

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

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

Plaintiffs,

Case No. 11-C-00562
JPS-DPW-RMD

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.

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

Plaintiffs,

v.

Case No. 11-C-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, TIMOTHY
VOCKE, and KEVIN KENNEDY, Director and
General Counsel for the Wisconsin Government
Accountability Board,

Defendants.

DEFENDANTS' BRIEF REGARDING MAP ALTERNATIVES

NOW COME the defendants by their attorneys, J.B. Van Hollen, Attorney General, Maria S. Lazar, Assistant Attorney General, and Reinhart Boerner Van Deuren s.c., and pursuant to the Court's Order dated March 27, 2012, hereby file this Brief regarding alternatives for the configuration of Assembly Districts 8 and 9 within the boundaries of those districts as set forth in 2011 Wisconsin Act 43 ("Act 43").

Given the Court's directive to meet and confer with the plaintiffs, the defendants attempted to discuss a configuration for Assembly Districts 8 and 9 that could provide the basis for a remedy. Despite good faith efforts by the defendants, no such resolution was achieved.

When a court disallows all or part of a redistricting statute, the goal for the remedial phase of litigation is adopting a map that adheres as closely as possible to the Legislature's policy considerations. "[F]aced with the necessity of drawing district lines by judicial order, a

court, as a general rule, should be guided by the legislative policies underlying' a state plan—even one that was itself unenforceable—to the extent those policies do not lead to violations of the Constitution or the Voting Rights Act.” *Perry v. Perez*, 555 U.S. ___, 132 S. Ct. 934, 941 (2012) (quoting *Abrams v. Johnson*, 521 U.S. 74, 79 (1997)).

The Legislature intended 2011 Wisconsin Act 43 to create one majority-minority Latino Assembly District and one district the Latino community would have a chance of winning in the next decade. Accordingly, pursuant to the directives of *Perry v. Perez*, that “a district court should take guidance from the State’s recently enacted plan in drafting an interim plan,” *id.*, the defendants have prepared two alternative map proposals which implement the relief that the Court has decided to enter, but which also attempt to adhere to the legislative intent evidenced in Act 43. Details and statistics for each of the two proposed maps follows.

Although defendants are offering maps for the Court’s consideration, they do not concede that 2011 Wisconsin Act 43 violates the Voting Rights Act and expressly reserve their right to challenge that portion of the Court’s decision on appeal.

ALTERNATIVE CONFIGURATIONS OF ASSEMBLY DISTRICTS 8 AND 9

Under Act 43, Assembly District 8 had an Hispanic Voting Age Population (“HVAP”) of 60.52% and Assembly District 9 had an HVAP of 54.0%. (Grofman Declaration at ¶ 17(d)). Thus, the Legislature, as part of its constitutional authority, used its judgment and determined that it would create one Latino majority-minority district and one Latino influence district. At that time, there was no legal directive that the Legislature create one single majority Latino Assembly District. That is not a requisite under the Voting Rights Act. See *Voinovich v. Quilter*, 507 U.S. 146, 155 (1993).

The HVAP of both Assembly Districts 8 and 9 were higher than those approved of in the 2002 redistricting plan imposed by this Court. At trial there was disputed testimony from experts as to the exact Citizen Voting Age Population (“CVAP”) percentages for the Act 43 Assembly Districts 8 and 9.¹ Regardless of which expert’s testimony was accepted, it is not disputed that the CVAPs for both Assembly Districts 8 and 9 were higher under Act 43 than under the 2002 plan.

1. MAP 1 (62.16% / 53.43% HVAP) [Attached as Exhibit 1/Map 1]

Map 1 adheres most closely to the Legislature’s policy judgment to increase the majority Hispanic voting age percentage over the 2002 Assembly District 8 map while creating a strong and growing Latino presence in Assembly District 9. In 2002, the Court drew Assembly District 8 with a HVAP percentage of 58.34%.² (Declaration of Bernard Grofman, dated January 11, 2012, at ¶ 18 [Trial Exhibit 1181]). That district has been continuously represented by a Latino Assembly representative from 2002 to present. (*Id.* at ¶ 18). Act 43 strengthened the Hispanic vote in Assembly District 8 by raising the HVAP to 60.52% while also increasing the HVAP in old Assembly District 9 from 22.94% to 54.0%. (*Id.* at ¶ 17(d)).

Map 1 further strengthens the Latino presence in Assembly District 8 by raising the HVAP to 62.16% in that district, while still retaining a strong presence in District 9. Depending on which calculation is used, Map 1 creates a Latino CVAP in District 8 of approximately

¹The CVAP for District 8 is between 49.6% and 47.07% under Act 43 compared to 40.9% under the 2002 plan. For Assembly District 9 the CVAP range is 43.02% to 40.52% as compared to 33.7% under the 2002 plan. (Corrected Rule 26 Expert Report of Dr. Kenneth R. Mayer, dated December 14, 2011, at 11 [Trial Exhibit 55]; Declaration and Expert Report of Peter A. Morrison, dated December 14, 2011, at ¶ 24 and Table 2 [Trial Exhibit 32]; and Rule 26 Expert Rebuttal Report of Dr. Kenneth R. Mayer, dated January 13, 2012, at 11 [Trial Exhibit 60]).

²The Court did not calculate the Citizen Voting Age Population (“CVAP”) for this district.

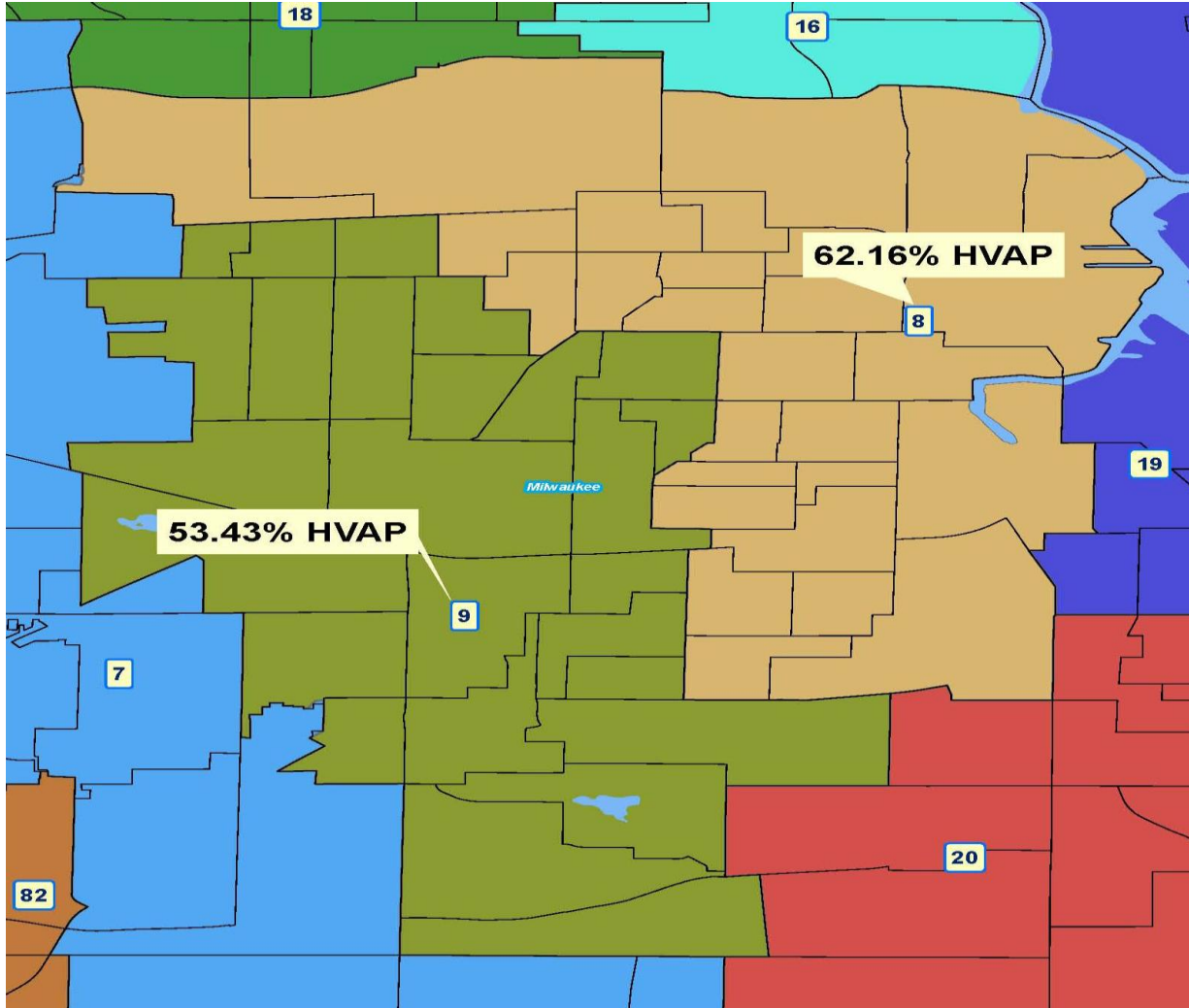
51.4%,³ which is a significant increase over the Act 43 Latino CVAP of between 40.9% and 49.6%. Although this increase comes at the cost of dropping the Latino CVAP in Assembly District 9 from 43.02% (in the Act 43 map) to 41.5%, it is the least disruptive alternative to the legislatively-adopted map.⁴

Map 1 also fares well under traditional redistricting principles. The map contains no ward splits, has a core retention of 68.7% for Assembly District 8,⁵ and a visual analysis confirms the two districts are reasonably compact. All in all, Map 1 takes into account the directions of the Court, minimizes the loss of influence in Assembly District 9, and stays within the general redistricting principles.

³Defendants do not concede that CVAP is the “relevant measure” for evaluating a district under the Voting Rights Act. By submitting this information, the defendants do not intend to waive their right to argue on appeal that the Court erred in concluding CVAP was the “relevant measure.” (Opinion at 24).

⁴In fact, given the range of CVAP for Assembly District 9, Map 1 actually increases the CVAP for that district.

⁵Although core retention is neither a constitutional nor statutory criterion, it can be useful in comparing the desirability of competing map proposals.



Map 1 reflects the following demographics:

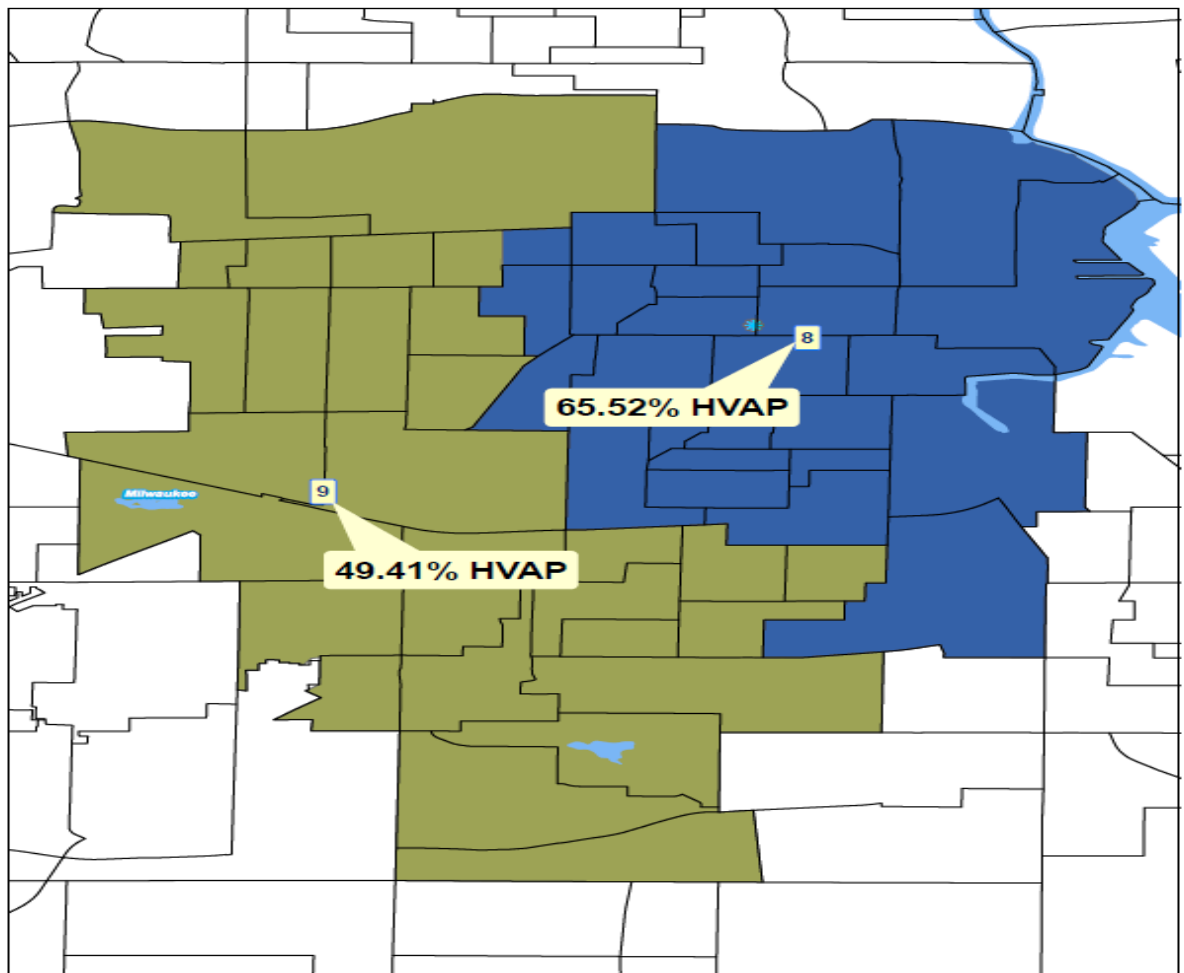
<u>Assembly District 8</u>		<u>Assembly District 9</u>	
HVAP	62.16%	HVAP	53.43%
CVAP	51.4%	CVAP	41.5%
Ideal Population:	57,444	Ideal Population:	57,444
Proposed Population:	57,333	Proposed Population:	57,146
Deviation	-111	Deviation	-298
Percent Deviation:	-.19%	Percent Deviation:	-.52%
Number of Ward Splits:	0		
Core Retention for Assembly District 8:		68.7%	

(See attached Exhibit 2, a copy of Dr. Peter Morrison's CVAP calculation for Map 1).

2. MAP 2 (65.52% / 49.41% HVAP) [Attached as Exhibit 3/Map 2]

Map 2 is yet another variation on the theme. The reason it may be preferable to the Court is that it has a higher HVAP (65.52%) and CVAP (55%) for Assembly District 8, while maintaining a high HVAP (49.41%) and CVAP (38.6%) for Assembly District 9. In addition, Map 2 splits only one ward.

Another factor in favor of Map 2 is that its shape is more in line with those proposed in Act 43. And, its core retention for Assembly District 8 is almost exactly the same as that proposed by the plaintiffs in their only map proposal defendants expect them to submit.



Map 2 reflects the following demographics:

<u>Assembly District 8</u>		<u>Assembly District 9</u>	
HVAP	65.52%	HVAP	49.41%
CVAP	55.0%	CVAP	38.6%
Ideal Population:	57,444	Ideal Population:	57,444
Proposed Population:	57,262	Proposed Population:	57,217
Deviation	-182	Deviation	-227
Percent Deviation:	-.32%	Percent Deviation:	-.40%
Number of Ward Splits:	1		
Core Retention for Assembly District 8:		70.08%	

(See attached Exhibit 4, a copy of Morrison's CVAP calculation for Map 2).

RECOMMENDATION

The defendant Government Accountability Board did not draw the boundaries in Act 43. However, when the plaintiffs sued the defendants, they defended the action in order to uphold the constitutionality and legality of Act 43. Nothing in this Brief waives the defendants' position in this litigation that Act 43 was constitutional and in compliance with the Voting Rights Act. Accordingly, other than to identify whether a particular map complies with the applicable constitutional and other legal requirements, the defendants do not take a position with respect to how the Court should create a new map for Assembly Districts 8 and 9 with the limited proviso: the new boundary line between the two districts should respect as much as possible the intent of the State Legislature as evidenced by Act 43.

Moreover, in the interest of providing this Court with a version of the selected map which comports with the legal requirements and has the necessary language regarding the included blocks and boundaries, the defendants request that the Legislative Technology Services Bureau (and in particular Tony Van Der Wielen who had served as special master and had assisted the

Court in 2002 to draw the approved maps) be allowed to take the selected map and “re-draw” it to insure that the final product meets the legal requirements for implementation as a statute and complies with other state laws (including 2011 Wisconsin Act 39).

In conclusion, this Brief and the maps addressed herein are being submitted with a full reservation of rights to appeal the Court’s decision regarding the legality of Assembly Districts 8 and 9 as created in 2011 Wisconsin Act 43. In particular, defendants continue to dispute the conclusion that Assembly Districts 8 and 9, as enacted in Act 43, violate the Voting Rights Act and further dispute the Court’s legal authority to redraw the boundary between those two districts. However, given that the Court has ruled on these matters and has requested input from the parties on specific relief, the defendants have submitted this Brief to assist the Court in the remedies phase of this litigation.

Dated this 3rd day of April, 2012.

Respectfully submitted,

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