



# Redistricting in Wisconsin

Michael Keane, Senior Research Analyst  
April 1, 2016

© 2016 Wisconsin Legislative Reference Bureau

This work is licensed under the Creative Commons Attribution 4.0 International License. To view a copy of this license, visit <http://creativecommons.org/licenses/by/4.0/> or send a letter to Creative Commons, PO Box 1866, Mountain View, CA 94042, USA.

# CONTENTS

I. INTRODUCTION .....	1
II. PRINCIPLES OF REDISTRICTING .....	1
A. Equal Population .....	1
B. Compactness .....	3
C. Contiguity .....	4
D. Communities of Interest .....	4
E. Unity of Political Subdivisions .....	4
F. Minority Protection .....	4
G. Competitiveness .....	5
III. HISTORY OF REDISTRICTING IN WISCONSIN .....	6
Pre-1960 Era .....	6
The 1960s and Beyond .....	9
IV. THE REDISTRICTING PROCESS IN WISCONSIN .....	15
The Census .....	15
PL Data .....	16
County Board Supervisory Districts .....	16
Municipal Wards .....	17
Municipal Redistricting .....	18
Legislative Redistricting .....	18
Congressional Redistricting .....	19
V. REDISTRICTING TIME LINE .....	20
VI. REFORM PROPOSALS .....	21
Recent Reform Proposals in Wisconsin .....	21
Alternatives to Redistricting by Legislative Enactment in Other States .....	21



# REDISTRICTING IN WISCONSIN

## I. INTRODUCTION

Redistricting, the process by which the district boundaries of representative bodies are adjusted to reflect shifts in population, re-emerges in the public consciousness every ten years, with each new census. For most citizens, unfamiliar terms such as *deviation*, *ward*, *competitiveness*, and *contiguity* are suddenly found to be central to civic discussion.

This publication, *Redistricting in Wisconsin*, answers questions about the redistricting process by discussing the basic principles upon which districts are drawn; the history of redistricting and reapportionment as it applies to Wisconsin; and efforts to reform what has become a controversial process in Wisconsin and nationally.

## II. PRINCIPLES OF REDISTRICTING

Population is the fundamental element of the redistricting process; redistricting is done in response to the more current and presumably more accurate information on population provided by the census. Indeed, if population was not central to drawing district lines, there would be no reason to ever adjust lines on a systematic basis. Nevertheless, there are other elements also important to the process. Civil boundaries are also important and have played an important role in Wisconsin, especially prior to court rulings in the 1960s requiring elevated standards for population equality. Principles such as compactness, contiguity, and political competitiveness are also important and will be discussed in this section.

### A. Equal Population

Equal population is the most central principle involved in redistricting. The “one man, one vote” idea—the concept that each citizen’s vote should have equal weight with every other—overrides all other concerns. It is this principle that drives the redistricting process as new information on population is provided following each decennial census by the federal government. District lines are moved primarily to reflect population shifts in the state in the ten years since the last census. Population has always been central to the redistricting process in Wisconsin, as required by Article IV, Section 3 of the constitution, which since 1848 has mandated that the legislature shall periodically “district anew ... according to the number of inhabitants.” Population is much more central in Wisconsin and across the country than it was prior to a series of federal court decisions in the 1960s requiring a greater sensitivity to population shifts in drawing district lines.

*Mathematical Concepts.* Discussing the principle of equal population as it applies to redistricting requires familiarity with a number of mathematical concepts often used to evaluate how well redistricting efforts achieve equality. The first concept is **Ideal Population**, or the target population for each equal population district under a redistricting plan. This figure can be calculated by dividing the total population of the unit being divided into districts by the number of districts being created. This can be expressed mathematically as

$$\frac{\text{total population}}{x}$$

where x = the number of districts being created.

In Wisconsin, for example, this concept as applied to the creation of state assembly districts following the 2010 census, could be expressed as

$$\frac{5,686,986}{99} = 57,444.30$$

since the population of Wisconsin according to the 2010 census was 5,686,986 and the assembly has 99 districts. The resulting figure, 57,444 (rounded down) is referred to as the ideal population. As applied to the senate, the figures were

$$\frac{5,686,986}{33} = 172,332.9$$

or, 172,333, rounded up.

Another concept commonly used to measure population equality in a districting plan is **Deviation**, or the difference between the population of a given district and the ideal population. This is derived by subtracting the ideal population from the population of a given district:

$$\text{population} - \text{ideal population}$$

As often as not, this will result in a negative figure, as in the case of Assembly District 94 after the 2010 census, where the equation is 57,266 – 57,444, for a deviation of -178. The concept of **Mean Deviation** allows a districting plan to be evaluated as a whole. This is derived by summing the deviation of each district in the plan—without regard to whether the deviation is above or below the ideal population—and dividing by the number of districts:

$$\frac{\text{total deviation}}{x} = \text{mean deviation}$$

where x = the number of districts in the plan. As applied to the assembly district plan adopted after the 2010 census, that is

$$\frac{9,190}{99} = 92.82$$

Both deviation and mean deviation can be expressed as a percentage by dividing by the ideal population of a district; for example, in Assembly District 94:

$$\frac{178}{57,444} = .31\%$$

or for the entire assembly district plan:

$$\frac{93}{57,444} = .16\%$$

These two figures reflect the most commonly used methods to quickly evaluate the degree to which a plan meets equal population goals, with Deviation used to evaluate individual districts and Mean Deviation used to evaluate a plan overall. Another mathematical concept used in redistricting is Range, the total difference between the largest and the smallest districts in a plan. This can be expressed mathematically as:

$$\text{Largest District's Deviation} + \text{Smallest District's Deviation (expressed as a positive integer)} = \text{Range}$$

As applied to the Assembly plan adopted after the 2010 census, this is:

$$214 \text{ (Assembly District 45)} + 224 \text{ (Assembly District 1)} = 438$$

Range can also be obtained by subtracting the population of the smallest district in a plan from the population of the largest:

$$57,658 \text{ (Assembly District 45)} - 57,220 \text{ (Assembly District 1)} = 438$$

*Standards of Equal Population.* A number of factors come into play in evaluating equal population of congressional districts. First, 2 USC 2c requires that all representatives from states having more than one member of the U.S. House of Representatives be elected from single-member districts. Second, the U.S. Supreme Court has interpreted Article I, Section 2, of the U.S. Constitution, which provides for house seats to be apportioned to states on the basis of population, as requiring that each district within a state meet a standard of strict equality. *Westbury v. Sanders* (1964) established the principle that Article I, Section 2 required equal population districts. *Karcher v. Daggett* (1983) held that any deviation in population of congressional districts must be justified by some legitimate state objective. Practically speaking, in Wisconsin this has meant that congressional districts are created with virtually no difference in population among them. Following the 2010 census, the ideal population of a Wisconsin congressional district was 710,873. Two of the districts exceeded the ideal by one; the other six met it exactly.

Federal courts have established less strict standards for state legislative districts, which are judged under the equal protection clause of the Fourteenth Amendment, and not Article I, Section 2, of the Constitution. The U.S. Supreme Court specifically rejected an absolute equality standard in *Gaffney v. Cummings* and *White v. Register* (1973) in favor of a standard requiring districts to be “as nearly uniform as practicable.” Although the court declined to set a specific standard, in subsequent cases the court has declined to overturn plans where no district has a deviation of more than 10 percent. This has become the de facto minimum for state legislative districts. In Wisconsin, recent legislative district plans have consistently met a standard where all districts have a deviation of 1 percent or less; in the most recent plan enacted in 2011, no district exceeded a deviation of .4 percent.

## **B. Compactness**

Compactness is a traditional redistricting principle requiring that districts be as compact as possible. Unlike equal population, compactness has been the subject of limited judicial interest. There is no generally agreed upon standard of compactness as it applies to redistricting other than common sense. One definition of *compact* may be useful: “marked by concentration in limited area; homogeneous and located within a limited definite space without straggling or rambling over a wide area” (*Webster’s Third New International Dictionary*, unabridged).

Although states generally do not have strict redistricting standards to require compactness, and courts have rarely condemned oddly shaped districts, academics have derived a number of ways to measure compactness. A common method is to measure the area of the smallest circle that can contain the district and calculate the percentage of the circle’s area contained by the district. This can also be done using the smallest polygon instead of the smallest circle. Compactness may also be measured by comparing the height and width of a district. Perhaps the most exacting measure is to measure the perimeter length of a district and compare the area of the district to the area of a circle with the same perimeter length.

The interest of the courts in compactness issues has been seen almost exclusively in the area of civil rights cases when they have addressed racial gerrymandering. In 1993, in *Shaw v. Reno*, the U.S. Supreme Court ruled that race-based gerrymanders designed to maximize Black voting strength were impermissible. In *LULAC v. Perry* (2006), the Supreme Court rejected a partisan gerrymander on the narrow grounds that a Latino population in a single district was impermissibly harmed in violation of the Voting Rights Act. Two justices, however, did assert that drawing oddly shaped districts for political advantage violated the state's constitutional duty to govern impartially.

### **C. Contiguity**

Contiguity is a traditional redistricting principle whereby every part of a district is connected to every other part, and all parts can be reached without crossing district lines. This principle is generally followed although not required by law or court precedent. Common exceptions to this principle involve districts whose parts are separated by waterways, and districts defined by municipal boundaries that are themselves non-contiguous. Although courts have shown little interest in contiguity issues, any non-contiguous district that harmed a minority group protected by the Voting Rights Act would probably be viewed with suspicion. At the same time, abandonment of the contiguity principle may make it easier to create districts favorable to those same minority groups. Traditionally, in Wisconsin two pieces of territory joined at the corner are not considered contiguous.

### **D. Communities of Interest**

Communities of interest refer to the principle that it is desirable to group like-minded or similar people so that they may elect a representative that reflects their common values. These values may be largely social, such as common ethnicity or language or a culture different from that of the larger society, or even based on a common economic status. People of like-minded political philosophy may also constitute a community of interest. Grouping voters of the same political philosophy in a district can be controversial, as it may make the district less electorally competitive. Respect for communities of interest is a principle often observed in the redistricting process but must be viewed separately from those racial, ethnic, or linguistic groups who are protected by federal law.

### **E. Unity of Political Subdivisions**

Many states including Wisconsin have a history of trying to draw legislative and congressional district lines along, rather than across, existing political boundaries. In Wisconsin, these principally include county and town lines, city and village limits, and ward lines within cities, towns, and villages. This principle has the advantage of making clear to voters which district they live in, and in many ways goes hand in hand with communities of interest. It also makes it much easier to administer elections when most municipalities of a county are within a single district, rather than split between two or more. This principle is often in conflict with the higher principle of equal population, and was adhered to much more strictly in Wisconsin and elsewhere before federal courts imposed the one-man, one-vote standard on the redistricting process.

### **F. Minority Protection**

Protecting the interests of minority groups is a very important principle of redistricting because it is required by federal law. The Voting Rights Act of 1965 was enacted to prevent state or local governments from hindering minorities from voting either directly or subtly through manipulation of the voting process. The law therefore applies to the creation of voting districts. 52 USC 10301 prohibits any practice that results in the denial or abridgement of the right of any citizen to vote on account of race or color. 52 USC 10303 (f) (2) also extends that protection to members of "a language minority group."



The obligations on state government with regard to redistricting imposed by the Voting Rights Act of 1965 can be divided into two categories. The first, known as “Section 2” obligations, found at 52 USC 10301, are a general requirement that no voting standard, practice, or procedure can impair the rights of minorities to vote. This broad statement, along with the large volume of court decisions interpreting it, applies to all states and jurisdictions within the United States. The second category of obligations, known as “Section 5” requirements, found at 52 USC 10303 (b), require states or smaller jurisdictions with a history of very low voter turnout to submit all changes in voting procedure, including redistricting, to the U.S. Department of Justice for approval before implementation. Neither the State of Wisconsin nor any jurisdiction within Wisconsin has ever been subject to these “preclearance” requirements. In fact, no state or jurisdiction is currently subject to the preclearance requirements because in 2013 the U.S. Supreme Court, in *Shelby County v. Holder*, invalidated the formula for determining whether any state or jurisdiction must comply with Section 5 of the Voting Rights Act.

Court interpretations of Section 2 have dictated that jurisdictions use special caution in drawing district lines in areas with a concentration of protected minorities. Beginning with *Thornburg v. Gingles* (1986), federal courts have ruled that a district plan can be in violation of the Voting Rights Act even if no discrimination is intended. In the absence of demonstrable ill will or past or current discrimination, a racial or linguistic minority may still challenge a plan if it demonstrates that it is large enough to elect a candidate of its choice, and that the racial majority usually votes as a block to defeat minority candidates. Minorities can be harmed by being concentrated into a single district, thereby “packing” their influence in a way that minimizes it; or it may be harmed by “splitting” or “cracking” a minority population between two or more districts, thereby insuring that the minority group will not have majority influence in any district. The line can be subtle, and often even members of minority groups do not agree on the best way to maximize their political influence. It is advisable for a plan to create “minority opportunity districts” wherever groupings of minorities dictate their creation. In doing this, it may be necessary to take into consideration lower minority voter turnout, by making an “opportunity district” well over 50 percent minority, and the younger demographic profile of minority populations, by consulting voting-age population in addition to general population figures.

During the last round of legislative redistricting in Wisconsin (2010), only Milwaukee County had sufficient population of African Americans to warrant the creation of opportunity districts. In that case, two majority-Black senate districts and six majority-Black assembly districts were created in Milwaukee County.

During the 2002 round of redistricting, a sufficient concentration of Hispanics was found to create two Hispanic-majority assembly districts in Milwaukee, although litigation resulted in these districts being altered by a federal court (see part II, History of Redistricting in Wisconsin), one of these districts, the ninth, has not elected a Hispanic representative. No area outside Milwaukee County approached a sufficient concentration of Hispanics to create an opportunity district.

No other racial or linguistic minority group has attained sufficient numbers or concentration in an area since passage of the Voting Rights Act to dictate the creation of an opportunity district in Wisconsin.

### **G. Competitiveness**

Competitiveness is a relatively new principle that may be considered in drawing legislative districts. Courts have generally declined to make competitiveness a constitutional imperative. No federal or Wisconsin law compels consideration of competitiveness as a principle to be followed in creating legislative districts. In the most recent U.S. Supreme Court decision on this matter, *Vieth v. Jubelirir* (2004), the court ruled that such cases did not constitute a violation of equal protection under the

Fourteenth Amendment, and that no test could be devised to determine when a partisan gerrymander would cross into unconstitutionality. The decision was not unanimous. A lawsuit filed in 2015 in the U.S. District Court for the Eastern District of Wisconsin, *Whitford v. Nichol*, contends that the redistricting plan enacted by the Wisconsin Legislature following the 2010 Census (2011 Act 43) created an unconstitutional partisan asymmetry, and proposes a test to measure the plan's competitiveness.

### III. HISTORY OF REDISTRICTING IN WISCONSIN

To understand the redistricting process as it applies to Wisconsin more completely, it is useful to examine the history behind it. Wisconsin has always required periodic adjustments of legislative district lines on the basis of population. Part II of this publication examines this history in some detail.

#### **The Pre-1960 Era**

*The Constitution and Early Apportionments.* During Wisconsin's territorial period, 1836–48, seats in both houses of the territorial legislature were apportioned to "election districts" consisting of whole counties or groups of counties. Within these districts, members were elected at-large no matter how many seats were apportioned to them. There were no "single-member" districts except for those apportioned only one seat. Wisconsin's 1847–48 constitutional convention decided that members of each house of the legislature should be elected from single-member districts, adjusted periodically by the legislature to account for shifts in population. The original version of Article IV, Section 3, of the constitution reads in part: "The legislature shall apportion and district anew the members of the senate and assembly, according to the number of inhabitants." Article IV, Section 4, of the constitution required that assembly districts "be bounded by county, precinct, town or ward lines, to consist of contiguous territory, and be as compact in form as practicable." Article IV, Section 5, of the constitution required that "no assembly district shall be divided in the formation of a senate district." These provisions remain today in nearly identical form in the Wisconsin Constitution, but they have changed significantly in their application.

In addition to articulating these general principles, the constitution also provided the new state legislature with its initial apportionment in Article XIV, Section 12. It is interesting to note that Wisconsin's constitution contained an apportionment that came nowhere near meeting modern standards of population equality, despite the framers' stated requirement that districts be created "according to the number of inhabitants." The largest assembly district, Green County, had 6,487 residents, more than twice the ideal of 3,190. The largest senate district, Waukesha County, had 15,866 residents, well over the ideal of 11,081. It is likely that the framers acceded to the convenience of using major civil boundaries at the expense of population equality. This would mark each of the early apportionments under Article IV of the constitution, which generally respected county lines and did not hesitate to codify what seem today to be glaring population inequalities.

One of the constitution's most striking departures from modern practice was that it required new districts every five years instead of every ten years. The legislature initially met annually, with assemblymen serving one-year terms and senators serving two-year terms. The constitution initially required the state to conduct its own census in years ending in "5". The result was that with annual, rather than biennial, legislative sessions, then as now every fifth legislature was to be elected from newly drawn districts.

Article IV, Section 2, of the constitution required that the assembly have at least 54 but no more than 100 members. The senate was to have at least one-fourth but no more than one-third the number of members as the assembly. The initial apportionment under Article XIV of the constitution created a

senate with 19 members and an assembly with 66 members. Increasing the size of the legislature allowed the early apportionments under Article IV of the constitution to award new seats to faster-growing parts of the state without taking seats from slower-growing areas. By the 1861 apportionment, however, the legislature reached its maximum size of 33 senators and 100 assemblymen.

Although the legislature's first attempt at reapportionment, 1851 Assembly Bill 381, was vetoed by Governor Nelson Dewey, who cited unnecessary departures from the principle of equal population, generally, early legislative apportionments were achieved without rancor and without dividing counties. Minor departures from this principle began with one fractional county attached to another in 1871. In 1876, two such districts were created; in 1882, one; and in 1887, four. The constitutional principle of county primacy in creating legislative districts appeared to be in peril.

*The Cunningham Cases of 1892.* An unexpected event brought this situation to a head. After a decade of Republican dominance, the election of a Democratic governor, George W. Peck, and large Democratic majorities in each house of the legislature gave the apportionment process following the 1890 federal census an unusual partisan flavor. When the Democratic legislature passed and the governor signed a plan that created an unheard-of 15 fractured county districts, splitting 20 counties without performing any miracles of population equality, Republicans cried foul and commenced a legal battle that ended in the state supreme court. In *State ex rel v. Cunningham*, 81 Wis. 440 (1892), issued in March 1892, the supreme court ruled that the plan created by Chapter 482, Laws of 1891 violated the constitutional requirements for legislative redistricting found in Article IV of the constitution. Specifically, the court ruled that the county must be the fundamental unit of geography in redistricting, and that while whole counties whose populations entitled them to more than one seat could be split within their boundaries, and that low-population counties could be joined to neighboring low-population counties to form a district, no county could be split to be partially joined to another county. Since the legislature had acted unconstitutionally, the secretary of state was prohibited from conducting the 1892 election using the plan.

Governor Peck called the legislature into special session in June 1892, and another plan was adopted following the supreme court's mandate to follow county lines. A minority report of the Joint Apportionment Committee, however, scored the plan for violating principles of equal population—in some cases, one district was more than twice the population of another. This second plan also ended up before the supreme court. In September, in *State ex rel Lamb v. Cunningham*, 83 Wis. 90 (1892), the court set aside this plan also, finding the unnecessary inequalities in district population in violation of the constitution.

With the fall election date bearing down, Governor Peck again called the legislature into special session in October, which resulted in a plan being signed by Peck and published on October 27, a scant 12 days before the general election. It is difficult to say that the resulting plan greatly favored either party; the Democrats made substantial gains in the senate but lost seats in the assembly. In subsequent elections, the Republicans regained the dominance they had enjoyed previously. The extraordinary events of 1892 did establish three principles, however, that would color Wisconsin's reapportionment efforts for decades: (1) the supreme court would intervene to prevent an unconstitutional plan from being implemented; (2) county lines must be respected in creating legislative districts; and (3) large deviations in district population would not be tolerated.

*Redistricting Under the "Cunningham Principles."* The Cunningham Principles ushered in a new era of tranquility in Wisconsin reapportionment. New plans were created in 1896 and 1901. Since the advent of biennial legislative sessions in 1883, mid-decade redistricting had lost its logical appeal, with only two

or three legislatures being elected from each map. No redistricting occurred following the 1905 state census. A constitutional amendment approved by voters in 1910 eliminated the state census and limited redistricting to every ten years following the U.S. census.

In 1911, Governor Francis McGovern of Milwaukee objected to the population variations and shapes of some districts in Milwaukee County and vetoed the redistricting bill. The legislature quickly passed another bill that addressed the governor's concerns within that county. The year 1921 marks the last time that a full reapportionment was accomplished without any court involvement. In 1931, the legislature passed a plan that changed district boundaries within counties without reapportioning seats among counties. The resulting plan had some obvious departures from the ideal of population equality; for example, Milwaukee County, with 24.6 percent of the state's population should have been entitled to 24 or 25 assembly districts, but remained at 20 under the plan. The plan was challenged in court for violating equal population requirements, but in *State ex rel Bowman v. Dammann*, 209 Wis. 21 (1932), the supreme court held that the constitution did not require absolute equality and that the variances in the plan did not overrule the presumed constitutionality of the legislative enactment.

Following the 1940 census, no reapportionment occurred. The 1941 legislature appointed a committee to work on reapportionment, but no reports were filed and no bills were introduced. The 1943 and 1945 legislatures each passed minor revisions in response to local annexations and ward changes. The legislature's inaction was challenged in court, but in *State ex rel Martin v. Zimmerman*, 249 Wis. 101 (1946), the supreme court ruled that it lacked the authority to compel a coordinate branch of government to act and that the apportionment of 1931 could remain in effect indefinitely. By the 1950 census, it had been nearly 30 years since the last full reapportionment, and district population had become a contentious political issue.

The protracted struggle over reapportionment in the 1950s foreshadowed the revolution of the 1960s. Cognizant of the fact that redistricting was an increasingly contentious issue and that the legislature had failed to fulfill its constitutional obligation following the 1940 census, the Legislative Council created an apportionment study committee of two senators, three assemblymen, and three public members. One of the public members, Marvin Rosenberry, who had recently completed a long tenure as chief justice of the supreme court, chaired the committee. Commencing work in July 1950 and soliciting advance release of detailed census data from the federal government, the "Rosenberry Commission" created a reapportionment plan that was introduced as a bill on February 20, 1951. The shift of legislative power from north to south and from rural to urban must have come as a shock to some, for a group of rural legislators immediately proposed that the state senate be apportioned at least in part on the basis of land area rather than population.

The Legislative Council plan, sometimes known as the Rosenberry Act, was signed into law as Chapter 728, Laws of 1951, but contained a section suspending it until an advisory referendum was placed before the people in November 1952, asking if the constitution should be amended to allow for area-based representation in the senate. The Rosenberry apportionment would take effect only if the referendum was rejected by the voters. The referendum was approved, and a constitutional amendment permitting area-based apportionment, already approved on first consideration in 1951, was quickly approved on second consideration in 1953.

In April 1954, the amendment was ratified by the voters, and an apportionment based in part on area was introduced later that month. The plan was passed in May and signed in June as Chapter 242, Laws of 1953. Known as the Rogan Act, after Senator Paul Rogan, it dealt with the senate only and based senate apportionment 30 percent on land area instead of population. The plan was challenged in court

on the basis that the various changes within the constitutional amendment—area apportionment, eliminating the requirement that senate districts consist of whole assembly districts, and permission to use village boundaries in creating legislative districts—constituted separate questions that should have been submitted to the people individually. The supreme court agreed and ruled that the Rosenberry Act should be the basis for the next election and the Rogan Act discarded. (See *Ex rel Thompson v. Zimmerman*, 264 Wis. 644 (1953).) This settled the issue for the decade, and although the issue of area representation was briefly revisited in the 1960s, it did not come close to implementation.

### **The 1960s and Beyond**

The 1960s ushered in a completely new world in redistricting nationally and in Wisconsin. This was largely driven by federal court decisions interpreting the Fourteenth Amendment to the U.S. Constitution to require that districts in state legislatures and other representative bodies be equal in population, without regard to state and local laws or customs. The first such case, *Baker v. Carr*, 369 U.S. 186 (1962), broke down the judiciary's traditional reticence to review and impose remedies in cases involving legislative districts. Subsequent cases placed increasingly specific standards for states to follow in creating legislative districts and, ultimately, virtually any elected body down to the lowest levels of government.

Another factor in this change in redistricting practices was a new attitude toward equal population as a matter of justice. Battles of the sort seen in Wisconsin in the 1950s were occurring around the country, often on an urban versus rural basis. There was a growing expectation among people in urban and suburban areas that their increase in numbers should result in a proportional increase in legislative strength.

Advances in technology also influenced these changes. The U.S. census by 1960 had begun to use computer technology that made detailed demographic information available more quickly, and therefore allowed the makeup of legislative districts to be more readily scrutinized. In recent decades, the interest in redistricting has become more general as its political implications are recognized and it has become a legislative task that must have a resolution.

Finally, federal legislation to protect racial minorities has compelled greater attention to where district lines are drawn. The Voting Rights Act of 1965 prohibited the use of redistricting to impair the ability of racial minorities to elect candidates of their choice. This means that certain parts of any district map—especially Milwaukee County, where protected minorities are concentrated—will be subject to special judicial or federal Justice Department scrutiny if established guidelines are not followed.

*The 1960s.* The 1960 round of redistricting started in much the same way as in 1950, with the creation of the Legislative Council Committee on Reapportionment. The committee consisted of four senators, six assemblymen, and six public members. Assemblyman Willis Hutnik was elected chairman. The committee first met in January 1960, and although it was hampered by slow release of census data, it did produce an apportionment plan. Although the committee approved the plan five to three with seven abstentions, the full Legislative Council did not endorse it. The plan was introduced in both houses by members of the committee during the 1961 session, which had Republican majorities in each house, but neither passed, nor did any of the several other redistricting bills introduced that session.

In November 1961, Attorney General John Reynolds advised both houses that if they failed to perform constitutionally required reapportionment, he would take the matter to the supreme court. The court declined to get involved, but invited Reynolds to renew his suit if the next legislature failed to act. That same month, March 1962, the U.S. Supreme Court issued its seminal redistricting decision, *Baker v.*

*Carr*, signaling a new willingness for the federal courts to get involved. The following month, Reynolds filed suit in federal court. Governor Gaylord Nelson called the legislature into special session to enact a plan. The legislature called itself simultaneously into regular session, the first time such a thing had occurred. The legislature passed Senate Bills 814 and 815, dealing with congressional and legislative redistricting, respectively. Both bills were vetoed by Governor Nelson, a Democrat, on July 2. He objected that both bills were created without input from the Democratic minorities in each house and that both resulted in population variations greater than the rejected Legislative Council plans. He specifically criticized SB-815 for creating a noncontiguous senate district and for apportioning Milwaukee County 24 assembly seats, the same as the Rosenberry Plan, despite the growth of this county since 1951. Nelson proposed that Milwaukee County have 26 seats. The senate overrode Nelson's vetoes the same day, but the assembly was unable to muster the required two-thirds vote. Two weeks later, another congressional apportionment, Senate Bill 817, was passed. It too was vetoed by Governor Nelson, with the senate overriding and the assembly sustaining the veto. On July 19, the senate passed a reapportionment by joint resolution, Senate Joint Resolution 125, thus bypassing Governor Nelson and his objections under the theory that Article IV, Section 3, of the constitution gives "the legislature" the authority to apportion. The assembly, however, did not concur in SJR-125. On July 31, the legislature created a new interim committee on reapportionment, and adjourned.

On August 3, 1962, the federal special master reported to the court that the inequalities of district population were not the result of arbitrary or capricious action, and that the late date prohibited creation of any alternative. The court dismissed the suit, while holding open the possibility of renewing the suit if the next legislature failed to enact a reapportionment. In the November elections under the Rosenberry Plan, the Republicans retained a majority in each house. The attorney general, John Reynolds, a Democrat, was elected governor. Thus, the same partisan alignment that failed to produce a reapportionment in 1961–62 would prevail in 1963–64.

In the new legislature, a Democratic plan was introduced in January as Assembly Bill 99, but did not pass. Senate Bill 575, reflecting Republican viewpoints, passed the senate on June 6 and the assembly on June 18. It was vetoed by Governor Reynolds on July 9. In his veto message, he noted similarities to 1961 SB-815, and cited many of the same objections noted in Governor Nelson's veto message of the previous year, but asserted in addition that the plan violated the Fourteenth Amendment to the U.S. Constitution. The Republican majority again resorted to reapportioning the legislature by joint resolution, cutting the governor out of the process. Senate Joint Resolution 74 was introduced on July 10 and passed the senate on July 30 and the assembly on August 1. Governor Reynolds, who had been permitted to continue the suit he had initiated as attorney general, asked the state supreme court to also address the issue of apportionment by joint resolution.

The supreme court issued its decision in February 1964 in *Reynolds v. Zimmerman*, 23 Wis. 2d 544. The court ruled that the legislature could not "enact" a reapportionment plan by joint resolution, and that the governor must be a part of the process. The court further ruled that a plan could become unconstitutional through shifts in population without any action by the legislature—in other words, the Rosenberry Plan of 1951 was no longer adequate. The court concluded by stating that if a new apportionment plan was not enacted by May 1, the court itself would issue a plan by May 15.

When the legislature reconvened in April, it introduced a redistricting plan as Senate Bill 679, passed by the senate April 15 and concurred in by the assembly with amendments on April 17. The senate concurred in the amendments the same day and the bill was enrolled on April 21. The following day, Governor Reynolds returned the bill with his veto message. Reynolds condemned the plan for failing to meet constitutional requirements of equality and for numerous partisan gerrymanders, styling it "a fraud

upon the people.” Conceding defeat, the legislature adopted Senate Joint Resolution 109, directing the chief of the Legislative Reference Bureau to assist the supreme court in creating a reapportionment plan.

On May 14, the supreme court, as promised, ended the drama by issuing its own plan in *Reynolds v. Zimmerman*, 23 Wis. 2d 606. The plan stated that no district exceeded the state average by more than one-third and that no senate district deviated by more than one-sixth from the ideal.

Although the redistricting question was resolved for another decade in Wisconsin, the waters would remain turbulent for years to come as the federal courts puzzled through the implications of the landmark *Baker v. Carr* decision. Some of these decisions would affect Wisconsin in a number of ways. Just months after the state supreme court settled Wisconsin’s reapportionment dispute in *Reynolds v. Zimmerman*, the U.S. Supreme Court issued *Reynolds v. Simms*, 377 U.S. 533, requiring that all legislative reapportionment schemes in both houses of bicameral legislatures must be based on equal population principles. *Avery v. Midland*, 390 U.S. 474 (1968), extended the equal population principle to all legislative bodies. The trend was clearly towards greater population equality requirements. In 1965, the U.S. Congress passed the Voting Rights Act, creating a number of protections for racial minorities in election administration, including drawing legislative district lines.

The 1960 round of redistricting was no doubt the most revolutionary and most dramatic in Wisconsin history. In addition to the revolution in legislative reapportionment, several other aspects are worthy of consideration.

*Congressional redistricting.* The legislature departed from past practice in adjusting congressional district lines according to population as reported in the 1960 census despite that the number of seats apportioned to Wisconsin was unchanged. Only one prior legislature—the 1911 Wisconsin Legislature—had done this. As a result, the districts, created in 1931 when Wisconsin was reduced from 11 to 10 seats in the U.S. House of Representatives, had become quite varied in population. Each was between 250,000 and 400,000 when created; by 1960 several had exceeded 500,000, while one had actually fallen to 230,000. Chapter 63, Laws of 1963 anticipated federal judicial and congressional action requiring periodic redistricting even if the number of congressmen in a state remained the same. The plan was, however, traditional in some ways. It paid great deference to county lines, with only Milwaukee County being split; and it had population deviations of 1.5 percent statewide, with the largest districts exceeding the smallest by more than 25,000 people. Subsequent court decisions would require strict equality, and the splitting of counties in order to achieve it.

*Local redistricting.* With the state redistricting battle just finished, and federal court decisions coming down with great frequency, the Wisconsin Supreme Court revolutionized local redistricting with its decision in *Sonneborn v. Sylvester*, 26 Wis. 2d 43 (1965). For many decades, county boards—with the exceptions of Milwaukee, which was elected under a district system, and Menominee, a new county whose board was elected at large—had been based on a unit, rather than a district, system. Under this system, each ward of each city and each village elected a member of the county board, while the chairman of each town also represented the town on the county board. As a result, members of the county board represented constituencies that were sometimes vastly different in population. The supreme court in its *Sonneborn* decision found this practice to be in violation of the Fourteenth Amendment to the U.S. Constitution and Article I, Section 1, of the Wisconsin Constitution. In response to this decision, the legislature, which was already exploring county board reform, enacted Chapter 20, Laws of 1965, which required the other 70 counties to adopt a population-based district system similar to that used in Milwaukee County.

*The 1970s.* Several loose ends remained from the 1960s redistricting. In 1969, the assembly requested an opinion from Attorney General Robert Warren on the feasibility of adhering to county lines in redistricting, as required by the Cunningham rules outlined in 1892, in light of federal court decisions on equal population. Warren indicated that the strict adherence to county lines of long custom would have to be set aside for redistricting purposes. In 1971, as the legislature began the redistricting process, leadership addressed a number of questions to the attorney general. Warren restated his emphasis on population equality, to the degree that he advised the legislature to lower assembly membership from 100 to 99, so that each senate district nested perfectly with three assembly districts. Delays in the receipt of detailed census block data on the population of each census block in the state prevented the legislature from introducing a plan meeting the new population equality standards until September 1971, when Assembly Bill 1356 was introduced by Representative Fred Kessler. Although the bill was approved by the Committee on Elections in October, it did not reach the assembly floor until February, by which time Senate Bill 864 was the focus of redistricting efforts. Introduced by Senator Ernest Keppler, the bill initially proposed a novel arrangement for redistricting. Wisconsin had been notified that its U.S. House delegation would be reduced from 10 to 9 in the next congress. Keppler's bill proposed to nest three assembly districts in each senate district, and three senate districts in each congressional district. This would have resulted in a senate of 27 members and an assembly of 81 members. A substitute amendment quickly reverted to the anticipated 33-99 alignment. The bill passed the senate on February 17 and passed the assembly in a heavily amended version on March 2. The senate refused to concur in Assembly Substitute Amendment 1, and requested a Committee of Conference the next day. The senate received the conference report on March 10, the day the legislature was scheduled to adjourn. The senate laid the report on the table and adjourned. The legislature had again failed to redistrict itself as required by the constitution.

Governor Patrick Lucey called the legislature into special session on April 19 in order to enact a redistricting plan. He took the unusual step of addressing a joint convention of the two houses at the opening of the special session, and emphasized the import of passing a redistricting law based on equal population principles. Senate Bill 1 passed the senate and assembly on April 20 and 21, respectively, and the plan was signed as Chapter 304, Laws of 1971 on May 8. The plan was notable historically for a number of reasons. First, it attained a level of population equality far surpassing any previous plan. Because county lines did not need to be followed, the legislature was able to create a plan in which no district deviated from the ideal by more than 1 percent. This standard has been an informal goal for legislative redistricting ever since. Second, the act also contained a framework for future redistricting efforts. The act required cities to elect their common councils from districts of equal population based on the most recent U.S. Census. It also changed the terminology, transforming *wards* into *aldermanic districts* and creating a new geographic subunit called *ward* to serve as sub-districts to be used by the Census Bureau to provide local population data and to facilitate the creation of equal population legislative districts in the future by joining portions of municipalities. This marked an end to the great respect shown to civil boundaries under the Cunningham Principles.

*Congressional Redistricting.* The legislature created new congressional districts with somewhat less drama. Wisconsin fell from 10 to 9 congressmen as a result of the 1970 census. Senate Bill 360 was the first bill introduced, on April 14. It made a brief appearance on the floor in June. A second bill, Senate Bill 558, was introduced in May and made it to the senate floor in September. After voting down numerous amendments, the senate passed the bill on October 5. The assembly also voted down numerous amendments and concurred in the bill on October 27. It was signed by Governor Lucey on November 17 as Chapter 133, Laws of 1971. Although it did not achieve the absolute equality of later apportionments, the plan did not create a district more than 200 people away from the ideal population, a much higher standard than had ever been achieved. Several counties were split in doing so.



*Public Law 94-171.* Persistent difficulties in obtaining official census returns from small geographic areas (below the municipal level) coupled with new court-mandated requirements for districts of equal or near equal population caused the states and the Census Bureau to ask Congress for a formal solution to the problem. Public Law 94-171, passed in 1975, required the Census Bureau to invite states to collaborate in a data-sharing system whereby states would provide geographical boundaries they wanted the Census Bureau to use in detailed returns well in advance of the census. The law also required the Census Bureau to provide the resulting data to participating states no more than one year after the census is taken.

*The 1980s.* For the first time since the creation of the Legislative Council in 1947, no council committee was involved in redistricting. Although the legislature did succeed in enacting a plan, it was a long and contentious journey. The 1981 legislature had Democratic majorities in each house, but Republican Lee Dreyfus was governor. Several legislative redistricting bills were introduced in the senate. One, Senate Bill 712, passed the senate on January 22, 1982, but was not concurred in by the assembly before the end of legislative business on April 2.

On April 21, Governor Dreyfus expanded an existing special session to cover legislative redistricting. Senate Bill 3 passed both houses on May 20, but was vetoed by Dreyfus on May 23. In his veto message, Dreyfus cited gratuitous splitting of counties and municipalities as his main objection and urged the legislature to pass another plan. With the deadline of election nominating petitions approaching, a three-judge panel of the U.S. District Court for the Eastern District of Wisconsin established a district plan as a decision in *Wisconsin AFL-CIO v. Elections Board et al.*, which was filed in February, and the 1982 elections were held under that plan.

The following legislative session, with Democrats retaining control of both houses of the legislature and Democrat Anthony Earl now governor, the legislature again attempted to enact a legislative district plan. Although two bills were introduced to codify the court plan of 1982 in the statutes, an amendment offered in June to Senate Bill 83, the biennial budget bill, included a redistricting plan. Both minority Republicans and Governor Earl objected to the inclusion of redistricting in the budget, and Governor Earl used his line-item veto authority to eliminate it on July 1. He called a special session on redistricting for July 11. Assembly Bill 1 passed the assembly on July 13 and the senate on July 14 and was signed by the governor the following day as 1983 Act 29. The 1984 elections were held under Act 29, as were the next three rounds of biennial elections.

Congressional districting went somewhat more smoothly. Wisconsin retained its nine seats in congress. Assembly Bill 616, a plan to adjust the boundaries of the nine districts in response to population shifts since 1970, passed both houses in October 1981, but was vetoed in November by Governor Dreyfus, who objected to the use of political criteria in drawing lines at the expense of rational boundaries following convenient civil divisions. A lawsuit to create a new plan was commenced in U.S. District Court for the Eastern District of Wisconsin in January 1982, but in March 1982, the legislature passed a plan acceptable to Dreyfus, who signed the bill as Chapter 154, Laws of 1981. A subsequent enactment, Chapter 155, Laws of 1981, made adjustments to the plan.

The 1980s round of redistricting was notable for a number of reasons. It was the first round in which the system of municipal wards was used in the creation of legislative districts. This caused some delay in redistricting as municipalities took some time in creating their new ward plans based on the 1980 census. The year 1981 was also the first time that the Census Bureau issued detailed population statistics under PL 94-171. This enabled the new ward process to begin around the beginning of April 1981 without soliciting early data. Finally the action of the legislature in passing a redistricting plan in 1983 established

the precedent that a court redistricting plan imposed because the legislature failed to redistrict could be superseded by a plan enacted by a subsequent legislature.

*The 1990s.* The 1991 round of redistricting arrived to a familiar political alignment. Both houses of the legislature were controlled by Democrats, and the governor's office was occupied by Republican Tommy G. Thompson. The PL data was delivered to the state on March 1, 1991, and the first redistricting bills were not introduced until March 1992. Two, Assembly Bill 1017 and Senate Bill 549, combined legislative and congressional redistricting into one bill. Each passed its house of origin, but failed in the other house. Two other bills dealt exclusively with legislative redistricting: Senate Bills 548 and 578. SB-578 passed the senate on April 14 and the assembly the same day. The plan was vetoed by Governor Thompson on April 28, who in his veto message rejected the bill on a number of grounds, including excess population variations, partisan gerrymandering, and failure to protect racial minorities. A suit had already been filed in the U.S District Court for the Western District of Wisconsin, and on June 2, a new district plan was issued by the court in *Prosser et al. v. Elections Board et al.* Although in subsequent years the Republicans controlled both houses of the legislature and the governor's office at the same time, no attempt was made to replace the court-ordered plan with a legislatively enacted one.

Congressional districting went more smoothly. Wisconsin retained nine seats in congress. In addition to the two congressional plans attached to legislative plans, five bills dealing with congressional districting were introduced in March and April 1992. The final bill, Senate Bill 577, was introduced on April 14 and passed both houses the same day. It was signed into law by Governor Thompson on April 30 as 1991 Act 256. For the first time, a congressional district plan in Wisconsin achieved "absolute equality" with a total range in deviation of  $\pm 6$ , less than the total number of districts.

*The 2000s.* As the 2001 round of redistricting began, the Democrats controlled the senate and the Republicans controlled the assembly. Given the recent history of redistricting in Wisconsin, a lawsuit was filed in federal court even before the receipt of the census bureau's PL data, asserting that the existing districts under *Prosser v. Elections Board* were no longer in conformity with constitutional standards and declaring that a legislative impasse was likely—this just weeks after the inauguration of the 2001 legislature. Only two legislative districting bills were introduced, one in each house, reflecting the views of the majority party. Both bills, Senate Bill 463 and Assembly Bill 842, were introduced in February 2002 and passed their house of origin on March 7. Neither bill was acted upon in the other house. The last general floorperiod of the legislature ended March 26. On May 30, the U.S. District Court for the Eastern District of Wisconsin issued its decision in *Baumgart et al. v. Wendelberger et al.*, creating a new district plan based on the 2000 census.

Legislative districting in this round did have one unusual aspect. With legislative redistricting efforts commencing and a federal redistricting lawsuit pending, Assembly Speaker Scott Jensen petitioned the Wisconsin Supreme Court in January 2002 to assert original jurisdiction in redistricting and to accept the case. In February, the court declined to get involved, citing the late date, the court's unfamiliarity with redistricting, and the existing federal case. In issuing its decision in *Jensen v. Elections Board*, 249 Wis. 2d 706, it did commence a process whereby it would familiarize itself with the issue of redistricting and place itself in a position to assert its right to original jurisdiction over redistricting in the future. Although a detailed framework by which the judicial branch would review redistricting actions at the state level was formulated, it was never adopted by the full supreme court as a court rule.

Congressional redistricting again went smoothly. Only one bill, Assembly Bill 711, was introduced. Although Wisconsin was reduced from nine to eight seats in Congress, the bill passed each house by large majorities and was signed into law as 2001 Act 46 on March 27, 2002.

*The 2010s.* The 2011 legislature, responsible for redistricting following the 2010 Census, was marked by many memorable events. For redistricting purposes, it was notable for the fact that the governor's office was held by Republican Scott Walker, while Republicans also held majorities in both houses of the legislature. Neither party had enjoyed such an advantage in redistricting since the 1950s. A series of senate recall elections scheduled for the summer of 2011, however, threatened to return control of that house to the Democrats.

The Census Bureau's PL data was received by Wisconsin on March 10, 2011, and distributed to local governments by March 21. Legislative leadership proceeded to work on legislative district plans while municipal and county governments were still creating wards and county board districts. A legislative district plan was introduced as Senate Bill 148 on July 11, 2011, along with another bill, Senate Bill 150, requiring counties and municipalities to conform their ward and district lines to any enacted redistricting plan—that is, that municipal ward boundaries in particular would not be allowed to straddle legislative district lines, and that the needed wards should be created without regard to the statutory population requirements for wards. Both Senate Bill 148 and Senate Bill 150 were passed by the senate on July 19 and concurred in by the assembly the following day. SB-150 was signed by the governor on July 25 as Act 39. The legislative district plan, SB-148, was signed by the governor on August 9 as Act 43. In addition to being notable for having abandoned the prevailing ward-based method of redistricting in favor of a block-based plan put forth before local governments had finished with their local lines, this plan had by far the lowest deviation of any in Wisconsin history—all districts within .4 percent of ideal—and was the earliest legislative district plan enacted since 1921.

The plan enacted by 2011 Act 43 was challenged before the U.S. District Court for the Eastern District of Wisconsin, and the case was heard before a three-judge panel as required by federal law. On March 23, 2012, the court declared that the boundaries of assembly districts 8 and 9 would have to be altered in order to ensure that Hispanics could be most able to elect the candidate of their choice as required by federal law; but that the rest of the plan in Act 43 was sustained. The legislature made no move to amend the two districts that were subject to the court order, and on April 11, 2012, the court issued an order creating a new boundary between assembly districts 8 and 9. The state Department of Justice appealed the order to the U.S. Supreme Court, but dropped its appeal on June 20, and elections proceeded under Act 43 with this small modification. It was the first time the legislature had enacted a legislative district plan since 1983.

A congressional district plan was introduced as Senate Bill 149 on July 11, 2011, and proceeded along with the legislative district legislation. The bill passed the senate on July 19, 2011, and the assembly on July 20. The bill was signed by Governor Walker as Act 44 on August 9, 2011.

#### **IV. THE REDISTRICTING PROCESS IN WISCONSIN**

The process of redistricting in Wisconsin as it has been usually been conducted in recent cycles consists of several distinct phases occurring in succession, with each phase commencing only upon completion of the previous phase. A delay in any one phase may well delay the whole process. Part III of this publication reviews the process and each interdependent phase.

##### **The Census**

Article IV, Section 3, of the Wisconsin Constitution requires the legislature to “district anew” the two houses of the legislature “according to the number of inhabitants” after “each enumeration made by the authority of the United States.” In other words, the first step in each redistricting process is the U.S. Census. Article I, Section 2, of the U.S. Constitution requires Congress to provide for an enumeration of

the country's population every ten years. The primary purpose of the census is to determine how many seats in the U.S. House of Representatives will be assigned to each state. In practice, the census has also become an important source of other information about the people, social practices, and economy of the United States. It has also become central to creating equal population districts in state legislatures and local representative bodies.

The U.S. Constitution requires an "actual enumeration" of inhabitants, and that is precisely what the U.S. Census attempts to do. Each dwelling in the country receives a census form asking that the recipient complete the form providing basic information about every individual residing there. Typically, between two-thirds and three-fourths respond. Each dwelling not returning a form is visited by a census taker, who interviews the inhabitants of the non-reporting dwelling or, failing this, attempts to ascertain the number of residents by interviewing neighbors, or tries to verify that the dwelling has no permanent residents.

State and local governments assist the Census Bureau in preparing for the census by providing the latest and most accurate geographical information possible, to make sure that every dwelling is accounted for and that each person counted is assigned to the proper geographic area down to the smallest level of detail: the census block. The Census Bureau provides maps called TIGER maps that indicate the most current geographic information it has, which gives states the opportunity to correct errors, and allows census data to be plotted geographically as soon as it is available.

State and local governments also assist the Census Bureau in publicizing the census and encouraging people to participate. Since not only political clout, but also the distribution of many federal, state, and local aid programs are determined on the basis of census figures, state and local governments have every incentive to see that as many people are counted as possible.

### **PL Data**

The first step in the redistricting process in Wisconsin, as in other states, is the receipt of the PL data. This refers to detailed census data for small geographic areas known as census blocks that correspond roughly to city blocks or, in rural areas, are bounded by visible geographic features like roads, railroads, rivers, or power lines. The data may also be aggregated by larger geographic areas requested by the state such as municipal wards. The data will include figures particularly relevant to redistricting: population, voting-age population, population by race, and Hispanic or Spanish-origin population. Other classes of information commonly associated with the census such as income or housing characteristics are not included in the PL data. It is called PL data because Public Law 94-171, a 1975 law, requires the Census Bureau to provide it to the states. Under 13 USC 141, the Census Bureau must provide the data no more than one year after the date of the census, usually April 1 of the year ending in "1". In most census cycles, it is actually available in February or March.

### **County Board Supervisory Districts**

Once the PL data has been received, the next step in the redistricting process is the creation of new county board districts to reflect shifts in population since the last decennial census. Although Wisconsin law requires county board districts to be "substantially equal" in population, the term is not defined. There are no specific standards for county boards set by federal or state courts.

County board districts are created by the county boards themselves. Seventy of Wisconsin's 72 counties district their boards under guidelines provided in § 59.10 (3), Wisconsin Statutes. In addition to requiring two-year terms, substantial equality of population, and other details of board operation, the statute provides maximum board sizes for different population ranges of counties:

Fewer than 500,000 but at least 100,000 = 47 maximum.  
Fewer than 100,000 but at least 50,000 = 39 maximum.  
Fewer than 50,000 but at least 25,000 = 31 maximum.  
Fewer than 25,000 = 21 maximum.

The Milwaukee County board is districted under statutory guidelines provided under § 59.10 (2), Wisconsin Statutes. While this statute also requires substantial equality of population, it provides for a two-year term for elections held in 2016 and subsequently, and does not specify the size of the board. Menominee County is governed by § 59.10 (5), Wisconsin Statutes, which provides that the town board of the lone town in the county, elected at large, serve as the county board.

County board lines are drawn first as a tentative plan to facilitate communication between county and local governments over where lines splitting municipalities should be drawn. This is why the counties are required to submit a tentative plan within 60 days of receiving the PL data under § 59.10 (3) (b), Wisconsin Statutes, and no later than July 1 of the year ending in “1”. The process is then suspended for 60 days, during which municipal ward lines are created, an activity described in more detail later. It is during this period that the counties and municipalities are to come to an agreement on where municipalities should be divided, if necessary, in the creation of county boards, and particularly, state legislative districts.

After each municipality in the county has provided a ward plan, the county has 60 days in which to hold a public hearing on its plan, giving the public the opportunity to express its preferences. The county must then adopt a final district plan for the county board, in which each district consists of whole, contiguous municipal wards. After the board adopts the plan, it must inform the secretary of state.

### **Municipal Wards**

Ward lines are drawn by municipalities, but facilitating the drawing of legislative district lines is one of the important functions of wards. Wards also are used in the creation of county board and common council districts, and can also be useful in election administration, serving as logical boundaries for polling locations.

Wards are created by the common council in cities and by the board in towns and villages. Rules governing the drawing of ward lines are found in § 5.15, Wisconsin Statutes. Municipalities are required to create ward lines within 60 days of the county board’s approval of a tentative supervisory district plan. Wards are to be compact and contiguous and observe the community of interest of existing neighborhoods. Wards are not required to be equal in population, but they must fall within prescribed population ranges depending on the population of the municipality:

For municipalities of 150,000 or greater, wards must be between 1,000 and 4,000.  
For municipalities between 39,000 and 149,999, wards must be between 800 and 3,200.  
For municipalities between 10,000 and 38,999, wards must be between 600 and 2,100.  
For municipalities of fewer than 10,000, wards must be between 300 and 1,000.

Cities under 1,000 population electing their common councils at-large are not required to divide into wards. All villages and towns under 1,000 population are also exempt from the requirement.

Wards must be made of whole blocks where possible; splitting of blocks, where necessary, must be based on the best evidence of where people actually live within the block. In municipalities located in more than one county, no ward may straddle a county line.

If a municipality fails to divide itself into wards as required within the 60-day time frame, § 5.18, Wisconsin Statutes, permits any elector of the municipality to submit a ward plan to the circuit court for any county in which the municipality is located. The court may impose the submitted plan or any other plan to bring the municipality into compliance with § 5.15, Wisconsin Statutes. The municipality may supersede the imposed plan by adopting one of its own.

Once a ward plan has been adopted by the board or council, it is not to be altered until the next decennial census, except to place annexed territory within an existing or newly created ward.

### **Municipal Redistricting**

After the creation of a ward plan, the next step for cities is the creation of aldermanic districts. These districts must be created by the common council of each city within 60 days of their adoption of the ward plan. Aldermanic districts must be compact and created by a combination of contiguous, whole wards. The resulting districts must be of equal population. These requirements are found in § 62.08, Wisconsin Statutes.

If a city fails to adopt an aldermanic district plan within 60 days as required by law, any elector of the city may propose a plan to the circuit court for any county in which the city is located. The court may impose the submitted plan or any other plan meeting the requirements of § 62.08, Wisconsin Statutes. This plan may be superseded by the common council adopting a plan of its own.

Cities may alter aldermanic district lines or the size of the common council during the decade by a two-thirds vote, but they may not alter the ward lines in doing so.

Town boards and village boards are elected at-large and require no districting.

### **Legislative Redistricting**

The basic requirements for legislative redistricting are found in the Wisconsin Constitution. Article IV, Section 3 requires the legislature to redistrict according to the number of inhabitants following each decennial federal census. Article IV, Section 4, of the constitution requires legislative districts to be contiguous and compact and to be bounded by county, precinct, town, or ward lines. Beyond that, the redistricting process is guided only by court precedents and the weight of recent practice. There are no statutory guidelines or requirements for legislative redistricting in Wisconsin.

Legislative district plans are enacted by law and proceed through the legislature like any other bill. Districts are created by aggregating smaller units of geography into areas of equal population, using the units required by Article IV, Section 4, of the constitution. During the 2010 round of redistricting, the legislature in 2011 Act 39 directed municipalities to alter their wards to conform with the legislative district plan being enacted by accompanying legislation (2011 Act 43).

Equal population is also a principle required by the constitution, but it is not defined in either the federal or state constitutions. Redistricting plans since 1970 have met a standard of 1 percent deviation, that is, no district was more the 1 percent greater or less than the ideal population. The 2011 plan met a standard of .4 percent deviation. While there is no written standard, it is possible that courts would require some strong justification for a step away from absolute equality.

Each of the two major party caucuses in the two houses of the legislature are usually involved in redistricting and can be expected to advocate for their interests in the process. In recent cycles, each party has usually introduced at least one preferred plan and been loathe to see the other's advance. In three of the last four decennial cycles, legislative impasse has resulted in redistricting plans being imposed by federal courts.

The commencement of the legislative redistricting process is dictated first by the arrival of the detailed PL data from the U.S. Census Bureau in early spring, usually around March 1, of the year ending in "1". The process then awaits the creation of new municipal ward lines during the summer. After wards are created, legislative service agencies create a database including the new ward lines and detailed population statistics for each ward in the state. This is usually ready in the early fall, usually around September 1, of the year ending in "1". In the most recent round of redistricting in 2010, the legislature enacted a plan while the municipal wards were still being created by local governments. Legislation enacted at the same time as the redistricting act required local governments to modify their wards if necessary, regardless of population, to accommodate the legislative district plan.

There is no deadline for legislative redistricting in the constitution or the statutes. However, practical considerations do create a deadline of sorts. The state constitution requires legislative redistricting to be accomplished by the legislature "at its first session" after the federal census. That session usually ends in May of the year ending in "2". And, practically speaking, district lines must be finished around mid-March of the year ending in "2" in order for required legal notice to be provided for the August primary and for candidates for the legislature to circulate petitions for placement on the ballot.

### **Congressional Redistricting**

The congressional districting process begins with the reapportionment of seats in the U.S. House of Representatives to the states. The apportionment is the primary function of the U.S. census. 2 USC 2a requires the president to determine how many seats each state should have in the next congress by the first week in January of the year ending in "1". This is done using the population of each state obtained in the recent census, using the method of equal proportions and assuming the size of the house of representatives to be 435. The method of equal proportions has been used to apportion the house since 1941 and is the formula best able to achieve the goal of equal representation among the states according to population while also providing for relatively equal population districts in the various states.

Congress may increase the size of the House of Representatives to accommodate increasing population, but generally it has remained at 435 since 1913. This means that for every seat gained by a state in reapportionment, another state must lose a seat. Each state must have at least one seat in the House.

The president notifies the chief clerk of the House of Representatives the number of seats each state will have on January 1 of the year ending in "1"; the chief clerk then notifies the governor of each state. The total population of the state divided by the number of seats awarded to the state will provide the ideal population of each congressional district, and redistricting can begin as soon as detailed PL data becomes available the following spring.

There are no statutory or constitutional guidelines in Wisconsin law for congressional redistricting. The process is governed by court and procedural precedents which dictate that the resulting plan must have districts absolutely equal in population, and be enacted into law following the same process as any bill. Prior to the one-man, one-vote revolution in the 1960s, county lines were more or less sacrosanct in congressional redistricting, and no county other than highly populated Milwaukee was ever split in

creating congressional districts. It was also normal for district lines to be altered only when the number of congressmen in the Wisconsin delegation changed.

Recent practice has respected the U.S. Supreme Court precedent in *Karcher v. Daggett* (1983), requiring any deviation in the population of congressional districts to be justified by some governmental purpose. The pursuit of absolute equality has necessitated the splitting of municipalities and even wards down to the block level. This has meant that the process cannot begin until the receipt of the PL data in spring of the year ending in “1”. It has also become customary to informally consult with the state’s U.S. House delegation on where lines should be drawn. Unlike legislative redistricting, congressional redistricting has been relatively free of contention: Since 1963, the legislature has never failed to discharge this duty in a timely fashion.

## V. REDISTRICTING TIME LINE

The following is a projected time line based on events in recent rounds of redistricting:

<b>Projected Date</b>	<b>Redistricting Event</b>
April 1, 2020	Census Day
November 3, 2020	Last Congressional and Legislative Elections in Old Districts
December 31, 2020	Seats in U.S. House Apportioned to States
February 1, 2021	PL 94-171 Data Received (earliest possible date)
March 2021	Counties Receive Detailed Census Data (earliest possible date)
April 6, 2021	Last Municipal Elections in Old Districts
March–June 2021	Tentative County Board District Plans Created
April–May 2021	Municipal Ward Plans Created (earliest possible date)
June 2021	Deadline for Tentative County Board Plan
August–September 2021	Municipal Ward Plans Created (latest possible date)
September–October 2021	Creation of City Aldermanic and Final County Board Districts
October 2021	Creation of Ward Database
November 2021	Earliest Ward-based Legislative Redistricting Can Begin
February–March 2022	Legislative and Congressional Redistricting
February 15, 2022	First Municipal Primary in New Districts
April 5, 2022	First Municipal General Election in New Districts
February–March 2022	Creation of Maps and Data for New Legislative Districts
March 2022	Deadline for Legislative Redistricting
Spring 2022	Special Elections for Legislature Held From New Districts
April 15, 2022	Nomination Papers for Elections in New Districts Circulated
June 1, 2022	Deadline for Filing Nomination Papers
August 9, 2022	First Primary Election in New Districts
November 8, 2022	First General Election in New Districts
January 3, 2023	First Legislature Under New Districts Inaugurated



## VI. REFORM PROPOSALS

The high-stakes and hyper-political atmosphere surrounding the redistricting process has led to calls for reform from many quarters. Part V of this publication contains a list of recent reform proposals along with a brief review of alternative redistricting methods used in other states.

### **Recent Reform Proposals in Wisconsin**

2011 Assembly Joint Resolution 78, Representative Kessler, establishes competitiveness criteria for redistricting plans (constitutional amendment). Failed to pass.

2011 Assembly Joint Resolution 122, Representative Kessler, excludes incarcerated felons disenfranchised by law from the official census count for redistricting purposes (constitutional amendment). Failed to pass.

2011 Senate Joint Resolution 68, Senator Cullen, requires the legislature to create an independent redistricting commission; requires redistricting plans to be approved by referendum and gives the supreme court the power to produce plans if the commission produced plans are rejected by the voters (constitutional amendment). Failed to pass.

2011 Assembly Bill 198, Representative Hulsey, and Senate Bill 157, Senator Risser, require the LRB and GAB to develop standards and draw up redistricting plans to be submitted to the legislature for approval. Failed to pass.

2013 Assembly Joint Resolution 23, Representative Kessler, establishes competitiveness criteria for redistricting (constitutional amendment). Failed to pass.

2013 Assembly Bill 185, Representative Wright, and Senate Bill 163, Senator Hansen, establish detailed redistricting criteria; create the Redistricting Advisory Commission; direct the LRB to draft redistricting plans and submit them to the legislature for approval. Failed to pass.

2013 Assembly Joint Resolution 80, Representative Wachs, requires an advisory referendum on adoption of a nonpartisan redistricting system. Failed to pass.

2015 Assembly Joint Resolution 48, Representative Kessler, establishes competitiveness criteria for redistricting (constitutional amendment). In Committee on Campaigns and Elections.

2015 Assembly Bill 328, Representative Spreitzer, and Senate Bill 58, Senator Hansen, establish detailed redistricting criteria; create the Redistricting Advisory Commission; direct the LRB to draft redistricting plans and submit them to the legislature for approval. In Assembly Committee on Campaigns and Elections and Senate Committee on Judiciary and Public Safety, respectively.

2015 Assembly Joint Resolution 55, Representative Wachs, and Senate Joint Resolution 47, Senator Vinehout, require a referendum on nonpartisan redistricting system on November 2016 ballot. In Assembly Committee on Campaigns and Elections and Senate Committee on Judiciary and Public Safety, respectively.

### **Alternatives to Redistricting by Legislative Enactment in Other States**

The legislature's prerogative in drawing legislative district lines is rooted in history and remains the norm nationally. In some states, however, this power has been moved at least to some degree away

from political actors and given to boards or commissions that exercise a direct or advisory role in the redistricting process. This section examines a few of the alternatives used in states that have decided to move away from the traditional method.

*The numbers.* The task of drawing congressional district lines is retained by the legislature in 43 states. Seven states—Arizona, California, Hawaii, Idaho, Montana, New Jersey, and Washington—use boards or commissions to create congressional districts. (Montana has had only one member of the U.S. House of Representatives since 1992.) A number of states use backup or advisory commissions that leave ultimate authority with the legislature.

Legislative district lines are drawn by state legislatures in 37 states. Thirteen states—Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Missouri, Montana, New Jersey, Ohio, Pennsylvania, and Washington—use boards or commissions to draw legislative districts. Of the 37 states where legislatures retain the power to draw legislative district lines, eleven have advisory or backup commissions in place—Connecticut, Illinois, Iowa, Maine, Mississippi, New York, Oklahoma, Rhode Island, Texas, Vermont, and Virginia.

*The methods.* The following are four diverse examples of non-legislative redistricting processes used in other states.

**Iowa** may be classified as using the “advisory commission” system of redistricting, but in fact the state’s Legislative Reference Bureau draws legislative district lines following detailed criteria set forth in the Iowa Code. The LRB creates the database containing the population of small geographical units, then creates legislative districts. The legislature creates a temporary advisory commission to answer any questions the LRB might have on redistricting not answered by the code provisions. The commission is made up of appointees of the majority and minority leaders of each house of the legislature, with a fifth member selected by at least three of the other four, who serves as chair.

The LRB must provide a first plan within 45 days of the receipt of the PL data, but no earlier than April 1 of the year ending in “1”. Iowa law prohibits the LRB from considering incumbents’ addresses or the political landscape as revealed by party registration or election results. The temporary commission holds hearings on the plan around the state, and it is introduced in the legislature, where each house may make only corrective amendments to the bill. If the plan fails to pass or is vetoed by the governor, the LRB must create a second plan, taking into consideration any written objections produced by the legislature or, if applicable, the governor’s veto message. The second plan must be submitted to the legislature within 35 days of the first plan’s rejection. Again the legislature may make only corrective amendments, and no public hearings are required. The legislature must vote on the plan within seven days. If it is disapproved, the LRB has 35 days to create a third plan and submit it to the legislature. Upon introduction of the third plan, the legislature regains full amendment power. This ends the LRB’s role (except for its usual support functions) and essentially returns the redistricting process to the legislature.

The Iowa Constitution gives the supreme court the duty to create a district plan by December 31 of the year ending in “1” if the legislature does not pass a plan by the previous September 1. Similarly, if the supreme court strikes down a plan as invalid, it has 90 days to adopt another.

The **Alaska** Constitution provides for an independent redistricting board, consisting of five members who hold no public office or employment during their tenure. The governor appoints two members, the president of the senate one, the speaker of the house of representatives one, and the chief justice of the

supreme court one. The five must be residents of different state judicial districts, and are prohibited from running for the legislature under the redistricting plan's first election.

The redistricting board is established by September 1 of the year ending in "0", and must produce a redistricting plan within 90 days of the receipt of detailed census data. The Alaska Constitution provides certain basic criteria the board must follow in creating districts, such as population equality, contiguity, compactness, and a "relatively integral socio-economic area." The board is required to hold public hearings during the 90-day period. The board may create more than one plan but must ultimately adopt one by proclamation with at least three of the five board members approving it.

Any elector may file an appeal of the plan with the superior court, which has original jurisdiction in redistricting matters. The court may return the plan to the board for correction or complete revision if it finds the plan invalid.

The **Missouri** Constitution removes redistricting power from the legislature while providing for a political, although bipartisan, process. Missouri provides for two separate redistricting commissions, one for each house of the legislature. The house commission is created by having the two major party committees for each of Missouri's congressional districts (currently nine) provide a list of two names in nomination. The governor then picks one name from each list, leaving a commission of 18 members, 9 Democrats and 9 Republicans. The senate commission is created by the state committee of each major political party providing the governor with a list of 10 names in nomination; the governor then selects five from each list, leaving a commission with 10 members, 5 Democrats and 5 Republicans. The process of selecting the commissions must begin within 60 days of the Census Bureau's determination of Missouri's total population around January 1 of the year ending in "1". The commissions must meet, organize themselves, and establish an agenda including scheduling public hearings, with 15 days of appointment by the governor. Within five months of appointment, both commissions must approve redistricting plans for their respective houses, and then hold hearings to allow citizens to register any objections and to take testimony on the plans. Within six months of appointment, each commission must approve a final plan and file it with the secretary of state. The senate commission must approve its plan with at least 7 of 10 members approving; the house commission must approve its plan with at least 13 of 18 affirmative votes. The commission members are prohibited from holding legislative office for four years after the final plan is filed.

The Missouri Constitution also provides a process for redistricting if either commission fails to adopt a plan in the time provided. In that case, the supreme court appoints six judges of the appellate court, who must adopt and file a plan within 90 days of appointment.

In **California** a recent constitutional amendment gives redistricting power to the Citizens Redistricting Commission, made up of citizen applicants who have been vetted by the state auditor for impartiality. The auditor is to divide applicants into three pools: those from the state's largest political party; those from the state's second-largest political party; and those not associated with either of the two largest parties. The auditor appoints three auditors to serve as an applicant review panel. The review panel must eliminate from consideration all applicants whose past activities meet certain criteria that indicate a conflict of interest, including candidacy for office; service as an officer or employee of a political party; membership in the central committee of a political party; registration as a lobbyist; service as a congressional or legislative staffer; or a contribution of more than \$2,000 to a political candidate. Candidates who have met any of these criteria within the past ten years are eliminated from consideration for membership on the commission. The panel concludes its work by producing a list of 60 names; 20 from the largest political party; 20 from the second-largest political party; and 20 from

neither. The list is presented to each house of the legislature. The minority floor leaders from each house and the president of the senate and the speaker of the assembly may each strike up to two names from each list of 20. The state auditor then draws eight names to serve on the commission: three from each partisan list, plus two from the list of those not associated with the two major parties. The eight chosen select the remaining six, two from each of the three lists. Each of the six chosen must be approved by at least five of the eight selected by the auditor, with a goal of using the final six positions for improving the racial, ethnic, geographic, and gender diversity of the commission. The full panel of 14 is to be chosen by December 31 of the year ending in “0”.

The commission, once formed, is charged with providing district maps for each house of the legislature by September 15 of the year ending in “1”. In creating district plans, the commission is not to consider the place of residence of any legislator. Although the commission may hire staff, legal counsel, and consultants, it may not communicate with any other person outside the context of scheduled public hearings, which are mandatory. The California Constitution and statutes provide detailed criteria for the creation of districts that the commission must follow.

The final redistricting plans must be approved by 9 of the 14 commissioners. Once approved, the plans must be submitted to the voters for approval. If the plans are approved, the secretary of state certifies the plans, and they are final. If the commission fails to produce plans approved by nine members, or the approved plans are rejected by the voters, the secretary of state must petition the supreme court to appoint special masters to modify the plans. The supreme court then certifies the amended plans to the secretary of state.