FILED
10-20-2023
CLERK OF WISCONSIN
SUPREME COURT

No. 2023AP001399-OA

IN THE SUPREME COURT OF WISCONSIN

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,

GOVERNOR TONY EVERS, IN HIS OFFICIAL CAPACITY; NATHAN ATKINSON, STEPHEN JOSEPH WRIGHT, GARY KRENZ, SARAH J. HAMILTON, JEAN-LUC THIFFEAULT, SOMESH JHA, JOANNE KANE, AND LEAH DUDLEY,

Intervenors-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,

WISCONSIN LEGISLATURE; BILLIE JOHNSON, CHRIS GOEBEL, ED PERKINS, ERIC O'KEEFE, JOE SANFELIPPO, TERRY MOULTON, ROBERT JENSEN, RON ZAHN, RUTH ELMER, AND RUTH STRECK,

Intervenors-Respondents.

MOTION TO DISMISS BY INTERVENOR-RESPONDENT WISCONSIN LEGISLATURE AND RESPONDENTS SENATORS CABRAL-GUEVARA, HUTTON, JACQUE, JAGLER, JAMES, KAPENGA, LEMAHIEU, MARKLEIN, NASS, QUINN, TOMCZYK, AND WANGGAARD

Counsel Listed on Following Page

BELL GIFTOS ST. JOHN LLC
KEVIN M. ST. JOHN, SBN 1054815
5325 Wall Street, Suite 2200
Madison, WI 53718
608.216.7995
kstjohn@bellgiftos.com

CONSOVOY MCCARTHY PLLC
TAYLOR A.R. MEEHAN*
RACHAEL C. TUCKER*
DANIEL M. VITAGLIANO*
C'ZAR D. BERNSTEIN**
1600 Wilson Blvd., Suite 700
Arlington, VA 22209
703.243.9423
taylor@consovoymccarthy.com

LAWFAIR LLC
ADAM K. MORTARA, SBN 1038391
40 Burton Hills Blvd., Suite 200
Nashville, TN 37215
773.750.7154
mortara@lawfairllc.com

AUGUSTYN LAW LLC
JESSIE AUGUSTYN, SBN 1098680
1835 E. Edgewood Dr., Suite 105-478
Appleton, WI 54913
715.255.0817
jessie@augustynlaw.com

LEHOTSKY KELLER COHN LLP
SCOTT A. KELLER*
SHANNON GRAMMEL*
GABRIELA GONZALEZ-ARAIZA*
200 Massachusetts Avenue, NW
Suite 700
Washington, DC 20001
512.693.8350
scott@lkcfirm.com

LEHOTSKY KELLER COHN LLP
MATTHEW H. FREDERICK*
408 West 11th St., Fifth Floor
Austin, TX 78701
matt@lkcfirm.com

** Admitted pro hac vice*
*** Pro hac vice motion forthcoming*

Intervenor-Respondent the Wisconsin Legislature, through its counsel, and Respondents Senator Rachael Cabral-Guevara, Senator Rob Hutton, Senator Andre Jacque, Senator John Jagler, Senator Jesse L. James, Senator Chris Kapenga, Senator Devin LeMahieu, Senator Howard L. Marklein, Senator Stephen L. Nass, Senator Romaine Robert Quinn, Senator Cory Tomczyk, and Senator Van H. Wanggaard (the Respondent Senators), through their counsel, respectfully move to dismiss this case pursuant to Wis. Stat. §§802.06, 809.14, 809.63 and 809.84. For the reasons stated in the accompanying memorandum filed in support of this motion, this case should be dismissed.

1. This action challenges the constitutionality of Wisconsin's existing state legislative district boundaries and asks the Court to declare the existing boundaries unconstitutional, draw new boundaries, and order special elections. Pet. at 43-44.

2. The existing state legislative district boundaries were adopted by this Court in 2022, after being proposed by the Legislature and Petitioners in *Johnson v. Wisconsin Elections Commission* (*Johnson III*), 2022 WI 19, 401 Wis. 2d 198, 972 N.W.2d 559. In the course of that

litigation, this Court decided or foreclosed every claim presented here. *See Johnson v. Wis. Elections Comm'n*, 2021 WI 87, ¶36, 399 Wis. 2d 623, 967 N.W.2d 469 (deciding contiguity); *id*. ¶3 (describing Court's role as "a purely judicial one"); *Johnson v. Wis. Elections Comm'n*, 2022 WI 14, ¶36, 400 Wis. 2d 626, 971 N.W.2d 402 (deciding contiguity); *Johnson III*, 2022 WI 19, ¶70 (same).

3. More than a year after *Johnson* became final, and one day after a change in this Court's membership, Petitioners filed this original action collaterally attacking *Johnson*. On October 6, 2023, this Court granted the petition in part. Some of the parties from *Johnson* intervened, including the Governor. The Court did not order the parties to submit responsive pleadings.

4. Dismissal is warranted for three independent reasons.

5. *First*, Petitioners lack standing to pursue either of their claims. Petitioners have not established any personal stake in this controversy and allege only generalized grievances.

6. *Second*, Petitioners and Intervenor-Petitioners' claims are barred by laches, preclusion, and estoppel.

7. *Third*, there is no legal basis for Petitioners' requested declaratory or injunctive relief, nor any legal basis for their request for a writ quo warranto. And for the reasons already briefed in the Legislature and Respondents Senators' opening brief, stare decisis precludes relitigation of their contiguity claim, and their separation-of-powers claim is based on a mistaken understanding of this Court's judgment in *Johnson*.

WHEREFORE, the Wisconsin Legislature and the Respondent Senators request that this case be dismissed.

Dated this 20th day of October, 2023.

Respectfully submitted.

Electronically Signed by
Jessie Augustyn

AUGUSTYN LAW LLC
JESSIE AUGUSTYN, SBN 1098680
1835 E. Edgewood Dr.,
Suite 105-478
Appleton, WI 54913
715.255.0817
jessie@augustynlaw.com

Counsel for Respondents Senators Cabral-Guevara, Hutton, Jacque, Jagler, James, Kapenga, LeMahieu, Marklein, Nass, Quinn, Tomczyk, and Wanggaard

LEHOTSKY KELLER COHN LLP
SCOTT A. KELLER*
SHANNON GRAMMEL*
GABRIELA GONZALEZ-ARAIZA*
200 Massachusetts Avenue, NW
Suite 700
Washington, DC 20001
512.693.8350
scott@lkcfirm.com

LEHOTSKY KELLER COHN LLP
MATTHEW H. FREDERICK*
408 West 11th St., Fifth Floor
Austin, TX 78701

Counsel for Wisconsin Legislature & Respondents Senators Cabral-Guevara, Hutton, Jacque, Jagler, James, Kapenga, LeMahieu, Marklein, Nass, Quinn, Tomczyk, and Wanggaard

Electronically Signed by
Kevin M. St. John

BELL GIFTOS ST. JOHN LLC
KEVIN M. ST. JOHN, SBN 1054815
5325 Wall Street, Suite 2200
Madison, WI 53718
608.216.7995
kstjohn@bellgiftos.com

CONSOVOY MCCARTHY PLLC
TAYLOR A.R. MEEHAN*
RACHAEL C. TUCKER*
DANIEL M. VITAGLIANO*
C'ZAR BERNSTEIN**
1600 Wilson Blvd., Suite 700
Arlington, VA 22209
703.243.9423
taylor@consovoymccarthy.com

LAWFAIR LLC
ADAM K. MORTARA, SBN 1038391
40 Burton Hills Blvd., Suite 200
Nashville, TN 37215
773.750.7154
mortara@lawfairllc.com

Counsel for Wisconsin Legislature
** Admitted pro hac vice*
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