CLC

ADVANCING
DEMOCRACY
THROUGH LAW

DESIGNING INDEPENDENT REDISTRICTING COMMISSIONS

ACKNOWLEDGMENTS

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I. INTRODUCTION

This Guide is intended to arm legislators, good government advocates, and activists with the knowledge needed to design an independent redistricting commission for state legislative or congressional districts.

Though redistricting has always been a problem in American politics,[1] the outsized role of partisanship in the redistricting process has received unprecedented attention across the nation since 2010. Members of both major political parties complain that the other side rigs elections by drawing district lines to favor their party and disadvantage the other.

In the lead up to 2010, the Republican Party executed a strategy called "REDMAP,"[2] taking control of twenty state legislatures in advance of the 2010 redistricting cycle, in part to draw extreme partisan gerrymanders that would help ensure partisan control of state legislatures and Congress for the decade.[3] In response, the Democrats have created the National Democratic Redistricting Committee (NDRC), which aims to prevent Republican gerrymandering in 2020 by "advancing legal action, mobilizing grassroots energy, supporting reforms, and winning targeted elections."[4] In short, both major political parties understand the importance of redistricting and have created a gerrymandering arms race for 2020.

Rather than allowing those in power to manipulate the very districts from which they will be elected, Campaign Legal Center (CLC) supports a variety of checks on the redistricting process, including the creation of independent redistricting commissions. CLC has worked with groups on both sides of the aisle to design commissions that will take the power of redistricting out of the hands of self-interested legislators and give it back to the people.

With public attention focused on the problems of gerrymandering and the 2020 redistricting cycle looming, the time to enact reforms that will permanently improve democracy in the states is now. Well-designed independent redistricting commissions can help make the line-drawing process more open to and reflective of citizens' voices and ensure that politicians are accountable and responsive to their constituents.

2017

"In 2012, 1.4 million more Americans voted for Democrats for Congress, but Republicans won a 33-seat majority in Congress."[a]

– NATIONAL DEMOCRATIC REDISTRICTING COMMITTEE

1987

"In 1984 there were 397 congressional races contested by both parties. In the races, Republicans won half a million more votes than the Democrats, but the Democratic Party won 31 more seats."[b]

– PRESIDENT RONALD REAGAN

Though we recommend that all states adopt independent redistricting commissions, there is no one-size-fits-all model that will work in every state. There are many unique local factors to think through in deciding what kind of commission will work best. We have produced this Guide to help those designing independent redistricting commissions think through the structural choices, policy decisions, and other important factors that go into creating a successful independent redistricting commission.

Two issues are not covered in this Guide. First, the principles explained in this Guide can be applied to redistricting at the local level, such as city councils and school boards, but such applications are not specifically addressed here. Second, every state has its own rules for how a redistricting commission may be introduced (whether by ballot initiative, legislatively referred initiative, or another mechanism), and its own rules for what types of changes each mechanism may make (for example, a single-subject rule). This Guide does not outline what the requirements for constitutional or legislative change are in any state.

This Guide begins with an explanation of key concepts that relate to redistricting, gerrymandering, and independent redistricting commissions. Next, we pose questions and offer suggestions for how to broadly structure a commission so that it is incentivized to create fair maps. Then, we describe the traditional factors that map drawers may consider when drawing district lines. Finally, in the Appendix, we provide a summary of the characteristics and requirements of commissions currently in use around the country.

example:

Throughout this Guide, we include samples of constitutional or statutory language that is used (or has been proposed) to achieve the goals set out in the section being discussed. You can easily find this language by looking for the boxes matching this one throughout the report.

II. REDISTRICTING, GERRYMANDERING, AND INDEPENDENT REDISTRICTING COMMISSIONS

What Is Redistricting?

Redistricting is the process of redrawing the electoral districts within each jurisdiction. For the U.S. House of Representatives, a state must wait until reapportionment (defined below) is finished before it can divide the state into the allotted number of congressional districts. For state house and senate districts, however, states can start redistricting as soon as they receive the decennial Census results. States draw their district lines according to the procedures and criteria set out in state and federal law.

Reapportionment is the process by which the federal government determines how many seats each state will receive in the United States House of Representatives. It happens every 10 years, after the decennial U.S. Census result are released, and is based on a state's population.

The Census is taken in the "zero year" (2000, 2010, 2020), and the results are released in the "one year" (2001, 2011, 2021). Once states are informed of the number of the seats they will receive in the House of Representatives, as well as the state's population according to the most recent Census, they can begin the process of redistricting.

Who Is Responsible for Redistricting?

In most states, the state legislature draws congressional and state legislative district boundaries. However, some states give the power of redistricting to a commission. There are various types of redistricting commissions, and the types can be grouped in different ways. We set out our definitions of commission groups here, and will use these terms consistently in this Guide:

Independent Commissions – These take the power of redistricting out of the hands of legislators and aim to create district boundaries that are not beholden to any political party. They generally allow for public input in the process.

Political Commissions – These take the power of redistricting away from the legislature, and give it to a select group of politicians, with one party having a majority of the seats on the commission.

Bipartisan Commissions – These take the power of redistricting away from the legislature, and give it to both major parties in equal measure. These differ from Independent Commissions because there is the possibility that the parties work together to advantage themselves, without public input or consideration.

Advisory Commissions – These do not take the legal power of redistricting away from the legislature, but can have a great influence on the process depending on the culture of the state. These run the gamut from drawing plans that are almost always approved by the legislature, to offering plans that are entirely ignored.

Another type of commission is a "Backup Commission." These are used in some states where the legislature is unable to agree upon a redistricting plan. Because this Guide focuses on states' primary mechanisms for redistricting, it does not address Backup Commissions specifically.

What Is Gerrymandering?

The term gerrymandering is used in different ways, but it always relates to some sort of intentional manipulation of district lines to gain an advantage for a group (whether that be a political group, a racial or ethnic group, or otherwise). Historically, there have been four main ways to manipulate lines for group advantage: malapportionment, minority vote dilution, partisan gerrymandering, and racial gerrymandering. These are briefly described below.

Malapportionment – Until the 1960s, gerrymandering for partisan advantage took the form of malapportionment. Malapportionment is the deliberate difference in the population of districts, which causes constituents in highly populous districts to have effectively less voting strength than their counterparts in more sparsely populated districts. The first case to strike down malapportionment as unconstitutional, *Baker v. Carr*,[5] involved urban districts in Tennessee that had ten times as many people in them as some rural districts.

Minority Vote Dilution – Minority vote dilution refers to the use of redistricting plans to minimize or cancel the voting strength of racial, ethnic, or other minorities. This practice has been challenged with some success on the ground that it violates the Fourteenth Amendment,[6] but such a violation requires proof of discriminatory intent. In 1982, an amendment was made to Section 2 of the Voting Rights Act (VRA) to make it clear that the VRA could also be violated if, in the totality of the circumstances, "the standard, practice, or procedure being challenged had the *result* of denying a racial or language minority an equal opportunity to participate in the political process." (emphasis added).[7] One way

to engage in minority vote dilution at the state legislative or congressional level is to consistently prevent a community of color from being a controlling majority in any district.

Partisan Gerrymandering – This occurs where one political party intentionally gains a systematic advantage for itself through the drawing of district boundaries.[8] As a result, elections are determined not by the will of the people, but the will of the map drawers. In the 1980s, the Supreme Court held that partisan gerrymandering is unconstitutional, but it set out a test for determining when such gerrymandering had occurred that no subsequent litigant has ever met. This issue came before the Court again in the *Gill v. Whitford* and *Benisek v. Lamone* cases in 2018, but the Court sent them back to the trial court for a greater development of the record on the issue of standing. One or more partisan gerrymandering cases may go back to the Supreme Court in the 2018-2019 term.

Racial Gerrymandering – This is the deliberate separation of citizens into districts based on race, with no sufficient justification (such as an attempt to comply with the Voting Rights Act).[9] The Supreme Court has found that an excessive focus on race in drawing districts offends the Fourteenth Amendment to the Constitution.

How Does One Gerrymander?

One can achieve advantage for a group or individual through the districting process in many ways. Here, we define some terms that are used in conjunction with gerrymandering:

Cracking is the practice of dividing a group's supporters among multiple districts so that they fall short of a full majority in each district.

Hijacking is the practice of separating an incumbent from her constituency.

Kidnapping is the practice of putting two incumbents in the same district so they have to run against each other.

Packing is the practice of concentrating a group's support heavily in a few districts so that the group wins significantly fewer districts than it would have had its supporters been spread out more evenly.

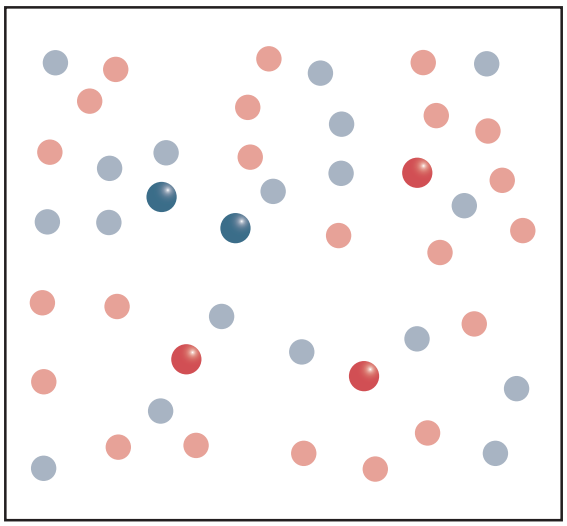
Stacking is placing low turnout voters of a particular racial or language minority group in a district to make it look like it will comply with the Voting Rights Act, but in reality, the district's white voters will likely be able to prevent the minority community from electing their candidate of choice.

Tacking is the practice of adding on a distant area with desired demographics to a district that would not otherwise be won by a certain group for whom the desired demographic will likely vote.

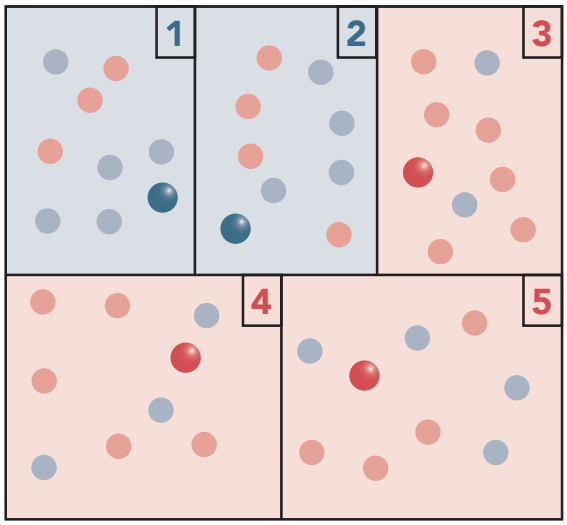
Illustrating Cracking, Packing, Hijacking, Kidnapping, Stacking, and Tacking

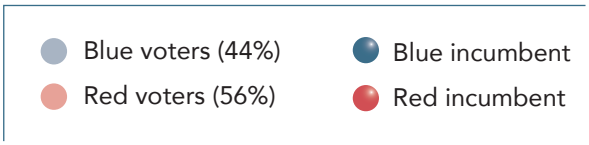
HYPOTHETICAL STATE

20 blue voters
25 red voters

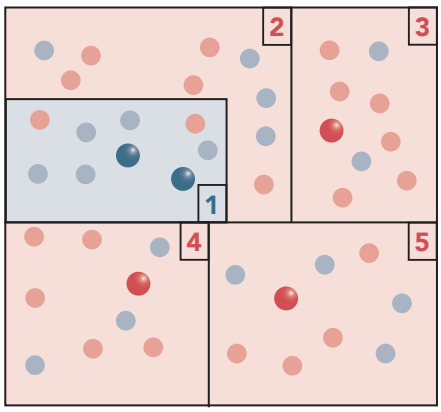


A NEUTRAL PLAN



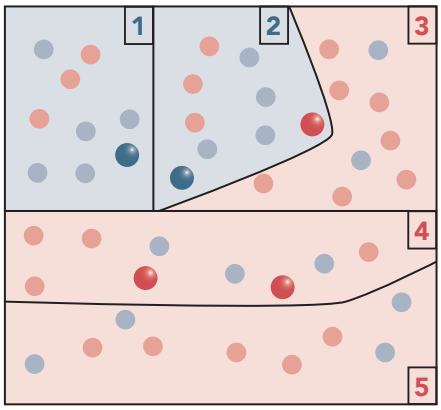


Illustrating Cracking, Packing, Hijacking, Kidnapping, Stacking, and Tacking



CRACKING AND PACKING

The blue voters are packed into district 1, which cracks the former blue voters in district 2, so that district 2 is now dominated by red voters (the blue incumbent has also been kidnapped!).

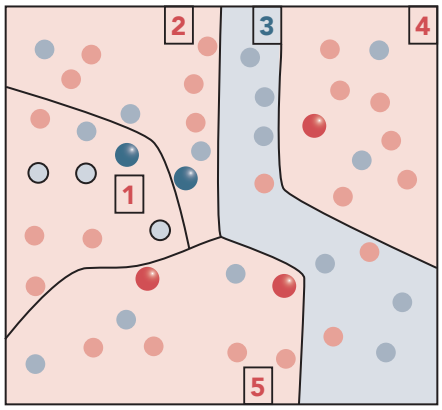


HIJACKING

The red incumbent is moved out of district 3 and into district 2, which has an advantage for blue voters.

KIDNAPPING

Two red incumbents are placed together in district 4, so they are forced to run against each other.



STACKING

The outlined blue dots are low-turnout voters. By putting them into district 1, it may look like the district will allow a blue candidate of choice to win, but actually the red voters will elect their candidate.

TACKING

The blue voters in the north are tacked onto the blue voters in the south east, because they are both blue, even though they may not share other characteristics.

- Low turnout blue voter
- Blue voters (44%)
- Red voters (56%)
- Blue incumbent
- Red incumbent

Why Form an Independent Redistricting Commission (IRC)?

"Redistricting is a single public act with the ability to shift the terrain on which all future political activity is negotiated. It does so by shifting political power among the groups within a jurisdiction that have the capacity to see their preferences translated into policy. Redistricting changes the aggregation of political preferences and the way that those preferences play out through the remainder of the political process, even when no individual constituent's interests have changed. And as such, redistricting is pre-political."[10]

Redistricting is a fundamentally political enterprise: it involves decisions about which voters can elect which types of representatives and how they will govern together. The history of redistricting in the United States shows us that when one party is able to use the redistricting process to gain power, it will invariably do so.[11] This is mainly due to the obvious conflict of interest created when politicians are given the opportunity to choose who will vote for them in future elections.

Removing the conflict of interest

To avoid such conflict of interest, it is incumbent upon citizens to take the power of redistricting away from legislators and give it to an independent body. The problem, of course, is how to create an independent body in a world of hyper-partisan polarization.[12] This topic is addressed in Part III of this Guide.

Gerrymandering is easier than ever

Until recently, the practice of redistricting for partisan advantage was relatively unsophisticated. Districts had to be created by hand, with paper maps and protractors.[13] Demographic data could only be reviewed manually, allowing for rough predictions of potential electoral outcomes.[14] Modern technology, however, makes it possible for legislators to target voters of their choice with surgical precision.[15]

Partisan gerrymandering is worse than ever

A recent study into the level of partisan gerrymandering in state house and congressional elections from 1972 to 2014 found that "the scale and skew of today's gerrymandering are unprecedented in modern history."[16]

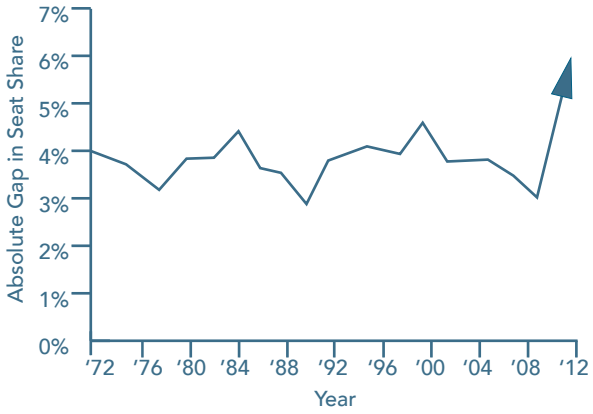


Figure 1: Chart showing absolute efficiency gap for state legislatures 1972-2012

Independent redistricting commissions have a proven track record

Independent redistricting commissions appear to be the best and most workable solution to the plethora of problems created by incumbent legislative redistricting. When properly designed, independent commissions lend greater public legitimacy to the redistricting process and minimize the conflicts of interests that are otherwise inherent in redistricting.[17]

Members of well-designed commissions are not legislators and have no political ties that would compromise their judgment as commissioners; they are structurally incentivized to redistrict according to the values espoused by state law rather than self-interest. Commissions can be designed to reflect the racial, ethnic, geographic, and/or gender diversity of the electorate.[18] They can also be designed to not be structurally beholden to legislators.[19]

Not only do independent commissions reduce partisanship in the redistricting process, but research has also shown that politically independent redistricting significantly reduces partisanship in the voting behavior of congressional delegations.[20]

Although independent commissions are not a panacea, they can remove the "dead hand of past majorities"[21] that prevents present legislatures from making the changes the electorate desires.

Independent Redistricting Commissions:

- Improve partisan fairness
  - Commission-drawn plans have lower partisan bias and efficiency gap scores[c]
- Improve competitiveness
  - More districts are contested in commission-drawn plans[d]
  - Commission-drawn plans have a greater share of districts that are decided by 10 points or less[e]
- Improve responsiveness
  - The rate at which seats change in response to changes in voter sentiment is higher in commission drawn plans[f]

III. DESIGNING THE STRUCTURE OF AN INDEPENDENT REDISTRICTING COMMISSION

Designing an independent redistricting commission (IRC) involves a series of decisions about how to build a system that will incentivize the creation of fair maps. Decisions on how to structure an IRC should be informed by an individual state's current redistricting process, the structure of state government, the political climate, and best practices found in other IRCs. These big picture decisions help inform the more nitty-gritty choices we examine here, such as how many commissioners to have and which selection criteria to include.

To help think through the key decisions in designing an IRC, we present a series of options to consider. These are written to mirror the summary of characteristics of commissions currently in use, which are set out in the Appendix.

Though separated out for clarity, these decisions should not be made in isolation from each other. Designing an IRC that will produce fair maps is analogous to calibrating the rules of a game; it is important to consider how decisions in one area may influence options in other areas. We have tried to highlight those crossover moments.

What Is the Role of the Commission?

The first important policy decision to consider is how much power to delegate to the commission for the redistricting process. This can range from giving the commission full authority to draw and approve the final maps to only allowing the commission to draw non-binding, advisory maps that the legislature can adopt, amend, or ignore.

The political reality in a particular state may make it difficult to take the power of redistricting out of the hands of politicians completely, but there are structural choices that can ensure politicians do not determine all aspects of the process or the final map. Even in an advisory capacity, commissions may be designed to retain meaningful authority. For instance, if the legislature will not give up its power to approve a plan, ensure that it cannot amend the plan directly or draw an alternative plan itself that would bypass the commission's input and/or consent.

What are "fair maps?"

In this Guide, we use the term "fair maps" to mean redistricting plans that promote good government values in terms of the process used to create them (e.g. free of conflicts of interest, involving the public in the process, etc.) and the outcome of the plan (e.g. allows minority communities to elect their candidates of choice, treats members of both political parties relatively equally, allows all residents (not just eligible voters) to be equally represented, etc.).

The commission procedure may also include directions as to what will occur if no map is approved (for example the state Supreme Court will draw a plan, or select from drafts from the commission, etc.). If this fallback alternative is included, it may create an incentive for the legislature to approve the commission's map.

If an advisory commission is the only politically feasible option, the design should ensure that the commission will gain credibility and clout in the eyes of the public and the judiciary, with the aim of shaming the legislature into a fairer final map. Even in an advisory role, the commission can provide alternative maps that may help courts determine whether a legislature's map has crossed legal lines. The options for the role of a commission are explained further below.

The Commission Produces and Approves the Final Map

Under this scenario, the redistricting commission has full authority to draw and approve the final map, without the need for approval from the legislature or governor. Delegating full authority to the commission limits the undue leverage a dominating political party may hold over the legislature and/or the governorship, and averts concerns about which body will draw a map if a commission-drawn plan cannot obtain legislative or gubernatorial approval. On the other hand, having full authority might discourage the commission from seeking and/or considering input from the state's elected bodies.

example:

Arizona:

"(3) By February 28 of each year that ends in one, an independent redistricting commission shall be established to provide for the redistricting of congressional and state legislative districts."
"(17) The provisions regarding this section are self-executing. The independent redistricting commission shall certify to the secretary of state the establishment of congressional and legislative districts."

ARIZ. CONST. art. 4, pt. 2, §§ 3, 17.

The Commission Creates a Map for Gubernatorial and/or Legislative Approval

Under this structure, the commission has the authority to draw maps, but the legislature and/or governor retain(s) the final authority to approve, reject, or amend the plans. This option leaves room for manipulation of the redistricting process by self-interested elected officials. However, under certain circumstances, it can work to produce fair maps.

For example, in Iowa, the nonpartisan Legislative Services Agency (LSA), in consultation with an independent commission, prepares maps for legislative approval. The legislature cannot amend LSA's model plans, but it can reject them and require modifications based on the legislature's feedback. If the legislature rejects three versions of a plan from LSA, it can draw and vote on its own plan, but the legislature has never done this.[22] Many academics and experts believe that Iowa is a unique case, primarily because of the strong public faith in the LSA and the particular demographics and geography of Iowa. Other scholars note that despite the widespread acclaim for Iowa's model, it is "not actually fully nonpartisan" but "an iterative process that leaves the legislature an opportunity to have input, even to pull the plug."[23] However, Iowa's model demonstrates that there is a spectrum of power for a commission even where it is simply preparing maps for legislative approval.

To retain power, an advisory commission's procedures should explain what will happen if the commission's maps are rejected by the legislature, such as starting fresh or taking legislative or gubernatorial suggestions into account. Repeated rejection of the maps could lead to: 1) placing full power into the hands of the body that rejected it, as is the case in Iowa, or 2) placing full authority in the hands of the commission itself, creating a strong incentive for legislative approval,[24] or 3) transferring the power of map-drawing to a third party–usually the governor or a court-appointed special master.

example:

New York:

"The independent redistricting commission established pursuant to section five-b of this article shall prepare a redistricting plan to establish senate, assembly, and congressional districts . . . . The redistricting plans for the assembly and the senate shall be contained in and voted upon by the legislature in a single bill, and the congressional district plan may be included in the same bill if the legislature chooses to do so. The implementing legislation shall be voted upon, without amendment, by the senate or the assembly and if approved by the first house voting upon it, such legislation shall be delivered to the other house immediately to be voted upon without amendment. If approved by both houses, such legislation shall be presented to the governor for action."

N.Y. CONST. art. 3, § 4.

The Commission Creates a Model Map

Under this structure, the commission acts only as a shadow commission to produce a map that can be submitted to the legislature.[25] Even if the legislature ignores the map, it can be used as a "neutral yardstick" in comparison to a legislative plan to discourage politicians from gerrymandering. Alternative maps can also help a court determine whether a challenged map violates state or federal law.[26]

example:

Maine:

"The Legislature shall enact the submitted plan of the commission or a plan of its own by a vote of 2/3 of the Members of each House by June 11th of the year in which apportionment is required. Such action shall be subject to the Governor's approval . . . ."

ME. CONST. art. IV, pt. 1, § 3.

Who Are the Commissioners and How Are They Chosen?

While the range of options for commissioners may be wide–from elected or appointed public officials all the way to regular citizens who may or may not have subject-matter expertise–the background of the commissioners and the way that they are chosen will have a big impact on whether a commission can operate smoothly and/or carry out the normative goals it was designed to meet.

Elected Officials

Often, the main reason to create a commission is to take the power to choose voters out of the hands of elected officials who have a vested interest in gerrymandering. Thus, involving them as commissioners might be counterproductive.

In some states, commissions include elected officials precisely because they are unwilling to fully delegate/surrender their redistricting power.[27] Nonetheless, a commission's structure can help limit or harness such officials' self-interested motives.[28]

example:

Arkansas:

"A Board to be known as "The Board of Apportionment," consisting of the Governor (who shall be Chairman), the Secretary of State and the Attorney General is hereby created and it shall be its imperative duty to make apportionment of representatives in accordance with the provisions hereof; the action of a majority in each instance shall be deemed the action of said board."

ARK. CONST. art. 8, § 1.

Appointees

Another option is for politicians to appoint citizens as commissioners to remove their own direct influence on the map drawing process. However, without proper safeguards – such as competitive decision-making – appointees may simply serve as agents of those who appointed them.

Some states have proposed allowing political appointments from only a limited pool of applicants. For example, commissioners could be selected from a pool of self-nominated citizens after screening the pool based on certain criteria – often to ensure candidates' personal distance from politicians. For instance, in some proposals, applicants are screened out if they are immediate family members of elected officials or candidates, if they are public officials or married to public employees, or if they are registered lobbyists, contractors, or political consultants.

Of course, such screening criteria can have unintended consequences. For example, a prohibition on public employees might screen out public university professors but not their counterparts in private universities. Moreover, pruning might also raise questions about objectivity of the selection criteria or neutrality of the selecting body.

However, pruning can increase the overall quality of a pool and such an improvement might justify its drawbacks, especially where some of the negative unintended consequences can be mitigated by careful language. Adopting neutral bodies for screening processes might also help balance the scale. Or, having the legislative body in charge of screening the pool could pit the adversarial incentives of the elected leaders against each other and help root out problematic candidates.

Depending on the intended makeup of a commission, candidates may also be sorted into pools. A bipartisan or multipartisan commission will require that candidates be selected from presorted pools of partisans or independents. Certain criteria must then apply to ensure that no one masquerades as a member of a different party or an independent to skew the balance of the commission. To screen for this, some proposals require candidates to have not switched registration within a certain number of years and to have voted in a certain number of consecutive primaries.

example:

Alaska:

"The governor shall appoint two members of the board. The presiding officer of the senate, the presiding officer of the house of representatives, and the chief justice of the supreme court shall each appoint one member of the board. The appointments to the board shall be made in the order listed in this subsection."

ALASKA CONST. art. VI, § 8(b).

Randomly-Drawn Citizens

To give politicians even less input regarding who serves on the commission, self-nominating citizens could be randomly drawn from a pool, rather than selected by elected officials.[29] This method of selection requires more intense screening, which raises the importance of a neutral body performing the screening process.

Some reform proposals put the Office of the Secretary of State in charge of the screening, a body that would already have the appropriate records for certain criteria such as party registration. Others, like California, use a panel of state auditors.[30] The screening can also be done by an apolitical body, such as a legislative drafting service, or others with nonpartisan clout (like Arizona's tribunal of retired judges). Finally, the screening body itself could be randomly selected. Factors to consider when selecting the screening body include: the opportunity for partisan gamesmanship (for example, the Secretary of State may be a political appointee); the public perception of the body (the Iowa LSA is widely viewed as actually neutral by the public); and the level of objectivity of the screening criteria (if the criteria are set in stone and truly objective, it might matter less who does the sorting).

Other reform proposals allow elected officials to exercise vetoes on the final pools before selection. If the politicians have vetoes on their own party's pools, they may be able to weed out people who would be inept at representing their interests. If they can exercise vetoes over members of the opposing party's pools, they may be able to weed out covert partisan operatives that the screening criteria did not catch. If the elected officials have too many vetoes, however, they may be able to effectively pick their own operatives by process of elimination, blunting the benefits of random selection over political appointment.

example:

California:

"(d) From the applicant pool, the Applicant Review Panel shall select 60 of the most qualified applicants, including 20 who are registered with the largest political party in California based on registration, 20 who are registered with the second largest political party in California based on registration, and 20 who are not registered with either of the two largest political parties in California based on registration. These subpools shall be created on the basis of relevant analytical skills, ability to be impartial, and appreciation for California's diverse demographics and geography. The members of the panel shall not communicate with any State Board of Equalization member, Senator, Assembly Member, congressional member, or their representatives, about any matter related to the nomination process or applicants prior to the presentation by the panel of the pool of recommended applicants to the Secretary of the Senate and the Chief Clerk of the Assembly.
(e) By May 15 in each year ending in the number zero, the Applicant Review Panel shall present its subpools of recommended applicants to the Secretary of the Senate and the Chief Clerk of the Assembly. No later than June 30 in each year ending in the number zero, the President pro Tempore of the Senate, the Minority Floor Leader of the Senate, the Speaker of the Assembly, and the Minority Floor Leader of the Assembly may each strike up to two applicants from each subpool of 20 for a total of eight possible strikes per subpool. After all legislative leaders have exercised their strikes, the Secretary of the Senate and the Chief Clerk of the Assembly shall jointly present the pool of remaining names to the State Auditor.
(f) No later than July 5 in each year ending in the number zero, the State Auditor shall randomly draw eight names from the remaining pool of applicants as follows: three from the remaining subpool of applicants registered with the largest political party in California based on registration, three from the remaining subpool of applicants registered with the second largest political party in California based on registration, and two from the remaining subpool of applicants who are not registered with either of the two largest political parties in California

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based on registration. These eight individuals shall serve on the Citizens Redistricting Commission.

(g) No later than August 15 in each year ending in the number zero, the eight commissioners shall review the remaining names in the subpools of applicants and appoint six applicants to the commission as follows: two from the remaining subpool of applicants registered with the largest political party in California based on registration, two from the remaining subpool of applicants registered with the second largest political party in California based on registration, and two from the remaining subpool of applicants who are not registered with either of the two largest political parties in California based on registration. The six appointees must be approved by at least five affirmative votes which must include at least two votes of commissioners registered from each of the two largest parties and one vote from a commissioner who is not affiliated with either of the two largest political parties in California. The six appointees shall be chosen to ensure the commission reflects this state's diversity, including, but not limited to, racial, ethnic, geographic, and gender diversity. However, it is not intended that formulas or specific ratios be applied for this purpose. Applicants shall also be chosen based on relevant analytical skills and ability to be impartial."

CAL. GOV'T CODE § 8252(d)-(g).

Selection by Previous or Current Commissioners

Another method of selection is to have the previous commission select new commissioners for the next round of redistricting. Alternatively, some states start with a set of appointed or drawn commissioners, and then allow those commissioners to select a set number of additional commissioners. For example, the Iowa independent commission consists of four appointees who collectively select a fifth member to be their chairperson.

example:

Hawaii:

"The eight members so selected, promptly after selection, shall be certified by the selecting authorities to the chief election officer and within thirty days thereafter, shall select, by a vote of six members, and promptly certify to the chief election officer the ninth member who shall serve as chairperson of the commission."

HAWAII CONST. art. IV, § 2.

Experts Versus Laypeople

Packing the commission with experts, such as professors, cartographers, mathematicians, and lawyers has the benefit of increasing efficiency and possibly the legality of the final plans. On the other hand, experts may be able to covertly manipulate the maps to serve partisan interests because of their familiarity with the programs, data, and criteria. They may also be more likely to have relationships with politicians than an ordinary citizen.

Having laypeople serve as commissioners has the benefit of allowing citizens with different backgrounds, skills, and perspectives to contribute to the redistricting process. However, laypeople may need more training to understand the basics of redistricting, criteria, map-drawing, and ensuring that the plans comply with relevant state and federal law. This could require additional staffing and budget, and could potentially open the door to undetected partisan manipulation through ostensibly neutral assistance.

A middle ground may be to ensure the availability of neutral expert assistance for a commission of laypeople. A state could offer the assistance of a nonpartisan government agency. Alternatively, a panel of experts could be assembled through a selection process mirroring that of the commissioners. While it may be almost impossible to find experts who are widely considered neutral, assembling a group of experts that are perceived as balancing each other politically may be a viable option.

example:

Arizona:

"The independent redistricting commission, with fiscal oversight from the department of administration or its successor, shall have procurement and contracting authority and may hire staff and consultants for the purposes of this section, including legal representation."

ARIZ. CONST. art. 4, pt. 2, § 1(19).

Are There Eligibility Requirements for Commissioners?

Eligibility requirements for commissioners can encompass both desirable characteristics and prohibitions on undesirable attributes. Desirable characteristics are generally included as part of the eligibility to serve on the commission, while undesirable factors are individualized. The most common desirable characteristics contemplate racial, ethnic, geographic, and/or gender diversity on the commission.

example:

Proposed Constitutional Amendment for Michigan:

"The selection pools shall use accepted statistical weighting methods to ensure that the pools, as closely as possible, mirror the geographic and demographic makeup of the state."

Voters Not Politicians' proposed constitutional amendment; http://www.votersnotpoliticians.com/language.

The most common prohibitions on undesirable characteristics exclude recent or current elected officials, lobbyists, or government employees as candidates for the commission. Rules for some commissions also restrict commissioners from holding public offices in the future.

example:

California:

"The State Auditor shall remove from the applicant pool individuals with conflicts of interest including:

(A) Within the 10 years immediately preceding the date of application, neither the applicant, nor a member of his or her immediate family, may have done any of the following:

(i) Been appointed to, elected to, or have been a candidate for federal or state office.

(ii) Served as an officer, employee, or paid consultant of a political party or of the campaign committee of a candidate for elective federal or state office.

(iii) Served as an elected or appointed member of a political party central committee.

(iv) Been a registered federal, state, or local lobbyist.

(v) Served as paid congressional, legislative, or State Board of Equalization staff.

(vi) Contributed two thousand dollars ($2,000) or more to any congressional, state, or local candidate for elective public office in any year, which shall be adjusted every 10 years by the cumulative change in the California Consumer Price Index, or its successor.

CAL. GOV'T CODE § 8252(a)(2)(A).

How Many Commissioners Should There Be?

The main choice with respect to the number of commissioners is whether to have an odd or even number. An odd number will reduce the chances for a gridlock, but it may also allow for one group of partisans to have more members on a commission than another. A common method to mitigate such an imbalance is to select equal numbers of partisans who will then select a mutually desired final commissioner, chair, or arbiter.

A second consideration relates to diversity among commissioners. A larger number of commissioners allows for greater geographic, racial, ethnic, gender, and/or other type of diversity on the commission. With only three members, it may be impossible to have a commissioner from every significant geographic location in the state, or every significantly sized racial or ethnic group. That said, overly large commissions can become unwieldy in certain respects, such as map drawing or financing.

How Long Will the Commissioners Serve?

A commission may be assembled only for the map-drawing period after the decennial Census, as is the case in California, or, it may remain in place until a new commission is selected. For example, in Arizona, the commission remains in place until new commissioners are appointed.[31] A commission may also stay in place longer to consider public feedback about the redistricting process or to set up the next commission pursuant to the rules; sorting and verifying applicants or running a random drawing might take years to complete. Budget considerations, such as commissioners' compensation, may also be a factor in determining the length of service.

example:

Arizona:

"Each commissioner's duties established by this section expire upon the appointment of the first member of the next redistricting commission."

ARIZ. CONST. art. 4, pt. 2, § 1(23).

How Is the Partisanship of Commissioners Taken into Account?

Another important consideration in determining how a commission will work in practice is how to account for the partisanship of commissioners. In an ideal world without conflicts of interest, a nonpartisan group would determine the redistricting boundaries. However, the reality of modern American politics is such that most people with an interest in politics or civic processes have an established partisan preference, and thus, it may be difficult, or impossible, to select a genuinely nonpartisan group to draw the lines.

The "Iowa model" is often described as a nonpartisan commission, but in reality, it is an example of how a nonpartisan agency can help a legislature with redistricting. We address this configuration below as part of the discussion on "hybrid" models.

In terms of partisan affiliation, a commission may be bipartisan, multipartisan, or a hybrid. The efficacy of these models depends mainly on how the decision-making mechanism for the commission is structured.[32]

Bipartisan Commissions

A bipartisan commission is one that has equal numbers of commissioners from each of the two largest political parties in a state.

example:

Missouri:

"[T]he congressional district committee of each of the two parties casting the highest vote for governor at the last preceding election shall meet and the members of the committee shall nominate, by a majority vote of the members of the committee present, provided that a majority of the elected members is present, two members of their party, residents in that district, as nominees for reapportionment commissioners. Neither party shall select more than one nominee from any one state legislative district. The congressional committees shall each submit to the governor their list of elected nominees. Within thirty days the governor shall appoint a commission consisting of one name from each list to reapportion the state . . . ."

MO. CONST. art. III, § 2.

What is a bipartisan gerrymander?

A bipartisan gerrymander is a district plan that preserves or increases safe districts for both political parties. This is often done to preserve the political status quo. The result of such horse-trading is usually a less competitive map and high incumbent retention.

Multipartisan Commissions

A multipartisan commission includes an equal number of commissioners from the two largest parties in a state and some independents or members of smaller parties.

example:

California:

"The commission shall consist of 14 members, as follows: five who are registered with the largest political party in California based on registration, five who are registered with the second largest political party in California based on registration, and four who are not registered with either of the two largest political parties in California based on registration."

CAL. CONST. art. XXI, § 2(c)(2).

Hybrid Commissions

A hybrid commission features nonpartisan and partisan organizations that work together to create redistricting plans.

Iowa's redistricting system is an example of a hybrid process. The nonpartisan LSA works in consultation with a bipartisan commission consisting of four commissioners appointed by the majority and minority leaders from the two legislatives chambers and a fifth commissioner selected by the legislative-appointed commissioners. The LSA lends its nonpartisan credibility to the final maps, but when decisions require discretion, LSA consults the bipartisan commission.[33]

Alternatively, a hybrid structure may involve a bipartisan commission creating maps that are then judged by a nonpartisan agency or another body based on objective criteria.

example:

Iowa:

"Not later than April 1 of each year ending in one, the legislative services agency shall deliver to the secretary of the senate and the chief clerk of the house of representatives identical bills embodying a plan of legislative and congressional districting prepared in accordance with section 42.4. It is the intent of this chapter that the general assembly shall bring the bill to a vote in either the senate or the house of representatives expeditiously, but not less than three days after the report of the commission required by section 42.6 is received and made available to the members of the general assembly, under a procedure or rule permitting no amendments except those of a purely corrective nature."

IOWA CODE ANN. § 42.3.

What Role Does the Public Play?

Many states require public hearings where public input can be provided on proposed district plans or an upcoming redistricting. Often, these hearings are window-dressing so that map drawers can proceed with maps that they have already drawn. However, public involvement can have tangible effects on improving the final maps; it can be a powerful tool for creating transparency and adjusting incentives of a commission and other decision makers. Moreover, public input can help represent unheard voices on the commission. There are several ways a commission can meaningfully involve the public in the redistricting process, including scheduling public hearings before and/or after drawing draft plans, making the data used to draw plans publicly available, and allowing for public submission of district plans.

In terms of public hearings specifically, it is important for the public to be able to provide input on criteria and goals before maps are drawn, but more importantly, it is crucial that advocacy groups and members of the public have an opportunity to meaningfully evaluate draft plans and suggest changes *before* a plan is enacted. At a minimum, the commission should be open to public comments on a draft plan and leave time to make changes accordingly. A commission should also consider holding public hearings across the state to allow for thorough in-person representation and participation by localities throughout the state.

Another way to make sure advocacy groups and members of the public can meaningfully evaluate draft district plans is for the commission to make the data and tools necessary to draw district plans publicly available.[34] A commission can do this by uploading any data it will use to draw maps, including census, racial and partisan data onto a public website. Further, a commission could provide tools for the public to draw their own district plans, either by providing the requisite software on a public website or by setting up access to public computers loaded with redistricting software. This would allow the public to evaluate draft maps and potentially draw their own district plans for submission.[35] State law could require that the commission consider or vote on publicly drawn maps that meet certain criteria. Or, if a state has a competitive-style commission, a state could be required to adopt a publicly drawn map if it scores best among other maps based on the requisite criteria.

Scholars Michael McDonald and Micah Altman have created open source software, called District Builder, which was used by a handful of states and municipalities to hold public map-drawing competitions in the 2010 redistricting cycle.[36] In Virginia, the software was used for a student competition at George Mason and Christopher Newport Universities.[37] According to some good government scholars, the students' maps far outperformed those created by politicians.[38] In Ohio, a public map-drawing competition was held so that alternative district plans could be submitted to the legislature. Many of the publicly drawn maps, which were judged according to specific "nonpartisan" criteria, scored better than those drawn by the legislature (with the legislature's congressional map ranking last).[39]

District Builder and other similar tools will be available again in 2020 to help the public draw district plans.[40] Although public-mapping tools may be plenty in number, it is essential that commissions provide public access to the tools necessary for the creation of legal maps; otherwise members of the public may not have a meaningful way to provide alternative plans.[41]

Public Map Drawing Resources

District Builder:
http://www.districtbuilder.org/

Auto-Redistrict:
http://autoredistrict.org/

Dave's Redistricting App:
http://gardow.com/davebradlee/redistricting/launchapp.html

example:

Iowa:

3. Upon the delivery by the legislative services agency to the general assembly of a bill embodying an initial plan, as required by section 42.3, subsection 1, the commission shall:
a. As expeditiously as reasonably possible, schedule and conduct at least three public hearings, in different geographic regions of the state, on the plan embodied in the bill delivered by the legislative services agency to the general assembly.
b. Following the hearings, promptly prepare and submit to the secretary of the senate and the chief clerk of the house a report summarizing information and testimony received by the commission in the course of the hearings. The commission's report shall include any comments and conclusions which its members deem appropriate on the information and testimony received at the hearings, or otherwise presented to the commission. The report shall be submitted no later than fourteen days after the date the bill embodying an initial plan of congressional and legislative redistricting is delivered to the general assembly.

IOWA CODE ANN. § 42.6.

Are There Mechanisms for Transparency?

Other considerations for allowing public involvement, and transparency and accountability from the commission, include requiring that commission meetings comply with state open meeting act laws and that any reports or assessments of maps or draft maps be made public. Commissions looking to promote public involvement and transparency should make sure to budget for the necessary resources and tools.

example:

Proposal for Utah:

"The Commission shall establish and maintain a website, or other equivalent electronic platform, to disseminate information about the Commission, including records of its meetings and public hearings, proposed redistricting plans, and assessments of and reports on redistricting plans, and to allow the public to view its meetings and public hearings in both live and in archived form."

"The Commission is subject to Title 52, Chapter 4, Open and Public Meetings Act, Secs. 52-4-101 to 52-4-305, and to Title 63G, Chapter 2, Government Records Access and Management Act, Secs. 63G-2-101 to 63G-2-804."

Proposed Utah Independent Redistricting Commission and Standards Act, § 6(7a)-8, https://elections.utah.gov/Media/Default/2018%20Election/Initiatives/Better%20Boundaries%20Application.pdf.

How Does the Commission Make Decisions?

How a commission selects a final plan is an important part of whether it will be effective, particularly in combination with how the commission takes the partisanship of commissioners into account. There are two main models for commission decision-making, including consensus-based and competitive models.

Consensus-Based

Under a consensus-based model, commissioners must approve a final map by a majority vote. A "majority" could be a simple majority, a supermajority, or a certain number of votes from each partisan bucket of commissioners. This model is meant to encourage compromise across party lines in order to build the majority needed to adopt a plan.

Depending on the composition of the commission, a consensus-based model may or may not work to produce a fair map. For example, a bipartisan commission could easily deadlock, passing the responsibility to draw the map to the fallback mechanism. If the fallback mechanism confers a partisan advantage to either party, this may make deadlocks desirable, since one party can utilize the threat of fallback to gain the majority needed to pass a plan (or, to avoid deadlock, the commissioners may compromise in ways that could skew the map). If the fallback mechanism does not give either party an upper hand, a consensus-based model could lead to a bipartisan gerrymander. Because of the risk of deadlock or bipartisan gerrymandering, the addition of at least one independent member may be necessary for the success of a bipartisan commission utilizing a consensus-based model.

A consensus-based model can work well for a multipartisan commission, depending on how the approval votes are structured. If a certain number of votes from each group of partisan commissioners is required for passage, cross-party compromise is incentivized while the risk of bipartisan gerrymandering is lowered (because of the presence of independents or members of neither major party). For example, in California, three votes from Democrats, three from Republicans, and three from decline-to-state-partisanship members are required for final approval of a map.[42] If, on the other hand, approval requires a simple majority, a bipartisan gerrymander is possible. Alternatively, independent commissioners could collude with other commissioners (perhaps of one particular party) to create a map that serves their preferences in exchange for a vote.

example:

California:

"Nine members of the commission shall constitute a quorum. Nine or more affirmative votes shall be required for any official action. The four final redistricting maps must be approved by at least nine affirmative votes which must include at least three votes of members registered from each of the two largest political parties in California based on registration and three votes from members who are not registered with either of these two political parties."

CAL. CONST. art. XXI, § 2(c)(5).

Competitive

Under a competitive model, commissioners or members of the general public compete against each other by submitting maps drawn according to a set of objective criteria. The winning map is either selected by a neutral arbiter or chosen based on the highest score. Ideally, scores are automatically generated based on the configuration of the plan (this can occur via a website program to maintain neutrality).

New Jersey's commission provides an example of partisan commissioners competing for the approval of a neutral arbiter. New Jersey forms two commissions (one each for congressional and state legislative districts) with both consisting of equal numbers of Democratic and Republican appointees.[43] On the congressional commission, the partisans select a chair together.[44] On the legislative commission, a tie-breaking vote is appointed by the state Supreme Court if the commission cannot agree on a map within a specified period of time.[45] Though the structure of the legislative commission formally provides an opportunity for the parties to compromise, the redistricting process informally functions as a competition.[46] The chair judges the maps through "an iterative process, where the commission's Democratic and Republican delegations alternately present competing maps, each one trying to improve on the last."[47] The benefit is that rather than colluding with each other in a bipartisan gerrymander, the parties compete to create the fairest map.[48] The downside is that the criteria by which the maps are judged are informal and uncodified, and therefore subject to manipulation.[49] Additionally, if the partisan commissioners did collude on a bipartisan gerrymander, the chair would be powerless to stop them.[50]

A competitive model can also function as a contest judged on objective criteria, rather than a competition for the approval of an arbiter. For example, a commission could be structured similar to New Jersey's model, but the chair could be required to select the map that has the highest overall score. Each map would have to meet an initial set of binary criteria to be considered. Next, the remaining maps would be scored on a set of optimizing criteria, excluding maps that score worse on any single one than the original or leading map. If those criteria and how to measure them are codified, such a model has the potential to incentivize fairer maps. Because winners in this model will be chosen based on preselected criteria, their creation and measurement become the most important questions.

example:

Proposal:

THE PLAN-DRAWING PROCESS. The Commission shall simultaneously conduct separate processes for drawing and scoring each redistricting plan — congressional, senatorial, and representative.

A. THE INITIAL PLAN. Within sixty days after receiving the new census data, the Chair shall propose a new redistricting plan that satisfies all six threshold criteria listed in Section 6 and, to the greatest extent reasonably practicable given that time constraint, maximizes all three optimizing criteria listed in Section 7. At this stage, the Chair shall resolve conflicts among the three optimizing criteria by maximizing "partisan fairness," as defined in Subsection 7(B). The Chair shall designate the proposed plan as the initial "leading plan" and shall post it on the Commission's public Internet site, along with a standardized scorecard indicating compliance with all six threshold criteria and stating the plan's score for each of the three optimizing criteria.

B. HOW THE LEADING PLAN IS DETERMINED. If the Chair, any Commissioner, or any member of the public proposes a new redistricting plan, and the Chair determines that the newly proposed plan satisfies all threshold criteria, equals or exceeds the leading plan on each of the three optimizing criteria, and exceeds the leading plan on at least one of the three optimizing criteria, then the Chair immediately shall designate the newly proposed plan as the new "leading plan" and shall post both the plan and its standardized scorecard on the Commission's public Internet site. The Commission shall give the previous leading plan no further consideration.

C. TERMINATING THE PROCESS. If a leading plan remains in place for seven days without being successfully challenged by a new proposal, the process terminates automatically. Otherwise, the process continues until the Chair announces its termination, with or without notice to the Commissioners or the public, at any time not earlier than thirty days nor later than forty-five days after posting the initial plan on the Commission's public Internet site.

Sam Hirsch, A Proposal for Redistricting Reform: A Model State Constitutional Amendment 20 (2009), http://img.slate.com/media/1/123125/123054/2207789/2208001/2208423/Hirsch_Redistricting.pdf.

What Is the Fallback Mechanism?

Finally, it is important to consider what will happen if the commission fails to produce a map. Commissions can fail for a number of reasons. If the commission's maps require passage by the legislature or governor, they may fail to win approval. If the commission requires consensus to create a final map, it may fail to garner the needed votes internally. Or, the commission's map may be struck down by a court. The system that comes into play in these circumstances is often called a fallback mechanism. Fallback mechanisms can range from another body drawing a map to a coin flip or a court-appointed special master. Though a fallback mechanism will only be triggered at the end of the commission's work, it creates strong incentives ex-ante, and plays an important role in whether a final map will be safeguarded from the self-interest of the commissioners.

A commission's fallback mechanism should be designed to incentivize the creation of a fair map, in the event it comes into play. If the fallback mechanism will produce unknown results, the commissioners may be more likely to compromise. For example, if a commission fails to agree on a map, a model may envision an arbiter flipping a coin to select between the two party's proposals. The very possibility that the other party's gerrymandered map will have 50% chance of becoming law may drive the two parties to reach a compromise. However, if the state has long been under single party control, 50% may actually seem good odds for the minority party, creating incentives for it to undermine the process and get to the fallback. In addition, if the fallback is utilized, the state may end up with an arbitrary and unfair map that is not necessarily in the interest of the public.

Thus, another common fallback mechanism is to give line-drawing authority to a court-appointed special master. The special master fallback generally strikes a good balance between an unknown result and likely impartiality. Because the special master could be anyone (though it is typically an academic), the commission is incentivized to do its job in order to keep power over the process. Additionally, because the appointment is at the discretion of the judiciary, it is likely that the maps will be more impartial or fair. On the other hand, the special master could have his or her own goals or motivations, or maps drawn by a special master could be criticized for a lack of democratic legitimacy. That said, requiring a special master to provide a publicly available report outlining her conclusions and any data considered in such conclusions could help protect against bias.

Further information on which commissions utilize a fallback mechanism is available in the Appendix.

example:

Maine:

"In the event that the Legislature shall fail to make an apportionment by June 11th, the Supreme Judicial Court shall, within 60 days following the period in which the Legislature is required to act, but fails to do so, make the apportionment. In making such apportionment, the Supreme Judicial Court shall take into consideration plans and briefs filed by the public with the court during the first 30 days of the period in which the court is required to apportion."

ME. CONST. art. IV, pt. 1, § 3.

IV. DESIGNING THE CRITERIA FOR AN INDEPENDENT REDISTRICTING COMMISSION

State constitutions almost always constrain how redistricting plans are drawn by requiring adherence to certain criteria which can vary by state, such as compactness, contiguity, and respect for political subdivisions. This is true whether the plans are drawn by the legislature, an independent commission, or a court. In most states, these criteria do not address issues of partisan fairness or competitiveness.

Creating an IRC provides an opportunity to enhance existing state redistricting criteria to ensure fair maps. Even in states where an independent commission may be politically unobtainable, it may still be worth pushing for reforms that constrain the criteria. For example, in Florida, voters passed a constitutional amendment that prohibited lawmakers from drawing plans for partisan gain.[51] In 2015, the Florida Supreme Court invoked this clause to strike down the state's 2012 congressional redistricting plan.[52]

We start this section by discussing the redistricting criteria required by the U.S. Constitution and federal statutes. The Supremacy Clause of the Constitution means that these laws will always predominate over any state criteria.[53] But, federal laws can change, so if there are particular protections in federal law that a state wants to prioritize, it can enshrine those same goals in its state constitutional language.

Second, this section will review criteria that are commonly used in state constitutional and statutory regulation of redistricting. Third, this section will discuss fairness criteria, which are measures designed to protect the public interest in a free and open democracy. Finally, this section will review transparency and public involvement criteria, which help ensure that the redistricting process is accessible and open and that the views of citizens are incorporated into the design of the districts.

Federally Required Criteria

The two main federal laws that govern redistricting are the U.S. Constitution and the Voting Rights Act.[54] The requirements of these are set out below, along with sample language demonstrating how state redistricting criteria can go even further than the federal requirements, for example, in protecting against vote dilution. States can also simply require that their commissions comply with federal laws.

example:

California:

(1) Districts shall comply with the United States Constitution. Congressional districts shall achieve population equality as nearly as is practicable, and Senatorial, Assembly, and State Board of Equalization districts shall have reasonably equal population with other districts for the same office, except where deviation is required to comply with the federal Voting Rights Act or allowable by law.
(2) Districts shall comply with the federal Voting Rights Act (42 U.S.C. Sec. 1971 and following).

CAL. CONST. art. XXI, § 2(d)(1)-(2)

Population Equality

Until the 1960s, gerrymandering for partisan advantage generally took the form of malapportionment. Malapportionment is the structuring of districts to have population variances, causing constituents in highly populated districts to have less voting strength than their counterparts in more sparsely populated districts. The first case to strike down malapportionment as unconstitutional, *Baker v. Carr*,[55] involved urban districts in Tennessee that had ten times as many people in them as the largest rural district. In effect, this meant that the votes of urban voters were diluted by a factor of ten compared with the power of voters in large rural areas.

When states create **congressional redistricting lines**, they are required to ensure that populations between districts are equal "as nearly as is practicable."[56] In effect, this means that many states draw their congressional districts to have a population difference between districts of no more than one person.[57]

Figure 2: How to calculate the total population deviation for a redistricting plan (using a sample five district plan with 1000 persons)

District No.	District Size	Ideal Size	Deviation (No.)	Deviation (%)
1	209	200	+9	+4.5%
2	194	200	-6	-3%
3	202	200	+2	+1%
4	191	200	-9	-4.5%
5	204	200	+1	+0.5%
TOTAL DEVIATION			(+9)-(-9) = 18	(18/200) = 9%

When redrawing **state legislative districts**, map drawers are not bound by the same stringent rules as those for congressional districts. State legislative districts must have "substantial equality of population."[58] Generally, a population deviation between the largest and smallest districts that is less than 10% of the average district population complies with the "substantial equality" requirement.[59] A plan with larger disparities in population, however, would create a prima facie case of discrimination and must therefore be justified by the state.[60] Some state legislative redistricting plans with a total population deviation below 10% can also be subjected to scrutiny if there is no justification for the deviations.[61]

It is possible to set a stricter standard for population equality in state redistricting criteria than is required by federal law.

example:

Colorado:

"The state shall be divided into as many senatorial and representative districts as there are members of the senate and house of representatives respectively, each district in each house having a population as nearly equal as may be, as required by the constitution of the United States, but in no event shall there be more than five percent deviation between the most populous and the least populous district in each house."

COLO. CONST. art. V, § 46.

Protection Against Minority Vote Dilution

The Voting Rights Act (VRA) was passed in 1965 with a major goal of ensuring access to the voting booth for all voters, regardless of race or color. An additional goal was to elect people of color to local, state, and federal offices.[62] As a result, electoral systems in various localities and states that reduce the power of voters of color to elect their preferred candidates of choice can be challenged if certain statutory requirements are met. One way redistricting can be used to dilute the vote of minority groups at the local, state legislative, or congressional level is to consistently prevent a community of color from being a controlling majority in any district.

The practice of minority vote dilution was challenged with some success on the ground that it violates the Fourteenth Amendment,[63] but such a violation requires showing of discriminatory intent. An amendment was made to Section 2 of the VRA in 1982 to make it clear that Section 2 could also be violated if, in the totality of the circumstances, "the standard, practice, or procedure being challenged had the *result* of denying a racial or language minority an equal opportunity to participate in the political process. (emphasis added)."[64]

Today, redistricting plans must not deny or abridge the right to vote on account of race, color, or language minority status. In practice, this means that if there is a racial or ethnic community[65] large enough to be drawn in a reasonably compact district, if the minority group has a history of voting together, and if white voters vote as a group to prevent the minority group's preferred candidate from winning, a majority-minority district must be included in a redistricting plan.[66]

State redistricting criteria can go further than the language of the federal VRA to require districts to be drawn so a community of color may have a chance to *influence* the outcome (rather than a certainty of election of their candidate of choice).

example:

Proposed Bill in Illinois:

"Legislative Districts and Representative Districts shall… provide racial minorities and language minorities with the equal opportunity to participate in the political process and elect candidates of their choice; provide racial minorities and language minorities who constitute less than a voting-age majority of a District with an opportunity to substantially influence the outcome of an election . . . ."

HJRCA0058, 99th Leg. (Ill. 2017).

No Extreme Partisan Gerrymandering?

Partisan gerrymandering is the intentional gain of systematic advantage for one political party through the drawing of district boundaries.[67] As a result, elections are determined not by the will of the people, but instead by the will of the map drawer. In the 1980s, the Supreme Court found that partisan gerrymandering is unconstitutional, but it set out a test for determining when such gerrymandering occurred that no subsequent litigant ever met.

In the Supreme Court's 2017-2018 Term, the Court considered two partisan gerrymandering cases, *Gill v. Whitford*, and *Benisek v. Lamone*, but sent them back to the trial court for a greater development of the record on the issue of standing. One or more partisan gerrymandering cases may go back to the Supreme Court in the 2018-2019 term. Thus, the state of federal law with respect to partisan gerrymandering remains in flux.[68] Under state law, however, states can establish redistricting criteria aimed at limiting partisan gerrymandering.

example:

Florida:

"No apportionment plan or individual district shall be drawn with the intent to favor or disfavor a political party or an incumbent; and districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice; and districts shall consist of contiguous territory."

FLA. CONST. art. III, § 20(a).

Racial Gerrymandering

Racial gerrymandering is a different claim than that of minority vote dilution. It is the deliberate separation of citizens into districts based on race, with no sufficient justification (such as an attempt to comply with the Voting Rights Act).[69] The Supreme Court has found that an excessive focus on race in drawing districts offends the Fourteenth Amendment to the Constitution.[70]

Common State Redistricting Criteria

There are a series of redistricting criteria that many states include in one form or another. This section sets out what some of those are and offers examples of language that can be used to promote each criterion.

Contiguity

Contiguity means that districts must be geographically connected. Most states have some form of contiguity requirement, though what that means in each state can differ to a large degree. Where there are insufficient rules around contiguity, public criticism can ensue. For example, in Maryland, a district was criticized for connecting two pieces of land across the Chesapeake Bay, but not including any convenient bridges or tunnels to connect the pieces.[71]

example:

Wisconsin:

(b)All territory within a ward shall be contiguous, except for island territory as defined in sub. (2)(f)3.
(f) 3. Island territory containing a resident population. In this subdivision, "island territory" means territory surrounded by water, or noncontiguous territory which is separated by the territory of another municipality or by water, or both, from the major part of the municipality to which it belongs.

WIS. STAT. ANN. §§ 5.15(1)(b), (2)(f)(3).

In some states, it makes sense to relax the contiguity requirement if geography prevents perfect contiguity. Hawaii for example, exempts districts with more than one island from its contiguity requirement. As seen below, Hawaii has two congressional districts. Congressional district 1 is contiguous as it encompasses the populous capital city of Honolulu, while congressional district 2, which covers the rest of the archipelago, by necessity, is not.

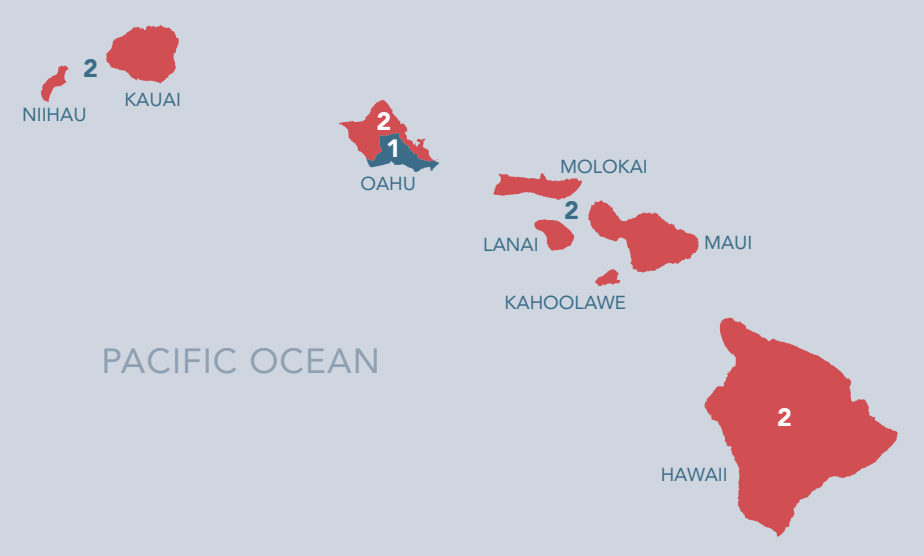

Figure 3: Hawaii's congressional map (2010 cycle).

Compactness

There is little agreement on the mathematical definition of compactness.[72] The most popular tests for measuring compactness tend to look at the deviation of a district from an ideally compact shape, such as a circle or square (*see, e.g.,* the Reock test).[73] Other measures of compactness focus on how contorted the boundaries of a district are. Using these measures, a district with smoother boundaries will be more compact than one with meandering boundaries. This is measured by comparing the district's perimeter to the district's area, or comparing the district's area to the area of a circle with the same perimeter as the district (Polsby-Popper test),[74] or by looking at the perimeter itself. Other compactness formulas quantify the dispersion of a district, or how close all the pieces of the district are to its center.

Most states do not specify a particular definition for compactness, but simply require that districts be reasonably compact, or compact "to the extent feasible."[75]

There is disagreement over the value of including a compactness standard for redistricting. Some academics suggest that setting a standard for compactness can help prevent gerrymandering.[76] Others, however, argue that overvaluing compactness will harm communities of interest[77] and good government principles.[78] States that prioritize compactness do so based on the idea that people who live closer together will have more similar political interests than people who live further from one another. These states may also believe that compactness helps candidates to easily identify the electorate.

However, compactness can have its drawbacks. Requiring compactness can have adverse effects on communities that have evolved into irregular shapes. Many suburbs, for example, border the outskirts of metropolitan areas and may take on odd shapes. Although these communities may have similar interests, they would not qualify as a unified district under a strict compactness standard. Depicted below is the west side of Chicago. Although this district does not appear to be compact, its shape can be justified by the fact that it incorporates the Puerto Rican American community on the northwest side of Chicago and the Mexican American community on the southwest side of the city. Creating this congressional district (the Illinois' 4th) in the 1990s led to the first elected Latino representative from Illinois and compliance with the Voting Rights Act.

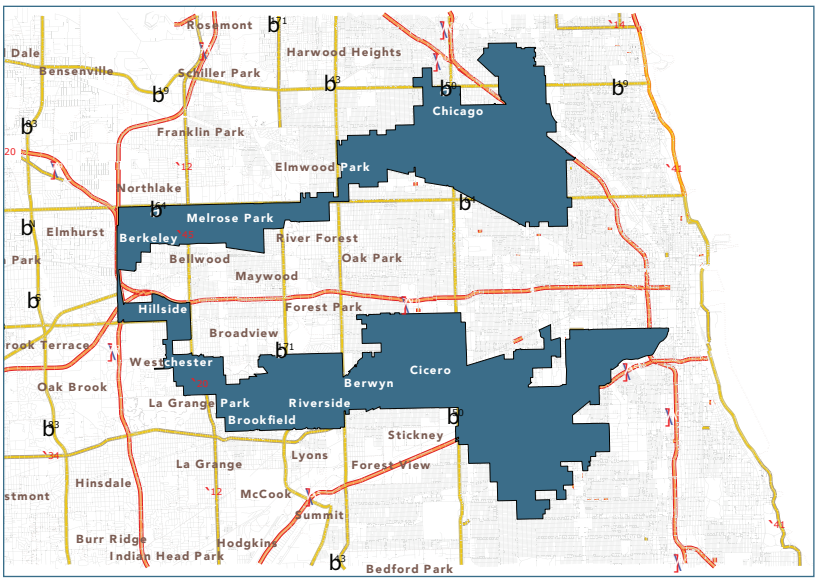

Figure 4: Illinois' 4th congressional district.

Historically, a long meandering district could be considered evidence of an intent other than to comply with traditional redistricting criteria. For example, in the "original" gerrymander, the salamander-like shape of a Massachusetts senate district was seen by the public as evidence of a discriminatory partisan intent.

Figure 5: Cartoon drawing of one of the districts in the 1812 Massachusetts state senate plan.

Similarly, in *Bush v. Vera,* the U.S. Supreme Court noted that there must have been a racial intent behind the challenged district because of the way it included and excluded certain census blocks.[79]

Figure 6: Texas' 30th congressional district that was struck down as a racial gerrymander in *Bush v. Vera.*

Strange district shapes can still provide evidence of discriminatory intent. However, given the advances in modern technology, gerrymanders today "may exist even when they do not announce themselves with strange shapes or carved communities."[80]

Geography may also affect compactness. Communities that have developed around mountains, rivers, and oceans may not have regular geometric shapes. Rigid allegiance to a compactness requirement in these regions may make creating compact and equally populous districts more difficult. Similarly, an overly strenuous

compactness requirement may compromise a state's ability to draw competitive districts. A particularly harmful effect of a strict compactness requirements is "packing;" compact districts may pack voters and thus dilute their vote.

example:

Colorado:

"Each district shall be as compact in area as possible and the aggregate linear distance of all district boundaries shall be as short as possible."

COLO. CONST. art. V, § 47(1).

Respect for Political Subdivisions

Respect for political subdivisions refers to giving due regard to areas such as county and municipal boundaries. This means keeping political subdivisions, such as cities, towns, and counties in one district where practicable. Of course, where cities or counties are large or populous, they will have to be split to conform with population equality requirements. A commission could be prohibited from drawing lines across certain boundaries or it could be incentivized to break those boundaries fewer times under a process that gives a map with fewer subdivision splits a better objective score. As with compactness, prioritizing minimal subdivisions of boundaries can sometimes compromise a state's ability to limit partisan skew in a district plan.

In addition to requiring respect for political boundaries, a state could require adherence to more practical boundaries like roads.

example:

Michigan:

"Each county which has a population of not less than seven-tenths of one percent of the population of the state shall constitute a separate representative area. Each county having less than seven-tenths of one percent of the population of the state shall be combined with another county or counties to form a representative area of not less than seven-tenths of one percent of the population of the state. Any county which is isolated under the initial allocation as provided in this section shall be joined with that contiguous representative area having the smallest percentage of the state's population. Each such representative area shall be entitled initially to one representative."

MICH. CONST. art. IV, § 3.

Preservation of Communities of Interest

Preservation of communities of interest is about keeping people who share similar priorities in the same district so that they can be well represented by a single legislator. Communities of interest can be groups that share cultural, socioeconomic, ethnic, political, religious, or social ties. Defining a community of interest can be complicated because the term "can be applied to almost any conceivable grouping of localities someone wishes to designate as a community. An affluent farming community with many older residents on the outskirts of a large city might be grouped with other affluent areas, other farming areas, other areas with many older persons, other communities outlying the same city, and so forth."[81] Because communities of interest can be defined in different ways, it is important that public input be taken into account to understand the actual priorities and needs of a particular community.

example:

California:

"The geographic integrity of any city, county, city and county, local neighborhood, or local community of interest shall be respected in a manner that minimizes their division to the extent possible without violating the requirements of any of the preceding subdivisions. A community of interest is a contiguous population which shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation. Examples of such shared interests are those common to an urban area, a rural area, an industrial area, or an agricultural area, and those common to areas in which the people share similar living standards, use the same transportation facilities, have similar work opportunities, or have access to the same media of communication relevant to the election process. Communities of interest shall not include relationships with political parties, incumbents, or political candidates."

CAL. CONST. art. XXI, § 2(d)(4).

Fairness Criteria

In recent years, proposed redistricting commission language has included criteria that will promote democratic goals such as better accountability or responsiveness by elected representatives. When choosing language to bind a commission or legislature, it will be important to understand the relationship between these different values and how they can compete with one another. Three common democratic values and examples of language that can be used to promote them are set out below.

Partisan Symmetry

Partisan symmetry is a measure of disparate treatment of one party over another.[82] It asks "whether both parties receive *like opportunity* to capture a given number of legislative seats if they receive a comparable share of the statewide vote."[83] So, in an election where Republicans won 55% of the statewide vote and say, 13 out of 15 congressional seats, partisan symmetry would ask whether Democrats would have also won 13 out of 15 seats by winning 55% of the vote share. In essence, partisan symmetry captures whether "the result would be different were the shoe on the other foot."[84]

There are several well-accepted ways to measure partisan symmetry and political scientists are creating even better tools.[85] Though some proposed redistricting criteria have included very specific details regarding method of calculation for partisan symmetry,[86] a best practice will be to outline a goal or standard in layman's terms and allow the evidence used to meet that standard evolve as social science advances.

example:

Proposed Language, Utah:

"The Legislature and the Commission may not divide districts in a manner that purposefully or unduly favors or disfavors any incumbent elected official, candidate or prospective candidate for elective office, or any political party. . . .The Legislature and Commission shall use judicial standards and the best available data and scientific statistical methods, including measures of partisan symmetry, to assess . . . ."

Proposed Utah Independent Redistricting Commission and Standards Act, § 6(7a)-8, page 6, lines 122-128, https://elections.utah.gov/Media/Default/2018%20Election/Initiatives/Better%20Boundaries%20Application.pdf.

Responsiveness

Responsiveness (also referred to as sensitivity) "describes whether and how representation changes when voters' preferences change."[87] It measures "the rate at which changes in vote share translate into seat share."[88]

A plan is considered responsive if it has a reasonable number of districts that will change hands as the votes around the state change from one party to the other. For example, assume a hypothetical plan has eight districts. Half of those districts are projected to be Republican-leaning and the other half are projected to be Democratic-leaning, each half with 46%, 47%, 48%, and 49% vote share. As the vote shifts towards one party or the other, some of these districts will flip to being won by the party with a higher vote share (one seat will flip as each additional percent of the vote for the party with the higher vote share is gained). A plan such as this may be considered "responsive," because changes in the seats won by each party occur in response to changes in the vote share for that party.

If, on the other hand, there are four districts that are 45% Republican and four districts that are 55% Republican, then we would not consider it a responsive plan, because it will likely take a shift in the vote of 5% in either direction for any seat to change hands.

Responsiveness is important to look at in tandem with partisan symmetry because it answers the question of whether a situation that presently seems to disfavor one party will be lasting or if the pendulum could swing back. A partisan gerrymander is much worse if it is practically guaranteed to last until the next redistricting cycle.[89]

Competitiveness

Competitiveness measures whether districts are likely to be closely contested, or whether districts have been designed to safely elect a candidate of one party or the other. A highly competitive district plan will have many districts with an expected vote share close to 50% for either party. A very uncompetitive district plan will have few, or even no, districts with a close to 50% expected vote share for either party.

Competitiveness is different from responsiveness because it *only* looks at how many districts are close to 50% for either party, rather than relating to the rate of change of seats in response to vote changes. For example, imagine a simple plan with eight districts, where four districts have a projected vote share of 53% for Democrats, and four districts have a projected vote share of 53% for Republicans. If the vote shifts two percentage points in favor of Republicans,

then the Republicans will continue to win four districts (with 55% of the vote) and the Democrats will continue to win four districts (with 51% of the vote). This would be considered a competitive plan (all districts are close to 50% for either party), but not a very responsive one (the vote changed 2 percentage points and no districts changed hands).

Depending on what one is seeking to achieve, it may make sense to include either or both of competitiveness and responsiveness as criteria for a redistricting commission. The most effective way to increase competitiveness in a district plan is to use ranked choice voting with multi-member districts.

Incumbency advantages and residential sorting will usually make it near impossible to have *every* district in a plan be competitive. Thus, a goal to maximize the number of competitive districts could promote both competitiveness and responsiveness at once (depending on the individual circumstances of a state).

example:

Arizona:

"To the extent practicable, competitive districts should be favored where to do so would create no significant detriment to the other goals."

ARIZ. CONST. art. 4, pt. 2, §1(14)(F).

Prohibited Information

Some states restrict the type of information that the redistricting entity can access. Information regarding incumbency, registered voters, political affiliation, previous election results, and demographics not relevant to compliance with federal law or state redistricting criteria can be sequestered from the state's redistricting body.

Such prohibitions are adopted to eliminate partisan intent–to the extent possible–by blinding commissions to data needed to create partisan gerrymanders.[90]

We do not recommend prohibiting the use of political data, however, for two main reasons. First, attempting to limit a legislature from access to political data is often pointless because legislators and map drawers are already highly knowledgeable about the relevant demographic and election data in the

How to decide what to prohibit

Whether or not to prohibit information depends in large part on the design of a commission. A neutral commission's public perception might benefit from a lack of certain information whereas a competitive commission may benefit from information about partisan affiliation to incentivize the commissioners to create the highest scoring map. In general, the more information a commission has the easier it is to create a fair map.

districts they care about. Second, if one is *trying to promote* partisan fairness, responsiveness, or competitiveness, then one will need to know the likely outcomes of elections in the proposed districts.

example:

Arizona:

"Party registration and voting history data shall be excluded from the initial phase of the mapping process but may be used to test maps for compliance with the above goals. The places of residence of incumbents or candidates shall not be identified or considered."

ARIZ. CONST. art. 4, pt. 2, §1(15).

Additional Considerations: How to Count People

Redistricting commissions generally use population data from the Census to draw districts. States may, however, augment Census data to accurately reflect where people live in the state. Making sure data is accurate is of utmost importance due to prison-based gerrymandering and the use of total population versus voter population.

Ending Prison-Based Gerrymandering

The Census counts prisoners where they are incarcerated rather than the community they consider home. This, unfortunately, leads to disproportionate representation. If a commission uses the Census data, it will give districts with prisons more representation, despite the legal or logistical inability of many prisoners to vote (this is called *prison-based gerrymandering*). Thus, the rural, less populous districts where prisons are located are overrepresented, while the disproportionately urban and low-income districts where many incarcerated people are from are underrepresented. Prison-based gerrymandering also has a disproportionate impact on communities of color.

This is not inevitable, however. A bill or constitutional amendment that creates an IRC can specify that incarcerated people should be counted in their home communities for redistricting purposes.

example:

New York:

"(a) In each year in which the federal decennial census is taken but in which the United States bureau of the census does not implement a policy of reporting incarcerated persons at each such person's residential address prior to incarceration, the department of corrections and community supervision shall by September first of that same year deliver to the legislative task force on demographic research and reapportionment the following information for each incarcerated person subject to the jurisdiction of the department and located in this state on the date for which the decennial census reports population."

Counting All People, Not Just Voters

Another way to ensure well-apportioned representation across a state is to require the redistricting body to measure population based on the entire population of the state and not just the voting age or voting eligible population. If districts are apportioned based purely on the number of eligible or registered voters, then people who cannot vote because they are under 18 years-old, have a physical, mental, or financial disability, or lack citizenship, will not be counted. This undermines the decades old belief that all people are deserving of representation, not just those who can vote, and is also likely to have the effect of overrepresentation for wealthy communities and underrepresentation for low-income communities and communities of color. The Supreme Court has unanimously upheld the right of states to choose to redistrict based on the entire population.[91]

Prioritization of Criteria

A state can establish criteria for redistricting that are ranked in importance, are not ranked, or that include certain hierarchies within groups at different levels. Ranked ordering might be beneficial if a commission will need clear directions for choosing between competing interests (for example, whether to keep counties whole, or respect communities of interest; or whether to promote compactness, or allow minority communities to exert influence over districts even if they are not majority-minority districts). However, if a commission's ability to deliberate over the criteria will be more beneficial to the voters than a more rigid, predetermined ranking, then establishing criteria without rankings will provide the most flexibility.

example:

Proposed Law in Illinois:

"Legislative Districts and Representative Districts shall each, in order of priority, be substantially equal in population; …"

HJRCA0058, 99th Leg., § 3(a) (Ill. 2017).

V. CONCLUSION

Independent redistricting commissions, although not always a perfect solution, are one of the best and most workable reforms available to curb the myriad problems created when self-interested legislators draw district lines. When properly designed, IRCs lend greater public legitimacy to the redistricting process and minimize the conflicts of interests that are otherwise inherent in redistricting.

As explained in this Guide, there is no one-size-fits-all type of independent redistricting commission. Every state should consider the current strengths and weaknesses of its redistricting process, its political culture, and its desired values in order to design a commission that will best serve its people.

ENDNOTES

[1] For a full discussion of the history of gerrymandering, see *Brief of Amici Curiae Historians in Support of Appellees*, *Gill v. Whitford*, (No. 16-1161)(U.S. argued Oct. 3, 2017), http://www.campaignlegalcenter.org/sites/default/files/16-1161bsacHistorians.pdf.

[2] 2012 REDMAP Summary Report, Redistricting Majority Project; http://www.redistrictingmajorityproject.com/.

[3] Elizabeth Kolbert, *Drawing the Line*, New Yorker (June 27, 2016), https://www.newyorker.com/magazine/2016/06/27/ratfcked-the-influence-of-redistricting.

[4] *About Us*, Nat'l Democratic Redistricting Comm., https://democraticredistricting.com/about/.

[5] 369 U.S. 186 (1962).

[6] *Rogers v. Lodge*, 458 U.S. 613 (1982); *White v. Regester*, 412 U.S. 755 (1973); *but see City of Mobile v. Bolden*, 446 U.S. 55 (1980); *Whitcomb v. Chavis*, 403 U.S. 124 (1971).

[7] *Section 2 of the Voting Rights Act,* U.S. Dep't of Justice, https://www.justice.gov/crt/section-2-voting-rights-act.

[8] *Whitford v. Gill*, 218 F. Supp. 3d 837 (W.D. Wis. 2016).

[9] *Cooper v. Harris*, 581 U.S. __, 137 S. Ct. 1455 (2017). *See also Shaw v. Reno*, 509 U.S. 630, 640 (1993).

[10] Justin Levitt, *Essay: Weighing the Potential of Citizen Redistricting,* 44 Loy. L.A. L. Rev. 513, 518 (2011) (footnote omitted).

[11] In North Carolina, legislators explicitly set out to draw a map that maximized their political advantage, with ten Republican-controlled and three Democratic-controlled districts. *See League of Women Voters of N.C. v. Rucho*, 240 F. Supp. 3d 376, at 4 (M.D.N.C. 2017). In 2011, political operatives in Wisconsin drew a map that they predicted would win them 59 out of 99 seats with only a 48.6% expected vote share; in 2012 they ended up winning 61% of the seats with a 48.6% vote share. *See Whitford,* 218 F. Supp. 3d at 898-99 (W.D. Wis. 2016). When their vote increased to 52% in 2014, their share increased to 64% of the seats. *Id* at 906. Democrats have also drawn politically gerrymandered maps in states like Rhode Island and Maryland. *See*, *e.g.*, *Shapiro v. McManus*, 203 F. Supp. 3d 579, 585 (D. Md. 2016) (regarding a challenge to Democratic partisan gerrymandering in Maryland); *Benisek v. Lamone,* 266 F. Supp. 3d 799 (D. Md. 2017) (same). In Illinois, the Democratic-controlled General Assembly admitted that they "considered partisan composition with regard to each and every district" and created a "Democratic Index" to analyze voters' partisan preference and degree of political affiliation down to the precinct and census block level. Defendants' Memorandum of Law in Support of Their Motion for Summary Judgment at 2-3, *Radogno v. Ill. Bd. of Elections*, 836 F. Supp. 2d 759 (N.D. Ill. 2011); Thomas E. Mann, *Redistricting Reform: What is Desirable? Possible?*, Brookings Inst. 24 (2004), https://www.brookings.edu/wp-content/uploads/2012/04/crc_Mann.pdf.

[12] *The Polarization of the Congressional Parties*, voteview (Jan. 30, 2016), http://voteview.org/political_polarization_2015.htm (showing the rising polarization of members of Congress); Boris Shor & Nolan McCarty, *The Ideological Mapping of American Legislatures*, 105 Am. Pol. Sci. Rev. 530 (2011) (same for state legislatures).

[13] David Daley, *Ratf**ked: The True Story Behind the Secret Plan to Steal America's Democracy* 51-60 (2016).

[14] *Id.*

[15] See, *N.C. State Conference of NAACP v. McCrory*, 831 F.3d 204, 214 (4th Cir. 2016); *see also Brief of Amici Curiae Political Science Professors In Support of Appellees and Affirmance, Gill v. Whitford* (No. 16-1161)(U.S. argued Oct. 3, 2017).

[16] Nicholas O. Stephanopoulos & Eric McGhee, *Partisan Gerrymandering and the Efficiency Gap*, 82 U. Chi. L. Rev. 831, 876 (2015).

[17] Levitt, *supra* note 10, at 532; *see also* Nicholas Stephanopoulos, *Reforming Redistricting: Why Popular Initiatives to Establish Redistricting Commissions Succeed or Fail,* 23 J.L. & Pol. 331, 338 (2007).
[18] Levitt, *supra* note 10, at 532.
[19] *Id.* at 538 ("[C]itizens whose job security is not affected by the outcome of a redistricting process will feel far less compulsion to distort otherwise coherent districts in the service of punishing a competitor, ensuring access to a particular funder, or capturing a personally salient landmark or facility that has little to do with the remainder of the district's representation.")
[20] David G. Oedel *et al.*, *Does the Introduction of Independent Redistricting Reduce Congressional Partisanship?*, 54 Vill. L. Rev. 57 (2009).
[21] Dennis F. Thompson, *Election Time: Normative Implications of Temporal Properties of the Electoral Process in the United States*, 98 Am. Pol. Sci. Rev. 1, 51-64 (2004).
[22] Justin Levitt, *All About Redistricting: Iowa*, Loyola Law, http://redistricting.lls.edu/states-IA.php (last visited Oct. 25, 2017).
[23] Heather K. Gerken, *Getting from Here to There in Redistricting Reform*, 5 Duke J. Const. L. and Pub. Pol'y 1, 14 (2010).
[24] It is important to consider that the system in place after repeated rejection of commission-drawn maps creates incentives at the approval stage. The party that will not control the map-drawing process in the event of a fallback has an incentive to approve, while the party that does control the fallback has an incentive to obstruct. Ideally, the fallback for a particular commission will function in times of divided government or unified party control.
[25] Gerken, *supra* note 23, at 8-9. In states without commissions, reform groups and individuals can also submit plans drawn according to particular criteria to serve as comparator plans. Courts can look at alternative plans drawn by commissions or reform groups as evidence that redistricting plans were drawn with invidious intent in violation of the Voting Rights Act or other federal law.
[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] Another (perhaps more extreme) method is to randomly select voters from the voter rolls, as was done by the British Columbia Citizens' Assembly on Electoral Reform, https://participedia.net/en/cases/british-columbia-citizens-assembly-electoral-reform.
[30] Justin Levitt, *All About Redistricting: California*, Loyola Law, http://redistricting.lls.edu/states-CA.php (last visited Oct. 25, 2017).
[31] Ariz. Const. art. 4, pt. 2, § 1(23).
[32] A more thorough discussion of decision-making mechanisms follows below on page 30.
[33] Levitt, *supra* note 22.
[34] *See, e.g.*, Heather K. Gerken and Travis Crum, *The OpenRedistricting Project*, Balkinization, http://balkin.blogspot.com/2009/04/openredistricting-project.html.
[35] Providing redistricting data and tools not only allows groups and members of the public to draw and evaluate maps, but it can also be a tool for reporters to easily compare proposed plans with prior plans or those submitted by members of the public. As mentioned above, publicly drawn maps can also be helpful evidence in court to show that fairer maps were possible and/or available.
[36] Public Mapping Project, http://www.publicmapping.org/.
[37] Thomas E. Mann & Norman J. Ornstein, *The Rigged Redistricting Process*, Wash. Post. (Mar. 18, 2011), https://www.washingtonpost.com/opinions/the-rigged-redistricting-process/2011/03/18/ABmFxAs_story.html?utm_term=.0430fd3d8f37.
[38] *Id.*
[39] Jim Slagle, *Ohio Redistricting Transparency Report: The Elephant in the Room 9* (2011), http://www.lwvohio.org/assets/attachments/file/The%20Elephant%20in%20the%20Room%20-%20Transparency%20Report.pdf.

[40] Public Mapping Project, *supra* note 36.
[41] For example, does the software or public mapping tool allow the map drawer to see population of each district to comply with the one person, one vote rule?
[42] Levitt, *supra* note 30.
[43] Justin Levitt, *All About Redistricting: New Jersey*, Loyola Law, http://redistricting.lls.edu/states-NJ.php (last visited Oct. 26, 2017).
[44] *Id.*
[45] *Id.*
[46] Sam Hirsch, *A Proposal for Redistricting Reform: A Model State Constitutional Amendment* 11 (2009), available at http://img.slate.com/media/1/123125/123054/2207789/2208001/2208423/Hirsch_Redistricting.pdf (delivered at the American Mathematical Society's Special Session on "The Redistricting Problem").
[47] *Id.*
[48] *Id.*
[49] *Id.*
[50] *Id.* at 14.
[51] Fla. Const. art. III, §§ 20-21 (§20: "In establishing congressional district boundaries: (a) No apportionment plan or individual district shall be drawn with the intent to favor or disfavor a political party or an incumbent . . . ."; § 21: "In establishing legislative district boundaries: (a) No apportionment plan or district shall be drawn with the intent to favor or disfavor a political party or an incumbent . . . .").
[52] *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363 (Fla. 2015).
[53] U.S. Const. art. VI, §2.
[54] 52 U.S.C. § 10101.
[55] *Baker,* 369 U.S. at 186.
[56] *Reynolds v. Sims*, 377 U.S. 533, 559 (1964) (quoting *Wesberry v. Sanders*, 376 U.S. 1 (1964)). Congressional districts must comply with U.S. Const. art. I, § 2.
[57] *Karcher v. Daggett*, 462 U.S. 725, 741 (1983); *see also Vieth v. Pennsylvania*, 188 F. Supp. 2d 532, 543 (M.D. Pa. 2002).
[58] *Reynolds*, 377 U.S. at 579. State legislative districts must comply with U.S. Const. amend. XIV, § 1.
[59] *Brown v. Thomson*, 462 U.S. 835, 842-43 (1983) (noting that state legislative apportionment plans with a maximum population deviation under 10% do not create a prima facie case for discrimination).
[60] *Reynolds*, 377 U.S. at 579.
[61] See *Larios v. Cox*, 300 F. Supp. 2d 1320, 1323 (N.D. Ga. 2004), *aff'd,* 542 U.S. 947 (2004); *Harris v. Ariz. Indep. Redistricting Comm'n*, 993 F. Supp. 2d 1042, 1071 (D. Ariz. 2014), *aff'd,* 136 S. Ct. 1301 (2016).
[62] "King advocated full political participation by an enlightened electorate to elect blacks to key political positions, to liberalize the political climate in the United States and to influence the allocation of resources." Lani Guinier, *The Triumph of Tokenism: The Voting Rights Act and The Theory of Black Electoral Success,* 89 Mich. L. Rev. 1077, n.26 (1991) (citing Martin Luther King Jr., Why We Can't Wait 166 (1963)).
[63] *Rogers,* 458 U.S. at 613; *White,* 412 U.S. at 755; *but see City of Mobile,* 446 U.S. at 55; *Whitcomb,* 403 U.S. at 124.
[64] U.S. Dep't of Justice, *supra* note 7.
[65] In some circuits, this can include two or more racial groups that vote together. *See, e.g., Campos v. City of Baytown*, 840 F.2d 1240, 1244 (5th Cir. 1988); *League of United Latin Am. Citizens v. Midland Indep. Sch. Dist.*, 812 F.2d 1494, 1499–502 (5th Cir. 1987).
[66] *Thornburg v. Gingles*, 478 U.S. 30 (1986); *Bartlett v. Strickland*, 556 U.S. 1 (2009); *see also* U.S. Dep't of Justice, *supra* note 7.
[67] *Whitford v. Gill*, 218 F. Supp. 3d at 837.

[68] *Id.*; *Benisek v. Lamone*, 266 F. Supp. 3d 799 (D. Md. 2017) (currently on appeal before the United States Supreme Court (No. 17-333)).
[69] *Cooper*, 137 S. Ct. at 1455; *see also Shaw*, 509 U.S. at 630, 640.
[70] "The Equal Protection Clause prohibits a State, without sufficient justification, from 'separat[ing] its citizens into different voting districts on the basis of race.'" *Bethune-Hill v. Va. State Bd. of Elections*, 137 S. Ct. 788, 797 (2017) (citing *Miller v. Johnson,* 515 U.S. 900, 911 (1995)).
[71] Md. Redistricting Reform Comm'n, 2015 Report 27 (2015), https://governor.maryland.gov/wp-content/uploads/2015/11/Final-Redistricting.pdf.
[72] Aaron Kaufman *et al.*, *How to Measure Legislative District Compactness If You Only Know It When You See It* 1 (2018), https://gking.harvard.edu/files/gking/files/compact.pdf ("Compactness is a widely valued but ill-defined normative criterion in the law for drawing legislative districts.").
[73] Md. Redistricting Reform Comm'n, *supra* note 71.
[74] Daniel D. Polsby & Robert D. Popper, *The Third Criterion: Compactness as a Procedural Safeguard Against Partisan Gerrymandering*, 9 Yale L. & Pol'y Rev. 301 (1991).
[75] *See, e.g.*, Okla. Const. art. V, § 9(A).
[76] *See, e.g.*, Polsby & Popper, *supra* note 74.
[77] For a full discussion of communities of interest *see* page 42.
[78] *See, e.g.*, Bruce E. Cain, The Reapportionment Puzzle 32-57 (1984).
[79] *Bush v. Vera,* 517 U.S. 952 (1996).
[80] Appellees' Merits Brief at 27, *Gill v. Whitford* (No. 16-1161) (U.S. argued Oct. 3, 2017), http://www.campaignlegalcenter.org/sites/default/files/Gill%20v%20Whitford%20brief.pdf.
[81] Md. Redistricting Reform Comm'n, *supra* note 71, at 22.
[82] *Brief of Bernard Grofman and Ronald Keith Gaddie as Amici Curiae in Support of Neither Party* at 12, *Gill v. Whitford (*No. 16-1161) (U.S. argued Oct. 3, 2017), http://www.campaignlegalcenter.org/sites/default/files/16-1161acBernardGrofman AndRonaldGaddie.pdf.
[83] *Id.* at 12 (emphasis in original).
[84] *Id.* at 13.
[85] Eric McGhee, *Measuring Efficiency in Redistricting* (2017), https://ssrn.com/abstract =3007401.
[86] *Proposed Initiative Petition*, Missouri 2017, section 3(c), https://www.sos.mo.gov/CMSImages/Elections/Petitions/2018-015.pdf.
[87] Grofman & Gaddie, *supra* note 82, at 15.
[88] McGhee, *supra* note 85, at 10.
[89] *Gill v. Whitford*, No. 16-1161 (U.S. argued Oct. 3, 2017). We are not aware of any commission proposal that seeks to promote responsiveness, but it would be relatively straightforward to include as a criterion. For example, language could state that "partisan responsiveness should be promoted in the redistricting plan."
[90] *See, e.g.*, Md. Redistricting Reform Comm'n, *supra* note 71.
[91] *Evenwel v. Abbott*, 136 S. Ct. 1120 (2016).
[a] *About Us*, Nat'l Democratic Redistricting Comm., https://democraticredistricting.com/about/.
[b] Ronald Reagan, *Remarks at the Republican Governors Club Annual Dinner,*] REAGAN LIBRARY (October 15, 1987), https://www.reaganlibrary.gov/sites/default/files/archives/speeches/1987/101587f.htm.
[c] Bruce E. Cain *et al.*, *Redistricting and Electoral Competitiveness in State Legislative Elections* 12 (2007); Vladimir Kogan & Eric McGhee, *Redistricting California: An Evaluation of the Citizens Commission Final Plans,* 4 Cal. J. Pol. & Pol'y 1, 16–17 (2012); Nicholas O. Stephanopoulos, *The Consequences of Consequentialist Criteria,* 3 U.C. Irvine L. Rev. 669, 692 (2013).
[d] Cain *et al.*, *supra* note c, at 16; Seth E. Masket *et al., The Gerrymanderers Are Coming! Legislative Redistricting Won't Affect Competition or Polarization Much, No Matter Who Does It*, 45 Pol. Sci. & Pol. 39, 42 (2012).
[e] Cain *et al.*, *supra* note c, at 16; Jamie L. Carson & Michael H. Crespin, *The Effect of State Redistricting Methods on Electoral Competition in United States House of Representatives Races*, 4 St. Pol. & Pol'y Q. 455, 461–62 (2004).
[f] Cain *et al.*, *supra* note c, at 16.

DESIGNING INDEPENDENT REDISTRICTING COMMISSIONS: APPENDIX

STATE LEGISLATIVE[1]

State	Type	Power	Size	Selection Process	Eligibility to Serve	Transparency	Map Approval	Fallback Mechanism
AK	Bipartisan	Full[2]	5[3]	Gubernatorial appointment; political appointment; judicial appointment[4]	Future office holding restriction; geographic diversity requirement; government employee restriction; prior public office restriction[5]	Must hold public hearings[6]	Simple majority[7]	Silent[8]
AZ	Independent	Full[9]	5[10]	Commissioners select other commissioner; judicial appointment; political party appointment[11]	Future office holding restriction; geographic diversity requirement; lobbying restriction; political party affiliation; prior public office restriction; voter registration requirement[12]	Certain meetings must be open; must accept public comments; must publish a draft map[13]	Simple majority[14]	Silent[15]
AR	Political	Full[16]	3[17]	Specified officeholder members[18]	Current office holding requirement[19]	Final plans must include a written justification[20]	Simple majority[21]	Silent[22]
CA	Independent	Full[23]	14[24]	Creation of pool from public applicants; legislative vetoes; commissioners select other commissioners[25]	Campaign contribution restriction; racial, ethnic, geographic, and gender diversity requirement; government employee restriction; lobbying restriction; political party affiliation; prior public office restriction; voter registration requirement[26]	Final plans must include a written justification; materials of line drawers subject to public records requests; meetings must be open; must accept public comments; must hold public hearings before and after draft plans revealed; redistricting data available to the public[27]	Nine votes required to approve final maps, including three from each group/faction on the commission; certified final maps subject to referendum[28]	The Secretary of State petitions the California Supreme Court for an order appointing special masters to draw a map[29]

State	Type	Power	Size	Selection Process	Eligibility to Serve	Transparency	Map Approval	Fallback Mechanism
CO	Political	Full[30]	11[31]	Gubernatorial appointment; judicial appointment; political appointment[32]	Geographic diversity requirement; political party affiliation; current public office restriction; voter registration requirement[33]	Must hold public hearings; must keep public record of meetings and hearings[34]	Silent on commission voting, but plan must be submitted to Colorado Supreme Court for approval[35]	Silent[36]
HI	Bipartisan	Full[37]	9[38]	Commissioners select other commissioners; political appointment[39]	Future office holding restriction[40]	Final plans must include a written justification; must accept public submissions; must hold public hearings; must keep public record of meetings and hearings[41]	Simple majority[42]	Silent[43]
ID	Bipartisan	Full[44]	6[45]	Political appointment; political party appointment[46]	Candidate restriction; future office holding restriction; geographic diversity requirement; lobbying restriction; prior public office restriction; voter registration requirement[47]	Must hold public hearings; geographic diversity for public hearings required; must accept public submissions; meetings must be open; redistricting data available to the public[48]	Two-thirds majority[49]	Silent[50]
IA	Bipartisan	Advisory[51]	5[52]	Commissioners select other commissioners; political appointment[53]	Government employee restriction; political party affiliation; prior public office restriction; voter registration requirement[54]	Must hold public hearings; geographic diversity for public hearings required; must keep public record of meetings and hearings[55]	Silent[56]	Legislature draws and votes on its own plan[57]
ME	Bipartisan	Advisory[58]	15[59]	Commissioners select other commissioners; political appointment; political party appointment[60]	Political party restriction[61]	Silent[62]	Simple majority[63]	Supreme Judicial Court[64]

State	Type	Power	Size	Selection Process	Eligibility to Serve	Transparency	Map Approval	Fallback Mechanism
MO	Bipartisan	Full[65]	House: 18; Senate: 10[66]	Gubernatorial appointment; political party appointment[67]	Future office holding restriction; lobbying restriction[68]	Must hold public hearings[69]	House: seven-tenths must approve; Senate: seven votes[70]	Six-judge panel draws the lines[71]
MT	Bipartisan	Full[72]	5[73]	Commissioners select other commissioners; judicial appointment; political appointment[74]	Future office holding restriction; geographic diversity requirement; prior public office restriction[75]	Must hold at least one public hearing[76]	Silent[77]	Silent[78]
NJ	Bipartisan	Full[79]	10[80]	Judicial appointment; political party appointment[81]	Geographic diversity requirement[82]	Silent[83]	Simple majority[84]	Supreme Court appoints eleventh member to commission[85]
NY[86]	Bipartisan	Advisory[87]	10[88]	Commissioners select other commissioners; political appointment[89]	Current public office restriction; geographic diversity requirement; lobbying restriction; prior public office restriction; racial or ethnic diversity requirement; spousal restriction; voter registration requirement[90]	Must hold public hearings; geographic diversity for public hearings required; redistricting data available to the public[91]	Bipartisan approval requirements[92]	If no map approved, map with highest number of votes submitted to legislature[93]
OH[94]	Bipartisan	Full[95]	7[96]	Specified officeholder members; political appointment[97]	No requirements[98]	Meetings must be open; must hold public hearings[99]	Four votes, including two from each largest party[100]	If fail to approve a plan, will introduce a plan to General Assembly by majority vote[101]
PA	Political	Full[102]	5[103]	Commissioners select other commissioners; judicial appointment; political appointment[104]	Current public office restriction for chair[105]	Must hold public hearings; must publish a draft map[106]	Silent[107]	State Supreme Court[108]

State	Type	Power	Size	Selection Process	Eligibility to Serve	Transparency	Map Approval	Fallback Mechanism
RI	Political	Advisory[109]	18[110]	Political appointment[111]	Current office holding requirement; current office holding restriction[112]	Materials of line drawers subject to public records requests; meetings must be open; must hold public hearings; redistricting data available to the public[113]	Silent[114]	Silent[115]
VT	Bipartisan	Advisory[116]	7[117]	Gubernatorial appointment; judicial appointment; political party appointment[118]	Geographic diversity requirement; government employee restriction; prior public office restriction; voter registration requirement[119]	Silent[120]	Silent[121]	Silent[122]
WA	Bipartisan	Partial with legislative approval and ability to amend[123]	5[124]	Commissioners select other commissioners; judicial appointment; political appointment[125]	Political party affiliation; prior public office restriction[126]	Silent[127]	Three out of four voting members[128]	State Supreme Court[129]

CONGRESSIONAL[192]

State	Type	Power	Size	Selection Process	Eligibility to Serve	Transparency	Map Approval	Fallback Mechanism
AZ	Independent	Full[130]	5[131]	Commissioners select other commissioner; judicial appointment; political party appointment[132]	Voter registration requirement; political party affiliation; lobbying restriction; held public office restriction; future public office restriction; geographic diversity requirement[133]	Certain meetings must be open; must accept public comments; must publish a draft map[134]	Simple majority[135]	Silent[136]
CA	Independent	Full[137]	14[138]	Creation of pool from public applicants; legislative vetoes; commissioners select other commissioners[139]	Campaign contribution restriction; racial, ethnic, geographic, and gender diversity requirement; government employee restriction; lobbying restriction; political party affiliation; prior public office restriction; voter registration requirement[140]	Final plans must include a written justification; materials of line drawers subject to public records requests; meetings must be open; must accept public comments; must hold public hearings before and after draft plans revealed; redistricting data available to the public[141]	Nine votes required to approve final maps, including three from each group/faction on the commission[142]	The Secretary of State petitions the California Supreme Court for an order appointing special masters to draw a map
HI	Bipartisan	Full[143]	9[144]	Commissioners select other commissioners; political appointment[145]	Future office holding restriction[146]	Final plans must include a written justification; must hold public hearings; geographic diversity for public hearings required; must keep public record of meetings and hearings[147]	Simple majority[148]	Silent[149]
IA	Bipartisan	Advisory[150]	5[151]	Commissioners select other commissioners; political appointment[152]	Government employee restriction; political party affiliation; prior public office restriction; voter registration requirement[153]	Must hold public hearings; geographic diversity for public hearings required; must keep public record of meetings and hearings[154]	Silent[155]	Legislature draws and votes on its own plan[156]

State	Type	Power	Size	Selection Process	Eligibility to Serve	Transparency	Map Approval	Fallback Mechanism
ID	Bipartisan	Full[157]	6[158]	Political appointment; political party appointment[159]	Candidate restriction; prior and future office holding restriction; geographic diversity requirement; lobbying restriction; voter registration requirement[160]	Must hold public hearings; geographic diversity for public hearings required; meetings must be open; must accept public submissions; redistricting data available to the public[161]	Two-thirds majority[162]	Silent[163]
ME	Bipartisan	Advisory[164]	15[165]	Political appointment; political party appointment[166]	Political party restriction[167]	Silent[168]	Simple majority[169]	Supreme Judicial Court[170]
NJ	Bipartisan	Full[171]	13[172]	Commissioners select other commissioners; political appointment[173]	Current public office restriction; geographic, racial, and ethnic diversity requirement[174]	Final vote for district plan must be at a public meeting[175]	Simple majority[176]	Two maps that have received the largest number of votes (and not less than five votes) are submitted to the Supreme Court, which chooses a plan[177]
RI	Bipartisan	Advisory[178]	18[179]	Political appointment[180]	Current office holding requirement; current office holding restriction[181]	Meetings must be open; must hold public hearings; redistricting data available to the public[182]	Silent[183]	Silent[184]
WA	Bipartisan	Partial with legislative approval and ability to amend[185]	5[186]	Commissioners select other commissioners; judicial appointment; political appointment[187]	Political party affiliation; prior public office restriction[188]	Silent[189]	Three out of four voting members[190]	State Supreme Court[191]

APPENDIX ENDNOTES

[1] For additional information, *see also Redistricting Commissions: State Legislative Plans*, Nat'l Conference of State Legislatures, http://www.ncsl.org/research/redistricting/2009-redistricting-commissions-table.aspx.
[2] Alaska Const. art. VI.
[3] Alaska Const. art. VI, § 8(a).
[4] Alaska Const. art. VI, § 8(a)-(b). Appointments are supposed to be made without regard to political affiliation. The Governor appoints two commissioners, the Majority Leaders of the state's House and Senate each appoint one commissioner, and the Chief Justice of the state Supreme Court appoints one commissioner.
[5] Alaska Const. art. VI, § 8(b)-(c).
[6] Alaska Const. art. VI, § 10(a).
[7] Alaska Const. art. VI, § 10(b).
[8] Alaska Const. art. VI.
[9] Ariz. Const. art. IV, pt. 2, § 1(3).
[10] Ariz. Const. art. IV, pt. 2, § 1(3).
[11] Ariz. Const. art. IV, pt. 2, § 1(5)-(8). Arizona Commission on Appellate Court Appointments creates a pool of 25, including ten Republicans, ten Democrats, and five not registered with either major party. The Majority and Minority Leaders in the House and Senate each choose one commissioner from this pool. The four then choose a fifth commissioner as chair, who must not be registered with the same political party as any of the other commissioners. If they cannot agree, the Commission on Appellate Court Appointments will choose the fifth.
[12] Ariz. Const. art. IV, pt. 2, § 1(3), (13).
[13] Ariz. Const. art. IV, pt. 2, § 1(12), (16).
[14] Ariz. Const. art. IV, pt. 2, § 1(12).
[15] Ariz. Const. art. IV, pt. 2, § 1.
[16] Ark. Const. art. 8, § 1.
[17] Ark. Const. art. 8, § 1.
[18] Ark. Const. art. 8, § 1. The members are listed in the statute: the Governor, the Secretary of State, and the Attorney General.
[19] Ark. Const. art. 8, § 1.
[20] Ark. Const. art. 8, § 4.
[21] Ark. Const. art. 8, § 1.
[22] Ark. Const. art. 8, § 1. Art. 8, § 5 gives the state Supreme Court original jurisdiction to hear challenges to state district plans.
[23] Cal. Const. art. XXI, § 2(c); Cal. Gov't Code §§ 8251-8253.6.
[24] Cal. Const. art. XXI, § 2(c)(2); Cal. Gov't Code § 8252(g).
[25] Cal. Gov't Code e §8252(a)-(g). Eight commissioners are randomly selected by the State Auditor from pools narrowed down by legislative vetoes of the Majority and Minority House Leaders (three Democrats, three Republicans, two from neither party). The eight commissioners then select the other six (two Democrats, two Republicans, two from neither party).
[26] Cal. Const. art. XXI, § 2(c)(6); Cal. Gov't Code § 8252(a)-(b), (g).
[27] Cal. Const. art. XXI, § 2(b), (h); Cal. Gov't Code § 8253(a)(1)-(2), (b).
[28] Cal. Const. art. XXI, § 2(c)(5), (i).
[29] Cal. Const. art. XXI, § 2(j).
[30] Colo. Const. art. V, § 48.
[31] Colo. Const. art. V, § 48(1)(a).
[32] Colo. Const. art. V, § 48(1)(a)-(c). The Governor appoints three members, the four Majority and Minority Leaders of the House and Senate each appoint a member, and the Chief Justice of the state Supreme Court appoints four members. No more than six commissioners can be of the same political party.
[33] Colo. Const. art. V, § 48(1)(c).
[34] Colo. Const. art. V, § 48(1)(e).
[35] Colo. Const. art. V, § 48(e).

[36] Colo. Const. art. V, § 48.
[37] Haw. Const. art. IV, § 2.
[38] Haw. Const. art. IV, § 2.
[39] Haw. Const. art. IV, § 2. President of the Senate and Speaker of the House select two members, and designated members in Senate and House select two members. Those eight select one member (by a vote of six or more).
[40] Haw. Const. art. IV, § 2.
[41] Haw. Rev. Stat. §§ 25-2, 25-8.
[42] Haw. Const. art. IV, § 2; Haw. Rev. Stat. § 25-3.
[43] Haw. Const. art. IV.
[44] Idaho Const. art. III, § 2(2); Idaho Code § 72-1501.
[45] Idaho Const. art. III, § 2(2); Idaho Code § 72-1502.
[46] Idaho Const. art. III, § 2(2); Idaho Code § 72-1502. Leaders of the two largest political parties in each house of the legislature each designate one member; chairs of the two parties whose candidates for Governor received the most votes in the last election each designate one member.
[47] Idaho Const. art. III, § 2(2), (6); Idaho Code §§ 72-1502, 72-1503.
[48] Idaho Const. art. III, § 2(4); Idaho Code § 72-1505.
[49] Idaho Const. art. III, § 2(4); Idaho Code § 72-1505.
[50] Idaho Const. art. III, § 2; Idaho Code §§ 72-1501 - 72-1508.
[51] Iowa Code § 42.3.
[52] Iowa Code § 42.5(1)(a).
[53] Iowa Code §§ 42.1(4)(a)-(d), 42.5(1)(a). Majority and Minority Leaders from both houses each appoint one member, and those four select the fifth member of the commission.
[54] Iowa Code § 42.5(2).
[55] Iowa Code § 42.6(2)-(3).
[56] Iowa Code § 42.5.
[57] Iowa Code § 42.3(3).
[58] Me. Const. art. IV, pt. 1, § 3; *id.* pt. 2, § 2.
[59] Me. Const. art. IV, pt. 3, § 1(A).
[60] Me. Const. art. IV, pt. 3, § 1(A). House Speaker appoints three members, floor leader of largest minority party appoints three members; Senate President appoints two, Senate minority floor leader appoints two members; largest political party chair appoints one member, second largest political party chair appoints one member, political chair appointees select one member; three members of the public are added (one selected by one party's commission members, one by the other party's commission members, the third is selected by the other two public members).
[61] Me. Const. art. IV, pt. 3, § 1(A).
[62] Me. Const. art. IV, pt. 3, § 1(A).
[63] Me. Const. art. IV, pt. 3, § 1(A).
[64] Me. Rev. Stat. tit. 21(A), § 1206.
[65] Mo. Const. art. III, §§ 2, 7.
[66] Mo. Const. art. III, §§ 2, 7.
[67] Mo. Const. art. III, §§ 2, 7. House: the congressional district committees for the state's two largest political parties each nominate two members from each congressional district and each party submits this list of names to the Governor. The Governor then chooses one member per district per party. Senate: the state committee for each of the state's two largest parties nominate ten members each, and the Governor chooses five from each party.
[68] Mo. Const. art. III, §§ 2, 7; Mo. Rev. Stat. § 105.967.
[69] Mo. Const. art. III, §§ 2, 7.
[70] Mo. Const. art. III, § 2.
[71] Mo. Const. art. III, § 2.
[72] Mont. Const. art. V, § 14(2).
[73] Mont. Const. art. V, § 14(2).

[74] Mont. Const. art. V, § 14(2). Majority and Minority Leaders of both houses appoint four members and those four select a chair. If the four cannot select a chair, a majority of the Supreme Court appoints the fifth member.
[75] Mont. Const. art. V, § 14(2); Mont. Code Ann. §§5-1-102, 5-1-105.
[76] Mont. Code Ann. § 5-1-108.
[77] Mont. Const. art. V, § 14; Mont. Code Ann. §§ 5-1-102 - 5-1-115.
[78] Mont. Const. art. V, § 14; Mont. Code Ann. §§ 5-1-102 - 5-1-115.
[79] N.J. Const. art. IV, § 3(1).
[80] N.J. Const. art. IV, § 3(2).
[81] N.J. Const. art. IV, § 3(1). The chairs of the state's two largest political parties each choose five commissioners. If the ten commissioners cannot pass a plan, the Chief Justice of the state Supreme Court appoints an eleventh member.
[82] N.J. Const. art. IV, § 3(1).
[83] N.J. Const. art. IV, § 3.
[84] N.J. Const. art. IV, § 3(2).
[85] N.J. Const. art. IV, § 3, ¶1.
[86] New York passed a constitutional amendment between 2012 and 2014, which created a commission for 2020. This commission is what is discussed in this row of the table.
[87] N.Y. Const. art. III, § 4(b).
[88] N.Y. Const. art. III, § 5-b(a).
[89] N.Y. Const. art. III, § 5-b(a). Temporary President of the Senate appoints two members; Speaker of the Assembly appoints two members; Minority Leaders of the Senate and Assembly appoint two members each; two members are appointed by the first eight members.
[90] N.Y. Const. art. III, § 5-b(c).
[91] N.Y. Const. art. III, § 4(c).
[92] N.Y. Const. art. III, § 5-b(e). Note also that the legislature must vote on the advisory commission's maps, without amendment. In order for the maps to be approved, there are different voting requirements based on whether the House and Senate are controlled by the same political party or not. See N.Y. Const. art. III, § 4(b)(1)-(3).
[93] N.Y. Const. art. III, § 5-b(g).
[94] Ohio introduced a new commission process for 2020 onward via referendum in 2014 (2014 HJR 12, adopted effective 1/1/2021). This commission is what is discussed in this row of the table.
[95] Ohio Const. art. XI, § 8(B).
[96] Ohio Const. art. XI, § 1.
[97] Ohio Const. art. XI, § 1. The members are the Governor, Auditor, Secretary of State and four political appointees.
[98] Ohio Const. art. XI, § 1.
[99] Ohio Const. art. XI, § 1(C).
[100] Ohio Const. art. XI, § 1(B)(3).
[102] Pa. Const. art. II, § 17(b)-(e).
[103] Pa. Const. art. II, § 17(b).
[104] Pa. Const. art. II, § 17(b). Majority and Minority Leaders from both houses (or deputies appointed by them) are commissioners and collectively choose the fifth, who is chair. If the four cannot agree on a chair, the state Supreme Court chooses the chair.
[105] Pa. Const. art. II, § 17(b).
[106] Pa. Const. art. II, § 17.
[107] Pa. Const. art. II, § 17.
[108] Pa. Const. art. II, § 17(h).
[109] 2011 R.I. Laws ch. 106, § 1; *id.* ch. 100, § 1.
[110] 2011 R.I. Laws ch. 106, § 1(a); *id.* ch. 100, § 1(a).
[111] 2011 R.I. Laws ch. 106, § 1(a); *id.* ch. 100, § 1(a). Majority Leaders of House and Senate choose eight legislators (four from each chamber) and six members of the general public. Minority Leaders of House and Senate choose four legislators (two from each chamber).

[112] 2011 R.I. Laws ch. 106, § 1(a); *id.* ch. 100, § 1(a). These two requirements both hold because twelve of the members must be legislators, while six must be "members of general public."
[113] 2011 R.I. Laws ch. 106, § 3(b)-(d); *id.* ch. 100, § 3(b)-(d).
[114] 2011 R.I. Laws ch. 106; *id.* ch. 100.
[115] 2011 R.I. Laws ch. 106; *id.* ch. 100.
[116] Vt. Stat. Ann. tit. 17, § 1904.
[117] Vt. Stat. Ann. tit. 17, § 1904(a).
[118] Vt. Stat. Ann. tit. 17, § 1904(a). Chief Justice of state Supreme Court designates a special master, who serves as chair. Vermont residents from each major political party are appointed by the Governor and state committee of those political parties. The Secretary of State serves as secretary of the board but does not vote.
[119] Vt. Stat. Ann. tit. 17, § 1904(a).
[120] Vt. Stat. Ann. tit. 17, § 1904.
[121] Vt. Stat. Ann. tit. 17, § 1904.
[122] Vt. Stat. Ann. tit. 17, § 1904.
[123] Wash. Const. art. II, § 43(7).
[124] Wash. Const. art. II, § 43(2).
[125] Wash. Const. art. II, § 43(2). Majority and Minority Leaders from both houses each appoint one voting member; those four then select a nonvoting chair. If appointments are not made, Supreme Court appoints.
[126] Wash. Const. art. II, § 43(3).
[127] Wash. Const. art. II, § 43.
[128] Wash. Const. art. II, § 43(6)-(7). A two-thirds majority of the legislature is needed to amend the commission's plan.
[129] Wash. Const. art. II, § 43(6).
[130] Ariz. Const. art. IV, pt. 2, § 1.
[131] Ariz. Const. art. IV, pt. 2, § 1(3)
[132] Ariz. Const. art. IV, pt. 2, § 1(5)-(8). The Arizona Commission on Appellate Court Appointments creates a pool of 25, including ten Republicans, ten Democrats, and five not registered with either major party. The Majority and Minority Leaders in both houses each choose one commissioner from this pool. The four then choose a fifth commissioner as chair, who must not be registered with the same political party as any of the other commissioners. If they cannot agree, the Commission on Appellate Court Appointments will choose the fifth.
[133] Ariz. Const. art. IV, pt. 2, § 1(2), (13).
[134] Ariz. Const. art. IV, pt. 2, § 1(15)-(16).
[135] Ariz. Const. art. IV, pt. 2, § 1(12).
[136] Ariz. Const. art. IV, pt. 2, § 1.
[137] Cal. Const. art. XXI, § 2(c); Cal. Gov't Code §§ 8251-8253.6.
[138] Cal. Const. art. XXI, § 2(c)(2).
[139] Cal. Gov't Code § 8252(a)-(g). Eight commissioners are randomly selected by the State Auditor from pools narrowed down by legislative vetoes of the Majority and Minority House Leaders (three Democrats, three Republicans, two from neither party). The eight commissioners then select the other six (two Democrats, two Republicans, two from neither party).
[140] Cal. Const. art. XXI, § 2(c)(6); Cal. Gov't Code § 8252(a)-(b), (g).
[141] Cal. Const. art. XXI, § 2(b), (h); Cal. Gov't Code § 8253(a)(1)-(2), (b).
[142] Cal. Const. art. XXI, § 2(c)(5), (i).
[143] Haw. Const. art. IV, § 2.
[144] Haw. Const. art. IV, § 2.
[145] Haw. Const. art. IV, § 2. The President of the Senate and Leader of the House select two members; Minority Leaders of the Senate and House select two members. Those eight select one member (by a vote of six or more).
[146] Haw. Const. art. IV, § 2.
[147] Haw. Rev. Stat. §§ 25-2, 25-8.
[148] Haw. Const. art. IV, § 2.
[149] Haw. Const. art. IV, § 2.

[150] Iowa Code § 42.3.
[151] Iowa Code § 42.5(1)(a).
[152] Iowa Code §§ 42.1(4)(a)-(d), 42.5(1)(a). Majority and Minority Leaders from both houses each appoint one member, and those four select the fifth member of the commission.
[153] Iowa Code § 42.5(2).
[154] Iowa Code § 42.6(2)-(3).
[155] Iowa Code § 42.5.
[156] Iowa Code § 42.3(3).
[157] Idaho Const. art. III, § 2(2); Idaho Code §72-1501.
[158] Idaho Const. art. III, § 2(2); Idaho Code §72-1502.
[159] Idaho Const. art. III, § 2(2); Idaho Code §72-1502. The leaders of the two largest political parties of each house of the legislature each designate one member and the state chairmen of the two largest political parties, determined by the vote cast for Governor in the last gubernatorial election, each designate one member.
[160] Idaho Const. art. III, §§ 2(2), 6; Idaho Code §§ 72-1502, 72-1503.
[161] Idaho Const. art. III, § 2(4); Idaho Code § 72-1505.
[162] Idaho Const. art. III, § 2(4); Idaho Code § 72-1505.
[163] Idaho Const. art. III, § 2; Idaho Code §§ 72-1501 - 72-1508.
[164] Me. Const. art. IX, § 24; *id.* art. IV, pt. 1, § 3; Me. Rev. Stat. Ann. tit. 21-A, § 1206.
[165] Me. Const. art. IV, pt. 3, § 1-A.
[166] Me. Const. art. IV, pt. 3, § 1-A. The Speaker of the House appoints three; the House Minority Leader appoints three; the President of the Senate appoints two; the Senate Minority Leader appoints two; and chairs of the two major political parties each choose one. The members from the two parties represented on the commission each appoint a public member, and the two public members choose a third public member.
[167] Me. Const. art. IV, pt. 3, § 1-A.
[168] Me. Const. art. IV, pt. 3, § 1-A.
[169] Me. Const. art. IV, pt. 3, § 1-A.
[170] Me. Rev. Stat. Ann. tit. 21-A, § 1206.
[171] N.J. Const. art. II, § 2, ¶ 1.
[172] N.J. Const. art. II, § 2, ¶ 1.
[173] N.J. Const. art. II, § 2, ¶ 1. The Majority and Minority Leaders in each legislative chamber and the chairs of the state's two major political parties each choose two commissioners, none of whom may be a congressional member or employee. Those twelve commissioners then choose a thirteenth who has not held any public or party office in New Jersey within the last five years. If the twelve commissioners are not able to select a thirteenth member to serve as chair, they will present two names to the state Supreme Court, which will choose the chair.
[174] N.J. Const. art. II, § 2, ¶ 1.
[175] N.J. Const. art. II, § 2, ¶ 3.
[176] N.J. Const. art. II, § 2, ¶ 3.
[177] N.J. Const. art. II, § 2, ¶ 3.
[178] 2011 R.I. Laws ch. 106, § 1. Note that the practice for Rhode Island is to create a new commission for each decade, so there is no legal guarantee that a similar commission will be used by Rhode Island after the 2010 cycle.
[179] 2011 R.I. Laws ch. 106, § 1.
[180] 2011 R.I. Laws ch. 106, § 1. The Majority Leaders of both the House and the Senate choose four members of the legislature and three who are not. The Senate and House Minority Leaders each choose two members who are not members of the legislature.
[181] 2011 R.I. Laws ch. 106, § 1.
[182] 2011 R.I. Laws ch. 106, § 3.
[183] 2011 R.I. Laws ch. 106, § 3.
[184] 2011 R.I. Laws ch. 106, §§ 1-6.
[185] Wash. Const. art. II, § 43(7).

[186] WASH. CONST. art. II, § 43(2).
[187] WASH. CONST. art. II, § 43(2). Majority and Minority Leaders from both houses each appoint one voting member; those four then select a nonvoting chair. If appointments are not made, Supreme Court appoints.
[188] WASH. CONST. art. II, § 43(3).
[189] WASH. CONST. art. II, § 43.
[190] WASH. CONST. art. II, § 43(6)-(7). Two-thirds majority of the legislature is needed to amend the commission's plan.
[191] WASH. CONST. art. II, § 43(6).
[192] Ohio is not included in this table because, even though it adopted a backup commission for congressional districts by ballot initiative in May, 2018, the legislature may still pass a redistricting plan with 60% of the vote in each chamber and thereby avoid the commission. *For more details, see:* https://ballotpedia.org/Ohio_Issue_1,_Congressional_Redistricting_Procedures_Amendment_(May_2018).