

# Redistricting: A Mid-Cycle Assessment

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# Introduction

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**A**s mandated by the Constitution, every 10 years congressional seats must be reapportioned and each state must redraw its congressional map. With the 2021–22 redistricting cycle now well underway, slightly more than half the states have completed the process. Already, this cycle appears to be one of the most abuse laden in U.S. history. There are a few notable bright spots, but in many states, racial discrimination and extreme gerrymandering are once again prolific.

Predictably, many of this round’s biased maps achieve their skew at the expense of communities of color. Over the past decade, communities of color accounted for nearly all of the country’s population growth. But in redrawing boundaries, Republican map drawers, especially in the South, haven’t just declined to create any new electoral opportunities for these fast-growing communities; in many instances they have dismantled existing districts where communities of color won power or were on the verge of doing so. This brazen attack is unprecedented in scale. In state after state, Republicans are claiming that they are drawing maps on a “race-blind” basis and then defending the resulting racially discriminatory maps on the basis of partisanship, cynically exploiting the loophole left when the Supreme Court declared that federal courts were off-limits to constitutional challenges to partisan gerrymandering. If courts are not willing to carefully probe the intersection of race and politics, the ruse may just succeed.

Democrats have tried to counteract Republican gerrymandering with aggressive line drawing of their own, but the playing field is not level. Republicans control the drawing of 187 congressional districts in this redistricting cycle; Democrats just 75. If, in the end, the cycle does not end up a wholesale disaster for Democrats, this will largely be attributable to three factors: the unwinding of gerrymanders in states like Michigan with reformed processes, court-drawn maps in states where the redistricting process has deadlocked, and litigation in states where state courts, unlike their federal counterparts, will hear partisan gerrymandering claims.

In states where legislatures draw maps, many of this cycle’s new maps are breathtaking in their aggressiveness. Republicans in North Carolina, for example, converted a congressional map that elected 8 Republicans and 5 Democrats (already a skewed map for an almost evenly divided battleground state) into one that could elect as many as 11 Republicans and just 3 Democrats. Under the redrawn map, even if Democrats get 52 percent of the vote, they will win no more than 29 percent of the seats. The map, moreover, achieves its partisan skew with a shocking targeting of Black political power, making the seat of one of the two Black members of the state’s congressional delegation much less likely to elect a

minority-preferred candidate. As a result, a state that is one-fifth Black could have only a single Black member of the U.S. House come next January.

North Carolina is extreme but hardly an outlier. Of the maps passed as of the end of 2021, GOP-passed congressional maps in Texas, Ohio, and Georgia are also severe partisan gerrymanders under standards in the proposed Freedom to Vote: John R. Lewis Act, and others are not far behind. Democratic-drawn congressional maps in Illinois, Maryland, and Oregon also are sufficiently skewed that they would trigger court review under the bill.

The problem, moreover, isn’t just that the parties are drawing skewed maps. Republicans in particular are drawing them in a way that aggressively takes competition off the table. Early indications are that by the time the latest round of redistricting is done, by March or shortly thereafter, there will be significantly fewer competitive districts for Democrats than there were in 2018 or 2020. Should Democrats lose their majority in the U.S. House in the 2022 midterms, as many expect, their road back to a majority in 2024, 2026, or even 2028 will be harder, especially if the expanded Democratic coalition of recent years changes unexpectedly.

Lawsuits will help mitigate these abuses, especially in states where litigation in state courts is a possibility. But overall, winning map changes will be harder than it was 10 years ago because of a fraying legal framework. In addition to seeing racially discriminatory maps defended as legally permitted partisan gerrymanders, expect multiple attacks, big and small, on what remains of the Voting Rights Act of 1965 (VRA). Some have already begun in Texas.

However, the story of the 2021–22 redistricting cycle isn’t yet written in stone. As bad as many of the maps drawn thus far are, Congress could upend gerrymandering and racial discrimination by passing the Freedom to Vote: John R. Lewis Act. If Congress acts quickly enough, it may even be possible to make changes to maps in time for the 2022 midterms. The bill would transform a broken map-drawing process by giving voters powerful new tools to fight both racial and partisan discrimination, including a statutory ban on extreme gerrymandering that would eliminate the loophole states are using to defend racially discriminatory maps. But time is

running out. The 2022 primaries soon will be well underway in much of the country, and in short order courts will likely conclude that it is simply too late to make changes to maps for this election cycle.

## Key Observations

- **Attacks on minority communities.** This cycle is seeing unprecedented efforts to undermine the political power of Black, Latino, Asian, and Native communities through redistricting, especially in southern states that, for the first time in more than half a century, are no longer covered by Section 5 of the Voting Rights Act, which before 2013 required states with a history of racial discrimination to get new maps preapproved by the Justice Department or a federal court before putting them into effect.
  - > Some of the most aggressive attacks on minority power are coming in the suburbs of southern states like Texas and Georgia. There, Republicans have surgically dismantled rapidly diversifying districts where communities of color have enjoyed increasing electoral success in recent years. Lawmakers in these states have already signaled that they plan to argue that these districts are not protected under the current version of the Voting Rights Act and that they were redrawn legally as political gerrymanders.
  - > The South also will see renewed legal fights over the failure of lawmakers to create a sufficient number of Black opportunity districts in Alabama and North Carolina and Latino opportunity districts in Texas. The recently enacted congressional map in Arkansas also is expected to be challenged on racial discrimination grounds.
  - > All told, voting rights advocates have raised significant concerns about the racial fairness of enacted or proposed congressional or legislative maps in seven southern states: Alabama, Arkansas, Georgia, Mississippi, North Carolina, South Carolina, and Texas.
- **Deeply skewed maps.** Republicans will enjoy an advantage this decade in the battle for control of Congress if new maps stand.
  - > In Texas, Georgia, and North Carolina — three of the four states that the Brennan Center has flagged as being at the greatest risk of discriminatory line drawing — new maps would have given Republicans 6 to 9 more congressional seats in 2020 than they would have won under neutral plans. Add to that the impact of an extreme gerrymander in Ohio and selective gerrymandering in smaller states like Utah, and Republicans would have won 8 to 15 more seats in 2020 under the new maps than under neutral plans.
- > Gerrymandering in states Democrats control and the unwinding of existing pro-GOP gerrymanders in other states will offset this advantage somewhat but likely not completely. Individually and collectively, the nation's maps will continue to have a skew favoring Republicans.
- **A decrease in competition in Republican-controlled states.** The number of competitive districts will decrease sharply as a result of redistricting. This reduction will be especially notable in Republican-controlled states, where Republicans' defensive gerrymanders have made the seats they currently hold much safer. Under old maps, Donald Trump won 54 congressional districts in GOP-controlled states by 15 or more percentage points. Under new maps, that number grows to 70, an increase of almost 30 percent. By contrast, the number of districts in Democratic-controlled states that Joe Biden won by 15 or more points remains flat at 29 between the old and new maps. Competitiveness, likewise, remains largely unchanged in states with commission-drawn maps.
- **Successful state-level redistricting reforms, but not everywhere.** Redistricting reforms have been greatly successful in creating fairer maps in some states, most notably Michigan, one of the past decade's most gerrymandered states. But elsewhere, the record of recent reforms is mixed. This is especially the case where reforms imposed new rules but left line-drawing responsibility in the hands of partisan lawmakers (as in Ohio) or where partisan lawmakers could simply override a map passed by an advisory commission to adopt a gerrymandered one (as happened in Utah). The lesson: Reforms can work, but the details of their design matter.
- **The potential impact of the Freedom to Vote: John R. Lewis Act.** If passed, the federal legislation would greatly mitigate this decade's gerrymanders. Newly adopted congressional maps in seven Republican-controlled states and five Democratic-controlled states would be presumed to be illegal partisan gerrymanders under the legislation because of high rates of bias and would be blocked from being used unless and until a state established that no fairer map could be drawn. But timing of passage will be critical. If the bill does not pass early in 2022, it is likely that changes to maps will have to wait for the 2024 election cycle.

# Trends So Far

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**F**our main trends have emerged so far in the 2021–22 redistricting cycle: a continuation of extreme partisan gerrymandering, a sharp reduction in competition, an aggressive targeting of communities of color, and mixed successes from reforms.

## A Continuation of Extreme Partisan Gerrymandering

On the basis of the maps passed so far, the Brennan Center estimates that this cycle is likely to approach the last in terms of extreme gerrymanders, though some notable states will improve.

Last decade saw maps so skewed that some observers expected federal courts to finally step in to establish a baseline for partisan fairness. Indeed, a series of lower court rulings did just that, striking down aggressively gerrymandered congressional maps in North Carolina, Michigan, and Ohio and legislative maps in Wisconsin.<sup>1</sup> But in 2019, the Supreme Court dashed hopes that federal courts would be a bulwark, holding in *Rucho v. Common Cause* that constitutional challenges to partisan gerrymandering could not be pursued in federal courts because they are political questions and thus nonjusticiable.<sup>2</sup>

In this redistricting round, Republicans are taking advantage of the green-lighting of gerrymandering provided by the Supreme Court's *Rucho* decision. Using the standard in the proposed Freedom to Vote: John R. Lewis Act, we calculate that redistricting in just four large, heavily gerrymandered states — Texas, Georgia, North Carolina, and Ohio — would have given Republicans a bonus of six to nine more seats in 2020 compared with neutral benchmarks in the proposed bill. In all four states, alternative plans would produce a share of seats for each party much closer to benchmarks and a far greater number of competitive seats.

Moreover, unlike 10 years ago, Republicans are no longer largely limiting their gerrymandering to big, seat-rich battleground states. Oklahoma and Utah are illustrative: Democrats defied expectations to win Republican-leaning seats around Oklahoma City and Salt Lake City in 2018 as part of their House wave, only to have Republicans reclaim those seats in 2020. Now, in redistricting, Republicans effectively have eliminated any hopes that Democrats could win the seats back, even in a wave election, by dividing Democratic voters in both cities among three or four congressional districts.<sup>3</sup> As of this writing, Democrats in Missouri and Tennessee worried that Republicans will similarly attempt to target longtime Democratic seats in Kansas City and Nashville.<sup>4</sup>

Democrats are pushing back, drawing maps favorable to their party in Illinois, Oregon, New Mexico, and Nevada, and they will try to maximize their seat share in other states where they have sole control of the process, notably

in seat-rich New York. But Democrats are at a disadvantage. While Republicans control the drawing of 187 congressional districts this redistricting cycle, Democrats control the drawing of only 75.<sup>5</sup> And many of those are in states, like Massachusetts and Rhode Island, where Democrats already hold all or nearly all the seats.<sup>6</sup>

Countering gerrymanders will also likely prove challenging for Democrats because of intraparty coalitional politics and political geography.

When drawing maps, coalitional pressures often lead Democrats to preserve or create electoral opportunities for minority communities, even where voting rights laws may not require them to do so. This pressure is beneficial for democracy in that it provides opportunities for communities of color to elect their preferred candidates. It also acts as a check on extreme gerrymandering. But from the standpoint of partisanship, it inefficiently concentrates Democratic voters and thereby limits opportunities for Democrats to maximize their seat share. For example, in Maryland, Democrats reportedly declined to draw an 8–0 Democratic map in part because it would have meant making the district of Congressman Kweisi Mfume less Black.<sup>7</sup> By contrast, Republicans have proved much more ruthless when it comes to carving up their voters in order to create as many Republican districts as possible.

Democrats also face a more practical limit on their gerrymandering. In many Democratic-controlled states, Democratic voters are already spread fairly thinly among districts. Manipulating maps to create additional Democratic seats would spread those voters out even more, especially if partisan map drawers left heavily minority districts untouched. If Democrats were to go down this path, they would risk creating maps where once safe districts could fall to Republicans if Democrats had even a moderately bad election cycle. Some commentators have described the Democratic-drawn Illinois congressional map as precisely this kind of “dummymander.”<sup>8</sup>

The saving grace for Democrats this cycle may be commissions and courts, which thus far have mostly drawn balanced maps. These maps will make the overall impact of redistricting less dire than it could have been for Democrats, but the net effect still will skew in favor of Republicans.

With a continuation of gerrymandering in much of the country, the great unknown is whether Congress will change the redistricting landscape through new legislation.

## Control of Congressional Redistricting, 2021–22

MAP DRAWER	REPUBLICAN CONTROL	DEMOCRATIC CONTROL	NO SINGLE-PARTY CONTROL	
<b>Legislatures</b>	Alabama	Nebraska	Illinois	Connecticut*
	Arkansas	New Hampshire	Nevada	Louisiana
	Florida	North Carolina†	Oregon	Minnesota
	Georgia	Ohio	Maryland‡	Pennsylvania
	Indiana	Oklahoma	Massachusetts‡	Wisconsin
	Kansas‡	South Carolina		
	Kentucky‡	Tennessee		
	Mississippi	Texas		
	Missouri	West Virginia		
<b>Advisory bodies</b>	Iowa§		New Mexico§	Maine
	Utah§		New York§	Virginia
			Rhode Island§	
<b>Commissions#</b>				Arizona
				California
				Colorado
				Hawaii
				Idaho
				Michigan
				Montana
				New Jersey
			Washington	
<b>Total congressional districts</b>	187	75	167	

\*In Connecticut, Democrats do not have the two-thirds legislative majority in each house necessary to pass maps on their own.

†In North Carolina, the governor cannot veto a congressional plan.

‡In Kansas and Kentucky, Republicans have a veto-proof majority. In Massachusetts and Maryland, Democrats have a veto-proof majority.

§Advisory bodies draw maps in Iowa, Maine, New Mexico, New York, Rhode Island, and Utah, but maps can be overridden through the legislative process by Republicans in Iowa and Utah and by Democrats in New Mexico, New York, and Rhode Island.

||Washington's commission maps can be amended only with a two-thirds majority in the legislature. Virginia's legislature cannot override its commission (map-drawing authority is ceded to the Virginia Supreme Court if a map fails to pass).

#Includes bipartisan, political, and independent commissions.

Under the proposed Freedom to Vote: John R. Lewis Act, partisan gerrymandering would be banned by statute, and congressional maps challenged in federal court under the act would be analyzed at the start of a lawsuit to determine whether they had such a high degree of partisan bias as to be presumed to violate the statute.<sup>9</sup> If so, the state would be barred from using it pending fuller litigation.<sup>10</sup> The Brennan Center calculates that in states with more than two congressional districts that had adopted final maps as of December 31, 2021, seven Republican-drawn maps and five Democratic-drawn maps would trigger a presumption of partisan gerrymandering under the proposed bill. Two commission-drawn maps also would trigger review. If a state were unable to rebut the

presumption, the bill would require that the state or the court modify the map.

But the time for passing new legislation is quickly running out.<sup>11</sup> The 2022 primary elections will soon start in earnest (mail ballots in Texas will go out to voters in mid January). If Congress does not pass the Freedom to Vote: John R. Lewis Act early in 2022, changes to maps likely will have to wait for the 2024 election cycle.

### A Sharp Reduction in Competition

Another notable feature of this decade's maps is that they will be far less competitive than those that preceded them. Most of the reduction in competition has come in Republican-controlled states. This has much to do with

the defensive nature of this cycle’s Republican gerrymanders. In contrast to past decades, during which Republicans aggressively tried to convert Democratic seats into Republican ones, this time around Republicans are far more focused on shoring up their incumbents and locking in the gerrymanders established 10 years ago. By forgoing the possibility of more seats, Republicans are betting that they can insulate their gerrymanders from the political volatility of recent years.

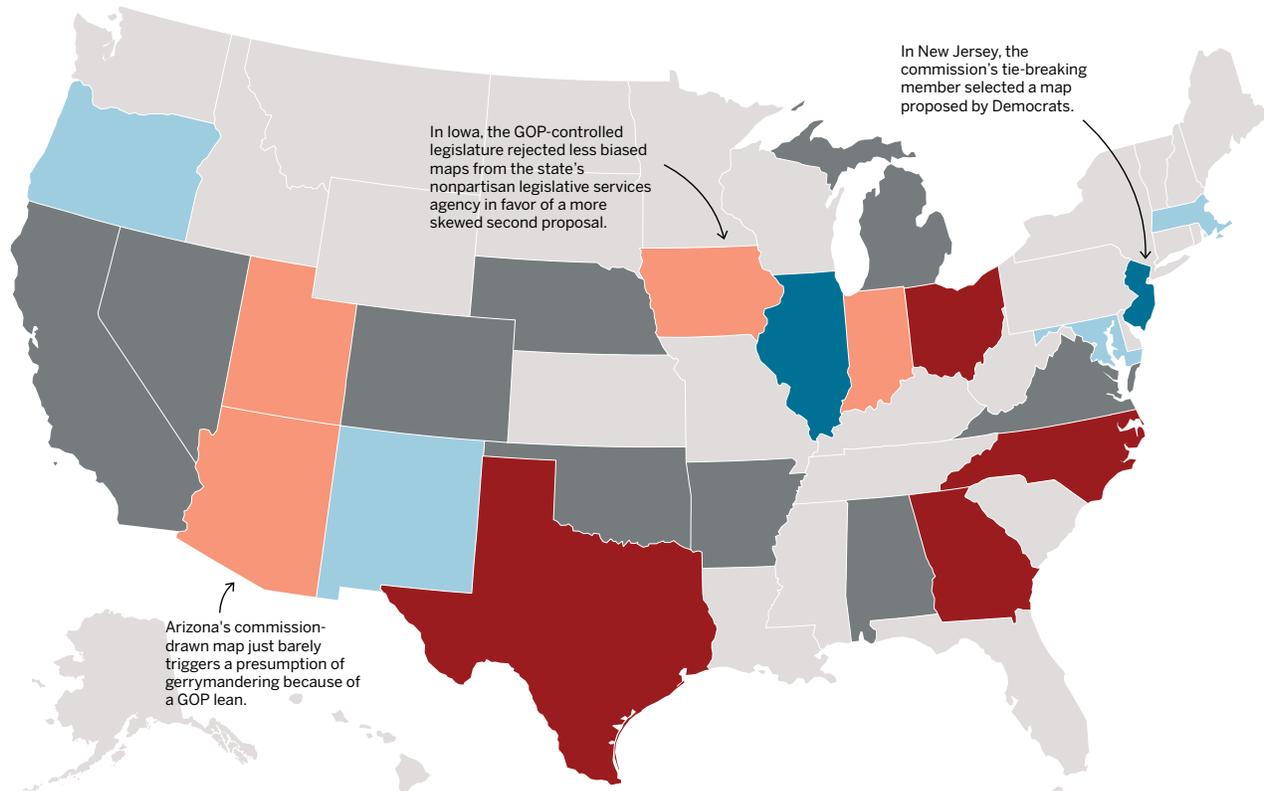
The changes in competition in Republican-controlled states are stark. In the 12 Republican-controlled states that have completed redistricting, the number of districts that Donald Trump won by 15 or more points in 2020 increases by nearly 30 percent from 54 to 70 between old and new maps. These 70 super Republican districts represent 80 percent of all Republican districts in GOP-controlled states. By contrast, only 67 percent of districts under old maps were super Republican. Meanwhile, the number of districts in these states that Joe Biden won in 2020 by 15 or more points also increases, going from 20 under old maps to 23 in new maps as a result of Republican packing of Democratic voters into heavily Democratic districts. By making Democratic districts more safely Democratic, Republicans were able to ensure that Republican districts would become more

securely Republican, giving them a significant cushion against demographic and political change for the coming decade.

The experience of Texas is notable. In 2011, Texas Republicans drew an aggressive gerrymander that was partially but not completely modified by courts. But the gerrymander proved to be a little too aggressive, and by the end of last decade Texas had become one of the most electorally competitive states in the country, due to demographic changes and political shifts, particularly in suburban districts that grew more diverse over the past decade and where in recent years suburban white voters deserted Republicans in large numbers. As a result, in recent election cycles, up to six Texas congressional districts were competitive for Democrats, and two Democratic-held seats provided pickup opportunities for Republicans.<sup>12</sup> This decade, Texas Republicans decided to shore up the remnants of their gerrymander rather than try to flip additional Democratic seats. The result is a stunningly aggressive defensive gerrymander. Under the new map, the number of districts won by Donald Trump by more than 15 points in 2020 nearly doubles, growing from 11 to 21. Democrats now need to win more than 58 percent of the statewide vote before being favored to win more than 37 percent of the state’s congressional seats.<sup>13</sup>

## Maps Presumed to Be Partisan Gerrymanders Under Proposed Legislation

- Significant Democratic gerrymander
- Significant GOP gerrymander
- Modest GOP gerrymander
- Modest Democratic gerrymander
- Map does not trigger review



**Note:** Based on Brennan Center analysis of maps enacted as of December 31, 2021, in states with three or more congressional districts.

On the other hand, Democrats were not nearly as aggressive in eliminating competition. In the six Democratic-controlled states that have completed redistricting, the number of districts that Joe Biden won by 15 or more points is 29 under both old and new maps. Democratic maps in these states did target Republican districts, however, increasing the overall number of districts won by Biden in 2020 from 37 to 42. In contrast to Republicans, Democrats opted for more seats over safer seats.

Meanwhile, in states that use commissions, there were few net changes in competitiveness. (See appendix 1 for a breakdown of changes in competition by state.)

### Map Drawers Aggressively Targeting Communities of Color

It is no surprise that many of the maps that are most skewed from a partisan perspective also heavily discriminate against voters of color. Racial and ethnic minorities have long been principal targets in redistricting, whether for racially discriminatory reasons or for partisan reasons (or both).

Discriminatory line drawing has been especially aggressive in the South, where, for the first time in six decades, states are no longer covered by the preclearance requirements of Section 5 of the Voting Rights Act as a result of the Supreme Court's ruling in *Shelby County v. Holder*.<sup>14</sup> All told, five of the six southern states that have passed congressional and legislative maps as of December 31 face significant charges of racial discrimination. (The exception is Virginia, where court-appointed special masters drew maps after the state's redistricting commission deadlocked).

The targeting of minority voters has been particularly aggressive in North Carolina, where lawmakers eliminated a majority-nonwhite district that had elected a Black member of Congress since 1990 by reducing its Black population by almost 13 percent.<sup>15</sup> In the wake of the changes, the district's longtime representative, G. K. Butterfield, announced that he would not seek reelection, calling the new map "racially gerrymandered" and saying "it will disadvantage African American communities all across the First Congressional District."<sup>16</sup> North Carolina Republicans were even more aggressive with legislative maps, redrawing districts in a way that could result in the defeat of one-third of the Black members of the state senate and one-fifth of the Black members of the state house.<sup>17</sup>

Black voters in Alabama too have made allegations that lawmakers diluted their political power by packing Black voters into a single congressional district.<sup>18</sup> In a lawsuit filed over the state's redrawn congressional map, Black voters and civil rights groups say lawmakers instead could have easily created a second opportunity district, which would bring the number of Black districts roughly in line with the 27 percent of Alabama's population that is Black.<sup>19</sup> A parallel lawsuit similarly

claims that Alabama's new legislative maps are racially discriminatory.<sup>20</sup>

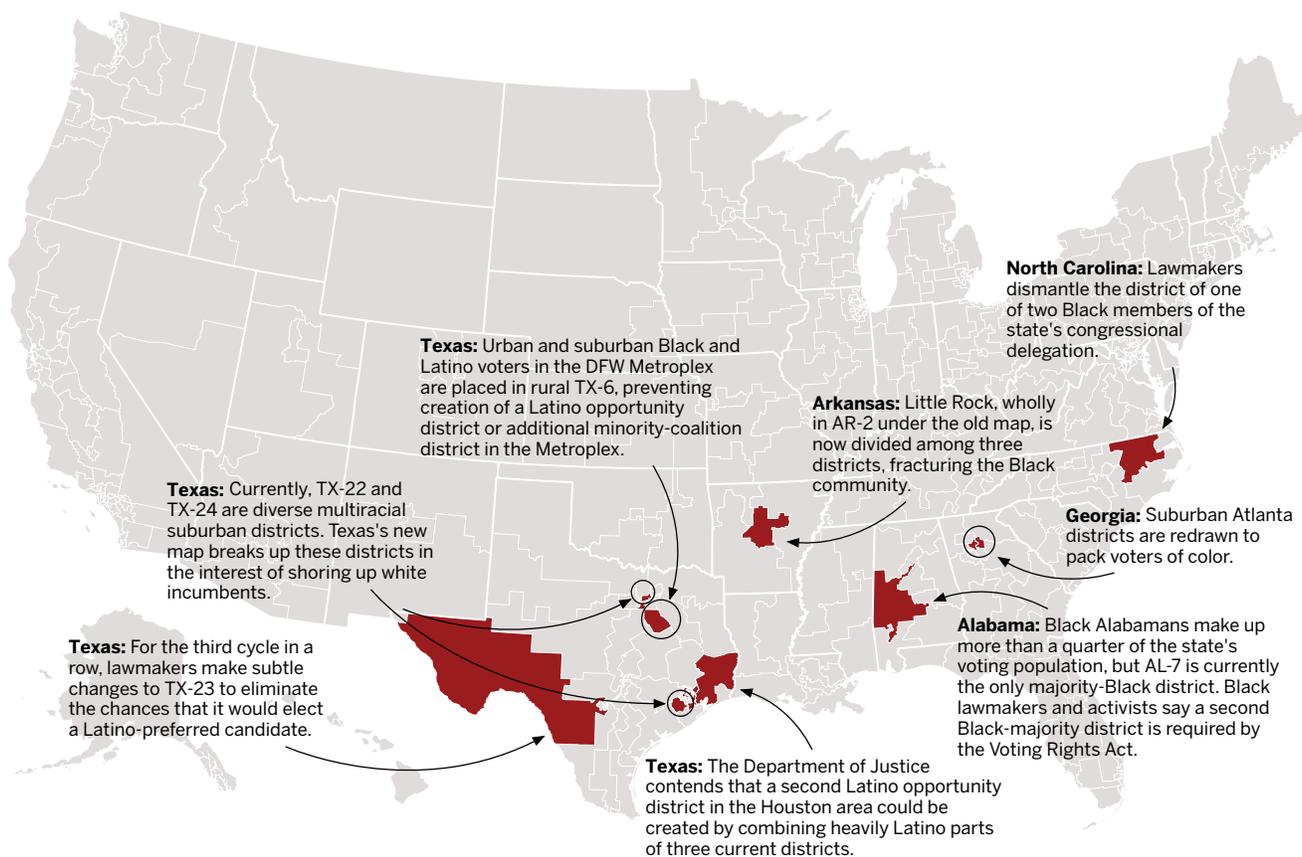
Meanwhile, in Arkansas, advocacy groups say that lawmakers there drew only 12 majority-minority state house districts when they could have drawn 16, thereby unnecessarily dividing Black-majority cities.<sup>21</sup> Arkansas's new congressional map similarly divides Little Rock for the first time in history, resulting in the Black community there being split among three districts, where they are a reduced minority in each.<sup>22</sup>

Latino, Black, and Asian voters in Texas also allege that new maps discriminate against them. In North Texas, there are now more Latino than white Texans in Dallas and Tarrant Counties, but the region of nearly 6.4 million people has never had a Latino-majority congressional district. Instead, Republican lawmakers actually went backward with the state's new congressional map, reducing the Latino population in the region's most Latino district by almost 20 percent and moving significant blocs of both Black and Latino voters into whiter, more rural districts.<sup>23</sup> A similar dynamic played out in the Houston metropolitan region, where lawsuits contend that lawmakers had an obligation to create an additional Latino opportunity congressional district but instead divided heavily Latino parts of the region among three districts.<sup>24</sup> Perhaps most brazenly, for the third map cycle in a row, Republicans redrew a sprawling West Texas district to make it less electorally favorable for Latinos. (Efforts in two previous decades to dismantle the district were both blocked by courts.)<sup>25</sup>

At the same time, a different kind of aggressive line drawing is taking place in Texas's rapidly changing suburbs. Once a bastion of Republican power, suburban districts in Texas have become highly competitive in recent years as a diversifying electorate has made building multiracial coalitions the key to electoral success. But rather than try to put together their own multiracial coalitions to compete with Democrats, Republicans in Texas used the latest redrawing of maps to surgically dismantle suburban districts, moving some voters of color to other districts and backfilling them with conservative white voters from exurban and rural areas. As a result, once highly competitive multiracial districts have become much whiter and more safely Republican. The move has set back the power of these fast-growing suburban communities of color, potentially for a decade.

For example, a burgeoning multilingual and multiethnic Asian community has accounted for one-third of the population growth since 2010 in suburban Fort Bend County, outside Houston. That growth helped make the congressional district containing most of Fort Bend increasingly politically competitive, with an Indian American candidate losing only narrowly in both 2018 and 2020. But in their new congressional plan, Texas Republicans have divided Fort Bend's Asian community among

## Significant Examples of Communities of Color Targeted by New Congressional Maps



three congressional districts, moving part of the community into a district anchored in Houston and leaving other parts stranded in redrawn districts engineered to have whiter and more rural populations.<sup>26</sup>

In Georgia, a similar story has unfolded in Atlanta's rapidly diversifying suburban counties. In 1990 Gwinnett County was nearly 90 percent white and an early stronghold of Republicans' emerging southern suburban base. But the most recent census found that the white share of Gwinnett County's population had fallen to just 35 percent, with no racial or ethnic group forming a majority. The 2020 elections saw that increased diversity play out up and down the ballot, including in the election of Michelle Au, the first Asian American woman to serve in the state senate. But in redistricting, Georgia lawmakers attacked the growing political power of communities of color by dismantling Au's district, which was 62 percent nonwhite and required that a candidate build a multiracial coalition to win. By stretching her district into the more rural Forsyth County, the district became majority white.<sup>27</sup> Au has since chosen to run for a different office in 2022.<sup>28</sup> (A list of further examples of alleged racial discrimination in this cycle of redistricting can be found in appendix 2.)

But if southern suburban communities of color were Republicans' intended targets, GOP map drawers may find

themselves in for a surprise. Suburban Republicans, in particular, are likely to find their voices diluted as a result of being joined with far-flung Republican voters very different from themselves. In Texas, for example, suburban Denton County, north of Dallas, was wholly contained in a single congressional district. But in redistricting, parts of the county were moved into a massive 38-county district that stretches almost 500 miles to the west, all the way to the Texas Panhandle.<sup>29</sup> The remaining voters in the county were joined to other rural counties. While suburban Republicans in places like Denton County will continue to be represented by a Republican, it very well could be a much different kind of Republican than what they are used to — one with few connections to suburban communities and potentially radically different policy priorities. Republican legislative and congressional leaders, likewise, may find themselves with much more fractious and unwieldy caucuses.

### The Successes and Limits of Reforms — and Courts

Another much watched story this redistricting cycle will be the degree to which new state-level reforms and state courts moderate abuses. The results are very promising in some states, particularly those with truly indep-

endent commissions, but mixed in states with less robust reforms.

After the last round of map drawing, a record six states passed redistricting reforms responding to aggressive gerrymandering. But the reforms, some of which have since been weakened, varied. Colorado and Michigan created strong, independent commissions to draw maps. But reforms in other states were less free of partisan politics.<sup>30</sup> Utah and New York, for example, created advisory commissions to propose draft maps but left map passage to legislatures that are free to ignore commission recommendations.<sup>31</sup> Reforms in Ohio similarly left responsibility for congressional redistricting in the hands of the legislature but tried to incentivize lawmakers to adopt a map on a bipartisan basis.<sup>32</sup>

So far, one big takeaway of this redistricting cycle is that independent commissions work. The new commissions in Colorado and Michigan have produced maps with some of the lowest rates of partisan bias of any maps adopted so far this cycle. The contrast between old and new maps is especially pronounced in Michigan, which saw some of the most extreme gerrymandering in the country a decade ago.<sup>33</sup> Maps passed by California's independent commission, which is now in its second decade of operation, also have modest rates of bias while at the same time significantly increasing electoral opportunities for communities of color, the Latino community in particular.<sup>34</sup> (Arizona's commission-drawn maps are the exception, producing a sufficiently high pro-Republican lean that they would trigger closer scrutiny under the Freedom to Vote: John R. Lewis Act.)

Virginia's advisory commission has also been at least a qualified success despite the commission's bitter partisan infighting and failure to pass maps. As a result of its deadlock, responsibility defaulted to the state supreme court, which appointed two special masters to propose maps.<sup>35</sup> Those maps, since adopted by the court, are models of partisan and racial fairness, in sharp contrast to the racially gerrymandered maps drawn by the Virginia legislature a decade ago. While further reforms to the process could make the commission less prone to partisan gridlock in the future, the process approved by voters nonetheless worked this round in preventing another cycle of gerrymandering.

By contrast, reforms that did not fully remove political actors from the mix have been less successful in producing fair maps, though the ability of voters to use new judicial remedies to challenge gerrymandered maps in state courts may result in some maps being redrawn.

In Ohio, for example, reforms banned partisan gerry-

mandering in the drawing of congressional districts but left the adoption of maps to the state legislature, which can pass them on a party-line basis. That is exactly what happened with the passage of a breathtakingly extreme gerrymander that creates up to 12 likely or certain Republican congressional districts versus only 3 Democratic ones even as Republicans receive on average only 53 percent of the statewide vote. Under reforms passed by Ohio voters in 2018, because this map was not passed on a bipartisan basis, it will be in place for only two election cycles, after which it must be redrawn. But Republicans appear to be gambling that courts will not enforce limits on partisan gerrymandering in the state constitution and that they will again be in control of the process in four years. Ohio's legislative maps, produced under a reform that similarly left partisan elected officials in charge, are also being challenged in court.<sup>36</sup>

Reforms in Utah have also failed to live up to expectations. Utah's reforms created an advisory commission to recommend maps to the legislature. Under the commission's recommended congressional map, most of Salt Lake City would be contained in a Republican-leaning but highly competitive district. However, Republican lawmakers wholly ignored the commission's proposal and instead passed a map that splits Salt Lake City among each of the state's four congressional districts.<sup>37</sup> As a result of the fracturing of the state's largest and most Democratic region, all four of the districts now are safely Republican — and likely will be for the entire decade. Democrats in New York may be similarly inclined to override maps proposed by that state's new advisory commission in order to pass their own aggressive gerrymanders, especially since New York is one of only two large states that Democrats control this cycle.

This round of redistricting also includes at least one cautionary reminder that state courts, like their federal counterparts, may not always be willing to police abuses, at least absent a clear directive to do so. In Wisconsin, the anticipated inability of the state's Democratic governor and Republican legislature to agree on a new congressional map is expected to send map-drawing responsibility to the state's supreme court. Anticipating that prospect, the court stated that it would adopt a "least change" approach to the map.<sup>38</sup> That has drawn criticism from good-government groups and Democrats alike because it would result in a map in which Republicans are expected to have a 6–2 advantage over Democrats in the state's congressional delegation, an odd outcome in a state that routinely elects Democrats to statewide office and that President Joe Biden won in 2020.<sup>39</sup>

# The Coming Legal Fights Over Maps

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**T**he completion of redistricting is only a prelude to litigation over maps. As of December 31, 2021, 28 cases had already been filed challenging legislative and/or congressional maps as racially discriminatory. Another 16 cases contend that maps violate state laws against partisan gerrymandering.

In many states, the legal battles will be a multiyear or even decade-long process. They will take place, moreover, within a legal framework that has frayed over the past decade. Republicans have already signaled that they will try to weaken it even further.

## Race Versus Party

One of the biggest points of contention in upcoming litigation is likely to arise out of the close alignment between race and party in the South. After the 2010 Census, one of the main tactics used by Republicans in southern states was to aggressively increase the nonwhite population share of minority districts, and in particular Black districts, on the pretext that the Voting Rights Act required them to do so. This allowed them both to diminish the political influence of voters of color and to significantly advantage their party. In North Carolina, for example, the racially discriminatory congressional map passed by lawmakers in 2011 gave Republicans a durable 10–3 advantage in the state’s congressional delegation despite voters splitting nearly evenly for the two major parties.

However, this packing of voters of color into minority-heavy districts backfired when it was successfully challenged as unconstitutional racial gerrymandering. Courts ordered that congressional and legislative maps in Virginia and North Carolina and legislative maps in Alabama be redrawn because race had impermissibly predominated.<sup>40</sup>

This time around, southern Republicans are trying a very different tactic. Instead of using the VRA as an excuse for discriminatory line drawing, Republicans are claiming they have drawn maps on a “race-blind” basis, without any consideration of racial data at all. (This seems to be a national tactic, with Republicans even in northern states like Ohio saying the same thing.)<sup>41</sup> The goal appears to be twofold: to defend against claims that maps were drawn with excessive consideration of race and to exploit the Supreme Court’s ruling that there are no enforceable limits on partisan gerrymandering under the U.S. Constitution. Any racially discriminatory effect maps have, lawmakers will say, is incidental, the result of the overlap between race and party in the South. Their intent was simply to target Democratic voters — or so they will say.

Surmounting this defense will require that courts untangle race and politics, something they have often struggled to do. The discriminatory impact of maps may be undeniable, but navigating the artificial race-or-politics

binary created by courts can be head-spinning for judges. (Justice Stephen Breyer has complained about how distinguishing between partisan and racial motives often requires courts to painstakingly sift through “5,000-page records.”)<sup>42</sup> The analysis is difficult for good reason: discriminatory maps frequently have both political and racial motives behind them, with racial resentment playing a key role in political alignments.

Congress could resolve the conundrum — and in doing so make it harder to discriminate against voters of color — by passing the Freedom to Vote: John R. Lewis Act, which would put partisan discrimination as well as racial discrimination out-of-bounds in congressional redistricting. However, whether it will do so remains to be seen.

## Renewed Attacks on the Voting Rights Act

This redistricting cycle also will bring attacks on what remains of the Voting Rights Act. A key fight will be over whether the VRA requires the creation of minority-coalition districts (districts where two or more nonwhite minority groups are counted as one for purposes of meeting the numeric thresholds necessary to establish VRA liability).<sup>43</sup>

Four of the five federal courts of appeal that have considered the issue have held or implicitly recognized that the creation of a minority-coalition district is required if minority voters challenging a map show that their various communities are politically cohesive in the aggregate and satisfy the other requirements of the VRA.<sup>44</sup> However, the Supreme Court has not yet weighed in on the issue, and Republicans have made clear in this cycle that they intend to argue that the VRA does not require minority-coalition districts. In Georgia, for example, lawmakers dismantled the highly diverse suburban Atlanta state senate district that in 2020 had elected the first Asian American woman to serve in the chamber, converting the district from one that was 62 percent nonwhite to one that was 51 percent white.<sup>45</sup> When asked how they could dismantle a minority district, a lawmaker involved in the process denied that coalition districts were protected under the VRA.<sup>46</sup> Texas has similarly claimed in litigation over maps that “the Voting Rights Act imposes no such obligation.”<sup>47</sup>

How the question of minority-coalition districts is resolved will have major ramifications for communities of color in this cycle and beyond. The impact will be particularly great in the diverse, multiracial suburbs,

where it is difficult to draw a district in which a single racial or ethnic group constitutes a majority. Already, a majority of people of color in metropolitan areas live in suburbs rather than urban cores. Without the ability to argue for minority-coalition districts — and without limits on partisan gerrymandering — it will be substantially harder for suburban communities of color to use federal law to prevent the dismantling of districts where they are beginning to enjoy electoral success.

Other attacks on the VRA may also be coming. In Texas, for example, Republican officials asserted that Section 2 of the Voting Rights Act does not create a private right of action that a voter may bring.<sup>48</sup> Although a three-judge district court panel rejected the claim, the fact that it was even made could be an ominous harbinger of future attacks on the VRA.

### **Will Congress Act in Time?**

As gloomy as the news about this decade's new maps is, this redistricting cycle is unusual in that the rules for map drawing still could change as a result of the Freedom to Vote: John R. Lewis Act.

The bill would transform a broken redistricting process by creating uniform national rules for drawing congressional districts. These include strengthened redistricting protections for communities of color and — for the first time in American history — a strong, judicially enforceable ban on partisan gerrymandering at the federal level.<sup>49</sup>

The bill also would speed up litigation of redistricting cases.<sup>50</sup> Courts would be required to expedite these cases and would be given expanded powers to postpone primary elections or create temporary maps.<sup>51</sup> Appeals would also be expedited, and only in limited circum-

stances could a court allow a map found to be discriminatory to be used while an appeal is pending.<sup>52</sup>

To ensure that the worst gerrymanders are quickly flagged for review, the bill would create the equivalent of a rapid test for assessing a map's partisan effects. Maps would be analyzed using the results of the last two presidential and last two U.S. Senate elections in the state. If the map produced a high rate of partisan bias, as defined in the statute, in two or more of the four elections, it would be rebuttably presumed to be an illegal gerrymander and could not be used unless and until the state successfully rebutted the presumption in litigation.<sup>53</sup>

The Freedom to Vote: John R. Lewis Act would similarly strengthen protections for communities of color in redistricting.<sup>54</sup> States with a recent history of discrimination would once again be required to have their redistricting plans and other election law changes preapproved by either the U.S. Justice Department or a panel of three federal judges in Washington, DC, a process that resulted in Texas's redistricting plans being blocked last decade.<sup>55</sup>

The bill also would expressly clarify that minority-coalition districts are protected under the Voting Rights Act.<sup>56</sup>

If the bill passes, it would amount to the most sweeping reform of the redistricting process in the country's history, ensuring greater racial as well as partisan fairness. If Congress acts quickly, the bill could even be enacted in time to impact the maps used in the 2022 midterm elections. Time is running short, however. The primary election cycle will soon be underway in earnest. If Congress does not pass the bill in coming weeks, its benefits will likely have to wait until the 2024 election cycle.

# Appendix 1: Changes in Competition by State

The close correlation between district-level results in presidential and congressional elections makes recent presidential elections a good proxy for how Democratic or Republican a district is. District-level presidential election results should not be taken as a prediction of future election outcomes but rather as an indication of the magnitude of political shift that would be required for a district to change party hands or become competitive. For example, a district that a presidential candidate wins by 2 percentage points is much more vulnerable to political shifts than one that the candidate wins by 10 points. In this appendix, we compare the competitiveness of maps that had been in use before redistricting with that of newly adopted ones. We consider districts won by 15 or more percentage points unlikely to change party hands under reasonably foreseeable election scenarios.

## Republican-Controlled States

In states where Republicans control the redistricting process, the number of districts won by Donald Trump in 2020 by 15 or more points goes from 54 to 70 after redistricting, a nearly 30 percent increase. The total number of districts Joe Biden would win in these states decreases from 33 to 30, but 23 of these new districts would vote for Biden by 15 or more points, a 15 percent increase from previous maps.

	DISTRICTS TRUMP WINS BY 15 OR MORE POINTS	DISTRICTS TRUMP WINS BY LESS THAN 15 POINTS	DISTRICTS BIDEN WINS BY LESS THAN 15 POINTS	DISTRICTS BIDEN WINS BY 15 OR MORE POINTS
<b>ALABAMA</b>				
OLD MAP (7 DISTRICTS)	6	0	0	1
NEW MAP (7 DISTRICTS)	6	0	0	1
<b>CHANGE</b>	—	—	—	—
<b>ARKANSAS</b>				
OLD MAP (4 DISTRICTS)	3	1	0	0
NEW MAP (4 DISTRICTS)	3	1	0	0
<b>CHANGE</b>	—	—	—	—
<b>GEORGIA</b>				
OLD MAP (14 DISTRICTS)	6	2	3	3
NEW MAP (14 DISTRICTS)	7	2	1	4
<b>CHANGE</b>	<b>+1</b>	—	<b>-2</b>	<b>+1</b>

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**Republican-Controlled States** continued

	DISTRICTS TRUMP WINS BY 15 OR MORE POINTS	DISTRICTS TRUMP WINS BY LESS THAN 15 POINTS	DISTRICTS BIDEN WINS BY LESS THAN 15 POINTS	DISTRICTS BIDEN WINS BY 15 OR MORE POINTS
<b>INDIANA</b>				
OLD MAP (9 DISTRICTS)	6	1	1	1
NEW MAP (9 DISTRICTS)	7	0	1	1
<b>CHANGE</b>	<b>+1</b>	<b>-1</b>	<b>-</b>	<b>-</b>
<b>IOWA</b>				
OLD MAP (4 DISTRICTS)	1	3	0	0
NEW MAP (4 DISTRICTS)	1	3	0	0
<b>CHANGE</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>NEBRASKA</b>				
OLD MAP (3 DISTRICTS)	1	1	1	0
NEW MAP (3 DISTRICTS)	1	1	1	0
<b>CHANGE</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>NORTH CAROLINA</b>				
OLD MAP (13 DISTRICTS)	5	3	1	4
NEW MAP (14 DISTRICTS)	6	4	1	3
<b>CHANGE</b>	<b>+1</b>	<b>+1</b>	<b>0</b>	<b>-1</b>
<b>OHIO</b>				
OLD MAP (16 DISTRICTS)	5	7	1	3
NEW MAP (15 DISTRICTS)	7	4	2	2
<b>CHANGE</b>	<b>+2</b>	<b>-3</b>	<b>+1</b>	<b>-1</b>
<b>OKLAHOMA</b>				
OLD MAP (5 DISTRICTS)	4	1	0	0
NEW MAP (5 DISTRICTS)	5	0	0	0
<b>CHANGE</b>	<b>+1</b>	<b>-1</b>	<b>-</b>	<b>-</b>

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## Republican-Controlled States continued

	DISTRICTS TRUMP WINS BY 15 OR MORE POINTS	DISTRICTS TRUMP WINS BY LESS THAN 15 POINTS	DISTRICTS BIDEN WINS BY LESS THAN 15 POINTS	DISTRICTS BIDEN WINS BY 15 OR MORE POINTS
<b>TEXAS</b>				
OLD MAP (36 DISTRICTS)	11	11	6	8
NEW MAP (38 DISTRICTS)	21	4	1	12
<b>CHANGE</b>	<b>+10</b>	<b>-7</b>	<b>-5</b>	<b>+4</b>
<b>UTAH</b>				
OLD MAP (4 DISTRICTS)	3	1	0	0
NEW MAP (4 DISTRICTS)	4	0	0	0
<b>CHANGE</b>	<b>+1</b>	<b>-1</b>	<b>-</b>	<b>-</b>
<b>WEST VIRGINIA*</b>				
OLD MAP (3 DISTRICTS)	3	0	0	0
NEW MAP (2 DISTRICTS)	2	0	0	0
<b>CHANGE</b>	<b>-1</b>	<b>-</b>	<b>-</b>	<b>-</b>

\* Due to the lack of precinct-level election data, we could not perform the same partisan analysis for West Virginia. Using composite election data, one analysis found that Republicans were heavily favored in both districts. Dave's Redistricting, "West Virginia," accessed January 5, 2022, <https://davesredistricting.org/maps#viewmap::aaaa571f-f204-4cbe-bcf1-404db0519d36>.

## Democratic-Controlled States

The total number of districts that Joe Biden would win by 15 or more percentage points in these six states does not increase from 29, but the number of districts Biden would win by less than 15 points goes from 8 to 13. The total number of districts Donald Trump would win in 2020 decreases from 10 to 5, with no net increase in seats Trump would win by 15 points or more.

	DISTRICTS TRUMP WINS BY 15 OR MORE POINTS	DISTRICTS TRUMP WINS BY LESS THAN 15 POINTS	DISTRICTS BIDEN WINS BY LESS THAN 15 POINTS	DISTRICTS BIDEN WINS BY 15 OR MORE POINTS
<b>ILLINOIS</b>				
OLD MAP (18 DISTRICTS)	3	3	3	9
NEW MAP (17 DISTRICTS)	3	0	4	10
<b>CHANGE</b>	—	<b>-3</b>	<b>+1</b>	<b>+1</b>
<b>MARYLAND</b>				
OLD MAP (8 DISTRICTS)	1	0	0	7
NEW MAP (8 DISTRICTS)	0	0	1	7
<b>CHANGE</b>	<b>-1</b>	—	<b>+1</b>	—
<b>MASSACHUSETTS</b>				
OLD MAP (9 DISTRICTS)	0	0	0	9
NEW MAP (9 DISTRICTS)	0	0	0	9
<b>CHANGE</b>	—	—	—	—
<b>NEVADA</b>				
OLD MAP (4 DISTRICTS)	0	1	2	1
NEW MAP (4 DISTRICTS)	0	1	3	0
<b>CHANGE</b>	—	—	<b>+1</b>	<b>-1</b>
<b>NEW MEXICO</b>				
OLD MAP (3 DISTRICTS)	0	1	1	1
NEW MAP (3 DISTRICTS)	0	0	2	1
<b>CHANGE</b>	—	<b>-1</b>	<b>+1</b>	—
<b>OREGON</b>				
OLD MAP (5 DISTRICTS)	0	1	2	2
NEW MAP (6 DISTRICTS)	1	0	3	2
<b>CHANGE</b>	<b>+1</b>	<b>-1</b>	<b>+1</b>	—

## Independent Commissions

In the states that had independent commissions draw the new maps, Joe Biden would win 62 districts in total, a small increase from the old maps' 61. There are 20 districts in total that Donald Trump would win, down from 22 in the previous maps. Of them, he would win 9 by 15 or more points under both the old and new maps.

	DISTRICTS TRUMP WINS BY 15 OR MORE POINTS	DISTRICTS TRUMP WINS BY LESS THAN 15 POINTS	DISTRICTS BIDEN WINS BY LESS THAN 15 POINTS	DISTRICTS BIDEN WINS BY 15 OR MORE POINTS
<b>ARIZONA</b>				
OLD MAP (9 DISTRICTS)	2	2	2	3
NEW MAP (9 DISTRICTS)	2	2	3	2
<b>CHANGE</b>	—	—	<b>+1</b>	<b>-1</b>
<b>CALIFORNIA</b>				
OLD MAP (53 DISTRICTS)	2	5	10	36
NEW MAP (52 DISTRICTS)	2	5	8	37
<b>CHANGE</b>	—	—	<b>-2</b>	<b>+1</b>
<b>COLORADO</b>				
OLD MAP (7 DISTRICTS)	1	2	0	4
NEW MAP (8 DISTRICTS)	1	2	2	3
<b>CHANGE</b>	—	—	<b>+2</b>	<b>-1</b>
<b>MICHIGAN</b>				
OLD MAP (14 DISTRICTS)	4	4	3	3
NEW MAP (13 DISTRICTS)	4	2	3	4
<b>CHANGE</b>	—	<b>-2</b>	—	<b>+1</b>

## Other Commissions

Idaho, Montana, and New Jersey use bipartisan but not fully independent commissions to draw maps. In Maine, an advisory commission draws maps for consideration by the legislature, where Democrats lack the two-thirds majority needed to pass maps. Overall, the number of districts Donald Trump would win remains seven but includes one additional district that he would win by 15 percentage points or more. Similarly, Joe Biden would win an additional district by 15 points or more, bringing the total number of districts he would win to 11.

	DISTRICTS TRUMP WINS BY 15 OR MORE POINTS	DISTRICTS TRUMP WINS BY LESS THAN 15 POINTS	DISTRICTS BIDEN WINS BY LESS THAN 15 POINTS	DISTRICTS BIDEN WINS BY 15 OR MORE POINTS
<b>IDAHO</b>				
OLD MAP (2 DISTRICTS)	2	0	0	0
NEW MAP (2 DISTRICTS)	2	0	0	0
<b>CHANGE</b>	—	—	—	—
<b>MAINE</b>				
OLD MAP (2 DISTRICTS)	0	1	0	1
NEW MAP (2 DISTRICTS)	0	1	0	1
<b>CHANGE</b>	—	—	—	—
<b>MONTANA</b>				
OLD MAP (1 DISTRICT)	1	0	0	0
NEW MAP (2 DISTRICTS)	1	1	0	0
<b>CHANGE</b>	—	+1	—	—
<b>NEW JERSEY</b>				
OLD MAP (12 DISTRICTS)	0	3	3	6
NEW MAP (12 DISTRICTS)	1	1	3	7
<b>CHANGE</b>	+1	-2	—	+1

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## Court-Drawn Maps

The special masters assigned by the Virginia Supreme Court to draw Virginia's new congressional districts largely keep the net partisan performance the same, with four districts being won by Donald Trump and seven by Joe Biden.

	DISTRICTS TRUMP WINS BY 15 OR MORE POINTS	DISTRICTS TRUMP WINS BY LESS THAN 15 POINTS	DISTRICTS BIDEN WINS BY LESS THAN 15 POINTS	DISTRICTS BIDEN WINS BY 15 OR MORE POINTS
<b>VIRGINIA</b>				
OLD MAP (11 DISTRICTS)	2	2	2	5
NEW MAP (11 DISTRICTS)	2	2	2	5
<b>CHANGE</b>	—	—	—	—

# Appendix 2: Allegations of Racial Discrimination in This Cycle’s Maps (as of December 31, 2021)

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## Congressional Maps

### Alabama

Black voters and the Alabama NAACP allege that the state’s new congressional map intentionally perpetuates a long history of discrimination against Black voters.<sup>57</sup> According to the plaintiffs, the map dilutes the voting power of Black Alabamans by failing to create a second Black opportunity congressional district. Instead, the map passed by the Alabama Legislature left the boundaries from the previous map largely in place, meaning most of the Black Belt, including the cities of Birmingham and Montgomery, was placed in AL-7, the only Black-majority district in the state.<sup>58</sup>

Because a high percentage of Black voters are packed into a single congressional district, Black Alabamans can now elect preferred candidates in only 14 percent of districts (one out of seven), despite now making up 27 percent of the state’s population.<sup>59</sup> A second Black opportunity district would bring the share of Black opportunity districts in line with Black Alabamans’ percentage of the state’s population.

The complaint notes that in 2019, Secretary of State John Merrill (R) indicated that he believed the old district configuration constituted a racial gerrymander because the district needlessly divided Jefferson County, home to Birmingham, to pack the city’s Black neighborhoods and suburbs into AL-7.<sup>60</sup>

### Arkansas

Gov. Asa Hutchinson (R) refused to sign Arkansas’s new congressional map into law over concerns that it dilutes the political power of nonwhite communities, instead allowing the bill to become law without his signature.<sup>61</sup>

Currently, 32 percent of Arkansas’s Black voting-age population lives in Pulaski County, where Little Rock, the state capital, is located.<sup>62</sup> All of Pulaski County historically had been assigned to the same congressional district.<sup>63</sup> However, in this cycle of redistricting, lawmakers redrew district boundaries to split Pulaski County and divide its Black population among three congressional districts.<sup>64</sup>

### Georgia

Two cases filed in federal court by Black voters and civil rights organizations contend that the new congressional map enacted by Georgia’s Republican-controlled legislature is racially discriminatory in violation of the U.S. Constitution and/or the Voting Rights Act.<sup>65</sup>

Black voters allege that the map intentionally perpetuates a long history of discrimination against them by

packing some Black voters in the Atlanta metropolitan area and cracking other such voters among rural-reaching districts that are predominantly white, thereby diluting Black political power.<sup>66</sup> They contend that the Georgia legislature was required to create an additional Black opportunity district in the western Atlanta metropolitan area.<sup>67</sup>

The civil rights organizations allege that Republican legislators “operated with surgical precision to crack and pack districts with higher percentages of Black, Latinx, and [Asian American Pacific Islander] voters, while moving the lines to increase the number of White voters in many districts.”<sup>68</sup> As an example, Georgia lawmakers radically reshaped GA-6, which is located within metropolitan Atlanta, by decreasing the proportion of the minority voting population within the district by 8.51 percent.<sup>69</sup> Although communities of color account for nearly all of Georgia’s population growth over the past decade, the new congressional map does not create additional minority opportunity districts.<sup>70</sup>

### Louisiana

Redistricting is still ongoing in Louisiana, but Black organizations have said that a new map must include a second Black-majority congressional district, something the state failed to create when maps were last redrawn, in 2012.

Although Louisiana is now one-third Black, at present Black voters have the ability to elect preferred candidates in only one of six congressional districts, LA-2. This sprawling district, stretching from New Orleans to Baton Rouge, is 62 percent Black and 72 percent nonwhite, well above the level needed to enable Black voters to elect the candidate of their choice. Creation of a second Black district would bring the number of Black opportunity districts roughly in line with the overall Black share of the state’s population.

### North Carolina

A series of state court lawsuits in North Carolina challenges the state’s new congressional map on the grounds that it dilutes the political power of Black citizens by packing and cracking Black voters.<sup>71</sup>

Between 2010 and 2020, North Carolina’s population grew by almost 1 million, with people of color accounting for 88 percent of that growth. This growth entitled North Carolina to an additional congressional seat.<sup>72</sup> However, under the map, Black voters have the opportunity to elect a candidate of choice in only 2 of 14 districts (14 percent) despite making up around 30 percent of the state’s voting-age population.<sup>73</sup>

Not only did North Carolina lawmakers fail to create any new minority opportunity districts, but they significantly reduced Black political influence by breaking up blocs of Black voters across districts throughout the state. Such cracking occurred most prominently in NC-1, a redrawn district in the eastern part of the state that saw its Black voting-age population decrease to 40 percent and its white population increase to more than 50 percent.<sup>74</sup> Although NC-1 has elected a Black member of Congress since 1990, the district is no longer likely to do so as reconfigured.<sup>75</sup> Lawmakers likewise significantly reduced the Black population in NC-6, which is located in central North Carolina. Under the old map, NC-6's voting-age population was 44 percent nonwhite and 30 percent Black. It also included large Black communities in the cities of High Point, Greensboro, and Winston-Salem.<sup>76</sup> The new map, by contrast, divides the old NC-6 among four districts, with the three metro areas placed, respectively, into the new NC-10, NC-11, and NC-12, all of which have a voting-age population that is at least two-thirds white and no more than 19 percent Black.<sup>77</sup>

The North Carolina Supreme Court delayed the 2022 primary from March until May so the trial court can rule in the case.<sup>78</sup>

## Ohio

A group of Black voters in Ohio has filed a lawsuit in federal court, claiming that the congressional plan illegally dilutes the voting power of Black communities in the cities of Warren and Youngstown. Specifically, the plaintiffs allege that Republican lawmakers could have created a district combining Youngstown and Warren with diverse areas in adjacent counties to give Black voters the opportunity to elect their preferred candidate, but instead decided to split the Black vote across multiple counties.<sup>79</sup> In the enacted plan, the new Sixth Congressional District cuts Youngstown and Warren off from Black communities outside Akron and stretches hundreds of miles across an overwhelmingly white and rural region of Appalachia.

## Oklahoma

Mapmakers have decreased the competitiveness of Oklahoma's only competitive district, OK-5, by excising Latino voters from the district and placing them in the sprawling OK-3, which covers the entire western half of the state and is far whiter and more rural.<sup>80</sup> Under the old map, the voting-age population of OK-5 was 43 percent nonwhite. Under the new map, that number shrinks to 34 percent. Because the map cracks Black and Latino voters, each of Oklahoma's five congressional districts is now no more than 38 percent nonwhite.<sup>81</sup>

## Texas

There are more allegations of racial discrimination in Texas than in any other state. The Department of Justice, several advocacy organizations, the nation's oldest and largest Latino legislative caucus, and groups of Black, Latino, and Asian voters have filed a series of lawsuits alleging that the new congressional map intentionally perpetuates a long history of discrimination against minority voters by packing and cracking them, which in turn dilutes their political power.<sup>82</sup>

Texas's population grew more than that of any other state between 2010 and 2020, with nonwhite Texans accounting for 95 percent of that growth. Latino Texans are close to becoming the state's largest ethnic group.<sup>83</sup> Despite this growth, which gave Texas two additional congressional seats, lawmakers drew no new minority opportunity districts — as they could have done in Houston and the Dallas–Fort Worth Metroplex — and even decreased the number of competitive districts.

Lawsuits contend that for the third time in as many decades, lawmakers redrew TX-23, which extends along the U.S.–Mexico border, in a way that deprives Latino voters of an opportunity to elect their preferred candidate. Specifically, the Department of Justice alleges that lawmakers excised active Latino voters from the district's population centers and replaced them with white voters and Latino citizens who rarely vote to make the district more Republican-leaning. Such gerrymandering reflects “a recalcitrant refusal to recognize the rights of Latino voters in this region.”<sup>84</sup>

As for other minority voters, a lawsuit brought by the Fair Maps Texas Action Committee contends that lawmakers surgically cracked the Asian community in North Texas and destroyed a minority-coalition district outside Houston.<sup>85</sup>

## Utah

Half of Utah's nonwhite voting-age population lives in Salt Lake County, which was divided among three congressional districts in the 2011 redistricting cycle.<sup>86</sup> The Utah Independent Redistricting Commission, tasked with proposing plans to be considered by state legislators, put forward three congressional plans, all of which kept the Salt Lake City area far more intact than the previous map.<sup>87</sup> However, lawmakers ignored the commission's proposals and instead passed a congressional plan that divided Salt Lake County among four districts, including splitting West Valley City, the state's first majority-nonwhite major city.<sup>88</sup>

# Legislative Maps

## Alabama

Black voters and the Alabama NAACP are challenging the drawing of 12 state senate and 21 house districts. In a lawsuit in federal court, they contend that the districts were purposely formed to dilute Black voting power.<sup>89</sup>

In an illustrative example, the complaint notes that eight house districts in the center of Jefferson County contain all but one of the county's majority-Black precincts. Meanwhile, the edges of Jefferson County, which are predominantly white, were placed in districts with other predominantly white communities in neighboring counties. The effect, plaintiffs argue, is the intentional dilution of Black voting power that will likely result in a majority-white Jefferson County house delegation, even though Jefferson County itself is majority-Black.<sup>90</sup>

## Alaska

Five state-court lawsuits filed by Alaska voters, various municipalities, a borough, and a regional corporation contend that Alaska's new legislative maps racially discriminate. The suits allege that mapmakers intentionally diluted the voting power of those who live in Alaska's lowest-income and most racially diverse areas by pairing voters who have little in common in Anchorage, Valdez, Skagway, Calista, Matanuska-Susitna, and the surrounding areas.<sup>91</sup>

According to the plaintiffs, to split communities of interest, the Alaska Redistricting Board drew district lines that are irrational and arbitrary. For example, the board created two senate districts that each contain an East Anchorage house district and a more rural district in nearby Eagle River (in Alaska, each senate district contains two house districts).<sup>92</sup> The East Anchorage house districts have voting-age populations that are each about 45 percent nonwhite, while the voting-age populations in the Eagle River districts are both less than 25 percent nonwhite. The pairings of an urban house district and a rural house district means that each of the resulting senate districts has a voting-age population that is only one-third nonwhite, diminishing the political power of East Anchorage's minority voters.<sup>93</sup> The plaintiffs contend that the board instead could have created one senate district containing the two demographically diverse East Anchorage house districts and another containing the less diverse Eagle River house districts.

The three board members appointed by the Republican governor and the senate president voted for the pairings, while the board's two Native members, appointed by an independent house speaker and the state supreme court's chief justice, voted against them, expressing disapproval with both the district pairings and the lack of public input. One of these members said that a majority member's

stated rationale for these pairings "exposes the Board to claims of racial and partisan gerrymandering" in the East Anchorage districts.<sup>94</sup>

## Arkansas

The Arkansas NAACP and the Arkansas Public Policy Panel have filed a lawsuit in federal court on behalf of Black voters that contends that the new state house map enacted by the Arkansas Board of Apportionment is racially discriminatory in violation of the Voting Rights Act.<sup>95</sup>

The suit alleges that the map intentionally perpetuates a long history of discrimination against Black voters by packing and cracking them, which in turn dilutes their political power. Although the Black community constitutes 16.5 percent of Arkansas's population, only 11 percent of house districts contain a Black majority. To achieve greater proportionality, the plaintiffs propose the addition of five majority-Black districts.<sup>96</sup>

## Georgia

A lawsuit brought by a Black fraternity, a religious organization, and Black voters contends that Georgia's legislative maps violate the Voting Rights Act by impermissibly packing and cracking Black voters.<sup>97</sup> The plaintiffs allege that the legislative maps could have added more than six new Black opportunity districts but failed to do so.<sup>98</sup> As an example, although the southern metropolitan Atlanta region's Black population experienced substantial growth, the new legislative map "carves up the large, cohesive Black communities in th[at] area[], rendering Black voters in those districts unable to elect candidates of their choice."<sup>99</sup>

## Illinois

There are currently three federal lawsuits alleging that Illinois's legislative redistricting plan discriminates against Black and Latino voters.<sup>100</sup>

Black voters in East St. Louis claim that Democratic lawmakers purposely cracked voters in House District (HD) 114 to shore up two districts with white Democratic incumbents. Specifically, the complaint alleges that predominantly white areas from three other house districts were added to HD 114, while one-quarter of HD 114's Black population was moved out of the district. As a result, HD 114's Black voting-age population was reduced from 37 percent to 33 percent while its white voting-age population increased from 55 to 59 percent. The plaintiffs allege that the resulting districts dilute the voting power of Black voters and deprive them of an opportunity to elect the candidate of their choice, violating the Equal Protection Clause of the Fourteenth Amendment and the Voting Rights Act.<sup>101</sup>

Latino voters allege that the legislative plan discriminates against them as well. Under the plan, only 4 of 118 state house districts (3 percent) would have a majority-Latino citizen voting-age population (CVAP) even though

the Latino community now makes up more than 11 percent of the state’s CVAP. Not only did the Illinois legislature fail to create more Latino districts, but it also reduced the number of Latino districts from the 2011 redistricting plan (even though Illinois’s Latino population grew more than any other racial or ethnic group within the state over the past decade).<sup>102</sup>

On December 30, 2021, a three-judge panel rejected all of the plaintiffs’ claims that the most-recently drafted legislative maps are racially gerrymandered, finding that partisanship — rather than race — predominated in the configuration of the challenged districts and that plaintiffs did not otherwise establish a violation of the Voting Rights Act. No appeal is pending as of January 12, 2022.<sup>103</sup>

### North Carolina

One of the state court lawsuits challenging North Carolina’s congressional districts also claims that the state’s legislative redistricting plan similarly undermines the power of Black voters.<sup>104</sup> For example, the plaintiffs allege that Black communities are packed into the state senate’s 14th District while others are cracked into the 18th District, where Black voters will have a more difficult time electing the candidate of their choice in the Democratic primary. The plaintiff’s complaint also includes an “optimized map” to demonstrate how both districts could have been drawn so that Black voters in both districts could elect the candidate of their choice. The optimized senate and house maps include 13 and 36 Black opportunity districts, respectively, compared with the enacted plan’s 10 and 31.<sup>105</sup>

### Ohio

The plaintiffs in the federal lawsuit claiming that Ohio’s adopted congressional plan discriminates against Black voters in Youngstown and Warren are making similar allegations about the new legislative map. Specifically, they allege that the map dilutes Black voting power in the two cities by separating them into two state senate districts.<sup>106</sup>

### South Carolina

The South Carolina NAACP has filed a federal lawsuit against the state alleging that 28 state house districts were drawn with the intent to discriminate against Black voters, violating the First, Fourteenth, and Fifteenth Amendments.<sup>107</sup> The complaint alleges that house district

boundaries in the adopted plan unnecessarily divide precincts and cities to pack and crack Black voters. The city of Anderson, for instance, was divided into four house districts “like a shattered mirror,” separating the Black voting base among its pieces.<sup>108</sup> One district in Chester County, plaintiffs allege, was contorted into a “bizarrely shaped, bunny-eared appendage” with the intention of packing Black voters into a single house district.<sup>109</sup>

### Texas

Of the seven cases alleging racial discrimination in Texas’s adopted congressional map, five also claim that one or both of the state legislative maps are discriminatory.<sup>110</sup> The Department of Justice lawsuit alleges that the new Texas house map dismantled or manipulated districts across the state where Latino voters had an opportunity to elect the candidate of their choice, after Texas’s Latino population dramatically increased in the last decade.<sup>111</sup> Another complaint alleges that the adopted legislative plan reduces the number of Latino-majority house districts from 33 to 30 and fails to create two additional Latino opportunity districts in the senate beyond the seven that already exist.<sup>112</sup>

The Fair Maps suit alleges that the adopted legislative plans deprive coalitions of Black, Latino, and Asian voters from electing the candidates of their choice, most notably in Fort Bend, Collin, Tarrant, and Bell Counties. In one example, the adopted house plan divides the majority-minority and 40-percent-Black city of Killeen into two house districts when it had previously been a single district. One lawmaker observed that the boundary between the two districts “cuts right through the heart of the Black community.” Another lawmaker then offered an amendment that would create one majority-Black district in the area, but it was voted down.<sup>113</sup>

Finally, Black and Latino voters along with a state senator have filed a lawsuit solely challenging Texas’s new senate map.<sup>114</sup> Plaintiffs allege that the Texas senate map “reprise[s] the infamous ‘lightning bolt’ ” district configuration from a previous plan to crack apart Tarrant County’s Black, Latino, and Asian voters.<sup>115</sup> Although Tarrant County, which includes Fort Worth, is majority minority, the new senate map does not include any minority opportunity districts.<sup>116</sup>

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The Brennan Center’s Democracy Program encourages broad citizen participation by promoting voting and campaign finance reform. We work to secure fair courts and to advance a First Amendment jurisprudence that puts the rights of citizens — not special interests — at the center of our democracy. We collaborate with grassroots groups, advocacy organizations, and government officials to eliminate the obstacles to an effective democracy.

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