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DATE: October 14, 2021
TO: Interested Parties
FROM: Margaret C. Daun, Corporation Counsel
Scott F. Brown, Deputy Corporation Counsel
SUBJECT: Redistricting – Amended (**Version 3**)

Milwaukee County embarked on a new process in 2021 to redraw its supervisory districts, using an independent redistricting committee (“IRC”) comprised of six retired judges.

Due to the delayed census, the redistricting process is time-sensitive, as well as novel. As a result, numerous questions have arisen. Given the novelty of this process, as well as the unusual delay in the census, no courts have weighed in on this particular confluence of factors. As such, this is only guidance. Moreover, this guidance is preliminary, non-final, and subject to revision. This is the **third** version of this guidance, and **this version supersedes all prior versions** (i.e., two prior versions issued on September 29 and 30, 2021), and all other prior written formal or informal guidance on this issue.

The Office of Corporation Counsel (“OCC”) is sharing this preliminary guidance, and will continue to provide updates and revisions, given the intensity of public interest and the immediate need for guidance expressed by decision-makers.

I. Question: Do municipalities require the County to definitively adopt its supervisory districts to draw their legislative districts and wards?

Answer: Yes. The County will also need to receive municipal ward maps to properly prepare for the Spring 2022 elections.

II. Question: Which municipalities have requested that the County draw their maps?

Answer: Brown Deer, Glendale, Fox Point, Shorewood, South Milwaukee, Wauwatosa, and Whitefish Bay requested that the County (via the IRC) draw their maps. The IRC directed the Southeastern Wisconsin Regional Planning Commission (“SEWRPC”) to draw maps for those municipalities who have requested the County’s assistance, and once completed, SEWRPC will transmit the maps to the OCC, and the OCC will then transmit

to the municipalities. Municipalities are encouraged to speak with their legal counsel regarding timing, public hearing requirements, etc.

III. Question: What is the specific deadline for the County to adopt its supervisory districts?

Answer: There is none. *However*, because potential candidates must be able to collect signatures to appear on the ballot, the Milwaukee County Clerk and most municipal election officials and clerks state that *all maps*, including municipal legislative districts and wards, as well as County districts, must be formally and finally adopted by no later than November 23, 2021, potentially at least a day earlier, so that clerks have enough time to complete and publish the requisite election notices. Wis. Stat. § 10.06(2)(a). See WCA Redistricting Timeline, attached as Ex. 1.

Importantly, state statute distinguishes between the County’s “tentative” and “final” map. Once the Board adopts its preferred map, this “tentative” map will be transmitted to the municipalities. After the municipalities establish their districts and wards, which must be completed by November 10, Wis. Stat. § 62.08(1), those municipal maps are returned to the County. The County and municipalities must then ensure that supervisory districts consist, to the extent possible given all other constitutional concerns, of contiguous whole wards or municipalities.¹ Then the County Board must adopt its “final” map.

The County must adopt its “tentative” map as soon as possible because (i) municipalities must wait for the County to adopt its map before drawing their districts and wards; (ii) municipalities must then convene a properly noticed public meeting to adopt their district and ward maps; and (iii) once the municipalities transmit their wards and districts back to the County, the County must convene a properly noticed public meeting to adopt the “final” map, all in time for clerks to complete and publish the required election notices on November 23.

¹ There have been cases considering whether contiguity is a per se requirement. It is not, though it is nonetheless an important factor. See, e.g., *Karcher v. Daggett*, 462 U.S. 725, 739-41 (1983) (“Any number of consistently applied legislative policies might justify some [population] variance, including, for instance, making districts compact, respecting municipal boundaries, preserving the cores of prior districts, and avoiding contests between incumbent Representatives. As long as the criteria are nondiscriminatory, these are all legitimate objectives that on a proper showing could justify minor population deviations. The State must, however, show with some specificity that a particular objective required the specific deviations in its plan, rather than simply relying on general assertions.”) (internal citations omitted). See also *Nudo v. Kenosha Cty.*, Case No. 2021-CV-885, filed Sept. 16, 2021 (alleging, among other things, that the district maps drawn by Kenosha County are illegal because “supervisory districts in the Adopted Map split political subdivisions”) at ¶ 25 (attached as Ex. 2); *Frank v. Forest Cty.*, 336 F.3d 570, 572-74 (7th Cir. 2003) (in a geographically large but sparsely and unevenly populated county with numerous supervisory districts, holding that population differences among districts that exceeded 10% and reached 18% in one instance did not constitute an equal protection violation, because reducing the variation to 10% or less would have resulted in districts “districts that were not compact and that crossed many local government boundaries, so that school districts, fire districts, and so forth would straddle [] districts”).

Notably, the IRC took nearly six weeks to identify a first map to recommend to the County Board and took more than one week to redraft and formally submit a second map to the Board. If the County does not finally adopt a map until October 18 or 25, for example, that will leave municipalities with four or three weeks, respectively, to draw their maps, with no time for the County Board (or the IRC) to make final adjustments if there are legally impermissible conflicts among supervisory district boundaries and municipal ward boundaries.

IV. **Question:** What if the supervisory and local districts and wards are not formally and finally adopted in time to comply with state statutory deadlines?

Answer: Unknown, but there would be an acute risk of litigation. Claims could include violation of the Voting Rights Act of 1965 (“VRA”), denial of due process, First Amendment claims, among others, such as a mandamus action to force the drawing of maps, or a request that a court intervene to draw the maps itself. As time goes on, the risk of these latter types of suits increases.

V. **Question:** May the County Board temporarily suspend its own Ordinances, specifically, section 3.01, given the time sensitivity?

Answer: The OCC defers to Legislative Research Director Cady. That said, based on prior discussions among the OCC and Director Cady, likely yes. If challenged, it is unlikely that a court would undo such an action since (i) the Board created the Ordinance, (ii) the Board has final authority over the IRC-created maps (subject to normal County Executive signature processes), and (iii) the time-bound “emergency” facing the County and municipalities, which was caused by a serious delay in the census (i.e., not due to the County or municipal delay or neglect), among other reasons. If suspended, the County Board could instruct SEWRPC directly regarding the redrawing of supervisory districts.

In addition or alternately, amendment of the ordinances is also possible to:

- reduce the back-and-forth with the IRC to only two drafts, before the County Board takes over the responsibility to redistrict itself (for this year only and/or going forward);
- to enable the IRC to propose multiple map options upon request or direction from the County Board (for this year only and/or going forward); and
- to include incumbent addresses as an express factor for the IRC to consider, or any other factors desired by the Board.

VI. **Question:** Under MCGO § 3.01, what options does the Board have when it considers maps proposed by the IRC?

Answer: MCGO § 3.01(4)(b) states that “[a]doption of the map by the county board shall be by a simple majority of the supervisors then seated. The map and any subsequent drafts

proposed by IRC shall be voted on by the county board.” Subsections (4)(c)-(e) address what happens if the Board takes no action on an IRC-created map.

Taking these sections together then, the Board only has two options when it considers IRC-drafted maps: either (i) vote to approve or reject the map as presented by the IRC (i.e., without amendment); or (ii) take no action and wait for the time period specified in the Ordinance to expire (30 days after the first IRC-created map is submitted, 20 days after the second map is submitted, and 10 days after the third map is submitted).

VII. Question: May the County Board propose amendments to an IRC-created map?

Answer: The OCC defers to Legislative Research Director Cady. That said, likely yes, under two circumstances.

1. If the Board suspends MCGO § 3.01, the Board (or a committee) can then immediately move to direct SEWRPC to assist Director Cady in amending the maps and drafting amendments.
2. If the Board does not suspend MCGO § 3.01, even though MCGO § 3.01 does not explicitly prohibit amendments by the Board, a court would likely infer that the Board cannot propose amendments since the ordinance contemplates only acceptance or rejection of the IRC-proposed map (or the expiration of the relevant time period, *see supra* Question VI).

Thus, if the Board does not suspend MCGO § 3.01, then the Board (or committee) can direct SEWRPC to assist Director Cady in amending the maps and drafting amendments, but not until after the third IRC-proposed map is rejected by the Board, assuming the Board does not elect to let the various time periods lapse without action.

VIII. Question: May a committee member propose an amendment to an IRC-created map?

Answer: The OCC defers to Legislative Research Director Cady. That said, maybe,² but given that the ordinance clearly contemplates either (1) a Board vote on the IRC-proposed map or (2) no action by the Board and the expiration of the relevant time period, *see supra* Questions VI and VII, a plain language reading of the ordinance likely requires that the committee vote on the IRC-proposed map without amendment.

Of course, as noted above, amendments may be submitted and considered by the committee and the Board after the Board rejects the third IRC-drafted map.

² Based upon discussions with SEWRPC and Director Cady, the OCC understands that neither Director Cady nor his staff can alter the map or prepare amendments in “real time,” i.e., during the meeting. Similarly, it may be difficult or impossible to provide legal guidance about the relative legal risk of different maps in “real time,” since that analysis requires detailed demographic data.

IX. Question: May the County Board direct the IRC to propose multiple maps?

Answer: The OCC defers to Legislative Research Director Cady. That said, and setting aside administrative or operational concerns or confusion, it is our opinion that a request or direction to the IRC to propose multiple maps would be possible if the relevant ordinance is amended by the Board to expressly permit that. *See supra* Question V. However, absent such an amendment, this does not appear to be contemplated by a plain language reading of the relevant ordinance. Specifically, MCGO § 3.01(4)(b)-(e), refers only to “the proposed map,” “the map,” “the [] draft.” The absence of any plural therefore does not permit the IRC to propose multiple draft maps at any one time to the County Board.

X. Question: If the County Board does not suspend or otherwise newly amend MCGO § 3.01, what is the process to formally adopt supervisory districts?

Answer: The process is laid out in MCGO § 3.01 and Wis. Stat. § 59.10. In summary, the County Board would need to convene potentially twice to vote on the IRC-drafted map and provide guidance to the IRC. If the Board rejects a third IRC map, the Board can draw its own maps. Practically speaking, after a map is rejected by the Board, the IRC would then need to convene to provide directives to SEWRPC regarding how to redraw the districts. Once the County settles upon its “tentative” map, municipalities must draw their districts and wards and submit them to the County. The County Board must then publicly meet at least one last time to adopt the “final” map. As noted above, supervisory districts should consist of contiguous whole wards or municipalities whenever practically possible, given other constitutional mandates. *See supra* n.1.

XI. Question: When the Board considers IRC-drafted maps. would minority rules permit the file to be referred to the OCC or laid over?

Answer: Yes, under MCGO § 1.15, but the OCC respectfully advises against doing so given the extreme time sensitivity. Also, layover or referral to the OCC would not fulfill the requirement set forth expressly in the Ordinance that the County Board vote on the IRC-proposed map (or wait for the state time period to lapse, *see supra* Questions V-VIII).

In addition, the OCC notes that under applicable legal precedent, the relative risk of an adverse litigation outcome can only be opined upon by the OCC in the most general and high-level sense, because the inquiries are fact intensive and evaluated under a “totality of the circumstances” standard, including past election results. *See Baldus v. Members of Wisconsin Gov't Accountability Bd.*, 849 F. Supp. 2d 840, 854-55 (E.D. Wis. 2012) (citing and discussing *Thornburg v. Gingles*, 478 U.S. 30, 48-51 (1986) (setting forth three requirements for a VRA claim to succeed: (i) minority groups sufficiently large and geographically compact to create a majority-minority district; (ii) minority groups are politically cohesive in terms of voting patterns; and (iii) voting is racially polarized, such that the majority group can block a minority’s candidate from winning)).

- XII. Question:** What is the relevant measure for analyzing claims of “cracking” (i.e., dilution) or “packing” (i.e., over-consolidation) under the VRA?

Answer: Citizen voting age population. *See id.* at 854 (citing *League of United Latin American Citizens v. Perry*, 548 U.S. 399, 429 (2006)).

- XIII. Question:** What is the general holding of *Baldus* regarding “majority-minority” or “minority influence” (i.e., a significant “minority” population, but less than 50%) districts?

Answer: As noted above, any challenge to a redistricting map requires a court to engage in a fact intensive totality of the circumstances review. Moreover, the relevant measure when comparing maps or districts is *citizen voting age population*. Regarding cracking, *Baldus* generally stands for the proposition that fewer districts, with an indisputable or supermajority “minority” population, is preferable to more districts with narrow “majority-minority” or “minority influence” populations. Specifically, the court held that *under the facts at issue in that case*, two districts with “Latino” populations of 60.52% and 54.03% was a VRA violation, when the other option was a single district with a “Latino” citizen voting age population of 70.07%. *Baldus*, 849 F. Supp. 2d 840, 854–58.

Perhaps most importantly, it is impossible to fulfill all redistricting factors equally, *see supra* n.1, *infra* Question XVII-XVIII, and while there are some objective measures (i.e., population deviation among and between districts, *Baldus*-styled analysis), subjective judgments will inevitably be required. And as noted above, under *Baldus*, any challenge to a new map will require an intense fact inquiry under a totality of the circumstances standard.

- XIV. Question:** Is closed session available or appropriate by the Board, a committee, or the IRC?

Answer: Yes, but the OCC respectfully advises that it be used only in very narrow circumstances for very specific questions regarding relative litigation risk between two specifically-defined maps or other specific questions. The OCC can opine publicly regarding general requirements of the VRA, other applicable law, as well as *Baldus, supra*.

- XV. Question:** Did the IRC public meetings satisfy the statutory requirements for a public hearing on the tentative map and for solicitation of suggestions from municipalities?

Answer: The OCC advises that the County/IRC has already satisfied the requirement in MCGO § 3.01(5) that the County “shall offer” redistricting services to municipalities. Separately, neither MCGO § 3.01 nor Wis. Stat. § 59.10 require “solicitation of suggestions from municipalities.” The IRC has satisfied the public meeting requirements in Chapter 3. As alluded to above, even where the County has been requested to draw maps for

municipalities, the municipalities are ultimately responsible for adopting their own maps, holding public hearings, and complying with required processes/deadlines, etc. Given that roughly a month and a half (or slightly more) remains before hard deadlines for the maps, if requested, it is highly unlikely that a court would agree to intervene at this juncture to affirmatively draw Milwaukee County's maps or otherwise direct the mapmaking. However, this risk increases as time goes on. It is also doubtful that County ordinances that appear to require certain public meetings by municipalities and/or reporting by municipalities to the County would be found by a court to compel those actions by municipalities.

XVI. Question: If the Judiciary Committee permits virtual public testimony and e-comments at a hearing, would this satisfy the statutory requirement for a public hearing?

Answer: Yes. MCGO § 3.01(4) specifically contemplates public meetings to consider and adopt a map, as well as public comments, but does not specify number or length. The OCC therefore respectfully recommends that public comment (whether live or via e-comment) be available during follow-up committee meetings and/or during Board (or Committee of the Whole) meetings regarding the maps. This does not, however, fulfill the clear requirement under MCGO § 3.01 that the Board either vote on the IRC-created map during a properly noticed public meeting or take no action for the specified time period.

XVII. Question: What directive, if any, did the IRC provide to SEWRPC regarding incumbency?

Answer: In the second meeting of the IRC, by a unanimous vote of 6-0, the IRC separately directed SEWRPC to not consider either (a) incumbent addresses; or (b) the prior district map. *See* IRC Minutes Aug. 27, 2021, attached as Ex. 3 at pp.6-7. The IRC, based on comments during the Judiciary Committee meeting on September 30, reversed course and then directed SEWRPC to consider incumbent addresses.

The County Board, when it adopted MCGO § 3.01, did not include incumbent addresses or prior district boundaries in the factors to be considered by the IRC. Relevant to incumbency, MCGO § 3.01(1) states only that “[T]o maintain the integrity of the redistricting process and to mitigate any conflicts of interest or claims of politicization, an independent redistricting committee (IRC) shall be ... convened.” *See also* MCGO § 3.01(2).³ The County Board may add either or both of these factors to the ordinance at any time.

³ MCGO § 3.01(2) states:

County supervisory districts are hereafter established so as to represent as nearly as practicable an equal number of persons, but considering such other factors as communities of interest, compactness of territory and contiguity, and continuity and integrity of existing village and city lines and precincts wherever possible, and with the predominant objective of achieving an honest and good faith effort to create the greatest possible equal population distribution among all districts.

In addition, the Wisconsin Counties Association’s 2020 Redistricting Handbook, attached as Ex. 4, pg. 3, states: “[u]nder Wis. Stat. § 59.10(3), counties begin the decennial redistricting process with a ‘clean slate.’” Related, the OCC has identified nothing in the VRA or in applicable case law that stands for the proposition that incumbency should be or must be considered.⁴ Similarly, no case law or VRA provision stands for the proposition that by considering incumbency, you are less likely to lose a legal challenge to the redistricted map. In fact, the opposite may be true when there are significant population changes between the decennial censuses since taking into consideration incumbent addresses could be argued to implicitly favor the prior map, which may be presumptively per se violative of the VRA and equalization of population mandates.

More broadly, preferencing incumbency may establish a precedent to do so during statewide redistricting, which could be argued as a reason to minimally alter the maps created in 2011 by a Republican-controlled Wisconsin state legislature and signed off on by a Republican governor, resulting in what many have argued to be one of the most constitutionally suspect partisan gerrymanders ever accomplished in U.S. history. *Whitford et al. v. Gill*, 218 F. Supp. 3d 837 (W.D. Wis. 2016) (finding Wisconsin’s Republican-controlled partisan gerrymander unconstitutional), *vacated and remanded*, 138 S. Ct. 1916 (holding that the claim was nonjusticiable). For all related filings, see Brennan Center for Justice, Case Tracker, available at: <https://www.brennancenter.org/our-work/court-cases/gill-v-whitford> (Oct. 13, 2021). See also “Wisconsin Republicans seek few changes to voting maps,” Jack Kelly, *The Capitol Times*, Sept. 28, 2021; “Republicans say they want few redistricting changes, but a decade ago they moved millions of voters into new districts,” Patrick Marley, *Milwaukee Journal-Sentinel*, Sept. 27, 2021.

XVIII. Question: What priorities or factors does the IRC use to direct SEWRPC?

Answer: The video/audio recordings of all IRC meetings and the minutes of same are the best record of the precise directives the IRC gave to SEWRPC. However, some summary observations are possible, discussed below.

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- (a) Committee criteria. The IRC's redistricting plan shall comply with the following criteria:
- (1) Federal equal population mandates.
 - (2) Redistricting criteria established by federal and state laws.
 - (3) Maintenance of voting rights of Hispanic and African American and other citizens as guaranteed in the VRA.
 - (4) A map that consists of districts that preserves the integrity of existing neighborhoods and communities of interest within Milwaukee County.

⁴ The OCC respectfully urges caution when considering any non-legally binding guidance, such as that of the National Conference of State Legislatures, that advocates for the consideration of incumbency, particularly regarding potentially partisan interests. The OCC respectfully notes that the current president of the NCSL is Wisconsin Representative and Speaker of the Assembly Robin Vos.

On August 27, 2021, the IRC voted to prioritize the following factors, in this order of importance, mirroring MCGO § 3.01(2), *see* Ex. 3 at pp.4-6:

1. the VRA, and recognition of ethnic and racial communities of interest, while noting that race is a social construct;
2. respect for municipal boundaries;⁵
3. equalization of population between districts, and that SEWRPC shall aspire and endeavor to make the deviation as small as possible, with the deviation for each district at no more than (+) / (-) 4 percent; and
4. compactness of districts.

On September 23, 2021, the IRC recommended its first map for adoption to the County Board (“Map E”). *See* File No. 21-898. Supervisors, elected officials from outside the County, and members of the public provided feedback regarding Map E during the Judiciary Committee on September 29, 2021. Ultimately, Map E was rejected by that committee and later by the entire County Board on October 1, by votes of 5-0, and 16-0, respectively. The video/audio recordings and minutes of same are the best record of that discussion. That said, Map E was nearly universally criticized, and some general observations are possible, noted below.

- The majority of Board members strongly opined that addresses of incumbent County Supervisors should be considered, although certain members expressed no opinion on this point, and others disagreed;
- Numerous Supervisors and members of the public expressed concern regarding an over-empowered and County-asset rich district along the lakefront/downtown;
- Numerous Supervisors and members of the public expressed concern regarding the inclusion of a portion of Zip Code 53206 in another district that does not share the same interests;
- Numerous Supervisors and members of the public criticized what they viewed as inadequate percentages of Black voters in Black Districts under *Baldus*-styled analysis; and
- Numerous Supervisors and members of the public acclaimed the creation of two clearly majority Hispanic/Latinx districts.

Also, all twelve meetings of the IRC to date were properly noticed and publicly accessible meetings, in conformity with Wisconsin’s open meetings law, which provided members of the public an opportunity to provide written or live video feedback directly to the IRC.

The IRC also held three meetings that were marketed widely and shared with nearly 200 media outlets to solicit feedback from the general public. These public hearings were held

⁵ The IRC discussed the difficulty of fulfilling this factor in light of other more pressing concerns under the VRA at follow-up meetings. *See, e.g.* IRC Minutes September 10, 2021, attached as Ex. 5, p.2.

on September 15, September 23, and October 6, 2021. The video/audio recordings and minutes of same are the best record of that public feedback, but some general observations are possible:

- Support for the VRA;
- Desire for the IRC to maximize districts represented by People of Color, specifically Black districts;
- Nearly universal opposition to any consideration of the addresses of incumbent County Board Supervisors; and
- The hearing on October 6 had robust attendance, likely due to increased outreach including paid advertisements with media outlets reaching underserved communities.

On October 11, 2021, the Intergovernmental Cooperation Council (ICC) met to discuss the County's independent redistricting process and Map K. Supervisor Steven Shea appeared and presented the views of a number of Supervisors regarding the initial map proposed by the IRC and the process in general. Much of the commentary from other municipal leaders was highly critical of the IRC's consideration of incumbent addresses, among other items, including the splitting of certain municipalities among two or more supervisory districts, specifically, Glendale and Greenfield. The ICC generally expressed distress that the Board rejected Map E, which was generally seen as preferable to Map K.

On October 12, 2021, the Judiciary Committee met to consider Map K, recommended by the IRC to the County Board on October 6. *See* File No. 21-955. The committee rejected the map on a vote of 4-1. The video/audio recordings and minutes of same are the best record of that discussion, but some general observations are possible:

- Numerous Supervisors and members of the public expressed disagreement with the IRC and among themselves over the weight given by the IRC to certain interests, including incumbency, municipal boundaries, and previously expressed concerns;
- Numerous Supervisors and members of the public expressed concerns over the shape of districts, including compactness;
- Numerous Supervisors and members of the public continued to express concerns over compliance with the VRA, specifically regarding:
 - The proposed four majority Black districts were criticized because two were considered packed and two were considered cracked (specifically proposed District 10); and
 - Given that County-wide demographics are now 52% People of Color and 48% non-Hispanic Caucasians, many indicated a preference that the Board districts be redrawn to ensure that there would be nine supervisors of color and eight to nine white supervisors;
- Numerous Supervisors expressed a preference for Map J, which was not before the Committee; and

- Numerous Supervisors also expressed distress because Map K was a significant departure from Map J.

On October 13, 2021, the full County Board met to consider the Judiciary Committee's proposed rejection of Map K. The Board rejected the map on a vote of 18-0. The video/audio recordings and minutes of same are the best record of that discussion, but some general observations are possible:

- Numerous Supervisors continued to express concerns over compliance with the VRA, specifically regarding:
 - The proposed four majority Black districts were criticized because two were considered packed (specifically proposed Districts 5 and 13, with 66.3% and 70.0% voting age Black populations, respectively) and two were considered cracked (specifically proposed Districts 7 and 10, with 58.4% and 53.3% Black voting age populations), also making note of District 15, with a Black voting age population of 23.5%; and
 - Given that County-wide demographics are now 52% People of Color and 48% non-Hispanic Caucasians, many indicated a preference that the Board districts be redrawn to ensure that there would be nine supervisors of color and eight to nine white supervisors;
 - On the other hand, at least one Supervisor expressed a concern that, by that Supervisor's understanding, the *citizen voting age* demographics County-wide are 54% non-Hispanic Caucasians and 46% People of Color;
- Preference for Map H and/or J was expressed, but concerns remain with those maps with respect to VRA for some, although such concerns were dismissed by others;
- Concerns were expressed, echoing concerns from prior meetings, as to District 1, 17;
- Concerns were expressed over inconsistencies among districts with respect to contiguity of municipal boundaries (i.e., some districts do not split municipalities, while others do);
- A preference for the IRC and SEWRPC to recommend a map that is most likely to survive a legal challenge based on the VRA;
- Statements that Map K is highly preferable to and more constitutionally sound than the current legacy map; and
- Thanks and commendations to the IRC and SEWRPC for their work.

XIX. Question: Do members of the IRC possess individual authority to draw maps?

Answer: Likely, no. The committee as a whole is tasked under the ordinance to draw the County district map. Regardless, the IRC voted to instruct SEWRPC to only consider information and factors as directed by a majority vote of the IRC, as publicly discussed in open session, which necessarily excluded Judge Kessler's privately-created map, using data that may or may not correspond to the official census data used by SEWRPC, and according to a priority of factors unknown to the IRC. *See* IRC Minutes September 3,

2021, attached as Ex. 6, p.3.⁶ The IRC may review or reverse this decision based upon comments from elected officials during the Judiciary Committee of this same date.

XX. Question: May Supervisors participate directly in live IRC deliberations?

Answer: Yes. That said, the OCC respectfully discouraged this practice during the IRC's deliberations to create a first map to recommend to the County Board, to ensure that the independence of the IRC is preserved, as well as to ensure public confidence in the independence of the process. Many might consider elected officials' abstention from live commentary to be a best practice throughout the IRC's deliberations. In lieu of live participation, the OCC respectfully recommends that, if necessary, Supervisors participate by submitting written comments via the County Legislative Information Center e-comment feature. Should the Board or a committee reject either the first or second map submitted by the IRC, MCGO § 3.01(4)(c),(d) requires that the IRC "heed public and elected official comment." Thus, the public meetings held by the Board and/or committees may be considered by many to be a best practice and the ideal forum for elected official feedback and input. Of course, ultimately, the County Board will determine its map, subject to normal County Executive signature processes.

XXI. Question: May Supervisors individually and outside of public meetings contact SEWRPC or provide direction, feedback, or information requests to SEWRPC?

Answer: Yes. That said, the OCC respectfully discourages this practice so that all communications, including directives, feedback, and information requests to SEWRPC by elected officials occur in public meetings to ensure transparency and accountability. As a best practice, the relevant bodies, at the appropriate time(s) in the process, may decide to direct SEWRPC or to request map amendments through formal resolutions or motion practice, with a public vote. If such communications occur in writing, they are public records and subject to disclosure.

XXII. Question: May Supervisors individually and outside of public meetings contact IRC member(s) or provide direction, feedback, or information requests to the IRC?

Answer: Yes. That said, the OCC respectfully discourages this practice so that all communications, including directives, feedback, and information requests to the IRC by elected officials occur in public meetings to ensure transparency and accountability. As a best practice, the relevant bodies, at the appropriate time(s) in the process, may decide to direct the IRC or to request map amendments through formal resolutions or motion practice, with a public vote. If such communications occur in writing, they are public records and subject to disclosure.

⁶ See also IRC Minutes September 10, 2021, attached as Ex. 5, p.2 (after learning that an envelope of unknown contents was dropped off at SEWRPC by a member of the IRC, the IRC discussed what its response should be to "information [] improperly transmitted to [SEWRPC] without IRC approval.").

XXIII. Question: Is there a conflict of interest for the OCC?

Answer: No. The OCC does not face any direct or indirect conflict of interest in its duties to advise the IRC, the County Board, the County Clerk, etc. regarding redistricting for many reasons. First, the OCC has not and will not substantively advocate for or against any particular map. Second and related, the OCC does not provide any substantive instruction regarding prioritization of facts, any map, or specific district boundaries. Third, the OCC's substantive and procedural advice will be consistent and identical among all clients. Fourth, each entity has wide latitude under MCGO § 3.01 to determine its processes. Fifth, while there are some objective substantive factors, as discussed above, *see supra* n.1, Questions XII-XIII, XVII-XVIII, the finalization of maps ultimately is a matter of subjective judgment for the Board, with standard legislative review by the County Executive. Sixth, the IRC is a creation of the Board. Seventh, the IRC is required to "heed" comments by the public and elected officials. Eighth, as demonstrated today, the process created in MCGO § 3.01 is non-adversarial and cooperative as among the IRC and Board. And ninth, the objective of both entities is the same, i.e., fair maps that if challenged, will be upheld by a court.

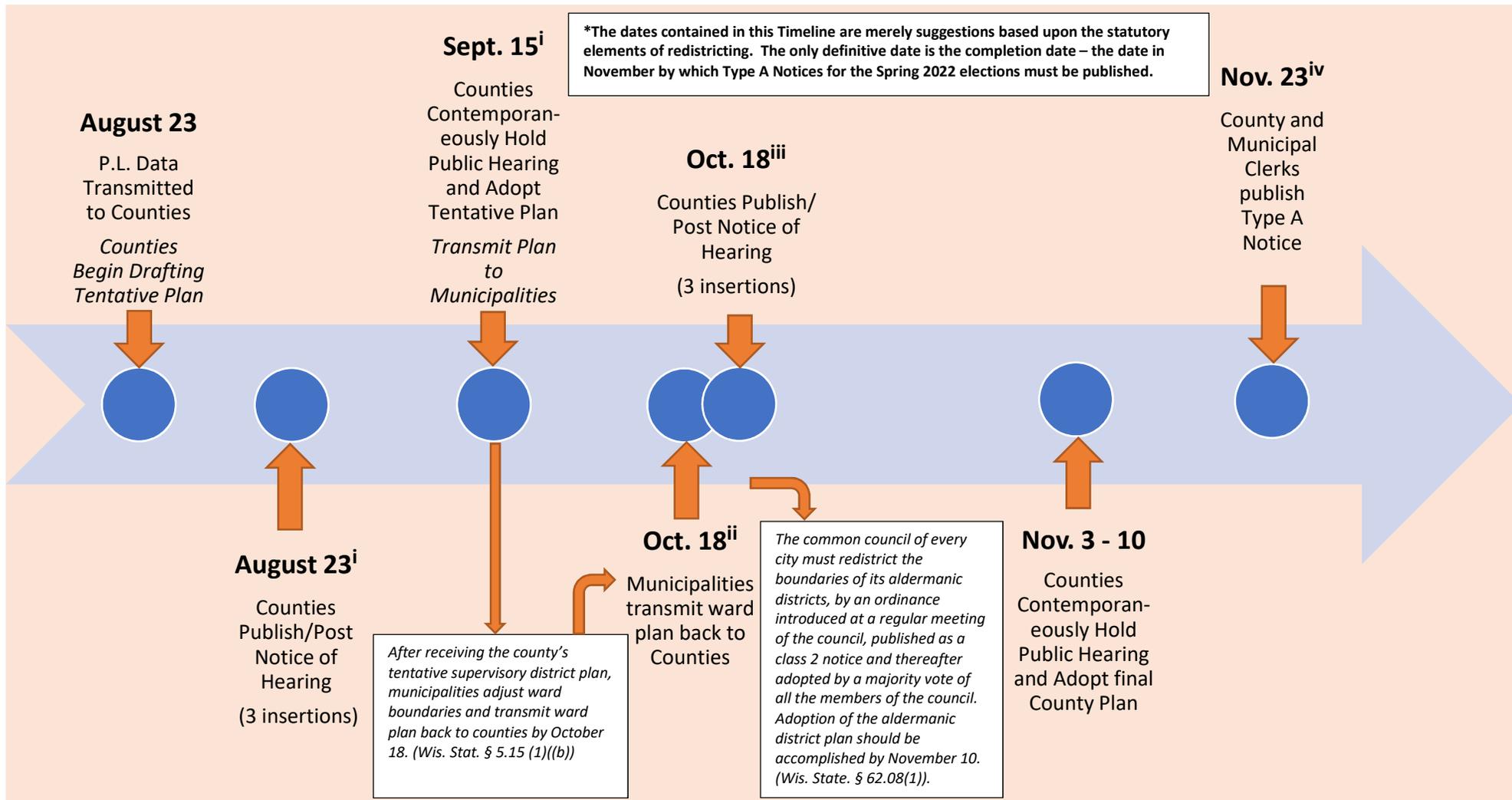
The OCC endeavors to provide independent, objective advice, specifically including how a court would likely analyze certain processes, maps, etc., if challenged. As explained by Caleb Cushing, Attorney General under President Franklin Pierce: government attorneys are "public officer[s], acting judicially, under all the solemn responsibilities of conscience and legal obligation." 6 Op. Atty Gen. 326, 334 (1854). Certainly, the Board could amend MCGO § 3.01 to require separate counsel for the IRC and the Board,⁷ though the OCC respectfully suggests that this is not required or necessary, even when clients have divergent interests or viewpoints. Advising clients with differing interests and/or viewpoints is *de rigueur* for government attorneys. Specifically, as explained in the American Bar Association's Scope 18, cited in ABA Comment 9 to Supreme Court Rule 10:1.13, government "lawyers under the supervision of [elected] officers [such as the OCC] may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients."

A government lawyer must provide the same advice to the same questions, no matter which client may be asking, with objectivity and independence, without allegiance to any individual client or branch or other political interest. This is the motivating philosophy of the OCC. And this opinion is a prime example of that philosophy in action. Finally, as noted at the outset, the OCC merely provides advice, which our clients can follow or

⁷ Also, we note that the OCC could easily provide separate counsel to both clients, by assigning a different individual lawyer from the OCC to each client and establishing a firewall to isolate each counsel and ensure no coordination or consultation takes place.

disregard as they see fit. *See also* OCC October 11, 2021 Budget Presentation, File No. 21-920, Attachment 7, pp. 79-94, and attached hereto as Ex. 7.

2021 COUNTY AND MUNICIPAL REDISTRICTING TIMELINE*



i Wis. Stat. § 59.10(3)(b)1. (NOTE: Publication/posting requirements are being discussed with LRB. Review publication/posting requirements and alternatives under ss. 985.02 and 985.05 with corporation counsel.)

ii Wis. Stat. § 5.15(1)(b).

iii Wis. Stat. § 59.10(3)(b)2. (NOTE: Publication/posting requirements are being discussed with LRB. Review publication/posting requirements and alternatives under ss. 985.02 and 985.05 with corporation counsel.)

iv Wis. Stat. § 10.06(2)(a). Some counties may publish earlier depending upon publication frequency. (NOTE: Elections commission must deliver Type A Notice regarding state offices to county clerk pursuant to Wis. Stat. § 10.06(1)(a))

FILED
09-16-2021
Clerk of Circuit Court
Kenosha County
2021CV000885
Honorable Angelina
Gabriele
Branch 6

STATE OF WISCONSIN CIRCUIT COURT KENOSHA COUNTY

GABRIELE NUDO
6410 53rd Avenue
Kenosha, WI 53142,

ZACHARY RODRIGUEZ
7525 21st Avenue
Kenosha, WI 53143,

MATT AUGUSTINE
4306 31st Avenue
Kenosha, WI 53144,

ED HIBSCH
866 Sheridan Road
Kenosha, WI 53140,

AMANDA NEDWESKI
3814 114th Place
Pleasant Prairie, WI 53158,

MATT SCHUETZNER
3637 121st Place
Pleasant Prairie, WI 53158,

BRIAN BASHAW
25910 31st Street
Salem, WI 53168,

ERIN DECKER
706 N School Street
Silver Lake, WI 53170,

KAREN COOPER
885 Bayview Avenue
Twin Lakes, WI 53181,

JOHN POOLE
6245 237th Avenue
Salem, WI 53168,

AMY MAURER
257 Old Green Bay Road
Kenosha, WI 53144,

Plaintiffs,

Exhibit 2

vs.

Case Code No.: 30701

Case Description: Declaratory Judgment

KENOSHA COUNTY
a Municipal Corporation
1010 56th Street
Kenosha, WI 53140

Defendants.

SUMMONS

TO: KENOSHA COUNTY
a Municipal Corporation
1010 56th Street
Kenosha, WI 53140

THE STATE OF WISCONSIN TO THE SAID DEFENDANT:

You are hereby notified that the Plaintiffs, GABRIELE NUDO, ZACHARY RODRIGUEZ, MATT AUGUSTINE, ED HIBSCH, AMANDA NEDWESKI, MATT SCHUETZNER, BRIAN BASHAW, ERIN DECKER, KAREN COOPER, JOHN POOLE AND AMY MAURER, have filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

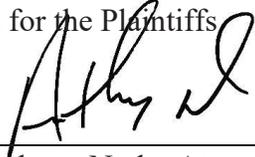
Within 45 days of receiving this Summons, you must respond with a written Answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an Answer that does not follow the requirements of the statutes. The Answer must be sent or delivered to the court, whose address is 912 56th Street, Kenosha, WI 53140, and Terry & Nudo, LLC, Plaintiff's attorney, whose address is 4003 80th Street, Suite 101, Kenosha, WI 53142. You may have an attorney help or represent you.

If you do not provide a proper Answer within 45 days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future and may also be enforced by garnishment or seizure of property.

[*INTENTIONALL LEFT BLANK*]

Dated at Kenosha, Wisconsin this 16th day of September, 2021.

TERRY & NUDO, LLC
Attorneys for the Plaintiffs

By: 

Anthony Nudo, Attorney at Law
State Bar No. 1055242

DRAFTED BY:

 TERRY & NUDO, LLC
Anthony Nudo, Attorney at Law
SBN: 1055242
4003 80th Street, Suite 101
Kenosha, WI 53142
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Facsimile: (262) 584-9949
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FILED
09-16-2021
Clerk of Circuit Court
Kenosha County
2021CV000885
Honorable Angelina
Gabriele
Branch 6

STATE OF WISCONSIN CIRCUIT COURT KENOSHA COUNTY

GABRIELE NUDO, et. al.,

Plaintiffs,

-v-

KENOSHA COUNTY,

Defendant.

Case Code: 30701
Declaratory Judgment

COMPLAINT

The Plaintiffs, by and through their attorneys Terry & Nudo, LLC, by Anthony Nudo, hereby allege as follows:

PARTIES

1. The Plaintiff, GABRIELE NUDO, is an adult resident of Wisconsin residing at 6410 53rd Ave, Kenosha, WI 53142.
2. The Plaintiff, ZACHARY RODRIGUEZ, is an adult resident of Wisconsin residing at 7525 21st Ave, Kenosha, WI 53143.
3. The Plaintiff, MATT AUGUSTINE, is an adult resident of Wisconsin residing at 4306 31st Ave, Kenosha, WI 53144.
4. The Plaintiff, ED HIBSCH, is an adult resident of Wisconsin residing at 866 Sheridan Road, Kenosha, WI 53140.
5. The Plaintiff, AMANDA NEDWESKI, is an adult resident of Wisconsin residing at 3814 114th Place, Pleasant Prairie, WI 53158.

6. The Plaintiff, MATT SCHUETZNER, is an adult resident of Wisconsin residing at 3637 121st Place, Pleasant Prairie, WI 53158.

7. The Plaintiff, BRIAN BASHAW, is an adult resident of Wisconsin residing at 25910 31st Street, Salem, WI 53168.

8. The Plaintiff, ERIN DECKER, is an adult resident of Wisconsin residing at 706 N School Street, Silver Lake, WI 53170.

9. The Plaintiff, JOHN WELCH, is an adult resident of Wisconsin residing at 300 N Cogswell Drive, Silver Lake, WI 53170.

10. The Plaintiff, KAREN COOPER, is an adult resident of Wisconsin residing at 885 Bayview Ave, Twin Lakes, WI 53181.

11. The Plaintiff, JOHN POOLE, is an adult resident of Wisconsin residing at 6245 237th Ave, Salem, WI 53168.

12. The Plaintiff, AMY MAURER, is an adult resident of Wisconsin residing at 257 Old Green Bay Road, Kenosha, WI 53144.

13. The Defendant, KENOSHA COUNTY, is a Wisconsin municipal corporation with its principal office located at 1010 56th Street, Kenosha, WI 53140.

GENERAL ALLEGATIONS

14. At all times relevant hereto, the Plaintiffs were and are electors of Kenosha County.

15. On September 10, 2021, the Kenosha County Redistricting Committee recommended to the Kenosha County Board of Supervisors to adopt a proposed tentative Kenosha County Supervisory District Plan as “**Resolution No. 54.**” Attached hereto and made a part hereof is a true and correct copy of Resolution No. 54 as **Exhibit A.**

16. On September 15, 2021, prior to the Kenosha County Board of Supervisors considering the recommendation of the Redistricting Committee, Counsel, on behalf of his clients, served notice to Kenosha County of the illegality of the Adopted Map. Attached hereto and made a part hereof is a true and correct copy of the notice as **Exhibit B**.

17. On September 15, 2021, the Kenosha County Board of Supervisors, by a split vote of 12 to 6, approved Resolution No. 54 and adopted the proposed tentative Kenosha County Supervisory District Plan. Attached hereto and made a part hereof is a true and correct copy of the Kenosha County Supervisory District Plan (the “**Adopted Map**”) as **Exhibit C**.

18. The overall relative deviation of population in the Adopted Map is 12.16%. Attached hereto and made a part hereof is a true and correct copy of the “**Adopted Deviation Spreadsheet**” as **Exhibit D**.

19. Pursuant to state and federal redistricting law, new Kenosha County supervisory districts must:

- (a) Be substantially equal in population;
- (b) Be compact;
- (c) Be contiguous;
- (d) Maintain communities of interest within a district;
- (e) Comply with the Voting Rights Act;
- (f) Preserve political subdivisions;
- (g) Preserve cores of districts; and
- (h) Preserve incumbents.

20. The supervisory districts in the Adopted Map are not substantially equal in

population.

21. The supervisory districts in the Adopted Map are not compact.

22. The supervisory districts in the Adopted Map are not contiguous.

23. The supervisory districts in the Adopted Map do not maintain communities of interest within a district.

24. Upon information and belief, the same which needs further discovery during the pendency of this litigation, the supervisory districts in the Adopted Map do not comply with the Voting Rights Act.

25. The supervisory districts in the Adopted Map split political subdivisions.

26. The supervisory districts in the Adopted Map are vastly different than the current Kenosha County supervisory districts adopted in 2011.

27. The Adopted Map is contrary to federal and state law.

28. Kenosha County is bound by the “one-person, one-vote” rule established by the U.S. Supreme Court.

29. A maximum deviation above 10% is presumptively impermissible and illegal.¹

FIRST CAUSE OF ACTION
Declaratory Action

30. The Plaintiff incorporates by reference all paragraphs of this complaint as if fully set forth at length.

1 1. “Where the maximum population deviation between the largest and smallest district is less than 10%, the Court has held, a state or local legislative map presumptively complies with the one-person, one-vote rule. Maximum deviations above 10% are presumptively impermissible.” *Evenwel v. Abbott*, 577 U.S. 937, 136 S. Ct. 1120, 1124, 194 L. Ed. 2d 291 (2016) (citations omitted).

31. A controversy exists between the Plaintiffs and the Defendant as to whether the Adopted Map is legal and constitutional.

32. Should the Adopted Map remain, the Plaintiffs will be harmed.

33. The actions by the Defendant presents a *bona fide* dispute between the parties which requires declaratory relief determining the legality of the Adopted Map.

SECOND CAUSE OF ACTION
Injunction

34. The Plaintiff incorporates by reference all paragraphs of this complaint as if fully set forth at length.

35. The Defendant has forwarded the Adopted Map to the City of Kenosha and various Villages and Towns for the purpose of drawing ward boundary lines.

36. The various municipalities rely on the Adopted Map to create wards.

37. Pursuant to Wis. Stat. § 59.10(3)(b)2., within 60 days after every municipality in Kenosha County adjusts its wards, the Kenosha County Board of Supervisors is required to conduct a second public hearing after which it adopts a final supervisory district plan and numbers each supervisory district.

38. The Plaintiffs, should Kenosha County continue its acts in finalizing the Adopted Map, will suffer irreparable harm.

39. The Plaintiffs do not have an adequate remedy at law in that the harm caused will disenfranchise them and deprive them of constitutional rights.

40. The Plaintiffs have a reasonable likelihood of success on the merits, especially in light of the standard set forth in *Evenwel v. Abbott, supra*, which states that deviations above 10% are presumptively impermissible.

DEMAND FOR RELIEF

WHEREFORE, the Plaintiffs request judgment against the Defendant for:

- A. An order declaring that the Adopted Map is illegal;
- B. An order vacating the Adopted Map;
- C. An order enjoining Kenosha County from proceeding to finalize the Adopted Map.
- D. For all costs, disbursements and actual attorney's fees, as allowed by law; and
- E. Such other and further relief, legal and equitable, general or special, to which the Plaintiff may be entitled.

Dated this 16th day of September.

TERRY & NUDO, LLC
Attorneys for the Plaintiffs

By: 

Anthony Nudo, Attorney at Law
State Bar No.: 1055242

DRAFTED BY:

TERRY & NUDO, LLC

Anthony Nudo, Attorney at Law

SBN: 1055242

4003 80th Street, Suite 101

Kenosha, WI 53142

Telephone: (262) 842-2338

Facsimile: (262) 584-9949

Email: Anthony@LawMidwest.com



Milwaukee County

Meeting Minutes - Final Milwaukee County Independent Redistricting Committee

The Honorable Jean A. DiMotto – Chairperson
The Honorable James A. Gramling, Jr., Vice-Chairperson

The Honorable Charles N. Clevert, Jr.
The Honorable Charles F. Kahn, Jr.
The Honorable Frederick P. Kessler
The Honorable Mary M. Kuhnmuench

Committee Coordinator: Allyson R. Smith
Research and Policy Analyst: Emily Petersen

Friday, August 27, 2021

1:00 PM

County Legislative Information Center

VIRTUAL MEETING

This meeting was live-streamed on the County Legislative Information Center:
<https://milwaukeecounty.legistar.com/Calendar.aspx>

Call To Order

Roll Call at 1:05 p.m.

Present: 5 - Gramling Jr., Clevert Jr., Kahn Jr., Kessler, and DiMotto

Excused: 1 - Kuhnmuench

Honorable Judge Kuhnmuench was not present at the time the roll was called, but appeared virtually shortly thereafter.

- 1 [HRA21-326](#) Approval of minutes from the August 16, 2021, meeting of the Milwaukee County Independent Redistricting Committee.

(ACTION ITEM)

Attachments: [HRA21-326 IRC DRAFT MINUTES \(08/16/21\)](#)

[HRA 21-326 IRC FINAL MINUTES \(08/16/21\)](#)

There were no appearances for Item 1.

A motion was made by Honorable Judge Gramling, Jr., and seconded by Honorable Judge Clevert, Jr., that the draft minutes from the August 16, 2021, meeting of the Milwaukee County Independent Redistricting Committee be APPROVED. The motion PREVAILED by the following vote:

Ayes: 6 - Gramling Jr., Clevert Jr., Kahn Jr., Kessler, Kuhnmuench and DiMotto

- 2 [HRA21-328](#) Update from Corporation Counsel, Office of Corporation Counsel, regarding the Professional Services Agreement with Southeastern Wisconsin Regional Planning Commission.

(INFORMATION ONLY)

Attachments: [HRA21-328 SEWRPC PROFESSIONAL SERVICES AGREEMENT](#)

APPEARANCE:

Margaret C. Daun, Corporation Counsel, Office of Corporation Counsel

Item 2 was DISCUSSED WITH NO ACTION TAKEN.

Items 3 and 6 were considered together.

- 3 [HRA21-333](#) Update from the Southeastern Wisconsin Regional Planning Commission regarding the redistricting process.

(ACTION MAY BE TAKEN BY THE COMMITTEE)

Attachments: [HRA21-333 2010 Map of Supervisory Districts](#)

[HRA21-333 Supervisory District Population by Race/Hispanic Ethnicity 2010](#)

[HRA21-333 Supervisory District Comparison between 2010 and 2020](#)

[HRA21-333 Supervisory District Population Comparison by Race 2010 to 2020](#)

APPEARANCES:

Margaret C. Daun, Corporation Counsel, Office of Corporation Counsel

Rob Hullum, Communications Specialist, Communications Division, Office of the County Clerk

Allyson R. Smith, Committee Coordinator, Legislative Services Division, Office of the County Clerk

The following people appeared virtually, and spoke for information only regarding this item:

Cheryl Maranto, Co-Director, Northshore Fair Maps

Sachin Chheda, Director, Fair Elections Project

Kevin J. Muhs, Executive Director, Southeastern Wisconsin Regional Planning Commission (SEWRPC)

Items 3 and 6 were considered together.

A motion was made by Honorable Judge Gramling, Jr., and seconded by Honorable Judge Kahn, Jr., that a proposed redistricting map from Honorable Judge Kessler be submitted to SEWRPC for review. The motion FAILED by the following vote:

Ayes: 2 - Gramling Jr. and Kessler

Noes: 4 - Clevert Jr., Kahn Jr., Kuhnmuensch and DiMotto

PRIORITIES

[HRA21-333](#) Update from the Southeastern Wisconsin Regional Planning Commission regarding the redistricting process.

(ACTION MAY BE TAKEN BY THE COMMITTEE)

Attachments: [HRA21-333 2010 Map of Supervisory Districts](#)

[HRA21-333 Supervisory District Population by Race/Hispanic Ethnicity 2010](#)

[HRA21-333 Supervisory District Comparison between 2010 and 2020](#)

[HRA21-333 Supervisory District Population Comparison by Race 2010 to 2020](#)

A motion was made by Honorable Judge Clevert, Jr., and seconded by Honorable Judge Gramling, Jr., that the priorities in the development of redistricting maps be: the Voting Rights Act; equal population; compact and contiguous districts; and respect for community interests.

Honorable Judges Clevert, Jr., and Gramling, Jr., later withdrew the motion, therefore a vote was not taken.

1st PRIORITY

[HRA21-333](#) Update from the Southeastern Wisconsin Regional Planning Commission regarding the redistricting process.

(ACTION MAY BE TAKEN BY THE COMMITTEE)

Attachments: [HRA21-333 2010 Map of Supervisory Districts](#)

[HRA21-333 Supervisory District Population by Race/Hispanic Ethnicity 2010](#)

[HRA21-333 Supervisory District Comparison between 2010 and 2020](#)

[HRA21-333 Supervisory District Population Comparison by Race 2010 to 2020](#)

A motion was made by Honorable Judge Clevert, Jr., and seconded by Honorable Judge Kuhnmuensch, that the first priority in the development of a redistricting map be: the Voting Rights Act.

Honorable Judges Clevert, Jr., and Kuhnmuensch later withdrew the motion, therefore a vote was not taken.

[HRA21-333](#) Update from the Southeastern Wisconsin Regional Planning Commission regarding the redistricting process.

(ACTION MAY BE TAKEN BY THE COMMITTEE)

Attachments: [HRA21-333 2010 Map of Supervisory Districts](#)

[HRA21-333 Supervisory District Population by Race/Hispanic
Ethnicity 2010](#)

[HRA21-333 Supervisory District Comparison between 2010 and 2020](#)

[HRA21-333 Supervisory District Population Comparison by Race 2010
to 2020](#)

A motion was made by Honorable Judge Kahn, Jr., and seconded by Honorable Judge Kuhnmuench, that the first priority in redistricting is honoring the intent of the Voting Rights Act, and recognition of ethnic and racial communities of interest, while noting that race is a social construct.

Honorable Judge Clevert, Jr., called for the previous question. There being no objections by the Honorable Judges, the roll was called on the first priority.

The motion PREVAILED by the following vote:

Ayes: 6 - Gramling Jr., Clevert Jr., Kahn Jr., Kessler, Kuhnmuench and DiMotto

2nd PRIORITY

[HRA21-333](#) Update from the Southeastern Wisconsin Regional Planning Commission regarding the redistricting process.

(ACTION MAY BE TAKEN BY THE COMMITTEE)

Attachments: [HRA21-333 2010 Map of Supervisory Districts](#)

[HRA21-333 Supervisory District Population by Race/Hispanic
Ethnicity 2010](#)

[HRA21-333 Supervisory District Comparison between 2010 and 2020](#)

[HRA21-333 Supervisory District Population Comparison by Race 2010
to 2020](#)

A motion was made by Honorable Judge Kessler, and seconded by Honorable Judge Gramling, Jr., that the second priority in the development of a redistricting map be: equal population - no greater than (+) / (-) 2 percent deviation [4 percent variation].

Honorable Judges Kessler, and Gramling, Jr., later withdrew the motion, therefore a vote was not taken.

[HRA21-333](#) Update from the Southeastern Wisconsin Regional Planning Commission regarding the redistricting process.
(ACTION MAY BE TAKEN BY THE COMMITTEE)

Attachments: [HRA21-333 2010 Map of Supervisory Districts](#)
[HRA21-333 Supervisory District Population by Race/Hispanic Ethnicity 2010](#)
[HRA21-333 Supervisory District Comparison between 2010 and 2020](#)
[HRA21-333 Supervisory District Population Comparison by Race 2010 to 2020](#)

A motion was made by Honorable Judge Kahn, Jr., and seconded by Honorable Judge Clevert, Jr., that the second priority in the development of a redistricting map be: respect for municipal boundaries.

The motion PREVAILED by the following vote:

Ayes: 5 - Gramling Jr., Clevert Jr., Kahn Jr., Kessler and Kuhnmuench

Noes: 1 - DiMotto

3rd PRIORITY

[HRA21-333](#) Update from the Southeastern Wisconsin Regional Planning Commission regarding the redistricting process.
(ACTION MAY BE TAKEN BY THE COMMITTEE)

Attachments: [HRA21-333 2010 Map of Supervisory Districts](#)
[HRA21-333 Supervisory District Population by Race/Hispanic Ethnicity 2010](#)
[HRA21-333 Supervisory District Comparison between 2010 and 2020](#)
[HRA21-333 Supervisory District Population Comparison by Race 2010 to 2020](#)

A motion was made by Honorable Judge Clevert, Jr., and seconded by Honorable Judge Gramling, Jr., that the third priority shall be equalization of population between districts, and that SEWRPC shall aspire and endeavor to make the deviation as small as possible, with the deviation for each district at no more than (+) / (-) 4 percent.

The motion PREVAILED by the following vote:

Ayes: 5 - Gramling Jr., Clevert Jr., Kahn Jr., Kuhnmuench and DiMotto

Noes: 1 - Kessler

4th PRIORITY

[HRA21-333](#) Update from the Southeastern Wisconsin Regional Planning Commission regarding the redistricting process.

(ACTION MAY BE TAKEN BY THE COMMITTEE)

Attachments: [HRA21-333 2010 Map of Supervisory Districts](#)

[HRA21-333 Supervisory District Population by Race/Hispanic
Ethnicity 2010](#)

[HRA21-333 Supervisory District Comparison between 2010 and 2020](#)

[HRA21-333 Supervisory District Population Comparison by Race 2010
to 2020](#)

A motion was made by Honorable Judge Gramling, Jr., and seconded by Honorable Judge Kuhnmuensch, that the fourth priority in the development of a redistricting map be: compactness of districts.

The motion PREVAILED by the following vote:

Ayes: 6 - Gramling Jr., Clevert Jr., Kahn Jr., Kessler, Kuhnmuensch and DiMotto

NON-PRIORITIES

[HRA21-333](#) Update from the Southeastern Wisconsin Regional Planning Commission regarding the redistricting process.

(ACTION MAY BE TAKEN BY THE COMMITTEE)

Attachments: [HRA21-333 2010 Map of Supervisory Districts](#)

[HRA21-333 Supervisory District Population by Race/Hispanic
Ethnicity 2010](#)

[HRA21-333 Supervisory District Comparison between 2010 and 2020](#)

[HRA21-333 Supervisory District Population Comparison by Race 2010
to 2020](#)

A motion was made by Honorable Judge Kuhnmuensch, and seconded by Honorable Judge Clevert, Jr., that the addresses of incumbents SHALL NOT be a factor in the development of a redistricting map.

The motion PREVAILED by the following vote:

Ayes: 6 - Gramling Jr., Clevert Jr., Kahn Jr., Kessler, Kuhnmuensch and DiMotto

[HRA21-333](#) Update from the Southeastern Wisconsin Regional Planning Commission regarding the redistricting process.
(ACTION MAY BE TAKEN BY THE COMMITTEE)

Attachments: [HRA21-333 2010 Map of Supervisory Districts](#)
[HRA21-333 Supervisory District Population by Race/Hispanic Ethnicity 2010](#)
[HRA21-333 Supervisory District Comparison between 2010 and 2020](#)
[HRA21-333 Supervisory District Population Comparison by Race 2010 to 2020](#)

A motion was made by Honorable Judge Kahn, Jr., and seconded by Honorable Judge Kuhmuench, that existing County Supervisory districts lines SHALL NOT be considered in the redistricting process, and redistricting shall begin with a "clean slate."

The motion PREVAILED by the following vote:

Ayes: 6 - Gramling Jr., Clevert Jr., Kahn Jr., Kessler, Kuhnmuensch and DiMotto

4 [HRA21-329](#) Proposals on public notification and involvement in the redistricting process.
(INFORMATION ONLY)

Attachments: [HRA21-329 PRESS RELEASE DISTRIBUTION LIST](#)
[HRA21-329 PRESS RELEASE FROM 08/24/21](#)

APPEARANCES:

Rob Hullum, Communications Specialist, Communications Division, Office of the County Clerk
Margaret C. Daun, Corporation Counsel, Office of Corporation Counsel
Allyson R. Smith, Committee Coordinator, Legislative Services Division, Office of the County Clerk

Kevin J. Muhs, Executive Director, Southeastern Wisconsin Regional Planning Commission (SEWRPC), appeared virtually, and spoke for information only, regarding this item.

The Committee plans to hold a virtual Public Hearing on the proposed redistricting maps from SEWRPC on WEDNESDAY, September 15, 2021, at 7:00 p.m.

Item 4 was DISCUSSED WITH NO ACTION TAKEN.

5 [HRA21-332](#) Proposed agenda items for the next Milwaukee County Independent Redistricting Committee meeting.
(INFORMATION ONLY)

There were no appearances for Item 5.

Item 5 was DISCUSSED WITH NO ACTION TAKEN.

Items 3 and 6 were considered together.

- 6** [HRA21-300](#) eComments submitted to the Milwaukee County Independent Redistricting Committee via the County Legislative Information Center (CLIC).
(INFORMATION ONLY)

*The Office of the County Clerk collects eComments submitted via CLIC, and appends these official public records to HRA File No. 21-300 at the conclusion of each meeting.

APPEARANCES:

Margaret C. Daun, Corporation Counsel, Office of Corporation Counsel
Rob Hullum, Communications Specialist, Communications Division, Office of the County Clerk
Allyson R. Smith, Committee Coordinator, Legislative Services Division, Office of the County Clerk

The following people appeared virtually, and spoke for information only regarding this item:

Cheryl Maranto, Co-Director, Northshore Fair Maps
Sachin Chheda, Director, Fair Elections Project
Kevin J. Muhs, Executive Director, Southeastern Wisconsin Regional Planning Commission

Items 3 and 6 were considered together.

The August 27, 2021, record of eComments is attached to the file as "HRA21-300 Public Comment (08/27/21)."

The August 27, 2021, record of eComments was **DISCUSSED WITH NO ACTION TAKEN.**

The foregoing items were not considered in agenda order.

Length of Meeting: 1:05 p.m. to 4:21 p.m.

Adjourned,

**Allyson R. Smith
Committee Coordinator
Legislative Services Division, Office of the County Clerk
Milwaukee County Independent Redistricting Committee**

Next Meeting:

The next meeting of the Milwaukee County Redistricting Committee is Friday,
September 3, 2021, at 1:00 p.m.



COUNTY DECENNIAL
REDISTRICTING
HANDBOOK

2021 Redistricting Cycle



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INTRODUCTION

The processes associated with reapportionment and redistricting are mandated by federal and state law. "Reapportionment" refers to the allocation of political seats among governmental units and traditionally refers to the allocation of congressional seats among the fifty states. "Redistricting" refers to the establishment of boundaries for political units such as state legislative and county districts.

Under Wisconsin statute 59.10, county governments in Wisconsin are required to redistrict following the federal decennial census ("decennial redistricting"). Section 59.10 also allows for redistricting one additional time in the period between decennial redistricting. Redistricting in this interim period will be referenced as "mid-term redistricting" throughout this handbook.

In order to meet the requirement of decennial redistricting and to understand the mechanics of mid-term redistricting, county officials need to have knowledge of the relevant legal, technical and procedural aspects of redistricting. This handbook provides a general overview of redistricting to assist county officials in this process.

The first chapter sets forth the statutory procedures for county redistricting in Wisconsin and includes a discussion of the creation of municipal wards within county districts as well as the rules governing mid-term redistricting. The second chapter discusses the creation of wards by municipalities and the interrelationship between ward creation and the county redistricting plan. The third chapter addresses legal issues surrounding redistricting with a particular emphasis on equal population and minority representation. The fourth chapter provides timelines and guidelines for counties in meeting the redistricting requirements. The final chapter provides a summary of the law as it relates to mid-term redistricting.

NOTE: This handbook is intended to be a general guide to understanding the county redistricting process and the statutes and legal principles that govern it. Before starting the redistricting process, county officials should review applicable state laws. The handbook is not intended as, and shall not constitute, legal advice. The Wisconsin Counties Association suggests that you seek guidance from the county corporation counsel regarding any legal questions you may have.

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CHAPTER 1: PROCEDURE FOR DECENNIAL REDISTRICTING

REAPPORTIONMENT & REDISTRICTING

The United States Constitution requires a national census every ten years (“decennial census”) and that the results of the census be used to reapportion representatives in Congress among the states according to population. The census and reapportion requirements are found in Article I, Section 2, Clause 3 of the Constitution, which states:

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers...The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative...

After reapportionment, each state must perform redistricting. Redistricting is the process of redrawing the lines of districts from which public officials are elected. Decennial redistricting takes place after each decennial census. As explained in more detail on page 21, redistricting may also occur after the decennial census (“mid-term redistricting”) if the county board has decided to decrease the number of supervisors. The purpose of reapportionment and redistricting is to preserve the one person-one vote fairness principle.

BASIC PROCEDURE FOR DECENNIAL REDISTRICTING UNDER WIS. STAT. § 59.10(3)

Under Wis. Stat. § 59.10(3), counties begin the decennial redistricting process with a “clean slate.” All existing district and ward lines are erased, and a county is able to draw new lines based on the results of the decennial census to reflect any population shifts. However, as indicated in the discussion below and in the legal issues section later, a county’s ability to redistrict is governed by traditional concepts of redistricting, which include compactness, contiguity, and substantial equivalence of population.

The legislature has adopted a three-step procedure for the creation of county board districts following publication of the results of the decennial federal census. The procedure is set forth in Wis. Stat. § 59.10(3) and applies to all Wisconsin counties with the exception of Milwaukee County and Menominee County.

STEP 1: Adoption of a Tentative County Supervisory District Plan.

Under Wis. Stat. § 59.10(3)(b)1, each county board is required to do the following as part of the creation and adoption of a tentative county supervisory district plan. This must be completed within 60 days after the results of the federal census (including the publication of maps showing the location and numbering of census blocks¹) become available from the federal government or are published by a state agency, but no later than July 1, 2021:

¹ Census blocks are uniquely numbered geographic areas used by the Census Bureau for basic demographic information, with boundaries determined by physical features or political borders. They are the smallest level of geography in which basic demographic information is available, including total population by age, sex, and race. They serve as the building blocks for all geographic areas in which the Census Bureau compiles data. They vary widely in population and physical size. Every physical location in the country is part of a census block. Census Bureau website, <https://www.census.gov/newsroom/blogs/random-samplings/2011/07/what-are-census-blocks.html> (accessed June 5, 2019).

- (a) propose a tentative county supervisory district plan establishing the number of supervisory districts proposed by the board and tentative boundaries for each district;
- (b) hold a public hearing on the proposed plan; and
- (c) adopt a tentative plan.

Rules for Drawing Lines and Substantially Equal Population

Each proposed supervisory district is required to consist of whole wards or municipalities. The tentative plan must divide the county into a number of districts equal to the number of supervisors (no multi-member districts), and all districts must be *substantially equal* in population. Territory within each district must be contiguous, and whenever possible, a county must place whole contiguous² municipalities or contiguous parts of the same municipality (wards) within the same district.³ If the board seeks to divide a municipality, the board is required to provide a written statement to the affected municipality with the tentative plan that specifies the approximate location of the territory from which a ward is to be created and the approximate population of the ward. Additionally, census blocks may not be divided unless the block is bisected by a municipal boundary or unless a division is required to enable creation of supervisory districts that are substantially equal in population.

Intergovernmental Cooperation

Counties are required by Wis. Stat. § 59.10(3)(b)1 to work with municipalities in connection with the creation of the tentative plan. The statute requires a county board to “solicit suggestions from municipalities concerning the development of an appropriate plan.”

Finalization and Distribution

The tentative plan may be amended after the public hearing and prior to its finalization and adoption. Once adopted, the board is required to transmit the tentative plan to each municipal governing body in the county.

ANTICIPATED TIMELINE FOR STEP 1: April 2021 through May 2021

STEP 2: Creation of Wards/Adjustment of Ward Lines by Municipalities

Upon receipt of the tentative plan and written statement regarding the creation of a ward, if any, from a county, a municipality has 60 days to create wards or adjust its ward lines in accordance with the tentative county supervisory redistricting plan. A municipality is required to:

- (a) make a good faith effort to accommodate the tentative plan for the county or counties in which it is located; and
- (b) to divide itself into wards in a way that permits the creation of supervisory districts that conform to the population requirements of the tentative plan.

The municipal clerk is required to forward a copy of the ward plan to the county within five (5) days after the municipality has enacted or adopted an ordinance or resolution creating wards in accordance with the tentative supervisory redistricting plan.

ANTICIPATED TIMELINE FOR STEP 2: June 2021 through July 2021

² “Contiguous,” for county supervisory district purposes, includes territory connected by corners.

³ There are two recognized exceptions to the contiguity requirement. In the case that one or more wards located within a city or village is wholly surrounded by another city or water or both, the wards may be combined with noncontiguous wards. Wards consisting of island territory (which is defined as territory surrounded by water, or noncontiguous territory which is separated by the territory of another municipality or water, or both, from the major part of the municipality to which it belongs), may be combined with noncontiguous wards of the same municipality.

STEP 3: Adoption of a Final County Supervisory District Plan

Public Hearing, Adoption, Numbering of Wards

A county board is required to hold a public hearing and to adopt a final supervisory district plan within 60 days after every municipality in the county adjusts its wards. The final plan must assign numbers to each district.

Contiguity Requirement

Territory within each supervisory district created by the plan must be contiguous, except that one or more wards located within a city or village which is wholly surrounded by another city or water, or both, may be combined with one or more noncontiguous wards. In addition, one or more wards consisting of island territory as defined in Wis. Stat. § 5.15(2)(f)3 may be combined with one or more noncontiguous wards within the same municipality, to form a supervisory district.

Submission to Secretary of State by County Board Chair

The county board chair is required to file a certified copy of the final supervisory districting plan with the Secretary of State. Once the plan is enacted and filed with the Secretary of State, including any authorized amendment that is also enacted and filed, the plan remains in effect until it is superseded by a subsequent plan enacted under Wis. Stat. § 59.10 and a certified copy of that plan is filed with the Secretary of State.

ANTICIPATED TIMELINE FOR STEP 3: August 2021 through September 2021

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CHAPTER 2: CREATION OF WARDS

The second step of the decennial county supervisory redistricting process involves the creation of wards and/or adjustment of ward lines in accordance with the tentative county supervisory district plan. This process is instrumental to the ability of counties to implement and, ultimately, finalize county supervisory redistricting plans. The following is a summary and explanation of the process for creating wards, as well as the enforcement mechanisms available to counties to require the creation of wards if municipalities do not meet their statutory obligations.

WHAT ARE WARDS?

A “ward” means a town, village, or city subdivision created to facilitate election administration and establish election districts (aldermanic, supervisory, legislative, and congressional) that are substantially equal in population.

RULES GOVERNING THE CREATION OF WARDS

General Rules

With the exceptions outlined below, every city, village, and town in Wisconsin is required, through its common council or village or town board, to be divided into wards. The boundaries of and number assigned to each ward are intended to be as permanent as possible. Where possible and practicable, each ward is to consist of whole census blocks. Wards are to be kept compact and observe the community of interest of existing neighborhoods and other settlements. Wards are confined to a single municipality and may only be in one county supervisory board district.

Wards do not have to be equal in population. They are, however, subject to the population limits as set forth in Wis. Stat. §5.15(2)(b) which are included below:

- In any city in which the population is at least 150,000, each ward must contain not less than 1,000 nor more than 4,000 inhabitants.
- In any city in which the population is at least 39,000 but less than 150,000, each ward must contain not less than 800 nor more than 3,200 inhabitants.
- In any city, village, or town in which the population is at least 10,000 but less than 39,000, each ward must contain not less than 600 nor more than 2,100 inhabitants.
- In any city, village, or town in which the population is less than 10,000, each ward must contain not less than 300 nor more than 1,000 inhabitants.

The division of a municipality into wards is made by the common council, village board, or town board. Municipal wards are to be created by ordinance or resolution of the municipal governing body. The ordinance or resolution must number all wards in the municipality with unique whole numbers in consecutive order, designate the polling place for each ward, and describe the boundaries of each ward.⁴

Once established, the boundaries of each ward are required to remain unchanged until:

- A further decennial federal census of population indicates that the population of a ward is above or below the applicable population range; or
- The ward boundaries are required to be changed to permit creation of supervisory or aldermanic districts of substantially equal population or to enhance the participation of

⁴ A list of all U.S. Census Bureau block numbers assigned to each ward, any partial blocks assigned to wards and a map with revised ward boundaries must be appended to the ordinance or resolution. The ordinance or resolution and the appended lists and maps must be filed with the county clerk of each county in which the municipality is located within five days after passage.

members of a racial or language minority group in the political process and their ability to elect representatives of their choice.

If the population of a ward increases above the maximum of its permitted population range or if the population of a ward must be decreased for one of the reasons immediately above, the ward must be divided into two or more wards in compliance with Wis. Stat. § 5.15(2)(b). If the population of a ward decreases below the minimum of its population range or if the population of a ward must be increased for one of the reasons immediately above, the ward must, if possible, be combined with an adjoining ward, or the underpopulated ward and one adjoining ward must be combined and together subdivided into two or more wards.

Notwithstanding the general rule regarding the creation of wards, no city electing its common council at large in which the total population is less than 1,000, and no village or town in which the total population is less than 1,000, is required to be divided into wards. However, any such city, village, or town may divide itself into wards if the creation of wards facilitates the administration of elections. Likewise, no village or town located in a county having only one town (Menominee County) is required to be divided into wards.

Creation of Wards Consistent with the Population Requirements of the Tentative County Supervisory District Plan

Every municipality is required to make a good faith effort to accommodate the tentative plan submitted by the county or counties in which it is located. If a municipality is unable to accommodate the tentative plan, the municipality is nonetheless required to divide itself into wards in a way that creates municipal districts that are in accordance with the population requirements of the tentative plan.

Furthermore, if the legislature, in the process of redistricting legislative or congressional districts,⁵ establishes a district boundary within a municipality that does not coincide with the boundary of a ward established under the municipality's ordinance or resolution, the municipal governing body must, no later than April 10 of the 2nd year following the year of the federal decennial census on which the act is based, amend the ordinance or resolution to the extent required to effect the act. The amended ordinance or resolution must designate the polling place for any ward that is created to affect the legislative act. However, counties or cities are not compelled to alter or redraw supervisory or aldermanic districts.

Aldermanic Districts

Aldermanic Districts are built using the same wards as county supervisory districts. Aldermanic districts have to be substantially equal in population. When a municipality creates its ward plan, it therefore not only has to accommodate the tentative plan for supervisory districts, but also has to allow for the creation of equal aldermanic districts.

COUNTY ENFORCEMENT OF MUNICIPAL DIVISION REQUIREMENTS

If a municipality does not divide itself into wards as required by statute, the county in which the municipality is located, or any elector of the municipality may petition the circuit court in which the municipality is located and submit a proposed ward division plan for the municipality. The plan must be submitted to the circuit court within 14 days following the expiration of the 60-day period in which the municipality has to adjust its wards following its receipt of a tentative supervisory district plan from a county following the decennial census.

If the circuit court finds that the existing division of the municipality does not comply with statutory requirements for redistricting, the circuit court will review the plan submitted by the petitioner and, after reasonable notice to the municipality, may adopt the plan or any other plan that complies with statutory requirements. The plan adopted by the circuit court is temporary and remains in effect until the municipality enacts or adopts a ward plan that complies with statutory requirements.

⁵ Pursuant to article IV, section 3, of the constitution.

CHAPTER 3: LEGAL ISSUES IN REDISTRICTING

ONE PERSON, ONE VOTE IN COUNTY ELECTIONS

The “one person, one vote” requirement arises under the equal protection clause of the United States Constitution and requires that members of a local elected body be drawn from districts of *substantially equal* population.⁶ Exact equality of population is not required.

PRINCIPLES OF ONE PERSON, ONE VOTE

Measuring Population Equality

“Substantially equal in population” is measured utilizing the following statistical methods:

1. *Ideal District Size.* Population equality is determined by calculating a district’s deviation from ideal district size. Ideal district size is determined by dividing the total population by the number of seats involved. Deviation is determined by calculating the extent to which an actual district is larger (has a “+” deviation) or smaller (has a “-” deviation) than the ideal district size. For example, the 2000 census reveals that ABC County has a total of 100,000 people with 10 supervisors, one for each district. The ideal population for each district is calculated as follows:

$$100,000 / 10 = 10,000 \text{ people per district}$$

2. *Calculating Relative Deviation from Ideal District Size.* Relative deviation is used to determine whether the 10% deviation rule (discussed below) has been achieved. Relative deviation is calculated by dividing the population deviation from the ideal population by the ideal population and is expressed in terms of a percentage. For example, if there is a 500-person deviation from the ideal population of 10,000 people, the relative deviation is calculated as follows:

$$500 \text{ (amount over ideal population)} / 10,000 \text{ (ideal population)} = .05 \text{ or } 5\%$$

3. *Overall Range.* Once the relative deviation is calculated for each individual district, the overall deviation range is determined. This statistic is calculated by determining the difference between districts with highest and lowest relative deviation. For example, if the highest and lowest deviations are +5% and –4% respectively, the overall range is 9%. Overall range is most commonly used in evaluating whether a district plan meets the one-person one, vote equal population standard.

Acceptable Deviation

1. *The 10% Rule.* The general rule that courts have applied in evaluating the constitutionality of redistricting is that districts should have a total population deviation of no more than 10% between the most populated district and the least populated district. Deviations below 10% in overall range are generally presumed to be constitutional. Deviations above 10% in overall range are presumed to be unconstitutional.

Courts have made exceptions to the 10% rule where a local government can demonstrate that legitimate reasons exist for the deviation. As such, the 10% rule is not hard and fast and must be considered in the particular facts and circumstances facing a local government in redistricting.

⁶ States may rely on total population (not only registered or eligible voters) to satisfy the one person, one vote requirement when drawing districts. *See Evenwel v. Abbott*, 136 S.Ct. 1120 (2016).

However, a redistricting plan with a deviation of 16.5% is unconstitutional because it substantially deviates from the 10% range that is presumed to be constitutional.⁷

2. *Justifying Deviations Greater Than 10%.* A county can justify a deviation greater than 10% based on traditional redistricting concepts. These concepts include drawing districts that are compact and contiguous (all parts connected and touching), keeping political subdivisions intact, protecting incumbents, preserving the core of existing districts, and complying with the Voting Rights Act.

In addressing acceptable deviations involving local government redistricting, the United States Supreme Court in *Abate v. Mundt*, 403 U.S., 182, 185 (1971) recognized that slightly greater deviations may be acceptable in the case of local governments due to their often-smaller size and specific circumstances:

The facts that local legislative bodies frequently have fewer representatives than do their state and national counterparts and that some local legislative districts may have a much smaller population than do congressional and state legislative districts, lend support to the argument that slightly greater percentage deviations may be tolerable for local government apportionment schemes. Of course, this Court has never suggested that certain geographic areas or political interests are entitled to disproportionate representation. Rather, our statements have reflected the view that the particular circumstances and needs of a local community as a whole may sometimes justify departures from strict equality.

In summary, the key for local officials to satisfy the one person, one vote standard is to develop supervisory district plans that keep the overall range below 10%. When district plans exceed this threshold, local officials should be prepared to justify the overall deviation by showing that the districts were created based on legitimate, consistently applied and nondiscriminatory redistricting policies.

MINORITY POPULATIONS AND CONSIDERATIONS OF RACE IN REDISTRICTING

Dilution and Methods of Dilution

Vote dilution, as opposed to vote denial, refers to the use of redistricting plans and other voting practices that unlawfully minimize or cancel out the voting strength of racial and other minorities. Three techniques frequently used to dilute minority voting strength are “fracturing,” “stacking,” and “packing.” Fracturing refers to fragmenting concentrations of minority population and dispersing them among other districts to ensure that all districts are majority white. Stacking refers to combining concentrations of minority population with greater concentrations of white population, again to ensure that districts are majority white. Packing refers to concentrating as many minorities as possible in as few districts as possible to minimize the number of majority-minority districts.

Section 2 of the Voting Rights Act: Prevention of Unlawful Voting Practices

1. *General Purpose.* Section 2 of the Voting Rights Act is designed to prevent dilution of voting strength of racial and other minorities through redistricting. Section 2 provides that a voting practice, such as redistricting, is unlawful if it “results” in discrimination, i.e., if, based on the totality of circumstances, it provides minorities with “less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.” A court must look to the “totality of circumstances” in determining whether a voting rights violation of Section 2 has occurred. Factors to be considered include, but are not limited to, bloc voting, a history of discrimination, depressed levels of minority employment, income disparity, and a lack of minorities elected to office.

⁷ *Connor v. Finch*, 431 U.S. 407, 416-418 (1977).

Section 2 does not create a right of proportional representation for minorities, i.e. a right to have members of a protected class elected in numbers equal to their proportion in the population. The ultimate question to be answered under a Section 2 challenge is whether the minority has been denied an equal opportunity to participate and elect candidates of his or her choice.

2. *Scope.* Section 2 of the Voting Rights Act can apply to any jurisdiction in any state. It enables a person filing suit to prove a violation of Section 2 if, as a result of the challenged practice or structure, plaintiffs did not have an equal opportunity to participate in the political process and to elect representatives of their choice.

When it was first enacted, the Voting Rights Act prohibited discrimination based on “race or color.” In 1975, Congress extended the protection of the act to language minorities, defined as American Indians, Asian-Americans, Alaskan Natives, and persons of Spanish heritage. Consequently, under Section 2, a governing body may not create districts that result in the denial or abridgment of any U.S. citizen’s right to vote on account of race, color, or status as a member of a language minority group.

3. *Establishing a Section 2 Violation.* In *Thornburg v. Gingles*, 478 U.S. 30, 44 (1986), the United States Supreme Court developed a three-part test that a minority group must meet in order to establish a vote dilution claim under Section 2 of the Voting Rights Act. The test requires that a minority group prove that (1) it is sufficiently large and geographically compact to constitute a majority in a single-member district; (2) it is politically cohesive; and (3) in the absence of special circumstances, bloc voting by the white majority usually defeats the minority’s preferred candidate. Stated another way, if these three conditions are present, the presumption is that a minority district must be established.

In creating a majority-minority district, the percentage of minorities required to provide minority voters with a fair chance to elect their candidate must be considered. In making this determination, information about differences between the majority and minority population regarding voter registration, past voter participation, and, especially, voting age population needs to be examined. The goal is to create a district with an effective voting majority of minority voters. There is no fixed percentage of minority population that translates into an effective voting majority in all cases. Rather, that percentage depends on the totality of circumstances. The percentage of minority voters assigned to a district must be based on empirical evidence rather than an arbitrarily applied formula. Also, those responsible for redistricting must follow the traditional redistricting principles of compactness, contiguity, and respect for political subdivisions. Lacking empirical evidence or focusing solely on creating a majority-minority district can result in a racial gerrymander— a district that is drawn solely or predominantly on account of race.

In order to satisfy the first factor, the minority must make up 50% plus 1 of the voting age population (VAP) in a district on the theory that only those of voting age have the potential to elect candidates of their choice within the meaning of Section 2. The Supreme Court affirmed this view in *Bartlett v. Strickland*, 129 S.Ct. 1231 (2009) by holding that: “Only when a geographically compact group of minority voters could form a majority in a single-member district has the first *Gingles* requirement been met.”

With respect to the compactness element of the first factor, the Supreme Court has ruled that a district complies with Section 2 if it “is *reasonably* compact and regular, taking into account traditional redistricting principles such as maintaining communities of interest and traditional boundaries.” Most courts have applied an “eyeball” test to determine compactness, i.e., if a district looks reasonably compact and is similar in shape to other districts drawn by the jurisdiction it is deemed compact within the meaning of Section 2 and the first *Gingles* factor.

In order to satisfy the cohesion factor, the Supreme Court held in *Gingles* that political cohesion can be shown by evidence “that a significant number of minority group members usually vote for the same candidates.” Elsewhere in the opinion, the Court said that racial bloc voting and political cohesion could be established “where there is ‘a consistent relationship between [the] race of the voter and the way in which the voter votes.’” Most courts have applied a common-sense rule that if a majority of minority voters vote for the same candidates a majority of the time, the minority is politically cohesive.

The third *Gingles* factor (whether white bloc voting is “legally significant”) is satisfied if the majority votes sufficiently as a bloc to enable it “usually” to defeat the minority’s preferred candidate. The fact that some minority candidates may have been elected does not foreclose a Section 2 claim. Instead, where a challenged scheme generally works to dilute the minority vote, it cannot be defended on the ground that it sporadically benefits minority voters.

Shaw v. Reno: Restricting Considerations of Race

The United States Supreme Court has placed strict limits on the manner in which race may be considered in redistricting. In *Shaw v. Reno*, 509 U.S. 630 (1993), the Court found that where racial considerations predominate in the redistricting process to the subordination of traditional non-race-based factors, the redistricting will be subject to a strict scrutiny test. The state or local government must demonstrate that race-based factors were used in furtherance of a compelling state interest, such as compliance with the Voting Rights Act and where the local government applied race-based factors in a “narrowly tailored” manner to achieve this interest.

Decisions following *Shaw* have established the following principles in redistricting: (1) race may be considered as a factor along with other traditional factors; (2) race may not be considered as the predominant factor in redistricting to the detriment of traditional redistricting principles; (3) bizarrely shaped districts are not unconstitutional *per se* but may be evidence that race was the predominant consideration in redistricting; (4) if race is the predominant consideration in redistricting, it may be constitutional if it is “narrowly tailored” to address a compelling government interest, i.e., the redistricting will use race no more than as necessary to address the compelling government interest. In 2015, the U.S. Supreme Court reaffirmed these principles, and held that voters may present statewide evidence of discrimination to prove that an individual district was drawn in a racially discriminatory manner.⁸ This means that voters may present evidence that a statewide discriminatory redistricting policy was applied to the specific district being challenged in court.

In light of *Shaw* and the cases that followed it, local governments should be careful to adopt and apply redistricting criteria that fairly consider race as well as traditional redistricting factors. These criteria should include:

- Using identifiable boundaries;
- Using whole voting precincts, where possible and feasible;
- Maintaining communities of interest;
- Basing the new plan on existing precincts;
- Adopting precincts of approximately equal size;
- Drawing precincts that are compact and contiguous;
- Keeping existing representatives in their precincts; and
- When considering race, narrowly tailoring to comply with the Voting Rights Act.

While the Supreme Court, in *Shaw v. Reno*, has limited the use of race in redistricting, it recognizes that race should not be excluded altogether. It remains impermissible for counties and other governmental entities to use redistricting to unlawfully minimize or cancel out minority voting interests. Rather, race should

⁸ *Alabama Legislative Black Caucus v. Alabama*, 135 S. Ct. 1257 (2015).

have equal standing with traditional districting principles when legislators or other government officials develop district plans.

GERRYMANDERING

Gerrymandering is the process where the majority party draws an election district map with district boundary lines that give itself an unfair and undeserved numerical vote advantage during each election. This numerical advantage is obtained by maximizing the number of districts with a majority of voters from the majority party. Here, majority party refers to the party with a majority of seats in the state legislature, which usually but not always corresponds to the party that received the majority of total votes in the previous election. Exceptions are possible due to gerrymanders.

A gerrymandered redistricting map concentrates minority party voters into the fewest possible number of election districts (packing), distributes minority party voters among many districts so their vote will not influence the election outcome in any one district (vote dilution), and/or divides incumbent minority party legislator districts and constituents up among multiple new districts with a majority of majority party voters (fracturing). In some gerrymander cases, multiple minority party incumbents are forced to run against each other in the same district. Bizarre election district boundaries are drawn to connect distant disjointed areas with thin strips of land running through unpopulated areas such as industrial parks and cemeteries, down highways and railroad tracks, and through bodies of water such as rivers, lakes, and the ocean.

While racially gerrymandered districts and districts that violate the "one person, one vote" principle are unconstitutional, the Supreme Court held that partisan gerrymandering claims are not justiciable.⁹ This means that opponents of districts gerrymandered for partisan purposes may not challenge them in court. Wisconsin's county board supervisors are elected in nonpartisan elections, so partisanship should not be an issue in drawing county board supervisor districts. However, critics of potential redistricting plans may refer to gerrymandering because the litigation has been controversial.

DETERMINATION OF COUNTY BOARD SIZE IN DECENNIAL REDISTRICTING

Related to the issue of equal representation is the issue of county board size. Wisconsin counties may increase or decrease the size of their boards during redistricting following the decennial census. Once a board determines its size, district lines can then be drawn in accordance with traditional redistricting principles, substantial equal population requirements, and minority and race considerations. Redistricting is the best time for county leaders to evaluate the size of their county boards since the number of seats in an electoral body are a key component in determining what each seat will look like.

The maximum number of county board supervisors any county may have is governed by statute. The classification plan establishing the maximum number of supervisors is detailed in Wis. Stat. § 59.10(3) as follows:

- a. Counties having a population of less than 750,000 but at least 100,000: 47 supervisors.
- b. Counties having a population of less than 100,000 but at least 50,000: 39 supervisors.
- c. Counties having a population of less than 50,000 but at least 25,000: 31 supervisors.
- d. Counties having a population of less than 25,000 and containing more than one town: 21 supervisors.

If the population of any county is within 2% of the minimum population for the next most populous grouping, the county board, in establishing supervisory districts may employ the maximum number for districts set for the next most populous group.

⁹ *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019).

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CHAPTER 4: GUIDELINES TO DECENNIAL REDISTRICTING

Redistricting is a complex process. The following guidelines will assist counties in moving forward with redistricting and in meeting their statutory obligation under Wis. Stat. § 59.10(3). Included are general time frames within which each step in the process should be completed.

STEP ONE: Determine the Board Size and Appoint a Redistricting Committee February 2021 and March 2021

As part of the redistricting process, county boards need to determine the number of districts that will be incorporated in the redistricting plan that, by definition, will determine the size of the board (county boards are single member districts). If the board size is to remain the same, no action should be taken. If the board size is going to increase or decrease, the county board should adopt a resolution establishing the new number of districts and board size.

County boards must then decide who will be responsible for overseeing the process of drawing district lines. The whole board can work in this capacity, but it is more efficient to select a redistricting committee that is tasked with the responsibility of drawing district lines. There are no restrictions on who may serve on a redistricting committee. A committee may, therefore, include county board members, representatives of affected municipalities, and citizens. Considering the integral role that municipalities play in the redistricting process and the obligation of counties to solicit suggestions from municipalities in the development of the plan, it is beneficial to have one or more representatives from municipalities on the committee.

The redistricting committee is not responsible for actually drafting the redistricting plans. The actual drafting will be done by county staff or a qualified consultant retained by the county to draw the district lines. The redistricting committee is responsible for establishing the guidelines that will govern the redistricting process and reviewing and making alterations to draft plans prepared by the consultant or staff.

STEP TWO: Establish Guidelines for Redistricting March 2021

The redistricting committee is responsible for establishing the principles that will guide the redistricting process. The primary focus of the consultant will be on establishing a redistricting plan that focuses on substantial equal, contiguous, and compact districts. The redistricting committee should determine the extent to which other traditional concepts of redistricting will be reflected in the plan including preservation of political subdivisions, communities of interest and cores of prior districts, protection of incumbent interests, and consideration of minority interests, when appropriate. Additional considerations include municipal ward size restrictions, development of aldermanic districts, and other municipal redistricting concerns. The redistricting committee will need to guide the consultant in the development of plans to ensure that the guidelines chosen by the redistricting committee will be reflected in the plan.

STEP THREE: Develop a Tentative Plan April 2021 through May 2021

Following receipt of census information, counties need to proceed forward with the preparation of a tentative plan. As indicated above, counties have 60 days under statute to complete this process from receipt of the census information.

Suggested Timeline

The following is a general timeline to assist in moving forward with the process:

1. Test the 2011 county plan. Using the 2020 census data, test the existing county plan. It may be possible to use the existing county plan as the basis for the tentative plan.
2. Draft plan options (about two weeks).
3. Review and revise plan (about two weeks).
4. Select a tentative plan.
5. Solicit municipal input (for split municipalities).
6. Hold a public hearing (early May).
7. Adopt tentative plan (May county board meeting).

Tips for Developing a Tentative Plan

1. When developing the tentative county plan, try to create districts that use whole contiguous municipalities and whole contiguous parts of municipalities. To be contiguous, the municipalities and/or parts of municipalities must have a common boundary or corner.
2. In the event that municipalities need to be divided, try first to divide those municipalities that are required to otherwise divide themselves under law, i.e., those with populations over 1,000. Only divide smaller municipalities when it is absolutely necessary in order to create supervisory districts that comply with the principle of one person, one vote.
3. Whenever it becomes necessary to divide a municipality, the county must submit a request to the municipality in writing, stating the size of the required ward and location for contiguity purposes. The county plan should not impose ward lines. It should inform the municipality of the types of wards it needs for county supervisory district purposes. The county should work with the municipality to create wards that meet both the county and municipal needs.
4. Special efforts must be made when working with cities that elect the members of the common council from districts. In these cases, the wards must serve both the county supervisory district purposes and the aldermanic district purposes. Careful work and negotiation with municipalities is advisable in this process.
5. The ultimate goal of any county redistricting plan should be 0% deviation from the norm; however, only districts which are *substantially equal* in population are required. With advances in mapping and redistricting software and technology, deviations below 10% (and potentially significantly lower considering the circumstances) should be readily achievable.
6. Amend the plan following the public hearing to address any issues that warrant consideration.

STEP FOUR: Create Municipal Wards

June 2021 through July 2021

As indicated above, every municipality in a county is required to make a good faith effort to accommodate the tentative plan submitted by the county or counties in which it is located. If a municipality is unable to accommodate the tentative plan, the municipality must still divide itself into wards in a way that creates county supervisory districts that are in accordance with the population requirements of the tentative plan.

STEP FIVE: Finalize and Adopt the Redistricting Plan

August 2021 through September 2021

The following is a timeline for completing the redistricting process following receipt of ward plans from municipalities:

1. Adjust the tentative plan to accommodate ward plan changes.
2. Hold a public hearing (August county board meeting).
3. Enact a final plan (September county board meeting).

STEP SIX: Effectiveness of the New Plan and Application to Elections

Any decennial redistricting plan takes effect on November 15, 2021 (following its enactment by the county board). The plan first applies to the election of supervisors at the next spring election following the effective date that immediately precedes the expiration of the terms of office of supervisors in the county.

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CHAPTER 5: MID-TERM REDISTRICTING

Section 59.10(3)(cm) governs mid-term redistricting, i.e., changes made during the decade following the decennial redistricting. Importantly, the only action that may be taken mid-term is a reduction in board size and corresponding redrawing of district lines to reflect the reduced board size. There are also circumstances involving municipal boundary adjustments when a board may, or may be required to, adjust districts to reflect such things as annexation or incompatibility of wards with legislative or congressional districts. However, the board may not increase or reduce the number of districts in such cases. The traditional concepts of redistricting and legal concerns outlined in this handbook apply in creating mid-term districts.

REDUCTION IN BOARD SIZE

Procedure for Mid-Term Redistricting to Reduce Board Size: Initiation by the Board

1. *Timing and Procedure.* Under Wis. Stat. § 59.10(3)(cm), a county board may, any time after the enactment of the decennial supervisory district plan, decrease the number of supervisors. Following the adoption of a resolution to reduce the size of the board, the board is required to redistrict, readjust, and change the boundaries of supervisory districts, so that (1) the number of districts equals the number of supervisors; (2) the districts are substantially equal in population according to the most recent countywide federal census; (3) the districts are in as compact a form as possible; and (4) the districts consist of contiguous municipalities or contiguous whole wards in existence at the time at which the redistricting plan is adopted. In the redistricting plan, the board must adhere to statutory requirements with regard to contiguity and must, to the extent possible, place whole contiguous municipalities or contiguous parts of the same municipality within the same district. In mid-term redistricting, the original numbers of the districts in their geographic outlines, to the extent possible, must be retained. Mid-term redistricting may be done once in between decennial redistricting.
2. *A Board May Not Mid-Term Redistrict if a Petition for Redistricting or Referendum for Mid-Term Redistricting is Pending.* A county board may not enact a mid-term redistricting plan during the review of a petition or referendum to decrease the size of the county board. However, if the electors of the county reject a change in the number of supervisory districts by referendum, the board may proceed with mid-term redistricting as outlined above.

Petition and Referendum to Reduce Board Size Mid-Term

1. *Timing.* The electors of a county may, by petition and referendum, decrease the number of supervisors at any time after the first election is held following enactment of a decennial supervisory district plan. This means that the electors cannot initiate action to revise the board's decennial supervisory district plan until after the April 2022 elections, i.e., "the first election held following enactment of the supervisory district plan."
2. *Procedure*
 - Initial Petition A petition for a change in the number of supervisors may be filed with the county clerk. Prior to circulating a petition to decrease the number of supervisors in any county, the petitioner must register with the county clerk, giving the petitioner's name and address and indicating the petitioner's intent to file such a petition. No signature on a petition is valid unless the signature is obtained within the 60-day period following registration. The petition must specify the proposed number of supervisors to be elected.

- Alternate Petition Within 14 days after the last day for filing an original petition, any other petitioner may file an alternative petition with the county clerk proposing a different number of supervisors to be elected. If the petition is valid, the alternative proposed in the petition must be submitted for approval at the same referendum. An alternative petition is subject to the same registration and signature requirements as an original petition.
- Petition Requirements Each petition must conform with the requirements of Wis. Stat. § 8.40 and must contain a number of signatures of electors of the county equal to at least 25% of the total votes cast in the county for the office of supervisor at the most recent spring election preceding the date of filing. The county clerk is responsible for determining the sufficiency of a petition.
- Referendum Once the county clerk determines that one or more petitions are sufficient, the county clerk must call a referendum concurrently with the next spring or general election in the county that is held not earlier than 70 days after the determination is made. If the referendum is approved by a majority of the electors voting on the referendum, the board must enact an ordinance prescribing revised boundaries for the supervisory districts in the county in accordance with the referendum. The districts created by the board are subject to the same requirements that apply to decennial redistricting. The county clerk must file a certified copy of any redistricting plan enacted under this subdivision with the Secretary of State.

Limitation on Mid-Term Redistricting to Reduce Board Size: Only Once a Decade

Under Wis. Stat. § 59.10(cm)(3), if the number of supervisors in a county is decreased by the board or by petition, no further action may be taken by the board or by petition until after enactment of the next decennial supervisory district plan by the board.

Mid-term Changes Due to Municipal Boundary Adjustments: No Changes in the Number of Supervisory Districts

After the enactment of a decennial supervisory plan, the board may amend the plan to reflect a municipal incorporation, annexation, detachment, or consolidation. The number of supervisory districts in the county may not be changed by any action under this paragraph.

On the other hand, a board must amend the county supervisory district plan to reflect any renumbering of the wards specified in the plan when a municipality enacts or adopts a revised division ordinance or resolution pursuant to Wis. Stat. § 5.15(4)(a)¹⁰. Such amendment must be made within 60 days after the enactment or adoption of the revised division ordinance.

In both of these scenarios, the districts under the amended plan must be substantially equal in population according to the most recent countywide federal census, as compact a form as possible, and consist of contiguous municipalities or contiguous whole wards in existence at the time at which the redistricting plan is adopted. The original numbers of the districts in their geographic outlines must be retained to the extent possible. An amended plan becomes effective on the first November 15 following its enactment.

¹⁰ Section 5.15(4)(a), Wis. Stats., provides, in relevant part that:

If the legislature, in an act redistricting legislative districts under article IV, section 3, of the constitution, or in redistricting congressional districts, establishes a district boundary within a municipality that does not coincide with the boundary of a ward established under the ordinance or resolution of the municipality, the municipal governing body shall, no later than April 10 of the 2nd year following the year of the federal decennial census on which the act is based, amend the ordinance or resolution to the extent required to effect the act. The amended ordinance or resolution shall designate the polling place for any ward that is created to effect the legislative act. Nothing in this paragraph shall be construed to compel a county or city to alter or redraw supervisory or aldermanic districts.

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Wisconsin Counties Association
22 East Mifflin Street, Suite 900 ♦ Madison, Wisconsin 53703
1.866.404.2700 ♦ www.wicounties.org



Milwaukee County

Meeting Minutes - Final Milwaukee County Independent Redistricting Committee

The Honorable Jean A. DiMotto – Chairperson
The Honorable James A. Gramling, Jr., Vice-Chairperson

The Honorable Charles N. Clevert, Jr.
The Honorable Charles F. Kahn, Jr.
The Honorable Frederick P. Kessler
The Honorable Mary M. Kuhnmuench

Committee Coordinator: Allyson R. Smith
Research and Policy Analyst: Emily Petersen

Friday, September 10, 2021

12:30 PM

County Legislative Information Center

VIRTUAL MEETING

This meeting was live-streamed on the County Legislative Information Center:
<https://milwaukeecounty.legistar.com/Calendar.aspx>

Call To Order

Roll Call at 12:31 p.m.

Present: 5 - Gramling Jr., Clevert Jr., Kahn Jr., Kuhnmuench, and DiMotto

Absent: 1 - Kessler

Honorable Judge Kessler was not present at the time the roll was called, but appeared virtually later in the meeting.

- 1 [HRA21-361](#) Approval of minutes from the September 3, 2021, meeting of the Milwaukee County Independent Redistricting Committee.

(ACTION ITEM)

Attachments: [HRA21-361 IRC DRAFT MINUTES \(09/03/21\)](#)
 [HRA21-361 IRC FINAL MINUTES \(09/03/21\)](#)

A motion was made by Honorable Judge Clevert, Jr., and seconded by Honorable Judge Gramling, Jr., that the draft minutes from the September 3, 2021, meeting of the Milwaukee County Independent Redistricting Committee be APPROVED. The motion PREVAILED by the following vote:

Ayes: 4 - Gramling Jr., Clevert Jr., Kuhnmuench and DiMotto

Absent: 1 - Kessler

Abstentions: 1 - Kahn Jr.

CLOSED SESSION: ITEM 2

The Committee may adjourn into closed session under the provisions of Section 19.85(1)(g), Wisconsin State Statutes, for the purpose of the Committee receiving oral or written advice from legal counsel concerning strategy to be adopted with respect to pending or possible litigation with regard to the following matter(s).

At the conclusion of the closed session, the Committee may reconvene in open session to take whatever actions it may deem necessary.

The Committee did not adjourn into closed session to discuss Item 2.

- 2 [HRA21-365](#) Milwaukee County Independent Redistricting Committee (IRC) directives and response when information is improperly transmitted to the Southeastern Wisconsin Regional Planning Commission without IRC approval.

(ACTION MAY BE TAKEN BY THE COMMITTEE)

There were no appearances for Item 2.

Item 2 was temporarily laid over until later in the meeting by unanimous consent of Committee members.

The Committee did not adjourn into closed session to discuss Item 2.

Item 2 was **DISCUSSED WITH NO ACTION TAKEN.**

- 3 [HRA21-362](#) Consideration of revised redistricting maps from the Southeastern Wisconsin Regional Planning Commission.

(ACTION ITEM)

Attachments: [HRA21-362 POWERPOINT \(09/10/21\)](#)
 [HRA21-362 VERSION D DETAILED MAP \(09/10/21\)](#)

APPEARANCE:
Margaret C. Daun, Corporation Counsel, Office of Corporation Counsel
Allyson R. Smith, Committee Coordinator, Legislative Services Division, Office of the County Clerk

Kevin J. Muhs, Executive Director, Southeastern Wisconsin Regional Planning Commission (SEWRPC), appeared virtually, and spoke regarding this item.

A motion was made by Honorable Judge Gramling, Jr., and seconded by Honorable Judge Clevert, Jr., to direct SEWRPC to revise Version D Map in an effort to increase the Hispanic population where necessary to accomplish a higher percentage rate in those districts be **APPROVED**. The motion **PREVAILED** by the following vote:

Ayes: 4 - Gramling Jr., Clevert Jr., Kuhnmuensch and DiMotto

Abstentions: 2 - Kahn Jr. and Kessler

- 4 [HRA21-300](#) eComments submitted to the Milwaukee County Independent Redistricting Committee via the County Legislative Information Center (CLIC).
(INFORMATION ONLY)

*The Office of the County Clerk collects eComments submitted via CLIC, and appends these official public records to HRA File No. 21-300 at the conclusion of each meeting.

APPEARANCES:

Allyson R. Smith, Committee Coordinator, Legislative Services Division, Office of the County Clerk

Rob Hullum, Communications Specialist, Communications Division. Office of the County Clerk

The September 10, 2021, record of eComments is attached to this file as "HRA21-300 eComments (09/10/21)"

The September 10, 2021, record of eComments was DISCUSSED WITH NO ACTION TAKEN.

Length of Meeting: 12:31 p.m. to 2:03 p.m.

Adjourned,

**Allyson R. Smith
Committee Coordinator
Legislative Services Division, Office of the County Clerk
Milwaukee County Independent Redistricting Committee**

Next Meeting:

The Milwaukee County Independent Redistricting Committee will hold a Virtual Public Hearing on Wednesday, September 15, 2021, at 7:00 p.m.



Milwaukee County

Meeting Minutes - Final Milwaukee County Independent Redistricting Committee

The Honorable Jean A. DiMotto – Chairperson
The Honorable James A. Gramling, Jr., Vice-Chairperson

The Honorable Charles N. Clevert, Jr.
The Honorable Charles F. Kahn, Jr.
The Honorable Frederick P. Kessler
The Honorable Mary M. Kuhnmuench

Committee Coordinator: Allyson R. Smith
Research and Policy Analyst: Emily Petersen

Friday, September 3, 2021

1:00 PM

County Legislative Information Center

VIRTUAL MEETING

This meeting was live-streamed on the County Legislative Information Center (CLIC):
<https://milwaukeecounty.legistar.com/Calendar.aspx>

Call To Order

Roll Call at 1:25 p.m.

Present: 6 - Gramling Jr., Clevert Jr., Kahn Jr., Kessler, Kuhnmuench, and DiMotto

- 1 [HRA21-345](#) Approval of minutes from the August 27, 2021, meeting of the Milwaukee County Redistricting Committee.
(ACTION ITEM)

Attachments: [HRA21-345 IRC DRAFT MINUTES \(08/27/21\)](#)
 [HRA21-345 FINAL IRC MINUTES \(08/27/21\)](#)

APPEARANCE:

Allyson R. Smith, Committee Coordinator, Legislative Services Division, Office of the County Clerk

Chairwoman DiMotto requested that Item 4 on the draft minutes from the August 27, 2021, meeting of the Milwaukee County Independent Redistricting Committee (IRC) be AMENDED to include the virtual Public Hearing scheduled for WEDNESDAY, September 15, 2021, at 7:00 p.m. There being no objections from Committee members, it was so ordered by the Chairwoman.

A motion was made by Honorable Judge Clevert, Jr., and seconded by Honorable Judge Kuhnmuench that the draft minutes from the August 27, 2021, meeting of the IRC be APPROVED. The motion prevailed by the following vote:

Ayes: 6 - Gramling Jr., Clevert Jr., Kahn Jr., Kessler, Kuhnmuensch and DiMotto

MOTION 1

- 2 [HRA21-346](#) From the Southeastern Wisconsin Regional Planning Commission, providing an update, and a proposed redistricting map.
(ACTION ITEM)

Attachments: [HRA21-346 POWERPOINT \(received on 09/03/21\)](#)
[HRA21-346 SEWRPC INTERACTIVE DISTRICT MAPS \(received 09/03/21\)](#)
[HRA21-346 VERSION A REDISTRICTING MAP \(09/03/21\)](#)
[HRA21-346 VERSION B REDISTRICTING MAP \(09/03/21\)](#)
[HRA21-346 VERSION C REDISTRICTING MAP \(09/03/21\)](#)

APPEARANCES:

Allyson R. Smith, Committee Coordinator, Legislative Services Division, Office of the County Clerk

Margaret C. Daun, Corporation Counsel, Office of Corporation Counsel

Supervisor John F. Weishan, Jr., District 16

Brian Rothgery, Communications Director, Communications Division, Office of the County Clerk

Kevin J. Muhs, Executive Director, Southeastern Wisconsin Regional Planning Commission (SEWRPC) appeared virtually, and spoke regarding this item.

Mr. Muhs, provided Committee members with an overview of proposed Redistricting Maps, which are attached to this file as follows:

HRA21-346 VERSION A REDISTRICTING MAP (09/03/21)

HRA21-346 VERSION B REDISTRICTING MAP (09/03/21)

HRA21-346 VERSION C REDISTRICTING MAP (09/03/21)

A motion was made Honorable Judge Clevert, Jr., and seconded by Honorable Judge Kuhnmuensch that Map C as presented by SEWRPC be the basis upon which direction to SEWRPC be based. The motion PREVAILED by the following vote:

Ayes: 4 - Gramling Jr., Clevert Jr., Kuhnmuensch and DiMotto

Abstentions: 2 - Kahn Jr. and Kessler

MOTION 2

[HRA21-346](#) From the Southeastern Wisconsin Regional Planning Commission, providing an update, and a proposed redistricting map.

(ACTION ITEM)

Attachments: [HRA21-346 POWERPOINT \(received on 09/03/21\)](#)
[HRA21-346 SEWRPC INTERACTIVE DISTRICT MAPS \(received 09/03/21\)](#)
[HRA21-346 VERSION A REDISTRICTING MAP \(09/03/21\)](#)
[HRA21-346 VERSION B REDISTRICTING MAP \(09/03/21\)](#)
[HRA21-346 VERSION C REDISTRICTING MAP \(09/03/21\)](#)

Honorable Judge Kuhnmuensch was not present at the time the roll was called on the second motion regarding this item, but was subsequently recorded as voting in the affirmative.

A motion was made by Honorable Judge Clevert, Jr., and seconded by Honorable Judge Gramling, Jr., that SEWRPC only consider matters that have been publicly presented in open session and discussed.

The motion **PREVAILED** by the following vote:

Ayes: 5 - Gramling Jr., Clevert Jr., Kahn Jr., Kuhnmuensch and DiMotto

Absent: 1 - Kessler

CLOSED SESSION: ITEM 3

The Committee may adjourn into closed session under the provisions of Section 19.85(1)(g), Wisconsin State Statutes (State Statutes) for the purpose of the Committee receiving oral or written advice from legal counsel concerning strategy to be adopted with respect to pending or possible litigation with regard to the following matter(s).

At the conclusion of the closed session, the Committee may reconvene in open session to take whatever actions it may deem necessary.

A motion was made by Honorable Judge Gramling Jr., and seconded by Honorable Judge Clevert, Jr., that the Committee adjourn into closed session under the provisions of Section 19.85(1)(g), State Statutes, for the purpose of the Committee receiving oral or written advice from legal counsel concerning strategy to be adopted with respect to pending or possible litigation with regard to Item 3.

Honorable Judge Kessler objected to the motion to adjourn into closed session.

The motion to ADJOURN into Closed Session PREVAILED by the following vote:

Ayes: 5 - Gramling Jr., Clevert Jr., Kahn Jr., Kuhnmuensch and DiMotto

Noes: 1 - Kessler

3 [HRA21-347](#)

Consideration of the request to submit a redistricting map to the Southeastern Wisconsin Regional Planning Commission for review and comparison.

(ACTION ITEM)

APPEARANCES:

Allyson R. Smith, Committee Coordinator, Legislative Services Division, Office of the County Clerk

Margaret C. Daun, Corporation Counsel, Office of Corporation Counsel

Item 3 was discussed in both Open and Closed Sessions.

Item 3 was DISCUSSED WITH NO ACTION TAKEN.

The Committee was in closed session from 3:58 p.m. to 5:16 p.m. The Committee reconvened at 5:16 p.m. Upon reconvening at 5:16 p.m, a roll was taken and four members were present.

Roll Call at 5:16 p.m.

Present: 4 - Gramling Jr., Clevert Jr., Kahn Jr., and DiMotto

Absent: 2 - Kessler, and Kuhnmuench

Honorable Judge Kuhnmuench was not present at the time the roll was called, but appeared virtually shortly thereafter.

- 4 [HRA21-300](#) eComments submitted to the Milwaukee County Independent Redistricting Committee via the County Legislative Information Center (CLIC).
(INFORMATION ONLY)

*The Office of the County Clerk collects eComments submitted via CLIC, and appends these official public records to HRA File No. 21-300 at the conclusion of each meeting.

APPEARANCE:

Allyson R. Smith, Committee Coordinator, Legislative Services Division, Office of the County Clerk

eComments were kept open for an additional two hours after the meeting adjourned.

There were no eComments submitted for the September 3, 2021, meeting.

The September 3, 2021, record of eComments was **DISCUSSED WITH NO ACTION TAKEN.**

The foregoing items were not considered in agenda order.

Length of Meeting: 1:25 p.m. to 5:24 p.m.

Adjourned,

Allyson R. Smith
Committee Coordinator
Legislative Services Division, Office of the County Clerk
Milwaukee County Independent Redistricting Committee

Next Meeting:

The next meeting of the Milwaukee County Independent Redistricting Committee is
Friday, September 10, 2021, at 12:30 p.m.

Office of Corporation Counsel

2022 Recommended Budget

October 11, 2021

Margaret Daun, Corporation Counsel

Scott Brown, Deputy Corporation Counsel

Jessica Fredrickson, Sr. Office Mngr.



**MILWAUKEE
COUNTY**

Department Purpose – the OCC’s WHY

The Office of Corporation Counsel strengthens the County community and empowers residents through highly competent, creative, compassionate and responsive legal services provided in strategic partnership with County stakeholders to optimize decision making, reduce risks, and maximize public resources.

Department Purpose – the OCC’s WHY

*Deputy Paul Kuglitsch as friend, colleague, and trusted advisor.
Curious, engaged, focused, patient, smart, reliable, flexible, ethical, and funny.
An example to all in public service.*

THANK YOU, PAUL.

OCC Duties per Statute

- § 59.42(b): “defend all civil actions...give advice to [clients] in all civil matters...perform all duties in connection with civil matters... [and] review and countersign all contracts”
- Our clients are every elected official, department, board, commission, etc. – we are the County’s attorneys. ONE COUNTY.
- Outside counsel only if (a) bandwidth, (b) expertise, (c) insurer-directed, (d) clients suing one another
- Govt attorneys are “public officer[s], acting judicially, under all the solemn responsibilities of conscience and legal obligation.” 6 Op. Atty Gen. 326, 334 (1854).



What if clients disagree?

- Unless clients engage in active litigation against one another, OCC may represent both clients, even when there is disagreement.
- ABA's Scope 18 (Comment 9 to Supreme Court Rule 10:1.13): government "lawyers under the supervision of [elected] officers [such as the OCC] may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients." (1987)



Rationale

1. A govt lawyer “is not a neutral, she is an advocate; but an advocate for a client whose business is not merely to prevail in the instant case. [A government lawyer’s] chief business is not to achieve victory but to establish justice. ... [T]he government wins its point when justice is done in its courts.” Solicitor General, 4th Cir. Ct. of App. Judge, Simon Sobeloff.
2. If a client’s mere dislike of opinions enabled the hiring of outside counsel at will, the OCC is irrelevant. For the right price, an attorney will say whatever you want.
3. Milw Co’s OCC is unique statewide, and unique among all County dep’t heads.
4. We are independent, legally insulated from political or other influence.
5. OCC provides objective advice, independent of politics or personality, which enables clients to make risk-adjusted decisions when the OCC advises regarding likelihood of a challenge and court decision-making.
6. No incentive to invent definitiveness or “pick sides.”
OCC’s incentive and objective is to GET IT RIGHT.



How does the OCC do that?

- Highly talented professionals; low turnover
- Same question from different clients gets same answer
- Issue public opinions to all stakeholders whenever possible
- Advice aims to accurately estimate risk of different options
- Understandable, lay-friendly and client-friendly advice
- Prioritization based upon: (1) mission; (2) public trust; (3) operational impact; (4) financial impact; (5) precedential impact
- Firewalls if necessary
- OCC-wide understanding and shared internal accountability to this philosophy of client service as govt attorneys



2021 Successes – Mission Mission Mission

- Opioid Legislation;
- Election Litigation;
- Overall risk reduction across entire lit portfolio;
- COVID-19 support; remote/hybrid support; ARPA support;
- Reduction in use of outside counsel in all matters/clients & improved conflict mngmt;
- Mental Health team flexed to address spike in cases and significant health disparities in Milwaukee's most vulnerable communities;
- DE&I achievements: hiring, development, events, outside counsel data, WCMIC panel; WCA/WACCC partnership to empower efforts statewide;
- Capacity and efficiency increased (added 2 attorneys & 1 paralegal -- 2 diverse and 2 female hires); 2 new deputies (diverse hire from our own ranks, female external hire)

Changes in 2021-2022

- The County community's mental health and guardianship needs have spiked over the past 18 months, appr. 30%
- We expect this demand for MH and guardianships to remain constant or again accelerate in 2022.
- Increased demand from all departments and elected offices, with static staffing and compensation
- Significant amount of highest risk litigation still going to outside counsel – long-term vision is ZERO



Challenges

- Salary equity and competitiveness (recruitment and retention) – comparable govt law offices pay more
- Staffing needs, particularly for highly experienced attorneys (less than 25 F/T employees, comparable public sector law offices serving similar clients range from 40-65+)
- Any work that goes to outside counsel costs the County 2-3x more than if kept inhouse – taxpayer \$ inefficient, less effective, less mission-driven
- All non-personnel costs have been virtually eliminated, or cut to absolutely min levels (CLE, sponsored events and travel)
- Budget of OCC (<\$2m, <25 FTEs) vs. City Attny (>\$5m, >60 FTEs)
- Hourly rate of OCC (\$125) vs. outside counsel hourly (\$250-\$750)

Achieving OCC END GOAL / VISION will save County millions...

Exhibit 7



Budget Summary 2022

Category	2019 Actual	2020 Actual	2021 Budget	2022 Budget	2022/2021 Variance
Expenditures					
Personnel Costs	\$1,895,883	\$1,850,818	\$2,328,213	\$2,375,247	\$47,034
Operation Costs	\$182,960	\$126,763	\$107,534	\$107,534	\$ 0
Debt & Depreciation	\$0	\$0	\$0	\$0	\$ 0
Capital Outlay	\$0	\$0	\$0	\$0	\$ 0
Interdepartmental. Charges	(\$833,145)	(\$1,185,655)	(\$904,050)	(\$963,730)	(\$59,680)
Total Expenditures	\$1,245,698	\$791,926	\$1,531,697	\$1,519,051	(\$12,646)
Revenues					
Direct Revenue	\$205,924	\$241,218	\$200,000	\$206,189	\$6,189
Intergovernmental Revenue	\$0	\$0	\$0	\$0	\$ 0
Indirect Revenue	\$0	\$0	\$0	\$0	\$ 0
Total Revenues	\$205,924	\$241,218	\$200,000	\$206,189	\$6,189
Tax Levy	\$1,039,774	\$550,708	\$1,331,697	\$1,312,862	(\$18,835)

Exhibit 7



Strategic Focus Area Alignment in 2022

- Increase capacity, which requires OCC to retain current talent, which requires OCC to address salary
- Increase educational trainings for County clients
- Increase accessibility for community members and departments seeking our assistance
- Promote nonmonetary compensation – development, mentoring, training, etc.
- Hire/promote diverse talent
 - 67% Female
 - 38% Ethnically/Racially Diverse
 - 16% Diverse Orientation
- OCC's mission work: events, survey, General Counsel Forum, WCMIC/WCA/WCCC partnerships, internships



Closing

The ROI to the County is immediate and significant when OCC (1) increases staff and (2) compensation is ***equitable*** and ***competitive***.

Closing

The OCC has succeeded through these compensation, hiring and retention challenges, which are County-wide, during an unprecedented period of decreased institutional confidence, partisan acrimony, and a measurable increase in volume and acuteness of issues we are asked to address...

...sanctuary city/\$20m+ in fed grant \$ protected; contracting authority; high-risk civil rights cases; denial of insurance coverage; outside counsel/conflict mngmt; Pokemon; Wellpath x'tn; pension cases, reestablishing roles, and VCP; opioids (state and nat'l leader); racial equity mission; BHD transition; PPPs of increasing complexity (Domes, MRMC, Rock); RoD restitution; ballot litigation; CEX and elected x'tn; 1000s of ORR; DNC prep; COVID-19 response; OM compliance for hybrids; social media OR issues; spike in MH needs; 2020 election reviews, recounts, litigation x 2, audits; consent decree; redistricting ...

The OCC produces highest quality of work consistently and efficiently (both time and \$-wise), while increasing and broadening our expertise, staffing, and reputation among clients, courts, and stakeholders.

Exhibit 7



Thank you to all our clients. It is a privilege to serve you and our community.

Questions?



**MILWAUKEE
COUNTY**