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Here's a somewhat painless way to redistrict without the courts

On Oct. 3, the U.S. Supreme Court heard oral arguments in *Gill v. Whitford*, the challenge to redistricting in Wisconsin. The oral arguments were clearly an hourlong attempt by eight justices and counsel to persuade Justice Anthony M. Kennedy that a serious constitutional right is involved and that the court can fashion a remedy without unduly impinging upon the authority of the Wisconsin legislature.

I guess that the court will probably announce that the Wisconsin Democratic Party has a constitutional right, as a party, to a greater say in the drawing of maps by the Republican-dominated legislature and then remand the case to a federal district court to fashion a remedy to reduce or eliminate gerrymandering in Wisconsin.

If so, the court will truly enter a political thicket more dangerous than the one person-one vote cases that began with *Baker v. Carr* in 1962.

First, at stake here is a claim that the major organized political parties have a claim based upon "freedom of association" under the First Amendment that is almost as strong, perhaps even as strong, as the claims of individual voters to "equality in elections."

So far as I know, this would give political parties more constitutional standing than they have ever had.

Second, the parties involved are really the Democratic and Republican Parties. None of the arguments addressed the rights of the best-known third parties, the Libertarians and the Greens, to a seat at the redistricting table even though those parties sometimes obtain 10 percent of the votes cast.

As for the other parties, such as the white supremacists/Nazis, the Democratic Socialists and the Communists, it is clear that their rights are not really involved because their support is so weak.

Why should major political parties have such status? A common definition of a political party is "a group of individuals joined together to elect members to office." If so, would not the tea party, whose adherents meet the definition above, qualify as a de facto political party?

Why not the Bernie Sanders wing of the Democratic Party? The Cook County Democratic Party has long had two subparties: the white Democrats, many of them of European ethnic descent, and the minority Democrats, consisting chiefly of African-Americans and Hispanics. Could all of these "parties" claim constitutional status?

I was present at the redistricting of the Illinois General Assembly in 1971 and have observed the process ever since. It is true that the main goal of a political party in redistricting is to maximize the number of seats that the party will win in elections for the next decade.

However, there are other goals, including wanting to insure that certain candidates will have a better chance of winning. Often those favored candidates are incumbents, but sometimes they are not. Incumbents who do not have the backing of their party leaders may

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find themselves "redistricted out" of their home base.

Major political parties also know that certain racial and ethnic groups want "fair representation" in the party and at the ballot box. Even though only Section Two of the Voting Rights Act applies these days, both Democrats and Republicans must draw maps that do not dilute the voting power of minorities.



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Nothing in the oral arguments in *Gill v. Whitford* suggests what the permissible method of redistricting would be beyond narrowing an "efficiency gap." Who would draw the maps? Nothing in the case indicates that the odd shapes of the districts we have in Illinois and elsewhere are involved.

Some citizens seem to think that the court will address the shape of districts, which often do look like the "salamander" that Elbridge Gerry drew two centuries ago. Not true.

If we think that there is a need to revise the redistricting process to give a less-favored major party (Democrats in Wisconsin, but Republicans in Illinois) more bargaining power, I suggest the following, which is tailored for Illinois.

First, go back to multimember districts for the Illinois House. We used to have three members per House district from 1871 to 1983.

This almost guaranteed that two members of one party and one member of another party were seated.

In 1980, Pat Quinn and the League of Women Voters foisted the Cutback Amendment upon us, reducing the House membership by one-third and instituting single-member districts. Consequently, nobody wants to run unless he has a really good chance of getting 50.1 percent of the votes.

If we kept two House members for each district, but let them run at large in the district, a less-favored party with substantial support could have a fighting chance of winning one of the two seats.

Second, put redistricting into the hands of a commission consisting of the four legislative leaders and a number of citizens appointed by them. Leave the rest of the legislature and all of the executive and judicial branches out of it.

Forget about so-called "independent citizen commissioners," there is no such animal as we'll see clearly in the next redistricting round in 2021. I know this is heresy, but I think that redistricting should be left to the parties in the legislature. The four legislative leaders would have to be two Republicans and two Democrats, no matter how many members of each party are in each chamber. Each major party would have a fair shot at drawing 59 districts, from each of which one senator and two representatives would be elected.

I can assure the Supreme Court justices that if they try to decide how each legislature draws congressional and legislative maps, they will unleash a backlash not seen since *Bush v. Gore*.

Acrimonious federal litigation over redistricting will spike. Because so much will depend upon federal judges, Senate confirmation hearings over judicial appointments will become battles like we've never seen before.