

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

LISA HUNTER et al.,

Plaintiffs,

v.

Case No. 3:21-cv-00512-jdp-ajs-ec

MARGE BOSTELMANN et al.,

Defendants,

WISCONSIN LEGISLATURE,

Intervenor-Defendant.

**REPLY OF PROPOSED INTERVENOR-PLAINTIFFS BILLIE JOHNSON,
ERIC O'KEEFE, ED PERKINS, AND RONALD ZAHN IN SUPPORT OF
MOTION TO INTERVENE AS PLAINTIFFS**

No party to this action has objected to Proposed Intervenor-Plaintiffs' (the "Intervenors") motion to intervene as of right pursuant to Fed. R. Civ. P. 24(a) or permissively pursuant to Fed. R. Civ. P. 24(b).

Indeed, the Plaintiffs are the only party to file a response at all. ECF No. 43. They do not address intervention as of right, instead noting that they "do not oppose this Court exercising its discretion to grant permissive intervention." *Id.* at 1.

The Plaintiffs then take a flyer and request summary denial of the Intervenors' Motion to Stay Proceedings (ECF No. 21-2) in any order granting intervention, arguing that a stay will unduly delay or prejudice adjudication of the Plaintiffs' claims. ECF No. 43:2. But the Plaintiffs are begging the question raised in the

motion for a stay. As pointed out in the Intervenor's proposed stay motion, Supreme Court case law *requires* this Court to defer consideration of the *Plaintiffs' claims* while state proceedings are ongoing. Resolving the Intervenor's stay motion thus *is* adjudication of the Plaintiffs' claims, including the Plaintiffs' right to be heard in a federal forum while state actors are proceeding on redistricting. Moreover, the question is not whether intervention will cause *any* delay or prejudice, but only "undue" delay or prejudice. Determining, less than a month after this action was filed, whether Plaintiffs' request is barred by binding precedent is highly appropriate "delay" (if it can fairly even be called delay).¹

More sensibly, the Plaintiffs indicate in the alternate that the Court should set briefing on the stay motion. ECF No. 43:2 n.2. The Intervenor agrees, and add that resolution of the stay motion should occur before further proceedings in this case.²

For the foregoing reasons, the Intervenor respectfully request that this Court grant their motion to intervene, either by intervention as of right under Fed R. Civ. P. 24(a)(2), or, in the alternative, by permissive intervention under Fed R. Civ. P. 24(b)(1)(B).

Dated this 8th day of September, 2021.

¹ Even if this Court disagrees, the Plaintiffs have offered no reason why intervention as of right is inappropriate, and the Intervenor's motion to intervene should be granted on that ground as well.

² With respect to other scheduling matters, this Court's order of August 27, 2021, authorizes only the "parties" to submit a "joint" proposed schedule for this case, "setting out any points of disagreement." ECF No. 24:4. The Intervenor are not parties until their motion to intervene is resolved. They look forward to being heard on any proposed schedule at that time.

Respectfully submitted,

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