



Written by [Steve Byas](#) on July 6, 2017

Supreme Court to Hear Wisconsin Gerrymander Case

That the U.S. Supreme Court has opted to hear a legislative redistricting case from Wisconsin, and issued a stay on the 2-1 decision of three federal judges in that state, is being called a good indication that a majority of the Supreme Court will likely overturn it. The case involved an effort by Democrats in Wisconsin to force the Wisconsin Legislature to draw lines in order that the ratio of Democrat votes statewide be reflected in the ratio of the partisan makeup of that legislative body.



The argument of the plaintiffs is that Democrats won 51.4 percent of the total vote in all legislative races for the State Assembly (the lower house) in 2012, but managed to win only 39 of 99 state Assembly seats. In essence, the Democrats are arguing that Wisconsin, and ultimately all state legislative bodies (and, one would presume, the U.S. House of Representatives), be selected in a manner similar to what is seen in the United Kingdom and other parliamentary systems.

In other words, in a manner different from what the Founders set forth in the Constitution.

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The plaintiffs are asking federal courts to essentially declare the system created by the Framers of the Constitution to be unconstitutional. In the U.S. House of Representatives, for example, we use “single-member districts.” This means that the national vote has no impact on what a specific congressional district decides. The voters in the Fourth District of Oklahoma determine which person will represent them in the House of Representatives, and the voters in a district in San Francisco choose to elect Nancy Pelosi. Each district’s vote has no bearing on the outcome of the other’s election. A person is elected to represent the people of his or her district, not the country as a whole, and certainly not a particular political party.

On the contrary, however, in Great Britain the national vote does determine how many seats each political party will have. Progressives at least as far back as Princeton Professor Woodrow Wilson have expressed disgust at the legislative system as established in our Constitution, arguing that a parliamentary system such as that used in the U.K. would be better.

In a 2-1 decision decided in November of last year, three federal judges held that the Wisconsin Assembly boundaries as drawn up by the Republicans in 2011 constituted a partisan gerrymander. They ordered the state to draw new boundaries to better reflect the statewide partisan vote, and that new district lines be drawn by November 2017, so as to be in place before the 2018 elections.

That is why the “stay,” or delay in the implementation of that order is seen as significant. Wisconsin Attorney General Brad Schimel asked for the stay, which was opposed by the four most liberal members of the Supreme Court: Ruth Bader Ginsberg, Stephen Breyer, Sonia Sotomayor, and Elena Kagan. This is yet another sobering result of the 2016 presidential election. Had Hillary Clinton won the White House, her nominee to the Supreme Court no doubt would have joined those four in upholding the stay,



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and likely would have joined in upholding the lower court decision itself.

Arguments on the merits of the case are expected in the fall term of the court, which begins the first Monday in October.

The Republican National Committee filed a brief with the Supreme Court which said, "Some voters who support one party are naturally 'packed' as a result of residential patterns not connected to legislative choices."

Rick Hasen, a law professor at the University of California-Irvine, writes a blog about election-law cases, and he also said that granting of the stay indicates the court is probably going to reverse the lower court panel's decision in the case. "This stay order raises a big question mark for those who think [the] court will use the case to rein in partisan gerrymandering."

But Martha Laning, who chairs the Wisconsin Democratic Party, remained "confident" that the 2011 legislative maps will be declared unconstitutional by the Supreme Court "and electoral fairness will be restored to Wisconsin."

Democrats argue that the huge victories they win in urban districts result in "wasted votes." Republican Governor Scott Walker, however, was pleased with the decision of the U.S. Supreme Court to take the case and to likely reverse the lower-court ruling. He noted that the district map adopted by the Wisconsin Legislature "very clearly upheld all the criteria that the courts had done in previous decades."

The argument that voters in urban centers such as Milwaukee and Madison should dictate to the rest of the state is similar to the reasoning used by those who wish to abolish the Electoral College method of choosing the president. Carrying this reasoning to its logical conclusion, the U.S. Senate should be abolished, as well. Finally, it would dictate that the United States have one national election, and if a party received 48.5 percent of the votes for the House of Representatives nationally, then that party would get 48.5 percent of the total seats in the House.

And if that happened, our Constitution would have been replaced by a parliamentary system used by the nation from which we seceded in 1776.

Photo of the Wisconsin capitol: [Jeff dean](#) at [English Wikipedia](#)



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