

Rutgers law expert: 3 ways to make every vote count

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By [Star-Ledger Guest Columnist](#)

By Frank Askin

There is an important political campaign being waged all across the country with relatively little publicity, but potentially enormous consequences, over the issue of [legislative gerrymandering](#).

Gerrymandering, of course, is the drawing of legislative districts to guarantee a disproportionate number of seats to the party in charge of the process. It gets its name from a onetime Governor of Massachusetts named Gerry who created a district that resembled a salamander meandering its way across the state, in an effort to assure the election of a political protege.

Politicians have been attempting to follow suit ever since; but in the digital age, the process has been transformed from an art into a science, as blocks of voters can be moved from one district to another with the touch of a button, a process called "packing" and "stacking."

Packing means placing your opponents' likely supporters in a few districts (with 80-85 percent majorities) while stacking your voters in districts with close but sufficient majorities (say 55 to 45 percent). It's a process which allows legislators to choose their constituents, rather than constituents choosing their representatives.



Both parties do it; but because of the Republican wave following the 2010 census there are now 25 states with Republican control of both the legislature and governor's office, compared to 6 such Democratic states. Demographics also make gerrymandering easier for Republicans, since Democratic voters are often congregated in urban areas.

The most egregious example is Wisconsin, normally a politically divided state, where the Democrats got 52 percent of the statewide vote, but won only 33 out of 99 seats in the Legislature.

Example 2 is North Carolina. In 2010, the state's Congressional delegation consisted of 7 Democrats and 6 Republicans. When Republicans took control after the 2010 census, that was changed to 10 Republicans and three Democrats.

That is why there is now a three-pronged effort to change the law.

Enter former President Barack Obama and his Attorney General Eric Holder. They have taken on the campaign to end political gerrymandering, with the assistance on some non-partisan voting rights groups such as the League of Women Voters.



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[The policy is a common-sense reform that will increase accuracy of the voter rolls and improve voter participation.](#)

Prong 1 is to do away with partisan control of the legislative districting process. There are now 12 states where legislative districting has been taken away from the legislature and turned over to non-partisan (or bi-partisan) commissions. In New Jersey, California, Hawaii, Montana, Arizona and Washington such commissions draw both congressional and state legislative districts.

In Alabama, Arkansas, Colorado, Missouri, Ohio and Pennsylvania they draw only state legislative districts. In 2018, there are ballot referenda in Michigan, South Dakota and Utah to adopt non-partisan commissions; and referenda in Ohio, Colorado and Missouri to extend non-partisan districting to Congress.

In comparison with Wisconsin and North Carolina, [New Jersey indicates the difference non-partisan districting can make](#). In the 2017 gubernatorial election, the Democrat candidate got 56 percent of the vote, while the Republican candidate got 42 percent. Meanwhile the Congressional delegation is split seven Democrats and five Republicans, which reflects almost perfectly the state's partisan divide.

Prong 2 is in the courts. Critics argue that gerrymandering violates the Constitution, either the equal protection clause or the First Amendment. The issue is before the Supreme Court once again this year, in two cases, one brought by Democrats in Wisconsin, supported by Obama and Holder, one brought by Republicans in Maryland.

The issue has been before the Court before without a clear result. All the Justices seem to agree gerrymandering is bad, but cannot decide what to do about it. The four liberals want to strike it down, and four conservatives say it is not an issue that courts can resolve. As usual, the matter seems to be in the hands of Justice Anthony Kennedy. It will be resolved -- or not -- before the end of June.

If the Court again refuses to intervene, we will be up to Prong 3.

That would mean electing anti-gerrymandering candidates, most likely Democrats, to state legislatures in 2022, after the 2020 census. Probably the most difficult task of all - but possibly doable in a number of states if Donald Trump's poll numbers stay abysmally low and he drags down the entire Republican Party with him.

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