



STATE OF WISCONSIN ASSEMBLY DISTRICTS

2003 - 2004 WISCONSIN STATE LEGISLATURE

Wisconsin Redistricting 2020 - 2022

A report by the
Wisconsin Maps Assessment Project
November 2023



Cover Notes

The background map for the cover of this report is the 2002 Wisconsin Assembly map showing the 99 districts of the 2003-2004 Wisconsin Assembly. We chose to feature this map on our cover, because it is the last fair legislative map drawn for Wisconsin. It was drawn by the United States District Court for the Eastern District of Wisconsin at the conclusion of the 2002 redistricting case Baumgart v. Wendelberger, after the legislative process had once again failed to produce an acceptable map. The map was fair, because it was drawn using constitutional and traditional redistricting criteria without partisan influence. Was it a great map? No. Was it a good map? Maybe. It was certainly a better map than the maps drawn in 2011 and 2022. It was an adequate map, and that's the best we can expect from a court as the step of last resort in our decades old system. Great, fair maps will require major reform in Wisconsin.

Map image courtesy of the Wisconsin Legislative Services Bureau GIS Team.

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FORWARD

When retired math professor Dr. Don Leake approached me back in 2020 with an idea for analyzing the maps submitted to the People’s Maps Commission (PMC), I wasn’t particularly encouraging. It was way over my head, and I didn’t have the bandwidth to take on any meaningful role in his proposed project.

But Don was not deterred! The Wisconsin Maps Assessment Project (WIMAP) was born.

With help and commitment from other “math” people, plus other dedicated volunteers, WIMAP met its original goal to analyze maps submitted to the PMC. And it did much more. WIMAP members analyzed a ton of maps. They helped others draw maps. They created a video, testified before the legislature, filed amicus briefs with the Wisconsin Supreme Court, and more.

Now WIMAP offers us this Report, which showcases their work and the work of other tireless fair maps advocates. It helps us better understand the complexities of the redistricting process, and is a record of “Wisconsin Redistricting 2020-2022.”

It is also forward looking. After all, the 2030 redistricting cycle is ... right around the corner.

**Carlene Bechen
Retired Organizing Director
WI Fair Maps Coalition**

I. Introduction

Every ten years, Wisconsin's voting maps are redrawn in a process called redistricting. New lines defining voting districts determine how voters are represented in the state legislature and congress for the next decade. Wisconsin's constitution and federal laws set specific rules the map makers must follow. The map makers can draw fair maps by following those rules without trying to favor one political party or another. Or they can manipulate the lines to help one political party and harm the other. That is called gerrymandering.

This is a Report by an ordinary group of citizens from across the beautiful state of Wisconsin about the 2020-22 redistricting process. We care deeply about our state, and the state of our democracy. We had lived for 10 years under some of the most gerrymandered maps in the United States, which produced a legislature that has consistently refused to even consider legislation on a broad array of concerns that have strong bipartisan support.

No matter where we live or what our political leanings, we all want clean drinking water, excellent schools for our children, and to be able to see a doctor when we need one. We want the freedom to make decisions that profoundly affect our lives, and the lives of our families. But powerful politicians carved up our neighborhoods, rigged our voting maps, and stripped us of our voice. We want to end gerrymandering so that our communities get the resources we need to survive and thrive. Voting maps matter!

This Report includes a cautionary tale. A bipartisan bill calling for fair voting maps was introduced in 2009. But the siren song of power kept the Democrats, who then held a trifecta (control of the senate, assembly and governorship), from passing the bill. When the Republicans swept into a trifecta in 2010, they passed some of the most gerrymandered maps in the country. Gerrymandering is a bipartisan disease. Giving the legislature the power to draw their own districts creates the ultimate conflict of interest. (Our founding fathers didn't always get it right.) An opportunity for fair voting maps was missed in 2009 to disastrous effect during the 2010-2012 redistricting cycle. Then, in 2020-2022, the legislature (aided by gerrymandered maps) was enabled to exacerbate the previous disaster.

This Report comprehensively describes:

- the redistricting process in Wisconsin in 2020-2022 cycle
- the history of citizen activism in Wisconsin to achieve fair voting maps
- the creation and work of the People's Maps Commission (PMC)
- how and why the Wisconsin Maps Assessment Project (WIMAP) was formed
- a review of the legislature's actions during this redistricting cycle
- court review and action on the maps, and
- our conclusions and recommendations.

In documenting the 2020-2022 redistricting cycle, we hope that people will learn from the experiences we describe in this Report. We want to ensure that all of the hard-won knowledge we gained during this process will not be lost. Citizens should know how the redistricting process should work. We encourage people to practice drawing voting maps. We want voters to

continue the fight to end partisan gerrymandering. And we encourage Wisconsin to begin preparing for the 2030 redistricting cycle – NOW.

We thank the people who took time to gather data for us to use in this Report, as well as those who reviewed and commented on drafts. Most of all, we thank all of the Wisconsinites who have worked so hard over the years to bring fair voting maps to our state. We are confident that our work and theirs will not cease until that goal is accomplished.

Wisconsin Maps Assessment Project
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¹ The authors' biographies can be found at the end of the Report.

II. Wisconsin's Redistricting Process

State and Federal law requires that Wisconsin's legislative and congressional maps be "redistricted" every 10 years following the federal decennial census. Redistricting is the process of drawing **electoral district maps**, or more simply put, **voting maps**. Voting maps determine who represents people in local, state, and federal government, in other words, what voting district people live in and what candidate names they will see on their ballots when Election Day arrives. Voting maps are subject to state and federal requirements, and often follow traditional principles. And because voting maps help determine who holds power in the state, Wisconsin has spent the last sixty years fighting over them.¹

A. The Basics:

Wisconsin's Legislative Reference Bureau ("LRB") opens its 2020 Redistricting Guidebook² ("LRB Guidebook") with these words: "The American system of representative democracy is grounded in the notion of equal representation in legislative bodies." This foundational principle is evident in the opening lines of Wisconsin's Constitution:

Article I Section 1. All people are born equally free and independent, and have certain inherent rights; among these are life, liberty and the pursuit of happiness; to secure these rights, governments are instituted, deriving their just powers from the consent of the governed.³

The redistricting process is the mechanism used to create and maintain equal numerical representation. Because populations are constantly shifting, periodically new voting maps are drawn to ensure that each member of legislative bodies continues to represent approximately the same number of people. The people may change, but when the process is over each representative must represent the same number of people.⁴ As will be seen throughout this report, the redistricting process entails much more than this, but at its core it ensures equal population in each district.

And it all begins with US Census data.

¹ Although local voting maps are also redistricted, only statehouse and congressional maps are discussed in this document. Also, this document does not address the issue of "apportionment", which is the process used to determine how many members of the U.S. House of Representatives each state is entitled to, based on state population. Wisconsin maintained the same number of congressional seats after the 2020 Census, and reducing or increasing the number of congressional districts was not required as part of redistricting.

² Redistricting in Wisconsin 2020: The LRB Guidebook (LRB Guidebook) p. 1.

³ https://docs.legis.wisconsin.gov/misc/lrb/wisconsin_elections_project/redistricting_wisconsin_2020_1_2.pdf.

⁴ <https://docs.legis.wisconsin.gov/2011/related/wiscon/11>.

⁴ LRB Guidebook p. 2.

1. The United States Census



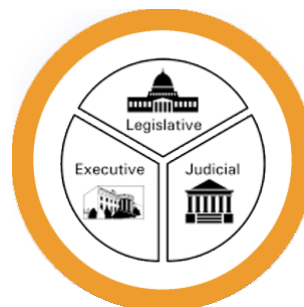
Population data are essential in the redistricting process. Pursuant to the U.S. Constitution, every ten years the Census Bureau counts every resident in the United States. Following that count, the Bureau releases the Decennial Census data. The data collected in that census are then used to “redistrict” the state.⁵

Federal law requires that the Census be taken as of April 1 of the census year, and in a typical year the Census Bureau delivers official Census data to the states no later than March 31 of the year following the Census.

In 2020, the Census was substantially delayed because of the COVID pandemic, as well as a political dispute over what Census data should be gathered.⁶ After a long delay, the 2020 Census redistricting data reached the states August 12, 2021.⁷ This compressed the timeline for drawing the 2022 voting maps (2022 Map), which had to be ready for use by the April 2022 elections. The 2020 Census was also not as accurate as past Censuses.⁸ Although Wisconsin has not been flagged by the Census Bureau as an affected state, the City of Milwaukee is officially disputing its Census count, not because of redistricting but because the asserted under-count affects federal funding.⁹

2. Separation of Powers

The Legislature draws the maps: Wisconsin’s Constitution calls on the legislature to draw the state’s voting maps as part of its Article IV legislative power:



⁵ <https://www.census.gov/programs-surveys/decennial-census/about/why.html>.

⁶ **2020 census mired in political controversy as deadline nears**, CNN September 9 2021.

<https://www.cnn.com/2020/09/09/politics/census-challenges/index.html>.

⁷ 2020 Census Timeline of Important Milestones: “August 12: States received the data they may use to begin redistricting. The Census Bureau also shared this information with the public. However, the data is in a format that requires additional handling and software to extract familiar tables. COVID-19-related delays and prioritizing the delivery of the apportionment results delayed our original redistricting data delivery plan. September 16: The Census Bureau delivered the final redistricting data toolkit to all states and the public. This included digital tools that provide access to an integrated software browsing tool for official recipients, as well access to the online Data Explorer tool for both official recipients and the public.” U.S. Census Bureau. <https://www.census.gov/programs-surveys/decennial-census/decade/2020/planning-management/release/timeline.html>.

⁸ **Key facts about the quality of the 2020 census.** <https://www.pewresearch.org/short-reads/2022/06/08/key-facts-about-the-quality-of-the-2020-census/>. See also the June 13, 2022 American Redistricting Project blog **2020 Census Count Errors & Congressional Apportionment** at <https://thearp.org/blog/apportionment/2020-census-count-errors/>.

⁹ **Milwaukee is challenging its 2020 census numbers. Here's why.** <https://www.wpr.org/milwaukee-2020-census-federal-funding>.

At its first session after each enumeration made by the authority of the United States, **the legislature shall apportion and district anew** the members of the senate and assembly, according to the number of inhabitants (emphasis added).¹⁰

The Governor accepts or rejects the maps: Just as the legislature is charged with drawing voting maps, the governor is charged with accepting or rejecting them. The governor derives his Executive Power under Article V of Wisconsin’s Constitution, which includes the power to accept or reject (veto) acts of the legislature.¹¹

Thus voting maps become law in the same manner as other legislative action: the new maps are presented as a proposed bill; that bill must pass both the senate and assembly; and that action must then be approved by the governor. If the governor vetoes the maps, under Article V the legislature can override the governor’s veto only by a two-thirds majority vote in both legislative chambers.

If the Executive and Legislative branches of government cannot agree on voting maps, and the legislature doesn’t have enough votes to override the governor’s veto, the maps go to court.

B. Federal Requirements.

The federal government imposes two central redistricting requirements: equal population and minority protection. These requirements apply to the U.S. Congress and state legislatures. They do not apply to the U.S. Senate, since two Senators are elected at-large from each state.¹²

1. Equal Population

Congressional districts must be as quantitatively equal in population as possible. In the early 1960s, the U.S. Supreme Court interpreted the phrase as mandating “one-person, one-vote,” meaning congressional districts should be as mathematically equal in population as possible.¹³ Although many states’ Congressional maps achieve zero population deviation, current federal judicial precedent has allowed 0.79% total population deviation to accommodate legitimate state redistricting objectives.¹⁴

¹⁰ Wis. Const. Art. IV Section 3. <https://docs.legis.wisconsin.gov/2011/related/wiscon/> 14.

¹¹ Wis. Const. Art. V Section 10. <https://docs.legis.wisconsin.gov/2011/related/wiscon/> 15.

¹² Some argue that the current United States Senate is a political gerrymander. **American Democracy Was Never Designed to Be Democratic.** <https://www.newyorker.com/magazine/2022/08/22/american-democracy-was-never-designed-to-be-democratic-eric-holder-our-unfinished-march-nick-seabrook-one-person-one-vote-jacob-grumbach-laboratories-against-democracy>.

¹³ See discussion in LRB Guidebook p. 7.

¹⁴ *Tennant v. Jefferson County Commission*, see SCOTUSblog discussion **Opinion recap: Hedging on “one person, one vote”**. <https://www.scotusblog.com/case-files/cases/tennant-v-jefferson-county-commission/>.

Deviation from population equality at the state level is restricted by the 14th Amendment, which courts have determined requires substantial, not absolute, equality of population. In practice, state legislative plans with a total population deviation of 10 percent or less have been considered constitutional by federal courts. There is, however, no safe harbor, and in Wisconsin, total population deviation has been less than 2% going back at least to 1982.¹⁵ For reasons that will become clear in the sections to follow, that deviation became even smaller in the 2022 Map.

2. “Minority” Protection

Two constitutional amendments were ratified in the aftermath of the Civil war, adding what the LRB Guidebook described as a “constitutional coda on that bloody internecine conflict.”

The 14th Amendment was ratified in 1868. Federal courts have interpreted its equal protection clause as prohibiting state and local governments from separating citizens into different voting districts on the basis of race without sufficient justification. This provision has led courts to strike down voting maps where race is the predominant motivating mapping factor, whether it be by putting a disproportionately large population of minority groups in a single district (commonly called “packing”) or by diluting the minority group’s members among a number of districts (commonly called “cracking”).

The 15th Amendment was ratified in 1870. It states: “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.” Congress is empowered to enforce the Amendment by statute. It took almost one hundred years, but the Voting Rights Act of 1965 (VRA) finally did just that. Pursuant to the VRA, minority populations must in some circumstances have the opportunity to elect the candidate of their choice.¹⁶

In recent years the U.S. Supreme Court has carved away the VRA’s protections. As we write this, the future of minority protection in redistricting is at best uncertain. Compliance with the VRA during redistricting is challenging even under the best circumstances, and requires specialized expertise capable of addressing the intersection of the VRA and political geography. Map consultants usually perform a detailed analysis of voting records in recent elections to provide proof that the VRA is violated. Claiming that a map does **not** violate the VRA is more difficult to establish.

Any map is subject to a VRA court challenge. Some of the pitfalls that can occur while attempting VRA compliance in redistricting will become clear as one reads about Wisconsin’s experience with the 2020-2022 redistricting cycle. This criterion is not easy to quantify. One general rule of thumb is to count districts that have a Black or Hispanic Voting Age Population (VAP) of over 50% as a minority opportunity district, however, depending on historical voting

¹⁵ LRB Guidebook pp. 5-9.

¹⁶ This section is based primarily on the LRB Guidebook, pp. 9-14.

records, a VAP as low as 37% could be sufficient.¹⁷ Districts with over 60% BVAP or HVAP could be challenged for packing. Statewide minority population distribution indicates that Wisconsin should have at least 6 BVAP and 2 HVAP assembly districts. All other minority classes are too spread out to be able to create viable opportunity districts in Wisconsin.

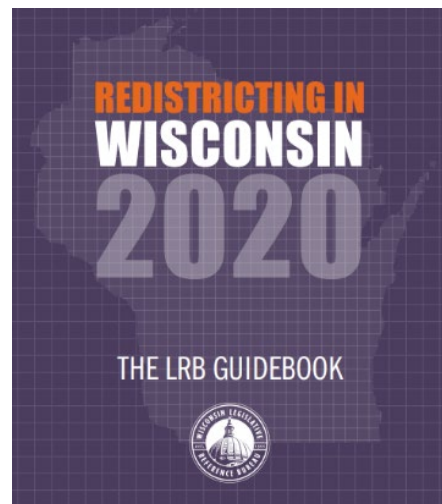
C. State Constitutional and “Traditional” Redistricting Principles

Article IV Sections 4 and 5 of Wisconsin’s Constitution¹⁸ states:

The members of the assembly shall be chosen ... by the qualified electors of the several districts, such districts to be bounded by county, precinct, town or ward lines, to consist of contiguous territory and be in as compact form as practicable.

The senators shall be elected by single districts of convenient contiguous territory, ... and no assembly district shall be divided in the formation of a senate district.

States also apply redistricting principles, commonly called “traditional” principles.



According to the LRB Guidebook, Wisconsin’s four most relevant redistricting factors are compactness, contiguity, preservation of the unity of political subdivisions, and preservation of communities of interest.¹⁹

1. Contiguity

Wisconsin’s Constitution requires that all assembly districts be contiguous. Contiguity is the principle that each area within a district should be physically adjacent to another area

¹⁷ E.G. **Comparison of Districting Plans for the Virginia House of Delegates**. <https://mggg.org/VA-report.pdf>.

¹⁸ Wis. Const. Art. IV Sections 4 and 5. <https://docs.legis.wisconsin.gov/2011/related/wiscon/14>.

¹⁹ This section borrows extensively from the LRB Guidebook pp. 14-17.

within the district. In other words, all pieces of the district should connect.²⁰ As we write this, the Wisconsin Supreme Court is considering how strictly this provision should be interpreted.²¹

2. Compactness

Wisconsin's Constitution states that assembly districts should be "in as compact form as practicable." Compactness is the principle that districts should be reasonably geographically compact, where distance between all parts of the district is minimized. Some think of it as measuring how "circular" a district is. Compactness used to be measured by sight: the "eyeball" test. Today it can be measured by mathematical equations. Two well-known mathematical methods are "Reock" and "Polsby-Popper." "Cut edges" is a relatively recent proposed method, not yet fully accepted.²²

3. Preserving the Unity of Political Subdivisions

Wisconsin's Constitution states that assembly districts must "be bounded by county, precinct, town or ward lines." This has traditionally been implemented by attempting to respect the unity of political subdivisions, and draw district boundaries in a way that avoids crossing existing political boundaries, typically counties and municipalities. This principle simplifies the administration of elections, and helps voters know which specific district they are in. But following this principle has proven difficult to satisfy while also satisfying the federal equal population requirement. Since the one-person one-vote rule was adopted, this principle has been followed less meticulously in Wisconsin.²³

4. Preserving Communities of Interest

According to the LRB Guidebook, respecting communities of interest means trying to group like-minded or similar people so that they may elect a representative who reflects their common values in a manner relevant to legislative representation. This is not an express Wisconsin Constitutional requirement and has proven difficult to define or implement for consistent mapping.

All four of the above-mentioned criteria are important in map making. When one-person-one-vote and VRA compliance are added to the equation, map making becomes complicated. Prioritizing one criterion inevitably comes at the expense of another. This became crystal clear during the 2020-2022 redistricting cycle, when not only the official map makers but the general

²⁰ LRB Guidebook p. 16.

²¹ Rebecca Clarke v Wisconsin Elections Commission, Appeal No 2023AP1399-OA.
<https://www.wicourts.gov/courts/supreme/origact/2023ap1399.htm>.

²² See Section VIII for definitions of Reock and Polsby-Popper.

²³ LRB Guidebook p. 17.

public had access to sophisticated map making tools and began to create and rate Wisconsin legislative voting maps.

D. Types of Voting Maps

1. Wisconsin Legislative Maps



Most of the redistricting work focuses on Wisconsin's assembly districts. Because senate districts are comprised of three contiguous assembly districts nested together,²⁴ a Wisconsin senate map's performance under the criteria is inherited from those of the assembly maps. To our knowledge, no one has ever challenged a senate map without challenging the corresponding assembly map.

2. Wisconsin Congressional Maps

Congressional redistricting in Wisconsin must conform to the U.S. Constitution and the Voting Rights Act of 1965, including requirements for equal population among congressional districts, avoiding racial gerrymanders, and providing equal opportunity for minority groups to elect candidates of their choice. Wisconsin has no statutory or constitutional guidelines for congressional redistricting.²⁵ However, Wisconsin's congressional district mapping traditionally considers contiguity, compactness, and political boundaries.



E. Resolving Disputes

As stated above, Wisconsin's legislature draws the maps, and the governor enacts them into law or vetoes them. History has proven this method to be fraught with legal trouble. The chart below, drawn from the LRB Guidebook,²⁶ shows how redistricting has worked – or not worked – since 1960. With one exception (1970), the only time redistricting has stayed out of the courts is when there was a trifecta, with one political party in control of the assembly, the senate, and the governor's office.

²⁴ Id. p. 19.

²⁵ Id. p. 18.

²⁶ Id. pp. 47-73.

<u>Census Year</u>	<u>Assembly</u>	<u>Senate</u>	<u>Governor</u>	<u>Plan determined by</u>
1960	Republican	Republican	Democrat	Federal Court
1970	Democrat	Republican	Democrat	Special Session
1980	Democrat	Democrat	Rep / Dem	FedCrt / Trifecta ²⁷
1990	Democrat	Democrat	Republican	Federal Court
2000	Republican	Democrat	Republican	Federal Court
2010	Republican	Republican	Republican	Trifecta ²⁸
2020	Republican	Republican	Democrat	WI Supreme Court



F. 2022 - Redistricting Criteria Changes

The highlighted portion of Table 1 on the following page contains 11 potential criteria by which a Wisconsin assembly map can be judged, based on the U.S. Constitution, the Wisconsin Constitution, and traditional redistricting principles. The rest of Table 1 reflects new criteria considered during the 2020-2022 redistricting cycle.

²⁷ According to the LRB Guidebook (pp 61-62), when the legislature and governor could not agree to a redistricting plan, the federal court stepped in and drew maps. One election was held under what the court conceded was an imperfect plan. That election led to a trifecta, with Democrats in charge of both statehouses and the governor's office. A new plan was drawn by the legislature, which the governor ultimately signed into law. That plan "did not deviate substantially from the court plan, but the legislature made sure to note that it had 'approved upon it' by creating the lowest population deviation in the history of Wisconsin redistricting. The overall range was 1.72 percent for assembly districts and 1.05 percent for senate districts." (Footnotes omitted).

²⁸ The 2011 Map was challenged in federal court, and two Milwaukee County districts were redrawn to ensure Hispanics could elect the candidate of their choice. *Baldus v. Members of the Wis. Gov't Accountability Bd.*, 849 F. Supp. 2d 840, 849-51, 852-3 (E.D. Wis. 2012), discussed in LRB Guidebook p. 72.

Table 1 Map Criteria

			2016	2020	2022	2022	2022	
Criteria	US Const.	WI Const.	Trad LRB 2016	Trad LRB 2020	Gov Ex. Or. #66	PMC	Jt Res (SJR 63)	Total # Reqs
Relatively equal district populations - one person one vote	x		x	x	x	x	x	6
Contiguity of districts		x	x	x	x	x	x	6
Compactness of districts		x	x	x	x	x	x	6
Minority opportunity to elect	x		x	x	x	x		5
Communities of interest intact			x	x	x	x	x	5
Municipalities intact			x	x	x	x	x	5
County splitting minimized			x	x		x	x	4
Partisan Fairness					x	x		2
Core Retention					x		x	2
Minimal odd to even Senate change							x	1
Competitiveness			men- tioned			men- tioned		0

Sources:

“One person one vote”	“The conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing -- one person, one vote.” Gray v Sanders, 372 US 368, 381 (1963)
Voting Rights Act (Section 2)	52 U.S.C. § 10301
WI Constitution	https://docs.legis.wisconsin.gov/2011/related/wiscon/_14
Legis. Ref. Bureau 2016	https://www.wisdc.org/images/files/pdf_imported/redistricting/redistricting_april2016_leg_ref_bureau.pdf
Legis. Ref. Bureau 2020	https://docs.legis.wisconsin.gov/misc/lrb/wisconsin_elections_project/redistricting_wisconsin_2020_1_2.pdf
Executive Order #66	https://content.govdelivery.com/attachments/WIGOV/2020/01/27/file_attachments/1366435/EO066%20-The%20People%27s%20Maps%20Commission-

	ROTATED.pdf
People's Maps Commission	https://evers.wi.gov/Documents/PMCCriteriaMemoFINAL.pdf
Legislature 2020	https://legis.wisconsin.gov/assembly/63/vos/media/news-updates-2019-to-2023/2021/state-legislature-invites-broad-public-input-on-redistricting-efforts/

Note that only the Governor’s Executive Order #66 and the People’s Maps Commission have **partisan fairness** on their criteria list. The LRB and the 2020 Legislature excluded this criterion. The LRB 2016 Guidebook states that, “Competitiveness is a relatively new principle that may be considered in drawing legislative districts.”²⁹ The word “competitiveness” is nowhere to be found in the 2020 LRB Guidebook, and the PMC eliminated competitiveness as a primary concern, based on data suggesting it would be a byproduct of satisfying the other criteria.

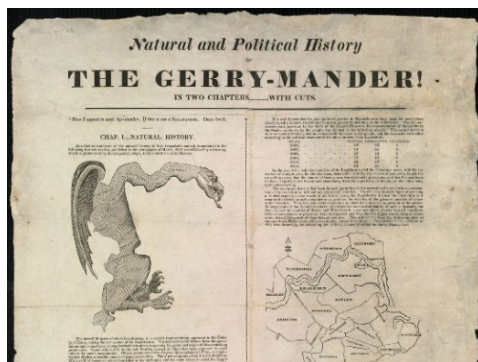
One criterion -- **minimal odd to even senate district change** -- appears only in the SJR 63 column. These would be logical considerations if all parties agreed on the fairness of the current enacted map. Maximizing **core retention** is usually measured as minimal district change, the average percentage of district populations that remain in the same district after redistricting,

G. Partisan Gerrymandering and Other Controversies

Much of the controversy over assembly redistricting in Wisconsin is a direct result of disagreement over what constitutes “traditional” map criteria, those beyond the five MUSTS: equal population, contiguity, governmental boundaries, compactness, and minority opportunity.

Another major controversy has come to the forefront: “partisan gerrymandering.”

Partisan gerrymandering is the act of dividing or arranging a voting map unit into election districts in a way that gives one political party an unfair advantage.³⁰



Gerrymandering is not new. Indeed, the word “gerrymander” comes from a voting map signed into law on February 11, 1812 by Elbridge Gerry, then governor of Massachusetts, in order to keep his political party in power in the upcoming election.³¹

But advances in math and computer science have given map makers the ability to draw maps that may often appear normal, but contain deep and sustaining partisan

²⁹ Redistricting in Wisconsin (2016), p. 5.

https://www.wisdc.org/images/files/pdf_imported/redistricting/redistricting_april2016_leg_ref_bureau.pdf.

³⁰ Merriam-Webster Dictionary. <https://www.merriam-webster.com/dictionary/gerrymander>.

³¹ Library of Congress Blog, Elbridge Gerry and the Monstrous Gerrymander. February 10, 2017. <https://blogs.loc.gov/law/2017/02/elbridge-gerry-and-the-monstrous-gerrymander/>. Photo left is the map that

bias. Those same math and computer science advances have given democracy defenders the ability to spot partisan gerrymanders. This set the stage for a new type of legal battle.

The maps drawn by the legislature after the 2010 Census contained an extreme partisan gerrymander.³² By the time the maps were redistricted after the 2020 Census, Wisconsin voters knew what the word “gerrymandering” meant. They knew they didn’t like it. And they did all they could to end it.



Opponents of the Republican redistricting plans vow to fight the maps at a rally ahead of a joint legislative committee hearing in Madison, Wisconsin, in October 2021. | Scott Bauer/AP Photo

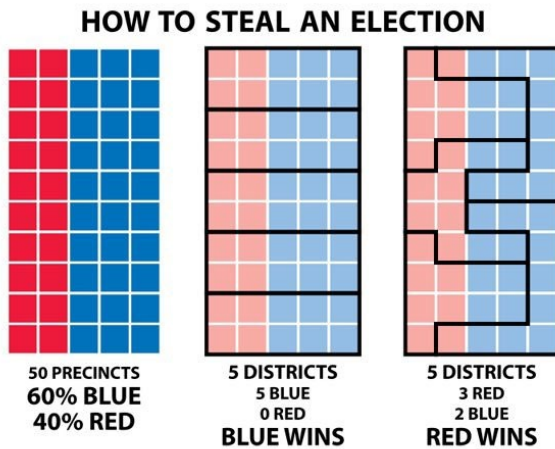
popularized the word “gerrymander.” <https://www.nationalgeographic.com/culture/article/map-gerrymander-redistricting-history-newspaper>.

³² In Section III we discuss how the maps were gerrymandered, and how plaintiffs in *Whitford v Gill* proved they were gerrymandered.

III. We the People Weigh In

Redistricting is sometimes viewed as a complicated math and map exercise done by bureaucrats. The public used to routinely accept changes to their voting maps. But after the 2010 redistricting cycle, when people in Wisconsin found their voting maps completely transformed, they began to wake up and pay attention.

What was it about this particular redistricting cycle that motivated Wisconsinites of all stripes to jump into the fray of the redistricting process, and, more important, stick with it?



Simply put, after the 2010 redistricting cycle, Wisconsin voters realized that extreme partisan gerrymandering had taken over their voting maps, and the politicians who drew the maps were now choosing their voters, instead of the other way around.

Wisconsinites first noticed that something was different when they went to their polling places to vote following the enactment of 2011 WISCONSIN ACT 43,¹ which created new voting maps (“2011 Map”). Many were surprised to see that their municipalities had

been divided into two or more districts. Others found that their counties had been split into two, three, even four districts in some cases. While slicing and dicing communities, *the map makers managed to move 2,357,592 people² -- 41.4% of the population³ --* from one assembly voting district to another as they created the 2011 Map.

But it wasn’t just people’s voting districts that changed. Their relationship with their legislators changed. Municipalities and counties began to realize that being divided affected their ability to solve problems. It was hard for citizens to break through to their legislators. To get anywhere on an issue affecting their community, they had to contact multiple state legislators. Voters found their representatives becoming less and less responsive, particularly if the voters held views different from their representatives. This unresponsiveness did not just affect voters in split municipalities and counties, but everyone throughout the entire state. Even if a voter shared

¹ <https://docs.legis.wisconsin.gov/2011/related/acts/43>.

² See discussion of the *Baldus* case below. *Baldus v. Members of the Wis. Gov’t Accountability Bd.*, 849 F. Supp. 2d 840, 849–51, 852–3 (E.D. Wis. 2012).

³ Wisconsin’s population in 2010 was 5,686,986.

https://cdn.apl.wisc.edu/publications/2010_census_chartbook_wi.pdf, p. 7.

political affiliation with their representative, if that representative could count on being re-elected, the voter could be ignored.

As the years went on, it worsened. Phone calls and emails were not returned or got pat answers. Representatives refused to hold meetings. Candidates refused to debate their opponents during election cycles, and many ran unopposed because they were in “safe” districts.⁴

The legislature worked to entrench its power. It passed voter ID laws that discouraged citizens from voting.⁵ After Democrats won every statewide election in November 2018, the legislature and the outgoing Republican governor enacted lame-duck legislation that curbed both the governor’s and attorney general’s power.⁶

Meanwhile, the legislature stoked culture wars⁷ that divided rather than united the people of Wisconsin, while leaving serious problems unattended.

That was when they were working: during 2020, Wisconsin’s “full-time” legislature was out of session for 170 straight days. A review found that in that COVID-pandemic year, Wisconsin had the least active full-time legislature in the nation. And it wasn’t because they thought it best to stay home during COVID. In fact, they fought the governor’s COVID safety measures.⁸

By the time the 2020-2022 redistricting cycle began, the state was abuzz with public hearings, letters to the editor, social media posts, referendums, town hall meetings and public forums, yard signs, billboards, and public awareness events at farmers markets, county fairs, libraries, bars and

⁴ **24th District Voter Forum canceled when Knodl declines to appear.** September 20, 2022.

<https://www.bobtatterson.com/news/24th-district-voter-forum-cancelled-when-knodl-declines-to-appear>. **Wisconsin’s least competitive legislative races happening Tuesday.** Wisconsin Examiner, November 8, 2022.

<https://wisconsinexaminer.com/2022/11/08/wisconsins-least-competitive-legislative-races-happening-tuesday/>.

⁵ **Wisconsin Strict ID Law Discouraged Voters, Study Finds,** New York Times September 25, 2017.

<https://www.nytimes.com/2017/09/25/us/wisconsin-voters.html>. The Legislature now wants those laws to become part of Wisconsin’s Constitution. **Wisconsin’s voter ID law would be enshrined in the state Constitution under GOP proposal: GOP lawmakers say it’s an effort to prevent the new liberal majority on the Wisconsin Supreme Court from overturning the 2011 law.** Wisconsin Public Radio October 24, 2023.

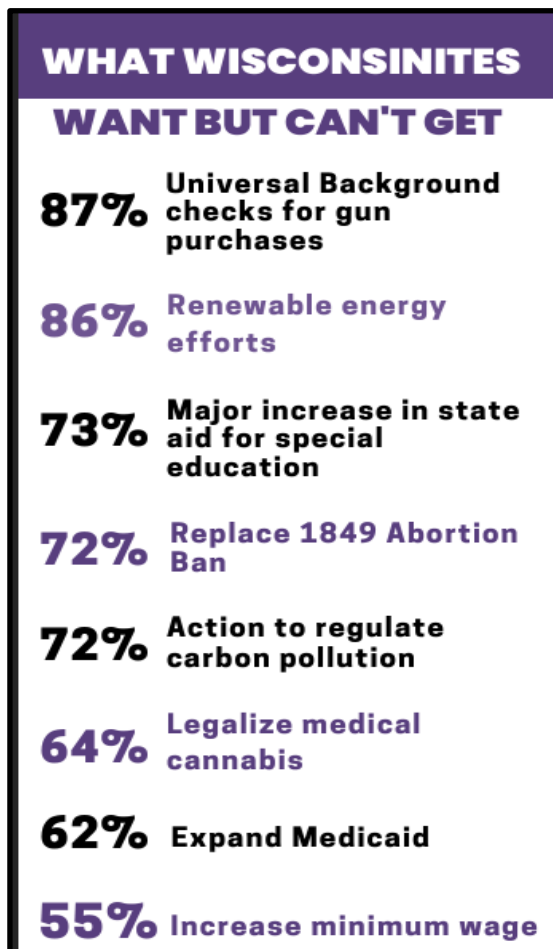
<https://www.wpr.org/wisconsins-voter-id-law-would-be-enshrined-state-constitution-under-gop-proposal>.

⁶ **Risky Precedents: A Brief Overview of the 2018 Wisconsin Lame Duck Laws & the Separation of Powers Doctrine.** Marquette Law School (blog) March 22, 2019. <https://law.marquette.edu/facultyblog/2019/03/risky-precedents-a-brief-overview-of-the-2018-wisconsin-lame-duck-laws-the-separation-of-powers-doctrine/>.

⁷ See, for example, **Attacks on new UW-Madison chancellor show how culture wars have come for college presidents.** Higher Ed Dive May 20 2022. <https://www.highereddive.com/news/attacks-on-new-uw-madison-chancellor-show-how-culture-wars-have-come-for-co/623921/>.

⁸ **“Review finds Wisconsin has least active full-time legislature in nation since pandemic”** read a headline in WisPolitics on October 6, 2020. “Wisconsinites deserve elected officials who will put politics aside and show up to work to do the right thing,” said a representative of the governor, adding “It’s unconscionable that Republicans who haven’t passed a bill in 170 days somehow mustered the will to join yet another lawsuit aimed at preventing the governor from keeping people safe.” <https://www.wispolitics.com/2020/review-finds-wisconsin-has-least-active-full-time-legislature-in-nation-since-pandemic/>.

cafes. Groups of voters had brought lawsuits against the legislature. Bipartisan efforts to fix the problem were raised time and time again in the legislature, to no avail.



Wisconsin had a legislature that would not listen to voters. Surveys and polls showed the issues voters wanted the legislature to address, to no avail.⁹

Voters now understood that partisan gerrymandering stood in the way of progress. The January 2019 Marquette Law School Poll declared:

Seventy-two percent of voters say they prefer redistricting of legislative and congressional districts to be done by a nonpartisan commission, while 18 percent prefer redistricting be done by the legislature and governor. Majorities in each partisan group favor a nonpartisan commission for redistricting... Less than 30 percent of each group preferred redistricting be done by the legislature and governor....¹⁰

On the surface, it was evident that Wisconsin had a legislature out of step with most Wisconsinites. Below that surface there seemed to be an insatiable lust for power so great it gave meaning to the phrase “power tends to corrupt, and absolute power corrupts absolutely.”¹¹

To understand how Wisconsin got to this juncture, we turn the clock back to July of 2011.

⁹ Polling data supporting the statistics in the text box above are at <https://bit.ly/WisconsinPollingResults> (updated 10/29/2023). Examples of 2021 bills that were introduced but never got so much as a hearing include AB 419 (protect drinking water from PFAS); AB 713 (protect abortion access); AB 846 (legalize marijuana); and AB 444 (expand Medicaid eligibility).

¹⁰ **New Marquette Law School Poll finds some issues less divisive amid continuing partisan divide**, Marquette Law School, January 24, 2019. <https://law.marquette.edu/poll/2019/01/24/mlsp51release/>.

¹¹ In a letter to a Cambridge University colleague, Lord Acton wrote: “If there is any presumption, it is ... against holders of power, increasing as the power increases. Historic responsibility has to make up for the want of legal responsibility. Power tends to corrupt and absolute power corrupts absolutely. Great men are almost always bad men, even when they exercise influence and not authority; still more when you add the tendency or the certainty of corruption by authority.” Reprinted at <https://www.nytimes.com/1974/03/13/archives/lord-actons-famous-remark.html>.

A. A Trifecta Enacts the 2011 Map

Following the 2010 November election, one party held a “trifecta” in Wisconsin government, with the assembly, the senate, and the governor’s office under single party control. The field of computer science had made great strides since the 2000 redistricting cycle. Computer programs could quickly and efficiently draw maps that to the naked eye appeared relatively normal, but they were not. The maps could contain partisan gerrymanders that provided one party a partisan advantage. And if the maps were not extreme enough, new, “better” maps, could be generated. On and on it could go until the people in charge of the maps settled on a normal looking map that was, in practice, so extreme it would guarantee the ruling party a decade of dominance in a deeply purple state.¹²

The Republican leaders who ruled the trifecta seized their opportunity. Using taxpayer dollars, they hired individuals who drew politically gerrymandered maps, which were redrawn over and over again until no further partisan advantage could be found. The maps they produced could be viewed only in a locked room at the law firm of Michael Best & Friedrich across from the State Capitol in Madison.

Only Republican leaders saw the entire map. After signing a nondisclosure agreement, individual Republican members were filed into the room one by one to view a map showing just their new district, who their new constituents would be. They were given a memo that discussed the partisan makeup of the district, but said nothing about contiguity, compactness, or core population. Meanwhile, Democrats were denied public funding to create or analyze voting maps, had no access to the Republican drawn maps before they were made public, and once they were public had no time to analyze them.¹³

On July 11, 2011, the assembly was presented with the voting maps Republicans had been working on behind closed doors for months. Two days later one public hearing was held. On August 2, the assembly and senate passed the Act 43 maps and presented them to the governor on August 2. He signed them

The legislature also adopted (on July 25) Act 39.¹ It reversed the order in which districts were drawn, allowing statewide maps to be adopted before local communities had an opportunity to address their own districts. It also allowed districts to be drawn based on census blocks rather than wards drawn by municipalities. This departure from the norm allowed the legislature to begin their secret gerrymandering project as soon the Census Bureau released data in March 2011, so their work was complete long before expected.

¹² Partisan gerrymandering is the act of dividing or arranging a voting map unit into election districts in a way that gives one political party an unfair advantage. See also the pages that follow.

¹³ Opinion, Whitford v Gill, United States District Court for the Western District of Wisconsin. Case 3:15-cv-00421-bbc Document # 166, filed 11/21/16. Slip op pp. 8-15. <https://www.brennancenter.org/sites/default/files/legal-work/Whitford-Opinion112116.pdf>.

into law one week later. Wisconsin had a new voting map -- the 2011 Map -- that would last a decade, and if that map worked as they hoped it would, the GOP would still be in power the next time maps had to be drawn.¹⁴ It was stunning and done with animosity:

Republican Assembly leaders later told Rep. Pasch that Senate Republicans demanded the changes to her district to “screw[]” her for “running against Alberta.” This was not an isolated incident. Shortly after the maps were drawn, a Republican Assembly leader approached Amicus Amy Sue Vruwink, then a Democratic Representative, and bragged, “We f—ed you. We f—ed you good.”¹⁵

The 2011 Map was enacted earlier than any plan since 1921.¹⁶ It also had the lowest population deviations of any legislative redistricting plan in Wisconsin history. Districts were within +/- 0.4 percent (.76 total deviation) of an exactly equal “one person one vote” size. But the 2011 Map moved a remarkable number of people from one legislative district to another. More than *forty-one percent* of Wisconsin’s population found themselves in a new assembly district. Civic boundaries and communities of interest were carved up. The 2011 Map divided college campuses, neighborhoods, tribal communities, municipalities, school districts, and counties, whatever stood in their way. They blew up the prior map. Clearly the “least-change” theory the legislature would adopt a decade later was, at the time, not considered to have any value whatsoever.

B. The Public Reacts – Lawsuits

A group of Wisconsin voters immediately recognized partisan gerrymandering’s threat to democracy. Their first and continuing response was to challenge them in court.

The 2011 Map was first challenged in federal court in Baldus v Members of the Wisconsin Government Accountability Board (GAB). With help from lawyers, a group of Wisconsin voters -- among them Carlene Bechen, who would go on to lead Wisconsin’s Fair Maps Coalition -- filed a lawsuit in federal court claiming the 2011 Map: 1) violated the Voting Rights Act (VRA) and 2) contained a partisan gerrymander extreme enough to violate their rights under the 14th



¹⁴ Id. p. 15.

¹⁵ What happened in Wisconsin was not unique. When Whitford v Gill was before the U.S. Supreme Court, an Amicus Brief was filed on behalf of 57 current and former state legislators (26 Republicans and 39 Democrats). The brief used anecdotes from eight states to show how partisan gerrymandering causes breakdown and dysfunction in the political process. The incidents listed here are from pp. 13-14 of the brief, which can be accessed at https://www.brennancenter.org/sites/default/files/legal-work/Gill_AmicusBrief_BipartisanLegislators_InSupportofAppellees.pdf.

¹⁶ LRB Guide p. 78.

Amendment of the U.S. Constitution. In March 2012, the U.S. District Court for the Eastern District of Wisconsin found the map violated the VRA. The plaintiffs dropped the partisan gerrymandering argument during the trial. The court altered the boundaries of two assembly districts in Milwaukee County to ensure that Hispanics could elect a candidate of their choice, and elections proceeded under the modified 2011 Map.

But the Baldus decision made one thing clear: many voters had been needlessly moved from one voting district to another:

“Only 323,026 people needed to be moved from one assembly district to another in order to equalize the populations numerically, but instead Act 43 moves more than seven times that number – 2,357,592 people – for a net change that results in districts that are roughly equal in size. Similarly, only 231,241 people needed to move in order to create equal senate districts, but Act 43 moves 1,205,216 – more than five times as many. Even accepting the argument urged by the GAB that one cannot change one district without affecting another, these are striking numbers.”¹⁷

Furthermore, while the Baldus case was open, the defendants attempted to hide or destroy evidence. Michael Best & Friedrich was fined by the court, and the legislature was ordered to turn over computers to forensic investigators hired by the plaintiffs. Those investigators found evidence, buried in the computers’ hard drives, proving that dozens of maps had been drawn, each measured for its partisan advantage, until it was impossible to further improve the partisan tilt of the maps. Only then did the map drawers stop their exercise and finalize their map.¹⁸

By this time, citizens across America were becoming aware of partisan gerrymanders in their home states. The country learned that 2011 statehouse maps had been drawn as part of a national effort called REDMAP. What happened in Wisconsin had happened elsewhere. Later, an article in The Atlantic began with “This ain’t your grandfather’s gerrymanders.”¹⁹

¹⁷ Memorandum and Opinion, Baldus v Members of the Wisconsin Government Accountability Board, United States District Court for the Western District of Wisconsin. Case 2:11-cv-00562-JPS-DPW-RMD, Document # 210, filed 03/22/12.

¹⁸ These articles provide a fair account of what transpired in the Baldus case. **Federal judges slam GOP lawmakers over redistricting secrecy.** <https://archive.jsonline.com/news/statepolitics/federal-judges-slam-gop-lawmakers-over-redistricting-secrecy-0l47pqm-139467038.html/>. **Lawyers in GOP redistricting case withheld 34 emails from groups.** https://archive.jsonline.com/news/statepolitics/lawyers-in-gop-redistricting-case-withheld-34-emails-from-groups-5v789vn-174380121.html. **Democrats’ short-lived 2012 recall victory led to key evidence in partisan gerrymandering case.** https://madison.com/news/local/govt-and-politics/democrats-short-lived-2012-recall-victory-led-to-key-evidence-in-partisan-gerrymandering-case/article_d5cfb956-6e93-5c81-8403-050493b5412e.html.

¹⁹ Author David Daley wrote extensively about RedMap, and partisan gerrymandering in Wisconsin and elsewhere, in his seminal book **Ratf**ked: Why Your Vote Doesn't Count** (WW Norton 2016). The following review from The New Yorker is also recommended: **Drawing the Line: How redistricting turned America from blue to red.** <https://www.newyorker.com/magazine/2016/06/27/ratfcked-the-influence-of-redistricting>. Another article worth reading is from the October 2017 issue of The Atlantic: **How Redistricting Became a Technological Arms Race.** <https://www.theatlantic.com/politics/archive/2017/10/gerrymandering-technology-redmap-2020/543888/>.

In early 2013, a group of friends in politics and law met at a Milwaukee landmark called the Watts Tea Room.²⁰ They chatted about what they could do about Wisconsin's new voting maps. The leader of the group, lawyer Fred Kessler, had gone to college with UW-Madison law professor Bill Whitford, and they added him to their group. They knew that to win a lawsuit, plaintiffs have to be able to measure the damage caused by the maps. They needed help from practicing lawyers, statisticians, and the like. A University of Chicago professor named Nick Stephanopoulos had published an article on something called "the efficiency gap," which could objectively measure partisan fairness.²¹ Now armed with data recovered from the computers seized in Baldus, and an objective test for partisan fairness, a team of lawyers and a new group of voters agreed to take on Wisconsin's gerrymandered maps. Bill Whitford became the named plaintiff in a case that went all the way to the United States Supreme Court.

C. Whitford v Gill

In July 2015, the Whitford v Gill voters filed a complaint with the U.S. District Court for the Western District of Wisconsin. The Whitford plaintiffs alleged that the 2011 Map's assembly districts intentionally favored the GOP in the legislature to such an extent as to violate the equal protection clause of the 14th Amendment.



Critical to the case was evidence showing how the map had been drawn and redrawn time and time again in search of maximum political gain. As more thoroughly described below, the evidence showed that Republican leaders had used multiple iterations of computer modeling, past election data, and voters' partisan preferences to design the state legislative districts so that Republican votes would be used more efficiently than the Democratic votes, maximizing the Republican's advantage. Computer modeling allowed each iteration to be assessed for anticipated partisan performance of each district as well as the assembly and senate as a whole, then that performance was translated into ever greater assembly seat share.

Wisconsin's assembly has 99 seats. As a starting point, the 2002 assembly district maps were simply updated using the 2010 Census data. In that case, expected partisan performance projected Republicans would win 50 of the 99 seats and the Democrats would win 49 of the 99

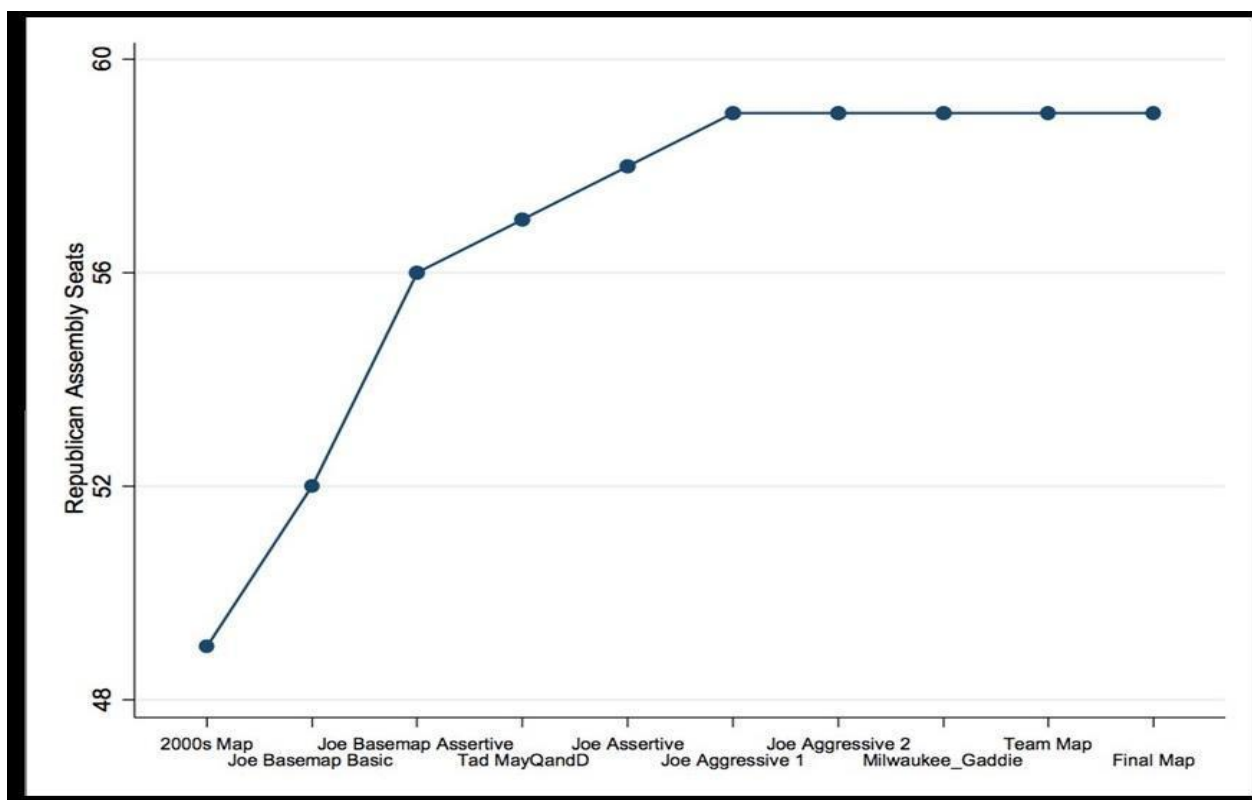
²⁰ Wisconsin Public Radio brought many of the stories about Wisconsin redistricting to life for listeners in the 2020 redistricting series "Mapped Out." The Watts Tea Room story is found in episode 4. <https://www.wpr.org/wpr-reports/mappedout/redistricting-underway-wisconsin-what-it-anyway#Derailed-pods-section>.

²¹ The efficiency gap is the difference between the two parties' wasted votes, divided by the total number of votes. It is a measure devised by University of Chicago law professor Nicholas Stephanopoulos and political scientist Eric McGhee in 2014. Stephanopoulos and McGhee suggest that an efficiency gap of 8% or greater is presumptively unconstitutional. Read more in Eric Petry's undated paper, **How the Efficiency Gap Works**. https://www.brennancenter.org/sites/default/files/legal-work/How_the_Efficiency_Gap_Standard_Works.pdf.

seats. Many iterations of maps were then created to increase that partisan advantage, as shown by these examples (named for their drafter):

- 2002 Map w/ 2010 data 50 seats out of 99 advantage
- Handrick Map 11: 53 seats out of 99 advantage
- Handrick Map 9: 54 seats out of 99 advantage
- Foltz Map 48: 56 seats out of 99 advantage
- Ottman Map 14: 57 seats out of 99 advantage
- Act 43: 59 seats out of 99 advantage

Once a 59-seat advantage had been reached, additional computer iterations were run to see if an even greater partisan advantage could be achieved. They all plateaued at 59. Act 43 was set at the 59-seat level.



The analysis above was created by legislative aides and consultants who drew maps for the Legislature. The chart, taken from evidence presented at the *Whitford v Gill* trial, gives the reader a visual presentation of the partisan climb the various maps produced, as well as the plateau the map makers finally hit.²²

During the trial, the Whitford plaintiffs proved that the districts were gerrymandered by “cracking” and “packing” individuals into and out of districts based on their voting history. The map makers “packed” voters who favored the Democratic candidates into safe voting districts, where their candidates would win by large margins. That wasted votes. They “cracked” other

²² WIMAP obtained this information from attorney Doug Poland, who represented the Whitford plaintiff group.

districts, moving voters who favored Democratic candidates from districts where those candidates had a chance of winning into districts where those candidates would lose, but by small margins. That also wasted votes. When the map makers identified safe Republican districts, representatives of those districts were told that voters from their districts were going to be taken away and added to other districts that were not yet safe. These legislators were labeled “Donors to the Team.”²³

By moving lines to create districts where Republican candidates would win their districts with relatively small margins and Democratic candidates would win theirs with huge margins, Republican leaders diluted the voting power of Democratic voters. The Republican votes were used efficiently; the Democratic votes were wasted. The “efficiency gap” could objectively measure the waste, and partisan gerrymandering could be proven.²⁴

In addition, the Whitford plaintiffs used findings of the Baldus court to prove the 2011 Map moved *more than seven times as many people as were necessary from one assembly district to another, and more than five times as many people as were necessary from one senate district to another*.²⁵

After years of preparation and a four-day trial, the Whitford parties rested their case. The federal court rendered its decision on November 21, 2016. After reviewing the law and analyzing the facts, the court applied a three-part test to prove partisan gerrymandering. The court issued a 118-page opinion which concluded that the 2011 Map 1) was drawn for a partisan purpose; 2) served its purpose, giving one party a clear and lasting partisan advantage; and 3) could not be justified by geography, including any argument that voters who favored the Democrats self-sort



in clusters in cities. The court also noted that the process was not transparent, and that there was very limited time for public comment. Judgment was granted to the plaintiffs.²⁶

Unfortunately, their victory was short lived. The defendants filed an appeal with the United States Supreme Court (SCOTUS). On June 18, 2018, SCOTUS ruled that the plaintiffs lacked “standing.” The plaintiffs did not present evidence sufficient to show that they had suffered harm under Article III of the U.S. Constitution as is required to bring a claim in federal court. SCOTUS did not consider the merits of the case, but instead sent it back to the District Court for further action.²⁷ Although some thought the SCOTUS decision was wrong, it was the court of last resort. Voters

²³ Opinion, *Whitford v Gill*, United States District Court for the Western District of Wisconsin. Case 3:15-cv-00421-bbc Document # 166, filed 11/21/16. Slip op p. 14. Accessible at.

<https://www.brennancenter.org/sites/default/files/legal-work/Whitford-Opinion112116.pdf>.

²⁴ Id. p. 17.

²⁵ See quote at footnote 17.

²⁶ *Whitford v Gill*, three-part test at p. 56.

²⁷ **The Supreme Court still won't crack down on partisan gerrymandering — yet, at least.** Vox, June 18 2018. <https://www.vox.com/2018/6/18/17474912/supreme-court-gerrymandering-gill-whitford-wisconsin>.

from additional gerrymandered districts were added to the lawsuit, in what would become Phase 2 of the Whitford case (Whitford II).



Statewide elections in 2018 showed further evidence of the 2011 Map’s extreme partisan gerrymander. That year, Democrats won all five statewide elections — governor, attorney general, state treasurer, secretary of state, and U.S. Senate — but the Wisconsin state legislature was stuck stubbornly under GOP rule: 64% majority in the assembly and 58% majority in the senate. Even voters who rarely noticed anything beyond the top races and their own representative knew something was wrong with the state’s voting maps.²⁸

Beginning in late 2018, the Whitford II parties began discovery, including depositions of the plaintiffs. Then, while the parties awaited trial, a June 2019 decision by the U.S. Supreme Court rendered the Wisconsin litigation moot.

In Rucho v. Common Cause, SCOTUS acknowledged that extreme partisan gerrymandering is undemocratic, but held that the issue is not “justiciable” in federal court. Federal courts are powerless to address partisan gerrymandering. Nonetheless, the Court said it “did not condone” partisan gerrymandering or leave those aggrieved to “echo in the void.” The Court went on to praise efforts done to fight gerrymandering at the state level, including state courts.²⁹ After Rucho came down, Whitford II was dismissed “without prejudice for lack of jurisdiction.”³⁰

It is important to note that Rucho is frequently mischaracterized by the Republican leaders as condoning partisan gerrymandering, or rendering it not justiciable anywhere, including state courts such as Wisconsin’s Supreme Court. In fact, WIMAP members have been told by their representatives that the Supreme Court said the 2011 Map was “fine.”³¹ That is simply not true.

Rucho was a crushing blow to fair voting maps advocates across America. But by then, a statewide anti-gerrymandering movement had taken hold in Wisconsin and beyond. In some states, efforts were underway to put referendums on the state ballot, making fair voting maps a requirement of the state’s constitution.³² Wisconsin’s Constitution does not allow amendment by public referendum. But Wisconsin voters could work at the local level. They could influence the court of public opinion. Much of this work was organized by leading Wisconsin nonprofits, and, ultimately, by what became known as Wisconsin’s Fair Maps Coalition.

²⁸ **The several layers of Republican power-grabbing in Wisconsin.** Washington Post December 4, 2018. <https://www.washingtonpost.com/politics/2018/12/04/several-layers-republican-power-grabbing-wisconsin/>.

²⁹ Rucho v Common Cause, see Section VII.

³⁰ Whitford v Gill, accessible at. <https://www.brennancenter.org/sites/default/files/legal-work/2019-07-03-319-Judgment.pdf>.

³¹ In discussions with constituents, both Representative Dan Knodl (AD24) and Senator Alberta Darling (S8) made this false claim.

³² Redistricting reform efforts, including a successful constitutional amendment effort in Michigan, are described in David Daley’s Unrigged (WW Norton 2020). As Daley wrote (p. 86), in Michigan, “Voters, not politicians, would now draw district lines--the basic building blocks of democracy.”

D. Public Activism -- The Fair Maps Coalition

For decades, nonprofit groups like Common Cause, the League of Women Voters of Wisconsin, and the Wisconsin Democracy Campaign had been advocating for a ban on partisan gerrymandering. Legislation was introduced in both chambers of the Wisconsin legislature in every session calling for a nonpartisan redistricting process. Rarely did these bills even get a committee hearing from the party in control of the legislature. Still, these nonprofit groups continued to beat the drum for a nonpartisan process. And they began working with voters, county by county, to pass advisory resolutions and referendums urging the legislature to ban partisan gerrymandering.

Then, in February 2019, a small group of volunteers started agitating and planning for a summit to educate and energize volunteers from across the state at the grassroots level into statewide action. In November 2019, nearly 200 volunteers met in Marshfield for the Fair Maps for Wisconsin Summit. At this day-long event, national and state experts who understood redistricting and the impact of gerrymandering educated attendees. Organizers led “action workshops” teaching participants how to recruit volunteers, work with the media, lobby and birddog legislators, and build the movement through relational organizing.

The Wisconsin Fair Maps Coalition (FMC) was a product of this meeting and a statewide organizer was hired to coordinate FMC efforts. Fair Maps activists formed regional teams and recruited thousands of volunteers. According to FMC data,³³ from November 2019 to the present, working together Wisconsinites:

- Educated voters about issues impacted by gerrymandered maps;
- Participated in Wisconsin Leadership Development training for strategic advocacy planning;
- Built Fair Maps Teams of local activists around the state;
- Gathered thousands of petition signatures calling for nonpartisan redistricting reform;
- Conducted exit surveys with voters (Feb. 2020) regarding their thoughts about redistricting;
- Hosted livestream of *Slay the Dragon* documentary featuring Wisconsin and Michigan about partisan gerrymandering for 1,000+ Wisconsin viewers followed by panel discussion
- Purchased billboards opposing partisan gerrymandering;
- Sent thousands of emails to state legislators opposing partisan gerrymandering;
- Passed county board resolutions and countywide referendums demanding a nonpartisan process for redistricting;
- Rallied in support of nonpartisan redistricting legislation proposed in the legislature in May 2021;

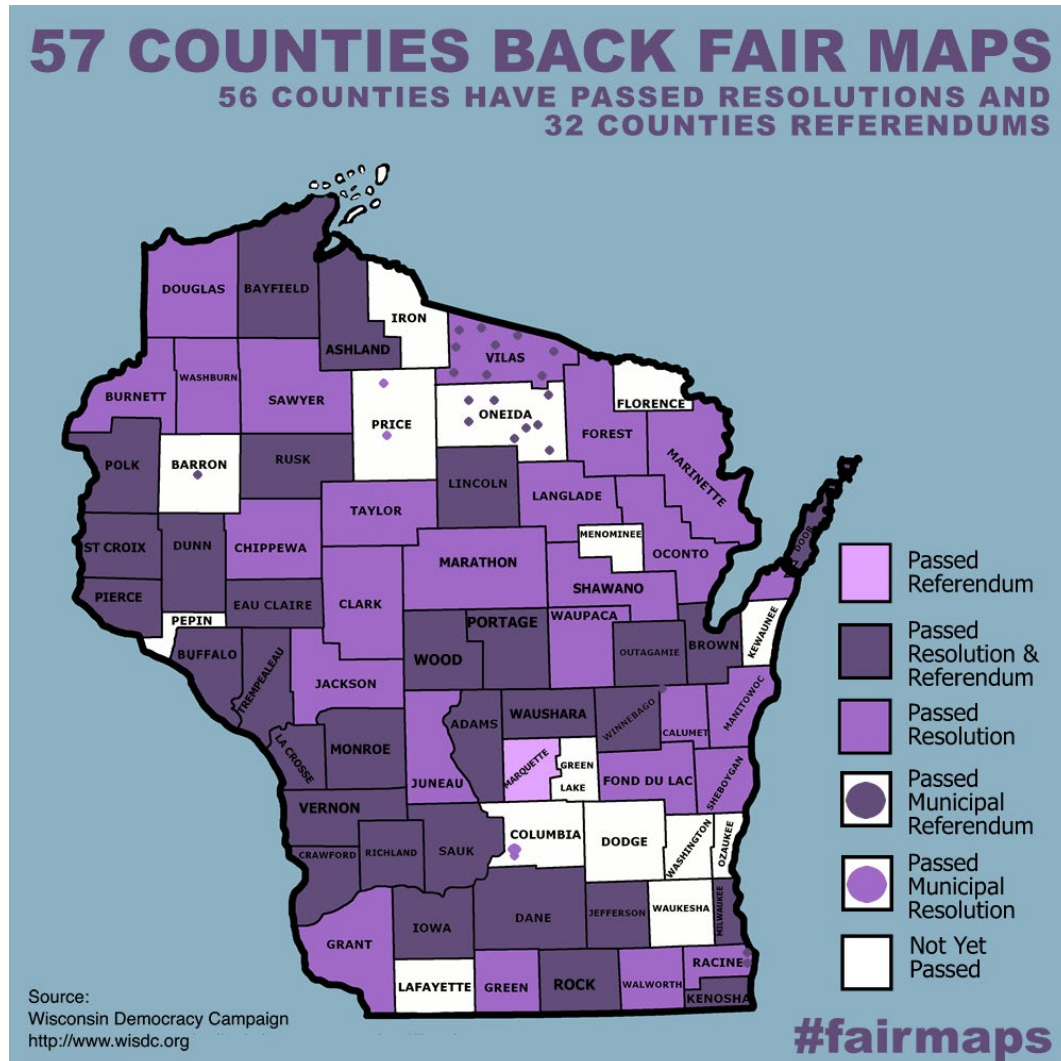
³³ This data comes from <https://www.fairmapswi.com/aboutfmc>.

- Hosted panel discussions prior to each PMC hearing to educate voters about the issues facing their congressional district and the impacts of gerrymandering on the region. FMC also offered testimony trainings to help people prepare to testify before the PMC
- Testified before the People’s Maps Commission about what fair representation looks like;
- Trained people to create ‘community of interest’ maps and assisted them in the process;
- Submitted 1,000+ maps to the PMC and legislature’s map portal;
- Participated in a virtual Legislative Lobby Day to advocate for the PMC’s maps and against the ‘least-change’ approach to new maps;
- Wrote hundreds of letters to the editor;
- Were featured in national magazines and local newspapers, radio interviews and television spots;
- Used *Redistricting Loteria* game to teach middle, high school, and college students about the process;
- Distributed tens of thousands of brochures about gerrymandering;
- Dispersed hundreds of yard signs and bumper stickers;
- Hosted dozens of educational events for local groups and organizations including AAUW, League of Women Voters, and Rotary;
- Mailed thousands of postcards to voters urging them to vote in spring and fall elections;
- Staged marches and rallies at the Wisconsin State Capitol and around the state;
- Testified against the gerrymandered 2022 maps;
- Created and posted ‘Mad About Maps’ videos to social media to call attention to what was happening;
- Held 17 simultaneous ‘Fair Courts = Fair Maps’ rallies around the state in frigid January temperatures while the maps were being batted back and forth between the Wisconsin and US Supreme Courts in 2021.
- Following the surprise introduction and passage — with NO public hearing — of SB415 (flawed redistricting bill) by speaker Vos in September 2023, the Fair Maps Coalition convened a Public Telling in the Wisconsin State Capitol on Monday, October 9th to hear the concerns of Wisconsin residents. On that Friday, the state senate scheduled a public hearing on the senate version (SB 488) for Thursday, October 19th in the Capitol. Voters from across the state turned out to share testimony against its passage.³⁴



³⁴ AB 415 passed the assembly, and is in committee at the Senate. See assessment by Common Cause. <https://www.commoncausewisconsin.org/2023/10/public-hearing-on-flawed-and-partisan.html>.

Since 2013, 57 counties have shown support for fair voting maps. Some passed resolutions; others passed referendums; and some passed both. Municipalities also passed referendums and resolutions. It didn't matter whether the districts were "Red" or "Blue," by overwhelming margins citizens called on state legislators to pass legislation creating a nonpartisan redistricting process.³⁵



Then, in 2023, citizen led reform efforts were abruptly curtailed. The gerrymandered legislature prohibited any future local or state advisory referendums. Today in Wisconsin, not only do citizens have no direct avenue to amend the Wisconsin Constitution to call for fair voting maps (as Michigan did), they can no longer even vote for advisory referendums.³⁶

³⁵ Wisconsin Democracy Campaign Redistricting Toolkit. <https://www.wisdc.org/reforms/118-redistricting/6392-toolkit-for-banning-gerrymandering-in-wisconsin>.

³⁶ The shared-revenue law, 2023 Wis. Act 12, generally eliminated the advisory-referendum process. See 2023 Wis. Act 12; Wisconsin Legislative Council, Act Memo on Act 12, p. 8, <https://docs.legis.wisconsin.gov/2023/related/lcactmemo/act012.pdf>.

Wisconsin's legislature is going out of its way to silence its citizens. Time and time again, legislators from the senate and assembly proposed bipartisan legislation to enact fair maps, which went into committee to die.³⁷

E. Poised for Change

In the years since 2012, books have been written about what happened in Wisconsin. David Daley's **Ratf**ked: Why Your Vote Doesn't Count** introduced Wisconsin's gerrymandered maps to the world. Called "extraordinarily timely" by the New York Times, it was perhaps the first explosive journalistic work explaining how statehouses were taken over through partisan gerrymandering. His sequel, **Unrigged: How Americans are Fighting Back**, chronicled the national movement to end partisan gerrymandering.³⁸ His work was integrated into a feature length documentary called **Slay the Dragon**, which chronicled efforts in Michigan, North Carolina, and Wisconsin, and had its world premiere at the 2019 Tribeca Film Festival.³⁹

David Pepper wrote about Ohio's gerrymander in **Laboratories of Autocracy: A Wake-Up Call from Behind the Lines**.⁴⁰ As Pepper states, "it's the statehouses, stupid." Pepper's sequel, **Saving Democracy: A User's Manual for Every American**, is a primer on how Americans can fight back.⁴¹

The Wisconsin Democracy Campaign⁴² is one of the trailblazing Wisconsin nonprofits working to end partisan gerrymandering, and the fiscal home for the Fair Maps Coalition. Before he retired, executive director Matthew Rothschild published a book titled **Twelve Ways to Save Democracy in Wisconsin**.⁴³ One of those ways is to end partisan gerrymandering.

In 2020, a nonprofit law firm called "Law Forward" was founded by two Madison lawyers, Jeff Mandell and Doug Poland, one of whom (Poland) had successfully litigated the Whitford lawsuit at the trial level. Law Forward litigated the gerrymandered 2022 maps, and has become a powerful legal advocate for voting rights in Wisconsin.⁴⁴

³⁷ The most recent example is 2021 Assembly Bill 395. <https://docs.legis.wisconsin.gov/2021/proposals/ab395>.

³⁸ See footnote 19.

³⁹ Tribeca wrote: "Directors Barak Goodman and Chris Durrance crafts a detailed, maddening, ultimately inspiring look—deftly balancing the facts and maps with the tireless work of people like Fahey to get us to act to ensure that democracy will survive." <https://tribecafilm.com/films/slay-the-dragon-2019>.

⁴⁰ St. Helena Press 2021. The Salon Magazine headline covering Pepper's work read: **How the states have become "Laboratories of Autocracy" — and why it's worse than you think; Former Ohio Democratic Party head David Pepper has a dire warning: Rigged state legislatures are destroying America.** <https://www.salon.com/2022/01/15/how-the-states-have-become-laboratories-of-autocracy--and-why-its-worse-than-you-think/>.

⁴¹ St. Helena Press 2023. The Vanity Fair headline read: **"We Have to Run Everywhere": David Pepper on Why We Have to Think Smaller to Save Democracy.** <https://www.vanityfair.com/news/2023/05/david-pepper-saving-democracy-interview>.

⁴² <https://www.wisdc.org/>.

⁴³ University of Wisconsin Press 2021. <https://uwpress.wisc.edu/books/5960.htm>. Midwest Review said "This pocket-sized handbook is essential for politically aware citizens as well as journalists and watchdogs who see Wisconsin as a crucial battleground state and political bellwether for the nation." https://www.midwestbookreview.com/wbw/jan_22.htm.

⁴⁴ <https://www.lawforward.org/about-us/our-story/>.

Recognizing that state-level government activity was being neglected, UW Madison Law School created the State Democracy Research Initiative.⁴⁵ Its mission is to foster academic research on state-level democracy, government institutions, and public law across the nation. Its co-director Robert Yablon has written law review articles on partisan gerrymandering, and was featured in a Wisconsin Public Radio series on gerrymandering called **Mapped Out**.⁴⁶ UW Madison mathematician Jordan Ellenberg wrote a bestseller called **Shape**.⁴⁷ The last chapter is novella-length and titled **How Math Broke Democracy (and Might Still Save It)**. In it, Ellenberg explains the geometry behind gerrymandering, and why the Supreme Court’s decision in Rucho v Common Cause was wrong. Both Yablon and Ellenberg testified against the proposed 2022 maps.

By the time the 2020 Census data were released, a legislature that wanted to stay in power for another decade was pitted against a governor committed to fair voting maps. The governor had formed a “People’s Maps Commission.”⁴⁸ Both the governor and the legislature were armed with lawyers ready and waiting in the wings. The Fair Maps Coalition had engaged activists in every corner of the state, a group of math and map lovers known as the Wisconsin Maps Assessment Project (WIMAP) was hard at work, and the general public was starting to understand what the words “redistricting” and “gerrymandering” meant, how those two words determine representative democracy in America, and how important representative democracy is to their lives and their freedoms.

This is how “We the People” became an integral part of the 2020-2022 redistricting cycle in a way never seen before in Wisconsin.



⁴⁵ <https://statedemocracy.law.wisc.edu/>.

⁴⁶ <https://www.wpr.org/wpr-reports/mappedout/courtrooms-commissions-redistricting-wisconsin-could-take-several-paths>.

⁴⁷ Penguin Random House 2022.

⁴⁸ See Section IV.

IV. The People's Maps Commission (PMC)



As stated in Section II, the legislature draws new voting maps every ten years, which the governor must accept or veto. As part of his first budget as governor, Democrat Tony Evers included recommendations for a nonpartisan redistricting process to be used during the 2020-2022 redistricting cycle. These recommendations were struck from the final budget with no funds allocated by the Republican-led Joint Committee on Finance.¹

Not deterred, Governor Evers announced an entirely new redistricting initiative in Wisconsin. Aware that Wisconsinites were eager for change, his approach was to bring ordinary Wisconsin citizens directly into the process. The People's Maps Commission (PMC) was formally created by Executive Order #66 in January, 2020,² long before the Census data became available on August 12, 2021.

¹ Within a few months of his election, the governor introduced his proposed 2019-2021 budget. <https://doa.wi.gov/Pages/StateFinances/2019-21-Executive-Budget.aspx>. It included funding for drawing nonpartisan voting maps: "The Governor's budget includes several provisions aimed at reestablishing good government practices... [G]errymandered legislative maps have rigged the process so that the majority party does not risk losing control of the State Assembly or Senate. The Governor is committed to making sure every single vote counts and that there is an opportunity for all Wisconsinites to participate in our democracy. The budget directs the nonpartisan Legislative Reference Bureau to redraw legislative and congressional redistricting maps and appropriates \$10,000 GPR biennially for that purpose." Budget in Brief p. 92. <https://doa.wi.gov/budget/SBO/2019-21%20Budget%20in%20Brief.pdf>. The recommendations were struck from the final budget with no funds allocated by the Republican-led Joint Committee on Finance.

² The Order can be found in the Final Report and Maps of the People's Maps Commission ("PMC Final Report"), October 2021, p. A2. Accessible at [https://evers.wi.gov/Documents/PMC/PMC_Report_Final_Full-compressed%20\(2\).pdf](https://evers.wi.gov/Documents/PMC/PMC_Report_Final_Full-compressed%20(2).pdf).

A. Goals and Process

The PMC's goal was "the prevention of voter disenfranchisement through equitable, accurate, legally correct redistricting maps prepared without any partisan political bias." When the Executive Order was issued, the idea of establishing a nonpartisan redistricting commission had already received overwhelming popular support.

Fifty of Wisconsin's 72 counties – containing approximately 78% of the state's population – had passed referendums or resolutions calling for nonpartisan redistricting. To ensure that citizens' voices were heard, Evers charged the PMC with visiting every congressional district to hear directly from Wisconsin residents across the State regarding their wishes and concerns for the next redistricting process and to draw fair maps for the Wisconsin legislature to consider.

The PMC was composed of members from each of Wisconsin's eight congressional districts, plus one at-large commissioner. Selected from 270 candidates, the members of the Commission were drawn from diverse backgrounds including education, business, medicine, administration, and community service, and included Black, Latinx, Native American and White women and men. The nonpartisan nature of the



Commission was reinforced by the fact that members could not be elected public or party officials or lobbyists, and were selected by a three-member panel of retired judges. The commissioners did not receive any compensation for their work. Dr. Christopher Ford (at-large commissioner) chaired the Commission. Other commissioners were: Elizabeth Tobias (CD1), Reuben Anthony Jr. (CD2), Annemarie MacClelland (CD3), Benjamin Rangel (CD4), Susan Ranft (CD5), Melissa Prentice (CD6), Jason Bisonette (CD7), and Anthony Phillips (CD8).³

The People's Maps Commission took public testimony from Wisconsin residents from the districts from October 2020 through March 2021. Because of the COVID pandemic, the public hearings were held virtually. Each public hearing included presentations from local and national authorities - lawyers, mathematicians, computer scientists, government officials, and more - who educated the public and the PMC Commissioners about the redistricting process, including the many factors to consider when configuring voting maps.

The PMC maintained its own website for written testimony, and as a depository for and access to all the products of its work.⁴ In April 2021, a portal was opened on the PMC website so Wisconsin residents and other interested parties could submit Community of Interest (COI) maps drawn with "Districtr" software. With help from the Fair Maps Coalition, individuals and groups were taught how to draw COI maps. More than a thousand COI maps were submitted, reviewed,

³ To see Chairman Christopher Ford's introduction, go to <https://www.youtube.com/watch?v=uyxRKdZf8Lg>.

⁴ PMC Final Report p. 9 and Exhibit 4.

and used as the PMC prepared to draw maps following the release of the Census information. In addition to COI maps, anyone could submit a map of a proposed voting district, or a complete voting map, for the assembly, the senate, or congress.

Because PMC members were not redistricting experts, it hired the Metric Geometry and Gerrymandering Group Redistricting Lab (“MGGG”) led by Dr. Moon Duchin (Tufts University) to aid in the map-drawing. Although encouraged by Dr. Duchin to draw their own maps, the Commission ultimately relied heavily on MGGG to supply them with examples of maps drawn with the aid of computer programming. MGGG created a “heat map” of the COI submissions, showing locations and concentrations, and the COI’s influenced the PMC’s decisions on priorities such as county and municipal splits.⁵



The October 2021 Final Report and Maps of the People’s Maps Commission is a thorough summary of the formation and workings of the PMC. The Commission excelled in transparency and public participation. To this day, each of the 8 monthly hearings,⁶ twenty-one Working Group meetings,⁷ and maps and written comments submitted by the public,⁸ can be accessed online.

As a first-time effort, the PMC faced many challenges. Its citizen commissioners needed considerable time to educate themselves on the many aspects of redistricting through expert testimony in the early part of its work. Their work was further hampered by the delayed release of the 2020 Census data. In retrospect, rather than wait for the 2020 Census, the Commission could have started serious map-drawing activities much sooner than it did by using estimated Census population data from 2019. It could have then adjusted the maps to account for population changes.

A serious drawback in the PMC’s procedures was its very delayed consideration of the Voting Rights Act in mapping Milwaukee County (where most of Wisconsin’s minority voters are clustered). Although some historical VRA experts gave testimony in January 2021, VRA mapping experts were brought in at a very late stage. Thus, the maps the PMC produced did not adequately reflect VRA requirements and were discredited by members of both parties as well as some members of Milwaukee’s Black and Brown communities.

The PMC’s independence also contributed to the lack of political support for its maps. Partisan input was forbidden throughout the entire process. Because the PMC was about people instead of politicians, when the maps were revealed, incumbents and power brokers *from both parties* had been excluded from the process.

⁵ PMC Final Report p. 18.

⁶ <https://govstatus.egov.com/peoplesmaps/work-records>

⁷ <https://www.youtube.com/@thepeoplesmapscommission504/streams>

⁸ <https://portal.wisconsin-mapping.org/>



Tony Phillips, Member of the Peoples Maps Commission, speaks during an informational and postcard-writing event hosted by The Outagamie Fair Maps Team on Wednesday, Wm. Glasheen USA TODAY NETWORK-Wisconsin

Because the PMC’s maps were completed and submitted to the legislature well before the Wisconsin Supreme Court’s decisive ruling that redistricting maps must follow a “least-change” approach, their maps had not used, and so were not compliant with, the novel approach. As such, the PMC maps never became part of the litigation process that ensued.

Most importantly, the PMC had no statutory authority. This hampered their work in a number of ways, including lack of funding, expertise, staff, communications, and other general support. Additional impediments included the distraction and delay caused by the COVID pandemic, and inadequate time for the task - 13 months from appointment to producing final maps, particularly in the absence of established procedures or staff when they began. Although it was an inaugural commission, much can be learned from their experience.

B. PMC Map Portal Submissions

The PMC opened its portal for district and COI map submissions on June 7, 2021. By August 8, 2021, 649 COI, 49 congressional, 17 senate, and 12 assembly maps were submitted to the portal.⁹ Sixty-four written comments were submitted through the portal, but the vast majority (773) were submitted directly to the PMC through its website after each of the eight hearings.¹⁰ MGGG grouped the COIs into 36 clusters, and summarized these in a report attached to the PMC’s final report.¹¹

C. PMC Assembly Maps

On Sept 30, 2021 the PMC released two draft assembly maps for public feedback. These maps were revisions of MGGG 28 and MGGG 29, maps generated with the aid of MGGG’s computer software. As stated in Section V of this Report, WIMAP reviewed maps using publicly available software, Dave’s Redistricting App (DRA)¹² software. When we reviewed the PMC’s draft maps, we found they did some things well: They held total population deviation to under 2%, DRA Proportionality ratings in the 70s, and DRA Competitiveness ratings in the 26 – 31 range.¹³ The maps had one Hispanic Majority district and four Black Majority districts. The PMC maps improved the Compactness and Splitting analytics of the MGGG maps. WIMAP’s analytical summaries of these maps along with others with total population deviations under 2% can be found online.¹⁴

⁹ Wisconsin PMC Submission Portal Overview through August 8, 2021. MGGG Redistricting Lab.

docs.google.com/document/d/16GRY3jUCZPHFiBKDsXis14-BjHECuMM9FJTD2DO7MI4/edit.

¹⁰ govstatus.egov.com/peoplesmaps/work-records.

¹¹ PMC Final Report p. A12.

¹² The nature and role of mapping software is discussed in Section V. Mapping criteria are discussed in Section VIII.

¹³ DRA ratings are described in detail in Section VIII, when we compare various maps.

¹⁴ docs.google.com/spreadsheets/d/1-q-77DKAg63xJ580TDmCA20POs1qD1rc/edit#gid=1827953260

The legislature published its assembly map on October 20, 2021. The PMC came out with a refinement of one of its draft maps on the same date. This refinement mostly responded to criticism that the draft PMC maps did not have an adequate number of minority opportunity districts in Milwaukee County. The refined map increased its DRA Minority Opportunity ratings substantially, but had only one Hispanic majority district and three Black majority districts. However, there were three districts with a Hispanic voting percentage between 35 and 50 and four districts with a Black voting percentage of between 40 and 50. The question of what percentage of minority voters in a district provides sufficient opportunity to elect representatives of their choosing is an area of unsettled law and depends on each district's history of racially polarized voting.

At a public hearing on October 28, 2021 Speaker of the Wisconsin State Assembly Robin Vos presented the legislature's assembly map as Senate Bill 621 to the Joint Senate Committee on Government Operations, Legal Review and Consumer Protection, and Assembly Committee on State Affairs.¹⁵ He noted that SB 621 compared favorably to the PMC assembly map because it had: a much smaller total deviation (.76% < 1.82%), 50 fewer county and municipality splits, and significantly better core retention, the percentage of population remaining in the same numbered district after redistricting. Vos made no mention of the number of Black and Hispanic majority districts in his presentation. Later in legislative debate, the PMC assembly map was criticized extensively by Democratic State Senator Lena Taylor and Assemblywoman Sylvia Ortiz-Velez for not having an adequate number of majority-minority districts.

The PMC's final assembly map did not respond to the criticisms it received and made only small changes to increase its DRA Proportionality rating,¹⁶ even though this was their lowest rated criterion.¹⁷ The final PMC assembly map did increase the number of Hispanic majority districts in Milwaukee County to two, but it also decreased the number of Black majority districts to two. It had five districts with Black Voting Age Population (BVAP) between 40 and 50 percent. Apparently, the PMC decided that seven districts with a BVAP of greater than 40% was superior to the legislature's SB 621, which had six districts with BVAP greater than 45%.¹⁸

However, this assessment was not supported in the narrative that accompanied the maps. The maps were discredited by the Republicans in the senate and assembly who were against the whole Commission process from the beginning. Legislators from Milwaukee County also voted against the PMC maps, because they felt that the maps did not adequately consider the VRA.

To access the PMC's final assembly map, go to <https://davesredistricting.org/join/8087403d-e702-4104-a2b8-ec2f4135de92>.

¹⁵ Vos's public comments can be found at the beginning of 188 pages of public testimony.

https://docs.legis.wisconsin.gov/misc/lc/hearing_testimony_and_materials/2021/sb621/sb0621_2021_10_28.pdf.

¹⁶ Proportionality is a measure of partisan fairness. See Section VIII.

¹⁷ <https://davesredistricting.org/maps#viewmap::8087403d-e702-4104-a2b8-ec2f4135de92>.

¹⁸ davesredistricting.org/maps#viewmap::6a8a362d-0c59-4d81-aea3-28cba004b502

D. PMC Senate Maps

Since each senate district comprises three contiguous assembly districts, the PMC's final senate map was based on the chosen assembly map. One concern peculiar to the senate map is what is termed "staggered term disenfranchisement." Because even- and odd-numbered districts have elections two years apart, individuals who are moved from an even-numbered district to an odd-numbered district must wait four years to vote in a state senate election. The PMC final report discusses how this concern was addressed.

While a diligent attempt was made to limit the shifting of populations from odd to even state senate districts to minimize staggered term disenfranchisement in senate district maps, higher-weighted criteria were given precedence. After district lines were finalized, MGGG assisted in renumbering senate districts to minimize staggered term disenfranchisement and maximize core population retention.

To access the PMC's final senate map, go to <https://davesredistricting.org/join/a07886fc-70c6-4793-86ab-ba3afa0559c0>.

E. PMC Congressional Maps

The PMC also released three draft congressional maps on September 30, 2021. Two of the maps, CD1 and CD3, were similar. CD2 presented a radically different District 1 which extended the entire length of Wisconsin's southern border. It was rated the highest in Proportionality (85) by DRA and was constructed to be proportional with three Republican and Democratic leaning districts each and two competitive ones. However, it rated very poorly in the Minority Opportunity category, as it included only one district with 35% - 40% minority voting age population. The other two maps had a more traditional proportionality breakdown of four Republican leaning districts, two Democratic leaning districts and two competitive districts. CD3 had a better Proportionality rating than CD1. On October 20, 2021 the PMC published a fourth map that pushed the Proportionality rating to its highest (91) by dividing the Democratic stronghold of Madison between two districts. However, the final congressional map that the PMC adopted on November 2, 2021 was similar to draft map CD 3, but with improved Proportionality at the expense of more Splitting.¹⁹

To access the PMC's final congressional map, go to <https://davesredistricting.org/maps#viewmap::874dc6a6-8ce2-428f-b6ef-be64496377dd>.



¹⁹ <https://davesredistricting.org/maps#viewmap::874dc6a6-8ce2-428f-b6ef-be64496377dd>.

V. Wisconsin Maps Assessment Project (WIMAP)

The Wisconsin Maps Assessment Project (WIMAP) is a team of volunteers from across Wisconsin who love maps and math and believe it is essential that Wisconsin have fair voting maps. WIMAP members are citizens from Dane, Jefferson, Milwaukee, Ozaukee, Pierce, Polk, Racine, and St. Croix counties. The group grew from a collaboration between Fair Maps Coalition members, Western Wisconsin for Nonpartisan Voting Districts (WWNVD), headquartered in Pierce County, and North Shore Fair Maps (NSFM), headquartered in Milwaukee's North Shore area.

A. Goals

WIMAP was formed to monitor public map sites, such as the portal provided by Wisconsin's People's Maps Commission (PMC),¹ the Wisconsin legislature's Draw Your District portal (DYD),² and Wisconsin maps published on Dave's Redistricting App (DRA).



We strove to become citizen experts in redistricting criteria and how these criteria can be prioritized and measured. We constructed a comprehensive summary of all Wisconsin redistricting maps submitted on PMC, DYD, and DRA portals, and advocated for high quality fair voting maps.

Individual members of WIMAP championed fair maps by, for example:

- drawing their own maps and submitting them to public portals;
- helping others draw and submit Community of Interest maps to public portals;
- writing to members of the PMC;
- writing letters to the editor;
- seeking coverage through news outlets;
- testifying before the October 28, 2021 joint legislative committee hearing on SB621; and
- posting articles on the WIMAP website.³

WIMAP's work culminated with the submission of an amicus brief to the Wisconsin Supreme Court in Johnson v WEC.⁴ After a pause, WIMAP came back together to write this Report, which we hope will prove useful to Wisconsinites going through future redistricting cycles, and

¹ <https://govstatus.egov.com/peoplesmaps>.

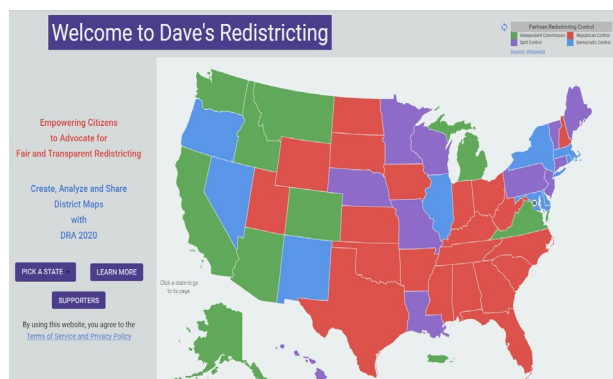
² <https://legis.wisconsin.gov/assembly/63/vos/media/news-updates-2019-to-2023/2021/state-legislature-invites-broad-public-input-on-redistricting-efforts/>.

³ <https://piersecountygro.org/wimap>.

⁴ Non-Party Brief of Concerned Voters of Wisconsin, filed January 4, 2021, accessible at <https://www.wicourts.gov/courts/supreme/origact/docs/briefamicuscuriaeconcernvoters.pdf>.

serve as proof that everyday citizens are capable of creating and judging voting maps, and should not be left out of the redistricting process.

B. DRA Evaluation Tools



The work of WIMAP would not have been possible without the help of free, high-quality software apps like DRA 2020,⁵ Districtr,⁶ and DistrictBuilder.⁷ The group selected DRA 2020 (DRA) as the primary tool to evaluate and analyze maps. DRA not only provides excellent tools for drawing voting district maps, it also provides an array of ratings and metrics that are second to none in the realm of map-drawing programs easily accessible to the general public.

DRA provides ratings and metrics for five important map criteria: Compactness, County/Municipal Splitting, Minority Opportunity, Proportionality, and Competitiveness. The ratings are based on multiple directly measurable metrics which were combined and normalized to range from 0 to 100, with 100 being the best score.

WIMAP used the following metrics and the ratings they produced to summarize map quality in each area.

- Traditional Compactness metrics, Polsby-Popper and Reock, which measure how close the districts in the map were to a circle, were reported.
- County splits and ultimately municipal splits were metrics reported for the Splitting category.
- For Minority Opportunity, the number of districts with 35% to 60% or more Hispanic, Black, or total minority percentage of voting age population was reported.
- For Proportionality, the ability of the map to reflect historical statewide election results in terms of political party, three measures were reported: efficiency gap, partisan bias, and mean - median.
- For Competitiveness, a measure of the historic proportion of districts reporting close election results, the number of Republican leaning, Democratic leaning, and Competitive (winner with less than 55%) districts was reported.
- Additionally, the total Deviation for a map, the difference between the highest and lowest percentage district population over/under ideal, was recorded.

⁵ <https://davesredistricting.org/maps#home>.

⁶ <https://districtr.org/>.

⁷ <https://www.districtbuilder.org/>.

C. Timeline of Activities

May 1 - July 31, 2021: Wisconsin Assembly Map Contest. Three college students: Theodore Warner (Carnegie-Mellon), Emma Jawarski (UW-River Falls), Aaron Moriak (Marquette) took first (\$599), second (\$499), and third (\$399) places respectively.



August 2021: WIMAP members educated themselves on redistricting map criteria generally, the ins and outs of Dave's Redistricting Application (DRA), how to analyze and compare maps, appropriate criteria for redistricting in Wisconsin, and then set criteria parameters. Many attended the webinar "Analyzing & Evaluating Districts for Advocacy," sponsored by the Coalition Hub for Advancing Redistricting Through Grassroots Engagement (CHARGE).⁸

Summer 2021: WIMAP and many others worked with Wisconsinites from all over the state, helping them draw maps of their Communities of Interest⁹ using Districtr software. They also helped transfer those maps to the People's Maps Commission portal.



Summer 2021: WIMAP analyzed voting district maps submitted to the PMC portal and compared them with other maps from different sources, mainly DRA published maps.

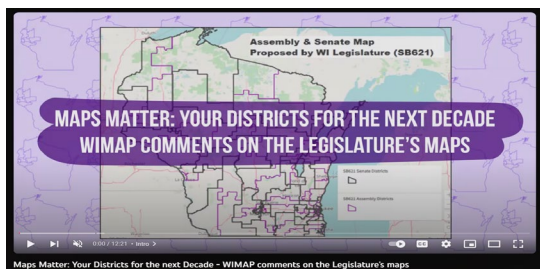
August 12, 2021: The 2020 Census figures were released. WIMAP began monitoring maps submitted to DRA and the PMC portal that were rebalanced using official Census data.

Sept. 1 – Oct. 15, 2021: WIMAP analyzed maps submitted to the legislature's Draw Your District portal, and migrated more than 400 maps from the PMC portal to the DYD portal.

Fall 2021: WIMAP consulted with developers of DRA regarding improvements that could be made in identifying municipal splits. At WIMAP's request, DRA added municipal splits to its analysis of Wisconsin's maps. To our knowledge, no other state maps had this feature.

⁸ <https://www.redistrictinghub.com/>.

⁹ For a description of Communities of Interest, see Section II. Section IV discusses how the PMC used the COI maps,



October, 2021: WIMAP members produced and distributed a video prior to the public hearing on SB 621, the legislature’s proposed 2022 maps, with the purpose of educating the public and the legislators prior to the hearing.¹⁰

October, 2021: Prior to the October 28 hearing, WIMAP members emailed each and every individual legislator with information about non-partisan redistricting. They included a link to their video, which pointed out problematic districts in SB 621.

October 28, 2021: The WIMAP website was launched.

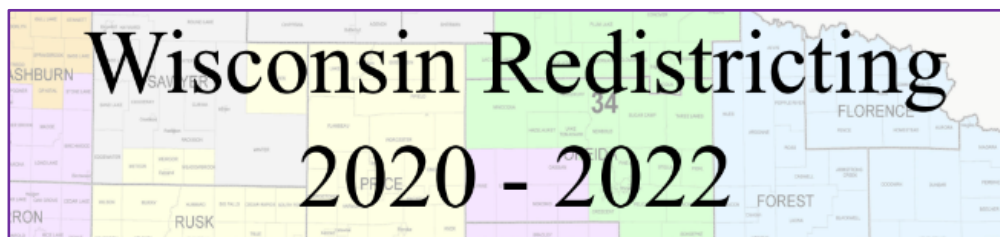
December 15 - 31, 2021: WIMAP analyzed maps parties submitted to the Wisconsin Supreme Court in Johnson v Wisconsin Elections Commission,¹¹ using the Court’s “least-change” criterion. We developed graphics and visualizations of maps good and bad, pointing out problematic maps with explanations of their respective problems. We reviewed briefs, experts’ reports, and reply briefs in the Johnson case, and decided to file an amicus brief in the case.

January 4, 2022: With help from the Fair Maps Coalition, WIMAP gathered voters from every senate district in the state, and, with pro bono assistance of the Milwaukee law firm Laffey, Leitner & Goode, filed an Amicus Brief.¹²

February, 2022: WIMAP continued to meet biweekly discussing court-adopted maps, and Wisconsin and US Supreme Court decisions.

April 15, 2022: When the Wisconsin Supreme Court finally decided the legislature’s voting maps would be the law of the land, WIMAP members went on a brief hiatus. In September 2022 we began work on this Report in order to ensure that all of our hard-won knowledge and insights would not be lost.

November 2023: WIMAP put the finishing touches on this Report, and it was published.



¹⁰ The video is accessible on the WIMAP website (<https://piercecounitygro.org/wimap/>) as well as YouTube (<https://www.youtube.com/watch?v=N5ri5edfiTI&t=5s>).

¹¹ Johnson v Wisconsin Elections Commission. Court documents can be found at <https://www.wicourts.gov/courts/supreme/origact/2021ap1450.htm>.

¹² Non-party Brief of Concerned Voters of Wisconsin, filed January 4, 2022, accessible at <https://www.wicourts.gov/courts/supreme/origact/docs/briefamicuscuriaeconcernvoters.pdf>.

VI. Wisconsin Legislative Action 2020 - 2021

As noted previously, in 2009, Democrats held a trifecta in Wisconsin. They rejected proposals from members of their party to create a nonpartisan redistricting process, as they anticipated holding on to that trifecta and controlling redistricting. Instead, as part of a national Republican effort called “REDMAP,”¹ Republicans took control of the assembly and senate in 2010. A Republican governor was elected the same year, giving the Republicans a trifecta. In 2011, Republican leadership drew the state’s new voting maps in secret, the maps were presented and quickly passed through both houses of the legislature, and the governor signed them into law.²

But the next time redistricting came around, things were different. State government was divided, with a Democrat in the governor’s mansion, a public clamoring for fair voting maps, and lawyers ready to go to court.

A. Wisconsin Constitutional Authority

Wisconsin’s constitution calls on the legislature to draw the state’s voting maps as part of its Article IV legislative power:

At its first session after each enumeration made by the authority of the United States, the legislature shall apportion and district anew the members of the senate and assembly, according to the number of inhabitants.

Article IV also states that assembly “districts [are] to be bounded by county, precinct, town or ward lines, to consist of contiguous territory and be in as compact form as practicable.”

Just as the legislature is charged with drawing voting maps, under Article V of Wisconsin’s Constitution, the governor is charged with accepting or rejecting them.

Thus, voting maps become law in the same manner as other legislative actions: the new maps are presented as a proposed bill; that bill must pass both the senate and assembly; and it must then be signed by the governor. If the governor vetoes the bill, under Article V the legislature can override the governor’s veto only by a two-thirds majority vote in both houses.³

B. The Road to the Legislature’s Maps (SB 621 / SB 622)

During the 2020-2022 redistricting cycle, the governor was a Democrat, both houses of the legislature were dominated by Republicans, but they did not hold a supermajority in either house. Knowing this, Republican leadership used two new tactics. First, they opened a web portal to accept maps drawn by the public, mimicking the People’s Maps Commission’s portal. This gave

¹ **How Redistricting Became a Technological Arms Race: Advances in data, computing, and fundraising have given politicians new power to gerrymander democracy away.** The Atlantic, October 17, 2017. <https://www.theatlantic.com/politics/archive/2017/10/gerrymandering-technology-redmap-2020/543888/>.

² See Section III.

³ See Section II.

the appearance of public involvement. Second, they adopted a Joint Resolution (SJR 63) that laid the groundwork for the voting maps they later presented for a vote. But before they did either of these things, they hired lawyers. And, as they had done every legislative session since 2011, Democrats proposed bills to implement a new and fairer way of drawing voting maps. All this happened while everyone waited for the delayed 2020 Census data to drop.

January, 2021 – The legislature hires lawyers

In January 2021, the Wisconsin legislature entered into a contract committing more than one million dollars of taxpayer money to hire private attorneys for redistricting. Because there was no lawsuit pending, the action was challenged in Waity vs. LeMahieu. Almost a year later (by which time lawsuits were pending), the Wisconsin Supreme Court ruled in a 4-3 decision that Republican leadership had followed the law when it hired attorneys to help with redistricting litigation before lawsuits actually existed.⁴ Republican leadership was preparing for whatever would come, courtesy of Wisconsin taxpayers.

June 11, 2021 – A Bipartisan fair voting maps bill is introduced (AB 395 / SB 389)

On June 11, 2021, a bill calling for nonpartisan redistricting was entered on the record (AB 395 / SB 389).⁵ Nonpartisan redistricting bills had been proposed in prior legislative sessions, with bipartisan sponsors. In fact, AB 395 / SB 389 was identical to bipartisan legislation proposed during the prior session.⁶ What happened in 2021 was the same thing that happened in 2019. The bill was sent to committee. Neither phone calls, emails, personal visits, published letters to the editor, nor other lobbying efforts could compel Republican leadership to schedule a hearing on the bill. Instead, the bill sat in committee, as it had in every other session.

2021 Senate Bill 389 - S - Government Operations, Legal Review and Consumer Protection			
History			
Date / House	Action	Journal	
6/11/2021 Asm.	Introduced by Representatives Andraca, S. Rodriguez, Anderson, Baldeh, Billings, Bowen, Brostoff, Cabrera, Conley, Considine, Doyle, Drake, Emerson, Goyke, Haywood, Hebl, Hesselbein, Hintz, Hong, Kitchens, McGuire, B. Meyers, Milroy, Moore Omokunde, Neubauer, Novak, Ohnstad, Ortiz-Velez, Pope, Riemer, Shankland, Shelton, Sinicki, Snodgrass, Spreitzer, Stubbs, Subeck, Tranel, Vining and Vruwink; cosponsored by Senators Smith, Roys, Agard, Bewley, Carpenter, Erpenbach, Johnson, Larson, Pfaff, Ringhand, L. Taylor and Wirth	323	
6/11/2021 Asm.	Read first time and referred to Committee on State Affairs	323	
11/1/2021 Asm.	Fiscal estimate received		
3/15/2022 Asm.	Failed to pass pursuant to Senate Joint Resolution 1	906	

September 1 – October 15, 2021: Draw Your District (DYD) web portal

The People's Maps Commission (PMC) had opened a web portal that allowed individuals to submit comments and proposed maps.⁷ The legislature also opened a web portal, but on an extremely compressed timeframe.

⁴ **Supreme Court rules Republican legislators can hire attorneys before lawsuits are filed.** Wisconsin Examiner, January 27, 2022. <https://wisconsinexaminer.com/brief/supreme-court-rules-republican-legislators-can-hire-attorneys-before-lawsuits-are-filed/>.

⁵ <https://docs.legis.wisconsin.gov/2021/proposals/sb389>.

⁶ AB 303 / SB 288. <https://docs.legis.wisconsin.gov/2019/proposals/ab303>.

⁷ See section IV.

On September 1, 2021, the legislature introduced the Draw Your District (DYD) website containing a portal that allowed anyone to submit a map for review. No advance notice of the portal was given. Rather than arrange for maps already submitted to the PMC to be forwarded to the legislature, each of those maps had to be resubmitted by individuals to the new portal. The portal was open from September 1 through October 15, 2021. Because fair maps advocates had helped voters draw maps for the PMC's portal, they mobilized their forces and contacted as many of those people as they could find. Under guidance from the Fair Maps Coalition, they migrated more than 400 Community of Interest maps from the People's Maps Commission portal to the DYD portal. More than 100 complete statewide maps were also submitted by people from Wisconsin and other parts of the United States.

The DYD portal closed on Friday October 15. Republican leaders later claimed that the maps submitted to the DYD portal were factored into the legislature's redistricting plan, but what transpired the following week belies that claim.

First, the proposed legislative and congressional maps introduced as SB 621 and SB 622 were introduced on October 20, five days (including a weekend) after the portal closed, along with the related final report from the Legislative Reference Bureau (LRB).⁸ It is highly unlikely that all of the data submitted to the portal could have been reviewed and digested, with modifications made to address public concerns, in time to have the SB 621 and SB 622 maps and the accompanying LRB report ready a mere three business days after the portal closed.

Second, those who studied the SB 621 and SB 622 maps, including the WIMAP team, found very few examples where *prior maps submitted anywhere or any time* had been incorporated into the new maps.

Although not proven beyond reasonable doubt, many suspect the DYD portal was for show, and for selective use during a public hearing that followed. As shall be seen below, the legislature did indeed selectively use some submitted comments to defend their proposed voting maps.⁹

September 24-28, 2021: Joint Resolution SJR 63

The legislature passed a Joint Resolution (SJR 63) as "public policy regarding plans that establish state legislative districts."¹⁰ The Resolution was introduced Tuesday September 24 and after heated debate adopted along party lines Friday September 28.¹¹

⁸ SB 621's LRB Report is published as part of the Hearing Materials, which can be accessed at https://docs.legis.wisconsin.gov/misc/lc/hearing_testimony_and_materials/2021/sb621/sb0621_2021_10_28.pdf.

⁹ See discussion of Brookfield "community of interest" from Vos memo in the Hearing Materials, footnote 8.

¹⁰ 2021 Senate Joint Resolution 63. <https://docs.legis.wisconsin.gov/2021/related/proposals/sjr63>

¹¹ <https://docs.legis.wisconsin.gov/2021/proposals/sjr63>. Democratic Legislators put forth several Amendments calling for a very different list of policies to apply, including one that focused on partisan fairness. https://docs.legis.wisconsin.gov/2021/related/amendments/sjr63/asa1_sjr63. The resolution passed without any amendments.

The Joint Resolution read as follows (bold highlighting added):

Relating to: public policy regarding plans that establish state legislative districts.

Whereas, the Wisconsin Constitution requires the legislature to reapportion the state legislative districts after each federal census; now, therefore, be it

Resolved by the senate, the assembly concurring, That it is the public policy of this state that plans establishing legislative districts should:

1. Comply with the federal and state law;
2. Give effect to the principle that every citizen's vote should count the same by creating districts with nearly equal population, having population deviations that are well below that which is required by the U.S. Constitution;
3. **Retain as much as possible the core of existing districts**, thus maintaining existing communities of interest, and promoting the equal opportunity to vote by minimizing disenfranchisement due to staggered Senate terms;
4. Contain districts that are compact;
5. Contain districts that are legally contiguous;
6. Respect and maintain whole communities of interest where practicable;
7. Avoid municipal splits unless unavoidable or necessary to further another principle stated above, and when splitting municipalities, respect current municipal ward boundaries;
8. **Promote continuity of representation** by avoiding incumbent pairing unless necessary to further another principle stated above; and
9. Contain districts that follow natural boundaries where practicable and consistent [with] [*sic*] other principles, including geographic features such as rivers and lakes, manufactured boundaries such as major highways, and political boundaries such as county lines.

The 3rd and 8th policies listed above, “retaining the core of existing districts” and “[promoting] continuity of representation,” express the idea that voters should not be moved from one voting district to another during redistricting. These policies are not legal requirements in Wisconsin, and they are not traditional principles highlighted in the “Legislative Reference Bureau for redistricting in 2020” (the LRB Guidebook).¹²

In fact, these two policies were the polar opposite of what had occurred the last redistricting cycle, just after Republicans took control of all three levers of power in the state. In 2011, Republican leadership used its trifecta to create the 2011 redistricting plan (2011 Map). The 2011 Map, later judged an unconstitutional gerrymander by a federal court, **moved a whopping 40% of the population of the state from one voting district to another!**¹³

This idea – that voters should stay in their same voting districts for decades – would become known as the “least-change” approach to redistricting. Wisconsin’s Republican leadership did

¹² See Section II.

¹³ See Section III.

not favor the “least-change” approach when they drew their “most-change” 2011 Map for partisan gain, but now that it served to preserve their partisan gerrymander, they wanted to embed “least-change” into Wisconsin “public policy.”

When the Joint Resolution was brought forth, Democratic legislators and fair voting maps advocates were enraged. The Fair Maps Coalition immediately mobilized their forces. Voters contacted their representatives to complain about policies very clearly designed to keep the gerrymandered 2011 Map in place. To placate one voter, a staffer for a powerful Republican Senator sent an email downplaying the matter, saying the Resolution was “not set in stone” and contained no “formal constraints,” and added that the principle of keeping districts as they had been a decade ago was “*a very standard principle*” used countless times “*across the country*.”¹⁴

This “*principle*” – if it ever was one – was violated a decade earlier. But now, after REDMAP had been used successfully by Republican legislators “*across the country*,” it made sense to the people in power who wanted to stay in power to declare it “*a very standard*” principle.

Furthermore, because the policies were to be entered into history as “public policy” rather than an official Legislative Act, Wisconsin’s Democratic governor was powerless to do anything about it. His veto power simply did not apply. Republican legislators were attempting an end-run around the governor. They would submit maps following their brand-new policies, and if the governor vetoed them, they would argue in court that they were merely following “policy.” If that court was a federal court, they would argue that federal courts must consider if not yield to Wisconsin “policy.” The Milwaukee Journal Sentinel summed it up this way:

The resolution is nonbinding, but it signals that Republicans plan to limit their changes to the maps. The resolution could be used in court proceedings to try to persuade judges to take a largely hands-off approach when drawing new lines.¹⁵

¹⁴ Email dated September 28, 2021 from Senator Darling’s staffer Noah Kirchner to a constituent of assemblywoman Deb Andraca (AD23) and Senator Darling, forwarded to Rep Andraca:

“The resolution contains a variety of provisions, all of which are quite broad and aim to serve as a loose guide for the Legislature to use while accommodating [sic] for population changes in the new legislative districts. There has been a common misconception that the resolution “sets in stone” the current maps. That, however, would not be legal - as the resolution recognizes, state and federal law stipulate that all districts must be of even population. As a result, the district lines must change after every census to reflect shifting demographics and political geography.

“The provision that I assume you reference is in line #3, which states that the “core” of each district should be kept intact. In practice, that is to prevent scenarios in which communities and municipalities are split up in a way that would drastically change their established constituencies. It is not by any means a provision that “rolls over” the old maps into the next decade as some have claimed.

“Ultimately, the resolution is not a bill and is therefore non-binding (it’s simply a statement of principles, many of which are already in law) and will not place formal constraints on the Governor or Legislature in drawing new district boundaries. Senator Darling is likely to support it as written (though she has not made a formal commitment) because contrary to popular belief, it’s a very standard assertion of principles that guide countless redistricting processes across the country.”

¹⁵ **Republicans seek to limit changes to election maps as legal fight over redistricting heats up.** Milwaukee Journal Sentinel, September 28, 2021. <https://www.jsonline.com/story/news/politics/2021/09/28/wisconsin-republicans-seek-limit-changes-election-maps/5890785001/>

UW-Madison Law School Professor Robert Yablon, co-director of the University's State Democracy Research Initiative, would later publish a law review article calling the practice of using "core retention" to keep voters in previously gerrymandered districts "Gerrylaunders." ¹⁶ The description fits perfectly.

Wisconsin Republican Representative Robin Vos (AD 63), was in the legislature when the 2011 Map became law. He became speaker of the Wisconsin assembly the following year, and remains the speaker to this day. He was also the president of the National Conference of State Legislatures (NCSL) from 2019 through 2021. By the fall of 2021, NCSL (perhaps not coincidentally?) listed core retention as a "traditional" principle adopted in "many states":

Preservation of cores of prior districts: This refers to maintaining districts as previously drawn, to the extent possible. This leads to continuity of representation. ¹⁷

Republican leadership knew exactly what they were doing.

C. Presenting SB 621 / SB 622

Wisconsin had received the long delayed 2020 Census data on August 12, 2021. ¹⁸ With Census data in hand, the legislature was ready to put their redistricting plan on the agenda. Once that happened, things moved swiftly.

October 20, 2021 - Proposed voting maps (SB 621 and SB 622) become public

Republican leadership's proposed voting maps were first unveiled on October 20, 2021, accompanied by analysis from the LRB. The matter was referred to committee, and a public hearing was set for October 28. SB 621 was the assembly and correlated senate map; SB 622 was the congressional map. ¹⁹

¹⁶ **Gerrylaunders.** NYU Law Review Summer 2022. <https://www.nyulawreview.org/issues/volume-97-number-3/gerrylaunders/>. He also joined forces with other noted legal scholars and filed an Amicus Brief in the Wisconsin Supreme Court case involving the 2022 Map. See Section VI.

¹⁷ Redistricting Criteria (Summary). <https://www.ncsl.org/redistricting-and-census/redistricting-criteria>.

¹⁸ 2020 Census Timeline of Important Milestones. <https://www.census.gov/programs-surveys/decennial-census/decade/2020/planning-management/release/timeline.html>.

¹⁹ SB 621 at <https://docs.legis.wisconsin.gov/2021/related/proposals/sb621>.

The DRA map/analysis of SB 621 (legislative map) can be found at <https://davesredistricting.org/join/6a8a362d-0c59-4d81-aea3-28cba004b502>.

SB 622 at <https://docs.legis.wisconsin.gov/2021/related/proposals/sb622>.

The DRA map/analysis of SB 622 (congressional map) can be found at <https://davesredistricting.org/maps#viewmap::334e66a6-e2ff-4b61-bd15-3ae4db635d0a>.

October 28, 2021 – WIMAP releases its “Maps Matter” video

The minute the maps became public, the Wisconsin Maps Assessment Project (WIMAP) went into action. As was discussed in Section III, WIMAP reviewed and analyzed the maps. They held meetings discussing their findings. And, in preparation for the October 28 public hearing, WIMAP members produced a video that demonstrated SB 621’s failures.²⁰ Using scenarios that sometimes involved areas where WIMAP members lived, the video showed examples where:

- maps were changed solely to protect Republican incumbents (AD 30),
- competitive districts were converted to party-safe ones (AD 23 & 24),
- adherence to constitutionally-required district compactness was ignored,
- counties were needlessly split, and
- gerrymandering was obvious.

The video showed that the legislature’s leadership made surgical changes to voting maps where it increased their partisan advantage. A number of districts clearly violated their “least-change policy.” The video was sent to each Wisconsin legislator and to the press throughout the state. It was shared widely on social media and Wisconsinites statewide were encouraged to attend the public hearing, testify, and/or submit testimony to their legislators.

October 28, 2021 - The public hearing

At 9:00 AM on October 28, 2021 a public hearing on Wisconsin redistricting commenced in the Wisconsin State Capital in front of a Joint Assembly and Senate Elections Committee. The room overflowed with people from all walks of life who had traveled from all parts of the state to declare fierce opposition to the proposed maps.²¹



Testimony began with Senate Majority Leader Devin LeMahieu (speakers’ table left in photo). He said the legislature’s employees crafted the maps within the walls of the capitol, without assistance from outside experts. They were instructed to ignore the race of voters. He spoke of public input received during the process.

Then Assembly Speaker Robin Vos (to LeMahieu’s right) spoke. Vos used the joint resolution rushed through the legislature’s chambers the prior month as the foundation for his argument that the legislature wanted “[t]o ensure adherence to classic redistricting principles and reaffirm their importance,” adding that “[t]he resolution furthers transparency in the process by

²⁰ **Maps Matter: Your Districts for the next Decade - WIMAP comments on the Legislature’s maps**, assessable at www.youtube.com/watch?v=N5ri5edfITl.

²¹ The hearing was televised live on WisconsinEye, and can be viewed at <https://wiseye.org/2021/10/28/joint-committee-on-government-operations-and-state-affairs/>.

informing the public of the criteria being considered.” He recited the principles set forth in SJR 63. He concluded by saying “[o]ur goal from start to finish was to produce a ‘least-change’ map that prioritized core retention while adjusting for population change.”

The LRB did not testify in favor of the proposed maps at the hearing. Not a single Wisconsin voter testified in favor of the proposed maps. No experts testified in favor of the maps. Indeed, the only two individuals who testified in favor of the maps the entire day were those who benefited the most from them: Assembly Speaker Vos and Senate Majority Leader LeMahieu. The only testimony offered in favor of the congressional maps was a written document submitted by Wisconsin’s Republican congressmen. Although proposed congressional maps were part of the hearing, very little attention was paid to them. The proposed state assembly map was in the spotlight.

Should the legislature’s maps prevail, it would impose on Wisconsin voters a brand-new set of so-called “classic” redistricting principles, ones not highlighted in the LRB Guidebook, and ones completely ignored a decade earlier. Republican leadership wanted a “least-change” map, so they simply declared the principles “classic.” And although voters had been told the principles were “not set in stone,” if the legislature could pull it off, they would at least be “set” in Wisconsin’s voting maps for a decade.

In a hearing that lasted almost nine hours, fierce objections were raised. Two hundred individuals attended the hearing. One hundred fifty of them registered to testify orally in opposition to the maps. Some were unable to testify because they had come far and the wait was too long. But many stayed and testified.

For some who testified that day, it was the first such experience in their lifetimes. The committee heard testimony that mirrored testimonies given to the People’s Maps Commission. Some brought maps for comparison purposes. People spoke of their frustrations with the lack of accountability and responsiveness from their legislators. They spoke often of how the 2011 Map had divided their cities, towns, counties, their tribal communities, and college campuses, and their dismay that these communities of interest had not been restored in SB 621. A leading legal scholar testified in opposition to the maps.²² A leading math scholar who could not attend in-person did the same in writing.²³

Through it all the committee sat on the dais. The Democrats were completely engaged and asked questions. The Republicans were for the most part polite, although some showed occasional

²² Rob Yablon testimony, accessible at https://docs.legis.wisconsin.gov/misc/lc/hearing_testimony_and_materials/2021/sb621/sb0621_2021_10_28.pdf.

²³ Jordan Ellenberg testimony, accessible at https://docs.legis.wisconsin.gov/misc/lc/hearing_testimony_and_materials/2021/sb621/sb0621_2021_10_28.pdf.

disdain or ignored the speakers altogether while talking amongst themselves. At one point, a frustrated witness asked the Republicans sitting before her to stop talking and listen.

One hundred and eighty-eight pages of written testimony were submitted. The first eleven pages were from Republican leadership in the legislature, and Wisconsin's Republican congressmen. The rest was a scathing rebuke of the proposed maps. Following the hearing, voters continued to press legislators to reject the maps. One voter sent a document to every member of the Wisconsin legislature, reminding them that when they pledge allegiance to the flag, they are also pledging allegiance to the republic for which it stands, and a government without fair representation is not a republic. Attached to that document was another entitled "Just the Facts," in which another voter set forth the facts proven in Whitford v Gill. When they voted, not one member of the legislature could claim they were unaware of what they were doing.²⁴

When it was over, none of the objections made at the hearing or put in writing or otherwise conveyed to the members of the legislature mattered to the Republicans who controlled that body. Not one thing.

D. Legislation Passes, Governor Vetoes, and the Maps go to Court

November 8 and November 11, 2021 – SB 621 and SB 622 pass without amendment

On November 8, 2021, after rejecting redistricting plans sponsored by senate Democrats as well as plans offered by the People's Maps Commission, the Wisconsin senate passed the Republicans' "least-change" redistricting plan, along a party line vote, and sent it to the assembly. On November 11, 2021, the Wisconsin assembly passed the senate's redistricting plan, again along party lines.

November 18, 2021 - governor's veto

On November 18, 2021, Governor Evers vetoed the legislature's senate and assembly maps, as well as the congressional maps,²⁵ and the maps went to court. By then, the Wisconsin Supreme Court had taken original jurisdiction of any redistricting dispute, and was preparing to issue an opinion on the question of whether using a "least-change" approach to voting maps was appropriate.²⁶

²⁴ Deborah Patel November 4 2021 memo to legislators.
https://drive.google.com/file/d/1lfsO8c_3Uq2ogH3F_dUE1oIVRfX6wNoD/view.

²⁵ Gov. Evers Vetoes GOP's "Gerrymandering 2.0" Maps.
<https://content.govdelivery.com/accounts/WIGOV/bulletins/2fcd160>.

²⁶ Original jurisdiction was taken by Order of the Wisconsin Supreme Court on September 22, 2021.
<https://www.wicourts.gov/courts/supreme/origact/docs/092221ordergrantpoa.pdf>. See Section VII for federal and state court review of Wisconsin's 2020-2022 redistricting cycle.

VII. Court Review and Action

The 2020 redistricting cycle began with a sour relationship between Wisconsin's Republican legislature (whose legislative powers include drawing voting maps anew every ten years¹) and the Democratic governor (whose executive powers include approving or vetoing bills passed by the legislature²). Despite rhetoric to the contrary,³ no one expected the legislature and the governor to agree on new voting maps. The existing maps had been gerrymandered by the legislature through a secretive process just 10 years before, and Wisconsin was in the midst of hyper-political rancor in the aftermath of the 2020 Presidential election. Political partisans and their supporters were ready for a fight. And they got one.



Census Bureau Director Steven Dillingham holds up his mask with the words "2020 Census" as he testifies before a House Committee on Oversight and Reform hearing on the census in July.
Andrew Hamik/AP

A. Background

The redistricting process relies on data received following the release of the decennial US Census of Population.⁴ Because the COVID pandemic occurred during the 2020 Census timeframe, and there were political disputes over what data should be included in the Census,⁵ the process was delayed by months. Redistricting data that should have been sent to the states in March 31 2021 were not released until August 12 of that year.⁶

¹ WI Constitution Article IV Section 3: "At its first session after each enumeration made by the authority of the United States, the legislature shall apportion and district anew the members of the senate and assembly, according to the number of inhabitants." <https://docs.legis.wisconsin.gov/constitution/wi/000230/000004>.

² WI Constitution Article V Section 10: "(1) (a) Every bill which shall have passed the legislature shall, before it becomes a law, be presented to the governor. (b) If the governor approves and signs the bill, the bill shall become law.... (2) (a) If the governor rejects the bill, the governor shall return the bill, together with the objections in writing, to the house in which the bill originated. The house of origin shall enter the objections at large upon the journal and proceed to reconsider the bill. If, after such reconsideration, two-thirds of the members present agree to pass the bill notwithstanding the objections of the governor, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of the members present it shall become law." <https://docs.legis.wisconsin.gov/constitution/wi/000231/000013>.

³ "Assembly Speaker Robin Vos has been adamant that the courts won't need to be involved in the redistricting process. 'Soon we will begin the robust map drawing process and I'm confident we will draw a map that the governor will sign,' the Rochester Republican said in August [2021]." **Blurring the lines: Wisconsin Braces for Bitter Redistricting Battle.** Cap Times, October 20, 2021. https://captimes.com/news/local/govt-and-politics/blurring-the-lines-wisconsin-braces-for-bitter-redistricting-battle/article_580841e8-606f-5b66-b1ac-49c11b04e33b.html.

⁴ <https://www.census.gov/topics/population/data.html>.

⁵ **After A Disrupted Census, Congress Tries Again To Extend Deadlines For Results.** NPR April 20, 2021. <https://www.npr.org/2021/04/20/984822577/after-a-disrupted-census-congress-tries-again-to-extend-deadlines-for-results>. **It's final: no citizenship question on 2020 census.** National Constitution Center Blog post, July 3, 2019, Lyle Denniston. <https://constitutioncenter.org/blog/its-final-no-citizenship-question-on-2020-census>.

⁶ See discussion Section II (footnote 7).

To further complicate matters, the venue where that fight would take place was unclear. In 2019, the United States Supreme Court (SCOTUS) issued a decision in the landmark Rucho v. Common Cause case, which held that the question of partisan gerrymandering was not justiciable in federal courts.⁷ SCOTUS said redistricting was a state, not federal, matter. Nevertheless, voting maps must comply with the Voting Rights Act (VRA), which is traditionally interpreted by federal courts. In fact, Wisconsin's voting maps had been litigated in federal rather than state courts for decades.⁸

B. The Venue Battle

Lawyers⁹ and advocates on both sides of the redistricting battle prepared and positioned themselves well before the Census data reached the state. They began with a battle over venue.¹⁰

June 2020 - March 2021

More than a year before the Census data were released, the Wisconsin Institute for Law and Liberty (WILL) petitioned the Wisconsin Supreme Court (SCOWIS) to immediately take original jurisdiction over redistricting.¹¹

Taxpayers carry the burden

Assembly Speaker Robin Vos and Senate Majority Leader Devin LeMahieu hired attorneys outside of the Wisconsin Department of Justice in December 2020 and January 2021, before any redistricting plans had been released, let alone voted on by the Legislature or challenged in court.

Four Madison teachers filed a lawsuit challenging that action. A Wisconsin circuit court found in favor of the taxpayers, and the legislature appealed to SCOWIS. The court's conservative majority overturned the lower court decision, saying the legislature was allowed to hire outside counsel under a state law used for procuring goods and services: "The term 'contractual services' under (state law) is unambiguous and includes attorney services." In their dissent, the court's liberal minority criticized the ruling for disregarding a state law that requires lawmakers to have joint legislative committee approval before entering into any contract, something they had not done. The dissent stated the ruling allowed lawmakers "to exercise purchasing authority they don't have, thereby eliminating a safeguard against the misuse of taxpayer dollars."

⁷ See discussion at

<https://www.brennancenter.org/our-work/court-cases/rucho-v-common-cause>; <https://www.fairmapswi.com/wi-maps>; www.wisbar.org/NewsPublications/WisconsinLawyer/Pages/Article.aspx?ArticleID=28393.

⁸ See Section II.

⁹ See discussion in text box. **Appeals Court rules against GOP leaders over redistricting.** AP June 23, 2021.

<https://apnews.com/article/wi-state-wire-redistricting-business-government-and-politics-0979fd297b18a3edfda9c9acbbdda3ba>. **Wisconsin court OKs lawyers for lawmakers before lawsuits.** AP January 27, 2022. <https://apnews.com/article/elections-wisconsin-lawsuits-madison-redistricting-333547494b14aae0b5b4defa60038c6a>.

¹⁰ **Battle over venue defines first phase of litigation on Wisconsin Redistricting.** Marquette Faculty Blog October 14, 2021. <https://law.marquette.edu/facultyblog/2021/10/battle-over-venue-defines-first-phase-of-litigation-on-wisconsin-redistricting/>.

¹¹ *In re* Petition for Proposed Rule to Amend Wis. Stat. § 809.70 (Relating to Redistricting). See court documents, including comments, at <https://www.wicourts.gov/scrules/archive/2003.htm>.

SCOWIS asked for public opinion, and they got it. With help from the Wisconsin Fair Maps Coalition, more than 2,000 written testimonials were filed opposing WILL's Petition. On January 14, 2021 SCOWIS held a public hearing on the Petition. More than thirty individuals -- lawyers, redistricting experts, public officials and citizens -- presented more than three hours of oral testimony at a hearing held virtually because of COVID. (Photo right of Chief Justice Patience Drake Roggensack presiding over the hearing.) The vast majority of both written and oral testimony opposed the Petition.¹²



Those who testified reminded SCOWIS that it had refused to take original jurisdiction of redistricting cases when asked in 2002. At that time, the court recognized its role as Wisconsin's highest appellate court, better equipped to review, rather than try, cases involving adversarial litigation, discovery, expert testimony, and cross-examination.¹³

SCOWIS also heard from many voters who said nothing about the court's structural shortcomings or prior decisions. These voters seized the opportunity to express their frustrations living in extremely gerrymandered districts. They wanted fair voting maps!

On May 14, SCOWIS denied WILL's petition. But it left the door open. It said WILL's rules petition was untimely because there was no lawsuit pending. The court hinted that it might be open to taking original jurisdiction, saying its decision to turn down the rules petition "should not be deemed predictive of this court's response to ... a request that we assume original jurisdiction over a future redistricting case or controversy."¹⁴

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The Census data were released,¹⁵ and lawsuits were quickly filed in both federal and state courts.

¹² Comments can be found at <https://www.wicourts.gov/scrules/archive/2003.htm>. The public hearing was recorded live by WisconsinEye and can be viewed at <https://wiseye.org/2021/01/14/wisconsin-supreme-court-public-hearing-redistricting-rule-petition/>.

¹³ *Jensen v. Wisconsin Election Board* (2002), quoted in *In re Petition for Proposed Rule to Amend Wis. Stat. § 809.70 (Relating to Redistricting)*.

<https://www.wicourts.gov/sc/rulhear/DisplayDocument.pdf?content=pdf&seqNo=368630>.

¹⁴ SCOWIS wrote "as drafted, the procedures proposed in this administrative rule petition are unlikely to materially aid this court's consideration of an as yet undefined future redistricting challenge, and voted to deny the petition. Our decision in this rule matter should not be deemed predictive of this court's response to a petition for review asking this court to review a lower court's ruling on a redistricting challenge or a request that we assume original jurisdiction over a future redistricting case or controversy." May 14, 2021 Order at 4.

¹⁵ 2020 Census Timeline of Important Milestones. <https://www.census.gov/programs-surveys/decennial-census/decade/2020/planning-management/release/timeline.html>.

Federal Court

On August 13, the Perkins Coie law firm filed Hunter v. Bostelmann in the U.S. District Court for the Western District of Wisconsin (Western District Court) on behalf of six Wisconsin voters. They argued that political gridlock would prevent reapportioned maps from being ready in time for 2022 elections, and asked the court to declare the current maps unconstitutional and implement new legislative and congressional maps.¹⁶

On August 23, Law Forward, a Wisconsin-based, nonprofit pro-democracy law firm, filed BLOC v. Spindell in the Western District Court on behalf of Black Leaders Organizing for Communities (BLOC), Voces de la Frontera, the League of Women Voters of Wisconsin, and individual plaintiffs. The individual plaintiffs, and members of the plaintiff organizations, lived in legislative districts that were now overpopulated and unrepresentative, in violation of their rights.¹⁷

On September 16, the U.S District Court for Western Wisconsin consolidated the two federal cases due to the common circumstances and legal issues.¹⁸

State Court

On August 23, acting on the hint left by SCOWIS in the May rules petition decision, WILL filed Johnson v. Wisconsin Elections Commission (WEC),¹⁹ a Petition for Original Action filed on behalf of four Wisconsin voters who lived in now overpopulated districts. WILL argued that SCOWIS should accept their petition because redistricting was a Wisconsin Constitutional responsibility, and SCOWIS was the proper venue to resolve state issues.²⁰

In the conclusion of their Memorandum in Support of Petition for Original Action, WILL stated that SCOWIS should “apply[] the principle of *making the least number of changes* to the existing maps as are necessary to meet the requirement of equal population and *the remaining* traditional redistricting criteria....” (Emphasis added.) Much more would be heard about what eventually became known as a “least-change” approach to drawing the new maps.²¹

¹⁶ <https://www.democracydocket.com/cases/wisconsin-redistricting-challenge/>.

¹⁷ <https://www.lawforward.org/bloc-et-al-v-spindell-et-al/>. For additional discussion and to access copies of the pleadings go to <https://campaignlegal.org/cases-actions/bloc-et-al-v-spindell-et-al-wisconsin-redistricting>

¹⁸ For an excellent discussion of the venue dispute, see **Battle over venue**, footnote 10.

¹⁹ The docket sheet for Johnson v Wisconsin Elections Commission can be accessed at <https://www.wicourts.gov/courts/supreme/origact/2021ap1450.htm>

²⁰ Johnson v Wisconsin Elections Commission, accessible at <https://www.wicourts.gov/courts/supreme/origact/docs/petorigaction.pdf>.

²¹ <https://www.wicourts.gov/courts/supreme/origact/docs/memosuppeterorigaction.pdf>. As explained in Section II, “least-change” was NOT a traditional redistricting criterion, but through its actions, Wisconsin’s legislature worked to make it such.

The federal court then put a stay on its cases while the redistricting process was being considered by SCOWIS. Later, when SCOWIS selected new voting maps in Johnson v WEC, the federal cases were dismissed.²²

Wisconsin Supreme Court takes original jurisdiction

When Johnson was filed, SCOWIS asked the Wisconsin Elections Commission (WEC) to respond. WEC opposed the petition on the grounds that the case was inappropriate for an original action by SCOWIS, citing the complex issues and related fact-finding that would be required.²³

SCOWIS also offered non-parties the opportunity to file amicus curiae briefs in support or opposition of the petition. Briefs in favor of the petition were filed by the legislature, Wisconsin's republican congressmen, and conservative attorney Daniel Suhr. They said SCOWIS was the appropriate court because redistricting was a state issue, and SCOWIS had a prior history of resolving redistricting disputes. Briefs opposed to the petition were filed by BLOC and Hunter, who argued the federal court was a better venue for complex issues and fact-finding, likely VRA issues, and the history of involvement of the federal courts in resolving redistricting disputes in Wisconsin over the last fifty years.

IT IS ORDERED that the petition for leave to commence an original action is granted;

On September 22, 2021, SCOWIS issued a 4-3 split decision accepting the petition, citing these factors:²⁴

- SCOWIS had long deemed redistricting challenges a proper subject for the court's exercise of its original jurisdiction.
- Judicial relief becomes appropriate in reapportionment cases only when a legislature fails to reapportion according to constitutional requisites in a timely fashion after having had an adequate opportunity to do so.
- Wisconsin's constitution places primary responsibility for the apportionment of Wisconsin legislative districts on the legislature.
- Redistricting plans must be approved by a majority of both the senate and assembly, and are subject to gubernatorial veto (recognizing that the legislature must present redistricting legislation to the governor for approval or veto under the Wisconsin constitution's Presentment Clause; both the governor and the legislature are indispensable parts of the legislative process).

²² See discussion at <https://www.democracydocket.com/cases/wisconsin-redistricting-challenge/>.

²³ <https://www.wicourts.gov/courts/supreme/origact/docs/respetorigaction.pdf>.

²⁴ Johnson v Wisconsin Elections Commission, September 21, 2021 Order Accepting POA, <https://www.wicourts.gov/courts/supreme/origact/docs/092221ordergrantpoa.pdf>.

Additional parties are added

SCOWIS then allowed others to intervene in the case. It directed the parties and prospective intervenors to submit letter briefs addressing the schedule needs and rationale for completing a redistricting plan. The original parties to the action were:

- **Johnson:** Billy Johnson and other voters; and
- **WEC:** The Wisconsin Elections Commission

In response to briefs received, SCOWIS granted motions to intervene to:

- **BLOC:** Black Leaders Organizing for Communities, Voces de la Frontera, the WI League of Women Voters, and three individual voters;
- **Congressmen:** Glenn Grothman, Mike Gallagher, Brian Steil, Tom Tiffany, and Scott Fitzgerald;
- **(Citizen) MathSci:** Citizen Mathematicians and Scientists Gary Krenz, Sarah J. Hamilton, Stephen Joseph Wright, Jean-Luc Thiffeault, and Somesh Jha;
- **Hunter:** Individual voters Lisa Hunter, Jacob Zabel, Jennifer Oh, John Persa, Geraldine Schertz, and Kathleen Qualheim;
- **Legislature:** The Wisconsin legislature;
- **Governor:** Governor Tony Evers; and
- **Bewley:** Senate Democratic Minority Leader Janet Bewley.

As a result, Johnson v WEC now had nine parties (“party/parties”). Most responses suggested that redistricting plans should be in place by March 1, 2022, in time for the 2022 campaign season.

C. Johnson v WEC -- Procedure and Timeline

On the same day SCOWIS took original jurisdiction (September 21, 2021), it directed all of the parties to answer four questions²⁵:

1. Under the relevant state and federal laws, what factors should we consider in evaluating or creating new maps?
2. The petitioners ask us to modify existing maps using a "least-change" approach. Should we do so, and if not, what approach should we use?
3. Is the partisan makeup of districts a valid factor for us to consider in evaluating or creating new maps?
4. As we evaluate or create new maps, what litigation process should we use to determine a constitutionally sufficient map?

²⁵ <https://www.wicourts.gov/courts/supreme/origact/docs/101421ord2rebriefs.pdf>.

All parties filed briefs. The legislature and their allies touted something they called a “least-change” approach. WILL stated that the existing maps had been adopted by the legislature and signed by the governor. It also claimed those maps were “approved by the courts,” and on that basis claimed they were “unquestionably constitutional (but for changes in population reflected by the new census).” WILL went on to focus on “the legislature’s prerogatives,” giving greater deference to the governor who finalized the 2011 Map during a trifecta than to the current governor, who had vetoed the current legislature’s maps. WILL argued the court should make the minimum changes “to deal with the population shifts over the last 10 years.” Any other action “should be reserved to the political branches.”²⁶ Of course it was the inability of the political branches to reach agreement that led them to court in the first place.

The parties who objected to partisan gerrymandering and their allies had a very different opinion. BLOC said:

Petitioners ask this Court to take an approach to deciding this case that is unprecedented as a matter of Wisconsin law and that is unjustified and inappropriate here. They propose that the Court employ a method for the so-called “least-change” theory, that not only has no support in Wisconsin law, but that if employed, would radically depart from this Court’s extensive precedent in interpreting and applying the express language of state statutes and the Wisconsin Constitution. That approach would wreak extraordinary damage on fundamental democratic principles reflected in the Wisconsin Constitution and statutes, and disturb fundamental tenets of judicial interpretation.²⁷

The Governor said:

Rather than minimize the judiciary’s involvement in politics, a “least-change” approach would entrench partisan advantage and districts that are unresponsive to voters, and it would contravene the will of the voters as expressed through the election of Governor Evers and the adoption in most Wisconsin counties of resolutions supporting fair maps. Adopting a “least-change” approach thus would involve the judiciary in the politics of the people far more than following the traditional principles for judicial redistricting would.²⁸

Using more measured language,

Citizen Mathematicians and Scientists respectfully submit that the “least change” approach that Petitioners advocate, which focuses on equalizing district populations to

²⁶ Petitioners’ Brief in Response to the Court’s October 14, 2021 Questions, October 25, 2021, p. 23. <https://www.wicourts.gov/courts/supreme/origact/docs/briefctowill.pdf>.

²⁷ Brief of Intervenor-Petitioners BLOC et al, October 25, 2021, pp. 22-23. <https://www.wicourts.gov/courts/supreme/origact/docs/briefctobloc.pdf>.

²⁸ Brief of Intervenor-Respondent Governor Tony Evers, October 25, 2021, p. 8 (internal quotes and citation omitted). <https://www.wicourts.gov/courts/supreme/origact/docs/briefctoever.pdf>.

the exclusion of other redistricting criteria under State and Federal law, is not appropriate. This Court can, and should, look to the legitimate policy choices the Wisconsin Legislature and Governor Walker made in 2011 as benchmarks, but the Court is held to a higher standard for purposes of a court-ordered plan. Ultimately, that plan must comply with all constitutionally and statutorily mandated criteria, not just equal population. Citizen Mathematicians and Scientists therefore suggest that instead of a “least change” approach, the Court should adopt a “best map” approach....²⁹

While SCOWIS was pondering whether or not to impose a “least-change” standard while reviewing maps, it became clear to all parties that there would be no fact-finding trial. On November 17, 2021, SCOWIS set the legal process (question 4 above):³⁰



- November 30, 2021 -- date by which SCOWIS would address the first three questions above (factors to consider; use of “least-change” theory; partisan consideration);
- December 3 -- joint discovery plans due from the parties;
- December 15 -- final date any party could submit a proposed map for legislative and congressional districts;
- December 30 -- response briefs due;
- January 4, 2022 -- any non-party amicus briefs due;
- January 4 -- parties’ reply briefs due;
- January 18 -- hearing and/or oral argument, if any.

²⁹ Brief of Intervenor-Respondent Citizen Mathematicians and Scientists, October 25, 2021, p. 20.
<https://www.wicourts.gov/courts/supreme/origact/docs/briefctocitizenmath.pdf>.

³⁰ See <https://www.wicourts.gov/courts/supreme/origact/docs/2021AP1450o8.pdf>.

D. SCOWIS Adopts "least-change" Approach

REBECCA GRASSL BRADLEY, J., delivered the majority opinion of the Court with respect to all parts except ¶¶8, 69-72, and 81, in which ZIEGLER, C.J., and ROGGENSACK, and HAGEDORN, JJ., joined, and an opinion with respect to ¶¶8, 69-72, and 81, in which ZIEGLER, C.J., and ROGGENSACK, J., joined. HAGEDORN, J., filed a concurring opinion. DALLET, J., filed a dissenting opinion in which ANN WALSH BRADLEY and KAROFISKY, JJ., joined.

Having addressed the legal process questions, SCOWIS turned to the three remaining questions:

1. Under the relevant state and federal laws, what factors should we consider in evaluating or creating new maps?
2. The petitioners ask us to modify existing maps using a “Least-Change” approach. Should we do so, and if not, what approach should we use?
3. Is the partisan makeup of districts a valid factor for us to consider in evaluating or creating new maps?

On November 30, 2021, writing for a sharply divided court, Justice Rebecca Bradley delivered the opinion of three of the justices, concluding:

In this case, we will implement judicial remedies only to the extent necessary to remedy the violation of a justiciable and cognizable right found in the United States Constitution, the VRA, or Article IV, Sections 3, 4, or 5 of the Wisconsin Constitution. We will not consider the partisan makeup of districts because it does not implicate any justiciable or cognizable right. *We adopt the least-change approach* to remedying any constitutional or statutory infirmities in the existing maps because the constitution precludes the judiciary from interfering with the lawful policy choices of the legislature.³¹ [Emphasis added.]

Bradley wrote that districts must be apportioned equally. Other “secondary” requirements included honoring municipal and county boundaries when possible, contiguity, and compactness. Voting maps must also comply with the VRA.

None of the justices denied that the 2011 Map was gerrymandered. Instead, Justice Bradley mistakenly read the United States Supreme Court case Rucho v. Common Cause as saying partisan gerrymandering claims are not justiciable in state courts, stating that “[t]he partisan makeup of districts does not implicate any justiciable or cognizable right...”³²

³¹ <https://www.wicourts.gov/courts/supreme/origact/docs/113021courtopinion.pdf>, p. 46-47.

³² The Court’s discussion of Rucho is found in the November 30 Order, p 22. This reading of Rucho has been disputed in a recent Petition for Original Jurisdiction filed with SCOWIS. In Clarke v WEC, the petitioner’s Memorandum of Law states: “Importantly, Johnson I dicta gets Rucho wrong. Far from foreclosing this Court’s

This was an extraordinary statement. The Rucho Court had expressly sent partisan gerrymandering claims to states to resolve, had indeed described actions taken by state courts across the country, and had made this promise to American voters:

Our conclusion does not condone excessive partisan gerrymandering. Nor does our conclusion condemn complaints about districting to echo into a void. [Emphasis added.] The States, for example, are actively addressing the issue on a number of fronts.... Provisions in state statutes and state constitutions can provide standards and guidance for state courts to apply.³³ [Emphasis added.]

Justice Hagedorn joined parts but not all of Bradley's opinion. He wrote:

[Justice Bradley's opinion] asserts that only legal requirements may be considered in constructing a fitting remedy. That is not quite correct. Legal standards establish the need for a remedy and constrain the remedies we may impose, but they are not the only permissible judicial considerations when constructing a proper remedy. For example, one universally recognized redistricting criterion is communities of interest. [Footnotes omitted.]

Justice Rebecca Dallet wrote the dissent, joined by two others. Dallet wrote that redistricting is inherently political, even when judges do it. And "now that we have stepped out of our traditional judicial role and into the "the political thicket" of redistricting, it is vital that this court remain neutral and nonpartisan." Dallet went on:

The majority/lead opinion's adoption of a "least-change" approach to evaluating or crafting remedial maps does not "remov[e] us from the political fray and ensur[e] we act as judges rather than political actors." It does the opposite, inserting the court directly into politics by ratifying outdated partisan political choices. In effect, a least-change approach that starts with the 2011 maps nullifies voters' electoral decisions since then. In that way, adopting a least-change approach is an inherently political choice. Try as it might, the majority is fooling no one by proclaiming its decision is neutral and apolitical.³⁴

Dallet raised other objections. Experts questioned whether the 2011 Map met constitutional criteria, as they required excessive shifts in population, disregarded core district populations, demonstrated arbitrary partisan motivations related to compactness, and unnecessarily disenfranchised voters.

review, the federal courts have expressly rerouted partisan gerrymandering cases to state courts to be litigated under state constitutions."

https://www.wicourts.gov/courts/supreme/origact/docs/23ap1399_petitionerresmemo.pdf, p.37.

³³ Rucho v Common Cause, slip op p. 31, accessible at <https://www.brennancenter.org/sites/default/files/legal-work/2019-06-27-Opinion.pdf>.

³⁴ Dissent, pp 1-2.

Dallet also criticized the majority for failing to tell the plaintiffs how to implement the “least-change” approach. She wrote that Wisconsin’s constitution recognized a separation of powers between the administrative and legislative branches, and objected to maps that were created when there was no disagreement between the two branches of government being foisted upon the state at a time when the governor and the legislature disagreed.

Johnson moves forward with an undefined “least-change” approach

“Least-change” ruled. Even though SCOWIS did not deny the 2011 Map’s extreme partisan gerrymander, even though it acknowledged that the legislature and governor each had a role to play in creating the maps, even though it recognized that the Court’s job was to resolve the dispute between the two, even though in Rucho the U.S. Supreme Court had stated that “excessive partisan gerrymandering reasonably seems unjust” and is “incompatible with democratic principles,” even though the Rucho Court had told parties to litigate gerrymandering claims in state courts – even though Justice Bradley and her three conservative colleagues had all of these facts before them, they forbade anyone from briefing the issue of partisan gerrymandering. Instead, they adopted a “least-change” approach. In doing so, the four justices baked the partisan gerrymander of the 2011 Map into the 2022 Map.

Many court observers were critical of the opinion.³⁵ The list included nationally respected legal scholars, who at a later stage in the proceedings pointed out that “[e]ven if courts ‘pay little heed to cries of gerrymandering’ in legislatively drawn maps, they are duty bound to guard against political bias when they adopt maps themselves.” They wrote:

While those [cited] courts accepted continuity as a general principle, they did not conduct least-change beauty pageants among party-submitted maps. Instead, they typically gave experts a general directive to limit changes and left them to make discretionary judgments. They also generally took pains to guard against partisan bias.³⁶

³⁵ **Wisconsin Supreme Court says it would minimize changes to current election maps, handing Republicans an initial redistricting victory.** Milwaukee Journal Sentinel, November 30, 2021.

<https://www.jsonline.com/story/news/politics/2021/11/30/wisconsin-supreme-court-to-minimize-changes-current-election-maps-called-a-republican-victory/8811621002/>. **Wisconsin Supreme Court sides with GOP on maps.** Wisconsin Examiner November 30, 2021.

<https://wisconsinexaminer.com/brief/wisconsin-supreme-court-sides-with-gop-on-maps/>.

State Supreme Court sides with GOP proposal for 'least-change' approach to redistricting.

https://madison.com/news/local/govt-and-politics/state-supreme-court-sides-with-gop-proposal-for-least-change-approach-to-redistricting/article_bc518113-3caa-510a-96e8-567ce095b295.html. **Combating Partisan Gerrymandering Not a Focus for Wisconsin’s High Court.**

<https://law.marquette.edu/facultyblog/2021/12/combating-partisan-gerrymandering-not-a-focus-for-wisconsin-high-court/>.

³⁶ Non-party Amicus Curiae brief of legal scholars in support of no party.

<https://www.wicourts.gov/courts/supreme/origact/docs/briefamicuscuriaelegalscholars.pdf>.

E. WIMAP Review of Maps Submitted by Parties

On December 15, seven parties submitted map proposals to the court. The Citizen MathScientists, Governor, Hunter, and the Legislature submitted plans for both legislative and congressional maps. Senator Bewley and BLOC submitted only legislative maps. The Congressmen submitted only a congressional map. WEC did not submit maps.

WILL also did not submit maps. Instead, WILL submitted a brief that included a proposed “scorecard” containing map criteria they recommended the court consider while reviewing the submitted maps. They provided an expert witness who developed the scorecard and would apply it to the submitted maps for the court.

WIMAP was not a party to the lawsuit. Nevertheless, we considered and rejected the idea of submitting a map as part of an amicus brief. Instead, we chose to review and evaluate all the map proposals using the same criteria and metrics we used for all of our prior map review work. SCOWIS had not clearly defined “least-change”, so we also added the criterion of core retention (see definition below), which we expected SCOWIS to consider as a measure of “least-change”. Every party that filed a brief reported core retention numbers as a measure of least change.

Metrics for the map review criteria we used are presented in the following tables for assembly, senate and congressional maps, with corresponding findings. Scores for each criterion are presented for each map, as well as the average score of each criterion for all submitted maps. The tables below are part of more detailed spreadsheets which include links to the corresponding maps on the DRA website. Links to the detailed spreadsheets are found below each of the tables.

The tables also include a color rating feature. For each metric in a table, we identify maps that are the best, the worst, above average and below average. Although the approach has statistical limitations, it gives the reader some context to evaluate the relative performance of maps for any given metric, as well as the performance of any given map across the metrics considered. It also illustrates the challenge of developing a map that does well for all metrics.

Each table and set of findings from our analyses include the following criteria:

Core Retention (Core Ret. %). Core retention is the percentage of the population retained in voting districts as they existed prior to redistricting. The higher the percentage, the more people remain in the same district that they were in on the previous district map. The lower the percentage, the fewer people remain in the same district that they were in the previous district map. If core retention is the goal, higher is better.

Total Deviation (Total Dev. %). Total deviation is the difference in population between the largest district and the smallest district in a redistricting plan expressed as a percentage of the ideal (exactly equal) district population. It is derived by adding the largest positive deviation and the absolute value of the largest negative deviation. Lower is better.

Compactness (Reock). Reock is a compactness measure of the redistricting plan. The Reock metric of a district compares the area of the district to the area of the smallest circle enclosing the district. The score in the tables is the average Reock of all the districts in the map. Reock (and its average) cannot exceed 1. Higher is better.

Counties Split (County Split). County split measures the number of counties that are divided by two or more districts. Wisconsin has 72 counties. Lower is better.

Number of Times Counties are Split (Times Split). Times split measures how many times counties are split. Example: one split means that parts of a county are found in two different districts. Lower is better.

Municipalities Split (Muni Split). Municipalities split measures the number of municipalities that are divided by two or more districts. Lower is better. According to the 2021-22 Wisconsin Blue Book, Wisconsin has 1,851 municipalities, including 190 cities, 415 villages and 1,246 towns.³⁷

Minority Voting Age Population (MVAP). This metric measures potential opportunities for minorities to elect representatives of their choice, given the size and distribution of minority populations. We identified the number of districts with at least a 35% minority voting age population. VRA compliance is both complicated and uncertain, and we offer no opinion as to whether the districts identified with 35% or more minority voting age population comply with the VRA. DRA explicitly states that this rating does NOT ensure VRA compliance.

1. Assembly least-change maps

Data and analysis for the six assembly maps submitted by the parties to SCOWIS for review are presented in the table and narrative below. Surprisingly, the legislative maps submitted by the legislature to SCOWIS were the SB 621 maps the governor had vetoed.

Each column in the table presents scores for each of the metrics described above. The last two columns in the table include relevant metrics for minority opportunity that are further explained in the corresponding section of the narrative below.

³⁷2021-2022 Wisconsin Blue Book: Local government in Wisconsin.
https://legis.wisconsin.gov/LRB/media/1211/090_local_government_in_wisconsin.pdf.

Table 1. Assembly “least-change” maps

<u>Map Source</u>	<u>Core Ret.%</u>	<u>Total Dev.%</u>	<u>Mean Reock</u>	<u>County Splits</u>	<u>Times Split</u>	<u>Muni Splits</u>	<u>BVAP ≥ 50%</u>	<u>BVAP 35-50%</u>
Bewley	84.02	3.82	0.3785	54	171	100	6	0
BLOC	83.48	1.32	0.3607	53	170	88	7	0
Citizen MathSci	71.14	0.74	0.3972	40	133	89	3	4
Governor	86.29	1.88	0.3685	53	174	111	7	0
Hunter	75.58	1.82	0.4234	50	142	154	5	2
Legislature	84.51	0.76	0.3582	53	156	51	5	1
Averages	80.84	1.72	0.38	50.50	157.67	98.83	5.50	1.17
Color Rating	Best		Above Average		Below Average		Worst	

For additional metrics provided by DRA see

Assembly SCOWIS Least Change Final Report, accessible at

<https://docs.google.com/spreadsheets/d/1QktKF7kO5-jiQexNaKCFdkgR67z-UDs1bwHQn6ouX2c/edit#gid=45643785>

Core Retention. The Governor had the highest core retention at 86.29%, followed closely by the Legislature, Bewley, and BLOC, all at less than three percentage points lower. Hunter and Citizen MathSci were more than ten percentage points below the Governor.

Total Deviation. Citizen MathScientists had the lowest total deviation at 0.74%, followed closely by the Legislature. BLOC, Hunter, and the Governor were considerably higher, but well within what WIMAP determined to be a 2 percent ceiling established by court precedents. The Bewley map was almost double that ceiling at 3.84 percent and could likely have been eliminated from further consideration on that basis alone.

Mean Reock (Compactness). The Hunter map had the best compactness, with a Reock score of 0.4234, followed by the Citizen MathScientists at 0.3972. The other four maps scored below average, with the Legislature’s map being the least compact.

County Splits. Citizen MathScientists had by far the fewest split counties (40). Bewley had the most split counties (54). BLOC, the Governor, and the Legislature had only one fewer than Bewley (53). Hunter was slightly better than average (50).

Number of Times Counties are Split. Citizen MathScientists also had the fewest number of times that counties were split (133), while the Governor had the most (174). Hunter and the Legislature were better than average, and Bewley and BLOC were worse than average.

Municipal Splits. The Legislature had the fewest municipal splits (51), while Hunter had the most (154). BLOC and Citizen MathScientists were better than average, while Bewley and the Governor were worse than average.

Minority Voting Age Population. BLOC and the Governor included seven districts with a greater than 50% Black Voting Age Population (BVAP). Citizen MathScientists and Hunter included seven districts with 35 to 50% BVAP. The Legislature’s map had only six districts with 35 to 50% BVAP. All six maps included two districts with at least 50% Hispanic Voting Age Population (HVAP), so that metric is omitted from the table.

Summary Observations. The variation among map proposals demonstrates several of the inherent conflicts between criteria used to evaluate maps. The Governor had the best core retention, but had poorer relative scores for other criteria, including total deviation, compactness, and splits. Citizen MathSci had the lowest (worst) core retention, but high relative scores for the other criteria of total deviation, compactness, and splits. Hunter had relatively poor scores for core retention and total deviation, but the best Reock score for compactness. The Legislature was just the opposite, with relatively strong scores for core retention and total deviation, but the worst scores for compactness. *These patterns clearly demonstrate that the Parties submitting maps to SCOWIS were forced to compromise one or more constitutional and traditional map criteria to meet the court’s “least-change” approach.* Their choices also revealed their motivation. For example, the Legislature was motivated to keep its extreme partisan gerrymander in place, so it focused on core retention, which is not required by Wisconsin’s Constitution, to the detriment of compactness, which is required. As will be seen in the next section, the minority opportunity question became critical on appeal.

2. Senate least-change maps

Each of Wisconsin’s 33 senate districts contains three nested assembly districts. Redistricting map data and analysis for the six senate maps submitted by the parties to SCOWIS for review are presented in the table and narrative below. The map submitted by the legislature was the same map that was previously adopted by the legislature (SB 621) and vetoed by the governor.

Each column in the table presents scores for each of the metrics described above. The last two columns in the table include relevant metrics for Minority Voting Age Population, which are further explained in the corresponding section of the narrative below.

Table 2. Senate least-change Maps

Map Source	Core Ret.%	Total Dev.%	Mean Reock	County Splits	Times Split	Muni Splits	BVAP ≥ 50%	HVAP 40-50%
Bewley	90.50	1.69	0.3743	48	88	52	2	1
BLOC	89.60	0.96	0.3828	42	84	61	2	1
Citizen MathSci	74.30	0.50	0.3967	28	57	31	2	1
Governor	92.22	1.21	0.3776	45	89	71	2	1
Hunter	80.00	0.95	0.3832	42	74	79	2	1
Legislature	92.00	0.59	0.3600	42	71	31	2	1
Averages	86.44	0.98	0.3791	41.17	77.17	54.17	2.00	1.00
Color Rating	Best		Above Average		Below Average		Worst	

For additional metrics provided by DRA see

Senate SCOWIS Least Change Final Report, accessible at

https://docs.google.com/spreadsheets/d/1INiwWEb_zh95OQWa8Z7cN2YPhRE2mQG38bOSsHoU5Uc/edit#gid=93590982

Core Retention. Governor had the highest core retention at 92.22%, followed closely by the Legislature, Bewley and BLOC, all at less than three percentage points below. Hunter and Citizen MathScientists were more than twelve percentage points below the Governor.

Total Deviation. Citizen MathScientists had the lowest total deviation at 0.50%, followed closely by the Legislature. BLOC, Hunter and the Governor were considerably higher. The Bewley map had the highest total deviation that was more than three times the lowest.

Compactness. The Citizen MathScientists map had the best score for compactness with a Reock score of 0.3967 followed closely by Hunter and BLOC. The other three maps scored below average with the Legislature's map being the least compact.

County Splits. Citizen MathScientists had by far the fewest split counties (28). Bewley had the most split counties (48). The other four maps were all worse than average with 42 or more split counties.

Number of Times Counties are Split. Citizen MathScientists also had the lowest number of county splits (57), while the Governor had the highest (89). Hunter and the Legislature were better than average, and Bewley and BLOC were worse than average.

Municipal Splits. The Citizen MathScientists and the Legislature had the fewest municipal splits (31), while Hunter had the most (79). Bewley was better than average, while BLOC and the Governor were worse than average.

Minority Voting Age Population. All six maps included two districts with at least 50% Black Voting Age Population and one district with between 40-50% Hispanic Voting Age Population.

Summary Observations. Because each senate district contains three contiguous assembly districts, there was similar variation among the senate maps, which again demonstrated the inherent conflicts between criteria. The Governor again had the best core retention, which was achieved at the cost of below average scores for all other criteria other than minority opportunity. Citizen MathScientists had the lowest core retention, which allowed achievement of the best scores for all other criteria other than minority opportunity. This dichotomy further illustrates the negative impact the “least-change” requirement had on both constitutional and traditional redistricting map criteria. Compactness and splits had to be sacrificed to maximize core retention. Faults in the 2011 Map were perpetuated, and sometimes exacerbated, in the maps submitted to SCOWIS.

3. Congressional “least-change” maps

Redistricting map data and analysis for the five congressional district maps submitted by the parties to SCOWIS for review are presented in the table and narrative below. Bewley and BLOC did not submit congressional maps.

The Congressmen and the Legislature both submitted the same map, which was also the same map previously approved by the legislature (SB622) and vetoed by the governor. It had been criticized for making boundary adjustments between the 3rd and 7th congressional districts that would make the 3rd congressional district more competitive for Republican candidates.³⁸ The Congressmen then filed a motion to submit an “alternative” map for SCOWIS to consider that would remove these adjustments and improve the map's core retention as a better “least-change” map.³⁹ All of the parties other than the Legislature objected to the Congressmen’s “alternative” map approach, and SCOWIS denied the request on the basis that it was outside its established map submission protocol.⁴⁰

Each column in the table presents values for each of the metrics described above. The last column in the table includes relevant metrics for minority opportunity that are further explained in the corresponding section of the narrative below.

³⁸ **Redistricting plan would increase GOP chances in Wisconsin's most competitive congressional district.** WPR, October 25, 2021. <https://www.wpr.org/redistricting-plan-would-increase-gop-chances-wisconsins-most-competitive-congressional-district>. **Redrawing Wisconsin's 7th Congressional District: How GOP hopes to again gain power with new maps.** Wausau Daily Herald, November 2, 2021. <https://www.wausaudailyherald.com/in-depth/news/politics/2021/11/02/wisconsin-politics-how-republicans-gain-power-7th-district-map/5336723001/>..

³⁹ <https://www.wicourts.gov/courts/supreme/origact/docs/motioncongressmen.pdf>.

⁴⁰ <https://www.wicourts.gov/courts/supreme/origact/docs/011022ordermotioncorrectmaps.pdf>.

Table 3. Congressional least-change maps

<u>Map Source</u>	<u>Core Ret.%</u>	<u>Total Dev.%</u>	<u>Mean Reock</u>	<u>County Splits</u>	<u>Times Split</u>	<u>Muni Splits</u>	<u>MVAP ≥ 50%</u>
Citizen MathSci	91.50	0	0.4197	7	8	13	1
Congressmen	93.48	0	0.3932	10	11	24	1
Governor	94.53	0	0.3786	12	13	47	1
Hunter	93.10	0	0.3739	11	11	29	1
Legislature	93.48	0	0.3932	10	11	24	1
Averages	93.22	0.00	0.3917	10.00	10.80	27.40	1.00
Color Rating	Best		Above Average		Below Average		Worst

For additional metrics provided by DRA see
Senate SCOWIS Least Change Final Report, accessible at

<https://docs.google.com/spreadsheets/d/1NMQ3YUNZt2dCBYVTFIYNUDjRTwuZnfzrjD23YpmDdYI/edit#gid=948063739>

Core Retention. Governor had the highest core retention (94.53%), followed closely by the Legislature, Congressmen, Bewley and Hunter (all less than 1.5 percentage points behind). Citizen MathScientists was more than three percentage points behind the Governor.

Total Deviation. All maps were at zero total deviation.

Compactness. The Citizen MathScientists map had the best score for compactness with a Reock score of 0.4197. Hunter had the least compact map with a Reock score of 0.3739. The Congressmen and the Legislature were slightly above average, and the Governor was below average.

County Splits. Citizen MathScientists had the fewest split counties (7). The Governor had the most split counties (12). The other three maps were no better than average (10 or more split counties).

Number of Times Counties are Split. Citizen MathScientists also had the lowest number of times counties are split (8), while the Governor had the highest (13). The other three maps all had more splits than the average (10.8).

Municipal Splits. The Citizen MathScientists had the fewest municipal splits (13), while the Governor had the most (47). The Congressmen and the Legislature were better than average, while Hunter was worse than average.

Minority Voting Age Population. All five maps included a district in the Milwaukee area with a Minority Voting Age Population (MVAP) greater than 50%.

Summary Observations. The variation among congressional map proposals also demonstrated several of the inherent conflicts among criteria used to evaluate maps. The Governor had the best core retention, which overshadowed low or the lowest scores for compactness and splits. Citizen MathScientists had the lowest core retention, which overshadowed the best scores for compactness and splits. Similar to our findings with the legislative maps, the congressional map proposal with the best core retention (Governor) had lower compactness and the most splits. The Citizen MathScientists map had the lowest core retention and had the best metrics for compactness and splits. Here too, the SCOWIS “least-change” approach produced suboptimal results for constitutional and traditional redistricting map criteria.

F. “Concerned Voters of Wisconsin” Amicus Brief

WIMAP members believe Wisconsin’s voting maps should be nonpartisan. Three events precipitated our decision to file an amicus brief in Johnson v. WEC.

First, we began reviewing possible assembly and congressional maps as soon as we could access them. Our review picked up speed when the Wisconsin legislature opened its Draw Your District map portal on September 1, 2021. We reviewed more than 100 statewide maps, and throughout the process were very encouraged by the enthusiasm and thoughtful input of so many fellow citizens. We were extremely dismayed and discouraged when the legislature released its proposed redistricting maps with no apparent consideration of input it received through the Draw Your District map portal.

Second, WIMAP members joined a large number of Wisconsin citizens and organizations in submitting oral or written testimony in opposition to the legislature’s proposed maps at its public hearing on October 28, 2021. In spite of a long day filled with citizens testifying, plus additional written testimony, all opposing the legislature’s proposed maps, the legislature again ignored the input, and quickly adopted SB 621 Maps without a single change. We were again dismayed and discouraged. We were neither surprised nor disappointed when the governor vetoed the maps shortly thereafter. We knew the maps would go to court.



Third, when SCOWIS made its “least-change” ruling, we decided we needed to raise our voices and be heard. Such was the motivation for our decision to prepare and submit an amicus curiae “friend of the court” brief.

Our brief was filed after SCOWIS imposed the “least-change” approach to the maps, and although we vociferously disagreed with that approach, we had no choice but to work within its parameters.⁴¹

WIMAP was represented pro bono by Joseph Goode, Mark Leitner and John Halpin of the Milwaukee law firm of Laffey, Leitner & Goode LLC. With help from Western Wisconsin Nonpartisan Voting Districts (WWNVD), North Shore Fair Maps (NSFM), and the Fair Maps Coalition (FMC), we enlisted amici from all 33 state senate districts. There were many issues and concerns with the Wisconsin redistricting and the SCOWIS process we wanted to address, but we were limited by the court’s word and page limitations. So we chose to focus our thinking and message on three issues that were immediate priorities being considered by SCOWIS:

1. The legislature’s proposed map (SB 621) fails as a “least-change” map.
2. The court should not protect incumbents in the redistricting process.
3. The court should reject the use of the scorecard metrics proposed by WILL to identify the “best map.”

1. “Least-change”: Even if the “least-change” approach was a valid criterion, SB 621 failed as a “least-change” map. We were able to provide three in-depth examples from western Wisconsin and Milwaukee suburbs proving that the legislature’s map made major changes to the district lines of five assembly districts without such changes being necessary. We showed how SB 621 unnecessarily moved tens of thousands of voters between districts, reducing compactness and splitting established communities of interest. DRA data revealed that the changes the legislature made to the maps favored both Republicans and incumbents. The legislature’s intent was clear. Unfortunately, because of SCOWIS’s stipulations, we were not allowed to address partisanship in our brief. We limited ourselves to SB 621’s “least-change” deficiencies. Our analysis, with images of the areas we reviewed, can be found in Section VIII.

2. Incumbents: The court should not protect incumbents in the redistricting process. Several parties to the case argued that the court should avoid incumbent pairings (two incumbents are drawn into the same district). SCOWIS said it would be apolitical and neutral, and not consider partisan concerns. Yet by avoiding incumbent pairings, SB 621 protected incumbents, while having the worst compactness of all maps submitted. Compactness is a Wisconsin constitutional requirement; incumbent protection is not. We reminded the court of its intentions and requested that it ignore incumbency.

3. Scorecard: The court should reject the use of the proposed scorecard metrics to identify the “best map.” Instead of submitting maps, WILL submitted a proposed scorecard developed by its expert, Dr. James Gimpel for evaluating and comparing the maps that were submitted by others. We explained that scorecards don’t tell the whole story, need to be accurate, and the metrics

⁴¹ Non-Party Brief of Concerned Voters of Wisconsin, filed January 4, 2021.
<https://www.wicourts.gov/courts/supreme/origact/docs/briefamicuscuriaeconcernvoters.pdf>.

considered would be critical. Based on these considerations, we argued that Gimpel’s scorecard was inappropriate and should be rejected.

We closed our brief with these recommendations: “For the reasons set forth herein, Concerned Voters ask this Court to reject SB 621 along with Petitioners’ application of their scorecard; and, recognizing the specialized expertise required for this inherently complicated task, invite the federal court to take jurisdiction over this dispute for appropriate fact-finding and decision-making. If the Court retains jurisdiction, it should clearly articulate how it prioritizes the redistricting criteria in reaching its decision.”

G. The Court Selects the Governor’s Maps

WIMAP’s amicus brief was filed January 4, 2022. The parties also filed briefs that day. Another amicus brief was filed by UW-Madison law professor Robert Yablon and seven other national legal scholars. The legal scholars’ amicus brief attempted to sway the court to change its mind about their “least-change” approach. The scholars’ words were harsh:

What this court should not do is continue down its current, misguided path. The notion that a makeshift least-change principle found nowhere in Wisconsin law compels this court to perpetuate what are likely the most politically biased maps in state history simply does not pass muster. Wisconsinites will see such a ruling for what it is, and they will judge this court harshly.⁴²

Oral arguments were limited to the parties, and went on for more than five hours on January 19th.

There was one constant thread that prevailed through all the briefing and oral arguments. Each party to varying degrees tried to articulate a concept of “least-change” that would support the strengths of their own map. In the end, the majority opinion would make it a simple definition: core retention. (Photo right of Justice Jill Karofsky discussing “least-change” with MathSci counsel.)



On March 3, 2022, SCOWIS approved governor Evers proposed maps in a hotly debated 4-3 decision.⁴³ Conservative Justice Brian Hagedorn aligned with the court’s three liberal justices and authored the majority opinion. They chose the governor’s maps largely on the basis that they achieved the highest level of core retention from the 2011 Map. According to the opinion, “The Governor’s map moves the fewest number of people into new districts. It is not a close call.” The

⁴² Non-party Amicus Curiae brief of legal scholars in support of no party.

<https://www.wicourts.gov/courts/supreme/origact/docs/briefamicuscuriaelegalscholars.pdf>.

⁴³ <https://www.wicourts.gov/sc/opinion/DisplayDocument.pdf?content=pdf&seqNo=491777>.

majority opinion added that the governor's assembly map had seven Black majority districts in the Milwaukee area in the narrow range between 50.09% to 51.39%. Without further discussion, the opinion concluded that, “there are good reasons to believe a seventh majority-Black district is needed to satisfy the VRA.”

Three conservative justices wrote separate dissents, each of the three joining each other's dissent. Justice Rebecca Bradley's dissent was inflammatory. Even though SCOWIS had failed to define “least-change”, and even though all of the parties used “core retention” as the measure for “least-change”, Bradley disavowed its use. Fellow conservative Justice Hagedorn, who had written a concurring opinion in the “least-change” decision but now sided with the liberal justices, became the subject of her wrath. She chastised the parties for giving deference to Hagedorn's concurring opinion, then added:

In fairness to the parties who mistook Justice Hagedorn's solo concurrence for the opinion of this court, perhaps their confusion stemmed from Justice Hagedorn's own words. In his concurrence, he "invited" the parties to submit proposed remedial maps and briefing in conformity with his idiosyncratic views--never mind that only this court, acting through a majority of participating justices, can "invite" parties to do anything. Justice Hagedorn may have cast the deciding vote in this case, but he does not have the power to act as a supreme court of one.

Bradley expressed her anger that Hagedorn, who had not mentioned “core retention” before, was now basing the entire outcome of the case on that measurement. In fairness to Justice Hagedorn, when Bradley wrote the earlier opinion demanding a “least-change” approach, she failed to define it. What were the parties, and Justice Hagedorn, to do? What is most telling about Bradley's dissent is the clarity it brings to the fact that the “least-change” approach adopted by SCOWIS was not defined by SCOWIS, nor easily discerned through legal research. WIMAP experienced this first-hand: even we had difficulty agreeing on how to operationalize “least-change.”

Bradley's opinion also questioned the legal basis and justification for the seventh VRA district in the governor's proposed assembly map, but that legal argument was almost lost amidst her attacks against Justice Hagedorn. Justice Annette Ziegler's dissent also raised a question about the governor's compliance with the VRA, wryly noting that the governor's assembly map “carved seven [Black voting age majority] districts by race with the exactness of only the most gifted social scientists.”⁴⁴

H. Appeals to the U.S Supreme Court and Reversal

The governor's legal success was short-lived. On March 4, 2022, the day after SCOWIS approved the governor's maps, the legislature filed a motion for expedited stay of the court's decision as applied to the legislative maps.

⁴⁴ <https://www.wicourts.gov/sc/opinion/DisplayDocument.pdf?content=pdf&seqNo=491777>. Bradley's block quote is in her dissent p. 30. Ziegler's comments on race in her dissent p. 1.

On March 7, the legislature and WILL appealed the decision to the U.S. Supreme Court (SCOTUS) on the grounds that the governor's legislative maps, particularly the VRA districts in Milwaukee, were a violation of the Fourteenth Amendment's Equal Protection Clause and the VRA. The congressmen also appealed to SCOTUS on the grounds that the governor's congressional map violated the U.S. Constitution, and the SCOWIS process violated the Due Process Clause.

On March 23, 2022, in an unsigned seven-page decision, SCOTUS overruled the SCOWIS decision on Wisconsin's legislative maps. SCOTUS focused on the statement by SCOWIS that the governor's map complied with the VRA because there were "good reasons" to think the VRA "may" require a certain number of majority-Black districts. SCOTUS rejected governor Evers' maps as they were, and sent them back to SCOWIS with instructions that maps chosen must comply with the Equal Protection criteria detailed in their ruling. Among other things, the majority noted, the court could adopt the maps only if it believed the VRA required an additional majority-Black district, which, the state court had conceded, it could not "say for certain." The SCOTUS majority stressed that the Wisconsin Supreme Court was also "free to take additional evidence if it prefers to reconsider the Governor's maps." SCOTUS denied the appeal from the congressmen on the same day.⁴⁵

Following the SCOTUS decision, governor Evers requested the opportunity to supplement the record with new and existing expert testimony on the VRA issues. SCOWIS denied his request on April 1, 2022.

I. Wisconsin Supreme Court Selects the Legislature's Assembly and Senate Maps

On April 15, 2022, in another closely divided 4-3 decision, SCOWIS made a bombshell reversal, and approved the legislature's maps. Rather than revising the governor's assembly map in the Milwaukee area, as was done by a federal court in 2012, SCOWIS relied solely on its own record and the feedback from SCOTUS, and concluded that the legislature's proposal was the only viable proposal, and that all the other proposals were somehow race based.⁴⁶

At the end of the 2020-2022 redistricting process, Wisconsin was left with legislative maps more gerrymandered than before, the same maps the governor had vetoed. The maps were designed to

⁴⁵ Wisconsin Legislature v WEC on application for stay and injunctive relief. https://www.supremecourt.gov/opinions/21pdf/21a471_097c.pdf, pp. 2 and 7.

⁴⁶ https://www.wicourts.gov/courts/supreme/origact/docs/21ap1450_opdec.pdf. For more on the reversal, go to **State Supreme Court reverses itself, picks GOP maps for Legislature**. Wisconsin Examiner, April 15, 2022. <https://wisconsinexaminer.com/2022/04/15/state-supreme-court-reverses-itself-picks-gop-maps-for-legislature/>; **Wisconsin Supreme Court adopts legislative maps drawn by Republicans**. Milwaukee Journal Sentinel, April 15, 2022. <https://eu.jsonline.com/story/news/politics/2022/04/15/wisconsin-supreme-court-adopts-legislative-maps-drawn-republicans/7250042001/>.

provide the GOP a super-majority (rendering moot the governor's veto power). In November 2022 the senate did gain that supermajority. The assembly fell two seats short. For now.

J. The Fight Continues

We were taught in school to believe that justice is blind. But the Legal Scholars correctly pointed out that Johnson v WEC would test our faith in the Wisconsin Supreme Court. When the legislature's hyper-gerrymandered maps became law through a failed court procedure, we could not help but ask ourselves why. And wonder what to do next.



Wisconsin's legislature has shown no willingness to give voters a voice in government. Wisconsin voters cannot amend the state constitution through referendums. In fact, since the spring of 2023, Wisconsin voters cannot even pass any advisory referendums at either the local or state level.

We also cannot help but wonder what U.S. Supreme Court Justice John Roberts meant when he said the partisan gerrymandering was not condoned, and what he meant when he said people's complaints were not condemned to "echo into a void," since after Johnson v WEC, complaints about redistricting have, indeed, been left to echo into a void.

But Wisconsinites are resourceful. The battle over Wisconsin's maps is not over.⁴⁷ In the fall of 2022, the conservative Chief Justice of the Wisconsin Supreme Court announced her retirement. In the spring of 2023, a more liberal justice won by a landslide. Justice Janet Protasiewicz was sworn in on August 1, 2023. The following day a group of voters represented by Law Forward filed a petition asking SCOWIS to take original jurisdiction and declare the 2022 Assembly Map unconstitutional. Two days later, a group of mathematicians and computer scientists filed a similar petition. The cases ultimately moved forward as part of Clarke v. WEC.⁴⁸

What happens in the litigation is, for the most part, beyond the scope of this Report. That said, WIMAP joined other concerned Wisconsinites in an amicus brief filed in Clarke on November 8, 2023. Whatever happens next ... WIMAP is watching.

⁴⁷ **Law Forward rings the warning bell on the Wisconsin Supreme Court.** November 2, 2022. <https://www.lawforward.org/deconstructing-democracy-law-forward-rings-the-warning-bell-on-the-wisconsin-supreme-court/>. See also **The 2022 Election is over. Wisconsin turns to redistricting (again).** Badger Project, November 23, 2022. <https://thebadgerproject.org/2022/11/23/the-2022-election-is-over-wisconsin-turns-to-redistricting-again/>.

⁴⁸ Clarke v Wisconsin Elections Commission. The Clarke docket sheet can be accessed at <https://www.wicourts.gov/courts/supreme/origact/2023ap1399.htm>.

VIII. WIMAP Review of Officially Selected Maps & Alternatives

WIMAP's overarching goal was to collect and analyze Wisconsin redistricting maps in the hope that some of the better characteristics of the various maps that were drawn could contribute to the production of quality maps for Wisconsin. Our primary map sources were the legislature's Draw Your District (DYD) portal (opened early September, closed October 15, 2021), Dave's Redistricting App (DRA), and the People's Maps Commission (PMC).¹

We used DRA exclusively to analyze and assess the maps. In order to obtain standardized metrics for its analysis, WIMAP submitted all maps drawn in any other redistricting app (e.g., Districtr) to DRA. The general procedure for standardization was to take comma-separated values (CSV) formatted files for the maps and submit these files to DRA.

Definitions of redistricting metrics as used in this Section:

Total Deviation (Tot Dev) - The difference in population between the largest district and the smallest district in a redistricting plan expressed as a percentage of the ideal district population (total population / number of districts). It is derived by adding the largest positive deviation and the absolute value of the largest negative deviation.

Polsby-Popper (Pol-Pop) - A compactness measure of the redistricting plan. The Pol-Pop metric of a district compares the area of the district to the area of a circle having the same perimeter of the district. The Pol-Pop of any district as well as the average Pol-Pop of all districts in the map cannot exceed 1. Larger numbers are better.

Reock - A compactness measure of the redistricting plan. The Reock metric of a district compares the area of the district to the area of the smallest circle enclosing the district. The Reock of any district as well as the average Reock of all districts in the map cannot exceed 1. Larger numbers are better.

County Splits (Co. Split) - The number of counties that are divided by two or more districts. Wisconsin has 72 counties.

Times Counties Split (Times Co. Split) - This number counts the total number of times counties are split. Example: one split means that parts of a county are found in two different districts, two splits mean parts of a county are found in three districts, etc.

Muni Splits - The number of municipalities (cities, villages, towns) that are divided by districts. There are 1,850 municipalities in Wisconsin.

¹ For more information about the People's Maps Commission, see Section IV. Draw Your District is described in Section VI. Dave's Redistricting App is described in Section V.

Minority Voting Age Population $\geq 35\%$ (MVAP $\geq 35\%$) - The number of districts that contain at least a 35% minority voting age population. This metric is the percentage reported by DRA and has no bearing on VRA compliance.

Efficiency Gap (Eff. Gap) - The difference between the two political parties' "wasted votes" - votes for a party's losing candidates plus votes for a party's winning candidates in excess of the minimum needed to win - divided by the total number of votes. It is a measure devised by University of Chicago law professor Nicholas Stephanopoulos and political scientist Eric McGhee in 2014. An efficiency gap above 7% or below -7% for states with two equally popular parties may be considered gerrymandered.²

A. Legislative maps

Each of Wisconsin's 33 senate districts is composed of three contiguous assembly districts. We focus only on the 99-district assembly map, mainly because the Wisconsin constitution is more prescriptive in its requirements of it. In addition, because each senate district consists of three assembly districts, the senate district inherits the characteristics of its component assembly districts. WIMAP did not record or review senate maps submitted to the DYD portal.

1. Timeline of maps and WIMAP review:

August 15 - October 15, 2021 -- Citizens submit maps

The computer files of the 2020 Census data that are used to create and review legislative maps were not released until August 12, 2021.³ Of the 37 citizen drawn assembly maps collected by WIMAP by October 15 (Citizen Maps), 25 came from DYD, nine from DRA, and three from the PMC. WIMAP created a master spreadsheet (Spreadsheet 1) listing DRA metrics with links to the maps and more details, which can be accessed at https://docs.google.com/spreadsheets/d/1vIwGauFBeh2R5vmI_3K-incOO1NbyDCa/edit#gid=1827953260.

This spreadsheet and others in this section include only complete statewide assembly maps; they do not include the multitude of community of interest (COI) maps submitted by ordinary citizens, as described in Section IV.

² We report on three partisan metrics out of many provided by DRA. The Efficiency Gap is one of them. We chose it because it is easy to explain and has some history in the courts. Some states use voting information to build maps. As the result of a fair voting maps referendum, Michigan's Constitution now reads: "Districts shall not provide a disproportionate advantage to any political party. A disproportionate advantage to a political party shall be determined using accepted measures of partisan fairness." Article IV Section 6: Independent citizens redistricting commission for state legislative and congressional districts. [http://www.legislature.mi.gov/\(S\(2lylau2ytuageotzz4ty1mcs\)\)/mileg.aspx?page=getObject&objectName=mcl-Article-IV-6](http://www.legislature.mi.gov/(S(2lylau2ytuageotzz4ty1mcs))/mileg.aspx?page=getObject&objectName=mcl-Article-IV-6).

³ See Section II footnote 7.

In Table 1 below, we compare the averages of important metrics of the Citizen Maps to Wisconsin’s 2011 Map, then add our observations. We compared the 2011 Map to the Citizen Maps because it is an important baseline in light of the “least-change” mandate. The legislature had not released their map at the time of our initial analysis.

The legislature’s assembly map (SB 621) was officially introduced on October 20, 2021. Had the legislature wanted to, it could easily have reviewed the Citizen Maps, as WIMAP did, and incorporated some of the superior map elements suggested by the many maps submitted by citizens, including the People’s Maps Commission. It did not do so.

Table 1: Average of Selected DRA Metrics of Citizen-Submitted Assembly Maps Compared to the 2011 Map

	Tot. Dev.	Pol.- Pop.	Reock	County Split	Times Co. Split	Muni Splits.	MVAP $\geq 35\%$	Efficiency Gap
Ave. of Citizen-Submitted Maps	3.05%	.3184	.3955	48.9	131.8	130.4	10.1	6.94 %
2011 Map	0.76%	.2757	.3700	58.0	169.0	110	11.0	11.05 %

Observations for Table 1 and its corresponding Spreadsheet 1:

- All of the maps in Spreadsheet 1 have a total deviation of less than 10%.
- The average compactness metrics of the Citizen Maps (Polsby-Popper, Reock) are better (higher) than that of the 2011 Map.
- The average county splitting metrics of the Citizen Maps (Counties Split, Times Counties are Split) are better (lower) than that of the 2011 Map.
- The average partisan fairness metrics of the Citizen Maps (Efficiency Gap, Partisan Bias, and Mean - Median) are better (lower) than that of the 2011 Map.
- The 2011 Map has superior population equality and municipal splitting compared with the average Citizen Map.
- The compactness metrics are highly correlated as are the county splitting metrics.
- All three of the partisan fairness metrics reported in Spreadsheet 1, including Efficiency Gap, are highly correlated, so we only report the Efficiency Gap in Table 1.
- The compactness metrics are moderately negatively correlated with the county splitting metrics.

October 15 - November 15 -- Official maps from the PMC, the legislature, and Senator Bewley enter the contest

Official assembly maps from the legislature (SB 621), the PMC, and Senator Bewley were published after the DYD portal closed on Oct. 15, 2023. Each of these maps have total deviations of less than 2%. Maps that have a higher total deviation have the advantage of more flexibility, which allows other metrics to be more easily improved. Some states allow deviation as high as 10%, but there is Wisconsin precedent for the 2% figure, so WIMAP decided to compare these new maps only to maps in Spreadsheet 1 whose total deviation was 2% or less.⁴

In Table 2 below we compare assembly maps in our collection whose deviation is less than 2% to SB 621. It reflects most of the observations of Table 1. The main difference is that the negative correlation between compactness and county splitting metrics is weaker in Spreadsheet 2, which can be accessed at

<https://docs.google.com/spreadsheets/d/1xA8dM5LKbDRzs07WXdDmJjAeUJiYaVTG/edit#gid=1827953260>.

Table 2: Selected DRA Metric Averages of Citizen-Submitted Assembly Maps with Less Than 2% Deviation Compared to SB 621

	Tot. Dev.	Pol.- Pop.	Reock	County Split	Times Co. Split	Muni Splits.	MVAP. ≥ 35%	Efficiency Gap
Citizen Maps	1.48%	.3151	.4006	50.3	138.4	119.3	10.1	7.25 %
SB 621	0.76%	.2450	.3582	53	156	51	10.0	11.25 %

Observations from Table 2 and its corresponding Spreadsheet 2:

- All of the maps in Spreadsheet 2 have a total deviation of less than 2%.
- The average compactness metrics of the Citizen Maps (Polsby-Popper, Reock) are better (higher) than that of SB 621.
- The average county splitting metrics of the Citizen Maps (Counties Split, Times Counties are Split) are better (lower) than those of SB 621.
- The average partisan fairness metrics of the Citizen Maps (Efficiency Gap, Partisan Bias, and Mean - Median) are substantially better (lower) than that of SB 621.
- SB 621 map has superior population equality and municipal splitting compared with the average Citizen Map.
- The compactness metrics are highly correlated as are the county splitting metrics.
- All three of the partisan fairness metrics are highly correlated.

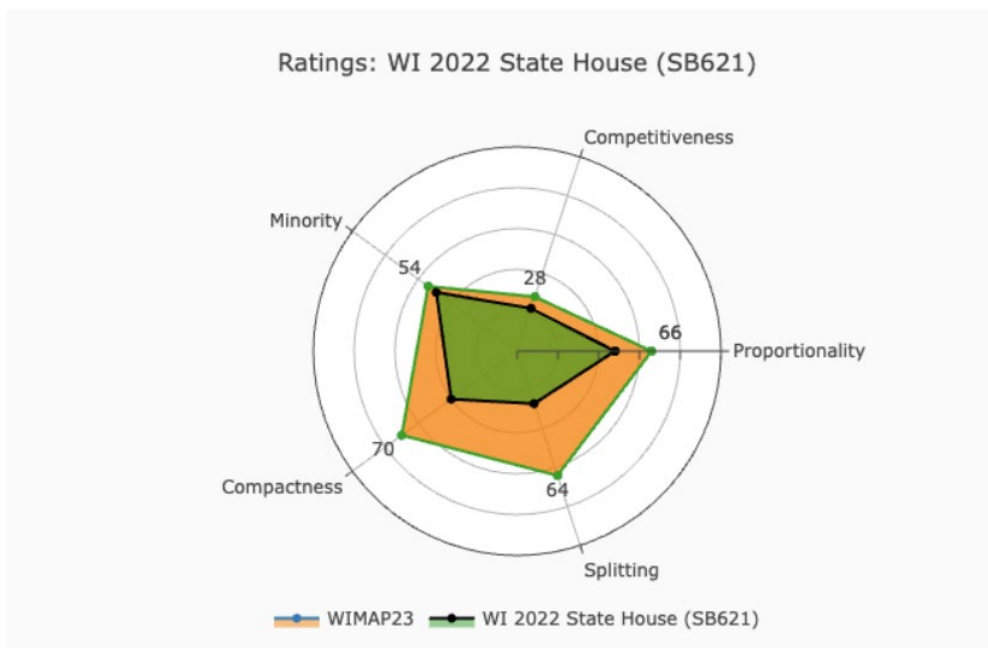
⁴ See LRB Guidebook p 10.

DRA ratings comparison of PMC map and SB 621

DRA combines various metrics into five ratings categories and converts them to a 0-100 scale.

- 1) **Compactness** (required by Wisconsin's constitution) is measured by comparing the area of a district to the area of the smallest circle that encloses it.
- 2) **County Splitting** measures how well counties are kept intact, not split across districts.
- 3) **Minority Opportunity** is concerned with the map's ability to give minorities an opportunity to elect candidates of their choice (see the Voting Rights Act of 1965). This rating is based on districts with minority voting age populations greater than 35%. DRA explicitly states that this rating does NOT ensure Voting Rights Act (VRA) compliance.
- 4) **Proportionality** compares the assembly election results to statewide election results for president 2016, 2020, senate 2016, 2018, governor 2018, and attorney general 2018.
- 5) **Competitiveness** rates the degree that the map provides competitive districts (ones with the winner getting less than 55% of the vote).

The DRA ratings categories listed above can be easily converted into a spider graph, which quickly illustrates the differences between maps. For example, the image below graphically illustrates the DRA ratings of two maps: 1) the legislature's assembly map (SB 621, smaller green area) and 2) a WIMAP demonstration map drawn to maximize compactness and minimize splitting (larger orange area). Larger numbers are always better. The fact that the WIMAP demonstration map's "spider web" is larger than the legislature's web shows that, according to DRA, a map better than SB 621 could have been drawn.



In Table 3 below, we compare SB 621 with several other assembly maps submitted to the DYD portal. As the table shows, numerous alternative maps were superior to SB 621 according to the five ratings categories assessed by DRA. In particular, the PMC's final assembly map scored better than SB 621 in all five rating categories. The Princeton Gerrymandering Project concurred with DRA's assessment. It gave the PMC map an overall grade of A. In contrast, SB 621 earned an F.⁵

Table 3: DRA Ratings of Some DYD Portal Assembly Maps, PMC & SB 621

GEOGRAPHIC MEASURES				VOTING RIGHTS MEASURES		POLITICAL MEASURES			
MAP NAME	Compactness	MAP NAME	County Splitting	MAP NAME	Minority Opportunity	MAP NAME	Proportionality	MAP NAME	Competitiveness
63VA3X	69	ROGUOH	76	PMC	55	ROGUNH	78	PMC	31
IHQZNZ	67	IHQZNZ	76	Z79JYZ	54	FC4IC5	78	LIAPIB	31
ROGUOH	67	Z79JYZ	76	07VVMC	49	PMC	77	O4DMAM	31
Z79JYZ	64	LIAPIB	56	TR6L27	49	O4DMAM	75	DK88ZQ	29
07VVMC	62	O4DMAM	52	L19J6I	49	63VA3X	71	63VA3X	29
FMAA1R	60	ROGUNH	47	SB 621	49	DK88ZQ	67	ROGUNH	29
O4DMAM	60	PMC	41	IHQZNZ	48	FMAA1R	66	07VVMC	28
DK88ZQ	60	63VA3X	36	LIAPIB	45	ROGUOH	66	FMAA1R	28
PMC	59	FC4IC5	31	FMAA1R	45	IHQZNZ	65	IHQZNZ	28
LIAPIB	59	07VVMC	30	O4DMAM	45	Z79JYZ	65	Z79JYZ	28
L19J6I	49	SB 621	26	ROGUOH	44	07VVMC	62	ROGUOH	28
TR6L27	48	L19J6I	23	DK88ZQ	42	LIAPIB	61	TR6L27	26
ROGUNH	47	TR6L27	23	ROGUNH	42	TR6L27	53	L19J6I	26
FC4IC5	40	FMAA1R	22	63VA3X	41	L19J6I	52	FC4IC5	26
SB 621	40	DK88ZQ	13	FC4IC5	40	SB 621	48	SB 621	22

Source: WIMAP Spreadsheet 3: https://docs.google.com/spreadsheets/d/124NXqi2EEeX0549AvDYC-cqyJCdYNT_j/edit#gid=523417997

To get DRA ratings click on the map code ID, let the map download, click Analyze button.

The legislature could have reviewed these maps and improved upon the map they were drafting. This would, of course, have required them to make substantial changes to the existing 2011 Map. Instead, five days (including a weekend) after they closed their DYD portal, the legislature introduced SB 621, proudly proclaiming it had very few changes from the 2011 Map. The fact that SB 621 had poor DRA scores and the speed with which SB 621 was brought forward for a vote suggest that the legislature had little interest in improving the quality of the 2011 Map by implementing changes suggested by the alternative maps submitted to its own DYD portal.

⁵ <https://gerrymander.princeton.edu/redistricting-report-card/?planId=recaaQlt0nQyOI7IB>.
<https://gerrymander.princeton.edu/redistricting-report-card/?planId=rechi9RM1d1yEiivc>.

November 17 - March 3 - The Wisconsin Supreme Court (SCOWIS) chooses the winning map - Round One

SB 621 was enacted along party lines, and vetoed by the governor. By this time, redistricting was under the original jurisdiction of SCOWIS.⁶ On November 17, 2021, SCOWIS gave parties until December 15 to submit maps for review, and on November 30, 2021, the Court declared that all maps submitted by the parties would be judged based on a “least-change” approach if all other federal and state requirements were met. They also stated they would not consider any discussion of partisan fairness. Although undefined in the opinion, the common interpretation of “least-change” by all the parties was highest core retention. Core retention is the percentage of the Wisconsin population that remains in the same numbered district in the redistricted map.

Six parties submitted assembly maps to SCOWIS: Black Leaders Organizing for Communities, Voces de la Frontera, and the WI League of Women Voters (BLOC), Hunter et al., Citizen Mathematicians and Scientists (Citizen MathSci), the Wisconsin Legislature, Governor Evers, and Senate Minority Leader Janet Bewley. A short list of metrics for these maps is given in Table 4 below.

Table 4: Selected DRA Metrics of Assembly Maps Submitted to SCOWIS⁷

Map	Core Retention	Total Deviation	Reock Comp.	Tot. Times Co. Split	Munis Split	BVAP ≥ 35%	Efficiency Gap
Gov.	86.29%	1.88%	.3685	174	111	7	8.65%
SB 621	84.51%	0.76%	.3582	156	51	6	11.25%
Bewley	84.02%	3.82%	.3785	171	100	6	8.47%
BLOC	83.48%	1.32%	.3607	170	88	7	7.60%
Hunter	75.58%	1.82%	.4234	142	154	7	7.79%
MathSci	71.14%	0.74%	.3972	133	89	7	7.98%

Additional details and the DRA links to the maps can be found in Spreadsheet 4, accessible at <https://docs.google.com/spreadsheets/d/1SNVT1Vd-zeg7OxsRMQt8WO7QH1MdvMgO/edit#gid=1827953260>

⁶ See Section VII.

⁷ Descriptions of the metrics can be found in the discussion of Table 1.

Observations for Spreadsheet 4 and its corresponding Table 4:

- Each of the maps submitted contain two majority Hispanic Voting Age Population districts in Milwaukee County.
- Even though Citizen MathSci's map has excellent compactness and splitting ratings and the lowest total deviation, it made the most changes to the 2011 Map, and was eliminated from competition for its vastly inferior core retention. Some critics faulted the lower number of majority BVAP (Black Voting Age Population) districts in the Citizen MathSci map, but there is some evidence that a 37% BVAP may be sufficient to provide Black communities the opportunity to elect representatives of their choice in a district.⁸
- Hunter's map also suffers from a significantly poorer core retention even though the map has the best compactness score.
- BLOC's map has a core retention of 83.48%, a full percentage point below that of the legislature's map.
- Sen. Bewley's map could be eliminated for its high total population deviation of 3.82%.
- Governor Evers' map with a 1.78% core retention advantage over the legislature's map won SCOWI's initial contest, even though its total deviation and splitting metrics are worse than the legislature's map.
- SB 621 stood out as the worst performing map of the six in partisan fairness (Efficiency Gap). Unfortunately, SCOWIS demanded that partisan data be excluded from all briefs and forbade any arguments considering it.

When a map excels on one metric, it is likely another metric suffers. That is the nature of redistricting and cannot be avoided. The best mapmakers work to balance the metrics while complying with basic legal requirements. But SCOWIS ignored recognized map quality metrics and focused almost entirely on core retention. To everyone's surprise the governor submitted a map with greater core retention (fewer changes) than SB 621! The governor's map won the first round of what legal scholars called a "least-change beauty pageant."⁹ SCOWIS' vote was close, 4-3, with Justice Brian Hagedorn casting the deciding vote in a contentiously split court.¹⁰

October 28 - April 15 - The VRA Balancing Act

The governor's assembly map, like that of BLOC, contains seven districts in the Milwaukee area with Black Voting Age Populations (BVAP) in a narrow range between 50.09% and 51.39%. Whether or not one agrees with the governor's approach to satisfying the Voting Rights Act (VRA), one should at least be sympathetic with the predicament he faced. BLOC pushed for a map containing seven BVAP majority districts in the Milwaukee area. The minority population

⁸ Comparison of Districting Plans for the Virginia House of Delegates. <https://mggg.org/VA-report.pdf>.

⁹ Non-party Amicus Curiae brief of legal scholars in support of no party. <https://www.wicourts.gov/courts/supreme/origact/docs/briefamicuscuriaelegalscholars.pdf>.

¹⁰ In Section VII we discuss Justice Rebecca Bradley's scathing dissent.

in Milwaukee grew even though the total population shrank, and the previous map had six majority BVAP districts. The legislature wanted a map that changed the current six BVAP map the least. SCOWIS ruled for a “least-change” map that did not violate the VRA, and left it up to the parties involved to solve the problem. The challenge for Governor Evers was to draw a map with superior core retention that was reasonably bullet-proof against any VRA complaint. To fully understand how VRA compliance complicated the situation, one needs to review the chronology of events leading up to the presentation of the maps to SCOWIS on December 15, 2021.

On October 28 Speaker Vos presented the legislature’s assembly map claiming, “Our goal from start to finish was to produce a ‘least-change’ map that prioritized core retention while adjusting for population change.” Feeling confident that its map would win the SCOWIS contest, the legislature chose not to make any changes to its map when it submitted it to SCOWIS in December. The core retention for this map is 84.5%, slightly better than BLOC’s percentage, but beatable. The VRA seemed to be secondary in the legislature’s priority list as its map contains only five majority BVAP districts, District 10 has only a 47.2% BVAP. BVAP percentages for the other five districts are: 73.3% (Dist. 11), 57.0% (Dist. 12), 54.1% (Dist. 16), 61.8% (Dist. 17), and 52.6% (Dist. 18).

At the time, there was debate about what BVAP percentage constitutes “packing” voters, a common gerrymandering practice disallowed by the VRA. BLOC posited that anything over 55% constitutes packing.¹¹ Maps submitted by others showed higher percentages, and some said up to 60% is acceptable. Under either position the 73.3% BVAP of District 11 is inordinately high, especially since it is a neighbor to sub-majority 47.2% District 10. Yet the legislature stated that its map was not race-motivated.¹²

On November 11 the legislature’s maps were officially adopted by the Republican-dominated assembly and senate. On the same day the PMC’s legislative map was soundly defeated by members from both parties. The Democratic opposition to the PMC map was led by Milwaukee Senator Lena Taylor and Representative Sylvia Ortiz-Velez, stating they did not believe that the maps complied with the VRA. The BVAP percentages for the PMC maps are: 56.3% (Dist. 10), 47.4% (Dist. 11), 58.0% (Dist. 12), 45.2% (Dist. 16), 44.9% (Dist. 17), and 45.7% (Dist. 18). The PMC said very little in its report to establish that its maps complied with the VRA, a critical mistake given that four of their districts had sub-majority BVAP. The governor most assuredly took note.

The PMC map was drawn before the “least-change” criterion was decided. This gave the governor an easy way to distance the PMC’s VRA-controversial map from his.

The governor’s roadmap to success was determined: 1) Draw a map that reduced the degree of partisan gerrymandering a bit more than the current map and considerably more than the legislature’s map, which had further increased the partisan gerrymander. 2) Make sure to have

¹¹ See Dec 15 2021 *Johnson v WEC* Merits Brief (BLOC) text and footnote, p. 33.
<https://www.wicourts.gov/courts/supreme/origact/docs/briefctobloc2.pdf>.

¹² See Dec 15 2021 *Johnson v WEC* Merits Brief (Legislature) p. 32-33.
<https://www.wicourts.gov/courts/supreme/origact/docs/briefctowislegis2.pdf>.

seven BVAP majority districts to protect against a VRA challenge. 3) Since significant changes in the Milwaukee area would hurt core retention, be extra diligent in the rest of the state to minimize overall change.

Like the PMC, the governor provided limited VRA analysis in support of his map. This left BLOC as the only party providing justification for a seven-district majority BVAP map in its brief. The BVAP percentages for the governor's map range from 50.1% to 51.4%. Like the BLOC map, District 14 was considerably revamped in order to create a seventh majority BVAP district.

On December 15, the parties submitted their maps to SCOWIS. The "least-change" order by SCOWIS dramatically changed the metrics used in Wisconsin's redistricting process. In an environment where the legislature and governor were of different political parties, the extreme partisan gerrymander could have been reduced by using standard redistricting principles. Instead, all of the parties to the lawsuit were forced into a "least-change" box. Even so, as Spreadsheet 4 shows, Evers' map legitimately won the core retention contest that SCOWIS had set up while also lowering the Efficiency Gap of the 2011 Map ($8.65 < 11.05$). Justice Hagedorn, who by then had proven himself to be a somewhat independent thinker on the court, broke from his conservative colleagues and voted in favor of the governor's map.

The legislature was left with one wild card to play: the much litigated, complicated, and eroding Voting Rights Act. A challenge to the governor's maps was taken to the US Supreme Court ("SCOTUS"), which said there was insufficient proof of VRA compliance. SCOTUS sent the maps back down for VRA compliance consideration. SCOTUS specifically stated that additional material might help prove the governor's map complied with the VRA.¹³

But the conservative SCOWIS majority (Justice Hagedorn joining in) refused to allow the governor to further justify his map with a more detailed VRA analysis. They did not accept arguments that BLOC had already made for VRA treatment similar to the governor's. They did not let any parties revise their maps. Instead, they selected SB 621 as the winning map, claiming that all of the other maps were "racially motivated and, under the Equal Protection Clause, they fail strict scrutiny."¹⁴

2. Additional Observations regarding SB 621, adopted by SCOWIS as the final 2022 Map

a. Concerned Voters amicus brief proves SB 621 is NOT a "least-change" map. In an amicus brief filed with SCOWIS during the Johnson case,¹⁵ WIMAP illustrated three examples

¹³ "On remand, the court is free to take additional evidence if it prefers to reconsider the Governor's maps rather than choose from among the other submissions. Any new analysis, however, must comply with our equal protection jurisprudence." Wisconsin Legislature v Wisconsin Elections Commission, 595 U.S. ____ (2022), Per Curium slip op p.7. Accessible at

https://www.wicourts.gov/courts/supreme/origact/docs/21a471_additionalauthority.pdf.

¹⁴ April 15, 2022 Order at p 3. Accessible at

https://www.wicourts.gov/courts/supreme/origact/docs/21ap1450_opdec.pdf.

¹⁵ Non-Party Brief of Concerned Voters of Wisconsin, filed January 4, 2021, accessible at

<https://www.wicourts.gov/courts/supreme/origact/docs/briefamicuscouriaeconcernvoters.pdf>.

of how the legislature's SB 621 Assembly Map departed from a "least-change" rebalancing of population.¹⁶ Ordered by SCOWIS to ignore partisanship, WIMAP did.

Example 1. AD 30 is on the western border of Wisconsin. The 2011 Map had a surplus of 3,202 people in the district. Any attempt to minimize the difference between the old and new AD 30 while balancing the population would naturally remove some smaller wards, resulting in a near 100% core retention. But instead, as the legislature's expert Dr. Thomas Bryan stated in his December 15 report, AD 30 has only a 76.5% core retention rate in SB 621.¹⁷

The legislature moved about 11,000 people - more than three times the number they needed to move. This is hardly "least-change." One casualty of SB 621's new AD 30 was River Falls. This city—a community of interest—was intact within AD 30 in the 2011 Map. SB 621 divided the city between AD 30 and AD 93 to the South. Residents of River Falls now have not only two different assembly representatives, but also two different state senators.

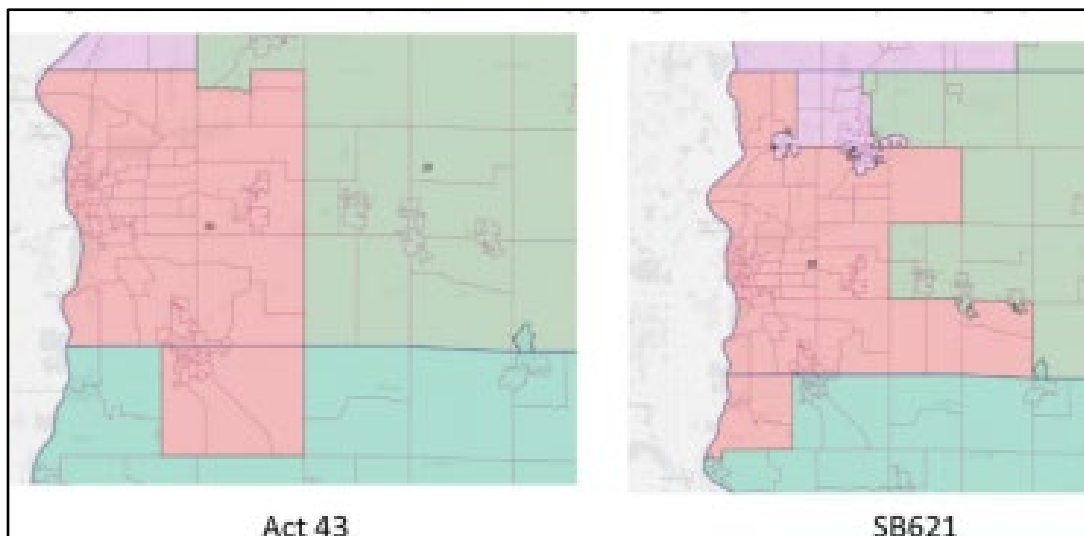


Figure 1. AD 30 (red) and 93 (aqua) (DRA images)

Example 2. AD 23 and 24, in the northern suburbs of Milwaukee, had small surplus populations of 1,228 and 1,204 respectively. A reasonable "least-change" map could yield a core retention rate of about 98% for each district. Given that fact, the changes made to AD 23 and 24 by SB 621 are stunning. Bryan reported that SB 621's AD 23 has a 66.2% core retention, and AD 24 has a mere 54.2% core retention.¹⁸ Bryan classified AD 24 as an "extreme change" and the fifth worst retention rate in SB 621. Instead of reaching down into Milwaukee County to balance AD 24, SB 621 extended north to include the Village and Town of Grafton, displacing over 20,000

¹⁶ Additional examples can be accessed at <https://piercecourtsgro.org/wimap/>.

¹⁷ Expert Report of Thomas Bryan (Bryan Report), filed with SCOWIS December 15, 2021, p. 58.

<https://www.wicourts.gov/courts/supreme/origact/docs/expertrepbryan.pdf>.

¹⁸ Bryan Report at 57.

people—almost 17 times more than necessary. In addition, the Village of Brown Deer, intact in the 2011 Map, was split. AD 23 absorbed most of the people from Milwaukee County that exited AD 24.

Bryan asserted that the very low core retention rates in the Milwaukee area were “unavoidable and to be expected given the population shifts in and between Madison and Milwaukee.”¹⁹ However, the WIMAP Demo Map in Figure 2 below (excerpted from an alternative least change map drawn by WIMAP with a 1.95% total deviation) shows that a *true* “least-change” revision to ADs 23 and 24 is readily attainable.²⁰ The core retention for WIMAP’s Demo is 98.0% for AD 23 (aqua) and 95.9% for AD 24 (purple)—much better than SB 621. This drastic change is reminiscent of Act 43, when the legislature last shuffled millions of voters into new districts.²¹

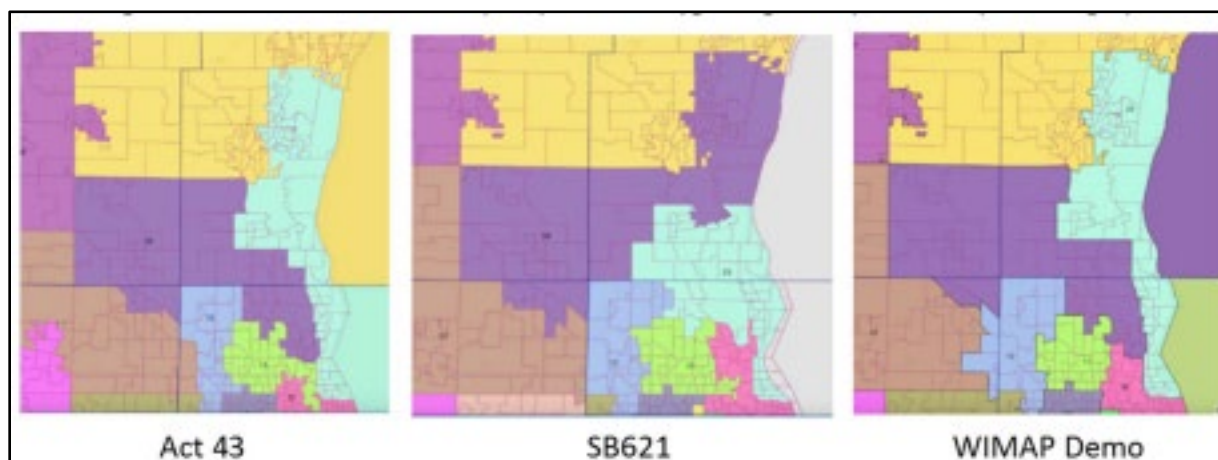


Figure 2. AD 23 (pale blue) & 24 (deep purple) and WIMAP demonstration map (DRA images).

Example 3. Arguably the most dramatic change brought about by SB 621 is found in the new 5th Senate District, comprising AD 13, 14, and 15. SB 621 transforms the three horizontally oriented districts into two squarish districts (new AD 13 and 15) linked by a sinuous AD 14. In SB 621, AD 13 is mainly Brookfield (split in the 2011 Map), its surrounding township, and the Village of Elm Grove. AD 15 is the square city of New Berlin (split in the 2011 Map) with a bit of West Allis and part of Waukesha Township. AD 14 zigs and zags its way through Wauwatosa and West Allis in Milwaukee County. Figure 3 below shows the legislature’s changes. Bryan summarized the following percentages of Act 43 populations retained in the new districts: 47.7%

¹⁹ Bryan Report at 25.

²⁰ While 1.95% is higher than the 0.76% total deviation of SB 621 that Bryan praises, the three-judge panel that redistricted Wisconsin in 1982 defined “de minimis” population deviations as below two percent. AFL-CIO v. Elections Bd., 543 F. Supp. 630, 634 (E.D. Wis. 1982).

²¹ **Republicans say they want few redistricting changes, but a decade ago they moved millions of voters into new districts.** Milwaukee Journal Sentinel, September 27, 2021. <https://www.jsonline.com/story/news/politics/2021/09/27/wisconsin-gop-wants-few-redistricting-changes-after-moving-millions-voters/5885010001/>.

in AD 13, 40.0% in AD 14, and 62.4% in AD 15.²² Of the 99 districts, these three rank first, third, and ninth in poorest core retention.

During redistricting, experts drawing new voting maps would normally have considered nearby Milwaukee County, which because of decreased population needed an infusion of approximately 40,000 people into Senate Districts 3, 4, and 6. That additional population would come primarily from a surplus in Dane County shifted district-by-district in an eastern path. SD 5, sandwiched between Dane and Milwaukee Counties, would also be affected. Bryan's analysis showed that the old SD 5 contributed 4.4% of its population to SB 621's SD 3 and 9.2% to SD 6.²³ That leaves 86.4% of the population within SB 621's SD 5. Distributed somewhat uniformly with least change in mind, one could expect core retention percentages in the 80s for the three assembly districts nested in SD 5. But instead, the retention percentages average 50.0%—remarkably low, and easily avoidable. In addition, although SB 621 puts all of Brookfield into one assembly district, it did so by further damaging the Village of Wauwatosa, which is now fractured into four, rather than three assembly districts. Dividing the village between three assembly districts (2011 Map) was bad enough; now (SB 621) divided it into four districts.

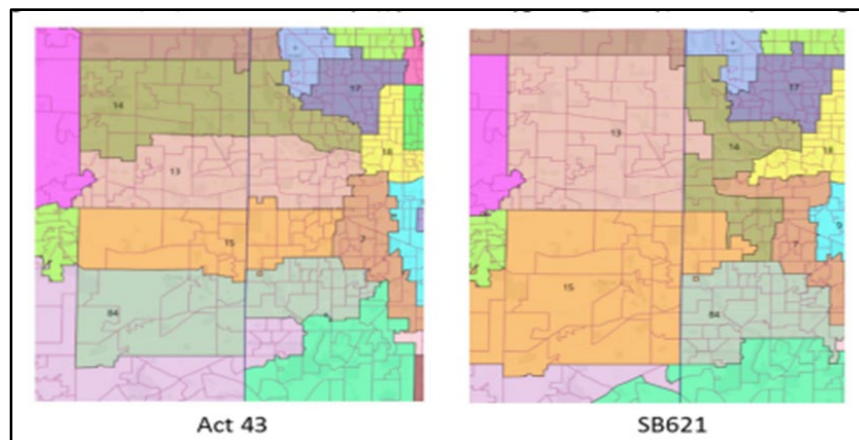


Figure 3. AD 13, 14, & 15 (DRA images)

In each of the three examples above, the legislature's changes to the 2011 Map were unnecessary and dramatically decreased core retention. SB 621 unites many cities, towns, and villages that were split in the 2011 Map, but also unnecessarily splits communities that were intact, such as River Falls, Whitewater, and Brown Deer. SB 621 also reduces the number of majority BVAP districts from six (2011 Map) to five (SB 621).

These changes to individual districts would have limited impact on the average core retention of an entire assembly map. To find the “not-least-changes” one must look beyond mere averages,

²² Bryan Report at 56-57.

²³ Bryan Report at 52.

and investigate changes to individual districts. DRA made this analysis possible. And reviewing images available online, like those above, help illustrate the failure of SB 621 as a “least-change” map. The Concerned Voters’ amicus brief discussed each of these districts, and included the images above. SCOWIS chose to ignore them. Worse yet, the amicus brief could not get to the heart of the matter.

Concerned Voters were not allowed to say that these changes and more were politically motivated

Because SCOWIS forbade it, the Concerned Voters’ amicus brief did not mention what WIMAP knew: **In each of the three cases above, the legislature had tilted the voting maps further in favor of Republicans, and helped incumbents retain their seats in the assembly.** An article posted on WIMAP’s website²⁴ said what could not be said in Court:

Example 1 – District 30. SB 621 increased the Republican advantage from a competitive R+ 4.55% to a noncompetitive R+ 11.89%. To do so, River Falls was sliced in half, and its perfect compactness rating was demolished by adding four tentacles reaching out for Republican voters.

Example 2 – Districts 23 and 24. These north shore Milwaukee suburbs were trending Democrat. In 2020, a Democrat “slayed the gerrymander” and became the first Democrat to serve District 23 since the 2010 redistricting cycle. District 24 was also trending Democratic. In 2020 AD23 was a D+ 1.8 seat and AD24 was a R+ 5.1 seat. SB 621 ceded AD23 to the Democratic incumbent in order to protect the AD24 Republican incumbent. The partisan lean in AD23 became D+ 14.2 and AD24 became R+ 25.9.

Example 3 - Districts 13, 14, and 15. These suburban Milwaukee areas were trending Democratic. They went from being three competitive districts (partisan leans of R+ 2.3, D+ 1.9 and R+ 6.6 to three safe incumbent districts: R+ 19.6, D+ 13.1, and R+ 21.0.

The Republicans moved millions of people in 2010 for partisan gain. When asked to draw a “least-change” map, they left people where they were when it suited their partisan purposes. When it did not, they ignored the “least-change” instruction and engaged in blatant partisan gerrymandering, in a highly surgical manner in a number of key districts. But no one was allowed to tell SCOWIS that.

b. The SCOWIS “least-change” requirement violates Article IV, Section 4 of Wisconsin’s constitution

²⁴ <https://piercecountygro.org/wimap/#wimap-wi-assembly-map-analysis>. The partisan lean data in the examples is from DRA’s statistical analysis of the 2011 Map (in effect in 2020, at <https://davesredistricting.org/maps#stats::a355b8c9-3876-46ac-95f6-02fe5cff742c>), and the 2022 Map (at <https://davesredistricting.org/maps#stats::6a8a362d-0c59-4d81-aea3-28cba004b502>).

Table 5 lists 30 assembly maps (including the six “least-change” maps that were submitted to SCOWIS) ordered from lowest to highest core retention, with pertinent nonpartisan metrics. Most were taken from the legislature's Draw Your District (DYD) portal, which closed on October 15, 2021 before the “least-change” edict was announced.

Table 5: Metrics of 2021 Assembly Maps Sorted by Core Retention²⁵

Map Name*	Tot. Dev.	Core Ret.	Mean Reock	Mean Pol-Pop	Comp. Sum	Co. Times Split	Muni Splits	Tot. Splits	Comp/ Splits
Averages	1.55	67.85	0.3972	0.3085	0.7057	139.2	110.8	250.0	30.23
MATPET	1.99	54.10	0.4648	0.3933	0.8581	188	184	372	23.07
FC4IC5	1.96	54.51	0.3564	0.2450	0.6014	132	89	221	27.21
MARCGR	0.01	54.61	0.3532	0.2820	0.6352	101	147	248	25.61
ROGUNH	1.91	55.56	0.3711	0.2792	0.6503	111	74	185	35.15
63VA3X	1.82	57.87	0.4312	0.3596	0.7908	126	108	234	33.79
O4DMAM	1.42	57.91	0.4030	0.3319	0.7349	116	100	216	34.02
PMCFIN9	1.87	58.21	0.4072	0.3331	0.7403	122	92	214	34.59
LIAPIB	0.99	58.21	0.3990	0.3330	0.7320	122	413	535	13.68
PMCFIN	1.87	58.27	0.4008	0.3271	0.7279	118	86	204	35.68
ROGUOH	1.95	58.40	0.4245	0.3537	0.7782	94	73	167	46.60
IHQZNZ	1.35	58.64	0.4251	0.3501	0.7752	95	88	183	42.36
Z79JYZ	1.35	58.76	0.4145	0.3440	0.7585	95	89	184	41.22
ROGUOH 3	1.97	58.88	0.4155	0.3426	0.7581	105	54	159	47.68
PMCRF#1	1.82	59.06	0.4094	0.3767	0.7861	127	110	237	33.17
DANRUS	1.88	59.37	0.4160	0.3412	0.7572	113	135	248	30.53
SENBW	1.98	60.23	0.3992	0.3001	0.6993	148	129	277	25.25
FMAA1R	1.13	63.96	0.4217	0.3009	0.7226	169	147	316	22.87
UWJKE1	1.13	64.02	0.4148	0.3161	0.7309	169	147	316	23.13
MathSci	0.74	71.14	0.3972	0.2863	0.6835	133	89	222	30.79
07VVMC	0.75	72.72	0.4175	0.3253	0.7428	151	28	179	41.50
Hunter	1.82	75.58	0.4234	0.3505	0.7739	142	154	296	26.15
Bewley	3.82	84.02	0.3785	0.2540	0.6325	171	100	271	23.34
L19J6I	0.91	84.20	0.3843	0.2741	0.6584	162	40	202	32.59
BLOC	1.32	84.32	0.3607	0.2464	0.6071	170	88	258	23.53
TR6L27	0.90	84.41	0.3826	0.2725	0.6551	164	58	222	29.51
SB621	0.76	84.51	0.3568	0.2450	0.6018	156	51	207	29.07
IQEDIV	2.01	85.75	0.3816	0.2683	0.6499	177	145	322	20.18
UWJKE2	1.36	85.75	0.3748	0.2837	0.6585	175	143	318	20.71
WIMAP	1.95	86.11	0.3628	0.2716	0.6344	150	51	201	31.56
GUV LC	1.88	86.29	0.3685	0.2673	0.6358	174	111	285	22.31
<i>2011 Map</i>			<i>0.3700</i>	<i>0.2762</i>	<i>0.6462</i>	<i>169</i>	<i>110</i>	<i>279</i>	<i>23.16</i>

*Map names were created by the DYD Portal and WIMAP. Maps in bold are those SCOWIS parties. To see the maps and the entire DRA analysis, go to https://docs.google.com/spreadsheets/d/1RYWkBMtw2Te0tI_1IHDMrDXOO2-STeuH/edit#gid=1827953260

Whatever one thinks about the importance and or appropriateness of a “least-change” approach to map making, Table 5 provides strong evidence that “**least-change,”** which **Johnson** seemed

²⁵ This table does not include any metrics based on voting data.

to interpret as maximizing core retention, when applied to the 2011 Map, limited the capacity of the districts of any assembly map submitted to the Court to “be in as compact form as practicable,” a requirement of Wisconsin’s constitution. To wit:

The orange column in the table holds the core retention percentages. The nine maps that tried to most faithfully maximize this metric -- from Bewley (84.02) to the Governor (GUV LC) (86.29) -- the Reock compactness metric runs from .3568 (SB 621) to .3843 (L19J6I). These data seem to be in line with the Reock score for the 2011 Map: .3700. In other words, the compactness of the old map does not change much with these new maps. This seems intuitively reasonable. The group includes four of the six maps submitted to SCOWIS.

Citizen MathSci and Hunter allowed their maps more core retention flexibility, and these two maps have core retention percentages in the low to mid-seventies.

But by doing so, they achieved a consequential increase in the Reock²⁶ compactness metric, .3972 for Citizen MathSci and .4234 for Hunter.

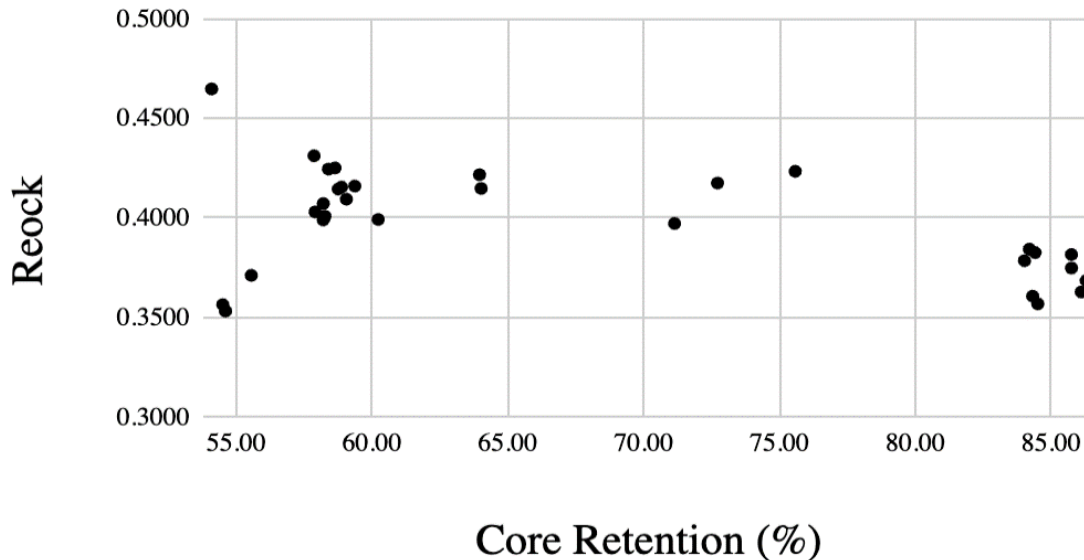


Eighteen maps in the table were not constructed with maximizing core retention in mind. Admittedly, there are some very poor scores corresponding to poor maps, but a cluster of maps has Reock scores between .40 and .43. This suggests a "natural" or "practicable" minimum could be set for Reock of 0.40. The same results can be seen using the Polsby-Popper compactness metric. A "practicable compactness" P-P minimum appears to be 0.33. SCOWIS could have provided needed guidance by requiring that assembly maps meet this quantitative definition for "practicable" compactness as measured by Reock. Notably, the only maps that attained a Reock of .40 or above have significantly lower core retention.

The “Reock Compactness v Core Retention” graph that follows shows the relationship between the two metrics associated with the maps in Table 5 above.

²⁶ This sample image of how one measures Reock compactness is taken from **Measuring Compactness**, accessible at <https://fisherzachary.github.io/public/r-output.html>.

Reock Compactness v Core Retention



Observe that the cluster of nine maps in the lower right that have high core retention cannot surpass a .40 Reock ceiling. There is one clear outlier in this data. MATPET achieves a Reock score of .4648 with the worst core retention of 54.10%. This score is achievable, but is it "practicable," given the competing demands of other criteria? Look to the first two tan columns of Table 5 for the answer. These columns hold county and municipal (cities, villages and towns) splitting numbers. Minimizing the splitting of counties and municipalities has traditionally been a goal of redistricting maps. The level of concern expressed about preserving communities of interest this last cycle suggests the need to minimize the number of times counties are split and keep municipalities intact within a district, if possible. MATPET underperformed on this metric. Wholesale splitting of units of government does not seem to be a reasonable means of achieving maximum compactness. There are maps such as ROGUOH 3 that excel at minimizing splitting, but they demonstrate a tradeoff with compactness scores.

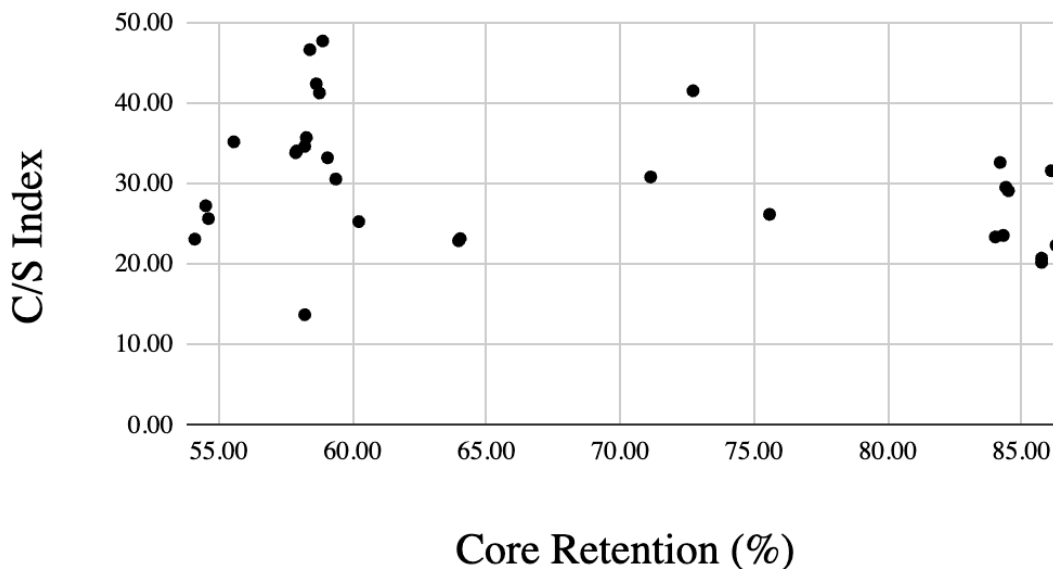
How can one assess the interplay between the two ideals, maximizing compactness and minimizing splitting? One easy way to combine the two into one is to calculate a fraction with compactness measures in the numerator and splits in the denominator. The two goals are then merged into the one goal of maximizing the fraction. The rightmost (green) column in the chart above reports this index, labeled *Comp/Splits*, calculated as:

$$[(Reock + PolsbyPopper) \div (\# of times counties are split + split municipalities)]\%$$

Let's look again only at the court-submitted maps (bolded in Table 5 above), which follow the "least-change" mandate. Citizen MathSci's index of 30.79 is the highest of the six "least-change" maps, but is barely above the average of all maps. (Note that it also has the lowest core retention

of the court-submitted maps.) The other five “least-change” maps are below average on the index. The 2011 Map set a very low bar for this index, 23.14. This demonstrates the degree to which compactness and splits - *both constitutional redistricting criteria* - are sacrificed by prioritizing the “least-change” criterion when the original maps that are the baseline perform poorly on them.

Compactness/Splits Index v Core Retention



3. Wisconsin senate maps

Turning to senate maps, since each of Wisconsin’s 33 senate districts contains three nested assembly districts, attention focused mainly on the assembly during redistricting. As a result, WIMAP did not record senate maps submitted to the legislature’s Draw Your District portal. We can only report on the maps submitted to SCOWIS. Here again is the summary table of these maps from Section VII showing the superiority of the Citizen MathSci map in every category except core retention.

Table 6 - WI Senate Maps submitted to SCOWIS

Map Source	Core Ret.%	Total Dev.%	Mean Reock	County Splits	Times Split	Muni Splits	BVAP ≥ 50%	HVAP 40-50%
Bewley	90.50	1.69	0.3743	48	88	52	2	1
BLOC	89.60	0.96	0.3828	42	84	61	2	1
Citizen MathSci	74.30	0.50	0.3967	28	57	31	2	1
Governor	92.22	1.21	0.3776	45	89	71	2	1
Hunter	80.00	0.95	0.3832	42	74	79	2	1
Legislature	92.00	0.59	0.3600	42	71	31	2	1
Averages	86.44	0.98	0.3791	41.17	77.17	54.17	2.00	1.00
Color Rating	Best		Above Average		Below Average		Worst	

Detailed analysis of the senate “least-change” maps submitted to SCOWIS can be accessed at
<https://docs.google.com/spreadsheets/d/1crj4GzIRp2JctMR4qk2ri4KjbWlyFZTT/edit#gid=1827953260>

B. Congressional maps: alternatives and officially selected

WIMAP collected 58 congressional maps from varied sources before the 2021 redistricting process ended up in SCOWIS. Before we proceeded with any comparative review, we eliminated 37 maps from further consideration, including any duplicates, any maps that did not include a district with a minority voting age population of at least 50%,²⁷ and any maps with total deviation greater than .75%. We applied the .75% total deviation threshold as recognized by DRA and consistent with federal legal precedent for congressional maps. Although the Wisconsin legislature and SCOWIS have, like some states, interpreted the one person one vote requirement of the United States Constitution to require absolute zero total population deviation, the prevailing SCOTUS ruling in Tennant v. Jefferson County Commission allows for some reasonable population deviation when applying other relevant state redistricting criteria.²⁸

Table 1 presents the 25 congressional maps from the 2021-22 redistricting process that we ultimately reviewed. They include 20 Citizen Maps submitted to DRA and the DYD portal, the final congressional map from the People’s Map Commission (PMC), and the four maps submitted to SCOWIS. All include one district with a minority voting age population of at least 50%. The maps are presented in rank order of their total deviation, because this is the most rigorous standard applied to congressional maps. At the bottom of the table, we provide the averages for the 20 Citizen Maps, the four SCOWIS maps, and all maps combined. Lastly, we

²⁷ We chose 50% as our base because all but six of the congressional maps reviewed by WIMAP produced one but only one Minority Voting Age Population (MVAP rather than BVAP or HVAP).

²⁸ See Tennant v. Jefferson County Commission, United States Supreme Court 2012, accessible at https://drive.google.com/file/d/1M_r0VK-cgyUETQ7bQu-VfHmCLHcag6Te/view.

include the metrics for the 2011 Map for comparison, since it served as the baseline for the “least-change” 2022 Map. The metrics in the table are described in the previous section on assembly maps. Color ratings: For each metric in the table, we identify maps that are the best, the worst, above average, and below average. Although the approach has statistical limitations, it gives the reader some context to evaluate the relative performance of maps for any given metric, as well as the performance of any given map across the metrics considered. It also visually illustrates the challenge of developing a map that does well for all metrics.

Table 1. 2021 Congressional Maps Sorted by Total Deviation

<u>Map Name</u>	<u>Total</u> <u>Dev. %</u>	<u>Mean</u> <u>Pol-Pop</u>	<u>Mean</u> <u>Reock</u>	<u>County</u> <u>Splits</u>	<u>Times</u> <u>Split</u>	<u>Muni</u> <u>Splits</u>	<u>Core</u> <u>Ret. %</u>	<u>Eff.</u> <u>Gap</u>
SCOWIS Governor-2022 Map	0.00	0.2922	0.3786	12	13	47	94.53	13.39
SCOWIS CitizenMathSci	0.00	0.3053	0.4197	7	8	13	91.50	11.67
SCOWIS Cong/Legis-SB622	0.00	0.2882	0.3932	10	11	24	93.48	18.63
SCOWIS Hunter	0.00	0.3453	0.3739	11	11	29	93.10	12.87
PMC Final Congressional	0.00	0.3166	0.3697	10	12	33	71.58	6.58
DYD-ZWO3WP	0.00	0.3237	0.3947	12	14	12	84.28	18.12
DYD-N3BL8K	0.08	0.3745	0.4880	11	11	15	63.47	8.25
DYD-X4SSJA	0.08	0.2572	0.3817	13	15	23	80.46	14.53
DYD-KSGF7X	0.11	0.2850	0.3936	25	28	34	62.05	1.00
DYD-YVN1VO	0.13	0.3071	0.3857	7	8	6	88.36	17.36
DYD-5LT3R3	0.15	0.3908	0.4915	13	14	18	56.14	0.79
DYD-TQJXQK	0.15	0.3184	0.4205	19	24	18	82.90	13.18
DRA-2246	0.18	0.3938	0.4639	10	10	21	61.93	4.67
DYD-GNBB2S	0.18	0.2847	0.3716	26	32	39	68.17	13.95
DYD-96ZD60	0.22	0.3455	0.3749	14	17	3	78.16	11.93
DYD-Y5TTKB	0.23	0.3239	0.3319	8	11	18	65.97	16.81
DYD-OVJJA0	0.24	0.2253	0.3560	10	10	4	62.07	1.90
DYD-ZWO2VP	0.26	0.3238	0.3826	4	5	10	74.18	10.23
DYD-QNFUNH	0.29	0.3038	0.4131	7	8	4	88.15	13.87
DYD-IQT3IJ	0.38	0.2364	0.3695	21	24	17	87.18	13.55
DYD-3AYYPF	0.42	0.3240	0.4140	5	6	15	72.17	11.68
DYD-KH9OHR	0.47	0.2122	0.3686	23	26	22	87.28	13.63
DYD-FNP0EF	0.47	0.2341	0.3694	22	25	22	86.87	13.65
DYD-42IXEI	0.62	0.2491	0.3717	22	25	19	87.02	13.50
DYD-RZNME4	0.67	0.3260	0.2792	18	23	34	72.02	15.43
SCOWIS Map Average	0.00	0.3078	0.3914	10.0	10.8	28.3	93.15	14.14
Citizen Map Average	0.27	0.3020	0.3911	14.5	16.8	17.7	75.44	11.40
Average of All Maps	0.21	0.3035	0.3903	13.6	15.6	20.0	78.12	11.65
2011 Congressional Map	0.00	0.2802	0.3800	12.0	14.0	0?		15.73
Color Rating	Best		Above Average	Below Average		Worst		

Additional metrics provided by DRA are at Congressional Evaluation Table 1 Final Report, accessible at <https://docs.google.com/spreadsheets/d/1ez3T8zGeL8sLofXrRHfZObzSqLeLfpn6/edit#gid=1391239646>

1. Observations

Total Deviation. Only six of the 25 maps reviewed have a perfect total population deviation of zero, including the four maps submitted to SCOWIS, the PMC map, and one Citizen Map. The table illustrates tradeoffs between total deviation and the other redistricting metrics. The best scores for compactness, county and municipal splitting, as well as partisan fairness, are found in maps with a total deviation of at least 0.15%. Core retention is the only metric where the best score is found in a map with zero total deviation (Governor-2022 Map). Only two maps (Citizen MathSci and DYD-ZWO3WP) with zero total deviation have above average scores for all metrics other than partisan fairness. The other four maps with zero total deviation have below average scores for one or both compactness metrics and municipal splits. One map with a low (but not zero) deviation attains above average scores for all metrics other than core retention (Citizen Map DYD-N3BL8K), with a total deviation of 0.08%.

These results demonstrate that performance on other relevant redistricting criteria can improve when total deviation is allowed to be moderately greater than zero. Of course, increasing total deviation isn't a guarantee of improved performance on the other criteria. The four maps we reviewed with the highest total deviation were also below average for most other criteria considered.

Compactness. Citizen Maps have the best and worst scores for the two compactness metrics of Polsby-Popper and Reock. Only six other maps have above average scores for both. The selected 2022 map from the governor is among eight maps that have below average scores for both compactness metrics. Only two of the maps with zero total deviation (Citizen MathSci and DYD-ZWO3WP) have better than average scores for both compactness metrics. The results for all maps suggest that allowing some reasonable population deviation between congressional districts can improve compactness.

County Splitting. Citizen Maps also have the best and worst scores for the two metrics used to measure county splitting. The best metrics for splits are found in a Citizen Map (DYD-ZWO2VP) with a total deviation of 0.26%. Fifteen of the 25 maps reviewed have better than average splitting scores, including all six maps with zero population deviation. Like the compactness data, the results for all maps for county splitting suggest that some reasonable population deviation can reduce county splitting, but it's not a guarantee.

Municipal Splitting. The results for municipal splitting vary somewhat from county splitting. The fewest municipal splits (3) are found in a Citizen Map (DYD-96ZD60) with a total deviation of 0.22%. The Governor's map has the most municipal splits (47). Most of the maps with better than average split scores and the map with the best score have population deviations greater than

zero. Only two of the six maps with zero population deviation have better than average splitting scores.

Core Retention. Nowhere are the tradeoffs between criteria more evident than in the results for core retention. The governor’s map has the highest core retention (94.53%) with zero population deviation, but also has the most municipal splits and worse than average metrics for compactness and partisan fairness. A Citizen Map (DYD-5LT3R3) has the lowest core retention (56.14%), but is better than average for all other metrics, including the best for Reock compactness and partisan fairness. This map accomplished those results with a population deviation of only 0.15%. These results further illustrate the impact of the SCOWIS imposition of “least-change” (high core retention) on the quality of the 2022 congressional map.

Partisan Fairness. The least partisan map, with the lowest Efficiency Gap (0.79), is the same Citizen Map (DYD-5LT3R3) with the lowest core retention. The most partisan map with the highest efficiency gap (18.63) is SB 622 approved by the legislature, vetoed by the Governor, and submitted to SCOWIS by the legislature and Republican congressmen. Only six of the 25 maps reviewed have an Efficiency Gap that is better than average.

Summary Observations. The overall metrics for the 25 congressional map proposals that we reviewed clearly demonstrate the challenge of developing a congressional redistricting map that balances all relevant or imposed criteria. Priorities based on the rigid adherence to zero population deviation, and the SCOWIS imposition of a “least-change” approach (which resulted in a focus on core retention) led mapmakers to make sacrifices on other criteria. No map illustrates this point better than the selected 2022 congressional map submitted by the governor. While it has zero population deviation and the highest core retention from the 2011 congressional map, it also has the highest number of municipal splits and below average compactness and partisan fairness scores. Only two of the maps (Citizen MathSci and DYD-ZWO3WP) that have zero population deviation have above average scores for compactness, splits, and core retention, but they also rate worse than average for partisan fairness. On the other hand, the only map (DYD-5LT3R3) that is above average or best in all other criteria has the lowest core retention. Given these results, it seems reasonable to expect that allowing some reasonable population deviation and eliminating the “least-change” approach would result in better maps that are more compact with fewer county and municipal splits.

2. Comparing 2021 Citizen Maps and the 2011 congressional map

Table 2 presents comparative metrics for the 20 Citizen Maps submitted in 2021 and the preexisting 2011 congressional map the Citizen proposals sought to replace. These Citizen Maps were all available for consideration by “official” mapmakers who prepared maps for the legislature and SCOWIS to consider. Due to limitations on the data available on the 2011 Map in

DRA, we cannot compare the performance of the 2011 congressional map on municipal splits and core retention.

Table 2. 2021 Citizen Maps and the 2011 Congressional Map

	<u>Total</u> <u>Dev. %</u>	<u>Mean</u> <u>Pol-Pop</u>	<u>Mean</u> <u>Reock</u>	<u>County</u> <u>Splits</u>	<u>Times</u> <u>Split</u>	<u>Muni</u> <u>Splits</u>	<u>Core</u> <u>Ret. %</u>	<u>Eff.</u> <u>Gap</u>
Citizen Map Average	0.27	0.3020	0.3911	14.5	16.8	17.7	75.44	11.40
2011 Congressional Map	0.00	0.2802	0.3800	12.0	14.0	Not Av.	Not Av.	15.73

We make the following observations about the metrics in Table 2:

- 1) The 20 Citizen Maps have a total population deviation of 0.67 or less, which is below the threshold of 0.79 established in Tennant²⁹, while the 2011 Map had zero deviation.
- 2) The average compactness metrics of the Citizen Maps are better (higher) than the 2011 Map.
- 3) The average county splitting metrics of the 2011 Map are better (lower) than the average Citizen Map.
- 4) The average partisan fairness metric (Efficiency Gap) of the Citizen Maps is better (lower) than in the 2011 Map.
- 5) Among the redistricting criteria we reviewed, Citizen mapmakers prioritized compactness and partisan fairness, while the 2011 Map prioritized total deviation, county splitting, and partisan gain.

3. 2021 Citizen Maps, the PMC, and the legislature

The first “official” congressional maps to be developed were prepared by the People’s Map Commission (PMC) and the legislature (SB 622). Table 3 reports the metrics for these maps with the averages for the 20 Citizen Maps.

Table 3. 2021 Citizen Maps, the PMC and the Legislature

	<u>Total</u> <u>Dev. %</u>	<u>Mean</u> <u>Pol-Pop</u>	<u>Mean</u> <u>Reock</u>	<u>County</u> <u>Splits</u>	<u>Times</u> <u>Split</u>	<u>Muni</u> <u>Splits</u>	<u>Core</u> <u>Ret. %</u>	<u>Eff.</u> <u>Gap</u>
Citizen Map Average	0.27	0.3020	0.3911	14.5	16.8	17.7	75.44	11.40
PMC Final Congressional	0.00	0.3166	0.3697	10.0	12.0	33.0	71.58	6.58
Legislature - SB622	0.00	0.2882	0.3932	10.0	11.0	24.0	93.48	18.63

²⁹ Ibid.

We make the following observations about the metrics in Table 3:

- 1) The 20 Citizen Maps considered have a total deviation of 0.67 or less, which is below the threshold of 0.79 established in Tennant, while the PMC and legislature maps both have zero deviation.
- 2) These maps have some unusual compactness results among them. The PMC map had the best (highest) Polsby-Popper score, but the worst (lowest) Reock score. Similarly, the legislature's SB 622 had the best (highest) Reock score, but the worst (lowest) Polsby-Popper score. The Citizen Map average was not far below the best score in both metrics.
- 3) The legislature and PMC maps are almost equal in county splitting and notably better than the average Citizen Map.
- 4) Conversely, the average Citizen Map has the fewest (best) municipal splits, while the PMC has the highest (worst) by almost double.
- 5) With its focus on limiting change to the 2011 Map, the Legislature's SB 622 has the highest core retention. Since the Citizen and PMC maps were developed before any public emphasis from the legislature or SCOWIS on core retention or "least-change", their core retention from the 2011 map is considerably lower.
- 6) The PMC map excelled at partisan fairness with an Efficiency Gap below 7.0. The average Citizen Map and the Legislature have much higher Efficiency Gap numbers and therefore have much less partisan fairness. As mentioned in our review of Table 1 above, the legislature's SB 622 has the worst partisan fairness of all maps reviewed.
- 7) The variability of the results found in Table 3 once again illustrate the challenge of developing a map with superior metrics for all relevant criteria.

4. 2021 Citizen Maps, SCOWIS maps and the 2022 congressional map

The last congressional maps to be developed for the 2020 redistricting cycle were submitted to SCOWIS as part of the Johnson v. WEC proceedings. SCOWIS ultimately selected the congressional map submitted by the governor. The design and metrics of these maps were significantly influenced by the SCOWIS imposition of its "least-change" approach and the focus on core retention. Table 4 presents the metrics for these maps against the average Citizen Map.

Table 4. 2021 Citizen Maps, SCOWIS Maps, and the 2022 Congressional Map

	<u>Total</u> <u>Dev. %</u>	<u>Mean</u> <u>Pol-Pop</u>	<u>Mean</u> <u>Reock</u>	<u>County</u> <u>Splits</u>	<u>Times</u> <u>Split</u>	<u>Muni</u> <u>Splits</u>	<u>Core</u> <u>Ret. %</u>	<u>Eff.</u> <u>Gap</u>
Citizen Map Average	0.27	0.3020	0.3911	15	17	18	75.44	11.40
SCOWIS Map Average	0.00	0.3078	0.3914	10	11	28	93.15	14.14
2022 Congressional Map	0.00	0.2922	0.3786	12	13	47	94.53	13.39

We make the following observations about the metrics in Table 4:

- 1) The 20 Citizen Maps considered have a total deviation of 0.67 or less, which is below the threshold of 0.79 established in Tennant, while the SCOWIS maps and the 2022 congressional map all achieve zero.
- 2) The average SCOWIS map has slightly better compactness metrics than the average Citizen Map, and both categories have notably better compactness than the 2022 congressional map.
- 3) The average SCOWIS map had the best (lowest) numbers for county splitting, while the average Citizen Map has the worst (highest), and the 2022 congressional map falls in between.
- 4) Conversely, the average Citizen Map has the best (lowest) numbers for municipal splitting, and the 2022 congressional map has the worst (highest) by more than double. As mentioned in our review of Table 1 above, the 2022 congressional map has the worst (highest) municipal splitting of all maps reviewed.
- 5) Given the SCOWIS emphasis on “least-change” and core retention, it is no surprise that the SCOWIS average for core retention is much higher than the Citizen Map average, and the 2022 congressional map has the highest core retention of all. Core retention is something that Citizen mapmakers didn’t consider much.
- 6) The average Citizen Map achieves greater partisan fairness (lower Efficiency Gap) than the average SCOWIS map and the 2022 congressional map, another likely effect of the “least-change” approach. It also reflects the value that Citizen mappers placed on partisan fairness.

5. Congressional map conclusions

Our review of these 25 maps from the 2021-22 redistricting cycle, including the 2022 congressional map submitted by the governor and approved by SCOWIS, is a lesson in tradeoffs among the applied redistricting map criteria, which failed to result in a balanced map. While the 2022 congressional map that emerged from a messy and inefficient process excels at total population deviation and core retention, it rates poorly (or worst) for compactness, municipal splitting, and partisan fairness. Several maps with reasonable levels of total population deviation and core retention perform much better on these other relevant map criteria. It seems reasonable to expect with today’s computing and mapping technologies that many maps could be generated that are well above average for all relevant criteria if allowed reasonable latitude on population deviation and core retention.

Total population deviation is a priority for congressional maps under the U.S. Constitution, but we question the need for absolute zero. Reasonable total population deviation within established legal precedent should be considered; it better enables the accomplishment of the legitimate state

interest in compactness and reduced splitting, particularly of municipalities and wards. Several maps in our review with a total population deviation of 0.25% are above average in those criteria. Strict adherence to zero total population deviation also seems misguided when we know that the populations of our congressional districts are changing daily, and the numbers are out of date when the maps are drawn. Why be bound to impossible and illusory precision?

Core retention was the other standard that was rigorously applied by SCOWIS as a “least-change” surrogate. It worked to the detriment of compactness, and caused excessive splitting of counties and municipalities (not to mention partisan fairness). Whereas compactness and maintaining jurisdictional integrity have some legal basis and legacy as redistricting criteria in Wisconsin, core retention has previously received little attention. Giving the “least-change” (core retention) criterion the highest priority made it easier for SCOWIS to choose a map, but it proved to be a poor process that resulted in a decidedly inferior map, as measured by constitutional and traditional redistricting criteria.

Better outcomes would certainly be achieved with a more balanced application of the multiple criteria and a better process.

That truism does not apply just to Wisconsin’s congressional maps. It applies to all of the maps drawn during the 2020-2022 redistricting cycle. In the next section of our Report, we summarize our conclusions, and offer advice for those who will draw Wisconsin’s next set of voting maps.

IX. Lessons Learned & Recommendations

Wisconsin's recent redistricting cycle provides many lessons for future legislatures, governors, and courts, as well as the mathematicians and social and computer scientists who will be charged with drawing voting maps. In this section, we divide those lessons into two sections. First, we discuss the overall redistricting process. Second, above all else, we believe Wisconsin must do as other states have done, and institute an independent nonpartisan redistricting process. Because we feel so strongly about this need, we devote an entire section to recommendations regarding the People's Maps Commission or some other future form of independent nonpartisan redistricting. Third, we provide closing thoughts

A. The Redistricting Process in Wisconsin

There is much room for improving Wisconsin's redistricting process.

1. Conclusion: The redistricting process as currently constituted under Wisconsin law is dysfunctional, generates inferior legislative and congressional maps, and continues to be held hostage by partisan politics. Political parties that hold simultaneously the governorship and majorities in both the assembly and senate (a "trifecta") cannot be trusted to adopt fair, objective redistricting maps or establish a nonpartisan redistricting process.

Background: Like most states, partisan politics drive the redistricting process in Wisconsin.

When the governor and legislature are controlled by the same party, we end up with highly gerrymandered maps that maximize the partisan advantage of the party in control. In 2009 and 2010, Democrats held the governorship and majorities in the state senate and assembly. Thinking they would maintain their trifecta after the 2010 election, and could therefore gerrymander maps in the Democrat's favor, no one sponsored a bill, and a joint resolution failed to get adequate support.¹ The Democrats were sorely mistaken. In the fall 2010 election the Republicans had a stunning election victory. Then the Republicans had the trifecta. The Republican majority in the legislature used technology to create a finely tuned and extreme gerrymander into new voting maps, which sailed through the legislature and were signed in a flash.

When the governor and one or both houses of the legislature are controlled by different parties, we collectively waste millions of dollars of taxpayer money resolving the issue in courts. When

¹ Blurring the Lines: Wisconsin Braces for Bitter Redistricting Battle; The Cap Times October 20, 2021. Accessible at https://captimes.com/news/local/govt-and-politics/blurring-the-lines-wisconsin-braces-for-bitter-redistricting-battle/article_580841e8-606f-5b66-b1ac-49c11b04e33b.html.

the process more frequently is decided by the courts, the court takes a minimalist approach for fear of “legislating.” Lawyers get rich, politicians enhance their power, and the electorate gets lousy maps and a big bill. The mapping criteria applied are fluid, if not vague, and the interplay of federal and state redistricting law is unsettled and confusing. Such was the case with the 2022 maps when SCOWIS applied an unprecedented “least-change” approach to approve maps submitted by the legislature that had been vetoed by the governor, while at the same time the legislature made changes that suited their partisan purpose. Both of these things made the 2022 Map more gerrymandered than the 2011 Map.

Leading up to the latest redistricting fray in Wisconsin, 56 of Wisconsin’s 72 counties passed resolutions and/or referendums demanding a nonpartisan process for redistricting. Until very recently, the legislature’s silence and lack of response to citizens’ pleas has been deafening, consistent with the arrogance reflected in the maps it adopted and defended in court.

No political party can be trusted with the redistricting process. Both have failed to take the opportunity to make Wisconsin’s redistricting process representative of the people the politicians are supposed to serve.

Recommendations: The legislature should work in a bipartisan and transparent fashion with the concurrence of the governor to establish a new and completely different, nonpartisan redistricting process for Wisconsin that puts citizens, voters, and taxpayers ahead of partisan politics. Wisconsin voters should continue to demand a nonpartisan redistricting process from their state legislators and the governor.

2. Conclusion: The Wisconsin Supreme Court (SCOWIS) was ill-equipped to take the redistricting case.

Background: SCOWIS was ill-equipped to address the multitude of issues that arose during the 2020 redistricting process. Simply put, SCOWIS is not a trial court. SCOWIS was reminded that, as an appellate court, it lacked the structure and fact-finding abilities of a trial court, including staffing, a system for hiring their own experts, holding an evidentiary trial, and more. Perhaps as a result, SCOWIS’s attempt to take a minimalist approach to this large and important task led to its acceptance of the deeply problematic “least-change” approach, as discussed below.

Recommendation: If SCOWIS takes original jurisdiction and fact-finding is required in a redistricting case, it should develop the structure and capabilities to conduct fact-finding. SCOWIS should also deploy the resources needed to ensure that any court-approved map refrains from disadvantaging either political party.

3. Conclusion: The “least-change” approach adopted by SCOWIS thwarts the people’s desire for fair voting maps. Although this approach may be appropriate when existing voting maps have

been drawn in a nonpartisan manner through negotiation among all interested parties or by a trial court after hearing all of the evidence, it is entirely inappropriate when the existing maps are, as in the case of the 2012 Map, an unconstitutional partisan gerrymander.

Background: SCOWIS’s decision to adopt voting maps that had the “least changes” from the existing Act 43 maps baked in an extreme partisan gerrymander. Act 43’s gerrymander was so extreme that in November 2016, a federal district court for the Western District of Wisconsin found the maps unconstitutional.

A group of nationally respected legal scholars attempted in vain to convince SCOWIS the “least-change” approach was inappropriate during the 2020-2022 redistricting cycle. They pointed out that using a “least-change” approach might be appropriate in some settings, but not when the existing maps were so clearly defective. The scholars quoted Justice Hagedorn, who at one point during the proceedings said courts should be “modest and restrained”; the scholars pointed out that “performing freewheeling judicial lawmaking while carrying forward partisan schemes is just the opposite.”

Recommendations: The 2022 Map and the application of the “least-change” requirement should be rejected by SCOWIS. The application of the “least-change” requirement in the Johnson opinion precluded consideration of Wisconsin’s constitutional and traditional redistricting requirements, as demonstrated in the map analyses in Section VIII. According to Article I Section IV of the Wisconsin Constitution, each redistricting cycle the legislature is to redistrict “anew.” The body charged with decennial redistricting should adhere to drawing maps that use the criteria that are found in the Wisconsin Constitution, along with federal redistricting requirements. They should prioritize traditional redistricting criteria in a transparent manner, openly involving the entire legislature, as well as providing opportunities for citizen input before the map drawing has begun. Redistricting criteria should not be adopted for partisan purposes as was the case with the 2022 Map.

4. Conclusion: The Voting Rights Act (VRA) is complex, and maps that do not take it into consideration early in the process are very likely to fail to provide communities of color with adequate representation. They would also be subject to legal challenge.

Background: Compliance with the VRA was a source of contention among the parties who submitted maps to SCOWIS. Ultimately, questions about VRA compliance caused the US Supreme Court to reject SCOWIS’s decision to adopt maps created by the governor. This was not because the maps violated the VRA, but because they were not adequately justified with supporting documentation. This was one of the problems inherent in the SCOWIS’s decision to handle redistricting as an original action. VRA compliance was also a problem for the People’s

Maps Commission (PMC), which lacked adequate resources to address this issue in a timely manner.

Recommendations: Redistricting map proposals should have a designated section devoted to VRA compliance. VRA experts should be consulted from the very beginning of the line-drawing process. Communications with relevant entities in and around Milwaukee and other areas in which VRA concerns may be implicated should occur long before the map drawing process begins.

5. Conclusion: Because there are unavoidable trade-offs among traditional and constitutional redistricting criteria in practice, conflicting sets of criteria are a major source of disagreement in the redistricting process. The prioritized redistricting map criteria should meet specified quantitative standards.

Background: The unavoidable conflicts among redistricting criteria were exacerbated during the 2020-2022 redistricting cycle, with major disagreements among the various interested parties (legislature, governor, PMC, and others involved in the lawsuit that ensued). It is clear in retrospect that different criteria serve different interests. Assembly maps submitted to SCOWIS varied widely in: total deviation, compactness, splitting, and minority opportunity districts. Setting realistic quantitative standards would make map comparison much easier and most likely would reduce conflict over partisan fairness.

It would also be helpful to include an agreed upon upper limit on total population deviation in the assembly map. Plus or minus 1% seems very reasonable as it allows enough flexibility in constructing districts to be able to minimize municipal and county splits.

Recommendations: In order to reduce conflict in the redistricting process, clear criteria need to be established and prioritized in advance. The prioritized criteria to be used in the map-making process should be made public and appropriately vetted before any maps are drawn. Considering the totality of the 2020-2022 redistricting cycle and all of the maps WIMAP reviewed, we suggest the following bounds for future assembly district maps.

- Total deviation of no more than 2% (plus or minus 1%).
- Contiguous districts.²
- Compactness metrics minima: Polsby-Popper (.33), Reock (.40).
- Number of Split Counties is no more than 50.
- DRA County Times Split + Municipalities Split no more than 250.

² Interpretation of contiguous districts is now before SCOWIS in *Clarke v Wisconsin Elections Commission*. WI Supreme Court 2023AP1399-OA. <https://www.wicourts.gov/courts/supreme/origact/2023ap1399.htm>.

6. Conclusion: Establishing clear redistricting mapping criteria and priorities would also be helpful for delineating Wisconsin Congressional districts. Limiting Wisconsin congressional districts to a total deviation of one or two people is unnecessarily restrictive. Allowing a reasonable level of total deviation subject to federal judicial precedent could improve performance with other traditional criteria applied to Congressional maps.

Background: Although federal law for Congressional redistricting is focused on equal representation and voting rights, Wisconsin has also considered contiguity, compactness, and government boundaries in drawing Congressional districts. Much SCOWIS court review was wasted arguing whether a total deviation of two people made the governor's congressional map invalid. In reality, Census figures that are collected the year before redistricting occurs cannot be anywhere close to that accurate. In fact, there is significant undercounting and overcounting of different demographic groups,³ and since communities grow and shrink as people are constantly moving, the maps are inaccurate before the ink on them dries. Current federal judicial precedent has allowed 0.79% total population deviation among congressional districts as long as other legitimate redistricting objectives are accomplished.

Recommendations: Some reasonable total deviation within the current legal threshold should be adequate for congressional districts, as long as other legitimate redistricting criteria are being applied and met. Considering the totality of the 2020-2033 redistricting cycle and all of the maps WIMAP reviewed, we suggest the following bounds for future congressional district maps.

- Total deviation of no more than .20% (plus or minus .10%).
- Contiguous districts.
- Compactness metrics minima: Polsby-Popper (.30), Reock (.39).
- Number of Split Counties is no more than 13.
- DRA County Times Split + Municipalities Split no more than 35.

See Section VIII of this report for a discussion of criteria.

7. Conclusion: Partisan fairness metrics should have a legitimate role in evaluating proposed redistricting maps.

Background: Partisan fairness metrics include a variety of mathematical and statistical tools used to evaluate the presence or absence of political bias in a redistricting map. The DRA map evaluation website that we used to compare and evaluate maps uses such metrics to evaluate the competitiveness and proportionality of a map. We have included the DRA category ratings and

³ Census Bureau Releases Estimates of Undercount and Overcount in the 2020 Census. March 10, 2022. <https://www.census.gov/newsroom/press-releases/2022/2020-census-estimates-of-undercount-and-overcount.html>

some of the individual metrics in our spreadsheets and focused on the Efficiency Gap as a common, representative measure in several of our tables.

Partisan fairness metrics can be used for both negative and positive purposes in redistricting mapmaking, depending upon the purpose and application of the data. When they are explicitly used to design and develop a map, the intent and outcome are usually to incorporate political bias and advantage for the party drawing the map. The result is a gerrymandered map that creates political advantage, because it is not as competitive or proportional as it could or should be. As we have documented in this report, the 2011 and 2022 Wisconsin legislative maps are an extreme gerrymander made worse in the subsequent redistricting cycle. SCOWIS has also demonstrated that we may not be able to rely on courts to consider and apply partisan metrics to eliminate such gerrymandering from the redistricting process.

On the other hand, partisan fairness metrics can be valuable tools to check proposed redistricting maps for unintentional partisan bias. With modern computational and mapping technologies, many maps can be created that meet and balance constitutional and traditional mapping criteria and priorities. However, even such sophisticated tools can produce maps that meet criteria well but create unintentional partisan bias. Partisan fairness metrics can help mapmakers discard such alternatives from the process.

Recommendation: Partisan data should not be used when drawing the maps, but partisan fairness metrics should be used to review the final maps, to assure no unintentional partisan bias.

B. Nonpartisan Redistricting (PMC and Future Attempts)

Hindsight is always clearer than the heat of the moment. It is easy today to identify some of the problems that arose in the 2020-2022 nonpartisan redistricting process. But whatever criticism we may offer below should not take away from the fact that a citizen-based redistricting process was, in 2020, a novelty in Wisconsin: it had never been undertaken before, and required a steep learning curve. Much credit is due to the governor, his staff, every member of the PMC, and Wisconsin voters' earnest efforts to create voting maps that were fair (or at least fairer) than in the past – and to take map making out of the hands of politicians. In the end, the belated “least-change” order issued by SCOWIS made moot the work done by citizens and the PMC, and the COVID pandemic overshadowed much of this redistricting work. But this valiant first effort can form the basis for better and more successful efforts going forward.

We offer a number of conclusions and recommendations below.

1. ***Conclusion:*** The PMC lacked bipartisan support and adequate authority, funding, staffing, and consultant services.

Background: From the beginning, the Republican-controlled legislature devalued Democratic governor Evers' PMC, stating that the Wisconsin Constitution gave it, the legislature, sole authority for redistricting. In doing so, it ignored the fact that the legislature's redistricting plan could not go into effect without the governor's approval. Given Wisconsin's split government, giving some recognition to the PMC's work would have recognized Wisconsin's separation of powers, and could have led to a negotiated map rather than one that ended up in the courts. The legislature essentially ignored the PMC and provided it with no funding. The legislature only acknowledged the PMC's work when it was to their benefit to point out perceived weaknesses in the PMC's maps.

The PMC was created by the governor's executive order without statutory or administrative authority. It could only advise the governor and lead by example with no authority to establish State policy for the redistricting process or important ingredients such as mapping criteria. Without budget resources for additional PMC staff, existing staff in the Governor's Office assigned to assist nonpartisan redistricting seemed overwhelmed at times, probably because they had multiple unrelated assignments. The minimal budget also limited the consultant services available for a very technical and complex process. The PMC's outputs and results were quite remarkable given the limitations it faced.

For two decades individual legislators have tried to pass legislation calling for nonpartisan redistricting, and providing the mechanism to achieve it. We heartily endorse this type of legislation, and urge its passing as soon as possible. Legislation now pending, AB 415 / SB 488 contains some improvements to Wisconsin's current redistricting process, but the current version of the bill has fatal flaws.

The ultimate goal is to establish an independent, nonpartisan commission with the power to adopt maps. This would require a constitutional amendment - a tall order in a state in which its citizens lack the power to initiate binding referendums, including to amend their state constitution. In the interim, we propose the following legislative suggestions.

Recommendations: Any nonpartisan commission ("Commission") tasked with developing district maps should have the backing of the legislature AND the governor, since both are constitutionally designated as ratifiers of the maps. The Michigan Independent Citizens Redistricting Commission (MICRC), which was formed after Michigan voters amended the state constitution by referendum, merits review for potential "best practices"⁴ where applicable. A Commission should have an annual budget with ample funding to get the job done, including estimated costs for legal bills. Adequate staff time should be dedicated to the work of the Commission, and the roles of staff, consultants, and Commissioners should be clearly defined.

⁴ <https://www.michigan.gov/micrc>.

Funds should be included in the budget for media relations, IT, and outreach, in order to ensure transparency and to conduct Commissioner recruitment, activities around public hearings, basic communications, website and public input management, as well as public engagement in submitting maps and reviewing maps.

A redistricting mapping expert consultant should be hired at the beginning of the Commission's work, for the duration of the process. Consultants with varying areas of expertise should be hired as needed, especially regarding VRA compliance, which should be included from the beginning of the process.

Well before the release of new Census data (presumably in April of 2031), the Commission should draft practice maps using estimated Census figures, since fairly minor modifications are likely to be required once final Census data are released. This would provide more time for the Commission to work through many of the issues that are likely to arise.

2. Conclusion: PMC recruitment and training while adequate could be improved.

Background: From the outset, the timing for forming the PMC was tight. The PMC was proposed by the Governor's Executive Order in January 2020. Applications for commission positions were received up until the end of July 2020. The geographic structure of the PMC created an efficient and effective working group of commissioners - one from each of the eight congressional districts and one member at large to serve as the chair. Wisconsin efforts to recruit volunteer commissioners attracted 270 applicants.

The PMC started its hearings in October 2020. The three-hour hearings were generally divided into two parts. During the first half commission members, as part of their training, listened and questioned invited experts. The second half of the hearing was spent listening to oral testimony from voters primarily in the congressional district that the PMC was focusing on that month.

PMC members stressed that they were ordinary citizens who had volunteered for the job because they all wanted to see a nonpartisan mapping process succeed. Much training in redistricting was needed. Some were still working so they had limited availability. They received advice from experts, but needed more day-to-day involvement from seasoned redistricting professionals. For example, Moon Duchin, a redistricting expert from Tufts University and her Metric Geometry and Gerrymandering Group (MGGG) encouraged the commissioners to begin to experiment drawing maps with Districtr, a free map-making software product in November of 2020. However, without training, the PMC did not begin learning how to use this tool until June of 2021, only two months before the 2020 Census data was released. Even then, they had to rely heavily on MGGG to provide them with starter maps.

Recommendations: Potential Commissioners should be recruited widely and through varying methods, including paid advertising.

The demographic makeup of the Commission should reflect the state population. All Commission applicants should identify: a) Wisconsin residence, b) age, c) race, d) party affiliation, e) statement of qualifications, f) reason for wanting to serve. Commission members should already have extensive knowledge of redistricting or be willing to undergo significant training (which can occur online) to acquire an understanding of redistricting criteria and the ability to analyze and assess maps with the aid of free publicly available software such as Dave's Redistricting App (DRA). This will ensure that members can hit the ground running, and are able to exercise independent judgment, and not be reliant on experts or Wisconsin's Legislative Reference Bureau. Appointed Commissioners should also be provided with information on state demographics.

Commissioners should be informed about expectations, including participation in work groups, time commitment required, and expected duration of redistricting process. Commissioners should be compensated for their extensive commitment and responsibilities. Fair compensation would encourage younger applicants to the pool.

The choice of Commissioners is, of course, critical. Using the last two bipartisan redistricting bills as a starting point, we recommend that a five-member panel of retired Wisconsin appellate jurists select the Commission members from the qualified applicant pool. The speaker and minority leader of the assembly and the majority and minority leaders of the senate must each appoint one jurist to serve on the panel. Within 30 days of the appointment of the fourth jurist, the four jurists so appointed must select a fifth Wisconsin appellate jurist, who serves as chair of the selection panel.

3. Conclusion: The slow development of the PMC's website and portal hampered public engagement.

Background: The PMC established a website that provided excellent information on redistricting, gerrymandering, and the PMC's composition and goals. However, the website lacked critical timeliness in other areas. For example, the Work & Records page was set up but completely void until the beginning of April 2021, six months after the PMC began its hearings. No written comments or summaries of oral comments were published during this time.

While the public hearings and the expert presentations were occurring, much more statewide outreach was required to inform the public on the issue. The PMC could have focused on more specific information needed in each of the districts. Although the general hue and cry, "We need

fair voting maps,” showed public engagement, it was not helpful in the actual map making process.

The PMC’s map and comment portal was not established until mid June 2021, a scant two months before the release of the 2020 Census results. There was insufficient time between the 2020 Census release in mid-August 2021 to the presentation of maps in late October to draft and fully vet the PMC maps. This was not necessarily the fault of the PMC, but more a result of the slowness of the Census data release which should have happened in April 2021. The PMC portal most likely influenced the legislature opening its own map portal in September 2021.

Recommendations: The eight congressional district public hearings should be more structured to avoid too much repetition. Specific questions pertaining to desired map characteristics should be provided to participants in order to generate the information needed to inform the Commission. Strengths and weaknesses of the current enacted maps should be the focus of the Commission as they visit each congressional district. Estimated population shifts should also be discussed. The basic question to be answered should be "How can the district be changed for the better?" This of course would include a discussion of the Assembly and Senate districts impacting the congressional one. The Community of Interest (COI) effort spearheaded by the PMC was commendable, but more effort should be made to solicit complete assembly, senate, and congressional maps from citizens.

4. Conclusion: Commission members were handicapped by the inability of their map-drawing software to provide them with more than basic analysis and assessment of their maps.

Background: When the PMC hired MGGG to assist with their map drawing and analysis they inherited Districtr, the in-house software used by MGGG. As a result, the PMC was completely dependent on MGGG to provide any requested analysis of the maps. But it should avoid Michigan’s mistake of using expensive proprietary software.

Recommendations: Redistricting software should be chosen carefully, based on the best options at the time, cost, user-friendliness, and compatibility with other platforms, to maximize public engagement in submitting maps. The software should be comprehensive and accurate in measuring all redistricting criteria, including partisan fairness and political data. Free software like DRA should be sufficient for the Commissioners.

5. Conclusion: The final PMC report on the maps did little to show how the great effort to identify COIs throughout the state impacted the redistricting maps.

Background: Professor Moon Duchin informed the PMC about the Communities of Interest concept in redistricting, but the role of COIs in drawing the maps was not evident in the PMC’s

report. Much time and effort by statewide fair maps groups was dedicated to the submission of COI maps, but it is unclear how such an amorphous criterion can be applied. In fact, those of us who helped voters draw COI maps were struck by how geographically large some were, how small some were, and how different people living in the same “neighborhood” could have strikingly different COIs. We began to question the use of COIs as defined by many individual voters in the map making process.

Our experience working with citizen map makers leads us to wonder if the concept of “communities of interest” could be defined through more objective criteria, such as indigenous communities, shared public services, municipalities, and smaller counties. The Michigan commission enlisted the University of Michigan’s Center for Local, State and Urban Policy to help define over 20 categories of COIs and put together a database of over 1,000 potential COIs that were available for public engagement in the process.⁵ This approach looks promising.

Recommendation: If Communities of Interest are going to be a featured criterion of district maps, a clear unambiguous definition of COI should be established, along with a procedure for reconciling the many conflicting COIs from individuals in one area.

6. Conclusion: The PMC’s report did not adequately address compliance with the VRA.

Background: Although the PMC maps were not proved to violate VRA requirements, the final report did not attempt to establish VRA compliance in the Milwaukee area. This was a major reason for the bipartisan rejection of the PMC maps by the legislature.

Recommendation: A VRA expert is absolutely necessary to advise a successful redistricting process, and should be engaged early in the process.

7. Conclusion: The PMC did many things extremely well.

Background: The PMC can be proud of its inaugural effort. They did a good job of making clear their prioritization of constitutional, statutory, and traditional redistricting requirements. They were extremely transparent in their process. They provided ample opportunity for public comment. They appeared to operate independently from the influence of any political party or partisan perspective. The atmosphere of the PMC was congenial, and decisions were made by consensus. The PMC worked well as a group.

Recommendation: The 2030 Commission should build on the strengths of the 2020 PMC.

⁵ <https://closup.umich.edu/redistricting-project/communities-of-interest>

C. Closing Thoughts

We finish this report in November 2023. Voting maps based on Census data from 2020 are still in the courts. But to us, 2030 seems right around the corner. Can litigation be avoided during the next redistricting cycle? Can politicians be compelled to give up some of their power to save our republic?

We introduced this Report with a cautionary tale. We end it with a tale of encouragement. There are signs that the momentum is with us. We must use this momentum to grow the fair maps movement. We need mappers, planners, spokespeople, researchers, and above all, advocates. We may well see in the near-term incremental steps that further our efforts via court decisions and/or actions taken by the legislature.

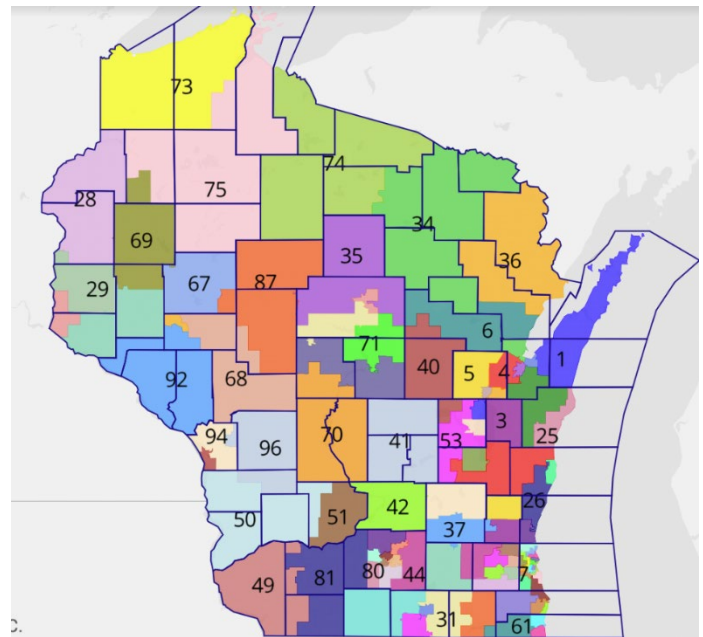
But whatever happens, good or bad, we must hold true to our principles when it comes to fair maps legislation, and fight smart and voraciously using the tools we have — knowledge, openness to new ideas, education, and advocacy. We must stay the course and grow the movement so that ultimately, well before the 2030 redistricting cycle begins, we achieve our goal of an independent nonpartisan redistricting commission and process enshrined in the Wisconsin Constitution.

In other words, there is plenty of work to be done. Let's do it.

The assembly map to the right was drawn by Dr. Don Leake, WIMAP's founder. One of many maps Don has drawn and analyzed using open-sourced DRA software, Don calls this his "Strictly Contiguous WI Assembly Minimum Splitting No Split Precincts 2020 Wards."

With today's technology, there is no reason why citizens should not be engaged in the map-making process.

For the sake of our future, they should be so engaged.



Authors

This Report is the collective work of five members of the Wisconsin Maps Assessment Project (WIMAP). They are:

Dr. Don Leake. Dr. Leake founded WIMAP in 2021. Dr. Leake is a retired math professor intrigued by the multi-faceted applied problem of drawing a Wisconsin Assembly map. He is especially intrigued by these questions: How does one judge if a map is fair? Is there a systematic way to construct a fair map? What are the qualities of a good fair map?

To Dr. Leake, it is essential that Wisconsin have superior fair district maps for the next decade. These questions and his wife's involvement in Western Wisconsin for Nonpartisan Voting Districts ("WWNVD") led him to join WWNVD and sponsor an assembly map-drawing contest the summer of 2021. The idea of the contest was to promote the submission of maps to the People's Maps Commission (PMC). Dr. Leake believes the map adopted by Wisconsin for the next ten years should be demonstrably better than all other maps considered.

As a citizen-voter like his fellow authors, Dr. Leake has drawn and submitted assembly maps to the PMC and Draw Your District web portals. He also submitted a Wisconsin senate map to a contest sponsored by the Princeton Gerrymandering Project ("PGP"). Although Dr. Leake's map did not win, it did well enough that he was invited to join the PGP Mapping Corps, a group of about 30 amateur mappers interested in drawing quality redistricting maps for every state in the United States.

His interest and success in mapping led to the establishment of WIMAP. While WIMAP's members do not claim to be experts, they have attended webinars about redistricting, read authoritative sources, drawn maps, and sought maps from multiple sources to inform themselves of the constitutional criteria and traditional principles involved in redistricting in Wisconsin.

Dr. Leake has become familiar with the free web-based applications Dave's Redistricting App 2020 and Districtr. He believes that these applications provide sufficient tools for any citizen to construct and analyze redistricting maps. Dr. Leake believes Wisconsin's maps should never be constructed behind closed doors. Public rationales should be provided for each map, explaining how it best satisfies the controlling legal criteria.

David Fodroczi. Fodroczi lives on Big Lake in the Town of Garfield in Polk County. Having lived in four different communities in Wisconsin over the last 45 years, he has been a regular, independent voter in local, state, and federal elections. Fodroczi has never belonged to a political party and cares deeply about his community, state, and country.

Fodroczi's interest in redistricting reflects his personal beliefs enhanced by the experiences of his professional career. He is a certified community planner through the American Institute of Certified Planners of the American Planning Association. He retired in 2011 after 33 years in Wisconsin public service, including 25 years in county government.

Fodroczi served as a principal staff or manager of the redistricting process at the county level during the last four redistricting cycles from 1981 to 2011. His last redistricting experience was in 2011 as Planning & Zoning Director for St. Croix County. He and his staff were responsible for all mapping, analysis, and preparation of county supervisory districts and coordination with all municipalities. While Fodroczi understands that the state has many more resources and more sophisticated redistricting tools than local municipalities, he believes the state redistricting process has been fraught with hyper-partisanship, a total lack of cooperation, and almost no transparency.

In 2021, Fodroczi supported the Polk County Board's decision to pass a resolution supporting fair maps and a nonpartisan process for redistricting, which was followed by the citizens in Polk County passing an advisory referendum endorsing the same concepts. He has testified to the PMC and the Legislature, and volunteered with WNVND, helping dozens of citizens to submit over 200 community of interest maps to the PMC and DYD portals.

Dr. Cheryl Maranto. Dr. Maranto is an Associate Professor Emerita of Management at Marquette University. She believes in public service. She has served on the Whitefish Bay School Board for 12 years, is a member of the League of Women Voters of Wisconsin ("LWV"), currently serving on its statewide fair maps group, and has been a voter registration volunteer for the LWV. Dr. Maranto is co-chair of Grassroots North Shore and co-leads North Shore Fair Maps (NSFM), a grassroots organization of citizens who believe that fair voting maps are foundational to our democracy, and essential for our communities and schools to get the resources they need to thrive.

Dr. Maranto assisted about 50 individuals in drawing their "Community of Interest" maps and, with their permission, submitted them to the People's Maps Commission ("PMC") portal and the legislature's Draw Your District ("DYD") portal. Dr. Maranto was thrilled to join with like-minded citizens to form WIMAP in order to provide objective analyses of alternative legislative maps to citizens and the courts. Her work with NSFM and WIMAP enabled her to develop a deep understanding of the many facets of redistricting, which served her well when she testified before the Senate Committee on Shared Revenue, Elections and Consumer Protection on October 19, 2023 regarding SB 488, the fake nonpartisan redistricting bill.

Maranto lives in Glendale, a Milwaukee suburb. In 2021, despite the supposed "least-change" approach that the Wisconsin Supreme Court mandated for redistricting, her assembly district was among a handful that the Republican legislature surgically re-gerrymandered in order to turn her and a neighboring suburban district which had become more competitive over the decade into two safe districts - one a bit bluer (it was one of only 3 assembly districts that flipped parties in 10 years) and one deeply red.

Deborah Patel. Patel is a retired lawyer and nonprofit leader. She lives in River Hills, a north shore suburb of Milwaukee. Her latest passion is working with others to save our republic. As a voter who lived in a gerrymandered district, she became a plaintiff in the second round of Wisconsin's landmark gerrymandering case Whitford v Gill. When that effort failed, she founded North Shore Fair Maps, which continues the fight for truly representative government. She runs the group's monthly virtual meetings, which regularly draw more than a hundred participants, and sends weekly action items to almost a thousand followers of the group.

Patel helped citizens draw community of interest maps. She was pleased to be asked to join the WIMAP team, where among other things, she plays the role of “math idiot.” (If she can understand Chapter VIII of this report, you can too.) Patel testified before the Wisconsin Supreme Court (SCOWIS) when it was deciding whether to take original jurisdiction over redistricting. She testified before the PMC as it was developing its maps. She has also testified before the legislature on several occasions, including the SB 621 hearing. As a lawyer, Patel was extremely disappointed when SCOWIS adopted the “least-change” approach to redistricting, and as legal scholar Robert Yablon foreshadowed, it has caused her to judge SCOWIS harshly.

Patel’s prior adventures include an assortment of things, from supervising construction to practicing law at Wisconsin's oldest and largest law firm, being "of counsel" to a Fortune 500 company, running the Milwaukee Symphony Orchestra for a year, being the first executive director of the Milwaukee Children's Choir, singing with the Symphony Chorus for 30 plus years, serving on several nonprofit boards (social welfare and arts), being president of the historic Woman's Club of Wisconsin, and serving as the registrar for her local chapter of the Daughters of the American Revolution. Life is an adventure, and an opportunity for life-long learning. Patel remains hopeful that she will not need to spend too many more years fighting gerrymandered maps. Until that happens, the fight continues.

Janie Riebe. Riebe is a retired aging and disability human services professional.

Advocating for fair maps has become a passion of hers since rigged voting maps directly impact the social justice issues which she champions – affordable housing, health care, education, food security, and the environment. Riebe volunteers with a variety of organizations, including the Fair Maps Coalition and the League of Women Voters. She was fortunate to have connected with Don Leake who gave her a clerical task transferring maps created by ordinary people from one public portal to another. As a result, she joined WIMAP and has been enriched by the opportunity to work alongside a talented team of people who freely share their diverse knowledge and skills.