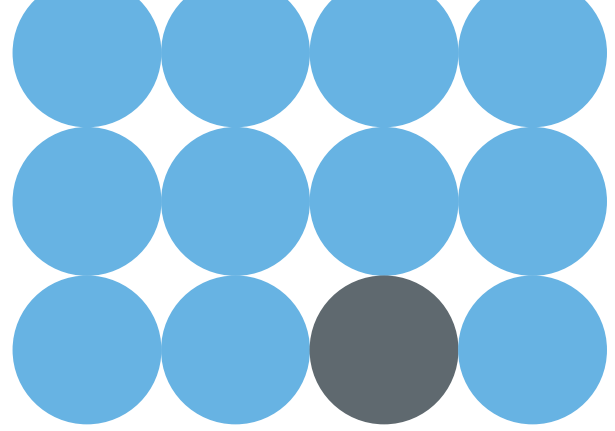


# Social Justice Brief

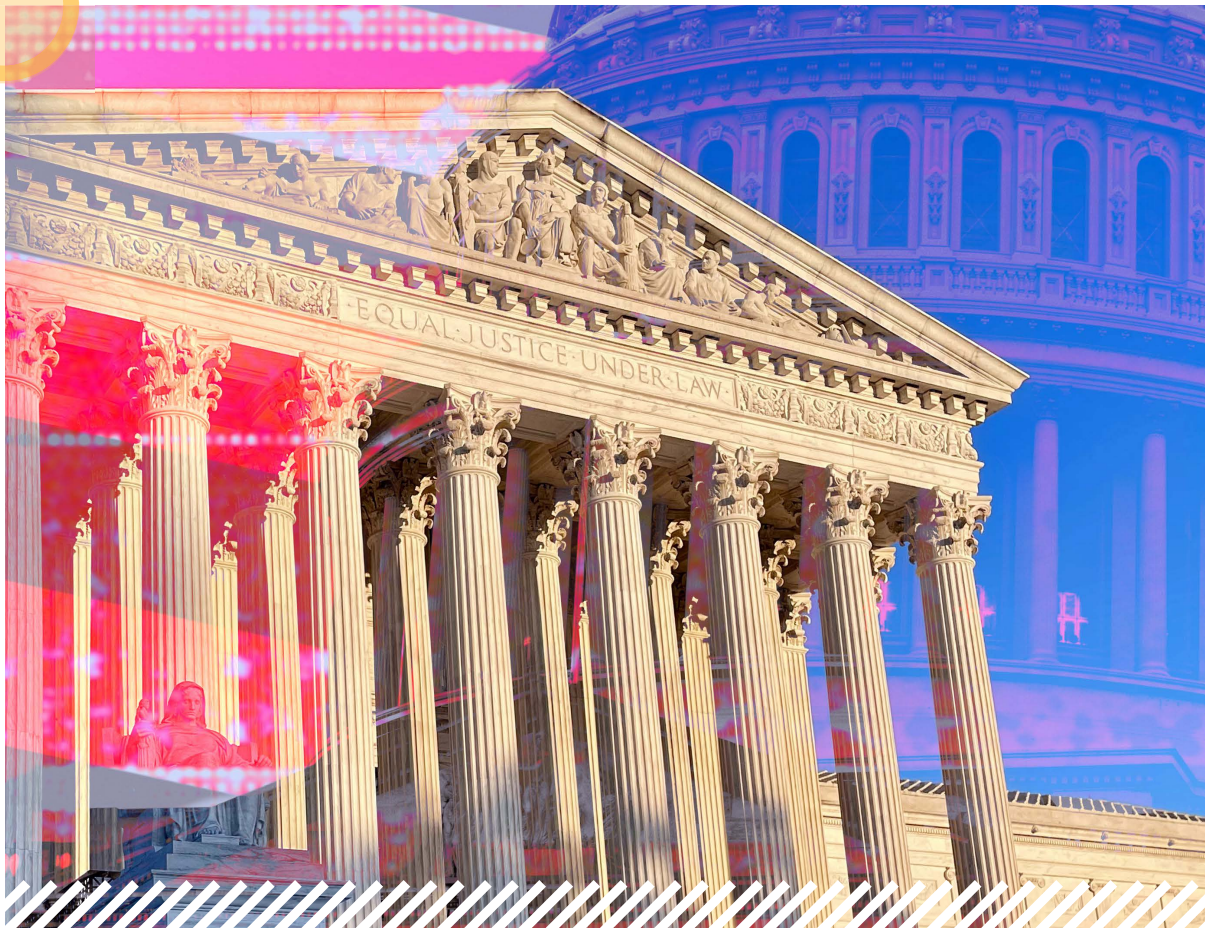
**DEVELOPED BY:**

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National Association of Social Workers



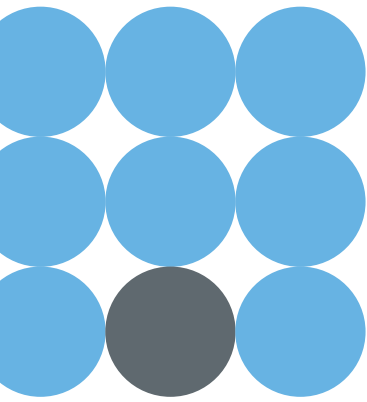
## The Ominous Cloud of Gerrymandering Hovering Over the 2024 Election

The primary mission of the social work profession is to enhance human well-being and help meet the basic human needs of all people, with particular attention to the needs and empowerment of people who are vulnerable, oppressed, and living in poverty.



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The National Association of Social Workers (NASW) is the largest membership organization of professional social workers in the United States. NASW works to enhance the professional growth and development of its members, to create and maintain professional standards, and to advance sound social policies.



# The Ominous Cloud of Gerrymandering Hovering Over the 2024 Election

The political turmoil that has engulfed the country in recent days is unsettling, frightening, and to many, unlike anything experienced in modern times. The closest parallel is perhaps the political atmosphere that existed in the decade leading up to the Civil War. Like the national divide in pre-Civil War America, the tensions today are not simply philosophical differences. We are seeing a deeply felt battle over America's, existence and the outcome could lead to the end of democracy as we know it.

None of this is happening in a vacuum. There is a well-formed hardline far-right political faction in the country that is determined to control all levers of government. Far-right ideology has been a significant factor in the U.S. voting rights struggle. This faction has traditionally been contemptuous of individual freedoms and would not hesitate to impose an autocratic political and social structure on the American people.

It would be a mistake to ignore the fact that their immediate objective is to gain power in any way they can through the 2024 elections. It is important to note that not all conservatives are far-right. However, the far-right ideology has seeped into conservative points of view in the U.S. voting rights debate.

It is no secret that a route to gaining such power is (and has always been) through the nation's political system. We have a two-party political system that — if adroitly

manipulated — can lead to one party having dominance over the majority of state government, thereby attaining a solid advantage in the Electoral College to elect their presidential candidate, even if that party's candidate loses the popular vote.

The Electoral College votes are indirectly tied to the national census because changes in population numbers recorded by the census can lead to states gaining or losing representation in the Electoral College, which happens every 10 years. More important, an increase in electoral votes is beneficial to a given political party because it enables that party to win control of the state governor's mansion and its legislature. Therefore, the longtime strategic plan for the far-right has been — over time — to win as many governorships as possible and, ideally to gain super majorities in state legislatures. They will use any tactic, including underhanded ones such as restrictive voting

laws and gerrymandering, to guarantee a favorable outcome.

## Gerrymandered Congressional Maps Are Not New

Gerrymandering, which has deep and infamous roots in U.S. politics, is often used to gain and maintain political power. The following brief historical context will help to put the practice in perspective. Historically, the term “gerrymander” goes back to 1812, when a newspaper in Boston ran a political cartoon depicting a “new species of monster” and dubbed it the Gerrymander. The article was satirically referring to an oddly shaped map of a congressional district that the state’s Republican party had drawn to make sure its candidate would be elected to that seat—the governor of Massachusetts, Elbridge Gerry, hence the term. The newspaper article was calling attention to a new approach to apportionment that blatantly and callously ignored the intent of the Constitution and what would later be defined as the “one person, one vote” principle.

In many ways, the gerrymandered redistricting process mirrors that seen in recent years. In fact, gerrymandering really became a tool of oppression and denying the right to vote at the end of Reconstruction beginning in 1870. As historians have noted, when Black men won the right to vote after the Civil War, the practice of gerrymandering increased significantly.

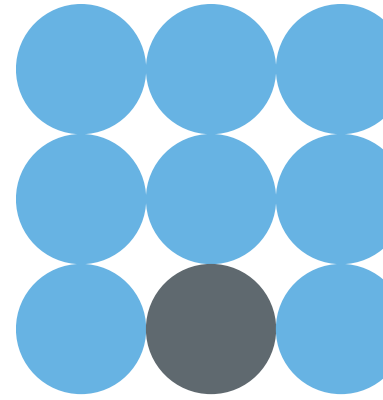
Almost immediately after the passage of the 15th Amendment, Southern states drew districts to maximize the electoral power and advantage of white southern candidates for office. Mimicking the maps drawn in Massachusetts in 1812, gerrymandered

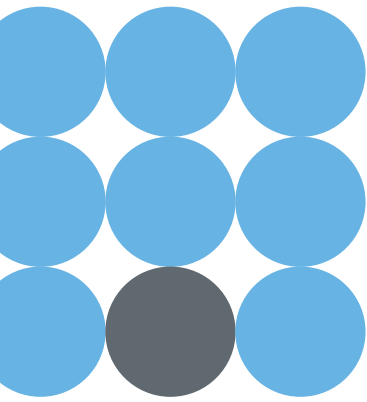
maps of the post-Reconstruction South were oddly shaped congressional districts that concentrated most Black voters into one single district—with the remaining districts having an overwhelming white majority. This assured political white supremacy for nearly a century. Gerrymandering, as a mechanism of voter suppression, continued unabated, until the mid-20th century with the passage of the Voting Rights Act of 1965 (VRA).

## The Voting Rights Act (VRA) of 1965: A Ban on Racial Gerrymandering

During an election both political parties seek to maximize the number of voting districts in which they can win approximately 55–60 percent of the vote—reaching that percentage will secure the greatest number of seats in Congress. Therefore, when a party draws district maps, it will not create a district that is 100 percent comprised of voters from the party in power. They will create several districts in which 55–60 percent of the party’s voters live. This is why it is tempting for parties in power to manipulate districts through partisan gerrymandering.

More cynically, racial gerrymandering as practiced since 1870, is the overt action of eliminating or greatly diminishing the power of eligible voters to elect the candidate of their choice. Unlike partisan gerrymandering, racial gerrymandering is illegal. Among dozens of other voter protections, VRA outlawed racial gerrymandering—making congressional maps that appear to be in violation of racial gerrymandering a prohibition challengeable in court. This provision in the VRA gave the U.S. Department of Justice and voting rights groups leverage in monitoring and overturning racially gerrymandered maps.





However, these voting protections offered by the VRA were recently put into jeopardy.

### Supreme Court Disallows Key Provisions of the Voting Rights Act of 1965

In 2013, the Supreme Court (SCOTUS) issued a ruling in a case called Shelby County v. Holder, which had significant implications for the VRA. SCOTUS, in a 5–4 vote, struck down an essential enforcement formula (administrative preclearance for redistricting maps) of VRA that was the heart of the legislation. This formula required states and localities with a history of discrimination against minority voters to get changes cleared by the federal government before they went into effect.

This ruling opened the floodgates for far-right conservatives in their plan for controlling state and federal political apparatus. The court’s decision removed what the far-right viewed as a barrier to employing voter suppression and gerrymandering tactics almost with impunity. Immediately after the decision, Republican lawmakers in Texas and North Carolina—two states previously covered by the law—moved to enact new voter ID laws and other restrictions.

### Gerrymandering: Strategy for Manipulating the Voting System

Constitutionally, one of the main required functions for states after the census is enumerated is to reapportion the seats in the U.S. House of Representatives according to the census-established population increases or decreases.

Reapportionment, together with the process of redistricting, are extremely significant political

powers delegated to the states. After each census, most states are required to redraw their congressional maps to, ostensibly, create a fair allocation of representation in each of their congressional districts. In such situations, the political party in control of the state has the power to redraw the maps, which presents an opportunity to unfairly manipulate distribution of the large numbers of voters favoring their party in multiple districts, while those favoring the opposition party are crowded in a single district. This practice of gerrymandering effectively ensures that the party in power will send a disproportionate number of its party members to Washington as members of Congress.

### Gerrymandering as a Priority Political Power Tactic Is Resurrected

In a response like that of the white supremacists with the passage of the 15th Amendment in 1870, far-right conservatives used SCOTUS’s 2013 VRA decision to move forward with their own gerrymandering initiative. As with the 19th century plan, the current version also primarily targeted African American voters with Hispanic and Native American voters being also impacted.

This time around the strategy is to gain long-term political dominance — after the 2024 presidential elections — by having an ultra-conservative president in the White House, control of both chambers of Congress by a political party with far-right leanings, and a conservative majority in the Supreme Court.

## Drawing Racially Gerrymandered Redistricting Maps after 2020 Census

Since the enumeration of the 2020 Census the issue of racial gerrymandering has, as anticipated, gone the route of litigation in the federal court system, including SCOTUS. Once all the states that were required to submit redistricting maps did so, as many as six states may have to redraw their maps, mostly due to racial gerrymandering issues.

The SCOTUS decisions related to these challenges have major implications. It is possible that both Democrats and Republicans may benefit from the court-ordered redrawn maps. For example, there is a likelihood that Democrats could pick up at least one seat in Alabama and they have a chance to gain House seats in Louisiana and Georgia. Republicans stand to pick up seats in North Carolina and New Mexico. More specifically, there are several states where the final resolution of their challenged redistricting plans has direct consequences for determining which political party will control Congress and will gain more (or fewer) representatives in the Electoral College. The following sections review those states and analyze the barriers to getting their redistricting plans approved.

### Alabama

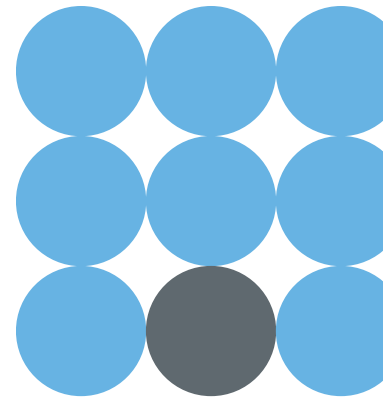
Alabama's situation is close to being settled; it will likely have a new approved congressional map in 2024. To recap the original concerns that the federal courts had with Alabama's first map: In 2021, the Republican-controlled legislature drew Alabama a congressional map that included six majority-white seats and one majority-Black seat. Based on 2020 census data, the state should have drawn a map with two majority-Black districts. In

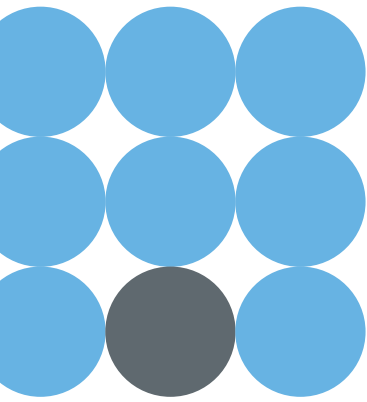
response to a clear attempt by the state to submit a gerrymandered map, voting rights advocates sued Alabama. In 2022, a federal court agreed that the map was in violation of VRA and ordered the state to redraw the map to include two Black districts.

Alabama appealed to SCOTUS, which upheld the lower court by ruling that the state discriminated against Black voters in violation of the VRA. SCOTUS affirmed that Alabama had to redraw its map. The state complied, but in an act of defiance the new map still did not include a second majority-Black district. The lower court issued a stern order striking down that map. With SCOTUS's concurrence, the lower court relieved Alabama of the authority to redraw the new map. The court—with the help of a special master will draw the map be used for the 2024 elections. The lower court's action assures that a second majority-Black district will be in place. The court's action also means that Democrats will almost certainly pick up a House seat in Alabama in 2024.

### New York

The New York redistricting issue is less about racial gerrymandering and more about partisan gerrymandering. The redistricting map that the Democrats drew in 2021 was rejected by the state's Supreme Court because it was overly biased in Democrats' favor. The state court ordered a redrawn congressional map under the direction of a special master. However, Democrats filed a lawsuit against the replacement map, taking the position that the special master's map should be temporary. The Democrats argued that the state's advisory redistricting commission should be entitled to redraw the final map. In July of





2023, the state court agreed that the commission should redraw the map. As would be expected, Republicans appealed that decision. The New York Court of Appeals will hear the case in November.

If the court of appeals approves the commission's map, it could be an extremely consequential redistricting action as it relates to the 2024 elections. Under the special master's redrawn map, Republicans were able to "flip" three House seats from Democrat to Republican in the 2022 elections, which certainly resulted in Republicans' control of the U.S. House of Representatives. A New York Congressional map that favors Democrats could lead to Democrats regaining House leadership.

### Louisiana

The uncertainty in the Louisiana redistricting case is whether it will have a redrawn congressional map before the 2024 elections. Like Alabama, Louisiana has faced litigation of racial gerrymandering in violation of the VRA. In 2022, the state's Republican-controlled legislature submitted and implemented a congressional map that maintained one majority-Black seat among six total districts. Democrats and voting rights advocates challenged that map—making the point that because Louisiana's population is nearly one-third Black, the map should include a second majority-Black district. A lower federal court agreed, ordering the state to draw a new map. In response to the legislature's appeal, SCOTUS delayed a decision on the Louisiana case as it deliberated over the similar redistricting case in Alabama. This delay allowed Louisiana's original map to be used in the 2022 election. However, the issue

of the lower court's order that the state must redraw its map is not resolved. In fact, SCOTUS's recent ruling against Alabama suggests that there is a good chance that the court will agree that Louisiana violated the VRA. In September, SCOTUS lifted its hold on the Louisiana case. This means that it is possible that the court will hear and decide the case before the 2024 elections.

### Texas

Because the Texas 2021 congressional map involves multiple legal challenges, the federal courts consolidated the case into a single broader lawsuit. For the most part, the Texas litigation is a racial gerrymander case that this time focuses on the allegations that the Republican-controlled Texas legislature diluted Latino voter strength. As in the other racial gerrymander cases, the specific charge is that the state was in violation of the VRA. The Texas challenge is closely related to population growth demonstrated by the 2020 census data. The litigants made the point that the Congressional map failed to add more Latino-majority districts even though Latinos significantly contributed to the state's population growth. Additionally, the litigants accuse the state of gerrymandering by weakening Latino voting strength in Texas's 15th District, where the Republican won two seats (over Democratic incumbents) in the 2022 midterms. For several legal technicality reasons, the federal lower court has not proceeded with the case. As a result, it is difficult to determine how long it will be until this case moves forward. Given certain election process reasons in Texas, experts believe it is unlikely this case will be resolved before the 2024 elections.

## North Dakota

On November 17, 2023, a federal judge ruled that North Dakota’s legislative maps violated the VRA and ordered that the map be revised before the end of 2023. This decision conforms with other legal actions related to redistricting and discriminatory lawsuits that have been heard in federal courts recently, including Alabama, Florida, Georgia, Louisiana, and South Carolina. Lawsuits are still being deliberated in Texas.

The North Dakota case is especially noteworthy because the judges wrote that the previous redistricting legislation diluted the voting power of the Turtle Mountain Band of Chippewa Indians and Spirit Lake Tribe, along with individual Native American voters. This is an example of how gerrymandering has been a pervasive practice that historically diluted the voting power of indigenous people.

North Dakota has until December 22, 2023, to draw and adopt a new legislative map that complies with the court’s ruling. The affected tribes will have until January 5, 2024, to file any objections to the new map, which will take effect in time for the November 2024 elections.

## Prison Gerrymandering

One form of gerrymandering that goes mostly unnoticed is that which is associated with prisons and the national census every ten years. While prison gerrymandering occurs “under the radar,” it is nonetheless quite meaningful. The crux of the problem is that — for many years — the Census Bureau has counted incarcerated individuals as residents of voting district of the prison in which they are housed as opposed to their legal residence (voting district) where they lived immediately prior to being incarcerated. The

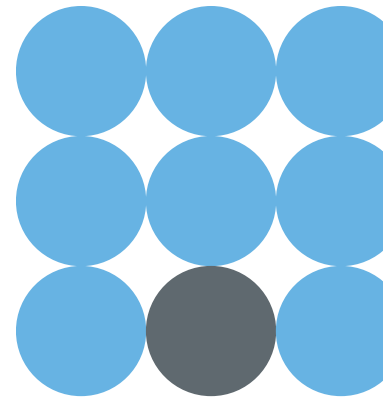
result is a distorted (gerrymandered) allocation of voting representation at local and state levels. The fact is that, for the most part, incarcerated people invariably almost return to their original place of residence after being released.

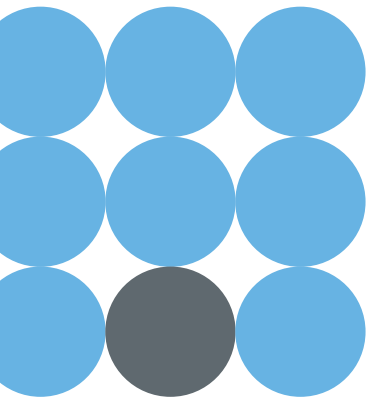
More importantly, This Census Bureau practice not only skews the population count but is counter to the constitutions and statutes of most states, which explicitly state that incarceration does not change a residence. Such a Census Bureau enumeration policy flies in the face of the Supreme Court’s intent when it required that political power be apportioned on the basis of population.

An added complication of counting incarcerated people as residents of the community where the prison is located is that prisons are disproportionately built in rural areas — though most incarcerated people resided in urban areas immediately before being incarcerated. This leads to a systematic transfer of population and political clout from urban to rural areas. Though historical prison gerrymandering may not have arisen out of intentional racial gerrymandering, the results are the same — the systematic disenfranchisement of Black, Brown and indigenous communities.

## Voting Rights Act (VRA) Under Again in a Precarious Situation

Protections against racial gerrymandering and related voting rights violations is dependent upon enforcement provisions in the VRA. Therefore, it is deeply concerning that In a November 2023 ruling by a three-judge panel of the Eighth Circuit of the U.S. Court of Appeals placed the VRA in peril. The panel, in upholding a lower court decision in response to an Arkansas





redistricting lawsuit, dismissed the case on the basis of the plaintiff not having standing to sue for violations of the VRA.

In their ruling, the panel's majority agreed that private individuals and groups—who, for decades, have brought the majority of lawsuits using Section 2 of the Voting Rights Act—cannot sue because such plaintiffs are not explicitly named in the law. That privilege, according to the panel, is reserved for government agencies — namely the Department of Justice (DOJ).

This decision has engendered apprehension throughout the voting and civil rights community. Their apprehensions are well founded because in spite of the effectiveness of private entities in suing for voting rights protections using the VRA, the panel's dismissal of the Arkansas case — if left as is — essentially makes the VRA powerless.

In an effort to overturn the panel's decision, the ACLU petitioned for a review by the full complement of judges on the Eighth Circuit. There is muted optimism that, because of the novel and extreme legal reasoning by the Eighth Circuit's panel, the full court may indeed reverse the panel's ruling. Of course, regardless of the outcome at the circuit court level, this case will most likely go to the Supreme Court.

## Conclusion

Context is important. Gerrymandering is one way in which the nation's electoral system is used as an avenue for already powerful people to obtain and retain absolute power by any means necessary. In this situation, the act of gerrymandering congressional districts

invariably culminates in denying Black, Hispanic, and Indigenous American voters' access to political power. That was the tactic used (successfully) in the post-reconstruction South, and in the aftermath of the gutted VRA, it remains to be seen how much damage it can incur.

It is important to keep the following in mind: (a) Racial and partisan gerrymandering is about power and control. When we look at the most aggressive proponents of gerrymandering today, we find a movement that includes many far-right-wing conservatives who hold autocratic points of view. (b) The goal of gerrymander strategies is—along with companion tactics of voter suppression and voter intimidation—to gain long-term control of all levels of federal and state power, especially Congress and the presidency. (c) Gerrymandering has such a long history in the United States, it can often be discussed in theoretical terms. The threat is far from being theoretical. Therefore, it should be responded to strategically and with a sense of urgency.

All of which is not to suggest that members from the voting rights community and governments that support voting rights are passively watching anti-democratic forces implement their plan unimpeded. As far as the history of racial gerrymandering is concerned, there have always been groups and individuals developing counter strategies to protect voting rights. There is a unbroken connection between the Jim Crow-era Niagara Movement's (the precursor of the NAACP) demand for the full right to vote in political elections and today's voting right organizations' (including the NAACP Legal Defense Fund) leadership on becoming aware of and fighting racial gerrymandering of congressional districts, all



the way up to SCOTUS. In addition, over 50 years of advocacy by voting rights coalitions such as the Leadership Conference on Legal and Civil Rights has served as a vanguard against attempts to subvert free and fair access to the ballot.

Given the volatility and unprecedented corrosiveness of America's current political environment, the importance and significance of the 2024 elections is lost on very few people. For those who recognize that racial gerrymandering is a real and serious threat to fair elections, there is a great deal of work to be done to increase voting protections. This includes educating and responding to equally problematic voting issues such as voting suppression and voting intimidation. We should also be prepared to join key coalitions on voter mobilization and voter registration drives that are effective in counteracting the inequities in determining election outcomes.

Notably, the social work community—with its history of social justice activism that goes back to the 19th century has a leadership

role to play in eliminating gerrymandering as a tool for denying millions of Americans the right to select the political candidate of their choice. It is for this reason that social work organizations must join other national leaders in protecting the right to vote and have their vote counted.

## Resources

### **Brennen Center for Justice**

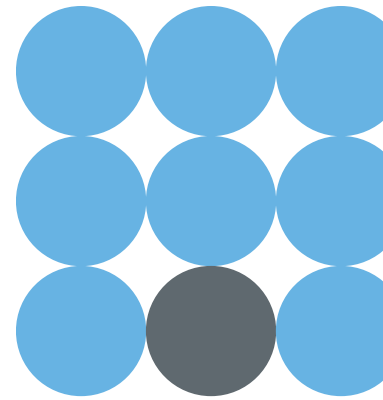
[The Newest Attack on the Voting Rights Act](#)

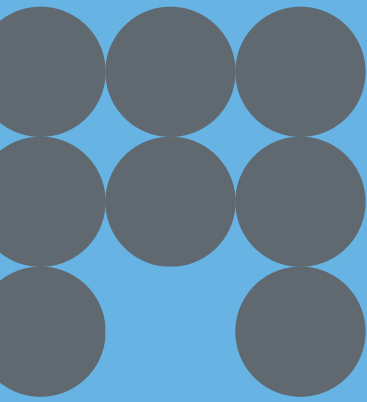
### **Leadership Conference for Civil and Human Rights** [Voting Rights Taskforce](#)

### **League of United Latin American Citizens (LULAC)** [LULAC's National Programs](#)

### **Legal Defense Fund (LDF)** [Voter Protection – Legal Defense Fund](#) [\(naacpldf.org\)](http://naacpldf.org)

### **Native American Rights Fund** [Court Orders North Dakota to Restore Native](#) [Voting Power Without Delay - Native](#) [American Rights Fund \(narf.org\)](http://narf.org)





# NASW Resources

**NASW** » [SocialWorkers.org](https://www.socialworkers.org)

**NASW Foundation** » [NASWFoundation.org](https://www.naswfoundation.org)

**NASW Press** » [NASWPress.org](https://www.naswpress.org)

**NASW Assurance Services, Inc.** » [NASWAssurance.org](https://www.naswassurance.org)

**Find A Social Worker** » [HelpStartsHere.org](https://www.helpstartsHere.org)

**Social Work Blog** » [SocialWorkBlog.org](https://www.socialworkblog.org)

**NASW Research and Data** » [SocialWorkers.org/News](https://www.socialworkers.org/news)

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