

Pennsylvania has to draw new congressional districts, but getting rid of gerrymandering will be harder than you think.

by Bernard Grofman and Jonathan Cervas February 9



(David Goldman/AP)

On Monday, the [U.S. Supreme Court denied state Republicans' request for a stay](#) in *League of Women Voters v. Pennsylvania*. In that case, the Pennsylvania Supreme Court had struck down as an unconstitutionally partisan gerrymander the districts for the U.S. Congress drawn by the state legislature, [with the reasoning specified in an opinion issued Wednesday](#). The Commonwealth of Pennsylvania has until Feb. 15 to come up with a district

plan that satisfies its Republican-controlled legislature and its Democratic governor — and which the state Supreme Court will find acceptable. [Most observers bet](#) that it will not happen by the deadline.

A new district map will give Pennsylvania Democrats a better chance at more House seats

If the state cannot agree on a plan, the court will issue a district map itself. The court has already hired professor Nathaniel Persily of Stanford Law to advise on a plan. The court also invited state Democrats and Republicans to submit maps that meet a list of criteria, including keeping counties, townships and municipalities within the same districts wherever possible; ensuring roughly the same number of voters for each district, so that each person's vote has roughly the same power; and keeping districts compact.

A map that meets all these criteria will probably reduce the Republican Party's advantage in the state's congressional races. Although the two parties poll more or less equally statewide, Republicans hold 13 of the state's 18 seats in Congress. As is true nationwide, Democrats are clustered around the major cities — Philadelphia and Pittsburgh — while Republicans are spread more broadly around the state. A new, nonpartisan district map would almost certainly give Pennsylvania Democrats a better chance at holding more House seats.

But eliminating gerrymandering is not as straightforward as you might think

There are at least two important legal issues the court would have to tackle in a new map.

First, partisan gerrymandering is like cancer: Sometimes the signs are obvious, but sometimes no signs can be seen. Districts that are bizarrely drawn and unnecessarily fragment existing political boundaries such as townships and counties almost always indicate partisan gerrymandering. But

sometimes districts satisfy good-government criteria on their face and nonetheless have egregious partisan intent and effects. The court will have to watch out for such maps, lest it approve what we might call “stealth” gerrymandering.

[*\[The U.S. could be free of gerrymandering. Here's how other countries do redistricting.\]*](#)

With that in mind, the Pennsylvania Supreme Court needs to decide whether to evaluate the likely political consequences of proposed plans to prevent such “stealth” gerrymanders. Political science can pretty reliably tell us the likely results of a potential district — understanding, of course, that competitive districts can shift from one election cycle to another, depending on the electoral tides — and understanding that incumbents can be favored beyond the party’s baseline support.

Should redistricting be “neutral” or “fair”?

Second, the court will need to ask whether it is looking for a “neutral” plan or a “fair” plan. “Neutral” treatment involves applying good-government criteria to a map without considering the partisan consequences. A “fair” map is drawn to try to keep the partisan results — in this case, the congressional delegation — more or less in line with the state’s partisan leanings. In other words, if roughly 50 percent of the state population favored party X, a “fair” map would result in party X holding roughly 50 percent of the state’s congressional seats. But if supporters of party X [were concentrated in just one or two parts of the state](#), a “neutral” plan might result in party X holding well under 50 percent of the state’s seats.

[*\[The Supreme Court discussed my research on gerrymandering. There were some misconceptions.\]*](#)

What does that mean in practice in Pennsylvania? Let’s take a look. Philadelphia County overwhelmingly votes for Democrats. If you draw two

congressional districts entirely within Philadelphia County, the average vote in the two will be around 80 percent Democratic, no matter how you draw the two districts. Republicans don't dominate any particular area of the state quite so overwhelmingly — but they do dominate in the state's congressional districts. So Philadelphia (and Pittsburgh) have an oversupply of votes for a Democrat — and Democratic votes are in an undersupply in other districts. Or to put it the way districting specialists do, more Democratic votes will be “wasted” in Philadelphia than Republican votes will be “wasted” elsewhere in the state.

In this case, “neutral” redistricting would give Republicans about a one-seat advantage. In other words, if Pennsylvania's voters were half Republicans and half Democrats, a “neutral” plan would not deliver nine Democrats and nine Republicans to the House of Representatives; rather, it would deliver eight Democrats and 10 Republicans.

To be more specific, a “neutral” plan following good-government criteria would probably draw two districts entirely within Philadelphia County. A “fair” plan probably would not. In racial gerrymandering cases, the U.S. Supreme Court has repeatedly rejected the idea that the 14th Amendment's guarantee of equal protection requires “fairness” in districting. Rather, treatment must provide an “equal opportunity to participate in the political process and to elect candidates of choice.”

But the Pennsylvania case is being considered under the state constitution, and whether that constitution requires anything beyond a plan drawn on good-government grounds remains an open question.

[*\[Everything you need to know about the Supreme Court's big gerrymandering case\]*](#)

How the Pennsylvania Supreme Court resolves these two legal issues in the remedy phase of the case almost certainly will affect the partisan balance of its congressional delegation for the next two elections. But what is most

important is that if the court does a good job, as we are confident it will, that delegation will be chosen not by manipulations in the state legislature, but by Pennsylvania's voters.

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