

To: Interested Parties  
From: Michael C. Li  
Date: January 10, 2021  
Re: Assessment of the Redistricting Cycle to Date

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This memorandum assesses the redistricting cycle in the 27 states that have completed congressional redistricting thus far, looking at the cycle through the lenses of seat share, competition, and the impact on communities of color.<sup>1</sup> The memorandum also assesses the impact the Freedom to Vote Act (FTVA) would have on this decade's maps if passed by Congress.

Toplines: Recent analyses that characterize the current redistricting cycle as positive for Democrats miss the mark. In this cycle of redistricting, Republicans have been able to use aggressive line drawing to give new life to many of last decade's extreme gerrymanders, significantly reducing competition while locking in a disproportionate share of seats in key states. These advantages, which are likely to persist for the decade, are accomplished heavily at the expense of communities of color, especially in the fast-growing states of the South. For their part, Democrats also have drawn aggressive maps. But because Democrats, in general, placed less emphasis on shoring up safe seats (choosing instead to maximize seat share), their maps are more vulnerable than Republicans' to political shifts. The FTVA would flag maps drawn by both parties for closer judicial review, but the most extreme maps this cycle, as last, were drawn by Republicans. The cycle began with the baseline of maps skewed in favor of Republicans. As a result of redistricting, that skewed baseline will not only largely endure but stands to be made even more impregnable in many states.

### **Seat Share**

Using the Biden/Trump election as a proxy, the two parties' net seat share has not changed much as a result of redistricting. Under old maps, President Joe Biden carried 157 districts in 2020 in the states that have finished redistricting to date or have only a single district. He would have carried 161 under new maps. Of course, this is only a rough proxy. As recent political shifts in Virginia show, Biden/Trump election results are only a proximate guide to how districts will perform for the parties in future elections, even in the near term. Shifts in the electorate could tip many seats unexpectedly toward Republicans, especially in states where commissions drew competitive maps or in states where Democrats' overly aggressive maps could backfire.

Overall, the nominal change in the number of Biden and Trump districts is principally due to three factors:

First, Republicans' gerrymandering tactics have shifted this cycle. Rather than aggressively redrawing maps to convert Democratic seats into Republican ones, they have drawn defensive gerrymanders, focused on shoring up and locking in the sizeable advantages they already hold because of last decade's gerrymanders. In states like Texas and Georgia, Republicans may not have increased seat share or done so only slightly but share of seats they hold remains deeply skewed. In Texas, for example, Democrats now get around 47–48 percent of the statewide vote but will only win 37 percent of seats for the foreseeable future. (Under the defensively gerrymandered new map, Texas Democrats would need to win 58 percent of the statewide vote to be favored to get more than 37 percent of seats.)

Second, maps in states with independent commissions partially offset gerrymandering by increasing competitive opportunities as well as minority representation. Maps in Michigan, for example, unwound one of the most extreme Republican gerrymanders of last decade, while maps in California responded to rapid growth of the state's Latino and Asian communities by creating meaningful additional electoral opportunities for minority communities. In the short term at least, these will favor Democrats.

Third, counter-gerrymandering by Democrats in the handful of states they control has helped somewhat offset Republican advantages, though there is significant danger that Democratic gains in these states could prove to be illusory.<sup>2</sup> In many states, aggressive Democratic efforts to maximize seat share has spread Democratic voters out so thinly among multiple districts that a sizeable number of Biden districts could be in danger of flipping to Republicans if Republicans have even a moderately good election year. While Republicans, this cycle have opted for safe seats, Democrats have often opted to maximize seats. But it remains to be seen if political shifts, as seen recently in Virginia elections, result in maps being unexpected "dummylanders."

### **Competition**

Although the overall Biden/Trump seat share may not have changed much as a result of redistricting, that is not the case with competition. One of the major causalities of this redistricting cycle will be competition, especially in states where Republicans have defensively gerrymandered.

Pre-redistricting maps in GOP-controlled states had 54 districts that former President Donald Trump won by 15 or more percentage points in 2020. Redrawn maps have 70 such districts, an increase of almost 30 percent. These 70 "super Trump" districts represent 8 in 10 Republican districts in GOP-controlled states. (The number of districts

that Joe Biden won in these states also goes up slightly under new plans from 20 to 23 as a result of packing of Democratic voters into heavily Democratic districts.)

The decrease in competition is particularly notable in Texas. Under Texas's pre-redistricting map, there are 11 congressional districts that Donald Trump won by 15 or more percentage points in 2020. After redistricting, the number of such districts almost doubles to 21. All told, of the districts that favor Republicans in the new Texas map, 88 percent (21 of 24) are super Trump districts.

The reduction in competition in this decade's maps will make it harder for Democrats to retake the majority should they lose it in 2022. It also potentially will increase the polarization of party caucuses.

### **The Targeting of Communities of Color**

Not surprisingly, this decade's gerrymandered maps heavily target communities of color, especially in the fast-growing and demographically changing states of the South.

In Texas, for example, where communities of color accounted for 95 percent of the state's population growth last decade, the skew in the state's new congressional map is driven heavily by the state's failure to create new Latino majority seats in the Dallas-Fort Worth and Houston regions and by the aggressive dismantling of quickly diversifying suburban districts where multiracial coalitions have enjoyed increasing political success in recent elections. Alternative plans that more fairly represent minority communities would produce significantly less skew.

Texas is hardly alone. Minority communities in suburban Atlanta also have seen their political power diminished under new maps. Likewise, aggressive line drawing in North Carolina, supposedly on a "race blind" basis, dismantled the district of one of two Black members of Congress from the state. In total, significant claims of racial discrimination have been made about new congressional maps in five states, including four of the most gerrymandered.<sup>3</sup>

In litigation over maps, lawmakers are ominously defending their plans on the basis of politics, claiming that they were simply discriminating against Democrats (who happen to be people of color) and asserting that such discrimination is sanctioned under the Supreme Court's 2019 ruling on partisan gerrymandering in *Rucho v. Common Cause*. Without a clear ban on partisan gerrymandering, there is a danger that this ruse may succeed.

### **The Impact of the FTVA**

The FTVA, if passed, would have a significant impact both in mitigating this decade’s gerrymandering and in helping to ensure the racial fairness of maps by eliminating partisanship as a defense for skewed maps.

A forthcoming Brennan Center analysis of maps in the 27 states that had completed redistricting as January 9, 2021, shows that maps in 7 GOP-controlled states and 5 Democratic-controlled states would trigger a presumption of gerrymandering under the FTVA and would be blocked from being used pending court review. Two commission drawn maps also would trigger court review.<sup>4</sup>

In six of these states, maps have modest to medium partisan skews that potentially could be fixed with relatively minor adjustments.<sup>5</sup> Much more significant skews exist in four GOP states (Georgia, North Carolina, Ohio, and Texas), one Democratic state (Illinois), and one commission state (New Jersey, where the commission’s tiebreaking member selected a Democratic proposal as the state’s new map).

Pending judicial review, the court in a case challenging a map presumed to be a partisan gerrymander would be empowered to either move the state’s primary or put in place an interim map for use in elections or both.

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<sup>1</sup> As of January 9, 2022, Alabama, Arkansas, Arizona, California, Colorado, Georgia, Idaho, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Michigan, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Texas, Utah, Virginia, and West Virginia had completed redistricting. Totals shown are the result of Brennan Center analysis based on Voting and Election Science Team (VEST) data, Voting and Election Science Team, 2018, "2016 Precinct-Level Election Results", <https://doi.org/10.7910/DVN/NH5S2I>, Harvard Dataverse, V78; and Voting and Election Science Team, 2020, "2020 Precinct-Level Election Results", <https://doi.org/10.7910/DVN/K7760H>, Harvard Dataverse, V29.

<sup>2</sup> This cycle, Democrats control the drawing of 75 congressional districts compared to the 187 districts that Republicans will draw. See Michael Li, Julia Kirschenbaum, and Gabriella Limón, “Who Draws the Maps?” Brennan Center for Justice, September 16, 2021, <https://www.brennancenter.org/our-work/research-reports/who-draws-maps-0>.

<sup>3</sup> “Redistricting Litigation Roundup,” Brennan Center for Justice, January 5, 2021, <https://www.brennancenter.org/our-work/research-reports/redistricting-litigation-roundup-0>

<sup>4</sup> Of the 27 redistricting plans analyzed, maps in Georgia, Indiana, Iowa, North Carolina, Ohio, Texas, and Utah, where Republicans control line drawing, Illinois, Maryland, Massachusetts, New Mexico, and Oregon, where Democrats control line drawing, and Arizona and New Jersey, where commissions draw maps, would trigger a rebuttable presumption of partisan gerrymandering under the FTVA.

<sup>5</sup> Indiana, Iowa, and Utah, drawn under GOP control, Maryland and Oregon drawn by Democrats, and the commission drawn map in Arizona. The commission drawn map in Arizona, in particular, only narrowly triggers a presumption of gerrymandering and likely could easily be redrawn if the state is unable to rebut the presumption.