

STATE OF WISCONSIN
SUPREME COURT

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DENNIS CLINARD, ERIN M. DECKER,
LUONNE A. DUMAK, DAVID A. FOSS,
LaVONNE J. DERKSEN, PAMELA S. TRAVIS,
JAMES L. WEINER, JEFF L. WAKSMAN and
KEVIN CRONIN,

CLERK OF SUPREME COURT
OF WISCONSIN

Petitioners,

and

Case No.

ALVIN BALDUS; CINDY BARBERA; CARLENE
BECHEN; ELVIRA BUMPUS; RONALD BIENDSEIL;
LESLIE W. DAVIS III; BRETT ECKSTEIN; GLORIA
ROGERS; RICHARD KRESBACH; ROCHELLE
MOORE; AMY RISSEEUW; JUDY ROBSON; JEANNE
SANCHEZ-BELL; CECELIA SCHLIEPP; TRAVIS
THYSSEN,

Involuntary Petitioners,

v.

MICHAEL BRENNAN, DAVID DEININGER, GERALD
NICHOL, THOMAS CANE, THOMAS BARLAND and
TIMOTHY VOCKE each in his official capacity as a member
of the WISCONSIN GOVERNMENT ACCOUNTABILITY
BOARD; and KEVIN KENNEDY, Director and General
Counsel for the Wisconsin Government Accountability Board;

Respondents.

**PETITION FOR APPOINTMENT OF THREE JUDGE PANEL PURSUANT TO WIS.
STAT. §§ 751.035 and 801.50(4m) OR, IN THE ALTERNATIVE, FOR LEAVE TO
COMMENCE AN ORIGINAL ACTION SEEKING DECLARATORY JUDGMENT AND
OTHER RELIEF**

INTRODUCTION

This matter concerns the reapportionment of legislative and congressional districts in the State of Wisconsin. The Petitioners seek a declaration from this Court concerning the validity of certain legislation which, following the 2010 federal census, has established new legislative and congressional district boundaries (the “2011 Redistricting Plan”). The Petitioners also seek a declaration that the 2002 court-adopted redistricting plan (the “2002 Court Plan”) is unconstitutional and that the Senate and Assembly districts established by the 2002 Court Plan may not lawfully be used to conduct any elections, including special or recall elections.

The 2011 Redistricting Plan, as set forth in 2011 Wisconsin Acts 43 and 44, was adopted by the State Legislature in order to account for shifts in population that have occurred since the previous 2000 census. Those shifts in population rendered the prior Senate and Assembly districts, which were established by the 2002 Court Plan, unconstitutionally malapportioned. Thus, the State Legislature acted pursuant to its duty, as set forth in Article IV, Section 3 of the Wisconsin Constitution, to “apportion and district anew” those unconstitutional districts.

The above-named Involuntary Petitioners have challenged the validity of the 2011 Redistricting Plan on constitutional and other grounds by the filing of an action in the Federal District Court for the Eastern District of Wisconsin, Case No. 11-cv-562. The Involuntary Petitioners have pursued their action in federal court despite the United States Supreme Court’s clear admonition that congressional and legislative reapportionment “is primarily the duty and responsibility of the State ... rather than of a federal court.” *Grove v Emison*, 507 U.S. 25, 34 (1993). In light of the challenge to the 2011 Redistricting Plan that has been initiated by the Involuntary Petitioners, the Petitioners seek a resolution to the issues raised by that challenge in the proper state forum by the Wisconsin Supreme Court. Specifically, Petitioners seek a

declaration that the 2011 Redistricting Plan is legally valid under applicable constitutional and other redistricting principles.

Following the enactment of the 2011 Redistricting Plan, the Government Accountability Board (“GAB”), which is the state agency responsible for administering the laws concerning the conduct of elections in the State of Wisconsin, issued formal guidance that any recall elections which may be initiated and held prior to the general election in November of 2012, are to be conducted in the old legislative districts established by the 2002 Court Plan. GAB issued this formal guidance despite the fact there is no dispute that the prior legislative districts are unconstitutionally malapportioned. Indeed, the Involuntary Petitioners have expressly alleged in the federal lawsuit that the prior legislative districts are unconstitutional.

GAB issued this formal guidance despite also concluding that the legislative districts established by the 2011 Redistricting Plan are effective for purposes of constituent representation. Thus, in the event that any recall elections are conducted between now and November of 2012, many electors who are now represented by a particular State Senator in a new district established by the 2011 Redistricting Plan *will not* be able to vote in a recall election concerning that Senator. Conversely, many electors who are no longer represented by that Senator, because they reside in the Senator’s old district but not within the new district, *will* be entitled to vote in a recall election concerning that Senator. This amounts to a clear violation of the constitutional provision concerning the recall of elective officers set forth in Article XIII, Section 12 of the Wisconsin Constitution. Thus, Petitioners seek a declaration from this Court that recall elections may not be conducted in unconstitutionally malapportioned districts and that such elections may only be conducted in the districts established by the 2011 Redistricting Plan, which incumbent legislators now represent.

Finally, in 2011 Wisconsin Act 39, the State Legislature enacted Wis. Stat. §§ 751.035 and 801.50(4m), which provide for the appointment of a panel of three circuit court judges by the Supreme Court in actions involving a challenge to the apportionment of any congressional or legislative district. Petitioners therefore ask this Court to appoint a three-judge panel pursuant to the provisions of Wis. Stat. §§ 751.035 and 801.50(4m). In the alternative, Petitioners request that the Court accept this case as an original action pursuant to Article VII, Section 3 of the Wisconsin Constitution. Petitioners have also filed herewith a memorandum in support of their request that the Court exercise its original jurisdiction.

PARTIES

Petitioners

1. Petitioner Dennis Clinard is a resident of the State of Wisconsin residing at 5852 Cedar Road in the Town of Sparta, County of Monroe, 54656. Clinard is a qualified elector who resides in the 70th Assembly District pursuant to the 2011 Redistricting Plan. Clinard's residence was previously within the 92nd Assembly District pursuant to the 2002 Court Plan. In 2010, Clinard ran for the office of State Assembly in the old 92nd Assembly District and may again run for the legislature.

2. Petitioner Erin M. Decker is a resident of the State of Wisconsin residing at 706 N. School Street in the Village of Silver Lake, County of Kenosha, 53170. Decker is a qualified elector whose residence was formerly in the 66th Assembly district, represented by Representative Kerkman, and the 22nd Senate district, represented by Senator Wirch. Pursuant to the 2011 Redistricting Plan, Decker's residence is now in the 61st Assembly district, represented by Representative Kerkman, and the 21st Senate district, represented by Senator Wanggaard.

3. Petitioner Luonne A. Dumak is a resident of the State of Wisconsin residing at 3601 South 147th Street, Apt. 134 in the City of New Berlin, County of Waukesha, 53151. Dumak is a qualified elector whose residence was formerly in the 84th Assembly district, represented by Representative Kuglitsch, and the 28th Senate district, represented by Senator Lazich. Pursuant to the 2011 Redistricting Plan, Dumak's residence is now in the 15th Assembly district, represented by Representative Staskunas, and the 5th Senate district, represented by Senator Vukmir.

4. Petitioner David A. Foss is a resident and qualified elector of the State of Wisconsin residing at 1894 22^{5/8} Street in the Town of Rice Lake, County of Barron, 54868.

5. Petitioner LaVonne J. Derksen is a resident of the State of Wisconsin residing at 2338 Talc Trail, Apt. 209 in the City of Madison, County of Dane, 53719. Derksen is a qualified elector whose residence was formerly located in the 79th Assembly district represented by Representative Pope-Roberts. Pursuant to the 2011 Redistricting Plan, Derksen's residence is now in the 78th Assembly district, represented by Representative Pocan.

6. Petitioner Pamela S. Travis is a resident and qualified elector of the State of Wisconsin residing at N2607 Cardinal Avenue in the Town of Grant, County of Clark, 54456.

7. Petitioner John E. Hager is a resident of the State of Wisconsin residing at 127 West Hidden Trail, Unit 101 in the City of Elkhorn, County of Walworth, 53121. Hager is a qualified elector who resides in the 31st Assembly District, which was formerly represented by Representative Nass but is currently represented by Representative Loudenbeck pursuant to the 2011 Redistricting Plan.

8. Petitioner James L. Weiner is a resident of the State of Wisconsin residing at W5665 Young Road in the Town of LaGrange, County of Walworth, 53156. Weiner is a

qualified elector whose residence was formerly in the 31st Assembly district, represented by Representative Nass. Pursuant to the 2011 Redistricting Plan, Weiner's residence is now in the 33rd Assembly district, which is still represented by Representative Nass.

9. Petitioner Jeff L. Waksman is a resident of the State of Wisconsin residing at 334 North Allen Street, Unit 5 in the City of Madison, County of Dane, 53726.

10. Petitioner Kevin Cronin is a resident of the State of Wisconsin residing at 1832 Grange Avenue in the City of Racine, County of Racine, 54301. Cronin is a qualified elector whose residence was formerly in the 62nd Assembly district, represented by Representative Mason, and the 21st Senate district, represented by Senator Wanggaard. Pursuant to the 2011 Redistricting Plan, Cronin currently resides in the 66th Assembly district, represented by Representative Turner, and the 22nd Senate district, represented by Senator Wirch.

Respondents

11. Respondent Michael Brennan, resident of the City of Marshfield, Wisconsin; David Deininger, resident of the Town of Monroe, Wisconsin; Gerald Nichol, resident of the City of Madison, Wisconsin; Thomas Cane, resident of the City of Wausau, Wisconsin; Thomas Barland, resident of the City of Eau Claire, Wisconsin; and Timothy Vocke, resident of the Town of Rhineland, Wisconsin are all members of the Wisconsin Government Accountability Board and are named in such official capacity. The Wisconsin Government Accountability Board is an independent agency of the State of Wisconsin with authority for the administration of laws concerning the conduct of elections.

12. Respondent Kevin Kennedy is a Wisconsin resident residing in Dane County, Wisconsin and is the Director and General Counsel for the Wisconsin Government Accountability Board.

Involuntary Petitioners

13. The following Involuntary Petitioners have challenged the validity of the 2011 Redistricting Plan on constitutional and other legal grounds by the filing of an action in the Federal District Court for the Eastern District of Wisconsin, Case No. 11-cv-562:

- a. Alvin Baldus is upon information and belief a Wisconsin resident and registered voter residing in the City of Menomine, Dunn County, Wisconsin.
- b. Cindy Barbera is upon information and belief a Wisconsin resident and registered voter residing in the City of Madison, Dane County, Wisconsin.
- c. Carlene Bechen is upon information and belief a Wisconsin resident and registered voter residing in the Village of Brooklyn, Dane County, Wisconsin.
- d. Elvira Bumpus is upon information and belief a Wisconsin resident and registered voter residing in the City of Racine, Racine County, Wisconsin.
- e. Ronald Biendseil is upon information and belief a Wisconsin resident and registered voter residing in the City of Middleton, Dane County, Wisconsin.
- f. Leslie W. Davis III is upon information and belief a Wisconsin resident and registered voter residing in the City of Stoughton, Dane County, Wisconsin.
- g. Bret Eckstein is upon information and belief a Wisconsin resident and registered voter residing in the Village of Susex, Waukesha County, Wisconsin.
- h. Gloria Rogers is upon information and belief a Wisconsin resident and registered voter residing in the City of Racine, Racine County, Wisconsin.
- i. Richard Kresbach is upon information and belief a Wisconsin resident and registered voter residing in the Village of Wales, Waukesha County, Wisconsin.

j. Rochelle Moore is upon information and belief a Wisconsin resident and registered voter residing in the City of Kenosha, Kenosha County, Wisconsin.

k. Amy Risseuw is upon information and belief a Wisconsin resident and registered voter residing in the Town of Menasha, Outagamie County, Wisconsin.

l. Judy Robson is upon information and belief a Wisconsin resident and registered voter residing in the City of Beloit, Rock County, Wisconsin.

m. Jeanne Sanchez-Bell is upon information and belief a Wisconsin resident and registered voter residing in the City of Kenosha, Kenosha County, Wisconsin.

n. Cecelia Schliepp is upon information and belief a Wisconsin resident and registered voter residing in the Town of Erin, Washington County, Wisconsin.

o. Travis Thyssen is upon information and belief a Wisconsin resident and registered voter residing in the Town of Grand Chute, Outagamie County, Wisconsin.

BACKGROUND

14. Pursuant to Article IV, Section 3 of the Wisconsin Constitution, the Wisconsin State Legislature is responsible for enacting a constitutionally-valid plan for legislative districts.

15. Article IV, Section 3 of the Wisconsin Constitution requires that the legislature “apportion and district anew” the state assembly and senate districts following each federal census.

16. Article 1, Section 2 of the United States Constitution provides that “Representatives . . . shall be apportioned among the several states . . . according to their respective numbers....” It further provides that “[t]he House of Representatives shall be composed of members chosen every second year by the people of the several states....”

17. The Bureau of Census, U.S. Department of Commerce, conducted a decennial census in 2010 pursuant to Article 1, Section 2 of the United States Constitution. Census data from the 2010 Census was released to the State of Wisconsin in March of 2011.

18. Pursuant to Article IV, Section 3 of the Wisconsin Constitution and Article 1, Section 2 of the United States Constitution, the Wisconsin State Legislature drafted and adopted legislation, 2011 Wisconsin Acts 43 and 44, referred to herein as the 2011 Redistricting Plan, establishing new legislative and congressional districts based upon population data gathered through the 2010 Census.

19. The Wisconsin State Senate adopted the 2011 Redistricting Plan on July 19, 2011. The Wisconsin State Assembly adopted the 2011 Redistricting Plan on July 20, 2011.

20. Governor Walker signed the 2011 Redistricting Plan into law on August 9, 2011.

21. A dispute has arisen concerning the legal validity of the legislative and congressional districts established by the 2011 Redistricting Plan. Specifically, the above-named Involuntary Petitioners have filed an action in the Federal District Court for the Eastern District of Wisconsin, Case No. 11-cv-562, in which they seek declaratory relief striking down the 2011 Redistricting Plan and a corresponding injunction. A copy of the Involuntary Petitioners' Complaint and Amended Complaint are attached to this Petition as Exhibit A and Exhibit B, respectively.

22. A dispute has also arisen regarding the initial applicability of the legislative districts created by the 2011 Redistricting Plan.

23. The GAB has issued formal guidance regarding the initial applicability of the legislative districts created by Act 43. A copy of the GAB's formal guidance memorandum is attached to this Petition as Exhibit C.

24. According to the GAB's formal guidance memorandum, "[t]he effective date of 2011 Wisconsin Act 43 with respect to representation differs from its effective date for election purposes." (Exhibit C at 3)

25. GAB has concluded in its formal guidance memorandum that the legislative districts established by the 2011 Redistricting Plan are "effective as of August 24, 2011 for representation purposes." (*Id.*)

26. However, GAB has also concluded that "the legislative districts created by 2011 Wisconsin Act 43 are not in effect for the purpose of 'special or recall elections to offices filled or contested' prior to the General Election on November 6, 2012." (*Id.* at 2) GAB's conclusion in this regard is purportedly based on provisions of Act 43 which state that the Act "first applies, with respect to regular elections, to offices filled at the 2012 general elections," 2011 Wis. Act 43 § 10(1), and that the Act "first applies, with respect to special or recall elections, to offices filled or contested concurrently with the 2012 general election." 2011 Wis. Act. 43 § 10(2).

27. Thus, GAB has concluded that any special or recall elections to offices filled or contested prior to the November 2012 General Election are to be conducted in the legislative districts established by the 2002 Court Plan. GAB's conclusion is erroneous because the legislative districts established by the 2002 Court Plan are unconstitutionally malapportioned and, thus, cannot be used to conduct elections consistent with the central constitutional principle of one-person, one-vote.

28. As outlined above, the new legislative districts established by the 2011 Redistricting Plan were established pursuant to Article IV, Section 3 of the Wisconsin Constitution using population data compiled by the federal government in the 2010 Federal Census and disseminated to the State of Wisconsin. The 2010 Federal Census data demonstrate

that the populations within the legislative districts established by the 2002 Court Plan deviated substantially from equal population and were therefore unconstitutionally malapportioned.

29. As shown by the 2010 Federal Census data, the population deviation among Senate districts under the 2002 Court Plan ranged from a high of 25,535 (14.82%) above zero deviation or an ideal population of 172,332 and a low of 19,574 (11.36%) below zero deviation. The population deviation among Assembly districts under the 2002 Court Plan ranged from a high of 18,720 (32.59%) above zero deviation or an ideal population of 57,444, and a low of 9,057 (15.77%) below zero deviation.

30. According to GAB's guidance memorandum, current legislators now represent constituents who reside in the new legislative districts established by the 2011 Redistricting Plan. Yet, despite the fact that current legislators represent persons who reside in the new legislative districts, GAB's guidance concludes that legislators may be recalled by a different set of constituents, namely those residing within the old districts established by the 2002 Court Plan.

31. GAB's guidance, which provides that any special or recall elections must be conducted in the old districts, while the new districts are effective for purposes of constituent representation, results in the potential disenfranchisement of nearly one million Wisconsin citizens for purpose of recall elections. Among the 24 Senate districts in which recall elections could be held in 2012, there are 923,362 citizens, including Petitioner Decker, who, according to GAB's guidance, could not vote in a recall election concerning the Senator who now represents them.

32. On November 15, 2011, the Committee to Recall Wanggaard filed a registration statement with GAB and appended to it a statement of intent to circulate a petition to recall Senator Wanggaard executed by the Committee's treasurer, Randolph Brandt. If the Committee

to Recall Wanggaard is successful in forcing a recall election in the 21st Senate District, Petitioner Decker could not vote in the election, despite the fact that Senator Wanggaard currently represents her.

33. Article XIII, Section 12(7) of the Wisconsin Constitution specifically provides that “no law shall be enacted to hamper, restrict, or impair the right of recall.” Article XIII, Section 12(1) provides that a “recall petition shall be signed by electors ... in the ... district which the incumbent represents.” GAB’s guidance providing that old legislative districts apply to recall elections is in direct conflict with this constitutional mandate and serves to impair the right of recall of more than 900,000 citizens, including Decker.

GROUND SUPPORTING JURISDICTION

34. The United States Supreme Court has often held that congressional and legislative reapportionment “is primarily the duty and responsibility of the State through its legislature or other body, rather than of a federal court.” *Grove v. Emison*, 507 U.S. 25, 34 (1993) (quotation omitted).

35. The United States Supreme Court has also recognized that state courts are the primary judicial authority on redistricting matters and has stated that it “prefers *both* state branches [legislative and judicial] to federal courts as agents of apportionment.” *Grove v. Emison*, 507 U.S. 25, 34 (1993) (emphasis in original).

36. The Wisconsin Legislature has enacted Wis. Stat. §§ 751.035 and 801.50(4m) granting this Court authority to appoint a three-judge panel to hear challenges and disputes regarding legislative or Congressional redistricting matters.

37. Wisconsin’s Uniform Declaratory Judgments Act, Wis. Stat. § 806.04, states that “[c]ourts of record within their respective jurisdictions shall have the power to declare rights,

status, and other legal relations whether or not further relief is or could be claimed.” Wis. Stat. § 806.04(1). The Act further allows a party “whose rights, status or other legal relations are affected by a statute” to petition a court and “have determined any question of construction or validity arising under” the statute. Wis. Stat. § 806.04(2).

38. Pursuant to Article VII, Section 3 of the Wisconsin Constitution, this Court “may hear original actions and proceedings.” The proper apportionment of Congressional and legislative districts is a matter which affects the rights of every citizen of the State of Wisconsin.

39. Citizens of the State of Wisconsin, including Petitioner Clinard, who may seek to run for a congressional or legislative office, will not know in which district they will be entitled to run until the dispute regarding the validity of the 2011 Redistricting Plan is resolved.

40. Wisconsin voters, including the Petitioners, are also severely disadvantaged by the uncertainty resulting from the challenge to the validity of the 2011 Redistricting Plan in many ways, including:

- i. Voters who desire to affect the views of candidates may not effectively communicate those concerns as candidates cannot declare for office without knowing the districts in which they will run;
- ii. Fewer potential candidates will come forward if they do not know the borders of the districts in which they will run;
- iii. Voters’ rights will be compromised because of candidates’ lack of ability to run effective campaigns and provide a meaningful election.

41. This Court has previously exercised original jurisdiction in cases involving the apportionment of legislative districts. *See State ex rel. Reynolds v. Zimmerman*, 23 Wis. 2d 606, 128 N.W.2d 16 (1964); *State ex rel. Reynolds v. Zimmerman*, 23 Wis. 2d 544, 128 N.W.2d 551

(1964); *State ex rel. Thomson v. Zimmerman*, 264 Wis. 644, 60 N.W.2d 416 (1953); *State ex rel. Bowman v. Dammann*, 209 Wis. 21, 243 N.W. 481 (1932); *State ex rel. Attorney General v. Cunningham*, 81 Wis. 440, 51 N.W. 724 (1892).

REQUEST FOR APPOINTMENT OF THREE-JUDGE PANEL

42. In recognition of the state’s primary role in the redistricting process, the Wisconsin Legislature has established a procedure for the review of disputes regarding redistricting. Pursuant to the newly enacted Wis. Stat. §§ 751.035 and 801.50(4m), the Wisconsin Supreme Court “shall appoint a panel consisting of 3 circuit court judges” to hear challenges to the apportionment of any Congressional or legislative district.

43. The 2011 Redistricting Plan has been challenged by the Involuntary Petitioners who claim that it is invalid on various constitutional and other legal grounds.

44. Petitioners contend that the 2011 Redistricting Plan is a valid, constitutional enactment of the Wisconsin State Legislature and further contend that Involuntary Petitioners’ challenge to the 2011 Redistricting Plan is without merit.

45. Petitioners hereby challenge the constitutionality of the legislative districts established by the 2002 Court Plan and contend that those districts may not be used for any purposes, including the conduct of recall elections.

46. Pursuant to Wis. Stat. §§ 751.035 and 801.50(4m), Petitioners are entitled to the appointment of a 3- judge panel of Wisconsin circuit court judges to resolve the disputes set forth in this Petition.

ALTERNATIVE REQUEST TO EXERCISE ORIGINAL JURISDICTION

47. In the event of any dispute concerning the validity or applicability to this matter of Wis. Stat. §§ 751.035 and 801.50(4m), and in order to ensure an expeditious resolution of the

issues presented herein, Petitioners request, in the alternative, that this Court hear this matter pursuant to its original jurisdiction.

48. In support of Petitioners' request that the Court exercise its original jurisdiction in this matter, Petitioners have contemporaneously filed a Memorandum in Support of Petition for Leave to Commence an Original Action Seeking Declaratory Judgment and Other Relief.

COUNT ONE

(Declaratory Relief Pursuant To Wis. Stat. § 806.04 That
The 2011 Redistricting Plan Is Valid And Constitutional)

49. A dispute has arisen regarding the validity and constitutionality of the 2011 Redistricting Plan.

50. Involuntary Petitioners have challenged the validity and constitutionality of the 2011 Redistricting Plan in the United States District Court for the Eastern District of Wisconsin, as outlined above.

51. Petitioners contend that the 2011 Redistricting Plan is a valid and constitutional enactment of the Wisconsin State Legislature.

52. Based upon the dispute regarding the legal validity of the 2011 Redistricting Plan, Petitioners have standing to bring this action for declaratory relief in light of the effect of that dispute on their interests.

53. Petitioners are entitled to a declaration, pursuant to Wis. Stat. § 806.04, that the 2011 Redistricting Plan is a valid and enforceable enactment of the Wisconsin Legislature.

COUNT TWO

(Declaratory Relief Pursuant To Wis. Stat. § 806.04 That The Legislative Districts Established By The 2002 Court Plan Are Unconstitutional)

54. There is no dispute that based on the 2010 Census data the legislative districts established under the 2002 Court Plan are unconstitutionally malapportioned and violate the central principle of one-person, one-vote.

55. GAB has nevertheless concluded that any special or recall elections held prior to November of 2012 will be conducted in the old legislative districts.

56. GAB has recently received statements of intent to circulate recall petitions in Senate Districts 13, 21, 23 and 29. Upon information and belief, petition circulators are circulating or intend to circulate recall petitions within the old Senate Districts under the 2002 Court Plan, pursuant to the GAB guidance.

57. GAB has legal authority to evaluate and determine the sufficiency of recall petition and, where such petitions are deemed sufficient, to direct that recall elections be held in a given legislative district. If not enjoined, GAB will unlawfully direct that recall elections be conducted in the Senate Districts under the 2002 Court Plan in the event the petitions in those districts are deemed sufficient.

58. Petitioners contend that the legislative districts established by the 2002 Court Plan are unconstitutional. Petitioners' interests will be impacted if recall elections are conducted in unconstitutional districts and are entitled to a declaration that recall elections may not be conducted in such districts.

STATEMENT OF RELIEF REQUESTED

59. Petitioners respectfully request that this Court appoint a panel of three circuit judges to hear the matters raised herein pursuant to Wis. Stat. §§ 751.035 and 801.50(4m).

60. In the alternative, and for the reasons set forth herein and in Petitioners' Memorandum in Support of Petition For Leave to Commence and Original Action Seeking Declaratory Judgment and Other Relief, Petitioners respectfully request that this Court exercise its constitutional authority to hear these matters as an original action.

61. Petitioners respectfully request that an order be issued declaring the 2011 Redistricting Plan, as enacted by 2011 Wisconsin Acts 43 and 44, to be legally valid.

62. Petitioners respectfully request that an order be issued declaring that the legislative districts established by the 2002 Court Plan are unconstitutional.

63. Petitioners respectfully request that an order be issued enjoining the Government Accountability Board from taking any action related to the conduct of any recall election in the unconstitutionally malapportioned legislative districts established by the 2002 Court Plan.

Dated this 21st day of November, 2011.

MICHAEL BEST & FRIEDRICH LLP
Attorneys for Petitioners

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Exhibit A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ALVIN BALDUS, CINDY BARBERA, CARLENE
BECHEN, ELVIRA BUMPUS, RONALD BIENDSEI,
LESLIE W. DAVIS, III, BRETT ECKSTEIN, GEORGIA
ROGERS, RICHARD KRESBACH, ROCHELLE
MOORE, AMY RISSEEUW, JUDY ROBSON, JEANNE
SANCHEZ-BELL, CECELIA SCHLIEPP, TRAVIS
THYSSEN,

Plaintiffs,

Civil Action

File No. _____

(Three-judge panel requested)

v.

Members of the Wisconsin Government Accountability
Board, each only in his official capacity:
MICHAEL BRENNAN, DAVID DEININGER,
GERALD NICHOL, THOMAS CANE,
THOMAS BARLAND, and GORDON MYSE, and
KEVIN KENNEDY, Director and General Counsel for the
Wisconsin Government Accountability Board,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

The plaintiffs, for their complaint in this matter under 42 U.S.C. § 1983 and 28 U.S.C. § 2284(a), requiring a three-judge panel, allege that:

SUMMARY

This is an action for a declaratory judgment and for injunctive relief, involving the rights of the plaintiffs under the U.S. Constitution and the Wisconsin Constitution and the apportionment of the 33 Senate districts and 99 Assembly districts in the State of Wisconsin. Those districts, established by a three-judge panel of this Court by order in 2002, have been rendered unconstitutional by the 2010 census. This case arises under the U.S. Constitution,

Article I, Section 2, and the Fifth and Fourteenth Amendments, Sections 1, 2 and 5, under 42 U.S.C. §§ 1983 and 1988, under the Voting Rights Act, 42 U.S.C. § 1973, and under article IV, section 3 of the Wisconsin Constitution.

JURISDICTION

1. This Court has 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 the plaintiffs.

2. This action challenges the constitutionality of the judicially-mandated apportionment of Wisconsin's legislative districts, found in chapter 4 of the Wisconsin Statutes, but only as ordered by the U.S. District Court for the Eastern District of Wisconsin in *Baumgart v. Wendelberger*, Nos. 01-121 and 02-366, 2002 WL 34127471 (E.D. Wis. May 30, 2002) (*per curiam*) (three-judge panel), *amended by* 2002 WL 34127473 (E.D. Wis. July 11, 2002). The current state legislative district boundaries were based on the 2000 census of the state's population, now superseded by the 2010 census.

3. Accordingly, 28 U.S.C. § 2284(a) requires that a district court of three judges be convened or reconvened 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.

VENUE

4. The venue for this case is properly in this Court under 28 U.S.C. §§ 1391(b) and (e). At least one of the defendants resides in the Eastern District of Wisconsin. In addition, nine of the individual plaintiffs reside and vote in this district.

PARTIES

Plaintiffs

5. The plaintiffs are citizens, residents and qualified voters of the United States of America and the State of Wisconsin, residing in various counties and legislative districts:

a. Alvin Baldus, a citizen of the United States and of the State of Wisconsin, is a resident and registered voter of Menomonie, Dunn County, Wisconsin, with his residence in the 67th Assembly District and 23rd Senate District as those districts were established by this Court in 2002.

b. Cindy Barbara, a citizen of the United States and of the State of Wisconsin, is a resident and registered voter of the City of Madison, Dane County, Wisconsin, with her residence in the 79th Assembly District and 27th Senate District as those districts were established by this Court in 2002.

c. Carlene Bechen, a citizen of the United States and of the State of Wisconsin, is a resident and registered voter of the Village of Brooklyn, Dane County, Wisconsin, with her residence in the 80th Assembly District and the 27th Senate District as those districts were established by this Court in 2002.

d. Elvira Bumpus, a citizen of the United States and of the State of Wisconsin, is a resident and registered voter of the City of Racine, Racine County, Wisconsin, with her residence in the 62nd Assembly District and 21st Senate District as those districts were established by this Court in 2002.

e. Ronald Biendsei, a citizen of the United States and of the State of Wisconsin, is a resident and registered voter of Middleton, Dane County, Wisconsin, with his residence in the 79th Assembly District and 27th Senate District as those districts were established by this Court in 2002.

f. Leslie W. Davis, III, a citizen of the United States and of the State of Wisconsin, is a resident and registered voter of the City of Stoughton, Dane County, Wisconsin, with his residence in the 46th Assembly District and 16th Senate District as those districts were established by this Court in 2002.

g. Brett Eckstein, a citizen of the United States and of the State of Wisconsin, is a resident and registered voter of the Village of Sussex, Waukesha County, Wisconsin, with his residence in the 99th Assembly District and 33rd Senate District as those districts were established by this Court in 2002.

h. Georgia Rogers, a citizen of the United States and of the State of Wisconsin, is a resident and registered voter of the Village of Waunauke, Dane County, Wisconsin, with her residence in the 62nd Assembly District and the 21st Senate District as those districts were established by this Court in 2002.

i. Richard Kresbach, a citizen of the United States and of the State of Wisconsin, is a resident and registered voter of the Village of Wales, Waukesha County, Wisconsin, with his residence in the 33rd Assembly District and the 11th Senate District as those districts were established by this Court in 2002.

j. Rochelle Moore, a citizen of the United States and of the State of Wisconsin, is a resident and registered voter of the City of Kenosha, Kenosha County, Wisconsin, with her residence in the 64th Assembly District and the 22nd Senate District as those districts were established by this Court in 2002.

k. Amy Risseuw, a citizen of the United States and of the State of Wisconsin, is a resident and registered voter of the Town of Menasha, Outagamie County,

Wisconsin, with her residence in the 3rd state Assembly District and 19th Senate District as those districts were established by this Court in 2002.

l. Judy Robson, a citizen of the United States and of the State of Wisconsin, is a resident and registered voter of the City of Beloit, Rock County, Wisconsin, with her residence in the 44th Assembly District and 15th Senate District as those districts were established by this Court in 2002. Ms. Robson, then a State Senator, was a plaintiff in *Baumgart v. Wendelberger*, 2002 WL 34127471. She has filed a motion under Rule 60(b), Fed. R. Civ. P., for relief from the judgment in that case, asking the Court to provide substantially the same relief requested in this complaint.

m. Jeanne Sanchez-Bell, a citizen of the United States and of the State of Wisconsin, is a resident and registered voter of the City of Kenosha, Kenosha County, Wisconsin, with her residence in the 65th Assembly District and 22nd Senate District as those districts were established by this Court in 2002.

n. Cecelia Schliepp, a citizen of the United States and of the State of Wisconsin, is a resident and registered voter of the Village of Hartland, Waukesha County, Wisconsin, with her residence in the 99th Assembly District and the 33rd Senate District as those districts were established by this Court in 2002.

o. Travis Thyssen, a citizen of the United States and of the State of Wisconsin, is a resident and registered voter of the Town of Grand Chute, Outagamie County, Wisconsin, with his residence in the 56th Assembly District and the 19th Senate District as those districts were established by this Court in 2002.

Defendants

6. Michael Brennan, resident of Marshfield, Wisconsin; David Deininger, resident of Monroe, Wisconsin; Gerald Nichol, resident of Madison, Wisconsin; Thomas Cane, resident of

Wausau, Wisconsin; Thomas Barland, resident of Eau Claire, Wisconsin; and, Gordon Myse resident of Appleton, Wisconsin, each personally and individually but only in his official capacity, are all members of the Wisconsin Government Accountability Board (“G.A.B.”). Kevin Kennedy, resident of Dane County, Wisconsin, in his official capacity, is the Director and General Counsel for the G.A.B.

a. The G.A.B. is an independent agency of the State of Wisconsin under section 15.60 of the Wisconsin Statutes. The G.A.B. has “general authority” over and the “responsibility for the administration of ... [the state’s] laws relating to elections and election campaigns,” Wis. Stat. § 5.05(1) (2009-10), including the election every two years of Wisconsin’s representatives in the state Assembly and every four years its representatives in the state Senate.

b. Among its statutory responsibilities, the G.A.B. must notify each county clerk by the second Tuesday in May of an election year, under Wis. Stat. §§ 10.01(2)(a) and 10.72, of the date of the primary and general elections and the offices to be filled at those elections by the voters. The G.A.B. is also required to transmit to each county clerk a certified list of candidates for whom the voters of that county may vote. Wis. Stat. § 7.08(2).

c. The G.A.B. issues certificates of election under Section 7.70(5) of the Wisconsin Statutes to the candidates elected to serve in the state Senate and state Assembly. The G.A.B. also provides support to local units of government and their public employees, including the county clerks in each of Wisconsin’s 72 counties, in administering and preparing for the election of members of the Wisconsin legislature. For purposes of the state’s election law, the counties and their clerks act as agents for the state and for the G.A.B.

FACTS / CONSTITUTIONAL PROVISIONS

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

8. The Equal Protection Clause of the Fourteenth Amendment 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, guaranteeing as well that the vote of each citizen shall be equally effective with the vote of any and every other citizen.

9. In addition, article IV, section 3, of the Wisconsin Constitution requires that the legislature “apportion” the state’s senate and assembly districts following each federal census “according to the number of inhabitants.”

10. The U.S. Constitution and the Wisconsin Constitution require that the members of the Wisconsin legislature be elected on the basis of equal representation. State Senate and Assembly districts must be virtually equal in population based on the number of inhabitants according to the April 2010 Census.

11. From and since 2002—based on the official results of the 2000 census and a certified statewide population total then of 5,363,675—the state has been divided into 33 Senate districts and 99 Assembly districts. The state legislative districts were created by this Court with relatively equal populations. *See* ¶ 2 *supra*. In 2002, each Senate district contained a population of approximately 162,536 residents, and each Assembly district contained a population of

approximately 54,179. A copy of chapter 4 of the Wisconsin Statutes, reflecting these facts and embodying the Court's 2002 order, is attached as Exhibit A.

12. The 2002 state legislative elections, every subsequent biennial legislative election, including the November 2, 2010 election, and other elections have been conducted under the district boundaries judicially-established in 2002. The next regular state legislative primary election is scheduled for September 11, 2012, and the next regular state legislative general election is scheduled for November 6, 2012.¹

13. The Bureau of the Census, U.S. Department of Commerce, conducted a decennial census in 2010 of Wisconsin and of all the other states under Article I, Section 2, of the U.S. Constitution.

14. Under 2 U.S.C. §§ 2a and 2c and 13 U.S.C. § 141(c), the Census Bureau on December 21, 2010 announced and certified the actual enumeration of the population of Wisconsin at 5,686,986 as of April 1, 2010, a slight population increase from the 2000 census. A copy of the Census Bureau's Apportionment Population and Number of Representatives, by state, is attached as Exhibit B.

15. Based on the April 2010 Census, the precise ideal population for each Senate District in Wisconsin is 172,333 and for each Assembly District 57,444 (each a slight increase from 2000).

16. On March 9, 2011, the Census Bureau released Wisconsin's official population, population growth and related data for the last decade. A copy of the Census Bureau's official

¹ To comply with the Military and Overseas Election Act, the September 11, 2012 primary may be moved to an earlier date. See 42 U.S.C. § 1973ff. State Senate Bill 116 and Assembly Bill 161, pending before the Wisconsin legislature, would move the partisan primary from the second Tuesday in September to the second Tuesday in August.