

WHOSE DISTRICT LINE IS IT ANYWAYS? HOW PARTISAN GERRYMANDERING IMPACTS ELDERLY AMERICANS' ACCESS TO HEALTH CARE

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One of the most important principals of America is the right to vote—the right for citizens to choose who represents their communities and who gets to make critical decisions that will impact their livelihoods. The purpose of redistricting—the process of drawing electoral district boundaries—is to ensure that every American is afforded this fundamental right. In reality, redistricting is seen as an opportunity for politicians to gain or maintain political control, regardless of voter preferences. For decades, far too many states have weaponized insidious partisan gerrymandering to secure victories and hand-pick their constituents, flipping democracy on its head. Beyond voter suppression, the effects of gerrymandering transcends panoplies of policy issues, including health care. Yet, the majority of American voters know little-to-nothing at all about their state's redistricting process. The result? Millions of Americans are left with broken systems despite voters' widespread public support for reform. From health care that plagues even the insured with crippling medical debt, to hospitals closing its doors, redistricting—and the partisan gerrymandering that runs rampant during the process—plays a crucial role in states' inability to adopt meaningful change.

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This Note analyzes the intersection of partisan gerrymandering and access to health care within the United States. It examines the effects of unfair maps, particularly as it relates to states' ability to expand Medicaid and improve access to Medicare for elderly Americans. This Note goes on to explore the different avenues states can take to achieve robust redistricting reform that curbs partisan interests, or better yet, removes politicians from the redistricting process entirely.

I. Introduction

Having quality health insurance is vital in protecting against financial calamity.¹ Medicare and Medicaid, the United States' federal public health insurance programs, were created to protect the health and well-being of America's elderly and financially limited.² Despite its necessity and the availability of public assistance, nearly thirty million Americans remain uninsured.³ One in six Americans have an outstanding medical bill,⁴ amounting to eighty-one billion dollars in national debt.⁵ Although health insurance can mitigate financial stress, it hardly insulates all individuals from diving into crippling debt, bankruptcy or, in the extreme, homelessness.⁶ Approximately 40% of insured adults report concerns of affording their monthly insurance premiums, and 48% are concerned about affording their insurance deductibles—a fixed amount beneficiaries are required to pay before their health insurance even kicks in.⁷

1. See, e.g., Jennifer Tolbert, Patrick Drake & Anthony Damico, *Key Facts About the Uninsured Population*, KFF (Dec. 19, 2022), <https://www.kff.org/uninsured/issue-brief/key-facts-about-the-uninsured-population/> [https://perma.cc/HS6B-SFWC].

2. See Medicare and Medicaid Act (1965), NAT'L ARCHIVES, <https://www.archives.gov/milestone-documents/medicare-and-medicaid-act> (last visited Feb. 24, 2024) [https://perma.cc/T7WS-9H7P].

3. *Nearly 30 Million Americans Have No Health Insurance*, PETER G. PETERSON FOUND. (Nov. 17, 2022), <https://www.pgpf.org/blog/2022/11/nearly-30-million-americans-have-no-health-insurance> [https://perma.cc/EA4Q-YVP7].

4. Michael Sainato, *'I Live on the Street Now': How Americans Fall into Medical Bankruptcy*, GUARDIAN (Nov. 14, 2019, 2:00 PM), <https://www.theguardian.com/us-news/2019/nov/14/health-insurance-medical-bankruptcy-debt> [https://perma.cc/SG38-9QV6].

5. *Id.*

6. See *id.*

7. Lunna Lopes, Marley Presiado, & Liz Hamel, *Americans' Challenges with Health Care Costs*, KFF (Dec. 21, 2023), <https://www.kff.org/health-costs/issue-brief/americans-challenges-with-health-care-costs/> [https://perma.cc/K8H4-UDNX]; *Deductible*, HEALTHCARE.GOV, <https://www.healthcare.gov/glossary/deductible/> (last visited Feb. 24, 2024) [https://perma.cc/D4MW-XEEW].

Take Susanne LeClair, a West-Palm Beach, Florida resident who was diagnosed and treated for cancer.⁸ Susanne was informed that the hospital accepted her insurance prior to her first cancer-related surgery; but after the surgery, she realized that the hospital was out-of-network, and her insurance only covered the hospital bed.⁹ Susanne's bills continued to pile up, amounting to hundreds of thousands of dollars, leaving her with no choice but to file for bankruptcy.¹⁰ Even after filing for bankruptcy, Susanne's medical debt continued to climb as her cancer treatment necessitated additional surgeries, medications, and medical appointments.¹¹ Despite her continued health insurance and efforts to pay premiums, deductibles, and co-pays out-of-pocket, Susanne's cancer diagnosis and treatment left her with \$52,000 in medical debt and on the verge of filing for her second bankruptcy.¹² Susanne's story is hardly remarkable. A 2019 study found that, of the bankruptcies filed annually, approximately 530,000 are filed due to accrued medical debt, citing poor health insurance as its main malefactor.¹³

The illusion that Medicare is a safe haven for America's aging population is far from true.¹⁴ Many of America's elderly population (those ages sixty-five and up), who are Medicare beneficiaries, cannot afford their health care and are sliding into medical debt.¹⁵ A 2021 report found that one in ten Medicare beneficiaries experience delayed care because they cannot afford the care, and struggle to pay their medical bills.¹⁶ Lower-income elderly Americans, meaning those whose annual income is between \$15,000–\$25,000, are more than twice as likely to delay receiving care and are three times more likely to have trouble paying medical bills.¹⁷ As of 2018, 40% of Medicare beneficiaries fell

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*; David U. Himmelstein, Steffie Woolhandler, Robert M. Lawless, Deborah Thorne & Pamela Foohey, *Medical Bankruptcy: Still Common Despite the Affordable Care Act*, 109 AM. J. PUB. HEALTH 431, 432 (2019).

14. See Amber Willink, *A Tricky Balance: Medicare's Affordability and Middle-and Lower-Income Beneficiaries' Financial Stress*, 45 GENERATIONS: J. AM. SOC'Y ON AGING, Summer 2021, at 2.

15. Dennis Thompson, *Many Seniors on Medicare Falling into Medical Debt*, HEALTHDAY (Dec. 15, 2021, 6:40 AM), <https://www.healthday.com/health-news/public-health/12-13-many-2655951317.html> [https://perma.cc/F5SS-ETS9].

16. *Id.*

17. *Id.*

within this annual income range.¹⁸ Furthermore, elderly Americans who suffer from several (four to ten) chronic conditions are twice as likely to let medical bills accrue, compared to seniors who have no chronic conditions, or who only need care for one chronic condition.¹⁹

For decades, health care coverage in America has been a highly politicized issue.²⁰ Interestingly, Medicare has remained somewhat party-neutral, as evidenced by surviving budget cuts in the American Health Care Act of 2017²¹ and the Better Care Reconciliation Act²²—both acts passed in a time period in which the Republican Party controlled both the legislative and executive branches.²³ Despite this, Medicare today still lacks coverage for long-term care, dental, vision, and hearing, and can still lead to high out-of-pocket costs for its beneficiaries.²⁴ Due to these high costs, the vast majority of Medicare beneficiaries receive supplemental insurance through Medicaid, employer-sponsored insurance, Medigap, or enroll in Medicare Advantage.²⁵ In 2018, only 15% of Medicare beneficiaries used Medicare as their sole health insurance provider.²⁶

Alternatively, Medicaid—a public health insurance program that provides health care for low-income individuals—is continuously attacked with threats and attempts to limit its federal funding.²⁷ For instance, in 2017, the Executive Office of the President at the time issued a new Medicaid waiver guidance that capped federal Medicaid spending, regardless of increases in health care spending.²⁸ The guidance provided greater flexibility to states to reduce Medicaid benefits by

18. Willink, *supra* note 14, at 3.

19. Thompson, *supra* note 15.

20. Colleen M. Grogan & Sunggeun (Ethan) Park, *The Politics of Medicaid: Most Americans Are Connected to the Program, Support Its Expansion, and Do Not View It as Stigmatizing*, 95 MILBANK Q. 749, 756 (2017).

21. H.R. 1628, 115th Cong. (2017).

22. See generally HENRY J. KAISER FAM. FOUND., SUMMARY OF THE BETTER CARE RECONCILIATION ACT OF 2017 (2017).

23. Grogan & Park, *supra* note 20, at 756.

24. Thompson, *supra* note 15.

25. Willink, *supra* note 14, at 2.

26. *Id.*

27. Grogan & Park, *supra* note 20, at 751; Cindy Mann, *What Does New Block Grant Guidance Mean for the Medicaid Program?*, COMMONWEALTH FUND (Jan. 31, 2020), <https://www.commonwealthfund.org/blog/2020/what-does-new-block-grant-guidance-mean-medicare-program> [<https://perma.cc/RVR3-3L74>].

28. Mann, *supra* note 27.

allowing them to cap premiums and adjust eligibility requirements, among other measures.²⁹

Despite the controversial nature of health care in the political arena, Americans generally support Medicaid (74%).³⁰ A 2020 survey found that more than half of American voters supported Medicare for All—a program that would provide Americans with health insurance from the government, eliminating the need for other health insurance providers.³¹ Further, the survey found that 65% of voters are in favor of a public health insurance option, meaning Americans would have the choice to receive insurance from *either* private insurance providers *or* from a government-run health program.³² Additionally, more than 93% of Medicare Advantage users believe protecting Medicare should be a priority for the Executive Branch—68% of whom suggest it should be a top priority, and 88% of whom oppose reducing federal spending on Medicare.³³ Moreover, a 2018 poll showed that 59% of voters who reside in states that have not expanded Medicaid are actually in favor of an expansion.³⁴

These statistics raise an important question: if there is such wide public support for Medicare and Medicaid, why has the U.S. chosen to keep its current, broken health care system—a system that leaves many without care and plagues insured individuals with medical debt?³⁵ Moreover, why do some states' residents continue to face more challenges than others in accessing quality health care? The answer, in part, is partisan gerrymandering.³⁶

This Note analyzes the intersection of partisan gerrymandering and access to health care within the U.S., specifically addressing how partisan gerrymandering impacts Medicare and Medicaid expansion,

29. *Id.*

30. Grogan & Park, *supra* note 20, at 757.

31. Gaby Galvin, *About 7 in 10 Voters Favor a Public Health Insurance Option. Medicare for All Remains Polarizing*, MORNING CONSULT (Mar. 24, 2021, 6:00 AM), <https://morningconsult.com/2021/03/24/medicare-for-all-public-option-polling/> [<https://perma.cc/5XHY-D59S>].

32. *Id.*

33. *Poll Shows Overwhelming Support for Protecting Medicare Advantage Funding*, BETTER MEDICARE ALL. (Jan. 12, 2022), <https://bettermedicarealliance.org/news/poll-shows-overwhelming-support-for-protecting-medicare-advantage-funding/> [hereinafter *Overwhelming Support*] [<https://perma.cc/R6ZA-T5SL>].

34. ALEX TAUSANOVITCH & EMILY GEE, CTR. FOR AM. PROGRESS, *HOW PARTISAN GERRYMANDERING LIMITS ACCESS TO HEALTH CARE 3* (2020).

35. See *Overwhelming Support*, *supra* note 33; see also Thompson, *supra* note 15; Sainato, *supra* note 4.

36. See *infra* Section III.A.

and the overall health of elderly Americans. Part II reviews the genesis and evolution of Medicare and Medicaid.³⁷ Part II also provides a brief overview of gerrymandering and its detrimental effects on America's election system.³⁸ Using two state case studies—Wisconsin³⁹ and Massachusetts⁴⁰—Part III assesses how partisan gerrymandering during the 2010-2011 redistricting cycle impacted each state's health care landscape, and what that meant for the elderly American population.⁴¹ Finally, Part IV examines solutions to curb partisan gerrymandering, specifically exploring Arizona's implementation of an Independent Redistricting Commission, and how that has impacted the state's elections.⁴² Furthermore, Part IV discusses supplemental strategies to make state elections more competitive, including continuing to challenge maps in state and federal courts.⁴³ Part IV also discusses how states can move the needle towards equitable access to quality health care for the elderly, including public education regarding the redistricting process and increasing health literacy.⁴⁴ Finally, the Conclusion provides a brief summary of the Note's contents as well as a reiteration of the impact a more nonpartisan, voter-centric redistricting process can have on improving the health care landscape across the country.⁴⁵

II. Background and History

In order to understand the intersection of Medicare, Medicaid, and partisan gerrymandering, it is necessary to understand the history of Medicare and Medicaid in the United States. Further, it is important to explain how partisan gerrymandering occurs and why politicians have weaponized the process of redistricting for decades to push their personal political agendas.⁴⁶

37. *See infra* Part II.

38. *See infra* Part II.

39. *See infra* Section III.B.

40. *See infra* Section III.C.

41. *See infra* Section III.D.

42. *See infra* Part IV.

43. *See infra* Part IV.

44. *See infra* Part IV.

45. *See infra* Part V.

46. *See infra* Part III.D.

A. A Brief History of Medicare in the United States

Medicare was first signed into law in 1965 with the aim of increasing health care coverage and financial security for elderly and disabled Americans.⁴⁷ Initially, Medicare had two parts: hospital coverage (Part A) and physician services (Part B).⁴⁸ In 1972, Medicaid was enacted to provide coverage for the elderly and families earning below a certain income baseline.⁴⁹ In 1997, Congress enacted the Medical Plus Choice program that included a third part (Part C) for Medicare: Medicare Health Maintenance Organizations (HMOs),⁵⁰ which was later reformed to Medicare Advantage (MA) in 2003 through the Medicare Prescription Drug, Improvement, and Modernization Act (MMA).⁵¹ Prescription drug benefits (Part D) were also added to Medicare as a result of the MMA in 2003.⁵² Today, Medicare provides coverage in two main ways: beneficiaries can enroll in (1) “Original Medicare” which includes Part A and Part B coverage, with the option to add Part D, or (2) enroll in MA, which is now a Medicare-approved plan from a private insurance company that “bundles” plans to include Part A, Part B, typically Part D, and sometimes additional benefits for costs related to vision, hearing, and dental services.⁵³

Medicare, which is now run by the Medicare and Medicaid Services (CMS) federal agency, is the largest U.S. public health program, providing health care coverage for over ninety million Americans,⁵⁴ offering essentially universal coverage for elder Americans sixty-five and older.⁵⁵ Every day, approximately 10,000 Americans become eligible for

47. *The History of Medicare*, NAT'L. ACAD. SOC. INS., <https://www.nasi.org/learn/medicare/the-history-of-medicare/> (last visited Feb. 24, 2024) [hereinafter *The History of Medicare*] [<https://perma.cc/CLW8-MMYW>].

48. *Id.*

49. CTR. FOR HEALTH CARE STRATEGIES, INC., MEDICAID: A BRIEF HISTORY OF PUBLICLY FINANCED HEALTH CARE IN THE UNITED STATES 2 (2023), https://www.chcs.org/media/Medicaid-Timeline-Fact-Sheet_010323.pdf [hereinafter MEDICAID: A BRIEF HISTORY] [<https://perma.cc/C9Z8-VGUP>].

50. *The History of Medicare*, *supra* note 47.

51. *Id.*

52. *What's Medicare?*, MEDICARE.GOV, <https://www.medicare.gov/what-medicare-covers/your-medicare-coverage-choices/whats-medicare> (last visited Feb. 24, 2024) [<https://perma.cc/66G9-QG79>].

53. *Id.*

54. MEDICAID: A BRIEF HISTORY, *supra* note 49, at 1.

55. Marilyn Moon, *What Medicare Has Meant to Older Americans*, 18 HEALTH CARE FIN. REV. 49, 49 (1996).

B. Medicare and its Impact on the Elderly

Prior to its enactment, the elderly were one of the least insured populations in the U.S., as only about 56% of Americans sixty-five years and older had health insurance.⁶⁵ Nearly seventy years after its inception, Medicare provides nearly universal coverage for the elderly American population, who are now the most insured population in the U.S.⁶⁶ By the early 1970s, approximately 97% of Americans sixty-five years and older were insured, and the insured population has remained steadily around this percentage ever since.⁶⁷

The effects of Medicare on the elderly population cannot be overstated, as it led to a substantial increase in the elderly's access to and use of medical care.⁶⁸ For example, in the five years after the enactment of Medicare, the elderly's use of physician services jumped from 68% to 76%.⁶⁹ Within the first decade of Medicare, the hospital discharge rate, which measures the number of individuals who leave hospitals after receiving care,⁷⁰ increased from 190 per 1,000 elderly individuals to 350 per 1,000 elderly individuals.⁷¹ Furthermore, as of recent reform, the MMA also includes coverage for prescription drug plans.⁷² Although Medicare does not cover all of the acute services that many older Americans need, it is clear that the program still provides considerable financial relief.⁷³

As the elderly American population continues to grow, the number of elderly Americans covered by Medicare has increased steadily, and will continue to do so for decades to come.⁷⁴ It is estimated that by 2060, the elderly population will account for nearly a quarter of the nation's population (estimated at approximately ninety-five million individuals).⁷⁵ Moreover, it is projected that individuals eighty years and older will account for more than one-third of the elderly population by

65. Moon, *supra* note 55, at 49.

66. *Id.*

67. *Id.*

68. *Id.* at 54.

69. *Id.*

70. *Hospital Discharge Rates*, OECD DATA, <https://data.oecd.org/healthcare/hospital-discharge-rates.htm> (last visited Nov. 7, 2023) [<https://perma.cc/YZF8-JTBB>].

71. Moon, *supra* note 55, at 54.

72. *The History of Medicare*, *supra* note 47.

73. *Id.*

74. *The Facts about Medicare Spending*, KFF (June 2023), <https://www.kff.org/interactive/medicare-spending> [hereinafter *The Facts About Medicare Spending*] [<https://perma.cc/4RUW-8RRV>].

75. *Id.*

2060, and the number of individuals that are ninety and older will double in size between 2020 and 2060.⁷⁶ As the elderly population continues to grow, discussions of their access to quality health care, through Medicare and Medicaid, will continue to remain at the fore of American politics.⁷⁷

C. The Political Polarization of Medicare, The Affordable Care Act, and its Ensuing Legal Challenges

Health care policy is often a party-line issue. Generally speaking, Democratic politicians fall within one of two camps: supporting universal Medicare to supplant private insurance, or creating a public-coverage option in addition to America's current private insurance system.⁷⁸ Alternatively, Republican politicians generally fall within the camp that sees Medicare as an unsustainable federal program and argues that the government should focus on, among other things, creating incentives for private insurance companies to provide health coverage to beneficiaries and subsidies for the elderly to buy private insurance.⁷⁹ Although this generalization does not describe every politician's stance on health care, the political divide can be seen most prominently in the development of House caucuses.⁸⁰ For example, the Congressional Progressive Caucus has long championed the Medicare for All Act, and has been at the forefront of pushing bills that include a single-payer health care plan.⁸¹ Alternatively, the Republican Study Committee (RSC) has a different vision for the future of Medicare, including increasing the age requirement from sixty-five to sixty-seven,

76. *Id.*

77. *See id.*

78. Kevin Uhrmacher, Kevin Schaul, Paulina Firozi & Jeff Stein, *Where 2020 Democrats Stand on Health Care*, WASH. POST (Apr. 8, 2020), <https://www.washingtonpost.com/graphics/politics/policy-2020/medicare-for-all/> [<https://perma.cc/2V4X-VD9W>].

79. *See Republican Views on Medicare*, REPUBLICAN VIEWS ON THE ISSUES (Mar. 5, 2016), <https://www.republicanviews.org/republican-views-on-medicare/> [hereinafter *Republican Views*] [<https://perma.cc/89AQ-2M3X>].

80. *See* REPUBLICAN STUDY COMM., BLUEPRINT TO SAVE AMERICA: FISCAL YEAR 2023 BUDGET 68–72 (2023), https://banks.house.gov/uploadedfiles/rsc_2023_budget_final_version.pdf [hereinafter RSC BLUEPRINT] [<https://perma.cc/WQG2-M7TG>]; Press Release, Jamie Raskin, Congressional Progressive Caucus Celebrates Medicare for All Hearing (Mar. 29, 2022), <https://raskin.house.gov/2022/3/congressional-progressive-caucus-celebrates-medicare-for-all-hearing> [hereinafter Raskin] [<https://perma.cc/9RUS-SD3B>].

81. Raskin, *supra* note 80.

repealing the Inflation Reduction Act's prescription drug cost cap, and increasing premiums.⁸²

Despite the divide, federal spending for Medicare has steadily risen over the last few years.⁸³ In 2022, 12% of government spending (approximately \$747 billion dollars) was spent on Medicare.⁸⁴ Although Medicare funds a variety of health services, hospital expenses remain the largest recipient of federal funds, accounting for approximately 40% of the program's budget.⁸⁵ Other services that account for a large portion of the program's budget include prescription drugs (making up 32% of the budget) and "home-health spending" for services such as in-home care (making up 37% of the budget).⁸⁶ Furthermore, in 2022, with the support of many Democratic congressional representatives, President Biden signed the Inflation Reduction Act⁸⁷ into law, which allows Medicare to negotiate prescription drug costs to help lower insurance premiums and cap drug prices for seniors.⁸⁸ Although the Inflation Reduction Act passed, it did so without a single Republican vote,⁸⁹ making it clear that changing America's health care system remains a highly controversial issue.⁹⁰

1. THE AFFORDABLE CARE ACT

In 2010, Congress enacted the Patient Protection and Affordable Care Act (ACA).⁹¹ The ACA greatly expanded access to affordable health care coverage by creating insurance marketplaces and imposing

82. RSC BLUEPRINT, *supra* note 80 at 68–72.

83. *Budget Basics*, *supra* note 57.

84. *Id.*

85. *Id.*

86. *Id.*

87. FACT SHEET: *By the Numbers: Millions of Americans Would Lose Health Care Coverage, Benefits, and Protections Under Congressional Republicans' Plans*, WHITE HOUSE (Nov. 1, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/11/01/fact-sheet-by-the-numbers-millions-of-americans-would-lose-health-care-coverage-benefits-and-protections-under-congressional-republicans-plans/> [https://perma.cc/8TMF-UY42].

88. Inflation Reduction Act of 2022, Pub. L. No. 117–169, 136 Stat. 1818.

89. *Biden-Harris Administration Takes Major Step Forward in Lowering Health Care Costs; Announces Manufacturers Participating in Drug Price Negotiation Program*, WHITE HOUSE (Oct. 3, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/03/biden-harris-administration-takes-major-step-forward-in-lowering-health-care-costs-announces-manufacturers-participating-in-drug-price-negotiation-program/> [https://perma.cc/XWZ8-NTSB].

90. Uhrmacher et al., *supra* note 78; *Republican Views*, *supra* note 79.

91. MEDICAID: A BRIEF HISTORY, *supra* note 49.

tax credits for states and insurance providers.⁹² The ACA also required states to expand their Medicaid relief.⁹³ In 2014, the ACA worked to expand Medicaid eligibility for approximately thirteen million Americans, though this expansion was not mandatory for state legislatures to implement.⁹⁴ For states that opted into the expansion, state residents, including elderly Americans, with incomes up to 138% of the federal poverty level would become eligible for Medicaid; states received federal funding to cover 90% of the costs associated with the expanded eligibility.⁹⁵ As of December 2023, ten states have yet to expand Medicaid under the ACA, resulting in approximately two million Americans to go without health insurance.⁹⁶

The passing of this landmark legislation did not come without challenges. The ACA failed to garner a single Republican vote during its final passage.⁹⁷ Shortly after the ACA was signed into law, twenty-six states (of which the majority were Republican-led) challenged the ACA's constitutionality in mandating individuals to purchase insurance in the 2012 Supreme Court case *National Federation of Independent Business (NFIB) v. Sebelius*.⁹⁸ In *Sebelius*, the Supreme Court refrained from striking down any provision of the ACA.⁹⁹ Although the Court upheld the constitutionality of the individual mandate provision to maintain a minimum level of health insurance, the Court left the expansion of Medicaid as an issue for individual states to decide.¹⁰⁰ The outcome of the litigation meant that states would not be stripped entirely of federal funding if they did not implement the health reform expansion, just that they would only lose the federal funds associated with

92. *Id.*

93. *Id.*

94. TAUSANOVITCH & GEE, *supra* note 34, at 3.

95. *Redistricting Watch: How Fair Maps Save Lives*, LEAGUE WOMEN VOTERS (Mar. 25, 2021), <https://www.lwv.org/blog/redistricting-watch-how-fair-maps-save-lives> [<https://perma.cc/742Q-VLFX>]; *Status of State Medicaid Expansion Decisions: Interactive Map*, KFF (Dec. 1, 2023), <https://www.kff.org/medicaid/issue-brief/status-of-state-medicaid-expansion-decisions-interactive-map/> [hereinafter *Medicaid Map*] [<https://perma.cc/ZJX3-EZ2F>].

96. *Medicaid Map*, *supra* note 95 (indicating that Wyoming, Wisconsin, Kansas, Texas, Mississippi, Alabama, Florida, Georgia, South Carolina and Tennessee have not opted into the ACA).

97. Lara Meckler & Greg Hitt, *Obama Signs Landmark Health Bill*, WALL ST. J. (Mar. 24, 2010, 12:01 AM), https://www.wsj.com/articles/SB10001424052748704896104575139522743971904?mod=article_inline [<https://perma.cc/4HZ3-WDUM>].

98. *Nat'l Fed'n Indep. Bus. v. Sebelius*, 567 U.S. 519, 519 (2012).

99. *Id.* at 585–86.

100. *Id.* at 575–85.

the expansion.¹⁰¹ States that chose to participate in the Medicaid expansion received federal funding and had wide discretion to determine delivery of care, coverage, benefits, and how and what providers are paid, so long as they remained in compliance with the federal guidelines.¹⁰²

In 2015, the Supreme Court was tasked again with determining the constitutionality of the ACA in *King v. Burwell*.¹⁰³ Republican-led challengers in this case claimed that the ACA's statutory text prevented the government from providing federal subsidies (in the form of tax credits) for lower-income Americans to purchase insurance options.¹⁰⁴ However, the Court held that access to subsidized insurance policies among lower-income Americans was lawful.¹⁰⁵ Approximately six and a half million Americans were saved from losing their health care as a result of the Court upholding the ACA's subsidy provision.¹⁰⁶

In 2021, the ACA was under attack once more, in the Supreme Court case *California v. Texas*.¹⁰⁷ Following the enactment of the Tax Cuts and Jobs Act of 2017 (TCJA)—which essentially eliminated the individual mandate requirement by removing the financial penalty for failing to comply with the mandate¹⁰⁸—twenty states¹⁰⁹ (represented by eighteen Republican Attorneys General and two Republican Governors), led by Texas—challenged the constitutionality of the individual

101. *Id.* at 588; see MARYBETH MUSUMECI, KAISER FAM. FOUND., A GUIDE TO THE SUPREME COURT'S DECISION ON THE ACA'S MEDICAID EXPANSION 10 (2012), <https://www.kff.org/wp-content/uploads/2013/01/8347.pdf> [<https://perma.cc/C9P5-BFAZ>].

102. See KAISER COMM'N ON MEDICAID & UNINSURED, FEDERAL CORE REQUIREMENTS AND STATE OPTIONS IN MEDICAID: CURRENT POLICIES AND KEY ISSUES 1 (2011), <https://www.kff.org/wp-content/uploads/2013/01/8174.pdf> [<https://perma.cc/VTC6-2UZM>].

103. See *King v. Burwell*, 576 U.S. 473 (2015).

104. *Id.* at 474.

105. *Id.* at 493.

106. Jess Bravin & Louise Radnofsky, *Supreme Court Upholds Obama's Health-Law Subsidies*, WALL ST. J. (June 25, 2015, 9:51 PM), https://www.wsj.com/articles/supreme-court-upholds-obamas-health-law-subsidies-1434737182?mod=article_inline [<https://perma.cc/F6BK-3FA3>].

107. See, e.g., *California v. Texas*, 141 S. Ct. 2104 (2021).

108. CHRISTINE EIBNER & SARAH A. NOWAK, COMMONWEALTH FUND, THE EFFECT OF ELIMINATING THE INDIVIDUAL MANDATE PENALTY AND THE ROLE OF BEHAVIORAL FACTORS 2 (2018).

109. Twenty states originally sued the federal government in 2018. However, in 2019, Wisconsin and Maine withdrew from the case and therefore only eighteen states pursued the ACA challenge on appeal. See, e.g., MaryBeth Musumeci, *Explaining California v. Texas: A Guide to the Case Challenging the ACA*, KFF (Sept. 1, 2020), <https://www.kff.org/health-reform/issue-brief/explaining-california-v-texas-a-guide-to-the-case-challenging-the-aca/> [<https://perma.cc/8VQB-9FW7>].

insurance mandate.¹¹⁰ Conversely, seventeen states, led by California, sought to defend the ACA.¹¹¹ The Supreme Court held that the challengers lacked standing under Article III to pursue the case, as they failed to show an injury related to the individual insurance mandate provision.¹¹² As a result, the Court did not reach the question of the constitutionality of the provision.¹¹³ These cases underscore the historical, controversial nature of health care in this country that will likely remain present in politics for decades to come.¹¹⁴

D. Defining Gerrymandering, and Why the Redistricting Process Matters

A bedrock principal within the U.S. Constitution is the right to vote.¹¹⁵ As such, “[t]he purpose of redistricting is essentially to make sure that each person is afforded the right to vote and that every citizen is represented in both the state and federal legislative bodies.”¹¹⁶ Although the Constitution never mentions the phrase “redistricting,” the constitutional root of the redistricting process is derived from Article I, Section 4 of the Constitution which provides, “[t]he times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the legislature thereof.”¹¹⁷ This, in effect, gave state legislatures the power to decide how representatives shall be elected.¹¹⁸ Furthermore, Article I, Section 2 of the U.S. Constitution provides that congressional representatives of the Constitution “shall be composed of members chosen . . . by the people of the several states . . .”¹¹⁹ and that each state is apportioned a set number of

110. See, e.g., *California*, 141 S. Ct. at 2108.

111. *Id.*

112. *Id.*

113. *Id.* at 2120.

114. See generally *infra* Part II.

115. See generally U.S. CONST. art. I.

116. Kristina Betts, *Redistricting: Who Should Draw the Lines? The Arizona Independent Redistricting Commission as a Model for Change*, 48 ARIZ. L. REV. 171, 179 (2006).

117. U.S. CONST. art. 1 § 4.

118. Thomas E. Mann, Sean O’Brien & Nate Persily, *Redistricting and the United States Constitution*, BROOKINGS (Mar. 22, 2011), <https://www.brookings.edu/on-the-record/redistricting-and-the-united-states-constitution/> [<https://perma.cc/PQ6L-ZNDG>].

119. U.S. CONST. art. 1 § 2; see also *Redistricting*, BALLOTPEDIA, <https://ballotpedia.org/Redistricting> (last visited Nov. 7, 2023) [hereinafter *Redistricting*] [<https://perma.cc/9GXB-5FEZ>].

congressional seats based upon the size of its population, compared to other states.¹²⁰

The redistricting process occurs once every ten years.¹²¹ After the release of Census data, states draw and approve new state legislative (i.e., state house and senate seats) and congressional (i.e., U.S. House seats) voting district lines.¹²² States that have a single congressional district are not required to engage in redistricting, as they do not need to draw any district line boundaries.¹²³ The purpose behind redistricting—the re-drawing of voting maps—is to ensure accurate representation for the American people.¹²⁴ As certain areas of the country grow and contract in population, the four hundred and thirty-five U.S. congressional seats are “reapportioned,” meaning they are re-assigned and distributed among the fifty states, depending on how fluctuations of populations have resulted in states losing or gaining congressional seats.¹²⁵

As the Constitution provides states with the power to determine their own elections, each state has their own process for drawing and enacting district maps. Generally, states’ congressional and state legislative redistricting processes can be described through the following classifications: (1) “legislature-dominant,” where the state legislature largely draws the maps (sometimes with the involvement of a nonpartisan Advisory Commission), and approves the district maps, which may or may not be subject to veto by the Governor;¹²⁶ (2) “commission,” which may be comprised of either elected political officials (i.e., a Politician Commission) or appointed individuals who cannot hold elective office of varying political affiliations (i.e., an Independent Commission); or (3) “hybrid” in which a commission and state legislature share

120. *Redistricting*, *supra* note 119.

121. Julia Kirschenbaum & Michael Li, *Gerrymandering Explained*, BRENNAN CTR. FOR JUST. (June 9, 2023), <https://www.brennancenter.org/our-work/research-reports/gerrymandering-explained> [<https://perma.cc/BGE7-DVLG>] (noting that the most recently completed redistricting cycle occurred during 2021–2022 as opposed to just 2021 due to the delay COVID-19 had on the 2020 Census).

122. *Id.*

123. See *Who Draws the Maps? Legislative and Congressional Redistricting*, BRENNAN CTR. FOR JUST. (Jan. 30, 2019), <https://www.brennancenter.org/our-work/research-reports/who-draws-maps-legislative-and-congressional-redistricting> [hereinafter *Who Draws the Maps?*] [<https://perma.cc/XWT2-NFN8>].

124. See *id.*

125. J. Gerald Hebert & Marina K. Jenkins, *The Need for State Redistricting Reform To Rein In Partisan Gerrymandering*, 29 *YALE L. & POL’Y REV.* 543, 543–47 (2011).

126. *State-by-State Redistricting Procedures*, BALLOTPEDIA, https://ballotpedia.org/State-by-state_redistricting_procedures (last visited Nov. 7, 2023) [<https://perma.cc/BXS9-TMFK>].

authority over the process.¹²⁷ Of the states that are required to draw congressional district lines every decade (meaning states in which there is more than one congressional district), thirty-three states were classified as “legislature-dominant” states, eight were classified as “commission” states (six of which have Independent Commissions and two of which have Politician Commissions) and two states were classified as hybrid.¹²⁸ Of the states that are required to draw state legislature district lines, thirty-three states were classified as “legislature dominant,” fourteen states were classified as “commission states” and three states were classified as hybrid.¹²⁹ States that have Independent Commissions oversee the redistricting process consistently enact maps that are “among the fairest in the country.”¹³⁰

The once-in-a-decade district re-drawing process allows for districts to remain relatively equal in population size and reflect “an ‘exact portrait, a miniature’ of the population as a whole.”¹³¹ Beyond federal mandates to uphold the Fourteenth Amendment and the Voting Rights Act of 1965, individual states commonly require the state legislatures to abide by and balance the following four factors when drawing district lines:¹³² (1) contiguity (meaning that the district lines are geographically adjacent),¹³³ (2) compactness (meaning those that reside within the district must live in close proximity to one another),¹³⁴ (3) community interest (meaning the lines are drawn in a manner that is “practical to

127. *Id.*

128. *Id.*; *Who Draws the Lines?*, ALL ABOUT REDISTRICTING, <https://redistricting.ils.edu/redistricting-101/who-draws-the-lines/> (last visited Nov. 7, 2023) [<https://perma.cc/G2XR-9VPD>].

129. Michael Li, *Anti-Gerrymandering Reforms Had Mixed Results*, BRENNAN CTR. FOR JUST. (Sept. 19, 2022), <https://www.brennancenter.org/our-work/analysis-opinion/anti-gerrymandering-reforms-had-mixed-results> [<https://perma.cc/57DZ-ACVS>]. 130. Michael Li, *Anti-Gerrymandering Reforms Had Mixed Results*, BRENNAN CTR. FOR JUST. (Sept. 19, 2022), <https://www.brennancenter.org/our-work/analysis-opinion/anti-gerrymandering-reforms-had-mixed-results> [<https://perma.cc/57DZ-ACVS>].

130. Michael Li, *Anti-Gerrymandering Reforms Had Mixed Results*, BRENNAN CTR. FOR JUST. (Sept. 19, 2022), <https://www.brennancenter.org/our-work/analysis-opinion/anti-gerrymandering-reforms-had-mixed-results> [<https://perma.cc/57DZ-ACVS>].

131. Kirschenbaum & Li, *supra* note 121.

132. Kimberly Tsoukalas, *An Introduction to Redistricting and its Effects on Healthcare*, LISTER HILL CTR. FOR HEALTH POL’Y (Aug. 13, 2021), <https://sites.uab.edu/listerhillcenter/2023/02/28/an-introduction-to-redistricting-and-its-effects-on-healthcare/> [<https://perma.cc/UM6J-7NY9>].

133. *Id.*

134. *Id.*

represent the collective interests of a portion of the state” taking into account similarities in historical, cultural, policy, or economic interests, or whose shared concerns would be affected by legislation),¹³⁵ and (4) political boundaries (meaning the district lines are drawn in a manner that is consistent with city and county limits to ensure that all individuals in the state have representation).¹³⁶ In this way, map drawers can ensure each district not only includes the same number of people, but also that the “districts are reflective and representative of the electorate.”¹³⁷

In reality, redistricting generally comes down to, in most states, “a legislative battle . . . requiring the input of the state’s legislative bodies and the approval (or veto) of the Governor” and is ripe for partisan gerrymandering to manipulate and sustain political gain.¹³⁸ Gerrymandering occurs when legislators intentionally draw their state’s district maps to influence elections.¹³⁹ Specifically, it occurs when state legislatures draw maps that maximize a certain party’s chances of winning elections in a district, in order to maintain majority control within the state.¹⁴⁰ Terms such as “packing” and “cracking” are generally used to describe the most common forms of gerrymandering.¹⁴¹ “Cracking” occurs when district lines are drawn to separate individuals with similar characteristics and common party affiliations, which diminishes the power of their vote to elect certain candidates.¹⁴² Alternatively, “packing” occurs when district lines are drawn to overload voters with similar characteristics into a few districts, which results in strong voting power to elect their preferred candidates within their district, but weak voting power in the rest of the voting districts within the state.¹⁴³

135. See *id.*; see also *Redistricting Criteria*, NAT’L CONF. STATE LEGIS. (July 16, 2021), <https://www.ncsl.org/research/redistricting/redistricting-criteria.aspx> [<https://perma.cc/F66J-XTXR>].

136. Tsoukalas, *supra* note 132.

137. *What is Redistricting and why is it Important?*, BRENNAN CTR. FOR JUST. (July 3, 2017), <https://www.brennancenter.org/our-work/analysis-opinion/what-redistricting-and-why-it-important> [<https://perma.cc/PJ49-XEAP>].

138. Hebert & Jenkins, *supra* note 125, at 544.

139. Kirschenbaum & Li, *supra* note 121.

140. Michael Wines, *What is Gerrymandering? And How Does It Work?*, N.Y. TIMES (June 27, 2019), <https://www.nytimes.com/2019/06/27/us/gerrymander-explainer.html> [<https://perma.cc/PG5V-GDW2>].

141. Kirschenbaum & Li, *supra* note 121.

142. *Id.*

143. *Id.*

Gerrymandering is more likely to occur when state legislatures oversee the drawing of maps (which is the current process in the majority of states),¹⁴⁴ and one political party dominates representation of that legislature.¹⁴⁵ In this way, the party dominating the legislature can continue to hold the majority power in their state¹⁴⁶ by filling districts with enough voters to elect and re-elect politicians in their party, regardless of whether the opposite party wins a majority of votes statewide.¹⁴⁷ As a result, the redistricting process becomes an opportunity for partisan gerrymanders to flip democracy on its head by providing elected officials with a way to hand-pick their constituents, instead of the voters picking their elected officials.¹⁴⁸

Gerrymandering occurs on both sides of the political aisle.¹⁴⁹ For example, in 2010, Pennsylvania's Republican-led legislature manipulated a congressional map to secure thirteen of the eighteen congressional districts, even in elections where Democratic candidates secured a majority of the statewide vote.¹⁵⁰ Comparatively, in Maryland, a Democratic-led legislature manipulated the map-drawing process to eliminate a Republican congressional district entirely.¹⁵¹ Though both parties engage in partisan gerrymandering, in 2010 the Republican State Leadership Committee of the United States launched a thirty million dollar campaign—REDMAP (the Redistricting Majority Project)—that focused on flipping state legislative seats and securing control in swing-states by “splicing, and dicing . . . congressional districts to secure Republican domination, and in turn, subvert the will of the American voter.”¹⁵² The plan was successful: by 2016, the Republican party had majority control in nearly two-thirds of the country's state

144. *Fighting Gerrymandering in the States*, INDIVISIBLE, <https://indivisible.org/resource/fighting-gerrymandering-states> (last visited Nov. 7, 2023) [<https://perma.cc/AC9M-C6F8>].

145. Kirschenbaum & Li, *supra* note 121.

146. *Id.*

147. Wines, *supra* note 140.

148. Hebert & Jenkins, *supra* note 125, at 544.

149. *See generally* Kirschenbaum & Li, *supra* note 121 (discussing instances of partisan gerrymandering among traditionally Republican and Democratic states).

150. *Id.*

151. *Id.*

152. Theresa Riley, *In 2010, Republicans 'Weaponized' Gerrymandering. Here's How They Did It.*, MOYERS (May 11, 2020), <https://billmoyers.com/story/in-2010-republicans-weaponized-gerrymandering-heres-how-they-did-it/> [<https://perma.cc/P28J-5KDP>].

legislatures.¹⁵³ As a result, countless organizations spurred into action to demand redistricting reform to protect Americans' voting rights.¹⁵⁴

1. REDISTRICTING REFORM

Between the 2011 and 2021-2022 redistricting cycles, ten states implemented redistricting reforms.¹⁵⁵ For example, Colorado, Michigan, New York, and Virginia adopted commissions to draw their district maps.¹⁵⁶ Michigan arguably underwent the most drastic reform, implementing a thirteen-member Independent Commission that included persons of a variety of political affiliations to oversee the redistricting process.¹⁵⁷ Michigan's reform includes barring the commission members from seeking election or appointment of members who have close partisan political ties.¹⁵⁸ Additionally, the state shifted its map approval process, now requiring support from both Democrats and Republicans, in addition to independent or third-party members, prior to the maps being enacted.¹⁵⁹

Furthermore, Missouri and Ohio reformed their state legislature drawing process: Missouri adopted two separate commissions to redraw state House and Senate districts, and Ohio adopted one commission to redraw state House and Senate districts, as well as the opportunity to redraw congressional maps if the state legislature failed to do so.¹⁶⁰ In addition, Ohio amended its map-drawing process by implementing stricter rules, such as standards for "partisan fairness."¹⁶¹ Other states such as Maryland, Utah, and New Mexico implemented advisory commissions that have no official authority but may propose

153. 'Gerrymandering On Steroids': How Republicans Stacked the Nation's Statehouses, WBUR (July 19, 2016), <https://www.wbur.org/hereandnow/2016/07/19/gerrymandering-republicans-redmap> [<https://perma.cc/6LXT-XULM>].

154. See generally *Organizations Involved in the Redistricting Process*, REDISTRICTING DATA HUB, <https://redistrictingdatahub.org/tools/organizations-involved-in-redistricting/> (last visited Nov. 7, 2023) [<https://perma.cc/8U33-PGD9>] (highlighting the organizations that are active in redistricting).

155. *2020 Redistricting Cycle Report: How Maps Were Challenged in Court*, DEMOCRACY DOCKET (Jan. 30, 2023), <https://www.democracymocket.com/analysis/2020-redistricting-cycle-report-how-maps-were-challenged-in-court/> [hereinafter *2020 Redistricting Cycle Report*] [<https://perma.cc/Y2VD-GYNV>].

156. *Id.*

157. Li, *supra* note 130.

158. *Id.*

159. *Id.*

160. See *2020 Redistricting Cycle Report*, *supra* note 155.

161. *Id.*

maps to state legislatures.¹⁶² These reforms did lead to some fairer outcomes. For example, the congressional maps used in the 2022 elections resulted in a one-seat bias in favor of the Republican party, but the tilt was “similar in magnitude to the expected structural and geographic bias predicted”¹⁶³ and was essentially “a political wash.”¹⁶⁴

Although these reforms were implemented with the goal of making the redistricting process fairer, they did not come without challenges.¹⁶⁵ In states like New York and Virginia, commissions failed to pass maps in 2021–2022, leaving the legislature and court to intervene and draw the district maps.¹⁶⁶ In Utah, the implementation of an advisory commission was practically useless, as the Republican-controlled state legislature ignored the commission’s recommendations and enacted a map that “surgically divided” four congressional districts “in order to create four solidly Republican districts.”¹⁶⁷ Moreover, many 2021–2022 maps, particularly in southern states, remain manipulated “in favor of the political party that drew them.”¹⁶⁸

While redistricting reform can lead to less gerrymandering, reform can only lead to better outcomes when it is robust enough to curb partisan interests or, better yet, remove politicians from the process entirely.¹⁶⁹

2. GERRYMANDERING’S IMPACT ON AMERICAN VOTERS

Voter suppression and disenfranchisement are the main effects of gerrymandering;¹⁷⁰ however, the effects of gerrymandering transcend numerous policy issues and are most deeply felt by communities of

162. *Id.*

163. Christopher T. Kenny, Cory McCartan, Tyler Simko, Shiro Kuriwaki & Kosuke Imai, *Widespread Partisan Gerrymandering Mostly Cancels Nationally, but Reduces Electoral Competition*, 120 no. 25 PNAS, 2023, at 2, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10288623/pdf/pnas.202217322.pdf> [<https://perma.cc/ENC6-MQFK>].

164. David A. Lieb, *Analysis: What Makes a Fair Election? Recent Redistricting the Most Politically Balanced in Years*, AP (June 10, 2023, 7:28 AM), <https://apnews.com/article/redistricting-gerrymandering-2022-elections-e576c35ee37ef7ae14337953a42541c2> [<https://perma.cc/FLT9-BSH2>].

165. See 2020 *Redistricting Cycle Report*, *supra* note 155.

166. *Id.*

167. Li, *supra* note 130.

168. *Assessing the Redistricting Cycle*, BRENNAN CTR. FOR JUST., <https://www.brennancenter.org/series/assessing-redistricting-cycle> (last visited Nov. 7, 2023) [hereinafter *Assessing the Redistricting Cycle*] [<https://perma.cc/7DFF-C2VE>].

169. Li, *supra* note 130.

170. See Kirshenbaum & Li, *supra* note 121.

color.¹⁷¹ Due to racially polarized voting patterns and residential segregation that affects population makeups, packing and cracking is often targeted towards communities of color.¹⁷² Although Section II of the Voting Rights Act of 1965 and the Constitution prohibit racial discrimination in the drawing of district maps,¹⁷³ in 2019, the Supreme Court held in *Rucho v. Common Cause* that partisan gerrymandering (the drawing of district lines in a way that strategically helps or hurts one political party) is not a legal question for the court to decide, i.e., that partisan gerrymandering is a political question.¹⁷⁴ The “political question doctrine” limits the ability of the Supreme Court and other federal courts to hear constitutional issues, despite meeting justiciability requirements, because these issues are beyond the capacity of the judiciary to review and should be resolved by the elected branches of government.¹⁷⁵ As a result of the *Rucho* decision, federal courts still have the power to strike down district maps that are drawn to “dilute the voting power of racial minorities, or maps that violate the ‘one person, one vote’ principal,” but cannot strike down a map simply for rampant partisan gerrymandering.¹⁷⁶

Ultimately, the *Rucho* decision took a way a powerful tool to hold accountable those state legislatures who gerrymander.¹⁷⁷ The decision effectively solidified states’ freedom to develop their own map drawing strategies—which often manipulate maps to give one party a political advantage¹⁷⁸—so long as they can circumvent violations of Section II of

171. *Id.*

172. *Id.*

173. *Id.*; 52 U.S.C. § 10301(a) (providing that “[n]o voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgment of the right of any citizen of the United States to vote on account of race.”).

174. See *Rucho v. Common Cause*, 139 S. Ct. 2484, 2508 (2019).

175. See U.S. CONST. art. III, § 2, cl. 1; *ArtIII.S2.C1.9.1 Overview of Political Question Doctrine*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/artIII-S2-C1-9-1/ALDE_00001283/ (last visited Nov. 7, 2023) [<https://perma.cc/7VPJ-TFBW>].

176. Andrew Prokop, *The Supreme Court just Said Federal Courts Can’t Stop Partisan Gerrymandering*, VOX (June 27, 2019, 11:40 AM), <https://www.vox.com/policy-and-politics/2019/6/27/18681923/supreme-court-gerrymandering-partisan-rucho-common-cause> [<https://perma.cc/HZ29-K6MU>].

177. *Id.*

178. Hebert & Jenkins, *supra* note 125, at 544–46.

the Voting Rights Act of 1965,¹⁷⁹ the Equal Protection Clause of the Fourteenth Amendment,¹⁸⁰ or Article I, Section 2 of the Constitution.¹⁸¹

Gerrymandering is not a problem voters can fix on their own, as they cannot vote the controlling party out of office due to the manipulated maps.¹⁸² For years, the U.S. Supreme Court remained uninvolved in the redistricting cycles, cautioning courts against “enter[ing] this political thicket.”¹⁸³ Prior to the *Rucho* decision, many redistricting challenges were filed in federal court.¹⁸⁴ However, the *Rucho* decision made it clear that, absent a textual basis in a state or federal statute or the Constitution (i.e., absent a Section II of the Voting Rights Act of 1965 or a Fourteenth Amendment Equal Protections Clause violation), federal courts lack jurisdiction to consider partisan gerrymandering challenges.¹⁸⁵ Thus, the only pathway to challenge partisan gerrymandered maps is in state courts.¹⁸⁶

A general lack of public awareness of the redistricting process compounds the challenge of removing partisan gerrymandering from the U.S. political system.¹⁸⁷ For many Americans, the process is completely foreign: a 2022 Pew Research study found that more than 85% of American voters know little-to-nothing at all about their state’s legislative redistricting process.¹⁸⁸ Even for voters who consider themselves generally politically educated, a mere 28% reported having a

179. See *Rucho*, 129 S. Ct. at 2508.

180. *Id.* at 2409–502.

181. This topic will be further addressed in Part IV. *Id.* at 2506.; see U.S. CONST. art. I, § 2; see also *Redistricting Criteria*, NAT. CONF. STATE LEGISLATURES (July 16, 2021), <https://www.ncsl.org/research/redistricting/redistricting-criteria.aspx> [<https://perma.cc/8ZSS-SN4B>].

182. Michael Li & Thomas Wolf, *5 Things to Know About the Wisconsin Partisan Gerrymandering Case*, BRENNAN CTR. FOR JUST. (June 19, 2017), <https://www.brennancenter.org/our-work/analysis-opinion/5-things-know-about-wisconsin-partisan-gerrymandering-case> [<https://perma.cc/5LGS-N8DL>].

183. *Colegrove v. Green*, 328 U.S. 549, 556 (1946); *Vordman Carlisle Traywick, III, Back to the Drawing Board: Redistricting 2020*, 31-SEP. S.C. L. 52, 54–55 (2019).

184. See, e.g., *Women Voters of Fla. v. Detzner*, 354 F. Supp. 3d 1280 (N.D. Fla. 2018); *Baker v. Carr*, 369 U.S. 186 (1962); *Gomillion v. Lightfoot*, 364 U.S. 339 (1960); see also Traywick, *supra* note 183, at 54–55.

185. See *Rucho v. Common Cause*, 139 S. Ct. 2484, 2508 (2019); see also sources cited *supra* note 184.

186. See sources cited *supra* note 185.

187. Bradley Jones, *With Legislative Redistricting at a Crucial Stage, Most Americans Don’t Feel Strongly About it*, PEW RSCH. CTR. (Mar. 4, 2022), <https://www.pewresearch.org/short-reads/2022/03/04/with-legislative-redistricting-at-a-crucial-stage-most-americans-dont-feel-strongly-about-it/> [<https://perma.cc/X6QN-K8KT>].

188. *Id.*

thorough understanding of their states' redistricting process.¹⁸⁹ Although the vast majority of American voters are uneducated about redistricting, the reality is that partisan gerrymandering impacts issues Americans care about. From reproductive rights, to health care, to gun violence, and more, the ability of a district to see change often rests with the political priorities of a district's representation, who decide what to advocate for at the legislative level.¹⁹⁰ And when representatives choose their voters instead of voters choosing their representatives, it is the voters' priorities and needs that are stifled.¹⁹¹

III. Analysis

Part III assesses the impact of partisan gerrymandering on states' access to health care, particularly as it relates to Medicare and Medicaid, through analyzing two state case studies: Wisconsin—a historically (and currently) gerrymandered state,¹⁹² and Massachusetts—which, despite its history of partisan gerrymandering, has taken steps over the years to curb this issue.¹⁹³

A. How One Map can Change a Health Care Landscape

As the redistricting process occurs once every decade, the resulting maps that dictate the district lines are used for several election cycles, allowing manipulated maps to have a large impact on who becomes and remains a representative within a state.¹⁹⁴ One report found that through the 2011 redistricting process, partisan gerrymandering caused fifty-nine seats in the U.S. House of Representatives to unfairly shift across the 2012, 2014, and 2016 elections, which directly impacted

189. *Id.*

190. See *Why Should We Care?*, ALL ABOUT REDISTRICTING, <https://redistricting.ils.edu/redistricting-101/why-should-we-care/> (last visited Nov. 7, 2023) [<https://perma.cc/3FYL-86GZ>] (explaining that “changing the lines will change the relevant voters, and can change the identity, allegiance, and political priorities of a district’s representative and of the legislative delegation as a whole.”).

191. See *Fair Districts*, COMMON CAUSE MASS., <https://www.commoncause.org/massachusetts/our-work/ensure-fair-districts-reflective-democracy/fair-districts/> (last visited Nov. 7, 2023) [hereinafter COMMON CAUSE MASS.] [<https://perma.cc/A32W-XWFE>].

192. See *infra* Section III.B.

193. See *infra* Section III.C.

194. Alex Tausanovitch, *The Impact of Partisan Gerrymandering*, CAP (Oct. 1, 2019), <https://www.americanprogress.org/article/impact-partisan-gerrymandering/> [<https://perma.cc/P9DH-DYW4>].

the representation of approximately forty-two million Americans.¹⁹⁵ Based upon voter support within the states, the report found that if not for the gerrymandered maps, these fifty-nine representatives would not have been elected at all.¹⁹⁶ Of the fifty-nine shifted seats, twenty shifted in favor of Democrats, while thirty-nine shifted in favor of Republicans.¹⁹⁷ Although some shifting is expected, the partisan gerrymandering that took place in 2011 resulted in the Republican party gaining a significant lead in representative positions.¹⁹⁸ The Republican Party won approximately twenty-two more seats in the U.S. House than expected (based on its shares of votes) in 2016, sixteen extra seats in 2018, and ten extra seats in 2020.¹⁹⁹

The impact of gerrymandering extends beyond elections and spreads into policy, including state decisions about health care.²⁰⁰ State legislatures are the representatives that introduce, reform, and redact bills that ultimately—with the state governor's approval—turn into law.²⁰¹ Therefore, who is elected into the state legislature has a direct impact on the laws of the state.²⁰² Furthermore, federal representation—the House and Senate representatives—propose, sponsor, and vote on new bills, such as health insurance reform, with the power to turn them into federal law.²⁰³ For example, despite the wide public support for the ACA's expansion, several of the eleven states that opted out of the ACA's 2014 Medicaid expansion are states that not only have a history of gerrymandering, but are also comprised of state legislatures who ideologically oppose the ACA.²⁰⁴ A 2020 Center for American Progress Report examined states such as North Carolina, Wisconsin, and Georgia, who refused to expand Medicaid despite the federal government

195. *Id.*

196. *Id.*

197. *Id.*

198. *See Lieb, supra* note 164.

199. *See id.*

200. Tsoukalas, *supra* note 132.

201. *See Indivisible States: How State Legislatures Work*, INDIVISIBLE, <https://indivisible.org/resource/indivisible-states-how-state-legislatures-work> (last visited Nov. 7, 2023) [<https://perma.cc/23M2-DUTS>].

202. *See id.*

203. *How Laws are Made*, USA.GOV (Dec. 8, 2023), <https://www.usa.gov/how-laws-are-made> [<https://perma.cc/27AN-D44U>]; Tsoukalas, *supra* note 132.

204. TAUSANOVITCH & GEE, *supra* note 34, at 4–5; *Status of State Medicaid Expansion Decisions: Interactive Map*, KFF (Oct. 4, 2019), <https://www.kff.org/medicaid/issue-brief/status-of-state-medicaid-expansion-decisions-interactive-map/> [<https://perma.cc/WPS9-VQ9G>].

providing coverage for the expansion through the ACA.²⁰⁵ The report estimated that approximately one million people could have become insured, and three thousand deaths would have been prevented in 2019, had these states implemented the expansion.²⁰⁶ These reports put the power gerrymandering has over critical issues American voters care about, like access to health care, on full display, and warrant further investigation into the ways in which gerrymandering played a role in cutting individuals off from health insurance.

B. Wisconsin, the 2010–2011 Redistricting Cycle, and the State’s Health Care Landscape

Wisconsin is historically one of the most gerrymandered states in the country.²⁰⁷ Additionally, Wisconsin is traditionally regarded as a “battleground” state, where voters are fairly evenly spread between the main two political parties, meaning that races are often decided within a few percentage points.²⁰⁸ In Wisconsin, like many other states, the state legislature controls the redistricting process (meaning it is classified as “legislature-dominant”).²⁰⁹ In 2011, a single party (the Republican Party) controlled the state senate, state assembly, and the governor’s office, meaning that a single party controlled the entire redistricting process in Wisconsin.²¹⁰ The maps drawn in 2011 particularly leveraged packing and cracking to draw district lines with surgical precision.²¹¹ The maps were used during the 2012 elections, and the results were uncanny: despite receiving fewer than half of the total votes in the state, the Republican Party preserved their majority in the state senate and won sixty out of the ninety-nine seats in the Wisconsin Assembly.²¹² Moreover, in 2014, using the same manipulated maps, the

205. TAUSANOVITCH & GEE, *supra* note 34, at 9–12.

206. *Id.* at 1.

207. Li & Wolf, *supra* note 182.

208. *Id.* at 1.

209. *State-by-State Redistricting Procedures*, BALLOTPEDIA, https://ballotpedia.org/State-by-state_redistricting_procedures (last visited Nov. 7, 2023) [<https://perma.cc/8NG6-PZQX>].

210. Bridgit Bowden & Shawn Johnson, *How the 2011 Political District Map Changed the Game for Wisconsin*, WPR (Oct. 13, 2021, 6:00 AM), <https://www.wpr.org/wpr-reports/mappedout/how-2011-political-district-map-changed-game-wisconsin> [<https://perma.cc/P4LZ-4R88>].

211. *See id.*; *see also supra* Section II.D.

212. Bowden & Johnson, *supra* note 210.

Republican Party won sixty-three seats in the Wisconsin Assembly with only 52% of the state-wide vote.²¹³

Although the maps were challenged, the state court ruled that the maps did not violate traditional redistricting criteria and upheld the maps, with the one exception requiring the movement of a single district line in Milwaukee.²¹⁴ In analyzing the 2011 state redistricting map, the Center for American Progress pointed out that Republicans would have failed to hold the majority of the state assembly's seats and likely would have lost the state senate, had the maps been drawn without gerrymandering.²¹⁵

The Wisconsin state legislature continues to weaponize the redistricting process to maintain political power.²¹⁶ During the 2021–2022 map drawing process, the state legislature once again manipulated district lines, splitting up major cities like Sheboygan to maintain a Republican advantage in the state's assembly.²¹⁷ In analyzing Wisconsin's 2022 statehouse elections, the state skewed 16.6% towards Republicans, one of the highest rates across the country.²¹⁸

Moreover, in September 2023, the Wisconsin Senate Committee on Shared Revenue, Elections and Consumer Protection proposed a new redistricting process in which the district maps would be drawn by the Legislative Reference Bureau, "a nonpartisan group employed by the legislature," with the legislature then voting to approve those maps.²¹⁹ On its face, tasking a nonpartisan, third-party group with drawing voting districts would have likely significantly curbed the partisan gerrymandering the state employed for decades.²²⁰ On September 12, 2023, the Wisconsin Governor rejected the proposal.²²¹ Many noted

213. Li & Wolf, *supra* note 182.

214. Bowden & Johnson, *supra* note 210.

215. TAUSANOVITCH & GEE, *supra* note 34, at 11.

216. See Matthew DeFour, *Wisconsin's Assembly Maps are More Skewed Than Ever—What Happens in 2023?*, PBS Wis. (Dec. 7, 2022), <https://pbswisconsin.org/news-item/wisconsins-assembly-maps-are-more-skewed-than-ever-what-happens-in-2023/> [https://perma.cc/X8JG-T3L7].

217. *Id.*

218. *Id.*

219. Abigail Leavins, *GOP Redistricting Proposal Raises Questions Over Nonpartisanship*, BADGER HERALD (Oct. 4, 2023), <https://badgerherald.com/news/2023/10/04/gop-redistricting-proposal-raises-questions-over-nonpartisanship/> [https://perma.cc/8GF4-MB2N].

220. *See id.*

221. *Id.*

the bill was a “sham”²²² and the Governor remarked that this insincere effort would do little to curb the partisan gerrymandering that took place in the state.²²³ According to the Bill, the Bureau would be made up of individuals hand-picked by the legislature; and without any provisions prohibiting gerrymandering, the “new” process would essentially retain Wisconsin’s current process of legislature-drawn maps.²²⁴

The election results in Wisconsin impacted the state’s health care landscape. With the single-party majority in power that traditionally disfavors health care expansion or imposing additional requirements for eligibility, in 2014, Wisconsin failed to implement the ACA expansion, rolled back Medicaid coverage, and declined to extend Medicaid (despite 70% of Wisconsin voters supporting the expansion of health care).²²⁵ In 2015, the state turned down a bill, once again, to expand Medicaid;²²⁶ and in 2018, CMS granted Wisconsin’s request to revoke coverage to beneficiaries who did not meet Wisconsin’s newly-imposed work requirements as an additional barrier to become eligible for the subsidies.²²⁷

Despite these efforts to curb government reliance, the legislature’s changes actually *cost* Wisconsin residents at least one billion more in tax dollars than if the state had opted to adopt the health care expansion in the years prior.²²⁸ Alternatively, if the maps were not gerrymandered, it is estimated that Wisconsin would have followed voters’ preference and approved the Medicaid expansion, allowing approximately one hundred and eight thousand Wisconsin residents to become medically insured, without imposing a high-tax expense to residents.²²⁹ Furthermore, it is estimated that the expansion would have saved the lives of three hundred uninsured individuals who died from preventable causes.²³⁰

222. Erik Gunn, *Fair Maps Advocates Hold ‘Public Telling’ to Air Opposition to GOP Redistricting Plan*, WIS. EXAM’R (Oct. 10, 2023, 5:45 AM), <https://wisconsinexaminer.com/2023/10/10/fair-maps-advocates-hold-public-telling-to-air-opposition-to-gop-redistricting-plan/> [<https://perma.cc/R5KD-SNU8>].

223. Leavins, *supra* note 219.

224. *Id.*

225. TAUSANOVITCH & GEE, *supra* note 34, at 10–11.

226. *Id.* at 10.

227. *Id.*

228. *Id.*

229. *Id.* at 11.

230. *Id.* at 8, tbl.1.

It is clear that there is a correlation between partisan gerrymandering and accessibility of health care in Wisconsin.²³¹ Although elderly individuals and people with disabilities only comprise of a quarter of the Wisconsin's Medicaid beneficiaries, they account for nearly 70% of the program's expenditures.²³² Thus, had Wisconsin's 2011 redistricting process not engaged in such insidious partisan gerrymandering, the Medicaid expansion would have significantly impacted the state's ability to provide services and financial relief associated with costs of care for their elderly population.²³³

The relationship between fairer maps and accessibility to health insurance is exemplified in examining states, such as Massachusetts, that have worked to curb partisan gerrymandering within its redistricting process.

C. Massachusetts, the 2010–2011 Redistricting Cycle, and the State's Health Care Landscape

The history of gerrymandering in Massachusetts dates back to 1812, and the state is often noted as home to the "first gerrymander," which occurred in the state's senate election.²³⁴ Until a decade ago, the Massachusetts state legislature controlled the redistricting process and drafted district maps with little transparency.²³⁵ For example, in 2001, the state's redistricting committee only received the map which they voted on ten minutes prior to the vote being due, giving the committee limited time to analyze and assess the map's legality and fairness.²³⁶ Furthermore, the 2001 approved state house district map was challenged in both state²³⁷ and federal court.²³⁸ Although the map was upheld in state court,²³⁹ the United States District Court of Massachusetts

231. See *id.* at 11; see generally KAISER FAM. FOUND., THE WISCONSIN HEALTH CARE LANDSCAPE (Oct. 2015), <https://files.kff.org/attachment/fact-sheet-the-wisconsin-health-care-landscape> [hereinafter WIS. HEALTH CARE LANDSCAPE] [<https://perma.cc/5NFN-AG63>].

232. WISC. HEALTH CARE LANDSCAPE, *supra* note 231, at 5.

233. See *id.*

234. COMMON CAUSE MASS., *supra* note 191.

235. *Id.*

236. COMMON CAUSE MASS., *supra* note 191.

237. *Mayor of Cambridge v. Sec'y of the Com.*, 36 Mass. 476, 765 N.E.2d 749 (2002).

238. *Black Pol. Task Force v. Galvin*, 300 F. Supp. 2d 291 (D. Mass. 2004).

239. *Mayor of Cambridge v. Sec'y of the Com.*, 36 Mass. 476, 765 N.E.2d 749, 487 (2002).

struck down the map, determining that it violated the Voting Rights Act and requiring the state to submit an adjusted map.²⁴⁰

Through the fierce advocacy of local activist groups, the Massachusetts state legislature dramatically shifted its redistricting process for the 2010–2011 cycle.²⁴¹ For example, although the state legislature still draws and votes on the maps, the state’s Joint Redistricting Committee is required to publicly release maps several weeks prior to the Committee’s vote, and has allotted a public comment period that includes hearings, as well as an open call for voters to submit their own voter-drawn district maps.²⁴² During the 2010–2011 redistricting cycle, the state held thirteen public hearings.²⁴³ Due to these efforts, Massachusetts’ 2010–2011 redistricting process was recognized at the time as “one of the best in the country.”²⁴⁴ The enacted maps created more compact districts, and doubled the number of minority-majority State House districts.²⁴⁵

However, the redistricting process in Massachusetts is far from perfect.²⁴⁶ Historically, the Massachusetts population has leaned more Democratic in terms of its political affiliation, and the elections that ensued from the district maps drawn in 2011 continued this trend.²⁴⁷ For example, the state’s congressional map strongly favored the Democratic Party, but it is unclear whether this favoring is due to voters’ general preference for Democratic representation, or whether it is a result of partisan gerrymandering to ensure the Democratic Party retained majority control.²⁴⁸

Regardless, Massachusetts’ elections over the years have impacted the health care landscape in the state.²⁴⁹ Massachusetts has been a long-champion of improving access to health care, establishing a

240. *Black Pol. Task Force v. Galvin*, 300 F. Supp. 2d 291, 317 (D. Mass. 2004).

241. *Id.*

242. *Id.*

243. *Redistricting in Massachusetts after the 2010 Census*, BALLOTPEDIA, https://ballotpedia.org/Redistricting_in_Massachusetts_after_the_2010_census (last visited Nov. 7, 2023) [<https://perma.cc/V6NG-FAZR>].

244. COMMON CAUSE MASS., *supra* note 191.

245. Nik DeCosta-Klipa, *How Gerrymandered is Massachusetts?*, BOSTON.COM (Apr. 8, 2018), <https://www.boston.com/news/politics/2018/04/08/massachusetts-gerrymandering/>.

246. *Id.*

247. *See id.*

248. *Id.*

249. *See* Louise Norris, *Medicaid Eligibility and Enrollment in Massachusetts*, HEALTHINSURANCE.ORG (Nov. 3, 2023), <https://www.healthinsurance.org/medicaid/massachusetts/> [<https://perma.cc/5BW7-KDHY>].

robust health care system called “Romneycare” in 2006 that not only used federal funds to provide Medicaid, and fully subsidized private coverage for residents within 150% of the federal poverty level; but also aimed to provide health insurance to all Massachusetts residents, and administered subsidies to individuals and families earning less than 150–300% of the federal poverty level.²⁵⁰ The program also encouraged and facilitated enrollment in private insurance plans for residents with higher incomes.²⁵¹

Prior to the enactment of the ACA, Massachusetts’ uninsured rate was approximately 4.4%—one of the lowest in the country.²⁵² Not surprisingly, Massachusetts was one of the first states to implement the Medicaid expansion in 2013, and the ACA had similar features of Massachusetts’ own health care reform that was already adopted in 2006.²⁵³ As a result of the expansion implementation, Massachusetts was able to provide care to approximately 476,916 individuals who were previously ineligible for Medicaid.²⁵⁴ Furthermore, since 2013, Medicaid enrollment in the state has increased by more than 50%.²⁵⁵ As of 2021, the uninsured population was cut in half, as only 2.5% of the population remained uninsured.²⁵⁶ As of 2022, 1.9 million Massachusetts residents were Medicaid beneficiaries.²⁵⁷

Massachusetts’s elderly population is higher than the national average, estimating that approximately 15% of Massachusetts population

250. MAURA CALSYN, CTR. FOR AM. PROGRESS ACTION FUND, ROMNEYCARE VERSUS OBAMACARE 5-7 (2012), https://cdn.americanprogress.org/wp-content/uploads/issues/2012/07/pdf/romneyu_romneycare2.pdf [https://perma.cc/SP4K-LP RF].

251. John Z. Ayanian, *The Massachusetts Journey to Expand Health Insurance Coverage*, 27 J. GEN. INTERN. MED. 139, 139 (2011).

252. AUDREY MORSE GASTEIER, MARISSA WOLTMANN, NIKHITA THAPER, MASS. HEALTH CONNECTOR, GETTING TO 100: WHAT WE KNOW ABOUT THE REMAINING UNINSURED IN MASSACHUSETTS 6 (Jan. 2021), <https://www.mahealthconnector.org/wp-content/uploads/Synthesis-Report-on-the-Uninsured-in-Massachusetts-021821.pdf> [https://perma.cc/EWE9-CJPJ].

253. Norris, *supra* note 249.

254. See *Medicaid Expansion Enrollment*, KFF, <https://www.kff.org/health-reform/state-indicator/medicaid-expansion-enrollment/> (last visited Nov. 7, 2023) [https://perma.cc/W7RM-2VMN].

255. Norris, *supra* note 249.

256. *Health Insurance Coverage of the Total Population*, KFF, <https://www.kff.org/other/state-indicator/total-population> (choose “2021” from the “Timeframe” dropdown) (last visited Nov. 7, 2023) [https://perma.cc/2V39-PTLX].

257. Norris, *supra* note 249.

is comprised of individuals sixty-five years or older.²⁵⁸ Nevertheless, Massachusetts is ranked one of the healthiest states for the elderly population and has decreasing mortality rates for individuals sixty-five years and older.²⁵⁹ This is due in part to “the high prevalence of dental visits, high community support expenditures, and high percentage of health screenings” among the older population.²⁶⁰ Furthermore, the percentages of elderly residents in Massachusetts who suffer from common diseases, such as diabetes and arthritis, fall below the national average.²⁶¹ Without Massachusetts’ commitment to reforming its redistricting process to curb partisan gerrymandering and expanding health care for its residents, it is unlikely their elderly population would have access and high engagement with these services.²⁶²

D. How the Connection Between Gerrymandering and States’ Ability to Expand Health Care Impacts Elderly Americans

In gerrymandered states like Wisconsin who refuse to expand health care services, it is the elderly population that suffers. While Medicare guarantees coverage for elderly Americans, many fail to receive the adequate care they need, due to the already higher out-of-pocket health care costs for those above the age of sixty-five, coupled with the gaps in coverage and the financial burden they place on the elderly.²⁶³ If states prioritized expanding health care services for the elderly through Medicare and Medicaid, then the elderly population would receive the additional financial support they need to engage in health services.²⁶⁴ Although Medicaid and other governmental programs aim to financially supplement some of these gaps, particularly in the case of

258. TUFTS HEALTH PLAN FOUND., HIGHLIGHTS FROM THE MASSACHUSETTS HEALTHY AGING DATA REPORT: COMMUNITY PROFILES 2018 1 (2018) [hereinafter TUFTS AGING DATA REPORT] (reporting that 13% of the national population is age sixty-five or older).

259. See Hannah Chanatry & Miriam Wasser, *Report Finds A ‘Mixed Bag’ of Health Outcomes for Mass. Seniors*, WBUR (Dec. 10, 2018), <https://www.wbur.org/news/2018/12/10/massachusetts-elderly-2018-healthy-aging-report> [https://perma.cc/EUV9-NQL4].

260. TUFTS AGING DATA REPORT, *supra* note 258, at 8.

261. *Id.* at 8 tbl.1.

262. *Id.* at 5; see Norris, *supra* note 249.

263. John Reichard, *Making Medicare Work for the Low-Income Elderly*, COMMONWEALTH FUND (Nov. 8, 2007), <https://www.commonwealthfund.org/publications/newsletter-article/making-medicare-work-low-income-elderly> [https://perma.cc/J2NC-7FHZ].

264. *Id.*

drug prescriptions, many eligible elderly Americans fail to become beneficiaries of the public insurance program.²⁶⁵ For example, the Medicare Savings Programs specifically works to lower out-of-pocket care costs and to reduce health care avoidance among the elderly population, but only a third of elderly Americans are currently enrolled in the program.²⁶⁶ In part, this has to do with states' efforts (or lack thereof) in making the nuances of Medicare and Medicaid services digestible to the elderly population, so that they understand the types of care that are afforded to them as beneficiaries of the programs.²⁶⁷

Furthermore, health care expansion particularly affects rural areas, which are predominately comprised of older Americans.²⁶⁸ In fact, more than one in five elderly Americans live in a rural area.²⁶⁹ Through Medicaid expansion, rural areas are able to provide better health care to their populations, particularly the elderly.²⁷⁰ In rural areas, Medicaid is often the only source of insurance coverage available.²⁷¹ Approximately 15% of the elderly residing in rural areas receive health coverage through Medicaid, and the program covers more than 50% of the elderly's hospital and long-term care costs.²⁷² With expanded Medicaid, hospitals are able to increase their financial security and combat "un-compensated care costs."²⁷³

Moreover, with expanded health care, rural areas are able to operate community health centers, which provide primary care and other health services to elderly adults, regardless of their ability to pay.²⁷⁴ This also improves elderly American's access to treatment and

265. *Id.*

266. *Id.*

267. *Id.*

268. Amy Symens Smith & Edward Trevelyan, *Older Population in Rural America*, U.S. CENSUS BUREAU (Sep. 24, 2020), <https://www.census.gov/library/stories/2019/10/older-population-in-rural-america.html> [<https://perma.cc/Y7UG-A966>].

269. *Id.*

270. PROTECT OUR CARE, A TOUGH ROW TO HOE: HOW WASHINGTON POLICIES ARE LEAVING ARIZONA'S RURAL HEALTH CARE IN THE DUST 2 (2019), <https://www.protectourcare.org/wp-content/uploads/2019/05/AZ-Rural-Health-Report-041619.pdf> [hereinafter PROTECT OUR CARE] [<https://perma.cc/P3PB-6S2N>].

271. CTR. ON BUDGET & POL'Y PRIORITIES, MEDICAID WORKS FOR PEOPLE IN RURAL COMMUNITIES 1 (2018), <https://www.cbpp.org/sites/default/files/atoms/files/1-19-18health-factsheet-rural.pdf> [<https://perma.cc/247P-6QFE>].

272. PROTECT OUR CARE, *supra* note 270, at 2.

273. *Id.* at 2–3.

274. *Id.* at 3.

screenings, including cancer screenings and diagnosis.²⁷⁵ It is estimated that 39–64% of annual mortality rates for elderly Americans could be reduced if all states adopted the Medicaid expansion.²⁷⁶

Without such expansion implemented by state representatives, many rural hospitals have to close, creating challenges in patients accessing care due to increased travel times.²⁷⁷ Since 2010, more than 104 rural hospitals have closed, 88% of which were located in states that refused to adopt the ACA's expansion.²⁷⁸ Moreover, when a rural hospital is forced to limit its services, or worse, close its doors, it creates an overload issue for the urban hospitals these elderly patients must travel to in order to receive the care that they need.²⁷⁹ However, a 2018 Government Accountability Office study found that rural hospitals were less likely to close and were even able to turn a profit if these hospitals were located in a state that implemented the ACA expansion.²⁸⁰

If states like Wisconsin—which are comprised of mainly rural areas,²⁸¹ have wide disparities in poverty rates, and have an above average elderly population (38%)²⁸²—adopted the ACA expansion, then fewer elderly residents would struggle to pay their medical bills or delay receiving critical care.²⁸³

275. Tara Straw, *Older Adults Benefit if Congress Closes the Medicaid Coverage Gap and Boosts Premium Tax Credits*, CTR. ON BUDGET & POL'Y PRIORITIES (Sept. 27, 2021, 2:44 PM), <https://www.cbpp.org/blog/older-adults-benefit-if-congress-closes-the-medicaid-coverage-gap-and-boosts-premium-tax> [https://perma.cc/F2LS-STKU].

276. *Id.*

277. PROTECT OUR CARE, *supra* note 270, at 1–2; *see generally* TAUSANOVITCH, *supra* note 60, at 3.

278. PROTECT OUR CARE, *supra* note 270, at 1–2.

279. Tsoukalas, *supra* note 132.

280. *See* U.S. GOV. ACCOUNTABILITY OFF., GAO-18-634, RURAL HOSPITAL CLOSURES: NUMBER AND CHARACTERISTICS OF AFFECTED HOSPITALS AND CONTRIBUTING FACTORS 27 (2018), <https://www.gao.gov/assets/700/694163.pdf> [https://perma.cc/CN72-YG2J].

281. WISC., HEALTH CARE LANDSCAPE, *supra* note 231, at 1.

282. *Wisconsin Senior Living Statistics & Facts*, SENIORLIVING.ORG (OCT. 26, 2023), <https://www.seniorliving.org/assisted-living/wisconsin/> [https://perma.cc/C6QA-YHTE].

283. *See supra* Part I.

IV. Recommendations

A. Harnessing the Power of Litigation

In a post-*Rucho* world, where challenging partisan gerrymandered maps remains a dead-end in the federal judiciary, litigation remains a vital tool in holding states accountable.²⁸⁴ In the wake of the 2020 Census data release, eighty-seven lawsuits were filed that challenged approved district maps (both congressional and state legislative maps) across the majority of the states.²⁸⁵ Of these lawsuits, forty-six challenged congressional maps in twenty-two states, and fifty-five lawsuits challenged state house and senate maps in twenty-three states.²⁸⁶ Additionally, “[twenty-eight] lawsuits challenged maps for partisan gerrymandering in state court.”²⁸⁷

There is also a special category of redistricting litigation called “impasse lawsuits,” which occur when a governing authority fails to draw new district maps and asks a court to intervene and draw the map themselves.²⁸⁸ This often occurs when a state’s legislature is controlled by a different political party than the governor, so the governor continues to exercise its veto-power to strike down maps.²⁸⁹ As a result of the 2021–2022 redistricting process, twenty-two impasse litigation cases were filed across twelve states.²⁹⁰ Of these cases, only six states adopted new maps.²⁹¹ By leveraging litigation to challenge approved maps, states can begin to be held publicly accountable, and forced to ensure that the maps they pass are a fair and accurate representation of the voter population.²⁹²

Although map challenges on partisan gerrymandered grounds must remain in state courts, maps may still be challenged in federal courts on racial discrimination and equal protection grounds.²⁹³

284. *2020 Redistricting Cycle Report*, *supra* note 155.

285. *Id.*

286. *Id.*

287. *Id.*

288. *Id.*

289. *Id.*

290. *Id.*

291. *Id.* (noting that the seventh impasse litigation case in Ohio resulted in an interim map drawn for the 2022 election).

292. *See supra* Section II.D(2).

293. *See supra* Section II.D.

Challenging maps on constitutional grounds is a challenging and often long process; but can lead to impactful, historical results.²⁹⁴

In the 2023 landmark case *Allen v. Milligan*, voters and non-profits challenged an Alabama congressional map drawn with the 2020 Census data, alleging it violated Section II of the Voting Rights Act by diluting the voting strength of Black Alabama voters.²⁹⁵ For the state's entire history, although Black Alabamians accounted for 27% of the state's population, only one out of the seven U.S. House seats was held by a representative preferred by Black voters.²⁹⁶ The district court in this case blocked the congressional map and ordered that a new map must be drawn with at least two majority-Black districts (the original map only had one).²⁹⁷ The U.S. Supreme Court paused this order, which allowed the original map to be used for the 2022 elections.²⁹⁸ However, the U.S. Supreme Court ultimately affirmed the district court's blocking of Alabama's congressional map.²⁹⁹ Upon the decision, Alabama went back to the drawing board, drafting a new congressional district map, which was again blocked by a district court for refusing to draw two Black-majority districts.³⁰⁰ The decision was appealed to the U.S. Supreme Court, who denied review in September 2023.³⁰¹ Finally, in October 2023, Alabama, by way of a three federal judge panel, approved a new congressional map that added "a second congressional district where Black voters' preferred candidate is projected to win a majority of the time."³⁰² The effect of this new map is that Alabama could have, for the first time in its history upon the 2024 elections, two Black representatives in the U.S. House simultaneously.³⁰³

294. See Stephan Bisaha, *Alabama Finally Has a New Congressional Map After a Lengthy Legal Fight*, NPR (Oct. 5, 2023, 11:10 AM), <https://www.npr.org/2023/10/05/1203309716/alabama-2024-congressional-map> [<https://perma.cc/Q3QA-WKZA>].

295. *Alabama Congressional Redistricting Challenge (SCOTUS)*, DEMOCRACY DOCKET (Oct. 2, 2023, 11:08 AM), <https://www.democracymocket.com/cases/alabama-congressional-redistricting-challenge-scotus/> [hereinafter *Alabama Redistricting*] [<https://perma.cc/XM3-ZMGG>].

296. Bisaha, *supra* note 294.

297. *Alabama Redistricting*, *supra* note 295.

298. *Id.*

299. *Id.*

300. Bisaha, *supra* note 294.

301. *Id.*

302. *Id.*

303. Brian Lyman (@lyman_brian), X (July 21, 2023, 2:04 PM), https://twitter.com/lyman_brian/status/168246655224915460?s=20 [<https://perma.cc/6GXM-G9V6>].

The *Allen v. Milligan* case illustrates not only the legal tug-of-war that comes with the technical, political nature of redistricting, but also the power of court intervention in implementing district maps that lead to fairer elections that better represent the voting population.³⁰⁴ It is imperative that voters and non-profit organizations remain empowered to bring forward federal litigation cases to protect the integrity of the redistricting process and that the fundamental right of Americans—the right to vote—without suppression or disenfranchisement remains intact.³⁰⁵

B. Voter-Determined Districts: An Independent Redistricting Commission Solution

Beyond encouraging a surge of litigation, scholarly literature and advocacy organizations often point to “voter-determined districts” (i.e., maps that reflect the political choices of voters) as a solution to the complicated subject of gerrymandering.³⁰⁶ By focusing on who and which parties voters support, district lines can be drawn symmetrically to the ratio of voter support among the main parties.³⁰⁷ Typically, voter-determined districts are achieved by voters passing a state initiative to shift the map drawing process from the state legislature to an Independent Redistricting Commission that is comprised of a group of nonpartisan representatives, elected by both the majority and minority leaders of the state.³⁰⁸ Although each state develops its own requirements for the Commission, oftentimes incumbent representatives are excluded from the Commission, meaning that elected representatives would no longer draw their own district lines and have the opportunity to essentially hand-pick their voters.³⁰⁹ Furthermore, all of the state ballot measures implementing Commissions to-date also require public hearing sessions prior to the maps’ enactments, where voters can voice their concerns regarding the maps, and in some cases, even propose their own maps for consideration.³¹⁰

304. See Bisaha, *supra* note 294; see also *Alabama Redistricting*, *supra* note 295.

305. See *2020 Redistricting Cycle Report*, *supra* note 155.

306. See generally TAUSANOVITCH, *supra* note 60.

307. *Id.* at 15.

308. *Id.* at 17.

309. *Id.* at 11.

310. Chris Leaverton, *Who Controlled Redistricting in Every State*, BRENNAN CTR. FOR JUST. (Oct. 5, 2022), <https://www.brennancenter.org/our-work/research-reports/who-controlled-redistricting-every-state> [<https://perma.cc/RST9-AD34>].

As of today, only five states have successfully implemented Independent Redistricting Commissions/Committees: Arizona, California, Colorado, Michigan, and New York.³¹¹ Ohio amended its constitution to allow an Independent Commission to draw its congressional district map in the event the state legislature fails to adequately do so.³¹²

In 2000, Arizona became the first state to enact a Committee, the Arizona Independent Redistricting Committee, to oversee the state's redistricting process.³¹³ The Committee is comprised of five appointed positions, which the state's House of Representatives and state Senate elect.³¹⁴ Arizona's Constitution requires that no more than two Committee volunteers may be members of the same political party and cannot reside within the same county.³¹⁵ Furthermore, appointed members cannot have any history of serving as a lobbyist, political party officer, or of holding another public office position.³¹⁶ Perhaps most unique to Arizona's Committee is that, unlike the majority of other states who begin the redistricting process by examining and updating existing district maps, the Committee is required to draw "districts of equal population in a grid-like pattern"³¹⁷ and then adjust as needed to comply with federal law and redistricting's four major factors.³¹⁸ After the draft drawings are complete, they are made available for public comment and the Committee holds public hearings for at least thirty days, in which the Committee may take recommendations from the state legislature and the public, prior to finalizing the maps and submitting them for certification to the Secretary of State.³¹⁹

311. See *id.*; *Proposition 106*, ARIZ. INDEP. REDISTRICTING COMM'N, <https://irc.az.gov/about/proposition-106> (last visited Nov. 7, 2023) [<https://perma.cc/X365-JKVW>]; *About Us*, CA.GOV, <https://wedrawthelines.ca.gov/about-us/> (last visited Nov. 7, 2023) [<https://perma.cc/AMA8-WQKZ>]; *Colorado Independent Redistricting Commission*, COLO. INDEP. REDISTRICTING COMM'N, <https://redistricting.colorado.gov/> (last visited Nov. 7, 2023) [<https://perma.cc/D2WP-ULV8>]; *About Us*, MICH. INDEP. CITIZENS REDISTRICTING COMM'N, <https://www.michigan.gov/micrc/about> (last visited Nov. 7, 2023) [<https://perma.cc/33CQ-8KVR>]; *A Message from the Chair and Vice Chair*, N.Y. STATE INDEP. REDISTRICTING COMM'N, <https://www.nyirc.gov/> (last visited Nov. 7, 2023) [<https://perma.cc/HGE9-QSMP>].

312. *2020 Redistricting Cycle Report*, *supra* note 155.

313. Joseph Kanefield & Mary O'Grady, *Citizen Redistricting in Arizona: How Does it Work?* 57 ARIZ. ATT'Y 34, 35 (2020).

314. *Id.* at 36.

315. *Id.*

316. *Id.*

317. *Id.*

318. *Id.*

319. *Id.* at 36–37.

Since the implementation of Arizona's Independent Redistricting Committee, Arizona has fostered not only a more transparent approach to redistricting, but also fairer, competitive elections, and as a result, is often seen as the model state for redistricting.³²⁰ Consistently since 2011, "the share of seats a [political] party has won [during elections] has tracked closely with the share of votes cast for that party."³²¹ By 2016, Arizona ranked first among all fifty states in "achieving a proportional translation of votes into seats,"³²² meaning that elections were absent partisan bias.³²³ Furthermore, following the 2011 redistricting cycle, it was estimated that, as a result of Arizona's unique map drawing process, 80% of the state's districts became more competitive,³²⁴ meaning that representatives likely feel more pressure to listen to the concerns and priorities of their constituents and voters feel more power at the ballot box.³²⁵

While the system is far from perfect, Arizona's efforts to curb the weaponization of gerrymandering has impacted the state's efforts to expand health care.³²⁶ The uninsured rate of Arizona residents has dropped from 17.1% in 2013 to 10.7% in 2021.³²⁷ Furthermore, from 2013 to 2021, almost 1.1 million Arizonans became eligible for Medicaid, and as a result of the state's adoption (the first Republican-led state to do so) of its expansion in 2013, Medicaid enrollment increased by 78%.³²⁸ As of September 2023, more than 2.2 million Arizonans are covered by Medicaid.³²⁹

The success of Arizona's Independent Redistricting Committee may beg the question of why other states have not adopted this

320. COLLEEN MATHIS, DANIEL MOSKOWITZ & BENJAMIN SCHNEER, HARV. KENNEDY SCH. ASH CTR. FOR DEMOCRATIC GOVERNANCE & INNOVATION, THE ARIZONA INDEPENDENT REDISTRICTING COMMISSION: ONE STATE'S MODEL FOR GERRYMANDERING REFORM 10 (2019), https://ash.harvard.edu/files/ash/files/az_redistricting_policy_brief.pdf [<https://perma.cc/P7PX-XDBU>].

321. *See id.* at 13; *see also* Daniel Harsha & Sarah Grucza, *New Report Highlights Arizona as a Model for Redistricting Reform Nationwide*, HARV. KENNEDY SCH. ASH CTR. FOR DEMOCRATIC GOVERNANCE & INNOVATION (Sept. 13, 2019), <https://ash.harvard.edu/news/arizona-redistricting-policy-brief> [<https://perma.cc/H8AW-CM89>].

322. MATHIS, MOSKOWITZ & SCHNEER, *supra* note 320, at 13.

323. *Id.*

324. *Id.* at 9.

325. *See id.* at 5; *see also* Harsha & Grucza, *supra* note 321.

326. *See generally* Louise Norris, *Medicaid Eligibility and Enrollment in Arizona*, HEALTHINS.ORG (Nov. 2, 2023), <https://www.healthinsurance.org/medicaid/arizona/> [<https://perma.cc/AN2T-5KRX>].

327. *Id.*

328. *Id.*

329. *Id.*

approach. In part, this has to do with the fact that Committees can only be implemented if they are voted into existence by a state ballot initiative.³³⁰ This requires that voters become educated on the topic of gerrymandering, understand the impact an Independent Redistricting Committee may have on their state and local elections, and know how the process may help support the policies they care about.³³¹ Many voters are unaware of the process of redistricting, due to its highly technical nature.³³² Thus, increasing public education not only about the redistricting process in the voters' particular states, but also about the ripple effects of gerrymandering on their ability to see reform in their communities is critical to moving the needle towards an independent redistricting process.³³³ In this way, such ballot measures can get on the ticket in the first place, and become voted into state law.³³⁴

As only five states have successfully implemented Independent Redistricting Commissions,³³⁵ perhaps an alternative solution to curb partisan gerrymandering is to require all states to implement an Independent Redistricting Commission.³³⁶ This was attempted by Congress in 2019, through the For the People Act, which contained a provision that required all states to install an Independent Redistricting Commission.³³⁷ Although the For the People Act passed in the House of Representatives—garnering the support of every House Democrat—the Act was blocked by a filibuster on the Senate floor.³³⁸ However, it is plausible that this provision of the For the People's Act would have ignited argument even without the Senate block.³³⁹ As mentioned, Article I, Section 4 of the Constitution provides that the manner in which elections are held “shall be prescribed in each state by the legislature thereof.”³⁴⁰ The term “legislature” has been held by the Supreme Court to include ballot initiatives, as “the people's legislative power is

330. See *Voter-Determined Districts*, *supra* note 57.

331. See TAUSANOVITCH, *supra* note 60, at 13.

332. *Id.*

333. *Id.*

334. *Id.*

335. See sources cited *supra* note 311.

336. See generally TAUSANOVITCH, *supra* note 60, at 17.

337. See *id.*

338. Nicholas Fandos, *Republicans Use Filibuster to Block Voting Rights Bill*, N.Y. Times (Oct. 22, 2021), <https://www.nytimes.com/live/2021/06/22/us/joe-biden-news> [<https://perma.cc/AGE2-EUGH>].

339. See *infra* notes 340–42 and accompanying text.

340. U.S. Const. art. 1 § 4.

coextensive with the state's legislative authority."³⁴¹ Therefore, a requirement that all states must implement an Independent Redistricting Commission may spur states to argue a Tenth Amendment claim: that Congress is overstepping its power and that this issue should be left to the states to decide.³⁴² Thus, efforts to push for state ballot initiatives, coupled with public education regarding the redistricting process and gerrymandering, remains a more viable solution to implement independent redistricting committees.³⁴³

C. Improving Health Care Literacy

As health care is inextricably linked to partisan gerrymandering, there also must be a push to increase health care literacy, particularly among the elderly population. This includes increasing local coordination and collaboration to help elderly Americans understand not only their current support from Medicaid and Medicare, but also what their states could be offering them in terms of health care support.³⁴⁴ Furthermore, there must be greater access to reliable care information, specifically in regards to what each particular state offers in terms of Medigap services.³⁴⁵ In this way, the elderly population will be better equipped to engage in the push for expanded health care services, and thus the redistricting process, as they gain a deeper understanding of how states can better serve their needs.³⁴⁶

V. Conclusion

The drawing of district maps is a contentious, challenging endeavor.³⁴⁷ For decades, politicians have capitalized on the naivety of American voters on the issue of redistricting to promote their personal ideologies. When representatives can essentially guarantee an electoral win through gerrymandering, there is less incentive to respond to the

341. *See* *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 789 (2015).

342. *See* U.S. Const. amend. X.

343. *See supra* notes 340–42 and accompanying text.

344. *See* U.S. DEPT. OF HEALTH & HUM. SERVS., CDC, IMPROVING HEALTH LITERACY FOR OLDER ADULTS 1 (2009), <https://www.cdc.gov/healthliteracy/pdf/olderadults-508.pdf> [<https://perma.cc/D7HL-SGPQ>].

345. *See id.* at 13, 29.

346. *See id.* at 29.

347. MATHIS, MOSKOWITZ & SCHNEER, *supra* note 320, at 16.

desires of voters.³⁴⁸ Although the provisions of Medicare and Medicaid are federal decisions, states and local representatives make important decisions in health care reform that affect the elderly population in the United States.³⁴⁹ As a result, critical issues like health care accessibility remain stagnant in states where partisan gerrymandering has overtaken elections.³⁵⁰

It is undeniable that “[a]ccess to affordable health insurance is an important pillar of health, particularly for older adults.”³⁵¹ The inception and expansion of Medicare and Medicaid has played a crucial role in improving the health and well-being of millions of elderly Americans.³⁵² In examining Medicare and Medicaid, particularly within the context of partisan gerrymandering, “[t]he adage that ‘all health care is local’ holds true.”³⁵³ States like Wisconsin, who have a history of gerrymandering, continue to refrain from implementing the ACA’s expansion and broadening its supplemental services, stifling elderly Americans from accessing quality care.³⁵⁴ Alternatively, states like Massachusetts have implemented health care reforms that reflect the needs and preferences of its voters.³⁵⁵ Thus, the redistricting process is not only a crucial part of America’s electoral process, but a mechanism that can have grave impacts on elderly Americans’ health.³⁵⁶ In states like Arizona, that have successfully implemented Independent Redistricting Committees, elections can become more competitive and reflective of the voters’ preferences.³⁵⁷ However, absent a national reform banning partisan gerrymandering, states must amend their constitutions to require that the redistricting process be overseen by an

348. Christy DeSmith, *Biggest Problem with Gerrymandering*, HARV. GAZETTE (July 5, 2023), <https://news.harvard.edu/gazette/story/2023/07/biggest-problem-with-gerrymandering/> [<https://perma.cc/7WG6-HTXN>].

349. See Darren A. DeWalt, Jonathan Oberlander, Timothy S. Carey, & William L. Roper, *Significance of Medicare and Medicaid Programs for the Practice of Medicine*, 27 HEALTH CARE FIN. REV. 79, 85 (2005), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4194929/pdf/hcfr-27-2-079.pdf> [<https://perma.cc/ML4T-4PJY>].

350. See TAUSANOVITCH & GEE, *supra* note 34, at 13.

351. Huffman & Upchurch, *supra* note 56, at 29.

352. See Moon, *supra* note 55, at 49.

353. See Huffman & Upchurch, *supra* note 56, at 29.

354. See WISC. HEALTH CARE LANDSCAPE, *supra* note 231, at 1.

355. Ayanian, *supra* note 251, at 139.

356. See Tsoukalas, *supra* note 132.

357. Mathis, Moskowitz & Schneer, *supra* note 320, at 6.

independent commission, out of the hands of the state legislature.³⁵⁸ Furthermore, through public advocacy and education, voters can understand the correlation between redistricting and the policy issues they care about, including health care, and push for state ballot initiatives that shift the way in which their state conducts map drawing. Ultimately, the inadequacies of health care for elderly Americans cannot be properly remedied until partisan gerrymandering is suitably addressed.³⁵⁹

358. See Hansi Lo Wang, *Is Drawing a Voting Map That Helps a Political Party Illegal? Only in Some States*, NPR (May 17, 2023, 5:00 AM ET), <https://www.npr.org/2023/05/17/1173469584/partisan-gerrymandering-explainer-north-carolina> [https://perma.cc/DH4Z-RLSW].

359. TAUSANOVITCH & GEE, *supra* note 34, at 1.