

FILED
10-10-2023
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 (DEE) 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 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.

PETITION IN INTERVENTION OF NATHAN ATKINSON, STEPHEN JOSEPH WRIGHT, GARY KRENZ, SARAH J. HAMILTON, JEAN-LUC THIFFEAULT, SOMESH JHA, JOANNE KANE, AND LEAH DUDLEY

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**PHV application forthcoming*

Nathan Atkinson, Stephen Joseph Wright, Gary Krenz, Sarah J. Hamilton, Jean-Luc Thiffeault, Somesh Jha, Joanne Kane, and Leah Dudley (collectively, “Proposed Intervenors”) respectfully submit this Petition in Intervention together with their Motion to Intervene in this action and supporting Memorandum pursuant to this Court’s Order of October 6, 2023 (“October 6 Order”) and Wis. Stat. § 803.09.

ISSUES PRESENTED

Proposed Intervenors respectfully adopt in full all parts of the *Clarke* Petition to the Supreme Court to Take Jurisdiction of an Original Action (“*Clarke* Petition”) that remain pending after the October 6 Order. Specifically, Proposed Intervenors respectfully adopt the two issues presented that were accepted for review from the *Clarke* Petition:

1. Whether the state legislative redistricting plans proposed by the Legislature and imposed by this Court in *Johnson III* violate the requirement of Article IV, Sections 4 and 5 of the Wisconsin Constitution that legislators be elected from districts consisting of “contiguous territory.”
2. Whether the state legislative redistricting plans proposed by the Legislature and imposed by this Court in *Johnson III* violate the separation-of-powers principle inherent in the Constitution’s division of legislative, executive, and judicial power by usurping the Governor’s core constitutional power to veto legislation and the Legislature’s core constitutional power to override such a veto.

INTRODUCTION

Proposed Intervenors respectfully adopt in full the introduction to the *Clarke* Petition as it relates to claims that remain pending after the October 6 Order.

PARTIES

Proposed Intervenors respectfully adopt in full the description of the parties in the *Clarke* Petition and hereby plead the following additional allegations:

Proposed Intervenors

1. Nathan Atkinson is a registered voter who resides in Dane County and in Senate District 26 and Assembly District 77. Senate District 26 shares borders with two non-contiguous districts (Senate Districts 16 and 27). Assembly District 77 shares borders with three non-contiguous districts (Assembly Districts 47, 76, and 79). Professor Atkinson is an economist, an Assistant Professor at the University of Wisconsin Law School, and a Research Affiliate at the ETH Zurich Center for Law & Economics. Professor Atkinson's research interests include the design of legal and political institutions, contract theory, and voting procedures. Professor Atkinson has written about algorithmic methods for aggregating preference rankings and about how certain types of voting systems can reduce political polarization. Professor Atkinson received his J.D. from Stanford Law School and his Ph.D. in Political Economics from Stanford University's Graduate School of Business.

2. Stephen Joseph Wright is a registered voter who resides in Dane County and in Senate District 26 and Assembly District 77. Senate District 26 shares borders with two non-contiguous districts (Senate Districts 16 and 27). Assembly District 77 shares borders with three non-contiguous districts (Assembly Districts 47, 76, and 79). Dr. Wright is the Chair of the Department of Computer Sciences at the University of Wisconsin-Madison and the George B. Dantzig Professor of Computer Sciences, teaching courses on nonlinear optimization and on linear

programming, among other subjects. He is a past Chair of the Mathematical Optimization Society, a current fellow and former trustee of the Society for Industrial and Applied Mathematics, and the current Director of the Institute for Foundations of Data Science at the University. In 2020, Dr. Wright was awarded the Khachiyan Prize, which honors life-time achievements in the area of optimization. Dr. Wright received his Ph.D. in Mathematics from the University of Queensland.

3. Gary Krenz is a registered voter who resides in Milwaukee County and in Senate District 8 and Assembly District 23. Senate District 8 is a non-contiguous district that shares borders with four other non-contiguous districts (Senate Districts 5, 13, 20, and 33). Assembly District 23 shares a border with Assembly District 24, which is non-contiguous. Dr. Krenz is a Professor Emeritus of Mathematical and Statistical Sciences and an Adjunct Professor of Computer Science at Marquette University. He is a past chair of Marquette's former Mathematics, Statistics and Computer Science Department. Dr. Krenz received Marquette University's Ignatian Pedagogy Award and the Rev. John P. Raynor, S.J., Faculty Award for Teaching Excellence. His research interests include mathematical and statistical modeling and computer-science education, for which he has been funded by both the National Institutes of Health and the National Science Foundation. Dr. Krenz received his Ph.D. in Applied Mathematics from Iowa State.

4. Sarah J. Hamilton is a registered voter who resides in Milwaukee County and in Senate District 7 and Assembly District 20. Senate District 7 shares borders with two non-contiguous districts (Senate Districts 21 and 28). Dr. Hamilton is an Associate Professor of Mathematics at Marquette University and an Assistant Adjunct Professor at the Medical

College of Wisconsin. She has taught courses at Marquette in mathematical modeling and analysis, differential equations, and the theory of optimization. Her research interests include inverse problems, machine learning and data science, and computational imaging, for which she has been funded by the National Institutes of Health. She has been named a Project NextT Fellow by the Mathematical Association of America. Dr. Hamilton received her Ph.D. in Mathematics from Colorado State University.

5. Jean-Luc Thiffeault is a registered voter who resides in Dane County and in Senate District 26 and Assembly District 77. Senate District 26 shares borders with two non-contiguous districts (Senate Districts 16 and 27). Assembly District 77 shares borders with three non-contiguous districts (Assembly Districts 47, 76, and 79). Dr. Thiffeault is Chair of the Department of Mathematics and also a Professor of Applied Mathematics at the University of Wisconsin-Madison, where his research interests include fluid dynamics, stochastic modeling, and topological dynamics. Dr. Thiffeault is a Fellow of the American Physical Society. He has spoken at over 140 invited research seminars and colloquia and has won the Society for Industrial and Applied Mathematics' outstanding-paper prize. Dr. Thiffeault received his Ph.D. in Physics from the University of Texas at Austin.

6. Somesh Jha is a registered voter who resides in Dane County and in Senate District 27 and Assembly District 79. Both Senate District 27 and Assembly District 79 are non-contiguous districts. In addition, Senate District 27 shares borders with four other non-contiguous districts (Senate Districts 13, 14, 15, and 16). And Assembly District 79 shares borders with five other non-contiguous districts (Assembly Districts 37, 46, 48, 80, and 81). Dr. Jha is the Sheldon B. Lubar Professor of Computer Sciences at the

University of Wisconsin-Madison, where he researches or teaches cartography, adversarial machine learning, computational finance, robust optimization, and data science, among other topics. He has received the National Science Foundation CAREER Award, the Computer-Aided Verification Award, and multiple best-paper awards. He is a Fellow of both the Association for Computing Machinery (awarded to the top 1% of ACM members) and the 5 IEEE (recognizing "extraordinary accomplishments" in the IEEE fields of interest). Dr. Jha received his Ph.D. in Computer Science from Carnegie Mellon University.

7. Joanne Kane is a registered voter who resides in Dane County and in Senate District 26 and Assembly District 77. Senate District 26 shares borders with two non-contiguous districts (Senate Districts 16 and 27). Assembly District 77 shares borders with three non-contiguous districts (Assembly Districts 47, 76, and 79). Dr. Kane is the Associate Director of Assessment and Research at the National Conference of Bar Examiners. Her research interests include scoring methodology, statistics, and multi-parameter models for fairness and decision-making. Dr. Kane received her Ph.D. in Social Psychology from the University of Colorado at Boulder.

8. Leah Dudley is a registered voter who resides in Dane County and in Senate District 26 and Assembly District 77. Senate District 26 shares borders with two non-contiguous districts (Senate Districts 16 and 27). Assembly District 77 shares borders with three non-contiguous districts (Assembly Districts 47, 76, and 79). Ms. Dudley is a Health Actuary for a consulting company. Much of her work involves analyzing Census data to advise cities, towns, and other local governments about actuarial-science issues. Ms. Dudley received her M.S. in Business Statistics from the University of Wisconsin-Madison.

STATEMENT OF FACTS

Proposed Intervenors respectfully adopt in full the statement of facts set out in the *Clarke* Petition as it relates to claims that remain pending after the October 6 Order.

CAUSES OF ACTION

Proposed Intervenors respectfully adopt in full Counts Four and Five of the *Clarke* Petition. Specifically, Proposed Intervenors respectfully adopt the following causes of action as stated in the *Clarke* Petition:

Count Four

The Current State Assembly and Senate Maps Violate the Contiguity Requirement Article IV, Sections 4 and 5

9. Proposed Intervenors restate and incorporate by reference all allegations above as though fully set forth in this paragraph.

10. Article IV, Section 4 states that assembly districts must be “bounded by county, precinct, town or ward lines [and] consist of contiguous territory.” Wis. Const. art. IV, § 4.

11. Article IV, Section 5 states that senate districts must be “single districts of convenient contiguous territory.” Wis. Const. art. IV, § 5.

12. This Court has held that “contiguous territory” means a district “cannot be made up of two or more pieces of detached territory.” *State ex rel. Lamb v. Cummingham*, 83 Wis. 90, 148, 53 N.W. 35, 57 (1892).

13. The current maps violate Article IV, Sections 4 and 5 on their face because they contain 55 assembly districts and 21 senate districts that have detached, noncontiguous territory.

14. The noncontiguous districts in the current maps are not necessary, as it is possible to draw maps that are “bounded by county, precinct, town or ward lines” and contiguous. Wis. Const. art. IV, § 4.

15. Proposed Intervenors are therefore entitled to declaratory and injunctive relief as more fully set out below.

Count Five

Violation of Separation of Powers Doctrine

16. Proposed Intervenors restate and incorporate by reference all allegations above as though fully set forth in this paragraph.

17. The Governor's power to veto legislation and the Legislature's power to override that veto are core powers of both branches of government that are protected by the Wisconsin Constitution.

18. This Court usurped these powers in *Johnson III* by imposing the exact legislation vetoed by Governor Evers in violation of the Constitution.

19. Proposed Intervenors are therefore entitled to declaratory and injunctive relief as more fully set out below.

STATEMENT OF RELIEF SOUGHT

Proposed Intervenors respectfully adopt in full the relief sought in the *Clarke* Petition as it remains pending following the October 6 Order. Specifically, Proposed Intervenors pray for the following relief as stated in the *Clarke* Petition:

(1) declare the current assembly and senate plans unconstitutional in their entirety and enjoin them from being used in any future election (including the November 2024 election and any earlier special or recall elections that may occur),

(2) declare that a remedial plan will not adhere to any "least-changes" approach but rather must comply with the Constitution's Article IV requirements and its Article I Declaration of Rights protections,

including by ensuring that this Court does not impose maps with a partisan skew,

(3) accept proposed remedial maps from the parties for either (a) review and selection by the Court or (b) review and recommendation to this Court by a referee or special master appointed pursuant to Wis. Stat. §§ 751.09 and 805.06, and

(4) issue a writ *quo warranto* declaring the election of senators in November 2022 from unconstitutionally configured districts to be unlawful, with senators holding those seats being merely *de facto* officers, and order special elections in November 2024 for all odd-numbered state senate districts that would not otherwise occur until November 2026.

Proposed Intervenors additionally pray for the following relief:

(5) establish new senate and assembly maps that fully cure all constitutional violations in the existing state-legislative maps and are designed to optimally comply with the Wisconsin Constitution and federal law, and

(6) grant any such other relief that this Court deems just and proper.

Dated: October 10, 2023

Electronically signed by

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**PHV application
forthcoming*