

**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

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

21-cv-512-jdp-ajs-eec

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, and REBECCA ALWIN,

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, and
MEAGAN WOLFE, in her official capacity as the
administrator of the Wisconsin Elections Commission,

21-cv-534-jdp-ajs-ec

Defendants.

**JOHNSON INTERVENOR-PLAINTIFFS’
UPDATED POSITION ON DISMISSAL**

These consolidated cases challenge those Wisconsin legislative and congressional districts that were current as of August 2021. On March 3, 2022, the Wisconsin Supreme Court issued an opinion and order establishing reapportioned maps based on the 2020 census. *Johnson v. Wisconsin Elections Comm’n*, 2022 WI 14, 400 Wis. 2d 626, 971 N.W.2d 402. However, the Supreme Court of the United States partially reversed that decision on March 23, 2022.

Specifically, while the Supreme Court denied the application filed by the Congressmen Intervenor-Defendants to stay the Wisconsin Supreme Court’s order adopting new congressional maps, *Grothman v. Wisconsin Elections Commission*, No. 21A490, 2022 WL 851726 (U.S. Mar. 23, 2022) (mem.), it construed a separate application to stay the Wisconsin Supreme Court’s order adopting new legislative

maps filed by the Wisconsin Legislature and the Johnson Intervenor-Plaintiffs as a petition for certiorari, granted the petition, summarily reversed the imposition of legislative maps, and remanded for further proceedings. *Wisconsin Legislature v. Wisconsin Elections Comm’n*, No. 21A471, 142 S. Ct. 1245, 1247-48 (2022) (per curiam). In the Court’s view, the Wisconsin Supreme Court “committed legal error in its application of decisions of this Court regarding the relationship between the constitutional guarantee of equal protection and the” Voting Rights Act of 1965 (VRA). *Id.* at 1248. The Court remanded, noting that it was providing the Wisconsin Supreme Court with “sufficient time to adopt maps consistent with the timetable for Wisconsin’s August 9th primary election.” *Id.*

Consistent with the Supreme Court’s order, on April 15, 2022, the Wisconsin Supreme Court issued an opinion adopting a new set of senate and assembly maps comporting with the Supreme Court’s analysis (namely, those maps proposed by Intervenor-Defendant Wisconsin Legislature). *Johnson v. Wisconsin Elections Comm’n*, 2022 WI 19 (2022). The Wisconsin Supreme Court also confirmed that its earlier decision selecting Intervenor-Defendant Governor Tony Evers’ congressional maps remained in place. *Id.* at ¶12 n.2. Not coincidentally, April 15 is the date that candidates seeking to appear on the ballot for the Fall 2022 general election could begin circulating nomination papers, Wis. Stat. § 8.15(1), that is, the “official commencement of the next election season” in Wisconsin. *Jensen v. Wisconsin Elections Bd.*, 2002 WI 13, ¶12, 249 Wis. 2d 706, 639 N.W.2d 537 (per curiam).

For the reasons discussed in the Johnson Intervenor-Plaintiffs’ previous submissions, this case should be dismissed. The Plaintiffs’ standing in this case

was premised on the unconstitutional malapportionment of Wisconsin's previous electoral districts. The basis for the species of deferral discussed in *Grove v. Emison*, in turn, was the possibility that Wisconsin's branches of government would not remedy this malapportionment "in time for the primaries." 507 U.S. 25, 37 (1993).

Wisconsin's malapportioned districts have now been reapportioned in time for the primaries, so the Plaintiffs have no cognizable harm justifying the existence of this case. Should the Plaintiffs wish to seek review of the Wisconsin Supreme Court's newly-selected maps, that review would again occur before the Supreme Court of the United States, as the recent pair of decisions from that Court demonstrates. 28 U.S.C. §1257(a); see *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

These cases should therefore be dismissed.

Dated this 20th day of April, 2022.

Respectfully submitted,

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