February 2, 2022

Via Email & Hand Delivery

Sheila T. Reiff
Clerk of the Supreme Court and Court of Appeals
110 East Main Street, Suite 215
Madison, WI 53703

RE: ***Johnson v. Wisconsin Elections Commission*, No. 2021AP1450-OA – Letter brief from Intervenor-Petitioners Black Leaders Organizing for Communities, et al., in response to the Court's Order dated January 31, 2022**

Dear Ms. Reiff:

Undersigned counsel represent Black Leaders Organizing for Communities, Voces de la Frontera, the League of Women Voters of Wisconsin, Cindy Fallona, Lauren Stephenson, and Rebecca Alwin, Intervenor-Petitioners (collectively the "BLOC Petitioners") in the referenced action. On January 31, 2022, the Supreme Court of Wisconsin ordered that the parties may submit letter briefs addressing the motion filed by the Hunter Intervenors on January 25, 2022. Order (Wis. January 31, 2021). The BLOC Petitioners submit this letter brief accordingly.

BLOC Petitioners have not proposed congressional districts, and have not advanced arguments on the merits of the various congressional proposals before the Court. BLOC Petitioners therefore take no position on the merits of the additional authority Hunter Intervenors submit in their January 25, 2022 motion. However, BLOC Petitioners write to address the secondary issue raised by Hunter Intervenors in that motion, as expounded upon by the response of the Congressmen, filed on January 26: the submission of additional or amended proposed districts following oral argument.

The time for submitting new districting proposals has passed. Parties seeking to propose new legislative or congressional districts in this litigation were ordered to do so by December 15, 2021. Order (Wis. November 17, 2021). That order recognized that technical corrections may be

required after this initial submission (and indeed BLOC Petitioners, as well as the Governor were granted leave to make such corrections) but also distinguished this in kind from wholesale *new* submissions advocating alternative district configurations. The Court emphasized the distinction in a later order: "The Congressmen's motion, however, is different-in-kind. It is not a motion to amend a previously submitted map. Rather, the Congressmen ask us to consider an alternative map… the Congressmen ask us to accept two congressional maps from them…. This plainly runs afoul of our direction that each party may submit only a single set of maps." Order (Wis. January 10, 2022, first, at 2). The Court appropriately denied the Congressmen's motion. *Id.*

The Congressmen now seek permission to submit new proposals that would require the parties to abandon their previous submissions and stand on a single *new* post-oral argument proposal. This approach is untenable. Alternative or additional districting proposals would require further analysis and critique by the other parties and their experts. The Court's previous briefing schedule, while expedited, heeded the need for an abbreviated adversarial process in evaluating proposed districts. The parties to this litigation not only submitted and advocated for their own preferred maps, but critiqued those of other parties. *See e.g.* BLOC Resp. Br. at pages 24-39. To allow substantive changes to these now-vetted proposals would require resetting substantial steps of this process, so that the parties may raise *new* issues with the *new* proposals.

This does not bar all amendments, and it need not preclude the Hunter Intervenors' request. ("Hunter Intervenors respectfully reiterate their request to submit *a technical, non-substantive modification* to their proposed congressional map." Hunter Intervenor-Petitioners' Motion for Leave to Provide Authorities in Response to Oral Argument Question, at page 5) (emphasis added). Technical corrections the Court deems necessary to bring maps it seeks to adopt into legal compliance—or address practical issues for election administration—may still be required. Minor technical corrections, such as moving a handful of voters or even a handful of census blocks, would not meaningfully change the analysis provided to the Court by the parties, nor their criticism of the competing proposals. The Court can direct those amendments be made by any party, or seek a party's position on the feasibility of making such changes to a proposal before the Court. Permitting all parties to file new or amended maps at this juncture, however, would require additional expert analysis and briefing for a thorough interrogation of those proposals.

Permitting minor corrections or revisions to proposals at this stage in the litigation may well serve the interests of the parties and the people of Wisconsin. But allowing the litigants a free hand to amend districts after the close of briefing and oral arguments would rewind the procedural clock and reopen issues already addressed. This appears to be what the Congressmen propose in their response, should the Hunter Intervenors' motion be granted. Resp. of Congressmen to Mot., at page 6. We agree with the Congressmen that allowing such submissions "appears unnecessary," but strongly disagree that *any* amendment or revision would be "equally "[]substantive."" *Id.*

Sincerely,

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By Email only
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