

Regarding a proposed rule for the Wisconsin Supreme Court to take original jurisdiction of redistricting lawsuits.

I write in opposition to the proposed rule for the Wisconsin Supreme Court to take original jurisdiction in redistricting cases.

Three of the past four redistricting proposals in Wisconsin occurred during split government where partisan differences required intervention in federal court for resolution. The most recent redistricting in 2012 was done under unified partisan control of both legislative bodies and the governor. Even so, that redistricting plan required modification imposed by a federal court.

The Wisconsin Supreme Court declined to take up redistricting disputes in 2002 because it did not have a procedure in place to handle such disputes but indicated it would have a procedure to handle future redistricting suits.

Given that Wisconsin voters have traditionally been equally divided between Republican and Democratic voters, redistricting is furiously contested and is expected to be so in 2021 with a Democratic Governor and an overwhelming Republican majority in both houses of the legislature. The likelihood is that the Legislature will again adopt maps that are heavily gerrymandered to favor Republicans and the Governor will veto that proposal with a resort to the courts for resolution.

The question now before the court is whether to adopt a rule to make this court the court of original jurisdiction in redistricting disputes. I believe that adopting such a rule will deprive this court of the benefit of the discovery or a trial that occurs when the process begins in a lower court.

A fundamental premise of representative democracy is that the people's legislative representatives should reflect the preferences of the voters. Voters express their preferences largely through their partisan choices. Legislative districts drawn in such a way that elections fail to affirm the voters' partisan preference undermines faith in the system, a faith that is essential to democratic governance.

The US Supreme Court recently ruled that partisan gerrymandering does not come within the jurisdiction of federal courts. This means that assuring that voters get the representation they voted for falls to the state courts. Drawing legislative districts involves many, sometimes conflicting, priorities such as complying with federal laws, assuring equal population, maintaining communities of interest, compactness, avoiding splitting jurisdictions when possible, and trying to achieve a partisan balance that reflects the voter's choice.

When this court considers maps that fail to optimize these considerations for the benefit of Wisconsin electors, it will benefit from the evidence brought forward in the lower court. I

strongly urge the court to adopt a procedure to take full advantage of the process for dispute resolution that begins in a lower court.

In recent years, the courts have been called upon to resolve disputes between partisan political adversaries. As a non-partisan branch of government, they also have the responsibility protecting the public interest by preserving the fundamentals of a democratic society. This is especially true when called upon to resolve redistricting questions that come before the Court. Partisan gerrymandering imperils our system of government by denying voters the representation they chose. Part of the Court's role in that system is to defend its foundations and the interests of the people.

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