

## **Reply Expert Report of Dr. John Alford**

Expert for the Wisconsin Legislature

*Johnson v. Wisconsin Elections Commission*

January 4, 2022

## **Executive Summary**

In his reply report for BLOC, Dr. Collingwood asserts that the Legislature's Assembly District 10 might not allow Black voters equal opportunity to elect the candidate of their choice. He also raises immaterial questions about whether 6.1 or 6.4 assembly seats are proportional. Both critiques are based in part on Collingwood's suggestion that there are errors in my analysis. There are no material errors in my analysis. Collingwood has not offered any evidence to support the suggestion that the Legislature's Assembly District 10 will not allow Black voters equal opportunity to elect the candidate of their choice. Similarly, Collingwood's proportionality discussion ultimately proves irrelevant.

## **Assembly District 10**

In my initial analysis, I observed that the Legislature's proposed District 10 would be slightly below 50% Black Voting Age Population but concluded that the Legislature's proposed District 10 would perform, meaning it would still allow Black voters equal opportunity to elect the candidate of their choice. In his reply report, Collingwood raises questions about District 10's potential performance. His critique focuses exclusively on the results of a single election, the 2018 Democratic primary for Governor. Dr. Collingwood concludes that those election results show that the Black candidate of choice would win District 10, as I concluded, but Collingwood goes on to speculate that the results might be different if the candidate field were smaller. Collingwood's speculation is unsubstantiated and is not a reason to reject the Legislature's Assembly District 10.

First, speculation based a single election, the 2018 Democratic primary contest for Governor, is problematic. It is not representative of the general pattern of racial polarization in Milwaukee County evident in the analysis in Dr. Collingwood's previous report, and therefore not broadly representative of how any given district might actually perform. Collingwood's Table 1 from page 4 of that initial report is reproduced below for ease of reference.

**Collingwood Table 1**

Contest	Primary or General	Year	Jurisdiction	Black Candidate	Main White Candidate	RPV	Black Candidate Blocked
Comptroller	spring general	2016	Milwaukee City	Thomas	Matson	YES	Yes
Dem Sheriff	Primary	2018	Milwaukee County	Lucas	Schmidt	NO	No
Dem Gov	Primary	2018	Statewide (subset to county)	Mitchell	Evers	YES	No
State Assembly	Primary	2018	Dem primary	Myers	Kessler	YES	N/A
Mayor	spring general	2020	Milwaukee City	Taylor	Barrett	YES	Yes
MLK County Executive	Spring General	2020	Milwaukee County	Crowley	Larson	YES	No
Comptroller	spring general	2020	Milwaukee County	Fields	Sawa	YES	Yes
State Superintendent	Primary	2021	Statewide (subset to county)	Hendricks-Williams	Underly	YES	Yes
Total						7/8 = 87.5%	4/7 = 57.1%

This table includes all of the eight contests that are the basis of the detailed analysis of racially polarized voting that Collingwood provides in his initial report. Note first that while Collingwood reports in this table that he found at least some evidence of racially polarized voting in seven of the eight contests, he was able to conclude that the preferred Black candidate was defeated by bloc voting (legally significant racial polarized voting) in only four of the eight contests.

Dr. Collingwood justifies his selection of the 2018 Democratic primary for governor by stating that it “is the most probative, because it was a partisan primary (like would be the case for state assembly seats) and it featured strong racially polarized voting. It thus best simulates the conditions that VRA remedial districts are designed to overcome—the possibility that white voters will bloc vote and defeat Black voters’ candidate of choice” (page 3). It may be the most typical of what the VRA is intended to overcome, but it is not typical of the elections in Milwaukee County that Collingwood analyzed in his report. Instead, this contest has the highest level of polarization of any of the contests Collingwood analyzed. In effect, Collingwood is not testing whether a district would usually perform given the typical sorts of elections in the geography, but is instead testing to see if a district will *always* perform, even under the worst of conditions. Seeking to provide the realistic opportunity to elect a candidate of choice does not justify mandating districts that provide a guarantee of election to those candidates in every circumstance.

This conclusion is further supported when all relevant election results are considered, versus excluding election results as Collingwood has done that do not fit his conclusion about racially polarized voting. (For example, Collingwood excluded from his initial analysis at least one contest

that he knew did not exhibit racially polarized voting.)<sup>1</sup> As he notes in his reply report on pages 3-4:

*I understand that other parties' experts also conducted a performance analysis of the 2018 Lieutenant Governor primary, in which Black candidate Mandela Barnes prevailed by a large margin statewide. This election is less probative of the performance of districts, because it does not simulate an election in which white bloc voting might defeat the choice of Black voters – i.e., it tells us little about whether the particular configuration of district lines, given local electoral conditions, will suffice to provide Black voters an equal opportunity to nominate and elect their preferred candidate in the face of racially polarized voting.*

Contrary to Collingwood, the Lt. Governor's race is probative. If we include the Lt. Governor's contest, including a Black and white candidate, alongside the Governor's contest, also including Black and white candidates, and seven other contests in Collingwood's Table 1 from his original report, we now have a total of nine contests. Of those nine contests, only four feature racially polarized voting in which the Black preferred candidate was defeated by white bloc voting. And in only one of the five Democratic primary contests<sup>2</sup>, the contest Collingwood is most concerned with here, was the Black preferred candidate defeated by white bloc voting. And finally, no one here denies that in the general elections the preferred candidates of Black voters (i.e. the Democrat) are not blocked by white voters.

This raises the threshold question of whether the level of racially polarized voting in Milwaukee County meets even the threshold level specified in *Gingles* factors two and three, which must be met before one can even consider whether the totality of the circumstances would permit race to predominate in redistricting. Whatever may have been the case when these districts were first drawn prior to 2010, the election patterns detailed by Collingwood raise serious doubts about whether the *Gingles* threshold standard is currently met in Milwaukee County. In particular, this seems to be a very weak basis for the explicit focus on race (not party or ideology) in the demand that "District 10 should be drawn to exclude the Village of Shorewood. Likewise, nearby predominantly white, liberal Whitefish Bay, Fox Point, and Bayside should be excluded. The other parties' plans include some or all of these in their proposed Black opportunity districts" (page 1). A map cannot consciously exclude Shorewood on the basis of race on such a weak showing, without meeting the *Gingles* prerequisites and establishing that the totality of circumstances requires such race-conscious redistricting.

In short, Collingwood's choice of the 2018 Democratic primary contest for Governor as his sole test case for whether the Legislature's Assembly District 10 will perform in any of the plans appears highly selective. Collingwood's critique about Assembly District 10 (still wrong for other reasons) amounts to arguing about whether there is a *single* instance where a preferred candidate

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<sup>1</sup> Note also that Collingwood included the 2018 Democratic primary contest, where the Black candidate prevailed, in Assembly District 12 in his table, but excluded it when he calculated his proportion of elections in which the Black preferred candidate was blocked by white voters, and then went on to suggest also excluding the 2018 Democratic Primary contest for sheriff, where the majority of white voters supported the Black candidate.

<sup>2</sup> Milwaukee County Sheriff, 2018 Governor and Lt. Governor, State Assembly District 12, and 2021 State Superintendent.

will be blocked by bloc voting, not whether the preferred candidate of Black voters will *usually* be blocked.

Second, Collingwood's doubt about the Legislature's proposed District 10 is based on speculation, not actual election results. Collingwood's critique is one that merely projects (by making a variety of hypothetical assumptions and transformations) a loss for a Black preferred candidate, even though the untransformed actual election results applied to the Legislature's District 10 shows a clear win for the Black preferred candidate, as Collingwood must concede.

Collingwood's conclusion is based upon analyzing the results of a single "packed field" primary in which the black preferred candidate won a substantial plurality and then speculating that the Black preferred candidate would have not have picked up additional votes if the field were reduced to only two candidates. To the extent a single election can be relied upon to assess the potential performance of proposed district, selecting a crowded primary to draw conclusions about a two-candidate primary entails numerous uncertain assumptions that would not be necessary if Collingwood had instead simply assessed a race with two candidates. (I included both contests in my assessment).

It is important to keep in mind the uncontested facts of the 2018 Democratic primary, which Collingwood resists. In the Governor's contest, which Evers won with only a plurality (41.8%) of the vote statewide, the Black preferred candidate Mitchell won the Legislature's proposed District 10 by a plurality. No one doubts Evers won the race statewide by a plurality in a crowded race, just as no one should doubt Mitchell would have won in the Legislature's District 10 by a plurality in that crowded race. Even in his original report, Collingwood notes that in the BLOC-proposed map Mitchell "is the clear winner in each district, winning an outright majority in six of the seven seats. It is important to note that this contest includes 10 primary candidates, so such win rates are extraordinary. Even in the one district that Mitchell does not outright win, he would have 47.9% of the vote, *a clear plurality*" (page 26).<sup>3</sup> If a plurality counts as a win for the BLOC plan, it counts as a win for the Legislature's plan.

In his reply report however, Collingwood now questions whether this result—a clear win with a plurality of the vote—can be taken at face value because there were more white candidates on the ballot than would be typical in an Assembly legislative primary. That same factor weighed in the opposite direction is his original report where he found Mitchell's winning performance in the seven BLOC plan districts to be "extraordinary" and given that Mitchell is the lone Black candidate in a field of nine, the wins, whether by majority or plurality, are extraordinary.

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<sup>3</sup> In his reply, Dr. Collingwood states that I made an "error" in my analysis by calculating Mitchell's vote share as 42.2% instead of 39.3% (page 11-12). Collingwood is correct that my Table 5 does not include the votes for two candidates, Gronic and Flynn, in the 2018 Democratic primary for Governor. Milwaukee County's PDF of the official canvas of that election has a pagination issue that attaches the columns for those two candidates to the end of the results for the Republican primary, rather than the beginning of the Democratic. A corrected table is attached here as Exhibit 1. The minor change to percentages by including these minor candidates makes no difference to any of the statements or conclusions in my original report, and it should make no difference to Collingwood's analysis. It is Collingwood who errs by suggesting that the exclusion of these minor candidates is material. The Black preferred candidate still wins by a stunning plurality against the full field in District 10.

Specifically, Collingwood applies an adjustment factor to the actual election results from the 2018 Governor's primary, to speculate about what the results of the primary would be in a less crowded field. Applying Collingwood's questionable adjustment factor to the Legislature's proposed District 10 leaves Mitchell at 44.4%, short of 50% as Collinwood notes. This adjustment factor is unrealistic on its face. As Collingwood explains in his footnote 3, when applying his formula to the BLOC District 10, where Mitchell's actual share was 46.3%, he takes "the 29% of votes that were not cast for either Mitchell or Evers. I multiply this number by 0.16 (the average RPV estimate for white support for Mitchell). This number (4.7%) is added to Mitchell's existing vote resulting in 51%" (page 15 n.3). Assigning Mitchell 16% of the votes that were not cast for him or for Evers, based on the fact that Collingwood estimated that white voters gave 16% of their vote to Mitchell amounts to assuming first that all of these votes cast for the other seven candidates were cast by white voters, and second that white voters in District 10 would behave exactly like white voters in all of Milwaukee County had (Collingwood's RPV estimates are for the entire County). Then, going beyond that to make the unlikely assumption that in choosing between two candidates that were by definition not their first choice, they would be no more likely to rank Mitchell above Evers than white voters in Milwaukee County overall had been likely to rank Mitchell above every one of the other eight candidates.

It is important to remember that the voting analysis Collingwood is relying on here is only an estimate of the choices voters made when faced with the full nine candidate field. For example, in the actual nine-way contest a voter whose first-choice candidate preference was McCabe presumably voted for McCabe, but that doesn't tell us anything about whether in their preference ranking for the remaining candidates Mitchell was above or below Evers. If Mitchell had been the second choice of every voter that voted for one of the seven other candidates, the election results would be exactly the same as they would be if Evers had been their second choice, or any proportion in between. The analysis of the nine-way contest just doesn't give us much leverage over that crucial preference information.

Perhaps most importantly, what actually happened in 2018 also gives no reason to question the results of the Governor's race for what they are. On the same day, on the same ballot, in the adjacent contest for Lt. Governor, the same voters faced a choice between a single Black candidate, Barnes, and a single white candidate, Kober, exactly the type of contest Collingwood suggests is more typical of a racially contested Assembly primary. As detailed in my original report, Barnes won by very strong margins in all the districts, including the Legislature's District 10. In particular, the Lt. Governor's race casts doubt on Collingwood's unproved suggestion that, despite Mitchell's clear win District 10 in a nine-way contest, Mitchell might not have won a majority in a two-way contest because of racially polarized voting. In the same election, with the same electorate, the Black candidate in the adjacent Lt. Governor's race *did* win a very clear majority in a two-way contest against a white opponent.

### Proportionality of Six versus Seven Black Districts

I addressed the issue of proportionality comprehensively in my initial report, and here will comment only on the narrow additional point raised in Dr. Collingwood's report. In his response report, Dr. Collingwood concludes that the "most up-to-date and accurate estimate of Black voters' proportionate share of Wisconsin's citizen voting age population is 6.5% – between 6 and 7 seats in the 99 seat Wisconsin Assembly" (page 1). Collingwood's estimate of 6.5% is based on quibbling with the ACS estimates. Collingwood concludes that the ACS estimates must be wrong because the "ACS estimates that they are roughly 7,000 more white adult citizens in Wisconsin than there are total white adults in Wisconsin. That is not possible" (page 16). Collingwood ignores that the population counts in the ACS estimates are 2017 estimates, while the 2020 Census is a spring 2020 count. Collingwood also ignores that ACS has never been intended to be a population count. It is not a count, it is a survey. The proportions or percentages that the ACS survey reveals are important, but it is not intended to substitute for the Census as a raw count. As the general user handbook notes: "The ACS was designed to provide estimates of the *characteristics* of the population, not to provide *counts* of the population in different geographic areas or population subgroups."<sup>4</sup> In any case, whatever the shortcomings of relying on the ACS 2015-2019 survey estimate of Wisconsin CVAP proportions, using those same proportions to create recalculated estimates (as Collingwood does) inherits most of those issues.

The more important question is why the difference between the 6.1% ACS CVAP Black proportion, the Census VAP 6.4% proportion, or Collingwood's re-calculated 6.5% proportion matters. Dr. Collingwood's conclusion that the appropriate number of seats is somewhere between six and seven seats seems to be offered in support of the necessity of moving from up from the current six Black seats to the seven seats in the proposed BLOC plan. It doesn't support that claim. The actual proportionate number of seats, whatever number one uses, is between 6 and 6.4 Assembly seats.<sup>5</sup> So regardless of which population proportion is chosen, the current level of six seats is closer to proportionate than would be seven seats.

Respectfully submitted,



Dr. John R. Alford

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<sup>4</sup> U.S. Census Bureau, *A Compass for Understanding and Using American Community Survey Data: What General Data Users Need to Know* 25, U.S. Government Printing Office (2008).

<sup>5</sup> Assuming that 6.1% is the correct CVAP share for Black voters, would be 6.039 ( $.061 \times 99 = 6.039$ ), while if the 6.4% VAP proportion is correct the seat number would be 6.336, and Dr. Collingwood's 6.5% CVAP recalculation would suggest a seat number of 6.435 seats.

**Exhibit 1**

District	Plan	VAP	BLK VAP	%Blk VAP	Evers	Pade	McCabe	Mitchell	Roys	Soglin	Vinehout	Wachs	Gronic	Flynn	Other	Total	%Mitchell	%Evers	Kober	Barnes	Total	%Barnes
Assembly	10 Existing	39057	22550	57.7%	2444	27	495	4608	1113	113	286	36	62	533	3	9720	47.4%	25.1%	985	7623	8608	88.6%
Assembly	10 SB621	45220	20700	45.8%	3425	39	601	4599	1559	213	406	47	89	708	3	11689	39.3%	29.3%	1419	9024	10443	86.4%
Assembly	11 Existing	36315	23744	65.4%	1048	14	152	4055	297	91	139	39	55	319	3	6212	65.3%	16.9%	661	4838	5499	88.0%
Assembly	11 SB621	41166	29420	71.5%	1075	16	141	5014	221	75	112	41	68	334	3	7100	70.6%	15.1%	731	5484	6215	88.2%
Assembly	12 Existing	40040	23653	59.1%	1465	24	141	3863	317	97	140	51	78	403	2	6581	58.7%	22.3%	1034	4717	5751	82.0%
Assembly	12 SB621	42610	23644	55.5%	1621	23	163	3901	362	113	156	60	74	437	3	6913	56.4%	23.4%	1118	4901	6019	81.4%
Senate	4 Existing	115412	69947	60.6%	4957	65	788	12526	1727	301	565	126	195	1255	8	22513	55.6%	22.0%	2680	17178	19858	86.5%
Senate	4 SB621	128996	73764	57.2%	6121	78	905	13514	2142	401	674	148	231	1479	9	25702	52.6%	23.8%	3268	19409	22677	85.6%
Assembly	16 Existing	41231	22281	54.0%	1202	20	296	3796	559	75	151	24	73	293	13	6502	58.4%	18.5%	661	4988	5649	88.3%
Assembly	16 SB621	45615	23985	52.6%	1243	22	306	3997	579	81	158	28	76	314	14	6818	58.6%	18.2%	704	5198	5902	88.1%
Assembly	17 Existing	40187	26744	66.5%	1469	20	194	5662	519	121	169	41	61	364	3	8623	65.7%	17.0%	1002	6390	7392	86.4%
Assembly	17 SB621	43760	26333	60.2%	1843	24	241	5682	763	165	236	46	72	424	3	9499	59.8%	19.4%	1226	7013	8239	85.1%
Assembly	18 Existing	38748	22767	58.8%	1489	15	190	3873	684	105	172	36	115	312	8	6999	55.3%	21.3%	824	5227	6051	86.4%
Assembly	18 SB621	43972	22337	50.8%	2178	21	266	4127	1103	158	281	43	116	404	8	8705	47.4%	25.0%	1107	6452	7559	85.4%
Senate	6 Existing	120166	71792	59.7%	4160	55	680	13331	1762	301	492	101	249	969	24	22124	60.3%	18.8%	2487	16605	19092	87.0%
Senate	6 SB621	133347	72655	54.5%	5264	67	813	13806	2445	404	675	117	264	1142	25	25022	55.2%	21.0%	3037	18663	21700	86.0%