

No. 21A490

In The
Supreme Court of the United States
March 2022

CONGRESSMAN GLENN
GROTHMAN, CONGRESSMAN
MIKE GALLAGHER,
CONGRESSMAN BRYAN STEIL,
CONGRESSMAN TOM TIFFANY,
CONGRESSMAN SCOTT
FITZGERALD,

Applicants,

v.

MARGE BOSTELMANN, IN HER
OFFICIAL CAPACITY AS A
MEMBER OF THE WISCONSIN
ELECTIONS COMMISSION, ET AL.,

Respondents.

ON APPLICATION FOR STAY, OR, IN THE ALTERNATIVE, ON PETITION FOR
A WRIT OF CERTIORARI TO THE WISCONSIN SUPREME COURT

**RESPONSE OF WISCONSIN ELECTIONS COMMISSION AND ITS
MEMBERS TO EMERGENCY APPLICATION FOR STAY PENDING
PETITION FOR WRIT OF CERTIORARI OR, IN THE ALTERNATIVE, A
PETITION FOR WRIT OF CERTIORARI AND SUMMARY REVERSAL**

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INTRODUCTION

Respondents Wisconsin Elections Commission and its members¹ (the “Commission”) submit this response to the Emergency Application for Stay Pending Petition for Writ of Certiorari Or, in the Alternative, a Petition for a Writ of Certiorari and Summary Reversal filed on March 9, 2022, by Applicants Congressmen Glenn Grothman, Mike Gallagher, Bryan Steil, Tom Tiffany, and Scott Fitzgerald.

Although the Commission has taken no position on the merits question of which party’s redistricting maps should be adopted, the Commission has serious concerns about the negative practical consequences that could result from even temporarily delaying implementation of the maps that were approved by the Wisconsin Supreme Court on March 3, 2022. For that reason, the Commission respectfully urges this Court to resolve the pending stay applications as soon as possible and consistent with the concerns expressed in this response.

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

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.

candidates to circulate nominating petitions for the general election begins on April 15, 2022, *see* Wis. Stat. § 8.15(1). Also, Wis. Stat. § 5.15(4) provides that if a new congressional (or legislative) redistricting plan establishes a district boundary that does not coincide with a ward established under a municipality's ordinance or resolution, the municipal governing body must amend the ordinance or resolution by April 10, 2022.

Throughout the redistricting action before the Wisconsin Supreme Court, *Johnson, et al. v. Wisconsin Elections Commission, et al.*, Case No. 2021AP1450-OA (Supreme Court of Wisconsin), the Commission took a neutral position on the merits of the case. However, the Commission took a strong position on the timing of final resolution of a new redistricting plan. The Commission informed the court that any redistricting plan needs to be in place *no later than March 1, 2022*, to enable Commission staff to timely and effectively administer Wisconsin's next scheduled election. Final maps must be chosen in time to implement them before April 15, when the period begins for circulating candidate nominating petitions. By that time, candidates need to know which district they reside in and which office they can run for, and voters need to know which candidates' petitions they can properly sign.²

² In two related federal court redistricting proceedings, *see* March 9, 2022, Emergency Application For Stay Pending Petition For Writ Of Certiorari Or, In The Alternative, A 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 and issued a final decision on March 3, 2022. That decision enjoined Wisconsin's existing legislative and congressional districts as malapportioned and ordered a new district plan (*i.e.*, the new maps) proposed by Wisconsin Governor Tony Evers. While the state supreme court issued its March 3 decision two days after the March 1 date, Commission staff has worked since then to effectively implement the maps for the next election for congressional and state legislative seats without an unreasonable risk of errors and while meeting all statutory deadlines. (Declaration of Greg G. Grube ("Grube Decl.") ¶ 4.) That work began promptly after the state supreme court's March 3 decision and the work is ongoing. (Grube Decl. ¶ 4.)

That implementation takes time. Although, prior to today, the raw data files for the Governor's maps had not yet been reviewed by the Wisconsin Legislative Technology Services Bureau (LTSB) for use by the Commission and local election officials, Commission staff has been able to perform a significant amount of preliminary implementation work using information in its possession. (Grube Decl. ¶¶ 4, 10.) The Wisconsin Legislature, in a recent filing with this Court in a related case, understood the Commission to be stating that it was not yet specifically implementing the Governor's maps.³ That is incorrect. Although the work already

³ See Reply in Support of Emergency Application for Stay and Injunctive Relief and Alternative Petition for Writ of Certiorari and Summary Reversal 11–13, *The Wisconsin Legislature, et al. v. Wisconsin Elections Commission, et al.*, No. 21A471 (Supreme Court of the United States).

being performed by Commission staff is being done without map data files fully analyzed by LTSB, some of that work is nevertheless tailored to implementing the particular maps approved on March 3. (Grube Decl. ¶ 4.) If the Congressmen's stay were entered and the parties were permitted to submit new maps from which this Court would choose for use pending appeal, some of this necessary work would need to be redone. (Grube Decl. ¶ 5.)

Further, the Commission needs to carry out additional work. (Grube Decl. ¶ 6.) Today the Commission received district data from the LTSB with a list of municipalities (and wards within those municipalities) that are being split. (Grube Decl. ¶¶ 3, 7.) These materials will allow the Commission to contact those municipalities and counties. (Grube Decl. ¶ 7.) In turn, those local governments will then be able to determine where new congressional (and state legislative) district lines require existing wards to be split or renumbered. (Grube Decl. ¶ 7.) And, if a new congressional (or legislative) redistricting plan establishes a district boundary that does not coincide with a ward established under a municipality's ordinance or resolution, these municipal governing bodies must amend the ordinance or resolution by April 10, 2022. (Grube Decl. ¶ 8.) *See* Wis. Stat. § 8.15(1). These local governments must then provide that information to the Commission so it can update the WisVote system before April 15, 2022. (Grube Decl. ¶ 7.) Once the new map boundaries are recorded in WisVote, the new redistricting data must be integrated with existing voter registration and address data, and ward map changes and parcel boundary data

must be manually reviewed to ensure that each voter is correctly located in their proper districts. (Grube Decl. ¶ 9.)

Receipt of the aforementioned data and information from LTSB took longer than the Commission expected, and staff must immediately begin these tasks using the data and information for the maps approved by the Wisconsin Supreme Court. (Grube Decl. ¶ 10.)

In short, implementing new maps other than those approved by the Wisconsin Supreme Court would create a grave risk of introducing significant inaccuracies into the WisVote system (Grube Decl. ¶ 11), would generate a situation in which candidates will not know what district they are in when they circulate nomination papers and in which voters will not know what district they are in to sign nomination papers, and could even prevent the April 15 deadline from being met at all. If a stay were entered, local governments might not have enough time to act on the ward splits and candidates and voters would not have adequate time to understand the new maps and participate in the process. (Grube Decl. ¶ 11.)

Dated this 14th day of March 2022.

Respectfully submitted,

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