

Proving Partisan Intent

The following approaches on proving partisan intent were gathered from various Supreme Court submissions and our experience in the case of Agre v. Wolf, 284 F.Supp.3d 591, 2018 WL 351603 (E.D. Pa. 2018), the federal challenge to Pennsylvania's Congressional map.

How to prove partisan intent in redistricting?

Preliminary Concepts

1. Communicate to the court the need for a completely neutral process to ensure fair elections. Just as a politician should not campaign in a polling place to unduly influence a single vote, politicians should not direct others to move voters in or out of an electoral district based on voting history.
2. "Time, place, and manner" of how elections are administered should not determine the outcome of an election before votes are cast.
3. Explain to the court that a politician should never ever design his or her own district because this would be tantamount to a politician choosing his or her voters instead of voters electing a person to represent them in a legislature.
4. Explain to the court that when districts are designed fairly there will be naturally Republican Districts in rural areas of a state, Democratic Districts in urban parts of a state and swing districts in suburban areas and regions of states where there is/was a history of trade unions and/or progressive voters.
5. Try to get the court on board with the notion that any partisan redistricting or personal gerrymanders including incumbency protection violates the equal protection provisions of any state constitution in which each citizen should have an equal chance to run for political office.
6. Most states have a limited set of objective criteria for redistricting which historically prevented gerrymandering. These included requirements that districts be compact, do not divide political subdivisions unless absolutely necessary, are equal in number and are contiguous. Where these few objective criteria are strictly applied, partisan manipulation of electoral maps becomes very difficult.
7. It is essential to inform a court that a limited number of objective standards will create a judicially enforceable standard for redistricting at the Congressional or state level. Those standards should be limited to require

that districts be compact, minimize divisions of counties and other municipalities, be contiguous, and be roughly equal in population.

8. As a result, gerrymandered districts that do not follow these norms will stand out creating a prima facie case of partisan gerrymandering.
9. Show the court the maps of the last century to demonstrate that neutral redistricting is feasible.
10. Show the court pre-gerrymandering decennial district maps to demonstrate that historically neutral design criteria were used to form legislative districts which emphasized compact districts (allowing communication between candidates and elected officials and constituents) and preservation of whole municipalities giving members of the legislatures geographic and political meaning.

District Design

11. Look for odd shapes in district design. (Oddly shaped districts create the presumption of partisan intent that the drafter must rebut explaining the rationale behind designing the districts in such a way.)
12. Get an expert to look at various state-wide elections in the prior decade broken down to the census block level using colors for majority Democrat census blocks and majority Republican census blocks. In certain elections these colors will correspond closely with the line drawing that was used to pack or crack Democratic voting territory. Three strategies will be observed: packing Democratic voting territory into urban areas by adding suburban tentacles, cracking concentrations of Democratic voters into majority Republican districts and carefully distributing Republican and Democratic voters to create 55% Republican to 45% Democratic districts. In almost every case, oddly drawn boundary lines will match voter performance using one of the above strategies.
13. Demand the drafter to present a non-discriminatory basis for each chosen boundary.
14. In each district show the court how the partisan drafter deviated from county, township, city or other municipal boundaries in order to design 55/45% districts.

15. Provide an alternative exemplar map that complies with the same neutral criteria but is more compact and preserves the boundaries of counties, townships, boroughs, cities, towns or wards.
16. Then introduce district by district examples of partisan manipulations to educate the court about both obvious and more subtle forms of partisan redistricting. The gerrymandering of each district should reinforce the intent to gerrymander the prior electoral district.

Process of Passing a Gerrymandered Map - Discovery and Cross and Trial

17. Demand discovery of the data used to create the gerrymandered map.
18. Demand to see communications between and among legislators on how the map was designed.
19. Demand to see communications between legislators and experts used to design the map.
20. Demand to see preliminary maps that were not adopted.
21. Demand to see draft maps showing a partisan index, or the partisan lean, of districts as boundary lines were being moved and tested.
22. Demand to see powerpoint and similar presentations to legislators of how the partisan maps would be drawn.
23. Ask if legislators were permitted to view and comment on the shape of their own districts.
24. Ask what neutral standards, if any, were used in drawing the proposed map.
25. Ask how individual boundary lines were chosen in each suspected gerrymandered district.

Process (based on the legislative process used in creating the 2011 PA Congressional, PA State House and PA Senate maps)

26. Partisan consultants were hired by the House and Senate Republican majority leaders.
27. One or more leaders were put in charge of portions of the state to manipulate boundaries for their region.
28. Staffers were taught how to use redistricting programs to create a few super D districts and carefully balance remaining districts to achieve a Republican majority.

29. Staffers met with each Republican Member of Congress as well as Republican state senators and Republican state representatives to view, and comment on the design of their own districts. Democrats were excluded from this review.
30. Staffers drafted initial proposed maps in secret and showed them only to Republican legislators.
31. The drafting was done in the Republican caucus rooms on either side of the PA Capitol Building and Democrats were not permitted to see draft maps.
32. A state mandated public process was done in a perfunctory manner.
33. When the map was completed and the committee vote was rushed through, only verbal descriptions of the districts were provided without a visual map of the districts.
34. The committee process and floor debate were perfunctory. Rules to ensure due process and careful deliberation were bent in order to rush the map through the legislature in time for the primary elections.
35. The floor debates did not consist of genuine discussions about the map but only an initial presentation and statements by Democrats about being excluded from the process.
36. Republicans made deals with a few Democrats who felt powerless to affect the whole map but were persuaded to vote for the map in exchange for personal gerrymanders. This gave Republicans an argument that the maps were bi-partisan.
37. The map was passed by each Republican house of the legislature and signed by a Republican governor in record time to prepare for the primary election. Note: the 2011 PA House and Senate maps were produced and passed in the same fashion as the 2011 PA Congressional map.

Additional Proof

38. Admissions by bragging legislators that the maps were the product of gerrymandering.
39. The fact that there was refusal to disclose data that was used to draw the map.
40. The partisan map deviates from the shape of prior decennial maps over time. Show prior compact maps in contrast to current map.

41. Discuss more subtle gerrymandering strategies such as (1) elongation of Republican majority districts into rural territory to give the district a Republican advantage; (2) linking Democratic incumbents in new districts to force them to run against each other; (3) filtering Democrats out of suburban districts by adding tentacles of Democratic territory to packed urban Democratic districts; (4) encircling Democratic strongholds and adding those votes to majority Republican districts; (5) dividing proven Democratic territory in half and adding each half to overwhelmingly Republican Districts; and (6) slicing Democratic suburban counties into multiple pieces and distributing all of the votes to majority Republican districts.

Effect

42. Then show the effect of partisan redistricting was a success. In virtually all districts intended by design to produce Republican victories succeeded.

43. Go district by district then aggregate the result by showing in the resultant effect in state-wide voting patterns and state-wide elections results over a number of elections cycles.

44. Partisan effect is also proof of partisan intent. i.e. They succeeded.

45. You may wish to add evidence that if you create hundreds of maps using neutral criteria the partisan map will be a statistical outlier.

Concerned Citizens for Democracy

Brian A. Gordon

Philip Rosenblum

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