

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 RESPONSE REGARDING DISMISSAL

This Court has requested all parties to update their positions about whether these consolidated federal cases ought to be dismissed in light of the recent opinion and order from the United States Supreme Court. Dkt. 127. As this Court correctly forecasted, *id.*, at this stage of the proceedings, there is no authority to establish legislative or congressional maps in light of the intervening rulings by the Wisconsin Supreme Court and the United States Supreme Court. The Wisconsin Legislature joins the statement by the Johnson Intervenor-Plaintiffs and agrees that these proceedings should be dismissed for these additional following reasons.

Plaintiffs in these federal cases and in the case pending before the Wisconsin Supreme Court asked for an injunction against the existing 2011 districts and revised district lines in light of the 2020 Census data. 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. Given that all plaintiffs were seeking the same ultimate relief and given that there can be only one set of

legislative and congressional districts in Wisconsin, this Court deferred to the state-court proceedings. See Dkt. 103, 114, 115, 116, 127; see *Grove v. Emison*, 507 U.S. 25, 35 (1993).

The Wisconsin Supreme Court enjoined the existing legislative districts—the relief all plaintiffs here have asked for. 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 Intervenor-Plaintiffs and the Legislature successfully appealed the legality of the replacement districts—districts that reduce the minority voting population in Wisconsin’s existing majority-minority districts to exactly 50 percent Black voting-age population—to the United States Supreme Court. In a *per curiam* opinion, the United States Supreme Court summarily reversed the Wisconsin Supreme Court’s opinion for failure to justify the race-based replacement districts. *Wis. Legislature v. Wis. Elections Comm’n*, 595 U.S. ___ (2022) (slip op. at 7). And the United States Supreme Court remanded for further proceedings in the Wisconsin Supreme Court. *Id.*

There is no basis for a federal district court to intercede in the final stage of the Wisconsin Supreme Court proceedings. The only court that may sit in review of the Wisconsin Supreme Court is the United States Supreme Court. See *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923); *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 476 (1983). The United States Supreme Court exercised that authority here and remanded for further proceedings in the state supreme court. Immediately thereafter in the state supreme court, parties submitted letter briefs to the state supreme court with various proposals about how it ought to end the proceedings so that all can move ahead with the 2022 primary elections.

If this Court were to intercede now, that would thwart the United States Supreme Court’s appellate jurisdiction and would exceed this Court’s original jurisdiction. The Hunter and BLOC Plaintiffs’ suggestion that these proceedings can continue is contrary to elementary principles of federal jurisdiction and smacks of strategic behavior. Last week, before the Supreme Court’s ruling,

both suggested that these actions could be dismissed if the Supreme Court *rejected* the Johnson Intervenor-Plaintiffs and Legislature's appeal but must continue if the Supreme Court *exercised* its appellate jurisdiction over that appeal. Dkt. 122 at 3-4 (“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.”); Dkt. 124 at 1. In the ordinary case, a litigant does not get to try and re-try claims in different courts until it wins. That is doubly true in this case, where the United States Supreme Court has exercised its jurisdiction over the state court's judgment.

Whatever the Hunter and BLOC Plaintiffs may think of the state court's ultimate judgment, corrected after instructions from the Supreme Court and regarding the very issues they wish to litigate here, “no court of the United States other than [the Supreme Court] could entertain a proceeding to reverse or modify th[at] 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.” *Rooker*, 263 U.S. at 415-16. “[N]o matter how erroneous or unconstitutional the state court judgment may be,” in the eyes of the federal Plaintiffs, “the Supreme Court of the United States is the only federal court that could have jurisdiction to review a state court judgment.” *Taylor v. Fed. Nat. Mortg. Ass'n*, 374 F.3d 529, 532 (7th Cir. 2004); *see also Sykes v. Cook Cty. Cir. Ct. Prob. Div.*, 837 F.3d 736, 742 (7th Cir. 2016) (similar). That jurisdictional bar extends even to new legal arguments against the Wisconsin Supreme Court's decision. “[E]ven federal claims that were not raised in state court...may still be subject to *Rooker-Feldman* if those claims are inextricably intertwined with a state court judgment... [T]he crucial point is whether the district court is essentially being called upon to review the state court decision.” *Jakupovic v. Curran*, 850 F.3d 898, 902 (7th Cir. 2017) (dismissing §1983 claim under *Rooker-Feldman*); *Sykes*, 837 F.3d at 743 (“[W]hen as in this case the injury is executed through a court order, there is no conceivable way to redress the wrong without overturning the order of a state court. *Rooker-Feldman* does not permit such an outcome.”).

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 28, 2022

Jeffrey M. Harris
Taylor A.R. Meehan
CONSOVOY MCCARTHY PLLC
1600 Wilson Boulevard, Suite 700
Arlington, Virginia 22209
703.243.9423
jeff@consovoymccarthy.com
taylor@consovoymccarthy.com

Respectfully submitted,

/s/ Kevin M. St. John

Kevin M. St. John, SBN 1054815
BELL GIFTOS ST. JOHN LLC
5325 Wall Street, Suite 2200
Madison, Wisconsin 53718
608.216.7990
kstjohn@bellgiftos.com

Adam K. Mortara, SBN 1038391
LAWFAIR LLC
125 South Wacker, Suite 300
Chicago, Illinois 60606
773.750.7154
mortara@lawfairllc.com

Counsel for the Wisconsin Legislature

CERTIFICATE OF SERVICE

I hereby certify that on March 28, 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.

/s/ Kevin M. St. John
Kevin M. St. John, SBN 1054815
BELL GIFTOS ST. JOHN LLC
5325 Wall Street, Suite 2200
Madison, Wisconsin 53718
608.216.7990
kstjohn@bellgiftos.com