

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

COUNSEL LISTED ON FOLLOWING PAGE

Mark P. Gaber*
Brent Ferguson*
Benjamin Phillips*
Michael Ortega*
CAMPAIGN LEGAL
CENTER
1101 14th St. NW, Ste. 400
Washington, DC 20005
202.736.2200

Annabelle E. Harless*
CAMPAIGN LEGAL
CENTER
55 W. Monroe St., Ste. 1925
Chicago, IL 60603
202.732.2200

Ruth M. Greenwood*
Nicholas O. Stephanopoulos*
ELECTION LAW CLINIC
AT HARVARD LAW
SCHOOL
4105 Wasserstein Hall
6 Everett Street
Cambridge, MA 02138
617.998.1010

Daniel S. Lenz, SBN 1082058
T.R. Edwards, SBN 1119447
Elizabeth M. Pierson, SBN 1115866
Scott B. Thompson, SBN 1098161
LAW FORWARD, INC.
222 W. Washington Ave.
Suite 250
Madison, WI 53703
608.556.9120

Douglas M. Poland, SBN 1055189
Jeffrey A. Mandell, SBN 1100406
Rachel E. Snyder, SBN 1090427
STAFFORD ROSENBAUM
LLP
222 W. Washington Ave.
Suite 900
P.O. Box 1784
Madison, WI 53701
608.256.0226

Elisabeth S. Theodore*
John A. Freedman*
ARNOLD & PORTER KAYE
SCHOLER LLP
601 Massachusetts Ave. NW
Washington, DC 20001
202.942.5000

**Admitted pro hac vice*

Attorneys for Petitioners

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

Daniel S. Lenz, SBN 1082058

T.R. Edwards, SBN 1119447

Elizabeth M. Pierson, SBN 1115866

Scott B. Thompson, SBN 1098161

LAW FORWARD, INC.

222 W. Washington Ave., Suite 250

Madison, WI 53703

608.556.9120

dlenz@lawforward.org

tedwards@lawforward.org

epierson@lawforward.org

sthompson@lawforward.org

Douglas M. Poland, SBN 1055189

Jeffrey A. Mandell, SBN 1100406

Rachel E. Snyder, SBN 1090427

STAFFORD ROSENBAUM LLP

222 West Washington Avenue, Suite 900

P.O. Box 1784

Madison, WI 53701-1784

608.256.0226

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

dpoland@staffordlaw.com
jmandell@staffordlaw.com
rsnyder@staffordlaw.com

Mark P. Gaber*
Brent Ferguson*
Benjamin Phillips*
Michael Ortega*
CAMPAIGN LEGAL CENTER
1101 14th St. NW Suite 400
Washington, DC 20005
202.736.2200
mgaber@campaignlegal.org
bferguson@campaignlegal.org
hjohnson@campaignlegal.org
bphillips@campaignlegal.org
mortega@campaignlegal.org

Annabelle E. Harless*
CAMPAIGN LEGAL CENTER
55 W. Monroe St., Ste. 1925
Chicago, IL 60603
202.736.2200
aharless@campaignlegal.org

Ruth M. Greenwood*
Nicholas O. Stephanopoulos*
ELECTION LAW CLINIC AT
HARVARD LAW SCHOOL
4105 Wasserstein Hall
6 Everett Street
Cambridge, MA 02138
617.998.1010
rgreenwood@law.harvard.edu
nstephanopoulos@law.harvard.edu

Elisabeth S. Theodore*
John A. Freedman*
ARNOLD & PORTER KAYE
SCHOLER LLP
601 Massachusetts Ave. NW
Washington, DC 20001

202.942.5000

elisabeth.theodore@arnoldporter.com

stanton.jones@arnoldporter.com

john.freedman@arnoldporter.com

**Admitted pro hac vice
Attorneys for Petitioners*