

**IN THE SUPREME COURT OF WISCONSIN**

No. 2021AP1450-OA

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BILLIE JOHNSON, ERIC O'KEEFE, ED PERKINS, AND RONALD ZAHN

Petitioners,

v.

WISCONSIN ELECTIONS COMMISSION, MARGE BOSETLMANN, JULIE GLANCEY, ANN JACOBS, DEAN KNUDSON, ROBERT SPINDELL, AND MARK THOMSEN, IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE WISCONSIN ELECTIONS COMMISSION,

Respondents.

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Petition for Original Action in the Wisconsin Supreme Court

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**MOTION FOR LEAVE TO FILE A BRIEF *AMICI CURIAE* (WITH APPENDIX)  
IN OPPOSITION TO PETITION FOR ORIGINAL ACTION**

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Black Leaders Organizing for Communities (“BLOC”), Voces de la Frontera (“Voces”), League of Women Voters of Wisconsin (“LWVWI”), 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., hereby move the Court, pursuant to Wis. Stat. §§ (Rules) 809.14(1) and 809.19(7)(a) for leave to appear and file a brief as *amici curiae* in the above-captioned matter, along with a supporting Appendix. In support of this motion, *amici* submit the following:

1. *Amici* are three nonprofit organizations and eleven Wisconsin voters whose interests will be directly affected by this Court’s decision in this matter.

2. BLOC, Voces, and LWVWI each invest significant time, money, and volunteer hours in registering, educating, and mobilizing their members, constituents, and the general public to participate in local, state, and national elections. Their interests also extend beyond voting to representation in the Wisconsin Legislature, to ensure that the policy interests of their members and constituents are represented by state legislators who speak for them. BLOC and Voces, in particular, represent communities of color that have a significant interest in, and federal protection under, Section 2 of the Voting Rights Act to ensure meaningful opportunities to elect candidates of their choosing to represent minority viewpoints. Because these organizations collectively seek to maximize voter participation, fair and equal representation in government, and compliance with the Voting Rights Act, they have a strong interest in ensuring that Wisconsin's legislative districts are apportioned as equally as possible.

3. Following the release of population data by the Census Bureau, many of the organizations' members and constituents now reside in overpopulated legislative districts in violation of their constitutional rights, meaning that their votes are diluted compared with voters in districts that are now underpopulated. Vote dilution, stemming from malapportioned legislative districts, not only undermines the constitutionally protected right to vote, but also discourages participation among potential voters who view their efforts to vote as making little, if any, impact. Thus, it is of critical importance to BLOC, Voces, and LWVWI that resolution of the subject of this petition for original action be effectuated through the proper legislative and judicial procedures.

4. Fallona, Stephenson, and Alwin are Wisconsin voters who now live in overpopulated districts and whose votes are consequently diluted. The Equal Protection Clause of the U.S. Constitution guarantees to the citizens of each state the right to vote in state elections and that each citizen will have substantially equal legislative representation no matter where they live within a state, giving each person's vote equal power. *Reynolds v. Sims*, 377 U.S. 533, 561-68 (1964). Indeed, “[f]ull and effective participation by all citizens in state government requires ... that each citizen have an equally effective voice in the election of members of his state legislature.” *Id.* at 565. But when legislative districts are malapportioned, the votes of persons living in overpopulated districts are afforded less weight, while those of person living in underpopulated districts are afforded proportionately more weight. *Id.* at 562-63. (“Overweighting and overvaluation of the votes of those living [in underpopulated districts] has the certain effect of dilution and undervaluation of the votes of those living [in overpopulated districts]. The resulting discrimination against those individual voters living in disfavored areas is easily demonstrable mathematically. Their right to vote is simply not the same right to vote as that of those living in a favored part of the State”). This gives voters in underpopulated districts an outsized voice in elections and overrepresentation in government, which is constitutionally impermissible.

5. Harris, Woodrow Wilson Cain, II, Nina Cain, Horton, Tatum, McCurtis, Toles, and Wade are Black voters whose votes are diluted in violation of Section 2 of the Voting Rights Act because, under the current legislative districts, they are placed in Milwaukee-area Assembly districts that are either packed with excessively high numbers

of Black voters—far more than is necessary to afford them an equal opportunity to elect their preferred candidates—or cracked from districts containing other Black voters, where their voting power is instead overwhelmed by white bloc voting in opposition to their candidates of choice.

6. Thus, like the organizational *amici*, the individual voters have a strong interest in ensuring that this matter at issue here is properly resolved.

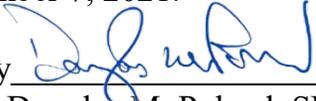
7. *Amici* have already properly initiated legal proceedings to address the subject matter of this petition for original action in the United States District Court for the Western District of Wisconsin having filed a Complaint in that Court on August 23, 2021, *Black Leaders Organizing for Communities, et al. v. Robert F. Spindell, Jr., et al.*, No. 21-cv-00534 (W.D. Wis.), and having moved for leave to join additional parties who allege a claim for violation of Section 2 of the Voting Rights Act.. *See* proposed First Am. Compl., A. App. 001-036.

8. *Amici* believe that their brief and supporting Appendix, filed simultaneously with this motion pursuant to this Court's order dated August 26, 2021, should be accepted for filing because it presents unique legal analysis demonstrating that their legal, voting, and representational interests will be directly affected by this Court's decision in this matter. A copy of *amici*'s proposed First Amended Complaint filed in federal court (via a motion to add plaintiffs to that action) is included in the Appendix to *amici*'s brief submitted along with this motion.

WHEREFORE, movants Black Leaders Organization 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., hereby respectfully requests that the Court grant this motion and grant them leave to file a brief *amici curiae* and an Appendix in support.

Dated: September 7, 2021.

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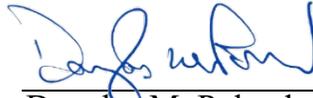
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**CERTIFICATE OF SERVICE**

A copy of this certificate and the foregoing Motion for Leave to File a Brief *Amici Curiae* has been filed with the Court and served by first class mail and email on counsel of record.



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Douglas M. Poland