

FILED

08-22-2023

CLERK OF WISCONSIN  
SUPREME COURT

No. 2023AP001399-OA

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**IN THE SUPREME COURT OF WISCONSIN**

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REBECCA CLARKE, RUBEN ANTHONY, TERRY DAWSON, DANA GLASSTEIN, ANN GROVES-LLOYD, CARL HUJET, JERRY IVERSON, TIA JOHNSON, ANGIE KIRST, SELIKA LAWTON, FABIAN MALDONADO, ANNEMARIE MCCLELLAN, JAMES MCNETT, BRITTANY MURIELLO, ELA JOOSTEN (PARI) SCHILS, NATHANIEL SLACK, MARY SMITH-JOHNSON, DENISE (DEE) SWEET, AND GABRIELLE YOUNG,

*Petitioners,*

*v.*

WISCONSIN ELECTIONS COMMISSION; DON MILLIS, ROBERT F. SPINDELL, JR., MARK L. THOMSEN, ANN S. JACOBS, MARGE BOSTELMANN, AND JOSEPH J. CZARNEZKI, IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE WISCONSIN ELECTIONS COMMISSION; MEAGAN WOLFE, IN HER OFFICIAL CAPACITY AS THE ADMINISTRATOR OF THE WISCONSIN ELECTIONS COMMISSION; SENATOR ANDRÉ JACQUE, SENATOR TIM CARPENTER, SENATOR ROB HUTTON, SENATOR CHRIS LARSON, SENATOR DEVIN LEMAHIEU, SENATOR STEPHEN L. NASS, SENATOR JOHN JAGLER, SENATOR MARK SPREITZER, SENATOR HOWARD L. MARKLEIN, SENATOR RACHAEL CABRAL-GUEVARA, SENATOR VAN H. WANGGAARD, SENATOR JESSE L. JAMES, SENATOR ROMAINE ROBERT QUINN, SENATOR DIANNE H. HESSELBEIN, SENATOR CORY TOMCZYK, SENATOR JEFF SMITH, AND SENATOR CHRIS KAPENGA, IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE WISCONSIN SENATE,

*Respondents.*

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**THE WISCONSIN LEGISLATURE'S MOTION FOR LEAVE TO FILE A  
NON-PARTY AMICUS BRIEF**

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The Wisconsin Legislature, through its counsel, moves for leave to file the attached non-party amicus brief in opposition to the petition for original action in *Clarke v. Wisconsin Elections Commission*, No. 2023AP1399-OA.

1. This action challenges the constitutionality of Wisconsin's existing state legislative district boundaries, put in place by this Court's order in *Johnson v. Wisconsin Elections Commission*, 2022 WI 19, 401 Wis. 2d 198, 972 N.W.2d 559 (*Johnson III*). Petitioners ask the Court to declare the court-ordered boundaries unconstitutional, draw new boundaries, and order special elections. Pet. at p. 43-45.

2. The Wisconsin Legislature is the bicameral legislative branch of Wisconsin's government. Wis. Const. art. IV, § 1. It has the constitutionally-assigned responsibility to create Wisconsin's state legislative districts. *Id.* art. IV, § 3.

3. This Court has allowed the Legislature and its leaders to participate in previous redistricting actions, and the Legislature has a statutory right to participate in litigation defending its laws. *See, e.g., Johnson v. Wis. Elections Comm'n*, 2021 WI 87, ¶6, 399 Wis. 2d 623, 967 N.W.2d 469 (noting intervention by Legislature); *State ex rel. Reynolds v. Zimmerman*, 22 Wis. 2d

544, 548, 126 N.W.2d 551 (Wis. 1964) (intervention by the Senate President *pro tem* and Assembly Speaker); *Democratic Nat'l Committee v. Bostelmann*, 2020 WI 80, ¶13, 394 Wis. 2d 33, 949 N.W.2d 423 (discussing Wis. Stat. §803.09(2m)).

4. This motion and the attached amicus brief satisfy the requirements of Wis. Stat. §809.19(7). The Legislature's brief explains why this Court must deny the petition for original action, which asks the Court to overrule its precedent without justification, reinterpret constitutional provisions that have not changed since this Court last interpreted them, ignore the doctrine of laches, all with the effect of enlarging this Court's judicial power beyond recognition.

5. The motion is timely, in compliance with the Court's order of August 15, 2023, inviting the filing of non-party amicus briefs.

WHEREFORE, the Wisconsin Legislature requests that this Court grant its request for leave to file the attached amicus brief.

Dated this 22nd day of August, 2023.

Respectfully submitted,

/s/ Kevin M. St. John

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