

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

Lisa Hunter, Jacob Zabel, Jennifer Oh, John Persa, Geraldine Schertz, *and* Kathleen Qualheim,

Plaintiffs,

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,

The Wisconsin Legislature,

Intervenor-Defendant,

Congressmen Glenn Grothman, Mike Gallagher, Bryan Steil, Tom Tiffany, *and* Scott Fitzgerald,

Intervenor-Defendants.

Case No. 3:21-cv-512-jdp-ajs-eec (consolidated with No. 3:21-cv-534-jdp-ajs-eec)

Black Leaders Organizing For Communities, Voces De La Frontera, League Of Women Voters Of Wisconsin, Cindy Fallona, Lauren Stephenson, Rebecca Alwin, Helen Harris, Woodrow Wilson Cain, II, Nina Cain, Tracie Y. Horton, Pastor Sean Tatum, Melody McCurtis, Barbara Toles, *and* Edward Wade, Jr.,

Plaintiffs,

v.

Robert F. Spindell, Jr., Mark L. Thomsen, Dean Knudson, Ann S. Jacobs, Julie M. Glancey, Marge Bostelmann, *in their official capacities as members of the Wisconsin Elections Commission,* Meagan Wolfe, *in her official capacity as the administrator of the Wisconsin Elections Commission,*

Defendants.

Case No. 3:21-cv-534-jdp-ajs-eec (consolidated with No. 3:21-cv-512-jdp-ajs-eec)

**CONGRESSMEN GLENN GROTHMAN, MIKE GALLAGHER, BRYAN
STEIL, TOM TIFFANY, AND SCOTT FITZGERALD’S STATEMENT
REGARDING THE *JOHNSON* PLAINTIFFS’ SECOND MOTION TO
STAY AND THE WISCONSIN SUPREME COURT’S GRANT OF
PETITION FOR ORIGINAL ACTION IN *JOHNSON v.
WISCONSIN ELECTIONS COMMISSION***

Intervenor-Defendants Congressmen Glenn Grothman, Mike Gallagher, Bryan Steil, Tom Tiffany, and Scott Fitzgerald, who are probable candidates for re-election to the U.S. House of Representatives in 2022 (hereinafter, collectively, “the Congressmen”), submit this statement addressing how the Wisconsin Supreme Court’s grant of the petition for original action in *Johnson v. Wisconsin Elections Commission*, No.2021AP1450-OA (Wis. amended Sept. 24, 2021) (hereinafter “*Johnson Order*”) (attached as Exhibit 1); see Dkt.79-1 (unamended *Johnson Order*), should affect these consolidated cases, Dkt.80.¹ Given that the *Johnson* original-action petition raises analogous equal-population claims against Wisconsin’s current congressional districts, the *Johnson Order* removes any plausible basis for this Court to continue moving forward with this case under both *Grove v. Emison*, 507 U.S. 25 (1993), and the *Burford* abstention doctrine.

The *Johnson Order* requires dismissal under *Grove*. Federal courts must “defer consideration of disputes involving redistricting” unless there is “evidence” that the “state branches will fail timely to perform [the redistricting] duty.” *Grove*, 507 U.S. at 33–34. Since the *Johnson Order* makes unambiguously clear that the

¹ All citations of “Dkt.” refer to this Court’s docket in Case No. 3:21-cv-512-jdp-ajs-eec.

Wisconsin Supreme Court will “timely [] perform” its redistricting “duty,” *id.* at 34, if the “legislature fails to reapportion according to constitutional requisites in a timely fashion,” *Johnson* Order at 2, that Order compels dismissal here.

The *Johnson* Order also requires dismissal under *Burford* abstention. To begin, the *Johnson* Order conclusively establishes that the Wisconsin state courts are “available” to provide “timely and adequate state-court review” of Plaintiffs’ redistricting claims, which is the threshold requirement for *Burford* abstention. *New Orleans Pub. Serv., Inc. (“NOPSI”) v. Council of City of New Orleans*, 491 U.S. 350, 361 (1989); *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 726–27 (1996); Dkt.30-3 at 4–9. Further, Plaintiffs’ claims satisfy the three general conditions that may then trigger *Burford* abstention, and the satisfaction of only a single condition is sufficient. *NOPSI*, 491 U.S. at 361; Dkt.30-3 at 7–10.² First, Plaintiffs’ claims raise “difficult questions of state law” involving substantial public-policy concerns, *NOPSI*, 491 U.S. at 361 (citation omitted), since any redistricting map must strike a sensitive balance among the oft-competing “traditional redistricting criteria,” *League of Women Voters of Chicago v. City of Chicago*, 757 F.3d 722, 726 (7th Cir. 2014), and the redistricting process always implicates “critical legal and political issues,” *Jensen v. Wis. Elections Bd.*, 639 N.W.2d 537, 542 (Wis. 2002) (per curiam); accord *Johnson* Order at 2. Second, “the exercise of federal review” here would be “disruptive of” the “state efforts” in this critical area, *NOPSI*, 491 U.S. at 361 (citation omitted), as Wisconsin

² Although this Court did previously deny the Congressmen’s Motion To Dismiss, it did not address the Congressmen’s *Burford* abstention argument. See Dkt.60 at 6–8.

“can have only one set of [congressional] districts,” *Grove*, 507 U.S. at 35. Indeed, parallel proceedings in the Wisconsin Supreme Court and this federal court could result in overlapping—and perhaps competing—discovery obligations. That is the kind of “disrupt[ion] of state efforts” that *Burford* avoids. *Quackenbush*, 517 U.S. at 726–27. Finally, abstention would further “principles of federalism and comity,” *id.* at 728 (quoting *Grove*, 507 U.S. at 32), given the State’s primacy over redistricting, *Grove*, 507 U.S. at 34, and Wisconsin’s “strong interest” in “an institution of state government” completing the map-drawing process, *Jensen*, 639 N.W.2d at 542.³

Dated: October 1, 2021

Respectfully Submitted,

/s/ Misha Tseytlin

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³ Both *Grove* and *Burford* require this Court to dismiss this case. See *Grove*, 507 U.S. at 32–33, 42; *Quackenbush*, 517 U.S. at 726–28. However, to the extent that this Court disagrees that dismissal is required, *Grove* and *Burford* would both require this Court to stay this case, for many of the same reasons.

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of October, 2021, a true and accurate copy of the foregoing was served via the Court's CM/ECF system upon all counsel of record.

/s/ Misha Tseytlin

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