

FILED

03-21-2024

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.

**RESPONSE TO COMMISSION RESPONDENTS' MOTION FOR
CLARIFICATION OF OPINION AND ORDER BY INTERVENOR-
RESPONDENT WISCONSIN LEGISLATURE 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

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*

On March 15, 2024, the Wisconsin Elections Commission Respondents filed a motion “for clarification of which maps to use for any recall or special elections that occur before the 2024 election.” WEC Mot. 2. As WEC’s motion states, Wisconsin enacted a new redistricting law after this Court enjoined the use of existing districts at the end of last year. *Id.*; see 2023 Wisconsin Act 94.

There is no ambiguity in the Court’s December opinion and order. The Court “enjoin[ed] the Wisconsin Elections Commission from using the current legislative maps in future elections.” *Clarke v. Wis. Elections Comm’n*, 2023 WI 79, ¶3, 410 Wis. 2d 1, 998 N.W.2d 370. The Court observed that “remedial maps must be drawn prior to the 2024 elections” and retained jurisdiction only “to ensure maps are adopted in time for the 2024 election.” *Id.* ¶4. The Court “urge[d] the legislature to pass legislation creating new maps.” *Id.* The political branches have answered this Court’s call and enacted new legislative maps. See 2023 Wisconsin Act 94.

Accordingly, the Court’s jurisdiction has ended, and the case should be dismissed. See Legis. Mot. Dismiss (Mar. 11, 2024). If

deemed necessary, the Court in dismissing the case can confirm that WEC is enjoined from using the *Johnson* maps in any future elections. As to any other elections-related questions that could arise, those can be decided in the normal course set forth under Wisconsin law. *See, e.g.,* Wis. Stat. §5.05(5t) (providing that WEC “shall issue updated guidance or formal advisory opinions ... or request an opinion from the attorney general on the applicability of [any] court decision” “that is binding on the commission and this state”); *id.* §5.05(6a)(a)1 (“Any individual, either personally or on behalf of an organization or governmental body, may make a request of the commission ... for a formal or informal advisory opinion regarding the propriety under chs. 5 to 10 or 12 of any matter to which the person is or may become a party.”); *see also, e.g.,* 71 Wis. Att’y Gen. Op. 157 (1982) (opining on effect of new districts for recall elections). The case should be dismissed.

Dated this 21st day of March, 2024.

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*