

**Redistricting:
Advocacy Methods to Help States Draw
Lines for Congressional and Many Other
Election Districts (schools)**



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The Three Pillars of Democracy: Census, Redistricting, Voting

AGENDA:

I. Why is community action concerned about reapportionment and redistricting:

- Partnership 2019 – 2020 policy platform

II. What needs to be done:

- create fair districts

III. How to create fair districts in eight steps

Reapportionment and Redistricting

- Every 10 years, The Census count of **total population** is used to reapportion the 435 Congressional seats.
- States then redistrict
- When redistricting is conducted fairly, district lines are redrawn to reflect population changes and racial diversity.
- Some states use redistricting as a political tool to try to change the outcome of elections. That's called **gerrymandering** — a widespread, undemocratic practice that discounts voters. Politicians pick their voters.
- Motives for and outcomes of gerrymandering are racial or political, sometimes both. Some remedies apply to both types, other remedies are related only to racial.

I. WHY are we concerned? Partnership 2019-2020 Policy Platform

- “Encouraging Civic Engagement that Allows Every Voice to Be Heard.”
- “Educating all community members about the importance of the decennial census and the effect the results will have on voting blocks, representation in Congress, and federal funding levels for vital programs and services is crucial.” (p. 12)
- Federal funding levels.
- Reapportionment of Congressional seats among states.
- Redistricting at the state level. “... voicing opposition to redistricting maps that disparately impact communities of color.” (P. 12)
- <https://communityactionpartnership.com/wp-content/uploads/2020/01/CAP-Policy-Platform-FINAL-Unformatted-1.30.20.pdf>

Gerrymandering based on race or politics

- The [Supreme Court of the United States](#) has affirmed in [Miller v. Johnson](#) (1995) that racial gerrymandering is a violation of constitutional rights and upheld decisions against redistricting purposely devised based on race. (VRA applies. Standards, precedents.)
- In a landmark decision in 2019 in [Rucho v. Common Cause](#), SCOTUS ultimately decided that questions of partisan gerrymandering represents a [nonjusticiable political question](#) that cannot be dealt with by the federal court system. (There are no Federal standards. It is state by state. The “standards” are whatever agreements are worked out by the people who are involved in the process, i.e. -- you.)
- One complexity is that partisan gerrymanders often result in racial gerrymanders.

How do you know its gerrymandered? The eyeball test

<https://www.nationaljournal.com/s/636757/modern-gerrymanders-10-most-contorted-congressional-districts-maps>

Modern Gerrymanders

These newly drawn congressional districts are among the most contorted in the nation. In some places, their appendages are not much wider than a highway.

Florida 14th



Illinois 4th



Illinois 7th



Maryland 2nd



Maryland 3rd



North Carolina 1st



North Carolina 12th



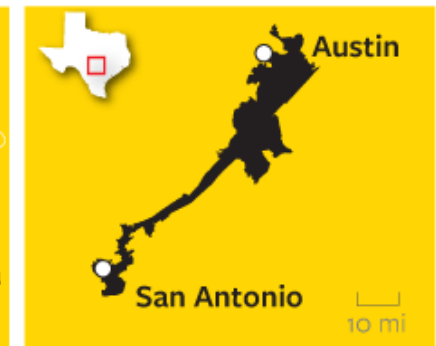
Ohio 9th



Pennsylvania 7th



Texas 35th

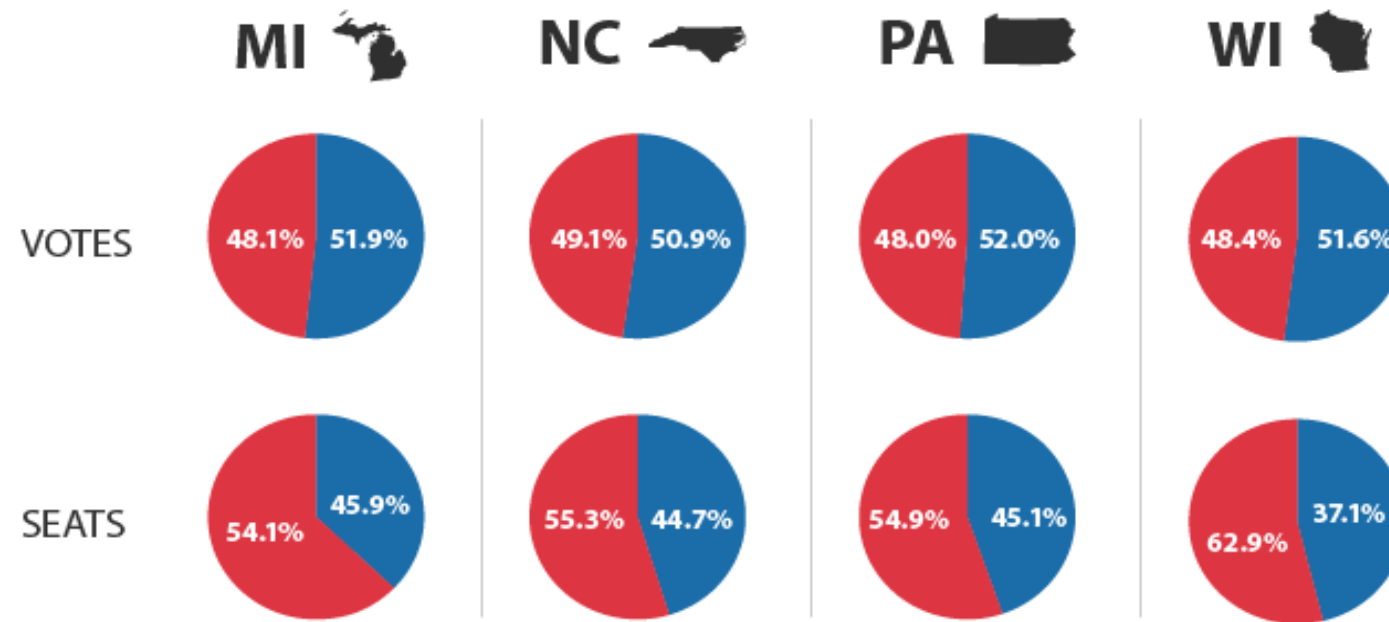


In state legislatures % of vote vs. % of seats won

FIGURE 1

In these four states, the party that won less than half of the votes won more than half of the seats

Gerrymanders that resulted in minority rule in state legislatures after the 2018 elections



Note: This figure combines the 2018 votes for the state House of Representatives and the most recent votes for each state Senate seat.
Source: Percentages are author's calculations based on data purchased from Carl Klarner, "State Legislative Election Returns, 1967-2018," available at <https://www.klarnerpolitics.org/> (last accessed November 2019).

In Congressional races % of vote vs. % of seats won

https://en.wikipedia.org/wiki/Gerrymandering_in_the_United_States#Gerrymandering_and_the_2018_midterm_elections

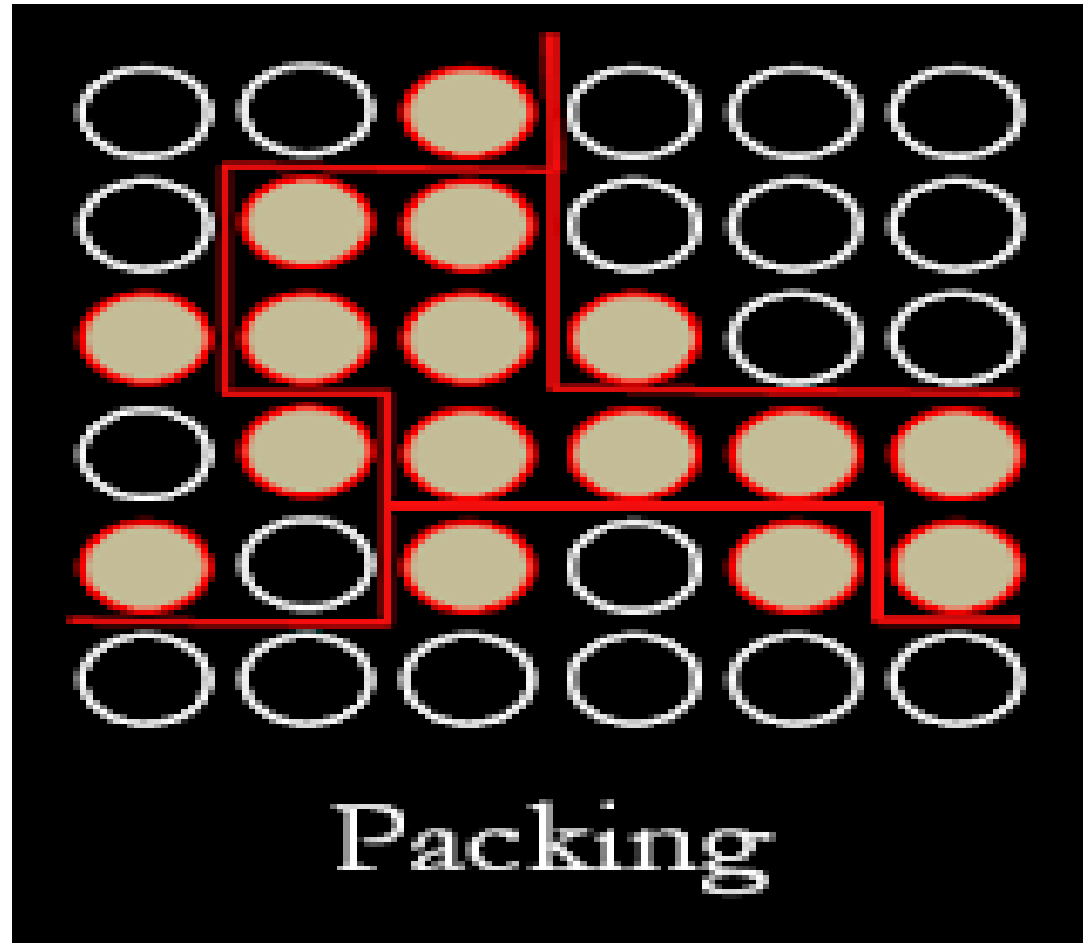
State	% Vote D	% Vote R	% Seats D	% Seats R	Total Seats		
North Carolina	48.35%	50.39%	23.08%	76.92%	13		
Ohio	47.27%	52%	25%	75%	16		

Top 10 most gerrymandered states

<https://worldpopulationreview.com/state-rankings/most-gerrymandered-states>

- [North Carolina](#): Has used Districts 1 and 12 for minority voters.
 - [Maryland](#): Uses broken districts to give an advantage to Democrats.
 - [Pennsylvania](#): Divides its major urban areas among other districts.
 - [West Virginia](#): Changed six districts into just three.
 - [Kentucky](#): Places urban populations in rural districts.
 - [Louisiana](#): Combined Baton Rouge and New Orleans into one district to minimize Democratic votes.
 - [Utah](#): Divides Salt Lake City into surrounding rural districts.
 - [Texas](#): Tried to propose districts that would unfairly affect minority voters.
 - [Arkansas](#): Has drawn district boundaries to balance out city voters with rural voters.
 - [Ohio](#): Unfairly distributed districts in a partisan way.
- Different lists that vary depending on the criteria used by whomever makes the list. Many lists include WI and MI

Typical Technique of Gerrymandering: Packing (aka stacking)



Proving Cracking and Packing

- When there were densely populated, mono-ethnic communities-- racial gerrymandering was easier to analyze. Now, with more ethnicities and more dispersal, gerrymandering can be difficult to prove to a Federal Judge in a VRA case.
- Markov Chain Monte Carlo Mathematical Model
- <https://www.scientificamerican.com/article/geometry-versus-gerrymandering/>
- Other

IMHO, some of what will happen in 2021 is already known and some will only become known in 2021

- Most existing gerrymandering that is racial and allegedly a violation of the VRA is known and the advocates have public positions. My speculation: continued activity about these known situations is about 20% of what will be happening in 2021.
- <https://www.justice.gov/crt/cases-raising-claims-under-section-2-voting-rights-act-0>
- About 30% of what will happen in 2021 is racial and/or partisan issues that are a continuation/extension of the dynamics that started after 2010. Some of this is hyper-partisan. Be careful 😊 It started with the very successful Republican Party RedMap project. <http://www.redistrictingmajorityproject.com/> The Democratic Party woke up in 2018 and is focused on MN, WI, VT, PA, OH, KS, KY, VA, NC, TX, LA, GA, FL <https://democraticredistricting.com/>
- About half what you will be dealing with in 2021 will be nonjusticiable political issues most of which will not even appear until 2021 when the redistricting processes begin to happen in every state.

What Is To Be Done?

- Some concepts about fairness apply to all redistricting activity including both political and racial gerrymandering.
- If racial, there are additional VRA factors.
- Here are eight things you can do to get ready for and to participate in redistricting in your state.

1. How does your state do redistricting?

Redistricting happens every 10 years following the census to maintain equal representation in the House

Overview of the redistricting process

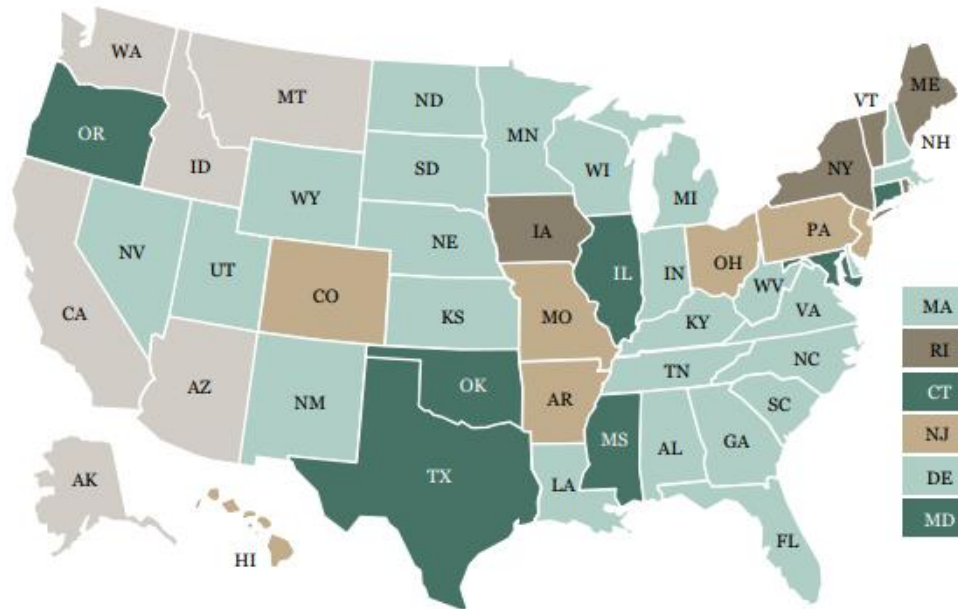
■ State legislature ■ Advisory commission ■ Backup commission ■ Politician commission ■ Independent commission

Advisory commission – An independent commission advises the legislature about where the new district lines should be drawn, but the legislature is not bound by these recommendations

Backup commission – A backup commission is similar to an advisory commission; however, instead of influencing the process before the lines are set, backup commissions only act if a plan is not complete by a set deadline

Politician commission – These commissions allow elected officials to serve as members alongside other neutral commissioners

Independent commission – An independent commission is made up of neither legislators nor public officials



Sources: Brennan Center for Justice, "National Overview of Redistricting: Who draws the lines?" June 1, 2010; Loyola Law School, "All about redistricting: who draws the lines?" 2011.

1. Sites to check to find out how your state does it.

- A nonpartisan site. Often cited by the League of Women Voters.
[https://ballotpedia.org/State-by-state redistricting procedures](https://ballotpedia.org/State-by-state_redistricting_procedures)
- Managed by Prof. Justin Levitt at Loyola Law School.
<https://redistricting.lls.edu/>
- The National Conference of State Legislatures.
- <https://www.ncsl.org/research/redistricting/2009-redistricting-commissions-table.aspx>

1. Get Busy.

- DEAL YOURSELF INTO THE PROCESS. Don't wait for an invitation. In any non-routine, non-recurring process, people make it up as they do it. Initially nobody knows who to talk to about what. Start talking to people and you will become part of the process.
- Review your state constitution and state laws. States that include language about fairness and equality before the law may have provisions that serve as a basis for swaying public opinion and/or legal action at the state level. For example, Pennsylvania has language its state constitution that led to a major victory. In January, 2018 “The Court found that the 2011 map violates the Free and Equal Elections Clause of the Pennsylvania Constitution.”
- <https://www.pubintl.org/cases-and-projects/pa-supreme-court-opinion-sets-groundbreaking-legal-standard-against-partisan-gerrymanders/>

2. Identify what constitutes fair districts.

Review the criteria for fair redistricting (a few examples):

- Compactness.
- Contiguity, i.e. districts that make sense as communities, as opposed to districts that wander down highways-like
- Equal population.
- Preservation of existing political communities.
- Partisan fairness.
- Racial fairness. (Add criteria from VRA)

Details about these and other criteria are at the nonpartisan advocacy organizations like the League of Women Voters. Here is info at the National Conference of State Legislatures.

- <https://www.ncsl.org/research/redistricting/redistricting-criteria.aspx>

- **IDENTIFY OR DEVELOP CRITERIA. DON'T WAIT FOR GODOT.**

3. Find out what data are used by your state.

- By state law or just tradition many states do use Census Bureau total population counts for redistricting, but there is no Federal law requiring states to use census data for redistricting and some states already exclude certain populations, e.g. prison inmates, military, et. al.
- Find out what data your state uses and the extent to which use of Census data is required from this website:
- <https://www.ncsl.org/research/redistricting/redistricting-and-use-of-census-data.aspx>

3. What Data Are Used? HUGE ISSUES.

- Watch out for efforts in your state to use Citizens only or even Citizens of Voting Age Population (CVAP) as the population for drawing lines instead of total population.
- Excluding undocumented at the Federal level from counts used for reapportionment is separate from some states trying to exclude noncitizens from population counts used to draw district lines within the state.
- Watch Texas, because of SCOTUS decision on Evenwel vs. Abbott n 2016. Affirms use of total population for redistricting, but drops hints that other methods may be acceptable. Opened the door for using citizens only. [https://ballotpedia.org/Evenwel v. Abbott](https://ballotpedia.org/Evenwel_v._Abbott)
- https://www.supremecourt.gov/opinions/15pdf/14-940_ed9g.pdf

4. Find Partners.

The Supreme Court has said that partisan gerrymandering is “beyond the reach of the federal courts.” This means that partisan issues in redistricting must be addressed on a state by state basis through means other than the VRA and Federal courts.

- a. Review your state constitution and/or laws about rights, fairness, processes for redistricting, data sources. Some of the language may be useful for persuading people, and/or for legal action. (PA)
- b. Engage in nonpartisan education and advocacy.
- c. Collaborate with national and state nonpartisan advocacy groups like the League of Women Voters, Brennan Center, SPLC, ACLU, Common Cause, others. (hotlinks are next.)

4. Connect With These Nonpartisan Organizations.

- League of Women Voters

<https://www.lwv.org/voting-rights/redistricting>

What the LWV is doing in your state

<https://www.lwv.org/tag/gerrymandering>

Find your state and local LWV chapters

<https://www.lwv.org/about-us/membership-local-leagues>

4. Connect With These Nonpartisan Organizations.

- Southern Poverty Law Center

<https://www.splcenter.org/20020213/drawing-line>

- Brennan Center for Justice New York University. They have gone through state law to determine which states afford the option of going to state courts, like happened in PA.

<https://www.splcenter.org/20020213/drawing-line>

<https://www.brennancenter.org/issues/gerrymandering-fair-representation>

- American Civil Liberties Union

<https://www.aclu.org/issues/voting-rights/gerrymandering>

- Common Cause

<https://www.commoncause.org/our-work/gerrymandering-and-representation/>

5. Create criteria in law that the legislature or the independent commission must use.

- Get criteria in law that people doing redistricting must follow when drawing maps. (If no criteria, anything can happen -- like VA.)
- There are independent commissions CA, WA, ID, AZ, MT. Five additional states approved nonpartisan ballot initiatives to create independent commissions. These states are: Colorado, Michigan, Utah, Ohio

<https://www.brennancenter.org/our-work/analysis-opinion/citizen-and-legislative-efforts-reform-redistricting-2018>

- and Missouri. (But the MO Legislature is now trying to change the result of the 2018 referendum with a trick constitutional amendment.)

[https://ballotpedia.org/Missouri_Amendment_3,_Redistricting_Process_and_Criteria,_Lobbying,_and_Campaign_Finance_Amendment_\(2020\)](https://ballotpedia.org/Missouri_Amendment_3,_Redistricting_Process_and_Criteria,_Lobbying,_and_Campaign_Finance_Amendment_(2020))

- Several other states are considering similar measures.
- California adopted an independent redistricting commission in 2010 with strict criteria.

5. Example: California Independent Redistricting Commission

- This commission was established by a referendum in 2010. Made up of 14 citizens—five Democrats, five Republicans, and four that are not affiliated with either of those two parties.
- For 2020, the first eight commissioners were randomly selected on July 2, 2020. Those 8 will be selecting the final six members of the commission.
- The Commission must draw the district lines in conformity with **strict, nonpartisan rules** designed to create districts of relatively equal population that will provide fair representation for all Californians.
- The Commission must hold public hearings and accept public comment. After hearing from the public and drawing the maps for the House of Representatives districts, 40 State Senate districts, 80 Assembly districts.
- To approve the new maps, the maps must receive nine “yes” votes from the Commission—three “yes” votes from members registered with the two largest parties, and three “yes” votes from the other members no later than August 15, 2020. (Date was moved 3 months.)
- The CA Independent Redistricting Commission is at: <https://wedrawthelines.ca.gov/>

6. If gerrymandering is based on race. (Get a lawyer)

- There are two important sections of the **Voting Rights Act** that apply to the creation of minority opportunity districts, Section 2 and Section 5.

Section 2. Section 2 applies nationally. Essentially, Section 2 requires that if there is racially polarized voting and if a minority opportunity district can be drawn, then it must be drawn. (There is a further consideration, known as the "totality of the circumstances," which involves the history of past discrimination in the jurisdiction in question.)

Section 5. When Section 5 was operative, covered jurisdictions had to clear any electoral change -- from moving a polling place to redistricting -- with the Department of Justice or the District Court of DC before it can take effect. This federal oversight was intended to ensure that a change does not have a discriminatory effect. In the context of redistricting, Section 5 required that the number of minority opportunity districts cannot decrease during redistricting.

- Section 5 is no longer functionally operative following the Supreme Court's [2013 Shelby County v Holder](#) ruling. Section 5 used to apply only to "covered jurisdictions." Section 4 of the Voting Rights Act defined the covered jurisdictions as those that had a past history of using discriminatory voting laws and had low turnout in the 1964, 1968, and 1972 presidential elections. In Shelby County, the Supreme Court essentially said that there was no rational basis for these historical elections to govern which jurisdictions should be covered today and invalidated the Section 4 coverage formula.

6. Voting Rights Act rules for district boundary lines.

1. When Must a Minority Opportunity District Be Drawn?

The ideal district has just the right percentage of minorities to elect a minority candidate of choice. The percentage of minorities cannot be too low, lest cracking occurs, and cannot be too high, lest packing occurs. Determining the legally acceptable minority percentage requires the following steps:

First, perform a statistical analysis of election results to determine the degree of racially polarized voting.

Second, draw a district with enough minority population to elect a minority candidate of choice, given the statistical analysis.

- The Supreme Court ruled in [Bartlett v Strickland](#) that in order for a district to be constitutionally required, minorities must constitute at least 50% of a minority opportunity district's voting-age population. Some have further interpreted this to mean that minorities must constitute at least 50% citizen voting-age population of a minority opportunity district.
- <http://www.publicmapping.org/what-is-redistricting/redistricting-criteria-the-voting-rights-act>

7. Keep track of how the dates that population counts are transmitted by the Census Bureau to the President and to the states affects reapportionment and redistricting.

- Under current law, after each census, the Commerce Department is obligated to provide two types of data that are used during the apportionment and redistricting processes.
- By December 31 of the year the census takes place, the Commerce Department must deliver apportionment counts to the president, which include the total population of each state. (And the number of congressional seats to which each state is entitled in an informal “courtesy” chart.) The President calculates the number of for the House of Representatives for each state.
- By January 10, the President must transmit the apportionment counts and #of seats per state to the Clerk of the House, which in turn is responsible for sending the counts to all U.S. governors. (Ministerial role.)
- Second, the Commerce Department is responsible for providing states with the block-level population and demographic data needed to redraw congressional and legislative district. (Commonly known as the “P.L. 94-171 file” or simply the “P.L. file,” citing the statute creating the requirement to provide these data).
- By statute, the Commerce Department must provide each state with this information no later than April 1 of the year after the census.
- The Commerce Department had asked Congress to extend the deadline for delivering apportionment counts to the President by April 30, 2021 and the deadline for delivering P.L. files to the states by July 31, 2021. But that request has recently been withdrawn.

<https://www.brennancenter.org/our-work/research-reports/how-changes-2020-census-timeline-will-impact-redistricting>

7. Dates are not yet final. Congress will decide.

- Due to Covid, the Census Bureau/DOC asked for these revised dates:
 - Reapportionment: by March 31
 - Redistricting: by July 31.
- In August (this month) the Administration withdrew the request to extend existing dates, which are:
 - Reapportionment: by December 31
 - Redistricting: by March 31

*States must be thoroughly confused as many were changing their dates to reflect the original DOC request. Congress can/must act in September?

*Hot Issue: Will there be one apportionment file with people who are undocumented included? Or two files, one with undocumented pulled out? Or something else? (July 31 presidential memo, Exec Order 13880, Census Bureau Working Group. Lawsuits.)

7. Impact of the delay.

1. If approved, the proposed delay will cause most states to have adjust their redistricting timelines -- trying to avoid having to use court-drawn maps for elections in 2021 and beyond.
2. In addition, some states may have to adjust their candidate filing or qualification periods and/or move primary dates.
3. Delays would also impact elections in New Jersey and Virginia, the two states with general elections scheduled in 2021.
4. A delay in delivery of redistricting data also will affect eight states that have fixed statutory or constitutional deadlines (California just moved their deadline date for redistricting from August 15 to Nov 15, 2021.)
<https://www.brennancenter.org/our-work/research-reports/how-changes-2020-census-timeline-will-impact-redistricting>

7. After the dates are determined the Census Bureau will post the P.L. 94-171 files.

- State and substate areas/districts for which the data will be compiled were developed by the states and are already at the Bureau. In (April – July) 2021 here is where the Bureau will post the data files:

<https://www.census.gov/programs-surveys/decennial-census/about/rdo/summary-files.html#P1>

- Here are the 2010 files.

<https://www.census.gov/data/datasets/2010/dec/redistricting-file-pl-94-171.html#:~:text=Public%20Law%2094%2D171%2C%20enacted,needed%20by%20the%2050%20states>

8. Other internal Census Bureau policy and statistical methods will affect the final counts. Pay attention to the advocates who track these technical issues.

1. Disclosure Avoidance System. Protecting confidentiality at the block/tract level with the Differential Privacy methods may affect populations with small numbers.

<https://www.census.gov/programs-surveys/decennial-census/2020-census/planning-management/2020-census-data-products/2020-das-updates/2020-das-faqs.html>

2. Coverage Measurement. Now called “Post Enumeration Survey”

<https://www.census.gov/programs-surveys/decennial-census/about/coverage-measurement.html>

3. Dual System Estimation. Can administrative records be used (like Denmark and some other Scandinavian countries) to enhance accuracy or as a substitute for direct counting?

<https://www.census.gov/programs-surveys/decennial-census/2020-census/planning-management/planning-docs/cpex-evaluations-experiments.html>

4. Demographic Analysis. <https://www.census.gov/programs-surveys/popest/technical-documentation/research/demographic-analysis.html>

5. Count Question Resolution. Methods by which (only) elected officials can challenge counts. <https://www.census.gov/about/policies/quality/corrections/cqr.html>

Recap of the eight steps CAAs should start now.

1. Find out how your state does redistricting, and deal yourself in.
2. Identify what constitutes fair districts. Identify good criteria.
3. Find out what data your state uses. Use total population.
4. Find partners. League of Women Voters, et. al.
5. Create ironclad criteria for legislature or independent commission.
6. If racial gerrymandering, add in VRA criteria and remedies.
7. Keep track of changes in dates for: data transmittal to states, redistricting deadlines in states.
8. Pay attention to advocates regarding Bureau statistical methods.



More Sources:

- Modern Gerrymandering:
<https://www.nationaljournal.com/s/636757/modern-gerrymanders-10-most-contorted-congressional-districts-maps>
- Redistricting Process: National Journal, Congressional Redistricting 101 9/5/2018
(<https://www.nationaljournal.com/md/653605/congressional-redistricting-101>)

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