

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

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

Plaintiffs,

and

21-cv-512-jdp-ajs-ee

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,

and

WISCONSIN LEGISLATURE,

Intervenor-Defendant,

and

CONGRESSMEN GLENN GROTHMAN, MIKE
GALLAGHER, BRYAN STEIL, TOM TIFFANY, and
SCOTT FITZGERALD,

Intervenor-Defendants,

and

GOVERNOR TONY EVERS

Intervenor-Defendant.

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.,

21-cv-534-jdp-ajs-ee

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.

BLOC PLAINTIFFS' STATEMENT ON DISMISSAL

On March 4, this Court directed the parties to state their positions on whether these consolidated cases should be dismissed in light of the Wisconsin Supreme Court's order adopting new state legislative and congressional maps. Dkt. 119.¹ The BLOC Plaintiffs oppose dismissal at this stage due to ongoing attempts by parties to this litigation, including the Wisconsin Legislature, Billie Johnson, Eric O'Keefe, Ed Perkins, Ronald Zahn, and the Congressmen, to invalidate the maps adopted by the Wisconsin Supreme Court and to restore the malapportioned maps that gave rise to this action or, alternatively, to saddle Wisconsin with maps that violate Section 2 of the Voting Rights Act. Since this Court's March 4 order, those same parties have asked both the Wisconsin Supreme Court and the U.S. Supreme Court to stay the Wisconsin Supreme Court's order remedying the malapportionment—a request that, if granted, would return Wisconsin to the situation that precipitated this litigation over six months ago. *Johnson v. Wis. Elections Comm'n*, No. 2021-AP-1450-OA (March 4, 2022) (expedited motion by Wisconsin Legislature for a stay); *Wis. Legislature, et al., v. Wis. Elections Comm'n, et al.*, No. 21A471 (March 7, 2022) (emergency application by Wisconsin Legislature and Johnson plaintiffs for stay of state legislative maps and

¹ All citations to the docket refer to entries for Case No. 21-cv-512 unless otherwise indicated.

injunctive relief and alternative petition for writ of certiorari and summary reversal).² BLOC Plaintiffs respectfully request this Court not dismiss this case until the Wisconsin and U.S. Supreme Courts have resolved the pending motions.

The Legislature and Johnson Plaintiffs ask the U.S. Supreme Court to stay the state court's decision implementing maps that comply with state and federal law, even though Wisconsin *has already begun* the process of administering the 2022 legislative elections based on these new districts. *See Grothman, et al., v. Wis. Elections Comm'n, et al.*, No. 21A490 (March 9, 2022), Resp. of Wisconsin Elections Commission (WEC), 3 ("work began promptly after the state supreme court's March 3 decision")³; Answer of Defendants WEC, *Hunter* Dkt. 41 at 2 (describing March 1, 2022 as the date maps must be in place to administer the 2022 elections). They propose that the U.S. Supreme Court issue an order enjoining the Wisconsin Supreme Court's districts from taking effect, and instead mandating one of three remedial options: (1) requiring the WEC and thousands of local clerks to prepare for elections using the *old* malapportioned districts that all parties agree are unconstitutional; (2) summarily imposing the Legislature's proposed maps—rejected by both the political process and the Wisconsin Supreme Court—pending appeal; or (3) putting in place some other process for selecting maps at this late juncture. *Wis. Legislature*, Mot. For Stay by Legislature, 3, 4-5.

Were the Wisconsin Supreme Court or the U.S. Supreme Court to grant the temporary relief the Legislature requests, BLOC Plaintiffs may continue to have live claims before this Court. If the

² The application also identifies the consolidated cases here as related cases. App. at ii. The application is available at: http://www.supremecourt.gov/DocketPDF/21/21A471/217802/20220307100303897_Wisconsin%20Legislature%20v.%20Bostelmann%20Application.pdf. The Congressmen filed a similar motion regarding Wisconsin's new congressional maps. *See Grothman, et al., v. Wis. Elections Comm'n, et al.*, No. 21A490 (March 9, 2022). Available at: <https://www.supremecourt.gov/docket/docketfiles/html/public/21a490.html>. BLOC Plaintiffs address only the state legislative maps here, since their claims did not involve a challenge to the congressional maps.

³ Available at: http://www.supremecourt.gov/DocketPDF/21/21A490/218548/20220314204644927_Grothman%20WEC%20Response%20to%20Congressmens%20Stay%20Motion.pdf

Wisconsin Supreme Court stays its decision, effectively erasing the new maps it just adopted, the BLOC Plaintiffs' pending malapportionment claims would remain unresolved. Similarly, an order from the U.S. Supreme Court temporarily imposing the Legislature's rejected maps could result in the same type of Voting Rights Act Section 2 violations that form the basis of BLOC Plaintiffs' amended complaint here. Dkt. 74. Given those potential outcomes, dismissal of this action is premature.

This Court need not retain jurisdiction indefinitely. In all likelihood, the emergency motions before the Wisconsin Supreme Court and U.S. Supreme Court will be resolved in a matter of weeks. While neither Court is bound to a specific timeframe, both are aware of the ongoing and impending nature of Wisconsin's election preparations and, as of this week, the pending motions are fully briefed and ripe for ruling. The parties could provide this Court with a status update or updated position statements in two weeks. If the pending motions remain unresolved at that time, the Court could revisit the timing issue then.

Until the Legislature's emergency applications to the Wisconsin Supreme Court and the U.S. Supreme Court are resolved, dismissing this action would be inappropriate and could prejudice BLOC Plaintiffs' ability "to secure the just, speedy, and inexpensive determination" of the federal claims they brought in this action nearly seven months ago. Fed. R. Civ. P. 1. Therefore, BLOC Plaintiffs request that this Court set a new date seeking the parties' positions on dismissal, two weeks from today's date.

Dated: March 18, 2022.

Respectfully submitted,

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