

Don Millis: Wisconsin's legislative maps gerrymandered? Digging deeper, not so much

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Those seeking to challenge Wisconsin's "gerrymandered" legislative districts wasted no time in taking advantage of the change in the ideological balance on the Wisconsin's Supreme Court. On Tuesday, August 1, liberal justice Janet Protasiewicz took the oath of office, tipping the ideological balance of the Wisconsin Supreme Court to the left. On Wednesday, August 2, a cavalcade of 19 Democratic Party voters filed an original action in the Wisconsin Supreme Court challenging Wisconsin's legislative maps that were approved by the Court just 16 months ago on 4-3 vote.

It is no surprise that the left is counting on the new justice to throw out Wisconsin's legislative maps. During her campaign for the court, candidate Protasiewicz claimed Wisconsin's legislative maps are "rigged." Justice Protasiewicz's campaign statements are currently the subject of a debate over whether she should recuse herself from the pending suit. I want to go a different direction.

As the chair of the Wisconsin Elections Commission and one of the many defendants named in the suit, I am pushing back on the idea that Wisconsin's legislative maps are rigged or—as some have claimed—that Wisconsin is the most gerrymandered state in the union.

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Protasiewicz is not alone among those on the left claiming Wisconsin's legislative

districts represent a partisan gerrymander. On election night last November, MSNBC's commentators observed that Gov. Tony Evers was re-elected with 51% of the statewide vote, yet Republicans won overwhelming victories in both houses of the legislature. The obvious cause, these pundits claimed without the benefit of any analysis, was that Wisconsin is the most gerrymandered state in union. Local and national commentators have echoed these claims.

So, what are the precise facts on the ground causing such outrage among the left? Democrat Evers defeated Republican challenger Tim Michels 51.2% to 47.8%. At the same time, Republicans ended up with 64.6% of the seats in the state Assembly (64 out of 99 seats, all of which were up for election) and 66.7% of the seats in the state Senate (22 out of 33 seats, 17 of which were up for election in November).

Now Wisconsin is not the only state to display disparate results between statewide races and legislative districts. Last fall, New York's incumbent Democratic Gov. Kathy Hochul garnered 52.7% of the vote. In contrast, the Democrats continue to have a stranglehold in the state legislature, holding 68.0% (102 of 150 seats) in the Assembly and 66.7% (42 of 63 seats) in the Senate. I don't recall any MSNBC pundit complaining about the gerrymander of New York's legislative districts.

To be honest, the type of superficial analysis relied upon by the MSNBC pundits and the disconnect between the legislative and gubernatorial results in New York and Wisconsin are very poor indicators of gerrymandering. Often other factors are the cause of the disconnect between results in statewide races and legislative races. In Wisconsin, drilling down below this superficial analysis shows that geopolitical demographics and candidate quality do much more to explain the disconnect between the results of the statewide and legislative campaigns than does gerrymandering.

Before getting into the nerdery, a little background. Contrary to popular belief, Wisconsin's legislative and congressional maps were not enacted by Wisconsin's Republican-controlled Legislature. The Wisconsin Legislature and Gov. Evers were unable to agree on legislative and congressional maps. In an original action filed in the Wisconsin's Supreme Court, a 4-3 majority adopted the legislative and congressional maps offered by Gov. Evers. The Legislature appealed the Wisconsin Supreme Court's adoption of Gov. Evers' legislative map, but not the congressional map. The U.S. Supreme Court summarily reversed the Wisconsin Supreme Court, rejecting Gov. Evers' legislative map as inconsistent with equal protection. On remand, the Wisconsin Supreme Court—again on a 4-3 vote—adopted the

Legislature's map for Senate and Assembly districts and these were in place for the 2022 election.

Geopolitical Polarization

Critics of the current legislative map point to the lack of competitive legislative districts. The complaint is that the current maps contain a few heavily Democratic districts with the rest leaning Republican. What is needed, the argument goes, is to have all or almost all districts divided evenly between voters of each party. Given Wisconsin's current geopolitical polarization, this no simple task.

Decades ago, it was easier to draw a map consisting primarily of competitive legislative districts. I cut my teeth in politics in the 1980s. Back then Wisconsin was much less polarized, both ideologically and geographically. Ideologically, there was such a thing as a pro-life Democrat and a pro-choice Republican. Geographically, Republicans could run with success in urban areas and Democrats could get elected in rural areas.

One great example of how times have changed is the evolution of the 20 northwestern Wisconsin counties represented—or better yet, dominated—by Congressman David Obey for 40 years. Until he retired in 2010, Rep. Obey was an influential Democratic member of the House of Representatives and at one point chair of the House Appropriations Committee. The ideological bent of these counties has totally flipped. Since Rep. Obey's retirement, his district has sent conservative Republicans Sean Duffy and Tom Tiffany to Congress. Even more remarkable is that this past Spring Daniel Kelly, the conservative Supreme Court candidate who lost to Protasiewicz with only 44.4% of the statewide vote, won 16 of the 20 counties that sent Democratic Rep. Obey to Washington 21 times.

My first job in politics was on the staff of State Sen. Jim Harsdorf, a Republican who in 1980 defeated an incumbent Democrat in the 10th Senate District, a district that spanned parts or all of eight counties in northwestern Wisconsin. Harsdorf prevailed with 51.9% of the vote. Yet, incumbent US Sen. Gaylord Nelson, the father of Earth Day who lost statewide, won every one of the counties in Harsdorf's district. Similarly, even though Ronald Reagan won Wisconsin in 1980, Jimmy Carter prevailed in five of those counties and in the remaining three counties, Reagan won but failed to win a majority of the vote.

By 2016, all of this had changed. Donald Trump won each of the same eight

counties that previously made up the 10th Senate District. Statewide, Trump won 47.2% of the vote, but in these eight counties he garnered 56.3%. Conversely, Hillary Clinton won 46.5% of the Wisconsin votes statewide, but only 37.1% in these formerly swing counties.

In fact, examining the differences between the 1980 and 2016 presidential elections best illustrates why Wisconsin's geopolitical polarization makes it impossible to draw 99 competitive assembly districts that would also be compact, recognize communities of interest and respect local political boundaries. In 1980 and 2016, the Republican candidate for president won Wisconsin by a nearly identical plurality; Reagan won with 47.9% of the vote in 1980; Trump won with 47.2% in 2016. The winning margin is about only similarity between 1980 and 2016. Where the candidates got their votes changed considerably as Democratic voters were now heavily concentrated in urban areas and Republicans dominate rural areas like the 10th Senate District and Rep. Obey's old House district.

Dane County is the poster child for ideological concentration. In 1980, Carter received 8.7% of his votes from Dane County, winning 50.8% of the Dane County vote. By 2016, Clinton received 15.7% of her votes from Dane County, winning 70.4% of the county's vote. Last fall, Dane County gave Gov. Evers 17.4% of his total vote as he won a whopping 78.6% of the Dane County vote. Dane County—which in the 2020 census represented just 9.5% of Wisconsin's population—gave Protasiewicz 19.3% of her votes as she won an incredible 81.9% of the Dane County vote.

Why is the increasing concentration of the Democratic vote in Dane County a problem? In a state with 99 assembly districts having an average population of 59,533, how do you create competitive districts with a county of 561,504 people that votes 80% Democratic? In order to create competitive districts incorporating Dane County, one would necessarily have to create 20 or so assembly districts that would resemble spokes in a wheel radiating from the capital city through two tiers of largely rural counties that surround Dane County. So, maybe you join Madison's Marquette neighborhood, adjacent to Lake Monona where the great Otis Redding died in an airplane crash, with Waukesha, the solidly Republican birthplace of Les Paul, the renowned guitar innovator. How about combining the landlocked Village of Maple Bluff, site of the Robert LaFollette home, with Ripon, the birthplace of the Republican party? Or, maybe combine Madison's Hawthorne neighborhood which contains the site where Elvis Presley broke up a street brawl, with King, Wisconsin, a GOP-heavy town 90 miles to the north. While such a map might provide more

balanced ideological districts, it would violate at least three tenets of redistricting: compactness, preserving communities of interest and respecting political boundaries.

Much the same is true for Milwaukee County although the trend has not been as dramatic. Nevertheless, the fact that 35.5% of the state's Democratic voters reside in two counties that represent 25.5% of the state's population—one of which is situated on the shores of Lake Michigan—makes drawing 99 competitive districts geographically impossible. As a result, regardless of your map-making skill, it is inescapable that there will at least 20 heavily Democratic districts between these two counties. If we assume a legislative map with 12 Milwaukee County Assembly districts and 8 Dane County Assembly districts—each of which would reflect the average partisan makeup of their respective counties—the remaining 79 assembly districts would, on average, lean Republican 53.6% to 46.4% based on the November 2022 gubernatorial results. It's a math thing.

Better Candidates

Recall the MSNBC pundits and others point to the fact that Gov. Evers polled at 51% of the vote, but Republicans gained close to two-thirds of the Legislature. Implicit in this argument is that the same voters who voted for Evers also voted for the Democratic legislative candidates and, conversely, the same voters who voted for Republican gubernatorial candidate Michels also voted the GOP legislative candidates. Hence, the argument goes, the overlay of the legislative maps is to explain why Evers won with 51% of the vote and Republicans dominated the legislative races.

This argument is based on a false premise. It was not so much the map that caused GOP legislative success. Rather, collectively GOP legislative candidates outperformed not only their opponents, but also outperformed both Evers and Michels.

Of the 99 Assembly districts, 73 featured both a Republican and Democrat on the ballot last November. Democrats failed to field candidates in 16 districts; Republicans had no candidate in 10 districts. Of the 73 Assembly races with both a Democrat and Republican on the ballot, Republican Assembly candidates not only collectively outpolled their Democratic rivals—by 52.3% to 47.7%—but GOP Assembly candidates collectively outpolled both candidates for governor. In these 73 districts, GOP Assembly candidates garnered 1,108,234 votes compared to

993,292 votes for Democrat Evers and 962,666 votes for Republican Michels.

One statistic demonstrating the fallacy of the rigged-map theory is that of these 73 districts, the Republican Assembly candidate outpolled Evers in 47 districts. Combine these 47 districts with the 16 districts where the Democrats chose not to run a candidate, and you have 63 seats, one fewer than the 64 Assembly seats the Republicans won. Doesn't seem very rigged to me.

But the most critical factor is the GOP's weakness at the top of the ticket. The data shows that Republican Michels was an exceptionally weak candidate. Ordinarily, a party's candidate at the top of the ticket should lead the way and outpoll those down ballot. Again, looking at the 73 Assembly districts with both a Republican and Democrat on the ballot, Evers outpolled the Democratic candidate in all but four districts. The script was flipped on the GOP side. The Republican assembly candidates outpolled Michels in 69 of the 73 assembly districts with both a Republican and Democrat candidate. Much of the delta between the votes for the GOP gubernatorial candidate and GOP legislative candidates is due to the weakness of the Michels campaign vis-à-vis the strength of Assembly Republican candidates.

I have no illusions that the cable news networks, and other media outlets will rethink the type of superficial reporting of redistricting stories that has become standard. I just hope the Supreme Court will dig just a little deeper.