

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN**

WILLIAM WHITFORD, ROGER ANCLAM,	)	
EMILY BUNTING, MARY LYNNE DONOHUE,	)	
HELEN HARRIS, WAYNE JENSEN,	)	
WENDY SUE JOHNSON, JANET MITCHELL,	)	No. 15-cv-421-bbc
ALLISON SEATON, JAMES SEATON,	)	
JEROME WALLACE, and DONALD WINTER,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
GERALD C. NICHOL, THOMAS BARLAND,	)	
JOHN FRANKE, HAROLD V. FROEHLICH,	)	
KEVIN J. KENNEDY, ELSA LAMELAS, and	)	
TIMOTHY VOCKE,	)	
	)	
Defendants.	)	

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**MOTION FOR LEAVE TO SUPPLEMENT THE RECORD**

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Plaintiffs William Whitford et al. move the Court for leave to supplement the record with the results of the 2016 Wisconsin State Assembly general election, and the calculation and analysis of partisan asymmetry for that election by plaintiffs’ expert, Professor Simon Jackman. The certified results of the election will be available from the Wisconsin Elections Commission on December 1, 2016, and, if given leave, plaintiffs will be able to file the results and the efficiency gap calculation and analysis with the Court on, or about, December 2, 2016.

In support of their motion, plaintiffs state as follows:

1. A high and durable level of partisan asymmetry is the core of the discriminatory effect prong of plaintiffs’ proposed test, and substantial evidence was presented on that topic at trial. For instance, Professor Jackman’s historical analysis determined that the Wisconsin State

Assembly district plan (the “Current Plan”) is nearly certain to have a large and pro-Republican average efficiency gap over its lifetime. Similarly, his sensitivity testing showed that the Current Plan would remain severely skewed in Republican’s favor even if significant shifts in voter sentiment took place.

2. At the time of the trial in May 2016, data to determine the Current Plan’s efficiency gap in the November 2016 election obviously was not available. Now that it is available, it is pertinent to plaintiffs’ claims, and plaintiffs believe it will be instructive to the Court. Specifically, it will indicate to the Court whether, as predicted by Professor Jackman, the Current Plan’s efficiency gap remained large and pro-Republican for a third consecutive election.

3. Initial examination of preliminary 2016 election results suggests that the Current Plan’s efficiency gap has, in fact, continued to be large and pro-Republican.

4. Defendants will not suffer any undue prejudice if the Court grants leave for plaintiffs to file the 2016 election results and the efficiency gap calculation and analysis.

5. On November 14, 2016, Plaintiffs’ counsel contacted defendants’ counsel to inform them of plaintiffs’ intention to file this motion and to seek defendants’ position on whether they would oppose plaintiffs’ motion for leave. Defendants’ counsel was not prepared to state whether defendants would oppose plaintiffs’ motion at this time but reserved their right to do so.

WHEREFORE, for the reasons identified above, plaintiffs respectfully request that the Court grant their motion for leave to supplement the record with the 2016 Wisconsin State Assembly election results and the calculation and analysis of the partisan asymmetry on, or about, December 2, 2016, and that those results, calculation, and analysis be admitted in the record of this action.

Dated this 14<sup>th</sup> day of November, 2016.

Respectfully submitted,

/s/ Douglas. M. Poland\_\_\_\_\_

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*One of the Attorneys for the Plaintiffs, William  
Whitford, et al.*