

No. 21A471

In The
Supreme Court of the United States
March 2022

THE WISCONSIN LEGISLATURE,
BILLIE JOHNSON, ERIC O'KEEFE,
ED PERKINS, and RONALD ZAHN,

Applicants,

v.

MARGE BOSTELMANN in her
official capacity as member of the
WISCONSIN ELECTIONS
COMMISSION, et al.,

Respondents.

ON APPLICATION FOR STAY AND INJUNCTIVE RELIEF AND ALTERNATIVE
PETITION FOR WRIT OF CERTIORARI AND SUMMARY REVERSAL

**RESPONSE OF RESPONDENTS WISCONSIN ELECTIONS COMMISSION
AND ITS MEMBERS TO EMERGENCY APPLICATION FOR STAY AND
INJUNCTIVE RELIEF AND ALTERNATIVE PETITION FOR WRIT OF
CERTIORARI AND SUMMARY REVERSAL**

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INTRODUCTION

Respondents Wisconsin Elections Commission and its members¹ (the “Commission”) take no position on the Emergency Application for Stay and Injunctive Relief and Alternative Petition for Writ of Certiorari and Summary Reversal filed on March 7, 2022, by Applicants the Wisconsin Legislature, Billie Johnson, Eric O’Keefe, Ed Perkins, and Ronald Zahn. Nonetheless, for the reasons below, the Commission respectfully urges this Court to rule on the emergency application no later than March 15, 2022, to enable it to implement new maps for the next election.

ARGUMENT

Wisconsin’s state legislative and congressional districts must be reapportioned on the basis of the 2020 census data prior to any future congressional or state legislative election. *See* U.S. Const., art. I, §§ 2, 4; U.S. Const. amend. XIV, § 2; Wis. Const., art. IV, § 3. In Wisconsin, the next general election for state legislative and congressional seats is November 8, 2022, *see* Wis. Stat. § 5.02(5); the partisan primary for that election is August 9, 2022, *see* Wis. Stat. § 5.02(12s); and the period for candidates to circulate nominating

¹ The Commission members are Marge Bostelmann, Julie Glancey, Ann Jacobs, Dean Knudson, Robert Spindell, Jr., and Mark Thomsen, all named in their official capacities.

petitions for the general election begins on April 15, 2022, *see* Wis. Stat. § 8.15(1).

Throughout the redistricting original action before the Wisconsin Supreme Court, *Johnson, et al. v. Wisconsin Elections Commission, et al.*, No. 2021AP1450-OA (Supreme Court of Wisconsin), the Commission took a neutral position on the merits of the case—that is, which party’s maps for Wisconsin’s state legislative and congressional districts, based on the results of the 2020 census, should govern Wisconsin’s subsequent elections. Instead, the Commission took a strong position on the timing of final resolution of a new redistricting plan. From the beginning of the litigation, the Commission informed the Wisconsin Supreme Court that any redistricting plan needs to be in place *no later than March 1, 2022*, in order to enable staff of the Wisconsin Elections Commission to timely and effectively administer Wisconsin’s next scheduled congressional and state legislative election.²

² In two related federal court redistricting proceedings, *see* March 7, 2022, Emergency Application for Stay and Injunctive Relief and Alternative Petition for Writ of Certiorari and Summary Reversal ii, the Commission also stayed neutral as to the merits while urging a March 1 final decision deadline. *See Hunter, et al. v. Bostelmann, et al.*, Dkt. 54:8–9, 21-cv-512 (W.D. Wis.), and *Black Leaders Organizing for Communities, et al. v. Spindell, et al.*, Dkt. 25:8–9, 21-cv-534 (W.D. Wis.).

The Wisconsin Supreme Court took the Commission's March 1 deadline request seriously by ordering expedited briefing and argument throughout the action and ultimately issuing a final decision on March 3, 2022. That decision enjoined Wisconsin's existing legislative and congressional districts as malapportioned and ordered new district plans (i.e., the new maps) proposed by Wisconsin Governor Tony Evers. (*See App. Vol. 1.*)

Although the Commission continues to take no position on the legal merits of the proposed maps submitted by any of the parties,³ the state supreme court's March 3 decision approving Governor Evers's maps supplied Commission staff with sufficient time to effectively administer the next election for state legislative and congressional seats, but the Applicant's stay motion is unfortunately reducing the benefit of the state supreme court's achievement.

To properly administer the next election for state legislative and congressional seats, Commission staff needs to record the maps' new boundaries in the statewide voter registration system (i.e., WisVote), integrate the new redistricting data with existing voter registration and address data,

³ For this reason, the Commission will not respond to the merits of the Applicants' argument.

and manually review local ward map changes and parcel boundary data to ensure that each voter is correctly located in their proper districts. These tasks must be completed before the candidate nominating petition circulation period begins on April 15, 2022, because candidates need to know in which district they reside and for which office they can run, and voters need to know which candidates' nominating petitions they can properly sign. While Commission staff has begun some general redistricting work since the Wisconsin Supreme Court's March 3 decision, it must now begin more specific implementation of map data. Any delay in that implementation work beyond March 15 would increase the risk of errors in WisVote and decrease the time available to correct those errors before circulation of nomination papers begins.

In summary, the Commission takes no position on the Applicants' motion for stay pending appeal, but respectfully urges the Court to expeditiously rule on the emergency application no later than March 15, so Commission staff can properly implement new state legislative and congressional district maps for the next election in Wisconsin.

Dated this 11th day of March 2022.

Respectfully submitted,

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