

No. 2021AP1450-OA

IN THE SUPREME COURT OF WISCONSIN

—————
BILLIE JOHNSON, ERIC O’KEEFE,
ED PERKINS, AND RONALD ZAHN,

Petitioners,

v.

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.

—————
**RESPONSE TO MOTIONS TO INTERVENE BY PROPOSED
INTERVENOR THE WISCONSIN LEGISLATURE**

Pursuant to this Court’s Order of September 22, 2021, the Wisconsin Legislature files this consolidated response to all motions to intervene.

The Legislature does not oppose the motions to intervene. All but one of the motions were filed by parties and one *amici curiae* (the Citizen Data Scientists) who are simultaneously involved in the federal court

proceedings regarding Wisconsin's redistricting plans. It makes little sense to exclude such parties here.¹ As the U.S. Supreme Court observed in *Grove v. Emison*, a State can have only one set of redistricting plans. 507 U.S. 25, 35 (1993). To the extent parties are raising redistricting claims, they should be raised in one forum. And in light of the nature of those claims—involving reapportionment—that forum is this Court. *Id.* at 33.

Relatedly, Petitioners seek declaratory relief. Wisconsin law states that “all persons shall be made parties who have or claim any interest which would be affected by the declaration.” Wis. Stat. §806.04(11). The federal plaintiffs, who are litigating the same reapportionment issues in federal court, are such parties. As this Court has explained, “The purpose of requiring that all interested persons be made parties or that their interests be suitably represented in an action for declaratory relief is to make it certain that the declaration will terminate the controversy.” *Lozoff v. Kaisershot*, 11 Wis. 2d 485, 491, 105 N.W.2d 783, 786 (1960). It

¹ It also makes little sense that the federal proceedings are ongoing. For the reasons in the Legislature's petition for writ of mandamus or prohibition, the federal proceedings should be dismissed. See *In re Wis. Legislature*, No. 21-474 (U.S. Sept. 24, 2021).

avoids this Court's "resolv[ing] a question for some of the interested persons, only to have it relitigated by others who were not bound by the first declaration." *Id.* That is especially important here, given that there can be only one set of redistricting plans.

With respect to Senator Bewley's motion to intervene on behalf of the Senate Democratic Caucus, the Legislature does not oppose her participation in this case as a permissive intervenor. *See* Wis. Stat. §803.09(2). But there should be no confusion that the Legislature has moved to intervene as the Legislature, as permitted by section 803.09(2m). A ballot of the Joint Committee on Legislative Organization, comprising members from both houses and belonging to both parties, authorized the Legislature's intervention. *See* Wis. Stat. §13.365(3). The Legislature accordingly speaks for the Legislature in this litigation and the related cases. For example, the Legislature has moved to dismiss the related federal-court litigation to protect its primacy in redistricting. Principles of comity and federalism are the cornerstone of those dismissal arguments. And in this Court, should there be an impasse, the

Legislature's role will be submitting and defending the *Legislature's* map passed by both legislative houses.

For the foregoing reasons, the Legislature does not oppose the motions to intervene. And for many of the same reasons that those parties seek to intervene, as well as the Legislature's statutory right to intervene in this matter, Wis. Stat. §803.09(2m), the Legislature respectfully requests that its motion to intervene be granted, too.

Dated this 13th day of October, 2021.

Respectfully submitted,

Electronically Signed By

Kevin M. St. John

CONSOVOY MCCARTHY PLLC

Jeffrey M. Harris*

Taylor A.R. Meehan**

James P. McGlone***

1600 Wilson Boulevard, Suite 700

Arlington, Virginia 22209

703.243.9423

jeff@consvoymccarthy.com

taylor@consvoymccarthy.com

jim@consvoymccarthy.com

* *Admitted pro hac vice*

** *Admitted pro hac vice; licensed
to practice in Ill. & D.C.*

*** *Admitted pro hac vice; licensed
to practice in Mass.*

BELL GIFTOS ST. JOHN LLC

Kevin M. St. John, SBN 1054815

5325 Wall Street, Suite 2200

Madison, Wisconsin 53718

608.216.7990

kstjohn@bellgiftos.com

LAWFAIR LLC

Adam K. Mortara, SBN 1038391

125 South Wacker, Suite 300

Chicago, Illinois 60606

773.750.7154

mortara@lawfairllc.com

*Attorneys for Proposed Intervenor,
The Wisconsin Legislature*

CERTIFICATIONS

Certifications as Required By Wis. Stat. § 809.19(8g)

I certify that this brief conforms to the rules contained in Wis. Stat. §§ 809.19(8)(b), (bm), (c) relating to the form of briefs. This brief uses a proportionally spaced serif font, is produced with margins equal to or greater than those specified by rule, and includes page numbers as specified by the rules. Excluding the caption, table of contents, table of authorities, signatures, and these certifications, the length of this brief is 478 words as calculated by Microsoft Word.

Certificate of Filing and Service Pursuant to this Court's Order of September 22, 2021 (as amended September 24, 2021)

I certify that I caused this Response to Motions to Intervene by the Wisconsin Legislature to be filed with the Court as attachments to an email dated this day and directed to clerk@wicourts.gov. I further certify that I will cause 10 copies of these materials with a notation that "This document was previously filed by email" to be filed with the clerk no later than 12 p.m. on Thursday, October 14, 2021.

I further certify that on this day, I caused service copies of what was emailed to the Clerk to be sent to counsel of record for Petitioners and Respondents by U.S. mail and email. Additionally, I caused courtesy copies of these documents to be sent by email to all counsel noticed by the Court's Order dated September 22, 2021, and counsel representing proposed intervenors.

Dated this 13th day of October, 2021.

Respectfully submitted,

Electronically Signed by
Kevin M. St. John

BELL GIFTOS ST. JOHN LLC
KEVIN M. ST. JOHN, SBN 1054815
5325 Wall Street, Suite 2200
Madison, Wisconsin 53718
608.216.7990
kstjohn@bellgiftos.com

Attorney for the Wisconsin Legislature