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 in her official capacity as a member of the Wisconsin Elections Commission, Julie Glancey in her official capacity as a member of the Wisconsin Elections Commission, Ann Jacobs in her official capacity as a member of the Wisconsin Elections Commission, Dean Knudson in his official capacity as a member of the Wisconsin Elections Commission, Robert Spindell, Jr. in his official capacity as a member of the Wisconsin Elections Commission and Mark Thomsen in his official capacity as a member of the Wisconsin Elections Commission,
Respondents,
The Wisconsin Legislature, Governor Tony Evers, in his official capacity, and Janet Bewley Senate Democratic Minority Leader, on behalf of the Senate Democratic Caucus,
Intervenors-Respondents.

Original Action in the Wisconsin Supreme Court

MERITS BRIEF OF INTERVENOR-PETITIONERS BLACK LEADERS ORGANIZING FOR COMMUNITIES, VOCES DE LA FRONTERA, LEAGUE OF WOMEN VOTERS OF WISCONSIN, CINDY FALLONA, LAUREN STEPHENSON & REBECCA ALWIN

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ISSUE PRESENTED

Does the BLOC Petitioners' proposed map comply with the "least-change" approach, the Voting Rights Act, and state and federal constitutional requirements—including the principles of "one-person, one-vote" and compact and contiguous districts—while also providing the best balance of other traditional apportionment criteria, such as preserving the boundaries of political subdivisions and respecting communities of interest?

STATEMENT OF THE CASE

This litigation over the apportionment of state legislative districts has reached the merits phase. On November 30, 2021, this Court released an opinion stating the criteria that it would follow when adopting new state legislative districts to remedy the now-unconstitutional 2011 Wisconsin Act 43.

More specifically, in the majority opinion,[1] the Court held that proposed state legislative districts must comply with both a "least-change" approach and the legal requirements of state and federal law. *Johnson v. Wis. Elections Comm'n*, 2021 WI 87, ¶¶ 39–68, 73, __ Wis. 2d __, __ N.W. 2d __ .

The provisions of the Wisconsin Constitution governing apportionment of state legislative districts require districts to: i) be nearly equal in population; ii) be bounded by county, precinct, town, or ward lines; iii) consist of contiguous territory; and iv) be as compact as practicable. Wis. Const. art. IV, §§ 3, 4. The United States Constitution similarly requires population equality among state legislative districts. *See Johnson*, 2021 WI 87, ¶¶ 24–26.

The Court further noted that proposed state legislative districts must comply with the federal Voting Rights Act of

[1] All references to the "majority opinion" are to the sections of Justice Rebecca Grassl Bradley's opinion that Justice Hagedorn joined.

1965, 52 U.S.C. § 10101, *et seq.* ("VRA"), and in particular, Section 2 of the VRA, 52 U.S.C. § 10301. Finally, the majority opinion required that new state legislative districts must take a "least-change" approach from existing districts. *See Johnson*, 2021 WI 87, ¶¶ 64–68, 73–79. The majority opinion also explained that it would not consider the partisan makeup of districts. *Id*., ¶¶ 39–63.

The concurring opinion identified two additional criteria that proposed state legislative districting plans may address as appropriate: i) respecting communities of interest; and ii) minimizing delayed voting in state senate elections. *Id.*, ¶ 83 & n.9 (Hagedorn, J., concurring).

The BLOC Petitioners now submit a proposed map for State Assembly and State Senate districts complying with these

parameters (BLOC App. 006-012[2]), as well as this supporting brief and supporting expert reports by Dr. Kenneth R. Mayer, demonstrating the least-change nature of the proposed map and how the districts perform under the other criteria set by the Court (BLOC App. 115-152); Dr. Loren Collingwood, demonstrating racially polarized voting in Milwaukee, one of the legal criteria under Section 2 of the VRA that must be considered when implementing a remedial apportionment plan (BLOC App. 013-058); and Dr. David Canon, addressing the "totality of the circumstances" analysis under Section 2 of the VRA (BLOC App. 059-114).

[2] All references in this brief to materials contained in the separate Appendix contemporaneously filed by the BLOC Petitioners in support of this brief are to "BLOC App. XX."

ARGUMENT

I. The legal standards that guide this Court's map-selection process are set forth in *Johnson*, along with federal and state law.

Johnson holds that judicially adopted legislative districts must follow a "least-change" approach to existing districts. But, as described in *Johnson*, that overarching requirement, although binding, is a generalized "approach" rather than a set of specific legal requirements or standards. The only specific legal requirements identified in *Johnson* are those found in federal and state law, most importantly compliance with the VRA, "one-person, one-vote" equal protection principles, and the Wisconsin Constitution's apportionment provisions.

Those legal requirements *must* be followed, even if they demand meaningful changes to some districts. This result aligns with courts that have adopted a "least-change" approach, and it fulfills the judiciary's obligation to protect the

"justiciable and cognizable rights" that are at stake when it redraws districts. *Johnson*, 2021 WI 87, ¶ 38. Furthermore, even within a "least-change" approach, the Court may also consider how proposed apportionment plans treat communities of interest and the magnitude of delayed voting in state senate elections. *Id.*, ¶ 83 & n.9 (Hagedorn, J., concurring).

A. Judicially adopted state legislative districts must satisfy federal and state law apportionment requirements when applying a "least-change" approach.

Johnson explained that the Court will use a "least-change" approach to guide its map-selection process. That approach may be conceptualized as examining which "proposed map most aligns with current district boundaries." *Id.*, ¶ 83 (Hagedorn, J., concurring). Courts taking this approach, however, have not identified any concrete, objective measures to compare maps on this basis. *See id.*, ¶ 73 (citing "least-change" cases). Rather, these courts typically mention

"least-change" as a general framework and then focus on satisfying federal and state legal requirements in conformance with traditional redistricting principles.[3] That said, one objective, quantitative measure of the magnitude of changes to a redistricting plan is the mean "core retention" for the plan, which measures the percentage of an old district's population that is kept together in a new district.

This Court also recognizes, like others that have used a "least-change" framework, that it may not adopt just *any* map that makes minimal changes to existing districts. Rather, a set of interlocking "justiciable and cognizable rights" recognized by federal and state law must be protected above all else. *Id.*, ¶ 38; s*ee also id.*, ¶ 82 n.4 (Hagedorn, J., concurring). While "least-change" offers a general mapmaking method, the map

[3] *See, e.g.*, *Crumly v. Cobb Cty. Bd. of Elections & Voter Registration*, 892 F. Supp. 2d 1333, 1345–53 (N.D. Ga. 2012); *Martin v. Augusta-Richmond Cnty., Ga., Comm'n*, No. 112-cv-058, 2012 WL 2339499, at *1–6 (S.D. Ga. June 19, 2012); *Stenger v. Kellett*, No. 4:11-cv-2230, 2012 WL 601017, at *9 (E.D. Mo. Feb. 23, 2012).

this Court ultimately selects also "must comply with the United States Constitution; the VRA; and Article IV, Sections 3, 4, and 5 of the Wisconsin Constitution." *Id.*

Applying these specific federal and state legal requirements to the reality of population shifts across Wisconsin over the last decade yields an inescapable conclusion: some districts created under 2011 Wisconsin Act 43 cannot lawfully survive in their current form. State legislative districts must be updated throughout the state to equalize population among the districts—making districts that have lost population larger and those that have gained population smaller—while still adhering to other legal apportionment criteria. Moreover, demographic changes in and around Milwaukee compel that area's legislative districts to be re-drawn to ensure compliance with Section 2 of the VRA.

Begin with Section 2 of the VRA, which mandates meaningful changes to the boundaries of Milwaukee-area

districts. Under Wisconsin's current state assembly plan, only six Black opportunity districts exist,[4] all in the Milwaukee area. But as explained more below in Section II.A, based on data in the 2020 Census, Section 2 now requires drawing a seventh such district in the Milwaukee area. To preserve the existing six VRA-mandated opportunity districts and create a seventh, territory and population must be taken from (or given to) surrounding districts. And like dropping a stone in a lake, these ripples affect not just the opportunity districts' neighbors, but also their neighbors' neighbors, and so on. Yet the BLOC Petitioners' proposed maps minimize that ripple effect, as explained *infra.*

This inevitable chain reaction is driven by the constitutional "one-person, one-vote" principle, which requires that each district not deviate too much from the ideal

[4] The law underlying the concept of an "opportunity district" is outlined below in Section I.B.

population.[5] *Johnson*, 2021 WI 87, ¶¶ 16, 24–26, 28–33. When one district is redrawn to rebalance a population that has grown or declined over the past decade, it can do so only by shifting population to or from its neighboring districts. That can leave the neighbors over- or under-populated, which sometimes then requires altering *their* neighboring districts, too.[6]

Other criteria (apart from making the least changes to existing districts) also feed the chain reaction caused by adjusting districts to comply with "one-person, one-vote" and VRA legal requirements. First, the redrawn districts must be compact, contiguous, and respect political subdivisions, as required by Article IV, Sections 3 and 4 of the Wisconsin

[5] According to the 2020 Census results: for a congressional district, 736,715 people; a state assembly district, 59,533 people; and a state senate district, 178,598 people. *Johnson*, 2021 WI 87, ¶ 15.

[6] *Cf. Bodker v. Taylor*, No. 1:02-cv-999, 2002 WL 32587312, at *5 (N.D. Ga. June 5, 2002) (applying "minimum change" approach, but noting that satisfying the "one person, one vote standard would be an impossible task without moving all of the district lines").

Constitution. *Johnson*, 2021 WI 87, ¶¶ 34–37.[7] Second, traditional criteria like maintaining communities of interest or minimizing delayed voting in state senate races through senate district changes may be used, so long as the districts satisfy federal and state law and generally follow a "least-change" approach. *Id.*, ¶ 83 (Hagedorn, J., concurring).

Taken together, whenever there is a meaningful change in a state's population from one decennial census to the next—and more critically, meaningful demographic change in specific geographic areas—federal and state legal requirements inevitably will produce a new apportionment plan with some meaningful differences from the current plan. Any apportionment plan that rests on a "least-change" framework still must rework some old districts to rebalance

[7] Indeed, the cases this Court cited as applying "least-change" still considered other criteria like this, in addition to VRA and "one-person, one-vote" requirements. *Cf., e.g., Crumly*, 892 F. Supp. 2d at 1347; *Martin*, 2012 WL 2339499, at *3; *Stenger*, 2012 WL 601017, at *10.

population distribution and comply with the VRA, which inescapably triggers a ripple effect in the surrounding area. The BLOC Petitioners' proposed apportionment plan, which best complies with the "least-change" approach and federal law while also adhering to state constitutional criteria—contiguity, compactness, respect for political subdivisions—and other traditional factors as appropriate, should be the one this Court selects.

B. The reapportionment process most logically begins with VRA compliance in the Milwaukee area.

Changes in Wisconsin's population between 2010 and 2020 occurred throughout the state, with some areas growing and others losing population—some more dramatically than others. When reapportioning districts accordingly, areas that have seen the greatest population and demographic change are a logical starting point. Moreover, only one region in Wisconsin—the Milwaukee area—has sufficiently large Black

and Hispanic populations to trigger Section 2's protections against diluting minority voting power. Given the relatively limited number of districts subject to Section 2—and the limited options to rebalance population in that area to achieve Section 2 compliance—it is reasonable to begin the apportionment process by starting with VRA and "one-person, one-vote" compliance in the Milwaukee area.

Section 2 of the VRA prohibits any "standard, practice or procedure" that "results in a denial or abridgment of the right of any citizen of the United States to vote on account of" race, color, or membership in a language minority group. 52 U.S.C. §§ 10301(a), 10303(f)(2). Such a violation occurs when "the political processes leading to nomination or election" in the applicable jurisdiction "are not equally open to participation by" protected minority voters, in that they "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their

choice." 52 U.S.C. § 10301(b). Put differently, Section 2 "prohibits any practice or procedure that, 'interact[ing] with social and historical conditions,' impairs the ability of a protected class to elect its candidate of choice on an equal basis with other voters." *Voinovich v. Quilter*, 507 U.S. 146, 153 (1993) (citation omitted).[8]

Section 2 therefore prohibits districting plans that "operate[ ] to cancel out or minimize the voting strength of racial groups" through vote dilution. *McNeil v. Springfield Park Dist*., 851 F.2d 937, 938 n.1 (7th Cir. 1988) (internal quotation marks and citations omitted). Improper dilution of minority voting power generally takes two forms: (1) "the dispersal of [minority voters] into districts in which they constitute an ineffective minority of voters"; or (2) "the

[8] A Section 2 violation need not entail discriminatory intent; rather, it can "be established by proof of discriminatory results alone." *Chisom v. Roemer*, 501 U.S. 380, 404 (1991).

concentration of [minority voters] into districts where they constitute an excessive majority." *Thornburg v. Gingles*, 478 U.S. 30, 46 n.11 (1986); *accord League of United Latin Am. Citizens* ("LULAC") *v. Perry*, 548 U.S. 399, 495-96 (2006) (Roberts, C.J., concurring) (noting that dilution can occur by either "pack[ing] minority voters in a few districts when they might control more, or dispers[ing] them among districts when they might control some").

Generally speaking, then, an apportionment plan violates Section 2 where "under another configuration minority voters ha[ve] better electoral prospects." *LULAC*, 548 U.S. at 495 (Roberts, C.J., concurring). Where single-member districts are involved (like here), "the question [is] whether an additional majority-minority district should be created." *Id.* (citations omitted); *see also Bartlett v. Strickland*, 556 U.S. 1,

13 (2009) ("[Section] 2 can require the creation of [majority-minority] districts.").[9]

Two sets of conditions must be met to show that Section 2 requires a court to adopt a remedial apportionment plan that creates additional minority opportunity districts over the number in the current plan.

First, three preconditions identified by *Gingles* must be met: (1) the minority group must be "sufficiently large and geographically compact to constitute a majority in a single-member district" ("*Gingles* I"); (2) the minority group must be "politically cohesive" ("*Gingles* II"); and (3) the majority must vote "sufficiently as a bloc to enable it … usually to defeat the minority's preferred candidate" ("*Gingles* III"). *Gingles*, 478 U.S. at 50-51. The second and third prongs of the *Gingles* test

[9] In the parlance of Section 2, "majority-minority" districts are those where a minority group constitutes over 50% of the voting-age population. They are also often called "opportunity districts," reflecting the express language used in Section 2 of the VRA. *See* 52 U.S.C. § 10301(b).

are frequently referred to collectively as "racially polarized voting," or "RPV." *See*, *e.g.*, *Ruiz v. City of Santa Maria*, 160 F.3d 543, 551 (9th Cir. 1998).

To satisfy *Gingles* I, it must be possible to draw districts where a geographically-compact minority voting age population exceeds 50%. *See Bartlett*, 556 U.S. at 19–20. "The first *Gingles* condition refers to the compactness of the minority population, not the compactness of the contested district." *LULAC*, 548 U.S. at 433 (internal quotation marks omitted). And to demonstrate racially polarized voting under *Gingles* II and III, it is necessary to show that members of the relevant minority group are politically cohesive, or "usually vote for the same candidates," and that "a white bloc vote…normally will defeat the combined strength of minority support plus white 'crossover' votes" (i.e., white bloc voting). *Gingles*, 478 U.S. at 56. This typically requires a statistical analysis of election results to determine the degree of racially

polarized voting. *See, e.g.*, *United States v. City of Euclid*, 580 F. Supp. 2d 584, 596 (N.D. Ohio 2008) ("In assessing whether racial bloc voting exists in a designated political subdivision, courts often begin with a statistical analysis of voting behavior.") (citing *Campos v. City of Baytown*, 840 F.2d 1240, 1244 (5th Cir. 1988)).

The statistical analysis conducted to examine the extent of racially polarized voting often considers a number of probative elections, with the most probative ones being interracial contests and more recent races. *See, e.g.*, *Bone Shirt v. Hazeltine*, 461 F.3d 1011, 1020-21 (8th Cir. 2006); *Ruiz*, 160 F.3d at 552-53 (collecting cases). In addition, "where elections are shown usually to be polarized, the fact that racially polarized voting is not present in one or a few individual elections does not necessarily negate the conclusion that the district experiences legally significant bloc voting." *Gingles*, 478 U.S. at 57.

Second, once the *Gingles* preconditions are satisfied, a court examines whether, under the "totality of the circumstances," the proposed districts would provide protected minority groups an equal opportunity to participate in the political process and elect representatives of their choice. 52 U.S.C. § 10301(b). While not every identified factor must be met, this fact-intensive inquiry examines the following factors (sometimes called the "Senate Factors"[10]), among others:

- "any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process";
- whether "voting in the elections of the state or political subdivision is racially polarized";
- whether "the state or political subdivision has used … voting practices or procedures that may enhance the opportunity for discrimination against the minority group";

[10] The name "Senate Factors" is derived from their inclusion in a Senate Judiciary Committee report that accompanied a 1982 amendment to the VRA. *See Gingles*, 478 U.S. at 36.

- whether "members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process";

- "whether political campaigns have been characterized by overt or subtle racial appeals";

- whether "members of the minority group have been elected to public office in the jurisdiction"; and

- "whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group."

Gingles, 478 U.S. at 36–37 (citation omitted).

If these conditions are met, the VRA requires the drawing of minority opportunity districts.

II. The BLOC Petitioners' proposed "least-changes" legislative district apportionment plan satisfies all required legal criteria, preserves communities of interest, and minimizes delayed state senate voting.

The BLOC Petitioners' proposed apportionment plan begins by assuring compliance with the VRA. To do so, it

draws seven Black opportunity assembly districts in the Milwaukee area, a necessary increase of one over the current plan. From there, it apportions assembly districts in the Milwaukee region to comply with "one-person, one-vote" principles, a process that ripples outward toward the Madison area, another region with significant population change that must be equalized. (Unlike the Milwaukee area, the Madison area experienced a growth in population, not a contraction, allowing for a balancing effect by addressing this area second.) Other regions in the state received only minor changes to their assembly districts due to the more limited population changes there.

Throughout this process, the BLOC Petitioners' lodestar remained "least-change," with careful attention to state constitutional apportionment requirements (compactness, contiguity, preserving political subdivisions) and, where

appropriate, preserving communities of interest and minimizing delayed senate voting.

As one measure of the BLOC Plans' fidelity to "least-change," the proposed Assembly plan has a mean core retention (*i.e.*, the average percentage of the prior district's population retained in the new district) of 84.2% (BLOC App. 115, Mayer Rpt. at 1.) Excluding the VRA-required changes in Milwaukee, that number rises to 86.4% (BLOC App. 130, Mayer Report at 16), and to 87.9% when the VRA districts' neighboring districts (which necessarily required changes) are excluded. (BLOC App. 131, Mayer Rpt. at 17.) Likewise, the proposed senate plan has a mean core retention of 89.6%. (BLOC App. 136, Mayer Rpt. at 22.)

A. The BLOC Petitioners' proposed assembly plan satisfies section 2 of the VRA.

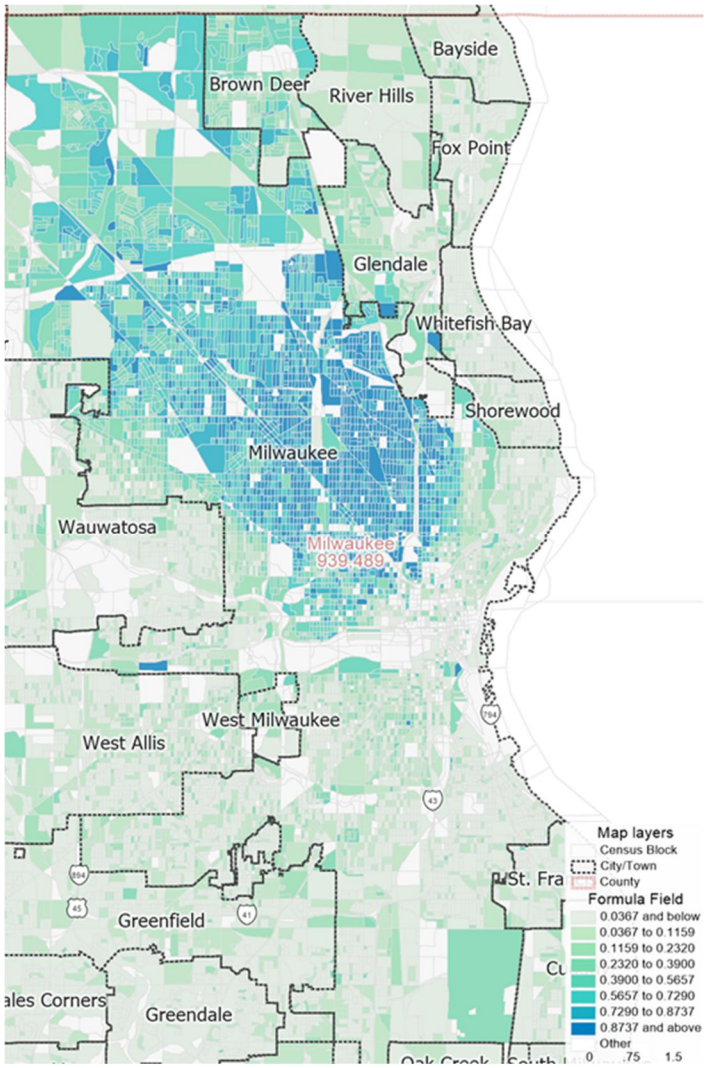
1. All three Gingles preconditions are present in the Milwaukee area.

First, the BLOC Petitioners' proposed districts satisfy *Gingles* I. The BLOC Petitioners' proposed assembly plan includes seven minority opportunity districts in the Milwaukee area where Black voters constitute a geographically compact majority of the voting-age population ("BVAP").[11] As the map below demonstrates, the Black population in Milwaukee—which, as Dr. Mayer notes, is one of the most racially segregated cities in America—is incredibly geographically

[11] In accordance with case law and federal guidance, for purposes of measuring BVAP, Petitioners used the "any-Part" Black category, which counts as "Black" any person who self-identifies as Black alone or Black in combination with any other race or ethnicity. *See*, *e.g.*, *Georgia v. Ashcroft*, 539 U.S. 461, 473 n.1 (2003), superseded by statute on other grounds as recognized by *Ala. Legislative Black Caucus v. Alabama*, 575 U.S. 254, 276-77 (2015); *see also* 62 Fed. Reg. 58,782 (incorporating multiracial reporting into the Federal statistical system, including the 2000 Census), available at https://obamawhitehouse.archives.gov/omb/fedreg_1997standards (last accessed December 14, 2021).

compact. (BLOC App. 122, Mayer Rpt. at 8.); *see LULAC*, 548 U.S. at 433 (explaining that relevant Section 2 inquiry is compactness of the minority population, not the district). In the

map below, the darkest shade of blue represents census blocks in which the Black population exceeds 87%.



(BLOC App. 123, Mayer Rpt. at 9.).

And each of the seven VRA districts proposed by the BLOC Petitioners exceeds the majority requirement of the first *Gingles* prong. *See Bartlett*, 556 U.S. at 13 ("In majority-minority districts, a minority group composes a numerical, working majority of the voting-age population."). In the BLOC Petitioners' proposed assembly map, the seven VRA-required districts, and their respective Black voting age populations, are:

- District 10: 52.3% BVAP;
- District 11: 50.6% BVAP;
- District 12: 50.2% BVAP;
- District 14: 50.5% BVAP;
- District 16: 50.5% BVAP;
- District 17: 50.6% BVAP; and
- District 18: 50.5% BVAP.[12]

(BLOC App. 124, Mayer Rpt. at 10.)

[12] While the VRA focus is on the compactness of the Black population within the district, each of the seven proposed districts follow ward and/or municipal boundaries to obtain their shapes.

By comparison, only six such districts exist under the current malapportioned assembly map, all six of which have a BVAP substantially higher than 50%.[13] The current assembly map's excessive majorities improperly dilute Black voting strength by packing Black voters within six districts and cracking Black voters elsewhere (including in Brown Deer and Milwaukee County wards 33 and 34) by dispersing them in heavily white districts 22 and 24. This improperly deprives Black voters the ability to participate meaningfully in the election of representatives to the state assembly. *See Gingles*, 478 U.S. at 46, n.11 (explaining that a Section 2 violation "may be caused by the dispersal of [the minority population] into districts in which they constitute an ineffective minority of

[13] In the current assembly map, the six minority opportunity districts are Districts 10 (59.4% BVAP), 11 (65.5% BVAP), 12 (60.6% BVAP), 16 (55.6% BVAP), 17 (68.4% BVAP), and 18 (60.7% BVAP).

voters or from the concentration [of minority population] into districts where they constitute an excessive majority").

The BLOC Petitioners' proposed plan, which creates an additional Black opportunity district, thus ensures that the voting power of Black voters is not diluted and triggers Section 2's protections by demonstrating that "under another configuration minority voters ha[ve] better electoral prospects." *LULAC*, 548 U.S. at 495 (Roberts, C.J., concurring).

That the BLOC Petitioners' proposed assembly districts provide a more meaningful opportunity for Black voters to elect their candidates of choice is demonstrated by a functional analysis of elections in the districts. Petitioners' expert Dr. Loren Collingwood reconstructed the results from several probative election contests involving Black candidates in Plaintiffs' proposed opportunity districts, including the 2018 Gubernatorial Primary race, the 2021 State Superintendent of

Public Instruction Primary race, and the 2020 Milwaukee County Executive spring general race, in order to assess whether Black-preferred candidates would be more likely to win election. (BLOC App. 037-38, Collingwood Rpt. at 25-26.) Reconstituted election results from all three elections strongly demonstrate that, *in all seven* of Petitioners' Black opportunity districts, Black voters "can and will win election to public office." (*Id*. at 25-28.) *See LULAC*, 548 U.S. at 496 (Roberts, C.J., concurring) ("[A] § 2 plaintiff must at least show an apportionment that is likely to perform better for minority voters, compared to the existing one."); *Gingles*, 478 U.S. at 99 (O'Connor, J., concurring in the judgment) ("[T]he relative lack of minority electoral success under a challenged plan, when compared with the success that would be predicted under the measure of undiluted minority voting strength the court is employing, can constitute powerful evidence of vote dilution.").

Second, statistical analysis of probative elections shows that racially polarized voting exists in the Milwaukee area, thus satisfying *Gingles* II and III. In short, Black voters typically prefer the same candidates and white bloc voting usually defeats those candidates.

Dr. Collingwood examined the extent of racially polarized voting in Milwaukee-area elections. In conducting this analysis, Dr. Collingwood analyzed eight probative elections, including nonpartisan primary races, Democratic primary races, and spring general races from 2016-2021 that involved Black candidates for political office. (BLOC App. 016, Collingwood Rpt. at 4.) To conduct this analysis, Dr. Collingwood applied several widely accepted statistical methods that infer aggregate voting behavior by members of distinct racial or ethnic groups based on election results and voter demographics, including the homogeneous precinct, ecological regression, and ecological inference techniques. (*Id.*

at 3.) These methods are routinely accepted by Courts analyzing claims under the VRA as reliable. *See*, *e.g.*, *Luna v. County of Kern*, 291 F. Supp. 3d 1088, 1124 (E.D. Cal. 2018) (citing *Patino v. City of Pasadena*, 230 F. Supp. 3d 667, 691 (S.D. Tex. 2017)); *Wright v. Sumter Cty. Bd. of Elections & Registration*, 301 F. Supp. 3d 1297, 1305 (M.D. Ga. 2018), *aff'd*, No. 18-11510, 2020 WL 6277718 (11th Cir. Oct. 27, 2020); *Montes v. City of Yakima*, 40 F. Supp. 3d 1377 (E.D. Wash. 2014).

Using these accepted methods, Dr. Collingwood found that "without a doubt" racially polarized voting is present in Milwaukee-area elections. (BLOC App. 040, Collingwood Rpt. at 28.) Specifically, of the eight elections analyzed, seven of eight (or 87.5%) demonstrated that, regardless of which statistical technique is used, Black and white voters consistently prefer different candidates and Black voters "strongly back" the same candidates for political office "at

very high rates even in multi-candidate primary elections. (BLOC App. 013, Collingwood Rpt. at 1, 4–22.)[14] That six different statistical methods show high levels of racially polarized voting strengthens Dr. Collingwood's conclusions and demonstrates a clear pattern of different electoral preferences among Black and white voters. (BLOC App. 013, 015, 040, Collingwood Rpt. at 1, 3, 28.)

Further, Dr. Collingwood's analysis shows that while Black voters strongly and consistently support the same candidates, white voters do not support those candidates. (BLOC App. 013, 016-35, Collingwood Rpt. at 1, 4–23.) Dr. Collingwood analyzed seven recent elections involving Black

[14] The one contest out of the eight considered by Dr. Collingwood that did not show racially polarized voting was the 2018 Milwaukee County Sheriff Democratic Primary race. (BLOC App. 018–21, Collingwood Rpt. at 6-9.) However, as Dr. Collingwood noted, this race was "an aberration to the overall findings," as "a higher percentage of white votes for Lucas is likely due to the contest's focus on the repudiation of polarizing former Sheriff David Clarke (who is Black). Schmidt served as Clarke's number two and became acting sheriff upon Clarke's resignation in 2017." (*Id*. at 6.)

candidates to assess whether white bloc voting usually defeats Black voters from electing their candidate of choice.[15] He found that in four of the seven races (57.14%), white bloc voting defeated the candidate of choice of Black voters. (*Id.* at 23.) In addition, the rate of electoral losses for Black preferred candidates increases to four of six (or 66.66%), if the 2018 Milwaukee County Sheriff Democratic Primary race is excluded. (BLOC App. 013, 035, Collingwood Rpt. at 1, 23.) As noted above, this contest was unique because of the abnormal level of white crossover voting due to the association of the white candidate, Schmidt, with controversial former sheriff David Clarke. (BLOC App. 018-19, 035, Collingwood Rpt. at 6–7, 23.) Local news reports from the time of the election showed that voters associated Schmidt with Clarke,

[15] Dr. Collingwood considered the same subset of elections that he analyzed for his RPV analysis, but excluded the 2018 State Assembly District 12 race, since that race took place in an existing majority-Black district and thus is not relevant for measuring bloc voting. (BLOC App. 035, Collingwood Rpt. at 23.)

and that as a result Black candidate Earnell Lucas received important and influential endorsements from local politicians including Milwaukee Mayor Tom Barrett, U.S. Senator Tammy Baldwin, and three former Democratic Governors, including Jim Doyle, Tony Earl, and Marty Schreiber. (BLOC App. 018-19, 035, Collingwood Rpt. at 6-7, 23.)

Thus, for purposes of determining the level of bloc voting, the 2018 Milwaukee County Sheriff's race is a "special circumstance" and should be disregarded. *See, e.g.*, *Gingles*, 478 U.S. at 57 (noting that "the success of a minority candidate in a particular election does not necessarily prove that the [jurisdiction] did not experience polarized voting" particularly when "special circumstances…may explain minority success in a polarized contest"). However, even if the 2018 Milwaukee County Sheriff's race is included, Dr. Collingwood's analysis demonstrates that Black–preferred candidates are usually defeated by white bloc voting. (BLOC App. 035, 040,

Collingwood Rpt. at 23, 28); *Gingles*, 478 U.S. at 56; *Missouri State Conf. of the NAACP v. Ferguson-Florissant Sch. Dist.*, 201 F. Supp. 3d. 1006, 1039 (E.D. Mo. 2016) ("There is **no** requirement that white voters have an 'unbending or unalterable hostility' to minority-preferred candidates such that those candidates always lose.") (internal citations omitted) (emphasis in original).

In sum, the BLOC Petitioners have shown that all three *Gingles* preconditions are satisfied for Black voters in the Milwaukee area.

2. The totality of the circumstances demonstrates that the BLOC Petitioners' proposed districts enable Black voters in the Milwaukee area to elect representatives of their choice.

In addition to satisfying the *Gingles* preconditions, the "totality of the circumstances" shows that Black voters have less opportunity than other members of the electorate to participate in the political process and to elect representatives

of their choice. 52 U.S.C. § 10301(b). Six of the seven Senate Factors demonstrate that Black voters in the Milwaukee area lack an equal opportunity to participate due to vote dilution under the current apportionment plan.

Factor 1: A history of official voting-related discrimination in the state or political subdivision.

Wisconsin has a history of official voting-related discrimination, including in recent years. For example, in 2012 a federal court held that the legislature diluted the voting strength of minority voters in the Milwaukee area. (BLOC App. 064, Canon Rpt. at 6.) In addition, recent voter list maintenance practices, which were the subject of litigation, had a disparate impact on Black voters. (BLOC App. 064-65, Canon Rpt. at 6-7.) And a process that led to voters being removed from the registration rolls incorrectly flagged minority registrations at rates two to three times higher than white registrations. (BLOC App. 067, Canon Rpt. at 9.)

Factor 2: Whether voting in the elections of the state or political subdivision is racially polarized.

As explained above, the analysis provided by Dr. Collingwood shows that voting in the Milwaukee area is polarized along racial lines. *See supra* Section II.A. 1. In short, Black voters are politically cohesive and white bloc-voting usually defeats Black voters' candidates of choice absent special circumstances. (BLOC App. 013, 016, 035, 040, Collingwood Rpt. at 1, 4, 23, 28.)

Factor 3: Whether the state or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group.

Several voting practices that enhance the opportunity for discrimination against Black voters in the Milwaukee area have been used in recent elections. For one, disproportionately fewer polling places have been located in predominantly Black areas, resulting in depressed Black voter turnout and longer

waiting times to vote. (BLOC App. 068-69, Canon Rpt. at 10–11.) Moreover, Wisconsin's voter ID law, one of the strictest in the nation, reduced voter turnout in general and disparately deterred or prevented more Black voters from voting than white voters. (BLOC App. 070-71, Canon Rpt. at 12–13.)

Factor 5: Whether minority group members bear the effects of discrimination which hinder their ability to participate effectively in the political process.

Black Wisconsinites disproportionately bear the effects of discrimination in employment, education, health, and criminal justice and incarceration, which hinders their ability to effectively participate in the political process. Black Wisconsinites have suffered historic discrimination in housing in Milwaukee, including redlining and racial covenants, which have helped produce outcomes that rank Milwaukee at the bottom or toward to bottom of all major U.S. cities concerning racial segregation in housing. (BLOC App. 072-74, Canon Rpt.

at 14-16.) Evictions and homelessness also have a disparate impact on Black residents of Milwaukee. (BLOC App. 074-77, Canon Rpt. at 16–19.) Milwaukee also has some of the largest racial disparities in the nation when it comes to education, with the most segregated schools in the nation, and extremely high disparities in test scores, graduation rates, school suspensions, and access to higher education. (BLOC App. 078-80, Canon Rpt. at 20–22.) Wisconsin also ranks poorly with regard to racial disparities in employment, income, and poverty rates, has the highest racial disparities in incarceration rates in the nation, and has large racial disparities in life expectancy, infant mortality, and COVID hospitalization rates. (BLOC App. 080-88, Canon Rpt. at 22–30.)

Factor 6: The use of overt or subtle racial appeals in political campaigns.

Political campaigns statewide and in the Milwaukee area are often marked by both subtle and overt racial appeals,

at all levels of public office. Examples include an advertisement run against a Black incumbent in a state supreme court race, a radio advertisement run against a Black U.S. congressional incumbent, advertisements and commentary in the 2020 Presidential and 2018 gubernatorial elections involving Black candidates, the 2020 state assembly district 24 race, and the 2021 State Superintendent of Public Instruction race. (BLOC App. 088-92, Canon Rpt. at 30–34.)

Factor 7: Whether members of the minority group have been elected to public office in the jurisdiction.

Most elected positions in the Milwaukee area, particularly those outside of Black-majority districts, are not held by Black officeholders, despite the large Black population in the area. For example, no Black candidate has *ever* been elected as Mayor of Milwaukee, and the first Black Milwaukee County Executive was only elected in 2020. (BLOC App. 092, Canon Rpt. at 34.) In addition, only two of eight current county

government officials elected on a countywide basis are Black. (*Id*.)

Given the above evidence, in the totality of the circumstances, Black voters in the Milwaukee area do not have an equal opportunity to participate in the political process and elect candidates of their choice. Combined with the establishment of all three *Gingles* prongs, this evidence demonstrates that the current assembly map results in a violation of Section 2, and a seventh minority opportunity district in the Milwaukee area must be drawn to comply with the VRA.

B. The BLOC Petitioners' proposed apportionment plan makes the least changes necessary to satisfy the state and federal constitutional criteria.

The BLOC Petitioners' proposed state assembly and state senate plans ("BLOC plans") remedy the malapportioned existing plans using the "least-change" approach. The BLOC

plans make changes only as necessary to comply with the VRA and the "one person, one vote" requirements of the federal and state constitutions.

As for constitutionally required population equality, a legislatively enacted plan would be presumed to satisfy "one-person, one-vote" requirements if the population deviation from the least-populated to the most-populated districts did not exceed 10% (assuming it could identify legitimate policy choices in drawing those district boundaries). *See, e.g.*, *Harris v. Ariz. Independent Redistricting Comm'n*, 136 S. Ct. 1301, 1307 (2016). A court-ordered plan, however, "must ordinarily achieve the goal of population equality with little more than de minimis variation." *Connor v. Finch*, 431 U.S. 407, 417–18 (1977) (internal quotation marks omitted)). And a court-ordered plan, like a legislatively enacted plan, may include minor population deviations where necessary to comply with the VRA. *Cf. Harris*, 136 S. Ct. at 1309 (approving plan with

4.07% overall deviation where underpopulated districts were the drawn "to comply with the Voting Rights Act").

The changes needed to comply with the VRA are dictated by a data-driven, "intensely local appraisal" of Milwaukee County electoral conditions. *Gingles*, 478 U.S. at 79; *see supra* Section I.B. It is not a question of mere demographics, but rather a "functional analysis of vote dilution," *Gingles*, 478 U.S. at 66, based on an analysis of election results in Milwaukee County "reconstituted" in proposed districts. (BLOC App. 013, 05-40, Collingwood Rpt. at 1, 23-28.) Once the VRA-compliant district configuration is set,[16] changes to surrounding districts are unavoidable. As

[16] It is readily apparent from the Census data that there was a serious undercount of minority population, particularly of Hispanic population in Milwaukee County. For example, the Census reports that benchmark Assembly District 8—the district the *Baldus* court ruled was necessary to comply with Section 2 for Latino voters—is underpopulated by 5,534 people, a 9.3% deviation below ideal population. (BLOC App. 118, Mayer Rpt. at 4.) No one seriously believes this truly or fairly represents the size of Milwaukee's Latino community.

explained below, the BLOC plans minimized those changes consistent with the Court's "least-change" approach.

Unlike the VRA, which provides specific guidance when drawing districts in the Milwaukee area to minimize minority vote dilution, "one person, one vote" principles do not dictate *how* districts must be altered to remedy malapportionment. However, "the Wisconsin Constitution establishes principles of 'secondary importance'" in redistricting. *Johnson*, 2021 WI 87, ¶ 34 (internal citation omitted). These include respecting municipal and ward boundaries to the extent possible, *id.* ¶ 35, and drawing contiguous and compact districts, *id.* ¶¶ 36–37. Moreover, as Justice Hagedorn explained, there are innumerable ways to balance population, each perhaps moving comparably few people overall from prior districts to new districts. A plan does so "best" by considering communities of interest and other

traditional redistricting criteria. *Id.* ¶ 83 (Hagedorn, J., concurring).

In choosing *how* to make necessary population shifts, the BLOC plans use the Wisconsin Constitution's "secondary criteria" and communities of interest as decisional criteria. For example, if regional changes require adding people to a district, and the district currently splits a municipality, the BLOC plans resolve the municipal splits in choosing which residents to add to the district.

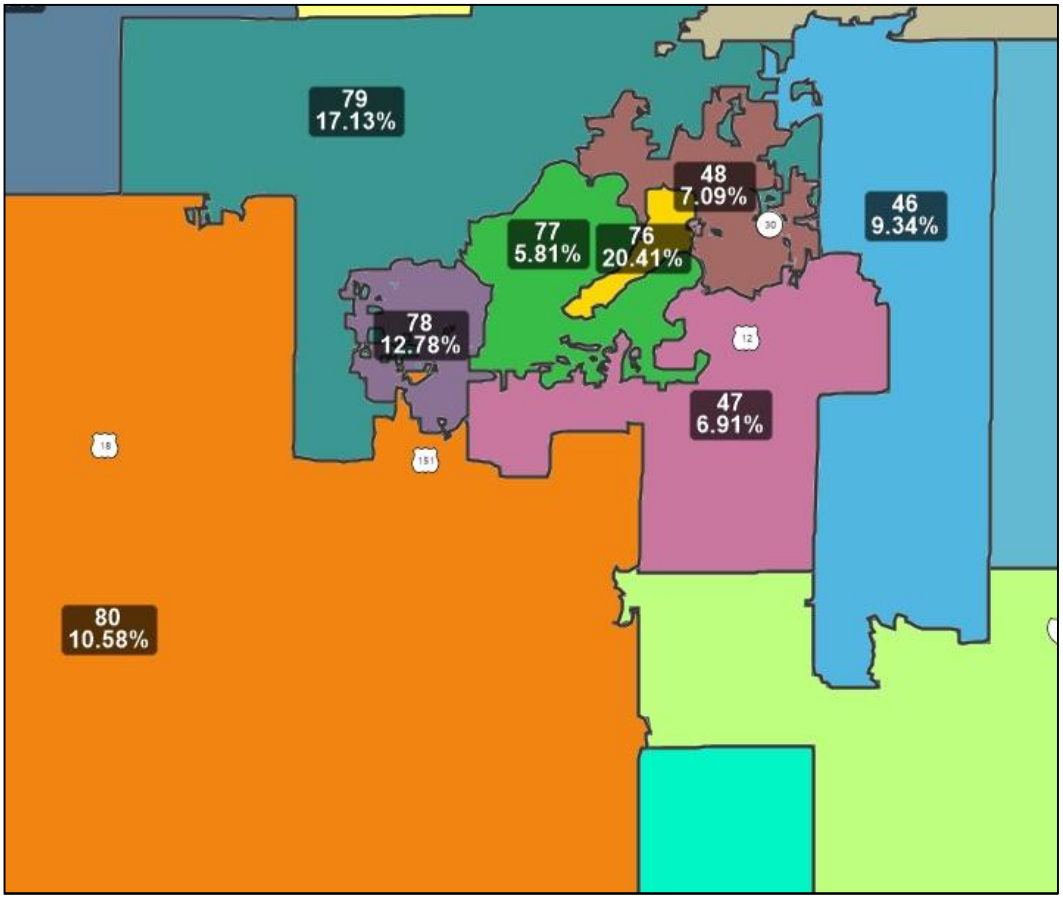
Below, we explain (1) the malapportionment present in the existing plan, to show where changes were needed to create population balance, (2) a statewide analysis of the BLOC plans to illustrate how they comply with the "least-change" approach, and (3) a regional explanation of the how the BLOC plans changed the existing plan in order to comply with the VRA and to balance population. We focus on the assembly plan in describing the changes proposed to the existing plan,

because assembly districts—in sets of three—are nested within senate districts. The senate districts, therefore, flow from the changes made to the assembly districts.

1. The existing plans' are malapportioned.

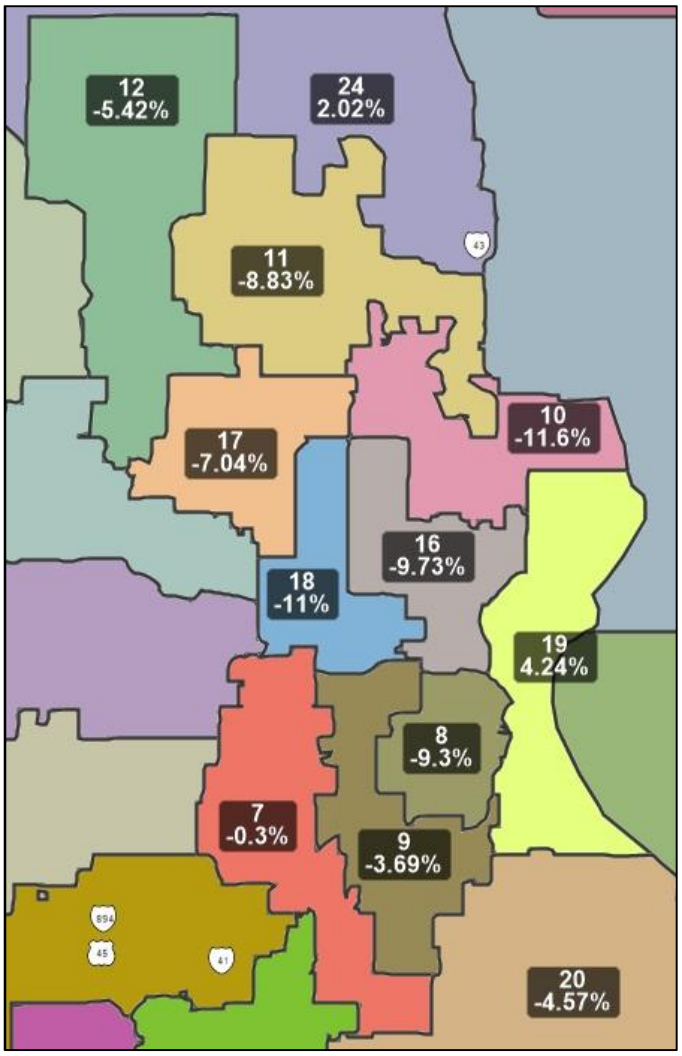
The existing state assembly and senate plans are significantly malapportioned. The existing assembly plan, according to the 2020 Census, has an overall population deviation of 32.01%. In other words, the difference in population from the least–populated district to the most–populated district is a difference of 32%. (BLOC App. 118, Mayer Rpt. at 4.) Generally, the Madison area districts are the most overpopulated, with overpopulated districts also in and around the Fox Valley and Green Bay region. (*Id.*) The Madison-area assembly districts (AD46, 47, 48, 76, 77, 78, 79, and 80) are overpopulated by a combined 53,609—nearly the size of an entire district's ideal population. (BLOC App. 118-

21, Mayer Rpt. at 4-7.) The image below illustrates this regional over-population in and around Madison:[17]



[17] The percentages indicate the amount by which each district deviates from the ideal population.

Districts around Green Bay and the Fox Valley (AD2, 3, 5, 55, 56, and 58) are also overpopulated by a combined 24,130. (*Id.*) By contrast, Milwaukee assembly districts (AD8, 9, 10, 11, 12, 16, 17 and 18) are underpopulated by a combined 39,449. (*Id.*) The image below illustrates this regional under-population around Milwaukee:



Likewise, the Racine/Kenosha districts (AD64, 65, and 66) are underpopulated by a combined 7,480. (*Id.*) Other deviations exist in lesser magnitudes across the state. (*Id.*)

These deviations mean that the underpopulated districts must expand in size—taking additional population from neighboring districts—while the overpopulated districts must contract in size–shedding population into neighboring districts. While neighboring districts sometimes are over- and under-populated by similar amounts (*e.g.*, AD68 is overpopulated by 2,363 and AD69 is underpopulated by 2,399) and can thus be balanced with minimal effect on surrounding districts, in most cases the over- and under-populated districts are not geographically proximate. (*Id.*)

This situation—unbalanced districts without correspondingly unbalanced neighbors—causes the "ripple effect" discussed earlier. Even though a district might, in a vacuum, have no need to gain or lose population, changes may be necessary to accommodate other districts as they expand outward to right-size under-population in the Milwaukee, Kenosha, and Racine areas. Likewise, districts near

overpopulated districts in Madison and the Fox River Valley necessarily must contract inward to assume population that the overpopulated districts have shed. And districts caught in between the over- and under-populated districts must see their borders shift away from the expanding underpopulated districts and towards the contracting overpopulated districts. (BLOC App. 121, Mayer Rpt. at 7.)

After rebalancing population in these regions and statewide, the BLOC plans have total overall population deviations of 1.32% (assembly) and 0.96% (senate). (BLOC App. 124, 136, Mayer Rpt. at 10, 22.) This is far below the "minor deviations from mathematical equality—*i.e.*, deviations under 10%" that federal courts generally approve. *Harris*, 136 S. Ct. at 1303 (internal quotation marks omitted). Moreover, it is below the "*de minimis* … 2 percent" level that federal courts have adhered to in previous redistricting cycles in Wisconsin. *See Baumgart v. Wendelberger*, No. 01-C-0121,

2002 WL 34127471, at *2 (E.D. Wis. May 30, 2002); *AFL-CIO v. Elections Bd.*, 543 F. Supp. 630, 634 (E.D. Wis. 1982).

2. The BLOC plans have high "core retention"—reflecting one potential measure of the "least changes" needed to comply with the VRA and achieve population balance.

The BLOC plans keep a high percentage of Wisconsin's population in the same districts as the existing plan, otherwise known as "core retention." (BLOC App. 127-31, 136, Mayer Rpt. at 13–17, 22.) This reflects the BLOC plans' faithful implementation of the "least-change" approach to complying with the VRA and balancing population.

In the BLOC assembly plan, the mean core retention is 84.2%. (BLOC App. 127, Mayer Rpt. at 13.) That figure increases to 86.4% when the adjacent districts that changed due to the creation of an additional VRA district for Milwaukee Black voters are excluded, and it increases further to 87.9% when those districts' neighbors are excluded. (BLOC App.

130-31 Mayer Rpt. at 16–17.)[18] The BLOC senate plan has a mean core retention of 89.6%. (BLOC App. 136, Mayer Rpt. at 22.)

The BLOC plans thus leave a high number of Wisconsinites in their same district, moving only those persons necessary to comply with the VRA and achieve population equality.

The BLOC plans also fare similarly to the existing plans on compactness. The existing assembly plan has a Reock[19] compactness score of 0.38, and the existing senate plan has a Reock score of 0.40. (BLOC App. 134, Mayer Rpt. at 20.) The BLOC assembly plan's Reock score is 0.38 and the BLOC

[18] This is the more meaningful "core retention" figure, since the adjustments in the Milwaukee area were required by the VRA. This figure demonstrates that, where federal law did not intervene, the BLOC plans stayed very true to existing districts.

[19] A district's Reock compactness scores measures the relationship between the area of a district and the smallest circle that would capture the entire district. The higher the score the more "compact" the district. (BLOC App. 134, Mayer Rpt. at 20.)

senate plan's Reock score is 0.41. (BLOC App. 136, Mayer Rpt. at 22.)

Moreover, the BLOC Plan minimizes the number of residents who will experience a two-year delay in voting for a state senator. A total of 179,629 people will be affected in this manner. (*Id.*) But 52,482 of those affected are attributable to the VRA-required changes to Milwaukee area districts, leaving 127,147 affected outside those districts. (*Id.*) By necessity, in the process of "unpacking" Black-majority assembly districts to avoid unlawful vote dilution under the VRA, the senate districts containing those overpopulated Black-majority assembly districts (SD5 and 7) must cede population to their neighboring senate districts (SD4 and 6). And because this population must shift from odd-numbered senate districts to neighboring even-numbered senate districts, this creates an unavoidable delay in senate voting for some people. But there is simply no way to avoid this issue and still comply with the

VRA. In any event, both figures are well below the 299,704 voters whose votes for senate were delayed when the existing plan was adopted in 2011. *See Baldus v. Members of Wis. Gov't Accountability Bd.*, 849 F. Supp. 2d 840, 852 (E.D. Wis. 2012).

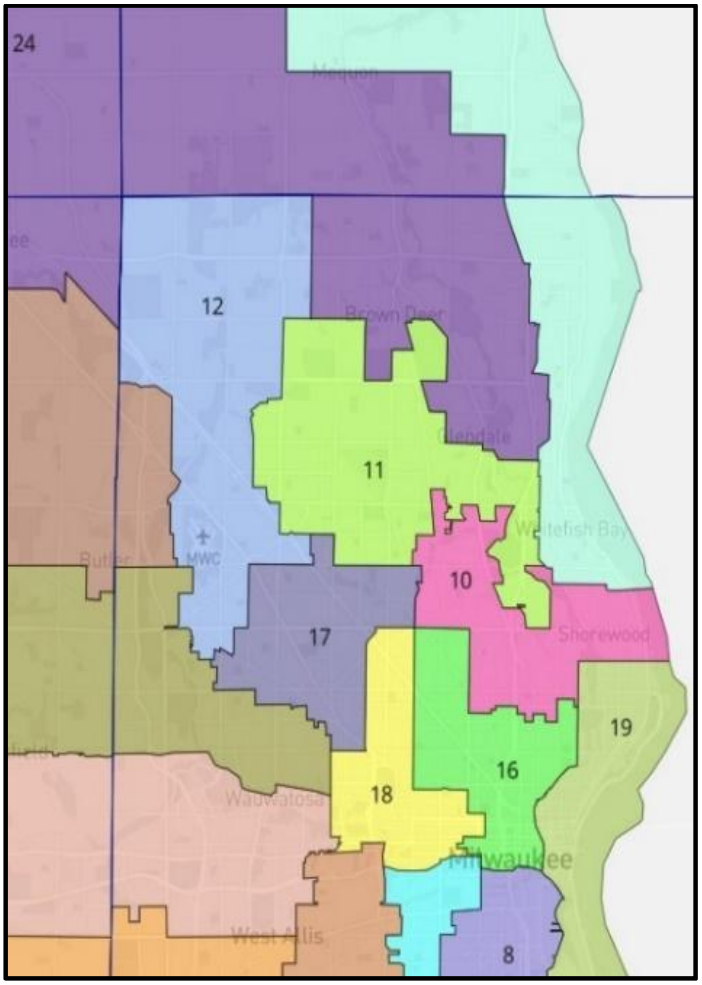
The high core retention scores for the BLOC plans, similar compactness scores to the existing map, and relatively low level of delayed senate voting, all illustrate the BLOC plans' fidelity to the "least-change" approach while complying with federal and state law.

3. Milwaukee area changes are necessary to comply with the VRA and resolve under-population of districts.

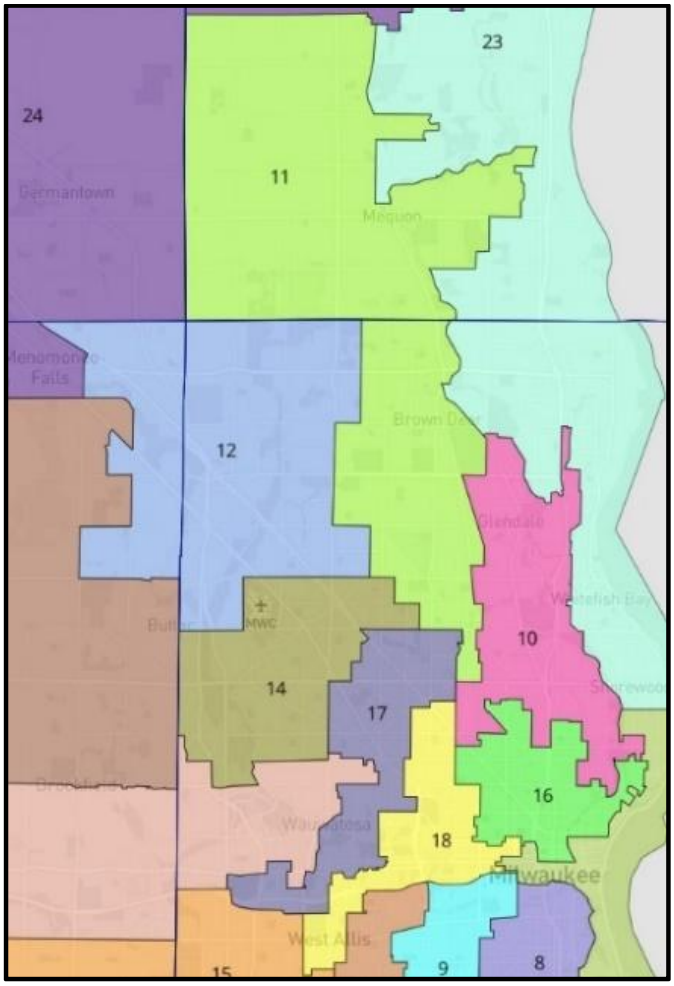
The Milwaukee area assembly districts required changes to (1) comply with the VRA and (2) add population to underpopulated districts. The existing Black-majority assembly districts pack and crack Black voters in Milwaukee County, and the VRA requires creating a seventh Black-majority district. *See supra* Section II.A.2. The BLOC

assembly plan creates a seventh district by remedying the cracking of Black populations in Brown Deer (currently in existing AD24) and Milwaukee wards 33 and 34 (currently in existing AD23), and unpacking the existing Black-majority districts (AD10, 11, 12, 16, 17, and 18), which all have Black populations far in excess of a majority and far in excess of the population needed to ensure the districts perform in real-word election results, as is required to comply with the VRA. *See supra* Section II.A.1. This result in an additional Black-majority district, AD14 as shown below.

Existing Plan



BLOC Plan



(BLOC App. 007.)

In BLOC's plan, AD14 changes from a Waukesha County-based district with an intrusion into Milwaukee County

into a Black-majority district contained wholly within Milwaukee County. Districts 10, 11, 12, 16, 17, and 18 remain majority Black and, as the expert analysis of Dr. Collingwood demonstrates, *see supra*, past election data show that all seven districts would perform in primary and general elections to allow Black voters an equal opportunity to elect their candidates of choice, as the VRA requires.

The addition of a new VRA district in Milwaukee, plus the underpopulation of Milwaukee assembly districts in the existing plan, mean that Milwaukee districts must expand in size to pick up additional residents. Those population shifts occurred in two basic directions—north (in the direction of the overpopulated Fox Valley districts that needed to contract and lose population) and southwest, en route to the overpopulated Madison-area districts. The expansion north was dictated by the VRA districts pushing AD24 out of Milwaukee County. The choice to expand district boundaries in a southwest route

rather than due west minimized the number of significant boundary changes, given the greater number of people (and therefore districts) in Waukesha County and areas west versus along the Illinois border. Moreover, the districts along the Illinois border required changes anyway to account for underpopulated districts in Kenosha and Racine needing to expand to the west. (AD64, 65, and 66). (BLOC App. 118-21, Mayer Rpt. at 4-7.)

a. Changes North from Milwaukee

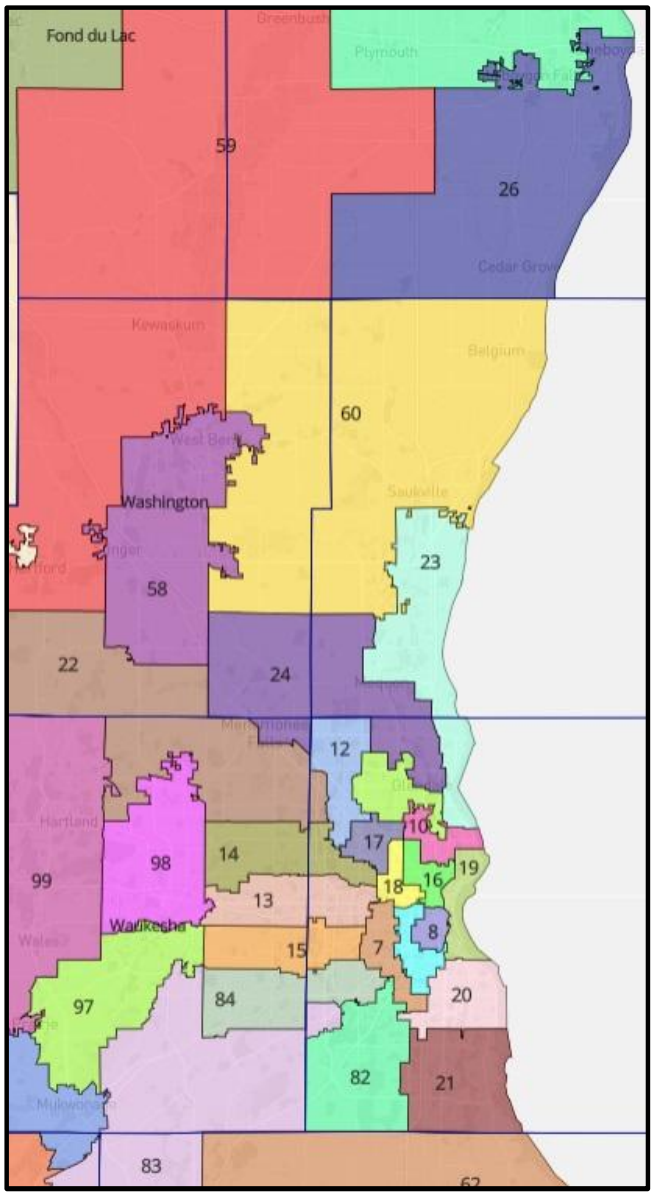
On the northern end of Milwaukee County, AD11 (a Black-majority VRA district) assumed Brown Deer and a portion of Mequon, previously in AD24.[20] This required AD24

[20] At the same time, BLOC's AD10 shifts out of the village of Shorewood (which it includes in the benchmark plan) and instead takes Glendale, which was previously in AD11. This is because the data show that Shorewood has high turnout in Democratic primaries and its voters demonstrate stark racially polarized voting, jeopardizing the ability of Black voters in AD10 to elect their candidate of choice in the district. (BLOC App.036, Collingwood Rpt. at 24.) BLOC's plan minimizes the resulting changes by shifting AD23 south to absorb Shorewood. This

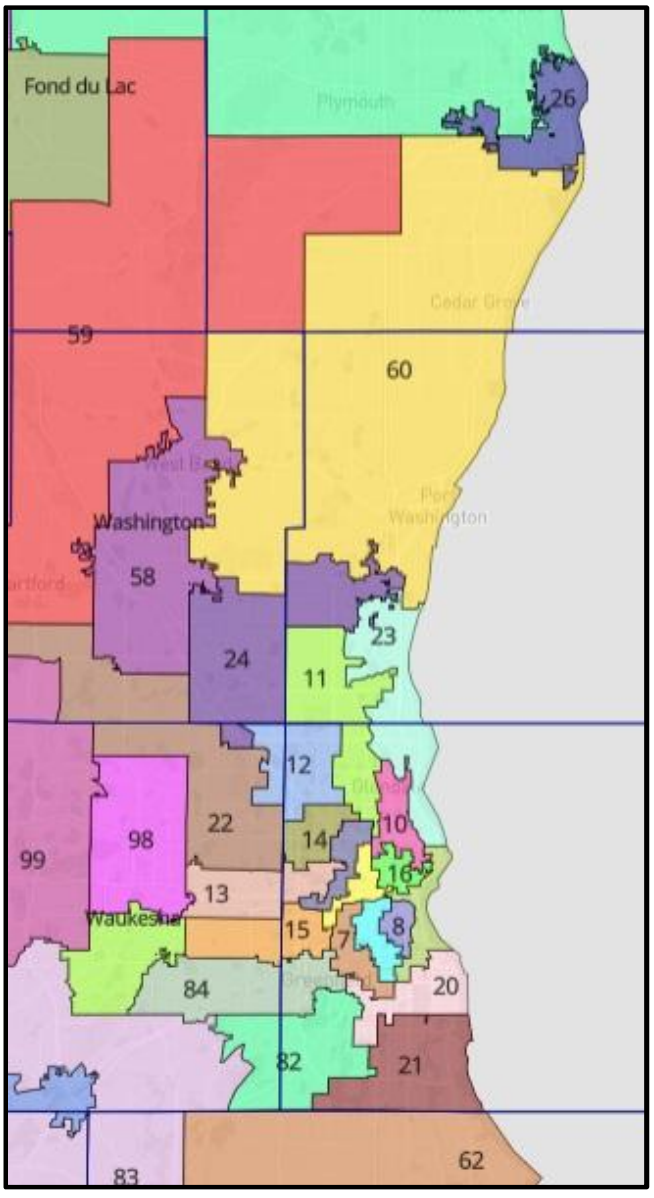
to push north (in the direction of overpopulated districts that need to shed population in the Fox Valley) and acquire population previously assigned to AD60 (and AD23, which moved south to assume Shorewood from AD10, *see* n. 20). In turn, this required AD60 to assume population previously assigned to AD26, as shown below:

advances communities of interest by joining the similar lakeshore villages of Shorewood, Whitefish Bay, Fox Point, and Bayside in a single district.

Existing Plan



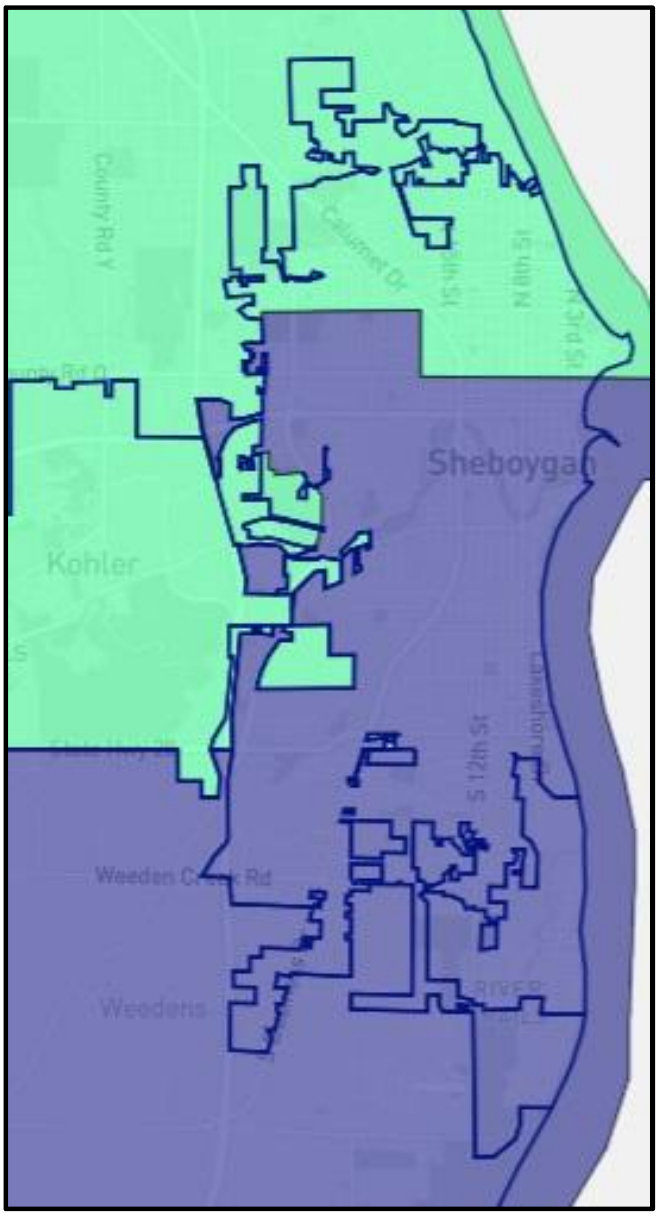
BLOC Plan



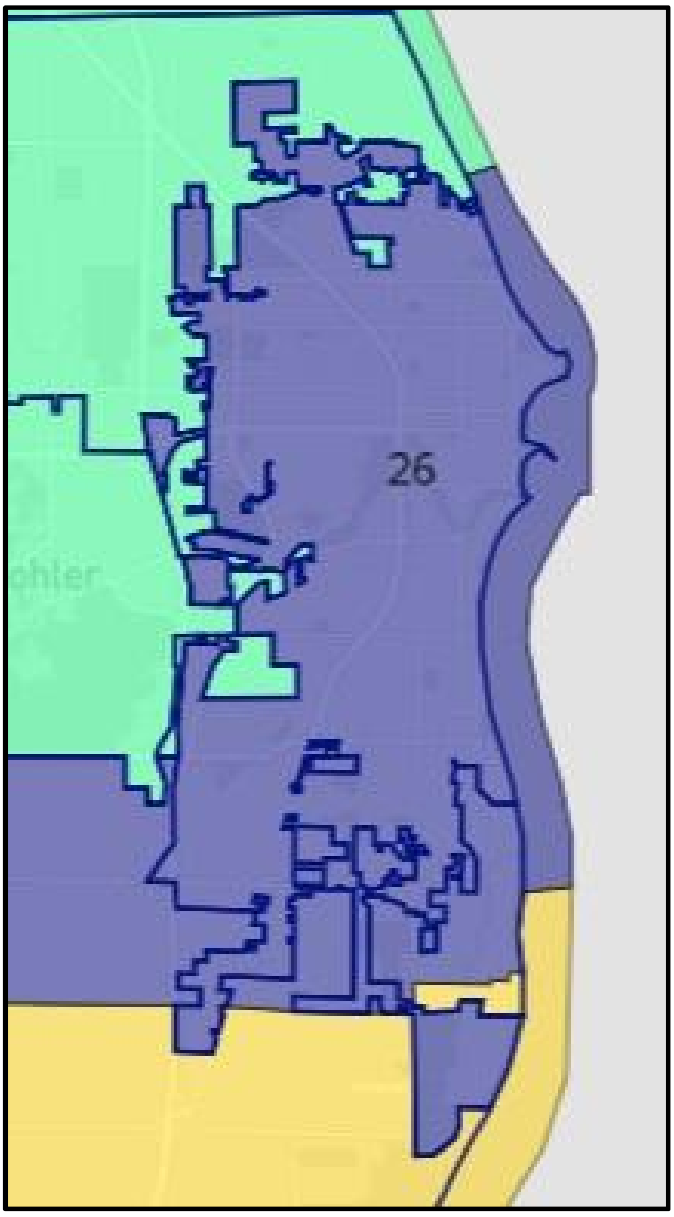
(BLOC App. 006-07.)

In choosing the district from which AD60 should take population to make up for its loss of population to AD24, the BLOC plan is guided by the Wisconsin Constitution. In the existing plan, the city of Sheboygan is split between AD26 and AD27, as shown below. But the changes emanating from Milwaukee to the north meant that AD26 needed to pick up nearly the same number of people as the existing plan split from Sheboygan into AD27.

Existing Plan



BLOC Plan



(BLOC App. 006.)

In accord with Article IV, Section 4 of the Wisconsin Constitution, the BLOC plan prioritized preserving Sheboygan's municipal boundaries in determining how to make the "least changes" given the necessary expansion of Milwaukee-area districts to the north. A contrary decision would "choose a remedy that solves one constitutional harm while creating another." *Johnson*, 2021 WI 87, ¶ 34.[21]

b. Changes Southwest from Milwaukee

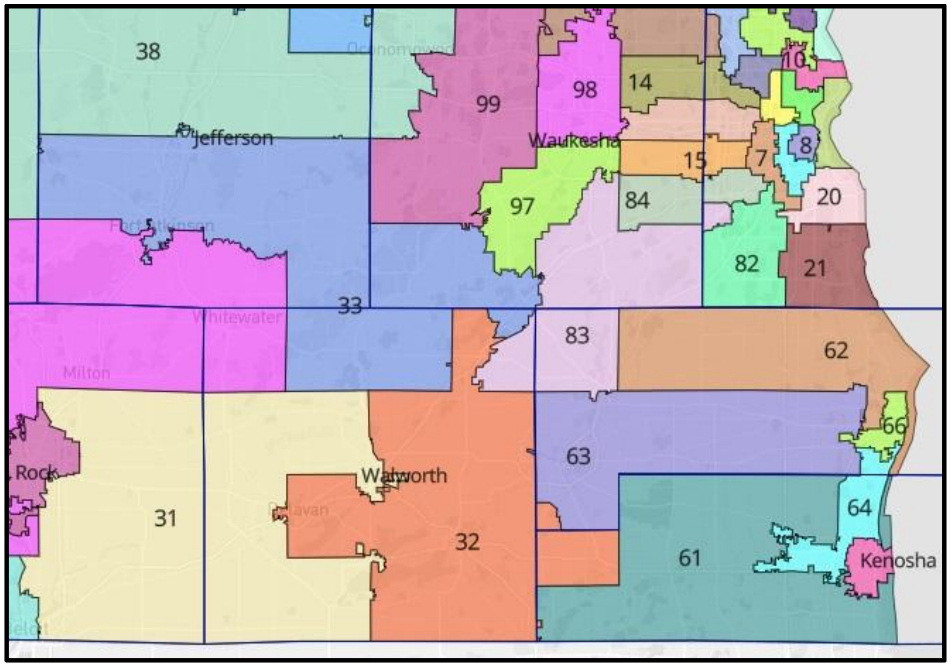
The underpopulation of Milwaukee districts required additional expansion beyond the assumption of portions of Ozaukee County to the north. Ultimately, the expansion of Milwaukee area underpopulated districts would continue in domino fashion until the Madison area was reached, where

[21] The resulting changes to AD27, which lost its portion of the Sheboygan split, were resolved by assigning it several towns that remained unassigned after it was necessary to contract AD59 toward Madison in light of overpopulated districts in that region shedding population, as discussed *supra.*

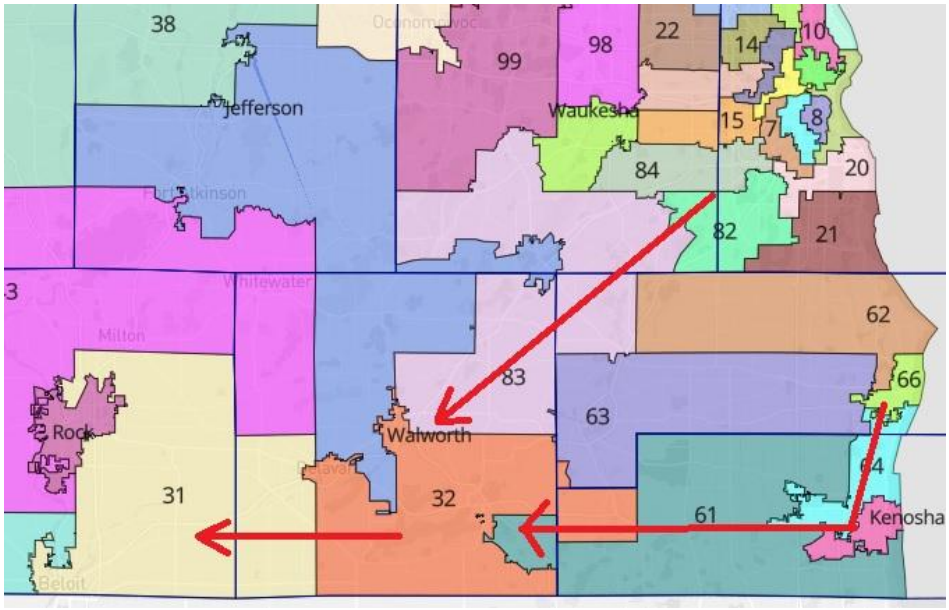
districts needed to contract and shed excess population. As explained above, the BLOC plan reaches Madison via movement southwest from Milwaukee along the Illinois border in order to minimize the number of districts requiring marked changes to their borders in populous Waukesha County. Moreover, the districts along the Illinois border required movement west anyway because of expansion from underpopulated Racine and Kenosha districts.

The maps below illustrate this movement of population:

Existing Plan



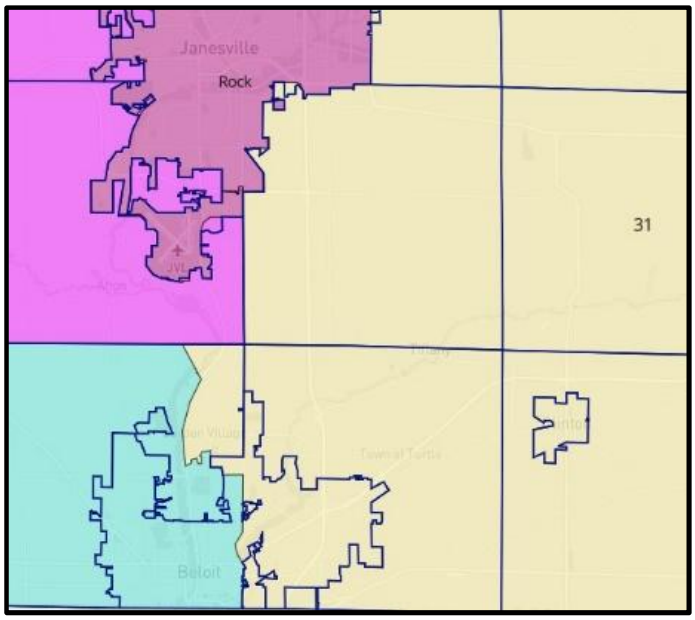
BLOC Plan

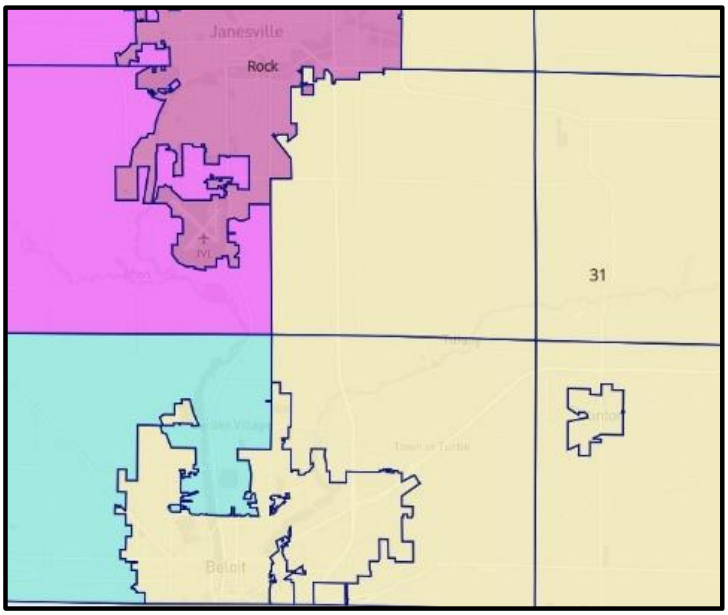


(BLOC App. 006.)

The combination of expanding districts southwest from Milwaukee, west from Kenosha/Racine, and merging AD83 into portions of AD33 (shown in blue, and starting in Mukwonago), meant that by the time AD31 was reached, it needed to gain about 29,000 people. In the existing plan, AD31 and AD45 split the city of Beloit, with roughly 29,000 residents of Beloit on the AD45 side of the line. Consistent with Article IV, Section 4 of the Wisconsin Constitution, the BLOC plan eliminates the split of the City of Beloit given population shifts from Milwaukee and Kenosha/Racine, as shown below:

Existing Plan **BLOC Plan**





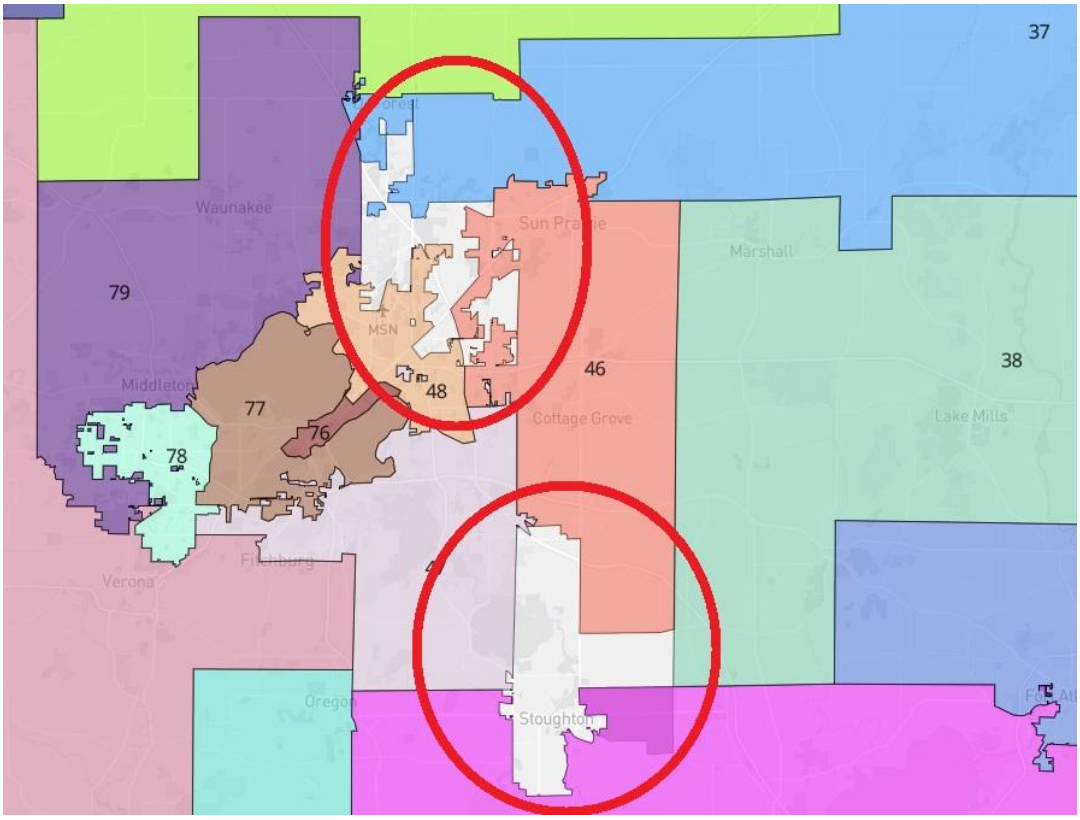
(BLOC App. 006.)

The remaining changes needed to AD45 are accomplished by picking up the city of Monroe from AD51 and changes made possible by the contraction of Madison area districts. This results in the elimination of a county split, with AD51 assuming all of Iowa County as a result. (*See* BLOC App. 006.)

4. Madison-Area Changes Necessary to Balance Population

The overpopulation of the Madison area districts is resolved in the BLOC plans in two ways. First, as shown above, the BLOC plans expand Milwaukee-area districts southwest, with ripple effects west through AD31 and AD45 in and around Beloit. Adjustments then turn northward toward Madison, resolving much of the changes needed to balance population in the area. Second, the remaining population is resolved by contracting AD37 and AD38 toward Madison. This is necessary because of unassigned "gaps" resulting from the contraction of Madison districts, as shown below:

Remaining Unassigned Madison-Area Population



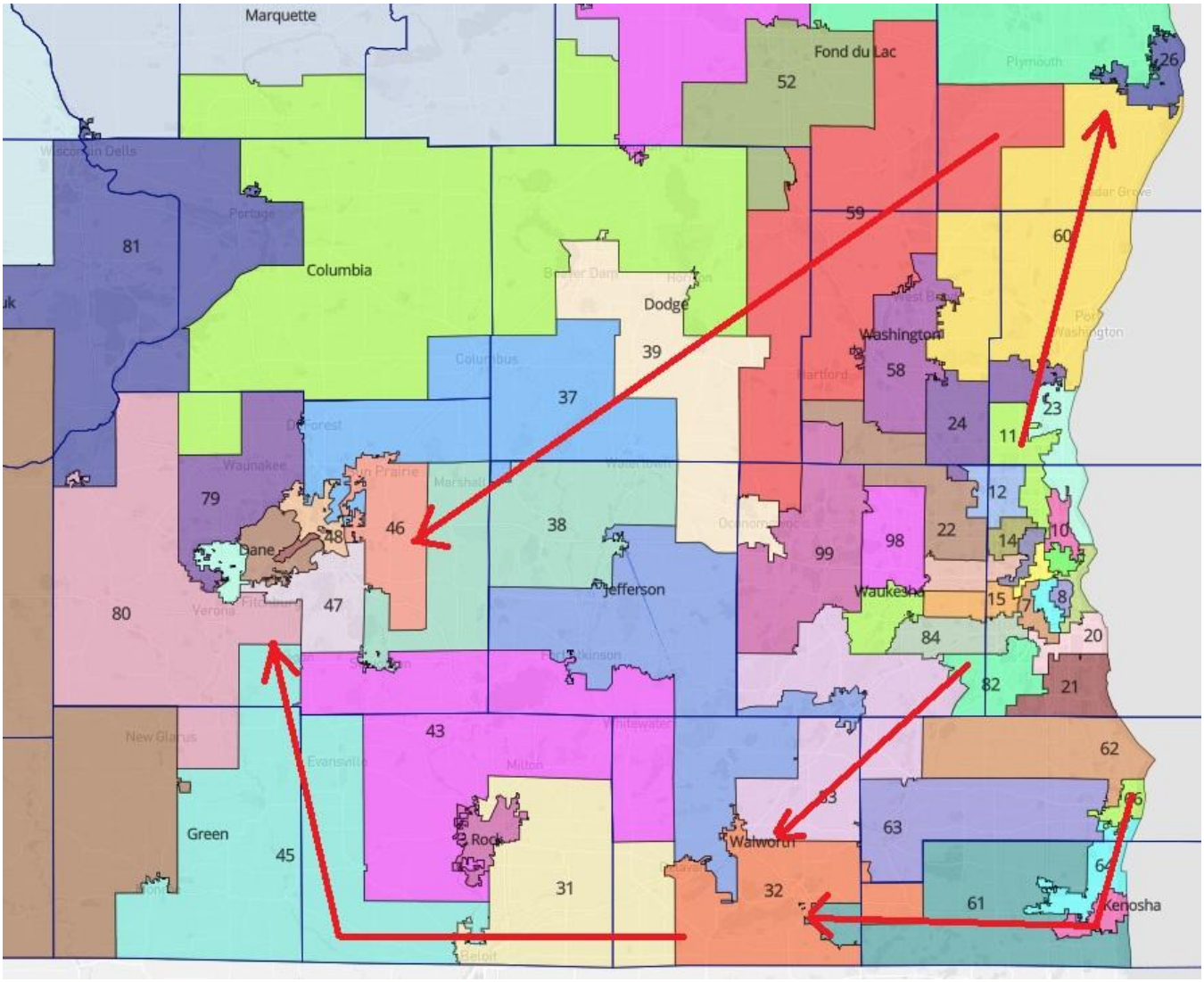
(BLOC App. 006.)

AD37 and 38 thus contract inward into Dane County, picking up the excess population from Madison-area contraction of overpopulated districts. AD39 picks up the population that AD37 and 38 shed in the process, and the

remaining changes are largely resolved by AD59 shifting south.

This completes the circle of the major population shifts in the map, because AD59's southward move creates room to balance population that resulted in the northward expansion of districts from Milwaukee, as illustrated below with red arrows:

Flow of Milwaukee/Madison Population in BLOC Plan



This flow of population follows the "least-change" approach because it minimizes the number of districts

(particularly in the populous Milwaukee suburbs) requiring marked changes. Moreover, it follows the Wisconsin Constitution in determining *how* to make the least changes, by resolving two major municipal splits in the process: the split of Sheboygan and Beloit in the existing plan. As the core retention data addressed above shows, the BLOC plan makes limited changes to the existing plan, while simultaneously protecting the VRA rights of Black voters in Milwaukee and respecting the constitutionally mandated respect for municipal boundaries and communities of interest.[22]

* * *

As this brief and the attached expert reports explain, the BLOC plans comply with the VRA, equalize population, and satisfy the "least-change" approach by maximizing core

[22] Although there are other changes in the BLOC plans to balance population, including to overpopulated districts in the Fox Valley/Green Bay area and near Hudson, these modifications are accomplished more simply by shifting population from nearby underpopulated districts.

retention and minimizing the number of districts affected by population changes.

CONCLUSION

The Voting Rights Act requires that the existing Black majority assembly districts in Milwaukee, many of which are packed with excessively high percentages of Black voters, be unpacked, and that Black voters in neighboring, white-dominated districts be uncracked. As the BLOC Petitioners show, a seventh VRA district for Black voters can, and must, be created to remedy this unlawful vote dilution. This conclusion flows from demographic, electoral, and totality of the circumstances data and expert analysis proffered by the BLOC Petitioners. The Court must start by ensuring that its remedial plan complies with the VRA in this manner.

Doing so dictates how the "least-change" approach to balancing population begins. The BLOC Petitioners have offered proposed assembly and state senate plans that comply

with the VRA and balance population while minimizing the numbers of districts markedly altered, as reflected in the high core retention figures discussed above. Where changes were necessary—and changes are necessary to balance disconnected areas of over- and under-population—the BLOC plans prioritize the Wisconsin Constitution's redistricting criteria to determine how to make the "least changes" to the existing districts. Doing so resolves two noteworthy municipal splits in the existing plan, in Sheboygan and Beloit, and thus ensures that the Court's remedy of the malapportionment does not create a plan inconsistent with the Wisconsin Constitution's criteria.

Dated: December 15, 2021.

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CERTIFICATION OF COMPLIANCE WITH WIS. STAT. § 809.19(8g)(a)

I hereby certify that this brief conforms to the rules contained in s. 809.19 (8) (b), (bm), and (c) for a brief. The length of this brief is 9,181 words.

Signed:

By Electronically signed by Douglas M. Poland
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CERTIFICATION OF MAILING AND SERVICE

I certify that a paper original and 10 paper copies of the foregoing Merits Brief of Intervenor-Petitioners, Black Leaders Organizing for Communities, Voces de la Frontera, the League of Women Voters of Wisconsin, Cindy Fallona, Lauren Stephenson, and Rebecca Alwin and Appendix were hand-delivered to the Clerk of the Supreme Court on December 15, 2021.

I further certify that on December 15, 2021, I sent true and correct email copies of the foregoing Merits Brief of Intervenor-Petitioners, Black Leaders Organizing for Communities, Voces de la Frontera, the League of Women Voters of Wisconsin, Cindy Fallona, Lauren Stephenson, and Rebecca Alwin and Appendix, to all counsel of record.

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