

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.

No. 3:21-cv-00512-jdp-ajs-ec

BLACK LEADERS ORGANIZING FOR COMMUNITIES, VOCES DE LA FRONTERA, THE LEAGUE OF WOMEN VOTERS OF 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.

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

THE WISCONSIN LEGISLATURE'S POSITION ON DISMISSAL

This Court has requested all parties to state their positions about whether these consolidated federal cases ought to be dismissed in light of the recent opinion and order from the Wisconsin Supreme Court.

The federal complaints should be dismissed. All Plaintiffs in the federal and state cases asked for an injunction against the existing 2011 districts and revised district lines based on the 2020 Census data. *See* Hunter Compl., Dkt. 1 at 15-16; BLOC Am. Compl., *BLOC v. Spindell*, No. 3:21-cv-534, ECF 44 at 34-35; Johnson Pet'n ¶47, *Johnson v. Wisconsin Elections Comm'n*, No. 2021AP1450-OA. With litigation in the state court underway, this Court temporarily stayed proceedings in the federal cases, and the stay was extended. *See* Dkt. 103, 114, 115, 116.

The Wisconsin Supreme Court has now enjoined those existing legislative districts. *See Johnson v. Wis. Elections Comm'n*, ___ N.W.2d ___, 2022 WL 621082, at *11 (Wis. 2022). In their place, the

court ordered new district lines adjusted for the 2020 Census data. *Id.* The Johnson Plaintiff-Intervenors and the Wisconsin Legislature have sought emergency relief from the United States Supreme Court with respect to the legality of the new district lines. *See Wis. Legis. v. Wis. Elections Comm'n* (U.S. Supreme Court No. 21A471). Their application for emergency relief also asks the Court to construe the application as a petition for writ of certiorari and summarily reverse the state supreme court's order as contrary to the Supreme Court's Voting Rights Act and Equal Protection Clause precedents.

However the Supreme Court resolves the pending application, there is nothing further for the parties to litigate in these related federal cases. The opinion and order by the Wisconsin Supreme Court brings these federal proceedings to an end. The Hunter and BLOC Plaintiffs appear to disagree. *See* Dkt. 122, 124. Among other problems, their arguments are contrary to basic principles of preclusion and federal jurisdiction. Only the United States Supreme Court can exercise appellate jurisdiction over a state-court decision. *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923) (“[T]heir [state-court] decision, whether right or wrong, was an exercise of jurisdiction....[N]o court of the United States other than this Court[, the Supreme Court,] could entertain a proceeding to reverse or modify the judgment for errors of that character. To do so would be an exercise of appellate jurisdiction. The jurisdiction possessed by the District Courts is strictly original.”); *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 476 (1983). Dismissal of these federal complaints, all of which relate to the same districts before the Wisconsin Supreme Court and now the United States Supreme Court, is appropriate.

Dated: March 18, 2022

Respectfully submitted,

/s/ Kevin M. St. John

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CERTIFICATE OF SERVICE

I hereby certify that on March 18, 2022, 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.

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