



Everything You Need to Know About Gerrymandering

It could keep Democrats out of the House for years to come.

Emma Sarran Webster Mar 31, 2017 5:53PM EDT

We recently learned that Barack Obama may return to politics, to take on the issue of gerrymandering. According to Politico, Eric Holder, who served as Obama's attorney general, said the former president is looking to help the National Democratic Redistricting Committee (NDRC) produce more fair congressional maps in the 2021 redistricting process. Wondering what exactly gerrymandering is, aside from being a word you remember hearing in your AP history class? Here's what you should know about the issue that's big enough to reel Obama back into politics.

What is "redistricting"?

Before we get into gerrymandering, we have to talk redistricting, which is at the core of the issue and important in determining who represents you in Congress.

Each state is partitioned into territorial divisions that contain a more or less equal number of constituents. These partitioned areas are known as congressional districts, and each elects one representative to serve his or her constituency in the U.S. House of Representatives. Redistricting is the process of redrawing the boundaries that determine congressional districts in each state, in order to balance the population among districts. The process takes place every 10 years, typically following the government census. Although redistricting occurs nationwide, the actual process varies by state. Michael Li, senior counsel of the Democracy Program at New York University's Brennan Center for Justice, a nonpartisan law and policy institute, tells Teen Vogue that in most states the maps are drawn by the politicians in the state legislature (sometimes with the help of advisors) and signed off on by the governor. In some states, though, independent and bipartisan commissions draw the maps instead. You can see which state uses which process on this map from Loyola Law School, Los Angeles, professor Justin Levitt.

The point of redistricting is to ensure that every voter has an equal say by creating equal-population-size districts — but that's not usually the end result. "It is unfortunately a process that oftentimes becomes politicized and an opportunity to try to manipulate the maps, rather than simply to draw fair maps," Li says. And that's where gerrymandering comes in.

What is “gerrymandering”?

Broadly, gerrymandering is when one political party redraws the boundaries to give it an advantage over its opposition. “There are a bunch of redistricting abuses that get clumped together under ‘gerrymandering,’” Li says. “You can think about them all as real harms...but they all have very different causes and they all have very different symptoms and they all have very different cures.”

One manifestation of gerrymandering occurs when the majority party in a state legislature manipulates district boundaries so that voters for the opposing party are either dispersed throughout the state so they won’t make up a majority in any district, or packed together in a minimum number of districts and don’t have enough representation in other districts to win the majority of the state’s House seats.

Gerrymandering can also be used to protect incumbents, such as when legislators create districts that strategically group together supporters of sitting representatives to minimize competition.

And then there’s racial gerrymandering, or when district lines are intentionally drawn to disperse minority groups, to dilute their influence in a district, thus making it impossible for them to elect representatives. “In other words, [it’s] ensuring that African-Americans or Latinos or other communities of color don’t have a sufficient seat at the table,” Li says. The Voting Rights Act of 1965, which outlaws discriminatory voting practices, prohibits redrawing districts for the purpose of minimizing the influence of racial minorities. Li also explains that in states where there tends to be “racially polarized” voting (meaning minority voters prefer different candidates than white voters do), the Voting Rights Act requires the drawing of majority-minority districts (meaning the majority of people within those districts are minorities), as long as those districts can be geographically “compact.” But drawing majority-minority lines can serve to disadvantage minority voters when “packing” them into just a few districts limits their influence in the rest of the state.

Both Democrats and Republicans have been known to gerrymander, but Republicans were also able to control the redistricting that took place in 2010 because they controlled the majority of state legislatures that year.

How has gerrymandering affected elections?

The fact that Republicans had that control in 2010 wasn’t a fluke; rather, it was the result of a strategic campaign called REDMAP (REDistricting MAjority Project), funded by the Republican State Leadership Committee (RSLC). “REDMAP was an effort by Republican-aligned groups to take over state legislatures in order to be able to control redistricting,” Li says. Prior to the 2010 congressional elections, Democrats held a majority in not only the U.S. Senate and House of Representatives (as well as the presidency, under Barack Obama) but also in most state legislatures. They controlled both legislative houses in 27 states, and one house in six states, and

had a Democratic governor in 29 states. To turn things around, the GOP poured nearly \$30 million into state elections — particularly in swing states like Ohio, Pennsylvania, and Michigan — and made historic gains, capturing control of both houses in 26 states, one house in five states, and 29 governorships.

Those gains came just in time for the 2010 redistricting, which put Republicans in the position to redraw district lines (which REDMAP also aided by providing mapping, technological, and legal help, according to Salon) to benefit their own party for the next 10 years' worth of elections.

“Where gerrymandering is the worst, where it is the most aggressive, is where one party has total control of the process and locks the other party out,” Li says. “And that’s what REDMAP was all about, making sure representatives were able to have sole control in as many states as possible.”

And it worked. In 2012, despite the fact that Democratic candidates for the House of Representatives won 1.1 million more votes than Republicans, Republicans maintained control of the House. The discrepancies were striking in swing states targeted by REDMAP. For example, in Pennsylvania, Democratic candidates won 51 percent of the popular vote but only 28 percent of the congressional seats; and in Ohio, Democrats won 48 percent of the popular vote but only 25 percent of the seats. Obama won both of those states on that same day. The Brennan Center estimates that, overall, redistricting likely caused the GOP to win about six more seats in 2012 than it would have under old district lines and 11 more seats than it would have in states where the GOP controlled redistricting, and it also protected at least eight Republican incumbents who would have lost reelection under old district lines. In 2014, *The Nation* reported, Republicans won 52 percent of the House votes but 57 percent of the seats.

It’s not just about winning seats and voting power in Congress, either. As *The Washington Post* noted, when Republicans aren’t concerned about losing their seats, courtesy of gerrymandered districts, they don’t have much reason to reach across party lines and compromise. If their party votes are locked in and Democratic voters hold no weight in their districts, then there’s no real need to appeal to them.

Why can parties get away with this?

“One reason in principle is that the Supreme Court hasn’t said, so far, that partisan gerrymandering is something that courts can police,” Li says. “They’ve recognized that partisan gerrymandering is a problem, they’ve recognized that it’s harmful to our democracy, but they haven’t agreed upon a standard for when partisan gerrymandering goes too far.”

Even though the Voting Rights Act outlaws racially discriminatory redistricting, the issue is complex for a couple reasons. Section 5 of the Voting Rights Act is a provision that requires states with a history of racial discrimination to get “preclearance,” or approval, from the justice department on any redistricting that would affect minorities. But in 2013, the U.S. Supreme Court overturned Section 4, a provision of the Voting Rights Act that determines which states are covered by Section 5. So without Section 4, there’s not much to Section 5.

And then there's the aforementioned issue of drawing majority-minority districts and thus limiting minority influence across multiple districts. In court cases arguing that states racially gerrymandered districts via packing, legislators claim they were simply abiding by the Voting Rights Act when they created districts made up primarily of minorities.

Will it ever end?

The tides could be turning. After the elections in November 2016, and after a federal court found that 28 districts in North Carolina were, according to *The News & Observer*, "unconstitutional racial gerrymanders," the state was ordered to hold a special legislative election in 2017. And this month the Supreme Court has called for further review of potential racially gerrymandered Virginia state districts, while federal judges have ruled that the Texas legislature racially gerrymandered some of its districts.

In terms of partisan gerrymandering, all eyes are currently on the upcoming Supreme Court case *Whitford v. Gill*. In November 2016 a federal district court ruled that Wisconsin's partisan gerrymandering was unconstitutional, the first time a federal court has ever "invalidated a gerrymander for providing unfair advantage to a political party," according to *Salon*. The state has appealed the decision, and the Supreme Court will likely hear the case later this year.

"I expect if the court rules that the Wisconsin map was in fact unconstitutional partisan gerrymandering, then we'll see a lot more suits and a lot more maps changing, perhaps for the 2018 election but certainly for the 2020 election that leads into the next redistricting cycle," Li says. "So suffice it to say, the Wisconsin ruling would be a really big deal."

But, he notes, even if the Supreme Court doesn't rule against the state in this case, other cases could see success. Li says: "If the Supreme Court doesn't bite on *Whitford*, it might still rule that partisan gerrymandering is unconstitutional in the case out of Maryland or out of North Carolina because those involve different facts and different theories. But if it doesn't do so in any of the cases, then what you've seen in these elections is that parties are very effective in locking themselves into power. These gerrymanders out of the 2010 cycle have been some of the most durable and lasting and hard-to-defeat of any gerrymanders in history," factors he credits to advances in technology that allow legislators to gather detailed information and data to hone in on voters. "The [idea] about politicians picking their voters," he continues, "is really evident on these maps, and it's a real problem, and it's going to get worse if the courts don't step in."

So what's next?

Court cases aren't the be-all and end-all for fighting gerrymandering. A big part of the push for gerrymandering reform is determining the fairest methods for drawing districts. Arguments have been made for prioritizing compactness and even using computer algorithms, but neither of those methods necessarily takes into account "communities of interest." Focusing on compactness, Li says, "would be saying the shape of a district or the size of a district has to be more important

than keeping communities of color together or keeping school district zones together or keeping towns together.”

Advocates for reform are looking beyond determinations for redistricting, focusing increasingly on the transfer of redistricting power from partisan state legislatures to independent multiparty commissions — an arrangement that has proved successful in Canada. On the state level, some voter-passed initiatives have succeeded in taking redistricting out of legislators’ hands and putting it into the hands of an independent body, while the Redistricting Reform Act of 2016, introduced by 47 House Democrats in February of this year, aims to make it a nationwide rule.

“A lot of people, as you go around the country, will tell you, ‘I don’t vote in these elections, because the results are predetermined and the system is rigged — and the people aren’t necessarily wrong,” Li says. “Politicians have been pretty good at drawing districts to achieve a certain end. But a lot of things can be done to have a greater transparency and build a greater trust in the system, either through the courts or through reforms that would create commissions and things like that, which take the process out of the hands of lawmakers.”

