

FILED
01-29-2024
CLERK OF WISCONSIN
SUPREME COURT

IN THE SUPREME COURT OF WISCONSIN

No. 2021AP1450-OA

BILLIE JOHNSON, ERIC O'KEEFE, ED PERKINS, AND RONALD ZAHN,
Petitioners,

BLACK LEADERS ORGANIZING FOR COMMUNITIES, VOCES DE LA FRONTERA,
LEAGUE OF WOMEN VOTERS OF WISCONSIN, CINDY FALLONA, LAUREN
STEPHENSON, REBECCA ALWIN, CONGRESSMAN GLENN GROTHMAN, CONGRESSMAN
MIKE GALLAGHER, CONGRESSMAN BRYAN STEIL, CONGRESSMAN TOM TIFFANY,
CONGRESSMAN SCOTT FITZGERALD, LISA HUNTER, JACOB ZABEL, JENNIFER OH,
JOHN PERSA, GERALDINE SCHERTZ, KATHLEEN QUALHEIM, GARY KRENZ,
SARAH J. HAMILTON, STEPHEN JOSEPH WRIGHT, JEAN-LUC THIFFEAULT,
AND SOMESH JHA

Intervenors-Petitioners,

v.

WISCONSIN ELECTIONS COMMISSION, MARGE BOSTELMANN, DON MILLIS, ANN
JACOBS, CARRIE RIEPL, ROBERT F. SPINDELL, JR., AND MARK L. THOMSEN,
IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE
WISCONSIN ELECTIONS COMMISSION,

Respondents,

THE WISCONSIN LEGISLATURE; GOVERNOR TONY EVERS, IN HIS OFFICIAL
CAPACITY, AND DIANE HESSELBEIN, SENATE DEMOCRATIC MINORITY LEADER,
ON BEHALF OF THE SENATE DEMOCRATIC CAUCUS,

Intervenors-Respondents.

**CITIZEN MATHEMATICIANS AND SCIENTISTS'
RESPONSE TO THE MOTION FOR RELIEF FROM JUDGMENT**

Sarah A. Zylstra (Bar No. 1033159)
Tanner G. Jean-Louis (Bar No.
1122401)
Boardman Clark LLP
1 South Pinckney Street
Suite 410
Madison, WI 53701
(608) 257-9521
szylstra@boardmanclark.com
tjeanlouis@boardmanclark.com

Sam Hirsch*
Jessica Ring Amunson*
Jenner & Block LLP
1099 New York Avenue NW
Suite 900
Washington, DC 20001
(202) 639-6000
shirsch@jenner.com
jamunson@jenner.com

* *Appearing pro hac vice*

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....3
ARGUMENT.....4
CONCLUSION6

TABLE OF AUTHORITIES

<i>Clarke v. Wisconsin Elections Commission</i> , 2023 WI 79, 998 N.W.2d 370	4
<i>Johnson v. Wisconsin Elections Commission</i> , 2022 WI 14, 400 Wis. 2d 626, 971 N.W.2d 402, <i>summarily rev'd on other grounds sub nom. Wisconsin Legislature v. Wisconsin Elections Commission</i> , 595 U.S. 398 (2022)	5
<i>Jensen v. Wisconsin Elections Board</i> , 2002 WI 13, 249 Wis. 2d 706, 639 N.W.2d 537	4
<i>State ex rel. Attorney General v. Cunningham</i> , 81 Wis. 440, 51 N.W. 724 (1892).....	4
<i>State ex rel. Lamb v. Cunningham</i> , 83 Wis. 90, 53 N.W. 35 (1892)	4

Intervenors-Petitioners Stephen Joseph Wright, Jean-Luc Thiffeault, Gary Krenz, Somesh Jha, and Sarah J. Hamilton (“Citizen Mathematicians and Scientists” or “CMS Intervenors”) hereby respond to Intervenors-Petitioners Lisa Hunter, Jacob Zabel, and John Persa’s Motion for Relief from Judgment, dated January 16, 2024.

ARGUMENT

The Court should grant the Motion for Relief from Judgment. In *Clarke v. Wisconsin Elections Commission*, 2023 WI 79, 998 N.W.2d 370, this Court expressly overruled the mandatory “least change” approach that produced Wisconsin’s current, gerrymandered congressional map. *Id.* ¶63. In *Clarke*, the Court also made clear that, “[a]s a politically neutral and independent institution,” it must “take care to avoid selecting remedial maps designed to advantage one political party over another.” *Id.* ¶71. In so doing, the Court rejected holdings from this case and returned to legal positions it had championed for more than a century. *See, e.g., Jensen v. Wis. Elections Bd.*, 2002 WI 13, ¶12, 249 Wis. 2d 706, 639 N.W.2d 537; *State ex rel. Lamb v. Cunningham*, 83 Wis. 90, 148, 53 N.W. 35, 57 (1892); *State ex rel. Att’y Gen. v. Cunningham*, 81 Wis. 440, 483–84, 51 N.W. 724, 729–30 (1892).

Given the recent holding in *Clarke*, this Court should now vacate the congressional-redistricting judgment in *Johnson v. Wisconsin Elections Commission*, 2022 WI 14, ¶¶7, 25, 52, 400 Wis. 2d 626, 971 N.W.2d 402 (“*Johnson I*”), summarily rev’d on other grounds sub nom. *Wis. Legislature v. Wis. Elections Comm’n*, 595 U.S. 398 (2022). And following vacatur of the judgment in *Johnson II*, the Court should promptly invite the parties to submit new proposed maps that remedy the malapportionment of the 2011 congressional map without mandating a “least change” approach and without favoring or disfavoring either major political party.

The Citizen Mathematicians and Scientists can be especially helpful in this remedial process. The CMS are not self-interested politicians. Rather, they include, among others:

- Professor Wright, the current Chair of the Department of Computer Sciences at the University of Wisconsin–Madison;
- Professor Thiffeault, the current Chair of the Department of Mathematics at the University of Wisconsin–Madison; and
- Professor Emeritus Krenz, the former Chair of Marquette University’s Mathematics, Statistics and Computer Science Department.

Any remedial map that these professors and the other CMS Intervenors propose will benefit from the power of *computational redistricting*—the use of high-performance computers to generate and evaluate maps that attempt to optimally comply with multiple redistricting criteria simultaneously. The expert team the CMS Intervenors have assembled will use advanced computing and algorithmic optimization techniques to systematically sort through millions of alternatives and identify the maps that best balance Wisconsin’s redistricting principles. And they can do all of this in a matter of days, not months. The result will be a streamlined remedial process and a vastly improved, politically neutral congressional map that promises the people of Wisconsin fair and equitable representation in the halls of Congress.

CONCLUSION

The Court should grant the Motion for Relief from Judgment.

Dated: January 29, 2024.



Sarah A. Zylstra (Bar No. 1033159)
Tanner G. Jean-Louis
(Bar No. 1122401)
Boardman Clark LLP
1 South Pinckney Street
Suite 410
Madison, WI 53701
(608) 257-9521
szylstra@boardmanclark.com
tjeanlouis@boardmanclark.com

Respectfully submitted,

Sam Hirsch*
Jessica Ring Amunson*
Jenner & Block LLP
1099 New York Avenue NW
Suite 900
Washington, DC 20001
(202) 639-6000
shirsch@jenner.com
jamunson@jenner.com
edeutsch@jenner.com
aramamurti@jenner.com

* *Appearing pro hac vice*

CERTIFICATE OF COMPLIANCE

I hereby certify that this Response conforms to the rules contained in Wis. Stat. § 809.81, which governs the form of documents filed in this Court where Chapter 809 does not expressly provide for alternate formatting. The length of this Response is 489 words.

Dated: January 29, 2024.



Sarah A. Zylstra
(WI Bar No. 1033159)
Boardman Clark LLP
1 South Pinckney Street
Suite 410
Madison, WI 53701
(608) 257-9521