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## Coates' Canons Blog: The Status of North Carolina Redistricting Near the End of the Decade

By Robert Joyce

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This blog post will bring you up to date on redistricting in North Carolina. It has been a wild decade, but it looks like things have mostly shaken out.

Every 10 years, after each federal census, the North Carolina General Assembly must come up with three redistricting plans—one for its own House of Representatives, one for its own Senate, and one for the state's members of the U.S. House of Representatives. That third one is often referred to as Congressional redistricting.

Almost always, the redistricting plans are challenged in court. In recent decades, the challenges have centered on claims that the plans involved racial discrimination—often called racial gerrymandering—in violation of the federal Voting Rights Act or the Constitution, or both. Following the 2011 redistricting, those claims were once again at the fore.

But in this decade, those *racial* gerrymander challenges have been joined by a newly-emerging kind of challenge—the *partisan* gerrymander claim. Look [here](#) for my earlier explanation of the partisan gerrymander challenge.

Over the last seven years, the U.S. Supreme Court affirmed court rulings that all three 2011 plans—state House, state Senate, and U.S. House—included unlawful racial gerrymanders and that the 2017 redraw of the state plans continued the unlawful racial gerrymander. A federal court found that the 2016 redraw of Congressional districts amounted to an unlawful partisan gerrymander. We now operate with court-drawn substitutes for the state plans, and the shadow of ongoing litigation hangs over all three plans.

### Congressional districts

Racial gerrymandering. In *Cooper v. Harris*, a federal three-judge panel held that the 2011 Congressional redistricting plan was an unconstitutional racial gerrymander. In 2017, the U.S. Supreme Court affirmed that holding. But before the Supreme Court issued its ruling, the General Assembly had, in 2016, under an order of the three-judge panel, redrawn the plan. That redrawn plan has not been challenged as continuing the racial gerrymander. It served as the plan for elections in 2016 and is serving again as the plan for the 2018 elections.

Partisan gerrymandering. Although the 2016 redrawn plan in *Cooper v. Harris* was accepted as resolving the racial gerrymander claim, it was challenged as creating a partisan gerrymander. The *Cooper v. Harris* three-judge panel concluded that it could not decide the partisan gerrymander claim and in June 2018 the U.S. Supreme Court affirmed that holding. Meanwhile, however, a distinct lawsuit, *Common Cause v. Rucho*, was filed in federal court, making the partisan gerrymander claim. In January 2018, after a trial, a different federal three-judge panel held that in fact the 2016 redrawn plan was unconstitutional as a partisan gerrymander. In June 2018, the U.S. Supreme Court sent a similar partisan gerrymandering case (this one from Wisconsin) back to the trial court for further consideration on the legal question of standing, and one week later it did the same thing in *Common Cause v. Rucho*. The partisan gerrymandering claim is now back under consideration by the three-judge panel.

The current status. The Congressional district plan drawn by the General Assembly in 2016 is the plan in use for the 2018 elections. It is not under a further racial gerrymander challenge. The partisan gerrymander claim is being litigated and the potential exists that the courts could again find an unconstitutional gerrymander and order a new plan for the 2020 elections.

### State House and Senate districts

Racial gerrymander. In *Covington v. North Carolina*, a federal three-judge panel ruled that the 2011 redistricting plans for

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state House and state Senate were unconstitutional as racially gerrymandered. In 2017 the U.S. Supreme Court affirmed that ruling. The General Assembly drew new plans. The three-judge panel rejected those plans as continuing the racial gerrymander, and the panel adopted its own plans to cure the racial gerrymander. In 2018 the U.S. Supreme Court affirmed the holding that the 2017 plans continued the racial gerrymander and affirmed the use of the changes that the panel put in place to correct that gerrymander. So, under the *Covington* litigation, the 2018 elections will go forward using the parts of the panel's plans that corrected the racial gerrymander.

Claim of NC Constitution violation. In its court-ordered 2017 redistricting, the General Assembly changed some districts to address the finding of racial gerrymander, of course. But it changed some other districts as to which there had been no finding of racial gerrymander. At the same time that the three-judge panel in the *Covington* litigation found that the 2017 plans continued the racial gerrymander, as described above, it also found that this second set of changes was unconstitutional in a totally different way. It found that the changes violated a provision of the North Carolina Constitution that prohibits mid-decade redistricting. The panel, when it adopted its own plans, included changes not only to correct the racial gerrymander but also to correct this violation of the state constitution. While the U.S. Supreme Court upheld the panel's changes that addressed the racial gerrymander, as discussed above, it held that the panel erred in ruling on the North Carolina constitutional claims. The Supreme Court rejected the parts of the plan that addressed those claims. As a result, the changes not related to correcting the racial gerrymander remain in the plans for use in the 2018 elections.

Meanwhile a totally new lawsuit, filed in state court in 2018, *NAACP v. Lewis*, renews the claim that the non-gerrymander changes violate the North Carolina Constitution. In April 2018 a state court three-judge panel found that the claim was likely to succeed—that is, there likely was a violation of the state constitution—but that the primary elections for state House and state Senate were so close (absentee voting had already begun) that it would be too disruptive now to bar the use of the non-gerrymander changes for this election. This litigation is ongoing.

The current status. State House and Senate districts adopted by the federal three-judge panel in the *Covington* litigation to correct the continuation of the racial gerrymander are in use for the 2018 elections. Districts adopted by the panel to address the court's finding of a state constitution violation are not in use for the 2018 elections but are still under challenge, a challenge the court has said is likely to succeed. That means there may well be further changes for the 2020 elections.