

FILED

03-21-2024

CLERK OF WISCONSIN
SUPREME COURT

IN THE SUPREME COURT OF WISCONSIN

No. 2023AP1399

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 CARRIE RIEPL, 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.

**PETITIONERS' RESPONSE TO COMMISSION RESPONDENTS'
MOTION FOR CLARIFICATION**

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The Clarke Petitioners agree with the Wisconsin Elections Commission, its members, and administrator (collectively, “WEC” or the “Commission”) that, given the posture of this case and the Court’s permanent injunction, clarification is warranted to permit the Commission to administer any elections that may occur between now and the effective date of the new, legislatively enacted maps.

As the Commission correctly describes, it is enjoined from using the previous legislative maps. WEC Mtn. for Clarification, Mar. 15, 2024, ¶8. Those maps are plainly unconstitutional as they contain pervasive non-contiguous legislative districts in violation of Article IV, Sections 4 and 5 of the Wisconsin Constitution. *Clarke*, 2023 WI 79, ¶3. This Court has properly declined to reconsider this common-sense conclusion. Order, Jan. 11, 2024. The previous maps cannot lawfully be used, making judicial action appropriate. *Johnson v. Wisconsin Elections Comm’n*, 2021 WI 87, ¶68, 399 Wis. 2d 623, 967 N.W.2d 469.

On February 19, 2024, Governor Tony Evers signed Senate Bill 488, now 2023 Wisconsin Act 94, into law, establishing new, constitutional legislative maps in the State of Wisconsin. Those maps comport with all constitutional requirements and are the result of the legislative process. *See* Consultants’ Report, Feb. 1, 2024, 4-9; *see also Clarke v. Wisconsin Elections Comm’n*, 2023 WI 79, ¶57, 410 Wis. 2d 1, 998 N.W.2d 370. They are identical to the maps the Governor proposed as a remedy in this case. Gov. Evers Ltr., Feb. 19, 2024. The Legislature, for its part, does not appear to object to the use of these maps in upcoming elections, and wrote to the Court to indicate that it “presumes” WEC will conduct future elections using

the Act 94 maps. Leg. Ltr. Feb. 21, 2024. The Clarke petitioners agree that, to avoid unneeded confusion or disruption, the Act 94 maps should be used going forward.

Given the absence of any current legislative maps that meet the basic requirements of Article IV, and WEC's need to perform its statutory duties in the coming months, the Clarke petitioners respectfully request that the Court clarify its injunction to provide that WEC shall administer all relevant elections between now and the effective date of Act 94 using the maps enacted through that legislation.¹

Respectfully submitted this 21st day of March, 2024.

By: Electronically signed by Daniel S. Lenz

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¹ Beyond what is needed to make this clarification, there is no reason for the Court to revisit its December 22, 2023 decision in this matter.

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