A CITIZEN'S GUIDE
TO REDISTRICTING

JUSTIN LEVITT

WITH BETHANY FOSTER

ABOUT THE
BRENNAN CENTER FOR JUSTICE

The Brennan Center for Justice at New York University School of Law is a non-partisan public policy and law institute that focuses on fundamental issues of democracy and justice. Our work ranges from voting rights to redistricting reform, from access to the courts to presidential power in the fight against terrorism. A singular institution – part think tank, part public interest law firm, part advocacy group – the Brennan Center combines scholarship, legislative and legal advocacy, and communications to win meaningful, measurable change in the public sector.

ABOUT THE BRENNAN CENTER'S REDISTRICTING PROJECT

The Brennan Center is a leader in the fight for just and equitable redistricting procedures across the country. We are currently counseling advocates in the Midwest on how best to maximize their goals of diversity, accountability, and fairness through redistricting reform. Building on our analyses of successful and unsuccessful reform initiatives in states like Arizona, California, and Ohio, and our extensive study of redistricting practices nationwide, we have submitted testimony and helped draft legislation to shape and advance the reform agenda. We have also filed friend-of-the-court briefs in many of the major cases addressing the use of redistricting for undue partisan gain or at the expense of minority voters.

The Center offers top-flight legal and policy expertise to advocates and officials on the national and state level seeking to develop effective redistricting bills and initiatives. We facilitate consensus on policy goals and then translate those goals into language appropriate for legislation or ballot measures. The Center reviews and analyzes text drafted by others for potential constitutional and other legal problems. Once legislation is introduced, Brennan Center attorneys accept invitations to deliver written and oral expert testimony.

Finally, the Center's publications and public advocacy have amplified the values of redistricting reform: counting the population and redrawing the district lines in a way that is equitable, fair, and sensitive to diversity. In anticipation of the round of redistricting following the 2000 Census, the Brennan Center offered *The Real Y2K Problem*, an accessible analysis of the technical and legal issues facing legislators and reform advocates in redrawing the nation's legislative and congressional districts. Our publication *Beyond the Color Line?* focuses on the ramifications of redistricting, and the litigation that often results, for race and representation. Brennan Center attorneys have also authored numerous law review articles, magazine pieces, and opinion pieces detailing the promises and challenges of redistricting in the public interest.

ABOUT THE AUTHOR

Justin Levitt is counsel at the Brennan Center for Justice, focusing on redistricting, election administration, and other voting rights concerns. His work has included thorough research into the most pressing issues of election law and practice; publication of extensive studies and reports; assistance to federal and state administrative and legislative bodies with responsibility over elections; participation as *amicus curiae* in significant cases around the country; and litigation, when necessary, as counsel for parties seeking to compel states to comply with their obligations under federal law and the Constitution. He is the author or co-author of articles in both law reviews and peer-reviewed publications, and has also written many shorter commentaries for a more public audience. His Brennan Center monographs, including *The Truth About Voter Fraud* (2007) and *Making the List* (2006), have been cited extensively in national and local media, and recently, by the U.S. Supreme Court. Before coming to the Brennan Center, Mr. Levitt worked for a number of different civil rights and nonprofit voter engagement organizations, including as in-house counsel to one of the nation's largest voter registration and mobilization efforts.

ACKNOWLEDGMENTS

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Members of Congress and state legislators are elected from districts; at least once per decade, the district lines are redrawn, block by block. In most states, these legislative district lines are drawn by the legislators themselves.

The way the lines are drawn can keep a community together or split it apart, leaving it without a representative who feels responsible for its concerns. The way the lines are drawn can change who wins an election. Ultimately, the way the lines are drawn can change who controls the legislature, and which laws get passed.

REDISTRICTING MATTERS.

INTRODUCTION

Our representatives in local, state, and federal government set the rules by which we live. In ways large and small, they affect the taxes we pay, the food we eat, the air we breathe, the ways in which we make each other safer and more secure. Periodically, we hold elections to make sure that these representatives continue to listen to us.
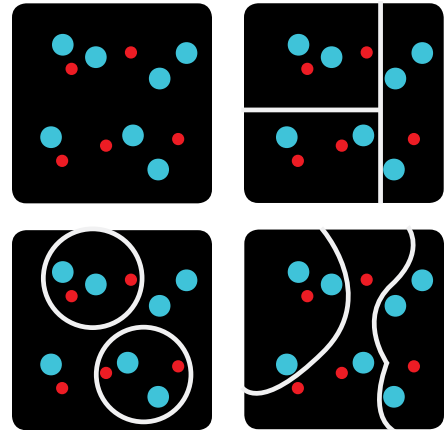
All of our legislators in state government, many of our legislators in local government, and most of our legislators in Congress are elected from districts, which divide a state and its voters into geographical territories. In most of these districts, all of the voters are ultimately represented by the candidate who wins the most votes in the district. The way that voters are grouped into districts therefore has an enormous influence on who our representatives are, and what policies they fight for. For example, a district composed mostly of farmers is likely to elect a representative who will fight for farmers' interests, but a district composed mostly of city dwellers may elect a representative with different priorities. Similarly, districts drawn with large populations of the same race, or ethnicity, or language, or political party are more likely to elect representatives with the same characteristics.

Every so often, a state's district lines – for both Congress and the state legislature – are redrawn, grouping different sets of voters together in new ways. Sometimes, the way that a particular district is redrawn directly affects who can win the next election. And together, the way that the districts are redrawn can affect the composition of the legislative delegation or legislature as a whole. Many believe that we would have different representatives, federal and state, if the district lines were drawn differently.

In addition to affecting large political trends, the way that district lines are drawn can have very specific consequences. For instance, in some cases, new lines may be redrawn to leave an incumbent's house out of the district she used to represent, making it difficult or impossible for her to run for re-election to represent most of her old constituents unless she moves. Other times, lines may be drawn to include the homes of two incumbents in the same party, forcing them to run against each other or retire, and in either case, knocking one of them out of the legislature. Often, sitting legislators from the party controlling the legislature are also in control of drawing new lines, leaving them free to target challengers, or legislators from an opposing party.

Occasionally, the process of redrawing district lines gets a lot of attention. In 2003, there was a big controversy in Texas; one party tried to redraw the district lines for Congress after a court had already redrawn the lines just a few years before, and legislators in the other party actually fled the state – twice – to try to stop the redrawing.

DIFFERENT REDISTRICTING PLANS

District lines group voters into districts, with each district electing a different representative. District lines can be drawn in many different ways.

More often, this "redistricting" gets much less attention in the press. But even when it does not make the front page, it is extremely important in determining which communities are represented and how vigorously – which is in turn extremely important to determining which laws get made.

There are many different ways to figure out which voters are grouped together to elect a representative. Whether the way that districts are currently drawn in any given state is good or bad depends on what you believe the goals of the process to be. Some stress objectivity; some independence; some transparency, or equality, or regularity, or other goals entirely. There is ample debate among scholars, activists, and practitioners about the role of political insiders, the nature of protection for minority rights, the degree of partisan competition or partisan inequity, and the ability to preserve established or burgeoning communities. But to date, this discussion has been inaccessible to most of the people directly affected.

This publication is intended to present the redistricting process for state and federal government, and for many local governments, in digestible parts. There are many moving components, complex issues that we attempt to describe in simple and straightforward fashion, piece by piece. This is a guide to the rules for drawing district lines – a description of how it works today, how it could work in the future, and what it all means. Consider it an owners' manual, for those who should own the process: we, the people.

RELATED TOPICS: Simulated Redistricting

After leafing through this **owners' manual,** feel like an entertaining and informative redistricting **test drive?**

At **www.redistrictinggame.org,** The Redistricting Game lets you draw and redraw the districts of a hypothetical state under several different scenarios, with instant feedback on the consequences. It's a good way to see for yourself how some of the parts of the redistricting process fit together.

WHAT IS REDISTRICTING?

I. WHAT IS REDISTRICTING?

We start with some definitions, to make sure that we are all talking about the same thing.

Even those who follow the issue may confuse three related terms: "reapportionment," "redistricting," and "gerrymandering." So what do they all mean?

Apportionment is the process of allocating seats in a legislature – two legislators here, three legislators there. On the federal level, the United States Constitution requires that seats in the House of Representatives be apportioned to states according to the population count in the federal census, conducted every ten years.[1] On the state level, most states maintain a fixed number of legislators, but some let the size of the legislature grow or shrink as the population grows or shrinks.[2] **Reapportionment**, then, is the process every ten years of deciding, based on population, how many representatives a state will receive.

Until the beginning of the twentieth century, the size of the House of Representatives grew as the United States population expanded and states entered the Union. For example, New York was assigned 6 federal Congressmembers in 1789, then 10 Congressmembers in 1790, and 17 Congressmembers in 1800 – and the House of Representatives grew accordingly.[3] However, in 1911 and 1929, Congress passed laws that ultimately fixed the number of House seats at 435.[4] Now, each state gets a portion of the 435 seats, depending on its population. After each census, states may therefore gain or lose House seats if their population grows more quickly or more slowly than the rest of the country.

For example, California grew substantially during the 1980s, and gained seven seats in the House after the 1990 census.[5] It gained an additional seat after 2000.[6] New York, on the other hand, lost population relative to other states; though it grew, it grew more slowly than the rest of the country. And the number of its Congressmembers dropped accordingly, falling from 34 to 31 after the 1990 census, and down to 29 after 2000.[7] The map to the right shows the seat shifts that resulted from the population shifts tallied by the 2000 census.[8]

If reapportionment is the process of figuring out whether New York has 29 federal Congressmembers, rather than 28 or 30, **redistricting** is how we know which New York voters each of the 29 Congressmembers represents. Put differently, after the number of legislators has been set, redistricting is the process of redrawing the lines of each legislative district. Representatives at all levels – school board, city council, state legislature, and Congress – may be elected from districts, and all of these lines are redrawn from time to time. The lines may be redrawn to account for big population shifts – for example, when an area has gained or lost seats through reapportionment. But they can also be redrawn at other times, for other reasons – or in a few states, for no reason at all. And redrawing the lines can have a substantial impact on how different

Reapportionment is the process of using a state's population to decide how many representatives it gets.

Redistricting is the process of redrawing legislative district lines.

Gerrymandering is the process of redrawing district lines to increase unduly a group's political power.

SEATS IN THE HOUSE OF REPRESENTATIVES, 2000

⊕ **GAINED SEATS**
⊖ **LOST SEATS**
○ **NO CHANGE**

ALABAMA	7		MONTANA	1
ALASKA	1		NEBRASKA	3
ARIZONA	8 ②		NEVADA	3 ①
ARKANSAS	4		NEW HAMPSHIRE	2
CALIFORNIA	53 ①		NEW JERSEY	13
COLORADO	7 ①		NEW MEXICO	3
CONNECTICUT	6 ①		NEW YORK	29 ②
DELAWARE	1		NORTH CAROLINA	13 ①
FLORIDA	26 ②		NORTH DAKOTA	1
GEORGIA	13 ②		OHIO	18 ①
HAWAII	2		OKLAHOMA	6 ①
IDAHO	2		OREGON	5
ILLINOIS	19 ①		PENNSYLVANIA	19 ②
INDIANA	8 ①		RHODE ISLAND	2
IOWA	6		SOUTH CAROLINA	6
KANSAS	4		SOUTH DAKOTA	1
KENTUCKY	8		TENNESSEE	9
LOUISIANA	7		TEXAS	32 ②
MAINE	2		UTAH	3
MARYLAND	8		VERMONT	1
MASSACHUSETTS	10		VIRGINIA	11
MICHIGAN	15 ①		WASHINGTON	9
MINNESOTA	8		WEST VIRGINIA	3
MISSISSIPPI	4 ①		WISCONSIN	8 ①
MISSOURI	9		WYOMING	1

1 9 9 2

2 0 0 2

SOURCE: IOWA LEGISLATIVE SERVICE BUREAU

RELATED TOPICS: A Vote for DC

Washington, DC is apportioned one federal representative … sort of. Rep. Eleanor Holmes Norton, Washington's at-large delegate in the House of Representatives, may sit on committees and participate in debate, but she is not allowed to vote.

Many Americans have joined the citizens of the District of Columbia – almost 600,000 people – in agitating for change, so that the District's residents will no longer suffer "taxation without representation."

Despite what some believe to be constitutional uncertainty, there is increasing support for a federal bill that would grant the District a vote in return for an additional representative for Utah.

Utah also believes that it has been denied adequate representation; the State claims that many of its citizens were not counted during the last Census because they were overseas at the time (for example, on missions on behalf of the Mormon church), and that the State's true population would merit an additional representative.

communities are grouped together. For example, the top map to the left shows Iowa's congressional districts drawn after the 1990 census, and the bottom shows the districts after the 2000 census; though the state kept the same number of districts, each district's borders changed substantially.

Gerrymandering refers to the manipulation of these district lines to affect political power. Every attempt to draw district lines has a political impact. But a gerrymander is a conscious and, according to opponents, undue attempt to draw district lines specifically to increase the likelihood of a particular political result. (Until a series of court decisions in the 1960s and 1970s, some insiders achieved similar results through **malapportionment** – assigning unequal numbers of people to districts, and making some votes worth less than others – instead of redrawing the district lines.) Some believe that most gerrymanders are a natural part of the political process; others believe that they represent a distortion from a more equitable norm.

Partisan gerrymandering occurs when the political party in control of the line drawing process draws districts to favor itself and limit opportunities for the opposition party. **Incumbent protection gerrymandering**, which is sometimes called "**bipartisan**" or "**sweetheart**" gerrymandering, occurs when those drawing the lines try to ensure that each party holds on to the districts it already controls, effectively divvying up the state to preserve the partisan status quo.

A BRIEF HISTORY OF REDISTRICTING

During the colonial period, long before the ratification of the Constitution in 1789, political insiders began to use malapportionment and other electoral structures for particular political gain. Redistricting is no exception. Patrick Henry, who opposed the new Constitution, tried to draw district lines to deny a seat in the first Congress to James Madison – the Constitution's primary author. Henry made sure that Madison's district was drawn to include counties that were more likely to oppose him.[9] The attempt failed, and Madison was elected – but the American gerrymander had begun.

It is ironic that the man who inspired the term "gerrymander" actually served under Madison, the practice's first American target. Just a few months before Elbridge Gerry became Madison's vice president, as the Democratic-Republican governor of Massachusetts, Gerry signed a redistricting plan that was thought to ensure his party's domination of the Massachusetts state senate. An artist added wings, claws, and the head of a particularly fierce-looking salamander creature to the outline of one particularly notable district; the beast was dubbed the "Gerry-mander" in the press, and the practice of changing the district lines to affect political power has kept the name ever since.[10]

In most states, the gerrymander is alive and well, and politicians still carve states into districts for political gain, usually along partisan lines. The particular rules have changed in some ways since the eighteenth century, but Elbridge Gerry and Patrick Henry would find many familiar elements in redistricting today.

*In the 1780s, **Patrick Henry** tried to draw congressional district lines to keep **James Madison** out of office.*

THE 1812 "GERRYMANDER"

WHY DOES REDISTRICTING MATTER?

II. WHY DOES REDISTRICTING MATTER?

The way that district lines are drawn puts voters together in groups – some voters are kept together in one district and others are separated and placed into other districts. The lines can keep people with common interests together or split them apart. Depending on which voters are bundled together in a district, the district lines can make it much easier or much harder to elect any given representative, or to elect a representative responsive to any given community. And together, the district lines have the potential to change the composition of the legislative delegation as a whole.

We discuss below options for drawing the district lines, and the effects they may generally have. To keep the discussion concrete, however, we first offer a few anecdotes from the last few rounds of redistricting, showing the substantial impact that these redistricting decisions can have on our elections.

LETTING POLITICIANS CHOOSE THEIR VOTERS

After the 2000 census, when it came time to redraw district lines in California, state Democrats controlled the state legislature and the Governor's mansion. Under California's rules, this let the party, and particularly the sitting Democratic legislators, control the redistricting process for both the state legislature and for California's Congressional delegation. However, Republicans threatened to put an initiative on the ballot, leaving the redistricting process to an uncertain public vote, if the Democrats got too greedy. Democrats also faced a threat that litigation over a redistricting plan would drive the process to the courts, potentially allowing the state supreme court – with six Republican appointees and only one Democratic appointee – to draw the lines. Ultimately, the two parties effectively decided to call a truce, and to keep the incumbents – of both parties – as safe from effective challenge as they could.[11]

Democrats paid Michael Berman, a redistricting consultant, more than $1.3 million to create the resulting redistricting plan. In addition, thirty of California's 32 Democratic members of Congress each gave Berman $20,000 in order to custom-design their individual districts for safety. As Rep. Loretta Sanchez explained: "Twenty thousand is nothing to keep your seat. I spend $2 million (campaigning) every year. If my colleagues are smart, they'll pay their $20,000, and Michael will draw the district they can win in. Those who have refused to pay? God help them."[12]

ELIMINATING INCUMBENTS

After the 2000 elections, just as Democrats controlled the redistricting process in California, Republicans controlled the redistricting process in Virginia. The Virginia Republicans used the redistricting pen to target Democratic Minority Leader Richard Cranwell, a 29-year veteran of the state legislature. They surgically carved his house, and 20 neighboring homes along the same street, out of the district he had represented, and placed them into the district of his 22-year colleague, Democrat Chip Woodrum. The resulting district crossed both county and town lines, and with what fittingly looked like a tiny grasping hand, reached out to grab Cranwell's residence.[13] Rather than run against Woodrum in what was essentially Woodrum's home district, Cranwell decided not to run for re-election in 2001.

ELIMINATING CHALLENGERS

In the 2000 Democratic primary for a Brooklyn, NY, state legislative seat, newcomer Hakeem Jeffries challenged long-time incumbent Roger Green, and won more than 40% of the vote.[14] Jeffries' strong showing set the stage for a potential rematch.

In the meantime, however, New York redrew its state legislative districts, in a process controlled by sitting legislators – including Roger Green. The redistricting process took the block where Jeffries' house was located and carved it out of Green's district.[15] With Jeffries out of the picture, no candidate ran against Green in the 2004 primary, and he won the general election in November with 95% of the vote. Two years later, Hakeem Jeffries was able to move to a house within the redrawn district in order to run for the seat; he won the district's primary election with 65% of the vote, and as the Democratic nominee in an overwhelmingly Democratic district, won the general election with 97% of the vote.[16]

PACKING PARTISANS

Just like they can be drawn around particular politicians, districts can be drawn around particular voters. There are many tools available to try to predict which voters will support a favored candidate, and those who draw the lines may try to put as many of those voters as possible within a given district, to protect incumbent legislators or give challengers a better chance, or to drain support for the opposition from neighboring districts. In so doing, the districts may split communities or stretch across vast swaths of a state.

NEW YORK ASSEMBLY 57
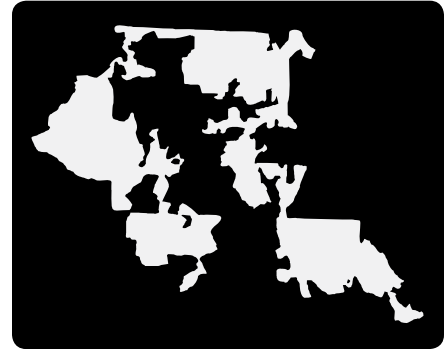

HAKEEM JEFFRIES' HOUSE

SOURCE: NEW YORK STATE LEGISLATIVE TASK FORCE ON DEMOGRAPHIC RESEARCH AND REAPPORTIONMENT

In 1991, for example, Texas's 6th Congressional District was designed to include as many loyal Republicans as possible, in part so that Democrats could control adjacent districts. As Supreme Court Justice John Paul Stevens described the district lines:

> To the extent that it "begins" anywhere, it is probably near the home of incumbent Rep. Barton in Ennis, located almost 40 miles southwest of downtown Dallas. . . . It skips across two arms of Joe Pool Lake, noses its way into Dallas County, and then travels through predominantly Republican suburbs of Fort Worth. Nearing the central city, the borders dart into the downtown area, then retreat to curl around the city's northern edge, picking up the airport and growing suburbs north of town. Worn from its travels into the far northwestern corner of the county (almost 70 miles, as the crow flies, from Ennis), the district lines plunge south into Eagle Mountain Lake, traveling along the waterline for miles, with occasional detours to collect voters that have built homes along its shores. Refreshed, the district rediscovers its roots in rural Parker County, then flows back toward Fort Worth from the southwest for another bite at Republican voters near the heart of that city. As it does so, the district narrows in places to not much more than a football field in width. Finally, it heads back into the rural regions of its fifth county – Johnson – where it finally exhausts itself only 50 miles from its origin, but hundreds of "miles apart in distance and worlds apart in culture."[17]

DILUTING MINORITY VOTES

When the Texas legislature next drew district lines, in 2003, there were further shenanigans. The redistricting battles were so bitterly fought that Democratic state legislators, then in the minority, fled to Oklahoma and New Mexico to prevent the state legislature from meeting; federal House Majority Leader Tom DeLay drew a formal ethics rebuke for using the FAA to try to track their plane.[18]

Among other things, the Congressional redistricting plan that emerged moved about 100,000 Latino voters from one district (District 23) into an adjacent district (District 25) in order to protect a particular incumbent.[19] The incumbent had lost support among Latinos in every election since 1996, and just before the lines were redrawn, Latinos had grown to a majority of the voting-age citizens in the district. Then the lines were redrawn, splitting off a sizable portion of the Latino community and replacing them in the district with voters more inclined to favor the incumbent.[20] The plan ended up at the Supreme Court, which recognized that, "[i]n essence, the State took away the Latinos' opportunity because Latinos were about to exercise it."[21] The Court forced Texas to redraw District 23, and the following year, the candidate of choice for the Latino community was elected.[22]

SPLITTING COMMUNITIES

In 1992, race riots in Los Angeles took a heavy toll on many neighborhoods, including the area known as Koreatown. It is estimated that the city suffered damages of more than $1 billion, much of it concentrated on businesses operated by Koreans and other Asian immigrants.[23]

When residents of these neighborhoods appealed to their local officials for assistance with the cleanup and recovery effort, however, each of their purported representatives – members of the City Council and the state Assembly – passed the buck, claiming that the area was a part of another official's district. The redistricting map, it turned out, fractured Koreatown. The area, barely over one mile square, was split into four City Council districts and five state Assembly districts, with no legislator feeling primarily responsible to the Asian-American community.[24]

WHEN ARE THE LINES REDRAWN?

III. WHEN ARE THE LINES REDRAWN?

Each state is responsible for drawing district lines both for its congressional delegation and for its state legislators.

This redistricting process usually starts with the federal Census, which takes place every ten years. In March of years ending in "0" (1980, 1990, 2000, etc.), the Census Bureau sends out questionnaires and census workers to count the population, and compiles basic demographic data like gender, age, and race.[25]

The Census Bureau spends the next few months adding up the data. By December 31st of years ending in "0," it sends population counts to the President.[26] The President, in turn, passes the population figures along to Congress, along with a calculation of how many federal Congressmembers are **apportioned** to each state, using a formula set by federal statute.[27]

Within one year of the federal Census, the Census Bureau also sends population data to the states.[28] This information includes population counts by age and race, down to individual blocks.[29]

As discussed below, in the 1960s, the Supreme Court ruled that legislative districts had to have approximately the same population, using figures that are reasonably up to date. For practical purposes, this means that district lines have to be redrawn at least once after every census, to account for population shifts.

Though the lines have to be redrawn after each census, in some states, district lines *may* be redrawn at any time – in the middle of a decade, even over and over. Other states have rules saying that district lines may not be redrawn before the next census, or that they may be redrawn only under certain circumstances – for example, if existing lines are struck down by a court. Moreover, most states have *different* rules for drawing congressional districts and for drawing state legislative districts. And some have no rules at all for when the district lines may be redrawn.[30]

*The next Census will take place in 2010. The **2012 elections** will be the first ones conducted using the newly drawn districts.*

RELATED TOPICS: Census Count

The official Census count determines how many federal representatives each state gets, and is usually essential for allocating state representatives to different parts of the state. There is evidence, however, that minorities, children, low-income individuals, and renters are systematically undercounted, resulting in underrepresentation in the legislature.

Moreover, incarcerated people – who are disproportionately minorities and poor – are generally counted where they are imprisoned, inflating representation of prison districts and diluting the voting power of the prisoners' home communities.

RELATED TOPICS:
Re-redistricting – Litigation & Legislation

In 2003, just two years after a court redrew Texas' congressional district lines, the Texas legislature redrew the lines again. A challenge made its way to the Supreme Court, but the Court refused to strike down the re-redistricting as unconstitutional. In the wake of the decision, three federal bills were introduced to prohibit states from redrawing congressional districts more than once per decade. Versions of these bills are once again pending in the 110th Congress.

REDRAWING STATE LEGISLATIVE DISTRICTS

- 🟠 **ONCE PER DECADE**
- 🔵 **AT ANY TIME**
- ⚪ **UNCLEAR**
- ⚪ **NO LAW**

REDRAWING CONGRESSIONAL DISTRICTS

- 🟠 **ONCE PER DECADE**
- 🔵 **AT ANY TIME**
- ⚪ **UNCLEAR**
- ⚪ **NO LAW**

There are upsides and downsides to redrawing district lines frequently. On the one hand, especially when the population is mobile, frequent redrawing makes it easier to tailor district lines as communities change shape. This may, in turn, make it easier for legislators to stay connected to the communities they represent. And if new population estimates are used when the lines are redrawn, it will also be easier to keep districts roughly the same size.

On the other hand, the ability to redraw districts as the population shifts will exaggerate the impact of drawing the lines. If districts are generally drawn to benefit a particular set of legislators or a particular political party, frequent redrawing lets the people with the pen tweak the lines repeatedly to address threats or opportunities in an upcoming election, and lock in their advantage. Frequent redrawing also means that constituents may be shuffled in and out of districts without the chance to hold their legislators accountable from one election to the next.

WHO REDRAWS THE LINES?

IV. WHO REDRAWS THE LINES?

Each state decides for itself – usually in the state constitution – who will draw district lines for its Congressmembers and for its state legislators.[31] And states have chosen many different ways to draw these lines. Though Congress is given the constitutional power to pass a federal law regulating the process in a uniform fashion nationwide for congressional district lines (and though several bills have been proposed), it has not yet done so.[32]

Most states put the power to draw district lines solely in the hands of the **state legislature**. This means that state legislators pass laws to create the boundaries for their own districts and for the state's Congressmembers. These laws are usually just like any other law, but sometimes involve a few special procedures. And usually, the governor can veto these laws – subject to an override by the legislature – just like any other law.[33]

In 22 states, entities other than the legislature, often called "commissions," may take part in the redistricting process. These commissions vary substantially from state to state, but even here, in nearly all instances, legislators have a say at some point in how their districts will be drawn.
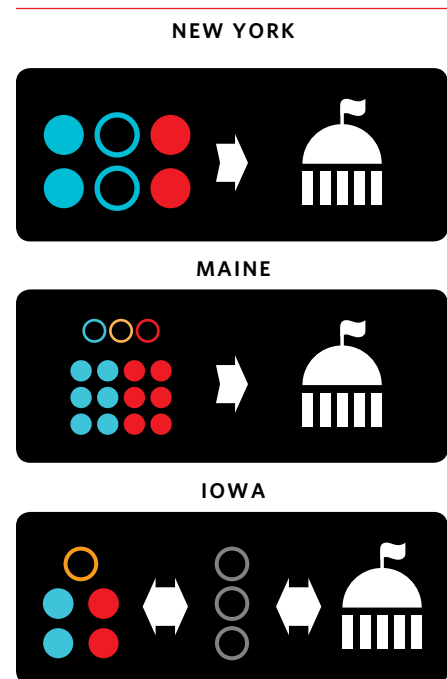
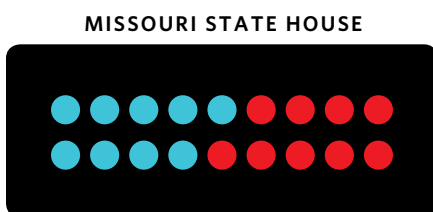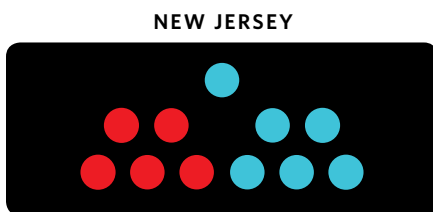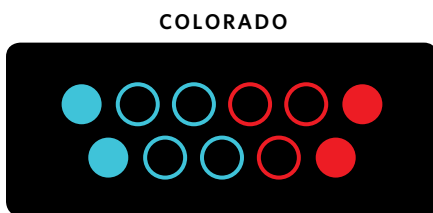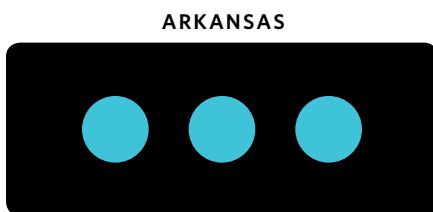Four states have **advisory commissions** to help draw lines for the state legislative districts.[34] (Ohio uses an advisory commission for its congressional lines.)[35] Advisory commissions recommend district plans to the legislature, but the legislature has the final say. The commissions vary widely. For example:

- New York's advisory commission has 6 members chosen by the majority and minority leaders of the legislature; some commissioners will also be legislators themselves. The way the commission is structured, there might be 4 Democrats and 2 Republicans, or 2 Democrats and 4 Republicans, or 3 of each, depending on partisan control of the legislature.[36]

- Maine's advisory commission has 15 members, with the legislative leadership and party chairs choosing some commission members, and those members choosing other members from the public. The structure is set up so that there will most always be an equal number from each major party, with one tiebreaker acceptable to both parties.[37]

- Iowa's advisory commission has a nonpartisan professional staff, advised by a five-member group appointed by the legislative leadership. There is an especially strong tradition of abiding by the commission's recommendations in Iowa; in fact, the legislature has to vote down two different plans proposed by the advisory commission before it can implement a plan of its own.[38]

In the figures below, blue and red represent partisan commissioners; orange represents commissioners chosen by members of both parties. Outline circles will not be current legislators; solid circles may be anyone.

NEW YORK

MAINE

IOWA

OREGON

TEXAS

ILLINOIS

ARKANSAS

COLORADO

NEW JERSEY

MISSOURI STATE HOUSE

Five states instead use a **backup commission** for their state legislative districts (Connecticut uses a backup commission for congressional districts as well, and Indiana uses a backup commission only for its congressional districts).[39] These backup commissions will step in to draw plans, but only if the legislature cannot agree on a districting plan in a timely fashion. Connecticut increases the chance that this backup commission will be called into action, by barring plans from the legislature without 2/3 support in each chamber.[40] Other states with backup commissions vary in other respects. For example:

- In Oregon, for example, the backup "commission" is really just the state's Secretary of State, who will draw the legislative districts if the legislature cannot come to an agreement.[41]

- Texas's backup commission is made up of the Lieutenant Governor, the Speaker of the House of Representatives, the Attorney General, the Comptroller of Public Accounts, and the Commissioner of the General Land Office – all of which are elected partisan posts.[42]

- In Illinois, the backup commission has 8 members chosen by the legislative leadership (half will be legislators, half not). If necessary, one tiebreaker is chosen at random from two names submitted by the Supreme Court, each nominee from a different political party.[43]

Still other states have commissions that do almost all of the work. Here too, the commissions look very different in different states.

At least for state legislative districts, seven states use what we'll call "**politician commissions**": either legislators or other elected officials can sit on the commission, but the legislature as a whole isn't involved.[44] Just as with the other structures above, each state is slightly different:

- In Arkansas, the commission is made up of the Governor, the Secretary of State, and the Attorney General.[45]

- In Colorado, the commission has 4 members picked by the legislative leaders, 3 picked by the Governor, and 4 picked by the Chief Justice of the Colorado Supreme Court. No more than six commissioners can be members of the same party, and no more than four can be legislators.[46]

- In New Jersey, each major party's state chair selects five commissioners. If these ten commissioners cannot agree on a plan by a set deadline, the Chief Justice of the New Jersey Supreme Court appoints a tiebreaker.[47]

- In Missouri, the lines for each house of the legislature are drawn by a separate commission. The commission drawing lines for the Missouri state house has 18 members; the parties each nominate two members from each congressional district, and the Governor picks one from each party for each district. The commission drawing lines for the Missouri state senate has 10 members; each party nominates ten members, and the Governor picks five from each party. Redistricting plans pass only if they have support from 70% of the commissioners.[48]

Finally, four states draw their congressional districts using **independent commissions** of five or six members of the public, largely chosen by the legislative leadership, but who are not themselves legislators or other public officials.[49] (Alaska has the same system for its state legislative districts, but has only one congressional district, and has no set rules for drawing congressional district lines.) This means that for the most part, legislators may have a role in picking the commissioners, but will not be able to pick the district lines themselves. As with the other examples above, there are several different models of independent commission. In Arizona, for example, four commissioners are selected by the legislative leadership, but they may only be chosen from a pool of nominees selected by the state's commission on appellate court appointments; those four commissioners then select a fifth tiebreaker of a different party or no party at all, by majority vote.[50] Washington has an independent commission chosen by the legislative leadership, but also lets the legislature tweak lines at the end of the process; once the commission has drawn a plan, if the legislature gets a 2/3 vote in each house, it can change the commission's plan on the margins – but only 2% of the population in any given district may be affected by such a legislative change.[51]

The summary above describes who currently draws the lines in each state. But as varied as these models are, there are still more possibilities. Some involve variants of the processes above. For example, one recent proposal would have established a commission of retired judges, chosen randomly from a pool nominated by legislative leaders (judges now draw the lines in many circumstances when other bodies fail to do so properly).[52] Another proposal would ask established non-legislative state bodies to nominate potential commissioners, and give legislative leaders a veto before choosing the commissioners themselves at random.

Other proposals are more radical departures from the status quo. Some have suggested letting **computers** draw the lines using automated algorithms. Some would allow members of the **public** to submit plans to be judged purely on quantitative criteria, like the plan that splits the fewest counties or the plan that creates the most competition (see below). Some have proposed **citizen commissions** selected by random lot.[53] Still others have put forth combinations of various pieces of the ideas above.

ARIZONA

COMMISSIONS FOR STATE LEGISLATIVE DISTRICTS

- INDEPENDENT
- POLITICIAN
- ADVISORY
- BACKUP

COMMISSIONS FOR CONGRESSIONAL DISTRICTS

- INDEPENDENT
- POLITICIAN
- ADVISORY
- BACKUP

CHOICES INFLUENCING WHO DRAWS THE LINES

Because the possibilities are virtually endless, it may help to think about the different ways of deciding who draws the lines by breaking the choices down into a few broad categories:

ROLE OF THE LEGISLATURE

Most states allow the legislature full control over the process of drawing lines from beginning to end. Some give the legislature first crack only. Some give others the first crack but allow the legislature the final word. Some (like Washington) let the legislature tinker only at the edges, changing districts set by others in minor ways. And some give no role to the legislature at all.

Giving the legislature a role has some pros and cons. Legislators, whose election depends on knowing their constituents, are particularly aware of where specific constituent communities are located in a geographic area; they may choose to use this knowledge to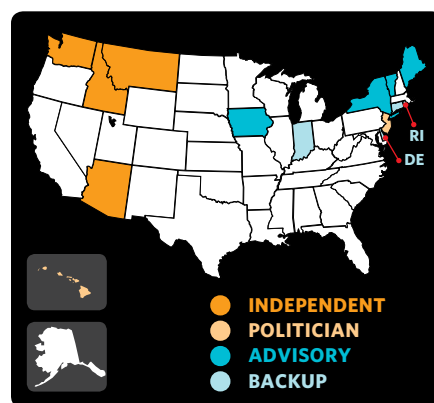 tailor districts so that those constituencies are adequately represented. Also, because legislators are elected, they are at least in theory directly accountable to the public in the event that district lines become controversial. (On the other hand, one of the ways in which legislators may use their redistricting power is to dilute the political voice of the groups most likely to oppose particular redistricting decisions.) Moreover, because there are always tradeoffs involved in drawing district lines, it may make sense to let the legislature – which has to confront tradeoffs constantly – handle the job, rather than creating a whole new institution to hammer out compromise.

Critics, however, point out that no other country allows self-interested legislators to draw the lines of the districts in which they run for office.[54] When the legislature is involved in drawing lines, the lines are more likely to overemphasize the interests of the party in control of the legislature, at least if the Governor is friendly or the legislature can override a veto. Moreover, when the legislature draws the lines, the lines are also more likely to emphasize the interests of some (or in some cases, all) incumbent legislators in getting re-elected. Because legislators who stay in office longer get more seniority, and are able to do more for their constituents, some people consider self-interested redistricting a good thing; because these same legislators may break up real communities in order to build districts more likely to re-elect them, many consider it a detriment.

ROLE OF INDIVIDUAL LEGISLATORS

By giving the legislature control of drawing the lines, most states necessarily involve legislators directly in the process. Some states move control to "politician commissions," where the legislature as a whole is not involved, but a few elected officials – usually legislative party leaders – become members of the commission. Arkansas gives control not to legislators, but to elected executive officials.

A few states have "independent commissions"; though elected public officials in these states are not themselves permitted to become commissioners, they are responsible for appointing commission members, and often select political insiders. Arizona limits this discretion by creating a nominee pool; though the legislative leadership chooses four of the five commissioners, they must make their selections from a pool of 25 nominees chosen by the state's bipartisan commission responsible for nominating appellate judges.[55]

The states with independent commissions also use other mechanisms to limit legislators' ties to those drawing the lines. All have some sort of forward-looking rule, preventing commissioners from running for office in the districts that they draw, at least for a few years after they draw the lines.[56] Idaho and Washington also look backward, preventing recent lobbyists from becoming commissioners.[57] Still other proposals would buttress the wall between legislators and those who draw the lines by declaring commissioner positions off-limits to relatives of legislators, or to recent staffers or consultants for legislators. A recent California proposal adds a further prohibition on those who have recently contributed more than a given amount to a candidate's campaign.[58]

Involving individual legislators – or allowing individual legislators to involve their staff or confidants, either as commissioners or as technical consultants for a commission – has many of the same effects as involving the legislature as a whole. Legislators may know their constituent communities especially well, and ensure that they are adequately represented. Individual legislators may also seek to preserve their own jobs, trying to draw the lines so that it is easier for them and harder for any promising challenger to win an election. When party leaders rather than individual legislators are involved, they may seek to serve the interests of their party's legislators, or they may try to boost party fortunes, even at the expense of individual members of the legislature.

PARTISANSHIP

In some states, the redistricting process may be set up to allow one political party to take control. For example, this may happen when the legislature draws the lines and one party controls the Governor's office and both houses of the legislature. Similarly, some commissions have an odd number of partisan members, putting one party effectively in charge. Illinois begins with an even number of members from each major party, but chooses a tiebreaker randomly, which lets one party ultimately take control.[59]

In other states, the process is designed to be bipartisan, as when an equal number of people from each major party sit on a commission; to get a majority, at least one commissioner from each party must vote for a particular plan.[60] In some cases, a commission consists of an equal number from each major party plus a tiebreaker either appointed by the judiciary,[61] or selected by the partisan commissioners themselves.[62] In Arizona, the tiebreaker must not be registered with any party already represented among commissioners chosen by the legislative leadership.[63]

There are also other ideas that are not yet in place in any state. Some of these proposals would create multipartisan commissions, with commissioners from third parties or who are not registered with any major party, in addition to Democrats and Republicans.[64] And some proposals would not let anyone registered with a political party draw the district lines.

Each of these models or proposals has its critics. Allowing one political party to control the process of drawing the lines can lead to a plan that tries to maximize that party's seats in the state legislature or in Congress, or make as many seats as possible "safe" for one party, at the expense of supporters of opposing parties. On the other hand, a process designed to be bipartisan or multipartisan may ratify bipartisan or incumbent protection gerrymanders, or allow the minority party or parties to draw lines that make it easier to win more seats than otherwise justified by their level of support. And critics are very skeptical of purported nonpartisans; they say that aiming for a nonpartisan process either involves people who don't know enough about political communities to make reasoned choices, or gives people with hidden partisan preferences – whether commissioners or the consultants or technicians who serve as staff to a commission – license to act under the radar.

VOTING RULE

In most states, a redistricting plan can pass if it wins a simple majority of the votes of the people drawing the lines. Some states, however, require a **super-majority**: more than just over half.[65] In Maine, a plan needs 2/3 of the votes to pass; in Missouri, it needs 70%.[66] In Connecticut, a backup commission will draw the lines if a plan does not get 2/3 of the votes in the legislature.[67] These sorts of supermajority requirements tend to produce broad compromise plans, because they give an effective veto to a small number of members. If legislators are themselves involved in drawing the district lines, this structure may lead to a compromise decision to just maintain the existing lines, or tweak the districts so that incumbent legislators have an easier chance to win their elections.

SIZE

Redistricting bodies range in size from 424 legislators in New Hampshire to just three executive officials in Arkansas. The more people who are involved, the more opportunity there is to make sure that those drawing the lines reflect the diversity of the state. However, involving more people also makes it harder to come to a consensus on where the lines should be drawn.

DIVERSITY

Because district lines make it more likely that certain interests will be represented and others ignored, many forms of diversity are relevant in deciding who draws the lines – including geographic, ethnic, racial, and partisan diversity. When the legislature is in charge of drawing the lines, those with the pen will at least be as diverse as the legislative majority. When commissions draw the lines, though, some states have extra rules to make sure that the commission is diverse. As discussed above, several states try to ensure that their commissions have a balance of partisan members. Other states may require that one or two commissioners be chosen from each of several geographic regions.[68] Still other proposals (not yet in place in any state) ask those who are picking the commissioners to make sure that the commissioners reflect the racial or ethnic diversity of the state.

In general, the more the body drawing the lines represents the diversity of the state itself, the more likely it is that the final district plan will fairly balance the various interests and communities in the state – though diversity on the redistricting body itself is no guarantee that the final plan will represent diverse interests.[69] On the other hand, the more diverse the membership, the harder it may be to come to a consensus on where the lines should be drawn.

ROLE OF THE COURTS

In a few states, a judicial official has some say in determining who draws the legislative lines. In Mississippi, the Chief Justice of the Supreme Court is him- or herself a member of the five-person backup commission that draws the lines if the legislature cannot agree on a plan.[70] In Alaska, the Chief Justice of the Supreme Court appoints one of the state's five commissioners; in Colorado, the Chief Justice appoints four of the eleven commissioners.[71] And in New Jersey, if the ten appointed bipartisan commissioners cannot agree on a plan, the Chief Justice will appoint a tiebreaker.[72]

Judges have little direct stake in the contours of particular legislative district lines, and may appoint individuals who similarly have little direct stake in the outcome of the redistricting process. Some judges, however, have more distinct loyalties. Particularly in states where judges are elected in partisan contests or have strong partisan ties, there may be pressure to use the redistricting or appointment power to further particular partisan ends.

Such inclinations may also be factors when the courts are called upon to draw district lines, when the regular process breaks down. Legislatures deadlock and can't come to an agreement. Commissions draw lines that are illegal and need to be revised in a hurry. Many times, those who feel they have "lost" in a redistricting plan will try to convince a court that the plan is illegal, and sometimes they are right. At that point, because of an upcoming election or because the primary line-drawers have proven incapable, the court may have to draw district lines itself.[73] Since 2000, courts have drawn district lines for at least one legislative chamber in at least eleven states.[74] As mentioned above, these may have partisan impact as well; studies have shown that judges who supervise the drawing of lines often adopt plans that favor the political party with which they identify.[75]

A few states provide for automatic review of any redistricting plan by the state's supreme court.[76] Such a rule generally speeds up the resolution of any conflict, though it is always possible that further litigation in federal court will follow. Moreover, these provisions also have their detractors: again, where judges have more pronounced partisan leanings, these loyalties may influence court decisions on a redistricting plan just as surely as they may influence the state legislature. And even if the courts do not actually draw the lines, the prospect of a judicial decision favoring one party may be used as a bargaining weapon by legislators or commission members from that party.

COMMISSIONS USED TO DRAW STATE LEGISLATIVE DISTRICTS[1]

	STRUCTURE	YEAR	SIZE	WHO SELECTS COMMISSIONERS	OTHER RESTRICTIONS ON COMMISSIONERS
AK	Independent Commission	1998	5	Governor selects 2 :: Legislative majority leaders select 1 each :: Chief Justice selects 1	1 commissioner from each of 4 judicial districts :: Cannot be public employee or official :: Cannot use party affiliation to select commissioner
AR	Politician Commission	1936	3	Governor, Secretary of State, Attorney General are the commissioners	
AZ	Independent Commission	2000	5	Commission on appellate court appointments nominates 25 (10 from each major party, 5 from neither major party) :: Legislative majority and minority leaders select 1 each :: Those 4 commissioners select 1 tiebreaker not registered with party of any of 4 commissioners	At most 2 commissioners from the same party :: At most 2 of first 4 commissioners from same county :: No public office for 3 years before appointment :: Cannot have switched party in last 3 years
CO	Politician Commission	1974	11	Legislative majority and minority leaders select 1 each :: Governor selects 3 :: Chief Justice selects 4	At most 6 commissioners from the same party :: At most 4 can be members of state assembly :: At least 1/at most 4 from each congressional district
CT	Backup Commission	1976	9	Legislative majority and minority leaders select 2 each :: Those 8 commissioners select 1 tiebreaker	Must be elector of state
HI	Politician Commission	1968	9	Legislative majority and minority leaders select 2 each :: 6 of those 8 commissioners agree on 1 tiebreaker	None
IA	Advisory Commission	1980	Bureau	Nonpartisan bureau draws lines for legislature to approve	
ID	Independent Commission	1994	6	Legislative majority and minority leaders select 1 each :: State party chairs of two major parties select 1 each	Must be registered voter in state :: Not lobbyist for 1 year before appointment :: Not official/candidate for 2 years before
IL	Backup Commission	1980	8 (9 if tie)	Legislative majority and minority leaders select 1 legislator and 1 non-legislator each :: Tiebreaker chosen if necessary by random draw from 2 names (1 of each party) submitted by Supreme Court	At most 4 commissioners from the same party
ME	Advisory Commission	1975	15	Senate majority and minority leaders select 2 each :: House majority and minority leaders select 3 each :: State party chairs of two major parties select 1 each :: Those 7 commissioners select 1 each from the public :: Those 7 "public" commissioners select 1 tiebreaker	None
MO	Politician Commission	1966	House: 18 Senate: 10	House: each major party nominates 2 per congressional district :: Governor chooses 1 per party per district (for 9 districts) Senate: each major party nominates 10 :: Governor chooses 5 per party	House: at most 1 nominee from each state legislative district within each congressional district Senate: none
MS	Backup Commission	1977	5	Chief Justice, Attorney General, Secretary of State, and the legislative majority leaders are the commissioners	

[1] *In the other states not represented in the chart, the legislature draws the district lines. If the legislature cannot agree on a plan, the Governor will draw the lines in Maryland; the Secretary of State will draw the lines in Oregon; and the process elsewhere is left to the courts.*

COMMISSIONS USED TO DRAW STATE LEGISLATIVE DISTRICTS (cont'd)[1]

	STRUCTURE	YEAR	SIZE	WHO SELECTS COMMISSIONERS	OTHER RESTRICTIONS ON COMMISSIONERS
MT	Independent Commission	1972	5	Legislative majority and minority leaders select 1 each :: Those 4 commissioners select 1 tiebreaker	2 commissioners from west counties, 2 from east :: Cannot be public official at the time
NJ	Politician Commission	1966	10 (11 if tie)	Each major party chooses 5 :: Tiebreaker chosen if necessary by Chief Justice	Selectors must "give due consideration" to representation of geographical areas of state
NY	Advisory Commission		6	Legislative majority leaders select 1 legislator, 1 non-legislator each :: Legislative minority leaders select 1 each	None
OH	Politician Commission	1967	5	Governor, State Auditor, Secretary of State are the commissioners :: Each major party's legislative leaders select 1 other commissioner	
OK	Backup Commission	1964	3	Attorney General, Superintendent of Public Instruction, State Treasurer are the commissioners	
PA	Politician Commission	1968	5	Legislative majority and minority leaders select 1 each :: Those 4 commissioners select 1 tiebreaker	Tiebreaker cannot be current public official
RI	Advisory Commission	2001	16	Legislative majority leaders select 3 legislators, 3 non-legislators each :: Legislative minority leaders select 2 legislators each	None
TX	Backup Commission	1948	5	Lt. Governor, Attorney General, Comptroller of Public Accounts, Commissioner of the General Land Office, and the House majority leader are the commissioners	
VT	Advisory Commission	1965	5	Chief Justice selects 1 :: Governor selects 1 from each major party :: Each major party selects 1	Gubernatorial and party appointees must be resident of state for last 5 years
WA	Independent Commission	1982	5	Legislative majority and minority leaders select 1 each :: Those 4 commissioners select 1 nonvoting chair	Must be registered voter :: Not lobbyist for 1 year or official/candidate for 2 years before appointment

[1] *In the other states not represented in the chart, the legislature draws the district lines. If the legislature cannot agree on a plan, the Governor will draw the lines in Maryland; the Secretary of State will draw the lines in Oregon; and the process elsewhere is left to the courts.*

	STRUCTURE FOR STATE LEGISLATIVE DISTRICTS	GOVERNOR CAN VETO PLAN?	2001 CYCLE PARTISAN CONTROL	STATE SUPREME COURT REVIEW
AK	Independent Commission	No	Democrat[2]	If citizen asks
AL	Legislature	Yes	Democrat	
AR	Politician Commission	No	Democrat	If citizen asks
AZ	Independent Commission	No	Bipartisan	
CA	Legislature	Yes	Democrat	
CO	Politician Commission	No	Democrat	Automatic
CT	Backup Commission	No	Republican Governor, Democratic Legislature ∷ no legislative agreement, bipartisan backup commission drew lines*	If registered voter asks
DE	Legislature	Yes	Democratic Governor, Democratic Senate, Republican House	
FL	Legislature	No	Republican	Automatic
GA	Legislature	Yes	Democrat	
HI	Politician Commission	No	Bipartisan	If registered voter asks
IA	Advisory Commission	Yes	Democratic Governor, Republican Legislature	If qualified elector asks
ID	Independent Commission	No	Bipartisan	
IL	Backup Commission	Yes	Republican Governor, Republican Senate, Democratic House ∷ no legislative agreement, Democratic backup commission drew lines*	
IN	Legislature	Yes	Democratic Governor, Republican Senate, Democratic House	
KS	Legislature	Yes	Republican	Automatic
KY	Legislature	Yes	Democratic Governor, Republican Senate, Democratic House	
LA	Legislature	Yes	Republican Governor, Democratic Legislature	

[2]   *Control by one party or another does not guarantee a partisan result, and bipartisan control does not preclude a result biased in favor of one party or another. This table lists only the inputs into the process.*

*   *In these states, the primary decision maker did not agree on district lines before the state's deadline. In some cases, a backup commission drew the lines; in other cases, a court took over.*

	STRUCTURE FOR STATE LEGISLATIVE DISTRICTS	GOVERNOR CAN VETO PLAN?	2001 CYCLE PARTISAN CONTROL	STATE SUPREME COURT REVIEW
MA	Legislature	Yes	Republican Governor, Democratic Legislature	If registered voter asks
MD	Legislature	No	Democrat	
ME	Advisory Commission	Yes	Independent Governor, split Senate, Democratic House ∷ no legislative agreement on Senate districts, court drew lines*	If citizen asks
MI	Legislature	Yes	Republican	If qualified elector asks
MN	Legislature	Yes	Independence Party Governor, Democratic Senate, Republican House ∷ no legislative agreement, court drew lines*	
MO	Politician Commission	No	Bipartisan ∷ no commission agreement, backup judicial commission drew lines*	
MS	Backup Commission	No	Democrat	
MT	Independent Commission	No	Bipartisan	
NC	Legislature	No	Democrat	
ND	Legislature	Yes	Republican	
NE	Legislature	Yes	Republican Governor, Nonpartisan Legislature	
NH	Legislature	Yes	Democratic Governor, Republican Legislature ∷ legislative plan vetoed, court drew lines*	
NJ	Politician Commission	No	Republican[3]	
NM	Legislature	Yes	Republican Governor, Democratic Legislature ∷ legislative plan for House districts vetoed, court drew lines*	
NV	Legislature	Yes	Republican Governor, Republican Senate, Democratic Assembly	
NY	Advisory Commission	Yes	Republican Governor, Republican Senate, Democratic Assembly	If citizen asks

[3]   *Although the commission's tiebreaker, Professor Larry Bartels, was selected by the state supreme court's Republican Chief Justice, Professor Bartels was not affiliated with either major party, and announced that he would vote based on criteria designed to foster partisan balance. Sam Hirsch,* Unpacking *Page v. Bartels, 1* ELECTION L.J. 7, 9-11 (2002).

*   *In these states, the primary decision maker did not agree on district lines before the state's deadline. In some cases, a backup commission drew the lines; in other cases, a court took over.*

	STRUCTURE FOR STATE LEGISLATIVE DISTRICTS	GOVERNOR CAN VETO PLAN?	2001 CYCLE PARTISAN CONTROL	STATE SUPREME COURT REVIEW
OH	Politician Commission	No	Republican	On request
OK	Backup Commission	Yes	Republican Governor, Democratic Legislature	If qualified elector asks
OR	Legislature	Yes	Democratic Governor, Republican Legislature :: legislative plan vetoed, Democratic Secretary of State drew lines*	If qualified elector asks
PA	Politician Commission	No	Bipartisan	If aggrieved person asks
RI	Advisory Commission[4]	Yes	Republican Governor, Democratic Legislature	
SC	Legislature	Yes	Democratic Governor, Republican Legislature :: legislative plan vetoed, court drew lines*	
SD	Legislature	Yes	Republican	
TN	Legislature	Yes	Republican Governor, Democratic Legislature	
TX	Backup Commission	Yes	Republican Governor, Republican Senate, Democratic House :: no legislative agreement, Republican backup commission drew lines*	
UT	Legislature	Yes	Republican	
VA	Legislature	Yes	Republican	
VT	Advisory Commission	Yes	Democratic Governor, Democratic Senate, Republican House	If 5 or more electors ask
WA	Independent Commission	No	Bipartisan	Automatic if plan is late, or if registered voter asks
WI	Legislature	Yes	Republican Governor, Democratic Senate, Republican Assembly :: no legislative agreement, court drew lines*	
WV	Legislature	Yes	Democrat	
WY	Legislature	Yes	Republican	

[4] *In 2001, Rhode Island created an advisory commission to assist with the particularly sensitive task of redistricting an assembly that had been "downsized" from 50 Senators and 100 Representatives to 38 Senators and 75 Representatives. It is not clear whether this advisory commission will be utilized again in the future. See 2001 R.I. Pub. Laws ch. 315; Parella v. Montalbano, 899 A.2d 1226 (R.I. 2006).*

* *In these states, the primary decision maker did not agree on district lines before the state's deadline. In some cases, a backup commission drew the lines; in other cases, a court took over.*

CONGRESSIONAL DISTRICTS: WHO DRAWS THE LINES

	STRUCTURE FOR STATE LEGISLATIVE DISTRICTS	STRUCTURE FOR CONGRESSIONAL DISTRICTS	GOVERNOR CAN VETO PLAN?	2001 CYCLE PARTISAN CONTROL FOR CONGRESSIONAL DISTRICTS
AK	Independent Commission	1 congressional district	n/a	n/a
AL	Legislature	Legislature	Yes	Democrat
AR	Politician Commission	Legislature	Yes	Republican Governor, Democratic Legislature
AZ	Independent Commission	Independent Commission	No	Bipartisan
CA	Legislature	Legislature	Yes	Democrat
CO	Politician Commission	Legislature	Yes	Republican Governor, Democratic Senate, Republican House ∷ no legislative agreement, court drew lines*
CT	Backup Commission	Backup Commission	No	Republican Governor, Democratic Legislature ∷ no legislative agreement, bipartisan backup commission drew lines*
DE	Legislature	1 congressional district	n/a	n/a
FL	Legislature	Legislature	Yes	Republican
GA	Legislature	Legislature	Yes	Democrat
HI	Politician Commission	Politician Commission	No	Bipartisan
IA	Advisory Commission	Advisory Commission	Yes	Democratic Governor, Republican Legislature
ID	Independent Commission	Independent Commission	No	Bipartisan
IL	Backup Commission	Legislature	Yes	Republican Governor, Republican Senate, Democratic House
IN	Legislature	Backup Commission	Yes	Democratic Governor, Republican Senate, Democratic House ∷ no legislative agreement, Democratic backup commission drew lines*[5]
KS	Legislature	Legislature	Yes	Republican

[5] *In Indiana, when the legislature cannot agree, congressional lines are drawn by a five-person backup commission composed of the majority leader and the chair of the apportionment committee in each legislative chamber, and a member of the assembly appointed by the Governor. In 2001, there were three Democrats and two Republicans on the commission. See* IND. CODE § 3-3-2-2; *Mary Beth Schneider,* Panel Adopts New Congressional Maps, INDIANAPOLIS STAR, *May 11, 2001.*

* *In these states, the primary decision maker did not agree on district lines before the state's deadline. In some cases, a backup commission drew the lines; in other cases, a court took over.*

	STRUCTURE FOR STATE LEGISLATIVE DISTRICTS	STRUCTURE FOR CONGRESSIONAL DISTRICTS	GOVERNOR CAN VETO PLAN?	2001 CYCLE PARTISAN CONTROL FOR CONGRESSIONAL DISTRICTS
KY	Legislature	Legislature	Yes	Democratic Governor, Republican Senate, Democratic House
LA	Legislature	Legislature	Yes	Republican Governor, Democratic Legislature
MA	Legislature	Legislature	Yes	Republican Governor, Democratic Legislature (veto overridden)
MD	Legislature	Legislature	Yes	Democrat
ME	Advisory Commission	Advisory Commission	Yes	Independent Governor, split Senate, Democratic House ∷ no legislative agreement, court drew lines*
MI	Legislature	Legislature	Yes	Republican
MN	Legislature	Legislature	Yes	Independence Party Governor, Democratic Senate, Republican House ∷ no legislative agreement, court drew lines*
MO	Politician Commission	Legislature	Yes	Democratic Governor, Republican Senate, Democratic House
MS	Backup Commission	Legislature	Yes	Democrat ∷ no legislative agreement, court drew lines*
MT	Independent Commission	1 congressional district	n/a	n/a
NC	Legislature	Legislature	No	Democrat
ND	Legislature	1 congressional district	n/a	n/a
NE	Legislature	Legislature	Yes	Republican Governor, nonpartisan Legislature
NH	Legislature	Legislature	Yes	Democratic Governor, Republican Legislature
NJ	Politician Commission	Politician Commission [6]	No	Bipartisan
NM	Legislature	Legislature	Yes	Republican Governor, Democratic Legislature ∷ legislative plan vetoed, court drew lines*

[6] *New Jersey uses a different politician commission for its congressional districts: the majority and minority leaders and the major state party chairs select 2 commissioners each (none of whom may be a member or employee of Congress), and those 12 commissioners select a tiebreaker by majority vote. N.J. Const. art. II, § 2, ¶ 1.*

* *In these states, the primary decision maker did not agree on district lines before the state's deadline. In some cases, a backup commission drew the lines; in other cases, a court took over.*

	STRUCTURE FOR STATE LEGISLATIVE DISTRICTS	STRUCTURE FOR CONGRESSIONAL DISTRICTS	GOVERNOR CAN VETO PLAN?	2001 CYCLE PARTISAN CONTROL FOR CONGRESSIONAL DISTRICTS
NV	Legislature	Legislature	Yes	Republican Governor, Republican Senate, Democratic Assembly
NY	Advisory Commission	Advisory Commission	Yes	Republican Governor, Republican Senate, Democratic Assembly
OH	Politician Commission	Advisory Commission	Yes	Republican[7]
OK	Backup Commission	Legislature	Yes	Republican Governor, Democratic Legislature :: no legislative agreement, court drew lines*
OR	Legislature	Legislature	Yes	Democratic Governor, Republican Legislature :: legislative plan vetoed, court drew lines*
PA	Politician Commission	Legislature	Yes	Republican
RI	Advisory Commission[8]	Advisory Commission	Yes	Republican Governor, Democratic Legislature
SC	Legislature	Legislature	Yes	Democratic Governor, Republican Legislature :: legislative plan vetoed, court drew lines*
SD	Legislature	1 congressional district	n/a	n/a
TN	Legislature	Legislature	Yes	Republican Governor, Democratic Legislature
TX	Backup Commission	Legislature	Yes	Republican Governor, Republican Senate, Democratic House :: no legislative agreement, court drew lines*
UT	Legislature	Legislature	Yes	Republican
VA	Legislature	Legislature	Yes	Republican
VT	Advisory Commission	1 congressional district	n/a	n/a
WA	Independent Commission	Independent Commission	No	Bipartisan
WI	Legislature	Legislature	Yes	Republican Governor, Democratic Senate, Republican Assembly
WV	Legislature	Legislature	Yes	Democrat
WY	Legislature	1 congressional district	n/a	n/a

[7]   *When Ohio's congressional redistricting took longer than expected, the legislature had to pull together a 2/3 majority to pass the plan as an emergency bill, which would take effect in time to avoid an expensive supplemental primary for congressional seats alone. See Lee Leonard,* Redistricting Compromise Reached, COLUMBUS DISPATCH, *Jan. 18, 2002.*

[8]   *This advisory commission was created to assist with redistricting given a reduction in the overall size of the legislature. It is not clear whether this advisory commission will be utilized again in the future. See the description above in the table of state legislative redistricting structures.*

*   *In these states, the primary decision maker did not agree on district lines before the state's deadline. In some cases, a backup commission drew the lines; in other cases, a court took over.*

HOW SHOULD THE LINES BE DRAWN?

V. HOW SHOULD THE LINES BE DRAWN?

Institutions that seem similar may draw lines using very different processes, and emerge with very different results.

STARTING POINT

A decision as simple as where to start drawing – from the southeastern corner of a state, for example, or from the northwest, or from the center – can substantially impact the final contours of the district lines. In most states, those drawing new lines start with the existing districts. Some, instead, start the map by drawing around minority communities, because of the priority of the federal Voting Rights Act (see below). Others start with a relatively regular box-like grid, and adjust as necessary.[77]

TIMING

The redistricting process always has one eye on the clock. The census distributes redistricting data to the states no later than April 1 of the first year of a decade: 1991, 2001, 2011, and so on.[78] In most states, districts must be redrawn for the next election; pragmatically, this means that district lines must be set, at the latest, by the filing deadline for the state's primary election, in the spring or summer of the decade's second year: 1992, 2002, 2012, etc.[79]

The vast majority of states actually set themselves deadlines far earlier than the candidate filing date. Most also set up interim time limits for different stages of the process: a proposed plan by *X* date, hearings by *Y* date, a final plan by *Z* date, usually anticipating the likelihood of litigation after a plan is passed. Some states with advisory bodies or commissions that draw the lines will get a head start by establishing those bodies, and picking commissioners, well before the census data arrives in April.[80]

If the clock runs out, a court or backup commission or elected official – depending on the state – will be charged with drawing district lines that reflect the new population counts. In order to ensure enough time to act, these institutions will usually begin the process of collecting data and reviewing potential plans well before the deadline for the primary decisionmaker.

The amount of time that each state devotes to each part of the redistricting process can affect the resulting district lines. For example, states that allow relatively little time for the primary redistricting body to negotiate over various proposals may be more prone to deadlock, leaving responsibility for the final district lines to the courts or other backup institutions. In states with more time, on the other hand, public hearings may reveal unintended consequences of a particular proposal, and allow the primary redistricting body to adjust the map accordingly.

TRANSPARENCY

In some states, only a few insiders have a meaningful chance to get involved with drawing the district lines. They may be on a committee within the legislature, or a technical advisory group, or one of the commissions discussed above. Decisions are made in secret, with little opportunity for those outside the room to have input into the district lines, or the communities that end up represented.

Other states open the process to the public. In 2002, at least 26 states made demographic or political data available and accessible, and at least 18 provided public access to computers or redistricting software that might otherwise cost thousands of dollars.[81] Many states hold public hearings.[82] They may accept potential maps from the public.[83] They may even publish proposed district lines and take specific feedback from the community.

Other proposals would go one step further, requiring that decisions be made entirely in the public eye. In these proposals, aside from conversations with their own staff or individual fellow commissioners, redistricting conversation would not be permitted behind closed doors.[84] All comments would have to be "on the record," for public distribution either at the time or after the maps are released.

Still other proposals take a different approach to transparency, allowing those drawing the lines to conduct business in secret, but forcing them to publicly justify the lines that they draw. They would have to produce a report at the end of the process, explaining why the districts were drawn as they were. That report would not only inform the public, but would also serve as contemporaneous evidence of the intent of the redistricting body in the event of a future court challenge.

Like the other variables, transparency has its tradeoffs. In the extreme, it can be hard to make politically unpalatable decisions if each step along the way is publicized in real-time. And though allowing the public to submit plans or forcing a body to justify its decisions in public need not interfere with the operation of a redistricting body, both require time that must be allocated in a busy redistricting season.

On the other hand, secrecy often breeds distrust, and may cause citizens to assume the worst about the motives of those drawing the lines. Moreover, members of the public are likely to know more about the effect of certain district configurations on local communities than legislators or commissioners who may be concentrating on the redistricting plan as a whole. Public comment is the best means to ensure that those who draw the lines get the best information on the impact of their choices.

DISCRETION AND CONSTRAINT

Finally, a practical note on discretion and constraint. As discussed below, different states have different legal rules for where the lines can be drawn. The more constraints there are, and the less discretion the line-drawers have, the less important it may be to choose one set of line-drawers over another. Some people want to make the rules on where to draw the lines so tight that one plan is the clear mathematical "winner." Some even advocate for programming a computer to draw the lines, though there are serious practical difficulties in doing so while trying to reconcile multiple objectives.[85]

Those who find intuitive appeal in an automated approach often point to the fact that automation limits the likelihood that maps will be manipulated by a few actors at the expense of others. "Automated," however, does not mean "neutral." Voters' homes are not randomly located across the countryside. Many of the rules susceptible to automated application have predictable consequences for the sorts of legislators likely to be elected.[86] For example, in 1969, districts for the Hinds County Board of Supervisors in Mississippi were ostensibly drawn to equalize road and bridge mileage within each district; the resulting plan had the effect of splintering the African-American urban core of the county, in the state capitol, Jackson.[87]

Moreover, many of the more familiar "mathematical" rules – like district shape and keeping counties intact and the like – are proxies for trying to keep together groups that people perceive as coherent communities. The tighter those rules are, the less flexibility there will be to adjust when a community doesn't stick to an ideal pattern.

Finally, even a computer has to be programmed, with rules deciding which constraints take priority over others. There is no way to avoid the hard work of balancing the tradeoffs involved in drawing district lines – the decision whether it is more important to draw districts that try to do X or that try to do Y. And that also means there is no way to avoid the hard work of deciding *who* should decide.

Because discretion can be abused, some have suggested eliminating discretion. But such tight constraints are rarely "neutral," and often have predictable, and potentially undesirable, effects.

WHERE SHOULD THE LINES BE DRAWN?

VI. WHERE SHOULD THE LINES BE DRAWN?

The people who draw district lines cannot simply divide a state up however they wish. To some extent, the federal Constitution and federal statutes limit where the lines can be drawn. In most states, the state constitution also imposes certain limits. And even when there are few legal limits, those with the pen use certain principles to guide where the lines should be drawn, each of which has its own tradeoffs. We next discuss the criteria that states must and may consider when redrawing their districts.

EQUAL POPULATION

For much of the 18th, 19th, and even 20th centuries, most legislative districts were made up of whole towns or counties, or groups of counties.[88] As the population shifted, however, some counties grew much larger than others – and accordingly, some legislative districts grew much larger than others. By the 1960s, for example, the biggest district in California (Los Angeles County) had 422 times as many people as the smallest district.[89]

In some cases, each district – each county – would be assigned a different number of legislative representatives, depending roughly on its population. In other cases, each district elected only one legislator. The population disparities quickly became extreme – and in the bigger districts, each individual vote was worth less. In California's state senate, for example, each district elected one Senator. And as a result, the vote of each citizen in the smallest district was worth 422 times more than the vote of each citizen in Los Angeles County.

In a series of cases starting in 1962 known as the "**one person, one vote**" cases, the Supreme Court decided this sort of disparity violated the Constitution. Now, when districts are drawn, each district's population must be roughly equal.[90]

There are two different standards for "equal" population in congressional districts and state legislative districts. In 1964, the Supreme Court set the bar for congressional districts very high, requiring equal population "as nearly as is practicable."[91] In practice, this means that states must make a good-faith effort to have absolute mathematical equality for each district within the state, and any differences must be specifically justified.[92]

For state legislative districts, the Supreme Court has allowed a bit more flexibility. These districts have to show only "substantial equality of population."[93] The Supreme Court has never said exactly how much equality is "substantial" equality. Over a series of cases, however, it has become generally accepted that the population difference between the largest and smallest state legislative districts (the "**total deviation**") may not be more than 10% of the average district population.[94] This is not an absolutely hard line: in some cases, a state

States consider some or all of the following **criteria** *when deciding where the lines should be drawn:*
- *Equal population*
- *Voting Rights Act*
- *Contiguity*
- *Compactness*
- *Political boundaries*
- *Communities of interest*
- *Electoral outcomes*

RELATED TOPICS: Measure of Population

Each Congressional district's population is based on the total number of residents, including children, noncitizens, and others not eligible to vote.

For state legislative districts, however, the law is less settled: most states count the total population, but some have proposed using voting-age population ("VAP") or citizen voting-age population ("CVAP").

These latter measures tend to equalize the voting power of each ballot, but leave many taxpaying residents under-represented.

Except for rare cases, **congressional districts** *must have almost exactly the same population. In contrast, the biggest and smallest* **state legislative districts** *can generally have a population difference of up to 10%.*

CALCULATING EQUAL POPULATION

DISTRICT #	POPULATION	DEVIATION
1	1,010	+ 1.0 %
2	1,035	+3.5 %
3	980	- 2.0 %
4	940	- 6.0 %
5	1,005	+0.5 %
6	990	- 1.0 %
7	965	- 3.5 %
8	1,020	+2.0 %
9	1,050	+5.0 %
10	995	- 0.5 %

Total population:	10,000
Average ("ideal") population:	1,000
Average deviation:	2.5 %
Total deviation:	11.0 %

may have a compelling reason for drawing districts with more than 10% population disparity,[95] and in some cases, a state's reasons may not be good enough to justify population disparities that are less than 10%.[96] But 10% seems to be a generally accepted federal constitutional benchmark.

A few states have gone beyond these federal limits. Some restrict the overall total disparity, to prevent particularly big or particularly small districts: Colorado, for example, says that there can be no more than a 5% difference between the biggest district and the smallest district,[97] and in Minnesota, the maximum deviation is 2%.[98] Iowa both limits the maximum deviation to 5% *and* says that the average deviation must be less than 1%, keeping all districts closer to the "ideal" population.[99]

Still other standards have been proposed but have not yet been put in place. For example, one standard would require groups of districts to reflect the appropriate proportion of the state population as a whole: 10% of the districts should have about 10% of the population, 20% of the districts should have about 20% of the population, and so on.[100] This measure allows flexibility for an individual district or two, while making sure that no substantial region of the state is systematically underpopulated or overpopulated.

Like all of the other criteria below, there are pros and cons to equal population rules more rigid than the constitutional requirements. Rigid equal population rules ensure that each person has the same representation as every other person. Because population is easy to measure, rigid equal population rules also limit the discretion of people who are drawing the lines in ways that are easily enforced by courts.

On the other hand, rigid equal population rules can force districts to cut up communities: if every district must be exactly the same size, a district may have to carve out part of a town or county or neighborhood. Rigid equal population rules can also cause districts to look strange, with lines drawn in irregular ways to exclude or include a particular number of people. Finally, rigid equal population rules can make it harder to draw districts that give minority citizens real opportunity to elect representatives of their choice; for example, in some cases, minority citizens may live in pockets that would make it possible for them to elect minority representatives in districts that are slightly smaller than average, but that would essentially make it impossible for them to do so in full-size districts.

MINORITY REPRESENTATION

The extent to which redistricting can account for race is a particularly delicate legal balance: essentially, states must account for race in some ways, but may not do so "too much." The Supreme Court has interpreted the federal Constitution to require a particularly compelling reason before a state can make the race of citizens the "predominant" reason for drawing particular district lines.[101] And the Court has also repeatedly implied that one such compelling reason is the use of race to comply with the federal Voting Rights Act.[102]

The Voting Rights Act was passed by Congress and signed by President Lyndon Johnson in 1965. As federal law, the Voting Rights Act overrides inconsistent state laws or practices, just like the federal constitutional equal population requirement overrides inconsistent state laws.

The Voting Rights Act was designed primarily to combat discrimination and intimidation that were used to deny African Americans and other minorities the right to an effective vote. And it has had a tremendous impact. The graph at right shows the number of African-American federal and state legislators elected, growing from 99 when the Act was passed to 650 today.[103] And including local offices, there are today more than 9,000 African-American elected officials, about 5,000 Latino or Hispanic public officials, and far more Asian Pacific American and Native American officials than ever before.[104]

Some parts of the Voting Rights Act are permanent, and some are set to expire unless they are renewed periodically. Two sections of the Voting Rights Act are particularly relevant to redrawing district lines: section 2 (which is permanent) and section 5 (which was last renewed in 2006).[105]

SECTION 2

Section 2 prohibits any voting practice or procedure that results in the "denial or abridgement" of anyone's right to vote based on race, color, or minority language status.[106] In 1982, Congress amended Section 2 to clarify that, specifically, it prohibited laws or practices that denied minority voters an equal opportunity "to participate in the political process and to elect representatives of their choice."[107] A violation of this type is sometimes called "**vote dilution**."
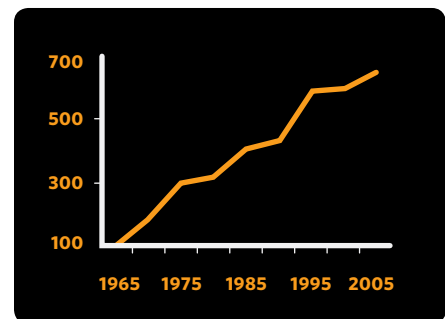
Many states had an ignominious history of using the redistricting process to dilute the vote of minority communities. In some cases, they would splinter a single community among many majority-white districts to eliminate minority voting power; in other cases, with larger minority populations, they would pack as many minority votes as possible into one district, to minimize the number of seats that minorities could control.[108]

AFRICAN-AMERICAN LEGISLATORS

RELATED TOPICS: Race and the Census

In 2000, the Census expanded the way in which it accounted for an individual's racial identity, by allowing a respondent to check multiple categories indicating her race or ethnicity.

Before 2000, redistricting data contained 9 racial and ethnic categories; now, there are 126 distinct categories to consider. In 2001, the Department of Justice explained that it would usually consider individuals with a multi-racial identity as belonging to each indicated minority group for Voting Rights Act purposes. Thus, a voter checking both Black and White would be tallied with the Black population when analyzing minority voting opportunities; a voter checking both Hispanic and Black would be tallied with both Hispanic and Black populations when analyzing minority voting opportunities.

Section 2 *requires states to draw districts*
where minorities have the opportunity to elect
a candidate of their choice if there is:

1. Large, compact minority population

2. Politically cohesive minority voting

3. Politically cohesive majority voting
   defeating minority candidates

+

Totality of the circumstances showing
diminished minority voting power

Section 2 provides some relief from such tactics. It gives voters the right to turn to the courts if, for example, a district could be drawn to give a minority community the opportunity to elect its candidate of choice, but the district lines instead split the community up into separate districts where its voting power is diluted. When litigants challenge a redistricting plan or part of a plan under Section 2, asserting that districts could be drawn to preserve minority voting power that is otherwise diluted, they must first show that:

- a minority population is sufficiently geographically compact (that is, living close together) that it would make sense to draw a district containing it;[109]

- the minority population (usually, the citizen voting-age minority population) is sufficiently large that it would have the opportunity to elect the candidate of its choice if it voted together;

- the minority population is "politically cohesive" – that is, that it usually votes for the same candidate; and

- the majority population usually votes for a different candidate, so that the majority population is usually able to defeat the minority-preferred candidate.[110]

When minority voters and majority voters reliably vote for different candidates, voting is said to be "**racially polarized**."

*In **majority-minority** districts, the majority of the voters are from the same minority racial or ethnic group. Some also include districts in which more than 50% of the voters are from two or more different minority groups, particularly if the different groups tend to vote in a similar pattern.*

*In **minority opportunity** districts, minorities have the opportunity to elect a representative of their choice. These are usually majority-minority districts, but in **minority coalition** districts, minority voters might comprise less than 50% of the district, and still elect their chosen representatives with support from some "crossover" white voters.*

*In **minority influence** districts, minorities constitute a sizable portion of the district, but cannot control the result of an election. There is substantial debate about the extent to which minority voters actually influence policy in such districts.*

If those attacking the plan can show that all of these conditions are satisfied, the court will then consider the "totality of circumstances": the total context in the state, including the extent of historical discrimination in voting and in other areas, and the extent to which minorities have been able to elect their chosen candidates anyway.[111] In the past, courts have paid particular attention to the proportion of districts controlled by minorities, compared to the minority percentage of the population – investigating, for example, whether a minority group with 10% of the population controls 10% of the districts.[112] If the court finds that, given the total state context, the power of the minority vote has been diminished, it may demand that a district be drawn to give the minority population the opportunity to elect a representative of its choice. Such districts are often known as "**minority opportunity districts**," or "**majority-minority districts,**" because minorities in such districts will usually constitute the majority of the voters. These districts do not guarantee that minority-preferred candidates will be elected, but they are drawn so that if the minority population all votes together, their candidate – who may or may not be a member of a racial or ethnic minority group – will usually win.[113]
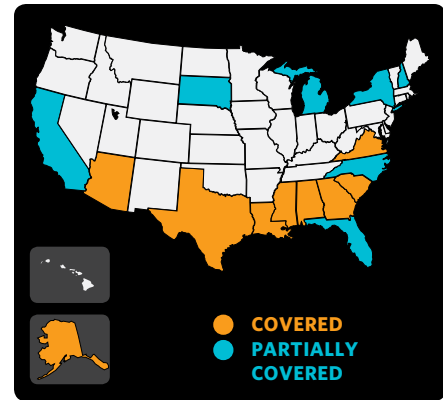
SECTION 5

Section 5 of the Voting Rights Act also addresses discrimination, but works a little differently.[114] It targets specific states and localities – "**covered**" jurisdictions – that historically erected barriers to the franchise for African Americans and other minorities. In particular, Section 5 targets areas that had low levels of voter registration or participation – much of which was tied to disenfranchisement of minority voters – in 1964, 1968, or 1972. After ten years of steps to improve opportunities for minority voting, a covered jurisdiction may ask the federal court in Washington, D.C. to be released from Section 5, in a procedure known as "**bailout**."[115]

For those areas still covered by section 5, the Voting Rights Act requires federal approval, either from the Department of Justice or from the federal court in Washington, D.C., before any change to a voting procedure may take effect. This covers changes as small as one or two new polling places and as big as new registration requirements for every voter in the state. It also covers changes to district lines. This process is called "**preclearance**."

New district plans will be precleared if they (1) are not intended to dilute racial and language minority votes, and (2) leave racial and language minority voters no worse off than they were before the redistricting, using old district lines but new population data.[116] Under section 5, minority losses in one region of a covered jurisdiction may be compensated by gains elsewhere, but if minority populations have fewer opportunities to elect candidates of choice, the new districts will not be approved.[117]

Other than drawing districts in order to comply with section 2 or section 5 of the Voting Rights Act, the courts have not clarified exactly when a state may take the race of voters into account for drawing district lines. If race is the "predominant" reason for the shape of a district – something the courts generally assess by looking at how irregular the district's shape is, and then trying to figure out whether other factors better explain the irregular shape[118] – then the use of race must be precisely tailored to meet a goal that the courts will find "compelling." There have been relatively few attempts to test the scope of this standard in the redistricting context.[119] If race is simply thrown in the mix with other factors in drawing the lines, courts may be more forgiving, but again, there have been few clear rules deciding how much is too much.

● COVERED
● PARTIALLY COVERED

See Appendix B for more detail.

Section 5 requires areas with historically low registration or voting rates to clear new district lines with the Department of Justice or the Washington, D.C. federal court. The new lines must leave minority voters no worse off than before.

**EFFECT OF VOTING RIGHTS ACTS,
100 MINORITY / 200 MAJORITY VOTERS**

AT-LARGE	(1 VOTE PER SEAT)		
	SEAT 1	SEAT 2	SEAT 3
Majority	200	200	200
Minority	100	100	100

DISTRICTS	(VRA) (1 VOTE TOTAL)		
	SEAT 1	SEAT 2	SEAT 3
Majority	35	80	85
Minority	65	20	15

VOTING RULE	(CVRA)(3 VOTES EACH)		
	SEAT 1	SEAT 2	SEAT 3
Majority	200	200	200
Minority	300	0	0

RELATED TOPICS: Cumulative Voting

In the most familiar American elections, voters make an either/or choice for one representative per district, and the candidate with the most total votes (the **plurality**) is the exclusive winner.

An alternative to this system is **cumulative voting:** several representatives are elected from the same district, and a voter has multiple votes, which she may give all to one candidate, or spread among several candidates.

Many corporations use a system like this. Illinois once used this method to elect its state representatives, but changed the rules in 1980. Cumulative voting is still used in some local communities, like Peoria, Illinois and Amarillo, Texas.

CUMULATIVE BALLOT

YOU MAY OFFER UP TO 3 VOTES

	1	2	3
Joe Smith	○	○	○
Henry Ford	●	●	○
Jane Doe	○	○	○
Mary Hill	○	○	●

RESULTS
2 votes for Ford, 1 vote for Hill

STATE VOTING RIGHTS ACTS

Several states offer protection for minorities that is based on, but not tied directly to, the federal Voting Rights Act. These states generally prohibit drawing districts with "the purpose [ ] or the effect of diluting minority voting strength."[120]

California's **state voting rights act** is perhaps the most clearly articulated of these provisions.[121] As compared to its federal counterpart, the California law simplifies the proof for vote dilution: minority voters need only show that voting in the jurisdiction is racially polarized, and that the polarized voting has interfered with their ability either to elect candidates of their choice or to influence the outcome of an election.[122] The California law also protects the voting rights of geographically dispersed minorities, perhaps even beyond the protections offered by the federal Voting Rights Act.[123]

The California Voting Rights Act applies to "**at large**" multi-member elections, where the voters elect several officeholders from the same district. Consider a city council election where all voters in the city can vote to fill three different seats; each voter casts one vote for each seat (three votes total), and the top three candidates win. Even if the city is one-third minority voters, if voting is "racially polarized" – if minority voters and majority voters reliably vote for different candidates – the majority population should consistently be able to beat the minority voters for all three seats.

If the minority population is sufficiently geographically concentrated, both the California law and the federal Voting Rights Act would probably force the city to divide up into three districts, with enough minority voters in one district to give them the opportunity to elect at least one city council candidate of their choice. But if the minority population is too spread out, some courts have been hesitant to apply the federal Voting Rights Act as a solution. This is where the California law steps in: it requires the city to remedy the harm, even if individual districts are not the most appropriate solution. If, for example, the city elected council members with a different voting rule, like **cumulative voting** – where each voter can cast three votes, however she likes (e.g., one vote for each of 3 candidates, or all 3 votes for one candidate) – the minority voters should be able to combine their voting strength on one candidate to have an opportunity to elect that candidate to at least one seat on the city council.

CONTIGUITY

Although not required by the federal Constitution or federal statute, contiguity is one of several redistricting principles considered "traditional" by the Supreme Court[124] – though scholars have questioned the extent to which such principles were actually followed historically.[125]

A contiguous district is simply a district where you can travel from any point in the district to any other point in the district without crossing the district boundary. Put differently, a contiguous district is a district where all parts of the district are connected to each other.

Water creates a special case for contiguity. Most people consider districts divided by a waterway to be contiguous if a bridge runs across the water; island districts are generally contiguous as long as the island is part of the same district as the closest mainland, as in Washington's 2nd Congressional District. In Hawaii, where there is no mainland to consider, the state constitution prohibits the drawing of "canoe districts" – districts that are spread across more than one major island group, where you need a "canoe" to travel between different parts of the district – unless the federal equal population requirements require combining two or more islands in a single district.[126]

Sometimes, though, states use water as an excuse to fudge what it means for parts of the district to be "connected." New York's Congressional District 12, for example, is only barely contiguous: the portions of the district in Manhattan are connected to the portions in Brooklyn and Queens, as many island districts are connected to larger land masses, by three bridges and numerous subway lines – but the portions of the district in Manhattan are connected to *each other* only by 900 feet of a single highway. And those drawing the lines didn't even pretend to connect the pieces of New York's state Senate district 60, or the two halves of New Jersey's congressional district 13.
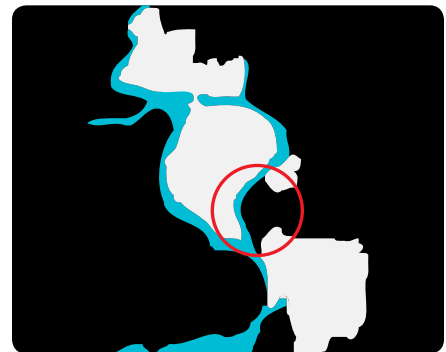
Sometimes city or town boundaries are not contiguous; this is often a product of annexations. This can, in turn, create non-contiguous legislative districts: Wisconsin's 61st assembly district, for example, is not contiguous, because it is drawn around portions of the city of Racine, which has a non-contiguous boundary.

Contiguity is one of the most common rules for drawing district lines. And to the extent that American districts generally represent geographic communities, it makes sense that no part of a district should be geographically separated from any other. On the other hand, it may be easier to represent communities that are not defined by geography – for example, voters of a certain race or political affiliation – by forming districts out of discrete pieces of a state, even when they are not contiguous.
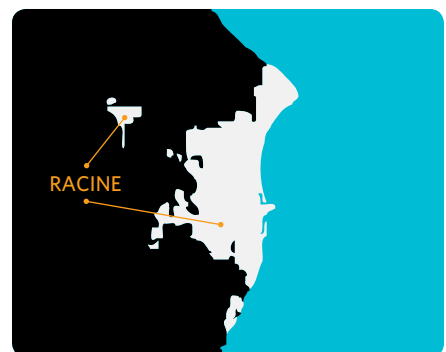
WA CONGRESSIONAL 2

NY SENATE 60

NJ CONGRESSIONAL 13

WI ASSEMBLY 61

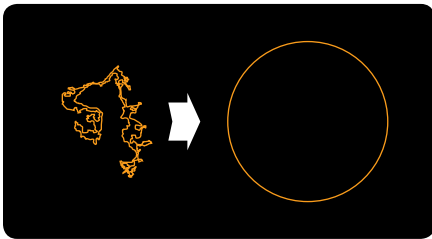
RACINE

COMPACT   **NOT COMPACT**

COMPACTNESS

Compactness has also been recognized as a "traditional" redistricting principle, though by many measures, districts were not, in the past, reliably compact.[127] Compactness is the only common rule for drawing a district that directly addresses the district's geometric shape. A district is generally considered compact if it has a fairly regular shape, with constituents all living relatively near to each other. A district shaped like a circle is very compact; a district with tendrils reaching far across a state is not.
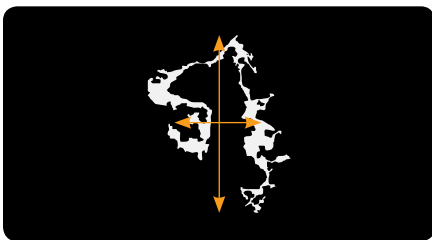
Beyond that I-know-it-when-I-see-it definition, there is little agreement about when a district is compact. Experts have proposed more than thirty different mathematical formulas to measure exactly how compact a district is.[128]

One set of compactness measures focuses on **contorted boundaries**: a district with smoother boundaries will be more compact, one with more squiggly boundaries will be less compact. Technically, these measures generally measure either the district's perimeter, the district's area as compared to the district's perimeter,[129] or the district's area as compared to the area of a circle with the same perimeter as the district (the "Polsby-Popper" test).[130] It may be easier to picture the last measure, currently used in Arizona,[131] by imagining a loop of string that follows the boundaries of a district, and then pushing that string out into a circle; the compactness formula compares the area of the district to the area of the circle.

POLSBY-POPPER MEASURE

Another set of measures focuses on the district's "**dispersion**," or how spread out it is: a district with few pieces sticking out from the center will be more compact, a district with pieces sticking out farther from the district's center will be less compact. There are a few versions of those formulas. One formula compares the district's height at its highest part to its width at its widest part. (Using this measure, if the district were rotated, it might have a different score.) Another formula compares the district's area to the area of the smallest circle (the "Reock" test)[132] or polygon that can be drawn around it.
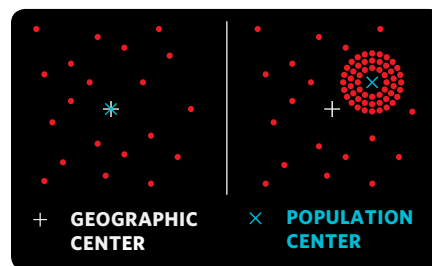
SOME MEASURES OF DISPERSION

Still another set of measures compares the district's shape to its population "**center of gravity**": looking at where the population in a district lives, a district with its population center close to its geographic center will be more compact, and a district where the centers are farther away will be less compact.[133] In the figure to the right, the geographic center and the population center of the district on the left are in the same place. In the district on the right, however, the "city" in the northeastern corner shifts the population center away from the geographic center, giving it a slightly lower compactness score than the first district.

No single measure is uniformly "best" at identifying what we think of as compact districts, or at distinguishing less compact lines in low-population areas from those that twist and turn to carve up population centers. For example, most people think that the 1992 map for Florida Congressional district 3 is not compact. A compactness measurement focusing on boundaries would fit with that intuition. However, some measurements focusing on dispersion (like overall width v. overall height) would say that the district was, against our expectation, relatively compact. Measures focusing on boundaries, in contrast, may not fit our intuition for districts that are very long and thin but smooth.
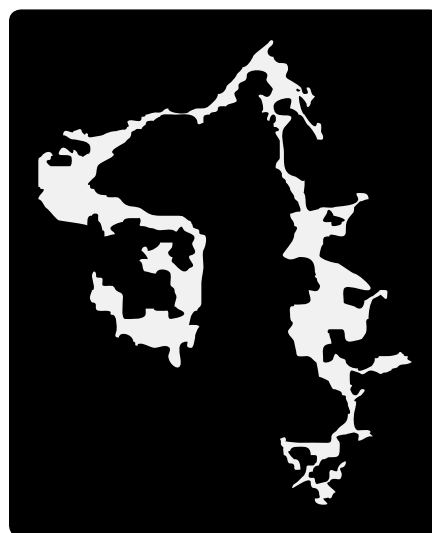
Most states that require compactness gloss over the different measurements by requiring that districts be "compact," without further explanation. A few states actually specify how compactness should be measured. In Iowa, for example, districts should be evaluated either by a measure comparing length and width, or by a measure comparing total district perimeter.[134] In Colorado, plans are also measured using district perimeter length, aggregated for all districts.[135] In Arizona, districts are measured using the Polsby-Popper test, comparing the district's area to the area of a circle with the same perimeter.[136] In Michigan, districts are measured using a variant of the Reock test, based on a circle drawn around the district.[137]

Whatever the measure, a focus on compactness – as with other criteria – has benefits and detriments. Preferring compact districts is based on the idea that people who live close to one another will likely form a community worthy of representation, with shared characteristics and common interests. (Indeed, the Supreme Court seems to have established a presumption that despite some shared characteristics, voters of the same race who live far from each other are not particularly likely to have race-based common interests that are worth representing.)[138] Compact districts may also make it easier for candidates – especially candidates for local office – to campaign on the ground, without having to travel great distances from one end of the district to another.[139]

POPULATION CENTER OF GRAVITY

+ **GEOGRAPHIC CENTER**   × **POPULATION CENTER**

FLORIDA CONGRESSIONAL DISTRICT 3, 1992

SOURCE: ELECTION DATA SERVICES, INC.

On the other hand, because compactness measures usually prefer regular geometric shapes like circles, emphasizing compactness is likely to cause districts to cut through communities that do not evolve in neat geometric patterns – including not just town boundaries, which often squirm in irregular ways[140] – but also communities of racial or ethnic minorities. Compact districts may not accommodate natural features like mountain ranges or rivers that disperse communities or cause them to meander. Depending on how the population is spread throughout a state, and the particular measure of compactness, it may also be very difficult to create compact districts that also have roughly equal population. And unless voters with different political preferences are very well integrated, requiring a district to be compact may limit a state's flexibility to draw competitive districts with voters of balanced partisan preferences.[141] Rather, especially if voters favoring one party tend to cluster in geographically small areas like urban centers, compact districts may "pack" these voters in and dilute their voting strength (see below).[142]

If trying to maximize each district's compactness gets in the way of these other criteria, one potential way to reconcile the tradeoffs is to set a particular compactness threshold. It is possible to use most compactness measures to give a particular district, or a particular plan, a numerical score. But as with the population equality standards discussed above, rather than pushing for the highest or lowest possible score in every case, some proposals would simply say that each district must be at least as compact as some threshold X. Other proposals would add or average the compactness scores for each district, so that the plan as a whole would be at least as compact as X, but individual districts could vary substantially.
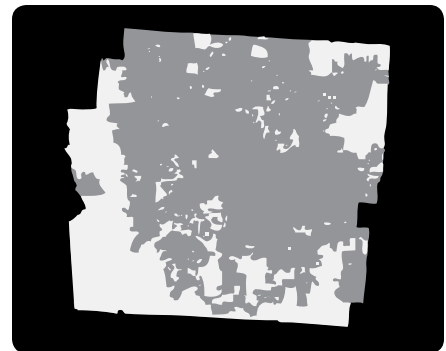
POLITICAL AND GEOGRAPHIC BOUNDARIES

In addition to contiguity and compactness, the Supreme Court has also expressly recognized respect for political "subdivisions" of a state (like counties, towns, or wards) and respect for communities defined by shared interests as "traditional" redistricting principles.[143] Indeed, in most states, following political subdivisions was the *first* explicit rule for drawing district lines: before the Supreme Court required population equality in the 1960s, most states simply assigned representatives to counties or groups of counties, so that each district precisely followed county boundaries. Even after the population equality decisions, many state constitutions have kept this preference for preserving county boundaries where possible, or for splitting no more than a certain number of counties overall.

In other states, the principle has been extended: preserve counties when possible; if you must split a county, preserve townships; if you must split a township, preserve municipalities, then city wards, then individual voting precincts. Sometimes these political units are given preference in a different order. Depending on the layout of cities and townships in a particular state, the order may be significant: preserving the boundaries of Franklin County's townships (highlighted in the figure on the right) forces a set of choices quite different from preserving the county's municipal boundaries, represented by the gray spaces in the center.

A small part of the reason for drawing district lines to preserve political boundaries is that voting precincts are usually wholly within a political boundary, and it is moderately less burdensome for election administrators if all election contests are the same within one precinct.[144] Another part of the reason for preserving political boundaries is that the extent to which district lines maintain these boundaries can be objectively measured, which provides an enforceable standard to reign in the twists and turns of gerrymanders. A third reason is that state legislators elected from districts comprising whole towns or cities may be more responsive to particular local needs.[145] But most of the reason is that political boundaries – especially counties and cities – are presumed to be fairly neutral, fairly good proxies for groups of people who share a common interest. When we talk about the fact that a particular legislator is from Detroit, or Des Moines, or San Francisco, we have an idea, right or wrong, about the kinds of people she might represent and the kinds of policies she might favor.

TOWNSHIPS IN FRANKLIN COUNTY, OH

Of course, political boundaries do not neatly represent all shared interests. If communities of racial or ethnic minorities cross town or county lines, a district that follows political boundaries may slice up these communities. And just as with compactness, drawing districts along town or county lines may limit a state's flexibility to draw competitive districts with voters of balanced partisan preferences. Rather, especially if voters favoring one party tend to cluster in particular cities or counties, districts that follow political lines may "pack" these voters in and dilute their voting strength (see below).[146]

In addition to or instead of political boundaries, some states place a priority on drawing lines that conform to geographic boundaries: mountain ranges, significant rivers, prominent lakes or other bodies of water, and the like. These limitations are sometimes phrased in terms of facilitating candidates' ability to get around: Maine, for example, seeks to "minimiz[e] impediments to travel within the district, . . . [which] include, but are not limited to, physical features such as mountains, rivers, oceans and discontinued roads or lack of roads."[147]

Emphasizing geographic boundaries has some of the same benefits and limitations as discussed above with respect to political boundaries. Often, these geographic boundaries divide the population into different communities. Where they do not, following the boundaries may fragment the communities of interest. Following geographic boundaries may also yield districts that are less compact. And as with each other constraint, following geographic boundaries in rigid fashion leaves less flexibility to accomplish other objectives.

COMMUNITIES OF INTEREST

In a few states, those drawing the lines are explicitly asked not just to follow the political boundaries that are proxies for pockets of people with shared interests, but to preserve **communities of interest** directly, even if they spread over county or city lines. A community of interest is a group of people concentrated in a geographic area who share similar interests and priorities – whether social, cultural, ethnic, economic, religious, or political.[148]

Some people believe that it is best to keep communities of interest whole, so that each community of interest can have a chance to have its own legislator looking out for its interest in the legislature, and so that individual legislators feel particularly responsible to serve the discrete communities as communities. Others believe that it is best to split communities of interest up so that districts are more heterogeneous and each legislator must compromise to suit her constituents. There are also instances when a sizable community, like a city dominant in its region, may want to be split into two or more districts, in order to extend its influence in the legislature. Which answer is the right answer depends entirely on what you think representative districts should accomplish.[149]

In any event, even if your philosophy of representation defines preserving communities of interest as the ultimate substantive goal of all redistricting, that standard nevertheless has some limits. First, as clear and objective as political boundaries may be, communities of interest are notoriously fuzzy, because shared interests may be either vague or specific, and because people both move locations and change their interests over time. This fuzziness makes it fairly easy to manipulate district lines while claiming that the lines are drawn to embrace a particular community. (Some have proposed reducing the fuzziness somewhat by preventing district lines from dividing **census tracts**: geographical regions defined by the U.S. Census, usually with between 2,500 and 8,000 people, that generally share the same demographic characteristics, economic status, and living conditions.)[150]

Preserving communities of interest may also make it more difficult to ensure strict population equality, if different communities are different sizes within a state – or to keep districts optimally compact, if the communities are scattered or spread out. And again, though shared political interests may well have their own community, preserving communities of interest other than communities of like-minded partisans may make it more difficult to draw competitive districts with voters of balanced partisan preferences.

ELECTORAL OUTCOMES

In addition to using the constitutional, statutory, and "traditional" principles above, district lines are drawn in many states with an eye to their likely electoral impact. Every set of lines has a predictable electoral impact. In some cases, however, it is apparent that the electoral impact of the lines – particularly the partisan impact – was the primary reason for drawing the lines as they are.

PARTISANSHIP

Partisan redistricting occurs when the people drawing the lines estimate that voters in a certain area are more or less likely to vote for a Democrat, Republican, or third-party candidate (or not to vote at all), and then group voters together in districts to increase the chance that candidates from a preferred party are elected.
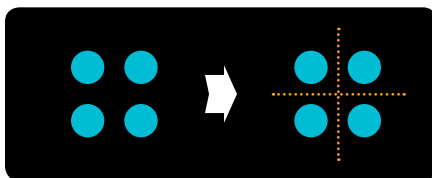
The calculation that voters in a certain area will probably vote for a certain party's candidate are guesses – but they are very, very, very well-informed guesses. In many states, when voters register, they can declare their party affiliation; it is usually possible to find out how many people have registered with which parties, at least by county and often by precinct. Even more reliable are past election returns: although election officials don't record whom each voter voted for, they do compile results for each candidate in each precinct. If 67% of your precinct voted for President Bush, there's a 67% chance that you voted for President Bush.[151] And adding up the election results for many candidates over time means that it's usually possible to estimate the partisan preference of a given precinct, on average. Research has shown that these estimates are both relatively accurate and relatively stable over time.[152]

Those in control of redistricting may try to use these estimates to help candidates of one party or another, by drawing districts that make it easier for that party to win. When an entire redistricting plan is designed to make it easier for one party to win elections, it is known as a **partisan gerrymander**. It is not surprising to find that partisan gerrymanders occur most often when one political party completely controls the redistricting process.

The basic techniques of creating a partisan gerrymander are **cracking**, **packing**, and **tacking**.[153] **Cracking** is the act of dividing groups of people with the same characteristics – in this case, voters likely to vote for a particular party – into more than one district. With their voting strength divided, the group is more likely to lose elections.

For example, imagine a state with 10 legislative districts and 1,000 voters, narrowly split between the two major parties: 520 registered Democrats and 480 registered Republicans. The Republican voters make up 48% of the state as a whole. But if the districts are drawn to divide up (or "crack") the Republican voters so that there are 48 Republicans (and 52 Democrats) in each and every district, the Republicans are likely to lose all ten legislative races.

"CRACKING"

Packing is just the opposite – cramming as many people with the same characteristic into as few districts as possible. In these few districts, the "packed" group is more likely to win … but this drains their voting strength elsewhere. Consider the same state as above, but now imagine that the Republicans control the line-drawing. They might pack two districts with 100 registered Democrats apiece, and split the remaining Democratic voters so that there are 40 Democrats (and 60 Republicans) in each of the other eight districts. The Democratic candidates will probably win two races, but they are likely to lose all of the rest.
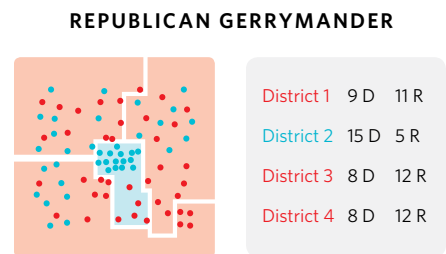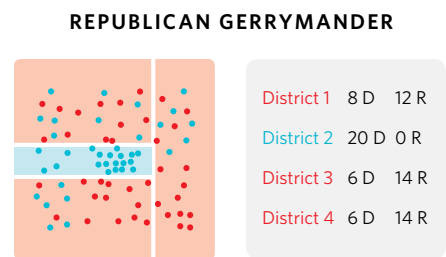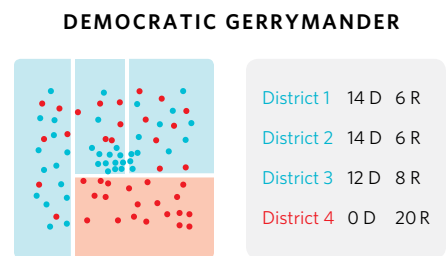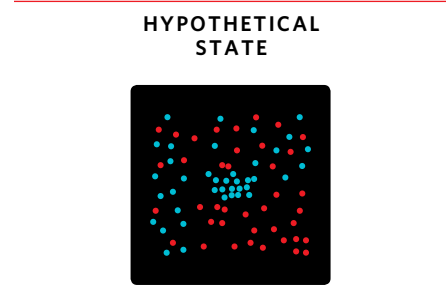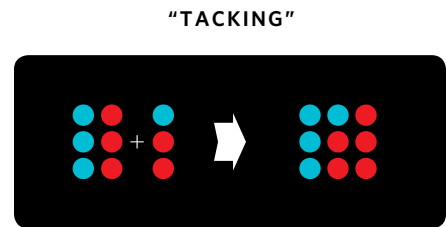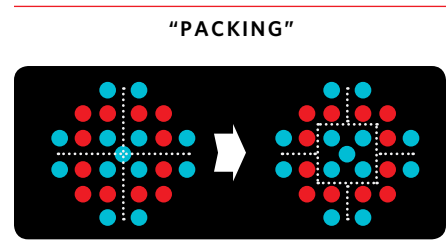
Tacking is the process of reaching out from the bulk of a district to grab a distant area with specific desired (usually partisan) demographics. Imagine our same state above, with the Republicans in control, and a consolidated area of 46 Democrats and 44 Republicans. If the Republicans can find a small portion of the state with 8 Republicans and only 2 Democrats, and "tack" it onto the consolidated area above, they will likely win the district. Tacking is also frequently used to add a particular politician's home to a district in which she is anxious to run.

It may be easier to understand packing, cracking, and tacking through a visual example. The figure to the right shows a hypothetical state, with a population cluster near the center; though the voters are unevenly distributed, the state as a whole is evenly politically balanced at 40 Democrats (blue circles) and 40 Republicans (red circles).[154] Imagine that the state has to be divided into four districts of equal population.

As the figures to the right show, with a little creativity, it is fairly straightforward to "pack," "crack," and "tack" either Democratic or Republican voters. The figure on the right is a Democratic gerrymander, packing the Republicans so that it is likely that they win one seat, and likely that Democrats win three. Below that is a Republican gerrymander, with Democrats now packed and likely to win only one seat, and Republicans likely to win three. And farther below is another Republican gerrymander, with the small section of four Republicans at the lower right corner of the state "tacked" to the larger population in the lower left.

One common complaint about these gerrymanders is that prospecting for voters by party tends to interfere with other objectives of redistricting. For example, depending on where a party's supporters live, drawing lines that follow party preference may lead to districts that are not compact, that cross political boundaries, or that carve out chunks of social or economic communities of interest.

Another complaint about such gerrymanders is that they distort representation in the state overall. With 40 voters apiece in our hypothetical state, Democrats and Republicans enjoy equal support statewide – but depending on the district lines, either party can win a disproportionate number of seats in the legislature.[155]

"PACKING"

"TACKING"

HYPOTHETICAL STATE

DEMOCRATIC GERRYMANDER

District 1	14 D	6 R
District 2	14 D	6 R
District 3	12 D	8 R
District 4	0 D	20 R

REPUBLICAN GERRYMANDER

District 1	8 D	12 R
District 2	20 D	0 R
District 3	6 D	14 R
District 4	6 D	14 R

REPUBLICAN GERRYMANDER

District 1	9 D	11 R
District 2	15 D	5 R
District 3	8 D	12 R
District 4	8 D	12 R

In a system of "winner take all" districts, one party or another will usually win more legislative seats than its overall statewide support (for example, winning 57% of the seats with 51% of the vote).

Some other countries (and some local American jurisdictions) forego districts, and instead use a system of **proportional representation** – where 51% support translates as nearly as possible to 51% of the legislative seats. Critics express concern that such systems give undue power to party insiders at the expense of voters, and to fringe parties at the expense of mainstream ones. Several variants of proportional representation, with slightly different rules, may mitigate these concerns.

Still other places mix the two systems, electing some representatives from districts and others from jurisdiction-wide lists, in a manner designed to approach proportional representation in the legislature as a whole. In America, the Democratic Party's presidential primary system is such a mix: some delegates allocated in the primary process are elected proportionally across an entire state, and some are elected (also by proportional representation) within a "multi-member" district (see the "multi-member" discussion on p.65 below).

Some of this disproportion is the by-product of virtually *any* district lines, if a single seat is up for grabs by the candidate who wins the most votes. In this kind of "winner take all" system, the preferences of voters who support losing candidates do not translate into legislative seats, no matter how the districts are drawn. At best, losers in one district can hope that their preferred party wins by a comparable margin, in a district somewhere else in the state, to make up for the loss.

Because this rarely works out exactly, there is almost always a difference between a party's statewide support and the percentage of seats that it wins in an election. Some view this difference as a good thing, because it tends to produce legislative majorities that are more robust, and can therefore implement programmatic changes more easily. Some view it as a distortion to be avoided. Either way, it is to some extent an inherent part of "winner take all" elections.

Some of the disproportion, however, has to do with the particular way the districts are drawn, and may end up giving an extra bonus to one party or the other. In the extreme, districts might be drawn so that a party with a majority of the votes might consistently lose the majority of seats. When the way that districts are drawn in a state with a rough overall partisan balance makes it statistically more likely that the translation from votes to seats will favor one particular political party consistently over time, the redistricting plan is said to have **partisan bias**.[156] Some have proposed that states adopt rules to reduce the partisan bias of redistricting plans.[157] One such method, for example, rewards maps to the extent they achieve balance: if one district is likely to favor Republicans by 10%, over and above the general statewide trend, there should be another district in the state that is likely to favor Democrats by 10%. Another method to mitigate partisan bias would keep legislative seats in reserve – not allocated through the districting system, but allocated statewide to parties that have won district seats – in order to keep the total legislative representation roughly proportional to the parties' statewide support.[158]

Minimizing partisan bias through district lines would limit partisan gerrymanders, but it would also likely affect many other redistricting principles. In fact, most redistricting principles that don't seem related to partisan outcomes have the potential to lead to skewed partisan results.[159] In our hypothetical state, for example, the population cluster at the center of the state might be a minority population to be protected under the Voting Rights Act, or a city with boundaries to be preserved. As seen in the figure on the right, in this particular state creating a district for that population also creates a district very likely to elect a Democrat. Or perhaps our hypothetical state requires a map with maximum compactness. In this state, the result is three districts likely to elect Democrats and one likely to elect a Republican. Relatively small shifts in either of these district plans can turn any given district from "likely red" to "likely blue," and vice versa.

These are, of course, made-up examples. But these principles will likely have a partisan impact in the real world as well. Indeed, election scholars have shown that because of broad population trends, certain redistricting principles increase partisan bias across the country – at the moment, in favor of the Republican Party.[160] For example, districts created under the Voting Rights Act, with enough minority voting strength to elect a candidate of choice, may be drawn in urban neighborhoods, where heavily Democratic African-American voters live next to heavily Democratic urban white voters, creating extremely heavily Democratic districts. These districts are effectively pre-"packed" with a high concentration of Democratic voters. And as seen to the right, packing Democrats in one district leaves fewer Democratic voters to go around in other districts, which may make it easier overall for Republicans to win elections.[161] Some think that compactness rules or respecting political subdivisions work the same way.[162] If Democrats are highly concentrated in cities and Republicans are more spread out in suburbs, a rule that forces districts to stay compact will likely end up packing many Democratic voters into a few tight urban districts. This leaves the remaining Democratic voters spread thinly among many suburban districts, which become more likely to elect Republican candidates.

Whether partisan bias is the result of an intentional gerrymander or the natural consequence of some other principle, there appears at present to be little legal limitation on how partisan a plan may be. Only a few states purport to limit partisanship, and these limitations are seldom enforced.[163] On the federal level, the Supreme Court has said that partisan gerrymanders may be challenged under the Constitution,[164] but five Justices have never agreed on a standard for deciding how much partisanship is too much. Several blatant partisan gerrymanders – from both parties – have been approved by the courts, and no plan has yet been ruled unconstitutional because it is an excessive partisan gerrymander.

*Most redistricting principles, even if they seem unrelated to partisanship, **have the potential to lead to skewed partisan results.***

MINORITY DISTRICT

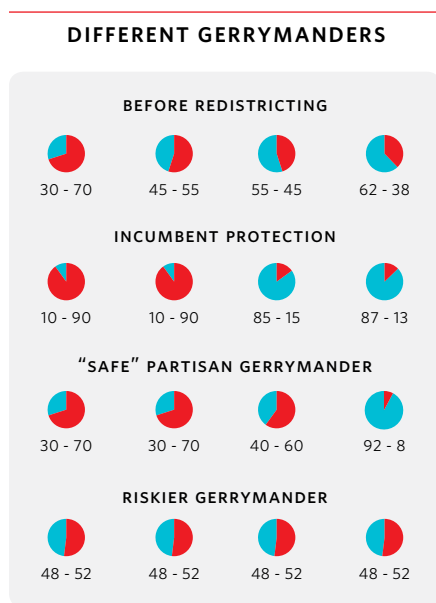| District 1 | 14 D | 6 R |
District 2	10 D	10 R
District 3	16 D	4 R
District 4	0 D	20 R

MAXIMUM COMPACTNESS

District 1	12 D	8 R
District 2	12 D	8 R
District 3	12 D	8 R
District 4	4 D	16 R

*When neither party dominates a state legislature, the sitting politicians can create a **bipartisan gerrymander** by packing districts with their own supporters.*

Just as those drawing the lines may try to create districts where it will likely be easier for one political party to win elections, they may also try to draw districts so that it will likely be easier for the current incumbent – or another candidate of the same party – to win re-election. These **bipartisan gerrymanders** happen most often when legislators are directly involved with the redistricting process, and control of the process is split (for example, if the two houses of the legislature – or the legislature and the governor's mansion – are controlled by two different parties). In these cases, the politicians may decide that if they won't be able to improve their own party's status at the expense of the opposition, they should just protect their own party's seats as best they can.

Many bipartisan gerrymanders are designed specifically to protect the existing incumbents. As in other partisan gerrymanders, line-drawers create an **incumbent protection gerrymander** by packing partisan supporters of an incumbent into her district. But for an incumbent protection gerrymander, not every like-minded voter will do: incumbents want most to keep the same voters with whom they have built up name recognition and goodwill over the years. Incumbent protection gerrymanders, then, tend to change existing district lines as little as possible.

There is an inherent tension between the attempt to protect incumbents and the attempt, discussed above, to promote partisan gain. In order to increase the number of districts that a party is likely to win, it makes sense to spread the party's supporters over the competitive districts. Put differently, to get the most gain for the party, it's better to win a lot of districts, even if that means winning by only a few points. (Scholars have noted that overly aggressive partisan gerrymanders may try to win too many districts by too few votes. That is, the party in control of the district lines may cut the likely margins so close that it ends up losing a number of races.) In contrast, an incumbent's highest priority is often winning just one district (her own) by a great many points. Spreading supporters thin in order to win many seats may cause individual incumbents to feel less secure.

DIFFERENT GERRYMANDERS

BEFORE REDISTRICTING

30 - 70   45 - 55   55 - 45   62 - 38

INCUMBENT PROTECTION

10 - 90   10 - 90   85 - 15   87 - 13

"SAFE" PARTISAN GERRYMANDER

30 - 70   30 - 70   40 - 60   92 - 8

RISKIER GERRYMANDER

48 - 52   48 - 52   48 - 52   48 - 52

In practice, the degree of support for a party in any given area may make it possible to achieve both objectives at the same time.[165] Consider, for example, the relatively evenly divided area at left:[166] in total, 52% of the voters lean Republican. Before redistricting, assume that the Republicans win two districts out of four. It may be possible to protect these incumbents by redrawing the district lines to pack two districts 90% full of likely Republican voters. Most such districts would be considered exceedingly "safe" for Republican candidates, and particularly for well-known incumbents. However, if the Republican party in our example also wanted to further a partisan gerrymander, it could do so without substantially jeopardizing its incumbents. It could spread supporters from the "packed" districts out into other districts in order to win more seats; rather than a district 90% full of likely Republican voters, districts of 70% Republican voters would still leave the party reasonably sure that its incumbents would be "safe." And that would leave enough likely Republican voters in a third district to give a Republican candidate a substantial advantage.

COMPETITION

The goal of both partisan and bipartisan gerrymanders is to draw district lines with enough likely supporters that preferred candidates will be relatively insulated from broader political trends – that they will be "safe." And by and large, most legislators *are* safe, though gerrymandering is only one of several causes.[167]

In 2006, for example, 38% of the partisan state legislative races were wholly uncontested by a candidate from one of the major parties; that is, 38% of the time, either a Democrat or Republican did not even bother running for the seat.[168] And in federal races, 86% of the elections for the House of Representatives were won by more than a 10% margin, which political scientists generally consider a fairly comfortable win.[169] The vast majority of legislators coasted to victory. In response, many advocates – and in limited fashion, three states – have proposed rules to foster elections with robust **competition**.

In the context of drawing district lines, most discussions of competition discount or ignore **primaries**, when incumbents may theoretically be kept accountable through challenges by members of their own party (though incumbents enjoy advantages that make meaningful primary competition difficult to achieve in practice).[170] Instead, the focus is on drawing districts that make it likely that the *general* election will be close. Usually, this means trying to group voters so that the election returns are likely to be 55% to 45%, or closer. As in the gerrymanders above, line-drawers would put voters in particular districts based on their likely partisan preference – only in this case, they would attempt to balance the partisan voters evenly in a district rather than lumping all voters with a particular preference together.

As with all other redistricting principles, using district lines to foster competition has upsides and downsides. There are several benefits of fostering competition. First and foremost, competitive districts appeal to our sense of fairness, at least in one sense: in a competitive district, a candidate from either major party usually has a realistic chance to win the general election. If an election is as much about a contest as it is about representation, the contest in a competitive district feels more evenhanded. Competitive districts may also foster challenges from more qualified candidates; many good candidates will not even try to contest an election in a district where the opposing party reliably wins 80% of the vote.

Moreover, districts with an even partisan balance should theoretically cause incumbent legislators to cater more attentively to a wider range of their constituents, because they would be more worried that they might lose a close election.[171] A related claim is that evenly balanced districts tend to elect more moderate legislators, because the candidates have to aim for the middle of the political spectrum to increase their chances of getting elected;[172] this is an application of the **median voter theorem**, which assumes that a representative's
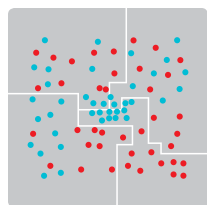
ideology tends to track the district's median voter. Also related is the claim that candidates in competitive districts will campaign with more vigor, spending more time and effort contacting voters and mobilizing them to vote. Finally, voters get excited by elections that are seen as competitive, and many assume that more people would vote – that **turnout** would be higher – if the districts were less slanted along party lines.

*Because of campaign finance rules, term limits, the natural advantages of incumbency, and the quality of a specific campaign, among other factors, **competitive districts** may not actually produce **competitive elections.***

While there is little dispute that competitive districts accomplish some of these objectives, there are reasons to be skeptical about their ability to accomplish others.[173] The most important caveat is that competitive districts will not always produce competitive elections, at least when an incumbent is running.[174] Incumbents are usually better able to raise campaign money, better positioned to get on the ballot, and more widely recognized within their districts.[175] Plenty of incumbents have run for office in competitive districts – or in districts where voters otherwise favor the *opposing* party – and have won in landslides.[176]

There may also be districts where balanced partisanship does not promote more balanced policies. If – a big, and empirically disputed "if" – voters are polarized in their partisan preferences, with little desire to cross party lines for particular candidates,[177] candidates may choose to focus on turnout more than policy: encouraging opposing voters to stay home, and depending on the more extreme voters in the "base" to bring victory on election day. It is not clear that a partisan balance in the district would have much of an impact on candidates' policies in such an environment – or that the increased campaign activity resulting from a closer race would produce better-informed voters. Finally, the intuition that more people vote when an election is competitive has certainly been demonstrated in races for President or for Governor. However, it is not clear whether even a high level of competition would motivate many more people to vote for a state representative if they weren't going to vote anyway.

It is also true that the impact of designing districts to encourage competition – just like the impact of designing districts to lock in a "safe" partisan seat, or the impact of designing districts to capture more transient communities – fades over time. Voters move in and out of districts, and parties fall relatively in and out of favor; though it is true that those drawing the lines can use past information to make a very accurate guess about voters' partisan preferences next year, predictions will be much less precise for voters' preferences eight years down the road.

MAXIMUM COMPETITION

District 1	10 D	10 R
District 2	10 D	10 R
District 3	10 D	10 R
District 4	10 D	10 R

As with each other criterion above, there are tradeoffs involved in drawing competitive districts – indeed, many of the same tradeoffs involved in drawing the uncompetitive, or "safe," districts described above. Depending on where a party's supporters live, drawing lines that follow party preference may lead to districts that are not compact, that cross political boundaries, or that carve out chunks of real communities of common interest.[178] For example, let's return for a moment to our hypothetical state. The figure on the left draws district lines

so that an equal number of Democrats and Republicans live in each district, but it has to break up the population cluster at the center of the state in order to do so. In a real world analog, drawing a competitive district in heavily Democratic San Francisco would likely require crossing the Bay Bridge to the eastern suburbs or drawing stringy districts stretching far down the peninsula and into central California.

In some regions of a state, it will usually be possible to accommodate multiple objectives: districts that preserve minority rights, embrace other communities, follow political boundaries, achieve partisan balance, and so on. Attempting to maximize competition in *each* district, however – as with an attempt to prioritize any other single objective, exclusively, in each district statewide – is likely to interfere with these other objectives. Maximizing competition also has a different impact in a state with a deeply divided electorate than it does in a state that heavily favors one party or another: in the latter circumstance, a district designed for competition strives to grant half of the likely vote to a party that, for whatever reason, has rendered itself unpersuasive in the region. Furthermore, some observers note that the more districts in a state that are designed to produce competitive elections, the more chance there is to switch party control of the legislature from year to year. Whether this potential for frequent switching is "good" or "bad" is in the eye of the observer; what to some looks like stability, looks to others like calcification.

Those who promote competitive districts usually do so in less extreme fashion, as part of a mix of objectives.[179] Arizona, for example, asks those drawing the lines to favor competitive districts, but only after all other criteria are satisfied.[180] Another proposal would set a threshold, requiring some but not all of a state's districts to be competitive. (There is no general agreement on the optimal number of competitive districts, or whether that number is similar for states that are evenly divided along partisan lines and for states that lean heavily to one party or another.)

Other proposals take a different approach. Rather than fostering competition directly, they suggest procedures that will help thwart specific attempts to make districts *un*competitive. To some degree, all of the states with commissions that insulate legislators from the decisionmaking process have removed the single biggest incentive to draw lines in order to make districts uncompetitive.

A few other states have attacked the tools rather than the motivation: these states prohibit line-drawers from looking at information on the past voting patterns of any given region, except where gauging the extent of polarized voting may be necessary to comply with the Voting Rights Act. Critics respond that the line-drawers are usually sufficiently expert in local partisan proclivities to understand how to reduce competition without relying on specific data; a ban on voting patterns would thereby serve to blind only the public to the partisan impact of the redistricting decisions.

*Rather than fostering competitive districts directly, some proposals focus on thwarting deliberate attempts to make districts **un**competitive.*

RELATED TOPICS:
Turnover and Term Limits

Much of the discussion above is in some way concerned with **turnover**: using the redistricting process either to help voters "throw the bums out" or to prevent voters from doing the same. Redistricting, however, is at best a blunt tool to manage turnover.

Campaign finance rules, ballot access rules, broad political trends, and a candidate's missteps in office or on the campaign trail likely have at least as much impact on whether the candidate wins or loses. Moreover, for any given district, turnover is a mixed blessing: it brings candidates with (potentially) fresh ideas but less experience and usually less power in the legislature as a whole.

Some states have directly addressed turnover by requiring **term limits**: laws forcing long-time legislators, who would otherwise likely be re-elected, to quit after a certain number of years in office. There are term limits for the U.S. President (basically, two terms), and the Supreme Court has said that there cannot be term limits for members of Congress; as for state legislators, each state can decide whether its legislators face term limits or not.

When term limits force an incumbent out of her seat, there will usually be a vigorous contest among multiple candidates to replace her – even more competitive if the districts are themselves balanced. Conversely, many quality candidates in term limit states may wait for a term to end rather than challenging an incumbent; the waiting game yields fewer contested elections and less turnover in the meantime.

In the constellation of factors used to draw district lines, politicians' homes shine with special brilliance. Most states require that politicians live in the district they intend to represent. Therefore, the lines drawn around a politician's home will determine the district in which she can run for office. In the past, district lines have been drawn to enfold particular blocks, or even particular houses, to ensure that the targeted individuals are placed in the desired district.

Sometimes, district lines are specifically drawn to protect: a district with constituents favorably disposed to a candidate may be stretched to accommodate the home of the candidate in question, so that she may run in more favorable circumstances. In other circumstances, the lines are drawn to injure. For example, a district may be drawn to carve the home of a threatening challenger or long-standing incumbent out of an otherwise coherent neighborhood, separating the politician from her likely base of success. Or the lines may be drawn to place two incumbents' homes (usually, but not always, of the same party) in the same district, forcing them to run against each other, and using one incumbent to knock the other out of the legislature.[181]

A handful of states have responded to these incentives by prohibiting those drawing the lines from acknowledging a candidate's residence. (Some preclude the use of incumbents' homes, but not challengers' homes; others prohibit using any person's residence as a basis for drawing a district.) In theory, such a rule limits insiders' ability to gerrymander for individual or partisan gain, and instead focuses attention on group-oriented concerns. Critics, however, believe that such rules are honored largely in the breach: legislative confidants may know their legislators' homes well, and may simply draw the districts around residences without acknowledging that they are doing so. Moreover, without knowledge of a candidate's home, lines may *unwittingly* separate the candidate from the heart of her district or pair two incumbents: if some redistricting plans maliciously carve incumbents out of the districts they represent, it is also possible that flying blind will achieve the same effect.[182]
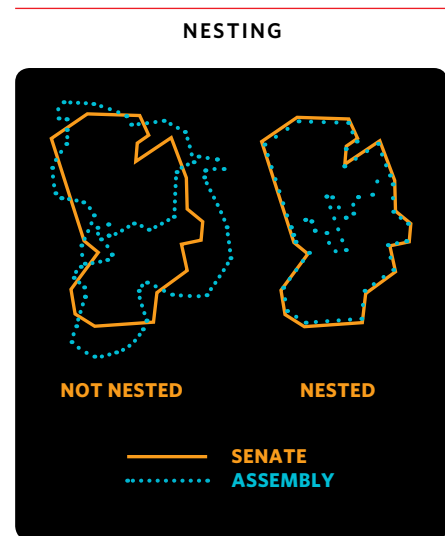
OTHER STRUCTURAL FEATURES

There are a few additional laws in some states that affect the structure of legislative districts, and thereby influence the process of drawing district lines.

NESTING

Nesting is the process of drawing districts so that districts for the upper legislative chamber contain two or more intact districts for the lower legislative chamber. For example, if each Senate district is composed exclusively of two Assembly districts, the Assembly districts are said to be "nested" within the Senate districts. Sometimes, a nested redistricting plan is created by drawing Senate districts first, and dividing them in half to form Assembly districts; sometimes the Assembly districts are drawn first, and clumped together to form Senate districts. Districts can be nested, of course, only if the number of seats in the state's lower chamber is a whole-number multiple of the number of upper chamber seats (e.g., 50 Senate and 100 Assembly seats, or 33 Senate and 99 House seats).

Nesting certainly makes redistricting maps look cleaner, though the clean appearance alone is of questionable value. More tangibly, it reduces administrative burdens somewhat by reducing the number of different ballots that need to be prepared. And, of course, tying the maps for one legislative chamber to the maps for the other legislative chamber, nesting constrains the discretion of those drawing the lines.

As with the other principles above, however, limiting this discretion may also limit the extent to which those drawing the lines are able to achieve other objectives. Voters' residential patterns may make it difficult or impossible to draw minority opportunity districts or competitive districts in both the Senate and the Assembly, if the districts must be nested; without nesting, it may be easier to group different sets of voters for different purposes in each legislative chamber.[183] Moreover, if Senate and Assembly districts are not nested and divide the state in different ways, the legislature may itself be more diverse: there exists the potential for some constituencies not represented in one legislative chamber to be represented instead in the other. Whether this potential can be realized depends entirely on how the communities are spread geographically across the state.

NESTING

NOT NESTED   NESTED

―――― SENATE
·········· ASSEMBLY

MULTI-MEMBER DISTRICTS

In addition to the districts discussed above, a few state or local legislatures permit "floterial districts": districts that overlap portions of other districts in the same legislative chamber. It may be helpful to think of such districts as "floating above" the patchwork of more familiar districts: in the overlap areas, a voter can vote for both a candidate in the "regular" district and a candidate in the "floterial" district.

Sometimes, such districts may be used to maintain community boundaries without sacrificing equal population. For example, imagine a state where each district has to have 100 voters, but there are two adjacent towns with 150 voters apiece. One solution would create three mutually exclusive districts, each with 100 voters, carving up the towns.

A different solution would create a district of 150 voters for each town, plus one floterial district elected by the 300 voters of both towns together. In either case, 300 people elect 3 representatives total, so overall voting power is the same, though the floterial districts essentially give each voter two legislative representatives.

Multi-member districts are districts drawn just like the more familiar "single-member" districts, but instead send two or more representatives to the legislature. Since 1842, federal law has prohibited multi-member districts for Congress, but some state and many local legislatures still use multi-member districts. In states like New Jersey, one state legislative chamber is composed entirely of uniform multi-member districts, with 2 members apiece; in other states, each district is different. In 2003, for example, some New Hampshire districts were used to elect two state legislators apiece; other districts were served by up to 14 legislators.

In some instances, multi-member districts function almost like nested districts. In a nested system, one Senate district might have the same boundaries as two Assembly districts; in a multi-member system, one Senate district might have the same boundaries as a single Assembly district that elects two state representatives. Arizona, for example, uses this latter system; each district elects one state senator and two state representatives.[184] In other cases, multi-member districts for one legislative chamber are not tied to the districts of the other chamber: a Senate district and a multi-member Assembly district are entirely unrelated.

Because multi-member districts contain multiple representatives, they will typically cover a larger geographical area than a district with just one representative. They may therefore avoid the need to divide large communities, like a city that might otherwise be split in awkward ways with more familiar single-member districts. Some systems allow representatives to be chosen from anywhere within the district; others limit candidates to particular areas of the district, so that a city's voters might choose one representative from the north side, and one from the south side.

Moreover, depending on the **voting rule** – the system for casting and tallying votes in the district – multi-member districts can either squelch or foster minority voices. As explained above in the discussion of the Voting Rights Act, if each voter in the district may cast one vote for a candidate for each of the district's seats, and the winners are determined by simple majority vote, the majority will be able to defeat minority preferences for each of the district's legislators. In contrast, a voting rule like **cumulative voting**, used for many corporations; or **choice voting**, used for the Oscars; or another system of "proportional representation" may elect a variety of legislators with both majority and minority views, more closely approximating their relative levels of support within the district.[185] Such rules are relatively common outside of the United States, and still show up in America for elections in local jurisdictions. Until 1980, Illinois used the cumulative voting method to elect its state representatives.[186]

STATE LEGISLATIVE DISTRICTS: WHERE TO DRAW THE LINES

	KEEP POPULATION SUBSTANTIALLY EQUAL	DRAW COMPACT DISTRICTS (WHEN PRACTICABLE)*	FOLLOW POLITICAL BOUNDARIES (WHEN PRACTICABLE)*	PRESERVE COMMUNITIES OF INTEREST (WHEN PRACTICABLE)*	NEST SENATE AND HOUSE DISTRICTS	ELECT MULTIPLE MEMBERS FROM ONE DISTRICT
AK	Yes[†]	Yes		Yes	Required	
AL	Yes	Yes	County (for the Senate)	Yes		
AR	Yes		County (for the Senate)			Permitted
AZ	Yes	Area of circle with same perimeter	Yes	Yes	Required	Required
CA	Yes	Yes	Yes	Yes		
CO	At most 5% total deviation	Total perimeter	Yes	Yes		
CT	Yes		Town (for the House)			
DE	Yes					
FL	Yes					Floterial permitted
GA	Yes					Permitted
HI	Yes	Yes	Census tract	Yes	Required if practicable	Permitted
IA	At most 1% average deviation, at most 5% total deviation	Length-width, total perimeter	Yes		Required	
ID	Yes	Yes	County, Precinct	Yes	Required	Required
IL	Yes	Yes			Required	
IN	Yes					
KS	Yes	Yes	Yes	Yes		
KY	Yes		County			
LA	Yes		Yes			
MA	Yes		County, Town, City			
MD	Yes	Yes	Yes			Permitted

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*   *In most states, standards like requiring compactness, following political boundaries, and preserving communities of interest must be followed only as closely "as is practicable," leaving substantial flexibility to the redistricting body. That is, a redistricting body must generally draw districts that are compact, but individual districts may be noncompact in order to serve other objectives. And in every state, such standards are always subordinate to federal equal population limits and to the federal Voting Rights Act.*

[†]   *A "yes" entry in this table indicates a legal requirement that is not more precisely articulated: for example, a requirement that districts must have "substantially equal" population or that they must be "compact."*

STATE LEGISLATIVE DISTRICTS: WHERE TO DRAW THE LINES (cont'd)

	KEEP POPULATION SUBSTANTIALLY EQUAL	DRAW COMPACT DISTRICTS (WHEN PRACTICABLE)*	FOLLOW POLITICAL BOUNDARIES (WHEN PRACTICABLE)*	PRESERVE COMMUNITIES OF INTEREST (WHEN PRACTICABLE)*	NEST SENATE AND HOUSE DISTRICTS	ELECT MULTIPLE MEMBERS FROM ONE DISTRICT
ME	Yes[†]	Yes	Yes	Yes		
MI	Yes	Area of circle around district	County			
MN	At most 2% deviation from ideal	Yes	County, City, Town	Yes	Required	
MO	Yes	Yes	County			
MS	Yes	Yes	County, Election district			Floterial permitted
MT	At most 1% deviation from ideal, except to keep political boundaries intact	Length-width	County, City		Required	
NC	Yes	Yes	County	Yes		Only if necessary
ND	Yes	Yes	County, City		Required	Permitted
NE	Yes	Yes	County			
NH	Yes		Town, Ward, Place			Permitted
NJ	Yes	Yes[9]	Municipality		Required	Required
NM	Yes	Yes				
NV	Yes					
NY	Yes	Yes	County, Town, City block			
OH	Yes	Yes	County, Township, Municipality, City ward		Required	
OK	Yes	Yes (for the Senate)	County	Yes (for the Senate)		
OR	Yes		Yes	Yes	Required	
PA	Yes	Yes	County, City, Town, Ward			
RI	Yes	Yes	Yes[10]			

[9] In New Jersey, the courts have said that noncompact districts may be tolerated to achieve partisan balance, but not to achieve partisan advantage. See *Davenport v. Apportionment Commission*, 319 A.2d 718,722-23 (N.J. 1974).

[10] In Rhode Island, the courts have interpreted the state constitutional requirement that districts be "compact" to include more than geometric regularity of district shape, including the idea that districts should generally follow political boundaries. See, e.g., *Parella v. Montalbano*, 899 A.2d 1226 (R.I. 2006); see also 2001 R.I. Pub. Laws ch. 315.

* In most states, standards like requiring compactness, following political boundaries, and preserving communities of interest must be followed only as closely "as is practicable," leaving substantial flexibility to the redistricting body. That is, a redistricting body must generally draw districts that are compact, but individual districts may be noncompact in order to serve other objectives. And in every state, such standards are always subordinate to federal equal population limits and to the federal Voting Rights Act.

† A "yes" entry in this table indicates a legal requirement that is not more precisely articulated: for example, a requirement that districts must have "substantially equal" population or that they must be "compact."

	KEEP POPULATION SUBSTANTIALLY EQUAL	DRAW COMPACT DISTRICTS (WHEN PRACTICABLE)*	FOLLOW POLITICAL BOUNDARIES (WHEN PRACTICABLE)*	PRESERVE COMMUNITIES OF INTEREST (WHEN PRACTICABLE)*	NEST SENATE AND HOUSE DISTRICTS	ELECT MULTIPLE MEMBERS FROM ONE DISTRICT
SC	Yes[†]					
SD	Yes	Yes	Yes	Yes	Required	Required
TN	Yes	Yes	Split at most 30 counties			
TX	Yes		County			Permitted
UT	Yes					
VA	Yes	Yes				
VT	Yes	Yes	County	Yes		Permitted
WA	Yes	Yes	County, Municipality	Yes	Required	Required
WI	Yes	Yes	Ward	Yes	Required	
WV	Yes	Yes (for the Senate)	County (for the Senate)	Yes		Permitted
WY	Yes					Permitted

* *In most states, standards like requiring compactness, following political boundaries, and preserving communities of interest must be followed only as closely "as is practicable," leaving substantial flexibility to the redistricting body. That is, a redistricting body must generally draw districts that are compact, but individual districts may be noncompact in order to serve other objectives. And in every state, such standards are always subordinate to federal equal population limits and to the federal Voting Rights Act.*

[†] *A "yes" entry in this table indicates a legal requirement that is not more precisely articulated: for example, a requirement that districts must have "substantially equal" population or that they must be "compact."*

SPECIFIC STATE CRITERIA FOR CONGRESSIONAL DISTRICTS[11]

AK	1 congressional district		**MT**	1 congressional district
AL	None		**NC**	None
AR	None[12]		**ND**	1 congressional district
AZ	Same as state districts		**NE**	None
CA	Same as state districts		**NH**	None
CO	None		**NJ**	None
CT	None		**NM**	None
DE	1 congressional district		**NV**	None
FL	None		**NY**	None
GA	None		**OH**	None
HI	Same as state districts		**OK**	None
IA	Same as state districts		**OR**	Same as state districts
ID	Same as state districts		**PA**	None
IL	None		**RI**	None
IN	None		**SC**	None
KS	Same as state districts		**SD**	1 congressional district
KY	None		**TN**	None
LA	Same as state districts		**TX**	None
MA	None		**UT**	None
MD	None		**VA**	Same as state districts
ME	Mostly the same as state districts[13]		**VT**	1 congressional district
MI	Same as state districts		**WA**	Same as state districts
MN	Same as state districts		**WI**	None
MO	Same as state districts		**WV**	None[12]
MS	None		**WY**	1 congressional district

[11] *The Supreme Court has required that all congressional districts within a state must be as equal in population as possible. This table summarizes additional requirements, imposed by each state, for drawing their congressional districts.*

[12] *In the 2001 cycle, Arkansas and West Virginia drew congressional districts consisting entirely of whole counties, without further equalizing population. See* Ark. Code §§ 7-2-101 – 105; W. Va. Code § 1-2-3. *These districts have not been challenged in court.*

[13] *For its state legislative districts, Maine requires that its advisory commission "give weight to the interests of local communities."* Me. Rev. Stat. tit. 21-A, § 1206-A. *There is no similar requirement for congressional districts.*

SUGGESTIONS FOR REFORM

VII. SUGGESTIONS FOR REFORM

There are no silver redistricting bullets, no single set of structures or principles or criteria that are uniformly "best."

Different people have different legitimate goals for political representation – different ideas about how the public should be represented, how power should be apportioned, which political cleavages matter and which do not, how to make the various tradeoffs when goals conflict, and even different ideas about who should decide the answer to these questions, and how.

Accordingly, different people offer different assessments of the most pressing problem with their own status quo, and the most promising solution. Some think that the existing process for redrawing their legislative lines is just fine. Others bemoan a conflict of interest at work in drawing the lines. Still others complain that their districts look aesthetically bizarre, or that they promote lopsided elections, or that they overvalue certain votes and undervalue others, or that they split towns, or that they fracture real communities, be they racial or ethnic or cultural or economic or ideological or defined by some other characteristic.

In order to figure out whether a particular system is flawed, and another best suited to your goals, you first have to agree on what you're trying to accomplish.

If the system must be designed to fulfill several goals at once, the process of accommodation and compromise will inevitably leave some goals less than optimally fulfilled. Moreover, a redistricting system may work wonderfully in one state and disastrously in another. Laws interact with each other, and yield different effects in different political cultures and demographic climates. Context matters – quite a bit.

That said, there are a few ideas that we at the Brennan Center suggest considering. On balance, we feel that they further the goals that *we* think important out of a redistricting process: district lines drawn by a meaningfully independent body with meaningful guidance, constraint, and transparency, designed to achieve meaningful and equitable diversity of representation. Others will have different goals, and different preferred means to accomplish them.

Our goals:
- *Meaningful independence*
- *Meaningful guidance*
- *Meaningful and equitable diversity of representation*

These ideas also reflect our belief that it is important to tailor reforms to root problems, rather than merely to attack symptoms. It is undeniably true that many current legislative districts look strange on paper, and many districts are packed with like-minded partisans. These symptoms, however, would not concern us if there were nevertheless fair and equitable representation for real communities by politicians accountable to their constituents. Rather, the symptoms cause concern because they reflect a deeper problem with the current process in most states: an inevitable incentive for incumbents to pick and choose various voters for various districts – at the expense of real communities, and thereby to the detriment of the legislative process as a whole.

We take primary aim at that natural incentive. Most of the ideas below thus reflect our attempt to find trusted decision-makers with meaningful independence from the incumbents to be elected from the districts in question, and to vest these decision-makers with power and flexibility to reconcile competing objectives and arrive at any number of discrete compromises. Given that redistricting decisions are inevitably fraught with both intended and unintended consequences, we aim to establish boundaries for those who draw the lines, without forcing them into a straitjacket.[187]

Many of these ideas may work effectively only if implemented in tandem with each other, and in tandem with other electoral reforms, including laws governing campaign finance and ballot access. Some of these ideas are already governing redistricting decisions somewhere in the country; others are merely proposals or ideas in need of further study. Similarly, some may be politically feasible tomorrow; others will likely face a much longer incubation period. Moreover, we do not pretend that the ideas below represent an exclusive list; innovation is continuous, and there are likely additional worthy ideas just around the corner.

IDEAS WORTH CONSIDERING, FROM EXISTING MODELS

- **Redistrict only once per decade** *(see page 16).* Eighteen states currently prohibit redistricting more than once per decade for state legislative districts, and four do the same for congressional districts. Although this rule maintains the status quo even when districts represent outdated demographic profiles toward the end of a decade, it should on balance promote stability and avoid the exaggerated effects of repeated gerrymanders.[188]

- **Use an independent commission** *(see page 22).* Independence in this context is not an attempt to force individuals to abandon their private partisan affiliations or leanings, or to find individuals who have neither; rather, it attempts to sever the tie between incumbent legislators and the ability to draw the districts where they will run. Five states use independent commissions to draw state legislative or congressional district lines, or both. The American Bar Association[189] recently adopted a recommendation that every state follow suit. If designed appropriately – a very big "if" – independent commissions can avoid the motivation for shenanigans like drawing districts to exclude a potent challenger. And they may be the only effective means to do so.[190]

- **Empower a redistricting body of appropriate size** *(see page 26).* A redistricting body of 5 or even 7 individuals may be too small to reflect the diversity of a state in any meaningful way.[191] Groups larger than 15 may be too large to function smoothly. Somewhere in between, a redistricting body may be able to represent – and effectively negotiate compromise among – many of the state's constituencies.

- **Maintain partisan balance** *(see page 25).* Given the consistent mischief to other objectives wrought by overly partisan redistricting plans, the partisan composition of a redistricting body should not be left to chance. Several states deploy bodies with an even number of line-drawers selected by the legislative leaders (and presumably evenly affiliated with each major party); those partisans must then agree on a tiebreaker. Other proposals permit multiple tiebreakers. Still others would allow a body like the state Supreme Court to nominate tiebreakers, subject to the legislative leaders' veto.[192] Arizona creates a role in the nominating process for individuals unaffiliated with either major political party; it may be wise to consider requiring that the tiebreaker be similarly unaffiliated.

- **Preserve independence through the body's composition** *(see page 24).* A redistricting body is not necessarily independent from self-interested legislators even when no members are incumbents. Arizona uses a nonpartisan body distinct from the legislature to designate nominees; although the legislative leaders choose 4 of its 5 independent commissioners from this nominee pool, the fifth is chosen not by the legislative leadership, but by agreement of the other four commissioners. Idaho prohibits recent lobbyists or candidates for office from sitting on its commission. Bills in other states would prohibit relatives of legislators or recent legislative staff or employees from sitting on a commission as well.[193] Still other proposals would subject commission staff to the same restrictions.

- **Preserve independence through the body's procedures** *(see page 39).* The more transparent the redistricting proceedings, the less motivation to serve the narrow immediate interests of individual incumbents. Several states conduct redistricting business only in public session, with ample notice before meetings are held, and at least some opportunity for public testimony. Proposals expand on these open meetings procedures by suggesting a ban on pertinent *ex parte* communications, other than between commissioners and their staff.[194] Transparency is also furthered in states that make demographic and political data available to the public, and that facilitate public comments and public submission of districting proposals. Some proposals would expand on this give-and-take, by requiring the redistricting body to produce a public report stating the reasons for each choice of district lines.

- **Preserve independence through the body's funding.** A body may be composed of independent personnel, with independent procedures, and still be dependent on the legislature for its funding. In Alaska, the legislature expressed its displeasure with a commission's lines by limiting the commission's budget and funding a lawsuit against the commission's work.[195] Arizona's constitution, in contrast, sets forth a structure for funding its independent commission well before the commission's work begins. With funding secure, the commission may draw the district lines without feeling beholden to the legislature's power of the purse.

- **Allow the legislature a final tweak** *(see page 23).* One of the downsides of independent redistricting is that legislators really do tend to know their districts inside and out. Allowing the legislature a final opportunity to tweak commission lines may both facilitate the passage of redistricting reform in the first place, and permit an escape valve to correct unintended negative consequences of particular redistricting decisions, at least on the margins. Washington State allows its legislature to modify a commission's plan, affecting no more than 2% of the population in any given district, and only if it can muster a 2/3 vote in each house. Requiring the legislature to justify any such changes publicly may mitigate the potential to use this safety valve for legislators' narrow personal gain.

- **Expressly prioritize criteria** *(see page 42).* Several states require their redistricting bodies to abide by several criteria when drawing the lines (e.g., a 5% population variance, preserved county lines). Few, however, expressly designate which criteria should yield to the others in the event of a conflict (Arizona, Colorado, and Iowa are among the few exceptions). States should expressly remind redistricting bodies that they must first comply with federal constitutional equal protection mandates and the statutory requirements of the Voting Rights Act – but beyond that, it is also useful to clearly designate some criteria as more important, others as subsidiary, and still others as equally important and therefore able to yield to each other according to the demands of the local political geography. Clear priorities let the public, those drawing the lines, and the courts that may eventually review a plan know what to expect.[196] It is also important to keep in mind that if it a plan places a high priority on maximizing or minimizing easily measured criteria, like county splits or population equality or compactness or competition, the mathematical imperative could prevent substantial consideration of criteria designated a lower priority.

- **Protect minority representation** *(see page 47).* California's state Voting Rights Act makes dilution easier to prove, and provides protections for dispersed minorities that may extend beyond the safeguards offered by the federal Voting Rights Act. Localities are free to experiment with various policies, including different districting schemes and different voting rules: the overriding question is merely ensuring that minority votes are not systematically diluted. Several upcoming lawsuits involving provisions of the federal Voting Rights Act will better indicate whether such provisions are likely to withstand legal challenge.

- **Allow meaningful space for communities of interest** *(see page 54).* The residential housing patterns of various communities do not always conform to neat political, geographic, or geometric demarcations, and as a result, many states expressly grant their redistricting bodies discretion to draw district lines that maintain the integrity of particular communities of interest. One means to ensure space for such communities is to prioritize their protection; another means is simply to leave sufficient flexibility in the other criteria that those drawing the lines will be able to bend a line, on the margins, in order to keep a community intact.[197] Under either approach, it may be worthwhile to investigate whether communities of interest in a given state can be more objectively "grounded" by requiring that they be composed of whole census tracts.[198] And under either approach, it may be worthwhile to require that the redistricting body publicly identify the particular community protected by any district's deviation from other, more objective, criteria.[199]

- **Reveal information sequentially** *(see page 63).* In any redistricting system with partisan actors, the temptation to use political data to try to secure partisan advantage is immense. Arizona attempts to address this problem by forbidding the use of party registration and voter history data until a draft set of maps is drawn, at which point the political data may be used to double-check for unintended consequences – but without political data, it is impossible to check for full compliance with the Voting Rights Act, and Arizona's first state legislative maps were indeed rejected by the Department of Justice.[200] That said, it may be worth considering using Arizona's model not for all political data, but for candidate residence.[201] It may also be worth considering publishing the final draft maps, before candidates' residences are revealed, in order to anchor the (potentially) less politicized draft.

- **Provide for streamlined court review** *(see page 27).* Redistricting plans are often challenged in court by those who fear losing voting power under the new plan. Without a designated forum for resolving these disputes, litigants may "shop" among various state and federal courts for the judge or judges that seem most favorably inclined; those decisions are inevitably appealed, consuming precious time in an election cycle. Several states have limited the potential for strategic gaming and delay by giving one state court – usually the state's Supreme Court – exclusive jurisdiction over any challenge.[202] Though this will not eliminate accusations of partisanship, it at least speeds the resolution of any litigation. These states may also require the court to place the highest priority on redistricting cases, to further limit the chance of uncertainty over redistricting lines as the upcoming elections approach.

- **Count prisoners at home** *(see page 16).* Incarcerated individuals – disproportionately poor and minorities – are currently tallied for redistricting purposes where they are imprisoned. This artificially inflates the voting power of prison districts, where the prisoners generally cannot vote and are not meaningfully represented, at the expense of their home communities. Incarcerated individuals should be counted for redistricting purposes in the communities where they lived before their incarceration. In 2007, applicable bills were introduced in both Michigan and New York.

- **Promote diversity in the redistricting body** *(see page 26).* A redistricting body should optimally reflect the diversity of its state; those selecting the members of such a body should be instructed accordingly. In New York in 2006, a bill required those appointing members of an independent commission to "give due consideration to reflecting the geographic, ethnic, and racial diversity of the state in appointments to the commission."[203] This balances the need for a clear mandate with the need to avoid potential constitutional difficulty.

- **Preserve independence through the body's voting rule** *(see page 26).* In many commission proposals, there is much importance placed on a tiebreaker, selected by a majority of commissioners otherwise affiliated with or selected by partisan interests. This tiebreaker should be relatively neutral, or at least acceptable to commissioners from both major parties. There still exists the possibility, however, that he or she will be outvoted. In order to mitigate the possibility of bipartisan collusion, the support of that tiebreaker should be required to pass any given plan.[204]

- **Provide for partisan balance in the body's staff** *(see page 25).* No one is more important and less visible in the redistricting process than the technical consultants who actually supply the data, advise the decision-makers of the redistricting body, and execute the mechanics of drawing the lines themselves.[205] No law regulating the redistricting process has yet sought to ensure that the responsibilities of the posts are carried out in a bipartisan, multi-partisan, or nonpartisan manner. To guard against partisan bias in the crucial mechanics of redistricting, the responsibilities of the chief consultant to the redistricting body should be split between representatives of the major political parties. Furthermore, if a commission is deployed with safeguards to preserve the commissioners' independence, staff should be selected using safeguards no less robust.

- **Use a flexible equal population standard** *(see page 42)*. The constitution generally requires state legislative districts with no more than 10% total population variance; various states have set themselves still lower thresholds. A proposal in New York in 2006 took a slightly different approach, requiring groups of neighboring districts to reflect the appropriate proportion of the statewide population: 10% of the districts should have about 10% of the population, 20% of the districts should have about 20% of the population, etc. This allows flexibility for an individual district or two to be slightly over- or under-populated in pursuit of other goals, but also ensures that no substantial region of the state has districts that are consistently over- or underpopulated.

- **Employ "accountability seats"** *(see page 57)*.[206] Much of the partisan dissatisfaction with particular districting plans stems from the gap between overall statewide support for a party and the proportion of districts that party is able to win: it seems intuitively unfair to many that a party can have 65% support but win only 52% of the legislative seats. To some extent, that gap is inherent in any majority-win districted system. "Accountability seats" – known in academic circles as a **mixed-member proportional** voting system – help reduce the disparity. In a system with accountability seats, most of the legislative seats – say 80 out of 100 – are familiar; citizens vote for candidates in those districts just as they do today. The remaining 20 seats, the "accountability seats," are used to bring a party's representation in the legislature in line with its statewide support. So, for example, if the Republicans won 44 of the 80 districted seats, but won statewide support of 58%, Republicans would be assigned 14 of the 20 accountability seats, filled through a statewide party list. In total, the Republicans would have 58 of the 100 legislative seats, matching their overall statewide showing.

THE REFORM PROCESS

Just as there is no single optimal redistricting system for all purposes, there is no single optimal path to reform. In some states, the voters have pushed reform directly, through the initiative process, or found a champion of reform in the governor's mansion. In other states, a legislative majority sensing a shift in the political winds has sought reform, in part, to stave off the excesses of a retributive redistricting effort by an opposing party on the threshold of power.

Still, recent experience with reform proposals, successful and unsuccessful, does suggest a few best practices for those seeking reform. Again, we do not pretend that the lessons below represent an exclusive list, or that they guarantee success if properly implemented. Nevertheless, we hope that they increase the likelihood that reform can be achieved … and that it will deliver the benefits anticipated.

- **Address the problem, not the symptom.** The most obvious signs of redistricting dysfunction may be symptoms, not problems. For example, some reformers highlight districts with exceedingly irregular shape, but do not believe that a district's shape itself either impedes or facilitates fair and equitable representation. Focusing on symptoms may lead to "solutions" that do not correct the underlying problems with the status quo – or that lead to other undesirable consequences. Reformers are better served by thinking through the goals of representation and the ways in which those goals are not adequately served by the status quo.

- **Do not overpromise.** Proponents of the redistricting initiative approved by Arizona voters in 2000 emphasized its potential to create more competition. However, the initiative proposal itself allowed the new redistricting commission to consider competition only after satisfying several other criteria;[207] furthermore, competitive districts increase the likelihood of, but do not guarantee, competitive races. When the first few elections in the new districts were not substantially competitive, some were disgruntled, and the public debate over the extent of the commission's obligation to create competition spilled over into the courts.[208] This rancor was caused, in part, by the way in which the reform was marketed, and might have been avoided with a more balanced sales pitch.

- **Engage minority constituencies early.** In substantial part because of the Voting Rights Act, minority legislators now occupy some senior legislative positions, and may be suspicious of attempts to remove redistricting power from the legislature just as they have arrived in positions of substantial influence. Proponents of reform should engage minority constituencies early in the process, to ensure that proposals adequately protect minority rights, and to gather support, tacit or explicit, for the need for reform.[209]

- **Leave time for education.** Research shows that knowledge about how districts are currently drawn, much less the available alternatives, is not widespread. Where public approval is part of the reform process, proponents would do well to leave ample time for education. In Arizona, for example, the 2000 initiative was the culmination of a decade of reform efforts in the public eye.

- **Beware the enthusiastic support of only one major party.** Redistricting initiatives failed in 2006 in both California and Ohio, in part, because they were perceived as attempted partisan power grabs: by Republicans in California and by Democrats in Ohio. Enthusiastic support by one major party – without equivalent enthusiasm from the other – could well prove fatal to a public initiative in a closely divided state, no matter how substantial the nonpartisan credentials behind the idea.[210]

- **Pay attention to the effective date of the proposal.** Proposals that have called for redrawing the district lines immediately upon the reform's passage have been repeatedly portrayed as partisan power-grabs by whichever party stands to benefit most in the short term – and that characterization has hastened their defeat.[211] It may seem frustrating, given the effort required for any redistricting reform, to postpone the effects until the next regular redistricting, just after the census. Reform delayed, however, may be preferable to reform denied.

- **Draw test maps to look for unintended consequences.** In the abstract, it is difficult to gauge the practical impact of multiple conflicting criteria that a redistricting body may have to consider. *After* agreeing on the goals that redistricting reform should serve, and developing a structure to further those ends, drawing a few test maps may reveal unanticipated effects of the structure in question. The point is not the appearance of a final plan, but an understanding of the constraints in place throughout the process: an instruction to minimize county splits or to nest Senate and Assembly districts, for example, may limit available options in a way that only becomes clear once you start drawing. Test maps can also reveal unanticipated quirks of a state's political geography.[212] In Ohio, for example, some townships are not contiguous, and look more like shotgun spray than regular polygons; a proposal that would preserve townships in a single district therefore creates constraints that may not be obvious from the text of the proposal itself.

APPENDICES

APPENDIX A.
RECAP OF REDISTRICTING CHOICES

The list below recaps some of the choices involved in a redistricting system. There are other options, not listed here; this summary is intended only as a sort of quick-reference reminder of the choices to be confronted. As discussed frequently throughout this paper, some or all of these choices may conflict with each other, and it may be necessary to prioritize among them.

WHEN TO DRAW

- **Once per decade**: Districts may be redrawn only once per decade

- **More than once**: Districts may be redrawn more than once per decade, at certain times (e.g., if a court declares a plan invalid, or if a court draws a plan because the primary body ran out of time)

- **As often as desired**: Districts may be redrawn as often as desired

WHO DRAWS

PRINCIPAL STRUCTURE

- **Legislature**: The legislature draws the lines

- **Advisory commission**: An advisory commission creates a draft plan, which the legislature can adopt, modify, or ignore

- **Backup commission**: The legislature draws the lines, but a backup commission steps in if the legislature cannot come to an agreement

- **Commission + legislature**: A non-legislative commission draws the lines, but the legislature can modify the plan in moderate fashion

- **Commission**: A non-legislative commission draws the lines

ROLE OF INDIVIDUAL LEGISLATORS

- **Legislature**: The legislature draws the lines, so all legislators (at least in the majority party) are directly involved in drawing the lines

- **Politician commission**: Some legislators (usually the leadership) are on the commission that draws the lines

- **Leadership chooses**: Some legislators (usually the leadership) select some or all of the commissioners who draw the lines; though they don't draw the lines themselves, they indirectly control the process

- **No legislators**: No legislators are involved, directly or indirectly

- **No legislators or staff**: Neither legislators nor legislative staff or lobbyists are involved, directly or indirectly

ROLE OF GOVERNOR

- **Veto**: The governor may veto a proposed plan

- **No veto**: The governor may not veto a proposed plan

VOTING RULE

- **Majority**: A simple majority is enough to approve a plan

- **Tiebreaker**: A simple majority is enough to approve a plan, but that majority must include the vote of a relatively neutral tiebreaker

- **Supermajority**: A supermajority is required to approve a plan

PARTISANSHIP

- **Always partisan**: The redistricting body will almost always have a partisan imbalance (e.g., the legislature draws the lines, or a commission is composed of an odd number of elected officials)

- **Sometimes partisan**: The redistricting body will sometimes have a partisan imbalance (e.g., the legislature draws the lines with a gubernatorial veto, or commissioners are chosen in such a way that it's possible but not certain to have more from one party than from another)

- **Bipartisan**: The redistricting body is divided between the major parties

- **Multipartisan**: The redistricting body is evenly multipartisan

- **Tiebreaker**: The redistricting body is evenly bipartisan or multipartisan, with a tiebreaker chosen by members of both or multiple parties

- **Nonpartisan**: The redistricting body is structured to be nonpartisan

WHO DRAWS (CONT'D)

SIZE OF THE BODY

- **Legislature**: The redistricting body is as large as the legislature

- **9-15 members**: The redistricting body is a commission of 9-15 people

- **3-7 members**: The redistricting body is a commission of 3-7 people

- **Sole decision maker**: One person draws the lines

DIVERSITY

- **Geographic**: The redistricting body reflects geographic diversity

- **Race/Ethnicity**: The redistricting body reflects racial or ethnic diversity

- **Gender**: The redistricting body reflects gender diversity

- **Partisan**: The redistricting body reflects partisan diversity

COURTS

- **Empowered**: Courts may draw district lines themselves (if the main redistricting body violates the law, or fails to act in time)

- **Deferential**: If lines are illegal, the main redistricting body redraws the lines; courts may draw lines only if the main body does not act in time

- **Open**: Any court can hear challenges to redistricting plans

- **Supreme Court**: No state court other than the state Supreme Court can hear redistricting challenges, and those cases get priority on the docket

- **Automatic**: The state Supreme Court will automatically review any plan, without the need to file a challenge

STARTING POINT

- **Current map**: Lines are redrawn starting with the existing district lines

- **Set point**: Lines are redrawn starting anew at a certain point of the map

- **Grid**: Lines are redrawn starting anew with a regular grid

- **No constraint**: No particular starting point is determined

DISCRETION

- **Full discretion**: The redistricting body has full discretion to draw lines as it pleases, with no constraints other than federal law

- **Some constraints**: The redistricting body has some discretion to draw the lines, but only within constraints set by the state

- **Automatic**: The redistricting body is essentially ministerial, and only acts to decide which plans best maximize certain criteria

TRANSPARENCY

- **Closed-door**: Lines are redrawn in private

- **Data available**: Redistricting data is made available to the public, possibly with software to use the data

- **Public submission**: The public may submit redistricting plans

- **Hearings**: Hearings are held to discuss redistricting plans, potentially with draft maps publicized for specific public input

- **Justification**: Final plans are submitted with a written justification of the particular choices made

- **Open meetings**: All meetings of the redistricting body are or will be public, either at the time or preserved for later public disclosure

- *Ex parte* **contacts**: All contacts with members of the redistricting body are public, either at the time or preserved for later public disclosure

WHERE TO DRAW

EQUAL POPULATION

- **Federal limit**: The largest district is no more than 10% larger than the smallest district

- **Proportion**: 10% of the districts must contain approximately 10% of the population, but individual districts may deviate somewhat

- **Total deviation**: The largest district is no more than X% larger than the smallest district

- **Average deviation**: The districts deviate no more than X% from the ideal population, on average

- **Individual deviation**: Each district is not more than X% different from the ideal population

- **Absolute equality**: There is as little difference between each district's population as possible

MINORITY REPRESENTATION

- **Federal limit**: The plan complies with the Voting Rights Act

- **Independent protection**: The plan prevents dilution of minority votes, no matter how the federal Voting Rights Act is interpreted

- **Eased proof of violation**: The state has a standard of proof for vote dilution that is easier to meet than the federal Voting Rights Act

- **Voting rule**: The plan incorporates districts with different voting rules, which prevent minority vote dilution without drawing specific minority opportunity districts

CONTIGUITY

- **Non-contiguous**: Some districts are not contiguous

- **Water**: All districts are contiguous except when crossing water

- **Contiguous**: All districts are fully contiguous, including districts that span water, but are joined by bridges or ferry routes

COMPACTNESS

- **Noncompact**: Some districts are not compact

- **General**: Districts seem compact by eyeballing, but there is no standard definition of compactness

- **Perimeter**: Districts must meet a threshold limit of compactness, using one of the measures driven by district perimeter

- **Dispersion**: Districts must meet a threshold limit of compactness, using one of the measures driven by district dispersion

- **Population**: Districts must meet a threshold limit of compactness, using one of the measures driven by population center of gravity

- **Max compact**: Districts must be drawn to maximize a compactness score, using a specific measure

POLITICAL / GEOGRAPHIC BOUNDARIES

- **No constraint**: There is no particular need to follow political or geographic boundaries

- **General**: Districts generally follow political and geographic boundaries when that does not interfere with other objectives

- **Total counties**: Districts split no more than X number of counties

- **Minimum counties**: Districts split the minimum number of counties

- **Minimum splits**: Districts split the minimum number of counties, towns, wards, precincts, and blocks

COMMUNITIES OF INTEREST

- **No constraint**: There is no particular need to draw districts to encompass communities of interest

- **Divide**: Districts generally divide communities of interest to force legislators to resolve competing goals

- **General**: Districts generally preserve communities of interest whole, when that does not interfere with other objectives

- **Articulate**: Districts preserve communities of interest whole, and the redistricting body must explain the communities of interest protected

COMPETITION

- **No constraint**: There is no particular need to draw districts with a particular political outcome in mind

- **Draw blind**: Districts must be drawn without access to data about voter partisanship, except where necessary to implement federal law

- **General**: Districts are generally drawn to foster district partisan balance, when that does not interfere with other objectives

- **Threshold**: X% of the districts must be drawn so that the partisan balance of the district is within 10%

- **Maximum competition**: Districts must be drawn so that as many districts as possible have a partisan balance within 10%

PARTISAN BIAS

- **No constraint**: There is no particular need to limit one party's advantage in the likelihood of winning a total number of seats

- **Draw blind**: Districts must be drawn without access to data about voter partisanship, except where necessary to implement federal law

- **Reduce bias**: Districts where the likely partisan outcome reduces the total partisan bias are favored

- **Minimize bias**: The plan must minimize either party's advantage in the likelihood of winning a total number of seats

- **Accountability seats**: The plan sets districts aside, outside of the district system, to make the total seats match the total votes more closely

CANDIDATES' HOMES

- **No constraint**: There is no rule relating to candidates' or incumbents' homes, one way or another

- **Incumbent protection**: Two incumbents' houses may not be put in the same district if possible

- **No consideration**: Districts may not be drawn in order to protect or harm particular candidates or incumbents

- **Draw blind**: Districts must be drawn without information about where candidates or incumbents live

NESTING

- **No constraint**: State House or Assembly districts need not be nested inside state Senate districts

- **Nested**: State House or Assembly districts must be nested inside state Senate districts

- **Floterial**: Districts for the same legislative chamber may overlap each other

MULTI-MEMBER DISTRICTS

- **Single-member**: All districts elect one and only one representative

- **Multi-member**: Some or all districts may elect multiple representatives

- **Voting rule**: Some or all districts may elect multiple representatives, using proportional voting rules like cumulative or choice voting

APPENDIX B.
JURISDICTIONS COVERED BY SECTION 5 OF THE VRA

Covered as a whole: Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas and Virginia

CALIFORNIA

Kings, Merced, Monterey and Yuba Counties

FLORIDA

Collier, Hardee, Hendry, Hillsborough and Monroe Counties

MICHIGAN

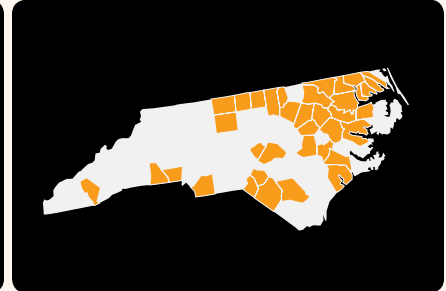Clyde and Buena Vista Townships

NEW HAMPSHIRE

Rindge, Pinkhams Grant, Stewartstown, Stratford, Benton, Antrim, Boscawen, Newington and Unity Towns; Millsfield Township

NEW YORK

Bronx, Kings and New York Counties

SOUTH DAKOTA

Shannon and Todd Counties

NORTH CAROLINA

Anson, Beaufort, Bertie, Bladen, Camden, Caswell, Chowan, Cleveland, Craven, Cumberland, Edgecomb, Franklin, Gaston, Gates, Granville, Green, Guilford, Halifax, Harnett, Hertford, Hoke, Jackson, Lee, Lenoir, Martin, Nash, Northampton, Onslow, Pasquotank, Perquimans, Person, Pitt, Robeson, Rockingham, Scotland, Union, Vane, Washington, Wayne and Wilson Counties

APPENDIX C.
ADDITIONAL RESOURCES

Micah Altman, *Traditional Districting Principles: Judicial Myths vs. Reality*, 22 Soc. Sci. Hist. 159-200 (1998), *available at* http://www.hmdc.harvard.edu/micah_altman/papers/ssha1_52.pdf.

American Civil Liberties Union Voting Rights Project, *Everything You Ever Wanted to Know about Redistricting* (April 2001), *available at* http://www.aclu.org/FilesPDFs/redistricting_manual.pdf.

Herbert Asher et al., *Reforming Ohio's Democracy: What's Wrong, What We Can Do About It* (Oct. 3, 2006), *available at* http://www.ohiocitizen.org/moneypolitics/2006/study/title.htm.

Jason Barbaras & Jennifer Jerit, *Redistricting Principles and Racial Representation*, 4 State Pol. & Pol'y Q. 415-35 (2004), *available at* http://people.rwj.harvard.edu/~jbarabas/Recent%20Papers/Barabas_Jerit_SPPQ_2004.pdf.

David Butler & Bruce E. Cain, Congressional Redistricting: Comparative and Theoretical Perspectives (1992).

Bruce E. Cain, The Reapportionment Puzzle (1984).

David T. Canon, Race, Redistricting and Representation (1999).

Adam Cox, *Partisan Fairness and Redistricting Politics*, 79 N.Y.U. L. Rev. 751 (2004).

Gary W. Cox & Jonathan N. Katz, Elbridge Gerry's Salamander: The Electoral Consequences of the Reapportionment Revolution (2002).

Andrew Gelman & Gary King, *A Unified Method of Evaluating Electoral Systems and Redistricting Plans*, 38 Am. J. Pol. Sci. 514 (1994).

Bernard Grofman, Lisa Handley & David Lublin, *Drawing Effective Minority Districts*, 79 N.C. L. Rev. 1383 (2001).

Bernard Grofman & Gary King, *The Future of Partisan Symmetry as a Judicial Test for Partisan Gerrymandering After* LULAC *v. Perry*, 6 Election L.J. 2 (2007).

Penda D. Hair & Pamela S. Karlan, *Redistricting for Inclusive Democracy* (2000), *available at* http://www.advancementproject.org/RFD.pdf.

J. Gerald Hebert et al., *The Realists' Guide to Redistricting: Avoiding the Legal Pitfalls* (2000).

Samuel Issacharoff, *Gerrymandering and Political Cartels*, 116 Harv. L. Rev. 593 (2002).

Iowa Legislative Service Bureau, *Legislative Guide to Redistricting* (December 2006), *available at* http://www.legis.state.ia.us/Central/LSB/Guides/redist.htm.

J. Morgan Kousser, Colorblind Injustice: Minority Voting Rights and the Undoing of the Second Reconstruction (1999).

Jeffrey C. Kubin, *The Case for Redistricting Commissions*, 75 Tex. L. Rev. 837 (1997).

League of Women Voters, The Campaign Legal Center & The Council for Excellence in Government, *Building A National Redistricting Reform Movement: Redistricting Conference Report* (2006), *available at* http://www.campaignlegalcenter.org/attachments/1641.pdf.

Daniel H. Lowenstein & Jonathan Steinberg, *The Quest for Legislative Districting in the Public Interest: Elusive Or Illusory?*, 33 U.C.L.A. L. Rev. 1 (1985).

Daniel H. Lowenstein, *Competition and Competitiveness in American Elections*, 6 Election L. J. 278 (2007).

David Lublin & Michael P. McDonald, *Is It Time to Draw the Line? The Impact of Redistricting on Competition in State House Elections*, 5 Election L.J. 144 (2006).

The Marketplace of Democracy (Michael P. McDonald & John Samples eds., 2006).

Michael P. McDonald, *A Comparative Analysis of Redistricting Institutions in the United States, 2001-02*, 4 State Pol. & Pol'y Q. 371-95 (2004), *available at* http://sppq.press.uiuc.edu/4/4/mcdonald.pdf.

Mexican American Legal Defense and Education Fund, NAACP Legal Defense and Education Fund & National Asian Pacific American Legal Consortium, *The Impact of Redistricting in Your Community: A Guide to Redistricting*, *available at* http://www.maldef.org/publications/pdf/Redistricting_Manual.pdf.

Minnesota Legislative Reference Library, *Redistricting 2000,* http://www.leg.state.mn.us/lrl/issues/redist00.asp.

National Conference of State Legislatures, *Redistricting Research and Presentations,* http://www.ncsl.org/programs/legismgt/redistrict/research.htm.

Richard G. Niemi *et al., Measuring Compactness and the Role of a Compactness Standard in a Test for Partisan and Racial Gerrymandering*, 52 J. Pol. 1155 (1990).

Party Lines: Competition, Partisanship, and Congressional Redistricting (Thomas E. Mann & Bruce E. Cain eds., 2005).

Nathaniel Persily, *In Defense of Foxes Guarding Henhouses*, 116 Harv. L. Rev. 649 (2002).

Race and Redistricting in the 1990s (Bernard Grofman ed., 1998).

The Reform Institute, *Beyond Party Lines: Principles for Redistricting Reform* (2005), *available at* http://www.reforminstitute.org/uploads/publications/RedistrictingPrinciplesFINAL.pdf.

The Shape of Representative Democracy: Report of the Redistricting Reform Conference, Airlie, Va. (2005), *available at* http://www.campaignlegalcenter.org/attachments/1460.pdf.

SELECTED REFORM PROPOSALS

The following represent a few of the recent specific proposals for redistricting reform, many with components we find admirable. That said, these proposals are listed here for reference only; the fact that any given proposal is or is not listed here should not imply the Brennan Center's approval or disapproval.

Sam Hirsch, *A Model State Constitutional Amendment to Reform Redistricting* (2006), *at* http://tinyurl.com/33s46v.

Ari Weisbard & Jeannie Wilkinson, *Drawing Lines: A Public Interest Guide to Real Redistricting Reform* (2005), *available at* http://www.demos.org/pubs/caredisreport.pdf.

Fairness and Independence in Redistricting Act of 2007, H.R. 543, 110th Cong. (2007).

California Voters FIRST Act, *at* http://votersfirstca.com/.

Comm. for Fair Elections, Initiative 05-14 (Fla. 2006), *at* http://election.dos.state.fl.us/initiatives/fulltext/pdf/41643-1.pdf.

Comm. on Election Law, Ass'n of the Bar of the City of New York, *A Proposed New York State Constitutional Amendment to Emancipate Redistricting from Partisan Gerrymanders* (2007), *at* http://www.nycbar.org/pdf/report/redistricting_report03071.pdf.

A. 5413, Reg. Sess. (N.Y. 2007), *at* http://assembly.state.ny.us/leg/?bn=A05413&sh=t.

H.J.R. 4, 127th Gen. Assem., Reg. Sess. (Ohio 2008), *at* http://www.legislature.state.oh.us/res.cfm?ID=127_HJR_4.

ENDNOTES

ENDNOTES

[1] U.S. Const. art. I, §2, cl. 3.

[2] *See, e.g.*, N.Y. Const. art. III, § 4 (setting the size of the State Senate).

[3] Office of the Clerk, U.S. House of Representatives, Congressional Apportionment, *at* http://clerk.house.gov/art_history/house_history/congApp.html.

[4] Act of Aug. 8, 1911, ch. 5, Pub. L. No. 62-5, 37 Stat. 13; Reapportionment Act of June 18, 1929, ch. 28, Pub. L. No. 71-13, 46 Stat. 21, 26–27.

[5] Office of the Clerk, Congressional Apportionment, *supra* note 3.

[6] *Id.*

[7] *Id.*

[8] In 2010, there will be another census, and congressional seats will again be apportioned among the states based on their population. As of early 2008, according to various population projections, at least seven states (Arizona, Florida, Georgia, Nevada, Oregon, Texas, and Utah) are expected to gain seats; at least ten states (Illinois, Iowa, Louisiana, Massachusetts, Michigan, Missouri, New Jersey, New York, Ohio, and Pennsylvania) are expected to lose seats. *See* Election Data Services, New Population Estimates Continue Trend for Congressional Apportionment, But Point to Changes for 2010 (2007), *at* http://www.cqpolitics.com/cq-assets/cqmultimedia/pdfs/2007_12_27edsstudy.pdf.

[9] Paul J. Weber, *Madison's Opposition to a Second Convention*, 20 Polity 498 (1998).

[10] Some accounts credit Gilbert Stuart, the artist better known for painting George Washington's familiar portrait, as the creator of the cartoon; others credit Elkanah Tisdale. Similarly, some credit Benjamin Russell as the editor who gave the "Gerry-Mander" its name; others credit a Mr. "Alsop"; still others, James Ogilive. *See, e.g.*, Charles Sumner Olcott, The Life Of William McKinley 82 (1916); 2 The American Historical Record 276 (Benson J. Lossing, ed. 1873); 27 New-england Historical and Genealogical Register and Antiquarian Journal 421 (1873).

[11] Jim Sanders, *Precursor to Prop. 77 "Orchestrated Well,"* Sacramento Bee, Oct. 19, 2005, at A3; *Democrats Might Gain Only 1 House Seat in Redistricting*, Ventura County Star, Aug. 15, 2001.

[12] Hanh Quach & Dena Bunis, *All Bow to Redistrict Architect*, Orange County Register, Aug. 26, 2001.

[13] The "hand," at the eastern end of current district 11, excised a portion of what had been Cranwell's district 14. Lindsey Nair, *Redistricting Effectively Moves Cranwell*, Roanoke Times, Apr. 24, 2001.

[14] Jonathan P. Hicks, *In District Lines, Critics See Albany Protecting Its Own*, N.Y. Times, Nov. 2, 2004.

[15] To mitigate the effects of redrawing the lines, in the first election after a redistricting, New York State allows candidates to run for office in any district in the county where they live, whether they live in the district itself or not. N.Y. Const. art. III, § 7. In 2002, just after the redistricting, Jeffries took advantage of this provision, and again earned nearly 40% of the primary vote against Green. By 2004, however, Jeffries could no longer run in Green's district without moving his house, and despite the fact that Green had been convicted for billing the state for false travel expenses, he faced no challenger in the primary. Hicks, *supra* note 14.

[16] N.Y. State Bd. of Elections, Election Results, *at* http://www.elections.state.ny.us/portal/page?_pageid=35,1,35_8301:35_8306&_dad=portal.

[17] Bush v. Vera, 517 U.S. 952, 1019 n.18 (1996) (Stevens, J., dissenting).

[18] *See* David Barboza & Carl Hulse, *Texas' Republicans Fume; Democrats Remain AWOL*, N.Y. Times, May 14, 2003, at A17; Ralph Blumenthal, *After Bitter Fight, Texas Senate Redraws Congressional Districts*, N.Y. Times, Oct. 13, 2003, at A1; Editorial, *The Soviet Republic of Texas*, Wash. Post, Oct. 14, 2003, at A22; *Texas: Democrats on the Run, Again*, N.Y. Times, July 29, 2003, at A18; *Texas Search for Democrats is Ruled Illegal*, N.Y. Times, July 12, 2003, at A7.

[19] League of United Latin American Citizens (LULAC) v. Perry, 126 S. Ct. 2594, 2613 (2006).

[20] *Id.*

[21] *Id.* at 2622.

[22] Greg Jefferson, *Rodriguez Upsets Incumbent Bonilla*, San Antonio Express-News, Jan. 9, 2007.

[23] Albert Bergesen & Max Herman, *Immigration, Race, and Riot: The 1992 Los Angeles Uprising*, 63 Am. Soc. Rev. 39 (1998).

[24] *See, e.g.*, Coalition of Asian Pacific Americans for Fair Redistricting, Fair Representation, Coalition Building, Political Empowerment, at 5, *at* http://www.apalc.org/pdffiles/capafrsum.pdf.

[25] U.S. Census Bureau, About 2010 Census, *at* http://www.census.gov/2010census/about_2010_census/.

[26] *Id.*

[27] *See* 2 U.S.C. § 2a.

[28] Pub. L. No. 94-171, 89 Stat. 1023 (1975). The Census Bureau reviews its own data after the census is complete, to try to estimate whether it made any systematic mistakes, and if so, how large; these estimates are usually released later as a statement of the "overcount" or "undercount" of certain groups. After the 2000 Census, the review process itself was sufficiently flawed that the extent of any overcount or undercount in 2000 is not clear. U.S. Gov't Accountability Office, Census 2000: Design Choices Contributed to Inaccuracy of Coverage Evaluation Estimates, GAO-05-71 (2004).

[29] A "census block" is a physical area set by the U.S. Census Bureau; it is the smallest geographic unit for which the Census Bureau collects data. In some cases, it will be the same area as a city block, but especially in rural areas, it can be substantially larger. *See* U.S. Census Bureau, Glossary: Census Block, *at http://factfinder.census.gov/home/en/epss/glossary_c.html#census_block.*

[30] *See generally* Justin Levitt & Michael P. McDonald, *Taking the "Re" out of Redistricting*, 95 GEO. L.J. 1247 (2007).

[31] *See generally* Michael P. McDonald, *A Comparative Analysis of Redistricting Institutions in the United States*, 2001–2002, 4 ST. POL. & POL'Y Q. 371 (2004).

[32] There have been at least two bills offered in the 110th Congress that would set a federal standard for most congressional districts to be drawn by commissions: the Fairness and Independence in Redistricting Act of 2007, H.R. 543 and S. 2342, and the Redistricting Reform Act of 2007, H.R. 2248.

[33] In North Carolina, for example, the Governor may not veto a redistricting law approved by the state legislature. N.C. CONST. art. II, § 22(1), (5). In Mississippi, though the Governor may veto a Congressional plan, redistricting for the state legislature is accomplished by joint resolution, which is not subject to a Governor's veto. MISS. CONST. art. XIII, § 254; Robert Pear, *Citing Race Bias, U.S. Vetoes 2 States' Redistricting*, N.Y. TIMES, July 3, 1991.

In Maryland, the Governor has a somewhat inverted role. The Governor proposes a redistricting plan, which the legislature may adopt or modify; the legislature may also substitute its own plan. If, however, the legislature does not act by the 45th day of the session, the Governor's default plan becomes binding. MD. CONST. art. III, § 5.

[34] IOWA CODE §§ 42.3, 42.5; ME. CONST. art. IV, pt. 3, § 1-A; N.Y. LEGIS. LAW § 83-m (2007); 17 VT. STAT. §§ 1904-06, 1907. In 2001, Rhode Island used an advisory commission in order to redraw the district lines after "downsizing" its Assembly from 50 Senators and 100 Representatives to 38 Senators and 75 Representatives. It is not clear whether Rhode Island will use the advisory commission structure again for the 2010 cycle. *See* 2001 R.I. PUB. LAWS ch. 315; Parella v. Montalbano, 899 A.2d 1226 (R.I. 2006).

[35] OHIO REV. CODE § 103.51.

[36] N.Y. LEGIS. LAW § 83-m (2007).

[37] ME. CONST. art. IV, pt. III, § 1-A.

[38] IOWA CODE §§ 42.3, 42.5.

[39] CONN. CONST. art. III, § 6(c); ILL. CONST. art. IV, § 3(b); MISS. CONST. art. XIII, § 254; OKLA. CONST. art. V, § 11A; TEX. CONST. art. III, § 28. *See also* IND. CODE § 3-3-2-2.

[40] CONN. CONST. art. III, § 6(c).

[41] OKLA. CONST. art. IV, § 6.

[42] TEX. CONST. art. III, § 28.

[43] Ill. Const. art. IV, § 3(b).

[44] Ark. Const. art. VIII, § 1; Colo. Const. art. V, § 48; Haw. Const. art. IV, § 2; Mo. Const. art. III, §§ 2, 7; N.J. Const. art. IV, § 3, ¶ 1; Ohio Const. art. XI, § 1; Pa. Const. art. II, § 17.

[45] Ark. Const. art. VIII, § 1.

[46] Colo. Const. art. V, § 48.

[47] N.J. Const. art. IV, § 3 ¶ 1.

[48] Mo. Const. art. III, §§ 2, 7.

[49] Ariz. Const. art. IV, pt. 2, § 1; Idaho Const. art. III, § 2; Idaho Code § 72-1502; Mont. Const. art. V, § 14(2); Mont. Code §§ 5-1-101-05; Wash. Const. art. II, § 43; Wash. Rev. Code § 44.05.030-.100. At present, Montana has only one congressional district.

[50] Ariz. Const. art. IV, pt. 2, § 1.

[51] Wash. Rev. Code § 44.05.100.

[52] *See* Proposition 77, Redistricting: Initiative Constitutional Amendment, *at* *http://www.sos.ca.gov/elections/bp_nov05/voter_info_pdf/entire77.pdf.*

[53] *Cf.* Heather K. Gerken, *The Double-Edged Sword of Independence*, 6 Election L.J. 184 (2007) (describing such a system in British Columbia for evaluating voting rules, rather than district lines).

[54] *See* Richard H. Pildes, *The Constitutionalization of Democratic Politics*, 118 Harv. L. Rev. 28, 79 (2004).

[55] Ariz. Const. art. IV, pt. 2, § 1.

[56] Alaska Const. art. VI, § 8; Ariz. Const. art. IV, pt. 2, § 1; Idaho Const. art. III, § 2(6); Mont. Code § 5-1-105; Wash. Rev. Code § 44.05.060; *see also* Haw. Const. art. IV, § 2; Mo. Const. art. III, §§ 2, 7.

[57] Idaho Code § 72-1502; Wash. Const. art. II, § 43; Wash. Rev. Code § 44.05.050.

[58] California Voters First Initiative, *at* *http://votersfirstca.com/.*

[59] Ill. Const. art. IV, § 3(b).

[60] Idaho Const. art. III, § 2; Wash. Const. art. II, § 43. In Missouri, 70% of the commissioners, who are appointed in even numbers by each party, must approve any final plan. *See* Mo. Const. art. III, §§ 2, 7.

[61] N.J. Const. art. IV, § 3, ¶ 2 (requiring the Chief Justice of the Supreme Court to appoint a tiebreaker). Colorado allows each of the legislative leaders to appoint one commissioner, allows the Governor to appoint three, and allows the Chief Justice of the Supreme Court to appoint four; in 1980 and 2000, the Chief Justice's choices were criticized as partisan appointments. *See, e.g.*, Bob Ewegen, Opinion, *The Midnight Gerrymander*, Denver Post, May 10, 2003, at B25.

[62] *See, e.g.*, ARIZ. CONST. art. IV, pt. 2, § 1; HAW. CONST. art. IV, § 2; MONT. CONST. art. V, § 14(2); PA. CONST. art. II, § 17. In Washington, a fifth commissioner chosen by the other four acts as chair, but does not vote. WASH. REV. CODE § 44.05.030.

[63] ARIZ. CONST. art. IV, pt. 2, § 1.

[64] California Voters FIRST Initiative, *at* *http://votersfirstca.com/*.

[65] Idaho uses an independent commission; though the state constitution states that 2/3 of commissioners must approve a plan before it can become law, because there are six commissioners, this voting rule (requiring 4 affirmative votes) is actually the same as a simple majority requirement in most circumstances. *See* IDAHO CONST. art. III, § 2(2), (4).

[66] ME. CONST. art. IV, pt. 1, § 3; ME. CONST. art. IV, pt. 2, § 2; ME. REV. STAT. tit. 21-A, § 1206; MO. CONST. art. III, §§ 2, 7.

[67] CONN. CONST. art. III, § 6(c).

[68] *See, e.g.*, COLO. CONST. art. V, § 48.

[69] *See, e.g.*, Morgan Kousser, *Reapportionment Wars: Party, Race, and Redistricting in California*, 1971-1992, *in* RACE AND REDISTRICTING IN THE 1990S, at 134, 169-70 (Bernard Grofman, ed. 1998).

[70] MISS. CONST. art. XIII, § 254.

[71] ALASKA CONST. art. VI, § 8; COLO. CONST. art. V, § 48.

[72] N.J. CONST. art. IV, § 3, ¶ 2.

[73] *See generally* Nathaniel Persily, *When Judges Carve Democracies: A Primer on Court-Drawn Redistricting Plans*, 73 GEO. WASH. L. REV. 1131 (2005).

[74] Those states include Florida, Georgia, Maryland, Maine, Minnesota, New Hampshire, North Carolina, South Carolina, South Dakota, Texas, and Wisconsin. *See* In re Constitutionality of House Joint Resolution 25E, 863 So.2d 1176, 1177-78 (Fla. 2003); Larios v. Cox, 314 F. Supp. 2d 1357 (N.D.Ga. 2004); In re Legislative Districting of State, 370 Md. 312 (2002); In re 2003 Apportionment of the State Senate, 827 A.2d 844 (Me. 2003); Zachman v. Kiffmeyer, Case No. C0-01-160 (Minn. Spec. Redist. Panel Mar. 19, 2002), *http://www.courts.state.mn.us/documents/CIO/redistrictingpanel/ Final_Legislative_Order.PDF*; Burling v. Chandler, 148 N.H. 143 (2002); Below v. Gardner, 148 N.H. 1 (2002); Stephenson v. Bartlett, 357 N.C. 301, 304-05 (2003); Colleton County Council v. McConnell, 201 F. Supp. 2d 618 (D.S.C. 2002); Bone Shirt v. Hazeltine, 387 F. Supp. 2d 1035 (D.S.D. 2005); Balderas v. Texas, No. 6:01CV158, 2001 WL 34104833 (E.D. Tex. 2001); Baumgart v. Wendelberger, No. 01-C-0121, 02-C-0366, 2002 WL 34127471 (E.D. Wis. 2002).

[75] *See* Gary W. Cox & Jonathan N. Katz, *Bias, Responsiveness, and the Courts, in* Elbridge Gerry's Salamander: The Electoral Consequences Of The Reapportionment Revolution 87-105 (2002); *cf.* Adam B. Cox & Thomas J. Miles, *Judging the Voting Rights Act*, 108 Colum. L. Rev. 1 (2008) (discussing the correlation between the party of the President appointing federal judges and the rate at which those judges find a violation of the Voting Rights Act).

[76] *See, e.g.*, Colo. Const. art. V, § 48(1)(e); Fl. Const. art. III, § 16(c), (e); Kan. Const. art. X, § 1(b).

[77] *See, e.g.*, Ariz. Const. art. IV, pt. 2, § 1 (14).

[78] 13 U.S.C. § 141.

[79] Maine, for example, redraws its districts to take effect in the third year of each decade: 1993, 2003, 2013, etc. Me. Const. art. IV, pt. 1, § 2; *id.* pt. 2, § 2.

[80] *See, e.g.*, Alaska Const. art. VI, § 8 (appointing commissioners by September 1, XXX0); Ariz. Const. art. IV, pt. 2, § 1 (collecting nominees for the commission by January 8, XXX1); N.J. Const. art. IV, § 3, pt. 1 (appointing commissioners by November 15, XXX0); Vt. Stat. tit. 17, § 1904 (selecting advisory commissioners by July 1, XXX0); Wash. Const. art. II, § 43 (appointing commissioners by January 31, XXX1).

[81] Micah Altman et al., *From Crayons to Computers: The Evolution of Computer Use in Redistricting*, 23 Soc. Sci. Computer Rev. 334, 339 (2005). Professor Michael McDonald has collected the state websites providing redistricting data and other information about the redistricting process. *See* Michael McDonald, United States Elections Project, 2001-2002 Redistricting in the 50 States, *at* *http://elections.gmu.edu/redistricting.htm* (last visited Feb. 22, 2008).

[82] *See generally* Bruce E. Cain & Karin Mac Donald, Transparency and Redistricting (2006), *at* *http://swdb.berkeley.edu/redistricting_research/ Transparency_&_Redistricting.pdf*.

[83] *See, e.g.*, N.J. Const. art. II, § 2, ¶ 4.

[84] *Cf.* Cain & Mac Donald, *supra* note 82, at 5 (discussing open-meetings requirements for groups of three or more).

[85] For all but the simplest plans, even if it were possible to quantify all of the measures of each redistricting criterion, computers might not have the capacity to draw the district lines. Given the need to reconcile various criteria, and given the number of potential combinations involved in most redistricting plans, the calculations involved in identifying a single "winning" plan may be so computationally complex that they become practically unsolvable by computers under common conditions. *See generally* Micah Altman, *The Computational Complexity of Automated Redistricting: Is Automation the Answer?*, 23 Rutgers Computer & Tech L.J. 81 (1997). In contrast, though it will also be impossible for any human to find an *optimal* solution, people are fairly well equipped to find reasonably balanced solutions that reconcile various complex objectives.

[86] *See, e.g.*, Micah Altman, *Modeling the Effect of Mandatory District Compactness on Partisan Gerrymanders*, 17 POL. GEOGRAPHY 989, 1000-04, 1006-07 (1998).

[87] Kirksey v. Board of Supervisors, 554 F.2d 139, 141 (5th Cir. 1977); FRANK R. PARKER, BLACK VOTES COUNT: POLITICAL EMPOWERMENT IN MISSISSIPPI AFTER 1965, at 153-56 (1990).

[88] Micah Altman, *Traditional Districting Principles: Judicial Myths vs. Reality*, 22 SOC. SCI. HIST. 159, 180-81 (1998).

[89] States that based representation on towns rather than counties had an even more pronounced disparity. In Vermont, the biggest district – the town of Burlington -- had 872 times as many people as the smallest district. Arthur L. Goldberg, *The Statistics of Malapportionment*, 72 YALE L.J. 90 (1962).

[90] The Supreme Court applied an equal population standard to Congressional districts in *Wesberry v. Sanders*, 376 U.S. 1 (1964), to state legislative districts in *Reynolds v. Sims*, 377 U.S. 533 (1964), and to local government districts in *Avery v. Midland County, Tex.*, 390 U.S. 474 (1968).

Gray v. Sanders, 372 U.S. 368 (1963), implemented the "one person, one vote" standard for statewide offices, by striking down a system that aggregated votes within counties and then tallied the counties to determine a winning candidate. Under such a system, the statewide offices were effectively elected by county "districts" of unequal population.

[91] Wesberry v. Sanders, 376 U.S. 1, 7-8, (1964).

[92] Karcher v. Daggett, 462 U.S. 725, 730 (1983). In the 2001 cycle, Arkansas and West Virginia drew congressional districts consisting entirely of whole counties, without further equalizing population. *See* ARK. CODE §§ 7-2-101 – 105; W. VA. CODE § 1-2-3. These districts have not been challenged in court.

The strict equal population standard usually requires absolute equality among Congressional districts within a state. From state to state, however, the population of Congressional districts will vary slightly, because each state has a whole number of Congressional seats. For example, based on the 2000 census, each Congressional district contained an average of 646,952 people. However, the single Congressional district in Montana had 905,316 people; Utah's three districts each had about 745,571 people; Nebraska's three districts each had about 571,790 people; and Wyoming's single Congressional district had 495,304 people. Karen M. Mills, U.S. Census Bureau, Congressional Apportionment: Census 2000 Brief tbl. 1 (2001), *at* http://www.census.gov/prod/2001pubs/c2kbr01-7.pdf.

[93] Reynolds v. Sims, 377 U.S. 533, 579 (1964). The different standards are based on different Constitutional clauses. Congressional district population disparities are regulated by the Apportionment Clause, U.S. CONST. art. I, §2. State legislative district population disparities are regulated by the Equal Protection Clause, U.S. CONST. amend. XIV, §1.

[94] Brown v. Thomson, 462 U.S. 835, 842-43 (1983) (noting that state legislative districts may generally vary in population by up to 10% without establishing a prima facie case under the Fourteenth Amendment).

[95] Mahan v. Howell, 410 U.S. 315 (1973); Voinovich v. Quilter, 507 U.S. 146 (1993). In these cases, the states' goal of preserving existing political boundaries was considered compelling enough to justify overall ranges of higher than 10 percent. Political boundaries are discussed in more detail, below.

[96] Cox v. Larios, 542 U.S. 947 (2004) (summarily affirming district court decision that deviation in state legislative districts of less than 10% violates the Equal Protection clause when deviation is not justified by a permissible purpose).

[97] COLO. CONST. art. V, § 46.

[98] H.R. Con. Res. 2 (Minn. 1991), *at* http://www.commissions.leg.state.mn.us/gis/html/hcr2.htm.

[99] IOWA CODE § 42.4(1)(a).

[100] Comm. on Election Law, Ass'n of the Bar of the City of New York, *A Proposed New York State Constitutional Amendment to Emancipate Redistricting from Partisan Gerrymanders* (2007), app. D, *at* http://www.nycbar.org/pdf/report/redistricting_report03071.pdf.

[101] Bush v. Vera, 517 U.S. 952, 958-59, 962-64 (1996) (plurality opinion); *see also* Shaw v. Reno, 509 U.S. 630 (1993); Miller v. Johnson, 515 U.S. 900, 916 (1995).

[102] *See* King v. Ill. Bd. of Elections, 979 F.Supp. 619, 621-22 (N.D.Ill.1997), *aff'd*, 522 U.S. 1087 (1998); *see also* Bush v. Vera, 517 U.S. 952, 994 (1996) (O'Connor, J., concurring); League of United Latin American Citizens (LULAC) v. Perry, 126 S. Ct. 2594, 2642 (2006) (Stevens, J., concurring in part and dissenting in part).

[103] For the number of federal and state African-American legislators in various periods, see Mildred L. Amer, Black Members of the United States Congress: 1870-2007 (CRS Report for Congress No. RL30378, 2007); Charles E. Jones, *African American State Legislative Politics*, 30 J. BLACK STUD. 741, 741 (2000); Lisa Handley & Bernard Grofman, *The Impact of The Voting Rights Act on Minority Representation, in* QUIET REVOLUTION IN THE SOUTH 335, 345 tbl. 11.1 (Chandler Davidson & Bernard Grofman eds., 1994); Joint Ctr. for Political & Econ. Studies, Black Elected Officials: A Statistical Summary 2000, *at* http://www.jointcenter.org/index.php/content/download/1809/12453/file/BEO-00.pdf; Joint Ctr. for Political & Econ. Studies, Black Elected Officials: A National Roster, 1995 (1995); *see also* data from the Joint Center for Political and Economic Studies for 2005. Other sources place the number of current federal or state African-American legislators at 571. *See, e.g.*, Pei-te Lien *et al., The Voting Rights Act and the Election of Nonwhite Officials*, 40 PS: POL. SCI. & POL. 489, 490, 492 (2007).

[104] The Gender and Multi-Cultural Leadership Project, *National Database of Non-White Elected Officials* (2007), *at* http://www.gmcl.org/database.htm.

[105] Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, Pub. L. No. 109-246, 120 Stat. 577 (2006).

[106] 42 U.S.C. § 1973; *see also* U.S. Dep't of Justice, Civil Rights Division, Voting Section, The Voting Rights Act of 1965, *at* http://www.usdoj.gov/crt/voting/intro/intro_b.htm.

[107] Voting Rights Act Amendments of 1982, Pub. L. No. 97-205, § 3, 96 Stat. 131, 134 (1982).

[108] *See generally* J. Morgan Kousser, Colorblind Injustice (1999).

[109] It is possible that the courts would allow minority populations to satisfy this first criterion even when they are somewhat geographically separated – as in a concentrated group of Latino voters in one part of a state, and another concentrated group of Latino voters in another part of the state fairly far away – as long as these populations are sufficiently culturally similar to justify one district. The Supreme Court introduced the idea briefly in a 2006 case, League of United Latin American Citizens (LULAC) v. Perry, 126 S. Ct. 2594, 2619 (2006), but did not really explain how far the principle would extend, or in what context it would be required. Scholars have coined the term "cultural compactness" to refer to the cultural similarity of different minority populations. *See* Daniel R. Ortiz, *Cultural Compactness*, 105 Mich. L. Rev. First Impressions 48, 50-51 (2006), *at* http://students.law.umich.edu/mlr/firstimpressions/vol105/Ortiz.pdf.

[110] Thornburg v. Gingles, 478 U.S. 30, 50-51 (1986); Growe v. Emison, 507 U.S. 25, 40-41 (1993); LULAC, 126 S. Ct. at 2614; *see id.* at 2617-19 (discussing compactness).

[111] Thornburg, 478 U.S. at 36-38, 44-45, 79-80.

[112] *See* LULAC, 126 S. Ct. at 2614, 2619-21.

[113] Just as majority-minority districts may elect individuals who are not members of racial or ethnic minority groups, minority representatives may be elected by majority-white districts, though such elections are still relatively rare. *See* Lien, *supra* note 103, at 490-91; Penda D. Hair & Pamela S. Karlan, *Redistricting for Inclusive Democracy* 35 (2000), *available at* http://www.advancementproject.org/RFD.pdf; Adam Nossiter, *Race Matters Less in Politics of South*, N.Y. Times, Feb. 21, 2008.

[114] 42 U.S.C. § 1973c.

[115] *See generally* J. Gerald Hebert, *An Assessment of the Bailout Provisions of The Voting Rights Act, in* Voting Rights Act Reauthorization Of 2006, at 257-75 (Ana Henderson ed., 2007).

[116] *See* 42 U.S.C. § 1973c; Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, Pub. L. No. 109-246, 120 Stat. 577 (2006).

[117] Georgia v. Ashcroft, 539 U.S. 461, 479 (2003). Section 5 of the Voting Rights Act measures only changes from the status quo. Section 2 focuses not on change, but on the absolute right of compact minority populations to be free from efforts to dilute their vote, and therefore works differently. Under section 2, the state may not dilute the votes of a minority in a certain area, even if it provides for minority opportunities elsewhere, unless both groups of minorities have a right under section 2, and both cannot be accommodated at once. Johnson v. De Grandy, 512 U.S. 997, 1019 (1994); LULAC, 126 S. Ct. at 2616-17, 2620.

[118] Shaw v. Reno, 509 U.S. 630 (1993).

[119] For example, the Supreme Court has said that a specific effort to correct prior racial discrimination may be an interest sufficiently "compelling" to let governments draw districts based on race, Shaw v. Hunt, 517 U.S. 899, 909-10 (1996), but thus far, the courts have not directly confronted such a case.

[120] Kan. Legis. Research Dept., Guidelines and Criteria for 2002 Kansas Congressional and Legislative Redistricting (2001), *at* *http://skyways.lib.ks.us/ ksleg/KLRD/Redistrct/documents/Guidelines.PDF*; *see also* Iowa Code § 42.4(5); H.R. Con. Res. 2 (Minn. 1991); Or. Stat. § 188.010. *Cf.* Wash. Rev. Code § 44.05.090 ("The commission shall exercise its powers to provide fair and effective representation . . . .").

[121] Cal. Elec. Code §§ 14025-14032.

[122] Cal. Elec. Code §§ 14027-14028; *see also* Sanchez v. City of Modesto, 145 Cal.App.4th 660, 669 (Cal. Ct. App. 2006).

[123] There is some debate about the extent to which section 2 of the federal Voting Rights Act protects minority voters who are geographically dispersed. In a series of Supreme Court cases in the 1980s and 1990s, minority voters protested that their votes had been "diluted" by a refusal to draw districts where substantial concentrations of minorities might have had the power to elect a representative. The Court said that, in these sorts of cases, the litigants first had to prove that the failure to draw the appropriate districts was the cause of the "dilution." More specifically, the Court said that in order to bring a claim for dilution, litigants have to show (among other things) that the minority population voted sufficiently similarly, was sufficiently large, and lived sufficiently close together that a reasonable district could have been drawn to give it the opportunity to elect a representative. *See* Thornburg v. Gingles, 478 U.S. 30, 50-51 (1986); Growe v. Emison, 507 U.S. 25, 39-41 (1993). The requirement that the minority population live close together – that it be "compact" – has often been repeated as a threshold requirement for dilution claims. Some, however, think that the compactness requirement applies only to dilution claims where the alleged problem is the failure to draw appropriate districts. If the cause of the "dilution" is some other barrier, like a voting rule that keeps geographically dispersed minorities from electing a representative when they might otherwise be able to do so without the particular voting rule, the federal Voting Rights Act might grant those geographically dispersed minorities protection. *See, e.g.*, Steven J. Mulroy, *The Way Out: A Legal Standard for Imposing Alternative Electoral Systems as Voting Rights Remedies*, 33 Harv. C.R.-C.L. L. Rev. 333, 364-79 (1998).

[124] Miller v. Johnson, 515 U.S. 900, 916 (1995); *see also* Shaw v. Reno, 509 U.S. 630, 647 (1993).

[125] Altman, *supra* note 88.

[126] Haw. Const., art. IV, § 6(1), (3).

[127] Altman, *supra* note 88.

[128] *See generally* Richard G. Niemi *et al., Measuring Compactness and the Role of a Compactness Standard in a Test for Partisan and Racial Gerrymandering*, 52 J. Pol. 1155 (1990); Richard H. Pildes & Richard G. Niemi, *Expressive Harms, "Bizarre Districts," and Voting Rights*, 92 Mich. L. Rev. 483, 536-59 (1993).

[129] See Colo. Const. art. V, § 47(1).

[130] Daniel D. Polsby & Robert D. Popper, *Partisan Gerrymandering: Harms and a New Solution* (The Heartland Institute, Heartland Policy Study No. 34, 1991).

[131] *See* Ariz. Indep. Redistricting Comm'n, Reporter's Transcript of Proceedings, Public Session, at 164 (Feb. 7, 2004), *available at* *http://www.azredistricting.org/ Meetings/PDF/AIRCTranscriptsPublicSession2-07-04.pdf*; Ariz. Indep. Redistricting Comm'n, Definitions, *at* *http://www.azredistricting.org/?page=definitions* (last visited Feb. 18, 2008).

[132] Ernest C. Reock, Jr., *A Note: Measuring Compactness as a Requirement of Legislative Apportionment*, 5 Midwest J. Pol. Sci. 70 (1961).

[133] This test was a part of the compactness measure used in Iowa until 2007. *See* Iowa Code §42.4(4)(c) (2006). In 2007, Iowa replaced the population-dispersion test with a measure of total perimeter. *See* 2007 Ia. Legis. Serv. ch. 78, § 6 (West) (S.F. 479).

[134] Iowa Code §42.4(4).

[135] Colo. Const. art. V, § 47(1).

[136] *See* Ariz. Indep. Redistricting Comm'n, Reporter's Transcript of Proceedings, *supra* note 131, at 164; Ariz. Indep. Redistricting Comm'n, Definitions, *at* *http://www.azredistricting.org/?page=definitions* (last visited Feb. 18, 2008).

[137] *See* Mich. Comp. L. §§ 3.63(c)(vii), 4.261(j).

[138] *See* League of United Latin American Citizens v. Perry, 126 S. Ct. 2594, 2617-19 (2006).

[139] That said, a district comprising several population centers connected by a thin strip of highway may be very easy to travel around, but will seldom be very compact.

[140] *See, e.g.*, Bruce E. Cain *et al.*, Competition and Redistricting in California: Lessons for Reform 8-9, 26 (2006) (showing city boundaries of Bakersfield and Fresno, California), *at* *http://swdb.berkeley.edu/redistricting_research/ Competition_&_Redistricting.pdf*.

[141] *See infra* text accompanying note 157.

[142] *See, e.g.*, Altman, *supra* note 86, 1000-04, 1006-07.

[143] Miller v. Johnson, 515 U.S. 900, 916 (1995).

[144] If the races are not all the same within one precinct (and in many precincts, they are not), voters in different districts but voting at the same precinct will vote different ballots.

[145] The Shape of Representative Democracy: Report of the Redistricting Reform Conference, Airlie, Va., at 12 (2005), *available at* http://www.campaignlegal-center.org/attachments/1460.pdf. *But see* Daniel H. Lowenstein & Jonathan Steinberg, *The Quest for Legislative Districting in the Public Interest: Elusive or Illusory?,* 33 U.C.L.A. L. Rev. 1, 29-30 (1985) (suggesting that towns split between districts might be able to command the attention of multiple legislators, rather than simply one).

[146] *See, e.g.*, The Reform Institute, Beyond Party Lines: Principles for Redistricting Reform 16 (2005).

[147] Me. Rev. Stat. tit. 21-A, § 1206-A.

[148] Some have argued that a community of interest can be based on a "media market," the geographic area covered by a specific group of local broadcast television stations. *See, e.g.*, Diaz v. Silver, 978 F.Supp. 96, 123-24 (E.D.N.Y. 1997); *see also* Nielson Co., Local Television Market Universe Estimates (2008) (listing the media markets), *at* http://tinyurl.com/2jbn4j.

[149] *See, e.g.*, The Reform Institute, *supra* note 146, at 15.

[150] *See* U.S. Census Bureau, Census Tracts and Block Numbering Areas, *at* http://www.census.gov/geo/www/cen_tract.html; Sam Hirsch, A Model State Constitutional Amendment to Reform Redistricting (2006), *at* http://tinyurl.com/33s46v.

[151] Less prominent statewide races – like state treasurer or comptroller – are even better means to predict the voters' underlying party preference, because individual candidates tend to be less well known. However, for the same reason, fewer voters cast ballots for these "downballot" offices. *See* Michael P. McDonald, *Redistricting and Competitive Districts, in* The Marketplace Of Democracy 222, 224 (Michael P. McDonald & John Samples eds., 2006).

[152] For a discussion of the various measures of the underlying partisanship of a district, see Simon Jackman *et al., Measuring District Level Partisanship with Implications for the Analysis of U.S. Elections*, 70 J. Pol. ___, *at* *3-7 (forthcoming 2008), *available at* http://jackman.stanford.edu/papers/download.php?i=0.

[153] "**Stacking**" is a fourth method used to make it easier for one party to win, when the jurisdiction permits winner-take-all elections of multiple representatives from one district. Stacking is the act of swallowing substantial minority populations in bigger, multi-member, winner-take-all districts; although these voters might have been able to control a smaller single-member district, their votes will be ineffective in the larger population.

[154] For simplicity's sake, these illustrative maps assume that every individual is also an active voter. In reality, those drawing the lines take into account citizenship, registration, and turnout rates in order to estimate the partisan impact of any particular decision.

[155] These examples, of course, assume that individuals reliably follow their overall partisan preference in voting for particular legislators. In reality, voters vote for individual candidates, and though partisan preference is still the strongest predictor of how citizens vote in any given election, a candidate's personal qualities or campaign tactics or policy platform or any number of other factors might cause someone to cast a ballot for a candidate across party lines.

[156] *See* Gary King & Robert X. Browning, *Democratic Representation and Partisan Bias in Congressional Elections*, 81 Am. Pol. Sci. Rev. 1251 (1987); Bernard Grofman & Gary King, *The Future of Partisan Symmetry as a Judicial Test for Partisan Gerrymandering After LULAC v. Perry*, 6 Election L.J. 2 (2007).

It is important to distinguish **partisan bias** from **responsiveness**. Partisan bias is a measure of the extent to which plans favor a particular party consistently over time, so that the party wins more seats with a certain percentage of the vote than its opposing party would. For example, if the Democrats are likely to win 60% of the seats with 53% of the votes, but the Republicans are likely to win only 55% of the seats with 53% of the votes, the plan would be said to have partisan bias.

In contrast, responsiveness is the measure of the difference between seats and votes: whether any party with 51% of the votes could expect to win 51% of the seats, or 53% of the seats, or 60% of the seats; and whether winning 1% more votes would result in 1% more seats, or 2% more seats, or 5% more seats. A plan in which either party is likely to win 70% of the seats with 51% of the votes has no partisan bias, but is very "responsive." In many ways, responsiveness refers to the degree to which districts are drawn with internal partisan balance: the degree to which individual districts are "competitive."

The two measures address two different ways in which the fairness of election outcomes can be judged based on party. Partisan bias addresses a party's chances that, over time, it will have a structural advantage, making it easier for that party than for its rivals to gain legislative seats based on a given level of support. Responsiveness addresses the degree to which small changes in electoral sentiment translate to clear changes in the overall legislative composition.

[157] Grofman & King, *supra* note 156, at 21-30; Sam Hirsch, *The United States House of Unrepresentatives*, 2 Election L.J. 179, 212 (2003).

[158] FairVote, *Reforms to Enhance Independent Redistricting* (2007), *at* http://www. fairvote.org/media/pep/redist_reform_enhance_0506.pdf.

[159] *See, e.g.*, Persily, *supra* note 73, at 1158; Hirsch, *supra* note 157, at 211-12. *See also* James A. Gardner, *What Is "Fair" Partisan Representation, and How Can It Be Constitutionalized?*, 90 Marq. L. Rev. 555, 565-82 (2007) (discussing an inevitable conflict between the effort to achieve partisan fairness and the effort to divide states into territorial districts).

[160] *See, e.g.*, Hirsch, *supra* note 157, at 192-96.

[161] When minority voters are "packed" into a majority-minority district, leaving fewer minorities in the surrounding areas, the effect is sometimes known as "**bleaching**." The extent of "bleaching", and the degree to which it is responsible for broader political trends, is hotly contested. *See, e.g.*, Hair & Karlan, *supra* note 113, at 25.

[162] *See* Altman, *supra* note 86, at 1000-06; Lowenstein & Steinberg, *supra* note 145, at 23-27.

[163] *See, e.g.*, 29 DEL. CODE § 804 (districts may "not be created so as to unduly favor any person or political party"); HAW. CONST. art. IV, § 6 ("No district shall be so drawn as to unduly favor a person or political faction."); IDAHO CODE § 72-1506 ("Counties shall not be divided to protect a particular political party or a particular incumbent."); IOWA CODE 42.4(5) ("No district shall be drawn for the purpose of favoring a political party, incumbent legislator . . . or other person or group."); OR. STAT. § 188.010 ("No district shall be drawn for the purpose of favoring any political party, incumbent legislator or other person."); WASH. CONST. art. II, § 43 (districts "shall not be drawn purposely to favor or discriminate against any political party or group."). *See also* Larios v. Cox, 300 F. Supp. 2d 1320 (N.D. Ga. 2004) (refusing to approve a deviation from equal population justified by partisan gerrymandering).

[164] Davis v. Bandemer, 478 U.S. 109 (1986); Vieth v. Jubelirer, 541 U.S. 267, 306-317 (2004) (Kennedy, J., concurring in the judgment); League of United Latin American Citizens v. Perry, 126 S. Ct. 2594, 2607 (2006).

[165] Grofman & King, *supra* note 156, at 13-14; Hirsch, *supra* note 157, at 210.

[166] The graphical format for presenting these hypothetical districts is indebted to Michael McDonald; *see, e.g.*, McDonald, *supra* note 151, at 231.

[167] Gary C. Jacobson, *Competition in U.S. Congressional Elections, in* MARKETPLACE OF DEMOCRACY 27, 43-44 (Michael P. McDonald & John Samples eds., 2006).

[168] State Legislative Nominees, Ballot Access News (Richard Winger ed., 2006), *at* http://www.ballot-access.org/2006/110106.html#10.

[169] *See* Gary C. Jacobson, *Referendum: The 2006 Midterm Congressional Elections*, 122 POL. SCI. Q. 1, 23 (2007).

[170] For more discussion on the limits of primaries in producing meaningful competition, particularly where incumbents are concerned, see Stephen Ansolabehere *et al., The Decline of Competition in U.S. Primary Elections, 1908–2004, in* MARKETPLACE OF DEMOCRACY 74 (Michael P. McDonald & John Samples eds., 2006).

[171] *Cf.* John D. Griffin, *Electoral Competition and Democratic Responsiveness*, 68 J. POL. 911 (2006) (finding that competitive districts produce legislators who are more responsive to slight changes in the ideological leanings of the district).

[172] *See, e.g.*, Thomas E. Mann, *Polarizing the House of Representatives: How Much Does Gerrymandering Matter?, in* 1 Red And Blue Nation? 263, 274-79 (David W. Brady & Pietro S. Nivola eds., 2006) (noting a pull toward the center in competitive districts, but also finding substantial partisan differences, even in these districts); Robert S. Erikson & Gerald C. Wright, *Voters, Candidates, and Issues in Congressional Elections, in* Congress Reconsidered 132, 150-51 (Lawrence C. Dodd & Bruce I. Oppenheimer eds., 1997) (same).

[173] Even if competitive districts were better able to produce competitive elections, some commentators have questioned the normative value of competitive elections themselves. *See, e.g.*, Thomas L. Brunell, Redistricting and Representation (2008); Justin Buchler, *The Statistical Properties of Competitive Districts*, 40 PS: Pol. Sci. & Pol. 333 (2007).

[174] *See, e.g.*, Cain *et al., supra* note 140, at 11.

[175] The fact that incumbents fare better in elections than challengers, all else being equal, is well documented, but there is ample debate about the cause. *See, e.g.*, Jamie L. Carson *et al., Candidate Quality, the Personal Vote, and the Incumbency Advantage in Congress*, 101 Am. Pol. Sci. Rev. 289, 290-91 (2007); Stephen Ansolabehere & James M. Snyder, Jr., *The Incumbency Advantage in U.S. Elections*, 1 Election L.J. 315 (2002); Stephen Ansolabehere *et al., Old Voters, New Voters, and the Personal Vote: Using Redistricting to Measure the Incumbency Advantage*, 44 Am. J. Pol. Sci. 17 (2000); Gary W. Cox & Jonathan N. Katz, *Why Did the Incumbency Advantage in U.S. House Elections Grow?*, 40 Am. J. Pol. Sci. 478 (1996).

[176] *See, e.g.*, Cain *et al., supra* note 140, at 4.

[177] *See, e.g.*, Larry M. Bartels, *Partisanship and Voting Behavior, 1952-1996*, 44 Am. J. Pol. Sci. 35 (2000); Mark D. Brewer, *The Rise of Partisanship and the Expansion of Partisan Conflict within the American Electorate*, 58 Pol. Res. Q. 219, 220-21 (2005); Daniel H. Lowenstein, *Competition and Competitiveness in American Elections*, 6 Election L. J. 278, 282 (2007). Some believe that increasing polarization is an effect rather than a cause: voters are less inclined to cross party lines not because the voters are polarized, but because the parties and candidates have become more polarized. *See, e.g.*, David C. Kimball, *A Decline in Ticket Splitting and the Increasing Salience of Party Labels, in* Models Of Voting In Presidential Elections 161 (Herbert F. Weisberg & Clyde Wilcox eds., 2003); *see also* Morris P. Fiorina, Culture War? The Myth Of a Polarized America (2005). Whichever came first, it seems likely that the voter and party polarization trends reinforce each other.

[178] *See, e.g.*, Cain *et al., supra* note 140, at 5, 24, 26.

[179] *See, e.g.*, McDonald, *supra* note 151, at 240-41 (discussing the potential downsides of maximizing competition but explaining the potential to draw some competitive districts).

[180] ARIZ. CONST. art. IV, pt. 2, § 1(14)(F); Ariz. Minority Coalition for Fair Redistricting v. Ariz. Indep. Redistricting Comm'n, 121 P.3d 843 (Ariz. Ct. App. 2005). Washington and Wisconsin also promote competitive districts, but not in any particular priority order: in Washington, the redistricting commission "shall exercise its powers to provide fair and effective representation and to encourage electoral competition," WASH. REV. CODE § 44.05.090, and in Wisconsin, the legislature declared that among other objectives, it gave due consideration to "competitive legislative districts." WIS. STAT. § 4.001(3).

[181] *See, e.g.*, Larios v. Cox, 300 F. Supp. 2d 1320, 1329-30 (N.D. Ga. 2004) (describing such an attempt in Georgia). In other cases, states will draw districts specifically to avoid pairing any two incumbents; this practice has been specifically approved by the Supreme Court. *See* Bush v. Vera, 517 U.S. 952, 964 (1996).

In a few circumstances, external circumstances will *require* two incumbents to run against each other; for example, if the population drops in a state with 30 representatives, so that the state receives 29 representatives after the next redistricting, unless an incumbent representative retires, at least two incumbents will be pitted against each other in vying for the remaining 29 seats.

[182] Indeed, in 2004, an independent Special Master acting on federal court orders drew state legislative districts in Georgia without any information as to the location of candidates' homes, and ended up pairing several senior minority incumbents in a way that might have violated the Voting Rights Act. When the effect was called to his attention, the Special Master redrew the district plan to avoid these unintended consequences. *See, e.g.*, Br. Amicus Curiae of Georgia Legislative Black Caucus, Larios v. Cox, No. 1:03-CV-693-CAP (N.D. Ga. 2004) (No. 197).

Likewise, in Iowa, where the advisory commission may not consider the address of any incumbent, the commission's first plan in 2001 paired 50 incumbents out of 100 in the state House, and 20 incumbents out of 50 in the state Senate. That plan was rejected by the legislature. Editorial, *Back to Plan A*, DES MOINES REGISTER, June 2, 2001, at 8A.

[183] *See generally* Bruce E. Cain & Karin Mac Donald, T*he Implications of Nesting in California Redistricting* (2007), *at* http://tinyurl.com/322cxx.

[184] ARIZ. CONST. art. IV, pt. 2, § 1(1).

[185] Lani Guinier, *No Two Seats: The Elusive Quest for Political Equality*, 77 Vₐ. L. Rₑv. 1413, 1502 (1991); Hair & Karlan, *supra* note 113, at 37-38.

Even when multi-member districts are coupled with favorable voting rules, single-member districts drawn for minorities might still provide greater benefit for minority populations in at least one circumstance: when there is a substantial difference between the voting population and the total population. Because districts are generally apportioned based on the total population, a minority opportunity district with a substantial portion of nonvoters may allow relatively fewer minority voters to elect the representative of their choice. *Cf.* Lowenstein & Steinberg, *supra* note 145, at 50-51 (discussing the difference between voter population and total population in areas with high concentrations of minorities). For example, in a district of 100 people where everyone votes and the votes are entirely polarized, 51 minority voters will be needed to elect a representative of choice; if, in that same district, 20 people do not vote, 41 minority voters can establish control. Unless the nonvoting population is both large and spread out, however, multi-member districts will tend to dilute this effect. Whether one system or the other will benefit the minority population in any particular instance will depend on the size and dispersion of both the minority community and the group of nonvoters.

[186] *See* Ill. Const. Of 1870, art. IV, § 7; Ill. Const. art. IV, § 2 (1970).

[187] Following Professors Bernard Grofman and Howard Scarrow, we aim to temper the worst excesses of "partisan lust" and individual self-interest, without "blindfold[ing our] cartographers." Bernard Grofman & Howard A. Scarrow, *Current Issues in Reapportionment*, 4 L. & Pol'y Q. 435, 444 (1982).

[188] The Shape of Representative Democracy, *supra* note 145, at 10-11, 20-22.

[189] *See* ABA H. Delegates, Daily Journal: 2008 Midyear Meeting, Report No. 102A (2008), *at* http://www.abanet.org/leadership/2008/midyear/docs/Daily_Journal.doc; *see also* A.B.A. Sec. Admin. L. Reg. Prac., Report to the House of Delegates, No. 102A (2008), *at* http://www.abanet.org/leadership/2008/midyear/sum_of_rec_docs/hundredtwoa_102A_FINAL.doc.

[190] The Shape of Representative Democracy, *supra* note 145, at 9.

[191] Ari Weisbard & Jeannie Wilkinson, Drawing Lines: A Public Interest Guide to Real Redistricting Reform 14 (2005), *available at* http://www.demos.org/pubs/caredisreport.pdf.

[192] Hirsch, *supra* note 150.

[193] Because "employment" by the legislature may not include consultants who, for all practical purposes, work for the legislature or individual legislators, it may be more effective to limit commission membership to those who have not earned a majority of their income from the legislature, or from individual legislators or candidates.

[194] Weisbard & Wilkinson, *supra* note 191, at 17; The Reform Institute, *supra* note 146, at 8.

[195] Michael P. McDonald, Enhancing Competitiveness in Redistricting, *at http://elections.gmu.edu/enhancing.htm* (last visited Mar. 1, 2008).

[196] Weisbard & Wilkinson, *supra* note 191, at 7; Hair & Karlan, *supra* note 113, at 23.

[197] Maine, for example, instructs that its commission "shall recognize that all political subdivision boundaries are not of equal importance and give weight to the interests of local communities when making district boundary decisions." ME. REV. STAT. tit. 21-A, § 1206-A.

[198] Hirsch, *supra* note 150.

[199] Weisbard & Wilkinson, *supra* note 191, at 11.

[200] Navajo Nation v. Ariz. Ind. Redistricting Comm'n, 230 F. Supp. 2d 998, 1003 (D. Ariz. 2002).

[201] Persily, *supra* note 73, at 1163.

[202] In any event, litigants are still able to choose to litigate either in the state's Supreme Court or in federal court.

[203] S. 5940, 2007 Leg., 230th Sess. (N.Y. 2007).

[204] In some proposals, this is expressed explicitly, by requiring the affirmative vote of the tiebreaker in order to pass a plan. In other proposals, this is instead expressed by giving the tiebreaker more votes than the sum of the remaining commission members.

[205] *See, e.g.*, Gene R. Nichol, Jr., *The Practice of Redistricting*, 72 U. COLO. L. REV. 1029, 1031 (2001).

[206] FairVote, *Reforms to Enhance Independent Redistricting* (2007), *at http://www.fairvote.org/media/pep/redist_reform_enhance_0506.pdf*.

[207] The proposition – now codified in Arizona's state constitution – provided that "[t]o the extent practicable, competitive districts should be favored," but only "where to do so would create no significant detriment to" five other goals of higher priority. ARIZ. CONST. art. IV, pt. 2 § 1; *see also* Ariz. Minority Coalition for Fair Redistricting v. Ariz. Ind. Redistricting Comm'n, 211 Ariz. 337, 352-54 (App. Div. 1 2005).

[208] *Id.*

[209] *See, e.g.*, League of Women Voters *et al.*, Building A National Redistricting Reform Movement: Redistricting Conference Report 23 (2006), *at http://www.campaignlegalcenter.org/attachments/1641.pdf*.

[210] *Id.* at 6-7, 24.

[211] *Id.* at 7, 13.

[212] Michael P. McDonald, *Regulating Redistricting*, 40 PS: POL. SCI. & POL. 675, 677 (2007).

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