

**IN THE SUPREME COURT OF WISCONSIN  
APPEAL NO. 2021AP1450-OA**

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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.

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BRIEF BY JANET BEWLEY,  
STATE SENATE DEMOCRATIC MINORITY LEADER

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December 15, 2021

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## INTRODUCTION

Pursuant to the Court's orders of November 17 and November 30, 2021,<sup>1</sup> Senate Minority Leader Janet Bewley, on behalf of the Senate Democratic Caucus ("Senate Democrats"), respectfully submits a proposed set of district plans for the Wisconsin State Assembly and Senate.<sup>2</sup>

The Bewley Maps comply with the Court's Order in every respect. As confirmed by the expert report of Dr. Brian Amos, they make minimal changes to the extant districting plans to correct for population changes since the 2011 district maps were created, while also observing all Constitutional and statutory mandates.

The Senate Democrats respectfully request that the Court adopt the Bewley Maps as the Wisconsin Assembly and Senate district plans for the period beginning in 2022.<sup>3</sup>

## ARGUMENT

In its November 17, 2021 order, this Court invited all parties to "file a proposed map (for state assembly, state senate, and congress), complying with the parameters set forth in the court's forthcoming decision." The parameters later provided simply required that submitted maps "mak[e] the minimum changes necessary in order to conform the existing . . . state legislative redistricting plans to

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<sup>1</sup> This latter order is hereinafter referred to as the "Order."

<sup>2</sup> Visual depictions of the proposed district plans, "Bewley Assembly Map" and "Bewley Senate Map," collectively referred to as the "Bewley Maps," are provided as Exhibit 1 to the Expert Report of Brian Amos, Ph.D. ("Amos Rpt."), filed herewith. The data files for these plans are available to the Court upon request and are being provided to counsel for all other parties concurrent with this filing.

<sup>3</sup> The Senate Democrats are not proposing a map for United States congressional districts.

constitutional and statutory requirements.” (Order, ¶ 8.) The Bewley Maps faithfully comply with the Court’s Order in every respect. As a result, this Court should adopt them as the State’s new legislative redistricting plan.

Under the Court’s Order, the specific legal requirements that proposed maps must adhere to are the maintenance, to the extent possible, of equal population among districts, (¶¶ 24-28), compliance with voter protection requirements as embodied in the Voting Rights Act of 1965 (¶ 27), and the Wisconsin constitutional requirements of respect for county and municipal boundaries (¶ 35), district contiguity (¶ 36), and district compactness (¶ 37). Beyond ensuring compliance with these mandates, the Court has ordered that all maps adhere to a “least-change” approach that uses the current maps enacted in 2011 (“benchmark maps”) as a template. (¶¶ 64, 66.) As described below, the Bewley Maps achieve each of these objectives.

**I. The Bewley Maps implement least change.**

In compliance with the Court’s Order, the Bewley Maps “mak[e] the minimum changes necessary in order to conform the existing congressional and state legislative redistricting plans to constitutional and statutory requirements.” (Order, ¶ 8.) Although these requirements require some deviation from the previous maps in order to correct for population changes, their maximal adherence to a least change is manifested in Dr. Amos’ analysis.

**A. The Bewley Maps perform extremely well in core retention.**

The Bewley Maps' adherence to least change is clearly demonstrated by their achievement in the most basic and simplest of least change metrics: core retention. Under the Maps, 83.8% of all voters retain their Assembly districts and 90.5% retain their Senate districts. Amos Rpt. at 7; Exs. 3 and 4. These numbers stand in stark contrast to the benchmark maps, which maintained only 58.8% of voters in their prior Assembly districts and only 78.8% in their prior Senate districts. Amos Rpt. at 7.

**B. The Bewley Maps also perform very well in other least change-related factors.**

To the extent the Court's least change analysis will consider other measures of stability such as Senate "disenfranchisement" and incumbent pairing, the Bewley Maps perform well in those regards as well.

"Disenfranchisement" occurs when a resident is moved from an odd-numbered district to an even-numbered district. Such voters will have voted for Senate in 2018 but will not be able to do so again until 2024 – a six-year span that is two years longer than that intended by the four-year constitutional Senate term. Under the Bewley Maps, only 135,560 voters – 2.3% of the state population, falls under this category. Amos Rpt. at 7; Ex. 5. By comparison, the benchmark maps affected 300,102 people – more than twice what the Bewley Maps did – in the same way. Amos Rpt. at 7, n. 2 and Ex. 2, p. 2.

Finally, the Bewley Maps contain eight Assembly districts and three Senate districts that contain two incumbents' homes. These numbers, too, compare favorably to the benchmark maps themselves, which paired eleven sets of Assembly members against one another and one set of Senators against one another. Thus, the Bewley Maps' number of incumbent pairings is fewer in total than the benchmark map and a low number overall. Amos Rpt. at 8.

Therefore, any way the concept of "least change" can reasonably be captured, the Bewley Maps produce it.

**II. The Bewley Maps make the minimum changes necessary to conform to legal requirements.**

As the Court has recognized, a least change approach to redistricting still requires compliance with other legal requirements. (Order, ¶ 8.) As described *infra*, the Bewley Maps achieve that compliance while minimizing, as much as possible, deviation from the previous maps.

**A. The Bewley Maps achieve population equality.**

The first constitutional requirement that the maps must comply with is that population among districts must be "as nearly equal as practicable." (Order, ¶¶ 27, 32.) The districts in the Bewley Assembly Map range from 0.94% under to 0.92% over the ideal population of 59,533 people, for a total deviation of 1.86% from ideal. Amos Rpt. at 8; Ex. 6. Similarly, the districts of the Bewley Senate Map range from 0.89% under to 0.72% over under the ideal population of 178,598, producing a total deviation of 1.61%. Amos Rpt. at 8; Ex. 7. These figures are far below the presumptively



unconstitutional threshold of 10%. *Brown v. Thomson*, 462 U.S. 835, 842-843 (1983).

**B. The Bewley Maps comply with the Voting Rights Act, consonant with a least change approach.**

The Bewley Maps also ensure compliance with the Voting Rights Act of 1965, and in doing so maintain the remedies chosen by the 2011 benchmark maps.

As Dr. Amos determined, the Bewley Maps maintain six Assembly districts (the 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup>, and 18<sup>th</sup>) and two Senate districts (the 4<sup>th</sup> and 6<sup>th</sup>) with a majority Black voting age population (“VAP”). The Bewley Maps also maintain two Assembly districts (the 8<sup>th</sup> and 9<sup>th</sup>) with a VAP that is majority Hispanic, and a Senate district (the 3<sup>rd</sup>) with a plurality Hispanic VAP. These counts are identical to those in the 2011 benchmark maps. Amos Rpt. at 9.

This plan complies with the test of Voting Rights Act compliance set forth in *Thornburg v. Gingles*, 478 U.S. 30 (1986). Amos Rpt. at 9-15.

**C. The Bewley Maps respect geographic lines.**

Article IV, Section 4 of the Wisconsin Constitution directs that Assembly districts “be bounded by county, precinct, town or ward lines[.]” Each of the districts in the Bewley Maps perfectly comply with this requirement. Amos Rpt. at 16.

In addition, the Bewley Maps minimize splitting of larger political subdivisions. The requirements of equal population, compactness, and least change make perfect avoidance of splits

impossible. Amos Rpt. at 16; Exs. 8 and 9. Even so, the Bewley Assembly Map splits 55 counties and 79 municipalities, while the Bewley Senate Map splits 48 counties and 52 municipalities. This achieves nearly identical numbers of splits as the 2011 benchmark maps, with the Bewley Maps splitting slightly fewer counties and slightly more municipalities. Amos Rpt. at 16.

**D. The Bewley Maps achieve contiguity.**

The Wisconsin Constitution also places certain contiguity requirements on both Assembly and Senate districts. Wis. Const., Art. IV, Sections 4 and 5. These must be perfectly complied with, except in the case of certain municipal “islands” created by annexation. (Order at ¶ 36, citing *Prosser v. Elections Bd.*, 793 F. Supp. 859, 866 (W.D. Wis. 1992). The Bewley Maps perfectly match the 2011 benchmark maps’ adherence to this requirement. Amos Rpt. at 16-17.

**E. The Bewley Maps comply with the constitutional compactness mandate.**

Finally, the Wisconsin Constitution also requires Assembly districts to be “in as compact form as practicable,” with Senate districts similarly consisting of “convenient contiguous territory” comprised of whole Assembly districts. Wis. Const., Article IV, Sections 4 and 5.

The Bewley Maps achieve excellent compactness across the state, within the confines of the least change approach. Using the standard Reock and Polsby-Popper tests, the Bewley Maps for both the Assembly and Senate perform on par with the average

compactness of the 2011 benchmark maps, while improving on the benchmark maps' minimum compactness. Amos Rpt. at 17-18; Exs. 10 and 11.<sup>4</sup>

In complying with each of the above legal requirements,<sup>5</sup> the Bewley Maps have still managed to achieve core retention of 83.8% in Assembly districts and 90.5% in Senate districts while also performing well in other metrics of "least change." The Bewley Maps have thus made the minimum changes necessary to conform to legal requirements. As such, they have met every aspect of the test set forth by this Court and merit its adoption.

### CONCLUSION

The Senate Democrats respectfully request that the Court adopt the Bewley Maps as the redistricting plan for the Wisconsin Assembly and Senate.

Respectfully submitted this 15<sup>th</sup> day of December 2021.

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<sup>4</sup> The Bewley Assembly Map has Reock scores ranging from 0.148 to 0.624 with an average of 0.405, and Polsby-Popper scores ranging from 0.065 to 0.524 with an average of 0.254. The Bewley Senate Map has Reock scores ranging from 0.137 to 0.564 with an average of 0.401, while the Polsby-Popper scores range from 0.078 to 0.451, with an average of 0.212. Amos Rpt. at 17-18.

<sup>5</sup> Though obvious enough not to merit further discussion, the Bewley Maps also meet constitutional requirements of single-member Assembly districts and the indivisibility of Assembly districts across Senate districts. Amos Rpt. at 18.

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**FORM AND LENGTH CERTIFICATION**

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § (Rule) 809.19(8)(b), (bm), and (c) for a brief produced with a proportional serif font. The length of this brief is 1,647 words.



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Aaron G. Dumas

**CERTIFICATE OF SERVICE**

I hereby certify that pursuant to the Court's November 17, 2021 Order in the above-captioned case, on December 15, 2021, I caused to be submitted the foregoing document as an attachment in pdf format to the Clerk of the Court for filing via electronic mail at this address: clerk@wicourts.gov. On December 15, 2021, I also caused a paper original and ten (10) copies of this document to be delivered by personal delivery to the Clerk of Court, with the notation "This document was previously filed via email," and also caused this document to be served on all counsel of record via electronic mail.



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Aaron G. Dumas