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Gerrymandering and Redistricting

Date: 2021

From: Gale Opposing Viewpoints Online Collection

Publisher: Gale, a Cengage Company

Document Type: Topic overview

Length: 2,497 words

Lexile Measure: 1470L 

Full Text:

Politicians elected to state legislatures or the US House of Representatives represent *districts*, or geographic areas that contain roughly equal portions of a state's total population. The main purpose of dividing states into legislative districts is to enable elected officials to best represent local interests at their statehouses or in Washington, DC. As populations grow, shrink, and shift over time, the geographic boundaries of legislative districts are adjusted in a process called *redistricting*. Redistricting is typically performed every ten years, though some states do it more often. Following the release of population figures from the US Census, seats in the 435-member US House of Representatives are allocated among the states based on their populations—a process known as *apportionment*. Each state then divides itself into geographical districts containing roughly equal population sizes to further allocate seats among voters. Federal law does not specify how states should go about grouping voters into districts; instead, states determine their own methods of redrawing district lines.

Redistricting decisions can have major effects on the political process. They can affect candidates' ability to win elections and also influence the composition of a state's legislature or congressional delegation. With such high stakes involved, some people attempt to manipulate the redistricting process to increase the likelihood that certain candidates or political parties will hold power. Intentionally redrawing legislative districts in a manner designed to produce a specific electoral outcome is known as *gerrymandering*. The practical effects of gerrymandering may undermine the democratic process and deny voters—especially underrepresented minorities—their constitutional right to fair and equal representation in government. Some citizens may feel as if their votes do not count, and their elected officials may have less incentive to represent their interests.

Main Ideas

- Lawmakers serving in the US House of Representatives and state legislators represent *districts*, geographic areas that all contain roughly the same proportions of the state's population. The geographic boundaries of legislative districts are adjusted periodically in a process called *redistricting*.
- Redistricting affects candidates' ability to win an election and the composition of a state's legislature or congressional delegation. Each state has the authority to run its own elections and devise its own methods of electing representatives.
- The term *gerrymander* dates to an 1812 political cartoon that referred to an amphibian-shaped district approved by Massachusetts governor Elbridge Gerry. Gerrymandering techniques include *cracking*—dividing voters who favor a political party into multiple districts to dilute their voting strength—and *packing*—concentrating voters who favor a political party together in certain districts.
- Critics of gerrymandering argue that it violates the Equal Protection Clause of the Fourteenth Amendment to the US Constitution. The US Supreme Court has ruled that some forms of partisan gerrymandering are so biased as to be unconstitutional. However, the court has also determined that only the states or Congress can set rules to stop partisan gerrymandering.
- One strategy for minimizing conflicts of interest in redistricting involves giving the responsibility to nonpartisan or independent commissions. Several states use such commissions to oversee both congressional and legislative redistricting. Proponents of redistricting reform also suggest increasing the transparency of redistricting by holding public hearings throughout the process.

Creation of Congressional Districts

The US Constitution requires that seats in the House of Representatives be apportioned among the states, but it grants each state the authority to run its own elections and devise its own methods of electing representatives. The first attempt to draw legislative district boundaries for political gain occurred prior to the election of the First Congress in 1789, when former Virginia governor Patrick Henry unsuccessfully tried to draw districts that would prevent James Madison from being elected. Gerrymandering received its name in 1812, after Massachusetts governor Elbridge Gerry approved a politically motivated redistricting plan that carved his state into oddly shaped districts. A Boston paper ran a political cartoon that emphasized one district's resemblance to a salamander and coined the term "Gerry-mander."

As of 2020, elected members of thirty-one state legislatures primarily controlled the redistricting process in their states. Proponents of this system argue that sitting legislators are well qualified to determine district boundaries because they have strong knowledge of the communities and interest groups within their constituent base. Critics argue that legislators should not control redistricting because they have a personal stake in the outcome.

To address concerns about conflicts of interest, four states (Arizona, California, Colorado, and Michigan) have established independent commissions to oversee both congressional and legislative redistricting. As of July 2020 another four states (Connecticut, Iowa, New York, and Utah) have commissions to advise their legislatures on both congressional and legislative redistricting.

Redistricting Criteria and Gerrymandering Strategies

Legislators use a variety of criteria to determine district boundaries. States may try to draw legislative districts that contain equal numbers of people, are as geographically compact as possible, preserve communities of interest (such as neighborhoods or school districts), provide fair representation of minority voters, ensure a competitive partisan balance, or promote specific electoral outcomes. Redistricting often involves tradeoffs because emphasizing one objective can make it more difficult to meet others. Accusations of gerrymandering arise when the main criteria for redistricting appears to be increasing the chances that a certain candidate or party will win elections.

There are several methods of grouping voters that legislators might use to create a partisan gerrymander. *Cracking*, for instance, involves dividing voters who favor the opposing party into multiple districts in order to dilute their voting strength. *Packing* refers to concentrating voters who favor the opposing party into as few districts as possible; though opposition candidates will likely win those districts, the party in power is more likely to hold onto its legislative majority. *Tacking* involves adding a distant community or area to a district in order to make its overall demographics more favorable to a candidate or party.

These tactics have also been applied in *racial gerrymandering*, which is the use of redistricting to prevent historically underrepresented populations, such as African American and Latinx citizens, from gaining political influence. The practice of *prison gerrymandering* has also emerged as a concern, as counting incarcerated populations—disproportionately people of color who cannot vote while incarcerated—as part of the district in which a prison is located can arguably give the local population—predominantly rural and White—outsized representation.

Conflicts and Legal Challenges

According to critics, gerrymandering distorts the outcome of elections and produces government bodies that do not represent voters fairly and equitably. In the case of partisan gerrymandering, these effects become clear when the disadvantaged political party fails to win the expected number of seats in an election. In the 2016 election for the US House of Representatives, for instance, Democratic candidates received 48 percent of the total vote, yet Republicans claimed 56 percent of House seats. Outcomes in specific states can be starker. In the 2018 midterm elections, for example, North Carolina Democratic candidates received 50 percent of the popular vote but won just three (23 percent) of the state's thirteen congressional seats. According to an analysis published by the Brennan Center for Justice in 2019, in states where Republican legislators had total control over redistricting, partisan bias in maps generated thirteen to nineteen extra House seats for Republicans in 2016.

Critics of gerrymandering argue that the practice violates the Equal Protection Clause of the Fourteenth Amendment to the US Constitution. The US Supreme Court agreed in its 1986 *Davis v. Bandemer* ruling that some forms of partisan gerrymandering are so biased as to be unconstitutional. Though the majority of justices found that the Illinois redistricting scheme in question did not violate the Fourteenth Amendment, they noted that gerrymandering may be considered discrimination "when the electoral system is arranged in a manner that will consistently degrade a voter's or a group of voters' influence on the political process as a whole." The court reaffirmed this position in 2018 when it declined to hear an appeal in *League of Women Voters of Pennsylvania v. Commonwealth of Pennsylvania*. In so doing, it upheld the state court's ruling that the district map created by Republican lawmakers in 2011 was "clearly, plainly and palpably" in violation of the state's constitution. State lawmakers were ordered to redraw legislative districts prior to the 2018 midterm elections.

The Supreme Court has weighed in on the constitutionality of redistricting criteria on several occasions. During the 1960s, for instance, the court ruled in *Gray v. Sanders* (1963) and *Reynolds v. Sims* (1964) that legislative districts must contain roughly equal numbers of people based on existing population data—a doctrine known as "one person, one vote." The Court upheld this doctrine in 2016 with its ruling in *Evenwel v. Abbott*. The justices unanimously held that Texas could use total population, rather than the number of eligible voters, to create equal legislative districts. The ruling upheld the principle that residents unable to vote—such as children who have not reached the legal voting age or immigrants who are not citizens—have a right to political representation.

Several legal challenges to racial gerrymandering have focused on the Voting Rights Act of 1965 (VRA), which was passed to address racial discrimination in state voting laws. To ensure that legislatures reflect the racial and ethnic diversity of the people they represent, the VRA required states to draw districts that contained a large percentage of Black, Latinx, or Asian voters—known as "majority-minority" districts. Citizens in North Carolina and Virginia challenged redistricting plans for 2011 in which they claim Republican state legislators used the packing technique to concentrate African American voters—who tend to favor the Democratic Party—in certain districts as a means of diluting Black voting power. Virginia legislators argued that they had to pack Black voters into majority-minority districts in order to comply with the VRA. Though North Carolina legislators admitted redrawing the districts for political gain, they insisted that party affiliation, rather than race, was the primary criteria used.

In the Virginia case, *Bethune-Hill v. Virginia State Board of Elections*, the Supreme Court ruled in 2017 that race cannot be the predominant factor in redistricting decisions and returned the case to a lower court for reconsideration. In the North Carolina case, *Cooper v. Harris*, a federal court determined in 2016 that the state legislature's redistricting plan involved racial gerrymandering of two

federal districts. The court ordered the legislature to redraw the US congressional districts. The state appealed the decision to the US Supreme Court, which affirmed the lower court's ruling in May 2017.

Two other gerrymandering cases—North Carolina's *Rucho v. Common Cause*, and Maryland's *Lamone v. Benisek*—were also argued before the US Supreme Court in 2019. Both cases involved allegations of egregious partisan gerrymandering. The court's decisions for these two cases were consolidated under the *Rucho* ruling. In the 5-4 decision, the majority determined that, while the federal court does have authority to determine when racial gerrymandering has gone too far, it is not empowered with determining when politically motivated gerrymandering has exceeded constitutional bounds. The court majority determined that only the states or Congress can make rules to stop partisan gerrymandering. Justice Elena Kagan's dissent stated that such practices undermine the US system of free and fair elections.

Critical Thinking Questions

- For what reasons is gerrymandering considered to disenfranchise certain voters?
- Do you believe that independent and nonpartisan commissions can help eliminate bias and self-interest in the redistricting process? Why or why not?
- In your opinion, should the United States adopt a single process for apportioning voting districts rather than leaving responsibility for districting methods up to individual states? Explain your answer.

Proposed Solutions to Gerrymandering

People who object to gerrymandering have proposed several alternative methods of redrawing legislative districts to improve representation. Some people believe that increasing the transparency of the redistricting process would help solve the problem and suggest that officials hold public hearings throughout the redistricting process. Another common recommendation involves taking responsibility for redistricting away from self-interested legislators and giving it to an independent, nonpartisan commission. In 2018 Missouri voters passed the Clean Missouri amendment, which included the creation of a new government position, that of a nonpartisan state demographer, to oversee redistricting in the state. To reduce the likelihood of partisan interference, people who serve as the state demographer cannot have held elected office in the previous four years and are barred from serving in Missouri's general assembly for four years following their latest redistricting map.

Supporters of independent redistricting commissions have proposed alternatives such as choosing commissioners from a pool of retired judges, or creating citizen commissions comprising people who reflect the racial, ethnic, geographic, and partisan diversity of the state as a whole. Some opponents of gerrymandering have proposed eliminating the human element from redistricting by automating the process. Mapping software and sophisticated mathematical algorithms, they suggest, may draw legislative districts that balance many different factors in a more impartial manner.

Though laws requiring single-member districts have been passed by Congress since the mid-nineteenth century, with the most recent law enacted in 1967, some people believe that the best way to end gerrymandering is to switch to multimember legislative districts. Rather than creating several small districts, each of which elect a single representative to office, proponents suggest merging the districts into a single large district in which voters elect several representatives. In multimember districts, the candidates who receive the highest percentage of votes would win seats in the legislature. Unlike the winner-take-all single-member system, a multimember system would ensure political minorities are represented. A district that is 40 percent Republican and 60 percent Democratic, for instance, could elect two Republican and three Democratic representatives rather than only one Democratic representative.

Researchers at the Center for American Progress (CAP), meanwhile, have proposed "voter-determined districts" to ensure that the composition of state and federal legislatures reflect the preferences of voters. CAP proposes that districts be determined based on the results of elections to mirror the overall political leanings of the electorate. For example, if Republicans received 55 percent and Democrats received 45 percent of all votes in a state, then 55 percent of the state's districts should lean Republican, while 45 percent of the state's districts should lean Democratic. CAP contends this would mitigate problems of both intentional and unintentional gerrymandering by making the voters rather than the parties the driving factor.

At the federal level, the US House of Representatives passed the For the People Act of 2019, which included a provision that would require states to use independent commissions to draw Congressional district maps. Some opponents contend that the bill oversteps congressional authority because state legislatures are constitutionally mandated to have redistricting authority. However, the US Supreme Court deemed some processes to create independent commissions constitutionally valid in other states, such as Arizona. Supporters of the bill also argue that the issue of politics in redistricting was left to Congress after the US Supreme Court's *Rucho v. Common Cause* ruling that it does not have the power to determine when partisan gerrymandering has gone too far. Though the For the People Act was passed by the House in March 2019, Republicans in the Senate have blocked attempts to pass it. It remained in the Senate as of June 2020.

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Source Citation (MLA 9th Edition)

"Gerrymandering and Redistricting." *Gale Opposing Viewpoints Online Collection*, Gale, 2021. *Gale In Context: Opposing Viewpoints*, link.gale.com/apps/doc/PHQMDR855761977/OVIC?u=mosc00780&sid=bookmark-OVIC&xid=f9da576c. Accessed 20 July 2022.

Gale Document Number: GALE|PHQMDR855761977