

# BALLOTPEDIA Summary of Wisconsin Redistricting

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## State legislative redistricting, 2010

On July 20, 2011, the state legislature approved a state legislative redistricting plan, which was signed into law on August 9, 2011. That summer, opponents of the new legislative and congressional maps filed suit in federal court through *Baldus v. Brennan*, alleging "partisan and racial gerrymandering and ... violation of the [Voting Rights Act](#) and various state constitutional criteria." Fifteen Wisconsin residents filed as the plaintiffs in that suit.<sup>[42]</sup> On March 22, 2012, the [United States District Court for the Eastern District of Wisconsin](#) ruled that two state Assembly districts violated the Voting Rights Act. The court ordered that these two districts be redrawn. On April 11, 2012, the court accepted the redrawn districts.<sup>[34]</sup>

In June 2012, Democrats assumed a one-vote majority in the Wisconsin State Senate as the result of a series of recall elections. Although Democrats lost the majority five months later, they were able, in the meantime, to compel law firm Michael Best and Friedrich to turn over files related to the 2011 redistricting cycle (Republicans tasked with drafting new maps in 2011 worked out of the Michael Best and Friedrich office in Madison, Wisconsin). Before Democrats assumed the majority, they had asked Michael Best and Friedrich to turn over the requested records, but the firm refused, saying that it answered to the majority leader. Democrats used these records as evidence when they filed suit in federal district court, alleging that the Wisconsin State Assembly map treated voters "unequally, diluting their voting power based on their political beliefs, in violation of the Fourteenth Amendment's guarantee of equal protection." On November 21, 2016, the [United States District Court for the Western District of Wisconsin](#) struck down the district map for the Wisconsin State Assembly, finding in favor of the plaintiffs, a group of state Democrats. The court ruled 2-1 on the matter, with Judges [Kenneth Ripple](#) and [Barbara Crabb](#) forming the majority. Ripple wrote the following in the court's majority opinion:<sup>[43][44]</sup>

“ We find that Act 43 [the redistricting plan enacted by the state legislature in 2011] was intended to burden the representational rights of Democratic voters throughout the decennial period by impeding their ability to translate their votes into legislative seats. Moreover, as demonstrated by the results of the 2012 and 2014 elections, among other evidence, we conclude that Act 43 has had its intended effect.<sup>[7]</sup> ”

—Judge Kenneth Ripple

Judge [William Griesbach](#) dissented and wrote the following in his dissent:<sup>[43]</sup>

“ I am unable to accept proof of intent to act for political purposes as a significant part of any test for whether a task constitutionally entrusted to the political branches of government is unconstitutional. If political motivation is improper, then the task of ”

redistricting should be constitutionally assigned to some other body, a change in law we lack any authority to effect.<sup>[7]</sup>

—Judge William Griesbach

The court declined to order a remedy when it issued its ruling. Instead, the court ordered the parties involved in the case to submit briefs outlining recommended remedies within 30 days.<sup>[43]</sup>

The plaintiffs in the case proposed a three-part test for determining whether illegal partisan gerrymandering has occurred in a state.<sup>[43]</sup>

1. Intent: "Plaintiffs would have to establish that a state had an intent to gerrymander for partisan advantage."
2. Effect: "Plaintiffs would need to prove a partisan effect by proving that the [efficiency gap](#) for a plan exceeds a certain numerical threshold."
3. State interest: "Plaintiffs placed the burden on the defendants to rebut the presumption by showing that the plan 'is the necessary result of a legitimate state policy, or inevitable given the state's underlying political geography.'"

[Peter Barca](#) (D), the minority leader of the Wisconsin State Assembly, said, "This is an historic victory for voters and further admonishment of the extremely slanted maps that trample the democratic will of the people of Wisconsin." Assembly Speaker [Robin Vos](#) (R) said, "There are only two things that are certain about this case: it's unprecedented and it isn't over. The state of Wisconsin has competitive legislative districts that meet every traditional principle of redistricting. Republicans win elections because we have better candidates and a better message that continues to resonate with the voters."<sup>[45]</sup>

On January 27, 2017, the court ordered state lawmakers to draft a remedial redistricting plan for use in the November 2018 election. The court ordered that this plan be adopted by the legislature and signed into law by the governor by November 1, 2017. On March 24, 2017, state attorneys [petitioned](#) the Supreme Court of the United States to reverse the district court's ruling.<sup>[46][47][48]</sup>

On June 19, 2017, the [Supreme Court of the United States](#) announced that it would hear the case, [Gill v. Whitford](#). The court also voted 5-4 to stay the district court decision that ordered Wisconsin lawmakers to draft new maps by November 1, 2017. Chief Justice [John Roberts](#) and Associate Justices [Clarence Thomas](#), [Anthony Kennedy](#), [Samuel Alito](#), and [Neil Gorsuch](#) voted to stay the district court order. Associate Justices [Ruth Bader Ginsburg](#), [Elena Kagan](#), [Sonia Sotomayor](#), and [Stephen Breyer](#) dissented. Oral argument in the case took place on October 3, 2017. On June 18, 2018, the Supreme Court of the United States ruled that the plaintiffs had failed to demonstrate standing to bring the complaint under Article III of the United States Constitution. The court's opinion, penned by Roberts, did not address the broader question of whether partisan gerrymandering claims are justiciable and remanded the case to the lower court for further proceedings. Roberts was joined in the majority opinion by Kennedy, Ginsburg, Breyer, Alito, Sotomayor, and Kagan. Kagan wrote a concurring opinion joined by Ginsburg, Breyer, and Sotomayor. Thomas authored an

opinion that concurred in part with the majority opinion and in the judgment, joined by Gorsuch. [\[49\]\[50\]\[19\]](#)

In response to the ruling, Bill Whitford, a plaintiff in the suit, said, "The discouraging thing is just the delay. We have a road map forward ... I don't think we'll have any difficulty meeting the burdens the court asked us to meet." Wisconsin Solicitor General Misha Tseytlin doubted the viability of a further challenge, saying, "I think it is quite notable that [the plaintiffs] put together a fairly large, well-funded litigation team, had a four-day trial, and the Supreme Court unanimously held 9-0 they did not prove the basis of standing. The plaintiffs here failed to prove up the minimal standing to even bring a lawsuit." [\[51\]](#)

On September 14, 2018, in response to the high court's ruling in *Gill*, the plaintiffs filed an [amended complaint](#) in the United States District Court for the Western District of Wisconsin. Also on September 14, 2018, the Wisconsin Assembly Democratic Committee filed a similar but separate suit in the same court. [\[52\]\[53\]](#)