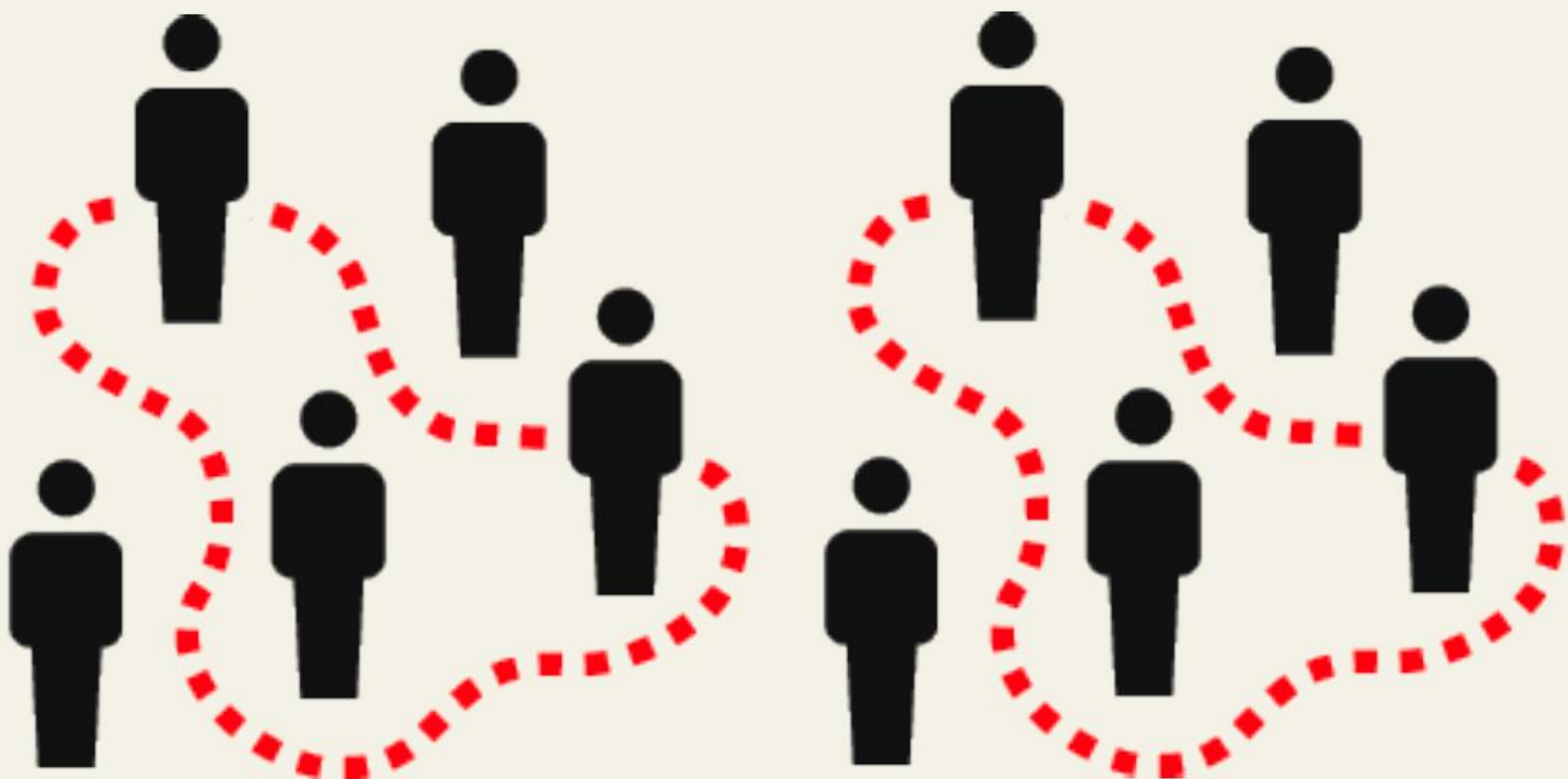


Gerrymandering: Our Democracy at Risk

A Primer on Redistricting Reform



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If Americans seriously want the United States to continue to exist in something like its current form, they had best respect the fundamental tenets of our unlikely union....

We won't hold together if presidents appoint political ideologues to the Justice Department or the Supreme Court of the United States, or if party loyalists try to win elections by trying to stop people from voting rather than winning them over with their ideas...

Other sovereign democratic states have central governments more corrupted than our own, but most can fall back on unifying elements we lack: common ethnicity, a shared religion, or near-universal consensus on many fundamental political issues.

The United States needs its central government to function cleanly, openly, and efficiently because it's one of the few things binding us together.

—Colin Woodard's *American Nations*, published 2011

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Gerrymandering: What It Is and Why It's Bad

What is Gerrymandering?

Why Should I Care?

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What's Behind Gerrymandering?

WHAT IS GERRYMANDERING?

Gerrymandering occurs when the *state legislators from one political party draw voting districts in a distorted manner*, gaming the system to gain an unfair partisan advantage over their opponents. The gerrymandering issue will be particularly acute in 2021. State legislatures redraw their voting districts every 10 years, after the Federal government conducts the census. This is true for both state legislative districts as well as Federal ones used to elect representatives to the U.S. Congress. During the process in 2021 it will be especially important to watch out for abuses and make sure that recent reforms are implemented.

Politicians resort to gerrymandering for many reasons. A party may want to stack the deck against the opposing party to win a disproportionate share of seats in the state legislature or Congress, compared to the number of votes its candidates actually received. Politicians may tailor districts to weaken the voting power, and political clout, of minority groups.

KNIGHTS OF THE
GERRYMANDERED TABLE



"I see Lancelot just happened to end up by the buffet."

©Tom Chitty/The New Yorker Collection/<https://cartoonbank.com>



The worst abuses occur when one political party controls the process. That's an open invitation to put the party's interest above all other factors.

There is also a more subtle reason for gerrymandering, which can, in a less obvious way, be used to insure a safe seat for an incumbent. Knowing that they have a comfortable supermajority in their district can cause elected officials to be much less likely to compromise in the legislative body to which they are elected, since they need not cater to the minority point of view in their district. This leads to much more gridlock, a symptom most would agree has been on the rise in our legislatures and in Congress. The proportion of seats which are safe, for both parties, has been steadily increasing.

WHY SHOULD I CARE?

Lest you think the offenders are all on one side of the aisle, some of the worst include states whose legislatures are controlled by Democrats (Maryland) or Republicans (North Carolina). In each case one political party can control the process. Both Republicans and Democrats have formal organizations to help their parties redistrict in ways that are politically advantageous to them.¹ Whatever the motive, the net effect of gerrymandering is to undermine the power of elections in our democracy. ***Gerrymandering allows the politicians in power to make elections less responsive to the will of the voters and to shifts in a district's mix of voters or their views.***

John Adams wrote that legislative bodies should be “an exact portrait, a miniature” of the people writ large. But gerrymandering distorts the composition of a legislature, so that voters are not fairly represented in the halls of power. ***Governments won't reflect the will of the people if elections are not conducted fairly.*** If some voters don't “count” because of gerrymandering, politicians can ignore their demands and priorities...and history shows they often will. So incumbent politicians may pursue policies that the majority of voters in many cases don't support.

Gerrymandering weakens our democracy by violating the bedrock principle that each person's vote should have the same value as everyone else's. Gerrymandering devalues or, as we will see, actually wastes many Americans' votes, as when a small group of politicians rigs the process behind closed doors. As a result, many citizens feel excluded, become apathetic and don't vote.

One of the key objectives of voting reform is to make redistricting a transparent process, with public hearings. The advent of super-fast, cheap computing power has enabled lawmakers to carve up

¹ “The Gerrymander Battles Loom, as G.O.P. Looks to Press Its Advantage”, Reid J. Epstein and Nick Corasaniti, New York Times, Jan 31, 2021, <https://www.nytimes.com/2021/01/31/us/politics/gerrymander-census-democrats-republicans.html?referringSource=articleShare>

electoral districts with far more sophistication and ease than ever before, with “surgical-like precision,” as one court noted.

WHERE DOES THE PRACTICE COME FROM?

Ever since the beginning of representative democracy, those running for office have been tempted to define the rules which determine who participates in their selection. And when those rules involve the selection of the various representatives based on the geographical areas in which the individual voters reside, the temptation has always been to lobby to create the boundaries of those areas to favor certain candidates and their parties. This process has come to be known as gerrymandering, and it has a long and storied history in the United States dating back to the inception of our nation.

Gerrymandering may have begun as early as 1788, when Patrick Henry succeeded in redefining boundaries for a congressional election between two future presidents, Madison and Monroe — so the practice is not limited to politicians of questionable character. The practice gained its name in 1812 when the then-governor of Massachusetts and signer of the Declaration of Independence, Elbridge Gerry, enacted a redistricting plan favoring his party, creating one district so strangely configured that it looked like a salamander. Gerry’s salamander-like district spawned the term “gerrymandering”.



Cartoon in the Boston Gazette in 1812 showing Elbridge Gerry’s strangely configured political district resembling a salamander from which the term gerrymandering arises, from *The Twisted History of Gerrymandering in American Politics*.²

Politicians have resorted to the practice as the way to compose our districts ever since. For example, when the Dakota Territory was admitted to the union in 1889 it was split by the Republican Party

² “The Twisted History of Gerrymandering in American Politics” by Emily Barasch, *The Atlantic*, September 19, 2012 <https://www.theatlantic.com/politics/archive/2012/09/the-twisted-history-of-gerrymandering-in-american-politics/262369/>

into North and South Dakota, producing twice as many votes in the Electoral College and twice as many senators.

Gerrymandering can happen in any democracy, but what makes it so insidious in American democracy is that in most states the people deciding on the boundaries are partisan groups *themselves*, as opposed to judicial or nonpartisan groups selected for the purpose.

But while both Congress and the courts have intervened to police situations where there is racially discriminatory line drawing, that has not been the case where the discrimination was politically motivated, aimed at giving one party or the other an unfair advantage. It is to this partisan gerrymandering that we will turn to in the balance of this paper, referring to it as “gerrymandering” as is the common usage in today’s political environment.

Historically, part of the Court’s reluctance to become involved in policing partisan gerrymandering, as opposed to racially discriminatory map drawing, stemmed from a preference to remain above the political fray. But part was based on the Court’s struggle to agree upon a clear metric of how gerrymandered a given redistricting plan might be, something considered a requirement before the Supreme Court could set a standard to offer guidance to lower courts on what would be allowable and what would not.

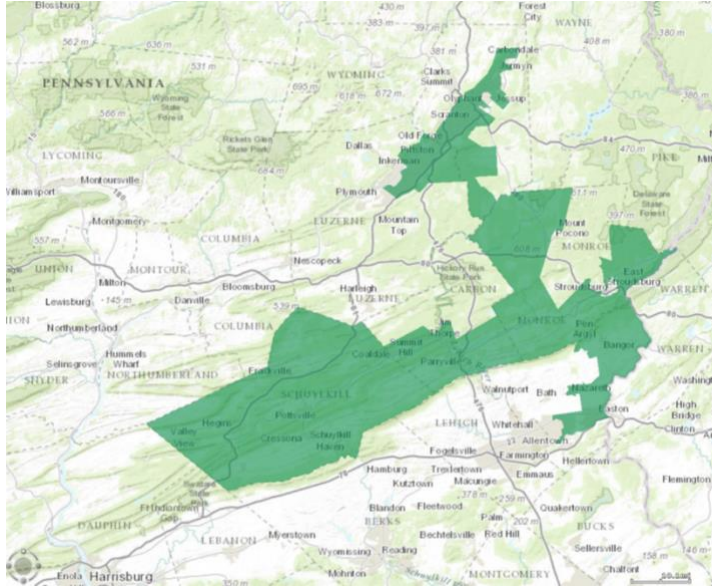
This struggle led to deadlock in 2004 in *Vieth v. Jubelirer*, with a plurality of the Court wanting to walk away from the issue as an unsolvable question. However, the issue stayed alive because Justice Kennedy in *Vieth* indicated that he would consider revisiting the Court’s decision to pass on ruling on partisan gerrymandering if a viable metric emerged that might allow the Supreme Court to set a manageable standard.³

Last decade, there was briefly hope that this deadlock had been resolved, with a series of lower court wins striking down gerrymanders in Wisconsin, North Carolina, Michigan, and Ohio. However, that hope was short-lived, with a more conservative Supreme Court ruling in 2019 that partisan gerrymandering, while offensive to constitutional values, was a political question off-limits to federal courts.

The lack of judicial oversight and the fact that redistricting will be controlled by a single party in most states are hugely dangerous to American democracy. Even a cursory examination of the shape of some of the Congressional districts gives more than a hint as to what is afoot. Consider for example Pennsylvania’s 17th District for the US House of Representatives, tailored by the Republicans in 2012 to disenfranchise Democratic voters. The district drew so much attention it was

³ “Supreme Court Takes Up New Cases on Partisan Gerrymandering” Adam Liptak, New York Times January 4, 2019, <https://www.nytimes.com/2019/01/04/us/politics/gerrymandering-supreme-court.html>

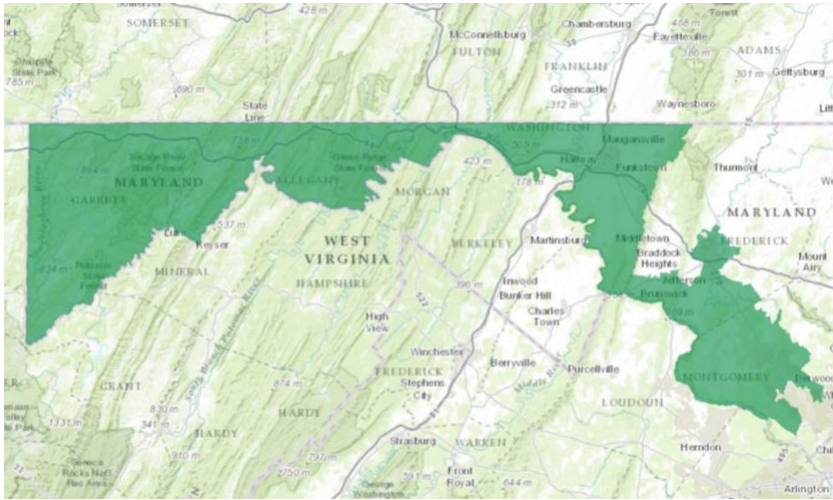
nicknamed the “Goofy kicking Donald Duck” district! The map was ultimately redrawn at the behest of the PA Supreme Court, but many such examples persist.



The exceedingly complex shape of Pennsylvania's 17th US Congressional District⁴ from 2013-2019, created by a Republican-controlled legislature, indicative of gerrymandering intent. The bizarre shape earned the district the nickname “Goofy kicking Donald Duck”.

Although such exercises appear to be happening more on behalf of the Republicans, since they controlled most legislatures after the 2010 census, consider Maryland's 6th Congressional District in a state whose legislature is controlled by the Democrats. The district was already exceedingly long and skinny before 2013, but its shape became even stranger in 2013, when it assumed its current boundaries:

⁴ “Pennsylvania's 17th congressional district” Wikipedia, https://en.wikipedia.org/wiki/Pennsylvania%27s_17th_congressional_district



Maryland's 6th Congressional District defined by a Democratic legislature.⁵



The shape of some of these districts has become so ludicrous and bizarre that one entrepreneur is selling necklaces sporting the shapes of some of the most egregious cases.⁶ The merchant offering these whimsical jewelry pieces calls one Maryland district, MD-3, “the praying mantis” and “the pinwheel of death,” posting on Instagram that it “is so badly gerrymandered to hurt the state’s Republican voters that we couldn’t make it into jewelry (it kept breaking).” The merchant did succeed in making the Ohio 1st District shown here to the left. If you wore this necklace, you’d have to make sure it didn’t snag anything.

Assessing the impact of complex boundary changes—which used to take months when done by hand—can now be accomplished in minutes on a laptop. This has led to a proliferation of proposals for redistricting plans, each optimized for the political advantage of the group proposing the plan. ***How this can be held in check depends on what body proposes the plan and how politically neutral it is.*** The bad news is that a predominance of states (see [Appendix B](#)) entrust this function to state legislatures, which are by their very nature political. But there are movements to shift such power away from them to more neutral parties in some states, which is an encouraging trend.

⁵ “Maryland’s 6th congressional district” Wikipedia, https://en.wikipedia.org/wiki/Maryland%27s_6th_congressional_district

⁶ Gerrymander Jewelry, <https://gerrymanderjewelry.com/shoponline>

The same computing power that makes it easier to create gerrymandered districts now also makes the detection of such gerrymandering in a proposed plan easier and, most importantly, quantifiable. Over the past decade a small but rapidly growing academic branch of mathematics⁷ has been developing to deal precisely in questions like this, and we'll cover some of that work [later in this paper](#).

WHAT'S BEHIND GERRYMANDERING?

Not all the motives for a district's appearing gerrymandered are nefarious or even intentional. One of the goals of creating reasonable district lines is to create "communities of interest" so they can be properly represented. So instead of imposing an arbitrary rectangular grid over the map, perhaps districts should be adjusted to conform with geographical boundaries like rivers, lakes and mountains, which are natural boundaries for those communities of interest. The result can look a little contorted relative to a rectangle, though perhaps not as distorted as some of the examples shown above.

Another example might be natural population concentrations. The center of a city as one district and the northern suburbs as another may be a reasonable separation based on common interests, even though the resulting district shapes might look somewhat artificial. Yet, reasonable as such district assignments may seem, they may lead to what is called accidental or unintentional gerrymandering if, for example, there is a concentration of a given race or party in one area and not another.

As Vann Newkirk points out in *The Atlantic*:⁸

“ The Constitution doesn't specifically outline a redistricting process, merely requiring proper apportionment of representatives to constituents. But in the redistricting processes that have developed since, politicians and parties with the most to gain from redistricting have generally owned them, which means they'll usually do what they can to maximize party advantage.

In those cases, it is more deliberately done to apportion an outsized number of seats to the party drawing the lines. This is the more insidious form of gerrymandering we will address in this primer.

⁷ "Geometry versus Gerrymandering" by Moon Duchin, *Scientific American*, November 1, 2018, <https://www.scientificamerican.com/article/geometry-versus-gerrymandering/>

⁸ "How Redistricting Became a Technological Arms Race" by Vann R. Newkirk II, *The Atlantic*, October 28, 2017, <https://www.theatlantic.com/politics/archive/2017/10/gerrymandering-technology-redmap-2020/543888/>

2

How Gerrymandering Works

Packing and Cracking

Quantifying Gerrymandering

Why There's Hope: Mathematics and Computing To The Rescue

“

Technology is both a threat and a promise. On the one hand, if courts refuse to entertain any claims of partisan gerrymandering, the temptation to use partisan favoritism in districting in an unconstitutional manner will grow. On the other hand, these new technologies may produce new methods of analysis that make more evident the precise nature of the burdens gerrymanders impose on the representational rights of voters and parties. That would facilitate court efforts to identify and remedy the burdens, with judicial intervention limited by the derived standards.

JUSTICE ANTHONY KENNEDY, CONCURRING IN VIETH V. JUBELIRER (2004)⁹

PACKING AND CRACKING

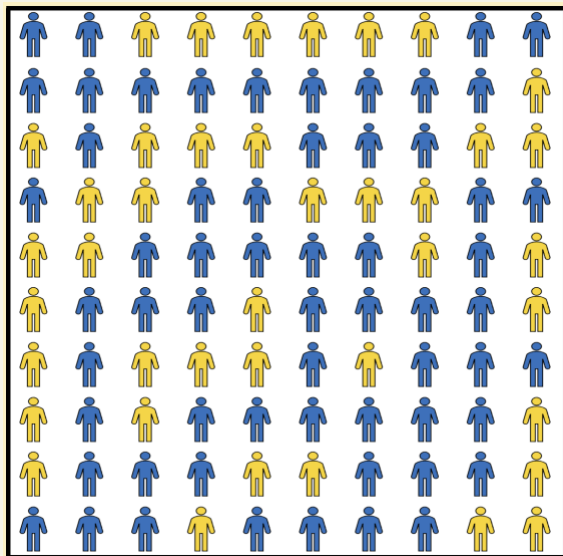
Gerrymandering is done to make the votes of the group you are favoring count more than other voters' ballots. You want your party's votes to count more than those of the other party, or you want the votes of a minority you are attempting to disenfranchise to count less than the votes of the remaining population.

⁹ Justice Anthony Kennedy, concurring in judgement, in *Vieth v. Jubelirer* (2004), <https://www.law.cornell.edu/supct/html/02-1580.ZC.html>

There are two simple ways to do this: packing and cracking. *“Packing” places excess members of the group being disenfranchised in a single district where they become the overwhelming majority, even though only half are needed to win, thus “wasting” some of their votes.* If a district has 90% of its voters voting for a given candidate, it’s really only the first 51% of them that are required to elect that group’s candidate. The remaining 39% would be more likely to help their group’s cause by voting in another district where the race is much closer, but instead their votes are wasted.

“Cracking” splits a majority group across multiple districts, causing them to fail to achieve a majority in any of those districts. If a group has a slight majority in a number of districts, it will be able to elect its favored candidates to each of those district seats. But if members of the group are spread across other districts where they represent only a minority, this may dilute their majority in their original districts. As a result, their candidates will lose in those original districts as well as in the new districts where they have been added intentionally as a minority. Their votes in districts where they fail to get a majority can also be said to be wasted.

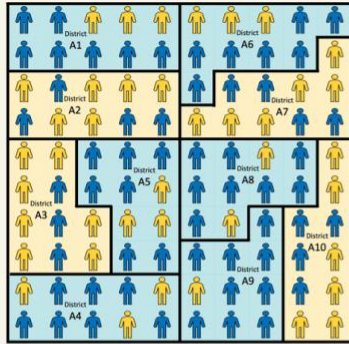
These two strategies are usually employed in tandem, and both result in a targeted group’s votes being wasted. Consider this simple example adapted from Professor Moon Duchin’s article in Scientific American.¹⁰ You have 100 voters spread “geographically” as shown:



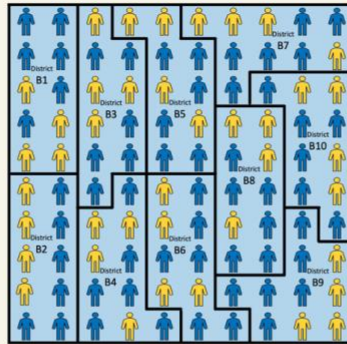
Location of each of 100 Voters 60 Blue Party Voters
40 Yellow Party Voters

¹⁰ “Geometry versus Gerrymandering” by Moon Duchin, Scientific American, November 1, 2018, <https://www.scientificamerican.com/article/geometry-versus-gerrymandering/>

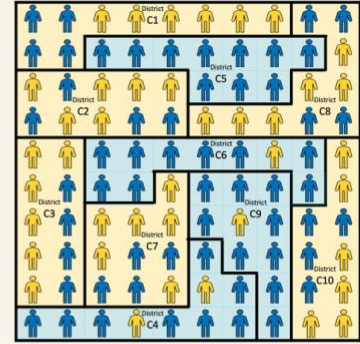
60 of the voters cast ballots for the Blue party and 40 for the Yellow party. These 100 voters need to elect 10 representatives, so this geographic area needs to be broken into ten districts of ten voters each. The following shows three possible ways, among many, to form those ten districts:



Districting Plan A
Blue Wins in 6 Districts
Yellow Wins in 4 Districts



Districting Plan B
Blue Wins in All 10
Districts



Districting Plan C
Blue Wins in 4 Districts
Yellow Wins in 6 Districts

How a simple population of 100 voters with a 60-40 Blue/Yellow Party split can be divided into 10 districts in a variety of ways, resulting in Blue winning 6 seats using the left Plan A district lines, all 10 seats with the middle Plan B district lines, and as low as 4 seats with the right Plan C district lines, all by the careful selection of where the boundary of each district is.

Your first thought might be that, since 60% of the population votes Blue, Blue will be likely to get 60% of the ten elected representatives—but wait. If each district of ten has precisely the representative 60% being Blue, then every district will go Blue. That’s in fact the case in Plan B districting scheme shown in the center of the Figure above.

A careful examination of the two other redistricting schemes, Plan A on the left and Plan C on the right, shows that districts can be set to result in a 6-4 Blue-Yellow split (left), reflecting the actual population mix, or even a surprisingly 4-6 Blue-Yellow split (right) favoring the minority party. Note in Plan C how Blue has been packed into one district which is all Blue (District C5), two which are 9-1 Blue voters (Districts C6 and C9), and a fourth one which is 8-2 (District C4), causing all the remaining districts to have a majority of Yellow voters. How you draw the lines really does have consequences. If the Yellow party was the one controlling what the districts look like, which scheme do you think they’d choose?

For a simple universe like this with only 100 voters and 10 districts, a computer program can generate all the allowed district schemes that could be assembled within the prescribed legal constraints, such as that there must be an equal number of voters in each district, that all parts of the district are

contiguous (no fair including two islands separate from one another merged into a single district), no voter can reside in a place more than a certain distance from the center of the district, etc.

But in the real-world case of millions of voters being assigned to state or Congressional districts, as the number of constituents goes up, the number of ways you can divide them begins to soar. Computers have changed the complex process on deciding the boundaries, making it much easier to give a political party an advantage. And more recently this computer power is also beginning to create the ability to *detect* that bias well. We will turn to this topic in the next sections.

But before doing so, it is worth noting that the goal from the standpoint of a gerrymandering party is to use your voters efficiently. Which is to say that you don't want to draw districts that your party wins by 80% (a common misperception), because then you limit the number of seats your party can obtain. Instead, what you want to do is create as many seats as possible so that your party wins by, say, 53%. The danger, of course, is that a 53% district could be vulnerable to political shifts. This is another case where computer technology and big data help to make sure 53% districts hold even in bad political years for your party.

QUANTIFYING GERRYMANDERING

The extreme gerrymandered district examples shown earlier are easy to detect: their bizarre shapes are a strong signal that something has been meddled with. But whether lines have been drawn with gerrymandering in mind can be more subtle and difficult to determine. A number of metrics have evolved in recent years to quantify if gerrymandering has occurred and to what extent it is present.¹¹ Let's look at a few of them.

Compactness Metric

The first we'll consider centers on the shapes of the districts, measuring how far from a normal compact shape each district is, essentially a quantification of the "bizarreness" of the shape. To be clear, there are sometimes legitimate reasons for a district not to be perfectly compact. As discussed earlier, communities aren't always compact. For example, sometimes districts aren't compact because map-drawers are trying to keep communities of color together or they are constructed to follow political subdivision boundaries, etc. But it is often the bizarreness of the shape that first brings more

¹¹ "How to Quantify (and Fight) Gerrymandering" by Erica Klarreich, Quanta Magazine, April 4, 2017, <https://www.quantamagazine.org/the-mathematics-behind-gerrymandering-20170404/>

extreme gerrymandering attempts to the fore, so let's take a look at some ways this might be quantified.

This is a very active field in mathematics because of this problem, and a host of metrics is evolving. One simple one is to circumscribe the outer reaches of the district shape with a circle and compare the area of the irregular shape of the district with that of the surrounding circle. The smaller that ratio is, the more “bizarre” the shape. Other more complex metrics are similar to this: for example, you create a polygon connecting the outer extremities and again look at the ratio, this time between the area of the district and the area of the surrounding polygon.

The overall breadth of results using one of these measures is instructive when comparing the districts in the various states where districting for the US House of Representatives takes place. Seven states--Alaska, Wyoming, Montana, North Dakota, South Dakota, Vermont, and Delaware--have populations small enough that they have only a single representative, hence they have no Congressional district lines, so they are not included in the comparison. [Appendix A](#) lists comparisons of the metrics of Federal Congressional district compactness for each of the remaining states.

The numbers in [Appendix A](#) are for the districts in 2012, after the last large-scale redistricting which occurred following the 2010 census. Since 2020 is another census year, we will be experiencing another such large-scale redistricting this year.

Two things jump out immediately. First, there is an enormous range—more than a five-fold range by one of the metrics—from the least compact scores at the top to the most compact scores at the bottom. If districts were laid out in ways which grouped together neighborhoods and towns which are close, that would not be the case.

Of course as already mentioned, some non-compactness arises because communities of interest are grouped together, leading for example to a coastal district which might be longer than it is wide. Such effects are sometimes referred to as accidental gerrymandering, which have a legitimate basis. But it is hard to argue that the disparity of the numbers shown in the table doesn't arise at least in part from intentional gerrymandering of the districts nearer the top of this list.

And second, the worst offenders, at the top of the list, are not limited to one political party. Democrats control Maryland (listed as #1), while Republicans govern North Carolina (#2).

Efficiency Gap Metric – Wasted Votes

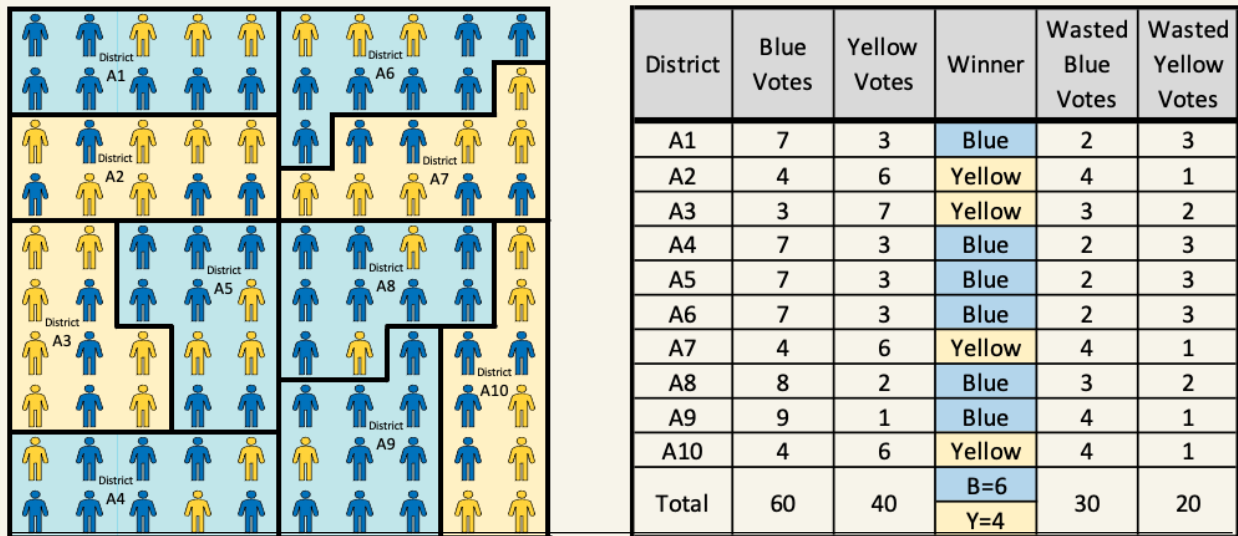
Several metrics look at all the districts in a state collectively. Perhaps the simplest to understand is the efficiency gap. As discussed earlier, if packing leads to votes in excess of 50% in a district, your party wins with those extra votes going to waste. And if cracking spreads your party's votes into

districts where your party loses and your candidates in those districts are not elected, those votes are also essentially wasted. Votes in either of these categories represent ballots not leading to a victory for your candidate.

What University of Chicago law professor Nicholas Stephanopoulos and political scientist Eric McGhee proposed¹² in 2014 is to add up those two wasted vote categories to calculate the percentage of the overall vote count they represent. The difference between the values for each party they termed the “efficiency gap,”¹³ indicating which party wastes more and measuring by how much.

In the universe of 100 voters in the Packing and Cracking Example we showed in the Figure above 60 vote Blue and 40 vote Yellow. Let’s first examine the wasted vote analysis for Plan A on the left above, which yields a reasonable 6 seats for the Blue Party and 4 for the Yellow Party:

Districting Plan A
 Blue Gets 6 Seats, Yellow Gets 4 Seats
 Efficiency Gap = 10% Slightly Favoring Yellow



Efficiency gap analysis of wasted votes in the Plan A districting configuration shown on the left side of the Packing and Cracking example discussed earlier, showing an efficiency gap of 30% minus 20%, or 10% in favor of Yellow.

¹² “Partisan Gerrymandering and the Efficiency Gap” by Nicholas O. Stephanopoulos and Eric M. McGhee, University of Chicago Law Review. 82: 831–900, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2457468

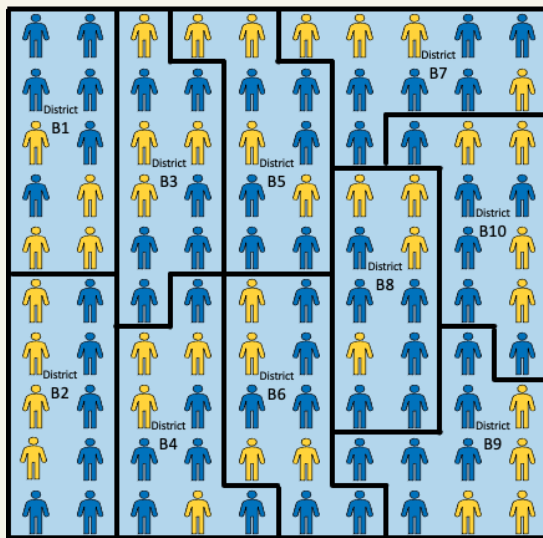
¹³ Wasted Vote” from Wikipedia, https://en.wikipedia.org/wiki/Wasted_vote

The second and third columns from the left in the table show how many votes are cast by each party in each district. The next column tells which party won the seat. The two right-hand columns show the number of votes which that party had in that district that didn't help their cause, either because they lost that district (all wasted) or were in excess of the 50% needed to win in the case of districts they won. In this reasonable districting, both sides waste a reasonable percentage of the overall vote, 30% for Blue and 20% for Yellow, leading to a reasonably low efficiency gap of 10%.

In the middle Plan B example [above](#), the Blue party has constructed a districting scheme to just win every district by a 6-4 margin by cracking the Yellow party votes and spreading them equally, below the 50% margin, across every district.

Districting Plan B

Blue Gets 10 Seats, Yellow Gets 0 Seats
Efficiency Gap = 30% Favoring Blue



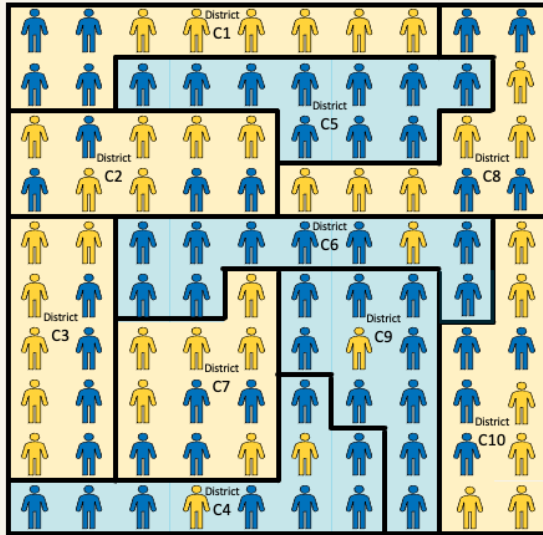
District	Blue Votes	Yellow Votes	Winner	Wasted Blue Votes	Wasted Yellow Votes
B1	6	4	Blue	1	4
B2	6	4	Blue	1	4
B3	6	4	Blue	1	4
B4	6	4	Blue	1	4
B5	6	4	Blue	1	4
B6	6	4	Blue	1	4
B7	6	4	Blue	1	4
B8	6	4	Blue	1	4
B9	6	4	Blue	1	4
B10	6	4	Blue	1	4
Total	60	40	B=10 Y=0	10	40

Efficiency gap analysis of wasted votes in the redistricting configuration shown in the middle Plan B districting of the Packing and Cracking example discussed earlier, yielding a rather large efficiency gap of 30% favoring Blue, indicative of Blue gerrymandering.

Blue wins all ten seats! The efficiency gap analysis tells us that the Blue party gerrymanderers have managed to cause 40% of the Yellow votes to be wasted by Yellow, while Blue only wasted 10%. The result is a very large efficiency gap in their favor, a much higher 30% in favor of Blue, three times that shown in the earlier more balanced Plan A example, an indication of Blue gerrymandering.

What happens when the Yellow Party assumes control and gets to draw the district lines? Their Plan C districting plan was shown on the right side of the [Packing and Cracking example earlier](#). What does the efficiency gap analysis show for this plan?

Districting Plan C
 Blue Gets 4 Seats, Yellow Gets 6 Seats
 Efficiency Gap = 30% Favoring Yellow



District	Blue Votes	Yellow Votes	Winner	Wasted Blue Votes	Wasted Yellow Votes
C1	4	6	Yellow	4	1
C2	4	6	Yellow	4	1
C3	4	6	Yellow	4	1
C4	8	2	Blue	3	2
C5	10	0	Blue	5	0
C6	9	1	Blue	4	1
C7	4	6	Yellow	4	1
C8	4	6	Yellow	4	1
C9	9	1	Blue	4	1
C10	4	6	Yellow	4	1
Total	60	40	B=4 Y=6	40	10

Efficiency gap analysis of wasted votes in the Plan C districting configuration shown on the right side of the Packing and Cracking example discussed earlier, showing a large efficiency gap of 30% in favor of Yellow, indicating Yellow gerrymandering.

They managed to pack a supermajority of 8, 9 or even 10 Blue voters into each of four districts (Districts C4, C5, C6 and C9), ceding Blue those four seats. This depletes the remaining Blue votes enough that they can spread them so thinly across the remaining districts that they fail to win any of them. The result is that Yellow gets 6 seats and Blue only 4. And the efficiency gap analysis measures this bias, showing that in this districting plan it's Blue now that wastes 40% of the votes while Yellow wastes only 10%. The efficiency gap is a high 30% in Yellow's favor, an indication of Yellow gerrymandering.

In reality, unlike this very simple example of 100 voters, districts constructed by states for their state legislatures and for the US House of Representatives involve tens of thousands of voters, organized in small units of precincts. With more than 100,000 precincts in the US, there are on average over 2,000

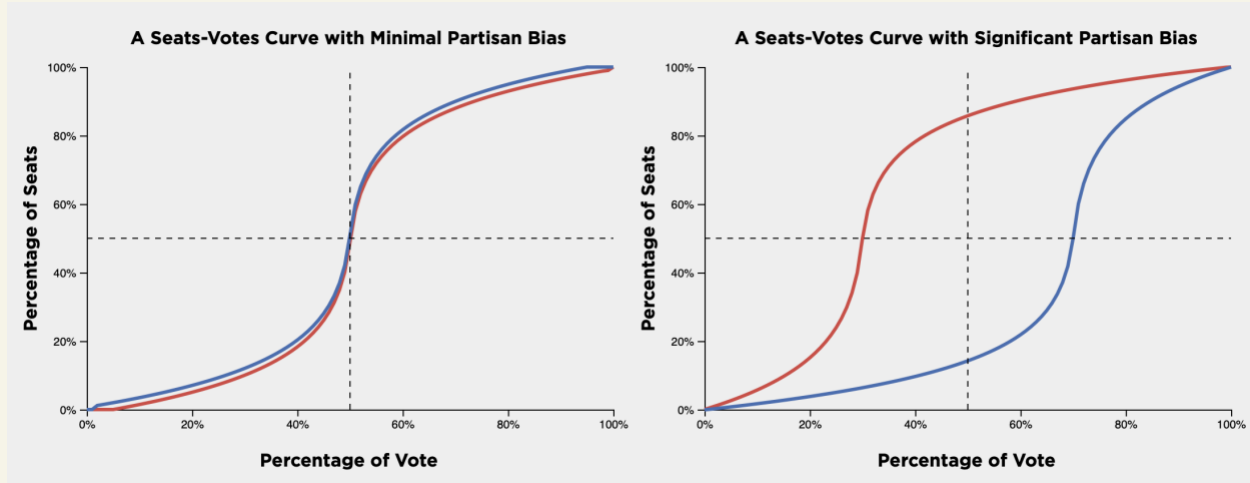
per state, each of which needs to be organized into its corresponding district. The number of ways you can group this large number of precincts into different redistricting plans is exponentially large. Even the world's largest computers couldn't come up with every such possible districting plan with a measure of how fair each such plan is, measured by some of the metrics just discussed. But even a simple program on a laptop computer can combine the existing district structure with the vote count in each of a number of recent elections, where you have the party breakdowns for each precinct, publicly available information, to yield a particular districting plan which favors your partisan goals. You can even try it yourself on the DRA 2020 web site!¹⁴ You can start moving precincts at the edges around in and out of districts to pack and crack, seeing if they make it better or worse for the outcome you seek.

Tools like this can show you what the vote would have been in each of those recent elections if the districts had been realigned in your new redistricting plan. If you do this enough, each time packing and cracking more efficiently, you can generate a plan significantly favoring your party. But what previously needed to be done laboriously behind closed doors by a select few in the past is now an exercise that any properly trained political operatives can do routinely on their laptops. That's the bad news.

Seats-To-Votes Curve and Partisan Symmetry

The good news is that there are other metrics some state courts are beginning to consider which also quantitatively measure on a statewide basis how politically biased a proposed redistricting plan is as well as how large and durable the seat skew in favor of a party is. Let's consider the seats-to-vote curve:

¹⁴ DRA Welcome to Dave's Redistricting site, <https://davesredistricting.org/maps#home>



A fair and unfair Seats-to-Votes set of curves indicating partisan symmetry on the left and bias on the right.¹⁵ The two colors, red and blue, indicate the Republican and Democratic Parties, respectively.

This analysis looks at the percentage of seats each party gets, plotted against the percentage of the electorate voting for that party’s candidates. The plot on the left of the Figure above shows partisan symmetry. Though the Republicans (red line) may get 80% of the seats with just 60% of the vote, the same is true for the Democrats (blue line) if they get 60% of the vote.

But look at the two curves in the right-hand side of the Figure. In this case, if 60% vote Republican (red line) the Republicans get 85% of the seats. But if 60% vote Democratic (blue line), the Democrats only receive 25% of the seats. This difference between the two curves near the middle *quantitatively* measures the partisan bias of the districting scheme.

Declination

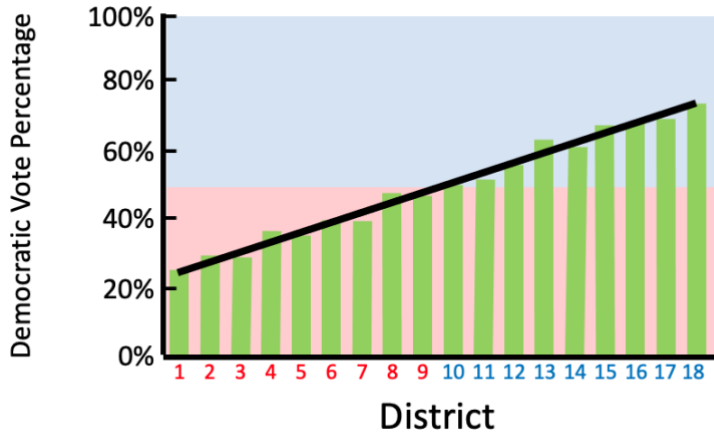
We discussed above how packing and cracking can be used by a party creating the district lines to increase the number of seats it wins. Let’s look at a metric developed only recently by Warrington¹⁶ called declination that is able to quantify the amount of such packing and cracking that has occurred.

Consider a hypothetical Congressional race in Pennsylvania, which has 18 Congressional districts. In a state like PA where there is roughly an equal number of Democrats and Republicans, the Democrats

¹⁵ “Exploring the Seats-Votes Curve” by Jeffrey Shen, <https://jeffreyshen19.github.io/Seats-Votes-Curves/>

¹⁶ “Quantifying Gerrymandering Using the Vote Distribution”, Gregory S. Warrington, Election Law Journal, Volume 17, Number 1, 2018, <https://www.liebertpub.com/doi/pdf/10.1089/elj.2017.0447>

will win some and lose others. Let's make a plot in which we order each district's results from left to right, ordered by the Democratic percentage they got in that district. What one would expect in a fairly-districted case is that the amount their vote share increases as you travel left to right will increase at roughly an even rate, shown by the slope of the black line in the following figure:

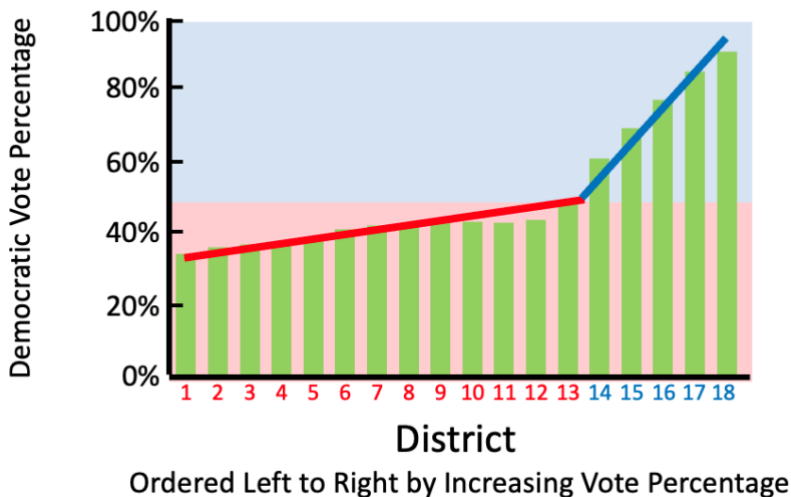


Ordered Left to Right by Increasing Vote Percentage

Results of a hypothetical Congressional race in PA in which the state's eighteen districts have been ordered left to right by increasing Democratic votes. The black line is fitted to the results.

Between the 9th and 10th highest result district, the Democrats' percentage crosses 50%, so they lose the lowest ranked nine districts (1-9) and win the highest nine (10-18), indicated in the diagram by the color along the bottom, red won by the Republicans and blue by the Democrats.

That's a hypothetical result. Following Warrington's analysis, let's now look at the actual results from the 2012 House election in PA, just after a Republican-controlled legislature redistricted based on the 2010 census:



Ordered Left to Right by Increasing Vote Percentage

Actual results in the PA 2012 Congressional race in PA in which the state's eighteen districts have been ordered left to right by increasing Democratic vote. The slope of the line gets greater in the portion won by the Democrats, an indication of potential packing and cracking. The magnitude of the slope change, called the declination, measures the degree of gerrymandering

Note that now the line fitted mathematically through the results essentially has two portions. The first red line is fitted to the districts which received less than 50%, districts the Republicans won. The second blue line is fitted through the districts the Democrats won. Look at the result. The Republicans take thirteen seats and the Democrats only five. Why? Because the Democrats have been packed more densely in districts of rank 14-19 (packing) and spread out more in districts of rank 1-13 (cracking) causing them to fail to reach the 50% mark in four districts they would have won in a more fairly redistricted case (districts of rank 10-13).

The more packing and cracking have occurred, the more the slope changes between the red and blue lines. Declination measures that slope change, giving a *quantitative* metric of the extent of gerrymandering.

WHY THERE'S HOPE: MATHEMATICS AND COMPUTING TO THE RESCUE

Here is the good news: that cheaper, increased computing power, coupled with more sophisticated ways of analyzing gerrymandered districts, is being used by a small but dedicated set of mathematicians to study the problem.¹⁷

The methods we have discussed so far show us how to analyze a given proposed redistricting plan using metrics like seats won, district compactness, efficiency gap, and subsequently become suspicious of certain plans. But a more convincing way of proving a district is gerrymandered is to look at these metrics for all possible alternatives and see if the proposed one is an extreme outlier, rather than falling legitimately somewhere near the middle. Such a finding is very strong evidence of gerrymandering.

The main hitch is that though it has become possible to calculate these metrics easily for a given districting plan, the total number of plans needed to do this if you considered every possibility becomes astronomical, as discussed [above](#), making the problem insoluble. Mathematics comes to the rescue again¹⁸ here in the form of what is called Markov Chain Monte Carlo (MCMC).

To employ this approach, you don't calculate the metrics for every possible districting configuration. Instead, you follow a course of action similar to the one the gerrymanderers themselves used to create the districts. You look at the metrics for those very close to the proposed one. One where a

¹⁷ "The Mathematicians Who Want to Save Democracy" by Carrie Arnold, Nature, June 7, 2017, <https://www.scientificamerican.com/article/the-mathematicians-who-want-to-save-democracy/>

¹⁸ "Geometry versus Gerrymandering" by Moon Duchin, Scientific American, November 1, 2018, <https://www.scientificamerican.com/article/geometry-versus-gerrymandering/>

particular precinct is swapped with another adjacent one. Then one in which a different precinct is swapped with its neighbor, etc.

The rigor of MCMC provides a way of telling when you've tried enough of these variations to know whether the proposed plan is more lopsided than most of its neighbors, an indication that it has been intentionally gerrymandered. The fact that you only have to explore the nearby "neighborhood" makes the calculation tractable. And this is the technique used by experts to advise bodies like courts or commissions that rule on whether a particular redistricting plan should be allowed. Such testimony led to the overturning of a Pennsylvania redistricting plan by the State's Supreme Court, as described in more detail later in [Chapter 3](#).

Michael Li, Senior Counsel, Democracy, at the Brennan Center for Justice and the author of an excellent white paper on all aspects of gerrymandering¹⁹, summarizes these promising developments well:

“ New quantitative measures of gerrymandering may offer a path forward. By providing ways to measure the extent of manipulation, these measures offer courts powerful new diagnostic tools.

However, the ability to determine if a proposed plan is biased does not assure that in this next round of redistricting in 2021 following the 2020 census states will adopt unbiased redistricting plans. Still, it provides some hope that extremely biased proposals might meet with stiffer opposition. Whether gerrymandered plans come into effect in that redistricting depends on which bodies are doing the work and what constraints there are on those entities.

Up next: How are new plans actually created and approved? And what can you do to help assure that those plans are fairer and more unbiased?

¹⁹ "Extreme Maps" by Michael Li, Brennan Center for Justice, <https://www.brennancenter.org/our-work/research-reports/extreme-maps>

3

Who Controls the Redistricting Process? And How Can We Change the System?

Who Controls the Process?

The Redistricting Landscape: 50 States, Many Approaches

Congress' Authority Over Election Standards

The Best Solution: An Independent Commission

Political-Appointee Commissions: Some Independence, But Not Enough

Advisory Commissions and Other Approaches

Federal Redistricting Reform Proposal

How do We Change the Status Quo?

Can't We Rely on the Courts to End Gerrymandering?

State Courts Can Overrule Gerrymandering

But State Courts May Be Partisan

Judicial Gerrymandering Is a Growing Risk

The Virginia Compromise: A Bi-Partisan or Hybrid Commission

The Virginia Reform: A Possible Model for Battleground States

WHO CONTROLS THE PROCESS?

In 30 out of the 50 states the state legislature controls redistricting decisions. Every ten years, following the census, the lawmakers pass the redistricting plan as a regular bill, just like other laws.

In some states, the legislature exercises this function because of tradition. In others, the constitution specifically delegates this power to the legislature, so an amendment is required to change the system.

Generally, each chamber must approve the plan by a majority vote, subject to a veto by the governor. This veto power can serve as a check on the dominant party if the governor belongs to the minority party. However, in some states the governor has no role in the process.

The fundamental problem with this arrangement is that the foxes are guarding the chicken coop.

Sitting members of the legislature have an inherent conflict of interest, because they want to hold onto their seats. Under this system the redistricting plan that results is often “a dirty deed done once a decade in a smoky back room”, as one reformer described the situation.

In many cases, only a small group of politicians--the leaders of the legislature--cut the deals in private meetings, without any public oversight. They then present the plan to the other members of their chambers for a rubber-stamp approval. Consequently, the plans may ignore the interests of the constituencies not at the table, and in many cases, that affects minority voters in particular.

If one party has majority control of the legislatures, it can ram through a plan that benefits its members at the expense of the opposition party. Neither political party has a claim to virtue in this respect, though the most egregious examples of gerrymandering currently exist more in states with Republican-dominated legislatures—because Republicans won control of many state legislatures in 2010 as the redistricting cycle was about to begin.

Even if the seats in the legislatures are fairly balanced between the two parties, politicians may still abuse the process. Majority and minority parties may work out deals protecting their respective incumbents, by making districts less competitive.

In the most highly gerrymandered states, such as Florida, Georgia, North Carolina, Maryland, Wisconsin, Pennsylvania, and Texas, the state legislature controls redistricting.

However, a large number of states have adopted approaches that may lead to fairer maps than those prepared by state legislatures. We discuss these alternatives below, beginning with the most voter-friendly.

When electoral districts are drawn fairly, every citizen's vote has equal weight. Politicians must pay attention to the various constituencies they represent, rather than a narrowly selected group of voters. So fairer maps should help restore trust in the system. These changes might also lead politicians to campaign on policies that will appeal to more voters in the center, not just to a highly partisan faction within one party.

THE REDISTRICTING LANDSCAPE: 50 STATES, MANY APPROACHES

Redistricting in the United States is more complicated than in most other Western democracies. In most states, there are two sets of electoral maps, one for state offices and one for Federal offices. To add to the complexity, the districts for state-level races are often completely different from those for Congressional elections, because there are so many more legislators on the state level. For example, Pennsylvania has 203 seats in its House and 50 in its Senate, each with its own electoral district. Meanwhile, Pennsylvania has 18 members in the U.S. House of Representatives. U.S. Senators run for election state-wide.

Each state, not the Federal government, determines how it will conduct its elections for state, local and Federal offices, including the criteria for drawing the various electoral maps. This patchwork approach is highly unusual, as most Western democracies have centralized their electoral systems and rules.

Although in most cases the legislature draws the electoral maps, some states have set up independent commissions or advisory commissions to make the redistricting process less partisan.

We list each state's approach to redistricting in [Appendix B](#).

CONGRESS' AUTHORITY OVER ELECTIONS

The states have broad latitude in conducting elections, but Congress has the power to mandate some standards for electoral contests, both Federal and state.

In 1965, Congress passed the Voting Rights Act (VRA), which prohibits racial discrimination in voting, including redistricting. A major victory for the civil rights movement, the Act was passed to enforce the Fifteenth Amendment to the Constitution, which granted all U.S. citizens the right to vote, regardless of race. The Act's provisions apply to all levels of government—Federal, state and local—and they have served as a major constraint on how maps are drawn.

Section 2 of the VRA prohibits voting practices or procedures that discriminate on the basis of race. Courts have relied on this section to invalidate maps that are racially discriminatory. Section 2 also can require the drawing of districts electorally favorable to communities of color if certain preconditions are met. Section 5 required state and local governments with a history of discriminatory voting practices to seek pre-clearance from the U.S. Attorney General for any proposed changes in their voting laws. The Supreme Court neutralized this section in a 2013 decision, *Shelby County v. Holder*, on the basis that the formula used to determine what states were covered

was outdated. Although Congress has the power to adopt a new coverage formula for Section 5, it has not done so.

In addition to its powers to prevent discrimination in elections because of race, Congress has broad authority to set standards for Federal elections under the Constitution’s Election Clause, which provides that:

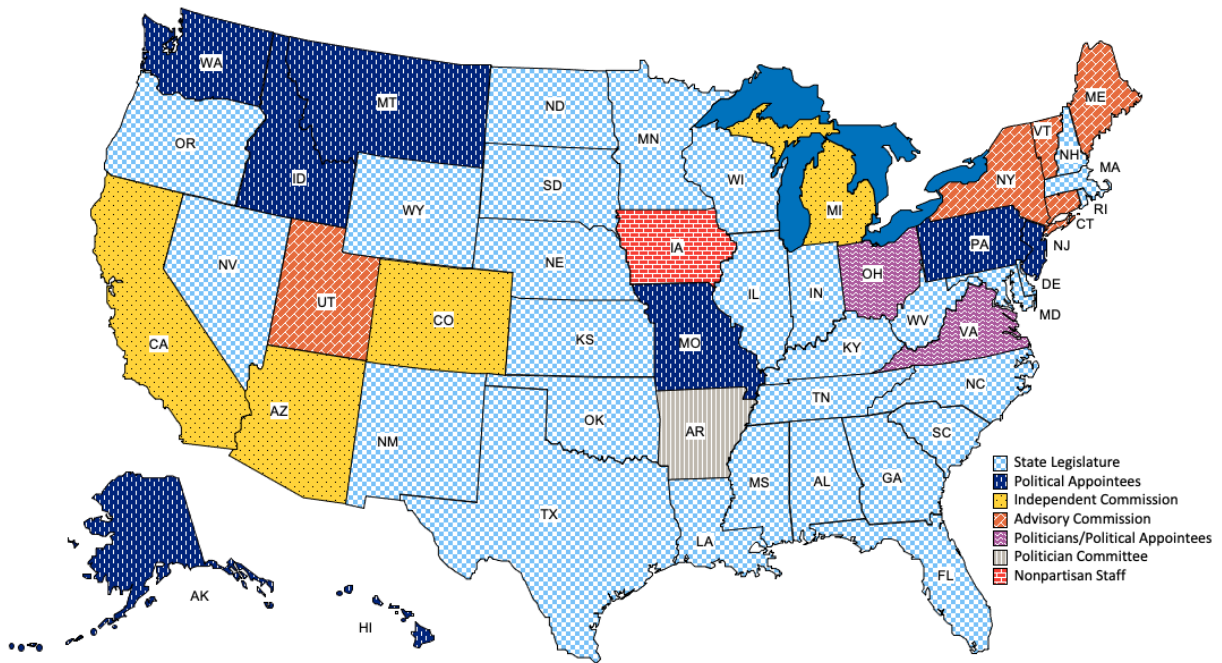
““ The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as the Places of chusing Senators” (Article 1, Section 4, Clause 1)

Congress has used this power for purposes ranging from creation of a uniform national election day to adoption the National Voter Registration Act. But in the redistricting context, Congress has not prescribed additional standards, except, at present, to require the use of single-member districts. Consequently, states have wide latitude and have followed different approaches to redistricting.

This situation may change, at least for elections on the Federal level, if Congress passes the “[For the People Act](#)”, which would direct each state to establish an independent commission for drawing Congressional district maps. The Act also sets forth criteria for developing a redistricting plan. Passage of the Act would be a major step forward in reducing or eliminating gerrymandering of Congressional district maps. The Act could also serve as a model for reforming redistricting on the state level.

The House of Representatives passed the Act in March 2021. The Senate bill, S-1, is likely to face stiff opposition from Republican Senators.

Redistricting Authorities in Each State



THE BEST SOLUTION: AN INDEPENDENT COMMISSION

The best way for a state to curtail or eliminate gerrymandering is by establishing an independent commission to draw electoral maps. Four states have set up such a structure, in which the commission, not the legislature, makes the redistricting decisions. This approach prevents one political party from controlling the redistricting process.

★ INDEPENDENT COMMISSIONS

Arizona
California
Colorado
Michigan

California is the best model for the independent commission approach. The state created its independent commission in 2011 under Republican Governor Arnold Schwarzenegger and subsequent Democrat administrations kept it in place.

Under California's system, neither the legislature nor the governor plays any role in redistricting decisions...or in the selection of commission members.

Citizens apply to serve on the commission, and they are screened by an independent entity. They are not appointed by lawmakers or party officials.

Commissioners cannot hold public office or serve in the legislature during their tenure.

The state requires partisan balance on the commission. There are 14 members: five Democrats, five Republicans, and four who are not affiliated with either major party.

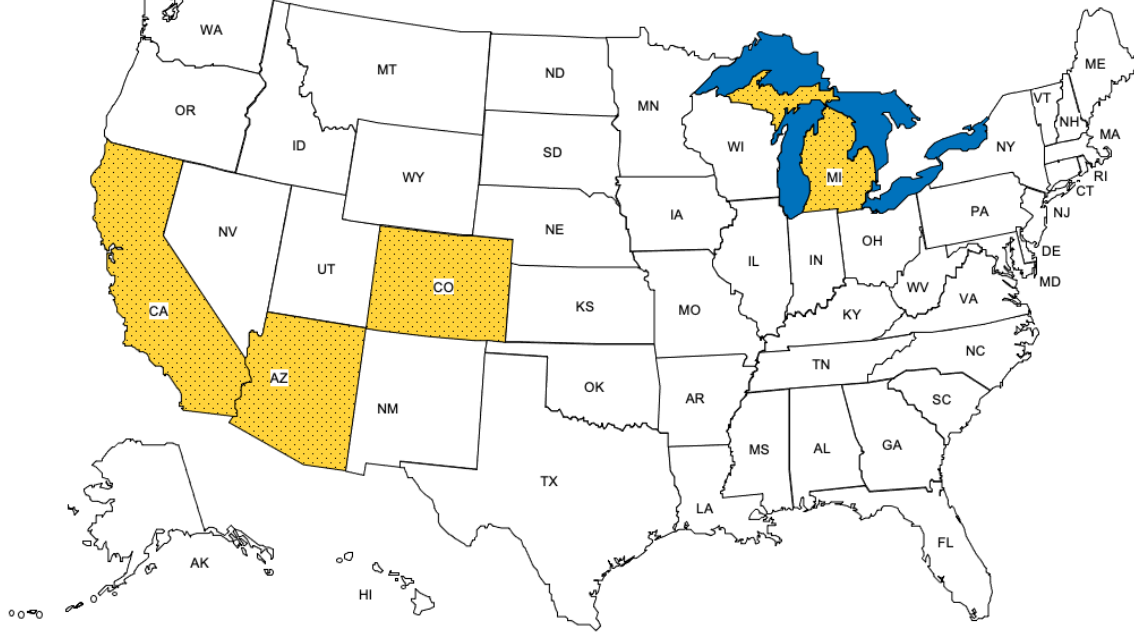
California's tough rules prevent a revolving door for commissioners. Commissioners must not have held or run for a state or Federal office or worked for a political party--**ever**. Other states, like Arizona, ban such activities for a certain number of years before someone serves on a commission.

California prohibits a commissioner from acting a party official or a political candidate for 10 years after his or her appointment. This is an unusually tight restriction, but we consider it a valuable guardrail.

An independent commission is the best approach for creating fairly drawn districts and, in the ideal world, all states would adopt this method. Under this system the dominant party cannot distort the process, and no politician can influence the creation of the maps. Disinterested citizens draw the maps, with the benefit of professional advisors.

This system also adds transparency to the redistricting process. The commission holds hearings where various interest groups and communities provide input on how the maps should be drawn, making backroom deals a thing of the past. In addition, the public hearings may bring to light issues and concerns that the commission members were not aware of.

States Where Redistricting is Done By an Independent Commission



Arizona established the first independent commission, with somewhat less robust guardrails, in 2000. A commission on judicial appointments nominates 25 candidates, applying partisan balance. From that pool the leaders of the two major political parties in the legislature choose a total of four commissioners. The four commissioners pick a fifth one from the unaffiliated candidates.

A commissioner cannot have held public office or served as an officer of a political party within three years of his or her appointment. However, unlike California, Arizona does not bar commissioners from holding office after they leave the commission. So politicians play a limited role in the selection process; the commission has produced maps that are considered fair.

Voters in Colorado and Michigan recently approved the establishment of independent commissions—a blend of the California and Arizona approaches—which will draw maps for the first time this year. Politicians have a minor role in the selection process, but they do not control it. This reform was particularly important for Michigan, which has a history of highly gerrymandered districts.

POLITICAL-APPOINTEE COMMISSIONS: SOME INDEPENDENCE, BUT NOT ENOUGH

Four states use a political-appointee commission for congressional maps, and nine use them for state races. *Under this approach, politicians choose all the commissioners. Because of this selection process, political-appointee commissions are not likely to be truly independent. Still, maps cannot be passed on a single-party basis.*

★ Political Appointee Commissions:

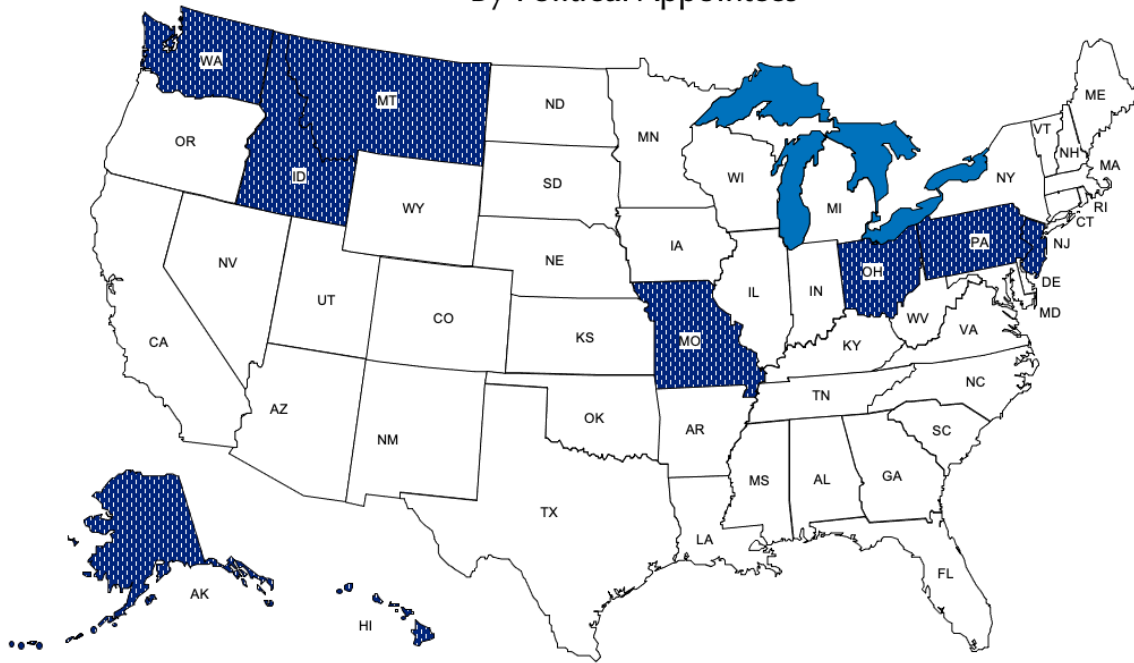
Alaska
Hawaii
Idaho
Missouri
Montana
New Jersey
Ohio
Pennsylvania
Washington

Political appointee commissions provide protection against extreme gerrymandering. Since lawmakers don't directly control redistricting, one political party cannot dictate the maps. However, politicians can exercise indirect influence on redistricting decisions, by picking the commissioners, so some gerrymandering (for example, protection of incumbents) can occur.

Though the commission members are not currently holding office, this system can be rife with potential conflicts of interest. The appointees may feel a sense of obligation toward the officeholders who chose them to serve on the commission.

Some states don't require their political-appointee commission to have partisan balance. Political appointees may have had close ties with one party in the past, either by holding public office or serving as a party official—which may even be a key factor in their selection. Political-appointee commissions may function well in some states and draw fair maps. However, the track record in Pennsylvania and New Jersey, for example, has not been impressive. To reduce partisan gerrymandering we strongly prefer the independent commission approach.

States Where Redistricting is Done By Political Appointees

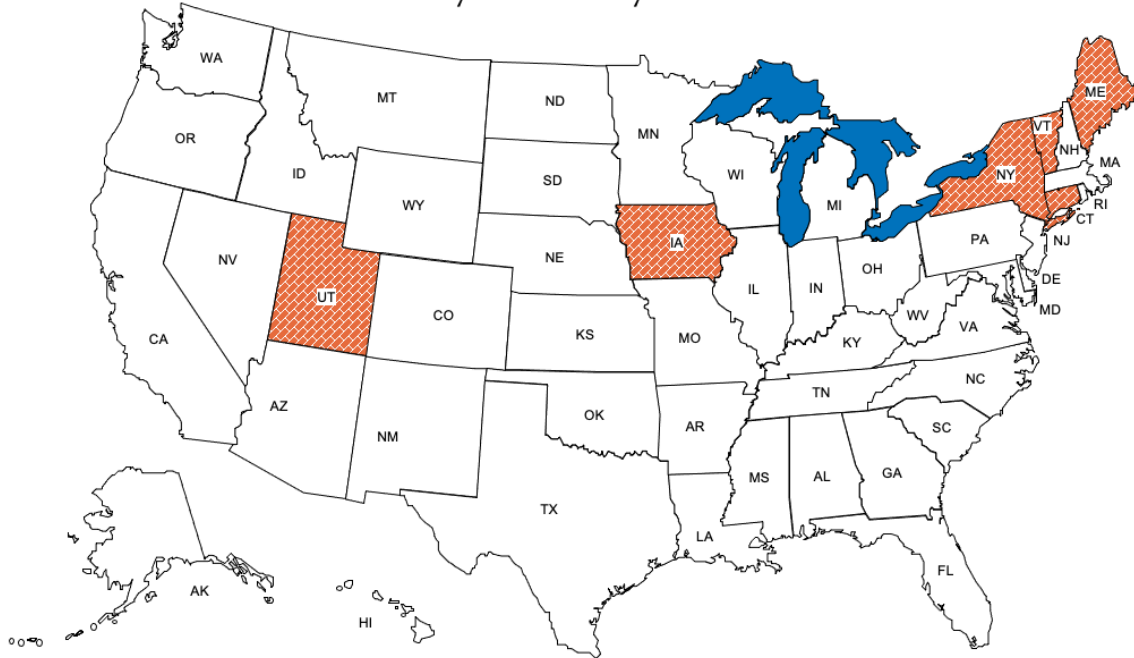


ADVISORY COMMISSIONS AND OTHER APPROACHES

Five states use an advisory commission to draw maps for Federal and state elections. An additional state, Vermont, uses an advisory commission only for state-level races, because it has only one Congressional district. The commission may be composed of legislators, citizens or a combination of both. The advisory commission draws the maps, but the legislature decides whether or not to approve them, usually through an up-or-down vote.

We have included Iowa in this group, but the state follows a unique approach and avoids the possible pitfalls that advisory commissions may pose. A nonpartisan agency draws the maps and consults with an advisory committee, in limited circumstances, before submitting the plan to the legislature for approval. As a practical matter, the legislature always approves the maps. So Iowa lawmakers neither pick the map-drawers nor make the ultimate decision on redistricting.

States Where Redistricting is Done By an Advisory Commission



This approach may improve the redistricting process somewhat, if the advisory commission takes an impartial approach, holds transparent hearings and can release its recommendations to the public. If a commission can publicize its suggestions, that can put pressure on the legislature to adopt them.

Nevertheless, the ultimate decision on redistricting still rests in the hands of the legislature. The success of this approach depends upon the willingness of key lawmakers to cede some of their power to the commission. There is a risk that the advisory commission becomes window dressing, a diversion to avoid more fundamental reforms.

New York has recently adopted this approach, which it will implement this year.

In January 2021, Larry Hogan, the Governor of Maryland, issued an executive order establishing an advisory commission. The commission will have nine members, consisting of three Republicans, three Democrats and three independents, and it will conduct public hearings. The commission will make recommendations for drawing Congressional and state legislative maps for the 2022 elections. However, under the state constitution the legislature has the power to draw the maps, so the Governor must submit them for approval.

Gov. Hogan, a Republican, tried several times to pass a bill in the legislature establishing an independent commission in Maryland, which would have required amending the state constitution. However, the Democratic-controlled legislature always rebuffed him. Maryland is a highly gerrymandered state. Although Democrats have a roughly 2:1 edge in voter registrations, they hold seven out of eight Congressional seats.

One state, Arkansas, has a “politician commission”, which is composed entirely of elected officials. This approach concentrates the power to redraw districts in a very small group of elected officials and has not been adopted elsewhere. (Ohio uses a hybrid approach with politicians and political appointees on its commission.)

Three states use backup commissions to draw maps for congressional districts, while five do for state districts. The backup commission creates maps if the legislature becomes deadlocked or the governor vetoes a plan. Texas is one of three states that has adopted this system.

In the seven states with only one Congressional district—Alaska, Delaware, Montana, North Dakota, South Dakota, Vermont and Wyoming—gerrymandering issues may still occur on the state level. Montana may gain a Congressional seat, and Rhode Island may lose one, after the 2020 census.

FEDERAL REDISTRICTING REFORM PROPOSAL

The “For the People Act of 2021” would direct each state to establish an independent redistricting commission to redraw Congressional boundaries. The Act’s provisions would basically mandate the adoption of the California model nationwide.

The Act is designed to ensure partisan balance on the commission. A nonpartisan agency, not politicians, would select the candidates to serve on the commission. A total of 15 members would be chosen: five from the majority party, 5 from the minority party, and 5 from independent or third-party voters.

The Act requires commissions to hold public hearings and it imposes strict conflict of interest rules on commissioners.

The Act would apply only to drawing maps for Congressional races, not state-level contests. Consequently, the proposed law would not be a substitute for reform at the state level.

Although the Act would mandate the creation of independent commissions in 2021, that provision is unlikely to be implemented unless the Senate approves the bill quickly. However, the Act’s criteria, transparency requirements and enhanced judicial remedies could be made applicable starting in 2021, with commissions to be set up in 2031.

The Act could also spur reform at the state level: once voters see the benefits of a fair redistricting process for Congressional elections, will they still tolerate a rigged system at the state level? That seems unlikely.

The Act would also enact sweeping reforms on other voting issues, which would go into effect after its enactment. State officials would be required to provide, for voters in Federal elections, mail-in voting, same day registration, and other measures to facilitate voting. The Act would ban various voter-suppression techniques.

We urge you to contact your Representative and your Senators to express your support for the Act. For more details on the For the People Act of 2021, please see [Appendix C](#), our summary of its key provisions.

HOW DO WE CHANGE THE STATUS QUO?

In some states, reformers can change redistricting practices through ballot initiatives or referenda. However, most states do not allow such measures, so the only path is through the legislature.

Changing redistricting laws is always challenging, but some states make it easier than others. Eighteen states allow measures, such as ballot initiatives or referenda, that allow citizen groups to submit reform proposals *directly* to voters, enabling you to bypass the legislature.

This is still a heavy lift, as it requires large numbers of signatures to place the proposal on the ballot. It may take years, a large volunteer effort, and a lot of money to educate citizens, get the requisite number of signatures...and then win at the ballot box.

There will be resistance from entrenched interests, yet polls consistently show that most voters support measures to make redistricting more equitable.

However, most states do not permit civic groups to launch ballot initiatives, so lawmakers must be persuaded to pass legislation changing the system. That is the case in states that experienced significant partisan gerrymandering last decade such as:

- Georgia
- Maryland
- North Carolina
- Pennsylvania
- Texas
- Wisconsin

Nonetheless, civic-minded groups have recently been able to win new legislation in several states, such as New York and Virginia, which do not allow ballot initiatives.

Florida has also exhibited substantial gerrymandering, although it allows ballot initiatives. Courts have intervened to correct gerrymandered maps in Florida, North Carolina and Pennsylvania--in the last case, only for Congressional maps. However, as we discuss in the next section, we prefer legislative solutions over judicial interventions.

CAN'T WE RELY ON THE COURTS TO END GERRYMANDERING?

It can be daunting to convince lawmakers to cede their control over districting, and if you're stymied in the political arena, you might be tempted to focus on judicial remedies.

However, we cannot rely on the courts, whether Federal or state, to eliminate gerrymandering unless the maps are racially discriminatory. Federal courts have struck down redistricting plans that discriminate against minorities, most notably in a decision nullifying North Carolina's maps. In Cooper v. Harris (2017), the Supreme Court upheld lower court rulings that invalidated maps on the grounds that they had been unconstitutionally drawn predominately on the basis of race.

However, the Supreme Court of the United States does not want to adjudicate disputes over partisan or political gerrymandering, which we focus on in this primer, and the court's position is binding on lower Federal courts.

Though litigants have attempted to use detailed quantitative methods of analysis to prove that state legislatures have gerrymandered districts, the Supreme Court has declined to intervene in such overtly political battles.

In Rucho v. Common Cause (2019), the Court acknowledged that partisan gerrymandering "may be incompatible with democratic principles." Nonetheless, the Court ruled in a 5-4 decision that "partisan gerrymandering claims present political questions beyond the reach of the federal courts". The Justices noted that drawing electoral maps was a complicated process in which they had no expertise, and they preferred to leave such decisions to the states

By ruling against these challenges to maps drawn in North Carolina and Maryland, *the Justices effectively closed off the Federal courts as an avenue for achieving redistricting reforms.* One can argue with the wisdom of that decision, but that is the reality.

STATE COURTS CAN OVERRULE GERRYMANDERING

Unlike the Federal courts, state courts have in some instances invalidated gerrymandered maps and created new ones. In a 2018 decision, the Pennsylvania Supreme Court threw out highly gerrymandered maps created by the state legislature. The Court ruled that the U.S. Congressional districting map violated the state constitution and invited the General Assembly to submit a new map, but it failed to do so. The Court then hired a special master, who prepared a map that is considered fair and balanced. A special master is a nonpartisan professional, sometimes an academic, who has technical expertise in creating electoral maps.

BUT STATE COURTS MAY BE PARTISAN

However, state courts can also be highly political. In 43 states, judges are elected. Unlike Federal judges, who are appointed for life, they do not have life tenure and they have to run for re-election every few years. As a result, state courts can be very partisan.

In Pennsylvania's case, Republicans controlled the legislature, but the state Supreme Court was dominated by Democrats. In this instance, the Court followed a process that resulted in more fairly drawn maps—yet a court with a different composition might not have produced the same outcome. So judicial intervention may create only a short-term solution.

And in some states like Wisconsin where gerrymandering is a major issue, one party may dominate both the legislature and the Supreme Court. That is why reformers in that state sought relief, unsuccessfully, at the Federal level.

Moreover, judicial solutions are not a long-term substitute for new laws. We prefer legislative solutions, rather than litigation, because your efforts will have more popular support and therefore, political legitimacy. Most voters support drawing maps fairly, once they are educated on the issues, regardless of political party.

Two-thirds of voters would prefer to have congressional districts with no partisan bias, even if it means fewer seats for their own party. Voters of all party affiliations share that view. At least 60% of each of the three categories of voters--Democrats, Republicans and Independents-- favor states' creating independent commissions, as well. That's based on a poll of general election voters published in January 2019

And if lawmakers decide that opposing voting reform will cost them politically, they will be more willing to enact a long-term solution.

More practically, litigation is not only time-consuming; it is often very expensive. A legislative reform campaign will also need funding, of course, but volunteers, rather than paid professionals, can carry out many of the important tasks.

JUDICIAL GERRYMANDERING IS A GROWING RISK

In some states, politicians are trying to make the courts even more partisan, by changing the procedures for electing judges.²⁰ Typically, higher-level judges run for office on a statewide basis, rather than in one district. This makes sense, since the judge's role is to interpret the law on a uniform basis throughout the state. By contrast, legislators' main duty is to represent the interests of the voters in their particular districts.

However, lawmakers in certain states want to compel appellate and Supreme Court judges to run for election in one district. The supposed rationale is that the judges will be more responsive to their district's needs or that this approach will increase diversity in the judiciary. But the judge should focus on the needs of the *entire* state, not just one district. Furthermore, where states have adopted such a system, diversity has not increased.

The real motivation is to gain a partisan advantage on the bench, by carefully selecting the district where a judge must run. That way, lawmakers can increase the chances that judges from their political party will be elected. They can gerrymander the judicial positions only if judges are elected, of course, but that is the case in most of the country.

Illinois and Louisiana, two highly gerrymandered states, already use such a system. Republican lawmakers in Pennsylvania, displeased with the state Supreme Court's rulings on election procedures, have introduced a bill to change the election rules in time for the 2022 election. Other states may follow the same path, unfortunately.

All the metrics we discussed above for detecting and quantifying the extent of gerrymandering can be used in trying to ensure that any judicial districts are being created fairly. However, given the Supreme Court's reluctance to rule in partisan gerrymandering cases, it's doubtful that the Federal

²⁰ "Pennsylvania G.O.P.'s Push for More Power Over Judiciary Raises Alarms", Nick Corasaniti, New York Times February 15, 2021, <https://www.nytimes.com/2021/02/15/us/politics/pennsylvania-republicans.html>

courts, at least, will intervene in judicial gerrymandering disputes. So the best way to avoid judicial gerrymandering is preventing a shift from state-wide judicial districts to a specific one.

THE VIRGINIA COMPROMISE: A BI-PARTISAN OR HYBRID COMMISSION

Virginia had a long tradition of gerrymandering, and the legislature had to enact an amendment to the state constitution to reform the system. Furthermore, the state's laws required the legislature to pass a joint resolution in two separate sessions.

The Republicans controlled the two houses of the legislature, but with ultra-thin majorities of two seats in each chamber. Consequently, they were very worried about losing control of both chambers, particularly after the Democrats performed strongly in the 2017 elections. In February 2019, the GOP passed the resolution on voting reform, because they feared the Democrats would win the election in November. Their fears came true, as the Democrats gained majorities in both chambers.

The legislature voted to approve the joint resolution in 2020, after the Democrats had taken over. In the Senate, 19 out of 21 Democrats supported the reform. However, only nine out of 55 Democrats in the House of Delegates voted in favor of the measure, so Republican support was crucial for the bill's passage in that chamber.

We consider Virginia's redistricting reform a useful model for states where creating an independent commission is not politically feasible. Virginia's approach is a compromise, but it should result in a major improvement over the status quo. Previously, the state legislature controlled the redistricting, which led to a high degree of partisan gerrymandering.

If you live in Virginia, one way you can support this improvement is by monitoring the commission's adherence to the new law. This is particularly important because the redistricting process will be rushed this year, as census data will not be released until the end of September.

Under Virginia's new system, a bi-partisan or hybrid commission, equally composed of legislators and citizens, will draw the maps. The commission will submit the maps to the legislature for approval, so it is an advisory commission...but with a key difference. The legislature can only hold an up-or-down vote; it cannot revise the maps. If lawmakers fail to approve the maps, they will not control the map-drawing. Instead, the state Supreme Court will appoint a special master.

This approach includes checks and balances to ensure that the process will be fair to both political parties and that it will reflect the views of a broad variety of constituencies.

The most important of these safeguards are:

- The selection processes
- A supermajority requirement for votes to approve maps
- A fallback mechanism relying on the Virginia Supreme Court
- Transparency— a requirement for public hearings and full disclosure of the commission’s deliberations and documents

Selection process: Eight members will be legislators, and eight will be individuals who do not hold office. The process is designed to level the playing field between the two major political parties, regardless of how many seats each holds in the legislature.

The majority leader and the minority leader of the state House will each pick two Delegates for the commission, for a total of four members. The *pro tempore* leader of the Senate, who belongs to the majority party, and the minority leader of the state Senate will each choose two Senators, for another four members.

A panel of five retired circuit judges will pick the eight citizen members of the committee. The legislators also have influence here. The politicians will choose four judges, who in turn will select a fifth judge to serve as chair of their panel.

The judges will select the members of the commission from a list of those who applied and were recommended by the four legislative leaders. Each legislative leader must recommend at least 16 citizens who are eligible to serve. The eight citizens selected for the commission will pick the chair, who must be one of the citizens.

Supermajority requirement: To force the members to compromise and prevent the majority party from gerrymandering, the law specifies several thresholds for the number of votes needed to approve maps:

- For Congressional maps: six out of eight legislators and six out of eight citizens must approve the maps
- For House of Delegates maps: the same six out of six standard applies, but the six legislators must include three out of the four members from the House of Delegates
- For the Senate maps: the same six out of six requirement holds, and three out of four Senators must agree on the map

In each instance, six citizens must approve the maps.

Fallback mechanism: If there is a deadlock between the commission and the legislature, the Virginia Supreme Court will be responsible for creating the maps. Judges are *not* elected in Virginia, and they

have a track record of non-partisan rulings. Furthermore, the Supreme Court must follow a bipartisan process to appoint a Special Master to draw maps.

This mechanism should put pressure on the legislature to approve the commission's maps. Supreme Courts in other states have all hired special masters to draw maps, and these professionals have taken an impartial approach.

Transparency: the bi-partisan committee must hold a certain number of public hearings in different parts of Virginia, so that members can hear the concerns of various communities and constituencies.

THE VIRGINIA REFORM: A POSSIBLE MODEL FOR BATTLEGROUNDS STATES

Until recently, Virginia was pretty evenly split between Republicans and Democrats, in terms of votes cast. This helped reformers to advance their cause, because both parties realized that control of the legislature could flip back and forth. Republican legislators had gerrymandered the state heavily in 2010. However, Republicans became more amenable to reform as they recognized that the state was trending blue.

The reform was controversial with many Democratic lawmakers, since they had finally gained control of the legislature. Although most Democratic Senators supported the measure, few Democratic Delegates did, and the bill passed in the lower house because of Republican support.

The Virginia model might be useful for reform initiatives in states such as Florida, Georgia, North Carolina, Pennsylvania, Texas and Wisconsin. These states are either closely split between the parties, or they have changing demographics that may shift the political balance in the legislature within a few years.

This approach might be a more viable path for you if you live in a state that, like Virginia, does not allow ballot initiatives. In those states, the only path for reform is convincing legislators to pass a law; they have to agree to reduce their control over redistricting. Lawmakers, including incumbents, might be more willing to shift to a system in which they retain at least some control, as opposed to relinquishing all power over redistricting.

The Virginia approach might also be more palatable in states such as Illinois and Maryland, where the Democratic party is deeply entrenched.

4

What Can You Do to Help Now?

Near-term and Long-term Reform Initiatives

Key Organizations You Can Join

States That Should be Monitored—Now

Battleground States: The Critical Arenas for Reform

States with Fair Redistricting Rules

How You Can Organize a Grassroots Campaign

Near-term and Long-term Reform Initiatives

NEAR-TERM AND LONG-TERM REFORM INITIATIVES

There are several ways for you to play an important role in the movement for gerrymandering reform. In this section, we will highlight certain states that should be a priority for action, and mention certain states that already have good redistricting practices, so you can focus on other initiatives. [Appendix B](#) summarizes the status of all 50 states.

Right now, *in states which have recently passed new legislation on redistricting, volunteers can play a crucial role* in monitoring officials' progress in implementing a new system. The reform movement has gained momentum and chalked up wins in several states, such as Colorado, Michigan, and Virginia. This trend is very encouraging, but it is important to make sure that local leaders actually put the new laws into effect.

This year and the next will be key for redistricting. State legislatures or committees will begin drawing maps this fall, after they receive the census numbers that will determine the composition of electoral districts for the next *10 years*.

The Census Bureau will release apportionment data, which are used to determine how many Congressional seats a state will have, in late April. The Bureau will send out redistricting data—which provide the basis for redrawing Congressional and state legislative districts—by September 30, 2021. The Bureau has usually released such data by the end of March, but the census was delayed

because of Covid-19. The typical “window” between the release of census data and redistricting decisions will be much shorter this time.

States will start organizing their commissions now, so it’s important to watch how commissioners are selected and what criteria the states plan to emphasize in drawing their maps.

In battleground states with a history of gerrymandering, changing the status quo will require a long-term effort. You can join an existing organization that is working hard to achieve reforms. The goal in these states will be to enact laws to ensure a fair redistricting process in 2031, when the next cycle of map drawing takes place.

That may seem a long time off, but bear in mind it took reformers *six* years to change the system in Virginia. If the reform movement in your state has already made a lot of progress, the timeframe for passing new laws may shorten.

Whether or not your state has already implemented good practices, a good way to help would be lobbying for the passage of a proposed Federal law, the “For the People Act”. This proposal would create sweeping reforms in voting practices, and it would mandate nationwide standards for drawing Congressional district maps.

KEY ORGANIZATIONS YOU CAN JOIN

In most states, various non-partisan civic-minded groups are playing critical roles in the drive to improve voting laws. You don’t have to re-invent the wheel, in most cases; you can simply volunteer for one of these organizations.

Fair Maps groups (<https://www.onevirginia2021foundation.org>) such as OneVirginia2021 focus on grassroots organizing and lobbying for specific legislation in the state where they are established.

The League of Women Voters (<https://www.lwv.org>) has chapters throughout the nation. They have been instrumental in educating the public and lobbying to improve redistricting practices, among other governance issues.

Common Cause (<https://www.commoncause.org>), which is more centralized, has also dedicated significant resources to studying gerrymandering issues in specific states and educating voters.

The Brennan Center for Justice (<https://www.brennancenter.org>), a law and policy institute at New York University School of Law, produces in-depth research on voting reform issues. The Center has

recently published “The Redistricting Landscape, 2021-22”²¹ and “Why Congress Must Pass the ‘For the People Act’”.²²

The Princeton Gerrymandering Project (<https://gerrymander.princeton.edu>) lists the relevant organizations that focus on gerrymandering issues in each state. Just click on a particular state on the website’s map to find the appropriate contacts. The Project’s website also contains extensive information on gerrymandering issues.

In addition to these non-partisan groups, [All on The Line](https://www.allontheline.org) (<https://www.allontheline.org>) focuses on combatting gerrymandering. Eric Holder, who served as Attorney General under President Obama, founded the organization.

STATES THAT SHOULD BE MONITORED—NOW

These states should be carefully monitored in 2021 as they draw maps under their new procedures.

- Colorado
- Michigan
- New York
- Ohio
- Utah
- Virginia

Several states will draw maps under new procedures in 2021. You should keep tabs on the progress to help prevent any backsliding. Most officials will hold public hearings as they draw up the maps, which you can attend.

If you observe problems during the hearings, you should report them to one of the organizations listed above and your local journalists. You could also write your state representative and state senator, to alert them about the issue, or organize a broader email campaign to pressure lawmakers.

Overall, Colorado and Utah do not have a history of egregiously drawn maps. Colorado, one of five states that conduct elections primarily via mail-in ballots, is particularly voter-friendly.

²¹ The Redistricting Landscape, 2021–22, Michael C. Li, The Brennan Center for Justice, https://www.brennancenter.org/sites/default/files/2021-02/2021_2_11_State%20of%20Redistricting.pdf

²² “Why Congress Must Pass the ‘For the People Act’”, Wendy Weiser, Daniel I. Weiner, and Dominique Erney, The Brennan Center for Justice, https://www.brennancenter.org/sites/default/files/2021-02/2021_01_Case%20for%20HR1_update_V4.pdf

In Michigan, the state Republican Party brought a lawsuit seeking to prevent the state from setting up the commission under the new law, but the Federal district court rejected its request.

BATTLEGROUND STATES: THE CRITICAL ARENAS FOR REFORM

Battleground states have the most highly gerrymandered systems. This is to be expected, as both major political parties are keenly aware of the high stakes involved in retaining or shifting power in those states.

The need for redistricting reform is most critical in these states:

- Florida
- Georgia
- North Carolina
- Pennsylvania
- Texas
- Wisconsin

All of these states have also used various measures to suppress voters, imposing strict I.D. requirements, limiting the number of polling stations, purging voter rolls, etc. They are not voter-friendly in several ways. Lawmakers in most of the states are proposing new measures to make voting more difficult, by limiting the use of mail-in ballots, tightening voter I.D. requirements, and so forth. Although the purported rationale is to prevent voting fraud, that was not a problem in the 2020 election.

In March the Georgia state legislature passed a harsh new law that includes several voter suppression measures, which appear aimed at Black voters in particular, even though two audits confirmed that the election results were valid and no fraud had occurred.

Some non-battleground states where one party dominates the state legislature and controls redistricting decisions are also gerrymandered:

- Illinois
- Maryland

However, these states are so Blue that changing the redistricting process might not have much impact on voting results. In most districts, the candidate of the majority party would probably be elected in any event.

Nonetheless, if districts were more fairly drawn, politicians would have to pay more attention to voters from the minority party. Elections could become more competitive, because incumbents would be less protected by distorted maps. As a result, candidates might adopt more “centrist” stances, so they appeal to a broader swath of the electorate.

Reformers suffered a setback in Missouri. In 2018 voters approved an amendment to the constitution establishing a new redistricting system. The amendment created an independent state demographer to draw the maps. The reform measure also outlined the criteria for redrawing districts and ensured that the process would be subject to public scrutiny.

Under the previous regime, the members of the redistricting committee were political appointees, and they were evenly divided between the parties. Since 70% of the members had to approve maps, this system resulted in deadlocks. As a result, a panel of six appellate judges drew the maps.

In 2020 opponents of the reform led a successful effort to nullify it. The GOP-dominated legislature proposed another amendment to overturn the new requirements and restore the old system. Unfortunately, the voters approved that amendment, so Missouri will conduct its redistricting under a slightly modified version of the old rules, starting this year.

STATES WITH FAIR REDISTRICTING RULES

Several states follow sound redistricting practices and are not major targets for reform. California is a leading example of good governance, since it was an early adopter of the independent commission approach. Politicians can strike a certain number of nominees from the selection pools, but they play no other role in selecting the commission’s members.

Several other Western states have also set up independent commissions that have the sole power to draw maps. However, in some cases politicians may appoint the members; some jurisdictions do not require partisan balance on the commission. Nevertheless, these states produce reasonable maps, even without safeguards as robust as California’s.

In addition, some states with bi-partisan commissions or advisory commissions also have a good track record on redistricting decisions.

These states do not present significant partisan gerrymandering issues:

- Alaska
- Arizona
- California

- Idaho
- Iowa
- Montana
- Oregon
- Washington
- Wyoming

HOW YOU CAN ORGANIZE A GRASSROOTS CAMPAIGN

The battleground states do not allow ballot initiatives, so the only way to change the status quo is by enacting legislation. You will have to convince lawmakers to relinquish at least some of their control over redistricting. You will encounter stiff resistance, so you will have to organize a grassroots campaign and create a groundswell of public support for your initiative.

The Virginia reform movement developed a template for grassroots organizing that may help you change the status quo in your state.

Reformers in Virginia developed an innovative way to win voters' backing for their proposal and put pressure on lawmakers to pass new legislation. The leaders of OneVirginia2021 recruited volunteers to meet people at polling stations and talk to them about the need to stop gerrymandering. The volunteers emphasized that they were non-partisan and did not want to know whether they were speaking with a Democrat or a Republican. They had two goals: educate voters and generate emails to politicians on the issue. OneVirginia2021 trained its volunteers to use a quick “elevator pitch”.

Volunteers typically spent two to three hours at a polling site, and they persuaded 20 to 25 voters to sign a petition that automatically sent an email to their representatives in the state house. The volunteers recorded the voters' email addresses on paper and subsequently uploaded it to a software program, Muster. Over time, they built up a large database of email addresses, which they used to stay in touch with voters.

OneVirginia2021 eventually deployed volunteers to Department of Motor Vehicles as well. They found that this was a good opportunity for engaging with voters, since people waiting in line were happy to chat with them.

Volunteers became enthusiastic about the campaign, particularly since the time commitment was manageable. The number of volunteers rose from 300 to 3,500 over time, and they collected over 100,000 email addresses.

Through the campaign, Virginia 2021 sent tens of thousands of emails to politicians from voters in their specific districts. Many politicians who had initially opposed the measure changed their stance, as they realized the depth of popular support for the reform.

Thanks to this grassroots campaign, Virginia should have fairer, more competitive elections.

You could use this approach to build support for reform at the state level or to push for enactment of the “For the People Act” in Congress.



Appendices

APPENDIX A – STATE-BY-STATE DISTRICT COMPACTNESS COMPARISON

State	Mean Score, Polsby-Popper	Mean Score, Schwartzberg	Mean Score, Convex Hull	Mean Score, Reock	Number of Districts
Maryland	8.08	27.67	49.63	24.68	8
North Carolina	11.51	32.17	59.62	29.46	13
Louisiana	11.1	32.14	59.53	32.14	6
West Virginia	13.65	36.66	54.76	32.29	3
Virginia	14.42	37.28	67.58	27.89	11
Hawaii	8.56	29.1	67.58	36.85	2
New Hampshire	16.45	40.53	67.53	23.81	2
Illinois	16.64	39.91	61.03	31.07	18
Pennsylvania	17.14	39.52	62.42	34.15	18
Rhode Island	20.14	42.35	62.42	26.38	2
Ohio	17.22	39.91	63.74	33.79	16
Massachusetts	18.45	41.74	63.19	35.85	9
Maine	14.04	37.04	72.83	36.62	2
Texas	19.17	42.09	67.35	36.12	36
New Jersey	18.96	42.92	63.71	38.92	12
Alabama	18.43	42.41	69.2	37.7	7
Kentucky	19.21	42.81	68.82	37.16	6
Washington	21.19	44.74	71.39	34	10
Arkansas	19.89	43.98	68.49	38.87	4
South Carolina	20.5	43.85	72.91	37.42	7
Tennessee	20.48	44.68	70.48	40.2	9
Florida	24.61	48.18	69.24	36.93	27
Oklahoma	24.98	49.91	68.58	36	5
Michigan	26.03	49.38	69.73	35.1	14
California	22.58	46.86	72.64	38.47	53
Colorado	24.6	48	69.77	39.12	7
Utah	27.65	52.28	69.17	34.18	4
Mississippi	23.33	47.58	76.84	38.08	4
Wisconsin	21.85	47.58	75.64	44.43	8
Idaho	25.01	49.51	77.41	37.69	2
Connecticut	26.61	50.94	71.85	42.19	5
Georgia	25.83	50.46	75.5	44.07	14
Missouri	27.08	51.49	75.25	44.6	8
New York	31.81	55.24	73.53	40.35	27
Oregon	31.15	56.06	75.28	42.43	5
Arizona	30.05	53.3	74.82	45.21	9
Minnesota	33.03	56.85	76.8	40.88	8
New Mexico	35.17	59.07	78.36	44.36	3
Iowa	39.97	62.92	78.02	44.13	4
Kansas	40.52	62.92	83.05	41.1	4
Indiana	41.03	63.59	81.73	44.07	9
Nebraska	39.27	62.54	83.73	46.54	3
Nevada	52.44	72.22	89.2	48.12	4

Comparison from the Azavea White Paper²³ of the degree of compactness of US House Districts as quantified by four different groups' measures of compactness, ordered from states with the lowest values (least compact) at the top to those with the highest values (most compact) at the bottom. Note that for each metric listed, the higher the number, the more compact the district, and the less likelihood the districts in that state were gerrymandered.

²³ Azavea White Paper “Redrawing the Map on Redistricting – 2012 Addendum”, https://s3.amazonaws.com/s3.azavea.com/com.redistrictingthenation/pdfs/Redistricting_The_Nation_Addendum.pdf

APPENDIX B – REDISTRICTING APPROACHES IN THE FIFTY STATES

State	State Districts	Federal Districts	Partisan Balance	Need Reform	Need Monitoring
Alabama	legislature	same		✓	
Alaska	political appointees	only 1	✓		
Arizona	independent commission	same	✓		
Arkansas	politician commission	legislature		✓	
California	independent commission	same	✓		
Colorado	independent commission	same	✓		✓
Connecticut	advisory commission	same	✓		
Delaware	legislature	only 1		✓	
Florida	legislature	same			
Georgia	legislature	same		✓	
Hawaii	political appointees	same	✓		
Idaho	political appointees	same	✓		
Illinois	legislature	same		✓	
Indiana	legislature	same		✓	
Iowa	non-partisan state agency	same			
Kansas	legislature	same		✓	
Kentucky	legislature	same		✓	
Louisiana	legislature	same		✓	
Maine	advisory commission	same	✓		
Maryland	Legislature or Governor	legislature		✓	
Massachusetts	legislature	same		✓	
Michigan	independent commission	same	✓		✓
Minnesota	legislature	same		✓	
Mississippi	legislature	same		✓	
Missouri	political appointees	same		✓	
Montana	political appointees	only 1			
Nebraska	legislature	same		✓	
Nevada	legislature	same		✓	
New Hampshire	legislature	same		✓	
New Jersey	political appointees	same		✓	
New Mexico	legislature	same		✓	
New York	advisory commission	same	✓		✓
North Carolina	legislature	same		✓	
North Dakota	legislature	only 1		✓	
Ohio	politicians/appointees	legislature	✓		✓
Oklahoma	legislature	same		✓	
Oregon	legislature	same		✓	
Pennsylvania	political appointees	same		✓	
Rhode Island	legislature	same		✓	
South Carolina	legislature	same		✓	
South Dakota	legislature	only 1		✓	
Tennessee	legislature	same		✓	
Texas	legislature	same		✓	
Utah	advisory commission	same			
Vermont	advisory commission	only 1			
Virginia	politicians/appointees	same			✓
Washington	political appointees	same	✓		
West Virginia	legislature	same		✓	
Wisconsin	legislature	only 1		✓	
Wyoming	legislature	same		✓	

APPENDIX C – THE “FOR THE PEOPLE ACT” --PROPOSED FEDERAL LEGISLATION ON VOTING REFORMS

In January 2021, the House of Representatives passed the “For The People Act of 2021” (H.R. 1), which would mandate sweeping reforms in voting procedures for Federal elections, including measures to eliminate gerrymandering. The bill aims to make voting much easier, by requiring early voting and mail-in voting, for example. The lawmakers also seek to end voter suppression practices such as excessive I.D. requirements, purging voters from the rolls, and so forth. The bill is now pending before the Senate

Congress has the authority to regulate Federal elections, under the Election Clause of the Constitution, which Congress has used to mandate single-member districts. In addition, Congress passed the Voting Rights Act of 1965, to implement the Fourteenth and Fifteenth Amendments to the Constitution. The VRA prohibits drawing maps that are racially discriminatory.

In *Shelby County v. Holder* (2013), the Supreme Court gutted the VRA’s section 5, which required states with a history of discriminatory voting practices to require pre-clearance from Federal authorities of proposed changes in their voting laws. Numerous Southern states quickly imposed various voter suppression measures.

A separate bill, the “John Lewis Voting Rights Advancement Act” (H.R.4), would reauthorize the Voting Rights Act and overturn the Supreme Court’s decision. This proposal would apply to voting changes at all levels of government—Federal, state and local.

The For The People Act does not mandate standards for conducting state-level elections, because the states, not Congress, have the authority to set the rules for those races. However, if the Act were passed, one has to wonder if many states would choose to maintain two different standards--and entities-- for running Federal and state elections. That could be costly, as well as confusing or irritating to voters.

Furthermore, Congress has previously set standards that states apply to their elections as well as to Federal ones. In 1845, Congress established the first Tuesday after the first Monday in November as Election Day for Presidential elections. In 1993, under the Voter Registration Act, Congress ordered states to offer to voters in Federal elections the opportunity to register at state motor vehicle offices and to register by mailing an application.

In 2019, the Democrats passed very similar versions of the For the People Act and the Voting Rights Advancement Act in the House, but the Republican leadership of the Senate refused to bring them to a vote. We should expect a major political battle fight over both Acts in this Congress.

Redistricting Reform

The Act aims to end gerrymandering by creating uniform standards for redrawing Congressional maps.

The Act's provisions basically follow the California model, requiring states to establish an independent commission to draw maps. States must also create a non-partisan agency to select the commissioners.

Here are some other key provisions:

Pan-partisan balance and approval: the commission must have 5 Democrats, 5 Republicans and 5 independents or third-party members; maps must be approved by at least some members of each group

Non-partisan selection: politicians have no role in choosing commissioners or the pool of candidates; the non-partisan agency has sole authority on appointing commissioners

Conflicts of interest: no candidate to serve on a commission can have held public office or served as a political party official for 10 years before being appointed; a candidate is also disqualified if a family member held such a position

Transparency: commissions must hold public hearings as they develop their plans

Back-up mechanism: if the commissioners cannot agree on a plan, a three-judge panel will create one; the judges may appoint a special master to draw maps

Redistricting criteria: maps must not favor a political party or discriminate against racial minorities; they must respect communities of interest

Enhanced judicial remedies: courts must give priority to redistricting cases.

Expanding Voting Rights and Election Security

The Act would expand and protect voting rights, and it would modernize voting systems to make them more secure and accessible. The Act would require states to adopt the following procedures for voters in *Federal* elections:

- Automatic voter registration
- Online voter registration
- Same day registration
- Expanded early voting
- Mail-in voting, with free postage
- Prohibition on purging eligible voters from rolls
- Restoration of voting rights to felons who have served their sentences
- Increased Federal funding to support use of paper-based ballots and oversight over election vendors

Making Democracy More Transparent

The Act would require secret money organizations to disclose their donors and upgrade rules on online political spending, so voters know who is paying for political ads.

To reduce the influence of big-money donors in Federal elections, the Act would create a public election finance system, which would match donations from small contributors (as defined).

The system would be financed via fines imposed on corporate malefactors for non-election offenses; taxpayers would not fund the system.

The Act would prohibit the use of shell companies to funnel foreign money in U.S. elections, among other steps to prevent foreign interference.

Ensuring Ethical Government

The Act would slow down the revolving door between government and lobbyists. The Act would expand and tighten conflict of interest laws for government officials and lawmakers. Members of Congress could not serve on corporate boards. The Supreme Court would have to adopt a code of ethics.

Presidential candidates would have to disclose their tax returns.

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JAMES P. HARBISON

After receiving his bachelor's degree in Physics in 1973 and his PhD in Applied Physics in 1977 at Harvard, Jim spent the first half of his career at Bell Laboratories and Bellcore doing material science research on the semiconductor materials that form the basis of the optoelectronic revolution underlying today's worldwide communications infrastructure. This work resulted in 4 patents, over 200 professional publications and the publication of a popular book in the Scientific American Library Series entitled "Lasers: Harnessing the Atom's Light".

Jim then moved into software research. He subsequently left Bellcore to co-found a startup, which created an ultra-efficient pattern recognition software engine. This grew over the next two decades into a product that eventually became a part of IBM's Enterprise Marketing Suite of products. Jim's wide-ranging interests, fostered even in those long-gone undergraduate days at Harvard, coupled with his concern over voter suppression, have recently led him to look in greater depth at the emerging application of mathematics to the vitally important problem of eliminating gerrymandering in order to keep our democracy vital and strong.

J. RYAN O'CONNELL

Ryan received an A.B. in History from Harvard University in 1973 and a J.D. from the University of Pennsylvania in 1977. After working as a corporate lawyer and then a banker in New York City, Ryan found his true calling as a bond analyst on Wall Street. At firms such as Moody's, Citigroup, and Bloomberg, he wrote frequently about banks and other financial institutions. These firms are particularly fascinating because they are profoundly affected by the economy and government policies as well as market trends. Ryan retired in the summer of 2018.

Ryan has a lifelong interest in politics. He has written a bi-monthly newsletter on politics since 2015, providing a moderate Democratic perspective. His website is [The Wall Street Democrat](http://www.wallstreetdemocrat.com) (www.wallstreetdemocrat.com).

Ryan has published his articles in Medium, Salon and The Globalist, an English-language online daily based in Berlin, Germany.



SALLIE GOUVERNEUR, Editor

Sallie Gouverneur was a founding Board member and contributor to the development of many aspects of ClassACT, serving as the communications team for the first half of its existence. Sallie was a core member of the Benazir Bhutto Leadership Program team and a strong advocate for ClassACT's relations with the Radcliffe Institute.

Sallie found classmate Barbara Lindsey to help guide ClassAct on nonprofit issues, and through Barbara's encouragement, has become involved in healthcare equity in New Haven and surrounding areas. Sallie currently serves as Secretary and Development Committee chair for [Project Access-New Haven](#), and she spends as much time as possible at her loom.



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About ClassACT

ClassACT is an initiative of members of the Harvard-Radcliffe Class of 1973, who are working together for positive social change. The purpose of ClassAct is to address important local, national, and international problems by creating and supporting positive change.

www.classacthr73.org