

STATE OF WISCONSIN
IN SUPREME COURT

Case No. 2021AP1450-OA

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
FALLONA, LAUREN STEPHENSON,
REBECCA ALWIN, CONGRESSMAN
GLENN GROTHMAN, CONGRESSMAN
BRYAN STEIL, CONGRESSMAN TOM
TIFFANY, CONGRESSMAN SCOTT
FITZGERALD, LISA HUNTER, JACOB
ZABEL, 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, 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,

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.

ORIGINAL ACTION

INTERVENOR-RESPONDENT GOVERNOR TONY EVERS'S ANSWER TO CONSOLIDATED PETITION

Intervenor-Respondent Governor Tony Evers responds to the consolidated petition as follows.

ISSUES PRESENTED

1. Evers admits that this is an issue presented in this case.
2. Evers admits that this is an issue presented in this case.
3. Evers admits that this is an issue presented in this case.
4. Evers admits that this is an issue presented in this case.
5. Evers admits that this is an issue presented in this case.
6. Evers admits that this is an issue presented in this case.

7. Evers admits that this is an issue presented in this case.

INTRODUCTION

8. Evers admits the allegations in paragraph 8 except states that this Court has not held that congressional districts must be equally apportioned under the Wisconsin Constitution. Evers admits, however, that congressional districts no longer meet the one person, one vote requirement under federal law.

9. Evers admits the allegations in paragraph 9.

10. Evers admits the allegations in paragraph 10.

11. Evers admits the allegations in paragraph 11.

12. With respect to paragraph 12, Evers admits that congressional districts must be equally apportioned under federal law but states that this Court has not held that congressional districts must be equally apportioned under article I, section 1 of the Wisconsin Constitution.

13. Evers lacks knowledge and information to form a belief about whether any petitioner or intervenor-petitioner lives in a district or represents individuals who live in a district that is overpopulated but admits that some districts are overpopulated and thus individuals living in those districts have a diluted vote.

14. Evers admits the allegations in paragraph 14.

15. Evers admits the allegations in paragraph 15.

16. Evers admits the allegations in paragraph 16.

17. Evers admits the allegations in paragraph 17.

18. Evers admits that this is an accurate quote from *Jensen v. Wisconsin Elections Board*, 2002 WI 13, ¶ 5, 249 Wis. 2d 706, 639 N.W.2d 537.

19. Evers admits that this is an accurate quote from *Jensen*, 249 Wis. 2d 706, ¶ 4.

20. Evers admits that this is an accurate quote from *Jensen*, 249 Wis. 2d 706, ¶ 17.

21. Evers states that paragraph 21 contains legal conclusions and denies anything inconsistent with *Grove v. Emison*, 507 U.S. 25 (1993) and *Jensen*.

22. Evers admits that this paragraph contains an accurate quote from *State ex rel. Reynolds v. Zimmerman*, 22 Wis. 2d 544, 564, 126 N.W.2d 551 (1964).

23. Evers admits that this Court's order of September 22, amended on September 24, said that "judicial relief becomes appropriate in reapportionment cases only when a legislature fails to reapportion according to constitutional requisites in a timely fashion after having had an adequate opportunity to do so," but denies that the order said anything about this Court having a duty to adopt a congressional redistricting plan.

24. Evers admits the allegations in paragraph 24.

JURISDICTION AND VENUE

25. Evers admits the allegations in paragraph 25.

26. Evers admits the allegations in paragraph 26.

27. Evers admits the allegations in paragraph 27.

28. Evers admits the allegations in paragraph 28.

PARTIES

29. Evers lacks knowledge or information to form a belief about the allegations in paragraph 29.

30. Evers lacks knowledge or information to form a belief about the allegations in paragraph 30.

31. Evers lacks knowledge or information to form a belief about the allegations in paragraph 31.

32. Evers lacks knowledge or information to form a belief about the allegations in paragraph 32.

33. Evers lacks knowledge or information to form a belief about the allegations in paragraph 33.

34. Evers lacks knowledge or information to form a belief about the allegations in paragraph 34.

35. Evers lacks knowledge or information to form a belief about the allegations in paragraph 35.

36. Evers lacks knowledge or information to form a belief about the allegations in paragraph 36.

37. Evers lacks knowledge or information to form a belief about the allegations in paragraph 37.

38. Evers lacks knowledge or information to form a belief about the allegations in paragraph 38.

39. Evers lacks knowledge or information to form a belief about the allegations relating to the resident of the BLOC Individual Intervenor-Plaintiffs in paragraph 31 but admits the allegations relating to the Assembly and Senate districts.

40. Evers lacks knowledge or information to form a belief about the allegations in paragraph 40.

41. Evers lacks knowledge or information to form a belief about the allegations in paragraph 41.

42. Evers lacks knowledge or information to form a belief about the allegations in paragraph 42.

43. Evers admits the allegations in paragraph 43.

44. Evers admits the allegations in paragraph 44.

45. Evers admits the allegations in paragraph 45.

46. Evers admits the allegations in paragraph 46.

47. Evers admits the allegations in paragraph 47.

48. Evers admits the allegations in paragraph 48.

49. Evers admits the allegations in paragraph 49.

50. Evers lacks knowledge or information to form a belief about the allegations in paragraph 50.

51. Evers lacks knowledge or information to form a belief about the allegations in paragraph 51.

52. Evers lacks knowledge or information to form a belief about the allegations in paragraph 52.

53. Evers lacks knowledge or information to form a belief about the allegations in paragraph 53.

54. Evers lacks knowledge or information to form a belief about the allegations in paragraph 54.

55. Evers lacks knowledge or information to form a belief about the allegations in paragraph 55.

56. Evers lacks knowledge or information to form a belief about the allegations in paragraph 56.

57. Evers lacks knowledge or information to form a belief about the allegations in paragraph 57.

58. Evers lacks knowledge or information to form a belief about the allegations in paragraph 58.

59. Evers lacks knowledge or information to form a belief about the allegations in paragraph 59.

60. Evers lacks knowledge or information to form a belief about the allegations in paragraph 60.

61. Evers lacks knowledge or information to form a belief about the allegations in paragraph 61.

62. Evers lacks knowledge or information to form a belief about the allegations in paragraph 62.

63. Evers lacks knowledge or information to form a belief about the allegations in paragraph 63.

64. Evers lacks knowledge or information to form a belief about the allegations in paragraph 64.

65. Evers lacks knowledge or information to form a belief about the allegations in paragraph 65.

66. Evers admits the allegations in paragraph 66.

67. Evers admits the allegations in paragraph 67.

68. Evers admits the allegations in paragraph 68.

69. Evers admits the allegations in paragraph 69 but states that this Court recognizes “legislative reapportionment as a matter for joint action between the legislature and the governor.” *Reynolds*, 22 Wis. 2d at 558.

70. Evers admits the allegations in paragraph 70 and states that the People’s Map Commissions maps are part of his role in proposing legislation to the legislature under *Reynolds*.

71. Evers admits the allegations in paragraph 71.

STATEMENT OF FACTS

72. Evers admits the allegations in paragraph 72.

73. Evers admits the allegations in paragraph 73 but denies that the adjustments the *Baldus* court made were “slight.”

74. Evers admits the allegations in paragraph 74.

75. Evers admits the allegations in paragraph 75.

76. Evers admits the allegations in paragraph 76.

77. Evers admits the allegations in paragraph 77.

78. Evers admits the allegations in paragraph 78.

79. Evers admits the allegations in paragraph 79.

80. Evers admits the allegations in paragraph 80.

81. With respect to paragraph 81, Evers admits that congressional districts must be equally apportioned under federal law but states that this Court has not held that congressional districts must be equally apportioned under article I, section 1 of the Wisconsin Constitution.

82. Evers admits the allegations in paragraph 82.

83. Evers admits the allegations in paragraph 83.

84. Evers admits the allegations in paragraph 84.

85. Evers admits the allegations in paragraph 85.

86. Evers admits the allegations in paragraph 86.

87. Evers admits the allegations in paragraph 87.

88. Evers admits the allegations in paragraph 88.

89. Evers admits the allegations in paragraph 89.

90. Evers admits the allegations in paragraph 90.

91. Evers admits the allegations in paragraph 91.

92. Evers admits the allegations in paragraph 92.

93. Evers admits the allegations in paragraph 93.

94. Evers admits the allegations in paragraph 94.

95. Evers admits the allegations in paragraph 95.

96. Evers admits the allegations in paragraph 96 except he lacks knowledge or information to form a belief about the residency of the Petitioners.

97. Evers lacks knowledge or information to form a belief about the allegations in paragraph 97.

98. Evers admits the allegations in paragraph 98.

99. Evers lacks knowledge or information to form a belief about the allegations in paragraph 99 but admits the Assembly and Senate Districts listed are overpopulated.

100. Evers admits the allegations in paragraph 100 except he lacks knowledge or information to form a belief about the residency of the BLOC Individual Intervenor-Petitioners.

101. Evers admits the allegations in paragraph 101 except he lacks knowledge or information to form a belief about the residency of the BLOC Individual Intervenor-Petitioners.

102. Evers admits the allegations in paragraph 102 except he lacks knowledge or information to form a belief about the residency of the individual Citizen Mathematicians and Scientist Intervenor-Petitioners.

103. Evers admits the allegations in paragraph 103.

104. Ever admits the allegations in paragraph 104 and states that legislative leaders have now introduced bills with the proposed districting plans.

105. Evers admits the allegations in paragraph 105.

106. Evers admits the allegations in paragraph 106.

107. Evers admits the allegations in paragraph 107.

108. With respect to paragraph 108, Evers admits that the lawsuit is ripe and states that this Court has already accepted jurisdiction over the case.

109. Evers denies the allegations in paragraph 109.

110. Evers admits the allegations in paragraph 110.

111. Evers admits the allegations in paragraph 111.

112. Evers admits the allegations in paragraph 112.

113. Evers admits the allegations in paragraph 113.

114. Evers admits the allegations in paragraph 114.

115. Evers admits the allegations in paragraph 115 except states that he believes the maps should be in place by

March 1, 2022, consistent with what the Wisconsin Election Commission has said it needs to run an orderly election.

116. Evers admits the allegations in paragraph 116.

117. Evers admits the allegations in paragraph 117.

118. Evers denies the allegations in paragraph 118.

119. Evers admits the allegations in paragraph 119.

120. Evers admits the allegations in paragraph 120.

121. Evers admits the allegations in paragraph 121.

122. Evers lacks knowledge or information to form a belief about the allegations in paragraph 122.

123. Evers admits the allegations in paragraph 123.

124. Evers admits the allegations in paragraph 124.

PETITIONERS' AND THE CONGRESSMEN'S STATEMENTS OF RELIEF SOUGHT

125. Evers admits the allegations in paragraph 125.

126. Evers denies the allegations in paragraph 126.
There is no need for this Court to enter an injunction at this time or for this Court to stay the action.

127. Evers denies the allegations in paragraph 127 except that the Court should look to equal population, contiguity and compactness in any remedy entered in this case.

BLOC INTERVENOR-PLAINTIFFS' STATEMENT OF RELIEF SOUGHT

128. Evers admits the allegations in paragraph 128.

129. Evers admits the allegations in paragraph 129.

130. Evers admits the allegations in paragraph 130.

131. Evers admits the allegations in paragraph 131.

132. Evers admits the allegations in paragraph 132.

133. Evers admits the allegations in paragraph 133.

134. Evers admits the allegations in paragraph 134.

135. Evers admits the allegations in paragraph 135.

136. Evers admits the allegations in paragraph 136.

137. With respect to paragraph 137, Evers admits the allegations in subparagraph (a). With respect to subparagraph (b), Evers denies that there is the need for an injunction. With respect to subparagraph (c), Evers admits the allegations and states that remedial maps should be in place by March 1, 2022. With respect to subparagraphs (d) and (e), Evers states it is premature to know whether the BLOC Intervenor-Plaintiffs would be entitled to costs, disbursements, attorneys' fees or any other relief, and states that Wis. Stat. § 814.01(1) only provides for "costs . . . to the plaintiff upon a recovery" and does not provide for attorneys' fees.

138. Evers admits the allegations in paragraph 138.

HUNTER INTERVENORS' STATEMENT OF RELIEF SOUGHT

139. Evers admits the allegations in paragraph 139.

INTERVENOR-PETITIONERS CITIZEN MATHEMATICIANS AND SCIENTISTS' STATEMENT OF RELIEF SOUGHT

140. Evers admits the allegations in the first and second sentences of paragraph 140 except denies that there is a need for an injunction. Evers lacks knowledge or information to form a belief about the remaining allegations in paragraph 140.

REASONS WHY THIS COURT SHOULD TAKE JURISDICTION

141. Evers admits the allegations in paragraph 141.

142. With respect to paragraph 142, Evers admits that this Court has taken jurisdiction over the case but denies that this Court has a duty to exercise its jurisdiction.

143. With respect to paragraph 143, Evers admits that a violation of the one person, one vote principle is a violation of the federal constitution, but states that this Court has not held that it is a violation of article I, Section 1.

144. Evers admits the allegations in paragraph 144 but states that article I, section 2 only applies to congressional districts.

145. With respect to paragraph 145, Evers admits that this Court has taken jurisdiction over the case

146. Evers admits that paragraph 146 contains an accurate quote from *Jensen*, 246 Wis. 2d 06, ¶ 17.

147. Evers admits the allegations in paragraph 147.

148. With respect to paragraph 148, Evers admits that this Court's order of September 22, amended on September 24, said that "judicial relief becomes appropriate in reapportionment cases only when a legislature fails to reapportion according to constitutional requisites in a timely fashion after having had an adequate opportunity to do so," but denies that the order said anything about this Court having a duty to adopt state legislative and congressional redistricting plans.

149. Evers admits the allegations in paragraph 149.

150. Evers admits the allegations in paragraph 150 and states that legislative leaders have now introduced bills with the proposed districting plans.

151. Evers admits the allegations in paragraph 151.

152. With respect to paragraph 152, Evers admits that new maps would not be approved until November 2021 at the

earliest but states that it is highly unlikely that a consensus will be reached through the political process.

153. Evers admits the allegations in paragraph 153.

154. Evers denies the allegations in paragraph 154.

155. Evers admits the allegations in paragraph 155.

156. Evers denies the allegations in paragraph 156.

CONCLUSION

157. Evers denies the allegations in paragraph 157 except admits that new constitutional apportionment plans are necessary.

158. Evers denies the allegations in paragraph 158.

159. Evers admits the allegations in the first two sentences of paragraph 159. With respect to the remaining allegations, Evers states that remedial maps should be in place by March 1, 2022, and takes no position on BLOC's request for federal review of this Court's remedial maps.

160. Evers admits the allegations in the first and second sentences of paragraph 160 except denies that there is a need for an injunction.

161. Evers lacks knowledge or information to form a belief about the allegations in paragraph 161.

STATEMENT OF PETITIONERS AND INTERVENORS-PETITIONERS ON OMNIBUS AMENDED PETITION

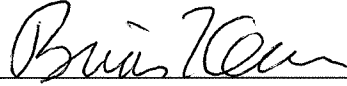
For paragraphs 162 through 166, Evers admits that these paragraphs contain the paragraphs each group of Petitioners and Petitioners-Intervenors join in the petition.

WHEREFORE, Evers asks this Court to adopt his proposed legislative and congressional plans for the remedial plans in this case.

Dated this 28th day of October 2021.

Respectfully submitted,

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CERTIFICATE FILING OF SERVICE

I hereby certify that the *Intervenor-Respondent Governor Tony Evers's Answer to Consolidated Petition* was email filed in pdf form to clerk@wicourts.gov, on or before 12:00 p.m. on October 28, 2021.

I further certify the original and 10 copies of this answer, with the notation that "This document was previously filed via email," were hand-delivered for filing to the Wisconsin Supreme Court Clerk's Office, 110 East Main Street, Madison, WI 53701, no later than 12:00 pm. on October 29, 2021.

I further certify that on this day, I caused service of a copy of this answer to be sent via electronic mail to counsel for all parties who have consented to service by email. I caused service of copies to be sent by U.S. mail and electronic mail to all counsel of record who have not consented to service by email.

Dated this 28th day of October 2021.



BRIAN P. KEENAN

Assistant Attorney General

