



# EXPLAINER

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## Opportunities for Redistricting Reform

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**Author:** Catherine Rowland, Legislative Affairs Director  
([catherine@progressivecaucuscenter.org](mailto:catherine@progressivecaucuscenter.org))

**The author thanks Public Citizen for their comments and insights.**

This year represents not only a midterm election year, but the first election to take place since the most recent Census revealed how the U.S. population has evolved over the past decade and, consequently, how many seats each state will be apportioned in the U.S. House of Representatives for the next 10 years. While the House passed significant reforms to improve the redistricting process as part of the For the People Act, the Senate failed to act on the legislation before states began drawing new districts. There is, however, still an opportunity for Congress to enact meaningful reforms ahead of the midterm elections through the Freedom to Vote Act.

As of January 4, 2022, [26 states have finalized their maps](#), while the others are still in the process of redrawing Congressional district lines. Some states have already been criticized for failing to ensure fair representation and these states will almost certainly face legal challenges. As litigation makes its way through the courts, it will be critical for Congress to enact legislation addressing the most egregious redistricting practices that deny Americans fair representation.

### Redistricting Ahead of the 2022 Midterms: A Snapshot

The redistricting process began in earnest once the Census Bureau released state-by-state population data, which determined how many House seats would be apportioned to each state for the next 10 years.<sup>1</sup> Control over the redistricting process varies from state to state. In 21 states, redistricting is overseen by a commission or a divided government. In 20 states, Republicans have complete control over the process, while Democrats manage it in the remaining nine states.

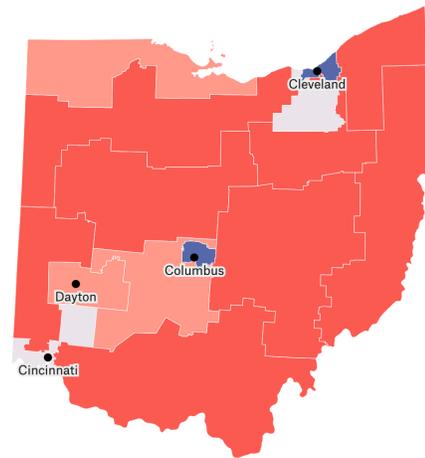
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<sup>1</sup> For a more detailed explanation of the apportionment and redistricting process, see the Congressional Progressive Caucus Center's explainer, "[Census Data Sets the Timer on Redistricting Reform.](#)"

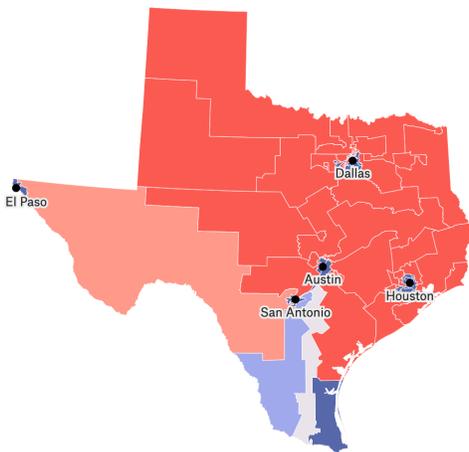
When one party controls redistricting, there is a heightened risk that the maps will be gerrymandered—that is, drawn with the express purpose of improving that party’s electoral prospects. This is primarily achieved using two methods, “cracking” and “packing”:

- *Cracking* occurs when a map is drawn to split a specific group of people—say, people who identify with a particular political party—into different districts, preventing them from coalescing behind their party’s candidate and diluting their voting power.
- *Packing* occurs when a map is drawn to “pack” a group of people into certain districts. While those people can now elect their candidates of choice in their districts without much difficulty, they have been cordoned off from the state’s remaining districts, which have now been made “safer”—that is, easier to win—for the opposition party.

The [map for Republican-controlled Ohio, for example, carves up largely Black, Democratic communities](#) in Hamilton County around Cincinnati into districts that include white Republicans from rural areas. By cracking these Democratic-leaning communities into separate districts, the Ohio GOP makes those districts safer for Republicans.



Source: FiveThirtyEight, “What Redistricting Looks Like In Every State.”



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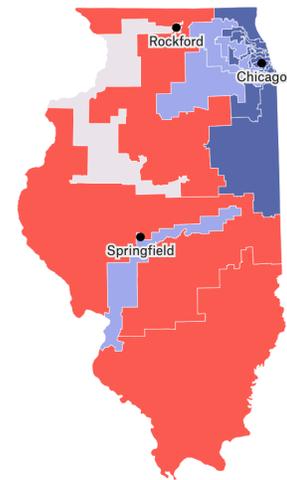
Packing, meanwhile, can be seen in Texas’s new maps, also drawn by Republicans.

[FiveThirtyEight explains](#), “GOP lawmakers moved more Democratic voters into seats that the GOP had previously targeted but now seem to have abandoned. For example, the seat held by Democrat Lizzie Fletcher, who unseated a Republican incumbent in 2018, would go from D+1 to D+25.”

By making once-competitive blue seats bluer and, concurrently, red seats redder, Republicans may make it easier for a few Democrats to win—but they make it easier for far more Republicans to win, too.

Gerrymandering is not an exclusively Republican practice. Illinois' map, for example, drawn by Democrats, earned an "F" from the Princeton Gerrymandering Project, which said the map created a ["significant Democratic advantage."](#)

A number of stakeholders have sued to have gerrymandered maps thrown out. While the Constitution and the Voting Rights Act prohibit "racial gerrymandering"—drawing districts in a way that disenfranchises a racial minority group—the [Supreme Court ruled in 2019](#) that "partisan gerrymandering" cases fall outside federal courts' jurisdiction and must be adjudicated in state courts or addressed via legislation in Congress (*Rucho v. Common Cause*).



Source: FiveThirtyEight, "What Redistricting Looks Like In Every State."

Allowing partisan gerrymanders, however, has implications for the enfranchisement of racial minorities; according to the [Brennan Center for Justice](#), "because there often is correlation between party preference and race, *Rucho* opens the door for Republican-controlled states to defend racially discriminatory maps on grounds that they were permissibly discriminating against Democrats rather than impermissibly discriminating against Black, Latino, or Asian voters."

Independent commissions have been touted as a possible solution to the problem of gerrymandered maps. Some commission-drawn maps have been deemed fair, like [Colorado's, which received an "A"](#) from the Princeton Gerrymandering Project. Other states that have commission-led processes, however, have faced considerable challenges. [Virginia's redistricting commission failed](#) to meet its final deadline, punting its map-drawing duties to the state's supreme court. In Arizona and Michigan, commissions have faced what [the New York Times called](#) "shadowy pressure campaigns disguised as spontaneous, grass-roots political organizing."

The varied levels of success among commissions in producing impartial maps indicates that these commissions can help to achieve more representative districts but are not in and of themselves panaceas. They must be structured in a manner that avoids bias and contains safeguards to shield commission members from lobbying efforts designed to influence the maps' makeup.

## Redistricting Reforms

On March 3, 2021 the House of Representatives passed the For the People Act ([H.R. 1](#)), introduced in the House by Congressman John Sarbanes and in the Senate by Senator Jeff Merkley. The bill contains reforms related to campaign finance, election security, access to the ballot box, and more, including redistricting. Specifically, the bill:

- Requires all states to use independent redistricting commissions;
- Bans partisan gerrymandering;
- Creates an expedited statutory legal remedy to challenge gerrymandered districts in court;
- Establishes uniform rules for drawing Congressional districts; and
- Prohibits mid-decade redistricting.

The Senate has not acted on H.R. 1. Absent Republican support or changes—whether permanent or temporary—to the filibuster, the bill is not expected to garner sufficient support to pass in the current 50-50 Senate.

The Senate did prepare to consider related legislation, the Freedom to Vote Act ([S. 2747](#)), in October. Like the For the People Act, this bill would ban partisan gerrymandering—including in maps already finalized by the states for 2022—and additionally [allow for expedited court consideration](#) of maps that are challenged.

The Freedom to Vote Act was introduced by Senator Amy Klobuchar on September 14, 2021 and a motion to begin consideration of the bill was made just over a month later. However, this procedural move failed and the chamber did not ultimately vote on the bill.

## Conclusion

As the midterm elections approach and costly court battles over maps rage on, the window for Congress to act grows narrower. If Congress wishes to improve the likelihood that the midterm elections occur with fair maps in place, it should pass the Freedom to Vote Act urgently. Reports indicate that [Democrats are discussing work-arounds](#) that could allow for legislation on election reforms and voting rights to bypass the filibuster without eliminating the rule altogether. In the wake of [a one-time carveout to raise the debt ceiling](#), such an exception to the filibuster has precedent. However, with the midterm elections less than 10 months away, the clock is ticking.