

STATE OF WISCONSIN
SUPREME COURT

FILED
JAN 07 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.

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

Respondents.

02 0057-0A

**PETITION FOR LEAVE TO COMMENCE AN ORIGINAL ACTION
SEEKING DECLARATORY JUDGMENT AND OTHER RELIEF**

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Dated: January 7, 2002

INV #4942 - \$150.00
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Petitioners, Scott R. Jensen, personally and in his capacity as the Speaker of the Wisconsin Assembly, and Mary E. Panzer, personally and in her capacity as the Minority Leader of the Wisconsin State Senate (hereafter "Petitioners"), by and through their attorneys, Michael Best & Friedrich LLP and Reinhart, Boerner, Van Deuren, Norris & Rieselbach S.C., hereby petition the Wisconsin Supreme Court for leave to commence an original action, pursuant to article I, § 1, article VII, § 3 and article IV, §§ 3, 4 and 5 of the Wisconsin Constitution, Wis. Stat. § 809.70, and Wis. Stat. § 806.04.

PRELIMINARY STATEMENT

1. This is a petition for leave to commence an original action in the Wisconsin Supreme Court. Petitioners, as members and leaders of the Wisconsin Legislature, are charged with certain constitutional duties in matters involving the apportionment of Wisconsin's Senate and Assembly districts. Pursuant to article IV, § 3 of the Wisconsin Constitution, the State Legislature is given the authority and obligation to "apportion and district anew the members of the senate and assembly, according to the number of inhabitants" in its first session following the federal decennial census.

2. Due to shifts in population throughout the State of Wisconsin since the 1990 census, the existing Senate and Assembly districts created in 1992 by judicial Order and enumerated in Wis. Stat. ch. 4 as the "Judicial Plan" (hereafter the "1992 Redistricting Plan") have substantial variations in population and, thus, do not meet the federal and state constitutional requirements of one-person/one-vote. However, no plan of apportionment based on the 2000 census for the election of Senators and Representatives to the Assembly has been enacted into law and no such plan has been introduced in either body of the Legislature following the 2000 census. The Legislature is at an impasse. Accordingly, Petitioners seek a declaration that the 1992 Redistricting Plan is unconstitutional and invalid and seek an injunction preventing the Respondents from conducting elections in those districts. Petitioners also request that this Court adopt a judicial plan of redistricting for Wisconsin's Senate and Assembly districts in light of the Legislature's failure to adopt such a plan.

PARTIES

3. Petitioner Scott R. Jensen (hereafter "Jensen") is a citizen of the United States and the State of Wisconsin and a resident and registered voter in the 32nd Assembly District and 11th Senate District of the State of Wisconsin. Jensen is a member and the Speaker of the Wisconsin Assembly with his principal office located at Rm. 211 West, State Capitol, Madison, WI.

4. Petitioner Mary E. Panzer (hereafter "Panzer") is a citizen of the United States and the State of Wisconsin and a resident and registered voter in the 59th Assembly District and 20th Senate District of the State of Wisconsin. Panzer is a member and the Minority Leader of the Wisconsin Senate with her principal office located at Rm. 202 South, State Capitol, Madison, WI.

5. Respondent Wisconsin State Elections Board (hereafter "Elections Board") is an independent agency of the State of Wisconsin with its principal office located at 132 East Wilson Street, Suite 200, P.O. Box 2973, Madison, WI 53701-2973. Pursuant to the Wisconsin Statutes, including ch. 5, ch. 7, §§ 7.08 *et seq.*, and ch. 10, the Elections Board is responsible for the administration and supervision of the election laws of

the State of Wisconsin and in particular has the responsibility for the administration and supervision of the election of members of the Senate and Assembly.

6. Respondents David Halbrooks, R.J. Johnson, Brenda Lewiston, Steven V. Ponto, John P. Savage, John C. Schober, Jeralyn Wendelberger and Christine Wiseman are Members of Elections Board. Kevin J. Kennedy is the Executive Director of the Elections Board. These Respondents are joined in this Petition in their official capacities only.

STATEMENT OF ISSUES PRESENTED BY THIS PETITION

7. Whether the existing Senate and Assembly districts enumerated in the 1992 Redistricting Plan are unconstitutional and invalid in light of the changes in population identified by the 2000 census.

8. Whether the Wisconsin State Elections Board must be enjoined from conducting elections in the existing unconstitutional and invalid Senate and Assembly districts enumerated in the 1992 Redistricting Plan.

9. Whether the Supreme Court should proceed to adopt a judicial plan of redistricting for Wisconsin's Senate and Assembly districts

in light of the State Legislature's failure to adopt a redistricting plan pursuant to article IV, § 3 of the Wisconsin Constitution.

STATEMENT OF FACTS

10. During 2000, the Bureau of Census of the United States Department of Commerce conducted a census of the United States, including the State of Wisconsin, pursuant to the Constitution and laws of the United States.

11. In March of 2001, the State of Wisconsin received the census data from the 2000 census enumerating the population of the State of Wisconsin, including detailed population counts for counties, municipalities and census blocks throughout the State.

12. Based on the 2000 census, the mean population of Senate and Assembly districts should be 54,179 and 162,536, respectively; however, the actual census-based numbers show that populations in the existing districts vary substantially:

	ACTUAL ASSEMBLY POPULATION	PERCENTAGE VARIATION – ASSEMBLY	ACTUAL SENATE POPULATION	PERCENTAGE VARIATION – SENATE
LARGEST DISTRICT	64,721 (#99)	+19.5%	179,037 (#27)	+10.2%
SMALLEST DISTRICT	39,661 (#8)	-26.8%	126,528 (#6)	-22.2%

13. The 2000 census data show that as a result of shifts and growth in population throughout the State of Wisconsin, the existing Senate and Assembly districts enumerated in the 1992 Redistricting Plan are malapportioned and fail to meet the legal requirements of the Wisconsin Constitution.

14. It is the duty of Wisconsin legislature to adopt a plan of apportionment for Senate and Assembly districts which satisfies the requirements imposed by law based upon the data from the 2000 census enumerating the population of the State of Wisconsin. Pursuant to article IV, § 3 of the Constitution of the State of Wisconsin, the legislature is to adopt a plan of apportionment during its first session following the decennial census.

15. Upon receiving the census data in 2001, Wisconsin's Department of Administration forwarded the census numbers to individual counties throughout the state. The counties then transmitted that data to local communities and others for the purpose of re-drawing ward boundaries and those ward boundaries are now the building blocks for redistricting. The ward drawing process is prescribed by statute, see Wis. Stat. §§ 5.15(1)(b), 59.10(3)(b)1, and it was substantially completed in the

Fall of 2001. Those ward boundaries have been delivered to the State for use in creating Assembly and Senate districts. Wis. Stat. § 5.15(4)(b).

16. No redistricting plan for the State Senate or Assembly, based on the 2000 census, has been introduced into either body of the Wisconsin legislature during the first session following the 2000 census. No plan of apportionment based on the 2000 census has been enacted into law. The redistricting process is at an impasse.

17. The Respondents are charged with the responsibility of conducting elections for the Senate and Assembly in the State of Wisconsin, and in that capacity must conduct elections in accordance with the existing legislative districts. See generally Wis. Stat. § 5.05. If not otherwise enjoined, the Respondents will prepare for and conduct primary and general elections for the Senate and Assembly in violation of the Wisconsin Constitution.

18. The 2002 election cycle is now upon us and the following deadlines loom:

Certification to Localities of Voting Districts:	May 14, 2002
Circulation of Nomination Papers Begins:	June 1, 2002
Deadline for filing of Nomination Papers:	July 9, 2002
Primary Election:	September 10, 2002

General Election:

November 5, 2002

See Wis. Stat. § 10.72.

19. Such elections and other pre-election procedures would be in plain violation of the constitutional mandate of one person/one vote, article IV, § 3 of the Wisconsin Constitution and other requirements imposed by law and thus illegal in that, *inter alia*, the 2000 census demonstrates substantial variations in the populations of the Senate and Assembly districts of the State of Wisconsin as enumerated in the 1992 Redistricting Plan.

GROUNDS SUPPORTING ORIGINAL JURISDICTION

20. The proper apportionment of Senate and Assembly districts is a matter which affects the rights of every citizen in the State of Wisconsin. A citizen's right to vote is a fundamental right of our republic. In the absence of properly apportioned districts, the right of a citizen to vote is significantly compromised. Pursuant to article I, § 1 and article 4 of the Wisconsin Constitution, malapportioned legislative districts are clearly a violation of State constitutional rights. Thus, original jurisdiction in this Court is appropriate because this matter is of critical importance, and impacts every citizen in this State.

21. Without action by this Court, the Elections Board will proceed to conduct elections for the State Senate and Assembly in malapportioned, constitutionally-defective districts. By statute, the Elections Board must notify the county clerks by May 14, 2002 of the offices, including Senate and Assembly districts, which the electors of each county will fill by voting in the 2002 primary and general elections. Further, candidates for Senate and Assembly must circulate and then file their petitions for nomination with the Elections Board on or before July 9, 2002. Wis. Stat. § 10.72. Accordingly, the matters raised by this Petition are of such urgency that original jurisdiction of the Supreme Court is essential.

22. Citizens of the State of Wisconsin who wish to run for the Senate and Assembly will not know in which district they will be entitled to run until redistricting is complete.

23. Voters are severely disadvantaged by the delay in reapportionment in many ways, including:

a) Voters who desire to affect the views of candidates may not effectively communicate those concerns as candidates cannot declare for office without known districts;

- b) Fewer potential candidates will come forward if they do not know the borders of the districts in which they will run;
- c) Given that political campaigns require funding for communication, travel and the like, the absence of district lines defining the citizens who may wish to contribute to potential candidates will severely restrict the number and effectiveness of potential candidates for the 2002 elections to the detriment of all voters;
- d) Voters' rights will be compromised because of the candidates' lack of ability to run effective campaigns and provide for a meaningful election.

24. Voters and potential candidates in the areas containing high concentrations of African-Americans, Hispanics and Native Americans are subject to the greatest disadvantage if redistricting is not completed in an expeditious manner since:

- a) Candidates in such districts are more likely to be members of the minority group of which the district is comprised;
- b) These potential candidates need the greatest opportunity to build name recognition and develop access to

campaign contributors, campaign exposure and media exposure in their districts at an early stage in the process;

c) Recruitment of candidates may be particularly difficult in minority communities; and

d) Any delay in the creation of the new districts will provide an unfair advantage to the incumbents who currently represent areas which are entitled to minority-majority or minority-influence districts.

25. This Court has previously exercised original jurisdiction in cases involving the apportionment of legislative districts. See, e.g., State ex rel. Reynolds v. Zimmerman, 23 Wis. 2d 606, 128 N.W. 2d 16 (1964); State ex rel. Reynolds v. Zimmerman, 22 Wis. 2d 544, 126 N.W.2d 551 (1964); State ex rel. Thomson v. Zimmerman, 264 Wis. 644, 60 N.W.2d 416 (1953); State ex rel. Bowman v. Dammann, 209 Wis. 21, 23, 243 N.W. 481 (1932); State ex rel. Attorney General v. Cunningham, 81 Wis. 440, 51 N.W. 724 (1892).

26. The United States Supreme Court has recognized that state courts are the primary judicial authority on redistricting matters. As stated by that Court, “[t]he power of the judiciary of a State to require valid

reapportionment, or to formulate a valid redistricting plan has not only been recognized by this Court but appropriate action by the States in such cases has been specifically encouraged.” Scott v. Germano, 381 U.S. 407, 409 (1965) (citations omitted) (quoted in Grove v. Emison, 507 U.S. 25, 34 (1993)). The United States Supreme Court emphasized the importance of the State Court’s role in redistricting when it held in 1992 that “. . . the doctrine of Germano prefers *both* state branches [legislative and judicial] to federal courts as agents of apportionment.” Grove v. Emison, 507 U.S. 25, 34 (1993) (italics in original).

STATEMENT OF RELIEF SOUGHT

27. Petitioners request that this Court declare that the existing apportionment of the Senate and Assembly districts in the State of Wisconsin, as enumerated in the 1992 Redistricting Plan, is unconstitutional and invalid.

28. Petitioners request that this Court issue an injunction preventing the Respondents from conducting elections in the existing unconstitutional and invalid Senate and Assembly districts.

29. Petitioners request that this Court adopt a judicial plan of redistricting for Wisconsin’s Senate and Assembly districts.

30. Petitioners request such other and further relief that this Court deems just and equitable.

CONCLUSION

For the forgoing reasons, as well as those more fully articulated in the accompanying Memorandum in Support of Petition for Leave to Commence an Original Action Seeking Declaratory Judgment and Other Relief, incorporated here by reference, and such other documents as the Petitioner may from time to time submit. Petitioners respectfully request that the Court take original jurisdiction of this matter and allow the Petition, as filed, to stand as a Complaint.

Dated this 7th day of January, 2002.

Respectfully submitted,

SCOTT R. JENSEN and MARY E.
PANZER

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