

FILED
12-28-2023
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 FOR RECONSIDERATION 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

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

**WISCONSIN INSTITUTE FOR
LAW & LIBERTY, INC.**

RICHARD M. ESENBERG, SBN 1005622
LUKE N. BERG, SBN 1095644
NATHALIE E. BURMEISTER,
SBN 1126820
330 E. Kilbourne Ave., Suite 725
Milwaukee, WI 53202
414.727.9455
Luke@will-law.org

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*

Intervenor-Respondent Wisconsin Legislature, through its counsel, Respondents Senators Rachael Cabral-Guevara, Rob Hutton, Andre Jacque, John Jagler, Jesse L. James, Chris Kapenga, Devin LeMahieu, Howard L. Marklein, Stephen L. Nass, Romaine Robert Quinn, Cory Tomczyk, and Van H. Wanggaard (the Respondent Senators), through their counsel, and Intervenor-Respondents Billie Johnson, Chris Goebel, Ed Perkins, Eric O’Keefe, Joe Sanfelippo, Terry Moulton, Robert Jensen, Ron Zahn, Ruth Elmer, and Ruth Streck (the Johnson Respondents), through their counsel, respectfully move for reconsideration of the Court’s opinion issued December 22, 2023, *Clarke v. Wis. Elections Comm’n*, 2023 WI 79, and the accompanying remedial scheduling order, Order, *Clarke v. Wis. Elections Comm’n*, No. 2023AP1399-OA (Dec. 22, 2023), pursuant to Wis. Stat. §§809.14 and 809.64. For the reasons stated in the accompanying memorandum of law, the Court’s opinion and remedial scheduling order should be reconsidered and all proceedings should be stayed pending a decision on this motion.

1. Reconsideration of the Court's opinion and order is warranted for several independent reasons.

2. *First*, the Court's opinion and remedial scheduling order fail to give the Legislature a reasonable opportunity to redistrict and apply the Court's newfound contiguity rules, contrary to controlling legal precedent and important policy considerations.

3. *Second*, the Court's opinion and remedial scheduling order is largely silent on Respondents' arguments, completely silent on 160 pages of dissents, and incompatible with state and federal law. The failure to meaningfully consider Respondents' arguments confirms this case has been pre-decided. Among other errors, the Court erroneously dismissed the Legislature's due process arguments as "underdeveloped." The Court's remedial schedule, moreover, does not give the parties a full and fair opportunity to litigate this case, denying them the most basic features of civil process. And the Court's remedial schedule denies the parties fair notice and an opportunity to be heard on proposed remedies.

4. *Third*, the Court's remedial schedule leaves insufficient time before 2024 election deadlines commence.

5. Respondents request that all proceedings be stayed pending a decision on this motion, thereby deferring substantial expenses for the parties and the Court-appointed consultants. *See* Wis. Stat. §809.14(3).

WHEREFORE, the Wisconsin Legislature, the Respondent Senators, and the Johnson Respondents request that the Court's opinion and remedial scheduling order be reconsidered and that all proceedings be stayed pending a decision on this motion.

Dated this 28th day of December, 2023.

Electronically Signed by
Jessie Augustyn

AUGUSTYN LAW LLC

JESSIE AUGUSTYN, SBN 1098680
1835 E. Edgewood Dr., Ste. 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 & Wanggaard*

LEHOTSKY KELLER COHN LLP

SCOTT A. KELLER*
SHANNON GRAMMEL*
GABRIELA GONZALEZ-ARAIZA*
200 Massachusetts Ave., NW, Ste. 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 & Wanggaard*

Respectfully submitted,

Electronically Signed by
Kevin M. St. John

BELL GIFTOS ST. JOHN LLC

KEVIN M. ST. JOHN, SBN 1054815
5325 Wall Street, Ste. 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., Ste. 700
Arlington, VA 22209
703.243.9423
taylor@consovoymccarthy.com

LAWFAIR LLC

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

Counsel for Wisconsin Legislature

* Admitted pro hac vice

Additional Counsel Listed on Following Page

Electronically Signed by

Luke N. Berg

WISCONSIN INSTITUTE FOR

LAW & LIBERTY, INC.

RICHARD M. ESENBERG, SBN 1005622

LUKE N. BERG, SBN 1095644

NATHALIE E. BURMEISTER, SBN 1126820

330 E. Kilbourne Ave., Suite 725

Milwaukee, WI 53202

414.727.9455

Luke@will-law.org

Counsel for Intervenors-Respondents

Billie Johnson, Chris Goebel, Ed Perkins,

Eric O'Keefe, Joe Sanfelippo, Terry Moulton,

Robert Jensen, Ron Zahn, Ruth Elmer, and

Ruth Streck