
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.

**RESPONSE BRIEF OF THE CONGRESSMEN REGARDING
PROPOSED CONGRESSIONAL DISTRICT MAPS**

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INTRODUCTION

The Congressmen offered to this Court a proposed remedial congressional map (“Proposed Remedial Map”)—the map passed by the Legislature after full public debate, but vetoed by the Governor—which satisfies the least-changes approach articulated in *Johnson v. Wisconsin Elections Commission*, 2021 WI 87, ___ Wis. 2d ___; ___ N.W.2d ___. The Congressmen supported their map through an expert with deep expertise in Wisconsin’s political geography, who explained why each of the limited changes that the Congressmen proposed makes sense for Wisconsin.

The Congressmen respectfully submit that no other party has even attempted to give this Court a viable alternative, least-changes congressional redistricting map. Given that the congressional maps that these parties submitted to this Court had never been disclosed to the public, it was especially important for these parties to explain *why* they made their proposed changes. But these parties utterly failed to do this. They offered no meaningful explanation for any of their proposed changes, including in terms of Wisconsin’s political geography, and did not put forward any expert qualified to discuss why their proposed maps make sense for Wisconsin. Unsurprisingly, then, these parties’ maps make numerous, unexplained changes to Wisconsin’s current congressional districts, which cannot be justified under *Johnson’s* least-change mandate.

BACKGROUND

The Governor's Proposed Map reaches equal apportionment after moving 322,356 people, which is 5.5% of the population, into a new district. Ex. A to Second Aff. of Tom Schreibel at 7 (hereinafter “Schreibel Resp. Expert Rep.”); Gov. Tony Evers’s Br. In Supp. Of Proposed Maps at 10, *Johnson v. Wis. Elections Comm’n*, No.2021AP1450-OA (Wis. Dec. 15, 2021) (“Gov.Br.”). The map shifts multiple close-in Milwaukee suburbs from District 4—including St. Francis, Cudahy, and South Milwaukee—to District 1. Schreibel Resp. Expert Rep.7. Next, it moves all of Waukesha County out of District 1, placing it in District 5. Schreibel Resp. Expert Rep.7. It then splits the Cities of Whitewater between District 5 and District 1 and moves East Troy and portions of the City of Mukwonago from District 1 to District 5. Schreibel Resp. Expert Rep.7. This map also shifts all of the City of Beloit from District 2 into District 1, and then moves all of Wauwatosa and portions of West Allis from District 5 to District 4. Schreibel Resp. Expert Rep.7. Finally, it makes some changes elsewhere, such as adding District 2’s portion of Richland County to District 3 and moving River Hills from District 6 to District 4 along the border of Milwaukee County. Schreibel Resp. Expert Rep.8.

The Hunter Petitioners' Proposed Map equally apportions the State while moving 410,502 people into new districts, which is 6.96% of the population. Schreibel Resp.

Expert Rep.11; *see* Expert Rep. of Dr. Stephen Ansolabehere In Supp. Of Hunter Int.-Pet’rs at 3, 10, *Johnson v. Wis. Elections Comm’n*, No.2021AP1450-OA (Wis. Dec. 15, 2021) (“Ansolabehere Expert Rep.”). Many of this map’s significant changes affect Districts 1, 4, 5, and 6. Schreibel Resp. Expert Rep.12. For example, it moves District 1’s portion of Waukesha County and significant portions of Walworth County into District 5. Schreibel Resp. Expert Rep.12. It then shifts parts of Wauwatosa and West Allis from District 5 to District 1, creating a thin peninsula at District 1’s northern border. Schreibel Resp. Expert Rep.12. It also takes most of Sauk County from District 2 and adds it to District 6, stretching District 6 from the coast of Lake Michigan to west of the Wisconsin River. Schreibel Resp. Expert Rep.12. Finally, it splits Shawano County between Districts 7 and 8. Schreibel Resp. Expert Rep.12.

The Citizen Mathematicians’ Proposed Map equally apports Wisconsin after moving 499,510 people, 8.5% of Wisconsin’s population, into new districts. Schreibel Resp. Expert Rep.14–15; Br. of Int.-Pet’rs Citizen Mathematicians & Scientists at 9, *Johnson v. Wis. Elections Comm’n*, No.2021AP1450-OA (Wis. Dec. 15, 2021) (“Citizen Math. Br.”). Like the Governor’s Proposed Map, the Citizen Mathematicians’ Proposed Map adds multiple close-in Milwaukee County suburbs like St. Francis, Cudahy, and South Milwaukee to District 1 from District 4. Schreibel Resp. Expert Rep.15. Then, it removes different, southwest

Milwaukee County communities like Franklin from District 1 and adds them to District 5. Schreiber Resp. Expert Rep.15. So, the Citizen Mathematicians' Proposed Map also leaves District 1 with a narrow, northern peninsula. Schreiber Resp. Expert Rep.15. Further, the Citizen Mathematicians' Proposed Map moves District 1's portion of Waukesha County into District 5 and District 5's portion of Walworth County into District 1. Schreiber Resp. Expert Rep.15. Those changes split both Whitewater and Mukwonago. Schreiber Resp. Expert Rep.15. Finally, the Citizen Mathematicians' Proposed Map adds portions of Wauwatosa and West Allis from District 5 into District 4. Schreiber Resp. Expert Rep.15.

SUMMARY OF ARGUMENT

I. This Court should reject the Governor's Proposed Map, the Hunter Petitioners' Proposed Map, and the Citizen Mathematicians' Proposed Map, as these maps all violate *Johnson*. Indeed, these parties and their experts do not even attempt to explain how any of their changes make sense, including in light of Wisconsin's political geography.

A. This Court should reject the Governor's Proposed Map. This map moves several close-in Milwaukee County suburbs out of District 4—a district that is already significantly underpopulated—and into District 1. That unnecessary change then spurs other changes that likewise violate this Court's decision in *Johnson*, as described below.

B. This Court should also reject the Hunter Petitioners' Proposed Map. This map makes multiple substantial changes without even attempting to justify them. For example, it gratuitously shifts people back and forth between Districts 1 and 5. This map also grafts most of Sauk County onto District 6, creating a bizarre, elongated district that stretches across the State. Moreover, it needlessly adds a county split along the District 7/District 8 border, despite other obvious, "least-change" ways to reapportion these districts.

C. Finally, this Court should likewise reject the Citizen Mathematicians' Proposed Map. This map, which moves substantially more people than any other proposed map, makes unexplained changes throughout. For example, it needlessly adds multiple close-in Milwaukee County suburbs from District 4 to District 1—despite District 4's significant underpopulation—causing other unnecessary changes between Districts 4 and 5. It also swaps populations back and forth across Districts 1 and 5, with no basis in Wisconsin's political geography.

II. If this Court wishes to adopt a remedial map that retains District 3's long, narrow appendage into central Wisconsin—as all of the other parties proposed—then it should simply adopt the Congressmen's modified version of the Proposed Remedial Map. While the Congressmen continue to believe that their Proposed Remedial Map is the best one under *Johnson*, the modified version of this map is far preferable to the maps proposed by the other parties.

ARGUMENT

I. This Court Should Reject The Remedial Maps Proposed By Other Parties, As They Do Not Satisfy The Standards Articulated In *Johnson*

Johnson establishes the standard for evaluating proposed remedial redistricting maps. Br. Of Congressmen Supporting Their Proposed Congressional District Map at 31–44, *Johnson v. Wis. Elections Comm’n*, No.2021AP1450-OA (Wis. Dec. 15, 2021) (“Congressmen Br.”). The *Johnson* lead opinion “adopt[ed] the least-change approach” to remedying the existing map. *Johnson*, 2021 WI 87, ¶ 81. Justice Hagedorn agreed “in almost all respects,” while adding that this Court can look at other relevant considerations in choosing from among alternative least-change proposals, *see id.* ¶¶ 82, 87 (Hagedorn, J., concurring).

In their submission, the Congressmen provided their Proposed Remedial Map and supported it with an expert report from Tom Schreibel, who has decades of expertise in redistricting, in general, and in Wisconsin’s political geography, in particular. Aff. of Tom Schreibel Ex. A at 5–7, *Johnson v. Wis. Elections Comm’n*, No.2021AP1450-OA (Wis. Dec. 15, 2021) (hereinafter “Schreibel Expert Rep.”). Mr. Schreibel significantly participated in the 1990, 2000, and 2010 Wisconsin congressional redistricting cycles, drafting and analyzing proposed congressional maps and advising Members of Congress. Schreibel Expert Rep.5–7. Mr. Schreibel is intimately familiar with Wisconsin’s political

geography given his decades-long career as a congressional staff member to Wisconsin members of Congress and his work on important legislative proposals like the Great Lakes Water Compact and the Northeast Interstate Dairy Compact. Schreiber Expert Rep.5–7. Mr. Schreiber’s expert report identifies each of the limited changes that the Proposed Remedial Map makes and explains how those changes equalize the population of Wisconsin’s congressional districts in a manner that is consistent with the State’s political geography. *See* Schreiber Expert Rep. Part III.

None of the other parties submitting congressional remedial maps explained how their changes make sense for Wisconsin, and they failed even to offer any expert claiming to be qualified to opine on Wisconsin’s political geography. *See* Expert Rep. of Jeanne Clelland In Support Of Gov. Evers at 1, *Johnson v. Wis. Elections Comm’n*, No.2021AP1450-OA (Wis. Dec. 15, 2021) (“Clelland Expert Rep.”); Ansolabehere Exp. Rep.6–9; Expert Rep. of Dr. Moon Duchin On Behalf Of Int.-Pet’rs Citizen Mathematicians at 1–2, *Johnson v. Wis. Elections Comm’n*, No.2021AP1450-OA (Wis. Dec. 15, 2021) (“Duchin Expert Rep.”). The closest any party comes to offering any Wisconsin-specific explanation to their proposed map is the Citizen Mathematicians’ expert, Professor Duchin, who purported to identify Wisconsin’s communities of interest based upon unrepresentative submissions to the Governor’s “People’s Map Commission.” Duchin Expert Rep.11, 31–34. But Professor Duchin does not claim to have any expertise in

Wisconsin's political geography, many of her listed communities of interest are unmoored from Wisconsin's political reality, and the Citizen Mathematicians do not even attempt to follow this list scrupulously in their proposed map. *See* Schreibel Resp. Expert Rep.16–19.

Notably, all of the other parties who submitted their proposed remedial maps drew their maps behind closed doors—unlike the Congressmen's Proposed Remedial Map, which the people of this State debated before the Legislature adopted it as 2021 S.B. 622. These parties thus ask this Court to adopt their proposed maps based upon their *ipse dixit*, without any expert explaining why their changes make sense under Wisconsin's political geography *and* without any public testimony that could explain why their proposed changes make sense for this State.

Below, the Congressmen discuss each of the three other proposed maps with particularity, explaining how each of them fall short of *Johnson's* controlling standard.

A. The Governor's Proposed Map Does Not Satisfy The Standards In *Johnson*

The Governor's Proposed Map equally reapportions Wisconsin after moving 322,356 people, comprising 5.5% of the population, into a new district. Schreibel Resp. Expert Rep.7. This map makes significant changes without offering any explanation grounded in Wisconsin's political geography for those changes. Specifically, this map moves multiple

close-in Milwaukee County suburbs from District 4, like St. Francis, Cudahy, and South Milwaukee, to District 1. Schreibel Resp. Expert Rep.7. Then, it shifts all of Waukesha County out of District 1 and into District 5. Schreibel Resp. Expert Rep.7. Next, it splits the City of Whitewater between Districts 5 and 1 and moves East Troy and portions of the City of Mukwonago from District 1 to District 5. Schreibel Resp. Expert Rep.7. Finally, it moves all of Wauwatosa and portions of West Allis from District 5 to District 4, and then all of the City of Beloit from District 2 into District 1. Schreibel Resp. Expert Rep.7.

The Governor's Proposed Map does not comply with *Johnson*, and each of the changes identified above are unexplained and appear inexplicable with reference to Wisconsin's existing political geography.

To begin, the changes between District 1 and District 4 violate *Johnson*. After the 2020 Census, District 4 was the most underpopulated congressional district in the State. Joint Stipulation of Facts And Law ("Joint Stip.") Ex. C, *Johnson v. Wis. Elections Comm'n*, No.2021AP1450-OA (Wis. Nov. 4, 2021). Yet, the Governor's Proposed Map *removes* multiple communities with close ties to the City of Milwaukee from District 4 to District 1, including St. Francis, Cudahy, and South Milwaukee. Schreibel Resp. Expert Rep.8. That is not compelled by a "least-change" approach, *Johnson*, 2021 WI 87, ¶¶ 64, 81; *id.* ¶ 82 (Hagedorn, J., concurring), as it ultimately requires adding even more people to District 4

from elsewhere, Schreibel Resp. Expert Rep.8. This shift also gives District 1 a peculiar shape, *Johnson*, 2021 WI 87, ¶ 87 (Hagedorn, J., concurring), adding a narrow appendage jutting well north into Milwaukee County, Schreibel Resp. Expert Rep.8. This change has no basis in Wisconsin's political geography, Schreibel Resp. Expert Rep.8–9, and the Governor and his expert—who has no specific expertise in redistricting for Wisconsin—do not even attempt to argue otherwise, *see generally* Gov.Br.8–19. Wisconsin traditionally includes St. Francis, Cudahy, and South Milwaukee in Milwaukee-based districts like District 4, for good reason: these cities are older-developed communities with strong ties to Milwaukee, and they are dissimilar to the more newly developed suburban Milwaukee communities found inside District 1's northern border, such as Franklin and Oak Creek. Schreibel Resp. Expert Rep.8–9.

The Governor's Proposed Map's changes between District 1 and District 5 also conflict with *Johnson*. First, the map removes all of District 1's portion of Waukesha County—which historically falls within District 1's boundaries, *Johnson*, 2021 WI 87, ¶ 87 (Hagedorn, J., concurring)—into District 5. Schreibel Resp. Expert Rep.9. The most plausible reason for this change is to counteract the Governor's unnecessary and unexplained addition of St. Francis, Cudahy, and South Milwaukee to District 1 from District 4, as described immediately above. Schreibel Resp. Expert Rep.9. Second, it moves portions of Whitewater from District

5 to District 1 and then moves all of East Troy and the remaining portions of Mukwonago from District 1 to District 5. Schreibel Resp. Expert Rep.9. But District 1 and District 5 are underpopulated, and the Governor does not offer *any* explanation of these back-and-forth population trades. Schreibel Resp. Expert Rep.9–10.

Next, the shift between District 4 and District 5 in the Governor's Proposed Map likewise violates *Johnson*. Given the changes discussed above, this map created a significant overpopulation in District 5 and a significant underpopulation in District 4, a district that was already severely underpopulated. *See supra* 9–10. So, to apportion both Districts 4 and 5 equally, the Governor's Proposed Map moves all of Wauwatosa and portions of West Allis into District 4. Schreibel Resp. Expert Rep.10. Given the size of these two communities, that is a dramatic shift of population into a new congressional district. Schreibel Resp. Expert Rep.10. The Governor offers no rationale for this substantial change, and it appears to have been precipitated by needless adjustments between Districts 1 and 4 and Districts 1 and 5. Schreibel Resp. Expert Rep.10; *Johnson*, 2021 WI 87, ¶¶ 64, 81; *id.* ¶ 82 (Hagedorn, J., concurring). Nor would this change find support in Wisconsin's existing political geography, Schreibel Resp. Expert Rep.10, as the Governor and his expert fail to argue otherwise, *see generally* Gov.Br.8–19.

Finally, moving the entirety of the City of Beloit from District 2 to District 1 also fails to adhere to *Johnson's*

standards. Here too, this map would have avoided moving Beloit—which includes a significant number of people—by respecting the existing boundary between Districts 1 and 4. *Supra* pp. 10–11. However, because the Governor’s map moved large southern Milwaukee communities from District 4 to District 1 without explanation, shifting Beloit from District 1 to District 2 also lacks any justification. *Johnson*, 2021 WI 87, ¶¶ 64, 81; *id.* ¶ 82 (Hagedorn, J., concurring). Further, the Governor and his expert fail to explain how moving Beloit to District 1 has any support in Wisconsin’s existing political geography. *See* Schreibel Resp. Expert Rep.10–11; *see generally* Gov.Br.8–19.

B. The Hunter Petitioners’ Proposed Map Does Not Satisfy The Standards In *Johnson*

The Hunter Petitioners’ Proposed Map reaches equal apportionment after moving 410,502 people—which is 6.96% of the State’s population—into a new congressional district. Schreibel Resp. Expert Rep.11; *see* Ansolabehere Expert Rep.3. This map is similar to the Governor’s Proposed Congressional Map, and it makes significant changes to Districts 1, 4, 5, and 6 without grounding in Wisconsin’s existing political geography. Schreibel Resp. Expert Rep.12. In particular, it places all of Waukesha County and significant portions of Walworth County into District 5, removing portions of these counties from District 1. Schreibel Resp. Expert Rep.12. Next, it adds parts of Wauwatosa and

West Allis from District 5 to District 1, which—similar to the Governor’s map—adds a thin peninsula onto District 1’s northern border, stretching into southern Milwaukee. Schreiber Resp. Expert Rep.12. As for District 6, this map adds most of Sauk County to its western border, removing this region from District 2 and thereby stretching District 6 from Lake Michigan to west of the Wisconsin River. Schreiber Resp. Expert Rep.12. Finally, this map reapportions District 8 by creating a split of Shawano County across District 7. Schreiber Resp. Expert Rep.12.

The Hunter Petitioners’ Proposed Map violates *Johnson*, and the changes identified above are unexplained and inexplicable by reference to achieving population equality, consistent with Wisconsin’s political geography.¹

¹ The Hunter Petitioners briefly claim that this Court does not have jurisdiction to reapportion equally Wisconsin’s congressional districts, since Petitioners originally raised claims under only Article IV, Section 4 of the Wisconsin Constitution. Hunter Br.11 n.1. While the Congressmen believe that Article IV, Section 4 imposes a one-person/one-vote requirement for Wisconsin’s congressional districts, as they have explained, see Congressmen Br. Addressing Four Questions at 8–11, *Johnson v. Wis. Elections Comm’n*, No.2021AP1450-OA (Wis. Oct. 25, 2021), the Omnibus Amended Petition also raises an equal-apportionment challenge to the existing congressional districts under Article I, Section 1 of the Wisconsin Constitution, Omnibus Amend. Pet. ¶¶ 1, 125, *Johnson v. Wis. Elections Comm’n*, No.2021AP1450-OA (Wis. Oct. 21, 2021). *The Hunter Petitioners admit by silence* that Article I, Section 1 requires that congressional districts comply with the one-person/one-vote standard. See Resp. Br. Of The Congressmen at 2–3, *Johnson v. Wis. Elections Comm’n*, No.2021AP1450-OA (Wis. Nov. 1, 2021). In any event, federal law recognizes one-person/one-vote claims against Wisconsin’s existing congressional districts, and it is “fitting” for this Court “to address congressional malapportionment claims as well,

First, the map's multiple changes between Districts 1 and 5 violate *Johnson*. 2021 WI 87, ¶¶ 64, 81; *id.* ¶ 82 (Hagedorn, J., concurring). This map gratuitously shifts people back and forth between Districts 1 and 5 without offering any reason, which is the antithesis of a “least change” approach. *Id.* Specifically, the map adds portions of Wauwatosa and West Allis from District 5 to District 1 and then moves District 1's portion of Waukesha County and part of its portion of Walworth County to District 5—although both districts were underpopulated after the Census. Schreibel Resp. Expert Rep.12–13; *Johnson*, 2021 WI 87, ¶¶ 64, 81; *id.* ¶ 82 (Hagedorn, J., concurring). The result is a narrow appendage to District 1 that juts north into the City of Milwaukee and creates an odd district shape. Schreibel Resp. Expert Rep.13; *Johnson*, 2021 WI 87, ¶ 87 (Hagedorn, J., concurring). Further, there is no support in Wisconsin's existing political geography for these changes, including because of the close ties between Wauwatosa and West Allis and the City of Milwaukee, as well other west-side Milwaukee suburbs—and the Hunter Petitioners and their expert fail to argue otherwise. *Johnson*, 2021 WI 87, ¶ 87 (Hagedorn, J., concurring); Schreibel Resp. Expert Rep.13; *see generally* Hunter Int.-Pet'rs Br. In Supp. Of Proposed Maps at 12–17,

whether under state or federal law,” *Johnson*, 2021 WI 87, ¶ 87 n.18 (Hagedorn, J., concurring); *accord* Congressmen Br.27.

Johnson v. Wis. Elections Comm'n, No.2021AP1450-OA (Wis. Dec. 15, 2021) (“Hunter Br.”).

Second, this proposed map unnecessarily alters District 6 by adding most of Sauk County from District 2 to its western boundary, in violation of *Johnson*. Schreibel Resp. Expert Rep.13. This creates a bizarre, elongated District 6 that stretches from the coast of Lake Michigan to west of the Wisconsin River. Schreibel Resp. Expert Rep.13; *Johnson*, 2021 WI 87, ¶ 87 (Hagedorn, J., concurring). Neither the Hunter Petitioners nor their expert even attempt to argue that adding Sauk County to District 6 fits with Wisconsin’s political geography. *See generally* Hunter.Br.at 12–17; Ansolabehere Exp. Rep.12, 14. In fact, Sauk County is a west-central Wisconsin county with ties to both Madison and western Wisconsin, Schreibel Resp. Expert Rep.13–14, while District 6 centers predominantly around eastern Wisconsin cities along the shores of Lake Winnebago and Lake Michigan, Schreibel Resp. Expert Rep.14. And while the Hunter Petitioners’ expert claims that this change was necessary to reapportion Districts 2 and 6, Ansolabehere Expert Rep.14, the Congressmen’s Proposed Remedial Map provides a readily available, “least-change” way to apportion these districts, Congressmen Br.36–37, 41–42; *accord* Schreibel Resp. Expert Rep.14.

Finally, this map creates a needless, inexplicable split of Shawano County between Districts 7 and 8. Schreibel Resp. Expert Rep.14; *see Johnson*, 2021 WI 87, ¶¶ 64, 81; *id.*

¶ 82 (Hagedorn, J., concurring). After the 2020 Census, District 8 was overpopulated and so had to lose population to its neighboring districts. See Joint Stip. Ex. C. The most logical, “least-change” place for District 8 to lose population is along its southern border, as that border contains two appendages jutting into Winnebago and Calumet Counties. Schreibel Resp. Expert Rep.14; see *Johnson*, 2021 WI 87, ¶ 87 (Hagedorn, J., concurring); Congressmen Br.40–41 (proposing this change). However, the Hunter Petitioners’ Proposed Map breaches the District 7/District 8 line, creating a new split of Shawano County. Schreibel Resp. Expert Rep.14; *contra Johnson*, 2021 WI 87, ¶¶ 64, 81; *id.* ¶ 82 (Hagedorn, J., concurring). The Hunter Petitioners and their expert offer nothing to justify this change, nor is such a justification apparent. Schreibel Resp. Expert Rep.14; see *generally* Hunter.Br.at 12–17; Ansolabehere Exp. Rep.15.

C. The Citizen Mathematicians’ Proposed Map Does Not Satisfy The Standards In *Johnson*

The Citizen Mathematicians’ Proposed Map equally reapportions Wisconsin’s congressional districts after moving 499,510 people—8.5% of the population—and making numerous changes that do not comport with Wisconsin’s existing political geography. Schreibel Resp. Expert Rep.14–16; Citizen Math. Br.9. Similar to the Governor’s Proposed Map, the Citizen Mathematicians’ Proposed Map adds multiple close-in Milwaukee County suburbs like St. Francis,

Cudahy, and South Milwaukee to District 1 from District 4—despite District 4’s significant underpopulation. Schreibel Resp. Expert Rep.15. Then, the map removes different Milwaukee County communities from District 1, like Franklin, adding them to District 5. Schreibel Resp. Expert Rep.15. So, this map also ends with a narrow, northern appendage attached to District 1, extending into the City of Milwaukee. Schreibel Resp. Expert Rep.15. Next, the map moves District 1’s portion of Waukesha County into District 5 and District 5’s portion of Walworth County into District 1—a swap that splits both Whitewater and Mukwonago. Finally, the proposed map adds portions of Wauwatosa and West Allis, two large Milwaukee County cities, from District 5 into District 4. Schreibel Resp. Expert Rep.15.

The Citizen Mathematicians’ Proposed Map violates *Johnson*. As an initial matter, this map moves 8.5% of Wisconsin’s population into a new district, almost 2% higher than the maps proposed by other parties. While the Citizen Mathematicians argue that their map follows a “least-change” approach because it minimizes the amount of “land area” that is “displaced,” this is irrelevant under *Johnson*. Citizen Math Br.8; *accord* Hunter Br.13; *contra Johnson*, 2021 WI 87, ¶¶ 24, 28–29. The one-person/one-vote principle that requires redistricting is based upon the understanding that “[l]egislators represent people, not trees or acres,” *Reynolds v. Sims*, 377 U.S. 533, 562 (1964), and the Citizen Mathematicians offer no plausible justification for importing

the “trees or acres” considerations into the remedial phase. *See* Citizen Math. Br.8.

Like the Governor’s Proposed Map, the Citizen Mathematician’s map adds close-in Milwaukee suburban communities from District 4 like St. Francis, Cudahy, and South Milwaukee to District 1, which is a clear violation of *Johnson*. *Supra* p. 12. The Citizen Mathematicians’ map goes even further than the Governor’s map on this score, removing other communities in Milwaukee County from District 1—like Franklin—and adding them to District 5. Schreibel Resp. Expert Rep.16. These shifts create a bizarre appendage at District 1’s northern border and lack a basis in Wisconsin’s political geography. *Johnson*, 2021 WI 87, ¶ 87 (Hagedorn, J., concurring); Schreibel Resp. Expert Rep.16; *supra* pp. 10–11.

The Citizen Mathematicians’ other proposed changes to Districts 1 and 5 likewise violate *Johnson*. Their map removes Waukesha County from District 1 and places it within District 5, and then it eliminates Walworth County from District 5 and puts it within District 1. Schreibel Resp. Expert Rep.16. *Johnson* does not permit such a give-and-take between districts as part of a “least-change” approach without offering any justification. *Johnson*, 2021 WI 87, ¶¶ 64, 81; *id.* ¶ 82 (Hagedorn, J., concurring). Further, this change needlessly splits the Cities of Whitewater and Mukwonago. Schreibel Resp. Expert Rep.17.

Additionally, like the Governor’s Proposed Map, the Citizen Mathematicians’ map shifts parts of Wauwatosa and

West Allis from District 5 to District 4, which is also a significant change that does not comport with “least changes.” *Johnson*, 2021 WI 87, ¶¶ 64, 81; *id.* ¶ 82 (Hagedorn, J., concurring); *supra* p. 13. The most plausible reason for the Citizen Mathematicians to shift both of these large communities from District 5 to District 4 is to offset the unnecessary removal of communities like St. Francis, Cudahy, and South Milwaukee from District 4, despite District 4’s significant underpopulation. Schreibel Resp. Expert Rep.17; *supra* p. 13. Therefore, just like the Governor’s Proposed Map, the significant shift of Wauwatosa and West Allis from District 5 to District 4 is not a “least change,” as the Citizen Mathematicians could have avoided it by not depopulating District 4 without cause. Schreibel Resp. Expert Rep.17; *supra* p. 13. And, given the map’s other changes to District 5, described above, the shift of Wauwatosa and West Allis from District 5 to District 4 means that District 5 both loses and gains population in Milwaukee County, Schreibel Resp. Expert Rep.17, which violates *Johnson* when not justified by concerns of political geography, *Johnson*, 2021 WI 87, ¶¶ 64, 81; *id.* ¶ 82 (Hagedorn, J., concurring).

Finally, the Citizen Mathematicians argue that their proposed map largely adheres to ward lines. *See, e.g.*, Citizen Math. Br.23–24. But respect for county and other municipal lines takes priority over respect for ward lines. *See* Wis. Const. art. IV, § 4. Moreover, ward lines often change after congressional redistricting has begun, thus they cannot

provide reliable guidance to map drawers during the congressional redistricting process. Schreiber Resp. Expert Rep.17. This explains why no other party has defended their proposed congressional map with reference to ward lines. *See* Congressmen Br.34–44; Gov.Br.8–19; Hunter Br.12–17.²

II. If This Court Wishes To Retain District 3’s Narrow Appendage Into Central Wisconsin—As The Governor, The Hunter Petitioners And The Citizen Mathematicians Proposed—This Court Should Modify The Congressmen’s Proposed Remedial Map To Retain This Feature, Which Would Reduce The Percentage of People Moved To 3.84%

As the Congressmen explained, their Proposed Remedial Map shifts District 3’s narrow appendage into central Wisconsin, which ends in Stevens Point, to District 7 as part of their “least change” approach to correcting the malapportionment of the existing congressional districts.

² With respect to overall municipal splits, each of the parties proposing remedial congressional maps appear to have calculated their map’s splits using different datasets and/or different methodology. *See, e.g.,* Schreiber Expert Rep.31 & n.12; Clelland Expert Rep.6; Ansolabehere Expert Rep.5; Duchin Expert Rep.12). Accordingly, comparing differences in total municipal splits would not appear to assist this Court in determining whether any map is the “best” least-change “alternative.” *Johnson, 2021 WI 87, ¶ 83* (Hagedorn, J., concurring); Schreiber Resp. Expert Rep.23 n.*. To the extent this metric is helpful, the Congressmen’s Proposed Remedial Map appears to have fewer splits than the Governor’s Proposed Map and the Hunter Petitioners’ Proposed Map. *Compare* Schreiber Expert Rep.31, *with* Clelland Expert Rep.6, *and* Ansolabehere Expert Rep.5. All that said, an individual proposed district’s treatment of municipal splits is still probative as to whether that district respects Wisconsin’s political geography. *Johnson, 2021 WI 87, ¶ 83* (Hagedorn, J., concurring); Schreiber Resp. Expert Rep.23 n.*.

Congressmen Br.37–39. That is, the Proposed Remedial Map’s move of Stevens Point from District 3 to District 7 aids in equally apportioning these two districts, while also removing four county splits caused by District 3’s long, narrow appendage into central Wisconsin. Congressmen Br.38–39. Further, this change achieves population equality in a manner that best respects Wisconsin’s political geography. Congressmen Br.37–39. As a larger municipality situated squarely in central Wisconsin, Stevens Point has much more in common with nearby Wausau—situated in District 7—than with District 3’s Eau Claire or La Crosse, which are firmly located in Wisconsin’s west. Congressmen Br.38–39. The proposed maps of the Governor, the Hunter Petitioners, and the Citizen Mathematicians all retain District 3’s long, narrow appendage into central Wisconsin. *See* Gov.Br.25; Hunter Br.14; Duchin Expert Rep.3.

While the Congressmen continue to believe that the Proposed Remedial Map’s elimination of District 3’s long, narrow appendage best complies with *Johnson*, if this Court agrees with the Governor, the Hunter Petitioners, and the Citizenship Mathematicians that this appendage should remain, then the only logical solution consistent with *Johnson* would be to adopt the Congressmen’s Proposed Remedial Map, while simply modifying that map to keep this appendage in District 3. Specifically, this modified version of the Proposed Remedial Map retains all of the Proposed Remedial Map’s features, except as to District 3’s northern border. *See*

Schreibel Resp. Expert Rep.19–20; Ex. B to Schreibel Aff. (picture of map). As to that border, the modified version of the Proposed Remedial Map largely retains District 3’s long, narrow appendage into central Wisconsin, adjusting it only to equalize population by shifting the southern and eastern portions of Portage County to District 8. Schreibel Resp. Expert Rep.20. Then, the modified version of the Proposed Remedial Map adjusts District 3’s already-existing split of Chippewa County with District 7 to equalize these districts. Schreibel Resp. Expert Rep.20. These changes are consistent with the other parties’ treatment of District 3’s northern border, including as to the appendage into central Wisconsin. *See* Gov.Br.25; Hunter Br.14; Duchin Expert Rep.4.

The modified version of the Proposed Remedial Map—which, to be clear, the Congressmen believe is less optimal compared to their Proposed Remedial Map—would be far better from the point of view of *Johnson* than the maps proposed by the other parties. To begin, it would move 226,723 people, or 3.84% of the population, which would be less than the number of people that the other proposed remedial maps move. Schreibel Resp. Expert Rep.19. Further, it would equally apportion the State by making only those “least changes” needed to account for population shifts, while remaining consistent with Wisconsin’s political geography in all other respects—except as to District 3’s long, narrow appendage. Schreibel Resp. Expert Rep.21; *see* Congressmen Br.34–44. The modified version of the Proposed

Remedial Map would also comply with the equal-population requirement, as it also perfectly apportions Wisconsin's eight congressional districts. Schreiber Resp. Expert Rep.22; Congressmen Br.28. It would adhere to the anti-racial-gerrymandering requirement, since it adjusts the existing boundary lines only to reapportion the State. Congressmen Br.29–30. Finally, it would comply with the Voting Rights Act (“VRA”), as it does not make any VRA-implicating changes to the existing map. Congressmen Br.30–31.³

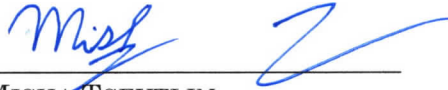
CONCLUSION

This Court should reject the remedial congressional maps proposed by other parties and adopt the Congressmen's Proposed Remedial Map.

³ This Court's November 17 Order provides that “any party that filed a proposed map and subsequently determines that it merits a correction or modification” must move for leave to “amend the proposed map.” Order at 3, *Johnson v. Wis. Elections Comm'n*, No.2021AP1450-OA (Wis. Nov. 17, 2021). The Congressmen are unsure whether they need to submit such a motion to present this Court with a modified version of the Proposed Remedial Map, for its consideration, in its exercise of remedial discretion, given that they continue to believe that their original map is the best alternative under *Johnson*. Nevertheless, out of an abundance of caution, the Congressmen have simultaneously filed such a motion with this Brief.

Dated: December 30, 2021.

Respectfully submitted,



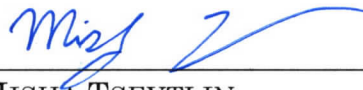
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CERTIFICATION

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 5,364 words.

Dated: December 30, 2021.



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**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 30, 2021.



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