



Distorted Districts, Distorted Laws

By Liz Kennedy and Billy Corriher

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Introduction and summary

States must redraw their election districts every 10 years, based on the U.S. census, in order to account for changes in population.¹ In most states, legislatures are responsible for redrawing the maps.² State legislators can manipulate district boundaries to benefit their political party, either by cramming the other party's voters into as few districts as possible or by thinly spreading the other party's voters among districts where they are outnumbered.³ This manipulation, called gerrymandering, weakens voters' ability to affect election outcomes. Technological advances have meant that states with gerrymandered districts have maps that are even more skewed than ever before.⁴ Recent polling shows that the vast majority of Americans—of both political parties—oppose partisan gerrymandering.⁵

The manipulation of districts means that politicians are picking their voters instead of the other way around.⁶ Distorted election districts lead to skewed representation and legislators who are less responsive to the will of the voters. An upcoming paper by three political scientists examines the impact of gerrymandering on policy outcomes, and it notes that if district maps favor one party, “then some citizens will enjoy more influence—more ‘voice’—over government policies than others.”⁷ The authors note that large “efficiency gaps can deny the majority of voters the opportunity to reverse past policies that they dislike or to enact large policy changes themselves.”⁸

This report discusses state legislatures in which gerrymandering has led to the greatest disparities between the votes cast for each political party and the number of seats won by the parties. Polls show that those gerrymandered state legislatures are enacting policies that voters do not support and refusing to pass laws that voters do support. Of course, other factors can contribute to legislators ignoring the public policy preferences of their constituents, including the influence of wealthy campaign donors and special interests.⁹

The results of gerrymandering are well known at the federal level. In 2012, Democratic candidates for the U.S. House of Representatives received 1.17 million more votes than Republicans, but the GOP ended up with a solid 57 percent majority in the House.¹⁰ The GOP managed this feat thanks, in part, to gerrymandering of Congressional districts by state legislatures.¹¹ In November 2016, Republicans again received fewer votes than Democrats but maintained a clear majority in Congress.¹² Democrats benefit from gerrymandering in a few states where they controlled the process of drawing maps, and Congressional districts in Maryland are facing legal challenges for favoring Democrats.¹³ However, a recent analysis from the Brennan Center for Justice estimates that the net benefit of partisan gerrymandering accounts for at least 16 or 17 Republican seats in Congress.¹⁴ A recent forecast of the 2018 Congressional elections estimates that Democratic candidates will receive 54 percent of the votes, but Republicans will maintain their majority in the House.¹⁵

Many of these GOP candidates for Congress campaigned on a platform to repeal the Affordable Care Act (ACA). Earlier this year, the House passed a bill to fulfill that promise,¹⁶ though only 16 percent of Americans supported the House bill according to a NBC/Wall Street Journal poll.¹⁷ The bill included large tax cuts for the wealthy¹⁸—something the vast majority of citizens oppose.¹⁹ Meanwhile, the House voted down popular measures, such as a minimum wage increase and nondiscrimination protections for LGBT people.²⁰

State legislatures are even more gerrymandered than Congress.²¹ This has led to legislative agendas that do not reflect the values of the majority of voters. The expansion of Medicaid under the ACA is something that the vast majority of voters support, but 19 states have refused the federal funding that covers almost all of the cost.²² As a result, 2.6 million low-income people cannot obtain the health care insurance that they could receive if they lived in states that expanded Medicaid.²³ Many state legislatures are also passing laws that pre-empt local laws that are broadly popular, such as expanded civil rights protections and minimum wage increases.²⁴ In recent years, the Wisconsin Legislature, for example, passed more than 100 laws blocking local government action.²⁵

This report discusses the fate of public policies in six state legislatures in which distorted districts recently resulted in a mismatch between the votes cast for each party and the seats gained by each party. It outlines policies that were not enacted by those state legislatures, even though they enjoyed popular support in public opinion polls, as well as some that were enacted despite being unpopular. The states profiled are Wisconsin, Virginia, Rhode Island, Ohio, Michigan, and North Carolina.

Gill v. Whitford and the efficiency gap

On October 3, the U.S. Supreme Court hears oral arguments in *Gill v. Whitford*, a case challenging extreme partisan gerrymandering in Wisconsin.²⁶ The court could soon restrain politicians' ability to manipulate election districts to gain an unfair partisan advantage. The plaintiffs in the case, represented by the nonpartisan Campaign Legal Center, argue that Wisconsin's distorted maps violate the rights of Democratic voters under the Equal Protection Clause and the First Amendment.²⁷

The lawsuit analyzes Wisconsin's districts using a new measure of partisan gerrymandering called the "efficiency gap."²⁸ The efficiency gap begins by tallying what are referred to as "wasted" votes, which are those cast for a losing candidate and votes for the winning candidate in excess of what the candidate needed to win.²⁹ The scholars who created the efficiency gap—Nicholas Stephanopoulos and Eric McGhee—argue that, in a competitive state, the two parties should have a roughly equal amount of wasted votes if districts are drawn fairly.³⁰ To obtain the efficiency gap, the difference between the two parties' wasted votes is divided by the total number of votes cast.³¹

The lower court's 2016 ruling in *Gill*—which relied on the efficiency gap—is the first time in decades that a court invalidated a redistricting map because it gave an unfair benefit to one political party.³² In a divided 2006 opinion, five justices of the Supreme Court agreed that partisan gerrymandering can violate the Constitution by unfairly targeting perceived supporters of the other party, but they did not agree on how to decide when a state has gone too far.³³ This new measure of partisan gerrymandering is intended to satisfy the Supreme Court's search for a workable standard for deciding how much partisanship is too much.³⁴ Mark Joseph Stern of *Slate* noted that, if the justices approve of the new measure, courts could "fundamentally alter representation in the United States."³⁵

Stephanopoulos and McGhee argue that a map should be presumed unconstitutional if the efficiency gap is greater than 7 percent and if "the gap is unlikely to hit zero over the plan's lifetime" given electoral trends.³⁶ In circumstances such as this, it is unlikely that "plausible changes in voters' preferences" would lead

to a new majority in the state legislature.³⁷ Four states had Congressional maps in place in 2012 that would be presumed unconstitutional under this proposed threshold: Pennsylvania, Ohio, Florida, and Virginia.³⁸ (The map in Florida has since been redrawn, after state courts ruled it unconstitutional.³⁹) Thirteen states had presumptively unconstitutional districts for 2012 state house elections: Wyoming, Wisconsin, Rhode Island, Oklahoma, Virginia, Michigan, Ohio, North Carolina, Kansas, Idaho, Missouri, Indiana, and Massachusetts.⁴⁰ The authors suggest that “a state whose plan’s efficiency gap exceeds the relevant threshold should have the chance to argue that the gap either was the necessary result of a legitimate and consistently applied state policy, or was inevitable given the state’s underlying political geography.”⁴¹

Stephanopoulos and McGhee found that the efficiency gap suggests that Democrats had a “modest” advantage through redistricting in the 1970s and 1980s.⁴² Republican candidates had a larger advantage in the 1990s and early 2000s, only to see their advantage skyrocket in 2012.⁴³

The efficiency gap for the Wisconsin Legislature was calculated at more than 13.3 percent in 2012 and around 10 percent for 2014 and 2016.⁴⁴ The plaintiffs noted that GOP candidates would have won more than 60 percent of the seats, even if the “elections had been perfectly tied.”⁴⁵ Just weeks after the November 2016 election, a three-judge panel, which included two judges appointed by Republican presidents, ruled the map unconstitutional.⁴⁶ The court said the map was intended to “secure Republican control ... under any likely future electoral scenario for the remainder of the decade, in other words to entrench the Republican Party in power.”⁴⁷ The judges noted that “even when Republicans are an electoral minority, their legislative power remains secure.”⁴⁸

Wisconsin

In 2012, Republican legislators in Wisconsin gained a supermajority—60 out of 90 seats—despite losing the statewide popular vote.⁴⁹ The Campaign Legal Center noted, “In 2014 and 2016, Republicans extended their advantage to 63 and 64 seats, respectively, even though the statewide vote remained nearly tied.”⁵⁰ The leaders of the Wisconsin Legislature hurriedly drafted its 2011 redistricting maps while the Republican party was in danger of losing its majority during six recall elections.⁵¹ The maps were revealed only a week-and-a-half before they were put up for a vote, and Gov. Scott Walker (R) signed the bill on the day of the recall election.⁵²

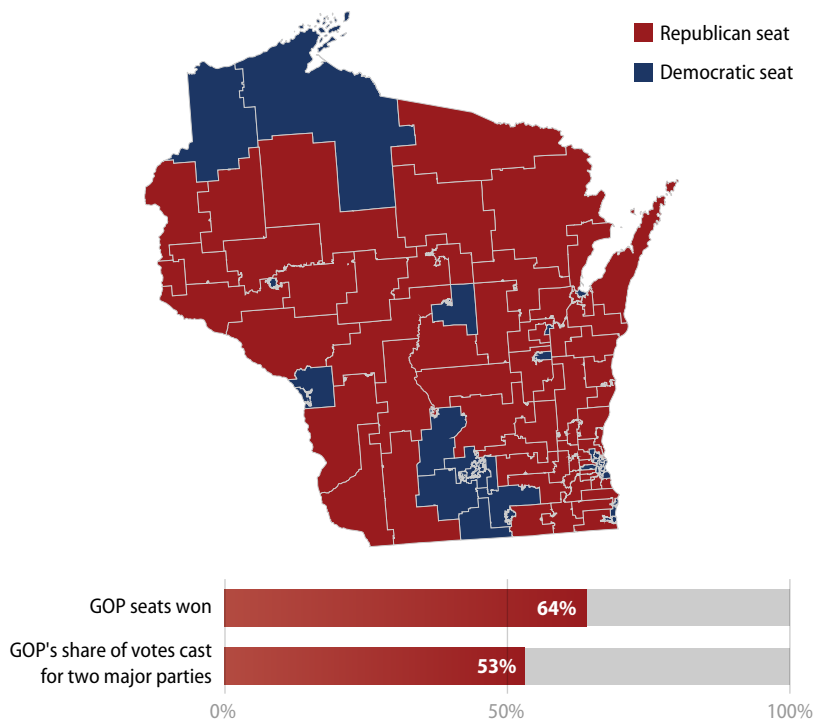
Distorted districts in Wisconsin have produced GOP supermajorities. Emily Bazelon of *The New York Times Magazine* wrote, “Wisconsin is a purple state ... But one-party control continues to produce policies—more union busting, abortion restrictions and lately \$3 billion in proposed tax credits for the electronics giant Foxconn—associated with a deep-red electorate.”⁵³ When the federal court struck down the maps, it pointed out that “in any likely electoral scenario, the number of Republican seats would not drop below 50%.”⁵⁴ An expert testified at the trial and estimated that the large efficiency gap would persist as long as the maps were in place.⁵⁵

Shielded from accountability to their voters, Wisconsin’s Legislature enacted an agenda that defied the preferences of most of their constituents. To stop frustrated citizens from turning to their local governments, the Legislature passed unpopular laws preventing local governments from setting their own rules in a variety of areas, such as the protection of sensitive environments and gun violence prevention laws.⁵⁶

FIGURE 1

Distorted districts in Wisconsin

Slightly more than half of voters chose Republican candidates for the Wisconsin State Assembly in 2016, but the GOP secured a supermajority of seats



Sources: Ballotpedia, "Wisconsin State Assembly elections, 2016," available at https://ballotpedia.org/Wisconsin_State_Assembly_elections,_2016 (last accessed September 2017); David Lieb and Meghan Hoyer, "Redrawing America: an Efficiency Gap Analysis" (New York: Associated Press, 2017), available at <http://data.ap.org/projects/2017/efficiency-gap/>.

FIGURE 2

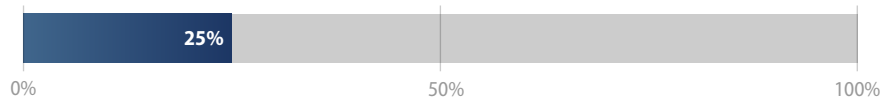
Distorted priorities for Wisconsin legislators

Most Wisconsin voters favor the expansion of Medicaid under the ACA, but legislators voted it down

Voter support for Medicaid expansion



Legislators voting for expansion in Finance Committee



Sources: Marquette University Law School Poll, "Marquette Law School Poll, October 21-24, 2013" (2013), available at <https://law.marquette.edu/poll/wp-content/uploads/2013/10/MLSP18Toplines.pdf>; Mary Spicuzza, "Legislature's budget committee rejects Medicaid expansion," *Wisconsin State Journal*, June 4, 2013, available at http://host.madison.com/wsj/news/local/govt-and-politics/legislature-s-budget-committee-rejects-medicaid-expansion/article_764dc436-c4a7-5d8e-89d0-39ffa09c7f8d.html.

The unpopular actions of the Republican Legislature have harmed the state's residents in several ways:

- In 2014, when a University of Wisconsin–Milwaukee poll showed that more than three-quarters of state residents supported a minimum wage increase, cities and counties across the state put minimum wage referenda on their own ballots.⁵⁷ The referendum won a clear majority in all 13 jurisdictions that voted on it—with two-thirds of all voters in favor—but could not go into effect because of a new state law preventing local increases.⁵⁸ The state Legislature also blocked efforts to raise the statewide minimum wage, despite clear support for a higher wage among Wisconsin residents.⁵⁹
- The Legislature's refusal to expand Medicaid under the ACA—a decision opposed by 56 percent of voters from both parties—caused 85,000 Wisconsinites to lose out on access to affordable and quality health care.⁶⁰
- Two-thirds of Wisconsinites think the rich should pay higher taxes, yet the Legislature has passed a series of tax cuts overwhelmingly favoring the state's wealthiest residents.⁶¹
- As 72 percent of Wisconsinites voiced support for increased funding for public schools, the Legislature enacted “the biggest cut to education in Wisconsin's history” in 2011, according to the Center for Media and Democracy.⁶²
- The legislature has repeatedly blocked bills to help student loan borrowers refinance their loans—a move supported by over two-thirds of Wisconsinites in a recent poll.⁶³ More than 750,000 people in the state have federal student loan debt.⁶⁴

Virginia

Virginia has voted for Democratic candidates in recent statewide elections, but gerrymandering has helped Republicans stay in power. Democrats won all statewide offices in 2013, but Republicans won a supermajority in the House of Delegates.⁶⁵ Stephanopoulos and McGhee said the Republican advantage in Virginia was “unlikely to fade away in future elections.”⁶⁶

The previous governor, Bob McDonnell (R), campaigned on a promise to reform redistricting and created an independent advisory commission in 2011.⁶⁷ The legislature, however, ignored the commission’s recommendations.⁶⁸ Nearly three-quarters of Virginians want an independent commission to draw district lines, according to a 2013 poll.⁶⁹

In March, the Supreme Court overturned a lower court’s ruling that Virginia’s district maps did not discriminate against black voters.⁷⁰ The justices voted 8-1, with only Justice Clarence Thomas issuing a partial dissent.⁷¹ Like other Southern state legislatures, Virginia was charged with “packing” African American voters into a few districts, minimizing their influence in other districts as well as their overall political power.⁷²

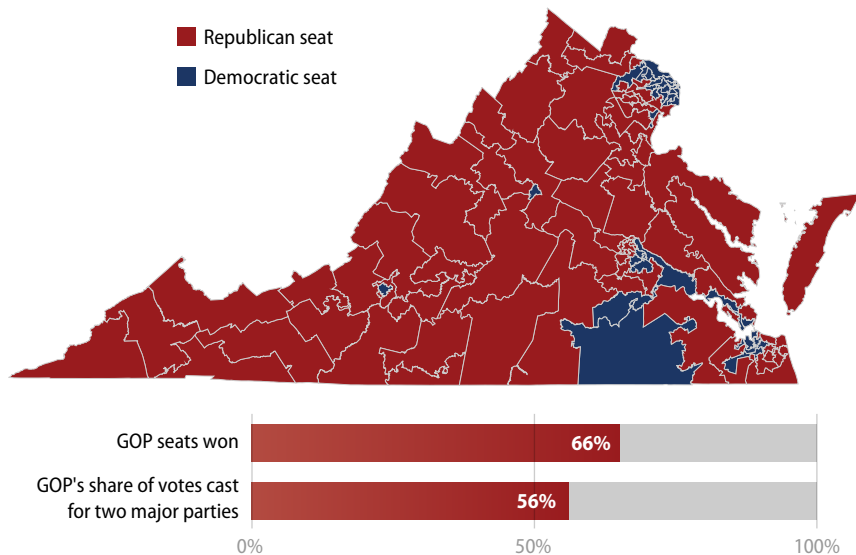
As in Wisconsin, gerrymandering by Virginia legislators who are not responsive to their constituents’ preferences has harmed voters:

- The Republican-controlled Virginia legislature passed a law in 2016 barring local governments from increasing the minimum wage, though this was vetoed by Gov. Terry McAuliffe (D).⁷³ A 2014 poll found that two-thirds of Virginians support a higher minimum wage.⁷⁴
- A recent poll found that 69 percent of voters support the expansion of Medicaid under the ACA,⁷⁵ but the Virginia legislature rejected the expansion, even though the federal government would initially cover almost all of the cost.⁷⁶

FIGURE 3

Distorted districts in Virginia

Fifty-six percent of voters chose Republican candidates for the Virginia House of Delegates in 2015, but the GOP secured a supermajority of seats



Sources: Ballotpedia, "Virginia House of Delegates elections, 2015," available at https://ballotpedia.org/Virginia_House_of_Delegates_elections,_2015 (last accessed September 2017); Virginia Department of Elections, "2015 November General, Official Results," available at <http://results.elections.virginia.gov/resultsUAT/2015%20November%20General/Site/GeneralAssembly.html> (last accessed September 2017).

FIGURE 4

Distorted priorities for Virginia legislators

Most Virginia voters favor the expansion of Medicaid under the ACA, but legislators voted it down

Voter support for Medicaid expansion



Legislators voting for expansion



Sources: University of Maryland Program for Public Consultation, "Large Majority of Voters in States Without Medicaid Expansion Favor It," April 6, 2017, available at <http://www.publicconsultation.org/federal-budget/large-majority-of-voters-in-states-without-medicaid-expansion-favor-it/>; Michael Martz and Graham Moomaw, "Medicaid expansion blocked again, but new health care debate takes shape," *Richmond Times-Dispatch*, April 5, 2017, available at http://www.richmond.com/news/virginia/government-politics/medicaid-expansion-blocked-again-but-new-health-care-debate-takes/article_9c411d09-2a9c-5cd1-8473-0eea6b51d5da.html.

- A similar percentage of voters polled supported a law preventing discrimination against LGBT people,⁷⁷ but LGBT nondiscrimination bills have failed in the last three sessions.⁷⁸ Wide majorities of Virginians also support same-sex adoption and oppose businesses discriminating against LGBT people,⁷⁹ yet the legislature has passed laws allowing discrimination against same-sex couples in the name of religious freedom.⁸⁰
- The legislature has slashed education funding, despite 72 percent of Virginia voters opposing cuts to K-12 education.⁸¹

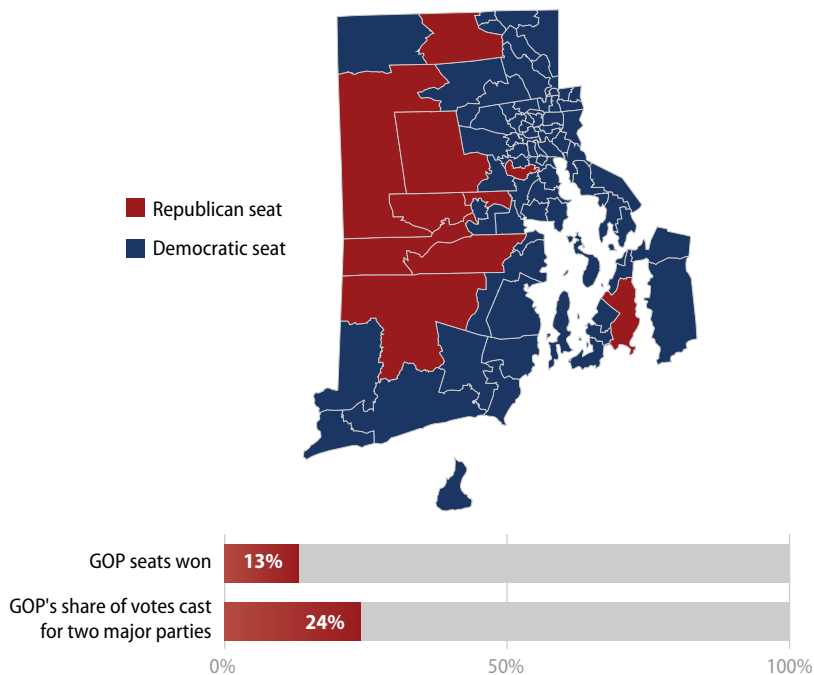
Rhode Island

In Rhode Island, the legislature draws districts with recommendations from an 18-member commission with a vast majority of members appointed by the majority leaders in both houses of the state legislature.⁸² Though the governor was an independent, Democrats controlled both houses during the 2010 redistricting cycle.⁸³

FIGURE 5

Distorted districts in Rhode Island

Almost one-quarter of voters chose Republican candidates for the Rhode Island House of Representatives in 2016, but the GOP only secured 13 percent of the seats



Sources: Ballotpedia, "Rhode Island House of Representatives elections, 2016," available at https://ballotpedia.org/Rhode_Island_House_of_Representatives_elections_2016 (last accessed September 2017); David Lieb and Meghan Hoyer, "Redrawing America: an Efficiency Gap Analysis" (New York: Associated Press, 2017), available at <http://data.ap.org/projects/2017/efficiency-gap/>.

Rhode Island and Massachusetts were the only state legislature districts drawn by Democratic officials that crossed the threshold suggested by Stephanopoulos and McGhee, and Rhode Island's efficiency gap for 2012 was around 11 percent, the fourth-highest in their study.⁸⁴ Republicans won 35 percent of the aggregate General Assembly vote in that election but came away with only 13 percent of seats.⁸⁵ The 2016 election, however, resulted in a lower gap of 2.25 percent, according to the Associated Press.⁸⁶

Democratic legislators in the other states discussed in this report supported increases in the minimum wage or opposed bans on local increases, but the Democratic legislature in Rhode Island pre-empted a Providence ordinance raising the minimum wage to \$15 an hour for hotel workers.⁸⁷ One Democratic legislator said, "It's more important it be on the state and not every city and county having their own minimum wage" because it would "cause undue hardships on businesses."⁸⁸ But these legislators, like Republicans in the other states analyzed in this report, are disregarding voter's expressed policy preferences:

- The Rhode Island legislature passed a law prohibiting local increases in the minimum wage.⁸⁹ More than two-thirds of Rhode Island voters support a \$15 per hour minimum wage, according to a recent poll.⁹⁰
- The legislature in 2016 passed a law that increased tolls on trucks, even though the vast majority of voters polled preferred an alternative Republican proposal.⁹¹

Michigan

In 2012, 54 percent of Michigan voters cast their ballots for Democratic candidates for the Michigan House of Representatives, but Republicans ended up with eight more seats than Democrats.⁹² The next election, in 2014, saw Republican House candidates again lose the total statewide vote but pick up several more seats.⁹³ In state Senate elections that year, Republican candidates received half of the votes statewide, but they ended up with a supermajority of 27 seats, while Democrats won 11 seats.⁹⁴ The Senate's efficiency gap was a staggering 22.8 percent in 2014, though it dropped by half in the 2016 election.⁹⁵

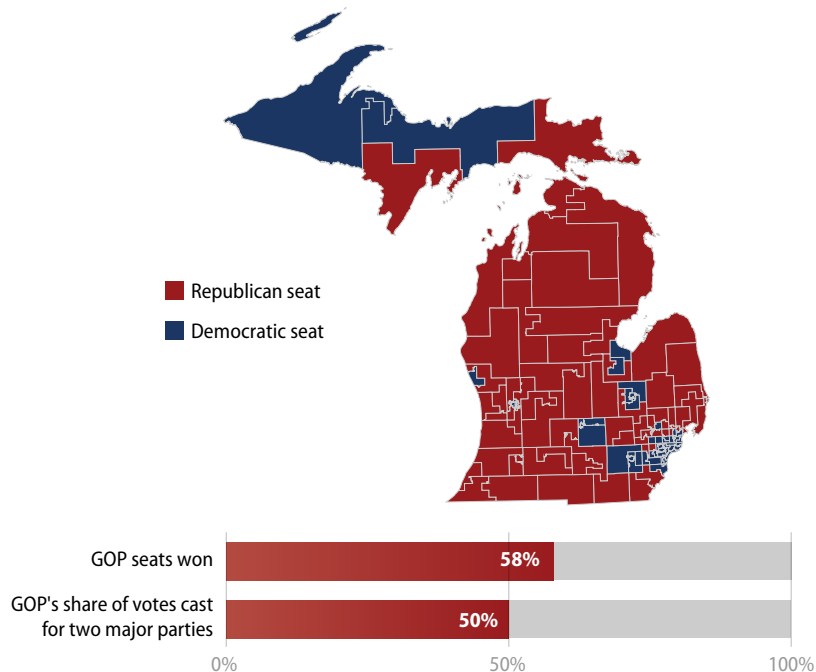
This gerrymandered Republican majority has defied the will of Michigan voters, with tragic consequences. In 2012, voters overturned the state's emergency manager law, which allowed the state to take over local governments that it decided faced a fiscal emergency.⁹⁶ But just weeks later, the Legislature passed a new version of the law.⁹⁷ Gov. Rick Snyder (R) used his authority under the new law to appoint emergency managers to take over the local government of Flint, Michigan.⁹⁸ In 2014, these managers switched the source of the city's water, leading to widespread lead poisoning and an outbreak of Legionnaires' disease.⁹⁹ Toxic levels of lead poisoned children throughout the city.¹⁰⁰

Flint resident Lee Anne Walters has twin five-year-old boys who suffer cognitive problems.¹⁰¹ They forget things they have already learned, such as the names of colors and the letters of the alphabet.¹⁰² Lead poisoning in children increases the risk of "damage to the brain and nervous system, slowed growth and development, learning and behavior problems (e.g., reduced IQ, ADHD, juvenile delinquency, and criminal behavior), and hearing and speech problems," according to the Centers for Disease Control and Prevention.¹⁰³ Three years after the contamination, residents of the city still do not have clean drinking water.¹⁰⁴

FIGURE 6

Distorted districts in Michigan

Half of voters chose Republican candidates for the Michigan House of Representatives in 2016, but the GOP secured 58 percent of the seats



Sources: Ballotpedia, "Michigan House of Representatives elections, 2016," available at https://ballotpedia.org/Michigan_House_of_Representatives_elections_2016 (last accessed September 2017); David Lieb and Meghan Hoyer, "Redrawing America: an Efficiency Gap Analysis" (New York: Associated Press, 2017), available at <http://data.ap.org/projects/2017/efficiency-gap/>.

After being elected in uncompetitive, gerrymandered districts, Michigan's legislators have also disregarded public sentiment by passing laws that permit discrimination and keeping regressive tax policies in place:

- Voters overturned the state's emergency manager law in 2012, but the Legislature quickly passed a new version of the law.¹⁰⁵
- The Legislature also overturned voters' 2012 rejection of a law eliminating the voter convenience option to vote "straight ticket" on a ballot.¹⁰⁶
- The Legislature did not approve a bill that would have given voters the chance to replace the state's flat income tax with a progressive tax that would lower rates for lower-income taxpayers and raise rates on the wealthy—a move supported by two-thirds of voters, according to a 2015 poll.¹⁰⁷

- A 2013 poll found that the vast majority of Michiganders support adoption rights for same-sex couples, and more than 75 percent support laws banning discrimination against LGBT people.¹⁰⁸ However, the state Legislature passed a law in 2015 that allows adoption agencies to discriminate against same-sex couples in the name of religious freedom.¹⁰⁹

Ohio

A commission chosen by elected officials redrew Ohio's election districts in 2011.¹¹⁰ Republicans appointed four of the five commissioners.¹¹¹ The election the following year saw Democrats winning the aggregate popular vote for state House and Senate but Republicans securing majorities in both chambers.¹¹²

In 2015, Ohioans overwhelmingly approved an amendment to their state constitution that will bring greater fairness to the redistricting process for the state legislature.¹¹³ The amendment offers greater representation of the minority party on the redistricting commission, and it requires at least some bipartisan support for the commission to approve a map.¹¹⁴ Common Cause Ohio said the amendment would “renew faith in the democratic process.”¹¹⁵ Ohio citizens are currently pursuing a ballot initiative to create a bipartisan redistricting commission for Congressional districts.¹¹⁶

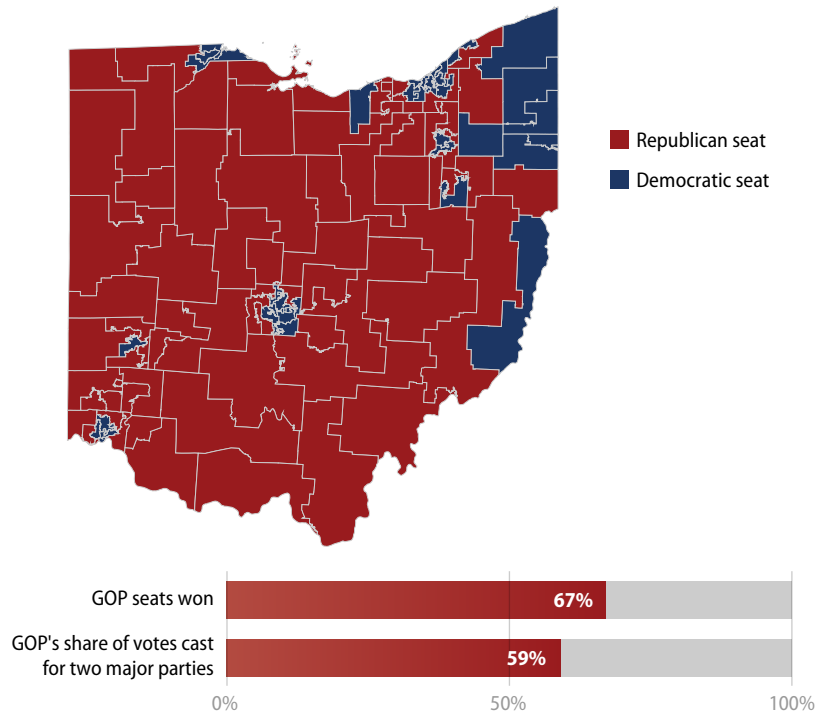
More than 700,000 low-income people gained access to health care insurance through Ohio's Medicaid expansion, but the legislature—insulated from accountability through gerrymandering—is still considering bills to reverse the expansion:

- Nearly two-thirds of Ohio residents favor expanding Medicaid under the ACA, but the state legislature passed a bill earlier this year to halt the governor's expansion.¹¹⁷ The bill was vetoed, but legislators could try to override the veto.¹¹⁸
- The vast majority of Ohioans also support civil rights laws that protect LGBT people from discrimination in employment, housing, and public accommodations,¹¹⁹ but the legislature has repeatedly refused to take up the issue.¹²⁰
- A 2015 poll found that 61 percent of Ohio voters support raising taxes on the wealthy in order to lower them for others,¹²¹ but recent tax cuts disproportionately benefit the wealthy.¹²²

FIGURE 7

Distorted districts in Ohio

Fifty-nine percent of voters chose Republican candidates for the Ohio House of Representatives in 2016, but the GOP secured a supermajority of seats



Sources: Ballotpedia, "Ohio House of Representatives elections, 2016," available at https://ballotpedia.org/Ohio_House_of_Representatives_elections_2016 (last accessed September 2017); David Lieb and Meghan Hoyer, "Redrawing America: an Efficiency Gap Analysis" (New York: Associated Press, 2017), available at <http://data.ap.org/projects/2017/efficiency-gap/>.

FIGURE 8

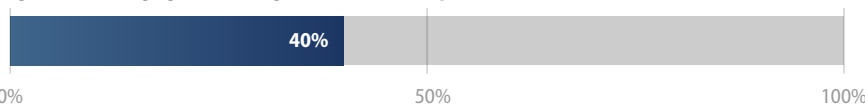
Distorted priorities for Ohio legislators

Most Ohio voters favor the expansion of Medicaid under the ACA, but legislators voted it down

Voter support for Medicaid expansion



Legislators voting against a budget that defunds expansion



Sources: Voice of the People and University of Maryland Program for Public Consultation, "Survey on Medicaid Expansion" (2017), available at http://vop.org/wp-content/uploads/2017/04/Medicaid_Expansion.pdf; Voice of the People and University of Maryland Program for Public Consultation, "Americans on Fixing U.S. Poverty Programs: Medicaid Expansion Questionnaire" (2017), available at http://vop.org/wp-content/uploads/2017/04/Medicaid_Expansion_Quaire.pdf; H.B. 49, Ohio General Assembly 132, 115 Cong. 1st sess., available at <https://www.legislature.ohio.gov/legislation/legislation-votes?id=GA132-HB-49>.

- An even larger majority, 75 percent, wants an increase in the minimum wage, according to a 2016 poll.¹²³ This did not stop the gerrymandered legislature from passing a bill to prohibit local governments from raising the minimum wage.¹²⁴
- Ohio voters overwhelmingly support universal background checks for gun purchases—83 percent, according to a 2013 poll.¹²⁵ But legislators rejected a bill requiring background checks and instituting other gun violence prevention measures.¹²⁶

North Carolina

Republicans gained a majority in both chambers of the North Carolina legislature in 2010, ensuring they would redraw district lines in 2011.¹²⁷ Some African American voters filed lawsuits challenging the maps for both Congress and the state legislature.¹²⁸ The voters argued that the legislature had disenfranchised them by packing them into a few districts, minimizing their influence across the state.¹²⁹ Federal courts agreed and ruled the maps unconstitutional.¹³⁰

The legislature claimed that the Voting Rights Act, which prohibits redistricting that weakens the political power of voters of color, required the packing of black voters.¹³¹ But in recent years, the U.S. Supreme Court has repeatedly told legislators that the Voting Rights Act does not require districts to have a certain set percentage of black voters.¹³² Instead, legislators must ensure that voters of color have the power to elect their “candidates of choice.”¹³³ In the North Carolina districts, they had that power before the 2011 redistricting, even without majority-black districts.

The Supreme Court upheld the rulings to strike down the maps earlier this year.¹³⁴ Legislators drafted new districts for the state legislature under a tight deadline, and hundreds of voters criticized the maps at public hearings.¹³⁵ When faced with claims that the illegal racial gerrymandering had been continued, the legislators actually defended themselves by claiming that the new maps were drawn based entirely on political—not racial—criteria.¹³⁶ The legislators admitted that the goal of the new maps was to elect Republicans.¹³⁷ An analysis by the nonpartisan Campaign Legal Center found that the maps give Republican candidates “an enormous edge” in elections.¹³⁸ The Campaign Legal Center computed the efficiency gap using prior voting patterns and found that Republicans only needed a statewide vote of 45.7 percent to maintain their majority in the state House of Representatives.¹³⁹

Both the current maps and the new maps ensure that Republican legislators in North Carolina are insulated from accountability from voters. Stephanopoulos and McGhee calculated the legislature’s 2012 efficiency gap at more than 10 percent, though it dropped in half in the 2016 election.¹⁴⁰ And this has led North

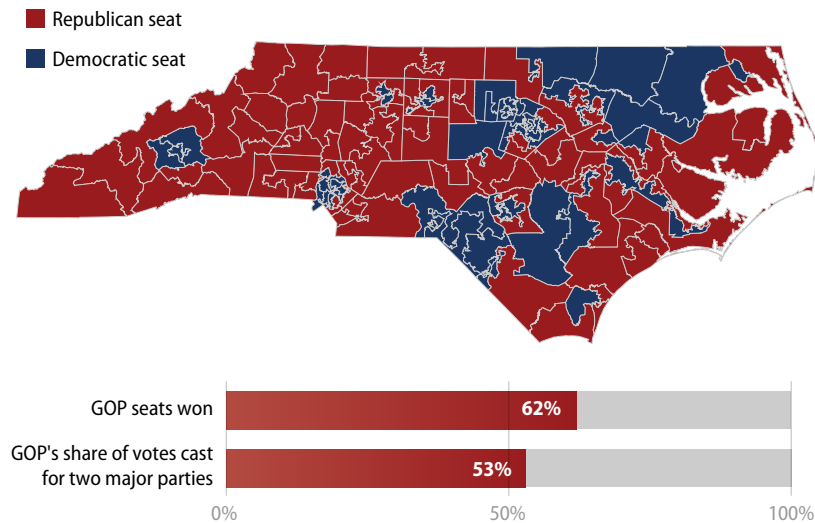
Carolina legislators to sometimes govern in ways that disregard the will of voters and harm consumers, workers, and LGBT people:

- A shocking 2 percent of voters supported a 2013 bill to raise the limit on interest charged for consumer finance loans to 30 percent,¹⁴¹ but that did not stop the legislature from passing the bill.¹⁴² In fact, legislators have passed a series of bills that benefit the payday loan industry, which gives large contributions to their campaigns.¹⁴³
- More than 60 percent of North Carolina voters supported an extension of the state's Earned Income Tax Credit and an increase on taxes on the wealthy, according to a 2012 poll.¹⁴⁴ But, in 2014, the legislature repealed the Earned Income Tax Credit and cut taxes for millionaires.¹⁴⁵
- The legislature passed a bill in 2016 that ended local government authority over civil rights in response to a Charlotte law that extended civil rights protections to LGBT people.¹⁴⁶ A 2015 poll found that 64 percent of North Carolinians support LGBT nondiscrimination laws.¹⁴⁷
- The same bill prohibited local increases in the minimum wage,¹⁴⁸ even though a 2016 poll showed that 76 percent of voters supported raising the minimum wage to \$10 an hour.¹⁴⁹
- Legislators also banned the governor from expanding Medicaid in 2013,¹⁵⁰ despite the vast majority of North Carolina voters supporting the expansion.¹⁵¹ This left 300,000 North Carolinians without access to affordable health care insurance.¹⁵²

FIGURE 9

Distorted districts in North Carolina

More than half of voters chose Republican candidates for the North Carolina House of Representatives in 2016, but the GOP secured a supermajority of seats



Sources: Ballotpedia, "North Carolina House of Representatives elections, 2016," available at https://ballotpedia.org/North_Carolina_House_of_Representatives_elections,_2016 (last accessed September 2017); David Lieb and Meghan Hoyer, "Redrawing America: an Efficiency Gap Analysis" (New York: Associated Press, 2017), available at <http://data.ap.org/projects/2017/efficiency-gap/>.

FIGURE 10

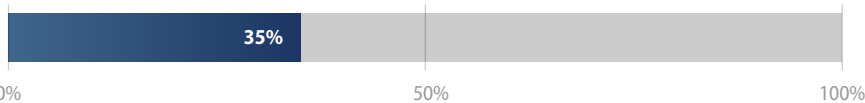
Distorted priorities for North Carolina legislators

Most North Carolina voters favor the expansion of Medicaid under the ACA, but legislators voted it down

Voter support for Medicaid expansion



Legislators voting for expansion



Sources: Mark Binker, "Poll: NC voters back health care expansion," WRAL, January 26, 2016, available at <http://www.wral.com/poll-nc-voters-back-health-care-expansion/15274337/>; North Carolina General Assembly, "North Carolina House of Representatives: Roll Call: SB 4," available at <http://www.ncleg.net/gascripts/voteHistory/RollCallVoteTranscript.pl?sSession=2013&sChamber=H&RCS=69> (last accessed September 2017).

Conclusion

Distorted districts mean that legislators are not properly accountable to voters. It means that more elections are uncontested or so lopsided that there is no real contest. This translates into unfair laws and policies that do not reflect the needs or desires of voters.

Gerrymandering leads to politicians who are less responsive and elections that are less competitive.¹⁵³ Since the current maps were put in place, none of Ohio's 16 congressional districts have changed hands, despite the fact that Ohio is a battleground state where both parties are competitive.¹⁵⁴ In the last three congressional elections, an average of 62 candidates ran unopposed.¹⁵⁵ If the next two elections are similar, this decade will have the highest average number of unopposed candidates since the 1980s.¹⁵⁶ The problem is even worse at the state level, where a shocking 42 percent of legislative elections were uncontested in 2016.¹⁵⁷ Many observers and scholars have attributed the increase in uncontested elections in recent decades to gerrymandering.¹⁵⁸ But as a recent Associated Press article also noted, "Some states, particularly in the South, have political cultures that place less importance on partisan competition. Incumbency also poses a deterrent to potential challengers."¹⁵⁹

A few states have taken the redistricting process out of the hands of incumbent politicians. Western states, such as California and Arizona, have independent, bipartisan commissions to draw election districts.¹⁶⁰ In Maryland, Republican Gov. Larry Hogan and the Democratic state Senate have both proposed versions of an independent redistricting commission.¹⁶¹

Several states have seen voters passing referenda to create independent, bipartisan redistricting commissions. States should create such commissions if they want a fair, transparent process for redistricting. A December 2016 report from the Center for American Progress highlighted California's commission and stated:

*Independent commissions offer several benefits, including eliminating the appearance of impropriety and making elections fairer... There are different ways to design independent or citizen-led redistricting commissions. These commissions should be comprised of an equal number of members associated with each major party, ensuring that at least one member from the opposing party must vote for any plan before it is implemented. Missouri and Idaho, for example, require that an even number of commissioners are appointed from each party. Missouri goes so far to require a supermajority to approve any final redistricting plan to ensure that all views are considered. Alternatively, an independent commission could be comprised of an equal number of members from each major party, plus one tiebreaker who is appointed by the judiciary and not registered with either of the major parties.*¹⁶²

Citizens can also amend state constitutions to require that legislators do not distort districts for partisan advantage. Florida's Constitution, for example, states that districts "may not be drawn to favor or disfavor an incumbent or political party."¹⁶³

Voting rights advocates are hopeful that the Supreme Court's decision in the Wisconsin case will put the brakes on extreme partisan gerrymandering.¹⁶⁴ The crucial point, as noted in the upcoming political science paper on how gerrymandering influences policy, is that "limiting the magnitude of partisan biases ... is likely to improve state governments' representation of their citizens."¹⁶⁵

When the Supreme Court recently upheld Arizona's independent, bipartisan commission, Justice Ruth Bader Ginsburg noted that the commission ended the cycle of endless litigation resulting from biased maps.¹⁶⁶ Justice Ginsburg said, "[N]onpartisan and bipartisan commissions generally draw their maps in a timely fashion and create districts both more competitive and more likely to survive legal challenge."¹⁶⁷

Voters should choose their representatives instead of politicians choosing their voters. Extreme partisan gerrymandering has robbed too many citizens of their right to fair representation. The Supreme Court could soon rein in the practice, and each citizen must demand a fair and transparent redistricting process in her or his state. This would lead to legislatures that are more accountable to the voters, more reflective of their values, and more responsive to their policy preferences.

About the authors

Billy Corriher is the deputy director of Legal Progress at the Center for American Progress.

Liz Kennedy is the Director of Democracy and Government Reform at the Center.

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Endnotes

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