

**Statement of Mr. John Tanner**  
**Chief – Voting Section (Retired)**  
**Civil Rights Division,**  
**U.S. Department of Justice**

Submitted by:  
**Mr. Darryl D. Morin**  
State Director  
League of United Latin American Citizens  
Of Wisconsin

Prepared for:

**Judiciary & Legislation Committee**  
**City of Milwaukee**  
**Public Hearing**

Submitted this 27<sup>th</sup> day of June, 2011

## **Statement of John Tanner**

I am pleased to have an opportunity to offer my views on the districts used for elections of the Milwaukee Common Council. I regret that I cannot attend the hearing in person, but I had made a prior commitment to speak at a state League of Municipalities Conference before I learned of this hearing.

By way of introduction, I have over nearly three decades of experience with the Voting Section of the Justice Department's Civil Rights Division. I litigated redistricting cases, among other voting rights cases, for many years, and eventually served as Chief of the Voting Section, responsible for overseeing federal enforcement of the Voting Rights Act in the United States. Since retiring in 2009, I have served as an adjunct professor law at the Cumberland Law School and as a Distinguished Visiting Professor at the Baylor School of Law, and have written and lectured extensively on election law issues.

I became interested in Milwaukee Common Council redistricting in connection with an invitation to speak on redistricting at the LULAC-Wisconsin biennial conference. In preparing for the conference, I studied census data and maps of the existing districts and of districts proposed by the Milwaukee Legislative Reference Bureau as well as other proposed plans.

There are two central legal issues in redistricting. First, voters have the right to districts with substantially equal populations. Second, voters have the right to racially fair districts; that is, the redistricting system cannot result in any racial or language minority being denied an equal opportunity to elect representatives of their choice.

These rights are held exclusively by the voters, and not by candidates, office holders or political parties. The districts belong to the voters, and no one else.

As to the law, the equal population requirement is usually very straightforward. Common Council districts, as well as other state and local election districts, generally satisfy the US Constitution if their populations vary from the ideal by less than five percent.

The ban on racial discrimination in redistricting is more complex. Stated broadly, the Voting Rights Act requires cities, counties and states to respect minority population concentrations. That is, where reasonably possible, they must draw districts in which minority voters will, as a practical matter, usually be able to elect representatives of their choice in rough proportion to their population. The requirement is one of fairness.

Congress and the courts have recognized that minority citizens suffer from a number of barriers to equal participation. As a result of such factors as past discrimination in education and current disparities in socio-economic conditions that chill their participation in voting. English language elections are a major barrier of the many Hispanic citizens with limited English proficiency. The election process relies on a specialized vocabulary – much more specialized than citizenship

exams – and there are literally millions of native-born American citizens who cannot speak English well enough to participate in English-only elections.

In light of these barriers, courts regularly determine that for Hispanic and other minority voters to have the requisite “equal opportunity usually to elect candidates of their choice,” a fair share of districts must have total and voting age populations well in excess of 50 percent. In 2006, for example, in *LULAC v. Perry*, the Supreme Court struck down a Texas redistricting plan because it reduced a district with a substantial Hispanic voting age majority (63.5%) to a bare 51 percent voting age majority.

The issue of when it is “reasonably possible” to draw minority districts can depend on the interplay of a number of factors. These factors become more complex where the minority population is scattered in various areas of a city, county or state, and they become very straightforward where minority population is concentrated in a single area. Race is always a touchy matter in the law, and racially fair redistricting is determined against a background of racially neutral redistricting criteria.

Common municipal redistricting standards or goals include compact districts, clear boundaries, and respecting communities of interest. Compactness requires no explanation, and clear boundaries such as rail lines, interstate highways and the like also are clear.

Political scientist Larry Sabato offered the best way of measuring the strength and importance of “communities of interest” in redistricting. He identified the three key factors:

1. The extent to which members of a group identify themselves as members of that group;
2. The extent to which others identify individuals as members of that group; and
3. The extent to which members of the group have been or can be affected similarly by governmental action.

For example, there is a clear community of interest in the Hispanic population in Milwaukee. It would- or should – be respected in any “good-government” redistricting process even without the legal protections against racial gerrymandering provided by the Voting Rights Act.

Where communities of interest are fragmented, the opportunity of voters to participate equally in the political process and elect representatives of their choice is diluted. Where racial communities are fragmented and their voting strength diluted, the result is a violation of the Voting Rights Act.

In applying these legal principles to the Milwaukee Common Council districts, it is first clear that the districts have become mal-apportioned, and that they must be redrawn.

The Common Council has 15 districts and the city population is now 40.3 percent black, or enough for just over six of the 15 districts; 37.5 percent white, or enough for 5.6 districts; and 17.3 percent Hispanic, or enough for 2.6 districts.

The population of the city is highly segregated along racial lines. The result of this segregation on redistricting is to make districts with large black or Hispanic majorities – and in which black or Hispanic voters can elect candidates of their choice – is all but inevitable when racially neutral redistricting criteria are used.

Most of the existing, mal-apportioned districts are relatively compact, except for districts 8 and 11. District 11 is oddly shaped, with two pincers reaching eastward across major barriers – railroad and a major thoroughfare, fragmenting Hispanic neighborhoods (Exhibit A). Portions of the district are barely contiguous in places. District 8 has an excrescence from the heavily Latino core westward that breaks up heavily white areas in the vicinity of Jackson Park (Exhibit B). Whatever their merits in 2000, these lines are irrational today.

In the wake of post-2000 population growth in the Hispanic population and the expansion of Hispanic neighborhoods, the Hispanic community is now badly fragmented, with majority-Hispanic wards divided among districts 8, 11, 12, 13, and 14. Such fragmentation, of course, tends to minimize and cancel out Hispanic voting strength. This is what courts term “vote dilution.” In my opinion, the current configuration violates the Voting Rights Act, and the districts would have to be redrawn even if they were equal in total population.

The logical course for the City of Milwaukee both in terms of racially neutral redistricting criteria and in terms of avoiding a violation of the Voting Rights Act is to re-unite the concentrated Hispanic population into three compact districts. These logically include the most heavily Hispanic districts, 8 and 12, and district 13, where the Hispanic population more than doubled in the past decade.

The plan presented to me as Legislative Reference Bureau Plan 2 (Exhibit C) achieves these goals admirably, with two districts (8 and 12) with substantial Hispanic voting age population majorities in which Hispanic voters should have an equal opportunity to elect representatives of their choice, and district (13) in which Hispanic voters can at least enjoy some influence.

In my opinion, the City of Milwaukee would be on solid ground legally if it adopted this plan.

If, on the other hand, the City were to depart from the two compact districts with substantial Hispanic voting age majorities drawn by the Legislative Reference Bureau and continue the extreme fragmentation of the Hispanic community, it would place itself in an exceedingly precarious legal position.

Where there is contested litigation under the Voting Rights Act, cities can and do spend literally millions of dollars in a vain effort to defend racially discriminatory districting plans. When they

lose, they also have to pay the legal fees of the plaintiffs' attorneys and the fees of expert witnesses. And in some cases, special elections must be held under a new court-drawn plan that complies with federal law.

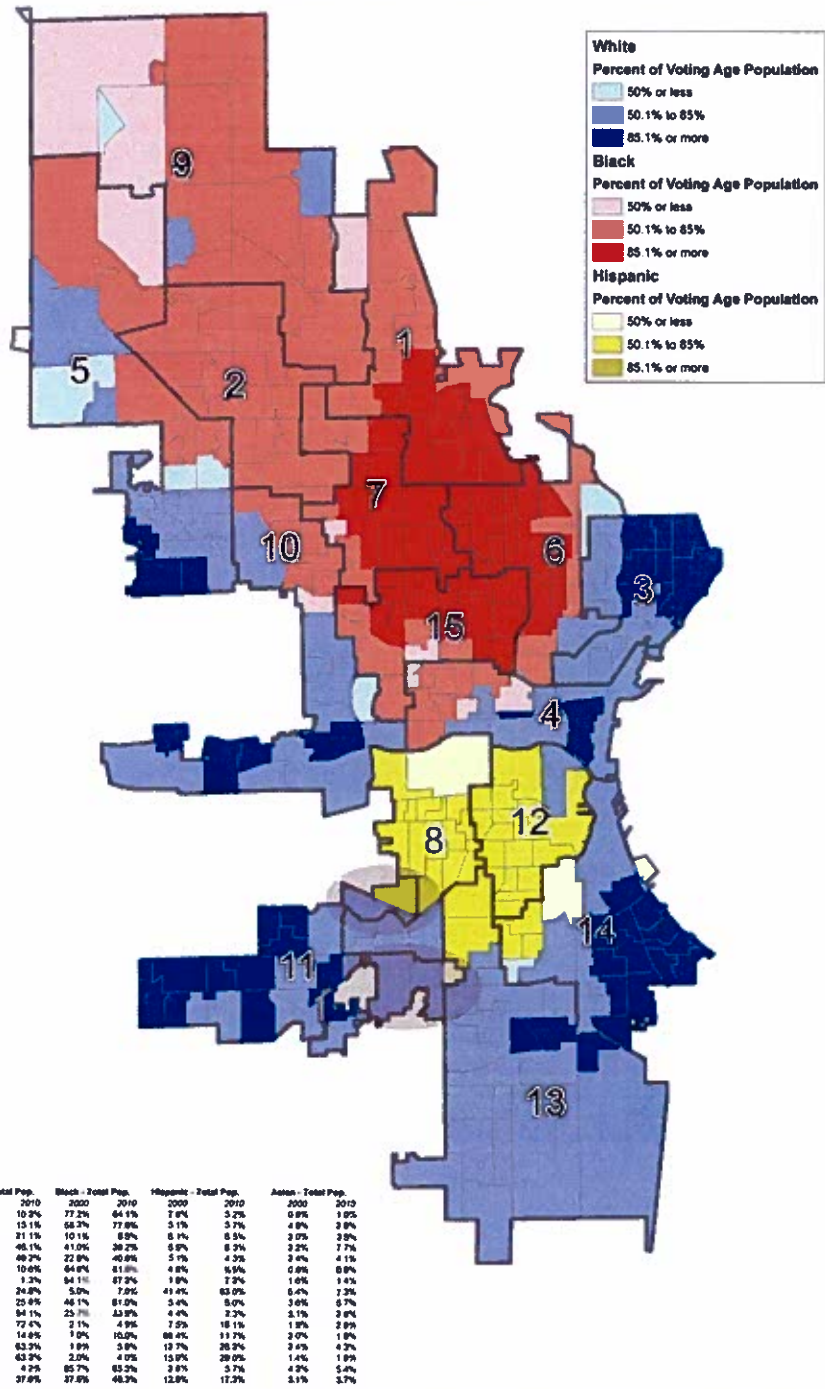
This necessarily has been a simplified statement on what can be extremely complex legal issue. In Milwaukee, however, many of the intricacies of redistricting are not present because of the high level of residential segregation. An overlay of district lines on racial population concentrations tells the story at a glance. In Milwaukee, good districts virtually draw themselves, and bad districts stand out like sore thumbs.

For a more in-depth but accessible explanation of the many intricacies of redistricting I recommend my short volume, "An Informal Guide to Redistricting: A Plain Language Guide for Legislators, Lawyers and Interested Citizens" which is available from the Alabama Law Institute. Especially in light of the alternatives and litigation risk in Milwaukee, the last line of the book may say it all:

"In the end, perhaps the safest course is the course of fairness."

Exhibit A

### City of Milwaukee 2010 Census Race / Ethnic Populations by Voting Ward

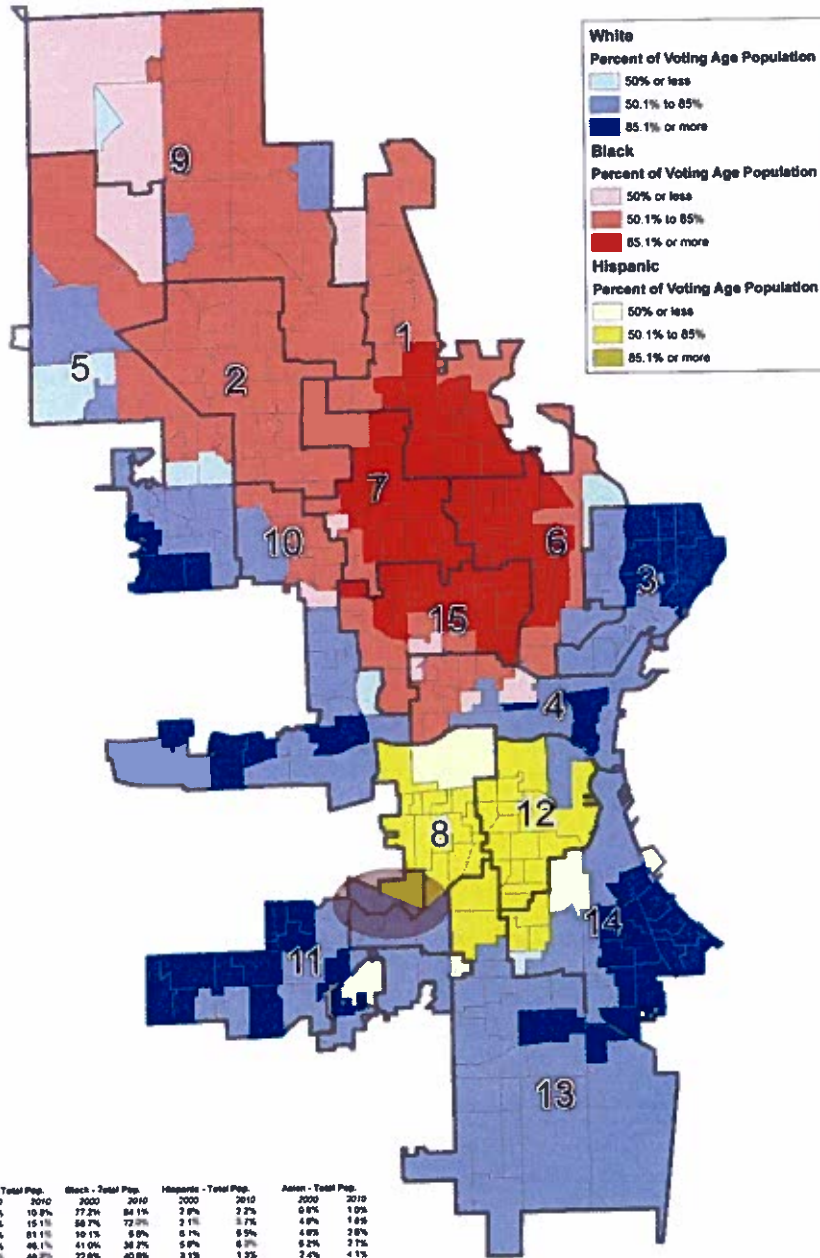


District	White - Total Pop.		Black - Total Pop.		Hispanic - Total Pop.		Asian - Total Pop.	
	2000	2010	2000	2010	2000	2010	2000	2010
1	11.8%	10.3%	77.3%	84.1%	7.0%	5.2%	0.9%	1.0%
2	31.8%	15.1%	58.2%	77.8%	5.1%	5.7%	4.8%	3.8%
3	78.9%	21.1%	10.1%	8.9%	6.1%	6.5%	2.0%	2.8%
4	43.1%	48.1%	41.0%	30.2%	8.9%	8.2%	2.2%	7.7%
5	70.1%	68.2%	22.8%	40.8%	5.1%	4.3%	2.4%	4.1%
6	8.8%	10.6%	64.6%	81.8%	4.8%	6.5%	0.8%	0.8%
7	11.0%	3.2%	84.1%	87.8%	1.8%	7.3%	1.6%	1.4%
8	44.3%	24.8%	5.0%	7.9%	41.4%	83.0%	8.4%	1.2%
9	43.1%	25.8%	48.1%	81.0%	5.4%	8.0%	3.6%	6.7%
10	66.2%	91.1%	25.1%	33.9%	4.4%	2.2%	3.1%	2.8%
11	27.0%	72.4%	2.1%	4.9%	7.9%	18.1%	1.9%	2.9%
12	20.4%	14.8%	1.0%	10.0%	88.4%	11.7%	2.0%	1.8%
13	80.8%	83.2%	1.8%	3.8%	12.7%	28.2%	2.4%	4.2%
14	79.5%	63.3%	2.0%	4.0%	15.8%	28.0%	1.4%	1.9%
15	5.3%	4.2%	85.7%	85.2%	3.8%	5.7%	4.2%	5.4%
City	48.4%	37.8%	37.8%	48.2%	12.8%	17.2%	3.1%	3.7%

Prepared by the City of Milwaukee Legislative Reference Bureau (126922.mxd 4-6-2017, RTW)



### City of Milwaukee 2010 Census Race / Ethnic Populations by Voting Ward

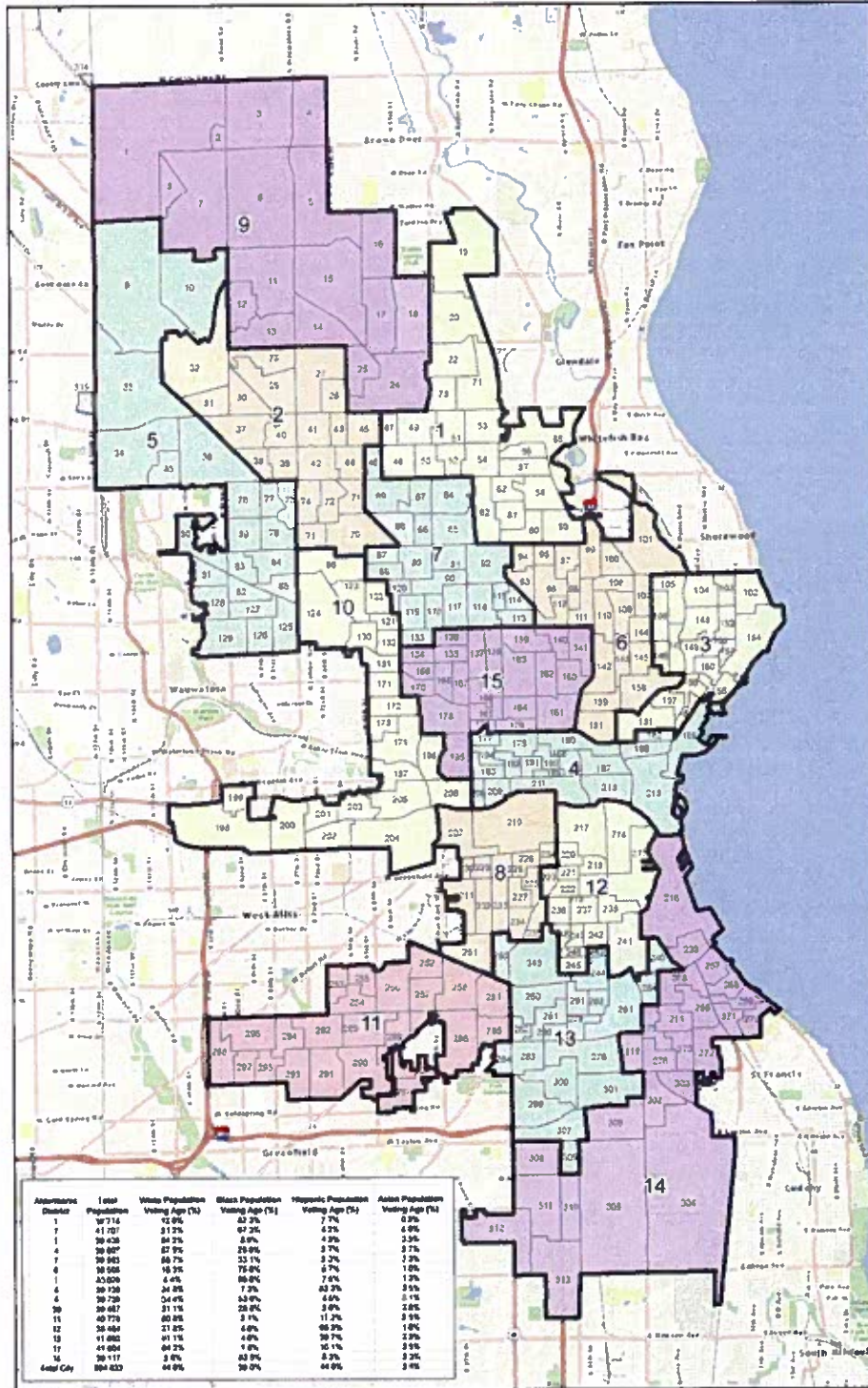


Assembly District	White - Total Pop.		Black - Total Pop.		Hispanic - Total Pop.		Asian - Total Pop.	
	2000	2010	2000	2010	2000	2010	2000	2010
1	12.8%	10.8%	77.2%	86.1%	2.9%	2.2%	6.0%	1.0%
2	21.6%	15.1%	68.7%	72.9%	2.1%	1.7%	4.9%	1.6%
3	78.6%	81.1%	19.1%	8.9%	6.1%	6.5%	4.9%	2.8%
4	43.1%	48.1%	41.0%	38.7%	5.9%	6.3%	6.2%	2.7%
5	70.1%	49.3%	22.6%	40.8%	3.1%	1.2%	2.0%	4.1%
6	8.0%	10.6%	86.6%	81.9%	4.6%	6.3%	0.6%	0.8%
7	11.0%	7.2%	84.1%	87.3%	1.8%	2.7%	1.8%	1.4%
8	44.2%	26.3%	5.0%	7.0%	41.6%	63.9%	5.4%	2.3%
9	43.1%	25.8%	49.1%	51.6%	3.4%	6.0%	2.9%	6.2%
10	64.6%	64.1%	25.7%	33.6%	4.4%	2.3%	2.1%	2.8%
11	22.6%	22.4%	2.1%	4.8%	2.8%	16.1%	1.9%	2.6%
12	32.8%	14.6%	7.0%	10.0%	86.4%	71.2%	2.4%	1.8%
13	80.4%	83.2%	1.6%	2.9%	12.7%	26.8%	2.4%	4.2%
14	79.2%	63.8%	2.2%	4.0%	72.9%	28.0%	1.4%	1.8%
15	5.5%	4.2%	88.7%	83.2%	2.9%	2.7%	4.2%	5.4%
City	48.4%	37.6%	37.8%	46.2%	12.8%	12.2%	3.1%	3.2%

Prepared by the City of Milwaukee Legislative Reference Bureau (126922.mxd 4-6-2011, RTW)

Exhibit C

City of Milwaukee  
2011 Redistricting  
Aldermanic Districts: Public Plan 2



Prepared by the City of Milwaukee Legislative Reference Bureau (127620-D.mxd 6-17-2011)