

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,

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.

Civil Action No. 21-cv-512-jdp-ajs-eec

**PLAINTIFFS' RESPONSE TO MOTION TO INTERVENE OF BILLIE JOHNSON,
ERIC O'KEEFE, ED PERKINS, AND RONALD ZAHN**

Like Plaintiffs, Proposed Intervenors Billie Johnson, Eric O'Keefe, Ed Perkins, and Ronald Zahn allege that they reside in congressional and state legislative districts that are unconstitutionally overpopulated and may not be used in future elections. Dkt. No. 21-1 ¶ 4. And like Plaintiffs, they believe Wisconsin's Legislature and governor are not reasonably likely to enact new districting plans in time for next year's candidate filing deadlines. Dkt. No. 21-4 ¶ 44. Because the Proposed Intervenors' claims "share[] with the main action a common question of law or fact," Fed. R. Civ. P. 24(b)(1)(B), Plaintiffs do not oppose this Court exercising its discretion to grant permissive intervention.¹

¹ Of course, Plaintiffs and Proposed Intervenors also maintain serious differences. For example, Proposed Intervenors argue that the Court should approve new maps that make the least number of changes to the existing maps. Memo. of Law in Support of Mot. to Intervene at 2. At the

That said, “[i]n exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties’ rights.” Fed. R. Civ. P. 24(b)(3). Thus, while all parties may advocate for their preferred maps if the political branches fail to enact new plans on their own, Proposed Intervenors’ proposed Motion to Stay must be denied for threatening precisely the delay and prejudice that would counsel against intervention. Proposed Intervenors are welcome to pursue their own rights as Wisconsin voters in this action, but they must not be allowed to prevent Plaintiffs from doing the same. This Court should continue to prepare for the likely event that the Legislature and governor will fail to enact new legislative and congressional maps, including by entering an order fixing the schedule by which the Court will take up the task of adopting new political districts. The Court has already asked all parties “to submit a joint proposed schedule for this case . . . , setting out any points of disagreement.” Dkt. No. 24. And the parties—including counsel for Proposed Intervenors—are in the process of meeting and conferring on this issue. Further deliberations on the case schedule provide a wholly sufficient opportunity to work out the appropriate timeline for this litigation. Given the criteria in Rule 24(b)(3), the Court should deny Proposed Intervenors’ proposed Motion to Stay in any order granting intervention.²

appropriate time, Plaintiffs will show that Proposed Intervenors’ “least change” approach to judicial map-drawing is a weakly-supported and inappropriate metric.

² If the Motion to Stay is not denied outright, Plaintiffs request an opportunity to provide further briefing on the matter.

Dated: September 7, 2021

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Respectfully submitted,

/s/ Aria C. Branch

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*Admitted *Pro Hac Vice*

**Motion for *Pro Hac Vice* Admission
Forthcoming

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **RESPONSE TO MOTION TO INTERVENE** was electronically filed with the Clerk of Court using the CM/ECF system, which automatically will send email notification and access to an electronic copy of such filing to all counsel of record.

This 7th day of September, 2021.

/s/ Aria C. Branch.

Aria C. Branch
Counsel for Plaintiffs

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