



COUNTY DECENNIAL
REDISTRICTING
HANDBOOK

2021 Redistricting Cycle



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INTRODUCTION

The processes associated with reapportionment and redistricting are mandated by federal and state law. “Reapportionment” refers to the allocation of political seats among governmental units and traditionally refers to the allocation of congressional seats among the fifty states. “Redistricting” refers to the establishment of boundaries for political units such as state legislative and county districts.

Under Wisconsin statute 59.10, county governments in Wisconsin are required to redistrict following the federal decennial census (“decennial redistricting”). Section 59.10 also allows for redistricting one additional time in the period between decennial redistricting. Redistricting in this interim period will be referenced as “mid-term redistricting” throughout this handbook.

In order to meet the requirement of decennial redistricting and to understand the mechanics of mid-term redistricting, county officials need to have knowledge of the relevant legal, technical and procedural aspects of redistricting. This handbook provides a general overview of redistricting to assist county officials in this process.

The first chapter sets forth the statutory procedures for county redistricting in Wisconsin and includes a discussion of the creation of municipal wards within county districts as well as the rules governing mid-term redistricting. The second chapter discusses the creation of wards by municipalities and the interrelationship between ward creation and the county redistricting plan. The third chapter addresses legal issues surrounding redistricting with a particular emphasis on equal population and minority representation. The fourth chapter provides timelines and guidelines for counties in meeting the redistricting requirements. The final chapter provides a summary of the law as it relates to mid-term redistricting.

NOTE: This handbook is intended to be a general guide to understanding the county redistricting process and the statutes and legal principles that govern it. Before starting the redistricting process, county officials should review applicable state laws. The handbook is not intended as, and shall not constitute, legal advice. The Wisconsin Counties Association suggests that you seek guidance from the county corporation counsel regarding any legal questions you may have.

CHAPTER 1: PROCEDURE FOR DECENNIAL REDISTRICTING

REAPPORTIONMENT & REDISTRICTING

The United States Constitution requires a national census every ten years (“decennial census”) and that the results of the census be used to reapportion representatives in Congress among the states according to population. The census and reapportion requirements are found in Article I, Section 2, Clause 3 of the Constitution, which states:

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers...The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative...

After reapportionment, each state must perform redistricting. Redistricting is the process of redrawing the lines of districts from which public officials are elected. Decennial redistricting takes place after each decennial census. As explained in more detail on page 21, redistricting may also occur after the decennial census (“mid-term redistricting”) if the county board has decided to decrease the number of supervisors. The purpose of reapportionment and redistricting is to preserve the one person-one vote fairness principle.

BASIC PROCEDURE FOR DECENNIAL REDISTRICTING UNDER WIS. STAT. § 59.10(3)

Under Wis. Stat. § 59.10(3), counties begin the decennial redistricting process with a “clean slate.” All existing district and ward lines are erased, and a county is able to draw new lines based on the results of the decennial census to reflect any population shifts. However, as indicated in the discussion below and in the legal issues section later, a county’s ability to redistrict is governed by traditional concepts of redistricting, which include compactness, contiguity, and substantial equivalence of population.

The legislature has adopted a three-step procedure for the creation of county board districts following publication of the results of the decennial federal census. The procedure is set forth in Wis. Stat. § 59.10(3) and applies to all Wisconsin counties with the exception of Milwaukee County and Menominee County.

STEP 1: Adoption of a Tentative County Supervisory District Plan.

Under Wis. Stat. § 59.10(3)(b)1, each county board is required to do the following as part of the creation and adoption of a tentative county supervisory district plan. This must be completed within 60 days after the results of the federal census (including the publication of maps showing the location and numbering of census blocks¹) become available from the federal government or are published by a state agency, but no later than July 1, 2021:

¹ Census blocks are uniquely numbered geographic areas used by the Census Bureau for basic demographic information, with boundaries determined by physical features or political borders. They are the smallest level of geography in which basic demographic information is available, including total population by age, sex, and race. They serve as the building blocks for all geographic areas in which the Census Bureau compiles data. They vary widely in population and physical size. Every physical location in the country is part of a census block. Census Bureau website, <https://www.census.gov/newsroom/blogs/random-samplings/2011/07/what-are-census-blocks.html> (accessed June 5, 2019).

- (a) propose a tentative county supervisory district plan establishing the number of supervisory districts proposed by the board and tentative boundaries for each district;
- (b) hold a public hearing on the proposed plan; and
- (c) adopt a tentative plan.

Rules for Drawing Lines and Substantially Equal Population

Each proposed supervisory district is required to consist of whole wards or municipalities. The tentative plan must divide the county into a number of districts equal to the number of supervisors (no multi-member districts), and all districts must be *substantially equal* in population. Territory within each district must be contiguous, and whenever possible, a county must place whole contiguous² municipalities or contiguous parts of the same municipality (wards) within the same district.³ If the board seeks to divide a municipality, the board is required to provide a written statement to the affected municipality with the tentative plan that specifies the approximate location of the territory from which a ward is to be created and the approximate population of the ward. Additionally, census blocks may not be divided unless the block is bisected by a municipal boundary or unless a division is required to enable creation of supervisory districts that are substantially equal in population.

Intergovernmental Cooperation

Counties are required by Wis. Stat. § 59.10(3)(b)1 to work with municipalities in connection with the creation of the tentative plan. The statute requires a county board to “solicit suggestions from municipalities concerning the development of an appropriate plan.”

Finalization and Distribution

The tentative plan may be amended after the public hearing and prior to its finalization and adoption. Once adopted, the board is required to transmit the tentative plan to each municipal governing body in the county.

ANTICIPATED TIMELINE FOR STEP 1: April 2021 through May 2021

STEP 2: Creation of Wards/Adjustment of Ward Lines by Municipalities

Upon receipt of the tentative plan and written statement regarding the creation of a ward, if any, from a county, a municipality has 60 days to create wards or adjust its ward lines in accordance with the tentative county supervisory redistricting plan. A municipality is required to:

- (a) make a good faith effort to accommodate the tentative plan for the county or counties in which it is located; and
- (b) to divide itself into wards in a way that permits the creation of supervisory districts that conform to the population requirements of the tentative plan.

The municipal clerk is required to forward a copy of the ward plan to the county within five (5) days after the municipality has enacted or adopted an ordinance or resolution creating wards in accordance with the tentative supervisory redistricting plan.

ANTICIPATED TIMELINE FOR STEP 2: June 2021 through July 2021

² “Contiguous,” for county supervisory district purposes, includes territory connected by corners.

³ There are two recognized exceptions to the contiguity requirement. In the case that one or more wards located within a city or village is wholly surrounded by another city or water or both, the wards may be combined with noncontiguous wards. Wards consisting of island territory (which is defined as territory surrounded by water, or noncontiguous territory which is separated by the territory of another municipality or water, or both, from the major part of the municipality to which it belongs), may be combined with noncontiguous wards of the same municipality.

STEP 3: Adoption of a Final County Supervisory District Plan

Public Hearing, Adoption, Numbering of Wards

A county board is required to hold a public hearing and to adopt a final supervisory district plan within 60 days after every municipality in the county adjusts its wards. The final plan must assign numbers to each district.

Contiguity Requirement

Territory within each supervisory district created by the plan must be contiguous, except that one or more wards located within a city or village which is wholly surrounded by another city or water, or both, may be combined with one or more noncontiguous wards. In addition, one or more wards consisting of island territory as defined in Wis. Stat. § 5.15(2)(f)3 may be combined with one or more noncontiguous wards within the same municipality, to form a supervisory district.

Submission to Secretary of State by County Board Chair

The county board chair is required to file a certified copy of the final supervisory districting plan with the Secretary of State. Once the plan is enacted and filed with the Secretary of State, including any authorized amendment that is also enacted and filed, the plan remains in effect until it is superseded by a subsequent plan enacted under Wis. Stat. § 59.10 and a certified copy of that plan is filed with the Secretary of State.

ANTICIPATED TIMELINE FOR STEP 3: August 2021 through September 2021

CHAPTER 2: CREATION OF WARDS

The second step of the decennial county supervisory redistricting process involves the creation of wards and/or adjustment of ward lines in accordance with the tentative county supervisory district plan. This process is instrumental to the ability of counties to implement and, ultimately, finalize county supervisory redistricting plans. The following is a summary and explanation of the process for creating wards, as well as the enforcement mechanisms available to counties to require the creation of wards if municipalities do not meet their statutory obligations.

WHAT ARE WARDS?

A “ward” means a town, village, or city subdivision created to facilitate election administration and establish election districts (aldermanic, supervisory, legislative, and congressional) that are substantially equal in population.

RULES GOVERNING THE CREATION OF WARDS

General Rules

With the exceptions outlined below, every city, village, and town in Wisconsin is required, through its common council or village or town board, to be divided into wards. The boundaries of and number assigned to each ward are intended to be as permanent as possible. Where possible and practicable, each ward is to consist of whole census blocks. Wards are to be kept compact and observe the community of interest of existing neighborhoods and other settlements. Wards are confined to a single municipality and may only be in one county supervisory board district.

Wards do not have to be equal in population. They are, however, subject to the population limits as set forth in Wis. Stat. §5.15(2)(b) which are included below:

- In any city in which the population is at least 150,000, each ward must contain not less than 1,000 nor more than 4,000 inhabitants.
- In any city in which the population is at least 39,000 but less than 150,000, each ward must contain not less than 800 nor more than 3,200 inhabitants.
- In any city, village, or town in which the population is at least 10,000 but less than 39,000, each ward must contain not less than 600 nor more than 2,100 inhabitants.
- In any city, village, or town in which the population is less than 10,000, each ward must contain not less than 300 nor more than 1,000 inhabitants.

The division of a municipality into wards is made by the common council, village board, or town board. Municipal wards are to be created by ordinance or resolution of the municipal governing body. The ordinance or resolution must number all wards in the municipality with unique whole numbers in consecutive order, designate the polling place for each ward, and describe the boundaries of each ward.⁴

Once established, the boundaries of each ward are required to remain unchanged until:

- A further decennial federal census of population indicates that the population of a ward is above or below the applicable population range; or
- The ward boundaries are required to be changed to permit creation of supervisory or aldermanic districts of substantially equal population or to enhance the participation of

⁴ A list of all U.S. Census Bureau block numbers assigned to each ward, any partial blocks assigned to wards and a map with revised ward boundaries must be appended to the ordinance or resolution. The ordinance or resolution and the appended lists and maps must be filed with the county clerk of each county in which the municipality is located within five days after passage.

members of a racial or language minority group in the political process and their ability to elect representatives of their choice.

If the population of a ward increases above the maximum of its permitted population range or if the population of a ward must be decreased for one of the reasons immediately above, the ward must be divided into two or more wards in compliance with Wis. Stat. § 5.15(2)(b). If the population of a ward decreases below the minimum of its population range or if the population of a ward must be increased for one of the reasons immediately above, the ward must, if possible, be combined with an adjoining ward, or the underpopulated ward and one adjoining ward must be combined and together subdivided into two or more wards.

Notwithstanding the general rule regarding the creation of wards, no city electing its common council at large in which the total population is less than 1,000, and no village or town in which the total population is less than 1,000, is required to be divided into wards. However, any such city, village, or town may divide itself into wards if the creation of wards facilitates the administration of elections. Likewise, no village or town located in a county having only one town (Menominee County) is required to be divided into wards.

Creation of Wards Consistent with the Population Requirements of the Tentative County Supervisory District Plan

Every municipality is required to make a good faith effort to accommodate the tentative plan submitted by the county or counties in which it is located. If a municipality is unable to accommodate the tentative plan, the municipality is nonetheless required to divide itself into wards in a way that creates municipal districts that are in accordance with the population requirements of the tentative plan.

Furthermore, if the legislature, in the process of redistricting legislative or congressional districts,⁵ establishes a district boundary within a municipality that does not coincide with the boundary of a ward established under the municipality's ordinance or resolution, the municipal governing body must, no later than April 10 of the 2nd year following the year of the federal decennial census on which the act is based, amend the ordinance or resolution to the extent required to effect the act. The amended ordinance or resolution must designate the polling place for any ward that is created to affect the legislative act. However, counties or cities are not compelled to alter or redraw supervisory or aldermanic districts.

Aldermanic Districts

Aldermanic Districts are built using the same wards as county supervisory districts. Aldermanic districts have to be substantially equal in population. When a municipality creates its ward plan, it therefore not only has to accommodate the tentative plan for supervisory districts, but also has to allow for the creation of equal aldermanic districts.

COUNTY ENFORCEMENT OF MUNICIPAL DIVISION REQUIREMENTS

If a municipality does not divide itself into wards as required by statute, the county in which the municipality is located, or any elector of the municipality may petition the circuit court in which the municipality is located and submit a proposed ward division plan for the municipality. The plan must be submitted to the circuit court within 14 days following the expiration of the 60-day period in which the municipality has to adjust its wards following its receipt of a tentative supervisory district plan from a county following the decennial census.

If the circuit court finds that the existing division of the municipality does not comply with statutory requirements for redistricting, the circuit court will review the plan submitted by the petitioner and, after reasonable notice to the municipality, may adopt the plan or any other plan that complies with statutory requirements. The plan adopted by the circuit court is temporary and remains in effect until the municipality enacts or adopts a ward plan that complies with statutory requirements.

⁵ Pursuant to article IV, section 3, of the constitution.

CHAPTER 3: LEGAL ISSUES IN REDISTRICTING

ONE PERSON, ONE VOTE IN COUNTY ELECTIONS

The “one person, one vote” requirement arises under the equal protection clause of the United States Constitution and requires that members of a local elected body be drawn from districts of *substantially equal* population.⁶ Exact equality of population is not required.

PRINCIPLES OF ONE PERSON, ONE VOTE

Measuring Population Equality

“Substantially equal in population” is measured utilizing the following statistical methods:

1. *Ideal District Size.* Population equality is determined by calculating a district’s deviation from ideal district size. Ideal district size is determined by dividing the total population by the number of seats involved. Deviation is determined by calculating the extent to which an actual district is larger (has a “+” deviation) or smaller (has a “-” deviation) than the ideal district size. For example, the 2000 census reveals that ABC County has a total of 100,000 people with 10 supervisors, one for each district. The ideal population for each district is calculated as follows:

$$100,000 / 10 = 10,000 \text{ people per district}$$

2. *Calculating Relative Deviation from Ideal District Size.* Relative deviation is used to determine whether the 10% deviation rule (discussed below) has been achieved. Relative deviation is calculated by dividing the population deviation from the ideal population by the ideal population and is expressed in terms of a percentage. For example, if there is a 500-person deviation from the ideal population of 10,000 people, the relative deviation is calculated as follows:

$$500 \text{ (amount over ideal population)} / 10,000 \text{ (ideal population)} = .05 \text{ or } 5\%$$

3. *Overall Range.* Once the relative deviation is calculated for each individual district, the overall deviation range is determined. This statistic is calculated by determining the difference between districts with highest and lowest relative deviation. For example, if the highest and lowest deviations are +5% and -4% respectively, the overall range is 9%. Overall range is most commonly used in evaluating whether a district plan meets the one-person one, vote equal population standard.

Acceptable Deviation

1. *The 10% Rule.* The general rule that courts have applied in evaluating the constitutionality of redistricting is that districts should have a total population deviation of no more than 10% between the most populated district and the least populated district. Deviations below 10% in overall range are generally presumed to be constitutional. Deviations above 10% in overall range are presumed to be unconstitutional.

Courts have made exceptions to the 10% rule where a local government can demonstrate that legitimate reasons exist for the deviation. As such, the 10% rule is not hard and fast and must be considered in the particular facts and circumstances facing a local government in redistricting.

⁶ States may rely on total population (not only registered or eligible voters) to satisfy the one person, one vote requirement when drawing districts. *See Evenwel v. Abbott*, 136 S.Ct. 1120 (2016).

However, a redistricting plan with a deviation of 16.5% is unconstitutional because it substantially deviates from the 10% range that is presumed to be constitutional.⁷

2. *Justifying Deviations Greater Than 10%.* A county can justify a deviation greater than 10% based on traditional redistricting concepts. These concepts include drawing districts that are compact and contiguous (all parts connected and touching), keeping political subdivisions intact, protecting incumbents, preserving the core of existing districts, and complying with the Voting Rights Act.

In addressing acceptable deviations involving local government redistricting, the United States Supreme Court in *Abate v. Mundt*, 403 U.S., 182, 185 (1971) recognized that slightly greater deviations may be acceptable in the case of local governments due to their often-smaller size and specific circumstances:

The facts that local legislative bodies frequently have fewer representatives than do their state and national counterparts and that some local legislative districts may have a much smaller population than do congressional and state legislative districts, lend support to the argument that slightly greater percentage deviations may be tolerable for local government apportionment schemes. Of course, this Court has never suggested that certain geographic areas or political interests are entitled to disproportionate representation. Rather, our statements have reflected the view that the particular circumstances and needs of a local community as a whole may sometimes justify departures from strict equality.

In summary, the key for local officials to satisfy the one person, one vote standard is to develop supervisory district plans that keep the overall range below 10%. When district plans exceed this threshold, local officials should be prepared to justify the overall deviation by showing that the districts were created based on legitimate, consistently applied and nondiscriminatory redistricting policies.

MINORITY POPULATIONS AND CONSIDERATIONS OF RACE IN REDISTRICTING

Dilution and Methods of Dilution

Vote dilution, as opposed to vote denial, refers to the use of redistricting plans and other voting practices that unlawfully minimize or cancel out the voting strength of racial and other minorities. Three techniques frequently used to dilute minority voting strength are “fracturing,” “stacking,” and “packing.” Fracturing refers to fragmenting concentrations of minority population and dispersing them among other districts to ensure that all districts are majority white. Stacking refers to combining concentrations of minority population with greater concentrations of white population, again to ensure that districts are majority white. Packing refers to concentrating as many minorities as possible in as few districts as possible to minimize the number of majority-minority districts.

Section 2 of the Voting Rights Act: Prevention of Unlawful Voting Practices

1. *General Purpose.* Section 2 of the Voting Rights Act is designed to prevent dilution of voting strength of racial and other minorities through redistricting. Section 2 provides that a voting practice, such as redistricting, is unlawful if it “results” in discrimination, i.e., if, based on the totality of circumstances, it provides minorities with “less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.” A court must look to the “totality of circumstances” in determining whether a voting rights violation of Section 2 has occurred. Factors to be considered include, but are not limited to, bloc voting, a history of discrimination, depressed levels of minority employment, income disparity, and a lack of minorities elected to office.

⁷ *Connor v. Finch*, 431 U.S. 407, 416-418 (1977).

Section 2 does not create a right of proportional representation for minorities, i.e. a right to have members of a protected class elected in numbers equal to their proportion in the population. The ultimate question to be answered under a Section 2 challenge is whether the minority has been denied an equal opportunity to participate and elect candidates of his or her choice.

2. *Scope.* Section 2 of the Voting Rights Act can apply to any jurisdiction in any state. It enables a person filing suit to prove a violation of Section 2 if, as a result of the challenged practice or structure, plaintiffs did not have an equal opportunity to participate in the political process and to elect representatives of their choice.

When it was first enacted, the Voting Rights Act prohibited discrimination based on “race or color.” In 1975, Congress extended the protection of the act to language minorities, defined as American Indians, Asian-Americans, Alaskan Natives, and persons of Spanish heritage. Consequently, under Section 2, a governing body may not create districts that result in the denial or abridgment of any U.S. citizen’s right to vote on account of race, color, or status as a member of a language minority group.

3. *Establishing a Section 2 Violation.* In *Thornburg v. Gingles*, 478 U.S. 30, 44 (1986), the United States Supreme Court developed a three-part test that a minority group must meet in order to establish a vote dilution claim under Section 2 of the Voting Rights Act. The test requires that a minority group prove that (1) it is sufficiently large and geographically compact to constitute a majority in a single-member district; (2) it is politically cohesive; and (3) in the absence of special circumstances, bloc voting by the white majority usually defeats the minority’s preferred candidate. Stated another way, if these three conditions are present, the presumption is that a minority district must be established.

In creating a majority-minority district, the percentage of minorities required to provide minority voters with a fair chance to elect their candidate must be considered. In making this determination, information about differences between the majority and minority population regarding voter registration, past voter participation, and, especially, voting age population needs to be examined. The goal is to create a district with an effective voting majority of minority voters. There is no fixed percentage of minority population that translates into an effective voting majority in all cases. Rather, that percentage depends on the totality of circumstances. The percentage of minority voters assigned to a district must be based on empirical evidence rather than an arbitrarily applied formula. Also, those responsible for redistricting must follow the traditional redistricting principles of compactness, contiguity, and respect for political subdivisions. Lacking empirical evidence or focusing solely on creating a majority-minority district can result in a racial gerrymander— a district that is drawn solely or predominantly on account of race.

In order to satisfy the first factor, the minority must make up 50% plus 1 of the voting age population (VAP) in a district on the theory that only those of voting age have the potential to elect candidates of their choice within the meaning of Section 2. The Supreme Court affirmed this view in *Bartlett v. Strickland*, 129 S.Ct. 1231 (2009) by holding that: “Only when a geographically compact group of minority voters could form a majority in a single-member district has the first *Gingles* requirement been met.”

With respect to the compactness element of the first factor, the Supreme Court has ruled that a district complies with Section 2 if it “is *reasonably* compact and regular, taking into account traditional redistricting principles such as maintaining communities of interest and traditional boundaries.” Most courts have applied an “eyeball” test to determine compactness, i.e., if a district looks reasonably compact and is similar in shape to other districts drawn by the jurisdiction it is deemed compact within the meaning of Section 2 and the first *Gingles* factor.

In order to satisfy the cohesion factor, the Supreme Court held in *Gingles* that political cohesion can be shown by evidence “that a significant number of minority group members usually vote for the same candidates.” Elsewhere in the opinion, the Court said that racial bloc voting and political cohesion could be established “where there is ‘a consistent relationship between [the] race of the voter and the way in which the voter votes.’” Most courts have applied a common-sense rule that if a majority of minority voters vote for the same candidates a majority of the time, the minority is politically cohesive.

The third *Gingles* factor (whether white bloc voting is “legally significant”) is satisfied if the majority votes sufficiently as a bloc to enable it “usually” to defeat the minority’s preferred candidate. The fact that some minority candidates may have been elected does not foreclose a Section 2 claim. Instead, where a challenged scheme generally works to dilute the minority vote, it cannot be defended on the ground that it sporadically benefits minority voters.

Shaw v. Reno: Restricting Considerations of Race

The United States Supreme Court has placed strict limits on the manner in which race may be considered in redistricting. In *Shaw v. Reno*, 509 U.S. 630 (1993), the Court found that where racial considerations predominate in the redistricting process to the subordination of traditional non-race-based factors, the redistricting will be subject to a strict scrutiny test. The state or local government must demonstrate that race-based factors were used in furtherance of a compelling state interest, such as compliance with the Voting Rights Act and where the local government applied race-based factors in a “narrowly tailored” manner to achieve this interest.

Decisions following *Shaw* have established the following principles in redistricting: (1) race may be considered as a factor along with other traditional factors; (2) race may not be considered as the predominant factor in redistricting to the detriment of traditional redistricting principles; (3) bizarrely shaped districts are not unconstitutional *per se* but may be evidence that race was the predominant consideration in redistricting; (4) if race is the predominant consideration in redistricting, it may be constitutional if it is “narrowly tailored” to address a compelling government interest, i.e., the redistricting will use race no more than as necessary to address the compelling government interest. In 2015, the U.S. Supreme Court reaffirmed these principles, and held that voters may present statewide evidence of discrimination to prove that an individual district was drawn in a racially discriminatory manner.⁸ This means that voters may present evidence that a statewide discriminatory redistricting policy was applied to the specific district being challenged in court.

In light of *Shaw* and the cases that followed it, local governments should be careful to adopt and apply redistricting criteria that fairly consider race as well as traditional redistricting factors. These criteria should include:

- Using identifiable boundaries;
- Using whole voting precincts, where possible and feasible;
- Maintaining communities of interest;
- Basing the new plan on existing precincts;
- Adopting precincts of approximately equal size;
- Drawing precincts that are compact and contiguous;
- Keeping existing representatives in their precincts; and
- When considering race, narrowly tailoring to comply with the Voting Rights Act.

While the Supreme Court, in *Shaw v. Reno*, has limited the use of race in redistricting, it recognizes that race should not be excluded altogether. It remains impermissible for counties and other governmental entities to use redistricting to unlawfully minimize or cancel out minority voting interests. Rather, race should

⁸ *Alabama Legislative Black Caucus v. Alabama*, 135 S. Ct. 1257 (2015).

have equal standing with traditional districting principles when legislators or other government officials develop district plans.

GERRYMANDERING

Gerrymandering is the process where the majority party draws an election district map with district boundary lines that give itself an unfair and undeserved numerical vote advantage during each election. This numerical advantage is obtained by maximizing the number of districts with a majority of voters from the majority party. Here, majority party refers to the party with a majority of seats in the state legislature, which usually but not always corresponds to the party that received the majority of total votes in the previous election. Exceptions are possible due to gerrymanders.

A gerrymandered redistricting map concentrates minority party voters into the fewest possible number of election districts (packing), distributes minority party voters among many districts so their vote will not influence the election outcome in any one district (vote dilution), and/or divides incumbent minority party legislator districts and constituents up among multiple new districts with a majority of majority party voters (fracturing). In some gerrymander cases, multiple minority party incumbents are forced to run against each other in the same district. Bizarre election district boundaries are drawn to connect distant disjointed areas with thin strips of land running through unpopulated areas such as industrial parks and cemeteries, down highways and railroad tracks, and through bodies of water such as rivers, lakes, and the ocean.

While racially gerrymandered districts and districts that violate the “one person, one vote” principle are unconstitutional, the Supreme Court held that partisan gerrymandering claims are not justiciable.⁹ This means that opponents of districts gerrymandered for partisan purposes may not challenge them in court. Wisconsin’s county board supervisors are elected in nonpartisan elections, so partisanship should not be an issue in drawing county board supervisor districts. However, critics of potential redistricting plans may refer to gerrymandering because the litigation has been controversial.

DETERMINATION OF COUNTY BOARD SIZE IN DECENNIAL REDISTRICTING

Related to the issue of equal representation is the issue of county board size. Wisconsin counties may increase or decrease the size of their boards during redistricting following the decennial census. Once a board determines its size, district lines can then be drawn in accordance with traditional redistricting principles, substantial equal population requirements, and minority and race considerations. Redistricting is the best time for county leaders to evaluate the size of their county boards since the number of seats in an electoral body are a key component in determining what each seat will look like.

The maximum number of county board supervisors any county may have is governed by statute. The classification plan establishing the maximum number of supervisors is detailed in Wis. Stat. § 59.10(3) as follows:

- a. Counties having a population of less than 750,000 but at least 100,000: 47 supervisors.
- b. Counties having a population of less than 100,000 but at least 50,000: 39 supervisors.
- c. Counties having a population of less than 50,000 but at least 25,000: 31 supervisors.
- d. Counties having a population of less than 25,000 and containing more than one town: 21 supervisors.

If the population of any county is within 2% of the minimum population for the next most populous grouping, the county board, in establishing supervisory districts may employ the maximum number for districts set for the next most populous group.

⁹ *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019).

CHAPTER 4: GUIDELINES TO DECENNIAL REDISTRICTING

Redistricting is a complex process. The following guidelines will assist counties in moving forward with redistricting and in meeting their statutory obligation under Wis. Stat. § 59.10(3). Included are general time frames within which each step in the process should be completed.

STEP ONE: Determine the Board Size and Appoint a Redistricting Committee February 2021 and March 2021

As part of the redistricting process, county boards need to determine the number of districts that will be incorporated in the redistricting plan that, by definition, will determine the size of the board (county boards are single member districts). If the board size is to remain the same, no action should be taken. If the board size is going to increase or decrease, the county board should adopt a resolution establishing the new number of districts and board size.

County boards must then decide who will be responsible for overseeing the process of drawing district lines. The whole board can work in this capacity, but it is more efficient to select a redistricting committee that is tasked with the responsibility of drawing district lines. There are no restrictions on who may serve on a redistricting committee. A committee may, therefore, include county board members, representatives of affected municipalities, and citizens. Considering the integral role that municipalities play in the redistricting process and the obligation of counties to solicit suggestions from municipalities in the development of the plan, it is beneficial to have one or more representatives from municipalities on the committee.

The redistricting committee is not responsible for actually drafting the redistricting plans. The actual drafting will be done by county staff or a qualified consultant retained by the county to draw the district lines. The redistricting committee is responsible for establishing the guidelines that will govern the redistricting process and reviewing and making alterations to draft plans prepared by the consultant or staff.

STEP TWO: Establish Guidelines for Redistricting March 2021

The redistricting committee is responsible for establishing the principles that will guide the redistricting process. The primary focus of the consultant will be on establishing a redistricting plan that focuses on substantial equal, contiguous, and compact districts. The redistricting committee should determine the extent to which other traditional concepts of redistricting will be reflected in the plan including preservation of political subdivisions, communities of interest and cores of prior districts, protection of incumbent interests, and consideration of minority interests, when appropriate. Additional considerations include municipal ward size restrictions, development of aldermanic districts, and other municipal redistricting concerns. The redistricting committee will need to guide the consultant in the development of plans to ensure that the guidelines chosen by the redistricting committee will be reflected in the plan.

STEP THREE: Develop a Tentative Plan April 2021 through May 2021

Following receipt of census information, counties need to proceed forward with the preparation of a tentative plan. As indicated above, counties have 60 days under statute to complete this process from receipt of the census information.

Suggested Timeline

The following is a general timeline to assist in moving forward with the process:

1. Test the 2011 county plan. Using the 2020 census data, test the existing county plan. It may be possible to use the existing county plan as the basis for the tentative plan.
2. Draft plan options (about two weeks).
3. Review and revise plan (about two weeks).
4. Select a tentative plan.
5. Solicit municipal input (for split municipalities).
6. Hold a public hearing (early May).
7. Adopt tentative plan (May county board meeting).

Tips for Developing a Tentative Plan

1. When developing the tentative county plan, try to create districts that use whole contiguous municipalities and whole contiguous parts of municipalities. To be contiguous, the municipalities and/or parts of municipalities must have a common boundary or corner.
2. In the event that municipalities need to be divided, try first to divide those municipalities that are required to otherwise divide themselves under law, i.e., those with populations over 1,000. Only divide smaller municipalities when it is absolutely necessary in order to create supervisory districts that comply with the principle of one person, one vote.
3. Whenever it becomes necessary to divide a municipality, the county must submit a request to the municipality in writing, stating the size of the required ward and location for contiguity purposes. The county plan should not impose ward lines. It should inform the municipality of the types of wards it needs for county supervisory district purposes. The county should work with the municipality to create wards that meet both the county and municipal needs.
4. Special efforts must be made when working with cities that elect the members of the common council from districts. In these cases, the wards must serve both the county supervisory district purposes and the aldermanic district purposes. Careful work and negotiation with municipalities is advisable in this process.
5. The ultimate goal of any county redistricting plan should be 0% deviation from the norm; however, only districts which are *substantially equal* in population are required. With advances in mapping and redistricting software and technology, deviations below 10% (and potentially significantly lower considering the circumstances) should be readily achievable.
6. Amend the plan following the public hearing to address any issues that warrant consideration.

STEP FOUR: Create Municipal Wards

June 2021 through July 2021

As indicated above, every municipality in a county is required to make a good faith effort to accommodate the tentative plan submitted by the county or counties in which it is located. If a municipality is unable to accommodate the tentative plan, the municipality must still divide itself into wards in a way that creates county supervisory districts that are in accordance with the population requirements of the tentative plan.

STEP FIVE: Finalize and Adopt the Redistricting Plan

August 2021 through September 2021

The following is a timeline for completing the redistricting process following receipt of ward plans from municipalities:

1. Adjust the tentative plan to accommodate ward plan changes.
2. Hold a public hearing (August county board meeting).
3. Enact a final plan (September county board meeting).

STEP SIX: Effectiveness of the New Plan and Application to Elections

Any decennial redistricting plan takes effect on November 15, 2021 (following its enactment by the county board). The plan first applies to the election of supervisors at the next spring election following the effective date that immediately precedes the expiration of the terms of office of supervisors in the county.

CHAPTER 5: MID-TERM REDISTRICTING

Section 59.10(3)(cm) governs mid-term redistricting, i.e., changes made during the decade following the decennial redistricting. Importantly, the only action that may be taken mid-term is a reduction in board size and corresponding redrawing of district lines to reflect the reduced board size. There are also circumstances involving municipal boundary adjustments when a board may, or may be required to, adjust districts to reflect such things as annexation or incompatibility of wards with legislative or congressional districts. However, the board may not increase or reduce the number of districts in such cases. The traditional concepts of redistricting and legal concerns outlined in this handbook apply in creating mid-term districts.

REDUCTION IN BOARD SIZE

Procedure for Mid-Term Redistricting to Reduce Board Size: Initiation by the Board

1. *Timing and Procedure.* Under Wis. Stat. § 59.10(3)(cm), a county board may, any time after the enactment of the decennial supervisory district plan, decrease the number of supervisors. Following the adoption of a resolution to reduce the size of the board, the board is required to redistrict, readjust, and change the boundaries of supervisory districts, so that (1) the number of districts equals the number of supervisors; (2) the districts are substantially equal in population according to the most recent countywide federal census; (3) the districts are in as compact a form as possible; and (4) the districts consist of contiguous municipalities or contiguous whole wards in existence at the time at which the redistricting plan is adopted. In the redistricting plan, the board must adhere to statutory requirements with regard to contiguity and must, to the extent possible, place whole contiguous municipalities or contiguous parts of the same municipality within the same district. In mid-term redistricting, the original numbers of the districts in their geographic outlines, to the extent possible, must be retained. Mid-term redistricting may be done once in between decennial redistricting.
2. *A Board May Not Mid-Term Redistrict if a Petition for Redistricting or Referendum for Mid-Term Redistricting is Pending.* A county board may not enact a mid-term redistricting plan during the review of a petition or referendum to decrease the size of the county board. However, if the electors of the county reject a change in the number of supervisory districts by referendum, the board may proceed with mid-term redistricting as outlined above.

Petition and Referendum to Reduce Board Size Mid-Term

1. *Timing.* The electors of a county may, by petition and referendum, decrease the number of supervisors at any time after the first election is held following enactment of a decennial supervisory district plan. This means that the electors cannot initiate action to revise the board's decennial supervisory district plan until after the April 2022 elections, i.e., "the first election held following enactment of the supervisory district plan."
2. *Procedure*
 - Initial Petition A petition for a change in the number of supervisors may be filed with the county clerk. Prior to circulating a petition to decrease the number of supervisors in any county, the petitioner must register with the county clerk, giving the petitioner's name and address and indicating the petitioner's intent to file such a petition. No signature on a petition is valid unless the signature is obtained within the 60-day period following registration. The petition must specify the proposed number of supervisors to be elected.

- Alternate Petition Within 14 days after the last day for filing an original petition, any other petitioner may file an alternative petition with the county clerk proposing a different number of supervisors to be elected. If the petition is valid, the alternative proposed in the petition must be submitted for approval at the same referendum. An alternative petition is subject to the same registration and signature requirements as an original petition.
- Petition Requirements Each petition must conform with the requirements of Wis. Stat. § 8.40 and must contain a number of signatures of electors of the county equal to at least 25% of the total votes cast in the county for the office of supervisor at the most recent spring election preceding the date of filing. The county clerk is responsible for determining the sufficiency of a petition.
- Referendum Once the county clerk determines that one or more petitions are sufficient, the county clerk must call a referendum concurrently with the next spring or general election in the county that is held not earlier than 70 days after the determination is made. If the referendum is approved by a majority of the electors voting on the referendum, the board must enact an ordinance prescribing revised boundaries for the supervisory districts in the county in accordance with the referendum. The districts created by the board are subject to the same requirements that apply to decennial redistricting. The county clerk must file a certified copy of any redistricting plan enacted under this subdivision with the Secretary of State.

Limitation on Mid-Term Redistricting to Reduce Board Size: Only Once a Decade

Under Wis. Stat. § 59.10(cm)(3), if the number of supervisors in a county is decreased by the board or by petition, no further action may be taken by the board or by petition until after enactment of the next decennial supervisory district plan by the board.

Mid-term Changes Due to Municipal Boundary Adjustments: No Changes in the Number of Supervisory Districts

After the enactment of a decennial supervisory plan, the board may amend the plan to reflect a municipal incorporation, annexation, detachment, or consolidation. The number of supervisory districts in the county may not be changed by any action under this paragraph.

On the other hand, a board must amend the county supervisory district plan to reflect any renumbering of the wards specified in the plan when a municipality enacts or adopts a revised division ordinance or resolution pursuant to Wis. Stat. § 5.15(4)(a)¹⁰. Such amendment must be made within 60 days after the enactment or adoption of the revised division ordinance.

In both of these scenarios, the districts under the amended plan must be substantially equal in population according to the most recent countywide federal census, as compact a form as possible, and consist of contiguous municipalities or contiguous whole wards in existence at the time at which the redistricting plan is adopted. The original numbers of the districts in their geographic outlines must be retained to the extent possible. An amended plan becomes effective on the first November 15 following its enactment.

¹⁰ Section 5.15(4)(a), Wis. Stats., provides, in relevant part that:

If the legislature, in an act redistricting legislative districts under article IV, section 3, of the constitution, or in redistricting congressional districts, establishes a district boundary within a municipality that does not coincide with the boundary of a ward established under the ordinance or resolution of the municipality, the municipal governing body shall, no later than April 10 of the 2nd year following the year of the federal decennial census on which the act is based, amend the ordinance or resolution to the extent required to effect the act. The amended ordinance or resolution shall designate the polling place for any ward that is created to effect the legislative act. Nothing in this paragraph shall be construed to compel a county or city to alter or redraw supervisory or aldermanic districts.



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