

U.S. Election Rules Doomed Democrats' Chances Of Taking The Senate

It's a testament to how U.S. election rules tip the scales for white, rural voters who support the GOP.

By Molly Redden and Nick Baumann

Democrats may be ecstatic that they retook the House of Representatives, but their decisive victory conceals a harsher reality: It took a landslide in the popular vote to get them here, and they are projected to lose seats in the Senate.

Those facts speak to just how far the U.S. election system is tilted in the Republicans' favor. Through a combination of fundamental factors and partisan gerrymandering, Republicans on Tuesday retained their grip on the Senate and many state houses without a national majority.

Because the process of redrawing political maps will not begin until after 2020, House Democrats will have to defend their gains on the same, skewed playing field. Ahead of Tuesday's election, various forecasts posited Democrats would have to beat Republicans by roughly 5.5, 7, or even 11 points in the general vote just to win a slim majority of seats in the House.

"If it requires a generational wave to give Democrats [the House], that's a sign of just how powerful gerrymandering is, not a sign that it can be conquered," said David Daley, the author of *Ratf**cked*, a chronicle of the GOP's aggressive gerrymandering efforts. "Winning back the House does nothing to change that structural unfairness in the future."

Certain factors give Republicans a natural advantage. In the Senate, the disproportionate representation of small states is part of the body's original design. But that advantage, which **benefits white voters**, has become more lopsided than the framers of the Constitution likely ever imagined as the country's population and demographics evolve. Today, 20 senators from urban states represent **roughly half the country's population**, while the other, rural half elects the remaining 80.

The House presents similar challenges. Many other democracies ensure that a party's control of the legislature corresponds to its share of the vote. But the United States has a winner-take-all system. Netting

40 percent of the vote in every district would result in a total loss; winning 80 percent of the vote in every district would be no different than winning 51 percent in every district.

Again, the benefit redounds mostly to white, rural voters likely to vote Republican. Because Democratic voters are concentrated in cities, it is inevitable that more of them will find their votes “wasted” — that is, packed into bright-blue districts. And over the past several decades, voters have sorted themselves so that the urban-rural partisan divide is even starker.

Republicans have inflated their House advantage through the use of gerrymandering. A wave of Republican victories in 2010 allowed the party to dominate the most recent redistricting process, which Republicans used to protect their advantage from the political equivalent of a 100-year flood.

In Michigan, for example — ostensibly a swing state — Democrats could have matched their exceptional performances in 2006 and 2008 and still failed to flip a single congressional seat, Brennan Center researchers argued before Election Day. Republicans controlled nine out of Michigan’s 14 congressional seats heading into Tuesday. As of early Wednesday morning, Democrats had flipped one seat.

“In the long run, we’re moving toward a world where Democrats can routinely get a majority of the vote and still not be able to gain meaningful electoral power,” argued David Shor, the head of political data science at Civis Analytics. The third branch of the federal government exaggerates all of these Republican advantages like a funhouse mirror. Conservatives enjoy a five-justice majority on the Supreme Court, with the help of four justices appointed by presidents who initially entered office after losing the popular vote. The senators who approved Brett Kavanaugh’s nomination represented 38 million fewer constituents than those who opposed, according to Congress-tracking site GovTrack.us. Lytics, a Democratic consulting firm.

For anyone worried about the impact of gerrymandering, Tuesday offered a few reasons for hope. Several states considered **ballot initiatives** that will give nonpartisan groups some power over redistricting in 2021. (Two of those states — Michigan and Ohio — were states where the GOP wave of 2010 led to highly partisan maps.)

In Colorado, voters approved a proposal to turn the process over to bipartisan or independent citizens commissions; Michigan voters did the same. Utah voters on Tuesday night seemed on the verge of creating an independent advisory commission to work with the legislature. Missouri voters approved a

statistical test to measure partisan fairness. Ohio's ballot measure requires new maps to involve bipartisan cooperation, but it still gives the majority party the ability to draw lines in its favor.

And voters in Florida restored voting rights to 1.4 million people with prior felony convictions, a huge expansion of the franchise that could radically redistribute voting power in that state.

The new rules should produce a more equitable remap in 2021 — so long as neither party finds a way to undermine them.

“It’s always possible for people with bad intentions to find a workaround,” Daley said. He noted how, after Florida voters approved a 2010 ban on partisan gerrymandering, the Republican-controlled legislature drew partisan boundaries anyway. Two election cycles passed before the courts struck down the most gerrymandered districts.

But fair election advocates worry that Tuesday’s outcome won’t change much of anything in the long run.

“What you’re describing could sooner or later lead to a quite massive withdrawal of support if [voters] in the majority come to the conclusion that in some deep sense, elections don’t really matter,” said Sanford Levinson, a politics professor and constitutional critic at the University of Texas.

Although their victory in the House may have staved off disenchantment among Democrats, Levinson said, it will have the opposite effect for Republicans if Trump reacts with his usual air of conspiracy.

“No democracy can operate if the losers aren’t good sports,” Levinson said. “And what Donald Trump has done is create a situation where many of his supporters, the Trump base, are being trained to be bad sports. ‘You can’t trust the press, the system is rigged, George Soros is the secret mastermind, so if the Republicans lose the House, don’t believe it was the result of a fair process.’”

“You certainly should not have to depend on extraordinary waves to bring electoral change,” Li said.

“That’s why we have elections every two years — because the framers thought if the mood of the people shifted, so should the composition of the legislatures. For most of the last decade [the system] has not been responsive to anything short of a tsunami. That’s not how any democracy should work.”

