

IN THE SUPREME COURT OF WISCONSIN

No. 2021AP001450 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 MIKE GALLAGHER, 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.

CITIZEN MATHEMATICIANS AND SCIENTISTS' OPPOSITION TO CONGRESSMEN'S MOTION TO SUBMIT THEIR MODIFIED VERSION OF THEIR PROPOSED REMEDIAL CONGRESSIONAL MAP

Michael P. May SBN: 1011610
Sarah A. Zylstra SBN: 1033159
Tanner G. Jean-Louis SBN: 1122401
BOARDMAN & CLARK LLP
1 S. Pinckney Street, Suite 410
P.O. Box 927
Madison, WI 53701
Phone: (608) 257-9521
mmay@boardmanclark.com
szlystra@boardmanclark.com
tjeanlouis@boardmanclark.com

David J. Bradford *PHV
JENNER & BLOCK LLP
353 N. Clark Street
Chicago, IL 60654
Phone: (312) 923-2975
dbradford@jenner.com

Jessica Ring Amunson *PHV
Sam Hirsch *PHV
Rebecca Fate *PHV
JENNER & BLOCK LLP
1099 New York Avenue, NW
Washington, D.C. 20001
Phone: (202) 639-6000
jamunson@jenner.com
shirsch@jenner.com
rfate@jenner.com

Elizabeth Edmondson *PHV
Olivia Hoffman *PHV
JENNER & BLOCK LLP
1155 Avenue of the Americas
New York, NY 10036
Phone: (212) 891-1600
eedmondson@jenner.com
ohoffman@jenner.com

Attorneys for Intervenors-Petitioners Citizen Mathematicians and Scientists Gary Krenz, et al.

Pursuant to the Court's January 4, 2022 Order, Intervenor-Petitioners Citizen Mathematicians and Scientists respectfully submit this opposition to the motion of Congressmen Glenn Grothman, Mike Gallagher, Bryan Steil, Tom Tiffany, and Scott Fitzgerald (together, the "Congressmen") to submit their modified version of their proposed remedial congressional map (the "Motion"). For reasons set out below, the Motion should be denied.

ARGUMENT

On October 14, 2021, this Court ordered all parties to brief what litigation process should be used to determine constitutionally sufficient maps for the state of Wisconsin. After receiving the briefing, this Court issued its November 17, 2021 Order ("Order"). The text of that Order is clear. It permits each party to submit a single proposed map for congressional districts. *See* Order at 2.

Now, the Congressmen seek leave to submit "an alternative" map. Mot. at 7. As the Motion makes clear, this alternative map is not intended to replace the original one. *Id.* Rather, it is offered as an additional proposal for consideration by this Court. What the Congressmen want, after reviewing maps submitted by other parties, is a second bite at the apple. *Id.*

Because the request to sponsor two congressional maps is inconsistent with the plain text of the Order, it should be denied. Order

at 2. To be sure, the Order contemplates that parties may seek leave to amend their original map, where a correction or modification is warranted. Order at 3. But the Congressmen request entirely different relief. And the Order simply does not contemplate or permit parties to submit more than one congressional map in this proceeding. *Id.* at 2-3.

In this respect, the Congressmen's request is not only impermissible under the plain meaning of the Order, but also prejudicial. Were parties permitted to offer multiple maps, they could have provided the Court with plans to address trade-offs like the one highlighted by the Congressmen's Motion, which typifies the tension between protecting county lines and minimizing the number of people who change districts. *See* Mot. at 3, 6. In fact, the Citizen Mathematicians and Scientists stood ready to do precisely that, as they noted in briefing the appropriate litigation process for this proceeding. *See* Citizen Mathematicians and Scientists Br. at 37 (October 25, 2021) (noting tension between redistricting factors and ability to provide the Court with "a set of maps based on different prioritization of the [redistricting] factors" if helpful). Particularly given that other parties in this proceeding have conformed their litigation conduct to the Court's reasonable limitation on the submission of plans, the Congressmen should not now be heard on multiple maps.

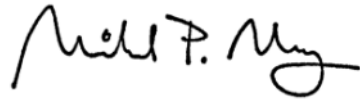
If the clear text of the Order and prejudice to other parties were not reason enough to deny the motion, its timing would offer an entirely separate and independent basis to do so. The Congressmen did not provide notice of their intent to file an alternative map until the close of business on December 29, 2021. And in providing notice, the Congressmen did not even disclose the PDF, CSV, and Shapefile formats for their new map. Instead, those materials were provided less than one hour before the deadline for responsive materials. That timing deprived other parties of a reasonable opportunity to evaluate and address the new map. It also deprives this Court of important analysis regarding the map's benefits, drawbacks, and implications. In light of those procedural and substantive concerns, the Motion should also be denied as untimely.

CONCLUSION

This Court's November 17 Order does not permit parties to sponsor more than one proposed congressional map. For that reason, and others articulated in this opposition, the Motion should be denied.

BOARDMAN & CLARK LLP

By



Michael P. May SBN: 1011610
Sarah A. Zylstra SBN: 1033159
Tanner G. Jean-Louis SBN: 1122401
BOARDMAN & CLARK LLP
1 S. Pinckney Street, Suite 410
P.O. Box 927
Madison, WI 53701
Phone: (608) 257-9521
mmay@boardmanclark.com
szylstra@boardmanclark.com
tjeanlouis@boardmanclark.com

David J. Bradford *PHV
JENNER & BLOCK LLP
353 N. Clark Street
Chicago, IL 60654
Phone: (312) 923-2975
dbradford@jenner.com

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JENNER & BLOCK LLP
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Phone: (202) 639-6000
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shirsch@jenner.com
rfate@jenner.com

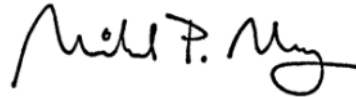
Elizabeth Edmondson *PHV (eedmondson@jenner.com)
Olivia Hoffman *PHV (ohoffman@jenner.com)
JENNER & BLOCK LLP
1155 Avenue of the Americas
New York, NY 10036
Phone: (212) 891-1600

FORM & LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief 599 words.

BOARDMAN & CLARK LLP

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A handwritten signature in black ink, appearing to read "Michael P. May". The signature is written in a cursive, flowing style.

Michael P. May SBN: 1011610

CERTIFICATION OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of § 809.19(12).

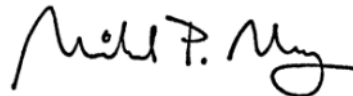
I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

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BOARDMAN & CLARK LLP

By



Michael P. May SBN: 1011610