

NCSL Redistricting: A National Overview

by Ben Williams

Policy Specialist for Elections and Redistricting

National Conference of State Legislatures

September 18, 2019

Good morning and thank you, Mr. Chairman, for inviting me to appear at this hearing. I am Ben Williams, policy specialist for elections and redistricting at the National Conference of State Legislatures (NCSL). Based in Denver, NCSL is the nation's bipartisan organization supporting the work of both legislators and legislative staff.

Redistricting is a traditional core function of legislatures, and therefore redistricting is a core subject for NCSL. As with all our work, we do not make recommendations on redistricting policy. Instead we provide 50-state research and analysis.

No two states approach redistricting in exactly the same way. In 36 states, the legislature is responsible for adopting state legislative plans. In 41 states, legislatures are responsible for Congressional redistricting. The vast majority of these states use traditional bills to redistrict, which go to the governor for approval. But there are some variations. Two states, Connecticut and Maine, require a two-thirds vote to pass a redistricting plan. Four states—Maryland, Mississippi, North Carolina and Florida—use legislative resolutions instead of bills.

Iowa is known for pioneering its own, unique procedure. There, nonpartisan legislative staff draw plans for the state legislature and Congress using only Census data. They are prohibited from using election results, partisan indices, incumbent addresses or party registration. Additionally, the plans are submitted to the legislature for an up-or-down vote. If the legislature rejects the first set of plans, staff produce a second set of plans. If the legislature rejects the second set of plans, a third set are produced. At that point, the legislature can amend the plans as it chooses. Since this system was adopted in the 1970s, the legislature has always approved the first or second plans submitted by the staff.

The remaining states give primary responsibility for drawing maps to a commission or board. NCSL includes Pennsylvania in that group. Historically, the number of commissions has grown slowly, with one to three states each decade switching from the legislature to a commission. That pace has increased in recent years, with six states—Colorado, Michigan, Missouri, New York, Ohio and Utah—adopting new redistricting processes that will be used for the first time in the upcoming redistricting cycle.

Most redistricting commissions are linked in some way to the legislature. Often legislative leaders play a key role in selecting commission members. In Hawaii, for instance, the Senate president, the Speaker of the House and both minority leaders each select two members. These eight members select the ninth member, who serves as the chair, and the tie-breaker. If the eight members are unable to come to an agreement, the state Supreme Court appoints the ninth member.

In addition to who serves on a commission, states' rules vary on how many votes are needed to approve a map. In some states, a simple majority of commission members is all that is needed, but more recently established commissions have begun to require a supermajority vote. Some supermajority states also require a certain number of votes come from the minority party in order for a map to be approved.

The commissions used in Arizona, California and New Jersey exemplify the diversity of approaches to these questions that states have adopted.

Arizona's Independent Redistricting Commission was put on the ballot by a citizens' initiative in 1999, and the process was first used in the 2000 cycle. The commission has five members. The selection process starts with the appellate court creating a pool of 25 nominees, ten from each of the two largest parties and five not from either of the two largest parties. The four legislative leaders each appoint someone from the pool. These four appoint a fifth commissioner from among the independents, and this commissioner serves as chair. If the four deadlock on this crucial tie-breaking spot, the appellate court appoints the chair.

California's Citizens Redistricting Commission (CRC) was also created via ballot initiative. Originally tasked with drawing state legislative districts, its mandate was expanded by another ballot initiative in 2010 to include drawing the state's Congressional districts. The CRC is unique for its complex process for selecting commissioners and for its supermajority voting rules for adopting district plans. The members of the CRC testifying after me can shed light on how these rules worked in practice.

Arizona and California's commissions are often referred to as "independent commissions." Another type of commission is the bipartisan commission, such as the one in New Jersey that draws Congressional maps. There, the first twelve members are political appointees. Two are appointed by each of the four legislative leaders, and two are appointed by each of the major parties. Those twelve select the 13th member, who cannot have held an elected office or an office in a political party for at least five years prior to being selected. Some have referred to this plan as "shuttle diplomacy," with the 13th member acting as the chief diplomat.

Ohio will use a new, hybrid model for congressional redistricting for the first time in the next redistricting cycle. Created by the legislature and approved by voters last year, it uses a combination of legislative supermajority voting rules and backup commissions. Under the system, the legislature has the first opportunity to draw the state's Congressional districts. If it can pass a plan with both 60 percent approval and at least 50 percent approval from the minority party, the process is complete and the plan is adopted. If the legislature is unable to do so, the task moves to the redistricting commission that draws legislative lines. If this commission is also unsuccessful, the job comes back to the legislature. It can pass a 10-year plan with one third of the minority party's vote, or it can pass a 4-year plan with a simple majority. In the latter case, the entire process starts over again four years later.

Some observers say that the criteria used are even more important than who is using them. Criteria that apply nationwide include the one-person, one-vote rule and the Voting Rights Act. All 50 states supplement these federal rules with criteria of their own. These are found

mostly in constitutions, but can also be set in statute, or in guidelines adopted by legislatures or committees. These criteria can and do conflict at times. Some observers think it is better to prioritize them to avoid conflict, and others say that flexibility is needed. In any case, a fair amount of legislation has been introduced in the last few years relating to criteria.

In addition to traditional criteria such as compactness and contiguity, some states are adopting newer, different rules for drawing districts. In 2010 Florida added, by ballot initiative, this phrase to its constitution: “no apportionment plan or district shall be drawn with the intent to favor or disfavor a political party or an incumbent.” This favor/disfavor language is becoming more common. Other so-called “emerging” criteria include prohibiting the use of political data (five states), as well as competitiveness (three states). In 2015, Ohio adopted a new criterion that says: “The statewide proportion of districts whose voters, based on statewide state and federal partisan general election results during the last ten years, favor each political party shall correspond closely to the statewide preferences of the voters of Ohio.”

Other states are placing a greater emphasis on public input, most commonly by holding hearings across the state to receive public comment. This can include officials accepting publicly-drawn maps for consideration.

In some circumstances, a state is unable to get a plan enacted and through the courts. The majority of states lack an enumerated backup mechanism for adopting district lines, meaning the task usually falls to judges. But in six states, a back-up commission is called into play, either for legislative or Congressional maps. Not surprisingly, how these back-up commissions work varies. All but the Indiana commission for Congressional plans are mentioned in state constitutions. The Indiana plan is statutory. In another three states, the state Supreme Court is designated as the back-up to the legislature or commission. In some states, these backup mechanisms are frequently used. In Connecticut, the back-up commission has been called into action for at least the last three cycles. The members of it have been the same as those who formed the original legislative committee, plus a new fifth member who is chosen for his or her negotiating skills.

With that, I want to thank you again, Mr. Chairman. If I can, I will answer any questions the Committee may have.

NATIONAL REDISTRICTING OVERVIEW: PENNSYLVANIA HOUSE STATE GOVERNMENT COMMITTEE

BEN WILLIAMS

SEPTEMBER 18, 2019



WHAT DOES NCSL DO?

- Serves 7,383 legislators and 30,000 legislative staff
- Provides non-partisan research & analysis
- Links legislators with each other and experts
- Speaks on behalf of legislatures in D.C.

I WILL ANSWER (IN BRIEF):

- Who does redistricting?
- How do redistricting processes vary?
- What criteria are used?
- What happens if a plan isn't passed?

WHO DOES REDISTRICTING?

- **The legislature**

State Legislative Plans:

36 states

Congressional Plans:

41 states

- **Commissions or Boards**

State Legislative Plans:

14 states

Congressional Plans:

9 states

WHAT YOUR NEIGHBORS DO

- WV, MD, DE: Legislature draws both legislative and congressional lines
- NY: advisory commission draws lines for legislature to vote on
- NJ: two separate bipartisan commissions for legislative and congressional lines
- OH: complex hybrid system

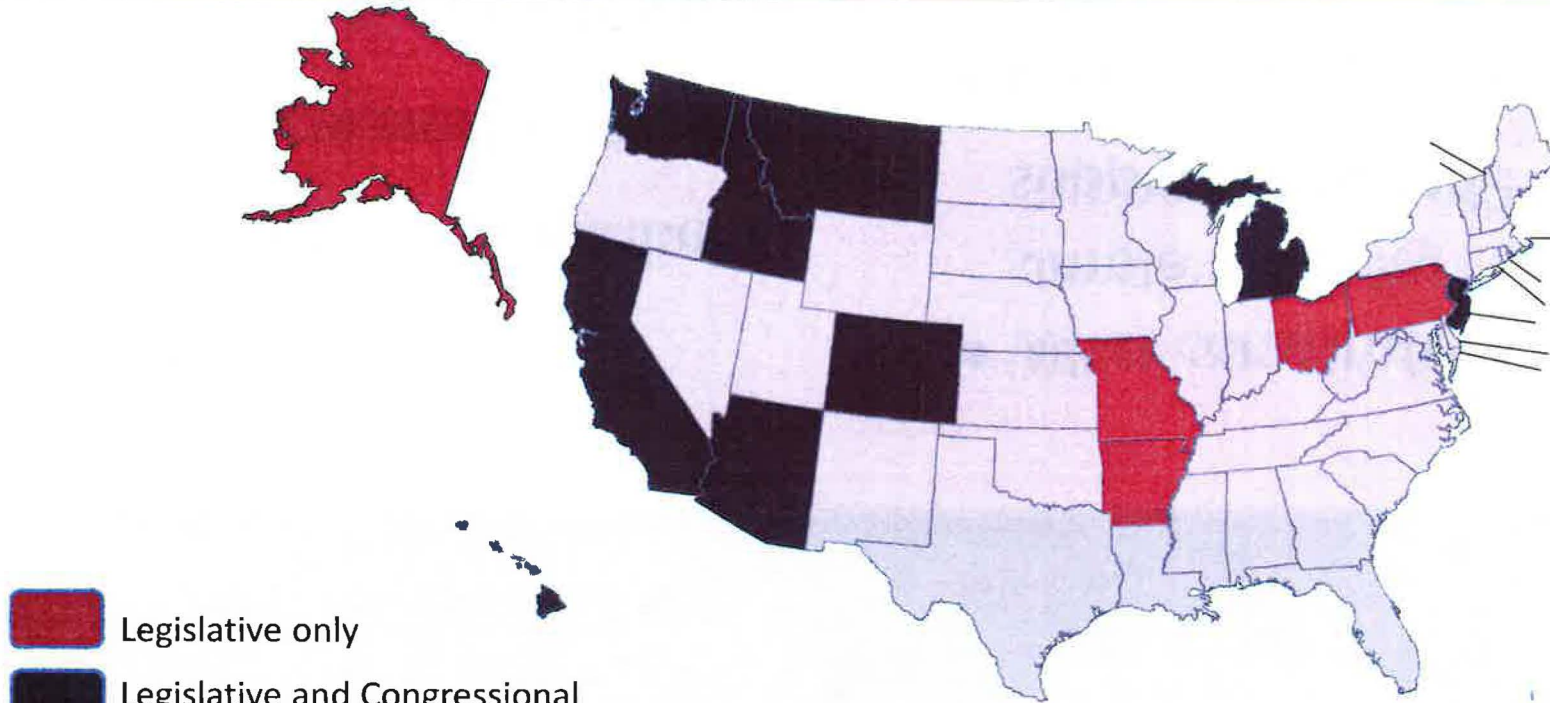
LEGISLATIVE VARIATIONS

- 2 states wait until the “3” year
- 4 have odd-year elections
- A dozen redistrict in special sessions
- 4 bypass the governor (for one or both kinds of maps)
- Some require more than a majority vote
- Various back-up systems

IOWA IS UNIQUE

- Nonpartisan staff draws maps
- Don't use political data such as party registration or addresses of candidates
- Legislature votes plan up or down
- Since 1970s, always voted for it

COMMISSION STATES



- Legislative only
- Legislative and Congressional

AS GU MP VI PR



COMMISSION VARIATIONS

- Size
- Who appoints members
- Qualifications for members
- Legislative, Congressional or both?
- What constitutes passage—a simple majority? Is bipartisan support required?
- Primary responsibility, advisory or back-up?

ARIZONA'S INDEPENDENT REDISTRICTING COMMISSION

- 5 member commission
- Starts with a pool of 25 (10 Ds, 10 Rs, 5 of neither party)
- Legislative leaders appoint 4; those 4 choose chair from the nonpartisan group
- Has survived several court challenges

CALIFORNIA'S CITIZEN REDISTRICTING COMMISSION

- 13 member commission (5 Ds, 5 Rs, 4 of neither party)
- Extensive eligibility requirements
- Complex selection process
- Must have a vote with support from Ds, Rs and independents
- Used for one cycle only so far

NEW JERSEY'S CONGRESSIONAL REDISTRICTING COMMISSION

- 13 members
- 2 appointed by each of 4 legislative leaders; 2 appointed by each major party
- 13th is an “independent member” chosen by members (or by Supreme Court)
- If commission fails, Supreme Court selects between two best plans

OHIO'S HYBRID SYSTEM FOR CONGRESSIONAL DISTRICTS

- 2018 legislature proposed “hybrid” plan for Congressional redistricting; ratified by voters the same year
- Complex multi-step process that requires supermajority voting rules to approve plans; if the legislature fails to do so, backup mechanisms are triggered

FEDERAL (NON-NEGOTIABLE) REQUIREMENTS

- Equal Population (Art. 1, sec. 2 U.S. Constitution)
- Comply with the 14th Amendment
- Comply with Voting Rights Act of 1965, as renewed by Congress in 2006

TRADITIONAL DISTRICTING PRINCIPLES

- Contiguity (50 states)
- Compactness (40)
- Preservation of Political Subdivisions (44)
- Preservation of Communities of Interest (25)
- Preservation of Cores of Prior Districts (10)
- Avoid Pairing Incumbents (11)

EMERGING CRITERIA

- Prohibit favoring/disfavoring parties, incumbents and/or candidates (14 states)
- Prohibit use of political data (5)
- Competitiveness (3)
- Proportionality/symmetry between statewide vote share and a party's seats in a legislative chamber (2)

PUBLIC INPUT

- A relatively new concept in redistricting
- Includes the following concepts:
 - Requiring a public map-making option
 - Requiring public hearings before and after maps are drawn
 - Requiring a minimum time period between introducing a plan and voting on it

PLAN B?

- Back-up Commissions
 - Congressional plans: CT and IN
 - Legislative plans: CT, IL, MS, OK, TX
- Courts are designated as the back-up: FL, ME, WA

BEN WILLIAMS
NATIONAL CONFERENCE OF STATE LEGISLATURES
BEN.WILLIAMS@NCSL.ORG
303-364-7700



California Citizens Redistricting Commission
Written Testimony to PA State House Government Committee
September 18, 2019

The California Citizens Redistricting Commission is pleased to provide written testimony about California's independent redistricting experience. This document is based on what was submitted to the State Senate Government Committee for the 4/24/18 hearing in response to their specific questions, with some additions. We have also provided as an attachment the narrative portion of our Final Report, mandated by the California Constitution, which explains the rationale for each of the electoral districts we created. The full report including all appendices is available to the public on our website at:

<https://wedrawthelines.ca.gov/maps-final-drafts/>.

Responses to the Committee's Questions:

Would you walk us through the process of how the California Citizens Redistricting Commissioners were selected?

It was a complex and comprehensive application process conducted by the nonpartisan California State Auditor's (CSA) office:

- 1. Over 36,000 Californians completed a short online form that checked for conflicts of interest and basic requirements (e.g must have voted in 2 of the last 3 statewide general elections, must not have switched parties in the past 5 years).*
- 2. Almost 30,000 applicants passing the initial screen were then asked to complete the Supplemental Application, which included essay questions, 3 letters of recommendation, education and career history, and disclosure of personal/family conflicts of interest and finances.*
- 3. Almost 5,000 complete applications were screened by the Applicant Review Panel (ARP), consisting of 3 auditors: a Democrat, Republican and one from neither of the two largest parties. The ARP was selected randomly from a pool of auditors with at least 10 years of experience. In open meetings, the ARP reduced the candidates to 120 applicants who reflected the diversity of California in 3 partisan pools: 40 Democrats, 40 Republicans, and 40 of neither of the major parties.*
- 4. The 120 remaining candidates were invited to interview in person with the ARP for 90 minutes. These interviews were open to the public, livestreamed, and recorded.*
- 5. The ARP submitted 60 qualified semi-finalists to the California Legislature for consideration: 20 Democrats, 20 Republicans, and 20 of neither of the major parties. The majority and minority leaders of the Senate and Assembly each exercised their rights to strike 2 from each of the partisan pools, reducing the applicants to 36 finalists: 12 Democrats, 12 Republicans, and 12 of neither of the major parties.*
- 6. The CSA selected the first 8 Commissioners randomly out of this qualified pool: 3 Democrats, 3 Republicans, and 2 of neither of the major parties.*



advanced degrees, the first 8 Commissioners received training from the state on legal and personnel matters prior to hiring staff and selecting the remaining 6 Commissioners. In addition, the entire CRC received training on the Voting Rights Act (VRA), redistricting, and line drawing. Trainers included the Director of the Statewide Database; Justin Levitt, Associate Dean of Loyola Law School; and our VRA Counsel.

Did the Commissioners also have full-time jobs while serving on the Commission? With the exception of 3 Commissioners who were retired and 1 stay-at-home mom, the remaining Commissioners had full-time employment or ran their own businesses.

How much time did an average Commissioner devote to the Commission's work? For those with other jobs, how did they balance their duties? During the 7 months after the CRC was fully seated and the final maps were due, the average hours likely ranged from 20 to well over 40+ hours per week, but the time commitment varied by week and role. The CRC chose shared leadership and rotated the roles of Chair and Vice Chair, spreading the burden. In addition, we formed 5 Advisory Committees and several ad-hoc committees of two Commissioners to address specific issues as they arose.

What was the total budget for the California Citizens Redistricting Commission? What were the main cost drivers? The initial budget was \$3MM, but with augmentation for actual expenses including post-map litigation, ended up at \$10.5MM. Initial recruitment and vetting of Commissioner candidates were a major cost, as was litigation. The retrospective cost analysis can be found here:

https://wedrawthelines.ca.gov/wp-content/uploads/sites/64/2012/06/handouts_20120605_crc_costreport.pdf

Why did you accept moneys from an outside foundation/group? Did anyone claim these contributions influenced the Commission's work in any way? If yes, how did you respond? The CRC did not accept any money from outside organizations during the line-drawing process or subsequent litigation period. As a state agency, the CRC is funded by the Legislature through the normal budgeting process. (A foundation did separately fund community organizations to support outreach.) However in 2017, years after our maps went into effect, the CRC was awarded a grant from Harvard Kennedy's Ash Center for Democratic Governance and Innovation to share the California model with other states. This does not constitute any contribution to the Commission's work in California. These funds are used solely to educate citizens in other states about the merits of California's independent redistricting model.

There have been repeated claims that the Commission was influenced by outside interests, in particular, the Democratic Party, because the resulting maps were perceived to be more favorable to Democrats. While both Democratic and Republican shills appeared before the Commission to testify, it is easy to confirm that this did not result in districts corresponding to their testimony. Instead, the changes reflected the unraveling of a bipartisan gerrymander that protected incumbents while ignoring demographic shifts over the previous two decades.

- 2.1. *Population equality*
 - 2.2. *Voting Rights Act compliance*
 - 2.3. *Contiguity*
 - 2.4. *Geographic integrity (respecting the boundaries of cities, counties, neighborhoods and communities of interest)*
 - 2.5. *Compactness*
 - 2.6. *Nesting (2 Assembly Districts in every Senate District; 10 SDs in every Board of Equalization district)*
3. **Diversity/Composition**—*The CRC's size enables it to fairly represent the diversity of the citizens of California. Its balanced, multi-partisan composition (and supermajority voting requirement) ensures that majority view prevails but minority views are protected.*

Three possible weaknesses:

1. **Limited Time to Draw Maps with a Public Process**—*Because of its very nature, the CRC requires time to consider public input and debate among itself in open meetings to agree on final maps. Democracy is a time-consuming process. Because California is usually the last state to receive census data (usually April), the time period to actually create the maps before the 8/15/2xx1 constitutional deadline will always be challenging.*
2. **Underfunding**—*Like the Census Bureau, the CRC is subject to government funding. This CRC was underfunded and was only able to achieve its mandate due to the resourcefulness of its staff and Commissioners, many of whom volunteered time and connections to reduce costs. It took significant effort by staff and the Legislature to augment the budget during the process.*
3. **Possibility of Deadlock**—*Under the current supermajority voting rules, any 3 Democrats or Republicans and any 2 of neither of the major parties can block approval of the maps. The CRC worked hard to ensure this did not happen in 2011, and the California Constitution provides a failsafe in case it happens: it goes to a panel of judges.*

What we would change: *The CRC considered a proposal to increase the number of Commissioners to 15, to make equal the pool of Commissioners from neither of the major parties. This would reduce the possibility of deadlock from only 2 Commissioners. The proposal was not submitted to the Legislature, but the Legislature did accept and pass amendments to increase the time for the CRC, seating the Commission a full year before the deadline and increasing the budget to \$12MM to reflect past expenditures and the longer period of operation—or about **3 cents per Californian per year**.*

Additional Information

The 2020 CRC selection process is underway. Close to 21,000 Californians applied. More information can be found at <https://shapecaliforniasfuture.auditor.ca.gov/>.

