

Policy Backgrounder: Redistricting Update

A Continued Focus on the Courts

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In May 2022, CED released a Policy Backgrounder, [Gerrymandering Update: Focus on the Courts](#), which discussed several redistricting cases following the 2021 release of the Census Bureau's reapportionment data. After state legislatures drew their maps, attention shifted to the judiciary to determine the constitutionality of maps drawn for both federal and state elections. Well over a year later, with less than 13 months until the November 2024 elections, several states' maps remain contested.

- Federal judges selected new congressional district lines for Alabama earlier this month after the Supreme Court rejected Alabama's attempt to defy its [June decision](#) in [Allen v. Milligan](#), which decided that the state must draw a second largely Black district.
- Following oral argument for [Alexander v. South Carolina](#), the Supreme Court's majority last week [expressed skepticism](#) that the drawing of the lines for a South Carolina congressional district was an unconstitutional racial gerrymander.
- In June in a 6-3 decision in the case of [Moore v. Harper](#), the Supreme Court [rejected](#) the "independent state legislature" theory, ruling that state lawmakers' power under the US Constitution to control its congressional elections are not unlimited but are subject to state constitutions and state courts.

Alabama Gains a Second Largely Black District

Federal judges earlier this month selected [new congressional lines](#) for Alabama, which include a second district in which Black voters comprise a substantial portion of the electorate. The new map may lead to the election of two Black representatives to the state's delegation for the first time. The map the court selected was [one of three](#) plans proposed by a court-appointed special master, all of which included a second district in which Black voters comprise a majority of the voting age population or close to it.

Alabama's newly drawn map is the result of the Supreme Court's September 26 [rejection](#) of Alabama's attempt to defy its [June decision](#) in [Allen v. Milligan](#), in which the Court ruled that Alabama had to draw a second largely Black district. In June's 5-4 ruling Chief Justice John Roberts and Justice Brett Kavanaugh aligned with the Court's liberals in rejecting the state's effort to dilute the votes of Black voters. The June decision was somewhat unexpected, as the Supreme Court had earlier permitted Alabama to use the map for both its 2022 primary and general elections at the same time it accepted the case for decision.

The case concerned Section 2 of the Voting Rights Act of 1965 to challenge racially discriminatory voting practices. In 2021, multiple groups of voters and civil rights organizations filed lawsuits challenging Alabama's congressional map, which contained only one majority-Black district out of seven even though the state's population is 34 percent Black. An appellate court held that the map violated Section 2 of the Act by diluting the power of Black voters, ordering for a map to be drawn including a second largely Black district. Alabama appealed to the US Supreme Court arguing that the lower court was wrong to consider

the race of voters in reviewing the maps, [contending](#) that Section 2 does not impose “an affirmative obligation upon the States to ensure that wherever a majority-minority district can be drawn, at whatever sacrifice to race-neutral redistricting criteria, it must be drawn” as this would involve “race-based sorting.” Instead, Alabama proposed an easier standard in which the test is whether the political process is “equally open” to all voters, which the Court rejected.

South Carolina Map: A Racial Gerrymander?

On October 11, the Supreme Court held oral argument for the case of [Alexander v. South Carolina State Conference of the NAACP](#), concerning whether the lines for a South Carolina congressional district constitute an acceptable partisan gerrymander or an unconstitutional racial gerrymander. South Carolina Republicans who drew the map following the 2020 Census said that data from the 2020 presidential election [guided their drafting](#) of the boundaries of Congressional District 1, a GOP-majority district stretching from Charleston to Hilton Head Island. After the new congressional map became law, voting rights groups challenged the lines drawn for three of the districts, including District 1, alleging they diluted the power of Black voters.

A three-judge federal district court panel ruled in January that Congressional District 1 constituted an unconstitutional racial gerrymander, deciding that race was the predominant factor in the adoption of the map. The district court found that the mapmakers used a target of 17 percent Black voting-age population for the district and achieved this by moving 30,000 Black voters from District 1 to District 6 to produce a Republican tilt.

South Carolina then appealed the case to the Supreme Court, arguing that the lower court failed to presume the good faith of the General Assembly in drawing the lines, and that the voting rights groups failed to show that race, rather than politics, was the reason for the boundaries of District 1. John Goore, who argued the case on behalf of the state, argued that the GOP legislators drew Congressional District 1 to adhere to traditional districting principles, and that “mere awareness of race does not prove racial dominance.”

The Supreme Court’s conservative majority last week [expressed skepticism](#) with the lower court’s ruling that District 1 was racially gerrymandered. The justices’ two-hour-long oral argument largely focused spent debating why, after the Supreme Court ruled that partisan gerrymandering is permissible, mapmakers would impermissibly rely on race in the drawing of the district lines.

During oral argument, Chief Justice Roberts noted that the challengers have a “very, very difficult” burden of “disentangling race and politics in a situation like this” and that there was no direct evidence, nor an alternative map that had been rejected, nor “odd-shaped districts, which we often get in gerrymandering cases.” While leaving open the possibility of a ruling for the challengers, he stated that “this would be breaking new ground” in redistricting cases—something the Court is likely reluctant to do.

Justice Brett Kavanaugh, who had also sided with the liberal justices in the Alabama case, had little issue with South Carolina’s explanation as to how the map turned out as it did, asking what the Court should do [if it finds](#) that the state relied on political, rather than racial, data to draw the district. The Court is expected to rule before its Term ends in June but may do sooner given the need to define final boundaries for next year’s elections quickly.

Supreme Court Rejects Independent State Legislatures Theory

In December, the US Supreme Court heard oral arguments in [Moore v. Harper](#), concerning whether state legislatures have ultimate power over Federal elections in their states (the “independent state legislature” theory) or whether state courts may overrule the legislatures to enforce state constitutions. The case arose out of a redistricting plan by North Carolina’s Republican-majority legislature which the state

supreme court overturned as excessive partisan gerrymandering. In oral argument, a majority of the Court [seemed](#) to lean towards reaffirming the powers of state courts, with Chief Justice John Roberts and Associate Justices Brett Kavanaugh and Amy Comey Barrett appearing to find ways to uphold state courts' power without "acting more as a legislature," in Justice Barrett's words. Roberts [noted](#) that previous Court decision permitting state governors "power to veto the actions of the legislature significantly undermines the argument that [the legislature] can do whatever it wants [.]"

However, on June 27, in a 6-3 decision (which Roberts, Kavanaugh, and Barratt joined), the Supreme Court [rejected](#) the "independent state legislature" theory, ruling that state lawmakers' power under the US Constitution to control a state's congressional elections is subject to state courts and state constitutions. The [opinion](#) stated "[w]hen state legislatures prescribe the rules concerning federal elections, they remain subject to the ordinary exercise of state judicial review."

Conclusion

The Supreme Court's standards on gerrymandering seem clear: racial gerrymandering violates the Constitution, while partisan gerrymandering is acceptable. However, the Court will continue to be drawn into cases that will continue to refine that doctrine, with results likely based on litigants' ability to persuade Chief Justice Roberts and Justice Kavanaugh of their position.

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