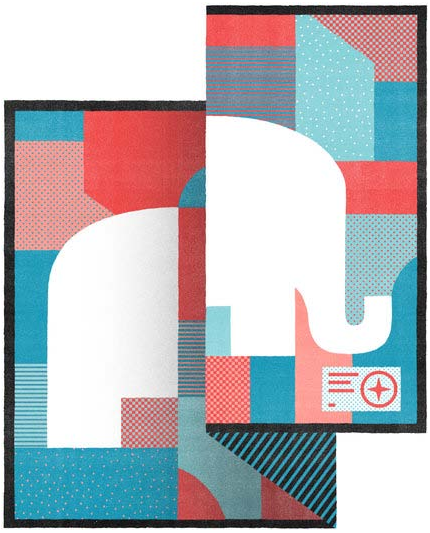
The New York Times

Editorial

Where Unfair Voting Practices Begin

By THE EDITORIAL BOARD

DEC. 3, 2016



Credit Andrew Holder

Partisan gerrymandering — the drawing of federal or state legislative districts to benefit Republicans or Democrats — is among the most corrosive practices in modern American democracy. It lets incumbents keep themselves and their party in power even without majority support, it deprives voters of representatives who reflect their wishes and it contributes to the hyperpartisan gridlock in the nation's politics.

As President Obama put it in his State of the Union speech this year, "we've got to end the practice of drawing our congressional districts so that politicians can pick their voters, and not the other way around."

This behavior has been hard to prevent, in part because courts don't know how to respond to it. Lawsuits involving racial gerrymandering are fairly common; on Monday, the Supreme Court is scheduled to hear two cases, one out of North Carolina and one from Virginia, alleging that Republicans drew district lines that diluted the voting strength of racial minorities. But even though race and partisanship are deeply entangled, especially in the South, the justices have long avoided the question of whether a legislative map drawn for partisan advantage is unconstitutional.

That could change. A federal court panel ruled last month that Republican lawmakers in Wisconsin had intentionally redrawn state legislative district lines in such a blatantly partisan way that the maps violated the Constitution. “There is no question,” the court wrote, that the new maps, which were created in 2011, were “designed to make it more difficult for Democrats, compared to Republicans, to translate their votes into seats.”

In 2012, the year after the new lines were drawn, Republican candidates for the Wisconsin Assembly won less than half of the statewide vote — but 60 of the Assembly’s 99 seats. That pattern persisted in 2014, as well as in federal and state races elsewhere around the country. In North Carolina, Democrats got 51 percent of the 2012 vote for the United States House of Representatives, which translated to only four of the state’s 13 congressional seats. The skew was roughly the same in Pennsylvania: Democrats won a little more than a quarter of the House seats, even though they got a majority of the votes cast in congressional races in the state that year.

Republicans achieved this effect in Wisconsin, according to the plaintiffs in that case, with two tactics: dividing Democratic neighborhoods among multiple districts so that Democratic voters fell short of a majority in each one and, in other places, cramming Democrats into a few districts to dilute their votes statewide.

Both Democrats and Republicans have tried to tilt the playing field when they’ve had the chance. But Republicans, who swept into power in statehouses in recent years, have done much more of it lately, and they have had the benefit of increasingly powerful mapping software to make partisan line-drawing even more precise and effective at protecting their party’s seats. The result is “the most extreme gerrymanders in modern history,” according to a paper published in The University of Chicago Law Review last year.

The paper, co-written by Nicholas Stephanopoulos, a law professor who represented the Wisconsin plaintiffs, argued that courts could address partisan gerrymandering with a measure called the “efficiency gap” — a relatively simple formula that compares each party’s “wasted” votes. Using that measure, the court in the Wisconsin case found that the new maps resulted in so many more wasted votes for Democrats than for Republicans that they violated the First Amendment and the Equal Protection Clause. The court declined to rule on a remedy.

The fate of the ruling now rests with the Supreme Court, which has two options: affirm or reverse it without argument, or hear oral arguments and consider the decision on its merits. Justice Anthony Kennedy has expressed an openness to an argument like the one that succeeded in Wisconsin, which suggests that there might be a majority to uphold the decision.

A permanent fix for partisan gerrymandering would be to take redistricting entirely out of the hands of self-interested lawmakers and give it to independent commissions. In California and Arizona, both of which have adopted such commissions, legislative races have become more competitive than the national average as measured by the smaller margins of victory. That’s good for voters, and for democracy.