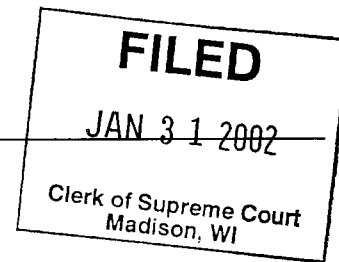


STATE OF WISCONSIN
SUPREME COURT



SCOTT R. JENSEN, personally and as
Speaker of the Wisconsin Assembly and
MARY E. PANZER, personally and as
Minority Leader of the Wisconsin Senate,

Petitioners,

v.

Case No. 02-0057-OA

WISCONSIN ELECTIONS BOARD, an
independent agency of the State of Wisconsin;
JERALYN WENDELBERGER, its chairman;
and each of its members in his or her official
capacity, DAVID HALBROOKS, R. J.
JOHNSON, JOHN P. SAVAGE, JOHN C.
(Caption Continued – Next Page)

**MOTION TO ALLOW THE FILING, INSTANTER, OF REPLY OF
PETITIONERS TO RESPONSE OF INTERVENOR-RESPONDENTS
TO PETITION FOR LEAVE TO COMMENCE AN ORIGINAL
ACTION (ATTACHMENT A) AND PETITIONERS' SECOND
SUPPLEMENTAL APPENDIX (ATTACHMENT B)**

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SCHOBER, STEVEN V. PONTO, BRENDA
LEWISON, CHRISTINE WISEMAN and
KEVIN J. KENNEDY, its executive director,

Respondents, and

State Senate Majority Leader CHARLES J.
CHVALA, State Assembly Minority Leader
SPENCER BLACK, WISCONSIN
EDUCATION COUNCIL, a voluntary
association, STAN JOHNSON, its elected
president and several of its members,
TOMMIE LEE LENN, PAUL HAMBLETON
and DIANNE CATLIN LANG,

Case No. 02-0057-OA

Intervening-Respondents.

NOW COME the Petitioners, Scott R. Jensen and Mary E. Panzer,
by and through their counsel, and respectfully request the Court grant
Leave to File the Reply of Petitioners to Response of Intervenor-
Respondents to Petition for Leave to Commence an Original Action
(Attachment A) and Petitioners' Second Supplemental Appendix
(Attachment B), and in support of that Motion state:

1. The Respondent, Wisconsin Elections Board, has agreed that
the Petition for Leave to Commence an Original Action Seeking
Declaratory Judgment and Other Relief ("Petition") should be allowed and
this matter should be heard by this Court. Two additional parties, permitted

by Order of this Court to intervene, have each filed lengthy responses opposing a grant of Original Jurisdiction. (“Response of Wisconsin Education Association Council Opposing the Petition For Leave to Commence an Original Action” (“WEAC Opposition”) and “Intervenor-Respondents Charles J. Chvala and Spencer Black’s Response and Supplemental Appendix to Petition For Leave to Commence an Original Action” (“Chvala Opposition”) (together “Oppositions”)). This matter is of extraordinary importance, and has been expedited by this Court. The Reply (Attachment A) and Petitioners’ Second Supplemental Appendix (Attachment B) will materially aid the Court. These items will correct clear errors in prior submissions of others and address important issues now before the Court.

2. On the matter of this Court’s consideration of facts in redistricting matters, the Oppositions substantially misstate the record of this Court’s prior actions. The WEAC Opposition (p. 20) states that this Court in *State ex rel. Reynolds v. Zimmerman*, 22 Wis. 2d 544, 126 N.W.2d 551, *enforced*, 23 Wis. 2d 606, 128 N.W.2d 16 (1964) (hereafter “*Reynolds*”) “did not even consider any submissions ... until after it had promulgated its plan” and the Chvala Opposition (p. 20) summarizes this

Court's actions by noting, "It does not appear from the opinion that the Supreme Court took . . . any submissions prior to redistricting the legislature." These statements are incorrect. The Wisconsin Supreme Court **received extensive submissions in *Reynolds*** as more fully described in the Reply of Petitioners to Response of Intervenor-Respondents to Petition for Leave to Commence an Original Action ("Reply") and Petitioners' Second Supplemental Appendix ("2nd Supp. Appx."), attached for filing instant as Attachments A and B, respectively. Contrary to the suggestion that this Court did not fully consider alternative maps before entering a remedy in the form of a court drawn redistricting in 1964, this Court, in fact, considered a wide variety of information, including no less than seven separate redistricting maps (Reply, pp. 2-3, 7-9; 2nd Supp. Appx., Exhs. B, D, F), submitted pursuant to Court Orders (2nd Supp. Appx., Exhs. A, C, E) by numerous parties. The Reply (Attachment A) and Second Supplemental Appendix (Attachment B) provide the official records of this Court obtained from the State Historical Society and other sources. The records and the explanations of the Reply demonstrate an effective procedure for legislative redistricting undertaken by this Court (Reply, pp. 7-9), and further demonstrate the appropriateness of granting

and proceeding on the Petition. This information directly and unequivocally contradicts the information and discussion of the Intervenor-Respondents.

3. The Chvala Opposition (p. 20) states this Court has “not taken original jurisdiction over redistricting since the *Baker* and *Reynolds* decisions.” That statement is incorrect. The Wisconsin Supreme Court, in fact, granted a Petition for Original Jurisdiction in 1982 concerning legislative redistricting, long after both *Baker* and *Reynolds v. Sims*. (2nd Supp. Appx. at Exh. I); *see, also Wisconsin State AFL-CIO v. Elections Bd.*, 543 F. Supp. 630, 633 (E.D. Wis. 1982). This information directly and unequivocally contradicts the information and discussion of the Chvala Intervenor-Respondents.

4. The Oppositions demonstrate, as the Petition for Leave to Commence an Original Action Seeking Declaratory Judgment and Other Relief (“Petition”) and Memorandum in Support of Petition for Leave to Commence Original Action Seeking Declaratory Judgment and Other Relief (“Memorandum in Support”) argued, that this Court has never before refused to consider, on its merits, a Petition for Original Jurisdiction

concerning legislative redistricting. The Reply (Attachment A) will provide the Court with this important background.

5. This Court is elected in non-partisan statewide elections and its members are scrupulously impartial, with knowledge of all aspects of Wisconsin history, culture and law. (Reply, pp. 11-12) The Oppositions have repeatedly failed to correctly describe the process of this Court's selection and its methods for handling important matters. (Reply, pp. 2-7) The Chvala Opposition (Chvala Opposition, pp. 17, 24, 32-33) suggests that the Court's experience and knowledge are a liability. In contrast, the Reply describes the Court's background correctly and provides an appropriate description of the high integrity and the role this Court must, accordingly, play in redistricting. (Reply, pp. 7-13; *see, also*, 2nd Supp. Appx.) The Reply is an important response by Petitioners to the incorrect and unsupportable assertions of the Oppositions.

6. Absent from the arguments of the Intervenor-Respondents is a discussion, in any respect, of the powerful reestablishment of federalism by the United States Supreme Court, of which *Grove v. Emison*, 507 U.S. 25 (1993) is one example. This failure may lead to a misinterpretation of *Grove*, as its context and the implications of its holding may be important

considerations for this Court. This Reply (pp. 13-15) is essential to explain the importance of this Court addressing critical state interests. Failure to grant the Petition would be contrary to the modern jurisprudence of federalism. *See United States v. Lopez*, 514 U.S. 549, 115 S. Ct. 1624 (1995); *United States v. Morrison*, 529 U.S. 598, 120 S. Ct. 1740 (2000); *Printz v. United States*, 521 U.S. 898, 117 S. Ct. 2365 (1997); *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159, 121 S. Ct. 675 (2001). The Reply will provide a response to the Oppositions on matters of federalism and *Grove*.

WHEREFORE, the Petitioners respectfully requests that the Court allow the filing, instant, of Attachment A, Reply of Petitioner to Response of Intervenor-Respondents to Petition for Leave to Commence an Original Action and, Attachment B, Second Supplemental Appendix of Petitioners. The Petitioners further hereby incorporate (a) Petition for Leave to Commence an Original Action Seeking Declaratory Judgment and Other Relief; (b) Memorandum in Support of Petition for Leave to Commence an Original Action Seeking Declaratory Judgment and Other Relief; (c) Petitioner's Appendix; (d) Response of Petitioners To Motion to Intervene of Charles Chvala and Spencer Black; (e) Petitioners'

Supplemental Appendix; and (f) Petitioners' Response to Wisconsin Education Association Council's Motion to Intervene, in addition to this Motion, the Reply and Second Supplemental Appendix, as well as other documents and pleadings of record, in support of this Motion and in support of granting the Petition.

Dated this 31st day of January, 2002.

Respectfully submitted,

SCOTT R. JENSEN and MARY E.
PANZER

By: 

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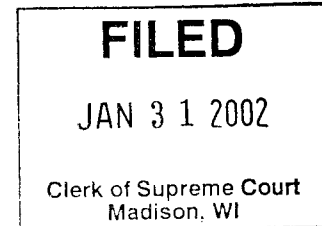
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January 31, 2002

Cornelia G. Clark
Clerk of the Court
Wisconsin Supreme Court
110 E. Main Street, #215
Madison, WI 53703



Re: Jensen, et al. v. Wisconsin Elections Board, et al.; Case No. 02-0057-OA

Dear Ms. Clark:

Enclosed please find the following documents for filing with the Court:

1. Motion To Allow The Filing, Instantly, Of Reply of Petitioners To Response Of Intervenor-Respondents To Petition For Leave To Commence An Original Action (Attachment A) And Petitioners' Second Supplemental Appendix (Attachment B).

We are providing an original and 8 copies for the Court, and would ask the Court to file-stamp and return 3 copies to this office.

Thank you for your assistance in this matter.

Very truly yours,

MICHAEL BEST & FRIEDRICH LLP

James R. Troupis

JRT:fw

Enclosures

cc: Michael P. May (w/encl)
Randall L. Nash (w/encl)
Kevin Kennedy (w/encl)
Thomas J. Balistreri (w/encl)
Brady C. Williamson (w/encl)

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