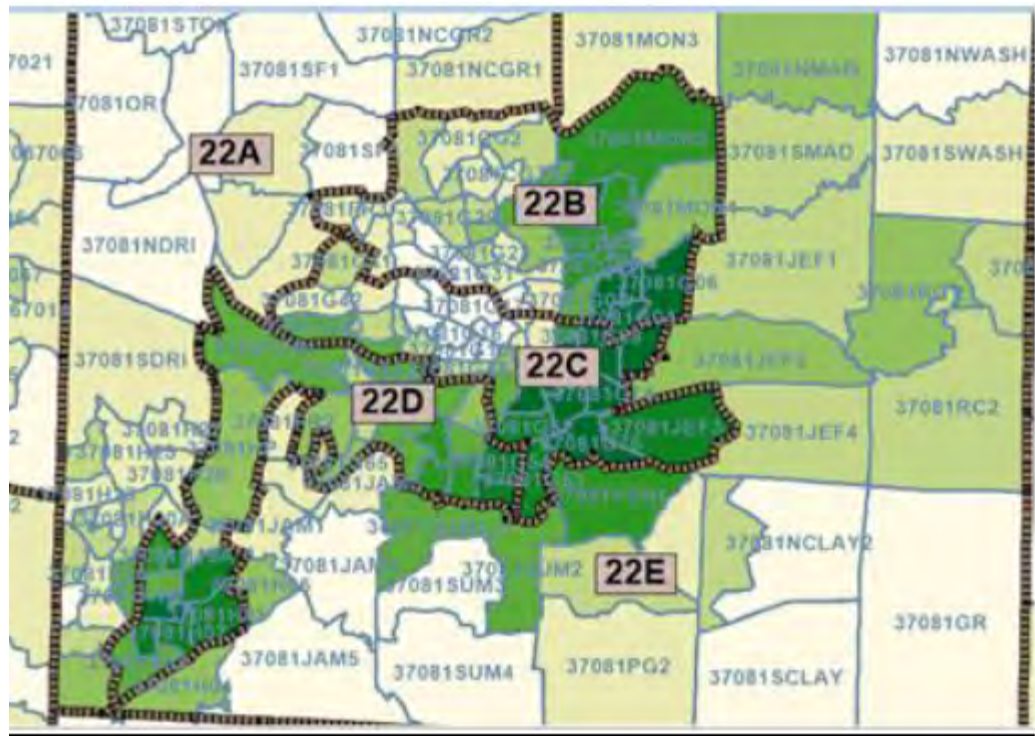


They've done it again

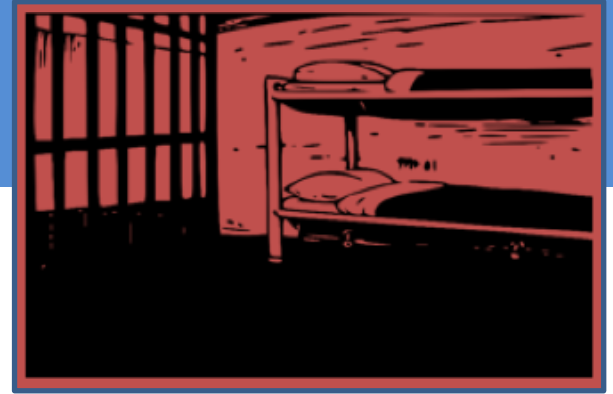


- This is a racial gerrymander, modeled on Senate 28, found by the Supreme Court to be a racial gerrymander



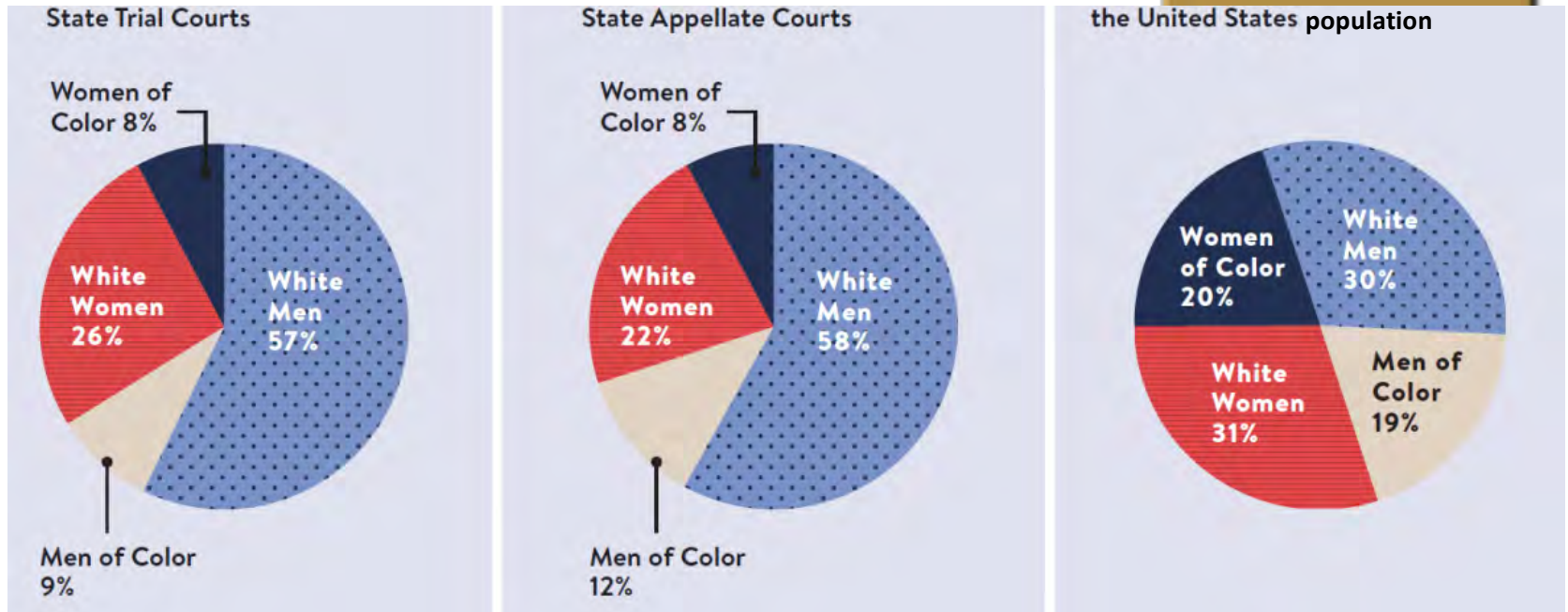
Double-bunking

- 26 sitting judges in Superior Court are paired in districts (double-bunked)
 - 19 Democrats (73.08%)
 - 3 unaffiliated (11.54%)
 - 3 Republicans (11.54%)
 - Non-white (mostly African-American, 26.88%)
- 19 open seats created in Superior Court
 - 15 in Republican-controlled districts.
- 44 District Court judges are double-bunked
 - 70.45% Democrats (31 judges)
 - 26.5% African-American
 - 29.5% Republican



Diversity

- Nationwide, we have a problem with diversity on the bench



American Constitution Society, The Gavel Gap, 2016.

NC got an F in this report!

Topics to be covered

NC SELECTING
COURTS JUDGES

MAPS

COURT
CASES







North Carolina: a leader in court action on gerrymandering

NC has had **16 redistricting lawsuits** since 2000


- State **lost 10 of 12** (1 split decision), 4 still in court
- **Millions** spent to defend (and lose) challenges to gerrymandering




NC Gerrymander Cases

	Partisan	Racial
Federal Court	<p>1st & 14th Amendments, US Const. Art. 1, sec. 2 & 4</p> 	<p>Voting Rights Act (VRA), 14th Amendment</p> 
State Court	<p>Betcha can't catch me!</p> 	


NC Gerrymander Cases

	Partisan	Racial
Federal Court	<div> <div>CONGRESS</div> <div> League of Women Voters v. Rucho Common Cause v. Rucho </div> </div> <div> <div>CONGRESS</div> <div> Harris v. Cooper <i>Pending at Supreme Ct.</i> </div> </div>	
State Court		<p>Hey, I'm over here!</p> 

NC Gerrymander Cases

	Partisan	Racial
Federal Court	<div> <div>CONGRESS</div> <div> League of Women Voters v. Rucho Common Cause v. Rucho </div> </div> <div> <div>CONGRESS</div> <div> Harris v. Cooper <i>Pending in Supreme Ct.</i> </div> </div>	<p>I'm still here!</p> 
State Court		<div> <div>CONGRESS & NCGA</div> <div> Dickson v. Rucho <i>NAACP, LWV, DEM-NC, Randolph Institute – Hearing in trial court</i> </div> </div>

NC Gerrymander Cases

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State Court	<p>Haven't gotten me yet!</p> 	<div> <div>CONGRESS & NCGA</div> <div> Dickson v. Rucho <i>NAACP, LWV, DEM-NC, Randolph Institute – back to trial court</i> </div> </div>

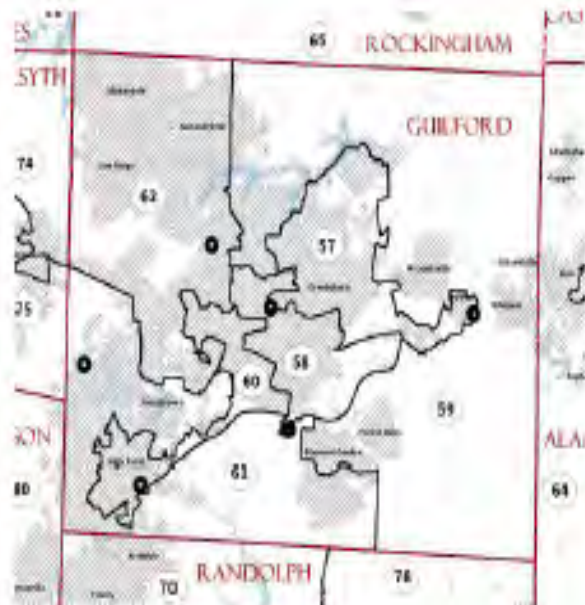
COURTS: Covington *(federal court case)*



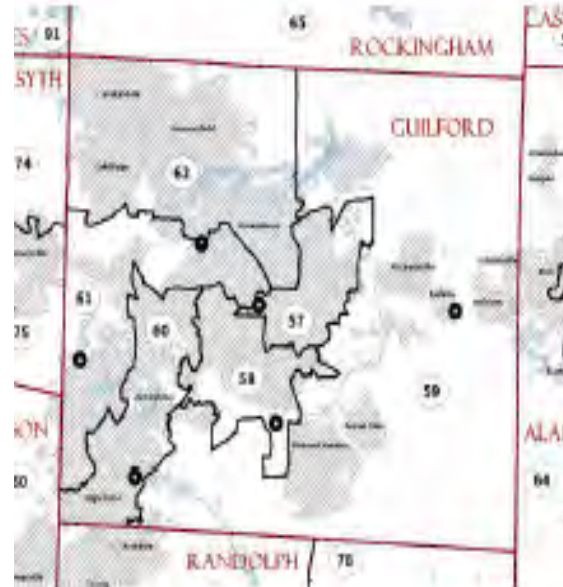
- Ruled 28 districts racial gerrymanders
- NCGA excluded race from consideration
- NCGA adopted new maps – submitted to court
- Maps maintained/increased partisan advantage, did not fully fix racial gerrymanders
- Special master's map fixed these, but stayed by Supreme Court...for now
- NCGA will appeal (but then what?)



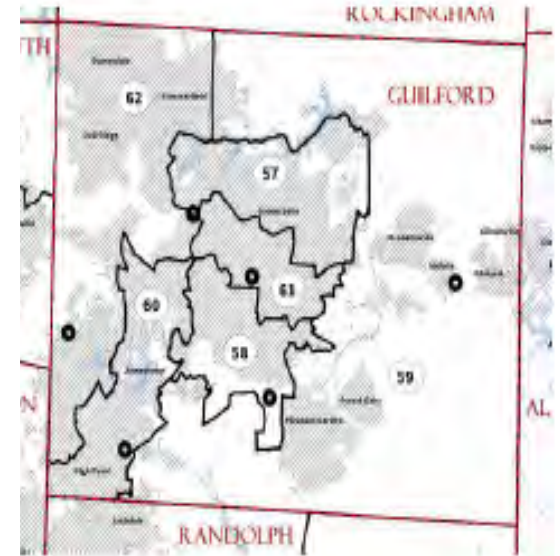
2011 Plan



2017 Plan

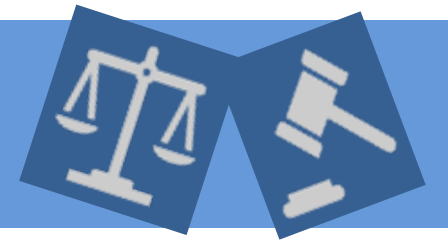


Special Master's Recommended Plan



District	2011 Plan	2017 Plan	Rec. Plan	chg from 2011	chg from 2017
Senate 21	51.5%	47.5%	42.1%	-9.4%	-5.4%
Senate 28	56.5%	50.5%	43.6%	-12.9%	-6.9%
House 21	51.9%	42.3%	39.0%	-12.9%	-3.3%
House 57	50.7%	60.8%	38.4%	-12.3%	-22.4%

LWVNC's own cases



- **LWVNC v Rucho**: **partisan gerrymanders of Congressional districts** (with Common Cause in federal court):
 - *Went to trial Oct. 16*
 - *Similar to Gill v. Whitford – could be a back-up!*
- **Dickson v Rucho**: **racial gerrymanders of NCGA/Congressional districts**, county splitting; NC Supreme Court sent it back to NC trial court to set remedy
 - **could also be a backup (in the fridge)**

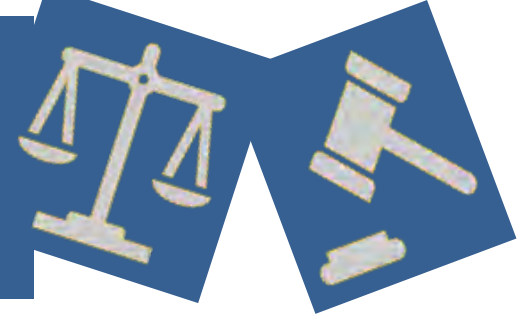
LWV v Rucho: the good, the bad, and the ugly



- Historic opinion – **first time** a federal court has ruled a Congressional map an **unconstitutional partisan gerrymander**
- Supports **multiple measures**, including efficiency gap, simulations, mean-median
- **Forbids current map from being used again**
- **Very strongly argued by Judge Wynn (4th Circuit)**
- Stayed by Supreme Court **but** called for timely submission of appeal

COURTS: LWV v Rucho

(federal court case)



- 2018 impact uncertain
- But important precedents set

Found 3 constitutional violations

1st amend. – speech, association

14th amend. – equal protection

Article 1, Sec. 2/4 – election clauses

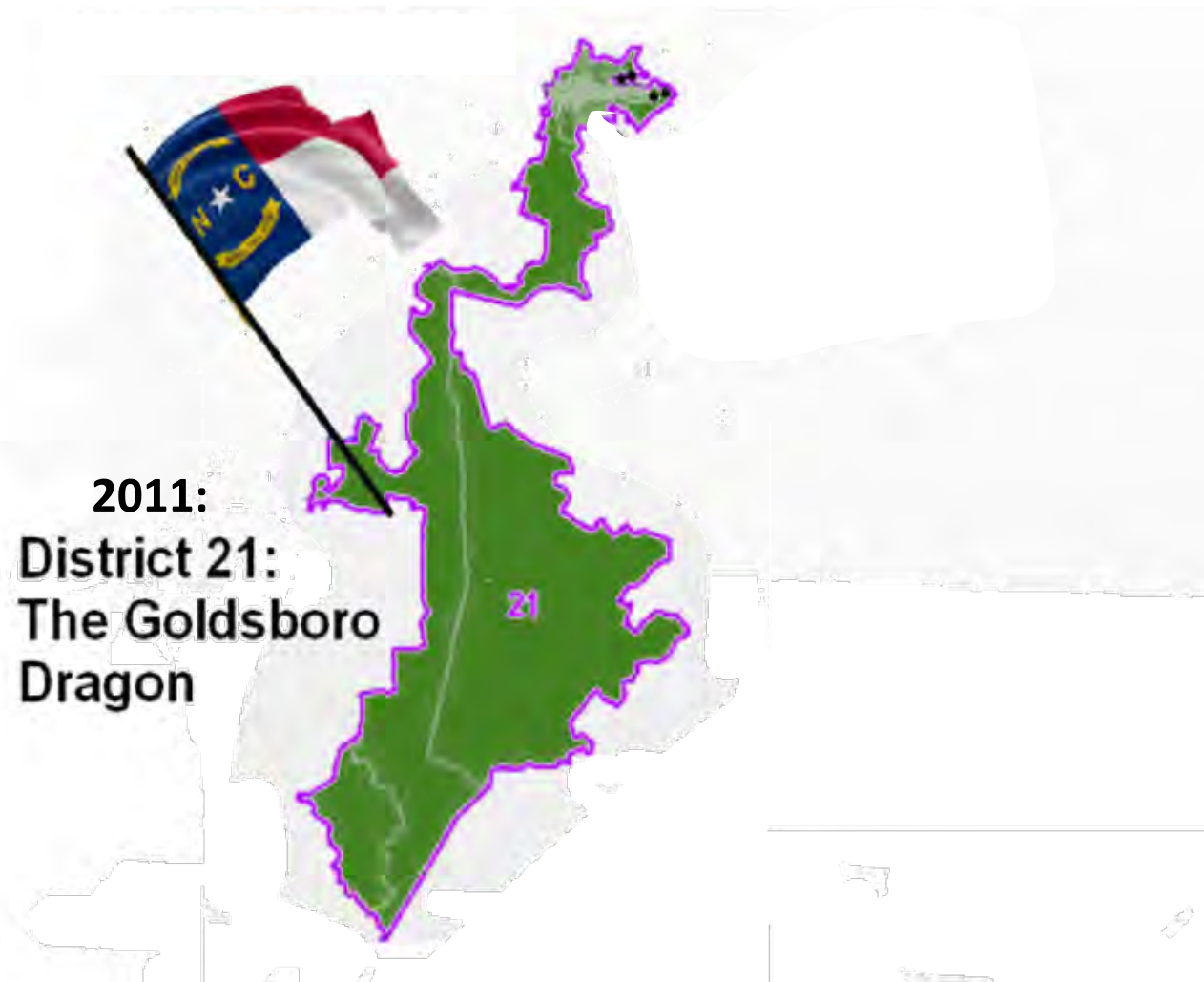
Used 3 gerrymandering measures

Efficiency gap

Mean-median

Partisan bias (shift)

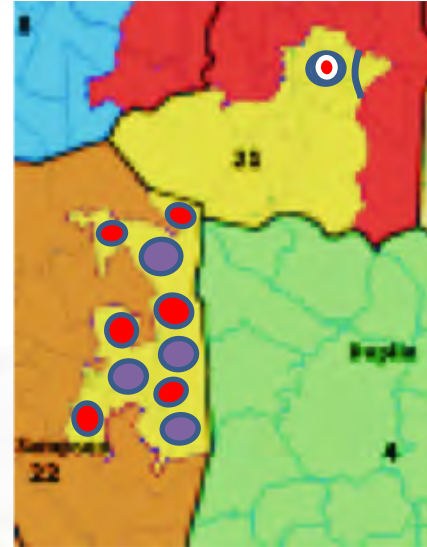
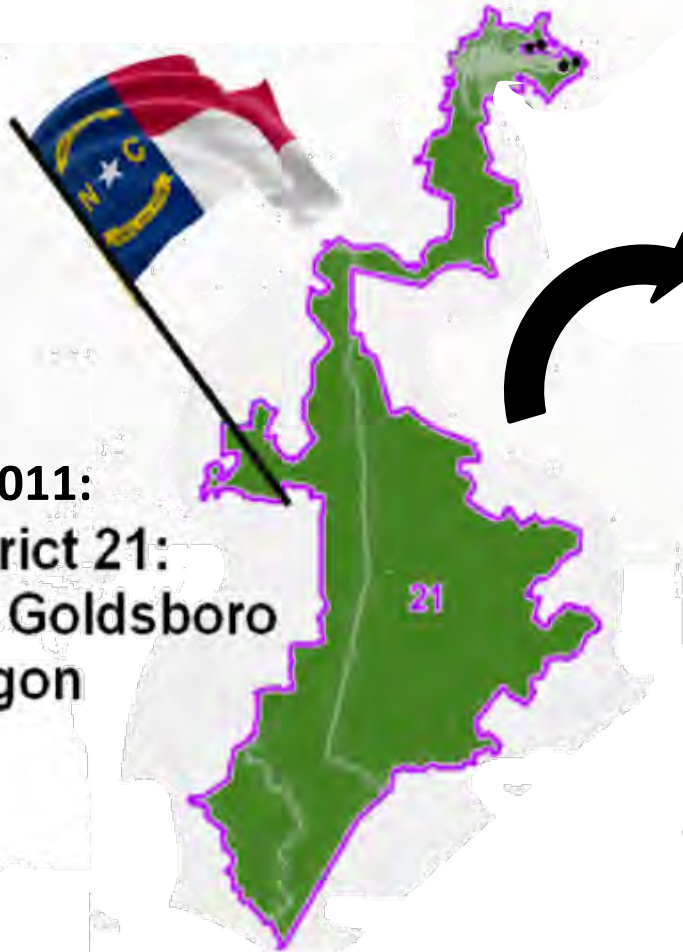
One thing's certain: the Goldsboro dragon



One thing's certain: the Goldsboro dragon **is dead!**

2017: NCGA's crazy-tailed
bird of paradise

2011:
District 21:
The Goldsboro
Dragon

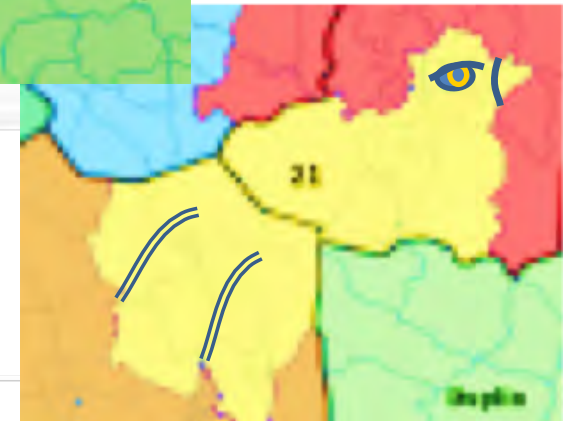
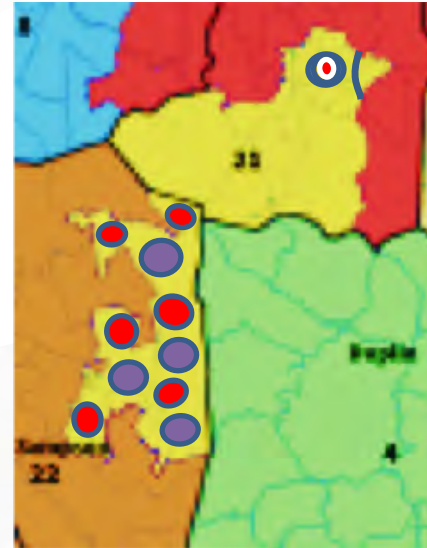


One thing's certain: the Goldsboro dragon is dead!

2017: NCGA's crazy-tailed
bird of paradise

2011:
District 21:
The Goldsboro
Dragon

2018: Persily's
gentle turtle-dove



Slides on the various standards if this
comes up & there's time

Pros and cons of the current system (popular election) and the most likely alternative (legislative appointment)

Popular election

Pros

- Judges, who can change public policy, are accountable to the public.
- Elected judges are less likely to be beholden to the governor or legislature than are judges who are appointed by political leadership.

Cons

- Elections, even nonpartisan ones, can add a political dimension to the judicial branch.
- Interest groups and lawyers who may appear before a judge can contribute to a judge's campaign.
- Interest group influence erodes public perception of judicial impartiality, integrity and independence.
- Low level of public knowledge and interest in judicial elections could mean that elected judges really aren't accountable to the public.

*Council of State Governments, [Judicial Democracy](#), October 2003.
Note: does not provide pros/cons for merit selection, noting they are similar to those for the other two methods of selection.*

Legislative or gubernatorial appointment

Pros

- Government officials may have more information about potential judges.
- Government officials may know more about the judicial branch than the average citizen does.
- Appointed judges may be less likely to submit to public opinion or special interests rather than focusing on the law.

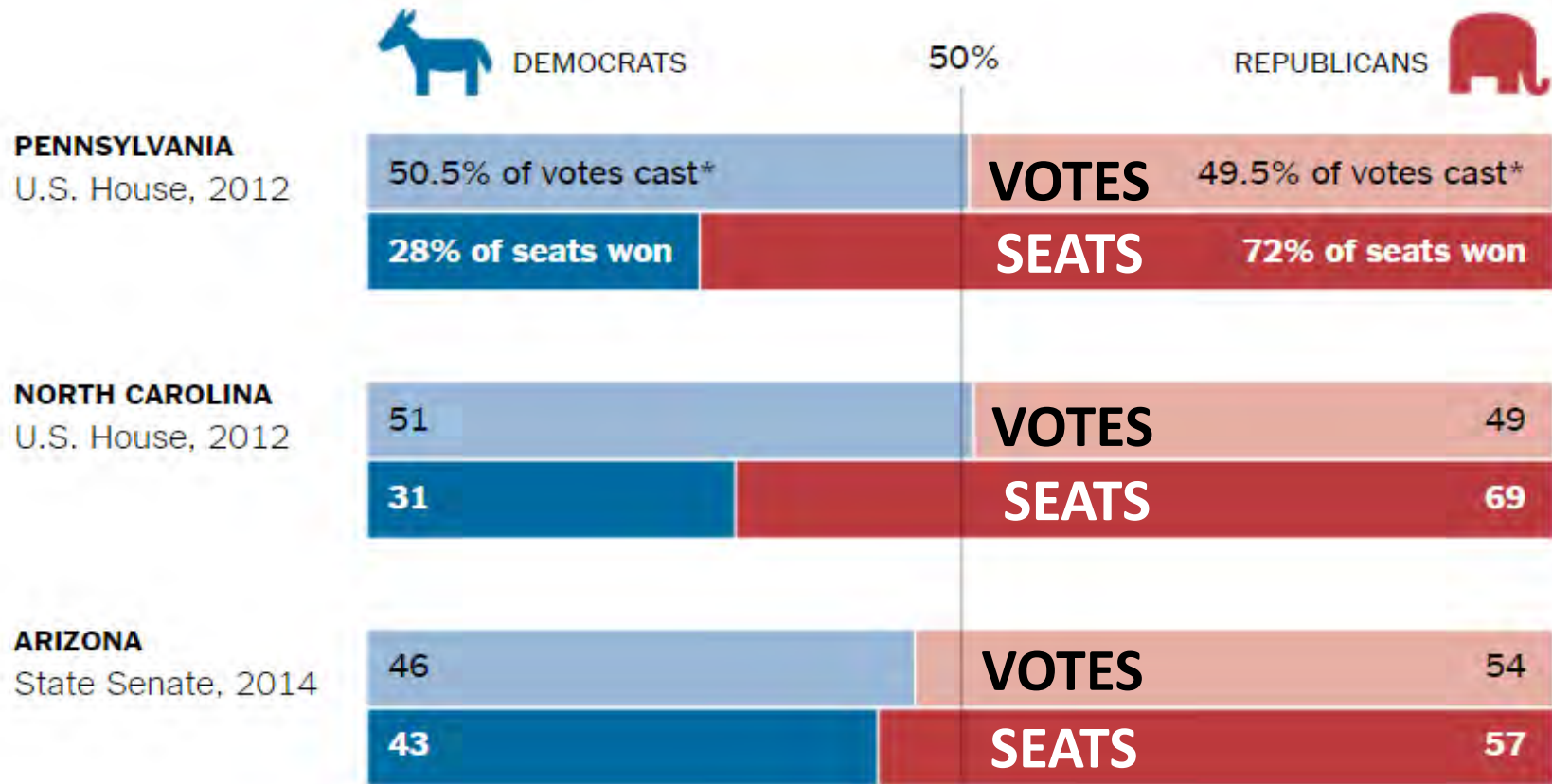
Cons

- System gives a great deal of power to the governor or legislature that appoints judges.
- Appointers may focus on political considerations rather than solely on a potential judge's qualifications.
- Appointed judges may become or be perceived as political cronies.
- Appointed judges may be more reluctant than elected judges to overturn legislation and executive orders.

On the national level: Can the Supreme Court define what goes **too far**?

- **Veith v Jubelirer (2004)** – found partisan gerrymanders likely unconstitutional, but found no standard to measure what is “too extreme”
 - Opened door to extreme gerrymandering?
- **Gill v Whitford** (Wisconsin case, October arguments, June 2018 ruling?)
 - Possible standards measure partisan asymmetry: Efficiency gap, mean/median, and probability simulation
 - Will it close the door on extreme gerrymandering?

Partisan asymmetry – same votes but not same seats



*Figures include only votes for Republicans and Democrats, not for other parties.

Source: Sam Wang, Princeton University

Standard 1: Mean-median

Super simple

How different are:

- The mean (average) vote share by district
- The median vote share (= vote share in the “middle district”)

District	Party 1 votes	Total votes	% share	
1	40	100	40%	
2	45	100	45%	←median
3	75	100	75%	
Total	160	300	53%	←average

2. The efficiency gap: how “efficiently” does each party translate votes into wins?

70 votes

These votes did not contribute to electing the winner

These votes elected the winner!

29

Party 2

5

36

Party 1

*They could have **all stayed home** with no effect on the result – their votes were “**wasted**”*

(50%+1)

Votes

$(29-5)$

70

= 34%

- If each party wins some & loses some, with similar margins, the efficiency gap is smaller.
- If one party usually “wins small and loses big” (a sign of gerrymandering), the efficiency gap is large.

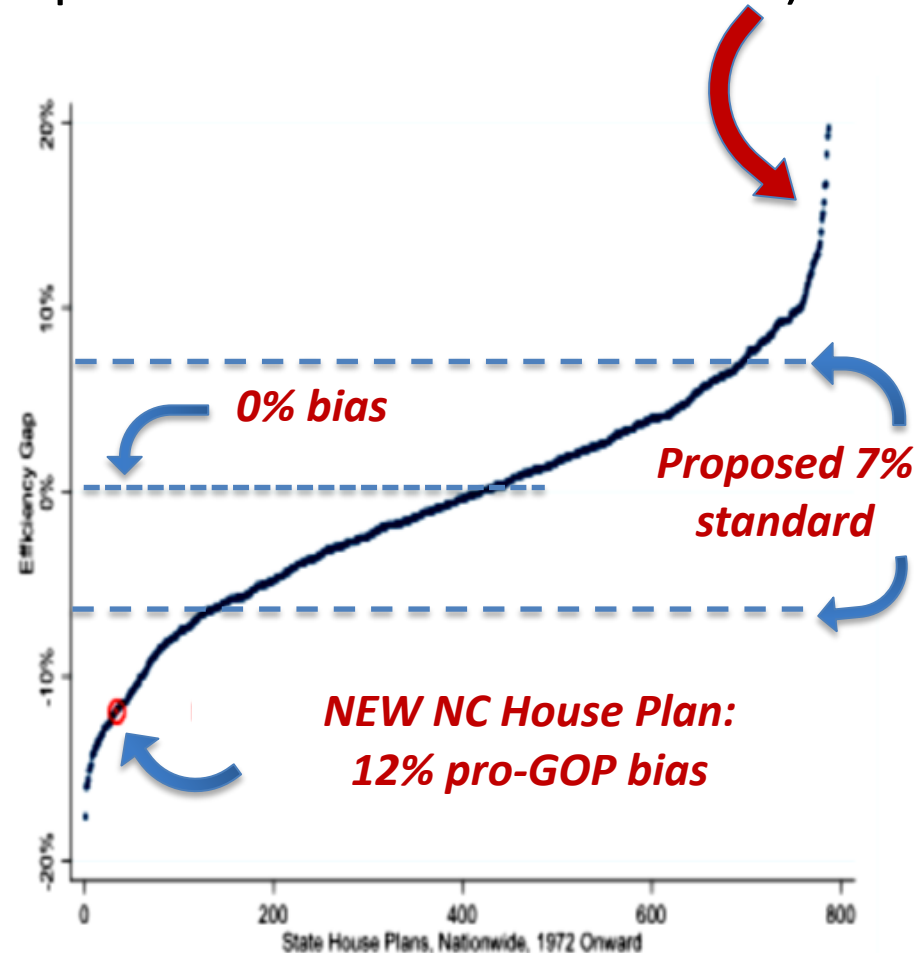
$$\left(\begin{array}{l} \text{Wasted votes of Party 2} \\ - \text{wasted votes of Party 1} \end{array} \right)$$

Total votes

Efficiency gaps in state legislatures

(800 elections since 1972, lined up most R bias to most D bias)

- A BIG advantage of the efficiency gap is that it measures **how many more seats one party has won** than would be expected given their share of the voters if districts were fair!
- For example, an efficiency gap of 20% translates to one party getting 20% more seats than it would have under fair districts



3. Simulations: Florida

1000 simulated maps with standard nonpartisan criteria: 93% have 13 or 14 majority-GOP districts (out of 27)

