Redistricting battle renews after Protasiewicz makes liberal court a reality

By WisPolitics.com

There was the high-spending, high-stakes battle in the spring election for a state Supreme Court seat to determine the philosophical balance of the high court.

Now there's the muti-front battle over the status of the new liberal justice who easily won that race. The partisan battle pertains to new cases challenging GOP-drawn legislative district lines. Those lines will influence whether Republicans can maintain their wide majorities in the Assembly and Senate.

Since the new liberal justice, Janet Protasiewicz, took office, the legal briefs have been proliferating and the conservative charges against the Milwaukee judge have been mounting.

Republicans' aim is clear: derail Democrats efforts to redraw GOP-drawn maps in time for the 2024 elections.

If they are redrawn closer to what Democrats like, Wisconsin's importance will be further heightened. Already the Badger State is watched by politicos around the country because of: the 2024 GOP national
convention in Milwaukee, the presidential election in a key swing state, the re-election bid of Democrat Tammy Baldwin that will help Democrats maintain control of the U.S. Senate and Democrats' challenge of freshman conservative Congressman Derrick Van Orden in western Wisconsin.

GOP Assembly Speaker Robin Vos even suggested his caucus could look at impeaching the new liberal Supreme Court justice if she hears redistricting suits. Political insiders took notice. They noted if lawmakers were successful in removing her from the bench -- and there are serious doubts the Senate would go along -- Democrat Gov. Tony Evers would fill the vacancy with someone just as liberal and Vos would be opening his caucus to backlash for usurping the will of voters.

In the meantime, GOP lawmakers have filed a motion seeking to force Protasiewicz off a pair of redistricting lawsuits, based on donations she received from the state Democratic Party and past comments the current lines are “rigged” for Republicans.

The motion filed with the state Supreme Court seeks her recusal from all aspects of the cases, including the decision on whether the court should take original action in the suit.

The court set a late August deadline for parties to respond to the requests that they take original action in two liberal lawsuits seeking to overturn maps put in place last year. Both argue the GOP lines, approved when the court was controlled by conservatives 4-3, are illegal on various fronts.

Along with the state Elections Commission, one suit names as defendants each member of the state Senate who was elected last fall under the current lines. Meanwhile, the GOP-controlled state Legislature has filed motions to intervene in both cases.

According to one filing from the GOP lawmakers, the motion argues the U.S. Constitution and state law require recusal “based on millions of dollars donated by the Democratic Party of Wisconsin,” as well as
Protasiewicz’s comments on the campaign trail that the current maps are “unfair” and “rigged” in favor of Republicans.

“Justice Protasiewicz invited a ‘fresh look’ at the questions presented. And Petitioners accepted the invitation, filing this Petition one day after Justice Protasiewicz was sworn in,” lawyers for the GOP senators wrote in a footnote.

This was preceded by a shot from conservative Justice Rebecca Bradley, who knocked Protasiewicz for not recusing from the case. Bradley noted a U.S. Supreme Court ruling regarding a West Virginia judge. The court found in that case the judge improperly heard a suit involving a contributor who gave $3 million to his campaign.

The state Democratic Party, which isn’t a party to the redistricting suits, gave Protasiewicz nearly $10 million earlier this year between direct transfers and in-kind contributions.

The 12 GOP senators also urged the court to reject both suits, arguing: “This Court does not overrule precedent based on changes to its members.”

Meanwhile, the five Democratic lawmakers named in the suit argued the court was wrong last year to put in place “extreme partisan maps that were not chosen, but rather were explicitly rejected, through the political process.”

Both redistricting suits argue those elected to Senate districts under the current lines last fall should have to run in special elections in 2024 under new maps. Those senators would potentially be on the ballot in 2022, 2024 and 2026.

The GOP motion knocked the suit in which the lawmakers are named as “an unapologetic attempt to retread old ground with the hope of a different result.”

The motion also seeks to rebut a claim in one of the suits that the current maps are unconstitutional because some legislative districts aren’t contiguous and include municipal “islands” that aren’t connected to the seats.

Republicans argued in their brief that courts for at least the past 50 years have allowed such districts.

The Democrat filing argues while past legislatures and courts have ignored the contiguity requirement in the Wisconsin Constitution, they were wrong to do so.

They also embraced an argument raised by the Democratic voters who filed the suit that the state Supreme Court last year violated the separation of powers by putting in place lines that Republican lawmakers drew.

Those maps passed both houses of the Legislature in late 2021, but were vetoed by Evers. GOP lawmakers then submitted the same maps to the then-conservative court for consideration.

The Democratic brief argues the justices acted as a super legislature to override Evers’ veto and impose maps that failed to be approved through the legislative process.

“Rather than carrying out its own powers, under the guise of the redistricting litigation, the Legislature requested the Court assume and subvert legislative powers expressly conferred to the political branches,” they argued.

The Elections Commission, a defendant in both suits, wrote in its response the agency’s primary concern is that any litigation doesn’t disrupt the efficient administration of the 2024 election calendar. In the last redistricting suit, the agency indicated it would need maps in place by March 15, 2022, to be able to “timely and effectively” administer that fall’s election. The agency added it’s prepared to provide a specific timeline for the latest suits if asked.

The furious legal wrangling is just beginning. And so is the latest redistricting battle.

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