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April 10, 2012

VIA ECF

Diane P. Wood, Circuit Judge
J.P. Stadtmueller, District Judge
Robert M. Dow, Jr., District Judge
United States District Court for the
Eastern District of Wisconsin
517 East Wisconsin Avenue
Milwaukee, Wisconsin 53202

Baldus, et al. v. Brennan, et al.,
Case No. 11-CV-00562-JPS-DPW-RMD

Your Honors:

A week ago, pursuant to this Court's order, the parties submitted proposed configurations for Assembly Districts 8 and 9 in the City of Milwaukee. That same day, the City conducted aldermanic elections, including elections in approximately the same areas (defined by wards) in which two members of the Latino community were aldermanic candidates. The results did not become known until April 4, 2012, and even then, one election may be recounted. One Latino candidate won; one lost. The results from those elections appear directly relevant to the Court's consideration of assembly district boundaries to replace those found in violation of the Voting Rights Act.

We enclose with this letter a supplemental affidavit of the plaintiffs' expert, Dr. Ken Mayer, that states the results of those elections and suggests their relevance. In his affidavit, Dr. Mayer also responds to the continuing statistical disparities between his voting calculations and those provided by the Department of Justice. While the Court has concluded the briefing schedule for the remedial phase, we nevertheless believe the election results warrant the Court's attention.

Very truly yours,

GODFREY & KAHN, S.C.

s/ Douglas M. Poland

Douglas M. Poland

cc: Maria Lazar (by ECF)
Patrick Hodan (by ECF)
Daniel Kelly (by ECF)
Peter Earle (by ECF)

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ALVIN BALDUS, CINDY BARBERA, CARLENE BECHEN, RONALD BIENDSEIL, RON BOONE, VERA BOONE, ELVIRA BUMPUS, EVANJELINA CLEEREMAN, SHEILA COCHRAN, LESLIE W. DAVIS III, BRETT ECKSTEIN, MAXINE HOUGH, CLARENCE JOHNSON, RICHARD KRESBACH, RICHARD LANGE, GLADYS MANZANET, ROCHELLE MOORE, AMY RISSEEUW, JUDY ROBSON, GLORIA ROGERS, JEANNE SANCHEZ-BELL, CECELIA SCHLIEPP, TRAVIS THYSSEN,

Plaintiffs,

TAMMY BALDWIN, GWENDOLYNNE MOORE and RONALD KIND,

Intervenor-Plaintiffs,

v.

Members of the Wisconsin Government Accountability Board, each only in his official capacity: MICHAEL BRENNAN, DAVID DEININGER, GERALD NICHOL, THOMAS CANE, THOMAS BARLAND, and TIMOTHY VOCKE, and KEVIN KENNEDY, Director and General Counsel for the Wisconsin Government Accountability Board,

Defendants,

F. JAMES SENSENBRENNER, JR., THOMAS E. PETRI, PAUL D. RYAN, JR., REID J. RIBBLE, and SEAN P. DUFFY,

Intervenor-Defendants,

Civil Action
File No. 11-CV-562

Three-judge panel
28 U.S.C. § 2284

(caption continued on next page)

SECOND SUPPLEMENTAL DECLARATION OF DR. KENNETH R. MAYER

VOCES DE LA FRONTERA, INC., RAMIRO VARA, OLGA WARA, JOSE PEREZ, and ERICA RAMIREZ,

Plaintiffs,

v.

Case No. 11-CV-1011
JPS-DPW-RMD

Members of the Wisconsin Government Accountability Board, each only in his official capacity: MICHAEL BRENNAN, DAVID DEININGER, GERALD NICHOL, THOMAS CANE, THOMAS BARLAND, and TIMOTHY VOCKE, and KEVIN KENNEDY, Director and General Counsel for the Wisconsin Government Accountability Board,

Defendants.

I, Kenneth R. Mayer, declare, under penalty of perjury and pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am a Professor of Political Science at the University of Wisconsin—Madison, and a faculty affiliate at the Lafollette School of Public Affairs, at the University. I joined the faculty in 1989. I teach courses on American politics, the presidency, Congress, campaign finance, election law, and electoral systems.

2. I have been asked by counsel representing the plaintiffs in this lawsuit to provide expert opinions in the above-captioned case. I submitted an expert report on December 14, 2011, and a rebuttal report on January 13, 2012. I testified at trial on February 23 and 24, 2012.

3. On March 27, 2012, counsel for the plaintiffs asked me to develop proposed configurations for Assembly Districts 8 and 9 that were responsive to the Court's rulings. Plaintiffs selected one of these options, with input from members of Milwaukee's Latino community, to be submitted to the Court as their proposed remedy. On April 3, 2012, I provided a declaration explaining the characteristics of the proposed districts.

4. On April 4, 2012, plaintiffs' counsel asked me to review and analyze the proposed districts submitted by defendants. On April 5, 2012, I provided a declaration analyzing defendants' submission. I have also reviewed defendants' response to the proposal plaintiffs submitted on April 3.

5. The Department of Justice argued in its submissions to the Court last week that citizenship should not be taken into account when measuring the voting age population of Latinos in Assembly Districts 8 and 9 to ensure that those districts comply with section 2 of the Voting Rights Act. In addition, the Department of Justice argued through the calculations of its expert witness, Peter Morrison, that if citizenship is taken into account, a non-citizenship rate of 35.75% should be used to calculate the Latino citizen voting age population ("CVAP"), which is significantly lower than the Hispanic non-citizenship rate of 42% that I used to calculate CVAP. As I testified at trial, the 42% figure is derived from the five-year (2006-2010) American Community Survey ("ACS") data for the City of Milwaukee, which is universally considered to produce better estimates than the ACS's annual statewide surveys.

6. My calculations of the citizen voting age populations also differ from those of Dr. Morrison because he failed to adjust the *non*-Hispanic population to correct for a 1.5% non-citizenship rate (per the five-year ACS). Adjusting Dr. Morrison's calculation of the CVAP (assuming a 42% Hispanic non-citizenship rate) in his April 5 declaration to account for the 1.5% difference in the non-Hispanic non-citizenship rate produces the correct CVAP percentages of 55.22% in Assembly District 8 and 34.78% in Assembly District 9 for plaintiffs' proposed remedy.

7. The results of Milwaukee's April 3, 2012 aldermanic election show the importance of using citizenship to measure the voting age population of Latinos in Assembly Districts 8 and 9 to ensure those districts comply with section 2 of the Voting Rights Act. In the

12th Aldermanic District, which consists roughly (though not precisely) of the same area as the Assembly District 8 proposed by plaintiffs, a Latino challenger, Jose Perez, narrowly defeated the non-Latino incumbent, James Witkowiak, 51.7% - 48.3%. In the 8th Aldermanic District, which includes much of the northernmost portions of the reconfigured Assembly District 9 that plaintiffs propose, the non-Latino incumbent, Bob Donovan, easily defeated his Latino challenger, Benjamin Juarez, 60.5% - 39.5%.

8. I supplement my April 3 and 5 affidavits because the results of the elections last week support the validity of my approach and demonstrate again that the approach of the Department of Justice and its expert to create a majority-Latino Assembly District 8 would not comply with the Voting Rights Act.

9. Attached as **Exhibit A** to this declaration is a map that superimposes the boundaries of the 12th Aldermanic District (bounded by red on the right) and 8th Aldermanic District (bounded by red on the left) on a map showing plaintiffs' proposed reconfiguration of Assembly Districts 8 (shaded brown) and 9 (shaded green).

10. The results of the April 3rd election show just how important it is, for section 2 purposes, to take citizenship into account and to use the appropriate non-citizenship rate. The Hispanic citizen voting-age population ("HCVAP") for the 12th Aldermanic District is 55.35%, and the HCVAP in the 8th Aldermanic District is 49.0%. The very narrow margin of victory (only 86 votes) by Latino challenger Jose Perez in the 12th Aldermanic District over the non-Latino white incumbent, and the overwhelming loss by Benjamin Juarez to a non-Latino white in the 8th Aldermanic District, show that the current percentage margins are either barely sufficient (and even that is subject to question, given that Mr. Witkowiak has requested a recount) or grossly insufficient for Latinos to have a reasonable opportunity to elect a candidate of their choosing. If citizenship were not taken into account, or if Dr. Morrison's lower non-citizenship

rate were used to formulate a district for Voting Rights Act purposes, the lower percentages of Latinos in the resulting district would not provide a sufficient margin to satisfy section 2 of the Voting Rights Act.

11. In addition, I address a contention in defendants' April 5 response that a 55.22% CVAP in plaintiffs' proposed Assembly District 8 constitutes "packing." Plaintiffs' proposed Assembly District 8, with a 55.22% citizen voting age population, does not constitute "packing." Packing, as the term is used in the political science literature, occurs when a district contains an excessive and unnecessarily high concentration of a minority population, and when the district does not follow other traditional redistricting criteria. And the definition of "excessive and unnecessarily high" depends on whether a population concentration is higher than it needs to be to protect that population's ability to have an equal opportunity to elect a candidate of choice. In the plaintiffs' proposed Assembly District 8, the district is compact and regularly shaped, with boundaries that follow geographic features and respect jurisdictional boundaries. The population concentrations protect the Latino community's opportunity to elect a candidate of its choice. Shifting one or two percentage points of the citizen voting age population to Assembly District 9 would reduce this opportunity, while not having any appreciable effect on the Latino community's opportunity to elect a candidate of choice in Assembly District 9, where they are a distinct minority.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 10, 2012.

s/ Kenneth R. Mayer
Kenneth R. Mayer

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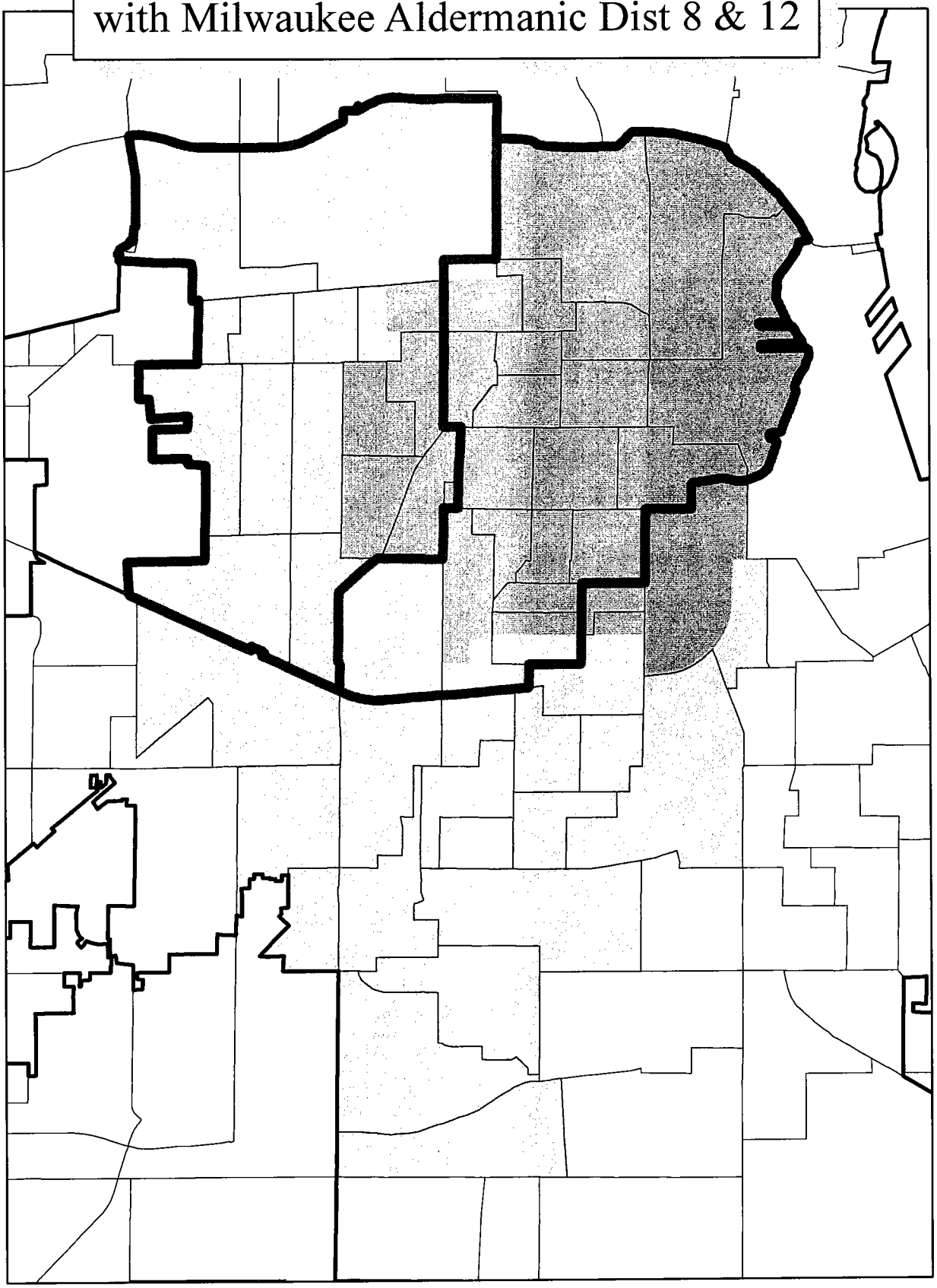
Exhibit A

Plaintiffs Proposed Remedy with Milwaukee Aldermanic Dist 8 & 12



Brandt, Karen J (15243)

From: ecfmaster@wied.uscourts.gov
Sent: Tuesday, April 10, 2012 1:24 PM
To: ecfmaster@wied.uscourts.gov
Subject: Activity in Case 2:11-cv-00562-JPS-DPW-RMD Baldus et al v. Brennan et al Letter

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United States District Court

Eastern District of Wisconsin

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Docket Text:
LETTER from Douglas M. Poland *regarding Milwaukee aldermanic elections held on April 3, 2012.* (Attachments: # (1) Second Supplemental Declaration of Dr. Kenneth R. Mayer)(Poland, Douglas)

2:11-cv-00562-JPS-DPW-RMD Notice has been electronically mailed to:

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