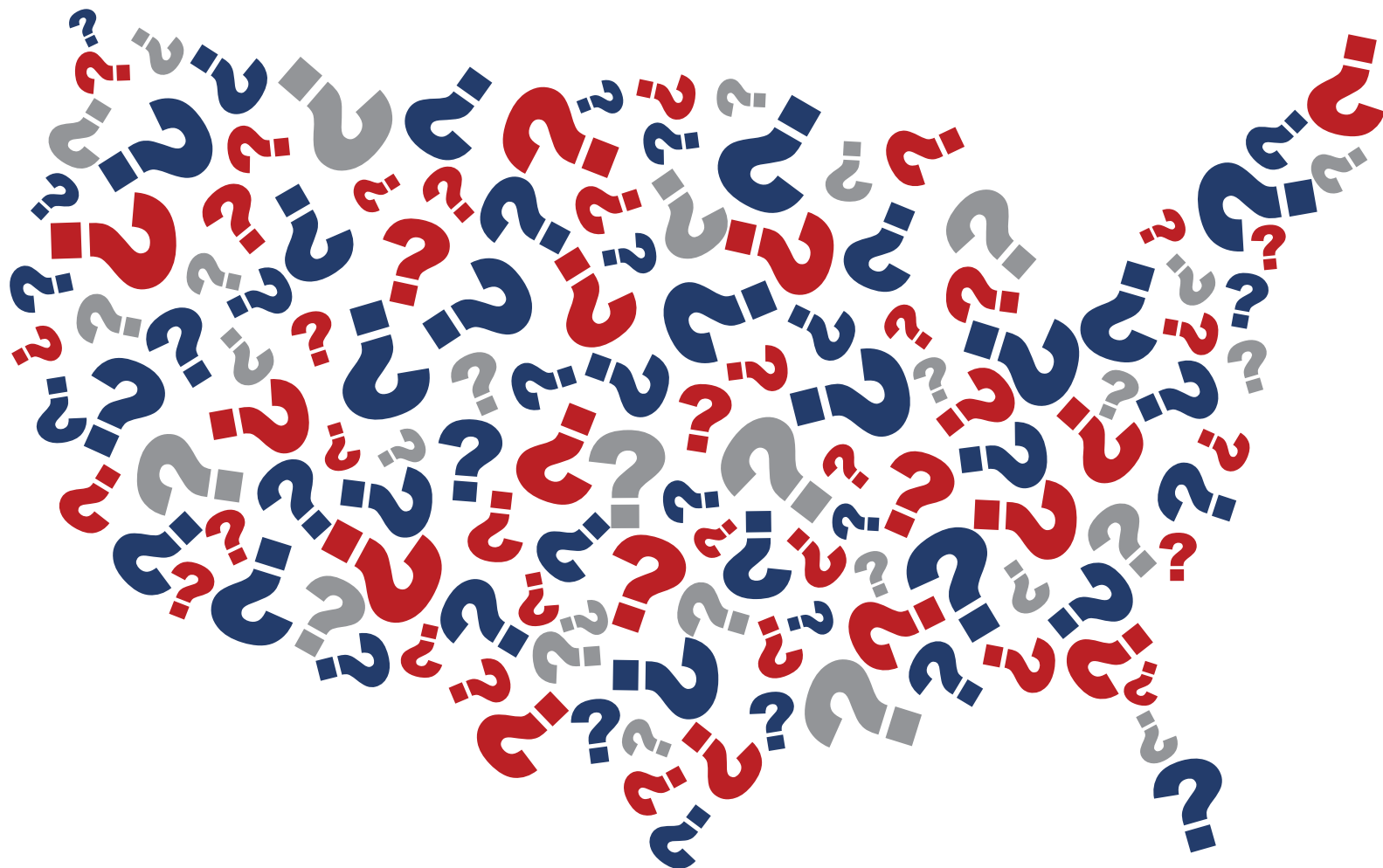


POLICY BRIEF

Let the Voters Choose

Solving the Problem of Partisan Gerrymandering



Let the Voters Choose: Solving the Problem of Partisan Gerrymandering

American democracy is based on the principle of fair representation and the fundamental notion that government should be responsive and accountable to the people. The people are represented through Congress and state legislatures, whose members are selected by voters in a system of free and competitive elections, which provide citizens with the means of expressing their political and policy preferences, holding elected officials accountable to the people's views. The health and vitality of our democracy thus depends on a fair and equitable electoral process, robust competition, an engaged electorate that is offered meaningful choices, and broad voter participation.

Representation in our democracy is based on a structure in which legislators are selected from districts that define their political constituencies. How district lines are drawn is thus a key factor in determining the quality of representation and the dynamics of elections. To ensure fair and equal representation, federal and state laws set forth general criteria for drawing congressional and state legislative districts. Districts must be based on equal population, which the Supreme Court has deemed essential to the democratic principle of "one person, one vote."¹ Districts must also adhere to the provisions of the Voting Rights Act, and may not be based on racial discrimination, although minority representation may be considered in drawing district lines, so long as race is not the overriding, predominant consideration in drawing district lines.² Districts must be compact and contiguous, so that they create some sense of political community or bear some relation to geographic constituencies or communities.³ Some states also require redistricting plans to meet additional neutral criteria, including requirements that districts respect local political jurisdictions (such as county or precinct boundaries), take into account geographical features (such as mountain ranges or rivers), or consider communities of interest (such as traditional areas of Native American residency).

Gerrymandering, which is the practice of manipulating district lines to achieve a political

advantage, can undermine democratic principles and diminish the efficacy of the neutral criteria that ground redistricting efforts. Gerrymandering can produce redistricting plans that skew representation by tilting the playing field in favor of one party over another, protecting incumbents from electoral competition, targeting political foes, or enhancing the influence of some voters over others. CED is particularly concerned about partisan gerrymandering, which is the practice of manipulating district lines to produce maps that unfairly favor one party. Political parties have strong incentives to influence the redistricting process, especially in states where the parties are competitive. A partisan district map can increase the number of districts favorable to a party and allow a party to gain additional legislative seats. It can give a party an advantage in ways that can entrench an unfair majority in a congressional delegation or state legislature for years, if not an entire decade, and can facilitate its own replication for decades to come. And it can lead to more extreme, polarized policymakers.

The most recent round of redistricting demonstrated that partisan gerrymandering is practiced by both major parties and has become more common, more effective, and more extreme.

Partisan gerrymandering distorts the political marketplace and has deleterious effects on the political process. It diminishes the influence of voters in many districts, reduces the number of competitive districts, and contributes to the rising partisan polarization in legislatures. It leaves far too many voters with no meaningful choice, which serves to discourage voter turnout. And it encourages unfair and unequal representation, producing outcomes in which a party's share of legislative seats does not equitably reflect its share of the statewide vote.

The most recent round of redistricting demonstrated that partisan gerrymandering is practiced by both major parties and has become more common, more effective, and more extreme. Aided by technological developments and the deep partisan divide within the electorate, legislators are now able to draw partisan lines with remarkable precision. Redistricting plans have thus become an effective means of rigging electoral contests in a way that yields increasingly predictable outcomes. More than 75 percent of all seats in the House of Representatives can reasonably be characterized as uncompetitive. This problem needs to be addressed for the political marketplace to function properly and the principles of representative government to be maintained.

Overview

Every ten years, states must carry out the constitutionally mandated task of redrawing congressional and state legislative district lines to account for changes in population and the apportionment of congressional seats based on the decennial census. Redistricting procedures and rules vary from state to state, and can even vary within a state, with different procedures or criteria used to draw congressional and state legislative districts. In most states, state legislatures are responsible for congressional districting. State legislatures determine the district lines in 39 of the 43 states where congressional redistricting is necessary (seven states have only one congressional district). An independent commission performs this task in four states (Arizona, California, Idaho, and Washington).⁴ These commissions are designed to reduce political bias in the process by ensuring that legislators or prospective candidates do not have an opportunity to draw their own district lines. Such commissions are typically comprised of persons who are neither elected officials nor current lawmakers. While legislators may have a role in selecting commission members, they may not serve as commission members. In addition, commission members are usually restricted from seeking office in the districts they draw, at least for a few years after a district map is approved.⁵

State legislatures also determine state legislative districts in most states, although the procedures used to develop and approve a redistricting plan vary depending on the provisions of state constitutions and statutes. In six states (Alaska, Arizona, California, Idaho, Montana, and Washington), an independent commission, not the legislature, is responsible for drawing state legislative district lines.⁶ In most other instances, members of the legislature draw the lines themselves and approve the redistricting plan just as they would any other piece of legislation—by majority vote subject to veto by the governor.⁷ However, in five states (Connecticut, Florida, Maryland, Mississippi, and North Carolina), a legislative district plan is passed by joint resolution and is not subject to veto by the governor.⁸ In six states, the legislature is responsible for approving a redistricting plan, but does not draw district lines in the first instance. In these states, an advisory commission, which may consist of legislators and/or nonlegislators, drafts a district map and submits it to the legislature, which decides whether to approve it as drafted, usually on an up or down vote. Iowa uses a nonpartisan Legislative Services Agency comprised of civil servants to draft district maps that are submitted to the legislature for an up or down vote without amendment. The Iowa legislature may draw district lines themselves only after rejecting three plans from the nonpartisan bureau, a result that has not occurred since this advisory process was established in 1980.⁹

Bipartisan gerrymandering

When state legislators have a role in legislative redistricting, they can use the redistricting process to manipulate district lines to improve their own election prospects and influence election outcomes. In states where the legislature is responsible for drawing district lines, legislators have the ability and the incentive to design districts based on their own political interests, and commonly do so. When there is divided control of the state legislature, with one party holding a majority in the House and the other holding a majority in the Senate, or there is a governor of a different party than the legislature, the result can

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easily be a *bipartisan gerrymander* designed to protect incumbents. In these instances, the two parties are forced to negotiate with each other and typically reach agreements that protect as many of their incumbents as possible by creating safe, uncompetitive districts for them. The goal is to reduce the competition between parties and the number of competitive districts, usually by developing district maps that allow incumbents to retain as much of their current districts as possible, while swapping voters unlikely to support them for those likely to support them.¹⁰ Even in cases where a state faces the loss of a congressional seat due to the reapportionment of congressional seats triggered by shifts in population, a divided legislature often will try to minimize the risks to their incumbents by minimizing the number of districts in which an incumbent may be forced to compete against another incumbent.

Partisan gerrymandering

When one party controls state government at the time of redistricting, that party has both the incentive and opportunity to gain unfair political advantage by crafting districts to benefit their party as a whole, since there is less need to compromise with the opposing party. In these instances, the result is usually a *partisan gerrymander* that yields a redistricting plan biased in favor of the majority party and its candidates. This partisan gerrymandering of districts is typically carried out in one of two ways. The party that holds the majority can *pack* the opposing party's voters into a few districts, so that the preferred candidate of the opposing party is likely to win those districts by an overwhelming margin, but the opposing party has little to no chance of winning in other districts. Alternatively, the majority party can *crack* the opposing party's voters by diffusing them across many districts, so that the preferred candidate of the opposing party is unlikely to win in these districts because they constitute a minority of the voters in these districts. These two techniques can of course be used simultaneously in different districts. In either case, voters are treated unequally, and the districts produce what are known as *wasted votes* because

they are unlikely to contribute meaningfully to an election outcome. In the case of packing, a party's voters are concentrated in a district so that the party's candidate is virtually predestined to win by a large margin (for example, 65 or 70 percent of the vote); the votes cast for a candidate above the 50 percent (plus one) threshold needed to win can be considered wasted votes that have no influence on the outcome. In the case of cracking, a party's voters are distributed in a way that ensures they constitute a minority in a district, so the party's candidate is unlikely to ever reach the 50 percent needed for victory; all votes cast for the losing candidate therefore can be considered wasted.

Partisan gerrymandering thus undermines the principle of "one person, one vote" and diminishes the influence of voters, many of whom are left to cast ballots that are unlikely to have any bearing on the outcome of an election. Voters who support a candidate representing the minority party in a gerrymandered district have little chance of electing their preferred candidate. Voters in uncompetitive districts, even where their preferred party has a substantial advantage, often are not offered a meaningful choice in the general election because their candidate is a virtual shoo-in and the candidate of the opposing party has little prospect of winning. Consequently, any competition that does occur in these lopsided districts tends to occur in primaries, because a victory in a majority party's primary is tantamount to winning the general election. In these primaries, highly partisan or ideological voters may encourage extreme candidates, thus producing highly polarizing contests that can lead to the election of candidates who do not represent the views of most of their constituents and are focused on narrow ideological agendas rather than broad public policy concerns and the pursuit of cooperative legislative efforts.

Partisan gerrymandering promotes a skewed electoral landscape that encourages election results in which a party's share of the statewide vote does not fairly or equitably translate into legislative representation, thereby diminishing the representative character of Congress and state

legislatures, and the responsiveness of government to changes in voter preferences. Changing legislative policy preferences on the part of the public usually should imply changes in partisan control, but partisan redistricting plans can thwart shifts in partisan control because a shift in voter sentiment might yield little or no change in representation. Although partisan redistricting plans do not always achieve their intended effects or make a shift in partisan control of a legislature impossible, they are certainly designed to reduce the likelihood of such a change by providing one party with an unfair advantage. In this way, partisan gerrymanders reduce legislative responsiveness to the will of the voters and the ability of the voters to hold elected officials accountable for their actions.

The New Politics of Partisan Gerrymandering

Partisan gerrymandering is not a new problem in American politics. Indeed, the practice can be traced back to the first congressional elections, when the districts in Virginia were drawn so that James Madison would be forced to compete against James Monroe. In 1812, Governor Elbridge Gerry of Massachusetts signed a bill that drew state senate districts in a way that benefitted his Democratic-Republican Party, including one district that resembled the shape of a mythological salamander (hence, the “Gerry-mander”).¹¹ But in recent decades the problem has become particularly acute. Changes within the electorate and the information and tools now available to legislative mapmakers have made it much easier to predict voting patterns and draw districts with fine lines. As a result, the incentives to engage in partisan redistricting have grown stronger, and the practice has become more common, more efficient, and more effective.

The amount of information now available about voters combined with innovations in digital mapping tools has improved the capacity of legislative mapmakers to devise partisan districts.¹² While legislators have had access to

census information and block-level census data for some time, this information is now supplemented with individual-level data drawn from enhanced voter files developed by party organizations or independent vendors that often contain extensive profiles of each voter. These data have become more useful because of digital mapping tools and automated redistricting algorithms that facilitate the construction of mapping scenarios with thousands of variations and allow detailed analysis of each of these districting designs. These tools also make possible rigorous sensitivity testing that allows mapmakers to test potential election outcomes under various scenarios, including shifts in voting behavior and projected population and demographic changes within each district. Redistricting has thus become more of a science than a matter of political judgment or legislative debate.

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Predicting voting behavior within political jurisdictions and geographic constituencies has also become much easier due to the rising polarization within the electorate. Voters have become increasingly rigid in their voting behavior, with party identification a stronger indicator of how an individual will cast a ballot. Also, split-ticket voting is now much rarer than in previous decades.¹³ Voters are less likely to change their party preferences from election to election, and party preferences are now more closely aligned with voters’ ideological views and policy preferences than was the case two decades ago.¹⁴ This polarization is also reflected and reinforced by the proclivity of citizens with similar demographic characteristics and lifestyles to live in common geographic areas. These demographic and social characteristics correlate with political views, creating communities

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and geographic clusters that are identifiable as strongholds for one party or the other, as in the case of major city centers dominated by Democrats or particular suburban communities dominated by Republicans. This social segregation facilitates the identification of geographic areas that can be targeted for packing or cracking.¹⁵

Furthermore, as voters have become more partisan and polarized, so too have legislatures. Both in Congress and in state legislatures, Democrats and Republicans have become more divided and have moved away from the center of the political spectrum. In Congress and state legislatures, there is now relatively little ideological overlap between Democratic and Republican legislators.¹⁶ This legislative polarization is not principally a result of redistricting practices, but partisan gerrymandering certainly has contributed to this divide by heightening polarization in districts and thereby reducing the prospects of more centrist candidates.¹⁷ Partisanship thus encourages more intensive partisanship. Legislatures that have become more polarized are more likely to approve extremely partisan redistricting plans when unified party control provides the opportunity to adopt such plans. When legislative control is divided between the parties, legislators are more likely to agree to bipartisan plans that entrench incumbents and minimize the number of seats that are truly competitive, as would packing and cracking in a purely partisan gerrymander. Thus, as the partisan divide in legislatures has become more apparent, redistricting plans that reflect and reinforce this polarization have become more common.

The Consequences of Partisan Gerrymandering

Partisan gerrymandering reverses the normal course of politics by allowing legislators to select their voters, rather than the voters selecting their representatives. The effects of this practice on voter efficacy and electoral competition were made clear in the most recent redistricting cycle following the 2010 elections. Once the 2010 election results

were settled, one party held control in most state legislatures, with the Republicans controlling both legislative chambers in 25 states and Democrats controlling both chambers in 16 states. Thirty-one of these states had unified party control when the governor is included, with Republicans holding unified control in 20 states and the Democrats in 11 states.¹⁸ As a result, a single party controlled the district line-drawing for more than half of the state legislatures and for more than half of the seats in Congress. Of the 435 US House districts, 244 were in states where one party determined the districts. Of these 244 districts, 195 were in states where the legislature was responsible for redistricting, and the Republicans controlled the legislative and executive branches of government. Democrats controlled both branches in states that held 49 districts. Of the remaining districts, 92 were in states with divided government and 92 in states where commissions draft redistricting plans or in Iowa, which uses its unique Legislative Services Agency process.¹⁹

Consequently, partisan gerrymandering surged to unprecedented levels of severity, producing maps in some states that were extreme in their partisan bias. An analysis of districting plans conducted by Professor Simon Jackman of Stanford University, which encompassed 786 state legislative elections in 41 states in the period from 1972–2014, found that the maps approved in the most recent redistricting cycle exhibited some of the worst partisan asymmetries at both the congressional and state level in the past 40 years.²⁰ A few examples demonstrate the political benefits parties achieved as result of these partisan imbalances:

- In Wisconsin, which was controlled by Republicans, the redistricting plan allocated votes among newly created state legislative districts in a way that made it likely that the party would retain a majority in the state assembly under any likely election scenario. In 2012, Republicans won 48.6 percent of the vote, but won 60 of the 99 seats. In both 2014 and 2016, Republicans won a narrow majority of 52 percent of the vote but won 63 seats in 2014 and 64 seats in 2016.²¹

- In Massachusetts, which was controlled by Democrats, the districting plans secured the Democratic majority. In state house elections, Democrats in 2012 received 73 percent of the vote, but 82 percent of the seats. In 2014, they received 67 percent of the vote and 78 percent of the seats. Conversely, Republicans received 25 percent of the vote in state house races in 2012 and 31 percent in 2014 but took only 18 percent and 22 percent of the seats. In the 2012 congressional elections, Republican candidates received 24 percent of the total statewide vote but won none of the state's nine congressional seats.²²
- In Pennsylvania, which was controlled by Republicans, the new congressional district map packed Democrats into five districts. In 2006, Democrats received a total of 2.2 million votes in congressional races, while the Republicans received 1.7 million, resulting in a congressional delegation consisting of 11 Democrats and 8 Republicans. In 2012, with a new districting plan in place, Democratic candidates received 2.79 million votes, while Republicans received 2.71 million, giving the Democrats a small advantage in the overall vote. The congressional delegation elected, however, consisted of 13 Republicans and 5 Democrats.²³
- In Maryland, which was controlled by Democrats, the Democrats drew a map designed to increase their 6–2 advantage in US House seats to 7–1 by targeting 10-term Republican incumbent Roscoe Bartlett. The new map included a district that looked like a dragon but served to take 66,417 Republicans out of Bartlett's Sixth District and move in 24,460 Democrats from safely Democratic adjoining districts for a swing of more than 90,000 voters. In 2012, Bartlett lost to Democrat John Delaney by about 75,000 votes, and Delaney has won reelection in the district ever since.²⁴ Statewide, Democrats received 63 percent of the vote in US House races but won 87 percent of the seats. Conversely, the Republicans received 33 percent of the vote but only one of the eight seats.

Both parties have thus been able to gain additional seats by crafting maps to their advantage. Republicans achieved the greater benefit from the 2010 districting because they had control of more states where legislatures are responsible for districting, including 10 of the 15 states that gained or lost seats through reapportionment based on population shifts, and controlled more of the larger states with a greater number of congressional districts. According to an analysis of the 2016 US House races by the Associated Press, the Republicans gained as many as 22 additional US House seats as compared to the average vote share in congressional districts due to the partisan advantage achieved through the districting process.²⁵ Similarly, a study by the Brennan Center for Justice of congressional elections from 2012–2016 (including only the 26 states with six congressional districts or more) estimated that Republicans derived a net gain of at least 16 US House seats due to partisan bias in redistricting.²⁶ Partisan gerrymandering thus strongly appears to produce partisan outcomes that distort the fair and equitable representation of voter preferences.

Partisan gerrymanders achieve their objectives by diluting voter influence and increasing the number of safe seats in elections. Maps drawn with partisan intent treat voters as a means to an end, rather than treating them as citizens who have the individual responsibility of deciding electoral outcomes. Such gerrymanders tend to produce safe districts that minimize general election competition and serve to entrench a party's incumbent members. In this way, they reduce the influence of a substantial share of voters by ensuring that their ballots will not have a meaningful effect in determining the outcome of a legislative race. As a result, more than 75 percent of congressional districts continue to be uncompetitive, a term typically applied to districts where the winning candidate's margin of victory was greater than 10 percentage points (i.e., margins of victory greater than 55 to 45 percent). The nonpartisan Pew Research Center, for example, found that in the 2010 election, the winning candidate won by a margin of 55 to 45

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percent or less in only 84 of the 435 congressional districts; in other words, only 84 of the 435 congressional districts featured competitive general election contests. In the other 351 districts, the winning candidate won by margins greater than 10 percentage points, including 12 districts where the winning candidate faced no opposition at all in the general election. In 2012, only 63 of the 435 districts featured competitive races. The other 372 districts did not feature competitive races, including 13 in which the winning candidate had no general election opponent. To put this into perspective, these 372 uncompetitive districts included 85 percent of the nation's eligible voters.²⁷ While this lack of competition is due to a variety of factors including the advantages of incumbency and political geography, studies have shown that redistricting contributes to the decline in competitive seats and partisan gerrymandering produces more uncompetitive seats than would be the case under randomly drawn district lines.²⁸

By encouraging the creation of uncompetitive districts or districts with a clear partisan advantage, partisan redistricting exacerbates the problem of polarization in Congress and state legislatures. While redistricting is not a major cause of the ideological polarization and partisan conflict that plagues our political system, it exacerbates the problem by producing districts that are more partisan and homogeneous, thus exposing representatives to fewer dissenting voices or fewer disparate groups of constituents. In such instances, district characteristics can serve to reinforce members' ideological predispositions and encourage them to appeal to their ideological bases of voter support, rather than pursue more centrist or moderate approaches.²⁹ Partisan redistricting also increases the incentive for ideologically extreme candidates to seek office, especially in safe districts where a candidate is of the district's majority party and only needs to win in a primary election to have a good chance of being elected to office. Scholarly analyses have shown, for example, that redistricting has a meaningful effect on the levels of polarization in legislatures and that candidates elected from

districts where the boundaries have changed significantly are more ideological than previous legislators, even when controlling for such factors as replacement of incumbents and electoral safety, which are often indirectly related to redistricting.³⁰

Thinking About Reform

Our representative system of government is designed to work best when it is based on neutral rules and procedures that do not impose or enforce narrow political interests. A fair and equitable electoral process is the best way to encourage robust competition and broad voter participation, which are essential to meaningful representation of public views and a government that is responsive to the will of all voters, not just those of one party or the other. The process used to draw district lines in most states fails to meet this basic conception of democratic governance.

Redistricting should rely solely on the application of neutral criteria to diminish partisan and political influence. Such criteria have already been established by the Constitution, federal law, state constitutions and statutes, and court decisions. Districts must adhere to all Constitutional and Voting Rights Act requirements. In addition to these requirements, some states have specified other neutral criteria to be used in redistricting, which we believe would mitigate political influence and should be applied to all redistricting efforts. The drawing of district lines should encourage geographical compactness and be contiguous to avoid districts that extend or meander over great distances, or encompass detached parts, which can diminish citizens' sense of political community. Districts also should be drawn to promote partisan competitiveness, which serves to increase voter interest in elections and enhances electoral accountability by creating districts that will reflect major changes in voter sentiment. The redistricting process also should be transparent, so that the public can be aware of the decisions that are made and have confidence that the outcome was not a result of secret deals or a rigging of the process in favor of one party.

We recognize that an adherence to these widely affirmed guidelines does not resolve completely the problem of political gerrymandering. Fulfilling these diverse criteria often involves trade-offs that require judgments concerning the best way of balancing these objectives. For example, the creation of compact districts might best be achieved by concentrating the voters in a city into one district, but this approach can work against the promotion of partisan competition, since these urban districts are likely to be uncompetitive. Furthermore, as recent experience demonstrates, partisan maps still can be constructed in accord with such criteria. That is why we have concluded that fundamental reform of the districting process is needed to bring about meaningful change.

One significant and highly valuable step towards reducing the role of partisan gerrymandering may come from the Supreme Court. In the past, justices have found partisan gerrymandering to be a justiciable issue before the court, rather than a political question outside of the court's purview.³¹ But the court has not deemed extreme partisan gerrymanders unconstitutional due to a lack of agreement on whether a practical standard can be established to determine the instances in which a partisan gerrymander could be held unconstitutional. This question is now before the court in the case of *Gill v. Whitford*, a case involving Wisconsin's 2011 partisan gerrymander, which plaintiffs contend diluted the influence of their votes by "wasting" them, thus violating the Fourteenth Amendment's guarantee of equal protection.³² While the case raises a number of questions concerning the ruling of the lower court, which found the Wisconsin map to constitute an unconstitutional gerrymander, the core issue is whether a measure of relative partisan advantage, known as the "efficiency gap," provides a standard that can be used to determine whether a partisan gerrymander is so extreme that it violates constitutional protections. Should the court rule that partisan gerrymandering is a justiciable issue and that there is a workable

standard for determining the constitutionality of partisan maps, future maps will have to conform to the new constitutional restrictions and future litigation may serve to prohibit the implementation of maps that implicate whatever standard the court finds applicable.

However, even if the court finds the Wisconsin map to be unconstitutional, such a ruling will not resolve the problem of political influence. Partisan maps that do not surpass the constitutional quantum established by the court still may be possible. In addition, bipartisan gerrymanders designed to protect incumbents in both parties and minimize the number of competitive districts also may be permitted. Consequently, we believe a change in the designation of the redistricting authority in most states is needed to effectively address the abuses in the current system.

Independent Redistricting Commissions

We support the use of nonpartisan, independent commissions as the entities responsible for drawing district lines. This method is used in a number of Western democracies, with a nonpartisan administrative board or commission, or some form of politically neutral body given the responsibility of redrawing district lines. In Great Britain, for example, a nonpartisan Boundary Commission carries out this task. In Canada, independent commissions that explicitly exclude members with partisan connections redraw district lines for the Parliament and every provincial legislature. A few US states also have adopted an independent commission process. The institutional arrangements, specific criteria to be employed when drawing districts, and formal procedures that dictate the practices of these commissions vary widely, with some states relying on commissions that are more bipartisan than nonpartisan, since members are appointed by legislative leaders or membership consists of individuals associated with the major parties with an individual who is not affiliated with the major parties serving as chair.

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An independent redistricting commission should meet certain requisites to minimize partisan or political influences:

- Commission members should be selected from a pool of candidates named by a mix of nominating authorities, including some authorities that represent civic or scholarly interests.
- Commission members should be appointed through a process that involves selection by a mix of appointing authorities.
- Commission membership should be structured to include an equal number of members affiliated with each party and members affiliated with neither party.
- The qualifications for commission membership should exclude elected officials or legislative candidates from serving on the commission. Commission members also should be prohibited from running as legislative candidates in the two elections following redistricting.
- The process for determining districts should be transparent and open to the public. Commission meetings should be a matter of public record and provide opportunities for public comment and input.
- The commission should be charged with drawing maps based on neutral criteria established to govern their task, including a charge to promote the creation of competitive districts.
- The commission should have sole authority for creating maps. The commission should have a nonpartisan staff and funding necessary to carry out its responsibilities. Should the commission fail to agree to a redistricting plan within the time frame established for the completion of its task, a designated court or court-appointed panel of judges should be responsible for resolving any issues and determining the map.
- The Commission should be accountable to a designated court, which will be responsible for review of its actions and addressing any controversies concerning its actions.

We believe that a commission-based redistricting process that incorporates these features will resolve the abuses evident in the current system. While it may not wholly insulate redistricting from partisan and political influence, it will be free of the conflicts of interest and blatant partisan motivations that have come to dominate redistricting in far too many instances.

The Census

We also recognize that any redistricting effort must be based on accurate and timely data, given the constitutionally mandated timetable for reapportioning congressional seats and revising district maps based on the decennial census. The decennial census is the foundation of fair political representation in our system of government because the population count serves as the basis for apportioning seats in the House of Representatives and drawing district boundaries to conform to the constitutional requisite of equal population. Similarly, it is the basis for drawing district lines for state legislative seats and other elected positions, including city councils, school boards, and some municipal offices. An accurate and robust census is thus the essential component of the redistricting process.

Given the importance of the census to political representation and many public and private stakeholders, ensuring an accurate count and high-quality data is a national policy priority. But at present the Census Bureau faces a high risk of failing to achieve this goal.

A decennial census is required by the Constitution, and unlike most government programs, it is carried out on a strict schedule. The next official count begins on April 1, 2020. The Census Bureau must be prepared to fulfill its responsibilities by this time, which typically requires two to three years of preparatory work to test its management systems and data collection methods, plan its outreach, hire the necessary workforce, and heighten public awareness of its efforts. These tasks require a significant ramp-up in spending by the Census Bureau in the years leading up to the actual count.

For example, prior to the 2000 Census, the Census Bureau's budget doubled from \$345 million in 1997 to \$693 million in 1998 and doubled again to \$1.37 billion in 1999. Similarly, prior to the 2010 Census, the Bureau's budget rose from \$893 million in 2007 to \$1.44 billion in 2008, an increase of 61 percent, and then rose another 65 percent to \$4.14 billion in 2009.³³

Congress has directed the Bureau to spend no more on the 2020 census than it spent on the 2010 count (\$13 billion).³⁴ To meet this directive and improve the efficiency of its data collection, the Census Bureau has been investing in new information technology infrastructure and, for the first time, plans to instruct American residents on its first pass to respond to its questions online. The Bureau estimates that this approach will significantly reduce the number of citizens who need to be reached by its traditional door-to-door approach and save an estimated \$5 billion.³⁵ However, the unexpectedly high costs of its infrastructure investments, combined with appropriations that have failed to fulfill budget requests, have left the Bureau without adequate funding to perform the tasks needed to ensure the collection of accurate and high-quality data. Due to the continuing congressional impasse over the budget, the Bureau has been operating under continuing resolutions and has not received the increase in funding required at this point in the census cycle. In addition, current budget proposals fail to fulfill the 20 percent increase requested by the Bureau for 2017, falling \$140 million short of the \$1.64 billion requested, and are unlikely to meet the Bureau's needs in the years leading up to the start of the count.³⁶

Consequently, the Bureau has not been able to complete planned activities in preparation for the 2020 count. The agency has been forced to delay implementation and testing of their new technology and collection methods. Two of the three major tests of pilot programs scheduled in 2017 were cancelled due to a lack of funds, and the opening of three field offices was also delayed.³⁷

Without such testing, there is no certainty that planned systems will work or that an accurate and credible count will be achieved.

The funding problems confronting the Bureau are compounded by a lack of established leadership. The administration of the census is a complicated and demanding managerial task that requires effective leadership. In June 2017, the Director of the Census Bureau resigned, and a permanent replacement has yet to be named. This has created a leadership vacuum at a critical time and entails the prospect of a confirmation process that may produce further delays. The Census Bureau needs strong leadership to ensure effective planning and implementation within the strict timetable that exists for the counting of the nation's population. At present, the leadership structure is uncertain.

CED believes the body of data compiled by the census is a public good and a vital information resource. In addition to its role in redistricting, census data is an essential resource for the business community, which relies on this body of data to make investment decisions and better understand community needs and local labor markets. Accurate and high-quality census information is also needed for proper stewardship of government resources, since many government grant programs and social services base their allocation of resources on census information.

We urge the Congress to ensure that the Census Bureau has levels of funding and staffing commensurate with its task. Funding allocated to the Bureau should provide the resources needed to develop the infrastructure required to capitalize on new technologies and the more efficient means of data collection that they offer. In addition, Congress should take the actions necessary to ensure that the census produces accurate, credible, robust and high-quality data. Such data are essential to fulfilling the constitutional and legitimate purposes of the census, the most important of which is to guarantee that citizens are fairly represented in the political process.

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Conclusion

Now is the time for action on redistricting reform. The Democrats and Republicans have already launched major national political projects designed to gain control of the redistricting process in 2020.³⁸ The battle over redistricting will thus become even more politicized, suggesting that partisan motives will influence the next round of redistricting even more than they did in 2010. This partisan competition does not serve the best interests of voters nor does it promote our political ideals. Redistricting should enhance voters' choices of legislators who will best represent their views, not each legislator's choice of the voters who will best ensure election or reelection.

CED believes that reform of the redistricting process will make a valuable contribution to the quality of our democracy. While it will not address all the challenges that confront the electoral process, it will significantly reduce partisan and political influence in the drawing of district lines and thereby establish a foundation for fairer, more equitable, and more competitive elections, which are better suited to the democratic principles that our elections must fulfill.

Endnotes

- 1 *Wesberry v. Sanders*, 376 U.S. 1 (1964) and *Reynolds v. Sims*, 377 U.S. 533 (1964).
- 2 See *Shaw v. Reno*, 509 U.S. 630 (1993) and *Miller v. Johnson*, 515 U.S. 900 (1995).
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POLICY BRIEF

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