

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LISA HUNTER, JACOB ZABEL, JENNIFER OH,
JOHN PERSA, GERALDINE SCHERTZ, &
KATHLEEN QUALHEIM,

Plaintiffs,

BILLIE JOHNSON, ERIC O'KEEFE,
ED PERKINS, RONALD ZAHN,

Intervenor-Plaintiffs,

LEAH DUDLEY, SOMESH JHA, JOANNE
KANE, MICHAEL SWITZENBAUM, JEAN-LUC
THIFFEAULT, STEPHEN JOSEPH WRIGHT,

Proposed Intervenor-Plaintiffs,

v.

MARGE BOSTELMANN, JULIE M. GLANCEY,
ANN S. JACOBS, DEAN KNUDSON, ROBERT
F. SPINDELL, JR., & MARK L. THOMSEN in
their official capacities as members of the Wisconsin
Elections Commission,

Defendants,

THE WISCONSIN LEGISLATURE,

Intervenor-Defendant,

CONGRESSMEN SCOTT FITZGERALD, MIKE
GALLAGHER, GLENN GROTHAM, BRYAN
STEIL, TOM TIFFANY,

Intervenor-Defendant,

GOVERNOR TONY EVERS,

Intervenor-Defendant.

BLACK LEADERS ORGANIZING FOR
COMMUNITIES, VOCES DE LA FRONTERA,
THE LEAGUE OF WOMEN VOTERS OF

No. 3:21-cv-00512-jdp-ajs-eec

No. 3:21-cv-00534-jdp-ajs-eec

WISCONSIN, CINDY FALLONA, LAUREN STEPHENSON, & REBECCA ALWIN, MELODY McCURTIS, HELEN HARRIS, EDWARD WADE, JR., BARBARA TOLES, SEAN TATUM, WOODROW WILSON CAIN, II, TRACIE Y. HORTON, NINA CAIN,

Plaintiffs,

v.

MARGE BOSTELMANN, JULIE M. GLANCEY, ANN S. JACOBS, DEAN KNUDSON, ROBERT F. SPINDELL, JR., & MARK L. THOMSEN, in their official capacities as members of the Wisconsin Elections Commission, MEGAN WOLFE, in her official capacity as the administrator of the Wisconsin Elections Commission

Defendants.

**MOTION TO DISMISS *JOHNSON* INTERVENOR-PLAINTIFFS' COMPLAINT
BY THE WISCONSIN LEGISLATURE**

The *Johnson* intervenor-plaintiffs' complaint alleges that the existing congressional and legislative districts in Wisconsin are unconstitutionally malapportioned. *See* Dkt. 73, *Johnson* Compl. They allege that their "lawsuit is already ripe," even though "the Legislature may yet draw, and the Governor may yet approve, maps that redress the Intervenor-Plaintiffs' injury." *Id.* at ¶7. They add that "this Court should stay any action herein until the Legislature has the opportunity to adopt a constitutionally adequate apportionment plan and the Wisconsin courts have ruled on any remaining dispute." *Id.* at ¶10; *see also id.* at p. 10 (asking to stay until "the Wisconsin courts have finally ruled on any and all issues" and asking for relief only "[i]f this matter is not fully resolved by either the Wisconsin Legislature or the Wisconsin courts").

For the same reasons that the *Hunter* and *BLOC* complaints should be dismissed for lack of jurisdiction, the Legislature moves to dismiss the *Johnson* complaint for lack of jurisdiction. Fed. R. Civ. P. 12(b)(1). The Legislature is currently redrawing the existing districts. And the Wisconsin

Supreme Court is now exercising its original jurisdiction to review the new maps and to resolve any redistricting disputes. *See* Dkt. 80, Order; Dkt. 81, Notice. There is thus no “realistic danger” that the existing districts that plaintiffs challenge as unconstitutional will be used again in next year’s elections. *Babbitt v. United Farm Workers Nat’l Union*, 442 U.S. 289, 298 (1979); *see also California v. Texas*, 141 S. Ct. 2104, 2114 (2021) (standing requires “an injury that is the result of the statute’s actual or threatened enforcement, whether today or in the future”). Any malapportionment claim about those existing districts is entirely “dependent on contingent future events that may not occur as anticipated, or indeed may not occur at all” in Wisconsin. *Trump v. New York*, 141 S. Ct. 530, 535 (2020) (quotation marks omitted). The complaint should therefore be dismissed.

Dated: September 30, 2021

Respectfully submitted,

Jeffery M. Harris
Taylor A.R. Meehan*
CONSOVOY MCCARTHY PLLC
1600 Wilson Boulevard, Suite 700
Arlington, Virginia 22209
703.243.9423
jeff@consovoymccarthy.com
taylor@consovoymccarthy.com

* Licensed in Illinois & D.C.; supervised by principals of the firm licensed in Virginia while Virginia bar application is pending.

/s/ Kevin St. John
Kevin St. John, SBN 1054815
BELL GIFTOS ST. JOHN LLC
5325 Wall Street, Suite 2200
Madison, Wisconsin 53718
608.216.7990
kstjohn@bellgiftos.com

Adam K. Mortara, SBN 1038391
LAWFAIR LLC
125 South Wacker, Suite 300
Chicago, Illinois 60606
773.750.7154
mortara@lawfairllc.com

Counsel for the Wisconsin Legislature

CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2021, I served the foregoing document with the Clerk of Court using the Court's ECF system, thereby serving all counsel who have appeared in this case.

/s/ Kevin St. John

Kevin St. John, SBN 1054815

BELL GIFTOS ST. JOHN LLC

5325 Wall Street, Suite 2200

Madison, WI 53718

608.216.7990

kstjohn@bellgiftos.com

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