

FILED

03-22-2024

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 MOTION TO DISMISS

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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. Act 94 fulfilled this Court's exhortation that the Legislature "meet constitutional requirements by adopting a substitute measure." *Clarke v. Wisconsin Elections Comm'n*, 2023 WI 79, ¶57, 410 Wis. 2d 1, 998 N.W.2d 370 (quoting *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978)). As various filings since have demonstrated, however, Act 94 did not fully resolve the pending issues in this case, including how to administer legislative elections that may occur before November 2024. *See* Gov. Evers Ltr., Feb. 19, 2024; Pet. Ltr., Feb. 19, 2024; Dem. Sen. Ltr., Feb. 19, 2024; WEC Mtn. for Clarification, Mar. 15, 2024; Pet. Resp., March 21, 2024; Gov. Evers Resp., March 21, 2024.

The Legislature's motion argues that this Court should dismiss the case because it is moot following the enactment of Act 94. As the Wisconsin Elections Commission and its members and administrator (collectively, WEC or the Commission) described in their March 15, 2024 motion, the parties (and others) require clarity from the Court as to what maps should be used to conduct special elections to be held before November 2024 in districts with vacancies. *See* WEC Mtn. for Clarification, March 15, 2024, ¶¶7-12; Pet. Resp., March 21, 2024. The Legislature has indicated that the enacted maps should apply to all future elections, including those that would take place before November 2024. Leg. Ltr. Feb. 21,

2024. The Petitioners agree. Until such questions are resolved, however, the Legislature's motion to dismiss is premature.¹

Therefore, the Petitioners respectfully request that this Court hold the Legislature's motion to dismiss in abeyance pending resolution of the Commission's motion and any other proceedings requiring the Court's attention. *See Auric v. Continental Cas. Co.*, 111 Wis. 2d 507, 331 N.W.2d 325 (1983).

Respectfully submitted this 22nd day of March, 2024.

By *Electronically signed by Daniel S. Lenz*

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¹ Although the Commission Respondents' motion is the most substantive and urgent, the Petitioners note that several other motions remain pending.

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