

IN THE SUPREME COURT  
OF THE STATE OF WISCONSIN

**FILED**

**JAN 14 2002**

Clerk of Supreme Court  
Madison, WI

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 STATE 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. SCHOBBER, STEVEN V.  
PONTO, BRENDA LEWISON, and CHRISTINE  
WISEMAN and KEVIN KENNEDY, its executive  
director,

Respondents,

and

WISCONSIN EDUCATION ASSOCIATION  
COUNCIL, a voluntary association, STAN  
JOHNSON, its elected president, and several of its  
members, TOMMIE LEE GLENN, PAUL  
HAMBLETON, and DIANNE CATLIN LANG.

Proposed Intervening Respondents.

---

**NOTICE OF MOTION AND MOTION TO INTERVENE**  
**Sec. 803.09, Stats.**

---

PLEASE TAKE NOTICE that the proposed intervening respondents, the Wisconsin Education Association Council ("WEAC"), its elected president, Stan Johnson, and several of its members individually, Tommie Lee Glenn, Paul Hambleton, and Dianne Catlin Lang, by their attorneys, LaFollette Godfrey & Kahn, move the Court under section 803.09, Stats., to intervene as parties in the Petition for Leave to Commence an Original Action Seeking Declaratory Judgment and Other Relief (the "Petition"), filed on January 7, 2002 by Scott R. Jensen and Mary E. Panzer, and in any related proceedings.

WEAC, for itself and its 92,000 members statewide, has a direct and immediate interest in the redistricting of the state legislature. The organization and its members are proper parties, whose interests are not represented by any other party, and they and the Court will be prejudiced if this original action proceeds without their direct participation as parties.

In support of their motion, WEAC and its members state that:

1. WEAC is a statewide, voluntary association that represents the public policy interests of the state's public school teachers and staff members. Through the involvement of its members in the state legislative and political process, WEAC advances its commitment to guaranteeing a quality public education for every child in Wisconsin.

2. "WEAC is the largest organization in Wisconsin," this Court has noted, "representing teachers." *Wisconsin Professional Police Ass'n, Inc. v.*

*Lightbourn*, 2001 WI 59, ¶ 3, 243 Wis. 2d 512, 529, 627 N.W. 2d 807, 816

(original action).

3. WEAC's principal place of business is at 33 Nob Hill Drive, Madison, Wisconsin 53713.

4. Stan Johnson, an individual member of WEAC and its president, is a citizen of the United States and of the State of Wisconsin. A resident and registered voter of Madison, Dane County, Wisconsin, his residence is in the 76<sup>th</sup> Assembly District and the 26<sup>th</sup> Senate District as those districts were established in 1992.

5. Tommie Lee Glenn, an individual member of WEAC, is a citizen of the United States and of the State of Wisconsin. A resident and registered voter of Milwaukee, Milwaukee County, Wisconsin, his residence is in the 17<sup>th</sup> Assembly District and the 6<sup>th</sup> Senate District as those districts were established in 1992.

6. Paul Hambleton, an individual member of WEAC, is a citizen of the United States and of the State of Wisconsin. A resident and registered voter of Baldwin, St. Croix County, Wisconsin, his residence is in the 29<sup>th</sup> Assembly District and the 10<sup>th</sup> Senate District as those districts were established in 1992.

7. Dianne Catlin Lang, an individual member of WEAC, is a citizen of the United States and of the State of Wisconsin. A resident and registered voter of Appleton, Outagamie County, Wisconsin, her residence is in the 57<sup>th</sup>

Assembly District and the 19<sup>th</sup> Senate District as those districts were established in 1992.

8. The Petition involves the prospective redistricting of the 33 State Senate and 99 State Assembly Districts in Wisconsin under the state constitution and under state law in Chapter 4, Stats., and the right of every citizen of this state to equal and effective legislative representation.

9. The 2000 census disclosed substantial variations in the populations of the Senate and Assembly districts in Wisconsin, all established in 1992, that increased or decreased their respective populations.

A. The districts no longer have an equal number of residents and, accordingly, “the legislature shall apportion and district anew the members of the senate and assembly, according to the number of inhabitants.” Art. IV, § 3, Wis. Const.

B. With individual members living and working in literally every Wisconsin Senate and Assembly district, WEAC and its members are directly affected by the existing malapportionment of the state legislature and any violation of the “one person / one vote” guarantee embodied in article IV, section 3 of the Wisconsin Constitution and in the 14<sup>th</sup> Amendment to the U.S. Constitution.

10. Under section 803.09, Stats., the proposed intervening respondents have a statutory right to intervene in the proceedings initiated by the Petition,

whatever course they may take, because none of the parties now before the Court can adequately represent the movants' interests as private citizens, taxpayers and voters – both individually and associated in and through WEAC.

11. On January 9, 2002, State Senate Majority Leader Charles J. Chvala and State Assembly Minority Leader Spencer Black (the “legislative intervenors”) filed a Motion to Intervene in this matter. On January 11, 2002, this Court ordered the petitioners to respond to that request by the legislative intervenors.

12. The petitioners as well as the legislative intervenors are all named parties in the federal district court litigation, *Arrington et al. v. Savage et al.*, Case No. 01-C-0121 (E.D. Wis.), pending now for almost a full year, in which the legislative intervenors have asked the three judge panel appointed under 28 U.S.C. § 2284 for the very relief requested by the petitioners.

13. The petitioners, the state respondents and the legislative intervenors are all Wisconsin public officials. While they have legitimate interests in this proceeding, those interests are separate and distinct from the interests of citizens.

14. WEAC and its individual members should be allowed to protect their interests by participating in this matter – just as they participated in the federal district court litigation after the 1990 census that apportioned the Wisconsin legislature. *See Prosser v. Elections Board*, 793 F. Supp. 859 (W.D.

Wis. 1992). Indeed, WEAC's participation there, the most recent legislative redistricting case, will permit it to share that experience with this Court, including the submission of a proposed legislative redistricting plan for the Court's consideration should the Court accept original jurisdiction.

15. This Court has established four requirements for intervention as a matter of right under section 803.09(1), Stats.:

- (1) that the motion to intervene be made in a timely fashion;
- (2) that the movant claims an interest relating to the property or transaction which is the subject of the action;
- (3) that the movant is so situated that the disposition of the action may as a practical matter impair or impede the movant's ability to protect that interest; and
- (4) that the movant's interest is not adequately represented by the existing parties.

*Armada Broadcasting, Inc. v. Stirn*, 183 Wis. 2d 463, 471, 516 N.W.2d 357, 360 (1994).

16. In this case, WEAC and its members satisfy all four requirements:

A. Their motion is timely. The Court has taken no substantive action on the Petition, filed just a week ago. Accordingly, intervention will not prejudice any of the parties to the proceeding.

B. WEAC's interests and its members' interests individually are directly related to this action. Representing citizens active in the public policy arena and in the Wisconsin political process, WEAC has a profound, well-recognized commitment to improving the state's educational policies established

by the state's elected legislators. The identity of those elected representatives, and the composition of the Senate and Assembly districts that elect them, directly affect WEAC and its members. As an organization, WEAC endorses and actively supports candidates for the state legislature from both major political parties.

C. WEAC and its members are indeed "so situated" that the disposition of this action without their involvement would impede their ability to protect their public policy interests. If this Court grants the Petition and ultimately redistricts the state's Senate and Assembly districts, that action will directly affect the proposed intervening parties' rights as voters and citizens to determine who represents their interests in the state legislature.

D. WEAC's interests and the interests of its members are not and cannot be adequately represented by the existing parties. The petitioners, Scott R. Jensen and Mary E. Panzer, as well as the legislative intervenors, are elected officials. They have a direct, partisan self-interest in the outcome of any redistricting litigation. But for WEAC's and its members' intervention, the only parties would be public officials whose interests, inevitably, differ from those of private organizations and citizens active in the political process.

17. The proposed intervening respondents should be allowed to intervene permissively, if not as a matter of right, in this original action. Section 803.09(2), Stats., allows intervention where the "movant's claim or defense and

the main action have a question of law or fact in common.” Such commonality exists here: the “main action” concerns legislative redistricting as does the movants’ interest in that determination.

18. This Court has noted that the intervention statute in “[s]ubsection (2) relates to permissive intervention, and states that ‘in exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.’” *City of Madison v. Wisconsin Employment Relations Comm’n*, 2000 WI 39, ¶ 11, 234 Wis. 2d 550, 558, 610 N.W.2d 94, 98. Allowing WEAC and its members to intervene in this original action will in no way delay or prejudice the adjudication of this dispute.

A. To the contrary, permitting the proposed respondents to intervene will allow them to demonstrate that the Court need not and should not exercise original jurisdiction in this case.

B. Moreover, if the Court nevertheless chooses to grant the Petition, WEAC’s participation will help ensure that the Court has the benefit of diverse parties able to present a broad range of well-supported legal arguments and well-documented redistricting plans to the Court.

19. Further, in exercising its discretion to permit intervention under section 803.09(2), Stats., the Court should allow private citizens – both individually and as an association – a voice in a lawsuit that profoundly affects the public interest but, otherwise, would only involve public officials as parties.



20. WEAC and its members have participated as intervening parties in prior cases decided by this Court that have helped shape the public policy of this state. In *Vincent v. Voight*, 2000 WI 93, 236 Wis. 2d 588, 614 N.W.2d 388, for example, WEAC as an intervening party advanced an argument adopted by the Court: the legislature has a constitutional responsibility to provide “sufficient resources so that school districts offer students the equal opportunity for a sound basic education as required by the [state] constitution...” *Id.*, ¶ 3, 236 Wis. 2d at 601, 614 N.W.2d at 397. That is a legislative determination, of course, and that is why – if for no other reason – the state’s educators have a direct and immediate interest in any litigation that affects the composition of Wisconsin’s legislative districts.

A. The Court itself made the point succinctly: “The state is now committed to funding two-thirds of the school districts’ cost of education.” *Id.*, ¶74, n. 24, 236 Wis. 2d at 634, 614 N.W.2d at 412 (citing 1997 Wis. Act 27). That commitment continues to depend, of course, on the commitment of the state legislature to public education. *See generally*, Wis. Stat. ch. 121 (1999-2000).

B. The decision in *Vincent* reflected, at least in part, the arguments advanced by WEAC for itself, for its members and for the public school students of the state. As an intervening party, WEAC brought to the Court’s attention points and authorities neither emphasized nor, in some respects, even advanced by the original parties. *See also Wisconsin Retired Teachers*

*Ass'n, Inc. v. Employee Trust Funds Board*, 207 Wis. 2d 1, 558 N.W.2d 83 (1997) (intervening plaintiff); *Davis v. Grover*, 166 Wis. 2d 501, 480 N.W.2d 460 (1992) (intervening petitioner).

21. This Motion to Intervene addresses only a threshold procedural issue in this case: from which parties will the Court hear before deciding whether or not to take original jurisdiction of matters already pending in federal district court. If WEAC's Motion to Intervene is granted, the proposed intervenors will file a substantive response to the Petition, if the Court invites a response, and they will oppose the Petition.

WHEREFORE, the proposed intervening respondents, WEAC and its individual members named above, request that:

- A. The Court grant their motion to intervene under section 803.09, Stats.;
- B. The Court allow them to file a substantive response to the Petition; and,
- C. The Court permit them to participate as parties in any and all further proceedings related to the Petition for Leave to Commence an Original Action Seeking Declaratory Judgment and Other Relief.

Dated: January 14, 2002.

LA FOLLETTE GODFREY & KAHN



Brady C. Williamson

State Bar No. 1013896

Mike B. Wittenwyler

State Bar No. 1025895

Gabriel S. Gross

State Bar No. 1037934

LaFollette Godfrey & Kahn

One East Main Street

Post Office Box 2719

Madison, Wisconsin 53701-2719

(608) 257-3911

*LaFollette Godfrey & Kahn is an  
office of Godfrey & Kahn, S.C.*

Attorneys for Proposed Intervening  
Respondents

MN140894\_2