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March 25, 2022

VIA ELECTRONIC MAIL & HAND DELIVERYWisconsin Supreme Court
c/o Ms. Sheila T. Reiff
Clerk of Supreme Court
110 East Main Street, Suite 215
Madison, WI 53701-1688Re: *Johnson v. Wisconsin Elections Commission*, No. 2021AP1450-OA – Response to
March 23, 2022 Remand Order from the United State Supreme Court

Dear Ms. Reiff:

Intervenor-Respondent Janet Bewley, Senate Democratic Minority Leader, on behalf of the Senate Democratic Caucus (“Senate Democrats”), hereby submits this letter brief regarding the March 23, 2022 Order of the United States Supreme Court in the above-referenced matter and the submissions of various parties on March 24, 2022. *See Wis. Legislature, et al. v. Wis. Elections Comm’n, et al.*, 595 U.S. __, Slip Op. at 2 (2022), reversing and remanding for further proceedings *Johnson v. Wis. Elections Comm’n*, 2022 WI 14, __Wis. 2d__, __N.W. 2d__.

The Senate Democrats believe Governor Evers should be provided with the opportunity to offer further support for the legality of his state legislative maps, consistent with the proposal outlined in his March 24, 2022 letter to the Court. Contrary to characterizations by some other parties, the United States Supreme Court has explicitly *not* rejected the legislative maps adopted by this Court. Slip Op. at 7 (noting that this Court could “reconsider the Governor’s maps rather than choose from among the other submissions.”) Rather, that Court has simply rejected this Court’s *explication* for its adoption of those maps with regard to the issue of Voting Rights Act (“VRA”) compliance. *Id.* Further, the U.S. Supreme Court explicitly provided that this Court “is free to take additional evidence” on remand. *Id.* Therefore, this Court should do exactly

that if it feels that it cannot adequately explain its selection based on the evidence already in the record.

Contrary to the Legislature's argument, there is no apt comparison between this proposal and past requests by other parties to add substantive map changes or additional arguments after the deadlines imposed by this Court. The additional submissions contemplated now would leave the substance of the maps at issue in place, and they would simply be in response to a clarifying prompt by the U.S. Supreme Court. The proposal would not disturb the even playing field the parties competed on under this Court's original selection process, and, because each party would have the opportunity to respond, it would not prejudice any party in relation to any other. It would simply allow the Court further evidence and argument with which to refine its analysis – an analysis by which it has already duly selected legislative maps. *Johnson*, 2022 WI 14, ¶¶ 11-12, 33-34, 51.

As other parties have noted, time is of the essence here. The Governor's proposal minimizes the potential for further litigation around VRA issues by allowing a fuller record and argument upon which the Court may rely. It also minimizes disruptions to the work of implementing legal maps for this year's elections. The Wisconsin Elections Commission and other authorities have already performed significant work towards implementing the maps adopted by this Court, which are by nature the least disruptive anyway as the maps that – as this Court has recognized – produce least change. The geographic issue here is confined to a few districts along a single edge of the least-change maps the Court adopted.

Regardless, there should be no question that there is ample time for the consideration of additional information as the Governor proposes. After all, the U.S. Supreme Court, having been well apprised by the parties of the relevant time pressures, has pre-approved such consideration in its order. Slip. Op. at 7.

If, however, the Court is not open to the Governor's proposal, it cannot simply adopt the Legislature's maps. To do so would be to trade one VRA issue for another, bigger one. This Court has already noted that even "[p]roportionality would . . . suggest somewhere between six and seven majority-Black assembly districts are appropriate." *Johnson*, 2022 WI 14 at ¶ 48. And, as the Court observed, not only does the Legislature's map include only five, but it clearly features an apparent "packing" violation of the VRA. *Id.* at ¶ 49; *see also* BLOC Reply Br. at 15-16. Moreover, contrary to the Legislature's argument that its maps are "race-neutral," other parties have observed here that "the Legislature itself unlawfully made race a predominant consideration in its districting plan." BLOC Reply Br. at 14. Therefore, adopting the Legislature's maps

would not only conflict with this Court's decisions, but it would inevitably lead to further federal litigation.

As a result, if the Court rejects the Governor's proposal and wishes to reconsider the other state legislative maps previously proposed, then the map proposed by Senator Bewley is its clear choice. By this Court's own analysis, the Bewley Map would at that point be easily the top performing map, among all submissions not tainted by fatal VRA issues, on what the Court deemed the "preeminent" metric of least change. *Johnson*, 2022 WI 14 at ¶¶ 27-28, 33. The Bewley Map also boasts high performance in the other least-change credentials this Court has recognized, including by performing the best in Senate disenfranchisement. *Id.* at ¶ 30. Further, the Bewley Map's retention of six majority-Black districts is itself another metric of least-change by its adherence to the policy choices of the 2011 map. All other maps proposed have either five such districts along with VRA packing problems (the Legislature) or seven such districts (the Governor and BLOC), moved significantly more voters (Citizen Mathematicians and Scientists), or had multiple of the above problems (Hunter). *Id.* If we assume that seven majority-Black districts are not *required*, there are no cognizable challenges to the legality of the Bewley Map. As such, and because of its clear superiority in least-change among non-VRA-tainted submissions, this Court's standard would require that it select the Bewley Map. *Id.* at ¶¶ 27-28, 33.

Therefore, the Court should proceed on remand in accordance with the Governor's March 24, 2022 proposal. In the alternative, it should adopt the Bewley Map for legislative redistricting.

Sincerely,

PINES BACH LLP



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cc: All parties via electronic mail