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,

Defendants.

21-cv-534-jdp-ajs-eec

JOHNSON INTERVENOR-PLAINTIFFS' UPDATED POSITION ON DISMISSAL

These consolidated cases challenge those Wisconsin legislative and congressional districts that were current as of August 2021. On March 3, 2022, the Wisconsin Supreme Court issued an opinion and order establishing reapportioned maps based on the 2020 census. On March 23, 2022, the Supreme Court of the United States denied the application filed by the Congressmen Intervenor-Defendants to stay the Wisconsin Supreme Court's order adopting new congressional maps. *Grothman v. Wisconsin Elections Commission*, No. 21A490, 2022 WL 851726 (U.S. Mar. 23, 2022).

However, it construed a separate application to stay the Wisconsin Supreme Court's order adopting new legislative maps filed by the Wisconsin Legislature and the Johnson Intervenor-Plaintiffs as a petition for certiorari, granted the petition,

summarily reversed the imposition of legislative maps, and remanded for further proceedings. *Wisconsin Legislature v. Wisconsin Elections Comm'n*, No. 21A471, 2022 WL 851720, at *1 (U.S. Mar. 23, 2022) (per curiam). In the Court's view, the Wisconsin Supreme Court "committed legal error in its application of decisions of this Court regarding the relationship between the constitutional guarantee of equal protection and the" Voting Rights Act of 1965 (VRA). *Id.* The Court remanded, noting that it was providing the Wisconsin Supreme Court with "sufficient time to adopt maps consistent with the timetable for Wisconsin's August 9th primary election." *Id.*

There is now absolutely no basis for these federal cases. "*At all stages of litigation*, a plaintiff must maintain a personal interest in the dispute." *Uzuegbunam v. Preczewski*, ___ U.S. ___, 141 S. Ct. 792, 796 (2021) (emphasis added). Until March 3, the basis for that personal interest was the unconstitutional malapportionment of Wisconsin's electoral districts. The basis for the species of deferral discussed in *Growe v. Emison*, in turn, was the possibility that Wisconsin's branches of government would not remedy this malapportionment "in time for the primaries." 507 U.S. 25, 37 (1993).

Not only did the Wisconsin Supreme Court reapportion on a timely basis, it did so in time for one round of appellate review. With respect to legislative maps, the Supreme Court of the United States has now ordered further proceedings while expressing its own understanding that the Wisconsin Supreme Court has "sufficient time to adopt maps consistent with the timetable for Wisconsin's August 9th primary election." If there is a scenario in which the Wisconsin Supreme Court fails to comply with this order, it's fair to characterize it as "highly speculative"—certainly too

speculative to support Article III standing. With respect to congressional maps, of course, the lack of a showing of harm is even stronger—the Supreme Court has denied review, so final maps are in place. Respectfully, it is not a federal district court's constitutional remit to supervise state court litigation on the merest of possibilities that something might go wrong. And, again, any further proceedings will and must be appellate in nature, as the recent pair of decisions demonstrates. 28 U.S.C. §1257(a); *see Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

These cases should therefore be dismissed.

Dated this 25th day of March, 2022.

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