

# Unpacking Gerrymandering and its Effect on Polarization in America

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Why should teachers, some of whom have each topic they introduce in class scrutinized, dare to teach about a controversial matter like gerrymandering? The practice and impact of gerrymandering—which is the redrawing of legislative districts to favor an incumbent or party in power—appears in many state standards and government and civics course requirements. Yet there are even more compelling reasons to ensure this current, contested issue makes its way into the classroom.

The topic of gerrymandering is both timely and relevant, as Americans, legislators, and courts grapple with what it means to guarantee the right to vote and the role institutions play in ensuring that right. It is important that young people understand gerrymandering and the impact of related policies on their lives, families, and communities. For example, a young person living in a gerrymandered district with an uncontested seat, may see their representative's priorities shift away from constituent needs to focus more on the party's agenda. This understanding becomes even more essential for our students who are at or approaching the legal voting age.

This article sets out important vocabulary, historical context, and theories about the impact of gerrymandering on polarization. It also provides a classroom-ready lesson that allows students to arrive at their own conclusions about what, if anything, should be done about gerrymandering.

## Redistricting and Gerrymandering Explained

On the surface, gerrymandering is not a polarizing

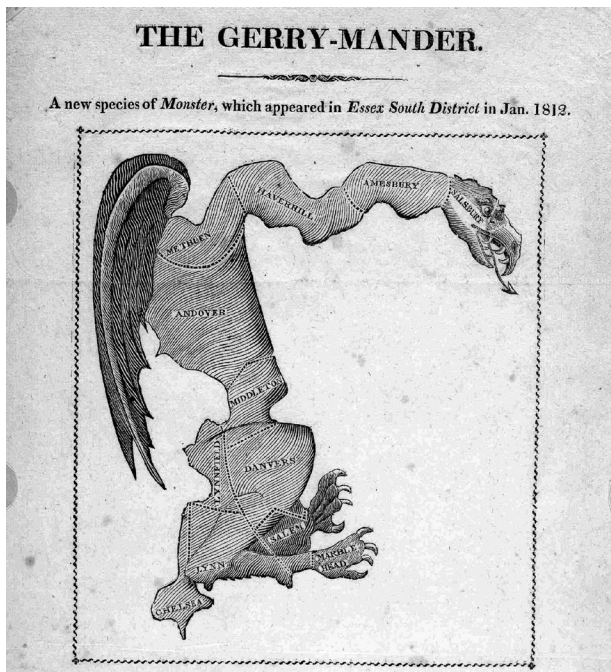
issue. The term “gerrymandering” has a negative connotation for most Americans, regardless of political affiliation. When asked directly, only 10% of poll respondents said they supported gerrymandering.<sup>1</sup> However, we find evidence of polarization when looking at the other 90% of respondents, whose degree of dissatisfaction was related to whether or not their preferred political party was in power.<sup>2</sup> Not surprisingly, people react more negatively when the gerrymandering is being done by the party they oppose and less negatively when it is done by their preferred party. To be clear, both parties gerrymander when they are able to.

Before considering the impact of gerrymandering, one must first understand the redistricting process. The 435 seats in the U.S. House of Representatives are allocated proportionally to the population. The number of representatives ranges from 1 to 52, the number currently allotted to California, the most populous state. Reapportionment of the number of members from each state occurs after each census, which is constitutionally mandated every 10 years. Since each voting district must contain roughly the same number of voters, even if the number of representatives allotted to a state does not change, shifts of population within a state may still necessitate redistricting. State legislative districts as well as congressional districts must be redrawn when population shifts.

Drawing voting district maps has always been political. In most states, new districts are drawn

by the state legislature and approved by the governor. When a single party controls the state legislature and the governorship, they have the power to create districts that favor their party and increase the likelihood of sending party members to the state legislature or the U.S. House of Representatives. When a party holds the power to redistrict, this may also enable that party to maintain control in a state even after they have become the numerical minority.

The term “gerrymandering” can be traced back to 1812, when Massachusetts Governor Elbridge Gerry signed a redistricting bill into law that created a bizarrely shaped district which benefited his party. A political cartoonist turned the shape into a creature resembling a salamander and titled the cartoon “The Gerry-mander.”



“The Gerry-mander: a New Species of Monster” Boston Gazette (March 26, 1812), page 2, Library of Congress Newspaper, Serials and Government Publications Division.

The two most common types of gerrymandering are “packing” and “cracking.” Packing is when the party in power draws a district that crams as many voters as possible from the opposition party into its borders. Packing allows the opposing party to win that single district while making the other districts safe for the party in power to win. Cracking is when voters from the opposing party are split

between districts, causing that party to win fewer seats because their votes are diluted across districts. Both strategies can result in an increased number of legislative seats for the party in charge of redistricting.

### Gerrymandering and the Role of Federal Courts

Historically, some state legislatures used racial gerrymandering to suppress African American votes by packing or cracking Black voters into districts. Throughout the 1960s, the Supreme Court declared racial gerrymandering unconstitutional in a series of decisions including *Baker v. Carr* (1962), *Wesberry v. Sanders* (1964), and *Reynolds v. Sims* (1964). Collectively, these cases established that redistricting could be litigated in federal courts, that congressional districts must be roughly equal in population, and that states must redraw state legislative districts when population shifts occur. Chief Justice Earl Warren said that these cases that allowed the federal government to intervene in instances of alleged racial gerrymandering were the most important decided during his tenure on the Court.

Until recently, many years after racial gerrymandering was restricted, the constitutionality of partisan gerrymandering was still in question. In 2019, the Supreme Court decided *Rucho v. Common Cause* and held that partisan gerrymandering claims are not justiciable because they are political questions that cannot be heard by federal courts. For all practical purposes, the *Rucho* decision permitted partisan gerrymandering while keeping in place earlier decisions that restricted racially motivated gerrymandering. This decision, coupled with more advanced software that allows map makers to ascertain information about voting behavior and race, make it possible to draw district lines to almost ensure electoral outcomes.

### Impact of Gerrymandering

Both Democrats and Republicans engage in gerrymandering. In recent years, Republicans made significant gains in Florida, North Carolina, Ohio, and Texas by packing Democrats into urban districts. Democrats also made gains in Illinois, Michigan, New York, North Carolina, and Pennsylvania by shifting the boundaries of Republican-leaning districts. These gains largely

offset each other on a national scale.<sup>3</sup> Together, however, the impact of these gerrymandered districts reduced the competitiveness of congressional races and the responsiveness of the House of Representatives.<sup>4</sup>

A looming and much debated question around gerrymandering is whether it contributes to the already increasing polarization within legislative bodies. Conventional wisdom is that while gerrymandering is not the main culprit for increased polarization, it does contribute by exaggerating the influence of more extreme members of the two major parties and diminishing the influence of moderates.

### ***Impact on Competition in Congressional Races***

Statistics from recent election cycles capture a shift in the competitiveness of congressional races. New maps created for the 2022 election cycle established six fewer competitive districts than previous maps.<sup>5</sup> Five out of every six House races were decided by 10 percentage points or more. The number of seats that went uncontested by a major party opponent increased from 27 in 2020 to 32 in 2022.<sup>6</sup> The percentage of competitive congressional districts fell in 2022 to a recent low of 14%.<sup>7</sup> This shift is significant because when gerrymandering creates safe districts for parties, candidates are largely selected in primaries. In primary races candidates must appeal to a small base who are motivated enough to vote in what are often “closed primaries” that are open only to members of their own party. The winners of these safe elections are more likely to vote along partisan lines, fueling extreme policies, and political polarization.

Drawing congressional districts to virtually guarantee a safe victory for one party, disadvantages moderates and contributes to their diminishing influence. A Brookings Institution report concludes that, “[W]hile scholars agree that gerrymandering is not the leading cause of political polarization, and that eliminating it would not necessarily increase legislative competitiveness, they agree that partisan redistricting can amplify partisan divides.”<sup>8</sup>

Additionally, incumbent officeholders may become more extreme when their districts are gerrymandered. By reducing competition,

gerrymandering incentivizes incumbents to pursue policy agendas that appeal to the more extreme members of their base. Courting these polarized voters helps prevent primary challenges, virtually ensuring incumbents stay in office and increasing the likelihood that extreme legislation will be proposed.<sup>9</sup> Included in the incumbents’ legislative agendas may be laws relating to voting and the creation of new districts in the future, which can help make their seats even safer in future elections.

### ***Impact on Responsiveness to Constituents***

Gerrymandering may also make incumbents less responsive to their constituents. A recent Harvard study found that gerrymandering impacted responsiveness because lawmakers in non-competitive seats have less incentive to meet the needs of voters. Redistricting expert David Wells commented, “The representation system, because it has been made less politically sensitive and therefore less responsive, has thus been rendered less able to perform its most fundamental task—the translation of public sentiment into public policy as accurately as possible.”<sup>10</sup> Public opinion can change quickly, but once a district is drawn to be safe for a single party, there is little reason for an incumbent to change course to respond to constituent wishes.

On the other hand, there is evidence that casts doubt that gerrymandering is contributing to polarization. Some pundits point to the Senate, which is an increasingly polarized body even though senators are elected statewide. They also cite representatives from purple districts whose politics are quite polarizing.<sup>11</sup> Some suggest that a greater cause of polarization is “self-sorting” done by voters themselves. Americans are increasingly choosing to live in communities that share their political leanings. In this way, districts are “pre-gerrymandered” and are, therefore, not competitive even without traditional gerrymandering.<sup>12</sup>

### ***Impact on Voter Efficacy***

Gerrymandering can also impact election results by decreasing voter efficacy, which is the belief that one’s vote matters. Voters who believe their district has been gerrymandered to ensure a winner from the opposing party and who feel their

preferred candidate cannot win, may be less likely to vote. This phenomenon may further disenfranchise historically marginalized communities.

Decreasing voter efficacy plagues even communities whose population numbers are rising. Census data from 2020 shows a decrease in the White population by 8.6% and an increase in communities of color, with the Hispanic population increasing by 23%, the Asian population by 35%, and the Black population by 5.6%. Despite populations increase, communities of color may not see their political representation increase proportionally due to gerrymandered redistricting efforts.<sup>13</sup>

The legislation produced by gerrymandered districts may also disproportionately impact voters of color. Leah Aden, deputy director of litigation at the NAACP Legal Defense and Educational Fund has remarked, "You can do all of the voting, but if people have manipulated the line so that your vote effectively doesn't matter, then how do you get better schools, better roads, better health care, criminal justice reform?"<sup>14</sup>

### **Alternative Redistricting Process**

In response to the negative impacts of partisan gerrymandering, some states are creating independent commissions to be in charge of redistricting. These bipartisan groups are composed of members of the public and exclude politicians who may personally benefit from redistricting. Presently, 10 states use independent redistricting commissions to draft district maps for the U.S. House of Representatives and 15 states use commissions for state legislative districts.<sup>15</sup>

Proponents believe these commissions will thwart the negative effects of gerrymandering and increase the competitiveness of races and the responsiveness of representatives. There is also some evidence that independent commissions will combat the underrepresentation of racial minorities that results from gerrymandering. In California, which uses commissions, the number of districts where Latinos constituted a majority of the voting age population rose from 13 to 18.<sup>16</sup>

A 2015 Supreme Court case (*Arizona Legislature v. Arizona Independent Redistricting Commission*) challenged the constitutionality of independent redistricting commissions, but the Court held that commissions did have the authority to draw

voting districts, clearing the way for more states to consider this alternative.

### **Teaching About Gerrymandering Court Cases**

Given gerrymandering's potential to increase polarization and the vital importance of elections to democracy, it is imperative that students learn about this topic. Supreme Court precedents such as *Baker v. Carr* do appear in some state standards and in the AP U.S. Government and Politics curriculum. Students also need to understand the effect of gerrymandering on their own lives. Redistricting may influence election results and, therefore, policies that impact students directly. Many students are nearing voting age and may have their voting power impacted by redistricting. Lastly, gerrymandering is a current, contested issue, so students must have background knowledge on the topic to be able to understand current events.

In recent years, the Supreme Court has considered at least one gerrymandering case each term. During the 2023–24 term, the Court will decide *Alexander v. South Carolina State Conference of the NAACP*, a case about a redistricting effort where prohibited racial gerrymandering and permitted partisan gerrymandering may have intersected. After the 2020 Census, South Carolina's Republican-controlled legislature created a redistricting plan. The cartographer who drew the districts was instructed to make the plan "more Republican leaning."<sup>17</sup> In January 2023, a three-judge panel ruled that one of the districts was a racial gerrymander because 30,000 Black voters were deliberately shifted to create a safe district for Republicans.<sup>18</sup> Legislators do not dispute the action, but contend that the motive was partisan gerrymandering to advantage their party, not racial. The state of South Carolina (represented by Thomas Alexander in his capacity as president of the South Carolina Senate), is now asking that the three-judge panel's decision be reversed. Among other issues, the Supreme Court will determine whether South Carolina's legislature engaged in racial gerrymandering or only partisan gerrymandering. This is a challenging question because in South Carolina, as elsewhere, there is a high correlation between Black voters and support for the Democratic Party. Variations on the question

of what to do when race and party affiliation are entangled have been raised in cases in other states but never settled.

One window into the polarization surrounding this issue is to look at the amicus curiae, or friend of the Court, petitions filed on behalf of each side. In *Alexander v. South Carolina State Conference of the NAACP*, there are six petitions supporting the redistricting plan filed for the petitioner (Alexander), including groups like the National Republican Redistricting Trust. There are seven petitions for the respondent (NAACP), including Congressman James E. Clyburn, a Democratic representative of South Carolina. The supporters of each side break down largely along partisan lines, and the case has become quite polarizing.

### Redistricting and Gerrymandering Lesson Plan

To help students understand the important electoral impacts of gerrymandering, Street Law created a lesson that invites students to use manipulatives to draw congressional maps to advantage a certain party. The lesson begins with an introduction to relevant terms, including *redistricting*, *gerrymandering*, *packing*, *cracking*, *dilution*, *compact*, and *contiguous*. Students then create definitions in their own words and create graphics to illustrate the terms. They then use the concepts and language they have just learned to draw district boundaries on a provided map of the fictional “Mystate.” They create three maps, one showing not-gerrymandered districts, one with packed districts, and one with cracked districts (see p. 43).

Once students master this skill, in small groups they collaborate to create their own maps by manipulating differently colored objects (e.g.,

Hershey’s Kisses, paper clips, poker chips, etc.). Students will create maps showing packed, cracked/diluted, and not-gerrymandered districts and explain the characteristics that make them such. Understanding the terminology and strategies of gerrymandering will give students the concepts and language they need to analyze the impact. To conclude the lesson, students consider Supreme Court cases *Baker v. Carr* (1962) and *Rucho v. Common Cause* (2019) and the proper role of the Court in restricting gerrymandering.



A participant at the “Teaching about the 2018 Elections Conference” at the University of Wisconsin, Madison, taking the “Kiss Quiz,” in which students use Hershey’s Kisses to illustrate three types of redistricting plans: *packing*, *cracking/diluting*, and *not-gerrymandered* districts.

### Conclusion

With constant challenges to redistricting maps and debates over disproportionate impact, gerrymandering will remain a current and contested issue for the foreseeable future. Because of

## Redistricting and Gerrymandering Lesson Objectives

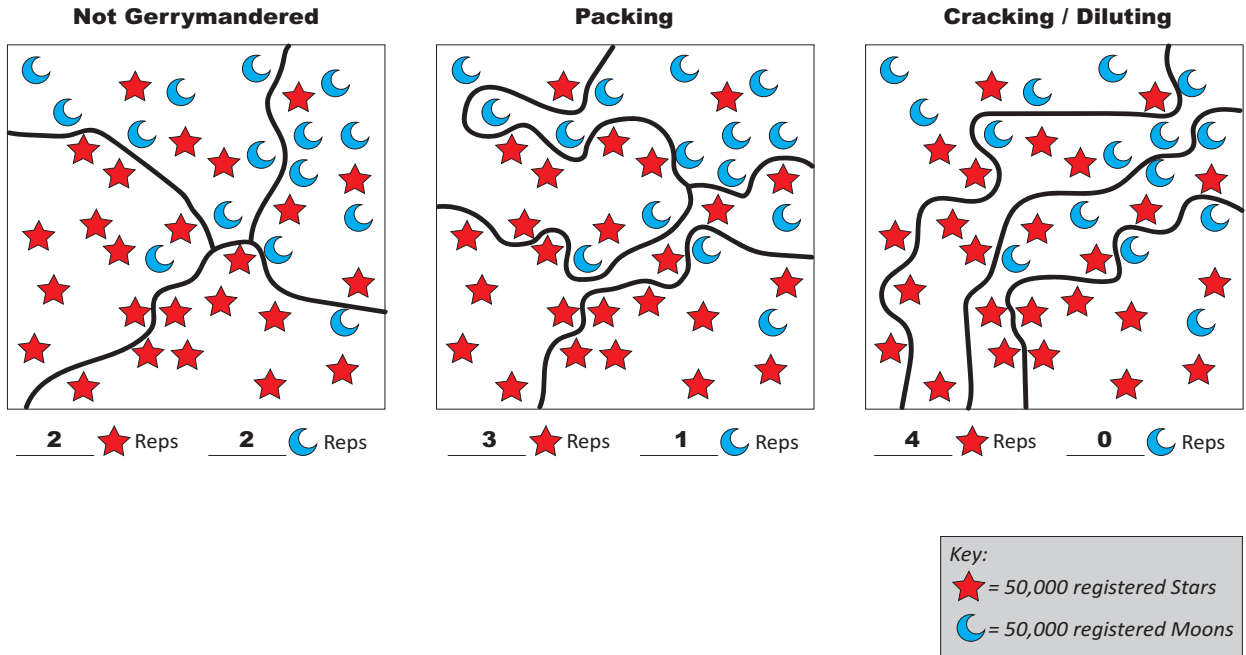
Students will be able to:

- Explain how state legislatures and governors can manipulate the redistricting process to gain an advantage for their party in the U.S. House of Representatives and state legislatures;
- Define and use in context the terms: gerrymandering, packing, cracking (dilution), compact, and contiguous;
- Apply redistricting concepts to draw both gerrymandered and not gerrymandered districts;
- Classify arguments in the Supreme Court case *Baker v. Carr* (1962);
- Evaluate the proper role of the Supreme Court in state redistricting cases.

Download the free lesson at <https://store.streetlaw.org/redistricting-gerrymandering-lesson-plan>.

### Redistricting Mapmaker.

Instructions: Mystate is an imaginary state that sends four representatives to the U.S. House of Representatives. Two parties, the Stars and the Moons, dominate the government of Mystate. You have been tasked with drawing new districts in Mystate. Using the maps below, draw districts to show “Not-Gerrymandered” districts (compact and contiguous), “Packing”, and “Cracking.” In each map you will draw four districts with 10 symbols (each representing 50,000 registered voters from that party) in each district. Underneath each map, note the number of representatives who will most likely be elected to the House of Representatives from each party.



gerrymandering’s potential to influence policy affecting students’ lives and to impact the health of American democracy, it is imperative students have the knowledge and language needed to effectively discuss and formulate their views on the topic. By incorporating lessons such as this one, teachers can help students scaffold the knowledge and skills to come to their own conclusions about what, if anything, should be done about partisan gerrymandering and polarization. ■

### Notes

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7. Michael Li and Chris Leaverton, “Gerrymandering Competitive Districts to Near Extinction,” *Brennan Center for Justice* (Aug. 11, 2022).
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18. *Ibid.*



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