

FILED
08-14-2023
CLERK OF WISCONSIN
SUPREME COURT

IN THE SUPREME COURT OF WISCONSIN
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,

v.

Wisconsin Elections Commission; Don Millis,
Robert F. Spindell, Jr., Mark L. Thomsen, Ann S.
Jacobs, Marge Bostelmann, and Joseph J.
Czarnezki, 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.

SENATORS CARPENTER, LARSON, SPREITZER, HESSELBEIN AND SMITH'S
RESPONSE TO MOTION FOR SCHEDULING ORDER

Respondents Senator Tim Carpenter, Senator Chris Larson, Senator Mark
Spreitzer, Senator Dianne H. Hesselbein, and Senator Jeff Smith, sued in their official
capacities as members of the Wisconsin Senate and collectively referred to as “the

Democratic Senator Respondents," by and through their attorneys, Pines Bach LLP, submit this Response to the Petitioners' August 2, 2023 Motion for Scheduling Order, pursuant to Wis. Stat. § 809.14(1).

The Democratic Senator Respondents acknowledge the serious Constitutional concerns over the composition of current state legislative districts, including the districts they were elected to represent in November 2022, raised in the Petitioners' Petition for Original Action and supporting documents. Whether these districts run afoul of the Wisconsin Constitution is of great import to all citizens of Wisconsin and central to the legitimate operation of democracy in this great State. Equally important, if the current district maps are unconstitutional, is determining how that defect is to be remedied. The Democratic Senator Respondents join in the Petitioners' request for the Court to issue a scheduling order that allows all parties, as well as potential intervenors, to address the issues raised in the Petition in an organized and comprehensive way that will be most helpful to the Court in resolving them.

To that end, the Democratic Senator Respondents request that the Court issue a Scheduling Order as follows:

1. Set a deadline for all Respondents to file a Response to the Petition for Original Action, with specified word limits and formatting requirements, addressing:
 - a. Whether the Petition meets the criteria for Original Action and whether the Court should accept the Petition;
 - b. To the extent Respondents choose, the merits of the following legal issues:
 - i. the justiciability of Petitioners' partisan gerrymandering claims;

- ii. whether the current state legislative districts violate the contiguity requirements of Article IV, Sections 4 and 5 of the Wisconsin Constitution;
 - iii. whether the current state legislative districts violate the separation-of-powers doctrine reflected in the Wisconsin Constitution;
 - iv. should the Court find that the current districts violate the Wisconsin Constitution in one or more ways, what standards should apply in determining remedial state legislative districts;
 - v. should the Court grant the Petition, a proposed method for adjudication of factual issues, if any.
2. Set the same deadline for any proposed intervenors to file their motions to intervene and require that such motions be accompanied by the proposed intervenor's proposed Response to the Petition for Original Action, with the same word limits, formatting requirements, and matters to be addressed by the Respondents.

Following receipt of the above-referenced Responses to the Petition for Original Action, the Democratic Senator Respondents propose that the Court proceed as follows:

- A. Enter a decision and order:
 - i. Granting the Petition pursuant to Wis. Stat. § 809.70(3);
 - ii. Ruling on any motions to intervene;

- iii. Setting a deadline for Respondents and Intervenors to file Petitions or responsive pleadings, as applicable, along with any Counterclaims and Cross-claims;
 - iv. Accepting the Parties' existing briefing as their briefing on the questions described in paragraph 9.b. of the Relief Requested in Petitioners' Motion, and paragraph 1.b.ii. through iv. above (i.e., Sections II through VII of the Petitioners' Memorandum of Law, as requested by Petitioners in their Motion, and all other Parties' positions on those same questions included in their Responses to the Petition for Original Action);
 - v. Ordering any further briefing on the legal issues addressed to date that the Court deems appropriate and/or ruling on those legal issues sufficiently briefed;
 - vi. Ordering a process (such as appointment of a referee pursuant to Wis. Stat. §§ 751.09 and 805.06(1)) and schedule for resolving any factual disputes, if necessary, including making findings of fact.
- B. Following resolution of any factual disputes, order any further merits briefing and oral arguments from the parties that the Court deems appropriate;
- C. Following receipt of further merits briefing, issue a decision and order ruling on the merits of any claims in the Petition that have not yet been decided and ordering a process and schedule for the remedies phase, i.e., for determining the appropriate remedies of any violations found, including a deadline for selection

of remedial state legislative district maps¹ and a method for submission and selection, and a ruling on Petitioners' requests for a writ *quo warranto* and order for special elections.

Respectfully submitted this 14th day of August 2023.

PINES BACH LLP

By: Electronically signed by Tamara B. Packard
Tamara B. Packard, SBN 1023111
Eduardo E. Castro, SBN 1117805

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Hesselbein, Larson, Smith and Spreitzer*

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¹ The Democratic Senator Respondents agree with Petitioners that this deadline should be March 19, 2024 at the latest, for the reasons described in Petitioners' Motion, footnote 2, and because as potential candidates in a November 2024 election, the Democratic Senator Respondents need as much time as possible to prepare for and run in that election.