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# GERRYMANDERING THE SLAYING OF AMERICA'S VOTING DRAGON

## A Study of Congressional Redistricting in US Elections

*By: Margot Mandula*

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## Abstract

This Master Thesis through the theoretical construction of depoliticization and public bureaucracy a discussion of US Congressional elections and the role of their redistricting authorities will lead the discussion of keeping the government “above politics”. Through a Qualitative Comparative Case Study of two separate redistricting authorities, coupled with a content analysis of legislative information on redistricting organization, legal cases and interviews with acting attorneys, the thesis will attempt to analyze the process links between redistricting authorities and election results from the 2012 US Congressional Elections. Finally, the thesis will contribute to the literature by shedding light on the nuts and bolts of gerrymandering in redistricting and providing one of the first empirical evaluations of whether delegation to independent commissions provides for more fair elections.

## 1. Introduction

*“As long as ours is a representative form of government, and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system.”*

- Reynolds v. Sims (1964)

This is an excerpt from the 1964 landmark US Supreme Court case Reynolds v. Sims which is one of three defining US Supreme Court battles fought during the 1960's "Reapportionment Revolution" (the other two being *Baker v Carr (1962)* and *Wesberry v Sanders (1964)*) indicating a new era of judicial and federal government involvement in the US election process placing an overarching emphasis on the ***One person, one vote principle or that equal numbers of people deserve equal representation***. To understand this principle a brief contextualization will be provided into the framework of the US election process. It begins with the US Constitution it requires the US Census Bureau to conduct a population enumeration of American residents at the end of each decade. The census is aimed to assist the government in the apportionment of taxes and the 435 representative seats in the US House granted to each of the fifty states. The Census tabulations inform seat apportionments based on the gain/loss deviations of state population also known as reapportionment (Hebert & Jenkins 2011, p.543-544).

Prior to the "Reapportionment Revolution" redistricting was not regulated in the same manner as it is currently, therefore, allowing electoral districts to remain the same size and enabling politicians to remain in power. The population growth of the 1960's made it clear that existing electoral district lines were wholly inadequate, enabling "gross malapportionment, and severe voter dilution in the now overpopulated districts" (Hebert & Jenkins 2001, p. 543- 545). The Reapportionment Revolution brought to light the demand for redistricting, so that new districts would ensure that each person's vote carries the same weight (Hebert & Jenkins 2001, p. 543-545). To help ensure that this happened the US legislative branch passed both the Civil Rights Act of 1964 and The Voting Rights Act of 1965 (VRA) the main legal document governing present-day US Elections. The (VRA) was designed to surmount the legal barriers that African Americans had faced in exercising their right to vote under the Fifteenth Amendment of the US Constitution. The act suspended previously established literacy tests, voting procedures and even developed a preclearance procedure for jurisdictions that were

previously using such tests to determine voter eligibility (Encyclopedia Britannica 2020b).

Hence, the push of the VRA and the Reapportionment Revolution to eliminate forty-year-old electoral districts in the name of equal representation coupled with statistical data gathering expanding beyond, census tabulations to, district level voter information providing a more comprehensive “digital footprint” of voters. Thereby inducing higher sophistication in the redistricting process has also created an unparalleled opportunity to tamper with the redistricting process and, manipulate district plans in such a way as to dilute voter’s choices (Bullock 2010, Kolbert 2016).

Such conditions are a breeding ground for gerrymandering a component of redistricting since 1812 with the first incident recorded in the state of Massachusetts’s conducted by the ninth Governor Elbridge Gerry who passed a law defining new senatorial districts. The new districts instituted and legally enabled the consolidation of the then Federalist Party Vote into a few small districts giving the disproportionate representational advantage to Democratic-Republicans. Hence, gerrymandering provides the maximum advantage for political or partisan based interests in the redistricting process which subsequently affects five elections due to the interval of redistricting coinciding with the census (Bullock 2010, p.109).

Among numerous attempts to constrain gerrymandering is the delegation of authority to redistrict to a commission structured authority. According to the Princeton Gerrymandering Project eight states delegate the power to draw electoral districts to an independently structured commission significantly diminishing the power of partisanship in the election process (Princeton Gerrymandering Project 2021). Therefore, in this thesis I aim to determine if the redistricting authority influences the fairness of the redistricting process, if redistricting effects electoral competition and if one type of authority is more favorable to incumbents.

Therefore, the primary research question is: ***Does the type of redistricting authority affect the fairness of election redistricting?***

With two secondary research questions:

- 1) *What evidence exists suggesting that the state legislative redistricting process is done expressly to weaken subsequent elections in the favor of incumbents?*



2) *What evidence is there indicating that districting effects electoral competition and the realization of the one-person-one-vote principle?*

To answer these questions the thesis will employ the theoretical framework of depoliticization, first developed in the field of public bureaucracy (Dahlstrom and Lapuente 2017; Miller 2000; Nistotskaya and Cingolani 2016), which argues for keeping important government functions “above politics” for the benefit of a society at large. From a methodological point of view, the thesis is a qualitative comparative case study of two separate redistricting authorities, a content analysis of US Supreme Court cases and existing election literature and an open-ended questionnaire of legal practitioners. This will be done by building on both legislative information on the organization of redistricting processes in both states in conjunction with the Arizona Independent Redistricting Commission’s Report published in 2019 by Colleen Mathis, Daniel Moskowitz and Benjamin Schner which provides valuable insight to the results of independent redistricted elections. The thesis will then analyze the link between the redistricting processes and election results for the 2012 Congressional Elections. Making contributions to the literature by shedding light on the nuts and bolts of the congressional redistricting process providing a comprehensive evaluation of whether delegation to independent commissions provides for more fair elections.

## 2. Literature Review

### 2.1 Elections, Redistricting, its causes, and outcomes

The implications of elections and their processes are vast. According to Charles Bullock elections are fundamental to any democracy. The greatest indicator of this is through electoral processes such as redistricting. Prior to the 1960’s the redistricting process was rare, leaving congressional districts unchanged for generations inducing further inequalities in the electoral process. Thus, at the time citizens were living in the 20<sup>th</sup> century but subject to 19<sup>th</sup> century discrimination and laws (Bullock 2010, p. 11). This bridges the discussion into what constitutes “good governance” popularized and pursued by institutional leaders such as the IMF and World Bank as they pave the way for more equitable global or internationally based policies. This embrace of “good governance” has not gone unchallenged with many institutions struggling to determine the best path forward for both societal well-being and economic prosperity (Agnafors 2013, p.433).

This struggle can be seen in the conflicting election literature which places a broad emphasis on the procedural regulation of population equality espoused by the “one person, one vote” principle established in the 1960’s Reapportionment Revolution. In turn, only providing for a singular provision of fairness in redistricting. It has now developed into a more concerted effort to achieve political fairness or fairness between “different partisan groups of voters” characteristic of institutions focused on redistricting outcomes (Cox 2004, p.756). Thus, the precedent set by the equal population principle was an attempt to impede the efforts of redistricting authorities in the utilization of gerrymandering (more specifically partisan gerrymandering). Therefore, in recent years measuring the efficacy of district plans in benefiting or hindering one party has become easier with the introduction of the “metrics like the efficiency gap and partisan bias”. Both metrics since its inception have been used by the courts in their litigation of gerrymandering cases which has brought progress but there is still little research or precedence on the causes or factors that affect a district’s partisan fairness and consequences of gerrymandering (Stephanopoulos 2018, Cox 2004).

Much like the Supreme Court both legal scholars and political scientists agree that partisan fairness is a “normatively desirable feature in districted elections” (Cox 2004, p. 756). While this might be true there is a uniformity among scholars critical of the Court’s effort to encourage fairness, implicating that the efforts of the Reapportionment Revolution based regulations are wholly ineffective in the promotion of fairness especially along partisan lines (Cox 2004, p.756). Moreover, the equal population regulation addressing “numerical equality” might have concentrated on equalizing district populations throughout the US, but it still does not clearly forbid “redistricting authorities from gerrymandering district lines in a way that unfairly favors one political party and disfavors another” (Cox 2004, p. 759-760).

That even if the one-person, one vote regulation enforced by the Supreme Court formally compartmentalizes the discretion of the legislature to adhere to equal population principles and “defeat partisan gerrymandering efforts” it has failed to do so. The requiring of districts to be drawn with equitable populations does next to nothing to restrict redistricting possibilities for those responsible for the redistricting process (Cox 2004, p. 759-760).

Oppositionally, Nicholas Stephanopoulos (2018) implicates that political scientists have devoted more time to measuring partisan gerrymandering rather than the causes and consequences of such outcomes. That the most intuitive explanation as the **cause of gerrymandering falls upon the institution that is responsible for designing the district map. Furthermore, that if a single party fully controls the state legislature at the time of**

**redistricting the motive and opportunity to enact a plan that benefits themselves is present as well as the opportunity to disadvantage their opponent.** In contrast, other redistricting institutions for example commissions or courts are required to replace unlawful plans and divided controlled state legislatures have no reason to play party favorites. Hence, with other redistricting authorities such as commissions there is not much research that “analyzes their effect on the direction of maps partisan skew” (Stephanopoulos 2018, p.4-5). Thus, producing a gap in the research pertaining to gerrymandering and the causes to fair and unfair redistricting.

### 2.3 Research Gap

From the discussion in the preceding paragraphs, it indicates an overreaching emphasis on population equity in the constitutional framework of redistricting. Through exploring election-based literature it became apparent that it was overly focused on one form or component of equality in the election process (population equality or the one person, one vote principle). Thus, a lacking pursuit into the causes and outcomes of fair and unfair redistricting practices. There is an inherent need to investigate these aspects of elections to provide a broader understanding into the fairness of elections, its authorities, and the provision for people’s individual human rights. Therefore, I think that it is necessary and pertinent to look deeper into the causes and or outcomes of both fair and unfair redistricting to contribute to the small literature base that currently exists. Hence, this Master Thesis attempts to fill the gap in literature relating to the causes and outcomes of redistricting methods.

## 3. Redistricting and the US Elections

The redistricting process restructures how citizens are clustered for purposes of political representation and is the single public process with the ability to “shift the terrain on which all political activity is negotiated” (Greenwood, Harless, Bowie and Wright 2018 p. 8). Meaning that in most US districts “*a bare plurality of the voters within a given district selects a single representative, any slight change in a district’s composition may generate substantial changes in that district’s choice of representative—and therefore in the interests most vigorously represented for that district*” (Levitt 2011a, p.518). This is done through the shifting of political power among polities that have the capacity to translate their preferences into policy. Therefore, the process of redistricting changes collective political preferences and the way that these preferences are expressed through the political process, even though the changes of individual constituent preferences might have changed. More so that the

redistricting process is “pre-political” meaning that redistricting decisions are not only applicable to the output side of the translation process but also a component of the redistricting translation “algorithm itself”. In summary, the changing of district lines may result in definitive shifts in the policy preferences of a legislative based majority (Levitt 2011a, p.518).

The process of redistricting can be carried out by three primary authorities: the state legislature, a political commission or independent commission. State legislatures in 34 states bear the responsibilities for the process of apportionment and redistricting while the remaining 16 states conduct this process through various commission structures such as bipartisan commission, or independent commission (Princeton Gerrymandering Project 2021). There are federal mandates that all authorities are responsible for following and then standard state-based regulations that each redistricting authority must follow. **Federal mandates require: 1) Representatives be apportioned to states based on population 2) That the population in each house district is as equitable as possible. More specifically, that a more than 1% population disparity between congressional districts would be considered potentially unconstitutional or in violation of voters protected under the US Constitution** (All About Redistricting 2020). Furthermore, each state determines their specific redistricting guidelines to be used in their own process but follow general principles such as contiguity, compactness, community interest and in some cases political boundaries.

*Contiguity* speaks to the spatial spread of areas within a district meaning that they must be adjacent. *Compactness* refers to the idea that constituents or voters within a district should reside as near to each other as possible. *Community interest* speaks to the idea that a group of people who all live in the same geographical area that share common interests in the political, social, or economic areas of life. The respecting of *political boundaries* already in place by other government entities such as city wards or districts in the effort to keep existing constituencies intact rather than the split across multiple districts (Encyclopedia of American Politics 2016a, p.2-3).

Additionally, to comply with both state and federal redistricting guidelines a process called Majority-Minority Districting was developed. This was done to provide a more equitable approach to the overall redistricting process. The majority-minority principle means that minorities comprise the overall makeup of a districts total population meant to assist states from diluting minority voters in the election process. Moreover, this principle helps individual states comply with Section 2 of the Voting Rights Act whose subtext is that no

redistricting standard or practice can be applied based on color. This principle is utilized in 122 Congressional Districts across the country which is 28 percent of the 435 House of Representative districts which breaks-down to approximately 122 seats out of the 435 (US Census Bureau 2015).

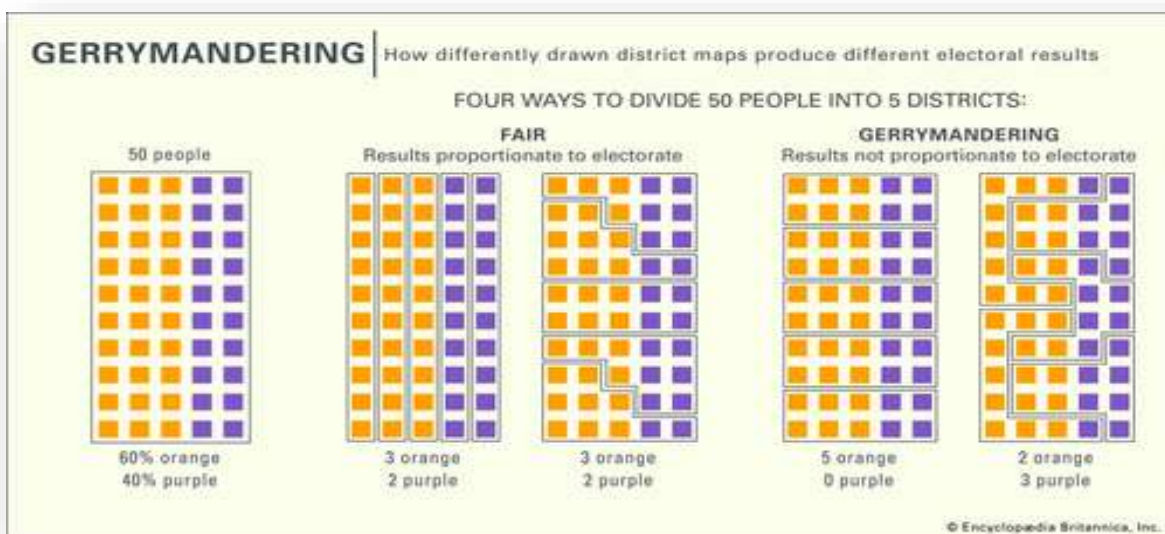
### 3.1 Gerrymandering

Therefore, in the absence of an independent commission to induce higher levels of election fairness state legislatures commonly turn to a process called gerrymandering to provide the aspired gains sought by partisan interests. Gerrymandering can be defined as **the premeditated manipulation of district lines to improve advantages for a specific group (potentially political, racial, or ethnic group)**. In US elections historically there have been four different ways to gain groups advantages: malapportionment, minority vote dilution, partisan gerrymandering, and racial gerrymandering but for the focus of this project will be partisan and racial gerrymandering practices. *Malapportionment* the process utilized until the 1960's was the "deliberate difference" of population between the districts which affected constituents voting strength in highly populated districts (weaker voting strength) than their counterparts in less populated districts. The second manifestation of gerrymandering is *minority vote dilution* which is the utilization of redistricting plans to "minimize or cancel the voting strength of racial, ethnic, or other minorities" (Greenwood et al 2018, p.4-5). This practice resulted in the denial of racial or language minority groups an equal opportunity to participate in the political process. The most consistent tactic that is employed in this process is preventing a community of color from "being a controlling majority in any district". *Partisan Gerrymandering* which is when one political party purposely gains systematic advantages for itself through the redistricting process. Thus, making the outcome of elections not determined through the "will of the people" but through the redistricting authority. *Racial Gerrymandering* which is the premeditated separation of citizen voters based on race without purposeful justification (most justified as attempting to comply with the Voting Rights Act) (Greenwood et al 2018, p.4-5).

More specifically, the practice of gerrymandering is the direct outcome of legislative redistricting with the fundamental goal of establishing "preference configurations" of congressional districts to induce preferable electoral outcomes. This practice is characteristic of map-based district modeling strategies that are utilized by legislative redistricting authorities. The strategy is to take stereotypical assumptions about voters much like the idea that Democrats or minorities live in urban/city spaces, while Republicans reside in rural or

outside the city landscape and apply them to the gerrymandering process of “packing and cracking” (Schotts 2001, p.122). *Packing* is when a group’s support is concentrated heavily in a few districts so that the targeted group wins significantly less districts than it would if its group supporters were evenly spread out. “*Packing*” then reinforces the practice of *Cracking* which is the practice of “dividing a group’s supporters among multiple districts so that they fall short of a full majority in each district (Greenwood et al 2018, p.5). To provide a visual example of this process Figure 1 will show how this process is completed.

**Figure 1 Explanation of Basic Gerrymandering Principles by Division of Districts**



Source: Encyclopedia Britannica 2020

Figure 1 presents five columns for the purpose of explaining the gerrymandering process. Column 1 (the far-left column) shows the voting split between two parties at a ratio 60% (orange) to 40% (purple). Columns 2 and 3 (the two middle columns) show an equitable division of representation as it is proportionate to the electorate numbers from Column 1 with the ratio of 3 orange to 2 purples. Columns 4 and 5 (the two right columns) show gerrymandered districts disproportionate to the electorate’s party affiliation. Shifting lines allowed one group to dilute or cancel the other group’s vote by 5 oranges to 0 purple, or 3 purples to 2 orange. In this graph, Column 4 illustrates the process of “Packing” and Column 5 the process of “Cracking”, illuminating how gerrymandering maybe used to gain the optimal electoral outcome that are in line with their interests (Encyclopedia Britannica 2020a).

### 3.3 Strategies to Reduce Gerrymandering

In addition to federal law and the US Supreme Court another way to reduce or eliminate gerrymandering would be adopting an alternative or commission based redistricting authority. There are multiple types of commission based redistricting authorities: there are advisory commissions, backup commissions, bipartisan commissions, independent commissions, and political commissions. A brief description of the three most common commission structures in the US will follow with the primary focus being the utilization of the independent commission for the purpose of this thesis comparison. **Advisory Commissions** are commissions utilized by four US states that do not take the legal authority away from the legislature but do carry responsibility and influence depending on the “culture of the state”. These commissions have mixed experiences in that some of the plans that are crafted by the commission are either always approved or completely ignored. (Greenwood et al 2018, p.3-4). The **Bipartisan Commission** structure utilized by only one state takes the legal authority or power of redistricting away from the legislature and membership is divided equally between both major political parties. These types of commissions are different from Independent Commissions because there is “the possibility that the parties work together to advantage themselves, without public input or consideration” (Greenwood et al 2018, p.3-4). The **Independent Commission** based structure is utilized by seven states which takes the power or legal authority away to redistrict from the legislature. Furthermore, an independent commission can craft districts that are not bound to any political party, allow for public input in the redistricting process, provide more transparency and accountability to the political process (Greenwood et al 2018, p.3-4). In the paragraphs to follow a more in-depth discussion of the Independent Redistricting process will occur with a focus on the numerous provisions this process provides regarding electoral fairness and competition.

To summarize, redistricting is an important political process, consequential for electoral results and, hence, policy formation. Redistricting is determined by the natural changes in the population, but has been a subject of manipulation, often through legal means. Among the measures aimed to address the manipulation of redistricting is delegation of redistricting authority to independent commissions.

## 4. Theoretical Framework

### 4.1 Operational separation of politicians and bureaucrats

To understand the difference between redistricting by the legislature and redistricting by independent commissions this thesis will draw on two interconnected literatures: 1) on the

operational separation of politicians and bureaucrats (Dahlstrom and Lapuente 2017) and 2) the delegation of important government functions from elected politicians to an independent entity (Peters and Pierre 2004 p.6) The example of the former is the transition of the US Bureaucracy from the politically dominated selection of public employees or the “spoils system” to the civil service system. The spoils system was engrained and institutionalized spreading to all positions of the federal government that remained beholden to politicians “gifting” federal positions from cabinet positions to the lowest ranking clerk. While this can be seen as advantageous in that with the change of government leadership and partisan appointments induces further levels of responsiveness in the political system. It can also provide a close link with civil society (Peters and Pierre 2004, p.126). Folke et al (2011) showed these advantages can even be used by political parties in the US to win elections in the state legislature. Implicating parties in control of the legislature potentially utilized the patronage system to develop their partisan electoral base and create further incentives for those proven loyal to their political incumbent or party.

This system remained in effect until the passage of the 1883 Pendleton Civil Service Act which made the civil service selection a merit-based process open to individuals regardless of their politics, religion, race, or national origin. Although almost 4000 top government positions still are filled through the political appointment process, the overwhelming majority of the 2,000,000 public service employees are then put through a rigorous meritocratic recruitment, fulfillment process and restrictions on their personal political involvement (which is all restricted except for the purpose of voting). Implying the beneficial effect of putting bureaucracy “above politics” (Miller 2000). Such bureaucracies are associated with higher economic growth (Evans and Rauch 1999), entrepreneurship (Nistotskaya and Cingolani 2016, Nistotskaya et al 2016), and achievement of millennium development goals (Cingolani et al 2015). This also exemplified in Oliveros and Schuster (2017) work showing that a meritocratic bureaucracy is less likely to perform political services to promote electoral changes for incumbents. Implicating that job protection provided by the meritocratic structure through for example tenure reduces the likelihood and drive for public servants to participate in political activities. In this context the American bureaucracy is then really an attempt to inhibit political involvement in day-to-day functioning of public bureaucracy yet remain responsive to the electorate agenda of the winning coalition (Miller 2000; Peters and Pierre 2004).



## 4.2 Applicability of Bureaucratic Politicization to Legislative Redistricting

Furthermore, in applicability of bureaucratic politicization to the legislative redistricting process politicians or state legislatures are foundationally political. They are responsible for the overt bureaucratic process (redistricting) as part of US Constitutional requirements. Hence, if the bureaucratic process of redistricting is accountable to elected legislators or politicians it becomes dependent on which political polity wins the election (Republicans or Democrats). Thus, resulting in further motivations to accept any action “legal or illegal, if necessary, that could increase the chances of winning the next election” (Cornell & Lapuente 2014, p.1288). That with the implementation of policy being done by political or party loyalists pursuing electoral outcomes such as gerrymandering are in line with a politicized or legislatively controlled process of redistricting (Cornell & Lapuente 2014, p.1288). Thus, in this thesis, I focus on the bureaucratic functionaries of legislative redistricting and the independent commission as a way of completing redistricting free from political influence.

## 4.3 Independent Redistricting and Professionalization of the Bureaucracy

To remedy the conflict of interest produced from the legislative redistricting process is the delegation of relevant political powers to an actor or institution that is “insulated from political instability and the time-inconsistent preferences of politicians” which would protect the institutional redistricting process from individual actors pursuing personal or partisan preferences (Nistotskaya & Cingolani 2016, p. 521). In the context of US Redistricting this was accomplished by delegating the redistricting authority (in some states) to an independent commission, whose members are not appointed by incumbent partisans and, therefore, not subject to the partisan pressure that those incumbents may exert to obtain partisan-friendly district designs. It is precisely because members of independent commissions are not members of the elected legislature (they often do not hold any political affiliation), their judgement in the redistricting process is not compromised. Instead, they are “structurally incentivized to redistrict according to the values espoused by state law rather than self-interest” (Greenwood et al 2018, p. 9).

Therefore, the design of an independent redistricting commission (IRC) is a sequence of decisions “on how to build a system that will structurally incentivize the creation of fair maps” (Greenwood et al 2018, p. 10). Fair maps implicating redistricting plans that uphold “good government values in terms of the process used to create them. This includes maps free of conflicts of interest, transparency in the development process, and public input in the map

drawing process. Furthermore, that the outcome of the determined plans makes allowances for minority communities to elect the candidates of their choice, treats members of both political parties relatively equally, and allows all residents (not just eligible voters to be equally represented) (Greenwood et al 2018, p. 10).” For the remainder of the discussion on independent redistricting commissions, the state of Arizona’s process and structure will be utilized to provide the contextualization of a standard independent process.

An independent commission is defined by its full authority to draw and approve maps drawn through the redistricting process without the intervention of the legislature or the state governor. The delegation of full authority to a commission structure limits any partisan or political influence a party may have over the legislature or the governorship. In addition, it removes the apprehensions about who will draw a redistricting plan if it is unable to obtain legislative or governor approval (Greenwood et al 2018 p. 11). The state of Arizona’s Independent Redistricting Commission (AIRC) is established through a retired tribunal of judges called The Commission on Appellate Court Appointments. This commission then nominates a pool of 25 applicants which include 10 Republicans, 10 Democrats and five applicants not registered with either major party. Selection criteria includes political affiliation, geographic representation, employment status (political or nonpolitical) and political activity. The first four members of the commission “are selected in succession by the Majority and Minority Leaders in both state houses (Senate and House of Representatives) each choosing one commissioner to serve; with those selected members then choosing the fifth member from that same pool to serve as the chairperson of the AIRC. The chosen chairperson must not be registered with the same political party as any of the other commissioners and serves as the intermediary or the non-partisan voice on the commission (Greenwood et al 2018, p.60).

The choosing of the chairperson is comparatively like the professionalization of bureaucratic structures. The introduction of bureaucratic agents or commission members with differing interests from their principals (the legislature) makes the opportunities to use organizational kickbacks-in this case partisan advantage limited and separates political interests from the process of redistricting (Dahlstrom et al 2012, p. 660). Furthermore, the degree of internalized behavioral control in part because of professional norms stresses the importance of loyalty to the organization over personal or partisan preferences. More specifically, the professionalization of bureaucracy promotes implicit norms of efficiency, fairness, transparency in turn mitigating the influence of partisanship in standard bureaucratic

process and the chairperson's role. Thus, through the utilization of a nonpartisan official the administration of the redistricting process should provide fair and unbiased redistricting (Kropf, et al 2013, p. 245). Hence, if it comes to the point that commissioners cannot agree on the chairperson's appointment, it will fall back on the Commission of Appellate Court Appointments to choose the fifth member. The commission then remains in place until new commissioners are appointed (the next redistricting cycle) (Greenwood et al 2018, Arizona State -Senate Brief 2018 p.2).

The decision-making apparatuses of independent redistricting commissions generally align with two categorizations: collective decision making or competitive decision making. Collective decision-making is the foundation for "higher level decision-making" being founded in the "Extended Republic" advocated by the American founding father James Madison. With it implicating the role of political constituencies being capable of battling against issues such as sectionalism or partisanship in the political process. Thus, contextually speaking if the commission can reach the majority votes necessary to pass the most equitable redistricting proposals while holding back partisan influences from imposing singular one sided decisions (Issacharoff 2008, p.255-256). Thus, further implicating the importance of an independent chairperson or independent commission members to the fairness in the redistricting process.

The competitive model of decision making is defined as the commissioners or in some instances the public compete "by submitting maps drawn according to a set of objective criteria" (Greenwood et al 2018, p.28). The winner or winning map is then selected either by a neutral intermediary or based on scoring the highest. Scores are allocated based on the most equitable configuration of the district map based on the preselected criteria. The remaining maps that were submitted are then scored on "a set of optimizing criteria, then excluding maps that scored below or worse than the leading map. If those criteria and how to measure them are codified, such a model has the potential to incentivize fairer maps. Because winners in this model will be chosen based on preselected criteria, their creation and measurement become the most important questions" (Greenwood et al 2018 p. 28). Although the structure, and decision-making mechanisms are important to the determination of fairness in redistricting; there are other important aspects the commission based redistricting process provides in striving to attain equitable representation.

#### 4.4 Transparency and Accountability

Independent commission-based redistricting makes allowances for more public involvement, transparency, and accountability from the commission itself. Which includes necessitating that “commission meetings comply with state open meeting act laws and that any reports or assessments of maps or draft maps be made public” (Greenwood et al 2018, p.23). Numerous states insist on public hearings to induce public input on proposed district plans or any upcoming redistricting stages. Often these hearings provide concrete effects on improving final maps, which can also be a prevailing method for fostering transparency, soliciting further public input, and making more citizen’s voices heard (Greenwood et al 2018, p.23).

For example, the Arizona Independent Redistricting Commission took extensive measures to solicit and guarantee the public had multiple opportunities to participate in the entire process. The most recent redistricting cycle (2010-2012) most of the commission’s work was done during the 2011 calendar year with the adoption of the final maps taking place in January 2012. Although, before any map or district line was drawn the commission “embarked on a listening tour, where commissioners traveled the state to host 23 public hearings exclusively held to obtain input on what the redistricting criteria set forth in the state constitution meant to Arizona citizens” (Mathis et al 2019, p.4-5). From there during the drawing phases the commission supplied time for public input at all its business meetings, opening the meetings so that anyone could attend, and supply input for the commission record. Then once the maps were done being drawn the commissioners once again set out around the state (Mathis et al, 2019, p.4-5).

The trip took the commission to 30 towns and cities to compile feedback on the work that they had completed. In the end the AIRC received more than 7400 “items of public input with 224 maps suggested by the public” (Mathis et al 2019, p.5-6). Thus, the commission produced maps reflecting much of the received input in its final maps. Hence, there is certainly evidence that the independence from the legislature, transparency in the map drawing process and the opportunity for citizens to participate have induced Arizona citizens to feel confident in their states redistricting process.

In summary, I employed the conceptualizations of bureaucratic politicization, the professionalization of bureaucracy and the “higher level” collective decision-making to argue that by delegating the authority to redistrict to an independent commission it is more likely to reduce the unfairness in the elections (the tilting of the playing field toward one of the parties). Thereby, resulting in increased electoral competition within congressional districts

and enhancing the probability that the electoral choice of minorities will be represented in electoral outcomes (Issacharoff 2008, p.255-256).

## 5. Methodology

Within this framework and the basis for “good qualitative research” is to help people understand the world, their society, and its institutions. Thus, providing the knowledge to target societal issues, question or mobilize to correct such issues that serve not just themselves but the society at large (Tracy 2013, p.5). It is the by and large opposite of the quantitative foundational studies which lean on the tendency of broad-based population research by using statistics and replicability to validate and generalize findings. Which is in the attempt to reduce the contamination of social variables (Holliday 2016, p.6). Throughout this Master Thesis project, a multiple qualitative methodological approach will be applied beginning with, a comprehensive content analysis of secondary research on both gerrymandering and US Election literature, a comparative case study analysis of two states redistricting practices, an interview questionnaire of practicing US Attorney’s understanding of gerrymandering and broad content analysis of applicable case law from the US Supreme Court. Implicating a method triangulation making use of multiple sources or methods to answer the research questions posed at the beginning of this project (Patten &Newhart 2018, p. 27,156).

The primary component of the thesis study is the comparative case study of two states North Carolina and Arizona which employ two distinctly different methods of the redistricting process. The case studies were structured to provide insight into multiple dimensions of the redistricting process specifically, the levels of politicization and partisanship that are inherent or absent in both redistricting authorities, the contextual background of each states individual redistricting guidelines, the levels of electoral competition and other procedural elements that coincide with processes such as redistricting. All designed with the expressed purpose to understand the importance of redistricting in the electoral process. While I understand that the redistricting outcomes do not stand alone and are part of a larger system of organizational designs, process mechanisms and outcomes. I am choosing to focus on the outcomes in my study rather than the other two components. Moreover, I am relying heavily on secondary research sources since much of the data is not something that I am able to generate (election results, census tabulations, case law and analysis) which has already been published. In the forthcoming paragraphs case selection,

process and analysis methods will be discussed for each of the qualitative methods that were utilized for this project.

### 5.1 Selecting Cases for Comparative Study

I began the case selection by identifying states that adhere to the legislative based redistricting model through a broad-based internet search into Decennial Reapportionment and Redistricting. That search yielded an initial pool of 34 potential states to study. From those 34 states I decided to apply specific criterion that would provide the necessary information to study the occurrence of gerrymandering in individual states redistricting process. I applied limitations such as: states subjected to intervention and enforcement from the US Justice Department based on majority-minority districting or Voting Rights Act principles. Secondly, states that had US Supreme Court cases filed in objection to legislatively drawn districts, and finally the states which legislatures were under single party control after the 2010 Census this narrowed the scope to 26 states.

From those 26 states I initially was attempting to provide examples of two similar states as far as party control and constitutional requirements but with discrepancies in their redistricting procedures but found that states that follow the legislative redistricting model overwhelming do not veer from the general prescribed process thus implicating that applying that structure to two states would have provided remarkably similar and repetitive information to the discussion of legislative redistricting. Hence, I chose to apply a more pronounced case determination examining cases that have shown massive geographical discrepancies in district map lines which derived the pool to eight states. The state I choose from that grouping is North Carolina because it met all the parameters that were used in the adhered filters and its utilization of gerrymandering in drawing its legislative districts with a centered focus on the map manipulation of its District 12 (The Encyclopedia of American Politics, 2016b).

For the completion of my second case study, I surveyed the remaining 16 states that utilize a different authority to complete its redistricting besides its legislature. From those states I eliminated authorities based on bipartisanship or back-up commissions. Which left states that utilize independent based commissions to complete redistricting which narrowed the applicable states down to nine. I then proceeded to look for states who have used this method in more than one election cycle because it would provide more depth and information into the commission based redistricting process which narrowed the field to two states being California and Arizona. At this point I felt that between the two states Arizona would provide

closely comparable information to the state of North Carolina due to its population density and the number of electoral districts (North Carolina 13, Arizona 9 versus California 53 electoral districts) (The Encyclopedia of American Politics, 2016b).

Choosing these states as part of my case studies is an attempt to provide an idiographic approach to my research which includes attempting to describe and emphasize the gerrymandering phenomena from a total holistic perspective accounting for as many descriptive indicators as possible to provide a detailed occurrence of gerrymandering in North Carolina's elections and the results of when these practices are absent as in the case of Arizona (Patten & Newhart 2018, p.174).

## 5.2 Conducting the Comparative Case Study

My inquiry builds on a theoretical model that distinguishes between two types of redistricting authorities: legislative redistricting which is prone to partisan influence, and hence is likely to lead to less fair elections and suppression of voter rights, and independent commission redistricting, which provides a degree of protection for partisan interests influencing the redistricting process and, hence, leading to a more even ground for electoral competition and voter representation. My cases capture this dichotomy: with the North Carolina case being the former, and the Arizona case being the latter. I then describe the outcomes in both cases, both in terms of electoral competition and voter suppression, and link the form of redistricting authority to these outcomes through by analysis the processes of redistricting in each state through materials from secondary literature, legal analysis, and materials from the survey of practicing attorneys. I provide extensive information on the contextual background of each state's redistricting guidelines, specific examples of election redistricting where partisanship played (or not) role in the redistricting.

## 5.3 Selection of Relevant Court Cases

Legal research is motivated by current events or developments in the practice of law which is justification enough for the research inquiry. While some scholars argue that the development of the theoretical framework in legal scholarship is within the current legal framework itself. Although varying court cases may show clear views on issues (or lack thereof) such as gerrymandering, in most legal research there is competing viewpoints and legal application of established laws (Taekema, 2018 p.3-4). That is why it is important to look at a well-rounded sample of court cases when doing this type of research to provide a clear picture of what is occurring in the redistricting process across the entire country and how the court addresses these types of cases. Therefore, what I hope to gain through the

utilization of case law is a more thorough account of not just the redistricting process but the role of law and the US Supreme Court in redistricting. This will provide a deeper understanding of gerrymandering and the prioritization of redistricting principles to assist in answering the proposed research questions.

The case specificity process regarding the courts problematization of gerrymandering was based on various election issues. The search began broadly with issues of voter suppression, election discrimination, and voting rights violations at both the state and federal level which returned an exhaustive list of cases. After compiling that list, I compared it with National Conference of State Legislatures database, which is an organization that compiles the most relevant information about state legislatures in all 50 states. From its database landmark cases or cases that changed US law were determined (National Conference of State Legislatures 2019). After further review the point of inference I then defined was cases that questioned the constitutionality of state drawn maps and the inherent presence of gerrymandering. That yielded a total of twenty landmark cases pertaining to redistricting process issues. I then determined from those twenty cases and other individual state-based cases what was relevant to the redistricting process in each state to then be included in the comparative case study as well as in the analysis of this body of work.

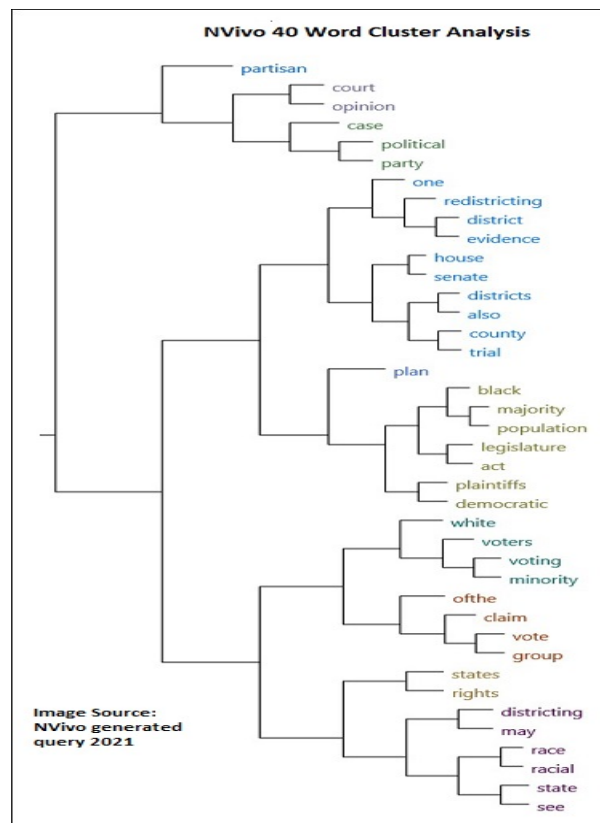
#### 5.4 Conducting the Legal Analysis

The case analysis process of US Supreme Court cases began as an inductive content analysis to identify any latent or less obvious contextual perspectives. Through this iterative process I utilized NVivo to organize, to help identify categorical similarities and differences within cases. This coding began with defining the keyword query to the top 500 words in Supreme Court cases post 1950 which seemed to return an overly broad sample to possibly to narrow down a true level of commonality among the court opinions. I then made the determination to narrow the scope of research to Supreme Court cases that had the capability to provide argumentation for redistricting, gerrymandering and cases related to the one-person, one-vote principle. After that I queried the top 40 terms that could potentially yield more direct correlation or themes across the court opinions. The Cluster Analysis indicates the most common themes emphasized throughout the court cases, dealing with population equality, the role of partisanship in the redistricting process and voting rights. This will be shown broken-down in Figure 3 Cluster Analysis as seen below. As text and content analysis are flexible analytical methods this produces the most systematic way of synthesizing the court opinions wide range and potential changes over the time selected (Julien 2008, p.1-4).



After this was completed the court opinions were organized based on the case type, the initial place of filing, and year to provide a cohesive pattern and theme to the analysis. This will reduce case law data independent from a theoretical perspective or framework. Further opening the discussion and analysis on the courts problematization of election issues such as map constitutionality and gerrymandering within the broader legal discourse (Julien 2008, p.1-4).

**Figure 3 Word Cluster Analysis**



### 5.5 Attorney Survey

For this component of my study, I created a brief eleven question open-ended survey which was distributed to attorneys in the US. I chose attorneys that I knew through previous professional and academic experiences working for a County Courthouse in the US. I selected initially five practicing attorneys who have established legal careers, are proficient in both criminal and civil types of law, have either had legal experience of working in election-based casework or have formal knowledge of gerrymandering and the issues of constitutionality. Then from those five I received three survey responses. I wanted to conduct a survey of attorneys to provide an expert understanding or perspective on the issue of

gerrymandering and how it is being handled by the US legal system. Since, case law has significantly lacked in providing guidance to redistricting authorities regarding processes such as gerrymandering it is important to provide other legal authorities perspectives on the matters before US Court. While this survey is not the primary source of how redistricting authorities work it does provide context to their performance in redistricting processes and how much judicial involvement has impacted the processes of redistricting. The answers from the attorney surveys will assist in the analysis of the effects of different types of redistricting authorities.

### 5.6 Conducting and Analyzing the Attorney Survey

The attorney survey began with the determination of what data may be needed to be unpack the link between the type of redistricting authority and electoral outcomes. Due to extenuating circumstances, a written email-based questionnaire seemed the be most prudent way to obtain the data necessary for my analysis. I devised a questionnaire with predominately open-ended questions requesting more of narrative based written responses which is conducive with the content analysis that I have been completing throughout this project. Hence, the value of the information collected in the questionnaire will be providing an in-depth purposeful set of data detailing perceptions, opinions, personal experiences and expertise to provide context to the analysis of redistricting processes and gerrymandering (Julien 2008, p.1-4).

### 5.7 Ethical Considerations

The consideration of ethics is an integral component of data collection for both quantitative and qualitative methods. Within this thesis there are a few components that must be determined and analyzed. The first component is the potentiality of sampling bias in the attorney questionnaires. For transparency, it is true that I have known these attorneys through previous professional or academic experiences. This proves to be inconsequential due to the nature of their professional code of conduct involving objectivity, their oath or commitment to upholding the integrity of the US Constitution and this personal affiliation has no bearing on the homogenous data sample that was collected (Patten &Newhart 2018, p.100).

The second component within my research to be addressed is informed consent of the questionnaire participants, in protecting their privacy by not disclosing their personal demographic information, treating them all equally and respecting their autonomy in participation (Patten & Newhart 2018, p.33-38). The third component is the validity and reliability of my content analysis. I hope to achieve this through conducting an iterative

analysis to receive data that assists and supports the presented research that I have drawn through methodological triangulation of my data sources. I recognize that the predominate portion of my research is considered secondary research in that I must draw on existing statistics and literature to generate a substantial portion of my thesis study, but I strive to remain impartial in my presentation of facts and keeping my own bias removed from the analysis and study process. Through this process the hope is that the important intellectual principles are intact and increase the trustworthiness and validity of the thesis project (Julien 2008, p.3).

## 6. Legislative Redistricting Case Study: North Carolina

**Map 1 State of North Carolina**



Image Source: World Map.com

### 6.1 Introduction to Case Study

As previously discussed, the process of reapportionment and congressional redistricting is done every ten years with the completion of the US Census. The year immediately following the census is when the redistricting process takes place. For this case study the primary focus will be on elections in North Carolina taking place after the 2010 census and redistricting process which are the most recent completed compilation of redistricting data. This will be coupled with a brief discussion of both past US Census processes and other underlying themes to provide a more recent contextual foundation of the legislative redistricting process. In addition, providing the foundation to address the numerous issues facing the state of North Carolina and its ability to manage them (Princeton Gerrymandering Project 2021).

## 6.2 Redistricting Guidelines Determined by State and Federal Authorities

The North Carolina State Legislature holds the responsibility for drawing both Congressional and State Legislative district lines with no oversight or veto ability from the State's Governor. "North Carolina's state constitution (Art. II §§ 3, 5) requires that state legislative and congressional districts be contiguous and avoid county splits. In the last cycle (2010), the legislative redistricting committees adopted additional criteria for both state legislative and congressional redistricting, requiring that they be compact and avoid pairing incumbents. While the use of partisan data is permitted, the use of racial data is prohibited" (Princeton Gerrymandering Project 2021). These guidelines apply to the 13 Congressional seats that are to be divided between the parties based on district polling percentages of win/loss (Princeton Gerrymandering Project 2021). In addition, to these basic requirements the state must follow guidelines determined by the VRA and the Department of Justice for the inclusion of majority-minority districts and compliance with the "one person-one vote principle" (Mock 2016, p.4). These principles would have to be considered by the North Carolina Senate Redistricting Committee when determining the composition of district maps moving forward.

## 6.2 District Composition and Gerrymandering Prior to 2010

Following the 1990 Census and Reapportionment the Democratic led North Carolina State Legislature began the redistricting process (1991) creating one majority-minority district (District 1) in the northeastern part of the state, where based on census block data was easier to draw a "compact black district" that is joined by nearby black communities in the city of Durham. This plan subsequently was not approved by the US Department of Justice on the grounds that it did not comply with the VRA because it did not sufficiently represent the minority population in the state. Hence, the creation of the now infamous second majority-minority district (District 12) which was described as a long, narrow, stretched out, snake-like strip to be exact, the district was 907 miles, which boundaries 'hug' the interstate highway so closely that its northbound and southbound lanes are in two different districts nicknamed the "I-85 District" (Blau 2016, Daley 2016, Lesnewski 2019, The Redistricting Task Force for the National Conference of State Legislatures, 2003). For a geographical representation please see Map 2 The Geographical District Representations after the 1990 Census below representing District 1 and 12 from the Democratic Redistricting Plan.

## Map 2 The Geographical District Representations after the 1990 Census

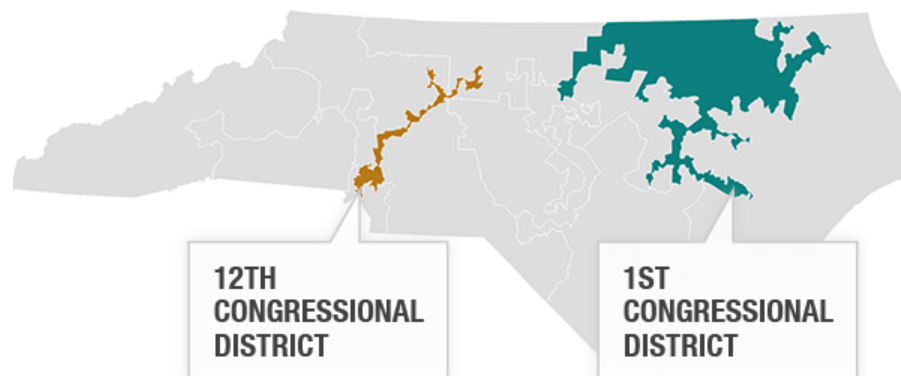


Image Source: National Public Radio (NPR) 2019

In drawing this map composition, the State Legislature exploited the politically powerful black community of Durham. In turn removing it as the only minority district rejected in 1991 by the Department of Justice and splitting it into two less compact minority districts (The Redistricting Task Force for the National Conference of State Legislatures 2003, p.63). Moreover, while the North Carolina's black population at the time amounted to 22 percent of the total state population, broken down one district only represents 8 percent of the total black population in the 12 districts not nearly the same in comparison with the total population. Whereas two districts out of 12 would then account for 16 percent of the total black population implicating those two districts would be more representationally correct of the black population in the state (The Redistricting Task Force for the National Conference of State Legislatures 2003, p.63).

The Republicans challenged this redistricting plan or map in the US Supreme Court in the case *Shaw v. Reno (1993)* arguing that this redistricting plan was a “partisan power grab because majority-minority districts tended to vote Democrat.” Further implicating that this tactic was more than a statistical adjustment to create two majority-minority districts it was a dilution of African American or Democratic voters. More specifically, District 12 was in violation of redistricting guidelines by the distending of both the contiguity and compactness requirements making it unsuitable to create predominately black districts. That by simply designating the heavily black populated areas of multiple cities into a single congressional district without linking them by a land corridor or by political boundaries. Thus, the practice of splitting counties or even down to neighborhoods leads to a careful scheme of inclusion and exclusion of certain voters which is characteristic of both racial and partisan gerrymandering practices (Bullock 2010, p.88,90,94).

While the Democrats countered the Republicans argument stating that the districts were out of necessity to adhere to VRA regulations, and to create more opportunities for people of color or more specifically African Americans to be elected to office (Schinabeck and Huss 2019, Mock 2016). The Supreme Court did not agree with the Democrats, with Justice Sandra Day O'Connor providing the opinion of the court in summary indicating that *“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 may have little in common with one another but the color of their skin, bears an uncomfortable resemblance to political apartheid”* (Shaw v Reno 1993). Thus, determining the Democrats redistricting plan to be an illegal gerrymander because districts were so bizarrely shaped and in violation of other redistricting criteria (contiguity and compactness) not because it established additional majority-minority districts in pursuit of fair representation. Thus, changing the standards of what constitutes racial gerrymandering and fair representation in the redistricting process not just in North Carolina but across the country (The Redistricting Task Force for the National Conference of State Legislatures 2003, Schinabeck and Huss 2019).

After the 2000 Census the state of North Carolina's population had increased once more to add another congressional seat bringing the district total to 13. The North Carolina State Legislature passed the congressional district map in December 2001 and was cleared by the US Department of Justice in February 2002 and was not challenged in any court. The Congressional District Map for the 2000 redistricting process can be seen in Map 3 Congressional District Map After the 2000 Redistricting Process as a point of reference for the curation of the 2010 districts (All About Redistricting 2020).

### Map 3 Congressional District Map After the 2000 Redistricting Process.

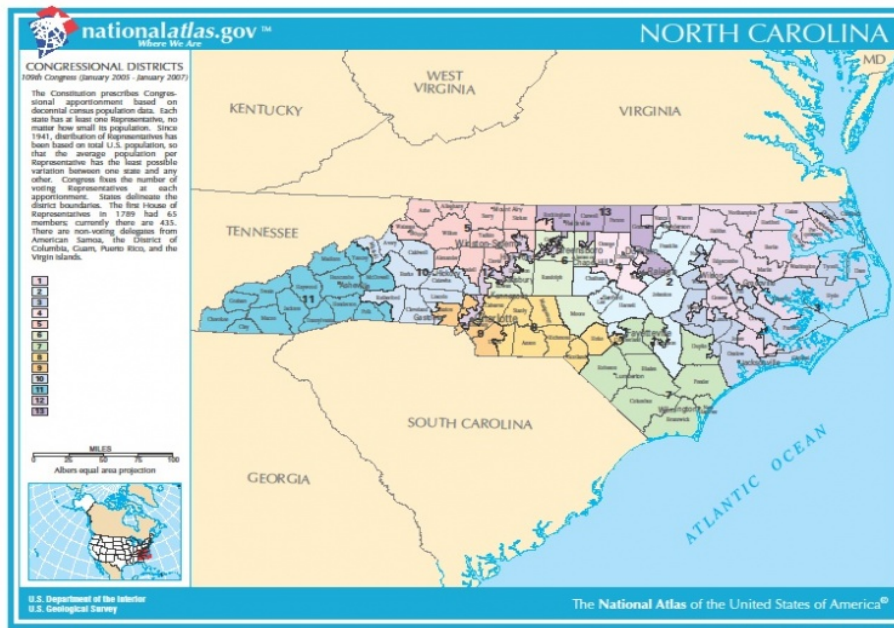


Image Source: The Encyclopedia of American Politics 2016

The redistricting process at the state level however was afflicted with numerous challenges to the proposed district maps. The North Carolina State Legislature passed the initial state level plans in February 2002 which was then challenged in numerous court cases in (*Stephenson v Bartlett* 2002-2003, 2007 *Pender County v Bartlett*, 2008 *Dean v Leake*, and 2009 *Bartlett v Strickland*) on the grounds of VRA violations on district compactness, maintenance of county boundaries and population requisites (All About Redistricting 2020). Hence, displaying a politicization of the state level process indicating a focus on partisanship goals instead of voters rights. That even though politicization and partisanship was not challenged as part of the congressional process it still played a role in the state level process.

#### 6.3 2010 District Composition and Gerrymandering

As it will be shown in the following section the 2010 Census and redistricting process played a prominent role in the distribution of representative seats that in some instances remain to this day. Prior to the 2010 redistricting process opponents of legislative redistricting in North Carolina focused their objections on the snake like 12<sup>th</sup> congressional district. After the Republican's assumed control of the state legislature the Senate Redistricting Committee comprised of fourteen legislative members (10 Republicans and 4 Democrats) commissioned what has been called the "Rucho-Lewis Plan" to redraw both the federal and state voting districts (Schinabeck and Huss 2019). A timeline of the 2010



Redistricting process will follow to show the steps and stages that the legislature went through to pass their politicized partisan-based maps.

**March 1<sup>st</sup>, 2011-** Census Bureau Data sent to North Carolina State Legislature for utilization in Congressional Redistricting.

**July 1<sup>st</sup>, 2011-** The State Legislature releases its first proposed map for the 13 Congressional Seats. shown in Map 4 First Proposed Rucho-Lewis Plan Congressional District Map.

#### **Map 4 First Proposed Rucho-Lewis Plan Congressional District Map**

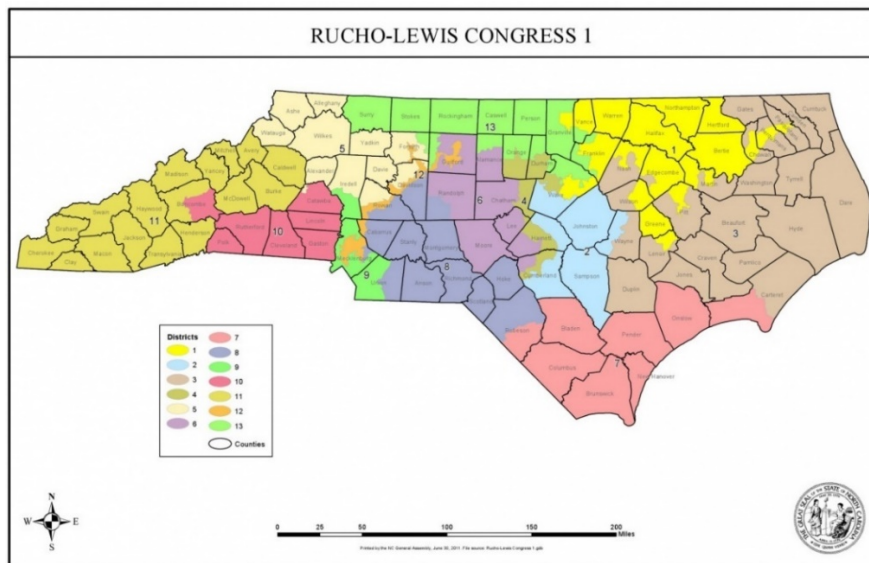


Image Source: Encyclopedia of American Politics 2016

Through the Redistricting Committee's geographical adjustments in this map, it created a duopolistic gerrymander dividing districts to suit both parties while pushing out any new candidates from entering the political arena. The plan protected eight incumbent representatives (6 Republican and 3 Democrats) from losing their seats or facing a competitive race in the upcoming congressional elections (Cohen 2011, p. 2). It also placed four incumbent Democratic Representatives (District 7,8,11,13) in danger of their districts being redrawn and losing their seat, in turn flipping the district majority from Democrat to Republican. This action minimized electoral insecurity and costs which might not create an incumbent advantage but protect certain incumbents in their already held seats (Issacharoff 2002, p.598). This is a conducive plan for a sitting legislature who relies on partisan control and influence to guarantee them safe seats for their party. Therefore, putting on display the lengths the politicized majority legislature goes to in hindering its opposition in elections. This strategy provided protection specifically for the 2012 elections but for also the



subsequent elections to follow this redistricting process. The discrepancies of the districts will be shown in Table 1 Partisan Composition in District, 7,8,11 and 13 in November 2010 and Table 2 Partisan Shifts in District 7,8, 11 and 13 May 2012 to provide an accurate representation of what geographical adjustments in district maps can do to district majorities (Encyclopedia of American Politics 2016c).

**Table 1 Partisan Composition in District, 7,8,11 and 13 in November 2010**

Congressional District	District Population	Democrat	Republican	Independent	Party Advantage
7 (Wilmington)	478,329	233,005	135,546	109,778	71.90% Democratic
8 (Concord)	429,710	212,046	118,472	99,192	78.98% Democratic
11 (Asheville)	506,035	198,905	164,610	142,520	20.83% Democratic
13 (Greensboro)	477,161	243,462	121,756	111,943	99.96% Democratic

\* "Party advantage" is the percentage gap between the two major parties in registered voters.

**Information and Graphic Source: The Encyclopedia of American Politics**

**Table 2 Partisan Shifts in District 7,8,11, and 13 May 2012**

Congressional District	District Total	Democrats	Republicans	Independent	Advantage	Party advantage*	Change in advantage*
<a href="#">District 7</a>	477,394	199,374	159,557	118,463	Democratic	24.95%	-46.95%
<a href="#">District 8</a>	450,771	201,071	149,211	100,489	Democratic	34.76%	-44.23%
<a href="#">District 11</a>	511,513	177,436	190,030	144,047	Republican	7.10%	-27.93%
<a href="#">District 13</a>	500,534	194,165	178,571	127,798	Democratic	8.73%	-91.23%

\* "Party advantage" is the percentage gap between the two major parties in registered voters. "Change in advantage" is the spread in difference of party advantage between 2010 and 2012 based on the congressional district number only.

**Information and Graphic Source: The Encyclopedia of American Politics**

As shown in the above tables all four of the redrawn districts (7,8,11,13) representatives saw major changes to the partisan composition of their districts paving the way for potential district seats to be flipped to the opposing party. District 7's advantage dropped from 71.90% (Democratic Advantage) to 24.95% (Democratic Advantage) making a potential 46.9% gain for a Republican candidate running for office. District 8's advantage dropped from 78.9% in 2010 to 34.6% in 2012 with potential gains for the Republicans at 44.2%. District 11's advantages dropped significantly from a 20.8% advantage to just 7.1% making the Republican gain just below 28%. District 13 saw the most significant drop between 2010 and 2012 in 2010 Democrats had a 99.9% majority but by 2012 it had dropped to 8.7% advantage with Republicans gaining a 91.2% advantage in the potentiality of a Republican taking that district (Encyclopedia of American Politics 2016c).

Moreover, this map (Map 4) was met with intense opposition from the National Association for the Advancement of Colored People (NAACP) and other opponents arguing that the newly drawn majority-minority districts (still District's 1 & 12) *“unfairly packed black and democratic voters in order to weaken their representation. In turn, calling the plan regressive and threatened to file a lawsuit.”* The Legislative Redistricting Committee's lead by Senators Rucho and Lewis (both Republican) implicated that the plan *“complied with federal and state law and would establish Congressional districts that were fair to North Carolina voters”* (Encyclopedia of American Politics 2016d).

**July 19<sup>th</sup>, 2011-** Stemming from the backlash the first map received a revised version of the Congressional redistricting maps was released indicating an even worse level of gerrymandering detrimental to congressional Democrats. The previous plan weakened four democratic districts but kept incumbents in their original districts this new plan paired four Democratic representatives into two districts (District 4 and 8). Democratic opponents called the plan gerrymandering but the legislative leadership again pushed back indicating that a democratic candidate could still possibly win in each of the new districts and that the districts were fair (Encyclopedia of American Politics 2016c). Further showing the new attempt at passing partisan based plans by the Legislative Redistricting Committee.

**July 27<sup>th</sup>, 2011-** The State Legislature approved the final revised map.

**September 2<sup>nd</sup>, 2011** – The Department of Justice approves the Congressional District Map (Map 5)

## Map 5 2010 State Legislature Final Approved Map

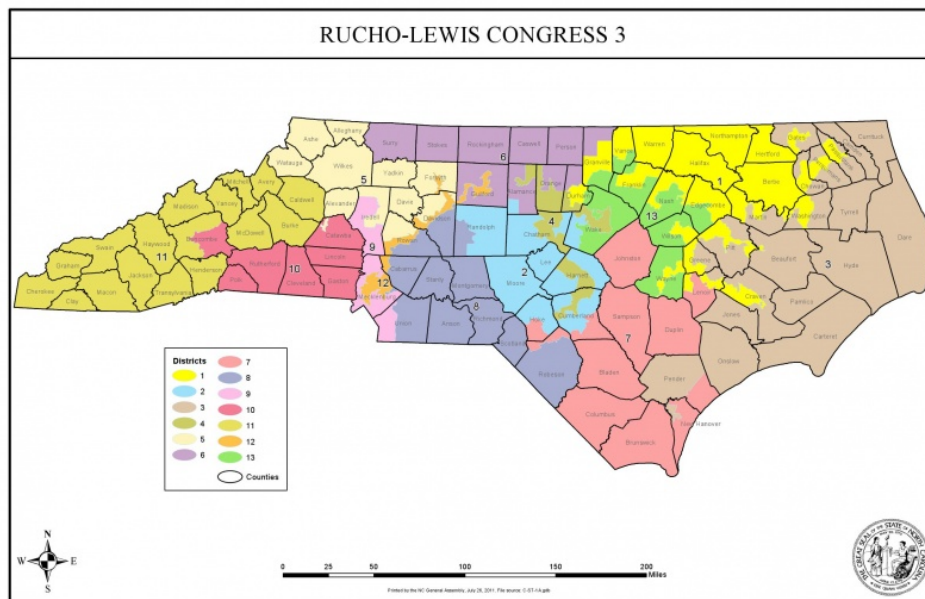


Image Source: Encyclopedia of American Politics 2016

As shown in Map 5 2010 State Legislature Final Approved Map the two majority-minority districts (District 1 and District 12) saw truly little change to their shape or composition in the 2010 plan implicating the partisan hold that the legislature had over the redistricting process. The districts drawn in the above map was met with numerous legal challenges, one of the most notable ones was the 2011 lawsuit *Dickson et al v Rucho et al* filed jointly by the Democratic Party and special interest groups in the North Carolina Supreme Court which challenged the states district boundaries approved in July 2011 alleging that the accepted map “illegally clustered black voters” to hamper their overall electoral power statewide and divide communities.

The lawsuit also states that district lines cross and affect too many county boundaries affecting more than 500 voting precincts totaling about 2 million registered voters. Implicating that the drawn divisions are “unprecedented and far exceeds alternative plans that comply with federal and state law. That the State Legislative Redistricting Committee has the design capability and effect to segregate voters by race.” Moreover, the Republicans who controlled the State Legislative Redistricting Committee “misconstrued the Voting Rights Act deliberately for their own political benefit” (NC Capital News 2011). The North Carolina Supreme Court denied the assertions of the Democratic Party allowing for the 2011 district

maps to be utilized in the forthcoming elections (The Encyclopedia of American Politics 2016c).

The question then becomes what electoral outcomes came from this politicized partisan process? In terms of electoral outcomes, each of the Congressional elections of 2010, 2012 and 2014 saw an increase in Republican representation in the U.S. House of Representatives. Table 3 below illustrates the representational split statewide from the election prior to 2010 and the gains achieved by the Republican Party from the exploitation of this district map (Map 6). As shown in the Table 3, every election since 2010 has seen the Democrats lose seats in the House of Representatives to Republicans. These losses were all foundationally based on and executed by the Legislative Redistricting Committee’s gerrymandered map (Encyclopedia of American Politics 2016c).

**Table 3. US House Representational Statewide Split from 2010-2014**

<b>US House Representational Statewide Split from 2010-2014</b>				
<b>Year</b>	<b>Democrats</b>	<b>Gain or Loss of Seat</b>	<b>Republicans</b>	<b>Gain or Loss of seat</b>
<b>2008</b>	<b>8</b>	<b>+1</b>	<b>5</b>	<b>-1</b>
<b>2010</b>	<b>7</b>	<b>-1</b>	<b>6</b>	<b>+1</b>
<b>2012</b>	<b>4</b>	<b>-3</b>	<b>9</b>	<b>+3</b>
<b>2014</b>	<b>3</b>	<b>-1</b>	<b>10</b>	<b>+1</b>

**Information Source: Encyclopedia of American Politics**

The 2011 district map (Map 5) was challenged in court once more in 2016 with *Harris v McCrory* a case challenging the constitutionality or constitutional validity of the two designated majority-minority districts (District 1 and 12) regarding racial gerrymandering claims in violation of the Fourteenth Amendment’s Equal Protection Clause. The plaintiffs or filing party implicated that the map adopted by the North Carolina State Legislature in 2011 did not create the districts to “serve a compelling interest” and that race was the predominant consideration in the creation of both districts. That even though the redistricting plan was supported by the legislature and governor there was opposition to the lines drawn in this

cycle. As stated by the North Carolina Supreme Court Judge Cogburn the maps that have been created from the 2011 redistricting has impacted both white and black voters. In addition, that the redistricting plan creates a veto-proof supermajority in the state legislature enables even further restrictions on the voting population. Which exposes the system wide voter dilution in the state by the Republican legislature which is in direct violation of the Civil Rights Act and the Fourteenth Amendment (Mock 2016, p.4).

Thus, ordering the legislature to redraw district maps to correct the unconstitutional congressional districts. The unfortunate consequence is that elections preceding this court decision that used the unconstitutional map their results and seat disbursements remain valid and in effect. Furthermore, that even though the partisan redistricting authority might have “been caught” using racial gerrymandering in 2016 it still fulfilled some aspect of its partisan agenda with the previous two elections. The newly revised map can be seen in Map 6 Court Order Revised District Map while both parties may agree that the district lines are more streamlined the partisan intent and influence is still present in the attempt to keep the opposing party (Democrats) out of power (Nilsen, 2018).

### Map 6 Court Ordered Revised District Map

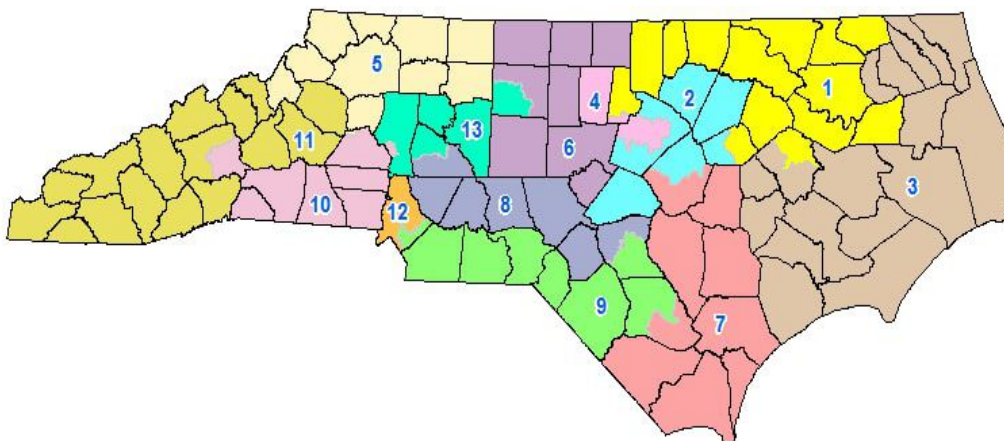


Image Source: Vox Article by Ella Nilsen

The Democratic Party subsequently filed a lawsuit *Common Cause v Rucho* challenging the North Carolina’s 2016 Congressional Redistricting Plan on the basis that the map “constitutes a partisan gerrymander in violation of the First Amendment, the Equal Protection Clause of the Fourteenth Amendment, and Article I, Sections 2 and 4 of the Constitution” (Rucho v Common Cause 2016-2018). While the Republican led redistricting committee did not dispute the district maps intention of “disfavoring supporters of non-Republican candidates” openly admitting to such in a State House hearing: “We want to make clear that we, to the extent we are going to use political data in drawing this map — it

is to gain partisan advantage on the map”. He also said: *“I want that criteria to be clearly stated and understood. I propose that we draw the maps to give a partisan advantage to 10 Republicans and three Democrats, because I do not believe it’s possible to draw a map with 11 Republicans and two Democrats”* (Nilsen, 2018).

Therefore, as stated in the court filing the Republican led state legislature gave the expressed consent and directive to legislators and consultants to draw a district map entirely on politically affiliated data or —"past election results specifying whether, and to what extent, particular voting districts had favored Republican or Democratic candidates, and therefore were likely to do so in the future—to draw a districting plan that would ensure Republican candidates would prevail in the vast majority of the state’s congressional districts” (Rucho v Common Cause 2016-2018). The Defendants (Republicans) also did not contest the assumption that this plan advanced any reasonable democratic, constitutional, or public interest. Hence, there is no foundation to be made in that vein due to the US Supreme Court or any other court *“recognizing any such interest furthered by partisan gerrymandering”* in fact it is opposite of the Constitutions expression of democratic principles and individual rights (Rucho v Common Cause 2016-2018). The court found in favor of the plaintiffs (Democrats) constitutional claims of partisan gerrymandering.

#### 6.4 Conclusion

Hence, gerrymandering impacts “everyone by weakening citizens political voices” (Schinabeck and Huss 2019). It becomes clearer how acutely gerrymandering has affected everyday life in North Carolina. From businesses being fed up with the “drastic partisan swings from election cycle to election cycle” to even impacting both taxes and various regulations. Gerrymandering has affected so many facets of North Carolina political culture calling into question whether the state could ever change. Lawmakers and advocates alike remain hopeful, but the state have much work to do “to reset the political calculus” and fight the established political bureaucracy that exists within the state (Nilsen 2018).

## 7. Independent Commission Redistricting Case Study Arizona

### Map 7 State of Arizona



Image Source: ontheworldmap.com

### 7.1 Background on Arizona Process

The second case study in my comparative case study is the state of Arizona. As much of the state of Arizona’s redistricting process and procedures were discussed in previous sections there will be a brief recap of certain aspects to discuss the 2010 redistricting process. In addition, discussions of previous census and redistricting processes will be done to provide context into the Arizona redistricting process. Prior to the 2000 Census the state completed its redistricting through the state legislature like most US states but has one defining characteristic that most other states do not have the citizen initiative process. Since Arizona receiving statehood in 1912 through the initiative process, state citizens are given the opportunity to “draft propositions, collect the requisite signatures through petition drives, and place measures on the ballot for voters to consider.” This has played an integral part into the adoption of an Independent Redistricting Commission and curbing gerrymandering in the state which will be discussed in more detail in the paragraphs to follow (Mathis, et al 2019, p. 3).

The state of Arizona like most of the states must adhere to the constitutional equal population requirements and state law places the requirement for districts to have “equal population to the extent practicable.” This should be applied to the states 6.4 million residents as of the 2010 Census who are dispersed across almost 114,000 square miles or 295,258 square kilometers. The most heavily populated areas are the city of Phoenix and its surrounding area with about 3.4 million people with the remaining 3 million people being



dispersed across the rest of the state. The state of Arizona then divides its population among the nine congressional districts that are subject to redistricting after each Decennial Census (State of Arizona Research Library 2019). What makes Arizona's district compositions unique comparatively to most of the US is 27 percent of the state's land composition is located on Native American reservations, the highest percentage in the entire US with other large portions being allocated to National Parks and Forests. This accounts for the sparse population in certain areas and as previously mentioned the overwhelming concentration in the state's urban areas (60% in Phoenix and 15% in Tucson comprising 75% of the state's population in these two urban areas making the redistricting process a complex one to say the least (*Arizonans for Representation v Symington 1992*)).

In addition to the standard redistricting requirements like preserving groups of interest or contiguity Arizona is also subject to the VRA majority-minority district requirements, therefore leading to the implementation of further constraints to the redistricting process. The process dictates that district maps begin as grid-like patterns which will then be adjusted to comply with mandated redistricting criteria to the extent practicable. Furthermore, district lines should reflect components such as visible geographic features, city, town, and county boundaries, and undivided census tracts. In addition, competitive districts should be favored if it does not significantly detract from the other requirements. Party registration and voting history data may not be used in the initial phase of the mapping process but can be used to ensure that plans ultimately meet the goals above. The commission may not consider the home addresses of incumbent candidates (Levitt 2021 All About Redistricting).

## 7.2 District Composition and Gerrymandering Prior to 2000

The 1990 Census and redistricting process (1991) was completed by the Arizona State Legislature which at this point was a divided legislature (The State Senate was controlled by the Democrats and the State House was controlled by the Republicans). Hence, indicating a sharp partisan division within the state legislature in the creation and adoption of a redistricting plan (Norrande & Wendland, 2011). Which led to *Arizonans for Representation v Symington (1992)* a lawsuit filed in the US District Court to provide legal recourse "to break the legislative impasse on congressional redistricting" and address other issues regarding the redistricting process.

The state legislature meaning the State House and Senate were asked as separate chambers to draw district maps for consideration by the court. The proposed maps of both



chambers were again rejected by the court (a three-judge panel) in turn forcing the court to create a district map. The court determined that the “Indian Compromise Plan” submitted by the special interest intervener Native American tribes was the best proposed map because it was “more compact, better preserved communities of interest, and avoided “the unnecessary or invidious outdistricting of incumbents.” The court ordered its congressional plan to be executed for the forthcoming 1992 election and elections thereafter through the year 2000 (*Arizonans for Representation v Symington* 1992). Furthermore, the court implicated that its court ordered plan was not subjected to the US Justice Department’s preclearance process and that the claims of “polarized voting” as alleged by the Arizona Senate (Democrats) did not need or require further action. After the court handed down its decision different special interest groups filed appeals (Norrander & Wendland 2011).

The Hispanic Chamber of Commerce filed an appeal alleging the court made an error in not obtaining the preclearance necessary from the US Justice Department on its newly adopted map and failing to acknowledge polarized voting across the state. The court did not agree with these accusations but placed a hold on the created congressional map for preclearance from the Justice Department. The courts plan was rejected and its subsequent revision for an insufficient number of majority-minority districts. The third district plan submitted to the Department of Justice was accepted in time for the 1994 elections and elections thereafter (until 2000) see Map 8 Arizona Adopted District Map 1993-2000. As demonstrated the 1991-1992 redistricting process was riddled with “sharp partisan divisions”, extensive delays in the adoption of district maps and a total of five challenges in the court (Norrander & Wendland 2011).

## Map 8. Arizona Adopted District Map 1993-2000

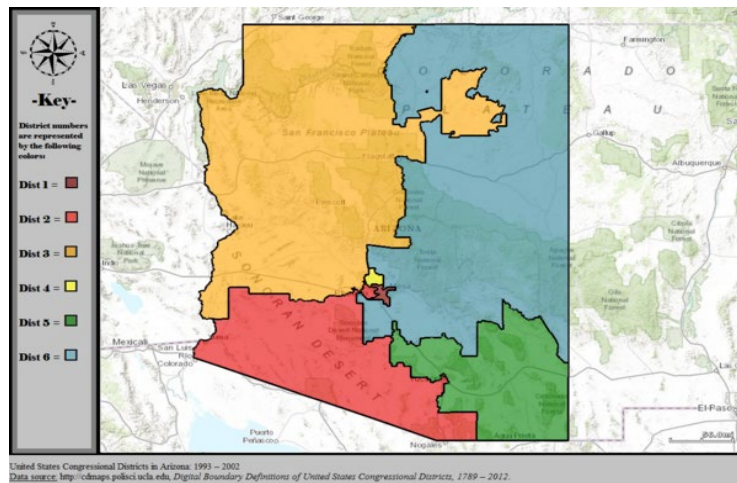


Image Source: UCLA Department of Political Science Digital Congressional Boundary Database

### 7.3 The 2000 Census and Redistricting Process

The 2000 Census and redistricting process represented a new era for elections in Arizona. It marked the creation of the Arizona's Independent Redistricting Commission (AIRC) through the citizen initiative process. Which began as a coalition of interest groups such as "the Democratic Party, some statewide leaders of the Republican Party, the state's leading newspapers, the League of Women Voters and Common Cause" all facilitating the addition of Proposition 106 to the 2000 ballot to end gerrymandering in the state. This was to be done by removing the power to create districts away from the state legislature and delegating it to an independent entity. While historically the attempts to create independent redistricting, commissions have failed (8 out of 12 attempts mostly repeated losses stemming from California between 1936-2005) Arizona's Proposition 106 passed with 56 percent of citizen support. Thus, exposing the growing concerns of Arizona citizens much like citizens across the US who felt that "gerrymandering was linked to government dysfunction". That the increasing number of single candidate elections and the level of partisan gridlock within both the state and federal government becoming more common since the 1990 redistricting process necessitated a change. That preserving the "party status quo or protecting an incumbent law maker" is a continually expanding component of a government system breaking down (Mathis et al 2019, Norrander & Wendland 2011). Hence, leading to the adoption of Proposition 106 and the AIRC.

The composition of the AIRC as discussed in previous sections is made up of five members chosen from a pool of (25 people) curated by a retired panel of Appellate Court Judges. It then turns to both major political parties' leaders (Majority and Minority Leaders)

to choose 4 members of the commission and the fifth member then being chosen by the other selected commissioners to serve as the independent chair of the commission. The decision-making process is based collectively on commissioner's input and decisions are made as a collective unit rather than individually or based on political affiliation.

The redistricting process then began in 2001 with the development of the equal population grid-maps for both congressional state legislative districts with the release of the first draft map in June 2001. The state as previously discussed completed its "listening tour" across the state in the summer of 2001 with a second draft map being release in August 2001 based off the input received during the summer meetings. After the 30 days left for public input and objections to district maps the US Department of Justice accepted the congressional district map but objected to the state level district maps (Norrander & Wendland 2011). Again, for case study purposes the focus will remain on the congressional redistricting process and not the state redistricting process. Map 9 2001-2010 Final Congressional District Map below shows the final approved congressional district map used for elections until the 2010 Census. Therefore, showing that through instituting an independent commission public transparency and participation increases while partisanship's role decreases with the adoption of the AIRC. Thus, leading to a more meritocratically based constitutional process. Moreover, that delegation of redistricting authority to an independent commission is likely to reduce the unfairness in the elections by inducing competition between parties (instead of titling the playing field toward one of the parties) and enhancing the probability that the electoral choice of minorities will find its way into the electoral outcomes.

## Map 9 2001-2010 Final Congressional District Map

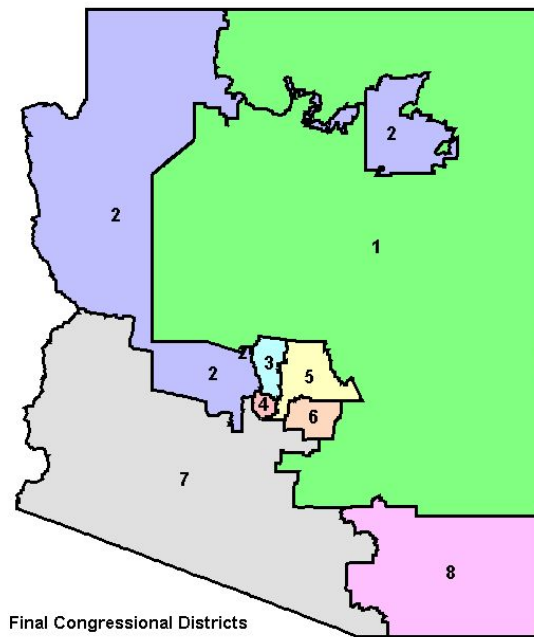


Image Source: Arizona Independent Redistricting Commission [www.azredistricting.org](http://www.azredistricting.org)

### 7.4 2010 Census and Redistricting Process

To begin the discussion of the 2010 Census and redistricting process it will be completed in the same timeline manor as the North Carolina Case Study was completed. In the 2010 Census the state gained additional congressional seat bringing the state total to 9.

**September 2010** -The Arizona Commission on Appellate Court Appointments confirms it Commissioner nominations for selection by the proper parties.

**June-August 2011**- The census population grids are approved for redistricting pursuant to the rules and procedures outlined in Proposition 106. The 30-day public input process took place over the summer of 2011.

**October 2011**- First draft district maps are adopted ready for the second 30-day public input process.

**November 2011**- The first partisan challenge to the independent redistricting process takes place with the impeachment of the commission's lead commissioner Collen Mathis. The allegations levied against her was the failure to "conduct the Arizona Redistricting Commission's business in meetings open to the public and failed to adjust the grid map as necessary to accommodate all of the goals set forth in the Arizona Constitution." She was removed from her position by a two-thirds vote in the Arizona State Senate. Once again showing the attempt of a partisan controlled legislature to undermine the independent



*Commission (2012)*. The Arizona State Legislature alleged that the Elections Clause of the US Constitution was violated when the citizens transferred the redistricting authority from the legislature to a citizen commission. In addition, the state legislature asked the court to permanently inhibit the AIRC from “adopting, implementing, or enforcing any congressional maps they created by determining them to be null and void.” The US District Court determined that the lawmaking capability in Arizona includes the power to enact laws through the initiative process, the establishment and utilization of the AIRC thus denying the state legislatures claims to recourse through the US Constitution (Encyclopedia of American Politics 2016e).

**October 2014-** The state legislature appealed this decision to the US Supreme Court, who on June 29, 2015 affirmed the lower court’s decision 5-4 in favor of the AIRC. The court acknowledged the Arizona State Legislatures position but implicated that the US Constitution does not in fact rule out the use of commission to adopt congressional districts. “While the Elections Clause does state that the power to determine the manner of holding elections resides in the state Legislature, the Court indicated that this includes voters themselves when the state constitution allows for the passage of laws through means such as initiative and referenda. The Court pointed out that the U.S. Constitution was ratified at a time when state constitutions did not allow for citizen initiatives” (Encyclopedia of American Politics 2016e).

## 7.5 Conclusion

In conclusion the 2010 redistricting process saw numerous attempts to thwart the process with challenging the commission’s authority and partisanship. The Commission/Commissioners overcame these attempts to provide a fair and competitive elections. Hence, drawing districts can be controversial with the inability to entirely satisfy all interests. The practice of aligning districts against state and federal regulations is a balancing act with high levels of complexity. Moreover, independent redistricting “cannot cure all the ills that threaten a healthy and functional democratic system” nor can it change where people choose to live (Mathis et al 2019, p. 15-17). But the “geographic clustering of like-minded people” (those who are close in age, share ideologies or other identifying characteristics) continues to present challenges in the creation and maintenance of competitive election districts. Despite these limitations the AIRC implicates that citizens broadly appreciate the independent redistricting structure over the politicized legislative based process which most often leaves voters without “meaningful choices at the ballot box” (Mathis et al 2019, p. 15-17).

## 8. Content Analysis of Relevant Court Literature and Case Law

In this content analysis I am going to attempt to present the arguments of applicable case law and analysis of the one-person, one-vote principle and its applicability to the redistricting process, gerrymandering, competitiveness in elections and voter representation. The most conducive way to review voting rights cases is through the lens of the First Amendment which provides for the right to vote. Meaning that the electorate is dependent on the court to assure that no one is denied the right to vote for no reason and that if there is a reason it must be a substantial one. The process of malapportionment (“where one person’s vote counts only a fraction of another’s”) encompasses the same principle (Ely 1980, p.120). Therefore, voting rights cases worked off the assumption that the consequence of malapportionment implicates a world with equal population in districting and would imply that the political realm would be different without it. By this logic, the effects on individual districts were not the principal concern when the one-person, one-vote principle was put into effect indicating that malapportionment was a much bigger problem for the democratic system. Not because any one district was not competitive but because the process was being dominated by partisanship in the legislature ensuring the dominant parties reelection. Thus, becoming the greatest concern for both the court and legal analysts because the process was so susceptible to manipulation by the state legislature. Hence, the thought that the implementation of the one-person, one-vote principle would help prevent partisan gerrymandering because of the inability of the legislature to over-populate districts with their supporters and under populate districts of their opponents (Persily et al 2002, p. 1301). More specifically, prior to the reapportionment cases of the 1960’s there was no legal or “administrable standard” in determining the equity of district apportionments. Hence, the standard of the court established in *Reynolds v. Sims* with the one-person, one-vote principle provides a level of “administrability” that was lacking previously in the courts (Ely 1980, p.120). In result, the cases that represent the Reapportionment Revolution or the cases defining one-person, one-vote (*Baker v. Carr (1962)*, *Wesberry v. Sanders (1964)* and *Reynold v. Sims (1964)*) was the courts most intense step into the field of politics. Shortly thereafter almost every legislative institution across the country restructured themselves to comply with the Courts mandates. Within four years after the decision in *Baker v. Carr* district lines in forty-six states had been disputed before the court, “all but three states reapportioned their state legislatures, and nineteen redrew their congressional districts” (Persily et al 2002, p. 1301).

The Supreme Court Cases that followed predominately dealt with, the one-person, one-vote principle which in this context is determined in two ways through competitiveness and representation. Competition is determined to be a process reinforcement mechanism that indicates that malapportionment required judicial intervention because it permitted the parties that held the power to “insulate themselves” from their competition by rigging the rules that governed elections at the time against those that would attempt to replace them. More specifically, “*The "ins" could keep the "outs" out by drawing district lines that perpetually favored the power structure of the status quo*” (Persily et al 2002, p.1308). Representation is then defined by the “accuracy of the translation of votes into seats.” In applying these contextual definitions to several of the reviewed case’s certain themes become apparent, electoral competition is intertwined with the realization of the one-person, one-vote principle.

*Gaffney v Cummings (1973)* was a case defined by population disparity in districts, alleging violations of the Equal Protection Clause of the Fourteenth Amendment with dividing too many town boundaries, and that the district deviations were more than the ten percent threshold allowed in the Equal Protection Clause of the Fourteenth Amendment. As a result, implying a level of unfairness in the legislative districts of Connecticut indicating an attempt to alter the representational structure within the legislative drawn districts to keep in line with the status quo of the state legislature. Resulting in the production of more seats for the controlling party of the state’s legislature. The court then in *Karcher v Daggett (1983)* went on to establish that congressional districts “must be mathematically equal in population, unless it is to achieve a necessary state objective” much in line with the cases that defined the 1960’s. The Supreme Court cases of the 1990’s like *Shaw v Reno (1993)*, *Miller v Johnson (1995)*, *Bush v Vera (1996)* were defined by bitter partisan and racial gerrymandering claims in dealing with VRA violations regarding majority-minority districting and the violation of the one-person, one-vote principle in the creation of opportunities and the translation of electorate votes into comparable representative seats. The Supreme Court cases of the early to mid - 2000’s dealt with the justiciability of gerrymandering and the courts ability to hear cases pertaining to issues regarding redistricting. Resulting in the removal of the courts from addressing claims of gerrymandering (particularly partisan claims) indicating a broad stroke flip of the Supreme Court in the 1960’s to the Supreme Court of today (National Council of State Legislatures 2019d).



## 9. Empirical Analysis

In reviewing relevant election literature, the case studies of North Carolina and Arizona, US Supreme Court cases and attorney questionnaires, they expose the nuances and discrepancies when it comes to the redistricting process. In turn, exposing a gap or loophole in the application of standard bureaucratically determined guidelines and the utilization of gerrymandering. Thus, this analysis will attempt to answer the presented research questions and provide further insight into the dichotomy of redistricting authorities and the empirical results they provide throughout the election process.

### 9.1 Comparative Case Studies

I conducted the cases studies as a chronological sequence which provided me the opportunity to look at the different structural components of the redistricting authorities, the causal mechanisms that the authorities used in making its decisions, what influenced their decisions and the overall consequences of the districting plans. I will begin with the case study of the state legislature based redistricting authority in the state of North Carolina. Hence, what I observed is the State Legislature directly benefits from **party congruence**. More specifically, the State Legislature directly benefits when one political party controls the entire legislative body comprised of the State House of Representatives, Senate, and the Governor's Office (Hill 2002, p.324).

When this occurs, it creates an opportunity to “game the system” meaning that redistricting procedures and decisions are straightforward. Thus, creating a process with no political discourse or check on a party's power, decisions, or partisanship. Further providing the opportunity to gerrymander or as previously explained packing and cracking districts to manipulate and enable the chance for one political party to “win more than their fair share of seats” (Hill 2002, p.324). In the case of North Carolina this element exposed the ease of implementing a districting plan that fulfills partisan goals on behalf of one party (Republicans) because of the power composition of both the legislature and the redistricting committee being overwhelmingly influenced and controlled by that same party (Republicans). Thus, as previously mentioned providing the motivation to accept any action “*legal or illegal, if necessary, that could increase the chances of winning the next election*” (Cornell & Lapuente 2014, p. 1288). Further, indicating a concrete example of how the state legislature cannot counteract the extent or application of partisanship in legislative redistricting plans.

The second component that was common in my research of the North Carolina process was the inherent insulation or protection of district incumbents also known in previous research as the **incumbency advantage**. Legislative redistricting is defined by their leadership's political preferences and partisanship which has become an integral part of US Elections over the past 50 years. The push for winning more representational seats, the party majority and representational incumbency have placed the "aggregate turnover" of candidates decreasing. This being attributed to fewer incumbent representatives retiring and no constitutional limitations on the number of terms a representative may serve, leading to an incumbent reelection rate exceeding 90 percent in congressional elections. Consequently, making turnover in legislative bodies low and the "tenure of a typical legislator" longer (Ansolabehere & Snyder, 2012 p.490-91).

As previous research has indicated incumbency advantages and redistricting are inseparable. As gerrymandering ensures through redistricting "safe seats" for in North Carolina's case Republican incumbents. Hence, making the argument that the legislative based process is a component of a politicized bureaucracy defined by partisanship and personal interest. Although this "duopolistic behavior" is practiced by both Democrats and Republicans it was highly prevalent in the state of North Carolina in 2010 for redistricting as well as the 2012 US Congressional Elections (Ansolabehere & Snyder, 2012 p.490-91). Much like the district maps (Map 5) shows the creation of six "safe" Republican incumbent seats and three "safe" seats for the Democrats (two of which are the majority-minority districts) in turn targeting the remaining four districts represented by Democrats (District 7,8,11, and 13). This was done to potentially increase the Republican representation and obtain the most seats creating an unfair and biased advantage. The Republican led districting plan worked in their favor per Table 4 labeled 2012 North Carolina US House Elections Margins of Victory shows that three out of the four districts did in fact flip in favor of Republicans. Hence, increasing the seat share by three for the Republicans who in 2010 had six seats to 2012 where it grew to nine (Encyclopedia of American Politics 2016d). In turn showing the margin of victory in North Carolina to be significantly greater in favor of Republicans and the creation of significant barriers for challengers in those four districts thanks to the redrawn district maps.

**Table 4 2012 North Carolina US House Elections Margins of Victory**

District	Winner	Democrat Vote Share	Republican Vote Share	Vote Differential	Total Vote	Margin of Victory	Partisan Switch
7	Democrat	168,695	168,041	654	336,736	0.2%	No
8	Republican	137,139	160,695	23,556	302,280	7.8%	Yes
11	Republican	141,107	190,319	50,212	331,426	14.8%	Yes
13	Republican	160,115	210,495	50,380	370,610	13.6%	Yes

Information Source: US House of Representatives Archives and The Encyclopedia of American Politics

More specifically, this type of distribution of the fundamental partisanship that exists in districts would effectively “insulate” incumbents against the national movements in the two-party voting system. Moreover, that even if the national shift of votes of approximately 5 to 10 percentage points from Democrats to Republicans or inversely would still preclude relatively low amounts of incumbents being defeated (Ansolabehere & Snyder,2012 p.9). These actions in most states create an “incumbent protection racket” producing even fewer competitive districts than previous decennial redistricting plans (Hill 2002, p.318). In addition, since the state legislature rarely changes size, the political party that holds the majority in the legislature attempts to use the absence of constitutional regulation and representative incumbency to their advantage to control the legislative redistricting process through partisanship. (Ansolabehere & Snyder,2012 p.490-91).

A third element that was apparent in my thesis research of the North Carolina case was the legislatures reliance on the **suppression of the opposition** (political parties, minorities, or the like). As discussed previously there were numerous documented instances of VRA, and majority-minority districting violations filed against the state legislature with the both the US Supreme Court and the State Supreme Court of North Carolina. Therefore, the over-populating of the two majority-minority districts (District 1 &12) starting with the original 2011 district plan the Republicans were attempting to secure their own incumbent districts for future elections by removing the democratic leaning African American voters from districts across the state. Indicating the utilization of both racial and partisan gerrymandering to exploit US Justice Department allowances to comply with majority-minority principles which led to widespread discrimination and voter dilution of the black voting population across the state (Bullock 2010, Mock 2016).

Through researching the second case study of the independent commission in the state of Arizona several factors became apparent. First the **initiative process** established through

the Arizona State Constitution is one of the defining differences between the state legislative process and the commission process. As previously discussed, citizen initiative is what created the independent commission to resist existing politicization of the redistricting process by the state legislature. It was utilized to counter the legislatures influence and deployment of gerrymandering to achieve their electoral goals. Proposition 106 as it is called raised levels of citizen involvement, process transparency and district competitiveness. As discussed in the theoretical framework section process transparency was achieved through public forum meetings, citizen input consideration and consensus-based decision-making when it came to the curation of districts indicating a significantly different disclosure process compared to the legislative process.

Secondly, I discerned the commission based redistricting structure is more **responsive** to constituent preferences which can be documented through the voter registration data from the 2010 Census. After the 2010 Census voters party registrations were evenly divided between Republicans, Democrats, and Independents. Indicating that the results from the 2012 election (the first election after redistricting is completed) should turn out in a perfect scenario each party receiving one third of the nine seats but, the seat composition tends to fall on the 50/50 divide (between Democrats and Republicans). After the AIRC complied with VRA standards as well as state-imposed standards it composed a congressional district map with “four safe Republican seats, two safe Democratic seats and three competitive districts (Districts 1,2,9)” (Mathis et al 2019, p.8). The results from the 2012 elections showed the Democrats winning all three competitive district races with a margin of victory only being 2,454 votes in one district (District 2). This same district in 2014 was won by the Republican candidate by a margin of 167 votes (Mathis et al 2019, p.8). Thus, the election results are highly responsive to citizen preferences and speaks to the creation of competitive districts which has come to carry the same weight in redistricting principles as others such as compactness and the like.

The AIRC must work and maintain this criterion to ensure that each district is “fair and competitive” where all parties have the equal opportunity to win the election at hand. One way that the AIRC does this is not considering the incumbents addresses or seats in redistricting plans. As there is some disagreement among political scientists who study this exact topic of whether competitiveness is increased comparatively between independent districting and legislative based districting can look to how districts in Arizona as previously discussed have performed since implementing independent redistricting (Mathis et al 2018 p.6,9-10). Thus, as intended by the passage of Proposition 106 makes independent

redistricting a more viable and better option for states who have had issues with gerrymandering and incumbent protection.

In addition, I observed that the AIRC or independent commission structural autonomy remained intact even when faced with scrutiny from both the state legislature and the judiciary. While the AIRC attempts to protect itself with such measures as the prohibition of considering an incumbents address in drawing district lines. What this does is protect the autonomy of the commission from impropriety and influence from legislators (Mathis 2019, p.16). That even if as described previously in the case study there were attempts to challenge this autonomy and authority the judiciary was able to intervene and check the state legislatures pursuit of power over the redistricting process. Which brings the analysis of relevant US Supreme Court cases to the forefront as the second analytical component used to answer the proposed research questions.

## 9.2 Supreme Court Analysis

Through further analysis of Supreme Court cases via The National Conference of State Legislatures legal database surrounding the redistricting process several observations were made. More specifically, the landmark Supreme Court cases dealing with elections and redistricting (20 cases in total) indicate all 20 cases involved a state legislature. Furthermore, thirteen of these cases deals with population equality/one person one vote, voter suppression or gerrymandering. Due to the courts intervention in the 1960's with cases like *Baker v. Carr* indicate an overt emphasis on the one person one vote principle as guide for making judicial decisions. Thus, indicating that the courts are a highly relied upon and exhausted accountability mechanism, for states seeking relief or guidance on deciding gerrymandering cases.

Moreover, the most prominent observation was that the courts lacked a manageable standard in adjudicating or deciding cases about gerrymandering and the fairness of a state's presented plan. For example, in the 1986 Supreme Court case *Davis v. Bandemer* made the allowance for partisan gerrymandering claims to be heard by the Supreme Court, it also attempted to create a partisan measurement mechanism that could be used to decide future cases of this type. The measurement mechanism was then "abandoned" by 2004 in *Vieth v. Jubelirer* case with the court implicating that developing a standard to manage partisan gerrymandering might be too difficult and push partisan gerrymandering into a realm of non-justiciability meaning that the court could not make decisions on issues involving gerrymandering. While it did not completely remove the opportunity to challenge cases of

gerrymandering it did not provide a workable standard to address such problems. This problem was also apparent in the 2016 case of *Rucho v. Common Cause* in that the Supreme Court struck down the North Carolina State Legislature map citing it was an “unconstitutional partisan gerrymander and blocked the state from using the plan for future elections” (*Rucho v. Common Cause 2016*). The Court then reversed its decision in 2019 dismissing the case on the grounds that the case was nonjusticiable and lacked the jurisdiction to decide such matters (*Rucho v. Common Cause 2016*). Thus, the courts inability to determine a standard or rule to address gerrymandering leaves the fight to the states to make decisions away from Supreme Court oversight.

### 9.3 Attorney Questionnaires

The third research component is the attorney questionnaires which reflects numerous points of the findings. First and foremost, they disclose that both political parties engage in gerrymandering across the country. The participants indicate that there is “*Data supports that the Republican party utilizes gerrymandering for the purpose of voter suppression as well as to skew legislative representation boundaries for the purpose of obtaining and maintain voting districts that benefit that party.*” Meaning that this practice is common in State Election Systems highlighting the need for federal intervention. Which speaks to the next finding when asked their professional opinion about the legal framework as it currently stands does it get manipulated to provide more favorable outcomes? Participant One discloses: “*I assume by “utilize legal remedies” you mean manipulate the law in order to gain an advantage. When a Republican majority is in a legislative branch, they tend to pass laws and rules of procedure that allow them to circumvent democratic processes in order to favor themselves. I believe Democrats also do that but to a much lesser extent. As the US basically has a 2-party system, there are no checks and balances on this behavior*” (Participant One Questionnaire 2020). Further indicating the failure of any recourse to provide relief from these practices.

The participants all agreed that the Supreme Court has failed to protect the democratic process going so far as to saying: “*As to the Supreme Court, yes, they failed to protect democratic processes, and voters, as shown in their recent 5-4 decision in the Rucho/Lamone cases. The Supremes’ majority basically stated that states are free to draw their legislative boundaries however they choose even though it might violate the US Constitution or “lead to results that reasonably seem unjust” because federal courts do not have jurisdiction to hear a challenge to such actions. I do not believe the Constitution deals with the question of voting*

*districts sufficiently because the framers obviously did not see that as an issue at the time the Constitution was written. Further, the Constitution failed to protect the voting rights of a majority of the population of the US at the time it was written and adopted, as women, slaves, non-landholders and other minorities were not granted voting rights”* (Participant One Questionnaire 2020). Thus, indicating that the US Supreme Court has failed to provide necessary guidance and relief to State Courts dealing with the numerous assertions and gerrymandering cases filed.

#### 9.4 Discussion of Findings

The process of determining representation is a complex system that is attempting to fulfill multiple objectives at the same time. One of the many complexities of redistricting is embracing and “equipping those conducting redistricting with the discretion to resolve fundamental political choices on behalf of the population as a whole while ensuring that the process is not subjected to abuse” (Leavitt 2011b , p.15). While politicization and partisanship has been shown to shape the political agenda and the implementation of policy it also impacts the implicit protection of people’s fundamental political human rights.

This issue is characteristic of the redistricting process in the state of North Carolina where direct manipulation of congressional districts is shown beginning with the power structure of the state legislature at the time of the 2010 redistricting process being that all three chambers of power (The House, The Senate and the Governor’s Office) were under control of the same political party it enabled a broad stroke plan to gain as much political power as possible. This can be exemplified in the comparison of district compositions in Table 1 and Table 2 within the case study of North Carolina. The tables display the blatant discrepancy between district compositions prior to the 2010 redistricting cycle and after the process was completed in 2012. Indicating the lengths that the state legislature went to alter the district composition of four Democratic districts to induce a changeover of representation (Democrat to Republican) hence a concrete manipulation of the political landscape to protect existing incumbent districts and provide the most favorable outcomes to the controlling party of the state legislature (Republicans). Further evidence that this manipulation was a problem is the continuous stream of court cases being filed in both State and Federal Court since 2011 by parties or authorities both inside and outside of the state legislature with the most recent challenge being *Rucho v. Common Cause* in 2016.

The element of partisanship and politicization was also at play in the independent commission-based process within the state of Arizona. Although the redistricting process authority has been removed from the state’s legislature it was subjected to several attempts to

politicize the commission-based process. As discussed in the case study of Arizona the politically motivated attempt to remove the AIRC Lead Commissioner from the commission and challenging the commission's overall authority in the Supreme Court was another example of how a politicized bureaucracy attempts to undermine the commission's authority and manipulate the redistricting process.

As a result of these processes one sector of the population bears the burden for the struggle of power, the minority population. While the VRA has certainly made a small impact on this front in making constitutional provisions for the significance of numerical and minority representation in elections political human rights are still being threatened. While there have been numerous attempts to impose or constrain both the redistricting process and gerrymandering in the courts the US Constitution does not provide relief, despite the small victories in different states in the pursuit of electoral fairness. Moreover, the US Constitution has not placed discernable limits on redistricting bodies "pursuit of political objectives" allowing for the drawing of districts to be done along partisan lines (Levitt 2011b p.13-14). The Supreme Court has gone as far as indicating the protection of incumbents in traditional redistricting practices is favorable and allowed even when they are evaluating "whether a district was drawn predominantly (and thereby unconstitutionally) based on race" (Levitt 2011b p.13-14).

Overall, the Supreme Court collectively agrees that excessive partisanship when it comes to redistricting is unconstitutional, but there is a large debate on whether it is the courts responsibility to decide when a redistricting plan is exhibiting too much partisanship. The court has left the opportunity open to "strike down a redistricting plan based on a federal constitutional claim of excessive partisan gerrymandering" that violates the US Constitution but has failed to even establish a constitutional standard in which to measure it by hence remaining "collectively silent" (Levitt 2011b p.13-14). Again, reiterating what the Attorney Participants indicated in their evaluation of the Supreme Court in curbing the issue of gerrymandering and protecting people's voting rights. That the court has failed to protect the democratic process and the countries voters. Through the courts broad stroke decision not to involve itself in cases questioning the constitutionality of districting plans it has removed itself from the discussion of changing the constitution to benefit the people that the court is meant to protect.

In result, enabling redistricting entities like state legislatures to seek whatever outcomes that aligns with their political agenda or political ideology even if it means further violations of minorities human rights. Which has enabled the passage of discriminatory



voting legislation and the continued suppression of minorities. For example, as of March 24, 2021 361 bills with voter restriction provisions have been introduced in 47 states (Waldman Brennan Center for Justice 2021). In turn creating a trickle-down effect that by not reining in or controlling this one component of the political process paved the way for more political human rights violations (predominately against minority populations) to take affect across the US. Furthermore, giving partisan influenced officials the green light to pass laws and utilize unfair practices for their own private gain at the expense of citizens human rights and democracy.

Why this is important is that groups that are categorically underrepresented or even discriminated against have significantly lower prospects of setting the legislative policy agenda or securing diverse preferential policies. That is why electing minorities to the legislature is important because they can affect the agenda setting in the legislature. Moreover, when district plans are drawn along partisan lines it can affect the extent in which minorities serve in legislative bodies like African Americans who make up less than 10% of the US Congress (42 seats) but 13.1% of the nation's population or Latinos who only hold 8.3% (36) of congressional seats but make up nearly 17% of the country's population. It can also affect the timing, and consideration of diverse policy agendas (Griffin 2014, Bullock 2010). More specifically, the intentional manipulation of district shapes means more than just the translation of votes into seats it also a major determinant of minority representation, policy implementation, and policy outcomes.

After reviewing the findings from my research, I wanted to determine if there was an alternative explanation for why all these detrimental practices (gerrymandering, politicization, incumbency protection) were happening or other factors that could be considered. One potentiality that could be considered is a newer, more technologically advanced form of malapportionment called reactive malapportionment which has the same effect as traditional malapportionment (the difference of population between the districts which affected constituents voting strength in highly populated districts (weaker voting strength) than their counterparts in less populated districts). The difference is in a reactive malapportionment even if districts were equal in size, if there is still a "high differential turnout" meaning that one party is at its strongest and it is countered by the highest abstention rate. The higher the voting abstention in that district the smaller number of votes the stronger party needs to win that district.

This is also true for states that have a strong third-party presence (like Arizona). The smaller number of votes needed to win a district seat, will provide an advantage to one of the

two major parties (Democrats and Republicans) if they are at their strongest in the same or surrounding areas where the third party (Arizona's registered Independents) is successful. Meaning that one of the major parties will have a better seat to vote ratio (a party's percentage of seats won in the election divided by the percentage of votes cast in the election) than the other if their best district performances are in districts with the lowest turnout of the other major party, the third party (Independents) wins the most votes or both scenarios occur ( Johnston 2002, p.3,7-8). Moreover, this could indicate that in districts dominated by one party there could be an even higher voter abstention rate making the district composition unintentionally skewed towards one party over another. Therefore, inducing a more significant party advantage potentially indicating another factor that could influence the outcome of elections.

### 9.5 Answering the Proposed Research Questions

#### **RQ One: Does the type of redistricting authority affect the fairness of election redistricting?**

While researching redistricting authorities, it was concluded that the authorities conduct their processes categorically different from one another and have different implicit priorities when it comes to representation. To answer this question, I will refer to all three methodological components to provide the foundation for my answer because the empirical results yield the information most conducive to answering the prescribed research question. While it can be argued that this question potentially could be answered through a quantitative analysis due to the lack of information pertaining to independent commissions, I will attempt to answer it qualitatively based on the evidence that has been obtained through the previously discussed approaches.

Through the comparative case studies, it was established that the dependence on partisanship to make district determinations affects not only the functioning of the bureaucracy but determines the power structure through the winning or losing of elections. These assertions are supported by the legal analysis which as previously mentioned through the cases filed with the Supreme Court challenging various state legislative authorities on the grounds of gerrymandering, voter suppression and population violations. More specifically, the court does indicate that the manifestation of these issues is influenced by who oversees the process. It is also supported by the attorney questionnaires as well with participants indicating the extent political parties will go to create an advantage for their party and the lack of oversight from the public or the judiciary. While the redistricting process is not insulated from scrutiny whether it is from citizens (the case of Arizona) or the courts it is still

the pervading approach to redistricting in legislative based redistricting states making the outcomes from this form of redistricting significant.

Whereas in the case of Arizona redistricting is completed by an independent commission free from the overt influence of partisanship in its district determinations thus being insulated from a politicized legislative authority. This cannot be said for the state legislative authorities based on the fact they are challenged continuously in the courts on their partisan based plans. So based on this research I would say that on the surface yes, the type of redistricting authority does impact fairness in redistricting but does not eliminate factors such as partisanship, incumbency protection, or gerrymandering. Independent Redistricting removes partisanship from the decision-making process in the development of congressional districts and adheres to VRA requirements of majority-minority districts but overall has not prevented vote dilution or voter suppression completely. These measures have certainly made strides toward eliminating inequities in minority voting but the redistricting authorities still need to provide further not less assistance to even out the electoral field.

**RQ Two: What evidence exists suggesting that the state legislative redistricting process is done expressly to weaken subsequent elections in the favor of incumbents?**

The evidence that exists in suggesting that the state legislative process is done expressly to weaken subsequent elections to favor incumbents is expressed through both the case study of North Carolina and the content analysis of significant Supreme Court cases relating to partisanship. Specifically, the case of *Gaffney v Cummings (1973)* which in the case the state legislature admitted to as previously discussed a duopolistic gerrymander in that every district was created to equally divide the congressional districts to benefit both democratic and republican incumbents alike therefore leaving a fewer number of competitive districts and inducing more advantages for incumbents in their own election. *In Karcher v Daggett (1983)* the case was about district population deviations in the state of New Jersey and them being unconstitutional on the basis that the state legislature did not equally apply legislative redistricting policies across all districts. Furthermore, that the state did not provide proper justification that specific objectives warranted deviations in the legislatures strategy like composing district plans that did not avoid or protect incumbents from competing against one another.

This was also a factor at time of the 2010 redistricting cycle in North Carolina with protecting eight incumbent representatives (6 Republicans and 3 Democrats) in the

congressional plan while it was not a perfect 50/50 divide it did secure a small portion of districts to Democrats who were then going to face unfair competition in four districts at the hands of the Republicans who reconfigured these four democratic strongholds to favor them over the Democrats as presented in Table 1 and Table 2 of the North Carolina case study. Providing further evidence that the legislature purposely configured their congressional districts to protect incumbents and weaken their opponents through population adjustments.

**RQ Three: What evidence is there indicating that districting effects electoral competition and the realization of the one-person-one-vote principle?**

The evidence indicating that districting effects electoral competition and the realization of the one-person, one vote principle lies in the content analysis of US Supreme court cases. The implementation of one-person, one vote was meant to address malapportionment in the redistricting process and the translation of votes into seats. Through cases like *Shaw v. Reno* and *Miller v Johnson* it became apparent that district compositions were affecting district competitiveness through the manipulations of VRA principles such as majority-minority districting. Meaning that majority-minority districts were not being given the opportunity to elect candidates that were representative of the district composition (meaning the lack of minority candidates running and serving in the House of Representatives.) More so that standard redistricting requirements were not aligned with the districts that were drawn through the redistricting process thus effecting the competitiveness of those districts in elections. Furthermore, by reviewing other cases pertaining to redistricting, gerrymandering (both racial and partisan) it is apparent that the manipulation of districts like in the case of North Carolina and other districts across the country affect electoral competition and the instances of electorate manipulation regardless of what grounds authorities use to do so. Hence, a concrete example of how districting effects electoral competition and the realization of a concrete manifestation of the one-person, one-vote principle.

## 10. Conclusion

My ambition in undertaking this research project was to explore the important but understudied area of redistricting authorities, gerrymandering and how it pertains to human rights issues. From the beginning of the research process there was an overwhelming gap in election literature pertaining to the causes and outcomes of fair and unfair redistricting practices with an overreaching emphasis on population equality (the one person, one vote principle). Therefore, this thesis aimed at addressing that gap by applying theoretical

conceptualizations of bureaucratic professionalization and politicization to the study of redistricting. Examples of this application is in the comparative case studies conducted of the state of North Carolina and Arizona. I completed research on the redistricting process of two differing authorities, studied case law, utilized the opinions of practicing attorneys, to show the effects of varying authority structures for the provision of electoral competition and voting rights.

While there were some limitations to my studies, the most important being that in my research on gerrymandering the availability of first-hand accounts or experiences with people who are directly involved with the legislative based redistricting process. Due to the nature of gerrymandering being a topic or process that those directly involved do not want to acknowledge, let alone divulge their participation in such practices it makes first-hand data collection not a possibility. The second limitation was in the availability of comparable election data such as fairness, and competitiveness indicators from both redistricting authorities. More specifically, the legislative authorities responsible for redistricting potentially do not have the same transparency and accountability mechanisms or responsibilities to disclose this type of information as with the independent commission authorities responsible for redistricting. Therefore, making some indicators potentially unknown for the legislative process versus the independent process.

What I did find was issues such as gerrymandering, voter suppression, and electoral competitiveness are in fact impacted based on the allocated redistricting authority within each state. I then realized that this finding provides new avenues to explore in election research the potentiality for the manifestation of corruption outside the context of the developing world. This exposed a disconnect between normal conceptualizations of corruption and what is being allowed to happen in the US with gerrymandering. In turn, creating a potential new line of study in the field of corruption, with the study of legal corruption or the act of gaining advantage inconsistent with official duty and the rights of the others, but which does not directly violate legal rules. This being applicable to the study of politicized bureaucratic authorities like state legislatures and independent commissions who are tasked with completing a constitutionally mandated process (redistricting). In turn, using this process to induce partisan based incentives for both personal and party gain by any means necessary (gerrymandering). While they are constitutionally permitted to utilize these mechanisms for the completion of the redistricting process the outcomes are inhibiting and detrimental to democracy in the US. Consequently, the process has been compared to political apartheid.

Moreover, that even if gerrymandering is used as a “corrective measure” it threatens the progression of the political system in which minorities and people have been striving for in race relations since they were granted the ability to vote (*Shaw v. Reno* 1993). Therefore, my hope is that with this thesis project I can contribute to the study of both corruption and various election topics to provide a space for further academic inquiry.

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## 12. Appendices

### Appendix I Attorney Questionnaires

#### Blank Attorney Questionnaire

- 1) What area of law do you practice currently?
- 2) What is the general procedure for building a case in civil court proceedings?
- 3) As in criminal law is there a burden of proof element that must be proven in civil cases?
- 4) How much do you know about the practice of gerrymandering?
- 5) Do you have any case or trial experience surrounding election issues?
- 6) Do you believe or know of either political party participation in such tactics?
- 7) Do you feel that political parties utilize the legal remedies available to skew election results in their favor?
- 8) Why or why not?
- 9) Do you believe that the Supreme Court and the US Constitution have overlooked or avoided to protect voters rights in dealing with gerrymandering?
- 10) Do you feel that gerrymandering should be illegal in the entire country?

11) Do you agree with this statement: Politicians are choosing their voters, not voters choosing their representatives?

Participant One Questionnaire Responses

**1) What area of law do you practice currently?**

Family and Juvenile

**2) What is the general procedure for building a case in civil court proceedings?**

Initial filing of a petition (or answer to a petition); discovery; pretrial motions; complying with court pretrial requirements which in family court involves mediation and parenting class; settlement conference; then trial.

**3) As in criminal law is there a burden of proof element that must be proven in civil cases?**

Yes, preponderance of evidence.

**4) How much do you know about the practice of gerrymandering? Do you have any case or trial experience surrounding election issues?**

I know a significant amount about gerrymandering as I also teach political and legal studies at a university. I also have experience representing state agencies and in administrative law as well as have engaged in political issue advocacy.

**5) Do you believe or know of either political party participation in such tactics?**

Data supports that the Republican party utilizes gerrymandering for the purpose of voter suppression as well as to skew legislative representation boundaries for the purpose of obtaining and maintain voting districts that benefit that party.

**6) Do you feel that political parties utilize the legal remedies available to skew election results in their favor?**

Yes

**7) Why or why not?**

I assume by “utilize legal remedies” you mean manipulate the law in order to gain an advantage. When a Republican majority is in a legislative branch, they tend to pass laws and rules of procedure that allow them to circumvent democratic processes in order to favor themselves. I believe Democrats also do that but to a much lesser extent. As the US basically has a 2-party system, there are no checks and balances on this behavior.

**8) Do you believe that the Supreme Court and the US Constitution have overlooked or avoided to protect voters rights in dealing with gerrymandering?**

As to the Supreme Court, yes, they failed to protect democratic processes, and voters, as shown in their recent 5-4 decision in the *Rucho/Lamone* cases. The Supremes’ majority basically stated that states are free to draw their legislative boundaries however they choose even though it might violate the US Constitution or “lead to results that reasonably seem unjust” because federal courts do not have jurisdiction to hear a challenge to such actions. I do not believe the Constitution deals with the question of voting districts sufficiently because the framers obviously did not see that as an issue at the time the Constitution was written. Further, the Constitution failed to protect the voting rights of a majority of the population of the US at the time it was written and adopted, as women, slaves, non-landholders, and other minorities were not granted voting rights.

**9) Do you feel that gerrymandering should be illegal in the entire country?**

Yes, I think gerrymandering should be abolished as it is an anathema to democracy and free and fair elections.

**10) Do you agree with this statement: Politicians are choosing their voters, not voters choosing their representatives?**

Yes.

Participant Two Questionnaire

**1) What area of law do you practice currently?**

Consumer Protection – civil and criminal prosecution on behalf of the state against those that commit fraud in business transactions.

**2) What is the general procedure for building a case in civil court proceedings?**

You start with filing a complaint in court and then must serve all the defendants with a summons the court will issue. The defendant then has 30 days to file an answer to the petition. After that, discovery starts where each side can ask the other for documents they have in their possession as well as testimony by the other party or other witnesses. Typically, after that the parties will attempt to settle. If no settlement can be reached, the case will be set for trial. The plaintiff then has to look at the documents they have in their possession and the testimony of the witnesses and determine what evidence needs to be presented to the jury or judge that will prove each element of their case.

**3) As in criminal law is there a burden of proof element that must be proven in civil cases?**

Yes, the case must be proven by a preponderance of the evidence.

**4) How much do you know about the practice of gerrymandering? Do you have any case or trial experience surrounding election issues?**

I understand gerrymandering from reading about it – that it is manipulating the physical boundaries of election districts in order to help one political party obtain an advantage. I do not have any case or trial experience surrounding election issues.

**5) Do you believe or know of either political party participation in such tactics?**

I believe both parties have participated in gerrymandering, however I believe the Republican party has done it more.

**6) Do you feel that political parties utilize the legal remedies available to skew election results in their favor?**

No

**7) Why or why not?**

I do not believe they use legal remedies to skew the actual results of an election. They may use available legal remedies to suppress voters and to gerrymander district lines that give them an advantage, but neither party tends to use legal remedies to try and change the results of the actual election.

**8) Do you believe that the Supreme Court and the US Constitution have overlooked or avoided to protect voters rights in dealing with gerrymandering?**

Yes – the Supreme Court just ruled last year that federal courts cannot hear challenges to gerrymandering.

**9) Do you feel that gerrymandering should be illegal in the entire country?**



Yes, but I do not know how you would do that.

**10) Do you agree with this statement: Politicians are choosing their voters, not voters choosing their representatives?**

Yes

Participant Three Questionnaire

**1) What area of law do you practice currently?**

Municipal Law

**2) What is the general procedure for building a case in civil court proceedings?**

Prepare and meet the applicable burden of proof.

**3) As in criminal law is there a burden of proof element that must be proven in civil cases?**

Yes.

**4) How much do you know about the practice of gerrymandering? Do you have any case or trial experience surrounding election issues?**

I know a decent amount about it. I have no experience with related cases.

**5) Do you believe or know of either political party participation in such tactics?**

Yes.

**6) Do you feel that political parties utilize the legal remedies available to skew election results in their favor?**

Yes.

**7) Why or why not?**

Because it is a legal means of overcoming other parties' votes.

**8) Do you believe that the Supreme Court and the US Constitution have overlooked or avoided to protect voters rights in dealing with gerrymandering?**

Yes.

**9) Do you feel that gerrymandering should be illegal in the entire**

country?

Yes.

**10) Do you agree with this statement: Politicians are choosing their voters, not voters choosing their representatives.**

Yes.

## Appendix II Legal Case Summaries

In this section is the compilation of court cases that were used in the content analysis of the US Supreme Court Cases sourced from the National Conference of State Legislatures Database denoted in the Reference List Under the source NCSLd. to provide a bit more context into the cases. They are organized by case filing year beginning in 1962 to the present. Most of the cases have been paraphrased from the website descriptions of the cases.

Case Heading & Year	Legal Question	Brief Summary of Case and Judgement	Significance of Decision
<i>Baker v. Carr</i> , 369 U.S. 186 (1962)	In this case, the Tennessee General Assembly had failed to reapportion seats in the Senate and House of Representatives since 1901.	The Court held that a federal district court had jurisdiction to hear a claim that this inequality of representation violated the Equal Protection Clause of the Fourteenth Amendment.	For the first time, the court held that the federal courts had jurisdiction to consider constitutional challenges to state legislative redistricting plans.
<i>Wesberry v. Sanders</i> , 376 U.S. 1 (1964)	Georgia voters filed suit implicating that one electoral district had three times the number of voters over another district and that this imbalance denied them the full benefit of their right to vote.	The Supreme Court determined that districts "must be drawn so that as nearly as is practicable one man's vote in a congressional election is worth as much as another's." hence the establishment of one person, one vote principle.	The Court held that the constitutionality of congressional districts was a question that could be decided by the courts.
<i>Reynolds v. Sims</i> , 377 U.S. 533 (1964)	Alabama Senate and House seats had not been reapportioned among the counties since 1903. Each county had one or more senators and one or more representatives, regardless of population.	The Alabama State Legislature was attempting to justify that the district disparities in their congressional plans were comparable to federally proposed district plans but the Supreme Court found that comparison unfounded. Indicating districts must be apportioned in line with a two-chamber legislative structure and apportioned on a population basis.	That district seats in both houses of state legislature must be apportioned according to population. That district deviations can only happen when it is necessitated to provide representation based on political subdivision and district compactness. That Legislative district should be redrawn every ten years to reflect population deviations.

<b><i>Gaffney v. Cummings</i></b> , 412 U.S. 735 (1973)	The complaint put forth on behalf of Connecticut voters alleged the redistricting plan was a political gerrymander that favored the Republican Party.	The State Board that is responsible for redistricting implicate in their defense that they followed a “politically fair policy” through using past election results to create legislative seats that closely reflect the composition of the state’s voters. The Supreme Court agreed that the state’s attempt fell within the federal standard of population limits and the allocation of political power to parties in accordance with their voting strength is constitutional.”	This case implicates that a reapportionment plan is not vulnerable to court intervention when the explicit purpose is to achieve a level of “political fairness between political parties.”
<b><i>Karcher v. Daggett</i></b> , 462 U.S. 725 (1983)	The New Jersey Legislature drew a congressional plan that had a total deviation of 3,674 people, or 0.6984 percent. The Supreme Court held that parties challenging a congressional plan bear the burden of proving that population differences among districts could have been reduced or eliminated by a good-faith effort to draw districts of equal population.	Brennan, now writing for the 5-4 majority, noted that complying with what we now call “traditional redistricting principles,” such as compactness, respecting municipal boundaries, preserving the cores of prior districts, and avoiding contests between incumbents, could meet the state’s burden.	Congressional districts must be mathematically equal in population, unless necessary to achieve a legitimate state objective.
<b><i>Davis v. Bandemer</i></b> , 478 U.S. 109 (1986)	Indiana Democrats claimed that district lines were an intentional attempt at discriminating against Democratic voters in violation of the Equal Protection Clause.	The Supreme Court determined that their claim was not a “political question” but a matter of law. Hence, the absence of a rule like the “one person, one vote” for measuring partisanship does not mean that “such challenges were non-justiciable political questions.” That for the court to hear challenges on this premise there had to be proof that partisan based discrimination was both the authority’s intent and that this discrimination did affect them as a group.	Partisan gerrymandering claims may be brought in federal courts under the Equal Protection Clause. It also established an effects test to determine a partisan gerrymander but was struck down in later Supreme Court Cases.
<b><i>Shaw v. Reno</i></b> , 509 U.S. 630 (1993)	Plaintiffs made the claim that North Carolina’s District 12 was bizarrely shaped that it amounted to a “racial gerrymander,” which they claimed violated the Equal Protection Clause.	The court rejected the state’s defense that District 12’s shape was justified as the second majority-minority district to bring the state into compliance with VRA requirements. The Supreme Court claimed that District 12 was “the most egregious racial gerrymanders of the past,” indicating that the district configuration displays the discriminatory belief that members of minority groups across the state have the same interests and did not have more localized needs.	Districts will be deemed unconstitutional by the courts if it violates the Equal Protection Clause for not being able to justify district composition other than on the grounds of race and that if districts retain unusual shapes this is a strong indicator of racial gerrymandering.

<p><b>Miller v. Johnson</b>, 515 U.S. 900 (1995)</p>	<p>Following <i>Shaw</i>, it remained unclear what the standard of review was under the new racial gerrymandering doctrine. In <i>Miller</i>, the U.S. Department of Justice in 1991 refused preclearance to Georgia’s initial congressional redistricting plan under § 5 of the Voting Rights Act, claiming the state needed to create an additional majority-minority district. Plaintiffs challenged the newly drawn districts as racial gerrymanders.</p>	<p>The Supreme Court held for the plaintiffs and established the rule for racial gerrymandering claims: if a district is drawn predominantly based on race, it violates the Equal Protection Clause.</p>	<p>A district becomes an unconstitutional racial gerrymander if race was the “predominant” factor in the drawing of its lines.</p>
<p><b>Bush v. Vera</b>, 517 U.S. 952 (1996)</p>	<p>Under the 1990 reapportionment of seats in Congress, Texas was entitled to three additional congressional districts. The Texas Legislature decided to draw one new Hispanic-majority district in South Texas, one new African American-majority district in Dallas County, and one new Hispanic-majority district in the Houston area. In addition, the legislature reconfigured a district in the Houston area to increase its percentage of African Americans. The legislature used sophisticated software that allowed it to redistrict with racial data at the census block level. Plaintiffs challenged 24 of the state’s 30 congressional districts as racial gerrymanders.</p>	<p>The Supreme Court struck down three districts, holding that race was the predominant factor in drawing the lines. In these districts, the court concluded that districts drawn to satisfy Section 2 of the VRA must not subordinate traditional redistricting principles more than reasonably necessary. The districts in question were in the court’s words, “bizarrely shaped and far from compact.” These characteristics were predominately attributable to racially motivated gerrymandering.</p>	<p>If you want to argue that partisan politics, not race, was your dominant motive in drawing district lines, beware of using race as a proxy for political affiliation. To survive strict scrutiny under the Equal Protection Clause and avoid being struck down as a racial gerrymander, a district must be reasonably compact.</p>
<p><b>Vieth v. Jubelirer</b>, 541 U.S. 267 (2004)</p>	<p>Between <i>Bandemer</i> and <i>Vieth</i>, nearly 20 years elapsed. During that time, no lower court successfully created a manageable legal standard under which to scrutinize partisan gerrymanders.</p>	<p>Most justices in this case held that this challenge also failed to prove a violation of the Constitution. Four of the five justices in the majority went further, stating that they believed no such standard existed and that partisan gerrymandering claims should be excluded from federal courts under the political question doctrine.</p>	<p>While a plurality of justices in this case held that partisan gerrymandering claims were non-justiciable, Justice Anthony Kennedy left the door open for potential future claims under the First Amendment, rather than the Fourteenth Amendment as had been cited in <i>Bandemer</i>.</p>
<p><b>Rucho v. Common Cause No. 1:16-cv-1026</b> (2016)</p>	<p>The parties challenged the 2016 remedial plan for congressional districts as a partisan gerrymander.</p>	<p>Supreme Court noted that “excessive partisanship in districting leads to results that reasonably seem unjust,” and that partisan gerrymandering is “incompatible with democratic principles,” but held that the U.S. Constitution contains no “limited and precise standards that are clear, manageable, and politically neutral” for determining when partisanship has become excessive.</p>	<p>The courts conclusion implicates that it does not condone excessive partisan gerrymandering. Nor does the court’s decision condemn complaints about districting to echo into a void. Provisions in state statutes and state constitutions can provide standards and guidance for state courts to apply.”</p>

