

# Common Cause Wisconsin: Wisconsin Supreme Court embraces hyper partisanship and polarization in choosing state legislative voting maps

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Late on Friday afternoon, as families all over Wisconsin were making preparations for two of the most important religious observances of the year — Easter and Passover — or, just beginning what was hopefully a warmer, Spring weekend, the Wisconsin Supreme Court chose to release its shockingly unfair, hyper partisan, and completely misguided decision regarding the state legislative redistricting process and voting maps and set the stage for yet another decade of deeply polarized, undemocratic and unrepresentative state government in Wisconsin.

The four “conservatives” on the court committed an act of unprecedented radical judicial activism in selecting the ultra-partisan gerrymandered voting maps drawn in secret by state legislative Republicans less than six weeks after having chosen the less partisan, fairer voting maps submitted to the court by Governor Tony Evers.

The U.S. Supreme Court, on March 23rd had remanded Wisconsin’s state legislative voting maps back to the Wisconsin Supreme Court for additional information, explanation and possible slight revision saying that in expanding to seven, from the current six the number of majority-minority Assembly districts in Wisconsin, the Governor needed to show more evidence that his maps did not constitute a “racial gerrymander” and were fully compliant with the Voting Rights Act. This, Evers said he was willing to do. Another way to address the concerns of the conservative majority on the U.S. Supreme Court about utilizing race-based redistricting might

have been to revise only the majority-minority districts (all in the Milwaukee area) and reduce the number of them from seven in the Governor's plan, back to six. The rest of the state legislative districts drawn by Evers were not at issue and could have been left intact.

But in what may be remembered in our state as the "Good Friday Surprise Attack on Democracy," the Wisconsin Supreme Court chose another path. And it was the worst possible alternative. Conservative Justice Brian Hagedorn, who had led the court in choosing the Governor's redistricting plan because it most closely adhered to his "least change" (from the 2011 redistricting) directive, on Friday executed a 180-degree pivot, and chose the severely partisan and even more gerrymandered (than in 2011) Republican state legislative maps, dishonestly claiming the court "had no other choice." That declaration was as absurd as it was untrue.

The Wisconsin Supreme Court could have accepted and reviewed the additional evidence that Gov. Evers offered to provide about how he determined the addition of a majority-minority Assembly district in his redistricting plan. It rejected that offer. The court could have made some revisions to the composition of the majority-minority districts to address the concerns of the U.S. Supreme Court about a "race-based" redistricting scheme. It refused to do so. Instead, Justice Hagedorn joined conservative justices Annette Ziegler, Patience Roggensack, and Rebecca Bradley in selecting the most unfair, hyper partisan redistricting plan available that is specifically designed to lock in absolute Republican control of the Wisconsin Legislature for the next decade and to achieve for the Republicans a veto-proof, supermajority in at least one of the two legislative chambers.

Some legal experts have said that there is very little or no precedent for a state or federal court to have made such a partisan, completely unbalanced redistricting choice as the 4 to 3 conservative majority on the Wisconsin Supreme Court made on Friday. There is no precedent for a court selecting a redistricting scheme that was legally vetoed by a Governor, ignoring that action, and then ramming it into effect, without any revision or compromise whatsoever. This will likely go down as one of the worst assaults on justice and fairness in the history of American jurisprudence.

Wisconsin Justice Jill Karofsky, a progressive, got it right in the dissent she wrote, and which was joined by progressive Justices Ann Walsh Bradley and Rebecca Dallet. Karofsky argued the court's majority had ignored a long history of racism in Milwaukee, one of the most segregated cities in the nation where Black residents

have long faced racial disparities in homeownership, education, employment, health care and the criminal justice system. “The fault and responsibility to remedy this systemic segregation lies not with Milwaukee’s residents but instead with the government and the society that perpetuated racial redlining and restrictive covenants,” Karofsky wrote. “Those practices shaped Milwaukee and that history of discrimination cannot be undone by force of will alone.”

The Governor’s plan attempted to address and correct some of that disparity and injustice in expanding from six to seven the number of majority-minority Assembly districts. The Republican plan adopted by the court majority decreases to five, the number of majority minority Assembly districts and enhances racial disparity and injustice. Rather than address this issue and attempt to alleviate the problem as one might reasonably expect a fair and impartial state supreme court to do, the Wisconsin Supreme Court voted to wash its hands of any responsibility for this blight on our state. Instead, they exacerbated the problem.

Common Cause in Wisconsin has long advocated for and supported the adoption of a non-partisan redistricting process for Wisconsin based on our neighboring state of Iowa’s 42-year-old non-partisan process with which, even with Republican state legislative majorities and a Republican Governor in power, earlier this year adopted non-partisan state legislative and congressional voting maps that were supported by almost every Democratic and Republican member in both chambers of the Iowa Legislature.

Contrast that process and outcome with Wisconsin’s, which with this horrendous state supreme court decision, has once again earned the dubious distinction of being one of the most hyper partisan, polarized and unfairly gerrymandered state of any in the nation. And lest there be any question that this is simply a “Republican problem,” it most definitely is not. Democratic legislative majorities with Democratic Governors this year rammed through hyper partisan, unfair state legislative gerrymanders in Illinois and New York every bit as egregious as the G.O.P. assault on fairness and democracy in Wisconsin.

The long-suffering citizens of Wisconsin clearly deserve much better than the Wisconsin Supreme Court and the Wisconsin Legislature have been willing or able to deliver. We will continue our relentless pursuit of non-partisan redistricting reform for our state for as long as it takes to achieve it. It will be up to “we the people” to make the necessary changes to restore some modicum of liberty and justice for all of us. And we cannot and will not rest until we do.



Onward,  
Jay Heck