

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-ec

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-ec

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' UPDATED POSITION ON DISMISSAL

On March 21, this Court declined to dismiss these consolidated cases due to the ongoing attempts to appeal the Wisconsin Supreme Court's March 3, 2022, Opinion and Order apportioning new state legislative and congressional districts following the 2020 Census. Dkt. 127.¹ The United States Supreme Court has now acted, *Wis. Legislature, et al. v. Wis. Elections Comm'n, et al.*, 595 U.S. ___ at 2 (2022) (per curiam), reversing and remanding the state legislative maps adopted by the Wisconsin Supreme Court to remedy the unconstitutional malapportionment of those districts. Because of this reversal, BLOC Plaintiffs' malapportionment claims pending before this Court remain unresolved.² Dismissal at this time would therefore be inappropriate.

It is now nearly a month past the deadline the Wisconsin Elections Commission (WEC) identified at the outset of this litigation for new maps to be finalized. Dkt. 41 at 2. The U.S. Supreme Court has instructed that time remains for the Wisconsin Supreme Court to resolve the issues identified and once again adopt state legislative maps ahead of the looming elections. *Wis. Legislature*, 595 U.S. ___ at 2. While the Wisconsin Supreme Court may act with necessary

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

² BLOC Plaintiffs do not assert claims related to Wisconsin's congressional maps in this litigation, and therefore take no position on dismissal with regard to those claims.

expediency, the current state legislative maps are *equally malapportioned as at the outset of this litigation*, and just as constitutionally infirm. The Wisconsin Supreme Court has not yet indicated how it will proceed on remand, and the statutory date for the commencement of the collection of nomination signatures for candidates seeking election in state legislative districts is little more than two weeks away. *See* Wis. Stat. §8.15(1) (setting April 15 as the first day for circulation of nomination papers). This Court must, at least for a short time longer, “stand by to draw the maps—should it become necessary.” Dkt. 103.

Further, even if the Wisconsin Supreme Court acts immediately to remedy the malapportionment, these consolidated cases may not be fully resolved. Should the Wisconsin Supreme Court grant the Legislature’s request, Letter Br. of Legislature, March 24, 2022, *Johnson v. Wis. Elections Comm’n*, 21-AP-1450-OA, to now adopt their rejected maps, this would result in the same type of Voting Rights Act Section 2 violations that form the basis of BLOC Plaintiffs’ amended complaint here. Dkt. 74. Once again, action by this Court may be necessary.

The Court need not retain jurisdiction indefinitely. It is possible that the Wisconsin Supreme Court issues a new opinion—adopting Governor Evers’s proposed maps again, or others—in a matter of days or weeks that resolves both the malapportionment and Section 2 claims. But until and unless the now-ongoing malapportionment is resolved by the Wisconsin Supreme Court, 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 oppose dismissal at this stage and request that this Court set a new date seeking the parties’ positions on dismissal, two weeks from today’s date.

Dated: March 28, 2022.

Respectfully submitted,

By: /s/ Douglas M. Poland
Douglas M. Poland, SBN 1055189

Jeffrey A. Mandell, SBN 1100406
Colin T. Roth, SBN 1103985
Rachel E. Snyder, SBN 1090427
Richard A. Manthe, SBN 1099199
Carly Gerads, SBN 1106808
STAFFORD ROSENBAUM LLP
222 West Washington Avenue, Suite 900
Madison, Wisconsin 53701-1784
dpoland@staffordlaw.com
jmandell@staffordlaw.com
croth@staffordlaw.com
rsnyder@staffordlaw.com
rmanthe@staffordlaw.com
cgerads@staffordlaw.com
608.256.0226

Mel Barnes, SBN 1096012
LAW FORWARD, INC.
P.O. Box 326
Madison, Wisconsin 53703-0326
mbarnes@lawforward.org
608.535.9808

Mark P. Gaber
Christopher Lamar
Simone Leeper
CAMPAIGN LEGAL CENTER
1101 14th St. NW Suite 400
Washington, DC 20005
mgaber@campaignlegalcenter.org
clamar@campaignlegalcenter.org
sleeper@campaignlegalcenter.org
202.736.2200

Annabelle Harless
CAMPAIGN LEGAL CENTER
55 W. Monroe St., Ste. 1925
Chicago, Illinois 60603
aharless@campaignlegalcenter.org
202.736.2200

Attorneys for BLOC Plaintiffs