

Wisconsin Democracy Campaign: Hagedorn blinks on maps

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MADISON—The horrendous ruling on redistricting maps by Wisconsin’s Supreme Court on Good Friday marks a new low for our state.

The 4-3 decision by the conservatives on the court imposed the rigged maps that the Republican Legislature passed last fall, which Gov. Evers had vetoed.

Those maps are even more tilted toward Republicans than the notorious ones the Republicans passed in 2011.

And they admitted they rigged the maps. Speaker Robin Vos, when he testified about the maps last fall, acknowledged that the Republicans “used partisanship” when drawing the maps.

Up in River Falls, for instance, they split the district where UW River Falls is located, splintering the largely Democratic voters into more conservative rural areas.

The decision marked a sharp reversal from the Wisconsin Supreme Court’s decision earlier this year to accept Gov. Tony Evers’s maps. In that decision, the court acknowledged that it couldn’t accept the Republican maps because the governor had vetoed them.

But now it turned around and accepted them anyway.

As Justice Jill Karofsky noted in her brilliant dissent, this is a violation of the separation of powers and the people’s will.

“We are not to act as a gubernatorial veto override body,” she wrote. “Here, the Legislature, having failed to override the gubernatorial veto, submitted the very

same proposal to us. By now implementing that failed bill, this court judicially overrides the Governor's veto, thus nullifying the will of the Wisconsin voters who elected that governor into office. But our constitution provides only one avenue to override such a veto; no judicial override textually exists ... Nor, historically, has this court ever exercised such a supreme power. By judicially enacting the very bill that failed the political process, a bare majority of this court, rather than a supermajority of the legislature, has taken the unprecedented step of removing the process of lawmaking from its constitutional confines and overriding a governor's veto ourselves."

In this case, swing Justice Brian Hagedorn blinked. Once the U.S. Supreme Court scolded his original decision accepting Evers's maps, and under withering criticism from the three other conservatives on the Wisconsin Supreme Court, Hagedorn basically threw up his hands and threw in the towel.

"Complying with the directive of the United States Supreme Court at this stage of the proceedings raises some difficult challenges," he wrote, noting the criticism about the way he had engaged with the requirements of the Voting Rights Act. "Most notably, our record is, at best, incomplete. One solution could be to develop a fuller record, make factual findings, and adjudicate a VRA claim with a firmer factual foundation. But the timing does not work. It would undoubtedly require delaying statutory deadlines and otherwise disrupting the administration of the fall elections. The window of opportunity to conduct a fresh trial with new evidence, new briefing, and potentially new arguments is well past. Supplementing the record would pose the same logistical challenges. For better or worse, the only reasonable course I see is selecting a map based on the record we have. We could construct one ourselves or with the assistance of an expert, but time and our institutional limitations make that unrealistic at this juncture. The remaining option is to choose one of the proposed maps we received as the baseline. Only one proposal was represented as race-neutral in its construction: the maps submitted by the Legislature."

But part of the problem was that the Wisconsin Supreme Court dilly-dallied in making its original decision, and it dilly-dallied again once the U.S. Supreme Court sent it back. Hagedorn has to own those delays. As the swing justice, he set the speed limit – at a crawl.

And secondly, once the U.S. Supreme Court had ruled, it certainly would have been possible for the Wisconsin Supreme Court to hire an expert to redraw the districts in and around Milwaukee while keeping the rest of Gov. Evers's maps intact.

History, and the Wisconsin public, will not look kindly on this decision.