

Supreme Court of Wisconsin  
NO. 2021AP001450 - OA

**SUPREME COURT OF WISCONSIN**

Appeal No. 2021AP001450 - OA

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

*Petitioners,*

BLACK LEADERS ORGANIZING FOR  
COMMUNITIES, VOCES DE LA FRONTERA,  
LEAGUE OF WOMEN VOTERS OF WISCONSIN,  
CINDY GALLONA, LAUREN STEPHENSON,  
REBECCA ALWIN, CONGRESSMAN GLENN  
GROTHMAN, CONGRESSMAN MIKE  
GALLAGHER, CONGRESSMAN BRYAN STEIL,  
CONGRESSMAN TOM TIFFANY,  
CONGRESSMAN SCOTT FITZGERALD, LISA  
HUNTER, JACOB SABEL, JENNIFER OH, JOHN  
PERSA, GERALDINE SCHERTZ, KATHLEEN  
QUALHEIM, GARY KRENZ, SARAH J.  
HAMILTON, STEPHEN JOSEPH WRIGHT, JEAN-  
LUC THIFFEAULT, and SOMESH JHA,

*Intervenors-Petitioners,*

v.

WISCONSIN ELECTIONS COMMISSION, MARGE  
BOSTELMANN 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,*

THE WISCONSIN LEGISLATURE, GOVERNOR TONY EVERS, in his official capacity, and JANET BEWLEY SENATE DEMOCRATIC MINORITY LEADER, on behalf of the SENATE DEMOCRATIC CAUCUS,

*Intervenors-Respondents.*

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**MOTION FOR LEAVE TO FILE NON-PARTY BRIEF IN  
SUPPORT OF NEITHER PARTY OF WILLIAM WHITFORD,  
HANS BREITENMOSER, MARY LYNNE DONOHUE, WENDY  
SUE JOHNSON, AND DEBORAH PATEL**

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William Whitford, Hans Breitenmoser, Mary Lynne Donohue, Wendy Sue Johnson, and Deborah Patel (“Amici”), by and through their attorneys, request permission pursuant to Wis. Stat. (Rule) § 809.19(7) to file a non-party brief in this case on the question of whether this Court should modify existing maps using the “least-change” approach (*Johnson v. Wis. Elections Comm’n*, Order No. 2021AP1450-OA, 1–3, Oct. 14, 2021). In support of their motion, Amici state as follows:

1. Amici are all citizens of the United States and residents of the State of Wisconsin. Amici are registered to vote in Wisconsin and intend to participate in the 2022 primary and general elections. Amici all served as plaintiffs in the federal court case *Whitford v. Gill*, 218 F. Supp. 3d 837

(W.D.Wis. 2016), *vacated and remanded*, 138 S. Ct. 1916 (2018), *see also* Am. Compl. (Sept. 14, 2018), ECF 201, (“*Whitford* case”).

2. Amicus William Whitford is a Professor Emeritus at the University of Wisconsin Law School. He has taught a range of subjects including Business Law, Contracts, Bankruptcy, and Consumer Protection and Taxation. He was the lead plaintiff in the *Whitford* case. The *Whitford* case complaint specified that the 2011 redrawn maps purposely exploited both “cracking” and “packing” techniques to dilute Democratic voters so that their votes would not carry the weight of one person, one vote,.

3. Amicus Hans Breitenmoser is a lifelong dairy farmer in Merrill, Wisconsin. He was one of the plaintiffs in the *Whitford* case. He has served as a supervisor on the Lincoln County Board (a non-partisan office) since 2012, motivated to run by his frustration with the gerrymandering in Act 43 in 2011. As a Lincoln County supervisor, he drafted a resolution insisting that the state adopt a nonpartisan procedure for drawing legislative and congressional district lines, which was adopted by the Lincoln County Board in 2017 and served as a model for the Wisconsin County Association and 42 other counties in the state. Mr. Breitenmoser then drafted a ballot referendum advocating the same, which the voters of Lincoln County passed.

He also advocates against partisan gerrymandering by speaking on panels and through the non-partisan Farmers Union. He has experienced first-hand the detrimental impacts of the gerrymandered assembly district lines drawn through Act 43 as a voter, office holder, and community member.

4. Amicus Mary Lynne Donohue is a retired attorney and former Sheboygan Alderperson who lives in Wisconsin's 26th Assembly District. She was one of the original plaintiffs in the *Whitford* case. Ms. Donohue regularly speaks to community members about the pernicious effects of gerrymandering, including at the Sheboygan County and Manitowoc County chapters of the League of Women Voters. Ms. Donohue was recently appointed to the State Governing Board of Common Cause Wisconsin, a non-partisan political reform advocacy organization. She has also submitted written testimony to the People's Maps Commission advocating for fair maps. Ms. Donohue has experienced first-hand the detrimental impacts of the gerrymandered assembly district lines drawn through Act 43 as a voter, candidate, and community member.

5. Amicus Wendy Sue Johnson is a practicing family law attorney who lives in Wisconsin's 68th Assembly District. She was one of the original plaintiffs in the *Whitford* case, having spent years volunteering with local

Democratic campaigns. Today, she remains civically engaged, canvassing for and donating to Democratic candidates and facilitating Eggs and Issues events for Eau Claire community members to gather and discuss politics. Ms. Johnson has experienced first-hand the detrimental impacts of the gerrymandered assembly district lines drawn through Act 43 as a voter, candidate, and community member.

6. Amicus Deborah Patel is a retired attorney and arts management professional who lives in Wisconsin's 24th Assembly District. One of the plaintiffs in the *Whitford* case, she cares deeply about promoting fair maps and holds membership in several nonpartisan organizations, including the League of Women Voters of Ozaukee County, the League of Women Voters of Wisconsin and the Ozaukee County NAACP. Ms. Patel is the founder and co-lead of North Shore Fair Maps, a nonpartisan citizens action group dedicated to ending partisan gerrymandering in Wisconsin. Ms. Patel has experienced first-hand the detrimental impacts of the gerrymandered assembly district lines drawn through Act 43 both as a voter and community member.

7. On October 14, 2021, the Court issued an order in this case stating: "The parties (including all interveners) shall file simultaneous briefs

addressing the following questions: . . . 2.) The petitioners ask us to modify existing maps using the “least-change” approach. Should we do so? And if not, what approach should we use?” Order No. 2021AP1450-OA, 2, Oct 14, 2021. Amici respectfully submit this motion for leave to file the enclosed non-party brief, pursuant to Wis. Stat. (Rule) § 809.19(7), specifically to address the Court’s question.

8. In their brief, Amici seek to outline, with particular reliance on the finding of the federal District Court in the *Whitford* case, why this Court should not adopt a “least-change” approach. Specifically, Amici will show that the “least-change” approach is inconsistent with the Wisconsin Constitution and the State’s prior practice where, as here, the existing map is an extreme partisan gerrymander. The result, Amici will show, is to compound the harm they have experienced for the past ten years by establishing a new, court-drawn gerrymander. Amici have also surveyed law and practice nationwide and will show that applying a “least-change” in this case is inconsistent with national trends and judicial practice.

WHEREFORE, Amici respectfully request that this Court grant its motion for leave to file the enclosed non-party brief in this case.

Dated: October 25, 2021

Respectfully Submitted,

/s/ Ruth M. Greenwood

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\*Motion for *Pro Hac Vice* Admission forthcoming

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**CERTIFICATE OF SERVICE**

I certify that on this 25th day of October, 2021, I caused a copy of this motion to be served upon counsel for each of the parties via e-mail and U.S. Mail.

Dated: October 25, 2021

*/s/ Jakob Feltham*

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Jakob Feltham