



# POWER on the LINE(S)

Making Redistricting Work for Us

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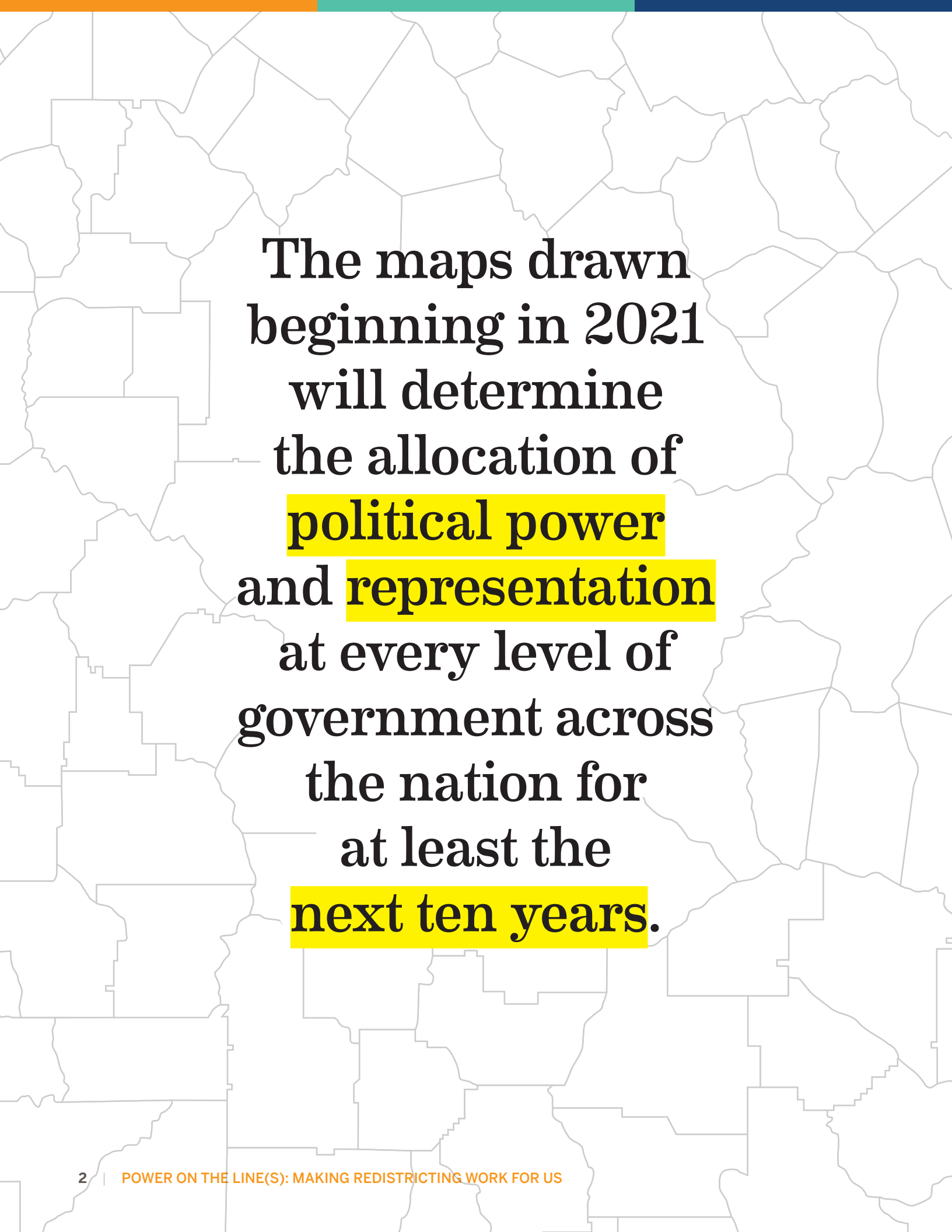


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**The maps drawn  
beginning in 2021  
will determine  
the allocation of  
political power  
and representation  
at every level of  
government across  
the nation for  
at least the  
next ten years.**

# Introduction

The first two decades of this millennium have proven to be incredibly eventful with regard to political representation in the United States. America's first Black president was elected and reelected to a second term. This country elected the first woman, and the first Black and South Asian person, to serve as vice president. Thousands of elections have been held for official positions in municipal governments, state governments, and the federal government. Our nation has continued to grow more racially and ethnically diverse. In at least four states—Texas, California, Hawaii, and New Mexico—Latino, Black, and Asian American people together now constitute a majority of the population.<sup>1</sup> Across the country, more than 10,000 Black, 6,000 Latino, and 1,000 Asian American elected officials represent our communities.<sup>2</sup> These realities certainly show progress. Yet there is much work ahead to ensure the full and meaningful representation of people of color in elected office and to safeguard the equal opportunity of voters of color to elect candidates of their choice.<sup>3</sup>

In the face of the many changes in our country's political and demographical landscape, one thing remains constant: the American people are the bedrock of our system of government, and it is our right to engage in the political process to achieve a more equitable nation and better lives for everyone. Achieving equal representation and being able to cast equal and effective votes depend in part on redistricting maps that are drawn fairly to reflect and respect our communities. Redistricting encompasses the process by which states and the jurisdictions within them redraw the district maps that shape legislative, congressional, and local power. The maps drawn for the post-2020 redistricting cycle will determine the allocation of political power and representation at every level of government across the nation for at least the next ten years. The redistricting process, therefore, should be on everyone's radar as we approach the next cycle of drawing district lines following the 2020 decennial Census.

This is a guide to familiarize you with what redistricting is all about, and to provide you with ways you can make sure your voice is heard in the redistricting process for the seats that affect you.

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1 Michael Maciag, *A State-by-State Look at Growing Minority Populations*, *Governing.com* (June 25, 2015), <https://www.governing.com/topics/urban/gov-majority-minority-populations-in-states.html>.

2 Khalilah Brown-Dean, Zoltan Hajnal, Christina Rivers & Ismail White, Joint Center for Political & Economic Studies, *50 Years of The Voting Rights Act: The State of Race in Politics* 4 (2015), <https://jointcenter.org/wp-content/uploads/2019/11/VRA-report-3.5.15-1130-amupdated.pdf>.

3 *Id.*

*This guide is a resource, not legal advice. It is provided for informational purposes only and not as a substitute for or supplement to the legal advice necessary to address the specific concerns of any individual. Moreover, applicable federal, state, and local laws may be revised or affected by litigation after the publication of this guide. Therefore, it is your responsibility to determine how all applicable legal considerations affect you.*



## CHAPTER 1

# Frequently Asked Questions about Redistricting

## What is Redistricting?

Redistricting is the process by which states and the jurisdictions within them redraw the lines that encompass electoral districts. These districts are the geographical areas from which political representatives are elected on the local, regional, state, and federal levels. The residents of each electoral district vote for who will govern them and represent them—in the U.S. House of Representatives, state legislatures, county commissions, city councils, school boards, and more. According to the U.S. Constitution, all electoral districts within a given redistricting map must contain approximately the same number of people.<sup>4</sup> This principle is an important starting point. But there are many other factors and criteria that also influence how district lines are drawn.

## What does the U.S. Census have to do with Redistricting?

Electoral districts must be drawn according to various criteria (detailed in **Chapter 2** of this guide). These criteria require current data, so that the districts can be developed to accurately encapsulate all of the people who reside within them. Data collected by the Census Bureau are used to redraw district lines. According to federal law, “tabulations of population for the areas identified in

4 U.S. Const. art. 1 § 2; see *Wesberry v. Sanders*, 376 U.S. 1, 7-18 (1964); *Reynolds v. Sims*, 377 U.S. 533, 568 (1964); *Avery v. Midland Cty., Tex.*, 390 U.S. 474, 484-86 (1968).

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**2020**

any plan... for legislative apportionment or districting... shall... be completed, reported, and transmitted to each respective State within one year after the census date.”<sup>5</sup> Thus, once Census data are released, state governments, redistricting committees, community organizations, and residents can proceed with redistricting based on the population data. For more information on Census data, see **Chapter 5** of this guide.

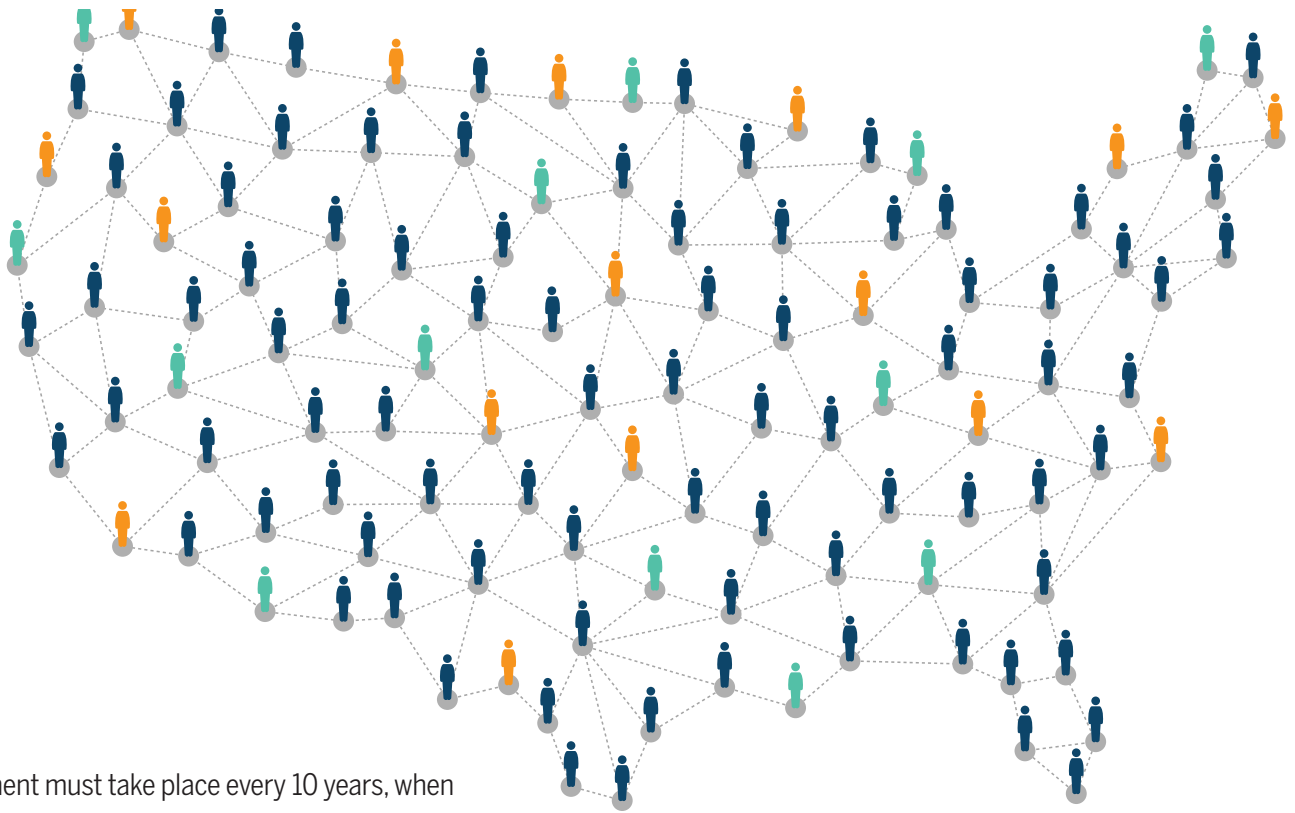
## What is the difference between redistricting and reapportionment?

**Redistricting** is the process of redrawing district lines, and **reapportionment** is the process of allocating electoral seats to specific geography, for example allocating seats in the U.S. House of Representatives to each state.<sup>6</sup> Both processes are based on population counts. And because populations change over time, both redistricting and

5 13 U.S.C. § 141.

6 Some states use the terms “reapportionment” and “redistricting” to mean the same thing. However, this guide will use reapportionment only when referring to the allocation of seats in the U.S. House of Representatives to the states.





reapportionment must take place every 10 years, when Census data become available.

Generally, the number of seats in **state legislatures** is fixed by law or state constitution, so that number does not change after the decennial Census. However, the number of seats allocated to each state in the **U.S. House of Representatives** (*i.e.* Congress) does change, as states' populations change. Every 10 years, through the reapportionment process, the 435 seats in the U.S. House of Representatives are distributed proportionally to the 50 states according to their populations; the larger a state's population, the more House seats it gets.<sup>7</sup> And, within states, the districts from which House seats are elected must be redrawn every 10 years to ensure that the populations of those districts are as close to equal as possible.<sup>8</sup>

Therefore, redistricting and reapportionment are related but distinct processes, and they serve different purposes.

## Distinct Processes, Different Purposes

**Redistricting**  
(redrawing district lines)  
v. **Reapportionment**  
(allocating electoral seats to specific geography)

<sup>7</sup> U.S. Const. art. 1 § 2.

<sup>8</sup> *Id.*

## Why does redistricting matter?

Where district lines are drawn may determine where residents can vote, whom they can vote for, and even how responsive elected officials are to constituents' requests. Moreover, the 2013 U.S. Supreme Court ruling in *Shelby County, Alabama v. Holder*, made Section 5 of the Voting Rights Act, an important tool to protect against discriminatory redistricting, effectively inoperable.<sup>9</sup> That means that jurisdictions with the worst records of racial discrimination in redistricting (and other practices) no longer have to seek federal pre-approval of their redistricting plans before they can be implemented. Advocates are working to pass federal legislation, pending before Congress, which would restore this pre-approval process. However, until its enactment, the absence of the federal government's pre-approval process before redistricting plans can go into effect is a major detriment to voters of color going into this next redistricting cycle. Thus, the planning and work that communities must do to protect against unfair and discriminatory redistricting plans is now all the more important.

Additionally, at the federal level, the U.S. Supreme Court has refused to curb what's known as "partisan gerrymandering," which occurs when a political party manipulates the redistricting process for political advantage, regardless of what the voters want.<sup>10</sup> This manipulative practice can sometimes negatively affect communities of color.<sup>11</sup> Left unchecked, actors will continue to draw maps that favor their preferred political party often to the detriment of voters of color. Until the

courts or new legislation curb partisan gerrymandering, going into the next redistricting cycle, voters may have one less tool to fight back against redistricting plans that manipulate voters based on their party affiliation.

Now more than ever, therefore, we must all participate in the redistricting process to prevent jurisdictions from engaging in discriminatory redistricting whether based on race, party affiliation, or some other identity. Your vote and your political power—your voice in our democracy—are on the line.

## Who draws the new district lines?

Who has the authority to draw electoral lines varies with each state and the jurisdictions within each state. In most states, that entity is the state legislature itself; most state legislatures additionally hold public hearings or consider public maps, providing an opportunity for community input, transparency, and inclusivity in the redistricting process. However, because redistricting directly affects incumbent legislators and their ability to be reelected, state legislators may prioritize their own re-election and particular racial groups or political parties whom they perceive as likely to support them over other criteria and policies during redistricting. Some (but not all) states have laws and constitutional provisions that attempt to combat these self-interested practices. Even when they do not, federal laws and the U.S. Constitution can be sources of protection against redistricting abuses.

In some other states, the entity that draws new district lines is an independent redistricting commission (IRC). IRCs have been established to try to divorce politics from the redistricting process and ensure more fairness. However, IRCs may not reflect the racial diversity of communities within their jurisdictions. IRCs also may not be immune to political motives. Research published by students and professors at Yale University and the University of California, Los Angeles contends that IRCs may gerrymander just as much as state legislators.

9 *Shelby County, Alabama v. Holder*, 570 U.S. 529, 556–57 (2013).

10 *Rucho v. Common Cause*, 139 S. Ct. 2484, 2506–07 (2019) (ruling "that partisan gerrymandering claims present political questions beyond the reach of the federal courts").

11 Olga Pierce & Kate Rabinowitz, 'Partisan' Gerrymandering Is Still About Race, ProPublica (Oct. 9, 2017), [www.propublica.org/article/partisan-gerrymandering-is-still-about-race](http://www.propublica.org/article/partisan-gerrymandering-is-still-about-race).

According to one study, “independent redistricters produce virtually the same degree of insulation as plans devised in legislatures or by politician commissions.”<sup>12</sup> In other words: “independent commissions may not be as politically-neutral as theorized.”<sup>13</sup> This might be due to the mechanisms by which members of the commission are chosen to serve. For example, in some states, politicians or people with vested political interests are responsible for appointing the members of commissions, resulting in commission membership that is still politically skewed—and maps that are still manipulated.

### When does the redistricting process take place?

Redistricting processes in all states rely upon population data from the U.S. Census. See **Chapter 5** of this guide for more information on the U.S. Census. Because the Census is conducted every 10 years, redistricting also takes place every 10 years.<sup>14</sup> That means that the next redistricting cycle in many states will begin in 2021, when updated population data from the 2020 Census are released. The actual timeline of the redistricting process and deadlines varies across states. Some states must submit and enact redistricting plans within two or three months of receipt of Census population data, and some states don’t have official redistricting deadlines. Inform yourself about the specific redistricting timelines and key redistricting dates by visiting the websites of your state’s legislative bodies.<sup>15</sup>

### How has redistricting been used to diminish voting power and capacities of communities of color?

Unfortunately, there is a long history of federal, state, and local officials using the redistricting process as a mechanism for excluding voters of color from the body politic, and/or diminishing their voting power.<sup>16</sup> These schemes most often occur when legislative bodies or redistricting commissions believe that they can ignore the interests of voters of color, or when communities of color and the groups that represent them are not involved in the redistricting process. Thus, your involvement in the process is of the utmost importance. The following are just a few of many examples of attempts to minimize the political power of people of color across America in the last decade.<sup>17</sup>

Where **district lines are drawn** may determine where residents can vote, whom they can vote for, and even how responsive elected officials are to constituents’ requests.

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12 John A. Henderson et al., *Gerrymandering Incumbency: Does Nonpartisan Redistricting Increase Electoral Competition?*, 80 J. Pol. 1011–16 (2018), <https://doi.org/10.1086/697120>.

13 *Id.*

14 13 U.S.C. § 141.

15 National Conference of State Legislatures, *State Redistricting Deadlines* (Mar. 29, 2021), <https://www.ncsl.org/research/redistricting/state-redistricting-deadlines637224581.aspx>; see also **Appendix 2**.

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16 Brennan Center for Justice, *7 Things to Know about Redistricting* (July 3, 2017), [www.brennancenter.org/analysis/7-things-know-about-redistricting](http://www.brennancenter.org/analysis/7-things-know-about-redistricting).

17 Although this guide focuses on the impact of redistricting on the communities served by the authors of this guide (i.e., Black, Latino, and Asian American), other communities of color, such as Native American people, also are affected by the redistricting process. To learn more, see, e.g., Native American Rights Fund, *Native American Voting Rights, Redistricting in Indian Country*, <https://vote.narf.org/redistricting/>.



## Black Voters

Following the release of Census data in 2011, North Carolina's state legislature engaged in an egregious act of racial gerrymandering to dilute the voting power of Black voters. In North Carolina, despite ongoing patterns of stark racial segregation,<sup>18</sup> Black voters reside in relatively dispersed neighborhoods of the state's metropolitan areas.<sup>19</sup> Counties in the state's northeastern region have the highest concentrations of Black North Carolinians; in 2013, there were 17 counties in the northeastern region where Black people made up between 34% and 62% of the population.<sup>20</sup> The other region of North Carolina where large populations of Black people reside is the southwestern region—especially Anson County, which borders South Carolina, where almost 50% of the population was Black in 2013.<sup>21</sup> Aware of these demographics and residential patterns, elected officials in the state attempted to “pack” Black voters into just two districts to diminish the potency of Black voters across the state.<sup>22</sup> Specifically, in 2011, the state legislature drew two districts that encapsulated 33.4% of the entire Black population of North Carolina: Districts

1 and 12.<sup>23</sup> Neither district included geographically compact Black neighborhoods. For example, District 12 encompassed a large portion of Charlotte, and then stretched northwards, almost crossing the entire state, so as to capture Black voters residing in Winston-Salem and Greensboro; the Charlotte and Greensboro metropolitan areas have two of the largest Black populations in the U.S. In 2013, residents of District 1 filed suit against the governor of North Carolina, challenging the 2011 map as a racial gerrymander. The case eventually reached the U.S. Supreme Court, and the Court held the redistricting plan unconstitutional.<sup>24</sup> Despite the positive ruling, the discriminatory districts had already been in place for six years, from their initial enactment in 2011 to their rejection by the Supreme Court in 2017; thus, the state's “redistricting decisions [had] pronounced consequences for black and white voters.”<sup>25</sup> An analysis of the electoral consequences noted that elections that took place between 2011 and 2017 “created Republican advantages in the state's general assembly,” and more specifically a “veto-proof super-majority” for the GOP.<sup>26</sup> With this super-majority, the legislature was able to pass legislation including an omnibus voter suppression law, which entailed drastic cuts to early voting, elimination of same-day registration and pre-registration for 16- and 17-year-olds, and a strict voter-ID requirement, which has

18 Douglas S. Massey & Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass* (1998).

19 Index Mundi, U.S. Bureau of the Census, *Population Estimates Program: North Carolina Black Population Percentage, 2013 by County*, <https://www.indexmundi.com/facts/united-states/quick-facts/north-carolina/black-population-percentage#map> (last visited Mar. 30, 2020).

20 *Id.*

21 *Id.*

22 *Cooper v. Harris*, 137 S. Ct. 1455, 1476–78 (2017). In addition to racially discriminatory redistricting, courts have also held that North Carolina officials engaged in illegal partisan gerrymandering. *Common Cause v. Lewis*, No. 18 CVS 014001, 2019 WL 4569584 (N.C. Super. Sep. 03, 2019).

23 Index Mundi, *supra* note 19; Rebecca Tippet & Caylin Bullock, *Redistricting North Carolina's U.S. House Seats: District 1, 2001 v. 2011 Boundaries* (2015), [https://www.ncdemography.org/wp-content/uploads/2015/11/NC\\_District\\_1.pdf](https://www.ncdemography.org/wp-content/uploads/2015/11/NC_District_1.pdf); Rebecca Tippet & Caylin Bullock, *Redistricting North Carolina's U.S. House Seats: District 12, 2001 v. 2011 Boundaries*, Carolina Population Center (2015), [https://www.ncdemography.org/wp-content/uploads/2015/11/NC\\_District\\_12.pdf](https://www.ncdemography.org/wp-content/uploads/2015/11/NC_District_12.pdf).

24 *Harris*, 137 S. Ct. at 1481–82.

25 Brentin Mock, *North Carolina's Tainted 2016 Primary Election*, CityLab (Feb. 9, 2016), <https://www.citylab.com/equity/2016/02/north-carolinas-tainted-2016-primary-election-racial-gerrymandering/461976/>.

26 *Id.*



*Photo by Scott Olson/Getty Images*

been shown to be “harmful for minority voters.”<sup>27</sup> The 2011 redistricting damaged the political power of Black and Brown communities across the state—not only because of the redistricting process itself, but also because of the power to enact harmful policies that manipulative redistricting enables. The North Carolina gerrymandering and its consequences show how important it is for communities to closely review the redistricting plans proposed by state governments because of the serious collateral consequences that they have on policy changes that communities of color need.

**Elected officials in North Carolina attempted to “pack” Black voters into just two districts to diminish the potency of Black voters across the state.**

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<sup>27</sup> *Id.*

## Latino Voters

### ■ Kern County, California

Following the 2010 Census, in Kern County, California, local officials drew new election district lines that split apart the Latino community in the northern part of the county to avoid creating a second Latino-majority district for the 5-member County Board of Supervisors. Although there was a large number of Latino voters living in northern Kern County, local officials split the cities of Delano and McFarland from Wasco in order to ensure that Anglos remained in the majority of districts in that area. Latino voters sued and in February 2018 the court ruled that the Kern County redistricting plan violated the federal Voting Rights Act.<sup>28</sup> Kern County then agreed to create two Latino opportunity districts in its redistricting plan and settled the case.

### ■ Texas

When redistricting the state House of Representatives after the 2010 Census, the Texas Legislature ignored Latino population growth in the Rio Grande Valley and refused to add an additional representative seat in that area. Latino voters brought suit, and a federal court created a remedial redistricting plan that contained a new Latino majority district in that region.<sup>29</sup> The resulting redistricting plan afforded Latino voters in the Rio Grande Valley an additional opportunity to elect a candidate of choice to the Texas House and more fairly reflected Latino population in the region.

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28 *Luna v. County of Kern*, 291 F. Supp. 3d 1088 (E.D. Cal. 2018).

29 *Perez v. Texas*, No. 11-360 (WDTX) Dkt. 690 at 5.

### ■ Illinois

In Illinois following the 2010 Census, the Latino population had grown enough to consider creating a second Latino-majority congressional district. In the end, though, two districts could not be drawn that would provide Latino voters a consistent opportunity to elect their candidates of choice, so only one Latino-majority congressional district was in the adopted plan. Nonetheless, openly partisan interests filed a lawsuit under the Voting Rights Act seeking to reduce the Latino population in the one drawn Latino-majority district and creating another district with a significant, but clearly minority, Latino population. By reducing the Latino population in the Latino-majority district, the partisan litigants threatened the Latino voting community's ability to ensure the election of its candidate of choice in that district. Fortunately, the litigation failed to secure the proposed weakening of the Latino-majority congressional district.<sup>30</sup>

**Your vote and  
your political  
power—your  
voice in our  
democracy—  
are on the  
line.**

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30 *Comm. for a Fair & Balanced Map v. Illinois State Bd. of Elections*, 835 F. Supp. 2d 563 (N.D. Ill. 2011).





## Asian American Voters

Historically, areas with significant Asian American populations were split into different districts (also known as “cracking”), which reduced the voting power of those populations. The impact of this cracking for Asian Americans is best illustrated by what happened in 1992 during the aftermath of the civil unrest in Los Angeles, which took a heavy toll on many neighborhoods, including the area known as Koreatown. It is estimated that the city suffered damages of more than \$1 billion, much of it concentrated on businesses operated by Korean Americans and other Asian American immigrants. When residents of Koreatown appealed to their local officials for assistance with the cleanup and recovery effort, however, each of their purported representatives—members of the City Council and the State Assembly—passed the buck, claiming that their specific part of Koreatown was in another official’s district. This denial of responsibility occurred because new district lines drawn after the 1990 Census fractured Koreatown. The map split Koreatown, barely over one square mile, into four City Council districts and five State Assembly districts, and because Asian Americans did not make up a significant portion of any official’s constituency, officials were left with little incentive to respond to the Asian American community.

Around the U.S., each redistricting cycle since then has continued this trend of dividing Asian American communities across multiple districts. After the 2000 Census, five Illinois Senate districts were over 10% Asian American; yet, after the lines were redrawn in 2001, only two Senate districts remained over 10% Asian American. The 2001 redistricting divided Chicago’s Chinatown—a compact community whose members have common ground in terms of history, ethnicity, language, and social concerns—from two Illinois Senate districts into three Senate districts, and from three Illinois House districts into four House districts. In addition to the Chicago

Chinatown area, past redistricting has fragmented several other Asian American communities, including the area encompassing Devon Avenue, Lincolnwood, and Skokie, which was divided into two different Senate districts, and the Albany Park area in Chicago, which was similarly divided.

In Georgia, after the 2010 Census, there was a 107% increase among Asian Americans in the city of Duluth, with Asian Americans representing 22% of the city. Out of the 6,400 businesses in Duluth, over 1,700 were Asian-owned. Advancing Justice – AAJC’s local partner, Center for Pan Asian Community Services, Inc., advocated to keep Duluth in one district for the Georgia House of Representatives during the redistricting cycle following the 2010 Census. Unfortunately, the proposed House redistricting map split Duluth into three House districts. An analysis of the three districts containing the city of Duluth showed that each district had a significant Asian American population (with the Asian American population comprising 20% each of District 97 and District 96, and almost 12% of District 95).

**The map split Koreatown, barely over one square mile, into four City Council districts and five State Assembly districts.**

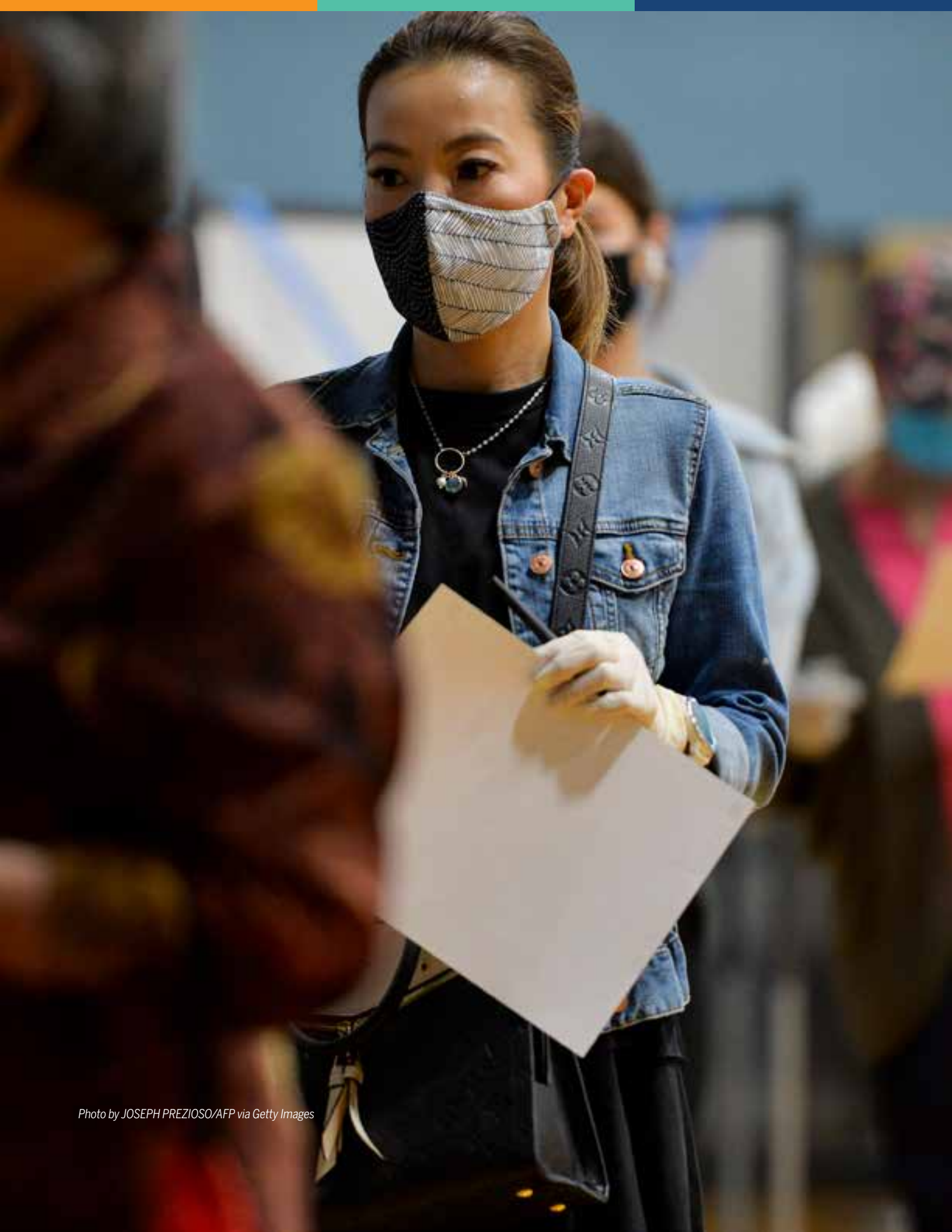


Photo by JOSEPH PREZIOSO/AFP via Getty Images



## CHAPTER 2

# Key Redistricting Standards and Concepts

## What are the types of electoral districts?

There are various types of electoral districts at all levels of government. The three main types of electoral districts are those for state legislatures (“legislative” districts), those for the U.S. House of Representatives (“congressional” districts) and those for local bodies like counties, cities and school districts. There can also be districts for electing judges, depending on where you live. It is important to distinguish between these types of districts because they refer to positions at different levels of government, and different legal constraints apply to them. For example, the main difference between legislative and congressional districts is that legislative districts serve state governments, while congressional districts serve the United States federal government. Also, legislative, congressional, and local electoral districts differ in size, shape, and number—so your legislative districts will not be the same as your congressional districts.

**State legislative** districts are used to elect members of the state legislature, such as state senators and state representatives. Most state legislatures have two chambers, such as a state senate and a state house of representatives. Typically, a state’s legislature’s “upper” chamber, such as a state senate, will have fewer seats, so it has fewer districts statewide. These districts are also larger geographically and have more population.

A “lower” chamber, such as a state house of representatives (sometimes called a state assembly), has more districts statewide and geographically smaller, less populous districts.

**Congressional districts** are used to elect members of the U.S. House of Representatives. The number of U.S. House seats awarded to each state is based on the state’s population in the most recent Census. During the reapportionment process, the total number of U.S. House seats (435) is distributed across the states. Each decade, a few states *lose* one or more congressional seats, while other states *gain* one or more congressional seats. That means these states’ populations have either increased or decreased, relative to the rest of the nation, since the last Census. The goal of awarding congressional seats to states based on population is to make sure that congressional power is fairly distributed.<sup>31</sup>

By contrast, the number of seats in state legislatures generally remains the same each decade, because it is set either by law or by the state constitution. However, because the U.S. Constitution requires that there be roughly the same number of people in each state legislative district, where your district lines are drawn for

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31 See pages 26 and 27 of this guide to learn which states gained and lost House seats based on the apportionment following the 2020 Census.



CONSTITUENCY

VOTING POWER

MAJORITY-MINORITY DISTRICTS

COMMUNITY OF INTEREST

INFLUENCE

POLITICAL ADVANTAGE

RACIAL MINORITIES

MANIPULATE BOUNDARIES

COMPACTNESS

DISTRICT BOUNDARIES

BOUNDARIES

VOTING

ELECTORAL CONSTITUENCY

POLITICAL GEOGRAPHIC BOUNDARIES

VOTER BASE

PACKING

INCUMBENTS

TACTICS

NEIGHBORHOOD

PARTICULAR DEMONSTRATION

REDRAWING DISTRICT LINES

REELECTION

CRACKING

FAVOR ONE PARTY

SOCIAL CLASS

ETHNIC

LINGUISTIC

ENTRENCHED INCUMBENTS

VOTING POWER

MAJORITY-MINORITY DISTRICTS

COMMUNITY OF INTEREST

INFLUENCE

POLITICAL ADVANTAGE

MANIPULATE BOUNDARIES

COMPACTNESS

DISTRICT BOUNDARIES

MAP REDRAWING

PACKING

INCUMBENTS

TACTICS

NEIGHBORHOOD

RACIAL

HELP

COALITION

RESULTS

OPPORTUNITY

ELECTORAL CONSTITUENCY

POLITICAL GEOGRAPHIC BOUNDARIES

ELECTORAL RESULTS

VOTER BASE

REDRAWING DISTRICT LINES

REELECTION

FAVOR ONE PARTY

SOCIAL CLASS

ENTRENCHED INCUMBENTS

OPPORTUNITIES

state legislatures likely *will* change each decade, at least somewhat, to reflect population changes. The same is true for local election districts. The requirement that roughly the same number of people live in each election district means that after the Census the district boundaries have to be adjusted where there have been shifts in population.<sup>32</sup>

As a resident, you live in multiple election districts. For example, every resident of New York City lives in a congressional district, a New York State Senate district, a New York State assembly district, a borough, and a city council district. You can learn more about the redistricting process and structure in your state by visiting the websites of your state's legislative bodies. You can learn more about the redistricting process and structure in your state in

## Appendix 2.

The U.S. Senate works differently and is not impacted by redistricting: every state has two U.S. senators, regardless of population, and those senators are elected statewide.<sup>33</sup>

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32 In some states, judges are elected. To learn more about the method in your state, see *How many states elect judges? With more than 20 different selection systems, that's a very complicated question*, National Center for State Courts (Nov. 2, 2020), <https://www.ncsc.org/information-and-resources/trending-topics/trending-topics-landing-pg/how-many-states-elect-judges-with-more-than-20-different-selection-systems-thats-a-very-complicated-question>; Brennan Center for Justice, *Judicial Selection: Significant Figures* (May 8, 2015), <https://www.brennancenter.org/our-work/research-reports/judicial-selection-significant-figures>.

33 U.S. Const. amend. XVII. There are also six states that have only one representative in the U.S. House of Representatives, based on the post-2020 reapportionment numbers. They are Alaska, Delaware, North Dakota, South Dakota, Vermont, and Wyoming. These states do not need to engage in congressional redistricting because their representatives are elected from the entire state. However, they must still conduct redistricting for their state legislatures and local government.

## How many people should live in one electoral district?

In *Reynolds v. Sims*, the Supreme Court announced a rule that **state legislatures** must have districts of approximately equal population size to ensure that everyone has equal representation and political power. This requirement is known as the “one person, one vote” principle.<sup>34</sup> When states embark on the redistricting process, they must follow this rule. Ensuring that each district contains roughly the same number of people requires some simple math. You take the total population in your state (or city or school district) and divide it by the number of seats on the body you are redistricting. That number is the “ideal” population for every district. The districts you draw can vary a small amount from the population “ideal,” but not more than 10% in the plan overall.<sup>35</sup> For example, if there are 5 seats on the city council, and 100,000 people in the city, each district should contain as close to 20,000 people as possible.

With respect to **congressional districts**, the Supreme Court has dictated that the populations of congressional districts must be made “as nearly as equal as is practicable.”<sup>36</sup> Thus, a stricter equal-population standard applies to congressional districts than applies to legislative and local districts. When congressional maps are challenged in court under the “one person, one vote” principle, states must show that any avoidable departures from mathematical equality in district populations are justified by a compelling state interest and are narrowly tailored to further that interest.<sup>37</sup>

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34 *Reynold v. Sims*, 377 U.S. 533, 558 (1964).

35 *Gaffney v. Cummings*, 412 U.S. 772, 776–77 (1973) (Brennan, J., concurring).

36 *Wesberry v. Sanders*, 376 U.S. 1, 7–8 (1964).

37 See *Karcher v. Daggett*, 462 U.S. 725, 730–32 (1983).



As a resident, you live in multiple election districts.

## Every resident in **New York City** lives in a:

- Congressional district
- New York State Senate District
- New York State Assembly District
- Borough
- City Council District



## EQUAL POPULATION REQUIREMENT

100,000 people in the city + 5 seats on the city council

DISTRICT 1  
APPROXIMATELY  
20,000  
PEOPLE

DISTRICT 2  
APPROXIMATELY  
20,000  
PEOPLE

DISTRICT 3  
APPROXIMATELY  
20,000  
PEOPLE

DISTRICT 4  
APPROXIMATELY  
20,000  
PEOPLE

DISTRICT 5  
APPROXIMATELY  
20,000  
PEOPLE

### How does the Voting Rights Act influence redistricting?

All 50 states and the political subdivisions within them must comply with the requirements of the federal Voting Rights Act, in addition to their respective state redistricting laws. The Voting Rights Act, passed by the U.S. Congress in 1965 and reauthorized four times since then, most recently in 2006, protects the voting rights of all American citizens, especially racial, ethnic, or language minority voters, and its purpose is to ensure that voting processes are fair and non-discriminatory throughout the country. Redistricting for congressional, state, and local bodies everywhere in the nation must comply with the Voting Rights Act.

Among other provisions of the Voting Rights Act, Section 2 prohibits voting practices that have a racially discriminatory intent or discriminatory results. Section 2 states: “No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of

race or color, or [language minority status].”<sup>38</sup> The Voting Rights Act is thus an invaluable protection against unfair redistricting maps (as discussed in more detail below in **Chapter 4**).

### How will the weakening of Section 5 of the Voting Rights Act affect the redistricting process?

In 2013, the Supreme Court’s ruling in *Shelby County, Alabama v. Holder*, made Section 5 of the Voting Rights Act inoperable in parts of our country where that provision applied.<sup>39</sup> In *Shelby County*, the Supreme Court ruled that jurisdictions, mainly in the South, with the worst records of racial discrimination in redistricting (and other voting practices) no longer have to seek federal pre-approval (i.e., “preclearance”) of their redistricting plans before the plans can be implemented. The preclearance process: provided the public with notice of proposed changes so

<sup>38</sup> 52 U.S.C. § 10301(a).

<sup>39</sup> *Shelby County, Alabama*, 570 U.S. at 556–57.

that communities could show changes' impact on them; deterred jurisdictions from even proposing changes because of the awareness that they would not survive scrutiny; and lessened or blocked the harm of voting changes on voters of color because of the pre-approval scrutiny. Before *Shelby County*, the Voting Rights Act's preclearance process for redistricting plans and other voting changes covered the entire states of Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia, and portions of California, Florida, New York, North Carolina, South Dakota, and Michigan.<sup>40</sup> Because the Supreme Court immobilized these protections against discrimination, the *Shelby County* ruling has had, and will continue to have, immense ramifications on redistricting and voting laws post-2020. The following paragraphs will outline how and why.

## Section 5 of the Voting Rights Act

Section 5 of the Voting Rights required certain states and subdivisions with histories of racial discrimination in voting to obtain preclearance from the U.S. District Court of Washington D.C. or the Department of Justice ("DOJ") any time that they tried to alter "any voting qualification or prerequisite to voting."<sup>41</sup> Redistricting plans were required to be precleared under Section 5. Under Section 5, a redistricting plan could not be precleared if it 1) intentionally diluted minority votes, or 2) intentionally or unintentionally would have caused "retrogression" in minority voters' political opportunity. In the context of redistricting, **retrogression** occurs when a new district map presents less opportunity for

minority voters to elect candidates of their choice as compared to the existing district map.<sup>42</sup> By preventing discriminatory voting practices from going into effect, Section 5 blocked discriminatory redistricting plans, as well as myriad other discriminatory schemes, *before* their implementation. For example, in 2012, the year before the *Shelby County* ruling, Section 5 stopped multiple discriminatory laws and practices from going into effect. Section 5 blocked: the State of Texas from redrawing congressional and state legislative districts in a way that diluted minority voting strength; Calera, Alabama from conducting serial annexations and adopting redistricting plans that eliminated the city's only majority-Black district; and Charles Mix County, South Dakota from increasing the membership size of the county commission and adopting a manner of electing the new seats because the changes were designed to dilute Native American voters' ability to elect candidates of choice.<sup>43</sup> The *Shelby County* ruling released almost all "covered" jurisdictions in the U.S. from the preclearance requirement. Now, only a few jurisdictions that are covered by court orders are required to preclear their proposed redistricting plans and other voting laws.<sup>44</sup> This means that many of the states and subdivisions that were notorious for enacting racially discriminatory voting policies may attempt to pass discriminatory redistricting plans following the 2020

40 U.S. Department of Justice, Civil Rights Division, *Section 4 of the Voting Rights Act*, <https://www.justice.gov/crt/section-4-voting-rights-act>; U.S. Department of Justice, Civil Rights Division, *Jurisdictions Previously Covered by Section 5*, <https://www.justice.gov/crt/jurisdictions-previously-covered-section-5> (last visited Apr. 5, 2020).

41 52 U.S.C. § 10101.

42 Justin Levitt, *Professor Justin Levitt's Guide to Drawing the Electoral Lines*, Loyola Law School: All About Redistricting (2019), <http://redistricting.lls.edu/>.

43 NAACP LDF, *Recent Examples of Discriminatory Voting Measures Blocked by Section 5 of the Voting Rights Act*, <https://www.naacpldf.org/wp-content/uploads/Shelby-Recent-Section-5-Successes.pdf>.

44 A limited number of jurisdictions remain protected by Section 5 because they have agreed to that preclearance process or, more rarely, a court has required jurisdictions to comply with Section 5. See Leah Aden, NAACP LDF, *A Primer on Sections 2 & 3(c) of the Voting Rights Act*, at 4 -5, <https://www.naacpldf.org/wp-content/uploads/LDF-Sections-2-and-3c-VRA-primer-1.5.21.pdf>.



Census, and we are left without Section 5's federal oversight. For example, in every redistricting cycle during which Section 5 has scrutinized Texas's redistricting maps, the federal government, or the federal courts, have blocked one or more of Texas's proposed redistricting plans because of their harm to Latino (and sometimes Black or Asian American) voters. We may see the same going into this next round of redistricting based on Texas's documented record of discriminating in its redistricting process.

It will be up to private actors like you and organizations that serve you, such as the NAACP Legal Defense and Educational Fund, Mexican American Legal Defense and Educational Fund, Asian Americans Advancing Justice – AAJC, and other advocates, to work to stop these redistricting plans from being enacted—and, if they are implemented, to challenge them in court.

Thus, your involvement in the redistricting process is even more important beginning in 2021 because the federal government no longer acts to review discriminatory voting laws and policies in advance. That job now lies with everyday people, especially Black, Latino, and Asian American voters, who are most vulnerable to disenfranchisement through discriminatory voting policies. If you are able, you should exercise your rights to: attend public redistricting hearings and provide input on the implications of redistricting plans and how they might affect your voting rights; speak with your legislators to hold them accountable in the redistricting process; and stay aware of voter discrimination efforts and notify civil rights advocacy groups like the NAACP LDF, MALDEF, and Advancing Justice – AAJC to reduce discrimination in redistricting.







Ensuring fair  
redistricting maps  
now depends more  
on everyday people,  
including **Black**,  
**Latino**, and **Asian**  
American voters  
who are vulnerable to  
disenfranchisement  
through discriminatory  
voting policies.

#### YOU CAN HELP BY

- Attending public redistricting hearings and providing input on the implications of redistricting plans and how they might affect your voting rights.
- Speaking with your legislators to hold them accountable in the redistricting process.
- Notifying civil rights advocacy groups like the NAACP LDF, MALDEF, and Advancing Justice – AAJC to reduce discrimination in redistricting.

## Does race play a factor in redistricting? To what extent?

The racial makeup of voters and communities in redistricting plans is subject to a complex array of laws and considerations.<sup>45</sup> First, although redistricters are always aware of race when they draw maps, race cannot be used as the sole or predominant basis for the drawing of any district without a compelling justification, such as protecting minority voting rights.<sup>46</sup> Of course, this does not mean that race cannot be used—simply that, if race is the predominant factor when drawing a district, it will have to survive what lawyers call “strict scrutiny,” meaning that the use of race in drawing that district must be narrowly tailored to serve a compelling justification. On the other hand, Section 2 of the Voting Rights Act requires the consideration of race, among other factors, to ensure that Black, Latino, and Asian American voters have an equal opportunity to participate in the political process and elect candidates of their choice.<sup>47</sup> Indeed, Section 2 is necessary to protect communities of color from having their voting strength diluted in redistricting. Thus, the racial makeup of communities can and often must be a consideration in the development of electoral lines. However, race cannot be the predominant basis for the formation of a district, absent a compelling justification like compliance with the Voting Rights Act.

How do these considerations play out in practice? One recent example is the case of *Bethune-Hill v. Virginia State Board of Elections*,<sup>48</sup> which challenged Virginia’s attempt to pack Black voters into too few state legislative districts. For

certain legislative districts, the state had set a minimum requirement that these districts have at least a 55% Black voting-age population (“BVAP”). However, Virginia officials had conducted no analysis—and produced no evidence—that this 55% threshold was necessary to meet the Voting Rights Act’s requirements in those districts. A group of Black voters filed suit in 2014, arguing that the legislature’s actions violated the Voting Rights Act by packing Black voters into districts at these quota levels and, thus, minimized the voting power of Black voters in the state overall—because it hindered their ability to elect candidates of choice in other districts. Relying on *Shaw v. Reno*, plaintiffs argued that the state’s use of the 55% requirement in its legislative districts constituted a racial gerrymander. In 2017, the U.S. Supreme Court held that the state’s defense was constitutionally insufficient and sent the case back to the original trial court so that it could “re-evaluate the districts under the correct standard.” In 2018, the federal trial court ruled that, under the appropriate legal standards, 11 of the 12 districts were, indeed, racial gerrymanders—that is, race served as the predominant consideration in the development of those districts, and that this predominant use of race was not narrowly tailored to serve a compelling state interest, such as meeting the Voting Rights Act’s requirements.<sup>49</sup> The Court thus ordered the Legislature to draw a new map.<sup>50</sup>

*Bethune-Hill* shows that courts can intervene when legislatures use race as the predominant consideration in redistricting without a compelling justification, such as preserving the voting strength of people of color. But sometimes there is a compelling justification to consider race—for example, when it becomes necessary to create a new majority-minority district to prevent minority vote dilution.

In 2011, the Texas Legislature, in response to requests

45 Justin Levitt, *supra* note 42.

46 *Shaw v. Reno*, 509 U.S. 630 (1993) (“classifications of citizens based solely on race are by their nature odious to a free people whose institutions are founded upon the doctrine of equality”) (emphasis added).

47 52 U.S.C. § 10101.

48 137 S. Ct. 788 (2017).

49 *Bethune-Hill v. Virginia State Bd. of Elections*, 326 F. Supp. 3d 128, 180 (E.D. Va. 2018).

50 *Id.* at 180–81.

by Latino advocates, created a new Latino-majority congressional district in South/Central Texas to reflect the state's increase in Latino population and avoid a Section 2 violation. The incumbent Democratic congressman in an adjacent district, along with others, filed suit and challenged the new Latino district, arguing it was predominantly based on race and not justified by the need to avoid vote dilution. The U.S. Supreme Court in *Abbott v. Perez* upheld the new Latino-majority congressional district, ruling that Latino voters had satisfied all the criteria to justify creating a new Latino-majority district and Texas had acted properly in considering race to create the district.<sup>51</sup> Thus, when a map-drawer is drawing a majority-minority district as a remedy for vote dilution, it is necessary and appropriate to consider race, along with other traditional redistricting principles (as discussed in more detail below in **Chapter 4**).

### What are traditional redistricting principles?

If consideration of race can serve as neither the sole nor predominant factor that goes into drawing districts, absent a compelling justification like compliance with the Voting Rights Act, then what other factors do we use to draw electoral districts? The answer to this question lies in part with state law that may set out redistricting criteria. For example, some states require redistricters to use whole counties as the building blocks of districts, while other states require redistricters to preserve the cores of existing districts and avoid pairing incumbents.<sup>52</sup> In addition, most states draw maps relying on “traditional redistricting principles.” Traditional redistricting principles are guidelines that redistricters use to ensure that the districts they draw are fair to their constituents, respect geographic boundaries, and comply with a jurisdiction’s laws governing redistricting. It is important to emphasize



Although redistricters are always aware of race when they draw maps, **race cannot be used as the sole or predominant basis for the drawing of any district without a compelling justification, such as protecting minority voting rights.**

51 *Abbott v. Perez*, 138 S. Ct. 2305, 2331–32 (2018).

52 National Conference of State Legislatures, *State Redistricting Criteria* (Feb. 2021) <https://www.ncsl.org/research/redistricting/redistricting-criteria.aspx>.



the nature of these principles as guidelines, rather than strict rules; traditional redistricting principles cannot overshadow the federal redistricting rules of equal population and compliance with the Voting Rights Act. Thus, in the first instance, a state must comply with federal requirements, including the Voting Rights Act.<sup>53</sup> After that, the state can follow its traditional redistricting principles. For example, although minimizing split precincts or protecting incumbents can be traditional redistricting principles, sometimes redistricters must split precincts or pair incumbents to create a district that Section 2 requires in order to provide minority voters the opportunity to elect their preferred candidate.

## What are some examples of traditional redistricting principles?

### 1. Communities of Interest

“Communities of interest” can be defined as “groups of individuals who are likely to have similar legislative concerns, and who might therefore benefit from cohesive representation in the legislature.”<sup>54</sup> These communities can be determined by data from the Census (detailed in **Chapter 5**), including data from the Census Bureau’s American Community Survey, or by community members themselves.

While much of this information will be available through Census data, your local government may also be a good source of information. Often, local governments compile information on school enrollment and attrition rates and socio-economic disparities, neighborhood boundaries and areas that receive community development block grants.

53 *Bartlett v. Strickland*, 556 U.S. 1, 7 (2009) (“It is common ground that state election-law requirements . . . may be superseded by federal law.”).

54 Brennan Center for Justice, *Communities of Interest* (Nov. 2010), [www.brennancenter.org/sites/default/files/analysis/6%20Communities%20of%20Interest.pdf](http://www.brennancenter.org/sites/default/files/analysis/6%20Communities%20of%20Interest.pdf).

The following characteristics are examples of commonalities that might denote a **community of interest**:

Income level

Educational background

Housing patterns (urban, suburban, rural) and living conditions

Historical neighborhoods, including historically segregated neighborhoods or neighborhoods that historically included residents from a common ancestry or ethnicity

Shared language

Shared festivals, neighborhood gatherings, or traditions

Occupation and employment patterns

Shared use of public transport infrastructure

Shared affiliation with common places of worship and schools

Use of particular shopping areas, parks, beaches, and recreation areas

Shared participation in civic organizations

Shared broadcast and print media markets





You should also supplement these sources by gathering information through stakeholder surveys and organizational interviews, as well as information provided at public hearings. Additionally, you should identify the issues of special concern for your area by talking to community activists, politicians, and civic leaders, and reviewing local reports and studies.

Finally, courts have also played a role in identifying communities of interest. You should determine whether courts in your state have identified or rejected state-specific standards for articulating communities of interest.

Once you collect a sufficient amount of data, you can produce maps that show how community characteristics and other considerations map onto a geographic area. The resulting maps can show communities based on similarities among individuals. For example, a map showing low-income residents, non-high school graduates, or households that predominantly speak a language other than English can be used as an indication of a “community of interest” within a particular geographic area.

## 2. Compactness and Contiguity

Compactness and contiguity both relate to the physical appearance of a district.

Contiguity is achieved if all of the boundary lines of a district touch; a district is not contiguous if it is made up of two or more areas that are not connected, or if the boundary lines do not all touch. For example, a district that is split by another district is not contiguous.

Compactness is not as easily identified as contiguity. Compactness means that the people who reside in a district generally live near each other.<sup>55</sup> However, rural districts may cover a large geographic area and include towns that are located far apart. Sometimes districts are irregularly shaped because they contain racial minority neighborhoods or follow mountain ranges or rivers. At other times, oddly shaped or unusually sprawling districts can be signs of gerrymandering, or of racial discrimination.

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<sup>55</sup> Justin Levitt, *supra* note 42.

There are also more concrete, objective methods of identifying compactness, like using mathematical tests that take into account the jaggedness or smoothness of the district's boundaries, the amount of dispersion of a population in a district from its central location, and housing patterns of the residents within the district.<sup>56</sup>

In many states, contiguity and compactness are important redistricting considerations. Currently, 37 states require legislative districts to meet a compactness criterion, and 18 states require congressional districts to be compact.<sup>57</sup> Additionally, 49 states require that at least some of their state legislature's districts be contiguous, and 23 states require congressional districts to be contiguous.<sup>58</sup>

### 3. Existing Political Boundaries

In most American states, 42 to be exact, new legislative districts must take into account existing political boundaries such as the borders of cities, counties, boroughs, towns, and wards.<sup>59</sup> Moreover, 19 states have this requirement for congressional districts as well.<sup>60</sup> These laws tend to be relatively flexible, particularly if you have to split cities or counties to comply with the federal Voting Rights Act or the requirement of equal population.

### How are America's demographics changing, and how does that affect redistricting?

Above all, it is important to note that the United States' population is growing rapidly, especially its Asian American and Latino communities. Since 2010, Latinos have accounted for about half (52%) of all U.S. population growth and, at over 60 million, Latinos are now the largest minority

group in the U.S.<sup>61</sup> Asian Americans are the fastest-growing segment of eligible voters out of the major racial and ethnic groups in the United States. More than 11 million were able to vote in 2020, making up nearly 5% of the nation's eligible voters.<sup>62</sup> The population shifts in the past decade will have a tremendous impact on both reapportionment and redistricting following the 2020 Census.

The U.S. Census Bureau reports that the five top states in numeric growth from 2010 to 2020 were Texas, Florida, California, Georgia, and Washington.<sup>63</sup> When reapportionment data was released following the 2020 Census, some of these states earned more seats in the U.S. House of Representatives. However, this increase in representation for some states caused a loss for other states (there are only 435 House seats to be apportioned). Based on the 2020 Census apportionment numbers, Texas's nearly 4 million new residents earned the state two more House seats, while five states each gained one seat (Colorado, Florida, Montana, North Carolina, and Oregon), and seven states lost a seat (California, Illinois, Michigan, New York, Ohio, Pennsylvania, and West Virginia).<sup>64</sup>

### How can technology impact redistricting?

Today, technology has an increasingly powerful effect on redistricting and the ability of everyday people to get

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56 *Id.*

57 *Id.*

58 *Id.*

59 *Id.*

60 *Id.*

61 Pew Research Center, *U.S. Hispanic population surpassed 60 million in 2019, but growth has slowed* (July 7, 2020), <https://www.pewresearch.org/fact-tank/2020/07/07/u-s-hispanic-population-surpassed-60-million-in-2019-but-growth-has-slowed/>.

62 Pew Research Center, *Asian Americans are the fastest-growing racial or ethnic group in the U.S. electorate* (May 7, 2020), <https://www.pewresearch.org/fact-tank/2020/05/07/asian-americans-are-the-fastest-growing-racial-or-ethnic-group-in-the-u-s-electorate/>.

63 U.S. Census Bureau, *Table E. Numeric and Percent Change in Resident Population of the 50 States, the District of Columbia, and Puerto Rico: 2020 Census and 2010 Census*, <https://www2.census.gov/programs-surveys/decennial/2020/data/apportionment/apportionment-2020-tableE.pdf>.

64 U.S. Census Bureau, *2020 Census Apportionment Results Delivered to the President* (Apr. 26, 2021), <https://www.census.gov/newsroom/press-releases/2021/2020-census-apportionment-results.html>.





CHAPTER 3

# Participating in the Redistricting Process

## Who can participate in the redistricting process?

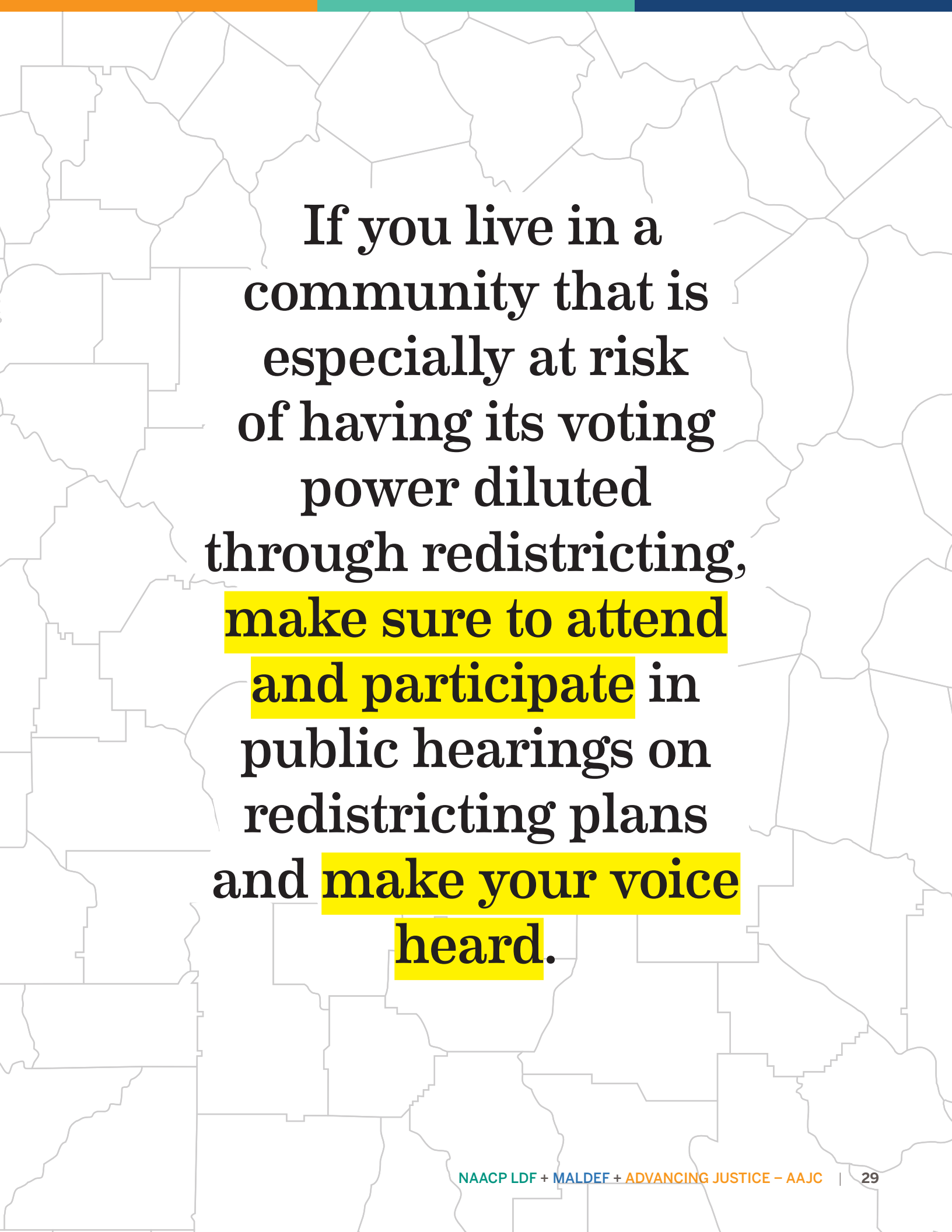
Anyone who wants to participate in the redistricting process may do so. Since redistricting affects everyone who resides in the United States, it is important that parties with a stake in how districts are drawn are able to voice their opinions. Different states, however, have different mechanisms and policies regarding public participation; make sure that any redistricting map that you propose complies with those state requirements, as well as the U.S. Constitution and the Voting Rights Act.

## Why is it important for everyone, especially people of color, to be involved in the redistricting process?

Redistricting is all about equal representation and who has influence in the election of our representatives. Because redistricting can be such a powerful tool, many people in the past and present have attempted to use redistricting to entrench political power for select populations, and to exclude communities of color from electing their candidates of choice. In order for redistricting to promote equality, people who have been historically disadvantaged by the redistricting process must themselves get involved, and it is especially important for communities of color, such as Black, Latino, and Asian American communities, to be involved.







**If you live in a  
community that is  
especially at risk  
of having its voting  
power diluted  
through redistricting,  
make sure to attend  
and participate in  
public hearings on  
redistricting plans  
and make your voice  
heard.**

Moreover, the risks of not being involved in the redistricting process are greater for communities of color, such as Latino, Black, and Asian American communities, because redistricting is a tool that may be used, directly and indirectly, to disenfranchise those same communities. Given that a core voter-protection mechanism, Section 5 of the Voting Rights Act, has been rendered inoperable throughout most of the nation,<sup>66</sup> the people must serve as a check on those who enact redistricting plans for their states and the jurisdictions within them. The communities that will be affected are the last line of defense to prevent discriminatory and disfranchising policies from being enacted by states and local jurisdictions that have histories of, and vested interests in, diluting the voting power of people of color. If you live in a community that is especially at risk of having its voting power diluted through redistricting—because of growing minority populations or populations that are (or are on the cusp of being) in the majority—make sure to attend and participate in public hearings on redistricting plans and make your voice heard.

You can create your own redistricting plans and propose them to the redistricting bodies of your state and local jurisdictions. You can work together with people within your community and other communities to ensure that the redrawn districts do not dilute your voting power.

### What steps can I take to participate in the redistricting process?

The following are some, though not all, ways that you can consider participating in the redistricting process. You can choose from among these options based on your level of engagement and available resources.

- **Consider** the different types of redistricting, and decide which levels you wish to get involved in, or if you would like to get involved in all levels (e.g. congressional, state,

county, and/or city, school board, water board redistricting, judicial redistricting).

- **Research** the schedule for hearings of public testimony on redistricting, and potential deadlines for submitting your map.

- **Look into** what resources are made available to the public for map-drawing in your state.

- **Speak with** members of your legislature, including legislators in Black, Latino, and Asian American caucuses, to learn what their priorities are when it comes to redistricting—this will help you understand how decision-makers will respond to your map.

- **Urge public officials** to ensure transparency during the redistricting process, and advocate for public access to any proposed redistricting plans that have been drawn by government officials.

- **Research the laws** and statutes governing redistricting in your jurisdiction. As mentioned before, not all states or counties have the same rules for redistricting; familiarize yourself with those rules to ensure that the map you draw falls within the legal parameters.

- **Find out** when Census Bureau data will be made available to the public for your state. Given the consequences of the COVID-pandemic on our society, the U.S. Census Bureau has delayed the release of decennial Census data to states for redistricting. This delay will mean that states' redistricting processes could be delayed as well. This is an evolving process; please make sure to confirm the dates when data will be released in your state so that you do not miss out on the redistricting process in your state and local communities.

- **Discuss** your redistricting plan with residents of your own community and residents of other neighborhoods to explore possible areas of collaboration on map-drawing and advocacy.

66 *Shelby County, Alabama*, 570 U.S. at 556–57.

■ **Work in solidarity** and partnership with other communities of color to explore whether it is possible to draw a “unity map” that would be supported by various groups.<sup>67</sup>

■ **Using your prior research** into the laws governing redistricting in your jurisdiction, consider the ways in which your redistricting plan may violate the legal code, and consider whether or not your map would be able to withstand a legal challenge.

■ **Analyze data** on the voting patterns of different racial groups (also known as racially polarized or racial bloc voting, discussed in more detail in **Chapter 4**) to consider how maps will perform for minority voters. This may help you to understand whether the demographics of a proposed new district will enable voters of color to elect candidates of their choice.

■ **Monitor** state and local legislative sessions (and official websites) to learn about proposed plans under consideration.

If proposed maps are discriminatory, sound the alarm by bringing public attention to the redistricting plans on social media and to officials, journalists, and local, state, and national organizations (like LDF, MALDEF, and Advancing Justice – AAJC). It is important to ensure that the public record reflects whether certain legislative procedures are broken, people are kept out of the redistricting process, or particular communities will be harmed by a map.

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67 See, e.g., Asian Pacific American Legal Center, *Asian Americans, Latinos and African Americans Submit Joint Mapping Proposal to California Redistricting Commission* (June 30, 2011), <https://www.advancingjustice-la.org/sites/default/files/Unity-MapRelease063011.pdf>; Asian American Legal Defense Fund, *Civil Rights Groups Announce Unity Map for NYC Council Redistricting and 9/4 Press Conference* (Aug. 30, 2012), <https://www.aaldef.org/press-release/civil-rights-groups-announce-unity-map-for-nyc-council-redistricting-and-94-press-conference/>.

## Provide **verbal and written feedback** to officials, including at public hearings, about:

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**THE IMPACT OF THOSE PLANS ON YOUR COMMUNITY** (i.e., will the proposed maps harm voting power of communities of color), including asking officials to publicly analyze the impact of the plans on your community.

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**YOUR PERSPECTIVE REGARDING THE FACTS AND PROCESSES** leading up to the creation and adoption of a proposed redistricting plan or other voting change (i.e., were the processes transparent, did they consider and incorporate the feedback of communities of color and the officials and groups that represent them).

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**ANY CONTEMPORANEOUS STATEMENTS** by the people who drew or approved the map that implicitly or expressly are **racially discriminatory, xenophobic**, etc.

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**THE HISTORY OF RACIAL DISCRIMINATION IN VOTING IN YOUR COMMUNITY** and why that requires a fair redistricting map in the current cycle.



**SOUND THE ALARM IF PROPOSED MAPS ARE DISCRIMINATORY**

## How can I provide input on an alternative redistricting map if I don't have the financial resources, redistricting knowledge, or mapping software?

In the redistricting process, it is most important that your voice be heard. Creating alternative redistricting maps is definitely a helpful method of participation, but it is not the only method. If you do not have the resources or means to create an alternative map yourself, you have the option of working with other residents or organizations in your community or state, or with national organizations that may have resources to help you (e.g., LDF, MALDEF, and Advancing Justice – AAJC).

Additionally, you can still provide input on maps without having to create one yourself; you can attend public meetings and provide your input on other maps that have already been created, raising the alarm if a map attempts to concentrate or split minority voters into too few or too many districts and dilutes the political influence of people of color.

You can also provide input about your community of interest and explain why it should be kept whole and not split across districts even if you do not have an alternative map to propose.

Ultimately, it is the residents of a community who know that community best—so it is up to you to be an advocate for yourself and your neighborhood. By providing information about your community, you are helping to fight for a more equal redistricting plan.

## Who else should be involved in the redistricting process?

It is important that experts be included in the redistricting process, in addition to everyday people. Experts can provide specified knowledge that allows for more precise and appropriate drawing of redistricting maps. To identify these experts, look to universities, colleges, and schools in the area where you live. The

following areas of expertise can be critical to the redistricting process:

**Map Drawers** have a particular expertise in the practice of drawing redistricting maps; they have experience in this field and have the ability to analyze demographic information provided by the Census as well as election-related information, such as registration and voting patterns. (Sometimes map drawers are also demographers—the next specialty discussed below.)

**Demographers** have expertise in the characteristics of human populations, which is why their help is useful in the process of drawing redistricting maps. They analyze Census data through the lens of human geography and can take into consideration income level, educational achievement, employment and housing patterns and language of neighborhood residents.

**Political Scientists** have expertise in political processes, voting patterns, and the electoral outcomes of existing and proposed districts. They can be very important to the redistricting process because they enable map-drawing groups to determine potential voting outcomes and effects of new boundaries on people of color. Additionally, political scientists may have the ability to determine areas of the community that have cohesive political identities, which is an important consideration in how districts should be drawn.

**Historians** are helpful in the redistricting process due to their expertise in the histories of certain regions and neighborhoods. Historical knowledge is crucial when drawing new districts in order to ensure fairness. Moreover, with this historical understanding, historians have the ability to determine which areas have shared histories, and possibly current shared interests.

**Attorneys** are important in the redistricting process because they can ensure that your redistricting plan complies with the specific laws that govern redistricting in your jurisdiction. Attorneys can provide guidance on the entire redistricting process, and they can also speak on your behalf in courts if you and your redistricting group decide to pursue litigation.



# Experts can provide helpful input for redistricting

- Map Drawers
- Demographers
- Political Scientists
- Historians
- Attorneys



## CHAPTER 4

# The Role of Section 2 of the Voting Rights Act in Redistricting

## Why is the Voting Rights Act important?

The federal Voting Rights Act sets forth our national commitment to ensuring voting equality regardless of race and protects those who belong to populations that have historically been disadvantaged in voting, like Black, Latino, and Asian American people.

Section 2 of the Voting Rights Act provides a legal basis for filing lawsuits against discriminatory redistricting plans. Throughout this past decade alone, Section 2 of the Voting Rights Act has provided the basis of many lawsuits over redistricting. Following the Supreme Court decision in *Shelby County, Alabama v. Holder*, Section 2 has become an even more important tool to protect minority voting rights.

Section 2 prohibits states and local governments from imposing voting laws that disproportionately harm people of color or laws that are motivated by a purpose to discriminate against minority voters.<sup>68</sup> Throughout the

history of the United States, these discriminatory devices included “grandfather clauses,” “poll taxes,” “literacy tests,” and more. In modern times, Section 2 has allowed minority voters to successfully challenge a variety of voting practices, such as dilutive redistricting schemes, voter identification laws, and discriminatory early voting schedules, as well as the failure to provide language assistance.<sup>69</sup> If a voting law creates a barrier to voting for people of color, that law may violate Section 2 of the Voting Rights Act.

<sup>68</sup> Section 2 of the Voting Rights Act states that “No voting qualification or prerequisite to voting... shall be imposed by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color, or [status as a member of a language minority group].” 52 U.S.C. § 10301(a).

<sup>69</sup> See, e.g., *Wright v. Sumter Cty. Bd. of Elections and Registration*, 979 F.3d 1282, 1311 (11th Cir. 2020) (the electoral mechanism for a Georgia County’s board of election diluted the strength of Black voters in violation of Section 2); *North Carolina State Conf. of NAACP v. McCrory*, 831 F.3d 204, 233 (4th Cir. 2016) (North Carolina’s voter ID law, and restrictions on early voting, same-day registration, out-of-precinct voting, and pre-registration for 16 & 17 year-olds, was motivated by discriminatory racial intent, in violation of Section 2 and the Fourteenth and Fifteenth Amendments to the U.S. Constitution); *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016) (en banc) (Texas voter ID law had racially discriminatory results under Section 2 of the Voting Rights Act); *Veasey v. Abbott*, 249 F. Supp. 3d 868 (S.D. Tex. 2017) (Texas voter ID law was enacted with racially discriminatory purpose in violation of the Fourteenth and Fifteenth Amendments and Section 2).

## How does Section 2 of the Voting Rights Act relate to redistricting?

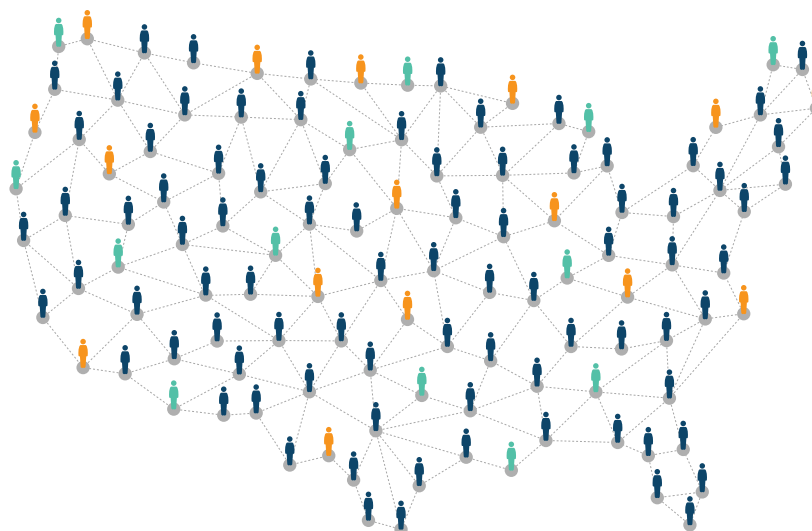
Section 2 prohibits discrimination in voting, including in redistricting plans, and thus plays an important role in the redistricting process. If a redistricting map disadvantages people of color through vote dilution, that violates Section 2 of the Voting Rights Act and gives voters a basis to file a lawsuit to challenge that map as discriminatory. Private citizens, community groups, organizations like LDF, MALDEF and Advancing Justice – AAJC, or the Attorney General of the United States can bring a lawsuit under Section 2 to ensure a fair redistricting plan. Because Section 2 is a federal law and applies to all redistricting across the country, it is important for redistricters to make sure that they comply with this law.<sup>70</sup>

Vote dilution occurs when officials draw district lines to prevent certain voters from having a fair chance to win elections. “Packing” is the process by which voters are “packed” or concentrated into one or more districts, which effectively decreases the power of those constituents’ votes—by limiting their electoral power to too few districts. On the other hand, “cracking” is the process by which voters who could potentially form a majority in one district are split up into many districts, which also diminishes their voting power. Packing and cracking are examples of mechanisms used to dilute the voting power of minority communities.<sup>71</sup>

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<sup>70</sup> Although judges are not technically representatives, nearly 40 states elect judges and other judicial officers to state courts. Brennan Center, *Judicial Selection: Significant Figures* (May 8, 2015), <https://www.brennancenter.org/our-work/research-reports/judicial-selection-significant-figures>. Since the 1991 decisions in *Chisom v. Roemer*, 501 U.S. 380 (1991) and *Houston Lawyers’ Assn. v. Texas Attorney Gen.*, 501 U.S. 419 (1991), the U.S. Supreme Court has recognized that the districts for electing judges and other judicial officers must comply with Section 2. Note, however, that most states do not require judicial districts to be redrawn following the Census. Because state courts decide significant civil and criminal issues that impact communities of color, it is important that you understand if and how your state court members are elected and whether the processes and maps that lead to their elections are fair and representative.

<sup>71</sup> NAACP LDF, *Redrawing the Lines: The Impact of Redistricting on Black People’s Political Power* (2019), [https://www.naacpldf.org/wp-content/uploads/LDF-REDISTRICTING\\_REPORT\\_SHORT\\_FINAL.pdf](https://www.naacpldf.org/wp-content/uploads/LDF-REDISTRICTING_REPORT_SHORT_FINAL.pdf).



**Vote dilution**  
occurs when  
officials draw  
district lines  
to prevent  
minority voters  
from electing  
their preferred  
candidates.



## How do you prove a violation of Section 2 of the Voting Rights Act?

You can prove that a redistricting plan violates Section 2 of the Voting Rights Act by showing either that the redistricting plan intentionally discriminates on the basis of race or that the redistricting plan has the effect of discriminating on the basis of race.

In order to decide whether a redistricting plan violates Section 2 because it has the effect of discrimination, courts are required to use a two-part test. The first part of the test is commonly referred to as the “Gingles” factors—because the factors were first announced in the Supreme Court case *Thornburg v. Gingles*.<sup>72</sup> To satisfy the *Gingles* factors, minority voters must prove that:

- the minority group in question is sufficiently large and geographically compact to constitute the majority of a district;
- voters in the minority group in question tend to vote together for the same candidates (*i.e.*, are politically cohesive); and
- white voters tend to vote cohesively against the candidate preferences of the minority group in question (also known as white bloc voting).

If the three *Gingles* factors are satisfied, then the Court moves to the second test: whether under the “totality of circumstances,” the challenged redistricting plan (or other voting law) denies members of the minority group an equal opportunity to participate in the political process and elect candidates of choice.<sup>73</sup> In this analysis, courts consider, among other factors, the history of voting discrimination in the jurisdiction at issue, the record of discrimination in education, housing, employment, health and other areas of life in the challenged jurisdiction, whether

minority candidates have been elected in the challenged jurisdiction, the existence of racially polarized voting and racial appeals in elections in the challenged jurisdiction, and the responsiveness of elected officials to the needs and interests of the minority community.

If the court concludes that the three *Gingles* factors are present, and that under the “totality of circumstances” the redistricting plan prevents minority voters from having an equal opportunity to elect their candidates of choice, the court will conclude that the redistricting plan has a discriminatory effect in violation of Section 2 of the Voting Rights Act.

In the alternative, you can prove that a redistricting plan intentionally discriminates on the basis of race. A court evaluating a claim of intentional racial discrimination will look first at any direct evidence of racial intent, including statements by lawmakers that they are drawing lines purposefully to disadvantage minority voters or to ensure that other voters control elections in the district. Such statements can be identified in depositions of lawmakers or mappers, in journals of legislative debates and in internal documents, such as emails or memos, shared by redistricters.

Because explicitly racist statements of legislative intent are rare, a court will also look at “circumstantial” evidence to decide if a redistricting plan is motivated by racially discriminatory intent. A court evaluating a claim of intentional racial discrimination will consider factors including (but not limited to) the following:

- the historical background of the decision;
- the specific sequence of events leading up to the decision;
- departures from the normal procedural sequence;
- substantive departures from normal policy considerations; and
- legislative history, especially statements by members of the decision-making body.

<sup>72</sup> *Thornburg v. Gingles*, 478 U.S. 30 (1986).

<sup>73</sup> *Id.*

Legislators' awareness of a harmful impact on a protected group is not enough. In order to prove intentional discrimination you must provide evidence of intent to cause that targeted impact.<sup>74</sup>

### What types of electoral districts can be used to improve the voting rights of people of color?

**MAJORITY-MINORITY DISTRICTS:** A **majority-minority district** is a district in which a majority is comprised of people of color, or “minority” populations. This means that more than 50% of the relevant population<sup>75</sup> of the district are members of a racial group that is considered a minority of the American population. Majority-minority districts usually provide the opportunity for minority voters to elect their candidates of choice even when white voters vote as a bloc for their own preferred candidates. However, it is possible for improperly-drawn majority-minority districts to be detrimental to the voting power of minority voters, for example in instances of packing, as mentioned earlier in the guide, or when minority voters' registration and turnout rates in the district are too low for them to overcome white bloc voting.<sup>76</sup> It is important to note that the term refers to minority voters, not candidates. A white candidate may be the preferred choice of minority voters, and conversely, some minority candidates are not the choice of minority voters.

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74 *Patino v. City of Pasadena*, 230 F. Supp. 3d 667, 677 (S.D. Tex. 2017), judgment entered, CV H-14-3241, 2017 WL 10242075 (S.D. Tex. Jan. 16, 2017).

75 Depending on federal courts in the part of the country where you live, the “relevant population” may be voting age population or citizen voting age population.

76 See, e.g., *Perez v. Abbott*, 250 F. Supp. 3d 123, 148–49 (W.D. Tex. 2017).

**MINORITY-COALITION DISTRICTS:** A **minority-coalition district** is similar to a majority-minority district, but it differs in that two or more different minority populations that share the same candidate preferences join together to form a majority of the relevant population, rather than just one racial group forming the majority, as in majority-minority districts.<sup>77</sup> Minority-coalition districts are protected by Section 2 of the Voting Rights Act if the racial groups that make up the coalition together satisfy the *Gingles* factors as well as the totality of circumstances test.

**CROSSOVER DISTRICTS:** A **crossover district** is a white-majority district in which some white voters “cross over” and vote with minorities to elect the minority-preferred candidate. In crossover districts, members of minority populations constitute less than a majority of the relevant population but are nevertheless strongly able to influence election outcomes in the district. Crossover districts can be helpful for improving voting power for minorities, but the Voting Rights Act does not protect or require the creation of crossover districts.<sup>78</sup>

**INFLUENCE DISTRICTS:** An **influence district** is loosely defined as a district in which minority voters are not populous enough to elect a candidate of their choice, but there are enough minority voters in the district to influence the election of a candidate who is responsive to the minority population. In other words, they are districts “in which minority candidates do not win, but minority voters can play a significant role in electing candidates who will be sympathetic to their interests.”<sup>79</sup> Although

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77 See, e.g., *Huot v. City of Lowell*, Case No. 1:17-cv-10895-DLC (D. Mass. June 13, 2019), <http://lawyersforcivilrights.org/wp-content/uploads/2019/05/Huot-v.-Lowell-Consent-Decree.pdf>.

78 See *Strickland*, 556 U.S. at 25–26.

79 Richard L. Engstrom, *Influence Districts – A Note of Caution and a Better Measure*, Berkeley Law Ctr. for Research and Admin. 1–8 (May 2011), [https://www.law.berkeley.edu/files/Influence\\_Districts.pdf](https://www.law.berkeley.edu/files/Influence_Districts.pdf).

they can be helpful to minority voters, influence districts are not protected or required by the Voting Rights Act. Additionally, given the loose interpretation of the “influence district” label, it is “open to misapplication and abuse.”<sup>80</sup> For instance, a state may create districts that it considers to be influence districts, when in reality minority voters in those districts cannot elect candidates who are responsive to their needs and concerns. In that scenario, the “influence district” label might be used as a cloak to make it appear as though the state is improving the voting power of minorities.<sup>81</sup>

### Are states permitted to create new majority-minority districts?

States and the jurisdictions within them should create majority-minority districts in two circumstances. First, majority-minority districts are required when the preconditions for Section 2 of the Voting Rights Act are met. Creating required Section 2 districts saves jurisdictions time and money because it avoids a legal challenge from minority voters.<sup>82</sup> Second, majority-minority districts are permitted when the state follows other traditional redistricting criteria, such as keeping together communities of interest or reflecting population growth in the region.<sup>83</sup> As long as a legislature avoids using “race for its own sake [as the] dominant and controlling rationale in drawing its district lines,”<sup>84</sup> a jurisdiction can create majority-minority districts based on other redistricting priorities. Of note, majority-minority districts continue

to be one of the most effective methods of ensuring that communities of color have the ability to elect officials of choice. Indeed, most of the 10,000 plus representatives of color for congressional, state, county, and municipal-level seats are elected from majority-minority districts.

### How can I advocate for the creation of new majority-minority districts in my state?

Majority-minority districts must have statistical and factual support to justify their creation. This means that any advocacy for majority-minority districts must begin upon a foundation of evidence that shows how a majority-minority district is necessary to protect against illegal vote dilution or otherwise to comply with traditional redistricting criteria. This evidence can take the form of public testimony by community members, demographic and voting analyses, studies, briefs and memos, newspaper or scholarly articles, expert testimony, and more. Essentially, the foundation for majority-minority districts should be carefully developed and presented in a publicly accessible way so that government officials are aware of and can acknowledge the evidence during the redistricting process.

10,000+  
representatives of  
color are elected  
from majority-  
minority districts

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> NAACP LDF, *The Cost (in Time, Money, and Burden) of Section 2 of the Voting Rights Act Litigation* (Feb. 2021), <https://www.naacpldf.org/wp-content/uploads/Section-2-costs-2.19.21.pdf>.

<sup>83</sup> See, e.g., *Perry v. Perez*, 565 U.S. 388, 399 (2012).

<sup>84</sup> *Miller v. Johnson*, 515 U.S. 900, 913 (1995).

# Advocacy for the creation of **majority-minority districts** can include the following:

- 1 PROPOSED REDISTRICTING MAPS** including majority-minority districts that generally satisfy your state's redistricting principles.
- 2 INFORMATION ON VOTING PATTERNS OF YOUR COMMUNITY.** This information typically focuses on the results of past elections, and especially ones in which a candidate of color ran against a white candidate. Overall election results, as well as how individual neighborhoods or precincts voted, are useful. Political scientists or other experts, as well as community leaders, may be able to help you discern these facts.
- 3 INFORMATION ON THE VOTING PATTERNS OF THE WHITE COMMUNITY,** or the non-minority community. To justify the creation of a majority-minority district, you must show that the white community tends to vote as a bloc against the candidates preferred by the minority community that is seeking a majority-minority district. This information can be gleaned through interviews, or through statistical data. As with the information previously mentioned, political scientists and community leaders may be able to help with these efforts.
- 4 INFORMATION ON PAST ELECTION OF MINORITY CANDIDATES** in the jurisdiction.
- 5 ANY HISTORY OF DISCRIMINATION IN YOUR JURISDICTION,** or in your state, with respect to voting, including discrimination in voter registration, acceptance of voters at the polls, location of polling places, candidate financing by private organizations, voter intimidation, and any other factor that may serve to discourage voting by members of the minority community.
- 6 ANY HISTORY OF DISCRIMINATION IN YOUR JURISDICTION** with respect to education, employment, health, housing, public accommodations, and policing that negatively affects the ability of a minority community to participate in political life.
- 7 STATISTICS SHOWING CURRENT SOCIO-ECONOMIC DISPARITIES** in your jurisdiction such as racial gaps in income, educational attainment, health outcomes, English-speaking ability, or any other statistic that negatively affects the ability of a minority community to participate in political life.
- 8 ANY CURRENT OR HISTORICAL LACK OF RESPONSIVENESS BY ELECTED OFFICIALS** toward the needs or concerns of the minority community seeking the creation of a majority-minority district.



## How can redistricting be used to help people of color and their communities?

Although redistricting is a process that has historically been used to prevent the full and equal participation of people of color in our democracy, it is also a powerful tool for people of color to augment their community's political power and participation; the redistricting process can be and has been a powerful asset to disadvantaged, disenfranchised and politically marginalized communities. The following examples demonstrate the ways in which redistricting can increase the political strength of people of color and their communities:

### Latino communities:

#### ■ Los Angeles County, CA

The Supervisors of Los Angeles County were known as “Five Little Kings,” and they protected their incumbency by drawing redistricting plans that fractured the Latino community to prevent the election of a Latino-preferred candidate. Latino voters filed suit and, represented by MALDEF, won a court decision that the County had intentionally split Latinos into several districts in its redistricting plan in violation of both Section 2 of the Voting Rights Act and the Fourteenth Amendment’s Equal Protection Clause.<sup>85</sup> Under the redistricting plan ordered by the court as a remedy, the first Latina, Gloria Molina, was elected to the Board of Supervisors. She went on to serve for over a dozen years.

#### ■ Pasadena, TX

Almost immediately after the *Shelby County* Supreme Court decision of 2013, the City of Pasadena, Texas adopted a new redistricting plan and changed its voting

structure to disadvantage Latino voters. The Latino population was growing in Pasadena, and Latino-preferred candidates were about to gain a majority of seats on the city council. In response, Pasadena eliminated a Latino-majority council district and changed the city’s election structure to make it more difficult to elect Latino-preferred candidates to the council. In the absence of Section 5’s protections (which would have blocked this change before it went into effect), Latino citizens filed suit and, represented by MALDEF, won a federal court decision that the City’s redistricting changes violated Section 2 of the Voting Rights Act and the Fourteenth Amendment to the U.S. Constitution.<sup>86</sup> The federal court restored the previous redistricting map and ordered the City of Pasadena back under Section 5’s preclearance process. In the post-*Shelby County* era, Pasadena, Texas is the only jurisdiction ordered by a court after trial to comply with Section 5 of the Voting Rights Act.

#### ■ San Fernando Valley, CA

The 2000 Census showed that a congressional district in the San Fernando Valley area of Los Angeles had become a majority-Latino district over the course of the 1990s. The district was represented by a long-serving white Democrat, who had been reelected even as the district had become majority Latino. Nonetheless, during 2001 redistricting, the California legislature split the compact Latino community between that district and another district also represented by a white Democrat, converting two neighboring districts from the 1990s into a horseshoe and stake configuration. The horseshoe shaved off a portion of the Latino community that had been in the upper central part of the district that had become majority Latino. The consequence was that the Latino community was a

<sup>85</sup> *Garza v. County of Los Angeles*, 918 F.2d 763 (9th Cir. 1990).

<sup>86</sup> *Patino v. City of Pasadena*, 230 F. Supp. 3d 667, 681 (S.D. Tex. 2017), *judgment entered*, No. CV H-14-3241, 2017 WL 10242075 (S.D. Tex. Jan. 16, 2017).

minority in both districts instead of being a majority in one of the districts. A legislative leader of the redistricting process publicly admitted to splitting the Latino community so that both incumbent congressmembers could “learn” to represent the growing Latino population. The lead legislative line-drawing consultant was the brother of the congressmember representing the district that had become majority Latino. MALDEF brought a

Voting Rights Act challenge, but the federal court rejected the claim after the legislature was able to suppress important evidence. Nonetheless, ten years later, the new state independent redistricting commission created the majority-Latino congressional district that should have been created ten years earlier. The district elected the first Latino congressmember ever from the San Fernando Valley. Justice was delayed, but not wholly denied.

*Photo by GASTON DE CARDENAS/AFP via Getty Images*



## Black communities:

### ■ Virginia

Following the 2010 decennial census, the Virginia House of Delegates carried out a severe racial gerrymander that diluted the strength of Black voters. State officials in 2011 “packed” Black voters into 12 districts, employing a mandatory 55% floor for the Black voting-age population of each district.<sup>87</sup> The Legislature erroneously claimed that this racial threshold was necessary to comply with Section 5 of the Voting Rights Act, at the time applicable to Virginia; in fact, a 55% Black voting age population was “far greater than necessary for black voters to continue electing their preferred candidates.” Indeed, Black voters in these districts had already been able to elect their candidates of choice, and at least three districts had been represented by Black delegates for more than two decades despite not meeting the 55% floor.<sup>88</sup>

To reach the racial threshold, state officials manipulated district lines, separating Black and white residential areas with “exacting precision.”<sup>89</sup> Five of the 12 districts at issue were located in the Richmond/Tri–City region of Virginia. Officials divided the City of Richmond by race, assigning only portions with a high concentration of Black residents to 55% threshold districts.<sup>90</sup>

In 2014, residents of the 12 legislative districts challenged the 2011 map as an unconstitutional racial gerrymander and ultimately the federal court agreed

with the plaintiffs that 11 challenged districts violated the Fourteenth Amendment’s Equal Protection Clause of the U.S. Constitution.<sup>91</sup> Although the lawsuit succeeded, districts that violated the constitutional rights of Black voters had been in place for seven years; four elections for the Virginia House of Delegates were held under a map that intentionally discriminated on the basis of race. Diluting the strength of Black voters had grave electoral consequences. Black voters’ candidates of choice likely could have changed the balance of power in Virginia’s state House in 2017 had the map been struck in time;<sup>92</sup> but that shift in power dynamics did not occur until 2019, under the remedial map.<sup>93</sup>

### ■ Fayette County, Georgia

Sometimes, Section 2 of the Voting Rights Act can be used to force a jurisdiction that does not use districts for elections to adopt a districted system. When a jurisdiction uses no districts but elects its officials “at-large,” this system can dilute minority voting strength. In at-large systems of voting, where Black, Latino, and Asian American voters are in the minority, and white and non-white voters vote along racial lines and prefer different candidates, that electoral method can dilute the minority community’s voting power in violation of Section 2 of the Voting Rights Act. The remedy for successful at-large challenges is for the jurisdiction to adopt a districted system for elections and redistrict after subsequent Censuses.

Until 2014, Fayette County, Georgia, maintained at-

87 *Bethune-Hill v. Virginia State Bd. of Elections*, 326 F. Supp. 3d 128, 145 (E.D. Va. 2018).

88 Complaint, *Bethune-Hill v. Virginia State Bd. of Elections*, No. 3:14- 00852-REP-GBL-BMK, at \*7 (E.D. Va. Dec. 22, 2014).

89 *Bethune-Hill*, 326 F. Supp. 3d at 150.

90 *Id.* at 154. Areas of Richmond that were made part of 55% threshold districts had a combined Black voting-age population of 56.2%; in contrast, areas excluded from 55% threshold districts had a combined Black voting-age population of 6.8%. *Id.* at 166.

91 *Bethune-Hill*, 326 F. Supp. 3d at 181. The Republican-led state House of Delegates appealed, but the Supreme Court found that the legislature lacked standing to appeal on behalf of the state. *Virginia House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945, 1956 (2019).

92 Mark Joseph Stern, *Virginia Democrats’ Victory Proves That Gerrymandering Matters*, Slate (Nov. 6, 2019), <https://slate.com/news-and-politics/2019/11/virginia-democrats-victory-after-killing-racial-gerrymander.html>.

93 *Id.*





large voting for all five seats on both the county board of education and commission. As of 2011, when the NAACP LDF filed a Section 2 lawsuit on behalf of Black voters and organizations serving them, no Black candidate in the history of Fayette County had ever been elected to these two local bodies, even though Black people make up 20% of the entire county's population, which was roughly 100,000 people, based on 2010 Census data.<sup>94</sup> Moreover, Black candidates had repeatedly run and lost for the school board and county commission. Regardless of whether they had run as Republicans or Democrats, and despite receiving significant support from Black voters in elections, they failed to get meaningful support from white voters. In 2013, a federal court found that the at-large voting system violated Black voters' rights under Section 2 and ordered Fayette County to create single-member districts in which voters would elect members of

the school board and county commission, including one district for each body in which Black voters would form the majority.<sup>95</sup>

Under district-based voting, beginning in elections in 2014, Black voters formed the majority in one majority-Black single-member district for each body to provide them with the opportunity to elect their preferred candidates. As a result, Black voters elected their first Black representative for the county commission and their white candidate of choice for the school board in districts beginning in 2014; in that 2014 election, Fayette County had the highest turnout of Georgia's 159 counties.<sup>96</sup>

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94 NAACP LDF, *Georgia State Conference NAACP, et al. v. Fayette County Board of Commissioners, et al.* (Feb. 16, 2018), <https://www.naacpldf.org/case-issue/georgia-state-conference-naacp-et-al-v-fayette-county-board-commissioners-et-al/>.

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95 *Georgia State Conference of NAACP v. Fayette Cty. Bd. of Comm'rs*, 950 F. Supp. 2d 1294, 1305 (N.D. Ga. 2013), *aff'd in part, vacated in part, rev'd in part on other grounds*, 775 F.3d 1336 (11th Cir. 2015).

96 *Georgia State Conference of the NAACP v. Fayette Cty. Bd. of Comm'rs*, 118 F. Supp. 3d 1338, 1340 (N.D. Ga. 2015).





After a record turnout, voters **elected three new Black city councilmembers**, the first Black candidates elected in the city's history

### ■ Pleasant Grove, Alabama

With a city population of roughly 10,000 people, voting that is sharply polarized along racial lines, and a slight white majority, the at-large elections for the five-member City Council in Pleasant Grove, Alabama ensured that no Black candidate had ever been successfully elected until 2020. In 2018, LDF filed a Section 2 lawsuit seeking to change the electoral method for Pleasant Grove City Council elections, proposing a change from the at-large electoral scheme to five single-member districts, which could facilitate up to three districts comprised of a majority of Black voters. In October 2019, the court approved a final settlement, which included as a remedy a change of the electoral method to cumulative voting beginning with elections in 2020, and public education about the new voting method.<sup>97</sup> Cumulative voting is an

alternative voting practice that provides each voter as many votes as there are vacant seats.<sup>98</sup> As a result of the electoral change, in the first election under cumulative voting in August 2020, there was record turnout, and voters elected three new Black city councilmembers, the first Black candidates elected in the city's history.<sup>99</sup>

97 Anna Beahm, *Pleasant Grove voting method changed to cumulative voting, according to approved settlement*, Alabama Media Group (Oct. 13, 2019), <https://www.al.com/news/2019/10/pleasant-grove-voting-method-changed-to-cumulative-voting-according-to-approved-settlement.html>.

98 Cumulative voting is used in dozens of localities in the United States, mostly in southern states like Alabama and Texas. To learn more about cumulative voting, see, e.g., *Mo. State Conference of the NAACP v. Ferguson-Florissant Sch. Dist.*, 894 F. 3d 924 (8th Cir. 2018); see also Richard L. Engstrom, Delbert A. Taebeel & Richard L. Cole, *Cumulative Voting as a Remedy for Minority Vote Dilution: The Case of Alamogordo, New Mexico*, 5 J.L. & Pol. 469 (1989); Richard L. Engstrom, *Cumulative and Limited Voting: Minority Electoral Opportunities and More*, 30 St. Louis Univ. Pub. L. Rev. 97 (2010). It is important to note that cumulative voting may not solve minority rights considerations in other areas, particularly in areas where minority voters show persistently lower levels of turnout than white voters.

99 Anna Beahm, *Pleasant Grove makes history; elects first Black councilors*, AL.com (Aug. 25, 2020), <https://www.al.com/news/2020/08/pleasant-grove-makes-history-elects-first-blacks-to-council.html>.

## Asian American communities:

### ■ California

For the 2010 redistricting cycle, Asian Americans Advancing Justice – Los Angeles anchored a California statewide network called the Coalition of Asian Pacific Americans for Fair Redistricting (CAPAFR) that worked to provide testimony and mapping proposals to the new independent state redistricting commission with the goal of achieving fair representation for Asian American, Native Hawaiian, and Pacific Islander (NHPI) communities across the state. Because of their advocacy, many Asian American and NHPI communities that were fragmented in previous district maps are now united. For example, Los Angeles Koreatown is now whole at the Assembly, Senate, and Congressional levels; Koreatown was previously split across several districts at all three levels of government. Additionally, the San Jose neighborhood of Berryessa, previously fragmented across four Assembly districts, is kept intact. The 2010 redistricting cycle also saw

the creation of the first state or federal district on the mainland in which Asian Americans make up a majority of the district's voter-eligible population—Assembly District 49, located in the west San Gabriel Valley. That same redistricting cycle also resulted in an Asian American majority-minority congressional district, the only one on the mainland (California's 17th congressional district).

### ■ New York City

In New York, redistricting advocacy by civil rights organizations, including the Asian American Legal Defense and Education Fund, successfully sought to keep the Asian American community in Queens (in Flushing/Bayside, Elmhurst and Briarwood/Jamaica Hills) intact within Congressional District 6. Asian Americans of voting age made up 37.9% of the district's population when the map was drawn. In November 2012, Grace Meng won that seat, becoming the first and only Asian American member of Congress from New York State and the first female Congressmember from Queens since former Vice-

Photo by Zeng Jingning/  
China News Service via  
Getty Images



Presidential nominee Geraldine Ferraro. Serving her fourth term in the United States House of Representatives, Meng is a member of the House Appropriations Committee and its Subcommittees on State and Foreign Operations, Homeland Security, and Commerce, Justice, Science and Related Agencies. In this position, Meng has been a strong and important champion for Census funding issues, and has passed several pieces of legislation, including laws about religious freedom, making Queens historic sites part of the National Park Service, striking “Oriental” from federal law, and protecting public housing residents from insufficient heat.

## Los Angeles Koreatown is now whole at the Assembly, Senate, and Congressional levels.

### Which Supreme Court cases from the last decade will affect redistricting in 2021?

#### ■ *Shelby County, Alabama v. Holder* (2013)

The impact of the Supreme Court’s decision in *Shelby County, Alabama v. Holder* to render Section 5 inoperable will continue to reverberate in the post-2020 redistricting process. Certain jurisdictions will no longer have to pre-approve their state and local redistricting plans before they can implement them; this scrutiny would have ensured that redistricting plans did not weaken the ability of minority communities to participate. Now, communities must conduct this scrutiny throughout the redistricting process and, if discriminatory maps get implemented, identify the resources to challenge them in court.

Overall, the main takeaway from the *Shelby County v. Holder* decision is that we, the people—especially people who live in jurisdictions formerly covered by Section

5<sup>100</sup>—must take responsibility for monitoring and auditing state voting laws and local election practices. We must initiate efforts to combat discriminatory voting laws as soon as they are proposed, so as to minimize the damage that is done, particularly so that elections are not held using discriminatory practices. Before the *Shelby County* decision, the federal government served as a safety net for catching these discriminatory laws. However, this is no longer the case, and we must become our own safety net.

In every session since the *Shelby County* decision, members of Congress have introduced legislation to respond to the decision. For example, the Voting Rights Advancement Act of 2019, later reintroduced as the John Lewis Voting Rights Advancement Act (or H.R. 4),

100 The jurisdictions that were previously subject to Section 5’s preclearance requirements include the entire states of Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia and portions of California, Florida, New York, North Carolina, South Dakota, and Michigan. U.S. Department of Justice, Civil Rights Division, *Jurisdictions Previously Covered by Section 5*, <https://www.justice.gov/crt/jurisdictions-previously-covered-section-5> (last visited Apr. 5, 2020).



would, if passed by Congress, provide tools to address discriminatory practices, including discriminatory redistricting. The Act would apply to states that have repeatedly suppressed the right to vote within the past 25 years. States covered by the Act would be required to have certain policies with a historically discriminatory impact reviewed before they go into effect. Examples of such policies include voter ID laws or the reduction of bilingual voting materials.<sup>101</sup> Additionally, the Act would create a complementary preclearance provision—practice-based preclearance—that targets the known tactics policymakers have repeatedly used to silence minority voters whose presence is growing and requires those practices, which include redistricting, to be preapproved prior to implementation when enacted in any jurisdiction across the country that is home to a racially, ethnically, and/or linguistically diverse population.<sup>102</sup>

### ■ *Alabama Legislative Black Caucus v. Alabama* (2014)

In 2014, the U.S. Supreme Court considered *Alabama Legislative Black Caucus (ALBC) v. Alabama*, a challenge to state legislative districts drawn by the Alabama Legislature after the 2010 Census. Alabama’s legislature in 2012 devised a redistricting plan that contained one additional majority-minority Senate district and one additional majority-minority House district compared to the districting scheme in place when 2010 Census data was released.<sup>103</sup>

In configuring its plan, the Legislature “instructed the consultant charged with redistricting to maintain not only the same number of majority-minority districts in the two state houses but also the same percentage of [Black people] *within* each district,” purportedly to comply with the non-retrogression principle of Section 5 of the Voting Rights Act.<sup>104</sup> However, due to population changes and the composition of the original 2001 districts, the districts comprised of a majority of Black voters were substantially underpopulated.<sup>105</sup> As a result, to achieve the requisite population deviation *and* maintain the same Black population percentage, many Black voters had to be shifted into majority-minority districts.<sup>106</sup> By “packing” Black people into fewer majority-minority districts, the Alabama legislature strengthened white voting power in districts throughout the rest of the state.

Black and Democratic legislators filed suit, alleging that the redistricting plan constituted vote dilution in violation of Section 2 of the Voting Rights Act and racial and partisan gerrymandering in violation of the U.S. Constitution.<sup>107</sup> Among other rulings, the U.S. Supreme Court held that Alabama’s legislature misapplied Section 5 of the Voting Rights Act because the law did not require a jurisdiction to maintain the same percentages of minority voters in each pre-existing minority-majority district.<sup>108</sup> LDF submitted an amicus-friend-of-the-court brief similarly contending that while Section 5 prohibited the reduction of minority voters’ opportunities to elect candidates of their choice, it was not so rigid to require a quota of Black voters in any particular district and that all reductions in the minority population of a majority-minority district are not retrogressive in violation of

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101 U.S. Senator Patrick Leahy of Vermont, *The Voting Rights Advancement Act of 2019*, <https://www.leahy.senate.gov/imo/media/doc/VRAA%20of%202019%20one%20pager.pdf>; see also Human Rights Campaign, *John Lewis Voting Rights Advancement Act* (Mar. 22, 2021), <https://www.hrc.org/resources/voting-rights-advancement-act>.

102 *Id.*

103 See *Alabama Legislative Black Caucus v. Alabama*, 231 F. Supp. 3d 1026, 1046 (M.D. Ala. 2017); see also Richard Hasen, *Opinion analysis: A small victory for minority voters, or a case with “profound” constitutional implications?*, SCOTUSBlog (Mar. 25, 2015), <https://www.scotusblog.com/2015/03/opinion-analysis-a-small-victory-for-minority-voters-or-a-case-with-profound-constitutional-implications/>.

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104 *Alabama Legislative Black Caucus*, 575 U.S. at 259–60.

105 Richard Hasen, *supra* note 103.

106 *Alabama Legislative Black Caucus v. Alabama*, 989 F. Supp. 2d 1227, 1235 (M.D. Ala. 2013).

107 Richard Hasen, *supra* note 103.

108 *Alabama Legislative Black Caucus*, 575 U.S. at 275–76 (explaining that the Alabama legislature’s “mechanical interpretation of § 5 can raise serious constitutional concerns”).



Section 5 of the VRA.<sup>109</sup> On remand, the lower court held that 12 of the challenged districts constituted unconstitutional racial gerrymanders and ordered the state to redraw them.<sup>110</sup> However, by that time, the 12 discriminatory districts had been in place for five years, diminishing the strength of Black voters during the 2012 and 2014 state legislative elections.<sup>111</sup>

### ■ *Arizona State Legislature v. Arizona Independent Redistricting Commission* (2015)

In 2015, the Supreme Court considered *Arizona State Legislature v. Arizona Independent Redistricting Commission*. In 2000, Arizona voters adopted an initiative that created an independent redistricting commission (“AIRC”) to draw new congressional district maps and shifted the responsibility away from the state legislature.<sup>112</sup> In 2012, the Arizona Legislature filed suit against the AIRC, claiming that giving the AIRC, instead of the state legislature, responsibility to draw the state’s redistricting maps violated the Elections Clause of the U.S. Constitution. The Supreme Court held that giving the responsibility for congressional redistricting to an independent redistricting commission, such as the AIRC, did not violate the U.S. Constitution.<sup>113</sup>

109 Brief of Amicus Curiae NAACP Legal Defense & Educational Fund, Inc., in Support of Appellants, *ALBC v. Alabama*, Nos. 13-895 & 13-1138, [https://www.naacpldf.org/wp-content/uploads/LDF-Amicus-Brief-in-Alabama-Legislative-Black-Caucus-v.-Alabama.pdf?\\_ga=2.83103381.2023988963.1617153287-206487206.1616439156](https://www.naacpldf.org/wp-content/uploads/LDF-Amicus-Brief-in-Alabama-Legislative-Black-Caucus-v.-Alabama.pdf?_ga=2.83103381.2023988963.1617153287-206487206.1616439156).

110 *Alabama Legislative Black Caucus*, 231 F. Supp. 3d at 1348.

111 Kelsey Jukam, *Alabama Ordered to Redraw Racially Gerrymandered Districts*, Courthouse News Service (Jan. 26, 2017), <https://www.courthousenews.com/alabama-ordered-to-redraw-racially-gerrymandered-districts/>.

112 *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 135 S. Ct. 2652 (2015).

113 *Id.*

**Why does this case matter?** In states that have adopted them, this Supreme Court decision allows independent redistricting commissions, rather than state legislators, to conduct redistricting.

### ■ *Evenwel v. Abbott* (2016)

In 2016, the Supreme Court considered *Evenwel v. Abbott*, a challenge to Texas’s statewide redistricting of the state Senate.<sup>114</sup> *Evenwel* plaintiffs claimed that the Fourteenth Amendment of the U.S. Constitution required that voter population—rather than total population—be equalized among the state senate districts, even though equalizing based on total population has been the standard practice nationwide for more than half a century. Any of the measures of voter population that plaintiffs sought (e.g., citizen voting-age population, voter registration, voter turnout) would at the very least have excluded children under 18 and immigrants who had not yet naturalized—both groups that are overrepresented in the Latino community. Texas defended its use of total population in redistricting, and an amicus brief filed by MALDEF demonstrated that the maps that plaintiffs sought as a remedy for their claimed violation would roll back Latino representation 30 years. The Supreme Court issued a narrow ruling holding that states may, but are not required to, equalize districts on total population; the Court did not issue a ruling on whether a state may use any other basis, like voter population, for equalizing districts.<sup>115</sup> As a result of this ruling, communities and the advocates who serve them must pay attention to what populations jurisdictions use to equalize electoral districts at all levels of government. If they use a measure other than total population, sound the alarm.

114 *Evenwel v. Abbott*, 136 S. Ct. 1120 (2016).

115 *Evenwel*, 136 S. Ct. at 1132–33.

## ■ *Abbott v. Perez* (2018)

In 2011, the Texas Legislature enacted new redistricting plans that reduced Latino, African American and Asian American voting strength across the state. Minority voters (and others) brought suit and, after several preliminary hearings, a federal court in 2012 concluded that the redistricting plans were discriminatory and ordered new, interim redistricting plans. The court's interim plans restored and created new minority opportunity districts for Texas House and Congress. The Texas Legislature subsequently repealed its 2011 redistricting plans and enacted the court's interim redistricting plans, which were then used for elections from 2012 through 2016. When the federal court declared more districts illegal after a 2017 trial, Texas appealed that ruling to the U.S. Supreme Court. The U.S. Supreme Court reversed the lower court, ruling that the Texas Legislature's enactment of the court's interim plans was not intentionally discriminatory and there was no vote dilution in violation Section 2 of the Voting Rights Act. The Supreme Court did uphold the ruling that the Texas Legislature had racially gerrymandered a district by manipulating Latino population.

**Why does this case matter?** It is critical that challengers to a redistricting plan marshal their evidence and secure positive changes as early as possible in the litigation process; it may be difficult to secure later changes to a redistricting plan, especially if a state has adopted a redistricting plan drawn by a court as an interim remedy.

# If legislatures use a measure other than total population, sound the alarm.



## CHAPTER 5

# The Impact of Census Data and Policies on Redistricting

Now that the Census Bureau has given the congressional apportionment data to the President, the Census Bureau will next release detailed redistricting data to the states that reflect race/ethnic origin and voting age. The official redistricting data file is expected by September 30, 2021.

The Census Bureau also collects, and makes available for redistricting, additional Census data such as data from the American Community Survey, discussed below. Jurisdictions will use Census data to draw new district lines, and the same data can be used to evaluate whether a redistricting plan discriminates against minority voters.

This chapter reviews several key Census concepts and issues that will affect the redistricting cycle that begins in 2021, including what data are needed for redistricting and how and where imprisoned people are counted during the Census.

## Census Data Needed for Redistricting

The U.S. Census Bureau is the premier federal statistical agency and is tasked with collecting information from U.S. residents through a variety of surveys. Of particular importance to redistricting are the data collected through the decennial Census and the annual American Community Survey.

## What is the decennial Census?

The decennial Census is a count of the entire U.S. population that occurs once every ten years. During this time, the Census Bureau sends out survey forms to every household and uses responses, as well as follow-up information, to determine the official population count of the United States. Through the Census, the Census Bureau is also able to collect basic population information, such as age, gender, race, and Hispanic origin, for all states and counties. Decennial Census data are provided at the block level, the finest geographic level used by the Census Bureau in reporting data.

The data obtained through the decennial Census are specifically collected for the purpose of congressional apportionment and redistricting. They determine how many seats each state will receive in the U.S. House of Representatives for the next decade, where district lines may be drawn to ensure that the population is equally divided among districts, and whether redistricting plans comply with the Voting Rights Act.

United States®  
**Census**  
**2020**







## What is the American Community Survey (ACS)?

The American Community Survey (ACS) is a sample survey by the Census Bureau that “provides vital information on a yearly basis about our nation and its people.”<sup>116</sup> The ACS is often confused with the decennial Census. To be clear, the Census is a count of *all* of the nation’s residents that occurs every 10 years, while the ACS gathers information from a sample of over 3 million housing units annually, on a rolling basis, to “provide up-to-date information about the social and economic needs of your community.”<sup>117</sup> The Census Bureau uses the ACS to create multi-year estimates about important characteristics of the national population throughout the country. The information gathered in the ACS is similar to the Census, but not precisely the same. For both the decennial Census and the ACS, if you receive a survey you are legally obligated to respond to the best of your ability. That’s because the ACS is part of the Census process (in which all residents of the United States are required by law to participate).<sup>118</sup> States and their political subdivisions use both decennial Census and ACS data for redistricting, each for a different purpose.<sup>119</sup>

116 U.S. Census Bureau, *About the American Community Survey* (June 17, 2018), <https://www.census.gov/programs-surveys/acs/about.html>.

117 *Id.*

118 13 U.S.C. § 221.

119 National Conference of State Legislatures, *Redistricting and Use of Census Data* (Apr. 1, 2021), <https://www.ncsl.org/research/redistricting/redistricting-and-use-of-census-data.aspx>; PRB, *Use of the American Community Survey in the Context of the Voting Rights Act* (Dec. 12, 2010), <https://www.prb.org/acs-votingrights/>.

## Can I access and use data from the American Community Survey to supplement my redistricting map?

Anyone with internet access may access microdata from the ACS; microdata can be found under the “American Community Survey Data” section of the Census Bureau’s website. As mentioned above, ACS data are not as precise as decennial Census data for numerous reasons: the ACS is a survey rather than an actual enumeration, and it surveys only a sample of the U.S. population, which increases the margin of error, especially for small geographic areas. However, ACS data can still be helpful in the redistricting process by providing map-drawers, map-drawing groups, or interested people with detailed demographic information about America’s communities.

Moreover, ACS data can be used when developing districts to make sure they comply with the Voting Rights Act. For example, in parts of the country where Section 2 of the Voting Rights Act requires advocates to show that a minority group can constitute the majority of citizen voting age population, ACS provides the data to make this showing.

## What should be considered when using ACS data for redistricting purposes?

ACS data provide valuable characteristics about the communities in which we live, as noted above. To be clear, ACS data are not the same as the 100% population count, which is taken from the decennial Census. **ACS data should not be used as a total population count for drawing districts—that’s what decennial Census data are for.** But ACS data can be useful in the following ways:

ACS data may be able to support the argument that a particular community shares common characteristics. This may be helpful in advocating that officials preserve a “community of interest” in redrawing districts. (For further discussion about communities of interest, see **Chapter 2**.)

ACS data are provided as either one-year estimates or five-year estimates. One-year estimates are only available for geographic areas that have a population of

# What information does the **American Community Survey** provide?

The ACS asks detailed questions regarding specific characteristics of the American population and provides data on the following subjects:

## Social

---

Ancestry

---

Citizen Voting-Age Population

---

Citizenship Status

---

Disability Status

---

Educational Attainment

---

Fertility

---

Grandparents as Caregivers

---

Language Spoken at Home

---

Marital History

---

Marital Status

---

Migration/Residence 1 Year Ago

---

Place of Birth

---

School Enrollment

---

Undergraduate Field of Degree

---

Veteran Status; Period of Military Service

---

Year of Entry

---

## Economic

---

Class of Worker

---

Commuting (Journey to Work) and Place of Work

---

Employment Status

---

Food Stamps/Supplemental Nutrition Assistance Program (SNAP)

---

Health Insurance Coverage

---

Income and Earnings

---

Industry and Occupation

---

Poverty Status

---

Work Status Last Year

---

Housing

---

Bedrooms

---

Computer and Internet Use

---

House Heating Fuel

---

Kitchen Facilities

---

Occupancy/Vacancy Status

---

Occupants per Room

---

Plumbing Facilities

---

## Rent

---

Rooms

---

Selected Monthly Owner Costs

---

Telephone Service Available

---

Tenure (Owner/Renter)

---

Units in Structure

---

Value of Home

---

Vehicles Available

---

Year Householder Moved Into Unit

---

Year Structure Built

---

Demographic

---

Age; Sex

---

Group Quarters Population

---

Hispanic or Latino Origin

---

Race

---

Relationship to Householder

---

Total Population

---

at least 65,000. Five-year estimates are available for all geographies down to the block group level. ACS estimates should only be compared to those of the same duration. In other words, one-year estimates should only be compared to other one-year estimates, and five-year estimates should only be compared to other five-year estimates.

Because ACS data are based on a sample, if you are working at the local level, you may want to combine one-year estimates of ACS data from several years to get a more accurate estimate of community characteristics, or utilize the five-year estimates.

### Are there any other Census data products I may need to use for redistricting?

As mentioned above, the Census Bureau uses the ACS to produce a special dataset for redistricting that contains information on citizen voting-age population. This is because the decennial Census does not ask for information about U.S. citizenship, but the ACS does. Thus, the Census Bureau combines information from the decennial Census and the ACS to produce a redistricting dataset that contains citizen voting-age population. Citizen voting-age population can play a role in redistricting. As of 2020, three federal appellate courts (the 5th, 9th, and 11th Circuits) require citizen voting-age population to be used to determine whether a population constitutes at least 50% of a district, as required under the *Gingles* test's first prong.<sup>120</sup> More courts, including the U.S. Supreme Court, may adopt this standard in this redistricting cycle,

120 See *Reyes v. City of Farmers Branch*, 586 F.3d 1019, 1023–24 (5th Cir.2009) (affirming that citizenship is a relevant factor in *Gingles* analysis); *Romero v. City of Pomona* *Romero v. City of Pomona*, 883 F.2d 1418, 1425–26 (9th Cir. 1989) (affirming lower court finding that “only those individuals eligible to vote can be counted in determining whether a minority group can constitute a voting majority of a single-member district”); *Negron v. City of Miami Beach*, 113 F.3d 1563, 1567–69 (11th Cir. 1997) (“[T]he proper statistic for deciding whether a minority group is sufficiently large and geographically compact is voting age population as refined by citizenship.”).

particularly when considering cases in which the plaintiff group contains a substantial number of immigrants. If you live in a state that is within these circuits, you will need to use citizen voting-age population data in your redistricting advocacy.<sup>121</sup>

## Incarcerated People & the Census

### ■ Mass Incarceration and Prison-based Gerrymandering

Mass Incarceration relates integrally to redistricting, because through the process of disparate policing and sentencing policies, millions of Americans, most of whom are Black or Latino, are incarcerated far from their homes; this diminishes the capacities of communities whose residents are disproportionately incarcerated to hold elected officials accountable through voting. As of 2018, Black Americans made up 12.7% of the U.S. population, but they are 41.3% of the U.S. prison population.<sup>122</sup> Importantly, the rates of incarceration of Black Americans did not come about by accident—they were a result of decades of legislation and policies as well as explicitly discriminatory practices at the federal, state, and local levels. Mass incarceration can contribute to discriminatory or unfair redistricting maps, especially for the communities where returning citizens reside because of the practice of prison-based gerrymandering.

Prison-based gerrymandering is the practice by which incarcerated persons are counted for redistricting purposes as residents of the correctional facilities where they are imprisoned on Census Day rather than their pre-incarceration communities, *i.e.*, their true residences, or where they were last registered to vote pre-arrest.

121 U.S. Courts, *Geographic boundaries of United States Courts of Appeals and United States District Courts* (Apr. 15, 2015), [https://www.uscourts.gov/sites/default/files/u.s.\\_federal\\_courts\\_circuit\\_map\\_1.pdf](https://www.uscourts.gov/sites/default/files/u.s._federal_courts_circuit_map_1.pdf).

122 NAACP LDF, *Prison-Based Gerrymandering Reform* (2018), <https://www.naacpldf.org/case-issue/prison-based-gerrymandering-reform/>.



PHILADELPHIA IS HOME TO

12%

OF PENNSYLVANIA'S  
TOTAL POPULATION

BUT SUPPLIES ABOUT

25%

OF ITS PRISON  
POPULATION

Without these prison populations, **at least four of Pennsylvania's** rural and suburban state legislative districts from the 2010 redistricting cycle are too small to meet population requirements under state and federal law.



This practice artificially inflates the population count—and thus, the political influence—of the geographic areas where prisons and jails are located. At the same time, it reduces the political power of everyone else, especially people of color who live in the urban neighborhoods that most incarcerated people call home. The viability of our communities, integrity of our democracy, and basic principles of equality suffer as a result.

The U.S. Constitution requires election districts to be roughly equal in size, so that everyone is represented equally in the political process. Public officials elected from districts must represent roughly the same number of people. Every constituent is entitled to enjoy the same level of access to their elected official and this right is enshrined in the “one person, one vote” principle.<sup>123</sup>

But, because of prison-based gerrymandering, the election districts drawn around prisons have fewer residents (and more political influence per capita) when compared to other districts in the state.

Prison-based gerrymandering uses a captive and disenfranchised population that is comprised disproportionately of people of color to inflate the political strength of the surrounding jurisdiction. It is all too reminiscent of the infamous “three-fifths compromise,” whereby enslaved and disenfranchised Black people were counted to inflate the number of constituents—and thus, the political influence—of Southern states before the Civil War.

As a growing reform movement recognizes, prison-based gerrymandering defies logic. Legally and practically, most incarcerated people are not truly residents of the districts where they are incarcerated. People imprisoned for felonies (the overwhelming majority of incarcerated people) cannot vote, and elected officials from districts that include prisons

generally do not engage with incarcerated people or treat them as constituents.

## ■ Case Study: Pennsylvania

Pennsylvania is one of the most severe examples of the distortions caused by prison-based gerrymandering—and of the practice’s unequal impact on people of color. In Pennsylvania, as in many states, mass incarceration has exploded in recent decades. And Black people are incarcerated at disproportionately high rates—a Black Pennsylvanian is almost nine times more likely to be imprisoned than a white Pennsylvanian.<sup>124</sup> People from Philadelphia are also disproportionately likely to be incarcerated. Philadelphia is home to 12% of Pennsylvania’s total population, but supplies about 25% of its prison population of over 45,000.<sup>125</sup> All of Pennsylvania’s incarcerated people are held in prisons outside of Philadelphia, mostly in more rural and less populated regions, where they are counted as members of those communities.<sup>126</sup>

Without these prison populations, at least four of Pennsylvania’s rural and suburban state legislative districts from the 2010 redistricting cycle are too small to meet population requirements under state and federal law.<sup>127</sup> Additionally, if incarcerated people were counted at their homes, it is likely that the Voting Rights Act would

124 The Sentencing Project, *State-by-State Data: Black-White Disparity*, <https://www.sentencingproject.org/the-facts/#rankings?dataset-option=BWR> (last visited Feb. 26, 2020).

125 Pa. Dep’t of Corrections, *Inmate Statistics* (Dec. 31, 2019), <https://www.cor.pa.gov/About%20Us/Statistics/Documents/Budget%20Documents/2019%20Inmate%20Profile.pdf>.

126 *Id.*; see also Peter Wagner & Elena Lavarreda, Prison Policy Initiative, *Importing Constituents: Prisoners and Political Clout in Pennsylvania* (June 26, 2009), <https://www.prisonersofthecensus.org/pennsylvania/importing.html>.

127 Briana Remster & Rory Kramer, *Shifting Power: The Impact of Incarceration on Political Representation*, 15 Du Bois Rev. 417, 431 (2018).

123 *Reynolds v. Sims*, 377 U.S. 533, 567 (1964).

require an additional majority-minority legislative district in Philadelphia.<sup>128</sup>

In light of these grave inequities, LDF, the NAACP, and the law firm Ballard Spahr LLP filed a lawsuit in February 2020 against the Commonwealth of Pennsylvania, arguing that the state's use of prison-based gerrymandering violates the Pennsylvania Constitution and state law because it dilutes the voting and representational rights of Pennsylvanians of color who live in the state's urban areas and cities, such as Philadelphia.<sup>129</sup> Through the lawsuit, plaintiffs in *Holbrook v. Commonwealth of Pennsylvania* sought a declaration and order that would require the state to end its unconstitutional practice when it redraws its redistricting maps after the 2020 Census. Unfortunately, in January 2021, Pennsylvania's state court dismissed plaintiffs' action on procedural grounds without addressing the heart of the case: whether Pennsylvania's practice of prison-based gerrymandering violates state law.<sup>130</sup>

For over a decade, there have been various efforts to combat prison-based gerrymandering and its detrimental effects. The fundamental solution would be ending mass incarceration. The next best approach would be for the Census Bureau to change its practice and count incarcerated persons in their home communities when reporting Census data, as LDF and other advocates have urged for more than a decade.<sup>131</sup> This would correct for prison-based gerrymandering before states receive data from the Census Bureau. Since the Census Bureau has declined to do that, similar to after the 2010 Census, the

Bureau is offering technical support to help states make this correction.<sup>132</sup> The Census Bureau has agreed to publish prison population count data earlier than in the past, which will give governments enough time to remove incarcerated people from the redistricting formulas, or reallocate them to another locale, such as their home addresses before incarceration.<sup>133</sup>

Moreover, as of the publication of this report, 10 states and over 200 counties have adopted laws to correct for prison-based gerrymandering.<sup>134</sup> The legislation creates a special state-level census that collects home addresses of people in prison and then adjusts the U.S. Census counts accordingly. Civil-rights organizations, including LDF in the Pennsylvania case, have brought lawsuits seeking to end the practice.<sup>135</sup> Much work has yet to be done, but a national movement to end prison-based gerrymandering is under way.

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128 *Id.*

129 Petition for Review, *Holbrook v. Commonwealth of Pennsylvania*, No. 184 MD 2020 (Pa. Commw. Ct. Feb. 27, 2020), <https://www.naacpldf.org/wp-content/uploads/2020-02-27-PBG-Petition-for-Review-as-filed.pdf>.

130 *Holbrook v. Commonwealth*, 2021 Pa. Commw. Unpub. LEXIS 45 (Pa. Commw. Ct. Jan. 14, 2021).

131 See, e.g., Prison Policy Initiative, *Over 200 organizations ask Census Bureau to develop solutions to "prison gerrymandering"* (Feb. 14, 2013), <https://www.prisonersofthecensus.org/news/2013/02/14/feb2013letter/>.

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132 U.S. Census Bureau, *Group Quarters Enumeration*, <https://2020census.gov/en/conducting-the-count/gq/gqe.html> (last visited Apr. 6, 2020); see also Prison Policy Initiative, *Census Bureau will count incarcerated people in the wrong place once again in 2020 Census, continues to distort democracy*, (Feb. 7, 2018), <https://www.prisonersofthecensus.org/news/2018/02/07/frn2018/>.

133 To learn more about how you can work to correct for prison-based gerrymandering during this next redistricting cycle, see Prison Policy Initiative, <https://www.prisonersofthecensus.org/data/>; Prison Policy Initiative, *Prison Gerrymandering Project, Solutions: What counties and other local governments can do*, <https://www.prisonersofthecensus.org/solutions.html#local> (last visited Nov. 20, 2020).

134 *Id.* These states include: Maryland, New York, Delaware, California, Washington, Nevada, New Jersey, Colorado, Virginia, and Illinois.

135 *Calvin v. Jefferson Cty. Bd. of Commissioners*, 172 F. Supp. 3d 1292 (N.D. Fl. 2016); *Davidson v. City of Cranston*, 837 F.3d 135 (1st Cir. 2016); *NAACP v. Merrill*, No. 3:18-cv-01094 (D. Conn. Feb. 15, 2019); Press Release, NAACP LDF, *LDF and Co-Counsel File Lawsuit Challenging Pennsylvania's Prison-Based Gerrymandering Scheme* (Feb. 27, 2020), <https://www.naacpldf.org/press-release/ldf-and-co-counsel-file-lawsuit-challenging-pennsylvanias-prison-based-gerrymandering-scheme/>.

## CHAPTER 6

# Non-U.S. Citizens and Political Representation

Redistricting is based on the premise that there is equal representation for equal numbers of people. The redistricting process is not intended solely to protect the voting power of citizens. Non-U.S. citizens, as well as U.S. citizens not yet of voting age, should count for purposes of apportionment.

## Do non-U.S. citizens get political representation too?

Yes, like other groups that are ineligible to vote (such as children), non-U.S. citizens get political representation. Non-U.S. citizens are “persons” under the Constitution and are entitled to protection under our laws.

Despite this constitutional promise, immigrants have been the target of increasing anti-immigrant rhetoric and laws in our nation. For example, in 2019, the Texas Secretary of State attempted to purge close to 100,000 recently naturalized U.S. citizens from the voter rolls. The voter purge was surgically targeted at immigrants and relied on outdated documents that these voters had provided to driver’s license offices before they became U.S. citizens. Represented by MALDEF, voters who had received purge notices sued Texas and won a temporary restraining order. Texas subsequently settled the case, promising to abandon its discriminatory practice, but several bills introduced in the 2021 Texas Legislature would revive the purge and once again single out naturalized U.S. citizens

for investigation and burdensome requirements to prove their eligibility to vote.

## Do states have to use total population data to draw districts? Can states just use data on citizens since they are the ones eligible to vote?

As a preliminary matter, if a state decides to exclude non-citizens from the redistricting base while including other non-voters like children, this action could be found discriminatory or unconstitutional by a court. It would also amount to “taxation without representation.”

Depending on the state and the region of the U.S., states may have the option to use either the total population or some other population in apportioning districts.<sup>136</sup> In certain jurisdictions, including those within the Ninth Circuit, all persons must be counted in determining the size of political districts.<sup>137</sup> However, not all jurisdictions have adopted this standard, and the U.S. Supreme Court’s 2016 decision in *Evenwel v. Abbott* left open the possibility that a jurisdiction might choose to depart from using total population as the base for apportionment.

<sup>136</sup> See, e.g. *Burns v. Richardson*, 384 U.S. 73 (1966).

<sup>137</sup> *Garza v. Los Angeles County*, 918 F.2d 763 (9th Cir. 1990).



## Why should non-U.S. citizens be considered in redistricting?

Non-U.S. citizens have many opportunities for civic participation, even though they cannot vote in most jurisdictions. They can participate in public hearings and government meetings and meet with their elected representatives. A number of jurisdictions around the country allow non-U.S. citizens to vote in local elections. Non-U.S. citizens are allowed to vote for local school boards in Chicago and they have been allowed to vote in Takoma Park, Maryland in local elections since 1992. Other small communities in Maryland allow non-U.S. citizen voting as well. In City Heights, California all residents are allowed to vote for members of the Planning Committee.<sup>138</sup>

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138 Stanley Renshon, *The Debate Over Non-Citizen Voting: A Primer*, Center for Immigration Studies (Apr. 7, 2008) <https://cis.org/Report/Debate-Over-NonCitizen-Voting-Primer>.

In New York, non-U.S. citizens were allowed to vote in community school board elections for more than three decades before Mayor Bloomberg dismantled the school board in 2003. In 2010, non-citizen parents were allowed to vote in an election to determine what organizations would run low-performing schools in the Los Angeles Unified School District. Moreover, elected officials have a duty to represent everyone in their district, not just the people who voted for them, are old enough to vote, or who are citizens. In addition, most non-citizens are or will become eligible to naturalize due to time as a lawful permanent resident. Participation in civic activity can be an important precursor to full and engaged participation once a non-citizen becomes a citizen through naturalization.<sup>139</sup>

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139 Too often, non-citizen is seen as equivalent to undocumented, but the undocumented comprise only a fraction of the total U.S. non-citizen population.



## CHAPTER 7

# Redistricting Reform Efforts

## What is the focus of modern redistricting reform?

### ■ Independent Redistricting Commissions

As mentioned in **Chapters 1** and **4**, some states and localities have adopted independent redistricting commissions with the goal of combatting partisan gerrymandering and improving the impartiality of the redistricting body. As of early 2021, nine states have given independent redistricting commissions primary responsibility for redistricting, and several other states have “politician commissions” made up of elected officials, or advisory commissions that help the legislature draw district lines.<sup>140</sup>

As discussed above, independent redistricting commissions (IRCs) have the potential to improve impartiality and equality in the redistricting process, but they also have potential pitfalls (see **Chapters 1** and **4**).

The creation of IRCs aims to take responsibility for redistricting away from elected officials and transfer that responsibility to an appointed body. While some redistricting commission reform measures have the goal of increasing transparency and opportunities for public input, other redistricting commission reform proposals have called for the adoption of stringent criteria that the

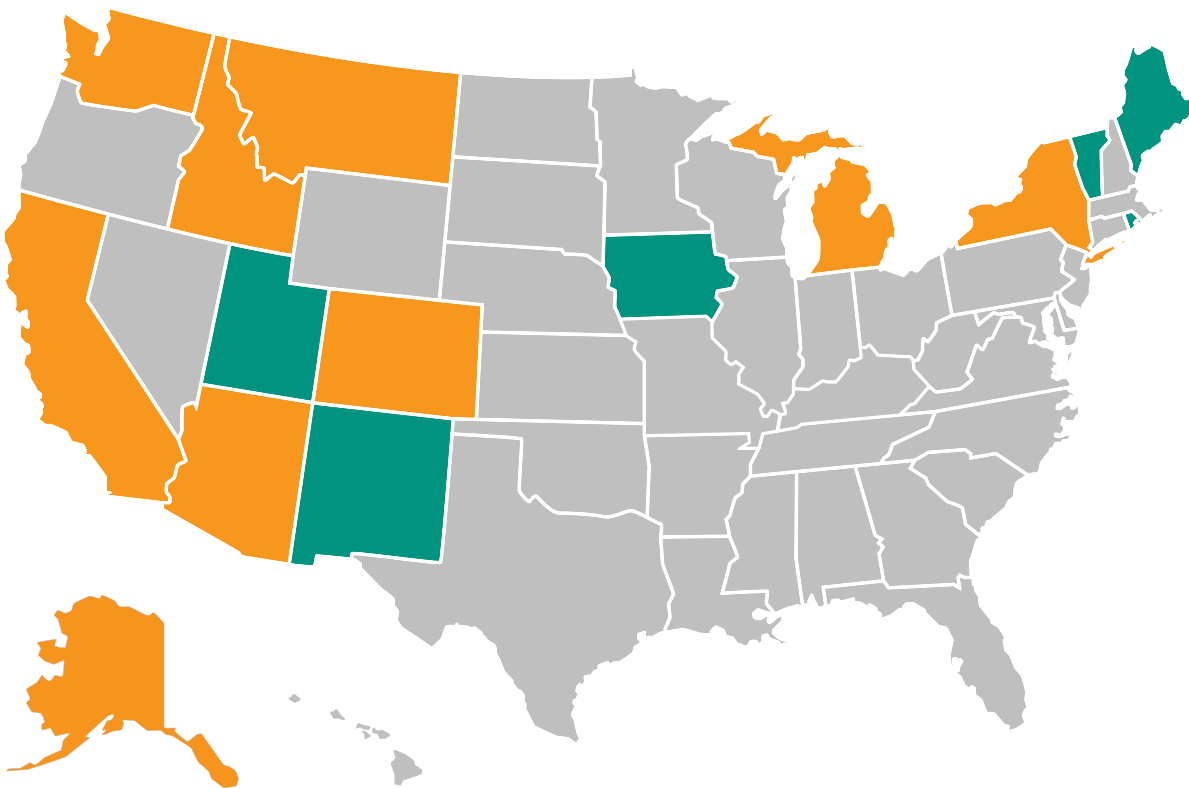
legislature or a politically appointed commission must follow in the process of redrawing district lines.

Proposals calling for the creation of redistricting commissions may be focused on a potential cure to perceived partisan or incumbency problems at the expense of providing adequate safeguards for minority voting rights. Indeed, during the 2000 redistricting cycle, the legislative redistricting plan adopted by the Arizona IRC resulted in an objection under Section 5 of the VRA.<sup>141</sup> Additionally, while adopting an IRC may change redistricting, there is little evidence that an IRC is the best way to curtail partisanship or eliminate political gerrymandering.

Moreover, our nation’s long history of racial discrimination in the electoral process requires that we carefully examine and assess all proposals to reform the redistricting process, no matter how neutral they may appear. Any process that transfers redistricting authority from elected officials to an appointed commission must be carefully monitored and assessed to ensure that the interests of minority communities are adequately protected. Commissions must prioritize compliance with federal voting rights requirements and should take into account principles of diversity and accountability; otherwise they run the risk of rolling back progress toward racial equality in the redistricting decision-making process. In our view, racial diversity among line-drawers and the

140 Justin Levitt, *Who draws the Lines?*, All About Redistricting, <https://redistricting.ils.edu/redistricting-101/who-draws-the-lines/>; Wendy Underhill, *Redistricting Commissions: State Legislative Plans*, Nat’l Conf. of State Legislatures (Apr. 30, 2021), <https://www.ncsl.org/research/redistricting/2009-redistricting-commissions-table.aspx>.

141 See Letter from Ralph F. Boyd, Jr., Assistant Attorney General, U.S. Department of Justice to Lisa T. Hauser, Esq. and José de Jesús Rivera, Esq., Phoenix, Arizona (May 20, 2002), [https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/I\\_020520.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/I_020520.pdf).



unequivocal commitment to protecting the interests of minority voters are two issues of paramount importance in any redistricting effort and should be of particular concern during any effort to reform the process. With over 40 years of enforcement of the VRA at stake, IRC proposals must not lead to a process that places minority voting rights in a more vulnerable position.

If your jurisdiction relies on IRCs for redistricting, consider your role in ensuring that they function fairly. For example, you can urge that the following principles direct the creation of, and work carried out by, IRCs: (1) include language that protects minority voting rights principles in redistricting criteria; (2) reject redistricting criteria that will hinder the protection of minority voting rights; (3) where majority-minority districts cannot be drawn, require the creation of districts where minority groups can combine to elect candidates of their choice; (4) establish

a process structured to yield a diverse commission; (5) include minority perspectives at the planning stage; and (6) eliminate fairness barriers that dilute minority voting strength.<sup>142</sup>

## ■ Partisan Gerrymandering

Partisan gerrymandering, as discussed above in **Chapter 1**, is the process by which legislatures draw district lines to benefit one political party inordinately over another. Partisan gerrymandering is used by incumbent politicians and political parties to entrench themselves in

<sup>142</sup> For a fuller explanation of these guiding principles, see NAACP LDF, *Independent Redistricting Commissions: Reforming Redistricting Without Reversing Progress Toward Racial Equality*, [https://www.naacpldf.org/wp-content/uploads/IRC\\_Report\\_Political-Participation\\_.pdf](https://www.naacpldf.org/wp-content/uploads/IRC_Report_Political-Participation_.pdf).



office by consolidating their voting bases, or diluting the voting bases of the opposing party.

In June 2019, the U.S. Supreme Court issued its ruling in *Rucho v. Common Cause*, a lawsuit challenging partisan gerrymandering in North Carolina. In *Rucho*, the Court held that for the Supreme Court to prevent partisan gerrymandering would be “an unprecedented expansion of judicial power”<sup>143</sup> and concluded “that partisan gerrymandering claims present political questions beyond the reach of the federal courts.”<sup>144</sup> This ruling leaves it up to individual state courts, legislative bodies, and the people to curb excessive gerrymandering based on party affiliation.<sup>145</sup> This decision will make challenging partisan gerrymandering more difficult, as *Rucho* effectively closes the federal courts to partisan gerrymandering claims. This

ruling, however, has not stopped efforts to prevent partisan gerrymandering. For example, as of June 2020, “about 18 states have passed some sort of redistricting procedures designed to keep partisanship in check [and] more are pursuing such measures.”<sup>146</sup> State courts in Pennsylvania and North Carolina have also struck down partisan gerrymanders under their respective state constitutions.<sup>147</sup> This provides an opportunity for you to consider how your state laws may protect against partisan gerrymandering in lieu of federal legislation and federal law.

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143 *Rucho v. Common Cause*, 139 S. Ct. 2484, 2507 (2019). *Rucho* was a consolidated appeal with a challenge to partisan gerrymandering in a case arising out of Maryland, *Benisek v. Lamone*, 348 F. Supp. 3d 493 (D. Md. 2018), vacated and remanded sub nom. *Rucho v. Common Cause*, 139 S. Ct. 2484, 204 L. Ed. 2d 931 (2019).

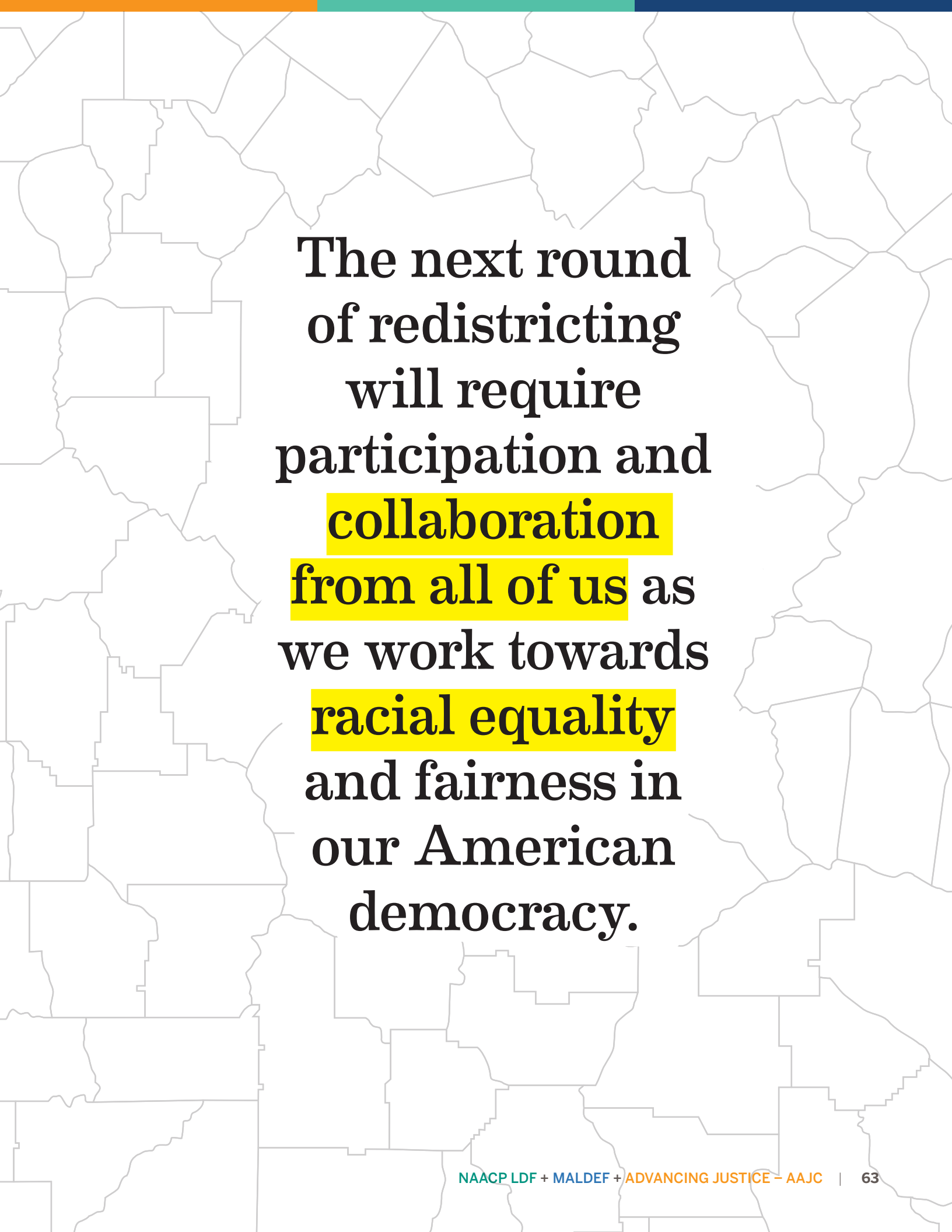
144 *Id.* at 2506-07.

145 *Id.* Indeed, North Carolina state courts have stepped up to strike down partisan gerrymanders. *Common Cause v. Lewis*, No. 18 CVS 014001, 2019 WL 4569584 (N.C. Super. Sep. 03, 2019). So, too, have other states’ courts. See, e.g., *League of Women Voters v. Commonwealth*, 178 A.3d 737 (Pa. 2018).

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146 David A. Lieb & Dan Sewell, *States Poised to Take Up Fight Over Partisan Gerrymandering*, Associated Press (June 28, 2019), <https://www.apnews.com/e4fc3a28224b4b6fa59d-788b23a08aa9>.

147 *League of Women Voters v. Commonwealth*, 178 A.3d 737 (Pa. 2018); Daniel McGlone, *Packing and Cracking: Exploring Pennsylvania’s Gerrymandered Congressional Districts* (Jan. 23, 2018), [http://2rct3i2488gxf9jvb1lqhek9-wpengine.netdna-ssl.com/wp-content/uploads/2018/01/packing\\_cracking.png](http://2rct3i2488gxf9jvb1lqhek9-wpengine.netdna-ssl.com/wp-content/uploads/2018/01/packing_cracking.png); *Common Cause v. Lewis*, No. 18 CVS 014001, 2019 WL 4569584 (N.C. Super. Sep. 03, 2019).



**The next round  
of redistricting  
will require  
participation and  
collaboration  
from all of us as  
we work towards  
racial equality  
and fairness in  
our American  
democracy.**



# Conclusion

The redistricting cycle of 2021 will have major effects on political participation and voting rights for Black, Latino, and Asian American communities for the next decade and beyond. As explained in this guide, redistricting is a vastly important process that affects the everyday lives of those who live in our country. Redistricting is a powerful mechanism of our democracy, and, due to this power, it has the potential to be used to benefit all of us and our voting rights, or it can be used to disadvantage communities of color. As a result, your participation in the process is vital: we, the people, must serve as auditors of the government to ensure that this process is as fair as possible, and benefits everyone equally and meaningfully.

We hope this guide has helped you understand the redistricting process and why it is so important. For more information on the process, or to ask questions, please contact the **NAACP Legal Defense and Educational Fund (LDF)** at: [www.naacpldf.org](http://www.naacpldf.org); the **Mexican American Legal Defense and Educational Fund (MALDEF)** at: [www.maldef.org](http://www.maldef.org); or the **Asian Americans Advancing Justice – AAJC** at: [www.advancingjustice-aajc.org](http://www.advancingjustice-aajc.org). You should also consult state and local resources in your communities. The next round of redistricting will require participation and collaboration from all of us as we work towards racial equality and fairness in our American democracy.





## Glossary of Redistricting Terms

<b>Congressional Apportionment</b>	Following each decennial Census, the 435 seats in the U.S. House of Representatives are apportioned to each state based on state population. <sup>148</sup> The larger the state population, the more congressional representatives the state will be apportioned. This occurs so that a state's representation in Congress is proportional to its population. Reapportionment is not redistricting, although some states use the terms interchangeably.
<b>At-large election system</b>	An at-large election system is one in which all voters can vote for all candidates running for open seats in the jurisdiction. In an at-large election system, candidates run in an entire jurisdiction rather than from districts or wards within the area. For example, a city with three open city council positions where all candidates for the three seats run against each other and the top three receiving the most votes citywide are elected is an at-large election system. In at-large election systems, 50% plus one of the voters control 100% of the seats. At-large election systems can have discriminatory effects on minority voters where minority and white voters consistently prefer different candidates, and the majority will regularly defeat the choices of minority voters because of their numerical superiority.
<b>Decennial Census</b>	The counting and survey of every person in a population. In the U.S., a decennial Census is taken every ten years. The decennial Census is required by the Constitution for reapportionment and is used in the redistricting process.
<b>Census block</b>	The smallest level of Census geography used by the Census Bureau to collect Census data. Census blocks are formed by streets, roads, bodies of water, other physical features, and legal boundaries shown on Census Bureau maps.
<b>Census Bureau</b>	The federal government agency that administers the decennial Census and the American Community Survey, as well as other data collection activities.

<sup>148</sup> The 435 total seats in the House is set by legislation; that number could be expanded or contracted by a newly-enacted federal law.

<b>Census tract</b>	A level of Census geography larger than a Census block or Census block group that usually corresponds to neighborhood boundaries and is composed of Census blocks.
<b>Citizen voting-age population</b>	The population of U.S. citizens aged 18 and over. (Related to VAP)
<b>Coalition District</b>	A district where two or more groups of racial minorities constitute a majority of the population and where the voters from these different racial groups vote together to elect the minority-preferred candidate. (Also called Minority Coalition District)
<b>Community of interest</b>	A neighborhood, community, or group of people who would benefit from being maintained in a single district because of shared interests, views, policy concerns, or characteristics.
<b>Compactness</b>	For Section 2 of the Voting Rights Act purposes, compactness refers to the geographic concentration of a minority community—that is, whether residents of color live reasonably close to each other. <sup>149</sup> It may also refer to the appearance/shape of a district. Compactness can be assessed through the use of visual and statistical tests, as well as testimony of community members.
<b>Contiguous</b>	A characteristic describing a district boundary's single and uninterrupted shape. A geographically contiguous district is one in which all parts of the district are physically connected to each other. (Contiguity is the noun form of the same term).
<b>Cracking</b>	A form of vote dilution that occurs when district lines divide a geographically compact minority community into two or more districts such that the minority community is not a significant portion of any district. If the minority community is politically cohesive and could elect a preferred candidate if placed in one district but, due to cracking, the minority population is divided into two or more districts where it no longer has any electoral control or influence, the voting strength of the minority population may be diluted. (Also known as Fracturing).

<sup>149</sup> *League of United Latin American Citizens v. Perry*, 548 U.S. 399, 433 (2006).



<b>Crossover Districts</b>	A crossover district is a white majority district in which minorities still reliably control the outcome of the election because some non-minority voters cross over to vote with the minority group.
<b>Deviation</b>	The deviation is any amount of population that is less than or greater than the ideal population of a district. The law generally allows for some deviation in state and local redistricting plans before the plans become legally suspect. However, congressional districts must have equal population within a state. See below for the definition of “ideal population.”
<b>Gerrymandering</b>	The drawing of electoral districts to give one group or party an undue advantage over another group. Drawing majority-minority districts to comply with the Voting Rights Act is not gerrymandering.
<b>Gingles Factors</b>	The <i>Gingles</i> factors are three preconditions set forth by the U.S. Supreme Court in <i>Thornburg v. Gingles</i> , 478 U.S. 30 (1986) that a minority group must prove as the first step in establishing a violation of Section 2 of the Voting Rights Act. These preconditions are: 1. A minority group must be sufficiently large and geographically compact to comprise a majority of a district; 2. The minority group must be politically cohesive; and 3. White voters vote sufficiently as a bloc usually to defeat the minority group's preferred candidate.
<b>GIS (Geographic Information System)</b>	Computer software used to create redistricting maps.
<b>Ideal population</b>	The total population goal for districts in a redistricting plan. It is computed by taking the total population of the jurisdiction and dividing it by the total number of districts in the redistricting plan. For example, if a city's population is 10,000 and there are ten electoral districts, the ideal population for each district is 1,000.
<b>Influence district</b>	A district in which a racial or ethnic minority group does not constitute a majority of the population but can still influence substantially the election or the decisions of an elected representative.

<b>Majority-minority district</b>	A majority-minority district is one in which one racial or ethnic minority group comprises a majority (more than 50%) of the relevant population.
<b>Minority vote dilution</b>	Minority vote dilution occurs when minority voters are deprived of an equal opportunity to elect their candidate of choice. It is prohibited under the Voting Rights Act. Examples of minority vote dilution include packing, cracking, and the discriminatory effects of at-large election systems.
<b>Multi-member districts:</b>	A district that elects two or more members to public office.
<b>Nesting</b>	A redistricting rule in some states under which each upper house (such as the state senate) district is made up of two lower house districts (such as the state assembly).
<b>One-person, one-vote</b>	The constitutional requirement that districts be substantially equal in total population. Typically, this means that every district in a redistricting plan should contain roughly the same number of people, regardless of age or citizenship. (Also known as the Equal Population Rule).
<b>Minority Opportunity district</b>	A minority opportunity district is one that provides minority voters with the opportunity to elect a candidate of their choice.
<b>Packing</b>	A form of vote dilution prohibited under the Voting Rights Act in which a minority group is over-concentrated in one or a smaller number of districts than necessary. For example, packing can occur when the Black population is concentrated into one district where it constitutes 90% of the district, instead of two districts where it could constitute 45% of each district.
<b>PL 94-171</b>	The federal law that requires the United States Census Bureau to provide states with data for use in redistricting.
<b>Political subdivision</b>	A division of a state, such as a county, city or town.

<b>Precinct</b>	An area created by election officials to assign voters to a designated polling place so that an election can be conducted. Precinct boundaries may change several times over the course of a decade.
<b>Pre-clearance</b>	The process by which states and jurisdictions covered by Section 5 of the Voting Rights Act must obtain pre-approval for changes in their voting laws and policies from the U.S. Department of Justice or the U.S. District Court for the District of Columbia. Following the Supreme Court decision in <i>Shelby County, Alabama v. Holder</i> , only a very limited number of jurisdictions must undergo the preclearance process, largely as a result of court settlement obligations. Thus, the <i>Shelby County</i> decision rendered Section 5 and the preclearance process almost entirely inoperable.
<b>Racially polarized voting or racial bloc voting</b>	Racially polarized voting is a pattern of voting along racial lines in which voters of the same race tend to support the same candidate, who is different from the candidate supported by voters of a different race.
<b>Reapportionment</b>	This term is used interchangeably with the term “apportionment,” and has the same definition.
<b>Redistricting</b>	The process used by governments to redraw electoral district boundaries; redistricting applies to all levels of government where district elections are held—from local school boards, cities and counties to state legislatures and the U.S. House of Representatives. Maps are redrawn every ten years after the Census to create districts with substantially equal populations to, at minimum, account for population shifts.
<b>Section 2 (of the Voting Rights Act)</b>	A key provision of the Voting Rights Act that protects minority voters from practices and procedures that deprive them of an effective vote because of their race, color, or membership in a particular language group.

<b>Section 5 (of the Voting Rights Act)</b>	A provision of the Voting Rights Act that prohibits jurisdictions from adopting voting changes, including redistricting plans, without first obtaining a federal decision that the new changes neither worsen the position of minority voters nor were adopted with a discriminatory purpose. Following the 2013 <i>Shelby County, Alabama v. Holder</i> decision by the U.S. Supreme Court, most jurisdictions previously covered by Section 5 are no longer covered.
<b>Totality of circumstances</b>	A consideration of all the circumstances in their totality, rather than a consideration of any one factor or rule. The totality of circumstances is used by courts to decide if there is a violation of Section 2 of the Voting Rights Act.
<b>Traditional redistricting principles</b>	Traditional redistricting criteria applied by a jurisdiction. In addition to ensuring equal population across districts and compliance with the Voting Rights Act, which are required by law, traditional redistricting principles can include ensuring compactness, contiguity, respect for political subdivisions, respect for communities of interest and protection of incumbents.
<b>Undercount</b>	The number of U.S. residents missed in the Census. Historically, among the populations that have the highest undercounts are Black, Latino, and Asian American communities.
<b>Unity Map</b>	A proposed redistricting map drawn by a coalition of multiple community groups that incorporates the redistricting goals of the multiple groups and demonstrates that multiple communities of interest can be simultaneously respected.
<b>Voting Age Population (VAP)</b>	The total population age 18 and over. (Related to CVAP)
<b>Voting Rights Act (VRA):</b>	The federal legislation passed in 1965 to ensure that state and local governments do not pass laws or policies that deny American citizens the equal right to vote based on race. Section 2 of the VRA protects voters from discrimination based on race, color, or membership in a language minority group in all election procedures.



## APPENDIX 2

**Appendix 2**, which is [available online](#), includes information about the redistricting process in your state. This includes who is responsible for drawing your state's legislative and congressional districts, how you can contact them, and any state-specific legal requirements they must follow, including deadlines and opportunities for public input. (Importantly, every state's redistricting plans must comply with the U.S. Constitution and federal laws, including the Voting Rights Act.)

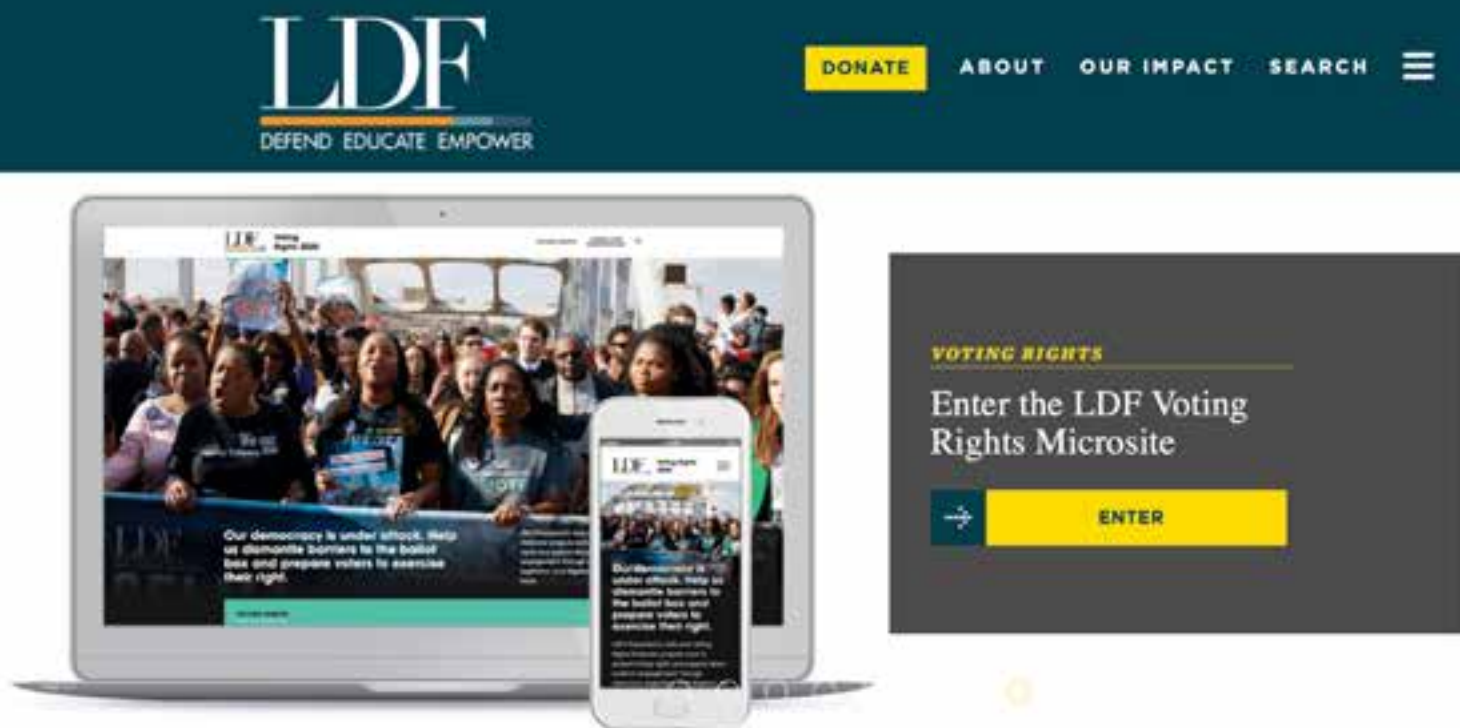
Visit [naacpldf.org/redistricting-report](https://naacpldf.org/redistricting-report) to download a copy of **Appendix 2**.



**Make sure your  
voice is heard** in the  
redistricting process  
for the seats that  
affect you.



## Partner Organizations



### NAACP Legal Defense and Educational Fund, Inc.

The NAACP Legal Defense and Educational Fund, Inc. (“LDF” or “NAACP Legal Defense Fund”) is the country’s first and foremost civil rights and racial justice law organization. Founded 81 years ago, LDF has an unparalleled record of expert legal advocacy and its victories serve as the foundation for the civil rights that all Americans enjoy today.

LDF has been completely separate from the National Association for the Advancement of Colored People (NAACP) since 1957—although LDF was originally founded by the NAACP and shares its commitment to equal rights.

LDF’s Thurgood Marshall Institute is a multi-disciplinary and collaborative hub within LDF that launches targeted campaigns and undertakes innovative research to shape the civil rights narrative. In media attributions, please refer to us as the NAACP Legal Defense Fund or LDF.

From the early white primary cases to the present day, the quest for the unfettered political participation of Black people has been an integral part of LDF’s mission. LDF has been involved in much of the litigation relating to minority voting rights, apportionment, and redistricting over many decades, including removing barriers to Black



voter participation and office-holding, creating some of the first Black congressional, state legislative, and judicial districts, and litigating the cases that led to the abolition of white primaries. See, e.g., *Trump v. New York*, 141 S. Ct. 530 (2020); *Department of Commerce v. New York*, 139 S. Ct. 2551 (2019); *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019); *Gill v. Whitford*, 138 S. Ct. 1916 (2018); *Evenwel v. Abbott*, 136 S. Ct. 1120 (2016); *Ala. Legis. Black Caucus v. Alabama*, 135 S. Ct. 1257 (2015); *Shelby Cty., Ala. v. Holder*, 570 U.S. 529 (2013); *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193 (2009); *League of United Latin Am. Citizens (LULAC) v. Perry*, 548 U.S. 399 (2006); *Georgia v. Ashcroft*, 539 U.S. 461 (2003); *Easley v. Cromartie*, 532 U.S. 234 (2001); *Bush v. Vera*, 517 U.S. 952 (1996); *Shaw v. Hunt*, 517 U.S. 899 (1996); *United States v. Hays*, 515 U.S. 737 (1995); *League of United Latin Am. Citizens v. Clements*, 999 F.2d 831 (5th Cir. 1993) (en banc); *Chisom v. Roemer*, 501 U.S. 380 (1991); *Houston Lawyers' Ass'n v. Attorney Gen. of Texas*, 501 U.S. 419 (1991); *Thornburg v. Gingles*, 478 U.S. 30 (1986); *Beer v. United States*, 425 U.S. 130 (1976); *Kirksey v. Bd. of Supervisors*, 554 F.2d 139 (5th Cir. 1977); *White v. Regester*, 422 U.S. 935 (1975) (per curiam); *Zimmer v. McKeithen*, 485 F.2d 1297 (5th Cir. 1973); *Gomillion v. Lightfoot*, 364 U.S. 339 (1960); *Terry v. Adams*, 345 U.S. 461 (1953); *Schnell v. Davis*, 336 U.S. 933 (1949) (per curiam); *Smith v. Allwright*, 321 U.S. 649 (1944).

LDF has also been involved in nearly every major legislative and administrative advocacy issue impacting minority political participation, including helping to craft the Voting Rights Act of 1965 and each of its four subsequent reauthorizations, the 1982 amendments to the Voting Rights Act, the National Voter Registration Act of 1993, the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King, Cesar E. Chavez Voting Rights Act Reauthorization and Amendments Act of 2006, as well as the John R. Lewis Voting Rights Act (to respond to the 2013 *Shelby County* decision), and H.R. 1, the “For the People” Act of 2021, both of which remain pending in Congress.

Over more than a decade, LDF also has been urging the U.S. Census Bureau to move away from counting incarcerated people as residents of their prison facilities on Census Day rather than in their home communities, an issue that has ramifications for post-Census redistricting and a flaw that the agency has yet to correct. Additionally, LDF filed *amici curiae* (meaning “friend-of-the-court”) briefs in opposition to the addition of a citizenship status question to the 2020 decennial Census—a question that would have resulted in massive undercounts of Black, Latino, and Asian American populations—as well as subsequent efforts in 2020 to remove undocumented immigrant people from the congressional apportionment base. Thanks, in part, to the work of the LDF and various other civil rights organizations, the citizenship status question was barred from the 2020 Census—a major win for the rights and resources of Black, Latino, Asian American, and other communities across the nation.

In addition, LDF has published a multitude of reports regarding subjects ranging from voter suppression in *Democracy Diminished* and *Democracy Defended*, to felony disenfranchisement in *Free the Vote For People With Felony Convictions*. These publications are critical in the effort to educate the public on the myriad impediments to racial justice that we are experiencing in contemporary times.

LDF will continue enforcing legal protections against racial discrimination and secure the constitutional and civil rights of Black people. In support of the post-2020 cycle, LDF will help to ensure that redistricting is fair and open to everyone.

LDF has offices in New York and Washington, D.C.

For more information, visit [www.naacpldf.org](http://www.naacpldf.org).






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## Mexican American Legal Defense and Educational Fund

Founded in 1968, MALDEF (Mexican American Legal Defense and Educational Fund) is known as “the law firm of the Latino community.” The nation’s preeminent Latino legal civil rights organization, MALDEF’s commitment is to protect and defend the rights of all Latinos living in the United States and the constitutional rights of all Americans.

During its 52-year history, MALDEF has been at the forefront of the most important legal victories for the Latino community, helping secure gains in education equity, employment rights, immigrants’ rights, political

empowerment and voting rights.

Beginning with its first U.S. Supreme Court case, in which MALDEF won a groundbreaking victory on behalf of Latino voters, MALDEF has been the nation’s leader in Latino voting rights litigation. MALDEF represented Mexican American voters in San Antonio, Texas in *White v. Regester*, 412 U.S. 755 (1973), which struck down, for the entire country, the practice of drawing multimember election districts to dilute minority voting strength. In 1999, MALDEF won another important ruling in the Supreme Court that enforced the preclearance provisions of the Voting Rights Act (VRA). In *Lopez v. Monterey*

*County*, 525 U.S. 266 (1999), the Supreme Court ruled in favor of Latino voters and held that Section 5 of the VRA required federal approval of election changes in Monterey County, CA, even when those changes were mandated by state law. Seven years later, MALDEF won the first U.S. Supreme Court decision in favor of Latino voters under Section 2 of the VRA. *League of United Latin American Citizens v. Perry*, 548 US 399 (2006). In 2013, MALDEF won a ruling from the Supreme Court invalidating an Arizona law that required voter registrants to provide documents proving U.S. citizenship. *Arizona v. Inter Tribal Council of Arizona*, 570 U.S. 1 (2013). In 2018, MALDEF again secured an important win for Latinos under Section 2 of the VRA in *Abbott v. Perez*, 138 S.Ct. 2305 (2018), yet another case relating to Texas statewide redistricting.

In addition to its work in the U.S. Supreme Court, MALDEF has successfully litigated many voting rights cases to resolution in the federal district courts and courts of appeals.

In addition to its work in the courtroom, MALDEF has worked in legislatures to ensure Latino voters have unrestricted access to the ballot box and meaningful representation. In 1975, MALDEF led the effort to secure passage of amendments to the VRA that expanded voting protections to include Latinos in the West and Southwestern United States. In the 1980s, MALDEF helped secure passage of federal protections for limited-English-proficient voters, and today that legislation requires bilingual voting materials and assistance at the polls at the state level in Texas, Florida and California, as well as in 214 political subdivisions in 26 states. The John Lewis Voting Rights Act, pending in Congress in 2021, contains language pioneered by MALDEF that targets election practices

historically used by states and localities to disenfranchise Latino and other minority voters as they reach significant size to threaten powers that be. MALDEF also sponsored the landmark California Voting Rights Act, which was drafted by former MALDEF President Joaquin Avila.

And most recently, MALDEF helped protect the integrity of the decennial Census securing important rulings before federal courts in Maryland relating to the discriminatory intent and unconstitutionality of the Trump-proposed citizenship question. This work secured the removal of the proposed question.

Headquartered in Los Angeles, MALDEF operates three additional regional offices in San Antonio, Chicago, and Washington, D.C. For more information, visit [www.maldef.org](http://www.maldef.org).





## Asian Americans Advancing Justice – AAJC

Founded in 1991, Asian Americans Advancing Justice – AAJC's (Advancing Justice – AAJC) mission is to advance civil and human rights for Asian Americans and to build and promote a fair and equitable society for all. Advancing Justice – AAJC is a member of Asian Americans Advancing Justice (Advancing Justice), a national affiliation of five civil rights nonprofit organizations that joined together in 2013 to promote a fair and equitable society for all by working for civil and human rights and empowering Asian Americans and Pacific Islanders and other underserved communities. The Advancing Justice affiliation is comprised of our nation's oldest Asian American legal advocacy center located in San Francisco

(Advancing Justice – ALC), our nation's largest Asian American advocacy service organization located in Los Angeles (Advancing Justice – LA), the largest national Asian American policy advocacy organization located in Washington D.C. (Advancing Justice – AAJC), the leading Midwest Asian American advocacy organization (Advancing Justice – Chicago), and the Atlanta-based Asian American advocacy organization that serves one of the largest and most rapidly growing Asian American communities in the South (Advancing Justice – Atlanta). Additionally, over 160 local organizations are involved in Advancing Justice – AAJC's Community Partners Network,

serving communities in 33 states and the District of Columbia.

Advancing Justice – AAJC is a national expert on issues of importance to the Asian American community including affirmative action, anti-Asian hate prevention and race relations, Census, immigration and immigrant rights, telecommunications, technology, and media, and voting rights. Advancing Justice – AAJC has worked to ensure compliance with voting rights laws by collecting data on voting participation and patterns, monitoring policies that affect the ability of Asian Americans to vote, providing community education on voting rights and political empowerment and participating in the redistricting process during the last redistricting cycle. Advancing Justice – AAJC was a key player in collaboration with other civil rights groups in the reauthorization of the Voting Rights Act in 2006 and has been on the front lines advocating for a legislative fix to the *Shelby County v. Holder* decision by the Supreme Court. Advancing Justice – AAJC has compiled reports on compliance with Section 203 of the Voting Rights Act, submitted amicus briefs on voting rights issues, including defending majority-minority districts drawn under the Voting Rights Act, fought against intimidation of Asian American voters, advocated against legislation that would prohibit campaign contributions by legal immigrants, and engaged in litigation to protect the rights of Asian American voters. For the 2012 election, Advancing Justice conducted poll monitoring and voter protection efforts across the country, including in California, Florida, Georgia, Illinois, Texas, and Virginia. And since the 2012 election, Advancing Justice – AAJC, in partnership with APIAVote, has run a multilingual Asian election protection hotline, 888-API-VOTE that provides in-language assistance to voters who have questions about the election process or experience problems while trying to vote.

During the last redistricting cycle, Advancing Justice – AAJC provided support and national-level coordination for the local redistricting processes to Advancing Justice affiliates in Illinois and California as well as local partners in Georgia, Michigan, Oregon, Texas and Washington State. In addition to the development and distribution of the previous Redistricting Handbook, used by the affiliates and Community Partners to conduct trainings and to participate in local redistricting efforts, Advancing Justice – AAJC provided both financial and technical support to the affiliates and partners for local redistricting efforts.

Advancing Justice – AAJC has worked with the DOJ regarding policies and enforcement of the related provisions of the Voting Rights Act. Advancing Justice – AAJC and its affiliates are recognized as experts on Section 203 of the Voting Rights Act, which provides for language assistance and bilingual voting materials to communities which meet the specific threshold requirements. Advancing Justice – AAJC has worked with the Census Bureau on its Section 203 determinations since the reauthorization and worked with local organizations to provide them with the tools and resources needed to work with their local election officials to ensure compliance with Section 203. Advancing Justice – AAJC also provided tools and resources to these organizations to conduct poll monitoring. More broadly, Advancing Justice – AAJC has fought against policies that would intimidate voters or add unnecessary hurdles aimed at newly naturalized voters.

For more information visit [advancingjustice-aajc.org](http://advancingjustice-aajc.org).





