



North Carolina gerrymandering struck down as SCOTUS decisions in Maryland and Wisconsin loom

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Gerrymandering of congressional districts in the United States was dealt a swift blow on Wednesday when a federal court ruled that North Carolina's congressional map was unconstitutional in its Republican bias.

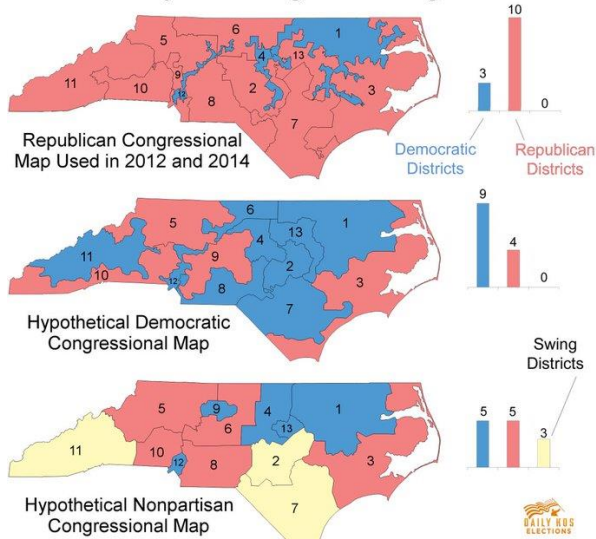
The case was brought against the state government by the League of Women Voters and Common Cause in North Carolina, which argued that in redrawing the state's districts to unfairly benefit Republicans, the 1st Amendment and the Equal Protection Clause in the 14th Amendment were violated.

In his 205-page ruling, Judge James A. Wynn agreed with the plaintiffs, stating that partisan gerrymandering "runs contrary to numerous fundamental democratic principles and individual rights enshrined in the Constitution." The judge noted that the state's General Assembly, which redrew the state's congressional map in 2016 to give 10 out of a total 13 districts Republican control, was "an injury to the First Amendment rights of the intended targets or victims."

Though Republicans are expected to appeal the decision, the court's ruling mandated that the state must correct the problem with new maps by Jan. 24. Tuesday's ruling marks the first time a federal court has ever blocked a congressional map due to partisan gerrymandering.

Gerrymandering, the practice of drawing congressional districts to ensure that one political party has a majority in a large number of districts while the minority party is concentrated in only a few, is widely decried by Americans. According to a 2013 Harris poll cited by the Brennan Center for Justice, 7 in 10 Americans believe that "those who stand to benefit from drawing electoral lines should not have a say in the way those lines are drawn." This includes 74% of Republicans and 73% of Democrats. Lawmakers have also come out against the practice, including Republican Gov. John Kasich of Ohio and former President Barack Obama.

How Gerrymandering Can Swing Elections



The U.S. Supreme Court, however, has been skittish when it comes to ruling on the controversial practice. In 2004, the court sided in favor of gerrymandering in Pennsylvania in a 5-4 decision, ruling that the practice was a political matter outside of the court’s purview. Justice Anthony Kennedy noted in his opinion that though “no such standard [for ruling gerrymandering unconstitutional] has emerged in this case,” that “should not be taken to prove that none will emerge in the future.”

Now, that future may have potentially arrived. As the Supreme Court prepares to rule on gerrymandering cases in Wisconsin and Maryland, there’s a chance that the North Carolina decision could be the start of a legal wave taking down the much-maligned political practice.

Wisconsin

The U.S. Supreme Court is currently taking on gerrymandering in Wisconsin via the case Gill v. Whitford, for which they heard oral arguments in October 2017.

The case follows a 2016 district ruling in favor of Wisconsin Democrats, who argued that the state’s 2011 redistricting for the state assembly’s lower house unfairly favored Republican politicians. The redistricting, the Brennan Center notes, resulted in Republicans winning 60 out of 99 assembly seats in 2012 with only 48.6% of the state-wide vote, as well as 63 seats in 2014 with only 52% of the vote.

The state is now trying to have the court strike down that ruling, which again uses the justification that the partisan redistricting violates the 1st and 14th Amendments, as it hinders voters’ right to be treated equally and fairly, discriminates against them for expressing their views or associating with a particular political party.

During the Supreme Court hearing, the justices expressed discontentment with the practice of gerrymandering. Justice Ruth Bader Ginsberg posed the question: “If you can stack a legislature in this way ... what becomes of the precious right to vote?”

Questions remain on how the court could apply a fair standard that would determine what instances of redistricting would be considered unconstitutional.

“Gerrymandering is distasteful,” Justice Samuel Alito said during the hearing. “But if we are going to impose a standard on the courts, it has to be something that’s manageable and it has to be something that’s sufficiently concrete.”

Solutions proposed to determine gerrymandering include measuring the “efficiency gap,” which is based on the “wasted votes” cast for either the losing candidate, or votes for the winning candidate, that exceed the majority they needed to win. A symmetry in wasted votes for each party would suggest a fair vote, advocates propose, while an imbalance could suggest gerrymandering. Other solutions include measuring whether vote results deviated from the historical ratio of votes cast to seats won, as well as calculating the difference between a state’s mean and median vote shares.

A more simple solution, Justice Stephen Breyer proposed, would be asking, in cases where a party wins a minority of state-wide votes but a majority of seats, whether the same possibility existed for the other party.

Demonstrators gather outside of the United States Supreme Court during an oral arguments in ‘Gill v. Whitford’ to call for an end to partisan gerrymandering on Oct. 3, 2017 in Washington, D.C. Olivier Douliery/Getty Images

Should the Supreme Court determine a suitable standard and rule against the state of Wisconsin, *Gill v. Whitford* could set the stage for taking down gerrymandering throughout the country.

Maryland

The Supreme Court is also set to hear *Benisek v. Lamone* this year, a gerrymandering case that centers on the other side of the aisle.

The case concerns the redistricting of Maryland’s 6th Congressional District, which was reshuffled to include 90,000 more Democratic voters, according to the *Washington Post*. The redistricting resulted in Republican incumbent Rep. Roscoe Bartlett’s loss in 2012 to Democratic challenger John Delaney — Bartlett had previously won by a 28-point margin.

Seven Republican voters in the district are now challenging the redistricting, arguing that the state violated the 1st Amendment by penalizing them for how they cast their votes. The voters’ challenge was previously struck down by a federal court in August, and is now being appealed.

While the reasons behind the Supreme Court’s decision to take up two gerrymandering cases in a single term are unknown, U.C. Irvine School of Law professor and election law expert Richard L. Hasen speculated in the *Los Angeles Times* that the two cases could be a way for the high court to indicate rulings against gerrymandering don’t show favor toward a particular political party.

The case represents a larger issue of Democratic-based gerrymandering in Maryland, where seven out of eight congressional seats are currently held by Democrats. Former Gov. Martin O'Malley even confirmed as such in a deposition as part of the 6th District case

“Part of my intent was to create a map that, all things being legal and equal, would, nonetheless, be more likely to elect more Democrats rather than less,” O'Malley said.

Former Maryland Gov. Martin O'Malley stands onstage following an inauguration ceremony for Baltimore Mayor Catherine Pugh, in December 2016. Patrick Semansky/AP

While gerrymandering has traditionally worked in favor of Republicans, the Maryland case demonstrates that partisan redistricting can work for both parties.

“It is power here that seems to be the corrupting factor. Both parties, when in power, have done a whole lot of this,” Walter Olson, who co-chairs a bipartisan redistricting commission in Maryland, told HuffPost. “The best time to be principled is when you're being magnanimous and no one is forcing this out of you. People remember when you've done the right thing before you had to.”