

**IN THE SUPREME COURT OF WISCONSIN**

No. 2023AP1399

REBECCA CLARKE, RUBEN ANTHONY, TERRY DAWSON, DANA  
GLASSTEIN, ANN GROVES-LLOYD, CARL HUJET, JERRY IVERSON,  
TIA JOHNSON, ANGIE KIRST, SELIKA LAWTON, FABIAN MALDONADO,  
ANNEMARIE MCCLELLAN, JAMES MCNETT, BRITTANY MURIELLO, ELA  
JOOSTEN (PARI) SCHILS, NATHANIEL SLACK, MARY  
SMITH-JOHNSON, DENISE SWEET AND GABRIELLE YOUNG,

*Petitioners,*

GOVERNOR TONY EVERS IN HIS OFFICIAL CAPACITY, NATHAN  
ATKINSON, STEPHEN JOSEPH WRIGHT, GARY KRENZ, SARAH J.  
HAMILTON, JEAN-LUC THIFFEAULT, SOMESH JHA, JOANNE KANE AND  
LEAH DUDLEY,

*Intervenors-Petitioners,*

v.

WISCONSIN ELECTIONS COMMISSION, DON MILLIS, ROBERT F.  
SPINDELL, JR., MARK L. THOMSEN, ANN S. JACOBS, MARGE  
BOSTELMANN, CARRIE RIEPL, IN THEIR OFFICIAL CAPACITIES AS  
MEMBERS OF THE WISCONSIN ELECTIONS COMMISSION; MEAGAN  
WOLFE IN HER OFFICIAL CAPACITY AS THE ADMINISTRATOR OF THE  
WISCONSIN ELECTIONS COMMISSION; ANDRE JACQUE, TIM  
CARPENTER, ROB HUTTON, CHRIS LARSON, DEVIN LEMAHIEU,  
STEPHEN L. NASS, JOHN JAGLER, MARK SPREITZER, HOWARD  
MARKLEIN, RACHAEL CABRAL-GUEVARA, VAN H. WANGGAARD, JESSE  
L. JAMES, ROMAINE ROBERT QUINN, DIANNE H. HESSELBEIN, CORY  
TOMCZYK, JEFF SMITH AND CHRIS KAPENGA IN THEIR OFFICIAL  
CAPACITIES AS MEMBERS OF THE WISCONSIN SENATE,

*Respondents,*

WISCONSIN LEGISLATURE, BILLIE JOHNSON, CHRIS GOEBEL, ED  
PERKINS, ERIC O'KEEFE, JOE SANFELIPPO, TERRY MOULTON,  
ROBERT JENSEN, RON ZAHN, RUTH ELMER AND RUTH STRECK,

*Intervenors-Respondents.*

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**[PROPOSED] BRIEF OF *AMICI CURIAE*  
LOCAL ELECTED OFFICIALS**

---

Nicholas E. Fairweather  
Hawks Quindel S.C.  
409 E Main Street  
Madison, WI 53703

Jonathan B. Miller\*  
Michael Adame\*  
Public Rights Project  
490 43rd Street, #115  
Oakland, CA 94609

*\*Pro hac vice applications forthcoming*

Dated: November 8, 2023

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## **STATEMENT OF INTEREST**

*Amici* are local elected officials from cities across Wisconsin.<sup>1</sup> We represent a variety of communities with a range of local economies, needs, and perspectives. Our communities are inhabited by constituents with diverse lived experiences, political views, and opinions on matters of public policy. The cities we help to run are major economic engines in the state, the site of universities and centers of learning, and places of culture and other activities for all Wisconsin residents. We believe deeply that the vibrancy of our cities is tied inexorably to the vitality of Wisconsin as a whole.

From our vantage as local elected leaders—and as part of the government closest to the people—we understand the array of needs of our residents. Each year, our governments are asked to do more, often with less resources. In addition, our governments have limited flexibility as frequently our hands are tied by state policy. Over time, we have witnessed the erosion of local government’s ability to enact and implement policies that are reflective of and responsive to local needs and values. Many forces have contributed to this trend, but disproportionate representation in the state legislature is a driving factor. Fairly drawn maps that ensure contiguous and compact districts where communities of interest are appropriately represented would be an important step in the direction of more robust democracy in Wisconsin and in strengthening the ability of local governments to serve their constituents.

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<sup>1</sup> No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund its preparation or submission. No person other than *amici* or *amici*’s counsel made a monetary contribution to the preparation or submission of this brief. A list of all *amici* is available at Appendix A.



## **SUMMARY OF ARGUMENT**

This Court must re-examine the state legislative map and implement a remedy that revises the current districting. The legislative map disproportionately favors rural and exurban areas over urban areas, resulting in our communities being underrepresented and our communities' interests and needs being disfavored. As explained by Petitioners, the Wisconsin Constitution's requirement of contiguity demands physical connection within districts. That understanding of contiguity is consistent with state law from surrounding jurisdictions as well as the federal Voting Rights Act. Accordingly, there are numerous examples of districts in which contiguity requirements of the Wisconsin Constitution are not met, and those legal flaws demand an immediate alteration before the next legislative election cycle.

The need for this Court's intervention extends beyond legal inadequacy of the current maps. The impact of the unfair maps has warped state policies and continues to harm our communities and our residents. These impacts are wide-ranging but manifest in at least three specific categories of harm: (1) the abusive preemption of local policies; (2) the disproportionate provision of shared revenue for local funds; and (3) the lack of support for local projects and improvements. Accordingly, we join Petitioners in their request to remedy the existing state legislative maps.

## ARGUMENT

### **I. BOTH STATE AND FEDERAL LAW SUPPORT PETITIONERS' ARGUMENTS THAT THE DISTRICTS ARE NOT CONTIGUOUS**

Petitioners make a clear and convincing argument that the current legislative map contravenes established principles of contiguity. Numerous districts contain components that are not geographically continuous and fail any reasonable understanding of contiguity. An independent researcher found that at least 51 Assembly districts and 22 Senate districts contain non-contiguous components.<sup>2</sup> Core to the requirements of the Wisconsin Constitution are the mandates that legislative districts “consist of contiguous territory (*i.e.*, no detached pieces).” Pet. Resp. Br. at 23. The districts run afoul of the correct reading of Wisconsin law and headlong into the laws of several adjacent states as well as established precedent under the federal Voting Rights Act.

#### **A. Surrounding States Similarly Require Geographic Cohesion**

State law in several surrounding states supports Petitioners' argument that legislative districts must be contiguous and cannot include distinct geographic components. This Court's decision in *Town of Wilson v. City of Sheboygan* concluding that “contiguous” means “some significant degree of physical contact,” 2020 WI 16, ¶¶18–19, 390 Wis. 2d 266, 938 N.W.2d 493, is consistent with neighboring states. While this Court must interpret the Wisconsin Constitution on its own terms, the meaning of an identical term used by other states lends strong support to Petitioners' reading of the text. *See, e.g., Schill v.*

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<sup>2</sup> John Johnson, *Measuring Geographic Noncontiguity in Wisconsin State Legislative Districts* (Oct. 30, 2023), <https://law.marquette.edu/facultyblog/2023/10/measuring-geographic-noncontiguity-in-wisconsin-state-legislative-districts/>.

*Wisconsin Rapids Sch. Dist.*, 2010 WI 86, ¶ 21, 327 Wis. 2d 572, 586, (“In keeping with the court’s past interpretations of the Public Records Law, we explore various avenues to interpret the word ‘record’ . . . [including] other states’ interpretations of their open records laws[.]”); *Wisconsin’s Env’t Decade, Inc. v. Pub. Serv. Comm’n*, 79 Wis. 2d 409, 416 (1977) (confirming interpretation of the Wisconsin Environmental Policy Act, which is “substantially patterned” after federal regulation).

### **1. Illinois**

Legislative districts in Illinois do not have a contiguity requirement. The term however arises in the context of land annexation by governmental bodies.<sup>3</sup> There, Illinois courts have required “tracts of land that touch or adjoin one another in a reasonably substantial physical sense.” *Henry Cnty. Bd. v. Village of Orion*, 663 N.E.2d 1076, 1083 (Ill. App. 3d Dist., 1996). Accordingly, mere physical contact is not enough: “point-to-point touching or cornering is generally not sufficient to satisfy the requirement of contiguity.” *LaSalle Bank Nat’l Ass’n v. Village of Bull Valley*, 826 N.E.2d 449, 457 (Ill. App. 2d Dist., 2005). Point-to-point contact does not lead to meaningful connection across the territory and can allow for stringing together unconnected districts. As one Illinois court has noted, “point-to-point touching[ ] and cornering . . . are merely a subterfuge to reach outlying areas.” *People ex rel. Village of Long Grove v. Village of Buffalo Grove*, 513 N.E.2d 408, 462 (Ill. App. 2d Dist., 1987). Instead, under Illinois law, “[c]ontiguity exists

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<sup>3</sup> *Amici* recognize that some states, including Wisconsin, may vary in how land annexation and districting questions are analyzed with respect to contiguity. Our research has revealed that districting requirements are typically at least as stringent (if not more so) than annexation criteria.

where the tracts of land touch or adjoin in a reasonably substantial physical sense.” *In re Petition to Disconnect Certain Territory from Frankfort Fire Prot. Dist.*, 656 N.E.2d 434, 435 (Ill. App. 3d Dist., 1995).

## **2. Indiana**

The state constitution provides that “[t]he territory in each district shall be contiguous.” Ind. Const. art. IV, § 5. As Petitioners explain, Pet. Reply Br. at 28 n.5, state law provides more leniency for territorial annexation by municipalities. But even there, the Indiana code requires some degree of contiguity. *See, e.g.*, Ind. Code § 36–4–3–1.5 (“For purposes of this chapter, territory sought to be annexed may be considered ‘contiguous’ only if at least one-eighth (1/8) of the aggregate external boundaries of the territory coincides with the boundaries of the annexing municipality.”). Point-to-point connections are not enough, and distinct and unconnected pieces of land cannot be conjoined.

## **3. Iowa**

State statutes are clear about the requirements of contiguity. Not only must districts be contiguous, they must include more than point-to-point contact. Under the Iowa Code, “[d]istricts shall be composed of convenient contiguous territory. Areas which meet only at the points of adjoining corners are not contiguous.” Iowa Code § 42.4.

## **4. Michigan**

The Michigan Legislature unambiguously stated that “all districts shall be contiguous.” MCL § 46.404(b). In that state, contiguity does not require that components of districts share long boundaries. Instead, so long as land areas “make point-to-point contact with their districts, they meet the statutory criterion that districts shall be

contiguous.” *In re Apportionment-Cass Cnty.-2021*, No. 359181, 2022 WL 1511683, at \*5 (Mich. Ct. App. May 12, 2022). In that reapportionment case, Cass County included a district separated by a thin strip of land without any voters, yet the Court of Appeals required the county to redraw its maps. *Id.* at \*6; *see also In re Apportionment of State Legislature—1982*, 321 N.W.2d 565, 576 (Mich. 1982) (“The basic building blocks of the apportionment rules are the counties. The Senate and the House are to be organized into contiguous, single-member districts drawn on county lines.”).

## **5. Minnesota**

In Minnesota, the state legislature has included a contiguity requirement expressly for Congressional districts. Minn. Stat. § 2.92 (1) (“The legislature intends . . . that all districts consist of convenient contiguous territory substantially equal in population.”). The Minnesota Constitution also requires contiguous districts for the state senate. *See* Minn. Const. art. IV, § 3 (“Senators shall be chosen by single districts of convenient contiguous territory.”). This requirement also applies to school districts and serves as a prohibition against certain types of consolidations. *See, e.g., Bakken v. Schroeder*, 130 N.W.2d 579, 583 (Minn. 1964) (The “prohibition is to prevent common school districts from being consolidated with a noncontiguous high school district where a contiguous high school district is interjacent.”).

### **B. Federal Law Requires Geographically Connected Districts**

The federal Voting Rights Act by its own terms does not require contiguity. However, it does demand that voting districts are formed based on “traditional districting principles” such as “maintaining communities of interest and traditional boundaries . . . geographical compactness [and] contiguity.” *Alpha Phi Alpha Fraternity Inc. v.*

*Raffensperger*, 587 F. Supp. 3d 1222, 1251 (N.D. Ga. 2022); *see also Shaw v. Reno*, 509 U.S. 630, 647 (1996) (“Traditional districting principles such as compactness, 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 that a district has been gerrymandered on racial lines.”). While this Court is not required to follow the federal Voting Rights Act in ascertaining the meaning of Wisconsin’s Constitution, these federal law principles provide further support for Petitioners’ reading of Article IV.

The VRA focuses on compactness of districts to examine racial vote dilution claims under Section 2. While there is no specific formula for compactness, “bizarre shaping of” a district that, for example, “cut[s] across pre-existing precinct lines and other natural or traditional divisions,” suggests “a level of racial manipulation that exceeds what § 2 could justify.” *Bush v. Vera*, 517 U.S. 952, 981 (1996). Physical proximity is of paramount concern in these cases. The residents within a district have to be actually connected, even if the boundary lines are fairly straight. For example, in *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399 (2006) (“*LULAC*”), the U.S. Supreme Court affirmed the rejection of “[a] district with a 300-mile gap between two Latino communities . . . despite being discrete communities of interest and relatively smooth district lines.” *Id.* at 402.

By way of comparison, in *Thornburg v. Gingles*, 478 U.S. 30 (1986), the Court upheld a district court finding of a VRA violation due to the creation of multi-member districts “where [populations of Black voters were] sufficiently large and contiguous to constitute effective voting majorities in single-member districts lying wholly within the

boundaries of the multimember districts.” *Id.* at 38. As both *Gingles* and *LULAC* show, in evaluating districts under the VRA—whether too sprawling or too diffuse—federal courts ensure that they are physically contiguous without extraneous components.

\* \* \*

In the main, the concept of contiguity under state laws in the surrounding jurisdictions and the Voting Right Act’s demand of compactness both require physical connection within voting districts. While in some jurisdictions a point-to-point connection is sufficient, the general rule points toward actual physical continuity with large overlap of territory. In either event, many of the legislative districts in Wisconsin fail to meet any of these requirements.

## **II. IMPROPER DISTRICT LINES HAVE IMPACTED LOCAL DEMOCRACY AND POLICY IN MULTIPLE WAYS**

Structural imbalance in the state legislature has touched upon all facets of local governance and policymaking. The lack of sufficient support for and representation of urban interests has harmed our jurisdictions and our residents. Though it pervades all types of policy and governance decisions, *amici* attempt to crystalize those broad impacts through three categories of examples below. It is not an exhaustive list.

### **A. Abusive Preemption of Local Laws Has Stymied Innovation and Response to Local Concerns**

While state preemption is an effective tool to ensure uniform regulation statewide, it can also function to stifle innovation and rights protection at the local level. Due to Wisconsin’s unfair maps, cities are disfavored and their attempts to be responsive and

provide protections for their constituents have been thwarted by preemptive state laws.<sup>4</sup> Several recent legislative enactments demonstrate a pattern of state legislative efforts to snuff out any local initiatives prior to them taking hold, and without any evidence of harm or impact to statewide programs. Instead, these pieces of legislation often reflect reactionary policies brought about by industry demands or efforts to maintain political advantage.

### **1. Workers' Rights Protections**

Cost of living is a critical concern for cities across the country, including in Wisconsin.<sup>5</sup> The median price for a home in Wisconsin rose 7% statewide in the previous year, the cost of child care rivals tuition at a state university, and the cost of transportation and food has increased with inflation.<sup>6</sup> Nearly a quarter of Wisconsinites earn too much to qualify for most public assistance programs but too little to afford anything but basic necessities.<sup>7</sup> Wage protections, especially the minimum wage floor, are a means to address these poverty concerns. In Wisconsin, the statewide minimum wage is tied to the federal standard, which has not increased since 2009 and stands at \$7.25. *See* Wis. Stat. § 104.035(1)(a). Wisconsin's minimum wage for workers who are tipped is lower than all of

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<sup>4</sup> *See, e.g.*, Paul Diller, *Gerrymandering and Local Democracy* Local Solutions Support Center (August 2018), <https://tinyurl.com/3tdyrf9s>.

<sup>5</sup> Jacob Resneck, *Rising cost of living in northeast Wisconsin has many working families treading water* Wisconsin Watch (June 7, 2023), <https://wisconsinwatch.org/2023/06/rising-cost-of-living-northeast-wisconsin-families/>.

<sup>6</sup> *Id.*; *see also* UniverCity Alliance, *'It has to be everyone': Wisconsin counties seek solutions for child care crisis*, University of Wisconsin-Madison (April 19, 2023), <https://university.wisc.edu/2023/04/19/it-has-to-be-everyone-wisconsin-counties-seek-solutions-for-child-care-crisis/>.

<sup>7</sup> Resneck, *supra* n.5.



its neighbor states at \$2.33 per hour. *Id.* § 104.035(3)(a)1. An hourly worker at that rate cannot reasonably afford rent in many Wisconsin cities.<sup>8</sup>

Notwithstanding these significant economic challenges, municipalities cannot set minimum wages higher than the state minimum despite a wide range in costs of living across cities in Wisconsin. For example, in 2017, Milwaukee County sought to implement modest wage raises for workers employed by or affiliated with the county. In response, the Legislature passed Act 327 of 2017, which stopped Milwaukee County from raising wages to \$15 an hour over four years. *See Wis. Stat.* § 103.007. By stymying these local efforts, the state legislature has blocked attempts to address economic insecurity as well as inequality.<sup>9</sup>

Wisconsin state law also prohibits municipalities from requiring employers to offer sick time. *See Wis. Stat.* § 103.10(1m)(e). As a result, many low-income workers often put their health at risk in order to receive regular pay.<sup>10</sup> In 2008, Milwaukee voters passed a paid sick leave ordinance by referendum which would have provided up to nine days of paid sick leave to any employee within city limits.<sup>11</sup> While a court challenge of the ordinance was still pending, the Legislature passed SB 23 to prohibit such local

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<sup>8</sup> Steven Potter, *What is Wisconsin's 'living wage'?* PBS Wisconsin (October 18, 2023), <https://tinyurl.com/epzy4j85>.

<sup>9</sup> *See, e.g.,* Laura Dresser & Pablo Aquiles-Sanchez, *Can't Survive on \$7.25*, Center on Wisconsin Strategy, <https://cows.org/wp-content/uploads/sites/1368/2023/10/Cant-Survive-on-725.pdf>.

<sup>10</sup> Ward Joles, *With no COVID sick leave, many workers are forced to choose between their health and their paycheck*, WKOW (January 29, 2022), <https://tinyurl.com/3xsa8ded>.

<sup>11</sup> Superior Telegram, *Legislature votes to overturn Milwaukee's wishes on sick leave*, <https://www.superiortelegram.com/news/legislature-votes-to-overturn-milwaukees-wishes-on-sick-leave>.

enactments.<sup>12</sup> The importance of protected access to sick leave became abundantly clear during the COVID-19 pandemic where taking sick time had broader public health and safety impacts. Wisconsin’s preemptive sick-leave law nonetheless functions to leave low-wage workers vulnerable by stopping local governments from addressing this gap.

## **2. Tenants’ Rights Protections**

Cities also face increasing challenges around housing access and affordability. However, state law prohibits localities from regulating rental prices or fees. Rent control and stabilization are both prohibited. *See* Wis. Stat. § 66.1015(1). In addition, significant municipal resources are spent ensuring the health and safety of housing, especially rental units within city limits. Despite the importance of these issues to municipalities in particular, cities are unable to create new or more robust protections for tenants—because of preemption, they cannot enact more stringent regulations for landlords and rental property than state law requires. Wis. Stat. § 66.0104(2). Among other things, the Legislature banned city governments from requiring landlords to disclose any information to tenants unless the federal or state government already mandated the disclosure. *Id.* § 66.0104(2)(d). As a result, this state law preempts efforts by cities to prevent housing discrimination; cities cannot require landlords to provide written reasoning when an applicant is denied housing. Madison General Ordinance 32.08(5) required a landlord to “give the tenant written reasons for the denial [of a tenant’s application] by the end of the

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<sup>12</sup> Annemarie Duran, *Wisconsin’s Preemptive Sick Leave & Minimum Wage Laws*, Workforce Hub (May 23, 2017), <https://www.workforcehub.com/blog/wisconsins-preemptive-sick-leave-minimum-wage-laws/>.

third day after the denial” in 2012 before it was preempted by legislation. *See* Wis. Stat. § 66.0104(2)(d). .

Under state law, landlords can hasten evictions if they suspect criminal activity, leaving victims of domestic abuse particularly vulnerable, and can dispose of evicted tenants’ property rather than placing it in storage.<sup>13</sup> Wis. Stat. § 704.05(5). SB 179, passed in 2014, has had significant preemptive effects. Among other things, state law no longer requires law enforcement to be present for the eviction process and allows housing code violations to go unreported by landlords to prospective tenants if they lack “actual knowledge” of the problems. The law had the effect of invalidating approximately 25 Madison ordinances, one which required landlords to provide voter registration information to tenants.<sup>14</sup>

### **3. Environmental Protections**

Banning reforms before they are implemented is a hallmark of abusive preemption. It prevents innovation at the local level and precludes voters from seeing policy initiatives come to fruition. This is particularly true with environmental regulations. Although no municipalities in Wisconsin have banned the use of a specific energy source to power their communities, state legislators introduced Assembly Bill 45 and Senate Bill 49 in 2023 to

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<sup>13</sup> Cary Spivak & Mary Spicuzza, *Some Wisconsin lawmakers double as landlords — and have passed laws that undermine renters’ rights* Milwaukee Journal Sentinel (January 22, 2022), <https://tinyurl.com/3fsv49yp>.

<sup>14</sup> Ben Siegel, *New Wisconsin landlord laws wipe out hard-fought victories for Madison renters* Isthmus (November 1, 2013), <https://isthmus.com/news/news/new-wisconsin-landlord-laws-wipe-out-hard-fought-victories-for-madison-renters/>.

prevent local governments from investing in renewable energy.<sup>15</sup> The bill provides: “No political subdivision may [...] place any restriction, either directly or in effect, on the connection or reconnection of a utility service based upon the type or source of energy to be delivered to an individual consumer within the political subdivision.”

The Legislature has previously taken actions to chill local efforts to pursue environmentally friendly initiatives. When some municipalities, including Appleton and Eau Claire, announced efforts to consider the reduction of the use of plastic bags in their jurisdictions, the Legislature again placed a “ban on bans” that limited *amici*’s ability to regulate plastics and other one-use materials. *See* Wis. Stat. § 66.0419(2)(b). Due to these preemptive acts, *amici* are thus kept from pursuing various environmental initiatives, such as reducing carbon emissions and other pollutants, that would result in positive health benefits for their constituents.

\* \* \*

The impacts of state preemption have been far-ranging in Wisconsin. On top of the examples provided above, the Legislature has impacted local regulation of ride-share companies, banned local regulation of firearms, prevented the creation of public broadband, and prohibited the creation of regional transit authorities. Recognizing that statewide consistency on some issues are of interest to many actors, *amici* nonetheless believe that these examples of abusive preemption show directly and concretely how unfair

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<sup>15</sup> This activity arose after the federal Consumer Product Safety Commission stated it is looking for ways to reduce emissions and indoor air quality hazards. Ari Natter, *US Safety Agency to Consider Ban on Gas Stoves Amid Health Fears*, Bloomberg (January 9, 2023), <https://www.bloomberg.com/news/articles/2023-01-09/us-safety-agency-to-consider-ban-on-gas-stoves-amid-health-fears>.

maps stymie innovation in policy and prevent local government from being responsive to the particular needs of their constituents.

## **B. Unfair Shared Revenue Structures**

Misshapen districts and unfair maps also have resulted in inadequate distribution of shared revenue to urban areas. This has significant consequences for local governance, as municipalities are reliant upon this funding to pay personnel, improve services, and invest in infrastructure. Among other things, state law limits their ability to generate other revenue, especially through local property taxes. In many jurisdictions tight budgets have made it difficult to expand services or meet growing local needs as robustly as local leaders have called for. As just one example, the City of Eau Claire has roughly the same number of municipal employees as it did 40 years ago, yet the city's population has grown by about 20,000.

Wisconsin provides general, unrestricted aid to counties and municipalities through its county and municipal aid program.<sup>16</sup> The Legislature sets the formula for how the county and municipal aid program is distributed between counties, municipalities, towns, and villages. *See generally* Wis. Stat. §§ 79.005 *et seq.* Municipalities are separated into four categories based on population size, with four differing formulas applied to each category. Wis. Stat. § 79.035. In addition to controlling how much state funding is distributed to local governments, the Legislature also controls how that funding may be

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<sup>16</sup> Noga Ardon, *Informational Paper #22 Shared Revenue Program County and Municipal Aid and Utility Aid*, Legislative Fiscal Bureau (Jan. 2023), at 2, <https://tinyurl.com/5abpxfky>.

reduced or penalized, based on specific local action.<sup>17</sup> Municipal and county aid is also reduced to offset the receipt by a county or municipality of certain state grants for mass transit vehicles. *Id.* § 79.035(7).

*Amici* do not contest here the ability of the Legislature to create the county and municipal aid program nor its ability to govern its administration via formula calculation and penalty creation. Rather, *amici* underscore that local governments are heavily dependent upon this program to finance themselves—on average, up to 30% of local financing is provided by state aid.<sup>18</sup> Adequate representation of cities in the Legislature is thus crucial to ensure that state-created formulas and distribution accurately meet the needs of local jurisdictions.

The resulting disproportionate allocation of state funding to medium- and larger-sized municipalities creates real challenges for effective city management. While around 30% of local financing comes from state revenue, up to 47% comes from local property tax levying.<sup>19</sup> State law however further controls how localities may increase those local taxes. *See* Wis. Stat. § 66.0602. A locality may not increase its levy by a percentage that exceeds the valuation factor, outside some very limited and specific exceptions. *Id.* § 66.0602(2). This statutory ceiling accordingly prevents local governments from raising

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<sup>17</sup> *Id.*

<sup>18</sup> Drew Dawson, *One of the biggest political fights in Wisconsin is over shared revenue. What is it, and why does it matter?* Milwaukee Journal Sentinel (May 26, 2023), <https://www.jsonline.com/story/news/2023/05/26/what-are-shared-revenue-levy-limits-in-wisconsin/70256358007/>.

<sup>19</sup> *Id.*

property tax levies—absent a direct voter referendum—to fill in funding gaps that may be caused by reductions in state-provided aid or other shortfalls.

Even when the Legislature responds to the dire financial needs of a city by lessening the limitation on local levies and expanding municipal aid, it is still able to impose additional restrictions on municipal revenues. For instance, in 2023 the Legislature passed Act 12, which among other things allows Milwaukee to raise its tax levy and increases the shared aid the city receives. However, Act 12 also imposed conditions for this change, including requiring the city to maintain certain spending levels on public safety. *See Wis. Stat. § 66.0608(2m)*. Following the expiration of federal American Rescue Plan Act funding in 2025, non-partisan experts predict that the city will have to make spending cuts to meet this state-mandated spending, including likely making cuts to “property tax-dependent functions like administration, libraries, neighborhood services, and public health.”<sup>20</sup> Act 12 was more stringent for other large cities. Madison, for instance, received only \$29 in shared state aid per resident, versus a statewide average for all municipalities of \$142 per resident. Non-partisan experts report that this is in part because the final Act 12 formula “targeted more of the overall increase in state aid to smaller communities.”<sup>21</sup>

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<sup>20</sup> Ari Brown and Rob Henken, *City of Milwaukee Budget Brief 2024*, Wisconsin Policy Forum 17 (Oct. 2023), [https://wispolicyforum.org/wp-content/uploads/2023/10/BudgetBrief\\_2024MilwaukeeCounty.pdf](https://wispolicyforum.org/wp-content/uploads/2023/10/BudgetBrief_2024MilwaukeeCounty.pdf).

<sup>21</sup> Jason Stein, Tyler Byrnes, and Ari Brown, *City of Madison Budget Brief 2024*, Wisconsin Policy Forum 14 (Oct. 2023), [https://wispolicyforum.org/wp-content/uploads/2023/10/BudgetBrief\\_2024CityofMadison.pdf](https://wispolicyforum.org/wp-content/uploads/2023/10/BudgetBrief_2024CityofMadison.pdf).

### **C. Lack of Support for Municipal Projects**

The third category of examples is wide-ranging and significant. Every session, the Legislature makes decisions about funding for infrastructure, other projects, and priorities that have broad impacts. Those decisions can be made in the aggregate or specific to a particular project. Either way, they need champions in the Legislature to come to fruition. Municipalities have lost some of their voice in the Legislature due to unfair maps. In some cities, such as Green Bay, there are fewer districts dominated by city residents. The City of Wausau has not had a resident in the Legislature in nearly a decade. As a result, fewer city residents are elected to the Legislature itself and the direct connection to the needs of the city are diminished in the body.

This direct connection to municipalities is essential to advocate for a wide range of local projects. These can range from one-time infrastructure improvements, such as the repair of a bridge, to initiatives to revitalize university programs geared toward job creation and worker training. Whatever the specifics of the particular project, the key is legislative sponsorship and support. Without sufficient legislative attention connected to the needs and interests of cities, these needs remain unmet or under-realized.

### **CONCLUSION**

For all of the foregoing reasons and for the reasons provided by Petitioners and Intervenor-Petitioners, this Court should order that the Wisconsin legislative maps violate the Wisconsin Constitution and must be withdrawn in advance of the next legislative election cycle.



Respectfully submitted,

*/s/ Nicholas E. Fairweather*

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NICHOLAS E. FAIRWEATHER  
Wisconsin State Bar No.: 1036681  
HAWKS QUINDEL, S.C.  
409 East Main Street  
Madison, WI 53701  
Telephone: (608) 257-0040  
Email: [nfairweather@hq-law.com](mailto:nfairweather@hq-law.com)

Jonathan B. Miller\*  
Michael Adame\*  
Public Rights Project  
490 43rd Street, #115  
Oakland, CA 94609

*\*Pro hac vice applications forthcoming*

Dated: November 8, 2023

**APPENDIX A – Amicus Curiae**

Kristin Alfheim  
Aldersperson, City of Appleton

Tiffany Brault  
City Council Vice President, City of Fond du Lac

Mitchel Craig  
Mayor, City of Portage

Amy Deal  
School Board Member, City of West Allis

Luke Diaz  
Mayor, City of Verona

Paul T. Esser  
Mayor, City of Sun Prairie

Jeremy Gragert  
City Council Member, City of Eau Claire

Jennifer Hoag  
School Board Vice President, City of Wauwatosa

Emily Kuhn  
Mayor, City of Middleton

Noah Leigh  
School Board President, City of West Milwaukee

Andrew Meindl  
Alderman, City of Wauwatosa

Mary O'Connor  
Mayor, City of Monona

Satya Rhodes-Conway  
Mayor, City of Madison

Jane Ricchio  
City Councilmember, City of Fond du Lac

Katie Rosenberg  
Mayor, City of Wausau

Gregg Schneider  
School Board Member, City of Beloit

Jeff Sikich  
Member, West Allis-West Milwaukee School Board

Steve Stocker  
Aldersperson, City of Sun Prairie

Linda Uselmann  
Board of Education Clerk, City of Fond du Lac

**FORM AND LENGTH CERTIFICATION**

I certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b), (c) and (d) for a brief produced with a proportional serif font. The length of this brief is 4,360 words.

Dated this 8th day of November, 2023.

*/s/ Nicholas E. Fairweather* \_\_\_\_\_

NICHOLAS E. FAIRWEATHER  
Wisconsin State Bar No.: 1036681  
HAWKS QUINDEL, S.C.  
409 East Main Street  
Madison, WI 53701  
Telephone: (608) 257-0040  
Email: [nfairweather@hq-law.com](mailto:nfairweather@hq-law.com)

**CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § 809.19(12)**

I certify that I have submitted an electronic copy of this brief, excluding the appendix, which complies with the requirements of Wis. Stat. § 809.19(12). A copy of this certificate has been served on all parties to this matter.

Dated this 8th day of November, 2023.

*/s/ Nicholas E. Fairweather* \_\_\_\_\_

NICHOLAS E. FAIRWEATHER  
Wisconsin State Bar No.: 1036681  
HAWKS QUINDEL, S.C.  
409 East Main Street  
Madison, WI 53701  
Telephone: (608) 257-0040  
Email: [nfairweather@hq-law.com](mailto:nfairweather@hq-law.com)