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Sheila Reiff
Clerk of the Wisconsin Supreme Court
110 East Main Street, Suite 215
P.O. Box 1688
Madison, WI 53701-1688

Re: *Johnson v. Wisconsin Elections Commission*, No.2021AP1450-OA (Wis.)

Dear Clerk:

Pursuant to this Court's September 22, 2021 Order, proposed-Intervenor-Petitioners Congressmen Glenn Grothman, Mike Gallagher, Bryan Steil, Tom Tiffany, and Scott Fitzgerald (the "Congressmen") submit this letter brief addressing "[w]hen (identify a specific date) must a new redistricting plan be in place, and what key factors were considered to identify this date." Order at 3, *Johnson v. WEC*, No.2021AP1450-OA (Wis. *amended* Sept. 24, 2021). The Congressmen respectfully submit that the remedial redistricting plans may well be needed by **February 28, 2022**, based upon the following factors and considerations.

In *Hunter v. Bostelmann,* Nos.3:21-cv-512, *et al.* (W.D. Wis.), Respondents (collectively, the "Commission") explained their view that March 1, 2022, is the date by which they need new redistricting plans to administer the upcoming elections in 2022. *E.g.*, Answer, *Hunter*, Dkt.41 at 2. The Commission argued that such a date is needed given the various deadlines for the upcoming 2022 elections. *Id.* In particular, the period for candidates to circulate nominating petitions for those elections begins on April 15, 2022; the partisan primary for those elections is scheduled for August 9, 2022; and the elections themselves are scheduled for November 8, 2022. *Id.*; *see* Wis. Stat. § 8.15(1); Wis. Elections Comm'n, *Fall 2022 General Election*.[*]

While the Congressmen cannot independently verify whether the Commission's March 1, 2022 date is correct, the federal court in *Hunter* appears inclined to defer to the Commission on this timing, ***and so this Court issuing remedial redistricting plans by February 28—the day before March 1—may well be necessary to avoid federal court usurpation of Wisconsin's redistricting process***. *See* Order at 3, *Hunter*, Dkt.75 ("If the State enacts maps by March 1, 2022, the court may be able to refrain from issuing a judgment in this case.").[†] In particular, given

[*] Available at https://elections.wi.gov/elections-voting/2022/fall (last accessed October 6, 2022).

[†] To be clear, the Congressmen believe that any such usurpation would be unlawful, and would challenge such usurpation should it occur, including on appeal in federal court.

the federal court's apparent deference to the March 1 deadline, this Court issuing its remedial redistricting plans by February 28 may be necessary to protect Wisconsinites' right to "a redistricting map drawn by an institution of state government—ideally and most properly, the legislature, secondarily, this court." *Jensen v. Wis. Elections Bd.*, 2002 WI 13, ¶¶ 17–18, 249 Wis. 2d 706, 639 N.W.2d 537 (per curiam). If this Court were to wait until after February 28, the federal court may well conclude—however incorrectly and without legal justification—that the State of Wisconsin has "fail[ed] timely to perform" its redistricting "duty," and proceed to adopt its own remedial maps on March 1. *Growe v. Emison*, 507 U.S. 25, 34 (1993). That would inflict grave sovereign injury on our State, as there is "no reason for Wisconsin citizens to have to rely upon the federal courts" in this area. *Jensen*, 2002 WI 13, ¶ 8 (citation omitted; emphasis omitted).

The Congressmen may well take a different approach if the federal court granted their request to dismiss, *see* Congressmen Statement, *Hunter*, Dkt.91, No.3:21-cv-512 (W.D. Wis. Oct. 1, 2021), or otherwise made clear that it would not adopt remedial maps on March 1. However, at this point, the federal court has denied the Congressmen's Motion To Dismiss, *Hunter*, Dkt.60 at 6–8, and has indicated, at least tentatively, that it will "refrain from issuing a judgment in this case" only until March 1, Order at 3, *Hunter*, Dkt.75, No.3:21-cv-512.

A February 28, 2022 date for this Court to adopt remedial redistricting plans would provide this Court with sufficient time to adjudicate this case. If the Legislature and Governor deadlock, this case will involve an undisputable violation of the "one person, one vote" principle by all of the extant maps, given the changes reported by the U.S. Census. Thus, the only meaningful proceeding will likely be over the appropriate remedial maps. To that end, this Court could set a reasonable, simultaneous briefing schedule—*far* in advance of February 28—for the parties and *amici* to submit and advocate for their proposed remedial maps, as well as provide any supporting legal arguments and other materials that those parties deem helpful. Then, this Court could provide for simultaneous response briefs from all parties and *amici* to respond soon thereafter. The Congressmen further respectfully submit that this Court's schedule would not need to permit discovery among the parties or fact-finding proceedings before a special master, Wis. Stat. § 751.09, especially if, as the Congressmen propose, this Court "undert[akes] its redistricting endeavor in the most neutral way it could conceive—by taking the [immediately previous] reapportionment plan as a template and adjusting it for population deviations," *Baumgart v. Wendelberger*, Nos.01-C-0121, 02-C-0366, 2002 WL 34127471, at *7 (E.D. Wis. May 30, 2002). That said, if this Court were to conclude that discovery and/or special-master proceedings would be helpful, the February 28 date would allow sufficient time for such proceedings.

Sincerely,

Misha Tseytlin