

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

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

21-cv-512-jdp-ajs-eec

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
WISCONSIN, 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
MEAGAN WOLFE, in her official capacity as the
administrator of the Wisconsin Elections Commission,

21-cv-534-jdp-ajs-eec

Defendants.

**NOTICE OF STATE COURT PROCEEDINGS AND
MOTION TO STAY PROCEEDINGS**

Intervenor-Plaintiffs Billie Johnson, Eric O’Keefe, Ed Perkins, and Ronald Zahn respectfully move this Court to stay these proceedings under *Grove v. Emison*, 507 U.S. 25 (1993), in light of the Wisconsin Supreme Court’s September 22, 2021 order granting the Intervenor-Plaintiffs’ petition for leave to commence an original action concerning redistricting in Wisconsin (Exhibit 1 to this motion). The grounds for this motion are as follows.

1. On August 26, 2021, the Intervenor-Plaintiffs filed with this Court a proposed Motion to Stay Proceedings and memorandum of law in support. ECF No. 21-2, 21-3. These filings informed the Court that the Intervenor-Plaintiffs had filed a Petition to the Supreme Court of Wisconsin to Take Jurisdiction of an Original

Action involving legislative and congressional redistricting and argued that under *Grove* this Court was required to stay its hand. Specifically, *Grove* mandates that “federal judges . . . defer consideration of disputes involving redistricting where the State, through its legislative *or* judicial branch, has begun to address that highly political task itself.” *Grove*, 507 U.S. at 33.

2. On September 16, 2021, this Court denied the Intervenor-Plaintiffs’ stay request. ECF No. 60. It explained that it was not “impeding or superseding any concurrent state redistricting process” and that there was “yet no indication that the state courts will entertain redistricting in the face of an impasse between the legislature and the governor.” *Id.* at 7-8. It added that “If the Wisconsin Supreme Court grants the petition, the parties should inform the court and the court will consider the Supreme Court’s action in setting the schedule.” *Id.* at n.3.

3. Consistent with this Court’s instruction, the Intervenor-Plaintiffs now inform this Court that the Wisconsin Supreme Court has granted their petition. *See* Ex. 1. In its order, the Wisconsin Supreme Court declared that it had “long deemed redistricting challenges a proper subject for the court’s exercise of its original jurisdiction,” assumed jurisdiction of the action, and ordered briefing related to intervention motions and preliminary scheduling. *Id.* at 1-2.

4. The Intervenor-Plaintiffs respect this Court’s September 16, 2021 order denying its stay motion but believe the facts have now materially changed such that consideration of a stay by this Court is once again appropriate. State court proceedings were not in place when this Court first considered a stay but now are.

5. *Grove* bars even federal “consideration” of redistricting disputes while state judicial proceedings are pending (“[a]bsent evidence that these state branches will fail timely to perform that duty”). *Grove*, 507 U.S. at 33. Put differently, but just as broadly, federal courts should not even “involve themselves in redistricting” before the state process has failed. *Id.* at 32 n.1.

6. The Supreme Court’s instruction that “a federal court must neither affirmatively obstruct state reapportionment nor permit federal litigation to be used to impede it” is now fully applicable. The prospect of overlapping, and perhaps conflicting, federal-state discovery, expert, and trial schedules, rules, and orders is simply untenable. Indeed, the mere need of the parties to double all litigation efforts will necessarily “impede” state proceedings.

7. *Grove* makes clear that this Court should not continue all federal proceedings short of a final judgment in case the Wisconsin Supreme Court fails; instead, it should at most communicate to that Court the “time by which it should decide on reapportionment, legislative *or* congressional, if it wishe[s] to avoid federal intervention,” *i.e.* federal “involve[ment]” in or federal “consideration” of these redistricting matters. *Id.* at 36.

8. Consequently, the Intervenor-Plaintiffs respectfully request that this Court stay these proceedings while the Wisconsin Supreme Court resolves the original action now before it.¹

¹ If this Court agrees, the Intervenor-Plaintiffs suggest a status conference be scheduled in November at which the parties can update the Court on the Wisconsin Supreme Court’s progress.

Dated this 23rd day of September, 2021.

Respectfully submitted,

WISCONSIN INSTITUTE FOR LAW & LIBERTY
Attorneys for Intervenor-Plaintiffs

/s/ Anthony LoCoco

Richard M. Esenberg, WI Bar No. 1005622

414-727-6367; rick@will-law.org

Anthony LoCoco, WI Bar No. 1101773

414-727-7419; alococo@will-law.org

Lucas Vebber, WI Bar No. 1067543

414-727-7415; lucas@will-law.org

330 East Kilbourn Ave. Suite 725

Milwaukee, WI 53202

414-727-9455; FAX: 414-727-6385