No. 21A471

In The
Supreme Court of the United States

THE WISCONSIN LEGISLATURE, *et al.*

v.

THE WISCONSIN ELECTIONS COMMISSION, *et al.*

On Application for Stay and Injunctive Relief and
Alternative Petition for Writ of Certiorari
and Summary Reversal

To the Honorable Amy Coney Barrett
Associate Justice of the United States Supreme Court and
Circuit Justice for the Seventh Circuit

MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF, MOTION FOR LEAVE TO FILE BRIEF ON 8 ½ BY 11 INCH PAPER, AND *AMICUS CURIAE* BRIEF OF RON HOFF SUPPORTING APPLICANTS

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MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

Mr. Ron Hoff respectfully moves under Supreme Court Rule 37.2(b) for leave to file a brief as Amicus Curiae supporting Applicants the Wisconsin Legislature, Billie Johnson, Eric O'Keefe, Ed Perkins, and Ronald Zahn.

IDENTITY AND INTERESTS OF MOVANT[1]

Mr. Ron Hoff served as the clerk of Vernon County for eighteen years, until his retirement in 2021. As a county clerk, Mr. Hoff was the elected official tasked with election administration in his jurisdiction. Given his tenure, Mr. Hoff has unique, on-the-ground experience regarding which decisions make conducting elections in Wisconsin easier and harder. Given his vantage point, Mr. Goff offers the following to aid the Court's analysis as it decides whether to grant the injunction relief sought by the Applicants.

[1] Consistent with Federal Rule of Appellate Procedure 29(a)(4)(E) and this Court's Rule 37.6, counsel for Movant and Amicus Curiae authored these motions and brief in whole, and no counsel for a party authored the motions and brief in whole or in part. No party or counsel for any party made a monetary contribution to preparation or submission of the motions and brief. Counsel for Applicants have consented to the filing of this brief. Respondents Governor Evers, BLOC, and the Congressmembers provided consent. Respondent the Wisconsin Elections Commission took no position on this filing. Counsel for the remaining Respondents did not respond before this motion and the accompanying brief were filed.

REASONS TO GRANT LEAVE TO FILE AMICUS CURIAE BRIEF

This application presents issues related, at their core, to the best and most efficient way to administer the rapidly approaching 2022 election cycle in the State of Wisconsin. Mr. Ron Hoff, proposed Amicus Curiae, served as a County Clerk in Wisconsin for eighteen years before his retirement in 2021. During that time, Mr. Hoff administered numerous elections for the constituents of Vernon County.

Because Mr. Hoff can provide a unique vantage point into the election process that will be underway shortly in Wisconsin, his submission will materially help the Court as it decides how to resolve this application.

For the foregoing reasons, the motion should be granted.

March 11, 2022

Respectfully submitted,

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MOTION FOR LEAVE TO FILE BRIEF ON 8 ½ BY 11 INCH PAPER

Amicus respectfully moves for leave of Court to file its brief supporting Applicants on 8 ½ by 11-inch paper rather than in booklet form. In support, Amicus asserts that the Application for Stay and Injunctive Relief and Alternative Petition for Writ of Certiorari and Summary Reversal filed by Applicants was filed on Friday, February 25, 2022. The expedited filing of the application and the resulting compressed deadline for any response prevented Amicus from properly preparing this brief for printing and filing in booklet form. Nonetheless, Amicus desires to be heard on the Application and requests the Court grant this motion and accept the paper filing.

March 11, 2022

Respectfully submitted,

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INTEREST OF AMICUS CURIAE[2]

Mr. Ron Hoff served as the clerk of Vernon County for eighteen years, until his retirement in 2021. As a county clerk, Mr. Hoff was the elected official tasked with election administration in his jurisdiction. Given his tenure, Mr. Hoff has unique, on-the-ground experience regarding which decisions make conducting elections in Wisconsin easier and harder. Given his vantage point, Mr. Goff offers the following to aid the Court's analysis as it decides whether to grant the injunction relief sought by the Applicants.

[2] Consistent with Federal Rule of Appellate Procedure 29(a)(4)(E) and this Court's Rule 37.6, counsel for Movant and Amicus Curiae authored these motions and brief in whole, and no counsel for a party authored the motions and brief in whole or in part. No party or counsel for any party made a monetary contribution to preparation or submission of the motions and brief. Counsel for Applicants have consented to the filing of this brief. Respondents Governor Evers, BLOC, and the Congressmembers provided consent. Respondent the Wisconsin Elections Commission took no position on this filing. Counsel for the remaining Respondents did not respond before this motion and the accompanying brief were filed.

INTRODUCTION & SUMMARY OF THE ARGUMENT

Although elections are partisan and almost always hard fought, election administration cannot be, and need not be. In *Purcell v. Gonzalez*, the Court recognized as much. 549 U.S. 1 (2006). It adopted a do-no-harm (or, at least, do-minimal-harm) principle when litigation arises close to an election. Specifically, because court-ordered alterations to voting laws can prompt a cascade of changes that might cause voter confusion and hurt election integrity, the Court has stayed its hand (and has stayed disruptive lower-court orders) when requests for injunctive relief arise too close to an election.

Although the *Purcell* Principle counsels against entry of injunctive relief in the many election cases decided close in time to elections, this case is not of the same character. Before the Wisconsin Supreme Court adopted Governor Tony Evers's proposed State Senate and Assembly voting-district maps on March 1, 2022 (i.e., ten days before this filing), the impasse between Governor Evers and the Wisconsin Legislature meant that the State had no post-2020 Decennial Census maps on which any voter, candidate, or election official could rely. With regard to Wisconsin's voting districts, the electoral map was largely a blank slate, and unknown to anyone outside the members of the State's Supreme Court until just days ago.

For that reason, Mr. Hoff respectfully requests that the Court enter the injunction requested by the Applicants and order Wisconsin to implement the voting districts submitted by the Wisconsin Legislature. To be certain, Mr. Hoff

expresses no opinion regarding the contested Voting Rights Act and Equal Protection questions motoring the case to this Court's docket. The resolution of those issues will arrive in due course after the lawyers on both sides have provided the Court with their respective analyses and after the Court has weighed the merits of each side's argument.

Meanwhile, however, the 2022 General Election cycle is upon us. Wisconsin needs voting-district boundaries in place to administer those contests. Given the virtual blank slate that is the current state of Wisconsin redistricting, the Court can (and should) issue interim relief designed to ensure a smooth election. And as a former elected official tasked with administering elections in Wisconsin, Mr. Hoff is uniquely well-suited to explain how the Court can help prevent election complications in the short term while the Court takes the time it needs to sort out the constitutional and statutory issues at the heart of this case.

Because county and municipal clerks are elected to serve specific counties and municipalities, adopting maps that split the fewest counties and municipalities ensures, as much as is practicable, efficient election administration. Between the two maps seriously considered by the Wisconsin Supreme Court, the map offered by the Legislature splits less than half the counties and municipalities that the Governor's map splits. And because *Purcell* exists to ensure that elections are administered efficiently even during the pendency of hard-fought litigation, *Purcell* and its progeny counsel in favor of adopting the Legislature's maps for the 2022

Election Cycle. For these reasons and those that follow, Mr. Hoff respectfully requests that the Court grant the Applicants' request for an injunction.

ARGUMENT

To understand why the *Purcell* Principle counsels for granting the Applicants' request for injunctive relief, the Court should keep in mind why it adopted the *Purcell* Principle in the first place. In the case that bestowed upon the Principle its name, the Court observed that "orders affecting elections . . . can themselves result in voter confusion and consequent incentive to remain away from the polls"; "[a]s an election draws closer," naturally, "that risk will increase." *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006). "Given the imminence of [an] election and" the resulting "inadequate time to resolve . . . factual disputes," *id.* at 5-6, the Court has adopted, and repeatedly enforced,[3] the path of least disruption when asked to adjudicate voting-rights cases when they arise close to an election. *Id.* at 5-6.

In a case like this, though—i.e., one in which no reliance interests in current voting boundaries have arisen, and no preparation based on the current voting boundaries has occurred—the calculus changes. The Court should still consider how

[3] *See, e.g.*, *Tennant v. Jefferson Cnty. Comm'n*, 567 U.S. 763 (2012); *Karcher v. Daggett*, 455 U.S. 1303 (1982) (Brennan, J., in chambers); *Gill v. Whitford*, 137 S. Ct. 2289 (2017); *Rucho v. Common Cause*, 138 S. Ct. 923 (2018); *North Carolina v. Covington*, 138 S. Ct. 974 (2018); *Abbott v. Perez*, 138 S. Ct. 49 (2017); *North Carolina v. Covington*, 137 S. Ct. 808 (2017); *Perry v. Perez*, 565 U.S. 1090 (2011); *Miller v. Johnson*, 512 U.S. 1283 (1994); *Chabot v. Ohio A. Philip Randolph Inst.*, 139 S. Ct. 2635 (2019); *Mich. Senate v. League of Women Voters of Mich.*, 139 S. Ct. 2635 (2019); *Andino v. Middleton*, 141 S. Ct. 9 (2020); *Clarno v. People Not Politicians Or.*, 141 S. Ct. 206 (2020); *Little v. Reclaim Idaho*, 140 S. Ct. 2616 (2020); *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. 1205 (2020). *See also Chisom v. Roemer*, 853 F.2d 1186, 1190 (5th Cir. 1988).

its actions might disrupt a forthcoming election. But where, as here, the State redistricting process remains essentially at square one, *Purcell*'s foundational interest instead counsels in favor of Court action.

I. USING THE LEGISLATURE'S MAP FOR THE 2022 GENERAL ELECTION CYCLE WILL ALLEVIATE THE COMPLEXITY THAT USING THE GOVERNOR'S MAP WOULD TRIGGER.

At issue in this case are Wisconsin's State Senate and Assembly Districts. After the 2010 Decennial Census, Wisconsin adopted Senate and Assembly voting maps that included six majority-Black Assembly districts and two majority-Black Senate districts. About a week and a half ago, the Wisconsin Supreme Court adopted new maps submitted to it by Wisconsin Governor Tony Evers. In so doing, the State High Court selected maps that increased the number of majority-Black Assembly Districts from six to seven.

Municipal and county clerks run Wisconsin's elections for the State's cities, towns, and villages. *See* WIS. STAT. § 7.10 (county clerks); *id.* § 7.15 (municipal clerks). The nearly 2,000 clerks in the State handle all the routine, yet crucial, electoral tasks, including, among other things, registering voters, recruiting poll workers, processing requests for absentee ballots, and counting votes. *See id.* Which clerk provides these services to which Wisconsin voter is determined entirely based on where that voter lives. *See id.*

Several broad points are worth underscoring for the Court. First, because Governor Evers vetoed the maps passed by the Wisconsin Legislature, and because Wisconsin was not free to use the maps enacted after the 2010 Decennial Census, the State did not have voting districts that would allow the clerks to begin their

work until the Wisconsin Supreme Court adopted them less than two weeks ago. Second, elections in Wisconsin are rapidly approaching; the primary election is scheduled for August 9, 2022, and the general election will occur on November 8, 2022. Third, election administration in Wisconsin becomes easier when fewer counties and municipal subdivisions are split by State Senate and Assembly districts.

Based on these three points, Mr. Hoff respectfully submits that granting the Applicants' request for injunctive relief (*i.e.*, mandating use of the Legislature's maps for the 2022 Election Cycle while the Court decides the merits of this case in the normal course) would be the least disruptive outcome. As noted above, no work had been done to implement the Governor's voting maps until last week; before the Wisconsin Supreme Court adopted them on March 1, 2022, they had no legal effect, and no election official, voter, or candidate had any reliance interest in them.

The Legislature's maps, in turn, split far fewer counties and minor civil divisions. Specifically, the Governor's map splits 45 counties and creates 136 county segments while the Legislature's splits only 42 counties and creates only 115 segments. The difference regarding the minor civil divisions is even more pronounced. The Governor's map splits 117 towns, cities, and villages while creating 252 minor-civil-division segments. The Legislature's, in turn, splits only 28, and creates only 62 segments.

Therein lies the administrative problem and the natural solution. Should the Court leave in place the Governor's map while it decides this case in the normal

course, clerks across the State will have to start from scratch in preparing for the rapidly approaching election cycle. At least 162 county and municipal clerks will have to navigate voting districts that split the communities they were elected to serve. But if the Court were to grant the Applicants' request for injunctive relief and require Wisconsin to use the Legislature's maps, it would reduce the number of clerks that need to navigate such complexity to 70—less than half the number burdened by the Governor's maps.

II. USING THE LEGISLATURE'S MAP FOR THE 2022 GENERAL ELECTION CYCLE BEST SATISFIES *PURCELL*'S FOUNDATIONAL PREMISES.

This Court (and others) have applied the *Purcell* Principle in a wide variety of cases, but the fundamental reason underlying its existence has remained constant. Roughly a month ago, this Court applied it to stay an order from a three-judge Middle District of Alabama panel that, if allowed to take effect, would represent a "prescription for chaos for candidates, campaign organizations, independent groups, political parties, and voters, among others." *Merrill v. Milligan,* Nos. 21A375 (21-1086), 21A376 (21-1087), 2022 U.S. LEXIS 760, at *3 (Feb. 7, 2022), (Kavanaugh, J, concurring). More critically, Justice Kavanaugh's *Merrill* Concurrence noted that "state and local election officials need substantial time to plan for elections." *Id*. at *4.

This point is crucial. "Running elections state-wide is" indeed "extraordinarily complicated and difficult." *Id*. Elections "require enormous advance preparations by state and local officials, and pose significant logistical challenges." *Id*. In the best of times, elections require "heroic efforts by . . . state and local

authorities." *Id*. When times are less than ideal, "avoid[ing] chaos and confusion" remains the watchword. *Id*.

Although courts have typically relied on the *Purcell* Principle in declining to grant injunctive relief too close to an election (or staying lower-court orders that grant injunctive relief too close to an election), the fundamental premise is that "[w]hen an election is close at hand, the rules of the road must be clear and settled." *Id*. In many (perhaps most) cases, entry of injunctive relief by an Article III court clouds election administration. But where, as here, (and as discussed above), injunctive relief would clarify and simplify election administration, fealty to the *Purcell* Principle counsels in favor of Court action.

Purcell, distilled to its essence, exists to ease the burden on state and local election officials as they undergo the "enormous advance preparations" required to run General Elections, all of which "pose significant logistical challenges" and require "heroic efforts." *Merrill*, Nos. 21A375 (21-1086), 21A376 (21-1087), 2022 U.S. LEXIS 760, at *4 (Kavanaugh, J, concurring). Successfully navigating these logistical challenges prevents "voter confusion and consequent incentive to remain away from the polls." *Purcell*, 549 U.S. at 4-5. For that reason, and based on the foregoing, Mr. Hoff respectfully submits that fealty to the *Purcell* doctrine's foundation counsels in favor of granting the Applicants' request for injunctive relief

and ordering Wisconsin to implement the Legislature's proposed maps for the 2022 election cycle.[4]

CONCLUSION

Mr. Hoff will leave argument regarding the merits of the Voting Rights Act and Equal Protection questions at the heart of this case in the hands of the individuals litigating the merits of it. Given his unique vantage point—i.e., a former clerk with experience administering Wisconsin's elections—Mr. Hoff offers his perspective to assist the Court as it assesses how to apply the *Purcell* Principle in this case. And placed in the context of this case (in particular) and the Wisconsin election machinery (in general), the *Purcell* Principle counsels in favor of granting the Applicants' requested injunction and ordering that Wisconsin must use the Legislature's proposed map for the 2022 election cycle.

For the foregoing reasons, Mr. Hoff respectfully requests that the Court grant the Applicants' request for injunctive relief and order Wisconsin to use the Legislature's proposed maps for the 2022 election cycle.

[4] Furthermore, the map produced by the Wisconsin Legislature should receive a deference not afforded to other maps because it is the effectuation of the will of the people. *See* U.S. Const. art. I, § 4, cl 1. That is why "'reapportionment is primarily a matter for legislative consideration and determination' . . . [while] courts, with a mandate to adjudicate, are ill equipped for the task." *Miller*, 515 U.S. at 935-36 (quoting *Reynolds v. Sims*, 377 U.S. 533, 586 (1964)). That is also why "the 'good faith of the state legislature must be presumed.'" *Abbott*, 138 S. Ct. at 2324 (quoting *Miller*, 515 U.S. at 915).

March 11, 2022

Respectfully submitted,

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