

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

LISA HUNTER, JACOB ZABEL, JENNIFER
OH, JOHN PERSA, GERALDINE SCHERTZ,
& KATHLEEN QUALHEIM,

Plaintiffs,

BILLIE JOHNSON, ERIC O'KEEFE,
ED PERKINS, RONALD ZAHN,

Intervenor-Plaintiffs,

LEAH DUDLEY, SOMESH JHA, JOANNE
KANE, MICHAEL SWITZENBAUM, JEAN-
LUC THIFFEAULT, STEPHEN JOSEPH
WRIGHT,

Proposed Intervenor-Plaintiffs,

v.

MARGE BOSTELMANN, JULIE M.
GLANCEY, ANN S. JACOBS, DEAN
KNUDSON, ROBERT F. SPINDELL, JR., &
MARK L. THOMSEN, in their official capacities
as members of the Wisconsin Elections
Commission,

Defendants,

THE WISCONSIN LEGISLATURE,

Intervenor-Defendant,

CONGRESSMEN SCOTT FITZGERALD,
MIKE GALLAGHER, GLENN GROTHAM,
BRYAN STEIL, TOM TIFFANY,

Intervenor-Defendant,

GOVERNOR TONY EVERS,

Intervenor-Defendant.

No. 3:21-cv-00512-jdp-ajs-ee

BLACK LEADERS ORGANIZING FOR
COMMUNITIES, VOCES DE LA FRONTERA,
THE LEAGUE OF WOMEN VOTERS OF
WISCONSIN, CINDY FALLONA, LAUREN
STEPHENSON, & REBECCA ALWIN,
MELODY McCURTIS, HELEN HARRIS,
EDWARD WADE, JR., BARBARA TOLES,
SEAN TATUM, WOODROW WILSON CAIN,
II, TRACIE Y. HORTON, NINA CAIN,

Plaintiffs,

v.

MARGE BOSTELMANN, JULIE M.
GLANCEY, ANN S. JACOBS, DEAN
KNUDSON, ROBERT F. SPINDELL, JR., &
MARK L. THOMSEN, in their official capacities
as members of the Wisconsin Elections
Commission, MEGAN WOLFE, in her official
capacity as the administrator of the Wisconsin
Elections Commission,

Defendants.

No. 3:21-cv-00534-jdp-ajs-ee

**REPLY IN SUPPORT OF MOTION TO DISMISS
JOHNSON PLAINTIFFS' COMPLAINT
BY THE WISCONSIN LEGISLATURE**

The Legislature incorporates by reference every argument it has made about lacking subject matter jurisdiction in previously filed motions to dismiss and in its pending petition for an extraordinary writ directing that all federal complaints in these consolidated cases be dismissed. *See* Dkt. 82, Notice; Dkt. 81, Notice; Dkt. 9-3, Br. in Support of Mot. to Dismiss; Dkt. 11-3, Proposed Br. in Support of Mot. to Dismiss, *BLOC v. Bostelmann*, No. 3:21-cv-534. Even if the Court agrees that there was federal jurisdiction at the outset of this dispute (there was not), that does not answer whether there is federal jurisdiction now. *See* Fed. R. Civ. P. 12(h)(3); *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006). The Wisconsin Supreme Court is exercising its original jurisdiction over redistricting claims. Ex. A (Order Granting Original Pet'n, *Johnson v. Wis. Elections Comm'n*, No. 2021AP1450-OA (Sept. 22, 2021, *as amended*, Sept. 24, 2021)). It has invited any proposed intervenors to file motions to

intervene and then granted intervention motions by every party who asked to intervene. *Id.* at 3; Ex. B (Order Granting Mots. to Intervene, *Johnson v. Wis. Elections Comm’n*, No. 2021AP1450-OA (Oct. 14, 2021)). The state supreme court has accepted briefing about *when* remedial plans must be finalized and *how* the court should go about crafting remedial plans. Ex. A at 3; Ex. C at (Order Regarding Remedial Briefs, *Johnson v. Wis. Elections Comm’n*, 2021AP1450-OA (Oct. 14, 2021)). There is thus no “certainly impending” or “actual or imminent” harm with respect to the existing districts. *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409 (2013). To agree that the any federal plaintiff has standing is to agree that the Wisconsin Supreme Court will not finish what it has already started. All complaints should be dismissed.

Dated: October 27, 2021

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Respectfully submitted,

/s/ Kevin St. John

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Counsel for the Wisconsin Legislature

CERTIFICATE OF SERVICE

I hereby certify that on October 27, 2021, I served the foregoing document with the Clerk of Court using the Court's ECF system, thereby serving all counsel who have appeared in this case.

/s/ Kevin St. John

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