

Gerrymandering: The Art of Redrawing Elections

A talk with Samuel Issacharoff

I. What is Gerrymandering?

- A. Process of drawing electoral districts to deliberately favor a particular group of people, giving the group a numerical advantage.
 - 1. Districts are redrawn every ten years, following updated census data.
 - 2. Districts must be drawn in a manner that is considered to be both compact and fair. Districts drawn otherwise are considered to have been gerrymandered.
- B. Gerrymandering has been around even before the Constitution.
 - 1. In 1788, Virginia voted to ratify the Constitution and join the Union. Patrick Henry, Virginia governor, rallied the state legislature to redistrict the 5th district to force James Madison to run against James Monroe for a congressional seat. Monroe was wildly favored to win, and redistricting placed many Antifederalists (who sided with Monroe) in the district. Henry's plan backfired, however, because Madison won anyway.
 - 2. The term "gerrymandering" was coined in 1810 when Eldbridge Gerry, governor of Massachusetts, redistricted the state. The Boston Gazette compared the shape of one newly created district to that of a salamander and coined the new district as Gerry-mander.
- C. Forms of gerrymandering
 - 1. Racial gerrymandering
 - a. Racial gerrymandering is intentionally drawing district lines to segregate voters based on race.
 - b. Using provisions of the Voting Rights Act, districts are typically drawn to make super majority-minority districts, concentrating minorities into fewer districts.
 - c. The Voting Rights Act, signed into law by Lyndon B. Johnson in 1965, was aimed at overcoming the legal barriers at the state levels preventing blacks from voting. Section 5 of the Act provided that jurisdictions thought to have the greatest potential for discrimination could not implement any change that affected voting until the Attorney General or the D.C. District Court determined that the change did not have a discriminatory purpose and would not have a discriminatory effect. Section 4 provided a "coverage formula" to determine which jurisdictions fell under Section 5.
 - 2. Partisan gerrymandering
 - a. Partisan gerrymandering is drawing district lines to the advantage of one political party over another.

- b. Partisan gerrymandering is unconstitutional, but proving in court that a particular gerrymandering is partisan vs. racial can be difficult.

D. Tools of gerrymandering

1. Cracking is breaking up a group of voters into several districts to prevent them from reaching a majority.
2. Packing is concentrating as many of one group of voters into one district to prevent them from affecting the voting in other districts.
3. Stacking is when low-income, less educated minorities are grouped together in a district to create a perceived voting majority, but are placed in the same district as high income, more educated whites who tend to turn out in greater numbers.

E. Case law

1. *Baker v. Carr* (1962)¹
 - a. Charles Baker, resident of Shelby County, Tennessee, filed suit alleging that the state legislature had not redrawn its legislative districts since 1901, in violation of the Tennessee State Constitution which required redistricting according to the federal census every ten years. Baker claimed that his vote was diluted as a result, in violation of the Equal Protection Clause of the 14th Amendment.
 - b. The Supreme Court ruled that federal courts have jurisdiction to hear a constitutional challenge to legislative apportionment.
2. *Gray v. Sanders* (1963)²
 - a. James Gray, a voter in Fulton County, Georgia, challenged the legality of Georgia's County Unit System, arguing that it gave unequal voting power to smaller counties.
 - b. The Supreme Court struck down the County Unit System. In his opinion, Justice Douglas wrote, "The concept of political equality... can mean only one thing – one person, one vote."
3. *Wesberry v. Sanders* (1964)³
 - a. James Wesberry, Jr. filed suit challenging Georgia's district apportionment. The district in which he resided, the 5th District, had a population 2-3 times larger than some of the districts in the state. Because there is one congressman per district, Wesberry alleged that this system diluted his vote.
 - b. The Supreme Court held that the apportionment scheme discriminated against voters in the 5th Congressional District and that Article I, § 2 of

¹ *Baker v. Carr*, 369 U.S. 186 (1962):

<https://supreme.justia.com/cases/federal/us/369/186/case.html>

² *Gray v. Sanders*, 372 U.S. 368 (1963): <http://caselaw.findlaw.com/us-supreme-court/372/368.html>

³ *Wesberry v. Sanders*, 376 U.S. 1 (1963): <https://www.law.cornell.edu/supremecourt/text/376/1>

the Constitution requires that, as nearly as is practicable, one person's vote in a congressional election should be worth as much as another's.

4. *Reynolds v. Sims* (1964)⁴:
 - a. M.O. Sims and other voters from Jefferson County, Alabama challenged the state's apportionment system. Pursuant to the state constitution, the legislature consisted of 106 representatives and 35 senators for the State's 67 counties and senatorial districts. Population variances as great as 41 to 1 existed among senatorial districts.
 - b. The Supreme Court upheld the challenge, noting that both houses of bicameral state legislatures must be apportioned based on population and states should construct districts of equal population as practicable.

II. Controversial Gerrymandering and Alternative Systems

- A. What's wrong with gerrymandering?
 1. Gerrymandering creates an artificial balance of seats for one party in the House and skews representation.
 2. It contributes to increased partisanship and polarization of politics.
 3. Some of the most gerrymandered districts include:
 - a. Illinois's 4th congressional district: nicknamed "Earmuffs" or "the Horseshoe," IL's 4th congressional district includes two separate areas composed largely of Hispanic voters connected only by a thin strip of land running along Highway 294. To be considered a district, all areas must be connected.
 - b. North Carolina's 12th congressional district: Long, thin, and running down the center of the state, NC's 12th congressional district is composed largely of black voters. In February 2016, a 3 judge U.S. District Court issued an opinion that found that the 12th congressional district boundaries constitute unconstitutional racial gerrymander and require that new districts be redrawn.⁵
- B. In most states, the state legislature has primary control of drawing the district lines for both state and congressional districts.
- C. Alternatives to state legislature control of redistricting
 1. Advisory bodies
 - a. Several states have legislative advisory commissions for drawing district lines, though the legislature is not bound by the advisory commission's recommendations.

⁴ *Reynolds v. Sims*, 377 U.S. 533 (1964):

<https://supreme.justia.com/cases/federal/us/377/533/case.html>

⁵ *Harris v McCrory*, m.d., 1:13cv-949: <http://electionlawblog.org/wp-content/uploads/North-Carolina-Decision.pdf>

- b. Iowa is unique in that it employs the Iowa Legislative Services Agency, a non-partisan legislative body. In drawing districts, they are not allowed to consider previous election results, voting history, where the incumbent resides, or demographics (except racial factors pursuant to the Voting Rights Act). Congressional districts must be composed of whole counties, and lines must follow county and municipal boundaries.
2. Independent and objective commission
- a. Some states, like Arizona and California, have adopted independent and objective commissions to draw district lines, limiting direct participation by elected officials.
 - b. *Arizona State Legislature v. Arizona Independent Redistricting Commission* (2015)⁶
 - i. In 2000, Arizona voters passed Proposition 106 to amend the state constitution to remove the congressional redistricting power from the legislature and vest it in the Arizona Independent Redistricting Commission.
 - ii. The Supreme Court held the Elections Clause of the Constitution and 2 U.S.C. § 2(a) does not preclude the independent commission from redistricting congressional districts.

⁶ *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 576 US __ (2015): <https://supreme.justia.com/cases/federal/us/576/13-1314/>