

FILED
01-22-2024
CLERK OF WISCONSIN
SUPREME COURT

IN THE SUPREME COURT OF WISCONSIN
SUPREME COURT CASE NO. 23AP1399

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,

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 Election 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

**BRIEF BY AMICUS, FOREVER WISCONSIN,
FOR LEAVE TO SUBMIT A BRIEF COMMENTING ON THE
REDISTRICTING MAPS SUBMITTED TO THE COURT**

Dated: This 22nd day of January, 2024.

Lawton Cates, S.C.

Attorneys for Amicus, Forever Wisconsin

Electronically Signed By: Dixon R. Gahnz

Attorney Dixon R. Gahnz

State Bar No. 1024367

345 W. Washington Ave. Ste. 201

P.O. Box 2965

Madison, WI 53703

P: 608.282.6200/F: 608.282.6252

dgahnz@lawtoncates.com

TABLE OF CONTENTS

INTRODUCTION.....4

ARGUMENT.....4

NORTH MILWAUKEE SUBURBS 8TH DISTRICT.....7

MILWAUKEE, RACINE, AND KENOSHA COUNTY.....8

RENUMBERING TWO SENATE DISTRICTS.....8

CONCLUSION.....9

INTRODUCTION

Pursuant to Wis. Stat. (Rule) 809.14(1), Amicus Forever Wisconsin hereby moves the Court for leave to file a brief in response to the Court's December 22, 2023 Order in this matter. Forever Wisconsin's proposed expert report has reviewed the maps and prepared the attached comments on the attached report.

The "Redistricting Principles" articulated for evaluating new legislative maps. (2023 WI 79, 43-47). In a nutshell, the five constitutional principles expressed include ensuring population equality, contiguity of districts, maintenance of local political subdivision integrity, compliance with federal law and political neutrality. (*Id.* at 43-47).

ARGUMENT

The maps submitted by the parties meet these principles to varying degrees. However, the map proffered by Law Forward hews most closely to the first four principles articulated by the Court providing population equality, compactness and contiguity all while complying with federal law. It also offers the least political bias to either party. As such, it is the Amica's opinion that Law Forward's map is the superior of the six maps submitted to this Court.

However, this brief argues that the Law Forward map should be adjusted slightly to address a flaw in the submission as it applies specifically to the state senate. The Court has declined the “drastic remedy” of requiring new elections for all senate legislative districts. According to the Court, senators holding odd-number seats would not face reelection until 2026. The Law Forward map must therefore be considered in the context of the election of only sixteen state senators. Based upon the Court’s exposition that maps should not offer partisan advantage, the Law Forward map should be revised such that each party has fair chance of winning a majority in the senate in 2024.

Wisconsin senators are elected to four-year terms, with half of the senators being elected every two years. While Law Forward’s legislative senate maps attempt to minimize bias when considered over a four-year period, they skew Republican during the first election in 2024. This can be seen through the use of Dave's Redistricting (DR) vetting the Law Forward maps using two historical composites of electoral results. Contrasting DR composites with a proposed legislative map captures the likelihood, that in a close election, a particular legislative seat might go Democratic or Republican. For sake of this brief, results are statewide elections from 2016 through 2020 are called Composite One. In a similar fashion, Composite Two contains

statewide results from 2016 to 2022. See attached study. Each composite accurately reflects close electoral margins in Wisconsin statewide elections that skew slightly Democratic. Composite One is 49.5% Democrat, 48.2% Republican and 2.3% for other parties. Composite Two is 50.5% Democratic, 48.2% Republican and 1.4% for other candidates. Both Composites lean slightly Democratic meaning non-biased legislative maps would show a slightly better Democratic result.

Using Composite One, over the course of the next two senate elections, the Law Forward map produces a total of fifteen safe Democratic senate seats along with three swing seats. Therefore, over the course of two elections, this map results in a roughly equivalent yet an inadequate opportunity for each party to win a majority of seventeen seats in the state senate.

However, in the most immediate election of just the even numbered senate seats, the Democrats are statistically prohibited from winning a majority even with a strong showing statewide. The most seats the Democrats would have a chance of holding following the 2024 election would be fourteen.

A Composite Two analysis again shows a Republican bias in 2024 for state senate results. According to the analysis, the Democrats could not be expected to hold fourteen seats after the

2024 election despite even a strong Democratic performance demonstrated in Composite Two.

Analyzing hypothetical district results based upon these two Composites demonstrates that there is statistically little opportunity under the Law Forward maps for the Democrats to win a majority in the senate in 2024. The Court has stated that Wisconsin voters should not endure this gerrymander any longer. The Law Forward map can be revised slightly to address unconstitutional gerrymander for this election cycle.

We propose the following revisions to the Law Forward map. These changes would tailor the Law Forward map to give each party an opportunity to achieve a majority based upon the Composite One and Composite Two election results. The results of these changes can be seen here.

<https://davesredistricting.org/join/84825e03-1647-4497-9c88-f4948b34c44d>.

NORTH MILWAUKEE SUBURBS 8TH DISTRICT

Each of the other maps contains an 8th Senate District which fails to have a community of interest which at least ties much of the district together. The 8th district presented here follows the community of interest of areas close to and along Lake Michigan flowing north from the North Milwaukee suburbs reaching into

communities such as Cedarburg. The residents of this district will likely have a great and compelling interest in legislation related to Lake Michigan in particular. At a minimum, Shorewood must be fully incorporated in this District given the community of interest widely acknowledged with the other North Shore suburbs. This district will add to the opportunity for both parties to have a politically neutral chance to win a majority in the 2024 election.

MILWAUKEE, RACINE, AND KENOSHA COUNTY

Changes here provide a 28th Senate District in Racine and Milwaukee County, which is essential to have an overall State Senate Map that is politically neutral. Other modest changes were required in these counties in order to accommodate this essential district adjustment. The 20th Senate District provided here with proposed changes is also essential to create a politically neutral Senate Map for 2024. Other changes in Milwaukee County and minor changes in Counties surrounding Milwaukee County must be made in order to make these changes fit with other districts and are reflected here as well.

RENUMBERING TWO SENATE DISTRICTS

There are two odd-number districts that are both competitive but not up for election until 2026. To ensure political neutrality, those districts should be renumbered. Senate district seventeen must be

renumbered to fourteen and senate district thirteen to senate district two.

CONCLUSION

Just these three proposed changes could make a significant difference in the competitiveness which will be available to voters across Wisconsin in the election of 2024. Core policies for the state and its citizens will receive a more robust and thoughtful debate both in the election and in the legislative session following the election where multiple legislators face competitive elections and majorities hang in the balance.

We have focused on the Senate, because it faces the greatest challenges to achieve a 2024 competitive election because all odd-numbered Senate districts will not be up for election this year.

Dated: This 22nd day of January, 2024.

Lawton Cates, S.C.

Attorneys for Amicus, Forever Wisconsin

Electronically Signed By: Dixon R. Gahnz

Attorney Dixon R. Gahnz

State Bar No. 1024367

345 W. Washington Ave. Ste. 201

P.O. Box 2965

Madison, WI 53703

P: 608.282.6200/F: 608.282.6252

dgahnz@lawtoncates.com