

FILED
03-11-2024
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 TO DISMISS CASE AS MOOT BY INTERVENOR-RESPONDENT 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, through their counsel, respectfully move to dismiss this case as moot, pursuant to Wis. Stat. §§809.14 and 809.63.

1. On December 22, 2023, this Court held unconstitutional and enjoined the electoral districts that it had adopted as a malapportionment remedy in *Johnson v. Wisconsin Elections Commission*, 2022 WI 19, 401 Wis. 2d 198, 972 N.W.2d 559. *Clarke v. Wis. Elections Comm'n*, 2023 WI 79, ¶¶4, 77, 410 Wis. 2d 1, 998 N.W.2d 370.

2. The Court's December 2023 opinion observed that "remedial maps must be drawn prior to the 2024 elections." *Id.* ¶4; *see also id.* ¶56. Recognizing the Legislature's "primary authority and responsibility to draw new legislative maps," the Court "urge[d] the legislature to pass legislation creating new maps." *Id.* ¶4.

3. The Court retained jurisdiction only “to ensure maps are adopted in time for the 2024 election” in the event that the Legislature failed to enact new maps or if the Governor vetoed maps pass by the Legislature. *Id.*; *see also id.* ¶¶56, 58. The Court explained, “Should the legislative process produce a map that remedies the contiguity issues” in the existing districts, “there would be no need for this court to adopt remedial maps.” *Id.* ¶57. The Court therefore “proceed[ed] toward adopting remedial maps unless and until new maps are enacted through the legislative process.” *Id.* ¶4.

4. The legislative process has run its course. The Legislature enacted new maps, and the Governor signed them into law in February 2024. 2023 Wisconsin Act 94. The legislation, which the Governor also proposed as a remedy in this case, resolves all contiguity issues. *See Report of the Court-Appointed Co-Consultants 8-9 (Feb. 1, 2024).*

5. Accordingly, this case should now be dismissed. *See Clarke*, 2023 WI 79, ¶¶4, 57; *Johnson v. Wis. Elections Comm’n*, 2021 WI 87, ¶19, 399 Wis.2d 623, 967 N.W.2d 469 (“As should be self-evident from this court’s lack of legislative power, any remedy we may

impose would be in effect only ‘until such time as the legislature and governor have enacted a valid legislative apportionment plan.’” (quoting *State ex rel. Reynolds v. Zimmerman*, 23 Wis. 2d 606, 606, 128 N.W.2d 16 (1964) (per curiam)); *State ex rel. Reynolds v. Zimmerman*, 22 Wis. 2d 544, 571, 126 N.W.2d 551 (noting any judicial plan “would be provisional ... until such time as the legislature and governor through ordinary legislative process, have themselves enacted a valid apportionment plan”).

WHEREFORE, the movants request that the Court dismiss this case.

Dated this 11th day of March, 2024.

Electronically Signed by

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Respectfully submitted,

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