

# “This Is Where We Draw the Line”

*Ending the Troubles with Redistricting & Partisan  
Gerrymandering at the Expense of Fundamental Democratic  
Values.*

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## Abstract

From George Washington's first presidential veto to the present day, redistricting issues have been highly controversial in the U.S. Gerrymandering, the act of manipulating district lines to grant someone an unfair advantage during elections, has caused the American society to become increasingly diverse, and it deprives the citizens of fundamental democratic rights. Independent redistricting commissions, which replace biased legislative redistricting, have become the premier institutional solution to the problem of partisan and racial gerrymandering, and initiatives to implement these commissions have skyrocketed in recent years. However, in awe of this evidently perfect solution to one of America's most significant threats to democracy, most people seem to overlook, or even ignore, essential democratic principles. The independent redistricting commission is a wolf in sheep's clothing; it might appear as the ideal way to construct the act of redistricting, but, in reality, it deprives American citizens of their fundamental democratic rights.

## 1. Introduction

Once every decade, the United States Census Bureau counts every resident in the United States. The aim is to count every person once and in the right place. When the census is complete, the data provides the groundwork for the redistricting process, which is the practice of redrawing the boundaries of both congressional and legislative districts (U.S. Census Bureau, 2021a).

The census decides how many seats in Congress each state will have; due to reapportionment, some states gain seats, other states lose seats, but most states remain unchanged. The number of seats in The House of Representatives reflects the number of congressional districts in each state. Over time, both states and the districts within a state gain and lose population, which gives a voter in a district with a larger population less influence than a voter in a district with a smaller population. In order to avoid this, and thus maintain the “one man, one vote”-principle, new lines are drawn so that the population in each district is roughly the same (Wiley, n.d.).

Each state has its own process of drawing the new maps. In most states, it is the state's legislative power that draws the map, which might result in what is called *gerrymandering*. This refers to the intentional distortion of a map to give one political party an advantage (Esposito, 2020). Even though all districts within a state must have approximately the same population, mapmakers decide *where* the lines are drawn, allowing them to manipulate the electoral district boundaries to their own benefit. According to the Voting Rights Act of 1965, *racial* gerrymandering, where lines are drawn with the intention to dilute the voting power of a protected minority into different districts, is illegal. However, federal courts have no authority to decide whether *partisan* gerrymandering, where voters are grouped or split based not on race but on their political affiliation, goes too far (Rucho v. Common Cause, 2013).

Currently, after the 2022 mid-term election, the House of Representatives is deeply divided. During the last couple of years, the Democratic Party has had one of the tiniest majorities in the history of the House of Representatives, and now it is the Republican Party's turn to experience the same situation (Ferris, 2022). The narrow margin makes every single seat count, and consequently, gerrymandering becomes desperately tempting for both parties.

Unfortunately, gerrymandering has also become more accessible. For instance, the 2020 redistricting cycle is the first after *Shelby v. Holder* (2013) and *Rucho v. Common Cause* (2019), two landmark court decisions that have made it more difficult for the federal courts to intervene in states' redistricting process.

Gerrymandering, of any kind, is considered to be highly undemocratic (Lowenthal, 2019). Instead of voters electing their representatives, it is the politicians choosing their voters, and the American citizens are now desperate for a solution to stop the aggressive gerrymandering currently happening in the U.S. However, the great anger and resentment towards gerrymandering have caused essential democratic values to be overlooked. A growing number of states have implemented *independent redistricting commissions* to draw both legislative and congressional districts. Most scholars praise the commissions for their separation from the state legislature, which reduces partisan biases and apparently solves all problems caused by partisan gerrymandering. Current research focuses mainly on the remarkable *results* the commissions produce, but they often fail to notice the circumstances in which these results are obtained.

### 1.1 Research Question

In my research, I want to examine the independent redistricting commissions more closely and evaluate to what extent these commissions are the best way to redistrict: **Do they eliminate the problem of partisan gerrymandering, and are they the most democratic way to organize congressional redistricting? If not, are there alternative solutions that provide a more satisfactory result?**

To answer these research questions, I will first briefly introduce the U.S. election system and explain why this system may induce gerrymandering. Then, I will explain the term *gerrymandering* and how this, in theory, is done before I provide examples from different states and their effects. I will introduce the independent redistricting commissions and explain how these reduce gerrymandering with examples from different states that have implemented this method of redistricting. Later, I attempt to answer my research questions by examining the problems associated with the independent redistricting commissions and explaining why this solution might not be the most democratic, despite all its merits of

diminishing partisan gerrymandering. Before finally presenting my conclusion, I will examine other options besides the independent commissions and try to provide an ultimate answer as to how redistricting should be done.

## 1.2 Methodology & Limitations

The method used to answer the research question is mostly close reading and analysis of existing research done by various scholars. Most of the resources are thus secondary sources like journal articles retrieved from *Google Scholar* (<https://scholar.google.com>) and *JSTOR* (<https://www.jstor.org>). I have also consulted primary sources like the U.S. Constitution, state constitutions, and opinions of the Supreme Court. Additionally, I have used a few news articles from *New York Times*, *USA Today*, and other American newspapers to describe the situations in the various states. Lastly, the data and numbers from different elections are collected from websites administered by the Government.

There is no easy way to define or describe the concept of democracy. Mulgan (1968) argues that “[the] word ‘democracy’ is so vague, democracies are so varied, that there is little chance of substantial agreement” (p. 3). However, this paper will not discuss the problem of defining democracy, but it is still essential to determine what the word “democracy” includes. In this paper, I will use the definition Mulgan (1968) presents in his research and broadly define democracy as “government by the people” (p. 4). This is by no means an all-encompassing definition; in addition, democratic processes “also accommodate [...] principles” that must be “included in the meaning of democracy” (p. 8). When examining the various redistricting solutions and how, or if, these are “democratic,” I evaluate how these different methods contribute to *increased competitiveness, reduction of disproportion and preserve the one-man-one-vote principle, a high level of accountability and transparency*, and how, or if, *the citizens are involved in the process*. Various scholars consider all these elements as democratic principles and will be further elaborated on in the upcoming sections.

Although this thesis includes distinct characteristics of political science research, it focuses on an aspect of political science that is of great significance regarding American culture and society, which is the overall topic of this thesis. Both racial and partisan gerrymandering has contributed to the polarization of American society and is one of the “prime suspects in the

investigation into what killed moderation and bipartisanship” (McCarty et al., 2009, p. 678). Therefore, I consider it an essential part of the study of American culture to evaluate various solutions to gerrymandering that might reduce the continuously growing polarization in the U.S. (Lee, 2022).

In this thesis, the word *districts* will be frequently mentioned. The *congressional* districts in the U.S. are the electoral districts that are used in federal elections. In contrast, the *legislative* districts are areas within a state from which voters elect their state senators and delegates to the state House of Representatives. My research will mainly examine the congressional districts, not the state’s legislative districts. However, legislative districts will be mentioned, but unless explicitly expressed otherwise, I am referring to the *congressional* districts. This also applies to the mentioning of “House of Representatives,” “the Senate,” “Congress,” “House seats,” etc.; If not directly stated, I am referring to the *federal* legislative bodies. I also want to add that all figures and tables presented in this paper are my own. They are drawn based on information found in the references stated in the text.

Lastly, I want to mention that my thesis will mainly focus on *partisan* gerrymandering. The reason for this choice will be explained and justified in chapter 2.3.4, where I further clarify the differences between partisan and racial gerrymandering.

## 2. Theory & Definitions

Below, I will briefly explain the U.S. election system, its importance in American society, and why it prompts the use of gerrymandering. Then, I will introduce the history of gerrymandering before describing its different methods.

### 2.1 The Electoral College

In order to fully understand the troubles of gerrymandering, it is essential to realize that this problem is directly linked to the U.S. election system and how members of the House of Representatives are elected.

In the U.S., the voters indirectly elect their president and vice president through the Electoral College, an idea adopted at the 1787 Constitutional Convention (Belenky, 2016). The Founding Fathers' vision was that every state should be divided into congressional districts (Adkison & Elliott, 1997). The state's population determines how many districts there should be; a larger population gives a higher number of districts, and a smaller population gives a lower number of districts (or even no districts; only one "at-large" district that consists of the state as a whole). Each district in every state would then be given one member in the House of Representatives. Today, there are 435 members of the House of Representatives; ergo, there are 435 congressional districts in the U.S. (Neale, 2017). Furthermore, in the Electoral College, each state is granted a certain number of electors that corresponds with its members of Congress, consisting of both The House of Representatives and The Senate (Fon, 2004). Currently, the number of electors is 538, divided among the fifty U.S. states and the District of Columbia (U.S. Census Bureau, 2021a). Every state receives a number of electors equal to the number of the state's congressional districts, in addition to one for each of every state's two senators (Fon, 2004).

The use of the Electoral College was decided by the Founding Fathers, who had different reasons why they thought this was the best idea for an election system. First, due to a lack of knowledge and information about the potential presidential candidates, the Founding Fathers did not believe that most ordinary people could make decisions for themselves. They had essentially no trust in American citizens, so they had to make a system that prevented them from directly electing their own president through a popular vote and instead having the state legislators elect the president for them (Neale, 2017). Furthermore, they wanted to prevent smaller states from losing their value and meaning of the "tyranny of the majority." They intended all states to be represented as equals, regardless of size (Belenky, 2016, p. 4). However, through the Electoral College, smaller states even possess an advantage because their electoral vote totals are larger in proportion to their population (Neale, 2017).

## 2.2 First Past the Post & The Winner-Take-All

First-past-the-post (hereinafter FPTP) is a majoritarian electoral system used in several countries, including the U.S. Simply explained, voters cast their vote for their preferred candidate, and the candidate with the most votes is elected. Only a simple majority is needed, which means that the winning candidate needs the *most* votes, not necessarily the *majority*

(over fifty percent) of the votes (Norris, 1997). To illustrate this, the 2016 presidential election in Michigan provides a good example: Donald Trump received 47.5% of the statewide vote, and Hillary Clinton received 47.3% (Office of the Historian, n.d.). None of the candidates received the *majority* of the votes because 5.2% went to other candidates, but since Trump received *the plurality* of the votes, he also won all of the state's (then) sixteen electoral votes. This method, used by Michigan and forty-seven other U.S. states, is known as "winner-take-all" (Norris, 1997). With this method, whichever candidate receives the plurality of the popular vote in a state is granted *all* the electoral votes from the respective state. It is irrelevant if a candidate wins the popular vote by fifty-one percent or ninety-one percent; *all* electoral votes are given to the winning candidate, regardless of the margin. The candidate who wins the popular vote in Michigan receives all its electoral votes (Cizmar & Morris, 2013). All U.S. states, except Maine and Nebraska, use the winner-take-all system during presidential elections. Furthermore, this means that the presidential candidate who won the electoral votes on a national basis did not necessarily receive the majority of the popular vote (Fon, 2004).

Most states also use FPTP during House of Representative elections. Only Louisiana, Washington, and California use a two-round voting system to ensure that the winning candidate receives the majority of the votes, not just the plurality. The members of the House of Representatives are elected every even year from each of the 435 districts, and the winning candidate is the one with the plurality of the votes (Grose, 2020).

Because of the FPTP system and the winner-take-all method used during presidential elections, gerrymandering is a problem. If the U.S. used a propositional system, the candidates would receive the number of electoral votes in a state that corresponds with the percentage of the popular vote (Norris, 1997). For example, the candidate that received forty percent of the statewide popular vote would be rewarded forty percent of the respective state's seats in the House of Representatives. This method allows all of the votes to be taken into account; no votes are "wasted" in the same way they would have been if it were a winner-take-all system, where the winner of the election is the only one that would be represented in this district. Thus, if proportional representation were used in Michigan, Clinton, and Trump would have received roughly the same number of electoral votes in 2016. Hence, it would not be of importance where the district lines are drawn; it would not affect

the final outcome because the statewide popular vote would not change, regardless of the district's design.

However, FPTP makes it more complicated during House of Representative elections. Each state is given a number of districts, and each district will be represented in the House of Representatives by the winning candidate after an election. Usually, there are two candidates, one representing the Democratic Party and one representing the Republican Party, and the candidate with the plurality of the votes is the one who will represent the respective district in the House of Representatives (Norris, 1997). Consequently, this makes the district lines of greater importance, and the districts are prone to gerrymandering, which I will clarify in an upcoming section.

Even though some citizens oppose using the Electoral College, it has been a part of America for well over 200 years and is still a relatively unique construction and an essential part of U.S. history and society. Despite the Founding Fathers' initial distrust in the American people and their inability to elect a president, they are still profoundly respected in American culture, and Supreme Court Justices are still committed to interpreting the Constitution, and its amendments, in accordance with its framers' intentions and understanding (Strauss, 1996).

## 2.3 Gerrymandering

### 2.3.1 History of Gerrymandering

Historians believe the first case of gerrymandering in the U.S. was during their first congressional election in 1788. Anti-federalists deliberately incorporated the home of then-future President James Madison in the same district with surrounding counties that included other anti-federalists. This attempted to cut Madison out of the newly formed House of Representatives (Lowenthal, 2019).

However, the most iconic gerrymander, and the case where “gerrymander” earned its name, was in 1812. Elbridge Gerry, then Governor of Massachusetts, signed the state's redistricting proposal, which contained a specifically odd-looking district that resembled a salamander (Lowenthal, 2019). Several newspapers pointed out the strange district, and The Boston Gazette combined the name “Gerry” and the word “salamander” and invented the new term

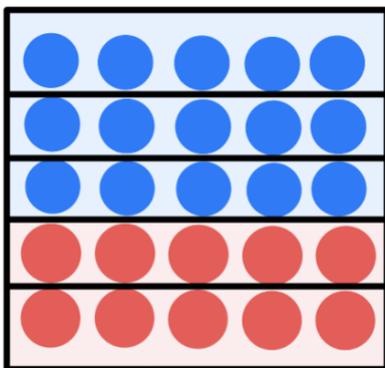
“gerrymander” to describe the action of deliberately manipulating political districts to favor one party (Lowenthal, 2019).

Despite people calling for equality among voters, gerrymandering has continued through the eighteenth, nineteenth, and twentieth centuries, which will be exemplified later in the paper.

### 2.3.2 Illustrating Gerrymandering

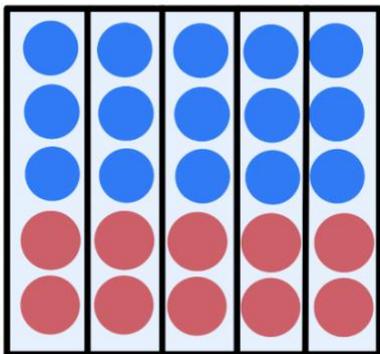
Gerrymandering is defined as drawing the boundaries of electoral districts in a way that gives someone, for instance, a political party, an unfair advantage over someone else (Esposito, 2020). In the U.S., all districts drawn in each state must have roughly equal populations, but the mapmaker decides *where* the lines are drawn. This means that despite one party receiving the majority of statewide votes, it does not necessarily mean that the respective party is rewarded the majority of Seats in the federal House of Representatives. In most states, it is the state legislatures that draw the map, meaning that it is either the Democratic Party or the Republican Party that has the power over the redistricting process.

Simply put, suppose a state has twenty-five eligible voters divided among five districts. Statewide, sixty percent vote for the blue party, which equals fifteen voters. Forty percent, or ten voters, vote for the red party. If the state had five House Seats and used proportional representation, the blue party would have three Seats, and the red party would have two:



*Figure 1: The illustration shows the twenty-five voters and for whom they are voting.*

However, since the members of Congress are elected in single-member districts, five different elections would be held in this example, and only the candidate that receives the plurality of votes is elected from each district. When the congressional lines are drawn, it is possible to draw them to fairly reflect the population and their will, as shown above. Nevertheless, in most states, where the party in power is in charge of the mapmaking, they often have biased intentions and want to remain in office. Suppose, in this example, that the blue party, which has the majority of statewide votes, is responsible for drawing new lines. If they want to remain in power, they can easily design the districts in a way that will cancel out all the red votes:



*Figure 2: The new districts are drawn so every district achieves a blue majority; thus, the red votes are canceled.*

In Figure 2, there are still only five districts; the voters vote for the same party and live in the same place. Still, the election's final outcome is entirely different because of *where* the lines are drawn, and the blue party enjoys a majority in all districts. However, if the red party were the mapmakers, they are also able to attain a majority of red districts with the identical outset, despite being the minority party:

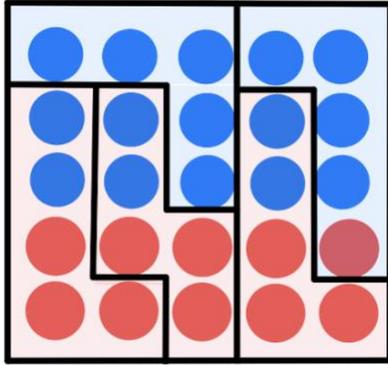


Figure 3

The number of districts is still the same, but the lines give the red party three House Seats, and the blue party, which still holds the majority of the statewide popular vote, only has two.

### 2.3.3 Different Ways to Gerrymander

There are several different ways to perform the act of gerrymandering. Still, the two most common ways to do this are by using techniques called *cracking* and *packing*. The Campaign Legal Center (2018) describes cracking as the “practice of dividing a group’s supporters among multiple districts so that they fall short of a full majority in each district” (p. 5) while packing, on the other hand, is the action of “concentrating a group’s support heavily in a few districts so that the group wins significantly fewer districts than it would have had its supporters been spread out more evenly” (p. 5).

Cracking may be illustrated as follows:

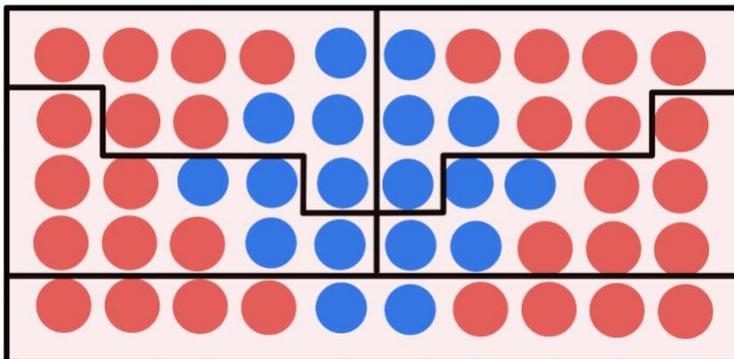


Figure 4

In this example, there are fifty voters where eighteen vote for blue and thirty-two vote for red. The red party controls the redistricting process and can control all of the districts by using the cracking technique. The blue voters, all concentrated in the middle of the state, are cracked between all five districts, and all the blue votes are canceled out and, therefore, “wasted.” Utah is a prime example of this: The state capital Salt Lake City, the state’s Democratic stronghold, is cracked and divided between *all* of the four congressional districts, making all districts red (FiveThirtyEight, 2022).

Packing is the opposite of cracking, and it is illustrated like this:

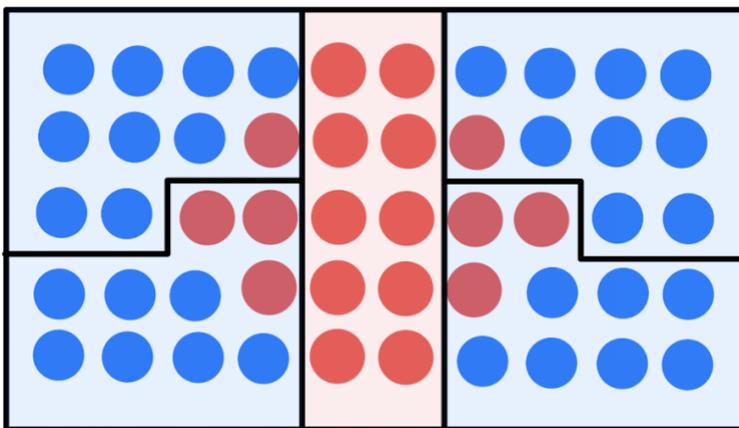


Figure 5

In the example in Figure 5, the blue party has the majority of statewide votes and is in charge of redistricting. This is because most of the red votes are packed into one single district, making it safe for the red party. This leaves only a few red votes in the remaining districts, which are no threat to the blue party, and the blue party has four safe districts.

While both techniques ensure that the party in power stays in control of redistricting, packing is considered to be the worst of the two methods regarding competitiveness (Campaign Legal Center, 2018). For example, in Figure 4, the allocation of blue and red voters in every district is more evenly distributed than in Figure 5, where the allocation gives four almost solid blue districts and one completely red. Ergo, the districts in Figure 5 are safer and less competitive than in Figure 4. “Competitive elections” and “safe districts” are terms I will later revisit and explain their significance.

Another way mapmakers gerrymander is by *hijacking*, also called *kidnapping*. Originally, these are two different ways to gerrymander, but the two terms are often used interchangeably about the same action. According to the Campaign Legal Center (2018), hijacking is “the practice of separating an incumbent from his/her constituency” (p. 5). When illustrating hijacking, the same map is used as in Figure 5, and each representative in every district is marked as *incumbent* with an “i” and black outline. It will look like this:

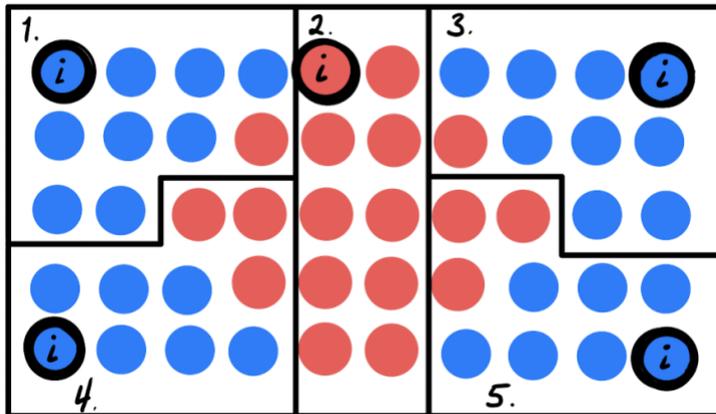


Figure 6: The situation before the hijacking – there is one incumbent of the House of Representatives in each of the five districts.

After a redistricting process, the new districts will look like this:

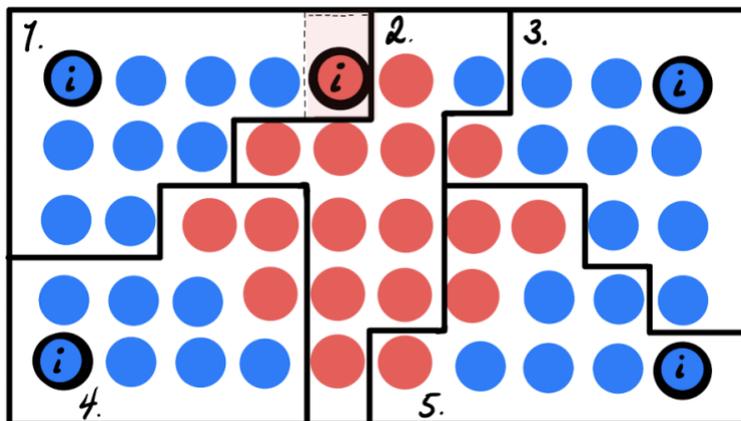


Figure 7: The situation after hijacking – incumbent in District 2 is moved to District 1.

The hijacking shown in Figure 7 separated the incumbent (the current House member representing a given district) from his or her long-time constituency in District 2. It moved it to the solid blue District 1, which made him or her face re-election in an unfamiliar district

against the blue incumbent. In District 1, with a clear majority of blue voters, the red incumbent will supposedly lose his or her seat in the House of Representatives.

#### 2.3.4 Partisan Gerrymandering & Racial Gerrymandering

Gerrymandering can be categorized in several ways. For instance, it is possible to distinguish between *partisan* and *racial* gerrymandering. While partisan gerrymandering refers to mapmaking that befits one political party over another, racial gerrymandering intends to dilute the voting power of racial minorities without any intended partisan motive (Forgette & Winkle III, 2006). The Voting Rights Act (1965), passed to ensure that states did not deny Americans the right to vote, regardless of race or color, declares racial gerrymandering illegal. A racial gerrymander may appear only as a simple partisan gerrymander or vice versa; it is not always obvious what the original intention was. Because of minorities' general voting preference, racial gerrymandering and partisan gerrymandering may look identical. Minorities tend to lean liberal, which gives the packing of minorities the same effect as packing Democrats (Soffen, 2016). Republicans are, therefore, more often than Democrats, accused of racial gerrymandering: "Typically the goal in [packing minorities into a district] is not to reduce minority representation in the adjacent districts; it's to reduce Democrats' representation in those districts" (Soffen, 2016, para. 4).

In order to prove a map was drawn to dilute minorities' voting power, a plaintiff must show that race was the predominant factor as to why the lines were drawn the way they were and that all other factors, like partisan motives, for instance, were secondary (O'Loughlin, 1982). This dilution is often done by cracking minorities into several districts or packing them into one single district to weaken their collective voting power across the state. It might be challenging, however, to prove that race was the predominant factor, as opposed to only a secondary factor, which means that even maps that dilute minorities' voting power might be approved because this was not the *predominant* factor (O'Loughlin, 1982). This also means that partisan motives may be used as an "excuse" by the mapmakers, and if not proven by plaintiffs in court, they can pass a racially gerrymandered map. However, it also works the other way; minorities may claim the maps deliberately dilute their voting power, while in reality, the mapmakers only had partisan motives.

The absence of a clear distinguishing provided by the Supreme Court between racial and partisan gerrymandering has resulted in a “racially polarized culture,” and “[Joey Fishkin] fears that the two concepts are so closely related that an effort to treat one in a particular manner may end up swallowing the other” (Spann, 2020, p. 1006) Since it is difficult to separate the two, Spann (2020) argues that the Supreme Court’s rulings are inconsistent and unpredictable; it is unclear how the Court decides if a gerrymander is partisan or unconstitutionally racial. He further argues that either both or neither of the two ways to gerrymander should be considered unconstitutional because “safeguards that are supposed to protect racial minorities from the discriminatory inclinations of the culture in which they live were never intended to provide anything but false hope” (p. 1025).

Although I will mention racial gerrymandering in this thesis, the main focus will be on partisan gerrymandering. The reason for this is that even though it is sometimes difficult to distinguish the two, racial gerrymandering has already been ruled unconstitutional by the Supreme Court more than once (Shaw v Reno, 1993; Miller v. Johnson, 1995), and is also considered illegal by The Voting Rights Act (1965). However, the guidelines and the question of when partisan gerrymandering has gone “too far” or “how partisan is too partisan” (Barrow, 2018, p. 17) remain somewhat unclear. The Supreme Court has declared these questions outside its jurisdiction (Rucho v. Common Cause, 2019); therefore, there are currently no standards or clear limitations on partisan gerrymandering. In other words, the Supreme Court’s assistance in fighting this type of gerrymandering is limited, which is why I want to look closer at different possible solutions that might help diminish the problem of partisan gerrymandering.

## 2.4 The Efficiency Gap

The seven figures in the section above show clear examples of gerrymandering. However, not all cases are equally obvious and easily recognized, and a closer examination of the states and districts is needed to identify when and where gerrymandering occurs.

In 2015, Stephanopoulos and McGhee developed a new standard for measuring partisan gerrymandering. This method is called *the efficiency gap*, and it counts the number of inefficient votes cast in an election to determine whether either party enjoyed a systematic

advantage in turning votes into seats. Wasted votes are either (1) *all* votes cast for the losing candidate in any district or (2) votes cast for the winning candidate *in excess* of the number of votes the candidate needed to win the election (Esposito, 2020). The efficiency *gap* is the difference between the two parties' number of wasted votes, then divided by the total number of votes cast. Portrayed as a simple equation, it looks like this:

$$\text{Efficiency gap} = (\text{All Democratic wasted votes} - \text{All Republican wasted votes}) \div \text{Total votes}$$

Essentially, the efficiency gap accumulates a party's partisan gerrymandering into a single number. A positive number indicates that this party benefits from partisan gerrymandering, while a negative number indicates that the same party is harmed by it. This means that if the number were zero, the district would be perfectly balanced between Republican and Democratic voters, and the two parties would waste an equal amount of votes (Stephanopoulos & McGhee, 2015).

In this example, a state has a population of 500 eligible voters, equally divided between five districts, giving each district 100 voters. In each district, they all vote for either the red or the blue party:

DISTRICT	BLUE VOTES	RED VOTES	RESULT
1	75	25	BLUE WINS
2	60	40	BLUE WINS
3	43	57	RED WINS
4	48	52	RED WINS
5	49	51	RED WINS
TOTAL	275	225	

Table 1

Since all the districts have 100 voters, the winning candidate, regardless of red or blue, needs no more than fifty-one votes to win the election in each district. Therefore, all votes cast, in addition to the 51 votes needed to win, are considered wasted because they, theoretically, do not contribute to victory. This is the case in District 5 in the table above, where none of the

51 votes cast for the red party is wasted, but the 49 votes cast for the blue party are all wasted because their candidate lost. The number of wasted votes in the example above will therefore look like this:

DISTRICT	BLUE VOTES	RED VOTES	RESULT	WASTED BLUE VOTES	WASTED RED VOTES
1	75	25	BLUE WINS	24	25
2	60	40	BLUE WINS	9	40
3	43	57	RED WINS	43	6
4	48	52	RED WINS	48	1
5	49	51	RED WINS	49	0
TOTAL	275	225		173	72

Table 2

The table shows that of all 500 votes cast, there are 173 wasted blue votes and only 72 wasted red votes, meaning the blue voters wasted 101 more votes than the red voters. To figure out if this can be classified as partisan gerrymandering, the number of wasted votes must be divided by the total number of all votes cast statewide, which gives the following calculation:

$$101 \div 500 = .202$$

$$.202 \approx 20 \%$$

This calculation tells that because of all the blue votes wasted, the red party won 20% more seats than they would have if the parties had wasted an equal amount of votes. In this example state, with five districts and then also five House seats, 20% equals *one* seat. Stephanopoulos and McGhee (2015) suggest that this number should not be two or higher for congressional plans; ergo, according to the efficiency gap, neither party benefits nor is harmed by partisan gerrymandering in the respective state as a whole. Nevertheless, although the red party was rewarded three seats, the blue party received the majority of the statewide popular vote but only won two seats. Accordingly, the efficiency gap was still big enough to grant the red party an unfair advantage over the blue party. This disproportion is possible because the results in districts 3, 4, and 5 were relatively even, resulting in few wasted votes for the winning red party. However, the blue victories in Districts 1 and 2 could not outweigh

this because the victories here were won by a greater margin. Therefore, many blue votes were wasted in these districts as well.

### 3. The Problem with Partisan Gerrymandering

As a consequence of the Electoral College and the winner-take-all-method, the idea of one-man-one-vote is challenged; and gerrymandering complicates the matter further. Today, with advanced computer systems, mapmakers can collect detailed information about “an area's political makeup – down to the voting history of a single block – and plug it into a computer, allowing them to carve up neighborhoods with precision” (Oedel et al., 2009, p. 64).

Computers and modern technology can provide mapmakers with much more information than the Census Bureau does every ten years. “The same computer algorithms that recommend your next purchase on Amazon and know the exact Netflix show you want to binge-watch can also determine [...] how you are likely to vote” (Daley, 2017, p. xxvi). Consequently, gerrymandering has become more accessible, more aggressive, and a bigger problem than ever before (Delay, 2017).

Partisan gerrymandering is often considered a threat to American democracy for two reasons. First, partisan redistricting has **eliminated competitive elections**. For example, during the election in 2004, only five of the 401 House incumbents running for re-election were defeated (Kang, 2005). The number of “true toss-up”-races has been declining for years. These are races where fewer than five percentage points separate the winner and loser. In the 2022 elections, only thirty-six of 435 House seats were classified as true toss-up seats (Quarshie, n.d.).

The other reason is **disproportion**, which refers to the imbalance between a party’s popular vote and their number of House seats. When a party receives more seats than the popular vote reflects, it is regarded as deeply unfair and biased against the other party, and it also violates the **one-man-one-vote** principle (Lowenthal, 2019). For example, in both 1996 and 2012, the Republicans won the majority of seats in the House of Representatives but, at the same time, failed to obtain the majority of the nationwide popular vote (Office of the Historian, n.d.).

Below, I will present four U.S. states and explain their problem with gerrymandering. The states presented are chosen for different reasons: North Carolina and Texas have both

designed maps that give the Republicans an unfair advantage and produced less competitive districts, and their troubles have resulted in lawsuits and landmark decisions. Illinois shows, on the contrary, that also Democrats can gerrymander and use biased intentions to dilute the voting power of Republicans. Michigan has had similar problems to Texas and North Carolina, with Republicans causing an apparent disproportion. This state later implemented an independent redistricting commission to resolve the troubles of gerrymandering. All these states represent an array of problems that can also be discovered in other states.

### 3.1 North Carolina

North Carolina is one of the most extremely gerrymandered states in the U.S. (Princeton Gerrymandering Project, n.d.). The congressional districts are drawn by the state legislature, which means that it is currently the Republicans that control the drawing and enacting of new maps. However, unlike most states using this method to draw the lines, the resulting plans are not subject to gubernatorial veto, which means Democratic Governor Roy Cooper cannot stop the Republican redistricting (FiveThirtyEight, 2022).

After the 2010 census, North Carolina faced several legal challenges regarding their redistricting, and the state's lawmakers spent several years in court trying to defend their gerrymandered maps. State courts forced the Republican legislators to draw new maps in 2016 and 2019, and later in 2019, "[their] map was taken to the Supreme Court in *Rucho* because it was one of the worst gerrymanders in the history of our country" (Timm, 2021, "North Carolina ignored race data" section). In *Rucho v. Common Cause* (2019), the lawmakers openly admitted that the maps were partisan gerrymandered. One of the Republicans in the redistricting committee even stated that "I think electing Republicans is better than electing Democrats. So I drew this map to help foster what I think is better for the country" (Rucho v. Common Cause, 2019, "Opinion of the Court," p. 2) He further clarified that the reason why he had drawn the map with the aim of obtaining ten Republican districts and only three Democratic districts was that he "did not believe it [would be] possible to draw a map with 11 Republicans and 2 Democrats" (Rucho v. Common Cause, 2019, "Opinion of the Court," p. 2).

Common Cause, a nonpartisan organization dedicated to upholding the core values of American democracy, argued that the new map intentionally diluted the voting strength of Democrats. Even though the Supreme Court, in *Rucho v. Common Cause* (2019), undoubtedly agreed that the map was “highly partisan, by any measure” (“Opinion of the Court,” p. 2), the main question was whether “claims of excessive partisanship in districting are ‘justiciable’—that is, properly suited for resolution by the federal courts” (“Opinion of the Court,” p. 2). The Court held that partisan gerrymandering presents a political question beyond their reach. Districting for partisan advantages is therefore not considered unconstitutional, unlike race-based districting. Thus, the aggressively gerrymandered map of North Carolina was left in place by the Supreme Court, and the ruling set a precedent against federal intervention regarding partisan gerrymandering that could have a significant and long-term effect on elections and legislatures across the country.

Although current congressional and state legislative maps in North Carolina have been redrawn several times, a pro-Republican bias remains (Princeton Gerrymandering Project, n.d.). In 2020, the map still favored the Republicans. Despite the Republicans winning less than fifty percent of the statewide vote in statewide races this year, they secured eight of thirteen congressional seats (Timm, 2021). This also happened in 2012 when the Democratic Party received more votes than the Republican Party, but the Republicans still won nine seats while the Democrats only got four (*Rucho v. Common Cause*, 2019).

The gerrymandering in North Carolina provides examples of both packing and cracking. After the census in 2010, the redistricting plan packed Democrats into the 1<sup>st</sup>, 4<sup>th</sup>, and 12<sup>th</sup> Congressional Districts. This ensured a clear Democratic win in these districts, while the Republicans won the remaining ten districts with a smaller, yet still safe, margin (Brower, 2021). Greensboro, the third largest city in North Carolina, has become a Democratic stronghold. Guilford County, where Greensboro is located, with its approximately 500,000 people, is big enough to form a district of its own. Nevertheless, the map made in 2016 split the county between the 6<sup>th</sup> and 13<sup>th</sup> Congressional Districts. As a result, the Democratic city was cracked and combined with the rural and Republican areas that canceled out the city’s vote, depriving Greensboro of the chance of electing a representative that reflected the preferences of the majority of the voters in the city (Brower, 2021).

The new map in 2022, after gaining one additional congressional district due to reapportionment in 2020, cracked the Democrats further. Guilford County was split into yet another district, making three safe Republican districts (Timm, 2021). However, the State Court ruled the map unconstitutional because it violated the North Carolina law requiring that district lines should not cross county lines and ordered the map to be redrawn. The map revision was also rejected, and the court drew a new map before the mid-term election in 2022 (Doran, 2022). The results from this election gave both the Democratic Party and the Republican Party seven seats each. Based on the efficiency gap, the map even slightly favors the Democrats. However, since this was made as a remedial map by the court, the Republican legislators must still draw a new map before the 2024 election, and the victory for the Democrats may be short-lived (FiveThirtyEight, 2022).

To sum up, the most obvious negative impact of the highly gerrymandered maps in North Carolina is that these deprive many of the state's voters of a voice in Congress. The state's votes are almost equally cast between the Democratic Party and the Republican Party. Still, the Republican Party has managed to gain most of the seats because of the manipulation of the district lines. Democrats are not attaining the representation they deserve and the representation they ideally would have under a fairer map.

## 3.2 Texas

### 3.2.1 After the 2000 Census

With the Texas legislature split between the Republicans and the Democrats, a new district map after the 2000 census was unable to pass. Because the two parties did not agree, the lines were drawn by a panel of judges according to state law. Despite only a few changes from the old map, the 2002 election resulted in the Republicans winning control of the state legislature for the first time in 130 years. By contrast, the Democrats won two more seats in the U.S. House of Representatives than the Republicans, despite the Republican Party receiving a majority of the votes statewide (Lo, 2013).

In 2003, Republican Tom DeLay, then House Majority Leader, led the extraordinary act of redrawing the congressional map between censuses. Since the Republican Party now had the majority in the state House and the state Senate, DeLay stated that it was only fair that they

also controlled more than fifteen of the thirty-two seats in the U.S. House. Prior to 2003, the Democratic Party has been responsible for gerrymandering the state map, which had caused the imbalance between seats and votes (Bickerstaff, 2010).

To propose a new congressional map, the Texas law required a *quorum*. This is the specific number, which is usually more than a majority, of members of a legislative body needed to conduct any business. The quorum of both the Texas House of Representatives and the Texas Senate is two-thirds, which is one hundred, and twenty-one members, respectively (Bickerstaff, 2010). This meant the sixty-two Democrats could stop this legislation by simply not showing up.

Breaking quorum has been used many times in U.S. history, and in 2003, fifty-two Democrats, known as the “Killer Ds,” fled to Oklahoma and returned when the time had expired. Eleven state senators did the same and went to New Mexico. Republican Governor Rick Perry then called a *special session* in the Texas Senate. These sessions differ from regular sessions, and the two-third rule does not apply (Bickerstaff, 2010). The Democrats were not able to stop the legislation, and a new congressional map was enacted. This map was designed to fragment eight Democratic districts. The mapmakers used the hijacking technique and placed the Democratic incumbents in these districts, in areas they had not previously represented. The Republicans combined the Democrats’ former districts with heavily Republican districts, forcing them to run against strong Republican incumbents. (Esposito, 2020). This helped the Republicans win twenty-one of thirty-two U.S. House seats in the 2004 election (Lo, 2013).

Democrats criticized the 2003 redistricting plan. Firstly, they were unhappy that the Republicans had ignored the precedent of redistricting more than once every decade and argued that this was done solely for political gain for the Republicans. Additionally, minority groups argued that the new plan violated the “one-man-one-vote” principle.

### 3.2.2 After the 2010 Census

After a population growth of four million people, Texas gained four seats in the U.S. House in the 2010 census (U.S. Census Bureau, 2010). However, despite approximately ninety

percent being minorities, not a single minority group gained an additional seat in Congress (de León, 2020).

Texas has a long history of intentional discrimination against voters of color. Because minorities are packed into single districts or cracked into several different ones, their power to choose their own political representation is being diluted. Due to this history, Texas was placed under “preclearance” in Section 5 of the Voting Rights Act of 1965 (de León, 2020). The preclearance section requires certain states, including Texas, to obtain federal approval before making changes to the district map. The original map, drawn after the 2010 census, failed to obtain preclearance, and the lines were redrawn by the court. This provisional map was used in the 2012 election (de León, 2020).

Right after the new map was drawn, the preclearance section of the Voting Rights Act was removed in *Shelby v. Holder* (2013). With the preclearance section, it was the Texas Republicans who had to prove that their map was not undermining minority votes, but with the section removed, the burden of proof now lies with the Texas Democrats. Justice Thomas argued in his concurring opinion that the preclearance section of the Voting Rights Act was unconstitutional. He claimed that the discrimination that the preclearance section was supposed to prohibit was no longer evident. The section served its purpose in the 1960s and 1970s but is no longer relevant (*Shelby v. Holder*, 2013). Unconstitutional or not, the removal of the preclearance section caused an increase in cases of racial gerrymandering (Gibson, 2020). Texas lawmakers could now freely draw a new map without the preapproval of federal authority, and with minor adjustments, the temporary map drawn by the court in 2011 was adopted on a permanent basis in 2013 (Li, 2018)

### 3.2.3 After the 2020 Census

In the 2020 census, Texas was the only state that gained more than one seat in the House of Representatives. The lawmakers then added two more districts to the state map, making a total of thirty-eight congressional districts (U.S. Census Bureau, 2021a). Once again, ninety-five percent of the growth was due to people of color, but the number of minority districts remained the same. There are now almost as many white, non-Hispanic Texans as Hispanic

Texans, but there are more than twice as many majority-white districts as majority-Hispanic districts (de León, 2020).

The gerrymandering in Texas is also an example of both packing and cracking. With less than one million residents and divided between six congressional districts, Austin is one of the most cracked cities in the country. The city is also the most decidedly blue (Democratic) in the state, but only one of the six districts is Democratic. The other five districts were connected to rural, conservative areas, making them safely Republican. However, when the population in Austin grew, so did the Democratic vote, making the Republican areas more competitive; the Republican vote in surrounding rural areas was no longer large enough to dilute the Democratic vote. So after the 2020 census, Texas lawmakers changed their strategy, added one of their new districts in Austin, and packed it with Democrats. This way, the other districts containing Austin remain safely Republican. The new map is designed to maintain long-term gains. It removed almost all the state's competitive seats, which gives the current map an efficiency gap of 15.3 percentage points, equaling nearly six congressional seats, in favor of the Republicans (Timm, 2021; FiveThirtyEight, 2022).

Texas has never lost a House seat due to reapportionment, which implies a constantly increasing population (U.S. Census Bureau, 2021b). Although racial gerrymandering is not the main focus of this thesis, it is still worth noticing the consequences the increasing population might have in the future. Suppose this trend continues, and the majority of the Texan population growth is due to Hispanics and other minorities like it has been in recent years. In that case, problems with racial gerrymandering in Texas will presumably escalate.

### 3.3 Illinois

Although the Republicans are responsible for most of the gerrymandering happening and are benefiting from it the most, Democrats are also responsible for some of the partisan redistricting in the U.S. Illinois is an example of where the Democrats gerrymander to protect their incumbents, and the Republicans push for an independent redistricting commission (Hancock, 2021).

For the first time in over 200 years, the state's population decreased and lost one district due to reapportionment (U.S. Census Bureau, 2021a). Before the 2020 census, Democrats controlled thirteen districts and the Republicans five. The new map, giving the Democrats one additional district and the Republicans three, makes Illinois one of the most gerrymandered states in the U.S. The old congressional map slightly favored the Republicans. However, the current map used in the 2022 election had an efficiency gap of 13.2 percentage points in favor of the Democrats (FiveThirtyEight, 2022). Forty-two of the state's 102 counties are now split up by the new district lines, and two of the Democratic districts are among the most crooked-looking districts, implementing as many Democratic-leaning communities as possible while at the same time avoiding the Republican rural areas (Epstein, 2021).

Illinois is also known for abusing redistricting to protect incumbents. Both Illinois Republicans and Democrats have done this to ensure that their party remains in power. One of the consequences of this method of gerrymandering is that it prevents candidates from running for office and reduces voter participation. Almost five million Illinoisan voters live in legislative districts with only one option for state representatives on the ballot. The state's lawmakers have made the districts so uncompetitive that half of the Illinois Senate candidates faced no opponent (Brutvan, 2021).

### 3.4 Michigan

Before 2018, the state legislature drew Michigan's congressional district map. Republicans controlled both legislative houses and the governorship during the 2010 redistricting cycle and produced one of the most gerrymandered congressional maps in the country (Ortega, 2020). David Daley (2017), a frequent lecturer and media source about gerrymandering, addresses in his book, *Ratf\*\*ked*, how partisan gerrymandering threatens democracy. In the chapter about Michigan, Daley takes the reader on a drive along the lines of the state's 14<sup>th</sup> congressional district. He describes the district's shape as something not even "[a] toddler too young for tangrams" could have made odder-looking (p. 61). It resembles a snake – "a very curious snake, coiled, perhaps asleep, then rising to stretch the top of its long body to the left, before craning its large head around" (p. 61). The district was designed to embed the African American-dominated cities of Pontiac and Detroit, over thirty miles apart, into one single

district. This approach packed in as many Democratic voters as possible, leaving adjoining districts bright red (Republican).

Since 1990, Michigan has only voted for a Republican presidential candidate once. This was when Donald Trump defeated Hillary Clinton by an extremely narrow margin of .23% in 2016 (Office of the Historian, n.d.). However, since 2002, the Democratic Party has had the majority of seats in the House of Representatives only two times, in 2008 and 2022 (Office of the Historian, n.d.). If the city of Pontiac instead had been attached to the adjoining 8<sup>th</sup> or 11<sup>th</sup> district, there would be a larger number of blue districts, and the allocation of House seats between the Democrats and the Republicans would have more accurately reflected the will of the citizens. Delay (2017) argues that this would have been more logical because the current lines (at the time of publication) “candy-swirl around Pontiac like a summer camp sand art project” (p. 64).

After Delay’s road trip, he consults Jeff Timmer, the man who drew the lines of Michigan’s 14<sup>th</sup> congressional district and hopes for an explanation of why the lines look the way they do. Regarding Pontiac, Timmer explains that the city is a part of Oakland County, and the odd lines implementing Pontiac in the 14<sup>th</sup> districts are actually the county lines: “[...] when you look at the geography of Oakland County, there are these municipal boundaries. It’s not the mapmaker’s fault, or even the evil partisan politician. The city boundaries are what they are” (p. 72). He explains that the mapmaker’s first goal is to keep the counties together and avoid “county breaks” (p. 72). Timmer continues by expressing that designing districts only for the sake of competitiveness is foolish: “Democrats in Michigan tend to live very closely together in urban areas [...] People live where they live [...] what should we do? Somehow draw a thin ribbon across northern Michigan so we can balance out the partisan fairness of this?” (p. 75). However, Timmer avoids mentioning the “thin ribbon” he himself drew to connect the cities of Pontiac and Detroit.

Despite Timmer’s reasonable arguments, the redistricting in Michigan causes problems. Even though Timmer might disagree and say that this is not a case of intentional partisan gerrymandering, the past election results still do not reflect the will of the people; like in North Carolina, the votes in Michigan are almost equally cast between Democrats and Republicans, but the Republican Party is the obvious winner when looking at the allocation of seats in the House of Representatives. Thus, people have reacted and started discussing

how to “make it fair and really put people back in charge” (Daley, 2017, p. 81). Together, the Democratic state representatives Jon Hoadley and Jeremy Moss have introduced legislation to remove the power of redistricting from the state legislatures to truly nonpartisan commissions. Moss adds that “Enough is enough. Our citizens should be drawing the lines, not the legislators who will benefit from those lines” (p. 82).

To sum up the situations in all the states mentioned above, the legislative redistricting, and consequently the biased intentions, have caused a clear disproportion and made several of the districts highly uncompetitive. Many elections have become so uncompetitive that people refrain from voting altogether because it is already certain that their votes will become wasted. The low voter turnout, the large number of wasted votes, and the apparent violation of the one-man-one-vote principle are severe threats to democracy.

#### 4. Independent Redistricting Commissions

Even though the Supreme Court decided in *Rucho v. Common Cause* (2019) that the question of partisan gerrymandering was of political nature and thus beyond their reach, there have been other attempts to find alternative methods of eliminating it. Samuel Issacharoff (2002) goes so far as to argue that the U.S. Supreme Court should declare every congressional map unconstitutional if these are drawn by elected officials. Although it is a very assertive claim, many states have in recent decades established alternative redistricting methods limiting the role of the state legislatures in tailoring their own legislative districts and congressional districts (Gartner, 2019). Specifically, the idea of independent redistricting commissions (hereinafter IRC) has become “the premier institutional solution to the problem of partisan gerrymandering” (Zhang, 2021, p. 1000).

This is an idea that experiences a rapidly growing enthusiasm among American citizens. Common Cause (n.d.), an organization with over one million members, is working to establish a democracy that works for all. Due to their involvement, significant reforms have been implemented, which has ended gerrymandering in several states. In addition, the organization has pushed for the creation of IRCs to deprive the legislators of the power to draw districts and give it to ordinary Americans (Common Cause, n.d.). During the mid-term election in 2022, four states used IRCs to draw their congressional districts. These were Arizona, California, Colorado, and Michigan (Leaverton, 2022). Below, I will examine some

of the possible merits of using IRCs and then look closer at the IRCs in Arizona, California, and Michigan.

#### 4.1 The Merits of the IRCs

Lowenthal (2019) was elected to the California State Assembly in 1998, and in his political essay “The Ills of Gerrymandering and Independent Redistricting Commissions as the Solution,” he talks about his experience with redistricting and how the process has upset him. He starts by stating that voters' lack of confidence in the political system is one of the greatest threats to democracy. The factor that has contributed the most to creating this lack of confidence derives from the side effects of gerrymandering. He claims that legislators with the power to redistrict are highly unlikely to give it up, and therefore, the power “must be taken from them and given to the voters” (p. 2). This is because he claims democracy works best if the people themselves lead it.

Lowenthal’s (2019) suggestion and solution to the problem of partisan gerrymandering is IRCs. He claims that IRCs are “currently the best tool that voters have to mitigate political influence and the negative effects of gerrymandering” (p. 15). He points out that the IRCs of Arizona and California have successfully removed gerrymandering from their redistricting process and that they are good examples of how other states should organize and execute redistricting. These IRCs both “seek to build representative constituencies that incorporate traditional redistricting principles while minimizing partisan drivers and political influence over the process. I believe that they serve as the current best practice and a model from which other states can build” (p. 18). The IRCs of Arizona and California will be further examined in upcoming sections.

Gerrymandering is not unique to *one* party. Instead, Lowenthal (2019) claims that the temptation to gerrymander often lies with the political party in control when trying to protect its own positions of power. Lowenthal, a Democrat himself, admitted that his party initially opposed the idea of an IRC for this exact reason. However, the Republican Party also had doubts, and because of opposition from both sides, Lowenthal was unable to move his proposal of an IRC forward. But thanks to the ballot initiative process in California, which allows citizens to propose new laws and constitutional amendments without the support of

the state government, Common Cause used Lowenthal's legislation as a blueprint for their proposal for an IRC, and in 2010, under the leadership of Governor Arnold Schwarzenegger, Proposition 20 passed.

One of the advantages of IRCs is that it prevents partisan gerrymandering, which according to Lowenthal (2019), threatens democracy, and people will eventually stop participating, like the situation is becoming in Illinois. If the voters do not feel that the democracy is working fairly or do not believe that political institutions have the voters' best interests at heart, people will not participate. Also, partisan gerrymandering tends to create more safe districts compared to redistricting done by independent commissions. If the districts become *too* safe, this will decrease the possibility of qualified opposition candidates wanting to run for election in this district. This reduction of competitiveness is a severe threat to democracy because it "results in fewer opportunities for voters to exercise their right to act as a check on their representatives" (p. 13). The voters will no longer have meaningful choices in electoral competition, which diminishes the voices of the voters. If residents of a district are gerrymandered into another district where their voices are not heard, they will most likely stop participating in the process, and without the people, democracy will surely fail. This way, gerrymandering creates a barricade between the people and their representatives, even though the House of Representatives is supposed to be "the legislative body closest to the pulse of the people" (p. 7). Partisan gerrymandering is where one political party intentionally gains a systematic advantage for itself through the drawing of district boundaries. It allows one party to win a much higher proportion of legislative seats than popular votes. Therefore, if the state legislatures had the power to redistrict removed, the problem of partisan gerrymandering would disappear, and the elections would become more competitive and better reflect the people's will.

This is further discussed by Delay (2017), who states that even though both parties are guilty of gerrymandering, the Republican Party has benefitted from it the most. After the 2010 census, the Republicans started their REDMAP (Redistricting Majority Project), which aimed to make the map bright red. He describes the outcome of this project as follows:

Republicans ended election day 2010 with majorities in 10 of the 15 states scheduled to gain or lose seats under reapportionment and where the legislature controlled the new lines. National Public Radio that year had deemed only 70 of the 435

congressional districts nationwide to be competitive — Republicans now controlled how 47 of those would be drawn, Democrats just 15 [...] That would help them shrink the number of competitive districts and tilt things even more steeply in their direction. (p. xx)

What REDMAP managed to do was to “[...] build a firewall against the popular will. And it held strong” (Delay, 2017, p. xxii). Delay proposes an IRC as the solution, but he is convinced that this particular solution to gerrymandering is unlikely to come from either party. Even though the Republicans perfected gerrymandering in 2010, both sides have had a long and successful history of manipulating district lines for their own advantage. The initiative must come from the people themselves because “[when] voters are given a choice, fairness wins. Perhaps that’s why they’re not often given the option” (Delay, 2020, p. 105). Regardless of which party is responsible for gerrymandering, based on the evidence previously mentioned in this paper, the voters seem to be the losers all the same.

## 4.2 The History of IRCs

### 4.2.1 Arizona – Introducing IRCs on the Congressional Level

Arkansas was the first state to create and use an independent commission to draw new districts as early as 1936 (Torchinsky & Polio, 2022). The state still uses this commission, but only to draw its own legislative districts; the state legislature controls the lines of the congressional districts (Torchinsky & Polio, 2022). Thus, the idea of having independent organs administering the task of redistricting is not particularly modern. The first state to create an IRC in charge of the congressional lines, on the other hand, was Arizona in 2000 (Kruschke, 2022).

Prior to 2000, Arizona had experienced a troubled redistricting history. In 1971, the court had to redraw the map made by the state lawmakers because it divided the Native American tribe reservation of Navajo into three different legislative districts (Cain, 2012). Ten years later, the Republican-controlled legislature proposed a new map, overriding the Democratic Governor’s veto, that was rejected by the federal court for “diluting the Native American vote and failing to achieve sufficiently equal population” (Cain, 2012, p. 1830).

Due to these issues, Proposition 106, a citizen initiative to remove the power to draw both legislative and congressional lines from the state legislature to an IRC, went on the ballot in 2000. (Betts, 2006) The initiative received support from Common Cause and the Democratic Party (Cain, 2012). The Arizona Independent Redistricting Commission (hereinafter AIRC) consists of five citizen volunteers selected by legislative leaders from both parties. Two of the members represent the Republican Party, and two represent the Democratic. Of these partisan members, no more than two may live in the same county (Cain, 2012). They must be registered to vote in Arizona and have been registered with their political party for over three years. However, during these three years, they “must not have been appointed to, elected to, or been a candidate for any public office” (Torchinsky & Polio, 2022, p. 551). The fifth member of the commission must be an independent: A person who is not registered with either party (Cain, 2012).

The commissions’ first maps, drawn after the 2000 census, were challenged by the Justice Department for violating the voting rights of Latinos. The maps were revised and passed the preclearance. Still, the maps were also challenged in state court for not drawing competitive enough districts when “it was possible to do so” (Cain, 2012, p. 1832). As the AIRC’s troubles continued, the state legislators challenged the commission, claiming it violated the United States Constitution in the State Court, a case eventually decided by the Supreme Court in *Arizona State Legislature v. Arizona Independent Redistricting Commission* (2015). The plaintiffs argued that AIRC ignored the Elections Clause, which states that the authority over redistricting lies with the legislators, by placing it in an independent commission (U.S. Const. art. I, § 4, cl. 1).

It was the word *legislature* in the Constitution that caused the dissent. Justice Ruth Ginsburg approved the commission and acknowledged its constitutionality by defining *legislature* as a word equivalent to *the people* since the Election Clause was meant to encompass the power of the people to make their own laws. Together with four other justices, she agreed with the defendant’s opinion that “‘the Legislature’ is not confined to the elected representatives; rather, the term encompasses all legislative authority conferred by the State Constitution, including initiatives adopted by the people themselves” (*Arizona State Legislature v. Arizona Independent Redistricting Commission*, 2015, “Opinion of the Court” p. 2). Ultimately, the authority of lawmaking possessed by the state legislature is based initially on a grant by the

people, and the people themselves are, therefore, the originating source of all the powers of government.

Justice Robert, the one writing the dissent, strongly disagreed with Ginsburg's interpretation of the Constitution. He claimed that the word *legislature* unambiguously referred, specifically and only, to "the representative body which makes the laws of the people" (Arizona State Legislature v. Arizona Independent Redistricting Commission, "Opinion of the Court" p. 2). He referred to other clauses in the Constitution which used the same term in this way and further specified this by explaining that when seeking the meaning of a word mentioned in the Constitution, "there is no better dictionary than the rest of the Constitution itself" (Torchinsky & Polio, 2022, p. 553). Still, the case now serves as a precedent that justifies the creation of other independent redistricting commissions, which is one of the reasons why there has been an increase in the establishment of these commissions (Torchinsky & Polio, 2022).

#### 4.2.2 California – Improving the Arizona Model

Despite AIRC's first set of maps being challenged by the Justice Department, the initial experience with AIRC was positive enough to encourage California to adopt a similar system (Cain, 2012). Like Arizona, California also had a troubled history of redistricting. During the 1970s and the 1990s, the Democratic Party controlled the legislature while the Governor represented the Republican Party. This caused problems with drawing congressional districts, and the California Supreme Court had to redraw the maps (Ancheta, 2014). In the 1980s and the 2000s, the Democrats controlled both the legislature and the governor's seat. However, the maps were still challenged through several ballot referenda, which gives citizens the opportunity to repeal a law, and voters rejected the plans that were labeled partisan gerrymandered by opponents (Ancheta, 2014). Proposals to implement an independent commission to draw district lines failed several times, and from 1982 to 2005, voters rejected four such propositions before Proposition 11 became a success, and the California Citizens Redistricting Commission (hereinafter CCRC) was established in 2010 to draw congressional districts (Ancheta, 2014).

With its fifty-two congressional districts, California is the U.S. state with the largest population, giving the fourteen CCRC commissioners an immense task. Five of the members

represent the Democratic Party, five represent the Republican Party, and four are from neither party (Ancheta, 2014). The partisan commissioners must have been a party member for at least five years and voted for this party in two of the past three statewide elections. Additionally, like in Arizona, the members must not have “a significant role in a party or campaign committee, working as a registered lobbyist, or being a major contributor to a political campaign” (Ancheta, 2014, p. 117). The members of CCRC are chosen by the Applicant Review Panel, composed of staff from the Bureau of State Audits, a state agency that serves as an auditor of financial and operational activities within the state (Torchinsky & Polio, 2022). Like the CCRA, the Applicant Review Panel is also independent and consists of three members: one from each party and one from neither (Ancheta, 2014). This panel chooses the sixty applicants whom they consider to be the most qualified. The first eight members of CCRA, three Democrats, three Republicans, and two from neither party, are chosen after a randomized selection process before these eight members choose the last six to form the commission (Ancheta, 2014). After proposing a map, the plan needs at least three approving votes from the Democrats, three from the Republicans, and three from members from either party (Ancheta, 2014).

Besides a relatively complex structure and selection process, the CCRC also includes a number of ranked criteria on how to draw a new map. Most of the requirements do not differ from previous redistricting cycles in California, nor are they much different from criteria found in other states (Ancheta, 2014). However, one significant difference between California and Arizona is that California does not require districts to be competitive, which is one of the requirements in Arizona (Betts, 2006). This might be due to California’s political geography, where Democrats and Republicans generally reside in different parts of the state. Democrats are usually concentrated in urban areas along the coast, while Republicans are located in rural areas, which makes it challenging to design districts that are competitive and do not look like something that resembles Delay’s (2017) description of Michigan’s 14<sup>th</sup> district (McGhee, 2020).

#### 4.2.3 Michigan – “Put People Back in Charge”

As described in the previous section of this thesis, Michigan has also experienced trouble with partisan gerrymandering resulting in odd-looking districts and election results that do

not reflect the people's will. Eventually, the year after Daley's publication of *Ratf\*\*ked* (2017), sixty-one percent of Michiganders voted to establish the Michigan Citizens Redistricting Commission (hereinafter MCRC) (Zhang, 2021).

Michigan used California as inspiration and created a commission with thirteen randomly selected members (Torchinsky & Polio, 2022). The members were two sets of four people representing each major party and five independents, which differed from CCRC's even-numbered commission that could deadlock. The method of selecting members is also influenced by California. In addition to open applications, the Michigan Secretary of State encourages citizens to apply by mailing applications to 10,000 randomly selected registered voters. The Secretary of State's Office then randomly selects sixty who self-identify as Republicans, sixty who self-identify as Democrats, and eighty who identify as independent (Torchinsky & Polio, 2022). Political actors and their immediate families are banned from serving, and the state constitution also prevents anyone from serving if the person currently is, or has been for the last six years, "a candidate or elected official to a partisan office; a member of a political party's leadership; an employee of the legislature, partisan officials, candidates, or political action committees" (Ortega, 2020, p. 400).

Even though adopting an IRC occurred recently, the MCRC has already proven successful regarding both competitiveness and reducing disproportion. Before the implementation of the MCRC, the efficiency gap was almost twelve percentage points in favor of the Republicans, while the new map after the 2020 census, the efficiency gap was practically zero and clearly indicated increasing competitiveness (FiveThirtyEight, 2022). Additionally, each party's number of House seats is now more accurately reflected by the statewide popular vote. Based on the election results in Michigan in 2016 (the last year with legislative redistricting) and in 2022 (the most recent election with lines drawn by MCRC), the problem of disproportion is also solved (Office of the Historian, n.d.). In both 2016 and 2022, the Republican Party received forty-eight percent of the statewide popular vote. Despite the same percentage of votes, the Republicans collected a different number of House seats; in 2016, they won nine seats, and in 2022 the number was reduced to six.

The cases from Arizona, California, and Michigan show that the IRCs do indeed help solve the problem of disproportion and tend to make districts less safe and therefore induce competitiveness. But, on the contrary, they also raise an array of other issues.

### 4.3 Difficulty Implementing IRCs

If the IRCs are considered the most democratic way to redistrict, why do so few states use them to redraw congressional districts? Despite the many merits of using IRCs, this arrangement has been proven difficult to implement. According to research by Nicholas Stephanopoulos (2007), most redistricting initiatives fail. He claims that the redistricting system in the U.S. is “rotten” (p. 331) because the lines are drawn in a way that deprives people of their democratic values. Thus, he tries to analyze how to successfully implement an IRC by examining twelve ballot initiatives.

All independent commissions created in the U.S. originated from ballot initiatives (Torchinsky & Polio, 2022). Twenty-four states allow citizen-driven ballot initiatives. Although the requirements for ballot initiatives differ in each state, it usually starts with a petition that has to attain a certain number of signatures from state residents to put it on the ballot. Voters in each state can then approve or deny the ballot initiative, and if the initiative receives enough votes, it is passed into law (USA Facts, 2022).

The reason why all IRCs are created through citizen initiatives is mainly that, as Lowenthal (2019) claimed, the party in power is unlikely to give up its ability to redistrict since they are most likely in charge *because* of this power. Justice Kagan, who wrote the dissent in *Rucho v. Common Cause* (2019), stated: “The politicians who benefit from partisan gerrymandering are unlikely to change partisan gerrymandering. And because those politicians maintain themselves in office through partisan gerrymandering, the chances for legislative reform are slight” (p. 30). In other words: Partisan motives makes implementing IRCs challenging.

Citizen initiatives are therefore considered to be the best way to implement changes to the redistricting process and to create IRCs “because it is an area where legislators' self-interest often trumps the pursuit of the public good” (Stephanopoulos, 2007, p. 334). However, because these initiatives will seldom gain support from the party in power, the people proposing changes are often dependent on assistance from the party in opposition. Stephanopoulos (2007) points out that the expenses of placing ballot initiatives are so high that it is nearly impossible for ordinary people to participate in this process without help from

organizations, for instance. Kang's (2006) opinion matches Stephanopoulos', and he says that the cost of exercising this form of direct democracy is too high to be used on a regular basis. Money plays a significant role in such campaigns because of the large number of signatures required: "As a result, 78 percent of initiative campaigns are won by the side that spends more money, and opponents of a measure who outspend its backers win 90 percent of the time" (p. 344).

Another factor that could help a ballot initiative to succeed is help from major newspapers, interest groups, and respected politicians. Stephanopoulos (2007) presented a study from 1991 showing that voters who knew of a particular politician who opposed a measure were more likely to oppose the measure themselves. Lastly, the framing of the initiative, the way it is constructed, is essential. It is proven that one of the most critical elements of initiative campaigning is the "drafting of messages designed to gain support or test likely objections for a ballot measure" (p. 344).

Even though the idea of ballot initiatives, and this form of direct democracy, is favorable because it invites the people to engage in the fundamental issues of democratic governance, some factors make it challenging. Stephanopoulos (2007) sums it up like this:

In short, redistricting initiatives generally fail because they provoke fierce opposition from the majority party in the state legislature, which feels threatened by the possibility of fairer district lines. The majority party typically raises more money than the initiative's supporters, argues more creatively and vociferously for its position, and manages to cast the debate in a light more favorable to it. On the other hand, redistricting initiatives succeed when for some reason the legislative majority party is unable to mobilize in opposition [...] The default, unfortunately, is that redistricting initiatives fail, and something out of the ordinary must transpire for them to prevail at the polls. (p. 383)

#### 4.4 IRC – An Undemocratic Solution to a Democratic Problem

Even though several states have tried to pass legislation that makes it harder for legislators to participate in the redistricting process and leave this task to the citizens, some are more

skeptical of this method of redistricting (Gartner, 2019). The IRCs may claim to be independent and appear to be the ideal solution for redistricting; however, “redistricting commissions often do not act neutrally, increase electoral competitiveness, or respect traditional districting criteria any more than their legislative counterparts” (Torchinsky & Polio, 2022, p. 572). In the same way some scholars claim that partisan gerrymandering is one of the greatest threats to democracy, other scholars have an equal view on IRCs; they have “discovered that even truly independent methods of redistricting may produce quite biased results” (Kang, 2006, p. 684).

#### 4.4.1 Truly Independent?

The first problem of IRCs is that most of these commissions are not as independent as they claim to be. In this context, independence refers to the commissions’ separation from the state legislatures (Torchinsky & Polio, 2022). However, this is not always the case.

In Arizona, the legislators have three opportunities to influence the structure and the work of the AIRC. Firstly, the legislators confirm the Governor’s selection of appointments to the Commission on Appellate Court Appointments, a commission that creates a pool of potential candidates for the AIRC. Secondly, the legislators can then choose members of the AIRC from this pool. Lastly, they can also give feedback on the proposed redistricting plan (Reyes, 2011). Additionally, they can remove a commission member “for substantial neglect of duty, gross misconduct in office, or inability to discharge the duties of office” (Torchinsky & Polio, 2022, p. 553). If the definition of *independent* implies that the commissions are separate from the state legislature, the AIRC is not truly independent when the political actors in Arizona select its members.

The MCRC, however, does not allow legislators to assist the commission’s mapmaking at any point in the process, and the Governor also plays no role. Even if one of the seats in the commission becomes vacant upon death, the legislators are not permitted to fill the seat (Torchinsky & Polio, 2022). The only chance the Michigan legislators can influence the process slightly is when the state House and Senate may reject up to five applicants each before the final thirteen members are “randomly selected” (Torchinsky & Polio, 2022, p. 544).

Even though the MCRC is considered more independent than the AIRC, Michigan's commission has a number of other flaws. For instance, the Michigan Constitution states that all applicants will be "randomly" selected. At the same time, it also says that the selection process has to be "statistically weighted" to ensure that the 200 final applicants mirror the geographic and demographic makeup of the state as closely as possible (art. IV, §6). Based on the words used in the state Constitution, describing the members as "randomly" selected seems contradictory when the pool of applicants has been chosen through a "statistically weighted" process. These two methods do not coalesce, and the selection may not be as random as it appears in theory.

Another factor that may cause trouble in Michigan is that the members of the MCRC only have to "self-identify" as either Republican, Democrat, or independent. While California and Arizona have criteria that the partisan members must be registered as members of the party they affiliate with, this is not a criterium in Michigan (Torchinsky & Polio, 2022). It may cause partisan imbalance when members do not "officially" belong to their affiliated party; in addition to independent members not being truly independent, there is also a chance that the Republicans are not really Republicans and that the Democrats are not really Democrats.

#### 4.4.2 Lack of Transparency & Accountability

One issue that opposes the political process and democratic values is the lack of public accessibility and transparency. Many redistricting commissions provide no institutional assurance of transparency or popular input, thus instead creating barriers to public participation. The IRC in Michigan has already received criticism for its need for more transparency. The commission held closed sessions when drawing the new lines, and despite citizens' and state senators' requests to review the documents providing insight into their decisions, MCRC denied release (Torchinsky & Polio, 2022). This is partly due to the unaccountability of the MCRC, where the members have "absolutely no incentive to provide transparency or necessary information to the public or press, creating a troubling precedent. (Torchinsky & Polio, 2022, pp. 546-547).

The MCRC is also considered to be one of the most unaccountable commissions in the country (Torchinsky & Polio, 2022). In modern societies and democracies, the legitimacy of governmental authority is generally assumed to rely on the people's consent. Therefore, the

fact that public officials should be held accountable for the decision they make is often emphasized. Voters should be able to hold the government responsible for their specific policy choices to ensure these decisions are compatible with the majority's preferences (Staszewski, 2009). Political accountability is provided through elections, which means that voters have the possibility to elect a representative and then decide if that same person should remain in office at the end of the specified term. The U.S. President is the only nationally elected official in the American system of government, and his or her decisions will presumably reflect the preference of the majority of the voters (Staszewski, 2009). However, if the President abandons the will of the American people, he or she can be held accountable at the next election. Voters may accept or reject officials based on their performance in office, and "the public's inability to approve or disapprove of commission decisions erodes the essential constitutional check on governmental overreach that the Founders envisioned" (Torchinsky & Polio, 2022, p. 535).

A major failure of IRCs is that they cannot be held accountable for their actions. The government is improved by accountability to the voters, "not to bureaucrats appointed to boards" (Kang, 2006, p. 680). In other words, this extreme case of independence from legislative power in MCRC causes unaccountability. With this reasoning, AIRC could be considered more accountable than MCRC because it includes the elected legislators in some of the parts of the redistricting process. Legislative redistricting is, therefore, the more accountable method of redistricting, thus maintaining an essential democratic value. If the commissioners of an IRC draw lines considered unfair or incoherent by the public, the members are "subject to little to no public accountability" (Torchinsky & Polio, 2022, p. 569). If elected officials, on the contrary, were to implement an unfair map, they risk their jobs and could be voted out of office; legislative voting records are publicly accessible in all states (Torchinsky & Polio, 2022). Moreover, in the case of *Rucho v. Common Cause* (2019), the Court clearly stated that partisan gerrymandering is a *political* problem beyond their reach, and Kang (2006) also noted that redistricting is a *political* task, thus "political questions deserve, even require, political answers" (p. 690). Indeed, scientist Charles S. Bullock III calls redistricting "the most political activity in America" (Daley, 2017, p. 161), and Oedel et al. (2009) clearly state that you "can't take politics out of politics" (p. 64). Redistricting is, therefore, not a task that should be left to ordinary citizens when legislators are already elected to do this exact job.

Another factor that makes the IRCs less accountable than legislative redistricting is that the commissions only function for a short period of time (Torchinsky & Polio, 2022). Mostly, the commissioners are temporary members that do not work with redistricting full-time, and generally, they do not serve on an IRC for more than one cycle. They have limited experience with redistricting compared to the legislators, which is what Chavez (2011) describes in his research:

The Legislature may have a vested interest in the outcome, but it also has more relevant knowledge and experience. Legislators are extremely familiar with their districts, their constituents, and their needs, and they usually have a better understanding of these concerns than do outsiders. Legislators are thus best able to tailor districts to represent constituent communities and their interests. (p. 368)

Finally, this implies that *independence* is not necessarily equivalent to *democratic*. Democratic means, based on the given definition in the introduction of this thesis, that the power originates with the people, namely the legislative power, not an “independent” and “randomly selected” commission. Yet, some scholars still claim that this lack of accountability is “a small price to pay for achieving supposedly greater competitiveness and partisan balance” (Torchinsky & Polio, 2022, p. 571). However, other problems with IRC are in conflict with fundamental democratic beliefs.

#### 4.4.3 Other Shortcomings of the IRC – Competitiveness & Partisan Balance

When an IRC is responsible for redistricting, it is still not ensured that the new districts will become more competitive or that they are, in any other way, an improvement of the legislators’ plans. Maps drawn by IRCs are still challenged in Court, for instance, and California, for example, does not even have a criterium demanding that the districts drawn should strive for competitiveness (Kruschke, 2022). Although California is the most populous state, and most states have a less demanding task of redistricting, the concentration of Democrats and Republicans is often similar in other states as well. In general, Democratic voters tend to live in cities and other urban areas, while Republican voters live in more rural places (Harvard University, 2021). Due to where Democrats and Republicans tend to live, it is not always possible to draw competitive districts without breaking county lines and

ensuring all counties have an equal population, which is the case in California. Therefore, when the production of competitive districts is not a criterium, per se, and when it is not always possible to do so anyway, even an IRC cannot guarantee competitiveness.

Despite California's inability to produce competitive districts, this was indeed the one thing supporters of Proposition 11 promised. The most significant contributor and fundraiser for the proposition, Governor Schwarzenegger, said that the IRC would increase competitiveness. As discussed, however, this did not happen, or at least not to the extent people were promised (Chavez, 2011). When the competitiveness did not significantly increase, discussion arose about whether or not competitiveness is even desirable. In a winner-take-all system and in single-member districts, like all congressional districts in the U.S., there will *always* be wasted votes (Norris, 1997). When districts are competitive, and the winning candidate defeats the losing candidate with a narrow margin, there will consequently be a large number of wasted votes, and almost all these wasted votes will be from only the losing party. If legislators are elected from less competitive and more homogeneous districts, they "will be more representative of more of the district's voters" (Chavez, 2011, p. 341) and, therefore, it might be beneficial to design districts with a "greater geographic clustering of the like-minded" (McCarty et al., 2009, p. 672). Thus, competitive districts may maximize the number of wasted votes, while non-competitive districts may maximize voter satisfaction. However, the question of whether competitiveness is something to even strive for, whatsoever, is a discussion of its own and beyond the scope of this paper.

Even partisan balance is not ensured when using an IRC. Despite the independent commissioners, the members that affiliate with either party, who often work as tiebreakers in IRCs, the final outcome does not automatically become neutral or independent. Miller & Grofman (2013) explain this in their research and claim that "usually the tiebreaker ends up in agreement with a plan proposed by just one of the two parties" (p. 648). This creates "partisan controversy equal to or greater than a legislature-controlled process" (Torchinsky & Polio, 2022, p. 572). Another example of how IRC does not promise partisan balance is the situation in California. While Michigan, Colorado, and Arizona have managed to produce fairly competitive elections after implementing an IRC, California has not. The state's efficiency gap favors the Democrats with 5.3 percentage points, which equals almost three House seats in a state with fifty-two congressional districts (FiveThirtyEight, 2022). Thus,

based on Stephanopoulos and McGhee's (2015) efficiency gap, California, despite its IRC, is considered a gerrymandered state and gives the Democrats an unfair advantage.

In addition to the question of whether the IRCs provide partisan balance or not, the apparent partisan motives that inspire the establishment of IRCs are also worth mentioning.

Gerrymandering has received critique because of its partisan and biased nature (Lowenthal, 2019). Even so, partisan motives also influence the creation of IRCs in the same way partisan reasons cause gerrymandering. This can be seen in the cases of California and Arizona, as briefly mentioned above: In California, the Republican Party, despite some doubts, were more supportive of an IRC than the Republican Party in Arizona, where they strongly opposed the idea. The situation in Illinois is similar, where the Republican Party proposes implementing an IRC (Hancock, 2021). It emphasizes the fact that in cases of redistricting, where one side decides where they stand on the matter, and "especially in states where the prospect of the minority party ever gaining legislative control are dim to nonexistent, the outside party is usually more willing to experiment with new processes" (Cain, 2012, p. 1831). This indicates that even the creation of IRCs, like partisan gerrymandering, is driven by biased intentions. In Arizona and California, it appears as if the parties choose the solution that suits them best, whether this is to create an IRC or to gerrymander, and then find the reason and explanation that is most compatible with their decision; what is most important, is that those in power, stay in power (Lowenthal, 2019). Alternatively, as Daley (2017) described in his book: "When you have power, 'you exercise it.' When you don't, you try and remove the other side's advantage 'under the cloak of good government'" (p. 79).

Kang (2006) agrees with Staszewski's view that IRCs lack the democratic value of accountability, and Kang states that it "occurs too isolated from public engagement, too distant from public scrutiny, and too insulated from popular accountability" (p. 668). He continues by saying that it is misleading to believe that redistricting needs political neutrality. Ironically, it is not a problem that redistricting, in states where legislators draw the district map, is too political; on the contrary, it is a problem that it is not political enough. He goes on to quote a Republican consultant who said that the "new [redistricting] plan basically does away with the need for elections" (p.667). Kang claims all the anger towards partisan gerrymandering has caused activists and promoters for IRCs to overlook forgotten values of the political and democratic process.

Kang (2006) believes the future of redistricting is heading in the wrong direction and proposes direct democracy as a middle way between legislative redistricting and an IRC to pass any statewide redistricting plan. Redistricting “implicates deep questions of politics and democratic values that demand popular involvement” (p. 690). Direct democracy is frequently praised as “democracy in its purest form” (Staszewski, 2009, p. 1263) because it invites the public into essential democratic governance. In redistricting matters, this means that all citizens can participate in deciding where the lines should be drawn. Kang (2006), who supports the idea that IRCs lack accountability and are therefore undemocratic and disrespectful, suggests that maps drawn by legislators should be subject to a statewide popular vote. The winning proposal in this direct democratic election will be enacted.

What Kang (2006) fails to mention, however, is the fact that almost every IRC created is created through ballot initiatives (Torchinsky & Polio, 2022). He agrees with Staszewski’s (2009) research that ballot initiatives are often categorized as “lawmaking by the people” (p. 1263), and this process is considered the “‘ideal’ form of decision-making in a democracy” (p. 1263). If ballot initiatives, and direct democracy, really is the ideal way of decision-making, why is it not reasonable, according to Kang (2006), to use IRCs for mapmaking when the majority of IRCs have been implemented in this exact way? If the choice to adopt a commission, although lacking in democratic standards, has been made based on a popular vote, and the majority of citizens has approved the decision, should it not be acceptable? Kang’s (2006) reasoning appears somewhat inconsistent when he argues that democratic values only should be respected in connection with the ballot initiatives but not when the ballot initiative includes the citizens’ request for an IRC. Per se, implementing an IRC by a ballot initiative is indeed *democratic* because it is “government by the people” (Mulgan, 1968, p. 4).

In conclusion, although the IRCs reduce the threats to democracy that legislative redistricting causes, they have several other shortcomings that also constitute threats to democracy and a fair decision-making process. Therefore, a search for an even better solution has been initiated.

## 5. Other Solutions

There are other ways to avoid partisan gerrymandering and to construct a redistricting commission. Generally, a redistricting commission falls into one of four main categories: If it is not a truly independent commission that is (or at least claims to be) entirely insulated from legislative control or influence, is either an *advisory commission*, a *backup commission*, or a *political commission* (Torchinsky & Polio, 2022).

### 5.1 Political Commissions – The Best of Both Worlds?

As previously mentioned, four states use IRCs for congressional redistricting, while the legislative power, either the Democratic Party or the Republican Party, has control of the district lines in thirty-three states. The remaining seven states use *political commissions*. There are still six states left, but these states only have one at-large district and do not need congressional redistricting (Loyola Law School, n.d.). Like the IRCs, the political commissions' composition varies from each state. They are similar to IRCs, but instead of having members that are randomly selected citizens, the members of a political commission are mainly appointed by the legislators (Loyola Law School, n.d.).

Below, I will look closer at New York, which has a combined solution, including the use of a political commission and the state legislature.

#### 5.1.1 New York

In 2014, the state of New York decided to implement a redistricting commission to draw both legislative and congressional districts in an attempt to end the problem of partisan gerrymandering (Li, 2020). The commission consists of ten members, where eight members are appointed by four legislative leaders from both the majority and minority parties, and these eight members then appoint the last two. Because the legislative leaders nominate the members, this is not considered an IRC, but instead, a political commission (Loyola Law School, n.d.). As discussed above, the involvement of the legislative power might help increase the commission's accountability, which, as previously discussed, is one of the main problems of the IRCs. However, unlike the IRCs, the political commission in New York does

not have the final say on maps. Instead, the commission proposes a district plan that the legislative power must approve, and if the lawmakers reject two proposals in a row, the legislative body is free to both draw and enact their own map (Li, 2020).

A political commission with the requirement of the legislative body's consent would probably work best in states where the legislative power is split between the Republican Party and the Democratic Party, and one of the parties is in control of the state House of Representatives and the other party in control of the state Senate. With the power split, it is essentially impossible for the legislators to agree upon a district plan, and the will to compromise is possibly stronger (Li, 2020). This way, the legislators may either approve the maps drawn by the political commission or oppose their plans and risk having the State Court draw a map. Thus, in theory, the idea of a political commission may sound favorable; however, in reality, it appears only as a detour for the legislative power to achieve what they would have attained anyway without a political commission.

Today, a split legislative power is not the case in New York, and the Democratic Party has control of both the state House of Representatives and the state Senate (Li, 2020). If the Democrats turned down the proposals from the political commission, the party would be free to gerrymander the whole state. After the 2020 census, the Republican members of the political commission managed to avoid this by deadlocking the process, and the commission then had no plans for the legislative power to review. This resulted in a better alternative for the Republican Party: a court-drawn map. Even though a court-drawn map was never the original intent when establishing a political commission, the map used in the 2022 election turned out to be one of the country's most balanced and competitive plans (Li, 2020).

## 5.2 Advisory Commissions & Backup Commissions

Some states that use the legislative power as their congressional mapmakers also include either an advisory commission or a backup commission in their process. An advisory commission is used in *advance* of the enactment of a district plan, while the backup commission may be used afterward if the intended map fails to pass (Loyola Law School, n.d.).

Again, the commissions vary depending on the different states' arrangements. Advisory commissions advise the legislators on where lines should be drawn, and in some states, the commissions also draw map proposals. Some commissions are created by a written law passed by the state's legislative body, while others are written into the state constitution, thus more challenging to possibly eliminate by the legislators. One factor they all share, however, is that the legislators have the final say (Loyola Law School, n.d.).

In other words, like the political commission in New York, an advisory commission does not necessarily impact legislative redistricting or affect the outcome. In Utah, for instance, an IRC, created based on a ballot initiative and working as an advisory commission, proposed dozens of district plans (Walker, 2022). Nevertheless, in the 2020 cycle, Republican Governor Spencer Cox signed another map into law that completely ignored the commission's suggestions and cracked Democrats in Salt Lake City into *all* of the state's four districts, making them safely Republican districts. If Cox had approved one of the commission's maps, the area around the state capital could have created a Democratic district. This would have more accurately reflected the statewide popular vote while at the same time leaving the Republican Party with the majority of the four House seats (Walker, 2022).

A backup commission, on the other hand, influences the redistricting process after the legislators have drawn the maps. These commissions draw new lines if the lines drawn by the legislators fail to pass as a new map. In Maryland, the Governor works as the backup commission, and his or her preferred plan is enacted if the legislature does not successfully pass a map, while the Secretary of State works as the backup commission in Oregon (Loyola Law School, n.d.). For this reason, regardless of their structure or function, the commissions do not ensure outcomes not driven by partisan motives. Also, unlike the advisory commission, which always provides advice before redistricting, the backup commission is only significant if the legislature does not pass a map. In the cases where the legislature is able to pass a new district plan, the backup commission is irrelevant. For instance, legislators in Ohio passed a redistricting plan after the 2010 census that favored the Republican Party with an efficiency gap of almost twenty percentage points, which equals over three House seats. In response to the highly gerrymandered map, a backup commission was established before the 2020 census. So far, the commission has had no actual significance, and today's map still has an efficiency gap that indicates partisan gerrymander (FiveThirtyEight, 2022).

This is similar to Chavez's (2011) research and proposed solution. When he evaluates the IRC in California, he argues that the commission will doubtfully produce any competitive districts, and therefore, an IRC is not appropriate for redistricting. Instead, the mapmaking should be left to legislators, and an IRC "could be most helpful not in drawing lines, but in reviewing the maps developed by the Legislature" (p. 372). In theory, this would closely resemble a backup commission and, therefore, based on the evidence previously offered, probably not work well in practice.

### 5.3 State Courts as Mapmakers

In 1946, the Supreme Court implied in *Colegrove v. Green* that it was unthinkable that redistricting could be done by the courts. However, several years later, the judicial power drew many of the congressional maps used in the 2022 mid-term election. In the 2022 election, state courts were responsible for eight states' district maps; the court drew ninety-one districts, which equals over one-fifth of all districts. Based on the old congressional maps, the total number of relatively competitive districts in these states went from seventeen to thirty-seven after the state courts revised the maps (Leaverton, 2022). The courts only draw maps in situations where the original mapmakers have failed to pass a map, and their involvement occurs only after a lawsuit is filed. No states use their state court as their default way to draw maps (Persily, 2005).

Although competitiveness is proven to increase when the courts draw maps, it is not the ideal way to pass a new district map (Li, 2020). The thesis has referred to statements by several scholars that the responsibility of redistricting should lie with the state legislatures. The process is merely political and needs elected officials to ensure accountability. Hence, the judiciary power is not suitable for this assignment. The point of the separation of powers, and the system of checks and balances in the U.S. government, is to prevent any single branch from attaining too much power or power interfering with its original responsibilities (Congressional Research Service, n.d.). Therefore, it is the court's duty to *evaluate* a map, not design one that the justices identify as fair. As mentioned in connection with *Rucho v. Common Cause*, the U.S. Constitution clearly emphasizes that "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature" (art. I, §4, cl. 1). They also ruled that partisan gerrymandering as a

political matter was not within the jurisdiction of the Supreme court (*Rucho v. Common Cause*, 2019).

A similar conclusion was previously also given in *Vieth v. Jubelirer* (2004), where the Supreme Court ruled that partisan gerrymandering was generally not considered unconstitutional, and the court was not able to determine whether or not partisan gerrymandering had become *too* partisan because there are no clear standards for this. However, despite a dissent, eight of nine justices agreed that “partisan gerrymandering is unconstitutional *only if used excessively*” (Tolson, 2010, p. 865). The Supreme Court inferred that partisan gerrymandering is not wrong but instead “allows some partisanship in our political maps, so long as it does not go ‘too far’” (Barrow, 2018). The justices were nonetheless incapable of answering what “too far” in reality implies. Therefore, based on these rulings and their arguments, redistricting, and mapmaking should also be a task considered beyond the courts’ reach. As Kang (2006) expresses in his research: “Courts are not mere referees of the redistricting process; they have become active players often placed in the uncomfortable role of determining winners and losers in redistricting, and, therefore, elections” (p. 674).

To sum up, even though IRCs are not the perfect solution for redistricting due to their lack of accountability and involvement from the legislators, the various solutions mentioned in this section do not seem to improve the situation or be ideal; the commissions are mostly insignificant, and there are still partisan biases that affect the redistricting and result in deadlocks, and courts go beyond their given jurisdiction by making maps.

#### 5.4 “The Bright Side of Partisan Gerrymandering”

Many scholars argue that partisan gerrymandering often reduces competition by protecting incumbents (Lowenthal, 2019). On the contrary, both Kang (2005) and Gelman & King (1994) prove that it actually does quite the opposite because partisan gerrymandering only protects incumbents that survive the redistricting; however, many of the incumbents do not.

Gelman & King (1994) assume that mapmakers are motivated by not only a partisan advantage but also incumbent protection, which are two competing goals. If a party wants

partisan advantages by increasing the number of House seats, this usually happens at the expense of their incumbents; they are often forced to give up their electoral safety in order to increase their number of legislative seats. Most incumbents would like to avoid redistricting because they are fighting for their political survival while simultaneously wanting to redistrict in favor of their party. It provides uncertainty and creates an undesirable situation for most politicians. The tension between these two goals makes the outcome of the redistricting process uncertain and less safe than often assumed. By creating a high level of uncertainty, redistricting, whether partisan or bipartisan, increases responsiveness because the incumbents are not safe in their current districts. Responsiveness is similar to accountability and is defined by Gelman & King (1994) as “the degree to which the partisan composition of the legislature responds to changes in voter preferences” (p. 542).

This is also examined by Kang (2005), who explains that the responsiveness in safer districts decreases over time because “it becomes easier for incumbents to stray from their constituents' wishes and win re-election based on the major advantages of incumbency” (p. 458). In his research, Kang (2005) attempts to answer the justices' question raised in *Vieth v. Jubelirer* about how partisan is “too partisan.” He distinguishes between two types of gerrymandering: *offensive* and *defensive*, and he only considers the latter a threat to democracy. He defines offensive gerrymandering as a technique that attacks the opposition. Defensive gerrymandering, on the other hand, is used as a strategy to try to make reelection easier for the incumbent and its party by keeping its voters in their own incumbents' districts to ensure they keep their seats; “it is defensive in the sense that it defends what the redistricters already have” (p. 444). Although these two methods are related and often combined, they serve two very different purposes, and Kang proposes that *defensive* gerrymandering is the type of gerrymandering that should be considered as gerrymandering gone “too far” (Barrow, 2018, p. 17).

Offensive gerrymandering is where the majority party has a limited number of voters to redistribute, so the party must choose whether to make the incumbents safer in their districts by “adding” more of their own voters to this district or make the opposition's incumbents less safe by “removing” voters for the opposition party into another district. When the number of voters to redistribute is limited, this party must not waste any votes by winning districts with extremely large margins or losing a district with a narrow margin. Instead, these otherwise wasted votes need to be distributed among other districts to help the party's incumbents from

a narrow defeat to a narrow victory (Kang, 2005). If the goal is to defeat the opponent with a narrow margin, this will consequently also increase the competitiveness and make incumbents less safe. Kang (2005) describes offensive gerrymandering this way: “[it] offers important benefits that are often overlooked. Rather than bemoaning partisanship in redistricting, we ought to be alert to how partisanship, in the form of offensive gerrymandering, produces greater responsiveness and competition” (p. 455).

Safe incumbents tend to become less responsive or accountable as they gain increasing security while in office. The act of offensive gerrymandering threatens incumbents by forcing them to worry about reelection. For instance, the hijacking and kidnapping techniques contribute to this by forcing incumbents to run against each other. Kang (2005) claims that legislative redistricting and offensive gerrymandering are misunderstood. When most people refer to gerrymandering, they refer to the biased act of one party’s manipulation of district boundaries to achieve an unfair advantage against the other party. However, he believes there are merits of gerrymandering that are ignored or, in some cases, not even acknowledged: “Offensive gerrymandering provides underrated benefits, whereas contemporary redistricting already features an excess of defensive gerrymandering by self-interested incumbents” (p. 461). In other words, it is the partisan motives, executed by hijacking and kidnapping, that create competitiveness. A commission without these partisan motives, like an IRC, would therefore not achieve this the same way the legislators would, and thus, another reason why legislators should remain in charge of the redistricting process. Additionally, election analyst Gonzales (2022) also claimed that there are just as many competitive races, if not even more, than average after the 2020 redistricting cycle, which might have resulted from the legislators’ partisan motives.

Another common claim is that partisan gerrymandering results in disproportion, an uneven allocation between the number of votes a party receives and the number of seats they are rewarded. As seen in North Carolina, the Republican Party secured eight of the state’s thirteen congressional seats, despite the Democrats winning the statewide popular vote (Timm, 2021). Although this might be the case in some states, it did not reflect the reality of the 2022 election, for instance. In 2022, the Democratic Party had a more significant advantage under the FPTP system than what they would have had with proportional representation, which is illustrated in the following paragraph:

For the misrepresentation, claimed to be caused by partisan gerrymandering, many Americans blame the Electoral College and the election system, which includes FPTP and winner-take-all. Although the discussion of the American election system is beyond the scope of this paper, it is worth mentioning that an election system that uses proportional representation does not necessarily provide a fairer or more democratic result than FPTP. For example, in the 2022 midterm elections, with numbers provided by the Office of the Historian (n.d.), the Republican Party received 50% of all the popular votes cast nationwide, and the Democratic Party got 47.3%. If these percentages are converted into House seats, the numbers would be 218 for the Republicans and 206 for the Democrats. Currently, after the 2022 election, the Republicans have 222 seats, and the Democrats have 213. This means that the Democrats have seven more seats than what they would have had under a proportional representation, while the Republican's number is only four. In other words, the Democrats received 47.3% of the nationwide popular vote and, at the same time, received 49% of the seats in the House of Representatives. Although not a big difference, it does not indicate an imbalance between votes and seats that the Democrats often argue is due to partisan gerrymandering done by Republicans (Lowenthal, 2019).

Finally, when discussing partisan gerrymandering and to what extent this is indeed a problem, it is important to distinguish between the *process* and the *result* of a process. Williamson & King (2022) emphasizes this in their research:

Additionally, it is important to note that implementing any reform is likely to have partisan consequences, as well as other potential unforeseen or unintended consequences. However, it is important to differentiate between partisan-motivated reforms and reforms with partisan consequences. (p. 16)

Thus, it is never guaranteed that a democratic and apparently fair process will produce an equally democratic and fair outcome. IRCs generally provide satisfactory results, but the commissions themselves consist of elements that should not be associated with a democratic process. The state legislatures, on the other hand, contain the democratic factors which the IRCs lack. However, the results have the chance of being of a more biased nature and not as fair as the IRCs' redistricting. In other words, a democratic *process* does not necessarily provide a democratic *result*, and vice versa. Is it possible to achieve both? And if not, what should be strived for?

Dalton (2007), an American political scientist whose work has focused on the citizens' role in democracy, describes this exact problem:

[...] people most often think of democracy in terms of the freedoms, liberties, and rights that it conveys, rather than in terms of institutional structures and governmental processes. This implies that the popular appeal of democracy lies not in its procedures for elections and governance, but rather in the freedom and liberty that democracy provides. (p. 152)

Dalton implies that the government often focuses democracy-building on the institutional element of democracies. The requirements for a democratic process are clearly stated in the U.S. Constitution, but “The First Amendment does not care about outcomes so much as process” (Barrow, 2018, p. 4). However, this is not what the general public is drawn to. Instead, people want the liberty and the rights a democracy provides *through* the democratic intuitions the government conducts. This might explain why there is a growing number of IRCs implemented through ballot initiatives; people overlook the IRC and its shortcomings as a democratic institution but instead focus on what the commission provides. “Put simply, the respondents [...] are telling us that democracy is more than a form of government, and these political benefits are most salient to them” (Dalton, 2007, p. 152).

## 5.5 Direct Democracy

While New York may have failed in its attempt to combine legislative and independent redistricting by implementing a political commission, Kang (2006) introduces a solution that aspires to do the same. Moreover, it could prove to be more successful than New York's political commission. He suggests a reform that seems to ensure both a democratic process as well as a democratic result.

As discussed above, Kang's (2006) reasoning about the use of direct democracy appears somewhat paradoxical. However, his proposal, considered in isolation, contains qualities that could solve the problems of the IRCs' insufficiency. Kang proposes that the state legislators should be the official mapmakers, but the citizens must approve their plans through a statewide popular vote. The legislators' maps, two in Kang's proposal, will be presented to

the public, and the map that receives the majority of votes will be enacted. Various legislators would draft maps, discuss them, and vote on which two of the plans under consideration should be presented to the public.

In this way, the legislators remain as the mapmakers, and what is referred to as “the most political activity in America” (Daley, 2017, p. 161) is preserved in the hands of competent elected officials. They attain the accountability that the IRCs lack, and since the maps are presented to the public for a popular vote, the transparency is high. The public’s involvement reduces the chance of disproportion, or at least justifies it if it were to happen, because the winning map, since decided by a popular vote, will reflect the people’s will clearly enough.

Including the citizens not only contributes to more democratic decision-making; it also reduces the chances of aggressive and unfair gerrymandering. When the mapmakers know that their proposals will be subject to a popular vote, they are put under pressure, and consequently, their decisions tend to be more moderate than what they ideally would have preferred. Kang (2006) explains it like this:

[A party] will be defeated and their redistricting proposal will not be enacted into law unless they can produce a redistricting proposal that more closely matches the median voter’s ideal than the [the other party’s] proposal. The party that best caters to the median voter’s preference will win; the party that fails will lose and receive no payoff at all. (p. 706)

By first including the legislators in the decision-making process, as opposed to ballots initiated by the people, the proposals presented to the public are already reviewed, carefully discussed, and compromised by elected officials; only the final decision is left to the public. This way, the legislators, as policymakers, are not deprived of their *given right* by the Constitution (art. I, §4, cl. 1) to handle political questions. However, the people can still be directly included in the redistricting process to express their wishes. Thus, there will not be an “absence of an open political process that would balance the many relevant interests in redistricting” (Kang, 2006, p. 682).

Even though Kang’s idea has yet to be adopted by any U.S. state, Gartner (2018) expresses that “the dramatic success of redistricting initiatives in 2018 suggests that the wave of

redistricting reform is unlikely to break any time soon” (p. 585), and therefore, the creation of improved solutions, like Kang’s proposal, is not improbable to happen in the near future.

## 6. Conclusion

As this thesis shows through the provided examples from several different states, it is clear that gerrymandering, both racial and partisan, has been a controversial problem in the U.S. for several years: While some consider it a legislator's given right to decide where district lines are drawn, others believe independent redistricting done by the state’s citizens is a necessity to attain fair elections. However, if there is no better solution to the problem of gerrymandering than an IRC, the problem will presumably continue for several more years. Unfortunately, despite their potential merits, the IRCs prove difficult to adopt, and essential values in society are overlooked.

Partisan gerrymandering has two main problems: It causes inequality between House seats and the popular vote, and it diminishes the number of competitive districts. The situation in Utah, with its aggressive partisan gerrymandering and Governor Cox’s refusal to listen to the commission’s proposal for a fairer map, indicates a clear case of disproportion. The issues of Texas and North Carolina also illustrate this problem of inequality. Their troubles with gerrymandering have resulted in lawsuits that have affected the practice of redistricting for the whole nation. Moreover, the current situation in Texas, where almost the entire population growth in the last years has been due to minorities, has not been reflected in the new districts and the representation in Congress, where there is a disproportionate number of white congressmen. This indicates that even though racial gerrymandering is illegal and unconstitutional, it is still an ongoing problem, and if the population in Texas continues to grow at the same rate, it will also be an increasing problem in the future.

The case of Michigan shows remarkable improvement regarding competitiveness, based on the efficiency gap, after implementing an IRC. Generally, this was also the case in Arizona and California. However, even though the IRC in Michigan proved relatively successful in reducing partisan gerrymandering, the commission still lacked a solid democratic foundation, which seems to be the case among other states’ IRCs as well.

Partisan gerrymandering might be undemocratic, but so are the IRCs. They are unaccountable, lack transparency, are not as independent as they claim to be, and only solve problems that legislators, in theory, are able to solve themselves. Altogether, legislative redistricting is a more democratic *method* of redistricting, with more accountability than an IRC. Even so, legislators often produce unfair and undemocratic *results* by reducing the number of competitive elections, thus the voter turnout, as seen in Illinois. Conversely, the IRCs are the opposite; their structure and characteristics defy democratic values, with a lack of accountability and transparency, while their results are usually fair and unbiased, as seen in Michigan, for instance, where the MCRC reduced the problem with disproportion and created an efficiency gap close to zero.

The only conclusion to what method of redistricting works best is that no current solution is perfect. None of the presently used redistricting methods discussed in this paper are sufficient in any way. The political commissions, advisory commissions, backup commissions, and the state courts as mapmakers all fail to mend IRCs shortcomings and only prove that compromises between legislative redistricting and independent redistricting do not work effectively this way. Instead, it is a discussion regarding which values are the most important: Accountability or independence? “Randomly selected” citizens or experienced legislators as mapmakers? A democratic process with an undemocratic result or a democratic outcome produced by an undemocratic commission?

Partisan gerrymandering *can* make elections less competitive and *may* increase the problem of disproportion. However, partisan gerrymandering or not, reduced competition and disproportion might still happen. If the ultimate goal is to eliminate partisan gerrymandering, it is necessary to identify the fundamental source of this problem: the election system. Because of the FPTP and winner-take-all method, there will always be a chance of an imbalance between popular votes and House seats, regardless of IRCs or any other commissions in charge of redistricting. The redistricting commissions, notably the IRCs, with their bipartisan and independent nature, *reduce* the problem of disproportion, but they do not *solve* it. The efficiency gap numbers from California prove that even with an IRC, the state is considered gerrymandered. The commissions also tend to make districts more competitive, but when used offensively, partisan gerrymandering is fully capable of producing competitive races as well.

My final remark is that Kang (2006) provides, in my opinion, the most satisfactory solution to redistricting by including the people in the legislators' lawmaking process through a referendum. Involving the citizens in this manner will ideally moderate the legislators' map proposals, thus reducing partisan and biased motives. For future research, I, therefore, suggest focusing more on potential "hybrid" solutions. Currently, most scholars seem to only focus on the various advantages and disadvantages of legislative redistricting and the IRCs separately. By prioritizing the search for a solution that includes the merits of *both* legislative redistricting and the IRCs, the possibility of this method eventually being implemented by any U.S. state will presumably increase, ultimately eliminating the problem of partisan gerrymandering.

Therefore, the simple answer to my remaining research question is, yes, you can implement independent redistricting commissions to reduce partisan gerrymandering, increase competitive elections, and diminish disproportion—however, the price you must pay for it: Your fundamental democratic values.

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