UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ALVIN BALDUS, CINDY BARBERA, CARLENE BECHEN, RONALD BIENDSEIL, RON BOONE, VERA BOONE, ELVIRA BUMPUS, EVANJELINA CLEEREMAN, SHEILA COCHRAN, LESLIE W. DAVIS III, BRETT ECKSTEIN, MAXINE HOUGH, CLARENCE JOHNSON, RICHARD KRESBACH, RICHARD LANGE, GLADYS MANZANET, ROCHELLE MOORE, AMY RISSEEUW, JUDY ROBSON, GLORIA ROGERS, JEANNE SANCHEZ-BELL, CECELIA SCHLIEPP, TRAVIS THYSSEN,

Plaintiffs,

TAMMY BALDWIN, GWENDOLYNNE MOORE and RONALD KIND,

Intervenor-Plaintiffs,

v.

Members of the Wisconsin Government Accountability Board, each only in his official capacity: MICHAEL BRENNAN, DAVID DEININGER, GERALD NICHOL, THOMAS CANE, THOMAS BARLAND, and TIMOTHY VOCKE, and KEVIN KENNEDY, Director and General Counsel for the Wisconsin Government Accountability Board,

Defendants,

F. JAMES SENSENBRENNER, JR., THOMAS E. PETRI, PAUL D. RYAN, JR., REID J. RIBBLE, and SEAN P. DUFFY,

Intervenor-Defendants.

Civil Action
File No. 11-CV-562

Three-judge panel
28 U.S.C. § 2284

(caption continued on next page)

RULE 26 EXPERT REBUTTAL REPORT OF DR. KENNETH R. MAYER

VOCES DE LA FRONTERA, INC., RAMIRO VARA, OLGA WARA, JOSE PEREZ, and ERICA RAMIREZ,

Plaintiffs,

v.

Case No. 11-CV-1011 JPS-DPW-RMD

Members of the Wisconsin Government Accountability Board, each only in his official capacity: MICHAEL BRENNAN, DAVID DEININGER, GERALD NICHOL, THOMAS CANE, THOMAS BARLAND, and TIMOTHY VOCKE, and KEVIN KENNEDY, Director and General Counsel for the Wisconsin Government Accountability Board,

Defendants.

My name is Ken Mayer. I submitted an expert report in this lawsuit on December 14, 2011. I have been asked by counsel representing the plaintiffs in this lawsuit (the "Plaintiffs") to analyze and provide expert opinions in rebuttal to opinions expressed by certain of the defendants' experts in the above-captioned case. Specifically, I have been asked to evaluate and provide opinions in rebuttal to those expressed by Peter A. Morrison and Ronald Keith Gaddie in their December 14, 2011 reports.

My rebuttal opinions, which are based on the technical and specialized knowledge that I have gained from my education, training and experience, are premised on widely accepted and reliable methods of analysis and application of traditional redistricting criteria, and are based on my review and analysis of the following information and materials, which are in addition to those that I identified in my December 14, 2011 report, and to the materials cited at the end of this report:

- Declaration and Expert Report of Peter A. Morrison, Ph.D., December 14, 2011;

- Expert Report of Ronald Keith Gaddie, Ph.D., December 14, 2011;
- Deposition of Joseph Handrick, December 20, 2011, and exhibits;
- Deposition of Adam Foltz, December 21, 20111, and exhibits;
- Deposition of Tad Ottman, December 22, 2011, and exhibits;
- Documents produced in response to subpoena to Joseph Handrick;
- Documents produced in response to subpoena to Adam Foltz;
- Documents produced in response to subpoena to Tad Ottman;
- Letter of Daniel Kelly, dated December 28, 2011, and attached materials; and
- American Community Survey 2006-2010, and 2010.

Introduction

Professor Gaddie's report primarily consists of a description of the redistricting plan adopted in Act 43. He does, however, make the following arguments about specific elements of Act 43:

(1) the number of voters disenfranchised because they are moved from even-numbered to odd-numbered state Senate districts – and therefore lose their vote in the 2012 elections – should be reduced because of the extraordinary recall elections held in nine districts during the Summer of 2011.

(2) Act 43 creates an acceptable number of majority-minority African American districts, and one majority-minority Latino Assembly district.

(3) the aggregate number of municipal splits throughout Wisconsin – local jurisdictions that are divided into multiple Assembly and Senate districts – is in line with the aggregate number of municipal splits throughout Wisconsin in the 1992 and 2002 Court-drawn redistricting plans.

As I explain below, each of these arguments is flawed theoretically, statistically, practically, or all three.

I. Recall Elections are Irrelevant to the Question of Disenfranchisement

As I noted in my initial report, Act 43 moves 299,704 persons from even-numbered Senate districts to odd-numbered Senate districts. Professor Gaddie does not dispute that. Senators from even-numbered districts were last elected in 2008, and the seats are subject to election again in 2012. Persons currently in even-numbered districts have the right to vote in the 2012 Senate elections. By moving these people from their current even-numbered districts into odd-numbered districts, Act 43 deprives these people of their right to vote in 2012. Their next opportunity to vote in a Senate election will not occur until 2014. In every redistricting cycle, it is inevitable that some people will be disenfranchised when legislative elections are staggered as Senate elections are in Wisconsin, but the number should be kept as small as possible. Gaddie recognizes this when he correctly notes that "the delayed voting issue is considered significant and is closely related to the fundamental principles of fairness and equality that underlie the dominant principles of population equality and racial fairness (Gaddie Report, pages 4-5). Yet he provides no justification for the disenfranchisement of such an extraordinary number of people, and the resulting denial of the right to vote in every four years for state Senator.

In defending the remarkable numbers of disenfranchised voters, Gaddie claims that the *percentage* of voters harmed by the loss of their 2012 vote (5.26%) is consistent with the percentage disenfranchised by the 1992 redistricting map, which was drawn by a Federal Court. The use of percentages, however, obscures two crucial facts about Act 43. First, it ignores the fact that the absolute number of disenfranchised voters in 2012 (299,704) is significantly larger, by 16.6 percentage points, than the absolute number of disenfranchised voters in 1992 (257,000).

The fact that the population of the state has grown slightly in the previous 20 years is not an adequate justification to excuse the disenfranchisement of an additional 43,000 people.

Moreover, it is apparent that the authors of Act 43 – whoever they are – used the 5.25% standard as a "safe harbor" that permits them to burden the same percentage of voters in the current process (Adam Foltz testimony at July 13, 2011 Legislative Hearing, p.31). But as with the 2002 redistricting map –which was also drawn by a Federal Court – it is possible to draw a map with significantly less disenfranchisement. That map disenfranchised only 177,163 persons, a level 45 percentage points smaller than the number created in Act 43. The authors of Act 43 could easily have chosen to disenfranchise fewer voters by using this standard instead. It is thus clear that minimizing the number of disenfranchised voters was not a factor in Act 43. Rather, Act 43 was, according to the testimony of the individuals who say they drew the map, designed with other goals in mind. The collateral damage of such a process is that tens of thousands of Wisconsinites unnecessarily lose their right to vote in the 2012 Senate elections.

Professor Gaddie further claims that the disenfranchisement created via Act 43 is not really disenfranchisement, since voters moved from even to odd districts had an opportunity to vote in the recall elections held in the Summer of 2011. There were, he claims, 164,843 disenfranchised persons who lived in districts where recall elections were held. Thus, he concludes, the actual number of persons who will go 6 years without voting in a Senate election is not 299,704, but 299,704 – 164,843 =134,861.

This argument is transparently disingenuous. Recall elections are not a substitute for the regular elections that occur at fixed intervals. Rather, recall elections are unpredictable, can be forced upon a recalcitrant electorate by a fraction of the population that signs recall petitions, are held at irregular intervals, involve a different strategic context than the regular Fall elections, and

have dramatically lower turnout than Fall elections.[1] Moreover, the exercise of one constitutional right – the right of recall under the state Constitution – cannot provide a basis to deny another constitutional right, the right to vote every four years for state Senator.

Given the timing of the legislature's consideration of Act 43 and the rulings by the Government Accountability Board, the "recall exception" can only be an after-the-fact rationalization of the disenfranchisement caused by Act 43. The record to date, including the single public hearing held by a Joint Committee of the Wisconsin legislature on July 13, 2011, and the depositions of the persons who consulted, makes no reference whatsoever to the relationship between the recall elections and the number of persons moved from even to odd Senate districts. Given the timing of the disenfranchisement moves in the map drawing process and the recall efforts, it is difficult to see how the two could have been related.

The Government Accountability Board certified the first of the nine recall petitions on May 23, 2011, less than two months before the legislature passed the redistricting map on July 19th (in the Assembly) and July 20th (in the Senate). The last recall petitions were certified on June 8, although lawsuits filed by *all nine* Senators facing recalls delayed the final certification decision until July 8, when a Dane County Circuit Court judge ruled that all the recalls could proceed. In contrast, the redistricting effort conducted by the legislature began as early as December 2010, when office space was provided to legislative staffers within the law offices of Michael, Best & Friedrich (Ottman Dep., page 135).

Further evidence of the unusual nature of the recalls comes from the voting results. Exhibit 1 shows the total number of votes cast in each recall election as well as the total number

[1] In Wisconsin, a recall against a legislator is triggered when a number of eligible voters in that district equal to 25% of the number of votes cast for Governor in that district in the most recent election sign a recall petition. The number of signatures required in the 9 recall efforts ranged from 13,537 (22nd District) to 20,343 (8th District). Recall petitions may not be filed until an incumbent has been in office for at least one year (Wisconsin Constitution, Art. 12, sec. 12; Wisconsin Statutes 9.10).

of votes cast in the 2008 elections in which the incumbents were last elected. In every case, turnout dropped, even in the districts where the incumbent had run unopposed in 2008 (which results in lower turnout through the phenomenon of "roll-off" in which many voters simply do not record a preference, mostly because they do not share the unopposed candidate's partisanship). Overall, turnout dropped by more than a third, even though the elections took place in a highly charged environment framed by the protests at the Wisconsin Capitol, and an openly expressed goal of overturning (or defending) the 19-14 Republican majority.[2] The turnout drop off in the recall exceeds the drop that occurs between presidential election years and off-years. In 2008 state senate elections, there was an average of 78,998 votes cast in the sixteen even numbered districts. In 2010, that number dropped by 26.6% in the odd-numbered districts up that year to 62,410. In the recall elections, the average number of votes dropped to 53,976.

Finally, whatever the validity the of "recall exception" on the question of disenfranchisement, it vanishes in the face of the simple fact that tens of thousands of voters in even numbered districts who voted in the Summer 2011 recall elections were almost immediately moved to their new districts (the effective date of Act 43 was specified as August 23, 2011), where they would lose their right to vote in 2012. In effect, many of the votes in the recall elections were cast by persons moved out of the district within a few weeks. This means that the citizens who were not moved from even to odd-numbered districts were committed to an election in which many of the voters no longer resided in the district; and those voters who moved had less say in who represented them in the new district, since they could not have voted for the incumbent in that district.[3] Further, the candidates who won the recall elections were

[2] Two Republican incumbents, Dan Kapanke and Randy Hopper, were defeated by their Democratic challengers, resulting in a reduced Republican majority of 17-16.

[3] In further attempting to defend the number of disenfranchised voters, Professor Gaddie makes an inapposite comparison to Oklahoma, where he lives, which without context has no bearing on whether the number of voters

immediately redistricted into new districts, some of which (especially the 21st) have relatively low core population retention from the old districts. In effect, immediately after the election both voters and incumbents were reshuffled into new districts.[4] This is one of the fundamental reasons core population retention is such an important redistricting principle, since it helps preserve the legitimacy of the decisions made in the previous election.

Ultimately, the recall elections occurred in a very specific constitutional and political context that differed substantially from the fixed elections held every four years:

- all nine candidates who faced recalls attempted to stop the recall elections through litigation[5]
- the campaign was unusually chaotic, with both parties running "fake" or "placeholder" candidates to force primaries in the other party that would further delay the date of the final recall and give incumbents more time to campaign[6]
- turnout in the recall elections was, on average, 35% lower than the 2008 elections, even though two of the Senators who faced recalls ran unopposed in the previous election (Exhibit 1)

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disenfranchised in Wisconsin is defensible. To give just a few examples of the differences that render the comparison irrelevant, the population of Oklahoma is significantly smaller than the population of Wisconsin, 3,751,351, compared to 5,686,986; the Oklahoma Senate has 48 members, each of whom represents 78,153, compared to Wisconsin, where there are 33 Senators each of whom represents 172,333. As a general principle, smaller districts tend to require larger shifts and deviations, as a shift of the same number of people will produce larger percentages in the smaller jurisdictions. Moreover, there has been no judicial finding that the 8% disenfranchisement in that state is permissible, nor any federal court action that is reviewing the question.

[4] The new 21st Senate district, for example, has core population retention of only 58%. There were 72,431 persons moved from the 22nd into the 21st.

[5] Wisconsin Government Accountability Board, "Statement Regarding Dismissal of Recall Lawsuits," July 8, 2011 (available online at http://gab.wi.gov/node/1939)

[6] Doris Hajewski, "Democrats to Force Primaries," *Milwaukee Journal Sentinel,* June 11, 2011 (online at http://www.jsonline.com/news/statepolitics/123688454.html); Tom Tolan, "Can 'Fake' Democrats Really Pull an Upset?" *Milwaukee Journal Sentinel*, June 25, 2011 (online at http://www.jsonline.com/news/statepolitics/124547974.html)

- there is no evidence in the record, to date, that the authors of the map considered the recall elections in any way in making any choices about disenfranchisement; indeed, the timeline suggests that they could not have.

In short, a vote in a recall election is not a meaningful substitute for the right to vote in a regularly scheduled Fall election.

Professor Gaddie reaches to 1992 for his benchmark, ignoring 2002. More significantly, he has ignored the 1983 process and the decision by this Court (though a different three-judge panel) that the disenfranchisement of just 173,976 voters – by the renumbering of Senate districts – constituted a constitutional violation. In fact, the current panel stated in its October 21, 2011 decision denying the state's motion to dismiss that: "If the plaintiffs are correct that the redistricting law disenfranchises 300,000, then their claim for relief appears much more than speculative at this stage of the proceeding." Neither the defendants nor their experts have yet to provide any justification for the massive relocation and disenfranchisement. Two facts are indisputable: First, Act 43 disenfranchises almost 300,000 people. Second, it need not have. Under any number of alternatives, the number of people disenfranchised would have been, and could have been, dramatically fewer.

II. Act 43 Packs African Americans into Districts with Unnecessarily High Concentrations

At the time the 2002 Federal Court drew its plan in the previous redistricting cycle, the conventional wisdom was that an effective majority-minority district required a supermajority minority voting age population (usually between 55% and 65%; see Cameron, Epstein, and O'Halloran 1996), in order to offset the disadvantages in participation that usually occurred among minority voters as compared to white voters. The percentages necessary to achieve an equal opportunity to elect candidates of choice depend on voting patterns of minority and white

voters, and whether minority groups have faced historical barriers to participation. Brace, Grofman, Handley and Niemi(1988) noted that many federal courts used 65% minority population, or 60% minority voting age population, as a standard that provided minorities with an effective opportunity to elect candidates of choice in Voting Rights litigation in the 1970s and 1980s.

A body of academic work over the past 10-15 years has concluded that "high concentrations [of minority voters] may be unnecessary to secure minority electoral opportunities. The basic question, then, is whether the marginal gain in the probability of electing a black Democrat from a majority-minority district is sufficient to offset the marginal loss of influence in other districts" (Cameron, Epstein, and O'Halloran 1996, p. 805). Grofman, Handley, and Lublin (2001, 1391) have noted that there is no single threshold that applies in all cases. Depending on other factors, a bare numerical majority may be more than is necessary to insure equal voting opportunity in some cases, and a 65% majority might be too low (especially in majority Latino districts). In *Page v. Bartels*, 248 F. 3d 175 (2001), the 3rd District Court of Appeals allowed a redistricting plan that reduced concentrations of minority voters substantially below 50% (see also Hirsch 2002).

The thrust of this academic work and jurisprudence suggests that lower concentrations of African American voters is possible, while still preserving vital communities of interest and providing African American voters the opportunity to elect candidates of choice.

III. Act 43 Does not Create an Effective Majority-Latino Assembly District

Professor Gaddie claims that Act 43 creates two majority-Latino districts, the 8th and the 9th, with Latino voting age populations (VAP) of 60.5% and 54.0%, respectively. However, these figures ignore the crucial *eligible* voting age population. In the case of Latino populations,

that value is much smaller because a significant percentage of Latinos are not citizens and thus cannot vote. If these percentages are adjusted to account for the significant non-citizenship rate, the purported majorities disappear. At the same time, other configurations could have created – indeed, should have created – an Assembly district that complied with the Voting Rights Act by providing Latino-Americans a real opportunity to elect candidates of their choice.

In my December 14th report, I calculated a non-citizenship rate of 35.75% for Latinos in Wisconsin, based on statewide figures from the 2008 American Community Survey. Alternatively, we can also use a figure calculated directly by the Bureau of the Census, of 42% Latino noncitizens in the city of Milwaukee, using the 2005-2009 5-year ACS data. Either way, the results are comparable.

As I demonstrated in my initial report, the number of noncitizen Latinos of voting age must be subtracted from the overall Latino VAP to determine the number of eligible Latino voters. Simple VAP percentages overstate the appearance of effective influence of any minority group, but especially Latinos.

Exhibit 2 shows the results of these calculations, for multiple noncitizen rate estimates from the ACS. In part A, the claimed 60.5% Latino VAP in district 8 is reduced to 49.62% of voting eligible Latino voters, and the 54% Latino VAP in district 9 is reduced to an eligible Latino VAP of 43.02%. Using the 42% noncitizen rate from the 5-year ACS reduces the eligible Latino majorities in districts 8 and 9 to, respectively, 47.07% and 40.53%. None of these figures is sufficient to create an effective majority-Latino district. Given the historically low registration figures for Latinos, the actual concentrations of voting eligible Latino voters would have to be well above 50% to insure that Latino voters have a meaningful opportunity to elect candidates of

their choice, and that their votes are not diluted by more numerous and more likely to vote non-Latino white voters.

We need not rely on my own calculations to reach this conclusion. Defendant's expert Peter Morrison's report effectively concedes the point that Act 43 fails to create a majority-Latino district. In table 3 of his report (Morrison report, p. 9),Morrison shows the results of his estimates of the growth in the percentage of Hispanic Voting Age citizens in Assembly districts 8 and 9. In 2010, he estimates the Hispanic voting age citizen concentration at 40.9% in AD 8 and 33.7% in AD9, nowhere near the levels necessary to create a truly effective Latino majority district. These percentages, he forecasts, will grow by approximately 1 percentage point per year.

The implications of his own analysis are clear: under Act 43, Latinos will not constitute a majority in any district until at least November 2018, where the concentration in AD8 is forecast to reach 50.9%. Although this is a mathematical majority, it is highly unlikely to constitute an effective majority, given the historically lower participation and registration rates among Latinos. Moreover, this "majority" is forecast to occur only 16 months before the 2020 decennial census. Projections so far into the future are not a valid foundation for creating a district with far less than an effective majority, supported only by an assumption that populations will reach a bare (but still not effective) majority at the end of the decade.

Far from concentrating minority voting power and influence, Act 43 *dilutes* it. In the absence of a neutral non-racial explanation, that choice appears deliberate.

There was – and remains – an alternative that meets the command of the Voting Rights Act. My proposed map of Assembly district 8 has a Latino citizen voting age concentration of

60.06%, which is an appropriate level necessary in order to constitute an effective majority, given the significantly lower participation in the Latino community.

At the same time, there are several reasons why Dr. Morrison's results should not be taken at face value. He bases his demographic projections on an unspecified "demographic accounting model" (Morrison Report, p. 8) that is neither explained nor adequately justified. In supplemental information supplied by Dr. Morrison, he appears to be using mortality data for 5-year cohorts of Latinos, based on data from the federal Centers for Disease Control and Prevention (Supplemental Information, December 28, 2011, exhibit 1). Still, he has not provided sufficient data to permit an adequate evaluation of his methods, or to allow for a replication of his results.

Furthermore, there are numerous discrepancies in the numbers that Dr. Morrison uses in his report. He combines Census data (based on actual enumeration) with American Community Survey data (based on samples), without clearly specifying which of his calculations use which data. At times he uses one year ACS data, while at other times he uses data from the 5-year sample, as well as Census data, even in the same table (Morrison report, Table 2). He does not show how he has calculated some key values.

Morrison's calculations of citizen and noncitizen Latino populations in Assembly Districts 8 and 9 are not explained. The manner in which he has presented the data –switching between ACS and Census data, and between 1 and 5 year ACS data – makes any validation effort difficult. However, it is possible to identify potential differences between the ACS data and the more accurate Census data by estimating the total Latino voting age population (VAP) in districts 8 and 9 (as established by Act 43), and comparing these totals to the Census data for districts 8 and 9. In order to do this, I inferred that Dr. Morrison's method was to identify the

Census tracts within the borders of districts 8 and 9, and count the number of Latinos, voting age Latinos, and citizen voting age Latinos. I attempted to replicate this method, allocating populations in census tracts not wholly including in the districts by area (which is a method Dr. Morrison uses in a different context)

These calculations show the differences between the ACS estimates and Census figures for quantities that are common to both datasets (recall that the Census does not include any information on citizenship). According to the ACS, the Latino population in district 8 is 34,779. According to the Census, the voting age Latino population is 37,750. The fact that these numbers are so different – the ACS figure is 11% lower than the actual Census figure – shows the possible errors that can occur relying on ACS data to make inferences at lower levels of aggregation. Here, the preference is to use data from higher levels of aggregation, such as city and county non-citizenship rates, and apply them to the more accurate Census data. In fact, my methodology of combining the ACS non-citizen percentages calculated at high levels of aggregation –such as at the city or county level – to the Census data at the district level is recognized as providing more accurate estimates of the total citizen voting age population (Chapa et al, 2011, p. 9).

Although Morrison does not identify the non-citizenship rate for Latino voting age persons in Table 2, it is possible to impute his rate by using the actual Latino VAP in districts 8 and 9 and Morrison's estimates of the number of Latino voting age citizens in those districts. When the calculation is performed, the non-citizenship rate estimates turn out to be 53.0% in district 8 and 53.9% in district 9. The notable feature of these estimates is that they are dramatically different from the citywide noncitizen rate of 42%, using the five year ACS data.

No matter what numbers are used, however, there are no circumstances under Act 43 in which the concentration of voting age citizen Latinos in district 8 achieves even a bare majority. As I noted above, while there is no single percentage that applies in every case, for Latinos we know that the concentration of voting age population must be substantially larger that 50% in order to provide for an *effective* majority of eligible Latino voters. Morrison's Latino citizen voting age population in Assembly district 8 – 40.9% – is clearly nowhere close to a majority, and even using the Census data for Latino voting age population and the citywide non-citizenship rate of 42% fails to produce a mathematical majority (a concentration of 47.07%, from Exhibit 2) , much less an effective Latino majority.

In exhibit 3 I show the demographics of the previous Assembly district 8 according to the 2010 Census (column 1), and the demographics of district 8 as created by Act 43. The growth in the Latino population between 2002 and 2010 had increased the concentration of Latino voting age population to 65.5%, and the Latino citizen voting age population to 52.4% in the existing Assembly District 8. Although Wisconsin is not covered by Section 5 of the Voting Rights Act, in a covered jurisdiction such a change in district demographics could very well be considered retrogression prohibited under the Act.

Finally, I demonstrated that Latinos are less likely to participate in elections, with lower registration rates (in part due to the number of noncitizens). The barriers to participation are likely to grow even stronger in the coming elections, because of the disproportionate impact of Wisconsin's newly enacted voter ID law. Under the new law, persons wishing to vote must display a Wisconsin drivers license, a state issued photo ID, a current military or student ID, or a passport. Previous work has shown that minorities – especially African Americans and Latinos – are far less likely that whites to have either the required ID or the documents necessary to obtain

them (Pawasarat 2005). I have made an open records request for the statewide drivers license and photo ID records for Wisconsin. I have not yet received this data, but I reserve the right to amend my opinions and conclusions based on the analysis I plan to perform on the data.

In short, Act 43 dilutes the voting power of Latinos by reducing their concentration in the newly drawn District 8 from the previous district 8.

IV. The Number of Municipal Splits Does Not Reflect the Arbitrary Fracturing of Communities of Interest

Professor Gaddie argued in his report that the number of "splits" – defined as the number of municipal areas (such as counties, cities, towns, and villages) that are divided into separate Assembly or Senate districts is consistent with the decisions of this Court in both 1992 and 2002. The 1992 map had 199 county and municipal splits, while the 2002 map had 167 (again demonstrating that it is possible to draw a map with a minimal number of splits). Act 43, by contrast, contains 203 splits, more than the 1992 map and nearly 22% more splits than the 2002 map. Once again, the authors of the map provided no justification or explanation for the number of splits, many of which were clearly unnecessary (as I explain below).

In any case, an exclusive focus on the aggregate number of splits obscures the negative consequences of specific splits. Here, I focus on two cases: the fact that the City of Beloit (which had been in a single Assembly district since the 1980s) is split into two Assembly districts by Act 43; and the City of Marshfield, which had been in a single Assembly district since at least the 1960s, but which was split into separate Assembly *and* Senate districts via Act 43, and the incumbents who had represented the city were drawn into different districts that did not include it.

It is clear that neither of these splits was necessary. Marshfield has a population of 19,118 according to the 2010 Census, or about one-third of the population of an ideal Assembly District. The city of Beloit has a population of 36,966 according to the 2010 Census. Both cities could have easily been contained in a single Assembly district.

In addition to the fact of the municipal split, both cities also constitute communities of interest, with distinctive industrial, geographic, and social commonalities. The largest employer in the area is the Marshfield Clinic and associated St. Josephs Hospital. Beloit is an industrial town on the Wisconsin-Illinois border, and is one of the more diverse communities in the state: 17% of the population is Latino, and 15% African American (making it the third largest concentration of African Americans in the state, after Milwaukee and Racine).

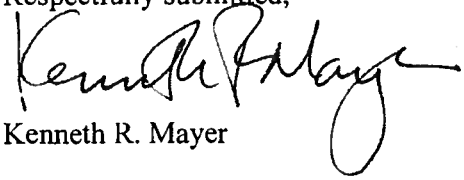
Why were these cities and communities split? No explanation has been provided (Ottman deposition, pages 230,232; Handrick deposition, pages 243,246; Foltz deposition, pages 208, 218-219).

V. Conclusion

The redistricting plan implemented by Act 43 departs in important respects from traditional redistricting principles. There are even questions about the accuracy of the population figures, given the discrepancies between the district geographies and the location of actual voters as recorded in the Statewide Voter Registration District. Act 43, despite the assertions of Professor Gaddie, in fact disenfranchises nearly 300,000 people by denying them their constitutional right to vote in the 2012 Senate elections. At the same time, Act 43 falls short in terms of respecting communities of interest and the rights of minorities, by on the one hand unnecessarily packing African Americans into districts with needlessly high concentrations, and simultaneously diluting the voting power of Latinos, by failing to create any districts with

sufficient concentrations of Latino voters to assure an equal opportunity to election candidates of their choice. And no explanation has been provided for the easily avoidable splits of cities that had for decades been part of a single Assembly district.

Respectfully submitted,



Kenneth R. Mayer

Dated: January 13, 2012.

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Exhibit 1 – Voting in 2011 Recall Elections

District	Recall Votes Cast	2008 Votes Cast	Decrease from 2008	Notes
2	47,011	60,900	22.8%	Uncontested in 2008
8	73,520	99,328	26.0%	
10	64,359	98,967	35.0%	
12	55,242	85,125	35.1%	
14	50,908	54,486	6.6%	Uncontested in 2008
18	55,128	83,622	34.1%	
22	46,251	82,444	43.9%	
30	33,445	78,176	57.2%	
32	59,917	87,881	31.8%	
total	485,781	730,929	33.5%	

Exhibit 2

Act 43 - Effective Latino Voting Majorities in Assembly Districts 8 and 9

A - using 35.75% noncitizenship rate

	Total Population	Voting Age Population (VAP)	Latino Population	Latino VAP	Latino VAP Pct.	Non-Latino VAP	Latino Eligible Voters	**Eligible Latino VAP %**
District 8	57,246	38,009	37,750	23,004	60.5%	15,005	14,780	**49.62%**
District 9	57,233	38,630	34,647	20,871	54.0%	17,759	13,410	**43.02%**

B - Using 42.0% noncitizenship rate

	Total Population	Voting Age Population (VAP)	Latino Population	Latino VAP	Latino VAP Pct.	Non-Latino VAP	Latino Eligible Voters	**Eligible Latino VAP %**
District 8	57,246	38,009	37,750	23,004	60.5%	15,005	13,342	**47.07%**
District 9	57,233	38,630	34,647	20,871	54.0%	17,759	12,105	**40.53%**

Exhibit 3 – Comparison of Assembly district 8

	2002 AD-8 based on 2010 data and 06-10 ACS Data	**2011 Act 43 AD-8 Based on Morrison Data**
Total Population	54,616	57,246
Total Voting Age Population (VAP)	35,888	38,021
Total Latino VAP	23,507 (65.5%)	23,004 (60.5%)
Total Latino Citizen VAP	13,634	10,816
% Latino CVAP	52.41%	40.9%
Total Latino Population	38,056	37,750
Total Latino %	69.7%	65.9%