



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

17 W. Main Street
P.O. Box 7857
Madison, WI 53707-7857
www.doj.state.wi.us

Steven C. Kilpatrick
Assistant Attorney General
kilpatricksc@doj.state.wi.us
608/266-1792
FAX 608/294-2907

March 14, 2022

Via Email and Hand Delivery

Ms. Sheila T. Reiff
Clerk of Supreme Court
110 East Main Street, Suite 215
Madison, WI 53701-1688

Re: *Johnson v. Wisconsin Elections Commission*,
Case No. 2021AP1450-OA

Dear Ms. Reiff:

We write on behalf of Respondents, Wisconsin Elections Commission and all six commissioners in their official capacities (the “Commission”), in the above-referenced original action.

This Court issued a decision dated March 3, 2022, enjoining Wisconsin’s existing congressional (and legislative) districts and ordering new district plans as proposed by Governor Evers. On March 7, Congressmen Grothman, Gallagher, Steil, Tiffany, and Fitzgerald (the “Congressmen”) filed an emergency motion for an order staying this Court’s judgment “pending their filing of a petition for certiorari with the U.S. Supreme Court and permitting all parties to submit equipopulous, core-retention-maximization congressional maps this week.”¹ On March 11, this Court ordered that any party wishing to file a response to the Congressmen’s motion to file a letter brief no later than 11:00 a.m. today. The Commission files this letter brief in response.

¹ On March 9, the Congressmen filed with the U.S. Supreme Court an emergency application for stay pending petition for writ of certiorari or, in the alternative, a petition for a writ of certiorari and summary reversal.

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Throughout this original action (and in the concurrent consolidated federal district court action), the Commission has taken a neutral position on the merits of the case—that is, which party’s maps, based on the results of the 2020 census, should govern the state’s subsequent elections. But the Commission has consistently asserted that final maps must be chosen in time to implement them before April 15, when the period begins for circulating candidate nominating petitions. By that time, candidates need to know which district they reside in and which office they can run for, and voters need to know which candidates’ petitions they can properly sign.

That implementation takes time, and the Commission asked that any redistricting plan “needs to be in place no later than March 1, 2022, in order to enable staff of the Wisconsin Elections Commission to timely and effectively administer Wisconsin’s next scheduled congressional and state legislative election.” (E.g., Answer to Omnibus Amended Petition by Wisconsin Elections Commission Respondents ¶ 137; *see also* Commission Ltr. Br. dated Oct. 13, 2021.) While the Court issued its March 3 decision approving Governor Evers’s maps two days after the March 1 date, the Commission staff has worked since then to effectively implement the maps for the next election for congressional and state legislative seats without an unreasonable risk of errors and while meeting all statutory deadlines.

Commission staff began that work promptly upon this Court’s issuance of its decision, and the work is ongoing. Although the data files for those maps have not yet been analyzed completely by LTSB for use by the Commission and local election officials, Commission staff has been able to perform a significant amount of preliminary implementation work using information in its possession.² If the Congressmen’s stay were entered and the parties were permitted to submit new maps from which this Court would choose for use pending appeal, some of this necessary work would need to be redone.

² The Wisconsin Legislature, in its reply in support of its emergency motion for stay filed with the United States Supreme Court, understood the Commission to be stating that it was not yet specifically implementing the Governor’s maps. That is incorrect. Although the work already being performed by Commission staff is being done without map data files fully analyzed by LTSB, some of that work is nevertheless tailored to implementing the particular maps approved on March 3.

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Further, the Commission needs to carry out additional work. This week the Commission expects to receive analyzed district data from the Legislative Technology Services Bureau (LTSB) and a publicly available version of the assembly, senate and congressional districts, with a list of municipalities (and wards within those municipalities) that are being split. These materials will allow the Commission to contact those municipalities and counties. In turn, those local governments will then be able to determine where new assembly, senate, and congressional district lines require existing wards to be split or renumbered. Notably, Wis. Stat. § 5.15(4) provides that the municipal governing body must amend the ordinance or resolution by April 10, 2022, if a new congressional (or legislative) redistricting plan establishes a district boundary that does not coincide with a ward established under a municipality's ordinance or resolution. These local governments must then provide that information to the Commission so it can update the WisVote system before April 15, 2022.³ Once the new map boundaries are recorded in WisVote, the new redistricting data must be integrated with existing voter registration and address data, and ward map changes and parcel boundary data must be manually reviewed to ensure that each voter is correctly located in their proper districts. Again, receipt of the aforementioned data and information from LTSB has not occurred and is taking longer than the Commission expected, and staff must immediately begin these tasks as soon as the data is transmitted.

In short, implementing new maps even after a few days' delay would create a grave risk of introducing significant inaccuracies into the WisVote system, would generate a situation in which candidates will not know what district they are in when they circulate nomination papers and voters won't know what district they are in to sign nomination papers, and could even prevent the April 15 deadline from being met at all. If a stay were entered, local governments might not have enough time to act on the ward splits and candidates and voters would not have adequate time to understand the new maps and participate in the process.

³ Other interested parties will also then be able to download data from the LTSB website.

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Sincerely,

ERIC J. WILSON
Deputy Attorney General



Steven C. Kilpatrick

Karla Z. Keckhaver
Thomas C. Bellavia

Assistant Attorneys General

SCK:aej

cc: All parties via electronic mail