

STATE OF WISCONSIN  
SUPREME COURT

**FILED**

**JAN 04 2022**

**CLERK OF SUPREME COURT  
OF WISCONSIN**

Billie Johnson, Eric O'Keefe, Ed Perkins and  
Ronald Zahn,

Petitioners,

Black Leaders Organizing for Communities,  
Voces de la Frontera, League of Women  
Voters of Wisconsin, Cindy Fallona, Lauren  
Stephenson, Rebecca Alwin, Congressman  
Glenn Grothman, Congressman Mike  
Gallagher, Congressman Bryan Steil,  
Congressman Tom Tiffany, Congressman  
Scott Fitzgerald, Lisa Hunter, Jacob Zabel,  
Jennifer Oh, John Persa, Geraldine Schertz,  
Kathleen Qualheim, Gary Krenz, Sarah J.  
Hamilton, Stephen Joseph Wright, Jean-Luc  
Thiffeault, and Somesh Jha,

**Appeal No. 2021AP1450-OA**

Intervenor-Petitioners,

v.

Wisconsin Elections Commission, Marge  
Bostelmann in her official capacity as a  
member of the Wisconsin Elections  
Commission, Julie Glancey in her official  
capacity as a member of the Wisconsin  
Elections Commission, Ann Jacobs in her  
official capacity as a member of the Wisconsin  
Elections Commission, Dean Knudson in his  
official capacity as a member of the Wisconsin  
Elections Commission, Robert Spindell, Jr. in  
his official capacity as a member of the  
Wisconsin Elections Commission and Mark  
Thomsen in his official capacity as a member  
of the Wisconsin Elections Commission

Respondents,

The Wisconsin Legislature, Governor Tony  
Evers, in his official capacity, and Janet

Bewley Senate Democratic Minority Leader,  
on behalf of the Senate Democratic Caucus,

Intervenors-Respondents.

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**UNOPPOSED MOTION OF CONCERNED VOTERS OF WISCONSIN  
SEEKING LEAVE TO FILE NON-PARTY BRIEF**

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Karen Wilson, Anneliese Waggoner, Megan O'Halloran, Jacqueline Boynton, Lena Eng, Richard C. Burton, Deborah L. Koconis, Cheryl Maranto, Julie A. Koconis, Don Leake, David Fodroczi, Dan Russler, Mary E. Ascher, Leslie DeMuth, Joseph J. Horvath Jr., Mark Fuller, Janie Riebe, Myra Enloe, Susan K. Curran, Heather Biesik, Mike Hennick, Eleanor Anderson, Jane Durment, John A. Scott, Ann E. Stevning-Roe, Patricia Schmidt, Paul DeMain, Claudia Grams Pogreba, Janine Edwards, Tanya Murphy, Peter Parthum, Chrysa Ostenso, Kristin Lyerly, Amy Dummer, Lori Toso, and Vicki Aro-Schackmuth, citizens and voters of Wisconsin hailing from all 33 of this state's Senate Districts (collectively "Concerned Voters of Wisconsin"), move the Court, pursuant to Wis. Stat. § 809.19(7), Wis. Stat. § 809.14, Internal Op. P. III.B.6.c, and the Court's November 17, 2021 Order, for permission to file the accompanying non-party brief.

The grounds for this motion are as follows:

1. On August 23, 2021, Petitioners filed a Petition to the Supreme Court of Wisconsin to Take Jurisdiction of an Original Action ("Petition") pursuant to Wis. Stat. § 809.70 and Article VII, § 3(2) of the Wisconsin Constitution. Relying on a 47-paragraph pleading, Petitioners seek (a) a declaration that existing apportionment maps for congressional and state assembly districts violate the one person one vote principle

contained in Article IV of the Wisconsin Constitution; (b) an injunction enjoining Respondent Wisconsin Elections Commission (“WEC”) and its members from administering any election for Congressional, State Senate, or State Assembly seats until a new apportionment plan is in place that satisfies the Wisconsin Constitution; and (c) a judicial plan of apportionment “in the absence of an amended state law containing a lawful apportionment plan.” (8/23/21 Pet., ¶ 1.)

2. That same month, the United States Census Bureau provided Wisconsin with data drawn from its 2020 census. (11/30/21 Op. and Order, ¶ 15.) According to the census, Wisconsin’s population grew from 5,686,989 to 5,893,718 people. (*Id.*) This Court has concluded that, to achieve equal legislative representation, the ideal congressional district over the next 10 years should have 736,715 people, the ideal assembly district should have 59,533 people, and the ideal senate district should have 178,598 people. (*Id.*)

3. Deciding how to apportion Wisconsin’s territory to ensure one person one vote is a legislative function. To this end, the Wisconsin Legislature passed legislation (SB621) and submitted its proposed apportionment maps to Governor Evers on November 11, 2021, which he vetoed. (11/30/21 Op. and Order, ¶ 17.) Having determined that the political branches have reached an impasse on new maps necessitating judicial involvement in Wisconsin’s redistricting process, this Court recently decided: (a) redistricting disputes may be judicially resolved only to the extent necessary to remedy a violation of a justiciable and cognizable right protected under the United States Constitution, the Voting Rights Act of 1965, or Article IV, §§ 3, 4, and 5 of the Wisconsin Constitution; (b) the partisan makeup of districts does not implicate any justiciable or cognizable right; and (c) judicial remedies

from this Court will be limited to making the minimum changes necessary in order to conform the existing congressional and state legislative redistricting plans to constitutional and statutory requirements. (11/30/21 Op. and Order, ¶ 8.)

4. In an earlier Order, the Court invited non-parties like Concerned Voters of Wisconsin to file a motion if they sought to file an *amicus curiae* brief in this action. (11/17/21 Order, p. 2.) The Concerned Voters of Wisconsin hereby seek leave to file the accompanying *amicus curiae* brief to assist the Court in understanding the perspectives of the average citizen and voter about the submissions of the parties made on December 15, 2021 and December 30, 2021. This Court has already concluded that a Petition involving redistricting “warrants this Court’s original jurisdiction” because it is, “by definition *publici juris*, implicating the sovereign rights of the people of this state.” (11/30/21 Op. and Order, ¶ 20 (citing *Jensen v. Wis. Elections Bd.*, 2002 WI 13, ¶ 17).) In this light, there could be no better *amici* than 36 residents of the State of Wisconsin from all over the state who vote and hold diverse political ideologies.

5. In Summer 2021, Dr. Don Leake, a mathematics professor emeritus from the University of Wisconsin-River Falls and one of the movants here, used public data and software to draw a legislative map for the State of Wisconsin. Later, he and others like him helped other voters learn how to map their communities. Together, this group of engaged citizens took on the task of reviewing every publicly available Wisconsin legislative map. The Wisconsin Map Assessment Project (“WIMAP” – pronounced “we map”) was born

from this process. The Court can read about WIMAP on its website: WIMAP's website: <https://piercecountygro.org/wimap/>, last accessed on January 1, 2022.<sup>1</sup>

6. The Concerned Voters of Wisconsin includes WIMAP members and other voters who seek to lend their voice to this Court's adjudication of the redistricting process.

7. WIMAP members became skilled in district map evaluation by learning how to understand map criteria and how those criteria are measured and prioritized by various groups. They sought out redistricting maps that were submitted to various public portals, including the Legislature's Draw Your District ("DYD"),<sup>2</sup> The People's Maps Commission ("PMC") web portal,<sup>3</sup> and Dave's Redistricting.<sup>4</sup> WIMAP then constructed a comprehensive summary of all submitted redistricting maps with a listing of metrics for each criterion, in order to develop the ability to provide objective evaluations of all maps recently submitted to the Court for its consideration.

8. Certain *amici* also helped Wisconsin residents from around the state create Community of Interest maps, which were submitted to the PMC and, in some cases, DYD. The people creating these maps often complained that their cities, towns, villages, and counties had been unfairly split by Act 43. Movants learned more about the splits caused by 2011 Wisconsin Act 43 and its proposed successor SB621 by attending or listening to

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<sup>1</sup> The WIMAP Team includes the following movants: Dr. Don Leake, Jane Durment, Lena Eng, David Fodroczi, Cheryl Maranto, Janie Riebe, and Dan Russler.

<sup>2</sup> <https://drawyourdistrict.legis.wisconsin.gov/>, last accessed on December 28, 2021.

<sup>3</sup> <https://portal.wisconsin-mapping.org/>, last accessed on December 28, 2021.

<sup>4</sup> <https://davesredistricting.org/maps#home>, last accessed on December 28, 2021.

a hearing on SB621 held October 28, 2021, and by reading 188 pages of written testimony submitted at the hearing. Some of the *amici* seeking leave here also participated in or listened to testimony given to this Court during a January 14, 2021 hearing on a Rules Petition request made by the Wisconsin Institute for Law & Liberty, counsel for Petitioners.<sup>5</sup>

9. Over the last year, WIMAP members have worked with people from many parts of the state, listening to their concerns, learning how to create and analyze legislative maps, and using statistical analytics and other evidence to objectively evaluate redistricting maps using publicly available tools. By seeking to file an *amicus* brief, the Concerned Voters of Wisconsin seek to share their collective knowledge and experiences with the Court and to amplify the voices of “We the People.”

10. WIMAP members have read all the pleadings in this action and analyzed each map submitted to the Court by the parties since December 15, 2021. The *amici* are voters from all 33 Senate Districts of Wisconsin who have been working to ensure that state legislative districts are truly representative and comply with the laws of the United States and the State of Wisconsin. Movants recognize that redistricting has broad implications, and that the maps being drawn by the Court today will impact the representation Wisconsin voters receive for the next decade. Some *amici* are retired and may not live to see the next census. Most have children, and some have grandchildren. All hope their efforts can have a lasting impact.

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<sup>5</sup> <https://wiseeye.org/2021/01/14/wisconsin-supreme-court-public-hearing-redistricting-rule-petition/>, last accessed on December 29, 2021.

11. The Concerned Voters of Wisconsin further bring a unique perspective to this case – that of everyday Wisconsin voters. They represent no political party, **and indeed are from both major political parties as well as independent voters, with differing levels of political engagement.** Although some are affiliated with organizations, they come before this Court as individual voters expressing their personal views. They are not in power seeking to stay in power, nor are they out of power seeking to be in power. They are not being paid for what they do. Even their lawyers are working pro bono to ensure their voice is heard. The only benefit these *amici* seek is the same benefit they ask for everyone living in Wisconsin: a just and representative government. And their only motive is to be a true “friend of the Court,” providing additional perspective while it wrestles with redistricting in this original action, a challenging exercise critical, in the view of the movants, to the survival of our republic.

12. A short summary describing each movant, his or her background, and his or her interest in the *amicus curiae* brief those movants seek permission to file is appended to this motion as **Exhibit A**. Because the Court has determined that redistricting is fundamentally a legislative process (8/30/21 Opinion and Order, ¶ 19), an *amicus curiae* brief from 36 Wisconsin citizens who have labored to assess and analyze their views about the proposed maps should be “desirable” to the Court within the meaning of Wis. Stat. § 809.19(7).

13. This Court has previously granted motions enabling *amicus curiae* similar to movants to participate in this action. Petitioners themselves are citizen voters like movants who allege that they “now live in a state and/or congressional voting districts that have

many more people than live in other districts and, as a result, have a diluted vote relative to the votes of others who live in less populated districts.” (8/23/21 Pet., ¶ 3.) In support of their standing to bring this original action, Petitioners assert that they “are Wisconsin voters who live in malapportioned districts” (*id.* at ¶ 13) and that they are “citizens who lay claim to having their votes count less than others . . .” (*id.* at ¶¶ 14-17). Like Petitioners assert, certain of the movants are themselves voters who live in malapportioned districts.

14. Movants are authorized to represent that they have asked all parties of record, through counsel, whether there is opposition to this motion seeking leave to file the proposed *amicus curiae* brief. All parties have represented that they either do not oppose this motion or take no position on it.

15. For the foregoing reasons, Concerned Citizens of Wisconsin are particularly suited to submit a non-party brief that would be of significant value to the Court in an original action that will result in the creation of legislative maps governing elections in Wisconsin for the next 10 years.

WHEREFORE, Karen Wilson, Anneliese Waggoner, Megan O’Halloran, Jacqueline Boynton, Lena Eng, Richard C. Burton, Deborah L. Koconis, Cheryl Maranto, Julie A. Koconis, Don Leake, David Fodroczi, Dan Russler, Mary E. Ascher, Leslie DeMuth, Joseph J. Horvath Jr., Mark Fuller, Janie Riebe, Myra Enloe, Susan K. Curran, Heather Biesik, Mike Hennick, Eleanor Anderson, Jane Durment, John A. Scott, Ann E. Stevning-Roe, Patricia Schmidt, Paul DeMain, Claudia Grams Pogreba, Janine Edwards, Tanya Murphy, Peter Parthum, Chrysa Ostenso, Kristin Lyerly, Amy Dummer, Lori Toso,



and Vicki Aro-Schackmuth respectfully request that this Court grant their motion for leave to file the accompanying *amici curiae* brief.

Dated this 4th day of January, 2022.

/s/ Joseph S. Goode

Joseph S. Goode

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