UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ALVIN BALDUS, et al.,

Plaintiffs,

TAMMY BALDWIN, et al.,

Intervenor-Plaintiffs,

vs.

Case No. 11-CV-562
JPS-DPW-RMD

MICHAEL BRENNAN, et al.,

Defendants,

F. JAMES SENSENBRENNER, JR., et al.,

Intervenor-Defendants.

VOCES DE LA FRONTERA, INC., et al.,

Plaintiffs,

vs.

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

MICHAEL BRENNAN, et al.,

Defendants.

INTERVENOR-DEFENDANTS' RESPONSES TO CONTESTED PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

In accordance with the Court's instructions in its Trial Scheduling Order dated December 15, 2011 (Dkt. 79) and at the Final Pretrial Conference held on February 16, 2012, the intervenor-defendants hereby submit these pretrial responses to the proposed findings of fact and

conclusions of law of the various plaintiffs in these consolidated actions, as set forth in the Joint Final Pretrial Report filed with the Court on February 14, 2012. (Dkt. 158.)

RESPONSES TO STATEMENTS OF CONTESTED FACTS

I. BALDUS PLAINTIFFS

243. On January 4, 2011, the Republican legislative leadership announced to members of the Democratic minority, including Assembly Minority Leader Peter Barca, that the Republican majority would be provided unlimited funds to hire counsel and consultants for purposes of redistricting legislative districts based on the 2010 census. The Democratic minority was denied any funding for use in the redistricting process. Barca Depo. (Dkt. 152) at 13:12-14:13.

RESPONSE: The intervenor-defendants join the GAB's response to this proposed finding of fact insofar as it implicates Act 44.

244. Representative Barca and Senate Minority Leader Mark Miller requested that the legislative majority reconsider its decision on redistricting funds by sending a letter to Assembly Speaker Jeff Fitzgerald and Senate Majority Leader Scott Fitzgerald. That request was denied. Barca Depo. (Dkt. 152) at 14:14-18.

RESPONSE: The intervenor-defendants join the GAB's response to this proposed finding of fact insofar as it implicates Act 44.

245. The Republican majority in the assembly and senate retained the law firm of Michael Best & Friedrich LLP ("Michael Best") to advise the assembly and senate in the redistricting process. Handrick Depo. (Dkt. 136) at 175:9-14; Declaration of Eric M. McLeod (Dkt. 78) ¶ 1.

RESPONSE: The intervenor-defendants join the GAB's response to this proposed finding of fact insofar as it implicates Act 44.

246. The redistricting legislation was drafted on behalf of the assembly and senate at the direction of the majority party's political leadership in the assembly and senate. *See infra.*

RESPONSE: The intervenor-defendants have stipulated that, as has been the case in previous decades, the Wisconsin Legislature in 2011 permitted the incumbent Wisconsin members of the House of Representatives to draft a map containing the new congressional boundaries to comply with the 2010 Census. (Stipulated Facts, ¶ 206.)

247. The legislative district boundaries codified in Act 43 were drafted by Adam Foltz, a staff member to Assembly Speaker Fitzgerald; Tad Ottman, a staff member to Senate Majority Leader Fitzgerald; and Joseph Handrick, a consultant with the law firm of Reinhart Boerner Van Deuren s.c. Foltz Depo. (Dkt. 138) at 11:25-12:1, 106:10-108:21, 285:11-12; Ottman Depo.

(Dkt. 140) at 105:11-106:4, 151:8-156:3, 185:4-23; Handrick Depo. (Dkt. 136) at 96:19-99:3, 101:16-21, 102:6-9.

RESPONSE: This contested fact does not implicate Act 44.

248. Attorneys from Michael Best and Troupis Law Office LLC, consultants retained by Michael Best, and Republican leadership of the assembly and senate met regularly with Foltz, Ottman, and Handrick at the offices of Michael Best to provide guidance on drawing the legislative districts. Foltz Depo. (Dkt. 138) at 32:25-36:2; Handrick Depo. (Dkt. 136) at 41:15-42:20; Gaddie Depo. (Dkt. 148) at 176:12-179:18.

RESPONSE: This contested fact does not implicate Act 44.

249. The bill that would become Act 43 was drafted in the offices of the law firm of Michael Best where Foltz and Ottman had offices. Foltz Depo. (Dkt. 138) at 13:16-14:2; Ottman Depo. (Dkt. 140) at 204:10-16; Handrick Depo. (Dkt. 136) at 32:9-24.

RESPONSE: This contested fact does not implicate Act 44.

250. Foltz, Ottman, and Handrick began their work on the redistricting process at Michael Best in early 2011. Foltz Depo. (Dkt. 138) at 32:10-33:15; Handrick Depo. (Dkt. 136) at 33:23-37:9; Tr. Ex. 4.

RESPONSE: This contested fact does not implicate Act 44.

251. Meetings with Republican legislators about the redistricting process were held at the Michael Best offices. Foltz Depo. (Dkt. 139) at 263:6-265:5. Democratic lawmakers were not invited to participate in this process. Foltz Depo. (Dkt. 139) at 269:19-270:13.

RESPONSE: This contested fact does not implicate Act 44.

252. At those meetings, Republican legislators were provided with preliminary maps or a description of their respective legislative districts, along with a table showing the results of past elections in their districts and the results of those same races had they been held in the proposed new districts. Foltz Depo. (Dkt. 139) at 263:6-270:13; Ottman Depo. (Dkt. 141) at 265:22-274:5; Tr. Ex. 100.

RESPONSE: This contested fact does not implicate Act 44.

253. The Republican legislators who participated in the meetings were shown or informed of "talking points" prepared by Foltz and Ottman. Among the "talking points" expressed to Republican members of the assembly were that they should not believe public comments about the new districts and that the real basis for the new districts was expressed to them in the meetings. Foltz Depo. (Dkt. 139) at 337:5-19, 340:16-344:12; Ottman Depo. (Dkt. 141) at 275:15-281:16; Tr. Ex. 113.

RESPONSE: This contested fact does not implicate Act 44.

254. Republican legislators who participated in meetings at Michael Best signed confidentiality agreements concerning the content of those meetings. Foltz Depo. (Dkt. 139) at 353:5-20; Ottman Depo. (Dkt. 141) at 274:6-275:14.

RESPONSE: This contested fact does not implicate Act 44.

255. The public aspects of the redistricting process were completed in 12 days. Act 43 and Act 44 were first made public on July 8, 2011, and the legislature adopted both bills on July 19 and 20, 2011. *See supra* ¶¶ 101-107; Barca Depo. (Dkt. 152) at 15:21-16:3.

RESPONSE: The parties have stipulated that Act 44 was made public in the Wisconsin Legislature on July 8, was passed by the Senate on July 19 and by the Assembly on July 20. (Stipulated Facts, ¶ 107.) If these procedures are deemed to constitute "[t]he public aspects of the redistricting process," they were concluded 12 days after they began. Act 44 was signed into law on August 9, 2011. (*Id.*)

256. The Democratic minority in the state legislature was not aware of the meetings at Michael Best and were not aware that the majority's redistricting bills would be introduced in July 2011. Barca Depo. (Dkt. 152) at 41:8-19.

RESPONSE: This contested proposed finding of fact is immaterial to any claim in issue as to Act 44..

257. In the months preceding the passage of Acts 43 and 44, the state legislative agenda was focused on public employees' collective bargaining rights and, in June, the budget process. Barca Depo. (Dkt. 152) at 58:18-60:23, 63:23-65:14.

RESPONSE: This contested proposed finding of fact is immaterial to any claim in issue as to Act 44.

258. Historically and by law, the Wisconsin legislature has waited for municipalities to develop new ward boundaries before introducing the new state legislative district boundaries, because wards are the traditional building blocks used to develop assembly and senate districts. *See* Wis. Stats. §§ 5.15(1)(b) and 59.10(3)(b) (2009-10). In light of this requirement, members of the Democratic minority in the state legislature did not expect any statewide redistricting legislation to be introduced until after municipalities had developed their ward boundaries. Barca Depo. (Dkt. 152) at 57:2-16.

RESPONSE: This contested proposed finding of fact is immaterial to any claim in issue as to Act 44.

259. As was later publicly revealed, Foltz and Ottman began drafting the legislative districts around April of 2011 using census blocks. Foltz Depo. (Dkt. 138) at 138:4-140:6; Ottman Depo. (Dkt. 140) at 58:23-61:2.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

260. The bill that would become Act 39, introduced concurrently with Act 43, requires municipalities to draw or re-draw their local ward boundaries to conform with state legislative redistricting. *See supra* ¶ 246. This change in law allowed the statewide redistricting legislation to be introduced and passed in July 2011, before municipalities had drawn their ward boundaries. Barca Depo (Dkt. 152) at 57:2-16.

RESPONSE: The intervenor-defendants stipulate as to the first sentence of this contested proposed finding of fact. The passage of Act 39 statutorily required that the bill that became Act 44 be based on census blocks and that municipal ward boundaries conform to the boundaries set by Act 44. Nothing in prior law (including 2009-10 Wis. Stats. § 5.15) required the Legislature to wait to pass redistricting legislation until after municipalities had drawn their ward boundaries and, in any case, one legislature cannot bind the legislative actions of a subsequent legislature absent the passage of a constitutional amendment.

261. The rushed, unprecedented, and secretive procedure used by the Legislature to create legislative and congressional districts resulted in discrepancies, including discrepancies between district and municipal boundaries, that the GAB addressed in a series of internal memorandums beginning in the fall of 2011. Those "anomalies" have caused considerable confusion among municipal and count clerks, voters, and the GAB itself. Kennedy Depo. (Dkt. 144) at 19:12-21, 74:1-76:11.

RESPONSE: This contested proposed finding of fact is immaterial to any claim in issue as to Act 44.

262. Although the GAB has and local clerks have resolved most of those anomalies, some have yet to be resolved. Kennedy Depo. (Dkt. 144) at 60:10-64:25, 132:25-135:12.

RESPONSE: This contested proposed finding of fact is immaterial to any claim in issue as to Act 44.

263. The 12-day period between the public introduction of Acts 43 and 44 and their passage by the legislature was insufficient time for the Democratic minority to develop an alternative map, in particular given the absolute denial of any funding to hire consultants or legal counsel. Barca Depo. (Dkt. 152) at 44:6-45:3, 48:12-49:1. The limited time and lack of resources also made it impossible for the Democratic minority to thoroughly analyze a map proposed by the Wisconsin Democracy Campaign to determine whether it presented a viable and constitutional alternative to Act 43. Barca Depo. (Dkt. 152) at 122:3-17, 124:5-16.

RESPONSE: As has been the case in previous decades, the Wisconsin Legislature in 2011 permitted the incumbent Wisconsin members of the House of Representatives to draft the new congressional districting map. (Stipulated Facts, ¶ 206.) By April 2011, the Democratic members had retained NCEC Services, Inc., a Washington D.C.-based Democratic political consulting firm to draft a set of possible redistricting scenarios. (*Id.* ¶ 225.) NCEC forwarded numerous potential scenarios to Democratic members' staff months before the passage of Act 44. (Intervenor-Plaintiff Tammy Baldwin's Responses to Defendants' Requests for Production, Ex. 2f.) On June 3, Erik Olson, chief of staff to Congressman Ronald Kind, a Democrat, emailed Andrew Speth a proposed map for congressional redistricting drawn with the assistance of the

Democratic Congressional Campaign Committee on behalf of the Democratic members. (Stipulated Facts, ¶ 226.)

264. It would not have been feasible for the Democratic minority to organize and conduct informational meetings about redistricting between the legislation's introduction and its ultimate passage. Barca Depo. (Dkt. 152) at 76:2-77:1.

RESPONSE: This contested proposed finding of fact is immaterial to any claim in issue as to Act 44.

265. The legislature held a single public hearing on Acts 43 and 44, on July 13, 2011. *See supra* ¶ 103. No other public hearing was held. Unlike during previous redistricting cycles, the public was denied access to redistricting software during the 2011 redistricting process. White Depo. (Dkt. 145) at 35:9-36:1.

RESPONSE: Stipulate to this proposed finding of fact.

266. Technological advances in the past two decades have facilitated the redistricting process. Modern computers allow districts to be drawn with greater precision and in more configurations than was possible in previous cycles of redistricting. Barca Depo. at 39:2-16.

RESPONSE: Technological advances have facilitated the redistricting process for longer than two decades. *See, e.g.*, *Karcher v. Daggett*, 462 U.S. 725, 733 (1983) ("The rapid advances in computer technology and education during the last two decades make it relatively simple to draw contiguous districts of equal population and at the same time to further whatever secondary goals the State has."); *Prosser v. Elections Bd.*, 793 F. Supp. 859, 863 (1992) ("With the right computer program a complete reapportionment map for the state can be created in days and modified in hours . . . .").

267. The average core population retention of the assembly districts—calculated as the simple mean of the core population retention of each district—is 64.8 percent. This means that, on average, less than two-thirds of each district was preserved in the redistricting plan. Tr. Ex. 55 (Mayer Report) at 12; Tr. Ex. 1019 (corrected pages to Mayer Report) at 12.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

268. Act 43 shifts, on average, 53.5 times as many people as necessary to achieve population equality in every assembly district. Tr. Ex. 55 (Mayer Report) at 11.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

269. In 90 percent of the assembly districts, at least twice as many people as necessary were shifted from one district to another. In 11 districts, at least 100 times as many people as necessary were moved to achieve population equality. Tr. Ex. 55 (Mayer Report) at 10.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

270. The new populations of the assembly districts represent a net change of 321,915 people. To achieve this, Act 43 shifted 2,363,834 individuals from one assembly district to another (after controlling for double counting). **Table 32** reflects the population shifted into and out of each assembly district.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

271. The new populations of the senate districts represent a net change of 231,501 people. To achieve this, Act 43 shifted 1,205,275 individuals from one senate district to another (after controlling for double counting). **Table 33** reflects the population shifted into and out of each senate district.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

272. Assembly districts represented by Democrats after the 2010 election have an average core population retention more than 9 percentage points less than that of Republican districts: the average core population retention for Democrat districts was 59.1 percent, and 68.2 percent for districts represented by Republicans. Tr. Ex. 55 (Mayer Report) at 12; Tr. Ex. 1019 (corrected pages to Mayer Report) at 12.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

273. The City of Racine is split into three different assembly districts, including one that stretches into the City of Kenosha (AD 64) and another that stretches west to Wind Lake and the Racine County line (AD 62). *See supra* ¶ 177; Tr. Ex. 20 (Act 43 Assembly map)

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

274. Act 43 combines parts of the cities of Racine and Kenosha in a single assembly district (AD 64), even though the two cities are separate communities of interest and have not traditionally been included in the same assembly district. Tr. Ex. 20 (Act 43 Assembly map). No rationale has been advanced for combining parts of Racine and Kenosha into a single assembly district. Handrick Depo. (Dkt. 137) at 293:8-13.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

275. Act 43 combines the City of Racine and the City of Kenosha into a single senate district (SD 22), and combines the rural parts of Racine County and Kenosha County into a separate senate district (SD 21). Tr. Ex. 22 (Act 43 Senate map).

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

276. The City of Appleton, a majority of which has traditionally been within one assembly district (AD 57), is split in half with the northern half of the city now in the Assembly District 56, which stretches west beyond the Outagamie County line and to the Winnebago County line. Tr. Ex. 20 (Act 43 Assembly map)

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

277. The City of Beloit, which has been contained traditionally and historically within one assembly district (AD 45), is split in half with the western part of the city falling within AD 45 and the eastern portion within AD 31, placing the City of Beloit in separate senate districts (SD 15 on the west and SD 11 on the east). Tr. Ex. 20 (Act 43 Assembly map).

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

278. Act 43 splits the City of Beloit between two assembly districts even though Beloit, with a population of 36,966, could be contained within a single district. *See supra* ¶ 172-73. No rationale has been advanced for splitting Beloit between two assembly districts. Foltz Depo. (Dkt. 138) at 207:19-208:17; Ottman Depo. (Dkt. 140) at 229:17-231:2; Handrick Depo. (Dkt. 137) at 299:4.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

279. Act 43 splits the City of Marshfield, which has been part of Senate District 24 for a century, between two assembly districts (AD 69 and 86) and two senate districts (SD 23 and 29). Tr. Ex. 20 (Act 43 Assembly map), Tr. Ex. 22 (Act 43 Senate map).

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

280. Act 43 splits the City of Marshfield between two assembly and two senate districts even though Marshfield—with a population of 19,118—could be contained within a single assembly and single senate district. *See supra* ¶ 174-75. No rationale has been advanced for splitting Marshfield between two assembly and two senate districts. Foltz Depo. (Dkt. 138) at 217:25-219:7; Ottman Depo. (Dkt. 140) at 232:12-233:14.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

281. Act 43 also divides Sheboygan into separate districts (AD 26 and AD 27). Tr. Ex. 20 (Act 43 Assembly map).

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

282. In Milwaukee, three assembly districts that historically have been within Milwaukee County are now stretched from the edge of the city well into Waukesha County. As a result, Milwaukee voters in up to six Milwaukee assembly seats will lose their influence in choosing who represents them to voters outside of Milwaukee. Tr. Ex. 20 (Act 43 Assembly map).

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

283. By splitting municipalities into more than one Assembly and/or Senate district, Act 43 imposes significant additional burdens on those municipalities. (Trial testimony of Steve Barg, City Administrator, City of Marshfield)

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

284. Act 44 shifts substantially more people to different congressional districts than necessary for population equality. Act 44 shifts (a) 171,270 people into District 3, and 190,354 people out of the district, for a net loss of 19,084; (b) 177,822 people into District 5, and 174,529 people out of the district, for a net gain of 3,293; (c) 144,923 people into District 6, and 139,152 out of the district, for a net gain of 5,771; and (d) 171,989 into District 7, and 150,395 out of the district, for a net gain of 21,594. *See* Ex. A to Joint Pretrial Report, Table 31; Tr. Ex. 45 (Nordheim Report), Ex. B at 5.

RESPONSE: The parties have stipulated to the data contained in Table 31. This proposed finding of fact is immaterial to any claim as to Act 44. The intervenor-defendants further note that phrases such as "substantially more" and "necessary" are in the eye of the beholder and go to the crux of lawmaking authority vested in the legislative branch of sovereigns such as the State of Wisconsin. For example, the proposed map sent by Congressman Ronald Kind's chief of staff to Andrew Speth on June 3, 2011, would have shifted populations analogous in size to those shifted under Act 44. (*See* Trial Ex. 43B; Int.-Defs.' Trial Br. 10–11.)

285. Act 43 moves more than 49,000 individuals on the western edge of Madison from the 26th senate district into the new 27th senate district. The last regular election in which residents of the 26th district voted for a state senator was in 2008; the next regular senate election in the 27th district will take place in 2014. Tr. Ex. 31 (Diez Report, "Core Constituencies Report: Senate Districts (Act 43)"); Ex. A to Joint Pretrial Report, Table 28.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

286. The population of the 27th senate district under the 2002 boundaries is 197,874, or 25,541 greater than the ideal population. Its population as redrawn in Act 43 is 172,449. The net population decrease of 25,425 was achieved by shifting 69,372 people into the 27th district—including more than 49,000 individuals formerly in SD 14, 16, and 26—and shifting another 94,797 people out of the district. Tr. Ex. 55 (Mayer Report), Ex. 3 ("Population Shifts in Senate Districts"); Tr. Ex. 31 (Diez Report, "Core Constituencies Report: Senate Districts (Act 43)").

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

287. In the 2002 court-drawn plan, Racine County comprised most of the 21st senate district, and Kenosha County most of the 22nd senate district. Act 43 combines the cities of Kenosha and Racine into the 22nd senate district, placing the remainder of Kenosha and Racine counties into the 21st senate district. As a result, 72,431 voters are shifted into the 21st senate district from the 22nd senate district. The last regular election in which residents of the 22nd district voted for a state senator was in 2008; the next regular senate election in the 21st district will take place in 2014. Tr. Ex. 31 (Diez Report, "Core Constituencies Report: Senate Districts (Act 43)").

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

288. The population of the 21st senate district under the 2002 boundaries is 166,735, or 5,598 less than the ideal population. Its population as redrawn in Act 43 is 172,324. The net population increase of 5,589 was achieved by shifting 72,431 people into the 21st district—all of whom were formerly in the 22nd district—and shifting another 66,842 people out of the district,

all but five of whom were moved into the 22nd district. Tr. Ex. 55 (Mayer Report), Ex. 3 ("Population Shifts in Senate Districts"); Tr. Ex. 31 (Diez Report, "Core Constituencies Report: Senate Districts (Act 43)").

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

289. The boundaries of the senate districts were not intended to minimize disenfranchisement. In drawing the district boundaries, Foltz and Ottman targeted a disenfranchisement rate of 5.25 percent, a figure derived from the percentage of people disenfranchised by the 1992 court-drawn senate map. As a result, rather than reducing disenfranchisement to the extent possible—which, in light of technological advances over the past two decades, would likely have resulted in a disenfranchisement rate far lower than that achieved in 1992—Foltz and Ottman affirmatively sought to disenfranchise 5.25 percent of the population. Tr. Ex. 19 at 30-31; Foltz Depo. (Dkt. 138) at 185:4-191:3; Ottman Depo. (Dkt. 140) at 190:15-193:2.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

290. Recall elections occur in a very specific constitutional and political context that differs substantially from the fixed elections held every four years. Tr. Ex. 55 (Mayer Report) at 8.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

291. In the 2011 senate recall elections, all nine candidates who faced recalls attempted to stop the recall elections through litigation. Tr. Ex. 55 (Mayer Report) at 8.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

292. The recall campaigns were unusually chaotic, with both parties running "fake" or "placeholder" candidates to force primaries in the other party, giving incumbents more time to campaign by further delaying the date of the final recall. Tr. Ex. 55 (Mayer Report) at 8.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

293. Turnout in the recall elections was, on average, 35 percent lower than in the 2008 elections, even though two senators who faced recalls previously ran unopposed. Tr. Ex. 55 (Mayer Report) at 8.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

294. An action has been filed in the Circuit Court for Waukesha County against GAB seeking a judicial determination of the appropriate districts under which recall elections must be held. *Clinard et al. v. Brennan et al.*, Case No. 11-cv-03995. In its answer to the Amended Complaint for Declaratory and Other Relief, *see* Tr. Ex. 167, GAB answered the paragraphs of the complaint as follows:

a. "Summary Paragraph 1: Following the enactment of 2011 Wisconsin Acts 43 and 44 by the State Legislature ('2011 Redistricting Plan'), the Government Accountability Board ('GAB'), which is the state agency responsible for administering the laws concerning the conduct of elections in the State of Wisconsin, issued formal guidance that any recall elections which may be initiated and held prior to the general election in November of 2012, are to be conducted in the old legislative districts established by the 2002 court-adopted redistricting plan (the '2002 Court Plan'). GAB issued this formal guidance despite the fact there is no dispute that the prior legislative districts are unconstitutionally malapportioned.

b. "Answer to Summary Paragraph 1: Defendants ADMIT the allegations of the first sentence in Summary Paragraph 1. Defendants ADMIT that the legislative districts created in the 2002 Court Plan are malapportioned. The remainder of this paragraph consists of plaintiffs' conclusions of law, so no response is necessary. To the extent any court should construe the remainder of this paragraph to contain allegations of fact, defendants lack information sufficient to form a belief as to the truth of the matters asserted and so DENY the same."

c. * * * "[Paragraph No.] 32. There is no dispute that based on the 2010 Census data the legislative districts established under the 2002 Court Plan are unconstitutionally malapportioned and violate the central principle of one-person, one-vote."

d. "Answer to paragraph No. 32: Defendants ADMIT that, based on the 2010 Census data, the legislative districts established by the 2002 Court Plan are now malapportioned. The remainder of this paragraph consists of plaintiffs' conclusions of law, so no response is necessary. To the extent any court should construe the remainder of this paragraph to contain allegations of fact, defendants lack information sufficient to form a belief as to the truth of the matters asserted and so DENY the same." Tr. Ex. 167.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

295. According to the 2010 Census, the Latino population of the city of Milwaukee is 103,001 (17.3 percent of the total), and the Latino voting age population (VAP) is 63,202 (14.6 percent of the total VAP). *See* Tr. Ex. 55 (Mayer Report) at 18.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

296. Of the 103,007 Latinos in Milwaukee County, 70,779 (68.1 percent) are concentrated within 939 contiguous census blocks on the near south side. The Latino population makes up 65.6 percent of the population within those census blocks. The area of concentration is roughly square—approximately bounded by I-94 on the north, 1st Street and I-94/43 on the east, Howard Street to the south and 42nd Street to the west. In this area, the Latino community is both sufficiently large and geographically compact to meet the first prong of the *Gingles* test. *See* Tr. Ex. 55 (Mayer Report) at 18.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

297. The statistical analysis by the Wisconsin Legislative Reference Bureau of the 8th 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 percent at that time. *See* Tr. Ex. 55 (Mayer Report) at 18.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

298. Assembly Districts 8 and 9, as created by Act 43, do not have a sufficient Latino voting age citizen populations to create effective Latino majorities. *See* Tr. Ex. 55 (Mayer Report) at 22; *see* Tr. Ex. 60 (Mayer Rebuttal) at 11-12

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

299. Assembly District 8 purports to have a Latino voting age population of 60.54 percent, and Assembly District 9 purports to have a Latino voting age population of 54.0 percent. The Latino population spread between the two districts is diluted. *See* Tr. Ex. 55 (Mayer Report) at 22.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

300. 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 8th and 9th 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. *See, e.g.,* Tr. Ex. 55 (Mayer Report) at 18, 19, 22-23, and Ex. 6; *see* Tr. Ex. 60 (Mayer Rebuttal) at 12-15.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

301. Voting age population percentages significantly overstate the appearance of effective political influence of any minority group, and this is especially true for Latinos. *See* Tr. Ex. 60 (Mayer Rebuttal) at 11.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

302. Given the historically low voter registration for Latinos, the actual concentration of eligible Latino voters must be well above 50 percent to insure that Latinos have a meaningful opportunity to elect candidates of their choice. *See* Tr. Ex. 60 (Mayer Rebuttal) at 11, 15.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

303. The percentage of non-Latino whites of voting age who turn out to vote is larger than the percentage of Latino citizens of voting age who turn out to vote in AD 8 and AD 9. *See* Tr. Ex. 1025 (spreadsheet produced by Mayer); *see* Grofman Depo. (Dkt. 150) at 178:10-179:24, Gaddie Depo. (Dkt. 148) at 139:17-140:16.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

304. The percentage of non-Latino whites of voting age who register to vote is larger than the percentage of Latino citizens of voting age who register to vote in AD 8 and AD 9. *See* Tr. Ex. 1019 (corrected Exhibit 8 to Mayer Report); *see* Morrison Depo. (Dkt. 149) at 154:10-13.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

305. The areas of the predecessor AD 9 that were added to AD 8 pursuant to Act 43 had larger percentages of non-Latino whites of voting age than the areas of the predecessor AD 8 that were retained with the new AD 8 pursuant to Act 43. *See* Tr. Ex. 184 (Map of AD 8 and 9 with Turnout Rate).

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

306. The areas of the predecessor AD 9 that were added to AD 8 pursuant to Act 43 have a higher percentage of voter turnout than the areas of the predecessor AD 8 that were retained with the new AD 8 pursuant to Act 43. *See* Tr. Ex. 184 (Map of AD 8 and 9 with Turnout Rate); *see* Grofman Depo. (Dkt. 150) at 182:13-22.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

307. In every general election since 1998, including 2000, 2002, 2004, 2006, 2008, 2010, AD 8 had the fewest total votes cast of any regular general assembly election held in those years. *See* Wis. Bluebook 1997-1998, 1999-2000, 2001-2002, 2003-2004, 2005-2006, 2007-2008.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

308. The areas of the predecessor AD 9 that were added to AD 8 pursuant to Act 43 constitute a different community of interest than the areas of the predecessor AD 8 that were retained under new AD 8, created pursuant to Act 43. The residents of the Wilson Park area do not consider themselves to be part of Milwaukee's near south side Latino community. The areas from the predecessor AD 9 added to the new AD 8 represent a different neighborhood known as Wilson Park which has a lower percentage of Latinos who are eligible voters and a higher percentage of non-Latino white voters who have higher voter registration rates and higher turnout rates than do the Latinos who are eligible voters in those portions of the predecessor AD 8 that were retained in the new AD 8. (Anticipated testimony of John Bartkowski and Christine Neuman-Ortiz. Defendants opted not to depose these witnesses.)

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

309. Act 43 divides the predecessor AD 8 almost in half along Cesar Chavez Drive (16th Street) retaining a mere 55% of the predecessor district in the new AD 8 and adding the Wilson Park areas from the predecessor AD 9. *See* Tr. Ex. 144 (comparing total registered voters with total voter turnout in these newly joined communities of interest during the 2008 presidential election).

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

310. 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 8th Assembly District. *See* Tr. Exs. 55 (Mayer Report), 1019 (corrected Exhibit 8 from Mayer Report).

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

311. A comparison of the voter registration rates between Latino and non-Latino individuals demonstrates a large disparity within the City of Milwaukee. The data obtained from the Statewide Voter Registration System (SVRS) for the City of Milwaukee show that more than 76 percent of non-Latinos are registered to vote versus 26 percent of Latinos. *See* Tr. Ex. 55 (Mayer Report) at 21 and Ex. 8.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

312. Voter registration rates for Latinos lag far behind non-Latinos everywhere in the City of Milwaukee due to demographic characteristics (lower income, higher poverty levels, less formal education), and because significant numbers of Latinos in Wisconsin and the City of Milwaukee are ineligible to vote because they are not citizens. *See* Tr. Ex. 55 (Mayer Report) at 21.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

313. The noncitizenship rate for Latinos in the City of Milwaukee, using the 2005-2009 five-year American Community Survey (ACS) data, is 42 percent. *See* Tr. Ex. 60 (Mayer Rebuttal) at 11.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

314. The noncitizenship rate for Latinos in the City of Milwaukee, using the 2008 ACS data, is 35.75 percent. *See* Tr. Ex. 55 (Mayer Report) at 22.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

315. When the noncitizenship rate of 35.75 percent is taken into account (as it must), as well as the historic low rates of registration even among otherwise eligible Latinos, the percentage of *eligible* Latinos constituting the voting age population in Assembly District 8 is 49.6 percent and is 43.02 percent in Assembly District 9. *See* Tr. Ex. 55 (Mayer Report) at 22; *see* Tr. Ex. 60 (Mayer Rebuttal) at 11.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

316. Using the 42 percent noncitizen rate derived from the five-year ACS data reduces the eligible Latino majorities in Assembly Districts 8 and 9 to 47.07 percent and 40.53 percent, respectively. *See* Tr. Ex. 60 (Mayer Rebuttal) at 11.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

317. Latinos who are U.S. citizens comprise between 47.07 percent and 49.6 percent of the voting age population living in AD 8. *See* Tr. Ex. 55 (Mayer Report) at 22; Tr. Ex. 60 (Mayer Rebuttal) at 11.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

318. Latinos who are U.S. citizens comprise between 40.53 percent and 43.02 percent of the voting age population living in AD 9. *See* Tr. Ex. 55 (Mayer Report) at 22; Tr. Ex. 60 (Mayer Rebuttal) at 11.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

319. As created by Act 43, Assembly Districts 8 and 9 do not contain enough citizen voting age Latinos to constitute a numerical majority. *See* Tr. Ex. 55 (Mayer Report) at 21; *see* Tr. Ex. 60 (Mayer Rebuttal) at 11-12.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

320. It is possible to construct an alternative Assembly District 8 with a Latino voting age population of 70.07 percent and a Latino citizen voting age population of 60.06 percent. *See* Tr. Ex. 55 (Mayer Report) at 19, 22-23, and Ex. 6; *see* Tr. Ex. 60 (Mayer Rebuttal) at 12-15. It is possible and, therefore, necessary to construct a compact Assembly District with a sufficiently large and effective Latino voting population. *Id.*

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

321. 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 predecessor 8th Assembly District demonstrates that the Latino community is politically cohesive. *See* Gaddie Depo. (Dkt. 148) at 90:9-20; Grofman Depo. (Dkt. 150) at 165:5-15.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

322. Minority cohesion and racial bloc voting are evidenced by analyzing voting percentages in elections where one or more Latino candidates ran against one or more white candidates. For example, in the 2011 primary for Milwaukee County Circuit Court Judge in which Latino candidate Pedro Colón ran against multiple white candidates, it was estimated that 58.2 percent of Latinos voted for Colón and 68 percent of white voters cast their ballots for one of the white candidates *(i.e.*, only 32 percent of white voters cast their ballots for Colón). The percentage difference in support was 26.2 percent. In the general election, 66.2 percent of Latinos voted for Colón while 54.7 percent of white voters cast their ballot for the white candidate. *See* Tr. Ex. 55 (Mayer Report) at 19-20, and Ex. 7. These results demonstrate a high rate of racially polarized voting. *See id.* at 19.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

323. A very high degree of racially polarized voting is again demonstrated by analyzing the results of the 2008 general election for State Superintendent of Public Instruction

where Spanish-surnamed Rose Fernandez ran against Tony Evers. 95.7 percent of Latino voters in Milwaukee County voted for Fernandez versus 40.5 percent of white voters. The difference in support, 55.2 percent, evidences a high degree of racial polarization. *See* Tr. Ex. 55 (Mayer Report) at 19-20, and Ex. 7.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

324. Latinos in the City of Milwaukee are less likely to participate in an election as demonstrated by the disparity in voter registration rates between non-Latinos (over 76 percent) and Latinos (26 percent). *See* Tr. Ex. 55 (Mayer Report) at 21, and Ex. 8.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

325. Barriers to electoral participation also include Wisconsin's newly enacted voter identification law. 2011 Wis. Act 23; *see* Tr. Ex. 60 (Mayer Rebuttal) at 15-16. These photographic identification requirements 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.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

326. Socioeconomic differences between non-Latinos and Latinos—such as lower income, higher poverty levels, and less formal education—all interfere with the ability of Latinos in the City of Milwaukee and Wisconsin to fully participate in the electoral process and elect candidates of their choice. *See* Grofman Depo. (Dkt. 150) at 172:15-172:24; *see also* Rodriguez Depo. (Dkt. 142) at 178:7-179:1, 179:17-180:5.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

327. Voces de la Frontera is the largest membership-based Latino organization in the State of Wisconsin with over 3,000 members who are concentrated mostly in the near-southside area of Milwaukee in the vicinity of the AD 8 and AD 9. Each year, Voces de la Frontera sponsors May Day marches on May 1st in Milwaukee with attendance ranging from 20,000 to over 65,000 members of the Latino community. Voces de la Frontera has focused on Get-Out-The- Vote campaigns and in 2004 successfully registered 5,100 new voters in the predecessor AD 8 and increased voter turnout by 6% in 10 of the wards in that district. In 2006, the civic participation program increased the voter turnout by 32 percent in Milwaukee targeted wards and by 20 percent in Racine targeted wards. (Anticipated testimony of Christine Neumann-Ortiz).

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

328. Voces de la Frontera actively participated in the redistricting process for the City of Milwaukee and joined with a number of other Latino organizations to form the Latino Redistricting Committee a bipartisan coalition to advocate on behalf of the Latino community's interests during the redistricting process. Neither organization was contacted by persons involved in the legislative redistricting process that led to the passage of Act 43. Neither organization was provided with an opportunity to provide input regarding the legislative redistricting process. (Anticipated testimony of Christine Neumann-Ortiz).

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

329. Hispanics for Leadership is not a formal organization and consists of a couple of dozen individuals. *See* Rodriguez Depo. (Dkt. 142) at 19:21-20:2.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

330. Between July 8, 2011, and July 13, 2011, Jesus ("Zeus") Rodriguez consulted with two individuals regarding the legislative redistricting plan that resulted in Act 43, but he does not recall providing the two individuals with copies of the proposed maps, rather he just "explained to them." *See* Rodriguez Depo. (Dkt. 142) at 73:20-74:10, 194:23-195:17.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

331. Hispanics for Leadership does not speak for the entire Latino community. *See* Rodriguez Depo. (Dkt. 142) at 187:22-187:24.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

332. According to the 2010 Census, the City of Milwaukee had a population of 594,833 and a voting age population of 433,442. The African-American population in the city of Milwaukee is 239,923 (40.3 percent of the total population) and the African-American voting age population is 156,153 (36 percent of the total voting age population). *See* Tr. Ex. 55 (Mayer Report) at 23.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

333. The African-American population is concentrated in the north-central portion of Milwaukee, and a large part lives in areas that are at least 75 percent African-American. 85.7 percent (217,551) of the total African-American population in Milwaukee County (253,764) resides in 3790 contiguous census blocks (of 13,231 blocks within the county). Within these blocks, the African-American population represents 70.6 percent of the total population. *See* Tr. Ex. 55 (Mayer Report) at 23.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

334. This area of high concentration is generally in the northern half of the county, and more specifically runs to the northwest away from downtown Milwaukee—broadly bounded by the Milwaukee County line on the north edge, variously the Milwaukee river and the Canadian National Rail line on the east, I-94 on the southern edge and Highway 41 and the NW county line to the west. *See* Tr. Ex. 55 (Mayer Report) at 23-24.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

335. The depressed socioeconomic status of Milwaukee's African-American community hinders the ability to participate in the electoral process on an equal basis with other members of the electorate. *See* Grofman Depo. (Dkt. 150) at 208:23-209:17.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

336. Minority cohesion and racial bloc voting are evidenced by analyzing voting percentages in elections where one or more African-American candidates ran against one or more white candidates. *See* Tr. Ex. 55 (Mayer Report) at 24, and Ex. 9. In all of these races, African-American voters were almost always close to unanimous in their support for the African-American candidate, and white voters were uniformly less likely to support the African-American candidate by large margins. These results show a high rate of racially polarized voting. *See id.*

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

337. In Assembly Districts 10, 11, 16, 17, and 18, the concentration of African-American voters is excessive, far above the threshold (typically, 55 percent) commonly accepted as necessary to achieve effective majority status for African-American voters. *See* Tr. Ex. 55 (Mayer Report) at 25; *see also* Grofman Depo. (Dkt. 150) at 90:2-17.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

338. If the percentage of African-American voting age population is reduced to 55 percent in each of these districts, 12,919 African-American voters would be available for other districts, increasing African-American influence while still retaining effective majorities in the existing majority-minority districts and enhancing the influence of African-Americans in other districts. *See* Tr. Ex. 55 (Mayer Report) at 25.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

339. African-Americans in Milwaukee and Wisconsin are less likely to participate in an election as demonstrated by the disparity in voter registration rates, socioeconomic differences, and other barriers to electoral participation. *See* Grofman Depo. (Dkt. 150) at 208:23-209:17.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

340. Traditional race-neutral redistricting criteria, such as compactness, contiguity, and respect for political subdivisions or communities defined by actual shared interests, were subordinated to race when the legislative majority decided to redraw the district lines under Act 43 so that an unnecessarily large number of African-American voters were concentrated in Assembly Districts 10, 11, 16, 17, and 18, and Latino voters were dispersed into Assembly Districts 8 and 9. There is no race-neutral justification for the creation of these districts under Act 43.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

341. District lines could have been drawn in a way that reduces the African-American voting age population to more appropriate levels (*i.e.*, 55 percent) and enhances the influence of African-Americans in other districts, and creates a compact Assembly District 8 with a

sufficiently large and effective Latino voting population. *See* Tr. Ex. 55 (Mayer Report) at 19, 22-23, 25, and Ex. 6; *see* Tr. Ex. 60 (Mayer Rebuttal) at 12-15.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

342. The explicit mandate of Act 43, establishing the effective date for redistricting, means any special or recall elections to offices filled or contested prior to the fall 2012 elections are to be conducted in the legislative districts established by the 2002 judicially-approved redistricting plan. *See* 2011 Wis. Act 43.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

343. Nine (9) recall elections were held in July and August 2011 under the 2002 district boundaries, and the Governor issued an Executive Order on September 2 to conduct a special election in the 95th Assembly District, which was conducted under the 2002 boundary.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

344. Recall petitions have been filed in Senate Districts 13, 21, 23, and 29, and the defendants are reviewing them for sufficiency to determine a date for recall elections under the 2002 boundaries.

RESPONSE: This contested proposed finding of fact does not implicate Act 44.

II. VOCES PLAINTIFFS

345. The Voces plaintiffs join in those foregoing statements of contested facts proffered by the Baldus plaintiffs including those that relate to AD 8 and AD 9 and the Latino community on Milwaukee's near southside.

RESPONSE: The Voces plaintiffs have not challenged the constitutionality of Act 44.

III. INTERVENOR PLAINTIFFS

A. Zero Deviation.

346. Zero deviation for a congressional district is determined by dividing the population of Wisconsin, as determined by the U.S. Census Bureau for the 2010 decennial Census, equally between the Eight Congressional Districts. This results in a population of 710,874 for Congressional Districts One and Two, and a population of 710,873 for Congressional Districts Three, Four, Five, Six, Seven, and Eight. Deposition of Andrew Speth, Chief of Staff for Intervening Defendant Congressman Paul Ryan (Dtk. 143) at 51:2-20.

RESPONSE: The ideal population for a Wisconsin congressional district is determined by dividing the population of Wisconsin, as determined by the U.S. Census Bureau for the 2010 decennial census, by eight. Zero deviation from the ideal exists when a congressional districting plan, like Act 44, allocates Wisconsin's population perfectly among the state's congressional districts. (Stipulated Facts, ¶ 190.)

347. Historically the census data used by the State legislature or federal three-judge court panels to draw redistricting maps has been inaccurate and incomplete (Deposition of Kevin Kennedy Director and General Counsel for the Defendant Government Accountability Board) for the following reasons:

a. The census itself (that is, the counting of people by the Census Bureau) is never entirely accurate. The Census Bureau misses some people during its count.

b. The boundary lines in the geographical maps used by the census are not always accurate. The census bureau openly acknowledges this.

c. The census is outdated as soon as it is released to the public. In the intervening period between when the census is released and redistricting maps are drawn by either the State Legislature or federal three-judge panel, as in 1982, 1992, and 2002 (which can be almost two years in some cases), some people have moved, other people have died, babies have been born, non-voting age citizens have become of voting age, and some boundary lines have shifted through annexations.

RESPONSE: This proposed fact is immaterial to any claim in issue as to Act 44.

348. It is impossible to have precise equal population for all citizens of the United States because congressional boundaries cannot cross state lines. This means that the citizens of some states will be underrepresented and the citizens of other states will be overrepresented. For example the average congressional district in Minnesota has a population of 662,990 while the average congressional district in Wisconsin has a population of 710,874. This is a deviation of 6.7%. This means that the citizens of Wisconsin are underrepresented if precise average population figures are required.

RESPONSE: This proposed fact is immaterial to any claim in issue as to Act 44. Moreover, the differences in the census populations of congressional districts of different states—being a direct result of the constitutionally prescribed scheme of state representation in the House of Representatives (U.S. Const., Art. I, sec. 2, cl. 3)—cannot supply the basis for any constitutional claim.

349. The boundaries for the Congressional Districts that became Act 44 were prepared by Andrew Speth, Chief of Staff for Intervening Defendant Congressman Paul Ryan. Speth Depo. (Dkt. 143) at 32:3-9.

RESPONSE: The parties have stipulated that Mr. Speth took primary responsibility for drafting the map that would eventually become Act 44. (Stipulated Facts, ¶ 207.) The parties have further stipulated that he and Congressman Paul D. Ryan, Jr., sought out, received, and incorporated the preferences of Congressman Kind, Congresswoman Baldwin, and Congresswoman Moore. (*Id.* ¶¶ 211, 213, 216, 219, 220, 221, 226, 229.) These preferences were included in the final Act 44. (*See id.* ¶ 231.)

350. The only legal principle that guided Mr. Speth in drawing the Congressional Boundaries that were enacted in Act 44 was zero deviation. *Id.* at 50:22-51:20.

RESPONSE: The intervenor-defendants will rebut this proposed finding of fact with the trial testimony of Andrew Speth.

B. Core Retention.

351. Attached as Exhibit 1014 is the Congressional boundary map that was adopted in 2002 as a result of the 2000 census.

RESPONSE: The intervenor-defendants stipulate that the attached Exhibit 1014 is a copy of the congressional districting map adopted by the Wisconsin Legislature in 2002 to comply with the United States Constitution following the 2000 U.S. Census.

352. Attached as Exhibit 1015 is the Congressional boundary map that was adopted by the passage of Act 44 following the 2010 census.

RESPONSE: The intervenor-defendants stipulate that the attached Exhibit 1015 is a copy of the congressional districting map embodied in Act 44.

353. The previous 2002 redistricting plan was recommended by a bipartisan congressional delegation. It was passed by the Wisconsin legislature and signed into law by the Governor. It was not challenged in court. There would be no reason to change those districts following the 2010 census unless there had been large population shifts, the state had lost a congressional seat, or there had been changes in the ethnic composition of a district requiring changes because of the Voting Rights Act. None of these considerations are relevant for the Third, Seventh, or Eighth Congressional Districts. Affidavit of Congressman David Obey (Tr. Ex. 47) ¶ 12.

RESPONSE: The intervenor-defendants stipulate to the first three sentences of this proposed finding of fact. The remainder of this proposed finding of fact appears to be opinion testimony that is immaterial to any claim in issue as to Act 44. The fourth sentence of this paragraph, moreover, is rebutted by other contested findings of fact proposed by the intervenor-plaintiffs. (*See infra* ¶ 359.) The U.S. Constitution required that Wisconsin's congressional districts be redrawn based on data in the 2010 U.S. Census and, as interpreted by the U.S. Supreme Court, counseled that the Wisconsin Legislature make a good-faith effort to comply with the principle of equal population among the state's congressional districts. *See, e.g.*, *Karcher v. Daggett*, 462 U.S. 725 (1983).

354. Retention of the core population from a Congressional District is important for the following reasons, among others.

a. One of the important duties of a member of congress is to provide constituent services to those he or she represents. That is best accomplished if confusion about which district citizens live in is minimized to the greatest possible degree. Constituent services can be a variety of things: assistance with passports, providing information about government programs, helping to confront government agencies or expressing opinions on issues before Congress. My staff and I would be constantly dealing with the needs of private citizens to understand how to gain access to government

services and information. These are usually people who cannot afford a lobbyist. This access to government I believe falls under a citizens' right to petition government.

b. People will best understand the positions taken by the representative in their district and will be better equipped to cast an informed vote than would be the case if they are continually confused about which district they now reside in. Moving voters will cause them to be less informed and more confused.

c. Parties form organizations that are based upon district boundaries. Unnecessarily moving voters disrupts those organizations, and their ability to provide useful information.

d. Unnecessarily disrupting the link between constituents and their districts of residence will lower voter turnout and participation because of a lack of information. Voter turnout in U.S. elections is already lower than in many countries – not something to be desired in the world's oldest democracy. Obey Aff., ¶ 17.

RESPONSES: This contested proposed finding of fact appears to be opinion testimony that is immaterial to any claim in issue as to Act

355. Mr. Speth was not familiar with the concept of core retention and did not use the concept of core retention in preparing the map that was enacted as Act 44. Speth Depo. (Dkt. 143) at 104:4-20, 105:19-22.

RESPONSE: The intervenor-defendants will rebut this proposed finding of fact with the trial testimony of Andrew Speth.

356. The 7th Congressional District and the 3rd Congressional District share a common boundary. Tr. Ex. 1014.

RESPONSE: The intervenor-defendants stipulate to this finding of fact. The congressional district maps embodied in both Act 44 and its predecessor statute included a common boundary between the 7th Congressional District and the 3rd Congressional District. 2009-10 Wis. Stats. §§ 3.13, 3.17; 2011-12 Wis. Stats. §§ 3.13, 3.17.

357. In the boundaries drawn in 2002, Clark County was divided between the 7th Congressional District and the 3rd Congressional District. Tr. Ex. 1014.

RESPONSE: The intervenor-defendants stipulate to this finding of fact. The congressional district map embodied in the former congressional districting statute divided Clark County between the 7th Congressional District and the 3rd Congressional District. *See* 2009-10 Wis. Stats. §§ 3.13, 3.17 and accompanying map. Act 44 does not. *See* 2011-12 Wis. Stats. §§ 3.13, 3.17 and accompanying map.

358. According to the 2010 census the population of Clark County was 34,690 and Clark County had grown by 3.4% from 2000. (2010 Census Data, available at: http://quickfacts.census.gov/qfd/states/55/55019.html)

RESPONSE: The intervenor-plaintiffs stipulate that under the 2010 U.S. Census, the population of Clark County is 34,690, a population 3.4% greater than that of Clark County under the 2000 U.S. Census.

359. By maintaining the same boundaries for the 7th and 3rd Congressional Districts as had been approved by Wisconsin Legislature and signed into law by the Wisconsin Governor in 2002, but placing all of Clark County in the 7th Congressional District, the 3rd and 7th Congressional District would have largely accomplished equal population with the other Wisconsin Congressional Districts. Obey Aff., ¶ 19.

RESPONSE: This contested proposed finding of fact appears to be opinion testimony or a hypothetical counterfactual scenario that is immaterial to any claim in issue as to Act 44.

360. Mr. Speth agrees that zero deviation could have been achieved by maintaining the previous boundaries of the Third and Seventh Congressional Districts by simply moving all of Clark County to the Seventh Congressional District following the 2010 census, but he never considered doing it. Speth Depo. (Dkt. 143) at 141:10–142:13.

RESPONSE: The intervenor-defendants will rebut this proposed finding of fact with the trial testimony of Andrew Speth.

C. Compactness.

361. Compactness reduces travel time before elections, during campaigns and after campaigns in performing representational duties to make candidates and representatives more accessible to constituents. Obey Aff., ¶ 22.

RESPONSES: This contested proposed finding of fact appears to be opinion testimony that is immaterial to any claim in issue as to Act

362. Compactness also impacts the media market as television coverage, radio coverage, and newspaper coverage is limited to a specific geographic area. Constituents receive considerable information concerning their congressional representative through those media markets, especially television. Campaigning is also dominated by television ads and television coverage. In western Wisconsin, the boundaries approved by the legislature further fragment the major media market for that area, making meaningful information less likely to be conveyed, and raising the cost of whatever communication is provided. The primary television coverage for western Wisconsin is provided by Minnesota and Twin Cities media outlets. Most of that coverage is presently provided to Third District counties such as Pepin, Pierce, Buffalo, and St. Croix counties. The new map split St. Croix County from that Third District and moved it to the Seventh. The result is that Third District candidates will need to continue to purchase Twin Cities media because it covers a major part of the district. Up until now, Seventh district candidates purchased very little Twin Cities media because only a small part of the Seventh district, such as Polk county, is dominated by Twin Cities television. This new map makes it more necessary for Seventh district candidates to also purchase Twin Cities media, unnecessarily raising the cost of campaigns. *Id.* ¶ 23.

RESPONSES: This contested proposed finding of fact appears to be opinion testimony that is immaterial to any claim in issue as to Act 44.

363. Compactness makes it easier for democracy to work because it facilitates communications between the representative and the public. Since Marathon, Wood, and Portage Counties are one media market, communications by a member of Congress can be broadcast throughout those three counties. The new district boundaries reduces the ability of the Seventh District representative to communicate with the public since all of Portage County and much of Wood County have been moved from the Seventh Congressional District, to the Third Congressional District which receives most of its news from La Crosse television outlets. Little information about Third district affairs will reach Portage County residents under this arrangement. *Id.* ¶ 24.

RESPONSES: This contested proposed finding of fact appears to be opinion testimony that is immaterial to any claim in issue as to Act 44.

364. Mr. Speth did not consider media markets when he prepared the Congressional Boundaries for the map that was enacted in Act 44. Speth Depo. (Dkt. 143) at 145:8-13.

RESPONSE: The intervenor-defendants will, by the trial testimony of Andrew Speth, rebut or otherwise explain or expand upon the attributions made by this proposed finding of fact to the deposition of Andrew Speth. Further explanation of Mr. Speth's considerations are available on this topic. Speth Depo. (Dkt. 143) at 145:14-147:18.

365. The new boundaries further reduce compactness by snaking the district boundary around Portage and part of Wood County and appending portions of Juneau, Jackson, and Monroe Counties so that these fractional counties could be added to the Seventh District. This makes no sense. Obey Aff., ¶ 25.

RESPONSE: The intervenor-defendants state that, as a matter of law, Act 44 drew boundaries for the 7th Congressional District as reflected in the resultant statute, *see* 2011-12 Wis. Stats. § 3.17. The second sentence, regarding whether "[t]his makes no sense," appears to be opinion testimony that is immaterial to any claim in issue as to Act 44.

366. In the northern portion of the district the new boundary line now extends to Florence County. This increases travel time from west to east by about an hour as the community of Florence in Florence County is about a five hour drive from Superior in Douglas County whereas formerly it was about a four hour drive from Superior to Three Lakes which was on the eastern boundary of the former district. The addition of territory as far southeast as Monroe County unnecessarily adds an hour's drive time to get from Superior to Monroe County and even more to get from the northeast regions of the new district to the southwest regions of Monroe and Juneau Counties. This will reduce communications between the representative and the populations in the far corners of the district. The Seventh Congressional District was geographically already the largest congressional district in Wisconsin. Now it is unnecessarily made even larger geographically. *Id.* ¶ 26.

RESPONSE: The intervenor-defendants stipulate that the northern boundary of the 7th Congressional District under Act 44 includes Florence County in that district. Further, the

intervenor-defendants stipulate that under the predecessor congressional districting statute, passed by the Wisconsin Legislature in 2002, the Seventh Congressional District was the largest of the state's eight congressional districts geographically. The remainder of this proposed finding of fact appears to be opinion testimony that is immaterial to any claim in issue as to Act 44.

367. If the boundaries of the Seventh and Third are merely adjusted as set forth above those districts will be more compact than the new districts. *Id.* ¶ 27.

RESPONSE: This contested proposed finding of fact appears to be opinion testimony that is immaterial to any claim in issue as to Act 44.

368. Visual comparison of exhibit A and exhibit B confirm that the boundaries of Wisconsin Congressional Districts Three, Seven, and Eight as prescribed by Act 44 are less compact than the boundaries of those districts before the redistricting by Act 44.

RESPONSE: This contested proposed finding of fact appears to be opinion testimony that is immaterial to any claim in issue as to Act 44.

369. Mr. Speth did not consider the principle of compactness when he prepared the boundaries of the Wisconsin Congressional Districts that were enacted into law by Act 44. Speth Depo. (Dkt. 143) at 121:8-10.

RESPONSE: According to Mr. Speth, "Going back to your previous question about considering compactness, if compactness means Congresswoman Baldwin preferred not to have to commute all the way over to Jefferson County, then yes. If Congressman Petri commuting to the western edge of his district, they yes." Speth Depo. (Dkt. 143) at 149:17-23; *see also id.* at 150:3-6. The intervenor-defendants will further rebut this proposed finding of fact with the trial testimony of Andrew Speth.

D. Communities Of Interest.

370. The collective power of a group of people or entities can become better informed and have a stronger influence on governmental action and legislation than can a single individual. Communities of interest are usually more effective if the focus is upon a single representative.

RESPONSE: This contested proposed finding of fact appears to be opinion testimony that is immaterial to any claim in issue as to Act 44.

371. Since at least 1938 Marathon, Portage, and Wood County have been in one congressional district. This has facilitated thinking of these counties as a single integrated economic and cultural unit.

RESPONSE: The first sentence of this contested proposed finding of fact is incorrect as a matter of law and fact. In 1982, the Wisconsin Legislature redistricted the state's congressional boundaries in response to the 1980 U.S. Census, splitting Wood County between two districts. *See* Chs. 154 and 155, Laws of 1981. Congressman David Obey was "deeply involved" in the

redistricting process in 1982 that led to this split. (Obey Aff., Dkt. 100, ¶ 9.) Marathon, Portage, and Wood Counties have only been joined within a single congressional district since 1992. *Compare* Wis. Stats. § 3 (1989-90) (splitting Wood County between 6th and 7th districts) *with* Wis. Stats. § 3 (1991-92) (placing all of Wood County in 7th district). The second sentence of this proposed finding of fact appears to be opinion testimony that is immaterial to any claim in issue as to Act 44.

372. The single most unifying community of interest in the Seventh Congressional District before the recent redistricting is the Wisconsin River. Obey Aff., ¶ 28.

RESPONSE: This contested proposed finding of fact appears to be opinion testimony that is immaterial to any claim in issue as to Act 44.

a. The Wisconsin River is called the hardest working river in the United States. This is because the river has led to economic development. In early years sawmills were built in Merrill, Wausau, Mosinee, and Stevens Point.

RESPONSE: The first and second sentences of this proposed finding of fact appear to be either inadmissible hearsay or opinion testimony that is immaterial to any claim in issue as to Act 44. The third sentence of this proposed finding of fact is immaterial to any claim in issue as to Act 44.

b. In later years the river became a great source of hydro-electric power. Today hydropower is still used to power paper mills on the river including:

i. Rhinelander Paper Co. in Rhinelander,

ii. Packaging Corp. of America in Tomahawk,

iii. Wausau Papers in Brokaw,

iv. Weyerhaeuser Papers in Rothschild,

v. Mosinee Papers in Mosinee,

vi. Stora Enso (Consolidated Paper) in:

(1) Stevens Point,

(2) Whiting,

(3) Biron,

(4) Wisconsin Rapids,

vii. Georgia Pacific in Nekoosa and Port Edwards.

RESPONSE: This proposed finding of fact is immaterial to any claim in issue as to Act 44. Further, the municipalities listed in this proposed finding of fact do not all lie in Wood, Portage,

and Marathon Counties, which the intervenor-plaintiffs have asserted form a community of interest, but in some cases instead in Oneida and Lincoln Counties, which the intervenor-plaintiffs have not alleged to comprise any part of any "community of interest."

c. All of the above 11 sites were located in the Seventh Congressional District for decades before the most recent redistricting.

RESPONSE: This proposed finding of fact is immaterial to any claim in issue as to Act 44.

d. Today the six latter sites have been taken out of the Seventh District and placed in the Third.

RESPONSE: This proposed finding of fact is immaterial to any claim in issue as to Act 44.

e. The river and the numerous impoundments are also a major source of recreation.

RESPONSE: This proposed finding of fact is immaterial to any claim in issue as to Act 44.

f. The industrial development of the river has brought with it a number of related community interests relating to water quality, water levels, air quality, real estate, shoreland zoning, and tourism.

RESPONSE: This proposed finding of fact is immaterial to any claim in issue as to Act 44.

g. One of the reservoirs is Lake Dubay. It within or near the borders of Marathon, Portage, and Wood Counties. It covers 6,830 acres and has 43 miles of shoreline.

RESPONSE: This proposed finding of fact is immaterial to any claim in issue as to Act 44.

h. The Wisconsin Valley Improvement Corporation is located in Wausau, Wisconsin. It manages the Wisconsin River flowage of Lake DuBay to ensure that community, recreation, and paper industry needs are fulfilled in the region as well as managing for flood control. These needs were formerly all in the Seventh District now they are split between the Seventh and the Third Districts

RESPONSE: This proposed finding of fact is immaterial to any claim in issue as to Act 44.

i. The Wisconsin River flows through Wausau (Marathon County), Stevens Point (Portage County), and Wisconsin Rapids (Wood County). All three of these cities were formerly in the Seventh District. Stevens Point and Wisconsin Rapids have now been moved to the Third District.

RESPONSE: This proposed finding of fact is immaterial to any claim in issue as to Act 44. The intervenor-defendants stipulate that the Wisconsin River, which flows from the Wisconsin-Michigan border to its confluence with the Mississippi River at the Wisconsin-Iowa border, flows through numerous municipalities throughout its path, including Wausau, Stevens Point,

and Wisconsin Rapids. Under the previous 2002 redistricting statute, the Wisconsin River flowed through portions of five different congressional districts as then drawn. Under Act 44, it flows through four different congressional districts. The last two sentences of this proposed finding of fact are matters of law the veracity of which can be determined by reference to the statutes. 2011-12 Wis. Stats. §§ 3.13, 3.17; 2009-10 Wis. Stats. §§ 3.13, 3.17.

373. Mr. Speth never considered the above factors set out in paragraph 39 relating to the Wisconsin River when he prepared the Congressional Boundaries that were enacted into law as Act 44. Speth Depo. at 148:6-15.

RESPONSE: Paragraph 39 of the Joint Final Pretrial Report is an element of a claim by the intervenor-plaintiffs relating to compactness, which does not relate to the deposition testimony cited in this proposed finding of fact.

374. In the early 1980's, Wisconsin Governor Lee Sherman Dreyfus, himself a resident of Central Wisconsin, urged that the area be thought of as a common unit. He referred to Marathon, Portage and Wood counties as the "Ruralplex." This is because these three counties were a highly integrated economic and cultural hub for Central Wisconsin. Obey Aff., ¶ 29.

RESPONSE: This proposed finding of fact is immaterial to any claim in issue as to Act 44 and also appears to be hearsay or opinion testimony.

a. The Central Wisconsin Regional Airport is a joint venture between Marathon and Portage counties.

RESPONSE: This proposed finding of fact is immaterial to any claim in issue as to Act 44.

b. Major highways connect the three counties.

RESPONSE: This proposed finding of fact is immaterial to any claim in issue as to Act 44.

c. The University of Wisconsin Stevens Point draws from the three counties.

RESPONSE: The intervenor-defendants have stipulated that in 2010, of Wisconsin's 72 counties, the University of Wisconsin – Stevens Point drew 27% of its students from Marathon, Portage and Wood Counties. (Stipulated Facts, ¶ 194c.)

d. Wausau is the regional shopping hub of Central Wisconsin. The Cross Road Commons in Stevens Point also serves the region.

RESPONSE: The intervenor-defendants have stipulated to these facts. (Stipulated Facts, ¶ 194d.)

e. Major Insurance Companies are headquartered in Wausau and Stevens Point.

RESPONSE: This proposed finding of fact is immaterial to any claim in issue as to Act 44.

f. The region has highly integrated medical services. Ministry Health Care and Aspirus and their affiliates are major providers and major employers in the region.

RESPONSE: This proposed finding of fact is immaterial to any claim in issue as to Act 44.

g. The same ABC, CBS, NBC, Fox and Public Television affiliates serve all three counties. Gannett Newspapers owns all four local newspapers.

RESPONSE: This proposed finding of fact is immaterial to any claim in issue as to Act 44.

375. Mr. Speth never considered the above factors set out in paragraph 41 when he prepared the Congressional Boundaries that were enacted into law as Act 44. (Speth Dep., p. 148, lines 16-22.)

RESPONSE: Paragraph 41 of the Joint Final Pretrial Report is an element of a claim by the intervenor-plaintiffs relating to compactness, which does not relate to the deposition testimony cited in this proposed finding of fact.

376. High Schools from Wausau, Marshfield, Stevens Point, and Wisconsin Rapids all are members of the Wisconsin Valley Conference. Obey Aff., ¶ 30.

RESPONSE: This proposed finding of fact is immaterial to any claim in issue as to Act 44.

377. For many decades the Third Congressional District has been considered the Mississippi River valley district. The economic development of that area has been tied to the Mississippi River in ways similar to the Wisconsin River. *Id.* ¶ 31.

RESPONSE: This contested proposed finding of fact appears to be opinion testimony that is immaterial to any claim in issue as to Act 44.

378. Monroe and Jackson counties have now been unnecessarily split between the Third and the Seventh District. These counties are more closely connected economically to La Crosse which is in the Third District than to any community in the Seventh District. *Id.* ¶ 32.

RESPONSE: This contested proposed finding of fact appears to be opinion testimony that is immaterial to any claim in issue as to Act 44.

379. The Eighth Congressional District has always been considered the Fox River, Green Bay, and northwestern Lake Michigan area. Its development has likewise been tied to these waterways. *Id.* ¶ 33.

RESPONSE: This contested proposed finding of fact appears to be opinion testimony that is immaterial to any claim in issue as to Act 44.

380. In 2002 the bipartisan congressional delegation, the Wisconsin Legislature and the Governor all recognized that the boundaries set forth by the 2002 redistricting incorporated the communities of interest of the Third, Seventh, and Eighth Congressional Districts. *Id.* ¶ 34.

RESPONSE: What the bipartisan delegation, the Governor, and the Legislature agreed to is set out in the congressional redistricting statute recommended, passed, and adopted in 2002. This contested proposed finding of fact appears to be opinion testimony that is immaterial to any claim in issue as to Act 44, and no proof has been proffered that anyone focused on any one or more "communities of interest" in agreeing to those lines.

381. Marathon, Portage and Wood counties are much more alike than the surrounding counties in terms of urbanization and employment levels. *Id.* ¶ 4n.

RESPONSE: This proposed finding of fact is immaterial to any claim in issue as to Act 44. Centergy, an economic development organization located in Wausau, serves an area of central Wisconsin comprised of Adams, Lincoln, Marathon, Portage, and Wood Counties. (Stipulated Facts, ¶ 194a.) In its list of the region's "population centers," Centergy includes the city of Merrill, located in Lincoln County, along with Marshfield, Stevens Point, Wausau, and Wisconsin Rapids. Centergy website, "Overview of Centergy," *available at* http://centergy.net/about/overviewcentergy.html (last visited Feb. 19, 2012).

382. Mr. Speth's only consideration of communities of interest in drafting the Congressional boundaries that were enacted into law in Act 44 related to geographic boundaries and never considered cultural or economic factors. Speth Depo., at 137:5-19.

RESPONSE: The intervenor-defendants will, with the trial testimony of Andrew Speth, rebut or otherwise explain or expand upon the attributions made by this proposed finding of fact to the cited deposition testimony.

a. Under the alignment before Act 44 the Seventh District had three partial counties (Clark, Oneida, and Langlade). If all of Clark is moved to the Seventh District only two counties would be divided. Exhibit 1.

RESPONSE: The first sentence of this proposed finding of fact is immaterial to any claim in issue as to Act 44 and, further, is a matter of law the veracity of which can be determined by reference to the predecessor statute. 2009-10 Wis. Stats. § 3.17. The second sentence of this proposed finding of fact appears to be opinion testimony or a hypothetical counterfactual scenario that is immaterial to any claim in issue as to Act 44.

b. The boundaries that were drafted by Mr. Speth divides the geographic boundaries of five counties (Chippewa, Jackson, Monroe, Juneau, and Richland) in the Seventh District and places these counties in two Congressional Districts. Jackson County is further fractured since there are three townships in the north that are in the Seventh District and another three townships on the east that are also in the Seventh District. However, the three townships in the north of Jackson County and the three townships in the east of Jackson County are not contiguous. Exhibit 2.

RESPONSE: This contested proposed finding of fact appears to contain opinion testimony that is immaterial to any claim in issue as to Act 44. The intervenor-defendants have stipulated that 12 counties are split under Act 44. (Stipulated Facts, ¶ 192.) Some of these counties were also split under the predecessor statute. *See* 2009-10 Wis. Stats. § 3.

c. Under the alignment before Act 44 the Third District only divided Clark and Sauk Counties. Tr. Ex. 1014..

RESPONSE: As a matter of law, the predecessor statute prior to the adoption of Act 44 included two partial counties, Clark County and Sauk County, in the 3rd Congressional District. 2009-10 Wis. Stats. § 3.13(2)–(3).

d. The boundaries that were drafted by Mr. Speth divides the geographic boundaries of six counties (Wood, Chippewa, Jackson, Monroe, Juneau, and Richland Counties). Tr. Ex. 1014, 1015.

RESPONSE: The intervenor-defendants have stipulated that 12 counties are split under Act 44, including Wood, Chippewa, Jackson, Monroe, Juneau, and Richland Counties. (Stipulated Facts, ¶ 192.)

383. Historically, the Wisconsin Congressional delegation, following the decennial census, would recommend a Congressional map to the Wisconsin Legislature based upon considerations of:

a. Core retention;

b. Communities of interest;

c. Compactness;

d. One man one vote.

RESPONSE: The intervenor-defendants have stipulated that, as in 2011, the Wisconsin Legislature in previous decades has permitted the incumbent Wisconsin members of the House of Representatives to draft a map containing the new congressional boundaries to comply with new census data. (Stipulated Facts, ¶ 206.) The intervenor-defendants further stipulate that the "one-person, one-vote" requirement of the Equal Protection Clause, as interpreted by the U.S. Supreme Court, has been considered by the drafters of Act 44 and its predecessor statutes. The remainder of this proposed finding of fact appears to contain hearsay or opinion testimony that is also immaterial to any claim in issue as to Act 44. What the bipartisan delegation, the Governor, and the Legislature agreed to is set out in the congressional redistricting statute recommended, passed, and adopted in 2002. This contested proposed finding of fact appears to be opinion testimony that is immaterial to any claim in issue as to Act 44, and no proof has been proffered that anyone focused on any one or more of the listed additional factors in agreeing to those lines.

384. From at least 1972 until 2002 the Wisconsin Legislature and the Governor adopted Congressional District boundaries based upon the above four considerations.

RESPONSE: The intervenor-defendants have stipulated that the Wisconsin Legislature has always redrawn the state's congressional districts, and that no court has ever done so. (Stipulated Facts, ¶ 124.) The intervenor-defendants further stipulate that, from at least 1972 through the present, the "one-person, one-vote" requirement of the Equal Protection Clause, as interpreted by the U.S. Supreme Court, has been considered by the drafters of Wisconsin's

congressional district boundaries, and that those boundaries have been adopted. The remainder of this proposed finding of fact appears to contain hearsay or opinion testimony that is also immaterial to any claim in issue as to Act 44. What the bipartisan delegation, the Governor, and the Legislature agreed to is set out in the congressional redistricting statute recommended, passed, and adopted in 2002. This contested proposed finding of fact appears to be opinion testimony that is immaterial to any claim in issue as to Act 44, and no proof has been proffered that anyone focused on any one or more of the listed additional factors in agreeing to those lines.

385. The boundaries drawn for Act 44 did not include consideration of core retention.

RESPONSE: The intervenor-defendants will rebut this proposed finding of fact with the trial testimony of Andrew Speth.

386. The boundaries drawn for Act 44 did not include consideration of compactness.

RESPONSE: The intervenor-defendants will rebut this proposed finding of fact with the trial testimony of Andrew Speth.

387. The boundaries drawn for Act 44 did not include consideration of communities of interest except for political boundaries.

RESPONSE: The intervenor-defendants will rebut this proposed finding of fact with the trial testimony of Andrew Speth.

388. The redistricting of Iowa in 2002 was based upon the Iowa Constitution (Article III. Sec. 37) and Iowa Statute Sec. 42.4 The constitution and statute requires a population which varies by no more than one per cent of the ideal district population. It also required keeping counties together to the greatest extent possible.

RESPONSE: The intervenor-defendants stipulate that the congressional redistricting statute passed in Iowa in 2002, and applicable in that state thereafter, complied with relevant portions of the Iowa Constitution and statutes, including Article III, § 37 of the Iowa Constitution and Iowa Stat. § 42.4. As a matter of law, the Iowa Constitution and Iowa statutes do not impose legal requirements on the Wisconsin Legislature. Wisconsin law includes neither any provision requiring a minimal variance from ideal district population nor any provision requiring that the Legislature endeavor to keep counties together within a single congressional district.

389. The requirement of keeping counties together requires a greater shift of populations to obtain equal population than if counties could be divided.

RESPONSE: This contested proposed finding of fact appears is immaterial to any claim in issue as to Act 44. Wisconsin law contains no such requirement. (Stipulated Facts, ¶ 239.)

390. Wisconsin does not have the same statute as Iowa.

RESPONSE: The intervenor-defendants stipulate that the Iowa statute is not law in the state of Wisconsin.

391. Act 44 divides several counties.

RESPONSE: The parties have stipulated that 12 counties are split under Act 44. (Stipulated Facts, ¶ 192.) Some of these counties were also split under the predecessor statute. *See* 2009-10 Wis. Act § 3.

RESPONSES TO PROPOSED CONCLUSIONS OF LAW

I. BALDUS PLAINTIFFS

519. The Equal Protection Clause requires "substantially equal state legislative representation for all citizens." *Reynolds v. Sims*, 377 U.S. 533, 568 (1964). Regardless of size, population deviations that cannot be justified by traditional redistricting criteria violate the Equal Protection Clause.

RESPONSE: This proposed conclusion of law does not implicate Act 44.

520. The Wisconsin Constitution requires that legislative districts "be bounded by county, precinct, town or ward lines . . . and be in as compact form as practicable." Wis. Const. art. IV, § 4.

RESPONSE: This proposed conclusion of law does not implicate Act 44. The cited provision of the Wisconsin Constitution, if judicially enforceable at all, does not, on its face, apply to congressional districts and would not, even if judicially enforceable, be enforceable by a federal court, in light of the Eleventh Amendment. *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89 (1984). No provision of the Wisconsin Constitution addresses requirements for congressional districts. (Stipulated Facts, ¶ 239.)

521. Deviations from population equality in legislative districts can only be based on "legitimate considerations incident to the effectuation of a rational state policy," *Reynolds v. Sims*, 377 U.S. 533, 579 (1964), including established redistricting criteria, *Baumgart v. Wendelberger*, No. 01-C-0121, 02-C-0366, 2002 WL 34127471 (E.D. Wis. May 30, 2002).

RESPONSE: This proposed conclusion of law does not implicate Act 44. The populations of the congressional districts created by Act 44, according to the 2010 Census, are either 710,874 (the 1st and 2nd districts) or 710,873 (the remaining districts). Thus, there is no population deviation from the ideal. (Stipulated Facts, ¶ 190.)

522. Established redistricting criteria include contiguity, Wis. Const. art. IV, § 4; compactness, *id.*; respect for "county, precinct, town or ward lines," *id.*; maintaining communities of interest, *Baumgart*, 2002 WL 34127471, at *3; and core population retention, *id.*

RESPONSE: This proposed conclusion of law does not implicate Act 44.

523. The failure to honor traditional redistricting criteria shifts the burden to defendants to justify the legitimacy of the legislative districts.

RESPONSE: This proposed conclusion of law does not implicate Act 44.

524. Act 43 unnecessarily divides municipalities between legislative districts and otherwise divides communities of interest.

RESPONSE: This proposed conclusion of law does not implicate Act 44.

525. Act 43 shifts substantially more people between legislative districts than necessary.

RESPONSE: This proposed conclusion of law does not implicate Act 44.

526. Deviations from population equality in the assembly and senate districts cannot be justified by legitimate considerations and, therefore, violate the Equal Protection Clause.

RESPONSE: This proposed conclusion of law does not implicate Act 44.

527. "[R]espect for the prerogatives of the Wisconsin Constitution dictate that . . . municipalities be kept whole where possible." *Baumgart*, 2002 WL 34127471, at *3.

RESPONSE: This proposed conclusion of law does not implicate Act 44.

528. By splitting municipalities without any rational basis for doing so, Act 43 violates the Equal Protection Clause.

RESPONSE: This proposed conclusion of law does not implicate Act 44.

529. Legislative districts that unnecessarily divide municipalities or are not compact violate the Wisconsin Constitution.

RESPONSE: This proposed conclusion of law does not implicate Act 44.

530. Act 43 unnecessarily divides municipalities between assembly districts in violation of the Wisconsin Constitution.

RESPONSE: This proposed conclusion of law does not implicate Act 44.

531. To the extent it relies exclusively on Act 39's permissive use of other boundaries (including census blocks), Act 43 violates Article IV, § 4 of the Wisconsin Constitution.

RESPONSE: This proposed conclusion of law does not implicate Act 44.

532. A *prima facie* case of unconstitutional gerrymandering is established by showing that the redistricting legislation moved significantly more people than necessary to achieve the ideal population, and no traditional redistricting criteria can justify the movement.

RESPONSE: This is a flatly incorrect statement of law, having no support in any decision of the Supreme Court. No workable standard exists with which to evaluate a partisan gerrymandering claim or measure the purported burden of an alleged partisan gerrymander on representational rights. *Vieth v. Jubelirer*, 541 U.S. at 313 (Kennedy, J., concurring). The burden is on the plaintiffs to "show a burden, as measured by a reliable standard, on the complainants' representational rights." *LULAC v. Perry*, 548 U.S. at 418. The plaintiffs' proposed standard is not manageable, is not discernible from the Constitution, and is virtually identical to standards previously rejected by the Supreme Court. *Vieth*, 541 U.S. at 296 (plurality opinion); *id.* at 308 (Kennedy, J., concurring).

533. Defendants can rebut the *prima facie* case by showing that the movement was necessitated by justified changes in other district boundaries or by traditional redistricting criteria.

RESPONSE: This is a flatly incorrect statement of law, having no support in any decision of the Supreme Court. No workable standard exists with which to evaluate a partisan gerrymandering claim or measure the purported burden of an alleged partisan gerrymander on representational rights. *Vieth v. Jubelirer*, 541 U.S. at 313 (Kennedy, J., concurring). The burden is on the plaintiffs to "show a burden, as measured by a reliable standard, on the complainants' representational rights." *LULAC v. Perry*, 548 U.S. at 418. The plaintiffs' proposed standard is not manageable, is not discernible from the Constitution, and is virtually identical to standards previously rejected by the Supreme Court. *Vieth*, 541 U.S. at 296 (plurality opinion); *id.* at 308 (Kennedy, J., concurring).

534. Plaintiffs can sustain their burden of proving an unconstitutional gerrymander by establishing that defendants' explanations are pretextual or unfounded.

RESPONSE: This is a flatly incorrect statement of law, having no support in any decision of the Supreme Court. No workable standard exists with which to evaluate a partisan gerrymandering claim or measure the purported burden of an alleged partisan gerrymander on representational rights. *Vieth v. Jubelirer*, 541 U.S. at 313 (Kennedy, J., concurring). The burden is on the plaintiffs to "show a burden, as measured by a reliable standard, on the complainants' representational rights." *LULAC v. Perry*, 548 U.S. at 418. The plaintiffs' proposed standard is not manageable, is not discernible from the Constitution, and is virtually identical to standards previously rejected by the Supreme Court. *Vieth*, 541 U.S. at 296 (plurality opinion); *id.* at 308 (Kennedy, J., concurring).

535. Acts 43 and 44 move significantly more people than necessary to achieve the ideal population, and no traditional redistricting criteria can justify the movement.

RESPONSE: This is a flatly incorrect statement of law, having no support in any decision of the Supreme Court. No workable standard exists with which to evaluate a partisan gerrymandering claim or measure the purported burden of an alleged partisan gerrymander on representational rights. *Vieth v. Jubelirer*, 541 U.S. at 313 (Kennedy, J., concurring). The burden is on the plaintiffs to "show a burden, as measured by a reliable standard, on the complainants' representational rights." *LULAC v. Perry*, 548 U.S. at 418. The plaintiffs' proposed standard is not manageable, is not discernible from the Constitution, and is virtually identical to standards previously rejected by the Supreme Court. *Vieth*, 541 U.S. at 296 (plurality opinion); *id.* at 308 (Kennedy, J., concurring). No standard such as that suggested by this proposed conclusion of law exists for the review of the constitutionality of an enacted congressional redistricting statute. *Id.* The multitude of considerations to be taken into account in drawing congressional district boundaries does not permit the conclusion suggested by this proposed conclusion of law. (*See* Int.-Defs.' Br. in Supp. of Mot. on the Pleadings and to Dismiss, Dkt. 76, at 11-17.) Moreover, redistricting is "primarily the duty and responsibility of the State" and, here, of the Wisconsin Legislature, and courts must defer to the State's preferences as embodied in enacted legislation. *See, e.g.*, *Perry v. Perez*, 132 S. Ct. 934 (Jan. 20, 2012).

536. The movement of significantly more people than necessary to achieve population equality was not necessitated by justified changes in other district boundaries or by traditional redistricting criteria.

RESPONSE: This is a flatly incorrect statement of law, having no support in any decision of the Supreme Court. No workable standard exists with which to evaluate a partisan gerrymandering claim or measure the purported burden of an alleged partisan gerrymander on representational rights. *Vieth v. Jubelirer*, 541 U.S. at 313 (Kennedy, J., concurring). The burden is on the plaintiffs to "show a burden, as measured by a reliable standard, on the complainants' representational rights." *LULAC v. Perry*, 548 U.S. at 418. The plaintiffs' proposed standard is not manageable, is not discernible from the Constitution, and is virtually identical to standards previously rejected by the Supreme Court. *Vieth*, 541 U.S. at 296 (plurality opinion); *id.* at 308 (Kennedy, J., concurring). No standard such as that suggested by this proposed conclusion of law exists for the review of the constitutionality of an enacted congressional redistricting statute. *Id.* The multitude of considerations to be taken into account in drawing congressional district boundaries does not permit the conclusion suggested by this proposed conclusion of law. (*See* Int.-Defs.' Br. in Supp. of Mot. on the Pleadings and to Dismiss, Dkt. 76, at 11-17.) Moreover, redistricting is "primarily the duty and responsibility of the State" and, here, of the Wisconsin Legislature, and courts must defer to the State's preferences as embodied in enacted legislation. *See, e.g.*, *Perry v. Perez*, 132 S. Ct. 934 (Jan. 20, 2012).

537. The districts created by Acts 43 and 44 constitute an unconstitutional partisan gerrymander in violation of the Equal Protection Clause.

RESPONSE: This is a flatly incorrect statement of law, having no support in any decision of the Supreme Court. No workable standard exists with which to evaluate a partisan gerrymandering claim or measure the purported burden of an alleged partisan gerrymander on representational rights. *Vieth v. Jubelirer*, 541 U.S. at 313 (Kennedy, J., concurring). The burden is on the plaintiffs to "show a burden, as measured by a reliable standard, on the complainants' representational rights." *LULAC v. Perry*, 548 U.S. at 418. The plaintiffs' proposed standard is not manageable, is not discernible from the Constitution, and is virtually identical to standards previously rejected by the Supreme Court. *Vieth*, 541 U.S. at 296 (plurality opinion); *id.* at 308 (Kennedy, J., concurring). The intervenor-defendants have explained, in previous filings in this case, some of the reasons why Act 44 is constitutional. (*See* Int.-Defs.' Br. in Supp. of Mot. on the Pleadings and to Dismiss, Dkt. 76; Int.-Defs.' Reply Br. in Supp. of Motion for J. on the Pleadings, Dkt. 115; Int.-Defs.' Reply Br. in Supp. of Motion to Dismiss, Dkt. 116.

538. Wisconsin voters have the right to vote in regularly scheduled representative elections for state senators every four years. Wis. Const. art. IV, § 5.

RESPONSE: This proposed conclusion of law does not implicate Act 44.

539. Voters moved from an even-numbered senate district, in which the last regular election was held in 2008, to an odd-numbered senate district, in which the next regular election is to be held in 2014, are deprived of the right to vote in a regular election for two additional years.

RESPONSE: This proposed conclusion of law does not implicate Act 44.

540. The two-year delay in the exercise of their right to vote in regularly scheduled representative elections temporarily disenfranchises voters.

RESPONSE: This proposed conclusion of law does not implicate Act 44.

541. "[A] redistricting plan cannot unnecessarily disenfranchise voters." Order Denying Defendants' Motion to Dismiss (Dkt. 25) at 6. The temporarily disenfranchisement of citizens is constitutionally tolerated only when, due to the complexities of the reapportionment process, the "delay" in the right to vote is an "absolute necessity" or is "unavoidable." *Republican Party of Wisconsin v. Elections Bd.*, 585 F. Supp. 603, 606 (E.D. Wis. 1984), *vacated and remanded for dismissal of complaint, Wisconsin Elections Bd. v. Republican Party of Wisconsin*, 469 U.S. 1081 (1984). The disenfranchisement of more voters than necessary is a "fatal flaw" that renders a redistricting plan unconstitutional. *Id.*

RESPONSE: This proposed conclusion of law does not implicate Act 44.

542. Act 43 temporarily disenfranchises 299,639 individuals by moving them from even districts to odd districts.

RESPONSE: This proposed conclusion of law does not implicate Act 44.

543. The temporary disenfranchisement of a significant number of the 299,639 individuals was unnecessary and avoidable and, without an appropriate explanation, a violation of the Equal Protection Clause.

RESPONSE: This proposed conclusion of law does not implicate Act 44.

544. The fact that some of these voters had or may have an opportunity to vote in an extraordinary recall election does not cure the constitutional violation. The Wisconsin constitution guarantees the right to vote in a regularly scheduled state senate election every four years. The right to vote every four years for a state senator cannot be denied based on the exercise of the separate constitutional right to petition for the recall of an incumbent elected official.

RESPONSE: This proposed conclusion of law does not implicate Act 44.

545. Section 2 of the Voting Rights Act, as amended, provides:

> (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right . . . to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided by subsection (b) of this section.

> (b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.
>
> 42 U.S.C. § 1973.

RESPONSE: This proposed conclusion of law does not implicate Act 44.

546. The Latino citizen voting age population in the City of Milwaukee is sufficiently large and geographically compact to permit the creation of a majority-minority district. The Latino citizen voting age population in the City of Milwaukee is "politically cohesive," meaning that its members vote in a similar fashion, and there is evidence of racial-bloc voting (*i.e.*, racially polarized voting), in which the Latino citizen voting age population tends to vote as a bloc, usually allowing majority voters to defeat its preferred candidates. *See Thornburg v. Gingles*, 478 U.S. 30, 48-51 (1986); *see also Growe v. Emison*, 507 U.S. 25, 401-41 (1993).

RESPONSE: This proposed conclusion of law does not implicate Act 44.

547. The African-American voting age population in the City of Milwaukee is "politically cohesive," meaning that its members vote in a similar fashion, and there is evidence of racial-bloc voting (*i.e.*, racially polarized voting), in which the African-American voting age population tends to vote as a bloc, usually allowing majority voters to defeat its preferred candidates. *See id.*

RESPONSE: This proposed conclusion of law does not implicate Act 44.

548. The Latino citizen voting age populations dispersed in Assembly Districts 8 and 9, as created by Act 43, are insufficient to create an effective Latino majority. *See Barnett v. City of Chicago*, 141 F.3d 699, 703 (7th Cir. 1998); *Ketchum v. Byrne*, 740 F.2d 1398, 1415 n.19 (7th Cir. 1984).

RESPONSE: This proposed conclusion of law does not implicate Act 44.

549. It is possible to create an Assembly District 8 that is compact and has a Latino total population and citizen voting age population sufficient to elect a candidate of their choice.

RESPONSE: This proposed conclusion of law does not implicate Act 44.

550. Either by intent or effect, Act 43 packs the African-American voting age population in the City of Milwaukee into six (6) Assembly Districts, a smaller number of districts than is necessary, with unnecessarily high concentrations to minimize their voting power in neighboring districts. *See Voinovich v. Quilter*, 507 U.S. 146, 158 (1993).

RESPONSE: This proposed conclusion of law does not implicate Act 44.

551. If the percentage of African-American voting age population is reduced in each of these districts, thousands more African-American voters would be available for other districts, while still retaining effective majorities in the existing majority-minority districts and enhancing the influence of African-Americans in other districts.

RESPONSE: This proposed conclusion of law does not implicate Act 44.

552. The process by which Act 43 was created and the legislature's disregard for traditional redistricting criteria, such as communities of interest, demonstrate intentional dilution of minority voting strength for African-Americans and Latinos. *See Bartlett v. Strickland*, 556 U.S. 1, 19-20 (2009); *see Ketchum*, 740 F.2d at 1406.

RESPONSE: This proposed conclusion of law does not implicate Act 44.

553. Latinos are less likely to participate in elections as demonstrated by the disparity in voter registration rates, socioeconomic differences, and other barriers to electoral participation—including Wisconsin's newly enacted voter identification law. *See Gingles*, 478 U.S. at 44-45; *see* 2011 Wis. Act 23.

RESPONSE: This proposed conclusion of law does not implicate Act 44.

554. African-Americans in Milwaukee and Wisconsin are less likely to participate in election as demonstrated by the disparity in voter registration rates, socioeconomic differences, and other barriers to electoral participation. *See id.*

RESPONSE: This proposed conclusion of law does not implicate Act 44.

555. Based on the totality of the circumstances, Latinos have been denied an equal opportunity to participate in the political process and elect legislators of their choice because Act 43 dilutes the voting power of Latinos by reducing their concentration in the newly drawn Assembly District 8, especially as compared with Assembly District 8 created by the 2002 judicially-imposed plan. *See* 42 U.S.C. § 1973(b); *see also Gingles*, 478 U.S. at 46.

RESPONSE: This proposed conclusion of law does not implicate Act 44.

556. Based on the totality of the circumstances, African-Americans in the City of Milwaukee and in Wisconsin have been denied an equal opportunity to participate in the political process and elect legislators of their choice because Act 43 dilutes their voting power by packing them into a smaller number of districts than is necessary. *See id.*

RESPONSE: This proposed conclusion of law does not implicate Act 44.

557. Although the Voting Rights Act necessitates, under narrow circumstances, that the legislature consider race in the redistricting context, the Equal Protection Clause of the 14th Amendment generally requires racial neutrality in governmental decision-making. *See* U.S. Const., amend. XIV, § 1 (providing that no State shall "deny to any person within its jurisdiction the equal protection of the laws").

RESPONSE: This proposed conclusion of law does not implicate Act 44.

558. The Supreme Court has repeatedly held that dividing voters according to their race in the redistricting context is subject to the strictures of the Equal Protection Clause. *See Shaw v. Hunt*, 517 U.S. 899, 904-05 (1996) ("*Shaw II* "); *Miller v. Johnson*, 515 U.S. 900, 905 (1995); *Shaw I*, 509 U.S. at 644.

RESPONSE: This proposed conclusion of law does not implicate Act 44.

559. Racial gerrymandering presents a justiciable claim under the Equal Protection Clause, even when there is no population deviation among the districts or direct evidence of intentional discrimination. *Davis v. Bandemer*, 478 U.S. 109 (1985) (*citing Rogers v. Lodge*, 458 U.S. 613 (1982)).

RESPONSE: This proposed conclusion of law does not implicate Act 44.

560. Act 43 violates the Equal Protection Clause because, absent a race-neutral explanation, race was the predominant factor motivating the legislature's decision to place a significant number of African-American and Latino voters within or without particular districts. *See Miller v. Johnson*, 515 U.S. 900, 916 (1995).

RESPONSE: This proposed conclusion of law does not implicate Act 44.

561. Plaintiffs have demonstrated the impermissible motives of the majority party of the legislature through, at the least, circumstantial evidence of the shape and demographics of the minority districts at issue, and the secrecy and inexplicable speed of the redistricting process. *See id.*

RESPONSE: This proposed conclusion of law does not implicate Act 44.

562. Traditional race-neutral redistricting criteria, such as compactness, contiguity, and respect for political subdivisions or communities defined by actual shared interests, were subordinated to race, and the legislature deliberately concealed the redistricting process from the public. *See Miller*, 515 U.S. at 920; *see also Shaw v. Reno*, 509 U.S. 630, 646 (1993) (*Shaw I*).

RESPONSE: This proposed conclusion of law does not implicate Act 44.

563. With respect to race, Act 43 is not justified by any compelling state interest, and is not narrowly tailored to achieve that interest. *See Miller*, 515 U.S. at 920; *Shaw I*, 509 U.S. at 646.

RESPONSE: This proposed conclusion of law does not implicate Act 44.

564. Section 10 of 2011 Act 43 states: "(1) This act first applies, with respect to regular elections, to offices filled at the 2012 general election. (2) This act first applies, with respect to special or recall elections, to offices filled or contested concurrently with the 2012 general election." 2011 Wis. Act 43.

RESPONSE: This proposed conclusion of law does not implicate Act 44.

565. The Wisconsin Constitution permits legislative redistricting only after a decennial census. Wis. Const. art. IV, § 3.

RESPONSE: This proposed conclusion of law does not implicate Act 44.

566. Where a state statute provides for redistricting after a decennial census, it may not impose an interim remedy to address subsequent population changes that allegedly render the redistricting invalid. *See Mississippi State Conf. of N.A.A.C.P. v. Barbour*, No. 11-cv-159, 2011 WL 1870222, *2, *6-*8 (S.D. Miss. May 16, 2011), *summarily aff'd*, 132 S. Ct. 542 (Oct. 31, 2011); *see also Holt v. 2011 Legislative Reapportionment Comm'n*, No. 7 MM 2012 (Pa. Jan. 25, 2012).

RESPONSE: This proposed conclusion of law does not implicate Act 44.

567. The Government Accountability Board has concluded, based on the plain language of Act 43, that any special or recall elections to offices filled or contested prior to the fall 2012 elections are to be conducted in the legislative districts established by the 2002 judicially-approved redistricting plan. *See* Tr. Ex. 186 (Memorandum Regarding Legislative Redistricting: Effective Date and Use of State Funds from Kevin J. Kennedy, Dir. and Gen. Counsel, Gov't Accountability Bd., to Robert Marchant, Senate Chief Clerk, and Patrick Fuller, Assembly Chief Clerk (Oct. 19, 2011), *available at* http://wispolitics.com/1006/111019_Chief_Clerk_Guidance.pdf.)

RESPONSE: This proposed conclusion of law does not implicate Act 44.

568. Tens of thousands of recall petition signatures were submitted in direct reliance upon Section 10 of 2011 Act 43 and the defendants' own opinion. *See Friends of Scott Walker v. Brennan*, No. 2012AP32-AC (Wis. Ct. App. Feb. 3, 2012).

RESPONSE: This proposed conclusion of law does not implicate Act 44.

569. Any recall or special elections must be conducted under the 2002 boundaries established by this Court.

RESPONSE: This proposed conclusion of law does not implicate Act 44.

570. In amending their answer to plaintiffs' Second Amended Complaint (*see* Dkt. 66), defendants continued to deny plaintiffs' claim that any recall or special elections must be conducted under the 2002 boundaries established by this Court (*see id.*, *e.g.*, at paras. 100, 101)

and requested relief on that question (*see id.* at request for affirmative relief para. 4). Furthermore, in answering a complaint in Waukesha County Circuit Court seeking a judicial determination of the appropriate districts under which recall elections must be held, *Clinard et al. v. Brennan et al.*, Case No. 11-cv-03995, the GAB has admitted an allegation that the 2002 district boundaries are now unconstitutionally malapportioned.

RESPONSE: This proposed conclusion of law does not implicate Act 44.

571. There is a "case or controversy" within the meaning of the Declaratory Judgment Act concerning the constitutionality of applying the 2002 senate district boundaries to any recall elections that precede the November 2012 general election.

RESPONSE: This proposed conclusion of law does not implicate Act 44.

572. Any arguments raised by defendants about the Court's authority to adjudicate state statutory or constitutional issues have been waived by defendants and are not supported by case law.

RESPONSE: This proposed conclusion of law does not implicate Act 44.

II. VOCES PLAINTIFFS

573. The 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 percent of all eligible voters in each district, thereby denying the Latino community an effective voting majority in either district.

RESPONSE: This proposed conclusion of law does not implicate Act 44.

574. The division of the Latino community into two separate adjacent but diluted assembly districts divides the Latino community's established business district in a way that fractures the cohesiveness of the community and ignores natural community boundaries.

RESPONSE: This proposed conclusion of law does not implicate Act 44.

575. 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 reapportionment, 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.

RESPONSE: This proposed conclusion of law does not implicate Act 44.

576. 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.

RESPONSE: This proposed conclusion of law does not implicate Act 44.

577. 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 50 percent of the voting age population.

RESPONSE: This proposed conclusion of law does not implicate Act 44.

III. INTERVENOR PLAINTIFFS

A. Zero Deviation.

578. Census data accuracy has always been a legal fiction. (Defendant GAB Memorandum In Support of Motion For Protective Order, filed 01/16/12, page 4.)

RESPONSE: This proposed conclusion of law is immaterial to any claim in issue as to Act 44. The populations of the congressional districts created by Act 44, according to the 2010 Census, are either 710,874 (the 1st and 2nd districts) or 710,873 (the remaining districts). Thus, there is no population deviation from the ideal. (Stipulated Facts, ¶ 190.)

579. Exact population equality is unattainable and is not the only goal of redistricting. *Prosser v. Elections Bd.*, 793 F. Supp. 859, 864 (W.D. Wis. 1992).

RESPONSE: This proposed conclusion of law is immaterial to any claim in issue as to Act 44. The populations of the congressional districts created by Act 44, according to the 2010 Census, are either 710,874 (the 1st and 2nd districts) or 710,873 (the remaining districts). Thus, there is no population deviation from the ideal. (Stipulated Facts, ¶ 190.) The district court in *Prosser* faced a situation in which the failure of the political branches of state government had failed to pass a state legislative redistricting plan, thus requiring the court to select one of the proposed maps or draw its own; therefore, its comments—if to be considered at all, since the decision is not precedential—must be read in light of this distinction, which makes it fundamentally different than the situation before this Court.

580. A deviation of 1% of population between congressional districts is not legally or politically relevant. *Prosser, supra*, 793 F. Supp. at 866.

RESPONSE: This proposed conclusion of law is immaterial to any claim in issue as to Act 44. Further, the intervenor-plaintiffs have previously taken the position that "only a congressional redistricting plan with virtually no population deviation can withstand the 'one person, one vote' demands of Article I." (Pls.' Motion to Defer, Dkt. 117, ¶ 4; Int.-Pls.' Motion to Defer, Dkt. 119 (joining plaintiffs' motion in all respects).) The populations of the congressional districts created by Act 44, according to the 2010 Census, are either 710,874 (the 1st and 2nd districts) or 710,873 (the remaining districts). Thus, there is no population deviation from the ideal. (Stipulated Facts, ¶ 190.)

B. Core Retention.

581. An important redistricting principle is core retention. This means redistricting should uproot the smallest number of constituents from one district to another consistent with the needs of equal representation. *Abrams v. Johnson*, 521 U.S. 74, 99-100 (1997); *Larios v. Cox*, 300 F. Supp. 2d 1320, 1349 (N.D. Ga. 2004).

RESPONSE: This proposed conclusion of law is immaterial to any claim in issue as to Act 44. In *Abrams v. Johnson*, the Supreme Court confronted a case dissimilar from this one involving the consideration of a districting map drawn by a district court, after a legislatively drawn plan had been denied preclearance under the Voting Rights Act and after an adopted plan was found invalid. 521 U.S. 74, 77–79 (1997). The Supreme Court, in the pages cited in this proposed conclusion of law, considered certain race-neutral factors that would be permissible, but it did not suggest that core retention was a free-standing constitutional requirement. *Id.* at 99–100. Further, as previously noted (Int.-Defs.' Br. in Supp. of Mot. for J. on the Pld'gs., Dkt. 115, at 3 n.1), *LULAC* rejected the application of the underlying *Larios* decision attempted in this proposed conclusion of law. 548 U.S. at 422–23 ("The [district court] *Larios* holding and its examination of the legislature's motivations were relevant only in response to an equal-population violation, something appellants have not established here.").

582. Act 44 violates the redistricting principle of core retention with regard to Congressional Districts Three, Seven, and Eight.

RESPONSE: No such claim exists. "[C]ompactness, contiguity, and respect for political subdivisions … are important not because they are constitutionally required—they are not—but because they are objective factors that may serve to defeat a claim [of otherwise unconstitutional redistricting]." *Shaw v. Reno*, 509 U.S. 630, 647 (1993) (internal citation to *Gaffney v. Cummings*, 412 U.S. 735, 752, n. 18 (1973)). Likewise, nothing in the U.S. Constitution requires that the new congressional districts be identical—to any particular percentage—to the previously enacted statutory plan, nor does it give any voter living in a given location to forever live in a given congressional district.

C. Compactness.

583. Compactness is a desirable principle feature in a redistricting plan. *Prosser*, 793 F. Supp. at 863.

RESPONSE: This proposed conclusion of law is immaterial to any claim in issue as to Act 44. The district court in *Prosser* faced a situation in which the failure of the political branches of state government had failed to pass a state legislative redistricting plan, thus requiring the court to select one of the proposed maps or draw its own; therefore, its comments—if to be considered at all, since the decision is not precedential—must be read in light of this distinction, which makes it fundamentally different than the situation before this Court.

584. Act 44 violates the redistricting principle of compactness with regard to Congressional Districts Three, Seven, and Eight.

RESPONSE: No such claim exists. "[C]ompactness, contiguity, and respect for political subdivisions … are important not because they are constitutionally required—they are not—but because they are objective factors that may serve to defeat a claim [of otherwise unconstitutional redistricting]." *Shaw v. Reno*, 509 U.S. 630, 647 (1993) (internal citation to *Gaffney v. Cummings*, 412 U.S. 735, 752, n. 18 (1973)).

585. There is no rational basis for causing Districts Three, Seven, and Eight to be less compact than those Districts were before the enactment of Act 44.

RESPONSE: No such claim exists. "[C]ompactness, contiguity, and respect for political subdivisions … are important not because they are constitutionally required—they are not—but because they are objective factors that may serve to defeat a claim [of otherwise unconstitutional redistricting]." *Shaw v. Reno*, 509 U.S. 630, 647 (1993) (internal citation to *Gaffney v. Cummings*, 412 U.S. 735, 752, n. 18 (1973)).

D. Communities Of Interest.

586. The concept of a community of interest recognizes that groups of voters share similar concerns and values, and that such values must be represented in and addressed by their legislature in redistricting plans. *Carstens v. Lamm*, 543 F. Supp. 68, 91 (D. Colo. 1982); *Legislature of the State of California v. Reinecke*, 516 P.2d 6, 24, 26-27, 30-31 (Cal. 1973); *Mellow v. Mitchell*, 607 A.2d 204, 220-221 (Pa. 1992), *cert. denied*, 506 U.S. 828 (1992); *Bandemer v. Davis*, 603 F. Supp. 1479 (S.D. Ind. 1984), *rev'd*, 478 U.S. 109 (1986); *Arizonans for Fair Representation v. Symington*, 828 F. Supp. 684, 688 (D. Ariz. 1992), *appeal dismissed sub nom Arizona State Senate v. Arizonans for Fair Representation*, 507 U.S. 980, *and aff'd sub nom. Hispanic Chamber of Commerce v. Arizonans for Fair Representation*, 507 U.S. 981 (1993); *Wisconsin State AFL-CIO v. Elections Bd.*, 543 F. Supp. 630, 636 (E.D. Wis. 1982); Stephen J. Malone, "Note: Recognizing Communities of Interest in a Legislative Apportionment Plan," 83 Va. Law Rev. 461, 465-466 (1997).

RESPONSE: This proposed conclusion of law is immaterial to any claim in issue as to Act 44. The *only* district court case that the Democratic Members cite that involved an enacted plan, *Bandemer v. Davis*, 603 F. Supp. 1479 (S.D. Ind. 1984), was *reversed by the Supreme Court* for having applied an insufficiently demanding standard. 478 U.S. 109, 113 (1986). The district court in *Prosser*, like the courts in each of the remaining district court cases cited, faced a situation in which the failure of the political branches of state government had failed to pass a state legislative redistricting plan, thus requiring the court to select one of the proposed maps or draw its own; therefore, its comments—if to be considered at all, since the decision is not precedential—must be read in light of this distinction, which makes it and the other cases cited fundamentally different than the situation before this Court.

587. Act 44 violates the redistricting concept of community of interest regarding the Third Congressional District and the Seventh Congressional District.

RESPONSE: No such claim exists. "[C]ompactness, contiguity, and respect for political subdivisions … are important not because they are constitutionally required—they are not—but because they are objective factors that may serve to defeat a claim [of otherwise unconstitutional

redistricting]." *Shaw v. Reno*, 509 U.S. 630, 647 (1993) (internal citation to *Gaffney v. Cummings*, 412 U.S. 735, 752, n. 18 (1973)).

588. There is no rational basis for violating the principle of community of interest for these districts.

RESPONSE: No such claim exists. "[C]ompactness, contiguity, and respect for political subdivisions … are important not because they are constitutionally required—they are not—but because they are objective factors that may serve to defeat a claim [of otherwise unconstitutional redistricting]." *Shaw v. Reno*, 509 U.S. 630, 647 (1993) (internal citation to *Gaffney v. Cummings*, 412 U.S. 735, 752, n. 18 (1973)).

E. Representative Democracy.

589. Redistricting plans should be designed to promote representative democracy. *Prosser*, 793 F. Supp. at 864.

RESPONSE: This proposed conclusion of law is immaterial to any claim in issue as to Act 44. The district court in *Prosser* faced a situation in which the failure of the political branches of state government had failed to pass a state legislative redistricting plan, thus requiring the court to select one of the proposed maps or draw its own; therefore, its comments—if to be considered at all, since the decision is not precedential—must be read in light of this distinction, which makes it fundamentally different than the situation before this Court.

590. By violating the redistricting principles of retention of core populations, compactness, and communities of interest Act 44 diminishes representative democracy in Congressional Districts Three, Seven, and Eight.

RESPONSE: No such claim exists. "[C]ompactness, contiguity, and respect for political subdivisions … are important not because they are constitutionally required—they are not—but because they are objective factors that may serve to defeat a claim [of otherwise unconstitutional redistricting]." *Shaw v. Reno*, 509 U.S. 630, 647 (1993) (internal citation to *Gaffney v. Cummings*, 412 U.S. 735, 752, n. 18 (1973)).

591. Act 44 is arbitrary and capricious and has no rational basis since it ignores the redistricting principles of core retention, compactness, and communities of interest.

RESPONSE: No such claim exists. "[C]ompactness, contiguity, and respect for political subdivisions … are important not because they are constitutionally required—they are not—but because they are objective factors that may serve to defeat a claim [of otherwise unconstitutional redistricting]." *Shaw v. Reno*, 509 U.S. 630, 647 (1993) (internal citation to *Gaffney v. Cummings*, 412 U.S. 735, 752, n. 18 (1973)).

Respectfully submitted,

FOLEY & LARDNER LLP

Dated this 20th day of February, 2012.

s/ Thomas L. Shriner, Jr.

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