

Partisan redistricting in Wisconsin and the U.S. Supreme Court Case *Gill v. Whitford*

David Canon
Breakfast Briefing
March 21, 2018



University of Wisconsin - Madison

Department of Political Science

College of Letters & Science

Redistricting 101

- Redistricting occurs every ten years after the U.S. Census. Equalize population across states (reapportionment for the U.S. House) and districts (redistricting for U.S. House and state legislatures).
- Redistricting process – state legislatures, non-partisan commissions, and the courts. Basic critique: politicians pick their voters rather than voters picking their leaders.
- Redistricting principles:
 - The “Big Two”: equal population and race.
 - Other traditional districting principles: compactness, contiguity, respect for political subdivision lines and natural boundaries, protect communities of interest, avoid incumbent pairings, and electoral competition.

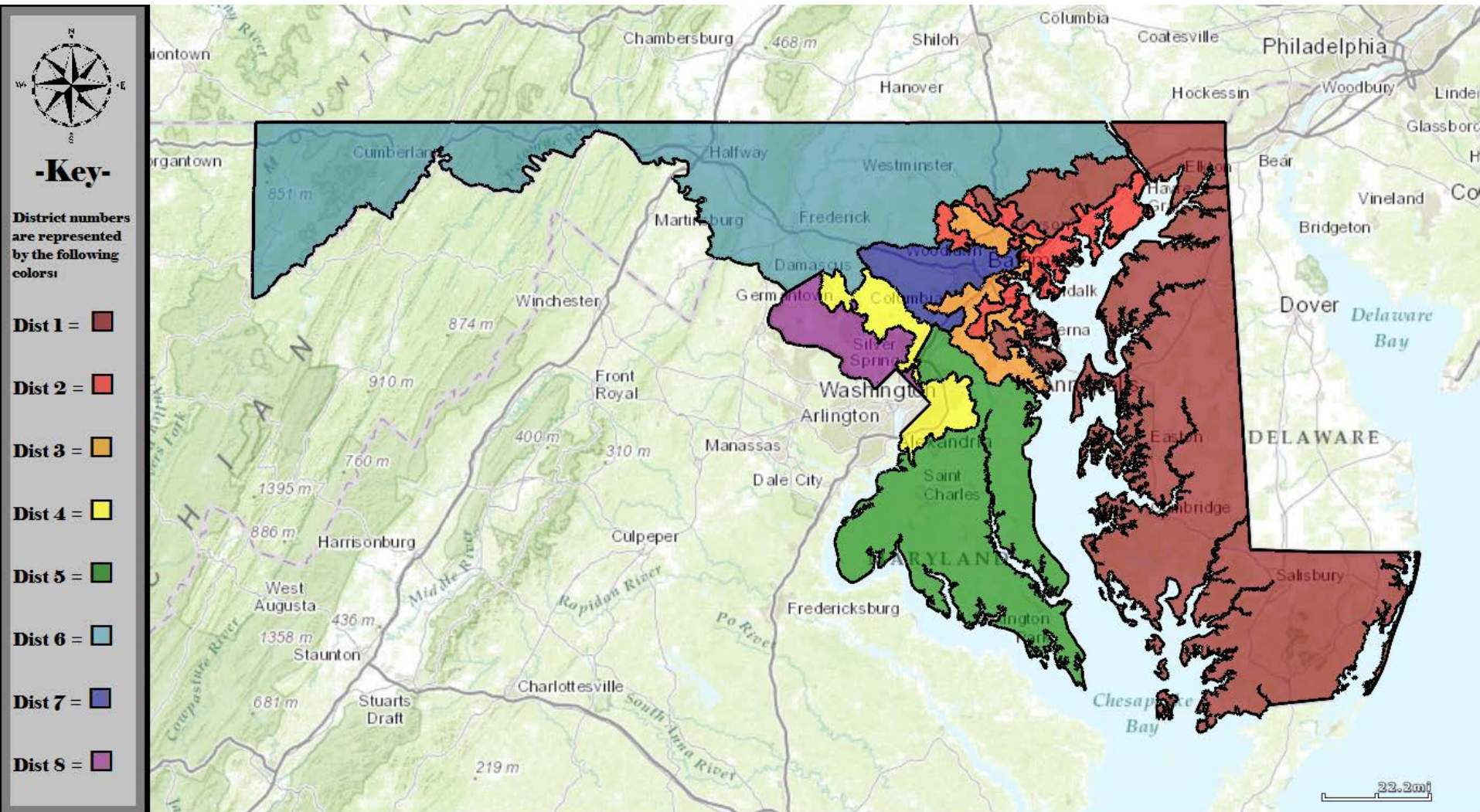
Partisan redistricting

- The original “gerrymander” a partisan redistricting 1812 in Massachusetts.
- The politics of partisan gerrymandering: not a D/R issue, but majority/minority party. Both Ds and Rs draw district lines for partisan advantage when they can: MD and IL for Ds and NC, PN, MI, VA, and WI for Rs in 2011. Unlike the politics of voter ID.
- Tools of partisan gerrymandering: cracking and packing.



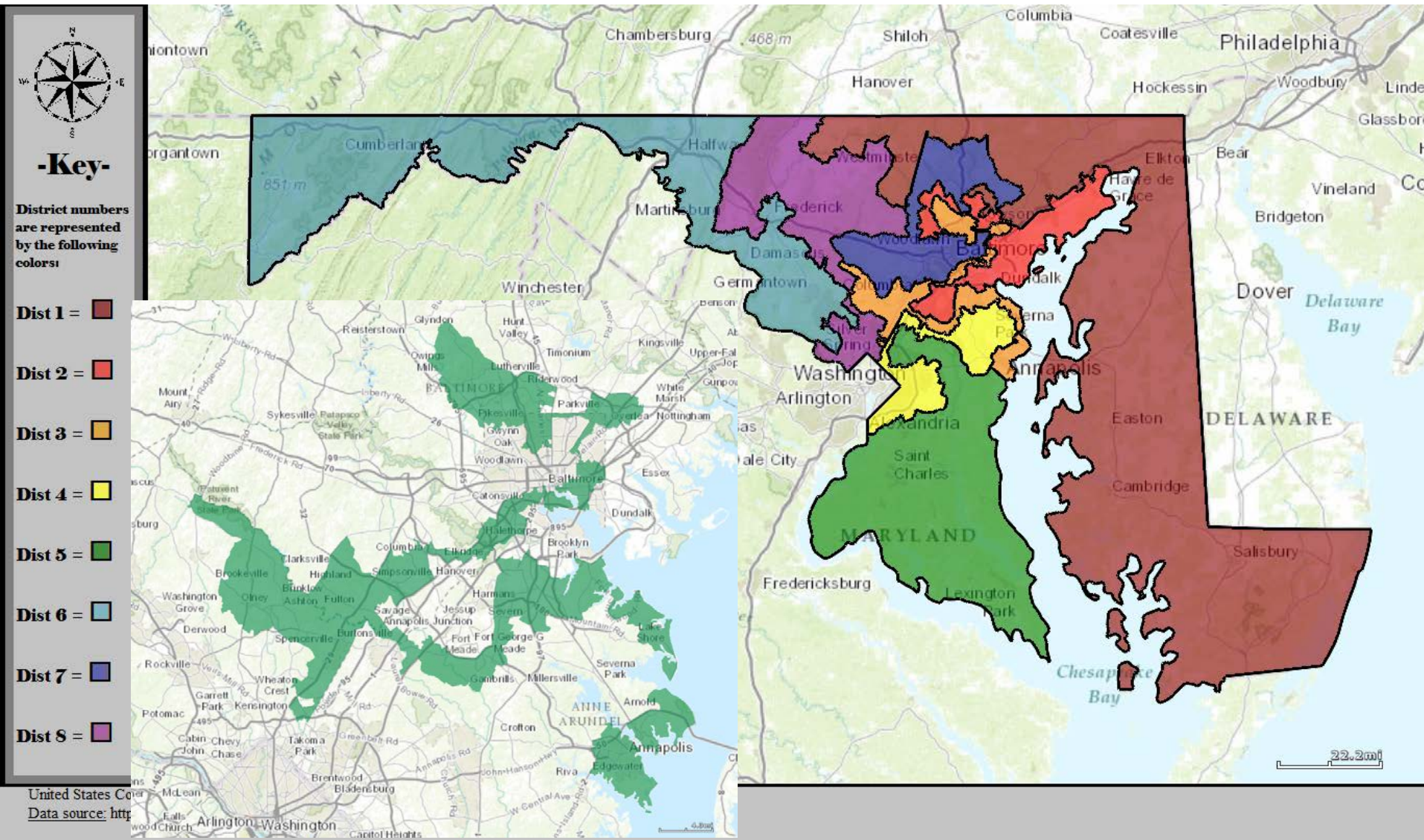
Fig. 6.4. Elkanah Tisdale's original Gerrymander, as it appeared in the *Boston Gazette*, March 26, 1812. (From James Parton, *Caricature and Other Comic Art* [New York: Harper and Brothers, 1877], p. 316.)

Cracking in Maryland's U.S. House districts: 2004-2012 districts

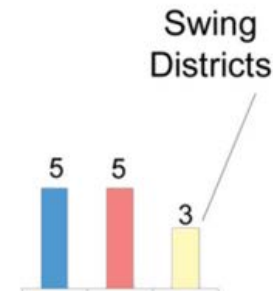
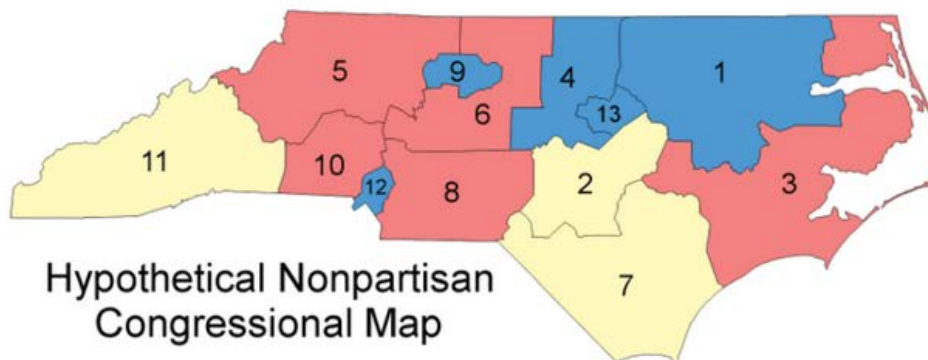
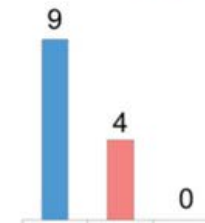
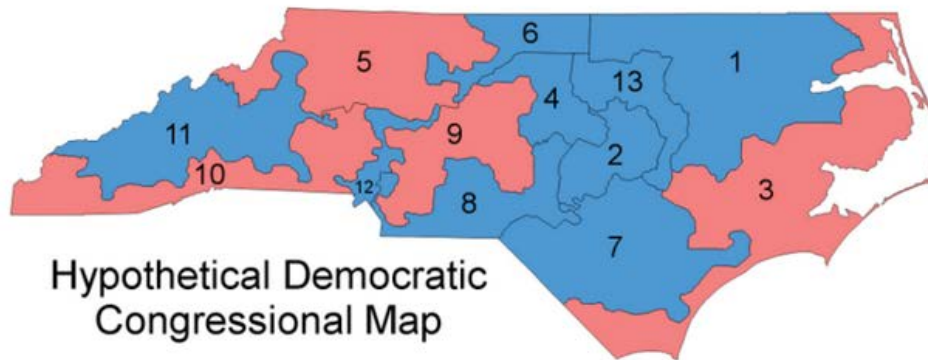
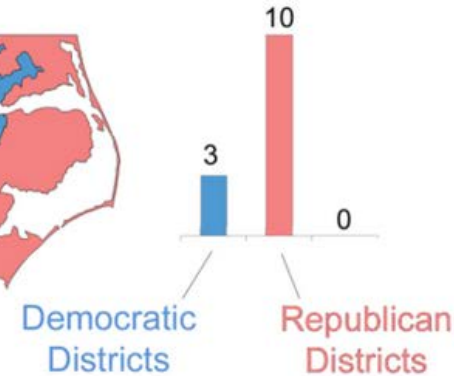
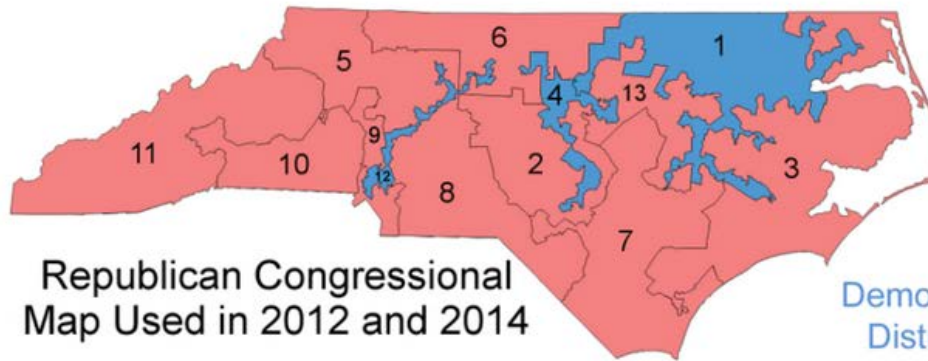


Current Maryland U.S. House districts

(S.C. oral arguments in *Benisek v. Lamone* on 3/28)



Packing: North Carolina U.S. House, 2012-2014



Redistricting in Wisconsin

- Unified Republican control for redistricting for the first time since the 1960s. August 23, 2011, Act 43 went into effect, creating state legislative districts and U.S. House districts for the next decade in WI.
- The maps packed and cracked Dem. voters so successfully that Rs won 60% of Assembly seats in 2012, while obtaining only 46.5% of the statewide presidential vote and 48% of the total votes cast in Assembly races.
- In July, 2015, the maps were challenged in federal court.

The plaintiffs' arguments

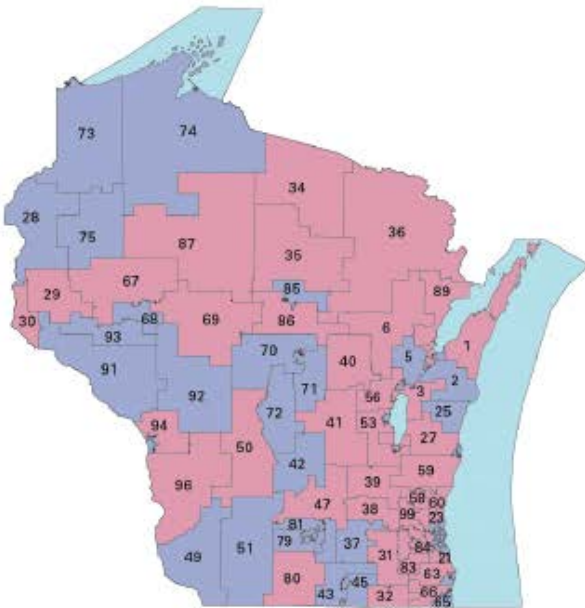
- Plaintiffs contended that the plan violates the 1st and 14th Amendments because it “treats voters unequally, diluting their voting power based on their political beliefs, in violation of the 14th Amendment's guarantee of equal protection” and “unreasonably burdens their 1st Amendment rights of association and free speech.”
- They also offered a new measure of an “efficiency gap” of the relative proportion of “wasted votes” to provide the objective standard of a partisan gerrymander that the Court had been searching for since the 1980s.

The state's response

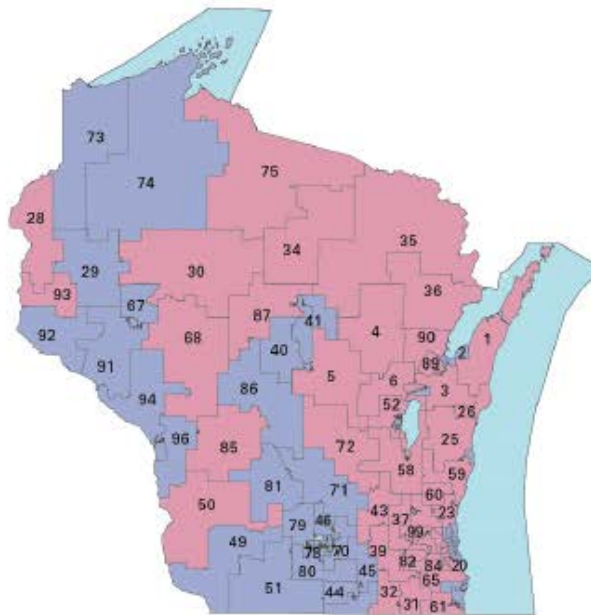
- The State argued that the efficiency gap “has no basis in the Constitution because there is no requirement that political parties be able to convert statewide vote totals into legislative seats with equivalent ease.” Furthermore, even neutrally drawn maps can have large efficiency gaps as more Democratic voters live in densely populated urban areas.
- Finally, the plaintiffs did not prove that the maps violated traditional districting principles.

WI Assembly districts, Act 43

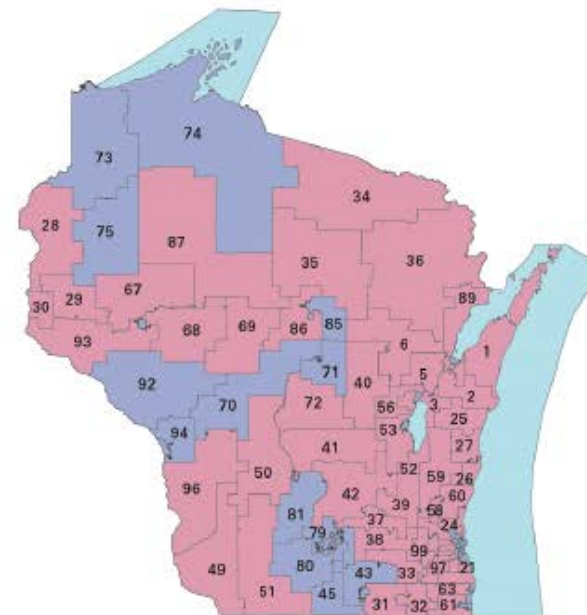
Prior Plan with 2008 General Election Results



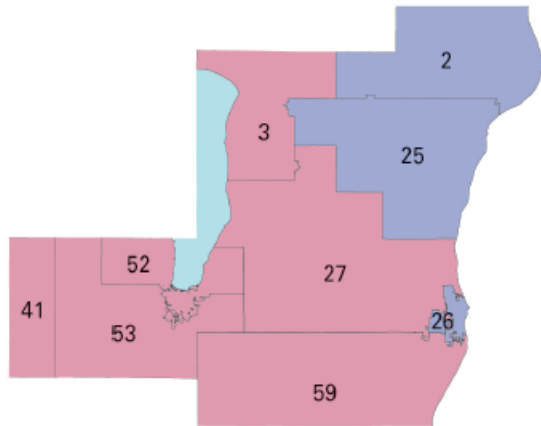
Demonstration Plan with imputed 2012 General Election Results



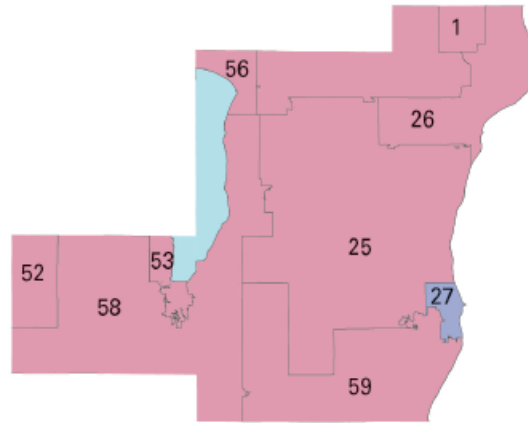
Current Plan with 2012 General Election Results



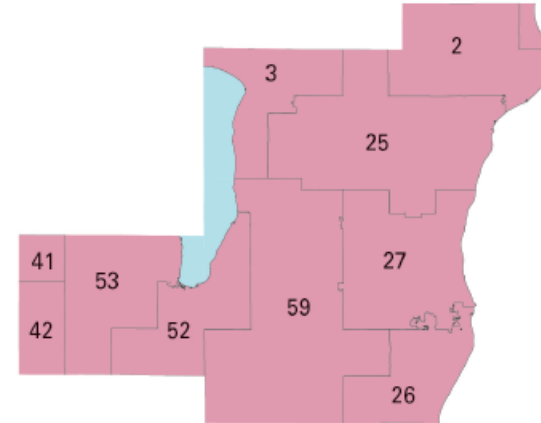
Prior Plan with 2008 General Election Results



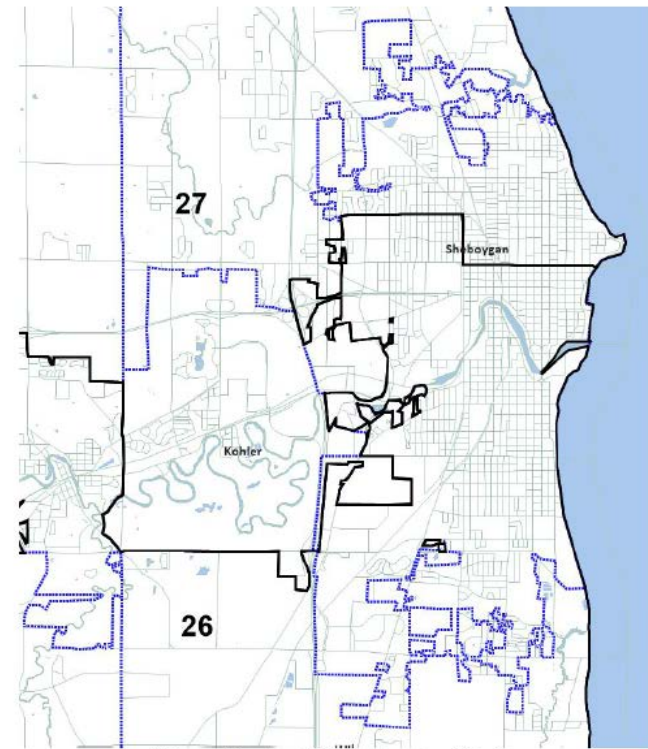
Demonstration Plan with imputed 2012 General Election Results



Current Plan with 2012 General Election Results



Cracking Democratic voters
in Sheboygan (new districts 26
And 27 in black, old district 26
in purple).



The Act 43 plan had an efficiency gap of $-.13$ in 2012 and $-.10$ in 2014. The $-.13$ gap was the fourth largest in any state legislative map in the U.S. since 1972 and the consecutive scores of $-.13$ and $-.10$ are the largest in successive elections in that period.

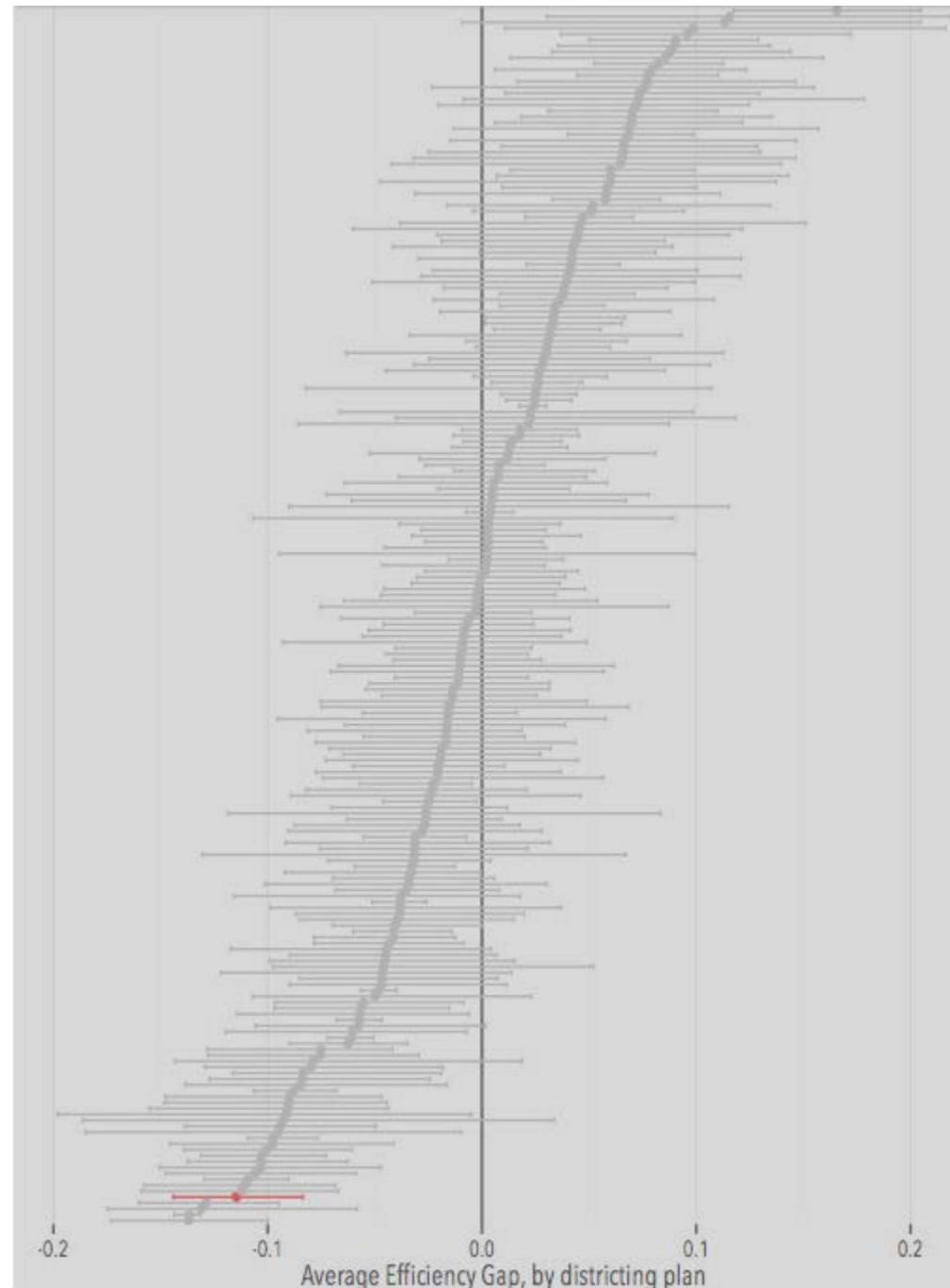


Figure 10: Actual 2012 Republican Assembly Vote in Act 43 Districts

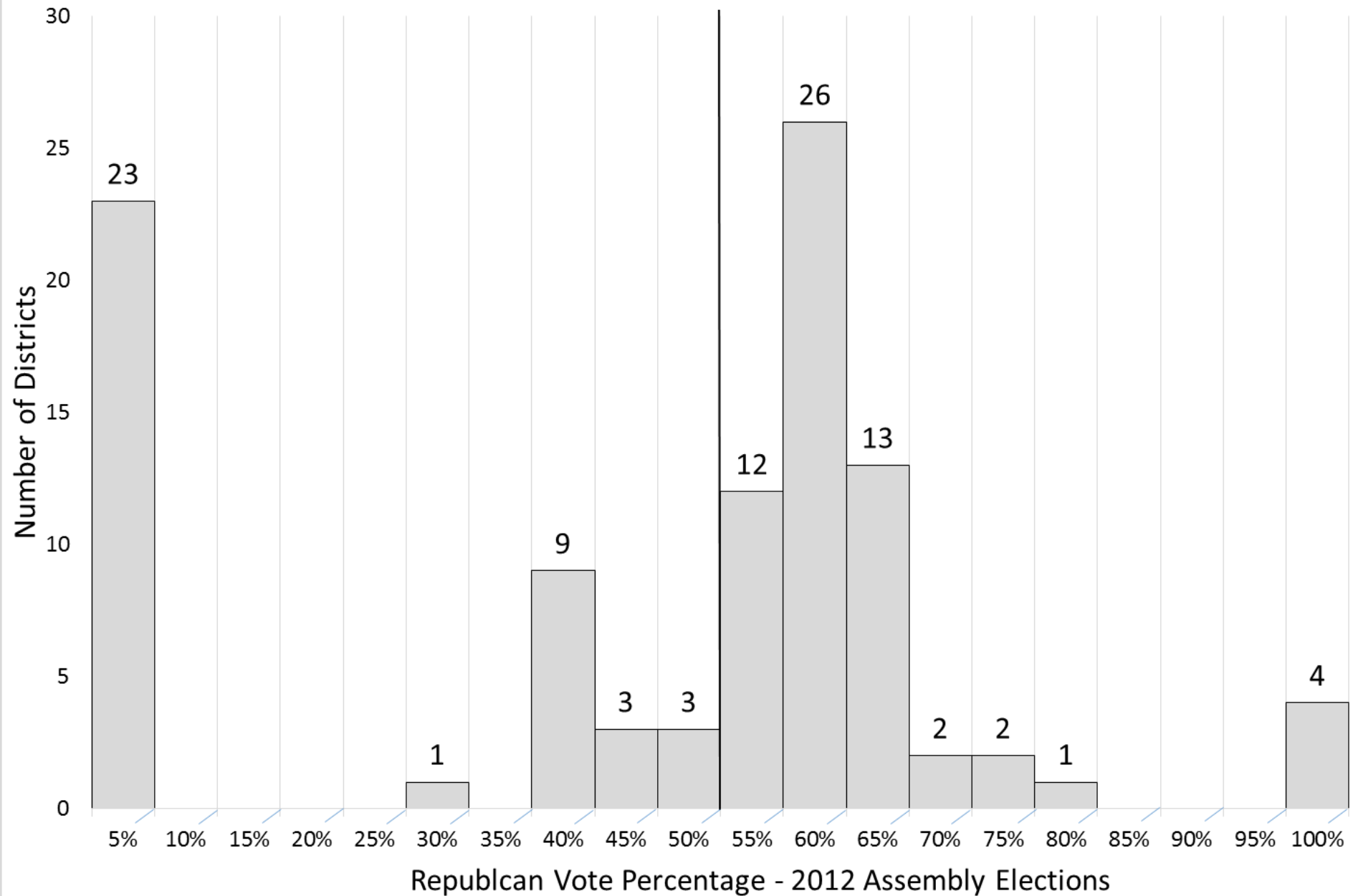
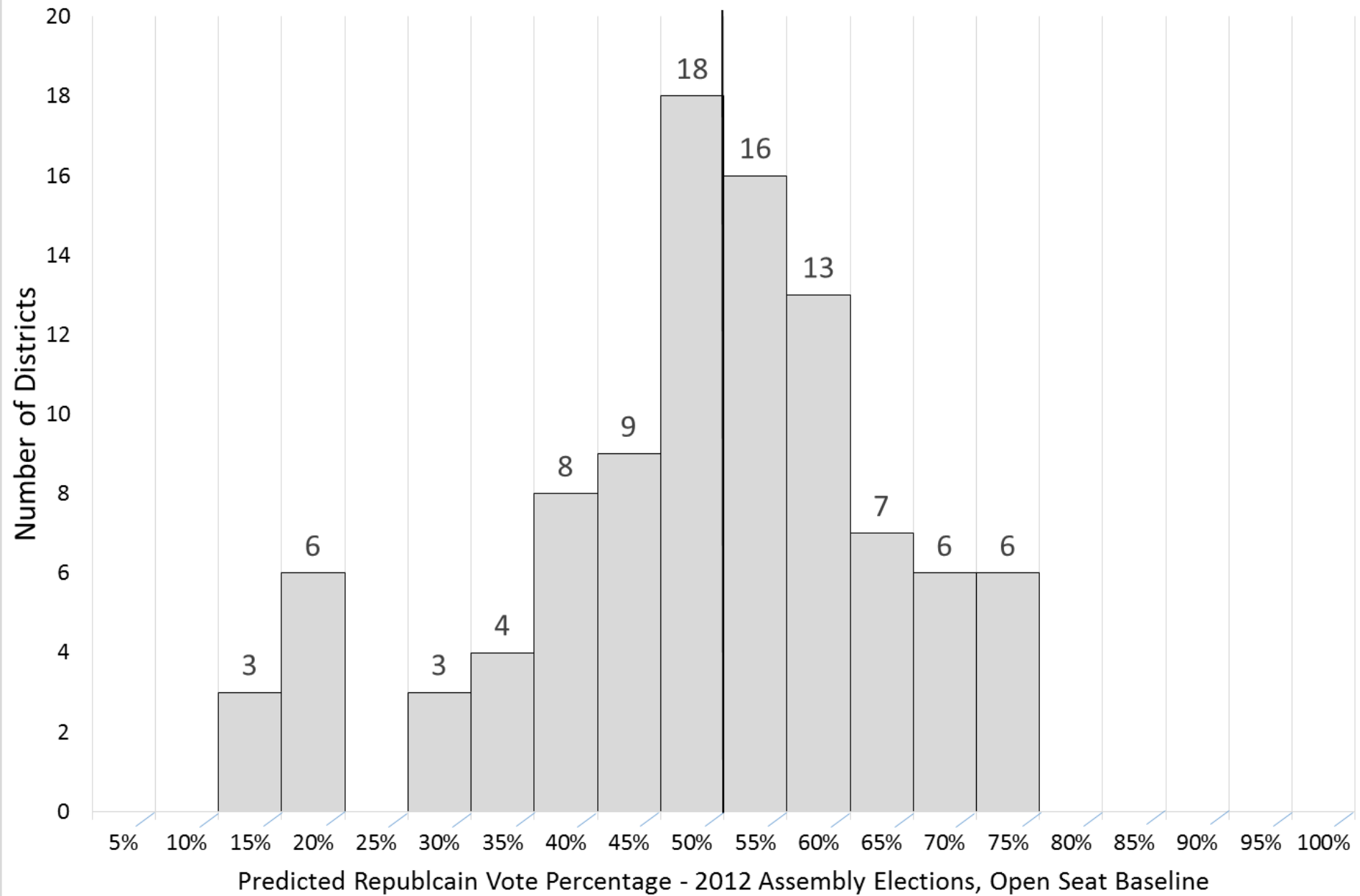


Figure 14: Predicted Vote - Demonstration Plan



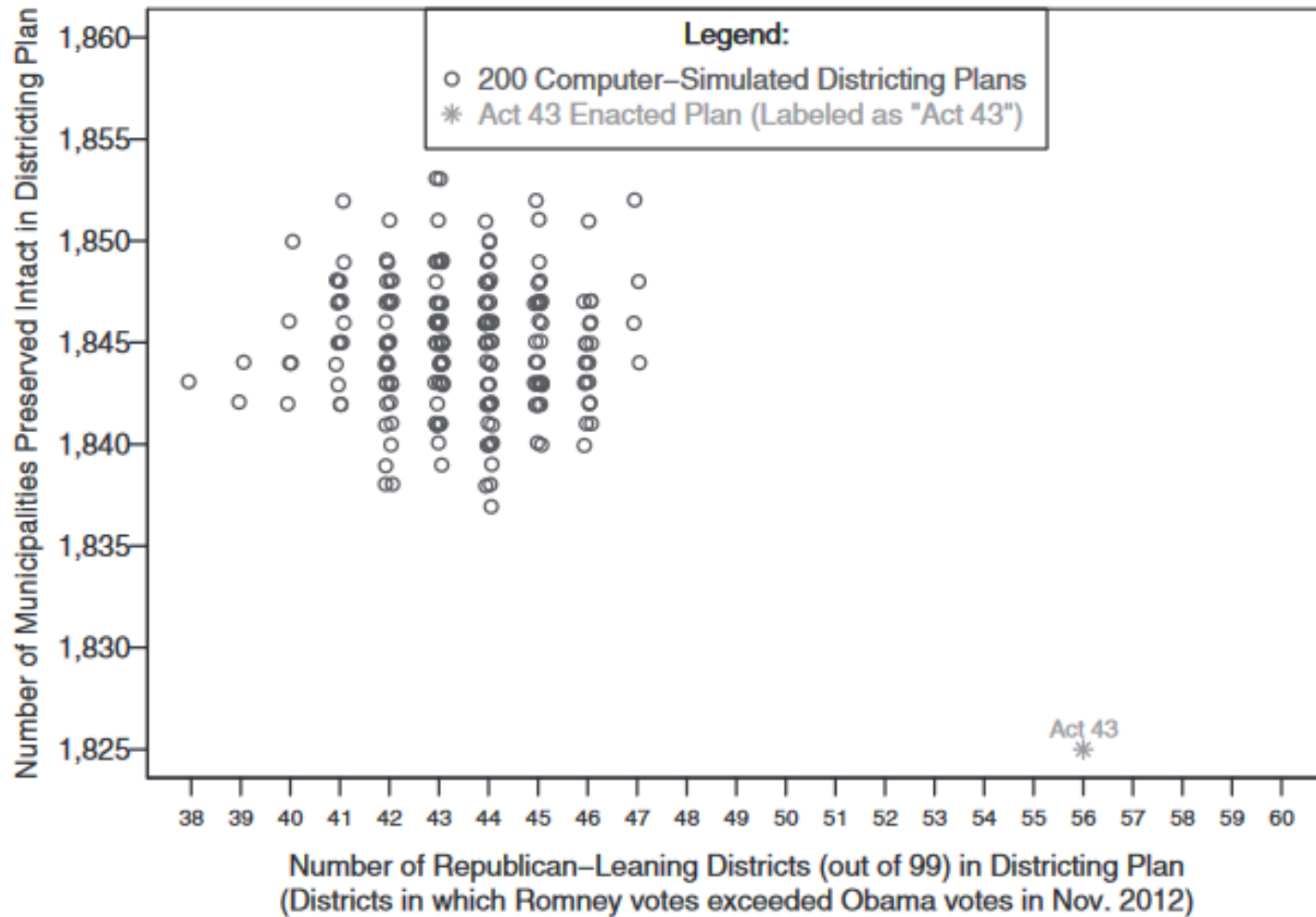


FIG. 6. Comparison of simulated districting plans to Act 43 on Republican seats and preservation of municipal boundaries.

Federal court ruling

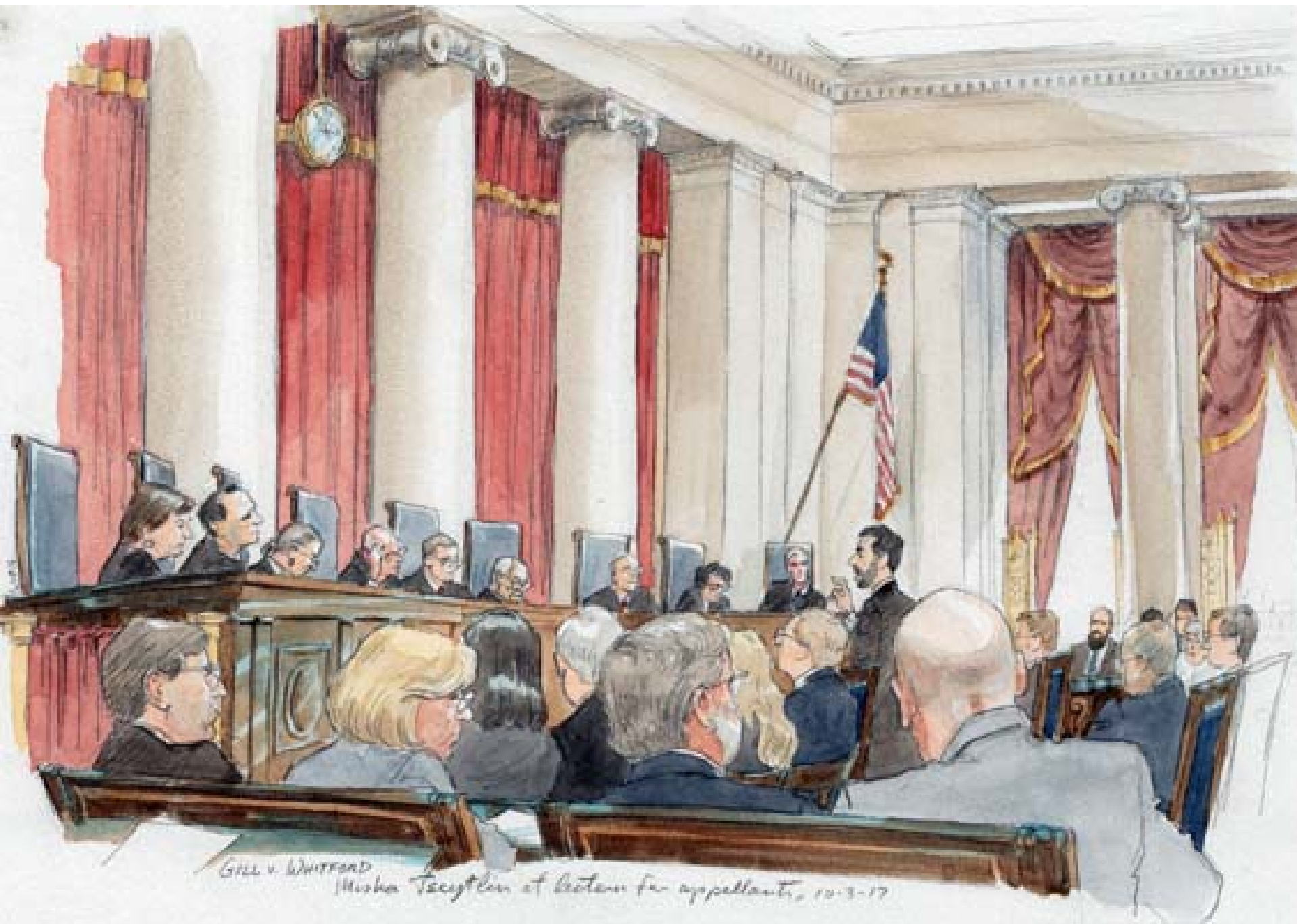
- On November 21, 2016, a 2-1 decision from a three-judge panel declared that the map was unconstitutional. To assess the validity of the map, the panel developed a three-pronged test that asked if the redistricting "(1) [was] intended to place a severe impediment on the effectiveness of the votes of individual citizens on the basis of their political affiliation, (2) has that effect, and (3) cannot be justified on other, legitimate legislative grounds. The court also pointed to the durability of the maps.

William Griesbach's dissent

- Judge Griesbach argued that “entrenchment” (the persistence of a partisan advantage over a decade) was not an appropriate standard and that traditional districting principles were more appropriate.
- He also raised questions about the efficiency gap, which is a relatively new measure in the literature.

Appeal to the Supreme Court

- Reading the tea leaves from oral arguments (Oct. 3):
 - Gorsuch, Alito and Roberts were clearly skeptical of the partisan gerrymandering claims. Thomas, as is his custom, did not ask any questions, but he is firmly in this camp.
 - Sotomayor, Ginsburg, Kagan, Breyer all very sympathetic to the plaintiffs.
 - Kennedy seemed to be leaning toward the plaintiffs, but it is hard to say. Only asked questions of Wisconsin's attorneys.
- It will all come down to Justice Kennedy.





Steve Case, Arnold Schwarzenegger + William Whitford
in courtroom for arguments in GILL V. WHITFORD
10-3-17

Oral arguments

- Question of standing.
- Justice Roberts: fear of politicizing the Court.
“And the intelligent man on the street is going to say that’s a bunch of baloney. It must be because the Supreme Court preferred the Democrats over the Republicans. ... And that is going to cause very serious harm to the status and integrity of the decisions of this court in the eyes of the country.” Also, the fear of swamping SCOTUS with gerrymandering cases.

Response

- Plaintiff's attorney Paul Smith replied that the nation is on the cusp of a "more serious problem as gerrymandering becomes more sophisticated with computers and data analytics and an electorate that's very polarized and more predictable than it's ever been before."
- Kennedy spoke 10 times to the WI attorney (5 questions, 5 statements) and 0 to Whitford's attorneys.
- Ginsburg argued that the ability to cast a meaningful vote is being undermined.
- Already voted on the case – SCOTUS is the only "leak proof" institution in our government.

What happens next?

- Implications of the Maryland and Pennsylvania cases for Wisconsin?
 - PN has no impact on WI because that was based on the state constitution.
 - MD could be relevant if Justice Kennedy was trying to address Justice Roberts' concern about the perceived partisanship of ruling for the plaintiffs in WI.
- The decision is unlikely to be in time to influence the 2018 midterms (6/1 filing deadline).
- The decision could be a landmark case or could do nothing to alter the status quo.

Redistricting in Wisconsin

- Current round of redistricting was the first time in the modern era (post *Baker v. Carr*, 1962) in which one party in Wisconsin controlled both chambers of the state legislature and the governorship.

	1971-72	1981-82	1991-92	2001-02	2011-12
Governor	D	R	R	R	R
Senate	R	D	D	D	R*
Assembly	D	D	D	R	R
Districts drawn by:	State legislature	Federal court	Federal court	Federal court	State legislature

*Democrats controlled the majority from 7/17/12-1/7/13 after winning 3 recall elections, but the legislative maps had already been enacted.

The state of Wisconsin countered that the plan did not violate traditional districting principles and that there are no Constitutional protections based on partisanship.

		Demonstration Plan	Act 43
Population Deviation		0.86%	0.76%
Average Compactness (Reock)		0.41	0.28
Number of Municipal Splits	County	55	58
	City Town Village	64	62

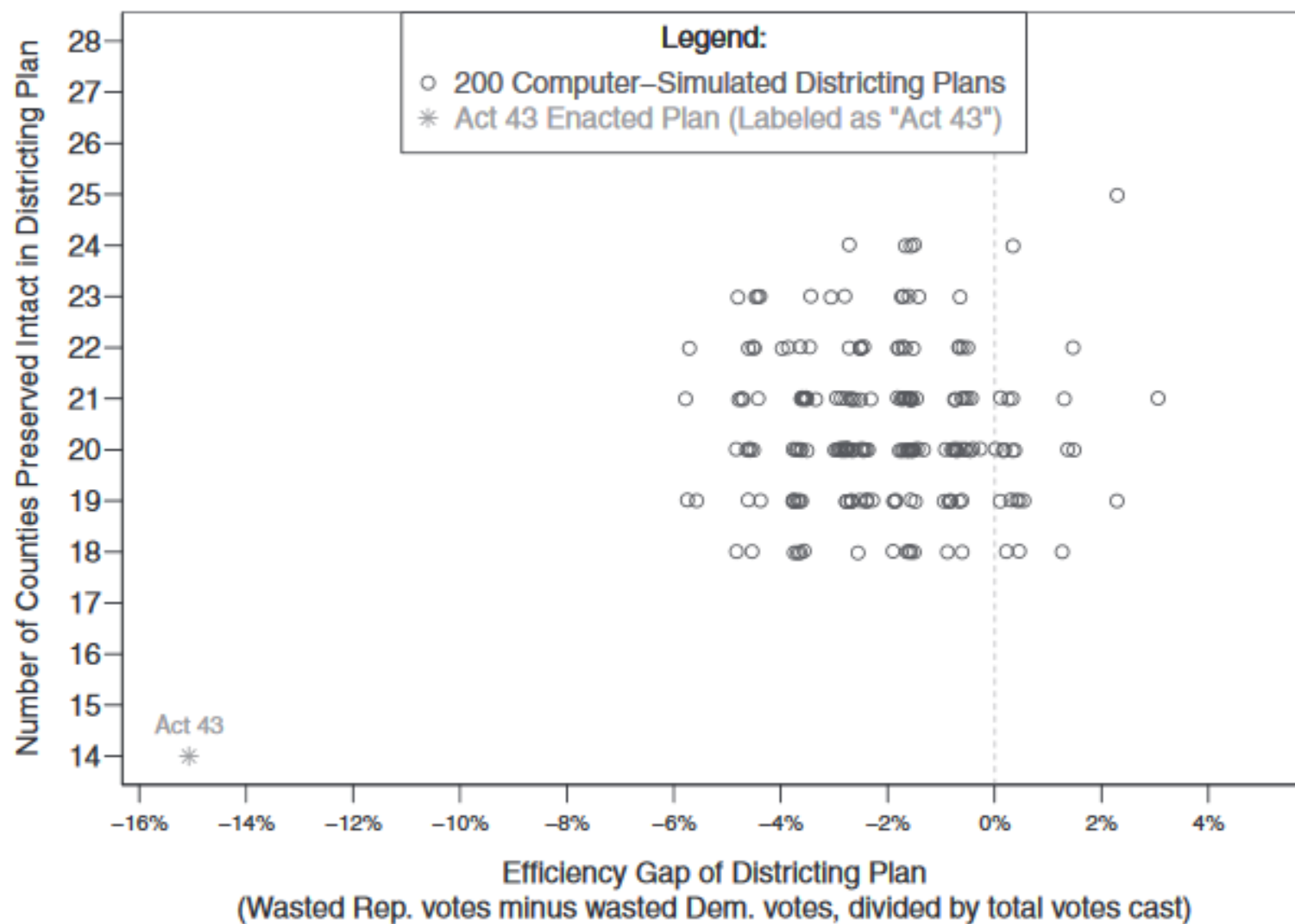
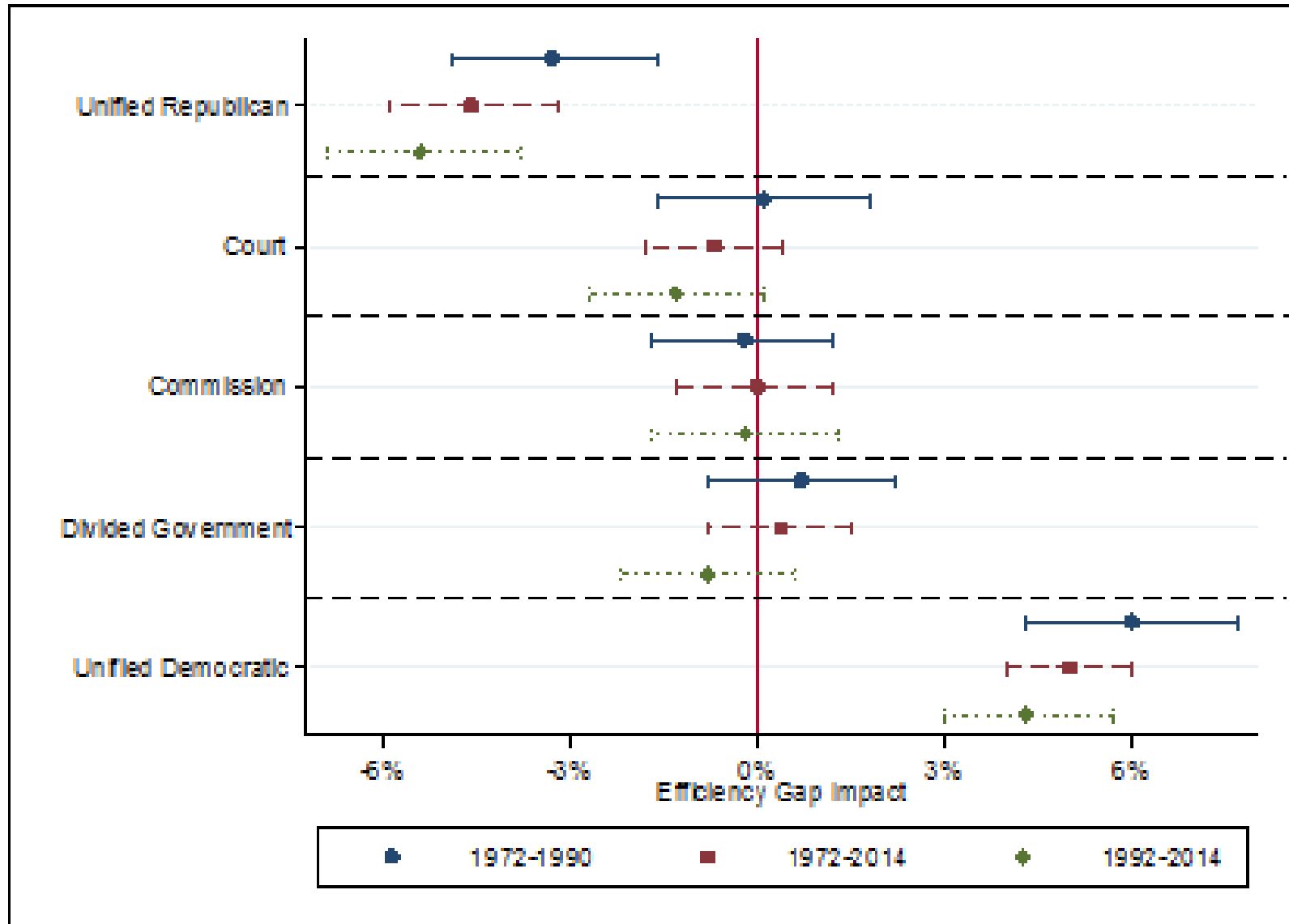


FIG. 2. Comparison of simulated districting plans to Act 43 on efficiency gap and preservation of county boundaries.

Reforms

- The problem is that neither party wants to give up the power to draw lines when they are in the majority. Democrats passed on the opportunity when they controlled the state government in 2009-2010.
- Bipartisan commissions.
- Non-partisan process (Iowa model).
- Multi-member districts with ranked-choice or cumulative voting (the latter was used in the Illinois state legislature from 1870-1980).

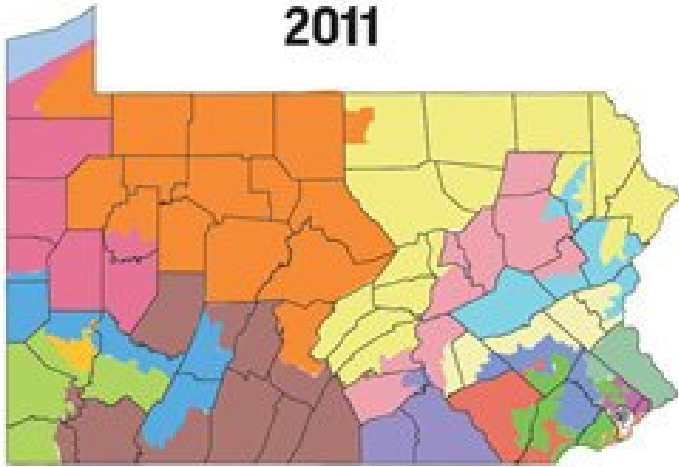
Efficiency gap and bipartisan commissions versus partisan state legislatures



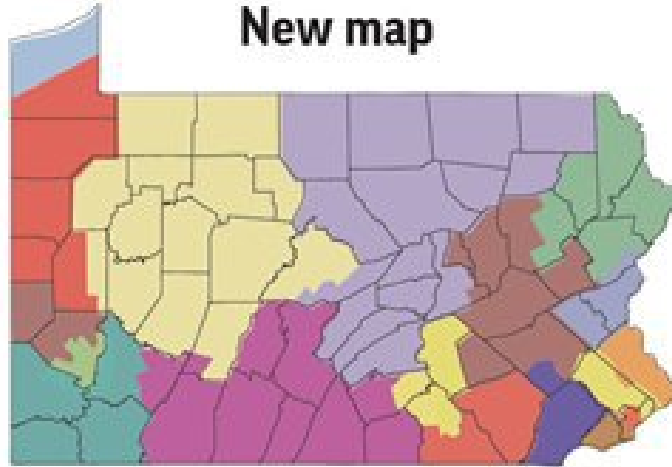
Pennsylvania redistricting

Pennsylvania's Supreme Court on Monday issued a new congressional district map for the state's 2018 elections:

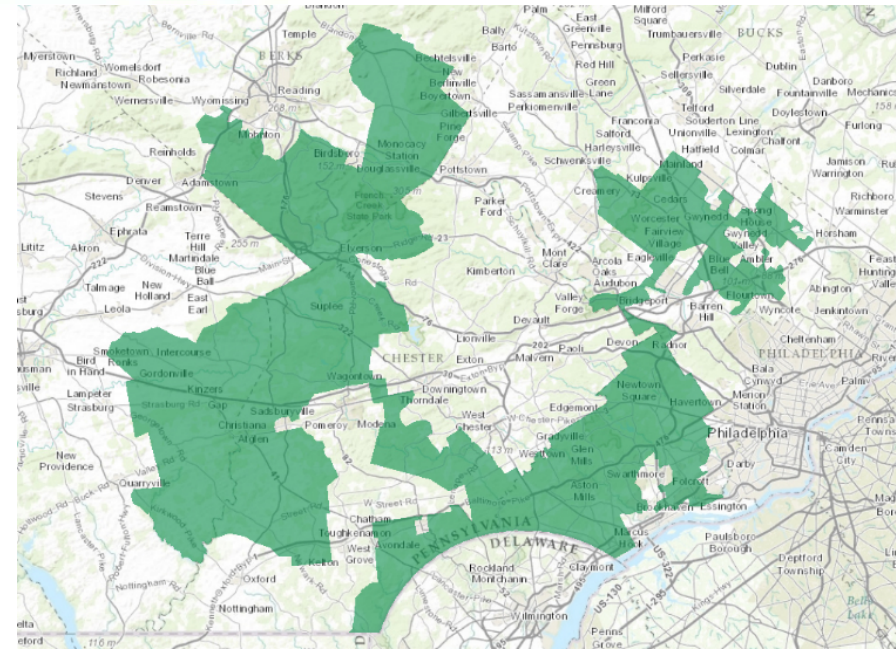
2011



New map



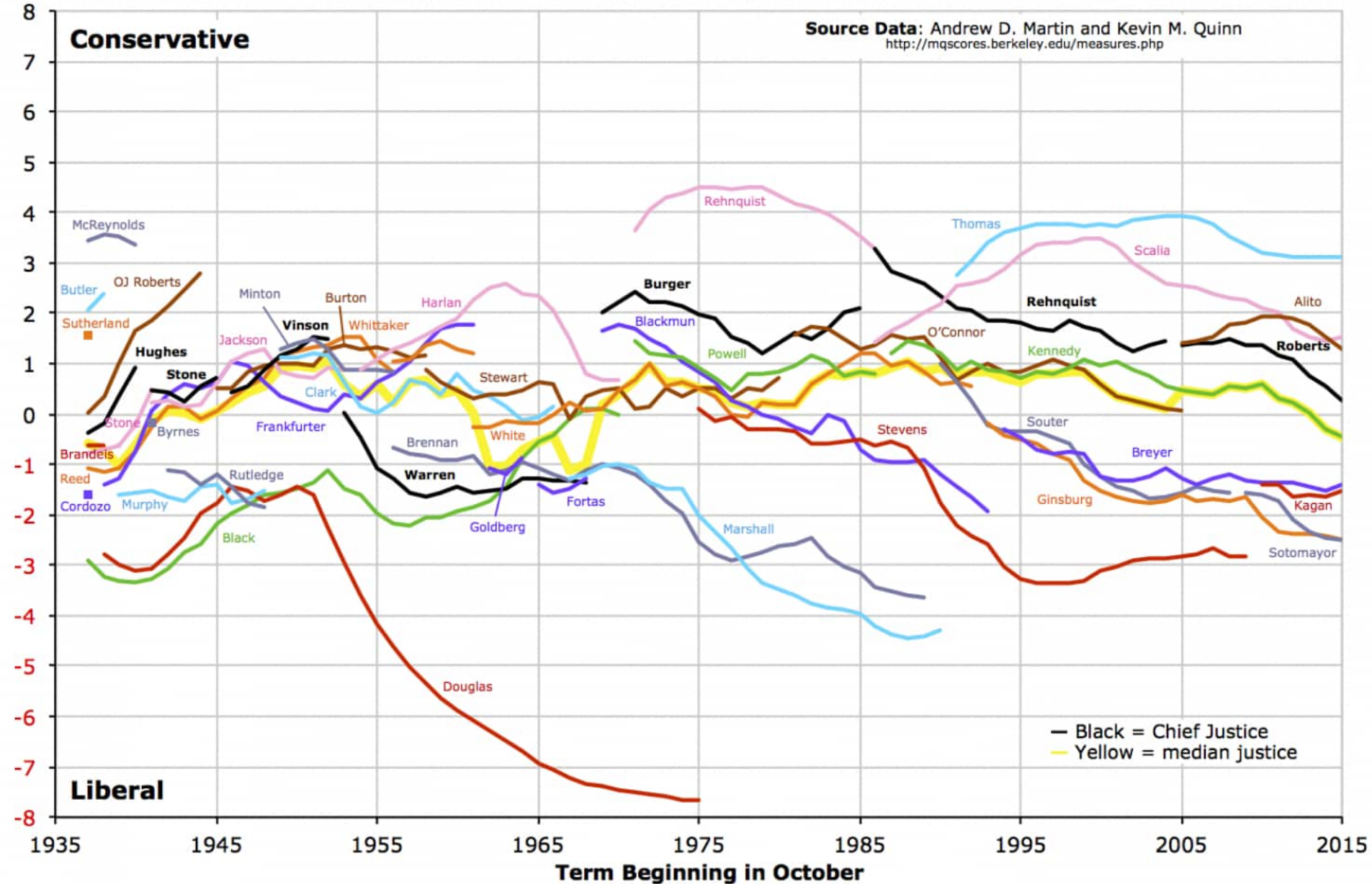
SOURCES: Pennsylvania Redistricting; AP election results

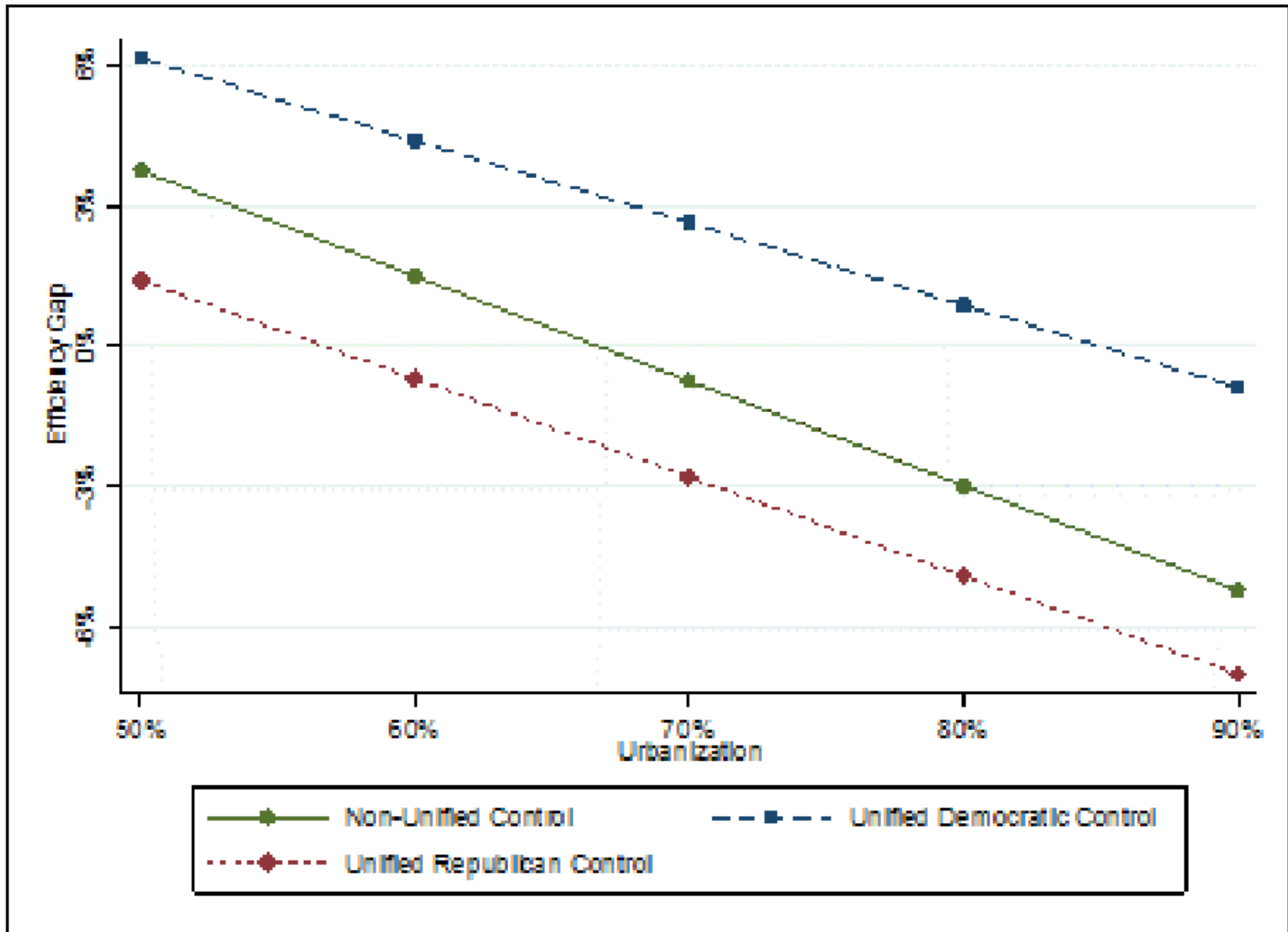


Ideological Leanings of Supreme Court Justices

Conservative

Source Data: Andrew D. Martin and Kevin M. Quinn
<http://mqscores.berkeley.edu/measures.php>





Wisconsin is 70.2% urbanized (2010 Census), so our baseline efficiency gap would be about -1%.

Democratic seat shares by vote shares, 1972-2014: Wisconsin in red, 2014 solid point

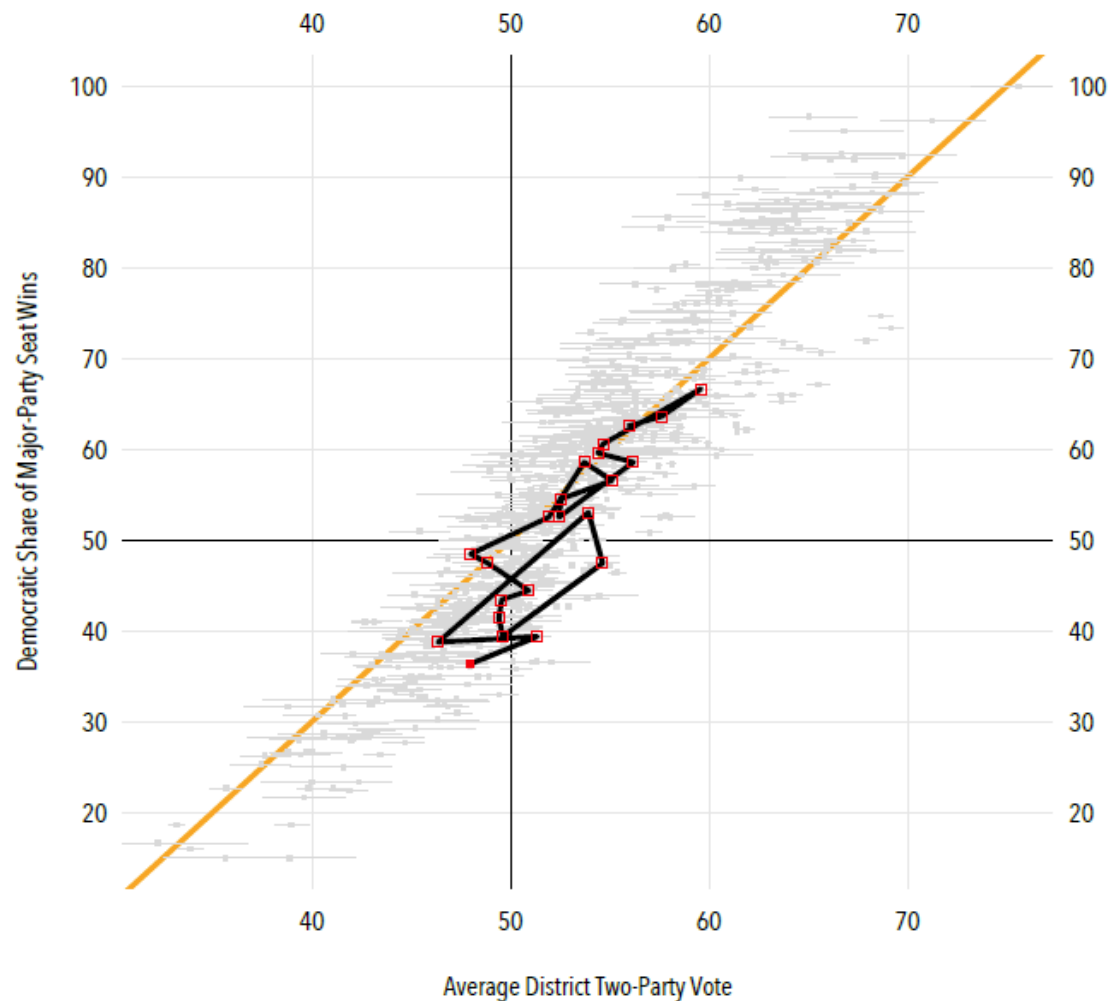
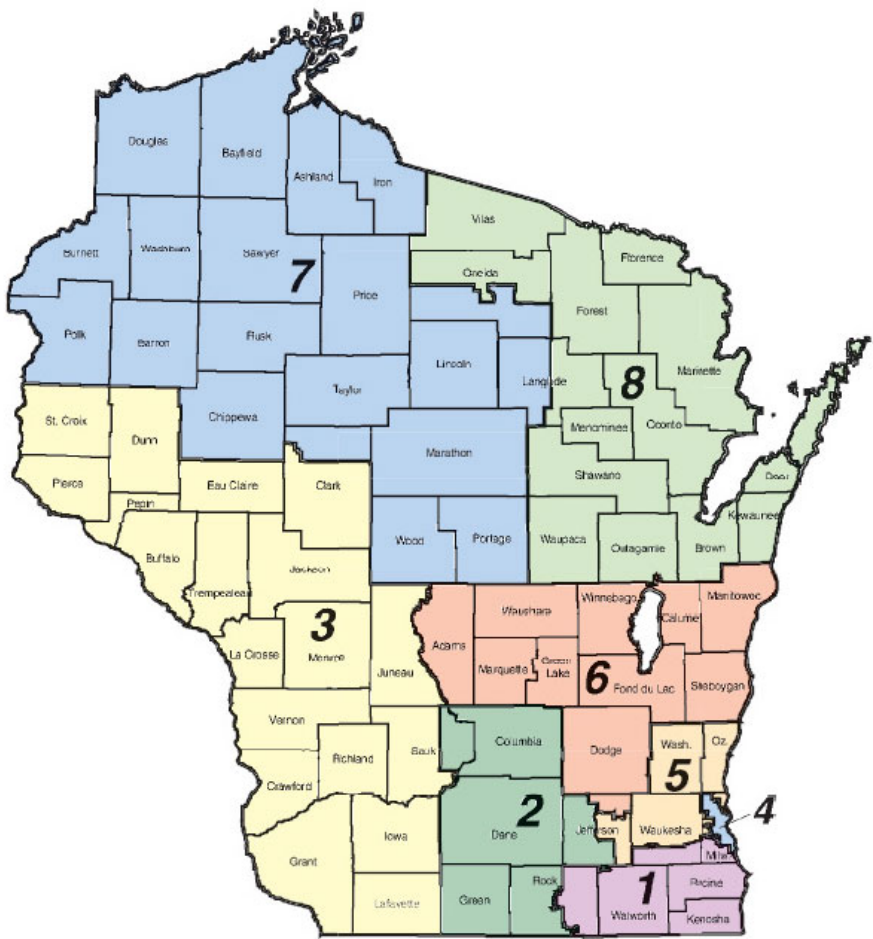


Figure 18: Wisconsin, Democratic seat share and average district two-party vote share, 1972-2014. Orange line shows the seats-votes curve if the efficiency gap were zero; the efficiency gap in any election is the vertical distance from the corresponding data point to the orange line. Gray points indicate elections from other states and elections (1972-2014). Horizontal lines cover a 95% credible interval for Democratic average district two-party vote share, given imputations in uncontested districts.



2002-2010 districts



2012-2020 districts

One for You, One for Me

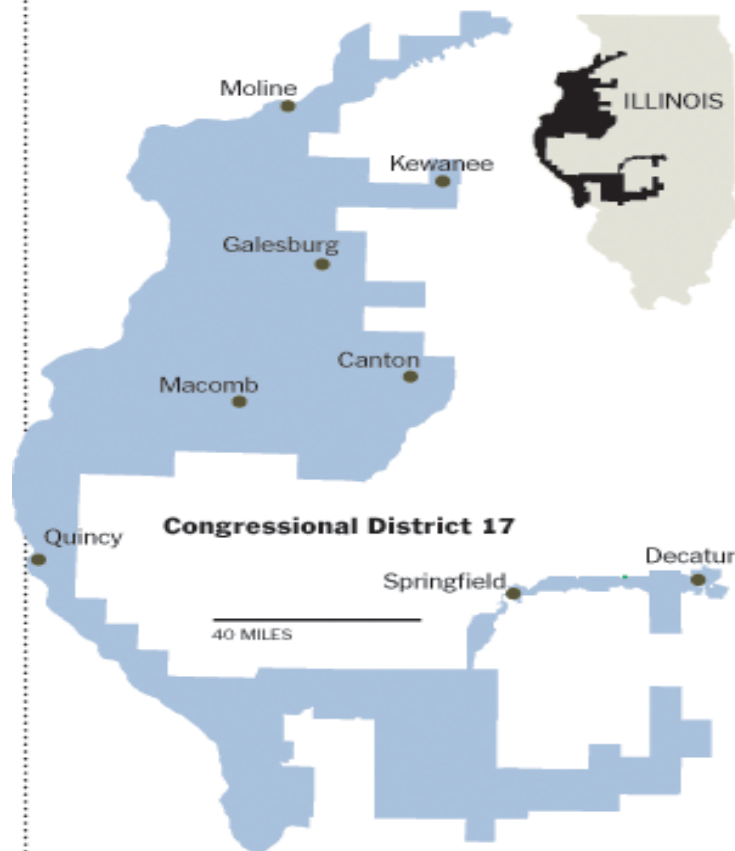
NEW YORK 28TH CONGRESSIONAL DISTRICT

States losing Congressional seats must decide which incumbent gets left without a chair. When New York lost two of its 31 House seats after the 2000 census, the state's government agreed on a compromise to protect an incumbent from each party. Two Republican lawmakers were put in a new Republican district and left to fight

it out, and two Democratic incumbents were assigned to a new Democratic district. The Democratic district, the 28th, was a bit of a stretch, literally, extending from Rochester, a Democratic city, across a thin sliver of the shore of Lake Ontario, to Democratic areas in Niagara Falls and parts of Buffalo. In this case, one of the two Democrats crammed into the district retired, paving the way for Representative Louise Slaughter to win.

20 MILES





Packing: To Keep Your Voters

ILLINOIS 17TH CONGRESSIONAL DISTRICT

There is a reason this district resembles a rabbit, speeding westward on a skateboard. To enhance the Democratic incumbent's re-election prospects, officials redrew this Quad Cities district to remove some Republican areas while stretching it along a narrow band to include Democratic neighborhoods in the cities of Springfield and Decatur, 40 miles to the east. Since the district was drawn in a bipartisan deal to protect most incumbents, the Republicans drawn out of this district made neighboring districts safer for Republicans.

Eliminate the Competition

ILLINOIS 1ST CONGRESSIONAL DISTRICT

In 2000, a little-known Illinois state senator named Barack Obama mounted a primary challenge against Representative Bobby L. Rush, a Chicago Democrat. Mr. Obama took a drubbing, getting a mere 30 percent of the vote. Still, someone took notice. The next year, under a bipartisan deal, the state's Congressional districts were redrawn to protect most of the state's incumbents — which meant that Mr. Obama's block was cut out of Mr. Rush's district (see below). As it turned out, Mr. Obama was not planning a rematch. But at least three other potential challengers were drawn out of their Illinois districts that year.

Congressional District 1



Partisan Symmetry Bias Since the 1950s



The efficiency gap

$$EG = \frac{W_B}{n} - \frac{W_A}{n}$$

where

$$W_A = \sum_{i=1}^n s_i(v_i - .5) + (1 - s_i)v_i$$

is the sum of wasted vote proportions for party A and

$$W_B = \sum_{i=1}^n (1 - s_i)(.5 - v_i) + s_i(1 - v_i)$$

Simplified Efficiency Gap Calculation

If either party's seat margin and vote margin for a given election are known, then the efficiency gap can also be calculated using the following formula:

$$\text{Efficiency Gap} = (\text{Seat Margin} - 50\%) - 2 (\text{Vote Margin} - 50\%)$$

Applying this formula to the hypothetical yields the following algebraic process:

$$\text{Efficiency Gap} = (\text{Republican Seat Margin} - 50\%) - 2 (\text{Republican Vote Margin} - 50\%)$$

$$\text{Efficiency Gap} = (60\% - 50\%) - 2 (45\% - 50\%)$$

$$\text{Efficiency Gap} = (10\%) - 2 (-5\%)$$

$$\text{Efficiency Gap} = (10\%) - (-10\%)$$

$$\text{Efficiency Gap} = 20\%$$

Alternatively, using the Democratic seat and vote margins, the formula yields:

$$\text{Efficiency Gap} = (\text{Democratic Seat Margin} - 50\%) - 2 (\text{Democratic Vote Margin} - 50\%)$$

$$\text{Efficiency Gap} = (40\% - 50\%) - 2 (55\% - 50\%)$$

$$\text{Efficiency Gap} = (-10\%) - 2 (5\%)$$

$$\text{Efficiency Gap} = (-10\%) - (10\%)$$

$$\text{Efficiency Gap} = -20\%$$