

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

LISA HUNTER, et al.,

Plaintiffs,

BILLIE JOHNSON, et al.,

Intervenor-Plaintiffs,

v.

Case No. 3:21-CV-512-jdp-ajs-ec

MARGE BOSTELMANN, et al.,

Defendants,

THE WISCONSIN LEGISLATURE,

Intervenor-Defendant,

CONGRESSMAN GLENN GROTHMAN, et al.,

Intervenor-Defendants,

GOVERNOR TONY EVERS,

Intervenor-Defendant.

BLACK LEADERS ORGANIZING FOR
COMMUNITIES, et al.,

Plaintiffs,

v.

Case No. 3:21-CV-534-jdp-ajs-ec

MARGE BOSTELMANN, et al.,

Defendants,

THE WISCONSIN LEGISLATURE,
Intervenor-Defendant,

**ANSWER OF DEFENDANTS TO COMPLAINT OF
JOHNSON INTERVENOR-PLAINTIFFS**

Defendants 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 (collectively, the “Defendants”), answering the Complaint of Intervenor-Plaintiffs filed in the above consolidated matters by Billie Johnson, Eric O’Keefe, Ed Perkins, and Ronald Zahn (collectively, the “Johnson Intervenor-Plaintiffs”), hereby ADMIT, DENY, and ALLEGE as follows:

INTRODUCTION

1. The results of the 2020 census make clear what everyone knew would occur. Based on population increases and decreases in different geographic areas, the existing apportionment plans for Wisconsin’s Congressional, State Senate and State Assembly seats no longer meet the constitutional requirements summarized in the principle of one person, one vote.

ADMIT that the 2020 census results show population changes in different geographic areas, but otherwise ALLEGE that those census results speak for themselves, and DENY any characterization of them contrary to their express terms. Further ADMIT that the Intervenor-Plaintiffs challenge

Wisconsin's congressional and state legislative districts as unconstitutionally malapportioned. ALLEGE that the United States and Wisconsin Constitutions require that congressional and state legislative districts be reapportioned on the basis of population data obtained in each decennial U.S. census and that Wisconsin's current districts must be reapportioned prior to any future congressional or state legislative election. *See* U.S. Const. art. I, §§ 2, 4; U.S. Const. amend. XIV, § 2; Wis. Const. art. IV, § 3. Further ALLEGE as follows:

- The next general election for congressional and state legislative seats in Wisconsin is scheduled for November 8, 2022.
- The partisan primary for that election is scheduled for August 9, 2022.
- The period for candidates to circulate nominating petitions for the November 8, 2022, election will begin on April 15, 2022.
- In order for staff of the Wisconsin Elections Commission to be able to timely and effectively administer the November 8, 2022, election—including the nominating petition circulation process starting on April 15, 2022—a new congressional and state legislative district plan needs to be in place no later than March 1, 2022—without regard to whether that plan is established by the Legislature and the Governor or by a court.

In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required. In the alternative, to the extent a response may be required, ALLEGE that the Wisconsin Elections Commission has no legal authority to create or alter district boundaries and that the Johnson Intervenor-Plaintiffs have not alleged any actual or imminent

violation of the United States or Wisconsin Constitutions by any of the Defendants.

2. Such cases involve a denial of voting rights under the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution as well as Article I, Section 2 of the U.S. Constitution.

ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required. In the alternative, to the extent a response may be required, ALLEGE that the Wisconsin Elections Commission has no legal authority to create or alter district boundaries and that the Johnson Intervenor-Plaintiffs have not alleged any actual or imminent violation of the United States or Wisconsin Constitutions by any of the Defendants.

3. The Intervenor-Plaintiffs have already asserted a claim under the Wisconsin Constitution in a Petition for an Original Action filed with the Wisconsin Supreme Court on August 23, 2021. As set forth below and in an accompanying Motion to Stay Proceedings, the Intervenor-Plaintiffs request that this Court stay this action under *Grove v. Emison*, 507 U.S. 25, 34 (1993). For purposes of this case, the Intervenor-Plaintiffs assert claims under the Fourteenth Amendment and Article I, Section 2 of the U.S. Constitution.

ADMIT that the Johnson Intervenor-Plaintiffs have filed an original action petition with the Wisconsin Supreme Court and ALLEGE that the Wisconsin Supreme Court granted that petition on September 23, 2021. ADMIT that the state court petition asserts a redistricting claim under the Wisconsin Constitution, while the complaint here asserts claims under both

the United States and Wisconsin Constitutions. ADMIT that the Johnson Intervenor-Plaintiffs have asked the Court to stay this action.

4. The Intervenor-Plaintiffs, among many others, now live in certain state and congressional voting districts that have many more people than live in other districts and, as a result, have a diluted vote relative to the votes of others who live in less populated districts.

ADMIT that the Intervenor-Plaintiffs live in state and congressional voting districts in Wisconsin, and that population changes have occurred in various districts since the 2010 census. LACK knowledge or information sufficient to form a belief as to the truth of any other factual allegations or characterizations in the paragraph, and thus DENY. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

5. That situation requires that a new apportionment plan with new maps be adopted to replace the election districts currently set forth in Wis. Stat. §§ 3.11- 3.18 (for the congressional districts) and §§ 4.01-4.99 (for the state assembly districts) and § 4.009 (for the state senate districts).

ALLEGE that the United States and Wisconsin Constitutions require that congressional and state legislative districts be reapportioned on the basis of the 2020 census data prior to any future congressional or state legislative election. *See* U.S. Const. art. I, §§ 2, 4; U.S. Const. amend. XIV, § 2; Wis. Const. art. IV, § 3. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

6. The Wisconsin Legislature first received the information from the U.S. Census Bureau necessary to draw new maps only two weeks ago.

ALLEGE that the 2020 U.S. census data was delivered to Wisconsin officials on August 12, 2021.

7. Under *Arrington v. Elections Bd.*, 173 F. Supp. 2d 856, 860 (E.D. Wis. 2001), this lawsuit is already ripe, although the Legislature may yet draw, and the Governor may yet approve, maps that redress the Intervenor-Plaintiffs' injury.

ADMIT that the Legislature and Governor still may enact a new district plan without court intervention. ALLEGE that the court decision referred to in this paragraph speaks for itself, and DENY any characterization of it contrary to its express terms. In all other respects, ALLEGE that the paragraph contains only legal conclusions to which no responsive pleading is required.

8. But the U.S. Constitution directly endows the States with the primary duty to redraw their congressional districts. U.S. Const. art. I, § 4 ("The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof[.]")

ALLEGE that the constitutional provision referred to in this paragraph speaks for itself, and DENY any characterization of it contrary to its express

terms. In all other respects, ALLEGE that the paragraph contains only legal conclusions to which no responsive pleading is required.

Further ALLEGE that, in addition to the powers and duties of state officials and state courts, federal courts have the power to ensure that congressional and state legislative districts are lawfully reapportioned on the basis of the 2020 census data prior to any future congressional or state legislative election.

9. And, although the federal and state courts have concurrent jurisdiction to decide redistricting matters, the U.S. Supreme Court has made it clear that the states' role is primary. *Grove v. Emison*, 507 U.S. 25, 34 (1993).

ADMIT that federal and state courts have concurrent jurisdiction to decide redistricting matters. ALLEGE that the court decision referred to in this paragraph speaks for itself, and DENY any characterization of it contrary to its express terms. In all other respects, ALLEGE that the paragraph contains only legal conclusions to which no responsive pleading is required.

10. Moreover, redistricting is a state matter both with respect to the legislative function and the judicial function and here the Wisconsin Legislature has not yet had a chance to act and the Intervenor-Plaintiffs have already asked the Wisconsin Supreme Court to handle the judicial function, if such a function becomes necessary. Thus, while this action is ripe in this Court, this Court should stay any action herein until the Legislature has the opportunity to adopt a constitutionally adequate apportionment plan and the Wisconsin courts have ruled on any remaining dispute.

ADMIT that the Legislature and Governor still may enact a new district plan without court intervention and that the Wisconsin Supreme Court has accepted an original action petition asserting a redistricting claim under the Wisconsin Constitution. In all other respects, ALLEGE that the paragraph contains only legal conclusions to which no responsive pleading is required.

Further ALLEGE that, in addition to the powers and duties of state officials and state courts, federal courts have the power to ensure that congressional and state legislative districts are lawfully reapportioned on the basis of the 2020 census data prior to any future congressional or state legislative election.

JURISDICTION AND VENUE

11. This is an action under 42 U.S.C. § 1983 asserting violations of the Fourteenth Amendment to the U.S. Constitution and Article I, Section 2 of the U.S. Constitution.

ADMIT.

12. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required. Further ALLEGE that the statutes referred to in the paragraph speak for themselves, and DENY any characterization of them contrary to their express terms.

13. Venue is proper under 28 U.S.C. § 1391(b)(1)-(2).

ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required. Further ALLEGE that the statute referred to in the paragraph speaks for itself, and DENY any characterization of it contrary to its express terms.

PARTIES

14. The Plaintiffs, Lisa Hunter, Jacob Zabel, Jennifer Oh, John Persa, Geraldine Schertz, and Kathleen Qualheim, are all Wisconsin voters.

ADMIT.

15. The Intervenor-Plaintiffs are likewise Wisconsin voters who live in malapportioned districts. Each of the districts the Intervenor-Plaintiffs live in fail the one person, one vote constitutional standard, under which population equality across districts ensures that each Wisconsinite's vote counts equally.

ADMIT that the Intervenor-Plaintiffs are Wisconsin voters. LACK knowledge or information sufficient to form a belief as to the truth of any other factual allegations or characterizations in this paragraph, and thus DENY. In

all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

16. Intervenor-Plaintiff Billie Johnson resides at 2313 Ravenswood Road, Madison, Wisconsin 53711, in the Second Congressional District, State Assembly District 78, and State Senate District 26. Because of the latest reapportionment count, Intervenor-Plaintiff Johnson's vote is unconstitutionally diluted, counting less than if he lived in a different district.

ADMIT the allegations in the first sentence of this paragraph. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

17. Intervenor-Plaintiff Eric O'Keefe resides at 5367 County Road C, Spring Green, Wisconsin 53588, in the Second Congressional District, State Assembly District 51, and State Senate District 17. Because of the latest reapportionment count, Intervenor-Plaintiff O'Keefe's vote is unconstitutionally diluted, counting less than if he lived in a different district.

ADMIT the allegations in the first sentence of this paragraph. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

18. Intervenor-Plaintiff Ed Perkins resides at 4486 N. Whitehawk Drive, Grand Chute, Wisconsin 54913, in the Eighth Congressional District, State Assembly District 56, and State Senate District 19. Because of the latest reapportionment count, Intervenor-Plaintiff Perkins' vote is unconstitutionally diluted, counting less than if he lived in a different district.

ADMIT the allegations in the first sentence of this paragraph. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

19. Intervenor-Plaintiff Ronald Zahn resides at 287 Royal Saint Pats Drive, Wrightstown, Wisconsin 54180, in the Eighth Congressional District, State Assembly District 2, and State Senate District 1. Because of the latest reapportionment count, Intervenor-Plaintiff Zahn's vote is unconstitutionally diluted, counting less than if he lived in a different district.

ADMIT the allegations in the first sentence of this paragraph. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

20. Respondent Wisconsin Elections Commission ("WEC") is a governmental agency created under Wis. Stat. § 5.05 and charged with the responsibility for the administration of Chapters 5 and 6 of the Wisconsin Statutes and other laws relating to elections and election campaigns, other than laws relating to campaign financing. WEC has its offices and principal place of business at 212 E. Washington Avenue, 3rd Floor, Madison, Wisconsin 53703.

ADMIT the factual allegations in this paragraph, except DENY that the Johnson Intervenor-Plaintiffs have separately named the Wisconsin Elections Commission as a defendant in their complaint.

21. Respondents Marge Bostelmann, Julie Glancey, Ann Jacobs, Dean Knudson, Robert Spindell, and Mark Thomsen are commissioners of WEC. The WEC Commissioners are sued solely in their official capacities.

ADMIT.

STATEMENT OF FACTS

22. There must be population equality across districts under the command of the “one person, one vote” principle. The standard for population equality for congressional districts is quite strict. States must draw congressional districts with populations as close to perfect equality as possible. *Evenwel v. Abbott*, ___ U.S. ___, 136 S. Ct. 1120, 1124 (2016). Any deviation from complete equality must be minor and must be justified by some consistent state policy. *See id.*

ALLEGE that the court decision referred to in this paragraph speaks for itself, and DENY any characterization of it contrary to its express terms. In all other respects, ALLEGE that the paragraph contains only legal conclusions to which no responsive pleading is required.

23. For example, in 2011, when the Legislature drew the existing maps for congressional districts it “apportion[ed] the 2010 census population of the state of Wisconsin perfectly.” *Baldus v. Members of Wisconsin Gov’t Accountability Bd.*, 849 F. Supp. 2d 840, 853 (E.D. Wis. 2012).

ALLEGE that the court decision referred to in this paragraph speaks for itself, and DENY any characterization of it contrary to its express terms. In all other respects, ALLEGE that the paragraph contains only legal conclusions to which no responsive pleading is required.

24. The report from the Legislative Reference Bureau on the proposed bill adopting the existing 2011 congressional maps stated that the population in Congressional Districts 3, 4, 5, 6, 7, and 8 was 710,873 and in Congressional Districts 1 and 2 was 710,874—a difference of one voter.

ALLEGE that the report referred to in this paragraph speaks for itself, and DENY any characterization of it contrary to its express terms.

25. Indeed, except for a dispute regarding whether Hispanics in the Milwaukee area were entitled to one majority Hispanic assembly district or two minority influenced assembly districts (which dispute was ultimately resolved), the existing congressional, state senate and state assembly maps now contained in Wis. Stat. §§ 3.11-3.18 (for the congressional districts) and §§ 4.01-4.99 (for the state assembly districts) and § 4.009 (for the state senate districts), were held to meet all of the traditional redistricting criteria including equality of population. *Baldus*, 849 F. Supp. 2d 840.

ALLEGE that the court decision referred to in this paragraph speaks for itself, and DENY any characterization of it contrary to its express terms.

26. On August 12, 2021, the United States Census Bureau delivered apportionment counts to the President and to the states based upon the 2020 census.

Admit that 2020 U.S. census data was delivered to Wisconsin officials on August 12, 2021. LACK knowledge or information sufficient to form a belief as to the truth of any other allegations or characterizations in this paragraph, and thus DENY.

27. From 2010 to 2020, the population of Wisconsin increased from 5,686,986 to 5,893,718.

ALLEGE that the 2010 and 2020 census results speak for themselves, and DENY any characterization of them contrary to their express terms.

28. Because there are eight Wisconsin congressional districts, the ideal population of each district is 736,715.

ADMIT that Wisconsin currently has eight congressional districts. Otherwise ALLEGE that the 2020 census results speak for themselves, and DENY any characterization of them contrary to their express terms.

29. However, the apportionment counts establish the following with respect to the populations now contained in each of the eight Wisconsin congressional districts:

1st Congressional District – 727,452

2nd Congressional District – 789,393

3rd Congressional District – 733,584

4th Congressional District – 695,395

5th Congressional District – 735,571

6th Congressional District – 727,774

7th Congressional District – 732,582

8th Congressional District – 751,967

ALLEGE that the 2020 census results speak for themselves, and DENY any characterization of them contrary to their express terms.

30. As a result, there is no longer the required level of equality between the populations in the eight Wisconsin congressional districts needed to meet the constitutional requirement of one person, one vote. The 2nd and 8th Congressional Districts, where the Intervenor-Plaintiffs reside, are overpopulated.

ALLEGE that the 2020 census results speak for themselves, and DENY any characterization of them contrary to their express terms. Further ALLEGE that the United States Constitution requires that congressional districts be reapportioned on the basis of the 2020 census data prior to any future congressional election. *See* U.S. Const. art. I, §§ 2, 4; U.S. Const. amend. XIV, § 2.

In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required. In the alternative, to the extent a response may be required, ALLEGE that the Wisconsin Elections Commission has no legal authority to create or alter district boundaries and that the Johnson Intervenor-Plaintiffs have not alleged any actual or imminent violation of the United States Constitution by any of the Defendants.

31. The data for state legislative redistricting similarly shows that new maps for the state legislative seats are necessary. Given the total population of Wisconsin, the ideal population for each of Wisconsin's 99 assembly districts is 59,533, and the ideal population for each of Wisconsin's 33 senate districts is 178,598.

ALLEGE that the 2020 census results speak for themselves, and DENY any characterization of them contrary to their express terms. Further ALLEGE that the Wisconsin and United States Constitutions require that

state legislative districts be reapportioned on the basis of the 2020 census data prior to any future state legislative election. *See* Wis. Const. art. IV, § 3; U.S. Const. amend. XIV, § 2.

32. Yet the assembly and senate districts in which the Intervenor-Plaintiffs reside are now malapportioned. Assembly District 78 (Johnson – 67,142); Assembly District 51 (O’Keefe – 56,878); Assembly District 56 (Perkins – 64,544); Assembly District 2 (Zahn – 62,564).

ADMIT that the Intervenor-Plaintiffs reside in the indicated districts. ALLEGE that the 2020 census results speak for themselves, and DENY any characterization of them contrary to their express terms. In all other respects, ALLEGE that the paragraph contains only legal conclusions to which no responsive pleading is required.

33. Likewise, the senate districts in which each of the four Intervenor-Plaintiffs reside are now malapportioned: Senate District 26 (Johnson – 201,819); Senate District 17 (O’Keefe – 173,532); Senate District 19 (Perkins – 184,473); Senate District 1 (Zahn – 184,304).

ADMIT that the Intervenor-Plaintiffs reside in the indicated districts. ALLEGE that the 2020 census results speak for themselves, and DENY any characterization of them contrary to their express terms. In all other respects, ALLEGE that the paragraph contains only legal conclusions to which no responsive pleading is required.

34. The Intervenor-Plaintiffs are entitled to new apportionment maps that continue to meet all of the traditional redistricting criteria including equality of population. But the responsibility for achieving this result rests first with the Wisconsin Legislature and then the Wisconsin courts.

In response to the first sentence of this paragraph, ALLEGE that the United States and Wisconsin Constitutions require that congressional and state legislative districts be reapportioned on the basis of the 2020 census data prior to any future congressional or state legislative election. *See* U.S. Const. art. I, §§ 2, 4; U.S. Const. amend. XIV, § 2; Wis. Const. art. IV, § 3. ALLEGE that the remainder of the paragraph contains only legal conclusions to which no responsive pleading is required. Further ALLEGE that, in addition to the powers and duties of state officials and state courts, federal courts have the power to ensure that congressional and state legislative districts are lawfully reapportioned on the basis of the 2020 census data prior to any future congressional or state legislative election.

35. Moreover, in the absence of new constitutional maps approved by the Legislature and the Governor, the Intervenor-Plaintiffs request that any court (whether state or federal) that handles any dispute regarding the new maps apply the principle of making the least number of changes to the existing maps as are necessary to meet the requirement of equal population and the remaining traditional redistricting criteria.

ADMIT that the Johnson Intervenor-Plaintiffs seek the relief described in this paragraph. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

CLAIMS FOR RELIEF

COUNT I – 42 U.S.C. § 1983 – Violation of the Fourteenth Amendment to the U.S. Constitution – Legislative Malapportionment

36. The Intervenor-Plaintiffs reallege and incorporate the preceding allegations of the complaint.

The Defendants incorporate by reference all their other responses as though fully set forth herein.

37. The Equal Protection Clause of the Fourteenth Amendment provides in part that a state shall not “deny to any person within its jurisdiction the equal protection of the laws.”

ADMIT that the referenced constitutional provision includes the quoted language.

38. “[A]s a basic constitutional standard, the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis,” and “an individual’s right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State.” *Reynolds v. Sims*, 377 U.S. 533, 568 (1964).

ALLEGE that the constitutional provision and court decision referred to in this paragraph speak for themselves, and DENY any characterization of them contrary to their express terms. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

39. Due to population shifts, Wisconsin’s legislative districts are no longer constitutionally apportioned, injuring one or more of the

Intervenor-Plaintiffs, and new maps must be drawn before elections may be held.

ADMIT that Wisconsin's population and its distribution have changed during the past decade. ALLEGE that the Wisconsin and United States Constitutions require that state legislative districts be reapportioned on the basis of the 2020 census data prior to any future state legislative election. *See* Wis. Const. art. IV, § 3; U.S. Const. amend. XIV, § 2. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required. In the alternative, to the extent a response may be required, ALLEGE that the Wisconsin Elections Commission has no legal authority to create or alter district boundaries and that the Johnson Intervenor-Plaintiffs have not alleged any actual or imminent violation of the United States or Wisconsin Constitutions by any of the Defendants.

COUNT II – 42 U.S.C. § 1983 – Violation of Article I, Section 2 of the U.S. Constitution – Congressional Malapportionment

40. The Intervenor-Plaintiffs reallege and incorporate the preceding allegations of the complaint.

The Defendants incorporate by reference all their other responses as though fully set forth herein.

41. Under Article I, Section 2 of the United States Constitution, congressional districts must “be apportioned to achieve population equality ‘as nearly as is practicable.’” *Karcher v. Daggett*, 462 U.S. 725 (1983) (quoting *Wesberry v. Sanders*, 376 U.S. 1, 7-8 (1964)).

ALLEGE that the constitutional provision and court decisions referred to in this paragraph speak for themselves, and DENY

42. Due to population shifts, Wisconsin's congressional districts are no longer constitutionally apportioned, injuring one or more of the Intervenor-Plaintiffs, and new maps must be drawn before elections may be held.

ALLEGE that the United States Constitution requires that Congressional districts be reapportioned on the basis of the 2020 census data prior to any future state legislative election. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required. In the alternative, to the extent a response may be required, ALLEGE that the Wisconsin Elections Commission has no legal authority to create or alter district boundaries and that the Johnson Intervenor-Plaintiffs have not alleged any actual or imminent violation of the United States Constitution by any of the Defendants.

PRAYER FOR RELIEF

In response to the Johnson Intervenor-Plaintiffs' prayer for relief, the Defendants ALLEGE as follows:

- The United States and Wisconsin Constitutions require that Wisconsin's congressional and state legislative districts be reapportioned on the basis of the 2020 census data prior to any future congressional or state legislative election.
- Without regard to whether a new congressional and state legislative district plan is established by the Legislature and the

Governor or by a court, such a plan needs to be in place no later than March 1, 2022, in order to enable staff of the Wisconsin Elections Commission to timely and effectively administer Wisconsin's next congressional and state legislative election.

- In light of the fact that 2020 census data was not delivered to Wisconsin officials until August 12, 2021, and in light of the current partisan divisions between the Wisconsin Legislature and the Governor, there is a meaningful possibility that the Legislature and the Governor will not be able to put a new district plan in place by March 1, 2022, without involvement of a court.
- The Wisconsin Elections Commission has no legal authority to create or alter district boundaries and the Johnson Intervenor-Plaintiffs have not alleged any actual or imminent violation of the United States or Wisconsin Constitutions by any of the Defendants. The defendants thus are not liable for costs, disbursements, or attorney's fees.
- Injunctive relief against the Defendants is not necessary or appropriate at the present time because, under Wisconsin's election statutes, the Wisconsin Elections Commission will not be called upon to apply congressional or state legislative district maps in a way that impact the interests of voters or candidates until April 15, 2022, when the period begins for candidates to circulate nominating petitions for the general election on November 8, 2022.

DEFENSES

1. Defendants reserve the right to later contest the standing, under U.S. Const. art. III, of any intervening parties should it be relevant to the Court's jurisdiction.

WHEREFORE, the Defendants respectfully ask the Court to issue such orders as it deems just and proper to ensure that a new congressional and state legislative district plan for Wisconsin is in place no later than March 1, 2022.

Dated at Madison, Wisconsin this 7th day of October 2021.

Respectfully submitted,

ERIC J. WILSON
Deputy Attorney General of Wisconsin

Electronically signed by:

s/ Steven C. Kilpatrick
STEVEN C. KILPATRICK
Assistant Attorney General
State Bar #1025452

THOMAS C. BELLAVIA
Assistant Attorney General
State Bar #1030182

KARLA Z. KECKHAVER
Assistant Attorney General
State Bar #1028242

Attorneys for Defendants

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-1792 (SCK)
(608) 266-8690 (TCB)
(608) 264-6365 (KZK)
(608) 294-2907 (Fax)
kilpatricksc@doj.state.wi.us
bellaviatc@doj.state.wi.us
keckhaverkz@doj.state.wi.us