

---

**No. 2021AP1450-OA**

---

**In the Supreme Court of Wisconsin**

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  
STEL, 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.

---

**BRIEF OF THE CONGRESSMEN SUPPORTING THEIR  
PROPOSED CONGRESSIONAL DISTRICT MAP**

---

*(Counsel for the Congressmen listed on the following page)*

MISHA TSEYTLIN  
*Counsel of Record*  
State Bar No. 1102199  
KEVIN M. LEROY  
State Bar No. 1105053  
TROUTMAN PEPPER HAMILTON  
SANDERS LLP  
227 W. Monroe, Suite 3900  
Chicago, Illinois 60606  
(608) 999-1240 (MT)  
(312) 759-1939 (fax)  
misha.tseytlin@troutman.com

*Counsel for Congressmen Glenn  
Grothman, Mike Gallagher, Bryan Steil,  
Tom Tiffany, and Scott Fitzgerald*

---

## TABLE OF CONTENTS

INTRODUCTION .....	1
BACKGROUND.....	1
A. The Current Congressional Districts.....	1
B. The Proposed Remedial Map.....	8
SUMMARY OF ARGUMENT .....	19
ARGUMENT .....	25
I. Wisconsin’s Current Congressional Districts Are Unconstitutionally Malapportioned, And This Court Made Clear That It Will Adopt New Congressional Districts To Remedy That Unconstitutionality .....	25
II. The Proposed Remedial Map Complies With All Federal And State-Constitutional Requirements And Adheres To A “Least-Change” Remedy That Minimizes Splits While Remaining Consistent With Wisconsin’s Political Geography In All Other Respects.....	28
A. The Proposed Remedial Map Achieves Absolute Population Equality.....	28
B. The Proposed Remedial Map Does Not Engage In Racial Gerrymandering.....	29
C. The Proposed Remedial Map Does Not Violate The Voting Rights Act.....	30
D. The Proposed Remedial Map Adheres To A “Least- Change” Approach That Also Reduces Splits While Remaining Consistent With Wisconsin’s Political Geography In All Other Respects .....	31
CONCLUSION.....	44

## TABLE OF AUTHORITIES

### Cases

<i>Baldus v. Members of Wis. Gov't Accountability Bd.</i> , 849 F. Supp. 2d 840 (E.D. Wis. 2012).....	2, 30, 31
<i>Bethune-Hill v. Va. State Bd. of Elections</i> , 141 F. Supp. 3d 505 (E.D. Va. 2015) .....	33, 34
<i>Cnty. of Kenosha v. C &amp; S Mgmt., Inc.</i> , 223 Wis. 2d 373, 588 N.W.2d 236 (1999).....	29, 30
<i>Cnty. of Milwaukee v. Williams</i> , 2007 WI 69, 301 Wis. 2d 134, 732 N.W.2d 770 (2007).....	27
<i>Cooper v. Harris</i> , 137 S. Ct. 1455 (2017) .....	29, 30
<i>Jensen v. Wis. Elections Bd.</i> , 2002 WI 13, 249 Wis. 2d 706, 639 N.W.2d 537 (per curiam).....	26
<i>Johnson v. Wis. Elections Comm'n</i> , 2021 WI 87, ___ Wis. 2d ___ ; ___ N.W.2d ___ .....	<i>passim</i>
<i>Miller v. Johnson</i> , 515 U.S. 900 (1995) .....	29
<i>Shaw v. Reno</i> , 509 U.S. 630 (1993) .....	29
<i>Thornburg v. Gingles</i> , 478 U.S. 30 (1986) .....	30, 31
<i>Voinovich v. Quilter</i> , 507 U.S. 146 (1993) .....	30, 31

### Constitutional Provisions

U.S. Const. amend XIV, § 1 .....	28, 29
U.S. Const. Art. I, § 4.....	28
Wis. Const. art. I, § 1 .....	25, 28
Wis. Const. art. IV, § 3.....	25, 28
Wis. Const. art. IV, § 4.....	33

## INTRODUCTION

Intervenors-Petitioners          Congressmen          Glenn Grothman, Mike Gallagher, Bryan Steil, Tom Tiffany, and Scott Fitzgerald (“the Congressmen”) respectfully offer their proposed remedial congressional map (“Proposed Remedial Map”) for this Court’s consideration, which is the same map that the Legislature recently adopted, *see* 2021 S.B. 622, and the Governor vetoed, Wis. Senate J. at 617, 105th Reg. Sess. (Nov. 18, 2021). The Congressmen submit that this Proposed Remedial Map best adheres to the “least-change approach” to “remedy[ing]” the unconstitutional “malapportionment” in the existing congressional map, in light of the 2020 Census. *Johnson v. Wis. Elections Comm’n*, 2021 WI 87, ¶¶ 1–2, 4, 64–79, \_\_\_ Wis. 2d \_\_\_ ; \_\_\_ N.W.2d \_\_\_ ; *id.* ¶¶ 82–83 (Hagedorn, J., concurring). This proposed remedial map equally reapportions Wisconsin’s eight congressional districts with a “least-change” methodology, making only adjustments that achieve population equality, while limiting the number of county and municipal splits and remaining consistent with Wisconsin’s political geography in all other respects.

## BACKGROUND

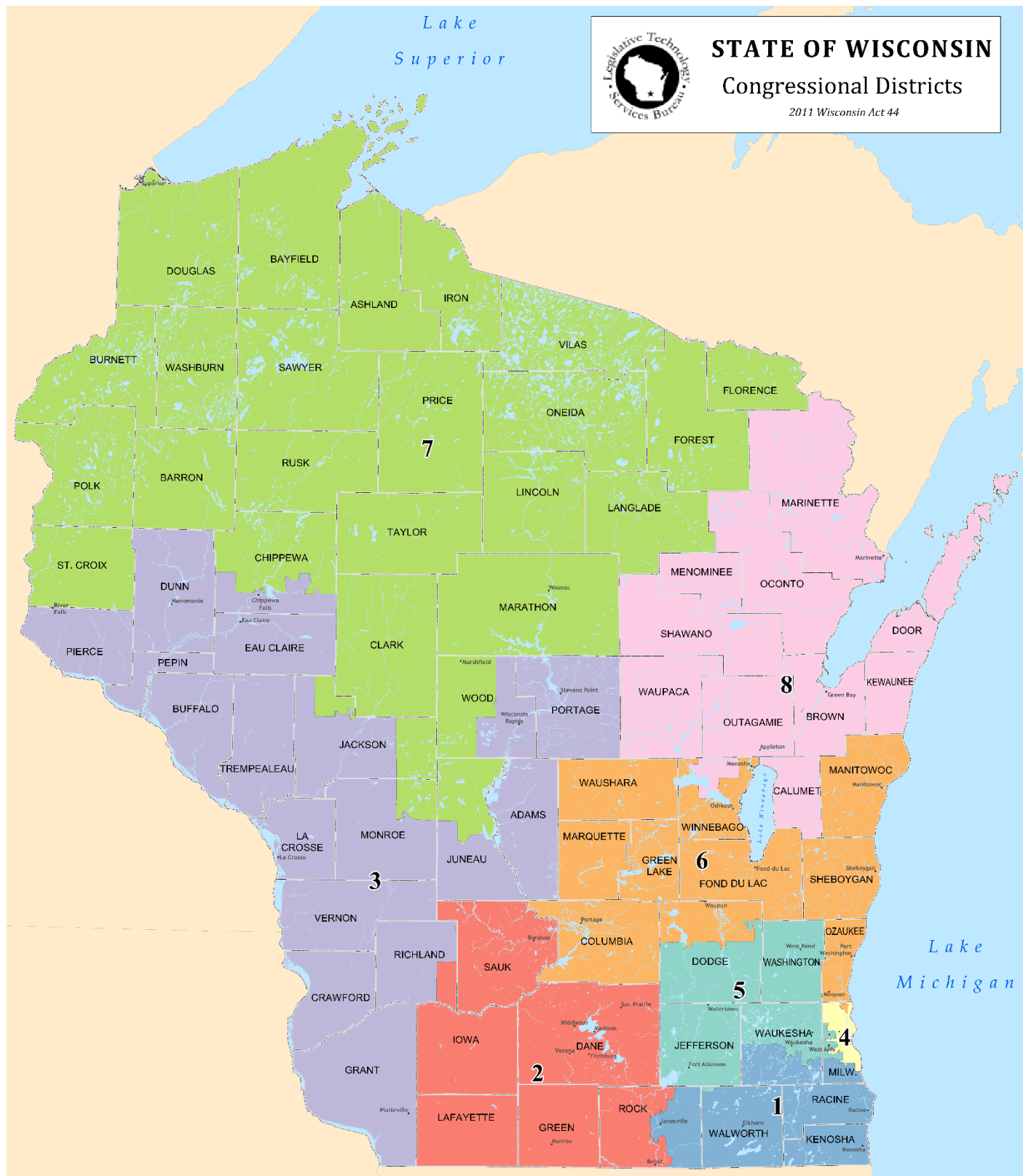
### A.     **The Current Congressional Districts**

Wisconsin “is divided into 8 congressional districts,” with “[e]ach congressional district . . . entitled to elect one representative in the congress of the United States.” Wis. Stat. § 3.001; *see* Wis. Stat. §§ 3.11–18; Joint Stipulation Of

Facts And Law (“Joint Stip.”) ¶ 24, *Johnson v. Wis. Elections Comm’n*, No.2021AP1450-OA (Wis. Nov. 4, 2021). Based on the results of the 2010 Census, Wisconsin’s total population was 5,686,986 people, meaning that the ideal population for each congressional district was 710,873 or 710,874 people. See Joint Stip. ¶ 29. The State’s 2011 congressional map had equal apportionment across all eight districts. *Baldus v. Members of Wis. Gov’t Accountability Bd.*, 849 F. Supp. 2d 840, 853 (E.D. Wis. 2012); Ex. B to Affidavit of Tom Schreiber (“Schreiber Aff.”). The Congressmen discuss each of Wisconsin’s existing congressional districts, in turn, below.

*(A full-page picture of the existing congressional map appears on the following page. See Schreiber Aff. Ex. C (non-map material cropped).)*

### The Existing Congressional Districts Map



District 1 is located in Wisconsin's southeastern corner, where it has been throughout Wisconsin's history. Schreibel Aff. Ex. A at 10 ("hereinafter "Schreibel Expert Rep."). District 1 largely includes mid-sized manufacturing centers and the surrounding areas—thus its population is composed of suburban, rural, and mid-sized communities. Schreibel Expert Rep. at 10. Given that its eastern boundary borders Lake Michigan, the people in District 1 generally share similar concerns and challenges related to manufacturing and the use and protection of the Lake Michigan coastline. Schreibel Expert Rep. at 10. District 1 comprises the counties of Kenosha and Racine, as well as parts of the counties of Walworth, Rock, Waukesha, and Milwaukee, thus it currently splits four counties, Schreibel Expert Rep. at 10. The municipalities in District 1 include the cities of Janesville, Kenosha, Racine, and Burlington. Schreibel Expert Rep. at 10. District 1 shares boundaries with Districts 2, 4, and 5. Schreibel Expert Rep. at 10.

District 2 is in southern Wisconsin, and it contains Wisconsin's capitol city of Madison, the University of Wisconsin, and the surrounding areas. Schreibel Expert Rep. at 10. The life and activity of Madison, the University, and the Capitol generally define this district's character. Schreibel Expert Rep. at 11. District 2 comprises Dane County, Lafayette County, Green County, Sauk County, and Iowa County, as well as parts of the counties of Rock and Richland. Schreibel Expert Rep. at 10. Therefore, District 2



currently splits two counties. Schreibel Expert Rep. at 11. The municipalities in District 2 include Madison, Monona, Middleton, Sun Prairie, and Beloit. Schreibel Expert Rep. at 11. District 2 shares borders with Districts 1, 3, 5, and 8. Schreibel Expert Rep. at 11.

District 3 is in the southwestern corner of the State, largely following the eastern shore of the Mississippi River. Schreibel Expert Rep. at 11. District 3 is often known as the “Driftless Region,” and it has a more rural and agricultural character. Schreibel Expert Rep. at 11. District 3 comprises the counties of Portage, Adams, Grant, Crawford, Vernon, La Crosse, Trempealeau, Buffalo, Eau Claire, Dunn, and Pierce, as well as parts of the counties of Juneau, Monroe, Jackson, Richland, and Chippewa. Schreibel Expert Rep. at 11. District 3, therefore, currently splits five counties. Schreibel Expert Rep. at 11. District 3 has only a few large municipalities, including Eau Claire and La Crosse in the west and—due to this district’s long, narrow appendage into central Wisconsin—Stevens Point. Schreibel Expert Rep. at 11. District 3 shares a border with District 2, 6, 7, and 8. Schreibel Expert Rep. at 11.

District 4 is centered in Wisconsin’s largest municipality, the City of Milwaukee, in southeast Wisconsin. Schreibel Expert Rep. at 11. This district is Wisconsin’s most urban and densely populated district. Schreibel Expert Rep. at 11. Further, District 4 is Wisconsin’s only majority-minority district. Schreibel Expert Rep. at 11. District 4

comprises parts of the counties of Milwaukee and Waukesha, and so it splits two counties, Schreibel Expert Rep. at 11. The largest municipalities here are the cities of Milwaukee, Shorewood and Whitefish Bay. Schreibel Expert Rep. at 11–12. District 4 borders Districts 1, 5, and 6. Schreibel Expert Rep. at 12.

District 5 is located towards Wisconsin's southeastern corner and has Milwaukee's northwest and western suburbs as its core. Schreibel Expert Rep. at 12. Owing to its proximity to Milwaukee, District 5's character is largely suburban and ex-urban. Schreibel Expert Rep. at 12. District 5 covers the counties of Jefferson and Washington, as well as parts of the counties of Dodge, Waukesha, Walworth, and Milwaukee. Schreibel Expert Rep. at 12. Accordingly, it splits four counties. Schreibel Expert Rep. at 12. District 5's municipalities include Menomonee Falls, Waukesha, West Bend, and Watertown, and it borders Districts 1, 2, 4, and 6. Schreibel Expert Rep. at 12.

District 6 is in eastern and central Wisconsin, and, as it has for decades, includes many small and mid-sized cities and villages with a focus on manufacturing and dairy. Schreibel Expert Rep. at 12. District 6 also borders Lake Michigan on its long, eastern boundary. Schreibel Expert Rep. at 12. So, like District 1, the people of District 6 generally have an interest in manufacturing, as well as the use and protection of the coast of Lake Michigan. Schreibel Expert Rep. at 13. District 6 contains the counties of Manitowoc, Waushara,

Marquette, Green Lake, Columbia, Fond du Lac, Ozaukee, and Sheboygan, as well as parts of the counties of Winnebago, Dodge, and Milwaukee. Schreibel Expert Rep. at 12. Therefore, this district splits three counties. Schreibel Expert Rep. at 12. District 6's municipalities include Sheboygan, Manitowoc, Fond du Lac, Oshkosh, Portage, and Two Rivers. Schreibel Expert Rep. at 12. It borders Districts 2, 3, 4, 5, and 8. Schreibel Expert Rep. at 12.

District 7 is “up north” Wisconsin, with its northern border along Lake Superior and its southern border reaching down to encompass much of the central region of the State. Schreibel Expert Rep. at 13. District 7 is Wisconsin's largest district geographically, Schreibel Expert Rep. at 13, and this vast area includes many of Wisconsin's lakes and forests, Schreibel Expert Rep. at 13. Further, many of northern Wisconsin's industries—including forest products and tourism—are based on those natural resources, giving this district a distinct character. Schreibel Expert Rep. at 13. Owing to its size, District 7 contains many counties, specifically St. Croix, Polk, Burnett, Barron, Washburn, Douglas, Bayfield, Ashland, Iron, Sawyer, Price, Rusk Taylor, Clark, Marathon, Lincoln, Oneida, Vilas, Florence, Forest, and Langlade, as well as parts of the counties of Chippewa, Jackson, Juneau, Monroe, and Wood. Schreibel Expert Rep. at 13. Accordingly, this district currently splits five counties. Schreibel Expert Rep. at 13. Finally, the district's municipalities include Wausau, Marshfield, Rhinelander, and

Hudson, and it shares a border with Districts 3, 6, and 8. Schreibel Expert Rep. at 13.

District 8 is Wisconsin's northeast region, comprising the Green Bay and Fox Valley media markets. Schreibel Expert Rep. at 13. District 8 contains the counties of Marinette, Oconto, Menominee, Shawano, Waupaca, Outagamie, Calumet, Brown, Kewaunee, and Door, as well as part of Winnebago County. Schreibel Expert Rep. at 13. It thus splits only a single county. Schreibel Expert Rep. at 13. District 8's municipalities include Green Bay, Appleton, Sturgeon Bay, Kewaunee, Kaukauna, Shawano, De Pere, and Marinette, Schreibel Expert Rep. at 13–14. And it shares a border with Districts 3 and 6—as well as a long border with District 7, which roughly tracks the line between the Wausau and Green Bay media markets. Schreibel Expert Rep. at 14.

### **B. The Proposed Remedial Map**

Wisconsin's population has grown and shifted since the last decennial Census. *Johnson*, 2021 WI 87, ¶¶ 1–2, 4 (identifying current “shifts in population across the state”); Joint Stip. ¶¶ 29–30, Ex. C. Specifically, Wisconsin's population grew 3.6% over the past ten years, although that growth was far from uniform across the State. Schreibel Expert Rep. at 14. District 2—and, in particular, Dane County—saw significant growth, while District 8, primarily in its Green Bay area, also grew in size. Schreibel Expert Rep. at 14–15. In contrast, District 4—especially the City of

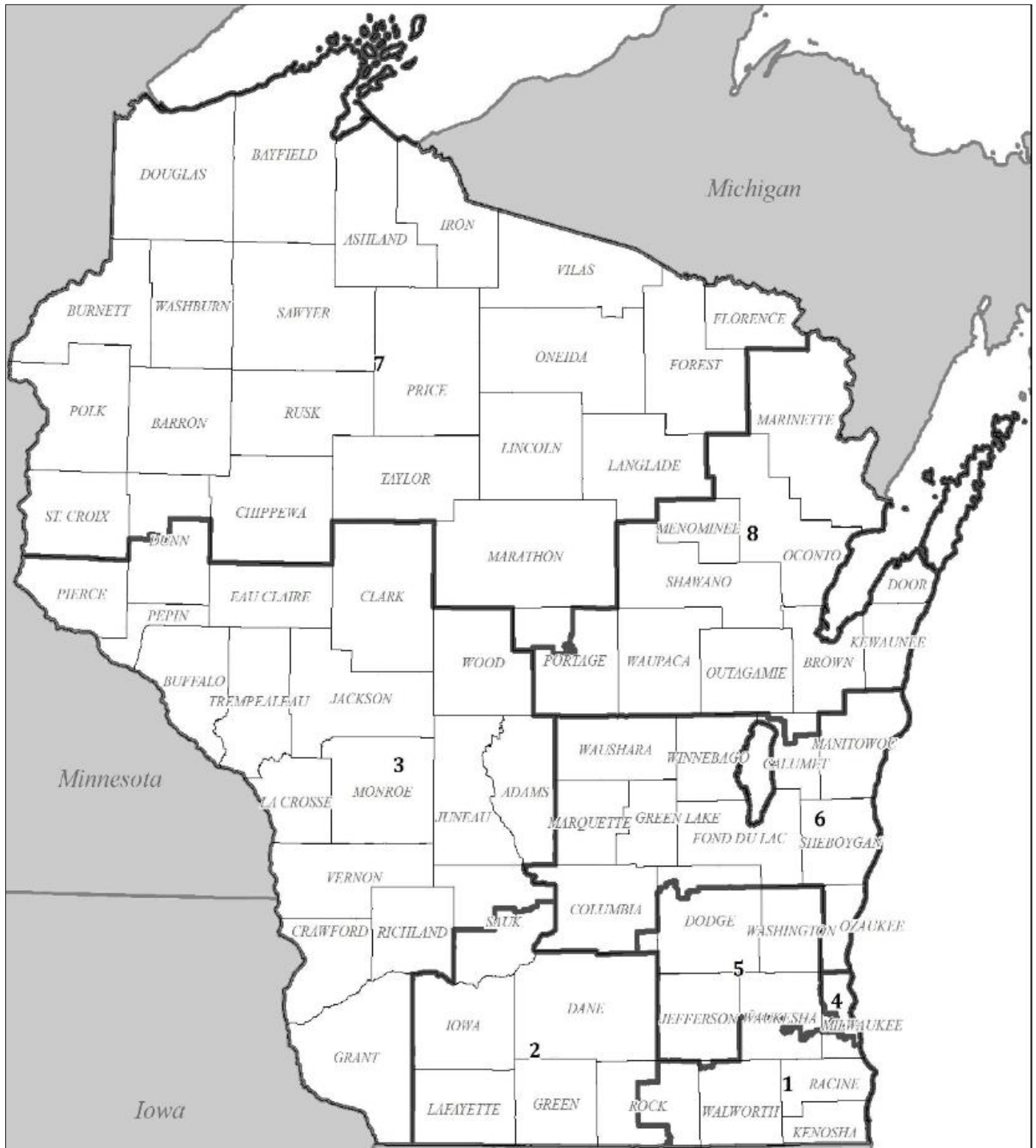
Milwaukee—experienced significant population decline, dropping approximately 17,000 people in the past ten years. Schreibel Expert Rep. at 14. And the remaining districts also saw population reductions, at least relative to elsewhere in the State. *See* Schreibel Expert Rep. at 14–15.

Given this population growth and shift, Wisconsin’s current congressional district map “do[es] not contain the constitutionally required level of equality between the populations of some of Wisconsin’s congressional districts.” Joint Stip. ¶ 13; *accord Johnson*, 2021 WI 87, ¶¶ 1–2, 4. Rather, Wisconsin’s four congressional districts covering Milwaukee County—Districts 1, 4, 5, and 6—must expand outward across the State to increase their population. Schreibel Expert Rep. at 14–15. District 7 and District 3, in the north and west, respectively, also need to expand to include more people. Schreibel Expert Rep. at 15. In contrast, District 2 and District 8 must contract in size, shedding current population to reach equal apportionment. Schreibel Expert Rep. at 15.

The Congressmen submit the Proposed Remedial Map to this Court in order to equally reapportion the people of Wisconsin into their eight congressional districts, thereby remedying the existing map’s unconstitutional malapportionment resulting from the State’s growth and shift in population. *See* Order at 2, *Johnson v. Wis. Elections Comm’n*, No.2021AP1450-OA (Wis. Nov. 17, 2021) (calling for such submissions from all parties here).

*(A full-page picture of the Proposed Remedial Map appears on the following page. See Schreibel Aff. Ex. D at 2 (non-map material cropped).)*

### The Proposed Remedial Map



The Proposed Remedial Map equally reapportions Wisconsin's eight congressional districts. After the 2020 Census, Wisconsin's current resident population is 5,893,718 people, which represents a population growth of 206,732 people in the State since 2010. Joint Stip. ¶ 29. So, given that Wisconsin has eight congressional districts, each district must now contain 736,714 or 736,715 people. Joint Stip. ¶ 30. The Proposed Remedial Map achieves equal reapportionment, as Districts 2, 3, 5, 6, 7, and 8 have 736,715 people, while Districts 1 and 4 have 736,714 people. Schreibel Aff. Ex. D at 1; Schreibel Expert Rep. at 15.

Below, the Congressmen summarize all of the limited changes that the Proposed Remedial Map makes to Wisconsin's existing districts to equally reapportion the State. This discussion begins with District 1 in the southeastern corner of Wisconsin and moves clockwise around the State, ending with District 4.

District 1. After the 2020 Census, District 1 was underpopulated by 9,337 people. Joint Stip. Ex. C. The Proposed Remedial Map adds these people to District 1 solely by moving the line between District 1 and District 2 farther into the existing District 2, without adjusting any of District 1's other boundaries. Schreibel Expert Rep. at 17. The Proposed Remedial Map's adjustment to District 1 adds more of the surrounding Janesville area into District 1, a city that has historically been located in this district. Schreibel Expert Rep. at 17. Further, since the existing border between



District 1 and District 2 already splits Rock County—and since the Proposed Remedial Map does not make any other changes to District 1—the Proposed Remedial Map equally reapportions District 1 without splitting any new counties. Schreibel Expert Rep. at 17. And while this change also shifted a small number of people from District 1 into District 2 in Rock County, that change was necessary to reach equal apportionment without splitting additional municipalities. Schreibel Expert Rep. at 17.

*District 2.* After the 2020 Census, District 2 was overpopulated by 52,681 people, Joint Stip. Ex. C, making it by far Wisconsin's largest-growing district over this past decade, Schreibel Expert Rep. at 18. After the Proposed Remedial Map's shift of people from District 1 to District 2, the Proposed Remedial Map still needed to remove people from District 2 to reach equal apportionment. Schreibel Expert Rep. at 18. The only change to District 2 that the Proposed Remedial Map makes to achieve that result—beyond the adjustment of its boundary with District 1, described above—is to the boundary between District 2 and District 3. Schreibel Expert Rep. at 18. Thus, the Proposed Remedial Map does not disrupt District 2's boundaries with District 5 and District 6. Schreibel Expert Rep. at 18. As for the change to the line between Districts 2 and 3, the Proposed Remedial Map moves all of Richland County into District 3, which is a county that is currently split between these districts, and which is generally rural in character. Schreibel

Expert Rep. at 18–19. The Proposed Remedial Map also moves part of Sauk County into District 3. Schreibel Expert Rep. at 19. Thus, the Proposed Remedial Map removes one split county between District 2 and District 3, replacing it with another. Schreibel Expert Rep. at 19.

District 3. After the 2020 Census, District 3 was underpopulated by 3,082 people. Joint Stip. Ex. C. Given that District 3 received a sizable number of people from District 2, as discussed immediately above, the Proposed Remedial Map had to remove people from District 3 to reach equal apportionment. Schreibel Expert Rep. at 19. To do so, the Proposed Remedial Map contracts District 3 at its most northernly and easternly extremities, while also eliminating four county splits due to the long appendage in the existing District 3. Schreibel Expert Rep. at 19. For the northern extremities, the Proposed Remedial Map moves District 3's portion of Chippewa County into District 7—eliminating that county split—along with the most northernly portion of Dunn County. Schreibel Expert Rep. at 19–20. For the eastern extremities, the Proposed Remedial Map moves the City of Stevens Point to District 7 and then—in a change that removes four county splits from District 3's long appendage—moves the District 7 portions of the counties of Jackson, Juneau, Monroe, and Wood to District 3, along with all of Clark County. Schreibel Expert Rep. at 20. Finally, the Proposed Remedial Map moves all of Portage County out of District 3 and into Districts 7 and 8, Schreibel Expert Rep.

at 20, as discussed more fully below. Overall, the Proposed Remedial Map eliminates six county splits in District 3 (Chippewa, Jackson, Juneau, Monroe, Wood Counties and—per the changes to District 2, above—Richland County), while adding only two county splits. Schreibel Expert Rep. at 20.

District 7. After the 2020 Census, District 7 was underpopulated by 4,182 people. Joint Stip. Ex. C. The Proposed Remedial Map accomplishes that reapportionment by adjusting only District 7's border with District 3, as already discussed above. Schreibel Expert Rep. at 22. That adjustment added the portion of Portage County occupied by the City of Stevens Point into District 7, which avoids splitting that city between District 7 and District 8. Schreibel Expert Rep. at 22. Finally, given that the Proposed Remedial Map only alters the District 7 and District 3 boundary, District 7's long border with District 8 remains wholly unchanged. Schreibel Expert Rep. at 22.

District 8. After the 2020 Census, District 8 was overpopulated by 15,252 people, Joint Stip. Ex. C, making it Wisconsin's second-largest growing district, Schreibel Expert Rep. at 23. The Proposed Remedial Map's changes to District 6 moved more than that amount from District 8, which, in turn, required adding people to District 8 from District 3. Schreibel Expert Rep. at 23. So, as for the change with District 6 to lose population, the Proposed Remedial Map adjusts District 8's southern border with District 6 in two respects. Schreibel Expert Rep. at 23. It eliminates all of

District 8's appendage in Winnebago County, thus eliminating a county split. Schreibel Expert Rep. at 23. Then, it eliminates most of its appendage in Calumet County, a county historically located within District 6. Schreibel Expert Rep. at 23. Although that latter change does split the City of Appleton between these districts, Appleton is already split among Winnebago, Calumet, and Outagamie Counties in the existing map, Schreibel Expert Rep. at 23. The Proposed Remedial Map places all of the Winnebago and Calumet portions of Appleton within District 6, with the Outagamie portion in District 8. Schreibel Expert Rep. at 23–24. As for the change with District 3 to add population, the Proposed Remedial Map places the more-rural portions of Portage County within District 8, which adds the people ultimately required by District 8 while avoiding splitting Stevens Point. Schreibel Expert Rep. at 24.

District 6. After the 2020 Census, District 6 was underpopulated by 8,954 people. Joint Stip. Ex. C. But as explained more fully below, the neighboring District 4's significant underpopulation required adding people from District 6 to District 4—despite District 6's own underpopulation. Schreibel Expert Rep. at 24. Accordingly, the Proposed Remedial Map removes District 6's most southernly extension into Milwaukee County and places it in District 4, creating a clean boundary line following Milwaukee County's northern border. Schreibel Expert Rep. at 24–25. To address District 6's underpopulation, then, the

Proposed Remedial Map added people to District 6 from District 8, as described above. Schreibel Expert Rep. at 25. Those adjustments alone would have caused District 6 to be overpopulated. Schreibel Expert Rep. at 25. This was necessary to shift more people to District 5, a neighbor of District 4, which also had to give to District 4 despite its own underpopulation. Schreibel Expert Rep. at 25. So, to reach equal apportionment for District 6—and, simultaneously, District 5—the Proposed Remedial Map first removes a portion of Dodge County from District 6 and places it in District 5, adjusting an already-split county line. Schreibel Expert Rep. at 25. Then, it gives District 6’s portion of the City of Columbus to District 5, which—while creating a county split—removes the existing split of that municipality. Schreibel Expert Rep. at 25. The Proposed Remedial Map does not make any alterations to District 6’s existing western border with District 3, as the foregoing adjustments resulted in equal apportionment. Schreibel Expert Rep. at 25.

*District 5.* After the 2020 Census, District 5 was slightly underpopulated, by 1,060 people. Joint Stip. Ex. C. But the neighboring District 4 is significantly underpopulated, as mentioned above and explained more fully below, requiring District 5 to lose people to that district. Schreibel Expert Rep. at 27. So, the Proposed Map had to add people to District 5 to reach equal population. Schreibel Expert Rep. at 27. As discussed above, the Proposed Remedial Map achieves that result solely by adding people from District 6, moving more of

Dodge County to District 5 from District 6 (a county that was already split) and adding the City of Columbus. Schreibel Expert Rep. at 27. The Proposed Remedial Map does not alter the boundary between District 5 and District 1, or between District 5 and District 2, to reach equal apportionment. Schreibel Expert Rep. at 27.

District 4. After the 2020 Census, District 4 was underpopulated by 41,320 people, Joint Stip. Ex. C—by far the largest population decline among Wisconsin’s districts, Schreibel Expert Rep. at 28. The Proposed Remedial Map adds more of the City of Milwaukee’s surrounding urban areas to District 4 to eliminate this substantial population deficit. Schreibel Expert Rep. at 28. Specifically, the Proposed Remedial Map adds the eastern portion of the City of Wauwatosa to District 4 from District 5, creating a more sensible boundary between these districts. Schreibel Expert Rep. at 28–29. Although this change splits Wauwatosa, the new boundary line roughly follows Interstate 41, which itself divides Wauwatosa. Schreibel Expert Rep. at 29. Finally, as already explained above, the Proposed Remedial Map then adds the northernmost portion of Milwaukee County into District 4 from District 6, creating a clean boundary that completes District 4’s reapportionment. Schreibel Expert Rep. at 29.

## SUMMARY OF ARGUMENT

I. In light of the results of the 2020 Census, Wisconsin's existing congressional-district map is unconstitutionally malapportioned, as this Court and all the parties here have recognized. This Court's opinion in *Johnson* makes unambiguously clear that this Court intends to remedy that malapportionment in this case by adopting a remedial congressional map.

II. The Proposed Remedial Map complies with all federal and state-constitutional requirements for redistricting, and it follows a "least-change" approach that minimizes splits of counties, cities, and villages, while also remaining consistent with Wisconsin's political geography in all other respects.

A. The Proposed Remedial Map complies with the one-person/one-vote requirement, since it obtains perfect population equality among Wisconsin's eight congressional districts by apportioning 736,715 people each in Districts 2, 3, 5, 6, 7, and 8, and 736,714 people each in Districts 1 and 4.

B. The Proposed Remedial Map complies with the U.S. Constitution's and the Wisconsin Constitution's prohibition on racial gerrymandering in redistricting, as it merely adjusts Wisconsin's existing congressional-district lines to equally reapportion the State's population.

C. The Proposed Remedial Map complies with the Voting Rights Act. District 4 of Wisconsin's existing

congressional map is the only minority-majority district in the State, and no one claimed during the ten-year life of that map that the VRA required Wisconsin to draw a different majority-minority district. Since the Proposed Remedial Map does not make any VRA-implicating changes to Wisconsin's existing congressional map, the Proposed Remedial Map complies with the VRA.

D. The Proposed Remedial Map complies with the “least-change” approach while also reducing the splitting of counties and municipalities and remaining consistent with Wisconsin's political geography in all other respects.

1. Under *Johnson's* majority opinion and the concurrence of Justice Hagedorn, this Court evaluates a proposed remedial map first by considering whether it follows a “least-change” approach, meaning that it makes only those changes needed to reach equal reapportionment. Then this Court may look to other considerations, like the number of splits of counties and municipalities, as well as whether any changes are consistent with Wisconsin's political geography in all other respects, to pick from among “least-change” approaches.

2. The Proposed Remedial Map best follows the *Johnson* majority opinion's “least-change” approach, including as further explained in Justice Hagedorn's concurrence.

Overall, the Proposed Remedial Map moves only 384,456 people into new congressional districts, which is about 6.52% of the population. Thus, it has a core retention



of 93.48%. The Proposed Remedial Map splits fewer counties, cities, and villages than the existing congressional map. And the changes of the Proposed Remedial Map remain consistent with Wisconsin's political geography in all other respects.

Addressing the Proposed Remedial Maps changes to each district with particularity, each comply with the *Johnson* majority opinion and the concurrence of Justice Hagedorn.

*District 1.* The Proposed Remedial Map's changes to District 1 are limited to those necessary to achieve equal apportionment, do not create additional splits, and are consistent with Wisconsin's political geography in all other respects. After the 2020 Census, District 1 was underpopulated by 9,337 people. The Proposed Remedial Map adds these people to District 1 solely by adjusting its boundary with District 2, which was overpopulated. This change did not split any new counties, and it accorded with District 1's political landscape since it added areas historically located in this district.

*District 2.* The Proposed Remedial Map's changes to District 2 likewise comply with the "least-change" approach, do not increase county splits and are consistent with Wisconsin's political geography in all other respects. After the Census, District 2 was overpopulated by 52,681. After the change between the boundary of District 1 and District 2, just described, the Proposed Remedial Map equally apportions District 2 solely by adjusting its boundary with District 3. That change does not increase the number of county splits,

and it is in accord with the State's political landscape since it moves largely rural areas to District 3, which is itself largely rural.

District 3. The Proposed Remedial Map's changes to District 3 also reflect a "least-change approach" that reduces splits and is consistent with Wisconsin's political geography in all other respects. Although District 3 was slightly underpopulated after the Census, the foregoing changes caused it to be overpopulated. The Proposed Remedial Map logically resolves that overpopulation by contracting District 3's northernmost and easternmost extremities, while eliminating four county splits caused by its long appendage into central Wisconsin. The Proposed Remedial Map's shifting of Stevens Point to District 7, as part of these changes, accords with the "least-change" approach, given District 3's overpopulation and the similarity of Stevens Point to Wausau, which is also in District 7.

District 7. The changes in the Proposed Remedial Map to District 7 follow a "least-change approach" that eliminates splits and is consistent with Wisconsin's political geography in all other respects. After the Census, District 7 was somewhat underpopulated, requiring the addition of people to equally reapportion it. The Proposed Remedial Map shifts the necessary number of people to District 7 solely by altering its boundary with District 3, a change discussed immediately above.

*District 8.* The Proposed Remedial Map's changes to District 8 likewise adhere to the "least-change" approach while reducing splits and remaining consistent with Wisconsin's political geography in all other respects. After the Census, District 8 was overpopulated by 15,252 people. However, necessary changes elsewhere caused District 8 to be underpopulated. To reach equal apportionment then, the Proposed Remedial Map removes or narrows District 8's appendages into District 6, eliminating a county split and adding historical District 6 areas back to that district. Then, the Proposed Remedial Map adds certain rural portions of District 3 to District 8, avoiding a split of Stevens Point.

*District 6.* The changes to District 6 also followed the "least-change approach," without adding to the number of splits and while staying consistent with Wisconsin's political geography in all other respects. After the Census, District 6 was underpopulated by 8,954 people. However, District 4's significant underpopulation required District 6 to give people to District 4, which the Proposed Remedial Map does by moving District 6's most southernly extension to District 4, along the Milwaukee County boundary line. To address District 6's own underpopulation, the Proposed Remedial Map adjusts its boundary with District 8 as discussed above. While that change—standing alone—would have caused District 6 to be overpopulated, it was necessary since District 6 was also required to give people to District 5. The Proposed Remedial Map thus ultimately reapportions both

District 6 and District 5 simultaneously by adjusting an already-split boundary line between these districts and by moving the City of Columbus to District 5—a move that, while creating a county split, avoids splitting this city.

*District 5.* The Proposed Remedial Map’s treatment of District 5 also takes the “least-change approach,” does not create new splits, and is consistent with Wisconsin’s political geography in all other respects. After the Census, District 5 was underpopulated by 1,060 people; however, District 4’s own significant underpopulation required District 5 to move people to that district. The Proposed Remedial Map then resolves District 5’s own shortfall in the manner discussed immediately above.

*District 4.* Finally, the Proposed Remedial Map’s adjustments to District 4 follow a “least-change” approach, do not create new splits, and are consistent with Wisconsin’s political geography in all other respects. After the Census, District 4 was significantly underpopulated by 41,320 people. The Proposed Remedial Map resolves that underpopulation first by shifting District 5’s portion of Wauwatosa roughly east of Interstate 41 dividing line to District 4. Then, the Proposed Remedial Map adds the northernmost part of Milwaukee County into District 4 from District 6. Both of these changes result in more sensible boundaries between districts, and respect District 4’s urban political landscape.

## ARGUMENT

### **I. Wisconsin’s Current Congressional Districts Are Unconstitutionally Malapportioned, And This Court Made Clear That It Will Adopt New Congressional Districts To Remedy That Unconstitutionality**

Wisconsin’s current congressional districts are unconstitutional, since, after the 2020 Census, the existing districts no longer comply with the “one person, one vote principle” in the U.S. Constitution, *Johnson*, 2021 WI 87, ¶ 25, and the Wisconsin Constitution, Wis. Const. art. I, § 1; Wis. Const. art. IV, § 3; *see also* Initial Br. Of The Congressmen at 8–12, *Johnson v. Wis. Elections Comm’n*, No.2021AP1450-OA (Wis. Oct. 25, 2021) (“Congressmen Initial Br.”). The parties stipulated that “[t]he existing maps do not contain the constitutionally required level of equality between the populations of some of Wisconsin’s congressional districts.” Joint Stip. ¶ 13.

This Court has made clear that, notwithstanding the dissent’s concerns, *Johnson*, 2021 WI 87, ¶ 113 (Dallet, J., dissenting), this Court unambiguously intends to adopt new congressional districts in this case, to remedy the current map’s unconstitutionality. This Court’s majority opinion explicitly “hold[s]” that the Court will provide a “judicial remedy” that “make[s] the minimum changes necessary in order to conform the existing *congressional* and state legislative redistricting plans to constitutional and statutory

requirements.” *Id.*, ¶ 8 (majority opinion) (emphasis added).<sup>1</sup> Similarly, Justice Hagedorn’s concurrence states that “congressional reapportionment and state legislative redistricting are primarily state, not federal prerogatives,” and so “it is fitting for [this Court] to address congressional malapportionment claims as well, whether under state or federal law.” *Id.* ¶ 87 n.18 (Hagedorn, J., concurring) (quoting *Jensen v. Wis. Elections Bd.*, 2002 WI 13, ¶ 5, 249 Wis. 2d 706, 639 N.W.2d 537 (per curiam)). There is thus no ambiguity regarding this Court’s intent to resolve the constitutional violation in Wisconsin’s existing congressional map by adopting a remedial map in this case.<sup>2</sup>

Contrary to the dissent’s statement that the Court “has no motion or other briefing on th[e] question” of “what, if anything, the Wisconsin Constitution has to say about congressional redistricting,” *Id.* ¶ 113 (Dallet, J., dissenting), the Congressmen specifically submitted briefing on this point—explaining that the Wisconsin Constitution requires

---

<sup>1</sup> This Court’s opinion in *Johnson* also discusses criteria in the U.S. Constitution and federal law that are applicable only to congressional districts. 2021 WI 87, ¶¶ 12, 24–25, 27.

<sup>2</sup> Further, this Court’s Order granting the Petition For Original Action described Petitioners’ claims as whether “Wisconsin’s congressional and state legislative districts . . . are malapportioned and no longer meet the requirements of the Wisconsin Constitution.” Order at 1, *Johnson v. Wis. Elections Comm’n*, No.2021AP1450-OA (Wis. amend. Sept. 22, 2021) (emphasis added). And this Court’s November 17 Order directed the parties to submit “a proposed map (for state assembly, state senate, and congress).” Order at 2, *Johnson v. Wis. Elections Comm’n*, No.2021AP1450-OA (Wis. Nov. 17, 2021) (emphasis added).

Wisconsin's congressional district to be of equal population (Article I, Section 1 and Article IV), and not racially gerrymandered (Article I, Section 1). See *Congressmen Initial Br.* 8–12; see also *Resp. Br. Of The Congressmen* at 2–3, *Johnson v. Wis. Elections Comm'n*, No.2021AP1450-OA (Wis. Nov. 1, 2021) (“Congressmen Resp. Br.”). None of the other parties disputed these points in their merits briefing on the redistricting standards applicable here, at least as to Article I, Section 1. See *Congressmen Resp. Br.* 2–3.

In any event, as Justice Hagedorn explained in his concurrence, “it is fitting for [this Court] to address congressional malapportionment claims as well” in this case, “whether under state or federal law.” *Johnson*, 2021 WI 87, ¶ 87 n.18 (Hagedorn, J., concurring). Further, given the parties’ stipulation that the congressional districts are unconstitutional—and that no other parties disputed the Congressmen’s arguments based on the Wisconsin Constitution, at least as to Article I, Section 1—this Court need not decide whether the congressional-malapportionment claims have their source in state or federal constitutional law, if it wishes to leave the issue open. See *Cnty. of Milwaukee v. Williams*, 2007 WI 69, ¶ 63, 301 Wis. 2d 134, 732 N.W.2d 770 (2007).

**II. The Proposed Remedial Map Complies With All Federal And State-Constitutional Requirements And Adheres To A “Least-Change” Remedy That Minimizes Splits While Remaining Consistent With Wisconsin’s Political Geography In All Other Respects**

**A. The Proposed Remedial Map Achieves Absolute Population Equality**

Under the U.S. Constitution’s and the Wisconsin Constitution’s one-person/one-vote principle, the State must draw its congressional districts with “absolute population equality.” *Johnson*, 2021 WI 87, ¶ 25 (citations omitted; brackets omitted); U.S. Const. Art. I, § 4; *id.* amend XIV, § 1; Wis. Const. art I, § 1; *id.* art. IV, § 3.

The Proposed Remedial Map complies with the one-person/one-vote requirement, as it achieves perfect population equality among Wisconsin’s eight congressional districts. Schreibel Expert Rep. at 14. After the 2020 Census, Wisconsin has a total resident population of 5,893,718, an increase of 206,732 people since 2010. Joint. Stip. ¶ 29. Therefore, the ideal population for each Wisconsin’s eight congressional districts is 736,715 people. Joint. Stip. ¶ 30. The Proposed Remedial Map has perfect population equality, as Districts 2, 3, 5, 6, 7, and 8 have 736,715 people, while Districts 1 and 4 have 736,714 people. Schreibel Expert Rep. at 14; *see Johnson*, 2021 WI 87, ¶ 25 (discussing “the practical impossibility of drawing equal districts with mathematical precision” (citations omitted)).



### **B. The Proposed Remedial Map Does Not Engage In Racial Gerrymandering**

The U.S. Constitution and the Wisconsin Constitution both prohibit racial gerrymandering in redistricting. The Equal Protection Clause, U.S. Const. amend. XIV, § 1, “prevent[s] the States from purposefully discriminating between individuals on the basis of race,” *Shaw v. Reno*, 509 U.S. 630, 642 (1993). Equal-protection principles prohibit a State from drawing congressional districts that “separate . . . citizens into different voting districts on the basis of race,” *Miller v. Johnson*, 515 U.S. 900, 911, 920 (1995), including by making race a “predominant factor motivating [its] decision to place a significant number of voters within or without a particular district,” unless the State satisfies strict scrutiny, *Cooper v. Harris*, 137 S. Ct. 1455, 1463–64 (2017) (quoting *Miller*, 515 U.S. at 916). Article I, Section 1 of the Wisconsin Constitution likewise prohibits racial gerrymandering, including because that provision imposes “essentially the same” or “substantially equivalent” requirements as the federal Equal Protection Clause. *Cnty. of Kenosha v. C & S Mgmt., Inc.*, 223 Wis. 2d 373, 393–94, 588 N.W.2d 236 (1999).

The Proposed Remedial Map complies with this anti-racial-gerrymandering principle, since it merely adjusts Wisconsin’s existing congressional-district lines to equally reapportion the State’s population. Therefore, there could be no possible allegation that the Proposed Remedial Map is a racial gerrymander, *see Shaw*, 509 U.S. at 642; *Miller*, 515

U.S. at 911; *Cooper*, 137 S. Ct. at 1464; *see generally C & S Mgmt.* 223 Wis. 2d at 393–94, including because no party challenged the existing congressional map on such grounds during the past decade and because there is no plausible basis to suggest that the changes that the Congressmen propose here would violate the prohibition against racial gerrymandering.

**C. The Proposed Remedial Map Does Not Violate The Voting Rights Act**

As it relates to redistricting, Section 2 of the Voting Rights Act (“VRA”) prohibits a redistricting plan from “manipulat[ing] . . . district lines” to “dilute[e]” the “voting power” of “[a] politically cohesive minority group.” *Voinovich v. Quilter*, 507 U.S. 146, 153 (1993); *see Johnson*, 2021 WI 87, ¶ 27. The U.S. Supreme Court in *Thornburg v. Gingles*, 478 U.S. 30 (1986), identified certain threshold requirements to have a “politically cohesive minority group” for purposes of Section 2: (1) the minority group must be sufficiently large and geographically compact to create a majority-minority district; (2) the minority group must be politically cohesive in terms of voting patterns; and (3) voting must be racially polarized, such that the majority group can block a minority’s candidate from winning election. *Id.* at 50–51; *see also, e.g., Baldus*, 849 F. Supp. 2d at 854. “In the context of single-member districts,” like those at issue here, a violation may occur when the redistricting plan: (a) disperses a minority

group “into districts in which they constitute an ineffective minority of voters,” or (b) concentrates a minority group “into districts where they constitute an excessive majority.” *Voinovich*, 507 U.S. at 153–54 (citation omitted).

The Proposed Remedial Map complies with Section 2 of the VRA. District 4 of the existing congressional map is the only minority-majority district in Wisconsin. See Schreibel Aff. Ex. B at 1. During the ten years that this map governed Wisconsin’s congressional elections, no party claimed that District 4 violated Section 2 of the VRA, and no party asserted that the VRA required Wisconsin to draw a different majority-minority district (even as plaintiffs raised VRA claims against certain of the State’s legislative districts, see *Baldus*, 849 F.Supp.2d at 846, 848). The Proposed Remedial Map does not make any VRA-implicating changes to Wisconsin’s existing congressional map; instead, it makes only those limited changes needed to achieve equal reapportionment. Schreibel Expert Rep. at 15. Therefore, the Proposed Remedial Map complies with the VRA. See *Gingles*, 478 U.S. at 50–51.

**D. The Proposed Remedial Map Adheres To A “Least-Change” Approach That Also Reduces Splits While Remaining Consistent With Wisconsin’s Political Geography In All Other Respects**

1. In *Johnson*, this Court’s majority opinion and the concurrence of Justice Hagedorn articulated the standard for evaluating remedial redistricting maps in Wisconsin.

This Court’s majority opinion “adopt[ed] the least-change approach to remedying any constitutional or statutory infirmities in the existing [redistricting] maps.” *Johnson*, 2021 WI 87, ¶ 81. This is because “the constitution precludes the judiciary from interfering with the lawful policy choices of the legislature,” *id.*, thus this Court may only adjust the existing district lines as necessary “to achiev[e] compliance with the law rather than [to] impos[e] [its own] policy choices,” *id.* ¶ 8. Therefore, the majority opinion explained that it would adopt a remedial congressional map that treads no “further than necessary to remedy the[ ] current legal deficienc[y]” in the 2011 map by ensuring that the remedial map achieves population equality. *Id.* ¶¶ 2, 4, 8, 64.

Justice Hagedorn’s concurring opinion joined the majority opinion “in almost all respects,” taking much the same approach. *Id.* ¶ 82 (Hagedorn, J., concurring). Justice Hagedorn, like the majority opinion, explained that “[a] least-change approach is the most consistent, neutral, and appropriate use of [this Court’s] limited judicial power to remedy the constitutional violations in this case.” *Id.* ¶ 85. Justice Hagedorn then added that this Court “is not necessarily limited to considering legal rights and requirements alone when formulating a remedy.” *Id.* ¶ 83. In Justice Hagedorn’s view, this Court may also consider “other traditional redistricting criteria” when evaluating proposed remedial maps, so long as those maps “comply with all relevant legal requirements” and “have equally compelling

arguments for why [they] most align[ ] with current district boundaries.” *Id.* Accordingly, Justice Hagedorn called upon the parties to explain “why their maps comply with the law”; identify “how their maps are the most consistent with existing boundaries”; and discuss “other, traditional redistricting criteria” that “may prove helpful.” *Id.* ¶ 87.

So, when evaluating a proposed remedial map under the *Johnson* majority opinion and the concurrence of Justice Hagedorn, this Court should first consider whether the map follows a “least-change” approach—meaning that it treads no “further than necessary to remedy” the existing map’s violation of the one-person/one-vote principle. *Id.* ¶¶ 64, 81 (majority opinion); *id.* ¶ 82 (Hagedorn, J., concurring). That primary consideration furthers both the equitable and remedial principles that limit this Court’s authority here, *id.* ¶ 81 (majority opinion); *id.* ¶ 83 (Hagedorn, J., concurring), as well as the traditional core-retention metric, which analyzes how well the new district “respect[s] existing district boundaries” in a politically neutral way, *Bethune-Hill v. Va. State Bd. of Elections*, 141 F. Supp. 3d 505, 544 (E.D. Va. 2015), *aff’d in part, vacated in part on other grounds*, 137 S. Ct. 788 (2017). Then, after the Court has concluded that a map qualifies as a “least-change” map, it may look to other considerations, such as the number of splits of counties and municipalities—in that order, *see* Wis. Const. art. IV, § 4—as well as whether any changes are consistent with Wisconsin’s

political geography in all other respects. *See Johnson*, 2021 WI 87, ¶ 87 (Hagedorn, J., concurring).

2. The Proposed Remedial Map best adheres to the *Johnson* majority opinion’s “least-change” approach, including as further explained in Justice Hagedorn’s concurrence. As an initial matter, the Proposed Remedial Map follows the “least-change” approach statewide. *Id.* ¶¶ 64, 81 (majority opinion); *id.* ¶ 82 (Hagedorn, J., concurring). In total, the Proposed Remedial Map moves only 384,456 of people into new congressional districts, which is 6.52% of the population. Schreibel Expert Rep. at 15. Relatedly, the Proposed Remedial Map also has a core-retention score of 93.48%, meaning that it changes only 6.52% of the area of the existing congressional map. Schreibel Expert Rep. at 31; *see Bethune-Hill*, 141 F. Supp. 3d at 544. Further, the Proposed Remedial Map splits fewer counties and municipalities statewide than the existing map, *see Johnson*, 2021 WI 87, ¶ 83 (Hagedorn, J., concurring); *accord id.* ¶ 71 n.7: the Proposed Remedial Map splits only 10 counties, while the existing map splits 12. Schreibel Expert Rep. at 31. And it splits only 16 municipalities, while the existing map splits 27. Schreibel Expert Rep. at 31. And the Proposed Remedial Map’s limited changes remain consistent with Wisconsin’s political geography in all other respects. *Johnson*, 2021 WI 87, ¶ 87 (Hagedorn, J., concurring).

The Congressmen now discuss each the Proposed Remedial Map’s changes to the existing map’s districts with

particularity, explaining first how those changes account for population changes in the district and then how they further other valid considerations, such as minimizing the splitting of counties and municipalities and remaining consistent with Wisconsin's political geography in all other respects. *Id.* ¶¶ 64, 81 (majority opinion); *id.* ¶¶ 82–83, 87 (Hagedorn, J., concurring). As in the relevant Background of this Brief, this discussion will begin with District 1 in the southeastern corner of the State and proceed clockwise around the map.

*District 1.* The Proposed Remedial Map's changes to District 1 are limited to those necessary to achieve equal apportionment, *Johnson*, 2021 WI 87, ¶¶ 64, 81; *id.* ¶ 82 (Hagedorn, J., concurring); do not create any additional county splits, *see id.* ¶ 83; *accord id.* ¶ 71 n.7 (majority opinion); and are consistent with Wisconsin's political geography in all other respects, *see id.* ¶ 87 (Hagedorn, J., concurring). After the Census, District 1 required an additional 9,337 people. Joint Stip. Ex. C. The Proposed Remedial Map adds those people to District 1 solely by altering its boundary with District 2, adding more of the surrounding Janesville area as needed to achieve equal reapportionment. *See Johnson*, 2021 WI 87, ¶¶ 64, 81; *id.* ¶ 82 (Hagedorn, J., concurring); Schreiber Expert Rep. at 17–18. This alteration does not split any additional counties, as the only adjusted boundary crosses Rock County, which is already split. Schreiber Expert Rep. at 18; *see Johnson*, 2021 WI 87, ¶ 83 (Hagedorn, J., concurring); *accord id.* ¶ 71 n.7

(majority opinion). And since Janesville has historically fallen within District 1, Schreiber Expert Rep. at 18, these changes are consistent with this district's political geography, *see Johnson*, 2021 WI 87, ¶ 87 (Hagedorn, J., concurring). In sum, the Proposed Remedial Map reapportions District 1, which is underpopulated, by moving people from the neighboring District 2—which is significantly overpopulated—without splitting any new counties or affecting the general character of this district.

District 2. The Proposed Remedial Map's changes to District 2 likewise comply with the "least-change approach," *Johnson*, 2021 WI 87, ¶¶ 64, 81; *id.* ¶ 82 (Hagedorn, J., concurring); do not increase county splits, *see id.* ¶ 83; *accord id.* ¶ 71 n.7 (majority opinion); and are consistent with Wisconsin's political geography in all other respects, *see id.* ¶ 87 (Hagedorn, J., concurring). As a result of the Census, District 2 was overpopulated by 52,681 people, Joint Stip. Ex. C, Wisconsin's largest-growing district, Schreiber Expert Rep. at 19. District 2 thus must contract considerably in size to achieve equal apportionment. To reach an equal population in District 2, the Proposed Remedial Map first makes a limited, logical adjustment to District 2's boundary with District 1—a change that, as explained above, satisfies this Court's "least-change approach." Then, the Proposed Remedial Map changes only District 2's boundary with District 3, and only as necessary to achieve equal reapportionment. *See Johnson*, 2021 WI 87, ¶¶ 64, 81; *id.*



¶ 82 (Hagedorn, J., concurring); Schreibel Expert Rep. at 19. Specifically, the Proposed Remedial Map moves all of Richland County into District 3, as well as part of Sauk County—a change that does not increase the number of county splits. Schreibel Expert Rep. at 19; *see Johnson*, 2021 WI 87, ¶ 83 (Hagedorn, J., concurring); *accord id.* ¶ 71 n.7 (majority opinion). This is consistent with Wisconsin’s political geography, as it maintains District 3’s rural character and District 2’s general orientation around the State’s Capitol and the University of Wisconsin. *See Johnson*, 2021 WI 87, ¶ 87 (Hagedorn, J., concurring); *supra* pp. 4, 13–14.

*District 3.* The Proposed Remedial Map’s changes to District 3 also reflect a “least-change approach,” *Johnson*, 2021 WI 87, ¶¶ 64, 81; *id.* ¶ 82 (Hagedorn, J., concurring), that reduces county splits, *see id.* ¶ 83; *accord id.* ¶ 71 n.7 (majority opinion), and is consistent with Wisconsin’s political geography in all other respects, *id.* ¶ 87 (Hagedorn, J., concurring). While District 3 was slightly underpopulated after the Census, the changes required by District 2’s population growth resulted in an overpopulation of District 3. Schreibel Expert Rep. at 21. The Proposed Remedial Map resolves that resulting overpopulation in District 3—a western-centric district—in a logical manner. Specifically, it contracts District 3’s northernmost and easternmost extremities, while eliminating four county splits caused by its long appendage into central Wisconsin. Schreibel Expert Rep.

at 21; *see Johnson*, 2021 WI 87, ¶ 83 (Hagedorn, J., concurring); *accord id.* ¶ 71 n.7 (majority opinion).

The Congressmen will specifically explain the Proposed Remedial Map's shift of Stevens Point from District 3 to District 7, as this change has been the subject of some public commentary. *See, e.g.*, Schreibel Aff. Ex. F. This Court's neutral, "least-change" standards in *Johnson* support the shift of Stevens Point, just as they support all other changes in the Proposed Remedial Map. That is, the Proposed Remedial Map moves Stevens Point from District 3 to District 7 in the service of equally reapportioning this district. Schreibel Expert Rep. at 21; *see Johnson*, 2021 WI 87, ¶¶ 64, 81; *id.* ¶ 82 (Hagedorn, J., concurring). That change also removes four county splits caused by District 3's long, narrow appendage into central Wisconsin. Schreibel Expert Rep. at 21; *see Johnson*, 2021 WI 87, ¶ 83 (Hagedorn, J., concurring); *accord id.* ¶ 71 n.7 (majority opinion). And this change preserves District 3's political landscape. Schreibel Expert Rep. at 21; *see Johnson*, 2021 WI 87, ¶ 87 (Hagedorn, J., concurring). District 3 is a predominantly rural, western district; however, Stevens Point is a larger municipality firmly within central Wisconsin, located at the tip of District 3's narrow, multiple-county-splitting appendage. Schreibel Expert Rep. at 21. Given its location, Stevens Point has far more in common with District 7's Wausau—which, like Stevens Point, has a history as a forest-products producer in central Wisconsin located on the Wisconsin River—than with

Eau Claire or La Crosse, the largest cities in District 3. Schreibel Expert Rep. at 21. Indeed, Stevens Point and Wausau not only share similar industries and a Wisconsin River location, but also share the same television market, helping to improve communications within a congressional district. Schreibel Expert Rep. at 22.

District 7. The changes in the Proposed Remedial Map to District 7 follow a “least-change approach,” *Johnson*, 2021 WI 87, ¶¶ 64, 81; *id.* ¶ 82 (Hagedorn, J., concurring), that eliminates splits, *see id.* ¶ 83; *accord id.* ¶ 71 n.7 (majority opinion), and are consistent with Wisconsin’s political geography in all other respects, *id.* ¶ 87 (Hagedorn, J., concurring). District 7 was underpopulated after the Census, and the Proposed Remedial Map reaches the population target solely by adjusting District 7’s boundary with District 3 in a targeted manner, *Johnson*, 2021 WI 87, ¶¶ 64, 81; *id.* ¶ 82 (Hagedorn, J., concurring), eliminating four county splits and creating a more sensible line between the districts, *see id.* ¶ 83; *accord id.* ¶ 71 n.7 (majority opinion); Schreibel Expert Rep. at 22. These limited changes also leave District 7’s existing, long boundary with District 8 undisturbed. *Id.* ¶¶ 64, 81; *id.* ¶ 82 (Hagedorn, J., concurring); Schreibel Expert Rep. at 22. And the map’s addition of Stevens Point accords with the political landscape of this district since, as explained above, Stevens Point is similar to Wausau, which is also within District 7’s boundaries. *Johnson*, 2021 WI 87, ¶ 87 (Hagedorn, J., concurring); Schreibel Expert Rep. at 22.

District 8. The Proposed Remedial Map’s changes to District 8 likewise adhere to the “least-change” approach, *Johnson*, 2021 WI 87, ¶¶ 64, 81; *id.* ¶ 82 (Hagedorn, J., concurring), while reducing splits, *see id.* ¶ 83; *accord id.* ¶ 71 n.7 (majority opinion), and remaining consistent with Wisconsin’s political geography in all other respects, *id.* ¶ 87 (Hagedorn, J., concurring). After the Census, District 8 was overpopulated by 15,252 people, Joint Stip. Ex. C, making it Wisconsin’s second-largest growing district in this past decade, Schreibel Expert Rep. at 23. However, the changes needed by District 6 (which had to give people to District 4) moved more than this amount of people from District 8. Schreibel Expert Rep. at 22–24. That, in turn, required adding people to District 8 from District 3 to reach the equal-population target. Schreibel Expert Rep. at 22–24. Specifically, as for the changes with District 6, the Proposed Remedial Map transfers people from this district to District 8 in a logical way, *Johnson*, 2021 WI 87, ¶¶ 64, 81; *id.* ¶ 82 (Hagedorn, J., concurring): it eliminates District 8’s appendage in Winnebago County, thereby eliminating a county split. Schreibel Expert Rep. at 23–24; *see Johnson*, 2021 WI 87, ¶ 83 (Hagedorn, J., concurring); *accord id.* ¶ 71 n.7 (majority opinion). Then, it eliminates most of District 8’s appendage made up of Calumet County, Schreibel Expert Rep. at 23–24, a county that has historically been in District 6, *see Johnson*, 2021 WI 87, ¶ 87 (Hagedorn, J., concurring); Schreibel Expert Rep. at 23–24. Moving to the

change with District 3, the Proposed Remedial Map makes a limited, logical change here as well, *Johnson*, 2021 WI 87, ¶¶ 64, 81; *id.* ¶ 82 (Hagedorn, J., concurring), adding the rural portions of Portage County as needed to reach equal reapportionment, while avoiding the split of Stevens Point, *see id.* ¶ 83; *accord id.* ¶ 71 n.7 (majority opinion); Schreibel Expert Rep. at 23.

*District 6.* The changes to District 6 also followed the “least-change” approach, *Johnson*, 2021 WI 87, ¶¶ 64, 81; *id.* ¶ 82 (Hagedorn, J., concurring), without adding splits, *see id.* ¶ 83; *accord id.* ¶ 71 n.7 (majority opinion), while staying consistent with Wisconsin’s political geography in all other respects, *id.* ¶ 87 (Hagedorn, J., concurring). After the 2020 Census, District 6 was underpopulated by 8,954 people. Joint Stip. Ex. C. However, due to District 4’s significant underpopulation, District 4 required additional people from District 6—despite its own underpopulation. Schreibel Expert Rep. at 25–26. Accordingly, the Proposed Remedial Map eliminates District 6’s most southernly extension into Milwaukee County and places it in District 4, a limited and logical change, *Johnson*, 2021 WI 87, ¶¶ 64, 81; *id.* ¶ 82 (Hagedorn, J., concurring), that creates a sensible boundary along the northern border of Milwaukee County, *see id.* ¶ 83; *accord id.* ¶ 71 n.7 (majority opinion); Schreibel Expert Rep. at 25. The Proposed Remedial Map then addresses District 6’s own underpopulation by making the logical adjustments to its boundary with District 8 described above.

Schreibel Expert Rep. at 25–26; *Johnson*, 2021 WI 87, ¶¶ 64, 81; *id.* ¶ 82 (Hagedorn, J., concurring). And while those adjustments would have caused District 6 to be overpopulated, standing alone, they were compelled by the “least-change approach” in order to shift people to the neighboring District 5—a district that was also required to give to District 4, despite its own underpopulation. *See id.* ¶¶ 64, 81 (majority opinion); *id.* ¶ 82 (Hagedorn, J., concurring). So, to reach District 6’s final state of equal apportionment—and to equally apportion District 5 as well, as also explained below—the Proposed Remedial Map first removes a portion of Dodge County from District 6 and places it in District 5, utilizing an already-split county line. *See id.* ¶ 87; Schreibel Expert Rep. at 25–26. Then, it gives District 6’s portion of the City of Columbus to District 5, which, while creating a county split, removes the existing split of that municipality. *see Johnson*, 2021 WI 87, ¶ 87 (Hagedorn, J., concurring); Schreibel Expert Rep. at 26. And since these adjustments resulted in an equal population, the Proposed Remedial Map does not make any alterations to District 6’s border with District 3. Schreibel Expert Rep. at 25–26; *Johnson*, 2021 WI 87, ¶¶ 64, 81; *id.* ¶ 82 (Hagedorn, J., concurring).

*District 5*. The Proposed Remedial Map’s treatment of District 5 also takes the “least-changes approach,” *Johnson*, 2021 WI 87, ¶¶ 64, 81; *id.* ¶ 82 (Hagedorn, J., concurring); does not create new splits, *see id.* ¶ 83; *accord id.* ¶ 71 n.7 (majority opinion); and is consistent with Wisconsin’s political

geography in all other respects, *see id.* ¶ 87 (Hagedorn, J., concurring). While District 5 was underpopulated by 1,060 people after the 2020 Census, Joint Stip. Ex. C, it had to give people to the neighboring District 4, owing to District 4's own substantial underpopulation, as explained below. Schreibel Expert Rep. at 27. So, to reach equal apportionment for District 5, the Proposed Remedial Map adds population from District 6 only, as explained above. *Johnson*, 2021 WI 87, ¶¶ 64, 81; *id.* ¶ 82 (Hagedorn, J., concurring); Schreibel Expert Rep. at 27. The Proposed Remedial Map moves more of the already-split Dodge County to District 5 from District 6, and then adds the City of Columbus. Schreibel Expert Rep. at 27; *see Johnson*, 2021 WI 87, ¶ 83 (Hagedorn, J., concurring); *accord id.* ¶ 71 n.7 (majority opinion). Since those limited changes result in an equal population, the Proposed Remedial Map does not adjust District 5's boundaries with District 1 or District 2. *Id.* ¶¶ 64, 81; *id.* ¶ 82 (Hagedorn, J., concurring); Schreibel Expert Rep. at 27.

*District 4.* The Proposed Remedial Map's adjustments to District 4 follow a "least-change" approach, *Johnson*, 2021 WI 87, ¶¶ 64, 81; *id.* ¶ 82 (Hagedorn, J., concurring), that do not create new splits, *see id.* ¶ 83; *accord id.* ¶ 71 n.7 (majority opinion), and are consistent with Wisconsin's political geography in all other respects, *id.* ¶ 87 (Hagedorn, J., concurring). After the Census, District 4 was underpopulated, by 41,320 people, Joint Stip. Ex. C, which is the largest population decline in any district in Wisconsin,

Schreibel Expert Rep. at 28. The Proposed Remedial Map makes up that significant shortfall in a logical way—adding people solely from Milwaukee’s surrounding urban areas—which preserves the political landscape of this district as a densely populated, urban region. *See Johnson*, 2021 WI 87, ¶¶ 64, 81; *id.* ¶¶ 82, 87 (Hagedorn, J., concurring); Schreibel Expert Rep. at 28–29. Specifically, the Proposed Remedial Map makes two targeted changes, both already referenced above. *Supra* p. 18. First, it adds the eastern portion of the City of Wauwatosa to District 4 from District 5 roughly along Interstate 41, *see Johnson*, 2021 WI 87, ¶ 83 (Hagedorn, J., concurring), resulting in a more sensible boundary between these districts in the process, *id.* ¶ 87; Schreibel Expert Rep. at 28–29. And while this change does split Wauwatosa, Interstate 41 itself separates this city into east and west portions. *See Johnson*, 2021 WI 87, ¶ 87 (Hagedorn, J., concurring); Schreibel Expert Rep. at 28–29. Second, and to complete District 4’s reapportionment, *Johnson*, 2021 WI 87, ¶¶ 64, 81; *id.* ¶ 82 (Hagedorn, J., concurring), the Proposed Remedial Map adds the northernmost part of Milwaukee County into District 4 from District 6, again resulting in a clean boundary, *id.* ¶ 87; Schreibel Expert Rep. at 29.

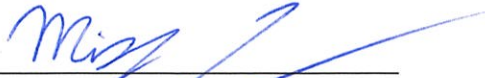
### CONCLUSION

For these reasons, the Congressmen respectfully request that this Court adopt the Proposed Remedial Map to replace Wisconsin’s current congressional districts.



Dated: December 15, 2021.

Respectfully submitted,



---

MISHA TSEYTLIN

*Counsel of Record*

State Bar No. 1102199

KEVIN M. LEROY

State Bar No. 1105053

TROUTMAN PEPPER

HAMILTON SANDERS LLP

227 W. Monroe, Suite 3900

Chicago, Illinois 60606

(608) 999-1240 (MT)

(312) 759-1939 (fax)

misha.tseytlin@troutman.com

*Counsel for Congressmen Glenn  
Grothman, Mike Gallagher, Bryan Steil,  
Tom Tiffany, and Scott Fitzgerald*

**CERTIFICATION**

I hereby certify that this Brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b), (c) for a brief produced with a proportional serif font, as well as to this Court's November 17, 2021 Order. The length of this Brief is 10, 443 words.

Dated: December 15, 2021.



---

MISHA TSEYTLIN  
State Bar No. 1102199  
TROUTMAN PEPPER  
HAMILTON SANDERS LLP  
227 W. Monroe, Suite 3900  
Chicago, Illinois 60606  
(608) 999-1240 (MT)  
(312) 759-1939 (fax)  
misha.tseytlin@troutman.com

**CERTIFICATE OF COMPLIANCE WITH  
WIS. STAT. § (RULE) 809.19(12), AND OF SERVICE**

I hereby certify that:

I have submitted an electronic copy of this Brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § (Rule) 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.

A copy of this certificate has been served with the paper copies of this Brief filed with the Court and served on all opposing parties.

Dated: December 15, 2021.

  
\_\_\_\_\_  
MISHA TSEYTLIN  
State Bar No. 1102199  
TROUTMAN PEPPER  
HAMILTON SANDERS LLP  
227 W. Monroe, Suite 3900  
Chicago, Illinois 60606  
(608) 999-1240 (MT)  
(312) 759-1939 (fax)  
misha.tseytlin@troutman.com