



## Red State, Blue State

Densely populated Democratic cities lead to GOP redistricting edge.

In Wisconsin's often-heated redistricting debates, one fact is frequently overlooked. Even if Republicans had not gerrymandered legislative districts, they probably still would hold a majority of seats in both houses of the Wisconsin legislature—likely not as large or as safe a majority, but a majority still.

The reasons for this are rooted in the state's political geography, its ideological split personality, and its urban-rural divide. These are nuances that get lost in some of the shorthand characterizations of Wisconsin as a “battleground,” “purple,” or “swing” state, or as a place where Democrats win most of the votes while Republicans win most of the legislative seats.

“My preferred description is that Wisconsin, politically speaking, is not one moderate state; rather, it is one very conservative state overlapping another very liberal one,” said John D. Johnson, research fellow in the Lubar Center for Public Policy Research and Civic Education at Marquette Law School.

Historically, “Wisconsin gave the nation the rabid anti-communist Sen. Joseph McCarthy at the same time Milwaukee elected its third mayor from the Socialist Party,” Johnson noted at an “On the Issues with Mike Gousha” online program at Marquette Law School in February.

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Republicans are more spread out through rural and suburban areas, Johnson said. He called this “asymmetrical polarization,” pointing out that 21 percent of Democrat Joe Biden's 2020 Wisconsin votes came in wards that he carried by at least 50 percentage points. That compares with Democratic presidential candidate Al Gore, who in 2000 received only 9 percent of his vote in Wisconsin from wards with such lopsided results.

This is a national trend. In his 2008 book, *The Big Sort: Why the Clustering of Like-Minded America Is Tearing Us Apart*, journalist Bill Bishop argued that, since the 1960s, Americans have been segregating themselves into areas where others agree with them politically.

But in his own 2019 book, *Why Cities Lose: The Deep Roots of the Urban-Rural Political Divide*, political scientist Jonathan Rodden contended that the split goes much further back, to the 19th century's urban concentration of unionized manufacturing workers, through the 20th century's migration of immigrants and people of color to cities, culminating with the 21st-century preference of highly educated “knowledge workers” for urban neighborhoods—all bolstering big-city Democratic coalitions.

However, that urban strength becomes a statewide weakness for Democrats when legislative districts are drawn, said Johnson and Rodden, a professor at Stanford University's Hoover Institution. Because various state and federal

laws and court decisions require districts to be compact and contiguous, to respect city and county lines wherever possible, and to maximize opportunities for racial and linguistic minorities to elect representatives, Democrats typically will be packed into a disproportionately small number of predominantly urban districts, they said.

Some on the GOP side cite this demographic logic as proof that they didn't do anything wrong in their 2011 Wisconsin legislative redistricting.

"A political result does not make it political gerrymandering," said Madison attorney Jim Troupis, who worked on the 2011 maps and represented Republicans in the previous two rounds of redistricting. "Because legislative districts are geographic to a significant degree, the results will naturally reflect the geography that the state has."

Even the maps drawn by a federal court after the 2000 census skewed unintentionally in favor of Republicans, conceded Law Forward litigation director Doug Poland, the Madison attorney who represented Democrats in two lawsuits over the 2011 maps.

## Running Up the Score

But the Republican-drawn 2011 maps went far beyond reflecting the GOP's built-in advantage, said Johnson and Kenneth Mayer, a University of Wisconsin-Madison professor of political science.

Although "cities tend to be much more Democratic . . . , that does not come close to explaining the size, the scope, the endurance of the gerrymander," said Mayer, who has served as an expert witness for Democrats in redistricting litigation.

"Over the past decade, mathematicians and quantitative social scientists have developed a set of sophisticated methods for measuring the partisan bias of maps," Johnson said. "No matter the technique used, every examination of Wisconsin's state Assembly map reveals a remarkable gerrymander."

Mayer and Johnson pointed to the work of Jowei Chen, a University of Michigan political scientist who studied the Wisconsin maps. "Wisconsin's natural political geography, combined with a nonpartisan process following traditional districting principles, could plausibly produce a plan with a modest amount of Republican-favoring electoral bias," Chen wrote in a 2017 article in the *Election Law Journal*. However, "these levels of natural electoral bias pale in comparison to the much more extreme electoral bias exhibited by the [GOP] plan."

Based on his own research, Johnson said, "The gerrymandered map drawn in 2011 probably hasn't cost the Democrats control of the Assembly in any election this decade, with the possible exception of 2012. Nonetheless, it has inflated the Republican majority in the close elections of 2012, 2018, and 2020." And, in each election, he said, it has meant that many Wisconsinites have not had real competition for their votes.

For example, a different map might energize Democrats to compete in more districts that they now leave uncontested, Johnson said, and it might enable them to raise more campaign cash, while increasing the chances that they could retake the majority if the statewide political tide turned in their favor.

But alternative approaches pose other challenges.

In his executive order in 2020 creating the People's Maps Commission, the Democratic governor, Tony Evers, directed the new advisory body to propose maps that "shall, whenever possible," be "free from partisan bias and partisan advantage."

To fulfill that mandate, former Democratic Assembly member Fred Kessler argued, the commission should ignore traditional rules and guidelines that limit crossing county and municipal lines. It should look at partisan voting data to intentionally draw a certain number of competitive districts, Kessler said in a column written for *The Fulcrum* and reprinted in the *Wisconsin State Journal*.

"I think that's a terrible idea," said Kessler's fellow Democrat, former Senate Majority Leader Tim Cullen. Trying to engineer districts that way "would be gerrymandering competitiveness," Cullen said at an October 2020 "On the Issues with Mike Gousha" program.

Wisconsin Institute for Law and Liberty President Rick Esenberg agreed that mandating competitive districts would be just "a different form of gerrymandering."

Iowa's Legislative Services Agency is prohibited from using election results in redistricting, and maps drawn by the nonpartisan civil servants still have increased competitiveness, former Senate Republican leader Dale Schultz said during the October program.

"No map is perfect," said Schultz, who has joined forces with Cullen to work for changes in redistricting. But once maps are drawn, he added, "It will be obvious what's a fair map and what's not a fair map." ■

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# Closer to Home

Local governments go first—usually—in Wisconsin redistricting.

Every 10 years, the redistricting spotlight is trained on the state legislatures and Congress. But in Wisconsin, the process typically starts at the local level, and every municipal and county government plays a role.

In the 2010 cycle, however, the Wisconsin legislature pushed the locals out of the way to dash ahead with unusually swift redistricting plans for itself and the state's U.S. House seats. And in the current cycle, the coronavirus pandemic has slowed census results so much that local governments might not be able to finish their work in time for the spring 2022 elections. Meanwhile, Wisconsin's two largest counties have established redistricting commissions—a model that their voters, through advisory referendums, have urged the state to adopt as well.

Like the legislature, local governments must keep districts substantially equal in population, draw districts so that they are compact and contiguous, and respect the voting rights of racial and linguistic minorities. In addition to the laws and court decisions that guide state and federal redistricting, a 1965 decision by the Wisconsin Supreme Court struck down most counties' systems of allocating supervisors by individual towns and, for villages and cities, by municipal wards; as summarized by the state's Legislative Reference Bureau (LRB) in a 2016 report, the result of those systems had been that "members of the county board represented constituencies that were sometimes vastly different in population."

Under a process established in the 1970s, Wisconsin gives its counties the first shot at using the census data. Within 60 days of receiving those data—but no later than July 1, current state law says—the counties must tentatively redraw the lines of their supervisory districts. Those supervisory district maps are shared with the cities, villages, and towns within each county. The municipal governments then have another 60 days to use the tentative county board maps to redraw lines for their voting wards, the equivalent of precincts in other states.

Because nobody is elected from the wards themselves, they aren't required to have substantially equal populations like aldermanic, supervisory, and legislative districts, the Wisconsin LRB explained in its guidebook, *Redistricting in Wisconsin 2020*. Instead, state law sets acceptable population ranges for wards according to the size of each municipality.

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While wards must be adjusted if they fall outside those population ranges, they otherwise aren't supposed to change much, to ensure consistency and convenience for voters, the guidebook said. But they must be compact and contiguous and should be set up to accommodate the creation of aldermanic, supervisory, legislative, and congressional districts that meet all legal requirements, including protecting the voting rights of people of color, according to the guidebook.

Adoption of the ward maps sets off another 60-day clock, this one for cities to redraw aldermanic districts and for counties to finalize their supervisory districts. That's not an issue for villages, towns, or nearly all school districts, which elect their board members at large from the entire community. Some smaller cities also elect all their aldermen at large, while Eau Claire elects five city council members from districts but elects the council president and five other members at large.

However, redistricting timelines do matter—in different ways—for the Milwaukee Public Schools (MPS) and the Racine Unified School District (RUSD) school boards. Since the early 1980s, state law has required MPS, Wisconsin's largest K–12 school system, to elect eight of its nine board members from districts, leaving just one seat elected at large. The state legislature shifted RUSD to electing all nine of its board members from districts as well, starting with the 2016 election.

At the time the first of these laws was adopted, the Milwaukee Common Council had 16 members, and the law specified that each of the eight school board districts would consist of two aldermanic districts. Within a few years, however, the law was changed to empower the Milwaukee school board to redistrict itself the same way that common councils do, and on the same schedule, within 60 days following the finalization of ward maps.

That was necessary because Milwaukee's council wasn't required to remain at 16 members or any other number divisible by eight. The redistricting process gives county boards and common councils the chance to change their sizes, and the Milwaukee Common Council took that opportunity to grow from 16 to 17 members, starting with the 1992 election, and then to shrink to 15 members, beginning with the 2004 election.

Similarly, the Milwaukee County Board of Supervisors dropped from 25 to 19 members, starting with the 2004 election, and then to 18 members, since the election in 2012.

For the upcoming redistricting cycle, Milwaukee Common Council President Cavalier Johnson and Milwaukee County Board of Supervisors Chair Marcelia Nicholson said earlier this year that they weren't aware of any efforts to change the sizes of their respective bodies. Madison voters opposed resizing their city council in an April 2021 advisory referendum. The issue has been discussed for such bodies as the West Allis Common Council and the Dane, Jefferson, and Marathon county boards.

## New Directions

The usual process changed in a big way for the last redistricting cycle, and more changes are ahead this time. A decade ago, Republicans were in control of state government and eager to cement that hold by approving new legislative and congressional district maps before a series of 2011 Senate recall elections that threatened their majority in the upper chamber, the LRB noted in its 2016 report.

Instead of waiting for local governments to redraw ward lines, GOP lawmakers used census blocks to start drawing their own maps. Those maps, approved in July 2011, were accompanied by a new law, 2011 Act 39, which retroactively authorized the new process and required local governments to adjust their ward lines to fit the legislative and congressional districts, instead of the other way around.

This time, the political calculus is different, with Republicans still running the legislature but Democrat Tony Evers in the governor's office and no recall elections on the horizon. GOP legislative leaders haven't said whether they plan to again invoke the Act 39 process, but the LRB guidebook warns local governments that it is possible.

Unlike common councils, county boards, and the MPS board, the Racine-area school board, RUSD, is required to follow the same process as Act 39, using census blocks to redistrict itself within 60 days after detailed census results are available, without waiting for ward maps.

A larger concern for the current redistricting cycle is the pandemic-driven delay in census results. That has repeatedly pushed back the U.S. Census Bureau's release of detailed redistricting data to the states. As of late April, those data were expected in late September, about six months later than usual.

That would force every county in Wisconsin to miss its statutory July 1 deadline to adopt a tentative supervisory district map. And if local governments then took the full 60 days each to draw up preliminary county board maps (and the RUSD map), then ward maps, and then aldermanic, MPS board, and final supervisory maps, they would not be done in time for the February 2022 primaries, let alone by December 1, 2021, the first day for candidates in the spring 2022 elections to circulate nominating petitions. As a result, the spring 2022 elections might have to use the existing maps, said Joseph Kreye, a senior coordinating attorney at the LRB.

In a January 2021 email, shortly after the Census Bureau announced a delay to late July, Mark O'Connell, executive director of the Wisconsin Counties Association, said, "We are aware of this issue and are working on a fix which likely will require legislative action."

Yet another new development is the rise of redistricting commissions to redraw the Dane and Milwaukee county board maps, a process approved by supervisors in each of those counties in 2016. Although the commission system is best known for its use in legislative and congressional redistricting in certain states, it is catching on in a growing number of cities and counties, primarily in California.

Milwaukee County's commission will consist of six retired judges, appointed by Nicholson and confirmed by the board, with technical assistance from the Southeastern Wisconsin Regional Planning Commission staff. Dane County's commission will consist of 11 citizens (none of whom is involved in formal politics or lobbying), appointed by the board chair and the county clerk and confirmed by the board, with technical assistance from county planners. In each county, the maps must be approved by the county board, and the commission will get at least one chance to redraw the map if the board rejects its first proposal.

Milwaukee County also has offered its system, free of charge, to help any municipality in the county redraw its ward and aldermanic district maps. Glendale was the first suburb to accept the county's offer. The city of Milwaukee is expected to use its normal process, with help from the city's Legislative Reference Bureau, its common council president said. The Milwaukee school board also plans to use the city bureau, as it did in the last cycle, assistant board clerk Jillian Kawala said. ■

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