

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

**GOVERNOR TONY EVERS'S
RESPONSE IN OPPOSITION TO CONGRESSMEN'S
MOTION TO SUBMIT A MODIFIED
VERSION OF THEIR MAP**

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ARGUMENT

The Court should deny the Congressmen's motion to file a new map in addition to the map they are currently asking the Court to consider. It should be denied for at least two reasons.

First, what the Congressmen propose is categorically outside what this Court's governing November 17 order allows. No other party has proposed "alternative" submissions, and it is not allowed by this Court's procedural order that controls these proceedings.

Second, in any event, what the Congressmen propose is no mere correction to technical errors or oversights in their current map, which they continue to advocate for, but rather is a substantially new map taking a different approach. They provide no true reason, as required, for why their attempted redo should be accepted.

I. The Court's November 17 order does not allow for the submission of alternative maps.

Until now, every party has submitted no more than one map for this Court's consideration. That is because this Court's November 17, 2021, order allows for only one map per party. It states: each party "may file *a* proposed map." *Johnson v. WEC*, 2021AP1450-OA, Order, Nov. 17, 2021. If any doubt remained, the paragraph allowing for "correction" or "modification" applies to a "party that filed a proposed map" and allows the party "to amend the proposed map." *Id.*

This order leaves no doubt: there are one set of proposals allowed per party, and the parties may move to correct or amend those proposals. And no party misunderstood this—no party attempted to submit multiple

versions of the same map on December 15, which was the due date.

The Court's governing procedural order does not allow for alternative maps, as the Congressmen now propose to submit. And, even now, the Congressmen do not explain how this Court's November 17 order covers their attempt to advocate for multiple maps at the same time. That is, the Congressmen maintain primary support for their existing proposal, saying it "better complies with *Johnson*." (Congressmen Mot. 7.) They point to nothing authorizing, at the same time, taking a much different position by proposing a substantially different map be considered, in the alternative, and to submit it long after the December 15 due date for maps.

The rules that this Court set, that each party is bound by to promote fairness, cannot be sidestepped by the Congressmen at the eleventh hour. Their motion should be denied for this reason, alone.

II. In any event, the Congressmen provide no proper reason for accepting their new map, which is not a true correction or modification to their existing map that they continue to champion.

The plain function of this Court's allowance for potential "corrections" or "modifications" to existing proposals was that, in this highly detailed, complex area, it was natural to assume some technical corrections may be necessary. But that is not what the Congressmen propose. Even putting aside that no "alternatives" are allowed, their proposal is based on no technical issue or oversight, but instead is a major change to their initial map. Their initial map's formulation was intentional, and their current attempt is nothing more than an effort to undercut other parties' submissions, prejudicing

the other parties at this late hour. If that were allowed, then every party should be allowed to serially submit maps to undercut other maps.

Put differently, the Congressmen identify no “reason,” as required by the November 17 order, that establishes good cause to allow their so-called “modification.” The asserted reason for the motion is that other parties’ proposals did not change District 3, which should not have been a surprise when this Court mandated a “least changes” approach. Throwing out alternatives, in the face of what the Congressmen apparently fear is a losing map because it made significant changes to District 3, clearly is not what this Court’s “corrections” or “modifications” proviso was intended for, nor should it be used for that, especially since briefing is complete on what the parties did propose.

The Congressmen admit their first proposed map intentionally changed the prior map to remove a long so-called “appendage” that is currently in Congressional District 3 to their new District 7—in fact, they continue to champion that change. It was no inadvertent error for the Congressmen to support this change to the current map made by Senate Bill 622, which was introduced nearly two months before the deadline for proposing maps to the Court. They advocated for that substantial change knowing full-well that this Court was applying a “least changes” mandate. That was the kind of choice that all parties were faced with: what maps to propose in light of this Court’s November 30th order.

It is too late, and unfair, to affect a major reset now—for example, the Congressmen’s currently-proposed map moves 384,456 people; their new alternative map purportedly moves 226,723 people. (Clelland Resp. Rep. 10; Congressmen Resp. Br. 22.) That is a difference of over 150,000 people—a difference more than large enough to render moot previous

briefing and expert reports regarding the Congressmen's submission. That is no mere technical adjustment to the existing map, and the Congressmen provide no true "reason" why it should be accepted.

* * * *

In sum, the Congressmen's proposal to submit two maps, in the alternative, should be rejected as beyond what is allowed by this Court's November 17 order. Further, what the Congressmen propose is no mere correction to the existing map but rather is a substantially new map, and the Congressmen provide no bona fide reason for accepting their new proposal now. For either of these reasons, the motion should be denied.

CONCLUSION

The Congressmen's motion should be denied.

Dated this 5th day of January 2022.

Respectfully submitted,

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CERTIFICATE FILING OF SERVICE

I hereby certify that *Governor Tony Evers's Response in Opposition to Congressmen's Motion to Submit a Modified Version of Their Map* was email filed in pdf form to clerk@wicourts.gov, on or before 4:00 p.m. on January 5, 2022.

I further certify the original and 10 copies of this response, 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 p.m. on January 6, 2022.

I further certify that on this day, I caused service of a copy of this brief 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 5th day of January 2022.



ANTHONY D. RUSSOMANNO
Assistant Attorney General