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The map wars

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Last week, a federal district judge struck down Louisiana's new congressional map on the grounds that it amounted to a racial gerrymander and ruled that it must be redrawn. In a related redistricting case, the Supreme Court issued a provisional stay in February regarding Alabama's newly drawn congressional map, overturning a lower court ruling that had invalidated the map. Utah's new congressional map is also being challenged in the courts.

This political process comes like clockwork every 10 years: States redo their congressional and state legislative maps following a census. A round of boisterous political theater follows, in which incumbents fret about their future and whether they'll relocate to another district or engage in a full-scale primary or general election war with another incumbent. And then come the inevitable litany of lawsuits. These are brought by a variety of groups, including political outfits such as the National Republican Redistricting Trust and the National Democratic Redistricting Committee, putative civil liberties groups such as the ACLU and NAACP, and, occasionally, the federal government, all complaining that the new congressional maps are unfair.

The process of redistricting, in which congressional maps are redrawn and adopted by state legislatures determined by partisan political majority, has become derisively and inextricably linked with the idea of "gerrymandering." The term originated in 1812 from a *Boston Gazette* political cartoon suggesting that a nascent district resembled a salamander. The map was signed by Massachusetts Gov. (and later vice president) Elbridge Gerry, hence the name "gerrymander." Gerry and the Democratic Republicans got what they wanted from the new maps: success at the ballot box. Albeit, that win did come at Gerry's expense, as he lost statewide election the next year.

Gerrymandering has since become the belle of the redistricting ball. Political parties use it to ensconce and harden their power, which lasts right up until a state's electorate shifts enough to benefit the other major party. Geographical commonsense takes a back seat to this mission, and salamanders are among the more diffuse shapes to be concocted to serve political purposes. Democratic California Rep. Phillip Burton famously called his gerrymandered congressional maps of the early 1980s "my contribution to modern art." Fellow Democratic congressman Howard Berman told the *Christian Science Monitor* in 1982 that the gerrymandering system was imperfect but still preferable to the alternatives because at least the politicians drawing the districts can be held accountable on Election Day.

History shows that Berman’s defense of gerrymandering is based on a lie. “These gerrymanders for Congressional purposes are in most cases buttressed by a gerrymander of the legislative districts,” wrote President Benjamin Harrison to Congress in his 1891 State of the Union, explaining that a layer of unaccountable action serves as a barrier between the gerrymander and the voters, “thus making it impossible for a majority of the legal voters of the State to correct the apportionment and equalize the Congressional districts. A minority rule is established that only a political convulsion can overthrow.”

Harrison’s solution to the gerrymandering problem involved a federal commission put together by the Supreme Court. “Nonpartisan in its membership and composed of patriotic, wise, and impartial men, to whom a consideration of the question of the evils connected with our election system and methods might be committed with a good prospect of securing unanimity in some plan for removing or mitigating those evils,” he said to Congress. “This commission should be charged with the duty of inquiring into the whole subject of the law of elections as related to the choice of officers of the National Government, with a view to securing to every elector a free and unmolested exercise of the suffrage and as near an approach to an equality of value in each ballot cast as is attainable.”

The plan, like most of Harrison’s civil rights proposals, went nowhere.

Individual states picked up Harrison’s proposal almost a century later. Colorado started using a somewhat partisan commission to put together its state legislative districts in the 1970s. It moved to a more nonpartisan redistricting commission in 2021.

“I think sort of philosophically ... partisan folks are more likely to support commissions when they’re not certain that they’re gonna have all the votes,” said Julia Jackson, redistricting analyst for Colorado’s Independent Redistricting Commissions, when asked about the 2018 ballot initiative creating the redistricting commission. She said Coloradans were tired of state courts drawing up maps instead of the elected legislature doing so. “We are now a state where one party controls the legislature and the governor and most of the statewide offices, but that hasn’t historically been the case. So, I think both sides had reason to think, ‘We don’t know for sure that we’ll win in a partisan mapmaking process.’”

Colorado’s commission features four Republicans, four Democrats, and four nonaffiliated members. A supermajority is required for passage that includes two nonaffiliated commissioners. Jackson believes this increases bipartisanship. “You either have to cross parties, or you have to get all four of the unaffiliated on your side, too, to pass something,” she said. “So, I think that really sort of shaped the discussions, knowing right from the start that if only one party likes the map, you’re probably not gonna get it through.”

Not everyone was pleased with Colorado’s redistricting process. The Libertarian and Green parties of Colorado felt that they were excluded because no third-party members were on the commission. Green Party co-chair Andrea Merida Cuellar told *Reason* in 2018 that the ballot initiatives were a “desperate attempt for the status quo for relevance in Colorado’s political landscape.” The Libertarian Party unsuccessfully argued that third parties should get at least one commissioner seat should they reach 5% registration in the state. Their membership would

increase to two seats if they reached 10% and three seats at 20%, meaning the 12-member panel would be split four ways.

Jackson is unconvinced. “The numbers of third-party voters are like under 4% total,” she said, commenting that 40% of Colorado voters are unaffiliated, while Democrats and Republicans enjoy an estimated 30% enrollment each. “I think the argument against including them was just that it would give extra representation to a very small portion of the electorate.”

The congressional map remains similar to the map approved in the last decade, albeit with the newly established 8th Congressional District. That could be extremely competitive this fall even though the winner will likely be a Republican or a Democrat instead of an independent or third-party candidate. It’s a disappointment for the Libertarian and Green parties. Colorado’s new maps will be tested this November.

Maryland’s redistricting attempt didn’t have the same success as Colorado. Republican Gov. Larry Hogan put together the nine-member Maryland Citizens Redistricting Commission in 2021. It included three registered Republicans, three registered Democrats, and three unaffiliated voters.

“[The independents] were kind of a token of the fact that if anyone did feel partisan, they weren’t going to have anyone near majority anyway,” observed commission co-chair Walter Olson over the phone. He’s a registered Republican in Frederick County but works for the libertarian Cato Institute. “It’s yet another disincentive to being partisan, is that you try to be partisan, and the independents are still going to make sure that you’re not close to a majority.”

Olson suggested that excluding elected officials on the commission reduced polarization. He believed that elected officials tend to push the individual party’s agenda, an issue that throttled both the Ohio and Virginia redistricting commissions. The Maryland commission kept things congenial, even when disagreements popped up. “On the issue of multimember districts, that was as close as we got to polarization because the Democrats did all favor the multimember district, while the Republicans did all have sympathy for single member districts, which kind of faithfully reflects the testimony we were hearing and the opinions from our different parts of the state,” he said. The commission’s compromise involved giving urban areas multimember districts, while rural areas received single-member districts.

Everything seemed to be going swimmingly. Commissioners unanimously approved the state Senate and delegate maps, while the congressional maps received an 8-1 vote. It was in the Maryland legislature where things fell apart. Democrats approved their own congressional maps, rejecting the commission’s compromise boundaries. Princeton’s Gerrymandering Project gave the maps an F grade (the commission’s map received an A) before a federal judge called them unconstitutional.

The legislature eventually came up with a new map deemed fairer by Hogan, who signed it into law. Fair Maps Maryland, which is co-chaired by Democrat James Brochin and Republican Doug Riley, called the map “extreme gerrymandering and blatant voter suppression.” Politics appeared to ruin everything.

Commissions aren't necessarily the universal redistricting solution. New York's so-called Independent Redistricting Commission collapsed into partisan bickering and produced two separate maps. The New York Legislature passed its own maps that were thrown out by the courts due to gerrymandering. Ohio's redistricting commission approved maps later rejected by the Ohio Supreme Court. A federal court rescued those maps last month. There's evidence that California House Democrats worked with the national Democratic Congressional Campaign Committee to taint the redistricting commission's independence.

It's worth noting, however, that maps drawn by independent commissions tend to face fewer court challenges. Of the 25 redistricting lawsuits currently being fought, only six involve redistricting commissions, according to the Brennan Center. Independent commissions appear to be a step in the right direction, as long as they truly remain nonpartisan and encourage more competitive races.