

INDEX OF DEFENDANTS' TRIAL EXHIBITS

1121	Current Senate Over/Under Population Map
1122	Current Senate Over/Under Population Map
1123	State of Wisconsin Assembly Districts
1124	State of Wisconsin Senate Districts

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INDEX OF DEFENDANTS' TRIAL EXHIBITS

Exhibit No	Exhibit
1075	Blue Book 1985-1986
1076	Election 2010 - Exit Poll Results for Wisconsin - CBS News
1077	CD containing census data and election results as produced by the LTSB
1078	Act 43 Assembly Map
1079	Act 43 Senate Map
1080	Act 44 Congressional Map
1081	African American Population Heat Map
1082	Map overlaying Senate Districts 4 and 6 (as created by Act 43) on Senate Districts 4 and 6 (as drawn by the court in 2002)
1083	Hispanic Population Heat Map
1084	Table 1
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Deponent	Exhibit
Peter A. Barca 1/31/12	1036. Subpoena and Exhibit A
	1037. Rule 26 Disclosures
	1038. Memo to Scott Adrian From Joel Gratz
	1039. Substitute Amendment to Senate Bill
	1040. Wisconsin Democracy Campaign Alternative Wisconsin Senate Redistricting Map
	1041. Wisconsin Democracy Campaign With the Assembly Version of the Map
	1042. Map Entitled WDC Assembly
	1043. Map Entitled WDC Senate
	1044. Large Chart For the Assembly
	1045. Large Chart For the Senate
	1046. Large Chart
	1047. Papers Mr. Barca Was Taking Notes and Documents Brought With Him to Deposition.
	1048. Cocktail Napkin With Notes Made By Mr. Barca
Peter A. Barca 2/7/12	1049. E-mail dated 12/13/10 from Steve Miller
	1050. E-mail dated 1/12/11 from Steve Miller attaching RSWG meeting notice and agenda
	1051. E-mails dated 3/15/11 between Matt Egerer, Rich Judge, and Cathy Friedl
	1051. E-mails dated 3/15/11 between Matt Egerer, Rich Judge, and Cathy Friedl
	1053. E-mail dated 7/1/11 to Peter Barca from Rich Judge
	1054. E-mails dated 7/15/11 between Matt Egerer and Adrienne Ramirez
	1055. Senate Bill 148 and legislative history, Assembly Substitute Amendment 1 to 2011 Senate Bill 148
	1056. Senate Bill 149 and legislative history, Assembly Substitute Amendment 1 to 2011 Senate Bill 149

PARTIES' EXHIBIT LIST - CONTINUATION

BALDUS, et al. vs. BRENNAN, et al.					CASE NO. 11-CV-562; 11-CV-1101 (Consolidated)
PLF. NO.	DEF. NO.	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION OF EXHIBITS AND WITNESSES
190					July 27, 2010 Correspondence from Attorney Eric M. McLeod, Michael Best & Friedrich LLP to Adam Foltz, Office of State Representative Jeff Fitzgerald re: Confidentiality and Nondisclosure Related to Reapportionment
191					1980 Census of Population and Housing Spanish Surname List Technical Documentation
192					Latino VAP Density by 2002 Wards with Dr. Mayer Illustrative District 8
193					Latino VAP Density by 2002 Wards with Dr. Mayer Illustrative District 8 & Act 43 AD 8
194					Latino VAP Density by 2002 Wards with Dr. Mayer Illustrative District 8 & 2002 AD 8
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PARTIES' EXHIBIT LIST - CONTINUATION

BALDUS, et al. vs. BRENNAN, et al.					CASE NO. 11-CV-562; 11-CV-1101 (Consolidated)
PLF. NO.	DEF. NO.	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION OF EXHIBITS AND WITNESSES
162					Defendants' Supplemental Answers to Plaintiffs' First Set of Interrogatories and First Request for Production of Documents dated February 3, 2012, Deposition Ex. 162 to the February 8, 2012 Deposition of Kevin Kennedy
163					Congressional Exception Report, Deposition Ex. 163 to the February 8, 2012 Deposition of Kevin Kennedy
164					Senate Exception Report, Deposition Ex. 164 to the February 8, 2012 Deposition of Kevin Kennedy
165					Assembly Exception Report, Deposition Ex. 165 to the February 8, 2012 Deposition of Kevin Kennedy
166					Exhibit E to Plaintiffs' Second Amended Complaint dated November 18, 2011, Wisconsin Government Accountability Board, for members of the legislature and the public, "Legislative Redistricting: Act 43 Effective Dates for Election and Representation Purposes," Docket No. 48-5, Deposition Ex. 166 to the February 8, 2012 Deposition of Kevin Kennedy
167					Waukesha County Case No. 11-CV-3995, Clinard, et al. v. Brennan, et al., Defendants' Answer to Amended Complaint for Declaratory and Other Relief dated January 20, 2012, Deposition Ex. 167 to the February 8, 2012 Deposition of Kevin Kennedy
168					Declaration of Kevin Kennedy in Support of the Defendants' Motion for Protective Order dated January 16, 2012, Docket No. 109, Deposition Ex. 168 to the February 8, 2012 Deposition of Kevin Kennedy
169					1959 Marshfield Map, Produced by Dr. Mayer in Response to Subpoena
170					Emails between Dr. Mayer, Attorney Poland and Steve Barg re: Marshfield redistricting plan, Produced by Dr. Mayer in Response to Subpoena
171					Terry Moulton Recall Petition, signed by plaintiff Alvin Baldus on November 27, 2011, p. 32
172					CD of Kenneth Mayer expert materials produced December 14, 2011
173					2011 Wisconsin Act 39 (statutory text)
174					2011 Wisconsin Act 43 (statutory text), Ex. B to Plaintiffs' Second Amended Complaint filed on November 18, 2011, Docket No. 48-2

PARTIES' EXHIBIT LIST – CONTINUATION

BALDUS, et al. vs. BRENNAN, et al.					CASE NO. 11-CV-562; 11-CV-1101 (Consolidated)
PLF. NO.	DEF. NO.	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION OF EXHIBITS AND WITNESSES
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140					January 11, 2011 Declaration of Bernard Grofman, Deposition Ex. 140 to the February 3, 2012 Deposition of Bernard N. Grofman, Ph.D.
141					Document showing calculations, Deposition Ex. 141 to the February 3, 2012 Deposition of Bernard N. Grofman, Ph.D.
142					Article by Nathan Persily, Deposition Ex. 142 to the February 3, 2012 Deposition of Bernard N. Grofman, Ph.D.
143					Voces de la Frontera, Inc. Plaintiffs' Original Complaint for Declaratory and Injunctive Relief Under the Voting Rights Act of 1965 dated October 31, 2011, Deposition Ex. 143 to the February 3, 2012 Deposition of Bernard N. Grofman, Ph.D.
144					Color map showing ward populations and voter turnout, Deposition Ex. 144 to the February 3, 2012 Deposition of Bernard N. Grofman, Ph.D.
145					February 3, 2012 Subpoena issued to Tony Van Der Wielen of the Legislative Technology Services Bureau, Deposition Ex. 145 to the February 7, 2012 Deposition of Tony Van Der Wielen
146					Documents produced in response to subpoena issued by Plaintiffs to Tony J. Van Der Wielen dated February 3, 2012, Deposition Ex. 146 to the February 7, 2012 Deposition of Tony Van Der Wielen
147					Flash drive produced by witness, Deposition Ex. 147 to the February 7, 2012 Deposition of Tony Van Der Wielen
148					Analysis of WISE-LR and Adjusted GAB datasets, Legislative Technology Services Bureau – Geographic Information Systems (GIS) Team, Deposition Ex. 148 to the February 7, 2012 Deposition of Tony Van Der Wielen
149					Map of Harmony and Assembly 44 Congressional 1 Map, Deposition Ex. 149 to the February 7, 2012 Deposition of Tony Van Der Wielen
150					January 3, 2012 Memorandum from Steve Miller, LRB and Jeff Ylvisaker, LRSB to Legislative Leaders, Deposition Ex. 150 to the February 7, 2012 Deposition of Tony Van Der Wielen
151					Government Accountability Board (GAB) Redistricting Meeting, Questions for GAB Staff, Deposition Ex. 151 to the February 7, 2012 Deposition of Tony Van Der Wielen

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PARTIES' EXHIBIT LIST – CONTINUATION

BALDUS, et al. vs. BRENNAN, et al.					CASE NO. 11-CV-562; 11-CV-1101 (Consolidated)
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110					Packet of e-mails, Deposition Ex. 110 to the February 1, 2012 Deposition of Adam R. Foltz, Vol. II
111					Comparison of Assembly districts, Deposition Ex. 111 to the February 1, 2012 Deposition of Adam R. Foltz
112					Census data, Deposition Ex. 112 to the February 1, 2012 Deposition of Adam R. Foltz, Vol. II
113					General talking points, Deposition Ex. 113 to the February 1, 2012 Deposition of Adam R. Foltz, Vol. II
114					Metadata document, Deposition Ex. 114 to the February 1, 2012 Deposition of Adam R. Foltz, Vol. II
115					Packet of e-mails and heat maps, Deposition Ex. 115 to the February 2, 2012 Deposition of Tad M. Ottman, Vol. II
116					Packet of e-mails, Deposition Ex. 116 to the February 2, 2012 Deposition of Tad M. Ottman, Vol. II
117					Ottman 000095 - 000096, Deposition Ex. 117 to the February 2, 2012 Deposition of Tad M. Ottman, Vol. II
118					Ottman 000117 - 000120, Deposition Ex. 118 to the February 2, 2012 Deposition of Tad M. Ottman, Vol. II
119					E-mail from Leah Vukmir, Deposition Ex. 119 to the February 2, 2012 Deposition of Tad M. Ottman, Vol. II
120					Ottman 000144, Deposition Ex. 120 to the February 2, 2012 Deposition of Tad M. Ottman, Vol. II
121					Talking points, Deposition Ex. 121 to the February 2, 2012 Deposition of Tad M. Ottman, Vol. II
122					Ottman 000145 - 000161, Deposition Ex. 122 to the February 2, 2012 Deposition of Tad M. Ottman, Vol. II
123					Privileged Attorney-Client Communication, Deposition Ex. 123 to the February 2, 2012 Deposition of Tad M. Ottman, Vol. II
124					Privileged Attorney-Client Communication, Deposition Ex. 124 to the February 2, 2012 Deposition of Tad M. Ottman, Vol. II
125					Troupis 000064 - 000070, Deposition Ex. 125 to the February 2, 2012 Deposition of Tad M. Ottman, Vol. II
126					E-mail from Jim Troupis, Deposition Ex. 126 to the February 2, 2012 Deposition of Tad M. Ottman, Vol. II

PARTIES' EXHIBIT LIST - CONTINUATION

BALDUS, et al. vs. BRENNAN, et al.					CASE NO. 11-CV-562; 11-CV-1101 (Consolidated)
PLF. NO.	DEF. NO.	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION OF EXHIBITS AND WITNESSES
80					January 13, 2012 Memo, Subject: Redistricting Anomalies - Municipal and Ward Boundaries, Deposition Ex. 80 to the January 20, 2012 Deposition of Ronald Keith Gaddie, Ph.D.
81					Facebook exchanges between Dr. Gaddie and Joe Handrick, Deposition Ex. 81 to the January 20, 2012 Deposition of Ronald Keith Gaddie, Ph.D.
82					Subpoena Issued to John Diez of Magellan Strategies BR, Deposition Ex. 82 to the January 23, 2012 Deposition of John C. Diez, Jr.
83					December 29, 2011 Correct Compactness Report by John Diez, Deposition Ex. 83 to the January 23, 2012 Deposition of John C. Diez, Jr.
84					January 11, 2012 Deferred Voting Study by John Diez of Magellan Strategies BR, Deposition Ex. 84 to the January 23, 2012 Deposition of John C. Diez, Jr.
85					January 13, 2012 Rebuttal Expert Report of Ronald Keith Gaddie, Ph.D., Deposition Ex. 85 to the January 23, 2012 Deposition of John C. Diez, Jr.
86					Notice of Deposition issued to David J. Meyer of the Government Accountability Board, Deposition Ex. 86 to the January 25, 2012 Deposition of David J. Meyer
87					Municipal Boundary Discrepancy Map for Rock County, Wisconsin, Deposition Ex. 87 to the January 25, 2012 Deposition of David J. Meyer
88					Letter dated 1/10/2012, Deposition Ex. 88 to the February 1, 2012 Deposition of Joseph W. Handrick, Vol. II
89					Letter dated 1/11/2012, Deposition Ex. 89 to the February 1, 2012 Deposition of Joseph W. Handrick, Vol. II
90					Summary core constituency report, Deposition Ex. 90 to the February 1, 2012 Deposition of Joseph W. Handrick, Vol. II
91					Series of e-mails, Deposition Ex. 91 to the February 1, 2012 Deposition of Joseph W. Handrick, Vol. II
92					Series of e-mails, Deposition Ex. 92 to the February 1, 2012 Deposition of Joseph W. Handrick, Vol. II
93					Series of e-mails, Deposition Ex. 93 to the February 1, 2012 Deposition of Joseph W. Handrick, Vol. II

PARTIES' EXHIBIT LIST – CONTINUATION

BALDUS, et al. vs. BRENNAN, et al.					CASE NO. 11-CV-562; 11-CV-1101 (Consolidated)
PLF. NO.	DEF. NO.	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION OF EXHIBITS AND WITNESSES
60					January 13, 2012 Rule 26 Expert Rebuttal Report of Dr. Kenneth R. Mayer, Deposition Ex. 60 to the January 20, 2012 Deposition of Ronald Keith Gaddie, Ph.D.
61					Confidential – Sealed Documents printed from original flash drive produced at the deposition by Dr. Gaddie, Deposition Ex. 61 to the January 20, 2012 Deposition of Ronald Keith Gaddie, Ph.D.
62					April 5, 2011, April 8, 2011, April 10, 2011 and May 8, 2011 Email chain between Dr. Gaddie and Jim Troupis, Subject: Gaddie this week and next, Deposition Ex. 62 to the January 20, 2012 Deposition of Ronald Keith Gaddie, Ph.D.
63					Dr. Gaddie's Notes, Deposition Ex. 63 to the January 20, 2012 Deposition of Ronald Keith Gaddie, Ph.D.
64					January 24, 2011 Email chain between Joe Handrick and Jim Troupis, Subject: Memo, Deposition Ex. 64 to the January 20, 2012 Deposition of Ronald Keith Gaddie, Ph.D.
65					February 7, 2011 and February 14, 2011 Email chain between Dr. Gaddie and Jim Troupis, Subject: Current Address, Deposition Ex. 65 to the January 20, 2012 Deposition of Ronald Keith Gaddie, Ph.D.
66					April 11, 2011 Letter/Consulting Services Agreement to Professor Gaddie from Eric McLeod bearing bates range MBF000033-35, Deposition Ex. 66 to the January 20, 2012 Deposition of Ronald Keith Gaddie, Ph.D.
67					April 19, 2011 and April 20, 2011 Email chain between Dr. Gaddie and Joe Handrick, Subject: Milwaukee county elections bearing bates range Foltz001059-1060, Deposition Ex. 67 to the January 20, 2012 Deposition of Ronald Keith Gaddie, Ph.D.
68					May 8, 2011 Email to Eric McLeod from Dr. Gaddie with attached May 8, 2011 invoice bearing bates range MBF000030-32, Deposition Ex. 68 to the January 20, 2012 Deposition of Ronald Keith Gaddie, Ph.D.
69					May 9, 2011 Email to Eric McLeod from Dr. Gaddie, Subject: Senate Disfranchisement bearing bates range MBF000029, Deposition Ex. 69 to the January 20, 2012 Deposition of Ronald Keith Gaddie, Ph.D.
70					May 31, 2011 Email to Eric McLeod from Dr. Gaddie with attached June 3, 2011 invoice, Deposition Ex. 70 to the January 20, 2012 Deposition of Ronald Keith Gaddie, Ph.D.

PARTIES' EXHIBIT LIST – CONTINUATION

BALDUS, et al. vs. BRENNAN, et al.					CASE NO. 11-CV-562; 11-CV-1101 (Consolidated)
PLF. NO.	DEF. NO.	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION OF EXHIBITS AND WITNESSES
38A					July 8-9, 2011 Emails re: "Alternative Confituration of ADs 8 and 9" and maps, Deposition Ex. 38A to the January 11, 2012 Deposition of Jesus "Zeus" Rodriguez
39					Copy of telephone records, Deposition Ex. 39 to the January 11, 2012 Deposition of Jesus "Zeus" Rodriguez
40					Copy of telephone records, Deposition Ex. 40 to the January 11, 2012 Deposition of Jesus "Zeus" Rodriguez
41					July 9, 2011 Emails between Adam Foltz and Tad Ottman re: "Heat Maps" and Milwaukee county Hispanic heat map," Deposition Ex. 41 to the January 11, 2012 Deposition of Jesus "Zeus" Rodriguez
42					January 6, 2012 Subpoena issued to Andrew D. Speth, Deposition Ex. 42 to the January 17, 2012 Deposition of Andrew D. Speth
43					Documents Produced by Andrew Speth at Deposition, Deposition Ex. 43 to the January 17, 2012 Deposition of Andrew D. Speth
44					Blown-up Act 44 redistricting map, Deposition Ex. 44 to the January 17, 2012 Deposition of Andrew D. Speth
45					December 14, 2011 Expert Report of Erik V. Nordheim, Deposition Ex. 45 to the January 17, 2012 Deposition of Andrew D. Speth
VOL. III					
46					January 11, 2012 Newspaper Article entitled "Errors in redistricting process could affect thousands of voters," January 11, 2012 Newspaper Article entitled "Glitch puts some Wisconsin voters in Africa," and January 13, 2012 Newspaper Article entitled, "Redistricting problem means thousands are listed in wrong district," Deposition Ex. 46 to the January 17, 2012 Deposition of Andrew D. Speth
47					Affidavit of David R. Obey, Deposition Ex. 47 to the January 17, 2012 Deposition of Andrew D. Speth
48					January 11, 2012 Subpoena issued to Peter A. Morrison, Ph.D., Deposition Ex. 48 to the January 18, 2012 Deposition of Peter A. Morrison, Ph.D.
49					Documents Produced by Dr. Morrison at Deposition, Deposition Ex. 49 to the January 18, 2012 Deposition of Peter A. Morrison, Ph.D.

PARTIES' EXHIBIT LIST - CONTINUATION

BALDUS, et al. vs. BRENNAN, et al.					CASE NO. 11-CV-562; 11-CV-1101 (Consolidated)
PLF. NO.	DEF. NO.	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION OF EXHIBITS AND WITNESSES
16					Wisconsin Supreme Court 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 dated November 21, 2011, Deposition Ex. 16 to the December 20, 2011 Deposition of Joseph W. Handrick
17					Waukesha County Summons and Complaint for Declaratory and Other Relief and Appointment of Three-Judge Panel Pursuant to Wis. Stat. 751.035 and 801.50(4m) dated November 28, 2011, Deposition Ex. 17 to the December 20, 2011 Deposition of Joseph W. Handrick
18					December 2, 2011 letter to Kathleen Madden, Waukesha County Clerk of Court from Joseph Louis Olson enclosing Amended Summons and Amended Complaint for Declaratory and Other Relief dated December 2, 2011, Deposition Ex. 18 to the December 20, 2011 Deposition of Joseph W. Handrick
19					Transcript of Joint Public Hearing on Wisconsin Redistricting Plan on July 13, 2011, Deposition Ex. 19 to the December 20, 2011 Deposition of Joseph W. Handrick
20					Oversized Map entitled State of Wisconsin Act 43 Assembly Districts, Deposition Ex. 20 to the December 20, 2011 Deposition of Joseph W. Handrick
21					Oversized Map entitled 2011 Act 44, Deposition Ex. 21 to the December 20, 2011 Deposition of Joseph W. Handrick
22					Oversized Map entitled 2011 Act 43, Deposition Ex. 22 to the December 20, 2011 Deposition of Joseph W. Handrick
23					December 13, 2011 Subpoena issued to Adam Foltz, Deposition Ex. 23 to the December 21, 2011 Deposition of Adam R. Foltz
24					Documents Produced in Response to Subpoena Issued by Plaintiffs to Adam Foltz dated December 21, 2011, Deposition Ex. 24 to the December 21, 2011 Deposition of Adam R. Foltz
VOL. II					
25					Documents Produced by Adam R. Foltz at Deposition, Deposition Ex. 25 to the December 21, 2011 Deposition of Adam R. Foltz
26					DVD identified as Adam Foltz Documents Responsive to December 13, 2011 Subpoena, Deposition Ex. 26 to the December 21, 2011 Deposition of Adam R. Foltz

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

ALVIN BALDUS, et al.,

PARTIES' EXHIBIT LIST

v.

Case Number: 11-CV-562,

MICHAEL BRENNAN, et al.

11-CV-1101 (Consolidated)

PRESIDING JUDGES (3-JUDGE PANEL) Circuit Judge Diane P. Wood, Northern District of Illinois Judge Robert M. Dow, Jr., and Eastern District of Wisconsin Judge J.P. Stadtmueller			PLAINTIFFS' ATTORNEY Attorneys Douglas M. Poland, Dustin B. Brown and Wendy K. Arends of Godfrey & Kahn, S.C., Counsel for Baldus Plaintiffs Attorney Peter G. Earle of the Law Office of Peter Earle, LLC, Counsel for Voces Plaintiffs Attorneys P. Scott Hassett, Daniel S. Lenz, James A. Olson of Lawton & Cates, S.C., Counsel for Intervenor-Plaintiffs			DEFENDANTS' ATTORNEY Attorney Maria S. Lazar of the Wisconsin Department of Justice, Counsel for Defendants Attorneys Patrick J. Hodan, Daniel Kelly, and Colleen E. Fielkow of Reinhart Boerner Van Deuren, S.C., Counsel for Defendants Attorneys Thomas L. Shriner, Jr., Kellen C. Kasper of Foley & Lardner LLP, Counsel for Intervenor-Defendants		
TRIAL DATE(S) February 21-24, 2012			COURT REPORTER			COURTROOM DEPUTY		
PLF. NO.	DEF. NO.	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION OF EXHIBITS* AND WITNESSES			
VOL. 1								
1					December 13, 2011 Subpoena Issued to Joe Handrick, Deposition Ex. 1 to the December 20, 2011 Deposition of Joseph W. Handrick			
2					Packet of documents produced by Joseph Handrick via Eric M. McLeod pursuant to the subpoena, Deposition Ex. 2 to the December 20, 2011 Deposition of Joseph W. Handrick			
2A					Population Totals, Deposition Ex. 2A to the December 20, 2011 Deposition of Joseph W. Handrick			
3					CD labeled Joe Handrick Draft Maps - Block Assignments, Deposition Ex. 3 to the December 20, 2011 Deposition of Joseph W. Handrick			
4					February 15, 2011 letter to Don M. Millis and Joseph W. Handrick from Eric M. McLeod, Deposition Ex. 4 to the December 20, 2011 Deposition of Joseph W. Handrick			

*Include a notation as to the location of any exhibit not held with the case file or not available because of size.

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White, Michael (The Shop Consulting)		
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Gratz, Joel		
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Baldus et al. v. Brennan et al., E.D. Wisconsin, Nos. 11-CV-562, 11-CV-1011

EXHIBIT E TO JOINT PRETRIAL REPORT: DEFENDANTS' DEPOSITION DESIGNATIONS

Barca, Peter		
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Baldus et al. v. Brennan et al., E.D. Wisconsin, Nos. 11-CV-562, 11-CV-1011
**EXHIBIT C TO JOINT PRETRIAL REPORT: INTERVENOR-PLAINTIFFS' DEPOSITION
DESIGNATIONS**

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Nordheim, Erik		
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Rodriguez, Jesus		
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Gratz, Joel		
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Handrick, Joseph		
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* Defendants do not stipulate to plaintiffs' Table 33.

7477981_3

78	55,031	-2,413	2,515	57,546	55,031	112,577	44.8	57,546
79	76,164	18,720	-18,703	39,380	58,083	97,463	5.2	57,461
80	60,352	2,908	-2,767	31,625	34,392	66,017	23.9	57,585
81	61,351	3,907	-3,948	53,984	57,932	111,916	28.3	57,403
82	60,035	2,591	-2,605	10,715	13,320	24,035	9.2	57,430
83	61,206	3,762	-3,783	11,867	15,650	27,517	7.3	57,423
84	56,225	-1,219	1,140	38,389	37,249	75,638	66.3	57,365
85	54,856	-2,588	2,624	8,939	6,315	15,254	5.8	57,480
86	59,763	2,319	-2,309	10,903	13,212	24,115	10.4	57,454
87	52,712	-4,732	4,646	18,874	14,228	33,102	7.1	57,358
88	58,089	645	-533	29,991	30,524	60,515	113.5	57,556
89	58,999	1,555	-1,365	10,224	11,589	21,813	16.0	57,634
90	56,344	-1,100	1,264	30,418	29,154	59,572	47.1	57,608
91	56,651	-793	708	57,359	56,651	114,010	161.0	57,359
92	58,894	1,450	-1,463	40,682	42,145	82,827	56.6	57,431
93	57,822	378	-274	36,918	37,192	74,110	270.5	57,548
94	62,641	5,197	-5,375	1,178	6,553	7,731	1.4	57,266
95	53,998	-3,446	3,374	4,552	1,178	5,730	1.7	57,372
96	55,740	-1,704	1,744	5,457	3,713	9,170	5.3	57,484
97	57,299	-145	-20	13,524	13,544	27,068	1353.4	57,279
98	56,450	-994	1,063	35,690	34,627	70,317	66.1	57,513
99	63,750	6,306	-6,254	45,467	51,721	97,188	15.5	57,496
TOTALS		322,726	321,915			4,727,667	53.5	

* Defendants do not stipulate to plaintiffs' Table 32.

23	55,249	-2,195	2,330	36,323	33,993	70,316	30.2	57,579
24	57,065	-379	217	29,936	29,719	59,655	274.9	57,282
25	53,380	-4,064	3,942	6,689	2,747	9,436	2.4	57,322
26	52,702	-4,742	4,879	24,731	19,852	44,583	9.1	57,581
27	56,118	-1,326	1,418	22,597	21,179	43,776	30.9	57,536
28	59,273	1,829	-1,806	1,414	3,220	4,634	2.6	57,467
29	66,814	9,370	-9,277	1,974	11,251	13,225	1.4	57,537
30	66,560	9,116	-9,319	6,929	16,248	23,177	2.5	57,241
31	61,755	4,311	-4,515	43,674	48,189	91,863	20.3	57,240
32	60,157	2,713	-2,633	12,367	15,000	27,367	10.4	57,524
33	59,460	2,016	-1,895	52,868	54,763	107,631	56.8	57,565
34	53,812	-3,632	3,575	7,718	4,143	11,861	3.3	57,387
35	52,716	-4,728	4,846	8,056	3,210	11,266	2.3	57,562
36	50,788	-6,656	6,644	22,760	16,116	38,876	5.9	57,432
37	58,965	1,521	-1,458	50,684	52,142	102,826	70.5	57,507
38	59,797	2,353	-2,304	41,512	43,816	85,328	37.0	57,493
39	56,515	-929	872	11,850	10,978	22,828	26.2	57,387
40	55,223	-2,221	2,143	13,001	10,858	23,859	11.1	57,366
41	55,581	-1,863	1,756	28,764	27,008	55,772	31.8	57,337
42	57,975	531	-690	47,843	48,533	96,376	139.7	57,285
43	57,584	140	-141	12,491	12,632	25,123	178.2	57,443
44	53,057	-4,387	4,338	4,430	92	4,522	1.0	57,395
45	59,610	2,166	-1,952	28,227	30,179	58,406	29.9	57,658
46	65,835	8,391	-8,377	51	8,428	8,479	1.0	57,458
47	61,700	4,256	-4,235	57,465	61,700	119,165	28.1	57,465
48	61,400	3,956	-3,894	32,312	36,206	68,518	17.6	57,506
49	55,456	-1,988	1,890	2,469	579	3,048	1.6	57,346
50	59,182	1,738	-1,558				2.7	

Table 31*

Table 31 provides a summary of the information in Table 30. It shows a tabulation of the total population shifted “in to” and “out of” each district.

District	shifted in to	shifted out of	net shift (in)
1	24,715	41,883	-17,168
2	77,850	118,145	-40,295
3	171,270	190,354	-19,084
4	63,109	21,251	41,858
5	177,822	174,529	3,293
6	144,923	139,152	5,771
7	171,989	150,395	21,594
8	59,752	55,721	4,031

Table 31: Overall tabulation of population transferred “in to” and “out of” each district under Act 44.

* Defendants stipulate to plaintiffs’ Table 31.

Table 29*

The first tabulation examines the population for each of the eight previously existing districts using the 2010 census and the population of each district under Act 44. Also included is the net change in population. The net change is the difference between the population of the Act 44 district and the previous district. A positive number indicates that a district needed to add population. Similarly, a negative number indicates the need to lose population. These results are presented in Table 29.

District	2010 population for district as created in 2001	2010 population for district created under Act 44	net change
1 17,168	728,042	710,874	-
2 40,295	751,169	710,874	-
3 19,084	729,957	710,873	-
4 41,858	669,015	710,873	
5 3,293	707,580	710,873	
6 5,771	705,102	710,873	
7 21,594	689,279	710,873	
8 4,031	706,842	710,873	

Table 29: Populations of 2001 and Act 44 congressional districts using 2010 census figures.

The changes in population between 2000 and 2010 differ for each of the congressional districts created in 2001. The previous Districts 1, 2, and 3 had the largest populations as of the 2010 Census. The previous District 4 had the smallest population under the 2010 Census, with districts 5, 6, 7, and 8 intermediate. The Act 44 districts all have virtually the same populations. Indeed the populations are as close to each other as possible. The final column indicates the net change (or transference) of population needed to implement the Act 44 map. Thus, for example, CD1 needed to “lose” or “give up” a net population of 17,168.

* Defendants stipulate to plaintiffs’ Table 29.

Compactness scores for both Act 44 Congressional Districts and the 2002 districts appear in Table 27*:

Compactness, Congressional Districts, Act 44				
	2002 Map		Act 44	
District	Smallest Circle	Smallest Circle	Perimeter to Area	Perimeter to Area
1	0.47	0.49	0.32	0.31
2	0.56	0.54	0.37	0.43
3	0.33	0.33	0.37	0.17
4	0.30	0.30	0.12	0.13
5	0.53	0.53	0.25	0.24
6	0.38	0.38	0.23	0.16
7	0.53	0.53	0.19	0.16
8	0.40	0.42	0.13	0.11
Average	.42	.44	.25	.21
Dem. Avg.	0.40	0.39	0.29	0.24
Rep. Avg.	0.46	0.47	0.22	0.20

(Source: Gaddie)

* Plaintiffs do not stipulate to defendants' Table 27.

Senate 21	Wirch-D, 22	+4.46%	42.03%
	Wanggaard-R, 21	-3.25%	57.97%

*Population deviation of the incumbent's previous district under the 2002 Federal Court-drawn map.

**Percentage of the new district that comes from the incumbent's previous district.

(Source: Gaddie, Gaddie rebuttal)

* Plaintiffs do not stipulate to defendants' Table 25.

Table 24* illustrates the Incumbent Core Retention scores for the Assembly and Senate districts created by Act 43.

Incumbent Core Retention Under Act 43

	Assembly	Senate
Assembly (all members)		
Average	61.72%	78.23%
Low	8.55%	42.03%
High	99.91%	99.92%
Democratic Incumbent	54.74%	78.84%
Low	8.55%	42.03%
High	99.91%	99.53%
Republican Incumbent	65.88%	77.64%
Low	17.74%	57.97%
High	97.67%	99.92%

(Source: Gaddie, Gaddie Rebuttal)

* Plaintiffs do not stipulate to defendants' Table 24.

For the ten least compact districts (as measured by the Smallest Circumscribing Circle method), Table 22* lists their compactness scores using other compactness equations:

The Ten Least-Compact Districts on the Smallest Circle Score, as they Rank on Other Compactness Measures								
District	Smallest Circle Score (SCC)	SCC Rank	Convex Hull	Convex Hull Rank	Polsby-Popper (PTA) Score	PTA Rank	Equal Circle	Equal Circle Rank
1	0.10	99	0.50	99	0.08	94	0.28	94
37	0.11	98	0.64	87	0.14	87	0.41	85
64	0.12	97	0.51	98	0.08	93	0.28	93
93	0.13	96	0.74	56	0.18	75	0.45	73
76	0.13	95	0.65	85	0.24	54	0.52	54
70	0.14	94	0.66	83	0.16	83	0.43	82
13	0.14	93	0.89	4	0.26	45	0.57	39
84	0.15	92	0.80	30	0.29	36	0.6	28
62	0.15	91	0.80	29	0.34	24	0.66	14
33	0.15	90	0.69	76	0.18	77	0.45	74

(Source: Gaddie Rebuttal)

* Plaintiffs stipulate to defendants' Table 22.

Table 20* reflects the present and historical local governments split by assembly or senate districts:

County and Municipal Splits

	1992 (U.S. Court)	2002 (U.S. Court)	2011 (Act 43)
Assembly Municipal Splits	72	50	62
Senate Municipal Splits	45	24	37
Assembly County Splits	47	51	58
Senate County Splits	35	42	46
Source: Wisconsin Legislative Reference Bureau; <i>Baumgart et al v. Wendelberg et al and Jensen et al</i> , 02-C-0366 (E.D. Wis. 2002).			

(Source: Gaddie)

* Plaintiffs do not stipulate to defendants' Table 20.

In 2002, Democrats proposed five different maps with the following delayed voting effects shown in Table 18*:

Delayed Voting In Select Maps Proposed to the Court in 2002		
	#Persons	% of State*
Democratic Map A	303,951	5.67%
Democratic Map B	301,604	5.62%
SB 463	298,749	5.57%
Democratic Map C	282,772	5.27%
*2000 census		

(Source: Gaddie Rebuttal)

* Plaintiffs do not stipulate to defendants' Table 18.

8	2008	Democrat primary	Pedro Colon	yes	571	54%	winner
			Laura Manriquez	yes	284	27%	
			Jose Guzman		206	19%	
8	2008	general election	Pedro Colon	yes	8,743	100%	winner

Source: State of Wisconsin Blue Book 2009-2010, page 920 and 923

www.legis.wisconsin.gov/lrb/bb/09bb/

Table 16g

Assembly District	Year	Election Type	Candidates	Hispanic	Vote	Percent	Winner
8	2010	Democrat primary	Jocasta Zamarripa	yes	755	53%	winner
			Angel Zanchez	yes	443	31%	
			Laura Manriquez	yes	238	17%	
8	2010	Independent primary	Romona Rivas	yes	0	0	winner
8	2010	general election	Jocasta Zamarripa - D	yes	4287	85%	winner
			Romona Rivas - I	yes	678	13%	
			Laura Manriquez - D write in	yes	90	2%	

Source: State of Wisconsin Blue Book 2011-2012, pages 903 and 907

www.legis.wisconsin.gov/lrb/bb/11bb/

* Plaintiffs stipulate in part to defendants' Table 16a-g: plaintiffs stipulate as to the correctness of the candidates for office, the votes received and percentages, the identification of the winner, and the election date. Plaintiffs do not stipulate to the manner in which the candidates have been identified with regard to ethnicity.

Tables 16a-g* reflect election results in Assembly District 8 from 1998 to 2010:

Table 16a

Assembly District	Year	Election Type	Candidates	Hispanic	Vote	Percent	Winner
8	1998	Democrat primary	Pedro Colon	yes	898	50%	winner
			Victor Huyke	yes	286	16%	
			Victor Larriuz		244	14%	
			Alvert Tadych		229	13%	
			Patricia Zamarripa		93	5%	
			H Nelson Goodson	yes	49	3%	
8	1998	Republican primary	Roberto Escamilla	yes	128	100%	winner
8	1998	Independent primary	Donald Stoetzel		1	100%	winner
8	1998	General election	Pedro Colon - D	yes	3779	76%	winner
			Victor Larriuz - D write in		22	0%	
			Roberto Escamilla - R	yes	831	17%	
			Donald Stoetzel - I		337	7%	

Source: State of Wisconsin Blue Book 1999-2000, pages 879 and 882

www.legis.wisconsin.gov/lrb/bb/99bb/index.htm

Table 16b

Assembly District	Year	Election Type	Candidates	Hispanic	Vote	Percent	Winner
8	2000	Democrat primary	Pedro Colon	yes	475	100%	winner
8	2000	General election	Pedro Colon	yes	7575	100%	winner

Source: State of Wisconsin Blue Book 2001-2002, pages 926 and 929

www.legis.wisconsin.gov/lrb/bb/01bb/

Table 14* describes age-related information about the Hispanic community in Wisconsin as a whole, and more specifically in Milwaukee County, and Assembly Districts 8 and 9:

Hispanics' Share of 18+ and Under-18 Population: Wisconsin and Milwaukee County (2010) and Assembly Districts 8 and 9 (2006-10)				
Population Base	Wisconsin	Milwaukee County	Assembly District 8	Assembly District 9
Total population, all ages	5,686,986	947,735	57,246	57,233
Hispanics	336,056	126,039	37,750	34,647
% Hispanic	5.91%	13.30%	65.94%	60.54%
Citizen Population 18 & older (CVAP)	4,219,723	670,124	26,440	28,534
Hispanics	127,139	50,738	10,816	9,626
%Hispanic	3.01%	7.57%	40.9%	33.7%
Citizen Population Under age 18	1,319,439	231,670	16,547	17,199
Hispanics	125,414	46,040	11,796	12,071
%Hispanic	9.51%	19.87%	71.3%	70.2%

Source: US Census Bureau, 2010 Census, Table QT-P1; 2010 American Community Survey, Tables B05003 and B05003I; 2006-2010 American Community Survey; Excel file of Assembly District population composition furnished by Joseph Handrick, Reinhart Law Firm.

(Source: Morrison)

* Plaintiffs stipulate in part to defendants' Table 14: plaintiffs stipulate to the numbers and percentages for "Total Population" for Wisconsin, Milwaukee County, AD 8 and 9. Plaintiffs do not stipulate to the numbers and percentages in "Citizen Population 18 & Older (CVAP)" and "Citizen Population Under age 18" for Wisconsin, Milwaukee County, AD 8 and 9.

Table 12* shows the demographics of the Assembly District 8 map proposed by Professor Mayer:

Hispanic Population:	73.46%
Hispanic Voting Age Population:	70.07%
Hispanic Citizen Voting Age Population:	60.06%
Total Minority Population:	86.14%
Total Minority Voting Age Population:	81.51%

* Plaintiffs stipulate in part to defendants' Table 12: plaintiffs stipulate to the percentages listed. However, the calculations for the percentages listed in "Total Minority Population" and "Total Minority Voting Age Population" were performed by defendants, and plaintiffs do not stipulate to the relevance of such percentages.

Table 10* shows Hispanic demographic data on population and voting age population characteristics of the court-drawn 2002 legislative districts, using 2010 census data.

Census Day 2010 - HVAP	
8	65.50%
9	46.18%

(Source: Grofman)

*Plaintiffs stipulate to defendants' Table 10.

Table 8* shows the racial demographic data on population and voting age population characteristics of the court-drawn 2002 African American majority-minority legislative districts, using 2010 census data.

Census Day 2010 - BVAP	
10	67.43%
11	75.84%
12	48.99%
16	55.87%
17	74.11%
18	58.85%

(Source: Grofman)

*Plaintiffs do not stipulate to defendants' Table 8.

Table 6* reflects the racial composition of the African American majority-minority districts in Milwaukee County, as drawn by federal courts in 1992 and 2002:

Historical African American Majority-Minority Districts

District	1992 Court		2002 Court	
	African American VAP		African American VAP	
<u>Assembly</u>				
10	58.7%		67.1%	
11	60.2%		62.9%	
12	[18.3%]		[32.8%]	
16	58.3%		60.5%	
17	59.7%		61.9%	
18	59.0%		56.7%	
<u>Senate</u>				
4	[45.0%]		54.2%	
6	59.0%		59.6%	
[Bracketed] data are notable concentrations of minority voters illuminated by the court.				
Sources: <i>Prosser et al. v. Elections Board et al.</i> , 793 F Supp. 859 (W.D. Wis. 1992). <i>Baumgart et al v. Wendelberg et al and Jensen et al</i> , 02-C-0366 (E.D. Wis. 2002).				

(Source: Gaddie, Grofman)

* Plaintiffs stipulate in part to defendants' Table 6: plaintiffs stipulate to the percentages listed for African-American VAP in the 2002 decision. However, plaintiffs do not stipulate to the African-American VAP percentages in the 1992 decision.

Population deviation in Assembly districts (both under Act 43 and historically) appear in Table 4*:

Population Deviations Under Act 43 for the Wisconsin Assembly

Deviation	1992 Court*	2002 Court**	2002 Court***	2011 Act 43***
>10.0%	0	0	7	0
5.0 to 10.0%	0	0	13	0
.5 to 4.99%	0	11	23	0
0-.499	51	36	1	56
No deviation	0	1	0	2
0 to -.499	47	40	3	41
-.5 to -4.99	1	11	28	0
-5.0 to -10.0%	0	0	21	0
< -10.0%	0	0	3	0
Low	-0.53%	-0.77%	-15.77%	-0.39%
High	+0.38%	+0.82%	+32.59%	+0.37%
Range	0.91	1.59	48.36	0.76
*1990 Census				
**2000 Census				
***2010 Census				

*Plaintiffs stipulate to defendants' Table 4.

Table 3* describes the population for each Senate District created by Act 43 (using 2010 Census data):

DISTRICT	Total Pop.	Target	Dev.	Difference
1	172313	172,333	0.00%	-20
2	172461	172,333	0.10%	128
			-	
3	171977	172,333	0.20%	-356
4	172425	172,333	0.10%	92
5	172421	172,333	0.10%	88
6	172292	172,333	0.00%	-41
7	172423	172,333	0.10%	90
8	172356	172,333	0.00%	23
9	172439	172,333	0.10%	106
			-	
10	172245	172,333	0.10%	-88
11	172329	172,333	0.00%	-4
12	172381	172,333	0.00%	48
13	172387	172,333	0.00%	54
			-	
14	171988	172,333	0.20%	-345
15	172496	172,333	0.10%	163
16	172429	172,333	0.10%	96
17	172550	172,333	0.10%	217
			-	
18	171722	172,333	0.40%	-611
19	172576	172,333	0.10%	243
			-	
20	172003	172,333	0.20%	-330
21	172324	172,333	0.00%	-9
22	172270	172,333	0.00%	-63
			-	
23	172149	172,333	0.10%	-184
24	172520	172,333	0.10%	187
25	172409	172,333	0.00%	76
26	172531	172,333	0.10%	198
27	172514	172,333	0.10%	181
			-	
28	172218	172,333	0.10%	-115
29	172292	172,333	0.00%	-41
30	172798	172,333	0.30%	465
31	172338	172,333	0.00%	5
			-	
32	172122	172,333	0.10%	-211
33	172288	172,333	0.00%	-45

			0.17%	
			-	
63	57365	57,444	0.14%	-79
			-	
64	57270	57,444	0.30%	-174
65	57455	57,444	0.02%	11
66	57545	57,444	0.18%	101
			-	
67	57239	57,444	0.36%	-205
			-	
68	57261	57,444	0.32%	-183
69	57649	57,444	0.36%	205
70	57552	57,444	0.19%	108
71	57519	57,444	0.13%	75
72	57449	57,444	0.01%	5
73	57453	57,444	0.02%	9
74	57494	57,444	0.09%	50
75	57462	57,444	0.03%	18
76	57617	57,444	0.30%	173
77	57504	57,444	0.10%	60
			-	
78	57410	57,444	0.06%	-34
79	57526	57,444	0.14%	82
80	57585	57,444	0.24%	141
			-	
81	57403	57,444	0.07%	-41
			-	
82	57430	57,444	0.02%	-14
			-	
83	57423	57,444	0.04%	-21
			-	
84	57365	57,444	0.14%	-79
85	57480	57,444	0.06%	36
86	57454	57,444	0.02%	10
			-	
87	57358	57,444	0.15%	-86
88	57556	57,444	0.19%	112
89	57634	57,444	0.33%	190
90	57608	57,444	0.28%	164
			-	
91	57359	57,444	0.15%	-85
			-	
92	57431	57,444	0.02%	-13
93	57548	57,444	0.18%	104
			-	
94	57266	57,444	0.31%	-178

Table 2* describes the population for each Assembly District under Act 43 (using 2010 Census data):

DISTRICT	Total Pop.	Target	Dev.	Difference
1	57220	57,444	0.39%	-224
2	57649	57,444	0.36%	205
3	57444	57,444	0.00%	0
4	57486	57,444	0.07%	42
5	57470	57,444	0.04%	26
6	57505	57,444	0.11%	61
7	57498	57,444	0.09%	54
8	57246	57,444	0.35%	-198
9	57233	57,444	0.37%	-211
10	57428	57,444	0.03%	-16
11	57503	57,444	0.10%	59
12	57494	57,444	0.09%	50
13	57452	57,444	0.01%	8
14	57597	57,444	0.27%	153
15	57372	57,444	0.13%	-72
16	57458	57,444	0.02%	14
17	57354	57,444	0.16%	-90
18	57480	57,444	0.06%	36
19	57546	57,444	0.18%	102
20	57428	57,444	0.03%	-16
21	57449	57,444	0.01%	5
22	57495	57,444	0.09%	51
23	57579	57,444	0.23%	135
24	57282	57,444	0.28%	-162
25	57322	57,444	0.21%	-122
26	57581	57,444	0.24%	137
27	57536	57,444	0.16%	92
28	57467	57,444	0.04%	23
29	57537	57,444	0.16%	93
30	57241	57,444	0.35%	-203
31	57240	57,444	-	-204

63	21	58,881	57,444	2.50%	1,437
	21 Total	166,735	172,332	-3.25%	-5,597
64	22	56,844	57,444	-1.04%	-600
65	22	61,608	57,444	7.25%	4,164
66	22	61,567	57,444	7.18%	4,123
	22 Total	180,019	172,332	4.46%	7,687
67	23	58,722	57,444	2.22%	1,278
68	23	59,129	57,444	2.93%	1,685
69	23	59,102	57,444	2.89%	1,658
	23 Total	176,953	172,332	2.68%	4,621
70	24	53,904	57,444	-6.16%	-3,540
71	24	57,415	57,444	-0.05%	-29
72	24	55,764	57,444	-2.92%	-1,680
	24 Total	167,083	172,332	-3.05%	-5,249
73	25	54,962	57,444	-4.32%	-2,482
74	25	52,623	57,444	-8.39%	-4,821
75	25	54,961	57,444	-4.32%	-2,483
	25 Total	162,546	172,332	-5.68%	-9,786
76	26	61,547	57,444	7.14%	4,103
77	26	51,957	57,444	-9.55%	-5,487
78	26	55,031	57,444	-4.20%	-2,413
	26 Total	168,535	172,332	-2.20%	-3,797
79	27	76,164	57,444	32.59%	18,720
80	27	60,352	57,444	5.06%	2,908
81	27	61,351	57,444	6.80%	3,907
	27 Total	197,867	172,332	14.82%	25,535
82	28	60,035	57,444	4.51%	2,591
83	28	61,206	57,444	6.55%	3,762
84	28	56,225	57,444	-2.12%	-1,219
	28 Total	177,466	172,332	2.98%	5,134
85	29	54,856	57,444	-4.51%	-2,588
86	29	59,763	57,444	4.04%	2,319
87	29	52,712	57,444	-8.24%	-4,732
	29 Total	167,331	172,332	-2.90%	-5,001
88	30	58,089	57,444	1.12%	645
89	30	58,999	57,444	2.71%	1,555
90	30	56,344	57,444	-1.91%	-1,100
	30 Total	173,432	172,332	0.64%	1,100
91	31	56,651	57,444	-1.38%	-793
92	31	58,894	57,444	2.52%	1,450
93	31	57,822	57,444	0.66%	378
	31 Total	173,367	172,332	0.60%	1,035
94	32	62,641	57,444	9.05%	5,197

Exhibit A to Joint Pretrial Report
TABLES

Table 1* describes the population deviation from the ideal for each Assembly and Senate district (using 2010 Census data):

ASM. DIST.	SEN. DIST.				
1	1	54,189	57,444	-5.67%	-3,255
2	1	61,009	57,444	6.21%	3,565
3	1	65,789	57,444	14.53%	8,345
	1 Total	180,987	172,332	5.02%	8,655
4	2	54,953	57,444	-4.34%	-2,491
5	2	61,133	57,444	6.42%	3,689
6	2	55,963	57,444	-2.58%	-1,481
	2 Total	172,049	172,332	-0.16%	-283
7	3	55,825	57,444	-2.82%	-1,619
8	3	54,616	57,444	-4.92%	-2,828
9	3	60,880	57,444	5.98%	3,436
	3 Total	171,321	172,332	-0.59%	-1,011
10	4	51,419	57,444	-10.49%	-6,025
11	4	52,178	57,444	-9.17%	-5,266
12	4	55,275	57,444	-3.78%	-2,169
	4 Total	158,872	172,332	-7.81%	-13,460
13	5	53,867	57,444	-6.23%	-3,577
14	5	52,656	57,444	-8.34%	-4,788
15	5	53,448	57,444	-6.96%	-3,996
	5 Total	159,971	172,332	-7.17%	-12,361
16	6	52,510	57,444	-8.59%	-4,934
17	6	51,861	57,444	-9.72%	-5,583
18	6	48,387	57,444	-15.77%	-9,057
	6 Total	152,758	172,332	-11.36%	-19,574
19	7	56,827	57,444	-1.07%	-617
20	7	54,999	57,444	-4.26%	-2,445
21	7	60,177	57,444	4.76%	2,733
	7 Total	172,003	172,332	-0.19%	-329
22	8	53,017	57,444	-7.71%	-4,427
23	8	55,249	57,444	-3.82%	-2,195
24	8	57,065	57,444	-0.66%	-379
	8 Total	165,331	172,332	-4.06%	-7,001
25	9	53,380	57,444	-7.07%	-4,064
26	9	52,702	57,444	-8.25%	-4,742
27	9	56,118	57,444	-2.31%	-1,326
	9 Total	162,200	172,332	-5.88%	-10,132
28	10	59,273	57,444	3.18%	1,829
29	10	66,814	57,444	16.31%	9,370
30	10	66,560	57,444	15.87%	9,116

Dated: February 14, 2012.

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the course of his seventeen year career, Mr. Diez has worked extensively with census data, provided redistricting services at the local, state and national levels and after the 2000 census cycle, was the Deputy Director of Redistricting Technology for the Republican National Committee. Mr. Diez holds a bachelor's degree in political science from Nicholls State University and attended graduate studies in political science George Washington University and the University of New Orleans.

631. **Congressman David R. Obey** was born October 3, 1938 and raised in Marathon, County, Wisconsin. He graduated from Wausau East, High School, and received a Bachelor of Science and a Master of Arts in Political Science from the University of Wisconsin, Madison.

632. David Obey was elected to the Wisconsin State Assembly in 1962. In 1969 he was elected to Congress from the congressional district in which Wausau is located (now the Seventh Congressional District) and was re-elected every two years until he did not seek re-election in 2010. Congressman Obey was the longest serving congressman in the history of Wisconsin. While in Congress, Congressman Obey served as:

- a. Chair: House Appropriations Committee;
- b. Chair: Labor, Health, Educations Appropriations Subcommittee;
- c. Chair: Foreign Operations Appropriations Subcommittee;
- d. Chair: Joint Economics Committee;
- e. Chair: Special Committee to rewrite Congressional Code of Ethics.

633. Congressman Obey has been involved in redistricting issues since he was elected to the Wisconsin Assembly. He was active in recommending congressional boundaries to the Wisconsin Legislature following the 1970, 1980, 1990, and 2000 decennial censuses.

D. A Statement Of The Background Of All Expert Witnesses Listed.

626. **Dr. Kenneth R. Mayer** is an expert witness for the Baldus plaintiffs and the Voces plaintiffs. He currently is a Professor of Political Science at the University of Wisconsin-Madison, and a faculty affiliate at the LaFollette School of Public Affairs, at the University. He joined the faculty in 1989. He teaches courses on American politics, the presidency, Congress, campaign finance, election law, and electoral systems. He has a Ph.D. in political science from Yale University, where his graduate training included courses in econometrics and statistics. His undergraduate degree is from the University of California, San Diego, where he majored in political science and minored in applied mathematics.

627. **Dr. Ronald Keith Gaddie** is an expert witness for defendants. He is a tenured professor of political science at the University of Oklahoma. He teaches course on electoral politics, research methods and southern politics at the undergraduate and graduate levels. He is also the author of numerous books, law review articles and journal articles related to various election issues. Dr. Gaddie has provided expert testimony related to voting rights, redistricting and other statistical issues in states across the country. He has appeared as an expert witness before committees of the U.S. House of Representatives, the U.S. Senate and the U.S. Commission on Civil Rights. He has a Ph.D. and a M.A. in political science from the University of Georgia. His undergraduate degree is from the Florida State University, where he majored in political science and history.

628. **Dr. Bernard Grofman** is an expert witness for defendants. He is the Jack W. Peltason Endowed Chair and Professor of Political Science at the University of California, Irvine and the Director of the UCI Center for the Study of Democracy. He is an internationally recognized expert in the study of redistricting and voting rights and has provided expert witness testimony or acted as a court appointed consultant in over twenty legal proceedings related to

CIVIL LOCAL RULE 16(c)(1)

A. A Short Summary Of The Facts, Claims, And Defenses.

620. *See supra* and the parties' respective trial briefs.

B. A Statement Of The Issues.

621. *See supra* and the parties' respective trial briefs.

C. The Names And Addresses Of All Witnesses Expected To Testify.

1. Baldus plaintiffs.

622. The Baldus plaintiffs expect to call the following witnesses to testify, in addition to witnesses listed by the Voces plaintiffs and the Intervenor Plaintiffs.

Kevin Kennedy
Government Accountability Board
212 East Washington, 3rd Floor
Madison, WI 53703

Hon. Peter Barca
Room 201 West, State Capitol
Madison, WI 53708

Adam Foltz (by deposition)
Room 211 West, State Capitol
Madison, WI 53708

Tad Ottman (by deposition)
Room 211 South, State Capitol
Madison, WI 53707

Joe Handrick (by deposition)
1000 North Water Street, Suite 1700
Milwaukee, WI 53202

Dr. Kenneth Mayer (expert witness)
7105 Longmeadow
Madison, Wisconsin 53717.

Steve Barg
City Administrator
City of Marshfield
7th Floor, 630 S. Central Ave.
Marshfield, WI 54449

2. Voces plaintiffs.

623. The Voces plaintiffs expect to call the following witnesses to testify, in addition to witnesses listed by the Baldus plaintiffs:

provision of the Wisconsin State Constitution. *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984).

V. INTERVENOR DEFENDANTS

607. Congressional redistricting plans in Wisconsin and all states must comply with the “one-person, one-vote” principle, which the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution has been interpreted to impose.

608. The Wisconsin Constitution—the applicability of which to this action the intervenor-defendants deny—places no additional restrictions or requirements on the drawing of congressional districts.

609. After the 2010 Census, the congressional district boundaries reflected in the existing Wis. Stat. ch. 3 (2009–10) had to be replaced by legislation creating districts based on the new census data.

610. The constitutional responsibility for adopting new congressional districting lines based on census data rests with the legislative and executive branches of state government. *See Perry v. Perez*, 565 U.S. ____ (2012).

611. Numerous state interests necessarily inform the drawing of each of the lines that together make up any congressional districting plan, including that adopted as Act 44.

612. No provision in the U.S. Constitution (or the Wisconsin Constitution) requires that congressional districting lines adopted by the Wisconsin Legislature conform with so-called “principles” of compactness, communities of interest, or core retention.

613. Neither the intervenor-plaintiffs nor the intervenor-defendants have or could have had any constitutional right to have input into the creation of the map and the congressional district lines that are embodied in Act 44.

B. Count II: “The Legislation Does Not Recognize Local Government Boundaries”

594. The Baldus Plaintiffs' second cause of action, “The Legislation Does Not Recognize Local Government Boundaries” fails to state a cause of action upon which relief might be granted.

C. Count III: “The Legislative Districts Unnecessarily Disenfranchise 300,000 Wisconsin Citizens”

595. Plaintiffs pled this claim solely as a violation of the Wisconsin Constitution.

596. This Court does not have jurisdiction to compel state agents to comply with the Wisconsin Constitution.

597. There is no claim under the Wisconsin Constitution for delayed voting consequent to new redistricting legislation.

598. There is no claim under the United States Constitution for delayed voting consequent to new redistricting legislation.

D. Count IV: “Congressional Districts Are Not Compact and Fail to Preserve Communities of Interest.”

599. The Baldus Plaintiffs' fourth cause of action, “Congressional Districts Are Not Compact and Fail to Preserve Communities of Interest” fails to state a cause of action upon which relief might be granted.

E. Count V: “Congressional and Legislative Districts Constitute Unconstitutional Gerrymandering.”

600. The Baldus Plaintiffs have failed to articulate a judicially discernible and manageable standard for adjudicating political gerrymandering claims, and so their claim for political gerrymandering is nonjusticiable.

B. Core Retention.

581. An important redistricting principle is core retention. This means redistricting should uproot the smallest number of constituents from one district to another consistent with the needs of equal representation. *Abrams v. Johnson*, 521 U.S. 74, 99-100 (1997); *Larios v. Cox*, 300 F. Supp. 2d 1320, 1349 (N.D. Ga. 2004).

582. Act 44 violates the redistricting principle of core retention with regard to Congressional Districts Three, Seven, and Eight.

C. Compactness.

583. Compactness is a desirable principle feature in a redistricting plan. *Prosser*, 793 F. Supp. at 863.

584. Act 44 violates the redistricting principle of compactness with regard to Congressional Districts Three, Seven, and Eight.

585. There is no rational basis for causing Districts Three, Seven, and Eight to be less compact than those Districts were before the enactment of Act 44.

D. Communities Of Interest.

586. The concept of a community of interest recognizes that groups of voters share similar concerns and values, and that such values must be represented in and addressed by their legislature in redistricting plans. *Carstens v. Lamm*, 543 F. Supp. 68, 91 (D. Colo. 1982); *Legislature of the State of California v. Reinecke*, 516 P.2d 6, 24, 26-27, 30-31 (Cal. 1973); *Mellow v. Mitchell*, 607 A.2d 204, 220-221 (Pa. 1992), *cert. denied*, 506 U.S. 828 (1992); *Bandemer v. Davis*, 603 F. Supp. 1479 (S.D. Ind. 1984), *rev'd*, 478 U.S. 109 (1986); *Arizonans for Fair Representation v. Symington*, 828 F. Supp. 684, 688 (D. Ariz. 1992), *appeal dismissed sub nom Arizona State Senate v. Arizonans for Fair Representation*, 507 U.S. 980, and *aff'd sub nom. Hispanic Chamber of Commerce v. Arizonans for Fair Representation*, 507 U.S. 981

568. Tens of thousands of recall petition signatures were submitted in direct reliance upon Section 10 of 2011 Act 43 and the defendants' own opinion. *See Friends of Scott Walker v. Brennan*, No. 2012AP32-AC (Wis. Ct. App. Feb. 3, 2012).

569. Any recall or special elections must be conducted under the 2002 boundaries established by this Court.

570. In amending their answer to plaintiffs' Second Amended Complaint (*see* Dkt. 66), defendants continued to deny plaintiffs' claim that any recall or special elections must be conducted under the 2002 boundaries established by this Court (*see id.*, *e.g.*, at paras. 100, 101) and requested relief on that question (*see id.* at request for affirmative relief para. 4). Furthermore, in answering a complaint in Waukesha County Circuit Court seeking a judicial determination of the appropriate districts under which recall elections must be held, *Clinard et al. v. Brennan et al.*, Case No. 11-cv-03995, the GAB has admitted an allegation that the 2002 district boundaries are now unconstitutionally malapportioned.

571. There is a "case or controversy" within the meaning of the Declaratory Judgment Act concerning the constitutionality of applying the 2002 senate district boundaries to any recall elections that precede the November 2012 general election.

572. Any arguments raised by defendants about the Court's authority to adjudicate state statutory or constitutional issues have been waived by defendants and are not supported by case law.

II. VOCES PLAINTIFFS

573. The division of the Latino community into two separate adjacent assembly districts dilutes the voting strength of the citizen voting age Latino voters well below 45 percent of all eligible voters in each district, thereby denying the Latino community an effective voting majority in either district.

Const., amend. XIV, § 1 (providing that no State shall “deny to any person within its jurisdiction the equal protection of the laws”).

558. The Supreme Court has repeatedly held that dividing voters according to their race in the redistricting context is subject to the strictures of the Equal Protection Clause. *See Shaw v. Hunt*, 517 U.S. 899, 904-05 (1996) (“*Shaw II*”); *Miller v. Johnson*, 515 U.S. 900, 905 (1995); *Shaw I*, 509 U.S. at 644.

559. Racial gerrymandering presents a justiciable claim under the Equal Protection Clause, even when there is no population deviation among the districts or direct evidence of intentional discrimination. *Davis v. Bandemer*, 478 U.S. 109 (1985) (citing *Rogers v. Lodge*, 458 U.S. 613 (1982)).

560. Act 43 violates the Equal Protection Clause because, absent a race-neutral explanation, race was the predominant factor motivating the legislature’s decision to place a significant number of African-American and Latino voters within or without particular districts. *See Miller v. Johnson*, 515 U.S. 900, 916 (1995).

561. Plaintiffs have demonstrated the impermissible motives of the majority party of the legislature through, at the least, circumstantial evidence of the shape and demographics of the minority districts at issue, and the secrecy and inexplicable speed of the redistricting process. *See id.*

562. Traditional race-neutral redistricting criteria, such as compactness, contiguity, and respect for political subdivisions or communities defined by actual shared interests, were subordinated to race, and the legislature deliberately concealed the redistricting process from the public. *See Miller*, 515 U.S. at 920; *see also Shaw v. Reno*, 509 U.S. 630, 646 (1993) (*Shaw I*).

racially polarized voting), in which the Latino citizen voting age population tends to vote as a bloc, usually allowing majority voters to defeat its preferred candidates. *See Thornburg v. Gingles*, 478 U.S. 30, 48-51 (1986); *see also Grove v. Emison*, 507 U.S. 25, 401-41 (1993).

547. The African-American voting age population in the City of Milwaukee is “politically cohesive,” meaning that its members vote in a similar fashion, and there is evidence of racial-bloc voting (*i.e.*, racially polarized voting), in which the African-American voting age population tends to vote as a bloc, usually allowing majority voters to defeat its preferred candidates. *See id.*

548. The Latino citizen voting age populations dispersed in Assembly Districts 8 and 9, as created by Act 43, are insufficient to create an effective Latino majority. *See Barnett v. City of Chicago*, 141 F.3d 699, 703 (7th Cir. 1998); *Ketchum v. Byrne*, 740 F.2d 1398, 1415 n.19 (7th Cir. 1984).

549. It is possible to create an Assembly District 8 that is compact and has a Latino total population and citizen voting age population sufficient to elect a candidate of their choice.

550. Either by intent or effect, Act 43 packs the African-American voting age population in the City of Milwaukee into six (6) Assembly Districts, a smaller number of districts than is necessary, with unnecessarily high concentrations to minimize their voting power in neighboring districts. *See Voinovich v. Quilter*, 507 U.S. 146, 158 (1993).

551. If the percentage of African-American voting age population is reduced in each of these districts, thousands more African-American voters would be available for other districts, while still retaining effective majorities in the existing majority-minority districts and enhancing the influence of African-Americans in other districts.

537. The districts created by Acts 43 and 44 constitute an unconstitutional partisan gerrymander in violation of the Equal Protection Clause.

538. Wisconsin voters have the right to vote in regularly scheduled representative elections for state senators every four years. Wis. Const. art. IV, § 5.

539. Voters moved from an even-numbered senate district, in which the last regular election was held in 2008, to an odd-numbered senate district, in which the next regular election is to be held in 2014, are deprived of the right to vote in a regular election for two additional years.

540. The two-year delay in the exercise of their right to vote in regularly scheduled representative elections temporarily disenfranchises voters.

541. “[A] redistricting plan cannot unnecessarily disenfranchise voters.” Order Denying Defendants’ Motion to Dismiss (Dkt. 25) at 6. The temporarily disenfranchisement of citizens is constitutionally tolerated only when, due to the complexities of the reapportionment process, the “delay” in the right to vote is an “absolute necessity” or is “unavoidable.” *Republican Party of Wisconsin v. Elections Bd.*, 585 F. Supp. 603, 606 (E.D. Wis. 1984), *vacated and remanded for dismissal of complaint, Wisconsin Elections Bd. v. Republican Party of Wisconsin*, 469 U.S. 1081 (1984). The disenfranchisement of more voters than necessary is a “fatal flaw” that renders a redistricting plan unconstitutional. *Id.*

542. Act 43 temporarily disenfranchises 299,639 individuals by moving them from even districts to odd districts.

543. The temporary disenfranchisement of a significant number of the 299,639 individuals was unnecessary and avoidable and, without an appropriate explanation, a violation of the Equal Protection Clause.

PROPOSED CONCLUSIONS OF LAW

I. BALDUS PLAINTIFFS

519. The Equal Protection Clause requires “substantially equal state legislative representation for all citizens.” *Reynolds v. Sims*, 377 U.S. 533, 568 (1964). Regardless of size, population deviations that cannot be justified by traditional redistricting criteria violate the Equal Protection Clause.

520. The Wisconsin Constitution requires that legislative districts “be bounded by county, precinct, town or ward lines . . . and be in as compact form as practicable.” Wis. Const. art. IV, § 4.

521. Deviations from population equality in legislative districts can only be based on “legitimate considerations incident to the effectuation of a rational state policy,” *Reynolds v. Sims*, 377 U.S. 533, 579 (1964), including established redistricting criteria, *Baumgart v. Wendelberger*, No. 01-C-0121, 02-C-0366, 2002 WL 34127471 (E.D. Wis. May 30, 2002).

522. Established redistricting criteria include contiguity, Wis. Const. art. IV, § 4; compactness, *id.*; respect for “county, precinct, town or ward lines,” *id.*; maintaining communities of interest, *Baumgart*, 2002 WL 34127471, at *3; and core population retention, *id.*

523. The failure to honor traditional redistricting criteria shifts the burden to defendants to justify the legitimacy of the legislative districts.

524. Act 43 unnecessarily divides municipalities between legislative districts and otherwise divides communities of interest.

525. Act 43 shifts substantially more people between legislative districts than necessary.

526. Deviations from population equality in the assembly and senate districts cannot be justified by legitimate considerations and, therefore, violate the Equal Protection Clause.

510. Twelve amendments were offered to the bill in the Assembly; 3 further amendments would be offered in the Senate.

511. On July 14, 1983, it was read the first time in the Senate, and referred to the Committee on Urban Affairs and Government Operations. The Committee recommended passage by a 3 to 2 vote.

512. On July 14, 1983, the rules were suspended and it was read a second time and a third time. The same day, the Senate passed the bill and ordered it immediately messaged.

513. On July 15, 1983, the Governor signed it. It was published as 1983 Wisconsin Act 29 on July 19, 1983.

514. The Governor vetoed an earlier plan that was inserted into the state budget bill by the Democratic caucus—without public hearing—four weeks prior. *Id.*, ¶ 3, Ex. B. The Assembly Democrats circulated an email with talking (Deposition Exhibit 1053) on July 1, 2011, before the redistricting maps were introduced to the Legislature. Barca Depo. II, at 173-174. One of the talking points was that the Democrats’ “message is the process and the map is unconstitutional, political and partisan. It is not in the best interest of residents.” *Id.* at 176. Representative Barca admits the Assembly Democrats had not seen the redistricting map at that time, but had hear rumors the maps would be extremely partisan and not constitutional. *Id.* at 176-177. These talking points were based on the rumor grapevine and speculation. *Id.*, 178-179.

515. Another bullet point was that that the pending Democrat caucus meeting was to be kept confidential. *Id.* at 183. This was standard operating procedure. *Id.* Caucuses for both parties typically met in closed sessions not open to the public. *Id.* at 187-188.

516. Another bullet point was to make sure that there was not discussion of what the Democrats might do, especially not to the press. *Id.* at 187, 188-189). The next bullet point

498. The Legislative Technology Services Bureau set up computer terminals for the Senate and Assembly democrats at the State Capitol in April or May, 2011. *Id.* at 132:1-18. They contained the map-drawing program, AutoBound. Gratz Depo. at 12:17-22. Representative Fred Kessler was capable of drawing redistricting maps on these terminals. Barca Depo. at 133:2-13.

499. Between January 5, 2011 and July, 2011, the democrat assembly caucus spoke with republican leadership about redistricting expenditures a few times, wrote a letter of concern about such expenditures and spoke with Legislative Counsel regarding whether they could provide legal assistance on redistricting. *Id.* at 61:17-62:14. They did not take any legislative steps in that time frame regarding redistricting. *Id.* at 63:23-65:14.

500. The democrat legislators did not take any procedural steps to slow down the legislative process of considering and enacting Acts 43 and 44. *Id.* at 112:6-18. In particular, they did not engage in a filibuster, although they could have if they had wanted. *Id.* at 116:20-117:14.

501. The democrat assembly caucus and democrat leadership did not consult with any redistricting experts between January, 2011 and July, 2011. *Id.* at 71:11-72:6. After the redistricting legislation was introduced in July, 2011, neither the Senate nor the Assembly democrat caucus held any informational hearings or town meetings on redistricting. *Id.* at 76:2-6; 77:2-16.

502. Representative Peter Barca admits that it was important that the Legislature adopt a redistricting map in time for the 2012 elections. *Id.* at 80:16-18. He agreed that there was some dispatch needed in adopting such a map, and that if the Legislature did not act the Courts would have to. *Id.* at 81:15-17.

487. There were other maps created by the Democrats or related entities following the introduction of the maps in Acts 43 and 44; to wit, there was a map started by Mr. Gratz in mid-July, 2011 which he drew after discussions with democrats “so that if they chose to introduce a map into the legislature as an alternative, one was available. *Id.* at 15:23-16:2. In addition, the Wisconsin Democracy Campaign posted a map on their website (*Id.* at 95:20-23.) and Representative Fred Kessler drew a map. *Id.* at 82:18-21.

488. There was no impediment or ban preventing the Democratic legislators from introducing one of the maps described above in response or as an amendment to Acts 43 and 44. *Id.* at 28:13-15

489. While still employed as a consultant to the Democrats, Mr. Gratz drafted a Memorandum to then-Speaker Michael Sheridan regarding the possibility of using census blocks to have the democrats draw legislative and congressional maps. *Id.* at 85:22-86:1 (referencing Exhibit 1031). The conclusion of that Memorandum mentioned a potential consideration to obtain the census data early while the Democrats were still in control of the Legislature and democrat Governor James Doyle was still in office and to draw maps and pass them in the first three days of January 2011—at the very end of the Democratic lame duck session. *Id.* at 88:24-90:16. This would have left practically no time for public hearings.

490. The Shop Consulting, Inc., was retained by the Senate Democrats in 2009 pursuant to a retainer agreement by which the Shop Consulting was to provide redistricting services. White Depo. (Dkt. 145) at 32:16-33:22.

491. Upon a request from Senator Mark Miller’s office, The Shop Consulting assisted in drawing a legislative redistricting map following the 2010 decennial census. *Id.* at 16:24-17:10. The map was drawn on terminals located in the State Capitol. *Id.* at 18:20-19:4.

181,419 people to achieve equal population in each congressional district. Rebuttal Report of Ronald Gaddie ("Gaddie Rebuttal") at 9, Table 1.

2. Communities of interest.

477. The Northwoods region of Wisconsin includes over 3200 lakes, streams, and rivers, and over a half million acres of public forest for recreational use. These shared features are an important part of tourism, the economy, and culture in the region.

(<http://www.northwoodswisconsin.com/area.htm>. See also <http://www.fs.usda.gov/main/cnnf/about-forest/about-area>.)

478. Chequamegon-Nicolet National Forest includes lands located in counties including Bayfield County to the northwest and Florence County to the northeast. <http://www.fs.usda.gov/cnnf> (follow link to "Where is the Chequamegon-Nicolet National Forest?")

479. High schools from Rhinelander, Tomahawk, Minocqua (Lakeland Union), Eagle River (Northland Pines), Antigo, Mosinee, and Medford comprise the entire membership of the Great Northern Conference. These schools are located in Taylor, Lincoln, Marathon, Vilas (now in the 7th), and Oneida Counties (including both sides of the previous congressional-district boundary through Oneida). (<http://www.greatnorthernconference.org/g5-bin/client.cgi?G5button=7>)

480. Nicolet Area Technical College has campuses in both Minocqua (Nicolet-Lakeland) and Rhinelander. <http://www.nicoletcollege.edu/community/findpeopleplaces/campusmaps/index.html>

481. Nicolet Area Technical College's mission statement is, "In service to the people of Northern Wisconsin, we deliver superior community college education that transforms lives,

57 percent/57 percent and 64 percent/51 percent. *Id.* at 388:5-7. Neither alternative was selected in the final version of Act 43.

466. Mr. Handrick spoke with Jesus “Zeus” Rodriguez regarding Assembly Districts 8 and 9. *Id.* at 319:10-14.

467. The amendment regarding Assembly Districts 8 and 9 that was adopted caused the final percentages of those districts to increase when compared to the past map, and in particular, the final voting age percentage of District 8 to be higher than the court-drawn percentage in 2002. *Id.* at 408:11-20. The final HVAP for Assembly Districts 8 and 9 was 60.5 percent/54 percent. The democrats voted against raising the Latino voting age population in Assembly District 8 from 57 to 60 percent. *Id.* at 410:15-20.

468. Mr. Handrick did not consider citizen voting age population for the Latino community when he was drawing the maps for Assembly Districts 8 and 9 because that data is not contained in the 2010 decennial census and he was unaware that such data existed. *Id.* at 334:1-6.

469. The only data available to the map drawers was from the United States Census – and the 2010 decennial census. *Id.* at 392:9-11. That census data does not include any information on citizenship. *Id.* at 393:21-24. Based on the computer system available to the map drawers, the software that was available to them, and the data that was available from the census, it was not possible to have drawn maps based on citizen voting age population. *Id.* at 394:21-395:5.

470. There is a public website called Dave’s Redistricting where anybody in the public may go on to any state and draw redistricting maps. *Id.* at 391:6-10.

457. When splitting the City of Beloit, Mr. Handrick was careful not to split the minority population in that City. *Id.* at 299:7-25.

458. The city of Eau Claire, the city of Madison and the cities of Racine and Kenosha are examples of communities of interest that Mr. Handrick put together in the new maps. *Id.* at 412:4-11.

459. The overwhelming majority of members of the Oneida Nation live in two townships, in two counties, town of Hobart and the town of Oneida, and a very small portion is in the village of Ashwaubenon. *Id.* at 304:18-22. Just as the federal court did in 2002, the new maps keep those two towns together in one Assembly District. *Id.* at 304:25-305:3. The bulk of the Oneida Nation lives in two counties: Brown and Outagamie. *Id.* at 396:4-7.

460. The Stockbridge-Munsee Nation is separate from the Menominee Nation. The Menominee Nation is indigenous to Wisconsin. *Id.* at 306:13-21. The Stockbridge-Munsee Nation is not; they are of Mohican origin from the state of New York. *Id.* The Stockbridge-Munsee reservation is almost exclusively contained in two townships, the town of Bartelme and the town of Red Springs. *Id.* The new maps keep the Stockbridge-Munsee reservation in one District. *Id.* at 306:22-307:1.

461. Members of the Stockbridge-Munsee Nation and the Menominee Nation live throughout the State of Wisconsin. *Id.* at 397:7-15. Thus, the members of those two nations have not always been represented by the same Assembly person and Senator. *Id.*

462. When drawing maps inside Milwaukee County, Mr. Handrick took the African-American minority community into account. *Id.* at 309:20-310:1. The map drawers were given several guidelines to consider when drawing the African-American districts in Milwaukee County, these included the following: (1) the 2002 court-drawn map had five

respond to the proposals regarding state-wide redistricting as compared to the months for Milwaukee County, he felt he was more effective with the state-wide process because they took his input and changed the maps. *Id.* at 170:14-171:9.

445. Mr. Rodriguez is aware of the group, Voces de la Frontera. *Id.* at 141:13-16. Just as Hispanics for Leadership do not speak for the entire Latino community in Milwaukee, Voces de la Frontera does not either. *Id.* at 143:8-10. This is, quite simply, because not all Latinos have the same political beliefs or economic interests. *Id.* at 144:22-145:3.

446. The Wisconsin Legislature also consulted with MALDEF in drafting Act 43. *Id.* at 188:8-18.

447. Under Act 43, Hispanic majority Assembly districts are 2.02 percent of all districts in the state, 12.1 percent of potential whole districts that might be drawn in Milwaukee County, and 9.5 percent of all districts that are wholly or partially in Milwaukee County. Gaddie Report at 4.

G. Map Creation Considerations.

448. When drawing redistricting maps in Wisconsin, the map drawers were advised to make certain to address the Voting Rights Act concerns (in Milwaukee County) first so that they wouldn't come back to that point and be unable to address the concerns. Handrick Depo. (Dkt. 137) at 398:1-13. The map drawers also took into account the malapportionment between Milwaukee and Dane County. *Id.* at 398:17-401:7.

449. When a district is underpopulated, it needs to expand in size to bring in additional population. *Id.* at 401:8-12. If the districts surrounding the underpopulated district also need to expand in size to bring in additional population, it causes a shift in population and increases the minimum number that each district had to increase. *Id.* at 401:13-402:9. This will cause a ripple or domino effect which will also have an impact on core retention. *Id.*

435. Professor Mayer testified that, as of 2010, the Hispanic citizen voting age population in Assembly District 8 as drawn by Act 43 is approximately 49.6%, based on ACS data. Mayer Report at 22.

436. **Table 15** describes the growth of the Hispanic community in Assembly Districts 8 and 9.

437. Jesus “Zeus” Rodriguez is a member/leader of a non-partisan group called the Hispanics for Leadership. Rodriguez Depo. (Dkt. 142) at 19:17-20:2. This group was formed to advocate in favor of representation for the Latino community at all levels of government in Wisconsin. *Id.*

438. Mr. Rodriguez was contacted by the republican map drawers in late June or early July, 2011 to see if he would be interested in commenting on the proposed redistricting maps for State Assembly Districts 8 and 9 and State Senate District 3, all of them located in the southern part of Milwaukee. *Id.* at 31:17-32:21.

439. On July 8, 2011, Mr. Rodriguez and Hispanics for Leadership were presented with two alternative maps for Assembly Districts 8 and 9 (the original legislation in SB148 and Amendment 1). *Id.* at 30:23-31:10. The first alternative had the Hispanic Voting Age Population (HVAP) at 57 percent/57 percent for Assembly Districts 8 and 9, and the second was a 64 percent/50 percent split. *Id.* at 41:3-9

440. After review of the two proposals, Mr. Rodriguez proposed a third alternative—one in between the two in which the percentage of HVAP was 60.5 percent/54 percent. *Id.* at 48:8-16. Hispanics for Leadership endorsed that third alternative. *Id.* at 11-21. They felt confident with the HVAP in Assembly District 8 and wanted to increase the HVAP in Assembly District 9. *Id.* at 49:16-50:1. Mr. Rodriguez was not concerned about the potential fracturing of

424. Under the 2002 court-drawn map there was one majority Hispanic Assembly seat and no majority Hispanic Senate seats. Gaddie Report at 3.

425. Under the 2002 court-drawn plan, Assembly District 8 has been continuously represented by a Hispanic Assembly member since the plan was put into place. All candidates in the Democratic primary in that district have been Hispanic, and the winner of the Democratic primary has then gone on to win the general election with 100 percent of the vote, i.e., in an uncontested election. The last contested election involving a Republican in the district was 1998 (under the 1992 plan). In that year the Hispanic candidate won the general election with 76 percent of the vote. Grofman Report at ¶ 18.

426. 2011 Wisconsin Act 43 includes two majority Hispanic Assembly districts, one of which is 60.5 percent Hispanic VAP, and the other is 54.0 percent Hispanic VAP. Gaddie Report at 4.

427. The Hispanic citizen voting age population in Assembly District 8 (created by Act 43), as calculated by Prof. Mayer, is 49.6 percent. Mayer Report at 22.

428. From 2000 to 2010, Wisconsin's total population grew 6 percent (from 5,363,675 to 5,686,986). Expert Report of Peter A. Morrison ("Morrison Report") (Tr. Ex. 32) at ¶ 6.

429. From 2000 to 2010, Wisconsin's Hispanic population increased 74 percent (from 192,921 to 336,056). The Hispanic share of Wisconsin's total population rose as a consequence from 3.6 percent to 5.9 percent. *Id.*

430. Since 2000, Hispanic numbers within Milwaukee County have registered an overall increase of nearly 44,000 in a County that gained barely 8 thousand residents overall between 2000 and 2010. *Id.* at ¶ 8.

sixth is 51.5 percent African American VAP. *Id.*; see also Gaddie Report at pg. 14 (Table 3); Grofman Report at Exhibit B.

414. **Table 8** shows the racial demographic data on population and voting age population characteristics of the court-drawn 2002 African American majority-minority legislative districts, using 2010 census data.

415. Even if the African-American population in Assembly Districts 10, 11, 16, 17, and 18 were redistributed so that each of these five districts were at exactly 55 percent black voting age population, the African American population is not large enough to create a seventh majority-minority African-American Assembly district. Expert Report of Kenneth R. Mayer (“Mayer Report”) (Tr. Ex. 55) at 25; *see also* Mayer Depo. (Dkt. 147) at 193:19-23.

416. Senate Districts 4 and 6 (as created by Act 43) contain 98.4 percent of the African-American population found in either Senate Districts 4 or 6 as created by the federal court in 2002. Grofman Report at ¶ 9(a); *see also* Expert Report of John Diez (“Diez Report”) (Tr. Ex. 31) at 2 (referencing data provided by the State of Wisconsin Legislative Technology Service Bureau).

417. In Milwaukee County, the 2002 court-drawn baseline map had sixteen Assembly districts wholly within the county, and another three districts that crossed the county line; the county population (940,164) would have accommodated seventeen whole districts plus a third of another. African-American majority districts constituted 28.8 percent of the potential whole districts that could have been crafted in Milwaukee County, compared to 24.6 percent African-Americans in the county population. African-American majority districts were 26.3 percent of all districts that were wholly or partially in Milwaukee County. Gaddie Report at 4.

lowest Democratic Incumbent Core Retention is 8.55 percent, the highest is 99.91 percent; for Republicans, the low is 17.74 percent and the high is 97.67 percent. Gaddie Report at ¶ 8 (Tr. Ex. 58).

404. In the Senate, average Incumbent Core Retention is 78.23 percent, with a low of 42.03 percent and a high of 99.92 percent. Democratic Senate Incumbent Core Retention averages 78.84 percent, compared to 77.64 percent for Republican incumbents. The low Democratic Senate Incumbent Core Retention score is 42.03 percent, the high is 99.53 percent. Among Republican Senate incumbents, the low is 57.97 percent; the high is 99.92 percent. Gaddie Report at ¶ 8 (Tr. Ex. 58).

405. **Table 24** illustrates the Incumbent Core Retention scores for the Assembly and Senate districts created by Act 43. (Diez Report)

C. Racial Fairness And Treatment Of Minority-Majority Districts.

406. No part of Wisconsin is subject to Section 5 of the Voting Rights Act.

1. African-American Majority-Minority Districts

407. African Americans are 6.3 percent of the Wisconsin statewide population and 26.8 percent of the population of Milwaukee County. Over 70 percent of the 358,280 African American Wisconsinites are in Milwaukee County, and then largely in the City of Milwaukee and north of the East-West Freeway. *Id.* at 3.

408. The Milwaukee area is the only part of the State of Wisconsin with a sufficiently large and concentrated African-American population so as to be able to draw Assembly or State Senate districts containing an African-American population or voting age population majority. Expert Report of Bernard Grofman (“Grofman Report”) (Tr. Ex. 140) at ¶ 7.

409. Under the 2002 court-drawn plan, Assembly Districts 10, 11, 16, 17 and 18, have been continuously represented by an African-American since the plan was put into place.

IV. GAB DEFENDANTS AND INTERVENOR-DEFENDANTS

A. Delayed Voting (Act 43).

392. The Intervenor-Defendants join the Government Accountability Board's statement of contested facts to the extent they address Act 44.

393. In 2002, Democrats proposed four different maps with delayed voting effects shown in **Table 18**.

394. **Table 19** reflects delayed voting effects in other states in the present redistricting cycle.

395. In the summer of 2011, senators in nine of the sixteen even-numbered Senate districts were subject to recall. Expert Report of Ronald Keith Gaddie ("Gaddie Report") (Trial Exhibit 30) at 5.

396. A total of 164,843 persons who reside in districts in which they would otherwise experience delayed voting also lived in districts where a recall was conducted in 2011. Accounting for the use of the recall, the actual period between voting for a Senator for these 164,843 persons is just three years, not six. Thus, Act 43 will cause only 134,861 persons to wait six years between opportunities to vote for a Senator. *Id.*

397. The delayed voting or disenfranchisement effects of the last three redistricting efforts appear in **Table 17**.

398. In 1982, the map drawn by the Federal District Court moved 713,225 people (or about 15.2 percent of all persons in Wisconsin according to the 1980 census) into districts where voters would wait six years between opportunities to vote for state senator. *Wisconsin State AFL-CIO v. Elections Board*, 543 F. Supp. 630, 659 (E.D. Wis. 1982).

380. In 2002 the bipartisan congressional delegation, the Wisconsin Legislature and the Governor all recognized that the boundaries set forth by the 2002 redistricting incorporated the communities of interest of the Third, Seventh, and Eighth Congressional Districts. *Id.* ¶ 34.

381. Marathon, Portage and Wood counties are much more alike than the surrounding counties in terms of urbanization and employment levels. *Id.* ¶ 4n.

382. Mr. Speth's only consideration of communities of interest in drafting the Congressional boundaries that were enacted into law in Act 44 related to geographic boundaries and never considered cultural or economic factors. Speth Depo. at 137:5-19.

a. Under the alignment before Act 44 the Seventh District had three partial counties (Clark, Oneida, and Langlade). If all of Clark is moved to the Seventh District only two counties would be divided. Exhibit 1.

b. The boundaries that were drafted by Mr. Speth divides the geographic boundaries of five counties (Chippewa, Jackson, Monroe, Juneau, and Richland) in the Seventh District and places these counties in two Congressional Districts. Jackson County is further fractured since there are three townships in the north that are in the Seventh District and another three townships on the east that are also in the Seventh District. However, the three townships in the north of Jackson County and the three townships in the east of Jackson County are not contiguous. Exhibit 2.

c. Under the alignment before Act 44 the Third District only divided Clark and Sauk Counties. Tr. Ex. 1014..

d. The boundaries that were drafted by Mr. Speth divides the geographic boundaries of six counties (Wood, Chippewa, Jackson, Monroe, Juneau, and Richland Counties). Tr. Ex. 1014, 1015.

g. One of the reservoirs is Lake Dubay. It within or near the borders of Marathon, Portage, and Wood Counties. It covers 6,830 acres and has 43 miles of shoreline.

h. The Wisconsin Valley Improvement Corporation is located in Wausau, Wisconsin. It manages the Wisconsin River flowage of Lake DuBay to ensure that community, recreation, and paper industry needs are fulfilled in the region as well as managing for flood control. These needs were formerly all in the Seventh District now they are split between the Seventh and the Third Districts

i. The Wisconsin River flows through Wausau (Marathon County), Stevens Point (Portage County), and Wisconsin Rapids (Wood County). All three of these cities were formerly in the Seventh District. Stevens Point and Wisconsin Rapids have now been moved to the Third District.

373. Mr. Speth never considered the above factors set out in paragraph 39 relating to the Wisconsin River when he prepared the Congressional Boundaries that were enacted into law as Act 44. Speth Depo. at 148:6-15.

374. In the early 1980's, Wisconsin Governor Lee Sherman Dreyfus, himself a resident of Central Wisconsin, urged that the area be thought of as a common unit. He referred to Marathon, Portage and Wood counties as the "Ruralplex." This is because these three counties were a highly integrated economic and cultural hub for Central Wisconsin. Obey Aff., ¶ 29.

a. The Central Wisconsin Regional Airport is a joint venture between Marathon and Portage counties.

b. Major highways connect the three counties.

c. The University of Wisconsin Stevens Point draws from the three counties.

the populations in the far corners of the district. The Seventh Congressional District was geographically already the largest congressional district in Wisconsin. Now it is unnecessarily made even larger geographically. *Id.* ¶ 26.

367. If the boundaries of the Seventh and Third are merely adjusted as set forth above those districts will be more compact than the new districts. *Id.* ¶ 27.

368. Visual comparison of exhibit A and exhibit B confirm that the boundaries of Wisconsin Congressional Districts Three, Seven, and Eight as prescribed by Act 44 are less compact than the boundaries of those districts before the redistricting by Act 44.

369. Mr. Speth did not consider the principle of compactness when he prepared the boundaries of the Wisconsin Congressional Districts that were enacted into law by Act 44. Speth Depo. (Dkt. 143) at 121:8-10.

D. Communities Of Interest.

370. The collective power of a group of people or entities can become better informed and have a stronger influence on governmental action and legislation than can a single individual. Communities of interest are usually more effective if the focus is upon a single representative.

371. Since at least 1938 Marathon, Portage, and Wood County have been in one congressional district. This has facilitated thinking of these counties as a single integrated economic and cultural unit.

372. The single most unifying community of interest in the Seventh Congressional District before the recent redistricting is the Wisconsin River. *Obey Aff.*, ¶ 28.

a. The Wisconsin River is called the hardest working river in the United States. This is because the river has led to economic development. In early years sawmills were built in Merrill, Wausau, Mosinee, and Stevens Point.

360. Mr. Speth agrees that zero deviation could have been achieved by maintaining the previous boundaries of the Third and Seventh Congressional Districts by simply moving all of Clark County to the Seventh Congressional District following the 2010 census, but he never considered doing it. Speth Depo. (Dkt. 143) at 141:10–142:13.

C. Compactness.

361. Compactness reduces travel time before elections, during campaigns and after campaigns in performing representational duties to make candidates and representatives more accessible to constituents. Obey Aff., ¶ 22.

362. Compactness also impacts the media market as television coverage, radio coverage, and newspaper coverage is limited to a specific geographic area. Constituents receive considerable information concerning their congressional representative through those media markets, especially television. Campaigning is also dominated by television ads and television coverage. In western Wisconsin, the boundaries approved by the legislature further fragment the major media market for that area, making meaningful information less likely to be conveyed, and raising the cost of whatever communication is provided. The primary television coverage for western Wisconsin is provided by Minnesota and Twin Cities media outlets. Most of that coverage is presently provided to Third District counties such as Pepin, Pierce, Buffalo, and St. Croix counties. The new map split St. Croix County from that Third District and moved it to the Seventh. The result is that Third District candidates will need to continue to purchase Twin Cities media because it covers a major part of the district. Up until now, Seventh district candidates purchased very little Twin Cities media because only a small part of the Seventh district, such as Polk county, is dominated by Twin Cities television. This new map makes it more necessary for Seventh district candidates to also purchase Twin Cities media, unnecessarily raising the cost of campaigns. *Id.* ¶ 23.

353. The previous 2002 redistricting plan was recommended by a bipartisan congressional delegation. It was passed by the Wisconsin legislature and signed into law by the Governor. It was not challenged in court. There would be no reason to change those districts following the 2010 census unless there had been large population shifts, the state had lost a congressional seat, or there had been changes in the ethnic composition of a district requiring changes because of the Voting Rights Act. None of these considerations are relevant for the Third, Seventh, or Eighth Congressional Districts. Affidavit of Congressman David Obey (Tr. Ex. 47) ¶ 12.

354. Retention of the core population from a Congressional District is important for the following reasons, among others.

a. One of the important duties of a member of congress is to provide constituent services to those he or she represents. That is best accomplished if confusion about which district citizens live in is minimized to the greatest possible degree. Constituent services can be a variety of things: assistance with passports, providing information about government programs, helping to confront government agencies or expressing opinions on issues before Congress. My staff and I would be constantly dealing with the needs of private citizens to understand how to gain access to government services and information. These are usually people who cannot afford a lobbyist. This access to government I believe falls under a citizens' right to petition government.

b. People will best understand the positions taken by the representative in their district and will be better equipped to cast an informed vote than would be the case if they are continually confused about which district they now reside in. Moving voters will cause them to be less informed and more confused.

344. Recall petitions have been filed in Senate Districts 13, 21, 23, and 29, and the defendants are reviewing them for sufficiency to determine a date for recall elections under the 2002 boundaries.

II. VOCES PLAINTIFFS

345. The Voces plaintiffs join in those foregoing statements of contested facts proffered by the Baldus plaintiffs including those that relate to AD 8 and AD 9 and the Latino community on Milwaukee's near southside.

III. INTERVENOR PLAINTIFFS

A. Zero Deviation.

346. Zero deviation for a congressional district is determined by dividing the population of Wisconsin, as determined by the U.S. Census Bureau for the 2010 decennial Census, equally between the Eight Congressional Districts. This results in a population of 710,874 for Congressional Districts One and Two, and a population of 710,873 for Congressional Districts Three, Four, Five, Six, Seven, and Eight. Deposition of Andrew Speth, Chief of Staff for Intervening Defendant Congressman Paul Ryan (Dtk. 143) at 51:2-20.

347. Historically the census data used by the State legislature or federal three-judge court panels to draw redistricting maps has been inaccurate and incomplete (Deposition of Kevin Kennedy Director and General Counsel for the Defendant Government Accountability Board) for the following reasons:

- a. The census itself (that is, the counting of people by the Census Bureau) is never entirely accurate. The Census Bureau misses some people during its count.
- b. The boundary lines in the geographical maps used by the census are not always accurate. The census bureau openly acknowledges this.

National Rail line on the east, I-94 on the southern edge and Highway 41 and the NW county line to the west. *See* Tr. Ex. 55 (Mayer Report) at 23-24.

335. The depressed socioeconomic status of Milwaukee's African-American community hinders the ability to participate in the electoral process on an equal basis with other members of the electorate. *See* Grofman Depo. (Dkt. 150) at 208:23-209:17.

336. Minority cohesion and racial bloc voting are evidenced by analyzing voting percentages in elections where one or more African-American candidates ran against one or more white candidates. *See* Tr. Ex. 55 (Mayer Report) at 24, and Ex. 9. In all of these races, African-American voters were almost always close to unanimous in their support for the African-American candidate, and white voters were uniformly less likely to support the African-American candidate by large margins. These results show a high rate of racially polarized voting. *See id.*

337. In Assembly Districts 10, 11, 16, 17, and 18, the concentration of African-American voters is excessive, far above the threshold (typically, 55 percent) commonly accepted as necessary to achieve effective majority status for African-American voters. *See* Tr. Ex. 55 (Mayer Report) at 25; *see also* Grofman Depo. (Dkt. 150) at 90:2-17.

338. If the percentage of African-American voting age population is reduced to 55 percent in each of these districts, 12,919 African-American voters would be available for other districts, increasing African-American influence while still retaining effective majorities in the existing majority-minority districts and enhancing the influence of African-Americans in other districts. *See* Tr. Ex. 55 (Mayer Report) at 25.

339. African-Americans in Milwaukee and Wisconsin are less likely to participate in an election as demonstrated by the disparity in voter registration rates, socioeconomic

thereby further hinder the ability of Latino citizens to participate in the electoral process on an equal basis with other members of the electorate.

326. Socioeconomic differences between non-Latinos and Latinos—such as lower income, higher poverty levels, and less formal education—all interfere with the ability of Latinos in the City of Milwaukee and Wisconsin to fully participate in the electoral process and elect candidates of their choice. *See* Grofman Depo. (Dkt. 150) at 172:15-172:24; *see also* Rodriguez Depo. (Dkt. 142) at 178:7-179:1, 179:17-180:5.

327. Voces de la Frontera is the largest membership-based Latino organization in the State of Wisconsin with over 3,000 members who are concentrated mostly in the near-southside area of Milwaukee in the vicinity of the AD 8 and AD 9. Each year, Voces de la Frontera sponsors May Day marches on May 1st in Milwaukee with attendance ranging from 20,000 to over 65,000 members of the Latino community. Voces de la Frontera has focused on Get-Out-The-Vote campaigns and in 2004 successfully registered 5,100 new voters in the predecessor AD 8 and increased voter turnout by 6% in 10 of the wards in that district. In 2006, the civic participation program increased the voter turnout by 32 percent in Milwaukee targeted wards and by 20 percent in Racine targeted wards. (Anticipated testimony of Christine Neumann-Ortiz).

328. Voces de la Frontera actively participated in the redistricting process for the City of Milwaukee and joined with a number of other Latino organizations to form the Latino Redistricting Committee, a bipartisan coalition to advocate on behalf of the Latino community's interests during the redistricting process. Neither organization was contacted by persons involved in the legislative redistricting process that led to the passage of Act 43. Neither organization was provided with an opportunity to provide input regarding the legislative redistricting process. (Anticipated testimony of Christine Neumann-Ortiz).

49.6 percent and is 43.02 percent in Assembly District 9. *See* Tr. Ex. 55 (Mayer Report) at 22; *see* Tr. Ex. 60 (Mayer Rebuttal) at 11.

316. Using the 42 percent noncitizen rate derived from the five-year ACS data reduces the eligible Latino majorities in Assembly Districts 8 and 9 to 47.07 percent and 40.53 percent, respectively. *See* Tr. Ex. 60 (Mayer Rebuttal) at 11.

317. Latinos who are U.S. citizens comprise between 47.07 percent and 49.6 percent of the voting age population living in AD 8. *See* Tr. Ex. 55 (Mayer Report) at 22; Tr. Ex. 60 (Mayer Rebuttal) at 11.

318. Latinos who are U.S. citizens comprise between 40.53 percent and 43.02 percent of the voting age population living in AD 9. *See* Tr. Ex. 55 (Mayer Report) at 22; Tr. Ex. 60 (Mayer Rebuttal) at 11.

319. As created by Act 43, Assembly Districts 8 and 9 do not contain enough citizen voting age Latinos to constitute a numerical majority. *See* Tr. Ex. 55 (Mayer Report) at 21; *see* Tr. Ex. 60 (Mayer Rebuttal) at 11-12.

320. It is possible to construct an alternative Assembly District 8 with a Latino voting age population of 70.07 percent and a Latino citizen voting age population of 60.06 percent. *See* Tr. Ex. 55 (Mayer Report) at 19, 22-23, and Ex. 6; *see* Tr. Ex. 60 (Mayer Rebuttal) at 12-15. It is possible and, therefore, necessary to construct a compact Assembly District with a sufficiently large and effective Latino voting population. *Id.*

321. Over the course of the last decade, the political and electoral conduct of Latino voters on Milwaukee's near south side in the vicinity of the predecessor 8th Assembly District demonstrates that the Latino community is politically cohesive. *See* Gaddie Depo. (Dkt. 148) at 90:9-20; Grofman Depo. (Dkt. 150) at 165:5-15.

that were retained with the new AD 8 pursuant to Act 43. *See* Tr. Ex. 184 (Map of AD 8 and 9 with Turnout Rate).

306. The areas of the predecessor AD 9 that were added to AD 8 pursuant to Act 43 have a higher percentage of voter turnout than the areas of the predecessor AD 8 that were retained with the new AD 8 pursuant to Act 43. *See* Tr. Ex. 184 (Map of AD 8 and 9 with Turnout Rate); *see* Grofman Depo. (Dkt. 150) at 182:13-22.

307. In every general election since 1998, including 2000, 2002, 2004, 2006, 2008, 2010, AD 8 had the fewest total votes cast of any regular general assembly election held in those years. *See* Wis. Bluebook 1997-1998, 1999-2000, 2001-2002, 2003-2004, 2005-2006, 2007-2008.

308. The areas of the predecessor AD 9 that were added to AD 8 pursuant to Act 43 constitute a different community of interest than the areas of the predecessor AD 8 that were retained under new AD 8, created pursuant to Act 43. The residents of the Wilson Park area do not consider themselves to be part of Milwaukee's near south side Latino community. The areas from the predecessor AD 9 added to the new AD 8 represent a different neighborhood known as Wilson Park which has a lower percentage of Latinos who are eligible voters and a higher percentage of non-Latino white voters who have higher voter registration rates and higher turnout rates than do the Latinos who are eligible voters in those portions of the predecessor AD 8 that were retained in the new AD 8. (Anticipated testimony of John Bartkowski and Christine Neuman-Ortiz. Defendants opted not to depose these witnesses.)

309. Act 43 divides the predecessor AD 8 almost in half along Cesar Chavez Drive (16th Street) retaining a mere 55% of the predecessor district in the new AD 8 and adding the Wilson Park areas from the predecessor AD 9. *See* Tr. Ex. 144 (comparing total registered

295. According to the 2010 Census, the Latino population of the city of Milwaukee is 103,001 (17.3 percent of the total), and the Latino voting age population (VAP) is 63,202 (14.6 percent of the total VAP). *See* Tr. Ex. 55 (Mayer Report) at 18.

296. Of the 103,007 Latinos in Milwaukee County, 70,779 (68.1 percent) are concentrated within 939 contiguous census blocks on the near south side. The Latino population makes up 65.6 percent of the population within those census blocks. The area of concentration is roughly square—approximately bounded by I-94 on the north, 1st Street and I-94/43 on the east, Howard Street to the south and 42nd Street to the west. In this area, the Latino community is both sufficiently large and geographically compact to meet the first prong of the *Gingles* test. *See* Tr. Ex. 55 (Mayer Report) at 18.

297. The statistical analysis by the Wisconsin Legislative Reference Bureau of the 8th Assembly District, as promulgated on May 30, 2002, by U.S. District Court for the Eastern District of Wisconsin, indicated a total population in the year 2000 of 54,074 of which 33,602 were Latino for a Latino population percentage of 62 percent at that time. *See* Tr. Ex. 55 (Mayer Report) at 18.

298. Assembly Districts 8 and 9, as created by Act 43, do not have a sufficient Latino voting age citizen populations to create effective Latino majorities. *See* Tr. Ex. 55 (Mayer Report) at 22; *see* Tr. Ex. 60 (Mayer Rebuttal) at 11-12.

299. Assembly District 8 purports to have a Latino voting age population of 60.54 percent, and Assembly District 9 purports to have a Latino voting age population of 54.0 percent. The Latino population spread between the two districts is diluted. *See* Tr. Ex. 55 (Mayer Report) at 22.

achieved in 1992—Foltz and Ottman affirmatively sought to disenfranchise 5.25 percent of the population. Tr. Ex. 19 at 30-31; Foltz Depo. (Dkt. 138) at 185:4-191:3; Ottman Depo. (Dkt. 140) at 190:15-193:2.

290. Recall elections occur in a very specific constitutional and political context that differs substantially from the fixed elections held every four years. Tr. Ex. 55 (Mayer Report) at 8.

291. In the 2011 senate recall elections, all nine candidates who faced recalls attempted to stop the recall elections through litigation. Tr. Ex. 55 (Mayer Report) at 8.

292. The recall campaigns were unusually chaotic, with both parties running “fake” or “placeholder” candidates to force primaries in the other party, giving incumbents more time to campaign by further delaying the date of the final recall. Tr. Ex. 55 (Mayer Report) at 8.

293. Turnout in the recall elections was, on average, 35 percent lower than in the 2008 elections, even though two senators who faced recalls previously ran unopposed. Tr. Ex. 55 (Mayer Report) at 8.

294. An action has been filed in the Circuit Court for Waukesha County against GAB seeking a judicial determination of the appropriate districts under which recall elections must be held. *Clinard et al. v. Brennan et al.*, Case No. 11-cv-03995. In its answer to the Amended Complaint for Declaratory and Other Relief, *see* Tr. Ex. 167, GAB answered the paragraphs of the complaint as follows:

a. “Summary Paragraph I: Following the enactment of 2011 Wisconsin Acts 43 and 44 by the State Legislature (‘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

a result, Milwaukee voters in up to six Milwaukee assembly seats will lose their influence in choosing who represents them to voters outside of Milwaukee. Tr. Ex. 20 (Act 43 Assembly map).

283. By splitting municipalities into more than one Assembly and/or Senate district, Act 43 imposes significant additional burdens on those municipalities. (Trial testimony of Steve Barg, City Administrator, City of Marshfield)

284. Act 44 shifts substantially more people to different congressional districts than necessary for population equality. Act 44 shifts (a) 171,270 people into District 3, and 190,354 people out of the district, for a net loss of 19,084; (b) 177,822 people into District 5, and 174,529 people out of the district, for a net gain of 3,293; (c) 144,923 people into District 6, and 139,152 out of the district, for a net gain of 5,771; and (d) 171,989 into District 7, and 150,395 out of the district, for a net gain of 21,594. See Ex. A to Joint Pretrial Report, Table 31; Tr. Ex. 45 (Nordheim Report), Ex. B at 5.

285. Act 43 moves more than 49,000 individuals on the western edge of Madison from the 26th senate district into the new 27th senate district. The last regular election in which residents of the 26th district voted for a state senator was in 2008; the next regular senate election in the 27th district will take place in 2014. Tr. Ex. 31 (Diez Report, "Core Constituencies Report: Senate Districts (Act 43)"); Ex. A to Joint Pretrial Report, Table 28.

286. The population of the 27th senate district under the 2002 boundaries is 197,874, or 25,541 greater than the ideal population. Its population as redrawn in Act 43 is 172,449. The net population decrease of 25,425 was achieved by shifting 69,372 people into the 27th district—including more than 49,000 individuals formerly in SD 14, 16, and 26—and shifting another

271. The new populations of the senate districts represent a net change of 231,501 people. To achieve this, Act 43 shifted 1,205,275 individuals from one senate district to another (after controlling for double counting). **Table 33** reflects the population shifted into and out of each senate district.

272. Assembly districts represented by Democrats after the 2010 election have an average core population retention more than 9 percentage points less than that of Republican districts: the average core population retention for Democrat districts was 59.1 percent, and 68.2 percent for districts represented by Republicans. Tr. Ex. 55 (Mayer Report) at 12; Tr. Ex. 1019 (corrected pages to Mayer Report) at 12.

273. The City of Racine is split into three different assembly districts, including one that stretches into the City of Kenosha (AD 64) and another that stretches west to Wind Lake and the Racine County line (AD 62). *See supra* ¶ 177; Tr. Ex. 20 (Act 43 Assembly map)

274. Act 43 combines parts of the cities of Racine and Kenosha in a single assembly district (AD 64), even though the two cities are separate communities of interest and have not traditionally been included in the same assembly district. Tr. Ex. 20 (Act 43 Assembly map). No rationale has been advanced for combining parts of Racine and Kenosha into a single assembly district. Handrick Depo. (Dkt. 137) at 293:8-13.

275. Act 43 combines the City of Racine and the City of Kenosha into a single senate district (SD 22), and combines the rural parts of Racine County and Kenosha County into a separate senate district (SD 21). Tr. Ex. 22 (Act 43 Senate map).

276. The City of Appleton, a majority of which has traditionally been within one assembly district (AD 57), is split in half with the northern half of the city now in the Assembly

259. As was later publicly revealed, Foltz and Ottman began drafting the legislative districts around April of 2011 using census blocks. Foltz Depo. (Dkt. 138) at 138:4-140:6; Ottman Depo. (Dkt. 140) at 58:23-61:2.

260. The bill that would become Act 39, introduced concurrently with Act 43, requires municipalities to draw or re-draw their local ward boundaries to conform with state legislative redistricting. *See supra* ¶ 246. This change in law allowed the statewide redistricting legislation to be introduced and passed in July 2011, before municipalities had drawn their ward boundaries. Barca Depo (Dkt. 152) at 57:2-16.

261. The rushed, unprecedented, and secretive procedure used by the Legislature to create legislative and congressional districts resulted in discrepancies, including discrepancies between district and municipal boundaries, that the GAB addressed in a series of internal memorandums beginning in the fall of 2011. Those “anomalies” have caused considerable confusion among municipal and count clerks, voters, and the GAB itself. Kennedy Depo. (Dkt. 144) at 19:12-21, 74:1-76:11.

262. Although the GAB has and local clerks have resolved most of those anomalies, some have yet to be resolved. Kennedy Depo. (Dkt. 144) at 60:10-64:25, 132:25-135:12.

263. The 12-day period between the public introduction of Acts 43 and 44 and their passage by the legislature was insufficient time for the Democratic minority to develop an alternative map, in particular given the absolute denial of any funding to hire consultants or legal counsel. Barca Depo. (Dkt. 152) at 44:6-45:3, 48:12-49:1. The limited time and lack of resources also made it impossible for the Democratic minority to thoroughly analyze a map proposed by the Wisconsin Democracy Campaign to determine whether it presented a viable and constitutional alternative to Act 43. Barca Depo. (Dkt. 152) at 122:3-17, 124:5-16.

248. Attorneys from Michael Best and Troupis Law Office LLC, consultants retained by Michael Best, and Republican leadership of the assembly and senate met regularly with Foltz, Ottman, and Handrick at the offices of Michael Best to provide guidance on drawing the legislative districts. Foltz Depo. (Dkt. 138) at 32:25-36:2; Handrick Depo. (Dkt. 136) at 41:15-42:20; Gaddie Depo. (Dkt. 148) at 176:12-179:18.

249. The bill that would become Act 43 was drafted in the offices of the law firm of Michael Best where Foltz and Ottman had offices. Foltz Depo. (Dkt. 138) at 13:16-14:2; Ottman Depo. (Dkt. 140) at 204:10-16; Handrick Depo. (Dkt. 136) at 32:9-24.

250. Foltz, Ottman, and Handrick began their work on the redistricting process at Michael Best in early 2011. Foltz Depo. (Dkt. 138) at 32:10-33:15; Handrick Depo. (Dkt. 136) at 33:23-37:9; Tr. Ex. 4.

251. Meetings with Republican legislators about the redistricting process were held at the Michael Best offices. Foltz Depo. (Dkt. 139) at 263:6-265:5. Democratic lawmakers were not invited to participate in this process. Foltz Depo. (Dkt. 139) at 269:19-270:13.

252. At those meetings, Republican legislators were provided with preliminary maps or a description of their respective legislative districts, along with a table showing the results of past elections in their districts and the results of those same races had they been held in the proposed new districts. Foltz Depo. (Dkt. 139) at 263:6-270:13; Ottman Depo. (Dkt. 141) at 265:22-274:5; Tr. Ex. 100.

253. The Republican legislators who participated in the meetings were shown or informed of "talking points" prepared by Foltz and Ottman. Among the "talking points" expressed to Republican members of the assembly were that they should not believe public comments about the new districts and that the real basis for the new districts was expressed to

241. Within the meaning of the first prong of *Thornburg v. Gingles*, 478 U.S. 30, 48-51 (1986), the Latino community is sufficiently large and geographically compact enough to permit the creation of an assembly district with a majority of eligible Latino voters in the vicinity of the 8th Assembly District.

III. STATE STATUTES

242. Under a previous statute, local governments were first required to draw local political and ward boundaries. Wis. Stats. §§ 5.15(1)(b) and 59.10(3)(b) (2009-10). Pursuant to Act 39, a bill related to Acts 43 and 44, also passed on July 19 and 20, and signed into law on July 25, 2011, state law now requires local communities to draw their local political boundaries to conform with state legislative redistricting. A copy of this statute appears as Trial Exhibit 173.

JOINT PROPOSED CONCLUSIONS OF LAW

I. JURISDICTION AND VENUE

232. The parties agree, except as set forth in paragraph (a) below, that this Court has jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(3) and (4), as well as under 28 U.S.C. § 1367, to hear the claims for legal and equitable relief, in that (a) this is a civil action arising under the U.S. Constitution and laws of the United States; (b) this civil action seeks to redress the alleged deprivation, under color of state law, of rights secured by the Constitution and by Acts of Congress providing for equal rights of citizens; and (c) this civil action seeks to secure equitable and declaratory relief under Acts of Congress providing for the protection of civil rights, including the right to vote.

a. The defendants and intervenor-defendants assert that the Eleventh Amendment deprives this federal Court of jurisdiction to enforce state law against the defendants. *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89 (1983).

233. Venue is properly in this Court under 28 U.S.C. § 1391(b), in that at least one of the defendants resides in the Eastern District of Wisconsin. Neither the defendants nor the intervenor-defendants have challenged venue.

II. THE U.S. CONSTITUTION AND THE WISCONSIN CONSTITUTION

234. The U.S. Constitution requires that the members of Congress be elected from districts with equal populations. The Wisconsin Constitution requires that state legislative districts be “substantially equal” in population and establishes other requirements.

235. The U.S. Constitution, in Article 1, Section 2, provides, in part, 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....” These

225. NCEC Services, Inc., is a Washington, D.C.-based Democratic political consulting firm. In April 2011, the Democratic members of the Wisconsin delegation retained NCEC as consultants in the redistricting process and to draft a set of possible redistricting expectations and scenarios.

226. On June 3, Mr. Olson emailed to Mr. Speth a map drawn with the assistance of the Democratic Congressional Campaign Committee on behalf of the Democratic members. At this point, Mr. Olson had not received a copy of the draft map developed by Mr. Speth, although he had seen it at the June 2 meeting and at the previous individual meeting earlier in the week. This exchange represented the first time any Democratic member (or staff member) had sent Mr. Speth a draft congressional districting map.

227. Mr. Speth concluded that the map received from Mr. Olson on June 3 did not reflect minimal deviation from the ideal population for congressional districts under the 2010 Census.

228. That same day, June 3, Mr. Speth emailed to Mr. Olson an electronic copy of the June 1 draft congressional districting map that all members of the Wisconsin delegation had discussed with Mr. Speth and Congressman Ryan that week, based on a previous agreement that such an electronic copy would be provided once the Democrats provided Mr. Speth with their own proposed map.

229. On or about June 8, Mr. Speth sent the chiefs of staff of the Democratic members revised drafts of the congressional districting lines, including a change to place Fort McCoy in the Third Congressional District, rather than in the Seventh Congressional District, of which it had been a part under the June 1 draft.

214. Mr. Speth shared the May 13 draft with the chiefs of staff for the Republican members of the Wisconsin delegation, who made recommendations for changes to the draft. Some of these recommendations were incorporated into subsequent drafts of the map, and others of them were rejected.

215. The May 13 draft was not shared with Democratic members of the Wisconsin delegation or their staffs at that time.

216. After May 13, Mr. Speth incorporated certain changes that Mr. Speth understood to reflect features preferred by certain Democratic and Republican members of Wisconsin's delegation to the House of Representatives. Some of the changes preferable to Democratic members had been recommended to Mr. Speth by Congressman Ryan. For example, the boundary between the Second and Third Congressional Districts was shifted to the east, a change that simultaneously addressed Congressman Kind's desire to preserve the Mississippi River corridor of his district and Congresswoman Baldwin's interest in reducing drive times from Madison to various locations in her district.

217. Mr. Speth shared the second draft of the congressional districting lines with the chiefs of staff of the Republican members of the Wisconsin congressional delegation. The second draft was not shared with Democratic members of the Wisconsin delegation or their staffs.

218. Mr. Speth completed another draft of the district map on or about June 1.

219. In early June, Congressman Ryan and Mr. Speth met individually with all members of Wisconsin's delegation to the House of Representatives, along with their respective chiefs of staff, to review the June 1 draft map of the congressional districting lines. This was the first time Democratic members of the Wisconsin delegation or their chiefs of staff were shown a

E. Population Movement.

201. The number of people moved in Wisconsin in 2011 under Act 44 is just under 892,000—15.67 percent of the state.

F. Compactness.

202. The average Smallest Circle score is .44; for Republican incumbent districts, the average is .46; for Democratic incumbent districts, the average is .40. The average Perimeter-to-Area score is .21; for Republican incumbent districts, the average is .20; for Democratic incumbent districts, the average is .24.

203. The Act 44 map has increased average compactness on the Smallest Circle score when compared to the 2002 court-drawn map, while average compactness has decreased on the Perimeter-to-Area score.

204. The changes in compactness between the 2002 map and Act 44 are not statistically significant. A paired-samples t-test of the district compactness for the 2002 and 2011 maps showed no significant difference on any of the five compactness measures used by Prof. Nordheim.

G. Pairing Of Incumbents.

205. No incumbent members of Congress are paired in one district.

H. Process of Drafting Congressional Boundaries.

206. As has been the case in previous decades, the Wisconsin Legislature in 2011 permitted the incumbent Wisconsin members of the House of Representatives to draft a map containing the new congressional boundaries to comply with the 2010 Census.

207. In 2011, Andrew D. Speth, chief of staff to Congressman Paul D. Ryan, Jr., a Republican, took primary responsibility for drafting the map that would eventually be reflected in Act 44.

197. The average core retention for Act 44 is 84.33 percent, with a high of 96.52 percent (District 1) and a low of 74.99 percent (District 5).

198. The average core retention for Democratic incumbents is 83.70 percent, and 85.36 percent for Republican incumbents.

199. The lowest Democratic incumbent core is 75.91 percent, the highest is 91.12 percent; for Republicans, the low is 74.99 percent and the high is 96.52 percent.

200. Stipulations (a)-(k) that follow are given in lieu of the testimony of Professor Erik Nordheim, a consulting statistician hired by the Intervenor-Plaintiffs:

a. If the 2002 Congressional boundaries for the 7th and 3rd Congressional Districts had been maintained these districts would have retained 100% of their core populations.

b. If nothing had been done to the 2002 Congressional boundary of the 8th Congressional District following the 2010 census it would have been .57% below the precise average population for the other Wisconsin congressional districts and 6.6% above the average population for Minnesota Congressional Districts.

c. Had there been no changes to the 8th Congressional District by Act 44, it would have retained 100% of its core population.

d. Before the 2011 redistricting, the 7th Congressional District deviated from the ideal population by 21,594 people under the 2010 Census. Act 44 shifted 171,989 people into the District and shifted 150,395 people out of the District.

e. Before the 2011 redistricting, the 3rd Congressional District deviated from the ideal population by 19,084 people under the 2010 Census. Act 44 shifted 171,270 people into the District and shifted 190,354 people out of the District.

Monroe: 3, 7
Richland: 2, 3
Rock: 1, 2
Walworth: 1, 5
Winnebago: 6, 8
Wood: 7, 8
Waukesha: 1, 5

193. The following municipalities are also split under Act 44. There are a total of 32 split municipalities encompassing 64 splits:

Alma: 3, 7
Anson: 3, 7
Bayside: 4, 6
Beaver Dam: 5, 6
Beloit: 1, 2
Buena Vista: 2, 3
Butler: 4, 5
Clearfield: 3, 7
Dousman: 1, 5
Edson: 3, 7
Germantown: 3, 7
Goetz: 3, 7
Harmony: 1, 2
Hubbard: 5, 6
Janesville: 1, 2
LaGrange: 3, 7
LaPrairie: 1, 2
Libson: 3, 7
Lomira: 5, 6
Milton: 1, 2
New Berlin: 1, 5
Oak Grove: 5, 6
Oshkosk: 6, 8
Rock: 1, 2
Theresa: 5, 6
Tomah: 3, 7
Turtle: 1, 2
Vinland: 6, 8
Waukesha: 1, 5
Whitewater: 1, 2
Winneconne: 6, 8
Wolf River: 6, 8

179. The two most widely used measures of compactness applied to legislative districts are the Perimeter-to-Area measure and the Smallest Circle score. These measures were regularly offered in post-Shaw litigation of the 1990s.

180. Traditionally, districting plans are assessed in the context of total (average) plan compactness.

181. The Perimeter-to-Area (PTA) measure compares the relative length of the perimeter of a district to its area. It represents the area of the district as the proportion of the area of a circle with the same perimeter. The score ranges from 0 to 1, with a value of 1 indicating perfect compactness. This score is achieved if a district is a circle. Most redistricting software generates this measure as the Polsby-Popper statistic.

182. Smallest Circle (SC) scores measure the space occupied by the district as a proportion of the space of the smallest encompassing circle, with values ranging from 0 to 1. A value of 1 indicates perfect compactness and is achieved if a district is a circle. This statistic is often termed the Reock measure by redistricting applications. Ernest C. Reock, Jr. 1961, "A Note: Measuring Compactness as a Requirement of Legislative Apportionment," *Midwest Journal of Political Science* 5: 70-74.

183. Compactness scores for Act 43 appear in **Table 21**.

184. The average Smallest Circle score for the entire Assembly map is .28 (range from .06 to .63).

185. The average Perimeter To Area score for the Assembly map is .28 (range of .05 to .56), and the Senate map has a mean Perimeter To Area score of .29 (range from .06 to .58).

186. The average Assembly compactness scores are marginally lower for Act 43 than for the 2002 court-crafted plan.

160. Only voters in even-numbered senate districts can vote for a senator in the 2012 regular election. Residents of odd-numbered senate districts cannot vote in a regular senate election until 2014. The last regular senate election for even-numbered districts was in 2008; for odd-numbered districts, the last regular election was in 2010.

161. For voters moved from even-numbered senate districts to odd-numbered senate districts, the most recent opportunity to vote for a state senator in a regular election was in 2008; the next opportunity to do so will be in 2014. This creates a six-year gap between regular senate elections in which they can vote.

162. In 2011, Act 43 moved 299,704 persons (5.26 percent of all persons in Wisconsin according to the 2010 census) into new districts that result in similar delayed voting or disenfranchisement. The number of persons per district experiencing delayed voting or disenfranchisement ranges from a low of 133 to a high of 72,431, with an average for the 17 districts involved of 17,630 persons per district.

163. **Table 28** shows the number of persons shifted into each odd-numbered district from an even-numbered district.

164. At least three plaintiffs were moved from an even-numbered district to an odd-numbered district.

D. Treatment Of Political Subdivisions.

165. The 1992 Federal Court map for the Assembly split 72 municipalities and the Senate map split 45 municipalities.

166. In 2002, the Federal Court's Assembly map split 50 municipalities and the Senate map split 24 municipalities.

167. Act 43 splits 62 municipalities in the Assembly and 37 in the Senate, which is between the numbers of municipal splits in the previous two court-ordered maps.

drawing, the MALDEF Chicago regional office was consulted. Neither Voces de la Frontera, Inc., nor the Latino Redistricting Committee in Milwaukee, nor any of its members were consulted. The Latino community in Milwaukee is diverse; some people in the Latino community supported Act 43 and some did not.

B. Equal Population.

148. Application of the 2010 census to the existing district boundaries shows that 44 of 99 Assembly seats had populations more than 5.0 percent above or below the ideal, as did 11 of 33 Senate districts.

149. **Table 1** describes the population deviation from the ideal for each Assembly and Senate district (using 2010 Census data).

150. **Table 2** describes the population for each Assembly District under Act 43 (using 2010 Census data).

151. **Table 3** describes the population for each Senate District created by Act 43 (using 2010 Census data).

152. The 1992 Assembly plan met a 1 percent standard (+/-0.5 percent) with an overall range of deviation of 0.91 percent, with 48 districts below the ideal and 51 above the ideal. Only one district was more than a half point away from the idea. In the Senate, the 1992 plan had an overall deviation range 0.52 percent with 15 districts above the ideal population and 18 below the ideal.

153. The 2002 federal-court Assembly map had an overall range of 1.59 percent deviation, with 47 districts above the ideal, 51 below the ideal, and one exactly apportioned district. In the Senate, the overall deviation range of the 2002 map was 0.98 percent with 15 districts above the ideal population, 17 below, and one perfectly apportioned. Of the 99

131. Milwaukee's African-American community bears the socioeconomic effects of historic discrimination in employment, education, health, and other areas.

132. According to the 2010 U.S. Census, the Latino population of the City of Milwaukee grew from 71,646 in 2000 to 103,007 in 2010, representing an increase of approximately 44 percent.

133. The data from the April 2010 census indicates that the area of most rapid growth of Milwaukee's Latino community has been on the city's near south side.

134. Act 43 creates two Assembly Districts on the near south side of Milwaukee in which Latinos of voting age comprise more than 50 percent of the voting age population living in each of those districts. Those two Assembly Districts are AD 8 and 9.

135. Latinos comprise 37,750 of the total population living in AD 8, or 65.9 percent of the total population living in AD 8.

136. The core retention for AD 8 is 55.3 percent.

137. **Table 9 (partial stipulation)** reflects available data related to the racial composition of the Hispanic majority-minority districts in Milwaukee County, as drawn by federal courts in 1992 and 2002. **Table 10** shows Hispanic demographic data on population and voting age population characteristics of the court-drawn 2002 legislative districts, using 2010 census data.

138. **Table 11 (partial stipulation)** shows the Hispanic demographic data on population and voting age population characteristics of Act 43 Hispanic majority-minority legislative districts, using 2010 census data. **Table 12 (partial stipulation)** shows the demographics of the Assembly District 8 map proposed by Professor Mayer.

124. The Wisconsin Legislature has always redrawn the state's congressional districts, and no court has ever done so in Wisconsin. After the censuses in 1970, 1980, 1990, and 2000, the Legislature enacted congressional redistricting plans. 1971 Wis. L. chs. 133; 1981 Wis. L. chs. 154, 155; 1991 Wis. Act 256; 2001 Wis. Act 46.

V. STATE SENATE AND ASSEMBLY DISTRICTS (ACT 43)

125. The 2010 census populations in the newly adopted assembly districts range from a low of 57,220 in the 1st Assembly District (224 fewer than the ideal population of 57,444) to a high of 57,658 in the 45th Assembly District (214 more than the ideal population). Thus, the total population deviation, from the most populous to the least populous district, is 438 persons.

126. The 2010 census populations in the newly adopted senate districts range from a low of 171,722 (611 fewer than the ideal population, the 18th Senate District) to a high of 172,798 (465 more than the ideal population, the 30th Senate District). Thus, the total population deviation, from the most populous to the least populous district, is 1,076 persons.

A. Minority Populations.

127. **Table 6 (partial stipulation)** reflects the racial composition of the African American majority-minority districts in Milwaukee County, as drawn by federal courts in 1992 and 2002. **(All tables are attached to the Joint Pretrial Report as Exhibit A.** The parties have stipulated or partially stipulated to all tables referenced in the stipulated facts section; they have not stipulated to tables referenced in the statements of contested facts. The terms of any partial stipulations are noted for each table in Exhibit A.)

128. Act 43 creates six Assembly Districts on the north side of Milwaukee in which African-Americans of voting age comprise more than 50 percent of the voting age population living in each of those districts. Those six Assembly Districts are: AD 10, 11, 12, 16, 17, and 18.

b. Among its statutory responsibilities, the GAB must notify each county clerk, under Wis. Stat. §§ 10.01(2)(a), 10.06(1)(f), and 10.72, of the date of the primary (August 14, 2012) and general (November 6, 2012) elections and the offices to be filled at those elections by the voters. The GAB also transmits 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 GAB issues certificates of election under section 7.70(5) of the Wisconsin Statutes to the candidates elected to serve in the senate and assembly and in the U.S. House of Representatives. The GAB 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 legislature and the U.S. House of Representatives.

121. Intervenor-Plaintiffs Tammy Baldwin, Ronald Kind, and Gwendolynne Moore are all adult citizens of the State of Wisconsin and are all of Wisconsin's incumbent Democratic Members of the United States House of Representatives, representing three of Wisconsin's Congressional districts.

a. Congressperson Tammy Baldwin represents Wisconsin's Second Congressional District.

b. Congressperson Ronald Kind represents Wisconsin's Third Congressional District.

c. Congressperson Gwendolynne Moore represents Wisconsin's Fourth Congressional District.

122. Intervenor-Defendants F. James Sensenbrenner, Jr., Thomas E. Petri, Paul D. Ryan, Jr., Reid J. Ribble, and Sean P. Duffy are all adult citizens of the State of Wisconsin and

u. 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 1st Congressional District, 65th Assembly District and 22nd Senate District as those districts have been established by law.

v. Cecelia Schliepp, a citizen of the United States and of the State of Wisconsin, is a resident and registered voter of the Town of Erin, Washington County, Wisconsin, with her residence in the 5th Congressional District, 22nd Assembly District and the 8th Senate District as those districts have been established by law.

w. 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 8th Congressional District, 56th Assembly District and the 19th Senate District as those districts have been established by law.

119. The Voces plaintiffs consist of Voces de la Frontera, Inc., which is a not-for-profit grassroots organization organized under the laws of Wisconsin with its principal place of business at 1027 South 5th Street, Milwaukee, Wisconsin and is located in the 8th Assembly District.

a. Ramiro Vara is a Latino citizen of the United States of Mexican American national origin and a registered voter of the City of Milwaukee, Milwaukee County, with his residence in the 8th Assembly District as that district has been established by law.

b. Olga Vara is a Latina citizen of the United States of Puerto Rican national origin and a registered voter of the City of Milwaukee, Milwaukee County, with her residence in the 8th Assembly District as that district has been established by law.

j. 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 2nd Congressional District, 46th Assembly District and 16th Senate District as those districts have been established by law.

k. 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 5th Congressional District, 22nd Assembly District and 8th Senate District as those districts have been established by law.

l. Maxine Hough, a citizen of the United States and of the State of Wisconsin, is a resident and registered voter of the Town of East Troy, Walworth County, Wisconsin, with her residence in the 1st Congressional District, 32nd Assembly District and the 11th Senate District as those districts have been established by law.

m. Clarence Johnson, a citizen of the United States and of the State of Wisconsin, is a resident and registered voter of the City of Milwaukee, Milwaukee County, Wisconsin, with his residence in the 4th Congressional District, 22nd Assembly District and the 8th Senate District as those districts have been established by law.

n. 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 1st Congressional District, 99th Assembly District and the 33rd Senate District as those districts have been established by law.

o. Richard Lange, a citizen of the United States and of the State of Wisconsin, is a resident and registered voter of South Range, Douglas County,

116. On February 13, 2012, the Baldus plaintiffs filed a letter with the Court objecting to the summary judgment motion (Dkt. 133), and the Intervenor-Plaintiffs filed a letter concurring with plaintiffs (Dkt. 135).

117. On February 14, 2012, the defendants filed a letter response (Dkt. 154).

IV. PARTIES

118. The Baldus plaintiffs are citizens, residents and qualified voters of the United States and the State of Wisconsin, residing in various counties and various legislative and congressional districts (as now re-established by Wisconsin Acts 43 and 44). Regardless of their place of residence, they allege their rights are harmed or threatened with harm by political district boundaries that violate federal and state law.

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 3rd Congressional District, 67th Assembly District and 23rd Senate District as those districts have been established by law.

b. Cindy Barbera, 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 2nd Congressional District, 78th Assembly District and 26th Senate District as those districts have been established by law.

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 2nd Congressional District, 80th Assembly District and the 27th Senate District as those districts have been established by law.

d. Ronald Biendseil, a citizen of the United States and of the State of Wisconsin, is a resident and registered voter of Middleton, Dane County, Wisconsin, with

104. The Senate Judiciary Committee recommended the passage of an amended version of the bill that would become Act 43 on July 15, 2011.

105. The senate approved the amended bill that would become Act 43 on July 19, 2011. The assembly approved the bill on July 20, 2011. It was signed into law on August 9, 2011. A copy of Act 43 appears as Trial Exhibit 174. A copy of the legislative history of Act 43 appears as Trial Exhibit 1055.

106. Act 43 provides that it shall first apply “with respect to regular elections, to offices filled at the 2012 general election,” and “with respect to special or recall elections, to offices filled or contested concurrently with the 2012 general election.”

107. On July 15, the Senate Judiciary Committee recommended passage of the bill that would become Act 44. On July 19 and 20, the Wisconsin legislature adopted Act 44, and the Governor signed Act 44 into law on August 9, 2011. A copy of Act 44 appears as Trial Exhibit 175. A copy of the legislative history of Act 44 appears as Trial Exhibit 1056.

III. PROCEDURAL HISTORY

108. The Baldus plaintiffs have filed three complaints: an initial complaint on June 10, 2011 (Dkt. 1), the First Amended Complaint on July 21, 2011 (Dkt. 12), and the Second Amended Complaint (Dkt. 48), filed on November 18, 2011, and answered on November 25, 2011 (Dkt. 57) by the Wisconsin Government Accountability Board (“GAB”) and on November 29, 2011 by the Intervenor-Defendants (Dkt. 60).

109. The defendants filed a Motion to Dismiss (Dkt. 6) on June 30, 2011, to which the plaintiffs responded, in part, with an Amended Complaint on July 21, 2011, which the defendants subsequently answered on November 4, 2011 (Dkt. 29). The defendants filed a Motion to Dismiss the Amended Complaint (Dkt. 16) on August 4, 2011.

JOINT STATEMENT OF STIPULATED FACTS

90. By agreeing that the following facts may be treated as true for purposes of this trial, the parties are not necessarily agreeing that each of them is material or relevant.

I. 2010 CENSUS AND POPULATION FIGURES

91. 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.

92. The Census Bureau on December 21, 2010 announced and certified the official enumeration of the population of Wisconsin at 5,686,986 as of April 1, 2010. For comparison, the 2000 Census had determined that the population of Wisconsin was 5,363,675.

93. Based on the April 2010 census, the precise ideal population for each of the 33 senate districts in Wisconsin is 172,333 and for each of the 99 assembly districts 57,444. For comparison, under the 2000 Census, the precise ideal population for each senate district had been 162,536, and for each assembly district had been 54,179.

94. Based on the April 2010 census, the precise ideal population for each of the eight congressional districts in Wisconsin is approximately 710,873. However, because dividing the population of Wisconsin (5,686,986) by eight results in a fraction, two districts must each have one additional person.

95. In 2011, there were recall elections—compelled by petition under the state constitution—for nine state senators: July 19, for District 30; August 9, for Districts 2, 8, 10, 14, 18 and 32; and, for Districts 12 and 22, on August 16. All of these elections were conducted within the districts established by this Court in 2002.

3. **Untitled “Seventh Claim” that the Legislature failed to consider principles of compactness, communities of interest and preserving core populations in drawing the new boundaries (Intervenor Complaint at ¶ 74).**

79. There is no such federal claim. “[C]ompactness, contiguity, and respect for political subdivisions ... are important not because they are constitutionally required—they are not—but because they are objective factors that may serve to defeat a claim [of unconstitutional redistricting].” *Shaw v. Reno*, 509 U.S. 630, 647 (1993) (internal citation to *Gaffney v. Cummings*, 412 U.S. 735, 752, n. 18 (1973)).

V. INTERVENOR DEFENDANTS

80. The intervenor-defendants filed a motion to intervene in this action on November 20, 2011. (Dkt. 32.) This Court granted that motion (Dkt. 49), and the intervenor-defendants filed an answer to the Second Amended Complaint (Dkt. 60). On December 8, 2011, they filed a motion for judgment on the pleadings of that complaint as to Act 44 issues and a corresponding motion to dismiss the intervenor-plaintiffs’ complaint in its entirety. (Dkt. 75.)

81. The intervenor-defendants join the GAB defendants’ responses to the elements of the claims put forward by the Baldus plaintiffs and the intervenor-plaintiffs to the extent they implicate Act 44.

82. The various grounds on which the plaintiffs and intervenor-plaintiffs purport to attack Act 44 amount to nothing other than successive attempts to state a political gerrymandering claim, which a four-justice plurality of the U.S. Supreme Court considers to be a non-justiciable question and for which a majority of that Court has held no workable standard presently exists or has ever been proffered.

83. The plaintiffs and the intervenor-plaintiffs have failed to state a claim upon which relief can be granted as to Act 44, because they have failed to provide the Court with a workable

of the circumstances requires a “searching practical evaluation of the past and present reality.” *Gingles*, 478 U.S. at 45. Central to this assessment is an examination of the following seven factors, which were set forth in the Senate Judiciary Committee Report accompanying the 1982 amendments to Section 2 of the Voting Rights Act:

- a. the extent of any history of official discrimination in the state or political subdivision that touched the right of members of the minority group to register, vote, or otherwise to participate in the democratic process;
- b. the extent to which voting in the elections of the state or political subdivision is racially polarized;
- c. the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;
- d. if there is a candidate slating process, whether the members of the minority group have been denied access to that process;
- e. the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder the ability to participate effectively in the political process;
- f. whether political campaigns have been characterized by overt or subtle racial appeals; [and]
- g. the extent to which members of the minority group have been elected to public office in the jurisdiction.

See S. Rep. No. 97-417, 97th Cong. 2nd Sess. 28 (1982) (the “Senate Report”). The Senate Report recognized two further factors that, in some cases, warrant consideration as part of plaintiffs’ evidence to establish a violation: (1) “whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group;” and (2) whether “the policy underlying the state or political subdivision’s use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.” *Id.* at 29 (footnotes omitted).

7. “Legislative districts unconstitutionally use race as a predominant factor.”

70. A districting plan violates the equal protection clause when it is shown (either through circumstantial evidence of a district’s shape and demographics or more direct evidence going to legislative purpose) that race was the predominant factor motivating the placement of a significant number of voters within or without a particular district. *Stabler v. County of Thurston, Neb.*, 129 F.3d 1015, 1025 (8th Cir. 1997); citing *Harvell v. Blytheville Sch. Dist. No. 5*, 126 F.3d 1038, 1039 (8th Cir. 1997), quoting *Miller v. Johnson*, 515 U.S. 900, 916, 115 S.Ct. 2475, 2488 (1995).

8. “New congressional and legislative districts are not justified by any legitimate state interest.”

71. There is no such federal claim. “[C]ompactness, contiguity, and respect for political subdivisions ... are important not because they are constitutionally required—they are not—but because they are objective factors that may serve to defeat a claim [of unconstitutional redistricting].” *Shaw v. Reno*, 509 U.S. 630, 647 (1993) (internal citation to *Gaffney v. Cummings*, 412 U.S. 735, 752, n. 18 (1973)).

must first prove that this Court has jurisdiction to instruct state officials on how to conform to state law. *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984).

5. “Congressional and legislative districts constitute unconstitutional gerrymandering.”

66. “The relevant question is not whether a partisan gerrymander has occurred, but whether it is so excessive or burdensome as to rise to the level of an actionable equal-protection violation.” *Radogno v. Illinois State Bd. of Elections*, 2011 WL 5025251, *2 (N.D. Ill. Oct. 21, 2011). No judicially discernible and manageable standards for adjudicating political gerrymandering claims have emerged.” *Veith v. Jubilerer*, 541 U.S. 267, 281 (2004)(Scalia, J., plurality opinion).

6. “Legislative districts violate the Federal Voting Rights Act.”

67. In order to establish a violation of § 2 of the Voting Rights Act, a minority group must prove (1) that it is “sufficiently large and geographically compact to constitute a majority in a single-member district”; (2) that it is also “politically cohesive”; and (3) that the “white majority votes sufficiently as a bloc to enable it — in the absence of special circumstances, such as the minority candidate running unopposed, . . . to defeat the minority's preferred candidate.” *Thornburg v. Gingles*, 478 U.S. 30, 50-51(1986).

68. Failure to establish any one of the Gingles factors by a preponderance of the evidence precludes a finding of vote dilution, because “[t]hese circumstances are necessary preconditions for multimember districts to operate to impair minority voters' ability to elect representatives of their choice.” *Id.* at 50.

69. If a minority group can establish these three elements, the court must then “consider whether, under the totality of the circumstances, the challenged practice impairs the ability of the minority voters to participate equally in the political process.” *Goosby v. Bd. of the*

58. Upon such a showing, the burden shifts to the state to prove “that each significant variance between districts was necessary to achieve some legitimate goal.” *Id.* at 731.

Previously recognized legitimate goals include “making districts compact, respecting municipal boundaries, preserving the cores of prior districts, and avoiding contests between incumbent Representatives.” *Karcher*, 462 U.S. at 740.

2. “The legislation does not recognize local government boundaries.”

59. No such federal claim exists. “[C]ompactness, contiguity, and respect for political subdivisions ... are important not because they are constitutionally required—they are not—but because they are objective factors that may serve to defeat a claim [of unconstitutional redistricting].” *Shaw v. Reno*, 509 U.S. 630, 647 (1993) (internal citation to *Gaffney v. Cummings*, 412 U.S. 735, 752, n. 18 (1973)).

60. Wis. Const. art IV § 4 requires that Wisconsin state legislative boundaries, “be bounded by county, precinct, town or ward lines, to consist of contiguous territory and be in as compact form as practicable.” Plaintiffs must first prove that this Court has jurisdiction to instruct state officials on how to conform to state law. *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984).

3. “The legislative district unnecessarily disenfranchise 300,000 Wisconsin citizens.”

61. The plaintiffs pled this cause of action solely as a violation of the Wisconsin Constitution. However, no such cause of action exists under the Wisconsin Constitution:

The complaint charges that the senate districts are so numbered in chapter 482 that large numbers of electors who were last permitted to vote for senators in 1888 cannot do so again until 1894, while other large numbers of electors who voted for senators in 1890 may again do so in 1892. This is alleged as a reason why the act is invalid. The court finds in the constitution no authority conferred upon it to interfere with the numbering of the senate districts. In that respect the power of the legislature is absolute.

44. There is no legitimate governmental interest in failing to preserve communities of interest.

45. The failure to preserve communities of interest is not rationally related to any legitimate governmental interest.

C. The 2011 Congressional Redistricting Plan Does Not Conform To The Principle Of Core Retention.

46. States have a duty to make congressional districts conform to the principle of core retention. *See Abrams v. Johnson*, 521 U.S. 74, 99-100 (1997); *Larios v. Cox*, 300 F. Supp. 2d 1320, 1349 (N.D. Ga. 2004).

47. Wisconsin's 2011 Congressional Redistricting plan, as enacted by 2011 Wisconsin Act 44, fails to conform to the principle of core retention.

48. There is no legitimate governmental interest in failing to conform to the principle of core retention.

49. Failure to conform to the principle of core retention is not rationally related to any legitimate governmental interest.

D. The 2011 Congressional Redistricting Plan Does Not Conform To The Principle Of Representative Democracy.

50. States have a duty to make congressional districts conform to the principle of representative democracy. *Prosser v. Elections Bd.*, 793 F. Supp. 859 (W.D. Wis. 1992).

51. Wisconsin's 2011 Congressional Redistricting plan, as enacted by 2011 Wisconsin Act 44, fails to conform to the principle of representative democracy.

52. There is no legitimate governmental interest in failing to conform to the principle of representative democracy.

53. Failure to conform to the principle of representative democracy is not rationally related to any legitimate governmental interest.

33. The Wisconsin Constitution permits legislative redistricting only after a decennial census. Wis. Const. art. IV, § 3.

34. Where a state statute provides for redistricting after a decennial census, it may not impose an interim remedy to address subsequent population changes that allegedly render the redistricting invalid. *See Mississippi State Conf. of N.A.A.C.P. v. Barbour*, No. 11-cv-159, 2011 WL 1870222, *2, *6-*8 (S.D. Miss. May 16, 2011), *summarily aff'd*, 132 S. Ct. 542 (Oct. 31, 2011); *see also Holt v. 2011 Legislative Reapportionment Comm'n*, No. 7 MM 2012 (Pa. Jan. 25, 2012).

35. The Government Accountability Board has concluded, based on the plain language of Act 43, that any special or recall elections to offices filled or contested prior to the fall 2012 elections are to be conducted in the legislative districts established by the 2002 judicially-approved redistricting plan. *See* Tr. Ex. 186 (Memorandum Regarding Legislative Redistricting: Effective Date and Use of State Funds from Kevin J. Kennedy, Dir. and Gen. Counsel, Gov't Accountability Bd., to Robert Marchant, Senate Chief Clerk, and Patrick Fuller, Assembly Chief Clerk (Oct. 19, 2011)).

36. Tens of thousands of recall petition signatures were submitted in direct reliance upon Section 10 of 2011 Act 43 and the defendants' own opinion. *See Friends of Scott Walker v. Brennan*, No. 2012AP32-AC (Wis. Ct. App. Feb. 3, 2012).

II. VOCES PLAINTIFFS

The Voces de la Frontera, Inc. (“Voces” or “Voces de la Frontera”) Plaintiffs filed a complaint on October 31, 2011, which this Court consolidated with the Baldus Plaintiffs’ Complaint in an order dated November 22, 2011 (Dkt. 55).

25. Discriminatory effect may be demonstrated through circumstantial evidence of discriminatory intent. *See Johnson v. DeGrandy*, U.S. 512 U.S. 997, 1565 (1994); *Ketchum v. Byrne*, 740 F.2d 1398, 1406 (7th Cir. 1984).

26. After the plaintiffs have met the three requirements, the Court decides based on the totality of the circumstances whether the minority groups have been denied an equal opportunity to participate in the political process and elect legislators of their choice. *See* 42 U.S.C. § 1973(b); *see also Gingles*, 478 U.S. at 46.

27. The following factors, while neither cumulative nor exhaustive, are relevant to the totality of the circumstances analysis:

- a. the history of voting-related discrimination in the state or political subdivision;
- b. the extent to which voting in the elections of the state or political subdivision is racially polarized;
- c. 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 groups, such as unusually large election districts, majority vote requirements, and prohibitions against bullet voting;
- d. the exclusion of members of the minority groups from candidate slating processes;
- e. the extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process;
- f. the use of overt or subtle racial appeals in political campaigns; and

16. There is no legitimate governmental interest in failing to honor established redistricting principles.

17. Failure to honor established redistricting principles is not rationally related to any legitimate governmental interest.

E. Unconstitutional Gerrymandering Of Legislative Districts (Fifth Claim) (Act 43).

18. A *prima facie* case of unconstitutional gerrymandering is established by showing that:

a. The redistricting legislation moved significantly more people than necessary to achieve the ideal population; and

b. No traditional redistricting criteria can justify the movement.

19. Defendants can rebut the *prima facie* case by showing that the movement was necessitated by justified changes in other district boundaries or by traditional redistricting criteria.

20. Plaintiffs can sustain their burden of proving an unconstitutional gerrymander by establishing that defendants' explanations are pretextual or unfounded.

F. Unconstitutional Gerrymandering Of Congressional Districts (Fifth Claim) (Act 44).

21. *See* paragraphs 18-20, *supra*. The elements of the unconstitutional political gerrymandering claim are identical with respect to congressional and legislative districts.

G. Section 2 Of The Voting Rights Act (Sixth Claim) (Act 43).

22. Section 2 of the Voting Rights Act, as amended, provides:

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right . . . to vote on account of race or color, or in contravention of the

Sims, 377 U.S. at 579, including established redistricting criteria, *Baumgart v. Wendelberger*, No. 01-C-0121, 02-C-0366, 2002 WL 34127471 (E.D. Wis. May 30, 2002). A partial list:

- a. contiguity, Wis. Const. art. IV, § 4;
- b. compactness, *id.*;
- c. respect for “county, precinct, town or ward lines,” *id.*;
- d. maintaining communities of interest, *Baumgart*, 2002 WL 34127471, at *3; and
- e. core population retention, *id.*

B. Failure To Honor Traditional Redistricting Criteria Or Maintain Local Government Boundaries Violates The Wisconsin Constitution (First And Second Claims) (Act 43).

3. The Wisconsin Constitution requires that legislative districts “be bounded by county, precinct, town or ward lines . . . and be in as compact form as practicable.” Wis. Const. art. IV, § 4.

4. “[R]espect for the prerogatives of the Wisconsin Constitution dictate that . . . municipalities be kept whole where possible.” *Baumgart*, 2002 WL 34127471, at *3.

5. Legislative districts that unnecessarily divide municipalities or are not compact violate the Wisconsin Constitution.

6. To the extent it relies exclusively on Act 39’s permissive use of other boundaries (including census blocks), Act 43 violates Article IV, § 4 of the Wisconsin Constitution.

C. Voter Disenfranchisement/Core Retention (Third Claim) (Act 43).

7. State senators “shall be chosen alternately from the odd and even-numbered districts for the term of 4 years.” Wis. Const. art. IV, § 5.

8. The movement of voters from an even-numbered senate district, in which the last regular election was held in 2008, to an odd-numbered senate district, in which the next regular

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VOCES DE LA FRONTERA, INC., RAMIRO VARA,
OLGA VARA, JOSE PEREZ, and ERICA RAMIREZ,

Plaintiffs,

v.

Case No. 11-CV-1011
JPS-DPW-RMD

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

Defendants.