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Redistricting:

The Road to Reform

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Introduction

In the past decade or so, redistricting, and more specifically gerrymandering, has become an extremely prevalent topic of discussion in the media, on late night television¹, and even in celebrity-driven public awareness campaigns.² Partisans on both sides of the political spectrum universally condemn the practice, yet many can recall at least one recent court case or one suspiciously-drawn district that has generated national attention due to allegations of gerrymandering.³ It is no mere coincidence that whenever redistricting, the process of dividing each state into new political districts, is discussed, the issue of gerrymandering, or the manipulation district boundaries to gain an electoral advantage, soon follows. And while it should be noted that each subsequent redistricting does not produce a gerrymandered district or map, the pervasive issue of gerrymandering is impossible to ignore. But if gerrymandering is so widely denounced, then why has the practice yet to be eliminated? The fact of the matter is that ending gerrymandering is a lot more complicated than fixing weird shapes and blatant partisan attempts to gain electoral advantage. Each state draws its districts through different processes, contains different communities of interest, and mandates that maps meet different requirements, creating a complex landscape that is difficult to comprehend let alone solve. In an effort to draw attention to critical flaws in the redistricting process, this report will detail how all 50 states draw new maps, highlight case studies from the past decade, chronicle recent reform efforts, and provide nuanced policy recommendations.

The Basics: What is Redistricting? What is Gerrymandering?

Before elaborating upon states' various redistricting practices, it is important to understand why it is important and why it so often results in disputes over gerrymandered districts. In every year that ends in a zero, the United States Census Bureau conducts a census to count the nation's population. This data is used to reapportion seats and redraw congressional and state legislative districts according to population shifts that have occurred within a state over the past decade. While there are some federal guidelines

governing how states must draw new district maps such as equal population⁴ and single-member district requirements,⁵ the redistricting process occurs mostly at the discretion of the individual states.⁶

Because redistricting occurs only once every decade, and in states in which incumbent politicians have significant control over the process, it can become an opportunity to solidify partisan control for the next ten years. This manipulation of district boundaries to favor one political group over another is known as gerrymandering. The term “gerrymander” was first used to describe a district drawn by Elbridge Gerry, the Governor of Massachusetts in the early 1800s, whose boundaries supposedly resembled a salamander.⁷ It should come as no surprise that one of the most pervasive, albeit not always accurate, identifiers presented in the media for whether a district has been drawn to generate electoral advantages is its shape (see *Competitiveness vs. Representativeness (vs. Compactness)*). Gerrymandering is primarily accomplished through two mechanisms referred to as packing and cracking. Packing refers to when one district is drawn to include as many voters from the opposing party as possible to help the governing party win in multiple surrounding districts. Cracking occurs when voters from the opposing party are spread thinly across several districts so that they will be unable to win elections within those districts. While racial gerrymandering is prohibited and has been used as justification to strike down maps in the courts, the Supreme Court has rendered itself unable to rule on the constitutionality of partisan gerrymandering.⁸

The COVID-19 pandemic has only further complicated the redistricting cycle in 2021. While census data would have typically been released state-by-state on a rolling basis starting in early spring, the Census Bureau has set a final deadline of September 30 and plans to release all state population data at the same time due to delays.⁹ This late release date will interfere with several states’ redistricting timelines as many states have final map approval deadlines set for before or shortly after September 30. New Jersey and Virginia even have state legislative general elections scheduled in November, leaving them unable to redistrict in time (see *New Jersey: Flawed Reforms and Census Delays*). While it is yet unclear how most states will adapt, it is certain that delayed population data will significantly impact this year’s redistricting cycle.¹⁰

Literature Review

This project is far from the first to explore the partisan implications of redistricting and the resulting difficulties associated with gerrymandering or partisan gridlock over map approval. Rather, this report seeks to synthesize data and analysis from a variety of well-established projects such as FiveThirtyEight’s “Atlas of Redistricting” and “The Gerrymandering Project,” the Princeton Gerrymandering Project, and various projects related to redistricting run by the Brennan Center for Justice to draw its own policy recommendations and conclusions in combination with original research.

As to be expected, FiveThirtyEight’s projects offer a numerical-based approach to breaking down redistricting and gerrymandering state by state. As part of “The Gerrymandering Project,” FiveThirtyEight drew eight different congressional maps for each state (except for seven states with only one congressional district) for a total of 258 state congressional maps.¹¹ One set of maps displays the current

congressional boundaries as of January 2018 and the other seven display possible districts for the U.S. House of Representatives drawn with different goals in mind. These goals include: gerrymandering districts to favor Republicans, gerrymandering districts to favor Democrats, making the partisan breakdown of seats reflective of the partisan breakdown of the electorate, promoting highly competitive elections in each district, maximizing the number of majority-minority districts, making districts as compact as possible (using an algorithm), and making districts compact while still following county borders. All districts were drawn to be contiguous and observant of the legal requirement that they be equally populous. They were also created to comply with the Voting Rights Act with the exception of maps drawn for compactness, which were created to demonstrate what districts might look like if they were drawn blind to race and political party.¹²

“The Gerrymandering Project” does not seek to normatively prescribe how districts should be drawn, but rather allows readers to compare maps drawn to achieve various goals on their merits. In each state, eight maps are ranked on factors such as probability of party control, compactness, number of county splits, number of majority-nonwhite districts, number of competitive districts, and the efficiency gap.¹³ FiveThirtyEight emphasizes that gerrymandering is easy to condemn and difficult to solve because there is no such thing as a “perfect” map.¹⁴ Rather, map desirability depends on the particular goals of a given state’s legislature or redistricting commission, and they may want to craft their maps in such a way that targets specific measures. While ideally most people would want a system which encourages compactness, competitiveness, and accurate partisan and racial representativeness, sometimes these factors are in direct conflict with one another.¹⁵

The Princeton Gerrymandering Project provides an in-depth look at how each state conducts both its state legislative and congressional redistricting process and then provides tailored solutions.¹⁶ All state pages have information about who draws district lines, criteria districts within a state must meet, and where there are provisions for public input in the process. As no state has a truly perfect system for its decadal redistricting, the Princeton Gerrymandering Project offers insight into pitfalls within each state’s system, highlights recent attempts at reform, and, finally, gives readers a list of resources and actionable measures they themselves can take to improve their state’s redistricting process. Another key feature of the Princeton Gerrymandering Project is its use of statistical testing to assess asymmetry in maps drawn up in each state.¹⁷ The three tests respectively look for distortion in the number of seats won by a party in a state that is unrepresentative when compared to national district characteristics, differences in winning vote margins between the two major parties, and the creation of reliable control over specific districts for the party in charge of redistricting.¹⁸ These tests allow us to see states where gerrymandering is likely to have occurred as well as the degree of severity, so that these issues can be specifically targeted. The Princeton Gerrymandering Project advocates for redistricting reforms based upon empirically driven formulas and the use of data crowdsourcing to promote clear standards and transparent processes.

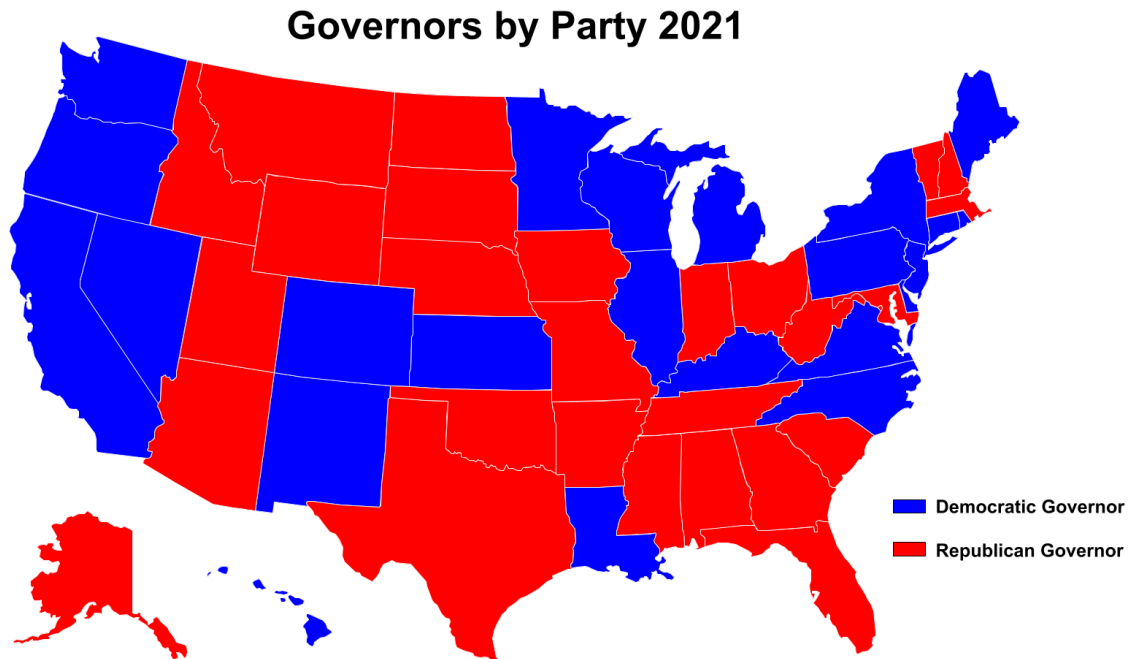
New York University Law School’s Brennan Center for Justice has published several briefs, policy solutions, reports, and additional resources as part of its “Redistricting” initiative.¹⁹ This initiative primarily focuses on advocacy for several key reform measures aimed at increased public input, bipartisanship, and transparency with its most predominant solution coming in the form of independent commissions being

implemented throughout the United States. The Brennan Center for Justice is involved in leading a nationwide campaign to implement its suggested reforms and creating resources to aid in the creation of new state laws. While the Brennan Center for Justice offers a plethora of resources on its website, this report will highlight three of them, two of which are policy solutions entitled “Creating Strong Rules for Drawing Maps”²⁰ and “A Better Way to Draw Districts.”²¹ “Creating Strong Rules for Drawing Maps” centers around the premise that there must be more explicit rules regarding the protection of communities of interest, the banning of partisan gerrymandering, and reporting requirements. Most importantly, the policy solution advocates the provision of such rules in a clear order of priority to ensure map-drawers have proper guidance and to protect against those who seek to use the redistricting process as a means of partisan gain. “A Better Way to Draw Districts” lays out the structure and commissioner selection criteria for the ideal independent redistricting commission according to the Brennan Center for Justice. Both policy solutions provide sample language with annotated guides and model bills to allow for easy adaptability for state lawmakers.

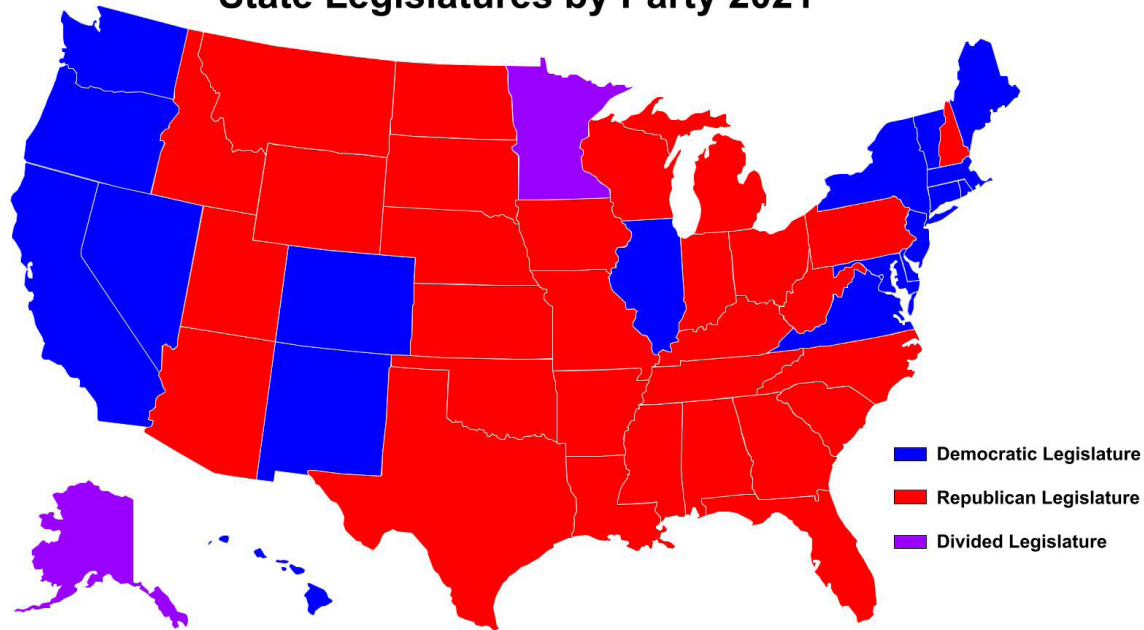
Laura Royden and Michael Li, a senior counsel at the Brennan Center, published a 2017 report entitled “Extreme Maps” that displays several significant findings regarding partisan bias in key battleground states.²² The report states that congressional maps of the past decade have been consistently biased to favor the Republican Party, and in the 26 states that account for 85 percent of U.S. congressional districts, Republicans garnered at least 16-17 seats through partisan bias in redistricting. Throughout the latest redistricting cycle, Michigan, North Carolina, and Pennsylvania have had the most extreme levels of partisan bias in favor of the GOP. Gerrymandering in these states collectively has accounted for seven to ten additional Republican seats in the 2012, 2014, and 2016 congressional elections, with states like Florida, Ohio, Texas, and Virginia being slightly less biased but accounting for most of the remaining extra Republican seats. These conclusions were derived using a series of three tests examining the efficiency gap, seats-to-votes curve, and the mean-median vote share difference utilized by the Princeton Gerrymandering Project. Critically, the “Extreme Maps” report found these seven states with the highest levels of partisan bias in congressional redistricting all had maps drawn by one party, the GOP, which had sole control of the redistricting process in 2011. However, states which had commissions, courts, or split government control over the redistricting process experienced much lesser partisan bias. This is not to say that states where Democrats had sole control of redistricting do not exhibit high partisan bias, but the number of districts these states account for creates a much smaller effect on partisan bias in the House of Representatives overall.

Redistricting at a Glance

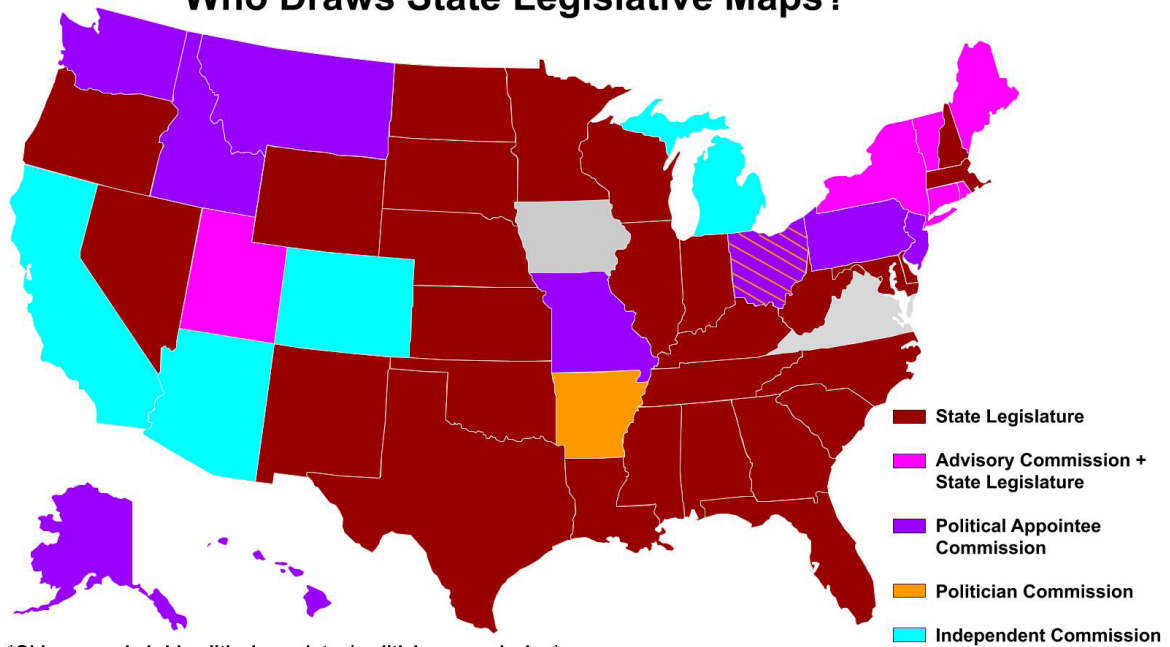
This section describes how redistricting currently functions in all 50 states. More information on state-specific processes can be found in the Brennan Center for Justice's "50 State Guide to Redistricting"²³ and Ballotpedia's state redistricting pages.²⁴



So long as Census data is not subject to exceedingly long COVID-related delays past the Census Bureau's current projections, the above map displays which party will have control of the governorship in each state at the time of redistricting. Two notable exceptions are in the states of New Jersey and Virginia where state legislative redistricting is set to be delayed until after the 2021 general election due to the late release of Census data.²⁵ As New Jersey and Virginia are the only states holding state legislative and gubernatorial elections in 2021, there is a possibility in those states that the governorship will change hands. Since these states have odd-year elections, the Census Bureau typically delivers data to them earlier than other states, but this year it will release all states' data at once, well after it would be feasible to draw new districts in time for Election Day.²⁶ Even though New Jersey and Virginia will hold another gubernatorial election before redrawing state legislative districts, it is likely that New Jersey Governor Phil Murphy will win reelection and that the Democratic nominee will win the governor's race in Virginia.²⁷ California is yet another potential variable, as Governor Gavin Newsome, a Democrat, is likely to face a recall election despite the state's liberal reputation.²⁸ So long as these governorships in question remain in the same partisan hands, 23 states will have a Democratic governor and 27 states will have a Republican governor during the upcoming round of redistricting.



Who Draws State Legislative Maps?



Ohio uses a hybrid political appointee/ politician commission

Iowa uses the Nonpartisan Legislative Services Agency with the help of an advisory commission

Virginia uses a form of redistricting commission unique to the state

****Maryland allows the Governor and a gubernatorial advisory commission attempt to pass their own maps through the legislature****

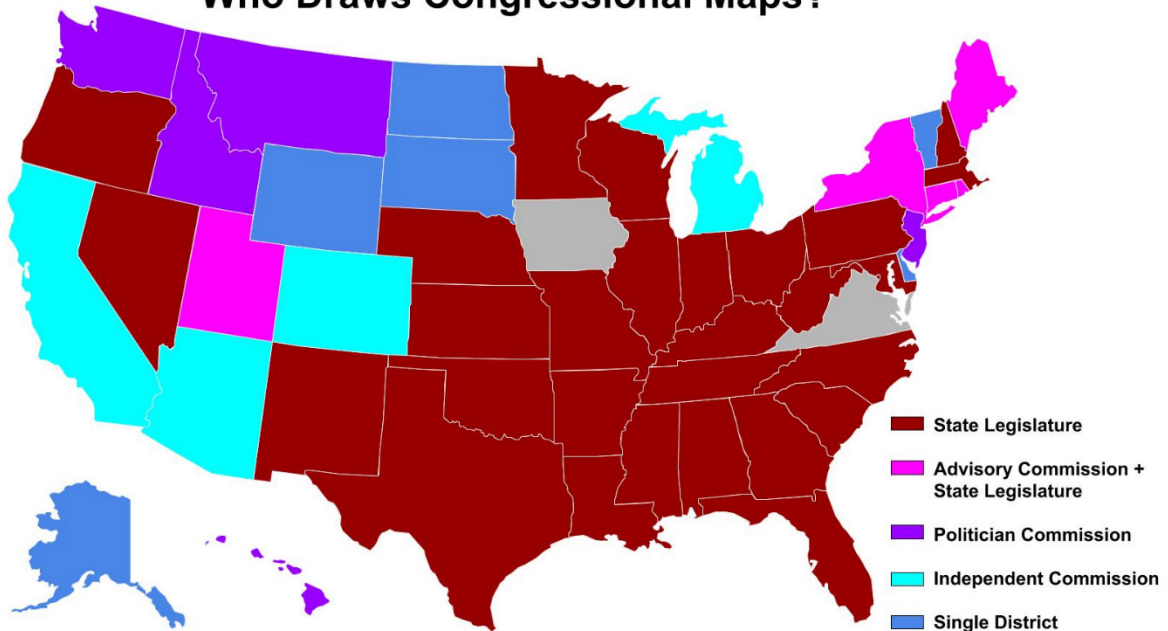
In the most common approach to state legislative redistricting—used in 27 states—the legislature draws and passes state legislative redistricting plans as it would regular legislation. (The power of the governor to veto this legislation varies by state—see section regarding *Gubernatorial Veto Power* below.) Six additional states use a similar process, but with an advisory commission that advises the legislature in drawing the maps. The state legislature then has the final say in approving them. In both scenarios, the plans must be approved with a simple majority vote in each chamber (or, in Nebraska, in the unicameral chamber), except for in Connecticut and Maine, where a 2/3 majority is required for approval. Maryland is a special case as the Governor submits a state legislative redistricting proposal assisted by a Governor-appointed advisory commission, although the state legislature may simply approve its own maps by joint resolution.

Political appointee commissions draw state legislative districts in nine states. These commissions are comprised of members who are directly appointed by elected officials, party leadership, and/or party committees. In some cases, the appointees themselves select a final tie-breaking member. In most of these commissions, the members are not themselves elected officials. Arkansas is the only state to use a politician commission fully comprised of three current elected officials, the governor, the secretary of state, and the attorney general. Ohio, meanwhile, uses a hybrid political appointee/politician commission, as the seven-member commission consists of four appointed members and three incumbent politicians, the

governor, the state auditor, and the secretary of state. Finally, four states use an independent commission comprised of members who cannot be public officials or current lawmakers and who are selected through a screening process conducted by an independent body. A few states, such as Idaho and Washington, refer to their redistricting commissions as independent commissions, yet contain members that are appointed by active politicians. For the purpose maintaining consistent definitions they will be classified as political appointee commissions in this report.

Two states will use unique methods in 2021. Since 1980, Iowa's Nonpartisan Legislative Services Agency has been responsible for drawing new district maps, consulting an advisory commission during the process.³² The state legislature then must approve the plan with a simple majority vote in both chambers; it cannot opt to pass its own maps or modify the maps created by the Nonpartisan Legislative Services Agency. Virginia voters passed a sweeping redistricting reform measure in through a 2020 ballot initiative, meaning that in 2021 Virginia will be the first state to test out a new type of redistricting commission.³³ The 16-member commission will consist of eight politicians: two Senate Democrats, two Senate Republicans, two House Democrats, and two House Republicans. The Speaker of the House of Delegates, the minority leader in the House of Delegates, the President pro tempore of the Senate of Virginia, and the minority leader in the Senate will each submit to a committee of retired circuit court judges a list of at least 16 citizen-candidates. Two commissioners will be chosen from each list for a total of eight citizen-commissioners. After the commission agrees upon its own maps, they will then be submitted to the Virginia General Assembly for final approval. The General Assembly must approve the redistricting plans by a simple majority vote and is prohibited from amending the maps.

Who Draws Congressional Maps?



Iowa uses the Nonpartisan Legislative Services Agency with the help of an advisory commission

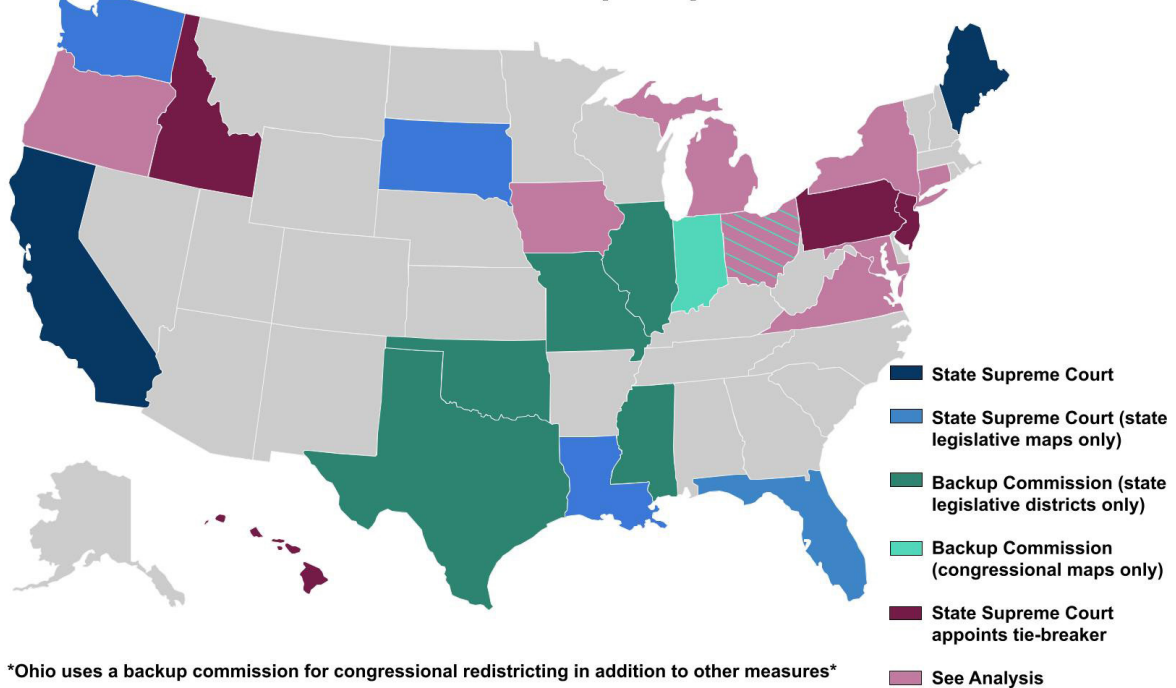
Virginia uses a form of redistricting commission unique to the state

As with state legislative redistricting, most states—28—redistrict at the federal congressional level by having state legislatures draw and pass maps as regular legislation. Five states involve an advisory commission in this legislative process. The plans must be approved by a simple majority vote in each chamber (except Nebraska, which has a unicameral legislature) with the exception of Connecticut and Maine, which require a 2/3 majority, and Ohio, which requires a 3/5 majority (including the approval of at least half of each major political party).

Four states use political appointee commissions to draw new maps and an additional four states use independent commissions. Iowa and Virginia use the same methods of redistricting for congressional districts as they do for state legislative districts.

It is important to note that six states will not require a congressional redistricting procedure during the upcoming redistricting cycle as they will be apportioned only one congressional district due to their small populations. Several of these states have never had more than one congressional district, and thus have never had to redistrict at the congressional level, leaving them without clearly defined plans in the event they are awarded a second district in the future.

Who Draws Backup Maps?



In the (relatively common) event that the body responsible for redistricting in a given state cannot come to an agreement on a map, many states have opted to have a backup plan. State supreme courts are charged with drawing backup maps in California and Maine for both state legislative and congressional maps and in Florida, Louisiana, South Dakota, and Washington for state legislative maps only. In California, after final maps are approved, they may be overturned by the public via referendum, in which case the California Supreme Court must appoint a committee to draw a new map. Backup commissions are called on to draw maps for state legislative districts in Illinois, Missouri, Mississippi, Oklahoma, and Texas, and for congressional districts in Indiana and Ohio. In the event of partisan gridlock, resulting in a tie in the political appointee commissions in Idaho, Hawaii, New Jersey, and Pennsylvania, state supreme courts appoint a tie-breaker to head the commission.

Other states have more specific and unique methods for drawing backup maps:

Connecticut: In the event that the legislature is unable to get the 2/3 majority needed to pass state legislative or congressional maps, a backup commission is convened. If the backup commission fails to adopt plan by the specified deadline, the state Supreme Court can compel the backup commission to adopt a plan or adopt a plan of its own.

Iowa: If the first maps drawn by Iowa's Legislative Services Agency (LSA) are not passed by the legislature, the LSA is given the opportunity to draft a second proposal. If that proposal fails, the LSA drafts a third proposal. If the third proposal also fails, then the state Supreme Court assumes authority over the redistricting process.

Maryland: The governor's proposed state legislative map takes effect if the legislature is unable to come to an agreement.

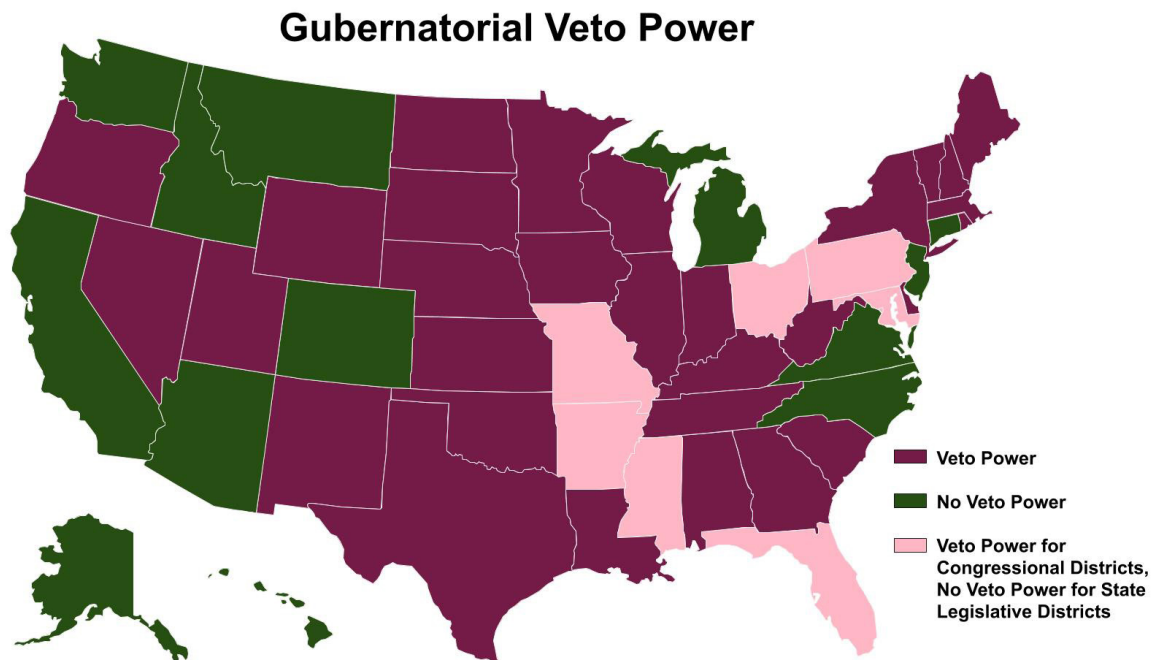
Michigan: Commissioners rank each proposed plan, and the commission will adopt the highest-ranked plan that is also ranked among the top half of plans by at least two commissioners not affiliated with the party of the commissioner submitting the plan. In the event of a tie, the Secretary of State will randomly select a proposed plan.

New York: If a map fails to pass or is vetoed by the governor, the advisory commission may submit a second map. If the advisory commission's second map fails, then the legislature may substitute in its own amended map.

Ohio: State legislative maps can be passed for four years instead of ten with a simple 4/7 majority of the redistricting commission. If the state legislature is unable to approve a congressional map, a backup commission intervenes. If the backup commission is unable to get the necessary votes to approve a congressional map, the state legislature gets a second attempt. If the state legislature is unable to get the necessary votes to pass a congressional map for ten years, a lesser threshold can be met to pass the map for a four-year period.

Oregon: If the state legislature is unable to pass a map, Oregon's Secretary of State is responsible for drawing the state legislative map only.

Virginia: The Virginia General Assembly may either pass or reject maps (without amending them) drawn by the redistricting commission. If a map is rejected, the commission gets a second chance to redraw district lines. If this map fails again, the state Supreme Court will establish districts.



Governors have veto power over state legislative and congressional maps approved by state legislatures in 29 states. Each of these 29 states pass maps as regular legislation. Some states, however, have different veto rules for state legislative maps than for congressional maps. In seven states, the governor has veto power over congressional maps but not for state legislative maps. Three of those states—Florida, Mississippi, and Maryland—expressly deny the governor the power of veto over state districts by law, while Arkansas, Missouri, Ohio, and Pennsylvania use different approaches for federal and state maps. Those four states rely on the legislature for drawing congressional maps but a non-legislative system for passing state legislative maps, thus revoking the governor's ability to veto.

In 12 states, the governor has no veto power over state or federal maps because the new maps are not passed as regular legislation, and thus the governor does not have the power of veto.

Finally, in North Carolina, while the legislature does pass both state and federal maps as regular legislation, the governor is expressly denied veto power over those maps.

Special Gubernatorial Powers

The following is a list of special gubernatorial powers by state, as they relate to redistricting. While most electoral reform groups focus primarily on the power of the legislature during redistricting, in several states the governor has the ability to heavily influence the drawing and passage of new maps beyond the scope of the gubernatorial veto. States that do not appear on this list do not provide their governors with special redistricting powers.

Alaska: The governor directly appoints two out of five commissioners on the political appointee commission.

Arizona: The governor, along with a 2/3 vote in the Arizona State Senate, can remove a commissioner from the independent commission "for substantial neglect of duty, gross misconduct in office, or inability to discharge the duties of office."

Arkansas: The political commission charged with drawing state legislative maps is comprised of 3 members one of whom is the Governor.

Indiana: The governor appoints one of the five members of the backup commission. The backup commission intervenes only for congressional maps.

Maryland: The governor submits a state legislative redistricting proposal which will become law if the legislature cannot pass its own maps. The governor is assisted by an advisory commission that is appointed solely by the governor.

Missouri: For state legislative redistricting, there are two political appointee commissions, one for the state senate and one for the state house of representatives. For the senate redistricting commission, the state committee of each major party chooses ten nominees from which the governor chooses five per party, for a total of ten commissioners. For the house redistricting committee, the congressional district committee from each major political party nominates two members per congressional district, for a total of 32 nominees, from which the governor chooses 16 commissioners.

Ohio: The state legislative redistricting commission consists of seven members, one of whom is the governor. If the legislature fails to adopt a new congressional map, a seven-person backup commission, which is the same as the state legislative redistricting commission, intervenes.

Oklahoma: The governor appoints one Democrat and one Republican to the backup commission, if necessary. The backup commission is for the state legislative map only.

Utah: The governor selects the chairperson of the seven-member advisory commission.

Vermont: The governor appoints one resident from each major political party to the advisory commission. In order to qualify as a major political party, a party must have had "at least three state legislators for six of the previous ten years."

Gubernatorial Power Rankings	
Higher than average amount of power	Alaska, Arkansas, Maryland, Missouri, Ohio, Utah, Vermont
Average amount of power	Alabama, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, West Virginia, Wisconsin, Wyoming
Lower than average amount of power	Arizona, Florida, Mississippi, Pennsylvania
Virtually no power	California, Colorado, Connecticut, Hawaii, Idaho, Montana, New Jersey, North Carolina, Virginia, Washington

The chart above categorizes the gubernatorial redistricting powers of every governor in the United States. Most governors simply have veto power over districts drawn by their state's legislature, which I have classified as an "average" amount of power in the redistricting process. The governors of Arkansas and Ohio arguably have the greatest amount of power of all United States governors, as they sit directly on the committee responsible for redrawing their respective state legislative districts. In Maryland, the governor submits a state legislative redistricting proposal (assisted by a governor-appointed advisory commission), but the legislature can still choose to pass its own proposal. In Alaska and Missouri, the governor makes

appointments to a political appointee commission in charge of redistricting and in Utah and Vermont, the governor appoints members to serve on advisory committees for congressional redistricting. The governors of Florida, Mississippi, and Pennsylvania have slightly less than average redistricting powers because they have no role to play in the state redistricting process, but they still have veto power over congressional maps. In Arizona, the governor is not involved in the redistricting process save for the fact that he or she could remove a commissioner with a 2/3 vote from the state senate “for substantial neglect of duty, gross misconduct in office, or inability to discharge the duties of office.” The governor has no explicit power in the process in some states because they rely on either independent commissions or political appointee commissions in which the governor does not pick any appointees. In the case of North Carolina, the state legislature redraws districts and the governor has no veto power.

Commission Structure

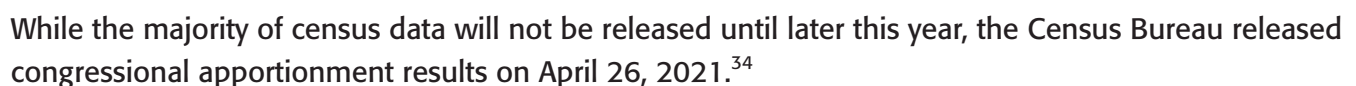
While state legislatures around the country generally have a standardized method of redistricting, commissions tend to differ quite a bit. The number of commissioners in each commission varies drastically by state; Arkansas’ commission consists of only three members while Missouri’s redistricting commissions will consist of a whopping 20 members each. Some commissions require only a simple majority for the approval of a map, while others require greater thresholds. As in the case of California, Colorado, and Michigan, states can require that in order to approve a map, the commission needs a certain number of votes from each partisan group within the commission to ensure bipartisan support. Some states also have requirements regarding partisan makeup of their commissions. For example, California’s independent commission must consist of five members of the state’s majority party, five members of the minority party, and four belonging to neither party. Missouri’s commissions must have ten members of the majority party and another ten from the minority party. No two advisory commissions, political appointee commissions, or independent commissions look exactly the same or must abide by the same rules.

The power of advisory commissions varies significantly as well. In most states with an advisory commission, the legislature can choose to disregard the commission’s maps and simply pass maps of its own. However, in New York, the legislature must vote on the advisory commission’s maps twice without amendment before having the ability to pass its own.

The selection process for commission members is also quite divergent across the country. Members of political appointee commissions can be selected by legislative leadership, state party committees, the governor, judges, or any combination of the four. Typically, if the commission has an odd number, the final tie-breaking commissioner will be selected by the other appointees to the commission or by the chief justice of the state supreme court.

The selection process for independent commissions is perhaps the most diversified of all the commission types. In California, a panel of nonpartisan state auditors selects a pool of nominees comprising of 20 Democrats, 20 Republicans, and 20 belonging to neither party from which the commissioners are appointed. The majority and minority leaders of both chambers of the state legislature may remove

Congressional Reapportionment



For the vast majority of states where a change in the number of districts is predicted, the potential gain or loss is only one congressional seat. The one exception is Texas, which will gain two congressional seats. Montana currently has one at-large district, but after the 2020 Census it will gain an additional seat, meaning that congressional redistricting will occur in the state for the first time in decades. Luckily, Montana has had more than one congressional district before and therefore has a plan in place to use its existing political appointee commission to draw congressional districts as well.

Case Studies

Redistricting, and even more so, gerrymandering, have become two hot-button issues in recent years thanks to public awareness campaigns by organizations such as Common Cause,³⁵ Indivisible,³⁶ FairVote,³⁷ and the League of Women Voters³⁸ as well as high-profile efforts by celebrities like former Governor of California Arnold Schwarzenegger.³⁹ The four cases detailed below were chosen because they each represent a unique issue related to redistricting which highlights the complexities surrounding reform.

Partisan Gerrymandering and the Supreme Court

While the Supreme Court has heard several highly publicized cases related to partisan gerrymandering, recent decisions have barred the highest court in the United States from doing much to stop the practice. In October 2017, the Supreme Court heard *Gill v. Whitford*, a case centering around the gerrymandering of state legislative districts in Wisconsin to favor the Republican Party.⁴⁰ The plaintiffs argued that the current map violated the First Amendment because it penalized Democratic voters for their political beliefs and the Equal Protection Clause of the Fourteenth Amendment because the political influence of a group of voters was being diluted. A district court created a three-part test which declared a map invalid if it intended to discriminate based on party identity, caused a “large and durable” swing in partisan state representation, and lacked any justification except to give one party a political advantage. In order to determine whether a “large and durable” swing was present, the district court relied on the efficiency gap, a statistical test prominently used to determine whether political gerrymandering is present.⁴¹

The district court already ruled in favor of the Democrats, so if the Supreme Court ruled similarly, the case would have been a landmark victory for redistricting reform. Instead, Chief Justice John Roberts described these statistical methods attempting to quantify gerrymandering as “sociological gobbledygook” and the Supreme Court went on to hear two other similar cases, *Bensiek v. Lamone* and *Rucho v. Common Cause*, before *Gill* was even decided.^{42, 43}

Bensiek v. Lamone was a case from Maryland concerning its Sixth Congressional District. For two decades, the Sixth District sent the same Republican congressman, Roscoe Bartlett, to Washington until the Democratic legislature redrew the district in 2011. In 2012, the first congressional election cycle post-redistricting, the long-time incumbent solidly went down in defeat to Representative John Delaney, a Democrat.⁴⁴ Affected Republican voters filed suit claiming that the large partisan variation diluted their voting power and thus violated the First Amendment.⁴⁵

The *Bensiek* case was thought to be a more likely win for anti-gerrymandering efforts than previous cases given that it did not rely on a complex system of tests and only one district's constitutionality was being challenged, avoiding an expansive ruling which could overturn a state's entire map.⁴⁶ *Bensiek* was heard by the Supreme Court alongside *Rucho v. Common Cause*, a case regarding Republican gerrymandering of North Carolina's congressional map. Despite the statewide vote being nearly evenly split between Republicans and Democrats, in 2016 and 2018 Republicans won ten congressional seats and Democrats won only three.⁴⁷ Both cases were the results of appeals following decisions from district courts which threw out the maps as unconstitutional.

In a 5-4 decision, the Supreme Court ruled that the topic of partisan gerrymandering was a political question, not a legal one and therefore that it was not within the jurisdiction of federal courts.⁴⁸

While the Supreme Court has previously invalidated maps which displayed evidence of gerrymandering based upon race, it has never struck down maps based on a partisan gerrymander because justices have yet to agree upon a legal standard constituting illegality.⁴⁹ The majority opinion, written by Chief Justice Roberts and joined by four other conservative justices, neither condoned nor endorsed partisan gerrymandering, but rather said that Congress and the states should deal with the issue.⁵⁰ Additionally, Chief Justice Roberts wrote that the Constitution does not currently provide a discernable legal standard for partisan concerns over redistricting.⁵¹ Some state constitutions, however, have more explicit language which makes it easier to invalidate partisan maps at the state level.⁵² However, with the current conservative Court, it seems unlikely any measures attempting to rectify partisan gerrymandering will come from federal courts.

The Pennsylvania Supreme Court and Gerrymandering

Prior to 2018, Pennsylvania was often cited for having maps exhibiting some of the worst cases of partisan gerrymandering in the entire country, even making national headlines and garnering infamy for its seventh congressional district which was said to resemble "Goofy kicking Donald Duck."⁵³ At the time of the 2011 redistricting, Republicans controlled the governorship and both chambers of the General Assembly. Since the state legislature was charged with drawing congressional maps and the governor, who had veto power, was a member of the same party, it was relatively easy to pass maps favorable to Republicans. Despite being a relatively purple state, backing governors, senators, and presidential candidates from both parties within the decade, in 2018 Republicans controlled 13 of Pennsylvania's 18 congressional seats.⁵⁴

This led Democrats in the state to claim an unfair advantage was given to the Republican party in violation of state and federal law, leading to the filing of *League of Women Voters of Pennsylvania v. the Commonwealth of Pennsylvania*.⁵⁵ Evidence presented by the plaintiffs suggested that up to five Republican-held seats would be Democratic had a "neutral" map been in place.⁵⁶

Eventually the case made its way to the Pennsylvania Supreme Court which struck down the existing congressional map in January 2018. The court found the map to violate Pennsylvania's constitution which contains a clause guaranteeing that "elections shall be free and equal."⁵⁷ The majority opinion claimed

that an election corrupted by extensive, sophisticated gerrymandering and partisan dilution of votes is not 'free and equal.' The state supreme court set a quick deadline to adopt remedial maps ahead of the scheduled primary elections in May and issued an order appointing Nate Persily, a Stanford University law professor, to assist the court if necessary.⁵⁸ While several parties including Republican and Democratic leadership in the General Assembly, Governor Tom Wolf, Lieutenant Governor Mike Stack, and the petitioners all submitted proposals, the situation was so contentious that ultimately the court decided to adopt Nate Persily's congressional plan.⁵⁹

Republican legislators attempted to get the United States Supreme Court to stay the Pennsylvania Supreme Court's decision and therefore reinstate the old congressional map, but they were unsuccessful.⁶⁰ The appeal failed because the Pennsylvania Supreme Court's decision was based solely on state law and was therefore beyond the jurisdiction of federal judges.⁶¹ The presence of a more clearly defined state law upon which the Pennsylvania Supreme Court initially ruled marks the key point of differentiation between this case and those previously mentioned where the gerrymandered maps stayed in place. There is hope that partisan gerrymanders can be overturned in the court system after all, but this is dependent upon state law and the individual rulings of state supreme courts - not sweeping decisions from the federal level. Following the adoption of Pennsylvania's remedial congressional maps and the 2018 General Election, Pennsylvania sent a delegation to Washington much more representative of the partisan makeup of the state with nine Democrats and nine Republicans in total.⁶²

New Jersey: Flawed Reforms and Census Delays

While Republican lawmakers are frequently chastised for their stonewalling of much-needed redistricting reforms or flat-out making the process worse, Democrats are not innocent of these faux pas either. Take the state of New Jersey for example, where Democrats in the state legislature were recently behind not one, but two, highly controversial constitutional amendments regarding the way the state draws its maps.

One such proposed constitutional amendment was proposed in late 2018 with the intention of letting voters weigh in via referendum in the following year's November General Election.⁶³ The amendment, if passed, would have significantly altered New Jersey's state legislative redistricting process. State legislative districts are currently drawn by a 10-member political appointee commission with an equal number of Democratic and Republican appointees. The appointees are selected by their party's respective state chairs. In the event of a partisan gridlock, and there usually is, the chief justice of the state supreme court appoints a neutral tiebreaker. Under the proposed amendment, there would be a 13-member commission where the state party chairs would each only appoint two members.⁶⁴ The majority and minority leaders from both state legislative chambers would each pick two members, with at least one appointment from each leader being a member of the legislature, and the final member would be appointed by the chief justice. Transferring power into the hands of legislators is a practice which is universally condemned

by voting rights activists over fears of maps becoming more politicized.⁶⁵ Legislators would be directly involved in the process of drawing the districts which they represent, and the move was viewed as a power grab.

Even more concerning was the proposed amendment's definition of competitiveness. Under the proposal, competitiveness would be defined based on a party's performance index, allowing newly drawn districts to favor a certain party if that party's percentage of votes for president, senator, or governor exceeded the statewide percentage over the past decade.⁶⁶ Since New Jersey is generally a blue state, there were concerns that this definition would be used to bake in a partisan advantage for the Democrats, although Professor Sam Wang of the Princeton Gerrymandering Project argued that the legislation was so poorly designed that it could also manifest itself into huge gains for the GOP following a cycle or two of moderate Republican waves.^{67, 68} Ultimately, the proposal never made it onto the ballot and thus never came into fruition due to intense backlash from Republicans and especially from grassroots progressive activists in the state.⁶⁹

However, this was not the Democrats' last attempt at a divisive redistricting-related constitutional amendment in the state. New Jersey and Virginia are the only two states to hold state legislative elections in 2021, making it critical that they receive Census data on time in order to redistrict ahead of primary elections. However, the COVID-19 pandemic and its associated logistical problems has created concerns that Census data will experience significant delays. Democrats' solution came in the form of Public Question 3, a public ballot question which would constitutionally amend New Jersey's redistricting process and postpone state legislative redistricting until after the 2021 general election if Census data was received by the state after February 15, 2021.⁷⁰ This delay would mean that current state legislative districts would be kept in place until 2023. Additionally, the delayed timeline would be in effect in all future redistricting cycles if Census data is received after the February 15th deadline.

The public question received a lot of criticism from Republicans, progressives, and voting rights organizations alike. Opponents pointed out that instead of permanently amending New Jersey's constitution, the government could simply push back the dates of the scheduled elections as the governor did for the 2020 primary elections due to the pandemic.⁷¹ Additionally, they found the February 15 deadline to be unnecessarily early as the state got Census data later than this date in the previous two redistricting cycles and managed to redraw district lines just fine. Republicans in the legislature argued that the constitutional amendment was about protecting Democratic incumbents for another election cycle.⁷²

Progressives and voting rights organizations were upset by the disadvantage to rapidly growing communities of color.⁷³ Since the last Census, Black, Latino, and Asian populations in New Jersey have grown significantly, entitling their communities to additional representation in the upcoming redistricting. Postponing redistricting would therefore postpone adequate legislative representation. Nevertheless, Democratic sponsors of the amendment maintained that there was simply no better option to the one they put on the ballot, and on November 3, 2020, 58% of New Jerseyans approved the public question amending the state constitution.^{74, 75}

Virginia's state legislative redistricting process will also be impacted as the state will be holding elections for the House of Delegates in November. While it is already too late for new districts to be implemented in time for the upcoming elections, as of the publishing of this report there are no plans to amend the state's constitution as seen in New Jersey. There is speculation that the redistricting delay could result in House members running in special elections in 2022, but the full House is scheduled to be up for election again in 2023 regardless.⁷⁶

Clean Missouri

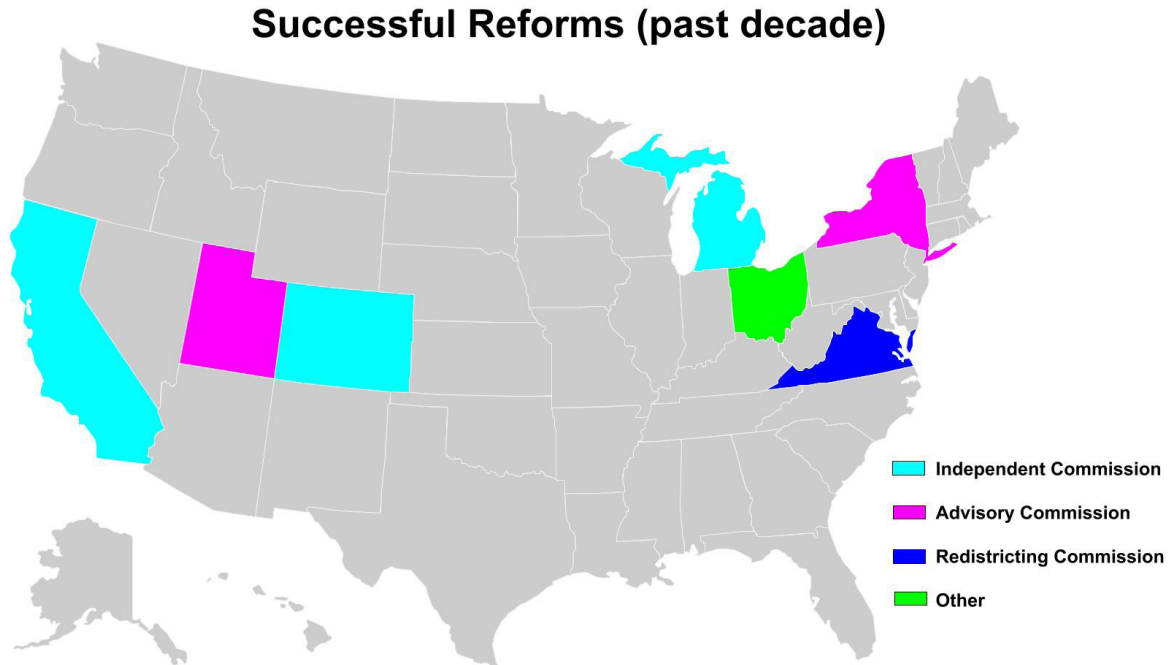
The 2018 midterm elections were a time of sweeping redistricting reforms in states such as Colorado, Michigan, Missouri, Ohio, and Utah. However, these changes in Missouri did not last long, and the story of their undoing provides an interesting view into challenges other reforms may face in the future.

In 2018, Missouri voters approved a ballot initiative known as Clean Missouri.⁷⁷ Clean Missouri provided an innovative solution to the oftentimes fraught redistricting process – have a state demographer create state legislative maps with the explicit goal of drawing lines which promote competitiveness and fairness. Majority and minority leaders of the state senate would jointly select a demographer to ensure bipartisanship. Prior to the introduction of the state demographer, separate political appointee commissions drew maps for the Missouri House and Senate. The commissions still retained some power given that they could overrule the demographer's maps, but 70% of members would need to agree on an alternative solution, a very unlikely scenario.⁷⁸ In addition redistricting reforms, Clean Missouri included provisions related to campaign finance and lobbying such as limiting lobbyist gifts to legislators, instituting two-year waiting periods before legislators and their staff may register as lobbyists, and limiting campaign donation limits.⁷⁹

Despite 62% of voters approving the constitutional amendment, there were many prominent detractors amongst the state GOP and even some African American leaders.⁸⁰ The contention among both groups surrounded Clean Missouri's mandate of creating competitive state legislative districts above all else. Republicans claimed that this provision was an attempt to help Democrats eat into Republicans' supermajorities in the General Assembly by breaking up historical district boundaries. They also raised alarm that prioritizing competitiveness would create districts which took on odd shapes and were narrowly spread out because most of Missouri's Democratic voters are concentrated in St. Louis and Kansas City while Republican voters are spread throughout the state. This was a concern shared by some leaders in the Black community. They feared that competitive districts would dilute percentages of African Americans in majority-minority districts, thus making it possible for white candidates to win, although experts at the Brennan Center for Justice argued that language in the amendment actually protected minority participation.⁸¹

Doing everything in their power to ensure Clean Missouri would not stand, the GOP quickly drew up yet another constitutional amendment to appear on the 2020 ballot and mounted a public awareness campaign. The public question, known as Amendment 3, essentially undid all of the redistricting reforms outlined in the Clean Missouri amendment.⁸² It eliminated the nonpartisan demographer and returned state legislative redistricting control to the political appointee commissions. Map approval would still require a 70% commission vote, likely resulting in deadlock as has occurred frequently in past decades, meaning that a backup commission of judges would ultimately be tasked with redistricting.⁸³ Amendment 3 reduced the importance of ensuring competitive districts, and required that contiguous districts with simple shapes be prioritized.⁸⁴ Additionally, Amendment 3 included provisions banning lobbyist gifts and reducing campaign contribution limits which were controversially emphasized in the ballot summary above the repeal of the new redistricting system.⁸⁵ Before the redistricting measures outlined in Clean Missouri could even be tested out, 51% of voters narrowly reversed their decision and approved Amendment 3 in November 2020. Due to the fact that Amendment 3 emphasized anti-corruption measures, some reformers argued that voters did not understand they were repealing rather than building upon Clean Missouri's reforms.⁸⁶ Republicans refuted these claims and said that Clean Missouri similarly encompassed a wide range of reforms, maintaining that Amendment 3 simply allowed voters a chance to reconsider.

Reform Efforts

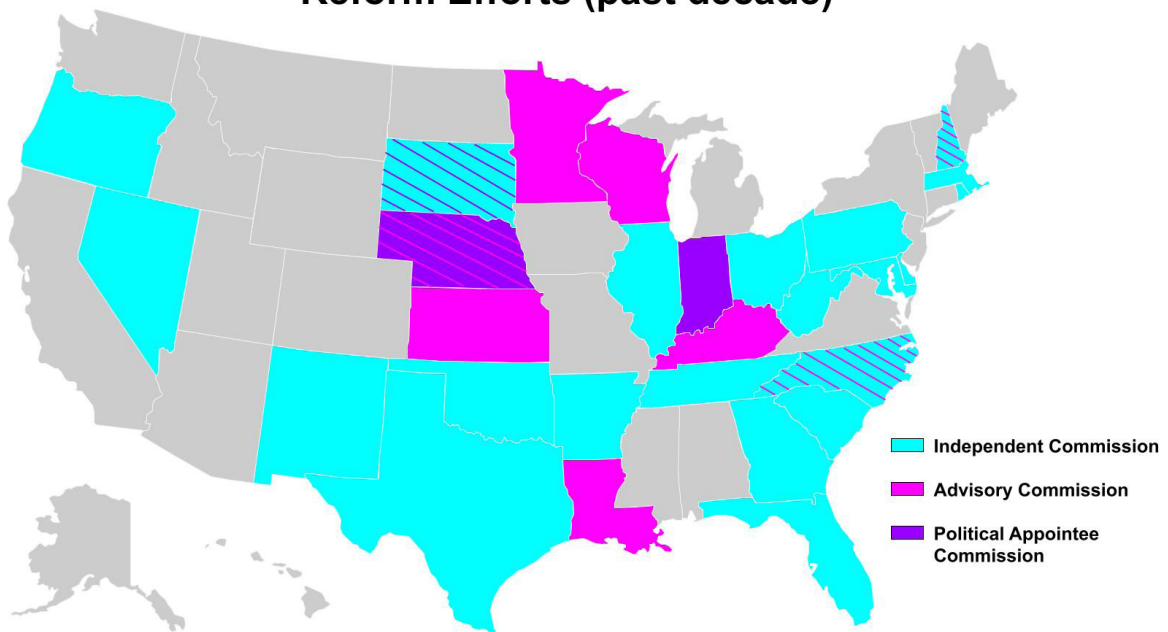


The past decade has seen far more successful redistricting reform measures than any decade prior. In the year 2018 alone, five states (Colorado, Michigan, Missouri, Ohio, and Utah) successfully passed significant reforms overhauling previous redistricting practices.^{87, 88} Ohio's reforms are unique in that they did not change what methods the state used to draw lines, but rather reformed state legislative and congressional redistricting practices to be more bipartisan.

Historically, the "default" method of redistricting involves the state legislature drawing and passing redistricting plans as it would regular legislation, needing only a simple majority of legislators to approve a map subject to gubernatorial veto. Any state deviating from this traditional system most likely instituted reform measures within the past several decades. Currently, 23 states rely on some form of commission to either draw and approve maps or to assist in the redistricting process. An interesting observation is that no state that has switched from the state legislature being solely responsible for redistricting to some commission has ever gone back to using the state legislature. This observation suggests a general trend away from state legislatures drawing maps. However, this is not to suggest that state legislatures have happily relinquished their redistricting powers without protest. The Arizona Independent Redistricting Commission has faced backlash from the state legislature which has challenged maps and even the commission's constitutional authority to draw congressional maps. In 2015, the U.S. Supreme Court issued

a ruling in *Arizona State Legislature v. Arizona Independent Redistricting Commission* which upheld the redistricting commission's authority.⁸⁹ Additionally, no state has ever gone from using an independent commission to a political appointee commission, but in 2018, Colorado voted to replace its political appointee commission with an independent commission. Most political appointee commissions were created in the latter half of the 20th while the independent commission seems to be the more popular reform route in recent decades.

Reform Efforts (past decade)



Information regarding attempted reforms was collected primarily from Ballotpedia and the Princeton Gerrymandering Project. This section seeks to elaborate upon recent trends in redistricting reform, and it is not intended to be an exhaustive account of all reform efforts attempted in the past decade.

Recent attempts at reform also suggest the increasing popularity of independent commissions, with at least 21 states attempting, in some way, to institute such a commission either through legislation or through a ballot initiative campaign. Attempts to establish advisory commissions have also proven popular in states in which the state legislature is tasked with drawing new district lines. In most cases where reforms were introduced in the legislature, the bills died in committee, suggesting a lack of majoritarian support amongst legislative leadership or the legislature in general, as they would lose a great deal of power over the redistricting process. State legislatures in Maryland and New Hampshire actually managed to pass substantive reform measures, but these reforms were subsequently vetoed by the governor without enough votes in the legislature to override said veto. In 2017, the Maryland General Assembly passed a bill which would establish an independent commission, although its enactment would have required passage of the same legislation in five other states: New York, New Jersey, Pennsylvania,

Virginia, and North Carolina.⁹⁰ The state legislature in New Hampshire passed a bill in 2019 to create an independent commission and a bill in 2020 to create an advisory commission, although both were ultimately vetoed.

Ballot initiatives have proven to be a much more effective strategy in terms of implementing redistricting reforms, but they by no means guarantee a reform's victory. Public questions which would establish independent redistricting commissions made it onto the ballot in Ohio in 2012 and in South Carolina in 2016, but they were defeated by voters. Additionally, 24 states do not even feature a process for citizens to propose ballot initiatives, making this strategy unviable.⁹¹ Other states have strict signature requirements which are difficult to meet, leading potential redistricting reform initiatives in 2020 to be thrown out by the courts in Arkansas and North Dakota.⁹²

However, the single biggest obstacle to redistricting reform via ballot initiative was indisputably the COVID-19 pandemic. Considering the success of ballot initiatives in 2018 and the fact that redistricting would take place in the upcoming year, there was a lot of energy in early 2020 to get redistricting reforms on the ballot. However, signatures to get referendums on the ballot must be collected in person, not electronically, and considering the need to socially distance, it was nearly impossible for organizers to hold events or go door-to-door with petitions.⁹³ Attempts to get redistricting reforms on the November 2020 ballot failed due to lack of signatures in states such as Nebraska, Nevada, Oklahoma, and Oregon. Despite overwhelming support amongst voters in Illinois for a legislatively initiated constitutional amendment which, if passed, would have created an independent commission, the pandemic led to legislative stagnation and the deadline for putting the amendment on the November 2020 ballot to pass without so much as a hearing.⁹⁴

Unique Reforms

Not all redistricting reforms take such a conventional approach; there are more ways to reform redistricting practices at the state level beyond changing who draws the lines or the number of votes needed to pass maps. Delaware is one such state to propose a unique solution based off a paper written by three Carnegie Mellon University professors entitled: "A Partisan Districting Protocol with Provably Nonpartisan Outcomes."⁹⁵ If implemented, this method would allow the two major parties in the state legislature to work together, taking turns freezing and redrawing districts.⁹⁶ Essentially one caucus would draw all the new legislative districts before handing them off to the second caucus which would have the ability to "freeze" a number of districts. The second caucus would then redraw remaining districts, hand the map back to the first caucus, and the process would repeat until all districts are set in place. The thought process behind this method is to ensure both parties' active involvement in the process and bipartisan cooperation.

States have also come up with innovative solutions as to how to involve greater public input into the redistricting process. The Indiana Senate introduced a pair of bills in 2020 which would have ensured that the public would have the tools and knowledge available to draw maps and submit them to the legislature for consideration.⁹⁷ While the bills ultimately died in committee, they would have created a formal redistricting portal and mandated joint legislative hearings to add more public input. Similarly, in 2017 West Virginia's legislature proposed resolutions to allow citizens to participate directly in the formation of legislative districts by creating a nonpartisan citizen commission.⁹⁸ The commission would act almost as an advisory commission, holding public hearings around the state and presenting a redistricting bill to the legislature. While neither of these efforts succeeded, they serve as examples as to what future reforms could resemble.

In order to ensure impartiality, a group known as North Dakota Voters First offered a ballot initiative requiring a five-member Ethics Commission to unanimously approve state legislative districts.⁹⁹ The commission would also agree upon an expert demographer to assist with redistricting. Essentially, the Ethics Commission would serve as yet another safeguard to check the power of the state legislature. The initiative never made it onto the ballot due to technical legal requirements.

Electoral reform groups offer even more unique proposals that we may see states attempt to adopt in the future. FairVote is a proponent of proportional representation reforms such as super-districts and districts plus. Super-districts would require states to have fewer districts, but each district would be larger and elect multiple legislators to Congress.¹⁰⁰ The implementation of super-districts would eliminate winner-take-all districts, thus allowing representatives to speak for more diverse communities and making elections more competitive. The districts plus system would serve as a sort of hybrid between super-districts and the current single-member district system, and it would be akin to the electoral system used for Germany's parliament. Most legislators would be elected from local districts just as they are now, and additional "accountability seats" would be added to the legislative body to compensate for partisan unfairness in local district elections.¹⁰¹ For example, in legislative body with 100 seats, 20 of which are accountability seats, a party winning 50% of the vote statewide but only 38 local districts would be awarded 12 accountability seats. The implementation of super-districts or a districts plus system is currently possible for state legislative districts, but not congressional districts. Congress would first have to repeal the 1967 Single-Member District Mandate, which prevents congressional districts from having more than one representative.¹⁰²

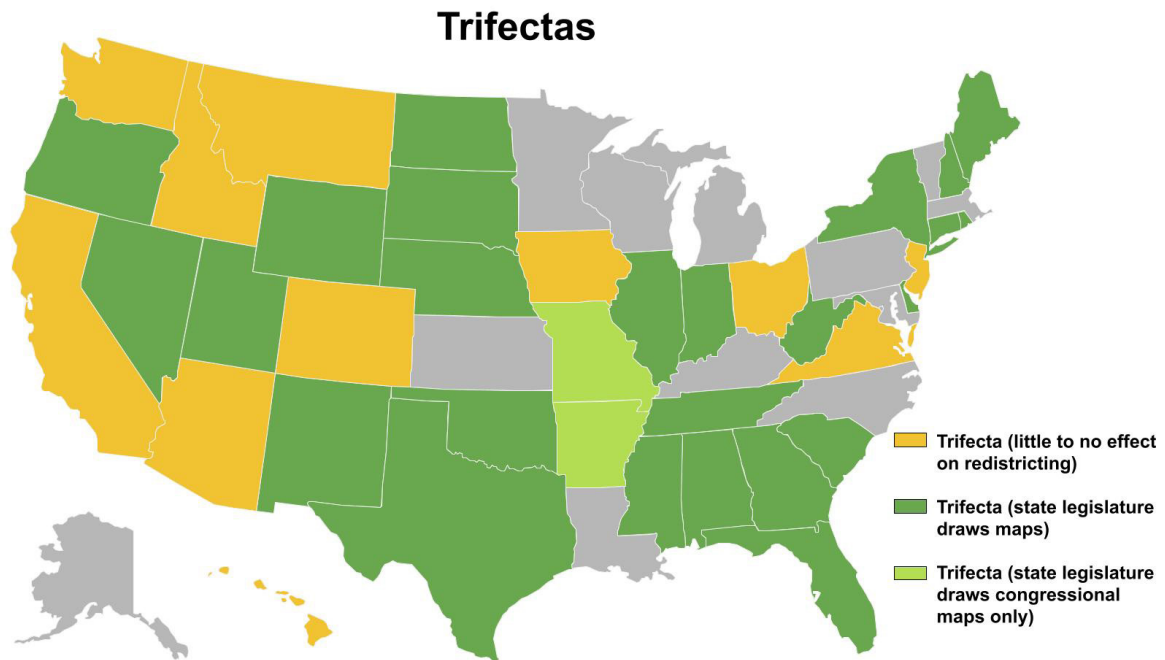
Dilemmas in Redistricting

The redistricting process is complicated and reform efforts are not without their downsides for certain groups. Legislators, governors, other incumbent politicians, partisans, racial minorities, and other communities of interest are all critical stakeholders with oftentimes conflicting interests. Certain reforms might be popular in one state, but difficult to accomplish in others due to the influence of specific

stakeholder groups. One thing is for certain: it is important to identify these redistricting dilemmas in order to better understand the redistricting process and create a set of clear statewide priorities when drawing new maps.

Partisan vs. Bipartisan vs. Nonpartisan Redistricting

Like it or not, partisanship and partisan identity play an instrumental role in the redistricting process. While in many states, particularly those in which the state legislature draws and passes redistricting plans, control of the redistricting process lays in the hands of just one party without the need for any consultation from the minority party, a totally partisan process which is overwhelmingly frowned upon by most reform advocacy groups. The standard, state legislature-driven redistricting process where redistricting plans can be passed the same as regular legislation and the governor can veto these plans, is flawed, but it is not without its advantages. The process is simple, easy to understand, and elected politicians can be held directly responsible. When a state has a trifecta (one party controls the governorship and holds majorities in the state legislature) and redistricting is passed by the legislature, the process can be more efficient without the difficulties associated with partisan gridlock and the need to oftentimes confer responsibilities to a backup entity. There are currently 38 trifectas, 15 of which are controlled by Democrats and 23 which are Republican-controlled. Of these trifectas, 27 are quite consequential when it comes to redistricting because they rely on state legislature-driven redistricting (although in Arkansas and Missouri the state legislature draws congressional maps only). Especially in states where only a simple majority is needed to pass maps and a trifecta is present, the majority party need not consult with the minority.



As previously noted, more and more states are moving away from partisan redistricting and state legislative-drawn districts, but partisanship will always be a critical determinant when considering reform measures and the creation of new redistricting commissions. Most reform measures typically result in either bipartisan or nonpartisan redistricting, and although the terms are frequently used interchangeably, it is important to understand the nuances between the two.

Bipartisanship refers to the cooperation between two, usually opposing, political parties. In the American context since there are only two major parties, bipartisanship refers to consensus between Democrats and Republicans. Bipartisan redistricting could be achieved by increasing the number of votes needed to approve maps in the state legislature, such as in Connecticut and Maine where a 2/3 majority is required in each chamber, or by establishing a threshold regarding the number of minority votes needed to approve a map, such as in Ohio where at least half of each major political party is required to draw congressional districts. Political appointee commissions are based upon the idea of bipartisan consensus, as most commissions of this type are made up of equal numbers of Republicans and Democrats nominated by party leaders. As two rival parties are forced to work together to create maps, one of two problems have the potential to arise. The first is partisan gridlock where commissioners are divided completely along partisan lines. Common solutions to this problem generally involve the state supreme court passing its own maps or choosing a tiebreaking member. In states where partisan gridlock over maps is common, it begs the question as to why a commission is even in place if a court or a sole tiebreaking commissioner will ultimately be responsible for establishing new districts. Tiebreakers have expressed frustration over

partisan backlash for their decisions, with John Farmer Jr., who cast the deciding vote on New Jersey's congressional district map in 2011, going so far as to state that he would not want to be selected as a tiebreaker ever again.¹⁰³ The second major problem is that just because a map is approved with bipartisan support, it does not mean that the state does not exhibit evidence of significant gerrymandering. In contrast, reports have found that both partisan and bipartisan gerrymandering produce many of the same empirical outcomes.¹⁰⁴ Gerrymandering can be just as bipartisan as it is partisan. For example, a heavily gerrymandered map could receive bipartisan support because it guarantees overall victory for one party while ensuring a certain number of noncompetitive, "safe" districts for another – a compromise that looks quite attractive to incumbents in the minority party who want to maintain their seats. Bipartisanship is not synonymous with "fairness" when it comes to redistricting, and although it remains better than pure partisanship, it features some very notable flaws.

Nonpartisanship, as the name suggests, is the absence of partisanship or lack of bias towards any one political group. As stated prior, it would be impossible to remove all partisan bias from the redistricting process entirely without employing a party-blind, race-blind, socioeconomic-blind algorithm to methodically draw maps purely based on district compactness and equal population (this is not to say that this method has not been theorized about).¹⁰⁵ However, a more agreeable approach to this conundrum could simply be to eliminate partisan considerations during the map-drawing process to the greatest reasonable extent possible. Arguably, several independent commissions are already close to accomplishing this feat. Qualified applicant pools can be established by a state commission, the courts, or state auditors and commissioners can be chosen by judges, other commissioners, or at random. This report will not explore which selection process is superior, only state that a multitude of options exist. Partisan affiliation of potential commissioners is not ignored, but rather made a transparent part of the process to check partisan impulses. Three independent commissions (those in California, Colorado, and Michigan) mandate roughly equal numbers of Democrats, Republicans, and those unaffiliated with either major party amongst their ranks. These quotas differ from measures put in place to ensure bipartisanship because Independents are included in the process, thus preventing gridlock or cooperation in the pursuit of Democratic or Republican interests. While the system is not perfect because even unaffiliated voters still might favor one party over another, it at least encourages more cooperation and ensures that a greater number of voices are represented when new districts are being drawn. Nonpartisanship within commissions can be strengthened even further by requiring a certain number of commissioners from the majority party, minority party, and those unaffiliated with either party approve of final maps in addition to the total number of votes needed to pass maps.

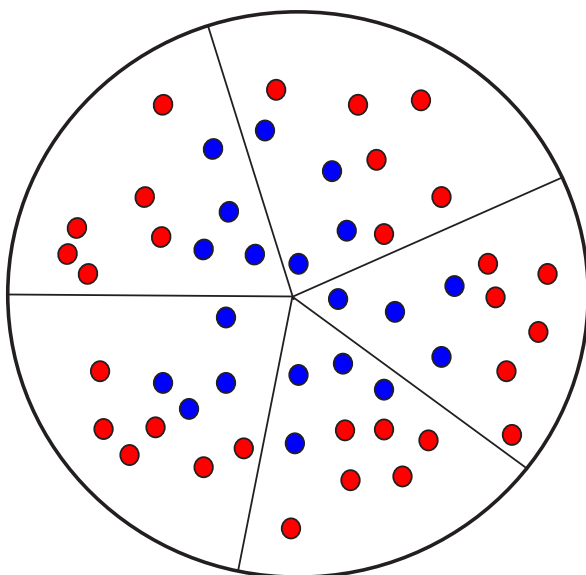
Competitiveness vs. Representativeness (vs. Compactness)

Another topic that often appears in critiques of the redistricting process is the concept of fairness. Individual districts or even whole states are frequently lambasted in the media or by politicians for being unfairly drawn. While most people would agree that gerrymandering is a major problem and that our redistricting process is broken, fairness in this context is difficult to define. Depending on the

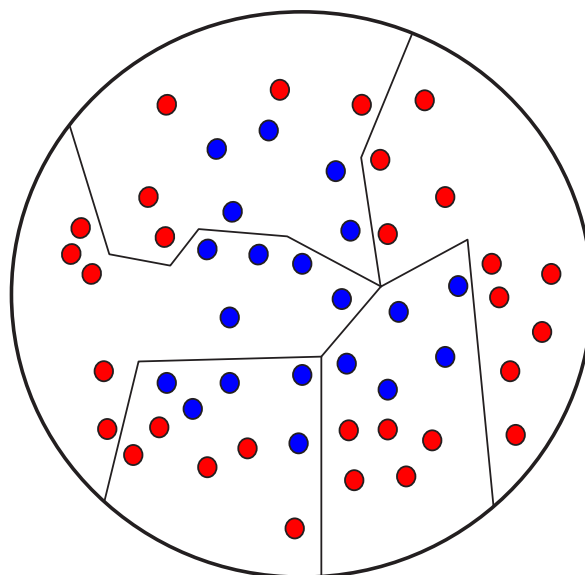
partisan and demographic makeup of a particular state, stakeholders might define “fairness” in terms of competitiveness or in terms of representativeness, which presents yet another major dilemma considering the fact that these two goals are often at odds with one another.

Competitiveness promotes highly competitive elections in each district. People seem to generally be against participating in elections where they feel as if their vote is, in a sense, “wasted” because a district tilts so heavily in one party’s favor (see previous discussions of the efficiency gap). On the other hand, states that prioritize representativeness aim to make the breakdown of seats reflective of the electorate. Identities typically considered for representativeness include partisan affiliation, race, and socioeconomic status. Race, ethnicity, and socioeconomic status, in particular, are accounted for in some states which seek to keep communities of interest intact. A community of interest is defined as “a neighborhood, community, or group of people who have common policy concerns and would benefit from being maintained in a single district.”¹⁰⁶

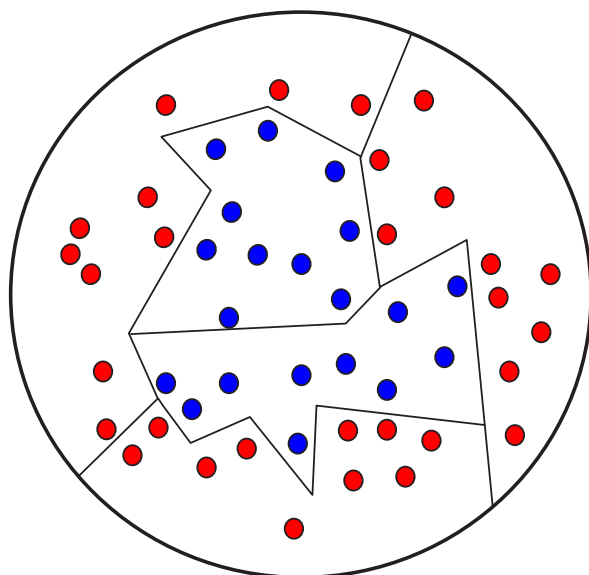
The best way to illustrate the difference between competitiveness and representativeness is through the following theoretical example: Say a state has five congressional districts. 60% of the state’s electorate leans Republican and the other 40% leans Democrat. If districts were drawn to promote competitiveness, the partisan makeup of each district could roughly mirror the partisan makeup of the state as a whole, meaning that each district would be about 60% Republican and 40% Democrat (see Example 1). In this scenario, Democrats, with enough resources and a high turnout, could come close in several races, but Republicans would likely win all five seats, a practice which would be considered “cracking” Democratic across districts so that they are unable to ever win a seat in the state. Another way to create competitive districts, but with greater chances of victory for the minority party, would be to create a number of highly competitive districts and a few districts consisting of mostly majority party voters in the state. In our scenario, this measure could take the form of four districts with an even number of Democratic and Republican voters and a fifth district which would be safely won by a Republican candidate every election cycle (see Example 2). While this process could be perceived as more “fair” if you are a Democrat, Republicans would likely argue that they are being “packed” into the fifth district, therefore diluting their voting power. Creating representative districts would likely quell accusations leveled against one party or another of favoring gerrymandered maps to pursue a partisan advantage, this strategy comes with its own disadvantages. For our example, our map could be drawn in such a way so as to ensure two districts that skew so far to the left that no Republican could ever win and three districts that skew so conservative that no Democrat would ever win an election. Elections in such districts would not be competitive whatsoever; the winner of the majority party’s primary would undoubtedly go on to win in the general election. Barring huge demographic shifts, partisan turnover would be highly unlikely in the state, making it difficult for voters to keep their elected officials accountable.¹⁰⁷



Example 1: Competitive Redistricting (1)



Example 2: Competitive Redistricting (2)



Example 3: Representative Redistricting

Upon a closer examination, the fairness debate continues to get even more complex. Creating districts with the explicit purpose of promoting competitiveness or representativeness can be challenging or even unfeasible depending upon a state's geography and demographics. In a state with a heavy partisan skew, such as Wyoming where 57% of voters lean Republican or Massachusetts where 56% of voters lean Democrat, it is impossible for the majority of districts to be competitive.¹⁰⁸ In such a scenario, the best that a state could aim for is promoting the greatest number of districts with competitive elections as possible. Geography and population distribution also complicate efforts to achieve electoral fairness. Congressional and state legislative districts must be of roughly equal population and most states require electoral districts be contiguous, meaning that all parts of a district are in physical contact with another part of the district.¹⁰⁹ For states where partisan affiliation is strongly correlated with location (ex. a state with liberal urban cities and conservative rural areas) redistricting to ensure competitiveness or representativeness may violate contiguity requirements or result in districts which resemble odd shapes such as a "rabbit on a skateboard," "earmuffs," "cat roadkill," and other gerrymandering-related greatest hits.¹¹⁰

A favorite topic of media coverage regarding redistricting consists of pointing out all of the odd district shapes present throughout the U.S. as evidence of partisan gerrymandering at work. Additionally, many states have provisions requiring that districts be as compact as possible, with Idaho going so far as to explicitly mandate that its commission "should avoid drawing districts that are oddly shaped."¹¹¹ But does compactness necessitate fairness? The answer is quite complicated because while the presence of strange district borders is usually symptomatic of a gerrymander, this is not always the case. Dustin Mixon, a mathematics professor at The Ohio State University, found that there are instances when a district's efficiency gap, which measures competitiveness through examining the percentage of "wasted votes," and Polsby-Popper score, which measures compactness, are at odds with one another. In certain circumstances, particularly when one party has a slight statewide advantage over the other and voters from both parties are well-distributed throughout the state, bizarre district shapes could be justified.¹¹² In Massachusetts, for example, Democrats hold all nine congressional seats despite 30 percent of the state being Republican because these voters are so geographically spread that compact districts waste their votes. "Weird shapes" do not always equal malintent from a representative standpoint, either. Illinois's Fourth Congressional District, which was previously mentioned because it has been criticized for resembling a pair of "earmuffs," was drawn to connect two majority-Hispanic neighborhoods in Chicago to provide the community a common voice.¹¹³

The preservation of majority-minority districts and protection of ethnic and racial communities of interest is perhaps more consequential during the upcoming redistricting cycle than ever before due to the controversial *Shelby v. Holder* ruling. In 2013, the Supreme Court ruled Sections 4(b) of the Voting Rights Act (VRA) to be unconstitutional, thereby eliminating the VRA's coverage formula which determines eligible districts that must receive preclearance before enacting changes to their election laws. While the VRA has its loopholes allowing pro-Republican map-drawers to historically pack large African American populations into a few districts to decrease Democratic representation, the absence of enforcement mechanisms ensuring the representation of racial minorities effectively strips away protections at the

federal level. In the years since the Shelby ruling, an adequate replacement for Section 4(b) of the VRA has yet to be put into legislation, meaning that the 2021 redistricting cycle will mark the first redistricting since the 1960s without mandated federal preclearance.¹¹⁴ As far as district representativeness is concerned, this development could prove quite significant and may also serve as proper justification for ensuring racial representativeness through state-level mandates. Resistance met by the Clean Missouri initiative provides insight into why African American Democratic leaders, even those in Republican-led states, would want to keep their districts as black as possible in order to ensure black constituents are represented by black legislators.¹¹⁵ This sentiment is not shared by everyone in the voting rights community as they argue African Americans do not need to constitute a district-wide supermajority in order to elect a representative of their choice, and in fact by drawing more districts with smaller African American majorities, the community wields more influence.^{116, 117} Still, the absence of key components of the VRA certainly complicates redistricting and makes this next cycle all the more consequential for people of color living in historically majority-minority districts.

Who Has Power? Governors vs. State Legislatures vs. Commissioners

Reform measures have the potential to contort and complicate legislative-executive power dynamics during the redistricting process, so it is important to examine these relationships. While moving towards a commission appears to be increasingly popular, not all commissions are created equal. Most commissions dramatically reduce or even altogether eliminate redistricting powers from the executive and legislative branches while in other, more rare instances, their powers are increased. Typically, however, when a redistricting commission is put into effect, governors lose all formal powers because they can no longer veto maps and responsibilities in the state legislature are transferred to leadership.

Most political appointee commissions are appointed by the majority and minority leaders in each chamber of the state legislature, meaning that the legislature retains some level of power, although it is concentrated in the hands of leadership. While commissioners are ultimately responsible for creating and approving maps, their appointments resemble a sort of political patronage or a reward for being a good partisan actor, who is expected to represent their appointers in the commission. New Jersey appoints its commissions a bit differently as the state party chairs select commissioners for both commissions, although majority and minority leaders also get to select commissioners for congressional redistricting. In Alaska and Missouri, governors appoint commissioners as well. The Governor of Missouri arguably is the most powerful governor in the entire country when it comes to redistricting as they select all 20 commissioners for each state legislative redistricting committee from a pool of nominees.

Advisory commissions are an odd case because their creation does not necessitate the diminishing of redistricting powers for a state's governor or legislature as maps are still passed as legislation. In fact, legislative leadership often gains power as they typically get to appoint commissioners. Governors can also gain power if they are able to appoint members to the advisory commission, with the Governor of Maryland and the Governor of Vermont being the most powerful governors in this regard as they get to appoint the entire advisory commission themselves.

Only two states employ politician commissions, and the governors from both Arkansas and Ohio serve on their state's commission. Since governors can typically only veto maps that are drawn by the state legislature, serving on a politician redistricting commission is a considerable increase in gubernatorial redistricting power typically at the expense of legislative power.

Virginia's redistricting commission will allow the state legislature to consolidate its control over the redistricting process as eight commissioners will be incumbent legislators directly from the state senate and the House of Delegates. The other eight commissioners will be randomly drawn from pools which are nominated by legislative leadership. The governor will have no formal power in the redistricting process.

Independent commissions are by far the most restrictive when it comes to gubernatorial and state legislative involvement in the redistricting process. The governors of California, Colorado, and Michigan have no formal powers, and the Governor of Arizona can remove a commissioner but only with a 2/3 vote from the state senate. The legislative role in the redistricting process is very limited in California and Michigan as majority and minority leaders can only strike a number of applicants from independently drawn nomination pools. In Colorado, the four legislative leaders are slightly more powerful as they can each select ten applicants to put into partisan nomination pools, but an independent panel of judges ultimately selects the commissioners. Arizona combines elements of a true independent commission and a political appointee commission, but its four legislative leaders only get to select once commissioner. These commissioners must be selected from a nomination pool determined by the State Commission on Appellate Court Appointments. Independent commissions are considered "independent" because elected officials play a very minimal role, meaning that true redistricting power lies in the hands of commissioners.

Conclusions & Policy Recommendations

Redistricting is a complicated process. Ending partisan gerrymandering is even more difficult, if not impossible, but increased awareness and a public desire for change promise continued reforms that will ultimately result in more equitable maps across the nation. In 2019, House Democrats unveiled the largest electoral reform package in American history, aptly titled "H.R. 1" to designate its significance. H.R. 1 would radically transform the redistricting landscape, banning partisan gerrymandering, creating uniform rules for redistricting across the entire country, and mandating that all states transfer redistricting powers to an independent commission.¹¹⁸ While a reintroduced version of H.R. 1 did pass the House of Representatives in early March 2021, it pushes off the effective date of its reforms until 2030.¹¹⁹ While these reforms could not feasibly be implemented in time for redistricting in 2021, mid-decade redistricting due to partisan gridlock or court challenges is quite frequent.¹²⁰ And while the passage of any redistricting reforms at the national level is better than nothing at all, especially for states in which the status of voting rights is so dire, H.R. 1 prescribes solutions which are too generalized to precisely target certain issues at the state level. Noting H.R. 1's inability to make a significant impact in the next decade and unlikelihood of passing in the Senate so long as the filibuster remains intact, the onus falls on individual states to transform their redistricting systems in the coming years. After an extensive investigation of each state's redistricting process, its successes and its shortcomings, this report offers the following nine policy recommendations:

Independent redistricting commissions.

1. This recommendation should be applied universally; independent redistricting commissions can be used in all states for drawing new state legislative and new congressional district maps. There is a reason why independent redistricting commissions have become the reform of choice in the last decade: they reduce conflicts of interest and more evenly distribute power across interest groups. If instituted properly the governor and state legislature should have a very limited role, or, preferably, no role in the redistricting process at all. This is because the governor and state legislature seek to directly benefit from the state legislative districts being drawn and are most certainly impacted by the outcomes of congressional redistricting from a state party standpoint. Political appointee commissions are typically better than no commission at all, but they are far from immune from state politics as active politicians essentially get to appoint surrogates to draw maps favorable to their interests.¹²¹ While at the end of the day commissioners are still partisans, there should be a screening process and rules regarding conflicts of interest in order to establish qualified applicant pools that are as independent as possible from the interests of elected officials and party leaders.
2. **Large and diverse commissions.** Larger commissions have the benefit of allowing more diverse voices and groups to be represented when it comes time to draw districts. It is crucial that women as well as ethnic and racial minorities have a seat at the table to advocate for districts which they perceive to be fair. Commissioners should also be diverse in terms of their socioeconomic class and geographic location within the state as these identifiers also play a role in redistricting considerations. It should go without saying that independent commissions should ideally feature the same number of Democrats, Republicans, and unaffiliated voters in order to prevent partisan mapmaking.
3. **Map approval should require more than a simple majority.** Regardless of whether the state legislature or a commission is responsible for passing maps, approval should but built around consensus to achieve districts which the vast majority of voters view as fair. This proposal could be achieved simply by requiring that maps have the approval of 60% or 2/3 of the body which passes maps. Mandating a certain threshold be met by each partisan group for approval acts as an additional safeguard. For example, the approval of 50% of each major party in the state legislature could be required. If a commission is tasked with redistricting, maps might require the approval of a certain number of independent commissioners in order to prevent bipartisan collusion benefitting Democratic and Republican incumbents in certain districts. Requiring redistricting bodies to reach broad consensus to pass maps eliminates the need for a tiebreaker and all of the associated controversies with one person ultimately deciding a state's districts for the next decade.
4. **Have a back-up.** Regardless of how a state conducts its redistricting process, having a back-up plan in the event that a map does not pass by a certain deadline is a good idea. The majority of states do not have a back-up plan, which is troublesome given the frequency in which redistricting bodies cannot agree on a map. There are several back-up redistricting methods already in place around the country, with back-up commissions and state supreme court intervention being the most popular. If, as per this report's recommendation, states adopt independent redistricting

commissions, there would be little use for back-up commissions, meaning that the courts would likely become the body to fall back on. Courts should appoint a panel of experts or demographers to draw new maps with different district boundaries rather than appointing tie-breaking commissioners or selecting from maps already drawn by the primary redistricting body. By drawing new maps, the court would ensure that neither political party has a hand in crafting districts, which would be viewed unfavorably by partisans and politicians. There should be incentive for the primary redistricting body to work towards a mutually agreeable solution rather than resorting to the use of back-up plans every redistricting cycle, making the courts the *de facto* redistricting body. It should be noted that 24 states elect judges, so the use of the courts in the redistricting process could prove flawed under these circumstances.¹²² If states require more than a simple majority to pass maps (see recommendation #3), another possible solution is to allow maps to bypass certain approval requirements in exchange for allowing those maps to only be in effect for a few years. For example, in Ohio maps can be passed for four years instead of the traditional ten if the redistricting body is unable to surpass partisan vote thresholds. This method once again incentivizes against using the back-up plan, as the redistricting process is laborious and redistricting once every decade is difficult enough.

5. **Prioritize criteria based upon the composition of a state.** Each state contains a unique partisan, geographic, and racial makeup which complicates the drawing of new districts. A federally implemented, one-size-fits-all solution determining the prioritization of redistricting criteria would prove ineffective and generate vastly different outcomes depending upon the state. A more racially and ethnically homogenous state may not need to consider district representativeness in that same way a diverse state does. A rural state with spread out communities may not be able to ensure that districts are compact. A highly partisan state will surely experience difficulty drawing several highly competitive districts. Redistricting involves a series of trade-offs amongst competing interests, so it is a good idea to determine which of those interests and goals is most important to implement. Criteria should be ranked in order of priority to avoid conflict and prevent against the manipulation of maps. However, this is not to state that the ranking of criteria should be used as an excuse to disregard all standards besides the top priority; obviously, a map which features districts that are both competitive *and* preserve communities of interest is better than a map which achieves only one of the two. Individual states need to figure out which criteria best fit their populations in order to make districts as “fair” as possible.¹²³ The fact of the matter is that no map consisting of single-member districts will ever be perfect in eliminating electoral advantages for one stakeholder group over another. “Ending gerrymandering” in all its forms is not feasible as one group or other will always take issue with some aspect of a map and declare foul play. Rather, the goal should be to make the redistricting process consistent and as legitimate in the eyes of the electorate as possible.
6. **Adopt clear criteria and metrics to measure effectiveness.** States should enact explicit language expressing requirements that mapmakers must follow when drawing new districts. In order to accomplish this, states can pass redistricting reforms directly stating that maps should be “compact” or “representative” or “competitive.” By reducing ambiguities, states can ensure

that redistricting bodies have a clear sense of their duties and that statewide courts have precise language with which to make decisions if legal challenges arise. If a state decides its maps are to prioritize, for instance, competitiveness, there should be a predetermined mathematical formula meant to measure how effectively a map achieves its goal of creating competitive districts. This recommendation is important because criteria without firm definitions can easily be rendered legally meaningless. For instance, in Virginia the state supreme court held that the state's own constitutional compactness requirement did not "require that compactness be given priority over other considerations, much less establish a standard to determine whether the legislature gave proper priority to compactness."¹²⁴ Instituting a system based upon metrics and mathematical formulas ensures that districts are drawn purposefully and with clear standards that must be met, adding additional legitimacy and transparency to the process.

7. **Strengthen protections for communities of color.** With the 2021 redistricting cycle being the first in decades without Section 4(b) of the Voting Rights Act, there is very little in the way of protection against electoral racial discrimination at the federal level. Even under the VRA, the voting power of racial minorities was often diluted through the redistricting process by packing constituents of color into as few districts as possible.¹²⁵ H.R. 4, also known as the John Lewis Voting Rights Advancement Act, would rectify the nullification of Section 4(b), establishing new criteria for determining which states must obtain preclearance from Department of Justice before changes to voting practices, including redistricting, take effect.¹²⁶ However, there is no guarantee that H.R. 4 or a similar proposal will become law, so it is incumbent upon the states to hold their redistricting processes to account in the meantime. States should adopt straightforward racial fairness provisions into law to prevent the occurrence of racial gerrymanders and to make it easy for state supreme courts to strike down racially gerrymandered maps in the event that they bypass these safeguards. The preservation of communities of interest could be enacted concurrent with racial protections as respecting the integrity of such racial, ethnic, economic, cultural, or geographic communities necessitates fair representation for communities with common concerns. 24 states consider communities of interest when drawing state legislative districts, and only 13 states do so when drawing congressional districts, although oftentimes these requirements leave communities of interest undefined and without specific metrics.¹²⁷ The lack of legal infrastructure surrounding communities of interest leaves room for significant development in this emerging topic of intrigue to shift the redistricting landscape and avoid making a monolith out of underrepresented groups.
8. **Make processes transparent to the public.** This recommendation is obvious; the more transparent redistricting is, the more the process will be viewed as legitimate and the easier it will be for the public to recognize specific procedural flaws. Whoever wants to access information about the redistricting process or the individual decisions of legislators or commissioners should have it easily available. Commissions should be considered public bodies, subject to requirements for public hearings, the public disclosure of documents, and the recording of meetings. There should be ethics provisions preventing members of a state's redistricting body from communications with outside people or interest groups seeking to influence the map-drawing

process outside of public forums. Public comment periods during which preliminary maps would be available online for public scrutiny through redistricting portals should be incorporated into the process in states where they are not already mandated.

9. **Create opportunities for public involvement.** The public should have the opportunity to be involved during all stages of the redistricting process. Commissions should be created from public applicant pools where average citizens can apply to be part of the process. Redistricting should be inclusive, providing the opportunity for any member of the public to submit maps, communities of interest, and other comments for the redistricters' consideration. Commissions and state legislatures need to be responsive to the concerns of the people for whom they are drawing new districts.

How can you get involved?

There are many ways that ordinary citizens can get involved in reforming the redistricting process right now. Contacting lawmakers, signing petitions, and spreading awareness of best practices are simple steps anyone can take. If your state features a process for citizen-initiated ballot measures, you can get involved in efforts to collect signatures or even by drafting a ballot initiative.¹²⁸ Most recent successful reform efforts have been implemented through this mechanism, so getting involved in this capacity is the single best way to reform your state's redistricting system. Find out if your state has citizen panels, hearings for public input, or redistricting portals for you to submit your own maps, so that you can play an active part in the upcoming redistricting and advocate on behalf of the interests of your community. There are several software-based citizen mapping tools available for free including Dave's Redistricting App,¹²⁹ DistrictR,¹³⁰ and DistrictBuilder¹³¹ where you can create your own maps and send them to your state's redistricting body for consideration. You could even win some money in the process – the Committee of Seventy, for example, has a political mapping competition called Draw the Lines PA which offers cash prizes up to \$5,000 for entering maps.¹³² If drawing maps is not your interest but you would still like to help mapmakers get a better understanding of your community, you can help to crowdsource data for various applications. Representable is a free, open-source tool which allows you to create maps for communities of interest.¹³³ These maps help to gather data on where these communities are located along with information about shared community interests which can be used by map-drawers, activists, and political analysts to evaluate how effectively maps keep these communities intact. There are many ways to improve the redistricting process at the individual level, so it is worthwhile to investigate and get involved in these or other pursuits.

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