

# Gerrymandering, Representation, and Consent of the Governed

## Essential Question

- What is the relationship between gerrymandering, the concept of representation, and the principle of consent of the governed?

## Guiding Questions

- What does it mean to be represented in a self-governing republic?
- How does representation support the Founding principle of consent of the governed?
- How does gerrymandering affect representatives' ability to represent the needs of their constituents and the people?

## Objectives

Students will:

- Define the principle of consent of the governed and the concept of gerrymandering.
- Assess how gerrymandering affects representation in a republic.
- Summarize and assess how Supreme Court decisions in *Baker v. Carr* (1962) and *Shaw v. Reno* (1993) have added to the debates on gerrymandering, representation, and consent of the governed.

## Materials

Documents:

- “The Gerry Mander,” Boston Centinel, 1812
- *Baker v. Carr* (1962) majority and dissenting opinions
- *Shaw v. Reno* (1993) majority and dissenting opinions
- Graphic organizer

## Engage

- Think, Turn, Talk: What does the term “consent of the governed” mean to you?
  - Have students reflect on the prompt and then share their responses with a partner.
- Ask for volunteers to share their responses.
- Create a class definition for this term or share the Bill of Rights Institute’s definition, and ask how or if they would change it:
  - consent of the governed: **the power of government comes from the people.**  
Here is a [video](#) to help explain the principle.
- Ask, “Why is it important for our government to ensure that our representatives have our consent?”
- Say, “In this lesson, we will be looking at the process of how districts are created and how that process connects to the ideas of representation and consent of the governed.”
- Show students the image of “The Gerry Mander” primary source without any context. Ask, “What do you see? What do you think this is? When or why do you think it was made? What other information do we need to analyze this cartoon?”
- Have students look at “The Gerry Mander” primary source with the background context.
- Discuss student observations and answers to the accompanying questions. Ensure that students clearly understand what gerrymandering is by asking them to define it in their own words before moving on to the next part of the lesson.

## Explore

- Transition: Say, “Whenever a drawing of an electoral boundary occurs, debates over fairness and representation follow. Now we’ll look at two landmark Supreme Court cases that took up questions of representation and gerrymandering.”
- Have students look at the *Baker v. Carr* (1962) and *Shaw v. Reno* (1993) primary sources and the accompanying questions for each source.

## Assess and Reflect

- Distribute the graphic organizer and review the main ideas of each case and the decisions of the Court. Direct students to answer the final question at the bottom of the graphic organizer handout:
  - Based on the sources you have read, what is the relationship between gerrymandering and the concepts of representation and consent of the governed?

## Extend

- Have students research the district boundaries within their own state to determine if they think there is any evidence of gerrymandering. Have them share their findings with the class.
- Have students complete the puzzles on <http://gametheorytest.com/gerry/>
  - What does this game reflect about the question of representation, fairness, and gerrymandering?
- Have students analyze other examples of gerrymandering cartoons from recent history.
- Have students create their own political cartoon about gerrymandering with an explanation of how their cartoon connects to the idea of representation and fairness.
- Have students examine the Supreme Court ruling in *Allen v. Milligan* (2023), and have them compare the decision to that of *Shaw v. Reno* (1993).

## Primary Source: “The Gerry-Mander,” *Boston Centinel*, 1812.

**Building Context:** The district depicted in the cartoon was created by the Massachusetts legislature to favor the Democratic-Republican Party candidates supported by Governor Elbridge Gerry over the candidates of the Federalist party in 1812. This cartoon gave rise to the term “gerrymandering,” or the manipulation of electoral district boundaries with the intent to create an advantage for a particular group in that district. This process concerns the idea of giving more power to a particular group, as it gives some voters greater representation than others.



### Comprehension and Analysis Questions:

1. Describe what you see.
2. What is the cartoonist’s opinion of the district boundaries created in 1812?  
How do you know?
3. Compare the above cartoon with [this cartoon](#) from 2019, also titled “The Gerrymander.”  
What do these cartoons suggest about the role of gerrymandering in American politics over time?

## Primary Source: *Baker v. Carr* (1962)

**Building Context:** The Tennessee state constitution required that legislative districts for the Tennessee State Assembly be redrawn following the federal census. The federal census is conducted every 10 years to determine population change, and the redrawing of districts following the census is known as **redistricting**. In 1959, Tennessee had not redistricted since 1901. Charles W. Baker, the mayor of an urban district in Millington, Tennessee, and other Tennessee citizens filed a case in federal court claiming that by ignoring the law to redistrict, urban districts such as Millington were not fairly represented in the state legislature. Baker claimed that the people of his county did not receive the “equal protection of the laws” guaranteed by the Fourteenth Amendment by virtue of the debasement or diluting of their votes. The lower court dismissed the case, citing the **political question doctrine**: Because the courts are meant to be apolitical, they cannot rule in cases that are politically charged. The Supreme Court agreed to hear the case, however, and ruled 6–2 in favor of Baker, stating that the court did have the jurisdiction to decide this case, and that the lower court that initially dismissed the case should review it.

For more information on this case, watch this Homework Help video:

<https://billofrightsinstitute.org/videos/baker-v-carr-homework-help>

### Majority Opinion, Justice Brennan

“We come, finally, to the ultimate inquiry whether our precedents as to what constitutes a nonjusticiable “political question” bring the case before us under the umbrella of that doctrine. A natural beginning is to note whether any of the common characteristics which we have been able to identify and label descriptively are present. We find none: the question here is the consistency of state action with the Federal Constitution. We have no question decided, or to be decided, by a political branch of government coequal with this Court. Nor do we risk embarrassment of our government abroad, or grave disturbance at home if we take issue with Tennessee as to the constitutionality of her action here challenged. Nor need the appellants, in order to succeed in this action, ask the Court to enter upon policy determinations for which judicially manageable standards are lacking. Judicial standards under the Equal Protection

Clause are well developed and familiar, and it has been open to courts since the enactment of the Fourteenth Amendment to determine, if, on the particular facts, they must, that a discrimination reflects no policy, but simply arbitrary and capricious action.”

## Dissenting Opinion, Justice Frankfurter

“The Court today reverses a uniform course of decision established by a dozen cases, including one by which the very claim now sustained was unanimously rejected only five years ago. The impressive body of rulings thus cast aside reflected the equally uniform course of our political history regarding the relationship between population and legislative representation—a wholly different matter from denial of the **franchise** to individuals because of race, color, religion or sex. Such a massive **repudiation** of the experience of our whole past in asserting destructively novel judicial power demands a detailed analysis of the role of this Court in our constitutional scheme. Disregard of inherent limits in the effective exercise of the Court’s ‘judicial Power’ not only **presages** the **futility** of judicial intervention in the essentially political conflict of forces by which the relation between population and representation has time out of mind been, and now is, determined. It may well impair the Court’s position as the ultimate organ of ‘the supreme Law of the Land’ in that vast range of legal problems, often strongly entangled in popular feeling, on which this Court must pronounce. The Court’s authority—possessed of neither the purse nor the sword—ultimately rests on sustained public confidence in its moral sanction. Such feeling must be nourished by the Court’s complete detachment, in fact and in appearance, from political entanglements and by abstention from injecting itself into the clash of political forces in political settlements. . . .

To charge courts with the task of accommodating the **incommensurable** factors of policy that underlie these mathematical puzzles is to attribute, however flatteringly, **omnicompetence** to judges. The Framers of the Constitution persistently rejected a proposal that embodied this assumption, and Thomas Jefferson never entertained it.”

## Comprehension and Analysis Questions:

1. Define the political question doctrine in your own words.
2. Why was the Court slow to decide this case?
3. Explain what Justice Frankfurter meant in saying the court took on a “novel judicial power” in this decision. What dangers would this pose, according to his dissent?
4. How does this case relate to the principle of federalism?
5. How does this case relate to the principle of separation of powers?
6. How does this case relate to the principle of consent of the governed?

## Primary Source: *Shaw v. Reno* (1993)

**Building Context:** Following the 1990 census, North Carolina’s legislature set out to redraw its political district lines. At the time, North Carolina’s population was 78 percent white, 20 percent Black, and 2 percent other. A stipulation of the 1965 Voting Rights Act allowed the U.S. Attorney General, then Janet Reno, to review the proposed redistricting plan for North Carolina. Reno ordered two Black majority districts be created. One of the districts was as narrow as an interstate and looped through the state to connect majority Black neighborhoods. Ruth Shaw and other white residents sued, claiming that the redistricting plan violated the Equal Protection Clause of the Fourteenth Amendment because the proposed district appeared so irrationally drawn that it only could have been intended to attempt to separate voters by race. In a 5–4 decision, the Supreme Court ruled in favor of Shaw. It determined that race could not be the predominant reason when drawing district lines in a certain way.

For more information on this case, watch this Homework Help video:

<https://billofrightsinstitute.org/videos/shaw-v-reno-bris-homework-help-series>

## Majority Opinion, Justice O’Connor

“Racial classifications of any sort pose the risk of lasting harm to our society. They reinforce the belief, held by too many for too much of our history, that individuals should be judged by the color of their skin. Racial classifications with respect to voting carry particular dangers. Racial gerrymandering, even for **remedial** purposes, may **balkanize** us into

competing racial factions; it threatens to carry us further from the goal of a political system in which race no longer matters—a goal that the Fourteenth and Fifteenth Amendments embody, and to which the Nation continues to aspire. It is for these reasons that race-based districting by our state legislatures demands close judicial scrutiny.”

## Dissenting Opinion, Justice Stevens

“The duty to govern impartially is abused when a group with power over the electoral process defines electoral boundaries solely to enhance its own political strength at the expense of any weaker group. That duty, however, is not violated when the majority acts to facilitate the election of a member of a group that lacks such power because it remains underrepresented in the state legislature—whether that group is defined by political affiliation, by common economic interests, or by religious, ethnic, or racial characteristics. The difference between constitutional and unconstitutional gerrymanders has nothing to do with whether they are based on assumptions about the groups they affect, but whether their purpose is to enhance the power of the group in control of the districting process at the expense of any minority group, and thereby to strengthen the unequal distribution of electoral power. When an assumption that people in a particular minority group (whether they are defined by the political party, religion, ethnic group, or race to which they belong) will vote in a particular way is used to benefit that group, no constitutional violation occurs. Politicians have always relied on assumptions that people in particular groups are likely to vote in a particular way when they draw new district lines, and I cannot believe that anything in today’s opinion will stop them from doing so in the future.”

### Comprehension and Analysis Questions:

1. Why did North Carolina’s government create an irregularly shaped congressional district?
2. What constitutional argument did Ruth Shaw and the other white residents who sued make?
3. Explain Justice O’Connor’s caution against racial gerrymandering.
4. Why was Justice Stephens critical of the Court’s decision?
5. How does this case relate to the principle of federalism?
6. How does this case relate to the principle of separation of powers?
7. How does this case relate to the principle of consent of the governed?

# Graphic Organizer: Gerrymandering, Representation, and Consent of the Governed

**Directions:** Fill in the tables below about the two Supreme Court cases then answer the follow-up question.

<i>Baker v. Carr</i> (1962)	
Summary of case	
Court decision	
Main ideas from majority opinion	
Main ideas from dissenting opinion	
Case connections to representation and consent of the governed	
Do you agree with the Court's decision in this case? Why or why not?	
What questions do you still have about this case?	

<i>Shaw v. Reno</i> (1993)	
Summary of case	
Court decision	
Main ideas from majority opinion	
Main ideas from dissenting opinion	
Case connections to representation and consent of the governed	
Do you agree with the Court's decision in this case? Why or why not?	
What questions do you still have about this case?	

After completing the tables above, answer the following question:

Based on the sources you read, what is the relationship between gerrymandering, the concept of representation, and the principle of consent of the governed?