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SUPREME COURT

April 3, 2024

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You are hereby notified that the Court has issued the following order:

No. 2023AP1399-OA Clarke v. Wisconsin Elections Commission

A "Motion for Clarification of Opinion and Order as it Relates to Recall and Special Elections," having been filed by respondents, the Wisconsin Elections Commission (WEC) et al., and responses to the motion having been filed by (1) intervenor-respondent, the Wisconsin Legislature, and the Republican Senator respondents; (2) intervenor-respondent, Billie Johnson et al.; (3) the Democratic Senator respondents; (4) petitioners, Rebecca Clarke et al.; (5) intervenors-petitioners, Stephen Joseph Wright et al.; and (6) intervenor-petitioner, Governor Tony Evers;

IT IS ORDERED that the Motion for Clarification of Opinion and Order as it Relates to Recall and Special Elections is denied. On December 22, 2023, we enjoined the "Elections Commission from using [the prior] legislative maps in all future elections" because the maps violated the Wisconsin Constitution. Clarke v. WEC, 2023 WI 79, ¶3, 410 Wis. 2d 1, 998 N.W.2d 370. Based on the submissions before us, we decline to further clarify or amend the opinion and order.

Subsequent to our December 22 order, the Legislature enacted 2023 Wisconsin Act 94, enacting new state legislative districts maps, and the Governor signed them into law. Act 94 is not before us in the Clarke case and any examination of these maps departs from the relief

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requested in Clarke v. WEC. We will "not depart from our general practice that this court will not offer an advisory opinion or make a pronouncement based on hypothetical facts." State ex rel. Collison v. City of Milwaukee Bd. of Rev., 2021 WI 48, ¶46, 397 Wis. 2d 246, 960 N.W.2d 1. As a threshold matter, it is WEC, not this court that has the "overall statutory responsibility for the administration of Wisconsin's elections." Democratic Nat'l Committee v. Bostelmann, 488 F.Supp.3d 776, 796 (W.D. Wis. 2020) (citing Wis. Stat. § 5.05(1)).

ANNETTE KINGSLAND ZIEGLER, C.J. (*concurring*). I concur that this matter should be denied. The court should simply state the motion is denied, without more. See Clarke v. WEC, No. 2023AP1399-OA, unpublished order (Mar. 19, 2024) (Ziegler, C.J., dissenting).

I am authorized to state that REBECCA GRASSL BRADLEY, J., joins this concurrence.

Samuel A. Christensen
Clerk of Supreme Court

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