REF2021

Institution: University of Strathclyde

Unit of Assessment: C19 Politics and International Studies

Title of case study: Gerrymandering and partisan bias: informing the courts, non-governmental organisations and public debate in the United States

Period when the underpinning research was undertaken: 2013 – 2016

Details of staff conducting the underpinning research from the submitting unit:

Name(s):	**Role(s) (e.g. job title):**	**Period(s) employed by submitting HEI:**
Anthony McGann	Professor	01/07/2013 – present

Period when the claimed impact occurred: 2016 – December 2020

Is this case study continued from a case study submitted in 2014? No

1. Summary of the impact

Conducted in collaboration with international partners, McGann's ground-breaking research into gerrymandering in the US has significantly influenced litigation on electoral districting in the US courts since 2016. It has been cited on multiple occasions before the US Supreme Court by plaintiffs, expert witnesses and prominent politicians, most notably the late Senator John McCain and Senator Sheldon Whitehouse. It has been used by multiple plaintiffs as a foundation for gerrymandering complaints to state and district courts. McGann's research and engagement has also influenced the strategy of US non-governmental organisations (NGOs), both in the issues they campaign on and the state-level legislation they have drafted. Finally, McGann's research has informed the wider debate and public understanding of redistricting and voting rights issues through coverage in prominent media outlets.

2. Underpinning research

The underpinning research is published in the book *Gerrymandering in America* [R2] and an article in the *Election Law Journal* [R1], written by McGann in collaboration with Charles Anthony Smith (University of California, Irvine), Michael Latner (California Polytechnic State University) and Alex Keena (formerly University of California, Irvine, now Assistant Professor, Virginia Commonwealth University). McGann led the project, provided the theoretical framework and wrote the majority of the text, while the other authors contributed vital expertise in US public law (Smith), political geography (Latner) and US state government (Keena).

The term 'gerrymandering' refers to the manipulation of electoral district boundaries – equivalent to the UK's constituencies – by politicians to give their party an electoral advantage. Politicians draw boundaries so that the opposing party wins a few districts by overwhelming majorities, which allows their party to win the remaining districts by smaller (but still safe) margins. Districts are redrawn in the USA every 10 years after the Census, usually by state legislatures.

Of course, gerrymandering is not new in US politics. What McGann and his colleagues showed was that gerrymandering dramatically increased in the redistricting that followed the 2010 census, as a result of a little-noticed 2004 Supreme Court ruling (*Vieth v. Jubelirer*), and that this had profound consequences for democracy in the US. Virtually all previous research had suggested that gerrymandering in the 1990s and 2000s only had minor effects on election results nationwide.

Gerrymandering post-2010

McGann and his colleagues used multiple methods to assess the extent and significance of gerrymandering after 2010. The starting point of the project was a normative political philosophy paper by McGann on the meaning of equal representation. Building on this and the work of Gelman and King (1994), McGann developed a quantitative measure of partisan gerrymandering using computer simulation [R2], applying it to congressional districting plans in every state before and after the 2010 redistricting. The researchers analysed Supreme Court legal decisions to show that this measure was legally, as well as scientifically, relevant. To demonstrate that partisan

gerrymandering was not the innocent result of natural demographic factors, they also engaged in political geography – in particular, considering the political contexts and institutions of different US states. To understand the significance of current debates on gerrymandering, they placed it in historical context, referring to the 'one man, one vote' jurisprudence of the civil rights period, and debates on the rights of states that originated in the founding of the USA.

This research found that:

- The level of political gerrymandering increased dramatically after 2010, so that the Democrats would need a landslide victory in any congressional election (around 54% of the vote) to win the House of Representatives. This happened in 2018, whereby the Democrats crossed the predicted 54% threshold to retake the House.

- Partisan advantage is not the result of 'natural' demographic factors, such as Democrats being concentrated in cities, nor of measures to protect minority voters (such as majority-minority districts). Rather it is the result of deliberate political choice, only happening in states where one party controls the entire redistricting process.

- This increase in gerrymandering was the result of the Supreme Court's 2004 decision that courts could not intervene in partisan gerrymandering.

Gerrymandering in America [**R2**], provided a viable, legal standard for deciding partisan gerrymandering cases based on the principle of 'partisan symmetry' (devised by Gelman and King in 1994), which seeks to uphold the constitutional ideal that each individual's vote be treated as equal. This entails a share of the vote translating to the same share of congressional seats, regardless of which party achieved that share. Although the *Vieth* ruling stated that parties are not individuals and do not need to be treated equally, McGann's team demonstrated that for people and their votes to be treated equally under the constitution, parties must be treated equally also.

3. References to the research (Strathclyde affiliated authors in **bold**)

R1 **A. McGann**, C.A. Smith, M. Latner, A. Keena (2015) A discernable and manageable standard for partisan gerrymandering, *Election Law Journal: Rules, Politics, and Policy,* 14(4): 295-311 https://doi.org/10.1089/elj.2015.0312

R2 **A. McGann**, C.A. Smith, M. Latner, A. Keena. (2016) *Gerrymandering in America: The House of Representatives, The Supreme Court and the Future of Popular Sovereignty* (Cambridge University Press) https://doi.org/10.1017/CBO9781316534342 [REF2]

R3 A. Keena, M. Latner, **A. McGann**, C.A. Smith (2019) 'Gill v. Whitford on partisan gerrymandering', in Klein, D. & Marietta, M. (eds.), *SCOTUS 2018: Major decisions and developments of the US Supreme Court* (Palgrave Macmillan) https://doi.org/10.1007/978-3-030-11255-4 .

Notes on the quality of research: All three references have been published in peer reviewed outlets. **R2** is published by a leading university press. **R1** won third prize in the 2015 Partisan Gerrymandering Writing Competition run by Common Cause, a major US NGO and plaintiff in the case *Rucho v. Common Cause*.

4. Details of the impact

Having demonstrated for the first time the dramatic increase in partisan bias in the US after 2010, McGann's gerrymandering research [**R2**] directly influenced policy and legal proceedings at state, district and Supreme Court level from 2016 onwards. Furthermore, by proactively engaging with US-based non-governmental organisations (NGOs) and participating extensively in the public debate on partisan gerrymandering, McGann and his fellow researchers strengthened efforts to promote voting rights and enhanced public understanding of gerrymandering.

1. Influenced litigation at the state and US Supreme Court level

Described by leading political commentators as *'an excellent book'*, *'essential reading'*, *'easily the most original and important work on partisan gerrymandering since the [Vieth v Jubelirer] ruling'* [**S1**],

Gerrymandering in America [R2] was immediately taken up by influential US political scientists, such as Bernard Grofman (who as court-appointed Special Master redrew the districts in Virginia in 2016). By providing a robust legal standard to challenge the 2004 *Vieth* ruling, the book became a popular foundation for gerrymandering complaints to state and district courts across the US. McGann's work was cited in complaints in 4 out of the 6 states where partisan gerrymandering cases were heard (North Carolina, Wisconsin, Pennsylvania and Maryland). As outlined in detail below, it was also used in amicus briefs ('friend of the court' advocacy documents used in court cases) prepared by NGOs, government entities, academics and other plaintiffs to provide grounds for legal challenge, in instances where state governments brought appeals to the US Supreme Court after district courts ruled against gerrymandering.

Political consultants drawing on Gerrymandering also acted as expert witnesses for litigants and as court-appointed consultants to draw the districts in some states. McGann's research provided a 'big picture', national-level understanding of the prevalence of partisan gerrymandering, the extent of its increase since 2010, and comprehensive state-by-state measures of partisan bias.

Between 2016 and July 2020 the work was cited on over 20 occasions in US Supreme Court cases, with the briefs using McGann's research [R1, R2] to demonstrate the extent and political causes of partisan gerrymandering. The most prominent cases were *Gill v. Whitford* (2018), *Lamone v. Benisek* (2018) and *Rucho v. Common Cause* (2019). *Gill* originated in Wisconsin, where in 2016 a district court ruled that gerrymandering was fundamentally unconstitutional. When the State Assembly appealed the decision in the Supreme Court, the plaintiffs and 7 out of 26 amicus briefs in their favour cited the research, most of them multiple times. The following 3 briefs referred to it most extensively:

- The late Senator (and former US presidential candidate) John McCain and Senator Sheldon Whitehouse summarised the researchers' politically provocative argument that current levels of gerrymandering were a direct result of the Supreme Court's *Vieth* ruling (6 pages; approximately 40% of the brief) [S2].

- Grofman and Gaddie used *Gerrymandering in America* to demonstrate both that partisan gerrymandering increased dramatically after 2010, and that it is neither self-limiting nor the result of the urban concentration of Democratic Voters [S3]. The conclusion on the post-2010 increase in gerrymandering was cited in Justice Kagan's opinion on Gill v. Whitford (2018).

- The Brennan Center for Justice used the book as the primary source on the political conditions that lead to partisan gerrymandering [S4].

The same briefs were submitted to the Supreme Court in *Rucho v. Common Cause* (2019), which originated in North Carolina and *Lamone v. Benisek* [S7], which deal with Maryland. The Supreme Court used the *Rucho* case to find that political gerrymandering was a 'political issue' in which the Court could not intervene.

While the US Supreme Court did not overturn partisan gerrymandering, various state courts did and the Supreme Court respected their jurisdiction. Gerrymandering in America was cited in four such cases, including *League of Women Voters of Pennsylvania v. Commonwealth of Pennsylvania* (2018) [S5, S6]. In this case, the Supreme Court of Pennsylvania ruled that the districts in Pennsylvania were unconstitutional under state law and ordered them to be redrawn. Under the old districts, Republicans won 13 seats out of 18, even when they won less votes than the Democrats; under the redrawn districts, each party has won 9 seats each.

Redistricting ordered by State courts has had a major political impact. In 2020 the Democrats retained control of the US House of Representatives with a majority of five seats (222 out of 435). However, if state courts in Pennsylvania, North Carolina and Virginia had not overturned gerrymanders in those states at various points in the previous four years, the Republicans would almost certainly have retaken the US House. In 2020 the Democrats won four more seats in

Pennsylvania, four more in Virginia and two more in North Carolina, compared to any election under the original 2012 districts.

2. Informed and strengthened NGO campaigns and state-level legislation

Since 2016, McGann's gerrymandering research and expertise has also shaped and supported the work of US-based NGOs including Fair Districts PA (a grass-roots, nonpartisan coalition of organisations and individuals campaigning for a transparent, impartial and fair process for redistricting in Pennsylvania) and the Union of Concerned Scientists (a national non-profit organisation whose mission is to use rigorous, independent science to address the world's most pressing issues). McGann's work has not only informed these groups, but has had a documentable effect on their strategies.

In the case of Fair Districts PA, McGann's research has influenced how they drafted and campaigned for the Legislative and Congressional Redistricting Act, a piece of Pennsylvania legislation which *'introduces clear, measurable map-drawing criteria designed to prevent partisan gerrymandering and promote accountability to voters'* [**S8**]. As confirmed by the organisation's Advocacy Advisors Team Chair, Gerrymandering in America [**R2**] has been their *'main source of reliable information on how gerrymandering works in the USA and how both gerrymandering and fairness can be objectively measured',* and has been '*invaluable as a reference*', when drafting the proposed legislation [**S8**].

In the United States it is common practice for NGOs and other interested parties to draft legislative measures they would like to see adopted, and then work with sympathetic legislators to get them proposed. The Legislative and Congressional Redistricting Act would require redistricting authorities in Pennsylvania to use objective measures of fairness and transparent public processes of the kind advocated in *Gerrymandering in America* [**R2**]. As of the end of the PA General Assembly session in November 2020, the proposal is being considered in both chambers, and is the focus of Fair District PA grass-roots, district-by-district campaigning. Given changes in Pennsylvania politics that mean it is now unclear which party will benefit from gerrymandering in the future, the legislation has a realistic chance of passage in 2021.

Given that Fair District PA is a volunteer citizens' group that cannot draw on expensive consultants, the accessibility of McGann's research was particularly appreciated. The Chair commended the book for being *'unique in presenting up-to-date facts and analysis in a way that can be understood by any competent adult'* in comparison to *'scholarly journals that are almost impenetrable to non-experts'* [**S8**]. McGann's direct engagement with Fair Districts PA, which provided additional information on request to enable to them *'to refine specific points, such as the relationships between district compactness and fair electoral map'* was also highly valued.

McGann and his colleagues also directly informed the work of the Union of Concerned Scientists (UCS), which has a staff of approximately 250 scientists, analysts and communications experts and a national membership of over 130,000 [**S9**]. As a result of this, UCS is now engaging increasingly with issues such as voting rights, and social science research in general. The Director of the organisation's Center for Science and Democracy states that McGann's research was *'important in showing how we can work on issues such as voting rights, redistricting and electoral law from a scientific perspective….As a result of the social scientific framework provided by scholars such as Professor Latner and Professor McGann, Union of Concerned Scientists is now able to engage more fully in questions of political process. For example, we are closely following, researching and writing about Supreme Court cases concerning gerrymandering, state laws that make voting harder, and state and national efforts to address these issues'* [**S9**].

Influenced by McGann's research, UCS has committed resources to research and campaigning on issues of political process. In 2017 it awarded a two-year Kendall Science Fellowship to Michael Latner, one of McGann's collaborators (and former student) to investigate the link between voting rights and environmental justice for dissemination to decision-makers [**S9**]. This is the first Kendall Science Fellowship working on voting rights, with recipients in the past generally coming from a

natural science background. This resulted in a UCS sponsored report, *Building a Healthier Democracy: The Link Between Voting Rights and Environmental Justice* (2018), that showed that communities deprived of representation experience worse environment and health outcomes [**S9**]. While UCS has always been concerned about the impact of science on public policy, it is now able to engage with issues of political process, for example campaigning for House Resolution 1 (which deals with campaign finance, gerrymandering and automatic voter registration) and various state level initiatives to raise voter turnout [**S9**].

3. Informed debate and enhanced public understanding

Between 2016 and 2019 McGann's research team wrote 14 accessible briefings on gerrymandering for prominent blogs with wide readerships, including *LSE US Politics and Policy* (LSE blog's overall monthly readership: 790,000), *The Political Studies Association Blog* (15,000 readers), *The Electoral Law Blog* (approx. 200,000 readers), *The Conversation* (2,300,000 readers), and *The Union of Concerned Scientists' Blog* (approx. 4,000 readers). Some posts were republished in prominent US mainstream news outlets, including *The Washington Post* (02/02/2017), *Newsweek* (10/02/2016, 10/25/2017) and the Associated Press (23/11/2016). A 2017 NBC news article referred to Gerrymandering in America as adding *'to the growing list of standards being developed by researchers that could be used to prove in the courts what districts are being unfairly manipulated'* [**S10**]. The work of the team was cited in *The New York Times* (14/07/2019) as evidence that the remedies for gerrymandering can be effective.

The work was also referred to as an exemplar of scientific research in blogs and news sources such as Talking Points Memo, Associated Press, the Library of Congress' *In Custodia Legis* blog. The team provided background briefings for journalists, such as Stephen Wolf at US online news site *Daily Kos* and Harry Enten (which included calculating new partisan bias scores) at *fivethirtyeight.com*, a leading source of US political news founded by Nate Silver, widely considered the foremost US electoral forecaster.

5. Sources to corroborate the impact

S1 Reviews and endorsements of *Gerrymandering in America*, Cambridge University Press website.

S2 Brief of Senators John McCain and Sheldon Whitehouse in Support of Appellees. McGann et al.'s work cited on pp. 6, 8, 9.

S3 Brief of Bernard Grofman and Ronald Keith Gaddie as Amici Curiae in Support of Neither Party. McGann et al.'s work cited on pp.9, 14–17, 20.

S4 Brief for The Brennan Center for Justice at NYU School of Law as Amicus Curiae in Support of Appellees. McGann et al.'s work cited on pp.11–13, 15.

S5 Brief of Bernard Grofman and Ronald Keith Gaddie as Amici Curiae in Support of Neither Party. McGann et al.'s work cited on pp. 10, 13, 23 and 27.

S6 *League of Women Voters of Pennsylvania v. Commonwealth of Pennsylvania*. Brief of Amici Curiae Political Science Professors in Support of Petitioners. McGann et al.'s work is cited on p.3.

S7 *Lamone v. Benisek* and *Common Cause v. Rucho*. Brief of Amici Curiae Political Science Professors in Support of Appellees and Affirmation. McGann et al.'s work cited on p.6.

S8 Factual statement from Chair, Advocacy Advisors Team, Fair Districts PA, dated 29 October 2020, with Summary of House Bill 2638: Legislative and Congressional Redistricting Act fact sheet.

S9 Factual statement from Director, Center for Science and Democracy, Union of Concerned Scientists, dated 21 February 2020.

S10 Stephen Nuño-Pérez, 'Supreme Court recognizes that with gerrymandering, not all votes are equal', *NBC News* website, 23 May 2017.