

FILED

01-22-2024

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 LEAVE TO FILE RESPONSIVE EXPERT REPORTS BY
INTERVENORS-RESPONDENTS WISCONSIN LEGISLATURE, AND
RESPONDENTS SENATORS CABRAL-GUEVARA, HUTTON, JACQUE, JAGLER,
JAMES, KAPENGA, LEMAHIEU, MARKLEIN, NASS, QUINN, TOMCZYK, AND
WANGGAARD**

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Intervenor-Respondent Wisconsin Legislature and 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 respectfully move for leave to file two responsive expert reports, included in the appendix to the Legislature's response remedial brief filed today. The responsive expert reports are necessary to evaluate proposed remedial maps and copious expert reports filed by the parties on January 12, 2024.

1. On January 12, 2024, parties submitted proposed remedies accompanied by expert reports. Those remedial filings made extensive factual assertions along with the production of voluminous data related to parties' proposed maps, raising just as many questions as answers. While the Legislature included a full log of changes for its proposed contiguity remedy, other parties were nowhere near as transparent. *See* Opening-App.41a-52a (LTSB Ex. 6), Leg. Opening Remedial Br. (Jan. 12, 2024).

2. To parse the other remedial proposals, responsive expert reports are necessary. They would benefit both the Court-appointed consultants and the Court by providing additional analysis that is critical to determining whether other parties' proposals are an appropriate judicial remedy and/or whether they raise additional constitutional questions that foreclose the Court's choosing them.

3. The expedited schedule and limits on discovery imposed by the Court effectively deny the parties an opportunity to fully litigate this case. The Court's remedial scheduling order does not state one way or another whether responsive expert reports are permitted. But to avoid further procedural irregularities here, the Legislature and Senator Respondents must be permitted to submit responsive expert reports to identify how other proposed remedies move *millions* of Wisconsinites, are not "neutral," pair droves of Republican incumbents, and unnecessarily disenfranchise an unprecedented number of Wisconsinites.

4. To the extent the Court did not intend to allow responsive expert reports due to the compressed schedule of this case,

the poor timing here is a problem of Petitioners' own making. Petitioners waited over one year and three months after this Court issued its final judgment in the *Johnson* litigation to file this original action. See *Johnson v. Wis. Elections Comm'n (Johnson III)*, 2022 WI 19, 401 Wis. 2d 198, 972 N.W.2d 559. Since then, the Court has moved at breakneck speed to accommodate Petitioners' long delay. After giving parties a mere 10 days (half of them falling on weekends and a federal holiday) to brief the merits of Petitioners' claims, the Court issued an order on the Friday before Christmas giving parties 21 days (a third of them falling on weekends and state holidays) to submit proposed remedies, lengthy remedial briefs, and expert reports and another 10 days (half of them falling on weekends and a state holiday) to file a response to over 1,500 pages of party briefs and expert reports and over 16 GB of material produced by experts. The court's scheduling order prevents parties from engaging in necessary factfinding through discovery, it prevents parties from cross-examining witnesses, and there is currently no opportunity for a hearing. But this case, like every redistricting case, requires the development of the

factual record. Granting leave to file a limited number of responsive expert reports, while not a cure for other procedural irregularities, is a necessary first step to understanding other parties' proposed remedies.

5. Granting leave to file two responsive expert reports will not result in the delay or interruption of any current deadlines. The proffered responsive expert reports by Dr. Brian Gaines and Dr. Sean Trende are included in the Legislature and Senator Respondents' appendix filed today. Those reports will not delay the Court-appointed consultants' efforts and may ultimately result in efficiencies in their work by providing analysis they might not otherwise be able to undertake themselves given the restrictive timeline.

6. If the Court's goal is to select what it believes to be the best remedial proposal, further scrutiny in responsive expert reports will only benefit the proposed maps and, ultimately, the people of Wisconsin.

WHEREFORE, the Wisconsin Legislature and Respondent Senators request that the Court grant the motion for leave to file two responsive expert reports along with their response brief on January 22, 2024.

Dated this 22nd day of January, 2024.

Respectfully submitted,

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