

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

LISA HUNTER, et al.,

Plaintiffs,

BILLIE JOHNSON, et al.,

Intervenor-Plaintiffs,

v.

Case No. 3:21-CV-512-jdp-ajs-ec

MARGE BOSTELMANN, et al.,

Defendants,

THE WISCONSIN LEGISLATURE,

Intervenor-Defendant,

CONGRESSMAN GLENN GROTHMAN,
et al.,

Intervenor-Defendants,

GOVERNOR TONY EVERS,

Intervenor-Defendant.

BLACK LEADERS ORGANIZING FOR
COMMUNITIES, et al.,

Plaintiffs,

v.

Case No. 3:21-CV-534-jdp-ajs-ec

MARGE BOSTELMANN, et al.,

Defendants,

THE WISCONSIN LEGISLATURE,

Intervenor-Defendant,

LEAH DUDLEY, et al.,

Proposed Intervenors.

**DEFENDANTS' RESPONSE TO JOHNSON INTERVENOR-
PLAINTIFFS' MOTION TO STAY**

Defendants 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, respond to the second motion to stay filed by Intervenor-Plaintiffs Billie Johnson, Eric O'Keefe, Ed Perkins, and Ronald Zahn (collectively, the "Johnson Intervenor-Plaintiffs") as follows:

1. Johnson Intervenor-Plaintiffs have moved to stay these consolidated cases in light of the Wisconsin Supreme Court's September 22, 2021, order granting their petition to commence an original action regarding redistricting in Wisconsin. *See Johnson v. Wisconsin Elections Commission*, No. 2021AP1450-0a (Wis. Sup. Ct. Sept. 22, 2021); (Dkt. 79.)

2. Johnson Intervenor-Plaintiffs seek a stay of indefinite length while the Wisconsin Supreme Court resolves the original action. (Dkt. 79:4.) They

propose a status conference in November to provide this Court with an update as to the Wisconsin Supreme Court's progress. (Dkt. 79:4 n.1.)

3. Defendants oppose the requested stay. As Defendants have previously explained, for the Wisconsin Elections Commission to properly, timely, and effectively administer the fall general election—which includes the nominating petition circulation process starting on April 15, 2022—a new congressional and state legislative district plan should be in place no later than March 1, 2022. An indefinite stay while the Wisconsin Supreme Court resolves the original action is very likely to interfere with that deadline because, by the time it becomes apparent that federal court action is necessary, it will be too late to complete the discovery and trial process by March 1.

4. This Court has already taken into account the Wisconsin Supreme Court proceedings. In denying previous motions to dismiss and for an indefinite stay, this Court indicated that it “understands the state government’s primacy in redistricting its legislative and congressional maps” and that it “is not impeding or superseding any concurrent state redistricting process,” but explained that “[t]he court and the parties must prepare now to resolve the redistricting dispute, should the state fail to establish new maps in time for the 2022 elections.” (Dkt. 60:6–8.)

5. While it did not dismiss or stay the case indefinitely, the Court indicated 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 map” but would “set a schedule that will allow for the timely resolution of the case should the state process languish or fail.” (Dkt. 60:8.) The Court has asked the parties to submit a joint proposed case schedule taking into account the pending Wisconsin Supreme Court case. (Dkt. 80.)

6. That is the best course of action, not an indefinite stay.

7. The marginal cost of preparing a schedule and possibly conducting additional or duplicative work in this case is outweighed by the risk that the requested stay could delay finalization of redistricting and thereby disrupt the fall 2022 election.

8. Defendants, therefore, ask this Court to deny Johnson Intervenor-Plaintiffs’ second motion for a stay and proceed with scheduling the case based on the joint proposed schedule submitted by the parties.

Dated at Madison, Wisconsin this 1st day of October 2021.

Respectfully submitted,

ERIC J. WILSON
Deputy Attorney General of Wisconsin

Electronically signed by:

s/ Steven C. Kilpatrick
STEVEN C. KILPATRICK
Assistant Attorney General
State Bar #1025452

THOMAS C. BELLAVIA
Assistant Attorney General
State Bar #1030182

KARLA Z. KECKHAVER
Assistant Attorney General
State Bar #1028242

Attorneys for Defendants

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-1792 (SCK)
(608) 266-8690 (TCB)
(608) 264-6365 (KZK)
(608) 294-2907 (Fax)
kilpatricksc@doj.state.wi.us
bellaviatc@doj.state.wi.us
keckhaverkz@doj.state.wi.us