

## SUPREME COURT OF WISCONSIN

Appeal No. 2021AP001450 - OA

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**BILLIE JOHNSON, et al***Petitioners,*

v.

**WISCONSIN ELECTIONS COMMISSION, et al***Respondents.*

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Original Action in the Wisconsin Supreme Court

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**NOTICE OF MOTION AND UNOPPOSED MOTION TO INTERVENE OF BLACK LEADERS ORGANIZING FOR COMMUNITIES, VOCES DE LA FRONTERA, LEAGUE OF WOMEN VOTERS OF WISCONSIN, CINDY FALLONA, LAUREN STEPHENSON, AND REBECCA ALWIN**

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**NOTICE OF MOTION**

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PLEASE TAKE NOTICE that Proposed Intervenors, Black Leaders Organizing for Communities (“BLOC”), Voces de la Frontera (“Voces”), League of Women Voters of Wisconsin (“LWVWI”) (collectively, “Organizational Intervenors”), Cindy Fallona, Lauren Stephenson, and Rebecca Alwin (collectively, “Individual Intervenors”) hereby move to intervene as Petitioners

(collectively “Proposed Intervenors”) in this action and will appear before this Court at such time and on such date as the Court may order, and shall then and there present the following Unopposed Motion to Intervene.

### **UNOPPOSED MOTION**

In accordance with this Court’s September 22, 2021 Order (as amended on September 24, 2021) and Wis. Stat. § 803.09, Proposed Intervenors, Black Leaders Organizing for Communities (“BLOC”), Voces de la Frontera (“Voces”), League of Women Voters of Wisconsin (“LWVWI”) (collectively, “Organizational Intervenors”), Cindy Fallona, Lauren Stephenson, and Rebecca Alwin (collectively, “Individual Intervenors”) hereby move this Court to intervene as Petitioners (collectively “Proposed Intervenors”) in this action. In support of this Motion, and as explained in detail in the accompanying Brief in support of this Motion, Proposed Intervenors state as follows:

1. Petitioners initiated this suit on August 23, 2021, by filing a petition for leave to commence original action.
2. On the same day, Proposed Intervenors commenced a federal court action relating to redistricting – the same matter at issue here. See *Black Leaders Organizing for Communities, et al. v. Robert F. Spindell, et al.*, No. 21-cv-534-jdp-ajs-eec (W.D. Wis) (“*BLOC*”).<sup>1</sup>
3. On August 26, 2021, Petitioners here moved to intervene in a related case in federal court. *Hunter, et al. v. Bostelmann, et al.*, No. 21-cv-512-jdp-ajs-eec (W.D. Wis.) (“*Hunter*”).

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<sup>1</sup> Proposed Intervenors later amended their complaint in *BLOC* to add individual plaintiffs and assert claims under Section 2 of the Voting Rights Act. The additional plaintiffs in the amended *BLOC* complaint are not among Proposed Intervenors here, nor do Proposed Intervenors here seek to bring an affirmative claim in this action for violation of Section 2 of the Voting Rights Act.

4. On the same day, this Court issued an order setting a briefing schedule in this proceeding. *Johnson v. Wisconsin Elections Comm'n*, No. 2021AP1450-OA, Order (Wis. Aug. 26, 2021).

5. Pursuant to that order, on September 7, 2021, Proposed Intervenors, joined by additional proposed plaintiffs named in the *BLOC* action, filed a brief *amici curiae* in opposition to the petition for original action.

6. This Court granted the petition for original action on September 22, 2021, and ordered any prospective intervenors to move for intervention by 4:00 p.m. on October 6, 2021. *Johnson v. Wisconsin Elections Comm'n*, No. 2021AP1450-OA, Order at \*2-3 (Wis. Sep. 22, 2021).

7. Petitioners allege that Wisconsin's current legislative districts are unlawful, and ask this Court to draw Wisconsin's legislative districts in the event that the Governor and Legislature fail to reach a legislative solution. Petitioners specifically propose that the Court do so by making the "least changes" possible to the existing districts.

8. Proposed Intervenors agree that Wisconsin's current legislative districts are unlawful, but disagree that the appropriate remedy is redrawing the districts in accordance with a "least changes" approach. Proposed Intervenors further believe that the "least changes" approach advocated by Petitioners would violate state and federal law. Consequently, Proposed Intervenors now move to intervene in this action as Petitioners.

9. The Court should grant this Motion because, as is explained in further detail in the accompanying Brief, Proposed Intervenors satisfy the requirements for intervention by right under Wis. Stat. § 803.09(1):

- a. **First**, Proposed Intervenors' Motion to Intervene is timely filed. Proposed Intervenors filed within two days after this Court granted the petition for original action, well before

the Court's October 6, 2021 deadline and, except for the petition for original action, no additional action, pleading, or briefing has occurred in this case.

- b. **Second**, Proposed Intervenors' interests are directly related to the subject of this action. As nonprofit organizations that engage in extensive and sustained efforts to promote voter awareness, education, and participation, and to encourage civic engagement, Organizational Intervenors invest time and resources in educating their members, constituencies, and the public about elections and how and when to cast a ballot, and provide resources to assist their members, constituents, and other Wisconsin voters to exercise their right to vote. They also have a strong interest in ensuring that their members and constituencies are adequately represented in state government so that their voices are heard and their public policy concerns addressed. Individual Intervenors are voters who, following release of the 2020 Census data, reside in now-overpopulated legislative districts. The consequence is that their votes are diluted by comparison to the votes of individuals residing in equally populated or underpopulated districts. Because Petitioners ask this Court to draw new districts by making the least amount of changes possible to the existing districts, this case threatens Proposed Intervenors' interests in seeking and obtaining nonpartisan, fair, and equal reapportionment and the subsequent representational and public policy results thereof.
- c. **Third**, the relief sought by Petitioners would, if granted, impair Proposed Intervenors' ability to protect their interests in this litigation. Were Petitioners to prevail here, there is a strong risk that new state legislative districts will not be nonpartisan, nor will they allow Proposed Intervenors and other Wisconsin voters a fair and equal opportunity to participate in the electoral process. Rather, it will entrench for another decade an extremely partisan gerrymander, thus undermining Proposed Intervenors' efforts to obtain fair and adequate representation in state government and the opportunity to meaningfully advance their own public policy positions.
- d. **Fourth**, the current parties do not adequately represent Proposed Intervenors' interests. The Wisconsin Elections Commission and the other respondents are procedurally adverse to Proposed Intervenors who seek to intervene as Petitioners here. Nor do the respondents have any duty to advocate for Proposed Intervenors' interests or proposed redistricting methodology. And while Proposed Intervenors agree with Petitioners that the current legislative districts are unlawful, the similarities end there. Proposed Intervenors strongly oppose Petitioners' proposed least changes approach to redistricting and the potential consequences thereof.

Weighing these factors compels the conclusion that Wisconsin law requires that Proposed Intervenors be granted intervention as a matter of right. *Armada Broadcasting, Inc. v. Stirn*, 183 Wis. 2d 463, 471, 516 N.W.2d 357 (1994).

10. Alternatively, Proposed Intervenors should be granted permissive intervention under Wis. Stat. § 803.09(2) because they have a significant stake in the outcome of this case, they would present to the Court valid alternative options for resolving the dispute, and their intervention would not unduly delay or prejudice the adjudication of the original rights of the parties. Moreover, given the decennial timeline of redistricting, this case presents one of the only opportunities Proposed Intervenors have to advocate for their interests in securing nonpartisan, fair, and equal state legislative districts based on the 2020 U.S. census data. As discussed above, this Motion is filed within two days after the Court granted the petition for original action, twelve days before the Court's October 6, 2021 deadline, and no further proceedings have occurred, so granting the Motion would neither delay nor prejudice the original parties. And redistricting procedure is both the subject of Petitioners' Complaint and the very issue that Proposed Intervenors seek to address.

11. On September 23, 2021, counsel for Proposed Intervenors contacted counsel for Respondents and Petitioners to inquire whether the parties would oppose this Motion. Counsel for Respondents responded on September 23<sup>rd</sup> that Respondents take no position on this Motion. Petitioners' counsel responded on September 24<sup>th</sup> that they do not oppose this Motion. Consequently, this Motion is unopposed.

12. In accordance with Wis. Stat. § 803.09(3), Proposed Intervenors attach to this Motion their pleading setting forth the claim for which intervention is sought.

WHEREFORE, Proposed Intervenor-Petitioners Black Leaders Organizing for Communities, Voces de la Frontera, League of Women Voters of Wisconsin, Cindy Fallona, Lauren Stephenson, and Rebecca Alwin respectfully request that this Court grant this Motion to Intervene and enter an order joining Proposed Intervenors to this action as additional Petitioners.

Dated: September 24, 2021.

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**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  
Bostelmann in her official capacity as a member  
of the Wisconsin Elections Commission, Julie  
Glancey in her official capacity as a member of  
the Wisconsin Elections Commission, Ann Jacobs  
in her official capacity as a member of the Wisconsin  
Elections Commission, Dean Knudson in his official  
capacity as a member of the Wisconsin Elections  
Commission, Robert Spindell, Jr. in his official capacity  
as a member of the Wisconsin Elections Commission  
and Mark Thomsen in his official capacity as a member  
of the Wisconsin Elections Commission,

*Respondents.*

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Original Action in the Wisconsin Supreme Court

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**BLACK LEADERS  
ORGANIZING FOR COMMUNITIES, VOCES DE LA  
FRONTERA, THE LEAGUE OF WOMEN VOTERS OF  
WISCONSIN, CINDY FALLONA, LAUREN STEPHENSON,  
and REBECCA ALWIN,  
INTERVENOR-PETITIONERS' COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE RELIEF**

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Intervenor-Petitioners Black Leaders Organizing for Communities, Voces de la Frontera, the League of Women Voters of Wisconsin, Cindy Fallona, Lauren Stephenson, and Rebecca Alwin, bring this Complaint for Declaratory and Injunctive Relief against respondents Wisconsin Elections Commission, Marge Bostelmann, Julie Glancey, Ann Jacobs, Dean Knudson, Robert Spindell, and Mark Thomsen, in their official capacities as members of the Wisconsin Elections Commission, (collectively, “Respondents”), under 42 U.S.C. § 1983, 28 U.S.C. § 2284(a), and Article IV, Section 3 of the Wisconsin Constitution, and state and allege as follows:

### INTRODUCTION

Wisconsin’s current state legislative districts were adopted by the Wisconsin State Legislature and signed by Wisconsin’s Governor as 2011 Wisconsin Act 43, and later modified by a federal court in *Baldus v. Members of Wisconsin Gov’t Accountability Bd.*, 862 F. Supp. 2d 860, 863 (E.D. Wis. 2012). The current districts are based on state population and demographic data collected by the U.S. Census Bureau in 2010. On August 12, 2021, the U.S. Census Bureau released Wisconsin’s state population data (Public Law 94-171 data) from the 2020 Census. As those data reveal, Wisconsin gained 199,243 residents in the past decade, a population shift that has rendered the existing state legislative districts unequally populated, and therefore malapportioned under state and federal law. More specifically, the current state legislative districts violate the basic democratic tenet of “one person, one vote,”<sup>1</sup> and therefore violate Intervenor-Petitioners’ rights under the Fourteenth Amendment to the U.S. Constitution and art. IV of the Wisconsin Constitution.

The Intervenor-Petitioners in this action include nonprofit organizations that have members and constituencies whose votes are diluted because they live in districts that are now overpopulated in violation of their constitutional rights, as well as individual voters who suffer the same harm.

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<sup>1</sup> See *Reynolds v. Sims*, 377 U.S. 533, 562–64 (1964); See also *Baker v. Carr*, 369 U.S. 186, 207-208 (1962).

Intervenor-Petitioners therefore seek a declaratory judgment that the current state legislative districts violate the United States Constitution and Wisconsin Constitution; a permanent injunction barring Respondents from holding future elections under the current scheme for Wisconsin State Senate and State Assembly districts; and an order implementing new state legislative districts that adhere to the requirements of federal and state law should the Legislature and Governor fail to adopt such districts through the legislative process.

Intervenor-Petitioners filed suit in the United States District Court for the Western District of Wisconsin challenging the constitutionality of Wisconsin's current legislative districts. *See Black Leaders Organizing for Communities, et al. v. Spindell, et al.*, No. 21-cv-534-jdp-ajs-eec (W.D. Wis.) ("*BLOC*"). As explained in the Intervenor-Petitioners' brief in support of their motion to intervene, this case directly affects the Intervenor-Petitioners' rights that were asserted in *BLOC*. The Intervenor-Petitioners agree with the Petitioners that Wisconsin's legislative districts are unconstitutionally malapportioned, but fundamentally disagree with implementing a "least changes" method of legislative reapportionment. Accordingly, the Intervenor-Petitioners seek intervention in this case to protect their interests in fair, non-partisan legislative maps that comply with the U.S. Constitution, federal law, and the Wisconsin Constitution.

## **JURISDICTION AND VENUE**

1. On August 23, 2021, Billie Johnson, Eric O'Keefe, Ed Perkins, and Ronald Zahn petitioned this Court to exercise original jurisdiction regarding the unconstitutionality of Wisconsin's malapportioned legislative districts. This Court granted that petition, and exercised original jurisdiction pursuant to Wis. Stat. § (Rule) 809.70.

2. Intervenor-Petitioners also challenge the constitutionality of the apportionment of Wisconsin's legislative districts, found in Chapter 4 of the Wisconsin Statutes and revised as ordered by the U.S. District Court for the Eastern District of Wisconsin in *Baldus v. Members of Wisconsin*

*Gov't Accountability Bd.*, 849 F. Supp. 2d 840 (E.D. Wis. 2012) (per curiam) (three-judge panel).

The current state legislative district boundaries were based on the 2010 census of the state's population, now superseded by the 2020 census.

3. This Court has personal jurisdiction over all Respondents. Respondents Spindell, Thomsen, Knudson, Glancey, Jacobs, and Bostelmann are state officials who reside in Wisconsin and perform official duties in Madison, Wisconsin.

## **PARTIES**

### ***Intervenor-Petitioners***

4. Intervenor-Petitioners include three nonprofit groups, each with members or constituents who are citizens, residents, and qualified voters of the United States of America and the State of Wisconsin, residing in various counties and legislative districts, including in now-overpopulated districts (the "Organizational Petitioners").

5. Intervenor-Petitioner Black Leaders Organizing for Communities ("BLOC") is a nonprofit project established in 2017 to ensure a high quality of life and access to opportunities for members of the Black community in Milwaukee and throughout Wisconsin.<sup>2</sup> BLOC is a year-round civic-engagement organization that has a robust field program to get out the vote and do civic education work door-to-door with community members and through its fellowship program. During 2018 BLOC made 227,000 door attempts in Milwaukee, targeting Black residents to exercise their right to engage in civic participation including voting. BLOC trains its constituents on the civics process and on different ways to make their voices heard, including (but not limited to) voting in each election. BLOC is regarded and used by members of the African-American community in

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<sup>2</sup> BLOC is a fiscally sponsored project of Tides Advocacy, a California nonprofit public benefit corporation.

Milwaukee as a resource and conduit through which they can become more engaged in and advocate for rights and political representation for members of their community.

6. Intervenor-Petitioner Voces de la Frontera (“Voces”) is a nonpartisan, nonprofit, non-stock corporation organized under the laws of the State of Wisconsin with its principal office located at 515 S. 5th St., in the City of Milwaukee, Milwaukee County, Wisconsin. Voces, a community-based organization currently with over one thousand dues-paying members, was formed in 2001 to advocate on behalf of the rights of immigrant and low-income workers. Voces currently has chapters in Milwaukee, Racine, Waukesha, Sheboygan, Walworth County, Madison, West Bend, Manitowoc, and Green Bay. Voces is dedicated to educating and organizing its membership and community members to exercise their right to vote as protected by the Constitution and the Voting Rights Act of 1965. Voces has sought legal redress in multiple cases to protect the voting rights of Wisconsin’s Latino voters, including challenging discriminatory legislative districts (as recently as in *Baldus* in 2011) and voter registration and photo ID requirements. Voces seeks to maximize eligible-voter participation through its voter-registration efforts and encourage civic engagement through registration and voting.

7. Intervenor-Petitioner League of Women Voters of Wisconsin (“LWVWI”) is a nonpartisan, nonprofit, non-stock corporation organized under the laws of the State of Wisconsin with its principal office located at 612 West Main St., Suite 200, in the City of Madison, Dane County, Wisconsin. LWVWI is an affiliate of The League of Women Voters of the United States, which has 750 state and local Leagues in all 50 states, the District of Columbia, Puerto Rico, the Virgin Islands, and Hong Kong. LWVWI works to expand informed, active participation in state and local government, giving a voice to all Wisconsinites. LWVWI, a nonpartisan community-based organization, was formed in 1920, immediately after the enactment of the Nineteenth Amendment granting women’s suffrage. LWVWI is dedicated to encouraging its members and the people of

Wisconsin to exercise their right to vote as protected by the Constitution and the Voting Rights Act of 1965. The mission of LWVWI is to promote political responsibility through informed and active participation in government and to act on select governmental issues. LWVWI seeks to maximize eligible-voter participation through its voter-registration efforts and encourage civic engagement through registration and voting. LWVWI works with and through 20 local Leagues in the following cities, counties, and areas throughout Wisconsin: Appleton, Ashland/Bayfield Counties, Beloit, Dane County, Door County, the Greater Chippewa Valley, Greater Green Bay, Janesville, the La Crosse area, Manitowoc County, Milwaukee County, the Northwoods, Ozaukee County, the Ripon area, Sheboygan County, the Stevens Point area, the St. Croix Valley, the Whitewater area, Winnebago County, and the Wisconsin Rapids area. These local Leagues have approximately 2,800 members, all of whom are also members of LWVWI. LWVWI has prosecuted lawsuits in state and federal courts in Wisconsin to vindicate the voting and representational rights of Wisconsin voters; this includes actions in this Court, such as *Swenson v. Bostelmann*, 20-cv-459-wmc (W.D. Wis. 2020), and *Lewis v. Knudson*, 20-cv-284 (W.D. Wis. 2020).

8. Organizational Intervenor-Petitioners' members and constituents include voters who reside in various State Senate and Assembly districts across Wisconsin, including districts that are now overpopulated. Because they live in state legislative districts that were approximately equal in population with the other state legislative districts at the time the current districts were configured in 2011, but that are now overpopulated as a result of the state population count released by the Census Bureau on April 26, 2021, their votes are now diluted compared with voters in districts that are now underpopulated. This vote dilution constitutes a specific and personal injury to each voter in an overpopulated district that can be addressed by the Court. *See Reynolds*, 377 U.S. at 561; *Baker*, 369 U. S. at 206.

9. Intervenor-Petitioners also include individual voters (“Individual Intervenor-Petitioners”) who reside in now-overpopulated districts. The residency of Individual Intervenor-Petitioners in three overpopulated districts is summarized here:

<b>Individual Intervenor-Petitioner</b>	<b>State Assembly District</b>	<b>Population compared to 2020 Census ideal</b>	<b>State Senate District</b>	<b>Population compared to 2020 Census ideal</b>
Cindy Fallona	AD5	+13.26%	SD2	+2.77%
Lauren Stephenson	AD76	+20.41%	SD26	+13.00%
Rebecca Alwin	AD79	+17.13%	SD27	+9.47%

10. Individual Intervenor-Petitioner Cindy Fallona resides at 301 West Morningside Drive, Kaukauna, Wisconsin, in Assembly district 5 and State Senate district 2. Fallona has lived at this residence for over three decades and is a regular voter in Wisconsin elections. Fallona intends to vote in 2022 and is registered at this residence, with no plans to register at a different address.

11. Individual Intervenor-Petitioner Lauren Stephenson resides at 1342 East Dayton Street, Madison, Wisconsin, in Assembly district 76 and State Senate district 26. Stephenson has lived at this residence for over six years and is a regular voter in Wisconsin elections. Stephenson intends to vote in 2022 and is registered at this residence, with no plans to register at a different address.

12. Individual Intervenor-Petitioner Rebecca Alwin resides at 1422 North Westfield Road, Middleton, Wisconsin, in Assembly district 79 and State Senate district 27. Alwin has lived at this residence for over 25 years and is a regular voter in Wisconsin elections. Alwin intends to vote in 2022 and is registered at this residence, with no plans to register at a different address.

### ***Respondents***

13. Respondents Robert F. Spindell, Jr., Mark L. Thomsen, Dean Knudson, Julie M. Glancey, Ann S. Jacobs, and Marge Bostelmann are sued in their official capacities as the members of the Wisconsin Elections Commission (“WEC”).

14. The WEC has the responsibility for the administration and enforcement of Wisconsin laws “relating to elections” including Chapters 5 to 10 and 12. Wis. Stat. § 5.05(1). This includes the election every two years of Wisconsin’s representatives in the State Assembly and every four years its representatives in the State Senate. The WEC provides support to local clerks in each of Wisconsin’s 72 counties, in administering and preparing for the election of members of the Wisconsin Legislature.

#### **FACTS AND CONSTITUTIONAL PROVISIONS RELATED TO MALAPPORTIONMENT**

15. The U.S. Constitution requires that the members of the Wisconsin Legislature be elected on the basis of equal representation. *Arrington v. Elections Bd.*, 173 F. Supp. 2d 856, 860 (E.D. Wis. 2001) (citing U.S. Const. art. I, § 2). The State Senate and Assembly districts must therefore be reapportioned after each Federal Census to be substantially equal in population.

16. The Due Process Clause of the Fifth Amendment to the U.S. Constitution provides that “[n]o person shall ... be deprived of life, liberty, or property, without due process of law.”

17. The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution provides, in pertinent part:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This provision guarantees to the citizens of each state the right to vote in state elections, and that each citizen shall have substantially equal legislative representation regardless of what part of the state they live in, giving each person’s vote equal power. *Reynolds*, 377 U.S. 533, 561-68 (1964).

18. Wisconsin’s Constitution similarly guarantees that each citizen shall have substantially equal legislative representation. Wis. Const. art. IV, § 3 (“the legislature shall

apportion and district anew the members of the senate and assembly, according to the number of inhabitants.”).

19. 2011 Wisconsin Act 43 divided the official state population determined by the 2010 Census into 33 Senate districts and 99 Assembly districts with relatively equal populations. *See* Wis. Stat. ch. 4. The revisions ordered by the *Baldus* court in 2012 did not disturb this approximate equality, despite modifying two Assembly districts. In 2012, each Senate district contained a population of approximately 172,333 residents, and each Assembly district contained a population of approximately 57,444.

20. The 2012 state legislative elections, and every subsequent biennial legislative election, including the November 6, 2020 election, have been conducted under the district boundaries created by Act 43, as modified by *Baldus*. The next regular state legislative primary election is scheduled for August 9, 2022, and the next regular state legislative general election is scheduled for November 8, 2022.<sup>3</sup>

21. The Bureau of the Census, U.S. Department of Commerce, conducted a decennial census of Wisconsin and of all the other states in 2020 under Article I, Section 2, of the U.S. Constitution.

22. Under 2 U.S.C. §§ 2a and 2c and 13 U.S.C. § 141(c), the Census Bureau on April 26, 2021 announced and certified the actual enumeration of the population of Wisconsin at 5,893,718 as of April 1, 2020, a population increase of approximately 200,000 people from the 2010 census. A copy of the Census Bureau’s Apportionment Population and Number of Representatives, by state, is attached as Exhibit 1.

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<sup>3</sup> “Upcoming Elections,” Wisconsin Elections Commission, available at: <https://elections.wi.gov/elections-voting/elections>.

23. Based on the 2020 Census, the precise ideal population for each Senate district in Wisconsin is 178,598 and for each Assembly district 59,533 (each an increase compared to the same figures from 2010).

24. The 2020 Census's P.L. 94-171 data, released August 12, 2021, demonstrate that Wisconsin's population has not grown uniformly across all 33 Senate and 99 Assembly districts. The data reveal substantial population disparities, indicating which districts are now over- and underpopulated in reference to the 2020 Census's "ideal" district populations for Wisconsin's Senate and Assembly districts.

25. Because of population shifts over the past decade, the 2011 state legislative districts now give some Wisconsinites' votes more weight than others. Voters living in Assembly district 76—where the population is 20.41% greater than the ideal population based on the 2020 Census—have their votes diluted. This is particularly true compared to voters in other districts that are now *less* populated than the ideal district population. Voters in the 37 other overpopulated districts suffer similar harm: Assembly districts 79, 5, 78, and 80 have grown overpopulated in the past decade (with populations now 17.13%, 13.26%, 12.78%, and 10.58% over the ideal district population, respectively). Other districts are now underpopulated, giving voters who reside there an outsized voice in electing their state representative. Due to these population changes, the current overall population deviation for Act 43 is about 32%.

26. The same population growth imbalances affect Senate districts, with some voters suffering vote dilution and others benefitting from heightened voting efficiency. Senate district 26 has grown to exceed the current ideal district population of 178,598 by 13.00%; Senate district 27 by 9.47%; and Senate district 16 by 7.78%. Meanwhile numerous Senate districts are now underpopulated relative to the ideal Senate district size.

27. This facial malapportionment of state legislative districts dilutes the voting strength of Individual Petitioners residing in the overpopulated districts: the weight or value of each voter in a relatively overpopulated district is, by definition, less than that of any voter residing in a relatively underpopulated district.

28. Article IV, section 3, of the Wisconsin Constitution assigns the Legislature and Governor responsibility for enacting a constitutionally valid plan for the state's legislative districts.

29. In each of the previous four decades, when control over Wisconsin's government has been divided between members of the Republican and Democratic Parties, however, the Legislature and Governor have not met that responsibility. Instead, a federal court has established district boundaries to ensure the constitutional guarantees for citizens and voters.

30. In the most recent round of decennial redistricting in 2011, the Legislature and Governor did enact a legislative district plan, but that plan, too, required judicial intervention to give Wisconsin a legally compliant legislative district map.

31. The legislature elected in November 2020 convened for the first time on January 4, 2021. Both the Senate and Assembly are controlled by Republican majorities, while the Governor is a Democrat. Each time in the past four decades that Wisconsin has had divided partisan control when redistricting was required, the political branches have failed to reach a compromise, requiring a federal court to step in and assume the constitutionally mandated reapportionment of state legislative districts. *See Prosser v. Elections Bd.*, 793 F. Supp. 859 (W.D. Wis. 1992) (per curiam); *Wisconsin State AFL-CIO v. Elections Bd.*, 543 F. Supp. 630 (E.D. Wis. 1982); *Baumgart v. Wendelberger*, No. 01-C-0121, 2002 WL 34127471, (E.D. Wis. May 30, 2002) (per curiam), *amended by* No. 01-C-0121, 2002 WL 34127473 (E.D. Wis. July 11, 2002).

32. The deadline for new districts to be in place is driven by the 2022 elections for state legislative seats. The date of the primary for these elections is dictated by state statute, and in 2022

will be August 9. Because there are a number of steps leading up to an election, however, new districts must be set no later than March 15, 2022. This is the statutory deadline for the WEC to notify county clerks of which offices will be voted on, and where information about district boundaries can be found. This notice informs potential candidates of district boundaries, so they can begin circulating nomination papers for signature by voters within those districts on April 15, 2022. Wis. Stat. § 8.15(1). The statutory deadline for completed nomination papers to be submitted to the WEC is June 1, 2022. *Id.* The WEC must then certify which candidates have qualified for ballot access, followed by ballot design, testing, printing, and then distribution of absentee ballots, which must begin no later than 47 days election day. *See* Wis. Stat. § 7.15. Thus, while the primary election occurs in August, new districts must be in place several months before that date for the WEC to comply with state law, and so that candidates may appear on the ballot for the election on that date.

## CLAIM FOR RELIEF

### COUNT I

#### *Malapportionment in Violation of the Equal Protection Clause of the 14<sup>th</sup> Amendment to the United States Constitution and Wis. Const. art. IV, § 3.*

33. Petitioners incorporate by reference the allegations in paragraphs 1 through 32, above.

34. A state statute that effects district populations and boundaries that discriminate against citizens in highly populous legislative districts, by definition preferring voters in less populous legislative districts, violates the U.S. Constitution and Wisconsin's Constitution. The 2020 Census rendered the state's 2011 legislative districts unconstitutional, which harms or threatens to harm Intervenor-Petitioners' constitutional rights unless future elections under the current districts are enjoined.

35. Shifts in population and population growth have rendered the 33 Senate districts and 99 Assembly districts created by 2011 Wisconsin Act 43 and modified by *Baldus* no longer roughly equal in population, as required by the federal and state constitutions. The population variations between and among the districts are substantial.

36. Organizational Petitioners' members and constituents who reside in the overpopulated 16th, 26th, and 27th Senate districts, among others, based on the existing district lines, are particularly underrepresented in comparison with the residents of other districts.

37. Organizational Petitioners' members and constituents who reside in the overpopulated 5th, 46th, 48th, 56th, 76th, 78th, 79th, and 80th Assembly districts, among others, based on the existing district lines, are particularly underrepresented in comparison with the residents of other districts.

38. Multiple Individual Intervenor-Petitioners reside in State Senate and Assembly districts that are overpopulated, and therefore their votes are diluted compared to Wisconsin residents in districts that are now underpopulated.

39. If not otherwise enjoined or directed, the WEC will have no choice but to carry out its statutory responsibilities for administering the upcoming 2022 legislative elections based on the now unconstitutional Senate and Assembly districts adopted in 2011 Wisconsin Act 43.

40. The boundaries and the populations they define, unless modified, violate the principle of "one person, one vote" and do not guarantee that the vote and representation in the Wisconsin legislature for every citizen is equivalent to the vote and representation of every other citizen.

41. Intervenor-Petitioners and their members and constituents are also harmed because, until valid redistricting occurs, they cannot know in which Senate and Assembly district individuals will reside and vote. Therefore, they cannot effectively hold their representatives

accountable for their conduct and policy positions advocated in office. Intervenor-Petitioners engage in accountability and voter-education efforts that are hindered by the lack of a valid redistricting plan because:

a. Their members and constituents who desire to influence the views of members of the Wisconsin Legislature or candidates for the Senate and Assembly are not able to communicate their concerns effectively because members of the legislature or legislative candidates may not be held accountable to those citizens as voters in the next election;

b. Potential candidates for the legislature will not be able to come forward, and be supported or opposed by Petitioners or their members, until potential candidates know the borders of the districts in which they, as residents of the district, could seek office; and,

c. Intervenor-Petitioners' members and constituents who desire to communicate with and contribute financially to candidates for the legislature who may or will represent them, a right guaranteed by the First Amendment, are hindered from doing so until districts are correctly reapportioned;

42. Intervenor-Petitioners' members and constituents' rights are compromised because of the inability of candidates to campaign effectively and provide a meaningful election choice.

### **RELIEF SOUGHT**

WHEREFORE, Intervenor-Petitioners ask that the Court:

A. Declare that the current configuration of Wisconsin's 33 Senate districts and 99 Assembly districts, established by 2011 Wisconsin Act 43 and modified by *Baldus*, based on the 2010 Census, is unconstitutional and invalid and the maintenance of those districts for the August

2022 primary election and November 8, 2022 general election violates Petitioners' constitutional rights;

B. Enjoin Respondents and the WEC's employees and agents, including the county clerks in each of Wisconsin's 72 counties and Wisconsin's 1,850 municipal clerks and election commissions, from administering, enforcing, preparing for, or in any way permitting the nomination or election of members of the Wisconsin Legislature from the unconstitutional Senate districts and unconstitutional Assembly districts that now exist in Wisconsin for the August 2022 primary election and November 2022 general election;

C. Establish a schedule that will enable the Court, in the absence of a constitutional state law, adopted by the Wisconsin Legislature and signed by the Governor in a timely fashion, to adopt and implement new State Senate and Assembly district plans with districts substantially equal in population and that otherwise meet the requirements of the U.S. Constitution and statutes and the Wisconsin Constitution and statutes;

D. Award Intervenor-Petitioners their costs, disbursements, and reasonable attorneys' fees incurred in bringing this action, pursuant to Wis. Stat. § 814.01 and 42 U.S.C. § 1988; and,

E. Grant such other relief as the Court deems proper.

Dated: September 24, 2021.

By:



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**EXHIBIT 1**

U.S. Department of Commerce  
U.S. Census Bureau

Table 1. APPORTIONMENT POPULATION AND NUMBER OF REPRESENTATIVES BY STATE: 2020 CENSUS

STATE	APPORTIONMENT POPULATION (APRIL 1, 2020)	NUMBER OF APPORTIONED REPRESENTATIVES BASED ON 2020 CENSUS <sup>2</sup>	CHANGE FROM 2010 CENSUS APPORTIONMENT
Alabama	5,030,053	7	0
Alaska	736,081	1	0
Arizona	7,158,923	9	0
Arkansas	3,013,756	4	0
California	39,576,757	52	-1
Colorado	5,782,171	8	1
Connecticut	3,608,298	5	0
Delaware	990,837	1	0
Florida	21,570,527	28	1
Georgia	10,725,274	14	0
Hawaii	1,460,137	2	0
Idaho	1,841,377	2	0
Illinois	12,822,739	17	-1
Indiana	6,790,280	9	0
Iowa	3,192,406	4	0
Kansas	2,940,865	4	0
Kentucky	4,509,342	6	0
Louisiana	4,661,468	6	0
Maine	1,363,582	2	0
Maryland	6,185,278	8	0
Massachusetts	7,033,469	9	0
Michigan	10,084,442	13	-1
Minnesota	5,709,752	8	0
Mississippi	2,963,914	4	0
Missouri	6,160,281	8	0
Montana	1,085,407	2	1
Nebraska	1,963,333	3	0
Nevada	3,108,462	4	0
New Hampshire	1,379,089	2	0
New Jersey	9,294,493	12	0
New Mexico	2,120,220	3	0
New York	20,215,751	26	-1
North Carolina	10,453,948	14	1
North Dakota	779,702	1	0
Ohio	11,808,848	15	-1
Oklahoma	3,963,516	5	0
Oregon	4,241,500	6	1
Pennsylvania	13,011,844	17	-1
Rhode Island	1,098,163	2	0
South Carolina	5,124,712	7	0
South Dakota	887,770	1	0
Tennessee	6,916,897	9	0
Texas	29,183,290	38	2
Utah	3,275,252	4	0
Vermont	643,503	1	0
Virginia	8,654,542	11	0
Washington	7,715,946	10	0
West Virginia	1,795,045	2	-1
Wisconsin	5,897,473	8	0
Wyoming	577,719	1	0
TOTAL APPORTIONMENT POPULATION <sup>1</sup>	331,108,434	435	

<sup>1</sup> Includes the resident population for the 50 states, as ascertained by the Twenty-Fourth Decennial Census under Title 13, United States Code, and counts of U.S. military and federal civilian employees living overseas (and their dependents living with them overseas) allocated to their home state, as reported by the employing federal agencies. The apportionment population excludes the population of the District of Columbia. The counts of overseas personnel (and dependents) are used for apportionment purposes only.

<sup>2</sup> The U.S. Census Bureau prepared these calculations using the existing size of the U.S. House of Representatives (435 members) and the Method of Equal Proportions, as provided for in Title 2, United States Code, Sections 2a and 2b.

## SUPREME COURT OF WISCONSIN

Appeal No. 2021AP001450 - OA

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**BILLIE JOHNSON, et al***Petitioners,*

v.

**WISCONSIN ELECTIONS COMMISSION, et al***Respondents.*

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Original Action in the Wisconsin Supreme Court

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**CERTIFICATE OF SERVICE**

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I certify that on behalf of Black Leaders Organizing for Communities, Voces de la Frontera, League of Women Voters of Wisconsin, Cindy Fallona, Lauren Stephenson, and Rebecca Alwin an original and 10 copies of the following were hand-delivered to the Clerk of the Supreme Court on September 24, 2021:

1. Notice of Motion and Unopposed Motion to Intervene (with attachments);
2. Brief in Support of Motion to Intervene (with attachments).

I further certify that on September 24, 2021, I caused true and correct copies of the foregoing to be served by electronic mail and by first-class mail, postage prepaid, on the following counsel of record:

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