

Wisconsin Institute of Law & Liberty: Files Amicus Brief With U.S. Supreme Court in Wisconsin Legislative Redistricting Case

Posted on Tuesday, Apr 25, 2017

>> **WisPolitics is now on the State Affairs network. Get custom keyword notifications, bill tracking and all WisPolitics content. [Get the app or access via desktop.](#)**

Milwaukee, WI - The Wisconsin Institute for Law & Liberty has [filed an amicus brief urging the United States Supreme Court to review the decision](#) of a divided three judge panel finding Wisconsin's 2011 legislative redistricting to be unconstitutional.

WILL argues that legislative redistricting is what courts call a "political question" and, therefore, "non-justiciable." The so-called "efficiency gap" relied on by the district court majority is nothing more than a presumption that the aggregate outcome of 99 races for the assembly ought to reflect the aggregate partisan vote in those races. But the most elementary understanding of simple mathematics and the nature of a legislature that is elected by geographic district reveals that this is not true. If the voters of one political party are more geographically concentrated than voters of the other, there will be no such proportionality.

It is undisputed that Democratic voters are more geographically concentrated than Republicans. While the district court majority believed that the legislature had acted to unfairly "maximize" the Republicans' natural advantage, there is no neutral principle for courts to determine how much of this advantage is "natural" and how much is "too much." If the district court decision stands, it will amount to a constitutional mandate to gerrymander for competitiveness. But distorting maps to remedy the natural disadvantage of one political party is every much a partisan act as gerrymandering to maximize that advantage.

This is particularly so where, as here, the legislature did not depart from traditional redistricting principles. The districts that were drawn were not unusually shaped. They were contiguous and compact. The district court majority found, in the words of the dissenting judge, a gerrymander without gerrymandering. WILL argues that, even if claims of a political gerrymander are justifiable, they should be rejected where a legislature has hewed to traditional redistricting principles.

The amicus brief can be found [here](#).