UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ALVIN BALDUS, et al.,

Plaintiffs,

TAMMY BALDWIN, et al.,

Intervenor-Plaintiffs,

vs.

Case No. 11-CV-562
JPS-DPW-RMD

MICHAEL BRENNAN, et al.,

Defendants,

F. JAMES SENSENBRENNER, JR., et al.,

Intervenor-Defendants.

VOCES DE LA FRONTERA, INC., et al.,

Plaintiffs,

vs.

Case No. 11-CV-1011
JPS-DPW-RMD

MICHAEL BRENNAN, et al.,

Defendants.

MOTION AND BRIEF IN SUPPORT OF MOTION TO DISMISS FOR LACK OF STANDING ALL REMAINING CLAIMS AS TO 2011 WISCONSIN ACT 44

The GAB defendants and the intervenor-defendants (the Republican House Members) hereby move to dismiss the complaint of the intervenor-plaintiffs (the Democratic House Members) for lack of standing by the Democratic Members, which deprives the Court of subject-matter jurisdiction to adjudicate their claims. The Democratic Members' complaint only

challenges the constitutionality of 2011 Wis. Act 44, which sets the boundaries of the state's congressional districts. With the Baldus plaintiffs' dismissal of all of their challenges to Act 44, only the Democratic Members continue to assert such claims.

Both the Republican Members and the Democratic Members were permitted to intervene in this action permissively under Fed. R. Civ. P. 24(b). (Order of Nov. 21, 2011 (Dkt. 49), at 3–4.) Though the Court was not satisfied that either set of intervenors had satisfied the "interest" requirement for intervention of right under Fed. R. Civ. P. 24(a), it recognized that the Democratic Members were "aligned with the interest of the original plaintiffs." (*Id.* at 4.) In such a circumstance, it does not matter whether the intervenors have standing themselves, since the case must be decided anyway, owing to the presence of parties with standing. *See, e.g.*, *Village of Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 264 & n.9 (1977).

But when the original plaintiff drops its claim, as has now happened here with respect to Act 44, "an intervenor's right to *continue* a suit in the absence of the party on whose side intervention was permitted is contingent upon a showing by the intervenor that he fulfills the requirements of [Article] III." *Diamond v. Charles*, 476 U.S. 54, 68 (1986) (emphasis added). *See also Bond v. Ultreras*, 585 F.3d 1061, 1068–72 (7th Cir. 2009); *City of Chicago v. FEMA*, 660 F.3d 980, 984–86 (7th Cir. 2011).

The Democratic Members have never even tried to show why they have standing to challenge Act 44. They clearly have no entitlement to their current offices, but, even if they did, none of them has tried to make a showing that the congressional redistricting effected by Act 44 threatens their re-election. Indeed, it is palpable that all of them have improved their prospects, for the 2nd, 3rd, and 4th Congressional Districts have all become more Democratic—in substantial part, the evidence shows, because of the changes incorporated into the final Act 44

map based on their preferences and requests. (*See, e.g.*, Joint Final Pretrial Report, Stip. Facts, ¶¶ 211, 213, 216, 219–20, 226, 229.) Upon seeing a draft of the congressional districts nearly identical to the final map, the chief of staff to Congressman Ronald Kind, one of the Democratic Members, told staffers for Congresswoman Baldwin and Congresswoman Moore, the other two Democratic Members: "The map isn't too unreasonable." (*Id.* at ¶ 223.) Likewise, a staffer for Congresswoman Moore reported that Congresswoman Moore "was happy with" the fact that the draft map "would give us everything in northern Milwaukee County except River Hills." (*Id.* at ¶ 224; Trial Ex. 1065, Ex. 2a.) This latter email likewise noted that the draft "would give Kind Portage County (Dem stronghold) and take some of his reddest Republicans for Duffy." (Trial Ex. 1065, Ex. 2a.)

Nor have the Democratic Members shown—nor could they—how any of them could be harmed in any way by the principal matter of which they now complain (though they did not do so in their complaint)—the division of Wood, Portage, and Marathon Counties between the 3rd and 7th Districts. It would be ludicrous for the Democratic Members to claim that their own representational interests or First Amendment interests have been adversely affected by Act 44, for they represent themselves. And who better to insure "effective representation" (the mantra of what is left of the challenge to Act 44) than to represent oneself? The Democratic Members have shown—and can show—no harm to themselves, and they may not assert alleged harm visited by the statute on others. Clearly, they are unlikely to claim that their own constituents are denied effective representation.

The Democratic Members lack constitutional standing to challenge Act 44. Because standing must be present at every stage of a case in federal court, the Baldus plaintiffs'

dismissal of their Act 44 claims deprives this Court of jurisdiction over the Democratic Members' claims. They should be dismissed.

Dated this 24th day of February, 2012.

Respectfully submitted,

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