

FILED
03-22-2024
CLERK OF WISCONSIN
SUPREME COURT

STATE OF WISCONSIN
IN SUPREME COURT

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
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,

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.

**GOVERNOR TONY EVERS' RESPONSE TO
WISCONSIN LEGISLATURE'S MOTION TO DISMISS**

Respondent Wisconsin Legislature moves to dismiss this case as moot because new Senate and Assembly maps have been enacted and the relevant constitutional issue in this case, contiguity, has been resolved. (Legislature's Mot. 1.)

Governor Tony Evers disagrees that this case is moot. Specifically, the prior *Johnson III* maps are enjoined for future use in any election, but the newly enacted maps in 2023 Act 94 do not take effect until the 2024 general election. *Clarke v. Wis. Elections Comm'n*, 2023 WI 79, ¶ 3, 410 Wis. 2d 1, 998 N.W.2d 370; 2023 Wis. Act. 94, § 2. Therefore, there is an unresolved question about which legislative districts should apply to recall and special elections held before the 2024 general. Respondent Wisconsin Elections Commission has moved for clarification on this question so that it can properly administer interim elections. (Commission's Mot. 1-5.) The other parties have responded and the motion remains pending. Governor Evers' response seeks additional time to allow the parties to reach a stipulation on which interim maps to use. Dismissal is not appropriate at this time.

The Legislature cites several cases for the proposition that a judicial redistricting remedy is only in place until the Legislature and Governor enact new maps, *Johnson v. Wisconsin Elections Comm'n*, 2021 WI 87, ¶ 19, 399 Wis. 2d 623, *State ex rel. Reynolds v. Zimmerman*, 22 Wis. 2d 544, 571, 126 N.W.2d 551, 566 (1964), and *State ex rel. Reynolds v. Zimmerman (Zimmerman II)*, 23 Wis. 2d 606, 606, 128 N.W.2d 16 (1964). But none of these cases address the

unique circumstances here, where the prior maps are enjoined but the new maps do not yet take effect, leaving no maps in place. Contrary to the Legislature's position, the question of interim districts to apply when a state's current and new maps both are unusable presents a controversy that a court may decide. *See Perry v. Perez*, 565 U.S. 388, 392 (2012).

This case is not moot, and the Court should not dismiss it at this time.

Dated this 22nd day of March 2024.

Respectfully submitted,

JOSHUA L. KAUL
Attorney General of Wisconsin

Electronically signed by:

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CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document 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 22nd day of March 2024.

Electronically signed by:

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