

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.

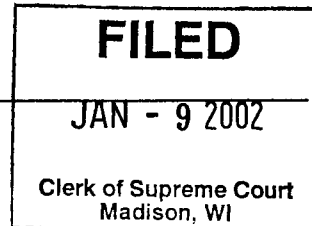
Case No. 02-0057-0A

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

Respondents.

MOTION TO INTERVENE

The Intervenors, State Senate Majority Leader Charles J. Chvala and
State Assembly Minority Leader Spencer Black, by their attorneys, hereby
move to intervene in the above-captioned matter and show the Court as
follows:



1. The Intervenors are the Majority Leader of the Wisconsin State Senate, Charles J. Chvala, and the Minority Leader of the Wisconsin State Assembly, Spencer Black. The Intervenors are residents of the State of Wisconsin, are registered to vote in Wisconsin and are the leaders of the Democrats in the State Senate and Assembly.

2. Intervention is sought pursuant to Wis. Stat. § 803.09. The Senate Majority Leader and the Assembly Minority Leader have a direct interest in the outcome of this action in that the redistricting of state legislative districts are obligations committed by law, as an initial matter, to the Wisconsin Legislature, of which they are members.

3. The last two efforts at redistricting were decided by federal courts. The State Supreme Court has not considered redistricting in nearly 40 years. In the event efforts at redistricting legislation are not successful, the Senate Majority Leader and the Assembly Minority Leader submit that judicial efficiency requires that one court consider the factual and legal claims for all redistricting in Wisconsin.

4. On February 1, 2001, seventeen plaintiffs filed suit in the District Court for the Eastern District of Wisconsin against the State of Wisconsin's

Elections Board, as well as the individual members of that Board, alleging that the congressional districts for Wisconsin were malapportioned following the decennial census. (See Arrington v. Elections Board, Case No. 01-C-121 (E.D. Wis. Feb. 1, 2001; Intervenor's App., Ex. A.) This suit has been pending for nearly one year. Pursuant to 28 U.S.C. § 2284, a three-judge panel was appointed to hear this suit. On February 5, 2001, eighteen members of the Wisconsin State Senate ("State Senators"), including Senate Majority Leader Chvala, filed a motion in their capacity as citizens, registered voters and as Senators of the Wisconsin State Senate, to intervene in that case and submitted a proposed Complaint seeking to place before the Court the potential redistricting of a State Senate and Assembly Districts. (See Intervenor's App., Ex. B.)

5. On February 21, 2001, the petitioners in this case, Representative Scott R. Jensen and Senator Mary E. Panzer, sought to intervene in the case filed in the Federal District Court for the Eastern District of Wisconsin. (See Intervenor's App., Ex. C.) No objection was made by any party, including Representative Jensen or Senator Panzer, to the State Senators' proposed Complaint seeking to place the state legislative redistricting before the Federal

Court. No objection was filed by Representative Jensen or Senator Panzer despite the Court's order that any objections to the Motions to Intervene be filed by March 7, 2001. (See Intervenors' App., Ex. D.)

6. On February 28, 2001, the three judge panel asked all parties, including the Petitioners and Intervenors in this case, to brief the issue of justiciability. (See Intervenors' App., Ex. E.) On November 28, 2001, the three judge panel determined that it had jurisdiction to proceed, granted both Representative Jensen and Senator Panzer's and the State Senators' Motions for Intervention and asked the State Senators to file the Complaint that was submitted with the Motion for Intervention on February 5, 2001. (See Pet. App., Ex. A.)

7. On December 6, 2001, the State Senators submitted the original complaint to the federal court for filing. Despite the federal court's acceptance of jurisdiction over the state legislative redistricting, Representative Jensen and Senator Panzer failed to answer the State Senators' Complaint.

8. Also on December 6, 2001, the Senators filed a Motion to Amend the Pleading and filed a proposed Amended Complaint in order to add members of the Assembly and to substitute defendants because the

membership on the Elections Board had changed since the proposed Complaint was submitted to the District Court.

9. On January 7, 2002, the Federal Court held a scheduling conference in which it (1) granted the State Senators' Motion to Amend the Pleadings, (2) heard arguments on the proposed schedule for trial in this matter, and (3) vacated any stay on further proceedings in the federal court.

10. Also on January 7, 2002, Representative Jensen and Senator Panzer filed a petition with this Court, seeking its exercise of original jurisdiction over the redistricting of the State Senate and Assembly districts.

11. The same underlying facts that make congressional districts malapportioned under the United States and Wisconsin Constitutions also rendered the existing state legislative districts to be malapportioned. A three judge panel in the District Court for the Eastern District of the State of Wisconsin has taken jurisdiction over the congressional and state legislative districts. As the Petitioners and the Intervenors are both parties in the federal district court case, and because any action by this Court would have a direct effect on the Intervenors, the Intervenors satisfy the grounds for intervention.

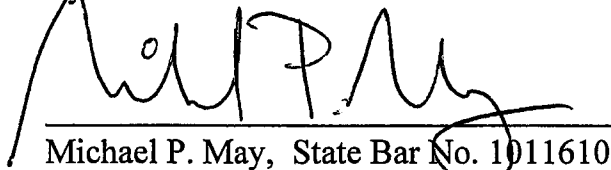
12. Intervenors file this Motion to Intervene to address the preliminary issue in this case: whether the State Supreme Court should take original jurisdiction of matters already pending in federal district court. This motion and the accompanying memorandum do not address the merits of whether this Court should entertain the Petition. If the Motion to Intervene is granted, Intervenors seek to file a response to the Petition, if a response is ordered by this Court, and will oppose the Petition.

WHEREFORE, Intervenors request that this Court grant this Motion to Intervene, allow them to appear as Intervenors and allow them to file a response to the Petition for this Court to take original jurisdiction if this Court so orders.

Dated this 9th day of January, 2002.

Boardman, Suhr, Curry & Field, LLP

Bx:



Michael P. May, State Bar No. 1011610

James E. Bartzen, State Bar No. 1003047

Sarah A. Zylstra, State Bar No. 1033159

Attorneys for Charles J. Chvala and

Spencer Black

BOARDMAN, SUHR, CURRY & FIELD LLP

One South Pinckney Street, 4th Floor

Post Office Box 927

Madison, WI 53701-0927

Telephone: 608/257-9521

Facsimile: 608/283-1709

O'NEILL, CANNON & HOLMAN, S.C.

Randall L. Nash, State Bar No. 1012140

111 East Wisconsin Avenue, Suite 1400

Milwaukee, WI 53202-4807

Telephone: 414/276-5000

Facsimile: 414/276-6581

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