

REDISTRICTING

Redrawing Maps the Right Way

States have an opportunity to make a fresh start and achieve greater cooperation when redistricting.

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The U.S. Supreme Court's recent *Rucho v. Common Cause* decision has closed the federal court door to partisan gerrymandering cases, but the fighting over redistricting plans is far from over. Plans considered "too partisan" may face challenges in state courts in the future, and those alleged to be racial gerrymanders can still be challenged in federal and state courts.

Several states that recently adopted bipartisan redistricting reform can provide lessons to legislators on how to promote fair procedures, transparency and civility, and avoid costly challenges in the upcoming round of line-drawing.

In addition to population equality disputes, challenges to redistricting maps have generally fallen into one of two categories: racial gerrymandering and partisan gerrymandering.

Gerrymanders and Recent Litigation

Racial gerrymandering occurs when minority voters are "packed" into districts beyond the necessary threshold to enable them to elect their preferred candidates. Courts have found this practice violates the 14th Amendment's equal protection standard. The courts have also set standards for what constitutes Voting Rights Act violations to better define the scope of these challenges.

Partisan gerrymandering generally oc-

curs where the majority party intentionally draws districts to minimize the ability of the minority party to elect candidates.

In the most recent round of litigation, both types of gerrymanders have been at issue. Cases alleging racial gerrymandering are pending in federal courts in Alabama, Connecticut, Georgia, Louisiana, Mississippi and Texas. In June, the Supreme Court dismissed the appeal of a racial gerrymandering case from Virginia on the grounds that the Republican-led House of Delegates, alone, lacked the necessary legal standing to appeal a lower court ruling. That lower court had invalidated 11 state House districts for being illegally gerrymandered on the basis of race. The Supreme Court's ruling left in place the court-ordered replacement districts that favored Democrats.

Over the years, courts have struggled with cases alleging partisan gerrymandering. In a 1986 case involving state legislative districts in Indiana, the Supreme Court held that charges of partisan gerrymandering (when one party is deliberately favored over another) could be heard in federal courts if challengers could prove that a redistricting plan was drawn with the intention and effect of disadvantaging members of a political party.

Yet in a 2004 case involving congressional districts in Pennsylvania, the court concluded that no judicially manageable standard existed.

The final die was cast in June when the Supreme Court decided in *Rucho* that par-

tisan gerrymandering is indeed a political question and, thus, not reviewable by federal courts. The 5-4 ruling came out of two cases challenging congressional lines, from Maryland and North Carolina, and consequently put the responsibility on legislatures and individual states to police redistricting efforts. How this decision will affect pending federal cases in Michigan and Ohio is unknown, but the cases will likely be set aside. Another partisan challenge is pending in North Carolina state court. One case in Wisconsin has already been dismissed.

While the *Rucho* decision may have ended the federal court fight against partisan gerrymandering, challengers may start flooding state courts, arguing that state constitutions protect against partisan mapmaking. Other states for the first time will be using new mechanisms such as redistricting commissions. And while Congress could adopt legislation applicable to states for congressional redistricting, such measures historically face long odds and that's likely to be the case in the current Congress.

Lessons From the States

Redrawn maps often end up in court after a breakdown in communication and cooperation between the two political parties. Often, challengers claim the majority party did not provide the minority party with a meaningful role in the process. The majority party generally disputes such charges, arguing that the processes fol-



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lowed were fully within its constitutional authority. And back and forth it goes.

New York and Ohio offer lessons on how legislatures can avoid this partisan paralysis. In 2014, New York voters approved a constitutional amendment crafted by a Democratic Assembly, a Republican Sen-

ate and a Democratic governor. It established an advisory redistricting commission appointed by legislative leaders to recommend up to three congressional and state legislative plans for the Legislature's consideration and approval.

The New York Legislature will still control the redistricting process since it can draw its own plans if the commission's plans are rejected. But requiring affirmative votes of commission members appointed by the minority party is a key to fostering greater bipartisan cooperation in developing a plan.

In Ohio, separate constitutional amendments submitted by the General Assembly were overwhelmingly approved by voters in 2015 and 2018. They change how the state draws its legislative and congressional districts beginning in 2021.

The 2015 amendment adds more mi-

Who's in Charge?

In two-thirds of the states, the legislature has responsibility for redistricting. Increasingly, though, states are moving to a commission model. According to NCSL data, Colorado, Michigan, Missouri and Utah created new redistricting commissions in 2018. Commissions in New Hampshire and Virginia are pending.

Fourteen states have a commission that has primary responsibility for redrawing state legislative districts; seven states have them for congressional districts. Six states have an advisory commission that may assist with drawing legislative or congressional lines. Five states use a backup commission to draw legislative districts if legislators are unable to agree on a plan. And three other states use backup commissions for stalemates in redrawing congressional districts.

And then there's Iowa, which conducts redistricting like no other state. Nonpartisan legislative staff, without any political or election data, including the addresses of incumbents, draw up several possible plans for state and federal districts. The General Assembly then votes on the one to adopt (and can create its own map if it chooses to do so).

nority party members to the state's redistricting commission and requires bipartisan approval of all newly drawn state legislative maps to ensure they will remain effective for a decade.

The 2018 amendment similarly requires bipartisan approval for the state's congressional districts. While the General Assembly retains its authority to draw congressional districts, the state's newly reformed redistricting commission will now be a backup for approving a congressional map.

Instead of relying on the courts, states have an opportunity to make a fresh start and achieve greater cooperation. Civility across party lines, standards, fairness and transparency will help. By following an objective, criteria-driven process, legislative leaders from both parties can be assured their state's redistricting processes will respect the will of the voters.

Commonsense Steps Can Yield a Better Process

So, what specifically can lawmakers do to improve the redistricting process? Here are some suggestions:

1 Work together to achieve a complete census count, knowing that both urban and rural districts have their challenges. A full and fair count is fundamental to our representative democracy.

2 Study the Census Bureau's redistricting operations. Learn how the bureau prepares redistricting data maps

through the Block Boundary Suggestion Project, a nonpartisan effort to ensure that physical features align with census data geography when the data are provided to states in 2021.

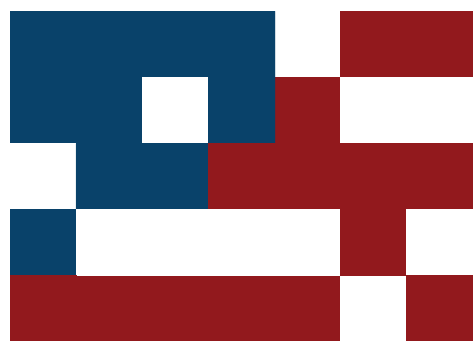
3 Develop user-friendly redistricting websites. These should include information on state redistricting laws, committee memberships, contact information, schedules, maps, census data and histories of previous redistricting processes. Offer as much information as possible.

4 Apply meaningful criteria to guide the process and help avoid prolonged litigation. In addition to adhering to the federal Voting Rights Act, strive for districts that are equal in population, keep communities of interest intact and follow defined standards for compactness and contiguity. Ensure the criteria is flexible enough to provide decision-makers with reasonable discretion.

5 Maintain transparency once redistricting begins so the public can offer meaningful input and not feel left out of the process. Schedule public hearings at convenient times and places throughout the state before draft maps are developed and before final plans are adopted. Open all redistricting meetings and hearings to the public and news outlets.

State legislatures and commissions can help prevent the legal challenges that have marked the last 10 years by creating a responsive redistricting process that lets everyone participate in a meaningful way. If basic rules of law, civility and fairness are followed, lawmakers can expect high marks from the public.

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