



Helenmary Ball, left, of Calvert County, Md., as "Maryland District 5," points toward the separated area of Maryland District 3, being represented by Bobby Bartlett, right, as nonpartisan groups against gerrymandering protest in front of the Supreme Court, Wednesday in Washington.

[JACQUELYN MARTIN/THE ASSOCIATED PRESS]

Supreme Court uncertain about redistricting case

By Mark Sherman
The Associated Press

WASHINGTON — The Supreme Court seems uncertain about how and whether to address the issue of drawing electoral districts for partisan advantage. Their decision could affect how elections are conducted around the country.

The justices seemed to be struggling Wednesday with an appeal by Republican voters in Maryland who object to a congressional district that Democrats drew to elect a candidate of their own.

The Maryland case is a companion to one from Wisconsin in which Democrats complain about a Republican-drawn map of legislative districts. That case was argued in October and remains undecided.

Justice Stephen Breyer suggested that the court could add in yet a third case involving North Carolina's congressional district and set another round of arguments to deal with all three states.

Breyer's comment is an indication that the justices haven't figured out the Wisconsin case in the nearly six months since it was argued.

More importantly, it suggests that Justice Anthony Kennedy, whose vote almost certainly controls the outcome, has reservations about using the Wisconsin case for the court's first-ever ruling that districting plans that entrench one party's control of the legislature or congressional delegation can violate the constitutional rights of the other party's voters.

The Maryland lawsuit offers the court a more limited approach to dealing with the issue because it involves just one district that flipped from Republican to Democratic control after the 2011 round of redistricting.

There was broad agreement that the Republican voters who sued presented what Justice Sonia Sotomayor called "pretty damning" evidence that the Democrats who controlled the state government wanted to increase the Democrats' edge in the congressional from 6-2 to 7-1. Even Chief Justice John Roberts, who has questioned

lawsuits over partisan redistricting, said the redrawing of the 6th congressional district seemed to lack "any internal logic," other than to elect a Democrat.

Residents of the wealthy Washington, D.C., suburb of Potomac, Maryland, were lumped in with people who live in the rural northwestern corner of the state, Roberts said. "They both have farms. But the former have hobby farms," he said, while the rural Marylanders are real farmers.

But Roberts was among several justices who raised a procedural problem that could keep the court from deciding the merits of the case. The Wisconsin case also has a potential problem that could prevent a decision about partisan redistricting.

That's where Breyer's suggestion could come in. He said even a decision striking down the Maryland map, which he said seems to be an extreme gerrymander, "will not do much to deal with a problem of serious dimensions, which is national."

If the court doesn't confront the big issues now, Breyer said, sophisticated map-makers using increasingly powerful technology will create more effective partisan maps after the 2020 census.

Putting all the challenged plans together would allow for a comprehensive ruling, he said.

Over the past 16 months, courts struck down political districting plans drawn by Republicans in North Carolina, Pennsylvania and Wisconsin. Federal judges threw out a state legislative map in Wisconsin and a congressional plan in North Carolina. In Pennsylvania, the state Supreme Court invalidated the state's congressional districts and replaced them with a court-drawn plan.

The Supreme Court has put the drawing of new maps on hold in North Carolina and Wisconsin, but refused to block the Pennsylvania court's adoption of revised congressional districts for this year's elections.