

IN THE SUPREME COURT OF WISCONSIN
No. 2021AP1450-OA

BILLIE JOHNSON, ERIC O'KEEFE, ED PERKINS, AND RONALD ZAHN,
Petitioners,

BLACK LEADERS ORGANIZING FOR COMMUNITIES, VOCES DE LA
FRONTERA, LEAGUE OF WOMEN VOTERS OF WISCONSIN, CINDY FALLONA,
LAUREN STEPHENSON, REBECCA ALWIN, CONGRESSMAN GLENN
GROTHMAN, CONGRESSMAN MIKE GALLAGHER, CONGRESSMAN BRYAN
STEIL, CONGRESSMAN TOM TIFFANY, CONGRESSMAN SCOTT FITZGERALD,
LISA HUNTER, JACOB ZABEL, JENNIFER OH, JOHN PERSA, GERALDINE
SCHERTZ, KATHLEEN QUALHEIM, GARY KRENZ, SARAH J. HAMILTON,
STEPHEN JOSEPH WRIGHT, JEAN-LUC THIFFEAULT, AND SOMESH JHA,
Intervenor-Petitioners,

v.

WISCONSIN ELECTIONS COMMISSION, MARGE BOSTELMANN IN HER
OFFICIAL CAPACITY AS A MEMBER OF THE WISCONSIN ELECTIONS
COMMISSION, JULIE GLANCEY IN HER OFFICIAL CAPACITY AS A MEMBER OF
THE WISCONSIN ELECTIONS COMMISSION, ANN JACOBS IN HER OFFICIAL
CAPACITY AS A MEMBER OF THE WISCONSIN ELECTIONS COMMISSION,
DEAN KNUDSON IN HIS OFFICIAL CAPACITY AS A MEMBER OF THE
WISCONSIN ELECTIONS COMMISSION, ROBERT SPINDELL, JR. IN HIS
OFFICIAL CAPACITY AS A MEMBER OF THE WISCONSIN ELECTIONS
COMMISSION, AND MARK THOMSEN IN HIS OFFICIAL CAPACITY AS A
MEMBER OF THE WISCONSIN ELECTIONS COMMISSION,
Respondents,

THE WISCONSIN LEGISLATURE, GOVERNOR TONY EVERS, IN HIS
OFFICIAL CAPACITY, AND JANET BEWLEY SENATE DEMOCRATIC
MINORITY LEADER, ON BEHALF OF THE SENATE DEMOCRATIC CAUCUS,
Intervenor-Respondents.

**HUNTER INTERVENOR-PETITIONERS'
MOTION FOR LEAVE TO PROVIDE AUTHORITIES
IN RESPONSE TO ORAL ARGUMENT QUESTION**

Charles G. Curtis, Jr.
Bar No. 1013075
PERKINS COIE LLP
33 E Main St, Ste 201
Madison, Wisconsin 53703-3095
(608) 663-7460
CCurtis@perkinscoie.com

John M. Devaney*
PERKINS COIE LLP
700 Thirteenth St., NW
Washington, D.C. 20005
(202) 654-6200
JDevaney@perkinscoie.com

Christina A. Ford*
William K. Hancock*
Jacob D. Shelly*
ELIAS LAW GROUP LLP
10 G St., NE, Suite 600
Washington, D.C. 20002
(202) 968-4490
CFord@elias.law
WHancock@elias.law
JShelly@elias.law

Attorneys for Hunter Intervenor-Petitioners

**Admitted Pro Hac Vice*

During oral argument held on January 19, 2022, the Court requested authorities and examples pertaining to the constitutionality of redistricting maps that contain districts with populations that deviate one person above and one person below the mathematical ideal.¹ Lisa Hunter, Jacob Zabel, Jennifer Oh, John Persa, Geraldine Schertz, and Kathleen Qualheim (the “Hunter Intervenor-Petitioners”) hereby move the Court for leave to provide the following examples where similar population deviations have not been held unconstitutional:

- Wisconsin (five-person population range after 2000 redistricting cycle,² which the Wisconsin Legislative Council characterized as a “zero deviation plan”³);
- Oregon (two-person population range after 2010 redistricting cycle⁴);

¹ *See, e.g.*, Oral Argument Recording, vol. 2, 40:08 (“What’s the case that says going one up or one down is not exact in a different way than going one down?”).

² “Designing P.S. 94-171 Redistricting Data for the Year 2010 Census,” U.S. Census Bureau (Sept. 2004), https://www2.census.gov/programs-surveys/rdo/2010_pl94-171rv.pdf, at 26. Eleven states adopted congressional plans in the 2010 cycle with population ranges greater than two people. *Id.* Because those examples do not raise the issue whether maps with districts that deviate from the population ideal by one person in different directions are legally distinguishable from maps with districts that deviate from the population ideal by one person in the same direction, this Court need not decide whether similar deviations greater than one person would be permissible in Wisconsin.

³ 2001 Assembly Bill 711 Amendment Memo, Wisc. Legis. Council (Feb. 1, 2002), <https://docs.legis.wisconsin.gov/2001/related/lcamendmemo/ab711.pdf>.

⁴ *See* “2010 Redistricting Deviation Table,” Nat’l Conf. State Legislatures (Jan. 15, 2020), <https://www.ncsl.org/research/redistricting/2010-ncsl-redistricting-deviation-table.aspx>.

- Georgia (two-person population range after 2010 redistricting cycle⁵);
- South Carolina (two-person population range in court-enacted plan after 2000 redistricting cycle⁶);
- Colorado (two-person population range in court-enacted plan after 2000 redistricting cycle⁷);
- Maryland (two-person population range after 2000 redistricting cycle⁸);
- Kentucky (two-person population range after 2000 redistricting cycle⁹).

Additionally, counsel for the Citizen Data Scientists and Mathematicians raised for the first time at oral argument that a Pennsylvania court in 2002 had invalidated a congressional plan with an 18-person population deviation, and counsel suggested “a majority of states have abided by the rule of one person deviation.”¹⁰ The Hunter

⁵ See *id.*; “Justice Approves Georgia’s Redistricting Plans,” Ga. Dep’t of Law (Dec. 23, 2011), <https://law.georgia.gov/press-releases/2011-12-23/justice-approves-georgias-redistricting-plans> (announcing preclearance by U.S. Department of Justice).

⁶ See U.S. Census Bureau, *supra* note 2; *Colleton Cty. Council v. McConnell*, 201 F.Supp.2d 618, 664 (D.S.C. 2002) (“In keeping with our overriding concern, the court plan complies with the ‘as nearly as practicable’ population equality requirement of Article 1, § 2 of the Constitution, *Karcher v. Daggett*, 462 U.S. 725, 730 (1983), with a deviation of plus or minus one person.”).

⁷ See U.S. Census Bureau, *supra* note 2; *Beauprez v. Avalos*, 42 P.3d 642 (Colo. 2002) (adopting plan).

⁸ See U.S. Census Bureau, *supra* note 2; *Duckworth v. State Bd. of Elections*, 213 F. Supp. 2d 543 (D. Md. 2002) (rejecting challenge to plan that did not allege unconstitutional population deviation), *aff’d* 332 F.3d 769 (4th Cir. 2003).

⁹ See U.S. Census Bureau, *supra* note 2.

¹⁰ Oral Argument Recording, *supra* note 1, at 2:14:20.

Intervenor-Petitioners further request leave to reply to this new argument as follows:

First, the logic of the Pennsylvania case does not apply here. There is no dispute that districts can be drawn that deviate from the ideal population by fewer than 18 people. There also is no dispute that Wisconsin districts cannot be drawn to deviate from the ideal population by fewer than one person. Because no party here has proposed a congressional map with districts that deviate from the ideal by more than one person, none of the proposed maps are unconstitutional.

Second, counsel was incorrect to suggest a majority of states require a population range of one person or fewer. In the same 2000 redistricting cycle that counsel cited to, 24 of the 43 states (55.8%) that engaged in congressional redistricting adopted a plan with a population range greater than one person.¹¹

The Hunter Intervenors request that the Court consider these examples in response to the Court's questions. Should this Court require a one-person population range, the Hunter Intervenors respectfully reiterate their request to submit a technical, non-substantive modification to their proposed congressional map. *See* Hunter Intervenor-Petitioners' Response Br. In Support of Proposed Maps at 9, n.3.

¹¹ *See* U.S. Census Bureau, *supra* note 2.

Dated this 25th day of January, 2022.

Respectfully Submitted,



Charles G. Curtis, Jr.

Charles G. Curtis, Jr.
Bar No. 1013075
PERKINS COIE LLP
33 E Main St, Ste 201
Madison, Wisconsin 53703-3095
(608) 663-7460
CCurtis@perkinscoie.com

John M. Devaney*
PERKINS COIE LLP
700 Thirteenth St., NW
Washington, D.C. 20005
(202) 654-6200
JDevaney@perkinscoie.com

Christina A. Ford*
William K. Hancock*
Jacob D. Shelly*
ELIAS LAW GROUP LLP
10 G St., NE, Suite 600
Washington, D.C. 20002
(202) 968-4490
CFord@elias.law
WHancock@elias.law
JShelly@elias.law


Attorneys for Hunter Intervenor-Petitioners

**Admitted Pro Hac Vice*

CERTIFICATE OF SERVICE

I certify that on this 25th day of January, 2022, I caused a copy of this brief to be served upon counsel for each of the parties via e-mail.

Dated: January 25, 2022

A rectangular box containing a handwritten signature in blue ink, which appears to read "Charles G. Curtis, Jr.".

Charles G. Curtis, Jr.