

SUPREME COURT OF WISCONSIN

Appeal No. 2021AP1450–OA

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

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.

Original Action in the Supreme Court of Wisconsin

**INTERVENORS GARY KRENZ, SARAH J.
HAMILTON, STEPHEN JOSEPH WRIGHT,
JEAN-LUC THIFFEAULT, AND
SOMESH JHA’S
COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

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Intervenors Gary Krenz, Sarah J. Hamilton, Stephen Joseph Wright, Jean-Luc Thiffeault, and Somesh Jha, in support of their Complaint in Intervention, state and allege as follows:

INTRODUCTION

1. Intervenors are United States citizens and registered voters in the State of Wisconsin who reside in congressional and legislative districts that were established in 2011 using population data from the 2010 Census. The 2020 Census Redistricting Data shows that Wisconsin's congressional and legislative districts are now unconstitutionally malapportioned, thus diluting the strength of Intervenors' votes and distorting Intervenors' voting power.

2. Intervenors also are some of Wisconsin's leading professors and research scientists in mathematics, statistics, and computer science. These "Citizen Mathematicians and Scientists" include a past Chair of the Mathematical Optimization Society, the current Director of the Institute for Foundations of Data Science, a National Science Foundation CAREER Award winner, a Society for Industrial and Applied Mathematics prize winner, and a recipient of Marquette University's highest teaching award.

3. The Citizen Mathematicians and Scientists seek to intervene in this case not to push the agenda of any political party, incumbent officeholder, or demographic slice of the electorate, but rather to advance the common public good by promoting fair and effective representation for all Wisconsinites. Based on their professional backgrounds and knowledge, the Citizen Mathematicians and Scientists provide a unique perspective on how this Court can accomplish that goal. Specifically, the Citizen Mathematicians and Scientists intend to ensure that the Court has access to—and will advocate that the Court rely on—the Nation's best quantitative experts on "computational redistricting," which is the use of high-speed computers both to draw maps and to evaluate them using a defined set of traditional districting principles.

4. Good redistricting requires adherence to multiple criteria, including population equality, contiguity, compactness, respect for county boundaries, partisan fairness, and compliance with the Voting Rights Act. Each of these criteria at some point conflicts with the others. Over the past several decades, satisfying all these principles simultaneously has been the core challenge for courts, or anyone else, seeking to redistrict in the public interest. Only in the last few years, however, have mathematicians, computer scientists, and others in related fields developed computer programs to simultaneously optimize these multiple, conflicting criteria. To the best of Intervenor's knowledge, only the Citizen Mathematicians and Scientists intend to offer maps drawn by computational-redistricting experts capable of bringing the full benefit of these new technologies and methodologies to this Court. And to the best of Intervenor's knowledge, only the Citizen Mathematicians and Scientists intend to advocate that the Court rely extensively on computational redistricting in this redistricting process. This not only will produce maps that better comply with the districting principles and priorities that the Court itself articulates, but also will do so with speed and efficiency—which is critically important, given the time-sensitive nature of this action.

JURISDICTION AND VENUE

5. On August 23, 2021, Billie Johnson, Eric O'Keefe, Ed Perkins, and Ronald Zahn petitioned this Court to exercise original jurisdiction regarding the unconstitutionality of Wisconsin's malapportioned legislative districts. This Court granted that petition, and exercised its original jurisdiction pursuant to Wis. Stat. § (Rule) 809.70.

6. This Court has personal jurisdiction over the Respondents, all of whom are State officials who reside in Wisconsin and perform official duties in Madison, Wisconsin.

PARTIES

7. Intervenor Gary Krenz is a registered voter who resides in Milwaukee County and in Senate District 8 and Assembly District 23, both of which the 2020 Census Redistricting Data demonstrates are overpopulated. Dr. Krenz is a Professor Emeritus of Mathematical and Statistical Sciences and an Adjunct Professor of Computer Science at Marquette University. He is a past chair of Marquette's former Mathematics, Statistics and Computer Science Department. Dr. Krenz received Marquette University's Ignatian Pedagogy Award and the Rev. John P. Raynor, S.J., Faculty Award for Teaching Excellence. His research interests include mathematical and statistical modeling and computer science education, for which he has been funded by both the National Institutes of Health and the National Science Foundation. Dr. Krenz received his Ph.D. in Applied Mathematics from Iowa State.

8. Intervenor Sarah J. Hamilton is a registered voter who resides in Milwaukee County and in Senate District 7 and Assembly District 20, both of which the 2020 Census Redistricting Data demonstrates are underpopulated, and lives directly across the street from Assembly District 19, which the 2020 Census Redistricting Data demonstrates is overpopulated. Dr. Hamilton is an Associate Professor of Mathematics at Marquette University and an Assistant Adjunct Professor at the Medical College of Wisconsin. She has taught courses at Marquette in mathematical modeling and analysis, differential equations, and the theory of optimization. Her research interests include inverse problems, machine learning and data science, and computational imaging for which she has been funded by the National Institutes of Health. She has been named a Project NextT Fellow by the Mathematical Association of America. Dr. Hamilton received her Ph.D. in Mathematics from Colorado State University.

9. Intervenor Stephen Joseph Wright is a registered voter who resides in Dane County, and in Congressional District 2, Senate District 26, and Assembly District 77, all of which the

2020 Census Redistricting Data demonstrates are overpopulated. Dr. Wright is the George B. Dantzig Professor of Computer Sciences at the University of Wisconsin-Madison, where he teaches courses on nonlinear optimization and on linear programming, among other subjects. He is a past Chair of the Mathematical Optimization Society, a former fellow and trustee of the Society for Industrial and Applied Mathematics, and the current Director of the Institute for Foundations of Data Science. In 2020, he was awarded the Khachiyan Prize, which honors lifetime achievements in the area of optimization. Dr. Wright received his Ph.D. in Computer Science from the University of Queensland.

10. Intervenor Jean-Luc Thiffeault is a registered voter who resides in Dane County, and in Congressional District 2, Senate District 26, and Assembly District 77, all of which the 2020 Census Redistricting Data demonstrates are overpopulated. Dr. Thiffeault is a Professor of Applied Mathematics at the University of Wisconsin-Madison, where his research interests include topological dynamics and methods of computational mathematics. He has spoken at over 140 invited research seminars and colloquia and has won the Society for Industrial and Applied Mathematics' outstanding-paper prize. Dr. Thiffeault received his Ph.D. in Physics from the University of Texas at Austin.

11. Intervenor Somesh Jha is a registered voter who resides in Dane County, and in Congressional District 2, Senate District 26, and Assembly District 78, all of which the 2020 Census Redistricting Data demonstrates are overpopulated. Dr. Jha is the Sheldon B. Lubar Chair of Computer Sciences at the University of Wisconsin-Madison, where he researches or teaches cartography, adversarial machine learning, computational finance, robust optimization, and data science, among other topics. He has received the National Science Foundation CAREER Award, the Computer-Aided Verification Award, and multiple best-paper awards. He is a Fellow of both the Association for Computing Machinery (awarded to the top 1% of ACM members) and the

IEEE (recognizing “extraordinary accomplishments” in the IEEE fields of interest). Dr. Jha received his Ph.D. in Computer Science from Carnegie Mellon University.

12. Respondents Marge Bostelmann, Julie M. Glancey, Ann S. Jacobs, Dean Knudson, Robert F. Spindell, Jr., and Mark L. Thomsen are the six Commissioners of the Wisconsin Elections Commission (“WEC”). They are named as Respondents in their official capacities only.

13. Respondent Meagan Wolfe is the Administrator of the WEC. She is named in her official capacity only.

FACTUAL ALLEGATIONS

14. Wisconsin’s current congressional and legislative districts were adopted by the Legislature and signed into law by Governor Walker on August 9, 2011, following the 2010 Census. In April 2012, the boundaries of Assembly Districts 8 and 9 were adjusted by court order.

15. The 2020 Census Data shows that Wisconsin’s population increased in the last decade to 5,893,718 residents. The ideal district populations are thus about 736,715 persons for each of Wisconsin’s eight congressional districts, about 178,598 for each of Wisconsin’s 33 Senate districts, and about 59,533 for each of Wisconsin’s 99 Assembly districts.

16. Wisconsin’s congressional and legislative districts are currently significantly unequal in population. According to the 2020 Census Data, Wisconsin’s congressional-district populations now range from 695,395 to 789,393 residents; Wisconsin’s Senate-district populations now range from 162,069 to 201,819 residents; and Wisconsin’s Assembly-district populations now range from 52,628 to 71,685 residents.

17. As the 2020 Census Redistricting Data demonstrates, Congressional Districts 2 and 8 are overpopulated, and Congressional Districts 1, 3, 4, 5, 6, and 7 are underpopulated. As a result, residents of Congressional Districts 2 and 8 have diminished electoral power compared to residents of Congressional Districts 1, 3, 4, 5, 6, and 7.

18. Similarly, the Senate and Assembly districts enacted in 2011 are now either overpopulated or underpopulated as compared with their ideal numbers. Accordingly, residents of overpopulated Senate and Assembly districts have diminished electoral power compared to residents of underpopulated districts.

19. Several of the Citizen Mathematicians and Scientists reside and intend to vote in a congressional district that the 2020 Census Redistricting Data identifies as overpopulated. For example, Dr. Wright resides and votes in Congressional District 2, which is more than 7% overpopulated according to the 2020 Census Redistricting Data.

20. Several of the Citizen Mathematicians and Scientists reside and intend to vote in a legislative district that the 2020 Census Redistricting Data identifies as overpopulated. For example, Dr. Jha resides and votes in Senate District 26 and Assembly District 78, both of which are about 13% overpopulated according to the 2020 Census Redistricting Data.

21. The existing malapportionment of congressional and legislative districts in Wisconsin dilutes the voting strength of the Citizen Mathematicians and Scientists in overpopulated districts, as the weight or value of each such vote is less than that of any voter residing in an underpopulated congressional or legislative district, in violation of the United States Constitution and the Wisconsin Constitution.

22. If this Court ultimately must adopt new redistricting plans for the people of Wisconsin, it should do so with parties that have access to computational-redistricting methodologies, optimization techniques, and data science, as well as the Nation's best quantitative redistricting experts. The Citizen Mathematicians and Scientists will bring those experts to the Court, to assist with the task of adopting new redistricting plans through the use of high-speed computers and algorithmic techniques that promote fair and effective representation for all Wisconsinites.

COUNT I

CONGRESSIONAL REDISTRICTING

23. The Citizen Mathematicians and Scientists incorporate by reference Paragraphs 1 to 22.

24. Article I, Section 2 of the United States Constitution, as amended by Section 2 of the Fourteenth Amendment, provides that “[t]he House of Representatives shall be composed of Members chosen every second Year by the People of the several States” and that “Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State.” These provisions create a constitutional guarantee of “one person, one vote,” requiring a State’s congressional districts to achieve population equality as nearly as practicable.

25. Absent new congressional districts as required by the United States Constitution, any action of Respondents in administering an election for Wisconsin’s Representatives in Congress using the decade-old districts currently in place will deprive Citizen Mathematicians and Scientists of their constitutional rights under Article 1, Section 2 of the United States Constitution.

COUNT II

LEGISLATIVE REDISTRICTING

26. The Citizen Mathematicians and Scientists incorporate by reference Paragraphs 1 to 22.

27. The Equal Protection Clause of Section 1 of the Fourteenth Amendment to the United States Constitution prohibits any State from “deny[ing] to any person within its jurisdiction the equal protection of the laws.”

28. Article IV, Section 3 of the Wisconsin Constitution requires apportioning and districting members of both state-legislative houses according to the number of inhabitants. *See State ex rel. Reynolds v. Zimmerman*, 22 Wis. 2d 544, 564, 126 N.W.2d 551 (1964).

29. Absent new legislative districts as required by the United States and Wisconsin Constitutions, any action of Respondents in administering an election for Wisconsin's Senators or Assembly members using the decade-old districts currently in place will deprive Citizen Mathematicians and Scientists of their constitutional rights under the Fourteenth Amendment to the United States Constitution and Article IV, Section 3 of the Wisconsin Constitution.

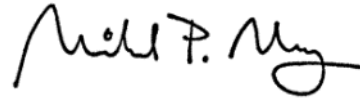
RELIEF SOUGHT

WHEREFORE, the Citizen Mathematicians and Scientist respectfully pray that the Court:

- a. Grant the Citizen Mathematicians and Scientists' Motion to Intervene;
- b. Enter a declaratory judgment that Wisconsin's current districting plans violate Article I, Section 2 of the United States Constitution; the Fourteenth Amendment to the United States Constitution; and/or Article IV, Section 3 of the Wisconsin Constitution.
- c. Permanently enjoin Respondents, their officers, agents, employees, attorneys, successors in office, and all persons acting in concert with each or any of them, from conducting a primary or general election in 2022 or thereafter, using Wisconsin's current congressional or legislative districting plan or any other congressional or legislative districting plan that violates the United States Constitution, federal law, or Wisconsin law;
- d. Ensure the implementation of new congressional and legislative districting plans that comply with the United States Constitution, federal law, and Wisconsin law; and
- e. Grant the Citizen Mathematicians and Scientists any other relief that the Court finds just and equitable.

Dated: October 6, 2021

Respectfully submitted,



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