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Supreme Court of Wisconsin

NO. 2021AP001450 - OA

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

Petitioners,

vs.

WISCONSIN ELECTIONS COMMISSION, MARGE
BOSTELMANN, JULIE GLANCEY, ANN JACOBS, DEAN
KNUDSON, ROBERT SPINDELL, AND MARK THOMSEN, IN
THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE
WISCONSIN ELECTION COMMISSION,

Respondents.

**MOTION FOR LEAVE TO FILE NON-PARTY BRIEF
OF LISA HUNTER, JACOB ZABEL, JENNIFER OH, JOHN
PERSA, GERALDINE SCHERTZ, AND KATHLEEN
QUALHEIM**

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*Motion for *Pro Hac Vice* Admission Forthcoming

Lisa Hunter, Jacob Zabel, Jennifer Oh, John Persa, Geraldine Schertz, and Kathleen Qualheim (“Amici”), by and through their attorneys, request permission pursuant to Wis. Stat. (Rule) § 809.19(7) to file a non-party brief in this case on the question of whether this Court should grant the petition. In support of their motion, Amici state as follows:

1. Amici are all citizens of the United States and residents of the State of Wisconsin. Amici are registered to vote in Wisconsin and intend to participate in the 2022 primary and general elections.
2. On August 12, 2021, the U.S. Census Bureau published detailed population data showing that Amici live in congressional and/or state legislative districts that are overpopulated.
3. On August 13, 2021, Amici filed suit in federal district court alleging that certain congressional and state legislative districts are malapportioned in violation of the United States Constitution. *See Hunter v. Bostelmann*, No. 3:21-cv-00512

(W.D. Wis). As discussed in the accompanying brief, a three-judge panel has been appointed in that litigation; related actions have been noted for consolidation; the Legislature has been granted intervention; the parties must file a proposed litigation schedule with the three-judge panel next Monday, September 13, and are in the process of meeting and conferring on plaintiffs' proposed schedule circulated last week; and Petitioners in this very case have filed an unopposed motion to intervene as plaintiffs in the federal litigation to make the same claims they are raising in their Petition.

4. Ten days after Amici filed their federal action, Petitioners filed their Petition for an Original Action on August 23, 2021. Petitioners make similar allegations of malapportionment, but only invoke their rights under the Wisconsin Constitution. *See e.g.*, Pet. at 2.
5. Though Amici and Petitioners are similarly situated, Amici's enclosed brief *opposes* the petition. Amici seek to advise this

Court on the complexities of the task of developing redistricting plans and the alternate forums available for addressing Petitioners' and Amici's claims in the first instance. As plaintiffs in a comparable pending federal case, Amici are uniquely well-positioned to provide this Court with such context.

6. Further, if this Court were to grant the petition, Amici would seek to intervene in this original action to ensure the vindication of their rights under the United States Constitution. Amici would aid the Court's decision-making process and ensure that all critically relevant legal issues—state and federal—are fully briefed.
7. On August 26, 2021, the Court issued an order in this case stating: “[A]ny non-party that wishes to file a non-party brief amicus curiae in support of or in opposition to the petition must file a motion for leave of the court to file a non-party brief pursuant to the requirements of Wis. Stat. (Rule) 809.19(7). Non-parties should also consult this courts

Internal Operating Procedure III.B.6.c. concerning the nature of non-parties who may be granted leave to file a non-party brief. A proposed non-party brief must accompany the motion for leave to file it.”

8. Consistent with the Court’s August 26, 2021 Order, Amici respectfully submit this motion for leave to file the enclosed non-party brief.

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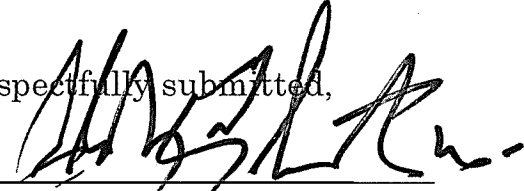
WHEREFORE, Amici respectfully request that this Court grant its motion for leave to file the enclosed non-party brief in this case.

Dated: September 7, 2021

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Respectfully submitted,

/s/

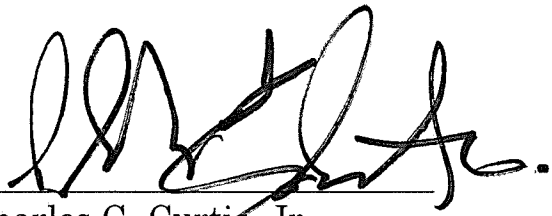

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CERTIFICATE OF SERVICE

I certify that on this 7th day of September, 2021, I caused a copy of this motion to be served upon counsel for each of the parties via e-mail and U.S. Mail.

Dated: September 7, 2021



Charles G. Curtis, Jr.

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