

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

BARBARA BOLLING)	
Plaintiff,)	
)	
vs.)	
)	
GARY COMMON COUNCIL OF)	
CITY OF GARY, MICHELLE)	
FAJMAN, Director of Lake)	CAUSE NO.: 2:23-cv-00032-PPS-JEM
County Board of Elections and)	
Registration, LAKE COUNTY)	
BOARD OF ELECTIONS AND)	
REGISTRATIONS)	
Defendants.)	

ORDER

Plaintiff, Barbara Bolling, and Defendant, Gary Common Council of City of Gary, through their counsel, filed a joint motion for the Court to approve a consent judgment. [DE 25.] The Court hereby GRANTS the motion to approve of the consent judgment [DE 25] and ADOPTS the parties’ stipulations, approves of the settlement agreement, and adopts the following findings and conclusions as written and provided by the parties as follows:

JURISDICTION, VENUE, CAUSE OF ACTION

1. This Court has jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 1343.
2. Declaratory relief is authorized pursuant to Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C §§ 2201, 2202.
3. Venue is proper in this district pursuant to 28 U.S.C. § 1391.
4. This action is brought pursuant to 42 U.S.C. §1983 to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States.
5. This Court has jurisdiction of the supplemental state claim pursuant to 28 U.S.C. § 1367 in that the claims brought pursuant to Indiana law and the United States Constitution are so

States Constitution.

6. The Court has jurisdiction to enter an order pursuant to I.C. 3-5-10-7(6) which provides, “As provided in the order of a court that has found the current redistricting plan unconstitutional or otherwise unlawful. (b) A redistricting authority may not redistrict at a time other than is provided in subsection (a).”
7. This Court has subject matter jurisdiction over Plaintiff’s constitutional malapportionment claims. *See Reynolds v. Sims*, 377 U.S. 533 (1964), and its progeny, e.g., *Judge v. Quinn*, 624 F.3d 352, 359 (7th Cir. 2010) (“federal courts have the power to hear cases and fashion remedies to redress the constitutional wrong.”); *Williams v. Jeffersonville City Council*, No. 4:03-cv-0002 DFH, 2003 WL 1562565, at *5 (S.D. Ind. Feb. 19, 2003) (Hamilton, J.) (finding malapportioned city council districts violated the Fourteenth Amendment).
8. The Council and Plaintiff have entered into Stipulations acknowledging that the Council’s current map is malapportioned in that the 2020 federal decennial census shows that the six single-member Council districts have the following populations: District 1: 12,414; District 2: 12,154; District 3: 12,016; District 4: 11,607; District 5: 9,651; District 6: 11,251.
9. Ms. Bolling is a resident of one of the overpopulated Council districts, District 3.
10. Ms. Bolling has standing to bring this action under 42 U.S.C. sec. 1983 because were the primary election to be held in the current malapportioned districts, her vote will be diluted in violation of the Equal Protection Clause of the Fourteenth Amendment, which applies to municipal units of government. *Brown v. Thomson*, 462 U.S. 835, 842-43 (1983) (holding that a plan used by a local unit of government with a greater than 10% total deviation is presumptively unconstitutional).
11. A total deviation of 24% was found to violate the equal protection principle in *Swann v. Adams*, 385 U.S. 440, 444 (1967).

12. The Court finds that the Council's current redistricting plan is unconstitutional and that the

Council and the Lake County Board of Elections and Registration may not use that plan for the 2023 primary and general elections for the Council.

13. Using the methodology established by the federal courts, *e.g.*, *Vigo Cnty. Republican Cent.*

Comm. v. Vigo Cnty. Comm'rs, 834 F. Supp. 1080, 1083 n. 5 (S.D. Ind. 1993), the total deviation in the current plan is 24%.

14. Pursuant to state law, redistricting shall occur "during the second year after a year in which a federal decennial census is conducted," and not later than December 31, 2022.

15. The Defendant Council did not comply with Indiana law to redistrict the six districts before December 31, 2022 and therefore Court intervention is necessary to remedy the current malapportionment of those six districts.

16. The "total deviation" is determined by adding the deviation from the average population of the six districts of the district with the largest population to the deviation of the district with the smallest population. *Vigo Cnty.*, 834 F. Supp. at 1083 n.5.

17. This total deviation is more than a "minor deviation from mathematical equality" and demonstrates a prima facie case of discrimination that must be justified by the Council, and it renders the current districts presumptively unconstitutional. *Brown*, 462 U.S. at 842-43; *Conner v. Finch*, 431 U.S. 407, 418 (1977).

18. The primary election is scheduled on May 2, 2023, and the general election November 7, 2023.

19. The failure of Defendant Council to redistrict following the 2020 census also violates Indiana Code §§ 36-4-6-3(g) and 3-5-10-7(a).

20. Defendant Council violated Ms. Bolling's right when it failed to redistrict pursuant to Indiana law before December 31, 2022 in violation of the Equal Protection Clause of the Fourteenth Amendment.

21. Ms. Bolling is a registered voter who resides in Council District 3 and who regularly votes in elections for the Council, who plans to vote in future elections, and who desires to have a vote that is equal to that of the votes of other voters in the City of Gary.
22. However, in elections for the Council, Ms. Bolling and other voters in overpopulated Districts 1, 2, and 3 have less voting strength than voters in Districts 5 and 6 which are underpopulated.
23. By failing to redistrict as required by law, Defendant Council is depriving Ms. Bolling of the right to vote in a Council district which complies with Indiana law.
24. That the current map is malapportioned
25. The Parties agree to remedy the malapportioned map through a Court order.
26. That on February 10, 2023, the Gary Common Council adopted a map for purposes of settlement agreement.
27. That Plaintiff and Defendant agree that the map adopted by the Gary Common Council is sufficient to address the malapportionment and move that the Court adopt said map as a part of this order.
28. That the stipulations and settlement agreement signed by the Parties are hereby incorporated into said order.
29. That the new map is attached to this Order, and is adopted by this Court through this order as the proper map which corrects the malapportionment and shall be used by the Lake County Board of Elections and Registration as the current map for Gary, Lake County, Indiana until the next census requires a review of the population.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED, the Court hereby finds that the Council's current redistricting plan is unconstitutional and that the Council and the Lake County Board of Elections and Registration may not use the plan for the 2023 primary and general elections for the Council, the Court hereby enters final judgment and

orders the Gary Common Council and the Lake County Board of Elections and Registration implement the map attached hereto for the 2023 primary and general elections for the Gary Common Council. Plaintiff may petition the Court for her fees and costs pursuant to 42 U.S.C. §1988 within the time provided by the Local Rules of the Court. That the proposed map submitted by the Gary Common Council and Barbara Bolling is not malapportioned and is recognized by the Court as the current map for the Gary Common Council. That said map shall replace the malapportioned map and is hereby adopted as an order of the Court. That, pursuant to previous court order, Michelle Fajman and the Lake County Board of Elections and Registration were hereby dismissed without prejudice as parties to this complaint.

Finally, because the parties have reached this agreement, Plaintiff's Motion for Preliminary Injunction [DE 2] is DENIED AS MOOT.

IT IS SO ORDERED this 22nd day of February, 2023.

/s/ Philip P. Simon

PHILIP P. SIMON, JUDGE
UNITED STATES DISTRICT COURT

2023



GARY COMMON COUNCIL

UPDATED

**CITY OF GARY
REDISTRICTING
PROPOSAL**

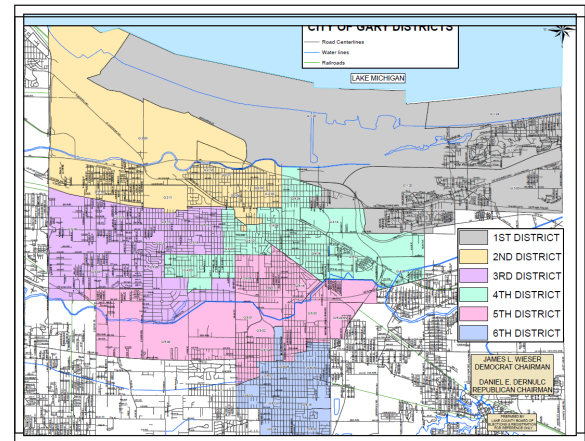
as of 2.8.23

CITY OF GARY

REDISTRICTING PROPOSAL : POPULATION NUMBERS BY DISTRICT

A LOOK AT THE NUMBERS

TOTAL CITY OF GARY POPULATION: 69,093
 IDEAL POPULATION: 11,515



UPDATED CITY OF GARY POPULATION BY DISTRICT	
<i>Updated</i> District 1	11,669
<i>Updated</i> District 2	11,675
District 3	12,009
<i>Updated</i> District 4	11,326
<i>Updated</i> District 5	11,164
District 6	11,250
TOTAL	69,093

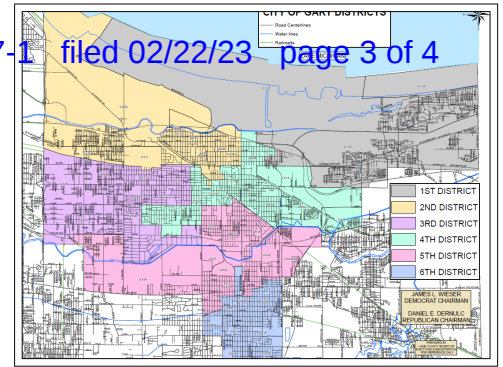
NOTE: Population totals are approximate with 95- 99% probability of accuracy.

CITY OF GARY

REDISTRICTING PROPOSAL : POPULATION NUMBERS BY PRECINCT

A LOOK AT THE NUMBERS

TOTAL CITY OF GARY POPULATION: 69,093
 IDEAL POPULATION: 11,515



Updated District 1	
Precinct	Pop.
G1-03	1,798
G1-08	1,488
G1-16	1,430
G1-18	1,290
G1-20	1,798
G1-22	1,866
G1-24	1,999
TOTAL	11,669

G1-10 Moved to 4th District

Updated District 2	
Precinct	Pop.
G2-01	1,217
G2-03	987
G2-04	1,615
G2-10	1,092
G2-11	1,864
G2-12	1,537
G2-17	1,297
G2-20	2,066
TOTAL	11,675

Boundary G2-01 south border changed; affected population moved into G4-10

District 3	
Precinct	Pop.
G3-03	1,726
G3-11	1,564
G3-15	1,464
G3-16	1,260
G3-17	1,420
G3-19	1,925
G3-21	1,250
G3-26	1,400
TOTAL	12,009

Updated District 4	
Precinct	Pop.
G4-03	1,447
G4-05	1,039
G4-10	1,857
G4-14	1,322
G4-16	1,733
G4-23	1,673
G4-25	1,510
G1-10 <i>Added to 4th</i>	745
TOTAL	11,326

Updated District 5	
Precinct	Pop.
G5-01	1,247
G5-02	910
G5-04	2,311
G5-06	1,186
G5-13	875
G5-14	1,224
G5-16	537
G5-20	1,358
G5-24	3
G4-22	1,443
G4-28 <i>moved to 5th</i>	70
TOTAL	11,164

District 6	
Precinct	Pop.
G6-02	1,774
G6-05	1,292
G6-07	994
G6-10	1,034
G6-12	1,050
G6-14	1,362
G6-16	1,679
G6-18	2,065
TOTAL	11,250

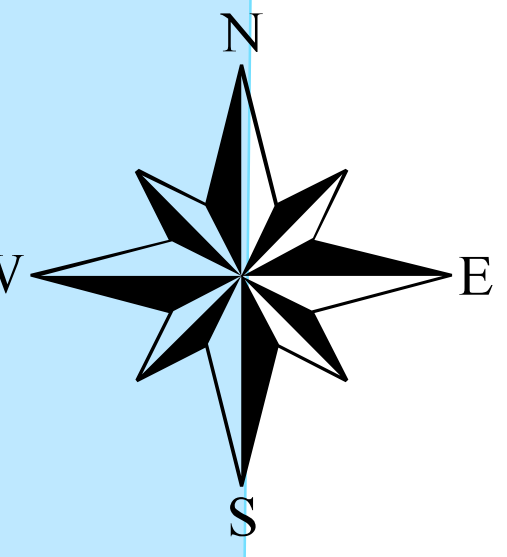
NOTE: Highest Populated District: 3rd District approximate total pop. of 12,009
 Lowest Populated District: 5th District approximate total pop. of 11,164
 Population Deviation: 845
 Target Population per District: 11,515 Total 2020 City of Gary Census Population: 69,093
New Percentage of Total Pop. Deviation: 7.338%

UPDATED

CITY OF GARY

DISTRICT CHANGES

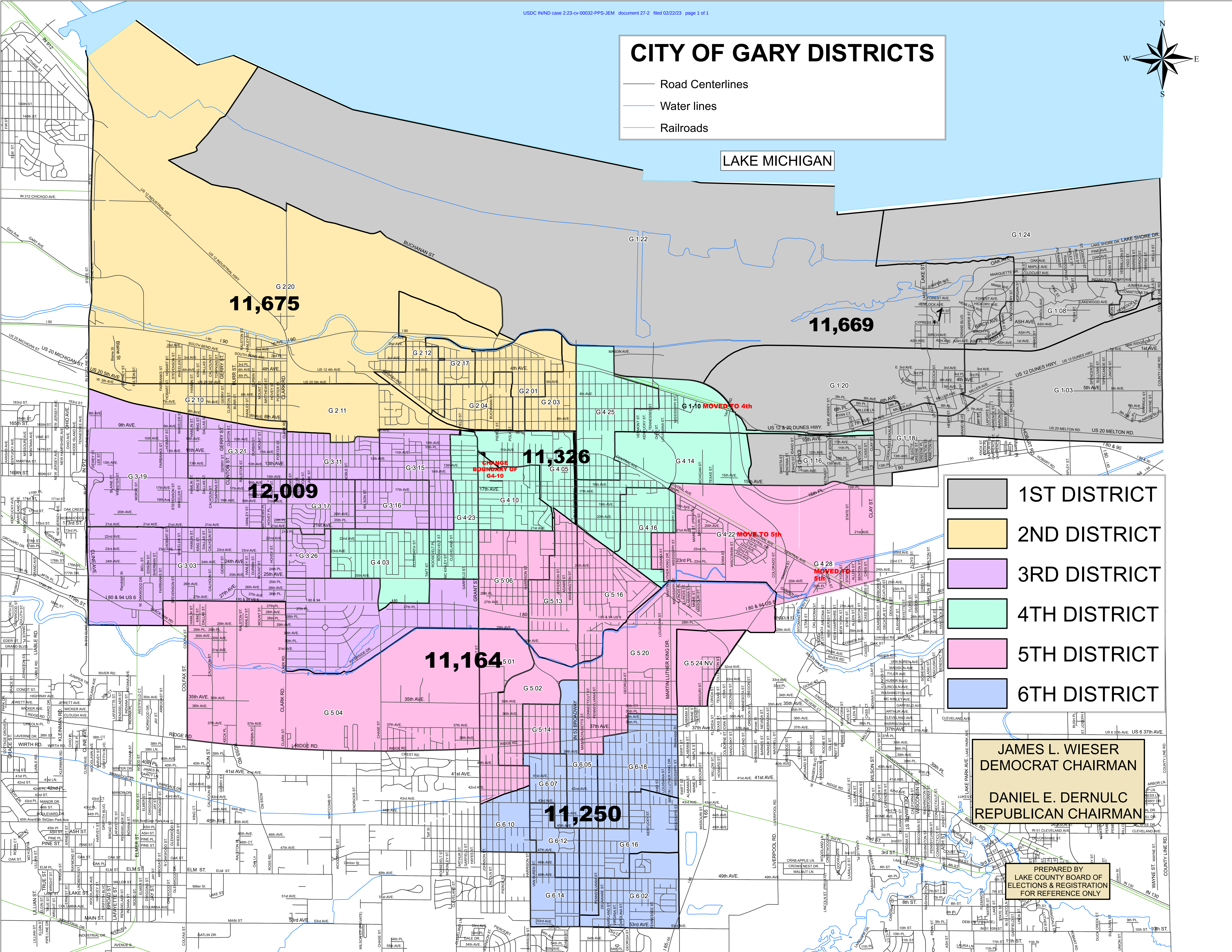
- (A) First District: G1-10 moved to Fourth District
- (B) Second District: South boundary of G2-01 adjusted to 9th Ave
- (C) Third District: To remain the same
- (D) Fourth District: Moved G4-22 into Fifth District
Moved G4-28 into Fifth District
G1-10 moved into Fourth District
- (E) Fifth District: *Added G4-22 into Fifth District*
Added G4-28 into Fifth District
- (F) Sixth District: To remain the same



CITY OF GARY DISTRICTS

- Road Centerlines
- Water lines
- Railroads

LAKE MICHIGAN



11,675

11,669

11,326

12,009

11,164

11,250

- 1ST DISTRICT
- 2ND DISTRICT
- 3RD DISTRICT
- 4TH DISTRICT
- 5TH DISTRICT
- 6TH DISTRICT

JAMES L. WIESER
DEMOCRAT CHAIRMAN

DANIEL E. DERNULC
REPUBLICAN CHAIRMAN

PREPARED BY
LAKE COUNTY BOARD OF
ELECTIONS & REGISTRATION
FOR REFERENCE ONLY

CHANGE BOUNDARY OF G4-10

G 1,10 MOVED TO 4th

G 4,22 MOVED TO 5th

G 4,28 MOVED TO 5th