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## Controversies in Redistricting: Apportionment and Gerrymandering in America's Federal System

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In a federal democracy, how should voters get to choose their representatives? What roles should elected representatives play in deciding who will elect them? Surprisingly, redistricting, or the process of redrawing geographic boundaries for electing legislative representatives, is highly dependent on politics. Sometimes, the majority party creates an advantage for its candidates. In other cases, particularly when political power is divided between political parties (e.g., a Republican governor and a Democratically-controlled legislature), districts can be drawn to keep incumbents in power. This digest explores redistricting controversies across America's federated election system.

### BACKGROUND

Redistricting occurs for all legislative jurisdictions in the United States. For the federal government, this occurs in redrawing the districts for the U.S. House of Representatives; for state governments, in redrawing both their senate and house legislative districts (except for Nebraska, which is unicameral); and for local governments in redrawing city, town or township council districts. The size, shape, and individuals included in these districts often determine which candidate will get elected. For instance, if a district contains a majority of registered Republicans, its voters will most likely elect the Republican nominee.

The intentional process of drawing electoral districts to benefit one political party, or one group over another, is called gerrymandering and has been employed in the United States since its founding. The term "[gerrymandering](#)" refers to the shape of a state legislative district that was drawn in Boston to benefit the Democratic-Republican party in 1812.

There are two primary strategies employed in gerrymandering legislative districts. The first is **packing**, which concentrates the number of voters who identify with or

are registered members of a particular political party. This strategy ensures that this party's candidate will most likely win the seat. This can be done to benefit the party in power by creating a safe district, or to limit the influence of the minority party, by diluting its power in other districts. The second type is **cracking**, which is designed to dilute the voting strength of voters registered with a particular political party. This effect is to limit the ability of the party's candidates to win the election. Gerrymandering is arguably undemocratic because it creates an artificial advantage that would not exist if the districts were drawn neutrally.

### HOW DOES REDISTRICTING HAPPEN?

The U.S. Constitution requires legislative districts for the House of Representatives to be redrawn [every ten years](#), following a nation-wide census. The current number of seats in the House (435) was set in 1913, and the formula for apportioning seats among the states based on their population is set by federal law (2 U.S.C.S 2a). Each state, no matter the size of its population, is guaranteed at least one seat in the House. Because the total number of seats is set at 435, reapportionment of these seats is a zero-sum game. For example, New York, Pennsylvania and New Jersey have been losing population (and seats in the House) to such states as Texas and Florida, which have gained seats over recent decades.

Since the 1960s when the U.S. Supreme Court (SCOTUS) issued a number of rulings regarding the principle of equal representation, the requirement to redraw legislative districts after each nation-wide census now applies to states and local governments. The authority to determine how these districts are drawn rests with state legislatures, which determine the geographic boundaries of districts. For most states, a committee of the legislature will draw the districts that must be approved by the full legislature and usually the governor. Other states use bipartisan or independent



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commissions to determine the new districts. The maps drawn by such commissions may or may not need legislative approval. In Arkansas, a commission composed of the governor, attorney general, and secretary of state determines the U.S. House districts.

### THREE MAJOR CONTROVERSIES OVER REDISTRICTING

People objecting to their legislative maps have recourse to both federal and state courts to request that maps be redrawn. In the 2020 cycle of redistricting, at least [73 lawsuits](#) were filed in federal courts. Traditionally, these challenges have relied on federal guarantees of equal protection of the law and the [Voting Rights Act](#) of 1965. However, in recent years, more plaintiffs have sued in [state courts](#) arguing that gerrymandering violated their [state constitutional rights](#). Nearly every state constitution, for example, protects a fundamental right to vote, and many provide for “[free elections](#).”

There have been many reasons for challenging electoral maps. The following are three major controversies that have dominated legal cases.

#### Apportionment

One redistricting controversy focuses on the reapportionment process itself. In a series of early 1960s’ decisions known as the “[redistricting cases](#),” SCOTUS ruled that congressional and state legislative districts must have equal populations to ensure everyone’s vote counts equally. Therefore, after each Census, districts must be redrawn to

reflect population changes. The idea that districts should have equal population has mostly been settled. However, there are current controversies of how to count members of an electoral district. In [Evenwel v. Abbott](#) (2016), SCOTUS was asked to decide whether total residents of a district, or total voting age residents, should be the metric for redistricting. The Court argued for the total-residents standard, but left open the possibility of other constitutionally permissible methods. Additionally, the Census counts prisoners where they are incarcerated.

Some argue that this results in [prison gerrymandering](#), which gives more representation to rural areas where prisons are located. Several states have taken action to count prisoners in their area of former residence before incarceration to mitigate this problem. Suits on this issue have been filed, but none have yet reached SCOTUS.

#### Racial Gerrymandering

Racial gerrymandering is a second controversy. [Section 2](#) of the [Voting Rights Act of 1965](#) prohibits electoral maps that intentionally or unintentionally discriminate by race. This was to ensure that minority votes [would not be diluted in states](#) with a history of discrimination. [Thornburgh v. Gingles](#) (1986) provided a test for identifying when minority votes had been diluted:

- Do minorities constitute enough population to be the majority in a district?
- Does the minority tend to vote for the same party?
- Do non-minorities have a tendency to vote against minority candidates?

If these criteria are met, then the legislature must draw a [majority-minority electoral district](#).

The most recent case on racial gerrymandering is [Allen v. Milligan](#) (2023). At issue was whether the 2020 electoral map of Alabama should have created more majority-minority African-American districts. The plaintiffs argued yes since only 1 of 7 U.S. House seats are majority-mi-

nority, even though the state's population is 27% black. The state argued that it uses a race-neutral approach to redistricting and if were to use the plaintiff's logic, it would be engaging in discrimination. A divided Supreme Court upheld Section 2 of the Voting Rights Act when states crack or pack concentrated populations of minorities in redistricted maps, provided there is a viable map that avoids this problem.

### Political Gerrymandering

Political gerrymandering is a third controversy. SCOTUS has not created standards to determine political gerrymandering. A 5-4 majority in *Rucho v. Common Cause* (2019) closed the question for the foreseeable future by deciding that this question was political in nature and no neutral mechanism exists for the courts to resolve issues of political gerrymandering. SCOTUS recently decided whether it is allowable for state courts to address political gerrymandering. In *Moore v. Harper* (2023) North Carolina's legislature challenged the authority of the state's supreme court to overturn electoral maps. The legislature invoked the Elections Clause of the U.S. Constitution, which states: "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof." Does the clause mean only the legislature can have this power? The "independent state legislature" argument says "yes." Or, does the clause refer to a state's legislative process more broadly, which could include the state judiciary? SCOTUS ruled in favor of the authority of state courts to apply judicial review in these cases and for them to use state constitutional provisions on elections when deciding cases. However, SCOTUS limited the ruling's scope by adding that "state courts may not transgress the ordinary bounds of judicial review such that they arrogate to themselves the power vested in state legislatures to regulate federal elections."

### ADDITIONAL RESOURCES FOR EXPLORING REDISTRICTING

[The Redistricting Project](#) at Princeton University has maps and graphics that explain what process each state uses for redistricting and potential reforms in the state. It then grades the state's congressional map on its level of gerrymandering, although the validity of the metric has been contested.

[Districtr](#) provides free and easy to use web-based software to create your own redistricting maps. It includes templates for all 50 states.

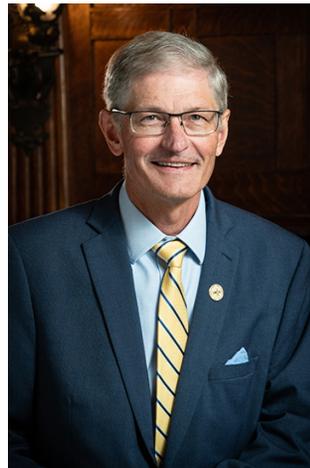
The U.S. Census Bureau maintains [Historical Apportionment Data](#) so that you can track how many seats in the U.S. House your state has won or lost since 1910.

## TOPICS FOR CLASSROOM DISCUSSION

1. The U.S. Constitution requires redistricting of legislative districts after every census. Why is this process important? How does it affect the distribution of political power among different states?
2. How does federalism affect the redistricting process? Who should have the power to create new congressional districts: the states or the federal government? Should this be a power given to legislatures, to independent commissions, or to some other authority?
3. What is gerrymandering and how does it affect the electoral process? Discuss the two strategies of gerrymandering – packing and cracking – and their implications for political representation.
4. Explore the three major controversies over redistricting mentioned in the text: apportionment, racial gerrymandering, and political gerrymandering. How have courts addressed these controversies?

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## ABOUT THE AUTHORS



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