

In the Supreme Court of the United States

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

Applicants,

v.

MARGE BOSTELMANN, IN HER OFFICIAL CAPACITY AS MEMBER OF THE WISCONSIN ELECTIONS
COMMISSION, *ET AL.*,

Respondents.

ON APPLICATION FOR STAY AND INJUNCTIVE RELIEF AND ALTERNATIVE
PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

**APPENDIX TO BLOC RESPONDENTS' OPPOSITION TO
EMERGENCY APPLICATION FOR STAY – VOL. I**

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TABLE OF CONTENTS

Volume I

Petition to the Supreme Court of Wisconsin to Take Jurisdiction of an Original Action (Aug. 23, 2021)	BLOC-App. 001
Letter Brief from the Wisconsin Legislature (September 2021).....	BLOC-App. 021
Order by the Supreme Court of Wisconsin (Sept. 22, 2021)	BLOC-App. 023
Letter from the Wisconsin Elections Commission (Oct. 6, 2021)	BLOC-App. 042
Order by the Supreme Court of Wisconsin (Nov. 17, 2021)	BLOC-App. 047
Proposed Joint Discovery Plan (Dec. 3, 2021)	BLOC-App. 052
Brief of the Wisconsin Legislature (Dec. 15, 2021)	BLOC-App. 070
Expert Report of David T. Canon (Dec. 15, 2021)	BLOC-App. 109

Volume II

Expert Report of Dr. Loren Collingwood (Dec. 15, 2021)	BLOC-App. 165
Expert Report of Dr. Kenneth R. Mayer (Dec. 15, 2021)	BLOC-App. 211
Expert Rebuttal Report of Dr. Loren Collingwood (Dec. 29, 2021).....	BLOC-App. 249
Expert Rebuttal Report of Dr. Kenneth R. Mayer (Dec. 30, 2021).....	BLOC-App. 268
Expert Reply Report of Dr. Loren Collingwood (Jan. 4, 2022)	BLOC-App. 276
Expert Reply Report of Dr. Kenneth R. Mayer (Jan. 4, 2022)	BLOC-App. 282
Order by the Supreme Court of Wisconsin (Jan. 10, 2022).....	BLOC-App. 284
Letter Brief from the Wisconsin Elections Commission (March 9, 2022)	BLOC-App. 289
Exhibit A to Brief of Black Leaders Organizing for Communities in Opposition to Motion for Stay (March 9, 2022)	BLOC-App. 292

IN THE SUPREME COURT OF WISCONSIN

No. _____

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

Petitioners,

v.

WISCONSIN ELECTIONS COMMISSION, MARGE BOSTELMANN, JULIE
GLANCEY, ANN JACOBS, DEAN KNUDSON, ROBERT SPINDELL, AND
MARK THOMSEN, IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF
THE WISCONSIN ELECTIONS COMMISSION,

Respondents.

**PETITION TO THE SUPREME COURT OF WISCONSIN
TO TAKE JURISDICTION OF AN ORIGINAL ACTION**

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ISSUE PRESENTED

1. Whether the Petitioners, who, based on the 2020 Census results, live in malapportioned districts, are entitled to:

(a) a declaration that the existing apportionment maps as set forth in Wis. Stat. §§ 3.11-3.18 (for congressional districts) and §§ 4.01-4.99 (for state assembly districts) and § 4.009 (for state senate districts) violate the one person one vote principle, contained in art. IV of the Wisconsin Constitution;

(b) an injunction prohibiting the Respondents from administering any election for Congressional, State Senate, or State Assembly seats until a new apportionment plan is adopted and in place that satisfies the requirements of art. IV of the Wisconsin Constitution; and

(c) in the absence of an amended state law with a lawful apportionment plan, establishment of a judicial plan of apportionment to meet the requirements of art. IV of the Wisconsin Constitution.

INTRODUCTION

1. The results of the 2020 census make clear what everyone knew would occur. Based on population increases and decreases in different geographic areas, the existing apportionment plans for Wisconsin's Congressional, State Senate and State Assembly seats no longer meet the Wisconsin constitutional requirements summarized in the principle of one person, one vote.

2. In *State ex rel. Reynolds v. Zimmerman*, 22 Wis. 2d 544, 564, 126 N.W.2d 551 (1964), this Court said, with respect to redistricting cases, that such cases involve a denial of voting rights under art. IV of the Wisconsin Constitution (as well as the equal protection clause of the U.S. Constitution).¹

3. The Petitioners, among many others, now live in state and/or congressional voting districts that have many more people than live in other districts and, as a result, have a diluted vote relative to the votes of others who live in less populated districts.

¹ The Petitioners do not raise a claim under the federal constitution in this proceeding.

4. That situation requires that a new apportionment plan with new maps be adopted to replace the election districts currently set forth in Wis. Stat. §§ 3.11-3.18 (for the congressional districts) and §§ 4.01-4.99 (for the state assembly districts) and § 4.009 (for the state senate districts).

5. A group of Wisconsin voters have already filed an action in federal court, *see Hunter v. Bostelmann*, No. 21-cv-512 (W.D. Wis. Aug. 13, 2021), seeking similar relief to the relief being sought herein.

6. But the U.S. Constitution directly endows the States with the primary duty to redraw their congressional districts. U.S. Const. art. I, § 4 (“The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof[.]”)

7. And, although the federal and state courts have concurrent jurisdiction to decide redistricting matters, the U.S. Supreme Court has made it clear that the states’ role is primary. *Grove v. Emison*, 507 U.S. 25, 34 (1993).

8. This Court said the same in *Jensen v. Wisconsin Elections Bd.*, 2002 WI 13, ¶5, 249 Wis. 2d 706, 639 N.W.2d 537: “It is an established constitutional principle in our federal system that congressional reapportionment and state legislative redistricting are primarily state, not federal, prerogatives.”

9. Given that the state’s role is primary, this Court previously noted that if the Legislature is unable to timely enact a new redistricting map, this Court’s “participation in the resolution of these issues would ordinarily be highly appropriate.” *Jensen*, 249 Wis. 2d 706, ¶4.

10. Further, this Court said that in our State, “[t]he people . . . have a strong interest in a redistricting map drawn by an institution of state government—ideally and most properly, the legislature, secondarily, this court.” *Id.* at ¶17.

11. Thus, redistricting is a state matter both with respect to the legislative function and the judicial function.

12. The Petitioners should not be required to resort to a federal court, and only a federal court, to protect their state constitutional rights. In *Reynolds*, this Court said that

“there is no reason for Wisconsin citizens to have to rely upon the federal courts for the indirect protection of their state constitutional rights.” 22 Wis. 2d at 564 (emphasis added).

PARTIES

13. Petitioners are Wisconsin voters who live in malapportioned districts. Each of the districts the parties live in fail the one person, one vote constitutional standard, under which population equality across districts ensures that each Wisconsinite’s vote counts equally.

14. Petitioner Billie Johnson resides at 2313 Ravenswood Road, Madison, Wisconsin 53711, in the Second Congressional District, State Assembly District 78, and State Senate District 26. Because of the latest reapportionment count, Petitioner Johnson’s vote is unconstitutionally diluted, counting less than if he lived in a different district.

15. Petitioner Eric O’Keefe resides at 5367 County Road C, Spring Green, Wisconsin 53588, in the Second Congressional District, State Assembly District 51, and State Senate District 17.

Because of the latest reapportionment count, Petitioner O’Keefe’s vote is unconstitutionally diluted, counting less than if he lived in a different district.

16. Petitioner Ed Perkins resides at 4486 N. Whitehawk Drive, Grand Chute, Wisconsin 54913, in the Eighth Congressional District, State Assembly District 56, and State Senate District 19. Because of the latest reapportionment count, Petitioner Perkins’ vote is unconstitutionally diluted, counting less than if he lived in a different district.

17. Petitioner Ronald Zahn resides at 287 Royal Saint Pats Drive, Wrightstown, Wisconsin 54180, in the Eighth Congressional District, State Assembly District 2, and State Senate District 1. Because of the latest reapportionment count, Petitioner Zahn’s vote is unconstitutionally diluted, counting less than if he lived in a different district.

18. Respondent Wisconsin Elections Commission (“WEC”) is a governmental agency created under Wis. Stat. § 5.05 and charged with the responsibility for the administration of Chapters 5 and 6 of the Wisconsin Statutes and other laws relating to

elections and election campaigns, other than laws relating to campaign financing. WEC has its offices and principal place of business at 212 E. Washington Avenue, 3rd Floor, Madison, Wisconsin 53703.

19. Respondents Marge Bostelmann, Julie Glancey, Ann Jacobs, Dean Knudson, Robert Spindell, and Mark Thomsen are commissioners of WEC. The WEC Commissioners are sued solely in their official capacities.

STATEMENT OF FACTS

20. There must be population equality across districts under the command of the “one person, one vote” principle. As this Court said in *Reynolds*, “sec. 3, art. IV, Wis. Const., contains a precise standard of apportionment-the legislature shall apportion districts according to the number of inhabitants.” 22 Wis. 2d at 564.

21. This Court further acknowledged, however, that “a mathematical equality of population in each senate and assembly district is impossible to achieve, given the requirement that the boundaries of local political units must be considered in the

execution of the standard of per capita equality of representation.”

Id. at 564.

22. This comports generally with the federal standard for population equality in that states must draw congressional districts with populations as close to perfect equality as possible, *Evenwel v. Abbott*, ___ U.S. ___, 136 S. Ct. 1120, 1124 (2016), while the federal standard for state legislative districts is more lenient.

23. For example, in 2011, when the Legislature drew the existing maps for congressional districts it “apportion[ed] the 2010 census population of the state of Wisconsin perfectly.” *Baldus v. Members of Wisconsin Gov’t Accountability Bd.*, 849 F. Supp. 2d 840, 853 (E.D. Wis. 2012).

24. The report from the Legislative Reference Bureau on the proposed bill adopting the existing 2011 congressional maps stated that the population in Congressional Districts 3, 4, 5, 6, 7, and 8 was 710,873 and in Congressional Districts 1 and 2 was 710,874—a difference of one voter.

25. Indeed, except for a dispute regarding whether Hispanics in the Milwaukee area were entitled to one majority

Hispanic assembly district or two minority influenced assembly districts (which dispute was ultimately resolved), the existing congressional, state senate and state assembly maps now contained in Wis. Stat. §§ 3.11-3.18 (for the congressional districts) and §§ 4.01-4.99 (for the state assembly districts) and § 4.009 (for the state senate districts), were held to meet all of the traditional redistricting criteria including equality of population. *Baldus*, 849 F. Supp. 2d 840.

26. On August 12, 2021 the United States Census Bureau delivered apportionment counts to the President based upon the 2020 census.

27. From 2010 to 2020, the population of Wisconsin increased from 5,686,986 to 5,893,718.

28. Because there are eight Wisconsin congressional districts, the ideal population of each district is 736,715.

29. However, the apportionment counts establish the following with respect to the populations now contained in each of the eight Wisconsin congressional districts:

1st Congressional District – 727,452

2nd Congressional District – 789,393

3rd Congressional District – 733,584

4th Congressional District – 695,395

5th Congressional District – 735,571

6th Congressional District – 727,774

7th Congressional District – 732,582

8th Congressional District – 751,967

30. As a result, there is no longer the required level of equality between the populations in the eight Wisconsin congressional districts needed to meet the constitutional requirement of one person, one vote. The 2nd and 8th Congressional Districts, where the Petitioners reside, are overpopulated.

31. The data for state legislative redistricting similarly shows that new maps for the state legislative seats are necessary. Given the total population of Wisconsin, the ideal population for

each of Wisconsin's 99 assembly districts is 59,533, and the ideal population for each of Wisconsin's 33 senate districts is 178,598.

32. Yet the assembly and senate districts in which the Petitioners reside are now malapportioned: Assembly District 78 (Johnson – 67,142); Assembly District 51 (O'Keefe – 56,878); Assembly District 56 (Perkins – 64,544); Assembly District 2 (Zahn – 62,564); Senate District 26 (Johnson – 201,819); Senate District 17 (O'Keefe – 173,532); Senate District 19 (Perkins – 184,473); Senate District 1 (Zahn – 184,304).

33. The Petitioners are entitled to new apportionment maps that continue to meet all of the traditional redistricting criteria including equality of population.

34. This lawsuit is already ripe although the Legislature may yet draw, and the Governor may yet approve, maps that redress the Petitioners' injury. *Cf. generally Arrington v. Elections Bd.*, 173 F. Supp. 2d 856, 860 (E.D. Wis. 2001) ("Since it is impossible for legislative districts to remain equipopulous from decade to decade, challenges to districting laws may be brought immediately upon release of official data showing district

imbalance—that is to say, “*before* reapportionment occurs.” (quoting Pamela S. Karlan, *The Right to Vote: Some Pessimism about Formalism*, 71 Tex. L.Rev. 1705, 1726 (1993))). Consequently, this Court should accept jurisdiction of this case and stay it until the Legislature adopts a constitutionally adequate apportionment plan.

35. If the State Legislature does not, while this litigation is pending, adopt new maps that are approved by the Governor and which meet all of the traditional redistricting criteria including equality of population, then the Petitioners request that this Court do so, applying the principle of making the least number of changes to the existing maps as are necessary to meet the requirement of equal population and the remaining traditional redistricting criteria. This “least changes” approach is consistent with past practice, *Baumgart v. Wendelberger*, No. 01-C-0121, 02-C-0366, 2002 WL 34127471, *7 (E.D. Wis. May 30, 2002) (unpublished) (court begins with last-enacted maps), *amended*, No. 01-C-0121, 02-C-0366, 2002 WL 34127473 (E.D. Wis. July 11, 2002) (unpublished), and “creates the least perturbation in the political

balance of the state.” *Prosser v. Elections Bd.*, 793 F. Supp. 859, 871 (W.D. Wis. 1992).

STATEMENT OF RELIEF SOUGHT

36. This Court should grant this petition, declare that a new constitutional apportionment plan is necessary under the Wisconsin Constitution, enjoin the Respondents from administering any election under the existing maps and then stay this matter until the Legislature has adopted a new apportionment plan and then, if any challenge is made to the new maps, rule on the constitutionality of such plan. Further, if the Legislature does not approve new maps that are approved by the Governor and which meet all of the traditional redistricting criteria including equality of population, then the Petitioners request that this Court do so. In so doing, the Petitioners intend to urge the Court to create districts that are equal in population, contiguous, compact, and that maximize “continuity,” moving the fewest number of voters to a district currently represented by someone other than that voter’s current representative. The Petitioners intend to

argue that the Court need not and should not take into account projections of the likely political impact of the maps. Such considerations are not required under the United States Constitution, *see Rucho v. Common Cause*, 588 U.S. ___, 139 S. Ct. 2484 (2018). The Petitioners intend to ask that this Court approve maps in time for candidates to timely circulate nomination papers for the Fall 2022 elections.

REASONS WHY THIS COURT SHOULD TAKE JURISDICTION

37. It is an established constitutional principle, recognized by both the U.S. Supreme Court and this Court, that congressional and state legislative redistricting is primarily a state and not a federal prerogative. This Court has a duty under both to exercise its jurisdiction.

38. A violation of the one person, one vote principle is a violation of art. IV of the Wisconsin Constitution.

39. Given that the Petitioners assert rights under the Wisconsin Constitution and that the U.S. Supreme Court and this Court have recognized that reapportionment, including

reapportionment undertaken by courts when the political branches cannot agree, is primarily a state responsibility, there is no reason that the Petitioners should have to rely upon the federal court rather than this Court to protect those rights. To the contrary, they ought to be able to appeal to the courts of the state of Wisconsin.

40. In *Jensen* this Court said that “there is no question” that redistricting actions warrant “this court's original jurisdiction; any reapportionment or redistricting case is, by definition, *publici juris*, implicating the sovereign rights of the people of this state.” *Jensen*, 249 Wis.2d 706, ¶17.

41. Further, the time for the resolution of redistricting litigation is so short (especially given the delay in the completion of the 2020 census) that completing both a circuit court action and appellate review within the available period of time would be extremely difficult.

42. It is not yet known precisely when the Legislature will adopt new redistricting maps.

43. The redistricting map after the 1990 census was not completed by the Legislature until April 14, 1992.² After the 2000 census, each house approved its own map on March 7, 2002 but neither house acted on the other's proposed map.³ The redistricting map after the 2010 census was approved by the Legislature on July 19, 2011 (but that date was based on receiving the state level redistricting counts from the Census Bureau on March 10, 2011).⁴ The 2011 maps were the quickest done by the Legislature in the last three decades of redistricting and were done in a situation where the state actually received the state level data 21 days before the March 31st deadline and where the Legislature and the Governorship were in the hands of the same party.

44. Here, given the delay in census results and the fact that Wisconsin currently has divided government, it is likely that

² Michael Keane, *Redistricting in Wisconsin* 14, Wisconsin Legislative Reference Bureau (Apr. 1, 2016), *available at* https://www.wisdc.org/images/files/pdf_imported/redistricting/redistricting_april2016_leg_ref_bureau.pdf.

³ *Id.*

⁴ *Id.* at 15.

new maps, if they are approved, would not be approved until the end of the year.

45. Under current law, candidates may begin circulating nomination papers for the 2022 fall elections on April 15, 2022, which papers must be filed no later than June 1.⁵ Given the probable timeline discussed in the previous paragraphs, litigation regarding the Legislature's proposed maps cannot proceed on the merits until approximately the end of the year when the Legislature has completed proposed maps, but the case must be completed in time for candidates to begin circulating nomination papers by April 15, 2022. That would be an extremely difficult time frame for both a circuit court action and Supreme Court review.

46. While this litigation may require some fact finding, the requirements of hearing and resolving those questions are not beyond the capacities of a referee. In 2012, the trial before a three-judge panel of a challenge to the enacted maps took only about two

⁵ See Wis. Stat. § 8.15.

days. *Baldus*, 849 F. Supp. 2d at 847. This Court routinely refers matters of comparable length to a referee in attorney discipline matters and can do so here.

CONCLUSION

47. For the foregoing reasons, the Petitioners respectfully request that this Court declare that a new constitutional apportionment plan is necessary under the Wisconsin Constitution, enjoin the Respondents from administering any election under the existing maps, stay this matter until the Legislature has adopted a new apportionment plan, and then rule on the constitutionality of such plan (if there is any challenge thereto). Further, if the Legislature does not approve new maps that are approved by the Governor and which meet all of the traditional redistricting criteria including equality of population, then the Petitioners request that this Court do so, applying the principle of making the least number of changes to the existing maps as are necessary to meet the requirement of equal population and the remaining traditional redistricting criteria and that this

Court do so in time for candidates to timely circulate nomination papers for the Fall 2022 elections.

Dated this 23rd day of August, 2021.

Respectfully Submitted,



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WISCONSIN LEGISLATURE

P. O. Box 7882 Madison, WI 53707-7882

To: *All Interested Wisconsin Citizens*

cc: *All Members of the Wisconsin State Assembly and State Senate*
The Mexican American Legal Defense and Educational Fund
Voces de la Frontera
The League of United Latin American Citizens
NAACP Wisconsin State Conference
Wisconsin Democracy Campaign
Fair Elections Project
Law Forward
Brennan Center for Justice
Black Leaders Organizing Communities
League of Women Voters of Wisconsin, Inc.

Every ten years, the Wisconsin Constitution tasks the Legislature with drawing new boundaries for congressional, State Senate, and State Assembly districts. As part of the State Legislature's ongoing redistricting efforts, we jointly invite you to provide input.

In August, the Legislature launched *Draw Your District Wisconsin*—a way for Wisconsinites to provide input on the 2021 redistricting process. Go to drawyourdistrict.legis.wisconsin.gov to provide input available now and ending in mid-October. On the Legislature's website, you can create a full statewide plan, a regional plan, or identify a community of interest.

We also welcome you to submit additional materials. Materials provided could address traditional redistricting criteria, state and federal constitutional redistricting requirements, or federal Voting Rights Act requirements.

If your submission includes comments pertaining to the Voting Rights Act, please consider the following. The Constitution generally prohibits the Legislature from engaging in race-based districting, but the U.S. Supreme Court has held that race-based districting is permissible in limited circumstances if it is necessary to comply with Section 2 of the Voting Rights Act. If you believe Section 2 requires race-based districting, then your comments should include:

- (1) An analysis that the affected racial group is sufficiently large and geographically compact to constitute a majority in a single-member district, including all supporting materials;
- (2) an assessment of whether voting preferences of the affected racial group in the identified area are politically cohesive and whether other racial groups vote sufficiently as a bloc to defeat the affected racial group's preferred candidate (often called a "racially polarized voting analysis");
- (3) all supporting materials for any racially polarized voting analysis¹; and
- (4) proposed district(s), with an explanation for the proposed district lines.

Please submit any comments before October 15. Comments and any supporting materials can be submitted at <https://drawyourdistrict.legis.wisconsin.gov/Upload> or to Rep.Vos@legis.wisconsin.gov and Sen.LeMahieu@legis.wisconsin.gov.

Sincerely,



Speaker Robin Vos



Majority Leader Devin LeMahieu

¹ Supporting materials would include: a description of all inputs used, including but not limited to identification of elections analyzed and rationale for selection of each; database containing source election and geographic data, and any intermediate and ancillary data used in the analysis; and any other information used for methods of voter prediction (e.g. Bayesian Improved Surname Geocoding); and any other documentation or metadata describing all data sources and data preparation steps. The racially polarized voting analysis should also include an explanation of the statistical analysis, including but not limited to: documentation of the methods and parameters used; any data or analysis of cross-over voting; and a database of all results.



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September 22, 2021

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You are hereby notified that the Court has entered the following order:

No. 2021AP1450-OA Johnson v. Wisconsin Elections Commission

On August 23, 2021, petitioners Billie Johnson, et al., four Wisconsin voters who claim that the results of the 2020 census show that Wisconsin's congressional and state legislative districts—including the voters' districts—are malapportioned and no longer meet the requirements of the Wisconsin Constitution, filed a petition for leave to commence an original action under Wis. Stat. § (Rule) 809.70, together with a supporting memorandum. The petitioners ask, inter alia, that we assume original jurisdiction, then “stay this matter until the Legislature has adopted a new apportionment plan” or if the legislative process fails, that this court adopt a new apportionment plan.

On September 3, 2021, the named respondents, Wisconsin Elections Commission, et al., filed a response, opposing the petition, arguing primarily that existing original jurisdiction

procedures cannot accommodate the fact-finding intensive requirements of this case and noting that there are two cases pending in federal district court that raise similar claims.¹

On September 7, 2021, the court received motions for leave to file a non-party brief/amicus curiae from: (1) the Wisconsin Legislature; (2) Congressmen Glenn Grothman, Mike Gallagher, Brian Steil, Tom Tiffany, and Scott Fitzgerald; (3) Attorney Daniel R. Suhr; (4) Lisa Hunter, et al. (plaintiffs in Hunter v. Bostelmann, No. 21-CV-512 (W.D. Wis. Aug. 13, 2021)); and (5) Black Leaders Organizing for Communities, et al. (plaintiffs in Black Leaders Organizing for Communities v. Spindell, No. 21-CV-534 (W.D. Wis. Aug. 23, 2021)). By order dated September 8, 2021, the court granted each of these motions. The non-party briefs and their appendices, if any, were accepted for filing.

This court has long deemed redistricting challenges a proper subject for the court's exercise of its original jurisdiction. See, e.g., Jensen v. Wisconsin Elections Board, 2002 WI 13, ¶17, 249 Wis. 2d 706, 639 N.W.2d 537 (2002) ("there is no question" that redistricting actions warrant "this court's original jurisdiction; any reapportionment or redistricting case is, by definition, *publici juris*, implicating the sovereign rights of the people of this state."); State ex rel. Reynolds v. Zimmerman, 22 Wis. 2d 544, 557, 126 N.W.2d 551 (1964) (observing that reapportionment "is vital to the functioning of our government").

We are mindful that judicial relief becomes appropriate in reapportionment cases *only* when a legislature fails to reapportion according to constitutional requisites in a timely fashion after having had an adequate opportunity to do so. See e.g., Zimmerman, 22 Wis. 2d at 570. We cannot emphasize strongly enough that our Constitution places primary responsibility for the apportionment of Wisconsin legislative districts on the legislature. See Wis. Const. art. IV §§ 3, 4. Redistricting plans must be approved by a majority of both the Senate and Assembly, and are subject to gubernatorial veto. Id.; Wis. Const., art. V, § 10; Zimmerman, 22 Wis. 2d at 558 (recognizing that the legislature must present redistricting legislation to the governor for approval or veto under the Wisconsin Constitution's Presentment Clause; both the governor and the legislature are indispensable parts of the legislative process).

As the respondents observed, the petitioners do not say how long this court should give the Legislature and the Governor to accomplish their constitutional responsibilities before the court would need to embark on the task the petitioners have asked of us in order to ensure its timely completion. We would benefit from the parties' input on this issue, and we would benefit from the input of amici and prospective intervenors on the issue as well. Accordingly,

IT IS ORDERED that the petition for leave to commence an original action is granted;

¹ Hunter v. Bostelmann, No. 21-CV-512 (W.D. Wis. Aug. 13, 2021) and Black Leaders Organizing for Communities v. Spindell, No. 21-CV-534 (W.D. Wis. Aug. 23, 2021).

IT IS FURTHER ORDERED that any prospective intervenor must file a motion to intervene together with a supporting memorandum addressing the requirements of Wis. Stat. § (Rule) 809.09 no later than 4:00 p.m. on October 6, 2021;

IT IS FURTHER ORDERED that the parties, amici, and proposed intervenors may each file a single response to the collective motions to intervene no later than 12:00 p.m. on October 13, 2021, provided that amici who seek to intervene may file only a single response to the proposed intervention motions, which shall be filed in their capacity as amici. Each response shall not exceed 15 pages if a monospaced font is used or 3,300 words if a proportional serif font is used;

IT IS FURTHER ORDERED that the parties and prospective intervenors are each directed to submit simultaneous letter briefs no later than 4:00 p.m. on October 6, 2021, addressing the following question:

When (identify a specific date) must a new redistricting plan be in place, and what key factors were considered to identify this date?

Amici may, but are not required to file a response to this question. The simultaneous letter briefs shall not exceed 15 pages if a monospaced font is used or 3,300 words if a proportional serif font is used;

IT IS FURTHER ORDERED that the parties, each amicus, and each proposed intervenor may file a single response to the letter briefs addressing timing, which shall not exceed 15 pages if a monospaced font is used or 3,300 words if a proportional serif font is used, by no later than 12:00 p.m. on October 13, 2021;

IT IS FURTHER ORDERED that if the court determines that additional briefing or a reply will assist the court, it will request additional briefing; given the time sensitive nature of this action, unsolicited briefing and requests for briefing extensions will be disfavored;

IT IS FURTHER ORDERED that all filings in this matter shall be filed as an attachment in pdf format to an email addressed to clerk@wicourts.gov. See Wis. Stat. §§ 809.14, 809.80, and 809.81. A paper original and 10 copies of each filed document must be received by the clerk of this court by 4:00 p.m. of the business day following submission by email, with the document bearing the following notation on the top of the first page: “This document was previously filed via email.”

We deem the petitioners’ other requests to be premature. We decline to formally declare, at the onset, that a new apportionment plan is needed. While the parties and amici generally concur that this is true, we have, as yet, an inadequate record before us upon which to make such a pronouncement. We also decline to stay this action at this time and we deny the petitioners’ request that we enjoin the respondents “from administering any election for Congressional, State or Assembly seats” until a new plan is in place. To the extent this order does not address other requests for relief contained in the petition, we take no action on those requests at this time.

REBECCA GRASSL BRADLEY, J. (*concurring*). Nearly 150 years ago, shortly after statehood, this court declared, "the purpose of the constitution was: 'To make this court indeed a supreme judicial tribunal over the whole state; . . . a court of first resort on all judicial questions affecting the sovereignty of the state, its franchises or prerogatives, or the liberties of its people.'" Petition of Heil, 230 Wis. 428, 436, 284 N.W. 42 (1938) (per curiam) (quoting Attorney Gen. v. Chicago & N.W. Ry., 35 Wis. 425, 518 (1874)) (emphasis added). More recently, in 2002, we unanimously declared in Jensen v. WEC, "[i]t is an established constitutional principle in our federal system that congressional reapportionment and state legislative redistricting are primarily state, not federal prerogatives." 2002 WI 13, ¶5, 249 Wis. 2d 706, 639 N.W.2d 537 (per curiam) (denying petition for leave to commence an original action) (citations omitted) (emphasis added). The United States Supreme Court agrees: "[T]he Constitution leaves with the States primary responsibility for apportionment of their federal congressional and state legislative districts." Grove v. Emison, 507 U.S. 25, 34 (1993) (citing U.S. Const. art. I, § 2)).

Consistent with the Constitution, "the Court has required federal judges to defer consideration of disputes involving redistricting where the State, through its legislative or judicial branch, has begun to address that highly political task itself." Id. at 33; see also id. at 34 (quoting Chapman v. Meier, 420 U.S. 1, 27 (1975)) ("We say once again what has been said on many occasions: reapportionment is primarily the duty and responsibility of the State through its legislature or other body, rather than a federal court."). "Absent evidence that these state branches will fail to perform that duty, a federal court must neither affirmatively obstruct state reapportionment nor permit federal litigation to be used to impede it." Id. at 34; see also Scott v. Germano, 381 U.S. 407, 409 (1965) (internal citations omitted) ("The power of the judiciary of a State to require valid reapportionment or to formulate a valid redistricting plan has not only been recognized by this Court but appropriate action by the States in such cases has been specifically encouraged. The case is remanded with directions that the District Court enter an order fixing a reasonable time within which the appropriate agencies of the State of Illinois, including its Supreme Court, may validly redistrict the Illinois State Senate[.]").

Spurning this longstanding precedent, including the United States Supreme Court's clear directive that states are primarily responsible for redistricting, with federal courts standing by only as a last resort, Grove, 507 U.S. at 33, Justice Rebecca Frank Dallet insists this case belongs in federal court. It doesn't. The petitioners are Wisconsin voters who allege they live in malapportioned districts. Following our unequivocal statement in Jensen that "congressional reapportionment and state legislative redistricting are primarily state, not federal prerogatives," they filed this case against the Wisconsin Elections Commission (WEC) and its commissioners in their official capacity, expressly relying on Article IV of the Wisconsin Constitution. It is primarily the duty of this court, not any federal court, to resolve such redistricting disputes.

Although this court has punted its responsibilities to the federal courts in the past, we have previously exercised our original jurisdiction to hear redistricting cases, and we have implemented a judicially-created redistricting plan when the political branches have reached an impasse. State ex rel. Reynolds v. Zimmerman, 23 Wis. 2d 606, 128 N.W.2d 16 (1964) (per curiam). See

generally Michael Gallagher, Joseph Kreye & Staci Duros, Redistricting in Wisconsin 2020, at 20 (2020), https://docs.legis.wisconsin.gov/misc/lrb/wisconsin_elections_project/redistricting_wisconsin_2020_1_2.pdf ("Prior to the 1960s, redistricting disputes in Wisconsin were typically filed with the state supreme court under that court's original jurisdiction. . . . [I]n pre-1960s redistricting cycles, the Wisconsin Supreme Court would entertain challenges to existing redistricting laws, and occasionally invalidate redistricting plans it found unconstitutional."). Justice Dallet must misunderstand the gist of our decision in Jensen if she actually believes it stands for the proposition that this court should abandon Wisconsin's sovereign prerogative to implement redistricting plans to federal courts. As Justice Ann Walsh Bradley characterized Jensen during a 2009 administrative conference concerning whether this court should establish rules to handle redistricting petitions: "I start with [what] the unanimous court said, in the Jensen case, noting the established constitutional principle that redistricting is primarily a state, not federal prerogative. That's what a unanimous court said. . . . I think that was correct then, and I think it is correct now. . . . I see this as a matter of doing your job."²

While in Jensen we denied a petition for original action requesting this court to consider redistricting claims, our decision was driven by the timing of the petition, which was filed on January 7, 2002. Jensen, 249 Wis. 2d 709, ¶1. By the time we denied the petition, analogous federal litigation had been ongoing for more than a year. Id., ¶13. The federal litigation was "well along[.]" Id. We were concerned about disrupting Wisconsin's upcoming elections but reaffirmed the long-established principle that this court should decide any disputes related to redistricting:

There is no question but that this matter warrants this court's original jurisdiction; any reapportionment or redistricting case is, by definition, *publici juris*, implicating the sovereign rights of the people of this state. See Petition of Heil, 230 Wis. 428, 443, 284 N.W. 42 (1939). The people of this state have a strong interest in a redistricting map drawn by an institution of state government—ideally and most properly, the legislature, secondarily, this court. Grove unequivocally reaffirmed that the principles of federalism and comity establish the institutions of state government—legislative and judicial—as primary in matters of reapportionment and redistricting. Had our jurisdiction been invoked earlier, the public interest might well have been served by our hearing and deciding this case. As it stands, it is not.

Id., ¶17 (emphasis added). Justice Dallet does not acknowledge this key factual distinction between this petition and the one in Jensen. As then-Chief Justice Shirley Abrahamson explained: "[I]n Jensen, we said 'no' for the reasons set forth, but it wasn't a jurisdictional matter. It was a discretionary matter based on the facts and circumstances."³ None of the facts or circumstances

² Supreme Court Open Administrative Conference, at 39:36 (Jan. 22, 2009) (statement of Ann Walsh Bradley, J.) (emphasis added), <https://wiseye.org/2009/01/22/supreme-court-open-administrative-conference-3/>.

³ Id. at 1:03:03 (statement of Shirley S. Abrahamson, C.J.).

inducing denial of the Jensen petition warrant leaving our responsibilities to the federal courts this time. The two federal cases were filed just a few weeks ago, and they are far from "well along."

Justice Dallet criticizes the petitioners for bringing this dispute "prematurely" and "inject[ing] the court into the political process[.]" By contrast, in rejecting an original action filed against the WEC last year, she—along with a majority of this court—faulted the petitioner for nothing more than a negligible delay, speculating it would disrupt the election. Hawkins v. WEC, 2020 WI 75, ¶5, 393 Wis. 2d 629, 948 N.W.2d 877 (per curiam) (denying petition for leave to commence an original action) ("Although we do not render any decision on whether the respondents have proven that the doctrine of laches applies under these circumstances, having considered all of the parties' filings, we conclude the petitioners delayed in seeking relief in a situation with a very short deadline and that under the circumstances, including the fact that the fall 2020 general election has essentially begun, it is too late to grant petitioners any form of relief that would be feasible and not cause confusion and undue damage to both the Wisconsin electors who want to vote and the other candidates in all of the various races on the general election ballot."); id., ¶86 (Rebecca Grassl Bradley, J., dissenting from denial of petition for leave to commence an original action) ("The majority pretends the court lacks 'sufficient time to complete our review and award any effective relief.' What nonsense. Wisconsin law unquestionably requires that Mr. Hawkins and Ms. Walker appear on the ballot.").

A federal court just rejected the argument that Justice Dallet embraces in this case. Two similar lawsuits were filed in federal court and recently consolidated.⁴ Just last week, the federal court denied a motion by the Wisconsin Legislature to dismiss the case for lack of ripeness. It wrote:

The Legislature . . . says that the . . . plaintiffs' injuries are purely speculative because the legislative redistricting process has not yet had a chance to fail. Dkt. 9-2. In making these arguments the Legislature relies heavily on Grove v. Emison, a case in which the [United States] Supreme Court held that a federal three-judge panel had erred in not deferring to the Minnesota courts' redistricting efforts and by enjoining the state courts from implementing their own plans. 507 U.S. 25, 37 (1993) ("What occurred here was not a last-minute federal court rescue of the Minnesota electoral process, but a race to beat the [state courts'] Special Redistricting Panel to the finish line."). . . .

This court understands the state government's primacy in redistricting its legislative and congressional maps. . . . But the Grove Court did not conclude that the federal case was unripe And this panel is not impeding or superseding any concurrent state redistricting process, steps that that [sic] might run afoul of Grove.

. . . .

⁴ Black Leaders Organization for Communities v. Spindell, No. 21-CV-534 (W.D. Wis. Aug. 23, 2021); Hunter v. Bostelmann, No. 21-CV-512 (W.D. Wis. Aug. 13, 2021).

These parties argue that the panel should forestall from any action until the state court system hears the case. But there is yet no indication that the state courts will entertain redistricting in the face of an impasse between the legislature and governor. . . . The court and the parties must prepare now to resolve the redistricting dispute, should the state fail to establish new maps in time for the 2022 election.

Hunter v. Bostelmann, Nos. 21-CV-512 & 21-CV-534, slip op., at 6–8 (W.D. Wis. Sept. 16, 2021). By granting this petition, we now inform the federal court that we "will entertain redistricting in the face of an impasse between the legislature and governor[.]" recognizing, as the federal court does, that both this "court and the parties must prepare now to resolve the redistricting dispute" in order to ensure resolution "in time for the 2022 election." If instead we chose to sit idly by, the federal courts would logically interpret our inaction as a sign that we would not act should the political branches reach an impasse.⁵ As a matter of comity,⁶ we owe the federal courts an answer on how we plan to proceed, and we furnish that answer by granting this petition.

Justice Dallet argues federal courts have "done this [redistricting] three times" but since 1964, "we have never done it." This court, however, resolved redistricting challenges on numerous occasions before 1964.⁷ Even if we had not, Justice Dallet's rationale offers flimsy support for her

⁵ Justice Dallet asserts "by granting the petition now, the court fails to give space for the legislature to fulfill its constitutional duties." The legislature itself apparently disagrees, having filed an amicus brief in support of the petition. It contends the plaintiffs in the federal cases "raced to the federal courthouse. . . . These [federal] cases threaten to usurp the State's primacy in redistricting. . . . To protect the State's constitutional prerogative in redistricting and to prevent federal interference, the Court should exercise original jurisdiction over this action." Legislature's Amicus Br. at 6–7.

⁶ Comity, Garner's Dictionary of Legal Usage (3d ed. 2011) ("comity = courtesy among political entities (as nations or courts of different jurisdictions)[.]").

⁷ Michael Gallagher, Joseph Kreye & Staci Duros, Redistricting in Wisconsin 2020, at 40–54 (2020), https://docs.legis.wisconsin.gov/misc/lrb/wisconsin_elections_project/redistricting_wisconsin_2020_1_2.pdf (discussing several redistricting cases in which this court exercised its original jurisdiction: (1) State ex rel. Attorney General v. Cunningham, 81 Wis. 440, 51 N.W. 724 (1892); (2) State ex rel. Lamb v. Cunningham, 83 Wis. 90, 53 N.W. 35 (1892); (3) State ex rel. Bowman v. Dammann, 209 Wis. 21, 243 N.W. 481 (1932); (4) State ex rel. Broughton v. Zimmerman, 261 Wis. 398, 52 N.W.2d 903 (1952); (5) State ex rel. Reynolds v. Zimmerman, 22 Wis. 2d 544, 126 N.W.2d 551 (1964); (6) State ex rel. Reynolds v. Zimmerman, 23 Wis. 2d 606, 128 N.W.2d 16 (1964) (per curiam)); see also Supreme Court Open Administrative Conference, *supra* note 1, at 41:56 (statement of Ann Walsh Bradley, J.) ("I look at our history since 1920, and in 1920 the districts were reapportioned by the legislature. In the 1930s, it went into state court. [Bowman]. In the 1940s, it again went into state court. [Martin v. Zimmerman, 249 Wis. 101, 23 N.W.2d 610 (1946) (denying petition for leave to commence original action)] In the 50s, it

conclusion to deny this petition—it is a self-fulfilling prophecy. We should not abrogate our duty now just because we have done so in the past.

Justice Dallet is convinced the issues presented in the petition will require substantial factual development. Perhaps, although she seems to be making some assumptions about ultimate remedies, which is putting "the cart before the horse[.]" Wis. Voter Alliance v. WEC, No. 2020AP1930-OA, unpublished dispositional order, at 4 (Roggensack, C.J., dissenting from denial of petition for leave to commence an original action). "We grant petitions to exercise our jurisdiction based on whether the legal issues presented are of state wide concern, not based on the remedies requested." Id. (citing Heil, 230 Wis. 428). The respondents suggest that if we decide to implement a judicially-created redistricting plan, we will have to start from scratch—a position Justice Dallet seems to accept. While that may be one option, federal courts often start with the existing plan and use it "as a template[.]" Baumgart v. Wendelberger, No. 01-C-0121, 2002 WL 34127471, at *7 (E.D. Wis. May 30, 2002); see also Hippert v. Ritchie, 813 N.W.2d 374, 380 (Minn. Spec. Redistricting Panel 2012) (quoting LaComb v. Growe, 541 F. Supp. 145, 151 (D. Minn. 1982)) ("Because courts engaged in redistricting lack the authority to make the political decisions that the Legislature and the Governor can make through their enactment of redistricting legislation, the panel utilizes a least-change strategy where feasible.").

Justice Dallet may be confusing a one person, one vote claim with a partisan gerrymandering claim, which the United States Supreme Court has declared nonjusticiable in the federal courts. "[T]he one-person, one-vote rule is relatively easy to administer as a matter of math. The same cannot be said of partisan gerrymandering claims, because the Constitution supplies no objective measure for assessing whether a districting map treats a political party fairly." Rucho v. Common Cause, 139 S. Ct. 2484, 2501 (2019). For this reason, among others, the United States Supreme Court has

concluded that partisan gerrymandering claims present political questions beyond the reach of the federal courts. Federal judges have no license to reallocate political power between the two major political parties, with no plausible grant of authority in the Constitution, and no legal standards to limit and direct their decisions. "[J]udicial action must be governed by standard, by rule," and must be "principled, rational, and based upon reasoned distinctions' found in the Constitution or laws. Judicial review of partisan gerrymandering does not meet those basic requirements."

went into state court in [Broughton], and a couple of other cases in the 50s. In the 60s, it went into both the federal and state court in [Wisconsin v. Zimmerman, 205 F. Supp. 673 (W.D. Wis. 1962)] and [Reynolds]. In the 70s, after the 1970 census, the reapportionment legislation was not challenged. 1971 law, chapter 304. 1980s it went into the federal court in [AFL-CIO v. Elections Board, 543 F. Supp. 630 (1982)] In the 90s it went into the federal court, and again we know [Jensen v. WEC, 2002 WI 13, 249 Wis. 2d 706, 639 N.W.2d 537 (per curiam) (denying petition for leave to commence an original action)] in the 2000s it went into . . . federal court and state court.").

Id. at 2506–07 (quoting Vieth v. Jubelirer, 541 U.S. 267, 278, 279 (2004) (plurality opinion)).

Nevertheless, the court may use existing mechanisms should Justice Dallet's concern become reality. See State ex rel. Ozanne v. Fitzgerald, 2011 WI 43, ¶148, 334 Wis. 2d 70, 798 N.W.2d 436 (Crooks, J., concurring/dissenting) (quotations omitted) ("There are mechanisms which have been utilized, such as appointment of a special master, perhaps a reserve judge, to conduct fact-finding under the continued jurisdiction/supervision of this court."). "[W]hen the legal issue that we wish to address requires it, we have taken cases that do require factual development, referring any necessary factual determinations to a referee or to a circuit court." Wis. Voter Alliance, No. 2020AP1930-OA, at 4 (Roggensack, C.J., dissenting from denial of petition for leave to commence an original action) (citations omitted). Justice Dallet does not explain why these mechanisms do not present viable options, should the need arise for fact-finding.

Next, Justice Dallet misinterprets our statutes by asserting we are "circumvent[ing] the statutory process for addressing redistricting challenges." Wisconsin Stat. § 801.50(4m) (2019–20) provides:

Venue of an action to challenge the apportionment of any congressional or state legislative district shall be as provided in s. 751.035. Not more than 5 days after an action to challenge the apportionment of a congressional or state legislative district is filed, the clerk of courts for the county where the action is filed shall notify the clerk of the supreme court of the filing.

(Emphasis added). This statute governs only a case filed in the circuit court, not an original action filed in this court. Wisconsin Stat. § 751.035 provides:

Upon receiving notice under s. 801.50 (4m), the supreme court shall appoint a panel consisting of 3 circuit court judges to hear the matter. The supreme court shall choose one judge from each of 3 circuits and shall assign one of the circuits as the venue for all hearings and filings in the matter.

Collectively, these statutes prevent a single judge in a single county from deciding—at least in the first instance—important redistricting questions of statewide importance. They have no bearing on the present petition.

More fundamentally, Justice Dallet misunderstands the nature of our original jurisdiction. She inaccurately asserts "the legislature has established a specific process for resolving redistricting claims, and we should not allow the parties to ignore it" while also acknowledging "nothing necessarily prevent[s] us from granting" this petition. The Wisconsin Constitution establishes our original jurisdiction. Article VI, § 3(2) states, "[t]he supreme court . . . may hear original actions and proceedings." This grant of original jurisdiction has been described as

"extraordinarily broad"⁸ and "practically unlimited in scope."⁹ In contrast, Article VII, § 5(3), which established the court of appeals' subject matter jurisdiction, provides: "The appeals court shall have such appellate jurisdiction in the district, including jurisdiction to review administrative proceedings, as the legislature may provide by law[.]" (Emphasis added). The text of our constitution is clear: "No statute . . . can circumscribe the constitutional jurisdiction of the Wisconsin Supreme Court to hear this (or any) case as an original action. 'The Wisconsin Constitution IS the law—and it reigns supreme over any statute.'" Trump v. Evers, No. 2020AP1971-OA, unpublished dispositional order, at 5–6 (Wis. Dec. 3, 2020) (Rebecca Grassl Bradley, J., dissenting from denial of petition for leave to commence an original action) (quoting Wisconsin Legis. v. Palm, 2020 WI 42, ¶67 n.3, 391 Wis. 2d 497, 942 N.W.2d 900 (Rebecca Grassl Bradley, J., concurring)); see also Skylar Reese Croy, As I See It: Examining the Supreme Court's Original Jurisdiction, Wis. Law. July-Aug. 2021, at 30, 32, <https://www.wisbar.org/NewsPublications/WisconsinLawyer/Pages/Article.aspx?Volume=94&Issue=7&ArticleID=28514> ("Several sources support the proposition that the Wisconsin Supreme Court's original jurisdiction cannot be limited by statute.").

This court remains mindful of the political nature of redistricting, the responsibility for which rests with the people's elected representatives in the legislature. In Jensen, we explained:

[R]edistricting remains an inherently political and legislative—not judicial—task. Courts called upon to perform redistricting are, of course, judicially legislating, that is, writing the law rather than interpreting it, which is not their usual—and usually not their proper—role. Redistricting determines the political landscape for the ensuing decade and thus public policy for years beyond. The framers in their wisdom entrusted this decennial exercise to the legislative branch because the give-and-take of the legislative process, involving as it does representatives elected by the people to make precisely these sorts of political and policy decisions, is preferable to any other.

Jensen, 249 Wis. 2d 706, ¶10. However, we have also recognized that "[t]he Wisconsin Constitution sets forth standards for redistricting" and "there is no reason for Wisconsin citizens to have to rely upon the federal courts for the indirect protection of their state constitutional rights." Id., ¶¶6, 8 (quoted source omitted). Because "this court is the final arbiter of questions arising under the Wisconsin Constitution" it must "stand ready to carry out its responsibility to

⁸ Skylar Reese Croy, As I See It: Examining the Supreme Court's Original Jurisdiction, Wis. Law. July-Aug. 2021, at 30, 31, <https://www.wisbar.org/NewsPublications/WisconsinLawyer/Pages/Article.aspx?Volume=94&Issue=7&ArticleID=28514>.

⁹ Jay E. Grenig, 1 Wisconsin Pleading and Practice Forms § 2:34 (2020).

faithfully adjudicate any such questions in appropriate circumstances, should that become necessary." Id., ¶25 (citation omitted).

Since Jensen, and after this court declined in 2009 to establish procedures for resolving redistricting actions, the United States Supreme Court removed political questions—such as partisan gerrymander claims—from federal judicial review, denying federal judges any "license to reallocate political power between the two major political parties[.]" Rucho, 139 S. Ct. at 2507. This circumscription of the judicial role in redistricting challenges to the interpretation and application of law should alleviate any concerns about the courts exercising anything but judicial power in these matters.¹⁰

In a perfect world, the political branches—not the judiciary—would implement a redistricting plan after every decennial census. Our precedent says the legislature can enact a redistricting plan only if the plan is subject to presentment. State ex rel. Reynolds v. Zimmerman, 22 Wis. 2d 544, 559, 126 N.W.2d 551 (1964); see State ex rel. Broughton v. Zimmerman, 261 Wis. 398, 407–08, 52 N.W. 93 (1952), overruled in part by Reynolds, 22 Wis. 2d 544 ("The power and duty imposed upon the legislature by the constitution to reapportion the state after each federal census can only be exercised by both the houses of the legislature passing a bill that becomes a law upon the signature of the governor, or, if the governor should veto it, upon repassage by the required vote over his veto, and publication."); see also State ex rel. Cunningham v. Attorney General, 81 Wis. 440, 506, 51 N.W. 724 (1892) (Pinney, J., concurring) ("[B]y an unbroken usage extending from the organization of the state, more than 40 years ago, . . . [the power of apportioning and redistricting] has been used and exercised as a legislative power executed in the form of a law, approved by the governor, and published in the General Laws."). In a state with a history of divided government, our precedent has created a constitutional conundrum.

Under the United States Constitution, states are effectively required to redistrict after every decennial census to comply with a principle commonly called "one person, one vote."¹¹ Similarly,

¹⁰ Justice Dallet cites League of Women Voters v. Pennsylvania, 178 A.3d 737 (Pa. 2018) for the proposition that "claims of partisan gerrymandering are cognizable under the Pennsylvania Constitution[.]" Why this matters is unclear. Additionally, she fails to mention that the Pennsylvania Constitution contains a Free and Equal Elections Clause; no analogous provision exists in the Wisconsin Constitution. This clause states: "Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." Pa. Const. art. I, § 5. In League of Women Voters, the Pennsylvania Supreme Court held partisan gerrymandering claims were justiciable under that particular provision. 178 A.3d at 813–14. The court went so far as to note that claims under the Fourteenth Amendment's Equal Protection Clause are "distinct" and "remain subject to entirely separate jurisprudential considerations." Id. at 813.

¹¹ Article I, § 2 of the United States Constitution requires members of the House of Representatives to be chosen "by the People of the several states." The United States Supreme Court has construed this section to mean "that as nearly as practicable one man's vote in a congressional election is to be worth as much as another's." Wesberry v. Sims, 376 U.S. 1, 7–8

Article IV, Section 3 of the Wisconsin Constitution states: "At its first session after each enumeration made by the authority of the United States, the legislature shall apportion and district anew the members of the senate and assembly, according to the number of inhabitants." Applying our precedent to redistricting disputes arising during a time of divided government, the political branches can quickly reach an impasse if the legislature passes a redistricting plan and the governor vetoes it. Courts then face a choice: On one hand, the court can avoid the "political thicket"¹² by refusing to do anything. This course of action prevents the judiciary from exercising powers vested in the political branches but it has a remarkable drawback: It allows inequality in the political process to go unchecked. As Justice Ann Walsh Bradley has explained, "[a]lthough . . . separation of powers is a cornerstone of our democracy, so is equal representation."¹³ Alternatively, courts can enter the thicket.

Since the 1890s, this court has often chosen the latter course. In State ex rel. Attorney General v. Cunningham, we stated, while discussing restrictions on the legislature's redistricting power:

The right of the people to make their own laws through their own representatives, so fundamental in and essential to free government, the convention sought to guard by these restrictions. That most dangerous doctrine, that these and other restrictions upon the power of the legislature are merely declaratory, and not mandatory, should not be encouraged even to the degree of discussing the question. The convention, in making a constitution, had a higher duty to perform than to give the legislature advice.

(1964). Under the Fourteenth Amendment's Equal Protection Clause, the Court has articulated a similar requirement for state legislative districts. Reynolds v. Sims, 377 U.S. 533, 577 (1964) ("By holding that as a federal constitutional requisite both houses of a state legislature must be apportioned on a population basis, we mean that the Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable."); see also Maryland Committee for Fair Representation v. Tawes, 377 U.S. 656, 674–75 (1964) (holding even state senate districts must comply with one person, one vote).

¹² Colegrove v. Green, 328 U.S. 549, 556 (1946) (plurality opinion), abrogation recognized by Evenwel v. Abbott, 577 U.S. 937 (2016) ("Courts ought not to enter this political thicket. The remedy for unfairness in districting is to secure State legislatures that will apportion properly, or to invoke the ample powers of Congress. The Constitution has many commands that are not enforceable by courts because they clearly fall outside the conditions and purposes that circumscribe judicial action.").

¹³ Supreme Court Open Administrative Conference, supra note 1, at 40:50 (statement of Ann Walsh Bradley, J.).

81 Wis. at 485 (majority opinion) (emphasis added). We concluded, "the restrictions on the power of the legislature to make apportionment, found in sections 3, 4, and 5 of article 4 of the constitution are mandatory and imperative, not subject to legislative discretion." Id. at 486 (emphasis added). We also emphasized "the judicial power to declare . . . [an] apportionment act unconstitutional, and to set it aside as absolutely void[.]" Id. It remains the province of the judiciary to declare, in cases presented to us, the constitutional obligations of (and limitations on) the other branches of government.

In Wisconsin's modern history, redistricting has primarily fallen to the judiciary. In Jensen we noted, "in the four decades since Baker v. Carr . . . and Reynolds v. Sims . . . the matter of redistricting has been resolved by the legislature without court involvement exactly once, in 1972." 249 Wis. 2d 706, ¶7. We have a history of letting federal courts handle these matters, perhaps because it removes us from the thicket of political conflicts. Our job, however, is not to avoid controversy but to declare the law. See State v. Herrman, 2015 WI 84, ¶156, 364 Wis. 2d 336, 867 N.W.2d 772 (Ziegler, J., concurring) (quoting John G. Roberts, Chief Justice, U.S. Supreme Court, 2011 Year-End Report on the Federal Judiciary, at 9 (Dec. 31, 2011), <http://www.supremecourt.gov/publicinfo/year-end/2011year-endreport.pdf>)). After all, "[o]ur fundamental role is to pass on the constitutionality [of laws]." ¹⁴

"Elections are the foundation of American government and their integrity is of such monumental importance that any threat to their validity should trigger not only our concern but our prompt action." Trump, No. 2020AP1971-OA, at 5 (Rebecca Grassl Bradley, J., dissenting from denial of petition for leave to commence an original action) (quoted source omitted). Redistricting ensures fair elections by preserving constitutionally-guaranteed equal representation for the people. See James Wilson Lectures on Law (1791), in 2 Collected Works of James Wilson 837 (2007) ("[A]ll elections ought to be equal. Elections are equal, when a given number of citizens, in one part of the state, choose as many representatives, as are chosen by the same number of citizens, in any other part of the state. In this manner, the proportion of representatives and of constituents will remain invariably the same."). It is beyond question that "the court has the power to declare a legislative plan constitutional or unconstitutional. The court has the power, . . . on a legal finding of unconstitutionality, to draw lines and exercise its constitutional function of equal representation." ¹⁵ Fundamentally, this court has a duty to resolve redistricting disputes; doing so does not threaten the separation of powers nor does it risk a concentration of power in the judicial branch:

[T]he courts were designed to be an intermediate body between the people and the legislature in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a

¹⁴ Id. at 45:32 (statement of Ann Walsh Bradley, J.).

¹⁵ Id. at 1:42:23 (statement of Shirley S. Abrahamson, C.J.).

fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body.

The Federalist No. 78, at 467 (Alexander Hamilton) (Clinton Rossiter ed. 1961). While some may wish to "let this cup pass" this is "our job Let's do our job."¹⁶ For all of these reasons, I concur with the court's decision to grant this petition.

REBECCA FRANK DALLET, J. (*dissenting*). As is often the case with original-jurisdiction petitions, the question is not whether we can grant the petition but whether we should. After the political process has an opportunity to play out, we may need to get involved in redistricting. But now is not the time and this petition is not the way. The majority's order prematurely injects the court into the political process, risks undermining the court's independence, and circumvents the statutory process for addressing redistricting challenges. The court should therefore deny the petition. I dissent.

There are good reasons for the court to avoid inserting itself into the redistricting process at all. Under the Wisconsin Constitution, it is the legislature's duty, not the court's, to pass a redistricting plan after each national census.¹⁷ See, e.g., Wis. Const. arts. IV, VII; see also James Madison, The Federalist No. 47 (1788) (explaining the heightened threat to citizens' liberty when the judiciary acts as the legislature). Indeed, avoiding usurping the legislature's role is an important reason the court has stayed out of previous redistricting battles. See Jensen v. Wis. Elections Bd., 2002 WI 13, ¶10, 249 Wis. 2d 706, 639 N.W.2d 537 ("Courts called upon to perform redistricting are, of course, judicially legislating, that is, writing the law rather than interpreting it, which is not their usual—and usually not their proper—role." (emphasis omitted)). As Chief Justice Ziegler and Justice Roggensack have noted, should the court take control of the redistricting process, the court would impermissibly transform itself into a "super-legislature"¹⁸ by "insert[ing itself] into the actual lawmaking function."¹⁹ See also, e.g., id., ¶10 ("The framers in their wisdom entrusted this decennial exercise [of redistricting] to the legislative branch because the give-and-take of the legislative process, involving as it does representatives elected by the people to make precisely these sorts of political and policy decisions, is preferable to any other.").

Redistricting is, in other words, an inherently political and partisan endeavor. Yet the court must strive to be apolitical—or at least nonpartisan. Both current and former members of the court have explained that it "would be a mistake" to "immerse[the court] in the partisan political

¹⁶ Id. at 45:36 (statement of Ann Walsh Bradley, J.) (emphasis added).

¹⁷ "At its first session after each enumeration made by the authority of the United States, the legislature shall apportion and district anew the members of the senate and assembly, according to the number of inhabitants." Wis. Cont. art. IV, § 3.

¹⁸ <https://wiseye.org/2009/01/22/supreme-court-open-administrative-conference-3/>.

¹⁹ Id.

process”²⁰ of redistricting because doing so “is totally inconsistent with our jobs as [a] nonpartisan judiciary.”²¹ Those apt observations ring even truer today given Wisconsin’s hyper-partisan politics.

That said, there are times when a court must become involved in redistricting. If the legislature fails to fulfill its constitutional duty by either enacting no new district maps or enacting unconstitutional maps, then the voters may turn to the courts to vindicate the right to vote in equally populated districts that are “convenient [and] contiguous” and “as compact . . . as practicable”. See Wis. Const. art. IV, §§ 2-5; Jensen, 249 Wis. 2d 706, ¶¶7–11. Here, the legislature has not even proposed, let alone enacted, new district maps. The political process has not failed; it has barely started. The majority recognizes as much, explaining that the court should involve itself in redistricting only after the legislature has had an “adequate opportunity” to act. Yet by granting the petition now, the court fails to give space for the legislature to fulfill its constitutional duties.²² We should let this political process play out in the political branches.

Of course, if the political process fails, then courts have a role to play. Either state or federal courts may hear redistricting challenges, although there are some such challenges that only a state court can hear. For instance, while the federal courts have held that partisan gerrymandering claims are nonjusticiable under the federal constitution, Rucho v. Common Cause, 139 S. Ct. 2484, 2506–07 (2019), it is up to state courts to determine whether the same is true under their state constitutions. See id. at 2507; see also League of Women Voters v. Pennsylvania, 178 A.3d 737, 814, 821 (Pa. 2018) (holding that claims of partisan gerrymandering are cognizable under the Pennsylvania Constitution and striking down the state’s Congressional map on that basis). We have never addressed whether partisan gerrymandering may violate the Wisconsin Constitution, and, so far, no party has raised such a claim here.

For other redistricting claims, there are several reasons why it is best for the federal courts to handle them, particularly when they involve federal law. First, since the United States Supreme Court revolutionized the law on redistricting in Reynolds v. Sims, 377 U.S. 533 (1964), the federal

²⁰ Id. (Justice Gableman).

²¹ Id. (Justice Roggensack).

²² The legislature made these same points in arguing for the dismissal of a redistricting action in federal court, pointing out that such litigation is “wildly premature” because the legislature’s process is barely underway. See Hunter v. Bostelmann, No. 3:21-cv-512-jdp-ajs-ec (W.D. Wis. Aug. 17, 2021), ECF No. 9-3, at 6–7.

courts have “done this [redistricting] three times.”²³ See Baumgart v. Wendelberger, No. 01-C-0121, 2002 WL 34127471 (E.D. Wis. May 30, 2002); Prosser v. Elections Bd., 793 F. Supp. 859 (E.D. Wis. 1992); Wis. State AFL-CIO v. Elections Bd., 543 F. Supp. 630 (E.D. Wis. 1982). Post-Reynolds, we have never done it. The last time we drew district maps was in May 1964, before Reynolds was decided. See State ex rel. Reynolds v. Zimmerman, 23 Wis. 2d 606 (1964). Second, the federal courts have experience with the unique complexities of federal Voting Rights Act claims, the resolution of which is “integral to the drawing of statewide maps.” See, e.g., Hunter v. Bostelmann, No. 3:21-cv-00512-jdp-ajs-ec (W.D. Wis. Sept. 16, 2021), ECF No. 60, at 5. We have no such experience. Third, unlike this court, the federal courts are made up of judges serving lifetime appointments, so they are “not . . . apt to be seen as partisans when they do the job of redistricting.”²⁴ Finally, the federal courts will likely have the last word anyway. Whatever plan the legislature or this court adopts, it will be subject to challenge in a separate action filed in federal court and appealable to the United States Supreme Court. See Jensen, 249 Wis. 2d 706, ¶16. Thus, any new district maps will be final only after the completion of both direct and collateral review in federal courts, raising the specter of further uncertainty and delay. See id. (“At best, such a scenario would delay and disrupt the [upcoming] election season . . .”).

Despite all of the reasons for preferring a federal forum, this court has chosen to step in via our original jurisdiction. But the legislature has established a specific process for resolving redistricting claims, and we should not allow the parties to ignore it. Following the last round of redistricting, the legislature enacted Wis. Stat. §§ 751.035 and 801.50(4m). See 2011 Wis. Act 39, §§ 28, 29. Under those statutes, a party may file a challenge to legislative or congressional apportionment in the circuit court. The circuit court must notify this court of that filing, at which point we are required to appoint a panel of three circuit court judges to hear the case. Parties may appeal the panel’s decisions to this court, but not to the court of appeals. § 751.035(3). This process mirrors the federal one, under which redistricting challenges are typically heard by a three-judge district court, whose decisions are appealable only to the United States Supreme Court. See generally 28 U.S.C. §§ 1253, 2284. The process under §§ 751.035 and 801.50(4m), like the well-tested federal process, thus ensures swift appellate review of the panel’s work while delegating to trial judges traditional trial-court tasks, such as motion practice and fact finding.

There is little doubt that substantial motion practice and extensive fact finding will be necessary in a case like this one. Both federal law and the Wisconsin Constitution require that any court-ordered redistricting plans account for many competing interests, among them are:

²³ <https://wiseye.org/2009/01/22/supreme-court-open-administrative-conference-3/> (Chief Justice Ziegler). In 2008, Justice Prosser promised to vote “every time” against granting an original action related to redistricting. See <https://wiseye.org/2008/04/08/supreme-court-rules-hearing-and-open-administrative-conference-part-3-of-4/>. Instead, he would “let [the parties] go to the federal court.” Id.

²⁴ <https://wiseye.org/2009/01/22/supreme-court-open-administrative-conference-3/> (Justice Roggensack).

- minimizing district changes (sometimes called “core retention”);
- population equality;
- “compactness”;
- maintaining traditional communities of interest;
- avoiding splitting municipal or ward boundaries;
- compliance with the federal Voting Rights Act; and
- minimizing so-called “disenfranchisement,” which occurs when voters are shifted from odd- to even-numbered senate districts, thus temporarily depriving them of a vote for a state senator.

See, e.g., Baumgart, 2002 WL 34127471, at *3. The list makes clear that, while the one-person-one-vote principle may be “relatively easy to administer as a matter of math,” see Rucho, 139 S. Ct. at 2501, it gets much more complicated after that. “Population equality” is but one of the myriad fact-intensive and often countervailing factors courts must balance. Not to mention that “there is a nearly infinite set of district configurations that would generate approximate population equality across districts, and no one supposes that a court should be indifferent among all members of the set.” See Prosser, 793 F. Supp. at 863. Courts must therefore balance the population-equality factor against many others, a task that requires extensive fact finding and consideration of experts’ and other witnesses’ testimony. Simply put, it requires a trial court, which we are “obviously not.” See Jensen, 249 Wis. 2d 706, ¶20 (adding that “our current original jurisdiction procedures would have to substantially modified in order to accommodate the requirements” of redistricting litigation).

We need only look to the last court-ordered redistricting of Wisconsin to appreciate the arduous task the court likely faces. There, a three-judge district court considered sixteen plans suggested by a variety of parties. See Baumgart, 2002 WL 34127471, at *4–7. It ultimately adopted none of them because each had “unredeemable flaws.” See id. at *6. The federal court had to create its own plan, which “involved some subjective choices,” such as deciding “which communities to exclude from overpopulated districts and to include in underpopulated districts.” Id. at *7. In doing so, the court relied on the parties’ affidavits, expert testimony, and testimony at a multi-day trial in which the parties “vigorously” disputed several factual questions. See id. at *4, *7. In the end, the court spelled out—in a discussion spanning more than twenty pages and delving down to the ward level—the precise districts across the entire state. See id. at *8–31.

Baumgart demonstrates that courts addressing redistricting challenges inevitably face myriad factual questions, questions we are ill equipped to handle as a court of last resort. See Jensen, 249 Wis. 2d 706, ¶20. This court’s proper role—to resolve complex legal issues involving undisputed facts—is accounted for in Wis. Stat. §§ 751.035 and 801.50(4m), which reserve fact-finding for the circuit court and appellate review for this court. The majority offers no rationale for ignoring this workable process.

The majority’s resort to Jensen fails to justify exercising our original jurisdiction here. Indeed, Jensen counsels squarely against it, seeing as there are two ongoing consolidated federal redistricting cases. Just last week, the three-judge district court declined to dismiss those cases.

See Hunter, No. 3:21-cv-512-jdp-ajs-eec (W.D. Wis. Sept. 16, 2021), ECF No. 60, at 9. Moving forward, the court suggested that although it may impose a “limited stay” to let the state process run its course, it would also set a “schedule that will allow for the timely resolution of the case should the state process languish or fail.” Id. at 8. Our adding this original action to the mix “put[s] this case and any redistricting map it would produce on a collision course” with the pending federal cases,” risking further uncertainty for both voters and candidates in the 2022 elections. See Jensen, 249 Wis. 2d 706, ¶16. Although we acknowledged in Jensen that redistricting challenges likely meet our criteria for original jurisdiction, see id., ¶17, that was nine years before the legislature enacted Wis. Stat. §§ 751.035 and 801.50(4m). Moreover, whether this petition meets our original-jurisdiction criteria is beside the point. Again, the question is not whether we can take the case but whether we should.

We have been in this situation before. Just last term, we denied then-President Trump’s original action petition challenging the recount of the presidential election results because Wis. Stat. § 9.01(11) requires candidates to file such challenges in the circuit court. See Trump v. Evers, No. 2020AP1971-OA, order (Wis. Dec. 3, 2020). As in this case, nothing necessarily prevented us from granting Trump’s petition, but we rightly decided that when the legislature establishes a process for specific actions, we should follow that process. See id. (Hagedorn, J., concurring). There is no reason to chart a different course now.

The majority’s order charts no course whatsoever. It drops the court into the redistricting wilderness without even a compass. The order sets forth no plan for how seven Justices with no experience in drawing district maps should go about this Herculean task while simultaneously attending to the rest of the court’s docket. Although I trust my colleagues as jurists, I do not share their confidence that we can simultaneously be legislators, cartographers, and mathematicians. Acting as if we can is bad for the court and worse for the people of Wisconsin. Redistricting is a difficult process when it involves only two branches of government. The majority now prematurely, inappropriately, and recklessly involves the third.

For all of these reasons, the court should deny the petition. I dissent.

I am authorized to state that Justices ANN WALSH BRADLEY and JILL J. KAROFKY join this dissent.

Sheila T. Reiff
Clerk of Supreme Court

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October 6, 2021

Ms. Sheila T. Reiff
Clerk of Supreme Court
110 East Main Street, Suite 215
Madison, WI 53701-1688

Re: *Johnson v. Wisconsin Elections Commission*,
Case No. 2021AP1450-OA

Dear Ms. Reiff:

We write on behalf of Respondents, Wisconsin Elections Commission and all six commissioners in their official capacities, in response to the supreme court's September 22, 2021, order, as amended on September 24, 2021. The court directed the parties and prospective intervenors to address the following question:

When (identify a specific date) must a new redistricting plan be in place, and what key factors were considered to identify this date?

Order, Sept. 22, 2021, as amended.

Respondents submit that, in order to enable the Commission to accurately integrate new districting data into its statewide election databases, and to timely and effectively administer the fall 2022 general election, a new redistricting plan must be in place no later than March 1, 2022. This is the same date provided to a three-judge panel of the federal district court presiding over *Hunter v. Bostelmann*, No. 21-CV-512-jdp-ajs-eec (W.D. Wis.) and *Black Leaders Organizing for Communities v. Spindell*, No. 21-CV-534-jdp-ajs-eec (W.D. Wis.), an ongoing consolidated federal redistricting case. This March 1, 2022, date is based on the following factors.

Ms. Sheila T. Reiff
Clerk of Supreme Court
October 6, 2021
Page 2

Wisconsin's congressional and state legislative districts must be reapportioned on the basis of the 2020 census data prior to any future congressional or state legislative election. *See* U.S. Const. art. I, §§ 2, 4; U.S. Const. amend. XIV, § 2; Wis. Const. art. IV, § 3.

The next general election for congressional and state legislative seats in Wisconsin is November 8, 2022; the partisan primary for that election is August 9, 2022.

State law requires the Wisconsin Elections Commission to administer elections. *See generally* Wis. Stat. ch. 5–10, 12. The Commission has no authority to draw district maps and, accordingly, takes no position in this original action as to the particulars of the maps. Nonetheless, the Commission takes its statutory charge seriously and advocates for final maps to be in place by March 1, 2022, a pragmatic date by which it believes it can properly, effectively, and timely administer the fall general election.

Administering an election requires that the Commission perform much work well before election day, especially in the year after the census data is released. Once new congressional and state legislative district boundaries have been determined, Commission staff must begin the complex process of recording these new boundaries in WisVote—the statewide election management and voter registration system. Staff must integrate the new redistricting data with existing voter registration and address data. This process includes manual review of ward map changes and parcel boundary data throughout the state of Wisconsin, to ensure accurate and efficient implementation of new redistricting data. Communication with municipal clerks about certain addresses is required because only local clerks would have such knowledge.¹ Manual review of ward map changes and parcel boundary data is a crucial task in administering an election because it ensures that each voter receives the correct ballot and is correctly located in their proper districts.

Wisconsin voters and candidates must know their proper districts far ahead of the fall general election. For instance, the period for candidates to circulate nominating petitions for the general election begins on April 15, 2022, and runs through June 1, 2022. If map boundaries are not drawn and finalized well before April

¹ While Commission staff will likely not need to contact every municipal clerk in Wisconsin, there are 1,851 clerks in the state.

Ms. Sheila T. Reiff
Clerk of Supreme Court
October 6, 2021
Page 3

15, candidates will not know in what district they reside and in turn will not know for what office they can run. And voters will not know what candidates' petitions they may properly sign. Improper residency of both a candidate and signor of a petition are bases for a challenge to a candidate's nomination papers. *See* Wis. Stat. §§ 6.10 (elector residence), 8.07 (Commission's authority to promulgate rules re validity of nomination papers), 8.30 (candidates ineligible for ballot placement), 8.40 (petition requirements); Wis. Admin. Code EL §§ 2.05 (treatment and sufficiency of nomination papers), 2.07 (challenges to nomination papers); *see also* Wis. Stat. § 8.28 (challenges to sitting office holder's residency). Therefore, before candidates can begin to prepare and circulate nomination papers, Commission staff must produce new district lists for nomination paper review. Further, both before and after the new maps are applied to the state-wide system, the Commission must perform basic quality assurance checks on the data.

Thus, the statutory foundation for Respondents' proposed March 1, 2022, deadline is the April 15, 2022, nomination paper date under Wis. Stat. § 8.15. If new maps are not in place at least 45 days before April 15, 2022, there is a significant risk that there will be errors in the statewide system and, in turn, less time for the Commission to correct those errors before circulation of nomination papers begins. The Legislature has prescribed that nomination papers for the fall general election must circulate between April 15 and June 1, 2022. The Commission must respect that statutory mandate and is in no position to advocate for delaying or shortening that time period.

Moreover, Commission staff will be performing this necessary work of recording new boundaries in WisVote while simultaneously administering the spring 2022 statewide election—for State Superintendent of Public Instruction, Court of Appeals Judge, Districts I, II and III, and Circuit Court Judge—with an election date of April 6, 2022.

Ms. Sheila T. Reiff
Clerk of Supreme Court
October 6, 2021
Page 4

For the Commission to properly, timely, and effectively administer the fall general election—which includes the nominating petition circulation process starting on April 15, 2022—a new congressional and state legislative district plan should be in place no later than March 1, 2022.

Sincerely,



Steven C. Kilpatrick
Assistant Attorney General

SCK:srh

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Ms. Sheila T. Reiff
Clerk of Supreme Court
October 6, 2021
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November 17, 2021

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You are hereby notified that the Court has entered the following order:

No. 2021AP1450-OA Johnson v. Wisconsin Elections Commission

Pending before the court is an original action filed by petitioners Billie Johnson, et al. This order provides scheduling expectations for the parties in the event new maps are not enacted into law, and it becomes necessary for this court to award judicial relief.

The court intends to issue an opinion on or about November 30, 2021, answering the first three questions posed in this court's order dated October 14, 2021, and briefed by the parties and amici, namely: (1) Under the relevant state and federal laws, what factors should we consider in evaluating or creating new maps? (2) The petitioners ask us to modify existing maps using a "least-change" approach. Should we do so, and if not, what approach should we use? and (3) Is the partisan makeup of districts a valid factor for us to consider in evaluating or creating new maps?

Upon issuance of the court's decision on the first three questions, the parties are encouraged to review discovery and record development needs and are advised that the following deadlines will apply:

IT IS ORDERED that by 4:00 p.m. on December 3, 2021, if parties desire discovery, they shall submit a joint proposed discovery plan that details from whom and how discovery will be sought, with all discovery to be completed on or before December 23, 2021;

IT IS FURTHER ORDERED that on or before 12:00 noon on December 15, 2021, each party (including all intervenors) may file a proposed map (for state assembly, state senate, and congress), complying with the parameters set forth in the court's forthcoming decision, a supporting brief, and an expert report; or, a party may file a letter-brief stating the party supports a map proposed by another party. Any brief filed in support of a proposed map shall not exceed 50 pages if a monospaced font is used or 11,000 words if a proportional serif font is used. A letter-brief filed in support of another party's proposed map shall not exceed 15 pages if a monospaced font is used or 3,300 words if a proportional serif font is used;

IT IS FURTHER ORDERED that any expert report filed in support of a proposed map and accompanying its supporting brief shall strive for brevity and shall contain an executive summary not to exceed five pages if a monospaced font is used or 1,100 words if a proportional serif font is used;

IT IS FURTHER ORDERED that on or before 12:00 noon on December 30, 2021, each party may file a responsive brief which shall not exceed 25 pages if a monospaced font is used or 5,500 words if a proportional serif font is used. A party that elects to support another party's proposed map may file a letter-brief that shall not exceed 15 pages if a monospaced font is used or 3,300 words if a proportional serif font is used;

IT IS FURTHER ORDERED that any non-party that wishes to file a non-party brief amicus curiae in support of or in opposition to a proposed map must file a motion for leave of the court to file a non-party brief. Wis. Stat. § (Rule) 809.19 (7). Non-parties should consult this court's Internal Operating Procedure III.B.6.c., concerning the nature of non-parties who may be granted leave to file a non-party brief. A proposed non-party brief must accompany the motion for leave to file it and shall not exceed 15 pages if a monospaced font is used or 3,300 words if a proportional serif font is used. Any motion for leave with the proposed non-party brief attached shall be filed no later than 12:00 noon on January 4, 2022. Any proposed non-party brief for which this court does not grant leave will not be considered by the court;

IT IS FURTHER ORDERED that on or before 12:00 noon on January 4, 2022, each party may file a reply brief, which shall not exceed 15 pages if a monospaced font is used or 3,300 words if a proportional serif font is used. A party that elects to support another party's proposed map may file a letter-brief that shall not exceed 15 pages if a monospaced font is used or 3,300 words if a proportional serif font is used;

IT IS FURTHER ORDERED that the form, pagination, appendix, and certification requirements shall be the same as those governing standard appellate briefing in this court for a brief-in chief, response, and reply;

IT IS FURTHER ORDERED that any party that filed a proposed map and subsequently determines that it merits a correction or modification, may file a motion seeking the court's leave to amend the proposed map. Such motion shall include a description of the amendments, the reasons for them, a proposed amended map, and shall state whether the motion is unopposed by other the parties. The court may request responses from the other parties; unsolicited responses to such a motion will be disfavored;

IT IS FURTHER ORDERED that the parties are advised that the court may elect to conduct a hearing and/or oral argument on one or more of four consecutive days beginning January 18, 2022; and

IT IS FURTHER ORDERED that all filings in this matter shall be filed as an attachment in pdf format to an email addressed to clerk@wicourts.gov. See Wis. Stat. §§ 809.70, 809.80 and 809.81. A paper original and 10 copies of each filed document must be received by the clerk of this court by 12:00 noon of the business day following submission by email, with the document bearing the following notation on the top of the first page: "This document was previously filed via email."

Sheila T. Reiff
Clerk of Supreme Court

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IN THE SUPREME COURT OF WISCONSIN

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,
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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.

PROPOSED JOINT DISCOVERY PLAN

Pursuant to the Court's Order of November 17, 2021, the Parties submit the following Joint Discovery Plan:

1. Scope and Subjects of Discovery; Completion.

a. Scope.

- i. Discovery shall be limited to material that is relevant to whether (and to what degree) the Parties' proposed state legislative and congressional apportionment remedial plans comply with the requirements of state and federal law and other parameters set forth in the Court's decision of November 30, 2021.

b. Fact Discovery.

- i. The parties agree that in light of stipulations and the Court's November 30 Order, at this time they do not anticipate that fact discovery is needed beyond the exchange of maps, expert disclosures, and any documents or data that a party intends to rely upon or an expert has relied upon. Noted below, government GIS and Census redistricting data are publicly available on websites maintained by the United States Census Bureau and the Wisconsin Legislative Technology Services Bureau. As indicated below, the Parties stipulate to the authenticity and admissibility of such records.

- ii. If any party seeks to take discovery, it shall do so between December 15 and 23, or otherwise by agreement of the parties or leave of court.¹
- c. **Expert Discovery.** The Parties agree that, to the extent the federal and Wisconsin rules are different, expert disclosures, reports, and discovery of communications shall be consistent with Federal Rules of Civil Procedure 26(a)(2)(B), (a)(2)(E), (b)(4), (e), as opposed to the Wisconsin rules which would otherwise be applicable.
- d. **Time to Complete Discovery.** Except as stipulated herein and as may be otherwise stipulated, discovery shall be completed by December 23, 2021.

2. Initial Disclosures.

- a. The Parties agree that by December 8, the Parties shall disclose all individuals other than experts whose testimony the party intends to use at any possible evidentiary hearing contemplated in the Court's November 17, 2021 Order. This disclosure obligation is ongoing.

3. Expert Disclosures

- a. Timing.
 - i. Initial expert disclosures shall be made on December 15, 2021.
 - ii. All Parties agree that any Party may submit an expert report as an attachment to the Responsive

¹ The Parties do not waive their rights to object to any discovery sought by any other party.

Briefs due December 30. The scope of any expert report or affidavit submitted with the Responsive Brief must be limited to rebutting initial briefs, maps, and reports.

- iii. All Parties agree that any Party may submit an expert report as an attachment to the Reply Briefs due January 4. The scope of any expert report or affidavit submitted with the Reply Brief must be limited to rebutting responsive briefs and reports.
- iv. The Parties may disclose additional experts in connection with the Parties' Responsive and Reply briefs.

b. Reports.

- i. Expert reports or affidavits shall contain all components specified in Fed. R. Civ. P. 26(a)(2)(B), including compensation and work history, as well as identification of facts, data, and assumptions relied upon, and a list of materials relied upon.
- ii. The Parties recognize that the Court previously ordered that expert reports or affidavits shall “strive for brevity and shall contain an executive summary not to exceed 1,100 words.”
- iii. Parties and experts have a duty to supplement per Fed. R. Civ. P. 26(a)(2)(E) and (e).

c. Documents and Supporting Materials.

- i. No later than the day following the disclosure of any expert report or affidavit, sponsoring Parties

must make available facts or data considered by the expert witness in forming his or her opinion otherwise not disclosed and available in the expert reports. Without limitation, this disclosure shall include any raw data (that is not otherwise clearly identified and publicly available), any modified data, r-files, statistical analysis, formulas, other backup sufficient to replicate analysis, inaccessible articles or books, and similar materials relied upon. The Parties agree to make good faith efforts to make such information available the same day as the disclosure of the expert report or affidavit.

d. Depositions.

- i. The parties agree there will be no expert depositions.

4. **Production of Maps.**

- a. Proposed maps shall be disclosed in the following formats: CSV, Shapefile, and PDF.
- b. Each CSV file must contain two fields: one that identifies all census blocks in the state, and another that identifies the district to which each census block has been assigned. File compression software shall not be used.
- c. Parties shall exchange proposed maps with the expert disclosures on December 15, 2021.

5. Production of Other Documents; Stipulations.

- a. Petitioners, the Legislature, the BLOC and Hunter Intervenor-Petitioners, the Congressmen, the Governor, the Citizen Mathematicians and Scientists, the Wisconsin Elections Commission Respondents, and Senator Bewley stipulate to the authenticity and admissibility of the 2020 Census Redistricting Data available at <https://legis.wisconsin.gov/ltsb/gis/data/> and listed under the subheadings “U.S. DOJ Summarized Fields” and “2020 TIGER Geography & P.L. 94-171 Redistricting Data as U.S. DOJ Summarized Fields.”
- b. Petitioners, the Legislature, the BLOC and Hunter Intervenor-Petitioners, the Congressmen, the Governor, the Citizen Mathematicians and Scientists, the Wisconsin Elections Commission Respondents, and Senator Bewley stipulate to the authenticity and admissibility of the relevant portions of the legislative record (including Legislative Reference Bureau and Legislative Council materials) contained on the Legislature’s website for the following bills and resolutions:
 - i. 2021 Wisconsin Senate Bill 621 (available at <https://docs.legis.wisconsin.gov/2021/proposals/reg/sen/bill/sb621> and referenced legislative journal entries).
 - ii. 2021 Wisconsin Senate Bill 622 (available at <https://docs.legis.wisconsin.gov/2021/proposals/reg/>

- sen/bill/sb622 and referenced legislative journal entries).
- iii. 2021 Wisconsin Assembly Bill 624 (available at <https://docs.legis.wisconsin.gov/2021/proposals/ab624> and referenced legislative journal entries).
 - iv. 2021 Wisconsin Assembly Bill 625 (available at <https://docs.legis.wisconsin.gov/2021/proposals/reg/asm/bill/ab625> and referenced legislative journal entries).
 - v. 2021 Senate Joint Resolution 65 (available at https://docs.legis.wisconsin.gov/2021/proposals/reg/sen/joint_resolution/sjr65 and reference legislative journal entries).
- c. The Legislature created a website relating to redistricting that, among other things, allowed the public to submit proposed maps between September 1, 2021 through October 15, 2021. This website used the domains <https://drawyourdistrict.legis.wisconsin.gov> and <https://redistricting.legis.wisconsin.gov>. Petitioners, the Legislature, the Congressmen, the Citizen Mathematicians and Scientists stipulate to the authenticity and admissibility of all materials contained at the domains <https://drawyourdistrict.legis.wisconsin.gov> and <https://redistricting.legis.wisconsin.gov> as of the date of this submission.

- d. Petitioners, the Legislature, the BLOC and Hunter Intervenor-Petitioners, the Governor, the Congressmen, the Citizen Mathematicians and Scientists, the Wisconsin Elections Commission Respondents, and Senator Bewley stipulate to the authenticity and admissibility of Executive Order #66, which can be accessed through the Legislature’s website at https://docs.legis.wisconsin.gov/code/executive_orders/2019_tony_evers/2020-66.pdf.
- e. The Citizen Mathematicians and Scientists stipulate to the authenticity and admissibility of the General Election Returns from the Election Data section of the above website (<https://legis.wisconsin.gov/ltsb/gis/data/>).
- f. The Citizen Mathematicians and Scientists stipulate to the authenticity and admissibility of the CVAP (Special Tabulation by Race and Ethnicity) data for the five-year period ending in 2019, available at <https://www.census.gov/programs-surveys/decennial-census/about/voting-rights/cvap.2019.html>.
- g. The Citizen Mathematicians and Scientists stipulate to the authenticity and admissibility of the Shapefiles of American Indian Lands from the Census PL Data, titled AMIN shapefile: tl_2020_55_aiannh20.zip”, which is available at https://www2.census.gov/geo/tiger/TIGER2020PL/STATE/55_WISCONSIN/55/, as well as the blockfiles of the same information, which is titled

“BlockAssign_ST55_WI_AIANNH.txt,” available at <https://www.census.gov/geographies/reference-files/time-series/geo/block-assignment-files.html>

- h. The Governor, the Wisconsin Elections Commission Respondents, and the Citizen Mathematicians and Scientists stipulate to the authenticity and admissibility of the Primary Election Returns from the Wisconsin Elections Commission, available at <https://elections.wi.gov/elections-voting/results-all>.
- i. The Parties agree to work cooperatively to join all parties where possible to the above-stipulations and to enter additional stipulations. Parties agree to enter such stipulations by January 11, 2022, and shall file those completed and additional stipulations with the Court by January 12, 2022.
- j. If the Parties contemplate substantial production of documents, other than those stipulated to above, then all production shall be in a format mutually agreed upon in a separate Electronically Stored Information (ESI) discovery protocol.

6. Service of Documents

- a. The Parties stipulate service and production of discovery by electronic mail.
- b. The Parties stipulate that publicly available government records, including for example the legislative record, need not be re-produced during the discovery phase.

7. Claims of Privilege and Work Product.

- a. The Parties agree that any documents in any format that contain privileged information or legal work product (and all copies) shall be immediately returned to the producing party if the documents appear on their face to have been inadvertently produced or if there is notice of the inadvertent production within 10 days after the producing party discovers that the inadvertent production occurred. The Parties agree that the recipient of such inadvertently produced information will not use the information, in any way, in the prosecution of the recipient's case. Further, the Parties agree that the recipient may not assert that the producing Party waived privilege or work product protection based upon the inadvertent production; however, the recipient may challenge the assertion of the privilege and seek a Court order denying such privilege.

8. Post-Briefing Procedures. Should the Court decide an evidentiary hearing “on one or more of four consecutive days beginning January 18, 2022” is necessary, the Parties may negotiate additional pretrial disclosure deadlines (*e.g.*, exhibit lists, witness lists, and the like) at a later date. The Parties offer the following comments on potential proceedings:

- a. Should the Court decide an evidentiary hearing “on one or more of four consecutive days beginning January 18, 2022” is necessary, The Legislature proposes that

Parties shall exchange written direct testimony of all fact and expert witnesses no later than January 11, 2022. The expert written direct testimony may be the experts' report(s), but is not required to be the experts' reports given the potential for written direct testimony to streamline the issues. Direct testimony would be filed with the Court no later than January 12, 2022. Absent stipulation by all Parties, witnesses for whom a sponsoring party has submitted direct testimony shall be made available for live cross-examination and re-direct.

- b. Should the Court decide an evidentiary hearing “on one or more of four consecutive days beginning January 18, 2022” is necessary, the Citizen Mathematicians and Scientists take no position on whether expert direct testimony should occur live at the hearing or be in the form of written direct testimony. If the Court prefers written direct testimony, however, the Citizen Mathematicians and Scientists submit that, for the sake of judicial economy, each Party's expert reports or affidavits serve as its written expert direct testimony and no additional written direct testimony be permitted. Absent stipulation by all Parties, witnesses for whom a sponsoring party has submitted direct testimony shall be made available for live cross-examination, re-direct, and re-cross.

- c. The Petitioners and the Congressmen state that any evidentiary hearing appears to be unnecessary, since the parties have agreed that no fact discovery is needed beyond exchange of maps, expert disclosures, and disclosure of data relied upon by experts.
- d. The BLOC and Hunter Intervenor-Petitioners, the Governor, and Senator Bewley agree with the Petitioners and the Congressmen that any evidentiary hearing appears to be unnecessary, since the parties have agreed that no fact discovery is needed beyond exchange of maps, expert disclosures, and disclosure of data relied upon by experts. Should the Court decide an evidentiary hearing “on one or more of four consecutive days beginning January 18, 2022” is necessary,” the BLOC and Hunter Intervenor-Petitioners, the Governor, and Senator Bewley propose the expert reports and affidavits submitted to the Court shall serve as the direct testimony for all witnesses, whether expert or otherwise, in this proceeding. Cross-examination of expert witnesses may be unnecessary, but the parties can make expert witnesses available if the court would like oral expert testimony.
- e. The Wisconsin Elections Commission Respondents take no position on post-briefing procedures.

Dated December 3, 2021.

Respectfully Submitted,

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IN THE SUPREME COURT OF WISCONSIN

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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
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THE WISCONSIN LEGISLATURE, GOVERNOR TONY EVERS, in his
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Intervenors-Respondents.

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TABLE OF CONTENTS

INTRODUCTION.....	6
STATEMENT OF ISSUES FOR REVIEW	7
STATEMENTS ON ORAL ARGUMENT & PUBLICATION	7
ARGUMENT	8
I. The Legislature’s plans are constitutionally reapportioned	8
A. Reapportionment requirements after the 2020 Census.....	9
B. The Legislature’s plans remedy Petitioners’ malapportionment claims	11
II. The Legislature’s map redresses Petitioners’ malapportionment claims in a least-changes way	14
A. Core retention of the existing districts	16
B. Temporal vote dilution in State Senate elections	25
C. Continuity of representation and incumbent pairings	28
III. The Legislature’s plans comply with all state and federal law, including compliance with the Fourteenth Amendment and the Voting Rights Act	30
A. Compliance with state law	31
B. Compliance with federal law	32
CONCLUSION	37
CERTIFICATIONS	38

TABLE OF AUTHORITIES

CASES

<i>Abbott v. Perez</i> , 138 S. Ct. 2305 (2018)	32
<i>Arizonans for Fair Representation v. Symington</i> , 828 F. Supp. 684 (D. Ariz. 1992)	28
<i>Baldus v. Members of the Wis. Gov’t Accountability Bd.</i> , 849 F. Supp. 2d 840 (E.D. Wis. 2012)	passim
<i>Baldus v. Members of Wis. Gov’t Accountability Bd.</i> , 862 F. Supp. 2d 860 (E.D. Wis. 2012)	34, 36
<i>Baumgart v. Wendelberger</i> , No. 01-C-0121, 2002 WL 34127471 (E.D. Wis. May 30, 2002)	18, 26
<i>Brnovich v. Democratic Nat’l Comm.</i> , 141 S. Ct. 2321 (2021)	33
<i>Burns v. Richardson</i> , 384 U.S. 73 (1966)	28
<i>Colleton Cty. Council v. McConnell</i> , 201 F. Supp. 2d 618 (D.S.C. 2002)	28
<i>Cooper v. Harris</i> , 137 S. Ct. 1455 (2017)	32, 33, 35
<i>Evenwel v. Abbott</i> , 136 S. Ct. 1120 (2016)	12
<i>Gaffney v. Cummings</i> , 412 U.S. 735 (1973)	13
<i>Holder v. Hall</i> , 512 U.S. 874 (1994)	32
<i>Jensen v. Wis. Elections Bd.</i> , 2002 WI 13, 249 Wis. 2d 706, 639 N.W.2d 537	7
<i>Johnson v. Wis. Election Comm’n</i> , 2021 WI 87, ___ Wis. 2d ___, ___ N.W.2d ___ (Nov. 30, 2021)	passim
<i>Karcher v. Daggett</i> , 462 U.S. 725 (1983)	9, 28
<i>Prosser v. Elections Bd.</i> , 793 F. Supp. 859 (E.D. Wis. 1992)	26, 31
<i>Reynolds v. Sims</i> , 377 U.S. 533 (1964)	9, 13
<i>See Ala. Leg. Black Caucus v. Alabama</i> , 575 U.S. 254 (2015)	32
<i>Shaw v. Reno</i> , 509 U.S. 630 (1993)	32, 33

<i>State ex rel. Attorney General v. Cunningham</i> , 81 Wis. 440, 51 N.W. 724 (1892)	9, 14
<i>State ex rel. Bowman v. Dammann</i> , 209 Wis. 21, 243 N.W. 481 (1932)	13
<i>State ex rel. Reynolds v. Zimmerman</i> , 23 Wis. 2d 606, 128 N.W.2d 16 (1964)	13
<i>Upham v. Seamon</i> , 456 U.S. 37 (1982)	17
<i>Vieth v. Jubelirer</i> , 541 U.S. 267 (2004)	29
<i>White v. Regester</i> , 412 U.S. 755 (1973)	13
<i>White v. Weiser</i> , 412 U.S. 783 (1973)	15, 28, 30

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. XIV	9
Wis. Const. art. IV, §3	9, 30
Wis. Const. art. IV, §4	12, 31
Wis. Const. art. IV, §5	31

STATUTES

2011 Wis. Act 43, Wis. Stat. §4.001 <i>et seq</i>	passim
52 U.S.C. §10301(b)	33

OTHER AUTHORITIES

2021 Wis. Senate Bill 621 (enrolled)	passim
2021 Wis. Senate Bill 622 (enrolled)	6, 8
Nathaniel Persily, <i>In Defense of Foxes Guarding Henhouses: The Case for Judicial Acquiescence to Incumbent-Protecting Gerrymanders</i> , 116 Harv. L. Rev. 649 (2002)	29
Nathaniel Persily, <i>When Judges Carve Democracies: A Primer on Court-Drawn Redistricting Plans</i> , 73 Geo. Wash. L. Rev. 1131 (2005)	29

INTRODUCTION

In November, both houses of the Legislature passed new redistricting plans for the State Assembly, the State Senate, and Wisconsin's eight congressional districts. *See* 2021 Wis. Senate Bill 621 (enrolled); 2021 Wis. Senate Bill 622 (enrolled). The Legislature submits those plans here to redress Petitioners' malapportionment claims.¹ They are the appropriate "judicial remedy," "making the minimum changes necessary in order to conform the existing congressional and state legislative redistricting plans to constitutional and statutory requirements." *Johnson v. Wis. Election Comm'n*, 2021 WI 87, ¶8, __ Wis. 2d __, __ N.W.2d __ (Nov. 30, 2021) (hereafter, "Order"). After accounting for substantial population decreases in Milwaukee and substantial population growth in Madison, the Legislature's plans leave more than 80 percent of Wisconsinites in their existing Assembly Districts and more than 90 percent in their existing Senate Districts, and otherwise comply with state and federal law.

Redistricting, moreover, "remains the legislature's duty." *Id.* ¶19. The Legislature's plans submitted here are an expression of that duty. The Legislature's plans are the true people's maps. They are not only based on the existing redistricting plans enacted in 2011; they were also voted on by Wisconsin's 132 elected

¹ The Legislature devotes this brief and accompanying expert reports by Mr. Thomas Bryan (an expert in demography) and Dr. John Alford (a Voting Rights Act expert) to the Legislature's State Assembly and State Senate plans. For reasons stated in the brief to be filed by the Congressmen Intervenor-Petitioners, the Legislature's congressional plan adequately redresses Petitioners' state and federal malapportionment claims with respect to the congressional districts. And the Legislature's congressional plan makes minimum changes to do so, as required by this Court's Order of November 30, 2021.

representatives and approved by an overwhelming majority in 2021. They are the natural remedy for this reapportionment dispute. See *Jensen v. Wis. Elections Bd.*, 2002 WI 13, ¶10, 249 Wis. 2d 706, 639 N.W.2d 537 (per curiam) (“The Framers in their wisdom entrusted this decennial exercise to the legislative branch because the give-and-take of the legislative process, involving as it does representatives elected by the people to make precisely these sorts of political and policy decisions, is preferable to any other.”).

STATEMENT OF ISSUES FOR REVIEW

1. Whether the Legislature’s redistricting plans comply with state and federal reapportionment requirements.
2. Whether the Legislature’s redistricting plans make minimum changes to accomplish reapportionment, in accordance with the Court’s Order entered on November 30, 2021.
3. Whether the Legislature’s plans otherwise comply with state and federal law.

STATEMENTS ON ORAL ARGUMENT & PUBLICATION

Consistent with this Court’s Order entered on November 17, 2021, the Legislature agrees that a hearing or oral argument between January 18, 2022, and January 21, 2022, will be necessary. The Legislature also requests publication of this Court’s final decision.

ARGUMENT

The Legislature submits the attached Assembly, Senate, and Congressional redistricting plans, which passed both houses of the Legislature in November, as its proposed remedy for this reapportionment dispute.² The Legislature's plans remedy Petitioners' malapportionment claims with minimal changes to the existing districts. To the extent there is any debate over which of the parties' proposed maps the Court ought to adopt, it is the Legislature's. The Legislature's maps achieve remarkable population equality across districts, after addressing sizeable population shifts in Milwaukee and Dane County (including Madison), as well as other population shifts across the State. Also remarkable, the Legislature's plans make those adjustments while keeping the vast majority of Wisconsin residents in their existing districts. The Legislature's plans score high on every metric for measuring minimum changes and otherwise comply with all state and federal law. They are the appropriate remedy for this reapportionment dispute.

I. The Legislature's plans are constitutionally reapportioned.

Any remedy must first redress why all the parties are here—to resolve the malapportionment of the existing electoral districts,

² Maps for all three plans are included in the Legislature's Appendix. *See* Legislature App. 3-4 (Assembly plan, 2021 Wis. Senate Bill 621 (enrolled)); App. 5-6 (Senate plan, 2021 Wis. Senate Bill 621 (enrolled)); App. 7 (Congressional plan, Wis. Senate Bill 622 (enrolled)). The bill text of Senate Bills 621 and 622 describe which counties, municipalities, and/or census blocks are included in each district, and the bill appendices include additional maps and population statistics. *See* Bryan Rep. App. 6. Noted above, the Legislature's arguments herein relate specifically to the Legislature's Assembly and Senate plans.

based on now obsolete 2010 Census data. The Legislature’s plans redress all Petitioners’ malapportionment claims.

A. Reapportionment requirements after the 2020 Census.

The state and federal constitutions require roughly equal numbers of individuals across legislative districts. Order ¶¶26, 28; Wis. Const. art. IV, §3; U.S. Const. amend. XIV. Under state law, “there should be as close an approximation to *exactness* as possible[.]” *State ex rel. Attorney General v. Cunningham*, 81 Wis. 440, 51 N.W. 724, 730 (1892) (emphasis added). Under federal law, Wisconsin must “make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable.” *Reynolds v. Sims*, 377 U.S. 533, 577 (1964). Under both state and federal law, the State retains some “limited flexibility to pursue other legitimate policy objectives,” including keeping political subdivisions together or compactness. Order ¶26; *see also Reynolds*, 377 U.S. at 578. But major inequality across district populations requires an explanation. *See Karcher v. Daggett*, 462 U.S. 725, 740 (1983).

To comply with state and federal constitutional reapportionment requirements in Wisconsin, new districts must account for the State’s population growth between 2010 and 2020. Wisconsin’s population grew by roughly 3.5%, increasing from 5,686,986 to 5,893,718. Order ¶15. The ideal population of an Assembly District is now 59,533, and the ideal population of a Senate District is 178,598. *Id.*

But Wisconsin’s population growth was not uniform across the State. Some portions of the State grew substantially, while others lost significant population. *See* Expert Report of Thomas M. Bryan (“Bryan Rep.”) ¶¶39-42; Legislature App. 8-9 (Bryan Maps 1 & 2, illustrating population changes). New districts thus must account

for these population shifts *within* the State, in addition to the State’s overall population growth. *See* Bryan Rep. ¶¶39-44. Between 2010 and 2020, populations shifted within Wisconsin in two major ways:

- Large numbers of individuals moved out of Milwaukee. *Id.*; Bryan Rep. ¶¶40, 42. The population in Milwaukee’s Assembly Districts 8, 10, 11, 12, 16, 17, and 18 dropped significantly (dropping below ideal population for a 2020 Assembly District by at least 5% and in some cases by more than 10%). Joint Stipulated Facts Ex. A (Nov. 4, 2021); *see* Bryan Rep. App. 4 at 79 (Map 1B) (illustrating Milwaukee population changes).³ Milwaukee districts must expand to account for the fewer number of individuals in those districts.
- Large numbers of individuals moved into Madison and surrounding areas. Bryan Rep. ¶¶40-41; *see* Bryan Rep. App. 4 at 78 (Map 1A) (illustrating Dane County population changes).⁴ Dane County added more than 73,000 individuals—well more than the population of an entire Assembly District. Bryan Rep. ¶41. Existing, now-overpopulated

³ There appear to be some disparities in the *exact* population deviation percentages in the existing districts, as between the LTSB-reported deviations reproduced in the parties’ joint stipulated facts and deviations calculated based on raw LTSB data. *See* Bryan Rep. ¶38 n.10. The disparities are slight and ultimately immaterial, and the upward or downward population trends are the same. *Id.*

⁴ According to LTSB-reported deviations, Joint Stipulated Facts Exs. A & B (Nov. 4, 2021), there were substantial population increases (in excess of 8% above ideal population) in Madison-area Assembly Districts 46, 76, 78, 79, and 80, and Senate Districts 26 and 27. And there were moderate to substantial increases (in excess of 5% above ideal population) in other Madison-area Assembly Districts 47, 48, and 77, and Senate District 16.

districts in the area must shrink to account for the increased numbers of individuals in the existing districts.

These large population changes in Milwaukee and Madison resulted in the greatest degree of deviation from ideal population for 2020 districts, and correcting that malapportionment necessarily has a cascading effect on surrounding districts. *See* Part II, *infra*.

While population changes in the rest of the State were less stark, very few districts remained within 0.5% of ideal population after accounting for the last decade's population changes. *See* Legislature App. 8 (Bryan Map 1).⁵

B. The Legislature's plans remedy Petitioners' malapportionment claims.

The Legislature's plans surpass all state and federal requirements to reapportion districts with a roughly equal number of individuals in each Assembly and Senate District. The smallest Assembly District in the Legislature's plan is only 0.37% below ideal population; the largest Assembly District is only 0.39% above ideal

⁵ The second largest growth area in the State included portions of the Fox Valley and up to Brown County. According to LTSB-reported deviations, Joint Stipulated Facts Ex. A (Nov. 4, 2021), Assembly District 5 (containing Kaukauna) and Assembly District 56 (parts of Appleton) exceeded ideal population by at least 8%. Nearby Assembly Districts 2 and 88 also grew, exceeding ideal population by 5% or more. By contrast, the more urban districts south of Milwaukee—Assembly District 20 (containing portions of Milwaukee and all of St. Francis and Cudahy), Assembly District 21 (containing Oak Creek and South Milwaukee), Assembly District 64 (portions of Kenosha), and Assembly District 66 (portions of Racine)—were each *under* ideal population. *See* Joint Stipulated Facts Ex. A (Nov. 4, 2021).

population, making the aggregate population deviation⁶ a remarkable +/- 0.76% for Assembly Districts:

Assembly	Deviation from Ideal Population	Persons	Percent
	Mean Deviation	112	0.19
	Largest Positive Deviation	231	0.39
	Largest Negative Deviation	-221	-0.37
	Overall Range in Deviation	±452	± 0.76

Bryan Rep. ¶47.

The smallest Senate District in the Legislature’s plan is only 0.28% below ideal population; the largest Senate District is only 0.29% above ideal population, making the aggregate population deviation a remarkable +/- 0.57% for Senate Districts:

Senate	Deviation from Ideal Population	Persons	Percent
	Mean Deviation	175	0.10
	Largest Positive Deviation	520	0.29
	Largest Negative Deviation	-506	-0.28
	Overall Range in Deviation	±1,026	± 0.57

Bryan Rep. ¶47.

As this Court and the U.S. Supreme Court have explained, there can be some population deviations in a legislative plan.⁷ The very slight deviations in the Legislature’s Assembly and Senate plans are consistent with the Legislature’s “limited flexibility to

⁶ “Maximum population deviation is the sum of the percentage deviations from perfect population equality of the most- and least-populated districts. For example, if the largest district is 4.5% overpopulated, and the smallest district is 2.3% underpopulated, the map’s maximum population deviation is 6.8%.” *Evenwel v. Abbott*, 136 S. Ct. 1120, 1124 n.2 (2016) (citation omitted).

⁷ In Wisconsin specifically, perfect population equality would be impossible for Assembly and Senate plans that follow 2020 ward lines, assuming wards are not equally apportioned across the State. *Cf.* Wis. Const. art. IV, §4 (“districts to be bounded by county, precinct, town or ward lines”).

pursue other legitimate policy objectives” in redistricting. Order ¶26; see *Reynolds*, 377 U.S. at 577. The U.S. Supreme Court has approved state legislative redistricting plans with population deviations approaching 10%, far greater than the *de minimis* population deviation in the Legislature’s plans. See *Gaffney v. Cummings*, 412 U.S. 735, 750-51 (1973) (7.83% for house districts and 1.81% for senate districts); *White v. Regester*, 412 U.S. 755, 763-64 (1973) (9.9% population deviation); see also Bryan Rep. ¶14 (noting “+/- 5.0% conventional maximums”).

The population equality achieved by the Legislature’s maps is better or equal to population equality in Wisconsin’s historical redistricting plans. See, e.g., *Baldus v. Members of the Wis. Gov’t Accountability Bd. (Baldus I)*, 849 F. Supp. 2d 840, 851 (E.D. Wis. 2012) (noting maximum population deviation for 2011 Assembly Districts was 0.76% and 0.62% for 2011 Senate Districts); *State ex rel. Reynolds v. Zimmerman*, 23 Wis. 2d 606, 607, 128 N.W.2d 16 (1964); *State ex rel. Bowman v. Dammann*, 209 Wis. 21, 243 N.W. 481, 485 (1932). The Legislature’s maps are also better apportioned than other proposals made during this redistricting cycle. For example, the maps created by the Governor’s People’s Maps Commission would have aggregate population deviations of +/- 0.96% for Assembly Districts and +/- 0.74 for Senate Districts.⁸ Similarly, an amendment rejected by the Legislature during the redistricting process would have had aggregate population deviations that more than doubled the Legislature’s aggregate

⁸ People’s Maps Commission, *Final Report and Maps* at 24, [https://evers.wi.gov/Documents/PMC/PMC_Report_Final_Full-compressed%20\(2\).pdf](https://evers.wi.gov/Documents/PMC/PMC_Report_Final_Full-compressed%20(2).pdf).

population deviations.⁹ Finally, the Legislature’s maps also substantially outperform national averages by other States. Bryan Rep. ¶49 (noting NCSL survey illustrated numerous senate and house plans with deviations in excess of 5% and concluding that the Legislature’s “small deviations cannot be considered anything less than exceptionally good”).

The Legislature’s plans thus redress all Petitioners’ malapportionment claims. Achieving near-perfect reapportionment, the Legislature’s plans ensures that Wisconsinites will have “equal representation in the legislature.” *Cunningham*, 51 N.W. at 729.

II. The Legislature’s map redresses Petitioners’ malapportionment claims in a least-changes way.

This Court has ordered that any proposed remedy make the “minimum changes necessary in order to conform the existing congressional and state legislative redistricting plans to constitutional and statutory requirements.” Order ¶8. Satisfaction of that “minimum changes” requirement ought to be measured by the combination of multiple metrics, including: (1) core retention of the existing districts; (2) temporal disenfranchisement of voters in upcoming State Senate elections; and (3) maintaining constituent-legislator relationships by avoiding pairing of incumbents. *See* Bryan Rep. ¶¶62, 84, 105. Additionally, a “minimum changes” plan is likely to resemble an existing plan when it comes to the number of “splits” (where districts split counties and municipalities) and the compactness of districts. *See, e.g.*, Bryan Rep. ¶¶15, 104.

⁹ Wis. Legislative Reference Bureau Memorandum to Sen. Janet Bewley, at 2 (Nov. 5, 2021), https://legis.wisconsin.gov/democrats/media/2209/lrb-s0263-2-ab624-sb621-and-2011-act-43-analysis_bewley.pdf (reporting aggregate deviation for Assembly Districts of +/- 1.98% and aggregate deviation for Senate Districts of +/- 1.43%).

Described more fully below, each of these metrics probe whether a remedy “honor[s] state policies” by leaving existing district plans largely in place, so as not to “preempt the legislative task, nor intrude upon state policy any more than necessary” in adjusting malapportioned districts. *White v. Weiser*, 412 U.S. 783, 795 (1973) (quotation marks omitted). In combination, these metrics provide a multi-faceted way of ensuring that the Court’s remedy goes no “further than necessary to remedy [the existing districts’] current legal deficiencies,” so as not to “intrude upon the constitutional prerogatives of the political branches and unsettle the constitutional allocation of power.” Order ¶64.

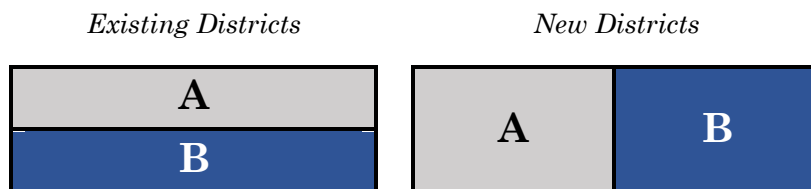
The Legislature’s map satisfies the Court’s “minimum changes” requirement on every metric, while redressing Petitioners’ claims in a near-perfect way. From the beginning of the redistricting process, the Legislature’s redistricting priority has been to “[r]etain as much as possible the core of existing districts, thus maintaining existing communities of interest, and promoting equal opportunity to vote by minimizing disenfranchisement due to staggered Senate terms.” Bryan Rep. App. 6 at 115 (2021 Wis. Senate Joint Resolution 63); Bryan Rep. App. 6 at 116 (public hearing statement by Assembly Speaker Robin Vos) (“Our goal from start to finish was to produce a ‘least-changes’ map that prioritized core retention while adjusting for population change.”).

The Legislature’s resulting plans follow Wisconsin’s existing districts—those “adopted by the legislature, signed by the governor, and survived judicial review by the federal courts.” Order ¶64. To be sure, the existing districts necessarily must change some. Any 2020 redistricting plan must account for the declining population in Milwaukee and increasing population in Dane County, among other population changes, any of which could also affect district lines of the surrounding districts. Bryan Rep. ¶¶43, 78. (For

example, the Milwaukee districts must push outward into surrounding districts to bring the Milwaukee districts back up to population equality. Even if those surrounding districts had close to ideal population after the 2020 Census, they must also change to account for the changes in Milwaukee. *Id.*) But the Legislature’s plans illustrate that these adjustments can be made in a “minimum changes” way. Order ¶8; *see* Bryan Rep. ¶15. The Legislature’s plans ultimately do so—keeping keep roughly 84 percent of Wisconsinites in their existing Assembly Districts, and 92 percent of Wisconsinites in their existing Senate Districts. Bryan Rep. ¶¶15, 68, 79; *see also* Legislature App. 18, 21 (core retention tables); Bryan Rep. App. 6 at 113 at 2 (Wis. Legislative Reference Bureau (LRB) Memorandum regarding SB 621).

A. Core retention of the existing districts.

Core retention is the first metric by which to assess whether a redistricting plan is a “minimum changes” plan. *See* Bryan Rep. ¶61. Core retention is a quantitative measure of how much of the geographical “core” of an existing district remains in a newly drawn district. Bryan Rep. ¶¶61-62. In the following simplified example of a two-district area, assuming uniform population distributions and no population growth, the overall core retention score is 50%. Half of District A’s population was moved to District B, and half of District B’s population was moved to District A:



A redistricting plan with high core retention scores is indicative of a “minimum changes” redistricting plan. Bryan Rep. ¶62. A plan with low core retention scores, on the other hand, is indicative

of a redistricting plan that did not give due regard for existing districts. *Id.* Adopting the latter plan as a court-ordered remedy would be a political re-writing of existing law, “interfering with the lawful policy choices of the legislature,” not a judicial redressing of constitutional claims. Order ¶81; *see also id.* ¶78 (rejecting invitation for “a judicial replacement of the law enacted by the people’s elected representatives with the policy preferences of unelected interest groups”); *Upham v. Seamon*, 456 U.S. 37, 43 (1982) (noting the court had no “authority to disregard aspects of the legislative plan not objected to by the Attorney General” on constitutional or statutory grounds).

Core retention can be measured overall and on a district-by-district basis. Bryan Rep. ¶¶63, 67. On any measure, the core retention of the Legislature’s plans is very high. Bryan Rep. ¶¶68, 73, 77-78; Bryan Rep. App. 2 (Core Retention Analysis tables). These high core retention scores are the first of many reasons why the Legislature’s proposed remedy is the “minimum changes” remedy that this Court seeks. Order ¶8; *see also* Bryan Rep. ¶77.

1. Overall core retention. The overall core retention of the Legislature’s plans keeps more than 84% of Wisconsinites in their existing Assembly Districts, and more than 92% of Wisconsinites in their existing Senate Districts. Bryan Rep. ¶¶15, 68, 79; *see also* Legislature App. 16, 18 (core retention tables); Bryan Rep. App. 6 at 113 at 2 (Wis. LRB Memorandum).¹⁰ These are soaringly high core retention numbers, especially in light of the substantial population decreases in Milwaukee, substantial population increases in Dane County, and Wisconsin’s overall population increase that

¹⁰ The Legislature’s plans overall core retention scores are tabulated by aggregating district-by-district core retention scores. *See* Bryan Rep. ¶65 (explaining methodology); Bryan Rep. App. 2A (core retention tables); Legislature App. 10-21 (core retention tables and totals).

was not uniform throughout the state. Bryan Rep. ¶¶43-45, 68, 73, 77; *cf. Baumgart v. Wendelberger*, No. 01-C-0121, 2002 WL 34127471, at *7 (E.D. Wis. May 30, 2002) (plan with 76.7% Assembly core retention); *Baldus I*, 849 F. Supp. 2d at 858.

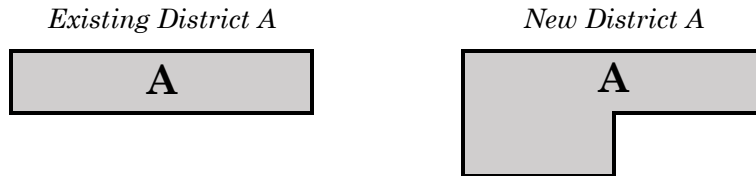
For a sense of how high the Legislature’s core retention scores are, consider the significantly lower core retention scores of the legislative maps proposed by the Governor’s People’s Maps Commission earlier this year.¹¹ The Governor’s maps kept fewer than 60% of Wisconsinites in existing Assembly and Senate Districts. Bryan Rep. ¶¶69-72, 75-76. These low core retention scores, as well as any district-by-district comparison, indicate that the plans were not based on existing districts, let alone made with “minimum changes” to those existing districts. Bryan Rep. ¶72.

By this overall core retention number, the Legislature’s plans are minimum changes plans. Bryan Rep. ¶¶68, 73.

2. District-by-District Core Retention. Core retention can also be examined on a district-by-district basis. To evaluate “minimum changes” on this district-by-district basis, Order ¶8, the best core retention measure is how much of an *existing* district remains in the *new* district in a new redistricting plan. Bryan Rep. ¶62. Existing districts will inevitably have to change on the margins in a new redistricting plan because of population growth or decline. But districts in a “minimum changes” plan will begin with the core of the existing district and grow outward, or begin with the core of the existing district and contract as necessary to achieve population equality. Measuring core retention in this way, a district with decreasing population can still have a core retention score of 100%. *All* of the existing district remains in the new district (plus new territory required to bring the district back to population equality).

¹¹ See People’s Maps Commission, *Final Report and Maps*, *supra*.

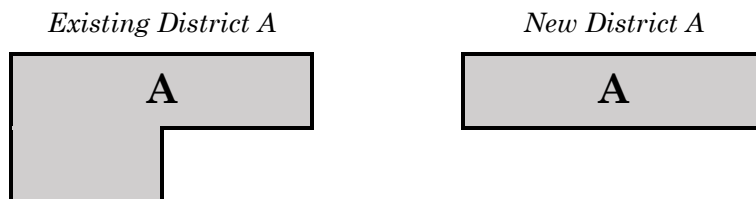
Bryan Rep. ¶62. For example, the core retention of District A below is still 100%, even though population changes required District A to add territory:



Applied to the Legislature's plans, every new Senate District retains nearly all of every existing district. *See* Bryan Rep. App. 2A at 47. The Legislature's Senate Districts 3, 4, 6, 7, 9, 12, 17, 18, 21, 22, 24, 25, 29, and 32 retain at least 95% of the existing district. *See* Legislature App. 19-21 (Senate core retention from Bryan Rep. App. 2B). And all but two of the Senate Districts retain at least 80% of the existing district. *Id.* Similarly, 25 Assembly Districts retain at least 95% of the existing district. The average Assembly District retains 84.4% of the existing district (and the median, 87.9%). *See* Legislature App. 10-18 (Assembly core retention from Bryan Rep. App. 2C).

District-by-district, the Legislature's plans are minimum changes plans. Bryan Rep. ¶77. The lion's share of Assembly and Senate Districts remain substantially intact, adding or shedding territory where necessary to bring the districts back up to population equality. And while some districts on a district-by-district basis have lower core retention scores, that is explained by the reality that sometimes the Legislature had no choice but to modify the existing districts substantially given stark population changes in some areas. Bryan Rep. ¶78; *see, e.g.*, Legislature App. 9 (Bryan Map 2) (showing population changes across I-94 corridor between Milwaukee and Madison).

3. Core retention and areas affected by population change. Districts affected by Dane County and other areas affected by population growth or decline will necessarily have core retention scores lower than 100%, if one examines core retention by assessing whether all persons in an existing district remain in that district. Bryan Rep. ¶62. Due to population changes, portions of a growing district must be cleaved off so that the district does not exceed ideal population. *See, e.g.*, Bryan Rep. ¶65 (showing example of overpopulated Senate District 2). In the following simplified example, imagine that District A's population has grown such that the southern portion of District A must be reapportioned to the neighboring district, lest District A exceed ideal population:



That change is a change required by shifting populations. And even in minimum changes redistricting plans, such changes will be necessary to constitutionally reapportion new districts. In these growing districts, it will be impossible to achieve a 100% core retention score under any redistricting plan (unless a redistricting plan ignores population equality requirements), even if all individuals in the new district lived in the old district.

Applied to the Legislature's plans, nearly all existing districts in Dane County and some in the surrounding area had to contract in size, because they exceeded ideal population. Bryan Rep. ¶¶39-40; Bryan Rep. App. 4 at 78, 80 (Maps 1A, 2) (illustrating Dane County and surrounding growth). Simultaneously, the Legislature had to accommodate Dane County's population growth of roughly 73,000 individuals, growth in excess of the size of an entire

Assembly District. Bryan Rep. ¶41. Explained more fully below, what results from these population-driven changes—combined with population declines in Milwaukee—is that many districts in and between Dane County and Milwaukee have lower-than-average core retention scores. Bryan Rep. ¶78; *see* Legislature App. 9.

Nonetheless, this required movement of district lines presented opportunities to unify municipalities that were previously split. For example, changes in Dane County permitted the Legislature to re-unify the City of Verona, the Village of Oregon, and the Towns of Cottage Grove, Verona, and Dunkirk, which were previously split by Act 43. *See* Bryan Rep. ¶¶55-60 (comparing splits in Act 43 versus Legislature’s plans).¹²

¹² *Compare* 2011 Wis. Act 43, Wis. Stat. §§4.79(6), 4.80(1)(h), *with* 2021 Wis. Senate Bill 621 (enrolled) §4.80(1)(d) (City of Verona); *compare* 2011 Wis. Act 43, Wis. Stat. §§4.43(1)(c), 4.80(1)(d), *with* 2021 Wis. Senate Bill 621 (enrolled) §4.43(1)(b) (Village of Oregon); *compare* 2011 Wis. Act 43, Wis. Stat. §§4.46(2), 4.47(2), *with* Wis. Senate Bill 621 (enrolled) §4.46(1) (Town of Cottage Grove); *compare* 2011 Wis. Act 43, Wis. Stat. §§4.79(2), 4.80(1)(b), *with* 2021 Wis. Senate Bill 621 (enrolled) §4.80(1)(a) (Town of Verona); *compare* 2011 Wis. Act 43, Wis. Stat. §§4.43(1)(b), 4.46(3), *with* Wis. Senate Bill 621 (enrolled) §4.43(1)(a) (Town of Dunkirk).

Similarly, population growth in the Fox Valley area required changes, and the Legislature used those changes as an opportunity to eliminate existing splits in the City of De Pere, the Village of Little Chute, the Towns of Ledgeview (Brown County), Calumet (Fond du Lac County), and Greenville (Outagamie County), all of which were split by Act 43. *Compare* 2011 Wis. Act 43, Wis. Stat. §§4.02(1)(e), 4.88(4), *with* 2021 Wis. Senate Bill 621 (enrolled) §4.02(1)(c) (City of De Pere); *compare* 2011 Wis. Act 43, Wis. Stat. §§4.03(2)(c), 4.05(2)(c), *with* 2021 Wis. Senate Bill 621 (enrolled) §4.05(1)(c) (Village of Little Chute); *compare* 2011 Wis. Act 43, Wis. Stat. §§4.02(1)(b), 4.88(2), *with* 2021 Wis. Senate Bill 621 (enrolled) §4.88(1) (Town of Ledgeview); *compare* 2011 Wis. Act 43, Wis. Stat. §§4.52(2), 5.59(2)(b), *with* 2021 Wis. Senate Bill 621

4. Core retention in surrounding areas affected by population changes. Changes to Madison- and Milwaukee-area districts will necessarily have a cascading effect on nearby districts. For example, consider the hypothetical six-district area below. The western districts are overpopulated by 10% (similar to Madison), the middle districts are at ideal population, and the eastern districts are underpopulated by 10% (similar to Milwaukee):

A (+10%)	C (+0%)	E (-10%)
B (+10%)	D (+0%)	F (-10%)

Because districts must be contiguous, the overpopulated Districts A and B cannot simply transfer population to the underpopulated Districts E and F, just like the overpopulation in Madison cannot be “trade[d]” with the underpopulation in non-contiguous Milwaukee. Bryan Rep. ¶78. Instead, changes will be required for all districts, including ideally populated Districts C and D. *See id.* That cascade of changes will affect core retention not only in under- or overpopulated districts, but also in ideally populated districts nearby. Bryan Report. ¶¶43-44; 78.

Milwaukee provides a real-world example of this cascading effect. The Milwaukee districts decreased in population between 2010 and the 2020 Census. *See* Bryan Rep. App. 4 at 79 (Map 1B). Any redistricting plan must expand these districts to achieve roughly equal population. But the options for expansion in

(enrolled) §4.59(3)(a); *compare* 2011 Wis. Act 43, Wis. Stat. §§4.55(1)(b), 4.56(1)(c), *with* 2021 Wis. Senate Bill 621 (enrolled) §4.56(1) (Town of Greenville).

Milwaukee are limited, given the constraint of Milwaukee's eastern border of Lake Michigan and the nearby Illinois state line.¹³ Considering population increases immediately to the north of Milwaukee and the pull created by population increases in Dane County to the west, the most natural way in which the Milwaukee districts could expand is illustrated by the Legislature's plan: a mostly westward expansion into Waukesha, with some changes to the north as well. Bryan Rep. App. 4 at 82 (Map 3A). Milwaukee's expansion will thus necessarily affect core retention scores of the districts between Milwaukee and Madison. Bryan Rep. ¶78.¹⁴

Finally, the Legislature again used the expansion of the Milwaukee districts into the surrounding areas as an opportunity to improve upon the existing districts. The changes allowed the Legislature to eliminate five pre-existing municipal splits in

¹³ Further constraining options, districts between the City of Milwaukee and the state line (in Racine and Kenosha Counties) were below ideal population as well. *See* Legislature App. 8 (Bryan Map 1).

¹⁴ Unsurprisingly, districts with lower core retention scores in the Legislature's plan sit between Madison and Milwaukee, or north of Milwaukee. Bryan Rep. ¶78; Bryan Rep. App. 2A. These include Senate Districts 5, 11, 15, 27, and 28—all districts that have population in the counties of Milwaukee, Waukesha, Jefferson, or Dane. Bryan Rep. App. 2A at 47. Likewise, the Assembly Districts with the five lowest core retention scores (Assembly Districts 13, 14, 24, 43, and 83) included territory in the counties of Milwaukee, Waukesha, Jefferson, or Dane. Bryan Rep. App. 2A at 50. Assembly District 24, for example, previously included Milwaukee territory. But Milwaukee districts to the south, including Assembly Districts 10 and 11, absorbed that Milwaukee territory to bring those Milwaukee districts back to population equality. Legislature App. 11 (reporting movement of individuals from Assembly District 24 to Assembly Districts 10, 12, and 23).

Milwaukee and nearby Waukesha County.¹⁵ For example, the Legislature had to address sizeable population decreases in Assembly Districts 10 and 11 on the northside of Milwaukee. *See* Bryan Rep. App. 4 at 79 (Map 1B); Joint Stipulated Facts Ex. A (Nov. 4, 2021) (reporting each Assembly District was more than 5,000 persons below ideal population). The Legislature’s Assembly District plan retains more than 85% of existing District 10 and 11. But both districts were among several in the area that also had to grow to bring each back to ideal population. To do so for Assembly District 10, the Legislature unified the City of Glendale (previously split between districts in Act 43) and placed all of it into District 10.¹⁶

5. Relatively unchanged areas. Elsewhere in Wisconsin, districts still must shift slightly to meet the new ideal population for 2020. *See* Legislature App. 8 (Bryan Map 1); Bryan ¶¶39, 43. Even in those districts with close to ideal population, changes can be unavoidable due to changes near the surrounding districts. Bryan Rep. ¶¶43, 78. For example, the population in existing

¹⁵ In Milwaukee County, the Legislature’s redistricting plans eliminate a municipal split in Glendale. *Compare* 2011 Wis. Act 43, §§4.11(a), 4.24(1)(b), *with* 2021 Wis. Senate Bill 621 (enrolled) §4.10(2). In neighboring Waukesha County, the Legislature’s redistricting plans eliminate municipal splits in the City of Brookfield, the City of New Berlin, the Town of Brookfield, and the Town of Genesee. *Compare* 2011 Wis. Act 43, Wis. Stat. §§4.13(2)(c), 4.14(2)(b), *with* 2021 Wis. Senate Bill 621 (enrolled) §4.13(2)(c) (City of Brookfield); *compare* 2011 Wis. Act 43, Wis. Stat. §§4.15(2), 4.84(2), *with* 2021 Wis. Senate Bill 621 (enrolled) §4.15(2)(b) (City of New Berlin); *compare* 2011 Wis. Act 43, Wis. Stat. §§4.13(2)(a), 4.14(2)(a), *with* 2021 Wis. Senate Bill 621(enrolled) §4.13(2)(a) (Town of Brookfield); *compare* 2011 Wis. Act 43, Wis. Stat. §§4.97(1), 4.99(2), *with* 2021 Wis. Senate Bill 621 (enrolled) §4.97(1) (Town of Genesee).

¹⁶ *Compare* 2011 Wis. Act 43, §§4.11(a), 4.24(1)(b), *with* 2021 Wis. Senate Bill 621 (enrolled) §4.10(2).

Assembly District 43, which included a small portion of Dane County, was close to ideal population after the 2020 Census. However, the overall growth in Dane County required significant changes in the area to accommodate the more than 73,000 new Dane County residents since the 2010 redistricting. Bryan Rep. ¶41. As a consequence, Assembly District 43 in the Legislature’s Assembly District plan is pulled in toward Madison and adds several Dane County municipalities, including the City of Stoughton. *Compare* 2011 Wis. Act 43, Wis. Stat. §4.43, *with* Wis. Senate Bill 621 (enrolled), §4.43.

These changes again present opportunities to respect “secondary” constitutional considerations by reducing existing splits, among other neutral redistricting criteria. Order ¶34. Overall, in addition to remarkably high core retention scores, the Legislature’s plans reduce the number of municipal and other splits in Act 43, and retain nearly the same amount of compactness as the Act 43 districts. Bryan Rep. ¶¶55-60, 104.

* * *

On multiple measures, the core retention of the Legislature’s plans is high. The Legislature’s plans make modifications as required for shifting populations. In doing so, the Legislature improves upon the existing districts. The Legislature otherwise respected the existing districts, leaving the vast number of Wisconsinites in their existing districts.

B. Temporal vote dilution in State Senate elections.

The second important measure of a “minimum changes” map in Wisconsin is the effect of a new redistricting plan on the ability of Wisconsinites to vote in their next State Senate election. *See* Bryan Rep. ¶84. Wisconsin Senate elections are staggered,

meaning those in odd-numbered Senate Districts will vote for State Senate in the 2022 elections (having last voted in 2018) and those in even-numbered Senate Districts will vote for State Senate in the 2024 elections (having last voted in 2020):

	Existing District	New District	Last Voted	Next Voted
1	Odd	Odd	2018	2022
2	Odd	Even	2018	2024
3	Even	Even	2020	2024
4	Even	Odd	2020	2022

Bryan Rep. ¶86 (Figure IV.17); *see also, e.g., Baldus I*, 849 F. Supp. 2d at 852; *Baumgart*, 2002 WL 34127471, at *3.

Temporal vote dilution occurs when a redistricting plan moves individuals from odd-numbered Senate Districts to even-numbered Senate Districts. *See* Bryan Rep. ¶86. When a voter who last voted for State Senate in 2018 (in her old odd-numbered district) will not be able to vote again until 2024 (in her new even-numbered district), her vote has been diluted as compared to other Wisconsin voters who remain in their Senate districts. This is a shift from the existing State Senate map, where this voter and others in odd-numbered districts would be expected to vote in 2022.

A minimum changes remedy should mitigate this movement of individuals from odd- to even-numbered districts. Bryan Rep. ¶84. The temporal vote dilution that results from such movement is a “special consideration[]” that must be kept in mind in Wisconsin redistricting and “is not something to be encouraged.” *Id.* at *7; *Prosser v. Elections Bd.*, 793 F. Supp. 859, 866 (E.D. Wis. 1992). Dilution with an outsized effect on some groups of voters, moreover, would create constitutional concerns under the Equal Protection Clause. *See Prosser*, 793 F. Supp. at 866; *see also Baldus I*, 849 F. Supp. 2d at 852 (“It is important to us here that the evidence presented at trial did not indicate that any particular group will

suffer more disenfranchisement than the remainder of the population.”). A map with minimal changes will mitigate the harm of such temporal vote dilution, because such a map should leave most individuals in their existing Senate Districts. Bryan Rep. ¶¶84, 86.

Some amount of temporal vote dilution in Senate Districts is unavoidable due to shifting populations. Bryan Rep. ¶88. Between 2010 and 2020, odd-numbered Senate Districts 1, 5, 13, 19, 23, 27, and 31 all increased in population in excess of the ideal population for a new Wisconsin Senate District (178,598) and thus must shed some of their existing population. Order ¶15; Joint Stipulated Facts Ex. B (Nov. 4, 2021); Bryan Rep. ¶88.¹⁷ Voters moved will necessarily have to wait until 2024 (versus 2022) to vote in their next State Senate election, unless they can be moved to odd-numbered and under-populated Senate Districts (an impossibility if there is no contiguous, odd-numbered district). Bryan Rep. ¶86. Additionally, the Legislature had to adjust the remaining existing Senate Districts, all with wide variation in population. *See* Joint Stipulated Facts Ex. B (Nov. 4, 2021). Those additional changes necessarily have a cascading effect on certain areas of the redistricting plan, which further contributes to movement of Senate voters from one district to another. Bryan Rep. ¶¶77-78.

The Legislature’s Senate District plan mitigates temporal vote dilution in Senate Districts, while again making changes necessary to rebalance population across districts. Ultimately, the Legislature’s plan moves only 138,732 people from odd-numbered senate districts to even-numbered senate districts. Bryan Rep. ¶91 By comparison, the proposed plan by the Governor’s People’s Maps Commission would move roughly *four times* as many people—

¹⁷ Senate Districts 26 and 27 saw the most substantial population growth, increasing by roughly 12% and 9% over ideal population respectively. Joint Stipulated Facts Ex. B (Nov. 4, 2021).

causing temporal vote dilution for more than 540,000 Wisconsinites. Bryan Rep. ¶94. A rejected amendment to the Legislature’s map would have similarly moved 533,201 individuals.¹⁸

C. Continuity of representation and incumbent pairings

Continuity of representation—as measured by incumbent pairings—is the third metric for assessing “minimum changes” in a proposed remedy. *See Karcher*, 462 U.S. at 740 (identifying “avoiding contests between incumbent Representatives” among “legitimate objectives” for redistricting); Bryan Rep. ¶105. One of the most direct ways a voter experiences a least-changes redistricting plan is when the voter remains represented by the same representative before and after redistricting, with the opportunity to vote for (or against) her representative in the upcoming elections. *See, e.g., Colleton Cty. Council v. McConnell*, 201 F. Supp. 2d 618, 647 (D.S.C. 2002) (affirming importance of “protecting the core constituency’s interest in reelecting, if they choose, an incumbent representative in whom they have placed their trust”). Districts that pair incumbents or draw incumbents out of their districts prohibit voters from maintaining (or making the choice not to maintain) that constituent-incumbent relationship. *See Karcher*, 462 U.S. at 740; *Burns v. Richardson*, 384 U.S. 73, 89 n.16 (1966); *Arizonans for Fair Representation v. Symington*, 828 F. Supp. 684, 688 (D. Ariz. 1992) (“maintenance of incumbents provides the electorate with some continuity”), *aff’d sub nom. Hispanic Chamber of Commerce v. Arizonans for Fair Representation*, 507 U.S. 981 (1993); *White*, 412 U.S. at 792 (approving “policy frankly aimed at maintaining existing relationships between incumbent congressmen and their constituents”); *see also* Nathaniel Persily, *When*

¹⁸ Wis. LRB Memorandum to Sen. Janet Bewley, *supra*, at 3.

Judges Carve Democracies: A Primer on Court-Drawn Redistricting Plans, 73 Geo. Wash. L. Rev. 1131, 1136 (2005) (“[C]ourts that take account of incumbency do so in order to preserve the constituency-representative relationship that existed under the enjoined plan.”).

A minimum changes remedy will maximize continuity of representation. Bryan Rep. ¶105. That includes minimizing the pairing of two or more incumbents into new districts bearing little resemblance to their old districts. Such incumbent-pairings upset continuity of representation for voters, who necessarily “develop relationships with their representatives,” and whose representatives “learn about and understand the unique problems of their districts and to pursue legislation that remedies those problems” while in office. Nathaniel Persily, *In Defense of Foxes Guarding Henhouses: The Case for Judicial Acquiescence to Incumbent-Protecting Gerrymanders*, 116 Harv. L. Rev. 649, 671 (2002); *see also Vieth v. Jubelirer*, 541 U.S. 267, 357-58 (2004) (Breyer, J., dissenting) (collecting sources for the idea that continuity of representation “makes it easier for voters to identify which party is responsible for government decisionmaking”).

Applying this third metric to the Legislature’s plans, continuity of representation was one of the guiding principles for the Legislature in the redistricting process. Bryan Rep. App. 6 at 115 (2021 Wis. Joint Senate Resolution 63) (“Promote continuity of representation by avoiding incumbent pairing unless necessary...”). The Legislature’s resulting plans include only three incumbent pairings in the Assembly and no incumbent pairings in the Senate. Bryan Rep. ¶107; Bryan Rep. App. 6 at 114 (Wis. LRB Memorandum). (By comparison, the Governor’s People’s Maps Commission proposed maps with twenty incumbent pairings among Assembly Members and six of incumbent pairings among Senate Members,

including districts where *three* incumbents would be paired in a new district. Bryan Rep. ¶¶107, 110. Similarly, a rejected amendment to the Legislature’s maps would have paired thirty incumbents in the Assembly in fifteen new districts and eight incumbents in the Senate in four new districts.¹⁹)

* * *

On every metric, the Legislature’s redistricting plans are an appropriate least-changes remedy for Petitioners’ malapportionment claims. The Legislature’s plans are based entirely on the existing redistricting plans—“the law enacted by the people’s elected representatives.” Order ¶78. They are adjusted as necessary “to achiev[e] compliance with the law,” rather than “draw maps from scratch.” *Id.* ¶¶8, 75. And to the extent those adjustments entailed making a policy choice—inherent when a policymaker is faced with possible redistricting options—the Legislature’s plans are the appropriate remedial plan because those choices were made by the elected representatives for the State of Wisconsin. *See* Wis. Const. art. IV, §3; *cf.* *White*, 412 U.S. at 795-96.

III. The Legislature’s plans comply with all state and federal law, including compliance with the Fourteenth Amendment and the Voting Rights Act.

All parties agree that this Court must ensure that any remedy must comply with all remaining state and federal law, including the requirements of the Voting Rights Act. Order ¶27. The Legislature’s plans do so in the following ways.

¹⁹ Wis. LRB Memorandum to Sen. Janet Bewley, *supra*, at 5-7.

A. Compliance with state law.

The Legislature’s plans contain 99 single-member Assembly Districts and 33 single-member Senate Districts, where 3 contiguous Assembly Districts are nested in each Senate District. Bryan Rep. ¶¶13, 52; Wis. Const. art. IV, §§4, 5 (providing for single-member districts and that “no assembly district shall be divided in the formation of a senate district”). All districts are contiguous. Bryan Rep. ¶¶13, 52; Wis. Const. art. IV, §4 (requiring Assembly districts to “consist of contiguous territory”); *id.* §5 (requiring Senate districts to be of a “convenient contiguous territory”).²⁰ Districts are “in as compact form as practicable.” Wis. Const. art. IV, §4; *see* Bryan Rep. App. 3. Finally, every district follows 2020 ward boundaries, meaning no 2020 wards are split. Bryan Rep. ¶52. Indeed, the Legislature’s plans reduce the number of county and municipal splits in the existing Act 43 districts. *See* Bryan Rep. ¶¶55-60 (comparing splits between 2011 Act 43 and Legislature’s plans). The Legislature’s plans thus comply with all remaining state law requirements, as well as secondary considerations. Order ¶¶34-36.

²⁰ Contiguity means political contiguity. Order ¶36. If annexation by municipalities creates a municipal “island” (common in the Madison area, for example), the district containing detached portions of the municipality is legally contiguous even if the geography around the municipal island is part of a different district. *See, e.g., Prosser*, 793 F. Supp. at 866 (rejecting argument that Wisconsin’s constitution requires “literal” contiguity, and noting “that it has been the practice of the Wisconsin legislature to treat [municipal] islands as contiguous with the cities or villages to which they belong”); *see also* Wis. Stat. §5.15(1)(b), (2)(f)(3); Wis. Stat. §4.001(2) (1972) (“Island territory (territory belonging to a city, town or village but not contiguous to the main part thereof) is considered a contiguous part of its municipality.”).

B. Compliance with federal law.

Any remedy must address Petitioners' malapportionment claim without creating another constitutional or legal harm. Order ¶34 ("in remedying the alleged harm, we must be mindful of these secondary principles so as not to inadvertently choose a remedy that solves one constitutional harm while creating another"). Applied here, the Legislature's redistricting plans comply with federal reapportionment requirements, Part I, *supra*, while also complying with the Fourteenth Amendment and the federal Voting Rights Act, in addition to the aforementioned state-law requirements.

Determining whether a map complies with both the Fourteenth Amendment and the Voting Rights Act can be a difficult task when a State considers race throughout the redistricting process. *See Abbott v. Perez*, 138 S. Ct. 2305, 2314 (2018); *Cooper v. Harris*, 137 S. Ct. 1455, 1463-65 (2017); *see also Holder v. Hall*, 512 U.S. 874, 896 (1994) (Thomas, J., concurring in judgment). Ordinarily, such racial considerations are unconstitutional. The Constitution's Equal Protection Clause does not tolerate race-based sorting unless proved to be for a compelling government interest and "narrowly tailored" to that end. *Shaw v. Reno*, 509 U.S. 630, 643 (1993). In redistricting, the Supreme Court has long assumed that compliance with the Voting Rights Act permits some consideration of race in redistricting. *Cooper*, 137 S. Ct. at 1464. But the Voting Rights Act does not give *carte blanche* authority to redistrict based on race. There must be a compelling reason for doing so. *See Ala. Leg. Black Caucus v. Alabama*, 575 U.S. 254, 279 (2015); *Shaw*, 509 U.S. at 643. And the use of race must be "narrowly tailored." *Cooper*, 137 S. Ct. at 1464.

1. The Legislature's race-neutral approach and compliance with the Fourteenth Amendment. Applied to the

Legislature’s plans, there can be *no* claim that the Legislature’s map is an unconstitutional racial gerrymander in violation of the Fourteenth Amendment. The Legislature’s plans employ only race-neutral redistricting criteria and do not redistrict on the basis of race. *See* Bryan Rep. App. 6 at 116 (Assembly Speaker Robin Vos’s statement explaining that drafters did not consider race when redistricting and instead considered only race-neutral criteria). Any racial gerrymandering claim or any suggestion of racial intent in the Legislature’s redistricting plans would thus fail at step one. There can be no suggestion that there has been any “effort to separate voters into different districts on the basis of race,” *Shaw*, 509 U.S. at 649, because the Legislature did not redistrict on the basis of race.

2. The Legislature’s least-changes approach and compliance with the Voting Rights Act. The Legislature’s plans also exemplify that a redistricting plan can comply with the Supreme Court’s existing Voting Rights Act precedents *without* race predominating in redistricting. The Milwaukee area has always been an area of concern for the Voting Rights Act. The Legislature’s plans for the Milwaukee area comply with the Voting Rights Act, both for Milwaukee’s Black and Hispanic populations. *See* Report of John R. Alford (“Alford Rep.”) ¶¶19, 39. The districts make the political process “equally open to participation” by all citizens. 52 U.S.C. §10301(b); *see Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2337-38 (2021). And there has been no “dispersal of a group’s members into districts”—intentional or otherwise—leaving them as “an ineffective minority of voters.” *Cooper*, 137 S. Ct. at 1464 (brackets omitted) (*quoting Thornburg v. Gingles*, 478 U.S. 30, 46 n.11 (1986)); *see* Order ¶27.

The Legislature’s Milwaukee districts are least-changes from the districts that were challenged (and then survived in part and

changed in part) in last redistricting cycle’s *Baldus* litigation. See *Baldus I*, 849 F. Supp. 2d 840; see Alford Rep. ¶¶12, 20-22. The *Baldus* plaintiffs, including a Petitioner-Intervenor here, alleged that the Act 43 districts violated the Voting Rights Act in two ways. *Id.* at 848. First, they alleged that “Act 43 ‘pack[ed]’ African-American voters in Milwaukee into six districts” (existing Assembly Districts 10, 11, 12, 16, 17, and 18²¹), instead of taking “the opportunity to create a seventh ‘influence’ district.” *Id.* Second, they alleged that Act 43 “‘crack[ed]’ the Latino community into two districts” (existing Assembly Districts 8 and 9), “neither one of which is a majority-minority district of *citizen* voting age Latinos.” *Id.* The plaintiffs “abandoned at trial their challenge to the African-American districts,” while their challenge to the Hispanic districts ultimately succeeded. *Id.* at 848, 859. The *Baldus* court adjusted Assembly Districts 8 and 9, which are the boundaries still in effect today. *Baldus v. Members of Wis. Gov’t Accountability Bd.* (*Baldus II*), 862 F. Supp. 2d 860, 863 (E.D. Wis. 2012). That approval of the existing districts by the *Baldus* court creates yet another reason why the Legislature’s minimum changes remedy is appropriate here.²²

Importantly, the Legislature’s proposed plans keep nearly all of the existing minority populations from the districts challenged in *Baldus* in the same districts under the Legislature’s plans. Alford Rep. ¶12 (Tables 2 and 3); Legislature App. 22-23. With

²¹ See Grofman Expert Decl., *Baldus v. Members of the Wis. Gov’t Accountability Bd.*, No. 2:11-cv-562 (Feb. 10, 2012), ECF 131-5.

²² In pending federal litigation, the *BLOC* Petitioner-Intervenors have asserted that a seventh Black majority-minority district should be included in a 2020 redistricting plan. As their underpopulated demonstration plan reveals, that claim is wholly without merit. Alford Rep. ¶¶29-36.

respect to the predominately Black Assembly and Senate Districts that were litigated in *Baldus*, the Legislature’s least-changes districts retain all or nearly all of the Senate and Assembly Districts.²³ Alford Rep. ¶¶12, 21. The *entirety* of the existing Senate Districts 4 and 6 are included in the Legislature’s proposed Senate Districts 4 and 6. *See* Alford Rep. ¶20; Legislature App. 19. Additionally, all existing representatives remain districted in these Senate and Assembly Districts under the Legislature’s plans; none has been paired with any other incumbent. Alford Rep. ¶19; Bryan Rep. App. 3 at 114 (LRB Memorandum). The only changes to these Assembly and Senate Districts are those required by the districts’ declining populations. *See* Joint Stipulated Facts Ex. A (Nov. 4, 2021). Each had to grow in some way, lest they all fall well below the ideal population. But the districts grew outward, such that the Legislature’s resulting districts move few individuals (and in some cases none) currently districted in the Act 43 districts. The Legislature’s plans retain the *Baldus* districts and comply with the Voting Rights Act. Alford Rep. ¶19.²⁴

²³ These include Assembly Districts 10, 11, and 12—which together comprise Senate District 4—and Assembly Districts 16, 17, and 18—which together comprise Senate District 6.

²⁴ Discussed in Dr. Alford’s report, the Legislature’s Assembly District 10 declined in Black Voting Age Population (BVAP), as compared to the Act 43 districts. Alford Rep. ¶11 (Table 1) (46% BVAP). Black individuals still make up the largest share of the population of the Legislature’s Assembly District 10 (totaling 29,311 individuals), which also includes white, Hispanic, Asian, and other minority voters. *Id.* The district remains compliant with the Voting Rights Act. Alford Rep. ¶¶24-27. And as the Supreme Court made abundantly clear in *Cooper*, there is no requirement that a district exceed 50% BVAP to comply with the Voting Rights Act; indeed, unnecessarily inflating a district to exceed 50% BVAP can itself violate the Fourteenth Amendment. *Cooper*, 137 S.

Likewise, with respect to the Hispanic districts adjusted by the *Baldus* court, the Legislature’s plans keep the cores of those districts almost exactly as they were in *Baldus*—meaning almost all individuals districted in Assembly Districts 8 and 9 after *Baldus* remain in Assembly Districts 8 and 9 under the Legislature’s plan. Specifically, the Legislature’s plan keeps intact 100% of existing Assembly District 8, more than 90% of existing Assembly District 9, and adds new Hispanic population to both Assembly Districts 8 and 9. Alford Rep. ¶¶12-13, 38; Legislature App. 23.²⁵ Importantly, the representatives for both districts remain in the districts under the Legislature’s plan, and they have not been paired. Alford Rep. ¶40; *cf. Baldus I*, 849 F. Supp. 2d at 858 (describing “the radical reconfiguration” of Act 43’s Assembly District 8 and emphasizing that the existing representative was “not an incumbent with respect to fully 45% of the population” of the then-new district). The Legislature’s plan then grows both districts, as required by population decreases.²⁶ The resulting districts mirror the demographics of those in *Baldus* and comply with the Voting Rights Act. Alford Rep. ¶¶38-39.

Ct. at 1472 (“neither will we approve a racial gerrymander whose necessity [of 50%+1 BVAP] is supported by no evidence and whose *raison d’être* is a legal mistake”).

²⁵ When the *Baldus* court adjusted existing Assembly Districts 8 and 9 for Voting Rights Act compliance, the modified Assembly District 8 had a Hispanic Citizen Voting Age Population (HCVAP) of 55.22%, and the modified Assembly District 9 had an HCVAP of 34.78%. *See Baldus II*, 862 F. Supp. 2d at 862-63.

²⁶ Assembly District 8 was roughly 9% below ideal population after the 2020 Census, and Assembly District 9 was roughly 3% below ideal population. Joint Stipulated Facts Ex. A (Nov. 4, 2021).

CONCLUSION

The Court should adopt the Legislature's proposed plans as the remedy for Petitioners' claims. The Legislature's Assembly, Senate, and Congressional District plans both redress Petitioners' malapportionment claims and comply with all other state and federal law. They make minimum changes to the existing districts. And they are the true people's map, passed by a majority of the representatives of all Wisconsinites.

Dated this 15th day of December, 2021.

Respectfully submitted,

Electronically Signed By
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CERTIFICATIONS

Form and Length. I hereby certify that this brief conforms to the rules contained in Wis. Stat. §809.19(8)(b), (bm), and (c) for a brief and appendix produced with proportional serif font. The length of this brief is 8,592 words as calculated by Microsoft Word, not including the caption, table of contents, table of authorities, signatures, and these certifications.

Appendix. I hereby certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using one or more initials or other appropriate pseudonym or designation instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Filing, Electronic Filing, and Service. I hereby certify that I caused the foregoing brief, the Legislature's Appendix, and the Expert Reports of Thomas Bryan and John Alford to be filed with the Court as attachments to an email to clerk@wicourts.gov, sent on or before 12:00 noon on this day. I further certify that I will cause a paper original and 10 copies of these materials with a notation that "This document was previously filed via email" to be filed with the clerk no later than 12:00 noon tomorrow. This method of filing and electronic filing was required by the Court's Order dated November 17, 2021.

I further certify that on this day, I caused service copies of these documents to be sent by email to all counsel of record, all of whom have consented to service by email.

Dated this 15th day of December, 2021.

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Section 2 of the Voting Rights Act Totality of the Circumstances Analysis

by

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Supreme Court of Wisconsin

Johnson, et al., v. WEC, et al., No. 2021AP1450-OA

December 15, 2021

Executive Summary

I have been asked to examine the totality of the circumstances analysis applicable under Section 2 of the Voting Rights Act to Wisconsin, and particularly the Milwaukee area. My analysis considers whether, under the totality of the circumstances, Black voters living in the Milwaukee area have less opportunity than other members of the electorate to participate in the political process and elect candidates of their choice. This analysis is guided by the non-exhaustive Senate Factors outlined in a U.S. Senate Report by the Senate Committee on the Judiciary that accompanied the 1982 amendments of the Voting Rights Act. These factors include:

1. the history of official voting-related discrimination in the state or political subdivision;
2. the extent to which voting in the elections of the state or political subdivision is racially polarized;
3. the extent to which the state or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority-vote requirements, and prohibitions against bullet voting;
4. the exclusion of members of the minority group from candidate slating processes;
5. the extent to which minority group members bear the effects of discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process;
6. the use of overt or subtle racial appeals in political campaigns; and
7. the extent to which members of the minority group have been elected to public office in the jurisdiction.

No certain number of the factors, nor any one factor in particular, must be shown to satisfy this totality of the circumstances analysis.¹

In this report, I review Senate Factors 1, 2, 3, 5, 6, and 7. Plaintiffs' expert Professor Loren

¹ S. Rep. No. 97-417, at 29 (1982).

Collingwood has conducted a separate analysis of racially polarized voting and prepared a report presenting his opinions that racially polarized voting is present in Milwaukee-area elections. Thus, for my analysis of Senate Factor 2, I rely on and adopt Professor Loren Collingwood's opinions. I did not review Senate Factor 4, as it is not applicable here.

My analysis shows that each of Senate Factors 1, 2, 3, 5, 6, and 7 are clearly present in the Milwaukee area. I provide a short summary of my opinions for each Factor here, with more detailed explanations below in my report:

- **Senate Factor 1:** Wisconsin has a history of official voting-related discrimination, including in recent years. For example, in 2012 a federal court held that the legislature diluted the voting strength of minority voters in the Milwaukee area. In addition, recent voter list maintenance practices, which were the subject of litigation, had a disparate impact on Black voters.
- **Senate Factor 2:** The analysis provided by Professor Collingwood analyzes a number of probative election contests and finds that voting in the Milwaukee area is polarized along racial lines. In his analysis, Professor Collingwood found that Black voters are politically cohesive, and that white bloc voting usually defeats Black voters' candidates of choice.
- **Senate Factor 3:** Several voting practices that enhance the opportunity for discrimination against Black voters in the Milwaukee area have been used in recent elections, including disproportionately fewer polling places located in predominantly Black areas, resulting in depressed Black voter turnout and longer waiting times to vote. In addition, Wisconsin's voter ID law, one of the strictest in the nation, reduced voter turnout in general and disparately deterred or prevented more Black voters from voting than white voters.
- **Senate Factor 5:** Black Wisconsinites disproportionately bear the effects of discrimination

in employment, education, health, and criminal justice and incarceration, which hinders their ability to effectively participate in the political process. Black Wisconsinites have suffered historic discrimination in housing in Milwaukee, including redlining and racial covenants, which have helped produced outcomes that rank Milwaukee at the bottom or toward to bottom of all major U.S. cities concerning racial segregation in housing. Evictions and homelessness also have a disparate impact on Black residents of Milwaukee. Milwaukee also has some of the largest racial disparities in the nation when it comes to education, with the most segregated schools in the nation, and extremely high disparities in test scores, graduation rates, school suspensions, and access to higher education. Wisconsin also ranks poorly on racial disparities in employment, income, and poverty rates, has the highest racial disparities in incarceration rates in the nation, and large racial disparities in life expectancy, infant mortality, and COVID hospitalization rates. The accumulated effect of these factors is to make it difficult for Black voters to have an equal opportunity to participate in the political process and to create some of the largest racial disparities in voter turnout in the nation: in 2018, Wisconsin had the third largest gap between Black and white turnout; in 2020, that gap was the second largest in the nation.

- **Senate Factor 6:** Political campaigns statewide and in the Milwaukee area are often marked by both subtle and overt racial appeals, and at all levels of public office. Examples include an ad run against a Black incumbent in a state supreme court race, a radio ad run against a Black U.S. congressional incumbent, ads and commentary in the 2020 Presidential and 2018 gubernatorial elections, the 2020 state assembly district 24 race, and the 2021 State Superintendent of Public Instruction race.
- **Senate Factor 7:** Most elected positions in the Milwaukee area, particularly those outside of

Black majority-districts, are not held by Black officeholders, despite the large Black population in the area. For example, no Black candidate has *ever* been elected as Mayor of Milwaukee, and the first Black Milwaukee County Executive was only elected in 2020. In addition, only two of eight current county government officials elected on a countywide basis are Black.

In light of this evidence, and my analysis provided below, I conclude that the totality of the circumstances demonstrates that Black voters do not have an equal opportunity to participate in the political process and to elect representatives of their choice in Milwaukee area elections (52 U.S.C. § 10301(b), see U.S. Department of Justice, 2021).

Background and Qualifications

I am a professor of political science at the University of Wisconsin-Madison. I received my Ph.D. in political science in 1987 and M.A. in public affairs in 1984 from the University of Minnesota. I received a B.A. from Indiana University in Economics and Political Science in 1981. I was a Research Fellow at the Brookings Institution in Washington, D.C., and taught at Duke University for five years before accepting my current position in the fall of 1991. I teach courses in American politics, the presidency, Congress, and race and politics, and I have also taught classes on congressional elections, political parties, introductory statistics, and the scope and method of political science.

My research interests are in race and representation, political careers, congressional reform, election laws and election administration, partisan realignments, and the historical analysis of Congress (especially congressional committees). My work on race and representation in Congress was funded by grants from the National Science Foundation and the Graduate School at the University of Wisconsin. The findings of the study were published by the University of Chicago Press as a book *titled Race, Redistricting, and Representation: The Unintended Consequences of*

Black-Majority Districts, which won the American Political Science Association's Richard F. Fenno award for the best book published on legislative politics in 1999. I am author of 42 scholarly articles and chapters, three scholarly books, seven editions of an introductory American government textbook, seventeen edited books, and 20 other publications (see the attached vita), many of which relate to redistricting and race and representation. I have been an editor for the Election Law Journal since 2018, and a reviewer for a number of journals. I frequently appear on local TV and radio as an expert on national politics.

I have served as an expert witness in state and federal court for eight different cases concerning redistricting and elections. I have not testified as an expert at trial or by deposition in the past four years. I am being compensated for my work in this matter on an hourly basis, and my hourly rate is \$400.

Analysis

I. Totality of the Circumstances Analysis

A. Senate Factor 1

Senate Factor 1 examines the history of official voting-related discrimination in the state or political subdivision. Direct evidence of a racially discriminatory election process exists in Wisconsin and shows that racial minorities face obstacles to equal political participation. For example, in 2012 a three-judge panel for the Eastern District of Wisconsin held that the state Assembly plan established in Act 43 violated Section 2 of the Voting Rights Act because of its dilution of Latino voters in Milwaukee County (*Baldus v. Members of the Government Accountability Board*, 2012). This recent example of the legislature diluting the vote of minority voters in the Milwaukee area is particularly relevant, given that the legislature's current and proposed plans (adopted by the legislature in SB621) continue to dilute the voting strength of voters in the area, particularly Black voters.

Voter list maintenance practices also have a racially disparate effect on Black voters in

Milwaukee. Because voters who move rarely share this information with election administrators, election officials must try to match voter registration records with other administrative records, such as a driver's license application. To facilitate this process, since 2015 Wisconsin (and 30 other states, plus Washington, D.C.) has participated in data sharing with the nonprofit corporation the Electronic Registration Information Center (ERIC).² ERIC ingests voter registration files and government transaction data that the member states provide, namely from Departments of Motor Vehicles, and uses its matching methodology to identify registered voters who appear to have moved within a state or to a different state, or to have died while out of state. ERIC then aggregates the information and compiles it into an electronic record that it provides to the Wisconsin Elections Commission ("WEC"). WEC then uses this list of voters who appear to have changed their residential address from the address at which they are registered to vote, to mail a letter to those voters suggesting they either confirm that their address is current, or if they have moved to a different municipality in Wisconsin, to register to vote at their new address. If a voter fails to return the postcard confirming they still live at the address, they can be removed from the registered voter list, or put in the "inactive" file.³

In October 2017, the Wisconsin Elections Commission (WEC) received from ERIC names of 341,855 registered voters who had potentially moved and no longer resided at the address where they were registered to vote. Of those, only 6,153 responded to the postcard; the remaining 335,702 registrants were removed from the voter rolls. Subsequently, the WEC restored 12,133 registrants to the rolls because of concerns about the data matches; in other words, some of the information supplied by

² As of October, 2021, the participating states are Alabama, Alaska, Arizona, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Iowa, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Missouri, Nevada, New Mexico, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin. The District of Columbia is also a member (31 states plus D.C.). Electronic Registration Information Center, <https://ericstates.org/>.

³ See Huber, 2021, for a more detailed description of this process.

ERIC gave false positives, reporting that voters had moved from the residence where they were registered to vote to a new residence, when, in fact, they had not moved. WEC also created a “movers poll book” for the 2018 elections for those that had been removed from regular voter rolls (Kaul 2021; Huber 2021). A similar process unfolded for the 2020 elections, with WEC mailing letters in October 2019 to 232,579 registered voters that ERIC reported had moved, asking them to confirm if they still resided at their registration address (Legislative Audit Bureau, 2021, 33). Given the problems in the previous election cycle in falsely identifying people who had moved, this letter did not mention removing voters from the rolls. The Wisconsin Institute for Law & Liberty sued, saying that all those who did not respond to the letter should be removed from the rolls within 30 days. The trial court agreed, but the appeals court reversed and that decision was largely upheld by the Wisconsin State Supreme Court in a 5-2 decision (*Zignego v. Wisconsin Elections Commission*, 2021 WI 32; see Kaul, 2021, for a more detailed discussion). Vindicating the appellate courts’ decisions not to affirm the trial court’s ruling, data from WEC demonstrates that 16,698 voters, or about 7.2% of the 230,000, would have been removed from the voter rolls for the 2020 election when they had not, in fact, moved (Kaul 2021, 3).

A 2021 report by the U.S. House Administration Committee’s Subcommittee on Elections investigated these events and found that voter mailers were disproportionately sent to areas in Wisconsin with large Black voting populations. “For example, mailers initiating a Wisconsin voter purge effort were disproportionately sent to counties with disproportionately large Black and Latino populations—over one-third of mailers were sent to areas that are home to the largest Black voting populations, while the Black voting population comprises only 5.7 percent of the total electorate” (U.S. House of Representatives, Subcommittee on Elections Report, 2021, 32-33).

In 2018, the WEC created a separate movers poll book for the 2018 elections, allowing for a

unique opportunity to examine the errors in the movers data. As Greg Huber and coauthors explain, “Registrants listed in the movers poll books who showed up in person to vote at their address of registration would sign their name in these poll books, which certified that they still resided at their registration address and wanted to remain registered at it.” (Huber et al. 2021, 3). They examined 60,145 of the 335,702 people in the movers poll book and found that 1,695 (2.8%) voted at their same address (by definition, these cases reveal errors in the ERIC database which listed these voters as having moved, when in fact they had not). After applying sampling weights, they determined that 9,015 voters in the mover poll book (about 3.5%) voted at their same address (Huber, et al. 2021, 5).⁴

The authors found significant racial disparities in those removed from the voter rolls, even after controlling for alternative explanations (such as living in apartment complexes and in larger households). They found that 2.7% of whites in the movers’ poll books cast a ballot at their same address of registration flagged by ERIC, while 6.5% of minorities did so.⁵ Focusing on those who voted in at least one of the three 2018 elections shows even greater disparities, including that “... more than 21% and 17% of black and Hispanic mover registrants, respectively, who voted using their original registration number did so at the address flagged by ERIC, as opposed to about 10% of white mover registrants” (Huber et al. 2021, 5).

B. Senate Factor 2

⁴ The authors note the 3.5% “only represents a lower bound on the false-mover error rate. First, the number does not include any voters who had their registration reactivated by the WEC before the movers poll books were created, including at least 12,133 removed registrations that the WEC proactively reactivated between January and March. Second, we show in the Robustness section that some registrants flagged as movers by ERIC subsequently cast ballots using a new registration number but at the same address. Last, some registrants in the movers poll book who did not vote may also not have moved, but we cannot observe this because we rely on the act of voting to learn a registrant’s most recent address” (Huber et al., 2021, 5).

⁵ Race was estimated in the following way. “Because the Wisconsin voter file does not include information on a registrant’s race or ethnicity, we imputed this information using a method that combines information on a registrant’s surname and the racial composition of a registrant’s census block group (22). We describe in the Supplementary Materials how we used this method to calculate predicted race and ethnicity scores for each registrant in the movers poll book and a random sample of the Wisconsin voter file” (Huber et al., 2021, 8). See <http://advances.sciencemag.org/cgi/content/full/7/8/eabe4498/DC1>.

As I note above, Professor Loren Collingwood's report demonstrates significant levels of racially polarized voting in Milwaukee County elections, and those conclusions need not be repeated here. I rely on Professor Collingwood's opinions that racially polarized voting is present in the Milwaukee area, and that Senate Factor 2 is therefore satisfied, for the purposes of my analysis and opinions.

C. Senate Factor 3

Senate Factor 3 examines the extent to which the state or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group. There are a number of examples of voting practices in the Milwaukee area that enhance the opportunity for discrimination against Black voters, in addition to those outlined above in the discussion of Senate Factor 1.

The April 2020 primary election is one example of Black voters not having an equal opportunity to participate in elections. Held at the height of the COVID-19 pandemic, the state was short about 7,000 poll workers on March 31 (Marley and Beck, 2020), which led to polling place consolidation around the state. The City of Milwaukee, which has a large Black voting population, was by far impacted most significantly in the state, with only *five* in-person polling sites (compared to 182 sites in November, 2016), or one polling place for every 103,000 registered voters. In contrast, the adjacent, predominantly white counties of Washington, Ozaukee, and Waukesha (WOW counties) each had one polling place for every 7,000 or fewer registered voters (Morris, 2021, 5), a ratio of nearly 15:1. News reports showed voters in the City of Milwaukee—and particularly Black voters—waiting in lines for hours (Curiel and Clark, 2021). Overall, only 16.1% of registered voters in the City of Milwaukee voted in the April 2020 primary, compared to 42.2% in the surrounding WOW counties. Morris and Miller, 2021, 2).

Another sophisticated study of voter turnout in the Wisconsin 2020 April primary employed a regression-discontinuity-in-space design that uses the municipal boundary line to compare turnout for

voters on either side of the boundary. Voters in Milwaukee were matched with two voters in the WOW counties on gender, household income, college education, race or ethnicity, partisan affiliation, and distance to the polls. This study found that poll closures in the April primaries depressed turnout in the City of Milwaukee by 8.6 percentage points (a one-third drop), with a disproportionate effect on Black voters who had a longer distance to travel to their polling places and who were required to learn the location of their new polling place. In the April 2020 election, turnout for Black voters who lived in Milwaukee was 13.2% lower than white voter turnout in the WOW counties. The depressive effects were even larger for voters who lived farther from the few polling places that were open (Morris and Miller, 2021, 10).

Another analysis also examined the April primaries in Wisconsin, explaining patterns of poll closures in the entire state and voter turnout in Dane and Milwaukee counties. Curiel and Clark (2021) use a spatial auto-regressive probit model to predict the probability of poll closures and logit models with random effects by ward for voter turnout. Only 30 of Wisconsin's 72 counties closed any polls and closures were concentrated in urban areas. They found that the percentage of non-white voters and population density are both strong predictors of poll closures. The predicted probability of a poll being closed in an all-white ward was 24% and in an all-Black ward it was more than three times as likely (77%). This statewide pattern was also evident within Milwaukee County. Figure 1 below confirms that more polls were closed in the areas of Milwaukee County with the greatest percentage of non-white voters (Curiel and Clark, 2021, Figure 1). In the voter turnout models, Curiel and Clark found that white voters were more likely to vote by mail, than early in person or on election day. Thus, Black voters bore the brunt of the poll closures. Also, as in the previous study, distance from the new polling place was related to lower turnout which had a racially disparate impact given that Black voters lived greater distances from the consolidate polls (Curiel and Clark, 2021, 11-12).

Figure 1 – Polling Places in Milwaukee County in the 2020 April Primary Elections

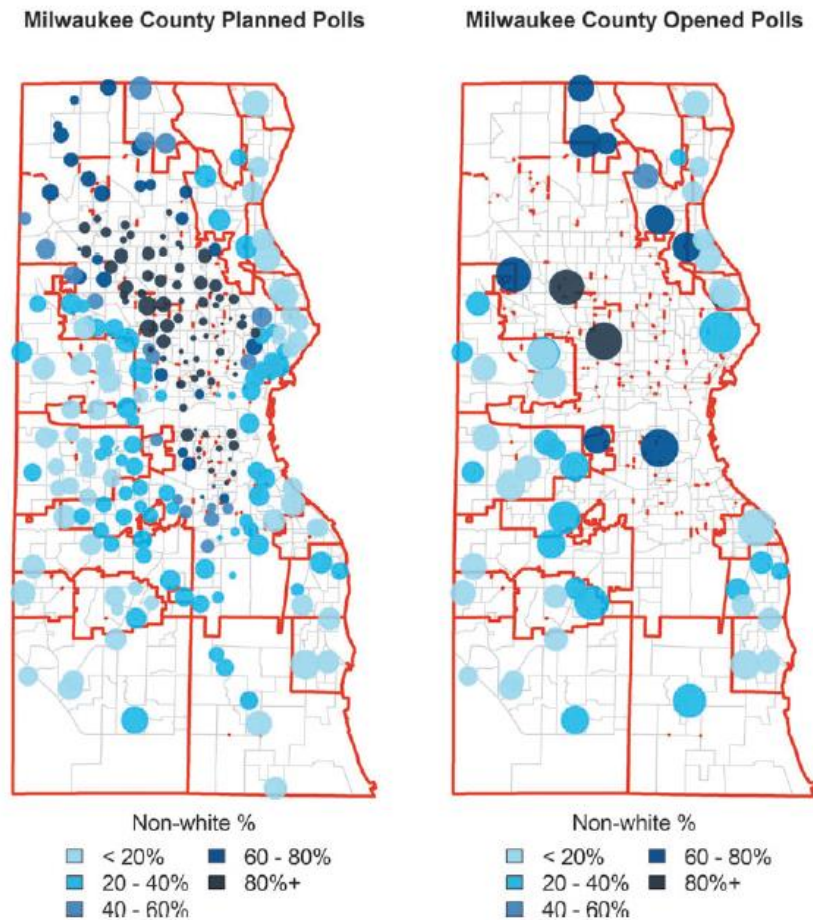


FIG. 1. Poll closures in Milwaukee County by size and race.

Source: Curiel and Clark, 2021.

In addition, in 2011, Wisconsin enacted one of the most restrictive voter ID laws in the nation. According to the National Conference of State Legislatures, only six other states have a photo ID law as strict as Wisconsin's.⁶ Research has demonstrated that racial minorities are more likely to be prevented from voting because of these laws than whites (Hajnal, Lajevardi, and Nielson, 2017). A sophisticated statistical analysis of the impact of the Wisconsin voter ID law in Milwaukee and Dane counties showed that thousands of voters were deterred or prevented from voting by the ID law:

Using flat priors, we estimate a mean of 13,900 nonvoters deterred from voting (to the nearest hundred, 95 percent interval from 9,000 to 19,000) and a mean of 7,900

⁶ National Conference of State Legislatures, <https://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx>.

nonvoters prevented from voting (interval from 4,100 to 11,700). Estimates from informed priors reflect regularization of the affected rate and are thus slightly lower than the estimates from flat priors: 12,300 nonvoters deterred from voting (95 percent interval from 8,100 to 17,000) and a mean of 7,000 nonvoters prevented from voting (interval from 3,700 to 10,500) (DeCrecenzo and Mayer, 2019, 351-52).

The sample sizes of racial subgroups were not large enough to make conclusive statements about racial disparities in the effect of the Wisconsin voter ID law, but the point estimates of racial disparities were in the expected direction with Black residents reporting that they were more likely to be prevented from voting than whites (DeCrecenzo and Mayer, 2019, 352-53).

D. Senate Factor 5

Senate Factor 5 requires an analysis of “the extent to which the minority group bears the effects of discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process.” Senate Report No. 97-417, 97th Cong., 2d Sess. (1982), pages 28-29. Black voters in Milwaukee disproportionately bear the effects of discrimination in housing, criminal justice and incarceration, education, employment, and health, which undermines their ability to participate effectively in the political process. For example, a 2020 Zippia⁷ study ranked Wisconsin as the worst state in the nation for racial disparities, reporting a 48% home ownership gap, a 37% income gap, and a 16.7% education gap between Black and white residents of Wisconsin (Morris, 2020).

Another broad-ranging report in 2019 by several Midwestern universities found that Wisconsin had the fourth-worst disparity in the nation in the rate of infant mortality for Black and white populations, the fourth-worst disparity for child poverty, the worst disparity for 8th grade math scores, the second-worst disparity for out-of-school suspensions, the worst disparity for bachelor’s degrees, the second-worst disparity for incarceration, the worst disparity for unemployment, the worst disparity for employment,⁸

⁷ Zippia is company that provides objective information, based on government data, to help people in their job searches (<https://www.zippia.com/about-us/>).

⁸ Unemployment refers to those who are looking for work who do not have a job, while employment is the total percentage of

the third-worst disparity for income, and the eighth-worst disparity for home ownership (Gordon, 2019; Center on Wisconsin Strategy, 2019).⁹ I will explore these and other findings in my analysis of Senate Factor 5, separated out by topic, below.

i. Housing

The history of racial discrimination in housing in the Milwaukee area dates back at least to the creation of the Federal Housing Administration (FHA) in 1934. In an effort to reduce the number of foreclosures, the FHA worked with the Home Owners' Loan Corporation (HOLC) to refinance mortgages for homeowners struggling to keep up. To aid in this process, the HOLC created "residential security" maps that identified specific neighborhoods as high or low risk for investment, color-coded blue ("best"), green ("still desirable"), yellow ("definitely declining"), and red ("hazardous"). These maps were used by banks and lending institutions to decide whether to provide mortgages to homebuyers. This system made it almost impossible to get mortgages in the "red" neighborhoods, and thus is referred to as "redlining" (Foltman and Jones, 2019).

The color-coding of neighborhoods in the Milwaukee area in the 1930s was explicitly linked to race by embracing neighborhoods that kept out racial minorities through restrictive racial covenants and deeming minority areas as hazardous. For example, the neighborhood just north of downtown Milwaukee was coded red with the following description, "This is the Negro and slum area of Milwaukee. It is old and very ragged. Besides the colored people, a large number of lower type Jews are moving into the section" (Foltman and Jones, 2019). On the other hand, the Washington Highlands subdivision in Wauwatosa was coded blue, while favorably noting it was a "highly restricted and exclusive area . . . which permits a wide latitude of discrimination in accepting residents into the

people who are employed (also referred to as the labor force participation rate).

⁹ In fact, one recent study found that the Black infant mortality rate in Milwaukee is worse than the mortality rates in Libya, Argentina, and the Ukraine (Stephenson, 2014).

neighborhood" (Foltman and Jones, 2019). Indeed, Washington Highlands was the first Milwaukee suburb to make a restrictive racial covenant in 1919. The covenant stated:

At no time shall the land included in Washington Highlands or any part thereof, or any building thereon be purchased, owned, leased or occupied by any person other than of white race. This prohibition is not intended to include domestic servants while employed by the owner or occupied by and (sic) land included in the tract (Quinn, 1979).

By the 1940s, at least 16 of the 18 Milwaukee County suburbs were using racially restrictive covenants to exclude Black families from residential areas (Quinn, 1979). These restrictive covenants were made illegal by the 1968 Fair Housing Act, but their effect is still evident today in segregated housing patterns in Milwaukee, which remains the most racially segregated metropolitan area in the nation at 79.8% (see Figure 2; Frey 2018).¹⁰ The impact of redlining is also reflected in homeownership statistics that reveal that Milwaukee has the seventh-lowest rate of Black homeownership in the nation at 26.7%, compared to 70.1% for whites in the Milwaukee metro area (Suh 2020). The national figures for home ownership are 73.3% for whites and 42.1% for Blacks.¹¹

¹⁰ Segregation is typically measured using a Black-white dissimilarity index; 100 indicates complete segregation while 0 is complete integration. Full integration means every neighborhood had the same racial breakdown as the metro area as a whole, not a 50-50 mix. For example, if a city is 40% White, 40% Black, and 20% Latino, then complete integration means each neighborhood would have a 40/40/20 racial composition.

¹¹ U.S. Census, 2020, <https://www.census.gov/housing/hvs/data/index.html>

Figure 2 – Metro areas with the highest Black-white segregation.

Metro areas with highest black-white segregation			
2000 and 2013-2017*			
2000		2013-2017	
	Segregation Index**		Segregation Index**
1	Detroit 85.7	1	Milwaukee 79.8
2	Milwaukee 83.3	2	New York 76.1
3	Chicago 81.2	3	Chicago 75.3
4	New York 79.7	4	Detroit 73.7
5	Cleveland 78.2	5	Cleveland 72.9
6	Buffalo 78.0	6	Buffalo 72.2
7	St. Louis 74.0	7	St. Louis 71.7
8	Cincinnati 73.6	8	Cincinnati 67.3
9	Indianapolis 71.7	9	Philadelphia 67.0
10	Philadelphia 71.0	10	Los Angeles 66.8
11	Kansas City 70.8	11	Pittsburgh 66.1
12	Los Angeles 70.0	12	Hartford 65.7

* Among 51 metro areas with populations exceeding one million and with black populations exceeding 3 percent of metro population (metro area names are abbreviated).

** Segregation Index is a dissimilarity index, which represents the percent of blacks that would need to relocate to be fully integrated with whites across metropolitan neighborhoods. A value of 100 indicates complete segregation; a value of 0 equals complete integration (See values for all metro areas and further details in Table A).

Source: William H Frey analysis of 2000 Census, and 2013-2017 multiyear American Community Survey (released December 6, 2018)

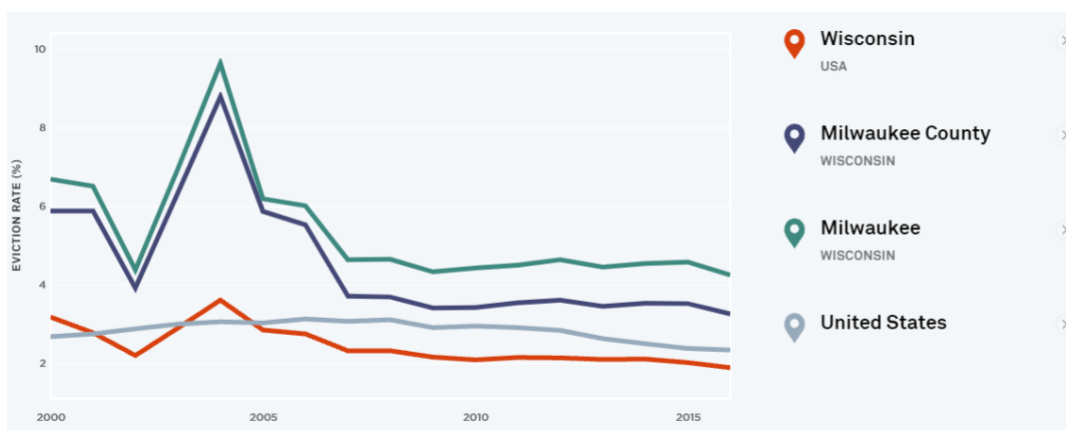
B Metropolitan Policy Program
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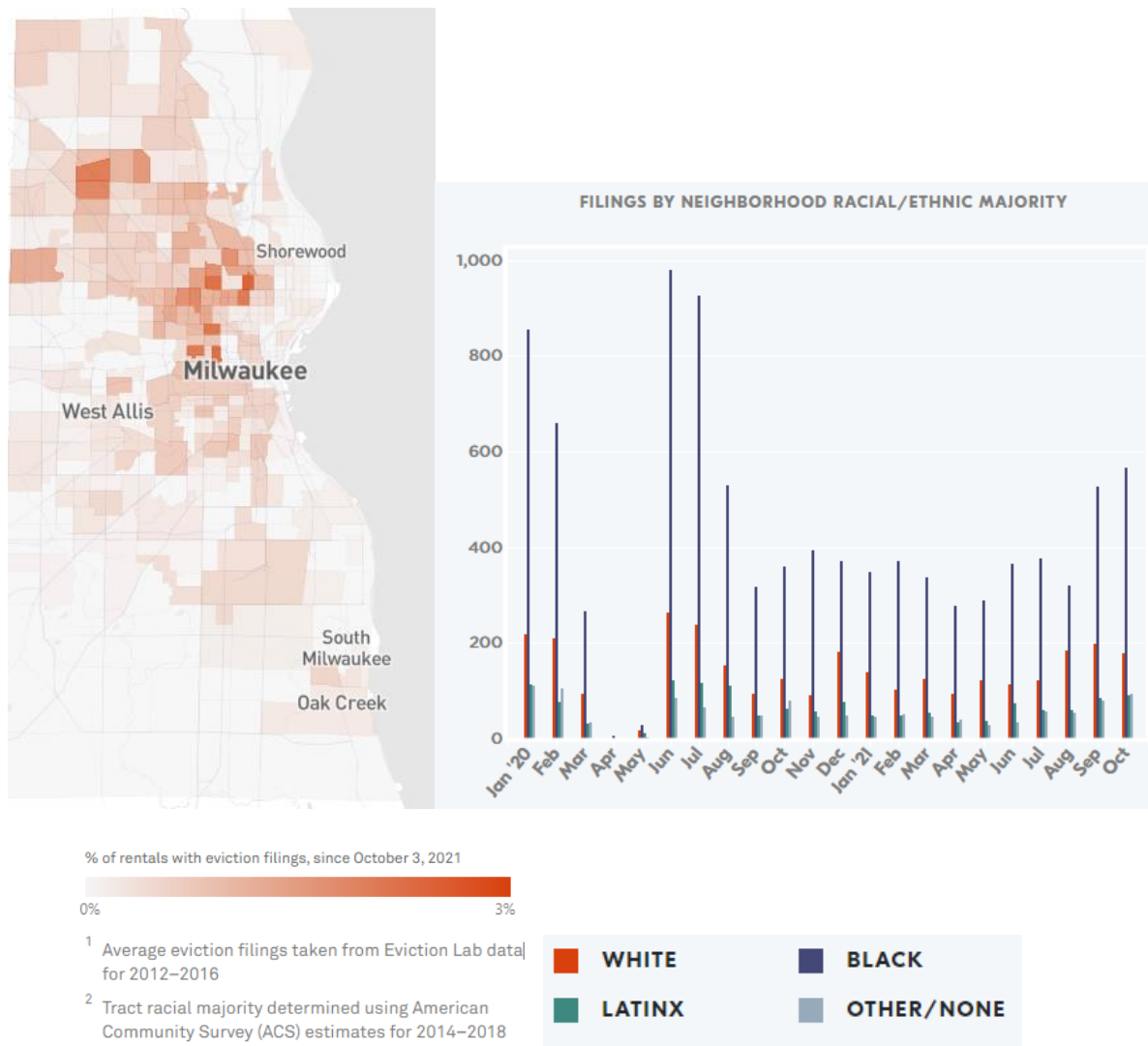
Against this backdrop, the United States Department of Housing and Urban Development (HUD) in 2015 entered into a settlement agreement with Associated Bank regarding a disparate treatment redlining case, which applies to majority-minority census tracts in Milwaukee, Wisconsin. HUD accused Associated Bank of disproportionately denying loans to Black applicants from 2008–2010 (United States Department of Housing and Urban Development, 2015). The agreement was the largest HUD-initiated redlining settlement in history (Gores, 2015).

Levels of eviction from housing also reveal large racial disparities. Between 2000 and 2016, the city of Milwaukee had between 5,687 and 6,102 court-ordered evictions per year, averaging just under

6,000 evictions a year (this understates the number of actual evictions because there are many others that are “informal”). Milwaukee County (not including the city) had an additional 600-700 evictions a year (Wisconsin Policy Forum, 2018, p.5). The eviction rate in the city of Milwaukee was between 4% and 5% from 2006-2016 after peaking at more than twice that rate in 2004. Eviction filings fell in the early months of the COVID-19 pandemic, given moratoriums against evictions, but now are climbing back to average levels. Evictions are concentrated in north Milwaukee, in predominantly Black neighborhoods (see the map in Figure 3). As shown in Figure 3 below, Black residents had about three times as many eviction filings from January 2020–October 2021 as whites, despite the fact that whites comprise 36.1% of Milwaukee’s population while Blacks are 38.6%.

Figure 3 – Eviction Rates in Milwaukee





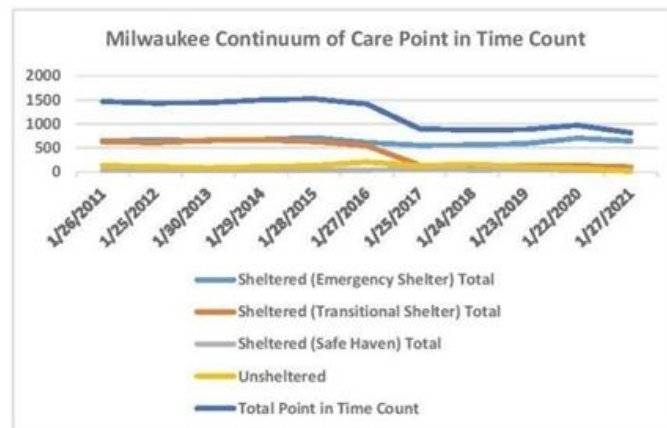
Source: The Eviction Lab, Princeton University, <https://evictionlab.org/eviction-tracking/milwaukee-wi/>, based on the U.S. Census American Community Survey. The map shows the number of eviction filings from October 3–31, 2021, divided by the number of renter households in the area. The bar chart shows the number of eviction filings from January 2020–October 2021 in Milwaukee county, by race.

Evictions are related to homelessness. As the eviction rate fell during the COVID-19 pandemic, the homelessness rate in Milwaukee also fell, but there were still 817 homeless people in Milwaukee at the “point in time count” in January, 2021 (Barrett, 2021) of which, 58% were Black (475 of 817), despite making up just 38.7% of the city’s total population (Baker, 2021). Furthermore, the annual snapshot of homelessness likely undercounts the actual number of homeless persons by some unknown, but large, margin. For example, in 2017, the government said the total homeless population in the U.S.

was 550,996. But that same year, school districts across the country reported 1.35 million homeless students, according to the National Center for Education Statistics (which would not include parents or other adults in the homeless family) (Editorial Board, 2021).

Figure 4 – Homelessness in Milwaukee

Date of Count	Sheltered (Emergency Shelter) Total	Sheltered (Transitional Shelter) Total	Sheltered (Safe Haven) Total	Unsheltered	Total Point in Time Count
1/26/2011	655	635	41	135	1466
1/25/2012	667	610	41	114	1432
1/30/2013	651	661	41	89	1442
1/29/2014	677	668	38	115	1499
1/28/2015	717	632	40	132	1521
1/27/2016	616	549	43	207	1415
1/25/2017	557	145	63	135	900
1/24/2018	565	99	46	161	871
1/23/2019	589	135	47	114	885
1/22/2020	704	134	45	87	970
1/27/2021	647	107	46	17	817



Point In Time Summary for WI-501 - Milwaukee City & County CoC

	Sheltered			Unsheltered	Total
	Emergency	Transitional	Safe Haven		
White	234	48	11	9	302
Black or African-American	382	58	31	4	475
Asian	4	0	1	1	6
American Indian or Alaska Native	5	1	1	1	8
Native Hawaiian or Other Pacific Islander	4	0	0	0	4
Multiple Races	18	0	2	2	22

Source: <https://city.milwaukee.gov/mayorbarrett/News/2021-News/Milwaukee-Continuum-of-Cares-Point-in-Time-Count-Sees-Record-Low>; https://drive.google.com/file/d/1VXMhk_W2egBAIYQVEJr447sVVdr2Mzyt/view, p.8.

There is a clear connection between segregation, homelessness, evictions, home ownership, and political participation. Studies show that a few as 10% of homeless people vote, compared to more than 60% of the voting age population in recent presidential elections (Vertenten, 2020). In addition, the voter ID law in Wisconsin makes no exceptions for homeless people. According to the Wisconsin Government Accountability Board (which was the election agency's name at the time the voter ID law went into effect), "There is no exception for homeless voters in the statute – they must also provide photo ID" (WEC, 2020). Homeless people may provide the address of a shelter or any physical location that could be identified on a map (such as a park) for their voting address, but they would have to provide "an affidavit on public or private social service agency letterhead identifying a homeless voter and describing the individual's residence for voting purposes" to establish that residence (WEC, 2020).

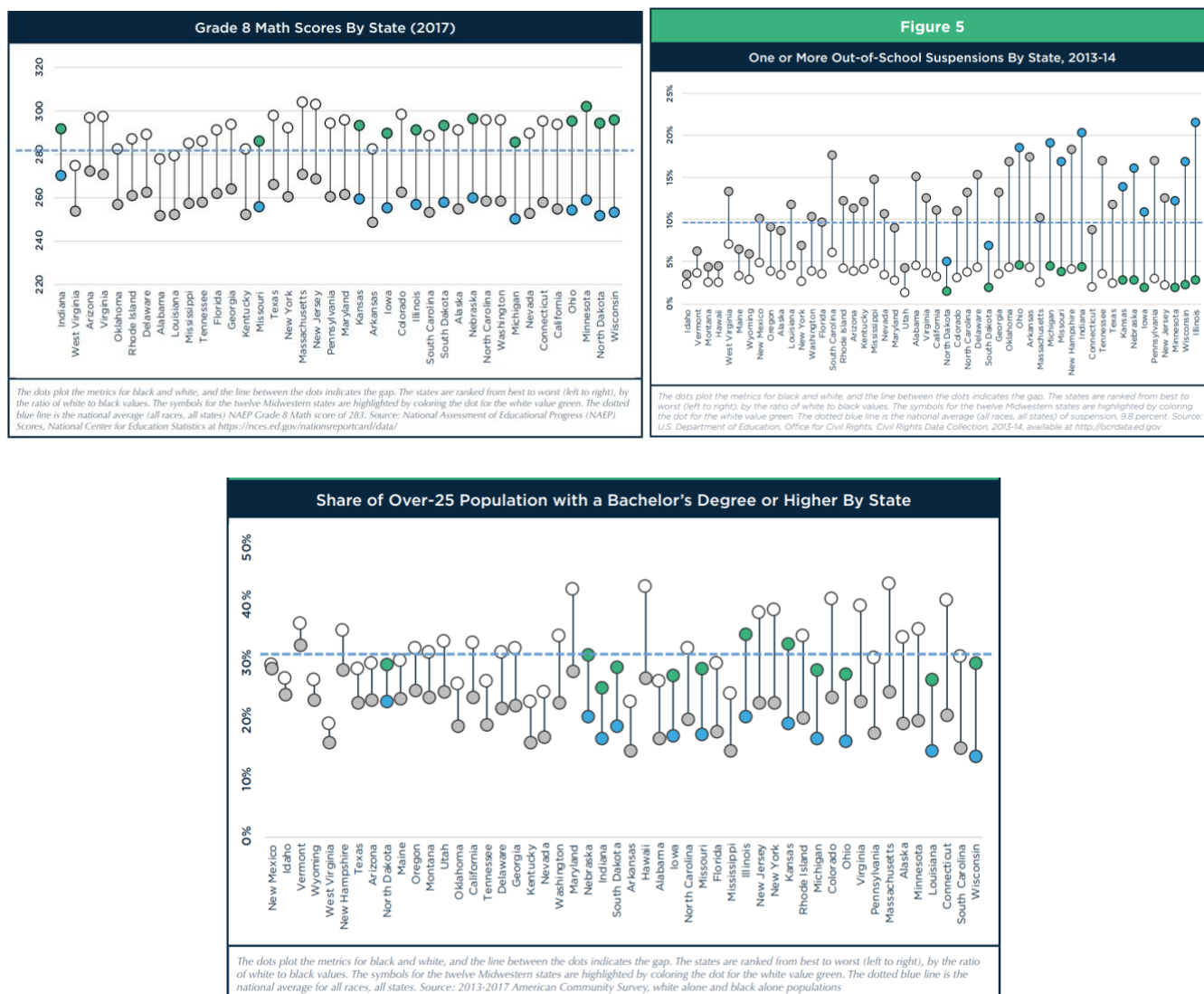
ii. Education

Racial disparities in education in Wisconsin are also among the highest in the nation. Data from the National Center for Education Statistics for the 2018-19 school year show that Wisconsin had a 22.4% gap between high school graduation rates for Black students (71.4%) and white students (93.8%)—the largest gap of any state in the nation, and second only to the District of Columbia. The national gap was only 9.8% and Wisconsin was the only state in the nation with a gap bigger than 20% (Minnesota was second worst at 18.8%).¹² A 2020 study by the financial firm WalletHub ranked Wisconsin last in the nation for educational equality, citing the graduation rate gap (50th in the nation), the gap in the percentage of adults with at least a high school degree (47th), the standardized test score gap (46th), the college entrance exam ACT score gap (48th), and the college degree gap between white and minority populations (47th) (McCann, 2020). The "Race in the Heartland" study cited above placed

¹²National Center for Education Statistics, https://nces.ed.gov/ccd/tables/ACGR_RE_and_characteristics_2018-19.asp.

Wisconsin at the bottom or close to the bottom on nearly every measure of the racial gap between white and Black students: last in 8th-grade math scores, next to last in out-of-school suspensions, and last in adults with a B.A. degree or higher (Gordon, 2019).

Figure 5 – Racial Disparities in Education

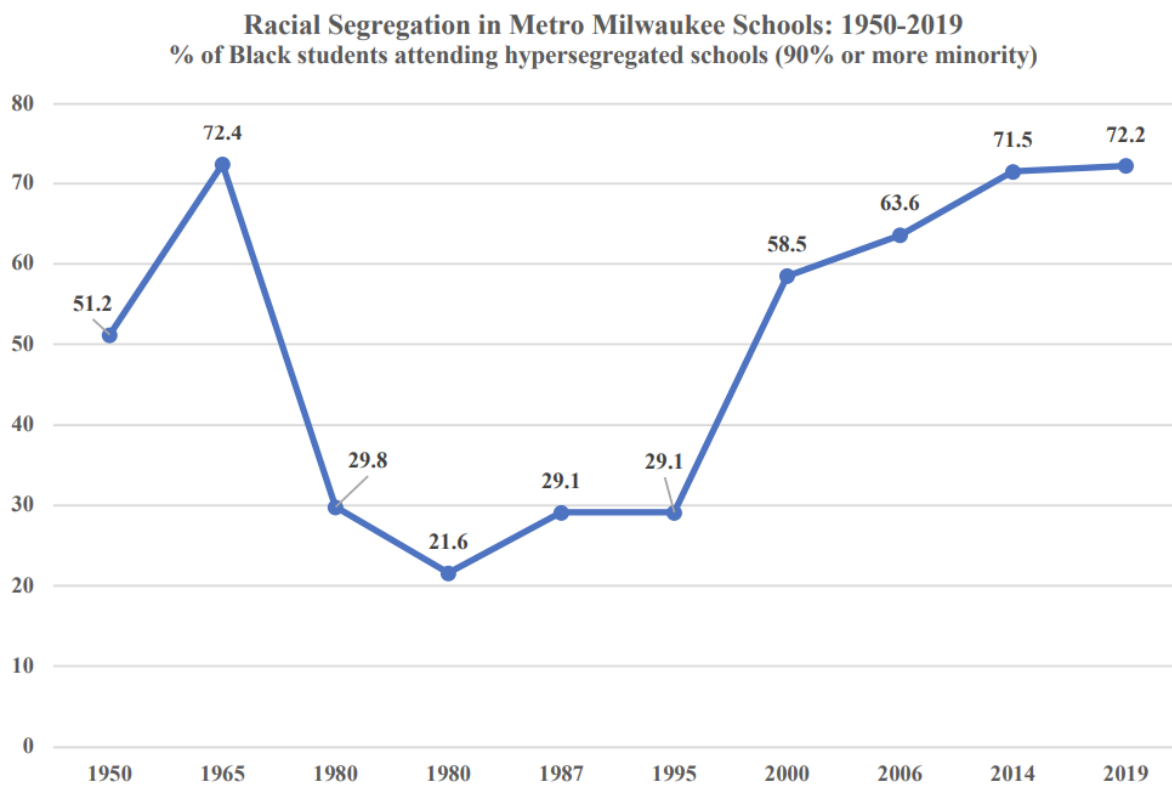


Source: “Race in the Heartland,” Fig. 4-6, pp. 6-7, <https://files.epi.org/uploads/Race-in-the-Midwest-FINAL-Interactive-1.pdf>

In addition, according to a 2015 study, “[A]bout 70% of Milwaukee’s black children attend hypersegregated schools (where students of color make up 90% or more of the enrollment), compared to 56% of African American students in Birmingham, Alabama.” (Sanchez, 2015). A more recent study

found that percentage increased to 72.2% in 2019, the highest rate in the country, and significantly higher than the percentage 30-40 years ago and nearly identical to the 72.4% in 1965 (Levine, 2020, 71-76, see Figure 6). The study also shows that more than a third of Milwaukee’s Black school children attend “apartheid” schools--those that are at least 99% minority--which is three times the level of 30 years ago (Levine, 2020, 73).

Figure 6 – Racial Segregation in Milwaukee Area Schools



Source: Levine, 2020, p. 74, https://dc.uwm.edu/cgi/viewcontent.cgi?article=1055&context=ced_pubs

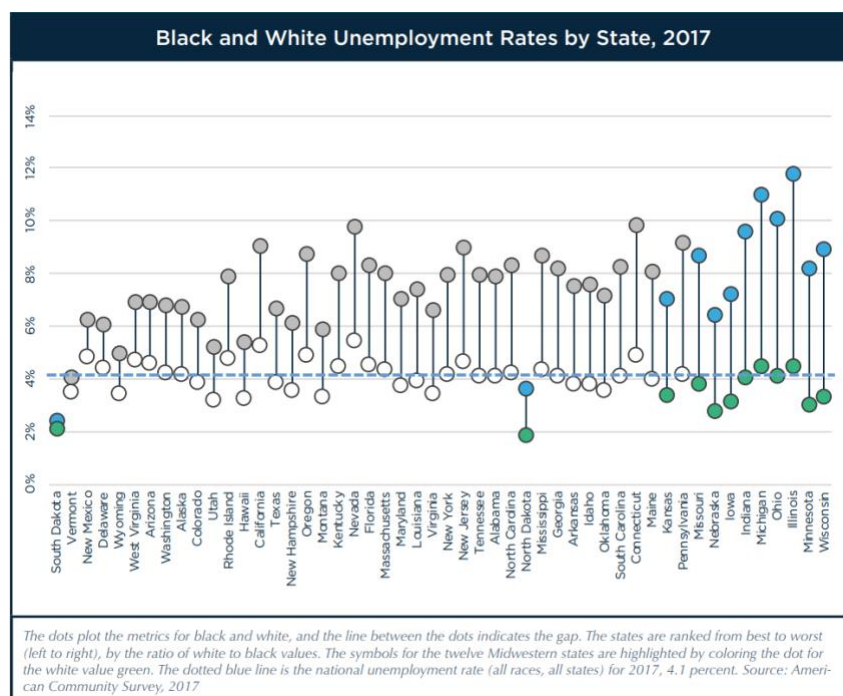
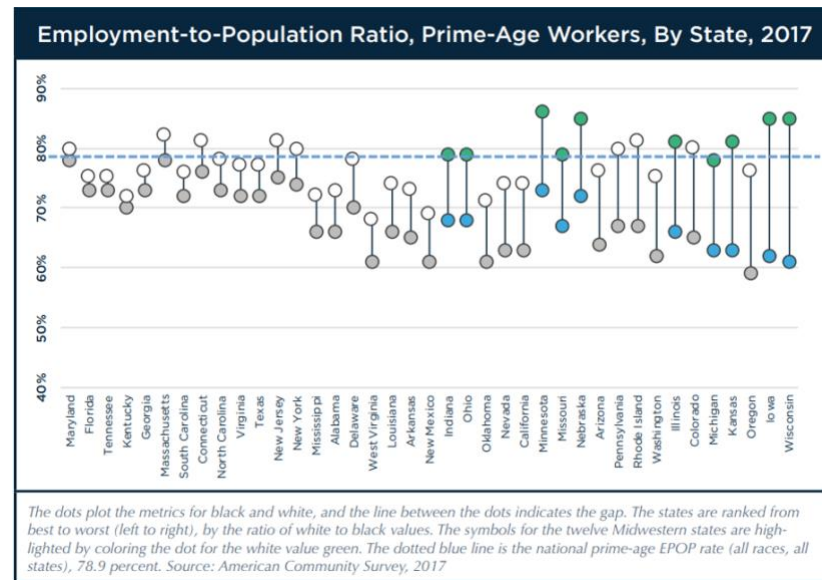
iii. Employment

Data from the U.S. Bureau of Labor Statistics demonstrate that the unemployment rate in 2020 among Black residents of Wisconsin was almost three times that of white residents (16.2% compared to 5.7%).¹³ Data from the U.S. Census’s American Community Survey show that Wisconsin is last in the

¹³ U.S. Bureau of Labor Statistics, <https://www.bls.gov/lau/ex14tables.htm>.

racial gap between white and Black residents in the employment-to-population ratio of prime-age workers (25-54) and last in the racial gap in unemployment rate (Gordon, 2019).

Figure 7 – Racial Gaps in Employment



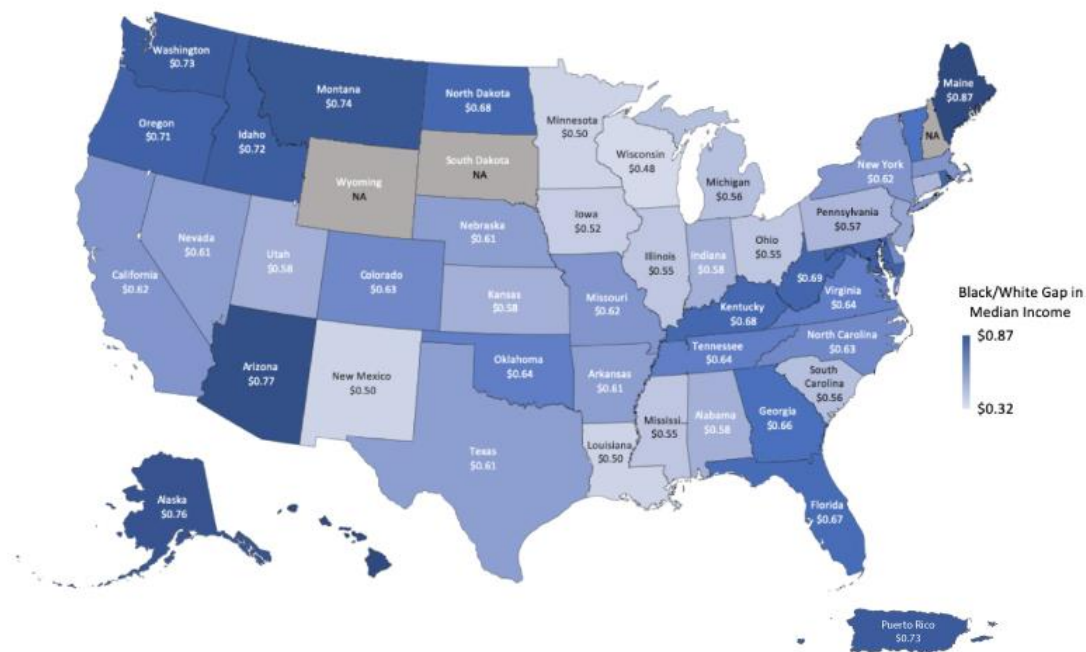
Source: “Race in the Heartland,” Figures 8 and 10, pp. 8-9, <https://files.epi.org/uploads/Race-in-the-Midwest-FINAL-Interactive-1.pdf>

In addition, a study by the St. Louis Federal Reserve in 2020 showed that Wisconsin had the largest gap in the nation in median household income, with Black residents earning 48 cents for every

dollar earned by white residents (the national gap is 61 cents per dollar). Similarly, Wisconsin has the highest disparity in the nation in the poverty rate between white and Black residents, with a gap of 23% while the national rate was 13% (see Figures 8 and 9). Using different government data, the “Race in the Heartland” study ranked Wisconsin third from the bottom in median income disparity and second from the bottom in the racial disparity in poverty rates (Gordon, 2019, pp.10-11).

Figure 8 – Racial Disparities in Income

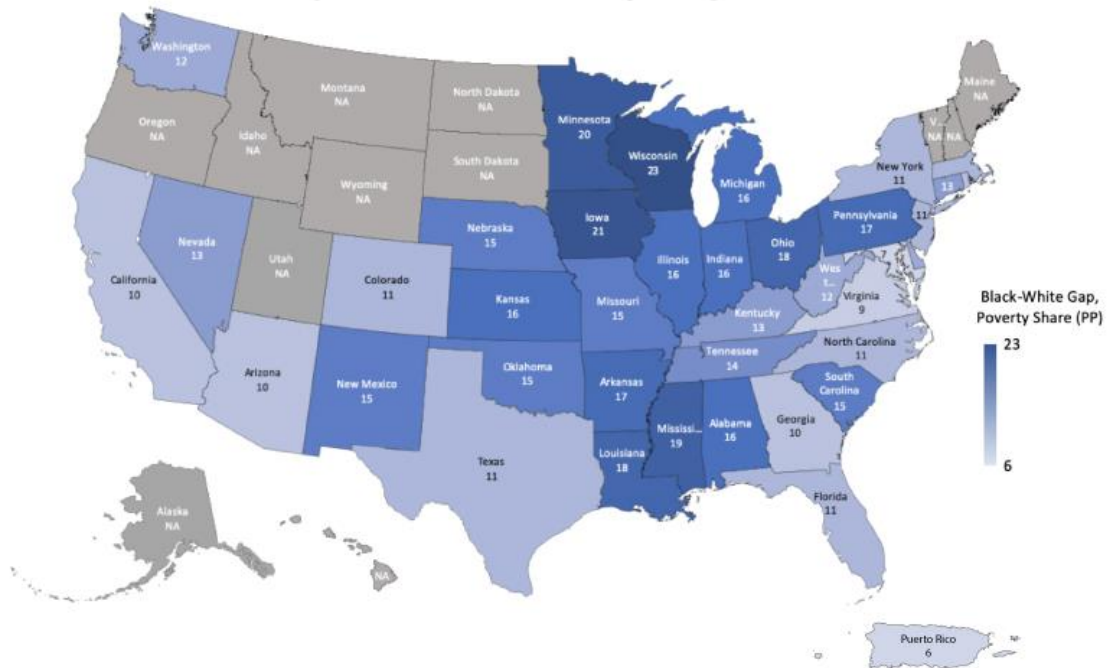
Black Household Median Income Per \$1 of White Household Income



Note: Lighter shading indicates a larger gap, or more inequality. States/areas too geographically small to show an estimate are as follows: Hawaii, \$0.87; Vermont, \$0.65; Massachusetts, \$0.62; Connecticut, \$0.57; Rhode Island, \$0.69; New Jersey, \$0.59; Delaware, \$0.63; Maryland, \$0.71; and District of Columbia, \$0.32. State estimates with a margin of error larger than 30% are not provided: New Hampshire, South Dakota and Wyoming. Source: Kent (2020), <https://www.stlouisfed.org/publications/bridges/volume-3-2020/examining-us-economic-racial-inequality-by-state>

Figure 9 – Racial Disparities in Poverty

Racial Poverty Gap in Percentage Points (Black Minus White Poverty Share)



Note: Heavier shading indicates greater inequality. States/areas too geographically small to show an estimate are as follows: Massachusetts, 11 percentage points; Rhode Island, 10; Delaware, 12; and District of Columbia, 19. State estimates with a margin of error larger than 30% are not provided: Alaska, Hawaii, Idaho, Maine, Montana, New Hampshire, North Dakota, Oregon, South Dakota, Utah, Vermont and Wyoming. Source: Kent (2020), <https://www.stlouisfed.org/publications/bridges/volume-3-2020/examining-us-economic-racial-inequality-by-state>

iv. Incarceration

Wisconsin has the highest rate in the nation of incarceration among its Black residents, with 2,742 per 100,000 Black residents in prison, which is more than double the national average of 1,240 per 100,000 Black residents. This translates to 1 in every 36.5 Black residents in Wisconsin being in prison, compared to 1 in every 80.6 in the U.S (Nellis, 2021, pp. 7). The ratio of Black incarceration to white incarceration is the second highest in the nation at 11.9 times (see Table 1) (Nellis, 2021, p. 10). Another large racial disparity is that 42% of Wisconsin's prison population is Black, while only 6% of its population is Black. This 36% difference is the fifth largest in the nation (Nellis, 2021, p.20).

Table 1 - States with the Highest Black/White Differential in Imprisonment Rates

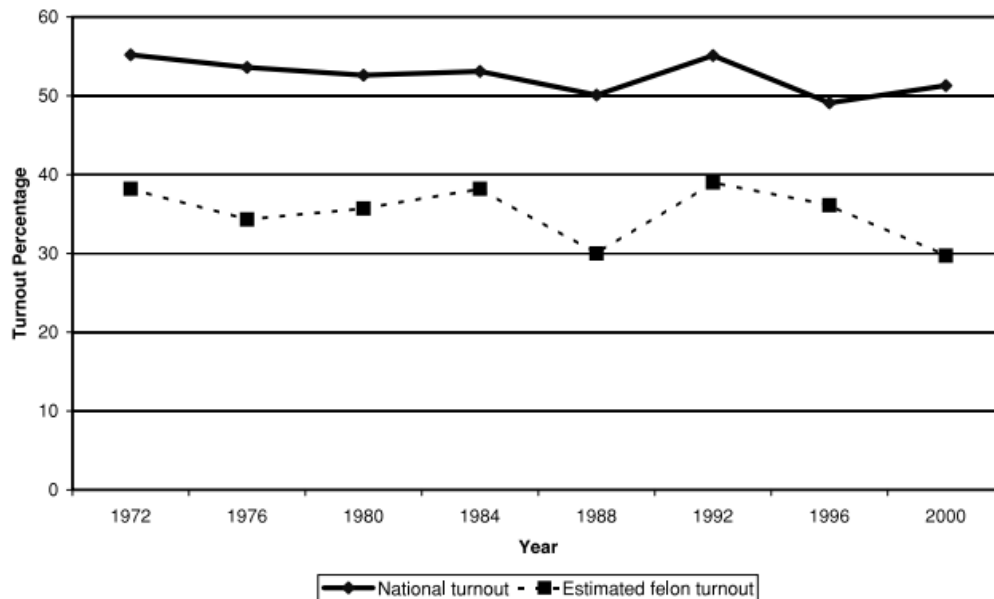
State	Black Imprisonment Rate	White Imprisonment Rate	B/W
New Jersey	1009	81	12.5
Wisconsin	2742	230	11.9
Minnesota	1023	105	9.7
Connecticut	1512	156	9.7
Maine	1331	143	9.3
California	1623	175	9.3
Iowa	2084	225	9.3
Nebraska	1733	195	8.9
Utah	1383	167	8.3
New York	754	96	7.9
State Average	1240	261	4.8

Source: Nellis, 2021, p.10.

The impact of incarceration on the ability to participate in the political process is direct and indisputable. In addition to the 10,165 Black residents in prison and 427 in jail in Wisconsin in 2020, individuals who are on probation or parole also are not allowed to vote in Wisconsin. In 2020, there were 7,330 Black Wisconsin residents on parole and 4,450 on felony probation, yielding a total of 22,371 Black Wisconsin residents who were disenfranchised because of a felony conviction, which is 9% of the state's Black voting age population (Uggen, et. Al, 2020, p.17). Further, the effects of a felony conviction on political participation go beyond the direct effects. Even after former felons are out of prison and "off papers," they continue to vote at a much lower rate than the general public. One study of voting from 1972-2000 showed that the level of turnout among ex-felons in presidential elections remained about 15-20% lower (Manza and Uggen, 2004, 496).

Figure 10 – Voting turnout among disenfranchised felons

Overall turnout rates and estimated turnout among disenfranchised felons, presidential elections 1972–2000



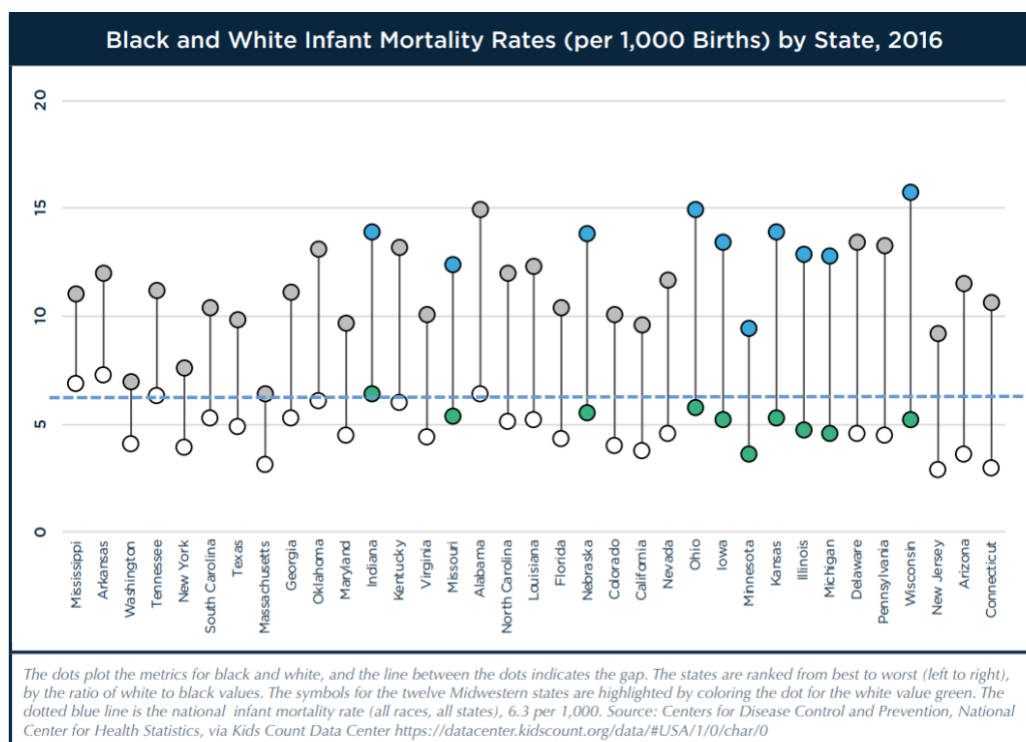
Source: Manza and Uggen, 2004, p. 496.

v. Health

Wisconsin has severe health disparities between Black and white residents. For example, Ozaukee County, which is predominantly white and has the second-highest median income in the state, ranked first for overall health of its residents in data from County Health Rankings & Roadmaps, a program of the University of Wisconsin Population Health Institute (data were accessed in November 2021 and are from various government sources ranging from 2017-2020). Milwaukee County, which has the vast majority of Wisconsin's Black population and also the highest rate of poverty in the state, ranked 70th among Wisconsin's 72 counties for the overall health of its residents. One measure showed that someone living in Milwaukee County was almost twice as likely to die before age 75 than someone living in Ozaukee County. Overall life expectancy for a Black person was 71.7 years in Milwaukee County, compared to 82.1 years for a white person in Ozaukee County. Milwaukee ranked 68th (of the 72 counties) in life expectancy and 72nd in quality of life. The study also ranked factors that could

explain these outcomes, demonstrating the interdependence between the various socioeconomic factors. Milwaukee ranked 71st in social and economic factors (education, employment, income, family and social support, and community safety), 71st in physical environment (air and water quality and housing and transit), 55th in health behaviors (tobacco use, diet and exercise, alcohol and drug use, and sexual activity) and 58th in clinical care (access to care and quality of care) (County Health Rankings & Roadmaps, 2021). The “Race in the Heartland” study cited above also found that Wisconsin ranked fourth from the bottom in the nation in racial disparities in infant mortality rates, which was driven by the highest Black infant mortality rate in the nation (the white infant mortality rate in Wisconsin was just below the national median; Gordon, 2019).

Figure 11 – Infant mortality rates



Source: “Race in the Heartland,” Figure 15, p. 14, <https://files.epi.org/uploads/Race-in-the-Midwest-FINAL-Interactive-1.pdf>

Finally, an important area concerning health is the racial disparate impact of the COVID-19 pandemic. A study published in the online *Journal of the American Medical Association* concluded that

“Milwaukee County (Wisconsin) is an area that has demonstrated racial disparities in COVID-19. By April 6, 2020, 601 of 1,304 cumulative confirmed cases (46.1%) in Milwaukee County had occurred among African American residents, who represent 27.2% of the county’s population. By the same date, 33 of 45 deaths (73.3%) due to COVID-19 had occurred in African American residents” (Muñoz-Price, et al., 2020). After controlling for many variables in a multivariate analysis, race still was a significant predictor of COVID cases and deaths. Updated raw data show that racial disparities persist. The Wisconsin Department of Health Services reports, “Communities of color have experienced higher rates of COVID-19 cases, hospitalizations, and deaths since the pandemic began. Compared to White Wisconsin residents, Hispanic or Latinx residents have 1.5 times greater case rates [Black case rates are 16% higher than White rates], Black residents have 2.0 times greater hospitalization rates, and American Indian residents have 1.4 times greater death rates [Black death rates are 5% higher than White rates]” (Wisconsin Department of Health Services, 2021).

The collective impact of these disparities is reflected at the ballot box. The 2019 Center on Wisconsin Strategy study showed that while 74% of eligible white Wisconsin voters participated in the 2016 election, just 47% of Black voters did—the third largest gap in the country, behind only North and South Dakota (Gordon, 2019, 16). According to data from the U.S. Census’s Current Population Survey, this gap persisted in 2018 and was even larger in 2020. In 2018, Black voter turnout was 46% and white turnout was 66.9%, for a disparity of 20.9%, which was the third-highest in the nation (the U.S. averages for 2018 were 51.1%, 57.5%, and 6.4%, respectively). In 2020, Black voter turnout in Wisconsin was even lower than 2018, which is almost unheard of when comparing a presidential election to a midterm election, at 43.5%, while white turnout climbed to 77.2%, producing a 33.7% gap, which was the second highest in the nation. The U.S. averages for 2020 were Black turnout of 62.6% and white turnout of

70.9% for a gap of 8.35.¹⁴ In addition, in 2020 Black voter turnout in Wisconsin was *19.1% lower* than Black turnout nationwide (see Table 3, Appendix). Given that nearly two-thirds of Black Wisconsin residents live in Milwaukee County (65.3%), this drop in Black voter turnout primarily occurred in Milwaukee (see Tables 2 and 3 in the Appendix).

E. Senate Factor 6

Senate Factor 6 examines the “the use of overt or subtle racial appeals in political campaigns.” Both overt and subtle appeals are frequently used in statewide campaigns in Wisconsin and in campaigns in the Milwaukee area. For example, former State Supreme Court Justice Michael Gableman ran an ad with strong racial appeals (Novak, 2008). The ad in question was run against Louis Butler in 2008 in Gableman’s campaign to unseat the incumbent Supreme Court Justice. Butler joined the state’s highest court in 2004 as its first Black justice after serving as a judge on the Milwaukee Municipal Court and the Milwaukee County Circuit Court. Gableman was trailing in the campaign, but then ran an ad that implied that Butler exploited a loophole to overturn the conviction of a Milwaukee man who went on to commit another crime. The campaign ad is described in detail:

The ad, by Gableman’s own campaign, showed the mug shot of a convicted rapist next to a photo of Butler. Both are African-American, and the effect was reminiscent of the Willie Horton ad run against Michael Dukakis in the 1988 presidential campaign. The false implication was that Butler was to blame for getting the rapist out of prison and allowing him to rape another victim. In fact, Butler was acting as a public defender and was not a judge at the time, though the ad pictured him in a judge’s robes. Furthermore, he failed to win his client’s release. Instead, Butler prevailed in an initial appeal of the man’s conviction but lost when the case went to the state’s highest court. The man remained locked up. He committed his next assault only after he’d served his sentence. Now, he’s behind bars again (Novak, 2008).

Butler was the target of 4,388 attack ads (with several other misleading ads), while Gableman was the target of 2,885 attack ads. Butler’s loss by a margin of 51-49% was the first time in more than forty

¹⁴ The CPS from 2018 is at <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-583.html>, Table 4b and from 2020 at <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-585.html>, Table 4b.

years that an incumbent Supreme Court justice had been defeated for reelection in Wisconsin (Novak, 2008).

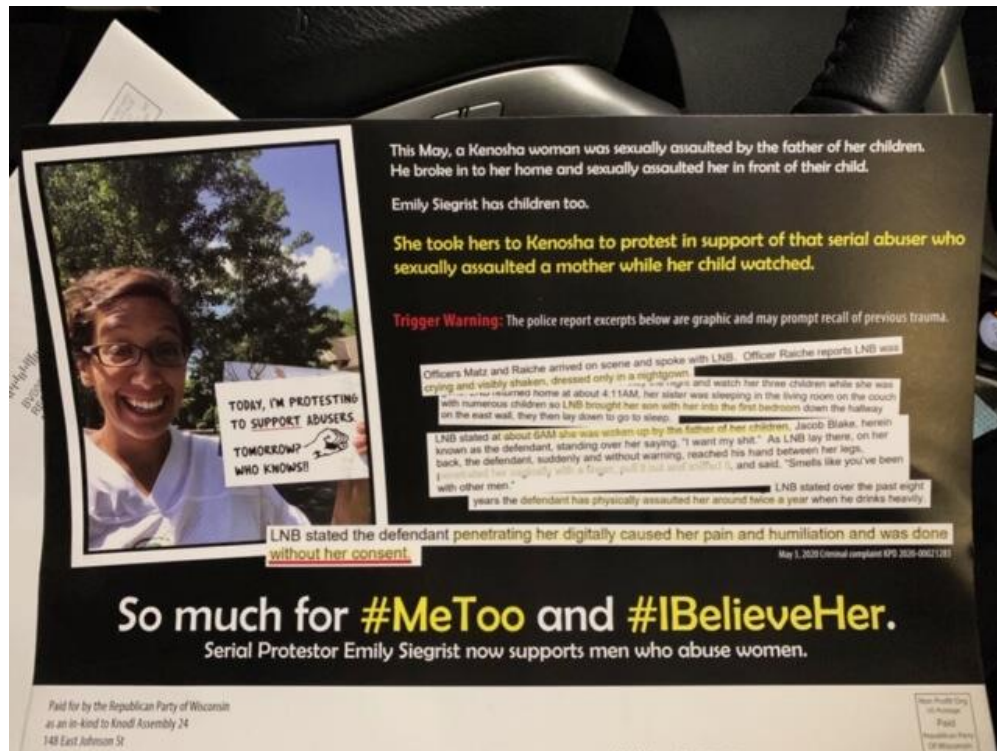
In the 2012 election for U.S. State Representative for the 4th congressional district in Wisconsin, Dan Sebring, a white male candidate, ran a radio ad against Gwen Moore, the Black female incumbent, and the eventual winner of the congressional seat.¹⁵ The ad contained many sound bites from Moore at a rally taken out of context and intended to make her sound loud and unsophisticated. After playing these clips of Moore, Sebring says “Many people in Glendale, Shorewood, Whitefish Bay, Fox Point, Bayside, and Brown Deer remain unaware that as a result of redistricting, they’re now represented by Gwen Moore.”¹⁶ The areas listed by Sebring are predominantly white, and the ad was designed to motivate white voter turnout.

A more recent example is from the 2020 campaign for Assembly District 24 in which the Republican Party of Wisconsin sent voters a mailer attacking Democratic candidate Emily Siegrist, a Latina woman, for attending a Black Lives Matter protest over the police shooting of Jacob Blake in Kenosha. The mailer attacked Siegrist for taking her children to the protest, and described in detail an alleged assault committed by Blake. The mailer showed a doctored photo of Siegrist holding up a sign saying “Today I’m protesting to support abusers. Tomorrow? Who knows!!” It concluded by saying “Serial Protestor Emily Siegrist now supports men who abuse women” (Conklin, 2020). Siegrist was also “doxxed” (having personal contact information revealed) by a Wisconsin Manufacturing and Commerce (WMC) ad. The ad, which criticized Siegrist’s position on health care and taxes, showed her phone number, something is that typically not done in attack ads. Siegrist lost the extremely close race to the Republican incumbent, Dan Knodl, by a 51.5% to 48.5% margin. Siegrist won 68.2% of the vote

¹⁵ An audio file of the ad can be heard here: <https://chirb.it/psadpq>

¹⁶ *Id.*

in Milwaukee County (9,150 to 4,263), while Knodl won 61.8% of the vote in the WOW counties (15,812 to 9,774).¹⁷



As a battleground state in the 2020 presidential election, Wisconsin was the target of heavy political advertising. Donald Trump aired an ad in Wisconsin entitled “Protecting Wisconsin Families” that accused Joe Biden of “taking a knee”—a reference to peaceful protests of racial injustice started by football player Colin Kaepernick—in response to protests over the police shooting of Jacob Blake in Kenosha. It is unclear where the picture of Biden kneeling came from, but it wasn’t in support of Blake. The ad also falsely accused Biden of calling to defund the police. While showing the image of a blond, white girl in a pink bandana, the narrator says that Trump will protect Wisconsin’s families, not criminals and “jobs, not mobs.” The ad made national news, with a *Los Angeles Times* headline saying, “New Trump ads stoke racial bias among white people in Minnesota and Wisconsin” (Finnegan 2020).¹⁸

¹⁷ 2020 Wisconsin State Assembly District 24 Election Results, <https://www.jsonline.com/elections/results/race/2020-11-03-state-house-WI-50243/>.

¹⁸ The full text of the ad is, “Lawless criminals terrorized Kenosha. Joe Biden takes a knee. Biden and the radical left weak

The same “take a knee” theme was emphasized in the 2018 governor’s race by Lieutenant Governor. Rebecca Kleefish and Governor Scott Walker, in a series of tweets, criticized a Black candidate for Lieutenant Governor, Mandela Barnes, for taking a knee.



Source: <https://twitter.com/RebeccaforReal/status/1037757762938318848>

Finally, in one of the more unusual racial incidents in recent Wisconsin campaigns, Deborah Kerr, one of the two candidates in the April, 2021, election for State Superintendent of Public Instruction, tweeted that she had been called the n-word while in high school because “my lips were bigger than most” (Bauer, 2021). Kerr is white, so the tweet was met with confusion and anger. Savion Castro, who is Black and a member of the Madison School Board, responded that the tweet made him “profoundly sad and angry. . . Perfect example of white educators profound failures to understand the isolation, alienation, and disenfranchisement our Black and Brown students experience in our education system – public [and] private.” Kerr apologized and took down her Twitter account, saying, “I apologize for having posted something that was intended to be a part of the discussion of racism,” (Bauer, 2021).

response has led to chaos and violence, and their calls for defunding police would make it worse. President Trump is making it stop sending National Guard and federal law enforcement to protect Wisconsin's families. Communities, not criminals, jobs, not mobs. Strong leadership when America needs it most. Donald J. Trump and I approve this message”
<https://host2.adimpact.com/admo/viewer/231b3cbd-24a7-4d7a-9a60-a3c6a55f7c5b/>.

The AP also reported that “Earlier in the campaign, the only Black candidate in the state superintendent race, Shandowlyon Hendricks-Williams, accused Kerr of a “racially motivated” attack when she tried to have Hendricks-Williams kicked off the ballot. Kerr filed a complaint saying Hendricks-Williams submitted invalid nomination papers. The Wisconsin Elections Commission deadlocked and Hendricks-Williams remained on the ballot” (Bauer 2021). Hendricks-Williams was the candidate of choice in the Democratic primary for Black voters in Milwaukee.

F. Senate Factor 7

Senate Factor 7 looks at the extent to which members of the minority group have been elected to public office in the jurisdiction. Recent election results show that Black candidates have mixed success in Milwaukee County. Although some Black candidates have had success in winning office in the Milwaukee area, most positions (outside of BVAP majority districts) are not held by Black officeholders, and the number of Black officeholders has been far below the number proportional to the Black population. For example, only two of out the eight current county government officials elected countywide are Black. David Crowley, the current County Executive (elected in 2020), is the first Black person *ever elected* to that office. Most significantly, the City of Milwaukee has never elected a Black mayor and has only ever had one Black mayor: Marvin Pratt became acting mayor in 2004 upon the resignation of Mayor Norquist.¹⁹ However, when he ran for a full term he was defeated in the 2004 general election by Tom Barrett, a white man. Having never elected a Black mayor is increasingly unusual for major U.S. cities (vom Hove, 2020). Indeed, Wisconsin has only elected one Black mayor in its history, Frances Huntley-Cooper in 1991 in Fitchburg, a suburb of Madison (Tomei, 2020). The Milwaukee region has no Black state representatives or senators outside of the BVAP majority districts

¹⁹ Common Council President Cavalier Johnson would become Milwaukee’s second Black mayor if the Senate confirms the nomination of Tom Barrett to be ambassador to Luxembourg.

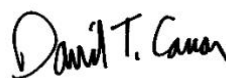
who were the candidate of choice of Black voters (Sen. Julian Bradley represent the 28th District, which is only 2% Black). The city of Milwaukee currently has no Black alderpersons outside of BVAP majority districts. Further, Milwaukee County has no Black supervisors outside of BVAP majority districts.

Conclusions

Overall, I conclude that Senate Factors 1, 2, 3, 5, 6, and 7 are present in Milwaukee County. There is a long history of voting-related discrimination against Black voters in Wisconsin, and Black voters continue to bear the effects of discrimination in areas such as voting, housing, education, incarceration, employment, and health. The analysis performed by Professor Collingwood shows that voting in the Milwaukee area is polarized along racial lines, and a number of voting practices have enhanced the opportunity for discrimination against Black voters in the Milwaukee area, such as the number and location of polling places and Wisconsin's voter ID law. Political campaigns statewide and in the Milwaukee area are marked by racial appeals, which helps explain the difficulty that minority candidates have getting elected in Milwaukee County. Most elected positions outside of Black majority voting age districts are not held by Black officeholders, and the number of Black officeholders is far from reflective of the size of the Black population. In sum, this analysis overwhelmingly shows that the totality of circumstances in the Milwaukee area undermines the ability of Black voters to participate fully in the political process and elect their candidates of choice.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 15, 2021.



David T. Canon

Appendix

Table 2 -- Citizen Turnout in the 2018 Elections

State	Black Citizen Turnout	White Citizen Turnout	White – Black Turnout
COLORADO	30.3%	62.6%	32.3%
WASHINGTON	44.2	65.5	21.3
WISCONSIN	46.0	66.9	20.9
OKLAHOMA	33.0	53.0	20.0
NEVADA	36.8	56.6	19.8
ARIZONA	47.0	65.3	18.3
WASH D.C.	53.7	69.5	15.8
KANSAS	46.5	59.1	12.6
MASSACHUSETTS	47.0	58.7	11.7
CALIFORNIA	50.6	61.4	10.8
MINNESOTA	54.7	64.8	10.1
FLORIDA	47.2	57.0	9.8
MARYLAND	48.7	58.4	9.7
CONNECTICUT	48.2	57.7	9.5
TEXAS	48.3	57.7	9.4
MISSOURI	47.9	56.7	8.8
IOWA	54.1	60.8	6.7
NEW JERSEY	51.5	57.9	6.4
U.S. AVERAGE	51.1	57.5	6.4
TENNESSEE	45.9	51.7	5.8
MICHIGAN	55.5	61.1	5.6
VIRGINIA	56.4	60.8	4.4
INDIANA	47.2	50.9	3.7
ALABAMA	49.5	52.6	3.1
NORTH CAROLINA	51.8	54.4	2.6
OHIO	51.4	53.9	2.5
ARKANSAS	41.6	44.0	2.4
LOUISIANA	49.5	51.7	2.2
PENNSYLVANIA	54.7	56.6	1.9
NEW YORK	51.3	52.9	1.6
ILLINOIS	56.8	57.1	0.3
KENTUCKY	56.4	54.1	-2.3
DELAWARE	56.2	52.7	-3.5
GEORGIA	59.6	56.1	-3.5
SOUTH CAROLINA	52.1	48.6	-3.5
MISSISSIPPI	59.8	51.7	-8.1

Note: cell entries are the percentage of citizens voting as reported in the U.S. Census report, “Voting and Registration in the Election of November 2018,” Table 4b, <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-583.html> using the “white alone” and “black alone” categories (accessed October 29, 2021).

Table 3 -- Citizen Turnout in the 2020 Elections

State	Black Citizen Turnout	White Citizen Turnout	White – Black Turnout
MASSACHUSETTS	36.4%	72.4%	36.0%
WISCONSIN	43.5	77.2	33.7
IOWA	46.2	73.0	26.8
OREGON	51.2	77.7	26.5
COLORADO	53.1	71.9	18.8
OKLAHOMA	49.5	65.0	15.5
SOUTH CAROLINA	53.9	69.0	15.1
WASHINGTON	61.9	77.0	15.1
MINNESOTA	66.1	79.9	13.8
VIRGINIA	63.9	77.3	13.4
ARKANSAS	44.7	57.0	12.3
NEVADA	58.5	69.7	11.2
TEXAS	60.8	72.0	11.2
CALIFORNIA	64.0	74.6	10.6
NEW JERSEY	71.3	81.1	9.8
KANSAS	61.0	70.7	9.7
WASH D.C.	79.3	88.8	9.5
ILLINOIS	63.8	72.9	9.1
U.S. AVERAGE	62.6	70.9	8.3
ALABAMA	54.8	63.0	8.2
FLORIDA	58.7	66.8	8.1
ARIZONA	69.1	77.0	7.9
KENTUCKY	62.5	69.6	7.1
OHIO	65.1	71.9	6.8
LOUISIANA	57.9	64.7	6.8
GEORGIA	64.0	70.3	6.3
NEW YORK	62.7	69.0	6.3
CONNECTICUT	65.2	71.0	5.8
MICHIGAN	63.8	68.2	4.4
DELAWARE	64.7	68.4	3.7
NORTH CAROLINA	63.4	66.6	3.2
INDIANA	60.2	62.0	1.8
PENNSYLVANIA	70.8	71.7	0.9
MISSOURI	69.2	67.9	-1.3
TENNESSEE	69.4	67.3	-2.1
MARYLAND	75.3	72.3	-3.0
MISSISSIPPI	72.8	69.8	-3.0

Note: cell entries are the percentage of citizens voting as reported in the U.S. Census report, “Voting and Registration in the Election of November 2020,” Table 4b, <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-585.html>, using the “white alone” and “black alone” categories (accessed October 29, 2021).

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EDUCATION

University of Minnesota, Ph.D. in Political Science, 1987. M.A., Humphrey Institute of Public Affairs, 1984.

Indiana University, Bloomington, Indiana. B.A., with High Distinction and Honors in Political Science, 1981; Ford P. Hall Award – Outstanding Senior, 1981; Phi Beta Kappa, 1980; double-major in Political Science and Economics.

ACADEMIC POSITIONS

Professor, University of Wisconsin, Fall, 1999-present.

Editor, *Election Law Journal*, September, 2018-present.

Chair, University of Wisconsin, May, 2014-May 2017; August, 2020-December, 2020.

Fulbright Scholar, Distinguished Chair in Political Science and American Studies, Eberhard Karls University of Tübingen, Germany, Fall, 2011 - Summer, 2012.

Co-editor (for Congress), *Legislative Studies Quarterly*, September, 2007- 2010.

Fulbright Scholar, John Marshall Distinguished Chair in Political Science, University of Debrecen, Hungary, Fall, 2003 - Spring, 2004.

Associate Professor, University of Wisconsin, Fall, 1994-Spring, 1999.

Assistant Professor, University of Wisconsin, Fall, 1991-Spring, 1994.

Assistant Professor, Duke University, Fall, 1986-Fall, 1991.

Research Fellow, The Brookings Institution, September, 1985-August, 1986.

Instructor, University of Minnesota, Humphrey Institute of Public Affairs, Sloan Summer Program in Policy Skills, Summer, 1985, 1984, 1983.

TEACHING

Undergraduate: American Politics and Government, American Presidency; Classics in American Politics; Introductory Statistics; Congressional Elections; Campaigns and Elections; Political Parties; Race and Politics in the United States; the United States Congress.

Graduate: American Government for AP high school teachers; Classics in American Politics; Congressional Elections; The U.S. Congress; Political Science as a Discipline.

Winner of the 2008 Chancellor's Distinguished Teaching Award, University of Wisconsin, Madison; University Housing "Honored Instructor," award, 2006, 2009, 2010, 2011, 2013, 2014, 2019, 2020; UW-Panhellenic Association teaching award, Fall, 1991 and 1993.

PUBLICATIONS

Books

Race, Redistricting, and Representation: The Unintended Consequences of Black-Majority Districts (University of Chicago Press, 1999). Winner of the American Political Science Association's Richard F. Fenno Prize for the best book published on legislative politics in 1999.

The Dysfunctional Congress?: The Individual Roots of an Institutional Dilemma (Westview Press, 1999). With Kenneth Mayer. 2nd edition to be published by Columbia University Press.

Actors, Athletes, and Astronauts: Political Amateurs in the United States Congress (University of Chicago Press, 1990; substantially revised version of my Ph.D. dissertation).

Textbooks, Edited Books, Reference Books, and Monographs

American Politics Today (W.W. Norton, 2009, 2nd edition 2011, 3rd edition, 2013, 4th edition, 2015, 5th edition, 2017, 6th edition, 2019, 7th edition, 2021), with William T. Bianco.

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Faultlines: Debating the Issues in American Politics (W.W. Norton, 2004, 2nd ed., 2007, 3rd ed. 2011, 4th ed. 2014, 5th ed. 2018, 6th ed. forthcoming, 2022), with John Coleman and Ken Mayer.

Readings for American Government (W.W. Norton, 4th ed., 1996; 5th ed., 1998; 6th ed., 2000; 7th ed. 2002). With Theodore Lowi, Benjamin Ginsberg, Anne Khademian, and Kenneth Mayer. Accompanied the American Government text by Theodore Lowi, Benjamin Ginsberg, and Kenneth Shepsle (John Coleman replaced Khademian, Lowi, and Ginsberg on the 7th edition).

Congress Under Siege: The Electoral Roots of an Institutional Crisis (Harper/Collins, 1995). Brief monograph in the Harper/Collins "Political Pamphleteer" series.

Readings in American Government (Simon and Schuster custom publishing, 1994). With Anne Khademian and Kenneth Mayer.

Scholarly Research

"Race and Redistricting," *Annual Review of Political Science*, (forthcoming, 2022).

- "Debunking the 'Big Lie': Election Administration in the 2020 Presidential Election," (with Owen Sherman), *Presidential Studies Quarterly* 51:3 (September, 2021): 546-581.
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- "What Happens at the Polling Place: Using Administrative Data to Look Inside Elections," Barry C. Burden, David T. Canon, Kenneth R. Mayer, Donald P. Moynihan, and Jacob Neiheisel, *Public Administration Review* 77:3 (May/June, 2017): 354-64; [published online](#) June 30, 2016.
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- "The Effects and Costs of Early Voting and Same Day Registration in the 2008 Elections," Barry C. Burden, David T. Canon, Kenneth R. Mayer, and Donald P. Moynihan. *American Journal of Political Science*, 58:1 (January, 2014): 95-108. Winner of State Politics and Policy Best Journal Article Award from the American Political Science Association, 2015.
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- “The Representation of Racial Interests in the U.S. Congress,” in the *Politics of Democratic Inclusion*. Edited by Rodney E. Hero and Christina Wolbrecht, Temple University Press, 2005, 281-313.
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Perspectives on the House of Representatives 4th ed., edited by Robert L. Peabody and Nelson W. Polsby, Baltimore: Johns Hopkins University Press, 1992, 291-318; in *American Political Parties*, edited by Eric M. Uslaner, Peacock Publishers, 1993, 464-92; and in *The International Library of Politics and Comparative Government: The United States of America, Volume II*, edited by Alan Ware, Dartmouth Publishing, 1997.

"Political Amateurism in the U.S. Congress." In *Congress Reconsidered*, Lawrence C. Dodd and Bruce I. Oppenheimer editors. Washington, D.C.: CQ Press, 4th Edition, 1989, pp. 65-87.

"Actors, Athletes, and Astronauts: Political Amateurs in the United States Congress." *Legislative Studies Section Extension of Remarks*, June, 1987.

Other Publications

"Writing An American Government Textbook: Lessons Learned," *PS: Political Science and Politics*, forthcoming, 2022, (with William T. Bianco).

"Restoring Trust in the Voting Process," (with Guy-Uriel Charles, Edward Foley, Richard Hasen, Lisa M. Manheim, Charles Stewart III, and Daniel Tokaji), *Election Law Journal* 20:2 (2021): 141-54.

Amici Curiae brief on partisan redistricting with other political scientists; Brian A. Sutherland as Counsel of Record and primary author, in *Robert A. Rucho, et al. v. Common Cause, et al.* (2019), U.S. Supreme Court, March 8, 2019.

"Representation and Redistricting," "*Shaw v. Reno*," and "Minority Majority Districts," in *American Governance*, edited by Laurie Malashanko, Macmillan Reference, 2015.

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- "Race, Redistricting, and Representation." In the *International Newsletter* for the International Political Science Association 7:1 (Summer, 1994) and the Research Committee of Legislative Specialists of IPSA, 3:1 (Summer, 1994).
- "Elections: Becoming a Candidate" and "Members: Demographic Profile," in *The Encyclopedia of the United States Congress*, Donald C. Bacon, Roger H. Davidson, and Morton Keller editors. New York: Simon and Schuster, 1994, pp. 701-706, 1371-79.
- "Congress: The Electoral Connection." Supplement to Greenberg and Page's *The Struggle for Democracy* (Harper/Collins), 1993.
- "The Context of Congressional Reform." Memo prepared for the Brookings/AEI Conference on Congressional Reform, Washington, D.C., June 29, 1992.
- "Amateurs in the United States Congress," "Direct Mail," "Election of 1968," and "Terry Sanford." In the *Encyclopedia of American Political Parties and Elections*, L. Sandy Maisel editor. New York: Garland Pub., 1991, 32-33, 265-66, 314-16, 988.
- "The Status of Women in Ph.D. Departments." Committee on the Status of Women, Southern Political Science Association. *PS: Political Science and Politics* 23:1 (March, 1990): 82-86 (with Dorothy McBride Stetson, Diane Wall, Diane Blair, Mary Ellen Guy, Erika Fairchild, and Cheryl Brown).
- "Intelligence and Ethics: The CIA's Covert Operations." *The Journal of Libertarian Studies* 4:2 (Spring, 1980): 197-214.

Book Reviews

- Review of *The Unsolid South: Mass Politics and National Representation in a One-Party Enclave*, by Devin Caughey, *Congress and the Presidency*, 47:2 (2020).
- Review of *The Turnout Gap: Race, Ethnicity, and Political Inequality in a Diversifying America*, by Bernard L. Fraga, *The American Review of Politics*, 37:1 (2020).
- Review of *Racial Realignment: The Transformation of American Liberalism, 1932-1965*, by Eric Schickler, *Congress & the Presidency*, 2017.
- Review of *The Congressional Black Caucus, Minority Voting Rights, and the U.S. Supreme Court*, by Christina R. Rivers, *American Review of Politics*, Fall/Winter, 2013.
- Review of *The Speaker of the House: A Study of Leadership*, by Matthew N. Green, *Congress and the Presidency*, 38:2 (May-August, 2011): 239-241.

- Review of *Redistricting and Representation: Why Competitive Elections are Bad for America*, by Thomas Brunell, *Political Science Quarterly* 124:2 (Summer, 2009): 366-68.
- Review of *The Future of the Voting Rights Act*, edited by David L. Epstein, Richard H. Pildes, Rodolfo O. de la Garza, and Sharyn O'Halloran. *Election Law Journal*, 6:3 (2007): 266-69.
- Review of *Congressional Communication: Content and Consequences*, by Daniel Lipinski, *Political Communication*, 24:2 (April, 2006): 112-13.
- Review of *Congress, the Press, and Political Accountability*, by Douglas R. Arnold, *Congress and the Presidency*, 31:2 (Fall, 2004): 203-205.
- Review of *African Americans and the Politics of Congressional Redistricting*, by Dewey M. Clayton. *Law and Politics Book Review* 11:4 (April, 2001): 138-140.
- Review of *Thomas Paine: Firebrand of the Revolution*, by Harvey J. Kaye, *Wisconsin Academy Review* 47:1 (Winter, 2001): 52.
- "Notes from the Book Review Editor," (short book reviews), *Congress and the Presidency*, 23:1 (Spring, 1996): 65-67; 23:2 (Fall, 1996): 173-79; 24:1 (Spring, 1997): 84-92; 25:1 (Spring, 1998): 91-98; 25:2 (Fall, 1998): 203-211; 26:1 (Spring, 1999): 77-87, 26:2, (Fall, 1999): 193-99; 27:1 (Spring, 2000): 81-92, 27:2 (Fall, 2000): 191-198, 28:1 (Spring 2001): 85-92.
- Review of *Mistaken Identity: The Supreme Court and the Politics of Minority Representation*, by Keith J. Bybee, *Law and Politics Book Review*, (November, 1999).
- Review of *The Congressional Black Caucus: Racial Politics in the U.S. Congress*, by Robert Singh, *Social Science Quarterly* (September, 1999).
- "Recent Reference Works on Congress and the Presidency," (review essay), *Congress and the Presidency*, 22:1 (Spring, 1995): 93-98.
- Review of *The Presidential Pulse of Congressional Elections*, by James E. Campbell, *Political Science Quarterly*, 109:5 (Winter, 1994-95): 911-12.
- Review of *Changing Patterns in State Legislative Careers*, Gary F. Moncrief and Joel A. Thompson eds., *Journal of Politics* 56:1 (February, 1994): 276-79.
- Review of *Leading Congress: New Styles, New Strategies*, John J. Kornacki, editor, *American Political Science Review* 85:3 (September, 1991): 1029-1030.
- Review of *Homeward Bound*, by Glenn Parker, *Congress and the Presidency* 15 (Spring, 1988): 110-112.

Research Submitted for Publication or in Progress

- "The Apportionment Act of 1842: Principle or Interest?," Paper Presented at the Annual Meeting of the American Political Science Association, Washington, D.C, August 28, 2014, (with William Egar).
- "Committee Hierarchy and Assignments in the U.S. Congress: Testing Theories of Legislative Organization." Paper Presented at the Annual Meeting of the Midwest Political Science Association, April 25-27, 2002. (with Charles Stewart III).
- "Partisan Policymaking in the United States House of Representatives, 1929-1998." Paper Presented at the Annual Meeting of the American Political Science Association, September 3-6, 1999, Atlanta, Georgia. (with Kevin S. Price).
- "Informational and Demand-Side Theories of Congressional Committees: Evidence from the Senate, 1789-1993." Paper Presented at the Annual Meeting of the American Political Science Association,

September 3-6, 1998, Boston, Mass. (with Martin Sweet).
 "The Development of the Senate Committee System, 1789-1879." Paper Presented at the Annual Meeting of the American Political Science Association, September 3-6, 1998, Boston, Mass. (with Charles Stewart III). Revised version of this paper presented at the Vanderbilt University Conference on Senate Exceptionalism, Nashville, Tennessee, October, 1999.
 "Taking Care of Business: The Evolution of the House Committee System before the Civil War." Paper Presented at the Annual Meeting of the American Political Science Association, August 31-September 3, 1995, Chicago, Illinois (with Charles Stewart III, Brian Kroeger, and Greg Flemming).

Conference Papers Presented

American Political Science Association: 2014, 2011, 2010, 2009, 2002, 1999, 1998 (2 papers), 1996, 1995, 1994, 1993, 1992, 1989, 1987, 1985.
 Carl Albert Center, University of Oklahoma: 1990.
 Center for Congressional and Presidential Studies, American University, 1998.
 "Bicameralism," Duke University, March, 2009.
 "Candidate Recruitment," Colby College, 1986.
 "The Legislative Branch and American Democracy," University of Pennsylvania, 2004.
 "Making Voting Work," sponsored by the Pew Charitable Trusts, Reed College, October, 2009.
 "The Politics of Democratic Inclusion," Notre Dame University, 2002.
 "Senate Exceptionalism," Vanderbilt University, March, 1999.
 Hendricks Symposium, University of Nebraska: 1994, 1988.
 Midwest Political Science Association: 2013, 2011, 2010, 2002, 1993, 1992, 1990, 1989, 1984.
 Shambaugh Comparative Legislative Research Conference, University of Iowa, 1998.
 Southern Political Science Association: 1988.

RESEARCH SUPPORT

\$60,000 Leon Epstein Fellowship, College of Letters and Science (for research support, 2013-2016)
 \$35,000 Phil R. Certain Fund Award, College of Letters and Science (for research support, 2011).
 \$70,500 Vilas Associate Award (\$24,500 in research support and two summers of salary support, 2002-2004).
 \$60,000 Hawkins Professor research support, Department of Political Science, 2000-2005.
 \$17,851 for summer money and a 1/3-time, nine-month project assistant from the Wisconsin Alumni Research Foundation, 1996-97 fiscal year.
 \$56,722 grant from the National Science Foundation, 7/1/94-6/30/97.
 \$10,105 for a 1/2-time, nine-month project assistant, travel and supplies money from the Wisconsin Alumni Research Foundation, 1994-95 fiscal year (returned when NSF grant was funded).
 \$91,605 grant from the National Science Foundation, 8/1/93-8/31/97.
 \$13,771 for summer money and a 1/3-time, six-month project assistant from the Wisconsin Alumni Research Foundation, 1993-94 fiscal year.
 \$1,000 grant from the Dirksen Congressional Research Center, 1992-93 fiscal year.
 \$8,993 for summer money from the Wisconsin Alumni Research Foundation, 1992.

\$10,000 in flexible research funds from the Wisconsin Alumni Research Foundation, 1991-1994 (not competitive--part of hiring package).
\$8,888 for summer money from the Wisconsin Alumni Research Foundation, 1991 (not competitive, part of hiring package).
\$3,800 from the Duke University Research Council for the 1990-91 fiscal year.
\$1,120 from the Duke University Research Council for the 1989-90 fiscal year.
\$840 from the Duke University Research Council for the 1988-89 fiscal year.

OTHER PROFESSIONAL ACTIVITIES

Discussant

“Restoring Confidence in the U.S. Election System,” panel discussion sponsored by the UW Elections Research Center, March 16, 2021.
Big Ten SPARK Conference on Redistricting, University of Maryland, March 4-5, 2019.
“Fifty Years after the Voting Rights Act: The Future of Voting and Representation in the U.S.,” Theme Panel, American Political Science Association Meeting, San Francisco, 2015.
“Constituent Relationships and Homestyles,” American Political Science Association Meeting, Chicago, IL, 2013 (also served as chair).
“Congress and the President: The Electoral Context,” Midwest Political Science Association Meeting, Chicago, April, 2010 (also served as chair).
“The Concept of Constituency,” Midwest Political Science Association Meeting, Chicago, April, 2007.
“Restoring Electoral Competition: Research and Remedies for Redistricting,” University of Minnesota, March, 2006.
“Descriptive and Substantive Representation in Congress, American Political Science Association Meeting, Washington, D.C., 2005 (also served as chair).
Conference on the Legislative Branch and American Democracy, University of Pennsylvania, October, 2004.
“Issues in Campaign Finance,” American Political Science Association Meeting, San Francisco, 2001 (served as chair).
“Author Meets Critic: Paul Frymer’s *Uneasy Alliances: Race and Party Competition in America*. Midwest Political Science Association Meeting, Chicago, April, 2001.
“Race, Gender, and Representation,” Midwest Political Science Association Meeting, Chicago, April, 2001 (also served as chair).
“Partisanship and Representation in Legislature.” American Political Science Association Meeting, Washington, D.C, 2000.
“Latinos, African Americans, and Electoral Politics,” Midwest Political Science Association Meeting, Chicago, 1996 (also served as chair).
“Patterns in State Legislative Careers,” Midwest Political Science Association Meeting, Chicago, 1996 (also served as chair).
“Minority Group Interests and Legislative Representation,” American Political Science Association Meeting, Chicago, 1995 (also served as chair).

"Campaign Strategy in Congressional Elections," Midwest Political Science Association Meeting, Chicago, 1995.

Conference on Congressional Reform, The Brookings Institution, Washington, D.C., June, 1992.

"Campaign Contributions and Congressional Elections," Midwest Political Science Association Meeting, Chicago, 1992.

"Congress and the Politics of Institutional Change," American Political Science Association Meeting, San Francisco, 1990.

"Legislative Voting: Ideology and Cohesion," Southern Political Science Association Meeting, Atlanta, GA, 1988.

"Measuring and Modeling the U.S. Congress," American Political Science Association Meeting, Washington, D.C., 1988.

"Perspectives on the Presidency," Southern Political Science Association Meeting, Charlotte, NC, 1987.

"Congressional Elections," American Political Science Association Meeting, Chicago, 1987.

Other Conferences and Invited Presentations

2nd Annual Conference on Effective Lawmaking, University of Virginia, June 9-10, 2019.

"Voting Rights for American Indians," 33rd Annual Coming Together of Peoples Conference, March 9, 2019. Wisconsin Indigenous Law Student Association, UW Law School.

Invited lecture, "Partisan Redistricting in Wisconsin," Wisconsin State Bar Association Foundation, Milwaukee, WI, September 13, 2018.

Invited lecture, "Midterm Elections in the United States," Department of Political Science, Nazarbayev University, Astana, Kazakhstan, August 21, 2018.

Invited lecture, "Partisan Redistricting in Wisconsin," Wisconsin League of Women Voters, State Convention, keynote address, Oshkosh, WI, June 9, 2018.

Invited lecture, "Voter ID, Early Voting, and Voting Rights: Will Changes in Voting Laws Affect the 2016 Elections?" American Democracy Project, University of Wisconsin Oshkosh, February 22, 2016.

Invited lecture, "The Budget Impasse in Washington," Michigan Tech University, Houghton, MI, September 16, 2013.

Invited lecture, "The U.S. Presidential Election: Who's Next, What's Next," keynote address, European Rotogravure Association, Turin, Italy, September 25, 2012.

Invited lectures, "Governing or Gridlock? Political Polarization in the United States" and "President Obama and Racial Politics," Free University of Berlin, July 19, 2012.

Invited lecture, "President Obama and Race in the 2012 Election," University of Bamberg, Bamberg, Germany, July 5, 2012.

Invited lecture, "Race and Religion in the 2012 Presidential Election," Graduate program retreat for the University of Heidelberg American Studies Program, Annweiler, Germany, June 15-16, 2012.

Invited lecture, "Race and Representation in Congress," University of Rostock, Rostock, Germany, June 8, 2012.

Invited lecture, "The 2012 Presidential Election: It's the Economy Stupid (Again)," The Hessischer Kreis, Frankfurt, Germany, May 7, 2012.

Invited lecture, "In Search of a True Conservative: The Republican Candidates in the 2012 Election,"

Atlantische Akademie, Lambrecht, Germany, April 27, 2012.

Invited lecture, "Race and Religion in the 2012 Presidential Election," Tübingen German-American Institute, Tübingen, Germany, April 26, 2012.

Invited lecture, "The 2012 Presidential Election: Strategies and Controversies," Studienhaus Wiesneck, Freiburg, Germany, April 19, 2012.

Chaired a panel on European Integration, Germany Fulbright Meeting, Berlin, Germany, March 21, 2012.

Invited lecture, "The Presidential Selection Process," Munich German-American Institute, Munich Germany, February 23, 2012.

Invited lecture, "Gender and Racial Equity in the Hiring and Tenure Process in American Universities," International Symposium on Quality Assurance in Personnel Processes, Sponsored by the Baden-Württemberg Ministry for Science, Research, and the Arts, University of Hohenheim, Stuttgart, Germany, December 9, 2011.

Invited lectures, "President Obama and Race," and "President Obama's Immigration Policy," Conference on U.S. Immigration Policy, sponsored by the U.S. State Department, Boppard, Germany, December 9, 2011.

Invited lecture, "Political Polarization in the United States," Fulbright Distinguished Chair Lecture, Eberhard Karls University Tübingen, Tübingen, Germany, December 5, 2011.

Invited lecture, "The Presidential Nomination Process," University of Munich, Department of Political Science, November 28, 2011.

Keynote Address, "Reforming the Presidential Nomination Process," Fulbright Alumni Association of Germany, Annual Meeting, Frankfurt, Germany, November 5, 2011.

Invited lecture, "Redistricting in Wisconsin," Lawrence University, April 19, 2011.

Invited lecture, "Election Laws and Turnout in Presidential Elections," Yale University American Politics Workshop, April 6, 2011.

"Making Democracy Work," Milwaukee, WI, September 29, 2007, sponsored by the League of Women Voters of Wisconsin (presentation on a panel on redistricting).

Roundtable on "Renewing the Voting Rights Act," American Political Science Association Meeting, Philadelphia, September, 2006.

Invited lecture, "The Patriot Act and the War on Terrorism," University of Pecs, Hungary, October, 27, 2003.

Conference (served as discussant), "Race and Political Representation," University of Rochester, May, 2003.

Invited lecture, "Race, Representation, and Redistricting in the U.S. House," University of Pittsburgh, March, 2003.

Invited lecture, "Race, Representation, and the U.S. Supreme Court," Dartmouth College Legal Studies speaker series, October, 2002.

Invited lecture, "Race, Representation, and Redistricting in the U.S. House," Utah State University, September, 2002.

Invited lecture, "Parties and Policy in the U.S. House," American Politics Workshop, University of Chicago, January, 2001.

Conference (presented paper), "Aftermath: Conversations on the Clinton Scandal, the Future of the Presidency, and the Liberal State," University of Wisconsin Law School, Madison, Wisconsin,

February, 2000.
 Roundtable on The Role of Political Consultants in the Contemporary Election Process, Midwest Political Science Association Meeting, Chicago, April, 1999.
 “Rational Choice and Interpretive Approaches to Studying Politics,” chair of Theme Panel for the Midwest Political Science Association Meeting, Chicago, April, 1997.
 “Political Parties in the United States Congress,” chair of panel, American Political Science Association Meeting, San Francisco, August, 1996.
 Roundtable on The Historical Study of Congress, American Political Science Association Meeting, New York, September, 1994.
 Roundtable on The Historical Study of Congress, American Political Science Association Meeting, Chicago, September, 1992.
 Conference on The Historical Study of Congress, University of North Carolina, Chapel Hill, May, 1992.
 Conference on Congressional Recruitment, The Carl Albert Center, University of Oklahoma, February, 1991.
 Understanding Congress: A Bicentennial Research Conference, Washington, D.C., February, 1989.
 Roundtable on Forecasting Congressional Elections, Southern Political Science Association Meeting, Atlanta, November, 1986.
 Conference on Congressional Candidate Selection, Colby College, Waterville, Maine, July, 1986.

Reviewer

American Economic Review, American Journal of Political Science, American Politics Research, American Political Science Review, American Politics Quarterly, American Review of Politics, British Journal of Political Science, Brooks/Cole Publishers, Columbia University Press, Congress and the Presidency, DC Heath, Du Bois Review, Election Law Journal, Electoral Studies, Ethnic and Racial Studies, Governance: An International Journal of Policy and Administration, Harper/Collins Publishers, International Studies Quarterly, Irish Research Council for Humanities and Social Sciences (IRCHSS), Journal of Policy History, Journal of Politics, Journal of Race, Ethnicity, and Politics, Journal of Theoretical Politics, Jurimetrics: The Journal of Law, Science, and Technology, Legislative Studies Quarterly, Louisiana State University Press, National Science Foundation, Northern Illinois University Press, Ohio State University Press, Paradigm Publishers, Party Politics, Perspectives on Politics, Politics, Groups, and Identities; Political Behavior, Political Communication, Political Research Quarterly; Politics, Groups, and Identities; Polity, PS: Political Science and Politics, Presidential Studies Quarterly, Princeton University Press, Roman and Littlefield, Routledge, St. Martin's Press, Social Science Journal, Social Science Quarterly, Southeastern Political Review, Stanford University Press, State Politics and Policy Quarterly, Studies in American Political Development, University of Chicago Press, University Press of Kansas, University of Michigan Press, University of Oklahoma Press, University of Pittsburgh Press, University of Virginia Press, University of Wisconsin Press, Western European Politics, Westview Press, Worth Publishers, W.W. Norton.

Editorial and Advisory Boards

American Politics Quarterly (10/95-6/98)

Campaign Assessment and Candidate Outreach Project (University of Maryland, 4/99-present)
 Center for Congressional and Presidential Studies (American University), Board of Academic Advisors
 (5/99-present)
Congress and the Presidency (Fall, 2007 - present)
Legislative Studies Quarterly (1/95-1/98, 2010-2016)
 Legislative Studies Section Executive Council, APSA, (8/2011-2013)
New York Times College Program Advisory Board (5/97-8/01)
Political Research Quarterly (7/91-7/94)
Polity (12/98-2003)
 Westview Press (for series on "Dilemmas in American politics," edited by L. Sandy Maisel, 1992-2004)

Member

American Political Science Association (Legislative Studies Section, Race and Ethnic Politics Section)
 Midwest Political Science Association

Service–Profession

Co-editor (with Janet Box-Steffensmeier), “Legislative Politics and Policy Making” book series,
 University of Michigan Press, 2008-current; Ohio State University Press, 2003-2008.
 Expert witness for the plaintiffs in *Rhonda J. Martin, et. al. v. Brian Kemp* (2020), Ohio Democratic
 Party in *The Ohio Democratic Party, et al., v. Jon Husted* (2015); Jon Erpenbach in *The John K.
 MacIver Institute for Public Policy and Brian Fraley v. Jon Erpenbach* (2013); for David A. Zien
 and Scott L. Gunderson in *State of Wisconsin, Peggy A. Lautenschlager, and Daniel P. Bach v.
 David A. Zien and Scott L. Gunderson* (2006); for the Wisconsin Senate Democrats in *Baumgart et
 al. v. Jensen et al.*, 10/2001-5/2002; for the State of Virginia, U.S. District Court, Roanoke, VA., in
Moon v. Meadows summer, 1996. I also prepared expert briefs for the U.S. Department of Justice in
 the remand of *Georgia v. Ashcroft* (12/2003-2/2004) and *North Carolina v. United States* (2/2004 -
 3/2004), and served as a consultant for the City of Greenbelt, MD, on a voting rights issue, Fall,
 2008-Spring, 2009.
 Testimony before an informational hearing sponsored by Senators Tim Cullen and Dale Schultz on S.B.
 163, Redistricting Reform, Wisconsin State Senate, February 10, 2014.
 Testimony before the Wisconsin State Assembly Committee on Election and Campaign Reform, March
 24, 2011.
 Testimony before the Wisconsin Senate Elections Committee on S.B. 6, Photo ID bill, January 26, 2011.
 Testimony before the U.S. Senate Judiciary Committee on the extension of the Voting Rights Act, June
 21, 2006.
 Co-editor (with Janet Box-Steffensmeier), “Legislatures and Parliaments” book series, Ohio State
 University Press, 2003-2006.
 Co-Program Chair (with Janet Box-Steffensmeier), Midwest Political Science Association Annual
 Meeting, 2004.
 Section Chair, Legislative Politics, 1997 Midwest Political Science Association Meeting.
 President, Pi Sigma Alpha, 2002-2004, Executive Council 1994-1998, 2001-2010; committee on “Best
 Graduate Paper Given at the APSA,” 1997, 1998; chair of committee on “Best Undergraduate

Honors Thesis,” 2001, 2007; chapter grant committee, 2002; Executive Committee, 1997-1998, 2001-2006, nominations committee (chair) 2006, 2008, 2010.

Reviews and Book Editor for *Congress and the Presidency: A Journal of Capital Studies*, Fall 1994-Spring, 2001.

Midwest Political Science Association Council, 2001-2004.

External Reviewer (chair of committee), Department of Political Science, University of Maryland (March, 2002).

Franklin L. Burdette/Pi Sigma Alpha Award Committee (chair), APSA, for the best paper presented at the 2014 APSA meeting.

Patrick J. Fett Award Committee, Midwest Political Science Association, 2014, best paper on the scientific study of Congress and the presidency.

Jewell Loewenberg Award Committee, 2013, APSA Legislative Studies Section award for the best article published in *Legislative Studies Quarterly* in 2012.

Alan Rosenthal Prize Committee, APSA Legislative Studies Section award for a young scholar whose work strengthens the practice of representative democracy, 2005-2006.

Gladys M. Kammerer Award Committee (best book on U.S. national Policy, sponsored by the APSA), 2001-2002 (chair).

Richard F. Fenno Prize Committee (best book on legislative politics, sponsored by the Legislative Studies Section of the APSA), 2000-2001 (chair), 1996-97.

Midwest Political Science Association, Committee on “Best Graduate Paper Given in American Politics at the 2000 Convention” (Westview Prize).

Carl Albert Prize Committee, Legislative Studies Section, APSA, best dissertation on legislative politics, 1998-99.

Committee on the Status of Women, Southern Political Science Association, 1988-1990.

Service–Department, University, and Community

University of Wisconsin, Dean’s Review Committee, School of Education, Spring, 2020.

University of Wisconsin, Provost Search Committee, Spring, 2019.

Social Sciences Divisional Committee, UW-Madison, Fall, 2018-present (vice-chair, 2019-20; chair 2020-21).

Faculty Advisory Committee, Tommy G. Thompson Center on Public Leadership, Fall, 2018-present.

Student Academic Appeals, College of Letters & Science, 2015, 2019, 2020, 2021.

Delta Program on Addressing the Performance Gap at UW, Fall 2014.

Student Academic Affairs Faculty Advisory Board, College of Letters & Science, 2007-2011.

Letters and Science Academic Planning Council, 2006-2009.

Faculty Senate (University and Letters and Science), 2007-2008.

Orientation and New Student Programs (ONSP) Advisory Committee, University of Wisconsin, 2004-2007.

Marching Band Review Committee, chair, Fall, 2009-Spring, 2010.

Undergraduate Program Committee, 2005-2007 (chair), 1994-96 (chair).

Teaching Awards Committee (chair), 2004-2011, 2012-14.

Graduate Program Committee, 1990-91, 1997-98, 1999-2001, 2004-2005, 2007-2008, 2012-2014.

Associate Chair, Department of Political Science, Fall, 1997; Fall, 1999-Spring, 2001.

Graduate Admissions and Fellowships Committee, Dept. of Political Science, 1989-93, 1996-98, 1999-2001.

Social Studies Fellowships Committee, Graduate School, University of Wisconsin, 2001-2003 (chair in 2003).

Union Council Personnel Committee, Wisconsin Union Directorate, 1995-96.

University Library Committee 1995-96.

Departmental Search Committees: American Politics, 1986-87, 1989-90, 1999-2000, 2010-11; Formal Theory, 1987-88, 1999-2000; Women's Studies, 1988-89.

Recruitment Committee, 2008-2011.

Ad Hoc Departmental Committees: Graduate Scope and Methods Class, 1988-89; Committee on 200-Level Courses, 1989; Mainframe Computing at Duke, 1989; Status of Women in the Graduate Program, 1998.

Student-Faculty Service Projects: Meals on Wheels (1987-90) and Habitat for Humanity, (1987-1991).

Pre-major Adviser, 1989-1990.

Undergraduate Faculty Council of Arts and Sciences, 1989-1990.

Twentieth Century America Program, Fall semesters, 1988-1990.

Co-organizer, Conferences on "American Federalism," Duke University, March 8-11, 1989; May 14-19, 1989. Sponsored by Visitor Program Service of Meridian House International and U.S.I.A., Washington, D.C.

Commentator on various television and radio programs concerning local and national politics.