



WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.
330 E. Kilbourn Avenue, Suite 725, Milwaukee, WI 53202-3141
414-727-WILL (9455)
Fax 414-727-6385
www.will-law.org

MEMORANDUM

To: Interested Parties
From: Lucas Vebber, Deputy Counsel
Date: April 7, 2025
RE: Wisconsin's congressional district maps, litigation history and analysis

There has been a lot of talk about Wisconsin's congressional district maps over the past several months. This memorandum briefly seeks to add context to that conversation by providing a summary of the legal history of how our current maps were adopted, and a brief analysis of any potential renewed attempt to redraw Wisconsin's congressional district maps.¹

Background

Every ten years, following the United States Census, states are required to re-apportion their legislative and congressional districts. Wisconsin's congressional district boundaries are set in state statute, requiring the legislature to adopt new district maps, and the governor to sign those into law every ten years.

Current Maps

When the legislature and governor cannot agree on new maps, the task of reapportioning falls to the courts. This happened after the 2020 Census, when Governor Evers vetoed the legislature's adopted maps. On behalf of a group of Wisconsin voters, WILL filed an original action in the Wisconsin Supreme Court alleging that the 2020 census revealed that the existing maps had become malapportioned and seeking judicial reapportionment. Additional parties joined that litigation.

As part of that case, the Court invited all litigants to submit proposed remedial maps based on the 2011 maps which are still in the state statutes (as they were the last districts adopted by the legislature and signed into law by the governor). It announced that one criterion by which proposed maps would be evaluated would be the degree of change from existing maps drawn by the legislature in 2011. The

¹ This memorandum only addresses the congressional district maps. The state legislative maps, which were also subject to litigation, have been separately resolved and are not expected to be revisited.

congressional maps drawn in that year had been challenged in federal court and were upheld, with the federal court there noting the maps were made with a “bipartisan process” which “incorporate[d] . . . feedback” from both Wisconsin’s Republicans and Wisconsin’s Democrats in Congress. See *Baldus v. Members of Wis. Gov’t Accountability Bd.*, 849 F. Supp. 2d 840, 854 (E.D. Wis. 2012) (per curiam). At no time had these *congressional* maps ever been found to be gerrymandered.

In response to the Court’s directive, four different parties submitted proposed congressional maps, including Governor Tony Evers and the state’s Republican Congress members. In 2022, a four-justice majority of the Court ultimately selected Wisconsin Governor Tony Evers’ maps from among all the submissions. That majority consisted of Justices Karofsky, Dallet, A.W. Bradley and Hagedorn. See *Johnson v. Wisconsin Elections Commission*, 2022 WI 14.

First Attempt to Challenge Current Maps

In January of 2024, there was an attempt to challenge the Evers-drawn map and reopen the case. The Wisconsin Supreme Court denied that request 6-0 with Justice Protasiewicz declining to participate.²

Potential Future Challenges

Following Wisconsin’s Supreme Court election on April 1, 2025, some partisan Democrats are now openly calling for the Court to redraw those Congressional district lines.³ As WILL argued⁴ in response to the first attempt to reopen the case just last year, the effort is futile because the maps adopted by the Wisconsin Supreme Court complied with all federal and state laws and constitutional requirements.

While it is certainly possible that some litigant will once again ask the Wisconsin Supreme Court to again reopen the state’s congressional district maps, such a request would face steep practical and legal hurdles.

First, as a practical matter, all 6 members of the Court who declined to reopen the case last year are still on the Court. Justice A.W. Bradley will continue to serve until August. And second, even after Justice A.W. Bradley’s term is up, 3 of the justices who adopted the Governor’s maps as Wisconsin’s congressional district maps are still

² A motion asking Justice Protasiewicz to recuse herself from that case had been filed. Justice Protasiewicz declined to participate on the grounds that she was not a member of the Court when it issued its initial decision, and determined the recusal motion was moot. Her order on that motion can be read at: <https://acefiling.wicourts.gov/document/eFiled/2021AP001450/772744>

³ See Scott Bauer, *Wisconsin Supreme Court to tackle abortion, unions and redistricting after a liberal’s win*, Associated Press (April 2, 2025), Available at: <https://apnews.com/article/wisconsin-supreme-court-elon-musk-trump-1a20a047437f69553730dfc096abd729>

⁴ WILL’s brief opposing that initial effort to reopen the case can be read at: <https://acefiling.wicourts.gov/document/eFiled/2021AP001450/758141>

on the Court and would need to not only reverse their initial decision from 2022, but also to reverse their decision to decline to reopen the case just last year.

Second, there is not an obvious basis for reopening the case. Following the 2023 Supreme Court election which shifted the Court's majority from "conservative" to "left progressive," the Court was asked to reopen the *state legislative* maps approved in *Johnson* on a number of bases including that those maps were the result of a partisan gerrymander. The Court declined to take up that claim due to its complexity and time constraints, but eventually did reopen the maps on the grounds that some of the legislative districts included noncontiguous territory.⁵

It is unclear that such ground would even be available here as the congressional district maps are contiguous. But even if it were argued they were not, the Wisconsin Constitution's requirement of contiguity applies only to the state legislative district maps. While one could claim a federal requirement of contiguity and the Court is not technically bound by lower federal courts approval of noncontiguous districts, it is more likely that the Wisconsin Supreme Court would have to entertain the partisan gerrymandering claim that it had declined to consider in the past.

Such a claim would be complicated by the fact that it was Governor Evers' maps that were chosen in *Johnson*. While plaintiffs might argue that the Court's requirement of "least changes" from the 2011 maps continued a pre-existing gerrymander, such a claim was, as noted above, rejected in *Baldus*.

Third, beyond those practical realities, such an effort would also likely violate the Elections Clause of the United States Constitution.⁶ Recently, the United States Supreme Court made clear that "state courts may not so exceed the bounds of ordinary judicial review as to unconstitutionally intrude upon the role specifically reserved to state legislature. . ." *Moore v. Harper*, 600 U.S. 1, 37 (2023).

Any effort by the Wisconsin Supreme Court to throw out the Governor Evers map it adopted just three years ago (and declined to revisit just last year), would almost certainly fall within what the United States Supreme Court's warned state courts could not do. This is particularly so since any finding of a partisan gerrymander would almost certainly have to rest on a bizarre requirement of proportionality that is at odds with single-member geographic districts.

⁵ The existence of such territory, which are the product of noncontiguous islands, was not new and had not been a problem in previous litigation, including *Johnson* itself.

⁶ The Elections Clause provides that the "Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof. . ." U.S. Const., Art. I, Sec. 4.

As a result, while such efforts certainly should be taken seriously, those efforts face significant practical and legal problems in both state and federal court, and are, ultimately, unlikely to succeed.

Conclusion

The narrative that Wisconsin's Supreme Court election would determine control of the House of Representatives was created by political operatives on both sides for fundraising and to drive turnout in the election. Now that the dust has settled, while it is certainly a possibility that the Wisconsin Supreme Court will again be asked to re-draw Wisconsin's congressional district maps before the next census, it is clear that such a legal challenge would have to overcome a number of significant hurdles.