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No. 2023AP1399-OA

IN THE SUPREME COURT OF WISCONSIN

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; 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,

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.

**NON-PARTY RESPONSE BRIEF OF COALITION ON
LEAD EMERGENCY TO THE CONSULTANT REPORT**

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INTRODUCTION

The Coalition on Lead Emergency (“COLE”) is an unincorporated association whose mission is to prevent and respond to lead poisoning in Milwaukee through partnerships with impacted families, faith leaders, neighborhood-based organizations, environmentalists, health care systems, academics, workforce development providers, non-profits, community activists and dedicated volunteers. COLE’s advocacy is directed by its members who are parents of lead-poisoned children (“COLE Parents”). Most COLE Parents are Black mothers living and working in historically redlined and disinvested neighborhoods on the Northside of Milwaukee.

COLE submitted an amicus brief to the Court during the merits phase of this litigation (COLE’s “merits amicus brief”). COLE Br. (Nov. 8, 2023). In its December 22, 2023 order, the Court provided COLE and all amici with opportunities to submit briefs during the remedial phase of this case, including response briefs to the report of the court-appointed consultants, Dr. Bernard Grofman and Dr. Jonathan Cervas (the “consultant report”). Order, *Clarke v. Wis. Elections Comm’n*, No. 2023AP1399-OA (Dec. 22, 2023). COLE submits this brief to apply the perspective it shared in its merits amicus brief to the consultant report’s findings.

ARGUMENT

The Court should reject the Johnson Intervenors' and the Legislature's remedial plans because these plans exhibit extreme partisan bias.

- I. Maps with partisan bias have contributed to inaction on childhood lead poisoning in Wisconsin.

COLE's merits amicus brief argued that any remedial maps should avoid partisan bias and promote legislative democracy in Wisconsin. COLE Br. at 23. COLE raised this argument based on the lived experiences of COLE Parents who have channeled their families' personal struggles with lead poisoning into resolve to advocate for policy solutions to prevent the lead poisoning of Wisconsin children. *Id.* at 10-12. The merits amicus brief explained that lead poisoning is a persistent environmental injustice that disproportionately impacts Black children living in lower-income, historically segregated and redlined areas. *Id.* at 3. This is because chipping and peeling lead paint, often found in poorly maintained housing stock, is the main cause of childhood lead poisoning. *Id.* at 5-6. COLE's merits amicus brief also described the double bind COLE Parents face. *Id.* at 13. Their families live in historically redlined areas of the state that now suffer from high rates of lead poisoning. *Id.* At the same time, their communities have been politically disempowered under the legislative maps that have been in place since 2011. *Id.* As a

result, the parents who have the most at stake in preventing lead poisoning in Wisconsin have faced successive state legislatures that do not respond to their concerns. *Id.* at 16-20. Instead, these legislatures have recently enacted policies that make it even more difficult to end childhood lead poisoning in Wisconsin. *Id.* The merits amicus brief provided examples illustrating this pattern, which included legislative actions limiting the authority of local governments to inspect apartments for chipping and peeling lead paint, rejecting proposals to lower the blood lead level that defines lead poisoning to be consistent with national standards, and removing funding from the state budget for the replacement of lead water service lines because “too much” funding would go to Milwaukee. *Id.*

Based on these experiences, COLE argued that maps with partisan bias are incompatible with foundational constitutional principles:

[T]he public health crisis that has galvanized COLE Parents has a definite geographical distribution that directly connects to historical discriminatory practices that are now universally condemned as injustices. If the “blessings of free government can only be maintained by firm adherence to justice...,” as the framers of Wisconsin’s constitution wrote, Wis. Const. art. I, § 22, then certainly any constitutionally healthy government ought to provide Wisconsinites with an equal and fair opportunity to mitigate injustices. Maps that have the effect of

unevenly distributing political power geographically have, on the contrary, helped perpetuate the injustice of lead poisoning and withheld the blessings of free government for COLE Parents.

Id. at 21-22.

II. The Court should not adopt maps with partisan bias.

In its merits decision in this case, the Court determined that it should not “enact maps that privilege one political party over another,” and that the Court “will take care to avoid selecting” such a plan. *Clarke v. Wis. Elections Comm’n*, 2023 WI 79, ¶ 70-71, 410 Wis. 2d 1, 998 N.W.2d 370. Taking such care requires the Court to consider partisan impact as one of many factors to avoid a “politically mindless approach” that may produce, “whether intended or not, the most grossly gerrymandered results.” *Id.* ¶ 71 (citing *Gaffney v. Cummings*, 412 U.S. 735, 753 (1973)). Indeed, the Court’s inclusion of partisan neutrality as one of the factors used to select a remedial plan is necessary to prevent the kind of grossly unequal political representation that has distorted state policymaking and stymied the prevention of childhood lead poisoning in Wisconsin.

III. Two of the six proposed plans reflect extreme partisan bias and must be rejected.

Consistent with this Court’s December 22 order, court-appointed consultants Dr. Grofman and Dr. Cervas produced

their report evaluating the six plans submitted by the parties according to the criteria outlined in the Court's merits decision. Report of Dr. Grofman and Dr. Cervas (Feb. 1, 2024). While refraining from opining on legal conclusions, Dr. Grofman and Dr. Cervas state that the six plans generally appear to meet the criteria of the Court's decision with two very critical exceptions. *Id.* at 21-24. The consultant report concludes that the Legislature's plan "is a partisan gerrymander" and that the maps put forward by the Johnson Intervenors, while not as extreme as the Legislature's maps, are also "so biased in partisan terms that they can clearly be labeled partisan gerrymanders." *Id.* at 22-23.

Either of these plans would continue the same political dynamics COLE Parents have experienced for years. The Legislature's or the Johnson Intervenors' plans would result in uneven political representation and insulate legislative majorities from accountability to people in areas of the state with disproportionately high rates of childhood lead poisoning. These plans would likely perpetuate the same pattern of legislative indifference and neglect to this public health crisis that COLE Parents have experienced to date. Consistent with its merits decision, the Court should reject further consideration of these two plans. *Clarke*, 2023 WI 79, ¶ 71 ("As a politically neutral and independent institution, we will take care to avoid selecting

remedial maps designed to advantage one political party over another.”).

IV. Geography need not be COLE Parents’ destiny.

Some argue that a legislature that is insulated from and unaccountable to the concerns of many Wisconsin communities, such as the northside Milwaukee neighborhoods where childhood lead poisoning is rampant, is the natural state of affairs. Akin to this line of thinking, the Legislature and Johnson Intervenors argue that Republican legislative entrenchment is a necessary consequence of Wisconsin’s electoral geography. Legislature Br. in Support of Proposed Maps (Jan. 12, 2024) at 53-58; Johnson Intervenors Br. in Support of Proposed Maps (Jan. 12, 2024) at 25-27. The four politically neutral maps submitted to the Court demonstrate that this is not true.

In their report, Dr. Grofman and Dr. Cervas also refute the idea that a healthy legislative democracy is out of reach for Wisconsinites. “[I]n Wisconsin, geography is not destiny,” they say. Report of Dr. Grofman and Dr. Cervas at 24. This phrasing is poignant for COLE Parents because they have been striving for years to overcome the notion that geography is destiny. They have been fighting the assumption that a pernicious affliction like childhood lead poisoning will remain endemic to their neighborhoods, along with lead poisoning’s causes: absentee landlords, a lack of quality housing options and deteriorating

infrastructure. As described in COLE's merits amicus brief, to ensure that these characteristics of their geography do not define their children's destinies, COLE Parents have directed their energies to policy advocacy. COLE Br. at 10-12. However, seen through the lens of the series of state legislative setbacks to action on childhood lead poisoning, Wisconsin's era of partisan gerrymandering has strengthened the painful idea that geography could remain destiny for COLE Parents, their children and their community. Thankfully, as Dr. Grofman and Dr. Cervas elucidate, this Court can make a better choice by selecting fair maps.

For the foregoing reasons, COLE urges the Court to reject the Legislature's and Johnson Intervenors' plans because they exhibit extreme partisan bias.

Dated this 8th day of February 2024.

Respectfully submitted,

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FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in s. 809.19 (8) (b), (bm), and (c) for a brief produced with a proportional serif font and with this Court's December 22, 2023 order. The length of this brief is 1,434 words.

Dated: February 8, 2024.

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