

Response Expert Report of Dr. John Alford
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Johnson v. Wisconsin Elections Commission

December 30, 2021

Executive Summary

Four of the six proposed plans (Legislature, Governor, BLOC, and Bewley) have very similar overall core retention levels in the mid-80% range. Of these four plans, only one (the Legislature's plan) has a total population deviation below 1% in both the Assembly and the Senate maps. In addition, only the Legislature's plan is a least change plan across the board. The remaining three plans are not least change plans for the Black districts, most especially for the Black voters and incumbent Black preferred representatives in those districts. The Bewley plan, for example, makes significant changes to predominantly Black assembly districts 11 and 12 (retaining only 66.8% and 55.7% of the existing districts' population), resulting in the pairing of two of the current Black representatives in the Assembly. The justification for the unequal burden of disruption on these Black districts is not borne out by population changes or proportionality.

I. Overview of the competing plans

A. Governor Plan

The new Governor's plan departs significantly from the Governor's People's Maps Commission plan.¹ It is now described as an intentional least change map, and the Governor reports an overall retention percentage of 85.8% for the assembly and 92.2 for the senate (Clelland Report 8). This retention level is very similar to the Legislature's plan where the overall retention is 84.2% and 92.2% respectively. However, note that the population deviation in the new Governor's plan is now at 1.88% for the assembly plan and 1.19% for the Senate plan, well above the comparable assembly level of 0.76% and senate level of 0.57% in the Legislature's plan. At the margins, retention statistics can be boosted by relaxing the population equality standard as seems to be true in the new Governor's plan. A second issue is the comparison between retention in the minority districts and retention in the non-minority districts, where, as discussed in detail below, the Governor's plan provides much less stability in the Black districts relative to the overall stability.

B. BLOC Plan

The BLOC plan reports an overall core retention of 84.2% in the assembly and 89.6% in the senate (Mayer Report 1), levels similar to, if slightly below that of both the Legislature's plan and the new Governor's plan. The BLOC Plan also has a relatively high population deviation statistics, with an overall population deviation of 1.32% in the assembly plan and an overall deviation of 0.96% in the senate plan. Also, as discussed below, the BLOC plan provides materially less district stability to predominantly minority districts in Milwaukee than the reported overall stability.

C. Bewley Plan

The Bewley plan reports an overall core retention of 83.8% in the assembly districts and 90.5% in the senate districts (Amos Report 7), a level below that of both the Legislature's plan and the new Governor's plan. Also, the Bewley plan has a relatively high overall population deviation of 1.86%

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

in their assembly plan and an overall deviation of 1.61% in their senate plan. As discussed below, the Bewley plan provides less district stability to the predominantly minority districts in Milwaukee than the Legislature's plan does.

D. MathSci Plan

The MathSci plan map reports the lowest core retention percentage of 61.0% in the assembly plan and 74.3% in the senate plan (Duchin Report 16, 19). However, in contrast the MathSci Plan scores well on population equality, with a relatively low overall deviation of 0.74% in their assembly plan and an overall deviation of 0.50% in their senate plan, levels comparable to those achieved in the Legislature's plan. While the emphasis on minimizing population deviation is a notable plus for the MathSci plan, the level of core retention is far lower than one would expect in a least change plan and it does not appear to have been a priority in the drawing of this plan.

E. Hunter Plan

The Hunter plan reports relatively low core retention at 73.2% for the assembly plan and 80.4% for the senate plan (where some senate districts have been reconfigured to include a different trio of assembly districts than those currently nested under existing law) (Ansolabehere Report 3-4). The plan also has relatively high population deviation numbers with a deviation of 1.82% in the assembly plan and 0.95% for the senate plan. With a combination of poor performance on both the core retention and total deviation metrics, the Hunter plan does not compare favorably to the other proposed plans.

II. Treatment of Minority Districts

A. Plan comparisons

As the table below shows, the changes in the minority share of the voting age population are substantial in some proposed alternative plans, particularly the Black districts. Some change is expected, given the need to boost population in these underpopulated districts to restore population equality, but there are also changes that go well beyond what is required.

Table 1²

	Act 43 BVAP %	Legislature BVAP %	Governor BVAP %	BLOC BVAP %	Bewley BVAP %	Math BVAP %	Hunter BVAP %
SD4	58.4%	57.2%	49.2%	49.6%	54.4%	52.0%	51.8%
SD6	61.0%	54.5%	48.8%	49.0%	55.4%	50.8%	48.9%
AD10	61.8%	45.8%	50.0%	50.8%	52.3%	40.1%	50.1%
AD11	61.9%	71.5%	48.9%	49.3%	61.7%	83.2%	57.0%
AD12	51.5%	55.5%	48.7%	48.8%	49.4%	35.2%	49.5%
AD16	61.3%	52.6%	48.5%	49.0%	53.0%	59.3%	45.2%
AD17	61.3%	60.2%	48.9%	49.2%	64.7%	38.4%	49.1%
AD18	60.4%	50.8%	48.9%	48.8%	48.8%	55.8%	51.6%
Proposed Seventh District			49.5%	49.2%		39.2%	44.0%
	HVAP % (Baldus)	HVAP %	HVAP %	HVAP %	HVAP %	HVAP %	HVAP %
AD8	67.7%	65.9%	66.6%	65.9%	66.6%	58.0%	58.8%
AD9	47.5%	53.0%	52.1%	53.0%	52.8%	58.2%	54.7%

Hispanic Districts: In most of the plans, the two Hispanic districts are kept largely unchanged in the form imposed by the *Baldus* court. The two exceptions to this pattern are the MathSci and Hunter plans, where the Hispanic VAP in district 9 is brought up by reducing the Hispanic share in district 8. This rebalancing is exactly what the Baldus court took exception to in the Act 43 plan and ordered reversed.

Black Districts: In the Legislature's plan, the six Black districts also remain at levels similar to their existing configuration, as they also do in the Bewley plan.³ The four remaining plans all reduce the Black population in the existing Black districts in order to create a new seventh Black district. This reconfiguration results not only in a reduction in the Black population in the six existing Black districts, but also in a related high level of disruption in the representation stability in these districts, with the core retention levels showing levels of disturbance in the Black districts well above the levels typical in the white majority districts in these plans outside the Milwaukee area.

Note also that in the MathSci plan the new seventh Black district is below 40% Black VAP, as are districts 12 and 17, while district 11 is pushed above 80% Black VAP. In the Hunter plan the new seventh Black district only reaches 44% Black VAP, despite drawing down the Black VAP in

² Full demographic reports for each plan are included in Exhibit 2. BVAP % is "Black 18" as reported by LTSB. If multi-race with any part Black is added to BVAP, percentages could increase slightly. Sources for Act 43 percentages are Pretrial Report, Ex. A, Table 7, *Baldus v. Members of the Wis. Gov't Accountability Bd.*, No. 2:11-cv-562 (E.D. Wis. 2012), ECF 158-1 and Declaration of Kenneth R. Mayer, *Baldus v. Members of the Wis. Gov't Accountability Bd.*, No. 2:11-cv-562 (E.D. Wis. 2012), ECF 226.

³ Exhibit 1 contains a corrected Table 1 from my initial report, containing demographics of the *Baldus* districts (SD 4, SD 6, AD 10, AD 11, AD 12, AD 16, AD 17, AD 18) for the Legislature's plan. In the initial report, Table 1 correctly reported the number of individuals in each district by race but incorrectly calculated three percentages from those numbers.

several other existing districts. Given that both of these plans also exhibit levels of overall core retention well below the levels achieved in the other four plans, the remaining analysis will focus primarily on the four plans with average core retention levels in the mid-80s.

B. Core Retention in Black Districts

The table below shows a plan-by-plan core retention comparison for the Legislature, Governor, BLOC, and Bewley plans (which have the higher average core retention scores). Clearly, the shared decision not to restructure Hispanic representation has left core retention high for the two Hispanic districts. In other words, all four plans exhibit a least change approach in their treatment of the Hispanic districts. The same is not true for the six existing Black districts.

Table 2⁴

	Act 43 BVAP %	Legislature		Governor		BLOC		Bewley	
		BVAP %	% Retained (Total)	BVAP %	% Retained (Total)	BVAP %	% Retained (Total)	BVAP %	% Retained (Total)
SD4	58.4%	57.2%	100.0%	49.2%	79.5%	49.6%	68.9%	54.4%	93.8%
SD6	61.0%	54.5%	100.0%	48.8%	84.2%	49.0%	76.3%	55.4%	98.9%
AD10	61.8%	45.8%	87.7%	50.0%	85.8%	50.8%	54.1%	52.3%	100.0%
AD11	61.9%	71.5%	85.4%	48.9%	56.1%	49.3%	58.1%	61.7%	66.8%
AD12	51.5%	55.5%	88.1%	48.7%	58.7%	48.8%	62.3%	49.4%	55.7%
AD16	61.3%	52.6%	100.0%	48.5%	91.3%	49.0%	57.4%	53.0%	100.0%
AD17	61.3%	60.2%	94.3%	48.9%	58.5%	49.2%	64.0%	64.7%	96.7%
AD18	60.4%	50.8%	86.4%	48.9%	75.9%	48.8%	81.0%	48.8%	80.2%
Proposed Seventh District			49.5%	12.7%	49.2%	18.4%			
	HVAP % (Baldus)	HVAP %	% Retained	HVAP %	% Retained	HVAP %	% Retained	HVAP %	% Retained
AD8	67.7%	65.9%	100.0%	66.6%	100.0%	65.9%	100.0%	66.6%	94.6%
AD9	47.5%	53.0%	90.6%	52.1%	90.5%	53.0%	90.6%	52.8%	77.2%

As noted above, the overall core retention in the Legislature's plan is 84.2% for assembly districts. Looking at the minority districts in Table 2, the levels of core retention are comparable to, or better than, the overall levels.

In contrast, the Governor's plan shows substantial variation. As noted above, retention overall in the Governor's plan is reported as 85.8%. Four of the six existing Assembly districts fall below this level, and three of the six have core retention levels below 60%. All six districts have core retention levels in the Governor's plan that are below the comparable retention levels in the Legislature's plan. Similarly, both of the Black Senate districts in the Governor's plan fall below the overall Senate core retention level of 92.2%. These low core retention scores mean that a large proportion of individuals in Milwaukee's predominantly Black assembly and senate districts will be moved to new districts; likewise, the current representatives of these districts will lose a

⁴ Full demographic reports for each plan are included in Exhibit 1. BVAP % is "Black 18" as reported by LTSB. If multi-race with any part Black is added to BVAP, percentages could increase slightly. For core retention percentages, I am relying on Thomas Bryan Response Report Appendix 1. Sources for Act 43 percentages are Pretrial Report, Ex. A, Table 7, *Baldus v. Members of the Wis. Gov't Accountability Bd.*, No. 2:11-cv-562 (E.D. Wis. 2012), ECF 158-1 and Declaration of Kenneth R. Mayer, *Baldus v. Members of the Wis. Gov't Accountability Bd.*, No. 2:11-cv-562 (E.D. Wis. 2012), ECF 226.

substantial proportion of their existing constituency. The Governor's plan disrupts the existing constituent-representative relationship in these districts far more than the Legislature's plan.

The BLOC plan shows the same pattern. All predominantly Black districts have materially lower core retention than the reported overall core retention of the BLOC plan (84.2%), and three of the six have core retention levels below 60%. All such districts also have core retention scores well below the Legislature's, which keeps each district largely the same. Similarly, the core retention of the predominantly Black senate districts is 68.9% and 76.3%, well below the overall core retention of the BLOC senate plan (of 89.6%). If implemented, much like the Governor's plan, the BLOC plan would move a large proportion of individuals from their existing districts (and remove a large proportion of current representatives' constituents). For example, the current representatives for assembly districts 10, 11, and 16 would lose nearly half of their constituencies under the BLOC plan.

The Bewley plan has slightly better district-by-district core retention than the Governor and BLOC plans. But the Bewley plan does not match the Legislature's. For example, the core retention percentages of Bewley's assembly districts 11 and 12 are 66.8% and 55.7% respectively, well below that of the Legislature's plan. Noted above, the Bewley plan reconfigures district 12 to such a degree that it draws the current representative of district 12 out of her district, pairing her with the current district 11 representative, and adds substantial population (> 15,000 individuals) from outside Milwaukee County in Waukesha (Bryan Response App. 1F).

III. Proportionality

As noted in my original report, the existing number of Black districts is already roughly proportional to the statewide Black VAP population proportion. In addition, within Milwaukee County, the proportion of six predominantly Black districts out of the roughly 16 Assembly districts that the Milwaukee County total population would support (37.5%) well exceeds the 24.3% Black VAP population proportion in the county.

It is also clear that the change in Black population in Milwaukee over the last decade has not provided a new source of Black population that would require, or provide the resource for, the creation of a seventh Black District. The table below details the changes in minority population in both Milwaukee and Milwaukee County between 2010 and 2020.

Table 3⁵

	YEAR	BLACK	HISPANIC	BLACK18	HISPANIC18	PERSONS	PERSONS18
Milwaukee Co	2010	257579	126039	168280	77116	947735	711358
	Percent	27.18%	13.30%	23.66%	10.84%		
	2020	253242	153017	174889	99824	939489	720446
	Percent	26.96%	16.29%	24.28%	13.86%		
	Change	-4337	26978	6609	22708	-8246	9088
	Percentage Pt.	-0.22%	2.99%	0.62%	3.02%		
Milwaukee City	2010	239920	103007	156151	63206	594833	433486
	Percent	40.33%	17.32%	36.02%	14.58%		
	2020	227066	116306	156250	76368	577222	432760
	Percent	39.34%	20.15%	36.11%	17.65%		
	Change	-12854	13299	99	13162	-17611	-726
	Percentage Pt.	-1.00%	2.83%	0.08%	3.07%		

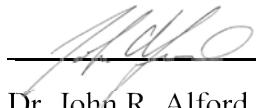
Note that while the total population of Wisconsin has grown during the last decade, there has been a decline in the total population of both the City of Milwaukee and Milwaukee County. Because there has been a decline in Milwaukee population, one cannot add a new district in Milwaukee County without substantially reconfiguring the existing districts. Similarly, there has been a decline in the Black population of both the City of Milwaukee and Milwaukee County. And while the Black VAP has grown slightly in the City at plus 0.08% (99 adults), and in the County at plus 0.62% (6609 adults), these slight increases are far below the number of Black adults needed to create a majority Black district, while also re-populating the underpopulated existing districts. (Only the Hispanic population has increased, both in total and adult population. If population increase alone mandated an addition district, it would be at least marginally supported for Hispanic voters. Despite this, no plan seeks to draw an additional Hispanic district and instead leaves the existing Hispanic districts largely as they were ordered drawn by the *Baldus* court.)

Finally, it is worth noting that the current configuration of the six predominantly Black districts in Milwaukee County is presumptively lawful. The VRA claims related to these Black districts were withdrawn at trial in the *Baldus* litigation. As such, the *Baldus* Court did not even reach the issue of whether there were good reasons under the VRA to allow race to predominate in the drawing of those districts. Indeed, the issue of racially polarized voting, basic to the *Gingles* 2 and 3 preconditions, were disputed by expert reports in the *Baldus* case—meaning, the parties disputed whether preconditions for drawing race-conscious districts were even met in for these Milwaukee districts—and *Baldus* plaintiffs then withdrew their claims before these fact issues could be resolved at trial. This places the Black districts on a different footing from the Hispanic districts. While a decade has passed, and conditions may have changed, there is at least a fairly recent existing litigated VRA foundation for the belief that there is a compelling state interest where the

⁵ <https://legis.wisconsin.gov/ltsb/gis/data/>.

Hispanic districts are concerned, given that the *Baldus* Court did fully examine those districts and find that the preconditions were met to permit race-conscious district lines. The same cannot be said for the existing Black districts. At the very least, those districts ought to remain the same. No party's expert has submitted an analysis showing that the existing configuration of six predominantly Black districts is unlawful, or that substantiated the claim that drawing a seventh race-conscious Black district would be permitted.

Respectfully submitted,



Dr. John R. Alford

Dated: December 30, 2021

Exhibit 2

Demographic Reports

Legislature SB621 Assembly Districts

DISTRICT	PERSONS	PERSONS18	DEVIATION	DEV	SENATE	WHITE	BLACK	HISPANIC	ASIAN	AMINDIAN	PISLAND	OTHERMUT	WHITE18	BLACK18	HISPANIC18	ASIAN18	AMINDIAN18	PISLAND18	OTHER18	MULT18	
93	59693	46897	160	0.27	31	54740	738	1579	806	863	44	746	177	43522	463	1035	546	633	27	531	140
94	59594	45263	61	0.1	32	53152	762	1178	3134	641	33	562	132	41338	381	720	1904	442	22	389	67
95	59479	50091	-54	-0.09	32	50543	2309	1839	3110	808	32	631	207	43933	1431	1350	2125	632	25	458	137
96	59312	44619	-221	-0.37	32	55435	689	1431	367	586	49	653	102	42017	477	911	222	415	30	485	62
97	59664	46607	131	0.22	33	48608	1854	6241	1439	672	47	695	108	39651	1041	3839	961	509	32	473	41
98	59406	47330	-127	-0.24	33	47600	1855	5437	3139	603	60	622	90	39455	1148	3574	2168	458	38	445	44
99	59677	46349	144	0.24	33	54835	514	1690	1249	603	39	649	98	43356	270	1028	765	436	32	410	52

Governor Assembly Districts

DISTRICT	PERSONS	DEVIATION	DEV. %	SENATE	WHITE	BLACK	HISPANIC	ASIAN	AMINDIAN	PISLAND	OTHER	OTHERMLT	PERSONS18	WHITE18	BLACK18	HISPANIC18	ASIAN18	AMINDIAN18	PISLAND18	OTHER18	OTHERMLT18
93	59,406	-127	-0.21	31	54,700	531	1,466	1,117	734	30	722	.106	46,175	43,132	280	935	700	520	12	512	84
94	59,021	-512	-0.86	32	52,434	795	1,177	3,193	672	36	587	.127	44,964	40,931	399	737	1,942	465	25	406	59
95	59,612	79	0.13	32	50,973	2,242	1,839	2,955	773	29	596	.205	49,864	43,918	1,392	1,326	2,021	609	22	435	141
96	59,018	-515	-0.87	32	55,279	638	1,256	446	580	36	653	.90	44,539	42,012	437	836	269	417	20	499	49
97	59,900	367	0.62	33	48,207	1,991	6,815	1,379	686	33	684	.105	46,400	39,018	1,123	4,277	927	525	26	457	47
98	59,016	-517	-0.87	33	49,257	1,550	3,972	2,849	554	69	625	.100	46,659	40,234	996	2,600	1,899	404	43	435	48
99	60,105	572	0.96	33	54,973	543	1,965	1,284	609	36	609	.86	46,903	43,691	293	1,192	795	448	27	411	46

BLOC Assembly Districts

DISTRICT	PERSONS	DEVIATION	DEV. %	SENATE	WHITE	BLACK	HISPANIC	ASIAN	AMINDIAN	PISLAND	OTHER	OTHERMLT	PERSONS18	WHITE18	BLACK18	HISPANIC18	ASIAN18	AMINDIAN18	PISLAND18	OTHER18	MLT18
93	59,463	-70	-0.12	31	54,657	555	1,463	1,207	724	33	721	103	46,112	43,012	293	933	759	514	15	505	81
94	59,494	-39	-0.07	32	53,032	773	1,163	3,139	661	32	561	133	45,158	41,223	389	713	1,899	452	21	394	67
95	59,365	-168	-0.28	32	50,476	2,301	1,838	3,098	788	32	626	206	49,970	43,844	1,419	1,349	2,120	623	25	453	137
96	59,706	173	0.29	32	55,838	671	1,417	372	598	46	679	85	44,992	42,414	453	888	222	429	28	510	48
97	59,800	267	0.45	33	45,737	2,543	8,185	1,824	653	57	678	123	46,921	37,847	1,507	5,217	1,293	503	39	462	53
98	59,910	377	0.63	33	50,507	1,386	3,495	3,141	555	68	652	106	47,045	40,923	820	2,253	2,110	399	44	445	51
99	59,690	157	0.26	33	54,832	499	1,752	1,256	639	33	597	82	46,654	43,603	251	1,085	772	475	26	395	47

Hunter Assembly Districts

DISTRICT	PERSONS	DEVIATION	DEV. %	SENATE	WHITE	BLACK	HISPANIC	ASIAN	AMINDIAN	PISLAND	OTHER	OTHERMLT	PERSONS18	WHITE18	BLACK18	HISPANIC18	ASIAN18	AMINDIAN18	PISLAND18	OTHER18	MULT18
93	59,459	-74	-0.12	31	54,236	725	1,390	1,488	812	36	641	131	47,360	43,741	468	943	1,010	627	16	476	79
94	60,027	494	0.83	32	53,502	774	1,187	3,177	651	33	570	133	45,605	41,634	391	725	1,923	448	22	394	68
95	59,046	-487	-0.82	32	50,193	2,297	1,830	3,067	798	32	623	206	49,749	43,637	1,421	1,345	2,106	626	25	453	136
96	59,295	-238	-0.4	32	55,460	677	1,417	353	587	44	670	87	44,509	41,951	455	888	211	421	26	509	48
97	59,556	23	0.04	33	52,324	1,032	3,844	915	721	26	612	82	48,257	43,256	703	2,589	660	519	22	467	41
98	59,585	52	0.09	33	46,701	1,958	5,706	3,816	621	64	662	87	47,601	38,942	1,211	3,770	2,658	466	40	474	40
99	59,494	-39	-0.07	33	53,891	649	2,196	1,353	626	39	652	88	46,410	42,897	358	1,335	839	463	35	434	49

