

What is partisan gerrymandering?

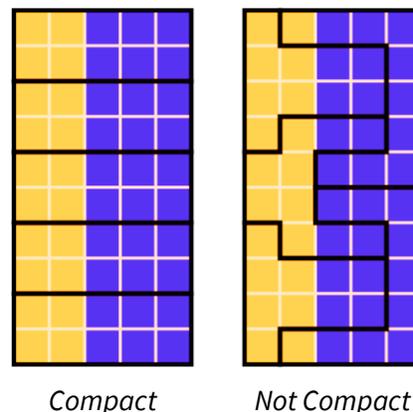
Every ten years, states undertake a process called “redistricting.” During this process, electoral maps are redrawn to account for the changes in populations in different geographic locations. The process depends on each state’s laws, but in most states the state legislature draws the new legislative and congressional district maps.

Gerrymandering is the manipulation during this process of district boundaries for some sort of political advantage. Gerrymandering is a broad term; there are many different forms. Partisan gerrymandering is the manipulation of district boundaries based on the partisan preference or voting history of residents.

What does gerrymandering look like?

Odd-looking district maps can be a sign of gerrymandering, and legal precedent does encourage mapmakers to draw compact districts. Compactness is not a requirement, but the lack of it can be used as evidence of gerrymandering.¹

More importantly, gerrymandering can occur even if districts on a map are all reasonably compact. For example, a community of color that was originally a single compact district could be purposefully split into two different, but still compact, districts in order to dilute the vote of that racial bloc. Increasingly sophisticated computer modeling can create compact, yet gerrymandered, districts.² Thus, a gerrymandered map can still look “normal.”



Is partisan gerrymandering illegal?

Excessive partisan gerrymandering is unconstitutional under the First Amendment because it penalizes voters based on “their participation in the electoral process, their voting history, the association with a political party, or their expression of political views.”³ It is also unconstitutional under the Equal Protection Clause of the Fourteenth Amendment because it dilutes the voting power of a targeted group to prevent “fair and effective representation.”⁴

But it’s difficult to prove partisan gerrymandering in court because there is no standard test to determine whether a map has been subject to it. The Supreme Court was unable to

¹ *Reynolds v. Sims*, 227 U.S. 533, 647 (1964).

² Emily Bazelon. *The New Front in the Gerrymandering Wars: Democracy vs. Math*. The New York Times Magazine, August 29, 2017, <https://www.nytimes.com/2017/08/29/magazine/the-new-front-in-the-gerrymandering-wars-democracy-vs-math.html>.

³ *Vieth v. Jubelirer*, 541 U.S. 267, 314 (2004) (Kennedy, J., concurring in the judgment). See also *id.* at 292 (plurality opinion).

⁴ *Reynolds* at 565-66.

determine a standard in 2004 in *Vieth v. Jubelirer*. Even though they did not establish a standard, they did state that such a standard needed to capture the constitutional harms of partisan gerrymandering, to be based on a “comprehensive and neutral principle,” and to incorporate elements in the Court’s existing gerrymandering jurisprudence. A case currently before the Supreme Court, *Gill v. Whitford*, proposes a standard meeting those criteria.

What is test for constitutionality being proposed in *Gill v. Whitford*?

The test proposed is that a map has been subject to partisan gerrymander if the court finds that there is discriminatory intent, a large and durable discriminatory effect, and a lack of any legitimate justification. Proof of discriminatory effect has been the hardest to measure in previous lawsuits. This case uses a mathematical model called the efficiency gap. Using the efficiency gap as a measure of discriminatory effect is the main reason this case is unique.⁵

Is the League of Women Voters or the state of Minnesota participating in this lawsuit?

The League of Women Voters of the United States has submitted an amicus brief to the Supreme Court on the issue. LWV US explains that a map that adheres to traditional redistricting principles, like compactness, are not necessarily immune from challenge. Such maps might still be gerrymandered.

The state of Minnesota has also joined an amicus brief with 16 other states and the District of Columbia. That brief argues that the constitutional standard proposed in the case is manageable and accounts for legitimate considerations in the states’ redistricting decisions.

If the Supreme Court doesn’t solve the issue, are there other ways to solve the problem of partisan gerrymandering?

State-based legislation continues to be a viable option for reforming the redistricting process to prevent partisan (or other) gerrymandering. Each state can pass laws to lessen the partisan influence on the redistricting process. For example, maps could be drawn by nonpartisan staff or by a nonpartisan, impartial panel of judges bound by the judicial code of ethics.

Where can I learn more?

- Alvin Chang, *How the Supreme Court could limit gerrymandering, explained with a simple diagram*, Vox, October 9, 2017, <https://www.vox.com/policy-and-politics/2017/10/9/16432358/gerrymandering-supreme-court-diagram>.
- League of Women Voters Minnesota, *Redistricting Briefing Paper* (2009) <https://www.lwvmn.org/sites/default/files/BriefingPaperRedistricting.pdf>.
- Devin Caughley, et al., *Partisan Gerrymandering and the Political Process: Effects on Roll-Call Voting and State Policies* (2017) http://www.ctausanovitch.com/CTW_efficiency_gap_170515.pdf.

⁵ Eric Petry, *How the Efficiency Gap Works* (Brennan Center for Justice) https://www.brennancenter.org/sites/default/files/legal-work/How_the_Efficiency_Gap_Standard_Works.pdf.