

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

LISA HUNTER, JACOB ZABEL, JENNIFER OH,
JOHN PERSA, GERALDINE SCHERTZ, &
KATHLEEN QUALHEIM,

Plaintiffs,

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

Intervenor-Plaintiffs,

LEAH DUDLEY, SOMESH JHA, JOANNE
KANE, MICHAEL SWITZENBAUM, JEAN-LUC
THIFFEAULT, STEPHEN JOSEPH WRIGHT,

Proposed Intervenor-Plaintiffs,

v.

MARGE BOSTELMANN, JULIE M. GLANCEY,
ANN S. JACOBS, DEAN KNUDSON, ROBERT
F. SPINDELL, JR., & MARK L. THOMSEN, in
their official capacities as members of the Wisconsin
Elections Commission,

Defendants,

THE WISCONSIN LEGISLATURE,

Intervenor-Defendant,

CONGRESSMEN SCOTT FITZGERALD, MIKE
GALLAGHER, GLENN GROTHAM, BRYAN
STEIL, TOM TIFFANY,

Intervenor-Defendant,

GOVERNOR TONY EVERS,

Intervenor-Defendant.

BLACK LEADERS ORGANIZING FOR
COMMUNITIES, VOCES DE LA FRONTERA,
THE LEAGUE OF WOMEN VOTERS OF

No. 3:21-cv-00512-jdp-ajs-ec

No. 3:21-cv-00534-jdp-ajs-ec

WISCONSIN, CINDY FALLONA, LAUREN STEPHENSON, & REBECCA ALWIN, MELODY McCURTIS, HELEN HARRIS, EDWARD WADE, JR., BARBARA TOLES, SEAN TATUM, WOODROW WILSON CAIN, II, TRACIE Y. HORTON, NINA CAIN,

Plaintiffs,

v.

MARGE BOSTELMANN, JULIE M. GLANCEY, ANN S. JACOBS, DEAN KNUDSON, ROBERT F. SPINDELL, JR., & MARK L. THOMSEN, in their official capacities as members of the Wisconsin Elections Commission, MEGAN WOLFE, in her official capacity as the administrator of the Wisconsin Elections Commission

Defendants,

ANSWER BY THE WISCONSIN LEGISLATURE TO *HUNTER* COMPLAINT

For the reasons argued in the Legislature’s motion to dismiss for lack of jurisdiction, the Court should dismiss this suit for lack of an Article III case or controversy. The Legislature is not waiving any of its jurisdictional arguments or its appellate remedies by answering the *Hunter* complaint, pursuant to Fed. R. Civ. P. 12(a)(4).

NATURE OF THE ACTION

1. Intervenor admits that this action challenges Wisconsin’s existing congressional and legislative districts as unconstitutional and that Plaintiffs’ complaint seeks various forms of relief as pled in the complaint. Intervenor denies all other allegations in paragraph 1.

2. Upon information and belief, Intervenor admits that on August 12, 2021, legacy census data was delivered to Wisconsin state officials. The remaining allegations in paragraph 2 set forth legal conclusions that require no response; if a response is required, Intervenor denies the remaining allegations in paragraph 2.

3. Paragraph 3 sets forth legal conclusions that require no response; if a response is required, Intervenor denies all allegations paragraph 3.

4. Paragraph 4 sets forth legal conclusions that require no response; if a response is required, Intervenor denies all allegations in paragraph 4.

5. Intervenor admits that the Wisconsin Constitution vests it with redistricting responsibility. Wis. Const. art. IV, §3. The remaining allegations in paragraph 5 sets forth legal conclusions that require no response; if a response is required, Intervenor denies the remaining allegations in paragraph 5.

6. Intervenor admits that the Governor Tony Evers is a Democrat, that the current Speaker of the State Assembly is a Republican, and that the current Majority Leader of the State Senate is a Republican. Intervenor admits that federal courts have intervened in Wisconsin's redistricting process in past redistricting cycles. Intervenor denies allegations regarding the cases referred to in paragraph 6 to the extent those allegations mischaracterize, vary from, or are otherwise inconsistent with those cases. Intervenor denies all other allegations in paragraph 6.

7. Denied.

8. Intervenor admits that this action challenges Wisconsin's existing congressional and legislative districts as unconstitutional and that Plaintiffs' complaint seeks various forms of relief as pled in the complaint. The remaining allegations in paragraph 8 set forth legal conclusions that require no response; if a response is required, Intervenor denies the allegations regarding the remaining allegations in paragraph 8 to the extent they mischaracterize, vary from, or are otherwise inconsistent with 28 U.S.C. § 2284(a) and (b)(1).

JURISDICTION AND VENUE

9. Intervenor denies that this Court has subject-matter jurisdiction for the reasons stated in Intervenor's Motion to Dismiss. The allegations in paragraph 9 set forth legal conclusions that

require no response; if a response is required, Intervenor denies the allegations in paragraph 9 to the extent they mischaracterize, vary from, or are otherwise inconsistent with 28 U.S.C. §§ 1331, 1343, 2201, 2202 as applied in this case.

10. Intervenor lacks knowledge or information to form a belief about the allegations in paragraph 10 with respect to where Defendants personally reside. Intervenor denies that this Court has subject-matter jurisdiction for the reasons stated in Intervenor's Motion to Dismiss and accordingly denies that this Court may exercise personal jurisdiction over Defendants other than for purposes of dismissing this action. The allegations in paragraph 10 set forth legal conclusions that require no response; if a response is required, Intervenor denies the allegations in paragraph 10 to the extent they mischaracterize, vary from, or are otherwise inconsistent with personal jurisdiction rules as applied in this case.

11. Intervenor denies that this Court has subject-matter jurisdiction for the reasons stated in Intervenor's simultaneously filed Motion to Dismiss and accordingly denies that venue is proper other than for purposes of dismissing this action. The allegations in paragraph 11 set forth legal conclusions that require no response; if a response is required, Intervenor denies the allegations in paragraph 11 to the extent they mischaracterize, vary from, or are otherwise inconsistent with 28 U.S.C. § 1391 as applied in this case.

12. Intervenor denies that this Court has subject-matter jurisdiction for the reasons stated in Intervenor's Motion to Dismiss. The allegations in paragraph 12 set forth legal conclusions that require no response; if a response is required, Intervenor denies the allegations in paragraph 12 to the extent they mischaracterize, vary from, or are otherwise inconsistent with 28 U.S.C. § 2284(a) as applied in this case.

PARTIES

13. Intervenor lacks knowledge or information to form a belief about the allegations in paragraph 13.

14. Intervenor lacks knowledge or information to form a belief about the allegations in paragraph 14.

15. Upon information and belief, Intervenor admits that Defendants are Commissioners of the Wisconsin Elections Commission. Intervenor denies the allegations regarding the statutes and cases referred to in paragraph 15 to the extent they mischaracterize, vary from, or are otherwise inconsistent with those statutes and cases. Intervenor denies all other allegations in paragraph 15.

FACTUAL ALLEGATIONS

16. Admitted.

17. Intervenor denies the allegations regarding the census data referred to in paragraph 17 to the extent the allegations mischaracterize, vary from, or are otherwise inconsistent with the census data.

18. Intervenor denies the allegations regarding the census data and legislation referred to in paragraph 18 to the extent the allegations mischaracterize, vary from, or are otherwise inconsistent with that census data and legislation.

19. Intervenor denies the allegations regarding the *Baldus* litigation referred to in the first sentence of paragraph 19 to the extent the allegations mischaracterize, vary from, or are otherwise inconsistent with the orders issued in that litigation. *See Baldus v. Members of the Wis. Gov't Accountability Bd.*, 862 F. Supp. 2d 860 (E.D. Wis. 2012). Intervenor admits legislative and congressional districting plans passed in August 2011, as adjusted by the orders issued regarding Assembly Districts 8 and 9 in the *Baldus* litigation, were used in every election of a member of Congress, State Senator, or

Representative of the State Assembly since 2012. Intervenor denies all other allegations in paragraph 19.

20. Intervenor lacks knowledge or information to form a belief about the allegations in paragraph 20.

21. Intervenor admits Wisconsin will have eight congressional districts. Intervenor denies the allegations regarding the census data referred to in paragraph 21 to the extent the allegations mischaracterize, vary from, or are otherwise inconsistent with the census data. Intervenor denies all other allegations in paragraph 21.

22. Intervenor admits that there are 99 State Assembly districts and 33 State Senate districts under current law. Intervenor denies the allegations regarding the census data referred to in paragraph 22 to the extent the allegations mischaracterize, vary from, or are otherwise inconsistent with the census data.

23. Intervenor admits that Wisconsin's population has changed in the past decade. Intervenor denies all other allegations in paragraph 23.

24. Upon information and belief, Intervenor admits that on August 12, 2021, legacy census data was delivered to Wisconsin state officials. Intervenor lacks knowledge or information to form a belief about the remaining allegations in paragraph 24.

25. Intervenor admits Wisconsin's population has changed in the past decade. Intervenor denies all other allegations in paragraph 25.

26. Intervenor denies the allegations regarding the census data referred to in paragraph 26 to the extent the allegations mischaracterize, vary from, or are otherwise inconsistent with the census data.

27. Intervenor denies the allegations regarding the census data referred to in paragraph 27 to the extent the allegations mischaracterize, vary from, or are otherwise inconsistent with the census

data. To the extent paragraph 27 intends to allege a legal conclusion, no response is required. Intervenor denies all other allegations in paragraph 27.

28. Intervenor denies the allegations regarding the census data referred to in paragraph 28, Exhibit A, and Exhibit B to the extent the allegations mischaracterize, vary from, or are otherwise inconsistent with the census data.

29. Intervenor denies the allegations regarding the census data referred to in paragraph 29, Exhibit A, and Exhibit B to the extent the allegations mischaracterize, vary from, or are otherwise inconsistent with the census data.

30. Paragraph 30 sets forth legal conclusions that require no response; if a response is required, Intervenor denies paragraph 30.

31. Intervenor admits that the Wisconsin Constitution vests it with redistricting responsibility. Wis. Const. art. IV, §3. Intervenor admits that Governor Tony Evers is a Democrat, that the current Speaker of the State Assembly is a Republican, and that the current Majority Leader of the State Senate is a Republican. Intervenor denies all other allegations in paragraph 31.

32. Intervenor admits that federal courts have intervened in Wisconsin's redistricting process in past redistricting cycles. Intervenor admits that when redistricting legislation was last passed in 2011, the Governor was a Republican and Republicans held a majority of the seats in the State Assembly and State Senate. Intervenor denies all other allegations in paragraph 32.

33. Intervenor admits that Wisconsin has entered a new redistricting cycle. Wis. Const. art. IV, §3. Intervenor avers that the Legislature's redistricting efforts have begun, consistent with the Wisconsin Constitution's vesting the Legislature with redistricting responsibility. *Id.* Intervenor admits that Governor Evers has, at times, vetoed legislation, though denies the allegations in paragraph 33 relating to those vetoes to the extent those allegations mischaracterize, vary from, or are otherwise inconsistent with the nature of that vetoed legislation. Intervenor avers that Governor Evers signed

state budget legislation for the two-year budget passed in 2019 and the two-year budget passed in 2021. Intervenor admits that a gubernatorial executive order purports to establish “the People’s Map’s Commission.” Wis. Executive Order No. 66 (Jan. 27, 2021). Intervenor lacks knowledge or information to form a belief about the remaining allegations regarding Governor Evers in paragraph 33, and therefore denies them. Intervenor denies all other allegations in paragraph 33.

34. Intervenor denies the allegations in paragraph 34 regarding the nature of the vetoed legislation to the extent the allegations mischaracterize, vary from, or are otherwise inconsistent with the nature of that legislation. Intervenor denies all other allegations in paragraph 34.

35. Denied.

36. Intervenor denies the allegations regarding the constitutional and statutory provisions referred to in paragraph 36 to the extent the allegations mischaracterize, vary from, or are otherwise inconsistent with those constitutional and statutory provisions. Intervenor lacks knowledge or information to form a belief about the remaining allegations in paragraph 36, and therefore denies them.

37. Intervenor denies the allegations regarding the statutory provisions referred to in paragraph 37 to the extent the allegations mischaracterize, vary from, or are otherwise inconsistent with those statutory provisions. The remaining allegations in paragraph 37 sets forth legal conclusions that require no response; if a response is required, Intervenor denies the remaining allegations in paragraph 37.

38. Paragraph 38 sets forth legal conclusions that require no response; if a response is required, Intervenor denies paragraph 38.

COUNT I

39. Intervenor incorporates by reference all prior answers as though fully set forth herein.

40. Intervenor denies the allegations regarding the Fourteenth Amendment and apportionment caselaw referred to in paragraph 40 to the extent the allegations mischaracterize, vary from, or are otherwise inconsistent with that constitutional provision and caselaw.

41. Paragraph 41 sets forth legal conclusions that require no response; if a response is required, Intervenor denies paragraph 41.

42. Paragraph 42 sets forth legal conclusions that require no response; if a response is required, Intervenor denies paragraph 42.

43. Paragraph 43 sets forth legal conclusions that require no response; if a response is required, Intervenor denies paragraph 43.

COUNT II

44. Intervenor incorporates by reference all prior answers as though fully set forth herein.

45. Intervenor denies the allegations regarding Article I and apportionment caselaw referred to in paragraph 45 to the extent the allegations mischaracterize, vary from, or are otherwise inconsistent with that constitutional provision and caselaw.

46. Paragraph 46 sets forth legal conclusions that require no response; if a response is required, Intervenor denies paragraph 46 to the extent the allegations mischaracterize, vary from, or are otherwise inconsistent with the constitutional provision and caselaw referred to in paragraph 46.

47. Intervenor denies the allegations regarding the congressional plan and census data in paragraph 47 to the extent those allegations mischaracterize, vary from, or are otherwise inconsistent with the congressional plan and census data. Intervenor denies all other allegations in paragraph 47.

48. Paragraph 48 sets forth legal conclusions that require no response; if a response is required, Intervenor denies paragraph 48.

49. Paragraph 49 sets forth legal conclusions that require no response; if a response is required, Intervenor denies paragraph 49.

COUNT III

50. Intervenor incorporates by reference all prior answers as though fully set forth herein.

51. Intervenor denies the allegations regarding the First Amendment and caselaw referred to in paragraph 51 to the extent the allegations mischaracterize, vary from, or are otherwise inconsistent with that constitutional provision and caselaw.

52. Paragraph 52 sets forth legal conclusions that require no response; if a response is required, Intervenor denies paragraph 52.

53. The second sentence of Paragraph 53 sets forth legal conclusions that require no response; if a response is required, Intervenor denies paragraph 53. Intervenor denies all other allegations in paragraph 53.

54. Paragraph 54 sets forth legal conclusions that require no response; if a response is required, Intervenor denies paragraph 54.

RELIEF REQUESTED

Intervenor denies that Plaintiffs are entitled to any of the relief requested on pages 15 and 16 of Plaintiffs' complaint.

AFFIRMATIVE DEFENSES

Including for the reasons explained in Intervenor's simultaneously filed Motion to Dismiss and accompanying Memorandum of Law:

1. Plaintiffs' claims are unripe, such that there is not yet a case or controversy required by Article III of the U.S. Constitution.

2. Plaintiffs lack standing to bring their claims, rendering Plaintiffs' complaint beyond the scope of the federal judicial power under Article III of the U.S. Constitution.

3. Plaintiffs' complaint does not seek "an acceptable Article III remedy." *Steel Co. v. Citizens for Better Env't*, 523 U.S. 83, 107 (1998).

4. Plaintiffs' claims are otherwise not justiciable.
5. Plaintiffs fail to state a claim for which relief can be granted.
6. Intervenor reserves the right to identify additional affirmative defenses should the

Court postpone or deny in whole or in part Intervenor's Motion to Dismiss.

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

Dated: September 22, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2021, I served the foregoing document with the Clerk of Court using the Court's ECF system, thereby serving all counsel who have appeared in this case.

/s/ Kevin St. John

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