

Congressional Redistricting 101

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Producer

Presentation Center

Director

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Roadmap

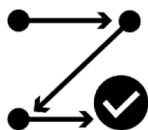
- Redistricting overview
- Efficiency gap
- VA and NC redistricting cases

Redistricting happens every 10 years following the census to maintain equal representation in the House

Overview of the redistricting process



- Every 10 years at the beginning of a new decade the Department of Commerce conducts the U.S. Census to produce an accurate count of the nation's population



- At the conclusion of the Census, seats for the US House of Representatives are reapportioned to reflect changes in state population
- Every state is guaranteed 1 seat and the largest states can receive as many as 50 or more seats



- Each state is then required to go through the process of redrawing its electoral map. Every state has to follow certain federal redistricting requirements; however, the states themselves determine who has the authority to control this process

Elections by redistricting year

■ Presidential election ■ Midterm elections

1990	2000	2010	2020
1992	2002	2012	2022
1994	2004	2014	2024
1996	2006	2016	2026
1998	2008	2018	2028
2000	2010	2020	2030

Trends in reapportionment

- The US House has had 435 seats since 1963 when two temporary, extra seats for Alaska and Hawaii were removed
- Texas and Florida are the only two states that have **received an increase in House seats** in all of the past five reapportionments
- Pennsylvania, Ohio and New York have all **lost House seats** in each of the past five reapportionments
- Current population trends suggest that several **southern states will gain a seat in 2020** while many Midwestern states are expected to lose a seat

Sources: Matthew Green, "Redistricting Revealed: The Basics," KQED, June 7, 2012; Sean Trende, "Census Data Shed Light on 2020 Redistricting," RealClearPolitics, December 22, 2016.

Many states that lost seats in 2010 will lose even more in 2020, while Florida and Texas will continue to gain seats

Changes to congressional apportionment with total number of representatives after 2022

BASED ON 2017 US CENSUS ESTIMATES; UNC CAROLINA DEMOGRAPHY PROJECT ANALYSIS

Lose 1	No change			Gain 1	Gain 2	Gain 3
Alabama (6)	AK (1)	MD (8)	TN (9)	Arizona (10)	Florida (29)	Texas (39)
Illinois (17)	AR (4)	ME (2)	UT (4)	Colorado (8)		
Michigan (13)	CA (53)	MO (8)	VA (11)	N. Carolina (14)		
Minnesota (7)	CT (5)	MS (4)	VT (1)	Oregon (6)		
New York (26)	DE (1)	MT (1)	WA (10)			
Ohio (15)	GA (14)	ND (1)	WI (8)			
Pennsylvania (17)	HI (2)	NE (3)	WY (1)			
Rhode Island (1)	IA (4)	NH (2)				
West Virginia (2)	ID (2)	NJ (12)				
	IN (9)	NM (3)				
	KS (4)	NV (4)				
	KY (6)	OK (5)				
	LA (6)	SC (7)				
	MA (9)	SD (1)				

Sources: US Census Bureau, February 22, 2018. UNC Carolina Population Center, "Carolina Demography Project" December 21, 2017.

Redistricting happens every 10 years following the census to maintain equal representation in the House

Overview of the redistricting process

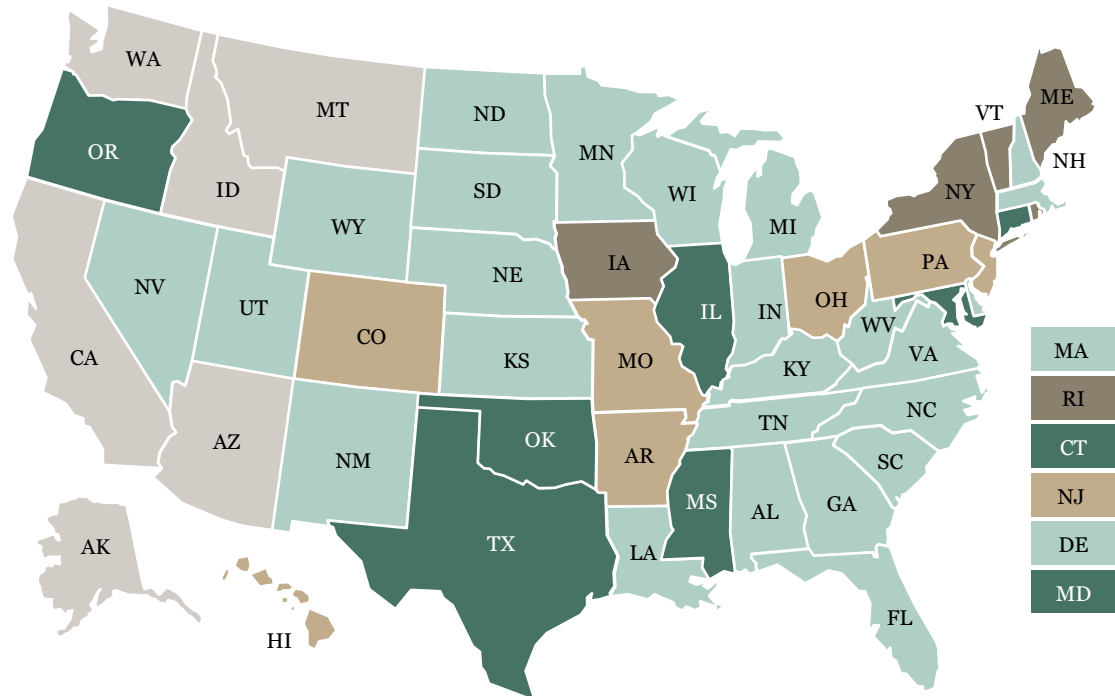
■ State legislature
 ■ Advisory commission
 ■ Backup commission
 ■ Politician commission
 ■ Independent commission

Advisory commission – An independent commission advises the legislature about where the new district lines should be drawn, but the legislature is not bound by these recommendations

Backup commission – A backup commission is similar to an advisory commission; however, instead of influencing the process before the lines are set, backup commissions only act if a plan is not complete by a set deadline

Politician commission – These commissions allow elected officials to serve as members alongside other neutral commissioners

Independent commission – An independent commission is made up of neither legislators nor public officials

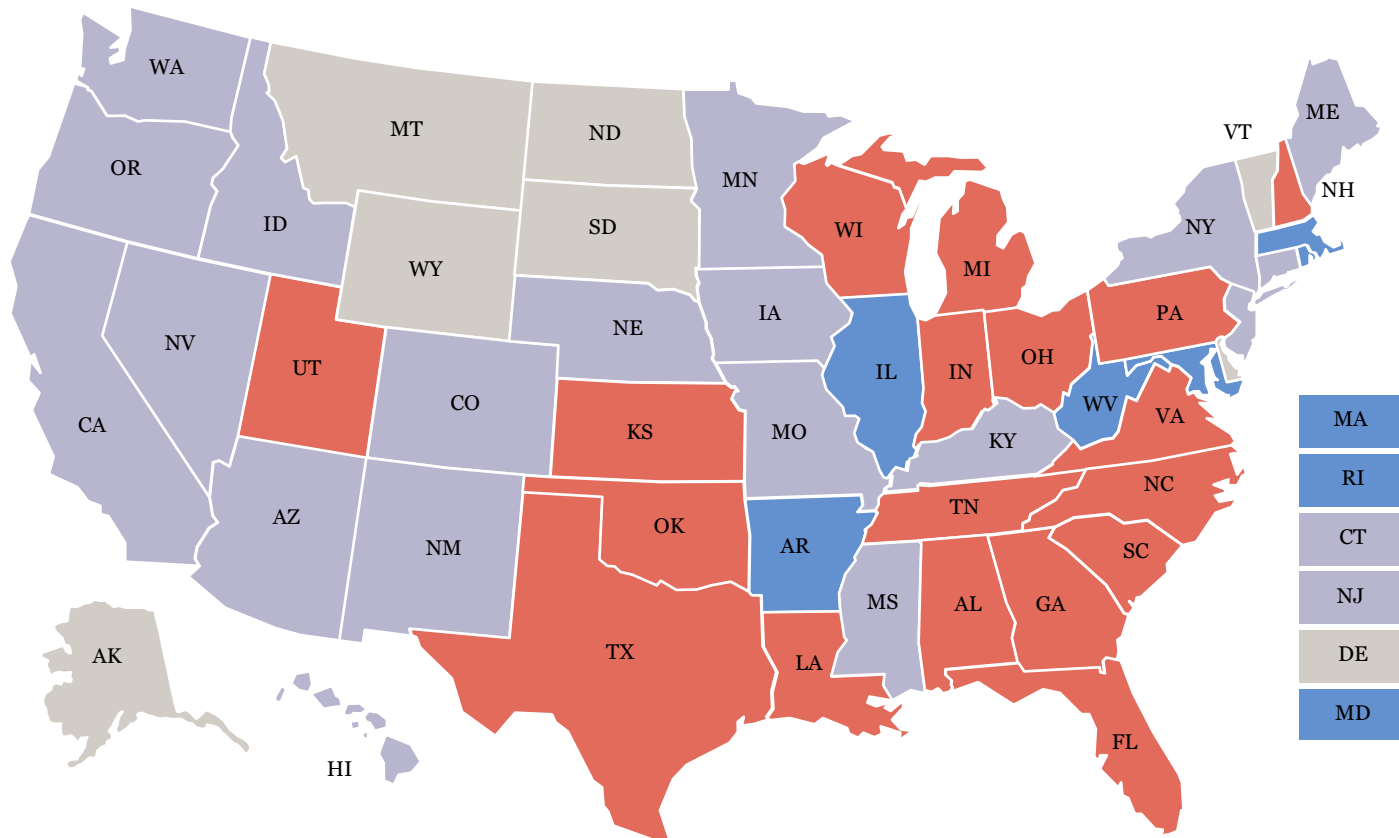


Sources: Brennan Center for Justice, "National Overview of Redistricting: Who draws the lines?" June 1, 2010; Loyola Law School, "All about redistricting: who draws the lines?" 2011.

18 states were under Republican control during 2010 redistricting compared to only 6 states controlled by Dems

State legislature partisan control during 2010 redistricting, by state

■ Republican control ■ Democratic control ■ Split control ■ No lines drawn (One congressional seat)



Sources: Loyola Law School, "All about redistricting: who draws the lines?" 2011.

Every redistricting plan must follow three basic redistricting requirements and the Voting Rights Act

Three basic redistricting requirements

1 Equal representation

Electoral districts must meet state and federal “one person, one vote” requirements, which means that the population between districts must be as equal as possible within a 10 percent deviation or less.

2 Contiguous, compact districts

Contiguous means that a district must be composed of one geographic area and not two or more separate pieces, although reasonable exceptions are allowed. The courts have given legislative bodies wide latitude in determining whether a district is considered compact, but irregularly shaped districts should be avoided.

3 Traditional redistricting principles

The Supreme Court considers the following as “traditional principles” and redistricting plans must make a good faith effort to follow them:

- Preservation of communities of interest
- Preservation of cores of prior districts
- Protection of incumbents
- Compactness
- Contiguity
- Preservation of political boundaries

In addition to these three requirements, **all redistricting plans must comply with the Voting Rights Act of 1965.** This act prohibits discriminating against the voting rights of racial or linguistic minorities. Additionally, Section 5 of the Voting Rights Act prevents 11 states (listed below) from changing voting practices without federal approval.

Alabama
Alaska
Arizona*
Georgia
Hawaii*

Idaho*
Louisiana
Mississippi
North Carolina*
Virginia

*Only certain counties within these states are subject to Section 5 of the VRA.


Roadmap

- Redistricting overview
- Efficiency gap
- VA and NC redistricting cases

The efficiency gap tests congressional maps for partisan gerrymandering, SCOTUS expected to rule on its efficacy

Understanding the efficiency gap

The efficiency gap counts the number of votes each party wastes in an election to determine whether a party enjoyed a systematic advantage of converting votes into seats. Any votes for a losing candidate are considered wasted. For the winning candidate, all votes in excess of the number needed to win are also wasted.



The Supreme Court is currently considering *Gill v. Whitford*, a challenge to Wisconsin’s 2011 redistricting plan that uses the efficiency gap to prove partisan gerrymandering. **The SCOTUS ruling on this case will likely determine if the efficiency gap is a rigorous and sound method for measuring the fairness of future redistricting plans.**

The statewide efficiency gap is calculated using the following equation:

$$\text{Efficiency Gap} = (\text{Percentage of seats held} - 50\%) - [2 \times (\text{Percentage of votes received} - 50\%)]$$

The threshold proposed as an acceptable efficiency gap is no more than two congressional seats.

Efficiency gap	Congressional seats	Seat gap
10%	10	1
30%	10	3

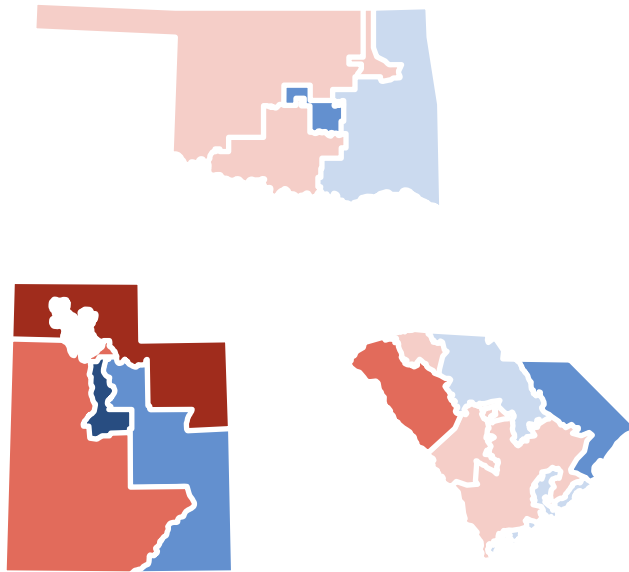


Sources: Nicholas Stephanopoulos and Eric McGhee, “Partisan Gerrymandering and the Efficiency Gap,” University of Chicago Law School Working Papers, 2014; Sam Wong, “Helping the New Gerrymandering Standard Survive in the Supreme Court,” Princeton Election Consortium, November 24, 2016.

Understanding efficiency gap maps

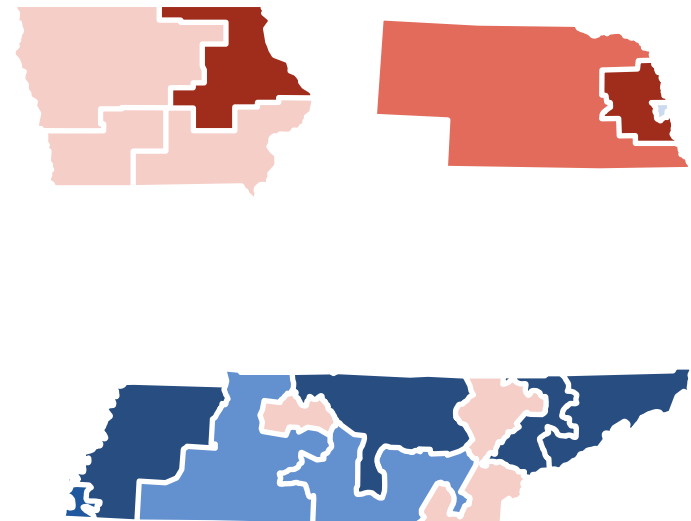
Fair maps

Maintaining a balance of wasted votes across parties ensures a low efficiency gap. Redistricting commissions don't need to minimize wasted votes, they simply need to ensure that the number of wasted votes is roughly equal between the two major parties. Therefore, a "fair" map shows a balance of red and blue districts.



Unfair maps

If a heavy majority of a map's districts are shaded one color, this means that one party has disproportionately more wasted votes than the other, resulting in an unfair map with a higher efficiency gap.



*All maps on this page are for display purposes only and are not based on accurate election data

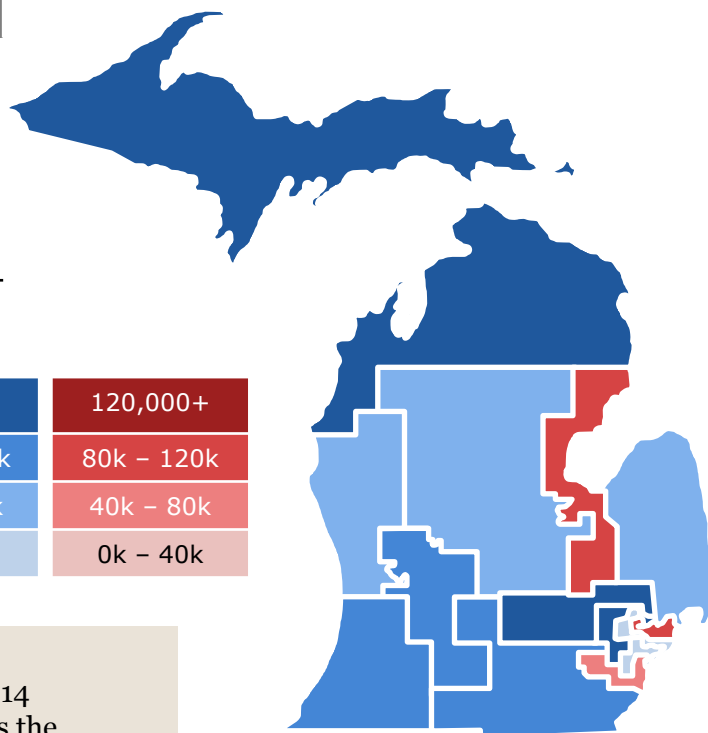
Sources: *National Journal Research*, 2017

Michigan's current map, drawn by Republicans, gave the GOP a 4-seat advantage after a nearly 50-50 vote in 2016

Efficiency gap in Michigan's 2016 congressional elections

THE MAP DISPLAYS THE NUMBER OF "WASTED" VOTES IN EACH DISTRICT*

Congressional Votes by Party	Votes	Pct.	Proportional Seats	Actual Seats
Total Republican Votes	2,243,402	48%	7	9
Total Democratic Votes	2,193,980	47%	7	5
Total Votes	4,670,905			



Statewide efficiency gap: 2 seats
(In favor of Republicans)



Summary

- In 2016, Michigan Democrats received 47% of the vote but lost nine of 14 congressional districts, suggesting that the current map unfairly dilutes the Democratic vote while strategically locating Republican voters to maximize wins

*The number of wasted votes per district is calculated as follows : (total votes for winning candidate) - (50% of total votes within district) + (total votes for losing candidate).

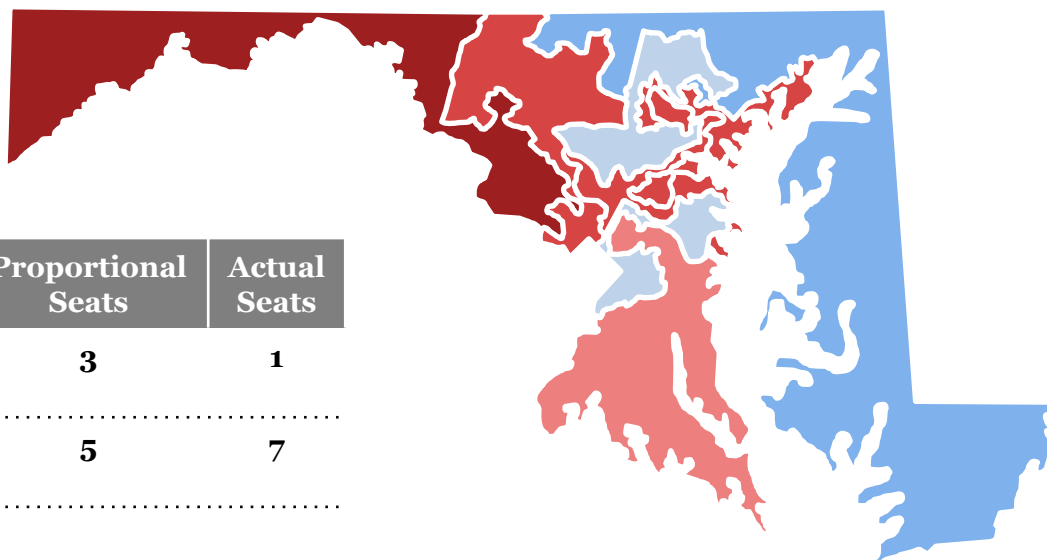
Sources: Michigan State Department of Elections, 2017; National Journal Research, 2017.

Maryland's current map favors Democrats, 7 of 8 seats won with only 60% of the vote statewide

Efficiency gap in Maryland's 2016 congressional elections

THE MAP DISPLAYS THE NUMBER OF "WASTED" VOTES IN EACH DISTRICT*

90,000+	90,000+
60k - 90k	60k - 90k
30k - 60k	30k - 60k
0k - 30k	0k - 30k



Congressional Votes by Party	Votes	Pct.	Proportional Seats	Actual Seats
Total Republican Votes	962,088	36%	3	1
Total Democratic Votes	1,636,200	60%	5	7
Total Votes	2,707,745			

Summary

- In 2016, Maryland Republicans lost seven of eight congressional districts but received over 35% of the vote, suggesting that the current map unfairly dilutes the Republican vote while strategically locating Democratic voters to maximize wins

Statewide efficiency gap: **2 seats**
(In favor of Democrats)

*The number of wasted votes per district is calculated as follows : (total votes for winning candidate) - (50% of total votes within district) + (total votes for losing candidate).

Sources: Maryland State Board of Elections, 2017; National Journal Research, 2017.

Virginia's new court-ordered map improves fairness but still favors Republicans

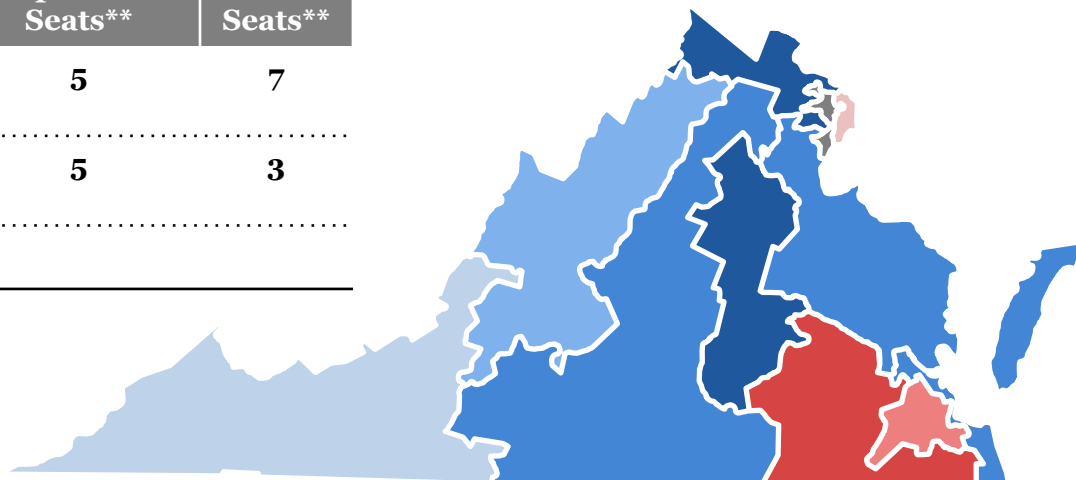
Efficiency gap in Virginia's 2016 congressional elections

THE MAP DISPLAYS THE NUMBER OF "WASTED" VOTES IN EACH DISTRICT*

** Democrat Gerry Connolly ran unopposed in Virginia's 11th district, therefore this district is excluded from the data for statistical purposes.

Congressional Votes by Party	Votes	Pct.	Proportional Seats**	Actual Seats**
Total Republican Votes**	1,843,010	52%	5	7
Total Democratic Votes**	1,611,608	46%	5	3
Total Votes**	3,533,750			

120,000+	120,000+
80k – 120k	80k – 120k
40k – 80k	40k – 80k
0k – 40k	0k – 40k



Summary

- Virginia was required to draw a new map for 2016 after courts found that the previous map utilized racial gerrymandering to favor Republican candidates
- In 2016, Democrats received 46% of the vote but lost seven of 10 districts, suggesting that the current map unfairly dilutes the Democratic vote while strategically locating Republican voters to maximize wins

Statewide efficiency gap: 2 seats
(In favor of Republicans)

*The number of wasted votes per district is calculated as follows : (total votes for winning candidate) – (50% of total votes within district) + (total votes for losing candidate).

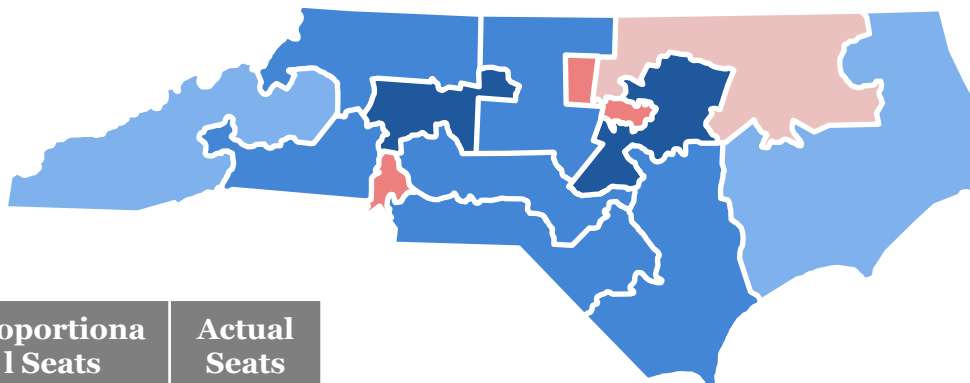
Sources: Virginia State Department of Elections, 2017; National Journal Research, 2017.

North Carolina's new map still produces a wide gap in House seats despite a vote margin of only 6 points

Efficiency gap in North Carolina's 2016 congressional elections

THE MAP DISPLAYS THE NUMBER OF "WASTED" VOTES IN EACH DISTRICT*

120,000+	120,000+
80k - 120k	80k - 120k
40k - 80k	40k - 80k
0k - 40k	0k - 40k



Congressional Votes by Party	Votes	Pct.	Proportiona l Seats	Actual Seats
Total Republican Votes	2,447,326	53%	7	10
Total Democratic Votes	2,142,661	47%	6	3
Total Votes	2,707,745			

Summary

- In 2016, NC Democrats lost 10 of 13 districts but received 47% of the vote, suggesting that the current map unfairly dilutes the Democratic vote while locating Republican voters to maximize wins
- North Carolina was forced to redraw their map after federal courts ruled that two districts were unfairly gerrymandered based on race. The Supreme Court upheld this decision and the new map (above) was used for the 2016 congressional elections

Statewide efficiency gap: 3 seats
(In favor of Republicans)

*The number of wasted votes per district is calculated as follows : (total votes for winning candidate) - (50% of total votes within district) + (total votes for losing candidate).

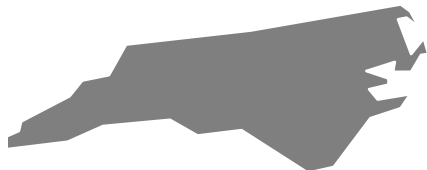
Sources: North Carolina State Board of Elections, 2017; National Journal Research, 2017.

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Virginia and North Carolina redistricting cases

SCOTUS redistricting cases in Virginia and North Carolina



Redistricting in North Carolina: timeline

- **2011:** Republican-controlled General Assembly approved the state's new congressional district map
- **2011:** the new map is challenged in court
- **2012:** Republicans win 9 of NC's 13 House seats, despite winning only 48.7% of the votes
- **2016:** An NC District Court rules that 1st and 12th districts (represented by Democratic Reps. G.K. Butterfield and Alma Adams) are illegal racial gerrymanders
- **2016:** New map is drawn during a special session; state primaries are delayed from March to June
- **May 22, 2017:** SCOTUS affirms the district court's ruling that the 1st and 12th districts were illegally gerrymandered based on racial lines
- **August 27, 2018:** In a separate case, a panel of three federal judges hold that all NC districts were unconstitutional partisan gerrymanders



Redistricting in Virginia: timeline

- **2013:** Virginia legislature approves the state's new congressional district map
- **2013:** the new map is challenged in court
- **2015:** A VA district court ruled that only one district – the 3rd, represented by Democratic Rep. Bobby Scott – was drawn using race as a predominate factor, but was done so legally; ruled that the other 11 districts were legally drawn and did not rely predominately on race
- **March 1, 2017:** SCOTUS affirmed the lower court's ruling on the 3rd district, but ruled that the district court used an incorrect legal standard for the 11 districts; orders the district court to reconsider the case

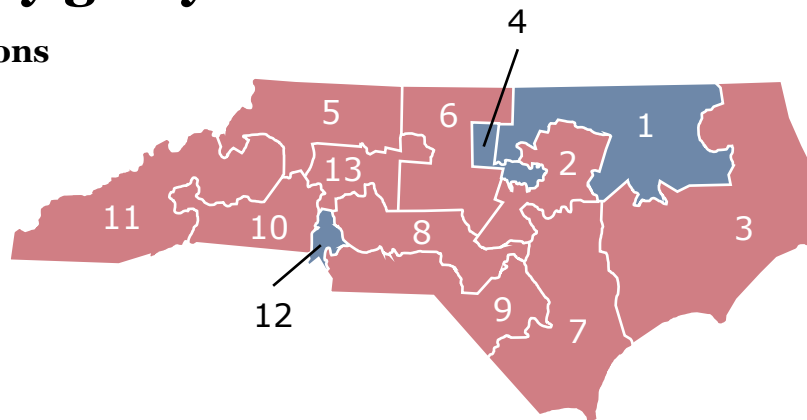
Sources: Bethune-Hill et al. v. Virginia State Board of Elections et al., no. 15-680, decided Mar. 1, 2017; Kevin Robillard, "Supreme Court calls for further review of Virginia legislative map," Politico, Mar. 1, 2017; Daniel Tokaji, "Restricting Race-Conscious Redistricting," The Regulatory Review, Jul. 21, 2017.

A panel of three federal judges rule that North Carolina's districts were unconstitutionally gerrymandered

What the ruling means for the 2018 midterm elections

Judges' decision:

The panel of judges found that Republican state legislators violated the First Amendment and the Fourteenth Amendment equal protection clause



Redrawing the congressional map:

- The judges wrote that the case “presents unusual circumstances,” acknowledging the closeness to a general election
- There are a few options at play:
 1. The court could appoint a Special Master to redraw a congressional map
 2. The court could give the NC legislature another chance to constitutionally redraw the districts with a deadline of Sept. 17
 3. NC could hold primary elections on November 6 and hold a general election at a later date

“ I think electing Republicans is better than electing Democrats, so I drew this map to help foster what I think is better for the country”

—**Rep. David Lewis**, in a statement to the NC General Assembly when passing the plan in 2016. The overt partisan intent of Republican legislators made it clear to the judges that the gerrymandering was unconstitutional

Update as of Sept. 4: The panel of judges determined that there is “insufficient time” to create new maps before the election and the existing map will be used in November

Sources: Robert Barnes, “North Carolina’s gerrymandered map is unconstitutional, judges rule, and may have to be redrawn before midterms,” *The Washington Post*. August 27, 2018; Scott Bland, “Court throws out NC congressional map before election,” *Politico*. August 27, 2018.

The North Carolina gerrymandering case is likely to go to the Supreme Court, where previous cases remain unclear

The Supreme Court on *Gill v. Whitford* and the implications for North Carolina

If the case is sent to the Supreme Court:

- The case will likely go before the Supreme Court, where the court blocked a lower-court order to redraw the partisan map
- Justice Anthony Kennedy retired in July
- With only 8 justices on the Court, a 4-4 decision would leave the lower court's ruling intact
- The Supreme Court has never ruled partisan gerrymandering unconstitutional

Gill v. Whitford:

- The plaintiffs in the case (12 Wisconsin Democrats) argued that the Wisconsin districts were gerrymandered unfairly against the Democratic party
- The Supreme Court ruled that the plaintiffs did not prove whether particular districts were gerrymandered
- The Court did not dismiss the case, and rather **sent it back to the district court for reargument**
- The case **failed to establish a precedent** for partisan gerrymandering, which leaves the future of North Carolina's case unclear

Expected breakdown of a potential ruling:

Against redrawing the congressional map



For redrawing the congressional map



Sources: Andrew Prokop, "The Supreme Court still won't crack down on partisan gerrymandering – yet, at least," *Vox*. June 18, 2018; Scott Bland, "Court throws out NC congressional map before election," *Politico*. August 27, 2018.