No. 21-474

IN THE

Supreme Court of the United States

IN RE WISCONSIN LEGISLATURE,

Petitioner.

On Petition For A Writ of Mandamus And Petition For Writ of Prohibition To The United States District Court For the Western District of Wisconsin

BRIEF OF *BLOC* RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF MANDAMUS AND PETITION FOR WRIT OF PROHIBITION FOR THE WESTERN DISTRICT OF WISCONSIN

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QUESTIONS PRESENTED

Wisconsin's state legislative districts are malapportioned. Two separate groups of plaintiffs—the *Hunter* plaintiffs and the *BLOC* plaintiffs—filed complaints seeking relief. Petitioner immediately moved to intervene in the *Hunter* case and to dismiss the complaint. The federal district court denied the motion to dismiss, consolidated the two cases, and granted the *BLOC* plaintiffs leave to file an amended complaint, which they promptly filed. However, recognizing the state's primacy in redistricting, the court has since ordered a stay until at least November 5, 2021. The sole motion currently being briefed in the district court is Petitioner's motion to dismiss the *BLOC* amended complaint. In its rush to petition this Court, Petitioner did not move to dismiss the *BLOC* amended complaint in the district court until *after* it first asked this Court to do the same.

The questions presented are:

1. Whether this Court should issue an extraordinary writ directing dismissal of the *BLOC* amended complaint, where (1) Petitioner did not seek dismissal of that complaint in the district court before filing its Petition, (2) Petitioner subsequently did file a motion to dismiss, and (3) that motion remains pending?

2. Whether Petitioner's claim of an abuse of discretion by the district court justifies issuance of an extraordinary writ of mandamus or prohibition, where the district court has acted in line with this Court's established precedent and has already stayed its hand in order to respect the state's primacy in the redistricting process?

PARTIES TO THE PROCEEDINGS

Petitioner is Intervenor-Defendant Wisconsin Legislature.

Respondents include Plaintiffs from two consolidated cases below. Plaintiffs in the *Hunter* case are Lisa Hunter, Jacob Zabel, Jennifer Oh, John Persa, Geraldine Schertz, & Kathleen Qualheim. Plaintiffs in the *BLOC* case are Black Leaders Organizing for Communities (BLOC), Voces de la Frontera, League of Women Voters of Wisconsin, Cindy Fallona, Lauren Stephenson, Rebecca Alwin, Helen Harris, Woodrow Wilson Cain II, Nina Cain, Tracie Y. Horton, Sean Tatum, Melody McCurtis, Barbara Toles, and Edward Wade, Jr.

Intervenor-Plaintiffs in both the *Hunter* and *BLOC* cases are Billie Johnson, Eric O'Keefe, Ed Perkins, and Ronald Zahn.

Defendants in the consolidated proceedings are Marge Bostelmann, Julie M. Glancey, Ann S. Jacobs, Dean Knudson, Robert F. Spindell, Jr., and Mark L. Thomsen, in their official capacities as members of the Wisconsin Elections Commission, as well as Meagan Wolfe, in her official capacity as administrator of the Wisconsin Elections Commission.

Intervenor-Defendants are the Wisconsin State Legislature; Congressmen Scott Fitzgerald, Mike Gallagher, Glenn Grothman, Bryan Steil, and Tom Tiffany; and Governor Tony Evers.

CORPORATE DISCLOSURE STATEMENT

Black Leaders Organizing for Communities (BLOC) is a fiscally sponsored project of Tides Advocacy, a California nonprofit, non-stock corporation, with no stock and no parent corporation.

Plaintiff Voces de la Frontera is a nonprofit, non-stock corporation organized under the laws of the State of Wisconsin with no stock and no parent corporation.

The League of Women Voters of Wisconsin (LWVWI) is a Wisconsin nonprofit, non-stock corporation. LWVWI's parent is the League of Women Voters of the United States.

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OPINIONS BELOW

For the *BLOC* plaintiffs, as of the date of this filing, there is no order from the district court denying Petitioner's motion to dismiss the amended complaint. The Legislature has come to this Court seeking, in the first instance, a writ of mandamus or prohibition granting its pending motion to dismiss the amended complaint.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The relevant constitutional and statutory provisions are included in the addendum.

STATEMENT

A. Wisconsin's Districts Are Malapportioned.

On August 12, 2021, the United States Secretary of Commerce released the census data used by state officials for redistricting. The data shows that since 2010, the population of Wisconsin increased by approximately 200,000 people. These new Wisconsinites are spread unevenly among the current Senate and Assembly districts, created after the 2010 census and as modified by a federal court in *Baldus v. Members of the Wisconsin Government Accountability Board*, 849 F. Supp. 2d 840 (E.D. Wis. 2012) (per curiam) (three-judge panel). This uneven growth has led to substantial population disparities throughout the districts, contrary to the requirements of *Reynolds v. Sims*, 377 U.S. 533, 562-64 (1964). The state legislative districts thus now give some Wisconsinites' votes more weight than others, violating the basic democratic tenet of "one person, one vote." *Id*.

B. Wisconsin Voters and Organizations Seek Relief From the Malapportioned Districts.

On August 13, 2021, a group of Wisconsin voters (the *Hunter* plaintiffs) filed a complaint in federal court alleging that Wisconsin's state legislative and congressional districts are malapportioned in violation of their First and Fourteenth Amendment rights. *See* Pet.App.18.

On August 23, 2021, another group of Wisconsin voters and nonprofit organizations whose members live throughout Wisconsin (the *BLOC* plaintiffs) filed a complaint in federal court alleging that the Wisconsin state legislative districts are malapportioned. On September 21, 2021, the *BLOC* plaintiffs filed an amended complaint adding an allegation that the state legislative districts dilute the votes of Black voters in violation of Section 2 of the Voting Rights Act. *See* Complaint, *BLOC, et al. v. Spindell, et al.*, No. 3:21-cv-00534 (W.D. Wis. Aug. 23, 2021), ECF No. 1, Pet.App.42; *see* also *id*. at ¶¶ 10-11, 15-23, 28-39, 51-110.

A third group of Wisconsin voters (the *Johnson* petitioners) filed a petition for original action in the Wisconsin Supreme Court on August 23, 2021. The *Johnson* petitioners requested that the court exercise its original jurisdiction to declare the existing districts malapportioned, enjoin the Wisconsin Elections Commission from administering elections under the existing districts, and rule on the constitutionality of a new plan proposed by the Legislature or resolve any impasse between the Legislature and the Governor should one arise.

C. The Federal Court Proceedings.

On September 16, 2021, the federal district court ruled on various procedural and substantive issues in the *Hunter* case. *See* Pet.App.1-17. First, the three-judge panel granted intervention to the Legislature, the *Johnson* petitioners, a group of Republican congressmen, and Governor Evers. *See id.* at 11. Second, the court denied the Legislature's and the congressmen's motions to dismiss the *Hunter* complaint and denied the Legislature's motion to dismiss the *BLOC* complaint. Third, the court denied the *Johnson* petitioners' motion to stay the *Hunter* case. *Id.* Fourth, the court consolidated the *Hunter* and *BLOC* cases. *Id.* Finally, the court granted the *BLOC* plaintiffs leave to file their amended complaint, which they did on September 21. The Legislature moved to dismiss the amended complaint on September 30.

In denying the motion to stay, the court stated that "the issue of a more limited stay will be considered at the [September 21] status conference," and that it was "inclined" to impose "a limited stay to give the legislative process, and perhaps the state courts, the first opportunity to enact new maps." *Id.* at 10.

In denying the motions to dismiss the *Hunter* and *BLOC* complaints, the court acknowledged that it "understands the state government's primacy in redistricting its legislative and congressional maps." *Id.* at 8. The court continued that Wisconsin's primacy did not render the federal case unripe or render its plaintiffs without standing. Instead, relying on *Growe v. Emison*, 507 U.S. 25 (1993), the court held that federal courts run afoul of a state's sovereignty only

when they “imped[e] or supersed[e] any concurrent state redistricting process.” Pet.App.8-9.

In a September 21 Order issued following a status conference, the Court ordered the parties to propose a pretrial schedule assuming a trial would be completed by January 28, 2022. The court chose this date for two reasons. First, it relied on this Court’s approval of the use of a candidate-qualification deadline as a basis to establish a deadline by which a state must adopt new maps “to forestall federal adjudication.” Pet.App.15-16 (citing *Branch v. Smith*, 538 U.S. 254, 260-62 (2003)). Second, the Wisconsin Elections Commission identified the deadline for new districts to be in place to properly administer Wisconsin elections as March 1, 2022.[1] Based on this assumed trial completion date, the court ordered the parties to submit a proposed discovery plan and pretrial schedule. Pet.App.15-16. Yet the court was also clear that flexibility was needed: “if the state were to enact legislation that moves the nomination-petition circulation deadlines, and the related deadlines, later into 2022, thus relieving some of the urgency the Commission now faces, then the [c]ourt could consider alternative trial dates.” *Id.* at 16.

D. The State Court Proceedings.

On September 22, the Wisconsin Supreme Court granted the petition for original action filed in *Johnson v. Wisconsin Elections Commission.*

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[1] Wisconsin law sets the third Tuesday in March—in 2022, March 15—as the deadline for the Wisconsin Election Commission to send notice of the primary and general elections to county clerks. Wis. Stat. § 10.06(1)(f). That notice will direct clerks to the descriptions of the new legislative district boundaries. Wis. Stat. § 10.01(2)(a).

Pet.App.90. Beyond granting the petition, the Wisconsin Supreme Court denied all other requested relief and "decline[d] to formally declare, at the onset, that a new apportionment plan is needed . . . we have, as yet, an inadequate record before us upon which to make such a pronouncement." *Id.* at 95. The court set a number of deadlines, including those for motions to intervene; letter briefs addressing when a new redistricting plan must be in place and the key factors used to identify that date; and responses to those filings. *Id.* at 93-95. The Wisconsin Supreme Court issued two orders on October 14, 2021. The first ordered all parties to file an omnibus amended petition as well as a joint stipulation of facts and law. The second order requests briefing on factors the court should consider in the redistricting process. Beyond that, the court has not stated how it will proceed.

E. Proceedings in this Court.

On September 24, 2021, the Legislature petitioned this Court to issue a writ of mandamus or writ of prohibition that directs the federal court to dismiss both the *Hunter* and *BLOC* complaints. *See* Petition at *ii*. Petitioner filed the petition for extraordinary relief in this Court even before it filed its motion to dismiss the amended *BLOC* case in the district court on September 30. Petitioner's motion to dismiss will be fully briefed in the district court on October 27, 2021.

F. The District Court Stay.

On October 6, 2021, the district court granted a limited stay, halting all proceedings—except its consideration of Petitioner's pending motion to dismiss the *BLOC* amended complaint—"until at

least November 5, 2021." Op. & Order, *Hunter v. Bostelmann*, No. 3:21-cv-000512 (W.D. Wis. Oct. 6, 2021), ECF No. 103 at 5. The Court also "reserve[d] five days beginning January 31, 2022, for trial of this matter," noting that "the Wisconsin Supreme Court did not commit to drawing new legislative or congressional maps, and has not yet set a schedule to do so, or even to decide whether it will do so," and thus "it is appropriate for this court to provide a date by which the state must act to avoid federal involvement in redistricting." *Id.* at 3-4 (citing *Growe*, 507 U.S. at 36). The court further directed the parties to "update the court on the status of the action in the Wisconsin Supreme Court." *Id.* at 5.

ARGUMENT

The "[i]ssuance by the Court of an extraordinary writ . . . is not a matter of right, but of discretion sparingly exercised." Sup. Ct. R. 20.1; *see also* 28 U.S.C. § 1651. "[T]he petition must show that the writ will be in aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court." *Id.* Only "a judicial usurpation of power," *Will v. United States*, 389 U.S. 90, 95 (1967), or a "clear abuse of discretion," *Bankers Life & Cas. Co. v. Holland*, 346 U.S. 379, 383 (1953), "will justify the invocation of this extraordinary remedy." *Will*, 389 U.S. at 95.

In *Cheney v. United States District Court for the District of Columbia,* 542 U.S. 367, 380-81 (2004), this Court further explained that before a mandamus may issue, a party must establish that (1) "no other adequate means [exist] to attain the relief he

desires," (2) the party's right to issuance of the writ is "clear and indisputable," and (3) "even if the first two prerequisites have been met," the Court, "in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances." (quotation marks omitted); *see also Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (discussing *Cheney* factors).

Petitioner falls far short of the standard for the extraordinary relief it seeks. The district court has acted within its jurisdiction and consistent with this Court's precedent. The petition should be denied.

I. The Petition Is Not Ripe.

The Legislature's premature petition is unripe for at least two reasons: (1) it failed to seek some of the relief it desires—dismissal of the *BLOC* amended complaint—in the district court *before* requesting the same relief in this Court, and (2) it failed to give the district court the opportunity to rule on the motion.

The petition for an extraordinary writ to dismiss the *BLOC* amended complaint is not ripe because it currently assumes that the district court will deny the pending motion to dismiss. *See Trump v. New York*, 141 S. Ct. 530, 535 (2020) ("[The] case must be 'ripe' —not dependent on 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'") (quoting *Texas v. United States*, 523 U.S. 296, 300 (1998)); s*ee also Heckler v. Ringer*, 466 U.S. 602, 616 (1984) (writs are "intended to provide a remedy for a plaintiff only if he has exhausted *all* other avenues of relief") (emphasis added). Although its motion is substantively meritless, procedurally Petitioner cannot first request that this Court dismiss

the *BLOC* amended complaint *before* asking the district court to do the same.

Petitioner seeks a "writ of mandamus or a writ of prohibition that directs the federal court to dismiss the *federal cases*." Petition at *ii* (emphasis added). This is not just an extraordinary request—it is an unprecedented one. Petitioner does not cite a *single* case where this Court has ordered dismissal of a case *before* the lower court issued an order. Petitioner asserts that it "moved to dismiss the federal litigation" in the district court. Petition at 8. That is only half true. Petitioner had only moved to dismiss the *Hunter* plaintiffs' complaint and the *BLOC* plaintiffs' original complaint before filing its petition. Filing a motion to dismiss in the district court *after* petitioning this Court to dismiss the *BLOC* amended complaint does not remove the defect because the motion has not been fully briefed, let alone decided. Thus, the petition should be denied.

II. Petitioner is Not Entitled to Either Extraordinary Writ.

Even if the Legislature's petition were ripe, it has no merit. Petitioner asks this Court to use one of the "most potent weapons in the judicial arsenal" to reverse the discretionary, interlocutory, and ordinary decision of a district court denying a motion to dismiss. *Will*, 389 U.S. at 95-96. A district court's decision to deny a motion to dismiss is not a "really extraordinary" circumstance warranting mandamus relief; it is an everyday occurrence in federal courts entrusted to district courts' discretion, and subject to the ordinary appellate process. *Cheney*, 542 U.S. at 380.

A. Granting the Writ Will Defeat, Rather than Aid, this Court's Jurisdiction

A writ of mandamus or prohibition would not aid this Court's eventual jurisdiction; it would extinguish it. "[T]he Court may issue the writ when the lower court's action might defeat or frustrate this Court's eventual jurisdiction." *Chandler v. Judicial Council of the Tenth Circuit*, 398 U.S. 74, 112 (1970) (Harlan, J., concurring). Lower courts frustrate or defeat this Court's eventual jurisdiction when the inferior court has "no judicial power to do what it purports to do." *De Beers Consol. Mines v. United States*, 325 U.S. 212, 217 (1945).

The only relevant action here is that the district court has received Petitioner's motion to dismiss the *BLOC* amended complaint. The district court clearly has the power to rule on that motion. And by filing multiple motions to dismiss, Petitioner agrees.

Even assuming that the district court will extend its denial of Petitioner's motion to dismiss the *Hunter* and original *BLOC* complaints to the *BLOC* amended complaint, the outcome here does not change. This is not a case where the district court has taken action it has no power to take, or has failed to act when it is clearly obligated to do so. *Cf. Mallard v. U.S. Dist. Court for S. Dist. of Iowa,* 490 U.S. 296, 309-10 (1989) (mandamus is the appropriate remedy where the district court exceeded its authority by compelling an attorney to represent an indigent litigant pursuant to 28 U.S.C. § 1915(d)); *Ex parte Collins*, 277 U.S. 565, 566 (1928) (mandamus is the appropriate mechanism to compel a district court judge to call two additional judges for a three-judge panel); *see also* Fed. R. Civ. P.

12(a)(4) (noting district courts can deny dispositive motions). And to the extent Petitioner believes the district court does not have this power, as discussed below, Petitioner has other avenues for relief: the district court's resolution of its pending motion to dismiss and a direct appeal under 28 U.S.C. § 1253 upon entry of final judgment.

In any event, Petitioner implausibly suggests that by closing the federal courthouse doors, this Court will somehow *aid* its own jurisdiction. This defies logic. *See McClellan v. Carland*, 217 U.S. 268, 280 (1910) ("[A] writ of mandamus may issue in *aid* of the appellate jurisdiction which might *otherwise be defeated* by the *unauthorized action* of the court below.") (emphases added). Not only is there no unauthorized action, but ordering the district court to dismiss the lawsuits will extinguish, rather than aid, this Court's eventual jurisdiction.

Petitioner also suggests that dismissing this case would aid this Court's future jurisdiction over the Wisconsin Supreme Court. But, again, closing off one route to this Court does not *aid* this Court's jurisdiction.

B. Petitioner Has Several Alternative Avenues for Relief and *Growe* Does Not Require the District Court to Dismiss the Case.

Petitioner has multiple avenues of relief, a fact that forecloses its petition. As previously discussed, this case is not yet ripe because Petitioner currently has a motion to dismiss pending in the district court. That the motion is pending is, alone, enough to deny the petition. *See Heckler*, 466 U.S. at 616 (writs are

"intended to provide a remedy for a plaintiff only if he has exhausted *all* other avenues of relief") (emphasis added).

Petitioner's second avenue for relief lies in the statutory method of appeal. Ordinarily, "mandamus may not be resorted to as a mode of review where a statutory method of appeal has been prescribed." *Roche v. Evaporated Milk Ass'n*, 319 U.S. 21, 27-28 (1943); *see also* Sup. Ct. R. 20.1 (authorizing mandamus only where "adequate relief cannot be obtained in any other form or from any other court"). Petitioner agrees it has such a statutory method of appeal in that it "may appeal" to this Court "an order granting or denying . . . an . . . injunction" in this case. *See* 28 U.S.C. § 1253; *see also* Petition at 15 (noting "the Court will have direct appellate jurisdiction" if or when the court grants or denies an injunction). Because the district court has not yet resolved any injunctions in this case, this avenue is not foreclosed. Petitioner thus may seek appellate relief at the appropriate time.

This Court has long held "that the extraordinary writs cannot be used as substitutes for appeals . . . even though hardship may result from delay and perhaps unnecessary trial." *Bankers Life & Cas. Co.*, 346 U.S. at 383. This rule reflects Congress's adoption of a strong policy "against piecemeal appeals" and in favor of delaying appellate review "until after final judgment has been rendered." *Will*, 389 U.S. at 96.

To avoid this strong policy, Petitioner misinterprets *Growe* and mischaracterizes the district court's actions. *Growe* involved challenges to a state's congressional and legislative maps in both federal and

state courts. 507 U.S. at 27-28. That is where the similarities between this case and *Growe* end. The federal district court in *Growe* entered orders staying all reapportionment proceedings in the state court, and then permanently enjoined the implementation of any maps other than the ones it developed. *Id.* at 29-31. This Court ruled that such a disruption to the State's attempt to reapportion was improper. *Id.* at 37. Justice Scalia, writing for the unanimous Court, went on to outline "what ought to have happened." *Id.* at 35. Although state actors have primacy in the redistricting process, federal courts only have to exhibit "deferral, not abstention." *Id.* at 37. Three-judge panels are "empowered to entertain" plaintiffs' claims but "only to the extent those claims challenged the state courts' plan" after the state court implemented the final maps. *Id.* at 36. Thus, it would have been "appropriate for the District Court to establish a deadline by which, if the [state court] had not acted, the federal court would proceed." *Id.*

That is exactly what is happening here. First, the district court repeatedly recognized the "state government's primacy in redistricting its legislative and congressional maps," and has deferred as *Growe* requires. Pet.App.8; *see also* Pet.App.15. Second, *Growe* permits courts to establish a deadline for state actors to enact maps. The court here relied on information provided by Defendant Wisconsin Elections Commission ("WEC") and identified March 1, 2022 as the deadline.[2] *See Branch*, 538 U.S. at 260-

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[2] Petitioner implies the district court should not have deferred to the "unelected" WEC because the next primary elections are in August 2022 and, in any event, federal courts can move these deadlines "in reapportionment cases when

62 (approving use of candidate-qualifications deadlines as the basis by which the state had to forestall federal adjudication). The district court even went so far as to note that flexibility is needed, stating, for example, that if Wisconsin moved the dates of the nomination-petition deadlines to later into 2022, then that will very likely be a reason to extend the court's March 1 deadline. Pet.App.15. Third, the district court has stayed all proceedings—except the resolution of Petitioner's pending motion to dismiss the *BLOC* amended complaint—until at least November 5, 2021. Op. & Order, *Hunter v. Bostelmann*, No. 3:21-cv-000512 (W.D. Wis. Oct. 6, 2021), ECF No. 103 at 5. This is exactly what *Growe* requires: giving state actors, including state courts, "adequate opportunity to develop a redistricting plan." *Branch*, 538 U.S. at 262.

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necessary." Petition at 26; *see also id.* at n.8. This is odd. The WEC is simply trying to comply with the election administration laws *Petitioner* passed and charged the WEC with executing. *See* Wis. Stat. § 10.06(1)(f) (setting the third Tuesday in March—in 2022, March 15—as the deadline for the WEC to send notice of primary and general elections to county clerks); Wis. Stat. § 5.05(1). To the extent the Legislature wishes for the WEC to no longer follow these laws, it may change them. Petitioner also knows that waiting until the primary election is too late. *See* Proposed Intervenor Wis. Leg.'s Resp. Letter Br., *Johnson v. Wisconsin Elections Comm'n*, No. 2021AP1450-OA (Wis. Oct. 13, 2021) (stating "that redistricting plans should be in place no later than mid- to late-April."). Petitioner's simultaneous claims that the district court has "no jurisdiction to do anything," Petition at 25, but also has the power to change deadlines cannot be true. We, however, agree with Petitioner that the district court here can move deadlines when necessary—because the court has jurisdiction over the *BLOC* amended complaint.

Branch also supports the district court's actions. There, the Mississippi legislature failed to adopt a redistricting plan and separate lawsuits were filed in state and federal courts. 538 U.S. at 259-63. The federal district court deferred ruling on the federal plaintiffs' motion for a preliminary injunction but stated that the Mississippi state courts had until January 7 to make it clear that a plan would be in place by March 1. Otherwise, the district court would assert its jurisdiction and draft and implement a plan. *Id.* at 259. Once it became clear that the state court plan could not be implemented in time for the election, the federal district court ordered the use of its own plan until the state produced a constitutional plan. *Id.* The Supreme Court ultimately found that the federal district courts' actions were proper.[3] *Id.* at 262.

Similarly, the district court here has subject-matter jurisdiction and announced a date—based on state law—by which the state actors must have a map or the district court *may* assert its jurisdiction and draft and implement a plan. The district court has also stayed all proceedings—except Petitioner's motion to dismiss the *BLOC* amended complaint—to give state actors an opportunity to develop a redistricting plan. The district court has correctly followed this Court's precedent.

Nothing in *Growe* or *Branch* requires the district court to dismiss the complaints. Having cited *Growe* throughout its petition, Petitioner now claims that

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[3] The *Branch* court noted that the federal court acted properly, in part, because the Mississippi state court map would not achieve preclearance in time for the upcoming election. *But see Shelby County v. Holder*, 570 U.S. 529 (2013).

Growe does not stand for what *Growe* says: that it would be "appropriate for the District Court to establish a deadline by which if the [state supreme court] had not acted, the federal court would proceed." Petition at 32-33 (quoting *Growe*, 507 U.S. at 36). Petitioner also attempts to convert *Growe's* "deferral" requirement into a dismissal mandate. This goes too far. The district court in *Growe* could not properly have "establish[ed] a deadline by which, if the [state court does] not act[]," the court would proceed, if it were required to dismiss the case. Additionally, even if, as Petitioner claims, "federal courts have allowed *Growe*'s exception to swallow its rule," this petition is an improper vehicle to seek relief because the petition has several defects.[4]

Petitioner tries to distinguish *Branch* because the preclearance formula in the Voting Rights Act ("VRA") no longer applies. Yet even in cases preceding the VRA, this Court held that a district court "shall retain jurisdiction of the case and in the event [state actors do not enact] a valid reapportionment plan" in time for the next elections. *Scott v. Germano*, 381 U.S. 407, 409 (1965). Petitioner does not cite a single case where this Court held that plaintiffs do not have standing to bring a federal malapportionment claim solely because state actors are engaged in redistricting.

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[4] Similarly, the Court should decline Petitioner's invitation to revisit the difference between deferral and abstention. Petition at 31 n.11.

C. The Propriety of a Writ is Not Clear or Indisputable.

Petitioners have not established a clear and indisputable right to a writ. *See Cheney*, 542 U.S. at 381. Courts have found such a clear and indisputable right when "a judicial usurpation of power," *Will*, 389 U.S. at 95, or a "clear abuse of discretion," *Bankers Life & Casualty Co.*, 346 U.S. at 383, occurs.

The district court cannot have usurped its power or abused its discretion as to the *BLOC* plaintiffs because the district court has not yet ruled on Petitioner's motion to dismiss the amended complaint.

Nevertheless, assuming the district court denies Petitioner's motion to dismiss the *BLOC* case, Petitioner still does not have a clear or indisputable right to a writ because it is not an abuse of discretion to reject Petitioner's claim that Plaintiffs do not have standing.

1. Living in Malapportioned Districts Has Caused Plaintiffs Sufficient Harm to Confer Standing.

The district court cannot clearly or indisputably err in concluding that Plaintiffs—who live in overpopulated districts—have standing to assert malapportionment claims. "For there to be a case or controversy under Article III, the plaintiff must have a personal stake in the case." *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2203 (2021) (quotation marks omitted). To determine if a plaintiff has standing, the plaintiff must show: "(i) that he suffered an injury in fact that is concrete, particularized, and actual or imminent; (ii) that the injury was likely caused by the defendant; and (iii) that the injury

would likely be redressed by judicial relief." *Id.* (citations omitted). Federal courts "may resolve only a real controversy with real impact on real persons." *Id.* (quotation marks omitted).

Plaintiffs have cleared this hurdle. They allege that their injuries are happening now because they are currently living in malapportioned districts and have their votes diluted in violation of Section 2 of the Voting Rights Act. *See* Pet.App.44 (noting Wisconsin has gained approximately 200,000 residents in the past decade, making legislative districts malapportioned in violation of Plaintiffs' rights under the 14th Amendment); *see also id.* at ¶¶ 10-11, 28-39, 99-100. This is a harm that is concrete and sufficient to grant them standing to seek relief. *See Reynolds*, 377 U.S. at 563 n.40 (1964) (districts "should be designed to give approximately equal weight to each vote cast."). Plaintiffs' injuries do not require some future turn of events. The results of the 2020 decennial census show that their electoral districts are malapportioned.[5]

Petitioner contends that living in a "malapportioned districting plan is not enough." Petition at 17. But even the case it cites, *Reynolds*, holds otherwise. There, the three-judge district court actually thought it was quite "clear" that the plaintiffs had standing to bring a malapportionment claim and this Court agreed. *Sims v. Frink*, 208 F. Supp. 431, 434 (M.D. Ala. 1962), *aff'd sub nom. Reynolds*, 377

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[5] Petitioner does not challenge "the injury was likely caused by the defendant" element. *See Baldus*, 849 F. Supp. 2d 840 (filing a malapportionment claim against the Government Accountability Board—the Wisconsin agency that preceded the WEC).

U.S. at 533 (1964); *see also Reynolds*, 377 U.S. at 542 (noting the three-judge panel found standing based on *Baker v. Carr*, 369 U.S. 186 (1962)).

Petitioner claims Plaintiffs' injuries are a future harm because Petitioner is "actively redrawing" the malapportioned districts. However, that does not mean the maps will be *enacted* in time for the WEC deadlines. In fact, the Governor believes "there is no guarantee that state efforts will result in maps in time for the coming election deadlines and [he has] reason to think that they will not." Intervenor-Def.'s Br. in Opp'n to Stay Mot., *Hunter v. Bostelmann*, No. 3:21-cv-000512 (W.D. Wis. Oct. 1, 2021), ECF No. 89 at 3; *cf. Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 413 (2013) (declining to endorse standing theories requiring "guesswork" as to how independent decisionmakers not before the Court will exercise their judgment). The Governor has also stated that if the Legislature passes state legislative maps that "continu[e] or mak[e] worse the gerrymandering that exists right now," the Governor will veto them."[6] Nevertheless, the Legislature adopted 2021 Senate Joint Resolution 63,[7] which provides that new legislative districts should "[r]etain as much as possible the core of existing districts." This leaves no doubt that the Legislature intends to keep

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[6] *Digital Extra: Gov. Tony Evers Discusses Covid-19 Vaccine for Kids*, WISN 5:29-54 (Oct. 10, 2021), https://www.wisn.com/article/web-extra-evers-discusses-vaccine-for-kids/37917099#.

[7] S. J. Res. 63, 105th S., Reg. Sess. (2021 Wis.), available at https://docs.legis.wisconsin.gov/document/proposaltext/2021/REG/SJR63.

Wisconsin's legislative districts as similar as possible to their current make-up even with the threat of a gubernatorial veto.

The district court, observing this tension, has correctly concluded that an impasse is likely and thus, absent court action, the existing malapportioned plan will be used in the next election. The court's conclusion does not warrant issuing an extraordinary writ.

In any event, Petitioner's theory is not how standing works. There is no "actively redrawing maps" exception to standing in malapportionment or Voting Rights Act cases, particularly where, as here, an impasse is likely. Plaintiffs do not have to sit idly by and continue to be injured while the Legislature "actively" draws maps—that may not cure Plaintiffs' injuries or could be vetoed by the Governor—before they incur additional injuries.

Lastly, Petitioner points this Court to *Growe* to contend that Plaintiffs' injuries are not redressable. Yet *Growe* does not support this argument. *Growe* did not hold that the plaintiffs lacked standing. The *Growe* Court also did not require plaintiffs to show that state actors "will fail to reapportion" before they could even *file* a complaint in federal court. Nevertheless, since there is "reason to think" state efforts will not "result in maps in time for the coming election deadlines," there is no question the district court could redress those injuries in compliance with *Growe.*[8] Brief, *Hunter v. Bostelmann*, No. 3:21-cv-000512 (W.D. Wis. Oct. 1, 2021), ECF No. 89 at 3.

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[8] Petitioner appears to suggest the *Growe* plaintiffs did not have standing but the Court did not rule on this because "there

2. Plaintiffs' Suits Are Ripe

Similarly, because Plaintiffs' injuries are happening now, they are ripe. "A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated or indeed may not occur at all." *Trump v. New York*, 141 S. Ct. 530, 535 (2020). Here, Petitioners live in malapportioned districts *now*, not at some point in the future. Voting in malapportioned districts only creates an *additional* harm. Petitioner's reliance on *Growe* is misplaced. The Court did not hold that the plaintiffs' claims were unripe. Thus, Plaintiffs' injuries here are ripe.

3. Plaintiffs' Injuries Under the Voting Rights Act Are Sufficient to Confer Standing and Are Ripe.

Plaintiffs have alleged that under the Voting Rights Act, Milwaukee must have seven majority-Black voting age population districts as opposed to the six that currently exist. Pet.App.66 ¶¶ 45-93, 104-110. Thus, this injury is happening now. And because the injuries are happening now, Plaintiffs have standing and the claim is ripe.

Petitioner believes that its standing and ripeness arguments "apply equally to both [the *Hunter* and *BLOC*] cases, even with the addition of a Voting Rights Act claim." Petition at 9 n.2. That cannot be true. As previously discussed, Petitioner sought to dismiss only the *Hunter* and the original *BLOC* complaints prior to petitioning this Court. Thus, *all* of

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was no occasion for this Court to address" it. Petition at 21. But this Court is "obliged to examine standing *sua sponte* where standing has erroneously been assumed below." *Adarand Constructors, Inc. v. Mineta*, 534 U.S. 103, 110 (2001).

its arguments regarding the *BLOC* amended complaint—including standing and ripeness—are not ripe and warrant denying the petition.

In any event, Petitioner cannot rely on "actively" drawing new maps to remove Plaintiffs' standing. As previously discussed, Petitioner plans to pass maps that retain as "much as possible the core of legislative districts." *See* S. J. Res. 63*, supra* n.7. Thus, even if Petitioner passes new maps, they are unlikely to resolve Plaintiffs' injuries under the Voting Rights Act; indeed the map Petitioner has introduced would not.

Finally, Plaintiffs' Voting Rights Act claim is ripe for the same reason their malapportionment claim is ripe—the Legislature and the Governor have made clear that there is a serious risk of impasse, and thus a serious risk the existing map—which Plaintiffs contend violates the Voting Rights Act—will be used absent court action.

D. The Court Should Deny the Petition.

The Court should deny the petition and reject Petitioner's invitation for this Court to engage in a roving mandamus jurisdiction over district courts' prospective adjudication of motions to dismiss. That issue does not belong before this Court.

Assuming the district court denies Petitioner's motion to dismiss the *BLOC* amended complaint, this Court has recognized that Congress has a strong policy against piecemeal appeals. *Will*, 389 US at 96. Thus, the Court should not grant an extraordinary remedy to, at best, overturn an ordinary denial of a motion to dismiss.

Petitioner suggests that this Court should issue an extraordinary writ because plaintiffs' filing of reapportionment suits in federal court and then asking the "court to set a deadline and wait" has evaded review. Petition at 29. That is simply not true. *See In re Michael C. Turzai*, 138 S. Ct. 670 (2018) (denying petition for writ of mandamus, No. 17-631, 2017 WL7058076 (Oct. 30, 2017), where separate challenges to congressional maps were filed in state and federal courts and the federal district court denied a motion to stay the proceedings). *See also Branch*, 538 U.S. at 269 (favorably discussing "at least six District Courts . . . [that] had suggested that if the state legislature was unable to redistrict to correct malapportioned congressional districts, they would" enact their own plans). Even if Petitioner's claim were true, granting a motion to dismiss in the first instance cuts against the purpose of extraordinary writs.

After requesting to intervene in this case and filing multiple motions to dismiss, Petitioner seeks relief from this Court for a new injury: litigating. Petitioner claims the district court's denial will irreversibly harm and has impermissibly left "all of Wisconsin's constitutional actors under the burden and expense of a discovery schedule" separate from Wisconsin state court proceedings. Petition at 25. However, a discovery schedule does not exist. The district court has stayed all proceedings until at least November 5, 2021.[9] Regardless, this Court does not

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[9] Plaintiffs' actual injuries offer a stark contrast to Petitioner's self-inflicted injuries. Plaintiffs live in districts across Wisconsin that are malapportioned *now*, whereas Petitioner's alleged injury—a discovery schedule in federal court—does not exist.

issue extraordinary writs solely to save petitioners from the costs of litigating, especially where they asked to join the litigation. Any cost or inconvenience attendant to having to potentially litigate the case to final judgment "is one which [this Court] must take it Congress contemplated in providing that only final judgments should be reviewable." *Roche*, 319 U.S. at 30 (1943).

Further, not only is Petitioner's claim wrong, but even if it is true, it still does not warrant issuing an extraordinary writ. Petitioner does not represent the viewpoints of *all* constitutional actors. The Governor, who has veto power over all maps passed by the Legislature, did not join this petition. He also *opposed* the motion to stay. That is, where Petitioner sees an "irreversible" injury, the Governor does not. Surely, a mandamus should not issue for the purpose of micromanaging a district court's case-management and trial-scheduling decisions. *See also Schlagenhauf v. Holder*, 379 U.S. 104, 110 (1964) (the writ "is not to be used as a substitute for appeal, even though hardship may result from delay and perhaps unnecessary trial") (citation omitted).

Lastly, the Legislature is an intervenor in this matter, a participant of its own volition rather than by any action taken by the Plaintiffs. If Petitioner does not wish to be under the "burden and expense" of federal district court litigation, it may simply withdraw as a party in this case.

E. The Court Should Also Deny the Writ of Prohibition.

Because Plaintiffs have standing to seek relief from their injuries, the writ of prohibition should also

be denied.[10] The purpose of a writ of prohibition "is to prevent an unlawful assumption of jurisdiction, and not to correct mere errors and irregularities." *Ex parte Cooper*, 143 U.S. 472, 495 (1892). *See also Ex parte Fassett*, 142 U.S. 479, 486 (1892) ("A writ of prohibition . . . will issue only in case of a want of jurisdiction."); *In re Chicago, R.I. & P. Ry. Co.*, 255 U.S. 273, 275 (1921) (the purpose of a writ of prohibition is "to prevent a lower court from wrongfully assuming jurisdiction").

As previously discussed, the district court has not wrongfully assumed jurisdiction. Petitioner has not directed this Court's attention to a single case where this Court held that plaintiffs do not have standing to file a complaint solely because state actors have begun the redistricting process. And the opposite has happened: this Court has instructed a district court to retain jurisdiction of a malapportionment case in the event that state actors failed to enact a valid reapportionment plan in time for the next elections. *See Scott*, 381 U.S. at 409.

CONCLUSION

Because the petition is not ripe and the Legislature has failed to demonstrate that the issuance of an extraordinary writ is warranted, the Plaintiffs in the underlying district court action

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[10] Petitioner makes no argument to support its request for a writ of prohibition. Its failure to set forth and develop that argument should be deemed to be a waiver of that request for relief. *See, e.g.*, *Weinstein v. Schwartz*, 422 F.3d 476, 477 n. 1 (7th Cir. 2005) ("We have repeatedly made clear that perfunctory and undeveloped arguments, and arguments that are unsupported by pertinent authority, are waived (even where those arguments raise constitutional issues.")).

respectfully request that this Court deny the Petition for Writ of Mandamus or Prohibition.

Respectfully submitted,

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October 25, 2021

ADDENDUM

ADDENDUM

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ADDENDUM A

Constitutional and Statutory Provisions

U.S. Const. amend. XIV, § 1.

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

28 U.S.C. §1651

The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

Addendum 2

52 U.S.C. § 10301

Denial or abridgement of right to vote on account of race or color through voting qualifications or prerequisites; establishment of violation

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 10303(f)(2) of this title, as provided in subsection (b).

(b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, that nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

Addendum 3

ADDENDUM B

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WISCONSIN

Case Nos. 21-cv-512-jdp-ajs-eec & 21-cv-534-jdp-ajs-eec

[Filed: October 6, 2021]

LISA HUNTER, JACOB ZABEL,)
JENNIFER OH, JOHN PERSA,)
GERALDINE SCHERTZ, and)
KATHLEEN QUALHEIM,)
Plaintiffs,)
)
and)
)
BILLIE JOHNSON, ERIC O'KEEFE,)
ED PERKINS, and)
RONALD ZAHN,)
Intervenor-Plaintiffs,)
v.)
)
MARGE BOSTELMANN,)
JULIE M. GLANCEY, ANN S. JACOBS,)
DEAN KNUDSON,)
ROBERT F. SPINDELL, JR., and)
MARK L. THOMSEN in their official)
capacities as members of the)
Wisconsin Elections Commission,)
Defendants,)
)

and)
)
WISCONSIN LEGISLATURE,)
Intervenor-Defendant,)
)
and)
)
CONGRESSMEN GLENN GROTHMAN,)
MIKE GALLAGHER, BRYAN STEIL,)
TOM TIFFANY, and)
SCOTT FITZGERALD)
Intervenor-Defendants,)
)
and)
)
GOVERNOR TONY EVERS,)
Intervenor-Defendant.)

BLACK LEADERS ORGANIZING)
FOR COMMUNITIES,)
VOCES DE LA FRONTERA,)
the LEAGUE OF WOMEN VOTERS)
OF WISCCONSIN, CINDY FALLONA,)
LAUREN STEPHENSON, and)
REBECCA ALWIN,)
Plaintiffs,)
v.)
)
MARGE BOSTELMANN,)
JULIE M. GLANCEY,)
ANN S. JACOBS, DEAN KNUDSON,)
ROBERT F. SPINDELL, JR., and)
MARK L. THOMSEN, in their official)
capacities as members of the)
Wisconsin Elections Commission, and)

Addendum 5

MEAGAN WOLFE, in her official capacity)
as the administrator of the)
Wisconsin Elections Commission,)
Defendants.)

OPINION and ORDER

This order addresses the case schedule and other matters pending before the court.

A. Case schedule and motions to dismiss or stay

The court asked the parties to confer and submit a joint proposed discovery plan and pretrial schedule on the assumption that trial would be completed by January 28, 2022, so that this court could, if necessary, have maps ready by March 1, 2022, which was the deadline provided by the defendant Wisconsin Elections Commission. *See* Dkt. 75.[1] After the Wisconsin Supreme Court granted the petition to commence an original action on redistricting, the court asked the parties to explain how the Wisconsin Supreme Court proceeding would affect this case. Once again, there is little on which the parties agree.

The intervenor-defendant Legislature thinks the federal case should be dismissed entirely, or failing that, delayed as long as possible, presumably to give the Wisconsin Supreme Court the maximum time to draw Wisconsin's maps. The Johnson intervenor-plaintiffs are generally sympathetic to the Legislature's perspective, and they have filed a second

[1] Docket citations in this order are to the entries in Case No. 21-cv-512.

motion to stay these cases.[2] Dkt. 79. The Hunter plaintiffs, the BLOC plaintiffs, and intervenor-defendant Governor Tony Evers would press on in this court and begin discovery almost immediately. The court will reject the two polar approaches.

Over the last six decades, when Wisconsin has had divided government, it has frequently failed to enact redistricting plans, and the federal courts—not the Wisconsin Supreme Court—have drawn Wisconsin's maps. When these cases were filed, it seemed likely that the federal courts would be called upon once again. But the recent decision by the Wisconsin Supreme Court to take up the redistricting issue suggests that this pattern may not repeat itself. It seems as unlikely as ever that Wisconsin will enact a redistricting law, but the Wisconsin Supreme Court seems poised to step into the breach for the first time since 1964.

Federal rights are at stake, so this court will stand by to draw the maps—should it become necessary. The court recognizes that responsibility for redistricting falls first to the states, and that this court should minimize any interference with the state's own redistricting efforts. But the Wisconsin Supreme Court did not commit to drawing new legislative or congressional maps, and has not yet set a schedule to do so, or even to decide whether it will do so. Dkt. 79-1, at 3. It is appropriate for this court to

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[2] The renewed motion to stay is fully briefed. The parties' responses are at Dkt. 89 to Dkt. 95. The Congressmen intervenor-defendants, the Hunter plaintiffs, and the Johnson intervenor-plaintiffs each ask for leave to file an additional brief. Dkt. 97; Dkt. 100; Dkt. 101. The court will grant each of those motions and will accept the proffered briefs.

provide a date by which the state must act to avoid federal involvement in redistricting. *Growe v. Emison*, 507 U.S. 25, 36 (1993).

The court is not persuaded by the Legislature's proposal to forestall trial until late March. Nomination papers for the 2022 partisan primary elections are due June 1. Wis. Stat. § 8.15(1) (2019–20). By statute, candidates may begin collecting signatures to support their candidacies on April 15, giving them six weeks to collect signatures. *Id.* Defendant Wisconsin Election Commission says it needs six weeks to prepare for the April 15 deadline, which would mean that Wisconsin's maps must be ready by March 1. The Legislature apparently assumes, without providing any explanation why, that the redistricting process can cut into the commission's preparation time or the candidates' six-week window to circulate nomination papers. Based on the information that the parties have so far provided to the court, March 1, 2022, is the deadline by which the maps must be available. Until the court is persuaded otherwise, the court will reserve five days beginning January 31, 2022, for trial of this matter.

This trial date is not far off, but the court will not open discovery immediately. The BLOC plaintiffs have professed the need for particularly searching discovery, which will impose significant burdens on the parties. It also risks substantial interference with the redistricting process and other government functions. All this might turn out to be wasted effort if the Wisconsin Supreme Court acts, and also because the BLOC plaintiffs' claims are the target of a pending, and not yet fully briefed, motion to dismiss.

Moreover, the proceeding in the Wisconsin Supreme Court will, presumably, provide some fact-development process through which the parties can develop much of the evidence they would need should the federal case proceed to trial. But that leads to one of the difficulties this court faces in determining how to proceed: this court lacks information about the timing of the redistricting process in the Wisconsin Supreme Court and the scope of the issues to be resolved. The supplemental briefs from the Congressmen intervenor-defendants and the Hunter plaintiffs raise the question of whether the Wisconsin Supreme Court action will address malapportionment of the congressional map. And it is not yet clear whether the parties to that action will be able to raise federal Voting Rights Act claims.

In light of these concerns, the court will grant the Johnson intervenor-plaintiffs' motion for a stay, in part. Discovery is stayed until at least November 5. By that date, the parties must update the court on the status of the action in the Wisconsin Supreme Court. The status report should address: the schedule of the action; the scope of any factual development process; and the scope of the legal issues that the parties intend to raise. Per the usual practice, the parties should submit a joint report, setting out points of disagreement. The court may schedule a status conference shortly after the status report.

In the meantime, the parties are directed to complete briefing on the Legislature's motions to dismiss the BLOC plaintiffs' amended complaint and the Johnson intervenor-plaintiffs' complaint. Dkt. 86 and Dkt. 87. The briefing schedule is set out in the order below.

B. The Citizen Data Scientists' motion to intervene

A group of Wisconsin voters living in now-malapportioned congressional and legislative districts seeks to intervene. Dkt. 65. These proposed intervenors, who identify themselves as the "Citizen Data Scientists," say that they "are some of Wisconsin's leading professors, practitioners, and research scientists in data science, computer science, mathematics, statistics, and engineering." Dkt. 67, at 2. They say that they "are nonpartisan scientists and mathematicians whose interest is in seeing the redistricting process proceed fairly and transparently for all Wisconsin voters." *Id.* at 3. They propose using "'computational redistricting'—a relatively recent field applying principles of mathematics, high-speed computing, and spatial geography to the redistricting process." *Id.*

The court has warned that any additional intervenors would have to make a particularly compelling showing. Dkt. 60, at 5. The Citizen Data Scientists resist any heightened intervention standard because they didn't have notice that the court would impose such a standard, no party opposes their intervention, and the litigation has not yet meaningfully progressed. The point of the court's statement was that it was now unlikely that any proposed intervenor would have an interest not already adequately represented by the existing parties.

The Citizen Data Scientists' motion is timely in the sense that it was filed only five weeks after the Hunter plaintiffs' complaint. But the motion comes after the court has already allowed numerous other

parties into the litigation and consolidated the '512 and '534 cases. The Citizen Data Scientists' malapportionment claims are the same as those already filed by the other sets of plaintiffs, and their stated interest in "fair and transparent" redistricting does not distinguish them from other parties in the case. Each set of parties brings its own perspective, but there are myriad political affiliations and demographic groups in the state of Wisconsin. Not every such party or group—partisan or not—has a right to intervene in this case.

The court must also consider whether intervention will unduly delay the case or prejudice the existing parties. Fed. R. Civ. P. 24(b)(3); *see also Planned Parenthood of Wisconsin, Inc. v. Kaul*, 942 F.3d 793, 803 (7th Cir. 2019). This litigation has already become quite complex; adding yet another party will needlessly further complicate the proceedings, potentially prejudice the other parties, and might invite a flood of additional motions to intervene by groups who believe that they have their own superior method of drawing the maps. The court concludes that the Citizen Data Scientists are not entitled to intervene, either as a matter of right or permissively.

The Citizen Data Scientists don't really have a unique interest that supports intervention. What they purport to bring is unique expertise. The Citizen Data Scientists "advocate that high-speed computers and cutting-edge algorithmic techniques can and should be used to thwart gerrymandering, streamline and accelerate the mapmaking process, and promote fair and effective representation for all Wisconsin residents." Dkt. 67, at 6. Their expertise is welcome:

the court will grant them leave to submit amicus briefs on any substantive issue in the case.

ORDER

IT IS ORDERED that:

1. Plaintiffs may have until October 20, 2021, to respond to intervenor-defendant Wisconsin Legislature's motions to dismiss, Dkt. 86 and Dkt. 87. The Legislature may have until October 27, 2021, to reply.

2. The Congressmen intervenor-defendants', Hunter plaintiffs', and Johnson intervenor-plaintiffs' motions for leave to file additional briefing on the Johnson intervenor-plaintiffs' motion to stay, Dkt. 97; Dkt. 100; Dkt. 101, are GRANTED. The court accepts their additional briefs, Dkt. 97-1; Dkt. 100-1; Dkt. 101-1.

3. The Johnson intervenor-plaintiffs' second motion to stay proceedings, Dkt. 79, is GRANTED in part. Proceedings other than briefing on the Legislature's motions to dismiss are stayed until November 5, 2021.

4. The parties must, by November 5, 2021, update the court on the Wisconsin Supreme Court proceedings, as described above, with a joint submission, setting out any points of disagreement.

5. The motion to intervene filed by Leah Dudley, Somesh Jha, Joanne Kane, Michael Switzenbaum, Jean-Luc Thiffeault, and Stephen Joseph Wright, Dkt. 65, is DENIED, but they are granted amicus status and may file briefs on any substantive issue in the case

Entered October 6, 2021.

BY THE COURT:

/s/______________________
JAMES D. PETERSON
District Judge

/s/______________________
AMY J. ST. EVE
Circuit Judge

/s/______________________
EDMOND E. CHANG
District Judge