

IN THE SUPREME COURT OF WISCONSIN
APPEAL NO. 2021AP1450-OA

BILLIE JOHNSON, et al.,

Petitioners,

v.

WISCONSIN ELECTIONS COMMISSION, et al.,

Respondents.

MOTION TO INTERVENE BY JANET BEWLEY,
STATE SENATE DEMOCRATIC MINORITY LEADER

Proposed Intervenor Janet Bewley, State Senate Democratic Minority Leader, on behalf of the Senate Democratic Caucus ("Senate Democrats"), by their attorneys, Pines Bach LLP, hereby moves the Court for an order pursuant to Wis. Stat. § 803.09(1) or (2) allowing the Senate Democrats to participate as Intervening Respondents in the above-captioned Original Action, and to fully participate in all subsequent proceedings in this Court.

If the Court denies the Senate Democrats' Motion to Intervene, they respectfully request that the Court allow them to participate as *amici*.

As grounds for this motion, the Senate Democrats respectfully represent as follows:

1. The Senate Democrats are the minority caucus in the Wisconsin State Senate. The Senate's majority caucus is comprised of Republicans. The Wisconsin Senate as a whole, and the Wisconsin Assembly together comprise the Wisconsin Legislature. As this Court recognized in its September 22, 2021 Order in this case:

We cannot emphasize strongly enough that our Constitution places primary responsibility for the apportionment of Wisconsin Legislative Districts on the legislature. See Wis. Const. art. IV §§ 3, 4. Redistricting plans must be approved by a majority of both the Senate and Assembly, and are subject to gubernatorial veto. Id.; Wis. Const. art. V, § 10; Zimmerman, 22 Wis. 2d at 558 (recognizing that the legislature must present redistricting legislation to the governor for approval or veto under the Wisconsin Constitution's Presentment Clause; both the governor and the legislature are indispensable parts of the legislative process).

2. The Senate Democrats are vitally interested in this litigation because, as part of the legislature, they are "indispensable parts of the legislative process" of apportionment of Wisconsin Legislative Districts. If this Court is to embark on the task that the Petitioners have asked them to, it is essential that the Senate Democrats have a seat at the table.
3. That the Senate Democrats should be provided a seat at the apportionment table being set by this Court is particularly important because they have been denied the ability to

participate at all in the redistricting process to date. Specifically, although in January 2021 Senate Majority Leader Devin LaMahieu engaged the law firm Bell Giftos St. John LLC (“BGSJ”) ostensibly to “represent the **Wisconsin State Senate**...on matters relating to redistricting during the decennial beginning on January 1, 2021,” (emphasis added) and in December 2020 Senator LaMahieu (as Senate Majority Leader-Elect) also engaged the law firm of Consovoy McCarthy PLLC, in association with Adam Mortara (“Consovoy”), ostensibly to “represent the...**Wisconsin State Senate**...in possible litigation related to decennial redistricting” (emphasis added), the legal counsel provided by those law firms on that topic, paid for by taxpayers represented by Democrats as well as Republicans, has not been shared with Senate Democrats and is restricted from them.¹

4. In fact, the legal representation being provided by BGSJ and Consovoy to the “Wisconsin State Senate” is limited to representation of the interests of the Senate Republican caucus. The engagement agreement with BGSJ explicitly states that the law firm will only “take direction” through Senate

¹ The engagement agreements with those firms are on file with the Court in *Waity v. LeMahieu*, Case No. 2021AP802, in the Appendix to Opening Brief of the Defendants-Appellants-Petitioners, Volume 1, at pages 94-102.

Majority Leader LeMahieu as to its representation of the Wisconsin State Senate. Consequently, while BGSJ has filed an *amicus* brief with this Court, ostensibly on behalf of “the Wisconsin Legislature,” that brief, and any future filings from BGSJ and/or Consovoy, represent only the perspective of the Republican caucuses of the State Senate and Assembly.

5. The nonpartisan Legislative Counsel has repeatedly informed the office of Senate Minority Leader Janet Bewley that the Senate Democrats have no right to access any information about redistricting that the taxpayer-funded law firms have provided to the Republican Legislative leaders.
6. If this Court is to become embroiled in what is in essence a legislative process, it must take into consideration the voices of the full legislature, both minority and majority caucuses, as well as the Governor’s voice and the voices of citizens and citizen interest groups.
7. Wisconsin Statute Section 803.09(1) sets the standard for intervention as of right, providing that a movant shall be permitted to intervene:

[W]hen the movant claims an interest relating to the property or transaction which is the subject of the action and the movant is so situated that the disposition of the action may as a practical matter impair or impede the movant’s ability to protect that interest, unless the movant’s interest is adequately represented by existing parties.

8. Thus, the following four criteria are met by the Senate

Democrats for intervention as of right:

(A) the movant's motion to intervene is timely;

(B) the movant claims an interest sufficiently related to the subject of the action;

(C) disposition of the action may as a practical matter impair or impede the movant's ability to protect that interest; and

(D) the existing parties do not adequately represent the movant's interest.

Helgeland v. Wisconsin Municipalities, 2008 WI 9, ¶ 38, 307 Wis. 2d 1, 745 N.W.2d 1.

9. The analysis is fact specific and requires the Court to "strick[e] a balance between allowing the original parties to a lawsuit to conduct and conclude their own lawsuit and allowing others to join a lawsuit in the interest of the speedy and economical resolution of a controversy without rendering the lawsuit fruitlessly complex or unending." *Id.* at ¶6. The criteria are not reviewed in isolation; rather, "a movant's strong showing with respect to one requirement may contribute to the movant's ability to meet other requirements." *Id.* at ¶39.

10. This motion is timely, as it is filed by the deadline set by the Court's September 22, 2021 Order.

11. The interest that the Senate Democrats have in the disposition of this case is to participate in the inherently legislative process of apportionment; a process that the Constitution

places primary responsibility for in the hands of the full Legislature – not just those in the majority party.

12. The disposition of this Original Action without the Senate Democrats' participation will impede or impair the interests of the Senate Democrats described above in that their voices will be entirely cut out of the process, resulting in a legislative decision that will be (1) not made through the legislative process and (2) made with only Republican members of the Legislature at the table.
13. Finally, the existing parties, four individual voters (Petitioners) and the Wisconsin Elections Commission (Respondents) do not adequately represent the Senate Democrats' interests in that at a basic level, this is a legislative function and they are neither part of the legislature nor the Governor. For that reason, other citizens and citizen groups now in the case as *amici* and expected to seek Intervenor status also cannot adequately represent the Senate Democrats' interests.
14. The State Senate and Assembly Republicans, purporting to appear in this case as "the Wisconsin Legislature," also do not adequately represent the Senate Democrats' interests. Indeed, their behavior thus far, denying Senate Democrats access to taxpayer-funded legal advice and representation on

redistricting from the private law firms, suggests that they are directly in opposition to Senate Democrats' interests.

15. The United States Congressmen, all Republicans, who have thus far appeared as *amici* fail to adequately represent the Senate Democrats' interests for the same reasons as do citizens and State Republican legislators, as discussed above. Like the citizens and citizen groups to whom they liken themselves,² they are not members of the Wisconsin Legislature. And like their State legislative Republican brethren, they presumably will advocate for the interests of the Republican party, not those of the Democratic party.
16. Finally, Governor Tony Evers, who is also anticipated to seek Intervenor status, also does not adequately represent the Senate Democrats' interests. The Governor brings to the redistricting question an Executive Branch perspective, whereas Senate Democrats bring a Legislative Branch perspective.
17. If the Court determines that the criteria for intervention as of right are not fully met, the Court should exercise its discretion and allow the Senate Democrats to intervene on a permissive basis.

² See their September 7, 2021 Brief of Amicus Curiae, pp. 6-7, referencing the "close relations" and "common feelings and interests" they share with citizens of the district from which they were elected to Federal office.

18. Wisconsin Statute Section 803.09(2) sets the standard for permissive intervention, providing that the Court may, in its discretion, allow a party to intervene:

[W]hen a movant's claim or defense and the main action have a question of law or fact in common....In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

19. These criteria are no doubt met, as described above.

Respectfully submitted this 6th day of October 2021.

PINES BACH LLP



Tamara B. Packard, SBN 1023111

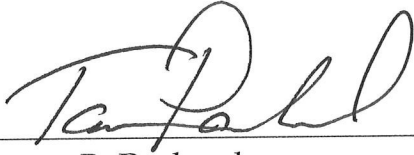
*Attorneys for Proposed Intervenor Janet
Bewley, State Senate Democratic
Minority Leader, on behalf of the State
Democratic Caucus*

Mailing Address:

122 West Washington Ave.
Suite 900
Madison, WI 53703
(608) 251-0101 (telephone)
(608) 251-2883 (facsimile)
tpackard@pinesbach.com

CERTIFICATE OF SERVICE

I hereby certify that pursuant to the Court's September 22, 2021 Order in the above-captioned case, on October 6, 2021 I submitted the foregoing document to the Clerk of the Court for filing via electronic mail at this address: clerk@wicourts.gov. On October 6, 2021, I also caused a paper original and ten (10) copies of this document to be delivered by personal delivery to the Clerk of Court, and caused this document to be served on all counsel of record via electronic mail and U.S. Mail.

A handwritten signature in black ink, appearing to read "Tamara B. Packard", written over a horizontal line.

Tamara B. Packard

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