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February 2, 2022

VIA E-FILING BY EMAIL

Hon. Sheila Reiff
Clerk of the Supreme Court and Court of Appeals
110 East Main Street, Suite 215
P.O. Box 1688
Madison, WI 53701-1688

Re: *Johnson v. Wisconsin Elections Commission,* No. 2021AP1450-OA; The Wisconsin Legislature's Letter Response To The Hunter Intervenors' Motion

Dear Ms. Reiff,

On Monday, January 31, 2022, the Court invited other parties to file a response to the Hunter Intervenors' pending motion to submit a modified proposed congressional map. The Legislature opposes the Hunter Intervenors' request as unnecessary and untimely.

Presumably any party could submit small changes to make their proposal slightly more palatable. But a slight change to one of many metrics here or there does not ultimately aid this Court in deciding which proposal is simultaneously lawful and least-changes.[1] For example, the Governor's previously submitted "technical" corrections

[1] For example, as the Legislature has explained, the Legislature could go back to the drawing board and split more municipalities between two districts, thereby surpassing the Governor's percentage of individuals retained in the Assembly plan (the Legislature already surpasses the Governor's percentage of individuals retained in the Senate plan). But doing so would be frivolous—it would elevate the importance of one aspect of least-changes (*i.e.*, a 1.6% difference in core retention in Assembly districts) over other aspects of least changes (*i.e.*, splitting a municipality that was kept whole in Act 43), the latter of which has constitutional ramifications. *See* Wis. Const. art. IV, §4; *Johnson v. Wis. Elections Comm'n,* 2021 WI 87, ¶35, ___ Wis. 2d ___, ____ N.W.3d (discussing constitutional importance in keeping municipal subdivisions whole and concluding that "in remedying the alleged harm, we must be mindful of these secondary principles so as not to inadvertently choose a remedy that solves one constitutional harm while creating another").

moved 148 individuals to eliminate a handful of the Governor's newly created municipal splits. *See* Clelland Supp. Rep. 6-7.[2] But even after the Governor's "technical" corrections, the Governor's amended plan still makes significant changes to existing law by splitting more than 50 municipalities that were previously kept together by name in Act 43.[3] Whether the newly created splits are more than 60 (as initially proposed) or more than 50 (as revised), the big-picture conclusion remains: that plan makes substantially more changes than the Legislature's on this metric, in addition to others (*e.g.*, lesser Senate core retention, greater Senate disenfranchisement, equal incumbent pairings, and increased population deviation). Such changes to already-submitted proposals at this late hour, whether labeled "technical" or not, should be rejected.

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[2] The Governor's "technical" corrections reunified the following municipalities that his initial proposal split, (Bryan Resp. 75-79), but were kept whole under existing law: the Towns of Burke, Brockway, Columbus, Delton, Fond du Lac, Fort Winnebago, Janesville, Middleton, Rock, Rutland, Washington; the Village of Grafton; and the Cities of Kaukauna, Kiel, and Pewaukee. *See* 2011 Wis. Act 43, Wis. Stat. §§4.05(2)(e), 4.23(2)(b), 4.27(1) & (2)(d), 4.42(1)(a), 4.43(1)(a), 4.43(3)(a), 4.52(1), 4.79(1), 4.81(4)(a), 4.92(2)(a), 4.93(4)(a), 4.98.

[3] Excluding the Governor's "technical" corrections, the newly split municipalities—none of which are split by the plain text of Act 43—are the Towns of Blooming Grove, Dunn, Madison, Sun Prairie, Emmets, Rubicon, Union, Nashville, Aztalan, Medary, Stettin, Packwaukee, Dale, Freedom, Hull, Waterford, La Prairie, Franklin, Lyndon, St. Joseph, Warren, Hartford, Merton, Oconomowoc, Ottawa, Algoma, and Black Wolf; the Villages of Hobart, Cross Plains, Muscoda, Weston, Bayside, Brown Deer, River Hills, West Milwaukee, Jackson, and Sussex; the Cities of Chilton, Wisconsin Dells, Stoughton, Sun Prairie, Menomonie, Monroe, Wausau, Oak Creek, South Milwaukee, Sheboygan Falls, Elkhorn, West Bend, Muskego, Oconomowoc, and Nekoosa. *Compare* Bryan Resp. 75-79 and Clelland Supp. 6-7, *with* 2011 Act 43, Wis. Stat. §§4.05(1)(a), (2)(a); 4.07(1); 4.21(1); 4.23(1)(b), (2)(c); 4.24(1)(a); 4.25(1)(c); 4.26(3); 4.29(1)(c); 4.30(2)(a); 4.31(1)(a), (2)(c); 4.36(2)(a); 4.37(3)(a); 4.38(2)(a), (3)(a), (d); 4.39(1)(a); 4.41(2), (5), (6)(a); 4.46(1), (5); 4.47(1); 4.49(2)(c); 4.51(1)(c) & (5)(a); 4.53(3)(a); 4.56(1)(a); 4.58(3), (5); 4.59(3)(a), (4)(a); 4.70(3)(a), (4)(d); 4.79(4); 4.83(2)(a), (4)(d); 4.85(3); 4.86(1)(a), (b); 4.93(4)(a); 4.94(1); 4.98(2); 4.99 (identifying each of the above municipalities by name as municipalities to be whole under existing law). In the Governor's counsel's rebuttal argument, counsel suggested that some unquantified subset of these newly created splits is forgivable because municipal lines shifted over the decade. That is no response to the fact that existing law identifies the above municipalities by name and designates the whole municipality be placed in one particular district, not split between two or three districts as the Governor's plan does. Nor could it explain the Governor's 27 new town splits, given a town's boundaries cannot change by annexing new territory. *See* Wis. Stat. §§66.0217-66.0223.

More fundamentally, the law has not changed since this Court issued its order delineating the requirements for remedial submissions on November 30, 2022. *See Johnson v. Wis. Elections Comm'n*, 2021 WI 87, ___ Wis. 2d ___, ____ N.W.3d ____. The Court's role then and now is two-fold. First, ensure that any proposed map is legal, including reapportioning districts with the constitutionally required approximation of exactness, abiding by other state constitutional constraints including keeping political subdivisions whole where possible, and complying with the federal Equal Protection Clause and Voting Rights Act. *See Johnson v. Wis. Election's Comm'n*, 2021 WI 87, ¶¶24-38 (2021) (detailing "Relevant Considerations Under Federal and State Law"); *see also id.* at ¶83 (Hagedorn, J., concurring) ("Legal standards establish the need for a remedy and constrain the remedies we may impose, but they are not the only permissible judicial considerations when constructing a proper remedy. For example, one universally recognized redistricting criterion is communities of interest. It is not a legal requirement, but it may nonetheless be an appropriate, useful, and neutral factor to weigh." (footnotes omitted)). Second, ensure that any proposed map is a "least changes" map, lest it exceed this Court's remedial authority. *See id.* at ¶¶64, 72; *id.* at ¶84 (Hagedorn, J., concurring).

The parties had those "guardrails" when they submitted their plans, which were then the subject of expert disclosures, briefing, and argument. A party's unsolicited submission of further changes now deprives the Court of the benefit of the full adversarial process. And it requires parties to evaluate yet another round of changes that may or may not be relevant to the Court's decision. In the absence of a specific request from this Court for alternative proposals from the parties, the time for parties to submit new maps has passed. The Hunter Intervenors' request should be denied.

Respectfully submitted,

Electronically Signed By
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cc: All parties, by email, per agreement of the parties

[4] Counsel certifies that the body of this letter brief uses a proportionally spaced serif font and contains 1,012 words as calculated by Microsoft Word.