

**IN THE SUPREME COURT OF WISCONSIN
APPEAL 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 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.

JANET BEWLEY, STATE SENATE DEMOCRATIC MINORITY LEADER'S OPPOSITION TO THE MOTION OF CONGRESSMEN GLENN GROTHMAN, MIKE GALLAGHER, BRYAN STEIL, TOM TIFFANY, AND SCOTT FITZGERALD TO SUBMIT THEIR MODIFIED VERSION OF THEIR PROPOSED REMEDIAL CONGRESSIONAL MAP, PER THIS COURT'S NOVEMBER 17, 2021 ORDER

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Minority Leader on behalf of the Senate
Democratic Caucus*

Pursuant to the Court's order of January 4, 2022, Senate Minority Leader Janet Bewley, on behalf of the Senate Democratic Caucus ("Senate Democrats"), by their attorneys, Pines Bach LLP, submit this brief in response to the Intervenor-Petitioners Congressmen Glenn Grothman, Mike Gallagher, Bryan Steil, Tom Tiffany, and Scott Fitzgerald's ("Congressmen") motion seeking leave to "submit a modified version of their Proposed Remedial Map for this Court's consideration." As explained herein, the Congressmen's motion is plainly outside the bounds of the rules this Court has for good reason set forth to govern the process of selecting new redistricting plans for the State of Wisconsin.¹ The Court should therefore deny the motion.

This Court's November 17, 2021 order in this matter (*Johnson v. WEC*, 2021AP1450-OA, Order, Nov. 17, 2021, "Order") provided that "each party . . . may file *a proposed map* (for state assembly, state senate, and congress), complying with the parameters set forth in the court's forthcoming decision, a supporting brief, and an expert report." (Emphasis added.) The Senate Democrats and all other parties (at the very least according to their submissions and conduct throughout this matter) have always understood those words to mean exactly what they say: each party may only place before the Court a *single* plan for each of the Assembly, Senate, and Congress.

¹ Although the Senate Democrats have not submitted a proposed Congressional district map, the Court has invited all parties to respond to the Congressmen's motion. Further, the Court's Order applies equally to all parties, and the Senate Democrats have an interest in all parties' adherence to that Order and fair administration of this matter by the Court.

The Order also provided “that any party that filed a proposed map and subsequently determines that it merits *a correction or modification*, may file a motion seeking the court’s leave *to amend* the proposed map.” (Emphasis added.) “Correction,” as relevant here, means “something substituted in place of what is wrong.”² Similarly, “modification” means “the making of a limited change in something.”³ And “amend” means “to change or modify (something) for the better; improve” or “to alter especially in phraseology – especially: to alter formally by modification, deletion, or addition.”⁴ One clear and common theme of these definitions is that they each refer to processes in which, for each original entity being acted upon – either through replacement of or change to that entity – a single entity remains after the act. In other words, the Order clearly only allows parties to make changes or substitutions to the single plan they originally propose – they may not set before the Court additional, alternative plans.

Yet the Congressmen propose to do exactly what the Order does not allow – simultaneously place two maps before the Court. The title of the Congressmen’s motion is misleading, if not outright dishonest, because it is not merely a “modification” of their original map that they submit, but rather an additional, alternative map. In fact, the Congressmen themselves admit that what they now submit is “an alternative (as opposed to a replacement) map.” (Motion at ¶ 8.)

² Available at <https://www.merriam-webster.com/dictionary/correction>. All websites accessed January 5, 2022.

³ Available at <https://www.merriam-webster.com/dictionary/modification>.

⁴ Available at <https://www.merriam-webster.com/dictionary/amend>.

The Court had good reasons for the above-described language in the Order, and by the same token there is *no* good reason why the Court should grant the motion now. By limiting each party to a single map, the Order ensured that the parties could adequately brief, and the Court could meaningfully compare and analyze, each map. To allow the Congressmen to throw another map into the ring – particularly at this juncture, after briefing is complete – would undermine both purposes and would prejudice the other parties.

Rather than withdrawing their original map, the Congressmen ask the Court, if it would otherwise choose another party's map, to consider this substantively new back-up map based on its closer physical shape characteristics to other maps. There is no logical end to the number of alternatives that could be proposed on such a cynical basis.

The Senate Democrats – and undoubtedly the other parties as well – have long since prepared or could prepare numerous alternatives to the map versions they submitted to the Court, but submitted one each in compliance with the Order. If the Court were to allow the Congressmen to submit their new map now, fairness would demand that it allow other parties to similarly submit contingent, responsive alternatives, thereby defeating the workability of the entire process the Court has constructed to adjudicate this crucial and time-sensitive matter.

Therefore, granting the motion would contravene both the letter and the spirit of the Court's Order and be grossly unfair to the other parties.

CONCLUSION

The Senate Democrats respectfully request that the Court deny the Congressmen's motion.

Respectfully submitted this 5th day of January 2022.

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CERTIFICATE

I hereby certify that pursuant to the Court's January 4, 2022 Order in the above-captioned case, on January 5, 2022 I submitted the foregoing document to the Clerk of the Court for filing via electronic mail at this address: clerk@wicourts.gov. The length of this brief is 785 words. On January 5, 2022, I also caused a paper original and ten (10) copies of this document to be delivered by personal delivery to the Clerk of Court, and caused this document to be served on all counsel of record via electronic mail.



Aaron G. Dumas