

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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WILLIAM WHITFORD, et al.,

Plaintiffs,

v.

Case No. 15-CV-0421

BEVERLY R. GILL, et al.,

Defendants.

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**DEFENDANTS' ANSWER TO AMENDED COMPLAINT**

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Defendants Beverly R. Gill, Julie M. Glancey, Ann S. Jacobs, Jodi Jensen, Dean Knudson, and Mark L. Thomsen, sued in their official capacity as members of the Wisconsin Elections Commission, by their undersigned counsel, respond as follows for their Answer to the Amended Complaint.

**INTRODUCTION**

1. Defendants respond that the first sentence in paragraph 1 of the complaint states legal conclusions to which no response is required. Defendants deny the allegations in the second and fourth sentences of paragraph 1. With regard to the allegations in the third sentence of paragraph 1, Defendants admit the allegations except for the word “enabled” to the extent it implies the Republican wins were caused entirely, or even mostly, by the Current Plan.

2. Defendants respond that paragraph 2 of the complaint states legal conclusions to which no response is required, but deny the allegations to the extent a response is required.

3. Defendants deny the allegations in the first sentence in paragraph 3 of the complaint. Defendants respond that the second sentence in paragraph 3 states legal conclusions to which no response is required, but deny the allegations to the extent a response is required.

4. Defendants respond that paragraph 4 of the complaint states legal conclusions to which no response is required, but deny the allegations to the extent a response is required.

5. Defendants deny the allegations of paragraph 5 of the complaint.

6. Defendants respond that paragraph 6 of the complaint states legal conclusions to which no response is required, but deny the allegations to the extent a response is required.

7. Defendants state that the first sentence of paragraph 7 of the complaint states legal conclusions to which no response is required, but deny the allegations to the extent a response is required. Defendants admit that Wisconsin's efficiency gap, as calculated by Simon Jackman using the simplified method, was roughly 13% in 2012 and 10% in 2014. Defendants deny the remaining allegations in paragraph 7.

8. Defendants respond that the first sentence of paragraph 8 of the complaint states legal conclusions to which no response is required, but deny the allegations to the extent a response is required. Defendants deny the allegations in the remaining sentences of paragraph 8.

9. Defendants deny the allegations in paragraph 9 of the complaint.

10. Defendants deny the allegations in paragraph 10 of the complaint.

11. Defendants respond that paragraph 11 of the complaint states legal conclusions to which no response is required, but deny the allegations to the extent a response is required. Defendants further state that Justice Kagan's concurrence in *Gill v. Whitford*, 138 S. Ct. 1916 (2018) is not the law because it did not achieve majority support of the Court. Instead, "the reasoning of [the *Gill*] Court with respect to the disposition of this case is set forth in [the majority] opinion and none other." *Id.* at 1931.

12. Defendants respond that paragraph 12 of the complaint states legal conclusions to which no response is required, but deny the allegations to the extent a response is required.

### **JURISDICTION AND VENUE**

13. Defendants admit that if Plaintiffs' claims are justiciable and they have standing to bring them, then this Court has jurisdiction and authority to issue declaratory relief.

14. Defendants admit that a three-judge panel is appropriate for this case.

15. Defendants admit that venue is proper in the Western District of Wisconsin.

### **PARTIES**

16. Defendants lack knowledge or information to form a belief about the allegations in the first sentence of paragraph 16 of the complaint. Defendants respond that the remaining allegations in paragraph 16 state legal conclusions to which no response is required, but deny the allegations to the extent a response is required.

17. Defendants respond that paragraph 17 of the complaint states legal conclusions to which no response is required, but deny the allegations to the extent a response is required. For the reasons stated in paragraph 11 of this answer, Justice Kagan's concurrence in *Gill* is not the law.

18. Defendants lack knowledge or information to form a belief about the allegations in the first two sentences of paragraph 18 of the complaint. Defendants deny the allegations in the third sentence of paragraph 18.

19. Defendants lack knowledge or information to form a belief about the allegations in the first sentence of paragraph 19 of the complaint. Defendants admit the allegations in the second sentence of paragraph 19. Defendants deny the allegations in the third sentence of paragraph 19. Defendants lack knowledge or information to form a belief about the allegations in the fourth sentence of paragraph 19 because they have no knowledge of the plaintiffs'

recalculation of the composite score. With respect to the allegations in the fifth sentence of paragraph 19, Defendants admit that Trial Exhibit 284 lists District 4 as a district that was “strengthened a little,” but by only 0.2% and deny the remaining allegations. With respect to the allegations in the sixth sentence of paragraph 19, Defendants deny that the composite score was a prediction of the winner of seats, but admit that the Republican candidate won District 4 in the 2012, 2014, and 2016 elections.

20. Defendants deny the allegations in the first and last sentences of paragraph 20 of the complaint. Defendants lack knowledge or information to form a belief about the allegations in the second, third, and fourth sentences of paragraph 20.

21. Defendants lack knowledge or information to form a belief about the allegations in the first two sentences of paragraph 21 of the complaint. Defendants deny the allegations in the third sentence of paragraph 21.

22. Defendants lack knowledge or information to form a belief about the allegations in the first sentence of paragraph 22 of the complaint. Defendants admit the allegations in the second sentence of paragraph 22. Defendants deny the allegations in the third sentence of paragraph 22. Defendants lack knowledge or information to form a belief about the allegations in the fourth sentence of paragraph 22 because they have no knowledge of the plaintiffs’ recalculation of the composite score. With respect to the allegations in the

fifth sentence of paragraph 22, Defendants deny that the composite score was a prediction of the winner of seats, but admit that the Democratic candidate won District 10 in the 2012, 2014, and 2016 elections without a Republican challenger.

23. Defendants deny the allegations in the first and last sentences of paragraph 23 of the complaint. Defendants lack knowledge or information to form a belief about the allegations in the second sentence of paragraph 23.

24. Defendants lack knowledge or information to form a belief about the allegations in the first two sentences of paragraph 24 of the complaint. Defendants deny the allegations in the third sentence of paragraph 24.

25. Defendants lack knowledge or information to form a belief about the allegations in the first sentence of paragraph 25 of the complaint. Defendants admit the allegations in the second sentence of paragraph 25. Defendants deny the allegations in the third sentence of paragraph 25. Defendants lack knowledge or information to form a belief about the allegations in the fourth sentence of paragraph 25 because they have no knowledge of the plaintiffs' recalculation of the composite score. With regard to the allegations in the fifth sentence of paragraph 25, Defendants admit that Trial Exhibit 284 lists District 13 as a "Statistical Pick Up" but deny the remaining allegations. With respect to the allegations in the sixth sentence of paragraph 25, Defendants deny that the composite score was a prediction of the winner of

seats, but admit that the Republican candidate won District 13 in the 2012, 2014, and 2016 elections.

26. Defendants deny the allegations in the first and last sentences of paragraph 26 of the complaint. Defendants lack knowledge or information to form a belief about the allegations in the second sentence of paragraph 26.

27. Defendants lack knowledge or information to form a belief about the allegations in the first two sentences of paragraph 27 of the complaint. Defendants deny the allegations in the third sentence of paragraph 27.

28. Defendants lack knowledge or information to form a belief about the allegations in the first sentence of paragraph 28 of the complaint. Defendants admit the allegations in the second sentence of paragraph 28. Defendants deny the allegations in the third sentence of paragraph 28. Defendants lack knowledge or information to form a belief about the allegations in the fourth sentence of paragraph 28 because they have no knowledge of the plaintiffs' recalculation of the composite score. With respect to the allegations in the fifth sentence of paragraph 28, Defendants deny that the composite score was a prediction of the winner of seats, but admit that the Democratic candidate won District 18 in the 2012, 2014, and 2016 elections without a Republican challenger.

29. Defendants deny the allegations in the first and last sentences of paragraph 29 of the complaint. Defendants lack knowledge or information to form a belief about the allegations in the second sentence of paragraph 29.

30. Defendants lack knowledge or information to form a belief about the allegations in the first two sentences of paragraph 30 of the complaint. Defendants deny the allegations in the third sentence of paragraph 30.

31. Defendants lack knowledge or information to form a belief about the allegations in the first sentence of paragraph 31 of the complaint. Defendants admit the allegations in the second sentence of paragraph 31. Defendants deny the allegations in the third sentence of paragraph 31. Defendants lack knowledge or information to form a belief about the allegations in the fourth sentence of paragraph 31 because they have no knowledge of the plaintiffs' recalculation of the composite score. With respect to the allegations in the fifth sentence of paragraph 31, Defendants admit that Trial Exhibit 284 lists District 21 as a "GOP seat[] strengthened a lot," but only by 1.0%, and deny the remaining allegations. With respect to the allegations in the sixth sentence of paragraph 31, Defendants deny that the composite score was a prediction of the winner of seats, but admit that the Republican candidate won District 21 in the 2012, 2014, and 2016 elections.



32. Defendants deny the allegations in the first and last sentences of paragraph 32 of the complaint. Defendants lack knowledge or information to form a belief about the allegations in the second sentence of paragraph 32.

33. Defendants lack knowledge or information to form a belief about the allegations in the first two sentences of paragraph 33 of the complaint. Defendants deny the allegations in the third sentence of paragraph 33.

34. Defendants lack knowledge or information to form a belief about the allegations in the first sentence of paragraph 34 of the complaint. Defendants admit the allegations in the second sentence of paragraph 34. Defendants deny the allegations in the third sentence of paragraph 34. Defendants lack knowledge or information to form a belief about the allegations in the fourth sentence of paragraph 34 because they have no knowledge of the plaintiffs' recalculation of the composite score. With respect to the allegations in the fifth sentence of paragraph 34, Defendants admit that Trial Exhibit 284 lists District 22 as a "Statistical Pick Up" but deny the remaining allegations. With respect to the allegations in the sixth sentence of paragraph 34, Defendants deny that the composite score was a prediction of the winner of seats, but admit that the Republican candidate won District 22 in the 2012, 2014, and 2016 elections.

35. Defendants deny the allegations in the first and last sentences of paragraph 35 of the complaint. Defendants lack knowledge or information to form a belief about the allegations in the second sentence of paragraph 35.

36. Defendants lack knowledge or information to form a belief about the allegations in the first two sentences of paragraph 36 of the complaint. Defendants deny the allegations in the third sentence of paragraph 36.

37. Defendants lack knowledge or information to form a belief about the allegations in the first sentence of paragraph 37 of the complaint. Defendants admit the allegations in the second sentence of paragraph 37. Defendants deny the allegations in the third sentence of paragraph 37. Defendants lack knowledge or information to form a belief about the allegations in the fourth sentence of paragraph 37 because they have no knowledge of the plaintiffs' recalculation of the composite score. With respect to the allegations in the fifth sentence of paragraph 37, Defendants admit that Trial Exhibit 284 lists District 23 as a "GOP seat[] strengthened a lot" but deny the remaining allegations. With respect to the allegations in the sixth sentence of paragraph 37, Defendants deny that the composite score was a prediction of the winner of seats, but admit that the Republican candidate won District 23 in the 2012, 2014, and 2016 elections.

38. Defendants deny the allegations in the first and last sentences of paragraph 38 of the complaint. Defendants lack knowledge or information to form a belief about the allegations in the second sentence of paragraph 38.

39. Defendants lack knowledge or information to form a belief about the allegations in the first two sentences of paragraph 39 of the complaint. Defendants deny the allegations in the third sentence of paragraph 39.

40. Defendants lack knowledge or information to form a belief about the allegations in the first sentence of paragraph 40 of the complaint. Defendants admit the allegations in the second sentence of paragraph 40. Defendants deny the allegations in the third sentence of paragraph 40. Defendants lack knowledge or information to form a belief about the allegations in the fourth sentence of paragraph 40 because they have no knowledge of the plaintiffs' recalculation of the composite score. With respect to the allegations in the fifth sentence of paragraph 19, Defendants deny that the composite score was a prediction of the winner of seats, but admit that the Republican candidate won District 24 in the 2012, 2014, and 2016 elections.

41. Defendants deny the allegations in the first and last sentences of paragraph 41 of the complaint. Defendants lack knowledge or information to form a belief about the allegations in the second sentence of paragraph 41.

42. Defendants lack knowledge or information to form a belief about the allegations in the first two sentences of paragraph 42 of the complaint. Defendants deny the allegations in the third sentence of paragraph 42.

43. Defendants lack knowledge or information to form a belief about the allegations in the first sentence of paragraph 43 of the complaint. Defendants admit that District 25 is located in Calumet and Manitowoc Counties and does not contain both the cities of Manitowoc and Two Rivers, but deny that the district “split[]” these cities when they were also not in the same district under the prior court-drawn plan. Defendants deny the allegations in the third sentence of paragraph 43. Defendants lack knowledge or information to form a belief about the allegations in the fourth sentence of paragraph 43 because they have no knowledge of the plaintiffs’ recalculation of the composite score. With respect to the allegations in the fifth sentence of paragraph 43, Defendants admit that Trial Exhibit 284 lists District 25 as a district that was “strengthened a little,” but by only 0.5% and deny the remaining allegations. With respect to the allegations in the sixth sentence of paragraph 19, Defendants deny that the composite score was a prediction of the winner of seats, but admit that the Republican candidate won District 25 in the 2012, 2014, and 2016 elections.

44. Defendants deny the allegations in the first and last sentences of paragraph 44 of the complaint. Defendants lack knowledge or information to form a belief about the allegations in the second sentence of paragraph 44.

45. Defendants lack knowledge or information to form a belief about the allegations in the first two sentences of paragraph 45 of the complaint. Defendants deny the allegations in the third sentence of paragraph 45.

46. Defendants lack knowledge or information to form a belief about the allegations in the first sentence of paragraph 46 of the complaint. Defendants deny the allegations in the second sentence of paragraph 46. Defendants deny the allegations in the third sentence of paragraph 46. Defendants lack knowledge or information to form a belief about the allegations in the fourth sentence of paragraph 46 because they have no knowledge of the plaintiffs' recalculation of the composite score. With respect to the allegations in the fifth sentence of paragraph 46, Defendants admit that Trial Exhibit 284 lists District 23 as a "GOP seat[] strengthened a lot" and deny the remaining allegations. With respect to the allegations in the sixth sentence of paragraph 46, Defendants deny that the composite score was a prediction of the winner of seats, but admit that the Republican candidate won District 26 in the 2012, 2014, and 2016 elections.

47. Defendants deny the allegations in the first and last sentences of paragraph 47 of the complaint. Defendants lack knowledge or information to form a belief about the allegations in the second sentence of paragraph 47.

48. Defendants lack knowledge or information to form a belief about the allegations in the first two sentences of paragraph 48 of the complaint. Defendants deny the allegations in the third sentence of paragraph 48.

49. Defendants lack knowledge or information to form a belief about the allegations in the first sentence of paragraph 49 of the complaint. Defendants deny the allegations in the second sentence of paragraph 49. Defendants deny the allegations in the third sentence of paragraph 49. Defendants lack knowledge or information to form a belief about the allegations in the fourth sentence of paragraph 49 because they have no knowledge of the plaintiffs' recalculation of the composite score. With respect to the allegations in the fifth sentence of paragraph 49, Defendants deny that the composite score was a prediction of the winner of seats, but admit that the Republican candidate won District 29 in the 2012, 2014, and 2016 elections.

50. Defendants deny the allegations in the first and last sentences of paragraph 50 of the complaint. Defendants lack knowledge or information to form a belief about the allegations in the second sentence of paragraph 50.

51. Defendants lack knowledge or information to form a belief about the allegations in the first two sentences of paragraph 51 of the complaint. Defendants deny the allegations in the third sentence of paragraph 51.

52. Defendants lack knowledge or information to form a belief about the allegations in the first sentence of paragraph 52 of the complaint. Defendants deny the second sentence of paragraph 52. Defendants deny the allegations in the third sentence of paragraph 52. Defendants lack knowledge or information to form a belief about the allegations in the fourth sentence of paragraph 52 because they have no knowledge of the plaintiffs' recalculation of the composite score. With respect to the allegations in the fifth sentence of paragraph 52, Defendants deny that the composite score was a prediction of the winner of seats, but admit that the Republican candidate won District 31 in the 2012, 2014, and 2016 elections.

53. Defendants deny the allegations in the first and last sentences of paragraph 53 of the complaint. Defendants lack knowledge or information to form a belief about the allegations in the second sentence of paragraph 53.

54. Defendants lack knowledge or information to form a belief about the allegations in the first two sentences of paragraph 54 of the complaint. Defendants deny the allegations in the third sentence of paragraph 54.

55. Defendants lack knowledge or information to form a belief about the allegations in the first sentence of paragraph 55 of the complaint. Defendants

deny the allegations in the second sentence of paragraph 55. Defendants deny the allegations in the third sentence of paragraph 55. Defendants lack knowledge or information to form a belief about the allegations in the fourth sentence of paragraph 55 because they have no knowledge of the plaintiffs' recalculation of the composite score. With respect to the allegations in the fifth sentence of paragraph 55, Defendants admit that Trial Exhibit 284 lists District 35 as a district that was "strengthened a little," but by only 0.8%. With respect to the allegations in the sixth sentence of paragraph 55, Defendants deny that the composite score was a prediction of the winner of seats, but admit that the Republican candidate won District 35 in the 2012, 2014, and 2016 elections.

56. Defendants deny the allegations in the first and last sentences of paragraph 56 of the complaint. Defendants lack knowledge or information to form a belief about the allegations in the second sentence of paragraph 56.

57. Defendants lack knowledge or information to form a belief about the allegations in the first two sentences of paragraph 57 of the complaint. Defendants deny the allegations in the third sentence of paragraph 57.

58. Defendants lack knowledge or information to form a belief about the allegations in the first sentence of paragraph 58 of the complaint. Defendants admit the allegations in the second sentence of paragraph 58. Defendants deny the allegations in the third sentence of paragraph 58. Defendants lack



knowledge or information to form a belief about the allegations in the fourth sentence of paragraph 58 because they have no knowledge of the plaintiffs' recalculation of the composite score. With respect to the allegations in the fifth sentence of paragraph 58, Defendants deny that the composite score was a prediction of the winner of seats, but admit that the Republican candidate won District 38 in the 2012, 2014, and 2016 elections.

59. Defendants deny the allegations in the first and last sentences of paragraph 59 of the complaint. Defendants lack knowledge or information to form a belief about the allegations in the second sentence of paragraph 59.

60. Defendants lack knowledge or information to form a belief about the allegations in the first two sentences of paragraph 60 of the complaint. Defendants deny the allegations in the third sentence of paragraph 60.

61. Defendants lack knowledge or information to form a belief about the allegations in the first sentence of paragraph 61 of the complaint. Defendants deny the allegations in the second sentence of paragraph 61. Defendants deny the allegations in the third sentence of paragraph 61. Defendants lack knowledge or information to form a belief about the allegations in the fourth sentence of paragraph 61 because they have no knowledge of the plaintiffs' recalculation of the composite score. With respect to the allegations in the fifth sentence of paragraph 61, Defendants admit that Trial Exhibit 284 lists District 42 as a "GOP seat[] strengthened a lot" but deny the remaining

allegations. With respect to the allegations in the sixth sentence of paragraph 61, Defendants deny that the composite score was a prediction of the winner of seats, but admit that the Republican candidate won District 42 in the 2012, 2014, and 2016 elections.

62. Defendants deny the allegations in the first and last sentences of paragraph 62 of the complaint. Defendants lack knowledge or information to form a belief about the allegations in the second sentence of paragraph 62.

63. Defendants lack knowledge or information to form a belief about the allegations in the first two sentences of paragraph 63 of the complaint. Defendants deny the allegations in the third sentence of paragraph 63.

64. Defendants lack knowledge or information to form a belief about the allegations in the first sentence of paragraph 64 of the complaint. Defendants deny the allegations in the second sentence of paragraph 64. Defendants deny the allegations in the third sentence of paragraph 64. Defendants lack knowledge or information to form a belief about the allegations in the fourth sentence of paragraph 64 because they have no knowledge of the plaintiffs' recalculation of the composite score. With respect to the allegations in the fifth sentence of paragraph 64, Defendants deny that the composite score was a prediction of the winner of seats, but admit that the Republican candidate won District 50 in the 2012, 2014, and 2016 elections.

65. Defendants deny the allegations in the first and last sentences of paragraph 65 of the complaint. Defendants lack knowledge or information to form a belief about the allegations in the second sentence of paragraph 65.

66. Defendants lack knowledge or information to form a belief about the allegations in the first two sentences of paragraph 66 of the complaint. Defendants deny the allegations in the third sentence of paragraph 66.

67. Defendants lack knowledge or information to form a belief about the allegations in the first sentence of paragraph 67 of the complaint. Defendants deny the allegations in the second sentence of paragraph 67. Defendants deny the allegations in the third sentence of paragraph 67. Defendants lack knowledge or information to form a belief about the allegations in the fourth sentence of paragraph 67 because they have no knowledge of the plaintiffs' recalculation of the composite score. With respect to the allegations in the fifth sentence of paragraph 67, Defendants deny that the composite score was a prediction of the winner of seats, but admit that the Republican candidate won District 56 in the 2012, 2014, and 2016 elections.

68. Defendants deny the allegations in the first and last sentences of paragraph 68 of the complaint. Defendants lack knowledge or information to form a belief about the allegations in the second sentence of paragraph 68.

69. Defendants lack knowledge or information to form a belief about the allegations in the first two sentences of paragraph 69 of the complaint. Defendants deny the allegations in the third sentence of paragraph 69.

70. Defendants lack knowledge or information to form a belief about the allegations in the first sentence of paragraph 70 of the complaint. Defendants deny the allegations in the second sentence of paragraph 70. Defendants deny the allegations in the third sentence of paragraph 70. Defendants lack knowledge or information to form a belief about the allegations in the fourth sentence of paragraph 70 because they have no knowledge of the plaintiffs' recalculation of the composite score. With respect to the allegations in the fifth sentence of paragraph 70, Defendants admit that Trial Exhibit 284 lists District 62 as a "Statistical Pick Up" but deny the remaining allegations. With respect to the allegations in the sixth sentence of paragraph 70, Defendants deny that the composite score was a prediction of the winner of seats, but admit that the Republican candidate won District 62 in the 2012, 2014, and 2016 elections.

71. Defendants deny the allegations in the first and last sentences of paragraph 71 of the complaint. Defendants lack knowledge or information to form a belief about the allegations in the second sentence of paragraph 71.

72. Defendants lack knowledge or information to form a belief about the allegations in the first two sentences of paragraph 72 of the complaint. Defendants deny the allegations in the third sentence of paragraph 72.

73. Defendants lack knowledge or information to form a belief about the allegations in the first sentence of paragraph 73 of the complaint. Defendants deny the allegations in the second sentence of paragraph 73. Defendants deny the allegations in the third sentence of paragraph 73. Defendants lack knowledge or information to form a belief about the allegations in the fourth sentence of paragraph 73 because they have no knowledge of the plaintiffs' recalculation of the composite score. With respect to the allegations in the fifth sentence of paragraph 73, Defendants deny that the composite score was a prediction of the winner of seats, but admit that the Republican candidate won District 63 in the 2012, 2014, and 2016 elections.

74. Defendants deny the allegations in the first and last sentences of paragraph 74 of the complaint. Defendants lack knowledge or information to form a belief about the allegations in the second sentence of paragraph 74.

75. Defendants lack knowledge or information to form a belief about the allegations in the first two sentences of paragraph 75 of the complaint. Defendants deny the allegations in the third sentence of paragraph 75.

76. Defendants lack knowledge or information to form a belief about the allegations in the first sentence of paragraph 76 of the complaint. Defendants

admit the allegations in the second sentence of paragraph 76. Defendants deny the allegations in the third sentence of paragraph 76. Defendants lack knowledge or information to form a belief about the allegations in the fourth sentence of paragraph 76 because they have no knowledge of the plaintiffs' recalculation of the composite score. With respect to the allegations in the fifth sentence of paragraph 76, Defendants deny that the composite score was a prediction of the winner of seats, but admit that the Democratic candidate won District 66 in the 2012, 2014, and 2016 elections without a Republican challenger.

77. Defendants deny the allegations in the first and last sentences of paragraph 77 of the complaint. Defendants lack knowledge or information to form a belief about the allegations in the second sentence of paragraph 77.

78. Defendants lack knowledge or information to form a belief about the allegations in the first two sentences of paragraph 78 of the complaint. Defendants deny the allegations in the third sentence of paragraph 78.

79. Defendants lack knowledge or information to form a belief about the allegations in the first sentence of paragraph 79 of the complaint. Defendants deny the allegations in the second sentence of paragraph 79 of the complaint. Defendants deny the allegations in the third sentence of paragraph 79. Defendants lack knowledge or information to form a belief about the allegations in the fourth sentence of paragraph 79 because they have no

knowledge of the plaintiffs' recalculation of the composite score. With respect to the allegations in the fifth sentence of paragraph 79, Defendants deny that the composite score was a prediction of the winner of seats, but admit that the Republican candidate won District 67 in the 2012, 2014, and 2016 elections.

80. Defendants deny the allegations in the first and last sentences of paragraph 80 of the complaint. Defendants lack knowledge or information to form a belief about the allegations in the second sentence of paragraph 80.

81. Defendants lack knowledge or information to form a belief about the allegations in the first two sentences of paragraph 81 of the complaint. Defendants deny the allegations in the third sentence of paragraph 81.

82. Defendants lack knowledge or information to form a belief about the allegations in the first sentence of paragraph 82 of the complaint. Defendants deny the allegations in the second sentence of paragraph 82. Defendants deny the allegations in the third sentence of paragraph 82. Defendants lack knowledge or information to form a belief about the allegations in the fourth sentence of paragraph 82 because they have no knowledge of the plaintiffs' recalculation of the composite score. With respect to the allegations in the fifth sentence of paragraph 82, Defendants admit that Trial Exhibit 284 lists District 70 as a Democrat-held seat that was "weakened," but only by 1.0% but deny the remaining allegations. With respect to the allegations in the

sixth sentence of paragraph 82, Defendants deny that the composite score was a prediction of the winner of seats, but admit that the Republican candidate won District 70 in 2014 and 2016. Defendants affirmatively allege that the Democratic candidate won District 70 in 2012.

83. Defendants deny the allegations in the first and last sentences of paragraph 83 of the complaint. Defendants lack knowledge or information to form a belief about the allegations in the second sentence of paragraph 83.

84. Defendants lack knowledge or information to form a belief about the allegations in the first two sentences of paragraph 84 of the complaint. Defendants deny the allegations in the third sentence of paragraph 84.

85. Defendants lack knowledge or information to form a belief about the allegations in the first sentence of paragraph 85 of the complaint. Defendants admit the allegations in the second sentence of paragraph 85. Defendants deny the allegations in the third sentence of paragraph 85. Defendants lack knowledge or information to form a belief about the allegations in the fourth sentence of paragraph 85 because they have no knowledge of the plaintiffs' recalculation of the composite score. With respect to the allegations in the fifth sentence of paragraph 85, Defendants admit that Trial Exhibit 284 lists this district as a pairing between two Democrats, but allege that the two Democrats were not paired under Act 43 and deny the remaining allegations. With respect to the allegations in the sixth sentence of paragraph 85,



Defendants deny that the composite score was a prediction of the winner of seats, but admit that the Democratic candidate won District 77 without a Republican challenger in the 2012, 2014, and 2016 elections.

86. Defendants deny the allegations in the first and last sentences of paragraph 86 of the complaint. Defendants lack knowledge or information to form a belief about the allegations in the second sentence of paragraph 86.

87. Defendants lack knowledge or information to form a belief about the allegations in the first two sentences of paragraph 87 of the complaint. Defendants deny the allegations in the third sentence of paragraph 87.

88. Defendants lack knowledge or information to form a belief about the allegations in the first sentence of paragraph 88 of the complaint. Defendants admit that District 80 is located southwest of Madison but deny the remaining allegations in the second sentence of paragraph 88. Defendants deny the allegations in the third sentence of paragraph 88. Defendants lack knowledge or information to form a belief about the allegations in the fourth sentence of paragraph 88 because they have no knowledge of the plaintiffs' recalculation of the composite score. With respect to the allegations in the fifth sentence of paragraph 88, Defendants deny that the composite score was a prediction of the winner of seats, but admit that the Democratic candidate won District 80 in the 2012, 2014, and 2016 elections, in some years without a Republican challenger.

89. Defendants deny the allegations in the first and last sentences of paragraph 89 of the complaint. Defendants lack knowledge or information to form a belief about the allegations in the second sentence of paragraph 89.

90. Defendants lack knowledge or information to form a belief about the allegations in the first two sentences of paragraph 90 of the complaint. Defendants deny the allegations in the third sentence of paragraph 90.

91. Defendants lack knowledge or information to form a belief about the allegations in the first sentence of paragraph 91 of the complaint. Defendants deny the allegations in the second sentence of paragraph 91. Defendants deny the allegations in the third sentence of paragraph 91. Defendants lack knowledge or information to form a belief about the allegations in the fourth sentence of paragraph 91 because they have no knowledge of the plaintiffs' recalculation of the composite score. With respect to the allegations in the fifth sentence of paragraph 91, Defendants admit that Trial Exhibit 284 lists District 86 as a district that was "strengthened a little," but by only 0.5% and deny the remaining allegations. With respect to the allegations in the sixth sentence of paragraph 91, Defendants deny that the composite score was a prediction of the winner of seats, but admit that the Republican candidate won District 86 in the 2012, 2014, and 2016 elections.

92. Defendants deny the allegations in the first and last sentences of paragraph 92 of the complaint. Defendants lack knowledge or information to form a belief about the allegations in the second sentence of paragraph 92.

93. Defendants lack knowledge or information to form a belief about the allegations in the first two sentences of paragraph 93 of the complaint. Defendants deny the allegations in the third sentence of paragraph 93.

94. Defendants lack knowledge or information to form a belief about the allegations in the first sentence of paragraph 94 of the complaint. Defendants admit the allegations in the second sentence of paragraph 94. Defendants deny the allegations in the third sentence of paragraph 94. Defendants lack knowledge or information to form a belief about the allegations in the fourth sentence of paragraph 94 because they have no knowledge of the plaintiffs' recalculation of the composite score. With respect to the allegations in the fifth sentence of paragraph 94, Defendants admit that Trial Exhibit 284 lists District 88 as a "GOP seat[] strengthened a lot" but deny the remaining allegations. With respect to the allegations in the sixth sentence of paragraph 94, Defendants deny that the composite score was a prediction of the winner of seats, but admit that the Republican candidate won District 88 in the 2012, 2014, and 2016 elections.

95. Defendants deny the allegations in the first and last sentences of paragraph 95 of the complaint. Defendants lack knowledge or information to form a belief about the allegations in the second sentence of paragraph 95.

96. Defendants lack knowledge or information to form a belief about the allegations in the first two sentences of paragraph 96 of the complaint. Defendants deny the allegations in the third sentence of paragraph 96.

97. Defendants lack knowledge or information to form a belief about the allegations in the first sentence of paragraph 97 of the complaint. Defendants deny the allegations in the second sentence of paragraph 97. Defendants deny the allegations in the third sentence of paragraph 97. Defendants lack knowledge or information to form a belief about the allegations in the fourth sentence of paragraph 97 because they have no knowledge of the plaintiffs' recalculation of the composite score. With respect to the allegations in the fifth sentence of paragraph 97, Defendants admit that Trial Exhibit 284 lists District 93 as a "GOP seat[] strengthened a lot" but deny the remaining allegations. With respect to the allegations in the sixth sentence of paragraph 97, Defendants deny that the composite score was a prediction of the winner of seats, but admit that the Republican candidate won District 93 in the 2012, 2014, and 2016 elections.

98. Defendants deny the allegations in the first and last sentences of paragraph 98 of the complaint. Defendants lack knowledge or information to form a belief about the allegations in the second sentence of paragraph 98.

99. Defendants lack knowledge or information to form a belief about the allegations in the first two sentences of paragraph 99 of the complaint. Defendants deny the allegations in the third sentence of paragraph 99.

100. Defendants lack knowledge or information to form a belief about the allegations in the first sentence of paragraph 100 of the complaint. Defendants deny the allegations in the second sentence of paragraph 100. Defendants deny the allegations in the third sentence of paragraph 100. Defendants lack knowledge or information to form a belief about the allegations in the fourth sentence of paragraph 100 because they have no knowledge of the plaintiffs' recalculation of the composite score. With respect to the allegations in the fifth sentence of paragraph 100, Defendants admit that Trial Exhibit 284 lists District 94 as a Democrat-held seat "weakened," but only by 0.3% and deny the remaining allegations. Defendants affirmatively allege that the Democratic candidate has won District 94 in all elections under the Current Plan.

101. Defendants deny the allegations in the first and last sentences of paragraph 101 of the complaint. Defendants lack knowledge or information to form a belief about the allegations in the second sentence of paragraph 101.

102. Defendants lack knowledge or information to form a belief about the allegations in the first two sentences of paragraph 102 of the complaint. Defendants deny the allegations in the third sentence of paragraph 102.

103. Defendants lack knowledge or information to form a belief about the allegations in the first sentence of paragraph 103 of the complaint. Defendants admit the allegations in the second sentence of paragraph 103. Defendants deny the allegations in the third sentence of paragraph 103. Defendants lack knowledge or information to form a belief about the allegations in the fourth sentence of paragraph 103 because they have no knowledge of the plaintiffs' recalculation of the composite score. With respect to the allegations in the fifth sentence of paragraph 103, Defendants deny that the composite score was a prediction of the winner of seats, but admit that the Democratic candidate won District 95 in the 2012, 2014, and 2016 elections without a Republican challenger.

104. Defendants deny the allegations in the first and last sentences of paragraph 104 of the complaint. Defendants lack knowledge or information to form a belief about the allegations in the second sentence of paragraph 104.

105. Defendants admit the allegations in the first four sentences in paragraph 105 of the complaint. Defendants deny the remaining allegations in paragraph 105.

106. Defendants lack knowledge or information to form a belief about the allegations in the first two sentences of paragraph 106 of the complaint.

Defendants deny the allegations in the third sentence of paragraph 106.

107. Defendants lack knowledge or information to form a belief about the allegations in the first two sentences of paragraph 107 of the complaint.

Defendants deny the allegations in the third sentence of paragraph 107.

108. Defendants lack knowledge or information to form a belief about the allegations in the first two sentences of paragraph 108 of the complaint.

Defendants deny the allegations in the third sentence of paragraph 108.

109. Defendants lack knowledge or information to form a belief about the allegations in the first two sentences of paragraph 109 of the complaint.

Defendants deny the allegations in the third sentence of paragraph 109.

110. Defendants lack knowledge or information to form a belief about the allegations in the first two sentences of paragraph 110 of the complaint.

Defendants deny the allegations in the third sentence of paragraph 110.

111. Defendants lack knowledge or information to form a belief about the allegations in the first two sentences of paragraph 111 of the complaint.

Defendants deny the allegations in the third sentence of paragraph 111.

112. Defendants admit the allegations of paragraph 112 of the complaint.

## BACKGROUND

### The Current Plan Was Intended To Discriminate Against Democrats

113. Defendants deny the allegations in the first sentence of paragraph 113 of the complaint. With regard to the remaining allegations, Defendants state the opinion in *Baldus v. Wisconsin Government Accountability Board*, 849 F. Supp. 2d 840 (E.D. Wis. 2012) speaks for itself.

114. Defendants state that the first two sentences of paragraph 114 of the complaint contain legal conclusions to which no response is required, but deny the allegation to the extent a response is required. Defendants deny the allegations in the third sentence of paragraph 114.

115. Defendants deny the allegations in paragraph 115 of the complaint.

116. Defendants admit the allegations in the first sentence of paragraph 116 of the complaint except for the word “ostensibly.” Defendants deny the allegations in the second sentence of paragraph 116.

117. Defendants deny the allegations in paragraph 117 of the complaint.

118. Defendants deny the allegations in paragraph 118 of the complaint.

119. Defendants admit the allegations in the first sentence of paragraph 119 of the complaint. With respect to the allegations in the second sentence of paragraph 119, Defendants admit that Dr. Gaddie created a model that analyzed the past partisan performance of all the districts established by Act 43, but deny that Dr. Gaddie created a model that was intended to predict the



expected performance in the future. Defendants deny the allegations in the third and fourth sentences of paragraph 119.

120. Defendants deny the allegations in the first and second sentences of paragraph 120 of the complaint. With respect to the third sentence in paragraph 120, Defendants admit that all redistricting work was done in the offices of Michael Best before the file was sent to the Legislative Reference Bureau for drafting and admit that the “map room” was located at Michael Best’s offices. Defendants admit the allegations in the fourth sentence of paragraph 120.

121. Defendants admit the allegations in the first four sentences of paragraph 121 of the complaint. Defendants deny the allegations in the last sentence of paragraph 121.

122. Defendants admit the allegations in the first sentence of paragraph 122 of the complaint. With respect to the second sentence of paragraph 122, Defendants admit the allegations except for the characterization of a “secrecy agreement” and the statement that “Michael Best had been hired to develop” the plan. With regard to the third sentence in paragraph 122, Defendants admit that the confidentiality and nondisclosure agreement said that McLeod had instructed Ottman to meet with certain members of the State Senate and said these meetings were subject to the attorney-client privilege and work product doctrine. With regard to the remaining allegations in paragraph 122,

Defendants state that the opinion in *Baldus v. Wisconsin Government Accountability Board*, 843 F. Supp. 2d 955 (E.D. Wis. 2012) speaks for itself.

123. Defendants admit the allegations in the first sentence of paragraph 40 of the complaint. With respect to the second sentence of paragraph 40, Defendants admit the allegations except for the statement that “Michael Best had been hired to develop” the plan.

124. Defendants admit the allegations in paragraph 124 of the complaint.

125. Defendants deny the allegations in the first sentence of paragraph 125 of the complaint. Defendants admit the remaining allegations in paragraph 125.

126. With respect to the allegations in paragraph 126 of the complaint, Defendants admit that Michael Best was paid \$431,000 by the State for its work, but deny the remaining allegations.

**The Current Plan Has The Effect Of Discriminating Against Democrats**

***The Efficiency Gap Reliably Measures Partisan Gerrymandering***

127. Defendants respond that paragraph 127 of the complaint states legal conclusions to which no response is required, but deny the allegations to the extent a response is required.

128. Defendants respond that paragraph 128 of the complaint states legal conclusions to which no response is required, but deny the allegations to the extent a response is required.

129. Defendants respond that paragraph 129 of the complaint states legal conclusions to which no response is required, but deny the allegations to the extent a response is required.

130. With respect to the allegations in paragraph 130 of the complaint, Defendants admit that the efficiency gap has only been developed in the last few years by Eric McGhee and Nicholas Stephanopolous, but deny the remaining allegations.

131. Defendants deny the allegations in paragraph 131 of the complaint.

132. Defendants deny the allegations in paragraph 132 of the complaint.

133. With respect to the allegations in paragraph 133 of the complaint, Defendants admit that this provides an example of the efficiency gap calculated under the district-by-district method.

134. Defendants deny the allegations in paragraph 134 of the complaint.

135. Defendants deny the allegations in paragraph 135 of the complaint.

136. Defendants deny the allegations in paragraph 136 of the complaint.

***Wisconsin's Current Plan Is An Outlier***

137. Defendants' responses to paragraph 137 are based on the assumption that the "efficiency gap" referred to in paragraph 137 is the version as

calculated by Simon Jackman. Defendants admit the allegations in the first sentence of paragraph 137. Defendants deny the allegations in the second sentence of paragraph 137. Defendants admit the allegations in the third, fourth and fifth sentences of paragraph 137. Defendants admit that the efficiency gap as calculated by Jackman averaged 11% in 2012 and 2014, but deny the allegation that this is “thanks to the Current Plan” to the extent that this implies this efficiency gap is caused entirely, or even mostly, by the Current Plan.

138. Defendants admit that Simon Jackman calculated the Wisconsin’s efficiency gap as 13% in 2012 and 10% in 2014 using the simplified method. Defendants deny the remaining allegations in paragraph 138 of the complaint.

139. Defendants deny the allegations in paragraph 139 of the complaint.

140. Defendants deny the allegations in paragraph 140 of the complaint.

141. Defendants deny the allegations in paragraph 141 of the complaint.

***Examples Of Cracking And Packing In The Current Plan***

142. Defendants deny the allegations in paragraph 142 of the complaint. Defendants affirmatively allege that the plaintiffs’ focus on the 2008 and 2012 elections is misleading because in the 2010 election, the Democratic candidates lost nine of the seats that the plaintiffs allege were won by Democrats in the 2008 election.

*Milwaukee, Ozaukee, Washington, and Waukesha Counties*

143. Defendants admit the allegations in the first and second sentences of paragraph 134 of the complaint, but state they are without knowledge or information sufficient to form a belief about the residences of the plaintiffs. Defendants deny the allegations in the third sentence in paragraph 134.

144. Defendants deny the allegations in the first sentence of paragraph 144 of the complaint. With respect to the allegations in the second sentence of paragraph 144, Defendants admit that the Republican candidates won Districts 22, 23, and 24 in the 2012 election, but deny these victories were “[d]ue to these changes” to the extent that this implies they were caused entirely, or even mostly, by the Current Plan.

145. Defendants deny the allegations in paragraph 145 of the complaint

*Calumet, Fond du Lac, Manitowoc and Sheboygan Counties*

146. Defendants admit the allegations in the first and second sentences of paragraph 146 of the complaint, but state they are without knowledge or information sufficient to form a belief about the residence of Plaintiff Donahue. Defendants deny the allegations in the third sentence in paragraph 146.

147. Defendants deny the allegations in the first sentence of paragraph 147 of the complaint. With respect to the allegations in the second sentence of paragraph 147, Defendants admit that the Republican candidates won

Districts 26 and 27 in the 2012 election but deny these victories were “[d]ue to these changes” to the extent that this implies they were caused entirely, or even mostly, by the Current Plan.

148. Defendants deny the allegations in paragraph 148 of the complaint.

*Racine and Kenosha Counties*

149. Defendants admit the allegations in the first, second, third and fourth sentences of paragraph 149 of the complaint, but state they are without knowledge or information sufficient to form a belief about the residences of the plaintiffs. Defendants deny the allegations in the fifth sentence of paragraph 149.

150. Defendants deny the allegations in the first sentence of paragraph 150 of the complaint. With respect to the allegations in the second sentence of paragraph 150, Defendants admit that the Democratic candidates won Districts 64, 65 and 66 and that Republican candidates won Districts 61, 62 and 63 in the 2012 election but deny these victories were “[d]ue to these changes” to the extent that this implies they were caused entirely, or even mostly, by the Current Plan.

151. Defendants deny the allegations in paragraph 151 of the complaint.

*Buffalo, Chippewa, Eau Claire, Jackson, La Crosse, Pepin, Pierce, St. Croix, and Trempealeau Counties*

152. Defendants deny that a Republican won district 67, but subject to that denial, Defendants admit the allegations in the first and second sentences of paragraph 152 of the complaint, but state they are without knowledge or information sufficient to form a belief about the residences of the plaintiffs. Defendants deny the allegations in the third and fourth sentences in paragraph 152.

153. Defendants deny the allegations in the first sentence of paragraph 153 of the complaint. With respect to the allegations in the second sentence of paragraph 153, Defendants admit that the Democratic candidates won Districts 91, 92, 94 and 95 and that Republican candidates won Districts 67, 68 and 93 in the 2012 election but deny these victories were “[d]ue to these changes” to the extent that this implies they were caused entirely, or even mostly, by the Current Plan.

154. Defendants deny the allegations in paragraph 154 of the complaint.

*Adams, Columbia, Marathon, Portage, and Wood Counties*

155. Defendants admit the allegations in the first and second sentences of paragraph 155 of the complaint, but state they are without knowledge or information sufficient to form a belief about the residence of the plaintiffs. Defendants deny the allegations in the third sentence in paragraph 155.

156. Defendants deny the allegations in the first sentence of paragraph 156 of the complaint. With respect to the allegations in the second sentence of paragraph 156, Defendants admit that the Democratic candidates won Districts 70, 71 and 85 and that Republican candidates won Districts 41, 42, 69, 72 and 86 in the 2012 election, but deny these victories were “[d]ue to these changes” to the extent that this implies they were caused entirely, or even mostly, by the Current Plan.

157. Defendants deny the allegations in paragraph 157 of the complaint.

*Brown and Manitowoc Counties*

158. Defendants admit the allegations in the first and second sentences of paragraph 158 of the complaint, but state they are without knowledge or information sufficient to form a belief about the residence of the plaintiffs. Defendants deny the allegations in the third and fourth sentences in paragraph 158.

159. Defendants deny the allegations in the first sentence of paragraph 159 of the complaint. With respect to the allegations in the second sentence of paragraph 159, Defendants admit that the Democratic candidates won District 90 and that Republican candidates won Districts 1, 2, 4, 5, 25, 88 and 89 in the 2012 election, but deny these victories were “[d]ue to these changes” to the extent that this implies they were caused entirely, or even mostly, by the Current Plan.



160. Defendants deny the allegations in paragraph 160 of the complaint.

***Wisconsin Does Not Need To Have A Gerrymandered Plan***

161. Defendants deny the allegations in paragraph 161 of the complaint.

162. Defendants deny the allegations in paragraph 162 of the complaint.

163. Defendants deny the allegations in paragraph 163 of the complaint.

**COUNT I – INTENTIONAL VOTE DILUTION**

164. Defendants incorporate and re-allege their responses to paragraphs 1–163 of the complaint.

165. Defendants respond that paragraph 165 of the complaint states legal conclusions to which no response is required, but deny the allegations to the extent a response is required.

166. Defendants respond that paragraph 166 of the complaint states legal conclusions to which no response is required, but deny the allegations to the extent a response is required.

167. Defendants respond that paragraph 167 of the complaint states legal conclusions to which no response is required, but deny the allegations to the extent a response is required.

168. Defendants respond that the first and last sentences of paragraph 168 of the complaint states legal conclusions to which no response is required, but deny the allegations to the extent a response is required. Defendants deny the remaining allegations in paragraph 168.

169. Defendants respond that the first, fourth, fifth and sixth sentences in paragraph 169 of the complaint state legal conclusions to which no response is required, but deny the allegations to the extent a response is required. Defendants deny the allegations in the second and third sentences of paragraph 169.

170. Defendants respond that the first sentence in paragraph 170 of the complaint states a legal conclusion to which no response is required, but deny the allegations to the extent a response is required. Defendants deny the remaining allegations in paragraph 170.

171. Defendants deny the allegations in paragraph 171 of the complaint.

172. Defendants deny the allegations in the first sentence of paragraph 172 of the complaint. Defendants respond that the second sentence of paragraph 172 states legal conclusions to which no response is required, but deny the allegations to the extent a response is required.

## **COUNT II – BURDEN ON RIGHT TO ASSOCIATION**

173. Defendants incorporate and re-allege their responses to paragraphs 1–172 of the complaint.

174. Defendants respond that paragraph 174 of the complaint states legal conclusions to which no response is required, but deny the allegations to the extent a response is required. For the reasons stated in paragraph 11 of this answer, Justice Kagan’s concurrence in *Gill* is not the law.

175. Defendants respond that paragraph 175 of the complaint states legal conclusions to which no response is required, but deny the allegations to the extent a response is required. For the reasons stated in paragraph 11 of this answer, Justice Kagan's concurrence in *Gill* is not the law.

176. Defendants respond that paragraph 176 of the complaint states legal conclusions to which no response is required, but deny the allegations to the extent a response is required.

177. Defendants respond that paragraph 177 of the complaint states legal conclusions to which no response is required, but deny the allegations to the extent a response is required.

178. Defendants respond that paragraph 178 of the complaint states legal conclusions to which no response is required, but deny the allegations to the extent a response is required.

### **RELIEF REQUESTED**

The defendants deny that the plaintiffs are entitled to any of the relief requested in paragraphs 179–184 of the complaint.

### **AFFIRMATIVE DEFENCES**

- A. Plaintiffs lack standing to bring their claims.
- B. Plaintiffs fail to state a claim that is justiciable
- C. Plaintiffs fail to state a claim on which relief can be granted.

WHEREFORE, Defendants request dismissal of this action in its entirety, together with such other relief as the Court deems equitable and just.

Dated this 28th of September, 2018.

Respectfully submitted,

BRAD D. SCHIMEL  
Attorney General of Wisconsin

Electronically signed by:

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