

Partisan Gerrymandering in 2016: More Extreme Than Ever Before

By Ruth Greenwood

The 2016 elections show that partisan gerrymandering is still a stain on our democracy

The Campaign Legal Center has conducted an initial analysis of the depth of partisan gerrymandering in the 2016 elections. Partisan gerrymandering occurs when political parties, during the redistricting process, manipulate district lines for their own partisan advantage, and voters are denied an effective voice in electing their representatives.

The general election of 2016 was the third election held since the 2011 round of redistricting. With three elections' worth of data, we can now say with even more certainty that the redistricting plans in the post-2010 cycle evidence more extreme partisan gerrymandering than any other decade in modern American history. For the third time this decade, we saw huge skews in favor of either Democrats or Republicans in plans across the country.

Allowing politicians to manipulate voting maps is like putting the fox in charge of the hen house. In almost every state, politicians choose their own voters and draw voting maps that benefit themselves, at the expense of American voters and our democracy as a whole. Partisan gerrymandering creates an unrepresentative and unfair democracy and encourages self-interested politics, and it is increasingly harming American democracy.

With partisan gerrymandering on the rise nationwide, it's more important than ever that the U.S. Supreme Court adopt a standard to help address this unconstitutional practice that has gone unaddressed for too long. The U.S. Supreme Court held that it has the authority and responsibility to decide partisan gerrymandering claims, and in 2006, a majority of the Court agreed that excessive partisan gerrymandering violates the Constitution. However, the Supreme Court has yet to adopt a standard for determining when a redistricting plan is so extreme that it constitutes an unconstitutional partisan gerrymander.

CLC has offered such a standard in the case *Whitford v. Gill*, which we successfully argued, along with co-

“The redistricting plans of the 2010s evidence more extreme partisan gerrymandering than any other decade in modern American history”

counsel, before a three-judge panel in a Wisconsin federal court. Our case showed that the Wisconsin state assembly plan is an unconstitutional partisan gerrymander, using a three-part test that incorporates the efficiency gap and other political science metrics of partisan advantage. The three-part test requires that a plaintiff prove that: (1) the state had an intent to advantage one party over another; (2) the state did in fact advantage one party over another (this can be shown with the efficiency gap and other metrics); and (3) that there was no neutral justification for the large advantage that the state gave to one political party.

If appealed, the *Whitford v. Gill* decision would be reviewed by the U.S. Supreme Court, likely in 2017, and the Supreme Court would have the opportunity to adopt a standard for determining unconstitutional partisan gerrymanders that can be used nationwide.

Measuring the extent of partisan gerrymandering: the efficiency gap

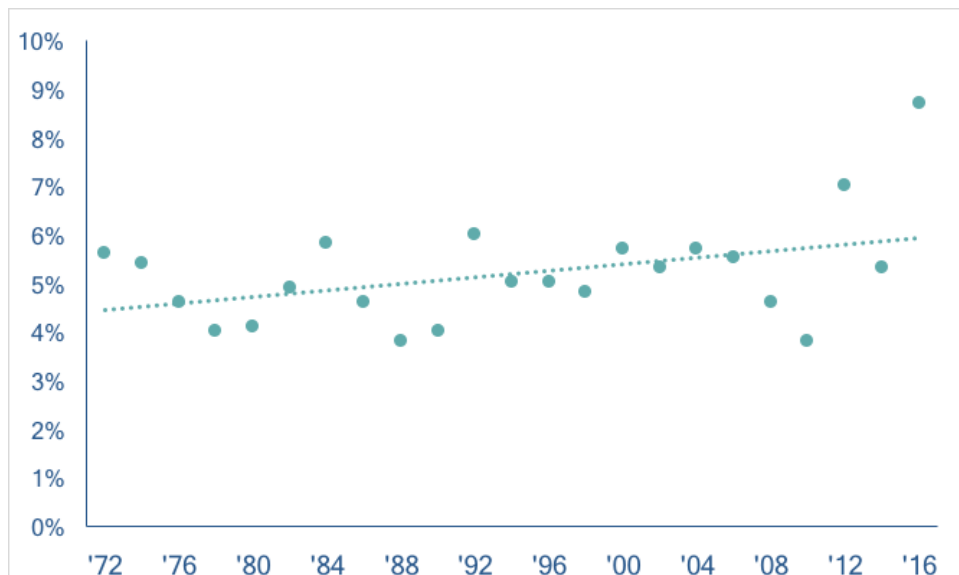
Our analysis measures partisan gerrymanders by the size of the efficiency gap, using early election returns compiled by Dave Wasserman of the *Cook Political Report*. This analysis shows that the trend of the efficiency gap over time is more extreme in 2016 than ever. The series of maps below illustrate the states where partisan gerrymandering is the most severe.

The efficiency gap is a metric that shows how efficiently voters are distributed throughout a district plan for one party or the other. It allows us to compare every state legislative and congressional plan using a single number, expressed as a percentage.

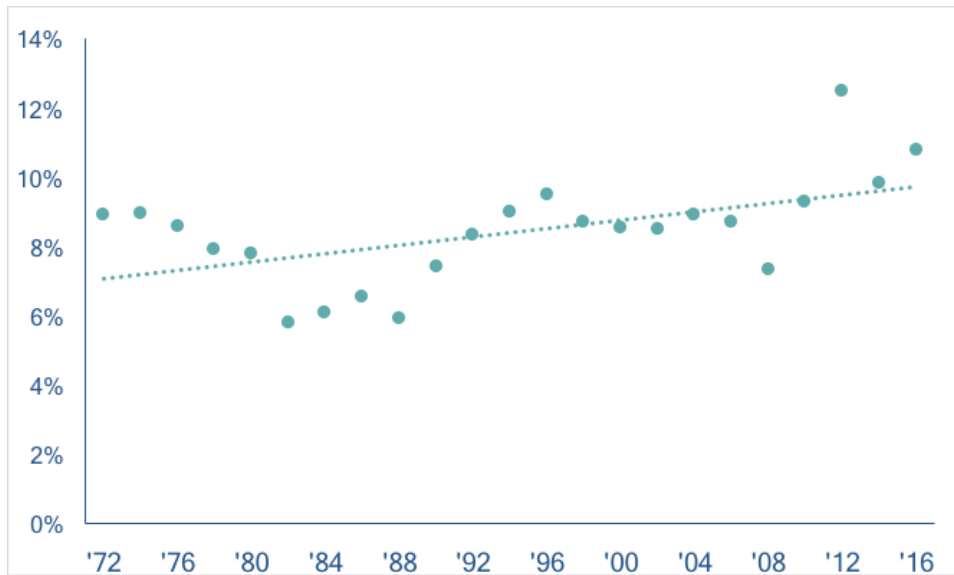
The efficiency gap has been increasing over time

The efficiency gaps exhibited by state legislative district plans and congressional district plans have never been higher than in the three most recent elections (2012, 2014, and 2016). The charts below show the average absolute efficiency gap for each general election from the 1970s to today.

The efficiency gap in state legislative district plans: 1972-2016



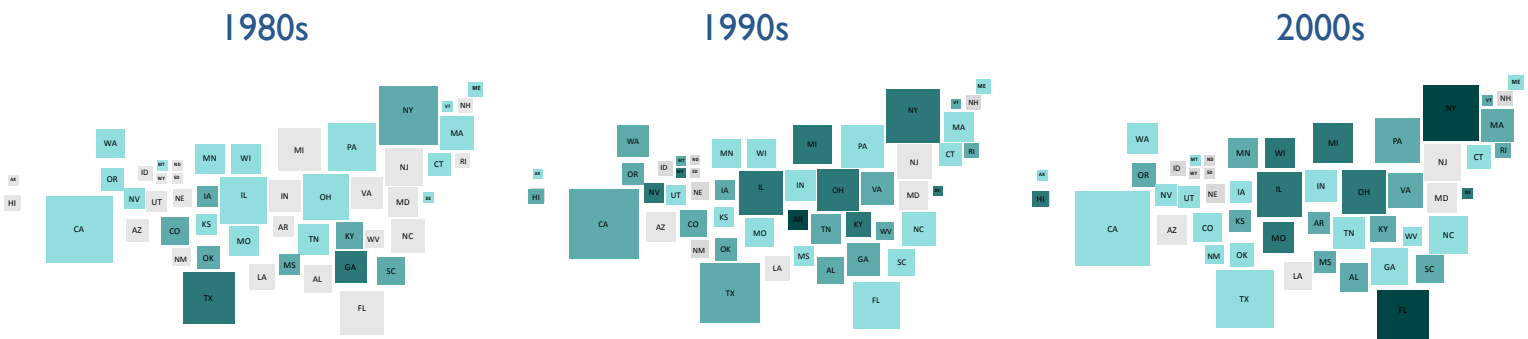
The efficiency gap in congressional district plans: 1976-2016



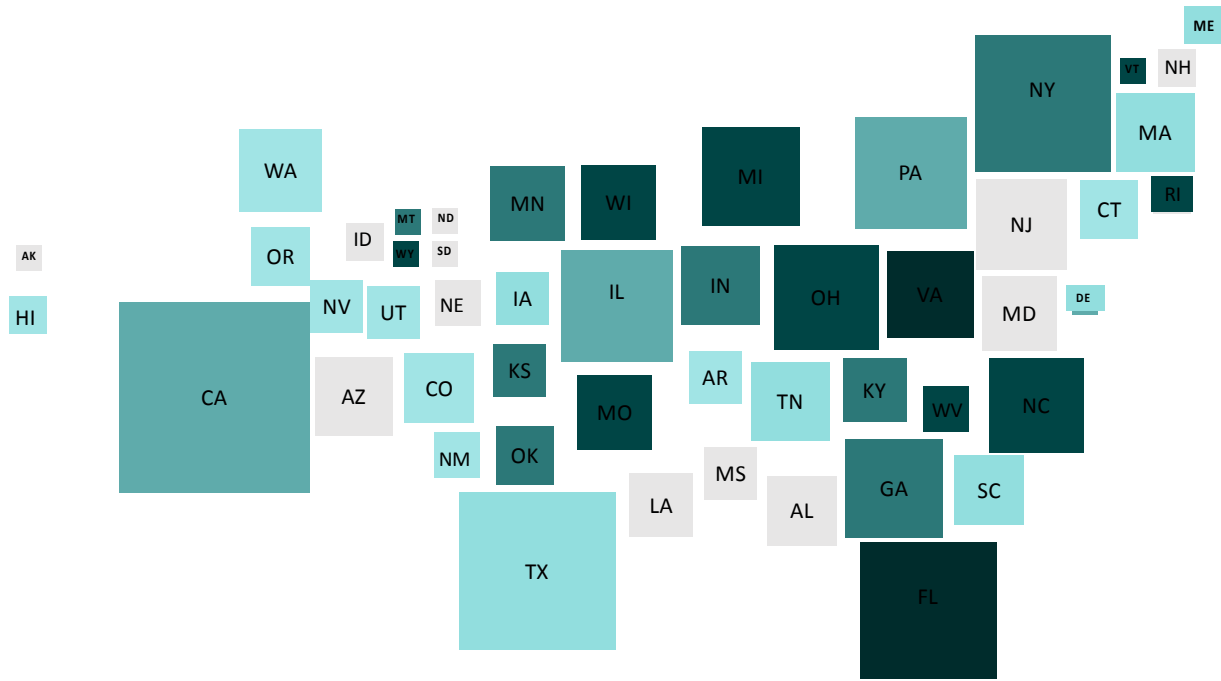
*The average efficiency gap for 2016 is an estimate based on the presidential vote as compiled by Dave Wasserman of the Cook Political Report, as of November 16, 2016. The state-by-state certified election results will not be finalized until early 2017.

State legislative district plans by state

The following charts show the estimated average efficiency gaps for state legislative plans (divided into bands of 3.5 percent, with darker colors representing larger efficiency gaps) for the 1980s, 1990s, 2000s and 2012-2016. The sizes of the states are shown in proportion to their population.



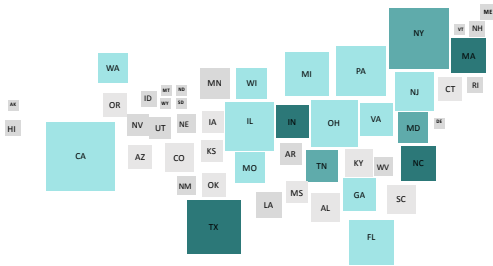
2012-2016



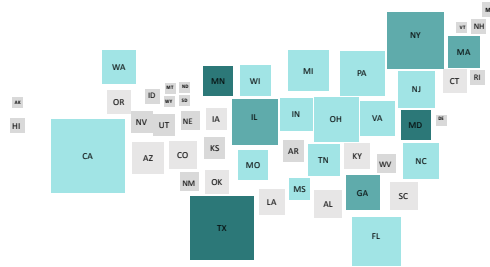
Congressional district plans by state

The following charts show the estimated average efficiency gaps for state congressional plans (divided into bands of 5 percent, with darker colors representing larger efficiency gaps) for the 1980s, 1990s, 2000s and 2012-2016. The sizes of the states are shown in proportion to their population.

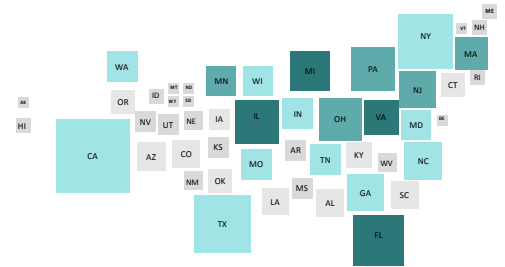
1980s



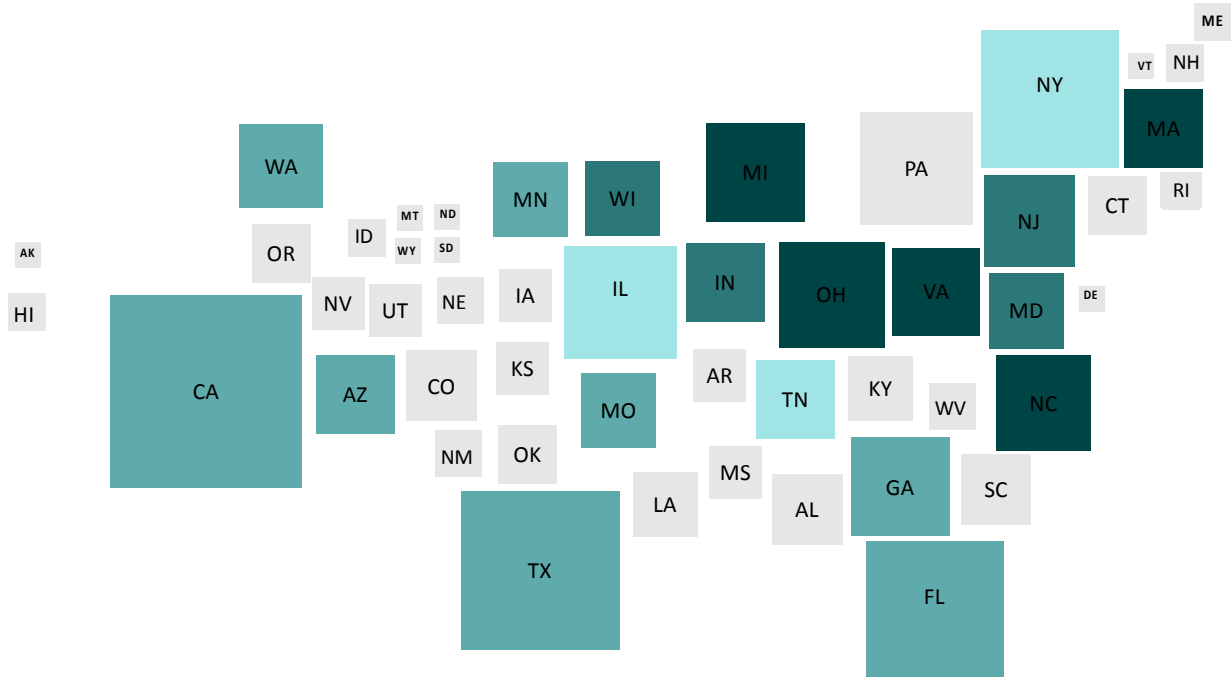
1990s



2000s



2012-2016



Why Should Americans Care About Increased Partisan Gerrymandering?

When partisan gerrymandering occurs, one party can gain disproportionate, and at times counter-majoritarian, power in the state. This can:

- Enable the legislative enactment of laws that the people oppose and that would never have been passed if there were no gerrymandering and a fair plan were used.
- Distort the lawmaking process by awarding the gerrymandering party more seats, and more influence over policy, than it otherwise would have had.
- Unfairly dilute the opposing party's ability to represent the interests of its supporters and promote legislation.

Which policies are affected by partisan gerrymandering?

There are real life policy consequences that can result from partisan gerrymandering. Any policy you can think of can be affected. If a legislature is skewed in favor of one party, and that party maintains control of the legislature, regardless of a plausible shift in the statewide vote, then policies that are not supported by a majority can be enacted. Below you will find just a few examples of legislation that has been passed in states, or legislation that has never reached the floor in other states, as a result of extreme partisan gerrymandering:

- A majority of Wisconsinites who voted in a local ballot referendum supported raising the minimum wage and expanding Medicaid using federal dollars, yet neither of these policies have been considered, let alone adopted, by the gerrymandered state legislature. From 2012-2016 Wisconsin has had one of the highest average efficiency gaps in the country at 12.2 percent, favoring Republicans. This means that Republicans control roughly 12 more seats (out of 99) in the state assembly than they would under fair maps.
- Republicans and moderate Democrats in Rhode Island opposed raising the state's gas tax, yet it was hiked in 2013 by the gerrymandered state legislature. Like Wisconsin, RI has had one of the highest efficiency gaps in the country since 2012 at 12.6 percent, however it favors Democrats. Democrats hold roughly 9 (of 75) more seats than they would under fair maps.
- Just recently in Ohio, the partisan gerrymandered Republican legislature passed through a controversial bill that would ban abortion six weeks after conception. Since 2012, Ohio has had an average efficiency gap of 8.9 percent in favor of Republicans. Under fair maps, controversial pieces of legislation like this one would be significantly harder to pass.

Partisan gerrymandering has real world consequences and put simply translates into voters having less say on the issues they care about.

Who loses when partisan gerrymandering runs rampant?

Everyone. Partisan gerrymandering diminishes the voices of some voters, while artificially inflating the voices of others. Though one party's supporters may be negatively affected in one state, that same party may be the beneficiary of gerrymandering in another state. This means that supporters of both parties across the country are negatively affected by partisan gerrymandering.

The maps on the preceding pages show that certain states have been affected by more, or less, partisan gerrymandering at the state legislative and congressional levels. However, overall, everyone in America suffers from an unrepresentative and unfair democracy that encourages self-interested politics.

The partisan gridlock we currently see in American politics, at both the federal and state levels, has reached unprecedented levels. This gridlock has resulted in an inability to govern, record low voter turnout and a distrust in government soaring to all-time highs. Ending partisan gerrymandering is a necessary step to reducing this gridlock and for ensuring that voters truly have a say in shaping the policies that affect their daily lives.

Ruth Greenwood is the Deputy Director of Redistricting at the Campaign Legal Center and is part of the litigation team representing the plaintiffs in Whitford v. Gill.