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BY ELECTRONIC FILING

Samuel A. Christensen
Clerk of the Supreme Court and Court of Appeals
110 East Main Street, Suite 215
P.O. Box 1688
Madison, WI 53701-1688

Re: *Wis. Bus. Leaders for Democracy v. Wis. Elections Comm'n*, No. 2025XX001330
Dane County Circuit Court Case No. 2025CV2252

Dear Mr. Christensen:

We represent the Wisconsin Business Leaders for Democracy and other plaintiffs in Dane County Circuit Court case number 2025CV2252. When the circuit court, in accordance with Wis. Stat. §§ 751.035(1) and 801.50(4m), sent this Court a request to appoint a panel of three circuit court judges, this Court docketed that request as matter 2025XX1330.

On the afternoon of Friday, July 11, Attorney Misha Tseytlin sent you a letter requesting that the Court permit briefing on the procedure for appointment of a three-judge panel. We write in response, urging the Court to reject that proposal and instead follow the clear statutory mandate that this Court appoint a three-judge panel to hear any motions to intervene, motions to dismiss, and other procedural motions, as well as the merits of the claims alleged in plaintiffs' circuit court complaint. Several longstanding principles of Wisconsin law support this approach.

First, as this Court unanimously explained in *White v. City of Watertown*, 2019 WI 9, ¶10, 385 Wis. 2d 320, 922 N.W.2d 61, "it is not for us to change statutory text. Instead, our responsibility is to ascertain and apply the plain meaning of the statutes as adopted by the legislature." Attorney Tseytlin's request asks this Court to deviate from the clear instructions of the venue statute. Moreover, his request is unsupported by any Wisconsin procedural statute or rule. He does not represent any party in the Dane County Circuit Court action, nor has he filed a motion on behalf of any person seeking to become a party to that action. Wisconsin has no procedural mechanism that allows persons who neither are nor have sought to become parties to an action to use a letter to request a briefing schedule. That alone dooms Attorney Tseytlin's request. *See, e.g.*, *Waters ex rel. Skow v. Pertzborn*, 2001 WI 62, ¶34, 243 Wis. 2d 703, 627 N.W.2d 497 (in a dispute about civil procedure, declining to "entertain [] policy arguments to reach a result contrary to that required by the statutes" and explaining that "this court makes changes to pleading and practice rules through the procedure set forth in Wis. Stat. § 751.12").

Our statutes expressly prescribe the procedure to request the relief that Attorney Tseytlin seeks here on behalf of his clients. As a threshold matter, requests to appellate courts for "an order or other relief ... ***shall***" be made by motion, which, subject to a few exceptions inapplicable here, only "parties" may generally file. Wis. Stat. § 809.14(1) (emphasis added). Among those exceptions are the statutory provisions allowing non-parties to move to intervene, Wis. Stat. § 809.13, and to request leave to file amicus briefs, Wis. Stat. § 809.19(7). Attorney Tseytlin's request fails every procedural requirement: his clients are not "parties" to the Dane County Circuit Court action nor to the matter this Court has docketed for administrative purposes to appoint a three-judge panel; his request is not in the form of a "motion"; and he seeks relief that the statutes do not anticipate or allow.

Second, as noted above, this matter is docketed for the sole purpose of carrying out the express and statutorily mandated appointment of a panel of three circuit court judges to hear the Dane County Circuit Court action. The Dane County Clerk of Courts fulfilled his statutory obligation under Wis. Stat. § 801.50(4m) by timely notifying the Clerk of the Wisconsin Supreme Court of the filing in Dane County Circuit Court. The Wisconsin Statutes prescribe this Court's sole duties and role at this point in the proceeding as being to: (1) "appoint a panel consisting of 3 circuit court judges to hear the matter"; (2) "choose one judge from each of 3 circuits"; and (3) "assign one of the circuits as the venue for all hearings and filings in the matter." Wis. Stat. § 751.035(1).

Indeed, because the statute by which the Dane County Circuit Court notified this Court of this action is a venue statute, and because the circuit court action is not before this Court based on any other statutory procedure or rule, neither venue nor jurisdiction (other than to appoint the three-judge panel) presently lies with this Court. To the extent that this Court could potentially exercise its inherent superintending powers to proceed as Attorney Tseytlin suggests, it should decline to do so. It will, in any event, have the opportunity to address, ***on appeal***, all issues that the panel of three circuit court judges decides. *See* Wis. Stat. § 751.035(3).

The procedure that Attorney Tseytlin requests is not only unsupported by the text of the relevant statutory provisions, but also unnecessarily threatens to mire the Court in the sort of limitless briefing and motion practice that the Court faced in the *Clinard v. Brennan* proceedings 14 years ago. It is unnecessary because the legal issues that Attorney Tseytlin identifies can and should be addressed by the circuit court. The circuit courts are well equipped to determine whether the action may proceed or must be dismissed. Moreover, it is likely that Attorney Tseytlin's clients (and potentially others) will request to intervene in these proceedings—requests the circuit courts commonly adjudicate. Attorney Tseytlin identifies no issue that cannot—and should not—be developed and decided in the circuit court before coming to this Court for appellate review.

The voluminous filings in *Clinard* preview the fate that awaits this Court should it proceed as Attorney Tseytlin suggests. The *Clinard* morass was not of this Court's making, given the novelty of the procedural mechanism at issue at the time, the fact that the *Clinard* plaintiffs filed multiple petitions and complaints in multiple courts within a very short period of time, and competing claims to jurisdiction between the *Clinard* action(s) and the pending *Baldus* redistricting case then proceeding in the U.S. District Court for the Eastern District of Wisconsin. Now, however, with the benefit of 14 years of hindsight, and without any competing federal action or impending special

elections, this Court faces no imperative to resolve the issues Attorney Tseytlin raises. This Court can, and should, use this opportunity—nearly six years before redistricting in the wake of the 2030 decennial census—to establish a thoughtful, measured, and procedurally proper template for future invocations of these untested venue statutes unique to redistricting actions.[1]

Accordingly, Wisconsin Business Leaders for Democracy and the other plaintiffs respectfully request that the Court decline to order briefing on the issues raised in Attorney Tseytlin's July 11 letter and, instead, follow the statutorily mandated procedure to appoint a panel of three circuit court judges and select a venue for the action currently pending in Dane County Circuit Court so that the action may proceed, including by addressing Attorney Tseytlin's issues, if he (or another party) properly presents them there.

Very truly yours,

STAFFORD ROSENBAUM LLP

Electronically signed by Douglas M. Poland

Douglas M. Poland

cc: Counsel of Record (by electronic filing)
Attorney Misha Tseytlin (by email)

[1] Nor is Attorney Tseytlin's proposal to conflate this matter with the recently dismissed *Bothfeld v. Wisconsin Elections Commission* case, No. 2025AP996-OA, logical or appropriate. The Dane County Circuit Court matter has little in common with *Bothfeld*, which was brought by different parties represented by different lawyers and asserting different claims. The only commonality is that Wisconsin Business Leaders for Democracy and individual voters sought to intervene in that case to press an antic-competitive gerrymandering theory. This Court declined to exercise jurisdiction in *Bothfeld* and thereby denied the intervention motion as moot. This Court never engaged in any way with the merits of that motion, and no Wisconsin court has had occasion to address these claims at any juncture. Attorney Tseytlin's efforts to cast these claims as retreads or as more of the same are completely unavailing, but he will likely have the opportunity to make that argument in the proper venue—before the three-judge panel this Court appoints as prescribed in Wis. Stat. §§ 751.035(1) and 801.50(4m).