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CLERK OF WISCONSIN
SUPREME COURT

STATE OF WISCONSIN
IN SUPREME COURT

No. 2023AP1399-OA

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,

v.

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,

Intervenor-Respondents.

GOVERNOR TONY EVERS' RESPONSE TO WISCONSIN ELECTION COMMISSION'S MOTION FOR CLARIFICATION OF OPINION AND ORDER AS IT RELATES TO RECALL AND SPECIAL ELECTIONS

Respondent Wisconsin Elections Commission moves for clarification from the Court on which legislative districts should apply to special and recall elections held before the 2024 general election. (Commission's Mot. 1, 5.) Governor Tony Evers agrees that clarification for interim elections is necessary. He asks the Court for one additional week, until March 28, 2024, to reach an agreement between the parties about which maps should apply.

Governor Evers has conferred with the parties in this case. Respondent Wisconsin Legislature takes no position at this time. The other parties, including the Wisconsin Elections Commission, do not oppose this request.

On December 22, 2023, the Court concluded that the then-current *Johnson III* legislative maps violated the Wisconsin Constitution and "enjoin[ed] the Wisconsin Elections Commission from using [those] legislative maps in future elections." *Clarke v. Wis. Elections Comm'n*, 2023 WI 79, ¶ 3, 410 Wis. 2d 1, 998 N.W.2d 370. While several proposed remedial maps were before the Court, the Wisconsin Legislature and Governor Evers on February 19, 2024, enacted new Senate and Assembly districts through 2023 Wis. Act 94. Act 94 states that it first applies to the 2024 general election and concurrently held special or recall elections. 2023 Wis. Act 94, § 2.

Because the *Johnson III* legislative maps are currently enjoined, but the Act 94 maps do not take effect until the 2024 general election, the Wisconsin Elections Commission seeks clarification on which maps it should use to administer any recall or special elections held before the general election. (Commission's Mot. 1–5.) The Commission identifies two specific interim elections that may need to be called before the general election, Assembly District 63, and Senate District 4. (Commission's Mot. 5.) The Commission also notes that the Democratic Senator Respondents have raised the possibility of one additional interim special election. (Commission's Mot. 5.)

The Governor agrees that clarification is needed on what maps to apply to interim elections. Under Wis. Stat. § 8.50(1)(a), the Governor is required to call special elections to fill vacancies in the Legislature. For any vacancy in the Legislature that occurs before the second Tuesday in May, a special election must be held prior to the 2024 general election, not concurrently with it. Wis. Stat. § 8.50(4)(d). To call any special election, the Governor must know what Senate and Assembly districts are in effect.

Courts have established interim districting plans in comparable circumstances. The general rule for redistricting is that a state's enacted plan is operative until new maps take effect. *Perry v. Perez*, 565 U.S. 388, 392 (2012). But when "an intervening event . . . renders the current plan unusable, a court must undertake the unwelcome obligation of creating an interim plan." *Id.* (reviewing court-chosen interim maps when new districts were awaiting preclearance but old district lines were unconstitutional); *Vandermost v. Bowen*, 53 Cal. 4th 421, 437, 269 P.3d 446 (2012) (deciding which state Senate map should be used if state referendum triggered a stay of certified Senate district maps); *Gonidakis v. LaRose*, 599 F. Supp. 3d 642, 648 (S.D. Ohio 2022) (adopting interim districting plan when state redistricting commission could not obtain court approval for proposed maps.)

Here, the Court's December 22 opinion and order and Act 94 leave no clear maps in place for interim recall and special elections. *Clarke,* 2023 WI 79, ¶ 3; 2023 Wis. Act 94, § 2. Governor Evers therefore asks the Court to allow the parties until March 28, 2024, to file a stipulation for court approval regarding which maps should apply to special and recall elections before the 2024 general election.

Dated this 21st day of March 2024.

Respectfully submitted,

JOSHUA L. KAUL
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CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Appellate Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 21st day of March 2024.

Electronically signed by:

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