

FILED
04-09-2024
CLERK OF WISCONSIN
SUPREME COURT

STATE OF WISCONSIN
IN SUPREME COURT

Case 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 ELECTIONS COMMISSION; AND
MEAGAN WOLFE, IN HER OFFICIAL CAPACITY AS
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 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.

**COMMISSION RESPONDENTS' RESPONSE TO
COURT ORDER DATED APRIL 2, 2024**

The Commission Respondents,¹ by undersigned counsel, respond to this Court's order dated April 2, 2024, as follows:

This Court has asked the parties to inform the Court on what basis the fees and expenses of the consultants should be allocated to the parties in this matter, and why that basis is preferable over other methods of allocation.

It is the Commission Respondents' position that they should not be included as a party in any allocation of the consultants' fees and expenses. In this action, the Commission Respondents were nominal respondents, who were not alleged to have taken any unlawful action and consistently did not take a position on the maps. Even if the Commission Respondents had taken a position, however, sovereign immunity bars the imposition of costs and fees against the Commission and its officers here. *See DOT v. Wis. Pers. Comm'n*, 176 Wis. 2d 731, 736, 738, 500 N.W.2d 664 (1993).

¹ The Commission Respondents are the 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 Commission; and Meagan Wolfe, in her official capacity as administrator of the Commission.

The Commission Respondents should not bear the costs of this litigation, and they take no position as to how the consultants' fees and expenses should be distributed among the other parties.

Dated this 9th day of April 2024.

Respectfully submitted,

ERIC J. WILSON
Deputy Attorney General of
Wisconsin

Electronically signed by:

Steven C. Kilpatrick
STEVEN C. KILPATRICK
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Spindell, Jr., Mark L. Thomsen, Ann
S. Jacobs, Marge Bostelmann, Carrie
Riepl, and Meagan Wolfe

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CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this *Commission Respondents' Response to Court Order Dated April 2, 2024* 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 9th day of April 2024.

Electronically signed by:

Steven C. Kilpatrick
STEVEN C. KILPATRICK
Assistant Attorney General