

Supreme Court of Wisconsin

NO. 2021AP001450 - OA

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

Petitioners,

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

Proposed Intervenor-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 TO INTERVENE OF PROPOSED INTERVENOR-
PETITIONERS LISA HUNTER, JACOB ZABEL,
JENNIFER OH, JOHN PERSA, GERALDINE SCHERTZ,
AND KATHLEEN QUALHEIM**

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Lisa Hunter, Jacob Zabel, Jennifer Oh, John Persa, Geraldine Schertz, and Kathleen Qualheim (“Proposed Intervenors”), by and through their attorneys, move to intervene as Intervenor-Petitioners in this action. In support of their motion, Proposed Intervenors state as follows:

1. Proposed Intervenors are registered Wisconsin voters who face the prospect of being forced to cast diluted votes in overpopulated congressional and/or state legislative districts in the 2022 election in the very likely event that the Wisconsin legislature and governor cannot agree on redistricting maps.

2. On August 13, 2021, Proposed Intervenors filed suit in federal district court alleging that Wisconsin’s congressional and state legislative districts are malapportioned in violation of the U.S. Constitution. *See Hunter v. Bostelmann*, No. 21-CV-512 (W.D. Wis Aug. 13, 2021).¹

¹ The Johnson Petitioners have since been granted intervention in the federal action. *See Hunter v. Bostelmann*, No. 21-CV-512, Dkt. No. 24, Order (W.D. Wis. Aug. 27, 2021).

3. Ten days later, on August 23, 2021, the Johnson Petitioners filed their Petition for an Original Action. The Proposed Intervenors submitted a non-party brief opposing that petition, citing the availability of alternate forums. However, the Proposed Intervenors also made clear that they would seek to intervene in this forum if the Johnson Petitioners' petition was granted. *Johnson v. Wisconsin Elections Comm'n*, No. 2021AP1450-OA, Motion for Leave to File a Non-Party Brief (Sept. 7, 2021).

4. On September 22, this Court granted that petition. *Johnson v. Wisconsin Elections Comm'n*, No. 2021AP1450-OA, Order (Wis. Sept. 22, 2021). Further, this Court requested that any prospective intervenors file motions to intervene by October 6, 2021. *Id.* at 3.

5. Consistent with this Court's September 22, 2021 Order, Proposed Intervenors now submit their Motion to Intervene, a brief in support of the motion, and a proposed Complaint in Intervention.

6. As explained further in their brief, Proposed Intervenors satisfy the four elements of intervention of right under Wis. Stat. § 803.09(1). First, their motion is timely, as it comes pursuant to this Court's schedule. Second, they are intensely interested in the outcome of this litigation—both as voters and as litigants in a parallel suit. Third, their interests will undoubtedly be affected by whether and how this Court develops a redistricting plan. Fourth, they are not adequately represented by the Johnson Petitioners, who do not raise associational rights claims that ensure a timely remedy, disagree on the proper forum for these claims, and have discordant views on redistricting criteria.

7. Alternatively, Proposed Intervenors satisfy the criteria for permissive intervention under Wis. Stat. § 803.09(2). Proposed Intervenors' claims involve the same legal issues—whether the current districts are malapportioned and when this Court must act to protect voters—and there is no risk of prejudice at this early stage of the litigation.

8. In accordance with Wis. Stat. § 803.09(3), Proposed Intervenors have attached to this motion their pleading setting forth the claims for which intervention is sought.

9. Counsel for Proposed Intervenors contacted counsel for Respondents and Petitioners to obtain their positions on this Motion. Counsel for Respondents indicated that Respondents take no position on this Motion. Petitioners' counsel indicated that Petitioners do not oppose this Motion.

WHEREFORE, Proposed Intervenors Lisa Hunter, Jacob Zabel, Jennifer Oh, John Persa, Geraldine Schertz, and Kathleen Qualheim respectfully request that this Court grant the Motion to Intervene and enter an order joining the Proposed Intervenors as Intervenor-Petitioners to this original action.

Dated: October 6, 2021

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this 6th day of October 2021, I caused a copy of this brief to be served upon counsel for each of the parties via e-mail and Federal Express.

Dated: October 6, 2021

/s/ Aria C. Branch
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