



# Supreme Court of Wisconsin

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Clerk of Supreme Court

September 24, 2007

*To:* Interested Persons  
(See attached list)

*Re:* ***In the matter of the adoption of procedures for original action case involving state legislative redistricting***, Rules File No. 02-03

Greetings,

On February 26, 2003, this court voted to convene a committee to study and draft procedural rules that govern state legislative redistricting litigation in Wisconsin. On November 25, 2003, this court appointed a committee to review this court's opinion in Case. No. 02-0057-OA, Jensen et al. v. Wisconsin Elections Bd., et. al, 2002 WI 13, 249 Wis. 2d 706, 639 N.W.2d 537, as well as to review the history of state legislative redistricting in Wisconsin, rules and procedures of other jurisdictions, including federal and state courts, and propose procedural court rules.

The committee has filed its report with the court, a copy of which is enclosed. This report has not yet been reviewed by the court.

We are now sending the report out for comment. Following the receipt of comments, the court will decide how to proceed further. For example, the court may propose changes to the report. The court may schedule and conduct a public hearing on the report (as drafted or with suggested changes) and hold an open administrative conference to discuss this matter in the coming months.

You are invited to provide a written comment to this report within 40 days of the date of this letter, if at all possible. Please feel free to pass this report and invitation to comment to whomever you think might be interested.

September 24, 2007

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Written comments should be directed to Susan Gray, c/o Office of the Director of State Courts, P.O. Box 1688, Madison, WI 53701-1688 (telephone: 608-266-6708) (email: [susan.gray@wicourts.gov](mailto:susan.gray@wicourts.gov)). A courtesy electronic copy of your response would be appreciated. Also, if you have specific questions or inquiries regarding this matter, they may also be directed to Susan Gray.

Very truly yours,

Shirley S. Abrahamson  
Chief Justice |

SSA/skg

Encl.

cc: Justice Ann Walsh Bradley  
Justice N. Patrick Crooks  
Justice David T. Prosser, Jr.  
Justice Patience D. Roggensack  
Justice Louis B. Butler, Jr.  
Justice Annette K. Ziegler

# P R O P O S E D     D R A F T

(September 21, 2007)

## The Courts and Redistricting in Wisconsin: A Proposal Wisconsin Supreme Court: Redistricting Committee

### Introduction

This report to the Wisconsin Supreme Court consists of the following parts:

1. Background
2. Redistricting in Wisconsin
3. Principles of Redistricting
4. Development A Process for Court Consideration Following Legislative Impasse
5. Court Procedures following Legislative Impasse: A Recommendation
6. The Proposed Process and Time Line
7. Appendix

### Background

The Chief Justice of the Wisconsin Supreme Court, Shirley Abrahamson, has asked us to draft procedural rules, setting out the process for how Wisconsin state courts should handle litigation that may arise during state legislative and congressional redistricting. If the Wisconsin Legislature *does not enact a redistricting plan* following the decennial census and *a lawsuit challenging the existing districting is filed*, courts are called upon to develop a districting map that provides for districts equal in population.

Because of a series of landmark U.S. Supreme Court decisions issued in the 1960s, states must redraw congressional and state legislative district lines after each census in order to ensure that districts have equal populations and to account for changes in congressional apportionment.<sup>1</sup> The next round of redistricting will take place in 2011-2012 after the 2010 decennial census conducted by the federal government.<sup>2</sup> The requirement of population equality means that whatever districts exist in 2010 will be, almost by presumption, unconstitutional as soon as the new census data are issued. Population increases, declines, and shifts will inevitably render district populations unequal.

Redistricting is an inherently political process, one which defines the nature of representative government. All of the stakeholders – political parties, incumbent legislators, civil rights coalitions, interest groups, watchdog organizations, labor unions,

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<sup>1</sup> *Baker v. Carr* 369 U.S. 186 (1962); *Reynolds v. Sims* 377 U.S. 533 (1964); *Wesberry v. Sanders* 376 U.S. 1 (1964). Later decisions imposed a requirement of nearly absolute population equality for congressional districts, *Karcher v. Daggett* 462 U.S. 725 (1983). Larger population deviations are permitted for state legislative districts, *Mahon v. Howell* 404 U.S. 1201 (1971).

<sup>2</sup> Throughout this report, we use the term “legislative redistricting” to refer to the drawing of state legislative districts. “Congressional redistricting” refers to the drawing of U.S. House districts. “Reapportionment” refers to the allocation of congressional representatives to each state.

even individual voters – seek to draw districts in a way that helps their allies and puts their opponents at a disadvantage. The increasing sophistication of computer programs and Geographic Information Systems (GIS) makes it an easy task to draw alternative redistricting plans. The legal guidelines for redistricting – allowable population deviations, compactness, respect for political subdivisions and communities of interest, partisan fairness – are often ambiguous, and it is not clear how they should be applied, or whether they should apply at all. Criticisms of the process abound: incumbents draw safe districts that make them unbeatable; parties try to maximize the number of seats they are sure to win, and because of the inability of the Legislature to agree upon a plan, the courts are left with the task of drawing maps.<sup>3</sup> We do not address the merits of alternative redistricting processes, as these are issues for the Legislature and the electorate to address.

Lawsuits have become a routine part of the redistricting process, in part because courts become involved when state legislatures or commissions are unable to come to agreement on redistricting plans, but also because litigants raise objections to whatever plans are implemented. According to the National Conference of State Legislatures, in the most recent round there were 150 lawsuits filed in 40 states challenging redistricting plans.<sup>4</sup> At times there are multiple lawsuits filed simultaneously in state and federal court with plaintiffs often choosing whatever venue they think will be most sympathetic to their claims.

Most recently the issue has arisen of whether the Legislature can revise districting maps more than once in a decade. This was the situation in Colorado and Texas where a redistricted legislature revised the legislative maps to gain further partisan advantage. Colorado's second redistricting was a modification of a court drawn plan, a practice that had been done in Wisconsin. Colorado's redistricting was found unconstitutional by their state Supreme Court on the basis of a provision in their state constitution which was interpreted to mean that only one redistricting was permitted in a decade.<sup>5</sup> This decision could have implications for Wisconsin because the Wisconsin state Legislature has revised districting drawn by the Wisconsin Supreme Court. Whether this is applied to Wisconsin will depend on whether Wisconsin's Supreme Court interprets a similar Wisconsin Constitutional provision as the Colorado court did in their Constitution.<sup>6</sup> A further challenge to a second redistricting is the Texas case in which the U.S. Supreme Court affirmed the Texas redistricting, declaring that it did not violate the U.S.

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<sup>3</sup> Partisan redistricting – in which a party holding a legislative majority draws district lines to maximize the number of seats it controls – has a long history in Wisconsin.. Theobald's authoritative account of Wisconsin's experience cited an account of the redistricting after the 1890 census: "the Democrats were in power and made the existing apportionment so as to get out of it as many Democratic districts as possible. Previous Republican legislatures had set the example. . ." H. Rupert Theobald, *Equal Representation: A Study of Legislative and Congressional Apportionment in Wisconsin*, Reprint from the 1970 *Blue Book*, p. 28.

<sup>4</sup> See <http://www.ncsl.org/programs/legman/elect/law-article.htm>, last visited June 30, 2005.

<sup>5</sup> *Salazar v. Davidson* 79 P. 3<sup>rd</sup> 1221,1231 (2003)

<sup>6</sup> See *State ex rel. Thomson v. Zimmerman* 262 Wis. 644 (1953) where the Court held a one-apportionment per federal census based upon the Wisconsin Constitution.

Constitution (*Henderson v. Perry*)<sup>7</sup> Therefore, if the Wisconsin Supreme Court does not negate a legislative revision to the Court drawn maps based upon a state constitutional provision, it would be reasonable to expect legislative revisions in a Court-determined districting.

### Redistricting in Wisconsin

In Wisconsin, legislative redistricting is the responsibility of the state Legislature,<sup>8</sup> which must complete this process by the end of the first session after the census. Plans must be approved by a majority of both the Senate and Assembly, and are subject to a gubernatorial veto.<sup>9</sup> Plans are also subject to legal challenge on the basis of either state or federal constitutional or statutory objections.<sup>10</sup>

But redistricting *must* occur: if the state government fails to enact a plan, it cannot conduct an election using the existing districts (because population shifts have almost certainly created unconstitutional population inequalities). At the same time, if the existing districts are invalid, there must be some way to create a new districting plan, even if the Legislature is deadlocked. Doing nothing is simply not an option.<sup>11</sup>

It is at this point – after a legislative deadlock – that the third branch of government, the judiciary, becomes involved. If the political branches of government cannot act, it necessarily falls to judges to create a plan.

As a practical matter, we think that litigation after the 2010 census is likely. Although the Wisconsin Legislature has usually been able to draw congressional district lines without much ado, the legislative redistricting process has proven nearly impossible. The last time the Legislature completed the redistricting process without substantial judicial intervention was 1931. Federal judges drew state legislative districts in each of the past three rounds (1980s, 1990s, 2000s); the State Supreme Court drew the lines in the 1960s, and threatened to do so again in the 1970s, when a judicially imposed deadline finally prompted a stalled Legislature to broker a deal.<sup>12</sup>

<sup>7</sup> *Henderson v. Perry* 548 U.S. \_\_\_\_ 126 S.Ct. 2594 (2006)

<sup>8</sup> “the legislature shall apportion and district anew the members of the senate and assembly, according to the number of inhabitants.” Article IV §3.

<sup>9</sup> *State ex rel. Reynolds v. Zimmerman* 22 Wis. 2d. 544 (1964)

<sup>10</sup> See <http://www.ncsl.org/programs/legman/elect/law-article.htm>, last visited June 30, 2005.

<sup>11</sup> Before the “reapportionment revolution,” doing nothing was, by contrast, common. States sometimes redrew districts after the census, but often did not. Wisconsin did not modify its legislative or congressional districts after the 1940 census. Tennessee, whose unequal districts were at the center of the 1962 case *Baker v. Carr*, had not redrawn state legislative districts since 1901.

<sup>12</sup> A. Clark Hagensick, “Wisconsin,” in *Reapportionment Politics: The History of Redistricting in the 50 States*, Leroy Hardy, Alan Heslop, and Stuart Anderson eds. (Beverly Hills: Sage Publications, 1981) recounts the events of the 1960s and 1970s. The primary cause of legislative deadlock was divided government. Judicial legislative plans were implemented by the State Supreme Court in *State ex rel. Reynolds v. Zimmerman* 22 Wis. 2d 544, 126 N.W. 2d 551 (1964),

## Principles of Redistricting

Redistricting, following the decennial census, is primarily the task of the state Legislature (Wisconsin Constitution, Art. IV, §3), required to adjust districts so that they are equal in population, a U.S. Supreme Court mandate since the 1960s. (*Baker v. Carr*, *Reynolds v. Sims*, *Wesberry v. Sanders*) Although some justified population deviation is allowed for state legislative districts (*Mahan v. Howell*), congressional districts must be precisely equal in population (*Wells v. Rockefeller*).<sup>13</sup> In 2002 court drawn state legislative districts in Wisconsin, the population deviation was 1.4% for the Assembly districts and 1% for the Senate districts.

Prior to the equal-population decisions of the 1960s, many states did not redraw their districts to account for population shifts resulting in inequality in representation. In Wisconsin the failure of the Legislature to redistrict after the 1940 census meant that considerable population shift was not reflected in the apportionment of the Legislature. In 1951 the Legislature did rectify the 20 year redistricting hiatus, redrawing the districts based upon population (the Rosenberry Act). An attempt in 1953 to include a non-population area factor in drawing Senate districts was invalidated by the state Supreme Court.<sup>14</sup> For congressional districts, Wisconsin went from 1931 to 1963 without redrawing their boundaries with the largest and smallest districts varying by about 30 percent from the district population average.<sup>15</sup>

Besides population equality, districts must be drawn in accordance with the Wisconsin Constitutional requirements. (Wisconsin Constitution, Article IV, §§3, 4 and 5). Further, the U.S. Supreme Court has stated that districts drawn cannot discriminate against a minority and must be consistent with the Voting Rights Act.. Within these parameters, the Legislature typically considers political impact in drawing districts. Conflict over political outcome is hard to avoid in drawing districts. Although the U.S. Supreme Court has nullified redrawn districts because of racial impacts and lack of population equality, it has never done so on the basis of political gerrymandering. Although at one time the U.S. Supreme Court indicated that the impact of redistricting on political parties was judiciable, more recently it has pulled back from that position. In *Vieth v. Jubelirer* (2004) four justices wrote that there were no “judicially discoverable

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and by three judge federal panels in *Wisconsin State AFL-CIO et al. v. State Elections Boar, et al.*, 543 F. Supp. 630 (E.d. Wisconsin, 1982); *Prosser et al. v. State Elections Board et al.*, 793 F. Supp. 859(W.D. Wisconsin 1992); *Baumgart et al. v. Wendleberger et al.* (E.D. Wisconsin, 2002). In the 1950s, the State Supreme Court invalidated a 1953 constitutional amendment requiring that the state Senate be apportioned on the basis of population and land area, *State ex rel. Thomson v. Zimmerman*, 264 Wis. 644, 60 N.W. 2d 416 (1953). No redistricting occurred in the 1940s.

<sup>13</sup> *Mahan v. Howell* 404 U.S. 1201 (1971); *Wells v. Rockefeller* 394 U.S. 542 (1969)

<sup>14</sup> A. Clarke Hagensick, “Wisconsin” in L.Hardy, A. Heslop, and S. Anderson, eds. *Reapportionment Politics*. Beverley Hills: Sage Publications, 1981. *State ex rel. Thomson v. Zimmerman* 264 Wis. 644 (1953).

<sup>15</sup> Hagensick, p. 351.

and manageable standards” for the adjudication of claims of a partisan gerrymander.<sup>16</sup> However, Justice Kennedy supported the majority in the case but wrote that it was possible that a legitimate standard could be proposed in a subsequent case. The reality is that the major forces behind redistricting are partisan and protection of incumbents. A few states, such as Iowa, have attempted to turn the task over to a non-partisan commission. However, removing the partisan elements is difficult.

The Court’s primary role has been to protect voting rights in reviewing the Legislature’s districting plans. Since the 1960s courts have reviewed districting to ensure that they meet the one person, one vote criterion and that minorities are protected, especially as specified in the federal 1965 Voting Rights Act. Cases have been easier to bring under this act since the 1982 amendments, eliminating the need to prove intent. Criteria for bringing redistricting discrimination cases were specified in *Thornburg v. Gingles* (large minority, political cohesive minority, and bloc voting by white majority usually defeated minority’s preferred candidate).<sup>17</sup> However, the Court may be called upon to draw the districts itself if the Legislature is at an impasse. Failure to do this would leave a malapportioned system in place. In drawing the districts, the Court needs to avoid being involved prematurely and foreclosing legislative action. At the same time, the Court needs sufficient lead time prior to the next election to allow input of involved parties and to draw the districts.

### **Developing A Process for Court Consideration Following Legislative Impasse**

Our goal is to untangle this process, by drafting clear rules that define the conditions in which plaintiffs can turn to the courts for relief and when they may initiate legal proceedings, and by establishing the process that the Court will use in drawing district lines in the event that the state Legislature is unable to do so.

We make three claims that are the foundation for this report. The first is that the state Legislature is the proper forum for redistricting because of an explicit constitutional assignment and because of the political nature of the process. As the branch of government most closely tied to the public, the Legislature is in the best position to make the necessary judgments.<sup>18</sup> The second is that when the Legislature cannot enact a redistricting plan in time for the next election cycle, and where court intervention is necessary, the Wisconsin Supreme Court has the authority to hear cases under original jurisdiction. The third is that since redistricting is fundamentally a state responsibility, the state courts are the appropriate forum for these actions. The U.S. Supreme Court has recognized the primacy of state courts in redistricting, and under most conditions federal judges will defer to state actions that are already under way, or when a state has

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<sup>16</sup> *Vieth v. Jubelirer* 541 U.S. 267 (2004)

<sup>17</sup> *Thornburg v. Gingles* 478 U.S. 30 (1986)

<sup>18</sup> This does not mean that we necessarily endorse an explicitly partisan process, in which legislators draw lines themselves. The legislature is free to create alternative processes, such as nonpartisan commissions, independent agencies, or special committees. The key is that the legislature is the primary arena for making these decisions.

established a clear procedure for resolving legislative impasses. In the most recent affirmation of this principle, a unanimous Supreme Court held that federal courts should defer to state processes: “Absent evidence that . . . state branches will fail to timely perform that [redistricting] duty, a federal court must neither affirmatively obstruct state reapportionment nor permit federal litigation to be used to impede it.”<sup>19</sup>

The guidelines we propose would apply only when the state Legislature has been unable to complete the redistricting process in a timely fashion. If the Legislature does enact a valid plan, or has a reasonable prospect of doing so in time to allow local governments to fulfill their election administration functions, then the courts need not get involved. Moreover, we do not address the issue of lawsuits challenging a legislatively enacted plan, as might be filed under section 2 of the Voting Rights Act.

### **Court Procedure following Legislative Impasse: a Recommendation**

Although the Wisconsin Supreme Court may exercise original jurisdiction in a matter of state-wide importance like redistricting, from a pragmatic standpoint it is not the best forum to engage in fact finding and draw the districts.<sup>20</sup> Moreover, given that whatever districting plan is devised may be subject to legal challenge, if the Supreme Court had drawn the plan there would be no forum for review.

We propose that in the event that the Legislature has failed to act (under bright-line circumstances that we outline below) and a case challenging the existing legislative districting is filed that a panel of Appeals Court judges be appointed to devise new legislative or congressional districts. In its work the Special Court will use the current districting as a starting point, making adjustment to meet the equal population criteria (Wisconsin Constitution, Article IV §3). In doing this, the Special Court shall make sure that the other constitutional criteria specified in the Wisconsin Constitution, Article IV §§ 4 and 5 and the Federal Voting Rights Act are met .

The panel would consist of 5 members, comprised as follows:

(a) the presiding judge of each of the four Appeals Court districts as of January 1, 2012. If the presiding judge of any Court recuses herself/himself, or is otherwise unable to serve, the next most-senior member of that Court will serve. If no Court of Appeals judge from that district is able to serve, a reserve court of appeals judge will be selected randomly from that district’s reserve judge pool first. If none are available, then among those judges eligible to be part of the reserve pool. If no reserve Court of Appeals judge or those eligible to be a reserve court judge is able to serve from that Court of Appeals district, then the panel’s member will be selected randomly from among the reserve circuit court judges in that district.

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<sup>19</sup> *Grove v. Emison*, 507 U.S. 25 (1992), 34.

<sup>20</sup> As an appellate court, the Supreme Court does not make initial findings of fact or hear testimony. The Wisconsin Constitution provides for the Supreme Court’s original jurisdiction in Article VII §3 (2).



(b) the fifth member of the panel will be randomly selected from a state-wide pool of reserve Court of Appeals judges. If none is available, then the selection will come from a random selection of those eligible to be in the reserve pool. If no reserve judge or those eligible to be a reserve court judge is able to serve, then the fifth member will be selected from a state-wide pool of reserve circuit court judges.

The Special Court shall have the authority to draw new district lines, based upon a delegation of authority by the Wisconsin Supreme Court. In drawing a new map or maps, the Special Court shall use the existing map as a baseline and make changes according to traditional redistricting criteria. These include population equality, contiguity, compactness, respect for political subdivisions and communities of interest, and adherence to Voting Rights Act requirements. The Special Court shall consider election returns and voting data only insofar as necessary to insure that a proposed map does not create undue partisan bias.

This Special Court has advantages over alternative arrangements.

**Neutrality:** We have noted the inherent partisan and political nature of the redistricting process. When the Legislature draws district lines, it is inevitable that political considerations enter in to their decisions. Even if the public or watchdog groups oppose the way that politicians draw maps, the pressure they bring is itself part of the political process. To date, the Supreme Court has deemed the partisan disputes arising out of redistricting a nonjusticiable “political question,” and has refused to overturn redistricting plans based on standards of political fairness.<sup>21</sup>

Judges have a different role in our government. They are charged with the duty of interpreting constitutional and legal language, and of adjudicating legal disputes. While judges may have a particular ideological stance or viewpoint about the proper methods of judicial interpretation, the expectation is that they will be neutral in political disputes. We expect the canons of judicial ethics and the judges’ oaths to uphold the law to minimize the partisan nature of their duties.

We do not claim that this Special Court will be perfectly neutral – indeed, given the nature of the redistricting process, we doubt that it is possible to devise a process that will satisfy all of the stakeholders.<sup>22</sup> But a panel of experienced judges, selected automatically, is the best of the possible alternatives to legislative processes.

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<sup>21</sup> In *Vieth v. Jubelirer*, 541 U.S. 267 (2004), a four member plurality held that partisan gerrymandering presented a nonjusticiable question. A four member dissent argued that the question should be resolved by the courts. Justice Kennedy voted with the majority, but wrote a concurring opinion concluded that there may be some instances in which partisan bias could be so extreme as to warrant judicial intervention.

<sup>22</sup> It is entirely possible, moreover, that even a perfectly neutral process can produce a map that has a political bias.

**Geographic Balance:** Wisconsin is not a homogeneous state, as it consists of large urban areas, exurbs and suburbs, medium size cities and suburbs, farmland, rural areas, small towns. Some parts of the state are strongly Republican, others reliably Democratic. Moreover, redistricting involves making decisions about communities of interest and representation, all of which assume a familiarity with the geographic and demographic characteristics of the state. By bringing in judges from across the state, we assure a broad range of experience and help insure that no one region or set of concerns will have a disproportionate effect.

By providing an automatic selection system, a biased selection process is avoided as is venue shopping by litigants. Additionally, the composition of the Special Court is geographically distributed, comprising five members, which is preferred to three in an earlier experience of Minnesota. Judges in the Appeals Courts have experience considering appeals and many have served in the more fact finding role as a circuit court judge.

The senior judge of the Special Court will act as chair. If two or more have equal seniority, the Special Court will select the chair from among them. The panel will function as a court. This Special Court will be able to call upon the services of non-partisan outside experts, such as the University of Wisconsin Applied Population Laboratory and Legislative Technology Services Bureau, and any other expertise that they wish to utilize. The Special Court will provide an opportunity for public comment on the proposed draft prior to its promulgation.

The Wisconsin Supreme Court has a second role in redistricting beyond its jurisdiction of redistricting congressional and state legislative seats in event of a legislative impasse. This role is to review redistricting to ensure that the resultant maps meet constitutional and statutory requirements, if any party with standing brings an action. This latter function is noted here but is not the focus of the redistricting rules being suggested for the court by this committee. However, this review function needs to be considered in establishing a mechanism for the court to draw districts. By having a panel independent of the Wisconsin Supreme Court draft the redistricting map, the Wisconsin Supreme Court would then be an appropriate form to review challenges to the resulting district map. Thus the maps drawn by the Special Court shall be considered as binding. However, litigants may file for a review by the Wisconsin Supreme Court, which shall provide appellate review of the maps drawn.

We anticipate that federal courts will defer to this state-level process.<sup>23</sup>

### **The Proposed Process and Time Line**

In determining a reasonable date, which if the Legislature hasn't acted and a lawsuit has been filed an impasse will be declared, the Court needs to consider the first date on which the Legislature may consider redistricting, the reasonable period for the Legislature to act, and the date at which the task must be completed to allow candidates

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<sup>23</sup> *Grove v. Emison* 507 U.S. 25 (1993)

to file their nomination papers. In reviewing the time line, the Redistricting Committee incorporated dates specified in the Wisconsin Statutes and time estimates by County Clerks that they need to complete local redistricting and the time they need to prepare the ballots for the next election.<sup>24</sup>

Wisconsin Statutes (§59.10(3)(b);§5:15 (1)(b)) requires local governments to complete their redistricting prior to legislative action, allowing a 180 day period to do it. From the Redistricting Committee's survey, the latest date county clerks said was needed to finish the local level redistricting plan is September. Therefore, when the U.S Census Bureau provides the population figures on **March 1**, local government could be expected to have completed their task 180 days later, **September 2**. The Legislature may want to consider amending this law to allow the Legislature to begin consideration of redistricting prior to the completion of local government districts. Litigation, challenging the failure of the legislature to draw a redistricting plan, shall be in order on or after **January 2**. (For 2012, the date is Monday, January 2, 2012)

According to state law, the earliest day that nomination papers can be circulated is June 1 with the deadline for nominations specified as the 2<sup>nd</sup> Tuesday in July, which for 2012 is July 10, 2012. (Wisconsin Statutes §10.78 (1) and (2)). The next week--3<sup>rd</sup> Tuesday in July—the State Elections Board is required to notify the County Clerks of the list of candidates for the September primary (Wisconsin Statutes §10.06(h)). Therefore, in order to give candidates sufficient time to prepare nominations papers, the Redistricting Committee recommends that the Court consider the **1<sup>st</sup> Tuesday in May (May 1, 2012)** as the date that an impasse would be declared if the Legislature had not acted. On that date the plan developed by the Special Court would be declared the districting plan for the state for either the congressional districts or the state legislative districts or both. In establishing a firm date, the Legislature is informed of the date that the plans—state Legislature and congressional-- need to be in place and disputes over whether an impasse has occurred are avoided. The draft plan shall be available on the Web by 3:00 pm April 16. Individuals and groups will have 10 days to respond. On the 2<sup>nd</sup> **Tuesday in May**, the State Elections Board sends a notice to the County Clerk notifying them of the September primary and the November general election (Wisconsin Statutes §10.72 (1)).

In order to give the Court sufficient time to receive input and draw the districts prior to **1<sup>st</sup> Tuesday in May (May 1, 2012)**, it will begin the process any time after **January 1 (2012)** if the Legislature has not developed its own plan for either the congressional districts, state legislative districts, or both. This would give the Legislature four months to act before Court consideration and give the Court four months to consider districts prior to the impasse date. To avoid premature filing of actions in the Court, the Court will accept filings anytime after **December 1 (2011)**. It is important to avoid Court action that could impede the Legislature, the primary locus for redistricting. The Court shall widely permit briefs, which must be filed with the Court by **April 1** to give the Court time to review them. Material submitted must be relevant, legible, and as concise

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<sup>24</sup> The Committee sought input from County Clerks on their time line for local government reapportionment. A copy of the survey sent to the clerks appears in the Appendix to this report.

as practicable The Court shall decide who among the filers shall be permitted to make oral arguments.

The maps drawn by the Special Court will be considered binding as the districts under which elections will be conducted. Litigants may appeal the decision (s) of the Special Court to the Wisconsin Supreme Court, which shall exercise appellant jurisdiction.

**Wisconsin Redistricting Committee**

R. Booth Folwer, Political Science (Emeritus) –  
UW-Madison

Donald Kotecki, Survey Research Center – St.  
Norbert College

Kenneth Mayer, Political Science – UW –  
Madison (co-chair)

Ed Miller, Political Science – UW Stevens Point  
(co-chair)

Peter Rofes, Law School – Marquette  
University

Appendix



### Wisconsin Redistricting Committee

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R. Booth Folwer, Political Science  
(Emeritus) – UW-Madison  
Donald Kotecki, Survey Research Center  
– St. Norbert College  
Kenneth Mayer, Political Science – UW –  
Madison (co-chair)  
Ed Miller, Political Science – UW  
Stevens Point (co-chair)  
Juliet Brodie, Law School – University of  
Wisconsin  
Peter Rofes, Law School – Marquette  
University  
Ron Weber, Political Science – UW -  
Milwaukee

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### 2005 WISCONSIN SUPREME COURT REDISTRICTING SURVEY

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The Wisconsin Supreme Court has appointed a committee to make recommendations to it regarding procedures that they would use if the 2010 redistricting involves the courts. To assist us in our task, we would appreciate it if you could answer a few questions for us. We are conducting this survey of Wisconsin County Clerks to determine county experiences with redistricting. If necessary please consult your files to assist in completing this questionnaire.

Q1. To begin with, did you receive population data by the statutory deadline of April 2, 2001?

Yes (**Continue to Q1a**)                       No (**Skip to Q2**)

Q1a. If no, when did you receive it?  
(**Check only one**)

January                       March                       May  
 February                       April                       June

Q2. When were the redistricting plans completed for your county and municipalities?

Month \_\_\_\_\_ Year \_\_\_\_\_

Q3. When do you believe would be the earliest date that your locality could have completed the redistricting process?

Month \_\_\_\_\_ Year \_\_\_\_\_

Q4. Which agency or organization drew the redistricting plans? (**Check all that apply**)

A unit of city government (Please specify)

\_\_\_\_\_

A committee of the city or county council

A special committee or unit established for the purpose of redrawing the lines

Some other unit (Please briefly describe)

\_\_\_\_\_

Q5. Did any of the redistricting efforts run into an impasse – that is, a dispute over the creation of wards and/or districts that delayed the final decision?

Yes (**Continue to Q5a**)

No (**Skip to Q6**)

Q5a. What was the main contributing factor that caused the impasse?

\_\_\_\_\_

Q5b. How did you resolve the impasse to meet the 60-day (120-day) turn-around deadline? (Does your county have an established process for resolving disputes, or did you use ad hoc measures?)

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Q6. Was any county or city plan challenged in Court?

Yes (**Continue to Q6a**)

No (**Skip to Q7**)

Q6a. What was the name of the case (if there was a decision), and were the plans revised in response to a court challenge?

\_\_\_\_\_

Q7. In your opinion, what is the number of days before the primary that would be the latest you could receive final state legislative districts, and still have sufficient time to prepare for the September primary election? (**Check one only**)

30 days

75 days

130 days

45 days

100 days

60 days

115 days

Q8. Overall, what recommendations can you offer to better facilitate the redistricting process?

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Q9. What is your current position and title?

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Please contact Donald Kotecki, Director, St. Norbert College Survey Center (1-877-214-7183) or Julie Rich, Wisconsin Supreme Court (1-608-266-1880) if you have any questions or concerns about this study.



January 20, 2005

Dear County Clerks:

The Wisconsin Supreme Court has appointed a committee to study and draft procedural court rules that will govern state legislative redistricting litigation in Wisconsin. To assist the committee in its task, the committee members are seeking your input so that they will understand the practices at the county and city levels since local redistricting must be completed prior to redistricting at the state level.

The enclosed questionnaire was drafted by Donald Kotecki, Director of the St. Norbert College Survey Center, based upon issues raised by the Redistricting Committee. The St. Norbert Survey Center will tabulate the results. I would appreciate it if you could complete the questionnaire, returning it in the stamped self-addressed envelope included. If you have any questions, please direct them to Donald Kotecki (1-877-214-7183) or Julie Rich, Supreme Court Commissioner (1-608-266-7442).

Sincerely yours,

Shirley S. Abrahamson  
Chief Justice

## Results of the Survey

**Friday, May 27, 2005**

**Q1:** Did you receive population data by the statutory deadline of April 2, 2001?

All yes

**Q2:** When were the redistricting plans complete for your county and municipalities?

Small: September 2001

Small: October 2001

Small: August 2001

Medium: June 2001

Medium: Sept. 18, 2001

Medium: June 2001

Large: September 2001

**Q3:** When do you believe would be the earliest date that your locality could have completed the redistricting process?

Small: September 2001

Small: August 2001

Small: August 2001

Medium: June 2001

Medium: Sept. 1, 2001

Medium: June 2001

Large: September or October 2001

**Q4:** Which agency or organization drew the redistricting plans?

Small: A special committee or unit established for the purpose of drawing the lines

Small: A special committee or unit established for the purpose of drawing the lines

Small: A redistricting committee chaired by the county board chairman

Medium: A special committee or unit established for the purpose of drawing the lines

Medium: A committee of the city or county council; the North Central Wisconsin  
Regional Planning Commission

Medium: A special committee or unit established for the purpose of drawing the lines

Large: A committee of the city or county council; a County Planning Commission and  
Board of Supervisors committee

**Q5:** Did any of the redistricting efforts run into an impasse?

Small: No

Small: No

Small: No

Medium: No

Medium: Yes

**Q5a:** What was the main contributing factor that caused the impasse?

Town board / county board dispute

**Q5b:** How did you resolve the impasse?

The county board adopted the plan they chose

Medium: No

Large: No

**Q6:** Was any county or city plan challenged in court?

Small: No

Small: No

Small: No

Medium: No

Medium: Yes

Q6a: Name of case/decision: Town of Woodruff v. Oneida County; county plan was upheld

Medium: No

Large: No

**Q7:** In your opinion, what is the number of days before the primary that would be the latest you could receive final state legislative districts, and still have sufficient time to prepare for the September primary election?

Small: 100 days

Small: 45 days

Small: 130 days

Medium: 130 days

Medium: 75 days

Medium: 130 days

Large: 130 days

**Q8:** Overall, what recommendations can you offer to better facilitate the redistricting process?

Small: None

Small: Draw the lines more straight and uniform

Small: Keep the county all in one district to avoid the expense of additional ballots and poll-workers

Medium: none

Medium: Better town, city and county communication and cooperation

Medium: Fewer splits; overall

Large: The county board decides on redistricting when the outcome affects them – thinks redistricting should be handled by an impartial body not directly affected by the

outcome, such as the courts. Otherwise, is personally OK with the process.

**Q9:** Position and title:

Small: County clerk

Small: County clerk

Small: County clerk

Medium: County clerk; consulted with Land Information

Medium: County clerk

Medium: County clerk

Large: County senior planner; consulted with county clerk