

## OFFICE OF THE CLERK

**Supreme Court of Wisconsin**

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November 30, 2011

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You are hereby notified that the Court has entered the following order:

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No. 2011AP2677-OA      Clinard v. Brennan

A petition for appointment of a 3-judge panel pursuant to Wis. Stat. §§ 751.035 and 801.50(4m) or, in the alternative, for leave to commence an original action seeking declaratory judgment and other relief has been filed on behalf of petitioners Dennis Clinard, Erin M. Decker, Luonne A. Dumak, David A. Foss, LaVonne J. Derksen, Pamela S. Travis, James L. Weiner, Jeff L. Waksman and Kevin Cronin. The petition names the following individuals as involuntary plaintiffs: Alvin Baldus, Cindy Barbera, Carlene Bechen, Elvira Bumpus, Ronald Biendseil, Leslie W. Davis III, Brett Eckstein, Gloria Rogers, Richard Kresbach, Rochelle Moore, Amy Risseeuw, Judy Robson, Jeanne Sanchez-Bell, Cecelia Schliepp and Travis Thyssen. The petition names the following individuals, in their respective capacities as officers, members, counsel or employee of the Government Accountability Board (GAB), as respondents: Michael

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Brennan, David Deininger, Gerald Nichol, Thomas Cane, Thomas Barland, Timothy Vocke, and Kevin Kennedy. Upon consideration of the petition and supporting materials;

The court will order simultaneous briefing as follows:

IT IS ORDERED that the petitioners shall file a memorandum with the clerk of this court by 12:00 p.m. on December 6, 2011. A single, joint memorandum on behalf of all of the petitioners shall be permitted but is not required. The petitioners shall file an original and twelve copies of their memorandum and any supporting materials.

The petitioners' memorandum shall address the following issues:

1. Do Wis. Stat. §§ 751.035 and 801.50(4m) apply to an action filed originally in the Supreme Court of Wisconsin? Is "receiving notice under s. 801.50(4m)" a condition precedent under Wis. Stat. § 751.035 to any obligation of this court to appoint a panel of circuit court judges to hear a matter involving a challenge to apportionment? Inasmuch as the language of Wis. Stat. § 751.035 uses the mandatory "shall appoint," does this court have discretion not to appoint a panel under Wis. Stat. § 751.035 in the action filed in this court? Does the filing of the summons and complaint in Clinard v. Brennan, Waukesha County Case No. 2011CV3995, affect the petition filed in this court?
2. Should the Wisconsin state courts defer from proceeding with the petition in this matter in light of the action already pending in the United States District Court for the Eastern District of Wisconsin (Baldus v. Brennan, Case No. 11-cv-562 (E.D. Wis.)) or should apportionment matters be heard in state courts despite the presence of a pending federal action on the subject? See, e.g., Grove v. Emison, 507 U.S. 25 (1993); Jensen v. Wisconsin Elections Bd., 2002 WI 13, 249 Wis. 2d 706, 639 N.W.2d 537. What impact if any, does the language of Wis. Stat. § 751.035 ("the supreme court shall appoint"), if it is applicable to the action filed in this court, have on the question whether this court should defer from proceeding on this matter in light of the pending federal action?

IT IS FURTHER ORDERED that by 12:00 p.m. on December 6, 2011, the respondents shall file a memorandum with the clerk of this court. The memorandum shall respond generally to the petition filed in this court and shall address, inter alia, the issues identified above. A single, joint memorandum on behalf of all of the respondents in their official capacities shall be permitted but is not required. The respondents shall file an original and twelve copies of their response(s) and any supporting materials.

IT IS FURTHER ORDERED that by 12:00 p.m. on December 6, 2011, the involuntary petitioners shall file a memorandum with the clerk of this court. The memorandum shall respond

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generally to the petition filed in this court and shall address, inter alia, the issues identified above. A single, joint responsive memorandum on behalf of all of the involuntary petitioners shall be permitted but is not required. The involuntary petitioners shall file an original and twelve copies of their memorandum and any supporting materials.

IT IS FURTHER ORDERED that petitioners, respondents, and involuntary petitioners each may file a responsive memorandum by 12:00 p.m. on December 9, 2011. The parties shall file an original and twelve copies of their responsive memorandum and any supporting materials.

The listing of the issues set forth above should not be construed as an indication whether or not the court intends to appoint a panel pursuant to Wis. Stat. §§ 751.035 and 801.50(4m) or grant leave to commence an original action in this case.

Prosser, J., did not participate.

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A. John Voelker  
Acting Clerk of Supreme Court