

IN THE SUPREME COURT OF WISCONSIN
No. 2021AP1450-OA

Billie Johnson, Eric O'Keefe, Ed Perkins and Ronald Zahn,
Petitioners,

Black Leaders Organizing for Communities, Voces de la Frontera, League of Women Voters of Wisconsin, Cindy Fallona, Lauren Stephenson, Rebecca Alwin, Congressman Glenn Grothman, Congressman Mike Gallagher, Congressman Bryan Steil, Congressman Tom Tiffany, Congressman Scott Fitzgerald, Lisa Hunter, Jacob Zabel, Jennifer Oh, John Persa, Geraldine Schertz, Kathleen Qualheim, Gary Krenz, Sarah J. Hamilton, Stephen Joseph Wright, Jean-Luc Thiffeault, and Somesh Jha,

Intervenors-Petitioners,

v.

Wisconsin Elections Commission, Marge Bostelmann in her official capacity as a member of the Wisconsin Elections Commission, Julie Glancey in her official capacity as a member of the Wisconsin Elections Commission, Ann Jacobs in her official capacity as a member of the Wisconsin Elections Commission, Dean Knudson in his official capacity as a member of the Wisconsin Elections Commission, Robert Spindell, Jr. in his official capacity as a member of the Wisconsin Elections Commission and Mark Thomsen in his official capacity as a member of the Wisconsin Elections Commission,

Respondents,

The Wisconsin Legislature, Governor Tony Evers, in his official capacity, and Janet Bewley Senate Democratic Minority Leader, on behalf of the Senate Democratic Caucus,

Intervenors-Respondents.

Original Action in the Wisconsin Supreme Court

APPENDIX TO REPLY BRIEF OF INTERVENOR-PETITIONERS
BLACK LEADERS ORGANIZING FOR COMMUNITIES, VOCES
DE LA FRONTERA, LEAGUE OF WOMEN VOTERS OF

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CERTIFICATION BY ATTORNEY

I hereby certify that filed with this brief is an appendix that complies with s. 809.19 (2) (a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under s. 809.23 (3) (a) or (b); and (4) portions the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using one or more initials or other appropriate pseudonym or designation instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Signed:

Electronically signed by Douglas M. Poland
Douglas M. Poland

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Reply Report of Dr. Kenneth R. Mayer

Johnson, et al., v. WEC, et al., No. 2021AP1450-OA
January 4, 2022

In this reply report, I provide analysis of the relationship between core retention and population deviation; calculate the core retention of a demonstration plan that has 6 Black opportunity districts in the Assembly, and the corresponding Senate plan shows additional information about how I calculated the Black Voting Age Population in proposed Assembly Districts 10, 11, 12, 14, 16, 17, and 18; identify characteristics about BLOC's proposed Districts 11 and 12, and make one correction to my calculation of the number of municipal splits in the BLOC Senate plan.

1. In the BLOC Assembly plan, there is no relationship between core retention and population deviation. Figure 1 plots absolute population deviation (the absolute value of a district's deviation from the ideal district population) by core retention for all 99 Assembly districts.

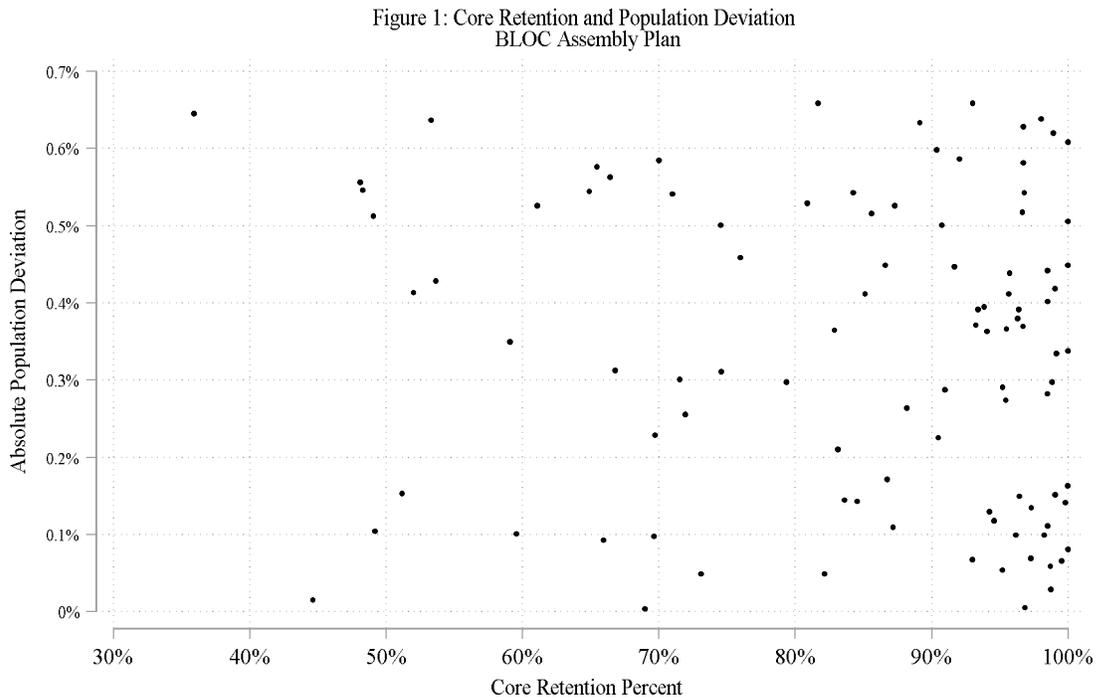


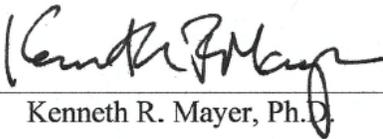
Figure 1 shows no relationship between a district's core retention and its population deviation. A regression of population deviation on core retention shows a statistically insignificant relationship, with an $r^2 = 0.01$.

As a first approximation, reducing the population deviation of the BLOC Assembly plan to 0.8% (achieved by altering every district over 0.4% absolute deviation to 0.4%) could

be achieved by moving a total of 3,265 people statewide. Such a small movement—in a state with 5,893,718 people—would not have a material effect on the plan’s core retention.

2. A demonstration Assembly plan with 6 Black opportunity districts that I was provided to review has an overall population deviation of 1.32% and an average core retention of 86.8%. The corresponding Senate plan has an overall population deviation of 0.91% and an average core retention of 91.8%. I performed these calculations in the same manner as my original report. In the demonstration plan, District 10 has a BVAP of 63.4%, District 11 has a BVAP of 56.5%, District 12 has a BVAP of 55.4%, District 16 has a BVAP of 55.9%, District 17 has a BVAP of 59.9%, and District 18 has a BVAP of 58.5%.
3. I calculated the Black Voting Age population of BLOC’s proposed Assembly Districts 10, 11, 12, 14, 16, 17, and 18 by counting everyone who listed a race of African American, alone or in any combination.
4. A large majority of the population in BLOC’s proposed Assembly District 11 is in Milwaukee County. Only 21.3% of the district’s population is in Ozaukee County. Likewise, a large majority of the population in BLOC’s proposed Assembly District 12 is in Milwaukee County. Only 15.5% of the district’s population is in Waukesha County.
5. In my December 30, 2021 report, I inadvertently excluded a municipal split in the BLOC Senate plan. The Village of Bellevue in Brown County is split between Senate Districts 1 and 30 in BLOC’s Senate Plan. The corrected total of municipal splits is 53 (19 cities, 24 towns, and 10 villages).

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 4, 2022.



Kenneth R. Mayer, Ph.D.

Expert Reply Report of Dr. Loren Collingwood

Loren Collingwood

2022-01-04

Executive Summary

In this reply report, I examine electoral performance of a demonstrative plan provided by BLOC Petitioners' counsel that includes six Black-opportunity districts. I also examine Census demographic change between Whites and Blacks from 2010 to 2020 in Milwaukee County and Wisconsin as a whole.

I conclude the following:

- The six-district demonstrative plan would elect Black voters' candidate of choice in Democratic primaries, unlike the Legislature's and Senator Bewley's proposed six-district configurations, in which AD10 would fail to perform for Black voters.
- Between 2010 and 2020, the Black voting age population increased at a faster rate than the White population statewide. In Milwaukee County – the focus area of the BLOC Petitioners, White VAP decreased 9.5% whereas Black VAP increased 5.5%.

My opinions are based on the following data sources:

- 1) Shapefile of the six majority-Black district BLOC Petitioners Demonstrative Assembly Plan (geojson file); and 2) 2010 and 2020 Census data.

Background and Qualifications

I am an associate professor of political science at the University of New Mexico. Previously, I was an associate professor of political science and co-director of civic engagement at the Center for Social Innovation at the University of California, Riverside. I have published two books with *Oxford University Press*, 39 peer-reviewed journal articles, and nearly a dozen book chapters focusing on sanctuary cities, race/ethnic politics, election administration, and racially polarized voting. I received a Ph.D. in political science with a concentration in political methodology and applied statistics from the University of Washington in 2012 and a B.A. in psychology from the California State University, Chico, in 2002. I have attached my curriculum vitae, which includes an up-to-date list of publications.

In between my B.A. and Ph.D., I spent 3-4 years working in private consulting for the survey research firm Greenberg Quinlan Rosner Research in Washington, D.C. I also founded the research firm Collingwood Research, which focuses primarily on the statistical and demographic analysis of political data for a wide array of clients, and lead redistricting and map-drawing and demographic analysis for the Inland Empire Funding Alliance in

Southern California. I am the redistricting consultant for the West Contra Costa Unified School District, CA, independent redistricting commission in which I am charged with drawing court-ordered single member districts.

I served as a testifying expert for the plaintiff in the Voting Rights Act Section 2 case *NAACP v. East Ramapo Central School District*, No. 17 Civ. 8943 (S.D.N.Y.), on which I worked from 2018 to 2020. In that case, I used the statistical software eiCompare and WRU to implement Bayesian Improved Surname Geocoding (BISG) to identify the racial/ethnic demographics of voters and estimate candidate preference by race using ecological data. I am the quantitative expert in *LULAC vs. Pate (Iowa)*, 2021, and have filed an expert report in that case. I am the racially polarized voting expert for the plaintiff in *East St. Louis Branch NAACP, et al. vs. Illinois State Board of Elections, et al.*, having filed two reports in that case. I am the Senate Factors expert for plaintiff in *Pendergrass v. Raffensperger (N.D. Ga. 2021)*, having filed a report in that case. In this case, I am being compensated at a rate of \$400/hour.

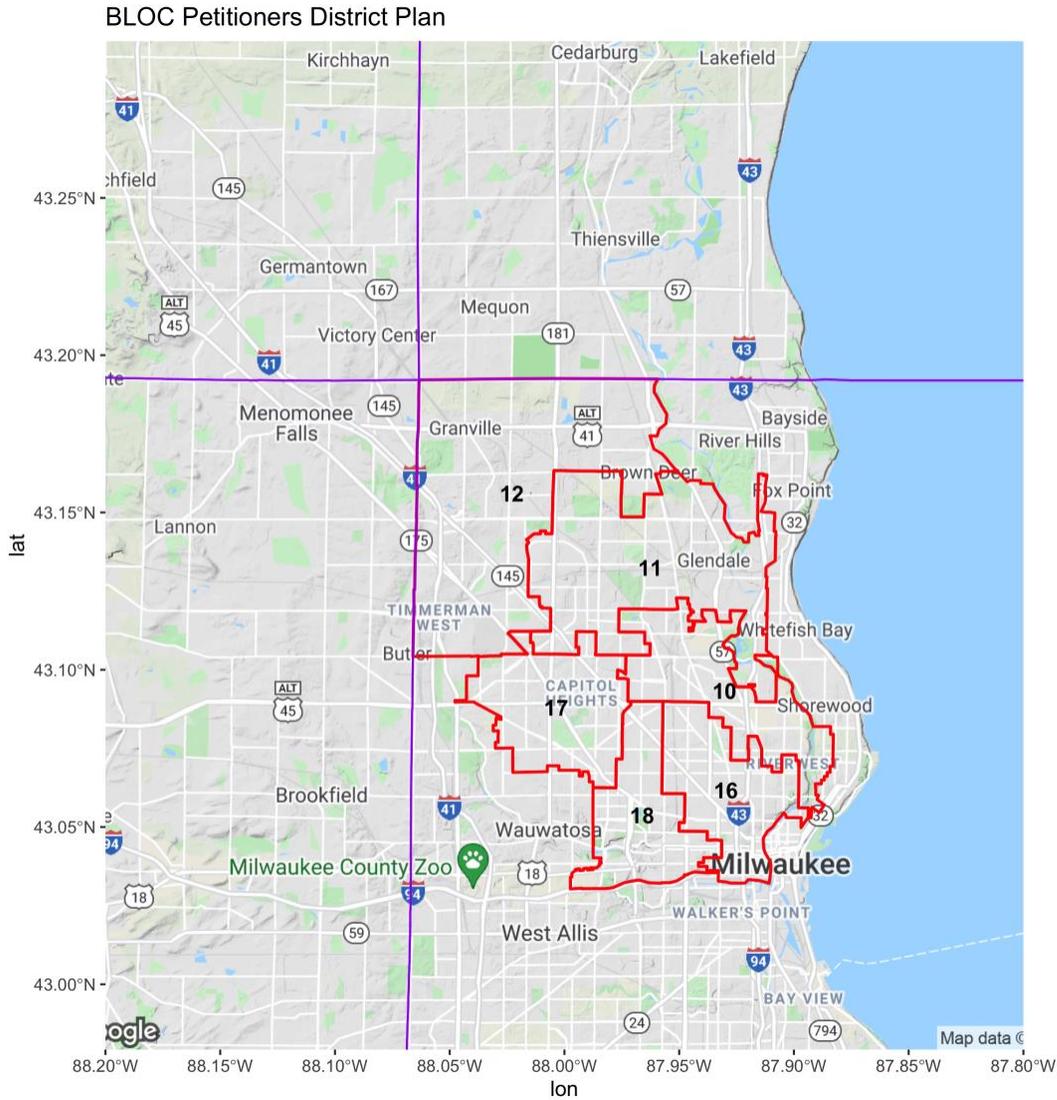
I filed my Expert Report on December 15, 2021. I refer to my prior opinions in this case on their location in the December 15, 2021, report (“December 15 Report”). I subsequently filed my Rebuttal Report on December 31, 2021. I refer to my prior opinions in this report on their location in the December 31, 2021, report (“December 31 Report”).

Demonstrative Six Majority-Black District Plan

In my previous reports, I conducted electoral performance analysis of the BLOC Petitioners’ seven majority-Black VAP districts – as well as other proposed plans. A performance analysis essentially reconstructs previous election results in a new map to assess whether a Black or White preferred candidate is most likely to win in the new districts.

BLOC Petitioners have asked me to analyze the electoral performance of a demonstrative six-district configuration plan and compare it to the six-district configurations proposed by the Legislature and Senator Bewley. Figure 1 presents BLOC Petitioners’ demonstrative six-district configuration.

Figure 1. Demonstrative Six-District Plan.



In this reply report, I analyze the electoral performance of White and Black candidates in the most probative race, the 2018 Democratic primary gubernatorial contest. Mitchell – the Black candidate of choice—receives a majority of the vote in all six of BLOC’s demonstrative districts – despite the fact there are 10 candidates in the race. It is indisputable he is the candidate of choice in this contest, winning between 53% - 59% in every district.

Table 1. Electoral performance analysis 2018 gubernatorial Democratic primary in BLOC Petitioners’ six Black-majority demonstration plan.

Candidate	D10	D11	D12	D16	D17	D18
B_Mitchell	58.6	53.29	54.73	57.77	58.93	53.86
W_Evers	18.75	23.42	24.08	19.15	20.23	21.74
W_Roys	9.01	7.85	5.8	8.57	7.54	10.39
W_other	13.64	15.44	15.39	14.51	13.3	14

Compare Mitchell’s performance in the BLOC demonstrative District 10 (58.6%) with his performance in the Legislature’s proposed District 10 (39.3%) and Senator Bewley’s proposed District 10 (39.2%). In the BLOC demonstrative plan, Black voters would have the equal opportunity to nominate their preferred candidates in Democratic primaries and elect their preferred candidates in general elections in each district (as was the case in the BLOC Petitioner’s proposed plan, which has seven performing Black opportunity districts). That is not so for the Legislature’s and Senator Bewley’s proposals, which include substantial numbers of bloc-voting, high-turnout White Democrats, mostly in Shorewood, whom the data shows would prevent Black voters from nominating their preferred candidates in Democratic primaries.

Demographic Change

I have been asked to assess the demographic change between 2010 - 2020 by White and Black persons aged 18 or over in Wisconsin, as well as in Milwaukee County.¹

I downloaded the 2010 and 2020 statewide Wisconsin Census files from the redistricting data hub.² These files are taken directly from the Census and made publicly available to researchers and redistricting practitioners. I also downloaded the 2010 and 2020 Wisconsin county Census files subsetting to Milwaukee County.

¹ For White, I select Census variable P0040005, taken from the P4 table (Voting Age Population Hispanic/Non-Hispanic). For Black I select any variable indicating Black alone or Black in some combination from the P3 table (Voting Age Population).

² <https://redistrictingdatahub.org/state/wisconsin/>

Table 2 presents the results. First, both White and Black voting age populations (VAP) grew between 2010 and 2020. Across the 10-year time period, White VAP grew from 3,753,673 to 3,774,226, a change of 20,553 (0.5%).³ Meanwhile, Black VAP grew at a faster rate, from 252,719 to 296,313, a change of 43,594 (17%).⁴

Table 2. Wisconsin statewide Census figures for the White and Black populations, 2010-2020.

	VAP	WhiteVAP	PctWhiteVAP	BlackVAP	PctBlackVAP
2010	4347494	3753673	86.34	252719	5.81
2020	4612300	3774226	81.83	296313	6.42

Table 3 presents the results for Milwaukee County. First, only the Black voting age population (VAP) grew between 2010 and 2020. Across the 10-year time period, White VAP declined from 433,061 to 391,811, a change of 41,250 (-9.5%). Meanwhile, Black VAP grew from 173,862 to 183,350, a change of 9,488 (5.5%).

³ To calculate change in percent White I subtract the 2010 White VAP from the 2020 white VAP then divide by the 2010 White VAP: $(3,774,226 - 3,753,673) / 3,753,673$.

⁴ $(296,313 - 252,719) / 252,719$.

Table 3. Milwaukee County statewide Census figures for the White and Black populations, 2010-2020.

	VAP	WhiteVAP	PctWhiteVAP	BlackVAP	PctBlackVAP
2010	711358	433061	60.88	173862	24.44
2020	720446	391811	54.38	183350	25.45

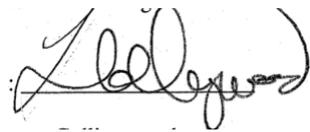
Conclusion

Based on this reply report analysis, I find that the BLOC Petitioners' demonstrative six majority-Black district plan would enable Black voters the opportunity to nominate their candidates of choice in Democratic primaries and elect them in general elections in six districts. The same is not true for the Legislature's and Senator Bewley's six-district configurations, in which only five would perform for Black voters.

I also find that while both White and Black voting age populations inclined across the state from 2010 to 2020, the Black voting age population grew at a significantly faster rate than did the White population. Even in Milwaukee County – the traditional hub of the Black population in Wisconsin, the Black VAP grew at a rate of 5.5% whereas the White VAP dropped at a rate of 9.5%.

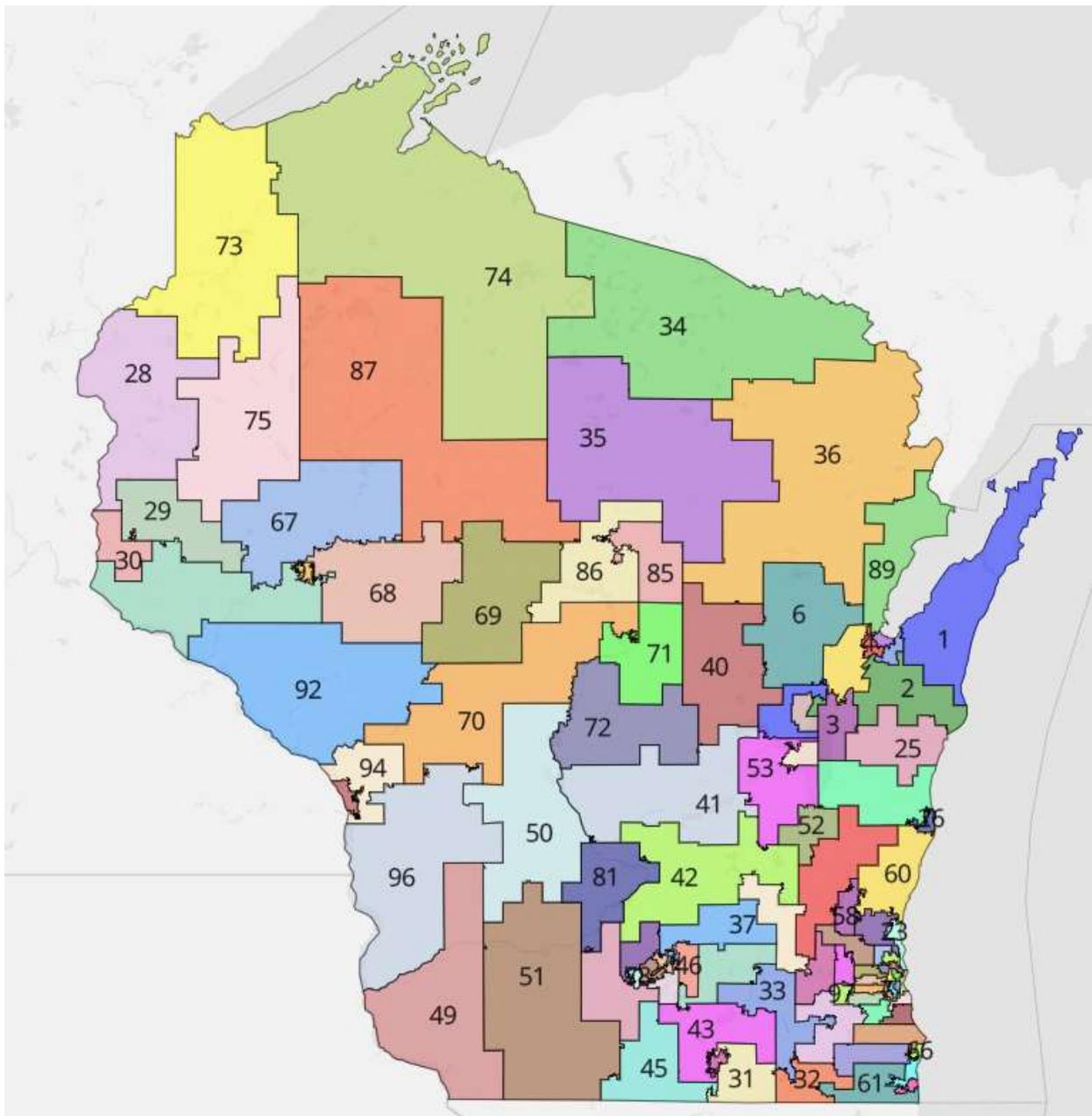
I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 4, 2022.

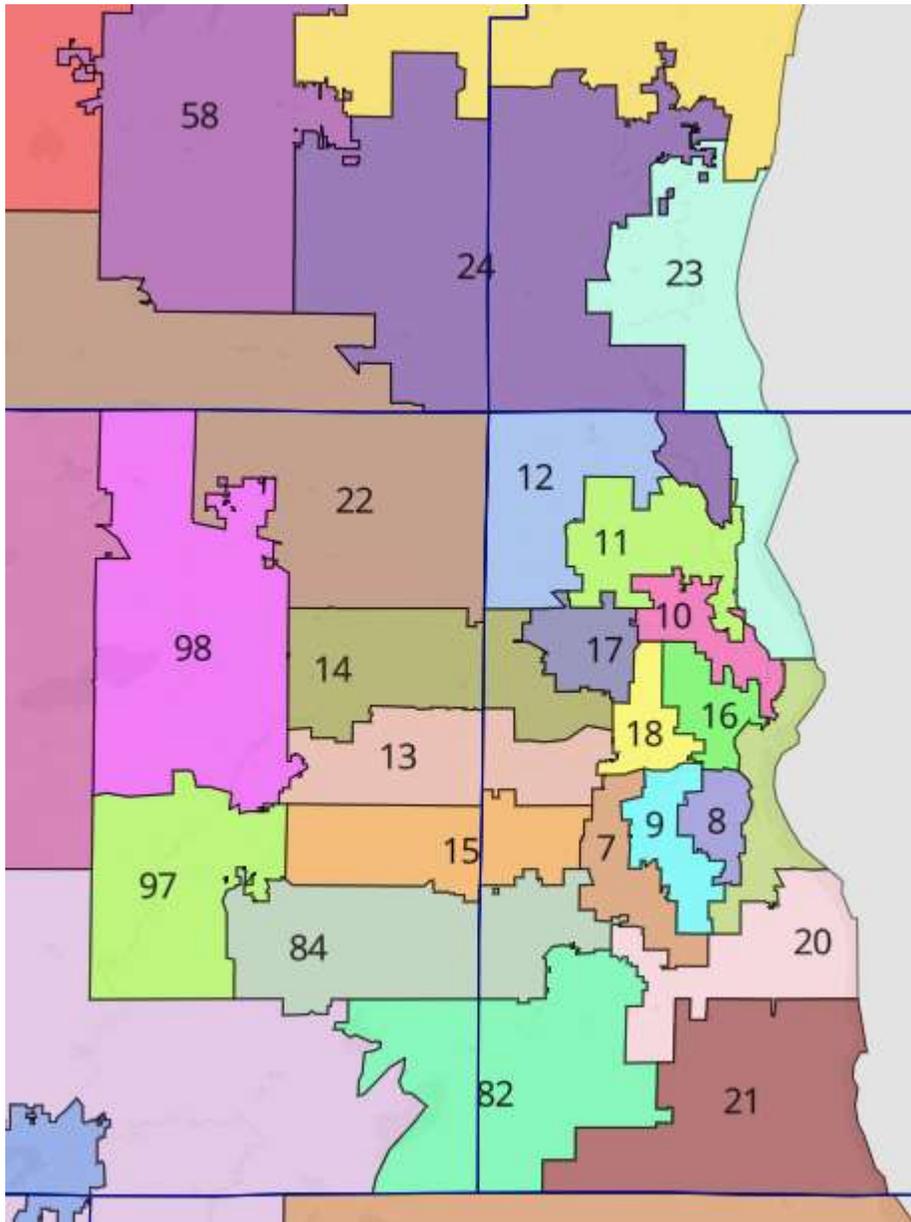


Loren Collingwood

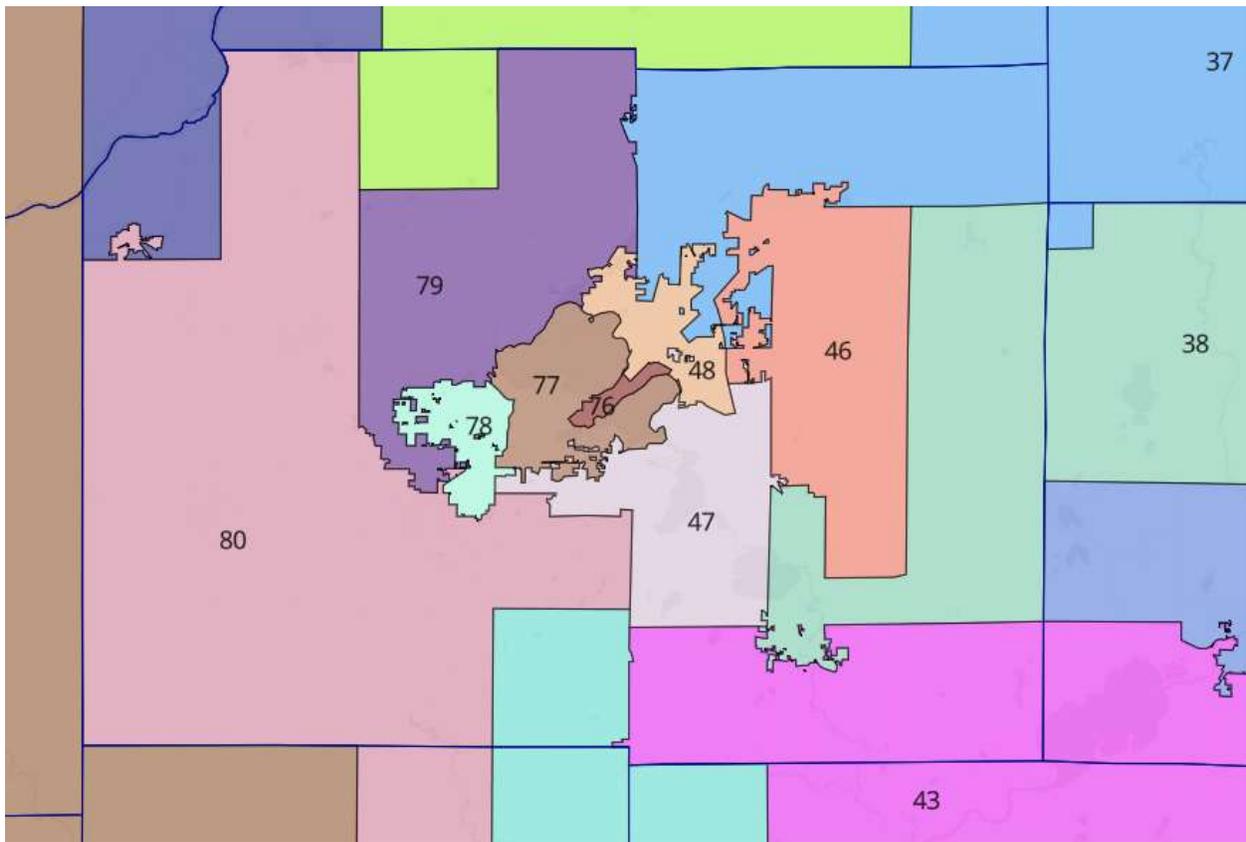
DEMONSTRATIVE PLAN: 6 BLACK-OPPORTUNITY DISTRICT CONFIGURATION
STATEWIDE ASSEMBLY



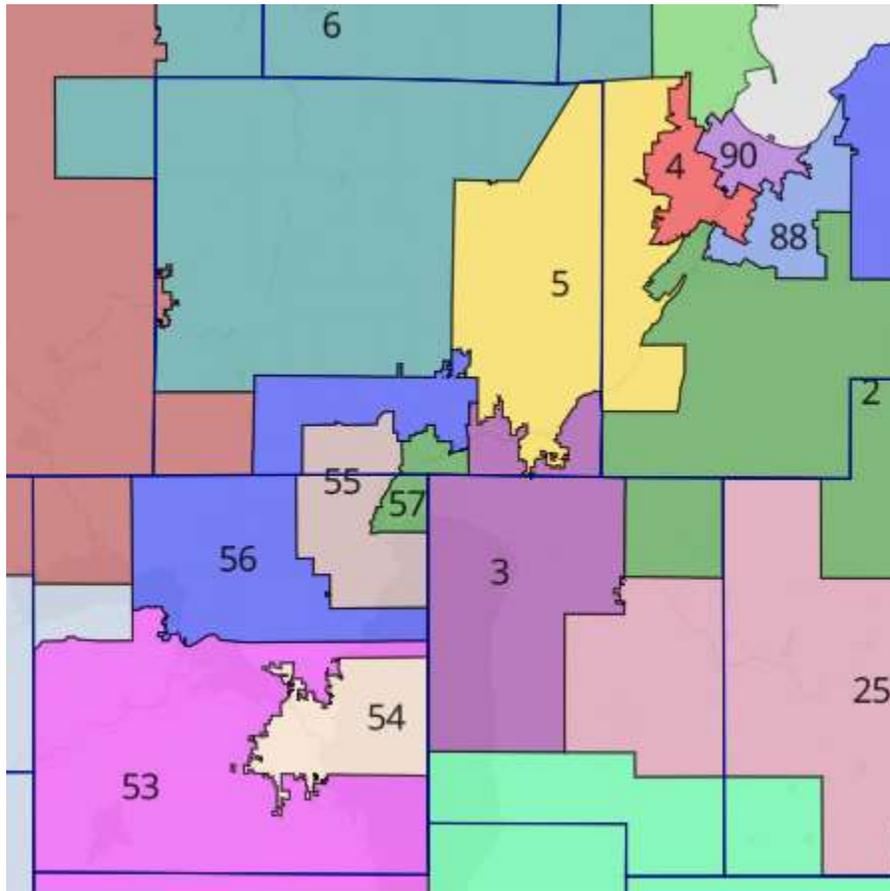
DEMONSTRATIVE PLAN: 6 BLACK-OPPORTUNITY DISTRICT CONFIGURATION
MILWAUKEE-AREA ASSEMBLY



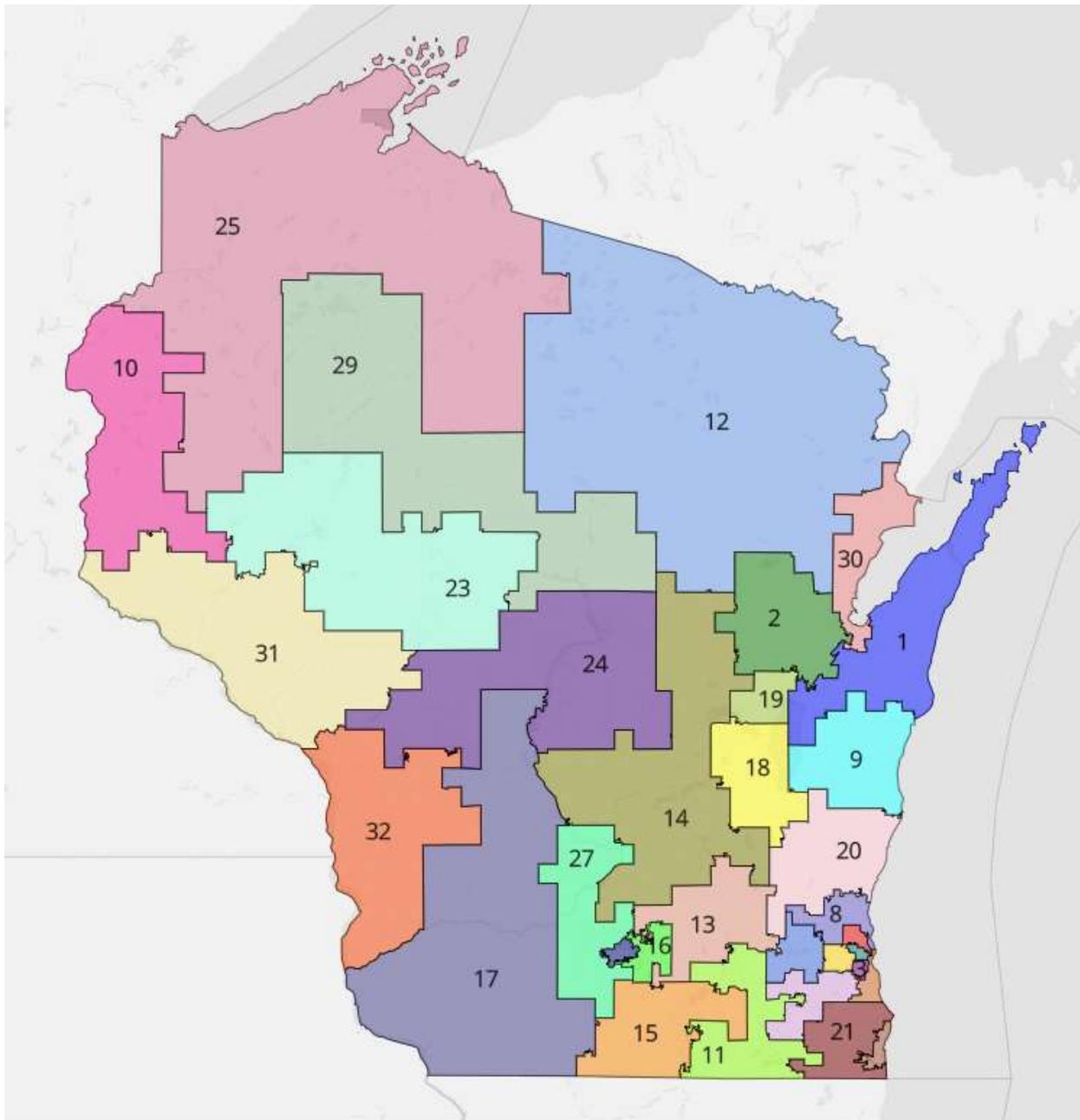
**DEMONSTRATIVE PLAN: 6 BLACK-OPPORTUNITY DISTRICT CONFIGURATION
MADISON-AREA ASSEMBLY**



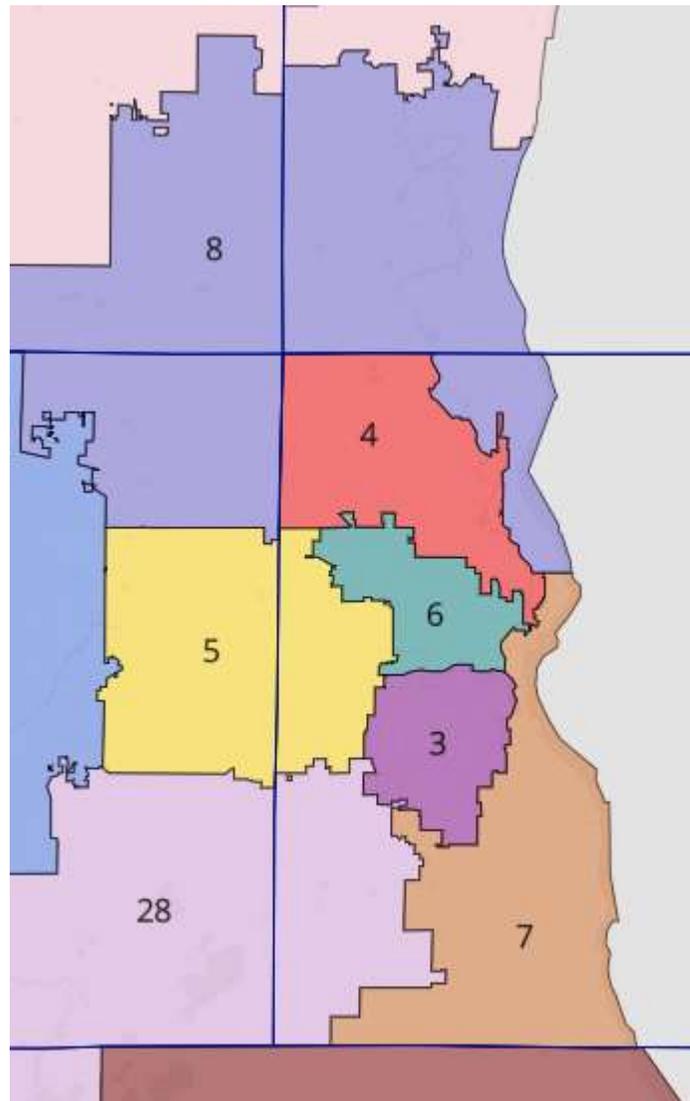
**DEMONSTRATIVE PLAN: 6 BLACK-OPPORTUNITY DISTRICT CONFIGURATION
GREEN BAY/FOX VALLEY AREA ASSEMBLY**



DEMONSTRATIVE PLAN: 6 BLACK-OPPORTUNITY DISTRICT CONFIGURATION
STATEWIDE SENATE



DEMONSTRATIVE PLAN: 6 BLACK-OPPORTUNITY DISTRICT CONFIGURATION
MILWAUKEE-AREA SENATE



**DEMONSTRATIVE PLAN: 6 BLACK-OPPORTUNITY DISTRICT CONFIGURATION
MADISON-AREA SENATE**

