# UNRIG THE RULES 

# 10 Frequently Asked Questions (FAQs) about Drawing New Congressional Districts <br> Updated September 26, 2022 

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1. Why do congressional districts change every 10 years?

Article 1, Section 2 of the Constitution mandates that an enumeration of the population be conducted every ten years and gives Congress the authority to determine the manner by which this enumeration is conducted. This is the primary mission of the Census Bureau. Under the Constitution, each state receives at least one seat in the U.S. House of Representatives. Seats 51 through 435 are apportioned out as established by the Apportionment Act of 1941, known as the "method of equal proportions." Under this method, each seat is apportioned to the state that is highest on the priority list. The priority list is determined by a formula based on each state's population.
2. What does it mean for states to gain or lose "seats" in the U.S. House of Representatives?

The number of seats in the House of Representatives has been fixed at 435 since passage of the Reapportionment Act of 1929. As a result, each state's allotment of seats may change based on its population data from the most recent census. The states that have grown at the fastest rates since the last census are more likely to gain new congressional districts (or "seats" in the House), while states that are shrinking or growing at slower rates than the national average are more likely to lose them.
3. How did the apportionment of House seats change based on the 2020 Census?

After the release of state-by-state population data, the Census Bureau determined that six states would gain Congressional seats and seven states would lose seats. Texas gained two seats while Colorado, Florida, Montana, North Carolina, and Oregon each gained one seat. California, Illinois, Michigan, New York, Ohio, Pennsylvania, and West Virginia each lost one Congressional seat. This is the first time that California has ever lost a Congressional seat since it became a
state. If New York had counted 89 more people, they would not have lost a Congressional seat. Similarly, if Minnesota had counted 26 fewer residents, it would have lost a Congressional seat.


## Apportionment of the U.S. House of Representatives Based on the 2020 Census



Source: United States Census Bureau.

## 4. Does apportionment have impacts beyond the number of seats each state has in the House?

Not only does apportionment determine the number of House seats a state is allocated, it also has a direct impact on presidential elections. Article 2, Section 1, Clause 2 of the Constitution mandates that the distribution of electors a state receives in the Electoral College is equal to the number of representatives it has, plus two senators. Accordingly, when states gain or lose House seats, that change is reflected in the number of Electoral College votes the state receives.
5. Who controlled the drawing of new congressional district maps in each state?

Based on state laws and the composition of state governments:

- In 21 states, the redistricting process was done by a commission or divided government.
- In 20 states, Republicans had sole control of the redistricting process.
- In 9 states, Democrats had sole control of the redistricting process.

6. Are there rules that govern the redistricting process in each state?

Yes. While each state has its own redistricting process, those cannot begin until the Census Bureau provides each state with block-by-block population counts. Supreme Court precedents require Congressional districts to be drawn with approximately equal population sizes. They must also be in compliance with provisions of the Voting Rights Act, as interpreted by federal courts.

State laws can place additional requirements on state redistricting processes. For example:

- 29 states require compact Congressional districts.
- 33 states require contiguous Congressional districts.
- 31 states require consideration of existing political subdivisions.
- 21 states require the preservation of communities of interest.

7. Can political parties use the redistricting process for their party's benefit?

Yes. States in which one political party has sole control over the redistricting process might create districts that are gerrymandered-that is, drawn with partisan considerations in mind such that they disproportionately favor the political party in charge. This is typically done using two methods: "cracking" or "packing." "Cracking" refers to the practice of splitting specific populations into different districts so they do not have the numbers to successfully elect their candidate of choice. "Packing," on the other hand, refers to the practice of jamming as many members of a specific population into one district as possible-and, accordingly, preventing them from exercising their voting power in other districts.

## 8. Can the redistricting process be manipulated to discriminate against people?

Yes. While Section 2 of the Voting Rights Act prohibits voting practices and procedures, including redistricting, that discriminate on the basis of race, those who control the map-drawing process within states do employ such practices.

For example, during the most recent redistricting cycle, a coalition of Black voters, Alabama-based advocacy organizations, and voting rights groups challenged the congressional map approved by the Alabama state legislature. The plaintiffs argued that certain districts violate Section 2 of the Voting Rights Act and the Fourteenth Amendment of the U.S. Constitution by packing many of the state's

Black voters into a single congressional district and, accordingly, diluting their voting power.

In January 2022, a three-judge panel ruled that Alabama's districts did violate the Voting Rights Act and, as such, had to be redrawn for the 2022 midterm election. In a 225-page ruling, the panel found that "Black voters have less opportunity than other Alabamians to elect candidates of their choice to Congress" and that they "will suffer an irreparable harm if they must vote...[under] a redistricting plan that violates federal law." However, on February 7, 2022, the U.S. Supreme Court granted Alabama's request to set aside the ruling and called for oral arguments in the fall to reexamine the relevant standards for Section 2 litigation going forward. This ensured that this new map, found by the panel to be racially discriminatory, would be used in the upcoming midterm elections.

## 9. Are there proposals to reform the redistricting process?

Yes. The Freedom to Vote: John R. Lewis Act proposes several changes to federal laws governing the electoral system in order to preserve the right to vote. A number of these changes concern the redistricting process. The bill aims to address discriminatory practices that have been used to disenfranchise people of color. Specifically, it would mandate federal checks on such discriminatory practices, allow voters to challenge racial discrimination in court, and halt discriminatory voting rules while they undergo judicial review. The bill would also prohibit partisan gerrymandering. While the Freedom to Vote: John R. Lewis Act passed the House in January 2022, it failed to advance in the Senate.

## 10. How might the next Supreme Court term impact the redistricting process?

The Supreme Court is slated to hear two cases in late 2022 that will have profound implications for fair representation, the right to vote, and the future of American democracy: Merrill v. Milligan and Moore v. Harper. The Court's decisions in these cases could determine the extent to which racial discrimination in redistricting is prohibited, as well as whether there can be any safeguards against partisan state legislatures that seek to cement their hold on power. To learn more about these cases, check out the Congressional Progressive Caucus Center's explainer, What the Supreme Court's Next Term Could Mean for the Future of Voting Rights and American Democracy.

