

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-eec

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

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.

RESPONSE TO *JOHNSON* INTERVENOR-PLAINTIFFS' RENEWED MOTION TO STAY BY THE WISCONSIN LEGISLATURE

The *Johnson* plaintiffs have renewed their motion to stay these federal proceedings in light of the Wisconsin Supreme Court's order granting the *Johnson* plaintiffs' petition for original review in that court. *See* Dkt. 79, Second Mot. to Stay. This Court has invited the parties to file responses to that motion. *See* Dkt. 80, Order.

For the reasons set forth in the Legislature's motions to dismiss, there is no Article III jurisdiction. The suits should be dismissed altogether, not merely stayed unless and until they become ripe. *See* Dkt. 81, Notice; Dkt. 82, Notice. There is no jurisdiction, for example, to conduct a status conference next month to check in on the Wisconsin Supreme Court proceedings, as the stay motion suggests. *See* Dkt. 79 at 4 n.1. That sort of ongoing federal oversight would be problematic in any redistricting proceeding, where the State's (and state court's) role is primary. *See Grove v. Emison*, 507 U.S. 23, 37 (1993). It is all the more problematic here, where there is no Article III basis empowering the Court to intercede. Speculation about what might not occur with ongoing legislative and judicial

proceedings is not evidence that the state will fail to timely redistrict.

The Wisconsin Legislature therefore respectfully requests that the Court resolve plaintiffs' motion by dismissing the federal proceedings altogether. *See* Fed. R. Civ. P. 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.").

Dated: October 1, 2021

Respectfully submitted,

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** Licensed in Illinois & D.C.; supervised by principals of the firm
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CERTIFICATE OF SERVICE

I hereby certify that on October 1, 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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