

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

BLACK LEADERS ORGANIZING FOR
COMMUNITIES, VOCES DE LA FRONTERA,
the LEAGUE OF WOMEN VOTERS OF
WISCONSIN, CINDY FALLONA, LAUREN
STEPHENSON, and REBECCA ALWIN,

Plaintiffs,

v.

Civil Action

File No. _____

(Three-judge panel requested)

ROBERT F. SPINDELL, JR., MARK L.
THOMSEN, DEAN KNUDSON, ANN S.
JACOBS, JULIE M. GLANCEY, MARGE
BOSTELMANN, in their official capacity as
members of the Wisconsin Election Commission,
MEAGAN WOLFE, in her official capacity as the
Administrator of the Wisconsin Elections
Commission,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Black Leaders Organizing for Communities, Voces de la Frontera, the League of Women Voters of Wisconsin, Cindy Fallona, Lauren Stephenson, and Rebecca Alwin bring this Complaint for Declaratory and Injunctive Relief against defendants Robert F. Spindell, Jr., Mark L. Thomsen, Dean Knudson, Julie M. Glancey, Ann S. Jacobs, and Marge Bostelmann, in their official capacities as members of the Wisconsin Elections Commission, and against defendant Meagan Wolfe, in her official capacity as the Administrator of the Wisconsin Elections Commission, (collectively, “Defendants”), under 42 U.S.C. § 1983 and 28 U.S.C. § 2284(a), and state and allege as follows:

INTRODUCTION

Wisconsin's current state legislative districts were adopted by the Wisconsin State Legislature and signed by Wisconsin's Governor as 2011 Wisconsin Act 43, and later modified by a federal court in *Baldus v. Members of the Government Accountability Board*, 862 F. Supp. 2d 860, 863 (E.D. Wis. 2012). The current districts are based on state population and demographic data collected by the U.S. Census Bureau in 2010. On August 12, 2021, the U.S. Census Bureau released Wisconsin's state population data (Public Law 94-171 data) from the 2020 Census. As those data reveal, Wisconsin gained 199,243 residents in the past decade, a population shift that has rendered the existing state legislative districts unequally populated, and therefore malapportioned under state and federal law. More specifically, the current state legislative districts violate the basic democratic tenet of "one person, one vote,"¹ and therefore violate Plaintiffs' rights under the Fourteenth Amendment to the U.S. Constitution.

This malapportionment became actionable in this Court with the Census Bureau's release of the 2020 Federal Census count of Wisconsin's population, and, with the Public Law 94-171 data now released, it is clear precisely where population shifts have occurred within the state. *See Arrington v. Elections Bd.*, 173 F. Supp. 2d 856, 860 (E.D. Wis. 2001). Indeed, on August 13, 2021, six Wisconsin residents who intend to advocate and vote for Democratic Party of Wisconsin candidates in the coming 2022 primary and general elections filed a complaint in this Court, alleging that current Wisconsin state legislative districts are unconstitutionally malapportioned based on the 2020 Census data. *See Hunter, et al. v. Bostelmann, et al.*, No. 21-cv-00512 (W.D. Wis.).

¹ *See Reynolds v. Sims*, 377 U.S. 533, 562-64 (1964); *See also Baker v. Carr*, 369 U.S. 186, 207-208 (1962).

Plaintiffs in this action are nonpartisan organizations that have members and constituencies whose votes are diluted because they live in districts that are now over-populated in violation of their constitutional rights, as well as individual voters who suffer the same harm. Plaintiffs therefore seek a declaratory judgment that the current state legislative districts violate the United States Constitution; a permanent injunction barring Defendants from holding future elections under the current scheme for Wisconsin State Senate and State Assembly districts; and an order implementing new state legislative districts that adhere to the requirements of federal and state law should the Legislature and Governor fail to adopt such districts through the legislative process.

The Wisconsin Constitution requires new legislative districts to be drawn in light of the U.S. Census Bureau's release of 2020 census data. Wis. Const. art. IV, § 3. The primary duty for reapportionment rests with the state legislature, with a new plan to be approved by the governor. *State ex Rel. Reynolds v. Zimmerman*, 22 Wis. 2d 544, 556-59, 126 N.W.2d 551 (1964). However, in every past decade since the 1980s when there has been a partisan divide among the Senate, the Assembly, and/or the Governor, there has been a legislative impasse requiring judicial intervention. *See Prosser v. Elections Bd.*, 793 F. Supp. 859 (W.D. Wis. 1992); *Wis. State AFL-CIO v. Elections Bd.*, 543 F. Supp. 630 (E.D. Wis. 1982); *Baumgart v. Wendelberger*, Nos. 01-C-0121 & 02-C-0366, 2002 WL 34127471 (E.D. Wis. May 30, 2002), *amended by* 2002 WL 34127473 (E.D. Wis. July 11, 2002). The Senate and Assembly currently have majorities of elected Republican representatives, whereas the Governor is a Democrat.

Since Governor Evers assumed office in January 2019, the Governor and the Legislature have disagreed on many significant policy issues that appear to fall along partisan political lines, such as the Governor's Administration's orders requiring Wisconsinites to remain at home and later, use face-coverings, during the COVID-19 pandemic;² the appropriate use of federal aid for

² *Wis. Legislature v. Palm*, 2020 WI 42, 391 Wis. 2d 497, 942 N.W.2d 900, and 2021 Senate Joint Resolution

COVID relief;³ limiting the authority of public health entities;⁴ vaccination requirements by employers or other entities;⁵ Department of Transportation policy;⁶ and raffle and sweepstakes laws;⁷ among others.⁸ The low likelihood of the Legislature and the Governor reaching agreement on a redistricting plan for state legislative districts in the 2020 cycle is further reflected in the current Legislature's frequent resort to the courts to challenge executive action in lieu of seeking political compromise. *See, e.g., Wis. Legislature v. Palm*, 2020 WI 42, 391 Wis. 2d 497, 942 N.W.2d 900; *Wis. Legislature v. Evers*, No. 2020AP608-OA (Wis. Apr. 6, 2020) (attached as Exhibit 1); *Fabick v. Evers*, 2021 WI 28 (Legislature filed a brief as *amicus curiae* in support of a challenge to the Governor's emergency powers); *Bartlett v. Evers*, 2020 WI 68, 393 Wis. 2d 172, 945 N.W.2d 685 (Legislature filed a brief as *amicus curiae* in support of a challenge to the Governor's veto authority). Indeed, legislative leadership has already retained private counsel in preparation for redistricting litigation this year. *See Waity v. Vos*, No. 21-CV-589 (Dane Co. Cir. Ct. Apr. 29, 2021) (holding void *ab initio* contracts for redistricting litigation counsel signed in December 2020) (copy attached as Exhibit 2), *petition for bypass granted sub nom Waity v. LeMahieu*, No. 2021-AP-802 (Wis. July 15, 2021) (attached as Exhibit 3), *and decision stayed sub nom Waity v. LeMahieu*, No. 2021-AP-802 (attached as Exhibit 4). The pending action by

3 (terminating 2021 Executive Order #104), available at <https://docs.legis.wisconsin.gov/2021/related/enrolled/sjr3>.

³ See, e.g., veto messages for 2021 [AB232](#), [AB234](#), [AB235](#), [AB236](#), [AB237](#), [AB238](#), [AB239](#), [AB240](#), [AB241](#), [AB243](#), and [SB183](#), available at https://docs.legis.wisconsin.gov/2021/related/veto_messages.

⁴ See veto messages for 2021 [AB1](#), available at https://docs.legis.wisconsin.gov/2021/related/veto_messages.

⁵ *Id.*

⁶ See veto messages for 2019 [AB273](#) and [AB284](#), available at https://docs.legis.wisconsin.gov/2019/related/veto_messages.

⁷ See veto messages for 2019 [SB292](#) and [SB43](#), available at https://docs.legis.wisconsin.gov/2019/related/veto_messages.

⁸ See veto messages for 2021 [SB39](#) (sports and extracurriculars by charter school students), and 2021 [SB38](#) (return to offices for state employees during COVID-19 pandemic), available at https://docs.legis.wisconsin.gov/2021/related/veto_messages; and veto messages for 2019 [AB4](#) (tax policy), [AB53](#) (student directory data definition), [AB76](#) (training hours for nurse aids), and [AB179](#), [AB180](#), [AB182](#), and [AB183](#) (abortion care policy), available at https://docs.legis.wisconsin.gov/2019/related/veto_messages.

Wisconsin residents who support the Democratic Party and its candidates for elected office, and the Legislature's motion to intervene in that case, further diminishes the chances that the Legislature and Governor will reach a legislative compromise on new legislative districts.

Consequently, past practice, the current partisan divide in Wisconsin's government, and the pending action by Democratic voters alleging a malapportionment in state legislative districts all strongly indicate that legislative impasse over new state legislative districts will occur, and that once again the federal court will be required to resolve the conflict.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1343(a)(3) and (4), 1357, and 2284 to hear the claims for legal and equitable relief arising under the federal and state constitutions. It also has general jurisdiction under 28 U.S.C. §§ 2201 and 2202, the Declaratory Judgments Act, to grant the declaratory relief requested by Plaintiffs.

2. This action challenges the constitutionality of the apportionment of Wisconsin's legislative districts, found in Chapter 4 of the Wisconsin Statutes and revised as ordered by the U.S. District Court for the Eastern District of Wisconsin in *Baldus v. Members of the Wisconsin Government Accountability Board*, 849 F. Supp. 2d 840 (E.D. Wis. 2012) (per curiam) (three-judge panel). The current state legislative district boundaries were based on the 2010 census of the state's population, now superseded by the 2020 census.

3. 28 U.S.C. § 2284(a) requires that a district court of three judges be convened to hear the case. In 1982, 1992, and 2002, three-judge panels convened pursuant to 28 U.S.C. § 2284 resolved complaints like this one, developing redistricting plans for the state legislature in the absence of valid plans adopted by the Legislature and enacted with the Governor's approval. *See Prosser*, 793 F. Supp. 859; *AFL-CIO*, 543 F. Supp. 630; *Baumgart v. Wendelberger*, 2002 WL 3412747, amended by 2002 WL 34127473.

4. This Court has personal jurisdiction over all Defendants. Defendants Spindell, Thomsen, Knudson, Glancey, Jacobs, Bostelmann, and Wolfe are state officials who reside in Wisconsin and perform official duties in Madison, Wisconsin.

5. Venue is proper in this Court under 28 U.S.C. §§ 1391(b) and (e). At least two of the defendants resides in the Western District of Wisconsin, and Defendants are state officials performing official duties in Madison, Wisconsin. Members of two Plaintiff organizations reside and vote in this district, and two Individual Plaintiffs, Stephenson and Alwin, also reside and vote in this district.

PARTIES

Plaintiffs

6. Plaintiffs include three nonprofit groups, each with members or constituents who are citizens, residents, and qualified voters of the United States of America and the State of Wisconsin, residing in various counties and legislative districts, including in now-over-populated districts (the “Organizational Plaintiffs”).

7. Plaintiff Black Leaders Organizing for Communities (“BLOC”) is a nonprofit project established in 2017 to ensure a high quality of life and access to opportunities for members of the Black community in Milwaukee and throughout Wisconsin. BLOC is a year-round civic-engagement organization that has a robust field program to get out the vote and do civic education work door-to-door with community members and through its fellowship program. During 2018 BLOC made 227,000 door attempts in Milwaukee, targeting Black residents to exercise their right to engage in civic participation including voting. BLOC trains its constituents on the civics process and on different ways to make their voices heard, including (but not limited to) voting in each election. BLOC is regarded and used by members of the African-American community in

Milwaukee as a resource and conduit through which they can become more engaged in and advocate for rights and political representation for members of their community.

8. Plaintiff Voces de la Frontera (“Voces”) is a nonpartisan, nonprofit, non-stock corporation organized under the laws of the State of Wisconsin with its principal office located at 515 S. 5th St., in the City of Milwaukee, Milwaukee County, Wisconsin. Voces, a community-based organization currently with over one thousand dues-paying members, was formed in 2001 to advocate on behalf of the rights of immigrant and low-income workers. Voces currently has chapters in Milwaukee, Racine, Waukesha, Sheboygan, Walworth County, Madison, West Bend, Manitowoc, and Green Bay. Voces is dedicated to educating and organizing its membership and community members to exercise their right to vote as protected by the Constitution and the Voting Rights Act of 1965. Voces has sought legal redress in multiple cases to protect the voting rights of Wisconsin’s Latino voters, including challenging discriminatory legislative districts (as recently as in *Baldus* in 2011) and voter registration and photo ID requirements. Voces seeks to maximize eligible-voter participation through its voter-registration efforts and encourage civic engagement through registration and voting.

9. Plaintiff League of Women Voters of Wisconsin (“LWVWI”) is a nonpartisan, nonprofit, non-stock corporation organized under the laws of the State of Wisconsin with its principal office located at 612 West Main St., Suite 200, in the City of Madison, Dane County, Wisconsin. LWVWI is an affiliate of The League of Women Voters of the United States, which has 750 state and local Leagues in all 50 states, the District of Columbia, Puerto Rico, the Virgin Islands, and Hong Kong. LWVWI works to expand informed, active participation in state and local government, giving a voice to all Wisconsinites. LWVWI, a nonpartisan community-based organization, was formed in 1920, immediately after the enactment of the Nineteenth Amendment granting women’s suffrage. LWVWI is dedicated to encouraging its members and the people of

Wisconsin to exercise their right to vote as protected by the Constitution and the Voting Rights Act of 1965. The mission of LWVWI is to promote political responsibility through informed and active participation in government and to act on select governmental issues. LWVWI seeks to maximize eligible-voter participation through its voter-registration efforts and encourage civic engagement through registration and voting. LWVWI works with and through 20 local Leagues in the following cities, counties, and areas throughout Wisconsin: Appleton, Ashland/Bayfield Counties, Beloit, Dane County, Door County, the Greater Chippewa Valley, Greater Green Bay, Janesville, the La Crosse area, Manitowoc County, Milwaukee County, the Northwoods, Ozaukee County, the Ripon area, Sheboygan County, the Stevens Point area, the St. Croix Valley, the Whitewater area, Winnebago County, and the Wisconsin Rapids area. These local Leagues have approximately 2,800 members, all of whom are also members of LWVWI. LWVWI has prosecuted lawsuits in state and federal courts in Wisconsin to vindicate the voting and representational rights of Wisconsin voters; this includes actions in this Court, such as *Swenson v. Bostelmann*, 20-cv-459-wmc (W.D. Wis. 2020), and *Lewis v. Knudson*, 20-cv-284 (W.D. Wis. 2020).

10. Organizational Plaintiffs' members and constituents include voters who reside in various State Senate and Assembly districts across Wisconsin, including districts that are now over-populated. Because they live in state legislative districts that were approximately equal in population with the other state legislative districts at the time the current districts were configured in 2011, but that are now over-populated as a result of the state population count released by the Census Bureau on April 26, 2021, their votes are now diluted compared with voters in districts that are now under-populated. This vote dilution constitutes a specific and personal injury to each voter in an over-populated district that can be addressed by a federal court. *See Reynolds*, 377 U.S. at 561; *Baker*, 369 U. S. at 206.

11. Plaintiffs also include three individual voters who reside in now-over-populated districts (the “Individual Plaintiffs”). The residency of Individual Plaintiffs is summarized here:

Individual Plaintiff	State Assembly District	Population compared to 2020 Census ideal	State Senate District	Population compared to 2020 Census ideal
Cindy Fallona	AD5	+13.26%	SD2	+2.77%
Lauren Stephenson	AD76	+20.41%	SD26	+13.00%
Rebecca Alwin	AD79	+17.13%	SD27	+9.47%

12. Individual Plaintiff Cindy Fallona resides in Wisconsin Assembly district 5 and State Senate district 2. Fallona has lived at this residence for over three decades and is a regular voter in Wisconsin elections. Fallona intends to vote in 2022 and is registered at this residence, with no plans to register at a different address.

13. Individual Plaintiff Lauren Stephenson resides in Wisconsin Assembly district 76 and State Senate district 26. Stephenson has lived at this residence for over six years and is a regular voter in Wisconsin elections. Stephenson intends to vote in 2022 and is registered at this residence, with no plans to register at a different address.

14. Individual Plaintiff Rebecca Alwin resides in Wisconsin Assembly district 79 and State Senate district 27. Alwin has lived at this residence for over 25 years and is a regular voter in Wisconsin elections. Alwin intends to vote in 2022 and is registered at this residence, with no plans to register at a different address.

Defendants

15. Defendants Robert F. Spindell, Jr., Mark L. Thomsen, Dean Knudson, Julie M. Glancey, Ann S. Jacobs, and Marge Bostelmann are sued in their official capacities as the members of the Wisconsin Elections Commission (“WEC”).

16. Defendant Meagan Wolfe is sued in her official capacity as the Administrator of the WEC.

17. The WEC has the responsibility for the administration and enforcement of Wisconsin laws “relating to elections” including Chapters 5 to 10 and 12. Wis. Stat. § 5.05(1). This includes the election every two years of Wisconsin’s representatives in the state Assembly and every four years its representatives in the state Senate. The WEC provides support to local clerks in each of Wisconsin’s 72 counties, in administering and preparing for the election of members of the Wisconsin Legislature.

18. Defendant Wolfe, as commission administrator, is the chief election officer of the state. Wis. Stat. § 5.05(3g).

FACTS AND CONSTITUTIONAL PROVISIONS

19. The U.S. Constitution requires that the members of the Wisconsin Legislature be elected on the basis of equal representation. *Arrington*, 173 F. Supp. 2d at 860 (citing U.S. Const. art. I, § 2). The State Senate and Assembly districts must therefore be reapportioned after each Federal Census to be substantially equal in population.

20. The Due Process Clause of the Fifth Amendment to the U.S. Constitution provides that “[n]o person shall ... be deprived of life, liberty, or property, without due process of law.”

21. The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution provides, in pertinent part:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This provision guarantees to the citizens of each state the right to vote in state elections, and that each citizen shall have substantially equal legislative representation regardless of what part of the state they live in, giving each person’s vote equal power. *Reynolds*, 377 U.S. 533, 561-68 (1964).

22. 2011 Wisconsin Act 43 divided the official state population determined by the 2010 Census into 33 Senate districts and 99 Assembly districts with relatively equal populations. The revisions ordered by the court *Baldus* in 2012 did not disturb this approximate equality, despite modifying two Assembly districts. In 2012, each Senate district contained a population of approximately 172,333 residents, and each Assembly district contained a population of approximately 57,444. A copy of Chapter 4 of the Wisconsin Statutes, embodying 2011 Wisconsin Act 43, is attached as Exhibit 5.

23. The 2012 state legislative elections, and every subsequent biennial legislative election, including the November 6, 2020 election, have been conducted under the district boundaries created by Act 43, as modified by *Baldus*. The next regular state legislative primary election is scheduled for August 9, 2022, and the next regular state legislative general election is scheduled for November 8, 2022.⁹

24. The Bureau of the Census, U.S. Department of Commerce, conducted a decennial census of Wisconsin and of all the other states in 2020 under Article I, Section 2, of the U.S. Constitution.

25. Under 2 U.S.C. §§ 2a and 2c and 13 U.S.C. § 141(c), the Census Bureau on April 26, 2021 announced and certified the actual enumeration of the population of Wisconsin at 5,893,718 as of April 1, 2020, a population increase of approximately 200,000 people from the 2010 census. A copy of the Census Bureau's Apportionment Population and Number of Representatives, by state, is attached as Exhibit 6.

⁹ "Upcoming Elections," Wisconsin Elections Commission, available at: <https://elections.wi.gov/elections-voting/elections>.

26. Based on the 2020 Census, the precise ideal population for each Senate district in Wisconsin is 178,598 and for each Assembly district 59,533 (each an increase compared to the same figures from 2010).

27. The 2020 Census's P.L. 94-171 data, released August 12, 2021, demonstrate that Wisconsin's population has not grown uniformly across all 33 Senate and 99 Assembly districts. The data reveal substantial population disparities, indicating which districts are now over- and under-populated in reference to the 2020 Census's "ideal" district populations for Wisconsin's Senate and Assembly districts.

28. Because of population shifts over the past decade, the 2011 state legislative districts now give some Wisconsinites' votes more weight than others. Voters living in Assembly district 76—where the population is 20.41% greater than the ideal population based on the 2020 Census—have their votes diluted. This is particularly true compared to voters in other districts like Assembly district 10—now 11.60% *less* populated than the ideal district population. Voters in the 37 other overpopulated districts suffer similar harm: Assembly districts 79, 5, 78, and 80 have grown overpopulated in the past decade (with populations now 17.13%, 13.26%, 12.78%, and 10.58% over the ideal district population, respectively). Other districts are now underpopulated, giving voters who reside there an outsized voice in electing their state representative. Assembly districts 18, 16, and 8, for example, now have populations 11.00%, 9.73%, and 9.30% below the ideal population of 59,533, respectively, based on the 2020 Census.

29. The same population growth imbalances affect Senate districts, with some voters suffering vote dilution and others benefitting from heightened voting efficiency. Senate district 26 has grown to exceed the current ideal district population of 178,598 by 13.00%; Senate district 27 by 9.47%; and Senate district 16 by 7.78%. Meanwhile Senate district 6 is now underpopulated

by 9.25% relative to the ideal Senate district size and Senate districts 4, 3, and 22 are 8.62%, 4.43%, and 4.19% below the ideal size.

30. This facial and uncontradicted malapportionment of state legislative districts dilutes the voting strength of Individual Plaintiffs residing in the overpopulated districts: the weight or value of each voter in a relatively overpopulated district is, by definition, less than that of any voter residing in a relatively under-populated district.

31. Article IV, section 3, of the Wisconsin Constitution assigns the Legislature and Governor responsibility for enacting a constitutionally valid plan for the state's legislative districts.

32. In each of the previous four decades, when control over Wisconsin's government has been divided between members of the Republican and Democratic Parties, however, the Legislature and Governor have not met that responsibility. Instead, a federal court has established district boundaries to ensure the constitutional guarantees for citizens and voters.

33. In the most recent round of decennial redistricting in 2011, the Legislature and Governor did enact a legislative district plan, but that plan, too, required judicial intervention to give Wisconsin a legally compliant legislative district map.

34. The legislature elected in November 2020 convened for the first time on January 4, 2021. Both the Senate and Assembly are controlled by Republican majorities, while the Governor is a Democrat. Each time in the past four decades that Wisconsin has had divided partisan control when redistricting was required, the political branches have failed to reach a compromise, requiring a federal court to step in and assume the constitutionally mandated reapportionment of state legislative districts. *See Prosser*, 793 F. Supp. 859; *AFL-CIO*, 543 F. Supp. 630; *Baumgart*, 2002 WL 34127471, *amended by* 2002 WL 34127473. The low likelihood

of an enacted redistricting plan in the current cycle is evidenced by the Legislature's recent preference for litigation over legislation, as described in detail above.

35. The deadline for new districts to be in place is driven by the 2022 elections for state legislative seats. The date of the primary for these elections is dictated by state statute, and in 2022 will be August 9. Because there are a number of steps leading up to an election, however, new districts must be set no later than March 15, 2022. This is the statutory deadline for the WEC to notify county clerks of which offices will be voted on, and where information about district boundaries can be found. This notice informs potential candidates of district boundaries, so they can begin circulating nomination papers for signature by voters within those districts on April 15, 2022. Wis. Stat. § 8.15(1). The statutory deadline for completed nomination papers to be submitted to the WEC is June 1, 2022. *Id.* The WEC must then certify which candidates have qualified for ballot access, followed by ballot design, testing, printing, and then distribution of absentee ballots, which must begin no later than 47 days election day. *See* Wis. Stat. § 7.15. Thus, while the primary election occurs in August, new districts must be in place several months before that date for the WEC to comply with state law, and so that candidates may appear on the ballot for the election on that date.

CLAIMS FOR RELIEF

COUNT I

Malapportionment in Violation of the Equal Protection Clause

36. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 35 above.

37. A state statute that effects district populations and boundaries that discriminate against citizens in highly populous legislative districts, by definition preferring voters in less populous legislative districts, violates the U.S. Constitution. The 2020 Census rendered the state's

2011 legislative districts unconstitutional, which harms or threatens to harm Plaintiffs' constitutional rights unless future elections under the current districts are enjoined.

38. Shifts in population and population growth have rendered the 33 Senate districts and 99 Assembly districts created by 2011 Wisconsin Act 43 and modified by *Baldus* no longer roughly equal in population, as required by the federal constitution. The population variations between and among the districts are substantial.

39. Organizational Plaintiffs' members and constituents who reside in the overpopulated 16th, 26th, and 27th Senate districts, among others, based on the existing district lines, are particularly underrepresented in comparison with the residents of other districts.

40. Organizational Plaintiffs' members and constituents who reside in the overpopulated 5th, 46th, 48th, 56th, 76th, 78th, 79th, and 80th Assembly districts, among others, based on the existing district lines, are particularly underrepresented in comparison with the residents of other districts.

41. Individual Plaintiffs reside in State Senate and Assembly districts that are overpopulated, and therefore their votes are diluted compared to Wisconsin residents in districts that are now under-populated.

42. If not otherwise enjoined or directed, the WEC will have no choice but to carry out its statutory responsibilities for administering the upcoming 2022 legislative elections based on the now unconstitutional Senate and Assembly districts adopted in 2011 Wisconsin Act 43.

43. The boundaries and the populations they define, unless modified, violate the principle of "one person, one vote" and do not guarantee that the vote and representation in the Wisconsin legislature for every citizen is equivalent to the vote and representation of every other citizen.

44. Plaintiffs and their members and constituents are also harmed because, until valid redistricting occurs, they cannot know in which Senate and Assembly district individuals will reside and vote. Therefore, they cannot effectively hold their representatives accountable for their conduct and policy positions advocated in office. Plaintiffs engage in accountability and voter-education efforts that are hindered by the lack of a valid redistricting plan because:

a. Their members and constituents who desire to influence the views of members of the Wisconsin Legislature or candidates for the Senate and Assembly are not able to communicate their concerns effectively because members of the legislature or legislative candidates may not be held accountable to those citizens as voters in the next election;

b. Potential candidates for the legislature will not be able to come forward, and be supported or opposed by Plaintiffs or their members, until potential candidates know the borders of the districts in which they, as residents of the district, could seek office; and,

c. Plaintiffs' members and constituents who desire to communicate with and contribute financially to candidates for the legislature who may or will represent them, a right guaranteed by the First Amendment, are hindered from doing so until districts are correctly reapportioned;

45. Plaintiffs' members and constituents' rights are compromised because of the inability of candidates to campaign effectively and provide a meaningful election choice.

RELIEF SOUGHT

WHEREFORE, Plaintiffs ask that the Court:

A. Immediately request that Hon. Diane S. Sykes, Chief Judge of the U.S. Court of Appeals for the Seventh Circuit, designate two other judges to form a three-judge panel under 28 U.S.C. § 2284(a);

B. Declare that the current configuration of Wisconsin's 33 Senate districts and 99 Assembly districts, established by 2011 Wisconsin Act 43 and modified by *Baldus*, based on the 2010 Census, is unconstitutional and invalid and the maintenance of those districts for the August 2022 primary election and November 8, 2022 general election violates Plaintiffs' federal and state constitutional rights;

C. Enjoin Defendants and the WEC's employees and agents, including the county clerks in each of Wisconsin's 72 counties and Wisconsin's 1,850 municipal clerks and election commissions, from administering, enforcing, preparing for, or in any way permitting the nomination or election of members of the Wisconsin Legislature from the unconstitutional Senate districts and unconstitutional Assembly districts that now exist in Wisconsin for the August 2022 primary election and November 2022 general election;

D. Establish a schedule that will enable the Court, in the absence of a constitutional state law, adopted by the Wisconsin Legislature and signed by the Governor in a timely fashion, to adopt and implement new State Senate and Assembly district plans with districts substantially equal in population and that otherwise meet the requirements of the U.S. Constitution and statutes and the Wisconsin Constitution and statutes;

E. Award Plaintiffs their costs, disbursements, and reasonable attorneys' fees incurred in bringing this action; and,

F. Grant such other relief as the Court deems proper.

Dated: August 23, 2021.

By: Electronically signed by Douglas M. Poland
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