republican candidate for State Treasurer won statewide by 4.1 percentage points. In 2018, a good year for Democrats, the Democratic candidate for State Treasurer won, also by 4.1 points. Neither election featured an incumbent. In a responsive map, a significant fraction of districts would be expected to swing, to reflect this 8.2-point shift in votes. This row of the table reports how many districts actually did swing.

This table is not meant to be the definitive "scorecard," but merely to illustrate that compliance with all these criteria is measurable and that understanding how the 2011 maps did with respect to these criteria is largely knowable. To be sure, there are additional valid metrics for several of these criteria. For example, when considering geographic compactness, this "scorecard" reports the Polsby-Popper and Reock scores for the map's worst (*i.e.*, least compact) district. The Court could instead request the scores for each map's mean (*i.e.*, average) district. Or the Court might prefer alternative metrics for compactness, like the map's "cut-edges" score, which counts how many adjacent pairs of census blocks are separated in forming the districts and therefore focuses on the practical choices available to the line-drawers without being impacted by any eccentric contours of the State or of the districts' building blocks.[7] Many of the other districting criteria beyond compactness likewise can be measured reasonably in more than one way. And there may be other criteria the Court wishes to add to this list. Again, this table is not meant to be the definitive proposed "scorecard." It simply demonstrates that it will be possible for the Court to answer the question, "What is the best map?" by pointing to objective measures.

Citizen Mathematicians and Scientists believe they will be able to provide the Court with that "best map" using high-performance computing and algorithmic optimization techniques to search through hundreds of thousands or even millions of maps to find *the* map (one for congressional districts, one for legislative districts) that scores best

[7] For example, the Polsby-Popper or Reock score may depend in part on whether a district boundary is drawn to follow a jagged coastline or to run smoothly down the middle of Lake Michigan. But that cartographic nuance would not alter a map's cut-edges score.

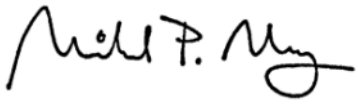
on whatever criteria the Court articulates. And they will do so not to augment the political power of mathematicians and scientists nor to benefit any political party, incumbent officeholder, or particular demographic group, but rather in service of the common interest that all Wisconsinites have in fair and effective representation.

CONCLUSION

Citizen Mathematicians and Scientists stand ready to provide the Court with legislative and congressional maps that neutrally implement all the required redistricting criteria and thus help ensure fair and effective representation for all Wisconsinites.

Dated this 1st day of November 2021.

BOARDMAN & CLARK LLP
By



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FORM & LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 5,323 words.

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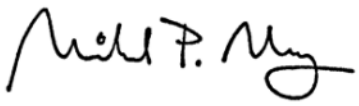

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I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of § 809.19(12).

I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

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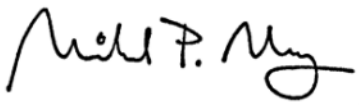

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