

STATE OF WISCONSIN  
SUPREME COURT

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

Respondents,

Case No. 02-0057-0A

and

State Senate Majority Leader CHARLES J. CHVALA,  
State Assembly Minority Leader SPENCER BLACK,  
WISCONSIN EDUCATION ASSOCIATION COUNCIL,  
a voluntary association, STAN JOHNSON, it's elected  
president, and several of it's members , TOMMIE LEE GLENN,  
PAUL HAMBLETON, and DIANE CATLIN LANG,

Intervenor-Respondents.

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**SUPPLEMENTAL APPENDIX TO INTERVENOR RESPONDENTS  
CHARLES J. CHVALA AND SPENCER BLACK'S RESPONSE TO  
PETITION FOR LEAVE TO COMMENCE AN ORIGINAL ACTION**

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JAN 18 2002

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE EASTERN DISTRICT OF WISCONSIN

3 -----

4 REV. OLEN ARRINGTON, JR., ALVIN BALDUS, CASE NO.  
5 STEPHEN H. BRAUNGINN, JOHN D BUENKER, 01-C-121  
6 ROBERT J. CORNELL, V. JANET CZUPER,  
7 LEVENS DE BACK, STEVEN P. DOYLE,  
8 ANTHONY S. EARL, JAMES A. EVANS,  
9 DAGOBERTO IBARRA, JOHN H. KRAUSE, SR.,  
10 JOSEPH J. KRUESER, FRANK L. NIKOLAY,  
11 MELANIE R. SCHALLER, ANGELA W.  
12 SUTKIEWICZ and OLLIE THOMPSON,

13 Plaintiffs,

14 and

15 JAMES R. BAUMGART, ROGER M. BRESKE,  
16 BRIAN T. BURKE, CHARLES J. CHVALA,  
17 RUSSELL S. DECKER, JON ERPENBACH,  
18 GARY R. GEORGE, RICHARD GROBSCHMIDT,  
19 DAVE HANSEN, ROBERT JAUCH, MARK MEYER,  
20 RODNEY MOEN, GWENDOLYNNE S. MOORE,  
21 KIMBERLY PLACHE, FRED A. RISSE,  
22 JUDY ROBSON, KEVIN W. SHIBILSKI and  
23 ROBERT D. WIRCH, each individually and  
24 as members of the Wisconsin State Senate,

25 Intervenor-Plaintiffs,

v.

ELECTIONS BOARD, an independent agency of  
the State of Wisconsin, JOHN P. SAVAGE,  
its chairman, and each of its members in his  
or her official capacity, DAVID HALBROOKS,  
DON M. MILLIS, RANDALL NASH,  
GREGORY J. PARADISE, CATHERINE SHAW,  
JUDD DAVID STEVENSON, CHRISTINE WISEMAN  
and KEVIN J. KENNEDY, its executive director,

Defendants,

1 and

2 SCOTT R. JENSEN, in his capacity as the  
3 Speaker of the Wisconsin Assembly, and  
4 MARY E. PANZER, in her capacity as the  
5 Minority Leader of the Wisconsin Senate,

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7 Intervenor-Defendants.

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HONORABLE CHARLES N. CLEVERT

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PRESIDING DISTRICT COURT JUDGE

12

MILWAUKEE, WISCONSIN

JANUARY 7, 2002

13

PROCEEDINGS

14

HELD IN THE ABOVE-ENTITLED MATTER

15

16 APPEARANCES:

17

BRADY C. WILLIAMSON and MIKE B. WITTENWYLER,  
LaFollette, Godfrey & Kahn, One East Main Street, Madison, WI  
53701, appearing for the Plaintiffs.

18

MICHAEL P. MAY and SARAH A. ZYLSTRA, Boardman, Suhr,  
Curry & Field, One South Pinckney Street, Madison, WI 53701,  
appearing for the Intervenor Plaintiffs.

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THOMAS J. BALISTRERI, Wisconsin Attorney General's  
Office, 17 West Main Street, Madison, WI 53702, appearing for  
the Defendants.

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22

JAMES R. TROUPIS, Michael, Best & Friedrich, One  
South Pinckney Street, Madison, WI 53701, and PATRICK J.  
HODAN, Reinhart, Boerner, Van Deuren, Norris & Rieselbach,  
1000 N. Water Street, Milwaukee, WI 53202, appearing for the  
Intervenor Defendants.

23

24

CYNTHIA M. BOHMAN, RMR  
Official United States Court Reporter  
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25

P R O C E E D I N G S

(Afternoon proceedings commenced at 3:02 p.m.)

THE CLERK: Case number 2001-C-121, Reverend Arrington, et al. v. Scott Jensen, intervenor defendants, et al. This matter's before the Court for status conference. May we have the appearances, please.

MR. WILLIAMSON: Good afternoon, Your Honor. For the plaintiffs, Brady Williamson and Mike Wittenwyler, LaFollette, Godfrey & Kahn.

MR. MAY: Your Honor, appearing on behalf of the intervening plaintiffs, Michael May and Sara Zylstra of Boardman, Suhr, Curry & Field.

MR. BALISTRERI: For the original defendants, the members and executive director of the Wisconsin Elections Board, Tom Balistreri, Assistant Attorney General.

MR. TROUPIS: And on behalf of the intervening defendants Scott Jensen and Mary Panzer, James R. Troupis of Michael, Best & Friedrich. And Patrick Hodan of Reinhart, Boerner, Van Deuren, Norris & Rieselbach.

THE COURT: Good afternoon to all. This matter's on the Court's calendar for a status conference. I do want to just make clear for this record that this case was transferred to this branch of the Court by random reassignment at the request of Judge John Reynolds. Actually it was as a result of his turning over of the case to the Clerk's Office under

1 the remand statute in order to facilitate the disposition of  
2 this case. As you may have heard, early today Judge Reynolds  
3 died, I believe it was earlier this morning. And as a result  
4 obviously I'm certainly saddened by that fact but also  
5 strengthening my resolve to try to see that this case is  
6 handled in an expeditious fashion.

7 I would like to begin by asking the parties to give  
8 me an update on matters as you see them. I do know that  
9 earlier today I received notice of a filing with the Wisconsin  
10 Supreme Court by Attorneys Troupis and Hodan, I believe. The  
11 letter's from Attorney Troupis. With that aside I'd like you  
12 to point out where we stand with regard to this action. We'll  
13 start with Mr. Williamson.

14 MR. WILLIAMSON: Thank you, Your Honor. As the Court  
15 knows, on November 28th, 2001 the panel issued a memorandum  
16 decision essentially confirming standing and requesting that  
17 the parties consult with each other and prepare and produce  
18 for the Court a proposed schedule for the prompt and efficient  
19 adjudication of the matter. The parties filed such materials  
20 on December 19th. The Court obviously is well aware of those.  
21 I will not repeat their essence.

22 This matter involves the proposed redistricting of  
23 the state's legislative districts as well as the state's  
24 congressional districts. That is primarily, of course, the  
25 responsibility of the state legislature. Happens every ten

1 years or we hope it does in the wake of the census. In the  
2 legislature today, Your Honor, to date as of today no  
3 legislation has literally been introduced for either  
4 congressional or legislative districting.

5 Later this week on Thursday a committee of the  
6 Wisconsin State Assembly will conduct a hearing on a  
7 congressional district proposal that has been proposed by the  
8 legislative reference bureau but not yet introduced in bill  
9 form. Late last year, Your Honor, the legislature also  
10 conducted a single hearing on congressional districting. To  
11 my knowledge, however, no hearings have been conducted on  
12 legislative districting. And without elaborating I think  
13 that's a fair summary, sir, of where things stand at the  
14 moment.

15 THE COURT: Does anyone view matters any different?

16 MR. MAY: Your Honor, Michael May. I believe that  
17 some of the hearings conducted by the legislature also did  
18 concern state legislation or redistricting in the broadest  
19 sense. But there is not a proposal before any committee or  
20 having been introduced with respect to state legislative  
21 redistricting. So I think with that one minor correction I  
22 don't have any further corrections to what Mr. Williamson put  
23 forth.

24 MR. TROUPIS: Your Honor, James Troupis for Jensen  
25 and Panzer. A couple of things, I think. First of all, the

1 congressional remap that has been the subject of these  
2 proceedings later this afternoon or tomorrow will be getting a  
3 bill number in the state house and at that point it will go to  
4 committee hearings. We fully expect, that is, the leadership  
5 of the Assembly, that that bill will, in fact, pass the  
6 Assembly sometime later this month. And that the only  
7 obstacle to its being enacted is Senator Chvala and the Senate  
8 leadership who may or may not take up the bill.

9 But the defendants Jensen and Panzer believe that, in  
10 fact, it will pass out of the Assembly substantially in the  
11 form that it is and it will happen sometime later this month  
12 on a normal calendar of the legislative session. For that  
13 reason we had indicated to the Court we'd sent a letter late  
14 last week indicating on issues of scheduling, for example,  
15 that the Jensen defendants, intervening defendants, maintain  
16 only, no longer believe that the schedule, whatever the  
17 schedule might be with regard to the congressional ought to be  
18 controlled by us because Mr. Williamson and his clients will  
19 pursue it according to what they believe is appropriate.

20 But we have settled that matter as with the Arrington  
21 plaintiffs by suggesting that we will pass a plan that the  
22 Arrington plaintiffs have requested should be passed. The  
23 second thing is is that at the outset, from the very outset  
24 the Jensen intervening defendants have not believed that the  
25 matters of state legislative districts could properly be



1 brought before this Court. The intervening plaintiffs, not  
2 the original plaintiffs, had brought a complaint which was not  
3 filed with this Court until the following order of November  
4 28th. And only they have contended that this Court had  
5 jurisdiction over the state legislative districts, that is,  
6 the Assembly and the state Senate.

7 The opinion of this Court, in fact, notes that the  
8 Jensen intervening defendants have from the beginning said  
9 that we did not believe that that matter should be before the  
10 Court. Nonetheless following the November 28th ruling and the  
11 filing of the complaint by the intervening plaintiffs Chvala  
12 we subsequently filed as Your Honor received today a petition  
13 with the Wisconsin Supreme Court to exercise original  
14 jurisdiction over the state Assembly and state Senate  
15 districts. That is not over the congressional remap because  
16 as I mentioned a moment ago we believe that the congressional  
17 map posed by the Arrington plaintiffs is sufficient and will  
18 take such actions as they request in order that it pass the  
19 legislature in a timely fashion.

20 THE COURT: Are you suggesting it's something that  
21 will pass the legislature as a whole or the Assembly in  
22 particular?

23 MR. TROUPIS: I only have control of the Assembly. I  
24 don't have control of the Assembly. Those are my clients.  
25 And our agreement with the Arrington plaintiffs is to make

1 the, is to recommend an agreement to the leadership and others  
2 and I have every reason to believe many will sign on.

3 As to the senators, I have every reason to believe  
4 that a majority of the senators agree with the plaintiff but  
5 that procedurally the Chvala defendants may block it for the  
6 purpose of negotiations on the upcoming budget. Now, that's  
7 speculation on my part but based upon published reports sounds  
8 pretty good. I don't know what the senators intend to do.  
9 The majority of the senators are controlled by Senator Chvala  
10 but I do believe a majority of the sitting state senators, in  
11 fact, agree with this bill and, in fact, will ultimately  
12 support it and it will pass the legislature and be signed by  
13 the Governor.

14 But as far as the democrats and the state Senate, Mr.  
15 May represents these and may be better able to address what  
16 their attitude is with regard to this plan.

17 THE COURT: Now, I note that your letter requests a  
18 continuation of the stay which is currently scheduled to  
19 expire in February. Can you elaborate?

20 MR. TROUPIS: Yes. We believe that the State Supreme  
21 Court can take one of two actions. It can take the original  
22 jurisdiction which we believe that it will, in which case the  
23 Grove decision and other decisions of the Supreme Court would  
24 indicate that this Court would then defer any action on those  
25 matters that State Courts are acting on until such time as the

1 State Court might act. Two courts ought not be addressing  
2 legislative apportionment at the same time. That decision  
3 should be reached very quickly but could take several weeks.  
4 It could take into early February to have them make that  
5 decision.

6 But the interesting thing that I notice is is that  
7 both parties, the Arrington plaintiffs and the intervening  
8 defendants, have asked that the stay be extended to March 1st,  
9 but we have quite a different definition of what we mean by  
10 continuation of stay. In our view the continuation of the  
11 stay with regard to the legislative districts only ought to  
12 stay all matters related to it so we're not doing all of the  
13 background work and what have you at great cost and expense  
14 while that goes on.

15 Whereas I think the definition that Mr. Williamson  
16 would have is the stay applies only to the potential trial.  
17 But I'm guessing both parties ask for the stay to be extended  
18 to March 1st generally but the reason we had asked for the  
19 stay to be extended beyond February 1st is because we  
20 anticipate that the State Supreme Court may take several weeks  
21 or longer to address its original jurisdiction and to set out  
22 its own schedule to address the apportionment of the state  
23 legislative districts.

24 THE COURT: Are you suggesting by your comments that  
25 where a, where a federal action has been initiated and there

1 is a subsequent state action that Growe in effect dictates to  
2 the Federal Court that it should not proceed?

3 MR. TROUPIS: I believe Growe does. I also believe  
4 that as a matter of comity generally that would be an  
5 appropriate result. The, otherwise we would have, as I said,  
6 a Federal Court addressing the same matters as the State Court  
7 when the Supreme Court and other courts have made it  
8 extraordinarily clear --

9 THE COURT: Now, if I recall correctly Growe is a  
10 case where the state action was filed first, true?

11 MR. TROUPIS: That's right.

12 THE COURT: Whereas here the federal action was filed  
13 first. And Growe also indicated that the Federal Court could  
14 proceed and that in that particular case the problem was that  
15 the District Court in Minnesota, Judge Tunheim, issued an  
16 injunction barring the State Supreme Court from going forward  
17 in the erroneous belief that it was in aid of the Federal  
18 Court's jurisdiction. That case did not say that Judge  
19 Tunheim could not go ahead. Wouldn't you agree?

20 MR. TROUPIS: I would agree that the sequence is what  
21 Your Honor said. I believe that the principle of Growe  
22 straightforwardly is that two actions pending, state and  
23 federal action, must not continue simultaneously to achieve  
24 the same result which, in fact, they would not receive. They  
25 would receive a different type.

1           THE COURT: Aren't you giving that perhaps a little  
2 elasticity that isn't warranted? Doesn't it say must not?

3           MR. TROUPIS: I believe that the Court said the Court  
4 has required federal judges to defer consideration of disputes  
5 involving redistricting where the state through its  
6 legislative or judicial branch has begun to address the  
7 highly --

8           THE COURT: Has begun. That's the key. This is not  
9 a case where anyone has begun. Correct? There is no bill  
10 pending in the legislature and there is no action that has, in  
11 fact, been taken up by the State Supreme Court. Isn't that  
12 true?

13          MR. TROUPIS: The action was filed. The Court has  
14 not yet granted original jurisdiction. That is correct.

15          THE COURT: So no action has taken place, correct?

16          MR. TROUPIS: I believe that once the action is  
17 filed, just as in other areas of the law once it's filed that  
18 has the effect of being filed and, therefore, is ongoing until  
19 the Court itself determines to decline it or send it to  
20 another forum. It doesn't, it isn't --

21          THE COURT: So at this stage the race to the  
22 courthouse, so to speak, was won by the parties who brought  
23 the action here. And the Wisconsin Supreme Court has not  
24 accepted original jurisdiction of the action that you just  
25 filed, correct?

1           MR. TROUPIS: That is correct. It has not granted  
2 it.

3           THE COURT: So if you apply that set of facts to  
4 Grove you do not have a case where actions have begun on the  
5 state level, isn't that true?

6           MR. TROUPIS: Well, I don't think so because --

7           THE COURT: Those actions did not begin before this  
8 Court obtained jurisdiction over this matter, correct?

9           MR. TROUPIS: That is true. But the Grove case --

10          THE COURT: I've heard enough on that point.

11          MR. TROUPIS: That's fine. Thank you, Your Honor.

12          MR. BALISTRERI: Your Honor, Tom Balistreri on behalf  
13 of the, what the clients and I will collectively refer to as  
14 the elections board even though the elections board  
15 technically is no longer a party to this case. The primary  
16 consideration of the elections board is to have some  
17 constitutionally acceptable districts in place in time for the  
18 board to oversee the fall elections that are supposed to be  
19 taking place in this state.

20                 Our timetable is simply this. We are supposed to be  
21 overseeing those elections during the middle of May. We would  
22 like to have some time in order to get everything together  
23 before we have to do those things in the middle of May. And I  
24 think that essentially the timetable we're talking about is  
25 the beginning of May. We don't particularly care if this

1 Court draws the districts. We don't particularly care if the  
2 Wisconsin Supreme Court draws the districts. We don't  
3 particularly care if the Wisconsin legislature draws those  
4 districts. We just need those districts in place by May 1st.

5 And our primary concern is expeditiousness. We want  
6 to take the route that is going to put the new districts on  
7 the map as soon as expeditiously possible. At the present  
8 time it looks like this Court is the most expeditious route to  
9 do that. We've had this action pending for almost a year now.  
10 We have a mechanism proposed for getting districts drawn. We  
11 don't have anything pending presently at least from a  
12 technical perspective in the Wisconsin legislature. We don't  
13 have a case pending in the Wisconsin Supreme Court and will  
14 not have a case pending in the Wisconsin Supreme Court unless  
15 and until it decides to take original jurisdiction.

16 So as far as we're concerned we're very happy with  
17 the jurisdiction of this Court. We're very happy to let this  
18 Court continue to exercise its jurisdiction and draw the new  
19 boundaries in a very expeditious fashion. Thank you.

20 THE COURT: There are a number of motions pending  
21 relating to the scheduling as well as requests to amend. I  
22 would like to first take up the matter of amendment. The  
23 motion to amend the pleadings and to add plaintiffs and to  
24 substitute defendants is docket item 54 filed December 7th.  
25 That motion filed by the intervening plaintiff seeks to add

1 the following members of the Wisconsin Assembly, Spencer  
2 Black, James Kreuser, Spencer G. Coggs and Gregory Huber as  
3 the plaintiffs. Further seeks to substitute R. J. Johnson,  
4 Brenda Lewison, Steven V. Ponto, John C. Schober and Jeralyn  
5 Wendelberger for Don M. Mills, Randall Nash, Gregory J.  
6 Paradise, Catherine Shaw and Judd David Stevenson as  
7 defendants resulting from a change of membership of the  
8 Wisconsin elections board.

9 Further, the motion seeks to have the caption of the  
10 case modified to reflect that Gerald Munderberger rather than  
11 John Savage currently chairs the board. I have a letter on  
12 file indicating that the defendants have no objection and join  
13 in the motion to substitute and I have not heard any response  
14 from the intervening defendants. Should I take the absence of  
15 a response from the intervening defendants as an indication  
16 that it supports the motion?

17 MR. TROUPIS: Your Honor, the reason we had not  
18 responded was procedural. We were unclear that we had been  
19 admitted for purposes of addressing the intervening  
20 plaintiffs' complaint. It was not a technical procedure. So  
21 long as we have an ability to respond and in light of the  
22 other filings that we've had today, you know, we would not  
23 object to making appropriate changes and we certainly will  
24 file appropriate motions with regard to this complaint once  
25 it's filed.



1 THE COURT: Well, I note that under the Federal Rules  
2 of Civil Procedure amendments should be liberally granted and  
3 in this particular instance I find no basis for precluding the  
4 proposed amendment and that request to amend will be granted.

5 Now, I do note that in the request to amend there  
6 were references to other documents. I just like to make a  
7 comment for the record insofar as further proceedings are  
8 concerned so that the parties upon filing various motions will  
9 be fully advised as to how I would like documents submitted.  
10 If a document is submitted let's say, for example, in an  
11 amended complaint it should be complete. It should not refer  
12 to other documents or incorporate other terms by reference.

13 I believe that the amended complaint I saw did  
14 include all of the language, the appropriate language. So but  
15 just so that you're clear, in this case I will ask that a  
16 proposed order be submitted providing for the granting of the  
17 motion and that in addition a new and amended complaint be  
18 filed so that we have a clear line of demarcation indicating  
19 when the complaint has come in with the appropriate caption  
20 and the appropriate parties.

21 MR. TROUPIS: Your Honor.

22 THE COURT: Yes.

23 MR. TROUPIS: May we be granted leave to respond to  
24 that complaint as to clear up the procedural conundrum?

25 THE COURT: Yes. When the amended complaint is filed

1 then I would want a response filed within five business days.

2 MR. TROUPIS: Thank you, Your Honor.

3 MR. MAY: Your Honor, we'll proceed to draft that  
4 order that you requested.

5 THE COURT: All right. Number 63, this motion seeks  
6 leave to amend the complaint to incorporate claims pertaining  
7 to the Senate and Assembly apportionment stated in the  
8 intervenors' complaint. Here the plaintiffs argue that there  
9 can be no prejudice with regard to the proposed amendment  
10 because of its timing following the intervenor plaintiffs'  
11 initial pleadings. I note here that there is no response by  
12 the defendants and intervenor defendants as well. Is the  
13 position of those parties the same as previously stated?

14 MR. BALISTRERI: The defendants have no objection. I  
15 just haven't had time to file a response. We have absolutely  
16 no objection to the motion.

17 THE COURT: Mr. Williamson.

18 MR. WILLIAMSON: Yes, Your Honor, we are the  
19 plaintiffs, the moving parties, and we have submitted a letter  
20 to the clerk dated January 4th in which we ask to withdraw  
21 that motion without prejudice so that the plaintiff might  
22 focus on congressional districting. We've served a copy of  
23 that letter on each of the parties. If the Court does not  
24 have that I would be glad to approach and give the Court a  
25 copy.

1 THE COURT: I do not have a copy in front of me so I  
2 would appreciate that.

3 MR. WILLIAMSON: Might I approach?

4 THE COURT: Yes, please. I will just acknowledge  
5 that it has been a task to get up to speed in this matter and  
6 I certainly want to be fully apprised of where you are with  
7 regard to all these matters and that's one reason I asked for  
8 your comments earlier. Very well. In light of this letter  
9 the motion is withdrawn. Would you make sure I have a copy of  
10 this, Kris, and return this to Mr. Williamson.

11 Next I wish to focus on the timing of further  
12 proceedings. As you know, there is in effect a stay and a  
13 request for a further stay of proceedings and represented by  
14 Mr. Troupis that he believes that certain legislative action  
15 will take place very shortly and in light of that a further  
16 stay is warranted. It's also obvious that an action has been  
17 filed with the Wisconsin Supreme Court and whether or not that  
18 Court will take up the action as an original matter remains to  
19 be seen.

20 I've looked at the schedules which the parties have  
21 proposed and several things are apparent. One, the schedule  
22 proposed by the Jensen party or so-called Jensen plan would  
23 call for continuation of the stay until March and a  
24 legislative trial commencing on or about May 1 of this year.  
25 The so-called Arrington plan proposes the submission of expert

1 witness lists no later than January 25th and the commencement  
2 of a congressional trial on the 4th of March and commencement  
3 of a legislative apportionment trial on the 18th of March.

4 Mr. Williamson, in light of what you said with regard  
5 to the motion which was, which will be withdrawn is your  
6 position concerning the trial in this matter different now?

7 MR. WILLIAMSON: To the contrary, Your Honor. It's  
8 redoubled. With respect to congressional districting only,  
9 only address myself to that issue, all of the parties now  
10 agree that the schedule we proposed to the Court in our  
11 December 19th filing, all of the parties agree that that is an  
12 appropriate schedule. There is no dissent on that point.  
13 Some of us in this room may be optimists, some of us may be  
14 pessimists about the likelihood that the legislature with  
15 respect to congressional districting will pass a plan with the  
16 agreement of both houses and the Governor. But whether we're  
17 an optimist or a pessimist all parties agree that the process  
18 should start and start soon. And that's why we outlined the  
19 dates we did, sir, in the proposal.

20 THE COURT: Now, with regard to the legislative  
21 apportionment trial, can you enlighten me a little further?

22 MR. WILLIAMSON: At the moment, Your Honor, we have  
23 withdrawn our motion with respect to the legislative schedule.

24 THE COURT: Yes.

25 MR. WILLIAMSON: But we feel strongly that the two

1 processes should be different, should be distinct and separate  
2 for reasons that were set out in our memorandum and I will not  
3 repeat them.

4 THE COURT: All right.

5 MR. WILLIAMSON: The Jensen intervening defendants  
6 have proposed a legislative schedule that we support. But  
7 what's absolutely essential is that the two processes be  
8 separate because, quite frankly, the burden on counsel and the  
9 Court to try these two things separate, together, would simply  
10 be overwhelming. And Mr. Balistreri has said for the State of  
11 Wisconsin the key here is having this process completed by  
12 someone by early May. And that's why we think starting in  
13 March, March 4th, with congressional makes the most sense.

14 THE COURT: Well, I certainly want to confirm the  
15 availability of my colleagues with regard to the congressional  
16 trial. Time will be problematic for us in March, I will tell  
17 you that right now. But I will see whether or not I can  
18 determine from my colleagues their availability. I do know  
19 that there is time available in early April for the trial.  
20 And was envisioning perhaps April 11th and 12th. I will see  
21 whether or not it's possible for us to carve out an earlier  
22 date but right now it looks like it may not be possible.

23 On the other hand, it certainly is appropriate that  
24 the stay which was previously entered be vacated in order to  
25 give you an opportunity to initiate all of the steps necessary

1 to bring this matter to trial on the congressional  
2 reapportionment. The schedule that the Arrington plaintiffs  
3 have put forth with regard to expert witnesses appears to be  
4 reasonable. And I note that in light of what Mr. Williamson  
5 has just said about the agreement of counsel it would seem to  
6 follow that the schedule as proposed is one that should be  
7 adopted with regard to congressional matters. Do I hear any  
8 exception to that proposal?

9 That in the absence of comment to the contrary then  
10 the Court will adopt the congressional apportionment schedule  
11 except for that portion concerning the trial date. And I will  
12 have to advise the parties how quickly we will be able to put  
13 that matter on for trial. Are there any dates between the 4th  
14 of March and the 12th of April which present any  
15 insurmountable problems for any one of counsel? Mr.  
16 Williamson.

17 MR. WILLIAMSON: Your Honor, the answer to that  
18 question, speaking only for myself, is no. But might I ask  
19 the Court's indulgence on one point briefly?

20 THE COURT: Yes.

21 MR. WILLIAMSON: In light of the Court's comments  
22 about the Court's own schedule I would request the opportunity  
23 between now and the end of the week to consult with counsel  
24 for all the other parties and submit an agreed upon schedule  
25 that tracks our proposal closely but perhaps not identically

1 in light of the Court's comments.

2 THE COURT: That's fine.

3 MR. WILLIAMSON: Thank you.

4 THE COURT: I don't have a problem with that. But  
5 one of the things I do want to determine before you spend a  
6 lot of time trying to tweak the schedule is the availability  
7 of my colleagues for a trial. And so I will have to do that  
8 first and we will communicate with you through the clerk the  
9 timetable that would best suit the Court and see whether or  
10 not you can work out your various deadlines in light of that  
11 timetable.

12 MR. WILLIAMSON: Your Honor, it's not precisely my  
13 place to ask the Court questions but when might that  
14 information be available?

15 THE COURT: ASAP. That's the best answer I can give  
16 you. I certainly will be in touch with my colleagues after  
17 this hearing. I don't know how quickly I can determine their  
18 schedules or they can get back to me, but the staffs will be  
19 in touch with one another and we will give you as much  
20 information as is available as soon as it's available.

21 MR. WILLIAMSON: I think, Your Honor, that from the  
22 pleadings already before the Court there seems to be a  
23 consensus that two or three trial days would be sufficient for  
24 congressional.

25 THE COURT: That's what we're currently working with,

1 two days. I do want it to be clear that there are several  
2 things that are imperative. One, all briefing must be  
3 completed no later than two weeks prior to the commencement of  
4 the trial. Two, all expert witnesses must, the reports of the  
5 expert witnesses must be made available to opposing parties at  
6 the earliest possible date. Those are the essentials. And I  
7 think that in fairness to both sides that should be done. So  
8 that should be worked into your agreement. I'm certainly not  
9 adverse to the parties working out something. It seems as  
10 though that should not be problematic.

11 MR. WILLIAMSON: Your Honor, then for the record  
12 could I simply state that within three business days of the  
13 parties and counsel learning the Court's trial dates we'll  
14 provide a schedule to the Court based on consultation with all  
15 counsel.

16 THE COURT: That satisfactory to all?

17 MR. BALISTRERI: Yes, Your Honor.

18 MR. TROUPIS: Yes.

19 MR. MAY: Your Honor.

20 THE COURT: Yes.

21 MR. MAY: Just in terms of scheduling, I would simply  
22 note if the Court picked it up but the last week of March  
23 includes both Passover and the Easter holidays so that may  
24 have some impact on people's availability.

25 THE COURT: Well, I don't plan on having much of a



1 vacation. My last vacation consisted of coming to the office  
2 this past few, past couple weeks, so it's not a problem with  
3 me. It should be clear in light of what you've discussed that  
4 the Court is dissolving the current stay immediately. In  
5 light of what we've discussed I don't want to set any other  
6 deadlines at this time. I think that that gets us moving and  
7 I'll await word from my colleagues regarding their  
8 availability. And on the basis of that the parties are asked  
9 to submit their timetables for trial on the congressional  
10 issue. We'll address other scheduling as may be warranted  
11 after that time.

12 We do hope to -- well, let me get to one other point.  
13 At this point no deadline for legislative or judicial action  
14 within the State of Wisconsin has been set. My question to  
15 you is is there any reason why this Court should not set  
16 deadlines in that regard.

17 MR. MAY: Your Honor, can I address that?

18 THE COURT: Yes.

19 MR. MAY: Your Honor, with respect to the legislative  
20 redistricting we would ask that the Court also pursue a date  
21 for a trial with respect to that in the event it needs to come  
22 before the Court. We support the prompt consideration of this  
23 in support of a proposed scheduling order that was filed by  
24 the plaintiffs and agreed to by the plaintiffs and oppose  
25 putting it off. I would note, Your Honor, that as the record

1 stands in front of you today the complaint, intervening  
2 complaint which we filed in December is the only complaint  
3 that addresses legislative issues. And the defendants state  
4 elections board have answered so we have joined issues on  
5 that.

6 The other parties, the original plaintiffs and  
7 intervening defendants have not addressed legislative  
8 redistricting at all until the intervening defendants filed  
9 this action in or petition for original jurisdiction today. I  
10 would note that in that petition that they filed with the  
11 State Supreme Court they assert the redistricting process is  
12 at an impasse. And these deadlines loom. And the first they  
13 cite is the May 14th deadline that we cite in our other  
14 proceedings.

15 We do not have any problem with bifurcating the  
16 hearings on congressional and legislative. But we would ask  
17 the Court to proceed and also look for a trial date with  
18 respect to legislative redistricting. And assuming you want a  
19 similar type of schedule as that for congressional we would  
20 take it upon ourselves to then consult with counsel and try to  
21 put together a schedule for legislative.

22 THE COURT: The reason I didn't specifically address  
23 it is I wanted to get a firm date for the congressional and  
24 then set the other date after that. What I tentatively have  
25 in mind is a schedule that would allow approximately seven

1 days between the two trials. So that's the way that I  
2 envision the cases proceeding. Let's say, for example, if we  
3 were to try this case on the 11th and 12th of April, we have  
4 the congressional part on the 11th and 12th of April -- I have  
5 the wrong calendar up here. Let me see if I can get my -- I  
6 would envision the legislative trial on the 22nd, 23rd.

7 That's just to give you a general idea of the kind of  
8 spacing I had in mind. If we move up the legislative trial,  
9 certainly a consideration of an earlier trial would move up  
10 the congressional, the legislative would be moved up likewise.  
11 But, of course, it's going to depend on my colleagues'  
12 schedule and I don't know exactly what their schedules are  
13 going to be like. My understanding is that Judge Stadtmueller  
14 will be available on the 11th and 12th but I'm not sure about  
15 Judge Easterbrook's schedule. And I am not certain about  
16 Judge Easterbrook's schedule with regard to the latter date.

17 But that's the kind of break that I would envision,  
18 breaking between the two trials to give us time to work on the  
19 congressional and then having the legislative. So I would  
20 just suggest that you be guided by the congressional timetable  
21 and that essentially the same timetable will be adopted for  
22 discovery and exchange of information and reports and expert  
23 vitae, et cetera. And that you stand by for the information  
24 that I hope to make available to you as soon as I can. Would  
25 that be satisfactory to all the parties?

1           MR. BALISTRERI: From the board's perspective, Your  
2 Honor, these dates are cutting it kind of close to the May 1st  
3 deadline and we think is the practical deadline, but as long  
4 as it's not any later than that we would be willing to go  
5 along with it.

6           THE COURT: Again, I would like to move it up if at  
7 all possible.

8           MR. BALISTRERI: We would like you to move it up if  
9 at all possible.

10          THE COURT: At this juncture I'm not sure it's doable  
11 but it's certainly being done with due regard to the pressure  
12 that it places on you as well as on us. We would like to have  
13 a decision by the end of April. That's what we're shooting  
14 for.

15          MR. BALISTRERI: Thank you.

16          THE COURT: Is there anything else at this time?

17          MR. TROUPIS: Yes, Your Honor. With regard to the  
18 legislative calendar schedule that the Court is entertaining,  
19 am I to understand that the deadlines that are established for  
20 the congressional expert reports, et cetera would be seven  
21 days behind those? There is a practical effect of that, you  
22 know, in terms of the way to approach matters. That's my  
23 question. The trial would be seven days later. Would we also  
24 then as the dates we set for congress, for other matters also  
25 follow that same pattern?

1           THE COURT: Well, I'll leave that to the parties. If  
2           you can't work it out then we will impose deadlines. But I  
3           want the parties to try to work out whatever is convenient and  
4           prudent under the circumstances.

5           MR. TROUPIS: Yes. And, Your Honor, with regard to  
6           that same schedule, of course, as we've indicated with the  
7           filing today in the State Supreme Court and the discussion  
8           Your Honor and I had a few moments ago we would actually  
9           expect in the event the State Supreme Court will refuse to  
10          take original jurisdiction of this matter we would move again  
11          for, move appropriately in this Court based upon that.

12          THE COURT: I'm not going to preclude you from filing  
13          whatever you think is appropriate.

14          MR. TROUPIS: Thank you, Your Honor.

15          THE COURT: Again, I want to take up the issue of  
16          deadlines for action in the state. Do the parties wish to be  
17          heard with regard to the imposition of deadlines by the Court?

18          MR. MAY: By that, Your Honor, do you mean a deadline  
19          by which --

20          THE COURT: The deadline for the legislature or the  
21          Supreme Court to act.

22          MR. MAY: I guess, Your Honor, our position would be  
23          at this point in time that this Court ought to simply proceed  
24          and set a trial date. And if the Supreme Court or the  
25          legislature acts in the interim this Court can take notice of

1 that and adjust its schedule as may be appropriate or not. In  
2 other words, it doesn't seem to me that they need to today  
3 tell the legislature if you have not acted by such and such a  
4 date this Court definitely will or will not go to trial. If  
5 you were to pick a date and you think that it's necessary to  
6 do that I would make it at the end of the legislative session  
7 in March, which if memory serves me correct, but I'd want to  
8 check it, is in the neighborhood of March 18th, March 14th.

9 In other words, our position is we have to have a  
10 schedule and be proceeding for trial and in the event  
11 something happens in the interim such that we have a plan  
12 that's passed by the legislature and signed by the Governor  
13 then this Court need not proceed any further.

14 THE COURT: Well, if something is moot obviously --

15 MR. MAY: Right.

16 THE COURT: -- I'd like to be apprised as soon as  
17 that occurs. I can certainly find other things to do with my  
18 time and my colleagues as well. Does anyone else -- Mr.  
19 Williamson, you stood.

20 MR. WILLIAMSON: Thank you, Your Honor. We believe  
21 that the Court should set a deadline. Again, I speak only  
22 with respect to congressional. That the deadline should be  
23 March 14th. That is the concluding date of that particular  
24 floor period. The Court will find in the terms submitted by  
25 Mr. Troupis on or about December 19th a list of the

1 legislative floor periods. Because at the moment the  
2 legislature is not next scheduled to come into session until  
3 April 30th.

4 If, however, the Court feels that this is not the  
5 right time to set a deadline of March 14th we think it would  
6 be advisable if the Court at its convenience would schedule  
7 yet another scheduling session so that we could bring more  
8 current information to the Court's attention sometime early  
9 next month. But to be crystal clear with respect to  
10 congressional, we would ask the Court to set a deadline of  
11 March 14th.

12 THE COURT: Your request is noted. That's all I'm  
13 prepared to address today, unless there's something that the  
14 parties wish to bring to the Court's attention.

15 MR. TROUPIS: Your Honor, one other matter just with  
16 regard to Mr. Williamson's last comment. I think that it  
17 would be appropriate if we were to return for an appropriate  
18 status conference at the end of this month or perhaps the  
19 first week of the following month because by then certainly  
20 events will take place between now and then we may wish to  
21 apprise the Court of and may be the most convenient way to do  
22 so.

23 THE COURT: Let see what our calendar is like, Kris.

24 THE CLERK: January 29th at 9:00 o'clock.

25 THE COURT: All right.

1 MR. WILLIAMSON: Thank you.

2 MR. MAY: Thank you.

3 THE COURT: See you then.

4 (Afternoon proceedings concluded at 3:51 p.m.)

5 \* \* \*

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11 UNITED STATES DISTRICT COURT

12 EASTERN DISTRICT OF WISCONSIN

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16 I, Cynthia M. Bohman, RMR, Official Court Reporter

17 for the United States District Court, Eastern District of

18 Wisconsin, Milwaukee, Wisconsin, hereby certify that the

19 foregoing is a true and accurate transcript of my stenographic

20 notes taken in the foregoing proceedings.

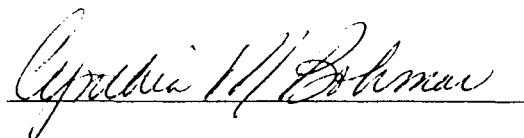
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Official Court Reporter

Dated this 14<sup>th</sup> day of January, 2002.





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## State giving Assembly GOP \$2 million for redistricting fight

### Cash to pay legal fees in political boundaries' redrawing after census

By RICHARD P. JONES  
of the Journal Sentinel staff

*Last Updated: Feb. 22, 2001*

**Madison** - Despite the tightest budget in years, the state is turning more than \$2 million over to lawyers for Assembly Republicans to cover legal fees and other expenses in an anticipated court fight over reapportionment.

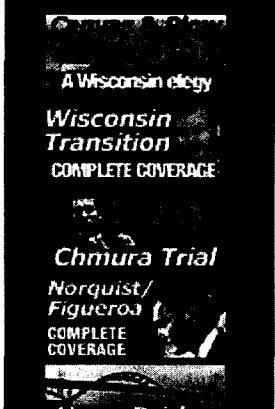
Under terms of the agreement, the state has been paying \$120,000 a month to the firm, Michael, Best & Friedrich, since July, and will continue those payments through November, bringing the total over 17 months to \$2.04 million.

In a letter to Assembly Speaker Scott Jensen (R-Town of Brookfield), the lawyers said the money would be put in an interest-bearing escrow account and will be used to pay fees and expenses.

The money is being set aside as state lawmakers embark upon the once-a-decade process of redrawing legislative boundaries, known as reapportionment or redistricting. Legislative and congressional district

**“The scale of the expenditure that they are proposing is totally unprecedented and . . . simply unethical.”**

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boundaries are configured every 10 years based on the population changes reflected in the latest census.

-- **Shirley Krug, Assembly minority leader**

After the 1980 and 1990 census data came in, the Legislature was able to draw new boundaries for the nine congressional districts to ensure voters equal representation. But when it came to their own districts, state lawmakers could not agree, forcing the courts to do the job.

With Republicans controlling the Assembly and Democrats in control of the Senate, a court battle is expected this time as well.

A decade ago, the total cost of reapportionment expenses for all four caucuses in both houses was just under \$527,600. At the time, Assembly Republicans were in the minority, and their legal tab at Michael, Best & Friedrich was \$204,968. Even with inflation factored in, that would be about \$275,000 in today's dollars.

## Democrats angered

The \$2 million amassed by Assembly Republicans for reapportionment had Assembly Democrats crying foul Thursday.

"The scale of the expenditure that they are proposing is totally unprecedented, and coupled with the fact that state taxpayer dollars are being used to represent the interests of one political party, is simply unethical," said Assembly Minority Leader Shirley Krug (D-Milwaukee).

"This is one of the most bizarre contracting arrangements ever," added Rep. Dave Travis (D-Madison). "The state does not give companies money and wait until later to find out what they're being billed for. The state pays for services rendered.

"Is there any doubt in anyone's mind that they will spend every nickel of that \$2 million?" he asked.

Just this week, Republican Gov. Scott McCallum sent the Legislature a budget with one of the lowest spending increases in 30 years.

"In the backdrop of a state budget that has cuts that are going to negatively impact on a whole variety of people in our state, this is very unsavory, to say the least," Krug said.

## Jensen questions figures

Jensen said Thursday there must be some mistake when asked about the \$2 million legal fund in the works.

"I don't think that's right," he said.  
"That doesn't sound right to me. That number is higher than I was led to believe."

**“There's no intention for the legal bills to reach that high.”**

However, Assembly Chief Clerk John Scocus confirmed the monthly

**-- Scott Jensen, Assembly speaker**

payments of \$120,000 into the fund through Nov. 5 of this year, just as stated on the law firm's letter reviewing terms of the contract.

Still, Jensen said the legal fees would not total \$2 million and that the remainder would be refunded.

"There's no intention for the legal bills to reach that high," he said, adding that actual expenses so far have amounted to \$46,000.

The \$2 million figure seems excessive, especially in light of the tight state budget, said Jay Heck, executive director of Common Cause in Wisconsin.

"In terms of what Governor McCallum's talking about - the most austere budget in years, cuts certainly in the growth of programs, affecting every citizen of this state, education and all the rest - it just seems to me to be a misplaced priority to have so much of that money for a partisan purpose," Heck said.

### **More than \$2 million?**

According to the law firm's letter, legal fees could even exceed \$2 million.

"The trust account arrangement is not meant as a cap on the amount of fees charged for legal services or other fees, costs and expenses," the firm said. "The trust account arrangement is meant solely as a convenience and an additional assurance of payment."

When asked the possibility of a legal bill well beyond \$2 million, Jensen said: "It could go below that. In fact, we believe it will be below that. That's a law firm protecting itself. That's not the intention in the contract. That's fairly standard language, actually, in this sort of contract."

Jensen said whatever remained in the account after expenses would be returned to the state.

Jensen added that he and Senate Majority Leader Chuck Chvala (D-Madison) are working to avoid a court battle. He said Assembly Democrats were raising the issue because he and Chvala have agreed on a strategy to hold down legal costs.

Under that plan, the Senate would provide legal representation to Democrats in the Assembly, while Jensen would see that the law firm representing the Assembly Republicans would provide legal representation to Senate Republicans.

The letter from the law firm lists the going rate for attorneys, up to \$300 an hour

for James Troupis, one of eight Michael, Best lawyers assigned to the case. The firm enlisted a second Milwaukee law firm, Reinhart, Boerner, Van Deuren, Norris & Rieselbach. On its remapping roster is Richard Graber, Wisconsin GOP chairman, whose hourly rate is listed at \$275.

Last fall, Senate Democrats retained the Madison law firm of Boardman, Suhr, Curry & Field. According to a Dec. 4 letter from lead attorney Michael May, he and 10 lawyers will represent the Senate. May listed his hourly rate at \$200; Earl H. Munson had the highest rate, \$220. May said those rates likely would increase.

The Boardman firm required no advance payments or escrow account, said Senate Chief Clerk Donald Schneider. Schneider said the legal bill so far was \$8,674.

Appeared in the Milwaukee Journal Sentinel on Feb. 23, 2001.

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W E D N E S D A Y

# Wisconsin State Journal

JANUARY 9, 2002

MADISON, WISCONSIN

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## Democrats will try to stop surreptitious Assembly decisions

The Organization Committee

By Phil Brinkman  
State government reporter

Approves routine matters, such as paying for private lawyers, without meeting.

The policy, adopted last January, allows the Assembly Organization Committee to approve routine matters by a paper ballot sent to members' offices without actually meeting. Previously, only emergency measures could be approved by committees outside of a formal meeting. Although such votes are public

record, few people know about them because they are not advertised like meetings are. "Secret decision-making flies in the face of Wisconsin's tradition of open government," Assembly Minority Leader Spencer Black, D-Madison, said. Black said Democrats will seek to repeal the rule when the Legislature reconvenes this month.

In September, the Republican-dominated Assembly Organization Committee used a paper ballot to unanimously approving private lawyers to represent employees of the now-defunct legislative caucuses in an ongoing investigation into allegations of illegal campaigning

and destruction of public records.

In the Senate, where the use of paper ballots is a long-standing tradition, the Senate Organization Committee

Please see DECISIONS, Page A7

◆ Judge gets records/B1

## Food aid workers reportedly looting supplies



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## Narrower

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## of 'disability'

## Decisions

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tion Committee approved a similar measure. Neither committee required the approval of their respective houses.

Black, who is a member of the Assembly committee, voted to pay the legal bills, which in the Assembly have climbed to at least \$169,000. Assembly Speaker Scott Jensen, R-Waukesha, has also charged about \$89,000 in private legal bills to negotiate a settlement closing the caucus offices.

But after hours of protest from constituents, the state attorney general and media or-

ganizations, Black said he regrets the committee didn't first hold hearings on the matter. He said he now might support limits on the caucus legal fees.

Using paper ballots, the organization committee in recent months also quietly approved:

- ◆ Paying up to \$985,000 to the law firm Michael Best & Friedrich to help redraw political boundaries after the last census.
- ◆ Hiring lawyers to represent Assembly Chief Clerk John Scocos in a newspaper lawsuit seeking to make public the content of the caucus legal bills.
- ◆ Adopting 120 pages in

new work rules for Assembly staffers, governing everything from personal appearance to possible conflicts of interest. Jensen was out of the office and unavailable for comment, according to his spokesman, Steve Baas. Baas said the Organization Committee uses paper ballots for efficiency.

"It's very difficult to get all the members of leadership together on the same day," Baas said.

Indeed, the committee rarely operates otherwise: Baas said it last met in January 1999. Although a policy allowing paper ballots wasn't adopted until last January, Baas said it had been an informal custom for the committee to operate that way before then.

ing, the Senate Republicans said they'd ban for two years state borrowing for building projects. But Democrats said that could hurt biotechnology research at UW-Madison, because it could delay the planned building of labs there.

The Senate Republicans also said as many as 3,700 state workers could be laid off under their plan. In addition, they'd save \$30 million by preventing anyone younger than 57 from claiming the Homestead Tax Credit on income tax forms.

Black said that amounts to a tax hike for 70,000 low-income people under 57 who now claim the credit. Some would see their state income taxes jump by more than \$1,000. Black said.



Associated Press

**An Indian army officer measures the height of a youth during a physical test in a recruitment drive by the Indian army in Jalandhar, India, Tuesday, Pakistan's president, Gen. Pervez Musharraf, said he renounces terrorism, but it appeared Tuesday that India wants to hear more before it might discuss an end to the crisis that has put the nuclear-armed rivals on the brink of war.**

for the long-festering dispute over Kashmir, a region that both India and Pakistan claim. They have fought two wars over Kashmir since their independence from Britain in 1947.

He also apparently will lay out plans for transforming Pakistan from an economic backwater and haven for Islamic extremists into what Lieberman described as a "modern and moderate" nation that could serve as a model for the Muslim world.

Lieberman said he hoped Musharraf's proposals would be "so bold and principled and fresh that they will encourage a response from the Indian government."

India in recent weeks has deployed missiles, tanks, heavy

## Budget

Continued from Page A1

hold their spending level steady," said Steve Baas, a spokesman for Assembly Speaker Scott Jensen, R-Waukesha. "Families do this all the time. Businesses do this all the time."

But Richard Eggleston, a spokesman for the 38-member Alliance of Cities that includes Madison, called the proposal "a recipe for disaster." Freezing spending — including worker pay — at the local level would likely violate union contracts, he said. The only alternative would be cuts in local services: "fewer cops on the street, fewer

road crews filling potholes, fewer firefighters."

Cowles said the Republicans "don't underestimate the pain on this. But we don't want to raise taxes."

The state budget could be \$1.3 billion or more out of balance because of slowing tax revenue. A more precise estimate of the state budget deficit is expected next week, after which Republican Gov. Scott McCallum will send a budget repair bill to the Legislature.

Tim Roby, a spokesman for the governor, said McCallum "warmly received" the proposal to freeze spending and property taxes Tuesday.

Besides freezing state spend-

