

No. 2021AP1450

In the Supreme Court of Wisconsin

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.

On Petition To The Supreme Court To
Take Jurisdiction Of An Original Action

**PROPOSED PETITION FOR ORIGINAL ACTION OF
PROPOSED INTERVENOR-PETITIONERS CONGRESSMEN
GLENN GROTHMAN, MIKE GALLAGHER, BRYAN STEIL,
TOM TIFFANY, AND SCOTT FITZGERALD**

MISHA TSEYTLIN
Counsel of Record
State Bar No. 1102199
KEVIN M. LEROY
State Bar No. 1105053
TROUTMAN PEPPER
HAMILTON SANDERS LLP
227 W. Monroe, Suite 3900
Chicago, Illinois 60606
(608) 999-1240 (MT)
(312) 759-1939 (fax)
misha.tseytlin@troutman.com

*Counsel for Congressmen Glenn
Grothman, Mike Gallagher, Bryan Steil,
Tom Tiffany, and Scott Fitzgerald*

ISSUES PRESENTED BY THE CONTROVERSY

1. If the Legislature and Governor fail to timely adopt a new congressional district map for Wisconsin, whether Wisconsin's current congressional map is malapportioned, in violation of the Wisconsin Constitution.

2. If the Legislature and Governor fail to timely adopt a new congressional district map for Wisconsin, what congressional district map should this Court adopt.

TABLE OF CONTENTS

ISSUES PRESENTED BY THE CONTROVERSY	i
INTRODUCTION	1
THE PARTIES	1
I. The Petitioners.....	1
II. The Respondents.....	2
III. The Congressmen.....	3
STATEMENT OF THE FACTS	4
I. Congressional Redistricting Principles	4
II. The Current Decennial Redistricting Cycle For Wisconsin’s Congressional Districts, And This Court’s Grant Of The Petition In <i>Johnson</i>	5
III. The Congressmen Have A Significant, Direct Interest In Congressional Redistricting	6
STATEMENT OF RELIEF SOUGHT	7
STATEMENT OF REASONS WHY THIS COURT SHOULD TAKE JURISDICTION	9
CONCLUSION.....	10

INTRODUCTION

1. Congressmen Glenn Grothman, Mike Gallagher, Bryan Steil, Tom Tiffany, and Scott Fitzgerald (hereinafter the “Congressmen”), who all intend to run for reelection in 2022, submit this proposed Petition For Original Action along with their Motion To Intervene in this case, per Wis. Stat. § (Rule) 803.09(3)’s requirement that any motion to intervene “shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought.” Wis. Stat. § (Rule) 803.09(3); *see* Order Granting Petition at 3, No.2021AP1450-OA (Wis. *amended* Sept. 24, 2021) (hereinafter “*Johnson* Order”).

THE PARTIES

I. The Petitioners

2. Upon information and belief, Petitioners are all Wisconsin residents and voters. *See* Pet. ¶ 13.

3. Upon information and belief, Petitioner Billie Johnson resides at 2313 Ravenswood Road in Madison, WI 53711, within the Second Congressional District, State Assembly District 78, and State Senate District 26. Pet. ¶ 14.

4. Upon information and belief, Petitioner Eric O’Keefe resides at 5367 County Road C in Spring Green, WI 53588, within the Second Congressional District, State Assembly District 51, and State Senate District 17. Pet. ¶ 15.

5. Upon information and belief, Petitioner Ed Perkins resides at 4486 N. Whitehawk Drive in Grand Chute, WI 54913, within the Eighth Congressional District, State Assembly District 56, and State Senate District 19. Pet. ¶ 16.

6. Upon information and belief, Petitioner Ronald Zahn resides at 287 Royal Saint Pats Drive in Wrightstown, WI 54180, within the Eighth Congressional District, State Assembly District 2, and State Senate District 1. Pet. ¶ 17.

II. The Respondents

7. Respondent Wisconsin Elections Commission is a governmental agency authorized under Wis. Stat. § 5.05 and is responsible for administering Chapters 5 and 6 of the Wisconsin Statutes. Pet. ¶ 18. The Wisconsin Elections Commission is principally located at 212 E. Washington Avenue, 3rd Floor, Madison, WI 53703. Pet. ¶ 18.

8. Respondents Marge Bostelmann, Julie Glancey, Ann Jacobs, Dean Knudson, Robert Spindell, and Mark Thomsen, all sued only in their official capacities here, serve as the Commissioners of the Commission. Pet. ¶ 19. (This proposed Petition will hereinafter refer to all Respondents collectively as “the Commission”.)

III. The Congressmen

9. Congressman Glenn Grothman is the duly elected U.S. Representative representing Wisconsin’s Sixth Congressional District, where he also resides.

10. Congressman Mike Gallagher is the duly elected U.S. Representative representing Wisconsin’s Eighth Congressional District, where he also resides.

11. Congressman Bryan Steil is the duly elected U.S. Representative representing Wisconsin’s First Congressional District, where he also resides.

12. Congressman Tom Tiffany is the duly elected U.S. Representative representing Wisconsin’s Seventh Congressional District, where he also resides.

13. Congressman Scott Fitzgerald is the duly elected U.S. Representative representing Wisconsin's Fifth Congressional District, where he also resides.

14. The Congressmen all intend to be candidates for reelection in 2022, thereby continuing to serve their respective districts if reelected.

STATEMENT OF THE FACTS

I. Congressional Redistricting Principles

15. The Wisconsin Constitution requires equal apportionment for Wisconsin's congressional districts, including, but not limited to: (a) the equal-protection clause found in Article I, § I, *see County of Kenosha v. C. & S. Management, Inc.*, 223 Wis. 2d 373, 393, 588 N.W.2d 236 (1999) (explaining that Article I, § 1 offers "essentially the same" protection as does the U.S. Constitution's Equal Protection Clause); *Evenwel v. Abbott*, 136 S. Ct. 1120, 1124 (2016); and (b) Article IV, Wis. Const. art. IV, § 3; *State ex rel. Reynolds v. Zimmerman*, 22 Wis. 2d 544, 564, 126 N.W.2d 551 (1964).

16. The Legislature has the primary authority to conduct congressional redistricting and must submit its approved plans to the Governor for his approval or veto. *See Johnson Order* at 2; Wis. Const. art. IV, §§ 3, 4; *Zimmerman*, 22 Wis. 2d at 558.

17. If the Legislature and the Governor “fail[] to reapportion according to constitutional requisites in a timely fashion after having had an adequate opportunity to do so,” then this Court has the duty to adopt a congressional redistricting plan for the State. *Johnson Order* at 2.

II. The Current Decennial Redistricting Cycle For Wisconsin’s Congressional Districts, And This Court’s Grant Of The Petition In *Johnson*

18. Based on the results of the U.S. Census Bureau’s 2020 census results, all of Wisconsin’s current congressional districts are now malapportioned, in violation of the Wisconsin Constitution, including Article I, § 1 and Article IV.

19. The Legislature has begun drawing a new map for these congressional districts, in light of the 2020 census.

20. On August 23, 2021, Petitioners filed their Petition For Original Action with this Court, which Petition:

(a) “claim[ed] that the results of the 2020 census show that Wisconsin’s congressional and state legislative districts—including the voters’ districts—are malapportioned and no longer meet the requirements of the Wisconsin Constitution”; and (b) asked this Court to “assume original jurisdiction” and “adopt a new apportionment plan” “if the legislative process fails.” *Johnson* Order at 1.

21. This Court granted Petitioners’ Petition and accepted this case for consideration in its original jurisdiction. *Johnson* Order at 2–3; *see infra* ¶¶ 28–29.

III. The Congressmen Have A Significant, Direct Interest In Congressional Redistricting

22. The Congressmen have the solemn duty to “promote and protect their [constituents’] interests,” which duty requires them to kindle “close[] relations” and “common feeling[s] and interests” with the citizens of the districts from which they were elected. *State ex rel. Att’y Gen. v. Cunningham*, 81 Wis. 440, 51 N.W. 724, 730 (1892); *accord McCormick v. United States*, 500 U.S. 257, 272 (1991).

23. Consistent with this duty, each Congressman has invested substantial time and resources to understand the needs of the constituents in the districts that they represent.

24. The Congressmen's solemn relationship with their constituents and their intent to run for reelection in 2022 give them a substantial interest in the ongoing redistricting process for Wisconsin's congressional districts.

25. The Congressmen have such a substantial interest because the "contours of" Congressional Districts "determin[e] which constituents the Congressmen must court for votes and represent in the legislature," so any change to those contours "affect[s] the Congressmen directly and substantially." *League of Women Voters of Michigan v. Johnson*, 902 F.3d 572, 579 (6th Cir. 2018).

STATEMENT OF RELIEF SOUGHT

26. As the Congressmen explain more fully in their simultaneously filed Motion To Intervene and supporting papers, the Congressmen respectfully request that this Court grant their Motion To intervene as Petitioners and accept this proposed Petition For Original Action for filing.

27. Further, if the Legislature and Governor do not adopt a new congressional district map in a timely fashion, the Congressmen respectfully request that:

a. This Court declare that Wisconsin's congressional district map is malapportioned, in violation of the Wisconsin Constitution, including Article I, § 1, and Article IV;

b. Draw a new redistricting map for Wisconsin's congressional districts that: (i) complies with the equal-population requirements of the Wisconsin Constitution, including Article I, § 1, and Article IV; (ii) complies with all other applicable state and federal redistricting requirements; and (iii) follows "the most neutral" redistricting principle of "taking the [immediately previous] reapportionment plan as a template and adjusting it for population deviations." *Baumgart v. Wendelberger*, 2002 WL 34127471, at *7 (E.D. Wis. May 30, 2002).

c. Adopt this new redistricting map for Wisconsin's congressional districts by February 28, 2022, so that the new map will govern Wisconsin's 2022 congressional elections.

**STATEMENT OF REASONS WHY THIS COURT
SHOULD TAKE JURISDICTION**

28. As noted above, this Court has already granted Petitioners' Petition and accepted this case for consideration in its original jurisdiction, explaining, as relevant here, that Petitioners claim that "the results of the 2020 census show that Wisconsin's congressional . . . districts . . . are malapportioned and no longer meet the requirements of the Wisconsin Constitution." *Johnson* Order at 1.

29. Among other things, this Court's Order granting the Petition explained that "[t]his court has long deemed redistricting challenges a proper subject for the court's exercise of its original jurisdiction," as "any redistricting case is, by definition, *publici juris*, implicating the sovereign rights of the people of this state." *Johnson* Order at 2 (quoting *Jensen v. Wisconsin Elections Bd.*, 2002 WI 13, ¶ 17, 249 Wis. 2d 706, 639 N.W.2d 537 (2002) (per curiam)).

30. This Court should grant the Congressmen's proposed Petition for the same reasons, and for the reasons that the Congressmen discuss in their simultaneously filed Motion To Intervene and supporting papers.

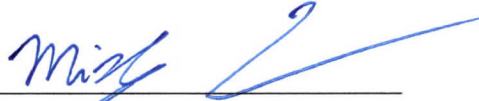
31. Notably, this proposed Petition raises the common question with the Petition of whether Wisconsin's existing congressional districts violate the equal-population principle found in the Wisconsin Constitution, including Article I, § 1, and Article IV. That is consistent with this Court's Order granting the Petition, as that Order covers all provisions "of the Wisconsin Constitution" relevant to whether the congressional districts are unconstitutionally "malapportioned." *Johnson* Order at 1.

CONCLUSION

32. This Court should grant the Congressmen's proposed Petition For Original Action and accept it for filing.

Dated: October 6, 2021.

Respectfully submitted,



MISHA TSEYTLIN

Counsel of Record

State Bar No. 1102199

KEVIN M. LEROY

State Bar No. 1105053

TROUTMAN PEPPER

HAMILTON SANDERS LLP

227 W. Monroe, Suite 3900

Chicago, Illinois 60606

(608) 999-1240 (MT)

(312) 759-1938 (KL)

(312) 759-1939 (fax)

misha.tseytlin@troutman.com

kevin.leroy@troutman.com

*Counsel for Congressmen Glenn
Grothman, Mike Gallagher, Bryan Steil,
Tom Tiffany, and Scott Fitzgerald*