

NC's political maps are on trial. Here are 5 key takeaways from the testimony so far.
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RALEIGH North Carolina's new political districts are so skewed toward Republicans that they're nearly off the charts, multiple expert witnesses testified during this week's trial in a high-profile gerrymandering lawsuit. The Republican-led legislature drew the maps late last year and is now defending them in court. On the other side are liberal challengers who want the maps tossed out and ruled unconstitutional due to partisan gerrymandering. A math professor from Carnegie Mellon University working for the challengers, Wesley Pegden, used a computer algorithm to draw a massive set of possible political districts for North Carolina. He testified that the legislature's congressional map is more biased in favor of Republicans than 99.99% of the billions of maps he created.

"The enacted map is an extreme outlier," he said. Pegden was one of half a dozen math and political science professors who all came to similar conclusions for the challengers, about the congressional map as well as the map for the state legislature, all using different ways of testing them. They spent Monday and Tuesday explaining their work to the judges hearing the case.

On Tuesday and Wednesday, attorneys and experts for the legislature made their own case in defense of the maps. They have not argued that it's incorrect to say the maps are skewed to the right. Instead they've said it makes sense, since Democrats tend to live in cities while Republicans tend to be more spread out in rural areas, which they say gives Republicans a built-in geographic advantage. Most importantly, however, the legislature's case hinges on the legal argument that there's nothing unconstitutional about partisan gerrymandering. "North Carolina gives a great deal of discretion to the legislature, compared to other states," said Andy Taylor, an N.C. State University political scientist who testified on behalf of the legislature. The trial will wrap up Thursday morning with closing arguments from both sides. In the meantime, here are five key takeaways from the first three days of the trial.

1. THE TOP 0.01 PERCENT? Pegden's finding that the legislature's congressional map was a 99.99% partisan outlier among billions of maps his algorithm created was echoed by similar testimony from other math and political science experts from around North Carolina and the nation. All said their findings — that the maps the legislature drew are skewed far to the right of what their research showed would be reasonable — should bolster the argument for the judges to order new maps to be drawn. Republicans criticized some of those experts' work on cross-examination, insinuating they had cherry-picked data to make the legislature's map seem like more of an outlier than it actually is. For instance, Duke University math professor Jonathan Mattingly drew 100,000 different versions of maps and ran them through numerous hypothetical election results. His report showed that under several scenarios the legislature's maps were more skewed to the right than 90% to 100% of his maps.

But there were also a handful of hypothetical elections in which as many as 35% to 45% of Mattingly's maps were more Republican-leaning than what the legislature drew. Lawmakers cited that as evidence that their maps should not be considered an outlier. Finally, testifying for the GOP, Taylor also said there is no universal definition of how to measure partisan

gerrymandering — not even highly technical models like the ones the challengers put forward. “They don’t necessary reveal, ‘Tada, this is a partisan gerrymander,’” he said.

2. RACE COULD BE A CONSIDERATION Racial gerrymandering has been considered unconstitutional since the 1980s, but this lawsuit is about partisan gerrymandering. It’s still a relatively unanswered question whether it’s OK to draw maps to diminish the voting power of a political party, rather than a racial group. Complicating that question in North Carolina, however, is the fact that the Democratic Party is more Black than white, and the vast majority of Black voters support Democratic candidates. “At the end of the day, African American voters are going to get the short end of the stick,” said Rep. Zack Hawkins, a Durham Democrat. James Leloudis, a UNC history professor, testified for the challengers that for generations white conservatives have worked to diminish the voting power of Black people in North Carolina — whether through Jim Crow laws or, more recently, through redistricting and other changes to election laws. “That’s a serious and fundamental issue about how democracy functions,” he said.

Leloudis made similar arguments in a recent lawsuit over voter ID, which Republican lawmakers passed in 2018, after their previous attempt at a voter ID law in 2013 was ruled unconstitutional for racial discrimination. In the current round of redistricting, Democrats objected to Republicans’ decision not to use racial data when drawing the maps — which ultimately led to fewer majority-minority seats. WRAL previously reported that the new maps would make a significant number of Black lawmakers likely to lose their elections in 2022. But Brigham Young University political science professor Michael Barber, an expert for the legislature, said the models he ran of North Carolina elections show that Black politicians don’t need majority-minority seats to win — backing up the legislature’s claim that it didn’t need to purposefully draw those districts. Black candidates can and have won in majority-white districts, Barber said.

3. GOP SUPERMAJORITY A KEY FOCUS The maps would likely create a 10-4 Republican advantage in North Carolina’s U.S. House of Representatives seats in a hypothetical 50-50 election. But that’s not the only concern for Democrats. They’re also looking at the state legislature, where analyses show the new maps would likely give Republicans a majority in the legislature even if Democrats win a majority of the statewide vote, and that Republicans would also have a good chance at winning a veto-proof supermajority. A supermajority would allow GOP lawmakers to override Democratic Gov. Roy Cooper’s vetoes without needing to get any Democratic lawmakers on board. Duke University math professor Jonathan Mattingly said his models show that even in a favorable election for Democrats, when they could expect a tie in the N.C. Senate, the map the legislature drew could give Republicans a supermajority. Similarly, even one of the legislature’s own expert witnesses, Barber, testified that the Senate map is skewed to create a supermajority. He testified under cross-examination that his own models show Republicans should expect to win 27 of the 50 N.C. Senate seats, but that the maps they drew would instead be likely to give them 30 seats. Barber, however, said there’s no way to predict that Republicans would always override Cooper’s vetoes even if they could. “We can’t say with certainty how the legislature is going to vote,” he said. Republicans previously had a

supermajority — under maps that were later ruled unconstitutional — for most of the last decade, including during the first two years of Cooper’s time as governor, 2017 and 2018. In that time he issued 28 vetoes, state records show, 23 of which the legislature overrode.

4. A VAGUE STATE CONSTITUTION Since the trial is happening in state court, it focuses on the state constitution. That worked for liberal challengers in 2019, who successfully forced the legislature to redraw maps for the 2020 elections. They’re making the same arguments this time. But despite that recent ruling, the legal question is still relatively unsettled. Republicans never appealed their 2019 loss, so there’s no appellate precedent one way or another. And now they’re arguing that the judges in 2019 got it wrong. Taylor said around 20 states do have constitutions that explicitly forbid partisan gerrymandering, but “North Carolina has nothing that resembles that at all.” But the constitution also doesn’t specifically allow it. Instead, the part in question is a single brief sentence that can be broadly interpreted. “All elections shall be free,” reads the entirety of Article I, Section 10 of the N.C. Constitution.

5. THE POLITICS OF THE JUDGES All constitutional questions in North Carolina are handled at trial by a panel of three superior court judges. In 2019 the panel that ruled against the legislature had a Democratic majority. This time around the new panel has a Republican majority. They are Republican judges Graham Shirley of Wake County and Nathaniel Poovey of Cabarrus County, and Democratic judge Dawn Layton of Anson County. If the case goes up for appeal, politics could remain a consideration. The N.C. Court of Appeals has a Republican majority but the N.C. Supreme Court has a 4-3 Democratic majority. On the Supreme Court, one of the Republican justices, Phil Berger Jr., is the son of the Senate leader who’s a main defendant in the case. One of the Democratic justices, Anita Earls, is the founder and former executive director of the Southern Coalition for Social Justice, which is helping lead the lawsuit.