

Chapter Two

Elbridge Gerry's Bum Rap and How We Got to Where We Are

Redistricting of state legislative and congressional boundary lines on an unequal basis within a state is as old as our republic. Since the colonial era, redistricting was not based on population, but rather on representation of municipal units, usually counties or towns. This was a natural carryover from the British practices in forming legislative seats.

As Supreme Court Justice Felix Frankfurter wrote, in Great Britain at the time the US Constitution was written, the sole basis for representation in the House of Commons was local geographical units, such as boroughs.¹ Each county or borough elected a fixed number of representatives to Parliament regardless of population.²

The American colonies, and later the states, used the county or town as the basic measure of representation in legislative seats. With the county as the measuring unit, it was simple to use redistricting to the advantage of the district designers.

Governor Patrick Henry of Virginia did not want his political adversary James Madison elected to the first US House of Representatives under the new constitution in 1788. Henry made sure that Orange County, heavily populated with anti-federalists, was added to the district, thus making it unlikely Madison would be elected. In spite of Henry's machination, Madison ran an astute campaign and won by 336 votes out of 2,280 cast.³

In 1790 the lower portion of South Carolina, with a voting population of less than 29,000, elected twenty senators and seventy house mem-



Figure 2.1. Elkanah Tisdale, "The Gerry-Mander," *Boston Gazette*, March 26, 1812

bers, while the rest of the state, with a voting population of more than 111,000, elected only seventeen senators and fifty-four representatives.⁴

In Maryland, the county system of legislative allotment produced a legislature in 1820 in which 200,000 people were represented by eighteen members while 50,000 had twenty.⁵

While this kind of disproportionate representation had become the usual politics of the new nation, Massachusetts Governor Elbridge Gerry inadvertently had his name attached to it when he signed into law the new state senate redistricting plan in 1812. The plan, as shown in the cartoon in Figure 2.1, began in Chelsea in the southwest and extends

Figure 2.1. Elkanah Tisdale, "The Gerry-Mander," *Boston Gazette*, March 26, 1812 (retouched). Frequently reproduced, "this new species of monster" has forever linked partisan redistricting to Elbridge Gerry. Tisdale's cartoon was reproduced in the *Salem Gazette*, April 2, 1813, with the following text. It raises issues that have never been resolved.

Again behold and shudder at the exhibition of this terrific Dragon, brought forth to swallow and devour your liberties and equal Rights. Unholy party spirit and inordinate love of power gave it birth;—your patriotism and hatred of tyranny must by one vigorous struggle strangle it in its infancy. The iniquitous Law, which cut up and severed this Commonwealth into Districts, is kindred to the arbitrary deeds of Napoleon when he partitioned the territories of innocent nations to suit his sovereign will. This Law inflicted a grievous wound on the Constitution,—it in fact subverts and changes our form of Government, which ceases to be Republican as long as an Aristocratic House of Lords under the form of a Senate tyrannizes over the People, and silences and stifles the voice of the Majority.

When Tyranny and arbitrary Power thus make inroads upon the Rights of the People, what becomes the duty of the citizen? Shall he submit quietly and ignominiously to the decrees of the Usurpers? Are the citizens of this Republic less jealous of their rights than their ancestors? Will you, then, permit a Party to disfranchise [sic] the People,—to convert the Senate Chamber into a Fortress in which ambitious office-seekers may entrench themselves and set at defiance the frowns of the People? No,—this usurping Faction must be dislodged from its strong-hold.

Arise, then, *injured Citizens!* Turn out! Turn out! Let Monday next be the day of your Emancipation—by one manful Struggle reclaim your usurped Rights—and frown into obscurity those audacious men who unblushingly boasted—"We have secured the Senate for ten years, and should have been fools if we had not done it." Prove on election day that the Folly of their men is equal to their want of honesty and contempt of the People. Elect patriots who will be loyal to the Constitution, and faithful to the interests of the State.

around Boston through nine other towns to Salisbury in the northeast. A cartoonist saw the figure as a salamander but changed it to "Gerrymander." Gerry's party won 50,164 votes to take twenty-nine seats, while the opposition received 51,766 votes but only eleven seats.⁶

Is the Massachusetts senate redistricting of 1812 worse than that of South Carolina in 1790? Maryland in 1820? Virginia in 1788?

It does not really matter. Because of a well-targeted cartoon Governor Gerry's place in US history is irrevocably tarred with the redistricting practices of the era. Overlooked and largely unappreciated is Gerry's career as an authentic American patriot. He signed the Declaration of



Figure 2.2. John Trumbull, *Declaration of Independence*, 1819, is a monumental (12 × 18 ft.) oil painting in the US Capitol rotunda. It shows the moment on June 28, 1776, when the first draft of the declaration was presented to the Second Continental Congress meeting in Philadelphia in what is now known as Independence Hall. Trumbull made most of the portraits from life. Elbridge Gerry is the fourth in the group of ten seated figures at the far right of the painting. Later Gerry would refuse to sign the Constitution. He believed it gave the executive branch too much power (photo: Wikimedia Commons).

Independence,⁷ attended the Constitutional Convention of 1787, served as governor of his state, and was vice president while James Madison was president.

That the United States should move into the nineteenth century with such a widespread pattern of inequity in legislative and congressional representation is really no surprise. The US Constitution that provides for the Congress is silent on how the states shall allocate the US House seats within each state.

One of the great divisive issues the Constitutional Convention confronted in 1787 was how the colonies would be represented in the new national legislature—equally by state or by population? The largest colony, Virginia, had a total population of 747,610. Delaware, the smallest in population, had about 59,094.⁸

After extended debate, the delegates compromised. Each state, regardless of population, would have two US Senators to be chosen by the state legislature,⁹ and each state would be allocated seats in the House of Representatives based on population.

The implementing language of the compromise is in Article 1, Sections 2 and 4, of the Constitution.¹⁰ The number of seats for each state is to be determined every ten years. The times, places, and manner of holding elections for the US House “shall be prescribed in each State by the legislature thereof.”

That is it, all the Constitution as ratified in 1788 said on the drawing of congressional boundary lines. Whatever the delegates to the Constitutional Convention said in their deliberations was not brought into the document. In effect, the state legislatures were left to carry on as before in drawing congressional district boundary lines.

For the next 174 years—seventeen census/redistricting cycles—states’ legislative drawing of their own seats, as well as congressional seats, went unchallenged. Seen as a political thicket, courts viewed redistricting with trepidation. In the federal judicial system, courts were powerless to intervene even if they wanted to. Federal courts had no jurisdiction to hear a case on redistricting. The Constitutional silence in Article 1 precluded seeking relief in a federal court.

On July 9, 1868, the states ratified the Fourteenth Amendment to the US Constitution. A major policy of the Republican-controlled Congress, and most states, the amendment contains five sections designed to assure that the newly freed slaves would not lose their federal rights at the hands of southern state governments following Reconstruction.

Section 1 provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; *nor deny to any person within its jurisdiction the equal protection of the laws.*¹¹ (Emphasis added by the author.)

At the time of its ratification no one saw the new amendment as having anything to do with legislative or congressional redistricting.¹² In

fact, it took ninety-two years for aggressive lawyers to seize upon the Equal Protection Clause (emphasized in the text) as a basis for giving federal courts the jurisdiction to hear redistricting cases.

The case started in Tennessee, where the state legislature had apportioned legislative seats by its ninety-five counties, regardless of population, pursuant to a 1901 statute. Nashville had grown significantly, but its representation at the state capitol remained unchanged. The mayor of Nashville, and other voters, asked a federal district court to declare the 1901 statute unconstitutional because it deprived them of equal protection of the law as provided in the Fourteenth Amendment.

There were twenty-three times more voters in a Nashville legislative district for every voter in the rural counties. In other words, the voting power of one in a rural county was the same as twenty-three in the city.

The district court dismissed the case for lack of jurisdiction, and the plaintiffs appealed to the Supreme Court.

The Supreme Court reversed the district court, holding that the complainants had stated a valid claim under the Fourteenth Amendment and were entitled to a trial and decision.

Over the fierce opposition of Felix Frankfurter, the court held that federal courts had jurisdiction to hear redistricting cases when there was a claim of denial of equal protection under the Fourteenth Amendment.

With this holding, *Baker v. Carr*,¹³ the Supreme Court began the ending of the two-century-old practice of state legislatures to redistrict without regard to population. Like the court's decision in *Brown v. Board of Education*¹⁴ that overruled *Plessy v. Ferguson*¹⁵ to end racial segregation in schools, *Baker v. Carr* changed forever the almost casual way in which legislatures, free of legal challenge in federal court, drew their district boundary lines.¹⁶

The federal courts now had jurisdiction to hear cases on state legislatures' handling of redistricting.

The significance of this was not lost on Felix Frankfurter, the court's most passionate opponent of granting jurisdiction to hear redistricting cases. In the first conference of the justices to review the case after it was argued by the parties, Frankfurter addressed his colleagues for ninety minutes, inveighing against getting the federal court into the political thicket of state legislatures and their politics. When the court made its decision, Frankfurter wrote the sixty-page dissenting opinion, discussed earlier.

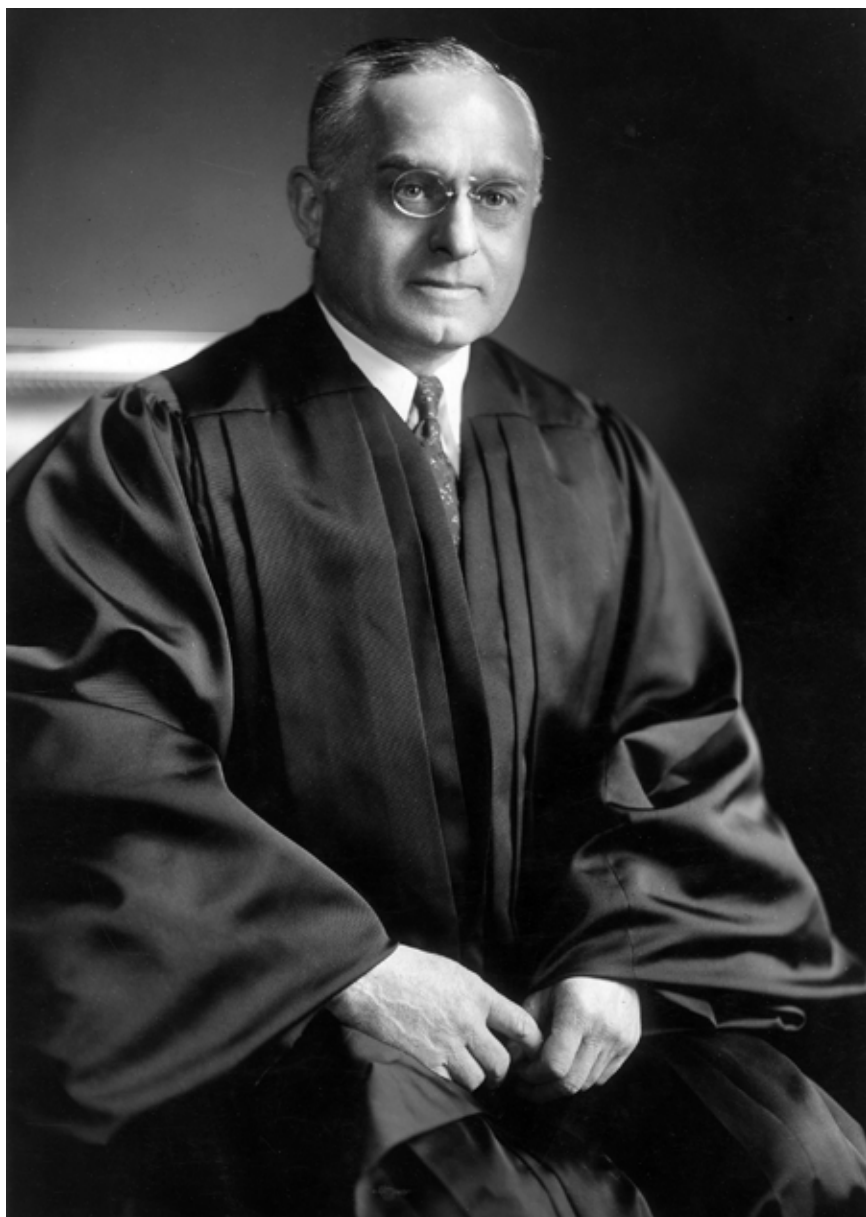


Figure 2.3. Felix Frankfurter, associate justice of the Supreme Court, 1939–1962, was a staunch advocate of judicial restraint. He feared the court would get entangled in politics if it were to adjudicate the states' apportionment of state legislative and congressional districts (photo: 1939, Washington, DC; Harris & Ewing Photographic Services, Collection of the Supreme Court of the United States).

Baker v. Carr gave federal courts jurisdiction to hear redistricting cases, but it did not provide a standard by which federal courts could measure claims of constitutional impairment by redistricting. That came in a new case a year later from Georgia, *Gray v. Sanders*.¹⁷

Sanders, a qualified voter in Fulton County, asked a federal district court to invalidate Georgia's county-unit system of tabulating votes in Democratic primary elections for statewide offices. According to its population, each county was allocated votes on a sliding scale that tilted in favor of the smaller counties. The vote of an individual citizen decreased in meaning as the county population increased. When Sanders brought his suit, a combination of votes from the counties with the smallest population gave counties with only a third of the total state population a clear majority of county unit votes.

The Supreme Court, relying on the Equal Protection Clause of the Fourteenth Amendment, declared that once a geographical unit has been chosen from which governmental representation is to be elected, all voters in that district must have an equal vote.

Speaking through Justice William O. Douglas, the court laid down a rule for measuring compliance with the Fourteenth Amendment's Equal Protection Clause that forever transformed how redistricting maps would be drawn.

When a state exercises power wholly within the domain of state interest, it is insulated from federal judicial review. But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right.

The conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth,¹⁸ Seventeenth,¹⁹ and Nineteenth²⁰ Amendments could mean only one thing—*one person, one vote*.²¹ (Emphasis added by author.)

Like a great bolt of lightning, this decision struck the redistricting practices of the states with great force and leveled them. It destroyed the traditional, almost routine systems of redistricting based on counties, towns, and other governmental units. State legislatures had to start anew to redistrict.²²

There was more to come from the US Supreme Court. A year later the court rules invalid a Georgia congressional plan based on a 1931 statute in which the congressman from one district represent two to

three times more people than other districts. Justice Hugo Black, after holding that reapportionment is not a political question, added:

The right to vote is too important . . . to be stripped of judicial protection. . . . The 1931 Georgia apportionment grossly discriminates against voters in the Fifth Congressional District. . . . it has contracted the value of some votes and expanded the value of others If the Federal Constitution intends that when qualified voters elect members of Congress each vote be given the same weight as any other, then this statute cannot. We hold . . . as nearly as is practical one man's vote in Congressional elections is to be worth as much as any others.²³

The one person, one vote rule, however, gave a great advantage to the map drawers. It is simple. Voters are tangible units that can be counted and allocated with relative ease. The only limitation was that each district had to have the same population—no deviation among the districts.

With that limitation, the mapmakers could draw the districts in any shape they wanted. The map drawers were in a new world of redistricting. There was, however, one more complication for the map drawers.

February 8, 1870, the states ratified the Fifteenth Amendment, the voting rights amendment.

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have the power to enforce this article by appropriate legislation.

Nine decades later it became obvious to the Congress that this article was ignored and disregarded in some states. The brutal treatment by the Alabama police of the civil rights marchers in Selma and the murder of three civil rights workers in Mississippi who had sought to increase black voter registration cried out for corrective action.

Under the strong leadership of President Johnson, the Congress enacted the Voting Rights Act of 1965.²⁴ This act did not create new voting rights for blacks and other minorities. That had already been clearly provided for in the Fifteenth Amendment. The act sought, as provided in Section 2 of the amendment, to give the federal government tools to enforce those rights.



Figure 2.4. President Lyndon Johnson celebrates with Rosa Parks, Martin Luther King, Jr., Ralph Abernathy, and other civil rights leaders after signing the 1965 Voting Rights Act into law. The law was immediately hailed as a “triumph for freedom.” It authorizes the Department of Justice to remedy violations of the Fifteenth Amendment of the Constitution, which prohibits the denial of the right to vote “on account of race, color, or condition of previous servitude” (photo: August 6, 1965, Washington, DC; CORBIS/Corbis via Getty Images).

After repealing the voting rights of the Fifteenth Amendment, Section 2, the act, in Section 5, gave special enforcement powers to the Department of Justice in those areas where voter discrimination appeared to be the greatest.

Section 5. Prohibited some states from implementing changes affecting voting until the changes were approved by the Attorney General or local US District Courts.

With this act, the cause of racial justice for the second time had a great impact on state legislative redistricting.²⁵ When the Congress held hearings on bills to extend the act for five and then seven years, there was extensive testimony on how some states manipulated legislative and congressional boundary lines to prevent newly registered black voters from effectively using their ballots.²⁶

The map drawers in several states, such as North Carolina and Texas, which struggled to deal with these new requirements, produced numerous redistricting plans that were litigated.²⁷

In 2013, the Supreme Court brought voting rights enforcement under the act to a virtual halt. In *Shelby County v. Holder*, the court ruled unconstitutional the formula on which the *preclearance* requirements were based.²⁸

The Voting Rights Act is in limbo, but the *Shelby County v. Holder* decision did not reduce the voting rights of blacks or any other minority. It did block the federal enforcement of these rights with the tools of the act. Redistricting plans can still be challenged as violating the Fifteenth Amendment, although this places the burden of proof on the complainant.

The one person, one vote ruling of the Supreme Court and the Voting Rights Act are the last federal government directives to state legislatures on redistricting. But two other developments have had an equally strong impact on redistricting—computer software programs and the dark money made possible by the Supreme Court decision, *Citizens United v. Federal Election Commission*.

Computer software programs have revolutionized the drawing of congressional and legislative boundary lines. What previously took months to do can now be done in a few days.

As Drew Crompton, chief of staff to the Pennsylvania Senate president and general counsel to the majority caucus, told me, “In the nineties, redistricting maps took months, in 2001 it took a few weeks, and for the 2011 maps it took only a few hours. For the 2021 maps? It could be a matter of minutes. It is really stunning!”

What makes the computer software programs so incredibly helpful to the map drawers is the data used in the programs. In earlier days, the only information available to map drawers was the US census data, voter registration lists, and figures for each voting district. The legislative leadership in each state and the redistricting staff did it themselves.

But now the data collected and made available by computer programming companies goes far beyond that—census figures, population trends, voting patterns by party, income levels, employment and unemployment, population trends, ethnic and racial patterns, age groups, and frequency of voting.²⁹

This data is easily processed and applied to the map as directed by the map makers. The programs are so sophisticated that they can draw

maps that conform to the boundaries of census blocks, the smallest geographic unit used by the US Census Bureau.

The legislative leadership and staff need outside help to handle this, and now software consultants, redistricting-savvy consultants, and redistricting knowledgeable lawyers are essential to preparing the new maps.

With this kind of staffing support, the software is an effective tool for those with the political power to put their maps into legislative form and make it the law of the state.

How effective is the tool? So good that only one congressional seat has changed hands since the 2011 maps were drawn in the states of Ohio, Pennsylvania, Michigan, North Carolina, and Wisconsin.³⁰ (These are among the states targeted by the Republican State Leadership Committee in REDMAP, discussed in chapter 1.)

Computer software programs and databases are available to anyone who wants to buy them, not just the map drawers for the major parties.³¹ There are also a number of groups that offer draw-it-yourself redistricting maps free of charge. (Information on them is provided in the Citizen's Toolbox on page 71.) A word of caution, however.

Using redistricting software programs, whether purchased or free of charge, at the level needed to transfer the resulting map into a statute is not simple. Only a handful of people in each state have the knowledge and sophistication to do the work adeptly. A novice in redistricting using the industry accepted standard software programs would be like a new pilot licensed to fly single-engine airplanes taking the controls of a two-engine jet.

Nevertheless, use of the do-it-yourself redistricting programs is a good step forward to understanding what is involved.

* * *

The US Supreme Court has made one other decision that dramatically impacts redistricting, but not directly. On January 21, 2010, the court gave birth to dark money in US politics by ruling that the federal election law's restrictions on the amount and preelection timing of independent expenditures by corporations and unions violated the free-speech provision of the First Amendment.³² The court invalidated those restrictions.

Citizens United is a nonprofit corporation organized and funded by the Koch brothers and their network to promote their goals of reduced taxes and less governmental regulation. In early 2008 Citizens United released a documentary called *Hillary: The Movie*, which was an independent expenditure. Its intended use could have violated the restrictions in the federal election law and subjected Citizens United to significant financial penalties. Citizens United sought to prevent the Federal Election Commission (FEC) from enforcing this law. It asked a district court to enjoin the FEC from applying the law to *Hillary: The Movie* and to declare the independent expenditure prohibition unconstitutional.

The district court denied Citizens United request, but the Supreme Court reversed the ruling and launched unlimited independent expenditures from anonymous donors.

The Supreme Court ruled that independent expenditures by corporations do not give rise to corruption or give the appearance of corruption. Moreover, the court declared there is not sufficient governmental interest justifying limits of the political free speech of nonprofit corporations.

Citizens United won its case, *Hillary: The Movie* was widely distributed, and funds from undisclosed donors to nonprofits started to flow.

As David Daley reported,

big donors were no longer limited to capped donations to the party or a candidate. They could go big, and now Gillespie and Jankowski had the perfect plan. The Republicans would mount a comeback (from Obama's election in 2008) from the states.³³

The impact of the *Citizens United v. FEC* case on congressional redistricting is discussed at greater depth in chapter 3.

* * *

Where are the fifty states of the United States on congressional redistricting today? It depends on which state you are in.

In seven states—Alaska, Delaware, Montana, North Dakota, South Dakota, Vermont, and Wyoming—redistricting is not an issue. Those elect only one member each to the US House of Representatives.

Thirty-seven states' legislatures have retained control of drawing the redistricting maps.³⁴ But in six states—Arizona, California, Hawaii,

Idaho, Montana, New Jersey, and Washington—the redistricting is in the hands of an independent commission.

California has the independent commission most removed from the legislature and the two major parties. It is the polar opposite of Pennsylvania, a classic example of assertive partisanship in congressional redistricting.

The California Citizens Redistricting Commission (CRC) was created by the public approval of Proposition 11 in the 2008. Similar proposals had been rejected four times, but in 2008 it obtained 51 percent of the vote, thanks to the leadership of a coalition of citizens' organizations led by Common Cause and the campaigning of Governor Arnold Schwarzenegger.

Proposition 20 approved in the 2010 elections added congressional redistricting to the work of the CRC. The CRC succeeded in defeating two legal challenges to its validity and went to work.

For its first redistricting map drawing, the CRC blazed new ground in public participation in the process. More than 2,700 citizens participated in thirty-four public meetings in thirty-two locations, and 20,000 citizens submitted comments.³⁵

The districts drawn by the CRC as a result of this process are in place. A new CRC will be constituted for the cycle beginning with the 2020 census, and a similar process will be used.

Completely separated from the legislature, California's redistricting method is the total opposite of Pennsylvania's. To appreciate how far the California CRC is removed from its legislature, consider how the CRC is appointed.

The CRC has fourteen members—five Democrats, five Republicans, and four declined-to-state—in a unique manner. Thirty thousand persons wanting to serve on the CRC submitted an online application. Those considered qualified are invited to submit a supplemental application in which they answer questions in essay form. Auditors from the state's audit bureau select 120 from these applications—forty Democrats, forty Republicans, and forty declined-to-state. Following interviews, the 120 are reduced to sixty, and the names are given to the leaders of both parties in both houses of the legislature. The legislative leaders, like trial lawyers picking a jury, have peremptory rights to remove twenty-four from the pool. The audit bureau then randomly draws three Democrats, three Republicans, and two declined-to-state from the pool. The eight selected



Figure 2.5. California Citizens Redistricting Commission Committee Meeting, 2017. Some members participated by telephone (photo: October 27, 2017, Sacramento, CA; author).

pick six more from the pool, two from each party and declined-to-state. These fourteen serve for a ten-year term, and their work is supported in line-drawing years by a staff of fourteen full-time employees. The CRC is funded by a legislative appropriation, and in nonline-drawing years has a budget of \$93,000 for the fiscal year 2017–2018.³⁶

The CRC maintains an informative website, www.wedrawthelines.ca.gov. Click on “See the Video” for a twenty-minute discussion of the CRC and how it works.

Each state must be analyzed on its own and that is beyond the scope of this book. But it is relatively easy to do with any state.

The National Conference of State Legislatures (NCSL) maintains a comprehensive website on redistricting, both state and congressional. In the Citizen’s Toolbox, “Redistricting Criteria for Each State”³⁷ is a state-by-state description of the criteria used for both state and congressional redistricting, together with citations to the state constitutional and statutory provisions. This is Document D in the Citizen’s Toolbox.

The NCSL also has a list of the initiative and referenda states that shows the process and requirements for the states. See Document E in the Citizen's Toolbox.

The NCSL website also has "Redistricting Commission: Congressional Plans"³⁸ that provides a summary of the law in the six states with independent commissions and three states with advisory commissions. (See Document F in the Citizen's Toolbox.) Another section shows all legislation currently pending in state legislatures on independent commissions: "Redistricting Commission Bills."³⁹

The NCSL documents just described are reprinted in the Citizen's Toolbox, except the one on redistricting bills.

There is also redistricting information on each state's website. To access this, use your browser or search engine to enter the state's name followed by "redistricting."

You can then browse your state's election bureau (often found in the secretary of state's office for the state) for the official election results for congressional races and maps of the congressional districts. See if your state has a separate website, as Pennsylvania does, that is devoted exclusively to redistricting and provides history and maps on the congressional districts.

There are many other sources of information available about each state. The Citizen's Toolbox contains a list of some of those sources in Document B.

With this information, you can begin to evaluate how well your state does with congressional redistricting. How does it compare to Pennsylvania? To California? Are there changes in your state's congressional redistricting system you would like to make? If there are, the next two chapters tells you what is involved and the challenges you will confront.

NOTES

1. Dissenting opinion in *Baker v. Carr*, 369 U.S. 186 (1962) at 266. Frankfurter's opinion is a well-documented summary of redistricting in US history, and the author has freely relied on it in this chapter.

2. This was immortalized in parody by lyrics in Sir John Porter's song in Gilbert and Sullivan's operetta *H. M. S. Pinafore*, "I grew so rich that I was sent by a pocket borough into Parliament. I always voted at my party's call and never thought of thinking for myself at all."

3. "Madison's Election to the First Federal Congress," *Founders Online*, July 20, 2017. Madison's opponent was James Monroe. This was the only time in US history when two future presidents ran against each other for Congress.
4. *Baker*, 369 U.S. at 310 (Frankfurter, J., dissenting).
5. *Ibid.*
6. David Daley, *Ratf**ked: The True Story behind the Secret Plan to Steal America's Democracy* (New York: Liveright, 2016), xviii.
7. In Trumbull's great mural of the signing of the Declaration of Independence, Gerry is number twenty on the list of signers at the bottom.
8. "1790 United States Census," *Wikipedia*, September 2, 1790.
9. With the ratification of the Seventeenth Amendment in 1913, US Senators are to be chosen by popular election.
10. The texts of these provisions is found in the Citizen's Toolbox that follows chapter 5.
11. The full text of the section of the Fourteenth Amendment is found in the Citizen's Toolbox in Document A.
12. *Baker*, 369 U.S. at 310 (Frankfurter, J., dissenting).
13. *Baker*, 369 U.S. 186 (1962).
14. *Brown v. Board of Education*, 347 U.S. 483 (1954).
15. *Plessy v. Ferguson*, 163 U.S. 537 (1896).
16. "More Perfect—The Political Thicket," audio transcript, Radio Lab. Available at http://www.radiolab.org/story/the_political_thicket. This is the most fascinating document the author uncovered in researching for this book. It has the voices of Earl Warren, Felix Frankfurter, and William Douglas.
17. *Gray v. Sanders*, 372 U.S. 368 (1963).
18. Right to vote, ratified February 3, 1870.
19. Election of senators by popular vote rather than by the state legislature. Ratified April 8, 1913.
20. Women's right to vote. Ratified August 18, 1920.
21. *Gray*, 372 U.S. at 381.
22. At least twenty states guaranteed each county at least one seat in one of the legislated houses regardless of population. *Baker*, 369 U.S. at 319 (Frankfurter, J., dissenting). Pennsylvania was one of them. When I was elected to the Pennsylvania House of Representatives in 1966, about one quarter of my district was Montour County, a whole county that previously elected its own representative.
23. *Westberry v. Sanders*, 376 U.S. 1(1964).
24. See "Voting Rights Act of 1965—Overview," *FindLaw.com*.
25. The first was the enactment of the Fourteenth Amendment, with its Equal Protection Clause. As noted earlier, it took almost a century before this provision had its impact on redistricting.
26. "Voting Rights Act of 1965—Overview," *FindLaw.com*.

27. For examples, see Robert Barnes, “After Losses on Voting Laws and Districting, Texas Turns to Supreme Court,” *Washington Post*, August 27, 2017.

28. *Shelby County v. Holden*, 570 U.S. 2 (2015).

29. This is information available from public records.

30. David Daley, “How Will Big Data Change Gerrymandering?” *Salon*, April 15, 2017.

31. A popular redistricting program is offered by Caliper. Its Maptitude for Redistricting, including one state of data, is priced at \$10,000 per licensee. This is the industry-preferred software for legislative redistricting. They also offer a standard Maptitude for \$695 and a redistricting database (one state) for \$2,500. For additional information, go to www.caliper.com.

32. *Citizens United v. Federal Election Commission*, 588 U.S. 310 (2010).

33. Daley, *Ratf**ked*, 12.

34. Iowa has a unique redistricting system. Its redistricting plans are developed by a nonpartisan staff that submits the plans without political or election data, including the addresses of incumbents. Since the legislature must approve the plans, it is included in the thirty-seven states with legislative control.

35. Common Cause Brief in *Radanovch v. Bower*, no. S196852. Copy supplied to author by Common Cause.

36. Correspondence from Christina Shupe, senior operations manager of the CRC.

37. <http://www.ncsl.org/research/redistricting/redistricting-criteria.aspx>

38. <http://www.ncsl.org/research/redistricting/redistricting-commissions-congre...>

39. <http://www.ncsl.org/research/redistricting/redistricting-commission-bills.aspxicin>