

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN

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Lisa Hunter, Jacob Zabel, Jennifer Oh, John Persa, Geraldine Schertz, *and* Kathleen Qualheim,

*Plaintiffs,*

Billie Johnson, Eric O'Keefe, Ed Perkins, *and* Ronald Zahn,

*Intervenor-Plaintiffs,*

*v.*

Marge Bostelmann, Julie M. Glancey, Ann S. Jacobs, Dean Knudson, Robert F. Spindell, Jr., *and* Mark L. Thomsen, *in their official capacities as members of the Wisconsin Elections Commission,*

*Defendants,*

The Wisconsin Legislature,

*Intervenor-Defendant,*

Congressmen Glenn Grothman, Mike Gallagher, Bryan Steil, Tom Tiffany, *and* Scott Fitzgerald,

*Intervenor-Defendants.*

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Case No. 3:21-cv-512-jdp-ajs-eec (consolidated with No. 3:21-cv-534-jdp-ajs-eec)

Black Leaders Organizing For Communities, Voces De La Frontera, The League Of Women Voters Of Wisconsin, Cindy Fallona, Lauren Stephenson, Rebecca Alwin, Helen Harris, Woodrow Wilson Cain, II, Nina Cain, Tracie Y. Horton, Pastor Sean Tatum, Melody Mccurtis, Barbara Toles, *and* Edward Wade, Jr.,

*Plaintiffs,*

*v.*

Robert F. Spindell, Jr., Mark L. Thomsen, Dean Knudson, Ann S. Jacobs, Julie M. Glancey, Marge Bostelmann, *in their official capacity as members of the Wisconsin Elections Commission,* Meagan Wolfe, *in her official capacity as the administrator of the Wisconsin Elections Commission,*

*Defendants.*

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Case No. 3:21-cv-534-jdp-ajs-eec (consolidated with No. 3:21-cv-512-jdp-ajs-eec)

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**CONGRESSMEN GLENN GROTHMAN, MIKE GALLAGHER,  
BRYAN STEIL, TOM TIFFANY, AND SCOTT FITZGERALD’S  
ANSWER TO *HUNTER* PLAINTIFFS’ COMPLAINT**

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**INTRODUCTION**

Intervenor-Defendants Congressmen Glenn Grothman, Mike Gallagher, Bryan Steil, Tom Tiffany, and Scott Fitzgerald, who are probable candidates for re-election to the U.S. House of Representatives in 2022 (hereinafter, collectively, “the Congressmen”) and who have been granted permission to intervene by this Court on September 16, 2021, Dkt.60,\* hereby file this Answer to the Complaint of Lisa Hunter, Jacob Zabel, Jennifer Oh, John Persa, Geraldine Schertz, and Kathleen Qualheim (hereinafter “the *Hunter* Plaintiffs”), Dkt.1.

**NATURE OF THE ACTION**

1. The Congressmen admit that this is an action challenging the constitutionality of Wisconsin’s existing congressional and legislative districts and that the *Hunter* Plaintiffs’ Complaint requests various forms of relief, as pleaded in the Complaint. Further, to the extent Paragraph 1 asserts legal conclusions, no response is required; however, if a response is required, the Congressmen deny that the *Hunter* Plaintiffs have any cognizable harm that is redressable by a federal court, given that redistricting is the primary duty and responsibility of the State, which includes the state courts. Finally, the Congressmen deny all other allegations in Paragraph 1.

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\* All citations of “Dkt.” refer to this Court’s docket in Case No. 3:21-cv-512-jdp-ajs-eec.

2. The Congressmen admit, upon information and belief, that on August 12, 2021, legacy census data was delivered to Wisconsin state officials. Paragraph 2 cites census data and case law, which speaks for itself. The Congressmen deny the allegations to the extent that they are inconsistent with those sources. Finally, the remaining allegations in Paragraph 2 set forth legal conclusions for which no response is required; however, if a response is required, the Congressmen deny that the *Hunter* Plaintiffs have any cognizable harm that is redressable by a federal court, given that redistricting is the primary duty and responsibility of the State, which includes the state courts.

3. Paragraph 3 cites a federal constitutional provision and an amendment, as well as state statutes, which speak for themselves. The Congressmen deny the allegations to the extent that they are inconsistent with those sources. Further, Paragraph 3 sets forth legal conclusions for which no response is required; however, if a response is required, the Congressmen deny that the *Hunter* Plaintiffs have any cognizable harm that is redressable by a federal court, given that redistricting is the primary duty and responsibility of the State, which includes the state courts.

4. Paragraph 4 sets forth legal conclusions for which no response is required; however, if a response is required, the Congressmen deny all allegations in Paragraph 4.

5. Paragraph 5 cites a Wisconsin constitutional provision and case law, which speak for themselves. The Congressmen deny the allegations to the extent they are inconsistent with these sources. That said, the Congressmen admit that the

Wisconsin Constitution vests the Wisconsin Legislature (“Legislature”) with redistricting responsibility. Wis. Const. art. IV, § 3. Finally, the remaining allegations in Paragraph 5 set forth legal conclusions for which no response is required; however, if a response is required, the Congressmen deny the remaining allegations in Paragraph 5.

6. The Congressmen admit that the Governor 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. The Congressmen further admit that federal courts have adjudicated certain of Wisconsin’s redistricting maps in the past. Further, Paragraph 6 cites case law, which speaks for itself. The Congressmen deny the allegations regarding that case law, to the extent that those allegations are inconsistent with that case law. Finally, the Congressmen deny all other allegations in Paragraph 6 and, in particular, state that Wisconsin has previously enacted bipartisan redistricting plans. *See Reapportionment Bill Becomes Law*, Wis. State J., Nov. 16, 1971, § 1, at 4;† *see generally Baldus v. Members of Wisconsin Gov’t Accountability Bd.*, 849 F. Supp. 2d 840, 843 (E.D. Wis. 2012) (discussing 1972 redistricting effort).

7. The Congressmen deny all allegations in Paragraph 7.

8. The Congressmen admit that the *Hunter* Plaintiffs’ action challenges the constitutionality of Wisconsin’s existing congressional and legislative districts and that the *Hunter* Plaintiffs’ Complaint seeks various forms of relief, as pleaded in

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† Available at <https://bit.ly/38o8WZF> (last accessed Aug. 30, 2021).

the Complaint. Paragraph 8 cites federal statutes, which speak for themselves. The Congressmen deny the allegations to the extent they are inconsistent with those federal statutes. Finally, the remaining allegations in Paragraph 8 set forth legal conclusions for which no response is required; however, if a response is required, the Congressmen deny the remaining allegations in Paragraph 8 to the extent that they are inconsistent with 28 U.S.C. § 2284(a) and (b)(1).

### **JURISDICTION AND VENUE**

9. The Congressmen deny that this Court has subject-matter jurisdiction. Paragraph 9 cites federal statutes and a federal rule, which speak for themselves. The Congressmen deny the allegations to the extent they are inconsistent with those federal statutes and rule. Finally, the allegations in Paragraph 9 set forth legal conclusions for which no response is required; however, if a response is required, the Congressmen deny the allegations in Paragraph 9.

10. The Congressmen lack knowledge or information to form a belief about the allegations in Paragraph 10 with respect to where Defendants reside. The remaining allegations in Paragraph 10 set forth legal conclusions for which no response is required; however, if a response is required, the Congressmen deny the allegations in Paragraph 10.

11. Paragraph 11 cites federal statutes, which speak for themselves. The Congressmen deny the allegations to the extent they are inconsistent with those federal statutes. The Congressmen admit, upon information and belief, that all Defendants have their official offices in the Western District of Wisconsin. Further,

the remaining allegations in Paragraph 11 set forth legal conclusions for which no response is required; however, if a response is required, the Congressmen deny the allegations in Paragraph 11.

12. The Congressmen deny that this Court has subject-matter jurisdiction for the reasons stated in the Congressmen's contemporaneously filed Motion To Dismiss. Further, Paragraph 12 cites a federal statute, which speaks for itself. The Congressmen deny the allegations to the extent they are inconsistent with that federal statute.

### **PARTIES**

13. The Congressmen lack knowledge or information to form a belief about the allegations in Paragraph 13.

14. The Congressmen lack knowledge or information to form a belief about the allegations in Paragraph 14. Additionally, Paragraph 14 sets forth legal conclusions for which no response is required; however, if a response is required, the Congressmen deny that the *Hunter* Plaintiffs have any cognizable harm that is redressable by a federal court, given that redistricting is the primary duty and responsibility of the State, which includes the state courts.

15. Paragraph 15 cites state statutes and case law, which speak for themselves. The Congressmen deny the allegations to the extent they are inconsistent with those sources. Further, the Congressmen, upon information and belief, admit that Defendants are Commissioners of the Wisconsin Elections

Commission and are named in their official capacities only. Finally, the Congressmen deny all other allegations in Paragraph 15.

### **FACTUAL ALLEGATIONS**

16. The Congressmen admit the allegations in Paragraph 16.

17. Paragraph 17 cites census data, which speaks for itself. The Congressmen deny the allegations to the extent that they are inconsistent with that data.

18. Paragraph 18 cites census data and legislation, which speak for themselves. The Congressmen deny the allegations to the extent that they are inconsistent with that data and legislation.

19. Paragraph 19 cites case law, which speaks for itself. The Congressmen deny the allegations to the extent they are inconsistent with that case law. The Congressmen admit the remaining allegations in Paragraph 19.

20. Paragraph 20 cites a federal constitutional provision, which speaks for itself. The Congressmen deny the allegations to the extent they are inconsistent with that federal constitutional provision. Further, the Congressmen lack knowledge or information to form a belief about the allegations in Paragraph 20.

21. The Congressmen admit that Wisconsin will have eight congressional districts. Further, Paragraph 21 cites census reports, which speak for themselves. The Congressmen deny the allegations to the extent they are inconsistent with those reports. Finally, the Congressmen deny all other allegations in Paragraph 21.

22. The Congressmen admit that there are 99 State Assembly Districts and 33 State Senate Districts in Wisconsin, under current law. Further, Paragraph 22 cites census data, which speaks for itself. The Congressmen deny the allegations to the extent they are inconsistent with that data.

23. The Congressmen admit that Wisconsin's population has changed in the past decade. However, Paragraph 23 also sets forth legal conclusions for which no response is required; but, if a response is required, the Congressmen deny these additional allegations in Paragraph 23.

24. The Congressmen admit, upon information and belief, that on August 12, 2021, legacy census data was delivered to Wisconsin state officials. However, the Congressmen lack knowledge or information to form a belief about the remaining allegations in Paragraph 24. Further, Paragraph 24 cites census data, which speaks for itself. The Congressmen deny the allegations to the extent they are inconsistent with that data.

25. The Congressmen admit that Wisconsin's population has changed in the past decade. Further, Paragraph 25 cites census data, which speaks for itself. The Congressmen deny the allegations to the extent they are inconsistent with that data. Finally, the Congressmen deny all other allegations in Paragraph 25.

26. Paragraph 26 cites census data, which speaks for itself. The Congressmen deny the allegations to the extent they are inconsistent with that data.

27. Paragraph 27 cites census data, which speaks for itself. The Congressmen deny the allegations to the extent they are inconsistent with that data.

Further, to the extent that Paragraph 27 intends to allege a legal conclusion, no response is required; however, if a response is required, the Congressmen deny the allegations. Finally, the Congressmen deny all other allegations in Paragraph 27.

28. Paragraph 28 cites census data, which speaks for itself. The Congressmen deny the allegations to the extent they are inconsistent with that data.

29. Paragraph 29 cites census data, which speaks for itself. The Congressmen deny the allegations to the extent they are inconsistent with that data.

30. Paragraph 30 sets forth legal conclusions for which no response is required; however, if a response is required, the Congressmen deny that the *Hunter* Plaintiffs have any cognizable harm that is redressable by a federal court, given that redistricting is the primary duty and responsibility of the State, which includes the state courts.

31. Paragraph 31 cites case law, which speaks for itself. The Congressmen deny the allegations to the extent they are inconsistent with that case law. Further, the Congressmen admit that the Wisconsin Constitution vests the Legislature with redistricting responsibility. Wis. Const. art. IV, § 3. Additionally, the Congressmen admit 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. Finally, the Congressmen deny all other allegations in Paragraph 31.

32. The Congressmen admit that federal courts have adjudicated certain of Wisconsin's redistricting maps in the past. Further, the Congressmen admit 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. Finally, the Congressmen deny all other allegations in Paragraph 32.

33. The Congressmen admit that Wisconsin has entered a new decennial redistricting cycle. Wis. Const. art. IV, § 3. Upon information and belief, the Congressmen state that the Legislature's redistricting efforts have begun, consistent with the Wisconsin Constitution's vesting of the Legislature with redistricting responsibility. *Id.* Further, the Congressmen admit that Governor Evers has, at times, vetoed legislation passed by the Legislature, although the Congressmen deny the allegations in Paragraph 33 relating to those vetoes to the extent that those allegations are inconsistent with the nature of that vetoed legislation. Additionally, upon information and belief, the Congressmen state that Governor Evers signed state budget legislation for the two-year budget passed in 2019 and the two-year budget passed in 2021. Next, the Congressmen admit that a gubernatorial executive order purports to establish an independent redistricting commission. Wis. Executive Order No. 66 (Jan. 27, 2020). Further, the Congressmen lack knowledge or information to form a belief about the remaining allegations regarding Governor Evers in Paragraph 33, and therefore deny them. However, the Congressmen state that, as evidence by the Governor's creation of an independent redistricting commission, the Governor intends to participate in the adoption of redistricting maps. Additionally, Paragraph 33 cites a news article, which speaks for itself. The Congressmen deny

the allegations to the extent they are inconsistent with that news article. Finally, the Congressmen deny all other allegations in Paragraph 33.

34. Paragraph 34 cites a news article, which speaks for itself. The Congressmen deny the allegations to the extent they are inconsistent with that news article. Further, the Congressmen deny the allegations in Paragraph 34 regarding the nature of the vetoed legislation to the extent that the allegations are inconsistent with the nature of that legislation. Finally, the Congressmen deny all other allegations in Paragraph 34.

35. The Congressmen deny all allegations in Paragraph 35.

36. Paragraph 36 cites a Wisconsin constitutional provision and a Wisconsin statute, which speak for themselves. The Congressmen deny the allegations to the extent they are inconsistent with those sources. Further, the Congressmen lack knowledge or information to form a belief about the remaining allegations in Paragraph 36 and therefore deny them.

37. Paragraph 37 cites a Wisconsin statute and federal case law, which speak for themselves. The Congressmen deny the allegations to the extent they are inconsistent with those sources. Further, the remaining allegations in Paragraph 37 set forth legal conclusions for which no response is required; however, if a response is required, the Congressmen deny the remaining allegations in Paragraph 37.

38. Paragraph 38 sets forth legal conclusions for which no response is required; however, if a response is required, the Congressmen deny that the *Hunter* Plaintiffs have any cognizable harm that is redressable by a federal court, given that

redistricting is the primary duty and responsibility of the State, which includes the state courts.

### COUNT I

39. The Congressmen reallege and reincorporate by reference all prior answers to all prior Paragraphs as though fully set forth herein.

40. Paragraph 40 cites a federal constitutional amendment and case law, which speak for themselves. The Congressmen deny the allegations to the extent they are inconsistent with those sources.

41. Paragraph 41 sets forth legal conclusions for which no response is required; however, if a response is required, the Congressmen deny that the *Hunter* Plaintiffs have any cognizable harm that is redressable by a federal court, given that redistricting is the primary duty and responsibility of the State, which includes the state courts.

42. Paragraph 42 sets forth legal conclusions for which no response is required; however, if a response is required, the Congressmen deny that the *Hunter* Plaintiffs have any cognizable harm that is redressable by a federal court, given that redistricting is the primary duty and responsibility of the State, which includes the state courts.

43. Paragraph 43 sets forth legal conclusions for which no response is required; however, if a response is required, the Congressmen deny that the *Hunter* Plaintiffs have any cognizable harm that is redressable by a federal court, given that

redistricting is the primary duty and responsibility of the State, which includes the state courts.

## COUNT II

44. The Congressmen reallege and reincorporate by reference all prior answers to all prior Paragraphs as though fully set forth herein.

45. Paragraph 45 cites a federal constitutional provision and case law, which speak for themselves. The Congressmen deny the allegations to the extent they are inconsistent with those sources.

46. Paragraph 46 cites a federal constitutional provision and case law, which speak for themselves. The Congressmen deny the allegations to the extent they are inconsistent with those sources.

47. Paragraph 47 cites census data, which speaks for itself. The Congressmen deny the allegations to the extent they are inconsistent with that data.

48. Paragraph 48 sets forth legal conclusions for which no response is required; however, if a response is required, the Congressmen deny that the *Hunter* Plaintiffs have any cognizable harm that is redressable by a federal court, given that redistricting is the primary duty and responsibility of the State, which includes the state courts.

49. Paragraph 49 sets forth legal conclusions for which no response is required; however, if a response is required, the Congressmen deny that the *Hunter* Plaintiffs have any cognizable harm that is redressable by a federal court, given that

redistricting is the primary duty and responsibility of the State, which includes the state courts.

### **COUNT III**

50. The Congressmen reallege and reincorporate by reference all prior answers to all prior Paragraphs as though fully set forth herein.

51. Paragraph 51 cites a federal constitutional amendment and case law, which speak for themselves. The Congressmen deny the allegations to the extent they are inconsistent with those sources.

52. Paragraph 52 cites case law, which speaks for itself. The Congressmen deny the allegations to the extent they are inconsistent with that case law. Further, Paragraph 52 sets forth legal conclusions for which no response is required; however, if a response is required, the Congressmen deny Paragraph 52.

53. The second sentence of Paragraph 53 sets forth legal conclusions for which no response is required; however, if a response is required, the Congressmen deny Paragraph 53. Further, the Congressmen deny all other allegations in Paragraph 53.

54. Paragraph 54 sets forth legal conclusions for which no response is required; however, if a response is required, the Congressmen deny Paragraph 54.

### **RELIEF REQUESTED**

55. The Congressmen deny that the *Hunter* Plaintiffs are entitled to any of the relief that they claim on pages 15 and 16 of their Complaint.

56. The Congressmen deny any allegations not otherwise answered in the prior paragraphs, including any allegations in headings, to the extent such denials are consistent with the Congressmen's prior answers.

### AFFIRMATIVE DEFENSES

In addition to the defenses explained in the Congressmen's simultaneously filed Motion To Dismiss, the Congressmen assert as follows:

1. The *Hunter* Plaintiffs' claims are unripe, meaning that their Complaint does not present a case or controversy as required by Article III of the U.S. Constitution for this Court to exercise jurisdiction.

2. The *Hunter* Plaintiffs lack standing to bring their claims, meaning that their Complaint does not present a case or controversy as required by Article III of the U.S. Constitution for this Court to exercise jurisdiction.

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

4. The *Hunter* Plaintiffs' claims in their Complaint are otherwise not justiciable.

5. The *Hunter* Plaintiffs' Complaint fails to state a claim for which relief can be granted.

6. This Court should dismiss The *Hunter* Plaintiffs' Complaint under *Burford* abstention. *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943); *E & E Hauling v. Forest Preserve District of DuPage Cty.*, 821 F.2d 433 (7th Cir. 1987).

7. The Congressmen reserve the right to identify additional affirmative defenses should this Court postpone or deny in whole or in part the Congressmen's Motion To Dismiss.

WHEREFORE, the Congressmen request that this Court dismiss this action in its entirety and grant the Congressmen such other relief as this Court deems just and proper.

Dated: September 27, 2021

Respectfully Submitted,

/s/ Misha Tseytlin

MISHA TSEYTLIN

*Counsel of Record*

KEVIN M. LEROY

TROUTMAN PEPPER

HAMILTON SANDERS LLP

227 W. Monroe Street, Ste. 3900

Chicago, IL 60606

(608) 999-1240

(312) 759-1939 (fax)

misha.tseytlin@troutman.com

kevin.leroy@troutman.com

*Counsel for Congressmen Glenn  
Grothman, Mike Gallagher, Bryan  
Steil, Tom Tiffany, and Scott  
Fitzgerald*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 27th day of September, 2021, a true and accurate copy of the foregoing was served via the Court's CM/ECF system upon all counsel of record.

/s/ Misha Tseytlin

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MISHA TSEYTLIN  
TROUTMAN PEPPER HAMILTON  
SANDERS LLP  
227 W. Monroe Street  
Suite 3900  
Chicago, IL 60606  
(608) 999-1240  
(312) 759-1939 (fax)  
misha.tseytlin@troutman.com