



A Funder Collaborative for Fair Districts

REDISTRICTING ISSUES LIKELY EMERGING IN 2024: SOME EXAMPLES

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Litigation: The struggle for fairness continues. In several states, voters of color have successfully challenged unfair maps in the courts. In June the Supreme Court upheld Section 2 of the Voting Rights Act in [Allen v. Milligan](#) and decided that Alabama's congressional map diluted the voting power of Black Alabamians. At the time of the decision, 38 Section 2 cases challenging state and local maps in 12 states were helped by that decision. Since then, additional cases have been filed.

Funders should expect litigation to fix unfair district maps to continue for some time as recalcitrant state and local policymakers in states like Arkansas, Georgia, Louisiana, Mississippi and Texas continue to drag their feet in order to continue holding elections under their challenged maps. For example, one of the first challenges filed was in Texas, but there has yet to be a hearing on the merits of the case.

While the Supreme Court *Milligan* decision was something to celebrate, there are additional threats to enforcement of the Voting Rights Act and federal and state constitutional protections. The Supreme Court heard a South Carolina case ([Alexander v. South Carolina State Conference of the NAACP](#)) where the state legislature essentially argues that if gerrymandering is done for partisan reasons, it is permissible under the U.S. Constitution even if it harms Black voters. That decision is expected this year.

Also, cases that could be heading to the Supreme Court seek to overturn decades of precedent saying private individuals and civil rights groups – not just the Department of Justice – have the right to sue under Section 2 of the Voting Rights Act. The majority of voting rights cases have been brought by private individuals and groups; the federal government has never had sufficient resources to fully enforce the law and, depending on the Administration, may be constrained from doing so. Overturning this settled law, as done in an Arkansas case, could potentially undermine enforcement of the Voting Rights Act beyond redistricting.

State court decisions are also shaping redistricting from the current cycle. For example, in two states – Wisconsin and New York – courts required redrawing district maps for the 2024 election. In Wisconsin, the state Supreme Court recently ruled that the state's legislative maps are unconstitutional because they lack contiguity, and ordered that parties involved in the litigation submit new maps by Jan. 12, knowing that final maps must be set by mid-March if they are to be used in the 2024 elections. Republicans in the state are very upset with the decision and have asked the Court to reconsider its decision, particularly the tight timeframe for new maps. They have also discussed appealing to the U.S. Supreme Court.

In New York, the state's highest court ordered new congressional maps ahead of the 2024 elections, concluding maps drawn by a special master for the 2022 election were intended to be temporary. The New York Independent Redistricting Commission (IRC) will have the responsibility to draw new maps, which the state legislature will then consider. The Court required the IRC to send the legislature the new maps no later than Feb. 28.

We are also closely watching developments in cases challenging district lines that seek to dilute the voting power of communities of color in “coalition districts,” where no single racial group forms a majority alone, but together some combination of Black, Latino, Asian American, and/or Native American voters share common interests and comprise a majority of the population.

This issue is playing out in a case before the 5th U.S. Circuit Court of Appeals, which has agreed to take up the question of whether a coalition of Black and Latino communities in a county district in Galveston, Texas is protected under the Voting Rights Act. And it may play out in Georgia where groups need to decide whether to sue over dismantling a district comprised of a coalition of Black, Latino, and Asian American voters with common political interests living in the Atlanta suburbs.

As more places become less segregated, the legal protections for and voting power of politically cohesive multiracial coalitions are increasingly at stake. The U.S. Circuit courts are split on the extent to which the Voting Rights Act protects these communities, and the U.S. Supreme Court has not yet weighed in on the question.

Final Comments on Litigation for Funders

In addition to federal and state level litigation moving forward, there are opportunities throughout the country to challenge unfair maps at the local level, such as school board, county, municipal, judicial and other maps. Accountable representation at this level can have an immediate and significant impact on the lives of people of color whose needs and priorities are currently being ignored. Additional resources from philanthropy will be needed to pursue these challenges, however.

Funders can support both litigation and the complementary organizing and communications strategies that are necessary for public engagement on the issues. Two of the key players in the *Milligan* lawsuit, Evan Milligan and Janai Nelson, [wrote](#) in the Chronicle of Philanthropy that those opposed to fair district lines will continue to delay or take actions to limit representation—even when the courts say maps should be redrawn. This is why philanthropy is needed.

They noted that foundation funding “ensured that organizations could pursue lawsuits. And they allowed nonprofits to help the public understand how discriminatory maps lead to inadequate representation and why inadequate representation leads to inequitable funding for schools, health care, public transportation, clean water, and other resources.” They added that philanthropy helped “shift the narrative from redistricting as a partisan food fight to redistricting’s potential to harm the interests of communities of color and undermine constitutional principles.”

Put another way, philanthropic support for the full range of litigation activity will be needed in 2024.

Improvements in the State Redistricting Process. In some states, planning by state and local nonprofits is underway to improve the way redistricting is done at both the state and local levels. In some cases, this might involve improved transparency and accountability in the redistricting process; in other states, it might call for more radical reforms such as establishing a citizen-led independent commission or changing voting rights laws or voting rules.

Some organizations promoting voting rights have been exploring new state-based voting rights laws because they believe that it will continue to be challenging to pass an updated Voting

Rights Act at the federal level. These kinds of state laws were recently enacted in Connecticut, New York, and Virginia (joining California, Oregon and Washington that passed them in earlier years); similar efforts are already underway in Maryland, Michigan, and New Jersey.

In some places, groups are also seeking to replace at-large voting systems with district-based lines to increase the opportunity for communities of color to elect candidates of their choice. Other groups are exploring new voting approaches such as multimember districts, proportional representation, and ranked choice voting to create greater racial equity outside the traditional redistricting processes.

In Ohio, there will likely be a measure on the November 2024 ballot to replace the Ohio Redistricting Commission with an independent body of citizens of Ohio. It will replace the seven-member panel comprised of elected officials (five Republicans and two Democrats) that currently serves as the redistricting commission, which has repeatedly ignored findings from the state Supreme Court that their maps are unconstitutional. The new panel would have 15 members – five from the governor’s party, five from the party of the gubernatorial candidate with the second most votes, and five unaffiliated with any party. Citizens Not Politicians, the group leading the effort, has until July 3 to collect enough signatures to qualify to be on the ballot.

There is no “one-size fits all” solution to increasing fair representation; more research is needed to understand how these new processes and alternative systems can promote the voting interests of communities of color.

Share learning and encourage philanthropy to engage more broadly. 2024 will be a key year to reach out to funders to explain why they should be engaged in redistricting (and census). Fair Representation in Redistricting just released a [new report](#) from Bill Woodwell that provides a case study of philanthropy’s role in redistricting. The report reflects feedback from a wide spectrum of funders—including issue-based, place-based, and democracy funders—about how working together via the FRR collaborative was a game-changer. The report notes that FRR helped shift perceptions of redistricting from a partisan “horse race” to a critical tool for achieving racial equity and responsive government.

A broader assessment of the overall FRR redistricting work, conducted by the Equity Research Institute at University of Southern California, will be available later in January. That report notes how strategic, coordinated investment by philanthropy through the FRR collaborative allowed organizations to achieve unprecedented success in building civic engagement on redistricting and highlights how important it is to sustain this new, emerging infrastructure.

About Fair Representation in Redistricting

[FRR](#) is a funder collaborative that was created to promote fair district maps as states redrew congressional, state, and local political boundaries in 2021-22. FRR supported enabling communities of color to engage in redistricting and leverage their power so that electoral maps are more racially equitable and elected officials are accountable to community interests. Advocates and funders asked FRR to continue its work beyond this past redistricting cycle. Today, FRR has three priorities: (1) support efforts to challenge unfair maps and address other ongoing redistricting activities; (2) support efforts to develop and advance redistricting policy reform for the next cycle; and (3) provide technical assistance and support to groups working on redistricting issues.