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IN THE SUPREME COURT OF WISCONSIN
No. 2023AP1399-OA

REBECCA CLARKE, RUBEN ANTHONY, TERRY DAWSON, DANA GLASSTEIN,
ANN GROVES-LLOYD, CARL HUJET, JERRY IVERSON, TIA JOHNSON, ANGIE
KIRST, SELIKA LAWTON, FABIAN MALDONADO, ANNEMARIE MCCLELLAN,
JAMES MCNETT, BRITTANY MURIELLO, ELA JOOSTEN (PARI) SCHILS,
NATHANIEL SLACK, MARY SMITH-JOHNSON, DENISE (DEE) SWEET,
AND GABRIELLE YOUNG,

Petitioners,

GOVERNOR TONY EVERS, IN HIS OFFICIAL CAPACITY; NATHAN ATKINSON,
STEPHEN JOSEPH WRIGHT, GARY KRENZ, SARAH J. HAMILTON, JEAN-LUC
THIFFEAULT, SOMESH JHA, JOANNE KANE, AND LEAH DUDLEY,

Intervenors-Petitioners,

v.

WISCONSIN ELECTIONS COMMISSION, DON MILLIS, ROBERT F. SPINDELL,
JR., MARK L. THOMSEN, ANN S. JACOBS, MARGE BOSTELMANN, AND CARRIE
RIEPL, IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE WISCONSIN
ELECTIONS COMMISSION, MEAGAN WOLFE, IN HER OFFICIAL CAPACITY AS
THE ADMINISTRATOR OF THE WISCONSIN ELECTIONS COMMISSION; ANDRÉ
JACQUE, TIM CARPENTER, ROB HUTTON, CHRIS LARSON, DEVIN LEMAHIEU,
STEPHEN L. NASS, JOHN JAGLER, MARK SPREITZER, HOWARD L. MARKLEIN,
RACHAEL CABRAL-GUEVARA, VAN H. WANGGAARD, JESSE L. JAMES,
ROMAINE ROBERT QUINN, DIANNE H. HESSELBEIN, CORY TOMCZYK, JEFF
SMITH, AND CHRIS KAPENGA, IN THEIR OFFICIAL CAPACITIES AS MEMBERS
OF THE WISCONSIN SENATE,

Respondents,

WISCONSIN LEGISLATURE; BILLIE JOHNSON, CHRIS GOEBEL, ED
PERKINS, ERIC O'KEEFE, JOE SANFELIPPO, TERRY MOULTON, ROBERT
JENSEN, RON ZAHN, RUTH ELMER, AND RUTH STRECK,

Intervenors-Respondents.

**BRIEF *AMICI CURIAE* FOR NON-PARTIES
MIDWEST ALLIANCE OF SOVEREIGN TRIBES AND
LAC DU FLAMBEAU TRIBE IN SUPPORT OF WRIGHT MAP**

Barry J. Blonien
David M. Oppenheim
BOCK HATCH & OPPENHEIM, LLC
203 N. LaSalle St. Ste. 2100
Chicago, IL 60601
(312) 658-5500
barry@classlawyers.com
david@classlawyers.com

*Counsel for Amici Curiae Midwest
Alliance of Sovereign Tribes and
Lac du Flambeau Tribe*

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INTRODUCTION

The Midwest Alliance of Sovereign Tribes (MAST) and the Lac du Flambeau Tribe submit this brief in support of the Wright Petitioners' proposed redistricting map (known as the "Wright Map"). The Wright Map best promotes the interests of Wisconsin's Indian Tribes and their members and is fair for all Wisconsin voters.

According to this Court's December 22 Order, a non-party may seek leave to file a non-party brief under Wis. Stat. § (Rule) 809.19(7). The Order instructs non-parties to attach the proposed brief (limited to 3,300 or fewer words), and to file both the motion and brief by 5:00 p.m. on January 22, 2024. MAST and the Lac du Flambeau Tribe timely submit this brief and a motion for leave. They offer special knowledge and experience to the matter and the points raised in this brief are of significant value. *See Wis. S. Ct. I.O.P. III.B.6.c.*

INTEREST OF PROPOSED *AMICI CURIAE*

The mission of proposed *amicus curiae* Midwest Alliance of Sovereign Tribes (or MAST) is to advance, protect, preserve, and enhance the mutual interests, treaty rights, sovereignty, and cultural way of life of the sovereign Nations of the Midwest throughout the 21st century. MAST coordinates important public-policy issues and initiatives at the state, regional, and federal levels, promotes unity and cooperation among member Tribes, and advocates for member Tribes.

MAST, founded in 1996, is headquartered in Gresham, Wisconsin. It represents 35 sovereign Tribal Nations in Wisconsin, Minnesota, Iowa, and Michigan. Altogether, MAST represents nearly 134,000 American Indian people.

In Wisconsin, 10 of the 11 federally recognized Indian Tribes are MAST members. They are:

- the Bad River Band of the Lake Superior Chippewa Indians of the Bad River Reservation;
- the Ho-Chunk Nation;
- the Lac Courte Oreilles Band of Lake Superior Chippewa Indians;
- the Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation;
- the Menominee Indian Tribe;
- the Oneida Nation;
- the Red Cliff Band of Lake Superior Chippewa Indians;
- the Sokaogon Chippewa Community;
- the St. Croix Chippewa Indians; and
- the Stockbridge Munsee Community.

The Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation (or Lac du Flambeau Tribe) is a member of MAST and also seeks to participate as a proposed *amicus curiae* to voice the Lac Du Flambeau Tribe's support for the Wright Map.

The Lac du Flambeau Tribe and MAST's other tribal members have a strong interest in maps that promote fair and effective representation for everyone, including Wisconsin's American Indian citizens. Their voting rights are protected by federal law—but no single Tribe in Wisconsin is large enough to constitute a majority of the voting population in any assembly or senate district. It is therefore imperative that Wisconsin's Indian reservations be respected and preserved as legitimate, long-standing, sovereign communities of interest by any remedial redistricting map that this Court adopts.

ARGUMENT

This Court should adopt the Wright Map proposed by the Wright Petitioners, as it is, hands down, the best map for all of Wisconsin, including Wisconsin's Indian people and communities.

Keeping communities of interest intact promotes democracy and good government. Preserving communities that share common interests allows members of a group to have a stronger voice that their elected representatives in the state legislature will then reflect. And it ensures that those representatives are responsive to community members' concerns, as this Court's consultants have acknowledged in their scholarly writings. *See* Sandra J. Chen, Samuel S.-H. Wang, Bernard Grofman, Richard F. Ober, Jr., Kyle T. Barnes, and Jonathan R. Cervas, *Turning Communities of Interest into a Rigorous Standard for Fair Districting*, 18 Stan. J. of Civ. Rights & Civ. Liberties 101, 108–09 (2022).

Reservations of federally recognized Indian Tribes are important communities of interest. *See, e.g., Hippert v. Ritchie*, 813 N.W. 374, 379 n.5 (Minn. Special Redist. Panel 2012) (defining communities of interest to include Native American reservations, among others); *Maestas v. Hall*, 274 P.3d 66, 78 (N.M. 2012) (dissent recognizing Native American communities of interest). Reservations are, after all, quintessential “territorial communities” that hold “subjective and objective relevance” to the people who live there. Nicholas O. Stephanopoulos, *Redistricting and the Territorial Community*, 160 U. Pa. L. Rev 1379, 1431–32 (2012). Tribal members who reside on reservations feel connected because they *are* connected—in how they live, learn, work, and organize their lives.

And that reality, in turn, gives rise to particular social, political, and economic interests for which they seek responsive representation.

That is why some states have expressly acknowledged Indian reservations as communities of interest in their redistricting laws. *See, e.g.,* N.M. Stat. Ann. § 1-3A-7 (requiring districts to “be drawn in an attempt to preserve communities of interest and [to] take into consideration political and geographic boundaries, including the boundaries of Indian nations, tribes and pueblos”).

The map that the Wisconsin Legislature proposed in 2021 and that this Court adopted in 2022 divided and broke apart Wisconsin’s Indian reservations, disrespecting Tribal communities of interest. For example, the Forest County Potawatomi Community was split across two assembly districts; the Lac du Flambeau Reservation was, too. The Oneida Nation was fractured across *three* assembly districts, as was the St. Croix Chippewa Indians’ reservation. And the reservations of the St. Croix Chippewa and *amicus curiae* the Lac du Flambeau Tribe were each needlessly sliced by senate-district boundaries, as well.

Legislative district lines that do not respect Indian reservation boundaries impede the ability of Tribal citizens to interact with their state legislators—and less likely those legislators will pay serious attention to their concerns. That in turn makes it less likely the government will enact policies beneficial to indigenous communities.

Tribe	Number of Assembly Districts:						
	2022 Map	Legislature's Map	Johnson Map	Democratic Senators Map	Governor's Map	Clarke Map	The Wright Map
Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation	1	1	1	2	2	1	1
Forest County Potawatomi Community	2	2	2	2	2	1	1
Ho-Chunk Nation	7	7	6	5	6	8	6
Lac Courte Oreilles Band of Lake Superior Chippewa Indians	1	1	1	1	1	1	1
Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation	2	2	2	2	2	2	1
Menominee Indian Tribe	1	1	1	1	1	1	1
Oneida Nation	3	3	5	4	4	3	1
Red Cliff Band of Lake Superior Chippewa Indians	1	1	1	1	1	1	1
Sokaogon Chippewa Community	1	1	1	1	1	1	1
St. Croix Chippewa Indians	3	3	2	3	2	2	1
Stockbridge Munsee Community	1	1	1	1	1	1	1

Comparing the parties' proposed remedial maps, all—except the **Wright Map**—split numerous reservations across numerous assembly and senate districts. The Wright Map, far and away, is the best and only proposal that keeps intact Tribal lands across assembly and senate districts for 10 of the state's 11 federally recognized reservations. The Wright Map divides the Ho-Chunk Nation's reservation lands, but that is unavoidable because its lands are spread across Dane, Jackson, Juneau, Monroe, Sauk, Shawano, and Wood Counties and cannot practicably be maintained in a single district.

Finally, a word about Tribal sovereignty: Tribes predate the State of Wisconsin and the United States. As domestic Nations, they have government-to-government relationships with the United States. The entire body of federal Indian law therefore rests on a political classification, not a racial one. Thus, for a state, or a state court, to pay close attention to the reservation lines of a sovereign Tribe is not a racial but rather a political consideration and therefore is both appropriate and plainly constitutional. *See Morton v. Mancari*, 417 U.S. 535, 553–54 & n.24 (1974). A court that, in adopting a legislative map, strives to preserve and keep intact local governments and political subdivisions such as counties and municipalities surely should pay the same respect to Tribal governments and their American Indian reservations.

Previous maps have torn apart reservations and disrespected Tribal communities of interest. In selecting a new map, this Court should consider that the proposals do not equally preserve the territorial integrity of reservations or protect Native American communities of interest. The Lac Du Flambeau Tribe and MAST, on behalf of its member Tribes, respectfully submit that the choice is clear: the Wright Map best

respects Indian reservations as communities of interest and, as discussed in the Wright Petitioners' memorandum, is fairest for all voters in Wisconsin.

CONCLUSION

The Court should issue an injunction adopting the Wright Map for the Wisconsin Assembly and Senate.

DATE: January 22, 2024

Respectfully submitted,

Electronically signed by
Barry J. Blonien

Barry J. Blonien
David M. Oppenheim
BOCK HATCH & OPPENHEIM, LLC
203 N. LaSalle St. Ste. 2100
Chicago, IL 60601
(312) 658-5500
barry@classlawyers.com
david@classlawyers.com

*Counsel for Amici Curiae Midwest
Alliance of Sovereign Tribes and
Lac du Flambeau Tribe*

CERTIFICATE OF COMPLIANCE

I hereby certify that this Brief conforms to the rules contained in Wis. Stat. § 809.19 for a brief produced with a proportional serif font. The length of this Brief is 1,428 words.

Dated: January 22, 2024.

Electronically signed by

Barry J. Blonien

Barry J. Blonien

David M. Oppenheim

BOCK HATCH & OPPENHEIM, LLC

203 N. LaSalle St. Ste. 2100

Chicago, IL 60601

(312) 658-5500

barry@classlawyers.com

david@classlawyers.com

*Counsel for Amici Curiae Midwest
Alliance of Sovereign Tribes and
Lac du Flambeau Tribe*