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December 15, 2021

Supreme Court of Wisconsin
110 East Main Street, Suite 215
P.O. Box 1688
Madison, WI 53701-1688
Clerk@wicourts.gov

RE: *Billie Johnson, et al. v. Wisconsin Elections Commission, et al.*
Appeal No. 2021AP001450-OA

To The Court:

Pursuant to the Court's November 17, 2021 Order, Petitioners Billie Johnson, Eric O'Keefe, Ed Perkins and Ronald Zahn (the "Petitioners") submit this letter brief explaining their views on an appropriate remedy in this case.

As discussed below, the Petitioners do not intend to propose their own map for this Court's consideration. Instead, they have retained an expert to evaluate and compare the maps proposed by other parties in this suit for compliance with this Court's November 30, 2021 ruling and anticipate supporting one (or more) of those maps. The expert, James G. Gimpel, Ph.D., will utilize a "scorecard" approach which will allow the Court to easily and rapidly compare maps and to measure how they comport with the parameters this Court announced it will apply in considering potential remedies. Dr. Gimpel will also provide an opinion as to how to evaluate potential maps with respect to: (1) a minimum changes approach, and (2) the other statutory and constitutional requirements identified by this Court in its November 30, 2021 Decision to the extent that those two considerations are in conflict.

FACTUAL AND PROCEDURAL BACKGROUND

As this Court is aware, this case arose when, in August 2021, the United States Census Bureau released 2020 census data showing that the population of Wisconsin has grown and that the state's legislative and congressional districts were no longer equally apportioned, diluting the votes of some Wisconsinites. *See Johnson v. Wisconsin Elections Comm'n*, 2021 WI 87, ¶¶15-16, ___ Wis. 2d. ___, ___ N.W.2d ___.

The Petitioners, Wisconsin voters who live in malapportioned districts, filed this original action shortly thereafter, asking this Court to declare the existing district maps unconstitutional, to enjoin the Respondents, the Wisconsin Elections Commission and its members in their official capacities, from administering any elections under the existing maps, and, in the event that the Legislature and Governor did not agree on a new set of maps, to remedy the existing maps by making the least number of changes to the existing maps as are necessary to meet the requirement of equal population and other relevant redistricting criteria. *See id.* at ¶5.¹

This Court granted the petition and allowed the intervention of several parties. *See id.* at ¶6. After ordering the submission of an omnibus original action petition by the Petitioners and Intervenor-Petitioners, answers to that petition from the Respondents and Intervenor-Respondents, and a joint stipulation of facts and law and statement of disputed facts from all parties, and following briefing on timing, procedure, and the criteria relevant to the evaluation or creation of new maps, this Court issued a decision on November 30, 2021.

In its decision this Court recognized that existing congressional and state legislative districts were malapportioned and that in mid-November “the political branches [had] reached an impasse” on the adoption of new maps. *Id.* at ¶¶15-18. Concluding that its “involvement

¹ In the parties' Joint Stipulation of Facts and Law (“JSFL”) in this case, the Legislature provided that it would stipulate to the Petitioners' alleged residences once they submit signed declarations under penalty of perjury stating where they reside. JSFL ¶1. Consequently, sworn affidavits to this effect are attached to this letter brief.

in redistricting has become appropriate,” this Court indicated that it planned to issue a mandatory injunction requiring Wisconsin elections “be conducted pursuant to modified maps.” *Id.* at ¶¶5 & n.1, 15-16. It then provided three critical limitations on the scope and nature of any such injunction.

First, in evaluating modified maps, the Court will not consider the partisan makeup of districts. *See id.* at ¶8 (plurality opinion); *id.* at ¶82 n.4 (Hagedorn, J., concurring). “[P]artisan fairness,” the Court explained, “presents a purely political question”; “[t]he parties have failed to identify any judicially manageable standards by which we could determine the fairness of the partisan makeup of districts, nor have they identified a right under the Wisconsin Constitution to a particular partisan configuration.” *Id.* at ¶39 (maj. op.).

Second, this Court will utilize a least-change approach in adopting any amendments to existing maps. *See id.* at ¶8 (plurality opinion); *id.* at ¶82 n.4 (Hagedorn, J., concurring). In other words, this Court will “[t]read[] [no] further than necessary to remedy [the existing maps’] current legal deficiencies.” *Id.* at ¶64 (maj. op.). This “neutral standard” “remov[es] [this Court] from the political fray and ensur[es] [its members] act as judges rather than political actors.” *Id.* at ¶¶76-77.

Finally, this Court will ensure that any remedy comports with applicable requirements of the United States Constitution; the Voting Rights Act; and Article IV, Sections 3, 4, and 5 of the Wisconsin Constitution. *See id.* at ¶8 (plurality opinion); *id.* at ¶82 n.4 (Hagedorn, J., concurring)

By separate order, this Court authorized the parties to file proposed maps complying with these parameters, briefing, and expert reports. This letter-brief and attached expert report follow.

ARGUMENT

The Petitioners do not intend to propose their own map for this Court’s consideration. Instead, they have retained an expert to evaluate and compare the maps proposed by other parties in this suit for

compliance with this Court’s November 30, 2021 ruling and anticipate supporting one (or more) of those maps for adoption by this Court as the remedy in this case.

At this time, of course, no party has yet submitted a map to this Court. Consequently, the Petitioners are simply disclosing their expert, James G. Gimpel, Ph.D., and the methodology by which he plans to evaluate any proposed maps.

As explained in his report (attached hereto), Dr. Gimpel intends to provide “an appropriate ‘score card’ methodology for evaluating whether and to what extent a proposed map complies with a minimal or least changes approach and with the other constitutional and statutory redistricting requirements identified by this Court.” Gimpel Report 2. An illustration of this approach—created for the Legislature’s publicly-released state legislative maps that may or may not ultimately be submitted in this litigation—is provided in Dr. Gimpel’s report.

As the example scorecard shows, Dr. Gimpel will assess measures like least changes (through metrics such as number of people moved across districts and the percentage of population retained), along with measuring population deviation from the ideal population, compactness, split geography, and compliance with the Voting Rights Act. These scorecards will allow the Court to easily and rapidly compare maps and to measure how they comport with the parameters this Court announced it will apply in considering potential remedies.

The ability to compare proposed maps in this case, as opposed to simply reviewing them in isolation, will be critical. Dr. Gimpel has noted that the “simplest quantifiable measures” related to a least-changes approach are “(1) determining the number of people moved from their existing district to a new district, and (2) determining the percentage of people who lived in the previous district that still live in the newly proposed district.” *Id.* at 4. But a number of factors can prevent map-drawers from moving the mathematical minimum number of people, such as the need to move individuals in groups (census blocks), the need to ensure that districts remain compact and contiguous, and the need to

avoid splitting municipal entities. *Id.* at 5. Therefore, this Court will need to be able to review how maps perform on a number of different metrics, relative to one another, simultaneously.

The example Dr. Gimpel provided in his report is instructive. For the Senate, for example, the Legislature's publicly-proposed map moved 458,704 people; retained 92.21%; and deviated 0.57% from the ideal population. A competing Senate map can be evaluated on the same metrics; if it underperforms without sufficient justification (e.g., slight underperformance on least-change metrics but better performance on population equality or other relevant constitutional and statutory metrics), this would suggest the competing map relies on factors not approved by this Court's November 30 order. *See id.* at 8-9.

As noted, the scorecard included in Dr. Gimpel's report at this time is merely illustrative. The Petitioners, through their expert, will evaluate and comment on all proposed maps once they are filed for compliance with the requirements identified by this Court in its November 30, 2021 Decision and then recommend to the Court which maps the Petitioners request that the Court adopt.

Sincerely,

WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.
Attorneys for Petitioners



Richard M. Esenberg (WI Bar No. 1005622)
Anthony LoCoco (WI Bar No. 1101773)
Lucas Vebber (WI Bar No. 1067543)
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CERTIFICATION

I hereby certify that this letter-brief conforms to the rules contained in s. 809.19 (8) (b)-(c) for a brief produced with a proportional serif font. The length of this letter-brief is 1,360 words.

Dated this 15th day of December, 2021,

Signed,

A handwritten signature in black ink, appearing to read "Anthony LoCoco", is written over a horizontal line.

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Attorney for Petitioners

CERTIFICATION OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this letter-brief, excluding the appendix, if any, which complies with the requirements of § 809.19(12).

I further certify that:

This electronic letter-brief is identical in content and format to the printed form of the letter-brief filed as of this date.

Dated this 15th day of December, 2021,

Signed,



Anthony LoCoco (WI Bar No. 1101773)
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Fax: (414) 727-6385
alococo@will-law.org

Attorney for Petitioners

IN THE SUPREME COURT OF WISCONSIN

No. 2021AP1450-OA

BILLIE JOHNSON, ERIC O'KEEFE, ED PERKINS AND RONALD ZAHN,

Petitioners,

BLACK LEADERS ORGANIZING FOR COMMUNITIES, VOCES DE LA
FRONTERA, LEAGUE OF WOMEN VOTERS OF WISCONSIN, CINDY
FALLONA, LAUREN STEPHENSON, REBECCA ALWIN, CONGRESSMAN
GLENN GROTHMAN, CONGRESSMAN MIKE GALLAGHER,
CONGRESSMAN BRYAN STEIL, CONGRESSMAN TOM TIFFANY,
CONGRESSMAN SCOTT FITZGERALD, LISA HUNTER, JACOB ZABEL,
JENNIFER OH, JOHN PERSA, GERALDINE SCHERTZ, KATHLEEN
QUALHEIM, GARY KRENZ, SARAH J. HAMILTON, STEPHEN JOSEPH
WRIGHT, JEAN-LUC THIFFEAULT, AND SOMESH JHA,

Intervenors-Petitioners,

v.

WISCONSIN ELECTIONS COMMISSION, MARGE BOSTELMANN IN HER
OFFICIAL CAPACITY AS A MEMBER OF THE WISCONSIN ELECTIONS
COMMISSION, JULIE GLANCEY IN HER OFFICIAL CAPACITY AS A
MEMBER OF THE WISCONSIN ELECTIONS COMMISSION, ANN JACOBS
IN HER OFFICIAL CAPACITY AS A MEMBER OF THE WISCONSIN
ELECTIONS COMMISSION, DEAN KNUDSON IN HIS OFFICIAL
CAPACITY AS A MEMBER OF THE WISCONSIN ELECTIONS
COMMISSION, ROBERT SPINDELL, JR. IN HIS OFFICIAL CAPACITY AS
A MEMBER OF THE WISCONSIN ELECTIONS COMMISSION AND MARK
THOMSEN IN HIS OFFICIAL CAPACITY AS A MEMBER OF THE
WISCONSIN ELECTIONS COMMISSION,

Respondents,



THE WISCONSIN LEGISLATURE, GOVERNOR TONY EVERS, IN HIS
OFFICIAL CAPACITY, AND JANET BEWLEY SENATE DEMOCRATIC
MINORITY LEADER, ON BEHALF OF THE SENATE DEMOCRATIC
CAUCUS,

Intervenors-Respondents.

AFFIDAVIT OF BILLIE JOHNSON

STATE OF WISCONSIN)
) SS
COUNTY OF DAVE)

I, Billie Johnson, being first duly sworn, on oath, state as follows:

1. I am a resident of the State of Wisconsin and make this affidavit based on my personal knowledge.

2. I am a Wisconsin voter and I reside at 2313 Ravenswood Road, Madison, Wisconsin 53711, in the Second Congressional District, State Assembly District 78, and State Senate District 26.

Dated this 8 day of December, 2021.

Billie Johnson
Billie Johnson

Subscribed to and sworn before me
this 8 day of December, 2021.

[Signature]
Notary Public, State of Wisconsin
My commission expires: 04/03/2023



IN THE SUPREME COURT OF WISCONSIN

No. 2021AP1450-OA

BILLIE JOHNSON, ERIC O'KEEFE, ED PERKINS AND RONALD ZAHN,

Petitioners,

BLACK LEADERS ORGANIZING FOR COMMUNITIES, VOCES DE LA FRONTERA, LEAGUE OF WOMEN VOTERS OF WISCONSIN, CINDY FALLONA, LAUREN STEPHENSON, REBECCA ALWIN, CONGRESSMAN GLENN GROTHMAN, CONGRESSMAN MIKE GALLAGHER, CONGRESSMAN BRYAN STEIL, CONGRESSMAN TOM TIFFANY, CONGRESSMAN SCOTT FITZGERALD, LISA HUNTER, JACOB ZABEL, JENNIFER OH, JOHN PERSA, GERALDINE SCHERTZ, KATHLEEN QUALHEIM, GARY KRENZ, SARAH J. HAMILTON, STEPHEN JOSEPH WRIGHT, JEAN-LUC THIFFEAULT, AND SOMESH JHA,

Intervenors-Petitioners,

v.

WISCONSIN ELECTIONS COMMISSION, MARGE BOSTELMANN IN HER OFFICIAL CAPACITY AS A MEMBER OF THE WISCONSIN ELECTIONS COMMISSION, JULIE GLANCEY IN HER OFFICIAL CAPACITY AS A MEMBER OF THE WISCONSIN ELECTIONS COMMISSION, ANN JACOBS IN HER OFFICIAL CAPACITY AS A MEMBER OF THE WISCONSIN ELECTIONS COMMISSION, DEAN KNUDSON IN HIS OFFICIAL CAPACITY AS A MEMBER OF THE WISCONSIN ELECTIONS COMMISSION, ROBERT SPINDELL, JR. IN HIS OFFICIAL CAPACITY AS A MEMBER OF THE WISCONSIN ELECTIONS COMMISSION AND MARK THOMSEN IN HIS OFFICIAL CAPACITY AS A MEMBER OF THE WISCONSIN ELECTIONS COMMISSION,

Respondents,



THE WISCONSIN LEGISLATURE, GOVERNOR TONY EVERS, IN HIS
OFFICIAL CAPACITY, AND JANET BEWLEY SENATE DEMOCRATIC
MINORITY LEADER, ON BEHALF OF THE SENATE DEMOCRATIC
CAUCUS,

Intervenors-Respondents.

AFFIDAVIT OF ERIC O'KEEFE

STATE OF WISCONSIN)
) SS
COUNTY OF Sauk)

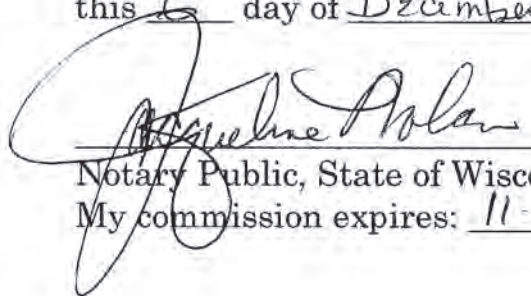
I, Eric O'Keefe, being first duly sworn, on oath, state as follows:

1. I am a resident of the State of Wisconsin and make this affidavit based on my personal knowledge.
2. I am a Wisconsin voter and I reside at 5367 County Road C, Spring Green, Wisconsin 53588, in the Second Congressional District, State Assembly District 51, and State Senate District 17.

Dated this 6th day of December, 2021.


Eric O'Keefe

Subscribed to and sworn before me
this 6 day of December, 2021.


Notary Public, State of Wisconsin
My commission expires: 11-17-2025



IN THE SUPREME COURT OF WISCONSIN

No. 2021AP1450-OA

BILLIE JOHNSON, ERIC O'KEEFE, ED PERKINS AND RONALD ZAHN,
Petitioners,

BLACK LEADERS ORGANIZING FOR COMMUNITIES, VOCES DE LA
FRONTERA, LEAGUE OF WOMEN VOTERS OF WISCONSIN, CINDY
FALLONA, LAUREN STEPHENSON, REBECCA ALWIN, CONGRESSMAN
GLENN GROTHMAN, CONGRESSMAN MIKE GALLAGHER,
CONGRESSMAN BRYAN STEIL, CONGRESSMAN TOM TIFFANY,
CONGRESSMAN SCOTT FITZGERALD, LISA HUNTER, JACOB ZABEL,
JENNIFER OH, JOHN PERSA, GERALDINE SCHERTZ, KATHLEEN
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WISCONSIN ELECTIONS COMMISSION, MARGE BOSTELMANN IN HER
OFFICIAL CAPACITY AS A MEMBER OF THE WISCONSIN ELECTIONS
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CAPACITY AS A MEMBER OF THE WISCONSIN ELECTIONS
COMMISSION, ROBERT SPINDELL, JR. IN HIS OFFICIAL CAPACITY AS
A MEMBER OF THE WISCONSIN ELECTIONS COMMISSION AND MARK
THOMSEN IN HIS OFFICIAL CAPACITY AS A MEMBER OF THE
WISCONSIN ELECTIONS COMMISSION,

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OFFICIAL CAPACITY, AND JANET BEWLEY SENATE DEMOCRATIC
MINORITY LEADER, ON BEHALF OF THE SENATE DEMOCRATIC
CAUCUS,

Intervenors-Respondents.

AFFIDAVIT OF ED PERKINS

STATE OF WISCONSIN)
) SS
COUNTY OF Outagamie)

I, Ed Perkins, being first duly sworn, on oath, state as follows:

1. I am a resident of the State of Wisconsin and make this affidavit based on my personal knowledge.

2. I am a Wisconsin voter and I reside at 4486 N. Whitehawk Drive, Grand Chute, Wisconsin 54913, in the Eighth Congressional District, State Assembly District 56, and State Senate District 19.

Dated this 3th day of December, 2021.

Ed Perkins

Ed Perkins

Subscribed to and sworn before me
this 8th day of December, 2021.

Faith R. Goodacre-Reinke

Notary Public, State of Wisconsin

My commission expires: Oct. 18, 2025



IN THE SUPREME COURT OF WISCONSIN

No. 2021AP1450-OA

BILLIE JOHNSON, ERIC O'KEEFE, ED PERKINS AND RONALD ZAHN,

Petitioners,

BLACK LEADERS ORGANIZING FOR COMMUNITIES, VOCES DE LA
FRONTERA, LEAGUE OF WOMEN VOTERS OF WISCONSIN, CINDY
FALLONA, LAUREN STEPHENSON, REBECCA ALWIN, CONGRESSMAN
GLENN GROTHMAN, CONGRESSMAN MIKE GALLAGHER,
CONGRESSMAN BRYAN STEIL, CONGRESSMAN TOM TIFFANY,
CONGRESSMAN SCOTT FITZGERALD, LISA HUNTER, JACOB ZABEL,
JENNIFER OH, JOHN PERSA, GERALDINE SCHERTZ, KATHLEEN
QUALHEIM, GARY KRENZ, SARAH J. HAMILTON, STEPHEN JOSEPH
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Intervenors-Petitioners,

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WISCONSIN ELECTIONS COMMISSION, MARGE BOSTELMANN IN HER
OFFICIAL CAPACITY AS A MEMBER OF THE WISCONSIN ELECTIONS
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A MEMBER OF THE WISCONSIN ELECTIONS COMMISSION AND MARK
THOMSEN IN HIS OFFICIAL CAPACITY AS A MEMBER OF THE
WISCONSIN ELECTIONS COMMISSION,

Respondents,

THE WISCONSIN LEGISLATURE, GOVERNOR TONY EVERS, IN HIS
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MINORITY LEADER, ON BEHALF OF THE SENATE DEMOCRATIC
CAUCUS,

Intervenors-Respondents.

AFFIDAVIT OF RONALD ZAHN

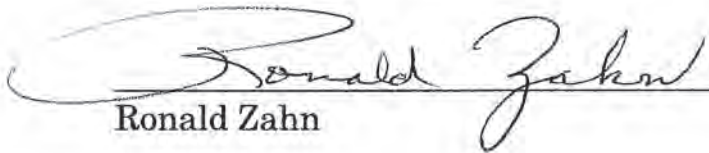
STATE OF WISCONSIN)
) SS
COUNTY OF Outagamie)

I, Ronald Zahn, being first duly sworn, on oath, state as follows:

1. I am a resident of the State of Wisconsin and make this affidavit based on my personal knowledge.


2. I am a Wisconsin voter and I reside at 287 Royal Saint Pats Drive, Wrightstown, Wisconsin 54180, in the Eighth Congressional District, State Assembly District 2, and State Senate District 1.

Dated this 7th day of December, 2021.



Ronald Zahn

Subscribed to and sworn before me
this 7th day of DECEMBER, 2021.



Notary Public, State of Wisconsin
My commission expires: 04-06-2025

Expert Report of
James G. Gimpel, Ph.D.

I am a Professor of Political Science in the Department of Government at the University of Maryland, College Park. I received a Ph.D. in political science at the University of Chicago in 1990. My areas of specialization include political behavior, political geography, geographic information systems (GIS), state politics, population mobility and immigration. I have authored expert reports *and/or* testified as an expert witness in redistricting cases in the past including *Agre v. Wolf*; *League of Women Voters v. Commonwealth of Pennsylvania*; *Common Cause v. Rucho* and *Whitford v. Gill*. A copy of my current CV is attached hereto and incorporated herein by reference. My publications include papers in well-regarded peer reviewed political science journals (*AJPS*, *APSR*, *JoP*, *QJPS*), journals in other social science fields, as well as several books relating to the same topics. A list of the cases in which I have testified in the last 4 years and my publications from the previous ten years are included as part of my CV. I am being compensated for my work herein at the rate of \$300 per hour.

Executive Summary of Opinions

I expect to express opinions on the following subjects:



1. Methods to measure a proposed redistricting map with respect to a “minimum changes” or “least changes” approach.
2. My opinion will include an appropriate “score card” methodology for evaluating whether and to what extent a proposed map complies with a minimal or least changes approach and with the other constitutional and statutory redistricting requirements identified by this Court. In order to illustrate the proper approach to a minimum or least changes rule, I have prepared a score card for the proposed maps made public by the Wisconsin Legislature for state legislative seats.
3. I anticipate reviewing all maps proposed in this case and evaluating them with respect to a minimum or least changes approach, compliance with the other applicable constitutional and statutory redistricting requirements identified by this Court, and compliance with the Court’s decision that the partisan makeup of districts does not implicate any justiciable or cognizable right.
4. I will also express opinions as to how the applicable constitutional and statutory redistricting requirements should impact on and interrelate with a minimum or least changes approach.

Statement of Opinions

The opinions that I hold and the facts and data I have considered are set forth below. I hold all of the opinions set forth herein to a reasonable degree of certainty within my field. As an initial matter I would state that I considered all of the facts set forth in the Amended Petition filed herein and the Joint Stipulation of Facts submitted herein. I also reviewed and considered the proposed maps and underlying data made public by the Wisconsin Legislature, the Wisconsin People’s Maps

Commission and the Wisconsin Senate Democrats. Finally, I have read the Wisconsin Supreme Court's Order of November 17, 2021 and its Decision of November 30, 2021 and done my best to address the issues in a manner consistent with that Order and that Decision.

Minimum Changes

I note the following statements from the Wisconsin Supreme Court's November 30, 2021 Decision regarding the "minimum changes" or least changes approach:

1. this court will confine any judicial remedy to making the minimum changes necessary in order to conform the existing congressional and state legislative redistricting plans to constitutional and statutory requirements. The existing maps were passed by the legislature and signed by the governor. They survived judicial review in federal court. Revisions are now necessary only to remedy malapportionment produced by population shifts made apparent by the decennial census. ¶8.
2. Accordingly, our role is appropriately limited to altering current district boundaries only as needed to comply with legal requirements. ... I concur in the majority's conclusions that: (1) remedial maps must comply with the United States Constitution; the Voting Rights Act; and Article IV, Sections 3, 4, and 5 of the Wisconsin Constitution; (2) we should not consider the partisan makeup of districts; and (3) our relief should modify existing maps under a least-change approach. ¶82, ¶82, fn. 4.

My opinions herein with respect to a "minimum changes" approach will use that term consistent with these two statements. I recognize that the November 30, 2021 Decision discusses the minimum changes

approach in more detail but these two statements appear to be the best summary of the Court's intent with respect to a minimum changes approach.

There are several potential ways to score whether a proposed new map makes the minimum number of changes to an existing map necessary to update the maps based on population changes and to comply with constitutional and statutory requirements. Gauging continuity with past districts could be done by simply comparing the similarity of the geographic boundaries themselves. But given the common necessity of adjusting boundaries to meet the equal population requirement, it makes more sense to develop a measure of continuity that captures the similarity or intersection of population encompassed by the old and new boundaries. It might also be possible to discern policy choices made in adoption of the existing maps and attempt to only make changes to the maps that comport with those policy choices. But that would be a measure that may be difficult to quantify.

In my opinion, the simplest quantifiable measures are: (1) determining the number of people moved from their existing district to a new district, and (2) determining the percentage of people who lived in the previous district that still live in the newly proposed district (which is typically referred to as "core retention"). Importantly, after evaluating

a proposed map from a minimum changes perspective, the proposed map must then also be reviewed and examined to determine its compliance with the other applicable constitutional and statutory requirements identified by this Court in its November 30, 2021 Decision.

In this regard, it must be remembered that when preparing redistricting maps that the map maker does not have the ability to move individual people from one district to another but instead must move them in groups (e.g. census blocks). This is further complicated by the fact that these small geographic areas are, themselves, parts of larger geographic areas, i.e., towns, villages, cities and counties. The Wisconsin Constitutional requirements for redistricting do not favor splitting these municipal entities. This results in more than the mathematical minimum number of people needing to be moved. The other constitutional and statutory requirements will have similar effects. Making sure, for example, that districts remain compact and contiguous can require that more than the mathematical minimum number of people be moved.

To accomplish the goals of minimum changes and compliance with the other constitutional and statutory redistricting criteria means that any proposed map must not only be evaluated for compliance with the minimum changes approach but also for compliance with the other

constitutional and statutory requirements set forth in the Court’s November 30, 2021 Decision. In addition, the Court has made clear that it “will not consider the partisan makeup of districts because it does not implicate any justiciable or cognizable right.” November 30, 2021 Decision at ¶80. Thus, no map that is submitted should be based on the partisan makeup of districts.

Scorecards

At this point in time, the Wisconsin Legislature, the People’s Maps Commission (which was created by the Governor to prepare proposed maps) and the State Senate Democrats have publicly made available proposed maps. However, all of those maps were prepared and proposed prior to this Court’s publication of its November 30, 2021 Decision. To the extent that these maps are inconsistent with the Court’s November 30, 2021 Decision, the parties that prepared them have the opportunity to change them to achieve greater consistency with this Court’s Decision and to submit alternative proposals to this Court. I have been informed, for example, that as a result of this Court’s November 30, 2021 Decision, the Governor has publicly announced that he intends to submit maps different from those prepared by the People’s Maps Commission.

Given the change in circumstances, in my opinion, it does not make much sense to evaluate and score the currently available proposals to

determine their compliance with the factors laid out by this Court because they may or may not be submitted by the parties that had them prepared. For illustrative purposes, however, I have used the methodology I intend to follow to prepare a score card for the Wisconsin Legislature’s proposed maps for state legislative seats. I have done this solely so that the Court and the other parties can see the methodology that I would use. In preparing the illustrative score card below, I relied on the scoring of those maps done by the Wisconsin Legislative Reference Bureau in its Memo dated October 20, 2021, except that I separately calculated the number of people moved through a software tool that I had created for that purpose and I added the section on the number of majority-minority districts because neither of those was included in the LRB Memo. Once the parties have submitted maps to this Court I will use the same methodology to prepare score cards for each map.

Proposed Form of Score Card

Wisconsin Legislature’s Plan for State Legislative Seats	
	People Moved Across Districts
Senate	458,704
Assembly	928,306
	Core Retention (in % retained)
Senate	92.21%
Assembly	84.16%

		Population Deviation	
		Deviation	% Deviation
Senate		1,026	0.57%
Assembly		452	0.76%
		Compactness	
		Polsby-Popper	Reock
Senate		0.216	0.374
Assembly		0.234	0.363
		Split Geography	
		Counties	Municipalities
Senate		43	28
Assembly		54	48
		Voting Rights Act Majority-Minority Districts Districts > 50% Black VAP	
Senate		2	
Assembly		5	

In my opinion, in applying the scorecard, the goal should be to select a map that best reflects the redistricting principles and priorities identified by the Court in its November 30, 2021 Decision; i.e., a map that complies with the minimum changes approach and meets the other constitutional and statutory redistricting criteria identified by the Court without regard to partisan composition.

Once proposed maps are submitted on December 15, 2021, I intend to submit score cards in similar format for any maps submitted and to offer an opinion as to which of those maps best balances compliance with a minimum changes approach and the other constitutional and statutory criteria identified by this Court in its November 30, 2021 Decision. For

example, for a map to be preferable to the maps previously proposed by the Wisconsin Legislature (as scored above) they should move fewer people than moved by the Legislature's proposal, or move only slightly more people but perform better with respect to population equality or the other constitutional and statutory factors, but in no case should partisan makeup of the proposed districts be considered.

/s/ Electronically signed by James G. Gimpel

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Full Professor, August 2001-present.

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University of Chicago. Ph.D. Political Science, 1990.

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Books:

- ▶ Dante Chinni and James G. Gimpel. 2010. *Our Patchwork Nation: The Twelve Community Types that Make Up Our Nation* (New York, NY: Gotham, a Penguin imprint).
- ▶ James G. Gimpel, J. Celeste Lay and Jason E. Schuknecht. 2003. *Cultivating Democracy: Civic Environments and Political Socialization in America* (Washington, DC: Brookings Institution Press).
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- ▶ James G. Gimpel. 2013. "State Politics and Political Culture." in Joshua J. Dyck and Richard G. Niemi, eds. *Guide to State Politics and Policy*. (Washington, DC: CQ Press)

Official Expert Reports and/or Testimony (last four years):

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- *Gilby v. Hughs*; March 2020. U.S. District Court for the Western District of Texas.
- *Allen v. Waller County*; September 2019. U.S. District Court for the Southern District of Texas.
- *Whitford v. Gill*; July 2019. U.S. District Court for the Western District of Wisconsin.
- *Baber v. Dunlap*; December 2018. U.S. District Court for the District of Maine.
- *League of Women Voters v. Commonwealth of Pennsylvania*; December 2017. Supreme Court of Pennsylvania.
- *Agre v. Wolf*; December 2017. U.S. District Court for the Eastern District of Pennsylvania.
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