

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN

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ALVIN BALDUS, CARLENE BECHEN, ELVIRA  
BUMPUS, RONALD BIENDSEIL, LESLIE W.  
DAVIS, III, BRETT ECKSTEIN, GLORIA  
ROGERS, RICHARD KRESBACH, ROCHELLE  
MOORE, AMY RISSEEUW, JUDY ROBSON,  
JEANNE SANCHEZ-BELL, CECELIA  
SCHLIEPP, TRAVIS THYSSEN, CINDY  
BARBERA, RON BOONE, VERA BOONE,  
EVANJELINA CLEERMAN, SHEILA COCHRAN,  
MAXINE HOUGH, CLARENCE JOHNSON,  
RICHARD LANGE, and GLADYS MANZANET,

Plaintiffs,

Case No. 11-C-00562  
JPS-DPW-RMD

TAMMY BALDWIN, GWENDOLYNNE MOORE  
and RONALD KIND,

Intervenor-Plaintiffs,

v.

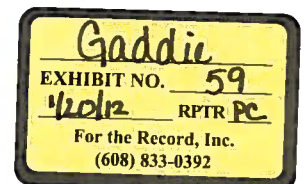
Members of the Wisconsin Government  
Accountability Board, each only in his official  
capacity: MICHAEL BRENNAN, DAVID  
DEININGER, GERALD NICHOL, THOMAS  
CANE, THOMAS BARLAND, and TIMOTHY  
VOCKE, and KEVIN KENNEDY, Director and  
General Counsel for the Wisconsin Government  
Accountability Board,

Defendants,

F. JAMES SENSENBRENNER, JR., THOMAS E.  
PETRI, PAUL D. RYAN, JR., REID J. RIBBLE,  
and SEAN P. DUFFY.

Intervenor-Defendants.

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VOCES DE LA FRONTERA, INC.,  
RAMIRO VARA, OLGA VARA,  
JOSE PEREZ, and ERICA RAMIREZ,

Plaintiffs,

v.

Case No. 11-C-1011  
JPS-DPW-RMD

Members of the Wisconsin Government  
Accountability Board, each only in his official  
capacity: MICHAEL BRENNAN, DAVID  
DEININGER, GERALD NICHOL, THOMAS  
CANE, THOMAS BARLAND, TIMOTHY  
VOCKE, and KEVIN KENNEDY, Director and  
General Counsel for the Wisconsin Government  
Accountability Board,

Defendants.

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DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO *VOCES DE LA  
FRONTERA* PLAINTIFFS' ORIGINAL COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF UNDER THE VOTING RIGHTS ACT OF 1965

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The defendants, the Members of the Wisconsin Government Accountability Board ("GAB"), Michael Brennan, David Deininger, Gerald Nichol, Thomas Cane, Thomas Barland, and Timothy Vocke, each in his official capacity only, and Kevin Kennedy, in his official capacity as Director and General Counsel for the GAB only, by their attorneys, J.B. Van Hollen, Attorney General, and Maria S. Lazar, Assistant Attorney General, and Reinhart Boerner Van Deuren, S.C., by Patrick J. Hodan, Daniel Kelly, and Colleen E. Fielkow, for their Answer

and Affirmative Defenses to the plaintiffs' Original Complaint for Declaratory and Injunctive Relief Under the Voting Rights Act, dated October 31, 2011, hereby state as follows:

**Jurisdiction And Venue**

1. This is an action for a declaratory judgment and for injunctive relief under Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, seeking to redress unlawful dilution of voting strength of Latino residents of the 8<sup>th</sup> Assembly District located on the near south side of the City of Milwaukee in the state of Wisconsin. Plaintiffs further allege that the legislative redistricting plan adopted by the Legislature of the State of Wisconsin on July 20, 2011, and signed by the Governor on August 9, 2011, unlawfully deprives the Latino community of Milwaukee's near south side of an effective voting majority in any of the newly created assembly districts despite the fact that the Latino community is sufficiently numerous and geographically compact to allow for at least one assembly district with an effective voting majority. As a result of the redistricting plan, Latino citizens have less opportunity than other members of the electorate to participate in the political process and to elect candidates of their choice to the Legislature of Wisconsin.

**Answer to ¶ 1:** The defendants do not deny the plaintiffs' characterization of their Complaint as an action for a declaratory judgment and injunctive relief, but put the plaintiffs to their proof as to the remaining allegations. The defendants DENY all other allegations in ¶ 1.

2. Jurisdiction over this action is conferred on the Court by 28 U.S.C. §§ 1331, 2201, 2202 and 42 § 1973. As this complaint alleges violations of (sic) federal law as a result of the re-appointment of legislative districts by Wisconsin's Legislature, a three judge court is required under 28 U.S. C. § 2284.

**Answer to ¶ 2:** Paragraph 2 contains conclusions of law to which no answer is required. To the extent any court should construe anything in this paragraph as an allegation of fact, the defendants lack information sufficient to form a belief as to the truth of the matters asserted and so DENY. However, defendants ADMIT this Court has jurisdiction over this Complaint.

3. Venue is proper because the violations of the Plaintiffs' voting rights complained of herein are being committed and continue to occur in the City of Milwaukee, Wisconsin, within the Eastern District of Wisconsin.

**Answer to ¶ 3:** Paragraph 3 contains conclusions of law to which no answer is required. To the extent any court should construe anything in this paragraph as an allegation of fact, the

defendants lack information sufficient to form a belief as to the truth of the matters asserted and so DENY. However, defendants ADMIT that the Federal District Court for the Eastern District of Wisconsin is a proper venue for this Complaint. Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations regarding the residences of the individual plaintiffs and put plaintiffs to their proof thereon. Defendants DENY the remaining allegations in ¶ 3.

**Parties**

4. The Plaintiff, Voces de la Frontera, Inc., is a membership based organization that seeks to advance the civil rights, political influence and economic conditions of Wisconsin's Latino community. In light of these objectives, Voces de la Frontera is committed to enforcing the protection afforded by the Voting Rights Act of 1965 to its members, as well as to the larger Latino community and all citizens in general. Voces de la Frontera is a not for profit corporation organized under the laws of the State of Wisconsin with its principal place of business at 1027 South 5<sup>th</sup> Street, Milwaukee, Wisconsin.

**Answer to ¶ 4:** Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations set forth in ¶ 4, and therefore, DENY the same, and put plaintiffs to their proof thereon.

5. The Plaintiff, Ramiro Vara, is a Latino citizen of the United States of Mexican American national origin and a resident of the City of Milwaukee, residing at 1122 West Madison Street, Milwaukee, Wisconsin.

**Answer to ¶ 5:** Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations set forth in ¶ 5, and therefore, DENY the same, and put plaintiffs to their proof thereon.

6. The Plaintiff, Olga Vara, is a Latina citizen of the United States of Puerto Rican national origin and a resident of the City of Milwaukee, residing at 1122 West Madison Street, Milwaukee, Wisconsin.

**Answer to ¶ 6:** Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations set forth in ¶ 6, and therefore, DENY the same, and put plaintiffs to their proof thereon.

7. The Plaintiff, Jose Perez, is a Latino citizen of the United States of Puerto Rican national origin and a resident of the City of Milwaukee, residing at 1112 South 8<sup>th</sup> Street, Milwaukee, Wisconsin.

**Answer to ¶ 7:** Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations set forth in ¶ 7, and therefore, DENY the same, and put plaintiffs to their proof thereon.

8. The Plaintiff, Erica Ramirez is a Latina citizen of the United States of Mexican national origin and a resident of the City of Milwaukee, residing at 125 West Mineral Street, Milwaukee, Wisconsin.

**Answer to ¶ 8:** Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations set forth in ¶ 8, and therefore, DENY the same, and put plaintiffs to their proof thereon.

9. The Defendant, Hon. Michael Brennan, is a resident of Marshfield, Wisconsin and being sued in his official capacity as a member of the Wisconsin Government Accountability Board and as such is subject to the provisions and requirements of § 2 of the Voting Rights Act of 1965.

**Answer to ¶ 9:** The defendants ADMIT that the Honorable Michael Brennan is a resident of Marshfield, Wisconsin and that he is a member of the Wisconsin Government Accountability Board. The defendants DENY that the Complaint states a claim against the defendants and so DENY all other allegations in ¶ 9.

10. The Defendant, Hon. David Deininger, is a resident of Monroe, Wisconsin, and being sued in his official capacity as a member of the Wisconsin Government Accountability Board and as such is subject to the provisions and requirements of § 2 of the Voting Rights Act of 1965.

**Answer to ¶ 10:** The defendants ADMIT that the Honorable David Deininger is a resident of Monroe, Wisconsin and that he is a member of the Wisconsin Government Accountability Board. The defendants DENY that the Complaint states a claim against the defendants and so DENY all other allegations in ¶ 10.

11. The Defendant, Hon. Gerald Nichol, is a resident of Madison, Wisconsin, and being sued in his official capacity as a member of the Wisconsin Government Accountability Board and as such is subject to the provisions and requirements of § 2 of the Voting Rights Act of 1965.

**Answer to ¶ 11:** The defendants ADMIT that the Honorable Gerald Nichol is a resident of Madison, Wisconsin and that he is a member of the Wisconsin Government Accountability Board. The defendants DENY that the Complaint states a claim against the defendants and so DENY all other allegations in ¶ 11.

12. The Defendant, Hon. Thomas Cane, is a resident of Wausau, Wisconsin, and being sued in his official capacity as a member of the Wisconsin Government Accountability Board and as such is subject to the provisions and requirements of § 2 of the Voting Rights Act of 1965.

**Answer to ¶ 12:** The defendants ADMIT that the Hon. Thomas Cane is a resident of Wausau, Wisconsin and that he is a member of the Wisconsin Government Accountability Board. The defendants DENY that the Complaint states a claim against the defendants and so DENY all other allegations in ¶ 12.

13. The Defendant, Hon. Thomas Barland, is a resident of Eau Claire, Wisconsin, and being sued in his official capacity as a member of the Wisconsin Government Accountability Board and as such is subject to the provisions and requirements of § 2 of the Voting Rights Act of 1965.

**Answer to ¶ 13:** The defendants ADMIT that the Honorable Thomas Barland is a resident of Eau Claire, Wisconsin and that he is a member of the Wisconsin Government Accountability Board. The defendants DENY that the Complaint states a claim against the defendants and so DENY all other allegations in ¶ 13.

14. The Defendant, Hon. Timothy Vocke, is a resident of Rhinelander, Wisconsin, and being sued in his official capacity as a member of the Wisconsin Government Accountability Board and as such is subject to the provisions and requirements of § 2 of the Voting Rights Act of 1965.

**Answer to ¶ 14:** The defendants ADMIT that the Honorable Timothy Vocke is a resident of Rhinelander, Wisconsin and that he is a member of the Wisconsin Government Accountability Board. The defendants DENY that the Complaint states a claim against the defendants and so DENY all other allegations in ¶ 14.

15. The Defendant, Kevin Kennedy, is a resident of Dane County, Wisconsin, and being sued in his official capacity as the Director and General Counsel of the Wisconsin Government Accountability Board and as such is subject to the provisions and requirements of § 2 of the Voting Rights Act of 1965.

**Answer to ¶ 15:** The defendants ADMIT that Kevin Kennedy is a resident of Dane County, Wisconsin and that he is Director and General Counsel of the Wisconsin Government Accountability Board. The defendants DENY that the Complaint states a claim against the defendants and so DENY all other allegations in ¶ 15.

16. The Government Accountability Board, is an independent agency of state government created pursuant to § 15.60, Wis. Stats., and is vested with the responsibility for the administration of chapters 5 to 12 of the Wisconsin Statutes and other laws relating to the conduct of elections, including the election of representatives to the Assembly.

**Answer to ¶ 16:** The defendants ADMIT the Government Accountability Board is an independent agency of the State of Wisconsin under Wis. Stat. § 15.60, and that it has statutory responsibilities, including those described in Wis. Stat. § 5.05. The defendants DENY any allegation inconsistent with the answer to this paragraph.

#### **Background**

17. The statistical analysis by the Wisconsin Legislative Reference Bureau of the 8<sup>th</sup> Assembly District as promulgated on May 30, 2002, by U.S. District Court for the Eastern District of Wisconsin, indicated a total population in the year 2000 of 54,074 of which 33,602 were Latino for a Latino population percentage of 62% at that time.

**Answer to ¶ 17:** Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations set forth in ¶ 17, and therefore, DENY the same

18. On December 21, 2010, the U.S. Census announced and certified the actual enumeration of the population of the State of Wisconsin as of April 1, 2010, at 5,686,986 representing a slight increase in the total population of the State. However, the 2010 census data also demonstrated that the Latino population of the City of Milwaukee had grown from 71,646 in 2000 to 103,007 in 2010, representing an increase of approximately 44%.

**Answer to ¶ 18:** The defendants ADMIT that on December 21, 2010, the Census Bureau announced and certified the actual enumeration of the population of Wisconsin at 5,686,986 as of April 1, 2010, which is an amount greater than the 2000 census. The census data is an authoritative source of information for the Latino population of the City of Milwaukee, and defendants DENY any characterization inconsistent with that data. Defendants lack information or knowledge sufficient to form a belief as to the truth of the remaining allegations set forth in ¶ 18, and therefore, DENY the same.

19. The data from the April 2010 census indicates that the area of most rapid growth of Milwaukee's Latino community has been on the City's near south side centered in the area of the 8<sup>th</sup> Assembly District.

**Answer to ¶ 19:** Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations set forth in ¶ 19, and therefore, DENY the same.

20. Based on the April 2010 census, the ideal re-apportioned population for each of the State's assembly districts is now 57,444 persons.

**Answer to ¶ 20:** Defendants ADMIT that, based on the April 2010 census, the zero-population deviation population for each of Wisconsin's 99 Assembly districts is 57,444. Defendants DENY all other allegations in ¶ 20.

21. On July 20, 2011, the Wisconsin Legislature adopted a redistricting plan in which the 8<sup>th</sup> Assembly District was assigned a re-apportioned total population of 57,246 of which 37,750 are Latino, for a Latino population percentage of 65.9%. The redistricting plan also assigned to the adjacent 9<sup>th</sup> Assembly District a re-apportioned



total population of 57,233 of which 34,647 are Latino, for a Latino population percentage of 60.53%. This division of the Latino community into two separate adjacent assembly districts dilutes the voting strength of the citizen voting age Latino voters well below 45% of all eligible voters in each district, thereby denying the Latino community an effective voting majority in either district. The division of the Latino community into two separate adjacent but diluted assembly districts also divides the Latino community's established business district in a way that fractures the cohesiveness of the community and ignores natural community boundaries.

**Answer to ¶ 21:** The defendants ADMIT that, on July 20, 2011, the Wisconsin Legislature adopted a redistricting plan for the 8th and 9th Assembly Districts. Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations set forth in the first two sentences of ¶ 21, and therefore, DENY the same, and put plaintiffs to their proof thereon. The defendants DENY the allegations in the last two sentences of ¶ 21.

22. The data from the April 2010 census and the annual American Community Survey indicate that the current population of the Latino community on Milwaukee's near south side in the Vicinity of the re-apportioned 8<sup>th</sup> and 9<sup>th</sup> Assembly Districts as adopted by the Legislature is now sufficiently large and geographically compact to allow for one Assembly District with an effective voting majority of voting age Latinos who are United States citizens.

**Answer to ¶ 22:** Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations set forth in ¶ 22, and therefore, DENY the same.

23. Over the course of the last decade, the political and electoral conduct of Latino voters on Milwaukee's near south side in the vicinity of the recently re-apportioned 8<sup>th</sup> and 9<sup>th</sup> Assembly Districts demonstrates that the Latino community is politically cohesive.

**Answer to ¶ 23:** Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations set forth in ¶ 23, and therefore, DENY the same.

24. Over the course of the last decade, the political and electoral conduct of non-Latino Caucasian voters on Milwaukee's near south side in the vicinity of the recently re-apportioned 8<sup>th</sup> and 9<sup>th</sup> Assembly Districts demonstrates the existence of a pattern of ethnically polarized voting, in that said non-Latino Caucasian voters usually vote as a block, in the absence of special circumstances, to defeat the preferred candidates of the Latino voters.

**Answer to ¶ 24:** Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations set forth in ¶ 24, and therefore, DENY the same.

25. Milwaukee's Latino community bears the socioeconomic effects of historic discrimination in employment, education, health, and other areas, and their depressed socioeconomic status hinders their ability to participate in the electoral process on an equal basis with other members of the electorate.

**Answer to ¶ 25:** Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations set forth in ¶ 25, and therefore, DENY the same.

26. The State of Wisconsin employs voting practices and procedures such as photographic identification requirements which will disproportionately affect Latino citizens and thereby further hinder the ability of Latino citizens to participate in the electoral process on an equal basis with other members of the electorate.

**Answer to ¶ 26:** The defendants ADMIT that 2011 Wisconsin Act 23 contains certain photographic identification requirements in connection with voting and that 2011 Wisconsin Act 23 is effective according to its terms. Defendants further DENY any characterization of such document contrary to its express terms. The defendants DENY all other allegations in ¶ 26.

### **Section 2 Voting Rights Claim**

27. The Plaintiffs incorporate by reference paragraphs 1 through 26 above and re-allege said paragraphs as if fully set forth herein.

**Answer to ¶ 27:** Defendants incorporate their responses to ¶¶ 1 through 26 of the Complaint, above, as though fully set forth herein.

28. The Voting Rights Act of 1965, 42 U.S.C. § 1973, precludes the State of Wisconsin from minimizing the opportunities for minority groups, including Latino citizens, to participate in the political process and in the context of the recent re-apportionment, said statute precludes the State from fracturing minorities into several districts to deprive them of an effective voting majority in situations where there exists a history of racially polarized voting.

**Answer to ¶ 28:** The defendants ADMIT that 42 U.S.C. § 1973 relates to the States' several voting practices and that it is effective according to its terms. Defendants further DENY

any characterization of such document contrary to its express terms. The remainder of this paragraph contains conclusions of law to which no answer is required. However, to the extent anyone should construe the remainder of this paragraph to contain allegations of fact, the defendants DENY.

29. The redistricting plan adopted by the Wisconsin Legislature on July 20, 2011, fails to create any assembly district with an effective Latino voting majority, despite the significant growth of the Latino community to such a degree that the creation of geographically compact district with an effective Latino voter majority is possible.

**Answer to ¶ 29:** Paragraph 29 contains conclusions of law to which no answer is required. To the extent any court should construe anything in this paragraph as an allegation of fact, the defendants lack information sufficient to form a belief as to the truth of the matters asserted and so DENY.

30. The redistricting plan adopted by the Wisconsin Legislature on July 20, 2011, fractures the Latino community's voting strength by dividing the Latino community into two districts in which the Latino citizen voting age population is substantially below fifty percent of the voting age population.

**Answer to ¶ 30:** Paragraph 30 contains conclusions of law to which no answer is required. To the extent any court should construe anything in this paragraph as an allegation of fact, the defendants lack information sufficient to form a belief as to the truth of the matters asserted and so DENY.

31. At all times relevant to the allegations of this Complaint, the Wisconsin Legislature, the Governor of the State of Wisconsin, and the Defendants have acted under color of State law and in complete disregard of the Plaintiffs' rights under the Voting Rights Act.

**Answer to ¶ 31:** Defendants DENY they acted in disregard of the Plaintiffs' rights under the Voting Rights Act. The defendants ADMIT that, with respect to the allegations of this Complaint, the defendants, the Wisconsin Legislature and the Governor of the State of

Wisconsin, have acted in their official capacities at all relevant times. The defendants DENY all remaining allegations of ¶ 31.

32. If not otherwise enjoined or directed, the Defendants will carry out their statutory responsibilities for the conduct of legislative elections during the fall of 2012, including elections in the 8<sup>th</sup> and 9<sup>th</sup> Assembly Districts based on the impermissibly drawn boundaries, which will irreparably harm the Plaintiffs by violating their rights protected by the Voting Rights Act of 1965.

**Answer to ¶ 32:** Defendants ADMIT that, pursuant to Acts 43 and 44, and absent a court order to the contrary, GAB intends to carry out their statutory responsibilities for the conduct of legislative elections during the Fall of 2012, including elections in the 8<sup>th</sup> and 9<sup>th</sup> Assembly Districts, under the boundaries established by 2011 Wisconsin Act 43. Defendants DENY all other allegations in ¶ 32.

33. In the absence of legislatively enacted and statutorily permissible assembly districts in the vicinity of the Latino community on Milwaukee's near south side, any elections conducted by the Government Accountability Board in the 8<sup>th</sup> and 9<sup>th</sup> Assembly Districts will deprive the Plaintiffs of their civil rights under color of law in violation of 42 U.S. C. § § 1973, 1983 and 1988.

**Answer to ¶ 33:** Defendants DENY ¶ 33.

#### **AFFIRMATIVE DEFENSES**

1. Plaintiffs have failed to state a claim for which relief may be granted as a matter of law.
2. Plaintiffs have failed to set forth a basis upon which they are entitled to declaratory or injunctive relief as there has been no violation of either the Wisconsin or Federal Constitution through the enactment of the new redistricting boundaries.
3. 2011 Wisconsin Act 43 directly advances state and/or governmental interests and it is not more extensive than necessary to serve those interests.

4. 2011 Wisconsin Act 43 enjoys the presumption of constitutionality, so the plaintiffs bear the burden of proving beyond a reasonable doubt that it is unconstitutional. *Davis v. Grover*, 166 Wis.2d 501, 520, 480 N.W.2d 460 (1992) (presumption of constitutionality); *State v. Chvala*, 2004 WI App 53, ¶9, 271 Wis.2d 115, 678 N.W.2d 880 (burden of proof); *State ex rel. Hammermill Paper Co. v. La Plante*, 58 Wis.2d 32, 46, 205 N.W.2d 784 (1973) (same). It is not enough that a challenger establish doubt as to an act's constitutionality nor is it sufficient that a challenger establish the unconstitutionality of an act is a possibility. *Id.* In the presence of doubt, the Act must be found constitutional. *State ex rel. Thomson v. Giessel*, 265 Wis. 558, 564, 61 N.W.2d 903 (1953).

5. The State Constitution gives the State Legislature the authority to reapportion the legislative boundaries every ten years. Wis. Const. Art. IV, §3; U.S. Const. Art. I, §2; *Grove v. Emison*, 507 U.S. 25, 34 (1993). "In the reapportionment context, the [United States Supreme] Court has required federal judges to defer consideration of disputes involving redistricting where the State, through its legislative *or* judicial branch, has begun to address that highly political task itself." *Grove*, 507 U.S. at 33 (emphasis in original). Here, the State Legislature has already adopted a new Assembly district map and the Governor has signed it into law. Even without 2011 Wisconsin Act 39 (which established the state court procedure to challenge redistricting maps), the state judiciary is the next appropriate venue for any constitutional challenges. Pursuant to the United States Supreme Court's dictates, first announced in 1965 in *Scott v. Germano*, 381 U.S. 407 (1965) (per curiam), state legislatures and judiciaries are to have the primary redistricting responsibilities.

6. "Federal-court review of districting legislation represents a serious intrusion on the most vital of local functions." *Miller v. Johnson*, 515 U.S. 900, 915 (1995). "It is well

settled that ‘reapportionment is primarily the duty and responsibility of the State.’” *Id.* (quoting *Chapman v. Meier*, 420 U.S. 1, 27 (1975)). The State Legislature has broad power and vast discretion to make policy decisions as to the drawing of redistricting maps after a decennial census.

7. The legislative districts created in 2011 Wisconsin Act 43 do not unconstitutionally sacrifice redistricting principles.

8. The legislative districts satisfy the requirement that they be as geographically compact as is practicable. Wis. Const. art. IV, § 4; *Wisconsin State AFL-CIO v. Elections Board*, 543 F. Supp. 630, 634 (E.D. Wis. 1982) (“The constitutional requirement of compactness is not absolute . . .”).

9. The legislative districts created in 2011 Wisconsin Act 43, to the extent possible, recognize local government boundaries. “While maintaining the integrity of county lines may be a desirable objective, [the Courts] believe its general incompatibility with population equality makes it only a consideration of secondary importance.” *Wisconsin State AFL-CIO*, 543 F. Supp. at 635.

10. The redistricting maps do not violate any provisions of the Voting Rights Act.

11. The legislative districts do not unconstitutionally use race as a predominant factor.

12. Assuming, *arguendo*, that the new redistricting legislation is susceptible to two constructions, by one of which constitutional questions arise and by the other of which such questions are avoided, the courts are required to adopt the latter construction and to interpret the redistricting legislation so as not to render it unconstitutional or void. *Basinas v. State*, 104 Wis. 2d 539, 546, 312 N.W.2d 483 (1981); *State ex rel. Harvey v. Morgan*, 30 Wis. 2d 1, 13, 139 N.W.2d 585 (1966).

13. Defendants hereby incorporate by reference, and reserve the right to assert, any and all of the Affirmative Defenses set forth by any other defendants or intervenor-defendants.

WHEREFORE, defendants, the Members of the Wisconsin Government Accountability Board, Michael Brennan, David Deininger, Gerald Nichol, Thomas Cane, Thomas Barland, and Timothy Vocke, and Kevin Kennedy, Director and General Counsel, demand judgment as follows:

1. Denying the declaratory relief sought by plaintiffs.
2. Denying the injunctive relief sought by plaintiffs.
3. Dismissing the Original Complaint on its merits and with prejudice.
4. Awarding defendants their costs and reasonable attorneys' fees.
5. Such other and further relief as the Court may deem appropriate.

Dated this 2nd day of December, 2011.

J.B. VAN HOLLEN  
Attorney General

s/Maria S. Lazar  
MARIA S. LAZAR  
Assistant Attorney General  
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