

Gerrymandering: Background Information

Every ten years, the U.S. government conducts a census to measure the U.S. population. The census is mandated by Article I, Section 2 of the Constitution. The data collected by the census determines the number of seats each state has in the U.S. House of Representatives. The next census in 2020 will require counting approximately 330 million people and will determine how the U.S. population has shifted within the country. Once this data is collected, states may be required to redraw their voting district maps—a process called redistricting.

The process for redistricting varies by state. According to the Brookings Institution:

- Thirty-seven states allow the state legislature to draw legislative districts (some with the aid of an advisory or backup commission). This means that if one political party controls the state house, it also controls the redistricting process.
- Four states (Arizona, California, Idaho, and Washington) use an independent commission to draw legislative districts. This is how most democracies in the world determine electoral districts.
- Two states (Hawai'i and New Jersey) use a political commission.
- Seven states (Alaska, Delaware, Montana, North Dakota, South Dakota, Vermont, and Wyoming) only have one Congressional district each, so they do not draw boundaries for the House of Representatives, but they do for state legislative districts.

The process of redistricting can become politicized, particularly when state legislatures are in charge of the process. Gerrymandering is an

effort to draw the boundaries of a congressional or legislative district in order to benefit either a particular political party (partisan gerrymandering) or a particular racial or ethnic group (racial gerrymandering).

Although the Constitution says that legislative districts should have roughly equal populations, those districts can be configured in different ways. Politicians use sophisticated computer models to redraw legislative districts and may use different methods to try to gain an advantage, but the most common are:

- “packing”—trying to group as many members of the opposing party or certain racial/ethnic groups into one district as possible;
- “cracking”—splitting members of the opposing party or certain racial/ethnic groups into various districts so they will not make up a majority in any of them.

An example from one state may help to illustrate the impact of gerrymandering on the political system. Even though the population of North Carolina is nearly evenly divided between Republicans and Democrats, ten of the thirteen seats in the U.S. House of Representatives for North Carolina are held by Republicans. This is in large part because of how district lines were drawn when Republicans controlled the redistricting process.

To be clear, both Republicans and Democrats engage in gerrymandering. It can play a significant role in determining the outcomes of elections. While gerrymandering is not new, recent court challenges and citizen action seek to ensure that elections do not favor one political party and that constituents are represented fairly.

It is your turn to try redistricting!

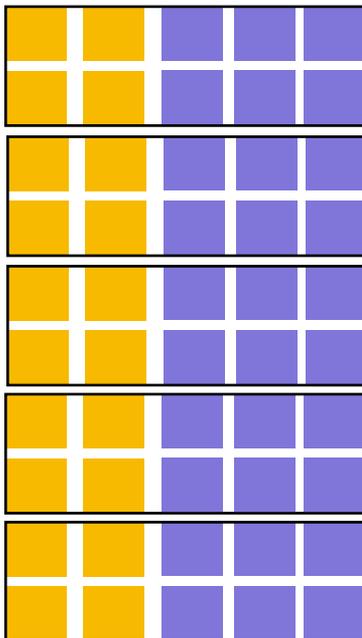
Drawing District Maps

The U.S. Constitution specifies that representation in the House of Representatives be proportional. States with large populations like California have more representatives (fifty-three) than states with small populations like Maine (two). Within each state, electoral districts should contain roughly equal numbers of people in each district. Voters in each Congressional district elect one representative to the U.S. House of Representatives.

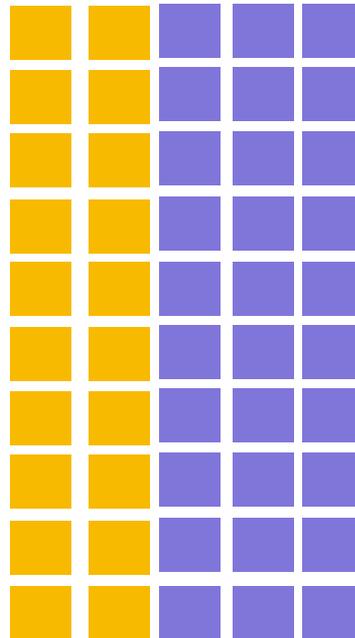
In this hypothetical example, imagine a U.S. state that has fifty people in it: twenty people who belong to the yellow party and thirty people who belong to the purple party. How might you divide people into five Congressional districts?

Instructions: Look at the example below on the left, then try to create one district map that fairly represents voters and one that unfairly benefits one political party. Each district should have ten squares in it so that representation remains equal. Get creative!

State District Map Example



State District Map 1



State District Map 2

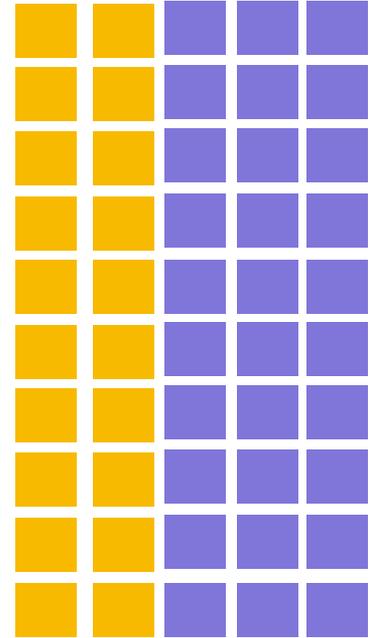


Image adapted from <https://img.washingtonpost.com/blogs/wonkblog/files/2015/03/gerry.png&w=1484>

Example:

1. Equal representation (ten people) in each district
2. One party has a majority in each district
3. House of Representatives would gain:
 - 5 members representing majority purple districts

For your examples, consider:

- Do you have equal representation (ten people) in each district?
- Does one party have a majority in each district?
- How many members of each party would join the House of Representatives?
 - How many members representing majority yellow districts?
 - How many members representing majority purple districts?

Discuss: Which of these district maps is most representative of the people living within it?

Challenges to Gerrymandering

Critics of gerrymandering have often challenged what they consider to be unfair legislative districts in court. While state and federal courts have generally allowed partisan gerrymandering, they have required redistricting when there is evidence of discrimination against certain racial or ethnic groups. Racial gerrymandering violates the Equal Protection Clause, part of the Fourteenth Amendment, and the Voting Rights Act, which was passed in 1965 to give all Americans the right to vote as guaranteed under the Fifteenth Amendment to the U.S. Constitution.

Here is a summary of some of the most recent court challenges to gerrymandering:

2015—Arizona State Legislature v. Arizona Independent Redistricting Commission

In a five-to-four decision, the U.S. Supreme Court upheld an initiative by Arizona voters to create an Independent Redistricting Commission rather than allow the state legislature to draw congressional districts.

2018—Gill v. Whitford (Wisconsin)

In 2016 a U.S. District Court ruled that Wisconsin's redistricting plan after the 2010 census was unconstitutional because it violated the Fourteenth Amendment principle of one person, one vote. The case was appealed to the U.S. Supreme Court. In a nine-to-zero decision, justices sidestepped the case, arguing that the plaintiffs needed to prove that they had a legal right to bring their case (known as "standing"). The justices did not dismiss the case entirely; seven of them ruled that the case should be re-argued before the U.S. District Court. In particular, the justices said that those challenging Wisconsin's redistricting plan would have to show how they were harmed in their districts rather than arguing that the entire state map was flawed.

2018—Benisek v. Lamone (Maryland)

Shortly after the *Gill v. Whitford* case, the U.S. Supreme Court heard a case challenging partisan gerrymandering in a single congressional district in Maryland. Without commenting on the merits of the case, the justices left in place a U.S. District Court ruling that upheld Maryland's congressional map. Justices argued that the challengers had waited too long (six years) to challenge the gerrymandered district. The Court reasoned that a decision would disrupt the 2018 elections.

2018—Rucho v. Common Cause (North Carolina)

After the 2010 census, critics in North Carolina claimed that the Republican legislature drew new district lines that resulted in racial gerrymandering. Because the U.S. Supreme Court had ruled previously that racial gerrymandering was unconstitutional, a U.S. District Court in 2016 ordered the state legislature to re-draw some districts, which the U.S. Supreme Court affirmed in 2017. Critics charged that the redrawn districts also were flawed and amounted to partisan gerrymandering. In January 2018, U.S. District Court justices found the new district maps to be unconstitutional and ordered that they be redrawn in time for the 2018 midterm elections. However, the U.S. District Court later agreed that there was insufficient time for new maps to be drawn and approved before the November 6 election. These will need to be redrawn after the November 6 election.

Citizen Reform Efforts

In addition to legal challenges, citizens continue to push for reform. For example, Ohio's legislature passed reform legislation in May 2018. In the November 2018 elections, citizens in four states (Colorado, Michigan, Missouri, and Utah) will vote on ballot initiatives intended to reform redistricting by forming independent commissions. The next round of redistricting will occur in 2021 after the 2020 census.

Effects of Gerrymandering on Democracy

Instructions: Read the following excerpt of a speech by former U.S. Senator George Mitchell and answer the questions below. The remarks below are from a 2013 lecture during which Senator Mitchell discussed what he sees as threats to democracy in the United States.

Senator George Mitchell, in a speech called “The Importance of Listening,” as part of the Fall 2013 Speaker Series “Politics Then and Now, In Maine and the Nation,” September 26, 2013.

“[L]ook at some of the maps of districts in the U.S. House of Representatives today. There you will see the fruits of highly computerized and partisan redistricting. It has now developed to a degree that most of those who serve today in the House of Representatives do not run in competitive districts. Most estimates are that, of the 435 House seats, fewer than 50 are genuinely competitive.

“Most members now sitting in House seats know that the outcome of the next election in their district will be in the favor of their party or the other. In other words, you can predict the party outcome now because of the manner in which redistricting has occurred. The Republicans have been most successful at this, the last time around for redistricting, because they controlled more State legislatures after the 2010 election, the last Census year. Democrats, there in the past, did much the same.

“What we have to do is to adopt a process whereby we take political partisanship out of the redistricting that occurs every 10 years after the Census, as much as humanly possible. We must be- cause, at this pivotal moment in American history and particularly in the House of Representatives, it is the nominating process, the party primary, and not the general election that matters most! It no longer matters who was nominated in most districts: the Republican will win in some, and the Democrat will win in others.

“We all know that in our country we have an embarrassingly low level of participation in elec- tions. In a hotly contested presidential election, it is between 50 and 60%. In the mid-term congres- sional elections, far fewer than that; and in the nominating primary process, only a tiny fraction of the American people participate. This gives hugely disproportionate influence to the most activist, the most ideological, the most rigid, and the most uncompromising persons in their parties, on both sides....”

Discussion questions:

1. What arguments does Senator Mitchell make about the influence of gerrymandering on U.S. politics?
2. Do you agree or disagree with his viewpoint?
3. What questions do you have about gerrymandering and/or its influence on politics in the United States?