

# **How to Cherry-pick Voters: Gerrymandering: A Lesson to Accompany *Fault Lines in the Constitution: The Framers, Their Fights, and the Flaws That Affect Us Today***

## **Rationale:**

Gerrymandering is not a new issue in the United States, but it is one that takes on additional significance in 2020 as Americans (hopefully) fill out and submit their census and we go to the polls for presidential and congressional elections. There are several ways that the U.S. could address this issue, as Cynthia and Sanford Levinson discussion in *Fault Lines in the Constitution*. For students, learning about this issue, its derivation, and the way that it has influenced and affected American politics is a necessary first step.

*Prior to exploring the packet, students should watch the following video:*



Watch: “Gerrymandering, Explained,” *The Washington Post*, November 14, 2017  
<https://www.youtube.com/watch?v=bGLRJ12uqmk>

## **Essential Questions:**

- To what extent does state power over determining congressional districts contribute to gerrymandering?
- To what extent has gerrymandering been used to make some people’s votes more valuable than others over time?
- How have the results of gerrymandering influenced laws and policies throughout US history?
- To what extent does gerrymandering represent a “fault line” in the Constitution?

## **Objectives: *Students will be able to...***

- Define gerrymandering.
- Explain the ways in which state legislatures use gerrymandering.
- Discuss the arguments against this practice.
- Evaluate the impact of gerrymandering on national elections.
- Assess the impact of gerrymandering on national politics and policymaking.

## **Common Core Standards:**

### ***Middle School:***

#### *Key Ideas and Details:*

CCSS.ELA-LITERACY.RH.6-8.1

Cite specific textual evidence to support analysis of primary and secondary sources.

CCSS.ELA-LITERACY.RH.6-8.2

Determine the central ideas or information of a primary or secondary source; provide an accurate summary of the source distinct from prior knowledge or opinions.

#### *Integration of Knowledge and Ideas:*

CCSS.ELA-LITERACY.RH.6-8.7

Integrate visual information (e.g., in charts, graphs, photographs, videos, or maps) with other information in print and digital texts.

CCSS.ELA-LITERACY.RH.6-8.8

Distinguish among fact, opinion, and reasoned judgment in a text.

### ***High School:***

#### *Key Ideas and Details:*

CCSS.ELA-LITERACY.RH.11-12.1

Cite specific textual evidence to support analysis of primary and secondary sources, connecting insights gained from specific details to an understanding of the text as a whole.

CCSS.ELA-LITERACY.RH.11-12.2

Determine the central ideas or information of a primary or secondary source; provide an accurate summary that makes clear the relationships among the key details and ideas.

CCSS.ELA-LITERACY.RH.11-12.3

Evaluate various explanations for actions or events and determine which explanation best accords with textual evidence, acknowledging where the text leaves matters uncertain.

#### *Integration of Knowledge and Ideas:*

CCSS.ELA-LITERACY.RH.11-12.7

Integrate and evaluate multiple sources of information presented in diverse formats and media (e.g., visually, quantitatively, as well as in words) in order to address a question or solve a problem.

CCSS.ELA-LITERACY.RH.11-12.8

Evaluate an author's premises, claims, and evidence by corroborating or challenging them with other information.

CCSS.ELA-LITERACY.RH.11-12.9

Integrate information from diverse sources, both primary and secondary, into a coherent understanding of an idea or event, noting discrepancies among sources.

### **I) Gerrymandering: A History**

To create something (a government) out of practically nothing (the Articles of Confederation), the Framers faced a bewildering array of issues. They dispatched some of them in short order, barely anticipating the possible consequences....

With the basics in place, the Framers had to decide when, where, and how the people's representatives would be elected to office. Some Framers didn't trust the states to be in charge of elections. One especially suspicious group warned that if it were up to the states, some might never get around to holding elections.

Others had qualms about Congress making these decisions about the election process. Luther Martin of Maryland claimed that turning elections over to Congress was "designed for utter extinction and abolition of all state governments."

James Wilson added that if Congress made the rules, it could require every voter in Pennsylvania, say, to show up in Philadelphia to cast their ballots. In that case, hardworking farmers who couldn't trek to the big cities would never get to vote.

In the end, most of the Framers didn't want to get into arguments about how, exactly, this new Congress they were creating should run elections. So, with no guidelines, they turned responsibility for planning and holding elections over to the states. In

case the union did manage to last, they gave Congress the right to pass laws in the future to regulate elections.

In 1842, Congress took advantage of its ability to control the elections of its members by adopting an Apportionment Act. The law requires every state to divide itself into single-member districts. However, Hawaii and New Mexico disobeyed the law until Congress reinforced it in 1967.

Nowadays we take it for granted that each member of the House comes from a single district and represents only that district. Before the Apportionment Act, though, some states elected all of their congressmen at large, meaning from the entire state. In such a system, people whose views are in the minority can be frozen out entirely. Only the opinions of the majority, even if it's narrow, get represented in Congress.

With single member districts, some could be composed of residents who hold different views from those in other districts. They would then have a better chance of electing someone who agreed with them. That did solve the problem facing Congress in 1842. We can see 175 years later, though, that it has created its own problems, including opportunities for hijinks by state legislators when they draw congressional boundaries.

(Cynthia Levinson and Sanford Levinson, *Fault Lines in the Constitution: The Framers, Their Fights, and the Flaws That Affect Us Today* (Atlanta: Peachtree Publishing Company, 2019), 68-73.)

**Should the states have the power to determine congressional boundaries? How might this cause problems/controversy related to representation and voting?**

## II) Voting Processes in the Constitution

*The Framers articulated that the number of persons living in each state would determine representation. \*The Fourteenth Amendment overturned references to slavery and the three-fifths clause.*

### **Article I, Section 2:**

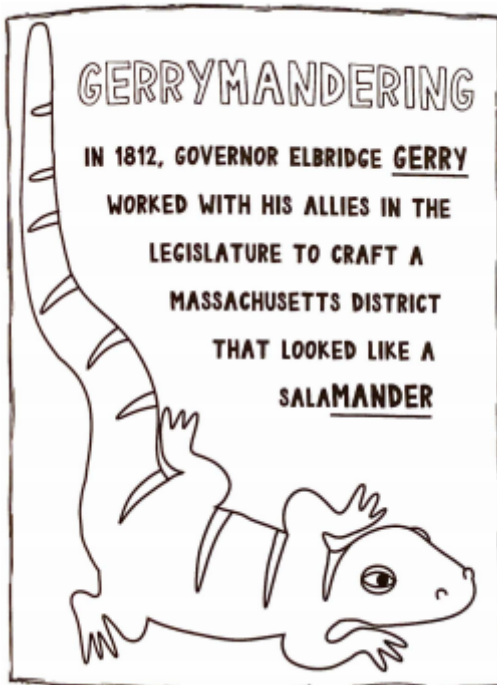
[Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.]\* The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

### **Article I, Section 4:**

The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

**What instructions does the Constitution provide for electing the House of Representatives? To what extent does this guarantee that all Americans' interests will be represented?**

### III) “Hijinks By State Legislators”



Usually we think of elections as opportunities for voters to pick their leaders. But when politicians have the power to shift district boundary lines around to suit themselves, the can preselect the voters who will put them into office.

America has a long history of such shenanigans. In 1788, Patrick Henry tried to keep James Madison out of the House of Representatives by creating a cockeyed district for him. Although Henry failed, attempts to skew districts have continued ever since....

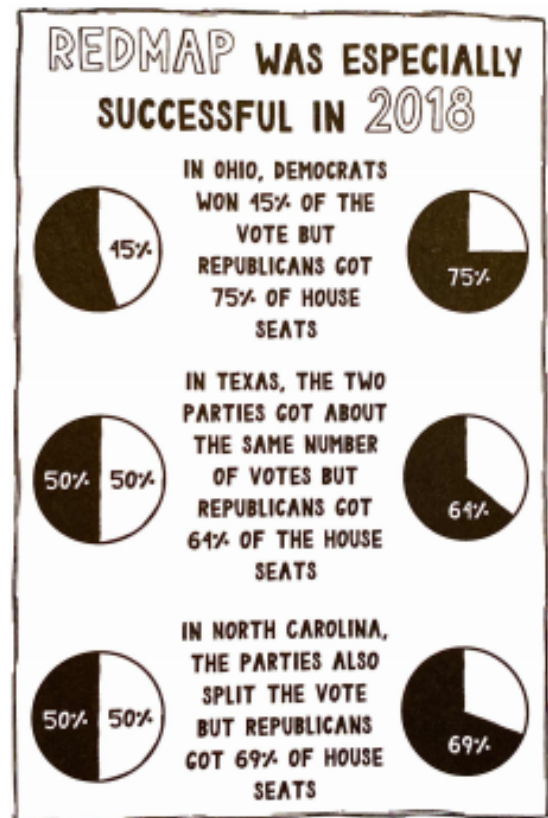
After the 2010 census, Republicans developed a plan to win over as many state legislatures as possible. Called Redistricting the Majority Project (REDMAP) the strategy succeeded,; the majority of both houses of the legislatures in twenty five states changes from Democratic blue to Republican red. These chambers redrew their states'

congressional maps to favor Republican candidates.

Then, in the 2012 House election, although Democrats across the country snagged nearly 1.4 million more votes, Republicans captured 33 more seats....

Democrats have also created district maps that skew electoral results. Federal judges in Illinois labeled the maps Democrats crafted after the 2010 census “a blatant political move to increase the number of Democratic congressional seats.” The outline of a district in Maryland that was drawn by Democrats is so scattershot it’s been described as looking like “blood spatter from a crime scene.”

(Sources: **Text:** Cynthia Levinson and Sanford Levinson, *Fault Lines in the Constitution: The Framers, Their Fights, and the Flaws That Affect Us Today*, 73-75; **Gerrymandering image:** Cynthia Levinson and Sanford Levinson, *Fault Lines in the Constitution: The Framers, Their Fights, and the Flaws That Affect Us Today*, 73; **REDMAP image:** Cynthia Levinson and Sanford Levinson, *Fault Lines in the Constitution: The Framers, Their Fights, and the Flaws That Affect Us Today*, 74.)



How have both parties attempted to use their power over elections to their own benefit? Should state legislators be able to use their power in this way? Why might some people believe that this practice should be restricted or eliminated?

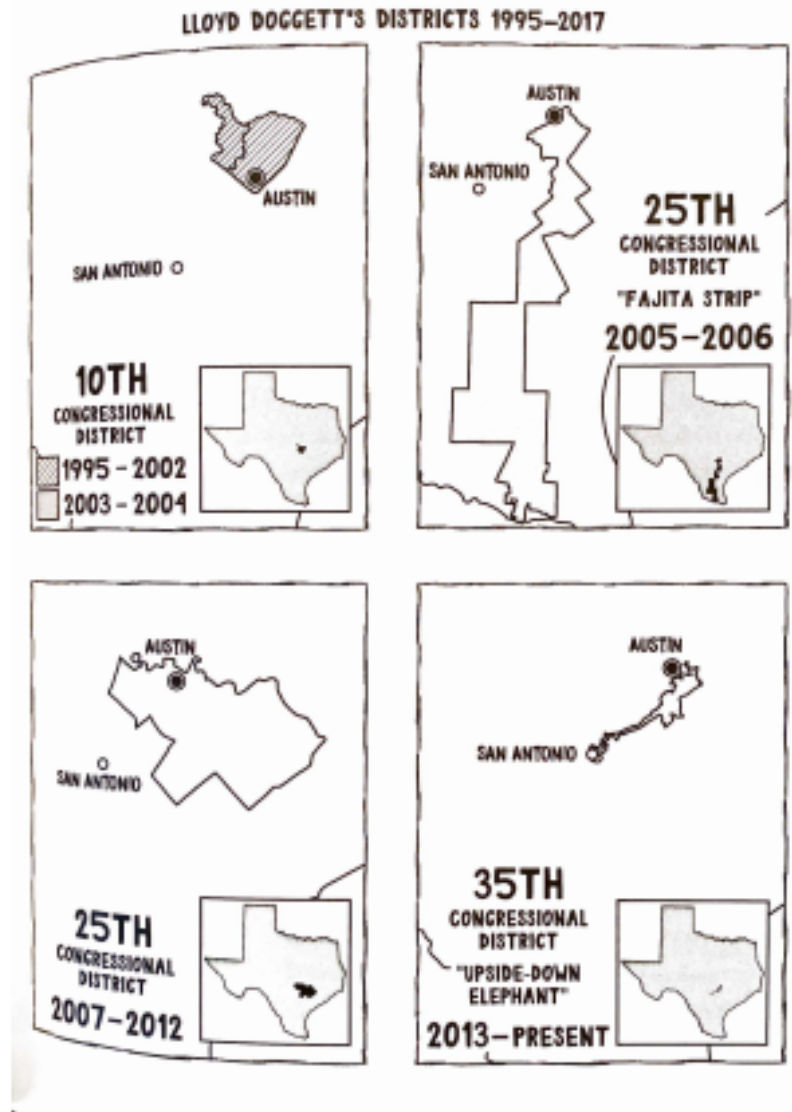
#### IV) Gerrymandering: The Case of Lloyd Doggett

In 2002 Texans elected a Republican governor and Republicans became the majority of the state legislature. Thus began years of redistricting aimed at winning Republican seats in the House of Representatives in the next congressional election. One Democrat who saw his district reconfigured several times over the next decade was Lloyd Doggett, a congressman representing liberal-leaning Austin and its surroundings. The size, shape, and demographics of Doggett's district (see map below) changed, encompassing more Latinx voters and more conservative parts of the state. Republicans counted on redistricting, coupled with the candidates opposing Doggett, to defeat him. Doggett continues to hold his seat leading into the 2020 election.

In 2018, Doggett issued a statement after the Supreme Court upheld Texas's redistricting plans in *Abbott v. Perez*. He said, *"This weekend I will be home in Texas, as usual, on I-35 doing my best to represent families from South San Antonio to North Austin. Republicans deliberately placed them, along with many other Texans, in districts designed to reduce the accountability and accessibility of their elected representatives. In too many places, access means a cardboard likeness of their Congressman at citizen-organized gatherings."*

*Today's Supreme Court decision makes clear that the district which I serve will not change an inch from its original 2011 gerrymandered shape. The powerful dissent of Justice Sotomayor makes clear 'the serious costs to our democracy' and great harm to underrepresented minority voters arising from the Court ignoring Republican wrongdoing. Real change depends on whether Texans change the composition of the State Legislature after the 2020 Census."*

(Source: <https://doggett.house.gov/media-center/press-releases/rep-doggett-today-s-supreme-court-redistricting-decision>)



(Source: Cynthia Levinson and Sanford Levinson, *Fault Lines in the Constitution: The Framers, Their Fights, and the Flaws That Affect Us Today* (Atlanta: Peachtree Publishing Company, 2019), 67.)

**Describe the changes in Lloyd Doggett's district between 2002 and 2013. What steps did the state legislature take to try to flip Doggett's seat? How might gerrymandering cause "great harm to underrepresented minority voters"?**

## V) Gerrymandering and the Supreme Court

### ***Reynolds v. Sims* (1964)—POLITICAL GERRYMANDERING**

In 1961, M.O. Sims, David J. Vann, John McConnell, and other voters from Jefferson County, Alabama, challenged the apportionment of the state legislature. Lines dividing electoral districts had resulted in dramatic population discrepancies among the districts. The state constitution required at least one representative per county and senatorial district. However, the district in Jefferson County, which is near Birmingham, contained 41 times as many eligible voters as those in another district of the state. Sims and the other voters argued that this lack of proportionality prevented them from effectively participating in a republican form of government.

(Source: <https://www.oyez.org/cases/1963/23>)

*Chief Justice Warren delivered the opinion of the Court.*

We hold that, as a basic constitutional standard, the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis. Simply stated, an individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State. Since under neither the existing apportionment provisions nor either of the proposed plans was either of the houses of the Alabama Legislature apportioned on a population basis, the District Court correctly held that all three of these schemes were constitutionally invalid. Furthermore, the existing apportionment, and also, to a lesser extent, the apportionment under the Crawford-Webb Act, presented little more than crazy quilts, completely lacking in rationality, and could be found invalid on that basis alone....

By holding that, as a federal constitutional requisite, both houses of a state legislature must be apportioned on a population basis, we mean that the Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable....

(Source: <https://www.law.cornell.edu/supremecourt/text/377/533>)

\*In an 8-1 decision, the Supreme Court upheld the “one person, one vote” principle established in *Baker v. Carr* (1961).

**Why is it important that districts' populations are equal? How might living in a more populous district affect the value of a person's vote? Why might some states—especially when this case was heard in the 1960s—seek to make some votes more meaningful than others?**



### ***Shaw v. Reno* (1993)—RACIAL GERRYMANDERING**

The U.S. Attorney General rejected a North Carolina congressional reapportionment plan because the plan created only one black-majority district. North Carolina submitted a second plan creating two black-majority districts. One of these districts was, in parts, no wider than the interstate road along which it stretched. Five North Carolina residents challenged the constitutionality of this unusually shaped district, alleging that its only purpose was to secure the election of additional black representatives.

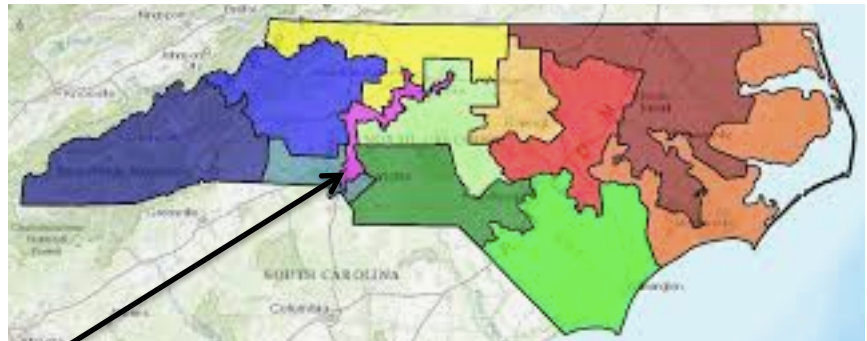
(Source: <https://www.oyez.org/cases/1992/92-357>)

*Justice O'Connor delivered the opinion of the Court.*

...we believe that reapportionment is one area in which appearances do matter. A reapportionment plan that includes in one district individuals who belong to the same race, but who are otherwise widely separated by geographical and political boundaries, and who may have little in common with one another but the color of their skin, bears an uncomfortable resemblance to political apartheid....

Racial classifications of any sort pose the risk of lasting harm to our society. They reinforce the belief, held by too many for too much of our history, that individuals should be judged by the color of their skin. Racial classifications with respect to voting carry particular dangers. Racial gerrymandering, even for remedial purposes, may balkanize us into competing racial factions; it threatens to carry us further from the goal of a political system in which race no longer matters--a goal that the Fourteenth and Fifteenth Amendments embody, and to which the Nation continues to aspire. It is for these reasons that race based districting by our state legislatures demands close judicial scrutiny.

...Today we hold only that appellants have stated a claim under the Equal Protection Clause by alleging that the North Carolina General Assembly adopted a reapportionment scheme so irrational on its face that it can be understood only as an effort to segregate voters into separate voting districts because of their race, and the separation lacks sufficient justification. If the allegation of racial gerrymandering remains uncontradicted, the District Court further must determine whether the North Carolina plan is narrowly tailored to further a compelling governmental interest....



that

*District in question*

(Source: <https://www.khanacademy.org/humanities/ap-us-government-and-politics/interactions-among-branches-of-government/congressional-behavior/a/shaw-v-reno>)

*Justice Stevens, dissenting.*

Finally, we must ask whether otherwise permissible redistricting to benefit an underrepresented minority group becomes impermissible when the minority group is defined by its race. The Court today answers this question in the affirmative, and its answer is wrong. If it is permissible to draw boundaries to provide adequate representation for rural voters, for union members, for Hasidic Jews, for Polish Americans, or for Republicans, it necessarily follows that it is permissible to do the same thing for members of the very minority group whose history in the United States gave birth to the Equal Protection Clause. A contrary conclusion could only be described as perverse.

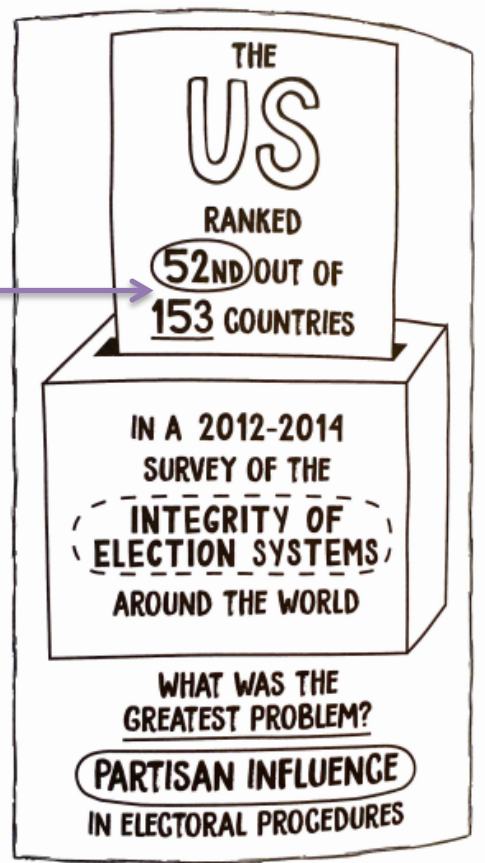
(Source: <https://www.law.cornell.edu/supct/html/92-357.ZO.html>)

**This case was decided by a 5-4 majority, which stated that racial gerrymandering, whatever its purpose, was unconstitutional. Do you agree with the majority or the dissent in this case? Why? Why do you think that the vote in this class was so much closer than in *Reynolds v. Sims*?**



## VI) Gerrymandering by the Numbers

(Source: Cynthia Levinson and Sanford Levinson, *Fault Lines in the Constitution: The Framers, Their Fights, and the Flaws That Affect Us Today*, 75.)



(Source: Cynthia Levinson and Sanford Levinson, *Fault Lines in the Constitution: The Framers, Their Fights, and the Flaws That Affect Us Today*, 76.)

What conclusions can you draw about gerrymandering and its impact on the electoral process in the United States based on these images?

## **VII) Gerrymandering in the 2020 Election**

***Gretchen Frazee and Laura Santhanam***

***“What the Supreme Court’s gerrymandering decision means for 2020”***

***PBS NewsHour, 6.28.2019***

The Supreme Court’s ruling Thursday that federal courts cannot determine whether election maps are too partisan has raised the stakes for the 2020 election, leaving room for both parties to draw gerrymandered district lines with little fear of a high court legal challenge.

Critics had hoped that the Supreme Court would deal a blow to the system. But in its 5-4 ruling, the court found that the power to address partisan gerrymandering lies with Congress, not the courts.

“Our conclusion does not condone excessive partisan gerrymandering. Nor does our conclusion condemn complaints about districting to echo into a void,” Chief Justice John Roberts wrote in the majority opinion.

Whichever party controls a state legislature after the 2020 elections will be able to redraw the lines based on data from the 2020 census. With little appetite from Republicans in Congress to impose restrictions on redistricting, gerrymandering will likely continue unless lawmakers who oppose the practice make meaningful gains at the state level next year ahead of the election.

Critics have long argued that the process, known as gerrymandering, disenfranchises minority voters and undermines democratic elections. Lawmakers in Democratic-controlled states like Maryland have also been accused of gerrymandering, but most changes in recent years have benefited Republicans.

After the last census, Republicans gained the upper hand when they swept into power in many state legislatures in the 2010 elections. Since then, GOP-controlled legislatures have redrawn election maps to fill certain districts with more Republican voters, including in North Carolina, Ohio and Wisconsin.

Gerrymandering predates the 2010 election of course. But the issue has increasingly been at the center of state-level fights for political power since then. Of the 435 congressional districts across the U.S. that year, 70 were rated as having a competitive partisan balance, according to FairVote, a nonpartisan group that monitors electoral reform. By 2011, there were 53 competitive districts. (Some researchers point out that other factors, such as self-segregation based on political ideology, could also be contributing to the decline in competitive districts.)

Nearly a decade later, the number of truly competitive House seats has arguably decreased to a few dozen. Opponents of the practice often point to oddly shaped districts that have been given nicknames such as the “praying mantis” and the “upside-down elephant” to show the lengths to which many state legislatures will go to exclude certain voters and create favorable House seats for their party.

The Supreme Court’s ruling “is a huge decision” in a country with a long history of political gerrymandering, Julian Zelizer, a political historian at Princeton University who has studied this issue, wrote in an email.

One-party rule in many states “will be uncontrolled,” Zelizer added. The ruling is a major “step back for those trying to guarantee that each vote counts equally.”

### **Immediate impact and the battle for control in 2020**

The Supreme Court’s ruling will have an immediate impact. States such as North Carolina, Maryland, Ohio and Michigan whose election maps were being challenged in federal courts, will not be forced to change their maps as lower courts had ordered.

The next battle will be the 2020 General Election.

“State legislative races are more important than ever,” said Justin Levitt, an election law professor at Loyola Law School Los Angeles, who wrote an amicus brief in the Supreme Court case in opposition of partisan redistricting.

“Whoever wins the 2020 elections on the state level will be in control of both state and federal districting for the next decade,” he said.

Left-leaning groups already had plans in place to take on gerrymandering before the court’s decision. The National Democratic Redistricting Committee, a group headed by former U.S. Attorney General Eric Holder that focuses on making districts more competitive for Democrats, is targeting states where the party can pick up key seats.

The group is also pushing for reform in state courts, where lawsuits against partisan redistricting can still be argued on the basis of state laws despite the Supreme Court ruling, which only bars federal courts from weighing in on the issue.

The Pennsylvania Supreme Court, for example, ruled last year that the state’s districting map violated the state’s constitution. That case could serve as a model for activists hoping to throw out maps in other states.

The National Republican Redistricting Trust, the Republican counterpart to Holder’s group, said it is ready to oppose Democratic efforts at the state level, including any moves to add more liberal judges to the state supreme courts that would ultimately decide redistricting cases.

(Source: <https://www.pbs.org/newshour/nation/what-the-supreme-courts-gerrymandering-decision-means-for-2020>; go to the link for more information and maps of North Carolina districting)

*See also:* Michael Wines, “What is Gerrymandering? And Why Did the Supreme Court Just Rule on It?,” *The New York Times*, 6.27.2019, <https://www.nytimes.com/2019/06/27/us/what-is-gerrymandering.html>.

**Why is the 2020 census important for congressional representation? How does the combination of the census and a major election make 2020 an especially significant year in national politics?**

*Directions:* Students will fill in the following note catcher using the information in these resources.

1. Why did the Framers give states the power to make decisions regarding electoral districts?
2. What is gerrymandering? How has it been used by states and politicians throughout US history?
3. How has gerrymandering affected the American people and the government? Is the impact more positive or negative? Explain your answer.
4. What are the differences between political and racial gerrymandering? To what extent to both affect the value of a person's vote?
5. How might gerrymandering affect a person's desire to vote in a national election?

**Activity #1:** Using the resources and their graphic organizers, students will respond to the following questions:

- To what extent should gerrymandering be considered a “fault line” in the Constitution?
- What suggestions would you make to reduce partisanship in US elections?

Students can respond to the questions in one of the following ways\*: newspaper editorial or letter to the editor; speech (recorded on video); legal brief or opening argument to Congress/Supreme Court; PowerPoint presentation/Google slides; captioned illustration; song (recorded on video); poem; or iMovie. (Other presentation methods at the teacher’s discretion.)

All work must meet the following requirements:

- Clearly state an opinion on voting rights and their limitations in the United States in the 21<sup>st</sup> century.
- Thoughtfully respond to both questions.
- Use evidence from the resources to support claims.
- Acknowledge both sides of the debate.
- Include information on past events and current issues.
- Evaluate information to draw original conclusions.
- Remain focused on the topic and task assigned.

\*The recommended activities refer to work students will complete independently. Teachers may also choose to use this information to prepare students for a debate, Socratic seminar, philosophical chairs activity, or any other large group activity where circumstances allow.

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### **Activity #2:** Gerrymandering at school

Imagine that students go to a school where there are 100 freshman, 90 sophomores, 75 juniors, and 50 seniors\*. Students will draw two diagrams: in one, representation in student government accurately represents the number of students in each grade; in the other, the seniors—the oldest students in school—have the most representation in student government. Students can draw the diagrams in whatever way they please as long as their diagrams meet those parameters.

Students will submit their diagrams to their teacher and/or share with their peers. They will answer the following questions orally or in writing at their teachers’ discretion.

- What are the differences between the two diagrams?
- What did you do differently to create diagrams that supported different representation schemes?
- What are the pros and cons for each system of representation at your imaginary school?
- Which diagram do you think more fairly provides for representation in student government?
- What conclusion can you draw about gerrymandering in US politics based on the ideas you developed in this activity?

\*These numbers can be changed to represent middle school grades if necessary.

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**Activity #3:** In Chapter 21 of *Fault Lines in the Constitution* Cynthia and Sanford Levinson grade the Constitution based on the way that it fulfills the goals asserted in the Preamble:

*We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.*

The authors divide their report card into the following categories--form a more perfect union; establish justice; insure domestic tranquility; provide for the common defense; promote the general welfare; secure the blessings of liberty to ourselves and our posterity—and assign composite grades based on the various aspects of the Constitution they evaluate in their book.

After studying **gerrymandering**, including the material in *Fault Lines* and outside sources, it's your turn to grade the Constitution! Based on what you learned and the ideas you formed about the Electoral College, please grade the Constitution in the following categories. Don't forget to add comments!

**The Constitution's Report Card**

Subject	Grade	Comments
Form a More Perfect Union		
Establish Justice		
Insure Domestic Tranquility		
Promote the General Welfare		
Secure Blessings of Liberty to Ourselves and Our Posterity		
<b>AVERAGE</b>		