



October 13, 2021

Via Email & Hand Delivery

Sheila T. Reiff
Clerk of the Supreme Court and Court of Appeals
110 East Main Street, Suite 215
Madison, WI 53703

RE: ***Johnson v. Wisconsin Elections Commission, No. 2021AP1450-OA –Proposed Intervenor-Petitioners Black Leaders Organizing for Communities, et al., response to letter briefs in accordance with the Court’s Order dated September 22, 2021***

Dear Ms. Reiff:

In its September 22, 2021 order, the Supreme Court of Wisconsin allowed the parties, amici, and proposed intervenors to submit a single response to the letter briefs addressing when a new redistricting plan must be in place and the key factors considered in discerning that date. (Order Wis. Sept. 22, 2021, amended Sept. 24, 2021) Proposed Intervenor-Petitioners, Black Leaders Organizing for Communities, Voces de la Frontera, the League of Women Voters of Wisconsin, Cindy Fallona, Lauren Stephenson, and Rebecca Alwin (collectively, the “BLOC Intervenors”), submit this response accordingly.

The letter briefs provided a variety of answers to the Court’s inquiry as to when a new redistricting plan must be in place. This response engages primarily with the letter briefs filed by the Johnson Petitioners and the Wisconsin Legislature, because the deadlines those entities proposed are statutorily infirm and at least 30 days past the deadline identified by the BLOC Intervenors. Because Wisconsin election statutes clearly show that March 14, 2022 (*i.e., before* March 15, 2022) is the correct answer to the Court’s inquiry, any proposed deadline after that date is incorrect. This is supported both by the statutory language and practical on-the-ground considerations, informed by the Wisconsin Elections Commission’s (“WEC”) expertise in administering past elections.

ARGUMENT

I. Wisconsin Statutes Require Redistricting to be Complete, and New Districts to be Finalized, by March 15, 2022, and any Proposed Later Date is Statutorily Infirm.

In their initial letter brief, the BLOC Intervenors provided a thorough, detailed table with election-related deadlines grounded in Wisconsin statutes. (*See* BLOC Intervenors' Br. at 4-6.) First and foremost, the BLOC Intervenors would like to add one more date to that previously disseminated table: April 10, 2022. The foundation for that date is Wis. Stat. § 5.15(4)(a), which reads, in part:

Except as provided in par. (c), the division ordinance or resolution shall number all wards in the municipality with unique whole numbers in consecutive order, beginning with the number one, shall designate the polling place for each ward, and shall describe the boundaries of each ward consistent with the conventions set forth in s. 4.003. The ordinance or resolution shall be accompanied by a list of the block numbers used by the U.S. bureau of the census that are wholly or partly contained within each ward, with any block numbers partly contained within a ward identified, and a map of the municipality which illustrates the revised ward boundaries. If the legislature, in an act redistricting legislative districts under article IV, section 3, of the constitution, or in redistricting congressional districts, establishes a district boundary within a municipality that does not coincide with the boundary of a ward established under the ordinance or resolution of the municipality, the municipal governing body shall, no later than April 10 of the 2nd year following the year of the federal decennial census on which the act is based, amend the ordinance or resolution to the extent required to effect the act. The amended ordinance or resolution shall designate the polling place for any ward that is created to effect the legislative act.^[1]

(Emphasis added.)

As background, on December 1, 2021, candidates for local office may begin circulating nomination papers for the spring elections. Wis. Stat. § 8.10(2)(a). Consequently, it is reasonable to expect that municipalities will have new wards in place before that date because candidates for local office must know the boundaries of the districts they seek to represent, such as aldermanic or county supervisory districts. However, if state legislative districts are adopted after that date (as they almost certainly will be), and the adopted maps create any conflict between the ward lines drawn by a municipality and a state legislative district boundary, then section 5.15(4)(a) mandates that the municipality must adjust its ward lines by April 10, 2022. For municipalities to meet that

¹ This was one of the adjustments made in 2011 when lawmakers changed the process for drawing municipal and county districts. *See* 2011 Wisconsin Act 39 § 9 (originally adopting the above-quoted language but with a deadline of May 15); 2011 Wisconsin Act 75 § 4 (amending deadline to April 10).

mandate, legislative-district boundaries must already be in place by April 10, 2022. As a practical matter, they must be in place days, or perhaps weeks, earlier so that municipalities can review the maps, assess any ward lines requiring revisions, and go through the process of revising those lines (as well as other local district boundaries that might need to change to accommodate the revisions triggered by the state-legislative map). Based on public notice and open meetings laws, if the change needs to be completed by municipalities no later than April 10, then there would certainly be at least some advance notice necessary for municipalities to assess the final maps, identify the necessary changes, go through any necessary public process, and approve any new districts. Therefore, this Court could only accept the argument that a new redistricting plan may be finalized after April 10, 2022, if it were willing to disregard statutorily mandated deadlines and thereby potentially put municipalities in violation of § 5.15(4)(a) through its ruling. In other words, the consequence of this Court following the Johnson Petitioners' and the Legislature's suggestion of identifying a date *after* April 10, 2022 to finalize state legislative districts would be to nullify Wisconsin law twice: once, by disregarding that deadline, and twice, by consequently putting municipalities in violation of the same deadline. This, of course, would violate a fundamental rule of statutory interpretation: courts should not interpret or apply statutes (including the failure to apply them) in a way that would render the statutory text meaningless. *See, e.g., Belding v. Demoulin*, 2014 WI 8, ¶17, 352 Wis. 2d 359, 843 N.W.2d 373 (“Statutory interpretations that render provisions meaningless should be avoided.”); *State ex rel. Kalal v. Cir. Ct. for Dane Cnty.*, 2004 WI 58, ¶46, 271 Wis. 2d 633, 681 N.W.2d 110 (“Statutory language is read where possible to give reasonable effect to every word, in order to avoid surplusage. ... In construing or interpreting a statute the court is not at liberty to disregard the plain, clear words of the statute.” (internal citations and quotation marks omitted)).

The Johnson Petitioners assert that a new redistricting plan need not be in place before April 15, 2022, and the Legislature claims that the proper deadline is April 30, 2022. Both of these dates are more than 30 days past the deadline proposed by the BLOC Intervenors. The deadlines proposed by the Johnson Petitioners and the Legislature have no anchor in Wisconsin's statutes and conveniently dodge any substantive discussion of the comprehensive statutory system currently in place, by which WEC and local clerks must abide.² Ultimately, any proposed deadline

² If the Legislature believes the statutory framework is unworkable, it is able to adjust the problematic provisions in the course of its legislative duties. It of course has both the power and the

later than March 15, 2022, is statutorily infirm under the current framework. The Court should reject any such proposals.

Most of the parties and intervenors fail to mention that Wisconsin law sets the third Tuesday in March—here, March 15, 2022—as the deadline for WEC to send notice of the primary and general elections to county clerks. Wis. Stat. § 10.06(1)(f). That notice directs clerks to the descriptions of the new legislative district boundaries. Wis. Stat. § 10.01(2)(a). County clerks then must send election notices to municipal clerks on the first Tuesday in April. Wis. Stat. § 10.06(2)(gm). In proposing that new redistricting plans only have to be in place by April 15 and April 30, the Johnson Petitioners and the Legislature fail to explain how those dates could comply with the statutory notice provisions in Wis. Stat. §§ 10.01 and 10.06,³ not to mention the April 10 deadline prescribed in Wis. Stat. § 5.15(4)(a).

Under the current scheme, as prescribed by the Legislature, candidates may begin circulating nomination papers, which may be signed only by those electors residing within the candidate's newly defined district, on April 15. Wis. Stat. §§ 8.15(1), (3). Candidates cannot collect the necessary signatures—or even strategize about how they will collect those signatures—until district boundaries are fixed and publicized. Section 8.15 allows candidates to organize and file these nomination papers up until 5:00 pm on June 1, 2022; many must be filed in original hard copy at WEC's office. Wis. Stat. §§ 8.15(1), (8)(a). Only those candidates who submit nomination papers bearing a sufficient number of valid signatures acquired within the allotted time may have their names on the August ballot. Wis. Stat. §§ 8.01, 8.15(6). Because prospective candidates must collect hundreds of signatures in this timeframe, the timeline for these activities is already quite compressed. Yet, astonishingly, the Johnson Petitioners assert that a new redistricting plan need

obligation to act in its primary role as a lawmaking body, rather than acting only in this Court in its role as just another litigant, and suggesting the Court adjust deadlines as required. In a previous order, the Supreme Court acknowledged that some of these timelines can be very compressed and urged the Legislature to broaden the applicable timelines. See *Hawkins v. Wis. Elections Comm'n*, 2020 WI 75, ¶5 n.1, 393 Wis. 2d 629, 948 N.W.2d 877 (“[U]nder the current statutory scheme, the time between the date the Commission makes its rulings on ballot access and the date that ballots must be sent to voters is extremely short. ... We urge the legislature to consider broadening the statutory timelines to afford a more reasonable amount of time for a party to file an action raising a ballot access issue.”). The Legislature, having chosen to forego that option, instead asks this Court to do the Legislature's work for it by ignoring the very laws the Legislature has adopted and chosen not to amend.

³ The Johnson Petitioners acknowledge the notice deadlines (Johnson Br. at 2), but make no effort to explain how its proposed deadline complies with those statutory requirements.

not be in place until the very day candidates may begin circulating nomination papers, and the Legislature proposes a deadline almost two weeks after the circulation period for such papers begins.

Both the Johnson Petitioners and the Legislature appear to be confused about the steps leading up to the circulation period. They overlook the practical reality—cemented in Wisconsin law through statutes that the Legislature itself devised – requiring that work be done in advance of the circulation period that begins on April 15. The Johnson Petitioners assert that “[a]ny work WEC needs to do could be done simultaneously with the circulation of nomination papers.” (Johnson Br. at 2) Yet, they provides no support for this assertion, which is rejected by WEC, the on-the-ground agency charged with administering Wisconsin’s elections. Wis. Stat. § 5.05. WEC’s letter brief outlines some of the work that needs to be done once new redistricting plans are put in place, but prior to April 15:

Commission staff must begin the complex process of recording these new boundaries in WisVote—the statewide election management and voter registration system. Staff must integrate the new redistricting data with existing voter registration and address data. This process includes manual review of ward map changes and parcel boundary data throughout the state of Wisconsin, to ensure accurate and efficient implementation of new redistricting data.

(WEC Br. at 2) Further, as a practical matter, if maps are not drawn and finalized well before April 15, how will candidates know what district they reside in or what office they can run for when the circulation period begins? How will voters know what petitions they may properly sign?⁴ Before candidates can begin to prepare and circulate nomination papers, WEC staff must produce new district lists for nomination paper review.

The BLOC Intervenors acknowledge and appreciate WEC’s unique experience and expertise and do not oppose the earlier deadline that WEC has proposed—March 1, 2022. The Governor and the Senate Democrats also agree with this date. WEC asserts that “to accurately integrate new districting data into its statewide election database, and to timely and effectively administer the fall 2022 general election,” the new plans must be in place no later than March 1,

⁴ These are not minor errors without consequence. A candidate’s nomination papers may be challenged based on improper residency of a candidate or of a petition signatory. Wis. Stat. § 6.10. And a circulator who collects a signature from an ineligible elector, including one who does not live within the district, has potentially committed voter fraud. Wis. Stat. §§ 8.15(4)(a), 12.13(3)(a).

2022. The BLOC Intervenors acknowledge that WEC has the on-the-ground experience regarding the administration of elections and has broad powers and responsibilities under Wis. Stat. § 5.05. See *State ex rel. Zignego v. Wis. Elections Comm'n*, 2021 WI 32, ¶18, 396 Wis. 2d 391, 957 N.W.2d 208 (citing §§ 5.05(1), (2m), (2w), (5t), (6a), and (12)). The federal court has adopted WEC's proposed deadline: "Based on the information that the parties have so provided to the court, March 1, 2022, is the deadline by which the maps must be available." Order, *Hunter v. Bostelmann*, No. 21-cv-512-jdp-ajs-eeec (W.D. Wis. Oct. 6, 2021). Regardless of the exact date this Court chooses in response to its inquiry, the deadline must be before March 15, 2022 so that WEC and local clerks can lawfully administer the August Partisan Primary.

II. Any Schedule Set by this Court Must Provide Sufficient Time for Federal Challenges to be Adjudicated Before March 15, 2022.

The Court's September 22, 2021 Order did not request that the parties and proposed intervenors recommend a full and detailed schedule for this Court to manage this litigation, or opine whether the Court would be wise to submerge itself in these issues. Accordingly, the BLOC Intervenors did not address such a schedule in their initial letter brief. However, several of the letter briefs went beyond the scope of the question presented by the Court and even opined as to the exact date the Court should hold a status conference and determine a briefing schedule.

To the extent that this Court may be inclined to set a schedule,⁵ it bears repeating that three of the BLOC Intervenors, along with individual plaintiffs not among the prospective intervenors here, have a claim under Section 2 of the Voting Rights Act ("VRA") pending before the federal court.⁶ For Wisconsin's state legislative districts to be finalized by March 14, 2022 in a form compliant with federal law, the federal court must be given time to review—and possibly alter—any state-legislative maps adopted by this Court. That will require additional time before the March

⁵ If the Court intends to set a comprehensive schedule for this case, then the BLOC Intervenors request that the Court allow briefing specifically addressing a proposed schedule.

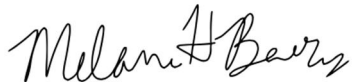
⁶ BLOC Intervenors have brought federal Voting Rights Act claims related to Wisconsin's maps (and to appropriate remedial districts) currently pending before the Western District of Wisconsin. First Am. Compl. ¶¶104-110, *BLOC, et al. v. Spindell, et al.*, No. 3:21-cv-534 (W.D. Wis. Sept. 7, 2021). Because those claims are not before this Court, they might need to be addressed by the federal court *after* the political branches agree upon, or this Court imposes, a map defining state legislative districts, should the state redistricting processes fail to cure those violations of federal law. The federal court has indicated a trial for any such claims will begin in January 2022. Therefore, if the political branches do not succeed in forging compromise maps that comply with state and federal law, this Court should be prepared to issue a final order in this action before the federal trial begins, and in sufficient time for the federal court to hold an orderly trial.

15, 2022 deadline for that court's proceedings *and* rulings. In light of this Court's Order asserting jurisdiction, the federal panel has stayed its proceedings until November 5, 2021; it has also established that it anticipates holding a trial on any claims to be tried before that court, presumably including the BLOC Intervenors' VRA claim, to begin no later than January 31, 2022.

CONCLUSION

Wisconsin's current election statutes are comprehensive and clear: new districts must be finalized no later than March 14, 2022. If the Court adopts the Johnson Petitioners' proposed deadline or the Legislature's proposed deadline for when a new redistricting plan must be in place, there is a great risk that WEC and local clerks will be afool of state, and possibly federal, law and that this Court will have put them in that precarious position.

Sincerely,



Mel Barnes, SBN 1096012
LAW FORWARD, INC.
P.O. Box 326
Madison, WI 53703-0326
mbarnes@lawforward.org
608.535.9808

Douglas M. Poland, SBN 1055189
Jeffrey A. Mandell, SBN 1100406
Rachel E. Snyder, SBN 1090427
Richard A. Manthe, SBN 1099199
Carly Gerads, SBN 1106808
STAFFORD ROSENBAUM LLP
222 West Washington Avenue, Suite 900
P.O. Box 1784
Madison, WI 53701-1784
dpoland@staffordlaw.com
jmandell@staffordlaw.com
rsnyder@staffordlaw.com
rmanthe@staffordlaw.com
cgerads@staffordlaw.com
608.256.0226

Mark P. Gaber*
Christopher Lamar*
CAMPAIGN LEGAL CENTER
1101 14th St. NW, Suite 400
Washington, D.C. 20005
mgaber@campaignlegal.org
202.736.2200

Annabelle Harless*
CAMPAIGN LEGAL CENTER
55 W. Monroe St., Ste. 1925
Chicago, IL 60603
aharless@campaignlegal.org
312.312.2885

**Admitted pro hac vice*

Attorneys for Proposed Intervenor-Petitioners Black Leaders Organizing for Communities, et al.

Cc:

By Email and First-Class U.S. Mail, postage prepaid

Richard M. Esenberg
Anthony LoCoco
Lucas Thomas Vebber
Wisconsin Institute for Law & Liberty
330 East Kilbourn Ave., Suite 725
Milwaukee, WI 53202-3141
rick@will-law.org
alococo@will-law.org
lucas@will-law.org

Karla Z. Keckhaver
Steven Killpatrick
Thomas C. Bellavia
Wisconsin Department of Justice
P.O. Box 7857
Madison, WI 53707-7857
keckhaverkz@doj.state.wi.us
kilpatricksc@doj.state.wi.us
bellaviatc@doj.state.wi.us

By Email only

Charles G. Curtis
Perkins Coie LLP
33 E. Main St., Ste. 201
Madison, WI 53703-5411
ccurtis@perkinscoie.com

Adam K. Mortara
Lawfair LLC
125 S. Wacker Drive, Suite 300
Chicago, IL 60606
mortara@lawfairllc.com

Kevin M. St. John
Bell Giftos St. John LLC
Suite 2200
5325 Wall Street
Madison, WI 53718
kstjohn@bellgiftos.com

Misha Tseytlin
Kevin M. LeRoy
Troutman Pepper Hamilton Sanders LLP
Suite 3900
227 W. Monroe St.
Chicago, IL 60606
misha.tseytlin@troutman.com
kevin.leroy@troutman.com

Marc E. Elias
Aria C. Branch
Daniel C. Osher
Jacob Shelly
Christina A. Ford
William K. Hancock
Elias Law Group
10 G St NE Ste 600
Washington, D.C. 20002
melias@elias.law
abranh@elias.law
dosher@elias.law
jshelly@elias.law
cford@elias.law
whancock@elias.law

Daniel R. Suhr
Attorney at Law
220 Madero Drive
Thiensville, WI 53092
dsuhr@libertyjusticecenter.org