

GERRYMANDERING

CURRENT ISSUES





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CENTRAL QUESTION



Should the federal government mandate that states end partisan gerrymandering?

INTRODUCTION



On April 26, 2021, the Census Bureau announced which states would gain or lose seats in the House of Representatives following the Bureau's year-long effort to count the U.S. population. Now that the census has divided up the 435 seats in the House among the states, it is up to each state to redraw its congressional districts to determine their boundaries.

Each state is allowed to make its own system for drawing congressional districts, with most using a political process that involves the state legislature and/or the governor. If one party controls the state's entire process, officials from that party can more easily draw district boundaries that align with the voting patterns of different neighborhoods, thereby increasing the number of representatives from the party to be sent to Congress. This practice—gerrymandering—has led some states to send far more members of one party than the other to Congress despite a closer statewide divide between Democrats and Republicans.

BACKGROUND



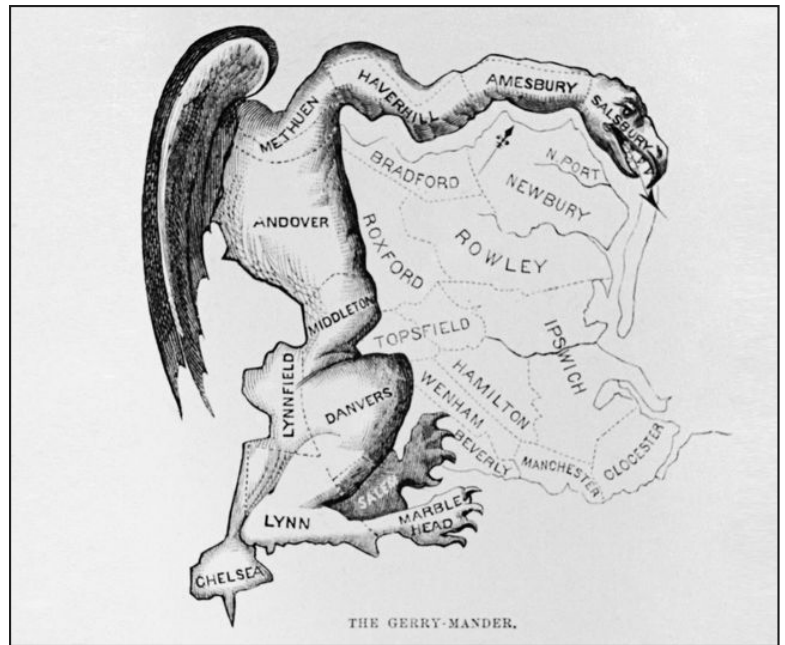
What Is Gerrymandering? Article I, Section 2 of the Constitution calls for an “enumeration,” or count, of all persons in the United States every ten years so that “Representatives ... shall be apportioned among the states.”¹ Congress took this instruction and funded a census in 1790 and every decade thereafter, so the government could ascertain the population of the country as accurately as possible. After determining the number of people residing in each state, the government would reapportion the number of representatives among the states.

The census and reapportionment are used to draw boundaries for House congressional districts and for seats in state legislatures. In most states, this process is a negotiation between the members of the state legislature and the governor. Ever since the first reapportionments, politicians and political parties have used the procedure to draw congressional districts that favor one party over the other.

For example, after the 1810 census, Governor Elbridge Gerry of Massachusetts negotiated districts for the state House of Representatives that strongly favored his Democratic-Republican Party. There were a number of oddly shaped districts, but one stood out with boundaries that started in Boston, went up to New Hampshire, and then moved toward

the Atlantic coast. Gerry's political opponents seized on the shape of the new district, which they claimed looked like a salamander, and called it a "gerrymander." Ever since the *Boston Gazette* published a political cartoon of the gerrymander, Americans have used the term to describe the politicization of the district-drawing process.²

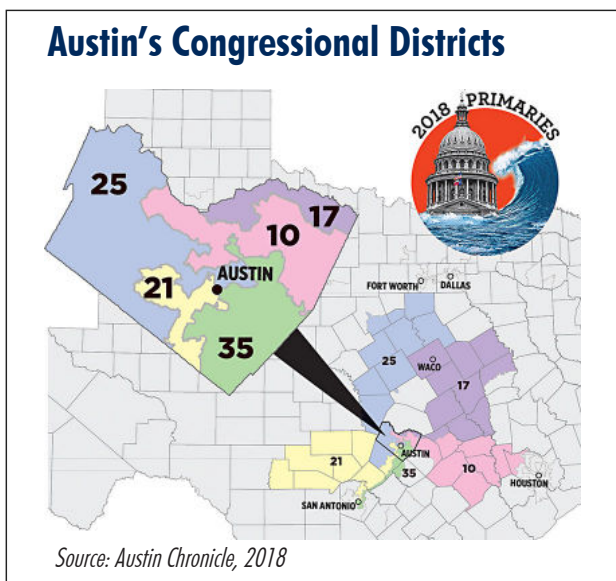
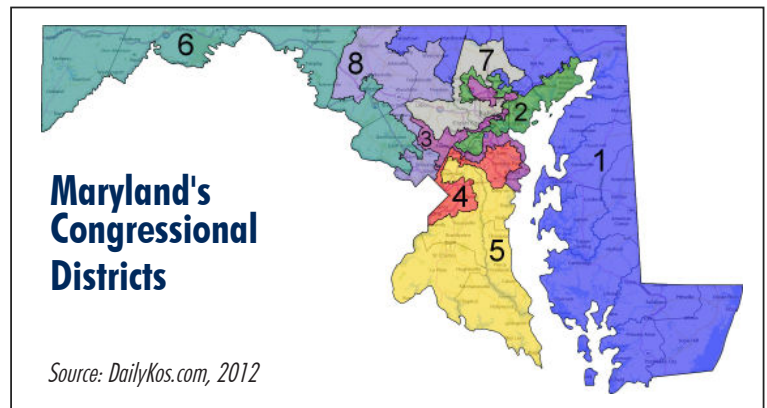
Once a state learns its number of representatives from the Census Bureau, it sets about developing new congressional districts to last for the next decade. Each of the new congressional districts must have roughly the same number of people within its jurisdiction.³ States have set out other rules, with most demanding that districts be contiguous (with all portions of the district connected to each other). Many states require that districts be compact as well (with most district residents living near each other and borders not stretched out for miles).⁴



When one party controls both of a state's legislative chambers and the governorship, the members of that party can collaborate to draw districts that will gain their party a number of seats that exceeds its share of the statewide vote. This redistricting practice is modern-day gerrymandering.

How Does Gerrymandering Work? When one party controls all levers of state government, it has two possible strategies for drawing congressional districts to give its members an advantage: packing and cracking.

Packing means putting as many supporters of the minority party in one district as possible, so the minority party has much less influence in the surrounding districts and the majority party has a large advantage in winning those other seats.⁵ Maryland's 1st Congressional District is an example of packing. If you look at the map, the 1st District is the blue district on the right. It contains a majority of the Republicans in the state, weakening the Republican presence in all of the other congressional districts and allowing Democrats to hold seven of the eight House seats in the state.⁶



Cracking allows the majority party to dilute the number of minority party voters in their strongholds. A cracking strategy splits up clusters of supporters of the minority party so they are outnumbered in their congressional districts.⁷ Austin, for example, is one of the most liberal areas of Texas. If it had its own representative, it would almost certainly be a Democrat. Instead, the city is divided among six congressional districts with the number of Democrats diluted by mostly Republican voters in the suburbs.⁸

As a result of various states packing and cracking, the political parties are at times overrepresented in terms of their overall share of the vote. Some examples include:

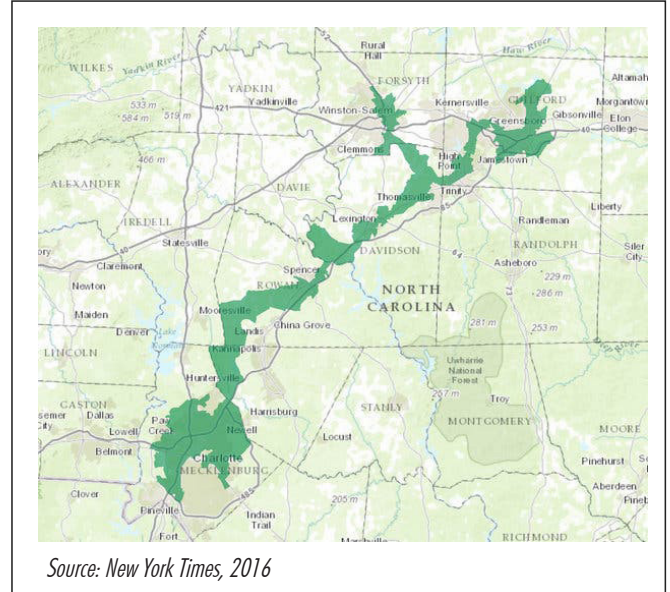
- In Pennsylvania in 2012, 51 percent of the vote for U.S. House candidates went to Democrats, but Republicans won 13 of the 18 congressional seats.⁹

- In New Jersey in 2020, Republicans received 41.58 percent of the U.S. House vote but won only one of the 12 congressional seats.¹⁰

What Is Racial Gerrymandering? After the Civil War and during the Jim Crow era, a different motivation for gerrymandering emerged: diluting the votes of African Americans. Using a cracking strategy, state legislatures approved congressional district maps that spread Black voters across a number of districts in order to ensure the election of white candidates.¹¹ In fact, between the end of the Civil War and 1968, there were never more than seven Black representatives in the House.¹²

To address this issue, the Supreme Court interpreted the Voting Rights Act of 1965 to outlaw this diffusion of minority voters. The Court required states, when appropriate, to draw “majority-minority” districts in which the majority of the voting-age population was from one specific group.¹³ As states followed the Court’s directive, more minorities were elected to the House, with the 116th Congress of 2019-2020 including 54 African Americans.¹⁴

However, in the wake of this ruling, some states used the packing strategy to place as many minorities in one district as possible, thus weakening their influence in other districts. Sometimes, this strategy went to an extreme, as was the case in North Carolina’s 12th Congressional District drawn after the 2010 census. The district was long and thin, connecting Black communities between Greensboro and Charlotte. The state’s map was thrown out by the state Supreme Court in 2017 because of districts such as the 12th.



THE CURRENT CONTROVERSY



On April 26, 2021, the Census Bureau announced how its most recent population count would divide the 435 seats of the House among the 50 states. Six states will gain seats and seven states will lose seats.¹⁵

States Gaining Seats	States Losing Seats
Texas +2	California -1
Colorado +1	Illinois -1
Florida +1	Michigan -1
Montana +1	New York -1
North Carolina +1	Ohio -1
Oregon +1	Pennsylvania -1
	West Virginia -1

Before the next state or federal elections, each state will have to draw, approve, and implement new boundaries for congressional districts. In most states, drawing district boundaries is a political process, with elected officials making the final decisions. Recently, several states have adopted commissions to draw district boundaries. Some states have special “politician commissions” on which elected officials may serve for the initial map-drawing. Once drawn, the legislative chambers approve the maps, which are then sent on to the governor to approve or veto.¹⁶



With the new apportionment of congressional seats, Republicans have complete control over the drawing of 179 districts, while Democrats have complete control over the drawing of 49. Both sides worry that the other party will manipulate the maps to their benefit.¹⁷

In response to this concern, Representative John Sarbanes, D-Md., introduced H.R.1, the For the People Act, to address a number of election issues including redistricting. The bill includes a provision mandating that states use independent redistricting commissions, which would:

- Include 15 members (five Democrats, five Republicans, and five unaffiliated members or members of smaller parties), with a majority of all three groups required to approve a map of new districts.
- Exclude elected officials, their staff, lobbyists, and political operatives from membership.
- Avoid dividing communities, neighborhoods, and political subdivisions (such as counties) as much as possible.
- Mandate the posting of the map and the data used to draw the map online, giving the public 30 days to review, comment on, and/or challenge the map.¹⁸

The House passed H.R.1 by a vote of 220-210 on March 3, 2021.¹⁹ As of September 2021, the bill has yet to be considered by the Senate. Elsewhere, a few states have adopted independent or bipartisan redistricting commissions, including Arizona, California, Colorado, and Michigan.²⁰





SHOULD THE FEDERAL GOVERNMENT MANDATE THAT STATES END PARTISAN GERRYMANDERING?



YES: Independent redistricting commissions and national standards are necessary for competitive elections and honest representation.

The current system—in which politicians are selecting their voters rather than voters selecting their politicians—has corrupted the system of democratic representation.

“Elections should be decided by the voters,” wrote Governors Roy Cooper, D-N.C., and Larry Hogan, R-Md. “Under the current system, politicians devise maps that make some votes count more than others. They rig the system with impunity.”²¹ The consequences of such a system are dangerous to the representative system of government.

“Gerrymandering also has a toxic, polarizing effect on the conduct of elected officials,” the governors continued. “It makes them more beholden to the party leaders who draw the boundaries than to the voters who live within them. They become less responsive to the full spectrum of needs in their district, and common ground and the common good take a back seat to a safe seat. It is just wrong.”²²

Partisan gerrymandering leads to a fundamental removal of the basic tenets of a representative democracy. As Supreme Court Justice Elena Kagan explained, “Partisan gerrymanders deprived citizens of the most fundamental of their constitutional rights: the rights to participate equally in the political process, to join with others to advance political beliefs, and to choose their political representatives.”²³

Gerrymandering helps to create districts that are solidly red or blue and safe for the incumbents who hold those seats. As a result, those incumbents only face a real electoral threat in the party primaries. When elections are decided in primaries, candidates are more likely to appeal to base voters and the ideological wings of their party; they are less likely to be willing to compromise across the aisle and get things done.

The best way to get a government that is more responsive to the people is to mandate that states set up independent redistricting commissions. A study of the maps before and after California instituted its redistricting commission concluded, “The [commission’s] maps are somewhat more competitive than the maps drawn by the legislature. ... The CRC congressional plan is one of the most competitive in the country.”²⁴ And in Arizona, congressional districts drawn by its commission had a margin of victory that was more than 28 percent lower than the U.S. average.²⁵ More competitive elections are good for democracy and good for the American people.



NO: The federal government should not usurp this role explicitly given to the states in the Constitution.

The American people must not be fooled into giving up the constitutionally prescribed power of the states to a distant and hyperpartisan federal government in Washington. The federal government cannot competently substitute its ideas of how to draw congressional districts for the judgment of state officials.

“[T]his idea that one-size-fits-all, this federal takeover of elections, can’t be in the interest of voters in our country,” said Senator Roy Blunt, R-Mo., of H.R.1. “It would force a single, and I believe a partisan, view of elections and how they should be run in 10,000 different jurisdictions in the country.”²⁶

The framers of the Constitution explicitly gave state legislatures the central role in drawing congressional districts, with Article I, Section 4 stating, “The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof.”²⁷ The framers understood that Congress would be a check against any abuses of the legislatures. They purposely did not put forward the idea of an unaccountable, independent redistricting commission.

The so-called independent commissions would not have to answer to anyone, unlike the members of state legislatures, who have to answer to voters. “[L]egislators at least are accountable to voters, who can vote them out of office if the voters are not satisfied with the job the legislators do,” wrote Hans von Spakovsky of the Heritage Foundation. “That’s certainly not true with the appointed members of government commissions.”²⁸

Furthermore, these commissions may be touted as “independent,” but in practice they have been found to be more political than their supporters admit. Supposedly independent commissioners are often really siding with one of the parties. “The commission essentially, all through its work, says, ‘Do we want to take the Republican or the Democratic plan,’” reported one Colorado commissioner. “What looks like a great reform ... [is] all just a cover for the political parties.” In fact, redistricting commissions in Colorado and Arizona have come under fire for their independent members actually having ties to one of the major parties.²⁹

If these independent commissions are unaccountable and cannot be insulated from partisanship, it remains far superior to have representatives in the state legislature—those who were elected as the voice of the people—draw district lines.

QUESTIONS TO CONSIDER



- 1. What is gerrymandering? What is its goal?**
- 2. What is the difference between partisan gerrymandering and racial gerrymandering?**
- 3. How does the Constitution play a role in congressional redistricting?**
- 4. Do you support a federal mandate for states to end partisan gerrymandering? Explain your reasoning.**



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- ¹⁴ Brudnick, Ida, and Jennifer Manning. "African-American Members of the U.S. Congress." Congressional Research Service. 15 Dec. 2020. Web. 9 Jun. 2021.
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- ²¹ Cooper, Roy, and Larry Hogan. "Take It from Us Governors: Politicians Shouldn't Draw Electoral Maps." *Washington Post*. 24 Mar. 2019. Web. 1 Sep. 2021.
- ²² Ibid.
- ²³ *Rucho v. Common Cause*. 139 S. Ct. 2484. 2019.
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- ²⁷ U.S. Constitution. Article I.
- ²⁸ Von Spakovsky, Hans A. "On Electoral Redistricting Panels, HR1 Would Require Racial, Gender Discrimination." Heritage Foundation.
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