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**CLERK OF SUPREME COURT
OF WISCONSIN**

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Comment of
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Point

We offer the following comments on the Petition for Proposed Rule to Amend Wis. Stat. §
809.70 (Relating to Original Actions).

We write as political scientists who have been engaged in redistricting and analysis of maps for
multiple cycles (Gaddie and Mayer) and as the two Co-Chairs of the Wisconsin Supreme Court
Committee on Redistricting (Mayer and Miller). Our knowledge of and experience with
redistricting, and litigation surrounding redistricting, in Wisconsin is extensive and spans
decades.

We oppose the adoption of the proposed rule described in rule petition 20-03. The reasons for
our opposition are described below:

1. The origins and timing of the current request

When this Court created the Committee on Redistricting in 2003, the Committee, composed of
an ideologically diverse group of political scientists, law professors, and experts in public
opinion met over the course of 4 years. We held public meetings to study the history of judicial
involvement in Wisconsin redistricting and best practices around the country, with the goal of
establishing a set of clear and manageable rules that could guide the Court as it addressed
litigation, *and* create a transparent process that the Court could establish to create maps if
required. We eventually recommended a process that used a panel of Appellate Court judges
relying on existing nonpartisan state agencies for technical support.

Crucially, that Committee recommended *against* the Wisconsin Supreme Court taking
redistricting cases under original jurisdiction, for the key reason that there would be no possible
avenue of review for anything the Court did with respect to an enacted map.

That process began nearly a decade before the subsequent round of reapportionment and
redistricting would take place, and the recommendations were offered several years before the
next Census would begin. This timing ensured both due consideration of the many challenges

involved in redistricting, as well as sufficient lead time to insure that the process or composition of a panel could not be known to favor one political party over another.

Even after such substantial study and opportunities for input, the Court declined to adopt the Committee's proposal, on the grounds that it would further politicize and already partisan issue; presented critical staffing issues that required expertise that the Court did not possess; and because the issues were more properly handled in federal court which already has a detailed process for considering redistricting challenges.

Now, the Court is asked to establish a procedure only months before the redistricting process will start, in a manner that cannot be separated from the explicit political and partisan interests of the party requesting the rule. Accepting this request would severely damage the integrity of the Court as an impartial and nonpartisan institution.

2. There is no opportunity for correcting defects in an enacted map under the proposed rule

Should the Court act as a court of original jurisdiction, there would be no forum for appealing on the basis of defects in either process or fact. The 2003 Redistricting Committee carefully provided a process by which this Court retained its central role: final review of disputes of state law. That Committee recommended that a panel of 5 appellate judges draw maps (when required by a legislative impasse after a fixed date) that would be considered final, subject only to this Court's review upon the request of an impacted party. While it is true that on certain issues, federal courts may be an avenue to challenge maps adopted by this Court in the first instance, the current proposed rule offers no mechanism for review in state courts, despite arguing that state courts are the appropriate forum for these disputes. While we note that previously the majority of the justices of this Court eventually expressed a preference for the federal courts as a venue, there is no justification proactively prohibiting any sort of appellate review of a redistricting map in state courts.

3. The proposed rule has no requirement for fact finding

While the proposed rule leaves open the possibility that the Court could engage in fact finding, the lack of a rigorous process means that the Court could find itself in a position in which it is simply selecting one of any number of proposed maps without any meaningful evaluation process. As experts, we must caution the Court against this approach.

What we have learned over decades of experience in map drawing and analysis of redistricting plans is that (a) even an ostensibly neutral map, or one created through the application of neutral rules, can result in a biased and flawed map; (b) the process of analyzing a map is complex, and depends crucially on choice of metric and how well a map complies with redistricting principles that are often in tension with one another; and (c) a Court lacking deep experience and expertise in analyzing maps will merely be delegating the authority for map drawing to petitioners with obvious (though often intentionally obscured) self-interest that can easily conflict with the public interest. We cannot overstate how fact- and resource-intensive the process of drawing or evaluating proposed maps is. This is even more the case today, when advances in redistricting software and data availability allow for a nearly unlimited number of maps that all superficially

meet criteria like equal population and compactness. A full fact-finding process, including taking of discovery and use of experts is vital for any court evaluating redistricting proposals. It is essential that this fact-finding be conducted by a neutral panel, familiar with the geography and communities of the state. We find the *optional* special master or referee provision of the proposal to fall entirely short of what in our experience is required.

We thank the Court for the opportunity to comment and respectfully ask that the Court reject rule petition 20-03.

Sincerely,

Kenneth R. Mayer, Ph.D.

Keith Gaddie, Ph.D.

Ed Miller, Ph.D.