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NOW

Are Our Elections RIGGED?

Critics say gerrymandering has distorted American democracy. Will the Supreme Court put an end to it? BY PATRICIA SMITH

Wisconsin has about as many Democrats as Republicans, but you wouldn't know that from looking at the Wisconsin state legislature. Republicans hold 65 percent of the seats—a bigger majority than Republican legislators have in a solidly conservative state like Texas.

How is that possible? The answer is gerrymandering.

Gerrymandering occurs when politicians draw election district maps in a way that gives their party an advantage. After the 2010 Census, Republican lawmakers in Wisconsin redrew maps that concentrated as many Democratic voters as possible into a small number of urban districts, removing them from other districts that would have otherwise been competitive.

The new maps changed nothing about

where people lived—only the district in which their votes were counted. Rearranging districts helped Republicans transform very close statewide vote totals into lopsided legislative majorities. In 2012, the election year the new district maps took effect, Republicans won less than 49 percent of the total votes statewide for state assembly candidates but captured 60 of the body's 99 seats.

The situation in Wisconsin is the focus

of a Supreme Court case challenging the constitutionality of gerrymandering. The case, *Gill v. Whitford*, will be decided this spring, along with a second case, *Benisek v. Lamone*, that challenges partisan gerrymandering by Democrats in Maryland. The two cases have huge implications for American democracy. Here are some questions and answers to help you understand why.

Why is gerrymandering a big deal?

Gerrymandering is common practice across the country; both Democrats and Republicans do it—in both statehouse and congressional districts.

Experts say gerrymandering has greatly reduced the number of competitive elections, contributed to partisan gridlock in Washington, and created a situation in which lawmakers don't reflect the political makeup of the population.

"It's easy to draw maps that essentially rig the results one way or the other," says Michael Li, an expert in gerrymandering at the Brennan Center for Justice at New York University. "What that means is that Congress doesn't look like America; it's not representative. And that's not what the Framers wanted; they thought the House of Representatives should reflect the people."

When did the practice start?

Gerrymandering is almost as old as the nation. The Constitution requires a nationwide census to be conducted every 10 years to count the population. (The next census is in 2020.) After

Gerrymandering is common practice across the country.

every census, the 435 seats in the House of Representatives are reapportioned based on the results: States that gain population get additional members in the House, while those with declining population lose seats. The same principle applies to state legislatures,

What Gerrymandering Looks Like

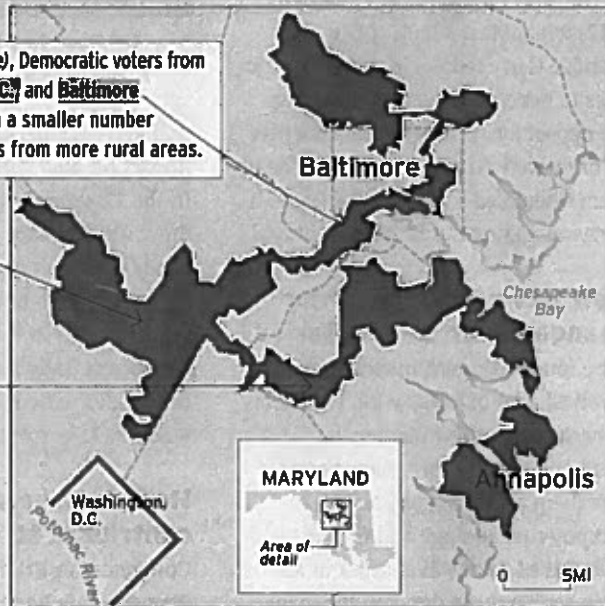
Bizarrely shaped districts, drawn to ensure one party wins more seats

MARYLAND: 3rd District

1. Democrats controlled redistricting in Maryland in 2011.

2. In this district (in blue), Democratic voters from near Washington, D.C. and Baltimore were combined with a smaller number of Republican voters from more rural areas.

3. Lumping those Republicans from rural areas with so many Democratic voters makes it all but certain that a Democrat will be elected.



SOURCE: FAIRVOTE

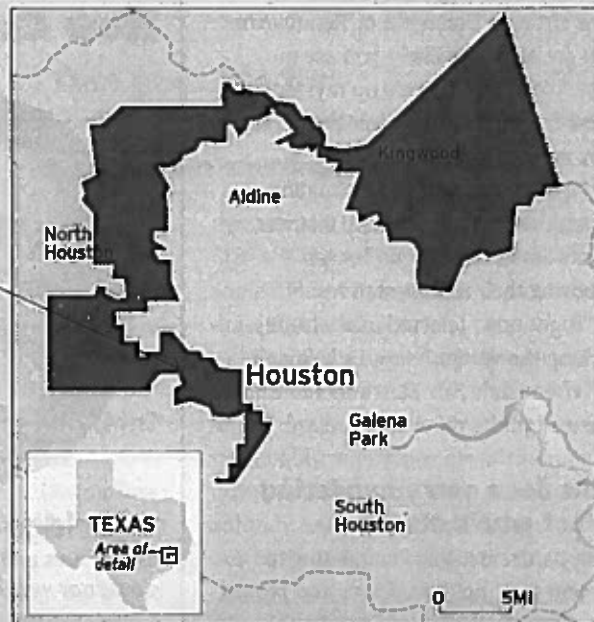
4. It also means fewer Republicans in other districts, giving Democrats in those districts an advantage.

TEXAS: 2nd District

1. In Texas, Republicans controlled the 2011 redistricting.

2. In this district (in red), suburban Republicans were combined with a smaller number of Democrats in the city of Houston.

3. That makes the district safe for Republicans and also weakens Democrats in the rest of Houston.



SOURCES: FAIRVOTE, SCOTT MCKEE/TEXAS TECH UNIVERSITY

whose seats are also reapportioned based on population shifts: Areas that are growing get more representatives, while those that are shrinking get fewer. In most cases, the party in control of the state legislature gets to redraw district lines—for both congressional and statehouse representation.

The term *gerrymandering* dates to 1812, when Massachusetts Governor Elbridge Gerry redrew his state's district lines to benefit his party and weaken the opposition. Critics said the districts he drew were so convoluted that one of them resembled a salamander (see "How Gerrymandering Got Its Name," below).

How has gerrymandering changed over the centuries?

For a long time, gerrymandering involved a lot of guesswork. Politicians in back rooms drew districts by hand and hoped those maps would give them an advantage. Now, computer technology and the vast amounts of data available about all of us enable those drawing the maps to be much more precise. (For an easy-to-follow explanation of how gerrymandering works, watch our video at upfrontmagazine.com.)

"We not only know that you're a Democrat or a Republican, we know how strong a Democrat or Republican you are and how likely you are to vote," says Li. "There's no mystery in these maps; they will elect the person they were designed to elect."

All of this adds up to a situation, experts say, where in many districts, voters essentially are no longer choosing their representatives.

"Right now, [elected officials are] picking the voters," says Dale Schultz of Wisconsin's Fair Elections Project, "instead of the other way around."

How does gerrymandering affect who's elected?

Both parties use gerrymandering to cement their hold on power and protect incumbents. A 2012 analysis by the Brennan Center found, for example,



Gridlock in Congress: Some say gerrymandering has made it much worse.

that gerrymandering has a significant impact on who gets elected to Congress. In the 17 states where Republicans drew district maps in 2011, their House candidates won about 53 percent of the overall vote but 72 percent of the seats in 2012. In the six states where Democrats drew the lines, their House candidates won about 56 percent of the vote but 71 percent of the seats.*

How does gerrymandering contribute to gridlock?

Congressman Brian Fitzpatrick, a Pennsylvania Republican, is one of many who say partisan gerrymandering has contributed to toxic polarization in the House of Representatives that makes it hard to get things done—the gridlock Americans complain about.

The problem, he says, is that gerrymandering has sharply reduced the number of truly competitive congressional districts (see map, facing page). For the nearly 400 members of Congress whose districts are safely Republican or Democratic, the only real political threat is a primary challenger from their own party. Lawmakers who are worried only about winning primaries tend to favor policies that will please the more extreme members of their party—who are most likely to vote in the primary—rather than appealing to more-moderate or independent voters who often tilt competitive general elections to one party or the other.

The result, Fitzpatrick says, is that lawmakers in Congress are far less inclined to compromise with the opposition because doing so only damages their chances of being re-elected.

"It's hurting the American people," Fitzpatrick says.

What could the Supreme Court do?

Beginning in the 1960s, the Supreme Court established that lawmakers can't draw election maps to intentionally reduce the power of black voters.

How Gerrymandering Got Its Name



Elbridge GERRY
Gerry was a Massachusetts governor who drew districts for political advantage.

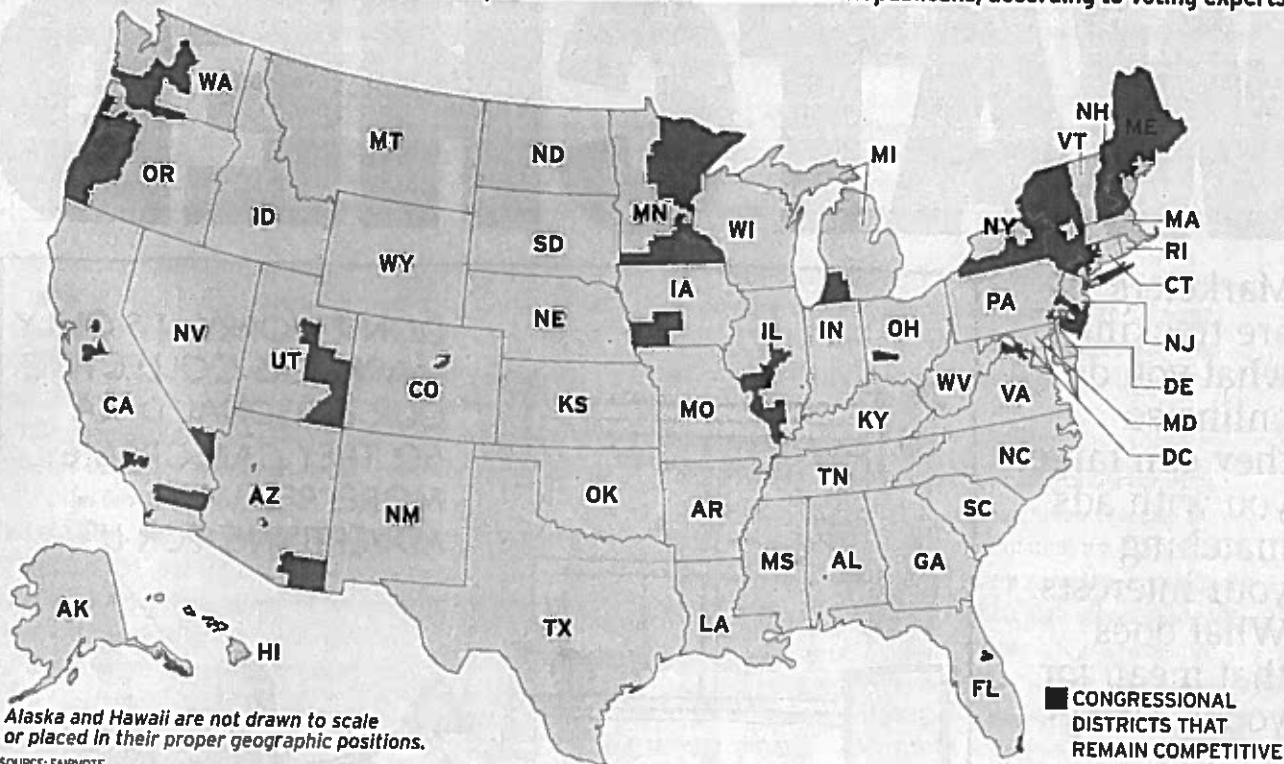


Sala-MANDER
A political cartoon from the time, showing how one district resembled a salamander

*In the remaining states, the parties shared control over redistricting, or a court or an appointed commission drew the lines, or there were no lines to draw because there is only one congressional district.

Very Few Competitive Districts

Gerrymandering has helped make the vast majority of the nation's 435 congressional districts safe for the party in power. Only 42 districts are considered competitive between Democrats and Republicans, according to voting experts.



But the Court has never struck down a legislative map drawn to benefit a political party, which is the complaint in the two cases it's now considering.

Wisconsin's Republican lawmakers, who are the defendants in the *Gill* case, say the Court shouldn't do so now either. They say the lower court's decision to strike down the maps they drew is "not only wrong, but dangerously so." They argue that allowing challenges to partisan gerrymandering to proceed through the court system will only "increase the federal judiciary's already outsized role in the redistricting process."

But the plaintiffs in the case say the courts have a critical role to play in helping restore the democratic process.

"You are the only institution in the United States that can solve this problem," Paul Smith, a lawyer for the Wisconsin Democrats, who are the plaintiffs, told the justices during oral arguments in October.

A group of prominent Republican politicians—both current and former lawmakers—filed briefs urging the Court to rule that extreme partisan gerrymandering violates the Constitution.

"This case is long overdue," says

former Republican Senator Alan Simpson of Wyoming, part of the group.

"Quite literally, gerrymandering is killing our system. Most Americans think politicians are corrupt, and when they're rigging maps to pick their own constituents, they're giving them reason to believe it!"

Is there any other solution?

One solution might be to take politicians out of the mix. Lawmakers can't be tempted to draw maps in their own self-interest if they're no longer the ones doing the drawing. Bipartisan or nonpartisan commissions now draw statehouse districts in 13 states and

congressional districts in six states (Arizona, California, Hawaii, Idaho, New Jersey, and Washington). States in which commissions draw district lines tend to have more competitive races, studies have found.

One possible fix: Don't let politicians draw the maps.

Rick Pildes, an election law expert at New York University, notes that

of all the countries that use election districts, the United States is the only one that doesn't have some kind of independent body to draw those districts.

"That is an inherently flawed system," Pildes says. "Even if the Supreme Court does something here, it probably would not get at the root of the problem. The more profound solution would be to take this power out of the hands of politicians." •

With reporting by Emily Bazelon and Adam Liptak of *The New York Times*.