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.

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-OA

Case No.

MEMORANDUM IN SUPPORT OF PETITION FOR LEAVE TO COMMENCE AN ORIGINAL ACTION SEEKING DECLARATORY JUDGMENT AND OTHER RELIEF

James R. Troupis, SBN 1005341
Raymond P. Taffora, SBN 1017166
Eric M. McLeod, SBN 1021730
MICHAEL BEST & FRIEDRICH LLP
One S. Pinckney Street, Suite 700
Post Office Box 1806
Madison, WI 53701-1806
Telephone: (608) 257-3501

Patrick J. Hodan, SBN 1001233
REINHART BOERNER VAN DEUREN S.C.
1000 N. Water Street
P.O. Box 514000
Milwaukee, WI 53203-3400
Phone: (414) 298-8333

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INTRODUCTION

> The 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 Growe v. Emison, 507 U.S. 25, 34 (1993)). This Court is the most appropriate forum to resolve redistricting for Wisconsin's Assembly and Senate.

The Petition for Leave to Commence an Original Action Seeking Declaratory Judgment and Other Relief (hereafter "Petition") respectfully requests the Wisconsin Supreme Court take jurisdiction of this matter to insure fair and timely redistricting for all the people of the State of Wisconsin.

BACKGROUND

As a consequence of a shifting and growing population, Wisconsin's existing Assembly and Senate districts are no longer within a population range sufficient to meet constitutional requirements. Based on the 2000 census, the mean population of State Assembly and Senate districts should be 54,179 and 162,536, respectively; however, the actual census-based

numbers show a much different pattern:

	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%

(Petition ¶ 12). As the numbers illustrate, if elections were held in the existing Assembly and Senate districts, the relative weight of each person's vote would vary based on the happenstance of now antiquated district lines. Accordingly, the existing districts must be declared invalid and state election officials (the Wisconsin Elections Board) must be enjoined from conducting elections in those existing Assembly and Senate Districts (Petition, Statement of Relief Sought ¶ 28).

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

completed in the Fall of 2001. (Petition ¶ 15).[1] Those ward boundaries have been delivered to the State for use in creating Assembly and Senate districts. (Wis. Stat. § 5.15(4)(b); Petition ¶ 15).

Though wards and census data are now available, the legislature has been unable to reach agreement on legislation essential to redistricting of state legislative districts. (Petition ¶ 16). The process is at an impasse. (Petition ¶¶ 2, 16).

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 Begin:	June 1, 2002
Deadline for Filing Nomination Papers:	July 9, 2002
Primary Election:	September 10, 2002
General Election:	November 5, 2002

See Wis. Stat. § 10.72; (Petition ¶ 18). In addition to those deadlines, the practical process of elections require candidates take action well before the statutory dates arrive. A potential candidate must declare that candidacy, circulate and file nomination papers, raise funds, and begin campaigning. Individual voters must consider potential issues and potential candidates

[1] Several counties may have failed to timely complete ward drawing, but the wards of those counties are not necessary for accurate redistricting.

throughout the process. (Petition, ¶¶ 21-24). It is critical that, failing action by the legislature, this Court undertake redistricting. (Petition, Statement of Relief Sought,¶ 29).

The historical roots of redistricting impasse are well known. Following the 1960, 1980 and 1990 census, court intervention was required in order to draw State Assembly and Senate districts. See State ex rel. Reynolds v. Zimmerman, 22 Wis. 2d 544, 126 N.W.2d 551, enforced, 23 Wis. 2d 606, 128 N.W.2d 551 (1964) (per curiam); Wisconsin State AFL-CIO v. Elections Board, 543 F. Supp. 630 (E.D. Wis. 1982); Prosser v. Elections Bd., 793 F. Supp. 859 (W.D. Wis. 1992) (per curiam). Following the year 2000 census, the Legislature met and did not pass legislation concerning redistricting of State legislative districts. (Petition, ¶ 16). No legislation has yet been introduced to redistrict either the State Assembly or State Senate. (Id.).

LEGAL ARGUMENT

I. REAPPORTIONMENT AND REDISTRICTING AFFECTS EVERY CITIZEN OF THE STATE AND IS A MATTER OF EXTRAORDINARY IMPORTANCE IN WHICH THIS COURT HAS PREVIOUSLY RECOGNIZED THE APPROPRIATENESS OF TAKING ORIGINAL JURISDICTION

A citizen's right to vote is the most fundamental right of our republic. The devaluation of that vote, by malapportioned legislative districts, affects every citizen of the State of Wisconsin. It is difficult to imagine a matter more important to the public than the ability to elect representatives of their choice.

A. Redistricting Fully Satisfies The Criteria For The Court To Exercise Original Jurisdiction.

The standard a Petitioner must meet for original jurisdiction is often repeated by this Court. "The supreme court limits its exercise of original jurisdiction to exceptional cases in which a judgment by the court significantly affects the community at large." Wisconsin Professional Police Ass'n v. Lightbourn, 2001 WI 59, ¶ 4, 243 Wis. 2d 512, 529, 627 N.W.2d 807 (2001). To provide further guidance in applying this broad standard, the Court's Internal Operating Procedures ("IOP") note that "[t]he criteria for the granting of a petition to commence an original action are a matter of case law." Wisconsin Supreme Court, IOP § II(B)(3) (citing

Petition of Heil, 230 Wis. 428, 284 N.W. 42 (1939)).[2]

The opinion of this Court in Petition of Heil, 230 Wis. 428, 284 N.W. 42 (1939), supplies no less than eight examples of appropriate matters of original jurisdiction while conceding, as well, that other cases may also fall within the criteria. Id. at 440. At least two examples described in Heil support original jurisdiction for this Petition:

1. "[A] state officer is about to perform an official act materially affecting the interests of the people at large, which is contrary to law or imposed upon him by the terms of a law which violates constitutional provisions," or

2. "[T]he situation is such, in a manner publici juris, that the remedy in the lower courts is entirely lacking or absolutely inadequate, and hence jurisdiction must be taken or justice will be denied."

Id. As the Heil Court concluded, original jurisdiction is appropriate in certain matters "because of their public importance or because of this importance in combination with circumstances creating an exigency

[2] The Statutes set out four specific elements to be addressed in a petition requesting original jurisdiction; (Wis. Stat. § 809.70(1) (a-d) (Petition should include issues, facts, relief and reasons)) and the Petition here addresses each of those elements. Further, Wis. Stat. § 809.70(1) provides the petition "may be supported by a memorandum" and this Memorandum is filed accordingly.

making the remedy in the circuit court inadequate." Id. at 442 (internal citations omitted).[3]

Applying these principles, the Court has, since 1892, consistently taken original jurisdiction on matters of redistricting. See 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) (per curiam); 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).

Relying on the doctrine of publici juris, the Court in Cunningham, explained the rationale for exercising original jurisdiction in redistricting:

> But, again, this apportionment act violates and destroys one of the highest and most sacred rights and privileges of the people of this state, guaranteed to them by the ordinance of 1787 and the constitution, and that is "*equal* representation in the legislature." This also is a matter of the highest public interest and

[3] Recent examples of successful invocation of this Court's original jurisdiction include a challenge by the Wisconsin Senate and Wisconsin Assembly and its leadership to the exercise of the Governor's partial veto power, State ex rel. Wisconsin Senate v. Thompson, 144 Wis. 2d 429, 424 N.W.2d 385 (1988), and a petition by the Governor seeking a declaratory judgment construing portions of the 1995 Budget Act creating a State Department of Education and reallocating the statutory powers of the Superintendent of Public Instruction. Thompson v. Craney, 199 Wis. 2d 674, 546 N.W.2d 123 (1996).

> concern to give this court jurisdiction in this case. If the remedy for these great public wrongs cannot be found in this court it exists nowhere.

Cunningham, 81 Wis. at 483. As this Court observed some years later "the power of this court to review the constitutionality of a legislative reapportionment must be taken as settled by the cases of State ex rel. Attorney General v. Cunningham, 81 Wis. 440, 51 N.W. 724 and State ex rel. Lamb v. Cunningham, 83 Wis. 53, N.W. 35." State ex rel. Bowman v. Dammann, 209 Wis. 21, 23, 243 N.W. 481 (1932).

Of course, the Wisconsin Elections Board must proceed to conduct elections "by the terms of the law" in existing districts. The only "existing districts" are the districts created based on the 1990 census – districts no longer tolerable under the State Constitution. Accordingly, the process about to begin "violates constitutional provisions," and this too satisfies the Heil criteria. Heil, 230 Wis. at 440; (see Petition, ¶¶ 20-21).

State Assembly and State Senate redistricting clearly falls within that category of "exceptional cases" requiring the Court to exercise original jurisdiction. Redistricting will certainly have a significant affect on "the community at large." Wisconsin Professional Police Ass'n v. Lightbourn, 2001 WI 59, ¶ 4, 243 Wis. 2d at 529.

B. Failure To Redistrict Assembly and State Senate Districts Violates Fundamental State Constitutional Standards.

Our State Constitution begins with the recitation of the importance of equal protection:

> Equality; inherent rights. Section 1. All people are born equally free and independent, and have certain inherent rights; among these are life, liberty and the pursuit of happiness; to secure these rights, governments are instituted, deriving their just powers from the consent of the governed.

Wis. Const. art. I, § 1. See Milwaukee Brewers Baseball Club v. DH&SS, 130 Wis. 2d 79, 83, 387 N.W.2d 254 (1986). As a consequence of this and other provisions, there is no legal doubt that malapportioned legislative districts are considered by this Court, "a violation of *state* constitutional rights . . . ." Reynolds, 22 Wis. 2d at 552. See also State ex rel. Attorney General v. Cunningham, 81 Wis. At 483 (State constitutional guarantee of equal representation in the Legislature violated by malapportionment of State legislative districts). The Petition alleges malapportionment in violation of those State constitutional rights.

The importance of this Court exercising original jurisdiction in state legislative redistricting is not only found in the equal protection clause of the Wisconsin Constitution, but is also the central subject of specific State

constitutional provisions addressing the reapportionment process. Article IV, § 3 of the Wisconsin Constitution enshrines the equal population principle, and provides:

> At its first session after each enumeration made by the authority of the United States, the legislature shall apportion and district anew the members of the senate and assembly, according to the number of inhabitants.

(Emphasis added). See also Cunningham, 81 Wis. at 484 (apportionment of districts according to number of inhabitants means apportionment by population "as close...to exactness as possible"). The Wisconsin Constitution also establishes a process and priorities for State legislative redistricting substantially different from the process and priorities of other states and the cryptic description of reapportionment described in the U.S. Constitution. (See U.S. Const. art. I, § 2).

Article IV, § 4 of the Wisconsin Constitution requires, when possible, that Assembly districts be "bounded by county, precinct, town or ward lines, to consist of contiguous territory and be in as compact form as practicable."[4] Wis. Const. art. IV, § 4. The Wisconsin Constitution

[4] The requirement that "counties" remain inviolate is likely no longer valid, though the remaining criteria (and to the extent possible, county lines, as well), can be honored in meeting both state constitutional and other requirements. See 58 Op. Att'y Gen. 88, 91 (1969).

separately addressed Senate and Assembly redistricting and provides somewhat different criteria for the Senate districts. "The senators shall be elected by single districts of convenient contiguous territory, at the same time and in the same manner as members of the assembly are required to be chosen; and no assembly district shall be divided in the formation of a senate district." Wis. Const. art. IV, § 5. Having expressed cognizable goals through its Constitution, the people of the State have a powerful interest in redistricting and failure to comply with those requirements is certainly a matter of great public importance.

The United States Supreme Court, too, has unequivocally acknowledged that the states, through their courts, are the most appropriate forum for addressing redistricting. As the Court noted, "The 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); see also Growe v. Emison, 507 U.S. 25, 34 (1993) (" [T]he doctrine of Germano prefers *both* state branches [legislative and judicial] to

federal courts as agents of apportionment") (quoting Growe, 507 U.S. U.S. at 34).

C. Procedurally Undertaking Redistricting Can Be Accomplished In Sufficient Time To Allow Orderly Elections.

Given impending deadlines for the 2002 elections, this Court's action will be required within certain fixed time frames. Based on prior redistricting experience, there remains sufficient time to complete the process through this Court.

In the most recent legislative redistricting case addressed by this Court, State ex rel. Reynolds v. Zimmerman, 23 Wis. 2d 606, 128 N.W.2d 16 (1964), the Court recognized certain deadlines for possible legislative action and then worked, as a whole, with the Wisconsin Legislative Reference Bureau in drawing legally sufficient redistricting maps. Similarly, in 1992 the United States Federal District Court for the Western District of Wisconsin received map submissions from each interested party, and then, following very limited testimony (submitted primarily in affidavit form), worked with the State of Wisconsin Legislative Reference Bureau in

drafting an appropriate redistricting plan. Prosser v. Elections Bd., 793 F. Supp. at 859, 862 (W.D. Wis. 1992).[5]

So too here, the Court's review process need not provide for direct testimony, but rather may call upon the parties to submit appropriate suggestions for legislative redistricting (i.e., maps), with supporting documentation (i.e., demographic data and briefs). Following that submission, the Court, in consultation with the Legislative Reference Bureau or other experts, could draft an appropriate redistricting plan. The computer based programs for drafting redistricting plans and for analyzing the plans proposed by each of the parties are relatively simple and are immediately available for the Court's use through the State of Wisconsin. The criteria to be applied in determining legal fairness, equal population, Cunningham, 81 Wis. at 484 and Reynolds v. Sims, 377 U.S. 533 (1964), preservation of communities of interest Abrams v. Johnson, 521 U.S. 74, 100 (1997), and Prosser, 793 F. Supp. at 863, preservation of municipal boundaries and the like, Wis. Const. art. IV, are principles well known to

[5] Certain unpublished scheduling orders from the 1992 District Court case are a part of Petitioner's Appendix. (See, "Pet. Appx.," Exhibits B, C and D). Those scheduling Orders may be helpful to this Court as they describe not only appropriate timing, but also articulate a procedure which could be utilized in this Court. The dates noted by those Orders could be followed here, modified, of course, by the exigencies of the 2002 calendar.

the parties and easily applied by the Court. (The Court could set out a list of requirements that the parties address, for example, in supporting documents). Such a process would be sufficient to enact a fair redistricting plan in a timely manner for the State of Wisconsin.

Alternatively, members of the Court could take such evidence as might be appropriate and report a recommendation to the Court as a whole. Again, the 1992 Federal Court proceedings are instructive in that the three-judge panel in that instance required the parties submit all direct evidence by way of affidavit and then limited cross examination to pre-approved witnesses on a strictly limited time schedule. (Pet. Appx., Exhibit D). The unique character of redistricting allows streamlined proceedings of the type described in recent cases.

There is no practical impediment to this Court reaching a decision on redistricting within the time frame remaining before the election process begins. Given the critical importance of redistricting to the very existence of our state government, a procedure involving the Court as a whole or a panel of Justices, will best insure public confidence.

II. THE EXISTENCE OF SEPARATE ACTIONS IN OTHER COURTS, DOES NOT PRECLUDE ORIGINAL JURISDICTION OVER STATE ASSEMBLY AND STATE SENATE REDISTRICTING BY THIS COURT.

An action concerning reapportionment of Wisconsin's congressional districts was begun in the U.S. District Court for the Eastern District of Wisconsin even before census data was generally available and long before the legislature could have acted. That matter, Arrington v. Elections Bd., No. 01-C-0121 (E.D. Wis., filed February 1, 2001), sought federal court jurisdiction primarily through certain federal statutes, including 42 U.S.C. 1983, 42 U.S.C. 1988, and 42 U.S.C. 1973. The Arrington matter was limited in scope to congressional redistricting and the original Complaint does not mention State legislative districts or State Constitutional standards.[6] The Petition before this Court seeks this Court's original jurisdiction as to State legislative districts, and does not seek original

[6] Following the entry of a Stay Order by the Federal Court (Pet. Appx., Exhibit A) the Plaintiffs initially moved to amend their Complaint to add State legislative redistricting. The Plaintiffs notified the Federal District Court by letter on January 4, 2002 they had withdrawn that request. Certain intervenors recently filed an intervening Complaint seeking to address State legislative districts by asserting, among other items, violations of Federal law. The Petitioners here (Jensen and Panzer) have not sought jurisdiction of the federal court in any respect concerning State legislative districts. (Pet. Appx. Exhibit A, Arrington, No. 01-C-0121, at 4).

jurisdiction to address federal congressional redistricting.[7]

The U.S. Supreme Court has expressly noted that federal courts must give way to state courts in matters of legislative redistricting. In Growe, the court emphatically noted, "[i]n the reapportionment context, the Court has **required** federal judges to defer consideration of disputes involving redistricting where the State, through its legislative *or* judicial branch, has begun to address that highly political task itself." Growe, 507 U.S. at 33 (bold added, italics in original).

Growe is entirely dispositive when redistricting actions are filed in both federal and state courts. In Growe, the state and federal actions were pending at the same time, and, as here, the federal action asserted certain federal statutory obligations, including, Voting Rights Act violations, (42 U.S.C. § 1973). After reviewing the procedural status, the Growe court emphatically rejected the suggestion that a federal court could proceed while a state action was under way.

> [T]he doctrine of Germano prefers *both* state branches [legislative and judicial] to federal

[7] The existence of federal congressional districts, unlike state legislative districts, is specifically enumerated in the United States Constitution. (U.S. Const. Art. I, § 2). The State legislative districts, in contrast, are strictly a creation of the State of Wisconsin. Wis. Const. art. IV, §§ 4 and 5.

> court as agents of apportionment. The Minnesota Special Redistricting Panel's [created by the Minnesota Supreme Court] issuance of its plan (conditioned on the legislature's failure to enact a constitutionally acceptable plan in January), far from being a federally enjoinable "interference," was precisely the sort of state judicial supervision of redistricting we have encouraged. See Germano, 381 U.S. at 409.

Growe, 507 U.S. at 34. As the Court concluded, "Minnesota can have only one set of legislative districts, and the primacy of the State in designing those districts compel a federal court to defer." Id. at 35.[8] See also Germano, 381 U.S. at 408.

Federal courts must defer to this State's Supreme Court in matters of state legislative redistricting. Indeed, as noted earlier (§ I(B), above), the State of Wisconsin has critical state interests at stake in reapportionment of the legislature. See Wis. Const. art. I, art. IV, §§ 3, 4 and 5; Reynolds, 22 Wis. 2d at 552. Growe and Germano each suggest a powerful doctrine of comity, including complete deference to state courts in legislative

[8] In Growe, the Supreme Court was addressing congressional redistricting and the right of Minnesota to draw those congressional districts. Here, the situation is even more compelling because the Petition to this Court seeks only jurisdiction as to the State legislative districts. There can be no doubt about this Court's right to address those state districts, the drawing of which is controlled in the first instance by Wisconsin's Constitution.

redistricting. This unequivocal deference appears to be distinct from other areas of abstention. See, e.g., Railroad Commission of Texas v. Pullman Co., 312 U.S. 496 (1941); Younger v. Harris, 401 U.S. 37 (1971).

Of course, even on principles of deferral and abstention established for non-reapportionment cases, this Court would undertake original jurisdiction here. As then State Supreme Court Justice Coffey noted, "the primary concern [in deferring to a federal court] is whether the state and the federal actions are substantially identical as being two separate actions involving the same parties and adjudicating the same legal principles. . . . Conversely, the state proceedings may continue where it is shown that the state action is reasonably necessary for the protection of a litigant's substantial rights which are not at issue in the federal action." North Central Dairymen's Cooperative v. Temkin, 86 Wis. 2d 122, 127-128, 271 N.W.2d 890 (1978) (citation omitted).

On nearly every criteria, the Petition supports bringing this action in the state courts. The pending federal action seeks relief under federal statutes, 42 U.S.C. 1973, 1983 and 1988, while the Petition seeks relief on state constitutional and statutory grounds. The State Constitution provides a distinct process and unique priorities (Wis. Const. art. IV), not otherwise

the subject of the federal proceedings. The Petition is intended to reach state legislative districts, not the congressional districts as originally posed in the federal action. The parties, too, are not identical. (Compare Petition with Pet. Appx., Exhibit A). There is no basis to defer to other courts.[9]

Should the Federal plaintiffs desire to pursue their federal statutory claims, they may do so; but only after the proceedings are completed in this Court. Growe, 507 U.S. at 36. Indeed, there is already little possibility of conflict as federal proceedings are stayed by Orders of that Court. (See Pet. Appx., Exhibit A, Arrington, No. 01-C-0121, at 23). As the U.S. District Court recognized, "[c]omity requires that the Court refrain from initiating redistricting proceedings . . . until appropriate state bodies have attempted – and failed – to do so on their own. See Growe, 507 U.S. at

[9] Procedurally, the federal action does not seek resolution of the state legislative districts, excepting only a recently filed intervening complaint by certain members of the legislature, led by Senator Charles Chvala. The original plaintiffs have no interest in proceeding on state legislative districts. The Petitioners here, have not sought to adjudicate the state legislative districts in the federal district court, nor have these Petitioners answered the allegations of the Chvala intervenors. In any event, the Federal case is stayed until February 1, 2002, and during that time this Court may consider, and grant the Petition.

34." (Pet. Appx., Exhibit A, Arrington, No. 01-C-0121, at 23).[10]

This Court has primary and original jurisdiction of matters of redistricting – jurisdiction it has exercised repeatedly over the decades following the enactment of the Wisconsin Constitution. See, e.g., Reynolds, 22 Wis. 2d at 544; State ex rel. Thomson v. Zimmerman, 264 Wis. 644, 60 N.W.2d 416 (1953); Bowman, 209 Wis. at 23; Cunningham, 81 Wis. at 440. State standards, state goals and state objectives are an essential component of redistricting and, as such, this Court should exercise original jurisdiction without regard to what a Federal Court may or may not do. Moreover, given the mandate of Growe and Germano, the U.S. District Court must stay its hand as this Court acts on State legislative districts. Accordingly, at this time, there is no impediment to the original jurisdiction of the Wisconsin Supreme Court.

[10] There is, as well, a serious question, raised by Circuit Judge Easterbrook in dissent about the propriety of the Arrington case, in any respect. (Pet. Appt., Exhibit A, Arrington, No. 01-C-0121, dissent at 3 ("this suit was dead on arrival . . .") (Easterbrook, J., dissenting) (emphasis in original)). As a consequence, Judge Easterbrook has indicated he will not participate any further in the Arrington proceedings. ((Id. at 3-4), (Easterbrook, J., dissenting)).

CONCLUSION

Since the 1890's this Court has exercised original jurisdiction in matters of legislative redistricting. Such original jurisdiction is appropriate to insure that the State of Wisconsin will have State Assembly and State Senate Districts in place that satisfy the dictates of the Wisconsin and U.S. Constitutions in sufficient time to conduct elections this year.

We respectfully request this 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

By: _____

James R. Troupis, SBN 1005341
Raymond P. Taffora, SBN 1017166
Eric M. McLeod, SBN 1021730
MICHAEL BEST & FRIEDRICH LLP
One South Pinckney Street
P.O. Box 1806
Madison, Wisconsin 53701-1806
(608) 257-3501

Patrick J. Hodan, SBN 1001233
REINHART BOERNER VAN DEUREN S.C.
1000 N. Water Street
P.O. Box 514000
Milwaukee, WI 53203-3400
Phone: (414) 298-8333

Attorneys for Petitioners