

SUPREME COURT OF WISCONSIN

No. 02-03

In the matter of the adoption of procedures for
original action cases involving state
legislative redistricting

FILED

JAN 4, 2008

David R. Schanker
Clerk of Supreme Court
Madison, WI

On January 7, 2002, Assembly Speaker Scott R. Jensen and Senate Minority Leader Mary E. Panzer, representing Assembly and Senate Republicans, petitioned this court for leave to commence an original action to declare the existing legislative districts constitutionally invalid due to population shifts documented by the 2000 census. They further asked this court to enjoin the Wisconsin Elections Board from conducting the 2002 elections using the existing districts. Finally, claiming a legislative impasse, they asked this court to remap the state's Senate and Assembly districts in time for the rapidly approaching 2002 election cycle. The Elections Board, by a 4-3 margin, supported the petition.

On February 12, 2002, this court issued its per curiam opinion denying the petition without prejudice. Jensen v. Wisconsin Elections Board, 2002 WI 13, 249 Wis. 2d 706, 639 N.W.2d 537. In its opinion, this court emphasized that the Wisconsin Constitution sets forth standards for redistricting and commits to the state legislature the authority and

responsibility of drawing state Senate and Assembly district boundaries: "At its first session after each enumeration made by the authority of the United States, the legislature shall apportion and district anew the members of the senate and assembly, according to the number of inhabitants." Wis. Const. art. IV, § 3; see id. at ¶6. This court stated:

The framers in their wisdom entrusted this decennial exercise to the legislative branch because the give-and-take of the legislative process, involving as it does representatives elected by the people to make precisely these sorts of political and policy decisions, is preferable to any other.

Id. at ¶10.

At the time the Jensen petition was pending, it was well into the first legislative session following the 2000 census enumeration and not far (just three and a half months) from the official commencement of the next election season (nomination paper circulation begins June 1). Wis. Stat. § 10.72(2) (1999-2000). Id. at ¶12. A group of Wisconsin citizens had commenced a congressional reapportionment lawsuit in federal court over a year before, pending in the United States District Court for the Eastern District of Wisconsin, which had been amended to include the issue of state legislative redistricting. See Arrington v. Elections Board, No. 01-C-121 (E.D. Wis. filed 2001). A three-judge panel, established pursuant to 28 U.S.C. § 2284 (2000), had assumed jurisdiction over the federal case. Id. at ¶14.

The timing of the Jensen petition did not permit the court to exercise its original jurisdiction in a way to do substantial justice. This court explained:

We have no established protocol for the adjudication of redistricting litigation in accordance with contemporary legal standards. A procedure would have to be devised and implemented, encompassing, at a minimum, deadlines for the development and submission of proposed plans, some form of factfinding (if not a full-scale trial), legal briefing, public hearing, and decision. We are obviously not a trial court; our current original jurisdiction procedures would have to be substantially modified in order to accommodate the requirements of this case. See Wis. S.Ct. IOP § II.B.3 (May 24, 1984).

All this takes time, and there is precious little of that left — certainly not enough for back-to-back state and federal plenary proceedings on a matter as complex and consequential as this.

Id. at ¶21.

While this court denied the petition for leave to commence an original action, it stated that it would initiate proceedings regarding procedures for original jurisdiction in future redistricting cases. Accordingly, as a consequence of the Jensen petition and decision, on November 25, 2003, this court appointed a committee to review legislative redistricting, along with rules and procedures of other jurisdictions, and to propose procedural rules.

On September 21, 2007, the committee submitted its report and proposal, which the court has posted to its website at: <http://wicourts.gov/news/archives/2007/docs/redistrictingreport.pdf>. On September 24, 2007, the court invited public comment on the report and stated that it would decide how to further proceed after receipt of comments. The court has received comments and is still open to receiving comments. The court has

decided to discuss the matter at an open administrative conference to decide any future steps.

IT IS ORDERED that on Tuesday, April 8, 2008, at 9:30 a.m., at its open administrative conference in the Supreme Court Room in the State Capitol, Madison, Wisconsin, the court shall discuss the committee's report and comments received.

IT IS FURTHER ORDERED that any interested persons may file with the court a written submission for the court's review at this conference, preferably no later than March 14, 2008. The court retains the entire file on this matter and interested persons are encouraged not to file duplicative submissions. As this matter is not presently scheduled for public hearing, general public testimony will not be entertained at the open conference at this time. The court may, in its discretion, direct questions to individuals present at the conference to aid the court's consideration of these matters.

IT IS FURTHER ORDERED that notice of the hearing be given by a single publication of a copy of this order in the official state newspaper and in an official publication of the State Bar of Wisconsin not more than 60 days nor less than 30 days before the date of the hearing.

Dated at Madison, Wisconsin, this 4th day of January, 2008.

BY THE COURT:

David R. Schanker
Clerk of Supreme Court

