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TO: Clerk of Court, Wisconsin Court of (608) 267-0640
Appeals/Supreme Court

FROM: Jeremy P. Levinson, Esq.

RE: *Dennis Clinard et al. v. Michael Brennan et al.*, Appeal Number 2011AP002677 –
OA and Waukesha County Case Number 2011CV003995

DATE: December 2, 2011

TIME: 3:00 p.m.

OUR FILE NUMBER: 9004.004

OF PAGES (INCLUDING COVER): 3

Please see the attached. Thank you.

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CLERK OF SUPREME COURT
OF WISCONSIN

ANY QUESTIONS, PLEASE CALL: Jeremy/Ingrid at (414) 271-0130

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December 2, 2011

VIA FACSIMILE

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CLERK OF SUPREME COURT
OF WISCONSIN

Re: *Dennis Clinard et al. v. Michael Brennan et al.*, Appeal Number 2011AP002677 – OA
and Waukesha County Case Number 2011CV003995

Dear Clerk,

I am writing on behalf of the Intervenors in Appeal Number 2011AP002677 – OA in connection with Petitioners' submission earlier today of a "Voluntary Withdrawal of Petition." I respectfully submit that that document should not be permitted to obstruct the prompt and efficient adjudication of the merits for which the Court's recent orders provided.

One week after filing their Petition in this Court, Petitioners filed a duplicate action in Waukesha County Circuit Court involving the same parties named in the Supreme Court and raising the same issues. In both proceedings, Petitioners seek to have a three judge panel appointed by this Court pursuant to §§ 801.50(4m) and 751.035, Wis. Stats. Both proceedings seek a declaration of the validity of the Legislature's 2011 Redistricting Plan (an issue well on its way to resolution in federal court) and a declaration that the legislative districts created in 2002 have become unconstitutional over time. Finally, both seek an order effectively making the 2011 Redistricting Plan effective well in advance of the effectiveness provision passed by the Legislature, undermining presently ongoing efforts to have recall elections ordered for certain state senators. Because these statutes contemplate that a challenge to the apportionment of legislative districts filed in a circuit court shall be transmitted to the Clerk of the Supreme Court, the distinction between the proceedings is an empty formality for present purposes.

On November 30, 2011, we moved to intervene in the proceeding before this Court. We also filed a motion to dismiss the Petition in this Court on the merits. On December 1, 2011, the Court granted our motion to intervene and ordered very prompt briefing of a number of substantive matters, including those raised by our motion to dismiss. All parties are poised to address the substantive issues in filings next week.

Today, Petitioners filed what purports to be an attempt to "withdraw" the Petition pending before this Court. While unclear, it may be that Petitioners intend to pursue this matter through the proceeding initially filed in Waukesha. If so, "withdrawal" of the Petition before this Court

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would have only the effect of undermining the Court's orders for prompt briefing of the merits, creating further delay and uncertainty.

Section 805.04(1), Wis. Stats., specifically precludes this kind of procedural manipulation. Pursuant to that statute, our motion to dismiss relieved Petitioners of the ability to unilaterally terminate the proceeding. While the statute requires a stipulation of the parties for dismissal or "withdrawal," no such stipulation exists. In order to ensure that the purpose and intent of the Court's orders in this matter are met, I request the following:

1. That the two proceedings be consolidated or otherwise treated as unified;
2. That my clients are deemed intervening parties in both proceedings; and
3. That briefing of the merits goes forward as laid out by the Court's orders.

Thank you for your attention to this matter.

Very truly yours,

FRIEBERT, FINERTY & ST. JOHN, S.C.



Jeremy P. Levinson
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JPL/ier

cc Maria S. Lazar, Esq. – Via E-mail & U.S. Mail
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