

FILED
11-16-2023
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 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, CARRIE RIEPL, 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; ANDRE JACQUE, TIM CARPENTER, ROB HUTTON, CHRIS LARSON, DEVIN LEMAHIEU, STEPHEN L. NASS, JOHN JAGLER, MARK SPREITZER, HOWARD MARKLEIN, RACHAEL CABRAL-GUEVARA, VAN H. WANGGAARD, JESSE L. JAMES, ROMAINE ROBERT QUINN, DIANNE H. HESSELBEIN, CORY TOMCZYK, JEFF SMITH AND 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.

APPENDIX TO RESPONSE BY INTERVENORS-RESPONDENTS WISCONSIN LEGISLATURE, JOHNSON, GOEBEL, PERKINS, O'KEEFE, SANFELIPPO, MOULTON, JENSEN, ZAHN, ELMER, AND STRECK AND RESPONDENTS SENATORS CABRAL-GUEVARA, HUTTON, JACQUE, JAGLER, JAMES, KAPENGA, LEMAHIEU, MARKLEIN, NASS, QUINN, TOMCZYK, AND WANGGAARD TO JOINT MOTION FOR CORRECTED LTSB REDISTRICTING DATA

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From: [Hirsch, Sam](#)
To: [Kevin St. John](#); [Kilpatrick, Steven C.](#); jessie@augustynlaw.com; [Luke Berg](#)
Cc: [Sarah A. Zylstra](#); [Amunson, Jessica Ring](#); [Dan Lenz](#); [Russomanno, Anthony D.](#); tpackard@pinesbach.com
Subject: RE: Motion in Clarke v. WEC (No. 2023AP1399-OA)
Date: Wednesday, November 8, 2023 4:10:37 PM

Kevin,

Thanks for your response. And thanks for expressing your shared interest in using a common and accurate dataset.

We will share the details about the basis for our concerns with you and all other parties, as well as with the Court, today, so that we can all get to a good place on these important issues as rapidly and efficiently as possible.

All the best,

Sam

From: Kevin St. John <kstjohn@BellGiftos.com>
Sent: Wednesday, November 8, 2023 1:24 PM
To: Hirsch, Sam <SHirsch@jenner.com>; Kilpatrick, Steven C. <kilpatricksc@doj.state.wi.us>; jessie@augustynlaw.com; Luke Berg <luke@will-law.org>
Cc: Sarah A. Zylstra <szylstra@boardmanclark.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Dan Lenz <dlenz@lawforward.org>; Russomanno, Anthony D. <russomannoad@doj.state.wi.us>; tpackard@pinesbach.com
Subject: RE: Motion in Clarke v. WEC (No. 2023AP1399-OA)

External Email - Do Not Click Links or Attachments Unless You Know They Are Safe

Sam,

Setting aside the question on the motion for a moment, I think there is a shared interest in using a common and accurate dataset. If you would share the basis for your concerns – what datasets are you using, where are the supposed inaccuracies, etc. – then we could investigate that and hopefully get to a common position.

But I think it is premature and improper to bring this issue to the Court at this time and in this manner. I am not going to go through all of the procedural reasons why in this email; I want to keep this email focused on the substance of your concern. And on that substance, we are willing to work with you. But we do not even know if there is a disagreement among the parties, much less a disagreement that can't be worked through by assessing your concerns. If we are able to work through that, no motion would be necessary.

Kevin

From: Hirsch, Sam <SHirsch@jenner.com>

Sent: Wednesday, November 8, 2023 11:03 AM

To: Kevin St. John <kstjohn@BellGiftos.com>; Kilpatrick, Steven C. <kilpatricksc@doj.state.wi.us>; jessie@augustynlaw.com; Luke Berg <luke@will-law.org>

Cc: Sarah A. Zylstra <szylstra@boardmanclark.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Dan Lenz <dlenz@lawforward.org>; Russomanno, Anthony D. <russomannoad@doj.state.wi.us>; tpackard@pinesbach.com

Subject: Motion in Clarke v. WEC (No. 2023AP1399-OA)

Dear Kevin, Jessie, Luke, and Steven,

Petitioners, Governor Evers, Senators Carpenter *et al.*, and Atkinson Intervenors intend to file, most likely this afternoon, a joint motion asking the Court to direct the Legislature to instruct the LTSB to review and correct the statewide ward “shapefile” that the Legislature, this Court, and all parties to *Johnson* used in 2021 and 2022 for purposes of state-legislative redistricting (the “LTSB Redistricting Dataset”) so that the shapefile accurately delineates wards and municipalities, and to re-release the corrected shapefile no later than December 1, 2023. We believe there are more than 200 ward fragments—that is, single Census blocks or small groups of Census blocks—for which the LTSB Redistricting Dataset seems to misidentify the municipality name or the ward number or perhaps both. We will provide the Legislature and all other parties an illustrative (but likely not exhaustive) list of these ward fragments in .pdf, .xlsx, and .csv formats. And LTSB may find other errors that need correction, as well. Because it is critical that all parties—and the Court—be able to rely on a common, accurate ward shapefile in any remedial phase of this litigation, we will ask the Court to order the Legislature to instruct the LTSB to immediately review, correct, and re-release by December 1, 2023, a statewide ward shapefile that accurately delineates all wards and municipalities.

Please let us know as soon as possible and no later than 3:30 p.m. Central Time today if your clients consent to this motion. Given the timeline, we intend to

get this motion on file today but can update the Court with your clients' positions.

All the best,

Sam

cc: Daniel S. Lenz, Anthony D. Russomanno, Tamara B. Packard, Sarah A. Zylstra, Jessica Ring Amunson

Sam Hirsch

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Affidavit of Jeff Ylvisaker

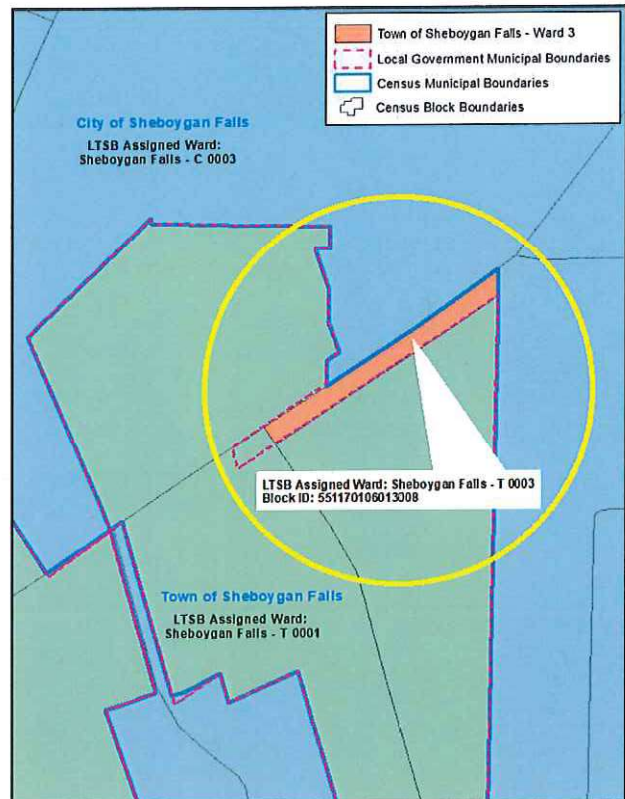
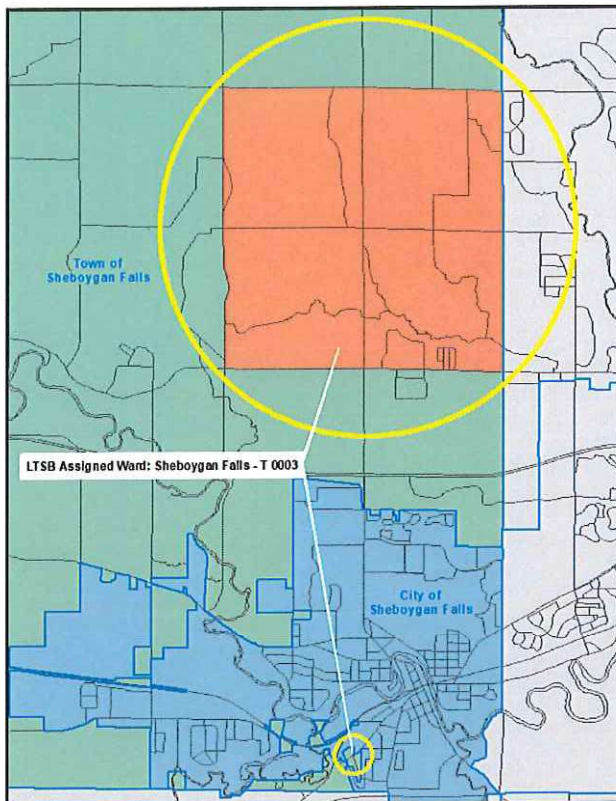
1. My name is Jeff Ylvisaker. I am the director of the Wisconsin Legislature's Legislative Technology Services Bureau (LTSB). I have worked at LTSB for 25 years. I have been the director for 16 years. I offer this testimony in my capacity as the director of LTSB.
2. LTSB is a nonpartisan legislative service agency defined by Wis. Stats. 13.96. LTSB provides and coordinates information technology support and services to the Wisconsin Legislature.
3. LTSB provides redistricting support to the Wisconsin Legislature. This includes providing redistricting software, training, and data to each of the four legislative caucuses. LTSB also publishes redistricting data on its public website.
4. The Wisconsin Legislature redraws legislative and congressional districts following each decennial census based on geographic data and population information provided to LTSB by the U.S. Census Bureau.
5. Background on geographic data in Wisconsin:
 - a. Wisconsin counties and municipalities maintain datasets describing their geographic boundaries. The U.S. Census Bureau independently maintains its own dataset of the same geographic boundaries. These datasets are not in perfect alignment.
 - b. Differences in geographic boundary data occur due to errors in U.S. Census Bureau datasets, errors in county datasets, differences in the way geographic boundaries are represented in each dataset, and outdated municipal boundary information in the U.S. Census Bureau dataset.
 - c. Though the U.S. Census Bureau provides opportunities for states, counties, and municipalities to participate in geographic data improvement initiatives designed to capture changes to municipal boundaries, participation in these initiatives had previously not been required by law and had proven technically challenging.
 - d. After the 2011 redistricting cycle, legislative leadership was made aware of these boundary synchronization issues and they requested that LTSB consider ways to improve the synchronization of the local government and U.S. Census Bureau geographic datasets.
 - e. LTSB worked with the Legislative Reference Bureau to identify potential changes to state law. These changes require counties to submit updated municipal ward datasets to LTSB in January and July of each year and to require LTSB to participate in U.S. Census Bureau data improvement initiatives on behalf of Wisconsin. These changes were implemented into state law effective January 2016.

- f. Pursuant to those changes to state law, LTSB receives geographic boundary data from each county twice a year and then participates on behalf of Wisconsin in the U.S. Census Bureau data improvement initiative called the Boundary and Annexation Survey.
 - g. As part of our participation in the Boundary and Annexation Survey, LTSB identifies discrepancies between U.S. Census Bureau and county geographic boundaries then submits suggested boundary changes ("corrections") to the U.S. Census Bureau. The U.S. Census Bureau does not incorporate every change suggested to them during the Boundary and Annexation Survey.
 - h. This process has resulted in the U.S. Census Bureau having the most accurate version of Wisconsin's municipal boundaries to date. That said, there will continue to be some differences between the county datasets and U.S. Census Bureau dataset.
6. The "LTSB Redistricting Dataset" used for redistricting is the combination of two U.S. Census Bureau datasets with additional information added by LTSB.
- a. Part 1: U.S. Census Bureau 2020 TIGER dataset. This dataset, which was published by the U.S. Census Bureau in February 2021, is a snapshot of their geographic boundary data as of January 1, 2020. Specifically, this dataset defines spatial regions called census blocks that partition Wisconsin. In this dataset, the U.S. Census Bureau assigns each block to a municipality and a county and associates each block with geographic boundary data.
 - b. Part 2: U.S. Public Law 94-171 dataset. This dataset was published by the U.S. Census Bureau on August 12, 2021. This dataset associates U.S. Census Bureau decennial census demographic information with each block in their TIGER dataset. Once this dataset is joined with the TIGER dataset, each block will include the number of persons identified in that block by the U.S. Census Bureau along with other demographic information.
 - c. Part 3: The addition of a ward assignment. LTSB added a municipal ward assignment to each block by comparing the geographic boundaries of the blocks with the wards acquired from county governments in January 2020. Each ward assignment was made within the municipal assignment contained in the U.S. Census Bureau TIGER dataset.
 - i. January 2020 was selected because that collection period aligned with the U.S. Census Bureau TIGER snapshot of January 1, 2020 as noted above.
 - ii. Ward information was added to the blocks so people could draw districts by various groupings of blocks: individual block, ward, municipality, and county. All redistricting plans built on the LTSB Redistricting Dataset adhere to the U.S. Census Bureau boundaries and population totals.

- d. LTSB published its redistricting dataset on August 16, 2021.
- e. LTSB does not alter U.S. Census Bureau data. Specifically, LTSB does not change the U.S. Census Bureau's population information, geographic boundary data, municipal assignments, county assignments, or any demographic information. LTSB therefore preserves the integrity of the data as published by the U.S. Census Bureau.

7. LTSB reviewed the "Apparently Erroneous Ward Fragments" noted in the appendix to the motion filed on November 8, 2023.

- a. LTSB's initial analysis is that the root cause of the "Apparently Erroneous Ward Fragments" can be traced to discrepancies between the U.S. Census Bureau municipal assignment of blocks and the county dataset for the same geographic region. That is, blocks were assigned by the U.S. Census Bureau to incorrect, or at least different, municipalities than the county dataset would indicate. Because LTSB maintained U.S. Census Bureau municipal designations in assigning wards, those wards will differ from the county dataset.
- b. The Town of Sheboygan Falls example in the motion is an example of the issue described above. The single block (551170106013008) identified in the image on the right is listed in the U.S. Census Bureau TIGER dataset as belonging to the Town of Sheboygan Falls, whereas the county dataset indicates that the region in question (the block) is in the City of Sheboygan Falls.



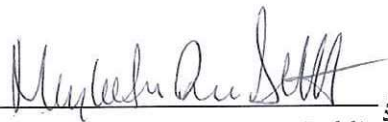
This completes my testimony.



Jeff Ylvisaker

Subscribed and sworn before me

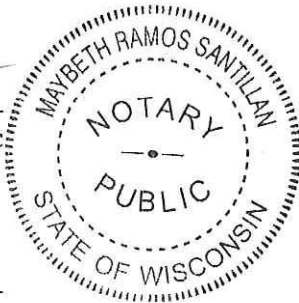
This 16th day of November, 2023



State of Wisconsin, Notary Public

My Commission Expires

5/9/2026



2002 WL 34127473

2002 WL 34127473

Only the Westlaw citation is currently available.
United States District Court,
E.D. Wisconsin.

James R. BAUMGART, Roger M. Breske, Brian T. Burke, Charles J. Chvala, Russell S. Decker, Jon Erpenbach, Gary R. George, Richard Grobschmidt, Dave Hansen, Robert Jauch, Mark Meyer, Rodney Moen, Gwendolynne S. Moore, Kimberly Plache, Fred A. Risser, Judy Robson, Kevin W. Shibilski, Robert D. Wirch, Spencer Black, James E. Kreuser, Gregory B. Huber, each individually and as members of the Wisconsin State Senate, Intervenor–Plaintiffs,

v.

Jeralyn WENDELBERGER, chairperson of the Wisconsin Elections Board, and each of its members in his or her official capacity, John P. Savage, David Halbrooks, R.J. Johnson, Brenda Lewison, Steven V. Ponto, John C. Schober, Christine Wiseman and Kevin J. Kennedy, its executive director, Defendants,

and

Scott R. JENSEN, in his capacity as the Speaker of the Wisconsin Assembly, and Mary E. Panzer, in her capacity as the Minority Leader of the Wisconsin Senate, Intervenor–Defendants.

Scott R. JENSEN, in his capacity as the Speaker of the Wisconsin Assembly, Mary E. Panzer, in her capacity as the Minority Leader of the Wisconsin Senate, Plaintiffs,

v.

Jeralyn WENDELBERGER, chairperson of the Wisconsin Elections Board, and each of its members in his or her official capacity, John P. Savage, David Halbrooks, R.J. Johnson, Brenda Lewison, Steven V. Ponto, John C. Schober, Christine Wiseman, Kevin J. Kennedy, its executive director, Defendants,

and

James R. BAUMGART, Roger M. Breske, Brian T. Burke, Charles J. Chvala, Russell S. Decker, Jon Erpenbach, Gary R. George, Richard Grobschmidt, Dave Hansen, Robert Jauch, Mark Meyer, Rodney Moen, Gwendolynne S. Moore, Kimberly Plache, Fred A. Risser, Judy Robson, Kevin W. Shibilski, Robert D. Wirch, Spencer Black, James E. Kreuser,

Gregory B. Huber, each individually and as members of the Wisconsin State Senate, Intervenor–Defendants.

No. 01–C–0121, 02–C–0366.

1

July 11, 2002.

Before EASTERBROOK, Circuit Judge, STADTMUELLER, Chief District Judge, and CLEVERT, District Judge.

DECISION AND ORDER

PER CURIAM.

*1 The court has been advised by its technical advisor, Tony Van Der Wielen of the Legislative Technical Services Bureau (LTSB), as well as Peter Cannon and Michael Keane of the LTSB, of errors in the population data set used by the parties and the court in determining Assembly and Senate districts in this case. These errors are of two types. The most common is the omission of wards from the data set. For example, Appleton ward 33 in the data set is actually comprised of wards 33 and 53, and Appleton ward 19 is actually comprised of wards 50 and 19. Similar errors occurred with respect to the Village of Little Chute (ward 13 omitted from the data set), the City of Brodhead in Rock County (ward 7 omitted), and the City of Eau Claire (ward 24 omitted).

The second data error relates to the City of Eau Claire, where two census blocks in the center of ward 20 are assigned to ward 1. Also, there are two unpopulated non-contiguous wards in Appleton, wards 41 and 49, which should be moved from Assembly District 3 to District 55.

In light of the above, and pursuant to Fed.R.Civ.P. 60(a), Part II of the Order of May 30, 2002, is amended as follows:

Third assembly district. All of the following territory constitutes the 3rd assembly district:

- (1) Brown County. That part of Brown County consisting of the towns of Holland and Morrison.
- (2) Calumet County. That part of Calumet County consisting of all of the following:
 - (a) The towns of Brillion, Chilton, Harrison, Stockbridge, and Woodville.

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(b) The villages of Sherwood and Stock bridge.

(c) The cities of Brillion and Chilton.

(d) That part of the city of Menasha located in the county.

(3) Outagamie County. That part of Outagamie County consisting of all of the following:

(a) The town of Buchanan.

(b) The villages of Combined Locks and Kimberly.

(c) That part of the village of Little Chute comprising wards 5, 6, 7, and 11.

Fifth assembly district. All of the following territory constitutes the 5th assembly district:

(1) Brown County. That part of Brown County consisting of all of the following:

(a) The towns of Hobart and Lawrence.

(b) That part of the village of Ashwaubenon comprising ward 9.

(c) That part of the city of Green Bay comprising wards 47, 48, and 49.

(2) Outagamie County. That part of Outagamie County consisting of all of the following:

*2 (a) The towns of Black Creek, Cicero, Freedom, Kaukauna, Oneida, Osborn, Seymour, and Vandebroek.

(b) The villages of Black Creek and Nichols.

(c) That part of the village of Little Chute comprising wards 1, 2, 4, 8, 9, 10, 12, and 13.

(d) That part of the village of Howard located in the county.

(e) The cities of Kaukauna and Seymour.

(3) Shawano County. That part of Shawano County consisting of the town of Maple Grove.

Fifty-fifth assembly district. All of the following territory in Winnebago County constitutes the 55th assembly district:

(1) That part of the town of Menasha comprising wards 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13.

(2) The city of Neenah.

(3) That part of the city of Appleton located in the county.

(4) That part of the city of Menasha located in the county.

Fifty-sixth assembly district. All of the following territory constitutes the 56th assembly district:

(1) Outagamie County. That part of Outagamie County consisting of all of the following:

(a) The towns of Center, Dale, Grand Chute, and Greenville.

(b) That part of the city of Appleton comprising wards 30, 31, 32, 51, 52.

(2) Winnebago County. That part of Winnebago County consisting of all of the following:

(a) The towns of Clayton, Neenah, Poygan, Vinland, Winchester, Winneconne, and Wolf River.

(b) That part of the town of Menasha comprising wards 1 and 2.

(c) The village of Winneconne.

Fifty-seventh assembly district. All of the following territory in Outagamie County constitutes the 57th assembly district:

(1) That part of the village of Little Chute comprising ward 3.

(2) That part of the city of Appleton comprising wards 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 33, 34, 35, 36, 37, 50, and 53.

Sixty-eighth assembly district. All of the following territory constitutes the 68th assembly district:

(1) Chippewa County. That part of Chippewa County consisting of all of the following:

(a) The towns of Hallie, Lafayette, and Wheaton.

(b) That part of the city of Eau Claire located in the county.

(2) Eau Claire County. That part of Eau Claire County consisting of all of the following:

(a) The towns of Lincoln, Ludington, Seymour, and Union.

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- (b) That part of the town of Washington comprising wards 9 and 13.
- (c) The village of Fall Creek.
- (d) That part of the city of Altoona comprising wards 8, 12, and 13.
- (e) That part of the city of Eau Claire comprising wards 1, 7, 8, 9, 10, 11, 12, 13, 14, 19, 22, 23, 29, 31, 34, 35, 36, and 37.

Eightieth assembly district. All of the following territory constitutes the 80th assembly district:

- (1) Whole county. Green County.
- (2) Dane County. That part of Dane County consisting of all of the following:
 - (a) The towns of Montrose, Oregon, Perry, and Primrose.
 - (b) That part of the village of Oregon comprising wards 1, 5, 6, 7, and 8.
 - *3 (c) That part of the village of Belleville located in the county.
 - (d) That part of the village of Brooklyn located in the county.
- (3) Lafayette County. That part of Lafayette County consisting of all of the following:
 - (a) The town of Wayne.
 - (b) The village of South Wayne.
- (4) Rock County. That part of Rock County consisting of all of the following:

- (a) The towns of Magnolia and Union.
- (b) The city of Evansville.
- (c) That portion of the City of Brodhead located within the county.

Ninety-third assembly district. All of the following territory constitutes the 93rd assembly district:

- (1) Dunn County. That part of Dunn County consisting of the towns of Dunn, Eau Galle, Peru, Rock Creek, and Weston.
- (2) Eau Claire County. That part of Eau Claire County consisting of all of the following:
 - (a) The towns of Brunswick, Clear Creek, Drammen, Otter Creek, and Pleasant Valley.
 - (b) That part of the town of Washington comprising wards 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, and 12.
 - (c) That part of the city of Altoona comprising wards 1, 2, 3, 4, 5, 6, 7, 9, 10, and 11.
 - (d) That part of the city of Eau Claire comprising wards 2, 3, 4, 5, 6, 15, 17, 18, 20, 21, 24, 25, 26, 27, 28, 30, 32, 33, 38, and 39.
- (3) Pepin County. That part of Pepin County consisting of the towns of Albany and Lima.
- (4) Pierce County. That part of Pierce County consisting of the town of Rock Elm.

All Citations

Not Reported in F.Supp.2d, 2002 WL 34127473

CERTIFICATION REGARDING APPENDIX

I certify that the appendix meets the form requirements governing a respondent's appendix contained in Wis. Stat. §809.19(3)(b) and further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using one or more initials or other appropriate pseudonym or designation instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 16th day of November, 2023.

Respectfully submitted,

Electronically Signed by

Kevin M. St. John

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