



Redistricting: A National Overview

**by Wendy Underhill, Program Director for Elections and Redistricting
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Good morning and thank you, Mr. Chairman, for inviting me to appear at this hearing. It is an honor to be in Pennsylvania. I am Wendy Underhill, program director for elections and redistricting at the National Conference of State Legislatures (NCSL).

NCSL is the nation's bipartisan organization that supports the work of both legislators and legislative staff. We are headquartered in Denver, Colorado, where I work.

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

In the next 12 minutes I plan to provide a brief overview of how states conduct redistricting.

I'll start by saying that no two states go about this job in exactly the same way. To get at the variety of approaches, I will first talk about who does redistricting, then shift to the criteria that govern redistricting, and close with three options for when a plan isn't passed.

As for who draws the maps, in 37 states the legislature has the responsibility for adopting state legislative plans. In 43 states, legislatures are responsible for Congressional redistricting.

The other states give primary responsibility for drawing maps to a commission or board.

I'll address variations in how legislatures draw the maps, and then will turn to commissions.

Generally speaking, when the legislature is responsible for redistricting, bills are introduced, hearings are held, each chamber votes and the enacted bill goes to the governor for approval. This slide highlights some of the variations within that standard practice.

For instance, there are three states — Florida, Mississippi and North Carolina— where redistricting plans go into effect without action on the part of the governor. And two states, Connecticut and Maine, require a two-thirds vote to pass a redistricting plan. Twelve states use a special session devoted to redistricting, whereas most do this work during regular session.

Iowa's procedure is the most unlike the other states where the legislature has responsibility. There, the nonpartisan legislative staff draws three plans—one for the state House, one for the Senate and one for Congress—using only census data. The staff are not allowed to use any political data including election results or indices, incumbent addresses or party registration.

That package of three maps is submitted to the legislature for an up-or-down vote. If the legislature rejects the first set of plans, staff produce a second set of plans. If the legislature rejects the second set of plans, a third set are produced, and at that point the legislature can amend the plans as it chooses.

Since this system was adopted in the 1970s, the legislature has always approved the first or second plans submitted by the staff.

Now I will move on to redistricting by commissions. I will talk about commissions that have primary responsibility for drawing maps.

I say that, because some states have advisory commissions and others have back-up commissions that come into play if the legislature fails to enact a redistricting plan by a specific deadline. I will come back to these back-up commissions in a few minutes.

13 states currently use commissions for legislative redistricting, and NCSL includes Pennsylvania in that group. On this map, all the colored states use commissions for legislative redistricting, and the seven states in black use a commission for Congressional redistricting as well.

The number of commissions has been growing slowly, with one to three states each decade switching from the legislature to a commission.

Commissions vary in all kinds of ways. For instance, the smallest commission has just three members, and the largest has 18 members.

Most redistricting commissions are linked in some way to the legislature. Often legislative leaders play a key role in selecting commission members. In Hawaii, for instance, the Senate president, the Speaker of the House and both minority leaders each select two members. These eight members select the ninth member, who serves as the chair, and the tie-breaker. If the eight members can't come to agreement, the state Supreme Court appoints the ninth member.

Rules vary on how a map gets approved. In some states, a simple majority of commission members is all that is needed, but more recently established commissions have begun to require a bipartisan vote, meaning that the majority can't pass a plan without at least some participation by the minority party.

With those general comments, I'll now move on to four examples of commission states.

The Arizona Independent Redistricting Commission was put on the ballot by a citizens' initiative in 1999, and the process was first used in the 2000 cycle.

The commission has five members. The selection process starts with the appellate court creating a pool of 25 nominees, ten from each of the two largest parties and five *not* from either of the two largest parties.

The four legislative leaders each appoint someone from the pool. These four appoint a fifth commissioner from among the independents, and this commissioner serves as chair. If the four deadlock on this crucial tie-breaking spot, the appellate court appoints the chair.

The Arizona Independent Redistricting Commission has been challenged in court several times, and withstood those challenges. This year the Senate president proposed a couple of changes to the commission, mostly to add more independent members.

Now, California. I will offer just two comments because you have real experts on its process here today. First, its selection process is complex. Second, to adopt a plan requires “yes” votes from at least three Democratic commissioners, three Republican commissioners, and three independents, which is a higher threshold than a simple majority.

Arizona and California’s commissions are often referred to as “independent commissions.” I’d like to mention also an example of a bipartisan commission, the one in New Jersey that draws Congressional maps.

Here, the first twelve members are political appointees. Two are appointed by each of the four legislative leaders, and two are appointed by each of the major parties. Those twelve select the 13th member, who can’t have held an elected office or an office in a political party for at least five years.

Some have referred to this plan as “shuttle diplomacy,” with the 13th member acting as the chief diplomat.

Ohio has been in the news twice this decade about redistricting commissions. In 2015, the Ohio legislature sent a ballot measure to the voters to create a seven-member bipartisan commission for legislative redistricting. It received a “yes” vote and will be used for the first time in the 2020 cycle. Any plan must receive at least two “yes” votes from members of the minority party.

This year, Ohio’s legislature has sent another measure to the voters, this one relating to Congressional redistricting. It will be on the primary ballot next month. This is the first “hybrid” plan I’m aware of. I’m calling it that because the legislature first gets to draw the plan. If it can pass a plan with a 3/5 vote and 50 percent yeses from the minority party, it’s done. If the legislature can’t do so, the job is moved to the same redistricting commission that is tasked with drawing legislative lines. If the commission is also unsuccessful, it comes back to the legislature. It can pass a 10-year plan with one third of the minority party’s vote, or it can pass a 4-year plan with a simple majority. In that case, the process starts over again four years later.

Some observers say that what matters isn't who does the work of redistricting, but rather what criteria are used. For the next few slides I will discuss the criteria, or rules, that govern redistricting around the country.

Let's look at federal requirements first. In brief, districts must be of equal size in terms of population, and states cannot intentionally or unintentionally dilute minority votes. Also, states cannot intentionally or inadvertently dilute minority votes.

Besides those federal requirements, each state can set its own criteria as well. These are found mostly in constitutions, but can also be set in statute, or in guidelines adopted by legislatures or committees.

I've divided these into traditional principles on this slide, and emerging criteria on the next slide.

These criteria can and do conflict at times. Some observers think it is better to prioritize them to avoid conflict, and others say that flexibility is needed. In any case, a fair amount of legislation has been introduced in the last few years relating to criteria.

Here I've provided some of the newer criteria being considered by states.

In 2010 Florida added, by a vote of the people, this phrase to its constitution: "no apportionment plan or district shall be drawn with the intent to favor or disfavor a political party or an incumbent." That favor/disfavor language is becoming more common.

Five states prohibit the use of political data, and competitiveness is a principle for three states: Arizona, New York and Washington.

And, most recently, Ohio adopted a new criterion at the same time it adopted the 2015 commission. It says, "The statewide proportion of districts whose voters, based on statewide state and federal partisan general election results during the last ten years, favor each political party shall correspond closely to the statewide preferences of the voters of Ohio."

Sometimes a state can't get a plan enacted and through the courts. When that happens, many states are silent, but a few have a plan.

In six states, a back-up commission is called into play, either for legislative or Congressional maps. Not surprisingly, how these back-up commissions work varies. All but the Indiana commission for Congressional plans are mentioned in state constitutions. The Indiana plan is statutory.

And in another three states, the state Supreme Court is designated as the back-up to the legislature or commission.

In Connecticut, the back-up commission has been called into action for at least the last three cycles. The members of it have been the same as those who formed the original legislative committee, plus a new fifth member who is chosen for his or her negotiating skills.

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