

## **What Happened in North Carolina Redistricting After the 2020 Census?**

*North Carolina's legislature is [likely to redraw](#) the state's Congressional, state Senate, and state House map again in 2023. This summary provides an explanation of what happened with the maps already in place and how we got here.*

1. After the 2020 Census, the General Assembly intentionally drew and enacted extreme partisan gerrymandered maps for Congressional and state legislative offices.

After the U.S. Census Bureau released its 2020 Census results in August 2021, North Carolina's General Assembly embarked on the process to redraw all three of its statewide voting maps: a Congressional map with 14 Congressional districts (an increase of 1 since the last Census); a state House map with 120 districts, and a state Senate map with 50 districts.

The North Carolina Constitution (art. II, §§ 3, 5) requires that state legislative maps include as many whole counties as possible, and so the General Assembly worked from a set of county cluster options [developed by researchers at Duke University](#).<sup>1</sup>

Legislators represented they would be drawing the maps in public view and on public terminals, but there were serious lapses in transparency. Leadership rejected proposed transparency measures that would have required members to disclose who was involved in drawing any of the maps.<sup>2</sup> Leadership also proposed a set of [redistricting criteria](#) that would prevent any use of racial data during the process which, when adopted, would allow any harm on the voting power of minority voters to be swept under the rug. The General assembly then held a series of public hearings throughout the state, in which voters from all parts of the states and all political backgrounds requested an end to gerrymandering in North Carolina's maps.

When members began drafting what would become the enacted maps in October, it became clear why transparency measures were never put up for a vote. Leadership was assisted by unidentified partisan assistants in drawing their maps and—as was later revealed at trial—[used secret “concept” maps that were destroyed](#). As Common Cause's Tyler Daye testified, it was clear during the process that legislators drawing what would become the enacted plan followed very specific strategies of packing and cracking to ensure an extreme partisan skew in the maps.<sup>3</sup>

Leadership proposed draft maps in late October 2021. For each map, proponents of the maps purported to rely upon the redistricting criteria adopted as well as public commentary for drawing district lines.<sup>4</sup> But as other legislators noted during debate,<sup>5</sup> each one of the maps were clearly

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<sup>1</sup> Leadership had legislative staff use this paper to develop a set of [Senate](#) and [House](#) county groupings that legislators were required to use in drafting maps.

<sup>2</sup> See [August 18, 2021 Joint Committee Meeting Transcript](#), at 3:8-14:15.

<sup>3</sup> See [December 23, 2021 affidavit of Tyler Daye](#).

<sup>4</sup> See [November 1, 2021 House Redistricting Committee Transcript](#) (House map); [November 2, 2021 Senate Redistricting Committee Transcript](#) (Senate map); [November 1, 2021 Senate Redistricting Committee Transcript](#) (Congressional map).

<sup>5</sup> See, e.g., [November 2, 2021 House Floor Transcript at 22:12-18](#) (House map); [November 4, 2021 House Floor Transcript](#) (Senate and Congressional maps).

drawn with partisan intent as the primary motivating factor, and the maps all received “F’s” for partisan fairness by the Princeton Gerrymandering project.<sup>6</sup>

In November 2021, the new [state House](#), [state Senate](#), and [Congressional](#) maps all passed along strict party lines and within a week of being proposed.

2. Common Cause and other plaintiffs successfully challenged the maps as unconstitutional partisan gerrymanders, and the N.C. Supreme Court struck them down in February 2022.

Common Cause and other plaintiffs, including Common Cause NC board member Becky Harper, challenged all three maps in state court soon after they were passed. [Common Cause](#) claimed the maps were unconstitutional partisan gerrymanders that violated the state’s Free Elections, Equal Protection, and Free Speech and Free Assembly clauses.

Common Cause also alleged the maps intentionally diluted the voting power for North Carolina’s Black voters, continuing a trend of legislatures targeting Black voting power back to post-Reconstruction. In particular, the 2021 maps destroyed a significant number of districts held by Black members from districts that allowed voters of color to elect a candidate of their choice. This included four of 12 such Senate districts,<sup>7</sup> five of 23 such House districts,<sup>8</sup> and 1 of two Congressional districts.

Following a week-long trial in January 2022, [a three-judge panel of the Superior Court found](#) that North Carolina’s legislatures intentionally drew extreme partisan gerrymanders that essentially entrench Republican dominance in North Carolina’s state legislature and its Congressional delegation. Importantly, the court found these maps would result in Republicans retaining governing power even if significant majority of North Carolina’s voters preferred the other party, as the maps were “especially effective in preserving Republican supermajorities,” (Finding of Fact ¶ 142). Specific districts were designed in a way that made the maps “maximally nonresponsive” to shifting public opinion (*see, e.g.*, Finding of Fact ¶ 253), thereby insulating members from political accountability from voters.

But the trial court also held that partisan gerrymandering claims were “nonjusticiable” under North Carolina’s Constitution because, it found, there would be no judicially manageable standards to adjudicate such claims. Here, it relied heavily on the 2019 U.S. Supreme Court decision in *Rucho v. Common Cause* that held the same under the federal constitution, despite the existence of a Free Elections Clause in North Carolina that does not exist federally.

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<sup>6</sup> 2021 House Map: <https://gerrymander.princeton.edu/redistricting-report-card/?planId=recT3qrY4IXWBIXSg>; 2021 Senate Map: <https://gerrymander.princeton.edu/redistricting-report-card/?planId=rec2DopeEjMZMk6NX>; 2021 Congressional <https://gerrymander.princeton.edu/redistricting-report-card/?planId=rec1jFkj1lne3m1RS>.

<sup>7</sup> The 2021 Senate map destroyed districts held by Senators Bazemore, Fitch, Clark, and Batch out of the following pre-existing black-opportunity districts: SD 17; SD 3; SD 14; SD 21; SD 5; SD 4; SD 23; SD 20; SD 28; SD 39; SD 40; SD 32.

<sup>8</sup> The 2021 House map destroyed districts held by Representatives Smith, Gaillard, Cooper-Suggs, Hunter II, and Peirce out of the following pre-existing black opportunity districts: HD 5, HD 8, HD 21, HD 23, HD 24, HD 25, HD 29, HD 31, HD 32, HD 33, HD 38, HD 42, HD 48, HD 54, HD 58, HD 60, HD 72, HD 92, HD 99, HD 101, HD 104, HD 106, HD 107.

Plaintiffs appealed this ruling to the N.C. Supreme Court, which [held in February 2022](#) that partisan gerrymandering was justiciable, and that each of the 2021 enacted maps therefore violated the N.C. Constitution and could not be used in the next election. Importantly, the Court held that North Carolina’s Declaration of Rights “guarantees the equal power of each person’s voice in our government through voting in elections that matter” (Opinion ¶ 1). Since “ a legislative body can only reflect the will of the people if it is elected from districts that provide on person’s vote with substantially the same power as every other person’s vote,” maps that were “egregious and intentional partisan gerrymanders” did not respect fundamental rights of voters to “cast votes that matter equally” as guaranteed by the Free Elections, Equal Protection, and Freedom of Speech and Assembly clauses (Opinion ¶¶ 4-9).

The Supreme Court remanded the matter back to the trial court to oversee the redrawing of all three maps.

3. The General Assembly redrew all three maps in 2022. The trial court accepted the remedial state House and state Senate maps but modified the remedial Congressional map.

In February 2022, legislators enacted three new remedial maps. While the remedial [House](#) map was drafted and passed in a bipartisan process, the remedial [Senate](#) and remedial [Congressional](#) maps were drafted and passed along partisan lines.<sup>9</sup>

After hearing objections from the parties, the trial court [approved the House and Senate maps, but ordered that a slightly modified Congressional map](#) be used for the 2022 election. By denying all parties’ motions for a stay, the North Carolina Supreme upheld these maps for the 2022 election while also agreeing to hear an appeal on the maps’ validity for future elections.

4. The General Assembly appealed the Interim Congressional Map to the U.S. Supreme Court, which allowed it to be used for 2022.

Days later, the legislators [appealed to the U.S. Supreme Court](#), asking it stay the modified Congressional map for 2022 and asked the Court to find the North Carolina’s state court had no authority to strike down the Congressional map or order the use of a court-modified map. In support of this, the legislators argued a theory, called the Independent State Legislatures Theory, that the U.S. Elections Clause gives state legislatures impunity from state law protections when enacted laws for federal elections. [The Supreme Court declined](#) to enjoin the modified Congressional map, but agreed to hear the matter. The Court heard oral argument on December 7, 2022, and the matter remains pending with the Court as of May 26, 2023.

5. In December 2022, the N.C. Supreme Court held that the remedial state Senate map was still too gerrymandered and ordered it to be redrawn.

The North Carolina Supreme Court heard oral argument on the remedial maps on October 4, 2022. In a [December 16 Opinion](#), it affirmed the trial court’s approval of the remedial House map and

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<sup>9</sup> See also [February 16, 2022 House Floor Transcript](#); [February 16 Senate Redistricting Transcript](#); [February 17 Senate Redistricting Transcript](#) (Senate map); [February 17, 2022 Senate Floor Transcript](#) (Congressional map).

order of the Interim Congressional Map but held that the remedial Senate map was an unconstitutional partisan gerrymander because it denied North Carolinian's equal voting power on the basis of partisanship.

After the November 2022 general election resulted in a new Republican majority on the Court, legislators petitioned for rehearing of the December 16 order in this matter as well as the Court's order striking down discriminatory voter ID. Speaker Tim Moore implied the rehearing's were filed as a results of the change in composition of the N.C. Supreme Court, calling the prior opinions "[judicial activism of the outgoing majority](#)." Common Cause [moved to dismiss](#) the petition for rehearing as motivated by improper purpose, which the Court struck from the record.

On February 3, 2023, the N.C. Supreme Court [granted the petition for rehearing](#) in this and the voter ID matter, a virtually unprecedented series of decisions. In her dissent, Justice Earls called the order a "radical break with 205 years of history" that abandoned "[r]espect for the institution and integrity" of the court.

6. In January 2023, the newly-composed N.C. Supreme Court agreed to rehear the case and overturned its February 2022 decision outlawing partisan gerrymandering in North Carolina.

On April 28, 2023, [the N.C. Supreme Court vacated the December 16 Remedial Opinion and reversed the February 2022 Opinion](#) that had found partisan gerrymandering unconstitutional. In doing so, the Supreme Court held that legislators are free to enacted extreme partisan gerrymanders that deny voters equal voting power on the basis of partisanship. Instead of reverting back to the 2021 maps, the court granted legislators' request to redraw all three voting plans despite a clause in the North Carolina constitution that, once "established," state legislative districts cannot be redrawn. In her dissent, Justice Earls wrote that "Despite its lofty prose about the need for principled adherence to the state Constitution, the majority follows none of these principles today . . . . "Nor does the majority even pay passing reference to the anti-democratic nature of extreme partisan gerrymandering. These efforts to downplay the practice do not erase its consequences and the public will not be gaslighted."

The same day, House Speaker Tim Moore [forecasted](#) that the General Assembly would redraw the state house, senate, and congressional maps.