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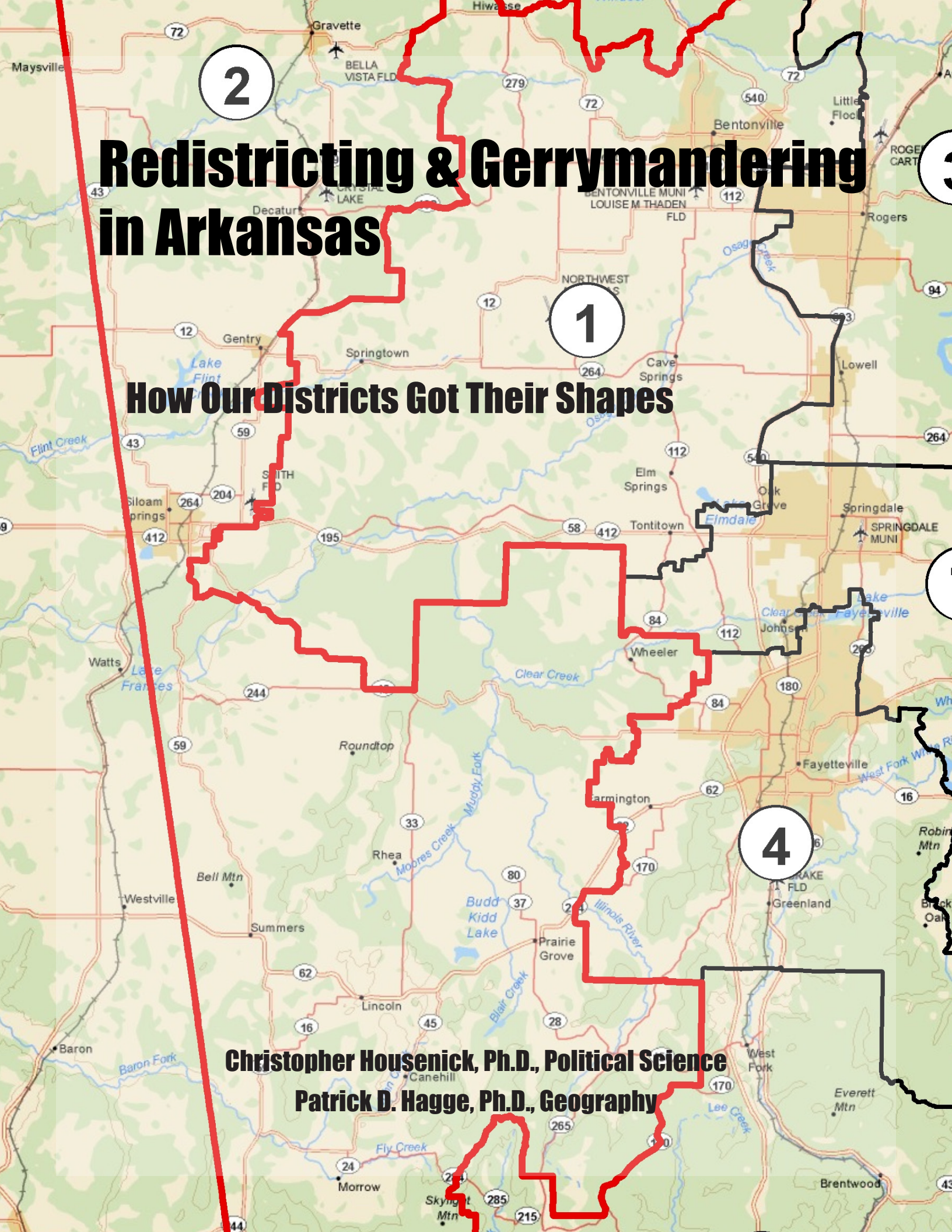
# Redistricting & Gerrymandering in Arkansas

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## How Our Districts Got Their Shapes

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## How Our Districts Got Their Shapes

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The Arkansas Public Policy Panel is a statewide organization dedicated to achieving social and economic justice by organizing citizen groups around the state, educating and supporting them to be more effective and powerful, and linking them with one another in coalitions and networks. The Panel seeks to bring balance to the public policy process in Arkansas.

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# Executive Summary

All states are required to periodically redraw electoral boundaries in a process known as **redistricting**. Because state and local populations change over time, district lines for political parties like Congressional Districts and state legislative districts must be redrawn and voters must be reapportioned, or reallocated, to keep roughly the same number of persons in a particular district.

This paper describes the process of redistricting in Arkansas and the vital role it plays in our democracy. It compares how other states approach redistricting, lifts up challenges to fair redistricting caused by gerrymandering, and concludes by reviewing reforms being applied in other states to address those challenges.

Arkansas has multiple types of redistricting for local, state, and federal district lines. The Arkansas General Assembly determines the boundaries for Arkansas's four U.S. House of Representative districts. The Board of Apportionment, a committee made up of the Governor, the Secretary of State, and the Attorney General determines the boundaries for the 100 Arkansas State House districts and the 35 Arkansas State Senate districts. Judicial districts are determined in another

way, and many local offices like city council and school board are redistricted in other ways.

In the past, most states allowed elected officials to draw new district lines, though this practice is changing, largely due to controversy around **gerrymandering**. Gerrymandering is where electoral districts are drawn to favor or hurt one particular party, candidate or constituency group. The political party in charge of redistricting may benefit in future elections if a district is redrawn to include (or exclude) specific counties, cities, neighborhoods, or demographic groups.

Gerrymandering creates four core challenges for our democracy. It creates biased representation where parts of the public are denied political representation. It leads to uncompetitive elections where candidates from the more represented party are nearly assured of election. Because candidates in gerrymandered districts need only worry about winning their party primary, it can lead to more polarized politics with lawmakers representing the more extreme views of their party. And districts that are gerrymandered are increasingly the targets of costly legal challenges.

Unusual, sprawling district shapes are often examples of gerrymandering, but there are few concrete legal definitions of just how much gerrymandering is acceptable. The legal question surrounding partisan gerrymandering is straightforward: **“How much manipulation is too much manipulation based on party?”**

Consider the complex U.S. Congressional district borders in western Arkansas. The 3rd and 4th District each have long “fingers” that snake to the Ozarks and Arkansas River Valley area, and the horseshoe-shaped 3rd District cuts the town of Alma in half. Driving on Interstate 40 from the Oklahoma boundary, a traveler would pass through the 3rd District, then the 4th District, then the 3rd District again, then the 2nd District, all on a trip of fewer than 100 miles.

In June 2019, the Supreme Court ruled that many partisan gerrymandering complaints were not able to be heard by federal courts, leaving the door open for state or U.S. laws to address gerrymandering.

Trends in redistricting reform have surfaced from several states in recent years, to protect district maps from gerrymandering. States are increasing the specific criteria for their redistricting processes, and several states are moving the redistricting process away from elected officials to some form of independent commission. States who have not adopted these reforms are increasingly facing legal challenges against suspected gerrymandered redistricting maps. These reforms around the country are allowing states to discard the heavily gerrymandered maps of the past in advance of the next redistricting process.

### **GERRYMANDERING CREATES FOUR CORE CHALLENGES FOR OUR DEMOCRACY:**

- 1. Biased representation**
- 2. Uncompetitive elections**
- 3. Growing political polarization**
- 4. Increase in costly legal challenges**

# Redistricting & Gerrymandering in Arkansas

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# Glossary

bipartisan gerrymandering	An uncommon form of gerrymandering where political parties work together to manipulate district boundaries to ensure mutually beneficial electoral outcomes.
communities of interest	Communities where voters share a common geographic location, culture, race, ethnicity, religion, or political background
descriptive representation	A legislature whose membership approximates the make-up of the entire population.
gerrymandering	The intentional manipulation of legislative district lines in order to advantage one group (and therefore disadvantage another group) in future elections.
partisan gerrymandering	When a political party draws legislative district lines to give their party an unfair advantage in future elections. This can lead to biased representation, where elected officials do not accurately represent an area's actual population.
racial gerrymandering	When someone sets out to diminish the voting power of minorities by manipulating legislative district lines.
reapportionment	Simple arithmetic to determine how many people need to reside within each state legislative district.
redistricting	The redrawing of state legislative district lines to reflect changes over time in the numbers of people living within a certain area. This process happens following each census, which is a Constitutionally-mandated counting of all persons in the United States every 10 years.

# An Overview of Redistricting

All of the United States are required to periodically redraw electoral boundaries in a process known as **redistricting**. *Redistricting* is the redrawing of state legislative district lines to reflect changes over time in the numbers of people living within a certain area. This process happens following each census, which is a Constitutionally-mandated counting of all persons in the United States every 10 years.

In Arkansas, our state is seeing rapid population growth in the Northwest Arkansas corridor and the Central Arkansas region. Rural areas, and in particular the Delta, are losing population. In recent years, the higher population counties in Arkansas are increasing in population, and the least populated counties in Arkansas are declining in population. Electoral districts will be redrawn to adjust to these population shifts, putting more legislative districts in the Northwest and Central parts of the state, and fewer in the Delta and other rural areas.

These same changes are happening nationwide. At the U.S. Congressional level, fast-growing Texas and Florida have gained more Congressional seats in recent decades, while the declining “Rust Belt” states of the Midwest are losing Congressional seats. A similar pattern is also seen at the state level. For example, the booming Las Vegas area is gaining more state legislative seats at the expense of rural Nevada.

Redistricting is a three-step process that takes several years to complete. The three steps are:

## 1. THE CENSUS.

The census, administered by the federal government, kicks off the redistricting process

and can affect every legislative district for all levels of government throughout the country. At the beginning of every decade, the government performs the national census, counting the number of people throughout the country. A full and accurate census count, as required in the U.S. Constitution, is critical to making fair political maps that protect the rights of every citizen.

## 2. REAPPORTIONMENT.

Once the census is complete, each state performs reapportionment — simple arithmetic to determine how many people need to reside within each state legislative district. From a political and practical perspective, reapportionment is non-controversial. For the Arkansas State House, the Arkansas Board of Apportionment takes Arkansas’s total population and divides by 100; for the Arkansas Senate, they take that same total population and divide by 35. This gives a target number of people who must reside in each of the legislative districts for the two chambers. Table 1 provides the current size of Arkansas’s districts, as well as the projected size of each district with completion of the 2020 census.

## 3. REDISTRICTING.

With a target number for each Arkansas House and Senate district in hand, next comes the duty of redrawing the legislative district lines. (Note: this process can take several months.<sup>1</sup>) Because “One Person, One Vote” is a Constitutional guarantee, every state is required to redraw all their legislative district

lines to correspond with the changes in their respective populations.<sup>2</sup> Much of the national attention on redistricting will be on how the House of Representative districts change, but states have to adjust their state Senate and state House districts. While the popular image of governmental power is usually

fixed on Congressional bills or Presidential executive orders, individual state governments are typically responsible for far more laws than Washington, D.C. State legislatures introduce more laws and pass laws at a higher percentage than Congress.<sup>3</sup>

**Table 1:  
Current & Estimated Size of Arkansas State Legislative Districts\***

	ARKANSAS'S POPULATION	IDEAL POPULATION IN EACH HOUSE DISTRICT	IDEAL POPULATION IN EACH SENATE DISTRICT
2010 CENSUS	2,915,918	29,159	83,312
2020 ESTIMATE	3,038,999	30,390	86,829

*\* These 2020 population estimates assume a typical census count, but as of August, 2020 the Arkansas census is undercounting residents much more than typical because of the COVID-19 pandemic. Undercounted communities will have less political representation. An accurate census count is critical to a fair redistricting process.*



# An Overview of Gerrymandering

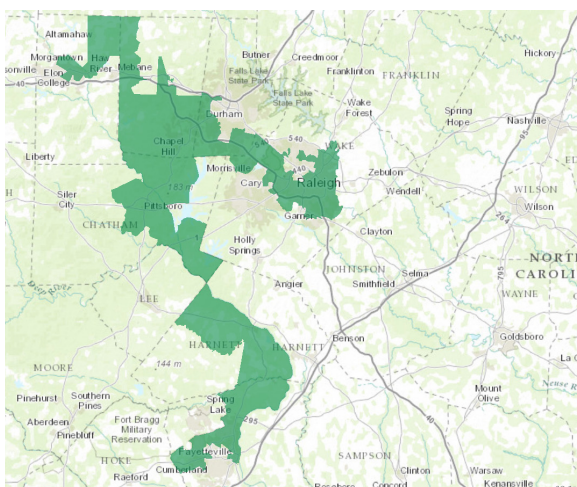
**Gerrymandering** is the intentional manipulation of legislative district lines in order to advantage one group (and therefore disadvantage another group) in future elections. This unfair political practice has existed throughout U.S. history. The earliest incident (and the event that gave gerrymandering its name) occurred in 1814 when Massachusetts Governor Elbridge Gerry drew an election district that looked like a salamander.

Whenever a state undergoes redistricting, gerrymandering is a possibility. What makes gerrymandering especially difficult in a legal sense is that there is no federal legal standard or definition of what constitutes gerrymandering. There were strong expectations that recent Supreme Court cases, such as *Gill v. Whitford* (2018), *Rucho v. Common Cause* (2019), and *Lamone v. Benisek* (2019), would finally establish legal doctrines and guidelines for states to follow to prevent and avoid gerrymandering. All of these case decisions had very narrow legal foci (the state

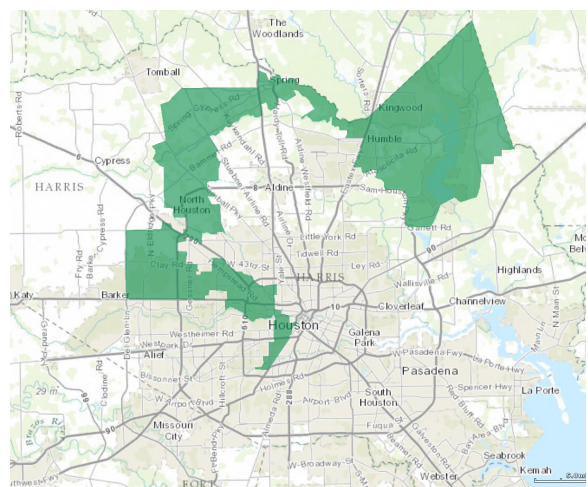
and map in question), and none of these cases established a national legal precedent for what constitutes illegal gerrymandering.

Without a legal doctrine in place, whether or not something is gerrymandered is often “in the eye of the beholder,” as there is no perfectly accepted definition. One recent academic article on gerrymandering was simply titled “How to Measure Legislative District Compactness If You Only Know It When You See It.”<sup>4</sup>

Unusual district shapes are typically indications of gerrymandered districts. Figure 1 and Figure 2 show two examples of gerrymandered U.S. House Districts. The former boundary of the North Carolina 4th Congressional District (*Figure 1*) was a Democratic-friendly gerrymandered U.S. House District until it was ordered to be redrawn by the Supreme Court. The Texas 2nd Congressional District (*Figure 2*) is a Republican-friendly gerrymandered U.S. House District.



**Figure 1: The former North Carolina 4th Congressional District, a gerrymandered district packed with Democratic voters. Thrown out by the courts.**

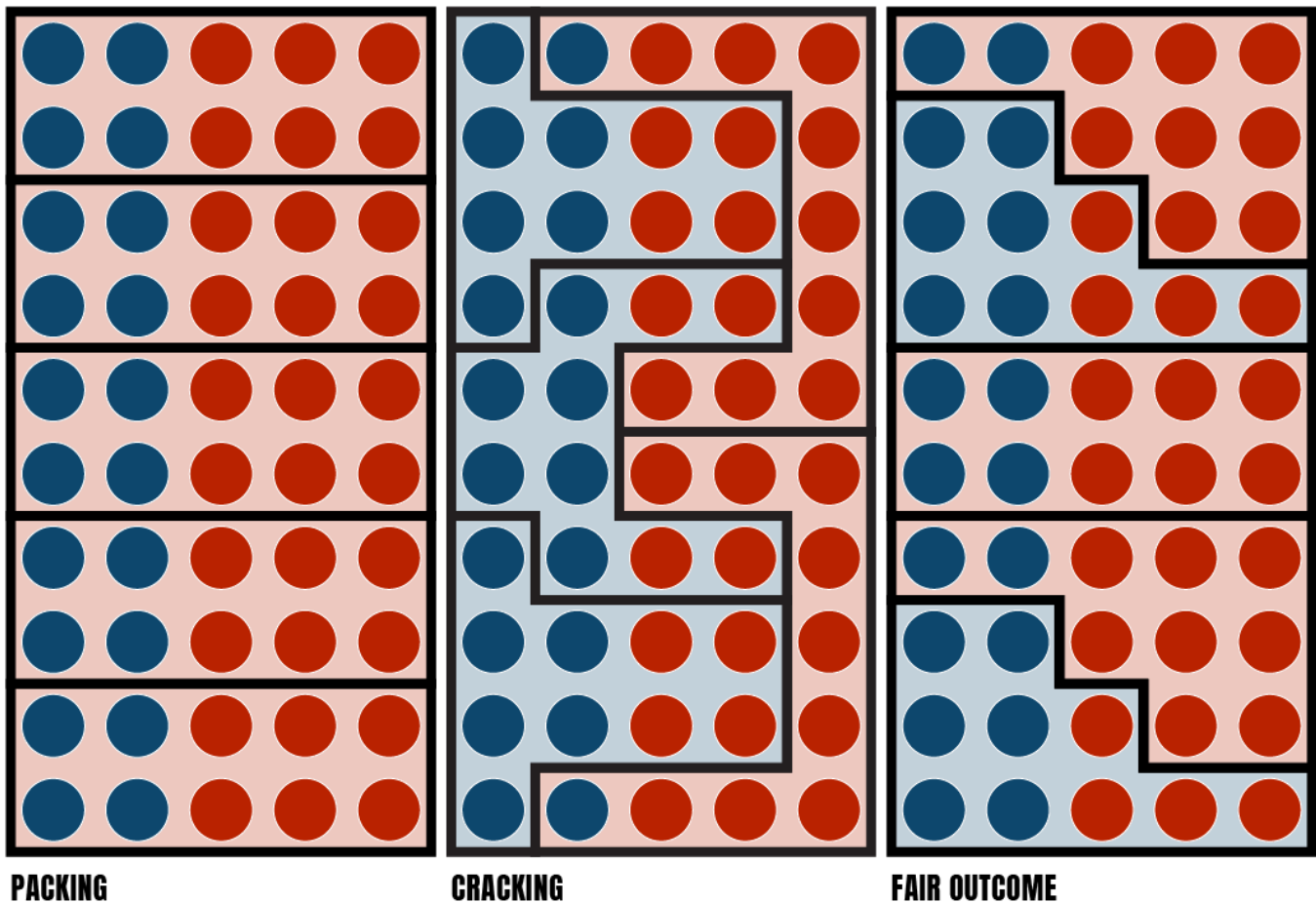


**Figure 2: The Texas 2nd Congressional District, a gerrymandered district packed with Republican voters. Thrown out by the courts.**

However, gerrymandering often falls into three major types or categories, each explained below:

**Partisan gerrymandering** is when a political party draws legislative district lines to give their party an unfair advantage in future elections. This can lead to biased representation, where elected officials do not accurately represent an area's actual population. Partisan gerrymandering is generally achieved by drawing districts that encompass a large number of the preferred party's voters and a small number of voters from other political parties, through "cracking" or "packing." In "cracking,"

the opposing party's voters are divided into many different districts, allowing the preferred party to win elections in several districts against a divided opposition. The "packing" approach calls for the opposing party's voters to be pushed into one or a few districts. The majority party surrenders the packed district to the opposition party, but the majority party can likely win the other districts. Examples of these phenomena are included in Figure 3.



**Figure 3: "A Deeper Look at Gerrymandering."**

In the left image ("packing"), red wins all districts. In the middle image ("cracking"), red wins two districts and blue wins three districts. In the right image, red wins three districts and blue wins two. This outcome is fair because red has 60% of the population and won 60% of the districts.

This form of gerrymandering is generally unconstitutional. However, to date, the Supreme Court has not provided governments a working, legal definition of partisan gerrymandering. For every redistricting cycle, a legal challenge against

partisan gerrymandering makes its way to the U.S. Supreme Court, who most often strikes down a state’s district map for partisan gerrymandering. A sample of these Supreme Court cases appears in Table 2.

**Table 2:**  
**Selected U.S. Supreme Court Gerrymandering Cases, 1962-2018**

SUPREME COURT CASE	YEAR	STATE
<i>Baker v Carr</i>	1962	Tennessee
<i>Gaffney v Cummings</i>	1973	Connecticut
<i>Davis v Bandemer</i>	1986	Indiana
<i>Shaw v Reno</i>	1993	North Carolina
<i>Georgia v Ashcroft</i>	2003	Georgia
<i>Gill v Whitford</i>	2018	Wisconsin

Sources: [https://ballotpedia.org/Timeline\\_of\\_redistricting\\_cases\\_heard\\_by\\_the\\_Supreme\\_Court\\_of\\_the\\_United\\_States](https://ballotpedia.org/Timeline_of_redistricting_cases_heard_by_the_Supreme_Court_of_the_United_States)  
<https://www.ncsl.org/research/redistricting/redistricting-and-the-supreme-court-the-most-significant-cases.aspx>

In June 2019, the Supreme Court ruled that many partisan gerrymandering complaints were not able to be heard by federal courts, leaving the door open for state or U.S. laws to address gerrymandering.<sup>5</sup>

Partisan gerrymandering is a problem on both sides of the political aisle. In the last few years alone, statistical tests of redistricting have shown that a Democratic Party-friendly map of Maryland Congressional Districts and a Republican Party-friendly map of Wisconsin state legislative districts were both too political to be developed by random chance.<sup>6</sup> These party-friendly maps are just two of

countless other partisan gerrymanders throughout American history.

Both major political parties are aware of the opportunity to redistrict in their favor and thus gerrymander future districts. Both the national Democratic Party (National Democratic Redistricting Committee) and the Republican Party (REDMAP – Redistricting Majority Project) have developed projects to maximize their successes in redistricting.<sup>7</sup>

**Racial Gerrymandering** is when someone sets out to diminish the voting power of minorities

by manipulating legislative district lines. Race is especially challenging when it comes to the drawing of district lines. In the past, racial gerrymandering occurred most frequently to prevent areas with high populations of racial or ethnic minorities from electing a particular candidate. In the modern era, both “cracking” and “packing” occur in districts with large racial or ethnic minority populations. States may consider race when drawing district lines, but race cannot be the only criteria used for determining a legislative district. Like partisanship above, racial gerrymandering is unconstitutional.

*Bipartisan Gerrymandering* is an uncommon form of gerrymandering where political parties

work together to manipulate district boundaries to ensure mutually beneficial electoral outcomes. This form of gerrymandering is often done to protect incumbents in both political parties. In the post-2000 redistricting round in California, widespread bipartisan gerrymandering occurred. Democratic and Republican legislators decided that protecting incumbents was more important than unpredictably close election districts. The new map was drawn in such a way that most California Congressional Districts in this era were either very reliably Democratic or very reliably Republican.

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# Problems Created by Gerrymandering

## GERRYMANDERING CREATES BIASED REPRESENTATION

The goal of legislative redistricting is to provide **descriptive representation** — a legislature whose membership approximates the make-up of the entire population.

Gerrymandering ignores the goal of descriptive representation. Consider two examples during the 2010s redistricting process: a Republican-friendly

gerrymander in North Carolina and a Democratic-friendly gerrymander in Maryland. North Carolina is nearly evenly split between Democrats and Republicans statewide. Before the state was illegally gerrymandered after the 2010 census, the House delegation from North Carolina looked much like the state’s overall population. Once the gerrymandered districts were in place, the number of Republicans elected to the House increased more than 20 percent. See Table 3 for details.

**Table 3:  
Gerrymandering Skews Political Representation**

		REPUBLICAN HOUSE SEATS	REPUBLICAN PRESIDENTIAL VOTE
North Carolina	Before Gerrymandering 2008	53.8%	49.4%
	After Gerrymandering 2016	76.9%	49.8%
Maryland	Before Gerrymandering 2008	25.0%	36.5%
	After Gerrymandering 2016	13.5%	33.9%

*Ballotpedia; also see Cooper v. Harris, 581 U.S. (2017)*

In Maryland, the redistricting efforts centered on complaints about a Democratic-drawn 6th Congressional District. This District was “overpopulated” by about 17,000 people after the 2010 Census, so new district lines would need to be drawn to exclude about 17,000 of the current residents. However, the new district boundary was drawn to shift over 700,000 residents into or out of that district.<sup>9</sup>

Gerrymandering can have an enormous influence if a large number of districts are considered. The politics website fivethirtyeight.com devised two extremely gerrymandered maps of all 435 U.S.

Congressional Districts, one set of maps to favor Democrats and one set of maps to favor Republicans. This research shows that — even given the same number of voters casting their vote — extreme gerrymandering could produce a Congress with anywhere from a 118-seat Democratic majority or a 136-seat Republican majority.<sup>10</sup>

### **GERRYMANDERING AND UNCOMPETITIVE ELECTIONS**

While determining gerrymandering is not an exact science, political scientists can look for gerrymandering by measuring uncompetitive elections.<sup>11</sup> The legal/political science firm PlanScore has measured gerrymandering for U.S. Congressional Districts and State House legislative districts for decades, finding several states with wide ranges of partisan favoritism after every single redistricting process. Sometimes this gerrymandered gap can differ within states, as in the mid-1990s Georgia had state house districts skewed towards the Democratic Party, but its U.S. House districts skewed towards the Republican Party.<sup>12</sup> These uncompetitive elections due to gerrymandering can be seen by voters as unfair power grabs, further eroding civic trust in government itself.

### **GERRYMANDERING AND POLARIZATION**

Gerrymandering to favor one party or another leads to uncompetitive elections. If a district is drawn in such a way to favor one party over the other entirely, that party's primary election is the "default" election. Thus, each party will tend to elect representatives that are ideologically farther and farther from the political center, increasing polarization between lawmakers.

### **GERRYMANDERING AND LEGAL CHALLENGES**

Fifty years ago, most state legislatures could draw whatever lines without any fear of legal challenges. Today, courts are more attuned to the possibility of gerrymandering and potential redistricting lawsuits. Gerrymandering practices have led to an increase in legal disputes over district boundaries. In 2018, four states had their legislative district maps reviewed by the U.S. Supreme Court. According to the National Conference of State Legislatures, 23 states had some elements of their redistricting plans facing a "serious legal challenge."<sup>13</sup>

Lawsuits to correct the problems of gerrymandering can be very costly and time-consuming for the state in question. Litigation over electoral maps and gerrymandering also adds confusion to the electoral process for voters and erodes faith in government.

# Current State of Redistricting

## DIFFERENT REDISTRICTING PROCESSES ACROSS THE U.S.

For U.S. Congressional District boundaries, state legislatures will draw lines in 35 states, independent commissions will draw lines in seven states, and a politician commission will draw lines in one state. (Seven states have only one U.S. Congressional District and do not need that type of redistricting.)

For state legislative district boundaries, state legislatures will draw lines in 36 states, independent commissions will draw lines in 10 states, and politician commissions will draw lines in four states. These commissions can range from politician-*appointed* commission members (such as Alaska) to nonpartisan agencies (such as Iowa’s “Legislative Services Agency”) to application-based

commissions made up of ordinary citizens (such as California).

Arkansas is one of only four states that will employ a “politician commission” to draw state legislature boundaries.<sup>14</sup> Figure 4 shows the current status of state redistricting for the state legislative level. Several states are moving in the direction of removing the redistricting process from the hands of politicians. The Princeton Gerrymandering Project identifies 11 states that are facing “potential reform by 2021.”<sup>15</sup>

## DIFFERING STATE STANDARDS FOR REDISTRICTING

In some states, citizen-approved redistricting criteria are being added to state constitutions. In other states, the state legislature passed a law

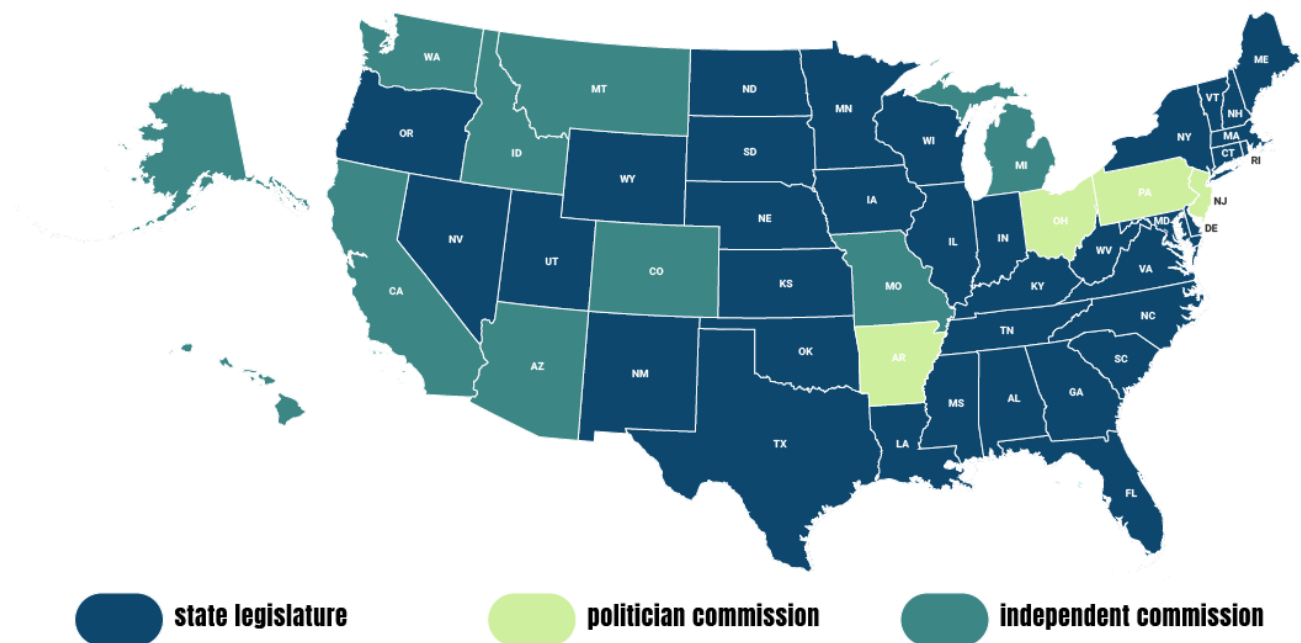


Figure 4: “State legislative redistricting methods in the United States.”

that establishes some criteria for drawing state legislative district lines. Table 4 below lists the 10 most common criteria used for state redistricting among the 50 states as of June 2019. As the table shows, all states require contiguous districts for state legislative boundaries. Compact districts that adhere to previous political subdivisions (counties, cities, township, etc.) are also required by 40 states.

communities of interest,” where voters that share a common geographic location, culture, race, ethnicity, religion, or political background may be grouped. For example, Franklin County in the Arkansas River Valley has significant portions located north of the river (near Ozark) and south of the river (near Charleston). Any likely electoral division of Franklin County would probably use some part of the Arkansas River as a dividing line, assuming equal populations on each side.

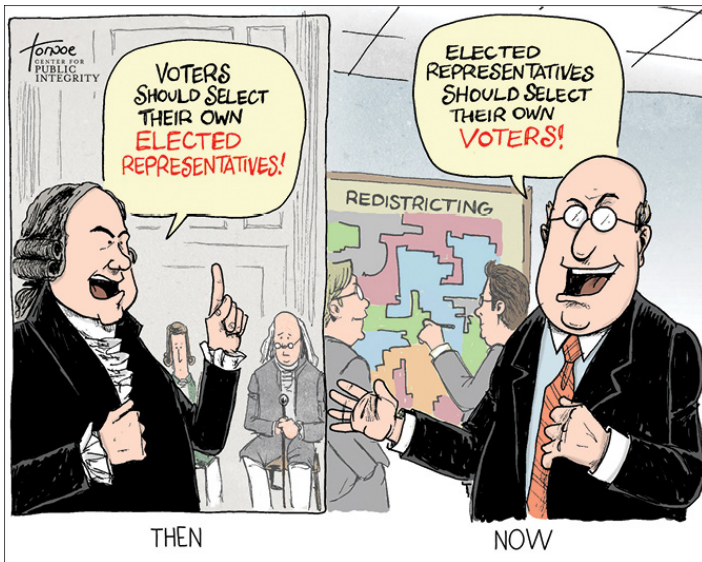
About half the states attempt to “preserve

**Table 4:  
Principles Used to Draw State Legislative Districts**

ESTABLISHED CRITERIA	NUMBER OF STATES	DOES ARKANSAS USE AS CRITERIA?
Contiguous Districts	50	Yes
Preserve Political Subdivisions	43	Yes
Compact Districts	40	Yes
Preserve Communities of Interest	24	Yes
House Nested in Senate or Congress	19	No
Not Favor Party	16	No
Not Favor Incumbent	15	No
Avoid Pairing Incumbents	11	Yes
Preserve Cores of Prior Districts	9	Yes
Competitive Elections	5	No

Source: National Conference of State Legislatures, June 2019 update<sup>16</sup>





### INCREASING RULES AND STANDARDS FOR REDISTRICTING PROCESS.

Historically, vague rules for evidence, public notice and public input have been a challenge for many states. Their district maps would be drawn without evidence, they would not be made available for public input, nor would there be any public debate or discussion (often in the form of legislative hearings) before approval. The lack of bureaucratic procedures, standards, and evidence has caused state district maps to be rejected in court.

Many states are now adopting standards for the process of redistricting. The Federal Government, as well as state governments across the country, has set policies and procedures for how they go about making or changing policy decisions. For instance, at the federal level, the Administrative Procedures Act (APA) sets rules that all government agencies must follow before implementing new policies, including providing minimum amounts of evidence for a new policy, publishing and publicizing the new policy ideas before they become law, and soliciting public input over various potential policy decisions

and directives. By adopting similar standards for redistricting, states make their process more clear, fair and transparent — as well as reducing confusion and litigation.

### IMPROVED MAPPING TECHNOLOGY AND BROADER PARTICIPATION

Improvements in technology have allowed for more direct citizen input of redistricting and electoral mapping. In the past, public forums have been the main way for citizens to interact with potential redistricting proposals, but mapping technologies have greatly increased in recent years. Geographic Information Systems (GIS) hardware and software allows for complex spatial decision-making and mapping solutions. In the 2010-2011 redistricting, public documents from the Arkansas redistricting process show several citizen-created maps. Modern GIS software allows for redrawing political boundaries with public participation, “demystifying” the process from a politician-led committee to a citizen-responsive commission. Several online web services allow the general public to produce their own proposed maps.<sup>17</sup>

# How Redistricting is Performed in Arkansas

Electoral district boundaries in Arkansas are revised through several different processes. The General Assembly draws U.S. Congressional Districts while the Board of Apportionment draws Arkansas General Assembly Districts. Judicial districts and city wards are redistricted through other methods that are not dictated by a new Census count every 10 years.

## REDISTRICTING FOR U.S. CONGRESSIONAL DISTRICTS

Arkansas's four U.S. Congressional Districts are drawn by the legislators of the Arkansas General Assembly. U.S. Congressional districts are redrawn in accordance with new data from the United States census, a Constitutionally-mandated counting of all people in the United States that occurs every 10 years.

Arkansas has four seats in the U.S. House of Representatives currently, but that is not a guarantee. Due to shifting populations among states, the number of Congressional districts per state is reallocated according to population every 10 years in a process known as apportionment. Past apportionments for Arkansas have ranged from one U.S. Congressional District at the time of statehood in 1836 to seven Congressional districts by the early 1940s. Since the redistricting process after the 1960 Census, Arkansas has had four U.S. Congressional Districts.<sup>18</sup> During this time, Arkansas's four Congressional Districts have been roughly aligned with particular geographic regions: the Delta (the 1st U.S. House District), the greater Little Rock area (the 2nd District), Northwest Arkansas (the 3rd District), and South Arkansas/the Ouachitas (the 4th District). Several reliable

estimates of future Arkansas population project four U.S. Congressional Districts in the state until at least the 2030s.

## REDISTRICTING FOR GENERAL ASSEMBLY DISTRICTS: THE ARKANSAS BOARD OF APPORTIONMENT

The Arkansas Board of Apportionment redistricts the 35 State Senate and 100 State House electoral districts for the Arkansas General Assembly. The Board of Apportionment is made up of three members of the Arkansas State Government: the Governor, the Secretary of State, and the Attorney General. The Board was created in 1936 after voters passed Amendment 23 to the Arkansas Constitution, updating the original apportionment language in Article 8 of the 1874 Arkansas Constitution. Arkansas Constitutional Amendment 45, passed in 1956, further revised Board of Apportionment procedures.<sup>19</sup>

In theory, a state Board of Apportionment minimizes conflicts of interest, since the existence of a separate Board of Apportionment prevents the Arkansas legislature from drawing its legislative district boundaries. In most other states, the state legislatures plan state legislative boundaries. In practice, there are possible political conflicts. Any Board of Apportionment member could be motivated to draw legislative boundaries to benefit that Board member's party or allies.

The multiple-member makeup of the Board allows for bipartisan redistricting if the Governor, Secretary of State, and Attorney General represent different political parties. This was initially rare in practice, as the three Board members were from

the Democratic Party for its first 40+ years of existence. The Board has been bipartisan in three of the last four redistricting processes (1981, 2001, and 2011). However, a 2-to-1 majority vote for one party or another still existed during those recent “bipartisan” processes, ultimately rendering real two-party compromise unnecessary.

There are also no requirements for the geographic diversity of Board members *within* Arkansas. A 2017 University of Arkansas redistricting report noted that the three members of the 2010-2011 Board of Apportionment “all grew up in Eastern Arkansas.”<sup>20</sup> Given the changing population geographies of Arkansas, satisfying several subregions of the state could be a difficult task.

## REDISTRICTING FOR THE ARKANSAS JUDICIARY

Unlike legislative redistricting, judicial redistricting in Arkansas is not required to be performed every 10 years. The Arkansas Judicial Council plays a major role in redistricting through its recommendations to the General Assembly with regard to some judicial district borders or new judgeships.<sup>21</sup>

The Arkansas Judiciary includes the Arkansas Supreme Court, the Arkansas Court of Appeals, 28 circuit courts, 60 state district courts, 35 local district courts, and additional specialty courts.<sup>22</sup> The different court levels have resulted in a complex redistricting process. For example, a “District Court Resource Assessment Board” recommends criteria for redistricting district courts. These criteria can include a district’s caseload, geographic area, or even “any other matter the board determines to be appropriate.”<sup>23</sup> However, circuit court districts are redrawn in accordance with criteria from the Arkansas Judicial Council. A letter of approval from the Council must be sent to

either the Arkansas Senate Judiciary Committee or the Arkansas House Judiciary Committee for any related judiciary redistricting bill.<sup>24</sup>

Furthermore, judicial redistricting can be a contentious issue, as shifting district lines may cause a community to lose a judgeship — and the related jobs associated with that court. Given all these challenges, it is no surprise that *Governing* magazine recently described judicial redistricting as the “Issue Politicians Don’t Want to Discuss.”<sup>25</sup>

U.S. Congressional authorization is required for any geographical changes to Federal judicial districts. However, such changes are rare. Arkansas “Eastern” Federal district had no changes between 1961 and 2019.<sup>26</sup>

## LOCAL REDISTRICTING IN ARKANSAS

Any redistricting of local election districts, such as city wards, are typically the purview of either a county’s board of elections or the city in question’s city council. Some procedures may differ slightly for “city manager” cities (such as Little Rock) compared to “city administrator” cities (Fort Smith) or “mayor-city council” cities (North Little Rock), where city councils have more authority to redistrict.<sup>27</sup> Arkansas state law calls for city councils in Arkansas cities to draw wards with equal populations “as would best serve the interest of the people or city.”<sup>28</sup>

School board election zones are redistricted as needed, though districts with 10 percent or greater minority populations must adhere to election processes that are compatible with the Voting Rights Act of 1965.<sup>29</sup> Any redistricting between two different school districts must be approved by the State Board of Education, and must occur with public notice in each district.<sup>30</sup> The redistricting of

individual school attendance zones within a school district is generally left up to that particular school district, yet redrawing lines for schools within a district can be controversial.<sup>31</sup>

Quorum Court districts in Arkansas are apportioned and assigned by each county's board of election commissioners.<sup>32</sup> This takes place after each new Federal Census. The most recent Census figures dictate the specific number of districts in a county, with more populous Arkansas counties receiving more quorum court districts

than less populous Arkansas counties.<sup>33</sup>

County board of election commissioners also have the power to create or change individual election precincts.<sup>34</sup> The many layers of local election redistricting can overlap in complex ways. In 2011, the Pulaski County Election Commission did not draw a redistricted Quorum Court map until the various cities in Pulaski County had submitted its new city ward maps.<sup>35</sup>

## A Case Study of Redistricting

### Arkansas Congressional Redistricting in 2010-2011

The 2010-2011 U.S. Congressional District redistricting process in Arkansas included a bipartisan committee of 20 Arkansas House members (12 Democrats and eight Republicans) and eight Arkansas Senate members (four Democrats and four Republicans).<sup>36</sup> Months of committee and legislative debate occurred over potential district lines. One proposed Congressional District map was the failed "Fayetteville to the Fourth" proposal that potentially moved the city of Fayetteville from the Northwest-dominated 3rd Congressional District to the South/Southwest-dominated 4th Congressional District. This proposed 4th Congressional District would have spread from Fayetteville to Texarkana to the border of Chicot County in extreme southeastern Arkansas.

The results of 2010 redistricting resulted in some Arkansas counties split among more than one Congressional District — a first in Arkansas history. The final U.S. House maps resulted in portions of five counties split between Congressional districts.

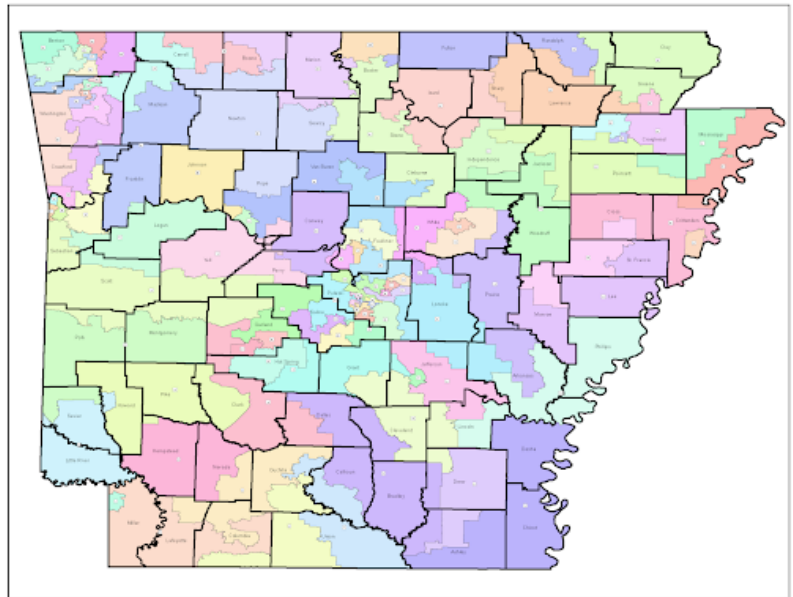
# A Case Study of Redistricting

## Arkansas General Assembly Redistricting in 2010-2011

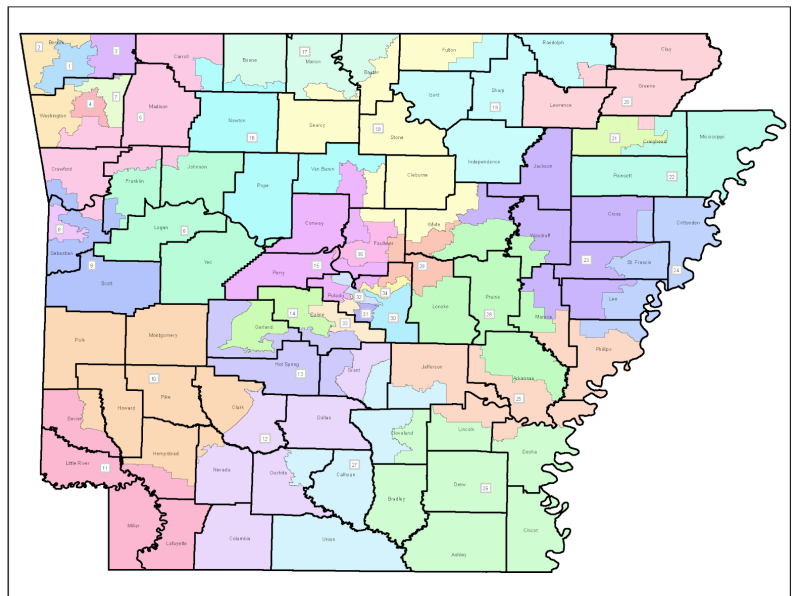
In 2011, redistricting the 135 General Assembly district boundaries (100 state House, 35 state Senate) also encountered political conflict. The three-member Arkansas Board of Apportionment was composed of a Democratic Governor, a Democratic Attorney General, and a Republican Secretary of State. Before the redistricting process could begin, partisan differences erupted among board members over who should be hired as a redistricting manager.

Redrawing 135 electoral district borders would likely never make all stakeholders happy. Officials working for the Board of Apportionment held several public meetings and made attempts at transparency with the creation of a new redistricting website. While Arkansas's four U.S. Congressional District maps were approved in April 2011, the greater number of state legislative districts resulted in a longer process of open forums and citizen input. The final General Assembly district maps were not approved by the Board of Apportionment until the end of July 2011.

Figure 5 shows the approved maps for the 100 Arkansas House Districts after the 2010-2011 redistricting process. Figure 6 shows the approved maps for the 35 Arkansas Senate Districts after the 2010-2011 redistricting process.



**Figure 5: "Statewide House District Map" (100 districts) after the 2010 Redistricting Process.**



**Figure 6: "Statewide Senate District Map" (35 districts) after the 2010 Redistricting Process.**

# Arkansas Redistricting Requirements

At present, the Arkansas Board of Apportionment follows several *principles* for redistricting.<sup>37</sup> While these principles are a starting point, principles do not carry the same weight nor force of law as legislation and changes to the Arkansas code. The criteria listed below range from formal requirements (such as Supreme Court cases or federal law) to informal principles that appear to be redistricting “suggestions” rather than enumerated requirements in the Arkansas code. Unclear reasons for redistricting could make Arkansas vulnerable to legal challenges over future district lines.

## EQUAL POPULATION: “ONE PERSON, ONE VOTE”

The most important requirement for redistricting — indeed, the essential reason for redistricting — is to ensure that electoral districts contain roughly the same number of people. The “ideal size” for any Congressional, state House, or state Senate district is calculated by taking the total census population for a state and dividing by the number of districts to apportion.<sup>38</sup>

Equal population is the bedrock of redistricting in the modern era, but it was not always agreed upon. Until the Supreme Court cases of the 1960s (including *Baker v. Carr* and *Reynolds v. Sims*) that struck down what were effectively race-based barriers to voting, individual states often allowed their state Senate districts to be allotted per county, regardless of population.<sup>39</sup> Before the 1960s, the Arkansas Constitution required that **no** Arkansas county could be divided into more than one Senate district.<sup>40</sup> Pulaski County, with over 240,000 residents, was represented by only

one state Senator in the early 1960s, while an equal-population apportionment would have given Pulaski County five state Senators at the time. The Arkansas Constitution also required at least one House district for each of the 75 counties, and the additional 25 counties would be “equally distributed as nearly as practicable among the more populous counties of the State.”<sup>41</sup> For the post-1960 redistricting apportionment, this meant that Perry County (with a 1960 population of 4,927) would have the same state House representation as counties with more than 25,000 persons.

Complicating the process is that there are different definitions of “equal population” for each redistricting process. In the U.S. Congressional Redistricting Process, all districts must be drawn with no more than one percent population difference in the average district population size. For the state-level Arkansas General Assembly Redistricting Process, all districts must be drawn with a total population difference of no more than 10 percent between the smallest and largest district.

## THE VOTING RIGHTS ACT AND NO RACIAL DILUTION

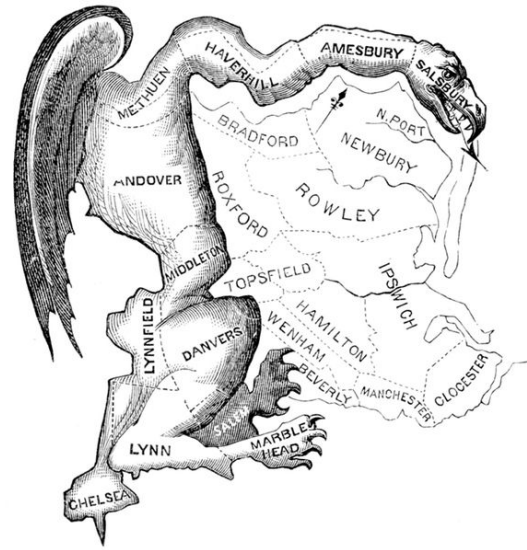
The Voting Rights Act of 1965 is a vitally important law for redistricting in Arkansas. The Voting Rights Act established Federal enforcement processes and legal protections to guarantee that racial and ethnic minorities had fair access to the ballot. Racial discrimination and legalized voter disenfranchisement such as poll taxes and literacy tests had long prevented the full electoral participation of African American voters. These discriminatory actions applied in primaries and

general elections, in both national or local contests. The sweeping guarantees of enforcement after 1965, along with suspect states forced to seek “preclearance” from the Federal Government for election changes, quickly raised voting participation by Southern African American voters.<sup>42</sup>

One problem that must be avoided with redistricting is the potential for race-based gerrymandering. In every census since the passage of the Voting Rights Act (from the 1970 census onward), African American residents have accounted for anywhere from 15 percent to 18 percent of Arkansas’s population. However, redistricting attempts could “pack” a large portion of Arkansas’s African American population into only a few state Senate or state House districts, thus reducing the potential number of districts represented by members of a particular racial or ethnic minority. After 2010 redistricting, four of Arkansas’s 35 Senate districts had a majority African American voter pool. However, the 15-18 percent African American statewide percentage should on average result in five or six majority African American districts. This potential dilution problem could also appear in the future as the statewide Hispanic/Latino population increases, particularly in Northwest Arkansas and select regions in the Ouachitas.

## DISTRICT SHAPE IS COMPACT AND CONTIGUOUS

Years of court decisions have resulted in the principle of “compactness” for electoral districts. A district is more compact when it is close to a circle or square shape, while districts with long elongated “arms” or unconventional shapes are not compact. The classic sign of gerrymandering — the famous “salamander” shape that gave rise to



Governor Gerry’s “salamander” district.

the “gerrymander” term — is a long, snake-like shape for an electoral district.

By promoting compact districts, regions, and cities that are closer to each other are more likely to be in the same electoral district as regions and cities that are farther away from one another. Compactness allows for easier constituent visits by elected representatives, more manageable dissemination of electoral district news and more cohesive representation by a particular elected leader. For several decades, Arkansas’s U.S. Congressional Districts were relatively compact (one district in the Delta, one around Little Rock, one in Northwest Arkansas, and one in South/Southwest Arkansas). However, many different state House and state Senate districts are anything but compact. Also, districts are to be contiguous, in that all parts of a district should physically border each other.

## PRESERVE COUNTY, TOWN, AND PRECINCT LINES

In the Arkansas redistricting process, political subdivisions (such as counties, cities, or even individual voting precincts) are supposed to have minimal divisions. In particular, redistricting should try to follow county line borders when possible.<sup>43</sup>

Arkansas's U.S. Congressional Districts have followed this maxim until the 2010 process, subdividing county lines by U.S. House district boundaries for the first time in Arkansas history.

For General Assembly borders, the issue is more difficult due to the math of 75 Arkansas Counties, 35 Arkansas Senate Districts, and 100 Arkansas House Districts. If Arkansas had 105 state House Districts, then each state Senate District could easily contain exactly three House Districts. But, 100 House Districts and 35 Senate Districts necessitate differing boundary lines. A 1981 Arkansas Supreme Court decision charged the Board of Apportionment with the power to ignore county lines as district boundaries when such acts are "obviously necessary" to draw equal-population districts.<sup>44</sup>

A comment made at a 2011 redistricting public meeting in Jonesboro summed up the citizen view to keep counties undivided. A state representative in the meeting pressed the Board to "...please be cautious in splitting those counties. Those people in those counties need to feel whole and they need to feel they have a representative, not two, that they have to go to discuss how to treat those counties."

According to district maps, fragmentation of county representation is increasing.<sup>45</sup> After 2000 redistricting, there were 31 counties where all parts of that county were represented by a single state House member, but after 2010 redistricting, there were only 13 of these counties. After the 2010 process, eight of the 10 least-populated counties in Arkansas were divided between multiple Arkansas House districts. Perry County, with just over 10,000 residents in 2010, was parceled among four state House districts in the 2010s.

## **PRESERVE CORES OF PRIOR DISTRICTS AND PREVIOUS REPRESENTATION**

Another principle is to generally maintain the cores of existing districts so that individual regions in Arkansas are not constantly reshuffling political districts. Continuity cannot be guaranteed, but the "core" of a district (perhaps the largest city in a district) should be preserved. A related consideration is to avoid redrawing lines to force two incumbents to face each other in a new election. This process respects the will of the voters that have already chosen an incumbent to represent that particular area in a recent election.

## **PRESERVE COMMUNITIES OF INTEREST**

The Board of Apportionment also strives to "preserve communities of interest" in the redistricting process. "Communities" may refer to social or cultural connections, racial or ethnic communities, religious identities, or even political attitudes. This important redistricting consideration allows for regional stability via representation. For instance, Lonoke County is made up of a very suburban northern end dominated by Cabot, and a more rural middle and southern section comprising the towns of Lonoke, Carlisle, and England. To "preserve communities of interest", any necessary division of Lonoke County would divide the suburban communities from the rural communities.

Public comment documents from the 2011 round of redistricting support this point. In one series of open comments, concerned groups of citizens and local political leaders from the Washington County cities of Springdale, Johnson, and Elm Springs asked to stay together in unified General Assembly Districts. One opinion noted that "Northern Washington County has integrated into a single community," but feared that this cohesive group could be divided.<sup>46</sup>



# Geographic Challenges with Arkansas Redistricting

After considering the current state redistricting process and the preceding criteria for redistricting, it is clear that some geographic challenges exist with redistricting in Arkansas. So, it follows that the General Assembly district map could be disorganized. Even so, upon surveying the current geographic map of Arkansas General Assembly districts, additional geographic questions are evident:

## SEVERAL DISTRICTS LACK GEOGRAPHIC COMPACTNESS

Several districts in both the Arkansas House and Arkansas Senate lack any real sort of geographic compactness. Political scientists have long used mathematical equations to measure the degree of compactness or “roundness” of electoral districts to test for gerrymandering. A compact shape would more likely contain voters with a shared geographic connection. Imagine the lack of cohesiveness in a hypothetical Arkansas district that somehow contained parts from every corner of the state: Bentonville, Texarkana, Lake Village, and Jonesboro. These current Arkansas state legislative districts lack geographic compactness:<sup>47</sup>

- A state House district (*12th*) that snakes through the Delta, where travel between two regions in the 12th (from Snow Lake to the edge of Star City) is over a two-hour drive
- A state House district (*21st*) extends from the south end of Fort Smith to the edge of Saline County
- A state Senate District (*9th*) that *surrounds* most of Fort Smith and Greenwood, without actually containing most of Fort Smith and

Greenwood

- A state Senate District (*12th*) that runs from the Louisiana border to the edge of Pulaski County, with some district cities located a three-hour drive apart
- A state Senate District (*18th*) stretching from the Missouri border to the outskirts of Vilonia, encompassing parts of nine different counties

Some county divisions are necessary to split 75 counties into 100 House districts or 35 Senate districts. But 37 of Arkansas’s 75 counties (representing 72 percent of the state’s population) are divided among more than one State Senate district, and 61 of Arkansas’s 75 counties (representing 93 percent of the state’s population) are divided among more than one State House district. Nor are oddly-shaped, non-compact state House or Senate districts unique to one part of the state. According to one measure of district compactness, the least compact General Assembly districts are scattered throughout the state.<sup>48</sup> Gerrymandering is not simply a problem of one small geographic part of Arkansas.

## SEVERAL DISTRICTS LACK COMPETITIVE ELECTIONS

Arkansas General Assembly races often lack competitive elections. In the 2018 state House elections, 60 out of the 100 House districts were uncontested by one of the two major parties (the Republicans did not contest 16 elections, and the Democrats did not contest 44 elections). The 2018 state Senate elections had 18 contests, but 10 of the 18 elections were also uncontested by

one of the two major parties (the Republicans did not contest three elections, and the Democrats did not contest seven elections). Individual incumbent candidate strengths, regional political differences, demographic patterns, and general political polarization certainly play roles in landslide Republican or Democratic victories. But the number of competitive elections in Arkansas could be affected by the borders of election districts.

### SEVERAL DISTRICTS LACK COMMUNITY COHESIVENESS

Several state legislative districts lack any real sort of community cohesiveness. Given that the ideal state Senate district population size is about 83,000 persons, and the ideal state House district population size is about 29,000 persons, it stands to reason that cities and their vicinities with populations near or above this ideal population size will be divided. However, multiple *smaller* cities and towns are expressly divided by various state House and state Senate district lines. Benton, Camden, Forrest City, Hot Springs, and Jacksonville all have populations far below 40,000 people — less than half of the “ideal size” of a state Senate District. Yet, all of these cities are divided by two state Senate Districts.

Communities of interest can also include public school district boundaries. By the mid-2010s, more than 75 percent of all Arkansas public school districts were represented by more than one state House member. Some overlap would be expected between large urban districts with many opportunities for state House members, but several smaller-sized school districts were also fragmented:<sup>49</sup>

- DeWitt School District (~1,100 students) contains the same number of State House districts as Fort Smith School District (~14,000

*students*)

- Harmony Grove School District in Camden (~900 students) is divided by more State House districts than the Cabot School District (~10,000 students)
- Sheridan School District (~4,000 students) is divided by as many State Senate districts as the Little Rock School District (~21,000 students)

In White County, several school districts are divided by multiple State House districts, including Searcy School District (four State House districts), Riverview School District (four State House districts), Beebe School District (three State House districts), and Bald Knob School District (three State House districts).

The average Arkansas House district contains portions of six Arkansas school districts, and the average Arkansas Senate district contains portions of 12 Arkansas school districts. This could create representation challenges for Arkansas legislators to best consider local concerns if “local” equals several different regions within Arkansas.

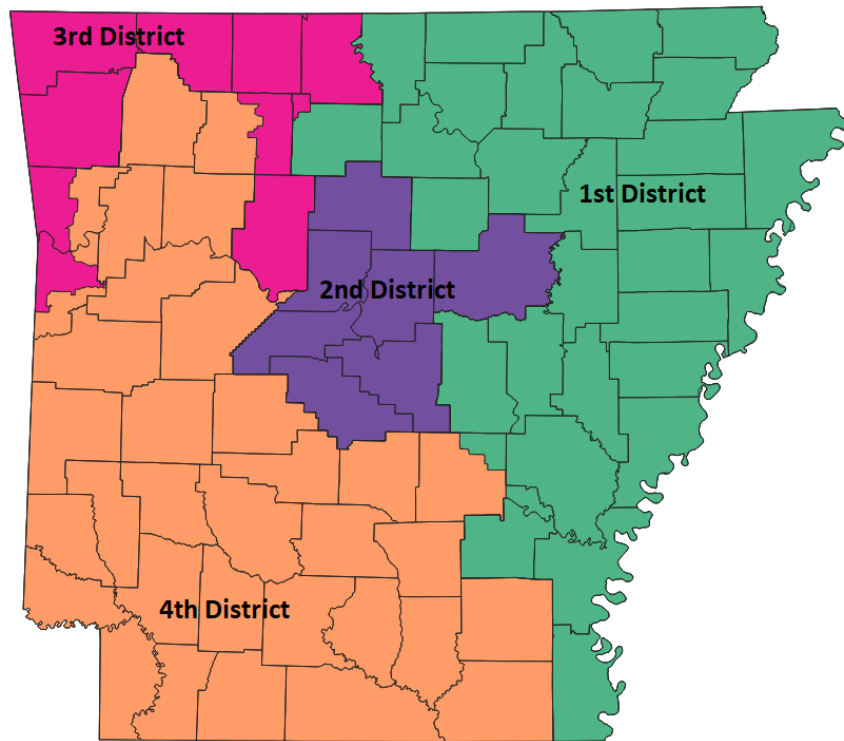
### AN INCREASINGLY URBAN ARKANSAS WILL REQUIRE MORE COMPLEX DISTRICT LINES

As Arkansas continues to urbanize, more complex state district lines will be required. In its history, Arkansas has always ranked among the 10 most rural states in the U.S., with Little Rock and Pulaski County as our state’s urban outliers. According to the 2010 census, nearly one million Arkansans do not live in an incorporated city or town, and over 40 percent of Arkansans do not fit the Census Bureau’s definition of “urban.”

Arkansas’s urban counties are growing much faster than Arkansas’s rural counties. According

to census estimates, the average population of a “growing” Arkansas county in the 2010s was 50,000 persons more than the average population of a “declining” Arkansas county.<sup>50</sup> As time goes on, districts with growing populations will have their district area reduced, and districts that decline in population will have their district area increased.

This process has been seen with the shrinking of Arkansas’s 3rd U.S. Congressional District. The 3rd District covered 25 counties in the mid-1960s, but by the 2010s, the 3rd District contained parts of just 10 counties.<sup>51</sup> See Figure 7 for a map of Arkansas’s four Congressional Districts.



**Figure 7: Post-2010 Redistricting, Arkansas U.S. Congressional District Boundaries.**

GIS data downloaded from <http://gis.arkansas.gov/product/2011-arkansas-congressional-districts/>

Between the 2000 to 2010 census, the four Arkansas state Senate districts comprising Benton County and most of urban Washington County gained around 84,000 residents. The population *gain* from these four Northwest Arkansas state Senate districts was greater than the 2010 “ideal size” for a typical district. Redrawing smaller

districts in Northwest Arkansas means a reshuffling of larger district sizes nearly everywhere else in the state.

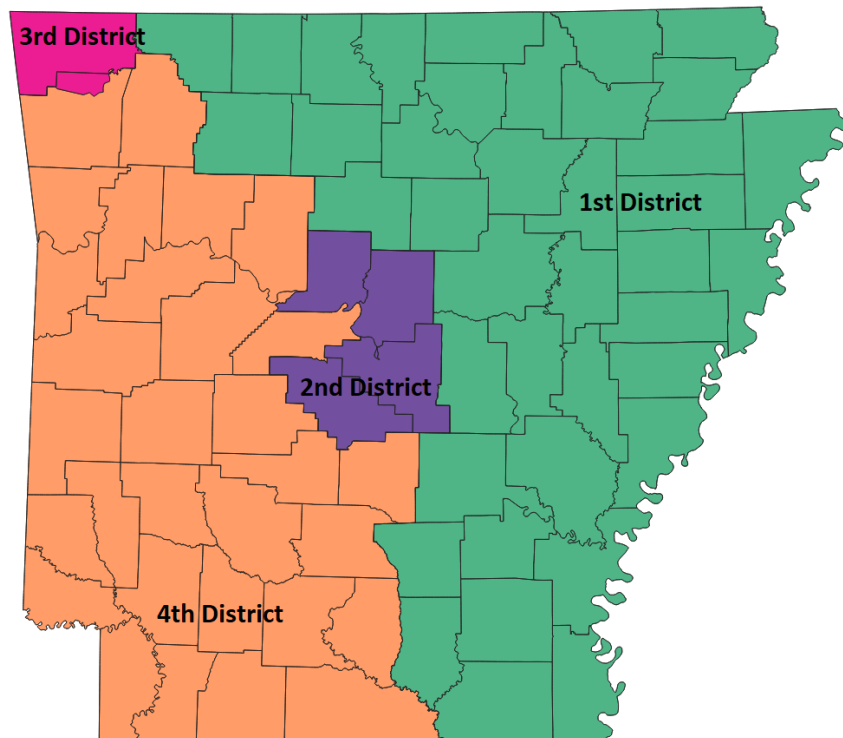
This problem of needing to completely overhaul district lines will continue as Arkansas becomes more urban. There are several versions of future

population projections for Arkansas. Estimates derived in 2014 by the Arkansas Census State Data Center suggested a midpoint population estimate of:

- **3.3 million Arkansans by 2030**
- **3.5 million Arkansans by 2040**
- **3.8 million Arkansans by 2050**
- **4.2 million Arkansans by 2060**

The percentage of Arkansas’s population made

up of urban Northwest Arkansas or urban Central Arkansas will increase accordingly. By roughly 2050, half of the state House and state Senate districts could potentially be drawn in just five of Arkansas’s 75 counties. More complex district lines — and greater accuracy in drawing district lines — will be needed in future redistricting for any region in Arkansas. Given the above population projections, a possible map of Arkansas’s four U.S. Congressional Districts by 2060 is seen in Figure 8.



**Figure 8: Possible Post-2060 Redistricting, Arkansas U.S. Congressional District Boundaries.**

GIS data from <http://gis.arkansas.gov/product/county-boundary-polygon/> 2060 county apportionment (with equal-population districts) determined as a possible projection by Patrick Hagge using 2060 county population projections from the Arkansas State Data Center. See Hamilton, Gregory. (2015) “County Population Projections 2014-2065 for Arkansas: Time Series Extrapolations”, Arkansas State Data Center.

# Various Redistricting Reforms in Other States

The National Conference of State Legislatures notes that the U.S. Supreme Court “has developed an extensive and complex jurisprudence on redistricting” over the last half-century.<sup>53</sup> As a reaction to these court decisions, many states have introduced various reforms to redistricting in the past few decades. These reforms have included more legislative and bureaucratic steps in the redistricting procedures. Many states have lost redistricting cases in federal courts because they failed to adhere to the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution. A redistricting process with very few steps is far more likely to be declared unconstitutional, resulting in the rejection of a redistricting map, and starting the redistricting process all over again.

In response to this trend in case law, states have made it a point to include more votes and process points to ensure that Due Process of Law is strengthened. Generally, the majority of states have made redistricting maps and policies follow the course of standard legislation, through subcommittees, committees of the whole, full chamber votes, and Governor’s approval, which contains several steps to ensure the sanctity of Due Process of Law.

Several states have reformed their redistricting processes in recent years. These reforms, while varied, can be grouped into a few major categories:

- **INDEPENDENT COMMISSIONS.**

Independent commissions are used by 10 states to redistrict state legislative lines and by seven states to redistrict U.S. Congressional

boundaries. Independent commissions have increased in popularity since the year 2000. Some state legislatures questioned the legality of these commissions, but a 2015 U.S. Supreme Court decision approved Arizona’s use of such a commission as part of the legislative process.<sup>54</sup> These commissions vary in their charges: the Arizona Independent Redistricting Commission draws both U.S. Congressional and state legislative boundaries; Missouri has one commission to redistrict the state House and a second commission to redistrict the state Senate. Independent commissions are typically made of some amount of politician-appointed members, where both major political parties can choose one or more members.

- **“AGENCY” INDEPENDENT COMMISSIONS.**

Unlike most states with independent commissions, Iowa maintains an organization called the “Legislative Service Agency” that is staffed by citizens “committed to nonpartisanship.” This Legislative Service Agency is aided by a five-member appointed commission, and potential district maps are sent to the Iowa legislature for approval. The Iowa legislature may reject maps by the Agency, but the Agency has the right to submit a second and third version of state legislative or U.S. Congressional district maps. The legislature may ultimately overrule the Agency after three attempts, but this has never happened.<sup>55</sup>

- **ADVISORY COMMISSIONS.**

These groups can aid a state legislature with

the redistricting process. Virginia established such a commission in 2011 by executive order of the Governor. However, the ultimate power to redistrict still lies with the legislature, as the advisory commission merely makes “recommendations” to leaders of the Virginia legislature for their “full consideration.”<sup>56</sup> Some advisory commissions can be larger than a typical state legislative redistricting subcommittee. The 2011 advisory commission in Maine had 15 members and the 2011 advisory commission in Rhode Island had 18 members.<sup>57</sup>

- **BACKUP COMMISSIONS.**

Several states allow for backup commissions that affect redistricting if the state legislature cannot decide on a new map. In Oklahoma, the state legislature map can be vetoed by the governor. This can lead to a conflict if the governor and legislature are controlled by different political parties. In that case, an appointed bipartisan commission with six total voting members will draw the new boundaries.<sup>58</sup> A similar backup commission is a possibility in Mississippi, but the backup commission members are all elected officials (such as the chief justice of the Mississippi Supreme Court) rather than appointed members. Some states have backup commissions involved only in the case of state legislative redistricting (Texas), while other states’ backup commissions can redistrict legislative or Congressional boundaries (Connecticut, Illinois).

- **“BACK-AND-FORTH” BACKUP COMMISSIONS.**

In 2018, Ohio established a new approach to redistricting U.S. Congressional boundaries, where the state legislature tries to adopt a bipartisan-approved map. The legislature vote must pass with at least 60 percent agreement, including the votes of half of the minority party’s members. If this fails, a politician commission attempts to redistrict. A failed politician commission map is followed up by a second state legislature attempt.<sup>59</sup>

- **CLARIFYING AND CODIFYING THE RULES FOR REDISTRICTING.**

Many states are now explicitly clarifying the rules and principals about redistricting to remove ambiguity about the legal requirement to achieve things like preserving communities of interest, honoring natural boundaries, compactness, creating competitive districts, community engagement in the process, and other desired outcomes that are not currently always explicitly required by code.

Each of these processes may have some drawbacks, such as one party’s continued power on a partisan commission with an odd number of members. However, there are several variations of reform that have been adopted by states attempting to reduce gerrymandering, as well as the costly legal challenges associated with gerrymandering.

# Endnotes

<sup>1</sup> Data reporting for all counties and local communities takes time to collect and compile. The 2010 census was conducted on April 1, 2010, but states did not receive detailed population data until early 2011. The new Arkansas redistricting map was not legislatively approved until April 2011, and did not go into effect until the November 2012 U.S. House elections.

<sup>2</sup> *Baker v. Carr*, 369 U.S. 186 (1962); *Reynolds v. Sims*, 377 U.S. 533 (1964).

<sup>3</sup> The legislative data company Quorum noted that in the 2016 calendar year alone, 19 percent of all U.S. state Senate and 13 percent of all U.S. state House bills were enacted. Compare these figures to a passage rate of 3 percent for the U.S. Senate bills and just 2 percent for U.S. House bills. See “State Legislatures vs. Congress: Which Is More Productive?”

<sup>4</sup> Kaufman, Aaron, Gary King, and Mayya Komisarchik. “How to Measure Legislative District Compactness If You Only Know it When You See it”, 2019, upcoming paper in American Journal of Political Science.

<sup>5</sup> *Rucho v. Common Cause*, No. 18-422, 588 U.S. (2019)

<sup>6</sup> Wang, Samuel. (2016) “Three Tests for Practical Evaluation of Partisan Gerrymandering.” *Election Law Journal*. 15(4), 367-384.

<sup>7</sup> See <https://democraticredistricting.com/> (Democratic Party) and <http://www.redistrictingmajorityproject.com/> (Republican Party)

<sup>8</sup> See *Shaw v. Reno*, 509 U.S. 630 (1993) among other cases.

<sup>9</sup> Miller, Peter. 2019 Mar 07. “Maryland’s Extreme Gerrymander.” Brennan Center For Justice. Accessed 22 May 2020. <https://www.brennancenter.org/our-work/research-reports/marylands-extreme-gerrymander>

<sup>10</sup> Bycoffe, Aaron, Ella Koeze, David Wasserman, and Julia Wolfe. 2018 Jan 25. “The Atlas of Redistricting” <https://projects.fivethirtyeight.com/redistricting-maps/> Accessed 22 May 2020

<sup>11</sup> “Tests.” Princeton Gerrymandering Project. <http://gerrymander.princeton.edu/tests/> Accessed 21 May 2020

<sup>12</sup> Planscore. “Partisan Gerrymandering Historical Data” <https://planscore.org/#!1996-statehouse> Accessed 22 May 2020.

<sup>13</sup> According to that organization, a “serious legal challenge” is when a lawsuit winds up in their State Supreme Court or in the Federal Judiciary.

<sup>14</sup> Levitt, Justin. “Who Draws the Lines?” All About Redistricting. <https://redistricting.ils.edu/who-state20.php> Accessed 21 May 2020

<sup>15</sup> “State-by-State Redistricting Reform: The Local Routes” *Princeton Gerrymandering Project*. <http://gerrymander.princeton.edu/> Accessed 20 May 2020

<sup>16</sup> National Conference of State Legislatures. (2019) “Districting Principles for 2010 and Beyond”, <https://www.ncsl.org/Portals/1/Documents/Redistricting/DistrictingPrinciplesFor2010andBeyond-6-edited-June-4.pdf> and see <https://www.ncsl.org/research/redistricting/redistricting-criteria.aspx> Also see Arkansas Board of Apportionment. “Redistricting Criteria Approved By the Courts” <http://www.arkansasredistricting.org/redistricting-criteria> Accessed 25 May 2020.

<sup>17</sup> Sites such as the Public Mapping Project (publicmapping.org), the Redistricting Game (redistrictinggame.org), Redistricting the Nation (redistricting.azavea.com), Redistricting Online (redistrictingonline.org), and Dave's Redistricting (davesredistricting.org) allow users to view detailed information about a state's redistricting process, examples of gerrymandering, and in some cases, the ability to create individual legislative district maps at the precinct-scale.

<sup>18</sup> "Redistricting in Arkansas." *Arkansas Democrat-Gazette*. Accessed 20 May 2020.

<https://www.arkansasonline.com/redistricting/>

<sup>19</sup> While the name "Board of Apportionment" suggests that the board actually apportion a particular number of Representatives or Senators to individual counties, that function is outdated since districts are drawn to achieve equal population. So, the Board of Apportionment is actually a "Board of Redistricting." See Arkansas Constitution (1874) Article 8.1. Amendment 23's overwhelming passage by voters in 1936 is probably due in part to the fact that Arkansas had not reapportioned any state legislative districts since 1890. See Stephanopoulos, Nicholas. (2007) "Reforming Redistricting: Why Popular Initiatives to Establish Redistricting Commissions Succeed or Fail." *Journal of Law and Politics* 23(331), p. 346.

<sup>20</sup> Brizzolara, Blake Z. "An End to Business as Usual: Adopting an Independent Redistricting Commission in Arkansas." *Arkansas Law Notes*, 2017 May 17. <http://media.law.uark.edu/arklawnotes/2017/05/17/an-end-to-business-as-usual-adopting-an-independent-redistricting-commission-in-arkansas/> Accessed 20 May 2020.

<sup>21</sup> The Council is composed of all judges (active or retired) of the Arkansas Supreme Court, Court of Appeals, and state circuit courts as well as the Director of the Arkansas Administrative Office of the Courts. See Arkansas Judiciary. "Arkansas Judicial Council". <https://www.arcourts.gov/administration/arkansas-judicial-council> Accessed 07 Aug 2020.

<sup>22</sup> Arkansas Judiciary. "Arkansas Court Structure". <https://www.arcourts.gov/sites/default/files/Arkansas-Court-Structure.pdf> Accessed 07 Aug 2020.

<sup>23</sup> The District Court Resource Assessment Board is made up of various elected officials, judges, and community members, such as representatives from the Association of Arkansas Counties or the Arkansas Municipal League. See A.C.A. § 16-17-1003.

<sup>24</sup> See A.C.A. § 10-2-124, A.C.A. § 16-10-501

<sup>25</sup> Wogan, J.B. "Judicial Redistricting: Issue Politicians Don't Want To Discuss". *Governing*. June 2017. <https://www.governing.com/topics/politics/gov-judicial-redistricting-courts-judges.html> Accessed 07 Aug 2020.

<sup>26</sup> De la Garza, Erik. "House Approves Realignment of Judicial Districts in Arkansas." *Courthouse News Service*. Oct 22 2019. <https://www.courthousenews.com/house-approves-realignment-of-judicial-districts-in-arkansas/> Accessed 10 Aug 2020. Also see "H.R.1123 - Divisional Realignment for the Eastern District of Arkansas Act of 2019", passed into law on November 26, 2019 as Public Law 116-73 of the 116th Congress.

<sup>27</sup> See A.C.A. § 14-61-109. City councils have authority for "cities of the first class" per ACA § 14-43-311 and "cities of the second class" per ACA § 14-43-311.

<sup>28</sup> See A.C.A. § 14-43-311 for Arkansas' "first class" cities and A.C.A. § 14-44-102 for Arkansas' "second class" cities. In both cases, a circuit court can ultimately overrule a city redistricting plan if the redrawn maps were seen as "arbitrary and capricious".



<sup>29</sup> A.C.A. § 6-13-631

<sup>30</sup> The public notice must be issued in “the local newspapers of general circulation in each affected school district” over a period of two weeks. See A.C.A. § 6-13-1414. The State Board of Education also has ultimate authority over the creation of new school districts. See A.C.A. § 6-13-1501, A.C.A. § 6-13-1601.

<sup>31</sup> In addition, academic studies have determined that the average U.S. school district’s individual school attendance zone map is “highly gerrymandered”. Richards, Meredith P. “The Gerrymandering of School Attendance Zones and the Segregation of Public Schools: A Geospatial Analysis.” *American Educational Research Journal*. Dec 2014, Vol. 51, No. 6, pp. 1119-1157.

<sup>32</sup> See A.C.A. § 14-14-403. The Arkansas code specifically called for regular apportionment “on or before the first Monday after January 1, 1982, and each ten years thereafter”, setting a deadline for redistricting that would incorporate the latest Decennial figures into population counts. Also see A.C.A. § 14-14-404. Interestingly, the Arkansas Board of Apportionment is responsible for providing individual county boards of election commissioners with “appropriate and necessary federal decennial census information”.

<sup>33</sup> The number of quorum court districts apportioned to each county increases with population. Arkansas counties with a population of 0 to 19,999 are granted 9 quorum court districts, counties with a population of 20,000 to 49,999 are granted 11 quorum court districts, counties with a population of 50,000 to 199,999 are granted 13 quorum court districts, and counties with a population of 200,000 and above are granted 15 quorum court districts. See table attached to A.C.A. § 14-14-402.

<sup>34</sup> A.C.A. § 7-5-101.

<sup>35</sup> Netterstrom, Kristin. “LR is set to unveil changes to wards.” *Arkansas Democrat-Gazette*. September 29, 2011. <https://www.arkansasonline.com/news/2011/sep/29/lr-set-unveil-changes-wards-20110929/> Accessed 10 Aug 2020.

<sup>36</sup> Ballotpedia.org “Redistricting in Arkansas after the 2010 census.” [https://ballotpedia.org/Redistricting\\_in\\_Arkansas\\_after\\_the\\_2010\\_census](https://ballotpedia.org/Redistricting_in_Arkansas_after_the_2010_census) Accessed 20 July 2020

<sup>37</sup> Arkansas Board of Apportionment. “About the Process.” <http://www.arkansasredistricting.org/about-the-process> Accessed 19 May 2020. Also see Arkansas Board of Apportionment. “Redistricting Criteria Approved By the Courts” <http://www.arkansasredistricting.org/redistricting-criteria> Accessed 19 May 2020.

<sup>38</sup> Arkansas Board of Apportionment. “About the Process.” <http://www.arkansasredistricting.org/about-the-process> Accessed 19 July 2020

<sup>39</sup> *Baker v. Carr*, 369 U.S. 186 (1962); *Reynolds v. Sims*, 377 U.S. 533 (1964).

<sup>40</sup> See *Arkansas Constitution* (1874) Article 8.3. Also see Advisory Commission on Intergovernmental Relations. *Apportionment of State Legislatures*. (1962).

<sup>41</sup> Goss, Kay Collett. (1998) *The Arkansas State Constitution: A Reference Guide*. Greenwood

<sup>42</sup> Arkansas Board of Apportionment. “Voting Rights Act of 1965.” Accessed 21 May 2020. <http://www.arkansasredistricting.org/voting-rights-act-of-1965>

<sup>43</sup> Such guidelines were agreed upon for the post-1990 redistricting, but a similar measure for the post-2000 redistricting died in a House committee. See HCR 1006 - TO ESTABLISH CRITERIA FOR CONGRESSIONAL REDISTRICTING, 78th General Assembly (Arkansas 1991). Also see HCR1009 - TO ESTABLISH CRITERIA FOR

CONGRESSIONAL REDISTRICTING, 83rd General Assembly, (Arkansas 2001)

<sup>44</sup> See *Wells v. White*, 274 Ark. 197, 623 S.W.2d 187 (Ark. 1981)

<sup>45</sup> See “Redistricting Hearing at Arkansas State University, Student Union Auditorium, May 25, 2011.” Arkansas Board of Apportionment. Accessed 19 May 2020.

<http://www.arkansasredistricting.org/Websites/apportionment/images/Jonesboro%20Minutes.pdf>

<sup>46</sup> “Governor’s Office Public Comment through June 3.” Arkansas Board of Apportionment. Accessed 19 May. <http://www.arkansasredistricting.org/Websites/apportionment/images/Governor’s%20Office%20Public%20Comment%20through%20June%203.pdf>

<sup>47</sup> See the statewide State House and State Senate maps published by the Arkansas Secretary of State in Figure 4 and Figure 5 of this report.

<sup>48</sup> According to the “Polsby-Popper” test. See Ingraham, Christopher. 2014 May 15. “How gerrymandered is your Congressional district?” *The Washington Post*. <https://www.washingtonpost.com/wp-srv/special/politics/gerrymandering/>

<sup>49</sup> Enrollment data from Arkansas Department of Education, *ADE Data Center*. Accessed May 21, 2020. <https://adedata.arkansas.gov/statewide/ReportList/Districts/EnrollmentCount.aspx>

<sup>50</sup> Arkansas counties with increasing populations had about a 73,000-person average in the 2010 census while Arkansas counties with declining populations had about a 19,000-person average in the 2010 census. See U.S. Census Bureau, “County Population Totals: 2010-2019.” 2019. <https://www.census.gov/data/tables/time-series/demo/popest/2010s-counties-total.html>

<sup>51</sup> “Redistricting in Arkansas.” *Arkansas Democrat-Gazette*. Accessed 20 May 2020. <https://www.arkansasonline.com/red>

<sup>52</sup> These statewide estimates are from a modified time-series extrapolation by the *Arkansas Census State Data Center*, so when accurate 2020 census data is tabulated the above numbers will surely change. The estimates quoted here represent the “point forecasts” in between a lower and upper confidence limit. For more documentation, see Hamilton, Gregory. (2015) “County Population Projections 2014-2065 for Arkansas: Time Series Extrapolations” Arkansas State Data Center, accessed at [http://arstatedatacenter.youraedi.com/demores/TimeSeriesCharts\\_vintage2010/Overview.pdf](http://arstatedatacenter.youraedi.com/demores/TimeSeriesCharts_vintage2010/Overview.pdf)

<sup>53</sup> National Conference of State Legislatures. “Redistricting and the Supreme Court: The Most Significant Cases.” <https://www.ncsl.org/research/redistricting/redistricting-and-the-supreme-court-the-most-significant-cases.aspx> Accessed 30 July 2020.

<sup>54</sup> See *Arizona State Legislature v. Arizona Independent Redistricting Commission*, No. 13-1314, 576 U.S. (2019)

<sup>55</sup> In the post-2000 redistricting cycle, the first district maps sent by the Legislative Services Agency were rejected by the Iowa legislature. However, the second proposal from the Agency was accepted. See Levitt, Justin. “Iowa.” *All About Redistricting*. <https://redistricting.ils.edu/states-IA.php> Accessed 24 July 2020

<sup>56</sup> Levitt, Justin. “Virginia.” *All About Redistricting*. <http://redistricting.ils.edu/states-VA.php> Accessed 29 July 2020. Also see “Executive Order No. 31 (2011): Establishing the Independent Bipartisan Advisory Commission on Redistricting” by Virginia Governor Bob McDonnell, archived at <http://web.archive.org/web/20110603213244/> <https://www.governor.virginia.gov/Issues/ExecutiveOrders/2011/EO-31.cfm>

<sup>57</sup> See Levitt, Justin. “Maine.” *All About Redistricting*. <https://redistricting.ils.edu/states-ME.php> Accessed 30 July 2020, and see Levitt, Justin. “Rhode Island.” *All About Redistricting*. <https://redistricting.ils.edu/states-RI.php> Accessed 30 July 2020.

<sup>58</sup> Levitt, Justin. “Oklahoma.” *All About Redistricting*. <https://redistricting.ils.edu/states-OK.php> Accessed 25 July 2020.

<sup>59</sup> The process would ultimately revert to the majority party of the legislature for approval, but their map would only apply for four years instead of the usual 10 years. See Balmert, Jessie. “Everyone complains about congressional gerrymandering. Ohio just did something about it.” *Cincinnati Enquirer*. <https://www.cincinnati.com/story/news/politics/2018/02/06/everyone-complains-gerrymandering-ohio-just-did-something/310438002/> Accessed 20 July 2020.