

# Partisan Gerrymandering

- Courts stayed out of redistricting until the 1960s
- *Baker v. Carr* (1962) – federal courts can hear state redistricting cases
  - Tennessee hadn't redrawn districts for 60 years
- *Wesberry v. Sanders & Reynolds v. Sims* (1964) – “one person, one vote”
  - Alabama also hadn't redrawn districts for 60 years
- Voting Rights Act of 1965 – courts involved with redistricting challenges based on discrimination against racial minorities

# Partisan Gerrymandering

- *Gaffney v. Cummings* (1973) – Connecticut legislative districts drawn to achieve proportionality was deemed constitutional
- *Davis v. Bandemer* (1986) – partisan gerrymandering is justiciable under the Equal Protection Clause but need to prove discrimination
  - No maps thrown out for partisan bias due to lack of legal standard or measurement
- *Vieth v. Jubelirer* (2004) – party affiliation not protected under the 14<sup>th</sup> Amendment → not justiciable via Equal Protection but possibly under 1<sup>st</sup> Amendment rights (right of association via political party)

## Gill Vs. Whitford

- Since 2010 Wisconsin has been a republican majority in state, senate also governor due to this republicans have been in control of districting maps
- After evaluating the constitutionality of the map with a three-part test, the panel concluded that the map displayed both bad intent and bad effect, citing evidence that the map drawers used special partisan measurements to ensure that the map maximized Republican advantages in assembly seats.
- In a Court decision, they ruled that voters in the state failed to show sufficient evidence of personal harm in the redistricting plan .
- The court has not yet deemed partisan gerrymandering to be unconstitutional



## So what was the argument exactly?

- 12 registered Democratic Wisconsin voters petitioned that the new redistricting plan intentionally diluted the votes of democrats and was unconstitutional. They specifically went against Act 43
- What is Act 43?
  - An act that was adopted by the Wisconsin State Assembly and was signed into law by Republican Governor Scott



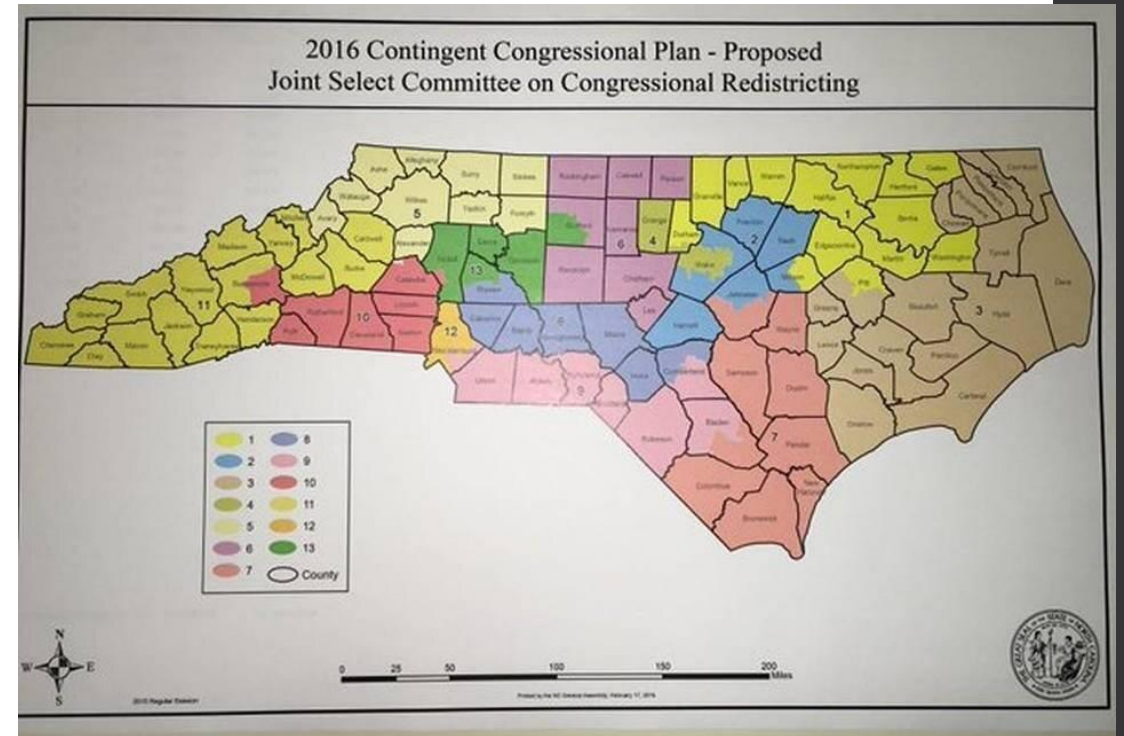
- Walker on August 23, 2011. The next three elections were held under act 43.
- showed that republicans under any likely scenario would have a 54-seat majority, but needed only 48 % of the statewide votes.



- While Democrats would need 54 % of the statewide votes to have majority. The courts found that the plan violated section 2 of the Voting rights Act because it diluted the strength of Latino voters in Milwaukee county, the court upheld the remainder of the plan. That county had to be redrawn but Act 43 was not changed,
- Plaintiffs argued that the Republican party employed both cracking and packing when drafting Act 43 that diluted voters but also packed them so much resulting in wasted voters.

# Rucho v. Common Cause

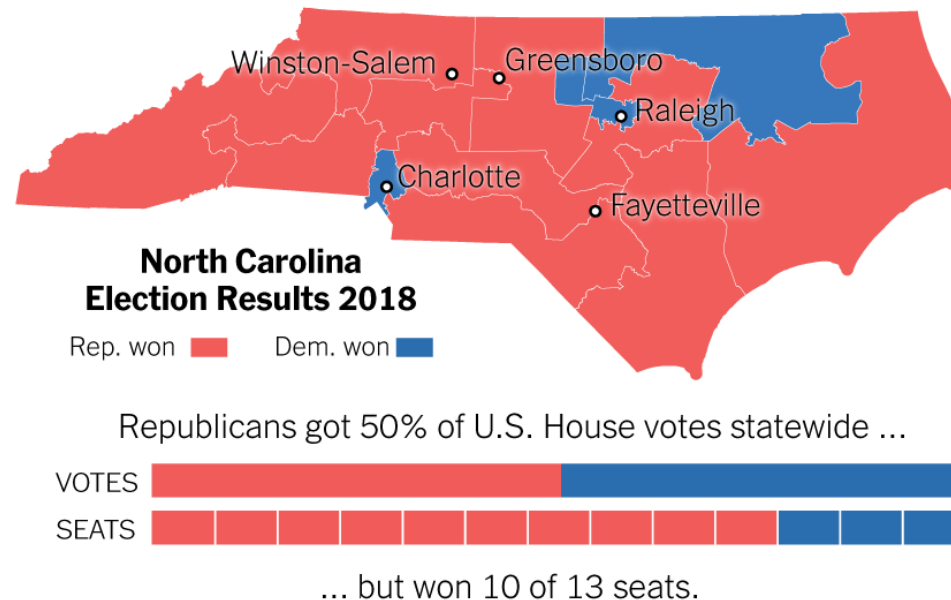
- Supreme court case which took place from March 26 to June 27, 2019.
- Political organization Common Cause filed a lawsuit in 2016 arguing that North Carolina's proposed Congressional redistricting plan was an example of partisan gerrymandering, as they believed the map created an unfair advantage in favor of the states Republicans.
- In 2018, a federal district court ruled in favor of Common Cause, as they blocked the state from using the map in future elections.
- The defendants, led by Republican Robert Rucho, appealed this decision to the supreme court.



Connor, Eduardo, Matt

# Rucho v. Common Cause

- Chief Justice John Roberts announced the final decision which was a 5-4 majority opinion
- The issue raised was that the federal court's cannot resolve questions of political gerrymandering
- Since there is no "limited and precise standard" to determine the degree of partisan gerrymandering, the federal court doesn't have the ability to evaluate those issues.
- Justices Elena Kagan filed a dissenting opinion and was joined by Justices Ruth Bader Ginsburg, Stephen Breyer, and Sonia Sotomayor
- They argued that the Court ignored an important question, which was the "violation of the most fundamental of . . . constitutional rights: the rights to participate equally in the political process, to join with others to advance political beliefs, and to choose their political representatives”





# League of Women Voters of Florida vs. Detzner

- Case centered around political gerrymandering in Florida's 2012 congressional maps
- League of Women Voters filed a claim against the state of Florida (as represented by Ken Detzner) because of the political gerrymandering
- The political gerrymandering favored Republicans, who had control of the state legislature in 2012
- LWV of Florida argued that the maps were intentionally politically gerrymandered and that it violated the Fair District Amendment in the Florida constitution



# Arguments

- After investigation, evidence emerged that a political group had secretly drawn the maps and that legislators knew of this.
- Secret emails between Florida legislators showed that they knew about the secret redistricting coalition and either were involved or didn't do anything to stop it.
- Not only was the redistricting hidden from the public, it was politically gerrymandered in favor of Republicans.
- LWV of Florida argued that this evidence proved the clear intention of partisan gerrymandering and that the map must be redrawn.
- The state of Florida argued that legislators didn't know about the secret redistricting coalition and that the maps were fair & created in good faith.





## Precedent & outcome

The case set the precedent that when there is “reasonable anticipation of litigation”, it is necessary under Florida law to preserve any and all relevant information

The Florida Circuit Court ruled that the 5th and 10th congressional districts (located in central Florida) were politically gerrymandered and violated the Florida state constitution.

# League of Women Voters of Pennsylvania v. Commonwealth of Pennsylvania

the League of Women Voters opposed Pennsylvania's 2011 district map. They claimed the map was subject to Partisan gerrymandering, that advantages the GOP unfairly.

Violation of Article 1 Sections 7 and 20  
of Pennsylvania Constitution



Commonwealth Court of Pennsylvania  
said defendants didn't provide them  
with enough evidence to prove **PARTISAN**  
gerrymandering, while also admitting  
that the map sucked.

the case was sent to the Supreme  
Court, where the map was identified  
as "Clearly, Plainly, and palpably"  
violating Pennsylvania's constitution.

# League of Women Voters of Pennsylvania v The Commonwealth of Pennsylvania (2017)

## What is the case about?

- The League of Women Voters of Pennsylvania argued that there was clear cases of partisan gerrymandering on June 15, 2017

## Who is involved in the case?

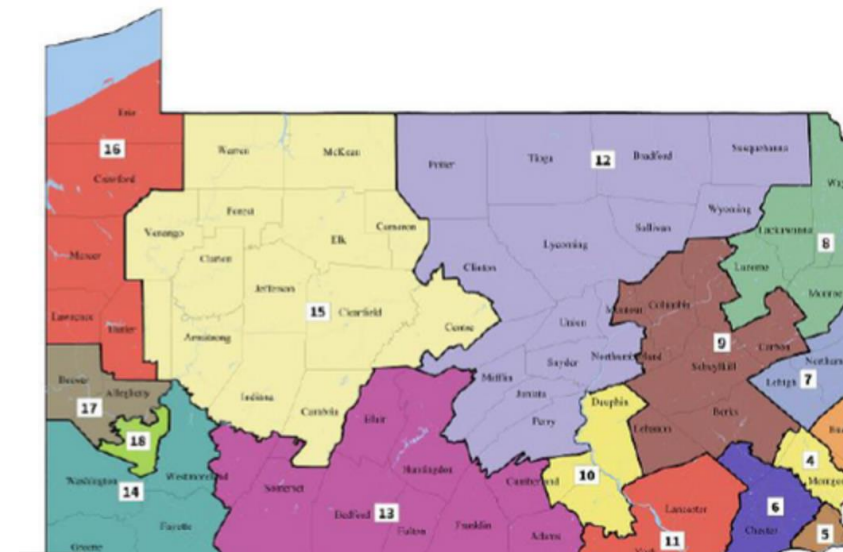
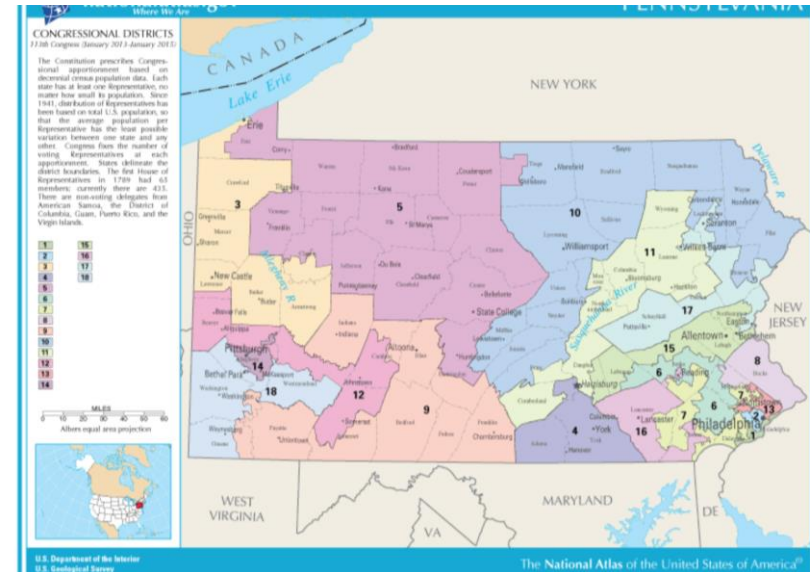
- The League of Women Voters of Pennsylvania, the Commonwealth of Pennsylvania, Justice Dera Todd

## What were the main arguments of each side?

- The LWV of PA argued that there was partisan gerrymandering that favored Republicans over Democrats and allowed people's freedoms of expression and associational rights to be restricted. The Commonwealth of PA denied these claims and argued that there was not enough evidence to be brought to the case to properly show the maps being unconstitutional or unfair in anyway because though the map may be "unflattering" it is rightfully justified.

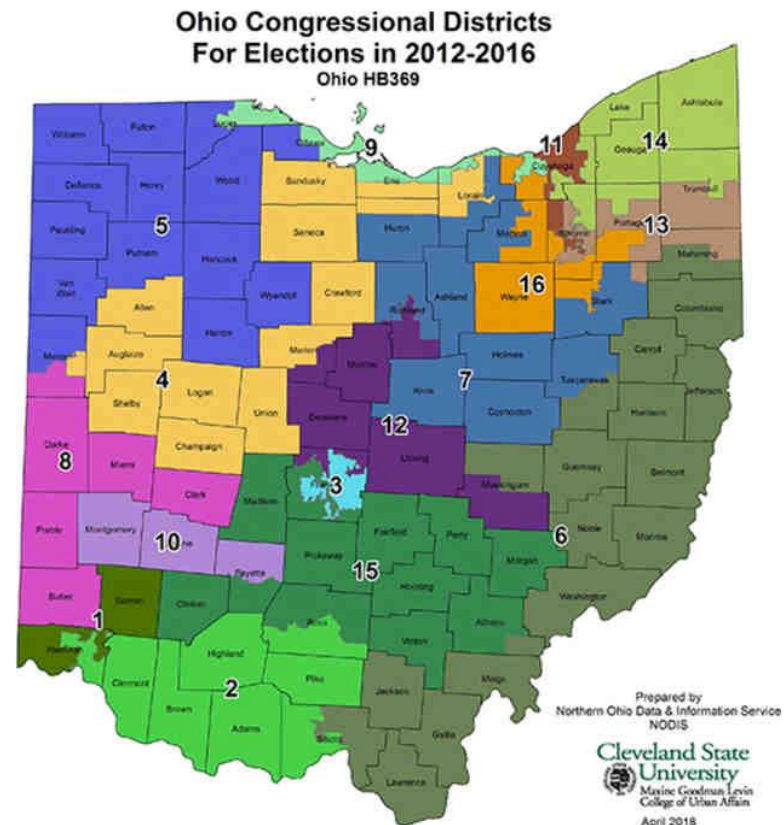
# League of Women Voters of Pennsylvania v The Commonwealth of Pennsylvania (2017)

- ❓ What was the result of the case? What changes occurred as a result?
  - ❓ Commonwealth of Pennsylvania denied any evidence of partisan gerrymandering
  - ❓ Taken to the Supreme Court on January 17, 2018
  - ❓ Had the outcome of saying that partisan gerrymandering could not have been more clear
  - ❓ Lead to a list of redistricting deadlines for the state and the governor so that the maps had to
  - ❓ Stanford Law professor, Nate Persily, was chosen to help assist the people redistricting so that they had professional help in creating an equal map.



# Ohio A. Philip Randolph Institute v. Householder Case Facts

- **What is the case about?**
  - The case is regarding partisan gerrymandering in Ohio, as the plaintiffs argued that the maps give Republicans a 12-4 congressional advantage, which does not match the political makeup of the state.
- **Who is involved in the case?**
  - The plaintiffs were the Ohio A. Philip Randolph Institute, an organization for the interests of African American trade unionists, as well as the League of Women Voters.

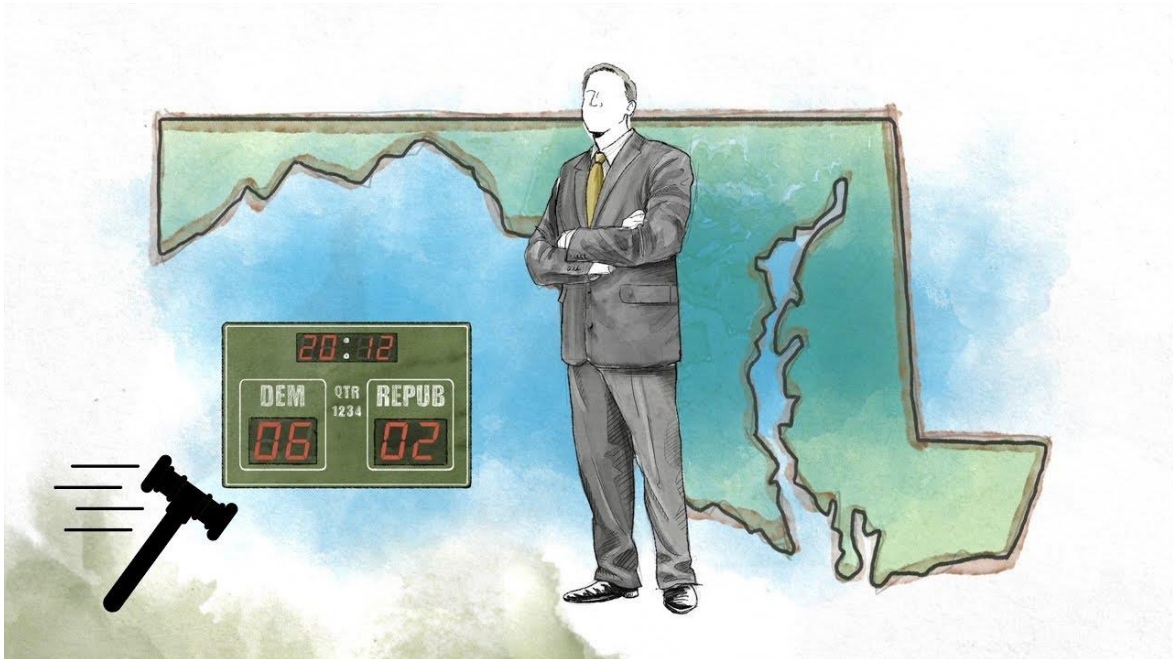


# Ohio A. Philip Randolph Institute v. Householder

## Arguments & Outcome

- **What were the arguments of each side?**
  - The plaintiffs argued that this large Republican advantage did not give meaningful representation to many Ohio voters. The defendants argued that they did not have standing to consider the maps a partisan gerrymander, and that it was not the courts' job to decide the legality of the maps.
- **What was the outcome of the case?**
  - The Supreme Court ruled that partisan gerrymandering claims were not justiciable by the courts, based on the prior ruling in *Rucho v. Common Cause*.
- **What changed as a result?**
  - This did not cause a major change, but further entrenched the stance of the court that it should not rule on partisan gerrymandering claims.

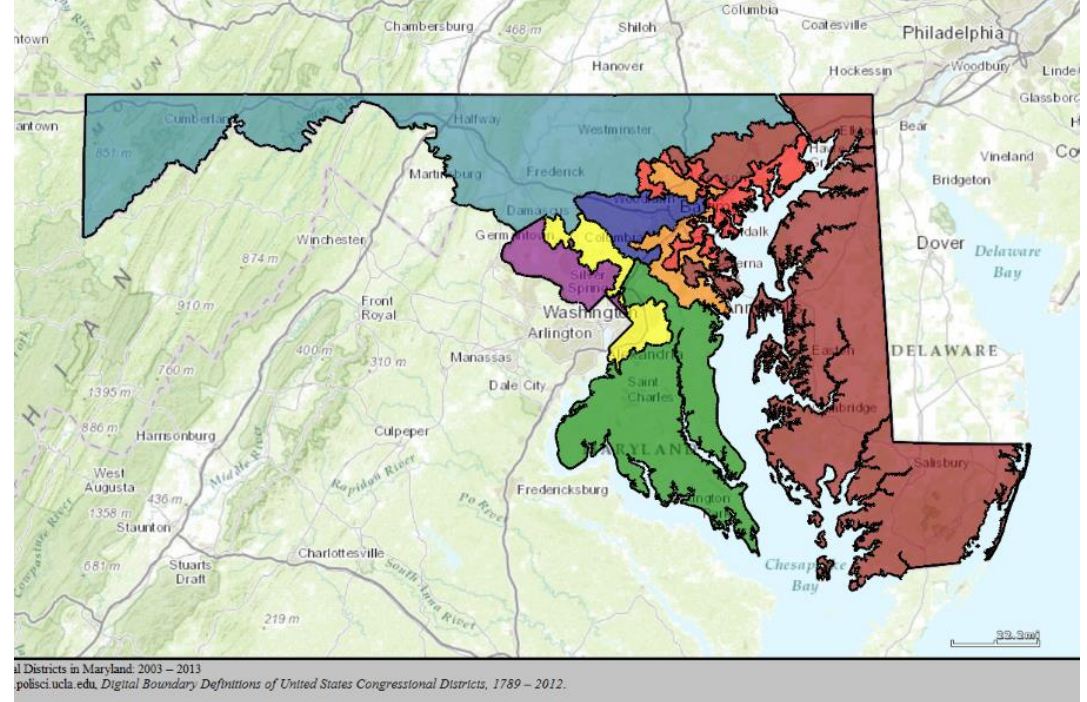
# Benisek v. Lamone - Context



- 2011 Maryland's redistricting plan
- Done in full by the legislature (Democrats)
- Stayed at 8 congressional districts from the 2000 to 2010 census

# Main Argument

- Plaintiffs claimed the district plan was a partisan gerrymander which violated the right to representation guaranteed by Article 1 Section 2 of the U.S. Constitution, and
  - Also, the First Amendment's protection of political association.
- Plaintiffs' claims center on the unconstitutionality of Maryland's 6th Congressional District





# Benisek v. Lamone: Result

- The Supreme Court upheld the district court's decision to deny the republican plaintiff's preliminary injunction to throw out the map
- Upon remand, the district court heard the plaintiff's arguments for a summary judgment in which the plaintiff's requested the map be redrawn for the 2020 elections
  - They voted in favor of the plaintiffs
  - This decision was appealed by the state and went back to the Supreme Court
- The Supreme Court overturned this decision for a redrawn map citing a lack of jurisdiction
  - Based on this decision, the maps were never changed before the 2020 elections



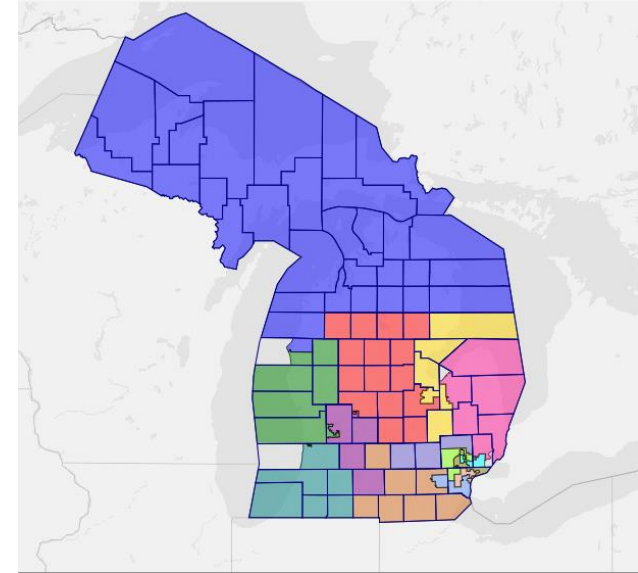
# League of Women Voters of Michigan v. Benson, 2017

- LWV Michigan and members of the Democratic Party sued MI Secretary of State Benson
- Dispute over districts drawn by the Republican State Leadership Committee in Project REDMAP
- Violations of the 14<sup>th</sup> and 1<sup>st</sup> Amendments to dilute Democratic Votes
- Court ruled this to be partisan gerrymandering, ordered Benson to hold special elections in Spring 2020 in the challenged Senate districts, and begin the process to remake the maps
  - 27 of 34 districts violated 14<sup>th</sup> and 1<sup>st</sup> amendment (freedom of speech)
  - All districts violated 1<sup>st</sup> amendment right to association

# Outcome of case

- The federal district court ruled it as partisan gerrymandering and ordered a new map be made for 2020
- Due to the Common Cause V. Rucho case, the federal government cannot make a decision on partisan gerrymandering and it has to be a state by state decision
- Because of this the district court's decision was vacated

2020 Congressional Districts



2011 Congressional Districts



# Precedent

- The supreme court has held that partisan gerrymandering can be ruled unconstitutional under the fourteenth amendment's equal protection clause.
- However, there is not a consistent standard for a constitutionality ruling so all cases are subject to judicial review.
- While this position has been threatened in the past, Justice Kennedy maintains that lack of a defined standard for constitutionality in this case does not render it non-justiciable.
- While interpretive, Precedent has established a threefold subjective test of constitutionality in partisan gerrymandering.
  - Proof of discriminatory intent
  - Proof of discriminatory effects
  - Lack of significant justification

# Significance

- This case predominantly affects two aspects of the courts actions in the future. First it affects the standard of evidence admitted in these matters in the future. Second, it affirms the standard that partisan gerrymandering is an issue subject to the court's jurisdiction.
- One of the main arguments of the intervenors is that of inaccurate statistical evidence used to arrive at a ruling. they argue that statistical evidence is inadmissible due to its bias and lack of direct causative evidence.
- The courts reply is that statistical evidence from expert witnesses is allowed use in order to prove plaintiff harm like vote dilution. It should not be used to establish intent independently, but significant statistical deviation is capable of identifying harm.