

Misha Tseytlin

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October 13, 2021

Sheila Reiff
Clerk of the Wisconsin Supreme Court
110 East Main Street, Suite 215
P.O. Box 1688
Madison, WI 53701-1688

Re: *Johnson v. Wisconsin Elections Commission*, No.2021AP1450-OA (Wis.)

Dear Clerk:

Pursuant to this Court's September 22, 2021 Order, as amended, proposed Intervenor-Petitioners Congressmen Glenn Grothman, Mike Gallagher, Bryan Steil, Tom Tiffany, and Scott Fitzgerald (the "Congressmen") submit this letter brief responding to the parties' and other proposed intervenors' submissions to the following question: "When (identify a specific date) must a new redistricting plan be in place, and what key factors were considered to identify this date[.]" Order at 3, *Johnson v. WEC*, No.2021AP1450-OA (Wis. Sept. 22, 2021), as amended (Sept. 24, 2021) (hereinafter "*Johnson Order*").

While the parties and other proposed intervenors offer this Court various deadlines for when a new redistricting plan must be in place—including January 24, 2022, which accounts for the federal court's early-2022 reserve trial dates in *Hunter v. Bostelmann*, No.3:21-cv-512 (W.D. Wis.), Letter Br. Of *Hunter* Intervenor at 2–3, No.2021AP1450-OA (Wis. Oct. 6, 2021); April 1, 2022, which is allegedly based on some past practice in Wisconsin, Letter Br. Of Citizen Mathematicians And Scientists at 1–3, No.2021AP1450-OA (Wis. Oct. 6, 2021); April 15, 2022, which aligns with the beginning of the nomination-paper-circulation process, Letter Br. Of *Johnson* Petitioners at 1–2, No.2021AP1450-OA (Wis. Oct. 6, 2021); and April 30, 2022, which provides "ample time for the legislative process," Letter Br. Of The Legislature at 1, No.2021AP1450-OA (Wis. Oct. 6, 2021)—the Congressmen respectfully submit that their proposed deadline of **February 28, 2022**, is the most sensible. See Letter Br. Of Congressmen at 1, No.2021AP1450-OA (Wis. Oct. 6, 2021).

Indeed, an order issued by the *Hunter* federal court immediately after the parties and proposed intervenors submitted their suggested deadlines to this Court confirms the wisdom of the Congressmen's February 28, 2022, date, for two interrelated reasons. See Opinion and Order, *Hunter*, No.3:21-cv-512, Dkt.103 (Oct. 6, 2021) (hereinafter "*Hunter Order*").

First, the *Hunter* federal court's recent order again reiterates that court's apparent intent to defer to the preferred March 1 deadline of Respondents (collectively, the "Commission"). *Hunter* Order at 2–4; *accord* Letter Br. Of Congressmen at 1–2, No.2021AP1450-OA. As the federal court explained, "[b]ased upon 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"—the date put forward by the Commission. *Hunter* Order at 4. Thus, the *Hunter* federal court announced that it has "reserve[d] five days beginning January 31, 2022, for trial of this matter," so that it may timely adopt new redistricting plans for the State by that March 1, 2022, deadline, should such federal-court involvement prove necessary. *Id.*

Second, the *Hunter* federal court's recent order demonstrates that the court is looking for an *unambiguous* indication from this Court that it will adopt redistricting plans for the State if necessary—including a plan for the congressional districts—by the March 1, 2022 deadline. While the federal court recognized this Court's primacy over redistricting disputes, it explained that, in its view, this Court "did not commit to drawing new legislative or congressional maps" by the apparent March 1 deadline, "has not yet set a schedule to do so," and has not "even [] decide[d] whether it will do so." *See id.* at 3. Further, the court stated that it "lacks information about the timing of the redistricting process in [this] Court" and about "the scope of the issues to be resolved," including whether this Court will even "address malapportionment of the congressional map." *Id.* at 4–5. Therefore, the *Hunter* federal court found it "appropriate [] to provide a date by which the state must act to avoid federal involvement in redistricting," *id.* at 3—which date is, by all accounts, March 1—until the court is "update[d]" on the "status of th[is] action" before this Court, *id.* at 5.

Taken together, these two interrelated statements from the *Hunter* federal court give every indication that it will impose redistricting maps for Wisconsin by March 1, 2022, unless this Court expressly provides that it will adopt such maps, if necessary, before that date—including with regard to Wisconsin's congressional maps.

In order to facilitate this Court's adoption of redistricting maps by the Congressmen's proposed deadline of February 28, 2022, if necessary, the Congressmen provide the following sample schedule:

- If the Legislature approves new redistricting maps by the close of its next available floor period, **November 11, 2021**, as the Legislature's Letter Brief suggests, Letter Br. Of The Legislature at 2, No.2021AP1450-OA, the Governor will have until **November 18, 2021** either to "approve[] and sign[]" the proposed maps or to veto and "return[]" them to the Legislature, Wis. Const. art. V, § 10(1)(b), (3) (providing the "governor with[] 6 days (Sundays excepted)" to sign or veto bills approved by the Legislature);
- If the Governor were to veto the proposed maps on November 18, **this Court could immediately thereafter declare that Wisconsin's existing congressional and state-legislative maps are malapportioned in violation of both Article I, Section**

1, and Article 4 of the Wisconsin Constitution, which is an issue that does not appear to be subject to any reasonable dispute. See *State ex rel. Reynolds v. Zimmerman*, 22 Wis. 2d 544, 564, 126 N.W.2d 551 (1964).

- Third, after entering a declaration that the existing maps violate the Wisconsin Constitution, this Court could order all interested parties and amici to simultaneously submit proposed maps, supporting briefs addressing *all* relevant legal and practical requirements, and any supportive materials that they would deem appropriate, by **December 24, 2021**, with simultaneous response briefs due on **January 7, 2022**;
- Finally, after reviewing those submissions, this Court could either: (a) proceed to enter its decision adopting redistricting maps for the State, based upon the parties' submissions (for example, after adopting, as a matter of law, "the most neutral way" to conduct redistricting by "taking the [immediately previous] reapportionment plan as a template and adjusting it for population deviations," *Baumgart v. Wendelberger*, Nos.01-C-0121, 02-C-0366, 2002 WL 34127471, at *7 (E.D. Wis. May 30, 2002)), or (b) order limited fact-finding procedures, whether or not before a special master, Wis. Stat. § 751.09, and then simultaneous submission of supplemental memoranda from all parties and amici by **January 28, 2022**.
- This Court could then enter its final relief by **February 28, 2022**.

Sincerely,



Misha Tseytlin