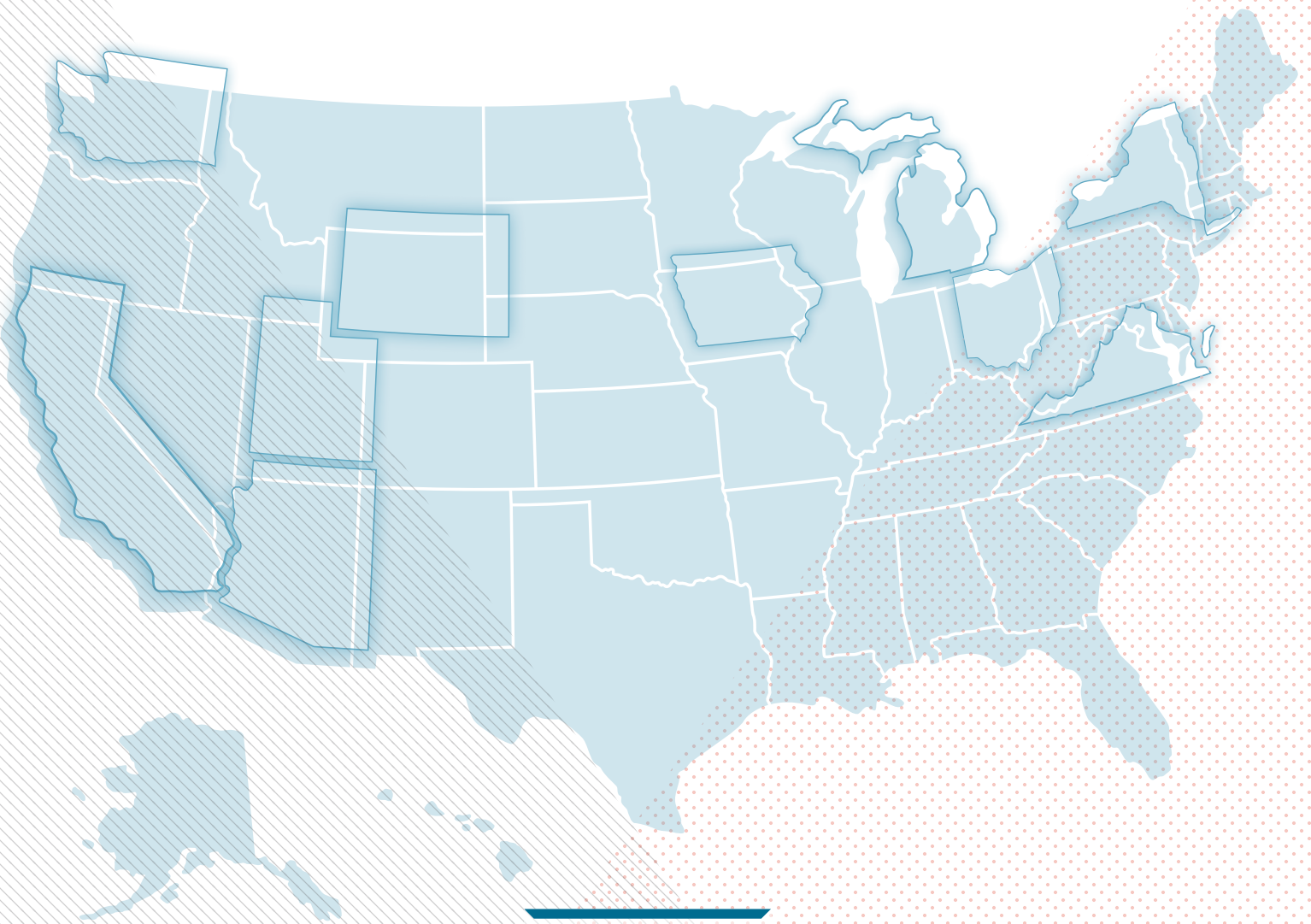


REDISTRICTING COMMISSIONS IN THE 2021 REDISTRICTING CYCLE:

CASE STUDIES AND LESSONS LEARNED
FOR 2031 AND BEYOND



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Introduction

Background

In 2021, 22 states utilized redistricting commissions to draw state legislative and/or congressional maps, directly impacting political representation for over 80 million voters — nearly 50% of all registered American voters.

These commissions did not all look or function similarly, nor did they all achieve fair maps, but they *did* shape the lives of tens of millions of Americans. Redistricting, at its core, is about achieving fair representation. If done wrong, redistricting can effectively silence voters, strip communities of much-needed resources, and lead to a loss of trust in our democracy. If done right, redistricting can make sure our government is reflective of the people, empower marginalized communities, and ensure *everyone* has a voice in our democracy.

That's why it is so important to ensure that, next time redistricting happens on a nationwide scale, states get it right. Redistricting commissions are one of the most prominent vehicles to move toward a more fair and equitable future.

These commissions are often created in an attempt to avoid the challenges posed when politicians draw their own districts, such as partisan gerrymandering and procedural flaws that lead to a failure to take into account communities of interest, the needs of minority communities for representation, and/or the views of the public.

The value of redistricting commissions lies in their potential to create a more equitable and transparent redistricting process. Through commissioner selection and commission structure, well-designed redistricting commissions promote accountability by minimizing the potential for biased decision-making, including by minimizing the influence of partisan interests. Commission redistricting can increase both public participation and transparency in the redistricting process, resulting in more representative maps and fostering trust in the electoral system. And commissions can also rely on the knowledge of experts, who provide advice on legal compliance, teach map-drawing processes, and assist in the administration of the commission as an institution. In this way, redistricting commissions can benefit from the input of all players in the redistricting space, while avoiding capture from any single set of interests.

These are the promises of redistricting commissions. But not all commissions are created equal. The 2021 redistricting cycle reaffirmed the effectiveness of true Independent Redistricting Commissions (IRCs) vested with full redistricting authority. It also demonstrated the various difficulties inherent in achieving unbiased and representative districts while also illustrating the ways in which different commission structures led some commissions to fall short of the promises of commission redistricting — especially when partisan politicians became involved.

Report Structure

This report evaluates the performance of various redistricting commissions during the 2021 cycle, based on an in-depth review of the laws and procedures that governed commissions in each state, as well as an assessment of each commission's redistricting process. The report presents a number of case studies from the 2021 cycle, which summarize how particular commissions functioned in practice and distill general principles that can be drawn from each commission's experience.

The processes and outcomes of redistricting commissions in the 2021 redistricting cycle provide valuable lessons regarding the aspects of commission design that worked well and design choices that ought to be avoided, because they make commissions less effective. These "2021 Lessons Learned" are set apart in boxes throughout this report and can help inform the design, administration, and functioning of future redistricting commissions as well as potential amendments to improve the commissions currently in existence.¹

The report is split into three parts, each focused on a different aspect of redistricting commissions, for a holistic view of how commissions can be structured, enabled, and administered to achieve the fundamental goals of redistricting reform. Each section begins with a summary of its components and a list of key takeaways from the section's assessment.

Section I considers the various design choices in the formation of redistricting commissions and how those initial choices will impact a commission's ability to facilitate fair redistricting. It first assesses the types of redistricting commissions by composition (Independent, Bipartisan, and Political) and granted authority (Advisory and Full). Next, the section addresses redistricting commissioners, including who is eligible to serve on a commission, how commissioners are selected, and mechanisms to ensure commissioner diversity. Finally, the section concludes with a discussion of how commission composition — by partisanship and size — can be balanced to increase the chances of positive outcomes.

Section II considers the baseline of support that ought to be provided to commissioners to empower redistricting commissions to redistrict effectively and independently. It delves into commissioner education — how best to prepare, in particular, citizen commissioners for the task of redistricting — and commission staffing — how best to build a skilled and reliable support structure that assists commissioners in conducting a thorough process resulting in fair, lawful maps. Next, the section discusses various redistricting standards and criteria — including federal and state protections against racial discrimination, state protections against partisan gerrymandering, and the preservation of communities of interest — and how those criteria can be codified and prioritized to facilitate fair redistricting by a commission.

¹ While this report focuses only on commissions for congressional and state legislative redistricting, there are also commissions across the country that conduct redistricting for local jurisdictions. Some of the takeaways and lessons learned may also be applicable to those local redistricting commissions.

Section III considers commission functionality and how different rules and procedures will impact a commission's ability to live up to the promises of commission redistricting. The section first assesses how different rules for commission decision-making and procedures for commission map drawing can encourage or discourage effective, transparent, consensus-based commission action. Next, the section reviews both effective and ineffective processes for taking public input and, importantly, incorporating it into redistricting. And finally, the section ends with an assessment of different fallback mechanisms to ensure the enactment of fair maps when the initial commission redistricting process stalls or fails.

Through assessing each of these areas, this report demonstrates that the most successful commissions are:

- Truly independent and insulated from legislative and other political influence;
- Vested with the full authority of redistricting;
- Made up entirely of citizen commissioners who are broadly representative of the diversity of their state;
- Evenly split between the primary political party, secondary political party, and independents;
- Large enough to disperse responsibilities, encourage collaboration and compromise, and prevent one or two outlier commissioners from derailing the process;
- Made up of commissioners empowered to understand and make decisions regarding the complexities of redistricting;
- Assisted by trustworthy and knowledgeable staff and advisors, selected through a process designed to give commissions a broad base of options;
- Guided by clearly defined and ranked criteria protective of the rights of every voter;
- Making decisions and drawing maps with processes aimed toward building consensus as opposed to rewarding contention;
- Redistricting through a participatory, inclusive, and transparent process;
- Required to demonstrate how the final maps incorporate public input; and
- Ensuring the enactment of fair maps through a clear, specific fallback mechanism.

The lessons from this report are intended to provide a guide for the design and implementation of redistricting commissions as well as a blueprint to ensure that future redistricting cycles, in 2031 and beyond, are as successful as possible.

Redistricting Commission Design:

• Creating a Commission to Facilitate Fair Redistricting

Redistricting commissions can be designed to promote a number of improvements to the redistricting process — greater transparency, more public participation, better representation of communities of interest, and a rejection of the unfair partisan manipulation typical of districts drawn by state legislatures. But some commissions are better designed to do this than others.

While commissions are often lumped together, every commission is uniquely formulated. And the precise formulation of each commission impacts the motivations of its commissioners and the outcomes of its redistricting process. Some formulations tend to incentivize fair redistricting, while others tend to reproduce the same partisan and self-interested map drawing done by state legislatures.

COVERED IN THIS SECTION:

This section addresses several design choices key to creating a commission structured to facilitate fair redistricting.

Part A covers the types of redistricting commissions used by states, including Independent, Bipartisan, and Political Commissions, and the varying levels of authority given to commissions.

Part B analyzes the process used for selecting commissioners, including who is eligible to serve on a commission and how they are chosen.

Part C examines two particular design choices, partisan makeup and size, that bear heavily on commission functionality.

KEY TAKEAWAYS:

Commissions are best structured to achieve the fundamental goals of redistricting reform when they are:

- 1 Truly independent and insulated from legislative and other political influence;
- 2 Vested with the full authority of redistricting;
- 3 Made up entirely of citizen commissioners who are broadly representative of the diversity of their state;
- 4 Evenly split between the primary political party, secondary political party, and independents; and
- 5 Large enough to disperse responsibilities, encourage collaboration and compromise, and prevent one or two outlier commissioners from derailing the process.

A. Types of Redistricting Commissions: Independence and Authority

Because redistricting commissions vary considerably in their design, they tend to resist easy classification. But commissions can be categorized along two dimensions. First, commissions vary in their composition: Independent, Bipartisan, and Political. Second, commissions vary in the degree of authority they are given to draw and enact redistricting plans, ranging from full authority with little to no involvement from the state legislature to purely advisory.²

Taxonomy is important to get right, because the terms used to describe commissions should reflect their operation. It is particularly important that commissions be identified based on their degree of independence from the state legislature and partisan politicians, *both* in terms of their composition *and* authority over redistricting, because the 2021 redistricting cycle saw several attempts by partisan interests to exert influence on the workings of commissions that are commonly described as “independent” but are far from independent in their mechanics or authority. Indeed, the more power partisan actors and institutions have in redistricting commissions, as a matter of design, the less fair and voter-centered the process tends to be.

In the 2021 cycle, Independent Redistricting Commissions vested with full redistricting authority were by far the most effective at resisting partisan influence in the map-drawing process, while Political and Bipartisan Commissions were more likely to fall prey to the traditional, partisan perils of redistricting. Advisory Commissions of all varieties largely failed to ensure that redistricting was, in fact, conducted by a commission rather than by legislators.

i. Commission Composition: Independent, Political, and Bipartisan

As noted above, commissions tend to have one of three types of composition.

Independent Commissions are the gold standard. These commissions — found in Arizona, California, Colorado, and Michigan — take the power of redistricting out of the hands of partisan legislators and put it in the hands of citizen commissioners who represent not only the two major parties but also independents and unaffiliated voters. IRCs aim to create district boundaries that are not drawn for the benefit of any political party. Generally, IRCs allow for greater public input into the redistricting process, which helps to ensure better maps and a better public record of the process should the maps require review by a court. In the 2021 redistricting cycle, IRCs had the best track record of undertaking robust public input processes and passing maps with broad commissioner support across parties. And, according to latest research, states with IRCs also tended on average to produce fairer maps, when considering partisan balance and racial representation, than states without IRCs.³

2021 LESSON LEARNED:

If you give partisan politicians an inch, they will take a mile.

² Some states have another category of commissions, known as “backup commissions,” which are used when the legislature is unable to agree on a redistricting plan. This report does not discuss backup commissions.

³ Christopher Warshaw, et al., *Districts for a New Decade—Partisan Outcomes and Racial Representation in the 2021-22 Redistricting Cycle*, 52 *Publius: J. Federalism* 428 (June 17, 2022).

Political Commissions are on the far end of the spectrum. They take the power of redistricting away from the legislature but give it to a select group of politicians, with one party having a majority of the seats on the commission. The majority on the commission generally has the same motivation and power to redistrict for partisan gain as in traditional legislative redistricting. Due to the limited number of Political Commissions (see Appendix) and the limited way in which Political Commissions differ from legislative redistricting, this report does not focus on them, with the exception of Ohio's Political Commission for state legislative redistricting.

Bipartisan Commissions — the largest single category of commissions — take the power of redistricting away from the legislature and give it to both major parties in equal measure. These commissions differ from IRCs in that they exclude meaningful representation of independent or unaffiliated voters. They also tend to allow partisan politicians or party bosses to appoint commissioners directly, without an institutional intermediary. Bipartisan Commissions can also fall prey to an unfortunate dynamic where the two major parties focus primarily on negotiating and compromising with each other to advance their respective partisan interests (in their shares of safe seats, for example), but often without public input and to the exclusion of other important interests in the configuration of districts.

CASE STUDY: WASHINGTON

In Washington state, a commission made up of four voting members — two each from the two major political parties — and one nonvoting chair redistricts both the state legislative and congressional districts. The 2021 redistricting process reflected deep partisan entrenchment, with the Democratic- and Republican-appointed commissioners using partisan staff employed by the legislature itself to redistrict, acting in the best interest of their party, mapping and negotiating in secret in violation of open public meeting laws, and ultimately ignoring extensive public input regarding an established Latino community of interest to adopt a map violative of Section 2 of the Voting Rights Act.⁴

WASHINGTON



⁴ *Soto Palmer v. Hobbs*, No. 3:22-CV-05035, 2023 WL 5125390 (W.D. Wash. Aug. 10, 2023).

ii. Commission Authority: Advisory Commissions and the Risks of Optional Fair Mapping

Advisory Commissions do not take the power of redistricting away from the legislature but can have varying amounts of influence on the process depending on the state and commission particulars. Advisory Commissions range from drawing plans almost always approved by the legislature to offering plans that are entirely ignored. In the 2021 redistricting cycle, newly enacted Advisory Commissions failed to realize the promise of redistricting commissions and instead allowed legislators to pursue partisan aims in redistricting, demonstrating the general rule that, while an Advisory Commission can be better than legislative redistricting, there is no guarantee that it will be.

2021 LESSON LEARNED:

Making redistricting reform optional will usually lead to a failure of redistricting reform.

For example, the fate of Utah's Advisory Commission illustrates perhaps the worst partisan overreach of the 2021 redistricting cycle.

CASE STUDY: UTAH

In 2018, Utahns voted to enact Proposition 4, which established a seven-member Advisory Commission to recommend state legislative and congressional maps to the Utah legislature and required the legislature to consider the maps in a public meeting, vote to approve or reject the maps, and issue a detailed public report if it voted to reject them. Proposition 4 also imposed clear redistricting criteria and standards on redistricting plans, including a ban on districts “drawn in a manner that purposefully or unduly favors or disfavors any incumbent elected official, candidate or prospective candidate for elective office, or any political party.”⁵ However, Proposition 4 was a statutory initiative rather than a constitutional amendment, so, in 2021, the Utah Legislature took the unprecedented step of passing a complete statutory repeal of the citizen initiative.⁶ The legislature replaced the robust voter-approved commission with a watered-down Advisory Commission that required no action on the commission's maps and nullified the redistricting standards. The legislature then proceeded to ignore the Advisory Commission's recommended maps and enact an extreme partisan gerrymander, devised in secret without regard for public input.⁷

UTAH

Utah's 2021 redistricting exemplifies how failing to vest commissions with the full authority of redistricting allows the abuse of legislative redistricting to continue unchecked.⁸ Iowa, however, provides a reminder that, while Advisory Commissions are far from sufficient, they can be better than no commission at all.

⁵ Utah Code § 20A-19-103, repealed by Laws 2020, c. 288, § 12, eff. March 28, 2020.

⁶ Laws 2020, c. 288, § 12, eff. March 28, 2020. CLC and Utah partners, representing the League of Women Voters of Utah, Mormon Women for Ethical Government, and a bipartisan mix of individual voters, challenged the repeal as unconstitutional in a lawsuit filed March 2022. At the time of this report's publication, the case is pending before the Utah Supreme Court after oral argument on July 11, 2023. *League of Women Voters, et al. v. Utah State Legislature, et al.*, No. 20220991-SC (Utah).

⁷ See, e.g., Robert Gehrke, *Utah's redistricting process was — as always — rigged from the start*, Robert Gehrke writes, Salt Lake Trib. (Oct. 29, 2021), <https://perma.cc/Q6ZT-XDL5>; Robert Gehrke, *Born in the dark, Utah's redistricting maps are the worst in decades*, Robert Gehrke writes, Salt Lake Trib. (Nov. 9, 2021), <https://perma.cc/9DEW-V3TL>.

⁸ New York's Advisory IRC, discussed *infra* Sec. III.C.i, provides another example of how Advisory Commissions can fail to deliver fair, commission-created maps.

CASE STUDY: IOWA

While ultimate redistricting authority in Iowa lies with the legislature, the maps are initially drawn by the nonpartisan Legislative Services Agency (LSA), a “body of civil servants committed to nonpartisanship and otherwise charged with tasks like legal and fiscal analysis of state legislation and state government oversight,” which is advised by a Bipartisan Advisory Commission composed of four legislative appointees and one member selected by those four.⁹ The LSA submits maps for the legislature to approve or reject without modification; if rejected, the LSA submits a second set for approval without modification; if rejected again, the LSA submits a third set, which may be amended.

Since this procedure was introduced in 1980, the state legislature has always approved an LSA proposal without modification, including in 2021. In 2021, the legislature approved the LSA’s second set of submitted draft maps by near-unanimous margins in both houses (93-2 in the House, 48-1 in the Senate).¹⁰ The requirement that the legislature vote at least three times on LSA-drawn maps and the accrued expectation that the legislature will pass a nonpartisan plan serve to increase the LSA’s authority in the redistricting process.¹¹

IOWA

iii. Composition and Authority of Current Redistricting Commissions

The chart on the following page shows where redistricting commissions fall in this taxonomy of commission composition and authority. The appendix to this report also contains a more comprehensive chart categorizing each existing congressional and state legislative redistricting commission by type, authority, size, commissioner selection process, commissioner eligibility restrictions and requirements, transparency, map approval requirements, and fallback mechanism.



⁹ All About Redistricting, Iowa, <https://perma.cc/VQC7-WUUZ>; Iowa Code §§ 42.5–42.6.

¹⁰ Greg Giroux, *Iowa Legislature Approves Congressional Map Giving Edge to GOP*, Bloomberg Government (Oct. 29, 2021), <https://perma.cc/4YNX-WTB6>.

¹¹ Iowa Code § 42.3.

Types of Redistricting Commissions

State Legislative		COMMISSION COMPOSITION		
		Independent	Bipartisan	Political
COMMISSION AUTHORITY	Full	Arizona California Colorado Michigan	Alaska Hawaii* Idaho Montana New Jersey* Virginia** Washington***	Arkansas Missouri Ohio Pennsylvania
	Advisory	New Mexico New York	Iowa Maine Rhode Island Utah Vermont	Connecticut

Congressional		COMMISSION COMPOSITION		
		Independent	Bipartisan	Political
COMMISSION AUTHORITY	Full	Arizona California Colorado Michigan	Hawaii* Idaho Montana New Jersey* Virginia** Washington***	
	Advisory	New Mexico New York	Iowa Maine Rhode Island Utah	Connecticut

* No explicit prohibition on politicians being appointed

** Hybrid Bipartisan-Political

*** Legislature provided short window of opportunity after commission adopts redistricting plans to make very limited changes by supermajority vote

B. Redistricting Commissioners: Who They Are and How They Are Chosen

Who serves on a redistricting commission, who selects those individuals, and how they are selected all impact the degree to which a commission will break from typical partisan motivations and instead seek to represent voters' best interests when redistricting. The 2021 redistricting cycle shows that the most successful commissions are those with citizen commissioners, qualifications to exclude partisan actors from serving on the commission, a nonpartisan selection process for commissioners, and commissioners broadly reflective of the diversity of the state.

i. Taking the Politics Out of Redistricting Requires Taking Redistricting Entirely Away From Politicians

Ensuring that redistricting commissioners are themselves uninvolved in political power dynamics is the best way to safeguard against undue political influence. The 2021 redistricting process demonstrated that leaving elected officials involved in the redistricting process will, unsurprisingly, lead to political games and is not an ideal long-term solution.



CASE STUDY: VIRGINIA



VIRGINIA

In 2020, Virginia voters passed a constitutional amendment creating a Hybrid Bipartisan-Political Commission to control the state's redistricting process beginning in the 2021 cycle. All commissioners are partisan: eight Democrats and eight Republicans, with four citizen and four politician (legislator) commissioners from each party. The politician members are appointed by the political party leadership in the legislature. The citizen members are selected by a Redistricting Commission Selection Committee.¹²

The 2021 redistricting was thus carried out by a Hybrid Bipartisan-Political Commission composed of politician commissioners, with all the political savvy and perceived expertise their position allotted them, and citizen commissioners, without anywhere near sufficient education to feel confident in their own decision-making. There were attempts by Virginia's citizen commissioners to institute a fair process, such as suggesting the commission vote on one map proposal initially drawn by each party. But the attempts were blocked by the partisan politicians on the commission,¹³ with accounts suggesting that citizens on both sides often ceded to the authority and specialized knowledge of the politician commissioners.¹⁴

The presence of politicians and the commission's bipartisan composition therefore meant the commission was divided by partisanship from the very start. The Hybrid Bipartisan-Political Commission was unable to decide on one set of attorneys and map drawers for the whole commission, so each partisan faction used their own.¹⁵ A Virginia citizen commissioner remarked that it was "unworkable" to do redistricting with two (partisan) sets of attorneys and map drawers.¹⁶ The commission couldn't even decide on draft maps as a starting point for public comment. A Democratic citizen commissioner described it as "a cost-benefit analysis for both sides."¹⁷ This zero-sum game resulted in both sides preferring to reach a stalemate and throw the responsibility to the courts, each believing they would get a better shake there than through negotiation.

Virginia provides a cautionary tale that commissions must be structured to minimize partisan influence and incentives. Combining politician commissioners with citizens failed to combat both the influence of the politicians and the partisan divide inherent in Bipartisan Commissions.

¹² The Selection Committee consists of five retired judges from the circuit courts of Virginia. Leaders of the majority and minority parties of both houses in the state legislature each select a judge from a list of retired judges willing to serve on the committee; these four judges select a fifth from the list. Following the selection of judges, the party leaders of the state legislative chambers each submit a list of at least 16 citizen candidates to serve on the redistricting commission. Following the submission of citizen candidate lists, the Selection Committee selects, by a majority vote, two citizen members from each list submitted. VA Const. art. II, § 6-A.

¹³ Gregory S. Schneider, *Virginia's bipartisan redistricting effort breaks down over accusations of partisan stalemate*, Washington Post (Oct. 8, 2021), <https://perma.cc/H8ZT-6B43>.

¹⁴ See, e.g., William Rice, *The Challenges of Partisanship in Redistricting — Virginia's Experiment in a Hybrid Redistricting Commission*, Georgetown Law SALPAL, <https://perma.cc/R5FA-NPDD>.

¹⁵ Graham Moomaw, *In divided vote, Va. Redistricting Commission chooses to hire partisan lawyers*, Virginia Mercury (June 7, 2021), <https://perma.cc/4W8R-MRVT>.

¹⁶ Graham Moomaw, *Va. Redistricting Commission implodes as Republicans reject compromise and Democrats walk out*, Virginia Mercury (Oct. 8, 2021), <https://perma.cc/E5F8-FAAG>; Former Virginia Redistricting Commissioner James Abrenio, *Blue Virginia*, <https://perma.cc/6JP2-EP9E>.

¹⁷ *Id.*



ii. Commissions Must Require Commissioners to Meet Certain Qualifications to Ensure Independence From Political Influence

Commissions can still fall short and fall prey to partisan machinations even when legislators themselves do not sit on the commission. True citizen commissioners are not embedded in the pre-existing state political system and therefore do not come to the task of redistricting with the assumptions, dynamics, and incentives of politicians. Examples of commissions with successful qualification requirements are California and Michigan.

But for commissions without qualification requirements barring former political actors or other individuals tied to the political system from serving as commissioners, so-called “citizen” commissioners may engage in the same political gamesmanship that plays out in legislative redistricting.

This flaw is particularly prevalent in Bipartisan Commissions. For example, in Washington state, the majority and minority legislative leaders in each chamber of the state legislature appoint a commissioner, with no other nomination procedure or qualifications, to make up the four voting members of the commission. In 2021, three of the four appointed members were former state legislators, and, as described above and below, the commissioners ultimately prioritized partisan aims over the public comment and advocacy they received. Creating restrictions on who can serve on the commission that exclude political actors (recent elected officials, lobbyists, those who seek to run for office in the near future, etc.) and taking the power of commissioner appointment away from politicians would be significant steps toward avoiding the same pitfalls in the future.

2021 LESSON LEARNED:

To realize their promise, commissions must be composed of citizens without a vested interest in the political process.

iii. The Commissioner Selection Process Must Be Designed to Preserve Commission Independence

Of course, citizen commissioners do not appear out of thin air. States with redistricting commissions each have procedures by which commissioners are appointed. Commissions often use multistep processes to select commissioners, with some of the steps involving elected officials. This has proven effective in some instances, but in other cases, the involvement of political actors in the commissioner appointment process has created, at the very least, an appearance of impropriety harmful to the commission's legitimacy.

CASE STUDY: ARIZONA

The Arizona commission combines political appointment of commissioners with a nomination process by a judicial panel.¹⁸ Four commissioners are chosen by the majority and minority leaders of the state legislature from a list of 25 nominees selected from the pool of citizen applicants by the Commission on Appellate Court Appointments. The 25 nominees consist of 10 Republicans, 10 Democrats, and five candidates who are not affiliated with either major political party. The fifth commissioner, who cannot be registered with any party already represented on the commission, is selected from the pool of remaining nominees by the four appointed commissioners. The single unaffiliated member acts as the IRC's chair and, frequently, its all-important tiebreaker.

While the formulation of the commission qualifies it as an Independent Commission, its candidate selection process nonetheless created questions about the commissioners' impartiality in the 2021 cycle. Members of the judicial panel that selects the 25 nominees from whom the commissioners are chosen are themselves selected by the governor alone. In 2021, Republican Governor Doug Ducey was accused of stacking that panel with Republicans and Republican-leaning independents.¹⁹ As a result, further accusations were levied against the panel itself, particularly for its selection of the five independent candidates for the IRC. Democratic leaders of the state legislature unsuccessfully sued to remove two of the unaffiliated candidates chosen by the Commission on Appellate Court Appointments, and others expressed concern about the campaign contributions of the unaffiliated applicant who was ultimately selected.²⁰ This acrimony cast a shadow on the IRC before it had even convened.

ARIZONA



¹⁸ Ariz. Const. art. IV, § 2.1.

¹⁹ Jeremy Duda, *Ducey appoints new members, including Dems, to key nominating commission*, AZ Mirror (July 17, 2020), <https://perma.cc/5Q87-GZDG>.

²⁰ Jeremy Duda, *Democrats sue to remove two independents from list of AIRC finalists*, AZ Mirror (Oct. 23, 2020), <https://perma.cc/5W9C-E4JA>.

Arizona’s 2021 commission demonstrates the flaws with partisan involvement in the commissioner selection process, and Arizona’s selection procedures have yet another point of partisan entanglement: the selection of four of the five commissioners directly by *partisan legislators*. This partisan involvement is less severe than in Washington, for example, where legislators are not limited to vetted pools and have unlimited leeway to appoint whomever they choose, but any direct partisan appointment of commissioners creates an opportunity for undue partisan influence.

By contrast, states such as Michigan and California have appointment processes that better avoid partisan entanglement while pursuing other goals, such as geographic and demographic diversity of commissioners. Based on how commissions fared in 2021, the best method for commissioner appointment involves some form of random selection and minimizes partisan involvement. This is unsurprising: Appointment by lot is the only way to absolutely guarantee that no actor is improperly putting their thumb on the scale.

CASE STUDY: MICHIGAN

The Michigan IRC utilizes random selection to the greatest degree. The process is facilitated by the Michigan Department of State (DOS) and requires the DOS to mail applications to at least 10,000 randomly selected Michigan voters as well as to make applications available to all voters in the state. The DOS then narrows the pool of applications to pools of affiliating and nonaffiliating semifinalists using a randomized selection process that incorporates “accepted statistical weighting methods to ensure that the pools, as closely as possible, mirror the geographic and demographic makeup of the state.” The pools also are to be half-composed of applicants who responded to the random mailing, if possible. The DOS then randomly selects four Republican, four Democratic, and five unaffiliated commissioners after the legislature has been given a chance to strike a limited number of applicants from the pools.²¹ In 2021, more than 9,000 Michiganders applied to serve as commissioners. Of those applicants, 48.5% were affiliated with neither party, 38.5% were Democrats, and 13% were Republicans.²²

2021 LESSON LEARNED:

Randomizing commissioner selection from vetted candidate pools is the surest way to prevent partisan influence on commissioner selection and avoids even the appearance of impropriety.



MICHIGAN

²¹ Mich. Const. art. IV, § 6(2).

²² *Who applied?*, Michigan Independent Redistricting Commission, <https://www.michigan.gov/micrc/-/media/Project/Websites/MiCRC/MISC1/Whos-applying.jpg?rev=0787ca5af1e94068a2d2b5c60d5db29e&hash=0B8D9CCD7F614A2695A1914820954F96>.

CASE STUDY: CALIFORNIA

As in Michigan, any California voter can apply to serve on the commission, and eight of California's 14 commissioners are randomly selected from pools of applicants. However, applications to serve on California's IRC are also evaluated on their merits. Interested individuals can apply to the commission by submitting an application that includes essays and letters of recommendation. The state auditor convenes an Applicant Review Panel, drawn randomly from a pool of all qualified independent state auditors until there are three auditors on the panel, one each from the two largest political parties in the state and one from neither of those parties. The panel then selects the 60 most qualified applicants.²³ Which applicants are "most qualified" is assessed "on the basis of relevant analytical skills, ability to be impartial, and appreciation for California's diverse demographics and geography."²⁴ After the legislature is given a chance to strike a limited number of applicants, the state auditor randomly draws eight commissioners: three each from the pools of candidates from the two largest political parties and two from the pool of unaffiliated candidates.²⁵ Those eight commissioners then choose the final six commissioners from the remaining candidates in the pools — two each from the pools of candidates from the two largest parties and two from the pool of unaffiliated candidates. Their selection must be done to ensure that the commission reflects the "state's diversity, including, but not limited to, racial, ethnic, geographic, and gender diversity."²⁶ At least five of the initial eight commissioners, including at least two from each of the largest parties and one unaffiliated, must approve the final six appointees.²⁷

CALIFORNIA

Michigan's fully randomized selection model eliminates the potential for commissioners to be selected for their willingness to pursue partisan aims in redistricting. And the incorporation of an acceptable statistical weighting of applicants to account for demographic and geographic diversity on the commission accomplishes part of the goal of a merits-based assessment. However, as California shows, there are benefits to a process that enables the selection of commissioners who are well positioned to undertake the work of redistricting. The qualitative evaluation, when it works correctly, serves to identify applicants who are best suited for the job and can lead to a redistricting process with more favorable outcomes.²⁸ The downside is that the reliance on human judgment can allow for bias. For this reason, it is critical that, when commissions incorporate merits-based selection, the process by which applicants are narrowed down and ultimately selected is as neutral as possible. California, for example, wisely ensures that the group of individuals assessing candidates (the Applicant Review Panel) is equally balanced between the two major political parties and an unaffiliated member.²⁹

2021 LESSON LEARNED:

There are significant benefits to combining randomized commissioner selection with a merits-based assessment, but it is critical that "merits" be properly defined and that partisan involvement in candidate selection is minimized.

²³ The 60 applicants selected must include 20 each from the largest and second-largest political parties in the state and 20 from the pool of candidates registered to neither of those parties.

²⁴ Cal. Gov't Code § 8252(d); Christian Grose, *Fair Maps in the State of California*, 29-33 (2023), <https://perma.cc/624Q-HVEE> (citing Sara Sadhwani, *Independent Redistricting: An Insider's View*, 20 *The Forum* 357 (2022)).

²⁵ Cal. Gov't Code § 8252(e-f).

²⁶ *Id.* at § 8252(g).

²⁷ *Id.*

²⁸ One commissioner pointed to the criteria of impartiality and appreciation for the state's diversity and demographics as a positive reason that the 2020 commissioners were "do gooders" who were willing to work together to build consensus on their final maps. Christian Grose, *Fair Maps in the State of California*, 30 (2023), <https://perma.cc/624Q-HVEE>.

²⁹ The process for selecting commissioners in Colorado includes both randomization and merits-based components. But Colorado's model for partisan involvement, which allows legislators to choose the candidate pools from which a judicial panel selects four commissioners, leaves room for partisan manipulation. The Michigan and California models, which allow legislative leaders to strike some candidates from an already randomized pool of applicants before commissioners are chosen, minimizes this risk.

iv. Outreach Is Necessary to Ensure a Diverse Applicant Pool of Potential Commissioners

Ideally, commissions should be representative of the racial, ethnic, gender, and geographic diversity of the states they redistrict, ensuring both that all residents see themselves represented and that commissions benefit from the varied and particularized perspectives of diverse commissioners. The 2021 cycle demonstrated that achieving that level of diversity requires upfront effort and processes intentionally designed to yield a diverse commission.

The example of Arizona's efforts — or lack thereof — to encourage citizens to apply to serve on the state's commission demonstrates how proactive efforts to recruit applicants are pivotal to the creation of a broad applicant pool more likely to be representative of the state.

CASE STUDY: ARIZONA

The Commission on Appellate Court Appointments, which reviews and narrows down applications to serve on Arizona's redistricting commission, is not required to and does not appear to have conducted any significant outreach to solicit applicants. The Commission on Appellate Court Appointments opened the applications in mid-July 2020³⁰ and closed them just over a month later after receiving only 138 applications.³¹ Arizona's total lack of a process encouraging residents to apply to serve on the redistricting commission predictably led to a paltry response when compared with other commissions, such as California's and Michigan's, which received thousands of applications. That limited applicant pool in turn limited the opportunities for the Commission on Appellate Court Appointments to narrow the list of nominees to one broadly reflective of the diversity of the state.

ARIZONA



³⁰ Jeremy Duda, *Application process opens for redistricting commission*, AZ Mirror (July 13, 2020), <https://perma.cc/N3QG-TSY5>.

³¹ Jeremy Duda, *138 apply for redistricting commission, including some notable names*, AZ Mirror (Aug. 21, 2020), <https://perma.cc/DD9K-5MG7>.

Even otherwise successful commissions, such as California's, faltered in their public engagement efforts to attract diverse candidates.

CASE STUDY: CALIFORNIA

California's commission had significantly more success soliciting applications, with a total of 20,724 applicants, 17,081 of whom were eligible to serve. But, in an early and controversial turn of events, the California IRC saw significant underrepresentation of Latinos in a state where they compose nearly one-third of the citizen voting-age population and nearly 40% of the total population. Of those who fully completed applications to the commission, including essays and letters of recommendation, only 13% were Latino. Because the Applicant Review Board considered the diversity of the pool in selecting finalists, 23% of the 60 finalists were Latino — not quite reflective of the state's demographics, but closer.

When the initial eight commissioners were randomly selected, none of them were Latino. Importantly, those eight commissioners took their directive to ensure that the commission reflected the state's diversity seriously, and four out of the six commissioners they selected were Latino.³² This validates the commission's selection process and clear criteria for the selection of the final six commissioners. But commenters were critical of several aspects of the commission's process that acted as barriers to Latino involvement in the first place, including "the lack of adequate pay for the role and the heavy time commitment making service harder; the lack of outreach to encourage applicants among younger voters, who are more ethnically diverse than older voters; and a lack of early funding for community-based organizations that would have been necessary to identify, recruit, and support applicants from Latino communities long before redistricting actually started."³³

CALIFORNIA



³² Christian Grose, *Fair Maps in the State of California*, 30-33 (2023), <https://perma.cc/624Q-HVEE>.

³³ *Id.* at 33.

In contrast, Michigan’s public relations efforts soliciting applications for its commission were significant and provide a positive example of outreach, even though the efforts could be improved on.

CASE STUDY: MICHIGAN

In 2021, the Michigan secretary of state’s office conducted a multifaceted outreach campaign that targeted diverse communities across the state. The campaign involved engaging with community organizations, conducting informational sessions, and leveraging various media platforms to encourage individuals from diverse backgrounds to apply for the commission. The office mailed 250,000 applications to randomly selected voters, well beyond the 10,000 required by law. A total of 9,367 Michiganders, including applicants from every single county, applied to serve as commissioners, and the racial composition of the applicants closely mirrored the state’s population.³⁴ Latinos, however, were still underrepresented in the applicant pool, suggesting room for improvement.



MICHIGAN

In order to ensure that the applicant pool from which commissioners are chosen is reflective, states must take early and robust — but also targeted — action to attract candidates from all corners of their state. And it is prudent for states to incorporate a backstop in the commissioner selection process to ensure the commission itself is diverse if the application pool fails to reflect the state’s diversity.

2021 LESSON LEARNED:

There must be purposeful outreach to have a diverse applicant pool of potential commissioners.



³⁴ *Who applied?*, Michigan Independent Redistricting Commission, <https://www.michigan.gov/micrc/-/media/Project/Websites/MiCRC/MISC1/Whos-applying.jpg?rev=0787ca5af1e94068a2d2b5c60d5db29e&hash=0B8D9CCD7F614A2695A1914820954F96>.

C. Commission Composition: Partisanship and Size

Having the proper number of commissioners and the proper partisan balance among those commissioners is a foundational element of commission design that bears heavily on the functionality of a commission. Ultimately, the 2021 redistricting cycle shows that both of these elements of commission design function best when calibrated to ensure balance: balance among commissioners belonging to the leading partisan factions and to neither, and the balance that comes from ensuring a commission is large enough that one strong personality or a small number of bad actors cannot outweigh the sum of the other commissioners.

i. Balancing Partisan Makeup of Commissioners

One of the first and most important lessons of 2021 is that functional commissions include independent or nonaffiliated commissioners. The most successful commissions include roughly the same number of Democrats, Republicans, and independent or unaffiliated members. This balance is generally found in the most successful commissions: California's IRC has five commissioners affiliated with each party and four unaffiliated (5-5-4); Michigan's IRC has four members who identify with each party and five independents (4-4-5); and Colorado's IRC has equal numbers of each (4-4-4).

These commissions were successful in large part because they were easily able to avoid stalemates and make decisions (despite one or two members objecting). Having a significant number of nonpartisan commissioners reinforced the notion that the commission as a whole was meant to be independent and nonpartisan. And it worked: From procedural votes to the adoption of final maps, these commissions were distinguished by a remarkable amount of cross-partisan consensus. The "my team versus your team" attitude and dynamic that took hold in most of the other commissions was weakened by the presence of members who were not on either so-called team.

2021 LESSON LEARNED:

The best commissions will have a roughly equal distribution between Democratic, Republican, and independent or unaffiliated commissioners.

CASE STUDY: ARIZONA

Arizona’s commission includes a single independent commissioner among the four other commissioners who are evenly split (2-2) between the two major parties. The independent commissioner serves as the tiebreaking vote between the partisan sides, a role entirely different than the collaborative one performed by independents in commissions evenly balanced between the parties and unaffiliated commissioners. The independent commissioner enables the commission to function; that is, the odd number allows the commission to escape deadlock on majority votes. But the partisans, themselves directly appointed by legislative and party leaders, unsurprisingly fragment, finding themselves in their partisan trenches. When this happens, it leaves basically every single commission decision down to one person — an independent commission turned into redistricting by fiat. Moreover, the “independent” commissioner has historically sided consistently with one of the two parties, leading the other to cry partisan foul. In the 2021 cycle in Arizona, the independent chair was accused of bias toward the Republican side as it related to the state legislative maps; the independent member joined with the two Republicans to pass a plan over the opposition of both Democratic commissioners. And even for the congressional plan, which passed with unanimous support by the commissioners, the Democratic commissioners cast doubt on the motivations of the independent.³⁵

ARIZONA



An insignificant independent presence in terms of numbers, therefore, does not yield the same balancing effect as a larger unaffiliated contingent. Independents on the commission can also fail to be a true balancing influence when the commissioner appointment process results in “independent” commissioners who nevertheless seem to have partisan motivations.

³⁵ Ray Stern, *AZ Republicans come out ahead in seats for Legislature, Congress as redistricting panel approves maps*, AZ Central (Dec. 22, 2021), <https://perma.cc/ZRX6-LUTM>.

NEW YORK



CASE STUDY: NEW YORK

New York's commission nominally includes two independents, but they must be appointed by a supermajority of the first eight legislatively appointed commissioners. The easiest and perhaps only way to reach a compromise on the two independent appointees is for the commissioners from both sides — who are likely to have entrenched partisan motivations due to the nature of their own appointment — to agree that each side will choose one independent. As expected, in 2021, the “independent” commissioners then effectively joined the caucus of the party that appointed them.³⁶ As a result, both sides wound up blaming the other for the stalemate, discussed further *infra*, accusing their counterparts of bad faith and unwillingness to negotiate.³⁷ The presence of just two “independent” commissioners did nothing to stop this breakdown.

New York's 2021 commission, because of its appointment process, ended up functionally a commission evenly split between the two parties. Its dysfunction parallels the typical dysfunction of Bipartisan Commissions, which have an even number of Democrats and Republicans and not even the appearance of an independent presence on the commission. Virginia, described *infra* Sec. II(B)(i), Washington, *infra* Sec. II(A), and Ohio provide additional examples of how an even partisan split can lead to disaster.

CASE STUDY: OHIO



The Ohio redistricting commissions (one Political Commission with full authority for state legislative redistricting and a backup Political Commission to the legislature for congressional redistricting) are designed to reflect the partisan makeup of the current government rather than making any attempt at balanced distribution. The governor, state auditor, and secretary of state are all members of the commissions, in addition to the more common four members appointed by each of the legislative leaders. As a result, in 2021, the commissions had five Republicans and two Democrats, and, predictably, voted 5-2 for maps later found by the Supreme Court to violate the state's ban on partisan gerrymandering.³⁸ Ohio demonstrated that single party-controlled commission redistricting results in an approximation of the same kind of blatant gerrymandering that occurs with single party-controlled legislative redistricting. Indeed, the Ohio commissions and legislature worked in perfect lockstep: they pursued the same strategy of aggressive partisan gerrymanders, and each reinforced the other's continued noncompliance with court orders, discussed more *infra* Sec. IV.C.i. This demonstrates that there may be no real benefit at all to a commission controlled by a single party.

OHIO

The best way for a commission to avoid the pitfalls of traditional legislative redistricting is to incorporate not just independence from the political process (in the literal sense), but also to incorporate commissioners who identify with neither major party.

³⁶ *Harkenrider v. Hochul*, 76 Misc. 3d 171, 177-78 (Sup. Ct. Steuben Cnty. 2022).

³⁷ Nicholas Fandos, *Odds of Gerrymandering Grow in New York as Redistricting Panel Falts*, N.Y. Times (Jan. 3, 2022), <https://perma.cc/3U76-KCK9>.

³⁸ The failures of Ohio's state legislative commission are discussed more below. *Infra* Sec. III.C.i.

ii. Choosing the Size of a Commission

One of the most basic questions of commission design is the size of the commission. The most successful commissions in 2021 were among the largest, between 13 and 15 commissioners. There are a number of benefits to a commission of this size, and small commissions have some specific hazards.

The California IRC has 14 commissioners, while Michigan's has 13. The relatively larger size of these commissions was particularly beneficial given the time constraints imposed by the delayed release of census data in 2021. The task of reaching a final redistricting plan is sizable, and a larger commission allows responsibility to be distributed among commissioners in a way that is less burdensome overall. The size of California's commission allowed it to split into subcommittees to address specific aspects of the redistricting process rather than each commissioner needing to address every issue. A larger commission also provides greater possibility for collaboration and compromise. To be sure, a large commission does not guarantee anything — Virginia's 16-member commission was the largest, and it saw very little cooperation. But it does open up some opportunities missing in smaller commissions.

2021 LESSON LEARNED:

Bigger tends to be better for redistricting commissions.

CASE STUDY: MICHIGAN

In Michigan, none of the final approved maps had unanimous support, but they all had bipartisan support, as required by the Michigan constitution. Michigan's commission size enabled buy-in from commissioners across the political spectrum without hamstringing proceedings by requiring unanimity for meaningful bipartisanship. Additionally, although the commission experienced some interpersonal strife and bickering,³⁹ its larger size meant there were enough other members to intervene and provide a buffer to smooth things over. In combination with the commission's independent structure and greater number of independent commissioners, its larger size enabled compromise and collaboration in the line-drawing process.

MICHIGAN



In contrast, Arizona and Washington have smaller commissions, Arizona with five commissioners and Washington with five total commissioners and only four voting commissioners. If one member of a small commission is unable to perform their duties in a pivotal moment, as happened during the Arizona commission's final meeting in which they were voting to certify plans, the commission grinds to a halt.⁴⁰ There are minimal options for other members picking up the slack, as might be possible in a larger commission. Small commissions also give outsized importance to single individuals. And, importantly, while not the necessary result of a small commission, the presence of

³⁹ Lauren Gibbons, *Michigan redistricting was fraught. But it's a 'poster child of what is possible' in a Midwest battleground*, MLive (Mar. 24, 2022), <https://perma.cc/2YZS-7VVH>.

⁴⁰ Jeremy Duda, *Redistricting commission gives final certification to new maps*, AZ Mirror (Jan. 21, 2022), <https://perma.cc/JM2X-S39R>.

only a few commissioners in Washington enabled an ad-hoc process of map drawing and approval, which ignored public input and neglected formal evaluation for partisan balance, Voting Rights Act compliance, or anything else. The Washington commissioners were able to simply ignore the negotiation plan created by the nonvoting chair and nonpartisan staff.⁴¹ As a practical matter, larger commissions require stricter rules to function. And there is less of a chance that a greater number of commissioners will accept the rule violations to which a smaller group may agree — and it would be harder for more people to get away with it if they tried.

CASE STUDY: ARIZONA

During the 2021 cycle, the personal projects of several Arizona commissioners greatly influenced the final maps. The commission’s nonpartisan chair was particularly concerned with ensuring her home district was “highly” competitive at the expense of other considerations;⁴² she was also committed to keeping one particular county, Yavapai, whole, even though the maps contained many other county splits. One of the Republican commissioners was transparent in pushing for a new district that would benefit the political organization of which he was a founding member.⁴³ The pursuit of individual and/or partisan goals undermines public confidence that a commission is acting honestly, independently, impartially, and in the public’s interest.

ARIZONA



Finally, there are important caveats to these observations about commission size. First, commissions larger than 15 members are likely to face difficulties typical of larger deliberative bodies. If commissions were to exceed this size, full group deliberation would likely become unwieldy and time-consuming, making it harder to ensure that all voices on the commission are heard on important mapping and administrative decisions. Commissions composed of 13-15 members are large enough to tackle the large volume of work expected from redistricting commissioners but small enough to inclusively deliberate as a full group on important questions and mapping tasks.

The second caveat is the cost of larger commissions. While California’s commission is an exemplar for independent redistricting, it is important to acknowledge that its robustness (including its size) comes at significant cost.⁴⁴ Not all states may be in a position to emulate the method of the nation’s most populous state (which has by far the highest tax revenue). As always, tradeoffs between competing interests must be evaluated: There is surely a point at which the cost of increased size or further robustness is no longer worth the price.

⁴¹ Daniel Walters, *11 reasons the Washington State Redistricting Commission turned into a deadline-botching fiasco*, Inlander (Nov. 19, 2021), <https://perma.cc/NRZ2-NUTX>.

⁴² Jeremy Duda, *Fractious final day ends with acrimony and accusations as redistricting commission splits on legislative map*, AZ Mirror (Dec. 22, 2021), <https://perma.cc/U28E-7UAE>.

⁴³ Nelson Morgan & Deborah Howard, *Arizona redistricting and destiny: The 2022 results mostly match the 2021 expectations*, AZ Mirror (Dec. 5, 2022), <https://perma.cc/SA88-YUQF>.

⁴⁴ The redistricting commission and process in California during the 2021 cycle cost upward of \$25 million. Katy Grimes, *Is the California Citizens Redistricting Commission Spending Out of Control?*, California Globe (Dec. 9, 2020), <https://perma.cc/8R4A-86Q7>.

II. Redistricting Commission Baselines: • Providing Commissioners With the Proper Knowledge, Resources, and Standards

After a commission is established but before the redistricting process can actually commence, commissions develop the pivotal backdrop to their process. The preparation and infrastructure provided to commissioners to assist them in their task and the criteria that will govern their mapmaking can dictate whether a commission is ultimately able to succeed in achieving the goal of fair redistricting. Even a well-designed commission can falter when commissioners are ill prepared to undertake or improperly supported in undertaking the task of redistricting, or when commissioners are unsure of the requirements that must be satisfied in the maps they prepare.

COVERED IN THIS SECTION:

This section addresses two main components that provide a strong baseline for redistricting commissions.

Part A discusses commissioner education and staffing necessary to ensure commissioners are adequately prepared to conduct and supported in conducting a fair redistricting process.

Part B examines the various legal standards and redistricting criteria that may govern commission redistricting.

KEY TAKEAWAYS:

Commissions are best enabled to achieve the fundamental goals of redistricting reform when commissioners are:

- 1** Empowered to understand and make decisions regarding the complexities of redistricting;
- 2** Assisted by trustworthy and knowledgeable staff and advisors, selected through a process designed to give commissions a broad base of options; and
- 3** Guided by clearly defined and ranked criteria protective of the rights of every voter.

A. Redistricting Commissioner Education and Staffing

One of the challenges facing citizen commissioners in particular is that they may lack specialized knowledge in redistricting and therefore must rely on competent staff, experts, and consultants to assist them in drawing districts that satisfy the criteria and requirements of state and federal law. The 2021 cycle illuminates the various areas in which commissions may need assistance and the type of assistance.

TOPIC/AREA	TYPE OF ASSISTANCE	DESCRIPTION
Mapping	Expert	Assistance from an individual with technical expertise in geographic information system (GIS) mapping software is necessary to assist commissioners with doing the technical work of creating redistricting plans.
Voting Rights Act (VRA) and Federal Law Compliance	Attorney	Counsel from attorneys regarding the requirements of the VRA (including when it applies and what is required when it applies) and avoiding racial gerrymandering is beneficial to ensuring redistricting plans are fully compliant with federal law.
	Expert	Expert analysis is often needed in order to determine which areas of the state may require the drawing of VRA opportunity districts. This may involve both demographers (to ascertain whether minority communities are sufficiently large and geographically compact to form the majority in a district) and political scientists (to ascertain whether those communities exhibit racially polarized voting, meaning minority voters favor candidates different from the area's majority voters and whether minority-preferred candidates usually fail).
Redistricting Criteria Compliance	Attorney	Counsel from attorneys regarding compliance with One Person, One Vote and other federal and state requirements (e.g., partisan fairness, contiguity) is needed to ensure that redistricting plans are fully compliant with the relevant law.
Transparency, Public Outreach and Input	Staff	Conducting a holistic and effective public input process, discussed more <i>infra</i> Sec. III.B, requires significant effort and infrastructure, including a supportive staff to organize the solicitation of feedback, to compile feedback for commissioners, and possibly to synthesize the feedback into a format useful to the commissioners. Commissions also need assistance in creating public-facing information sharing, such as websites, to convey important information including draft maps and data files.

Providing commissioners with the necessary support in these areas is pivotal to the proper functioning of a redistricting commission. Failing to provide that support or failing to require that commissioners accept it can, unsurprisingly, yield maps violative of the law.

CASE STUDY: WASHINGTON

The Washington Bipartisan Commission has the power to employ experts, consultants, and support staff including attorneys.⁴⁵ The 2021 staff was led by an executive director hired by the commission and a staff of six who reported to the executive director. The staff included a GIS analyst, a communications director, a digital media and communications coordinator, a public outreach coordinator, and two executive assistants. Additionally, each commissioner had approximately two staffers supplied by the relevant party caucus in the state Senate or House who drew the majority of actual maps for the commissioners. This division of labor was a significant factor leading both to the politicization of the process and the lack of transparency.

In 2021, the commission considered hiring but ultimately did not hire outside attorneys or experts to advise on the requirements of the VRA and their applicability in Washington. After the commissioners publicly released their proposed maps, the Democratic-appointed commissioners were given a briefing, arranged by the Senate Democratic Caucus, by a political scientist with an expertise in federal VRA compliance.⁴⁶ That briefing included detailed analyses indicating that the VRA applied and required the creation of a Latino opportunity district in the Yakima Valley region.⁴⁷ In response, and after the Democratic-appointed commissioners released additional maps responsive to this information, the Republican-appointed commissioners commissioned a legal evaluation regarding VRA compliance in the Yakima Valley.⁴⁸ Unlike the political scientist's report, this evaluation contained no expert analysis of the region, but it concluded that the VRA did not require the creation of a majority Latino district in the Yakima Valley.⁴⁹ The commission, without attorney or expert staff or consultants, never did an assessment of the final map for VRA compliance.

As a result, a federal court found that the Washington commission's districting plan denied Latinos in the Yakima Valley the opportunity to elect candidates of their choice by diluting their voting strength in violation of the VRA.⁵⁰

WASHINGTON



⁴⁵ Wash. Rev. Code. § 44.05.070(1).

⁴⁶ Matt Barreto, *Assessment of Voting Patterns in Central/Eastern Washington and Review of Federal Voting Rights Act, Section 2 Issues* (Oct. 19, 2021), <https://perma.cc/L5AK-SDXM>; UCLA Voting Rights Project, *Memorandum to Washington State Redistricting Commission, Washington Supreme Court, and all Washington Residents re: Voting Rights Act compliance* (Nov. 17, 2021), <https://perma.cc/K4B8-HQLM>.

⁴⁷ *Id.*

⁴⁸ Rob Maguire et al., *Memorandum to Commissioners Graves and Fain, Washington Redistricting Commission, re: Legal Analysis of Arguments Regarding Creation of a Majority-Minority District*, (Nov. 4, 2021), <https://perma.cc/A3CM-26V5>.

⁴⁹ *Id.* at 1.

⁵⁰ *Soto Palmer v. Hobbs*, No. 3:22-CV-05035-RSL, 2023 WL 5125390 (W.D. Wash. Aug. 10, 2023).

The 2021 Washington commission thus demonstrates that failing to require commissions to solicit and incorporate legal and expert input, leaving commissioners to their own devices, can lead to disastrous results.

Citizen commissioners also risk being more easily swayed by arguments from those with more expertise, simply because those commissioners lack the knowledge to fully evaluate or counter such arguments. Commissioners in Virginia, *supra* Sec. I.B.i, and Colorado faced these challenges in the 2021 cycle.

CASE STUDY: COLORADO

Colorado, unlike some other states,⁵¹ does not bar commissioners or staff from discussing redistricting with members of the public outside official public meetings. On the contrary, the Colorado constitution explicitly allows paid lobbyists to “advocate” to individual commissioners, as long as the lobbying activity is disclosed to the secretary of state (who in turn must disclose it to the public).⁵² As a result, there were accusations in 2021 that political actors were improperly influencing the process.⁵³ In light of this, one of Colorado’s 2021 commissioners highlighted the need for education to train commissioners on how to recognize partisanship and remain impartial. “There was really no education that occurred for commissioners ... and the understanding of how deep the game can be played,” said ... the only commissioner to vote against the new congressional map. ‘I think the voters of Colorado tried to make it (redistricting) less political, but I think what we’re going to see is more outside groups trying to manage the process from the outside.’⁵⁴

COLORADO

The 2021 Colorado Commission highlights how, even where there are not politicians directly involved in a commission, commissioners can still be unduly influenced by partisan actors. Prohibiting lobbying of commissioners is an obvious step to avoid such influence. And, beyond that, thorough commissioner education on the legal requirements and considerations governing redistricting is critical to ensure that citizen commissioners are equipped to make their own informed decisions.

But not just any education and staffing will guarantee beneficial results. While *good* education and staffing can lead to better maps, *bad* education and staffing can lead to problems. Michigan’s 2021 redistricting cycle demonstrates how important it is that citizen commissioner education be conducted, and legal support and expert advice be provided, by effective sources.

2021 LESSON LEARNED:

Proper education is especially important for citizen commissioners to make decisions without undue influence.

⁵¹ See, e.g., Mich. Const. art. IV, § 6(11).

⁵² Colo. Const. art. V, § 44.2(4)(b)(iii).

⁵³ Sandra Fish & Thy Vo, *Despite Colorado’s new redistricting process being independent, there was still plenty of political influence* (Nov. 10, 2021), <https://perma.cc/4GM7-6CAK>.

⁵⁴ *Id.*

CASE STUDY: MICHIGAN

The Michigan commission hired litigation counsel, in-state counsel, a Voting Rights Act attorney, a mapping consultant, and a consultant to help identify communities of interest. But the hiring of outside counsel and consultants was not without controversy. The commission's VRA attorney drew complaints for donating to Michigan Secretary of State Jocelyn Benson.⁵⁵ There were also objections to the commission's chosen litigation counsel, as the firm had previously defended maps determined by courts to be unconstitutional gerrymanders and because an attorney there was formerly counsel to the Republican National Committee.⁵⁶ While the commission sent out two requests for proposals (RFPs) for litigation counsel, only one firm submitted a bid.⁵⁷ The commission's RFPs for this role were not drafted in a manner likely to encourage or enable firms with significant redistricting litigation experience to submit a proposal, limiting the commission's choices.⁵⁸

The commission also hired an expert to help with map drawing, which sparked complaints, as that particular expert had been accused of "being behind some of the most gerrymandered districts in the country."⁵⁹ The commissioners hired his company in part because the proposal offered to provide racially polarized voting (RPV) analysis conducted by an expert employed by the company.⁶⁰ However, the original RFP did not solicit proposals for RPV analysis, instead asking for deliverables such as mapping software and training.⁶¹ As a result, many companies/experts best suited to conduct RPV analysis likely did not respond to the RFP or, even if applicants were capable of conducting RPV analysis, they likely did not include it in their proposals because the RFP was not soliciting those services. This process ultimately led to maps found to violate federal law.



MICHIGAN

The 2021 Michigan commission illustrates how an overreliance on the advice of consultants and attorneys can have potentially detrimental results. Commissions should fashion their solicitations to encourage a broad base of proposals from which they can select.

The 2021 California commission provides valuable lessons about how commissions can empower citizen commissioners *and* retain competent staff and advisors to assist commissions in creating fair, legally compliant maps.

2021 LESSON LEARNED:

The process by which commissions select their legal and expert advisors must be designed to attract a broad base of options.

⁵⁵ Sergio Martinez-Beltran, *Michigan redistricting group hires law firm with GOP ties over objections*, Mich. Bridge (Aug. 12, 2021), <https://perma.cc/JGV5-9ZPL>.

⁵⁶ *Id.*; Voters Not Politicians, *Voters Not Politicians statement on the MICRC's decision to proceed with BakerHostetler*, <https://votersnotpoliticians.com/voters-not-politicians-statement-on-the-micrcs-decision-to-proceed-with-bakerhostetler>.

⁵⁷ Sergio Martinez-Beltran, *Michigan redistricting group hires law firm with GOP ties over objections*, Mich. Bridge (Aug. 12, 2021), <https://perma.cc/JGV5-9ZPL>.

⁵⁸ The RFPs, for example, asked that applicants describe their experience before the U.S. Supreme Court, "any legal or advisory services provided specific to redistricting," and "any legal and advisory services provided specific to election law." BakerHostetler, *Michigan Independent Citizens Redistricting Commission RFP* (July 29, 2021) at 8-12, <https://perma.cc/T7NM-KDTS>. These requests likely would prove unmanageable for many firms and attorneys with substantial relevant experience.

⁵⁹ Sergio Martinez-Beltran, *Michigan redistricting group hires law firm with GOP ties over objections*, Mich. Bridge (Aug. 12, 2021), <https://perma.cc/JGV5-9ZPL>.

⁶⁰ Clara Hendrickson, *'Picasso' of gerrymandering selected to draw new districts*, Detroit Free Press (Mar. 5, 2021), <https://www.freep.com/story/news/local/michigan/detroit/2021/03/05/redistricting-commission-chooses-company-redraw-michigan-districts/4589271001/>.

⁶¹ Michigan Independent Citizens Redistricting Commission, *Line Drawing and Redistricting Technical Services, Request for Proposal No. 920, 21000000714* at 18-22, available at <https://perma.cc/6BHP-VR89>.

CASE STUDY: CALIFORNIA

In California, the state auditor posted the RFP for the line-drawer role before the commission was seated. The commissioners chose to withdraw and repost the RFP after they were seated to ensure that the line-drawer selection was not tainted by outside influence.⁶² The commission’s RFP clearly outlined the parameters of the services expected from the line-drawing role,⁶³ and the commission ultimately engaged two groups to serve as technical consultants.⁶⁴ The commission sent out requests for information for legal services for both litigation counsel⁶⁵ and Voting Rights Act counsel⁶⁶ that solicited relevant experience and information without creating a burden so significant that it would discourage applicants, as reflected in the multiple applicants for each role.

The California commission also solicited presentations and hands-on trainings from a diverse range of outside experts, exposing the commissioners to a variety of viewpoints while educating them on “demography, mapping, voting rights, and more.”⁶⁷ In other words, citizen commissioners were trained on how to make their own decisions, in addition to seeking out the best experts and advisors to guide their decision-making.

2021 LESSON LEARNED:

Diversifying sources of information for commissioners can protect against overreliance on potentially flawed advice.

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California’s 2021 redistricting experience shows that with effective training and reliable support staff, citizen commissioners can successfully undertake redistricting while avoiding the pitfalls of undue influence from partisan forces.

⁶² Christian Grose, *Fair Maps in the State of California*, League of Women Voters of California Education Fund and California Common Cause, 39 (2023), <https://perma.cc/624Q-HVEE>.

⁶³ California Citizens Redistricting Commission, *Request for Proposal, RFP No. CR20 CRC-010: Notice to Prospective Proposers for Line Drawing Services for Redistricting* (Jan. 16, 2021), <https://perma.cc/63CN-B5JS>; California Citizens Redistricting Commission, *Request for Proposal, RFP No. CR20 CRC-010: Addendum #001* (Feb. 2, 2021), <https://perma.cc/NH47-66UL>.

⁶⁴ California Citizens Redistricting Commission, *Press release: 2020 California Citizens Redistricting Commission Announces Redistricting Line Drawing Contract* (Mar. 31, 2021), <https://perma.cc/9X23-2D9X>.

⁶⁵ California Citizens Redistricting Commission, *Request for Information for Legal Services: Citizens Redistricting Commission Litigation Counsel*, <https://perma.cc/EU92-SGJK>.

⁶⁶ California Citizens Redistricting Commission, *Request for Information for Legal Services: Citizens Redistricting Commission Voting Rights Act Counsel*, <https://perma.cc/EU92-SGJK>.

⁶⁷ Christian Grose, *Fair Maps in the State of California*, 41 (2023), <https://perma.cc/8B28-P8QN>; California Citizens Redistricting Commission, *Commissioner Education Panels*, CA.gov, <https://perma.cc/5H8E-WLY2>.

B. Redistricting Standards and Criteria

Redistricting maps, whether drawn by commissions or state legislatures, are subject to substantive requirements of federal and state law. In addition to commissioner education and advice, these legal standards and criteria are crucial to ensuring that districts are fair, nondiscriminatory, consistent, and conducive to geographic representation. Common redistricting criteria are included in the table below.

STANDARD/CRITERIA	DESCRIPTION
Population Equality	Every state must follow the U.S. Constitution’s One Person, One Vote command. Congressional districts must be strictly equal in population (“as nearly as is practicable”), ⁶⁸ whereas state legislative districts need only be “substantially” equal (with minor deviations permitted). ⁶⁹ Some states set a stricter population equality standard for state legislative districts than federal law requires. ⁷⁰
Protections Against Racial Discrimination	Every state must also follow the federal Voting Rights Act of 1965 (VRA) and the Equal Protection Clause’s prohibition on racial gerrymandering. ⁷¹ As discussed below, some states have parallel requirements that are more protective of minority voting rights than the federal VRA.
Protections Against Extreme Partisan Gerrymandering	The Supreme Court ruled in 2019 that the issue of partisan gerrymandering is nonjusticiable under the U.S. Constitution, but many state constitutions and laws can be enforced to prevent the practice. ⁷² As discussed below, many states explicitly require map drawers to consider partisan fairness, proportionality, and/or competitiveness in drawing district lines.
Typical State Redistricting Criteria	<p>Contiguity: Ensuring all parts of each district physically touch, with no detached pieces.</p> <p>Compactness: Maintaining districts of reasonable shape (sometimes paired with language requiring convenient districts).</p> <p>Respect for Political Subdivisions: Minimizing the splitting of counties, cities, towns, and other local governments across districts.</p> <p>Preservation of Communities of Interest: Including people who share common interests or circumstances in the same district.</p>
Incumbent Protections	Some states allow or require map drawers to avoid creating contests between incumbents. ⁷³ Others prohibit drawing districts with the intent to favor or disfavor incumbents or prohibit map drawers from considering incumbent residences. ⁷⁴ Others still are silent on this point.

⁶⁸ U.S. Const. art. I, § 2; *Reynolds v. Sims*, 377 U.S. 533, 559 (1964); *Karcher v. Daggett*, 462 U.S. 725 (1983).

⁶⁹ U.S. Const. amend. XIV, § 1; *Reynolds*, 377 U.S. at 579; *Brown v. Thomson*, 462 U.S. 835, 842-43 (1983) (noting that state legislative apportionment plans with a maximum population deviation under 10% do not create a prima facie case for malapportionment).

⁷⁰ See, e.g., Colo. Const. art. V, § 46 (requiring state legislative districts to have a maximum population deviation of 5% or less).

⁷¹ See *Cooper v. Harris*, 581 U.S. 285 (2017).

⁷² In *Rucho v. Common Cause*, 588 U.S. 684, 718 (2019), the Supreme Court held that that partisan gerrymandering is a political question that cannot be adjudicated in federal court. But the Court made clear that provisions in state constitutions and state statutes “can provide standards and guidance for state courts to apply.” *Id.* at 719. Many state courts have since applied state constitutional principles and statutes to invalidate extreme partisan gerrymanders. See, e.g., *League of Women Voters of Pa. v. Commonwealth*, 178 A.3d 737, 820 (Pa. 2018); *Szeliga v. Lamone*, No. C-02-CV-21-001816, 2022 WL 2132194, at *1 (Md. Cir. Ct. Mar. 25, 2022); *Kennai Peninsula Borough v. State*, 743 P.2d 1352, 1371 (Alaska 1987); *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363 (Fla. 2015); *Harkenrider v. Hochul*, No. 60, 2022 N.Y. Slip Op. 02833, 2022 WL 1236822, at *10 (N.Y. Apr. 27, 2022).

⁷³ *Redistricting Criteria*, National Conference of State Legislatures (Jul. 16, 2021), <https://perma.cc/Z2T4-TW6M>.

⁷⁴ *Id.*

While many states codify some or all of the above criteria in their constitutions or statutes, the precise wording often varies. This makes sense, especially with respect to traditional criteria such as contiguity, compactness, respect for political subdivisions, and preserving communities of interest, which necessarily reflect the unique political and physical geography and policy goals of each state.

However, two lessons from the 2021 redistricting process regarding the form of redistricting criteria bear mention up front. First, all redistricting criteria should be codified in state law with robust definitions of key terms (e.g., “communities of interest”). When terms are not adequately defined in the law itself, commissions should commit themselves to clear definitions at the outset of the redistricting process and agree on how they will assess compliance with each criterion. In Arizona, for example, the IRC voted early in its process on how to define and assess the competitiveness of redistricting plans, one of the undefined criteria the commission was required to consider under the state constitution.⁷⁵

Second, state law should provide commissioners clear directions for prioritizing redistricting criteria, and where state law does not do so, commissions should take it upon themselves to determine how they will prioritize criteria at the outset. Redistricting criteria can sometimes pull in different directions, and citizen commissions often seek guidance about which criteria to prioritize when disagreements or decision points arise. Some states indicate priority obliquely by using mandatory language for some criteria and requiring compliance with others only to “to the extent practicable.”⁷⁶ However, the clearest way a state can indicate priority among criteria is to rank them in order of importance, as do California and Michigan.

The remainder of this section focuses on the three redistricting requirements that consumed the most attention and resources of redistricting commissions (and courts) during the 2021 redistricting cycle: (i) federal and state protections against racial discrimination, (ii) protections against partisan gerrymandering, and (iii) preservation of communities of interest.⁷⁷

2021 LESSON LEARNED:

Redistricting criteria should be clearly defined and ranked in order of priority in the law itself or by early decision of the commission.

⁷⁵ Jeremy Duda, *Redistricting commission chooses competitiveness metrics*, AZ Mirror (Aug. 10, 2021), <https://perma.cc/R2U6-CJX9>.

⁷⁶ See, e.g., Ariz. Const. art. IV, pt. 2, § 1(14) (Arizona); R.C.W. 44.05.090 (Washington).

⁷⁷ For a robust description of all redistricting criteria, including examples of how to articulate them in statutory language, see Campaign Legal Ctr., *Designing Independent Redistricting Commissions* (2018), <https://perma.cc/57G6-J245>.

i. Federal Protections Against Racial Discrimination

The Fourteenth Amendment allows states to consider race in redistricting but prohibits race from being “the predominant factor” unless justified by a compelling interest, such as compliance with Section 2 of the federal VRA.⁷⁸ Section 2 in turn requires districts that enable minority racial groups to elect their preferred candidates when the minority community is large and compact enough to form a majority in a reasonably configured district and there is racially polarized voting (RPV) such that other voters usually vote as a bloc to defeat the minority group’s cohesively preferred candidates.⁷⁹ These are known as the *Gingles* preconditions for the namesake Supreme Court case in which they were first articulated.

Compliance with the federal VRA requires commissions to be proactive in identifying areas of the state where the *Gingles* preconditions likely require drawing minority opportunity districts. This diligence demands at least three actions. First, VRA compliance requires hiring both competent legal counsel and consultants who have familiarity with the data and statistical methods used to identify compact minority populations and determine racially polarized voting levels. Second, the work of hiring consultants, conducting RPV analysis, and educating commissioners on the VRA’s requirements and RPV findings should occur as early as possible in the redistricting process to allow for proper balancing of redistricting criteria. Third, commissions should leave time to assess draft and final maps for VRA compliance well before adoption, to avoid needless legal battles.⁸⁰

Many commissions delayed in hiring necessary VRA consultants and conducting RPV analyses, in part because of the delay in the release of census redistricting data and compressed time frames for map drawing.⁸¹ Though it certainly suffered these challenges, California’s IRC was among the more successful commissions when it came to VRA compliance.

2021 LESSON LEARNED:

Commissions must hire quality VRA counsel and consultants and provide commissioners with training and analysis as early as possible before line-drawing begins.

CASE STUDY: CALIFORNIA

California’s IRC was advised to begin VRA work as early as possible. However, due to unanticipated delays in state contracting approval, the VRA work began at least a month later than anticipated. Still, once VRA counsel and an RPV consultant were onboarded, the commission made a swift and robust effort to gather all the information and preliminary analysis it needed to determine where opportunity districts would need to be drawn.⁸² In October 2021, the commissioners were provided a preliminary analysis memorialized in a series of maps showing areas of the state where the *Gingles* preconditions were likely met (see example below), which informed the development of ‘visualizations’ of possible legislative and congressional districts.⁸³ A second RPV analysis was conducted in certain areas for which the preliminary analysis “yielded somewhat mixed or inconclusive results” and included more detailed examination of voting and population data in affected precincts, public input, and historical considerations.⁸⁴ This analysis was all considered in conjunction with traditional redistricting criteria to draw effective opportunity districts.

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⁷⁸ *Cooper v. Harris*, 581 U.S. at 291-92.

⁷⁹ *Id.* at 301-02; *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986).

⁸⁰ See Deborah Howard & Nelson Morgan, *AIRC must draw fair districts that properly balance criteria, including competitiveness*, *AZ Mirror* (Oct. 12, 2021), <https://perma.cc/6BNL-48Z2>.

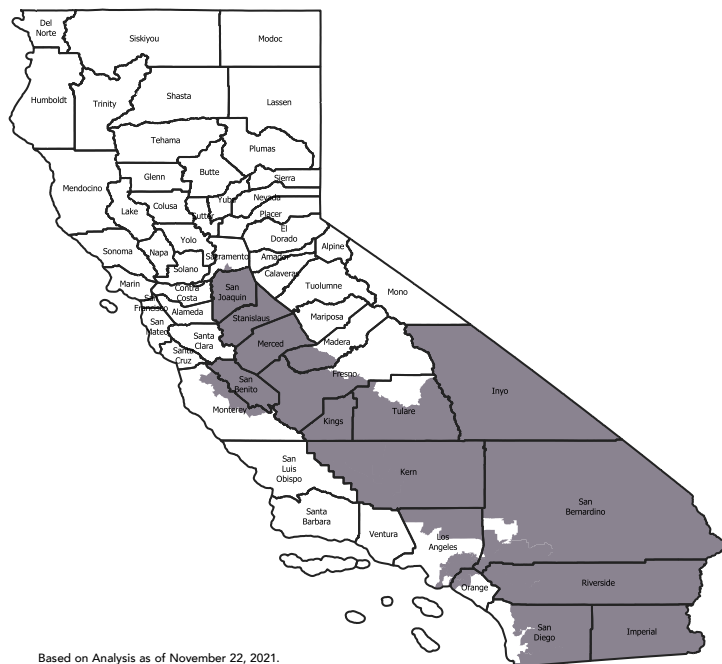
⁸¹ The Census Bureau had planned to finish delivering data to states by March 31, 2021 but did not begin sharing preliminary data files with states until late August 2021. See Yuriy Rudensky, Michael Li, & Gabriella Limón, *The Impact of Census Timeline Changes on the Next Round of Redistricting* (Apr. 22, 2021), <https://perma.cc/62H2-KZEA>.

⁸² The RPV analysis ultimately “incorporated the results of some 735 separate electoral contests held from 2012 to 2020 and included both primary and general elections, as well as both endogenous and exogenous elections.” 2020 California Citizens Redistricting Commission, *Report on Final Maps* 39 (Dec. 26, 2021), <https://perma.cc/9RHR-C3RW>.

⁸³ *Id.* at Appendix 7.

⁸⁴ *Id.* at 41.

**Areas Where All Three Gingles Preconditions Were Met in Existing
Assembly, Senate, or Congressional Districts, Based on
Endogenous or Exogenous Elections**



Screenshot from 2020 California Citizens Redistricting Commission, *Report on Final Maps 221* (Dec. 26, 2021), <https://perma.cc/9RHR-C3RW>.

Other redistricting commissions were less effective at ensuring compliance with the VRA. In Arizona, RPV analysis was not provided to commissioners until well after mapping had begun on October 26, 2021,⁸⁵ which, as one public testifier lamented, was “weeks behind” schedule.⁸⁶ And, as discussed in Sec. II.A, the Washington commission’s inability to hire a VRA consultant led to a federal court finding its legislative maps violated the VRA by failing to include a required Latino opportunity district in the Yakima Valley.

Michigan’s IRC also faltered in its compliance with the VRA, due, in large part, to advice provided by its legal counsel and RPV consultant. These missteps are chronicled in a recent federal court opinion finding that the commission racially gerrymandered House and Senate districts in the Detroit area. The court found that the commission unlawfully aimed to achieve arbitrarily low Black voting-age population targets in Detroit-area districts — a target urged by their VRA counsel repeatedly despite the misgivings of commissioners themselves.⁸⁷ The court also found that those racial targets rested on incomplete RPV analysis by the commission’s demographic consultant, analysis that failed to consider RPV in primary elections (which are dispositive in Detroit), historical factors, and the vast amount of public testimony asking to unify Detroit’s Black communities of interest.⁸⁸ As ordered by the court, the Michigan IRC has redrawn its Detroit House districts in advance of the 2024 election and is in the process of doing the same for the Senate districts before those seats are up for election in 2026. The commission can easily avoid similar compliance problems next decade by improving its process for selecting VRA counsel and consultants, as discussed in Sec. II.A.

⁸⁵ *Overview of Decennial Redistricting Process and Maps*, Arizona Independent Redistricting Commission, at 32 (Jan. 2022), <https://perma.cc/6RKZ-6BCB>.

⁸⁶ *Reporter’s Transcript of Grid Map Public Meeting*, Arizona Independent Redistricting Commission, at 124-25 (Sept. 29, 2021), <https://perma.cc/3PFP-T4X7>.

⁸⁷ *Opinion and Order, Agee v. Benson*, No. 1:22-cv-00272, 2023 WL 8826692 (W.D. Mich. Dec. 21, 2023), <https://perma.cc/6PBL-MVPJ>.

⁸⁸ *Id.* at 5, 11.

ii. State Protections Against Racial Discrimination

States can (and should) codify independent standards to prevent racial discrimination in redistricting that are more protective than the federal VRA.

Section 2 of the federal VRA speaks only in terms of minority voters' opportunity to "elect representatives of their choice."⁸⁹ But states can craft their own provisions that not only protect minority voters' opportunity to unilaterally elect preferred candidates, but also require commissions to draw districts that protect minority voters' opportunity to "influence" electoral outcomes even if they are not the voting majority of a given district. This would contemplate drawing "crossover" districts — districts in which a sizeable minority population is joined by white crossover voters to elect minority-preferred candidates. The Supreme Court has held that while the federal VRA does not require drawing crossover districts to prevent vote dilution, states are free to do so.⁹⁰

In crafting more protective laws against minority vote dilution, drafters should take care to distinguish state-level protections from the usual requirements of the federal VRA. Colorado offers a cautionary tale. The Colorado Constitution includes in the same provision both the federal VRA standard and a state standard against dilution of a minority group's "electoral influence."⁹¹ But unfortunately, in 2021, the Colorado Supreme Court interpreted the state's "electoral influence" protections to be coextensive with the protections of the federal VRA.⁹² To avoid such erroneous interpretations, legal drafters should be sure to clearly set state legal protections apart from federal legal protections.

2021 LESSON LEARNED:

State-level protections for minority vote dilution should be clearly distinguished from requirements to comply with the federal VRA.

iii. State Protections Against Partisan Gerrymandering

Reform efforts to enact redistricting commissions often also seek to add specific state law requirements to bar partisan gerrymandering. These criteria can take many forms and are an important means to protect against undue manipulation for partisan gain.

One common approach is simply to prohibit map drawers from favoring or disfavoring any political party or group. California, for example, provides that districts "shall not be drawn for the purpose of favoring or discriminating against an incumbent, political candidate, or political party"; Florida's constitution, though it does not provide for a commission, is similar.⁹³ While some state courts have relied on these sorts of provisions to strike down gerrymandered maps, they are generally limited to prohibiting *intentional* partisan gerrymanders.⁹⁴

⁸⁹ 52 U.S.C. § 10301(b); see also *Bartlett v. Strickland*, 556 U.S. 1, 19-20 (2009) (plurality opinion).

⁹⁰ *Bartlett*, 556 U.S. at 23.

⁹¹ Colo. Const. art. V §§ 44.3(4)(b), 48.1(4)(b) (prohibiting maps "drawn for the purpose of or [that] results in the denial or abridgement of the right of any citizen to vote on account of that person's race or membership in a language minority group, including diluting the impact of that racial or language minority group's electoral influence").

⁹² *In re Colorado Indep. Cong. Redistricting Comm'n*, 497 P.3d 493, 510 (Colo. 2021).

⁹³ Cal. Const. art. XXI, § 2(e); Fla. Const. art. III, §§ 20(a), 21(a).

⁹⁴ See, e.g., *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363 (Fla. 2015).

A more direct and perhaps more effective approach to ensuring partisan fairness is to affirmatively require it, both in intent and effect. The Michigan Constitution, for example, requires that districts “shall not provide a disproportionate advantage to any political party,” where disproportionate advantage must be “determined using accepted measures of partisan fairness.”⁹⁵ Some common measures of partisan fairness are listed below:⁹⁶

COMMON MEASURES OF PARTISAN FAIRNESS	DESCRIPTION
Efficiency Gap	A measure of the difference between each party’s inefficient votes (i.e., votes that do not contribute to winning a seat) due to cracking a party’s voters among many districts and/or packing its voters into few districts. ⁹⁷
Partisan Symmetry	The difference between a party’s observed seat share and 50% in a hypothetically tied election. ⁹⁸
Mean-Median Difference	The difference between a party’s median vote and its average vote share across all districts in a redistricting plan. ⁹⁹
Responsiveness/ Sensitivity	Measures that describe whether and how representation changes when voters’ preferences change, i.e., the rate at which changes in vote share translate into seat share. ¹⁰⁰
(Dis)proportionality	The extent to which a party’s share of seats deviates from its share of voters statewide.

The Ohio Constitution presents a more specific way to mandate partisan fairness, by requiring near proportionality between each political party’s share of seats and their share of statewide support. Ohio law currently requires that the “statewide proportion of districts whose voters, based on statewide state and federal partisan general election results during the last ten years, favor each political party shall *correspond closely* to the statewide preferences of the voters of Ohio.”¹⁰¹ This proportionality standard is, on the one hand, more prescriptive than Michigan’s “accepted measures” approach, but Ohio’s standard also leaves map drawers (and courts) to answer a number of questions. For example, how are statewide and federal partisan election results aggregated to determine whether a particular district goes for one party or another in determining seat share?

⁹⁵ Mich. Const. art. IV, § 6(d).

⁹⁶ For more detailed information on how partisan fairness measures are calculated, see PlanScore at <https://perma.cc/FHX8-7D7Y>.

⁹⁷ See *Efficiency Gap*, PlanScore, <https://perma.cc/FZN2-96HE>.

⁹⁸ See *Partisan Bias*, PlanScore, <https://perma.cc/UZX6-WVUW>.

⁹⁹ See *Mean-Median Difference*, PlanScore, <https://perma.cc/48W5-WK6V>.

¹⁰⁰ *Designing Independent Commissions*, Campaign Legal Center, at 44 (2018), <https://perma.cc/T8MW-DM9Z>.

¹⁰¹ Ohio Const. art. XI, § 6(B).

A new ballot initiative in Ohio to create an IRC proposes to add specificity to this proportionality standard. The proposal would define precisely how the commission must calculate a party's seat share and statewide partisan preference and requires that the statewide proportion of districts in each redistricting plan that favors each political party deviate by no more than three percentage points in either direction or by the smallest possible proportion greater than three percentage points.¹⁰²

Ohio's "strict proportionality" approach and Michigan's "open toolbox" approach each present their own benefits and drawbacks. Ohio's prescriptive standard allows for less flexibility and may constrain map drawers' discretion, but it provides clarity and predictably fair partisan outcomes. Michigan's approach is less prescriptive but affords the state's commission flexibility to consider any of the well-accepted measures of partisan fairness (including proportionality), as well as any new measures that may be developed in the future.

iv. Defining Communities of Interest

The final redistricting criterion that most consumes commission map drawers' time and attention is respect for communities of interest. Determining which communities of interest should be kept together should be guided, in large part, by public input during the redistricting process and, of course, commissioners' knowledge of the state and its people (see Sec. III.B). But before commissioners can begin to assess where communities of interest are located, they must have a firm understanding of what groups count as communities of interest.

To that end, communities-of-interest (COI) criteria in state constitutions should define as clearly as possible what counts as a community of interest and what doesn't. These definitions should align with the fundamental goal of COI criteria: Groups that share representational interests should have an opportunity to gain representation and influence policymaking in the legislature so that the legislature in turn reflects the diversity of interests in the state. But to avoid abuse of COI criteria to privilege certain political or partisan groups, state constitutions should make clear that individuals connected based on relationships with political parties, incumbents, or candidates do not count as COIs. California's COI criterion offers a good model:

A community of interest is a contiguous population which shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation. Examples of such shared interests are those common to an urban area, a rural area, an industrial area, or an agricultural area, and those common to areas in which the people share similar living standards, use the same transportation facilities, have similar work opportunities, or have access to the same media of communication relevant to the election process. Communities of interest shall not include relationships with political parties, incumbents, or political candidates.¹⁰³

¹⁰² *Initiative Petition: Amendment to the Constitution Proposed by Initiative Petition to be Submitted Directly to the Electors, Citizens Not Politicians*, at § 6(B) (2024), <https://perma.cc/7WYN-KLVT>.

¹⁰³ Cal. Const. art. XXI, § 2(d)(4).

Ohio's proposed ballot initiative provides another positive example of COI criterion, because it also recognizes that political subdivisions do not always neatly align with the more malleable community boundaries COIs are intended to capture (see part b):

(3) Districts shall preserve communities of interest to the extent practicable.

(a) A community of interest is an area where the record before the commission demonstrates the existence of communities of people with broadly shared interests and representational needs, including, without limitation, interests and representational needs that arise from common ethnic, racial, social, cultural, geographic, environmental, socioeconomic, or historic identities or concerns.

(b) Counties, municipal corporations, townships, and school districts may constitute communities of interest provided the record before the commission clearly and convincingly demonstrates such subdivision is a community of people who have broadly shared interests and representational needs that are greater than those of other overlapping communities of interest.

(c) Under no circumstance shall communities of interest include a community defined based on a shared political identity or common relationships with political parties or political candidates.

(d) In considering which overlapping communities of interest to preserve, the commission shall give greater consideration to those communities of interest whose representational needs would be most benefited from the community's inclusion in a single district.¹⁰⁴

¹⁰⁴ *Initiative Petition: Amendment to the Constitution Proposed by Initiative Petition to be Submitted Directly to the Electors, Citizens Not Politicians*, at § 6(C)(3) (2024), <https://perma.cc/7WYN-KLVT>.

III. Redistricting Commission Functionality: • Ensuring Redistricting Commissions Live Up to Their Potential

A truly functional commission should proceed effectively and independently from partisan interests in a transparent manner that encourages and incorporates substantial public input and ultimately enacts fair, lawful maps. The rules and procedures that govern the actual task of redistricting commissions — mapmaking and map passage — are pivotal to ensuring that commissions achieve this goal.

COVERED IN THIS SECTION:

This section discusses several different design choices for how commissions practically do their work, assessing which structures and processes are most likely to lead to a fair and successful commission redistricting process.

Part A assesses processes for commission decision-making — in particular, vote thresholds — and map drawing.

Part B considers the best processes for commissions to operate transparently, engage the public, and incorporate public input throughout redistricting and in the final map(s).

Part C reviews the effectiveness of various backstops and fallback mechanisms — including judicial review, a true judiciary backstop, and alternative solutions — for when the standard commission process stalls or fails.

KEY TAKEAWAYS:

Commissions function best to achieve the fundamental goals of redistricting reform when:

- 1 Their decision-making and map-drawing processes are aimed toward building consensus as opposed to rewarding contention;
- 2 The redistricting process is participatory, inclusive, and transparent;
- 3 Commissions are required to demonstrate how the final maps incorporate public input; and
- 4 There is a clear, specific fallback mechanism that ensures the enactment of fair maps.

A. Effective (and Ineffective) Processes for Commission Decision-Making and Map Drawing

Once the body of a commission is constituted, the next policy consideration is how the commission is to function and make decisions. Usually, state law will define the most basic of these rules, such as how many commissioners must vote for a district plan in order to adopt it. In some cases, the state will also prescribe more specific procedures, whereas in others, the commission will have the prerogative to pass its own rules and bylaws.

This section describes some of the ways in which commissions in the 2021 redistricting cycle operated (or failed to operate). It discusses the requirements for commissions to act and to enact maps, and how vote thresholds can either encourage or discourage consensus building, as well as the processes commissions use to draw the maps themselves and how those processes can succeed or fail at facilitating a public, collaborative process.

i. Vote Thresholds and Processes for Procedural Decisions and Final Plan Adoption

A commission's vote threshold is the minimum level of support required for the approval of a proposed rule or redistricting plan. Some of the discussion above on the balance of partisanship in a commission, *supra* Sec. I.C.i, touched on the ways commissioners are likely to vote given a particular partisan array. However, while the partisan makeup of a commission is closely tied to how its decision-making process functions, they are not the same. One commission could have an even partisan split and make decisions by a simple majority, permitting one partisan faction to further its interests with minimal need for collaboration. Another commission with an even partisan split could instead require a supermajority vote threshold, incentivizing more cross-partisan collaboration. Similarly, a commission with a blend of partisans and independents could proceed on majority alone or have a high supermajority and multipartisan threshold.

Vote threshold design, therefore, is pivotal to whether or not a commission will achieve the goal of fair, nonpartisan decision-making. Unfortunately, in 2021, the vote threshold designs in a number of states appear to have failed to produce that result.

CASE STUDY: OHIO

Ohio's redistricting reforms (from 2015 and 2018) created rules for both state legislative and congressional map drawing that provide an opportunity for approved maps to last 10 years, provided the maps reach a specified threshold of bipartisan support. But the constitutional provisions governing the state's redistricting specified that maps passed along strictly *partisan* lines would only be in force for *four* years.¹⁰⁵ The logic of this structure is that a currently dominant party may be unsure of the balance of power four years down the line, so its members would be incentivized to compromise now rather than receive a less-desirable result later.

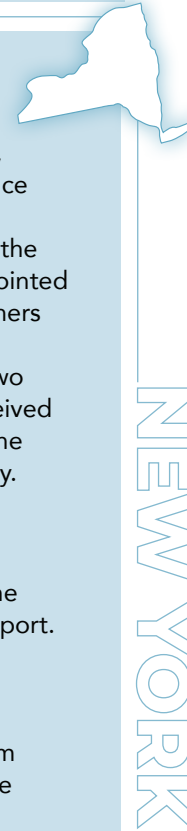
However, if one party feels assured of its dominance in four years' time (aided by gerrymandered maps they are enacting), the so-imagined incentive to compromise disappears. That appears to have been the Republican Party's calculus in the 2021 cycle. State legislative maps were passed on party-line votes, over and over again. While the commission was functional in the strictest sense in that it was able to make decisions and approve maps, the redistricting reforms' failure to incentivize compromise and compliance with redistricting criteria ultimately undermined the commission's ability to function, as it repeatedly adopted illegal maps.¹⁰⁶



CASE STUDY: NEW YORK

The New York commission uses a simple majority for basic procedural decisions, but a bipartisan supermajority vote of seven commissioners is required to advance a redistricting plan to the legislature, with the approval of at least two members appointed by each party, when the same political party controls both houses of the legislature; when the legislature is under split control, at least one member appointed by each party must approve the plan.¹⁰⁷ With its two "independent" commissioners each siding with one of the political parties and a resulting functionally even 5-5 partisan split, the commission struggled to reach either threshold. As a result, two sets of partisan maps were drafted in parallel; the commission solicited and received public comment on both sets of maps.¹⁰⁸ That two commissioners from one of the parties might vote for the map drawn by the other party seemed an impossibility.

However, New York's redistricting reform contemplated the possibility that the bipartisan supermajority threshold may not be attainable: It included a backup procedure by which the plan with the highest number of votes is advanced to the legislature, even if it does not garner seven votes or the requisite bipartisan support. If two or more plans are tied for the highest number of votes, the commission submits all those with the highest vote total to the legislature.¹⁰⁹ And so it went in 2021: The Republican and Democratic commissioners each submitted a plan to the legislature, as each had garnered five votes. While this fallback mechanism avoids the complete failure and dissolution of the commission when compromise cannot be reached, it also substantially lessens incentives for bipartisanship and consensus building.¹¹⁰



¹⁰⁵ Ohio Const. art. XI, § 8. Ohio Const. art. XIX, § 1.

¹⁰⁶ Sec. III.C.i below further explores the Ohio commission's failures related to the repeated passage of illegal maps.

¹⁰⁷ N.Y. Const. art. III, § 5-b(f).

¹⁰⁸ Nick Reisman, *New York redistricting commission releases two sets of maps*, Spectrum News 1 (Sept. 15, 2021), <https://perma.cc/6XND-453X>.

¹⁰⁹ N.Y. Const. art. III, § 5-b(g).

¹¹⁰ This somewhat contradictory design choice — imposing a substantial and complex bipartisan threshold, but then giving commissioners an easy out — is likely a result of the context in which the redistricting reform initially passed. Since World War II, New York's state government repeatedly failed to compromise and pass maps, throwing the task to the courts and leaving both parties displeased. The commission was thus conceived in the context of providing significant incentive for bipartisanship, but such incentive is not found in the design of the commission itself. Michael Li, *What Went Wrong with New York's Redistricting*, Brennan Center for Justice (June 7, 2022), <https://perma.cc/4VJA-J2UH>. And, as discussed *infra* Sec. III.C.i, the design flaws with the New York commission's fallback mechanism led to its ultimate failure.

Both Ohio and New York's commissions fall prey to the same design flaw: The primary incentives for consensus building are external to the commissions themselves. However, as Virginia and Washington show, even internal incentives for consensus building, such as requiring a bipartisan vote for map passage, can fall short.

CASE STUDY: VIRGINIA

For the Virginia commission, regular procedural votes pass with a simple majority, but the Virginia Constitution sets a high bipartisan supermajority threshold for approval and submission of proposed plans to the General Assembly.¹¹¹ With a greater incentive to compromise, the evenly split commission was able to agree on many groundwork propositions: The commission voted unanimously to prioritize neutrality, instructing the map drawers to refrain from considering political data or information showing where incumbents live.¹¹² The commission also agreed on giving guidance to the map drawers to preserve communities of interest and on treating county and city lines the same when determining district boundaries.¹¹³ And the commission passed a set of guidelines and criteria that interpreted and determined a prioritization order for the standards set by Virginia Code.¹¹⁴

However, commissioners could not agree on a single set of legal advisors and map-drawing experts. To break the stalemate, they agreed to hire two sets of lawyers and map drawers — one Democratic and one Republican. This structurally pitted the evenly numbered partisans against each other and cut against their ability to reach majority compromise, let alone bipartisan supermajority agreement. And, as mentioned in Sec. I.B.i, the commission also could not agree on the use of race in the map-drawing process. They could not get even a simple majority for any instruction for the map drawers regarding the use of racial demographics, so the map drawers received no additional guidance on this incredibly important subject.¹¹⁵

As the deadline to submit maps to the General Assembly neared, the commission struggled to break the strictly partisan, 8-8 stalemate. On the state legislative maps, the commission deadlocked evenly on the question of which maps to use as a starting point to move forward, which led three of the Democratic citizen commissioners, including the co-chair, to walk out.¹¹⁶ Later discussion of the congressional maps devolved into naked partisanship, with the commission deadlocking on how many Democratic, Republican, and competitive seats there should be in the abstract.¹¹⁷ The commission proved unable to break the stalemate, failing to adopt maps by their deadline and shifting the responsibility to the Virginia Supreme Court.

2021 LESSON LEARNED:

Incentives for consensus building ought to be built into the commission itself in order to ensure those incentives remain.

VIRGINIA



¹¹¹ Proposed congressional maps require an affirmative vote of at least six of the eight legislative members and six of the eight citizen members. Proposed maps for the State Senate require an affirmative vote of at least six of the eight legislative members, including at least three of the four legislative members who are members of the Senate, and six of the eight citizen members. Proposed maps for the Virginia House of Delegates require an affirmative vote at least six of the eight legislative members, including at least three of the four legislative members who are members of the House of Delegates, and six of the eight citizen members. Va. Const. art. II, § 6-A(d).

¹¹² Graham Moomaw, Va. *Redistricting Commission approves neutrality rule, deadlocks on use of race*, Virginia Mercury (Sept. 15, 2021), <https://perma.cc/8EN3-376T>.

¹¹³ *Id.*

¹¹⁴ Virginia Redistricting Commission, *2021 Redistricting Guidelines and Criteria* (Aug. 19, 2021), <https://perma.cc/E28C-WMMV>.

¹¹⁵ Virginia Redistricting Commission, *Directions to the Map Drawers* (Sept. 15, 2021), <https://perma.cc/4YZR-8M4J>.

¹¹⁶ Gregory S. Schneider, *Virginia's bipartisan redistricting effort breaks down over accusations of partisan stalemate*, Wash. Post (Oct. 8, 2021), <https://perma.cc/H8ZT-6B43>.

¹¹⁷ Motions for a 5-4-2 plan (five Democratic, four Republican, and two competitive) and for a 5-5-1 plan were both defeated in 8-8 party-line votes. Meagan Flynn, *Partisan biases laid bare on Virginia Redistricting Commission as more gridlock stymies congressional map*, Wash. Post (Oct. 20, 2021), <https://perma.cc/H8ED-WZBA>.

Similarly, the Washington commission demonstrates that even a bipartisan vote requirement is not sufficient to ensure fair outcomes. Rather than encouraging commissioners to come to a consensus that would lead to more fair representation for Washingtonians, the commission's bipartisan vote threshold incentivized both partisan factions to listen to their worse angels to negotiate a "compromise" that pursued their respective partisan priorities at the expense of fair representation for a significant Latino community in the state.¹¹⁸ Both Virginia and Washington demonstrate the different ways that vote thresholds can interact with commission makeup — and in particular, Bipartisan Commission design — to produce disappointing results.

The Colorado IRC also has an even number of commissioners. But, due to other aspects of the Colorado structure (crucially, the significant presence of independents), it did not face the same dysfunction.

CASE STUDY: COLORADO

In the Colorado commission, procedural decisions are by a simple majority vote, but eight of Colorado's 12 commissioners — four Democratic, four Republican, and four unaffiliated — must vote to adopt a final plan, including at least two unaffiliated commissioners.¹¹⁹ Party-affiliated commissioners, therefore, cannot band together and pass maps over the objection of the independent commissioners. However, maps could pass over the objection of all commissioners affiliated with one party, which both prevents one party from torpedoing the proceedings and incentivizes the parties to compromise in order to ensure a seat at the table. In 2021, these incentives seemed to work, with the final congressional and state House maps being adopted with an 11-1 margin, and the state Senate map passing unanimously.¹²⁰

COLORADO

Similarly, the California IRC has a supermajority threshold for all decisions and robust multipartisan assent necessary for map approval and hiring, firing, and contract decisions.¹²¹ In 2021, the California IRC unanimously approved its final maps.¹²² Colorado and California demonstrate how vote threshold requirements can interact with a good commission design — namely, incorporating a significant independent/unaffiliated commissioner contingent — to incentivize and lead to the creation of fair maps.

2021 LESSON LEARNED:

Bipartisan vote thresholds will not save a Bipartisan Commission from falling prey to partisan devices.

2021 LESSON LEARNED:

Commissions with a significant number of independents and high vote threshold requirements will incentivize commission participation and consensus building.

¹¹⁸ *Soto Palmer v. Hobbs*, No. 3:22-CV-05035, 2023 WL 5125390 (W.D. Wash. Aug. 10, 2023).

¹¹⁹ Colo. Const. art. V, § 44.2(2).

¹²⁰ Alex Burness, *Colorado's new congressional districts are set – and in need of Supreme Court approval*, The Denver Post (Sept. 29, 2021), <https://perma.cc/LX5Q-VT4R>. Alex Burness, *Colorado's redistricting commission picked new maps for the state House and Senate. Here's what they look like.*, The Denver Post (Oct. 12, 2021), <https://perma.cc/2B75-N3YX>.

¹²¹ Cal. Const. art. XXI, § 2(c)(5); Cal. Gov. Code § 8253(a)(5).

¹²² 2020 California Citizens Redistricting Commission, *Report on Final Maps 8-9* (Dec. 26, 2021), <https://perma.cc/9RHR-C3RW>.

Commissions in some states, like Arizona and New Jersey, have simple-majority thresholds for the passage of maps, with no requirements for bipartisanship. The Arizona and New Jersey commissions each have an odd number of commissioners, with a single nonpartisan (tie-breaking) commissioner, so they avoid the danger of absolute stalemate. But, while technically functional, this commission design tends to result in controversial decisions. In Arizona, in 2021, most decisions, even procedural ones, came about as one would expect given the structure of the commission — a 3-2 vote with the nonpartisan chair siding with one of the partisan pairs.¹²³ When one of the two parties is regularly locked out of the final agreement, an atmosphere of distrust and alienation is created.¹²⁴ Meanwhile, in New Jersey, the congressional commission's tiebreaking member's stated reasoning for his (decisive) vote on the final map highlighted the way in which a simple majority vote threshold, in that context, can lead to capricious, uncontested decisions that undermine any semblance of independence or fairness. He stated:

"In summary, both delegations aptly applied our standards to their map ... In the end, I decided to vote for the Democratic map, simply because in the last redistricting map it was drawn by the Republicans. Thus, I conclude that fairness dictates that the Democrats have the opportunity to have their map used for this next redistricting cycle."¹²⁵

Finally, the voting process used by the Michigan IRC deserves specific attention as an innovative way to maintain functionality while encouraging broad consensus.



¹²³ See, e.g., Jeremy Duda, *Redistricting commission gives final certification to new maps*, AZ Mirror (Jan. 21, 2022), <https://perma.cc/JM2X-S39R>; Bob Christie, *Arizona redistricting panel picks mapping consultant*, AP (May 4, 2021), <https://perma.cc/GL6P-J4TZ> ("The commission that will redraw Arizona's political district lines later this year on Tuesday chose a company to crunch Census data and create maps on a split vote that marked the second time the panel's Democrats were outvoted.")

¹²⁴ Jeremy Duda, *Fractious final day ends with acrimony and accusations as redistricting commission splits on legislative map*, AZ Mirror (Dec. 22, 2021), <https://perma.cc/U28E-7UAE>.

¹²⁵ Nikita Biryukov, *N.J. Supreme Court chief wants clarification on redistricting choice*, N.J. Monitor (Jan. 4, 2022), <https://perma.cc/S33U-VX39>.

CASE STUDY: MICHIGAN

In the Michigan commission, all decisions other than adopting a map are decided by simple majority of its 13 members (four affiliated with each party, five unaffiliated), except “a decision on the dismissal or retention of paid staff or consultants,” which “requires the vote of at least one commissioner affiliating with each of the major parties and one non-affiliating commissioner.”¹²⁶ The final plan adoption requires a majority vote that includes at least two commissioners of each of the major parties and two non-affiliating commissioners.¹²⁷ If such bipartisan agreement cannot be reached, each commissioner may submit a plan. The commissioners rank all submitted plans, and the plan that has the highest cumulative ranking is adopted, provided it is ranked in the top half of plans by at least two commissioners with a party affiliation different from that of the submitting commissioner. If no plan reaches that threshold, one is randomly selected from the submissions.¹²⁸

In 2021, the commission ultimately adopted its final congressional plan by an 8-5 vote, with two Democratic, two Republican, and four independent commissioners voting in favor of the plan. Three additional commissioners indicated that the adopted plan was their second choice. The commission adopted the map for the state Senate by a vote of 9-4 and the map for the state House by a vote of 11-2.¹²⁹ Thus, there was ultimately no need to reach the ranked voting procedure. However, its existence seemingly encouraged commissioners to support maps that could garner support from a range of commissioners (i.e., a higher ranking from more people). The commission was also able to easily move past points of disagreement, as they were resolved by a simple majority vote of an odd-numbered commission.

MICHIGAN



The ultimate lesson from these examples is that vote threshold design can be a powerful motivator for consensus building, but only where the design and partisan balance of a commission is such that it is at all possible to counter partisanship.

ii. Procedures for Map Drawing

A related but distinct feature of commission design is the mechanism and process by which redistricting plans, the actual maps with their specific lines, come to be. Commissions can use a variety of staff, consultants, technology, citizen input and citizen maps, or any combination thereof, to draw districts. The process may be more collaborative or more oppositional, depending on the commissioners’ posture. Either type of process can result in fair, nonpartisan maps in certain contexts, but the experience of commissions in 2021 suggests that a process centering collaboration is most likely to be successful.

¹²⁶ Mich. Const. art. IV, § 6(12).

¹²⁷ Mich. Const. art. IV, § 6(14)(c).

¹²⁸ *Id.*

¹²⁹ Michigan Independent Citizens Redistricting Commission, *Proposed Meeting Minutes* (Dec. 28, 2021) https://www.michigan.gov/micrc/-/media/Project/Websites/MICRC/Nov82021TOJan312022/MICRC_Proposed_Meeting_Minutes_2021_12_28.pdf?rev=ce551d9594804339a48bf1f6c5dd6af9&hash=A088673C2B018497A5B0F2B0C7D260FE; Clara Hendrickson & Todd Spangler, *Michigan’s redistricting commission adopts final congressional map for the next decade*, *Detroit Free Press* (Dec. 28, 2021), <https://perma.cc/2FWF-6VW4>; Clara Hendrickson, *Michigan redistricting commission adopts new state legislative maps*, *Detroit Free Press* (Dec. 28, 2021), <https://perma.cc/BF7R-9Q7T>.



CASE STUDY: CALIFORNIA

The gold standard for a consensus-oriented approach to map drawing is the one taken by California. In 2021, the California commission contracted with two groups to help draw the maps.¹³⁰ The commission started with region-specific “visualizations” of districts. These visualizations approximated districts rather than showing exact district lines and were based on commissioners’ guidance to the line drawers, included ranked districting criteria, as well as input from the commission’s voting rights counsel and consultant.¹³¹ The visualizations allowed the commission and the public to see the preliminary map options.

Those visualizations were discussed in public meetings, and after many revisions based on feedback from the commissioners and the public, the line drawing team drew full draft maps from the visualizations. These maps were released to the public for review and comment. The lines were then adjusted in an iterative process wherein commissioners advised the line-drawing team in live, public meetings on how the maps should be changed, considering legal criteria and public input.¹³² Assessment of whether the maps met the legal requirements was an ongoing process.

The result of the map-drawing process in California was a single set of final maps, which the commission enacted with unanimous approval. Disagreements about specific district lines were worked out as part of the map-drawing progression. While the process received some criticism, including charges that it was tedious and that too much time was spent in the initial brainstorming phase of visualization, the slow and deliberative process enabled a nonpartisan and largely uncontroversial outcome.

CALIFORNIA



¹³⁰ California Citizens Redistricting Commission, *Press release: 2020 California Citizens Redistricting Commission Announces Redistricting Line Drawing Contract* (Mar. 31, 2021), <https://perma.cc/9X23-2D9X>.

¹³¹ Christian Grose, *Fair Maps in the State of California*, 60 (2023), <https://perma.cc/624Q-HVEE>.

¹³² *Id.* at 60-64.

CASE STUDY: MICHIGAN

In Michigan, commissioners drew their own maps. Using mapping technology, they created iterative maps from scratch, based on population distribution, demographic diversity, existing district boundaries, and input gathered from 16 pre-drafting public hearings. In drawing and adjusting the lines, the commissioners took guidance from the ranked criteria in the Michigan Constitution as well as input from VRA and line-drawing consultants.¹³³ Commissioners were instructed to incorporate communities of interest and public comments into this process as well.

The line-drawing process in Michigan was not structured to generate a single set of maps based on consensus. Rather, commissioners drew several maps, some collaboratively and others individually, which were shared with the public for comment and then whittled down and amended based on that feedback.¹³⁴ In 2021, the commission made available 20 draft proposed maps (six state Senate, six state House, and eight congressional) for an initial round of public comment. Of those 20 maps, half had been drawn collaboratively and half had been submitted by individual commissioners.¹³⁵ Following this initial round of public feedback, the commission narrowed down the proposals to 15 maps, nine collaboratively drawn drafts and six submitted by individual commissioners, for a second round of public hearings.¹³⁶



MICHIGAN

The map-drawing process used by the Michigan IRC, while functional and ultimately successful in resulting in maps passed by the commission, was less effective than California's in fostering consensus and transparency. However, the ideal process followed in California necessitates significant time and cost. Where states are unwilling or unable to devote such resources to a commission, Michigan's map-drawing process is a good option — and far superior to the processes used by other commissions. The most partisan and dysfunctional mapmaking processes occurred when different partisan camps broke away and drew their own maps, as in New York, *supra* Sec. III.A.i; Virginia, *supra* Sec. III.A.i; and Washington.

2021 LESSON LEARNED:

The gold standard for mapmaking is a public-facing, consensus-building process.

¹³³ Flaws in the 2021 Michigan IRC's selection process for legal and expert advisors are discussed *supra* Sec. II.A.

¹³⁴ Michigan Independent Citizens Redistricting Commission, *Mapping Process and Procedures V12.28* (Dec. 28, 2021), <https://www.michigan.gov/micrc/-/media/Project/Websites/MICRC/MISC5/Mapping-Process-and-Procedures-v12-28.pdf?rev=e000555a38b44160a3136fe658446d24&hash=7ADEA22A21EC81FEF9E5EC21B82C2E59>.

¹³⁵ Jon X. Eguia, *Michigan Redistricting Draft Map Analysis*, Institute for Public Policy and Social Research (Oct. 2021), <https://perma.cc/T8DM-Y43X>; Jon X. Eguia, *MICRC Individual Commissioners' Redistricting Maps: IPPSR Brief Study*, Institute for Public Policy and Social Research (Oct. 24, 2021), <https://perma.cc/3LG9-H4GH>.

¹³⁶ Sergio Martinez-Beltran, *Michigan's Redistricting Panel Releases Maps. Is Legislature Shakeup Next?* Mich. Bridge (Nov. 10, 2021), <https://perma.cc/L3GC-AWC5>.

CASE STUDY: WASHINGTON

In Washington, while the commission technically had staff capable of assisting commissioners with map drawing, it was the staff employed by the *legislature* (specifically, staff of the legislative caucus responsible for appointing each commissioner) who did the majority of the map creation.¹³⁷ This was one factor leading to the politicization of the process — each commissioner withdrew to their own camp and decided how they wanted lines to be drawn. The only maps ever released by the commissioners for public comment were maps drawn and released by individual commissioners.¹³⁸ But the line-drawing process was siloed, neither enabling nor encouraging collaboration. The time necessary to reconcile the different maps was one of the factors responsible for ultimately causing the commission to miss its deadline to pass maps.¹³⁹ Had the map drawing been more collaborative, and importantly, more public, the frantic, massive undertaking to resolve differences at the end would not have been necessary.

WASHINGTON



Washington's 2021 redistricting cycle demonstrates the perils of map-drawing procedures that not only lack incentives for gradual and productive consensus building but also enable commissioners to create maps in secret. This highlights the interplay between map-drawing procedures and the solicitation and incorporation of public input.

¹³⁷ Daniel Walters, *11 reasons the Washington State Redistricting Commission turned into a deadline-botching fiasco*, *Inlander* (Nov. 19, 2021), <https://perma.cc/NRZ2-NUTX>.

¹³⁸ Jim Brunner, *See the competing Washington legislative maps drawn by Democrats, Republicans*, *Seattle Times* (Sept. 21, 2021), <https://perma.cc/X6LD-DAWM>; Kate Smith, *New redistricting proposal would create a Latino majority by voting age in the 14th*, *Yakima Herald-Republic* (Oct. 25, 2021), <https://perma.cc/PDU6-3VPT>.

¹³⁹ Laurel Demkovich, *Washington redistricting commission admits it failed to meet deadline; questions on what happened in final hours remain*, *The Spokesman-Review* (Nov. 16, 2021), <https://perma.cc/BW4Z-HHJB>.

B. Taking (and Incorporating) Public Input

Transparency and effective public engagement are important to make the best maps, get public buy-in for those maps, and ultimately assist in resolving any litigation that arises after the redistricting process concludes.¹⁴⁰

In general, the processes and requirements for commissions to take and incorporate public input into their maps are intertwined with the processes of commission decision-making and map drawing. Indeed, in developing a plan for public engagement, redistricting commissions should consider, at a minimum:

- **Timing:** At what points in time will public input be solicited? At a minimum, the public should be solicited for input before map drawing begins, after draft map proposals have been developed, and before final maps are adopted.
- **Accessibility:** What channels or mediums will the commission make available to ensure that people of diverse backgrounds can participate, including, but not limited to, people with disabilities, working-class people, and members of language-minority groups? At minimum, the redistricting process should be made available to all language-minority groups in the state covered under Section 203 of the Voting Rights Act.
- **Type of Input Solicited:** What kinds of input will the commission ask for and accept from the public? Members of the public should have the opportunity to provide oral testimony, written comments, proposed redistricting plans, and maps identifying communities of interest.
- **Synthesis of Public Feedback:** How will the commission synthesize the potentially large volume of public comments, testimony, and maps so that they can be considered effectively in the drawing of district lines? Commissions should consider hiring technical experts to assist with synthesizing and categorizing public comments, especially maps and commentary solicited to identify communities of interest.

In 2021, redistricting commissions faced unprecedented challenges in answering the above questions and in organizing public engagement due to COVID-19 pandemic restrictions on in-person meetings. But, even given these constraints, some redistricting commissions did a better job than others in operating transparently, engaging the public, and incorporating public input in the final map.

¹⁴⁰ More information and recommendations on how to create a fair, open, and accessible redistricting process can be found in Campaign Legal Center's report on Designing a Transparent and Ethical Redistricting Process, available at <https://perma.cc/2N7T-ZYSX>.

CASE STUDY: OHIO

Ohio provides an example of how a commission can fail to solicit public input at the most basic level. The Ohio constitution requires that “[b]efore adopting, but after introducing, a proposed plan, the commission shall conduct a minimum of three public hearings across the state to present the proposed plan and shall seek public input regarding the proposed plan.”¹⁴¹ There is a requirement that those meetings be open to the public and broadcast by electronic means “using a medium readily accessible by the general public” but no requirement to permit participation by electronic means. In 2021, the commission provided limited opportunity for public input, noting that it would accept testimony regarding map proposals “only in conjunction with scheduled meetings and hearings of the Commission.”¹⁴² Ohio’s poor public input in 2021 is perhaps best encapsulated by the commission holding one required public input session in the middle of the workday in the surprising location of a state park — with unsurprisingly meager participation as a result.¹⁴³

OHIO



The 2021 example from Ohio demonstrates that the mere existence of some type of redistricting commission does *not* necessarily mean there will be a more open and transparent redistricting process.

Incorporating requirements for public input during the mapping process into the laws governing commissions is necessary. In doing so, public engagement must be genuine rather than a mere façade to legitimize an illegitimate process. Commissions and the public are best served by prescriptive requirements, such as a requirement that any maps to be voted on must be publicized with sufficient time for public comment prior to any such vote, that *guarantee* transparency and opportunity for meaningful public input in the process of passing maps.

2021 LESSON LEARNED:

Requirements for commissions to collect public input are important, as are requirements to ensure that input is incorporated into final maps.

¹⁴¹ Ohio Const. art. XI, § 1(C).

¹⁴² Commission Meetings, Ohio Redistricting Commission, <https://archive.redistricting.ohio.gov/meetings#previous-meetings>.

¹⁴³ Nick Evans, *Ohio Redistricting Commission kicks off regional hearings*, Ohio Capital Journal (Sept. 25, 2023), <https://perma.cc/W2EK-YGYE>.

CASE STUDY: CALIFORNIA

In 2021, the California IRC was an exemplar of public engagement and transparency. California has in place several provisions to ensure the transparency of the redistricting process. Broadly, the state constitution mandates that the commission “conduct an open and transparent process enabling full public consideration” of the maps, and that the commissioners “conduct themselves with integrity and fairness.”¹⁴⁴ The commission is required by law to comply with the Bagley-Keene Open Meeting Act and must give multiple days’ notice prior to each meeting at which the public can give testimony.¹⁴⁵ The public hearing process established by the commission must be promoted through an outreach program and must include hearings to receive input both before and after the maps are drawn.¹⁴⁶ The commission’s records and data are all public records that must be “posted in a manner that ensures immediate and widespread public access.”¹⁴⁷ The legislature is required to “take all steps necessary to ensure that a complete and accurate computerized database is available for redistricting” and to give the public access to that data and software.¹⁴⁸

In 2021, the California commission divided its public input process into three phases: The first focused on raising awareness about the redistricting process, the second was aimed at encouraging input on communities of interest, and the third was dedicated to reviewing the public’s proposed plans and receiving input on the commission’s draft maps.¹⁴⁹ The California constitution also requires that the commission issue a final report “that explains the basis on which the Commission made its decisions in achieving compliance with the criteria” outlined in the constitution and “include[s] definitions of the terms and standards used in drawing each final map.”¹⁵⁰ The 2021 report illuminated how important the public input process was for the commission to learn about COIs and required the commission to explain how that information was taken into account in the creation of the maps.¹⁵¹

CALIFORNIA



Contrasting California’s process with failed processes in other states provides valuable lessons for commissions moving forward. California’s thoroughly outlined public input requirements ensure that each commission will engage in public information-gathering regardless of the variable will of commissioners to do so. California’s fully public mapping process and final report guaranteed that the public was provided significant opportunity to comment on the actual maps being considered throughout the process and that public input was considered in a transparent manner.

2021 LESSON LEARNED:

Public input will be more effective if commissions are required to show — and justify — their work.

¹⁴⁴ Cal. Const. art. XXI, § 2(b).

¹⁴⁵ Cal. Gov’t Code § 8253(a)(1).

¹⁴⁶ *Id.* § 8253(a)(7).

¹⁴⁷ *Id.* § 8253(a)(2).

¹⁴⁸ *Id.* § 8253(b).

¹⁴⁹ Report on Final Maps: 2020 California Citizens Redistricting Commission at 2-3 (Dec. 26, 2021), <https://perma.cc/4WQE-W7NE>. The commission hosted 35 meetings regarding communities of interest, including 1,340 individuals total. *Id.* at 21.

¹⁵⁰ Cal. Const. art. XXI, § 2(h).

¹⁵¹ Report on Final Maps: 2020 California Citizens Redistricting Commission at 24 (Dec. 26, 2021), <https://perma.cc/4WQE-W7NE>.

CASE STUDY: MICHIGAN

Michigan's commission is required to hold at least 10 public hearings throughout the state before the commissioners may draft any plan. The purpose of the hearings is to "inform[] the public about the redistricting process and the purpose and responsibilities of the commission" and to "solicit[] information from the public about potential plans."¹⁵² Additionally, any member of the public can submit redistricting plans and supporting materials to the commission.¹⁵³ The commission is then required to hold at least five public hearings on its proposed plans and must provide at least 45 days for public comment on any proposed plan prior to that plan receiving a vote.¹⁵⁴ In the 2021 cycle, the Michigan commission far exceeded these base requirements, holding upward of 120 meetings and collecting more than 25,000 public comments. To reach an array of communities all over the state, the commission hosted meetings, hearings, and presentations in many different areas. It collaborated with universities, did public television broadcasts, and held town halls with Rotary clubs, affinity groups, and pastors. Commissioners also attended state fairs and 4-H events.¹⁵⁵

The commission also maintained a website with information such as draft plans and data, spending reports, a public comment portal, and meeting minutes; made video of all meetings available on a public YouTube channel; and provided remote participation options.¹⁵⁶ Some, but not all, of these materials were also available in several languages.¹⁵⁷ The commission regularly (about twice a month) released reports summarizing the public comments it was receiving, which are also available on the website.¹⁵⁸

However, the Michigan commission was charged with violating open meetings requirements for holding a private meeting on Oct. 27, 2021.¹⁵⁹ In order to hold the private meeting, the commissioners instructed reporters to leave the room, paused the livestream of the meeting, and covered the room's door windows with paper.¹⁶⁰ They did so to discuss "privileged and confidential" memoranda from the commission's attorneys regarding the litigation risk related to dismantling many of the majority-minority districts in the state Senate and congressional maps.¹⁶¹ Ultimately, the Michigan Supreme Court ordered the commission to make the records public to comply with the Michigan Constitution's directive that the commission "conduct all of its business at open meetings."¹⁶²

MICHIGAN



¹⁵² Mich. Const. art. IV § 6(8).

¹⁵³ *Id.* Any such submissions are public records. *Id.*

¹⁵⁴ Mich. Const. art. IV § 6(14)(b).

¹⁵⁵ University of Michigan, *Michigan Redistricting: A Model for the Nation? Evaluating the State's New Maps and Process*, YouTube (Jan. 19, 2022), <https://www.youtube.com/watch?v=FAAVQqkslS8>.

¹⁵⁶ See, e.g., MICRC Quarterly Report, FY 2021 4th Quarter Activities (Sept. 12, 2022).

¹⁵⁷ See, e.g., *Meeting Notices & Materials Archives*, Michigan Independent Redistricting Commission, <https://perma.cc/6B7K-26X5> (providing language access information in meeting notices).

¹⁵⁸ *MGGG Public Comment Portal Reports*, Michigan Independent Redistricting Commission, <https://perma.cc/WJ78-9SB8>.

¹⁵⁹ Sergio Martínez-Beltrán, *Michigan redistricting panel, which pledged openness, meets in secret*, Bridge Mich. (October 27, 2021), <https://perma.cc/3QCC-VND7>.

¹⁶⁰ *Id.*

¹⁶¹ Sergio Martínez-Beltrán, *Here's what the Michigan redistricting panel discussed in secret*, Bridge Mich. (Dec. 21, 2021), <https://perma.cc/EH5F-AQ63>.

¹⁶² *Detroit News, Inc. v. Indep. Citizens Redistricting Comm'n*, 976 N.W.2d 612, 629-30 (Mich. 2021).

CASE STUDY: MICHIGAN (CONTINUED)

In addition, the Michigan commission was accused of failing to fully incorporate the public input of communities of color. Black communities in Detroit and Flint in particular felt that the maps ultimately adopted by the commission diluted their voting power and that their voices were ignored throughout the redistricting process.¹⁶³ A federal court ultimately found the Detroit-area districts unconstitutional racial gerrymanders, while noting that “every decision [the commission] made, every word they spoke, was recorded in real time in a body of transcripts that runs some 10,000 pages. In that respect the record here is unique among redistricting cases litigated in federal court.”¹⁶⁴ Michigan’s public input and transparency requirements enabled the court to adjudicate the claims raised by Black Michiganders with significantly more ease than usual.

Michigan provides an example of how critical it is to ensure that the rules governing commissions include public input and transparency requirements, so that commissions can be held accountable when they fail to reflect or to meet them.

C. Fallback Mechanisms for When Commission Efforts Stall or Fail

The 2021 cycle demonstrated the need for a contingency plan as an element of redistricting commission design, in addition to processes for the commission’s primary, ideal operations. Given how contentious and complex redistricting is, events rarely proceed entirely as expected. A clear, specific fallback mechanism is important for the overall success of redistricting commissions even when they stall or fail.

This section reviews the promises and pitfalls of judicial review (either as a general function of the law or specifically delineated by a commission’s enacting legislation), a true judiciary backstop (with the judiciary fully empowered to redistrict following commission failure), and alternative solutions that ensure maps are enacted after the regular commission process fails without turning to the courts.

i. Judicial Review and the Judiciary Backstop

Many midcycle redistricting reforms introduced new provisions, which operated with varying degrees of success, for judicial review of commission-created maps and/or judicial adoption of district plans in the event of commission failure. The successes and failures of court review and backstops in the 2021 redistricting cycle provide valuable insight into the provisions necessary to maximize success from and the pitfalls that exist with a judicial backstop.

New York’s 2021 redistricting and its aftermath demonstrate how relying on traditional judicial review without any specified procedure in the event of commission failure can yield unpredictable results.

2021 LESSON LEARNED:

Thorough public input and transparency requirements help to ensure that commission redistricting ultimately results in more fair maps — even if the commission itself does not originally produce them.

¹⁶³ In particular, during the commission’s deliberations on proposed maps, Commissioner Brittni Kellom, a Detroit native, accused the commission of ignoring hundreds of public comments it heard on the first set of maps to redraw the area around Detroit. Clara Hendrickson, *Michigan redistricting commission is done mapping, plans to adopt final maps next*, Detroit Free Press (Nov. 5, 2021), <https://perma.cc/S4SY-M6NS>; see also Lauren Gibbons, *Mapping Michigan: Here’s where the political redistricting process stands*, MLive (Nov. 27, 2021), <https://perma.cc/F93N-LRBG>.

¹⁶⁴ Opinion and Order, *Agee v. Benson*, No. 1:22-cv-272, 2023 WL 8826692 at *1 (W.D. Mich. Dec. 21, 2023), <https://perma.cc/8S67-MQ75>.

CASE STUDY: NEW YORK

In 2021, the courts in New York were required to remedy deadlock by the state’s Advisory IRC.¹⁶⁵ Commission-adopted maps must be approved by the legislature, and, if the legislature rejects the commission’s first two attempts, it may amend the plans without limitation. As a result, in 2021, the Democratic legislature could simply twice reject the Advisory IRC’s proposals, after which they could pass maps gerrymandered to their advantage. This possibility “created an incentive for Republican appointees on the commission to deadlock the process. Having no proposals for the legislature to vote down would throw responsibility for map drawing to the courts — an option that suddenly looked much better for Republicans once compromise was off the table.”¹⁶⁶ The New York constitution contemplates court involvement in redistricting but does not specify the precise circumstances under which a court could enact its own redistricting plan (or how long that plan should be in effect) in the event that the commission fails to submit maps to the legislature.¹⁶⁷

After the IRC failed to submit a second set of congressional maps to the legislature as required after the first set was rejected, the New York legislature drew and passed its own set of maps, based on unconstitutional statutory authority it granted itself. The maps were successfully challenged in court for the unconstitutional process by which they were passed and for being drawn with unconstitutional political bias.¹⁶⁸ A court-appointed special master drew new maps for the 2022 elections that, according to measures of partisan fairness, were a distinct improvement on the Assembly-drawn maps.¹⁶⁹

However, although court-ordered maps were in effect for the 2022 elections, another round of litigation commenced after those maps were ordered, and, in December 2023, New York’s highest court ordered the IRC to reconvene, and draft and submit a new congressional plan to the legislature for adoption (or amendment and adoption) as required by the Constitution.¹⁷⁰ In so doing, the court cited the creation of the IRC in 2014 “because of the frustration over both the legislature’s inability to draw lawful districts and the continual requests for districts to be created by the courts”; the court said that “[i]n light of that history, it does not make sense to read the constitutional amendments to require a court to create decade-long electoral districts if the IRC or legislature fails to carry out its constitutional duties.”¹⁷¹ The IRC submitted a congressional plan to the legislature, which passed on multipartisan lines with a 9-1 vote in favor,¹⁷² but the New York legislature rejected that plan and passed their own, albeit with minor changes to the IRC’s proposal.¹⁷³

NEW YORK



¹⁶⁵ This section focuses on New York’s 2021 congressional redistricting, but New York also faced challenges with State Assembly and State Senate redistricting, necessitating judicial intervention for the enactment of final, fair maps. See *Matter of Harkenrider v. Hochul*, 197 N.E.3d 437 (N.Y. 2022) (invalidating Senate map); *Matter of Nichols v. Hochul*, 170 N.Y.S.3d 70 (N.Y. App. Div. 2022), appeal dismissed, *Nichols v. Hochul*, 190 N.E.3d 1173 (N.Y. 2022) (invalidating Assembly map).

¹⁶⁶ Michael Li, *What Went Wrong with New York’s Redistricting*, Brennan Ctr. for Just. (June 7, 2022), <https://perma.cc/4VJA-J2UH>.
¹⁶⁷ N.Y. Const. art. III, § 4(e), 5, 5-b(a).

¹⁶⁸ *Matter of Harkenrider v. Hochul*, 197 N.E.3d 437 (N.Y. 2022).

¹⁶⁹ *New York Congressional Special Master Final Plan*, PlanScore (May 24, 2022), <https://perma.cc/X8WM-F7NP>.

¹⁷⁰ *Hoffman v. N.Y. State Indep. Redistricting Comm’n*, 2023 WL 8590407, at *9 (N.Y. Dec. 12, 2023).

¹⁷¹ *Id.*

¹⁷² NY IRC, *Vote Tally* (Feb. 15, 2024), <https://perma.cc/X2A6-RHSP>.

¹⁷³ Bill Mahoney, *New congressional maps approved in New York*, POLITICO (Feb. 28, 2024), <https://perma.cc/MXU5-YDHF>.

Because the New York Constitution failed to explicitly define the court's role as a backstop for commission failure, judicial authority to adjudicate those matters and the extent of the court's remedial power have been challenged every step of the way.¹⁷⁴ Clear provisions as to what exactly happens in the event of a commission failure at any point could result in a process less drawn out and mired in controversy.

But, as demonstrated by Ohio's 2021 redistricting, even where the role of the judiciary to review maps is clearly defined, courts also need sufficient power to address commission failure.

CASE STUDY: OHIO

Ohio places the responsibility for state legislative redistricting in the hands of a Political Commission.¹⁷⁵ The Ohio Supreme Court has original jurisdiction in all cases arising under the redistricting amendments, which include procedural and substantive requirements for maps.¹⁷⁶ If the court determines that the enacted plans are infirm, it will order that new maps be passed.¹⁷⁷ The court can either order amendments to the passed plan to correct isolated violations or order the wholesale creation of a new plan if the violations are more expansive.¹⁷⁸

Despite the clear language, the 2021 cycle Ohio commission simply ignored these constitutional mandates. Throughout 2022, the Ohio Supreme Court rejected the commission's passed legislative maps *five times* as a violation of the constitutional partisan fairness requirement.¹⁷⁹ Each time, the court instructed the commission to redraw the maps to cure the violation, and each time, the commission returned maps that continued to violate the prohibition on partisan gerrymandering.¹⁸⁰

Ohio's redistricting reform amendments, despite providing for judicial review, did not empower the Ohio Supreme Court to order remedies; indeed, the court is expressly prohibited from doing so.¹⁸¹ As a result, the court had no way to remedy a rogue commission's insistence on gerrymandering. Due to the lengthy process and delay tactics, federal courts ultimately ordered that the 2022 elections be conducted using district boundaries that had been declared unconstitutional. And, in November of 2023, the state Supreme Court declared moot the partisan gerrymander challenge to the state legislative plans after the commission passed a sixth legislative map that, while passing with bipartisan support, nonetheless continues to favor Republicans.¹⁸² The 2024 elections will move forward under that plan, while future elections remain uncertain.

OHIO



¹⁷⁴ New York's 2021 redistricting also demonstrates the perils with Advisory Commissions. Indeed, after the legislature rejected the IRC's proposal and passed their own congressional plans, the Senate deputy leader remarked that "[w]e reasserted the right of the Legislature to be responsible for this important task." *Id.*

¹⁷⁵ Ohio also has a backup Political Commission for congressional redistricting in the event legislative redistricting fails.

¹⁷⁶ Ohio Const. art. XI, §§ 9(A), 6.

¹⁷⁷ Ohio Const. art. XI, § 9(D).

¹⁷⁸ *Id.*

¹⁷⁹ Ohio Const. art. XI, § 6(B).

¹⁸⁰ Julie Carr Smyth, *Ohio Supreme Court dismisses 3 long-running redistricting lawsuits against state legislative maps*, AP (Nov. 29, 2023), <https://perma.cc/MSV6-2CQF>. The court also twice invalidated congressional maps, first passed by the legislature and then passed by the backup commission, as impermissible gerrymanders. Andrew J. Tobias, *Ohio Supreme Court Rejects Redistricting Map Again*, *Governing* (July 19, 2022), <https://perma.cc/ZS7P-W7DQ>.

¹⁸¹ Ohio Const. art. XI, § 9(D).

¹⁸² Julie Carr Smyth, *Ohio Supreme Court dismisses 3 long-running redistricting lawsuits against state legislative maps*, AP (Nov. 29, 2023), <https://perma.cc/MSV6-2CQF>.

Ohio's 2021 redistricting cycle thus provided lessons for future commission design. Commissions cannot be designed to rely on partisan actors operating in good faith in the redistricting process. And, bearing that in mind, backstops to commission dysfunction must be true backstops (not just review) and include *effective* solutions. Even a clearly outlined judicial review process may fail when it does not provide courts with the ability to remedy any violations.

By contrast, in Virginia, the state Supreme Court assumes responsibility for redistricting if the commission fails to pass maps. If that occurs, the Virginia Supreme Court appoints two special masters, one from each of two shortlists of candidates provided by the legislative leaders of the two largest parties in the state. The special masters must collaborate in submitting one set of maps to the court.¹⁸³ This process played out in 2021, and the Virginia Supreme Court established rules and procedures, appointed two special masters, took public input, and held public hearings. After considering input from the court and public, the special masters presented the court with final maps, which it adopted unanimously. The court's adopted maps, which have remained unchallenged in court, resulted in the most racially diverse General Assembly in the state's history with an increase from the previous session's 29 legislators of color to 44.¹⁸⁴

The New York, Ohio, and Virginia examples demonstrate the importance of specificity in the law governing commission redistricting, including the provisions triggered by commission failure, and effective measures to ensure the redistricting process does, in fact, end with fair maps.

2021 LESSON LEARNED:

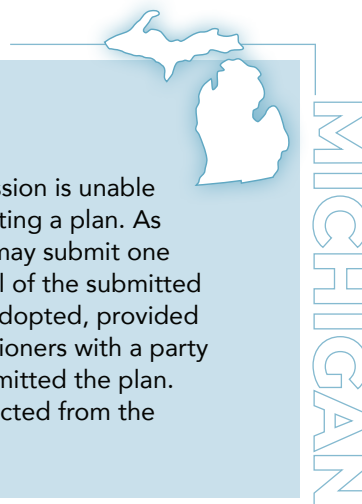
Judicial backstops can be a positive improvement, but they must be well crafted to ensure the orderly enactment of fair maps.

ii. Alternative Solutions for Commission Failure

Courts have long been the venue for resolving redistricting lapses, so it is natural that redistricting reform efforts often incorporate them as a remedy to commission redistricting failures. However, innovations from the Michigan and Colorado commissions show that there are other options to guarantee that the redistricting process ends with enacted maps. These examples provide a promising starting point for future commission design and potential amendments.

CASE STUDY: MICHIGAN

Michigan defines a set of backup procedures if the commission is unable to meet its bipartisan, supermajority threshold for adopting a plan. As described above, *supra* Section IV(A), each commissioner may submit one plan for consideration by the group; each member ranks all of the submitted plans, and the one with the highest cumulative ranking is adopted, provided it is ranked in the top half of plans by at least two commissioners with a party affiliation different from that of the commissioner who submitted the plan. If this threshold is also not reached, a plan is randomly selected from the commissioner-submitted plans.



¹⁸³ Va. Code Ann. § 30-399.

¹⁸⁴ Vali Jamal, *The Numbers Behind Virginia's Most Diverse General Assembly*, WYDaily (Dec. 3, 2023), <https://wydaily.com/latest-news/2023/12/03/the-numbers-behind-virginias-most-diverse-general-assembly/>.

CASE STUDY: COLORADO

Although Colorado’s fallback mechanism was not needed in the 2021 cycle, if the Colorado Commission is unable to adopt a plan by its deadline, one drawn by nonpartisan staff (as mandated by the Colorado constitution) becomes the de facto adopted plan. It must be submitted to the state Supreme Court for final approval, like any plan passed by the commission. The Colorado Supreme Court is tasked specifically and only with determining if the map drawer “abused its discretion in applying or failing to apply” the criteria enumerated in the state constitution.¹⁸⁵ The incorporation of the nonpartisan staff as a fallback is a creative solution to commission disfunction.¹⁸⁶

COLORADO

Redistricting commissions — in particular, Independent Commissions — can play a pivotal role in positively shaping the political landscape, but commission effectiveness is contingent on their ability to navigate challenges, learn from experiences, and continuously adapt to the evolving dynamics of American democracy. Commissions therefore require more than merely functional fallback mechanisms in response to commission failure. Michigan’s cumulative ranking system, in particular, provides a creative procedure whereby redistricting authority remains with the commission and commissioners are incentivized to come to agreement on plans.



¹⁸⁵ Colo. Const. art. V, § 44.5(2).

¹⁸⁶ It is worth noting that the constitutional provision governing the Colorado Supreme Court’s review (of both commission-created and staff-created plans) bears some of the same potential pitfalls as in Ohio. There is no provision permitting the court to create its own plan in the event that it finds a submitted map deficient and the map drawer fails to make the necessary alterations. Presumably, nonpartisan staff would have different incentives than partisan actors and would be more likely to remedy issues with the plan as ordered by the court, but this nevertheless creates a potential avenue for mischief.

Conclusion

The 2021 redistricting cycle provides a number of valuable lessons for states looking to create redistricting commissions or to amend existing commissions so that they can better achieve their promise. Perhaps the greatest lesson of all is that, while commissions may improve on or altogether avoid the perils of traditional legislative redistricting, not all commissions are created equal. Voters and election reformers should not be fooled by the mere term “commission,” but should look deeper at the elements of commission design, which will determine whether a commission only has the veneer of independence instead of the true potential to revolutionize redistricting in their state. And where commissions do fall short — as elements of our democracy so often do — reformers can look to the positive lessons of the 2021 cycle to know the changes, both incremental and substantial, that can be made so that redistricting commissions are maximizing their potential to move us toward a more perfect union.

APPENDIX

STATE LEGISLATIVE¹

State	Commission Type	Authority Over Redistricting	Size	Commissioner Selection Process	Commissioner Eligibility Restrictions & Requirements	Transparency	Map Approval Requirements	Fallback Mechanism
AK	Bipartisan	Full ²	5 ³	Gubernatorial appointment; political appointment; judicial appointment ⁴	Current office-holding restriction; government employee restriction; future office-holding restriction; state residency requirement; geographic diversity requirement ⁵	Must hold public hearings ⁶	Simple majority ⁷	Silent
AZ	Independent	Full ⁸	5 ⁹	Judicial appointment; political appointment; commissioners select other commissioner ¹⁰	Prior public-office restriction; future office-holding restriction; lobbying restriction; political party affiliation; voter registration requirement ¹¹	Certain meetings must be open; must accept public comments; must publish a draft map ¹²	Simple majority ¹³	Silent
AR	Political	Full ¹⁴	3 ¹⁵	Specified officeholder members ¹⁶	Current office-holding requirement ¹⁷	Final plans must include a written justification ¹⁸	Simple majority ¹⁹	Silent

State	Commission Type	Authority Over Redistricting	Size	Commissioner Selection Process	Commissioner Eligibility Restrictions & Requirements	Transparency	Map Approval Requirements	Fallback Mechanism
CA	Independent	Full ²⁰	14 ²¹	Creation of pool from public applicants; legislative vetoes; commissioners select other commissioners ²²	Prior public-office restriction; government employee restriction; lobbying restriction; campaign contribution restriction; immediate family restriction; future office-holding restriction; voter registration requirement; political party affiliation; geographic diversity requirement; racial, ethnic, and gender diversity requirement ²³	Final plans must include a written justification; materials of line drawers subject to public records requests; meetings must be public; must hold public hearings before and after draft plans revealed; must accept public comments; redistricting data available to the public ²⁴	Nine votes required to approve final maps, including three votes from each political group on the commission; certified final maps subject to referendum ²⁵	The Secretary of State petitions the California Supreme Court for an order appointing special masters to draw a map ²⁶
CO	Independent	Full ²⁷	12 ²⁸	Creation of pool of applicants; judicial appointment; political appointment ²⁹	Prior public-office restriction; prior candidate restriction; current office-holding restriction; lobbying restriction; campaign committee restriction; party official restriction; political party affiliation; voter requirement; geographic diversity requirement; racial, ethnic, and gender diversity requirement ³⁰	Must hold public hearings; must keep public records of meetings and hearings; must accept public comments; must accept public submissions; geographic diversity for public hearings; must publish draft maps ³¹	Eight votes required, including two from non-affiliated commissioners, to submit to Colorado Supreme Court ³²	Colorado Supreme Court ³³

State	Commission Type	Authority Over Redistricting	Size	Commissioner Selection Process	Commissioner Eligibility Restrictions & Requirements	Transparency	Map Approval Requirements	Fallback Mechanism
CT	Political	Advisory ³⁴	8 ³⁵	Political appointment; commissioners select ninth commissioner in backup ³⁶	Current office-holding requirement ³⁷	Silent	Simple majority ³⁸	Backup commission, then state Supreme Court ³⁹
HI	Bipartisan	Full ⁴⁰	9 ⁴¹	Political appointment; commissioners select other commissioners ⁴²	Future office-holding restriction ⁴³	Must hold at least one public hearing in each island unit; must accept public comments; must accept public submissions; must keep public record of meetings and hearings; must submit written report ⁴⁴	Simple majority ⁴⁵	Silent
ID	Bipartisan	Full ⁴⁶	6 ⁴⁷	Political appointment; political party appointment; judicial appointment ⁴⁸	Prior public office restriction; candidate restriction; lobbying restriction; current office-holding restriction; future office-holding restriction; voter registration requirement ⁴⁹	Must hold public hearings in different locations of state; redistricting data available to the public; must accept public submissions; meetings must be open ⁵⁰	Two-thirds majority ⁵¹	Silent
IA	Bipartisan	Advisory ⁵²	5 ⁵³	Political appointment; commissioners select other commissioners ⁵⁴	Current public office restriction; legislative employee restriction; legislative employee family restriction; party official restriction; voter registration requirement ⁵⁵	Must hold public hearings; geographic diversity for public hearings required; must keep public record of meetings and hearings ⁵⁶	Silent	Legislature draws and votes on its own plan ⁵⁷

State	Commission Type	Authority Over Redistricting	Size	Commissioner Selection Process	Commissioner Eligibility Restrictions & Requirements	Transparency	Map Approval Requirements	Fallback Mechanism
ME	Bipartisan	Advisory ⁵⁸	15 ⁵⁹	Political appointment; political party appointment; commissioners select other commissioners ⁶⁰	Political party restriction ⁶¹	Must hold public hearings ⁶²	Two-thirds majority in each House ⁶³	Supreme Judicial Court ⁶⁴
MI	Independent	Full ⁶⁵	13 ⁶⁶	Creation of pool from public applicants; legislative vetoes ⁶⁷	Prior public-office restriction; current office-holding restriction; future office-holding restriction; lobbying restriction; campaign contribution restriction; government employee restriction; spousal/relative restriction; voter registration requirement; political party affiliation; geographic diversity requirement ⁶⁸	Must hold public hearings; materials subject to public records request; must accept public comments; must accept public submissions; redistricting data available to the public; meetings must be open; final plans must include a written justification; geographic diversity for public hearings ⁶⁹	Simple majority, including two commissioners who affiliate with each major party and two non-affiliated commissioners ⁷⁰	Commissioners rank alternative plans ⁷¹
MO	Political	Full ⁷²	20 ⁷³	Gubernatorial appointment; political party appointment ⁷⁴	Lobbying restriction; future office holding restriction ⁷⁵	Must hold public hearings; must publish a draft map; must accept public comments; redistricting data available to the public ⁷⁶	Seven-tenths majority ⁷⁷	Judicial commission ⁷⁸
MT	Bipartisan	Full ⁷⁹	5 ⁸⁰	Political appointment; commissioners select other commissioners; judicial appointment ⁸¹	Current office-holding restriction ⁸²	Must hold at least one public hearing ⁸³	Silent	Silent

State	Commission Type	Authority Over Redistricting	Size	Commissioner Selection Process	Commissioner Eligibility Restrictions & Requirements	Transparency	Map Approval Requirements	Fallback Mechanism
NJ	Bipartisan	Full ⁸⁴	10 ⁸⁵	Political party appointment; judicial appointment ⁸⁶	Geographic diversity requirement ⁸⁷	Silent	Simple majority ⁸⁸	Supreme Court appoints eleventh member to commission ⁸⁹
NM	Independent	Advisory ⁹⁰	7 ⁹¹	Political appointment; ethics commission appointment; specified officeholder members ⁹²	Voter registration requirement; prior public office/candidate restriction; lobbying restriction; current officeholder or government employee restriction; family restrictions ⁹³	Must hold public hearings; meetings must be open; must accept public comments; geographic diversity for public hearing required; must keep public record of meetings and hearings; final plans must include a written justification ⁹⁴	Silent	Silent
NY	Independent	Advisory ⁹⁵	10 ⁹⁶	Political appointment; commissioners select other commissioners ⁹⁷	Prior office-holding restriction or spouse; government employee restriction; lobbying restriction; political party chairman restriction; political party non-affiliation requirement (for two members); geographic diversity requirement; racial, ethnic, and gender diversity requirement ⁹⁸	Must hold public hearings; geographic diversity for public hearings required; redistricting data available to the public; must publish a draft map; must accept public comments; must accept public submissions ⁹⁹	Seven-tenths of commission, with conditional bipartisan approval requirements ¹⁰⁰	If no map approved, map(s) with highest number of votes submitted to legislature ¹⁰¹

State	Commission Type	Authority Over Redistricting	Size	Commissioner Selection Process	Commissioner Eligibility Restrictions & Requirements	Transparency	Map Approval Requirements	Fallback Mechanism
OH	Political	Full ¹⁰²	7 ¹⁰³	Specified officeholder members; political appointment ¹⁰⁴	Current member of Congress restriction ¹⁰⁵	Must hold at least 3 public hearings across state; meetings must be open; must publish a draft map; must accept public comments ¹⁰⁶	Four votes, including two from each party ¹⁰⁷	If fail to approve a plan with requisite votes from each party, the commission must approve a plan by majority vote that remains in effect for only two general elections, after which time the commission must be reconstituted ¹⁰⁸
PA	Political	Full ¹⁰⁹	5 ¹¹⁰	Specified officeholder members; political appointment; judicial appointment ¹¹¹	Current office-holding requirement (office-holding restriction for chair) ¹¹²	Must publish a draft map ¹¹³	Simple majority ¹¹⁴	Supreme Judicial Court ¹¹⁵
UT	Bipartisan	Advisory ¹¹⁶	7 ¹¹⁷	Gubernatorial appointment; political appointment ¹¹⁸	Lobbyist restriction; office-holding restriction; candidate restriction; government employee restriction; political party official restriction; partisan affiliation restriction ¹¹⁹	Must keep record of meetings and hearings; must publish a draft map; must accept public submissions; must accept public comments ¹²⁰	Simple majority vote of quorum ¹²¹	Silent
VT	Bipartisan	Advisory ¹²²	7 ¹²³	Gubernatorial appointment; judicial appointment; political party appointment ¹²⁴	State residency requirement; current office holder and legislative employee restriction ¹²⁵	Silent	Silent	Silent

State	Commission Type	Authority Over Redistricting	Size	Commissioner Selection Process	Commissioner Eligibility Restrictions & Requirements	Transparency	Map Approval Requirements	Fallback Mechanism
VA	Hybrid Bipartisan-Political	Full ¹²⁶	16 ¹²⁷	Political appointment; political party appointment; creation of pool from public applicants; judicial appointment ¹²⁸	<p>Legislative commissioners: current office-holding requirement</p> <p>Citizen commissioners: Residency requirement; voter registration requirement; voting requirement; prior office-holding restriction, current office-holding restriction; government employee restriction; campaign restriction; political party employee restriction; lobbying restriction; family restriction</p> <p>Both: geographic diversity requirement; racial, ethnic, and gender diversity requirement; political party affiliation¹²⁹</p>	Must hold public hearings; must accept public comments; must accept public submissions; meetings must be open; must keep public record of meetings and hearings; must publish a draft map; redistricting data available to the public ¹³⁰	Six votes from citizen commissioners and six votes from the legislative commissioners, including three from the relevant House ¹³¹	Virginia Supreme Court ¹³²
WA	Bipartisan	Partial with limited legislative changes allowed ¹³³	5 ¹³⁴	Political appointment; commissioners select other commissioners; judicial appointment ¹³⁵	Current and prior office-holding restriction ¹³⁶	Must hold public meetings; retain records; final plans must include a written report ¹³⁷	Three of four voting members ¹³⁸	State Supreme Court ¹³⁹

CONGRESSIONAL¹⁴⁰

State	Commission Type	Authority Over Redistricting	Size	Commissioner Selection Process	Commissioner Eligibility Restrictions & Requirements	Transparency	Map Approval Requirements	Fallback Mechanism
AZ	Independent	Full ¹⁴¹	5 ¹⁴²	Judicial appointment; political appointment; commissioners select other commissioner ¹⁴³	Prior public-office restriction; future office-holding restriction; lobbying restriction; political party affiliation; voter registration requirement ¹⁴⁴	Certain meetings must be open; must accept public comments; must publish a draft map ¹⁴⁵	Simple majority ¹⁴⁶	Silent
CA	Independent	Full ¹⁴⁷	14 ¹⁴⁸	Creation of pool from public applicants; legislative vetoes; commissioners select other commissioners ¹⁴⁹	Prior public-office restriction; government employee restriction; lobbying restriction; campaign contribution restriction; immediate family restriction; future office-holding restriction; voter registration requirement; political party affiliation; geographic diversity requirement; racial, ethnic, and gender diversity requirement ¹⁵⁰	Final plans must include a written justification; materials of line drawers subject to public records requests; meetings must be public; must hold public hearings before and after draft plans revealed; must accept public comments; redistricting data available to the public ¹⁵¹	Nine votes required to approve final maps, including three votes from each political group on the commission; certified final maps subject to referendum ¹⁵²	The Secretary of State petitions the California Supreme Court for an order appointing special masters to draw a map ¹⁵³

State	Commission Type	Authority Over Redistricting	Size	Commissioner Selection Process	Commissioner Eligibility Restrictions & Requirements	Transparency	Map Approval Requirements	Fallback Mechanism
CO	Independent	Full ¹⁵⁴	12 ¹⁵⁵	Creation of pool of applicants; judicial appointment; political appointment ¹⁵⁶	Prior public-office restriction; prior candidate restriction; current office-holding restriction; lobbying restriction; campaign committee restriction; party official restriction; political party affiliation; voter requirement; geographic diversity requirement; racial, ethnic, and gender diversity requirement ¹⁵⁷	Must hold public hearings; must keep public records of meetings and hearings; must accept public comments; must accept public submissions; geographic diversity for public hearings; must publish draft map ¹⁵⁸	Eight votes required, including two from non-affiliated commissioners, to submit to Colorado Supreme Court ¹⁵⁹	Colorado Supreme Court ¹⁶⁰
CT	Political	Advisory ¹⁶¹	8 ¹⁶²	Political appointment; commissioners select ninth commissioner in backup ¹⁶³	Current office-holding requirement ¹⁶⁴	Silent	Simple majority ¹⁶⁵	Backup commission, then state Supreme Court ¹⁶⁶
HI	Bipartisan	Full ¹⁶⁷	9 ¹⁶⁸	Political appointment; commissioners select other commissioners ¹⁶⁹	Future office-holding restriction ¹⁷⁰	Must hold at least one public hearing in each island unit; must accept public comments; must accept public submissions; must keep public record of meetings and hearings; must submit written report ¹⁷¹	Simple majority ¹⁷²	Silent

State	Commission Type	Authority Over Redistricting	Size	Commissioner Selection Process	Commissioner Eligibility Restrictions & Requirements	Transparency	Map Approval Requirements	Fallback Mechanism
ID	Bipartisan	Full ¹⁷³	6 ¹⁷⁴	Political appointment; political party appointment; judicial appointment ¹⁷⁵	Prior public office restriction; candidate restriction; lobbying restriction; current office-holding restriction; future office-holding restriction; voter registration requirement ¹⁷⁶	Must hold public hearings in different locations of state; redistricting data available to the public; must accept public submissions; meetings must be open ¹⁷⁷	Two-thirds majority ¹⁷⁸	Silent
IA	Bipartisan	Advisory ¹⁷⁹	5 ¹⁸⁰	Political appointment; commissioners select other commissioner ¹⁸¹	Current public office restriction; legislature employee restriction; legislative employee family restriction; party official restriction; voter registration requirement ¹⁸²	Must hold public hearings; geographic diversity for public hearings required; must keep public record of meetings and hearings ¹⁸³	Silent	Legislature draws and votes on its own plan ¹⁸⁴
ME	Bipartisan	Advisory ¹⁸⁵	15 ¹⁸⁶	Political appointment; political party appointment; commissioners select other commissioners ¹⁸⁷	Political party restriction ¹⁸⁸	Must hold public hearings ¹⁸⁹	Two-thirds majority in each House ¹⁹⁰	Supreme Judicial Court ¹⁹¹

State	Commission Type	Authority Over Redistricting	Size	Commissioner Selection Process	Commissioner Eligibility Restrictions & Requirements	Transparency	Map Approval Requirements	Fallback Mechanism
MI	Independent	Full ¹⁹²	13 ¹⁹³	Creation of pool from public applicants; legislative vetoes ¹⁹⁴	Prior public-office restriction; current office-holding restriction; future office-holding restriction; lobbying restriction; campaign contribution restriction; government employee restriction; spousal/relative restriction; voter registration requirement; political party affiliation; geographic diversity requirement ¹⁹⁵	Must hold public hearings; materials subject to public records request; must accept public comments; must accept public submissions; redistricting data available to the public; meetings must be open; final plans must include a written justification; geographic diversity for public hearings ¹⁹⁶	Simple majority, including two commissioners who affiliate with each major party and two non-affiliated commissioners ¹⁹⁷	Commissioners rank alternative plans ¹⁹⁸
MT	Bipartisan	Full ¹⁹⁹	5 ²⁰⁰	Political appointment; commissioners select other commissioner; judicial appointment ²⁰¹	Current office-holding restriction ²⁰²	Must hold at least one public hearing ²⁰³	Silent	Silent

State	Commission Type	Authority Over Redistricting	Size	Commissioner Selection Process	Commissioner Eligibility Restrictions & Requirements	Transparency	Map Approval Requirements	Fallback Mechanism
NJ	Bipartisan	Full ²⁰⁴	13 ²⁰⁵	Political appointment; commissioners selects other commissioner; judicial appointment ²⁰⁶	Current office-holding restriction; geography, ethnic, and racial diversity requirement ²⁰⁷	Final vote for plan must be at a public meeting; must hold at least three public meetings in different parts of state ²⁰⁸	Simple majority ²⁰⁹	The Supreme Court chooses between the two maps that have received the largest number of votes (and not fewer than five) ²¹⁰
NM	Independent	Advisory ²¹¹	7 ²¹²	Political appointment; ethics commission appointment; specified officeholder members ²¹³	Voter registration requirement; prior public office/candidate restriction; lobbying restriction; current officeholder or government employee restriction; family restrictions ²¹⁴	Must hold public hearings; meetings must be open; must accept public comments; geographic diversity for public hearing required; must keep public record of meetings and hearings; final plans must include a written justification ²¹⁵	Silent	Silent

State	Commission Type	Authority Over Redistricting	Size	Commissioner Selection Process	Commissioner Eligibility Restrictions & Requirements	Transparency	Map Approval Requirements	Fallback Mechanism
NY	Independent	Advisory ²¹⁶	10 ²¹⁷	Political appointment; commissioners select other commissioners ²¹⁸	Prior office-holding restriction or spouse; government employee restriction; lobbying restriction; political party chairman restriction; political party non-affiliation requirement (for two members); geographic diversity requirement; racial, ethnic, and gender diversity requirement ²¹⁹	Must hold public hearings; geographic diversity for public hearings required; redistricting data available to the public; must publish a draft map; must accept public comments; must accept public submissions ²²⁰	Seven-tenths of commission, with conditional bipartisan approval requirements ²²¹	If no map approved, map(s) with highest number of votes submitted to legislature ²²²
UT	Bipartisan	Advisory ²²³	7 ²²⁴	Gubernatorial appointment; political appointment ²²⁵	Lobbyist restriction; office-holding restriction; candidate restriction; government employee restriction; political party official restriction; partisan affiliation restriction ²²⁶	Must keep record of meetings and hearings; must publish a draft map; must accept public submissions; must accept public comments ²²⁷	Simple majority vote of quorum ²²⁸	Silent

State	Commission Type	Authority Over Redistricting	Size	Commissioner Selection Process	Commissioner Eligibility Restrictions & Requirements	Transparency	Map Approval Requirements	Fallback Mechanism
VA	Hybrid Bipartisan-Political	Full ²²⁹	16 ²³⁰	Political appointment; political party appointment; creation of pool from public applicants; judicial appointment ²³¹	Legislative commissioners: current office-holding requirement Citizen commissioners: residency requirement; voter registration requirement; voting requirement; prior office-holding restriction, current office-holding restriction; government employee restriction; campaign restriction; political party employee restriction; lobbying restriction; family restriction Both: geographic diversity requirement; racial, ethnic, and gender diversity requirement; political party affiliation ²³²	Must hold public hearings; must accept public comments; must accept public submissions; meetings must be open; must keep public record of meetings and hearings; must publish a draft map; redistricting data available to the public ²³³	Six votes from citizen commissioners, and six votes from the legislative commissioners ²³⁴	Virginia Supreme Court ²³⁵
WA	Bipartisan	Partial with limited legislative changes allowed ²³⁶	5 ²³⁷	Political appointment; commissioners select other commissioners; judicial appointment ²³⁸	Current and prior office-holding restriction ²³⁹	Must hold public meetings; retain records; final plans must include a written report ²⁴⁰	Three of four voting members ²⁴¹	State Supreme Court ²⁴²

ENDNOTES

- ¹ This appendix does not include states that use commissions solely as a backup redistricting entity. For additional information, see also *Redistricting Commissions: State Legislative Plans*, Nat'l Conference of State Legislatures, <https://www.ncsl.org/redistricting-and-census/redistricting-commissions-state-legislative-plans>.
- ² Alaska Const. art. VI, § 10(a).
- ³ Alaska Const. art. VI, § 8(a).
- ⁴ Alaska Const. art. VI, § 8(a)-(b). Appointments are made without regard to political affiliation. The governor appoints two commissioners, the majority leaders of the state's House and Senate each appoint one commissioner, and the chief justice of the Supreme Court appoints one commissioner.
- ⁵ Alaska Const. art. VI, § 8.
- ⁶ Alaska Const. art. VI, § 10(a).
- ⁷ Alaska Const. art. VI, § 10(b).
- ⁸ Ariz. Const. art. IV, pt. 2, § 1.
- ⁹ Ariz. Const. art. IV, pt. 2, § 1(3).
- ¹⁰ Ariz. Const. art. IV, pt. 2, § 1(5)-(8). The Arizona Commission on Appellate Court Appointments creates a pool of 25 potential commissioners, including ten Republicans, ten Democrats, and five not registered with either major party. The majority and minority leaders in the House and Senate each choose one commissioner from this pool. The four then choose a fifth commissioner as chair, who must not be registered with the same political party as any of the other commissioners. If they cannot agree, the Commission on Appellate Court Appointments chooses the fifth.
- ¹¹ Ariz. Const. art. IV, pt. 2, § 1(3), (13).
- ¹² Ariz. Const. art. IV, pt. 2, § 1(12), (16).
- ¹³ Ariz. Const. art. IV, pt. 2, § 1(12).
- ¹⁴ Ark. Const. art. 8, §§ 1, 4.
- ¹⁵ Ark. Const. art. 8, § 1.
- ¹⁶ Ark. Const. art. 8, § 1. The members are listed in the statute: the governor, the secretary of state, and the attorney general.
- ¹⁷ Ark. Const. art. 8, § 1.
- ¹⁸ Ark. Const. art. 8, § 4.
- ¹⁹ Ark. Const. art. 8, § 1.
- ²⁰ Cal. Const. art. XXI, § 2(g); Cal. Gov't Code §§ 8251-53.6.
- ²¹ Cal. Const. art. XXI, § 2(c)(2); Cal. Gov't Code § 8252(g).
- ²² Cal. Gov't Code § 8252. Eight commissioners are randomly selected by the State Auditor from pools narrowed down by legislative vetoes of the majority and minority House leaders (three Democrats, three Republicans, two from neither party). The eight commissioners then select the other six (two Democrats, two Republicans, two from neither party).
- ²³ Cal. Const. art. XXI, § 2(c)(6); Cal. Gov't Code § 8252 (a), (b), (g).
- ²⁴ Cal. Const. art. XXI, § 2(b), (h); Cal. Gov't Code § 8253(a)(1)-(2), (b).
- ²⁵ Cal. Const. art. XXI, § 2(c)(5), (i).
- ²⁶ Cal. Const. art. XXI, § 2(j).
- ²⁷ Colo. Const. art. V, § 46(2).
- ²⁸ Colo. Const. art. V, § 47(2).
- ²⁹ Colo. Const. art. V, § 47(3)-(10). A panel of retired judges randomly selects pools of 300 qualified applicants from each major party and a pool of 450 who are unaffiliated, and then narrows each pool to 50 based on merit. The panel randomly selects two applicants from each of the three pools to serve on the commission (total of six). The majority and minority leaders of the House and Senate also each select a pool of 10 applicants. The judicial panel then selects one member from each legislative leaders' pool and two from the pool of unaffiliated applicants (total of six).
- ³⁰ Colo. Const. art. V, § 47(2), (10).
- ³¹ Colo. Const. art. V, §§ 48, 48.2.
- ³² Colo. Const. art. V, §§ 48(2), 48.3.
- ³³ Colo. Const. art. V, § 48.3(5).
- ³⁴ Conn. Const. art. III, § 6(a).
- ³⁵ Conn. Const. art. III, § 6(a)-(b).
- ³⁶ Conn. Const. art. III, § 6(a). The president pro tempore of the Senate and the speaker of the House of Representatives, as well as the minority leaders in each house, each designate two members of their respective houses.
- ³⁷ Conn. Const. art. III, § 6(a).
- ³⁸ Conn. Const. art. III, § 6(a).
- ³⁹ Conn. Const. art. III, § 6(b), (d).
- ⁴⁰ Haw. Const. art. IV, § 2.
- ⁴¹ Haw. Const. art. IV, § 2.
- ⁴² Haw. Const. art. IV, § 2. The president of the Senate and the speaker of the House of Representatives each appoint two members. Minority-party members from each house designate one of their own, and those two each appoint two members. The eight members then select the ninth member, who chairs the commission.
- ⁴³ Haw. Const. art. IV, § 2.
- ⁴⁴ Haw. Rev. Stat. §§ 25-2, 25-8.
- ⁴⁵ Haw. Const. art. IV, § 2; Haw. Rev. Stat. § 25-3.
- ⁴⁶ Idaho Const. art. III, § 2(5).
- ⁴⁷ Idaho Const. art. III, § 2(2); Idaho Code § 72-1502.

- ⁴⁸ Idaho Const. art. III, § 2(2); Idaho Code § 72-1502. Leaders of the two largest political parties in each house of the legislature each designate one member. The chairs of the two parties whose candidates for governor received the most votes in the last election each designate one member. The Supreme Court selects the members if no appointing authority selects the members within 15 days.
- ⁴⁹ Idaho Const. art. III, §§ 2(2), (6); Idaho Code §§ 72-1502-03.
- ⁵⁰ Idaho Const. art. III, § 2(4); Idaho Code § 72-1505.
- ⁵¹ Idaho Const. art. III, § 2(4); Idaho Code § 72-1505(5).
- ⁵² Iowa Code §§ 42.5, 42.3. The legislature votes on redistricting plans submitted by an Advisory Commission, allowing only minimal corrections. If the first proposal is rejected, the commission submits a second one. If the second is also rejected, a third proposal is submitted. The legislature can either adopt this third proposal or create its own redistricting plan.
- ⁵³ Iowa Code § 42.5(1).
- ⁵⁴ Iowa Code §§ 42.1(4)(a)-(d), 42.5(1)(a). Majority and minority leaders from both houses each appoint one member, and those four select the fifth member of the commission.
- ⁵⁵ Iowa Code § 42.5(2).
- ⁵⁶ Iowa Code § 42.6(2)-(3).
- ⁵⁷ Iowa Code § 42.3(3).
- ⁵⁸ Me. Const. art. IV, pt. 1, § 3; pt. 2, § 2.
- ⁵⁹ Me. Const. art. IV, pt. 3, § 1-A.
- ⁶⁰ Me. Const. art. IV, pt. 3, § 1-A. House speaker appoints three members, floor leader of largest minority party appoints three members; Senate president appoints two members, Senate minority floor leader appoints two members; largest political party chair appoints one member, second-largest political party chair appoints one member, political party appointees select one member; three members of the public are added (one selected by one party's commission members, one by the other party's commission members, and one selected by the other two public members).
- ⁶¹ Me. Const. art. IV, pt. 3, § 1-A.
- ⁶² Me. Const. art. IV, pt. 3, § 1-A.
- ⁶³ Me. Const. art. IV, pt. 1, § 3; pt. 2, § 2.
- ⁶⁴ Me. Const. art. IV, pt. 1, § 3; pt. 2, § 2.
- ⁶⁵ Mich. Const. art. IV § 6(17).
- ⁶⁶ Mich. Const. art. IV § 6(1).
- ⁶⁷ Mich. Const. art. IV § 6(2). The secretary of state constructs randomized pools of applicants, two for applicants affiliated with each major party and one pool for those unaffiliated. Four legislative leaders have a combined 20 strikes against applicants (majority and minority leader of the Senate and speaker and minority leader of the House of Representatives). The secretary of state selects four applicants with major party affiliation each from two pools and five from another pool with no party affiliation.
- ⁶⁸ Mich. Const. art. IV § 6(1)-(2).
- ⁶⁹ Mich. Const. art. IV § 6(8)-(10).
- ⁷⁰ Mich. Const. art. IV § 6(14)(c).
- ⁷¹ Mich. Const. art. IV § 6(14)(c).
- ⁷² Mo. Const. art. III, §§ 3(g), 7(f).
- ⁷³ Mo. Const. art. III, §§ 3(c), 7(a).
- ⁷⁴ Mo. Const. art. III, §§ 3(c), 7(a). Missouri has two separate commissions, one responsible for drawing Senate lines and the other House lines. For both the House and Senate redistricting commissions, the congressional district committees for the state's two largest political parties each nominate two members from each congressional district, and the parties' state committees each nominate five members. The governor then chooses one member per district per party and two members from each party's statewide nominees.
- ⁷⁵ Mo. Const. art. III, §§ 3, 7; Mo. Rev. Stat. § 105.967.
- ⁷⁶ Mo. Const. art. III, §§ 3(d)-(f), 7(d)-(f).
- ⁷⁷ Mo. Const. art. III §§ 3(f), 7(e).
- ⁷⁸ Mo. Const. art. III, § 3(g), 7(f).
- ⁷⁹ Mont. Const. art. V, § 14(4).
- ⁸⁰ Mont. Const. art. V, § 14(2).
- ⁸¹ Mont. Const. art. V, § 14(2). Majority and minority leaders of both houses each choose one commissioner. The four commissioners select the fifth commissioner. If the four commissioners fail to appoint a fifth commissioner, a majority of the Montana Supreme Court selects the fifth commissioner.
- ⁸² Mont. Const. art. V, § 14(2).
- ⁸³ Mont. Code Ann. § 5-1-108.
- ⁸⁴ N.J. Const. art. IV, § 3.
- ⁸⁵ N.J. Const. art. IV, § 3, ¶ 1.
- ⁸⁶ N.J. Const. art. IV, § 3, ¶¶ 1-2. The chairs of the state's two largest political parties each choose five commissioners.
- ⁸⁷ N.J. Const. art. IV, § 3, ¶ 1.
- ⁸⁸ N.J. Const. art. IV, § 3, ¶ 1.
- ⁸⁹ N.J. Const. art. IV, § 3, ¶ 2.
- ⁹⁰ N.M. Stat. Ann. § 1-3a-9.
- ⁹¹ N.M. Stat. Ann. § 1-3a-3(B).
- ⁹² N.M. Stat. Ann. § 1-3a-3(B). The speaker of the House of Representatives and the president pro tempore of the Senate, as well as the minority floor leader of each house, each appoint one member. The state ethics commission selects two members who are not members of the state's two largest political parties and one member who is a retired state supreme court justice or appeals judge.
- ⁹³ N.M. Stat. Ann. § 1-3a-4.
- ⁹⁴ N.M. Stat. Ann. §§ 1-3a-5(A), 1-3a-6, 1-3a-8.
- ⁹⁵ N.Y. Const. art. III, § 4(b). The legislature votes on redistricting plans submitted by the redistricting commission, without amendment. If the first proposal is rejected or vetoed by the governor, the commission submits a second one. If the second is also rejected, the legislature can create its own redistricting plan.

- ⁹⁶ N.Y. Const. art. III, § 5-b(a).
- ⁹⁷ N.Y. Const. art. III, § 5-b(a). The president pro tempore of the Senate, the speaker of the Assembly, and the minority leaders of each House each select two commissioners. The remaining two commissioners shall be appointed by the eight appointed members by majority vote.
- ⁹⁸ N.Y. Const. art. III, § 5-b(b).
- ⁹⁹ N.Y. Const. art. III, § 4(c).
- ¹⁰⁰ N.Y. Const. art. III, § 5-b(f). If the same party controls the House and Senate, then the redistricting plan must get approved by at least one member appointed by each legislative leader. If different parties control the House and Senate, then the redistricting plan must get approved by at least one member appointed by the House speaker and one member appointed by the temporary president of the Senate.
- ¹⁰¹ N.Y. Const. art. III, § 5-b(g).
- ¹⁰² Ohio Const. art. XI, § 1.
- ¹⁰³ Ohio Const. art. XI, § 1.
- ¹⁰⁴ Ohio Const. art. XI, § 1. The members are the governor, auditor, secretary of state, and one appointee each from the speaker of the House of Representatives, the president of the Senate, and the minority leaders of each house.
- ¹⁰⁵ Ohio Const. art. XI, § 1.
- ¹⁰⁶ Ohio Const. art. XI, § 1(C).
- ¹⁰⁷ Ohio Const. art. XI, § 1(B)(3).
- ¹⁰⁸ Ohio Const. art. XI, § 8.
- ¹⁰⁹ Pa. Const. art. II, § 17(e).
- ¹¹⁰ Pa. Const. art. II, § 17(b).
- ¹¹¹ Pa. Const. art. II, § 17(b). Majority and minority leaders from both houses (or deputies appointed by them) are commissioners and collectively choose the fifth, who is chair. If the four cannot agree on a chair, the state Supreme Court chooses the chair.
- ¹¹² Pa. Const. art. II, § 17(b).
- ¹¹³ Pa. Const. art. II, § 17(c)-(i).
- ¹¹⁴ Pa. Const. art. II, § 17(a).
- ¹¹⁵ Pa. Const. art. II, § 17(h).
- ¹¹⁶ Utah Code Ann. § 20A-20-201.
- ¹¹⁷ Utah Code Ann. § 20A-20-201.
- ¹¹⁸ Utah Code Ann. § 20A-20-201(2). The governor appoints one member, who chairs the commission. The president of Senate, speaker of the House of Representatives, legislative leader of largest minority party in the Senate, and legislative leader of largest minority party in the House of Representatives each appoint one member. The legislative leader of the largest minority party in the Senate and legislative leader of the largest minority party in the House of Representatives together select one member.
- ¹¹⁹ Utah Code Ann. § 20A-20-201(5)-(6).
- ¹²⁰ Utah Code Ann. § 20A-20-201(13).
- ¹²¹ Utah Code Ann. § 20A-20-201(11).
- ¹²² Vt. Stat. Ann. §§ 17-1906–08.
- ¹²³ Vt. Stat. Ann. § 17-1904.
- ¹²⁴ Vt. Stat. Ann. § 17-1904(a). Chief justice of state Supreme Court designates a special master, who serves as chair. Vermont residents from each major political party are appointed by the governor and state committee of those political parties. The secretary of state serves as secretary of the board but does not vote.
- ¹²⁵ Vt. Stat. Ann. § 17-1904(a).
- ¹²⁶ Va. Const. art. II, § 6-A(a).
- ¹²⁷ Va. Const. art. II, § 6-A(b).
- ¹²⁸ Va. Const. art. II, § 6-A(b). The president pro tempore of the Senate, the speaker of the House of Delegates, and the minority leader in each house each appoint two legislators from their parties, for a total of eight legislative commissioners. They each also submit lists of 16 candidates to a panel of retired judges, who appoint two from each list, for a total of eight citizen commissioners.
- ¹²⁹ Va. Const. art. II, § 6-A(b); Va. Code Ann. §§ 30-392, 30-394.
- ¹³⁰ Va. Code Ann. § 30-396.
- ¹³¹ Va. Const. art. II, § 6-A(d).
- ¹³² Va. Const. art. II, § 6-A(g).
- ¹³³ Wash. Const. art. II, § 43(7).
- ¹³⁴ Wash. Const. art. II, § 43(2).
- ¹³⁵ Wash. Const. art. II, § 43(2). Majority and minority leaders from both houses each appoint one voting member; those four then select a nonvoting chair. If appointments are not made, the Supreme Court appoints.
- ¹³⁶ Wash. Const. art. II, § 43(3).
- ¹³⁷ Rev. Code Wash. § 44.05.080.
- ¹³⁸ Wash. Const. art. II, § 43(6)-(7). A two-thirds majority of the legislature is needed to amend the commission's plan.
- ¹³⁹ Wash. Const. art. II, § 43(6).
- ¹⁴⁰ This appendix does not include states that use commissions solely as a backup redistricting entity. For additional information, see also *Redistricting Commissions: Congressional Plans*, Nat'l Conference of State Legislatures, <https://www.ncsl.org/redistricting-and-census/redistricting-commissions-congressional-plans>.
- ¹⁴¹ Ariz. Const. art. IV, pt. 2, § 1.
- ¹⁴² Ariz. Const. art. IV, pt. 2, § 1(3).
- ¹⁴³ Ariz. Const. Art. IV, pt. 2, § 1(5)-(8). The Arizona Commission on Appellate Court Appointments creates a pool of 25 potential commissioners, including ten Republicans, ten Democrats, and five not registered with either major party. The majority and minority leaders in the House and Senate each choose one commissioner from this pool. The four then choose a fifth commissioner as chair, who must not be registered with the same political party as any of the other commissioners. If they cannot agree, the Commission on Appellate Court Appointments chooses the fifth.
- ¹⁴⁴ Ariz. Const. Art. IV, pt. 2, § 1(3), (13).
- ¹⁴⁵ Ariz. Const. Art. IV, pt. 2, § 1(12), (16).

- ¹⁴⁶ Ariz. Const. art. IV, pt. 2, § 1(12).
- ¹⁴⁷ Cal. Const. art. XXI, § 2(g); Cal. Gov't Code §§ 8251-53.6.
- ¹⁴⁸ Cal. Const. art. XXI, § 2(c)(2); Cal. Gov't Code § 8252(g).
- ¹⁴⁹ Cal. Gov't Code § 8252. Eight commissioners are randomly selected by the state auditor from pools narrowed down by legislative vetoes of the majority and minority house leaders (three Democrats, three Republicans, two from neither party). The eight commissioners then select the other six (two Democrats, two Republicans, two from neither party).
- ¹⁵⁰ Cal. Const. art. XXI, § 2(c)(6); Cal. Gov't Code § 8252(a)-(b), (g).
- ¹⁵¹ Cal. Const. art. XXI, § 2(b), (h); Cal. Gov't Code § 8253(a)(1)-(2), (b).
- ¹⁵² Cal. Const. art. XXI, § 2(c)(5), (i).
- ¹⁵³ Cal. Const. art. XXI, § 2(j).
- ¹⁵⁴ Colo. Const. art. V, § 44(2).
- ¹⁵⁵ Colo. Const. art. V, § 44.1(2).
- ¹⁵⁶ Colo. Const. art. V, § 44.1(3)-(10). A panel of retired judges randomly selects pools of 300 qualified applicants from each major party and a pool of 450 who are unaffiliated, and then narrows each pool to 50 based on merit. The panel randomly selects two applicants from each of the three pools to serve on the commission (total of six). The majority and minority leaders of the House and Senate also each select a pool of 10 applicants. The judicial panel then selects one member from each legislative leaders' pool and two from the pool of unaffiliated applicants (total of six).
- ¹⁵⁷ Colo. Const. art. V, § 44.1(2), (10).
- ¹⁵⁸ Colo. Const. art. V, §§ 44.2, 44.4.
- ¹⁵⁹ Colo. Const. art. V, § 44.2(2).
- ¹⁶⁰ Colo. Const. art. V, § 44.5(5).
- ¹⁶¹ Conn. Const. art. III, § 6(a).
- ¹⁶² Conn. Const. art. III, § 6(a)-(b).
- ¹⁶³ Conn. Const. art. III, § 6(a). The president pro tempore of the Senate and the speaker of the House of Representatives, as well as the minority leaders in each house, each designate two members of their respective houses.
- ¹⁶⁴ Conn. Const. art. III, § 6(a).
- ¹⁶⁵ Conn. Const. art. III, § 6(a).
- ¹⁶⁶ Conn. Const. art. III, § 6(b), (d).
- ¹⁶⁷ Haw. Const. art. IV, § 2.
- ¹⁶⁸ Haw. Const. art. IV, § 2.
- ¹⁶⁹ Haw. Const. art. IV, § 2. The president of the Senate and the speaker of the House of Representatives each appoint two members. Minority-party members from each house designate one of their own, and those two each appoint two members. The eight members then select the ninth member, who chairs the commission.
- ¹⁷⁰ Haw. Const. art. IV, § 2.
- ¹⁷¹ Haw. Rev. Stat. §§ 25-2, 25-8.
- ¹⁷² Haw. Const. art. IV, § 2; Haw. Rev. Stat. § 25-3.
- ¹⁷³ Idaho Const. art. III, § 2(5).
- ¹⁷⁴ Idaho Const. art. III, § 2(2); Idaho Code § 72-1502.
- ¹⁷⁵ Idaho Const. art. III, § 2(2); Idaho Code § 72-1502. Leaders of the two largest political parties in each house of the legislature each designate one member. The chairs of the two parties whose candidates for governor received the most votes in the last election each designate one member. The Supreme Court selects the members if no appointing authority selects the members within 15 days.
- ¹⁷⁶ Idaho Const. art. III, § 2(2), (6); Idaho Code §§ 72-1502-03.
- ¹⁷⁷ Idaho Const. art. III, § 2(4); Idaho Code § 72-1505.
- ¹⁷⁸ Idaho Const. art. III, § 2(4); Idaho Code § 72-1505(5).
- ¹⁷⁹ Iowa Code §§ 42.5, 42.3. The legislature votes on redistricting plans submitted by an Advisory Commission, allowing only minimal corrections. If the first proposal is rejected, the commission submits a second one. If the second is also rejected, a third proposal is submitted. The legislature can either adopt this third proposal or create its own redistricting plan.
- ¹⁸⁰ Iowa Code § 42.5(1).
- ¹⁸¹ Iowa Code §§ 42.1(4)(a)-(d), 42.5(1)(a). Majority and minority leaders from both houses each appoint one member, and those four select the fifth member of the commission.
- ¹⁸² Iowa Code § 42.5(2).
- ¹⁸³ Iowa Code § 42.6(2)-(3).
- ¹⁸⁴ Iowa Code § 42.3(3).
- ¹⁸⁵ Me. Rev. Stat. tit. 21-A, ch. 15, § 1206.
- ¹⁸⁶ Me. Const. art. IV, pt. 3, § 1-A.
- ¹⁸⁷ Me. Const. art. IV, pt. 3, § 1-A. House speaker appoints three members, floor leader of largest minority party appoints three members; Senate president appoints two members, Senate minority floor leader appoints two members; largest political party chair appoints one member, second-largest political party chair appoints one member, political party appointees select one member; three members of the public are added (one selected by one party's commission members, one by the other party's commission members, and one selected by the other two public members).
- ¹⁸⁸ Me. Const. art. IV, pt. 3, § 1-A.
- ¹⁸⁹ Me. Const. art. IV, pt. 3, § 1-A.
- ¹⁹⁰ Me. Rev. Stat. tit. 21-A, ch. 15, § 1206.
- ¹⁹¹ Me. Rev. Stat. tit. 21-A, ch. 15, § 1206.
- ¹⁹² Mich. Const. art. IV, § 6(17).
- ¹⁹³ Mich. Const. art. IV, § 6(1).

- ¹⁹⁴ Mich. Const. art. IV, § 6(2). The secretary of state constructs randomized pools of applicants, two for applicants affiliated with each major party and one pool for those unaffiliated. Four legislative leaders have a combined 20 strikes against applicants (majority and minority leader of the Senate and speaker and minority leader of the House of Representatives). The secretary of state selects four applicants with major party affiliation each from two pools and five from another pool with no party affiliation.
- ¹⁹⁵ Mich. Const. art. IV, § 6(1)-(2).
- ¹⁹⁶ Mich. Const. art. IV, § 6(8)-(10).
- ¹⁹⁷ Mich. Const. art. IV, § 6(14)(c).
- ¹⁹⁸ Mich. Const. art. IV, § 6(14)(c).
- ¹⁹⁹ Mont. Const. art. V, § 14(4).
- ²⁰⁰ Mont. Const. art. V, § 14(2).
- ²⁰¹ Mont. Const. art. V, § 14(2). Majority and minority leaders of both houses each choose one commissioner. The four commissioners select the fifth commissioner. If the four commissioners fail to appoint a fifth commissioner, a majority of the Montana Supreme Court selects the fifth commissioner.
- ²⁰² Mont. Const. art. V, § 14(2).
- ²⁰³ Mont. Code Ann. § 5-1-108.
- ²⁰⁴ N.J. Const. art. II, § 2 ¶ 1(a).
- ²⁰⁵ N.J. Const. art. II, § 2 ¶ 1(a).
- ²⁰⁶ N.J. Const. art. II, § 2 ¶ 1(b)-(c). The majority and minority leaders in each legislative chamber and the chairs of the state's two major political parties each choose two commissioners. Those twelve commissioners then choose a thirteenth who has not held any public or party office in New Jersey within the last five years. If the twelve commissioners are not able to select a thirteenth member to serve as chair, they will present two names to the state Supreme Court, which will choose the chair.
- ²⁰⁷ N.J. Const. art. II, § 2, ¶ 1.
- ²⁰⁸ N.J. Const. art. II, § 2, ¶¶ 3-4.
- ²⁰⁹ N.J. Const. art. II, § 2, ¶ 3.
- ²¹⁰ N.J. Const. art. II, § 2, ¶ 3.
- ²¹¹ N.M. Stat. Ann. § 1-3a-9.
- ²¹² N.M. Stat. Ann. § 1-3a-3(B).
- ²¹³ N.M. Stat. Ann. § 1-3a-3(B). The speaker of the House of Representatives and the president pro tempore of the Senate, as well as the minority floor leader of each house, each appoint one member. The state ethics commission selects two members who are not members of the state's two largest political parties and one member who is a retired state supreme court justice or appeals judge.
- ²¹⁴ N.M. Stat. Ann. § 1-3a-4.
- ²¹⁵ N.M. Stat. Ann. §§ 1-3a-5(A), 1-3a-6, 1-3a-8.
- ²¹⁶ N.Y. Const. art. III, § 4(b). The legislature votes on redistricting plans submitted by the redistricting commission, without amendment. If the first proposal is rejected or vetoed by the governor, the commission submits a second one. If the second is also rejected, the legislature can create its own redistricting plan.
- ²¹⁷ N.Y. Const. art. III, § 5-b(a).
- ²¹⁸ N.Y. Const. art. III, § 5-b(a). The president pro tempore of the Senate, speaker of the Assembly, and the minority leaders of each house each select two commissioners. The remaining two commissioners shall be appointed by the eight appointed members by majority vote.
- ²¹⁹ N.Y. Const. art. III, § 5-b(b).
- ²²⁰ N.Y. Const. art. III, § 4(c).
- ²²¹ N.Y. Const. art. III, § 5-b(f). If the same party controls the House and Senate, then the redistricting plan must get approved by at least one member appointed by each legislative leader. If different parties control the House and Senate, then the redistricting plan must get approved by at least one member appointed by the House speaker and one member appointed by the temporary president of the Senate.
- ²²² N.Y. Const. art. III, § 5-b(g).
- ²²³ Utah Code Ann. § 20A-20-201.
- ²²⁴ Utah Code Ann. § 20A-20-201.
- ²²⁵ Utah Code Ann. § 20A-20-201(2). The governor appoints one member, who chairs the commission. The president of Senate, speaker of the House of Representatives, legislative leader of largest minority party in the Senate, legislative leader of largest minority party in the House of Representatives each appoint one member. The legislative leader of the largest minority party in the Senate and legislative leader of the largest minority party in the House of Representatives together select one member.
- ²²⁶ Utah Code Ann. § 20A-20-201(5)-(6).
- ²²⁷ Utah Code Ann. § 20A-20-201(13).
- ²²⁸ Utah Code Ann. § 20A-20-201(11).
- ²²⁹ Va. Const. art. II, § 6-A(a).
- ²³⁰ Va. Const. art. II, § 6-A(b).
- ²³¹ Va. Const. art. II, § 6-A(b). The president pro tempore of the Senate, the speaker of the House of Delegates, and the minority leader in each house each appoint two legislators from their parties, for a total of eight legislative commissioners. They each also submit lists of sixteen candidates to a panel of retired judges, who appoint two from each list, for a total of eight citizen commissioners.
- ²³² Va. Const. art. II, § 6-A(b); Va. Code Ann. §§ 30-392, 30-394.
- ²³³ Va. Code Ann. § 30-396.
- ²³⁴ Va. Const. art. II, § 6-A(d).
- ²³⁵ Va. Const. art. II, § 6-A(g).
- ²³⁶ Wash. Const. art. II, § 43(7).
- ²³⁷ Wash. Const. art. II, § 43(2).
- ²³⁸ Wash. Const. art. II, § 43(2). Majority and minority leaders from both houses each appoint one voting member; those four then select a nonvoting chair. If appointments are not made, the Supreme Court appoints.

²³⁹ Wash. Const. art. II, § 43(3).

²⁴⁰ Rev. Code Wash. § 44.05.080.

²⁴¹ Wash. Const. art. II, § 43(6)-(7). A two-thirds majority of the legislature is needed to amend the commission's plan.

²⁴² Wash. Const. art. II, § 43(6).

